I respectfully mention one fact and that is that we are in great suspense about the condition of things in Assam. As you will be pleased to remember a Short Notice Question was accepted by you and we expected it to be answered at least today. A long time has elapsed since the Short Notice Question was put and the answer should be given to us.

Mr. Speaker: That point was raised by Mr. Amjad Ali and the hon. Minister said that he was in communication with the Government of Assam. He will get the information as soon as possible.

Shri R. K. Chaudhury: Am I to take it that the communication with the Government of Assam has been disturbed and therefore the answer has been delayed?

Mr. Speaker: Let us not go into that. The hon. Minister is anxious to give the information as early as possible.

Jonab Amjad Ali (Goalpara-Garo Hills): Is he ready with that information today?

The Minister of Home Affairs and States (Dr. Katju): I have got some information. It is being collated. I shall present it before the House tomorrow.

PREVENTIVE DETENTION (SECOND AMENDMENT) BILL.—*Contd.*

Mr. Speaker: Before the House proceeds with the further consideration of this particular motion and the amendments, I should deal first with certain points raised by the hon. Dr. S. P. Mookerjee during the course of the debate on this Bill.

On the motion made by the hon. the Home Minister for consideration of the Preventive Detention (Second Amendment) Bill, 1952, three amendments were moved as follows:

(i) for circulation of the Bill to elicit public opinion by Shri Gurupadaswamy;

(ii) for reference to the Joint Select Committee, by Dr. Punjabrao Deshmukh; and

(iii) for reference to the Select Committee, by Sardar Hukam Singh with direction to consider all amendments even to those sections of the principal Act, which are not sought to be amended by the present amending Bill.

During the course of the debate Dr. Syama Prasad Mookerjee raised on 18th July, 1952, two points. The first was that the form in which the Bill has been drawn up is bad and therefore not in order. The other was, to quote his words, about "the feasibility and admissibility of amendments so as to enable the House to consider the entire Act." In other words, whether it would be competent for a Member of the House to move amendments to sections of the principal Act which are not sought to be amended by the present amending Bill.

His contention seems to be that, by this Bill the Government are attempting not only to continue an expiring law, but are further amending some of its substantive provisions also. This form of the Bill raises some difficulties as regards the scope for and the character of the amendments, that may be permissible to be moved. The position would have been clear, if the Bill sought merely to continue an expiring law. The scope of amendments would be then strictly limited, as has been settled by long Parliamentary practice, and as stated in a recent ruling by me in connection with the Ajmer-Merwara Rent Control Bill, which came before the House on 19th March, 1951. I need not go into those details as the matter is fully dealt with in my previous ruling. But a difficulty is felt here because Government have sought to amend certain other provisions also of the principal Act in addition to a provision to continue the remaining provisions of the Act for a certain period. His contention is that such a Bill is bad in form, and the proper course for Government to follow, for securing thorough deliberations on the measure and for giving the House an opportunity of discussing the entire subject, was to introduce a totally new Bill including therein as many provisions of the old Act as Government may have thought proper. Instead, Government having sought by the present Bill amendments in both directions, namely continuation of some of the provisions of the principal Act and amendment of others, it has become necessary to know, at the outset, as to whether the Bill is to be treated as an expiring Act continuation Bill or as an ordinary amending Bill. If on the other hand, it is to be treated as a combination of both forms, then his contention is that the rule which governs the scope of amendments on an expiring law continuation Bill cannot apply, because Government themselves are not seeking to continue the same law without any alterations.

While one can appreciate this contention, it is difficult to see as to how

[Mr. Speaker]

the Bill can be ruled out of order, because of what he calls a 'bad form'. He appears to be conscious of the weakness of his contention and he, therefore, advances the second alternative contention also. I do not think I need dilate upon the question of form. It is obvious to my mind that the Bill cannot be said to be out of order on that ground. His second point mentions that his purpose is to get a ruling of the Chair as regards "the feasibility and admissibility of the amendments so as to enable the House to consider the entire Act". He wants an opportunity to be given to propose amendments with regard to any or all the provisions of the principal Act.

Looking to the provisions of the Bill, it is obvious that it is not an expiring law continuance Bill, *pure and simple*, and it follows that it has to be treated as a category by itself. The position is undoubtedly complicated. If it were merely an amending Bill seeking to amend certain provisions of the principal Act, the position was clear that it would not be permissible to seek amendments to those sections of the principal Act which are not sought to be amended. But the Bill seeks to continue in force all the provisions of the principal Act with certain amendments by means of a small amendment in Section 1 of the Principal Act, by changing the date on which the principal Act ceases to exist, under the existing provisions. It also adds a new provision—proposed section 12A.

I think, looking to the form and the nature of the Bill, it cannot be treated as an expiring law continuance Bill, pure and simple, and the amendments, therefore, that can be proposed, cannot be limited in scope, like the amendments in case of an expiring laws continuance Bill. In a sense, the Bill presents in a different form the entire subject of the principal Act; and for the purposes of judging about the admissibility of amendments on the ground of the scope of the Bill or clauses, it is immaterial, to my mind, to go into the question as to how far the amendments sought to be made by the Bill in the principal Act are substantial. It is enough that the amendments that are sought to be made by the amending Bill are not *purely* formal or altogether *minor ones*. Some of them are of a substantial character, though they make the law more liberal and give certain more privileges to a detenu and limit the total period of detention. The point is that, the amending Bill now before the House is different at least in some material particulars from the Act, the life of which the present Bill seeks to extend.

What should be the scope of amendments in these circumstances? A specific answer to this general question is perhaps impossible of exact definition. In so far as the Bill touches particular sections of the principal Act, such as sections 3, 10, etc., it is clear that amendments to those sections would be permissible as being within the scope of the Bill, if relevant to and within the scope of the individual sections. That is a well established rule. The amending Bill touches the scheme of provisions of law contained in that particular section; and even a minor amendment to any part of the section opens a wider scope for amendments. This statement is rather too general, but it becomes difficult to extricate the substance from the appendage, when both are huddled together in one scheme of a section.

The difficulty arises in respect of amendments to such sections of the principal Act as are not touched by the amending Bill directly, but are sought to be continued by extension of time by amendment of one section only, of the principal Act. On this aspect, it is neither possible nor desirable to treat the whole of the expiring Act on the same footing as one section, though the Act consists of one entire piece of legislation, and, therefore, presents one scheme. It is not on a par with a section which represents a complete, but component part of a bigger scheme. At present, therefore, I am inclined to think that unless there is some authority from the House to permit a general amendment to the whole scheme of the Act, it would be difficult to hold that any amendment to any section of the Act would automatically be permitted. At this stage, the question is hypothetical. Unless a specific amendment to sections of the principal Act not touched by the amending Bill is brought before me and its affinity or relation to the provisions of the amending Bill are examined, it would be difficult to say as to what particular amendment is or is not in order. In view of the peculiar and mixed form in which the Bill is coming before the House, one can say that the scope of amendments to a particular section need not necessarily be restricted to the provisions of the sections specified in the clauses of the amending Bill, but the admissibility has to be determined in the light of the entire new scheme of the Act and as sought to be amended by the amending Bill.

Amendments relating to matters outside the particular section sought to be amended but closely related to the new scheme of the Act and arising from the sections sought to be amended may be permissible, if they are otherwise competent. I do not think I can go beyond this general statement at the present stage.

According to English practice, they have general instruction given by Standing Order No. 40 which provides as follows:

> "It shall be an instruction to all Committees in which Bills may be committed, that they have power to make such amendments therein as they shall think fit provided they be relevant to the subject matter of the Bill but that if any such amendments shall not be within the title of the Bill, they do amend the title accordingly, and do report the same specially to the House."

There, the scope is determined by the title, and therefore, a general rule is made for allowing amendments beyond the strict scope provided they are relevant to the subject, and then liberty is given to change the title.

In addition to this Standing Order, there is also the practice to give special instructions to Select Committees and thereby extend the original scope for the amendments. The amendment of Sardar Hukam Singh appears to proceed on this line. It would be for the House to decide as to whether such instructions should or should not be given as it is competent for the House to give them if it is pleased to do so. Sardar Hukam Singh's amendment is not, therefore, out of order, as the matter is within the competence of the House with reference to the present Bill.

In the view that I am taking of the peculiar nature of this Bill and its provisions, I do not think it is necessary to discuss the position as on an expiring laws Bill. To my mind, the various rulings cited and discussed on the floor of the House do not apply to the facts of the present case. Nor is the question of assurance given by the hon. the Home Minister to the predecessor of this Parliament on 28th February, 1952, relevant for the purpose of deciding the present issue.

I may add that a glance at the amending Bill will show that it practically covers the most vital and important provisions of the expiring Act. The amending Bill touches section 3, which is, as it were, the centre of the Preventive Detention Law, and section 10 dealing with the procedure of Advisory Boards is also sought to be amended by clause 6 of the Bill. The other provisions, both of the original Act and the Bill are mainly procedural or formal. For all practical purposes, even within the restrictions of the general rule about the admissibility of amendments, the field as regards detentions, the right of representation, the period for which the law has to remain in force etc., is open. Matters of administration, such as execution of detention orders, regulation of places and conditions of detention, constitution of Advisory Boards etc., though matters of importance, are not matters of vital substance. But these are matters which have to be considered by hon. Members who are thinking in terms of amendments to all sections. I am merely inviting their attention to aspects which seem to make any further discussion about the admissibility of amendments rather unnecessary at this stage from a practical point of view.

Shri N. P. Nathwani (Sorath): When the House adjourned on Friday, I was referring to the various safeguards against the abuse of this power. May I refer to the provision for the Advisory Board? Though certain Members from the opposite side have tried to belittle or ignore the existence of this provision, may I point out that though not a substitute for a Court of law, it is, as observed by Mr. Justice Mahajan in a case which came up before the Supreme Court, a substantial solatium for the person preventively detained.

Mr. Speaker: Order, order. Let there be no talk here now.

Shri N. P. Nathwani: Again, the courts of law can intervene and grant relief in a number of cases. For instance, if the power is used out of personal spite or ill-will, or if the power is used and the ground is given which has no relation to the facts or if the grounds supplied by the detaining authority are insufficient to enable the detained person to make his representation—in all these cases, the courts of law can grant relief. Thus, the Bill which is sought to be passed is not arbitrary or capricious, and it does not give arbitrary powers. But, some of the hon. Members on the opposite side have stated that it is a draconian law which is sought to be passed, that it is barbarous, that it is stinking and so on. And they say that whenever the power is used, it is used to crush democracy or some

[Shri N. P. Nathwani]

democratic movement, and they demand that the Bill should be circulated for eliciting public opinion.

On the last day I referred to some facts to show under what circumstances the Government of Saurashtra had no alternative left but to resort to this Act, and how the situation was brought under control. Some of the hon. Members who want to know about the forces which have been operating at the back of these dangerous activities of gangs of dacoits may do well to await the result of a trial which is going on today in the court of the Sessions Judge at Gondal. In that case several persons including a Prince have been charged with and are being tried for having conspired to commit and having committed a dacoity at a village called Rib in Central Saurashtra. But these hon. Members say that you are trying to suppress democracy, you are trying to suppress democratic movements, and therefore, refer the Bill for eliciting public opinion. Do these hon. Members want to tell the people in Saurashtra and other parts of the country that these dangerous activities, these dacoities and robberies which have been committed.....

Jonab Amjad Ali (Goalpara-Garo Hills): On a point of order, Sir. The hon. Member on his legs is referring to certain matters *sub judice*. Is he competent to do it?

Mr. Speaker: The hon. Member will realise that he is not referring to the merits of the cases. He merely mentions the fact that cases are pending. There is no objection to that. He mentions that proceedings are pending but he does not discuss the merits of the proceedings or the contents of the proceedings.

Shri N. P. Nathwani: Do these hon. Members who want the Bill to be circulated for eliciting public opinion want to tell the people in Saurashtra and several other parts of the country that these robberies and dacoities represent a democratic movement? Do they want to tell the people that these dacoits and the powerful persons who are at the back of these dacoities are the leaders of a democratic movement? And they want the people to express their opinion whether they would choose between a reign of terror or allow a certain class of persons committing these atrocities to be preventively detained. Does it not amount to asking a person who is starving to express his opinion whether he would like to have food or whether he would like to strave and die? To do so is not merely an insult to his intelligence, but to add insult to injury.

I regret not because this Bill is to be passed, but because there exist circumstances in the country which justify the continuance of this Bill. It is not a question of dealing with a few dacoits. It is a question of dealing with a class of big landlords and Princes who, with a view to oppose your land reforms policy and other economic programmes, want to indulge in a terrorist movement to scare away the tenants and other classes from insisting upon their strict rights under the reform measures which are being enacted in various parts of the country. Several hon. Members on the opposite side have spoken on this Bill, but none of them has said even a single word in condemnation of this class of persons. None of them has a word of sympathy for the people who faced and are facing serious danger. Still they say that the Bill should be circulated for eliciting public opinion thereon. But may I say this that people have expressed themselves solidly behind this measure, so far as Saurashtra in particular and various other parts of the country are concerned, and they want this Bill to continue? The recent events in Saurashtra have a lesson and a valuable lesson for other parts of the country. If you want peace and order to be preserved, if you do not want your land reform policies to be whittled down by a reign of terror, the States must have this power to detain. And therefore this Bill must be passed.

With these words, I support the Bill and oppose the amendment seeking to circulate the Bill for eliciting public opinion thereon.

Shri N. C. Chatterjee (Hooghly): I am not one of those who believe in a policy of obstruction or opposition for the mere sake of opposition. Therefore, I listened to the speech of the hon. the Home Minister with great attention. I expected from him some solid facts some close reasoning, and some logical arguments in defence of the measure which he wants to continue and for which he wants the vote of this House, the first House elected on the basis of adult suffrage for the first time in the history of India. I am sorry to say that I am disappointed. I am disappointed because I did not get real facts. He gave us more abuses than facts, he hurled at us invectives and not logic, and propounded arguments which will not even convince a political ignoramus. He was continually saying Look at this unior

of hearts amongst these people'. He takes a good deal of pleasure in calling some of us communalists, he hates the Communists, he despises people whom he calls the ex-rulers—according to the Constitution of India which he has not attempted to read fully they are still rulers and not ex-rulers—and he also hates all the Independents. I can assure him and the hon. Members sitting behind him that we are here in spite of the terrific machine which his party represents. We are here representing the loyalty and willing suffrage of not thousands, not hundreds of thousands, but millions of our fellowmen, who have elected us to this House of the People with the definite understanding that we should vote down this lawless Bill, unless some congent argument is put forward for the continuance, of this measure which is a disgrace on the statute book of India and which every lawyer in India worth his name knows has been disgracefully abused in its practical application in this country. I say this with the fullest sense of responsibility and I am prepared to prove it in any court of law. and before this House, that it has been abused. What is the good of the hon. Home Minister standing up and saying that it has never been used against political parties? It has been used in the past against political parties, and our suspicion is genuine, reasonable, and well grounded that it may be used against political parties. What is the use of saying that it is not meant for use against political parties when you extern under the Preventive Detention Act, the President of a big political organisation, and apply it against the General Secretary and practically against each and every member of the Working Committee of that organisation? I am sorry that I do not stand convinced by the arguments put forward by the hon. Home Minister. He has tried to oversimplify the whole issue, by referring to one or two articles in the Constitution and he just quoted one judgment in the Gopalan case, by the Supreme Court.

Jonab Amjad Ali: I rise to a point of order, Sir. I find one hon. Member —and possibly he happens to be an hon. Minister also—frequently going to the dais and whispering something to the Speaker. That takes away a certain amount of the dignity of the Chair as well as that of the House. This kind of thing, I have noticed not only today, Sir, but ever since the day I entered this House. I do not think it is in any way in keeping with the dignity of the House if he should continue in this fashion. I want your ruling on this point.

Mr. Speaker: I entirely concur with the hon. Member that apart from the question of dignity, the Chair should not be too often approached by hon. Members because it creates an impression in the minds of at least some hon. Members that the Chair is being instructed this way or that way. If it happens that a particular Member is called upon to speak, after the Whip or Leader of a party or the Member sees the Chair, it might create the impression that the instruction which was given is being followed, though there is nothing of that kind. But as it may not be possible to prohibit absolutely any approach, it should be very occasional and very very rare. Supposing, as it just happened, that there is a question of the sitting of the House and the timings, obviously such a thing cannot be done merely by chits, and it is no use the Chair being approached after the House is adjourned. I am just giving this as an illustration of the occasions when it may be necessary to approach the Chair. I entirely agree with the hon. Member that this practice should be discouraged and put an end to. I myself have told hon. Members that, if they want to have any communication with the Chair, they could send chits, instead of approaching the Chair very often.

Shri N. C. Chatterjee: I wish the Treasury Benches were more uptodate with constitutional developments both in India and outside. Of course when an old votary of Themis is lured away from the temple of justice and is elevated to the position of His Excellency and kept as such for years, he naturally in the midst of his diverse preoccupations and good many useful or ceremonial functions is apt to get out of touch with jurisprudence which in the modern world is not static but dynamic. The hon. Minister has referred us to the fact that in the Constitution of India, freedom from preventive detention is not a guaranteed fundamental right. He says that article 22 has provided for preventive detention. I am amazed at such a statement. I can give you instances of countries like England where there are no fundamental rights. There are no guaranteed rights in the British Constitution. But what is the law there? Can you have this kind of statute on the Statute book? Never in the history of Britain, will such a thing be allowed. Even when the battle of Britain had begun, even when France had fallen, and Belgium had been run over, Flanders had been occupied, Dunkirk had been captured and there was daily and hourly bombing of London and other areas, England had never had such a drastic

[Shri N. C. Chatterjee]

piece of legislation as we are being called upon to enact today. Never did they have such a law as this, and I say this with the fullest sense of responsibility. The Defence of Realm Regulation—Regulation 18B—was confined only to certain occasions. One was the time of war. Never during peace time has any democratic country in the world resorted to such legislation. It was confined only to wartime. And secondly, this discretionary power was vested in the Home Minister and not anybody else. It was left to the subjective satisfaction of a responsible Cabinet Minister, and not to a Tom, Dick, Harry or a district magistrate. We know how district magistrates have behaved in this country. We know how the grounds have been cooked up, how facts have been distorted in case after case; not in dozens or scores of cases, but in hundreds of cases the Supreme Court and the different High Courts, in spite of the limitations of their power, in spite of the limited authority given to them under this Preventive Detention Act, have held that there has been an abuse of power, that the grounds have been *mala fide* and that the power has not been exercised in a *bona fide* manner by the police or the executive.

Take, for instance, the case of Prof. Ram Singh, to which my learned friend Dr. Krishnaswamy, was referring. My learned friend intervened and said: "Are you reading the dissentient judgment of Mr. Justice Bose?" I did not expect it of a veteran lawyer like Dr. Katju. Remember the greatest judgments in the world of jurisprudence are dissentient judgments. Go to the courts in America. You will find the dissentient judgments of Justice Holmes, Justice Brandies, Justice Cardozo going down in the history of jurisprudence and the history of human liberty as the greatest landmarks. Go to England. In the constitutional development of England, you will find that the dissentient judgment of Lord Shaw is quoted in every court, in every country, by every person who believes in freedom. Read the great dissentient judgment of Lord Atkin in the Liversidge case which is quoted as a great contribution to jurisprudence. But I am not thinking of that. What did the Supreme Court say, the majority say: "The conduct is regrettable. We are powerless, as the statute stands; we cannot do anything." As the statute stands, although the grounds may be wrong, although the grounds may be false, they have held that the grounds are not justiciable.

[MR. DEPUTY-SPEAKER *in the Chair*]

What is the good of the hon. Dr. Katju standing up on the floor of this House and saying: "Believe the police, believe the magistrate. Why should the police concoct any shorthand report?" What was Prof. Ram Singh doing? He was possibly lecturing in some college on a particular day. On the same day he delivered a speech in the Delhi Municipality also as he was its Vice-President and as a public worker he addressed some meetings, and the grounds were: "You were delivering speeches likely to imperil public safety". For God's sake, tell us, you are referring to which speech? Where did I deliver the speech? Which portion of the particular speech is objectionable? Just tell me that. Not one word in spite of the efficiency of the police —an efficiency that Dr. Katju has now discovered and I congratulate him on the discovery of this new fact—although the Supreme Court was also saying: "It is only fair, it is only right, it is only proper before you put a man behind the prison bars, you should give him some opportunity of saying what is the speech he delivered, which portion of it, giving a gist of the speech". Nothing was given. Mr. Justice Bose said that that kind of detention was illegal. Other Judges said in effect: "It is very unsatisfactory, very undesirable, but we are powerless; we cannot do anything".

Shri N. P. Nathwani: Will the hon. Member point out from the judgment of the case passages wherein the Judges observed to that effect?

Shri N. C. Chatterjee: I have not here all the books. I can give my learned friend any reference he likes. I will read to you the case of Mr. Asutosh Lahiri. Mr. Lahiri came here in Delhi in the month of March 1950. He was here for a few days. He attended a Press conference on the 27th March and then went back to Calcutta. At that time, Sir, you know the East Bengal carnage had started and thousands and thousands of refugees, displaced and homeless, were coming into West Bengal and there was a terrible tragedy. Lahiri as a man who was representing some East Bengal constituency in the old Legislative Assembly was doing relief work. The Chief Minister of my province, Dr. Bidhan Chandra Roy, knows that he was doing his best to rehabilitate the poor people. In this work he was cooperating wholeheartedly with the Government and the executive authorities. Do you know, Sir, when he came back a little later, I think on the 30th of March, immediately he came to attend the Working Committee meeting at

8.45 P.M., a detention order dated 31st March was served on him? Do you know, Sir, what are the grounds? I am reading from the Supreme Court Judgment, not a minority judgment. There was no minority judgment. Both the Judges, Mr. Justice S. R. Das and Mr. Justice Mukerjee, said practically the same thing:

> "You came to Delhi on March 27, 1950, and held a Press conference in which you gave a highly exaggerated version of happenings in Bengal and East Bengal. It is understood that since after the Press conference your activities have continued to be of a nature inciting communal passions. It has also come to notice that your activities during your stay in West Bengal had also been of a communal nature. Your activities in the present atmosphere in Delhi are likely to create hatred between different communities which may lead to disturbance of public peace and order."

10 A.M.

In an affidavit sworn by Mr. Lahiri it was put on record that on the 5th March 1950 when Pandit Jawaharlal Nehru, the Prime Minister of India, visited Calcutta there was a talk of organising a *hartal*, but Lahiri issued a statement deprecating such a movement and said it was very ill-advised and the *hartal* was called off. Since then in Delhi he had done nothing. Sir, you will be amazed to know that the district magistrate or whoever signed that detention order kept back from the Court, kept back from the world that this Press conference was banned by the authorities of Delhi and not one word of the Press Conference was given out to the public. Nobody in Delhi, nobody in India knew anything about it. The Judges said: "It is a very unfortunate thing". Justice Mukerjee said—I am reading a few words:

> "Legitimately doubt arises in one's mind as to the necessity or propriety of making use of the Preventive Detention Act against the petitioner. He is not an inhabitant of this place and does not normally carry on his activities in Delhi. He resides habitually in West Bengal and came to Delhi only to attend certain meetings. If as the District Magistrate thought, his presence at that time in Delhi might lead to some disturbance of communal peace there were ample powers under the ordinary law which he could exercise for the purpose of preventing the mis-chief. There are provisions in the Criminal Procedure Code which could be invoked for such purpose. As a matter of fact, persons who were expected to take a leading part in the same were externed from Delhi. It is difficult to see why a different treatment was meted out to the petitioner and he was consigned to detention in jail for an indefinite period of time. There could be no better proof of *mala fides* on the part of the executive authorities than a use of the extraordinary provisions contained in the Act for purposes for which ordinary law is quite sufficient."

This district magistrate knew, that in Delhi he had done nothing. The Supreme Court said that there could be no better proof of the *mala fide* use of executive authority than using the extraordinary provisions contained in the Act for purposes for which the ordinary law was quite sufficient. But they could not do anything, because the power of the courts was deliberately taken away. The Courts are powerless to give you relief and can do nothing about this kind of suspected *mala fide* use of power. Then Lahiri from jail wrote to Dr. Roy, the Chief Minister of West Bengal. "Did I do anything in West Bengal for which you wanted that I should be arrested and put in jail?" Dr. Roy wrote back and said: "You did nothing improper and the West Bengal Government never wanted you to be arrested by the Delhi authorities or anybody". We again moved the Supreme Court on that letter of Dr. Roy. You will be amazed to know the Supreme Court said: "That proves that the authorities were not acting *bona fide*, but we are powerless". You know, Sir, in case after case the courts have held the grounds are not justiciable. Even if somebody says that you, Sir, when you are presiding here, were in Madras today doing some illegal act prejudical to public safety. I cannot prove before the Supreme Court or any Court in India that this statement is not true, that it is a malicious falsehood, I cannot prove that. It is almost impossible to prove '*mala fides*' against a particular officer. Therefore, I cannot prove it. The Supreme Court said that this statement of Dr. Roy showed that it was a very very undesirable thing for the Delhi Government to have arrested him. Then he was released. This is the way this Act has been used. This is the way things have been going on.

You know, Sir, what has happened in some recent cases. Sardar Hukam Singh told you and told the House

[Shri N. C. Chatterjee]

about Prof. Deshpande's case. He was not here for several days. He was engaged in one of the most terrible electoral conflicts. You know, Sir, the Congress set up one of their strong candidates in Madhya Bharat in Gwalior-Shivpuri constituency bye-election. There is only one man in this House, one man in the House of the People, who was returned from two parliamentary constituencies. That is V. G. Deshpande. He had to resign one seat. He resigned the Gwalior-Shivpuri constituency and Dr. Khare stood there. The Congress set up a very powerful candidate. Mr. Deshpande had to go down—he is now in the House—he went down, he was actually in the midst of a most terrible electoral fight. Actually polling was going on during seven days, I think from the 20th to the 26th, and he was not here at all, he had nothing to do with the troubles, with the demonstrations and with the *tamashas* that were going on in Delhi. As a matter of fact, at that point of time the polling was going on in the interior of the district and he knew nothing of what was happening here. He came here on the 26th morning. From the railway station he came to this House to participate in the proceedings, in the evening he addressed a meeting, and the next day in the early morning he is detained. What are the grounds? The grounds are, "You have been organising and instigating the processions, demonstrations and all the troubles that were going on in Delhi". That is not true, it is a patent falsehood. The Home Minister should stand up and apologise for this kind of falsehood which his police, which his efficient police, which his uncorrupt police, his incorruptible police are trotting out against Members of this House. Not only that. That meeting was made one of the pegs on which to hang the preventive detention order. Solemnly the district magistrate signed the order: "You, so-and-so, presided over the meeting held at the Diwan Hall where provocative speeches were made". To another person also he said, "You, so-and-so, presided over the meeting at the Diwan Hall on the evening of such-and-such a date....."

The Minister of Home Affairs and States (Dr. Katju): Sir, I rise on a point of order and ask your ruling on whether all these references to particular cases are in order because if they are in order they might require a detailed answer, every one of them.

Dr. S. P. Mookerjee (Calcutta South-East): Only the posters which the hon. Minister saw in Gwalior were relevant—not the rulings from the judgments.

Dr. Katju: I rose to a point of order —you address me when I am addressing the Deputy-Speaker. The hon. Member is referring to particular cases, to particular statements. There is much to be said on the other side. It is not so very rosy and white as you paint it up here. (*Interruption*).

Mr. Deputy-Speaker: Any hon. Member has got a right to rise to a point of order. If I have a doubt and if other hon. Members think that their view must be expressed before the Chair gives a ruling, certainly I will allow them to speak and they are welcome to express their views. But if all hon. Members on the left side should immediately say there is no point of order I need not be in the Chair. Therefore, I request hon. Members to bear this in mind. This is a very contentious matter and any amount of heat will be generated even on an innocuous—I do not mean to say this Bill is innocuous—on an innocuous speech that might be made and therefore hon. Members will try to keep as cool as possible.

So far as this point of order is concerned, I feel that unless references to particular instances are made it will not be possible to prove that the Preventive Detention Act has not worked properly and therefore it ought not to be allowed to continue. But at the same time I would request hon. Members not to take any other hon. Member by surprise. Order, order. There are occasions when hon. Members can laugh. Now so far as this matter is concerned, I would urge upon hon. Members that whenever they want to make a detailed reference to any particular case they will give an intimation to the other side so that the Member concerned may come prepared. Of course, the hon. Minister will have ample time to reply and he will not be called upon to exercise his right of reply today. But whenever any hon. Member wants to make a reference to a particular case let him not take the other side by surprise, whether this side or that side.

I do not see that there is any irrelevance in this matter. Details can be referred to for the purpose of showing whether the Bill ought to be continued or ought not to be continued.

Dr. Katju: I only wanted a ruling on that point.

Dr. Rama Rao (Kakinada): Sir, may I know whether we will get a chance to speak or not?

Mr. Deputy-Speaker: Every hon. Member may honestly feel that he will get a chance to speak.

Shri S. S. More (Sholapur): Can I seek some further information from you, Sir? Supposing in the course of developing a particular argument I suddenly refer to a particular case of which an intimation has not been given to the hon. Minister on the other side, will my reference be out of order?

Mr. Deputy-Speaker: There are exceptions. The hon. Member is aware that when on the spur of the moment he comes by a particular incident and refers to it I will certainly allow the other side to take some time and reply.

Dr. S. P. Mookerjee: That will apply to the hon. Minister also. When long references were made to the Saurashtra cases of which we knew nothing we got no previous notice and had no opportunity of verifying them. So, are you suggesting that in all cases that are going to be referred to the other side should be informed? Will any general circular be issued? How else will Members know?

Mr. Deputy-Speaker: It is no good making any observations which make it look so ridiculous. I would only say wherever it is necessary and is possible. Should we mention in this House a series of references to particular facts and allow them to go unchallenged? I would not cut down the right of speech, but in cases where the incidents quoted are considered to be bad but true and may show that this Bill ought not to be continued for any length of time, there it is the Government that has to explain and all notice should be given to the Government. So far as the Government is concerned, it comes forward with the Bill, it starts the motion, and all hon. Members have sufficient time to study the facts. Members come from all parts of the country—it is not as if one area alone is represented here. When reference was made to the incidents in Saurashtra we should remember that Members from Saurashtra are here who have intimate knowledge of the facts. But it may not be so as far as the hon. Minister who deals with the whole of India is concerned. Hon. Members will appreciate this difficulty. It is not as if I would like to shut out discussion on any particular matter—on the other hand I am anxious to see that nobody is taken by surprise, not that one view alone, whether right or wrong, should prevail and carry conviction in the rest of the country at large.

Dr. Katju: Sir, on a point of order. I have no objection whatsoever to any Member reading extracts from judgments but the point of order on which I would ask your ruling is whether it is open to anyone to make attacks on the veracity or proper conduct of any officer who is not here to defend himself, in a case which has not gone to court.

Mr. Deputy-Speaker: It is not as if every case goes to a court of law and there is a judgment. Therefore, if certain allegations are made against particular officers concerned, it is open to the hon. Minister who is in charge of all the officials in this country to safeguard their interests.

Shri N. C. Chatterjee: I had made the suggestion with due humility that our law should be put on the same level at least, if you want to have this kind of preventive detention, as Regulation 18B, and no one but the Home Minister either of India or of the State concerned should be given this wide discretionary power of detaining any person in jail without trial, without formulation of a real charge, without an opportunity of being heard in defence. Dr. Katju says, "I do not understand his point". I wish he had read the classical judgment of Lord Macmillan in the Liversidge case. In that case the great law Lord said:

"The statute..."

that is, the English Defence Regulation 18B,—

> "...has authorised the discretion to be conferred on a Secretary of State, one of the high officers of State, who, by reason of his position, is entitled to public confidence in his capacity and integrity, who is answerable to Parliament for his conduct in office and who has access to exclusive sources of information. Wide discretionary power has been confided to one who has high authority and grave responsibility."

Every Law Lord in England—and it was one of the strongest Benches in the House of Lords—laid special emphasis on this aspect as a desirable safeguard in eliminating possible abuse. Sir John Anderson was the Home Secretary, and he was one of our ex-Governors. It is an irony of fate that our ex-Governors are promoted or demoted to the position of Home Ministers and then they come up with this kind of legislation a little later in life. We the people of

[Shri N. C. Chatterjee]

Bengal will have to think twice before we allow any potential Home Minister to climb up to the provincial *gadi* any more. I would not use strong words, but I would humbly submit that it is no use referring to one judgment in Gopalan's case. Article 22 of the Constitution is a blot on democracy. It is a disgrace to our Constitution. The sooner it is removed, the better. Even if it is not removed, and even knowing full well that it is there and that Praliament has got the power under the Constitution to enact such a law, I ask you: Should you enact this law? Go to England or America. I would confine myself to the two countries to which my hon. friend referred—England and America. He said we were familiar only with the jurisprudence and law prevailing in England and the United States of America. Let us confine our attention to those two countries.

In England, there is no guaranteed freedom. There is no fundamental right. But you know well that there is no country in the world where personal liberty is so much cherished, and what is personal liberty? The great Dicey says:

> "'Personal liberty' means (i) that physical restraint of an individual may be justified only on the ground that he has been *accused* of some *offence* and must be brought before the court to stand his *trial*, or (ii) that he has been *convicted* of some offence and must suffer imprisonment for it."

What is the law in the United States of America? The great Jurist Willoughby has said quoting a judgment of the Supreme Court which accepted the argument of Webster, the greatest lawyer that America has produced, in the well-known Dartmouth case:

> "It is not every Act which is legislative in form that is law. Law is something more than a mere will exerted as an act of power. Law means that which hears before it condemns, which proceeds upon enquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life or liberty under the protection of the general rules which govern society."

In England and America the cardinal principles of civilised society and the essential postulates which inhere in every civilised society and in every form of democrarcy are: *audi alteram partem*. No man shall be condemned unheard. That law which infringes this cardinal maxim is a "lawless" law. A great American judge has said:

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his say in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity to be heard wants all the attributes of a judicial determination: it is judicial usurpatoin and oppression and can never be upheld where justice is justly administered."

In the Preamble to our Constitution, we say "We are constituting a Republic of India *inter alia* for justice.." If you want really that justice should be justly administered, then you would not give your imprimatur to this kind of legislation.

The hon. Minister referred to one judgment in Gopalan's case. I will quote to him from two judgments in the same case. One is from a dissenting judgment and the other is from a majority judgment. Mr. Justice Mahajan said in Gopalan's case:

> "Preventive Detention laws are repugnant to democratic constitutions and they cannot be found to exist in any of the democratic countries of the world."

Then Mr. Justice Mukherjea said—and remember, his was not a minority judgment but a majority judgment:

> "Detention in such form is unknown in America. It was resorted to in England only during war time but no country in the world that I am aware of has made this an integral part of their Constitution as has been done in India. This is undoubtedly unfortunate...and it cannot but be regarded as a most unwholesome encroachment upon the liberties of the people."

After Gopalan's case, Professor Schwartz, one of the greatest American lawyers, contributed an article to the *Indian Law Review*. It is possible that Dr. Katju may remember it. When he was Governor of Bengal, he used to take a keen interest in this legal journal which had

been started in Calcutta by the members of the Bar.

Dr. Katju: I have given up reading law reports.

Shri N. C. Chatterjee: Then I am sorry for India and for the Treasury Bench. This passage is most inconvenient, but we did present him with it. The heading of Professor Schwartz's article was "Comparative view of Gopalan's case" and Professor Schwartz is one of the greatest Jurists in the world in Comparative Jurisprudence. His language was:

> "No such law exists in the United States of America or in England in time of peace."

I call this legislation a "lawless law" because it militates against certain fundamental principles of justice which inhere in every civilised system of law and which are at the root of it. As practical men, we have got to remember that liberty may be controlled or regulated when the country is faced with danger of foreign invasion or when there is risk of national enslavement. With the greatest respect to my hon. friend the Home Minister, I must submit that there is no such danger in India today. We must remember that. What was the most glorious chapter, what was the greatest chapter, in the history of Indian freedom? It was the protest of Mahatma Gandhi and the Congress against the Rowlatt Act. Why was the Punjab plunged into anarchy and disaster? Why did the Jalianwala Bagh massacre take place? Why were human lives lost in the streets of Delhi, Bombay, Calcutta and other parts of India during the great *satyagraha* movement which Gandhiji started as a protest against the Rowlatt Act? Why? What was that Act? That Act was nothing but a Preventive Detention Act, which enabled the executive at its sweet will to deprive a citizen of his liberty and to detain him without trial and without proper hearing. The then British Viceroy appealed to Mahatma Gandhi, and told him, "Look at the Rowlatt Report". What was the Rowlatt Report? One of the greatest judges of England was brought out to this country and a strong Committee found that "there was an organised terrorist movement in this country". People were being shot down in Bengal, Maharashtra and the Punjab. We are today worshipping the memory of those martyrs, the great pioneers of Indian freedom. We celebrate *Shaheed* Day year after year to commemorate their hallowed and sacred memory. That is why they had this Rowlatt Act. Mahatma Gandhi said, "I have read the report. It drives me to the opposite conclusion". He said that in this country of over thirty crores of human beings, a handful of terrorists working here and there did not provide a justification for placing on the statute book the Rowlatt Act which was a Preventive Detention Act and which put the life and liberty of every man in the country at the mercy of the executive and the police. Is not the position just the same today? You talk of little troubles here and there. What was your Government doing in Saurashtra? It was an inefficient and incapable Ministry. The Ministers were fighting amongst themselves. They were absolutely unfit. They ought to have been thrown out of office. You had the Preventive Detention Act these years and why was it not applied there?

You cannot rule India by the Preventive Detention Act. I am appealing to my hon. friends opposite; I am appealing to the Members of the Government; I am appealing to the Prime Minister and the Home Minister: Remember, the State must shed the old notion of being a real despot who can enact any laws it likes. The old conception of law that it is a command from a political superior to a political inferior has gone long ago. What is the good of trotting out these little points like my hon. friend seeing some posters in Madhya Pradesh during the elections? I never expected this kind of argument from my hon. friend.

Throughout India 16 crores of people were put on the electoral rolls; a good portion of them participated in the General Elections—the biggest experiment in human history, in democratic system, has proved a success. Neither at the instance of the Congress nor at the instance of the Communists, nor at the instance of the so-called communalists has there been anywhere organised violence, or goondaism which disturbed the electoral machine. Nothing of the sort happened and all parties are now working constitutionally.

Today I appeal to my hon. friend to realise that the time has come for a reorientation of policy; the time has come when he has got to remember that you can get the best out of a citizen and the individual not by way of fear of punishment. That old concept has gone. You can never evoke that real loyalty, that real allegiance, that real enthusiasm which will enable the individual to contribute his best to the making up of the State if you simply threaten him with punishment. I appeal to them to drop this unwanted measure.

[Shri N. C. Chatterjee]

Nothing has happened in India today which justifies the continuance of this kind of measure. Let them drop it. You have dropped controls. You are experimenting with decontrol. Why do you not decontrol liberty and give up repression for heaven's sake and see how India is run. At the end of six months if the country behaves badly, if there is any portion which demonstrates the necessity of these repressive laws, you can come here. In fact you have got the majority and can enact any law you like at any moment, at any time, at any period. I have seen standing in the corridors of the Supreme Court day after day persons detained under the Preventive Detention Act being brought up on *habeas corpus* applications presented to the Judges of the Supreme Court. It was a dismal sight—hundreds and hundreds of intelligent young men being brought up. I saw Mr. Gopalan there pleading his own case. It was a great tragedy, a poignant tragedy. Some of them, possibly most of them, were old Congressmen; some of them had broken the law in obedience to the mandate of Gandhiji and the call of the Congress and had suffered incarceration times without number. And in independent India they are rotting in jails not for days, not for weeks or months, but for years. It is a great disaster. I want to save India from this disaster. I saw hatred on their faces. I saw that that hatred was not merely infecting them, but infecting their friends and families.

I appeal to my hon. friends to remember that the old concept of State has changed. A State must not only administer laws, but also prove the legality of its laws—legality in the proper sense. I appeal to my hon. friends to remember that there is danger inherent in every democratic form of Government; that there is danger inherent in every system of administration.

I say with all humility and earnestness that repression brings hate and that hate menaces all stable government. I want the Government of this country to be stable, whether it is in your hands or anyone else's hands. The greatest menace to human freedom is this kind of frustration, this kind of suppression, this kind of feeling that you are not getting justice. This is a great calamity and I appeal to my hon. friend to drop this measure and not to go on with this Bill. Give India a chance; give the impulsive youth of India a chance and see what happens. I hope that the experiment will be a great success; that it will be in keeping with the cherished principles which the Congress had been preaching. Congress wanted freedom; people wanted liberty—freedom from what? from political bondage for the fulfilment of the human personality. That fulfilment is being impeded if you have a measure of this kind on the statute book

I appeal again for forbearance, for patience, for consideration in the context of things today. I hope that my appeal will have some response.

Shri D. D. Pant (Almora Distt.—North East): I had thought that I should not open my lips in this session of Parliament, simply for this reason that last year Mr. Speaker had said that every minute of Parliament costs the exchequer Rs. 60 and since the number of Members in the present Parliament has gone up, perhaps, it might cost Rs. 100 per minute. In these circumstances, Sir, I thought that unless I was provoked to speak, I should not open my lips.

As the Members of the old Parliament would know, I used to raise objection to the Preventive Detention Act. During the time of Mr. Rajagopalachari, I extracted from him a promise that the Bill would be properly administered. I had then made it quite clear that so far as the principle of the preventive detention went, it was a very salutary one and I think it was by some stroke of genius that it was embodied in article 22 of the Constitution.

The objection to the Preventive Detention Act has mainly come from two quarters: from the communalists and the Communists. (*Some Hon. Members*: No, no.) I would ask my hon. friends not to lose their patience. It is enough that they have lost in votes.

So far as the communalists are concerned, I will first deal with one point that my hon. friend Dr. Shyama Prasad Mookerjee raised the other day. He said that nowhere in the world is there such an Act. May I respectfully ask him in which part of the world there is a situation like the one prevailing in India today? In which part of the world there is a man who gifted with the art of oratory does not use it in the interest of peace, but for provoking ideas which have no meaning? May I ask him in which part of the world was the creator of freedom killed as it was done in India? These are certain questions that I put to him.

I then come to Mr. Chatterjee's arguments. He said that in England,

which is a democratic country, there is no Preventive Detention Act. But may I ask him: are there communalists in England? In England, if a girl wants to marry a young man of her choice is she prevented from doing so? —as happened here, where people are not able to exercise their civil liberties on account of the activities of communalists. Let him answer these questions?

Shri V. G. Deshpande (Guna): King Edward VIII was required to abdicate his throne for this reason.

Shri D. D. Pant: Mr. Chatterjee said that he was here in spite of the Congress. May I tell him that he is here on sufferance. If the great organisation wanted to exterminate its enemies, it could do so. I will point out to him the greatest example of Russian revolution. There, the Constitution was given and elections were held 20 years after the revolution. It was only in this country that within two and a half years of the framing of the Constitution, elections were held on adult suffrage. Take China. Is there any democratic Constitution there even now? If we had followed that policy we would have destroyed all the opponents of democratic progress like vermin, as was done in other countries. So that argument does not at all hold. To his saying that in England it is not like that, may I just ask which other country has killed both its King and its Archbishop as they have done in England? Different countries have different kinds of genius. *(Interruption).*

Mr. Deputy-Speaker: Order, order. Let there be no running commentary. I would appeal to hon. Members not to indulge in running commentaries. I try as far as possible to see that there is no interruption when any hon. Member goes on on this side. The same thing must apply when any hon. Member from the other side speaks.

Dr. S. P. Mookerjee: The only thing is that he may not make his speech in the form of so many questions.

Mr. Deputy-Speaker: It is one way. Each hon. Member chooses his own form of presentation. It is not expected, however, that those questions should be answered immediately.

Dr. S. P. Mookerjee: Or answered at all!

Shri D. D. Pant: If my hon. friend wants that we should have also created democracy like some of those other countries have done we could do it. And let me tell him that in that case it would not have been possible for him to come here and oppose this Bill in this manner.

It is with the greatest sincerity that this measure has been enacted. My first acquaintance with the preventive detention law is as early as when I was a child. I was one of the rowdiest ones in the family and the only way to control me was preventive detention. My servants had been ordered by my father—I had lost my mother at the age of two—that whenever I was rowdy and created mischief the only thing to do with me was to take me and lock me up in a room. And I tell my friends that this is the only non-violent way of dealing with such a person. I also tell them that if I had not been locked up, probably I would not be existing now, because I would have gone up the roofs and set fire to the hay stacks of the villagers. What other way was there to stop me from doing all these things? If, as my friends say, my father had behaved as they behave in a particular State, probably the only alternative would have been to liquidate me completely. If they want that choice that is always open to them. But so far as this Government is concerned—this Government which is so much imbued with the ideas of Mahatma Gandhi and the ideas of non-violence—the only way in which I believe it can deal with the mischievous people here is to lock them up and give them a chance of improving, rather than liquidating them and destroying them like vermin as is done in some other countries.

So far as its administration goes, I respectfully submit that there may be certain defects in the administration. They can and must be removed. My friend Mr. Hiren Mukerjee quoted about five or six cases. What are five or six cases where you have to deal with a population of 350 million? I would respectfully ask him, what are those five cases?

Shri H. N. Mukerjee (Calcutta North-East): I will quote five hundred.

Shri D. D. Pant: I can still feel the pain when my servants used to press my arm and if I cried when they were doing it, not even my sisters—of a motherless child !—were prepared to believe me and come to my help. Because I used to hit him with stones whenever there was an opportunity, and whenever he had his time he used to do like that. So if the gentlemen can behave properly with the administrative machinery, so far as the enforcement goes, it will not be so troublesome. After all, we have got a welfare State here and we must find

[Shri D. D. Pant]

out a method of dealing with naughty children. What do they want? What else do they want? The only way to deal with them is the Preventive Detention Act, nothing else.

As for the Communists, I will say that the Communist Party is a baby party; it is still a political child in India. They are rowdy, and behave in that manner. But I tell them that if we adopt towards them a method as they do in other countries it will not be proper. I myself have been a student of Communism and still continue to be one. And if there is any Communism by which one does not mean Russianism or any other ism, I am a Communist. And I want Communism to grow in this country. But I do not want it to be imposed. Communism can never be imposed. I am one of the greatest admirers of the Russian Revolution and the methods they used. Probably they could not use any other methods. The history of Russia is there, the history of violence in Europe is there. Probably no other method could be used. But so far as my country is concerned, let me tell my friends that we do not take them as enemies. We take them as political babes who have just come out and who want to achieve a revolution in a day, and when they are stopped from doing mischief they cry and kick like babies. If they want to achieve revolution they will have to revise the methods of bringing Communism in India, and instead of obstructing this Parliament, and making it spend so much money by speaking for long hours on anything and everything that the Government brings forward, they will be better advised to co-operate with the Government. If they have patience and grow intellectually, morally and politically, they will have Communism in this country of course of the Indian type. Everybody wants Communism, but it should be achieved in a proper non-violent manner.

Pandit A. R. Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West) Nobody wants.

Shri D. D. Pant: I do not think we are committing any crime or that any Bill is being passed here which has not been passed in any other country. Our conditions are entirely different and our way of dealing with things is entirely different. I believe that just as in every family there is a preventive detention law for the rowdy child, we must also have today, for the country such an Act in respect of people who, if we do not detain them, will go and take away the civil liberties of others and will not allow the others to exercise their civil liberties. So, in the interests of freedom and civil liberty itself it is necessary that we should have an Act like this in this country.

Shri A. K. Gopalan (Cannanore): I do not want to go in detail into the question of the Preventive Detention Act and the constitutional issues that are involved in it, because when I read the proceedings of the House the other day I found the hon. the Home Minister saying that I could not quote chapters from the judgment of the Supreme Court. So I do not want to quote anything that was said in the judgment. I only want to say that as far as I was concerned, ever since the preventive detention law was in operation—whether it came in the form of the Preventive Detention Act, or the Public Security Act, or the Maintenance of Public Order Act, or the Defence of India Act—I was a victim of this preventive detention from 1941 till 1951. What were the grounds of detention that were given to me in 1941? The hon. the Home Minister was saying the other day that in 1941 we were helping the Government. When we were 'helping' the Government, two thousand of our comrades were in jail, and I was also put in jail in 1941. I was free only in 1945. In 1947 I was detained and I was released only in 1951. The number of the detention orders that were served on me from 1947 to 1951 inside the jail—I have got copies of all those detention orders—was not one or two: it was five. So, from 1947 to 1951, continuously, inside the jail, five or six detention orders were served on me. I also want to show that the Preventive Detention Act had been used not only in my case but in the case of other persons also. It is a lawless law. It is flouting the opinion of the Judges, it is flouting the Criminal Procedure Code and it is flouting all other Acts and laws that exist in the country today.

First of all it is quite essential that this Bill should be circulated to elicit public opinion. I place on the Table of the House some comments sent by the Advocates in Bengal. About 300 of them sent a petition saying that this Bill should not be extended. From Bombay some 300 advocates have sent a representation and other petitions are there. I do not want to read them as it would take a long time. I place them on the Table of the House. I only want to say that as far as we know there is considerable opinion in the country that the Preventive Detention Act should not be

there because there are other provisions in the law by which anybody who commits a crime or who is committing a crime or who has already committed a crime, who is abetting a crime or is preparing for a crime—all the categories of people can be punished and convicted and they can be given an opportunity to prove whether they are innocent or not. On the basis of that I want to show how from 1947 onwards the Preventive Detention Act has been used.

It has been said by an hon. Member that only five cases were shown. I have with me not five cases but about 35 or 40 cases of detention orders and if it is necessary, I will be able to show that at least 95 per cent. of the cases of persons detained under the Preventive Detention Act or the Public Security Act are such that on the very grounds of detention that had been served on them, there is nothing to warrant their detention or arrest.

I want to say only one word about the hon. Minister who referred the other day about the elections in the country, of how freedom was given to fight in the elections and how the elections were conducted. I only want to remind the hon. Minister that we the Communist Party in Travancore and Cochin along with 60 other organizations were banned. Fifteen of the leaders are inside Parliament here and others are inside Legislative Assembly in Travancore-Cochin. Fifteen persons were released by the order of the Supreme Court and a little later they were having a convention to consider about the elections whether they should take part in the elections or not and they were detained by the Government on the ground that they were holding a meeting and they were released only after the elections were over. As far as elections in Travancore and Cochin and other parts of the country are concerned, I may say that all those who were released were not allowed to contest the elections. I was released in 1951 and I went to Travancore and Cochin and I wanted to do propaganda for the election. I was not allowed to enter that place and I was not allowed to hold any public meeting there. As far as Hyderabad was concerned, I went there and found that other parties were doing propaganda and I requested the district magistrate to let me speak. I also told him that if necessary, I would be able to send a copy of the speech in advance so that he might know that I was only talking about the elections, of what we are doing about the elections, but I was not allowed to speak there. I do not wish to go into details on this question. Section 3 of the Act reads as follows:

> "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—
>
> (ii) the security of the State or the maintenance of public order,
>
> (b) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946..."

According to section 3 there are two conditions. The man who is making the order must be satisfied that there is something that a man is doing or is about to do and he must prevent him from doing that act and also he must be satisfied that the Preventive Detention Act is necessary in order to prevent that man from doing that. He must satisfy himself whether the Preventive detention order under section 3 must be made or not, so that the man may be prevented from acting in a manner prejudicial to the security of the State or the maintenance of law and order. In my own case what are the grounds of detention? I made a speech. Supposing I am going to make a speech or I am speaking something, if the district magistrate thinks that my speech is against the security of the State and the maintenance of public order, then in order to prevent me from doing that detention under the preventive detention order is not necessary. There are two ways of preventing it according to the Cr. P. C. One is to issue an order under section 144 asking me not to make any speech. According to section 3 the man who makes the order should be satisfied that there is a danger and it must be prevented. He must also be satisfied that in order to prevent that danger the use of the Preventive Detention Act is necessary and then only according to section 3 the Act must be used.

As far as the preventive detentions are concerned, I have said before how the Act has been used. I have already stated before you that I was arrested in January 1947 under the Maintenance of Public Order Act. I was released in 1947 in the month of October and in December 1947 I was

[Shri A. K. Gopalan]

again arrested not under the Maintenance of Public Order Act but under some other law. Charges of abetment and other things were framed against me and I was arrested and kept inside the jail as an under-trial prisoner. The grounds of detention were that I was speaking on 23-1-1947, I was speaking at another place on 3-11-1947; I was speaking at Tellicherry on 18-11-1947, I was speaking at another place on 24-11-1947, 5-12-1947, 15-12-1947 and all the speeches were quoted by the police. It was an ordinary police man who took down my speeches and some of these were false. When I had been detained in 1941 by the British Government they said that in 1936 I had taken part in the Congress movement and I might act prejudicially to the public safety but here on the 23rd February 1951 I was detained on grounds of detention which an hon. Member said was a non-violent act and a non-violent order. The grounds for detention are: He was bound over under section 109 Cr. P. C., and sent to jail on 17-12-1936 for a period of nine months. It was under different Acts in 1936 that I was bound over for good behaviour and sent to jail. During the first election I was a Congressman and I was going to the villages and speaking there. It was just before the elections in 1937 that the British Government said that I was creating confusion, that I was going about and doing propaganda for the first election and on that basis I was bound over in 1936. But I cannot imagine the Congress Government in 1951 saying that in 1936 on such and such a date you had been bound over for good behaviour and so in 1951, you shall be detained. Even when this case was brought before the Supreme Court Mr. Justice Mahajan asked the Advocate General of Madras the following questions: How is it relevant that Mr. A. K. Gopalan is detained who was a congressman and who was convicted in 1937 for charges of fighting against the British Government which action is considered to be patriotic by those persons who had been fighting then and are in power today? Whatever other charges may be, how can you bring the charge that in 1936 he was detained for a certain reason and in another case in 1941 and therefore he must be detained in 1951? What are the grounds against him in 1951? The grounds are summarized and from this you can understand what they were. Here it is stated: Mr. A. K. Gopalan: the main grounds of detention are: 1947—ex-president of the Kerala Congress Committee; resigned from the Congress Party; stood as a Communist candidate in Calicut general constituency and a security bond was taken during election. Collected Rs. 8000 for Communist Party funds—collected funds for Deshabhimani; demanded enquiry into corrupt officials and black-marketeers: condemned Congress people for running after jobs; regretted the independence of 1947 did not bring any benefit to the common people; vehemently attacked the jenmis—asked the Government to distribute the fallow lands to toddy tappers—condemned MSP atrocities; has been connected with several political cases. In NGO's strike in 1946, he stated that the NGOs were as patriotic as Congressmen but they wanted living wages only.

In 1947, I was detained.

Mr. Deputy-Speaker: It is only a short sketch of the hon. Member's activities.

Shri A. K. Gopalan: Yes; it is a short sketch of the activities of the Member. These are the reasons for my detention. I only wanted to know how these activities, such as attacking black-marketeers and others could be against the security of the State and maintenance of public order. I only wanted to know on which date I was the ex-president of the Kerala Congress Committee. That very sentence has been used in the detention order. The Home Minister said today that I am acting against the security of the State and maintenance of public order. I would not have been sorry if I had been hanged for saying something. But, here is a detention order which says, whatever it may be today, that I had been a Congressman and ex-president of the Kerala Congress Committee in 1947. In 1951, when I am sought to be detained, there must be fresh reasons. If there are no fresh reasons, certainly, they can proceed with the cases against me. There were three cases against me. I am not going to refer to other cases. I only wanted to show that I was detained under section 3 not because I was acting in a manner prejudicial to public safety. The authorities who could arrest me understood that I was going to make speeches, and so they thought I should be stopped from making speeches. There was an offence already committed. I had made three speeches already and in those speeches I had said something which was an offence. Then. I was arrested. There were three cases against me. I appealed to the High Court on 17-12-1947. I

asked the sessions court; but the sessions court did not release me. So, I went to the High Court and asked the High Court that I must be given an opportunity to conduct my cases and as they were bailable offences, I must be released. When I was released on 11-2-1948.....

Shri R. G. Dubey (Bijapur North): On a point of order, Sir. The hon. Member has already taken 30 minutes and he is narrating his life history. Are we expected to be listening to the life history of the hon. Member.....

Shri Chattopadhyaya (Vijayavada): On a point of submission, Sir, [Mr. Gopalan's case is very important and it sums up the exquisite generosity of the Detention Act. So, we should like to know something about it.]

Mr. Deputy-Speaker: There is no point of order in this. Hon. Members need not instruct me. Whenever a point of order is raised, they will kindly allow me to give my ruling in the matter. If ever I have a doubt I shall ask the hon. Members about it. I have this doubt in this case. The hon. Member is reading out a number of orders passed against him. They will be very useful; very relevant. But, the difficulty arises this way. As against this, it will be open to the other side to refute this and say, this hon. Member is wrong; he has done this, has done that. What is passing in my mind is this. We go on referring to the orders. So far as the Preventive Detention Act is concerned, the points can be supported by reference to other cases. The question is whether it would be relevant to make an issue of the conduct of an hon. Member. It may lead to countercharges and then it will be inconvenient for us to look into the matter. Therefore, advisedly the rules say, there ought to be no attack on an hon. Member. If an hon. Member says that he has been unlawfully attacked, the other hon. Member will certainly try to justify his conduct or justify his acts. It may be said that he was a Congressman once, now he has become a Communist and so we are terribly afraid. These are arguments that can be raised in this House. The question is how it is desirable. If the hon. Member wants to proceed, I will allow him; but the other side also will be naturally expected to go into these details. So, I would like to have information.

11 A.M.

Shri A. K. Gopalan: It is not because of a desire to state all these things here that I am going into these details. It is only in this case that all kinds of irregularities have occurred. I do not know whether there is anywhere in the history of this country a case where a man had been regarded as a convicted detenu. I was a convicted detenu for about one year. That is the reason why I am quoting all these things. The High Court is the highest court to which one can go when he is convicted; when a person is convicted for six months, he cannot even go to the High Court. When it was said that I had been convicted for a certain crime, I appealed to the Government and said that I am now a convicted man and so there should be no detention order against me. They said that I was a convicted detenu. They issued an order of detention and said, 'you are now a convicted detenu.'

If necessary, I will go into other details. I wish also to say one thing. If anybody says that all these things are not correct, and attack me, I shall take it very pleasantly and I will not say anything further. As I told you, whenever the Preventive Detention Act came I had been outside only for two months or three months; I have always been inside the jail. In no other case of a detenu has a preventive detention order been served inside the jail for five times. I have got copies of the detention orders here. In my practical experience all these things are done.

As far as other cases are concerned, I have have got those figures also and I shall refer to them briefly. I wrote to the Government of Madras and I got the copies two days back. The first detention was on 5th February, 1947. The second was on 27th April 1948; The third was on 18th November 1948; the fourth was 17th February, 1950, the fifth on 22nd February 1951. The next order, I did not get because I was under arrest, and a case was going on. In all, there are seven detention orders. All these orders had been served when I was inside the jail. What I want to show is this. If it is the case that a man is going to act or is acting in a manner prejudicial to the security of the State or maintenance of public order, and the detaining authority has reason to understand that there is danger and there are no other provisions of law and therefore he must be arrested and prevented, I can understand preventive detention orders being passed. Not only that. There are judgments of the courts also where they have said that these detention orders are unlawful. I only wanted to refer briefly.....

Shri R. G. Dubey: On a point of information, Sir....

Some Hon. Members: Order, order.

Shri R. G. Dubey: On a point of order, Sir. It is relevant...

Mr. Deputy-Speaker: Order, order, let there be any relevance. So long as the hon. Member is speaking and is trying to support his case by arguments, let there be no disturbance. The trend of the argument disappears. The hon. Member will kindly resume his seat.

Shri R. G. Dubey: May I submit, Sir,...

Mr. Deputy-Speaker: Order, order. So far as his information is concerned, he may kindly note it down and at the end of the hon. Member's speech, he can put the question. If the hon. Member is willing, he may answer: otherwise not. Let there be no interruption; let the hon. Member be allowed to go on.

Shri A. K. Gopalan: I am only saying certain things that happened and I have here the records; I am not saying anything else.

On 11-2-1948 I was released on bail subject to certain conditions, by the High Court. Before I had been released, on 6-3-1948, I was again arrested. I do not want to go into the details of other things because it will take a long time. Five cases were laid against me. My bail was cancelled and there was a case for forfeiture of security. I again filed a petition to the High Court saying that these were not correct. Again, the High Court ordered that the arrest was illegal, that I must be granted bail and that the forfeiture of security case should be proceeded with. I was given bail and three days time to go to Malabar and conduct the case. Then, an order under the Preventive Detention Act was served inside the jail saying that I was about to act or was acting in a manner prejudicial to public safety.

Justice Satyanarayana Rao and Justice Mack gave different judgments. One Judge stated that I must be released. The other Judge said that I must not be released. So, the case was referred to a third Judge, and he said on 18-11-1948, that it was only to defeat the bail that the detention order had been served. You cannot proceed against a man in two ways. If you want to detain him withdraw all the cases and detain him. Whatever the grounds, we do not question. Here is a man who had been arrested. At the time of his arrest, you did not think that he must be detained. You only wanted to proceed with some cases against him, and then a court of law said: we see no reason why bail should not be granted. Now, when bail was granted, another detention order was served inside the jail against me saying that I was likely to act in a manner prejudicial to public safety and so on. I do not want to quote the judgment. It is here.

Again, when the judgment on my *habeas corpus* petition came up when I was inside the jail, the same day another order was served saying that I was detained. So, the two orders, the cancellation of the detention order from the High Court, and the order of detention from the Madras Government came the same day, and they were both served on me, with only a difference of about half an hour. I even told them: If you want to detain me again, at least comply with the formality of releasing me, and when I am outside a free man, then you can serve on me the new detention order saying that I am likely to act in a manner prejudicial to public safety etc., and then bring me inside the jail. Even that was not done. After that the case was continued.

What I ask is: Why was the Preventive Detention Act used against me? Why is it used against everybody? Because, if a case is filed against anybody and there is no evidence for that, certainly when they go before the court, the person will be acquitted. In all the four cases that were preferred against me, I had been acquitted by the High Court, because the cases were such that there was no proof, and I could not be convicted.

Then, on 23-2-1949 when I was convicted for six months by the Sessions Court, I sent a petition to the Madras Government, and said: "This is not preventive detention; this is only punitive detention. So I should not be detained because I am convicted by a court of law for a certain offence. If you want to keep me in detention, you will have to release me first, and then detain me saying that I am likely to act in a manner prejudicial to public safety etc. Because I am convicted, I must be treated as a convict, and there must be no detention order against me" The reply which came after 15 days said I was a convicted detenu and that the Government was not going to cancel my detention order. There is a copy of that order in the Central Jail, Trichinopoly, and in the Central Jail, Cuddalore. I have not got the copies. The order said definitely that Government was not prepared to cancel the detention order, but was prepared to consider me as a

convicted detenu. Then, I said: "I must be either a convict, or a detenu. How can I be both? Then, I must have facilities as a convict as also facilities as a detenu." The facilities of a detenu are different. Then, I fought for six months, and said: "If I am a convicted detenu, I must have the family allowance as a detenu. I must have the right to see everyone as a convict." So, I remained a convicted detenu for six months. That only shows that the detention and other sections of the law are mixed up and that the Government does not want to release persons.

In this period of four years of detention, I filed about 15 *habeas corpus* petitions. I used to file the petitions one after another. Some were dismissed, and others were allowed. Again in March, 1950, when I filed a petition before the Supreme Court, another preventive detention order was served on me. I do not want to go into details, because the validity of the Act was there. After that, in February, 1951, I filed another petition before the Madras High Court and the Madras High Court gave its judgment. Then the new Act of 1951 had been passed, but the President had not signed it. Before the judgment was delivered, the C.I.D. man was in the room. He had come to the Court and was ready with the fifth detention order. When he was called before the court, he admitted that he had been given the new detention order before the judgement was delivered. When the judgment was delivered and I went out, the police arrested me again, and contempt of court proceedings against the officer who detained me were pursued by the High Court. Afterwards, I also filed a petition.

Mr. Deputy-Speaker: The ordinary law, so far as the hon. Member is concerned, appears to have been ineffective.

Pandit A. R. Shastri: The whole thing is becoming too individual.

Shri A. K. Gopalan: I only want to say how can they serve a preventive detention or any order when the judgment is not delivered. When the executive officers do not know what the judgment is, how can they have the detention order ready? And when they served it on me immediately after my release, the Madras High Court had to summon the executive officers for contempt of court. When you are in jail, the detention order is served there inside the jail. When you are convicted, you are a convicted detenu. When you are released, you are again served with another detention order. This only shows how the Detention Act is being used.

I will not again go into the grounds in my case, but I want to show some of the grounds which had been given against persons who had been detained. A news item appeared in the *Hindustan Standard* as under:

> "Simla, July 2—An innocent person found himself cooped up in a jail at Jhabhal in the Amritsar district for a week because he had the same name as a Communist wanted by the police.
>
> The story of the arrest and detention of the innocent man, Sri Achchar Singh of Jhabhal, was narrated in the Punjab Assembly yesterday by the State's Chief Minister, Sri Bhimsen Sachar, who described the incident as 'unfortunate' and regretted the mistake.
>
> The wanted Communist detenu was serving a term in the Jullundur district jail at the time of the arrest of the innocent namesake, but the jail authorities believed that the detenu had been released and was at large, the Minister disclosed.
>
> Sri Sachar added that the incident was under enquiry."

So, here is the news where you understand that the police wanted one Sachar.....

Dr. S. P. Mookerjee: Not Sachar. He is the Chief Minister.

Shri A. K. Gopalan: There are two names here. One is Sachar, the Chief Minister, and the other is Achchar Singh who was wanted by the police.

Mr. Deputy-Speaker: I would like hon. Members, as far as possible, to read extracts from authentic documents.

Shri A. K. Gopalan: I want the hon. Home Minister to deny and say that there was nothing like that. Here are the proceedings of the Assembly, and it says that the Chief Minister said that it was unfortunate.

Mr. Deputy-Speaker: From what is the hon. Member reading?

Shri A. K. Gopalan: These are the proceedings of the Assembly as reported in the paper where it is stated that the Chief Minister said that it was unfortunate. I only want to say that if it is wrong, then the hon. Minister may say that what the Chief Minister said was wrong, and what has appeared in the paper is also wrong.

[Shri A. K. Gopalan]

Then there are other cases of grounds of detention which will be very interesting to know. Very serious acts had been committed by certain persons in the country. One was that a person was the Vice-President of a co-operative labour union. "He represented to Satyanarayana Rao expressing his sorrow that he was not able to get Soviet film, and requested the former to obtain this film." That is why he was detained. I am quoting here from the collection of grounds of detention in the various cases, by the Madras Civil Liberties Union. One of the charges against a particular person was that he wore a red cap and a white pyjama. I have got the copy of the full detention order with me, and I shall just read out some of the charges mentioned.

Mr. Deputy-Speaker: Was it not reviewed by the Advisory Board?

Shri A. K. Gopalan: I do not know whether it was reviewed or not.

In that detention order, the grounds of detention are as follows:

> "He spends his time reading Communist journals. He is a full time worker of the party at Tuticorin and acts as Captain of the volunteers. He is the general secretary of the Salt Pan Workers' Union and always likes to create unrest among the labouring class at Tuticorin. He has got a great love for his party and he is leading member there. He instigated the Hotel workers at Tuticorin to demand Deepavali bonus at a meeting held on 20th October 1946. He exhorted all the labour Unions to rally round the Communist banner at a meeting held on 31st October 1946. At meetings of the chank divers, Tuticorin held on 13th November 1946 and 13th December 1946, he wanted them to demand increased wages. He protested against the refusal of the boat owners to announce the freight for transport and load and wanted the boat workers to agitate against them at a meeting on 27th December 1946. At meetings held on 30th November 1946, and 1st December 1946, he condemned the police firing at Coimbatore. He criticised the police firing at Vikramasingapuram and Golden Rock at meetings held at Tuticorin on 15th January 1947,...he instigated the Salt Pan Workers to demand increased wages at meetings held on 4th May 1947 and 12th May 1947. He condemned the formation of the INTUC at meetings held on 19th May 1947,...at a meeting on 8th June 1947, the house-owners were criticised for collecting high rents and the Government's attitude towards the B & C Mill workers was condemned. He is influential with the boat workers and salt Pan workers of Tuticorin and used to address frequently meetings condemning the Indian National Trade Union Congress and criticising the Railway Pay Commission and the pro-capitalistic policy of the Government. He also supported the demands of the non-gazetted officers and openly backed their demands at a meeting on 20th November 1947. He is an active worker of the Communist Volunteer Corps and has got a good and strong following of communist volunteers at Tuticorin who would assist him in..."

And lastly, Sir, the ground of detention is mentioned like this:

> "He has got many volunteers ready to work, and he regularly wears a red cap and a white pyjama."

Mr. Deputy-Speaker: It might have been mentioned as a matter of identification.

Shri A. K. Gopalan: If it is a matter of identification, then there is no need for it to be mentioned in the grounds of detention. If such things are going to be mentioned, then even such things as my having a half-moustache etc. can also be mentioned among the grounds of detention. Therefore, Sir, it is not a question of identification, but it is a question of the foolishness of the executive officer who makes the order to say these things because there are no other things which he can say. In a detention order which is meant to detain a man and curtail his liberty, I do not know how wearing a white pyjama and a red cap are against the public security and the maintenance of public order. It is on this basis that the grounds of detention are given. You also said, Sir, that it may be a matter of identification why this is mentioned. It may be. But what about the other things? There is no mention as to what are his activities and to what extent those activities have disturbed public peace. It is stated that he is the leader of the trade union, that he criticised the INTUC and the Government's attitude etc. Does this in any way show that the activities were such that something was done or that something was created or something happened due to the public meetings? Nothing was shown.

I can give you the grounds of detention from another very innocuous charge sheet. This is:

> "Law and Maintenance of public Order—Kistna District—Manikonda Suryavathi—'Her husband Manikonda Subba Rao is an ardent Communist of the district.'"

That is one of the grounds of detention, and under that ground, the husbands or wives of all the Communists can be detained.

Then it is mentioned:

> "Under the influence of her husband and his associates she enlisted herself as a member of the Communist party. She was entrusted with the task of organising the Mahila Front in association with Dr. K. Atchmamba, by the Andhra Provincial Communist Party. She has gifted her entire property to the value of Rs. 20,000 to the party and has since been receiving subsistence allowance from it.
>
> To review the work done on the Mahila Front and to organise a Provincial Sangh, delegates from different countries were invited to Bezwada where a conference was held in the house of Dr. Atchamamba on the 28th and 29th of December 1946. A committee was formed with Dr. K. Atchamamba as president and herself as secretary to form a Provincial Sangh. She was elected as a member of the sub-committee to draft the constitution and rules of the Mahila Sangh. At this conference of delegates, resolutions criticizing the textile policy of the Government and decrying the alleged repressive policy of the Government in putting down political activities were passed."

From this you will see—I do not want to elaborate these things—that the only grounds of detention are that Manikonda Suryavathi was associated with only the activities of the Mahila Sangh, and was a member of the Communist party, and was doing propaganda on behalf of that party.

Then I shall read out to you the detention order served on Mr. K. L. Narasimhan who is now a member of the Council of States. The grounds of detention are as follows:

> "He is the General Secretary of the M. & S. M. Railway Employees' Union. He organises and addresses meetings of the M. &. S. M. Railway Employees Union. He is a staunch Communist and a member of the Communist Party. He has frequent contacts with the communists at 1/6 Davidson Street, George Town and often visits that place. He attends the Communist party study classes regularly. His main object is to bring the workers of the M. & S. M. Railway to the Communist fold and for this purpose he visits branches of the M. & S. M. Railway Employees Union at Guntakal. Bitragunta, Bezwada, Rajahmundry etc. (Communist controlled) and carries on intense propaganda towards this end."

The only charges against him are that he is the secretary of the railway employees' union, and that he goes and preaches to them with a view to enlisting them within the communist fold.

This is another instance which will show clearly that there was absolutely nothing against anybody, which could be considered as a fit ground of detention. If the Government or the executive officer knew of some genuine grounds, then those should have been mentioned in the detention order.

I can give you instances one after the other where such detention orders have been passed. But I will just mention the various grounds that have been served on the several persons.

> "Shri Komanduri Gopalakrishna —he has been carrying on propaganda against State Congress, State Police and Ittehad-ul-Muslameen, resulting in subversive activities in the bordering villages of the Indian Union and Hyderabad etc.
>
> T. Honoch, Malabar—Influential Union leader among weavers—a Communist.
>
> R. Panchaksharam, South Arcot—On 26th September 1947, at Nellikuppam Labour Union, spoke for the abolition of the white capitalist management. Grounds not communicated.
>
> N. K. Swamy, Coimbatore—Employee in Nellikuppam Parry & Co—very zealous and active worker—commands greater influence on workers.
>
> K. Chokkalingam, South Arcot—Participated in Mill strike in Udimalpalyam.
>
> R. Somanna, Coimbatore—Staunch Communist worker at Tirupur.

[Shri A. K. Gopalan]

S. A. Ahmed, North Arcot—He is opposed to the Hyderabad Communist.

Dr. Annaji, Salem—Organised Kisan sabha in Krishnagiri.

Mr. Poonurangam, Madras—Ex-president of Tramway Workers' Association—Possessed considerable influence on workers.

R. Ramanathan—Attacks Government's Food policy and decontrol policy."

I would like to quote also an extract from the judgment in Mr. Ramanathan's case to show what the Judges themselves felt about the grounds of detention. While discussing the grounds of detention, it has been stated:

"It was not alleged that the Madras Provincial Trade Union Congress was an unlawful body engaged in prejudicial activities, nor was it alleged that the organisation of strikes *per se* was illegal or unlawful so long as they were done in a peaceful manner without any interference with the lawful exercise of the rights by the public and by the respective authorities. The statement in the grounds of detention that the detenu held secret meetings and was in contact with Communist-controlled labour unions was bald and did not convey any clear impression that the petitioner was connected with activities. ...The gravamen of the charges levelled against the detenu was that he was strongly criticising the policy of the Government with regard to certain matters, characterising their attitude as being anti-labour and procapitalistic. He was also alleged to have criticised the treatment of N.G.O's and the policy of control of food. But nowhere was there the slightest indication of the detenu having in all the utterances counselled the audience or the workers to employ violent means in pursuance of their agitation. Presumably all the meetings referred to in the grounds must have been conducted openly and with the permission of the concerned authorities, at all events with their full knowledge.

His Lordship questioned categorically the Assistant Public Prosecutor, whether membership of a party with which had not been declared unlawful was by itself sufficient to justify an order of detention under the Act, in the absence of anything more specific to indicate that by reason of that or in consequence thereof the member was acting or was about to act in a manner prejudicial to peace and public order. He was unable to obtain a direct answer to the question, for the obvious reason that such a ground by itself would not be sufficient to deprive a subject of his liberty.

His Lordship had scrutinised the original and the supplemental grounds of detention and could not find, apart from the petitioner's membership of the Communist Party and his activities in connection with the Trade Union Congress, anything else to indicate an attitude on his part for doing acts likely to disturb public peace and tranquility.

It need hardly be pointed out, His Lordship added, that this special enactment was not directed against parties or groups of persons, but against particular persons. It was therefore their attitude, their tendency and their conduct which had to be taken into account in coming to a conclusion whether any particular person should be held in detention in the interest of public safety. Mere membership of a body, not declared unlawful, in the absence of overt acts suggesting that a particular person was acting or was about to act in a prejudicial manner contemplated in the Act was, in His Lordship's opinion, no ground for detention. The ground that the detenu would be guided by the instructions of leaders who had gone underground and was likely to commit crimes was just a conjecture and His Lordship was not satisfied that the detaining authority was entitled on a conjecture of that kind to say that he was satisfied that the particular person was about to act in a prejudicial way".

I do not want to go into other details. There are so many other details also. One hon. Member asked here whether it was only five cases. There are not only five cases. If the hon. Home Minister will allow me to read the grounds of detention, we will be able to place all the grounds of detention in the case of thousands of people who were detained in Madras at least, from the year 1948 to 1951. I only wanted to show that wherever a detention order has been given, there are other ways of dealing with them. I do not refer to those underground; if a man is underground, the

detention order cannot be served; if a man is underground and he is not found, then certainly the police has to find out. But the question is, there are cases where the grounds of detention are that they are organising meetings, they are saying that the N.G.Os. must be given some more allowances or bonus or other things and there are strikes and if in the course of their speech or in the course of a strike or some other thing, some offence is committed, what we say is, there are certainly other ways in which they can be proceeded with. There is the Criminal Procedure Code and there are many other things in the country by which they can be convicted and they can be put inside jail. But here the detention has been used to defeat the ordinary law. I have already shown that it is the duty of the authorities concerned when they once arrest a man, they must see that he is detained under a proper order and put under trial and when they have filed a case against him give him an opportunity under the Criminal Procedure Code to have a bail. To conduct my bail after three or four months when I asked for bail and then to say that I am detained certainly is a lawless law. So what I say is that the Preventive Detention Act in all cases that it has been used has been used in such a way that the charges or offences for which a person is detained are such that if brought before a court and tried they would have been defeated.

First I was arrested in 1941 under section 115 read with section 302, that is, I abetted one man to commit a crime of murdering a police officer. And in the Court, he said it was nothing, it was only a small thing. And when he was speaking, he said something in the court. After my speech in that locality where there was an M.S.P., within about 15 days that M.S.P. was also taken away. That means it was so peaceful.

If you want to arrest a man on the charge of murder or abetment of murder or for any other crime in the country, certainly you have to give him a chance and when you know that the man has not committed that crime, certainly whatever the condition of the country, for the sake of a few people in this country, the liberty of the man cannot be taken away. That is why it was said in other countries also that there must be trial and he must be given some opportunity, he must be given an opportunity of producing witnesses. In some cases we will not be able to produce the witnesses because the authority of the executive will be such that he will not get witnesses to go before the court. But when he has no witnesses, he must be able to cross-examine the executive authority who gave the order so that at least from the cross-examination itself it can be found out that the order that was passed against him was not correct and it was an illegal order.

So, what we on this side say is that when there are certain other laws in this country by which you can proceed against a man who has committed a crime, you use the Preventive Detention Act. That means that by the use of the Preventive Detention Act the ordinary law in this country is not at all respected. Therefore, what I have to say about this Act is that as far as the present situation is concerned, there is no situation in the country today where any crime committed by any individual in this country, to whatever party he belongs, may not be brought before a court. According to the circumstances of the grounds of detention already given, the cases should be brought before a court of law. Even according to the judgment given, in almost all the cases the Judges have said that there is no ground by which the man can be detained—that is, if there had been a trial, if there had been an opportunity for the people to go into the merits of the case and also to have witnesses.

As far as persons like me are concerned, it is not only the Preventive Detention Act of 1950. In 1941 we were detained, in 1947 we were detained and when I was detained in 1947 I was told that it was because I was detained in 1941. Again when I was detained in 1948 I was told that it was because I was detained in 1941 and 1947. Again in 1950 I was told that I was detained because I was detained in 1941, 1947 and 1948. In 1951 the charge was that I had been detained in 1947, 1948 and 1950. So when a man is detained once, that itself can be shown as a ground when he is detained again. What we have to say is that till now, in whatever from it has come, the Preventive Detention Act has been used in such a way that the whole people in the country are suspicious that any man whoever he may be—the name of Achchar Singh was an instance—can be detained because the executive authority has got that right. He should not produce any witness; he should say nothing about it.

When Government introduced the Bill in 1950, the hon. Sardar Patel said that it was only for one year. Then Mr. Rajagopalachari said it was.

[Shri A. K. Gopalan]

only for one year. Now our hon. Minister has been kind enough to extend it by two years. (*An Hon. Member*: Only two years). Under this law you may even tomorrow detain me and the grounds of detention, as they have been served to me, will be the same—that I had been doing so many things and so I was detained. So when the liberty of a man is curtailed, when a man is not given an opportunity and when there are laws in the country by which the man can be punished, why is it that the Government does not use that law? What I want to know is, when a man is arrested, why is it that the Government does not say: "Hereafter you should not make any speech" and then why is it that he is not taken before a court and then given an opportunity to prove his case?

Mr. Deputy-Speaker: The hon. Member is arguing that the ordinary law is just sufficient for this purpose. Is there any law which says that having regard to the previous conduct of an individual, he ought not to speak, not in a particular place? Under section 144...

Shri A. K. Gopalan: There is no law like that. Speeches are not made everyday and I do not say: "I will be going and addressing meetings for about one year in that place". The meeting will be announced. You will know when the meeting is held. Suppose I am going to speak on any subject, then even after the speech they can proceed against me according to the law and they can convict me. That is what I say. Even knowing that a man is going to a speech which is against, according to the Government, the security of the State and maintenance of public order, he can be detained and there are cases in which even bail is not given. That is under-trial prisoners are not given bail, even if the court thinks that it can be given. If the case as proved by the prosecutor is such that the Judge thinks that the bail can be given, then certainly it has to be given. So what I say is only this: that there are instances where according to the charge-sheet that had been given, according to the number of detenus who had been detained inside jail on the basis of the grounds of detention given to them, there has been no case where they had committed any offence, and even if they had not committed any offence they are detained.

What I have to submit is this if today Government thinks that there is a situation in the country which warrants the continuance of the Preventive Detention Act, it certainly is quite necessary to know the public opinion in the matter. If there is necessity, if the situation exists the people will say so—they may say at least in such-and-such a place the continuance of the Act is necessary. In a matter like this it is always essential that public opinion should be consulted. I therefore say that this Act which takes away the liberty of a person without any trial, being for so many years on the statute book should now be circulated for eliciting public opinion.

As regards section 4, what does it say? Section 4 says: So long as a detention order is in force in respect of any person, he shall be liable to be removed to and detained in, such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the Central Government or, as the case may be, the State Government, may from time to time by general or special order specify.

At present there is no special law in the country as regards the way in which detenus are to be treated. For instance, a detenu in Madras may be treated justlike an ordinary prisoner. But that may not be the case in the other States. The object of the Act is to prevent a man from acting in a manner prejudicial to public safety. When the man is kept in jail without any trial, at least inside the jail he must be given liberty as an ordinary prisoner and not as a convict. There must be some difference between the two. While I do not want to quote instances of different treatment in different States, I can say that one thing that was common to all the States was that the detenus were not supplied with literature for reading. In the matter of interviews I can say that an ordinary convict can have interviews with his friends, relations and other people but a detenu cannot have it unless the C.I.D. man comes and sits there. Once in the Madras High Court when I had to discuss with my lawyer a certain case a C.I.D. man was sent by the Madras Government to be present on the occasion. I filed a petition before Mr. Justice Panchapakesa Iyer asking whether a C.I.D. man can sit near me when I discussed certain things with my lawyer concerning a case filed against me, because from the same C.I.D. man Government had got the report against me and this would have gone against

my interest. A judgment was given on my petition which said that he cannot sit near me and listen—if he wished to do so he could watch from a distance but he could not sit near me. There have been cases where because a detenu's wife or father or mother was a sympathiser the interview was not allowed.

Now, about section 4 I would say this. The treatment given in the different States varies. I had been in the Delhi jail for about five or six days when the *habeas corpus* petition was up here and I found that conditions here were entirely different from those in Madras. The conditions obtaining in the Punjab were different from those in Madras. You have given absolute authority to the States to treat the detenus even worse than convicts. When you have not convicted a man, when you have not given him an opportunity to say whether he has committed a crime or not, if you feel that the prevehtive detention of a person is necessary for the security of the State, should you restrict his liberty even inside the jail? Without going into the details of punitive and preventive cases, I would only say that in my case the judgment said, you have curtailed part of his liberty, you have restricted his movement outside, but he should have his liberty of movement and every other liberty inside the jail. Today Government are allowing the States to do anything they like in this matter and there is no general law so far as the maintenance of discipline and other things are concerned.

As far as the Advisory Board is concerned, other hon. Members have spoken at length on it and I have nothing to add. Till now the recommendation of the Advisory Board had not been accepted. Now it is said that whatever the Advisory Board says must be granted and its recommendations must be accepted. I know of at least two cases in which the judgments of High Courts had not been accepted. That being so, I do not know whether the judgments of the Advisory Board will be accepted. But when they are liberalising the whole law why is it that the detenu is not allowed to cross-examine a witness before the Advisory Board? Why is it that he is not allowed to bring in some witnesses so that even though it may not be a court he may be able to prove his innocence, so that he may have an opportunity to do so?

Today the Preventive Detention Act is sought to be extended by two years without understanding what the situation in the country will be after six months, after one year. We have been extending it again and again for these past few years and it has become a part of the law of the country. While I do not want to say as other hon. Members have said that this is a blot, a stigma on free India, I may be allowed to quote the judgment in my case wherein Justice Mahajan towards the end of the judgment has said as follows on this Act:

> "Curiously enough, this has found a place in the Constitution in the Chapter on Fundamental Rights."

He also says that nowhere else in the world is there such an Act. And curiously enough whenever the Supreme Court as well as the other courts have found that a certain man should be released, they have said, "We connot do it because there is a certain article in the Constitution. We cannot go into the merits of the case. We can only say whether there is any technical error in the detention order".

So, this Act has been in the country for so many years now and so many persons have been detained without trial. If necessary I can quote instances, not of 1947 or 1948, but of 1951. There have been some detentions of late, that is only fifteen days back. Yesterday I got information that in Tripura about ten persons are detained—I am subject to correction because it was only yesterday that I got that information. I can give specific instances. Samuel Augustine's case is one. He was president of the Dockyard Employees' Union, Bombay. A strike of 8000 workers against retrenchment of 1000 workers took place in 1947. After the strike was called off he was arrested along with a few others, under the Bombay Public Security Measures Act. After a stay-in-strike by the workers, they were all released. In 1948 the Union again gave strike notice for the proper application of the Pay Commission's recommendations. Even when conciliation proceedings were going on he was arrested again. He was released by the Bombay High Court in July, 1950. He was again arrested on the 11th May, 1951. Since then he has been continuously in jail for the last fourteen months. There was another case of T. Janardanchari. He was arrested on 17th June, 1950. Neither the Hyderabad Government nor the Madras Government know anything about it. The case is before the Supreme Court but the detenu is not to be found now. The Supreme Court is not told what has become of the

[Shri A. K. Gopalan]

detenu nor whether the Madras Government has to answer or the Hyderabad Government, for the case. In another case, Santosh Chandra Kapoor, the Secretary of the Kanpur Mazdoor Sabha, and seventeen others were detained. I do not want to go into the details of that case. They had taken out a procession and something happened, and they were arrested. Then there is another case in which Pangarkar, the Vice-President of the Gujerat Kisan Sabha, was detained. So, even during the last two or three months, several persons have been detained. I do not know whether the Home Minister has got reports about these cases.

The reason why Government feel that the Prevention Detention Act should be there is because the Government think that all sections of the people are against them. The Government have not got the confidence of the people. If they have, then why should there be such an Act? The Criminal Procedure Code (Amendment) Bill has just been passed and we have given powers to the Government to use not merely the Army, but also the Air Force and the Navy. The High Courts in the land and the Supreme Court have held during the last five years that the Preventive Detention Act should not be there. People have a right to organise. The worker has a right to organise. When peoples' rights are restricted, when the worker wants a bonus, when the employees want something more, they have a right to organise. That fundamental right is given by the Constitution itself. And then there are already laws in the country to deal with agitations. Therefore, why is it that you want the Preventive Detention Act to be continued? By whatever method, you want to have it. Why? It is because it can be misused. It shows that the people have lost confidence in the Government and the Government feel that the people may attack any day. But if there is an unlawful assembly or association, have you not got the powers to disperse it by using the Navy and the Air Force? You are afraid. It is a small crowd today. It may become a big crowd tomorrow. All the sections of the people are against the Government and therefore, you feel that it is only through repression that you can carry on the Government. If that is not the reason, why can you not suspend the Preventive Detention Act for some months, as suggested by my hon. friend Shri Chatterjee, and then see what happens in the country? If there is in any part of the country a serious emergency calling for drastic action, certainly in the Constitution itself you have been given the emergency powers. You can use them and nothing can be done in any part of the country. Therefore, it is on principle, on sound principle, that the Preventive Detention Act is hated by the people. The Judges have also declared that it should not be there. If the Government persists in having the Preventive Detention Act, it is only for the purpose of misusing it, as it has been doing in thousands of cases.

According to my information, in 1950 there were about 15,000 people in the whole of India under detention and according to the grounds of detention many of these people had done absolutely nothing wrong. If there are any persons who have committed crimes, certainly let those persons be convicted but if you look at the detention orders in those 15,000 cases, you find absolutely nothing there. Therefore, when the High Court Judges declared those orders illegal, a circular was issued saying, "When you issue a detention order hereafter, you must be very careful". Even after that, in 1951 you have got detention orders quoting what was done ages ago. In the order given to me, they had done the same thing. I actually wrote to the Government saying, "Hereafter, in the detention orders do not tell me what were my actions in 1936". In 1951 they had quoted my actions in 1936. That meant that I had done absolutely nothing wrong now and there could never be anything against me In 1947 I was inside the jail. Therefore, for the new Government of today there can be nothing against me, and when they served the order saying, "You are acting or are about to act in a manner prejudicial to the security of the State", I asked them "Which State?" If it was against the British State, I had certainly acted against it, but against your State I had done absolutely nothing. Therefore, I told them, "You must give me an opportunity to explain. You must release me. Then see whether I am against this State that is newly born. I must be let off for two days at least and let your officers watch me". But it was not done like that. They served the detention order. That only showed that without there being any warrant, I was detained.

In the end, Sir, I have only to submit very humbly that when you want to continue the Preventive

Detention Act for two years or three years more, you must remember that if there is anything in the country which warrants its continuance on the ground of peace and tranquillity, then certainly you can have the extension. But I say that without this Act the peace and tranquility of the country can be maintained by the existing laws of the country. The past history of India has shown that such situations can be tackled by the Criminal Procedure Code. You cannot have peace and tranquillity by endangering the liberty of the people. There will be peace only when you look to the problems of the people and solve them. You can slowly solve their problems. Therefore, inspire confidence in the people that within two or three or four or five years the problems of the ordinary man can be solved. If there is confidence in the mind of the common man that this Government is trying to do something and if he feels that he should give some time to the Government and wait for three or four years—if there is that confidence in the common man, then nobody in this country will act in a way which is prejudicial to the safety of this country. The common man understands only his state of hunger. He does not get his food. He thinks only about his hunger and collects some people together and says that he wants food. It is not because he is against the Government, but it is because he is irritated and angry. He feels that this Government will not be able to solve his problems and out of that desperation, out of that discontentment, out of that anger, he says, "We must agitate against this Government". Your law and order and your peace and tranquillity can never be maintained in any country unless the problems of the people are taken note of and at least a feeling of confidence is created in the minds of the people that this Government is likely to solve those problems. They must feel that you have a policy by which these problems can be solved.

I have not got much more to say. I have quoted very many instances, I think, to show that the Preventive Detention Act has for so many years now been used in such a way that if this power is given to the executive, the officers—howsoever we may restrain them—will misuse the power. There will be no reason given against the ordinary man working openly. The charges are against persons who are working openly, and no charge warranting preventive detention can be brought against them. Therefore, they bring in other reasons and innocent people also are put inside the jails.

I am not talking about the amendments, because there will be another opportunity when they are taken up one by one. For the present, let me conclude by saying that there is a big volume of public opinion in this country among all sections of the people against this measure, and I request that it may be sent round to elicit public opinion. If the public wants it, if there is a certain amount of opinion that this measure should be there, then let us understand it first, and if that be the case then it is the duty of Parliament to continue it. But let us not pass this Bill before eliciting public opinion.

Shri Datar (Belgaum North): I oppose the motion for sending this Bill for eliciting public opinion. While I was hearing very carefully and anxiously the debate that was been carried on for the last two days, I was struck by two circumstances. One was the unreality of the approach so far as this question was concerned, and the other was the needless excitement with which this question was handled. I shall try, Sir, with your indulgence, to place certain facts, circumstances and inferences before this House in order that there may be a dispassionate appreciation of the circumstances which have led this Government to come again before this House for extending the Preventive Detention Act.

In 1950, the Indian Constitution was promulgated. Within one month thereafter, there was an occasion for the Government of India to approach Parliament for the purpose of enacting the Preventive Detention Act. We have to consider why circumstances arose immediately after the passing of the Constitution necessitating the enactment of the Preventive Detention Act. For that purpose, we ought to take into account the circumstances that obtained when the Constitution was framed. After we obtained freedom, there were circumstances which showed that we passed through the greatest disturbances that any country had to pass through. There were in India certain parties which had certain extra-territorial affiliations and which were not necessarily careful about the maintenance of law and order. Under those circumstances, in the very first Republican Constitution we framed we made a provision for an extraordinary measure, namely, detention without trial. That was a circumstance which we have to understand. The framers of the Constitution were patriots and they were influenced by the realities of the situation. Weight was given

[Shri Datar]

by them to the extraordinary circumstances through which the country was passing. Therefore, it was that when the Constitution was promulgated in January 1950 we had in the Constitution article 22 which dealt with what is known as "preventive detention." These provisions have been laid down advisedly for the purpose of meeting a highly extraordinary situation through which the country has been passing. So, the first question that I will pose and I will answer is whether there has been propriety so far as this particular measure is concerned, whether constitutional propriety as also what will be called circumstantial propriety exist for having a measure of this kind on the statute book.

When the first Preventive Detention Bill was placed before the House, as I stated, within one month of the passing of the Constitution, there was a desire on the part of the House, on the part of a number of Members at least, that inasmuch as the provisions had been made for preventive detention, there ought to be on the statute book a permanent measure dealing with preventive detention. That was a point which was made by a number of responsible and senior Members of this House. This point was repeated, in 1951, when, for the first time, the executive Government sought an extension of this measure. Neither in 1950, nor 1951, nor even in 1952 are the Government going to have an Act which will be permanently placed on the statute book, so far as preventive detention is concerned. I am placing these facts before the House to show that the problem is being approached mildly and not sordidly or harshly as the other party is trying to make out. Because, after all, such powers are extraordinary and according to our Constitution, of which we ought to be worthy, there ought not to be on the statute book a permanent Act dealing with preventive detention. It has been the desire, it has been the ambition of this Government that circumstances might change and there ought to be no need for having a Preventive Detention Act being permanently placed on the statute book. It is this approach which has got to be properly understood by the other party.

Now in place of a permanent statute we had first an Act in 1950. It was an Act which had to be passed immediately, in view of certain judgments of the High Courts and Supreme Court. When that measure was before the House the then Home Minister said that he had to pass two sleepless nights before he persuaded himself to place that piece of legislation before the House. That shows the extent of the gravity of the situation that persuaded Sardar Patel and is a demonstration of the fact that this problem was not approached with levity, nor was there any spirit of exhilaration or enthusiasm for curtailing the liberty of the nation. The Act in the first instance was only meant for a year. After one year when it was found that the conditions had not returned to normal, Government sought the extension of the measure for one more year. In this connection, I would like to bring to the notice of the House certain very important facts. When the Act was passed in 1950 it had certain provisions and clauses which were perhaps of a debatable nature. Therefore, in 1951 when the new amending Bill was placed before the House certain improvements were made and my hon. friend Dr. Syama Prasad Mookerjee himself admitted that the amending Act of 1951 was an improvement on the original Act. Now we have got the Bill before the House, which has to be considered from the point of view of constitutional propriety as also the needs of the present situation.

Now, Sir, we are told that detention without trial is an invasion on public rights, on the rights of liberty. True, it is an invasion on the rights of liberty. But there may be circumstances where in a country like India, which is an infant republic, there might be forces which are reactionary, which are destructive to an orderly State, as to necessitate the use of power of preventive detention.

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A number of analogies were quoted. We were referred to the English Constitution and the American Constitution. We ought to know that the English Constitution was developed over 600 long years. They have got a measure of stability and the English public are accustomed to exercising that right of democracy which is at the heart of everyone of us. The American Constitution is 150 years old. There also conditions have stabilised to a very large extent. But there are certain instances which I am going to place before the House to show that even in 1950 or 1952, there are cases where powers far harsher than the one we have are being used.

When the first Preventive Detention Act was being placed before this House two instances were quoted

by an hon. Member who was an Ambassador for India in Brazil and Chile. It was pointed out that in those two countries extremely harsh Acts have been passed, which purport to show that whenever in any society, or any country there are elements which are carrying on activities destructive to democracy, all their rights of citizenship are taken away. In Chile a judicial tribunal was appointed and the particular party that was impugned was the Communist Party there. After calling judicial evidence and going through all the facts of the case that tribunal came to the conclusion that it was necessary to pass a special Act known as the Law for the Preservation of Democracy. A law was passed in Chile for the preservation of democracy under which all rights of citizenship were taken away from this party and the citizens of that particular country who were acting in a way destructive of democracy. In the other country similar Acts have been passed. Whenever any act is done which is destructive of democracy, certain rights are withheld from citizens.

Hon. Members may be aware that only a few days ago Sardar Panikkar was here and he told us about conditions in China—I would not call it Red China, but I would call it Republican China. In Republican China—it would startle many Members to know—that there are two classes of people: one known as the people and the other known as the non-people. Now, those who are landlords, those who are moneylenders, those who are believed by the Communist Government to be against the interest of the country, all of them are classed as non-people. It would surprise many of us to know that these non-people have absolutely no rights at all. They have no right of vote. When a question was asked of Sardar Panikkar he stated clearly that even their safety was not a matter for the Government. Therefore, they have to protect themselves; they have to take care of themselves. So, we have got in the year of grace 1952 at least three cases where not only are there laws which sanction detention without trial, but there are cases where even fundamental rights, like right of voting, right of property, etc., are taken away by a statute passed by the legislature of those democratic countries. These are the instances which we have to take into account.

We are an infant republic and all possible steps should be taken to provide for the stability of Government and the maintenance of law and order. Some hon. friends quoted certain rulings of High Courts and the Supreme Court. So far as Judges of the High Court and Supreme Court are concerned, it is true we have to treat all their judgments with the respect they deserve. But there are circumstances, where it is not possible for the High Court Judges or the Supreme Court Judges to realise the position which only the executive Government can do. Therefore, we have to understand that their functions are different and that the functions of the legislature or the functions of the executive Government are entirely different. All the same, in the very judgment in Mr. Gopalan's case which has been quoted we have got a dissenting judgment. Some Members of the Opposition waxed eloquent over dissenting judgments and they said it was dissenting judgments that were making the law memorable. Whatever it is, I am quoting to this House a passage from the judgment of Mr. Justice Fazal Ali which was not the majority judgment, it was a dissenting judgment. In addition to section 14 he held that section 12 also was *ultra vires*. It was a dissenting judgment and in the course of that judgment he has clearly admitted that the conditions in India are yet not normal, that the conditions are onerous. When the conditions are onerous it is the duty of the State Governments as also of the Central Government to make laws that are necessary for meeting all such menace.

Secondly, we have got the judgment of the present Chief Justice of India, Mr. Justice Patanjali Sastri, in the same case. He also has stated that in a country like India there are and might be elements which are of an unsocial character and from these elements, disruptive elements and subversive elements, the country has to be protected. Therefore, both the Judges of the Supreme Court of India have accepted the position that the conditions in India are still far from normal.

Then, some friends suggested that in the Constitution we have got provisions for declaring an emergency. Now, when there is a grave emergency, when a war is being threatened for instance, it is open to the President to declare an emergency. And if an emergency is declared then this Parliament also ceases to function. Therefore, instead of having an emergency created over such matters, we have to accept this position that short of a grave emergency there might be elements in the country, there might be circumstances where the conditions are far from normal,

[Shri Datar]

or to a very large extent abnormal. In such circumstances there must be placed at the disposal of the Central Government and the State Governments a law that would keep the country out of those mischievous elements. it is against such elements that this Act has been passed and it is meant to be there only for one year. (*An Hon. Member*: Two years) I am sorry, two years.

The next question that has to be considered is whether at the present moment the law is required. Now, this question can be answered in two ways. As I stated, it was an extraordinary measure. But even though it was an extraordinary measure, the question whether the powers have been sparingly used or whether they have been used in a very bad way has to be considered. It is true that in 1950 we had a very large number of detentions. But graduall conditions have improved. And the Statement of Object and Reasons to this Bill clearly points out that the conditions have improved to a certain extent but we are not yet completely out of the wood, we are not entirely out of the wilderness, and therefore it is that the Central Government and the hon. the Home Minister have come forward with a Bill which they want to be in operatio nonly for two years.

[SHRI PATASKAR *in the Chair*]

There are of course certain instances where some complaint can be made. After all there are officers who act over-zealously sometimes. In this connection the hon. Mr. Rajagopalachari made a very funny remark in 1951 when he piloted the Preventive Detention (Amendment) Act. He stated that these powers were necessary on account of the fact that some officers were not efficient and therefore some people were not intelligent. Various instances have been quoted to show that in some cases officers have acted over-zealously. The question is whether the number is so large or so abnormal as to point out that such an Act is not necessary at all.

In fact, if we take into account and make a cool assessment of the whole position we shall come to the irrefutable conclusion that but for this Act, the condition would have gone worse. The passing of the Preventive Detention Act in 1950 was an Act which was absolutely essential. It might be unfortunate, but it was inevitable. The Act was absolutely essential and it has saved the country from disaster and from internal enemies. That is a circumstance which we cannot forget. That Act has saved the country in a large measure. And when the first amending Bill was placed before this House we find that there were a number of departures in it—very happy departures, by way of improvement, and the improvement has been carried still further on. In this respect you will find an improvement in the present Bill. In the Constitution it is laid down in article 22 that whenever any measure for preventive detention is passed it must lay down a particular period, namely the maximum period. Now, in the original Act the minimum period of three months was laid down. But the maximum period has also to be laid down so that there should not be what can be called an indefinite detention. Accordingly, in the present Bill the first important improvement or the first happy departure that has been made is that we have got a maximum period provided, namely one year.

Secondly, you will also note that both in the original Act as also in the first amending Bill what was laid down was that whenever an order was passed by a district magistrate or a divisional magistrate or any other magistrate then that order had more or less the effect of being a final order and not an order requiring the confirmation or the approval of the Government. Now, here you will find that the position is entirely different. Here, the greatest vigilence has to be exercised by the State Governments as also by the Central Government. What has been provided for here is that when such an order has been passed, that order would remain in force only for fifteen days. Therefore, automatically, after the expiry of the fifteen days, that order will lapse and the detenu will be set at liberty, unless the order has been approved of or confirmed by the State Government. So that is an innovation. It will be very clear to every Member in this House that within fifteen days the Government in the State or the Government at the Centre will have to take care to see whether there are proper circumstances for the detention.

The next point that we have to consider is the quesion of the Advisory Boards. Now, an Advisory Board is not a judicial body. That has to be admitted. Though it is not a judicial body, still there might be cases where it may not be desirable in the interests of the security of the nation and for the purpose of maintaining

secrecy—because there are certain pieces of information which are extremely vital and fateful in character—and such pieces of information have to be kept away from the public. Otherwise they would be a disturbing tendency on the very life and future of the nation. It is on account of this reason that even in foreign countries, though originally they stated that there ought to be judicial trial and without a judicial trial no man can be detained long or convicted, even in the Supreme Court of America as also in the English High Court we have got the present position accepted, according to which they say that this freedom should not be made too much of, and therefore certain abnormal Acts were passed during the war in America as also in England and they had recourse to what is known as the mid-way position between no trial or no enquiry at all and an enquiry through a judicial tribunal. They are what we call the Advisory Bodies. Here in this case we have got a further safeguard namely that these Advisory Bodies have to be consulted. Formerly when the first Act was passed there was no compulsion on the Central Government or the State Governments to submit all the cases wherever there were detenus, to the Advisory Bodies and even the Constitution itself makes a provision that if a State Government or the Central Government thinks that there are certain cases where it might be prejudicial to the safety of India or it might be harmful to the safety of India, certain circumstances should not be disclosed even to the Advisory Body. Therefore, that power was recognized and was laid down in article 22. We find that even so far as this particular point was concerned there are two circumstances of a refreshing nature in this measure. One is that these Advisory Bodies are to consist only either of High Court Judges or those who are competent to become High Court Judges. In other words though these bodies are stated to be non-judicial bodies still in fact they would be considered as judicial bodies. Secondly, you will understand that so far as these bodies are concerned, they are called Advisory Bodies. Ultimately, they gave only a piece of advice. I am not bound to accept and it is open to me to accept, reject or ignore it. That is the ordinary meaning of the expression 'Advisory Body'. It would be found to our great relief that in the present Bill that has been placed before us and that is being debated now, every case has to be submitted for its consideration to the Advisory Body.

Suppose for example, there is pronounced an opinion which is against the continuance of detention, then what is to be done? Formerly there was some technical difficulty in the amendment that was passed in 1951, namely there were only two members and it was likely that two members might not agree amongst themselves and there might be a tie. Under these circumstances the Attorney-General gave the opinion that when the two members of the Advisory Body gave opinions which were incompatible with each other, then it was to be considered that there was no opinion of the Advisory Body and he further stated that in such a case the Government were bound to respect the decision in a way, of the Advisory Body and release the detenu, forthwith. That difficulty has been met in this particular Bill by two circumstances. One is that the number has been increased to three. Secondly, the opinion of the Advisory Body is more or less a judgment, for every opinion that has been given by the Advisory Body either unanimously or by majority vote would be binding on the Government and the Government are bound to release the detenu provided that opinion is in favour of the circumstances that the detention made was not proper or that the detention should not be persisted in. It is a great innovation that though we call it an Advisory Body still it is not an Advisory Body in fact. It is a body whose opinion is entitled to the greatest respect and is by the present statute stated to be binding on the Government.

Formerly, either in the original act or in the amending Act of 1951 there was no provision for the appearance of detenus before the Advisory Body. Therefore, it was contended that it was not a trial. It was not a judicial inquiry and therefore, a detenu was not entitled as of right to appear before such a body. That right has also been conceded. For example under the present Bill where a detenu has been arrested and detained, he is supplied with the grounds for which he has been arrested or detained and then these grounds along with the information that the Government have at their disposal, the representation that the detenu might make—all these will be submitted for the proper consideration by the Advisory Body.

A further right has been given by the present Bill according to which if a detenu expresses his desire to appear personally before an Advisory Body then it shall be the duty of the Advisory Body to call him in. It shall be the duty of the Government

[Shri Datar]

to place such a detenu before the Advisory Body. This important right of appearance in person before the Advisory Body is one of the most valuable rights. As against this it might be contended by the other party that the original Constitution when it deals with the detention.....

An. Hon. Member: There are no parties here like that.

Shri Datar: There are other parties of whom we may have to take notice. All right. I shall be glad if there are no parties at all. Then it was contended that the right of appearance through a lawyer was allowed under the Constitution—article 22. It is true that clause (1) of article 22 gives the right of appearance before a duly constituted authority when a man was detained, but it has been made clear in a subsequent clause that this right of appearance through a lawyer is not open when there has been a preventive detention. Therefore, we cannot say that in the case of a preventive detention a detenu has as a matter of right the facility of appearance through a lawyer and that right cannot be claimed as such. There are certain weighty considerations. I am a lawyer and ordinarily one is likely to believe that the right of representation through a lawyer is a very valuable right but there are grave circumstances which deal with the stability of a state where such a right ought not to be available to a lawyer at all because when a lawyer appears, when witnesses appear, naturally it will not be possible for the Advisory Body to suppress certain information provided all those facilities are allowed.

The next question is whether a lawyer is absolutely essential. The High Court Judges or persons competent to be High Court Judges who are the members of the Advisory Body would take care of the legal and constitutional position and so far as the presentation of the factual side is concerned that is a matter which a detenu can surely take care of and, as for the detenu, he is not supposed to be a gullible or dull person. These detenus are a class of persons who are extremely wise and who are extremely clever. In fact it is their cleverness which has been baffling the Government and therefore the ordinary normal law cannot apply to such cases.

Then, it was contended by some lawyer friends also with some amount of plausibility that there ought not to be passed laws for a detention without trial. We have seen also that a number of lawyers from Bihar have made a representation to the Central Government that this Bill is an obnoxious measure and should not be placed on the statute book even for a limited period. What are the fundamentals which have been some times ignored by our friends opposite? In ordinary cases when the conduct is normal, then the conduct by way of commission of offences is normal and then we have got the law of Criminal Procedure Code, the Penal Code and we have got other criminal Acts also. But when there are extraordinary circumstances and when there are organized parties or when there are organized unsocial elements, then in that case you cannot say that the State has to remain quiet and to take action only after a particular act has been committed. That would only be a *post mortem* procedure. There are circumstances in which it is the overwhelming duty of the State to prevent the commission of such acts which might lead to the unsettling of conditions in India. In section 3 a number of circumstances have been mentioned as for example where the security of India is concerned, where attempts are made to tamper with services or the supply of foodgrains. There are also other circumstances. These are overweighty circumstances to cope with which the ordinary law of the land would be entirely insufficient and would not be of any use at all. In ordinary cases, it is the duty of the prosecution to prove the Commission of offences and then only it is open to the court to convict. We know a number of cases where actually an offence has been committed, but on account of some technical non-compliance with the law, the offenders have had to be released very reluctantly by the magistrates. In such cases, the interests of the State are not at stake to the extent to which it would be at stake where we deal with fundamental problems which affect the welfare of the whole State, or the security of the whole State. In the former case, actual proof may be insisted upon. As I said, there may be other circumstances which might lead to or which might prepare the ground for unsettling the conditions in a country or for introducing subversive activities which may be highly fatal to the interests of the nation. In such cases, it is not sufficient merely to put the law in motion after the act has been committed. An *ex post facto* procedure would not be

sufficient. What is required is, not merely should the act be nipped in the bud, but the very preparation should be crushed. In such cases, you have to deal with not actual proof, but as some courts have pointed out, with reasonable suspicion and anticipation. So far as suspicion and anticipation are concerned, we have to remember that we are a responsible Government and a certain party has been returned to power at the recent General Elections. That shows that the party which is in power at the Centre and in most of the States, has the confidence of the nation. If there is responsible Government, it means that there is a responsible Ministry. The first fundamental act of any democratic Government is to place implicit faith in its Ministry or in its executive. Otherwise, Government would be impossible. You cannot carry on the Government if for example you administer pin-pricks at every stage, and you do not rely on and place confidence in the Ministry and place some theoretical considerations before them. Therefore, my submission to this House is this. When we have a responsible Government of the republican type, which we undoubtedly have, whatever my friends on the opposite may say, when in their opinion, which is entitled to great weight, there are circumstances that require the continuation or extension of this Bill for a period of two years, I say they are entitled to have that measure of confidence to the extent that we place these powers in their hands. As I said, in spite of what has been said, in certain cases, there may have been over-zealous acts; you can call them bunglings. But, beyond bunglings and over-zealousness, there is nothing to show that there was any tyrannisation. In these circumstances, you have to place in the armoury of the executive certain powers which may be used only when necessary. Those who know the conditions in Rajasthan, Saurashtra, and certain areas in Hyderabad—I would say, that, but for such an Act to deal with such cases which are of an extraordinary nature, the safety of the nation would have been imperilled. I come from a part of the country where the Communists are not, happily, in the picture. In my part of the country, for the protection of the life and property in the ordinary way, the ordinary law is not sufficient. There also, this Preventive Detention Act has to be resorted to for the purpose of protecting the life and property of the citizen. I have a number of instances to prove that but for this Act, my part of the country would have been in great jeopardy. Therefore, these powers have to be given.

All we can say is that this power should be used as sparingly as possible. The hon. Home Minister, the other day gave the figures of persons in detention in the various States. So far as these figures go, they do not err on the side of being highly excessive or being highly unwarranted. Taking into account the magnitude of our country, taking into account also the various subversive and unsocial elements that we unfortunately have in this country, taking into account the desire of the present popular Government at the centre and the various States, these powers should be given to the Government. We have also to remember one point mentioned by the hon. Home Minister. He said, not only did he require these powers in his arbitrary will, but that all the States, in all the parts of the country, desired that these powers should be extended. If we read the proceedings of this House when this Act was passed, we find that a certain number of judgments had been given by High Courts and the Supreme Court and the position was likely to be chaotic. Senior officials from various States had gathered in Delhi and they impressed upon Sardar Patel the necessity for the passing of this law as early as possible and as expeditiously as possible. Therefore it was that the first Preventive Detention Act was passed in the course of one day after five hours of discussion. This shows the measure of anxiety that was bestowed on the matter and the measure of the intensity of this problem. From an examination of these circumstances, we understand the constitutional propriety and the need for this measure. Technically we may not be in abnormal circumstances; still the conditions are far from normal. In such circumstances, we must have in the armoury of the Central Government certain powers which have to be used when the need arises. It is only for such contingencies that this Bill has been brought forward. Let us hope, let us all join in giving the powers that they need, and in calling upon and warning them that these powers should be used as sparingly as possible, and as intelligently as possible If the powers are not used intelligently, the High Courts are there and the Supreme Court is there to pull them up and the legislative authority is there to prevent an abuse of the power or correct any lacuna or omissions. So far as the present Bill is concerned, if we take into account all these safeguards, if

[Shri Datar]

we take into account the reality of the present situation where we have to nurse the stripling of a young republic, in my opinion it is necessary, not as a member of the Congress Party, but as a responsible citizen of India, that we must place these powers in the hands of the Central executive as also the State executives.

श्रीमती सुभद्रा जोशी (करनाल) : श्रीमान्, इस बिल के बारे में दो तीन दिनों से काफ़ी बहस चल रही है और इस बिल के बारे में मैंने भी इन दो तीन दिनों तक काफ़ी विचार किया है। अभी हमारे आनरेबिल मेम्बर श्री गोपालन ने बहुत से केसेज़ (cases) बतलाये, अपना भी किस्सा उन्होंने बतलाया। मुझे उन के साथ पूरी हमदर्दी है। मालूम होता है कि काफ़ी मुसीबत में से वह गुज़रे हैं, बहुत से डिटेंशन आर्डर्स (detention orders) उन पर सर्व (serve) किये गये हैं। बाकियों का भी किस्सा उन्होंने बतलाया और यह बतलाने की कोशिश की कि किस तरह नामुनासिब इस्तेमाल हुआ है। उन्होंने बहुत कुछ पढ़ पढ़ कर बताया कि क्या क्या नामुनासिब बातें लिखी थीं। तो इस सब से अध्यक्ष महोदय, ऐसा मालूम होता है कि हमारे एग्जीक्यूटिव आफ़िसर्स (executive officers) ने जिन्होंने वह आर्डर्स सर्व किये, लिखने में ग़लती की। लेकिन हमारे आनरेबिल मेम्बर ने यह साबित नहीं किया कि जिन को पकड़ा था, जिन को डिटेन किया था, वह बाक़ई इतने मासूम थे। वह यह साबित नहीं कर सके कि वह बेगुनाह थे। बहुत से केसेज़ आनरेबिल श्री गोपालन ने जो बताये उन को मैं नहीं जानती, उन का श्री गोपालन का केस भी नहीं जानती हूं। औरों का भी नहीं जानती। परन्तु मेरी उत्सुकता बड़ी यह जानने के लिये कि आखिर उन्होंने क्या किया था और आखिर उन्हें क्यों पकड़ा गया। मैं उम्मीद करती हूं कि हमारे आनरेबिल होम मिनिस्टर इस पर रोशनी डालेंगे।

मुझे इस बारे में एक बात का और भी ख्याल आया। हमारे एक बड़े वकील साहब उठे और बहुत कुछ उन्होंने इस के बारे में कहा। तो मुझे यह मालूम हुआ कि हमारे होम मिनिस्टर साहब ने यह बिल पेश करके एक बड़ा क़सूर किया है। उन्होंने यह बड़ा क़सूर किया है कि बहुत हद तक वकीलों और बैरिस्टरों को ऐलीमिनेट (eliminate) करने की कोशिश की है और यह सवाल सिर्फ़ सिविल लिबर्टीज़ (civil liberties) का ही नहीं रह जाता परन्तु यह सवाल पाकेट (pocket) का भी हो जाता है। इस बात को मैं ने अच्छी तरह महसूस किया और जहां सैल्फ़ इंट्रेस्ट (self interest) होता है तो बहुत हद तक युक्तियां भी सूझती हैं, आरग्यूमेंट्स (arguments) भी सूझते हैं। तो मैं भी साफ़ कहना चाहती हूं कि जब इस बिल का सवाल आता है तो मेरा भी सैल्फ़ इंट्रेस्ट बोलता है और मैं भी अपने सैल्फ़ इंट्रेस्ट को सामने रख कर बोलना चाहती हूं और उन सिटीज़न्स (citizens)की तरफ़ से बोलना चाहती हूं, उन लोगों की तरफ़ से बोलना चाहती हूं जिन की आज़ादी और लिबर्टी खतरे में पड़ जाती है, उन जमाअतों के जरिये जो कि इस शहर में, या हिन्दुस्तान में और इस मुल्क में डिसआर्डर (disorder) करना चाहती हैं। मुझे यह देख कर ताज्जुब होता है कि इस बिल के बारे में हमारे हाउस में और शहर में भी मैं ने सुना ऐसी जमाअतें हैं जो कि आपस में मिलकर

डिमान्स्ट्रेशन (demonstration) करना चाहती हैं और हाउस में भी ऐसी जमाअतें मिल कर इस बिल को अपोज़ (oppose) करना चाहती हैं, जिन जमाअतों के उद्देश्य में एम्स (aims) में आबजैक्टस (objects) में और सिद्धान्त में या उन सिद्धान्तों तक पहुंचने के रास्ते में भी आपस में कुछ भी चीज़ नहीं मिलती है।

हमारे यहां कम्युनिस्ट भाई बैठे हैं। वह मुनासिब चीज़ें चाहते हैं, हम सब भी वही चीज़ें चाहते हैं। लेकिन वह जनता का नाम ले कर कहते हैं कि यहां के किसानों के ख़िलाफ़ यह इस्तेमाल किया जायेगा, मज़दूरों के ख़िलाफ़ यह इस्तेमाल किया जायेगा, जनता के ख़िलाफ़ यह इस्तेमाल किया जायेगा। हमारे बैरिस्टर साहब ने फ़रमाया कि बहुत से चेहरे हमें नज़र आते हैं अपने नौजवानों के, सुप्रीम कोर्ट के बाहर, जिन को देख कर रंज होता है। हमें भी रंज होता है।

यह ठीक है कि हमारे नौजवान जब जेलों में डिटेन किये जाते हैं तो हमें रंज होता है, लेकिन साथ ही हमें उस समय अपने उन बेक़सूर और बेगुनाह नौजवानों की भी याद आ जाती है जो गाड़ी में सवार होते हैं और पटरी खींच ली जाने के कारण रेल दुर्घटना के शिकार हो जाते हैं और मारे जाते हैं और यह सारे कृत्य कुछ नौजवान एक ज़ील (zeal) में कर बैठते हैं और ऐसा करके वह इस देश में एक ऐसी हुकूमत बनाया चाहते हैं जिस में सब बराबर हों। जहां तक उनके उद्देश्य का सवाल है, हमारा उन से कोई मतभेद नहीं है, हम भी ऐसा ही चाहते हैं। लेकिन जब हम उनके रास्तों की तरफ़ देखते हैं तो हमें ताज्जुब आता है। और एक अजीब बात ने यह देखी कि जब से यह बिल हाउस के सामने आया है मेरे उन मित्रों ने रूस अथवा चीन की बात नहीं की जिस के बारे में हम पिछले दो महीनों से सुनते आ रहे हैं। जब गेहूं की बात आती है तो उनकी तरफ़ से कहा जाता है कि गेहूं रूस से आना चाहिये चीन से आना चाहिये और ऐक्सपर्टस् (experts) जर्मनी से आना चाहिये, लेकिन जब आज़ादी की बात करते हैं, सिविल लिबर्टीज़ की बात करते हैं, तो इंग्लैंड और अमरीका की बात करते हैं। और जिस चीन का यह मेरे मित्र यहां रोज़ आये दिन ज़िक्र करते हैं तो मुझे चीन के नेताओं की यह बात याद आ जाती है कि कांउटर रेवोल्यूश्नरीज़ (counter-revolutionaries) को वोट देने का भी अधिकार नहीं होना चाहिये और चीन के उन नेताओं के कथनानुसार वह जनता नहीं हैं। यहां मेरे सामने हिन्दी का एक ट्रान्सलेशन (translation) है जिस में चीन के एक बहुत बड़े नेता ने कहा है कि प्रतिक्रियावादियों को अपनी राय ज़ाहिर करने के हक़ से वंचित कर देना चाहिये और सिर्फ़ जनता को ही वोट देने और अपनी राय के ज़ाहिर करने का अधिकार होना चाहिये। और उनके मतानुसार जनता मज़दूर, किसान वर्ग निम्न पूंजीपति वर्ग और राष्ट्रीय पूंजीपति वर्ग हैं। इन सब वर्गों को मिलना चाहिये ताकि वह प्रतिक्रिया वादियों और काउन्टर रिवोल्यूश्नरीज़ या अपनी डिक्टेटरशिप (dictatorship) क़ायम कर सकें। वोट देने का अधिकार सिर्फ़ जनता को ही मिले, प्रतिक्रियावादियों को काउन्टर रेवोल्यूश्नरीज़ को वोट देने का अधिकार ही नहीं है, उनको जनता नहीं समझा जाता है। लेकिन इस के विपरीत हमारे देश में क्या देखने में आता है कि मेरे यह कम्युनिस्ट मित्र प्रतिक्रियावादियों से हाथ मिलाते हैं और गठबंधन करते फिरते हैं और मैं अदब से

[श्रीमती सुभद्रा जोशी]

कहना चाहती हूं कि यहां हाउस में जब मैं अपने कम्युनिस्ट और सोशलिस्ट मित्रों को ऐसे प्रतिक्रियावादी लोगों से हाथ मिलाते देखती हूं जो कि रिवोल्यूशन के दुश्मन है और देश को पीछे घसीटना चाहते हैं, जो कि ऐसी जमातें आरगैनाइज (organise) करते हैं जो देश को खत्म करना चाहती हैं और देश के टुकड़े टुकड़े कर देना चाहती हैं और गुंडाशाही स्थापित करना चाहती हैं, तो मुझे बहुत ताज्जुब होता है ।

अध्यक्ष महोदय, मैं कोई क़ानून से बहुत वाकफ़ियत नहीं रखती हूं और मैं हमेशा से अपने शहर में हुकमत के सामने क़ानून तोड़ने की मुजरिम रही हूं और अकसर तोड़ देती हूं और क़ानून टूट जाने के बाद मुझे मालूम होता है कि मुझ से अन जाने कोई सरकारी क़ानून टूट गया है और इसीलिये म आप से शुरू में प्रार्थना करती हूं कि अगर अनजाने में मैं अपनी स्पीच के दौरान में कोई ऐसा शब्द इस्तेमाल कर जाऊं जो अन-पार्लियामेंटरी (unparliamentary) हो, तो मुझे उस के लिये क्षमा किया जाये और मैं उम्मीद करती हूं कि आप उस की तरफ़ मेरा ध्यान दिलावेंगे ।

जहां तक प्रिंसिपल (principle) का ताल्लुक़ है हम सब मानते हैं कि वाक़ई यह बड़ा जुल्म है कि किसी को मौक़ा य बग़ैर ही जेल में बन्द कर दिया जाये उस को यह मौक़ा न दिया जाये कि उस को सफ़ाई में क्या कहना है और वह बतलाये कि वह क्या चाहता है । हर एक को इसका मौक़ा दिया जाना चाहिये । इस सिद्धान्त को सब मानते हैं और हम कांग्रेस वाले तो हमेशा आज़ादी के लिये लड़ते रहे, ऐसे लोगों की तरफ़ से ऐसा बिल आना वाक़ई में बहुत ताज्जुब की बात मालूम पड़ती है लेकिन मैं आप का ध्यान देश की वर्तमान अवस्था की तरफ़ दिलाना चाहती हूं जिन से हो कर हमारा देश गुज़र रहा है नई नई आज़ादी हम ने प्राप्त की है, नई नई हुकुमत हमारी बनी है और यह किसी हद तक दुरुस्त है कि हमारे लोग जो हुकूमत कर रहे हैं वह बहुत ऐक्सपर्टस् भी नहीं हैं । यहां पर बहुत से डिटेंशन आर्डर्स का हवाला दिया गया जिन से ऐसा मालूम हुआ कि हमारी ऐक्ज़ीक्यूटिव (executive) बहुत एफ़ीशियट (efficient) नहीं है । अभी यहां पर बतलाया गया है कि किसी ज़िला मैजिस्ट्रेट ने पांच आदमियों को यह लिख दिया कि ये पांचों एक मीटिंग पर प्रीसाइड (preside) कर रहे थे, इस से एक्ज़ीक्यटिव की इनएफ़ीशियसी ज़ाहिर होती है और इसलिये मैं चाहती हूं कि हम इन मामलों को सिर्फ़ उन ही लोगों पर न छोड़ें, बल्कि हम उस कानून को अपने हाथ में लें और वकीलों की मदद से उन के सलाह मशविरे से अदालतों की कमज़ोरियों से जो लोग बच जाते हैं जो प्रतिक्रियावादी हैं और जो हमारे देश की आज़ादी को ख़तरे में डालना चाहते हैं उन को खुली छुट न मिल जाये और हम उन को चैक (check) में रख सकें । और जैसा कि मैं ने आप से पहले अर्ज़ किया कि हमारे देश के अन्दर हालात ऐसे हैं, और हम ऐसी परिस्थितियों से गुज़र रहे हैं कि हमें बहुत सतर्क रहने की आवश्यकता है और इस सम्बन्ध में दूसरे देशों का इतिहास हमारे सामने पड़ा है कि वहां पर किस तरह जब नेशनल इंट्रेस्ट (national interest) ने डिमांड किया तो ऐसे लोगों को दंड दिया गया । वहां पर कोई ट्रायल (trial) का सवाल नहीं उठा । यह कहा गया है कि वहां बिना ट्रायल के लोग डिटेन नहीं किये जाते हैं,

लेकिन आप ने यह भी देखा कि उन देशों में वक्त आने पर ऐसे समाजद्रोही लोगों को एक साथ दीवार के सहारे खड़ा करके गोली मार दी जाती है और सबको भून डाला जाता है और इस तरह वहां पर पीपुल्स ट्रायल(peoples trial) किया जाता है। यह चीज़ भी हमारे सामने है। मैं यहां पर उस बात का कोई खास जिक्र नहीं करना चाहती, मैं तो अपने देश के वर्त्तमान हालात का और यहां की पोलिटिकल पार्टीज़ का जिक्र करना चाहती हूं और यह बतलाना चाहती हूं कि इस प्रकार का क़ानून नितान्त आवश्यक है।

अध्यक्ष महोदय, मुझे माफ़ करें, क्योंकि मैं जिस बात का अब जिक्र करने जा रही हूं, वह एक व्यक्तिगत बात मालूम होती है और मेरा उससे बहुत ताल्लुक़ रहा यहां उस चीज़ का भी बहुत जिक्र रहा। और अक्सर उसका जिक्र हाउस में होता रहता है। यहां दिल्ली में एक शादी होने वाली थी। अभी मेरे एक आनरेबिल मेम्बर ने उसका जिक्र किया कि क्या इस डेमोक्रेटिक गवर्नमेंट में किसी को शादी करने का अधिकार नहीं है ? उस पर मेरे एक दूसरे मित्र ने कहा कि ऐज (age) का सवाल है। टीक है शादी के होने में लड़की की उम्र का सवाल उठाना मुनासिब है। मामला कोर्ट में गया, और कोर्ट का इंजंक्शन आर्डर (injunction order) भी समझ में आया। मुनासिब यह था कि उस लड़की को भी मौक़ा होना चाहिये कि आज़ादी के साथ वह अदालत में पेश हो कर अपनी बात कह सके। लोग उस लड़की को देखें, अदालत उस को देखे, और सबूत पेश हो और साबित हो कि क्या क़िस्सा है। लेकिन यह नहीं हो पाता और हमारी कुछ सियासी जमातें इस मामले को बढ़ाचढ़ा कर ऐसी हवा पैदा करती हैं और हमारे कुछ दोस्त ऐसा माहौल पैदा करते हैं कि वह लड़की मारी मारी फिरे और अदालत में आज़ादी के साथ सामने आ कर अपनी बात पेश न कर सके।

हमारे लोग ऐसा ऐटमास्फ़िअर (atmosphere) शहर में बनाते हैं कि वह लड़की मारी मारी फिरे, घर घर, शहर शहर मारी मारी फिरे। उस लड़की के खिलाफ़ मुकदमा चला, लड़की अदालत में पेश न हो सकी। अगर अदालत में जाने की कोशिश करे है तो रास्ते में हमला किया जाये। लड़की के बाप पर हमला किया जाये, लड़की की मामी पर रास्ते में हमला किया जाये, ऐसी हवा पैदा की जाती है कि लड़की सामने न आये और न यह साबित कर सके कि उस की उम्र क्या है। इस तरह के क़िस्सों से सयासी फ़ायदा उ ाने की कोशिश की जाती है। तो यह अदालतें उन लोगों के लिये हैं जो नार्मल (normal) होते हैं और नार्मल टाइम्स के लिये हैं, लेकिन जब ऐसी ऐसी जमातें हों जो क़ानून तोड़ कर शहर में हुल्लड़ मचवाती हैं तो क्या किया जाये। मैं इस सारी बात का जिक्र नहीं करना चाहती हूं, लेकिन हम क्या देखते हैं कि यहां पर हमारी जमातों के नेताओं ने ऐसी स्पीचेज़ और लेक्चर दिये और एसी बातें कहीं जिस का यह नतीजा यह हुआ कि शहर में कत्ले आम हुआ, खूनखराबा हुआ। मैं क्या बताऊं कि जिस लड़की के लिये इतना हुल्लड़ हुआ उस की कितनी मिट्टी पलीद हुई, वह सब आज हमारे सामने है।

अध्यक्ष महोदय, मैं कह रही थी कि कानून जो होते हैं वह नार्मल लोगों के लिये और नार्मल टाइम्स के लिये होते हैं। लेकिन हमारी जमातें तो अब बड़ी होशियार हो गई हैं। मझे तो उस दिन हंसी आई

[श्रीमती सुभद्रा जोशी]

अभी कि एक साहब विरोधी बैन्चेज से कह रहे थे कि कलकत्ते में जो फ़ायरिंग (firing) हो रही है, या हंगर मार्च (hunger march) हो रहे हैं मैं उस जमात का प्रेजिडेन्ट हूं। गोलियां वहां चल रही हैं, मार्चेज वहां हो रहे हैं, मुकदमे वहां हो रहे हैं और प्रेजिडेन्ट साहब यहां तशरीफ़ रखते हैं। मुझे तो सुनकर ताज्जुब हुआ। यह कोई मामूली वक्त की बातें नहीं हैं। जिक्र किया जाता है कांग्रेस का, जिक्र किया जाता है उस समय का जब कांग्रेस अपनी आजादी की लड़ाई लड़ा करती थी गांधी जी का नाम लिया जाता है, यह सब सुनकर मुझे ताज्जुब होता है। कांग्रेस में कभी ऐसा नहीं होता था। अगर कोई लड़ाई लड़ी जाती थी तो प्रेजिडेन्ट साहब झंडा ले कर आगे तशरीफ़ रखते थे, घर में नहीं बैठा करते थे। पर आजादी आने के बाद हम ने देखा कि अब यह होने लगा कि सेना कहीं चलती है और जनरल कहीं छिप कर बैठ जाता है, सामने नहीं आता और दूसरे लोगों से जो चाहता है करवाता है। खराब खराब स्पीचेज देता है, खराब खराब बातें कहता है, अगर मीटिंगों पर बैन (ban) लग जाता है तो कमरे में बैठ कर मीटिंग करता है और लोगों को इन्साइट (incite) करता है और फिर कहता है कि यह सब जनता कर रही है, मेरा इस से कोई वास्ता नहीं। यह एक नई टेकनीक (technique) है, नया तरीका है। हो सकता है कि दूसरे मुल्कों में हो हमारे मुल्क में नया तरीका है जो वह इस्तेमाल करते हैं और यहां पर जिक्र करते हैं कि इस डिटेंशन (detention) बिल में क्या क्या गल्तियां हैं। मैं तो मानती हूं कि अगर हमारी एग्जिक्यूटिव के लोग उतने ही होशियार होते जितने आज कल के लोग हो गये हैं तो इस बिल की कतई जरूरत न थी, वह पकड़े जाते और मुकदमे चलते। लेकिन वह बचते फिरते हैं और छिपते फिरते हैं, तमाम कार्रवाईयां करते हैं और कुछ कहा जाता है तो कहते हैं कि हम कुछ नहीं कर रहे हैं। ऐसे लोगों के लिये नार्मल कानून से क्या काम चल सकता है। मुझे वह दिन याद आता है जब गांधी जी की हत्या हुई। अध्यक्ष महोदय, मैं चाहती हूं कि आप इस के मुताल्लिक़ याद करें और आनरेबिल मेम्बर्स याद करें कि हमारी फिर्क़ा-परस्त जमातों के नेताओं की स्पीचेज कैसी हुआ करती थीं और वह क्या क्या कह रहे थे। आप अखबारों का मुलाहजा फ़रमायें कि वह उस समय क्या क्या कह रहे थे और कैसी कैसी कोशिशें कर रहे थे। आज की पोलिटिकल जमातों के लोग पुरानी जमातों के नेताओं जैसे नहीं हैं। आज जो घरों में छिप कर, घरों में बैठकर गोडसे पैदा किये जाते हैं। गोडसे ने गोली मारी, गोडसे को फांसी दी गई लेकिन गोडसे पैदा करने वाले आज तक मौजूद हैं और दिन रात ऐसे लोग पैदा कर रहे हैं। वैसे तो घर में बैठे रहते हैं छिपे रहते हैं, लेकिन डिमोक्रेसी (democracy) का नाम ले कर हम लोगों के खिलाफ़ आवाज उठाते हैं, वह सामने नहीं आते हैं, आड़ में से ही डिमाक्रेसी की हत्या करना चाहते हैं। इसी तरह से गांधी जी की हत्या हो जाने के बाद कहने लगे कि हमारा इस से कोई ताल्लुक़ नहीं। जमातें कहने लगीं कि हमारा कोई ताल्लुक नहीं, व्यक्ति कहने लगे कि हमारा कोई ताल्लक़ नहीं, और अब जब हत्या हुए थोड़े दिन हो गये तो फिर उठ और, अध्यक्ष महोदय, मझे बड़े शर्म से कहना पड़ता है कि आज जब जमातों के बड़े बड़े

नेता आते हैं तो उन की जमातों के लोग जब उनका स्वागत करते ह तो कहते हैं कि गोडसे जिन्दाबाद, और फिर कहते हैं कि डिमाक्रेसी के नाम पर यह बिल नहीं चाहते हैं।

इसी तरह मैं अखबारों का जिक्र करना चाहती हूं। जो लोग काउन्टर रिवोल्यूशनरीज कहलाते हैं, जिन से प्रोग्रेसिव (progressive) लोग हाथ मिलाया चाहते हैं, उन काउन्टर रिवोल्यूशनरीज का हिन्दुस्तान के ज्यादातर अखबारों के मालिक हैं उन अखबारों का थोड़ा सा जिक्र मैं आप से करना चाहती हूं। गांधी जी की हत्या के पहले मैं चाहती हूं कि आप उन अखबारों की बात याद कर लीजिये कि वह क्या क्या लिखते थे।

अभी पिछले दिनों काश्मीर का जिक्र हुआ था और हाउस में और हाउस के बाहर बड़ा उधम मचाया गया कि काशमीर का झंडा हम नहीं मानते हैं। और हमारे एक प्रोफेसर साहब का जिक्र हुआ जो कि दिल्ली में ही प्रोफ़ेसर हैं। जब उनका जिक्र आया तो मुझे कुछ पुरानी याद आई प्रोफेसर राम सिंह न अपनी एक स्पीच में कहा था पुरानी स्पीच है और जो कुछ उन्होंने कहा उसका अग्रजी ट्रांसलेशन है:

"This is not our national flag. This is foreign flag, alien flag which contains Pakistan's colour in it and so long as Pakistan's colour remains in it, it continues to be a foreign flag for us. We will not feel at rest till we have managed to hoist our national flag at the Red Fort."

Shri V. G. Deshpande: On a point of information, may I know whether this extract is from the C.I.D. report?

Mr. Chairman: Order, order, let there be no interruptions.

श्रीमती सुभद्रा जोशी: अध्यक्ष महोदय, यह पब्लिक मीटिंग की स्पीच है। मैं ने पहले ही कहा था कि यह अंग्रेजी का ट्रांसलेशन है, इसके लिये में माफ़ी चाहती हूं। मैं यह भी अदब से अर्ज करना चाहती हूं कि यह वह स्पीचें हैं जो मुहल्लों में दी जाती हैं, हो सकता है इस में कोई ग़लती हो, तो इस के लिये मैं माफ़ी चाहती हूं, लेकिन मेरी इत्तला के मुताबिक़ यह उनकी स्पीचें हैं। मैं एक और स्पीच का भी जिक्र करना चाहती हूं जो कि मेरे हाथ लग गई। हम लोग तो इस की तालाश में रहते ही हैं, इत्तफ़ाक़ से यह मेरे हाथ लग गई। पता नहीं है कि इस में कोई ग़लती है या नहीं, लेकिन इस को पढ़ कर मुझे हैरानी हुई। मैं तो इन साहब को जानती नहीं हूं लेकिन उनका नाम होरी लाल सक्सेना है। उन्होंने कहीं पर एक बार स्पीच दी और कहा कि :

"I have heard to day the radio broadcast of a person who described himself as the Prime Minister of India and whom I for myself do not regard as such. He has now in most unbecoming terms threatened to sweep off all of us. We have seen enough of those who were accustomed to sweeping off others. Mussolini also used to say this but the world knows of his fate, he was shot dead and the Italians spat at his body."

मुझे यह तकरीर इत्तफ़ाक़से ही मिल गई, हालांकि मुझे बहुत ज्यादा वाक़फ़ियत नहीं है, न मैं बहुत शहरों से ताल्लुक़ रखती हूं। सन् १९४७ के बाद मैं दिल्ली में ही रही हूं। ऐसी बातें कह कर और हर लेक्चर में पाकिस्तान का बहाना बना कर हमारे प्राइम मिनिस्टर को गाली दी जाती है, और सब कुछ कह कर कभी कभी यह भी कह दिया जाता है कि हम सब पाकिस्तान से लड़ाई करना चाहते हैं।

[श्रीमती सुभद्रा जोशी]

पर पाकिस्तान का नाम ले कर यहां की हुकुमत के खिलाफ़ यहां के रहने वाले लोगों को भड़काया जाता है। अध्यक्ष महोदय, दिल्ली में जो म्युनिसिपल कमेटी के एलेक्शनस हुए उनके सम्बन्ध में जो मीटिंगें हुईं उन में तो साफ़ साफ़ कहा गया कि अगर पुरुषार्थी और शरणार्थी लोग बसना चाहते हैं, आबाद होना चाहते हैं, तो हमारे पास बहुत आसान तरीक़ा है, और वह यह कि एक दफ़ा यहां से मुसलमानों को निकाल दिया जाये फिर सारे पुरुषार्थी उनकी जगहों पर आबाद हो सकते हैं।

इतनी मीटिंग्स होती हैं, और इतनी छोटी छोटी मीटिंग्स होती हैं। मुझे बहुत ताज्जुब होता है कि हमारी हुकूमत उन के लिये कुछ क्यों नहीं करती है। कभी कभी हम कहते हैं तो हमारे आफ़िसर्स कानून की किताबें निकाल कर हमारे सामने भी कह देते हैं कि इस में कोई दफ़ा लागू नहीं होती है। अब कोई दफ़ा लागू हो या न हो, दफ़ायें और क़ानून किताबों की चीजें हैं, और बकीलों की चीजें हैं। पर जो हत्यायें, और जो खून और क़त्ल और लूटें होती हैं उन को हम दिन रात देखते हैं। और मैं समझती हूं कि अगर मामूली क़ानून से यह चीजें नहीं रोकी जा सकतीं और हुकूमत इन के लिये इस क़िस्म का बिल लाती है तो यह बहुत मुनासिब है।

जैसा मैं ने आप से पहले कहा था, एक चीज का मैं और जिक्र करना चाहती हूं। आज इंडीविजुअल लिबर्टी (individual liberty) की बात की जाती है। तो जैसा कि मैं ने आप से पहले भी कहा था मुझको भी अपनी इंडिविजुअल लिबर्टी का ख्याल आता है औरों को भी आता है। परसनल इंट्रेस्ट्स (personal interests) का भी सवाल आता है। और, अध्यक्ष महोदय, मैं आप के सामने और बड़ी बड़ी बातें न करके औरतों की बात आप के सामने रखना चाहती हूं। हमारे देश में बद-किस्मती देखिये। मुझे कुछ जमाअतों का अफ़सोस के साथ जिक्र करना पड़ता है। पहले भी अच्छे और बुरे लोग होते थे। अध्यक्ष महोदय, हम लोग जब पढ़ते थे उस वक्त यह देखते थे कि अगर कोई पुरुष सड़क पर चलते हुए या बाजार में जाते हुए किसी औरत की तरफ़ उंगली उठा देता था और वह औरत उस के खिलाफ़ आवाज़ उठाती थी तो शहर के और बाजार के तमाम लोग उस आदमी के खिलाफ़ हो जाते थे और उस को दुरुस्त कर देते थे। जो लोग औरतों का अपमान करने में यक़ीन रखते थे इन जमाअतों ने उन को आरगेनाइज़ (organise) कर दिया। और सन् १९४७ से हम देखते हैं कि उन बहिनों का नाम ले कर जो पाकिस्तान में रह गई हैं, या किसी और चीज़ का नाम ले कर किसी धर्म का नाम ले कर, किन्हीं बहिनों का नाम ले कर या कभी माताओं का नाम ले कर, हमारी हिन्दुस्तान की औरतों का अपमान जगह जगह किया जाता है। इंडीविजुअल लिबर्टी का तो यह हिसाब है। कहते हैं कि इंडीविजुअल लिबर्टी नहीं है। अब देखिये अध्यक्ष महोदय, इंडीविजुअल लिबर्टी का तो हमारे यहां यह हाल है कि हमारे भाई राम सुभग सिंह पार्लियामेंट के हाउस में पूछ सकते हैं कि होस्टैस का ताल्लुक़ क्या था कि उस को पार्टी दी गई। और भी इंडीविजुअल लिबर्टी का यह हाल है कि हमारे शहरों में हमारे देश की औरतों को नंगा करके उन का जुलूस निकाल देते हैं। इतनी इंडीविजुअल लिबर्टी है और उस को कोई रोकने वाला नहीं है, क्योंकि जैसा कि मैं न आप से पहले कहा आज कल करवाने

वाले मैदान में नहीं आते हैं। करवाने वाले तो अपने घरों में बैठे रहते हैं और दूसरे लोगों को भेज देते हैं। और अध्यक्ष महोदय, यह रोज का किस्सा है। मुझे यह देखकर ताज्जुब होता है। जब से यह पार्लियामेंट का सेशन शुरू हुआ है तरह तरह की बातें होती हैं। मैं यहां देखती हूं कि तनख्वाहों की बातें होती हैं, खान की बातें होती हैं कपड़े की बातें होती हैं और मैं देखती हूं कि हमारे हाउस के मेम्बर इन चीजों की रक्षा करने की बहुत कोशिश करते हैं। लेकिन मुझे बड़ा ताज्जुब होता है कि एक जो बड़ा भारी खतरा है और हमारे देश में औरत की इज्जत को बहुत बड़ा खतरा है इस की तरफ़ किसी का ध्यान नहीं जाता है। मैं याद करवाना चाहती हूं कि आनरेबिल मेम्बर्स को कि औरतें हमारे घरों में पत्नी के रूप में, बहिनों के रूप में और माताओं के रूप में हैं और जिस तरफ़ हमारे देश के वह लोग जो कि अपने को सयासी जमातें कहते हैं इस वक्त देश को लिये जा रहे हैं उस तरफ़ हमारे देश की औरतों की इज्जत के लिये बहुत भारी खतरा है। और मैं अध्यक्ष महोदय, एक जिक्र करना चाहती हूं। यह एक छोटी सी बात है पर चूंकि . . . .

Mr. Chairman: How long will the hon. Member take? कितना वक्त और लगेगा आप को ?

Shrimati Subhadra Joshi: I can continue tomorrow, Sir.

1 P.M.

Mr. Chairman: Yes, she may continue her speech tomorrow.

The House then adjourned till a Quarter Past Eight of the Clock on Tuesday, the 22nd July, 1952.