These are the amendments before the House to the Motion moved. Does the hon. Minister want to say anything?

Dr. Katju: Have you held that the amendments are in order?

Mr. Deputy-Speaker: No.

Dr. Katju: Then, do you propose to hold them in order? Because my position is this. It is open to any hon. Member to vote against the consideration of the Bill on any ground he likes. One ground may be that it does not go far enough. The instructions to the Select Committee that it should go farther than the Bill into the very teeth of Rule No. 100 and I respectfully submit that so long as the Rules of Business stand, that is not permissible. You were pleased to point out that the Speaker can suspend the Rules of Business. I speak subject to correction, but that matter is dealt with by Rule No. 280 where it is said:

> "Any Member may with the consent of the Speaker move that any Rule may be suspended in its application to a particular motion before the House, and if the Motion is carried, the rule in question shall be suspended for the time being."

That is the only thing. I do not know whether that motion will be applicable to this Rule No. 100. Till that is done, Rule No. 100 stands, and we had an instance only four days back in a Bill—I do not know what exactly its name was; I think it was the Bill for amendment of the Criminal Procedure Code—which gave rise to a great discussion about aerial bombardment and naval bombardment in which there were dozens of amendments which were all ruled out by the Speaker on the ground that they went beyond the scope of the Bill, the scope of the Bill merely being that for the purpose of dispersal of an unlawful assembly, the Magistrate may be entitled to call for not only the assistance of the Military, but also the assistance of other armed personnel. There were many amendments moved that the President should declare an emergency and so on, the District Magistrate should be consulted etc., and the Speaker ruled out all those amendments. Now, I respectfully suggest that if that Bill had gone to the Select Committee, the Select Committee would have been bound to take exactly the same procedure which the hon. Speaker took on the floor of the House. It is not permissible to go outside the scope of the bill. This certainly binds the House, and binds the Select Committee still more strongly. Therefore, this amendment which has just been moved that a Select Committee appointed with express instructions to go beyond the scope of the Bill is out of order.

Shri Raghabachari: It was not meant to extend the operations of existing Act. It was only an amendment.

Mr. Deputy-Speaker: The Secretary will now read a message.

MESSAGE FROM THE COUNCIL OF STATES

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

> "In accordance with the provisions of sub-rule (5) of rule 162 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to return herewith the Appropriation (No. 2) Bill, 1952, which was passed by the House of the People at its sitting held on the 4th July, 1952, and transmitted to the Council of States for its recommendations, and to state that the Council has no recommendations to make to the House of the People in regard to the said Bill."

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

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

[MR. SPEAKER *in the Chair.*]

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

Mr. Speaker: The House will now proceed with the further consideration of the Preventive Detention Bill.

Shri Gadgil: Sir, in the morning there was so much confusion created at any rate in my mind on account of the walk-outs and walk-ins, the number of amendments moved for referring the Bill to a Select Committee or a Joint Select Committee, or a Select Committee to report beyond the scope of the Bill according to the meaning of the rules as I understand, that I thought it would be better if it were possible for me to put myself in the mental climate of an ordinary unsophisticated commonsense man and then approach this question which is undoubtedly of vital importance today. I therefore formulated four questions for my own satisfaction, on the answers to which the whole thing, in my opinion, depends.

The first question that I posed myself was whether this piece of legislation is consistent with our Constitution, or is correct and proper constitutionally.

The second question was whether there was the need for such a legislation.

[Shri Gadgil]

The third question was, assuming that there was the need for such a legislation, whether the powers given in this particular Bill are appropriate, adequate or excessive.

The fourth and last question was whether there are any provisions regarding the safeguarding against the abuse of the powers conferred.

Now although in your ruling you have desired the discussion to be limited to a summary appraisal of what has happened since the last Act was passed, by a subsequent ruling given by the Deputy-Speaker, the discussion and consideration of principles underlying the expiring Act have been allowed to be discussed and even held to be relevant. I, therefore, want to enter into not a wide discussion of the same, but a brief reference to the Constitutional position. Appeals have been made in the name of liberty and democratic principles with which we are all familiar. In fact Congressmen have all along been fighting for certain principles, and I hope every one of them feels rather pained when he is faced with the necessity of a legislation of this character. But many times, we have to balance between what to do and what not to do, and come to a conclusion which is consistent with the basic interests of the country. It has been pointed out that in other democratic countries, there is no Preventive Detention Act, and if it was there it was only during wartime and when there was internal rebellion. I want to point out to this hon. House that in 1939 in Eire, a law was passed for preventive detention, when there was neither war nor any internal rebellion; but the riots and disorders were of such a scale that the Parliament there felt the necessity for a measure similar to the one which we have in our Statute book and so an Act was passed. It is not therefore an axiomatic truth that ordinarily in times of peace, there should be no such legislation. I visualized the circumstances in which this country became free as one who has to see that the transfer was gradual in one sense and secondly that the newly-won freedom should take deep root in the soil: it was necessary in those circumstances to have a preventive detention provision in the Constitution. It is true no doubt that the Constitution states general rules not for a fleeting period, not for the fugitive necessities or exigencies of the time, but for generations to come. At the same time we must feel that the Constitution is a road to progress and not a gateway which is closed against all eventualities. Therefore in those circumstances, the principle of preventive detention was incorporated in our constitution, and not only that, the provision was openly made in the Constitution that Parliament is empowered to make laws consistent with those principles which are embedded in the clause called the preventive detention clause. What the Parliament will do will be essential for the passing-over, but it cannot be a part and parcel of the Constitution. If there is anything wrong done by this Parliament, as the Englishman has said:

> "Corrective of the action of Parliament as a human and fallible institution is not a legal corrective and lies not with the judiciary, but with the Parliament itself acting upon a fresh wave of patriotism, a higher sense of duty, a wider range of experience or a broader perspective in the region of applied justice."

Therefore, if this Parliament is doing anything wrong in passing this particular Bill, it is open for the successive Parliament or even for the matter of that if the public opinion changes, even this Parliament composed as it is, may well find it desirable to erase this law, or cancel some of its provisions. All that I say is that if under the Constitution the power is given to the Parliament, then it will be perfectly open to the Government to make use of that power and the justification for bringing in a legislation will depend upon the consideration of the question that if such a Bill is not brought what will be the consequences. In my humble opinion it would have been an act of 'unwisdom' on the part of Government, if they had not brought this Bill. So far as the Constitutional issue is concerned, I do not want to say anything more than what I have said. But the cry that law must proceed on inquiry, law must hear before it condemns, law must give judgment after trial is there. But we have a situation in which all the normal things are of no use or inadequate, and hence the justification for resorting to the power which the Constitution has given to have a law of this character passed by the Parliament.

The question of vital importance now is this. Has the need for this piece of legislation been established? The expiring Act was passed in the month of January 1950, and if my memory was correct, when the first preventive detention Act was passed by this Parliament, my hon. friend Dr. S. P. Mookerjee was in the Cabinet and I know how very anxious he was

that this particular Bill should be passed as quickly as possible.

Dr. S. P. Mookerjee: The hon. Member is manufacturing something. It was a Cabinet decision. I was not very anxious.

Shri Gadgil: There is no need to be disturbed over this. Actually it was more for West Bengal that the House sat on a Sunday and passed the Bill. Now if my hon. friend knows Bengal as nobody knows, I am simply surprised that he is against this Bill so much that from A to Z it seems his opposition will range. At the very introduction, he opposed it, in spite of the best established traditions of this House that there should be no opposition at the introduction stage. I know he has a right to do it, but he has certainly acted against the convention. Now he knows Bengal very much. Only today Homa, delightful and normally truthful, wrote in his paper that the demonstrators did not loot a single shop of *rasgoola* or tea shop or restaurant; all they looted were *biri* and cigarette shops. If they were members of a hunger marchers' combination, one would normally expect them to loot not *biri* and *pan* shops or picture shops but something else. Let me confess that I am not a photographer myself. In the pictures I found the students, most of them, were looking very healthy. Apparently, therefore, the marchers are not actuated by a real grievance, that they are going about with empty stomachs. Nothing of that kind. From what I have read and seen from the pictures leads me and will lead every reasonable man to one conclusion, that there is something far deeper behind these marches.

Pandit A. R. Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): You are right.

Shri Gadgil: Now it is for the Bengal Government and the Bengal Members here to consider whether in spite of the partial fulfilment of the promise by the Central Government in the matter of food supply to Calcutta or Greater Calcutta if such things go on, is it not a menace to the stability of the State, is it not a menace to the security of the State, is it not a menace to the peace and tranquillity of the community? And if you are willing to tolerate it and explain away every firing or every resistance by the forces of law and order by putting them to ridicule, as we used to do six years ago, I think you are not serving the community in the way in which every responsible citizen is expected to do.

Now, let us go province by province. In Saurashtra, to which a reference was made by the hon. the Home Minister, a few months ago the situation of law and order was very serious. It was impossible to arrest every man and put him before a court for a proper trial, the Government knowing that it would be very difficult to collect evidence against ex-Rulers and Jagirdars. The Government of Saurashtra had to have recourse to this measure with the result that within three months not only law and order had been restored, but Bhupet had to run away from Indian territory. Now, take PEPSU. From what we read in the papers the situation is deteriorating so much. I read in the papers—I do not know how far it is true—that in two or three tehsils police stations have been withdrawn and villagers are marching from village to village wherever they are in a majority removing and mishandling the Biswedar and where the Biswedars are in power the reverse is happening. Is that a desirable state of affairs? Now, go step by step even in this particular respect of law and order. In my State of Bombay, every effort has been made by the State Government and the Central Government to give relief in the matter of food as much as possible and whatever is inadequate, according to our humble view, we are trying our best to persuade both the State Government and the Government at the Centre and yet everywhere there are marches—hunger marches, food marches—and now they are trying their game by disobeying taxation laws in general. Do you consider what will be the result of an atmosphere of this kind? If there is a general contempt or even indifference to the laws of the land, it will not be in the interest of this country, its future and its progress. A good horticulturist when he plants a sapling, surrounds it with a fence so that it may grow properly. He does not like branches to come out at very low level till the stem is of a particular diameter. No risk is taken. Why? Does he want to circumscribe the liberty of the sapling? Nothing of that kind. But it is in the interest of the sapling that it should be of a certain height, then branch off full of leaves, flowers and fruits. Our freedom is just like a sapling. It has just taken root and the test is, if I may say so, if the country is in danger, if every citizen feels that it is a personal danger, then I say the sapling has taken root. If today, it should not happen, but unfortunately happens that some country invades India, I want to know how many of the Oppositionist parties would brush aside all personal and party considerations and would stand.....

Some Hon. Members: All.

Shri Gadgil: I make a definite statement. If the Communists are real Communists, then there is no nation for them. If they are real Communists, then it is only the international world. Let me make no mistake, let me make the position abundantly clear. That is the test. If everyone of us, if our border is attacked, lays down his life, offers whatever he has, then he is a citizen entitled to every privilege. (*Interruption*). I am not Dr. Katju, a soft man, to give you way. If every citizen considers this to be his country and wants to enjoy all the fruits, then equally it is his duty that when the country is attacked he should offer his life whatever may be his ideology. That is the test.

Now, take, as I said, province by province in the political and economic sphere. As the hon. the Home Minister has stated, this Bill is not meant against the Communists. In fact, it is meant against no party.

Pandit A. R. Shastri: Quite so.

Shri Gadgil: If any person does an act or intends to do an act which is calculated to prejudice the conduct of foreign affairs or defence or security or maintenance of peace or supply of essential articles, he must be dealt with. I repeat what I once said, though it was not appreciated all round: A weak Government and a weak husband deserve to be kicked out. My grievance is that not only there is a need, but the powers taken are not adequate. But I am agreeable to the provisions as they are. I do not want to go further. The point I was making was that in the economic sphere very recently, though I regret individually, Government has entered on a policy of cautious decontrol. Now a few months ago the Chief Minister of Madras, who was also Home Minister here, gave an instance in which the merchants mixed cow-dung with jaggery..... (*Interruption*). I accept your evidence. According to him, the merchants have become godfearing. So far so good. But the report shows that from Vishakhapatnam the supply of *gur* instead of going to Madras is either waylaid or managed in such a manner that it goes to different areas with the result that prices are going up. If this situation aggravates then the Government must be equipped with adequate power to deal with such persons whether they are regular blackmarketeers or hoarders or speculators. Every anti-social activity must be properly curbed. It has become now a fashion in the last five or six months to refer to China and what China did in order to put down corruption. Well, the Bill is not thinking of giving them whips—there is no provision for whipping the blackmarketeer or the anti-social-*walla*, no hanging, nothing of that kind. Simply he may be detained and according to classification—blackmarketeers are bound to be rich people—they will be put in 'A' class. No harm done, nothing of the kind. And yet, the opposition is so intense that even the introduction of this Bill has been opposed. I want to ask like a plain man of commonsense, as an unsophisticated man: If you are all anxious that all these anti-social activities must be put an end to as quickly as possible (*Interruption*). I particularly appeal to my friend, Dr. Syama Prasad Mookerjee that his approach should not be an approach of opposition, consistent and persistent,—to borrow those old-style adjectives—but he must oppose in a constructive manner. He must, if he finds the provisions are inadequate to tackle the blackmarketeers, make suggestions and I have no doubt the hon. Minister will accept them. If any particular clause is really such as would go right against our fundamental conceptions of liberty, I have not the slightest doubt that he will also be responsive. But to oppose it from the introduction stage right to the third reading of the Bill, followed by a walk-out, is hardly a method which the parliamentary game lays down. I shall also appeal to my Communist friends: Since you have made your constitutional bow to this all sovereign Parliament, you must observe the rules. I give you a bit of my experience. After all, this is the forum that you want to use and that forum is only available if you keep right with the Speaker, and if you do not keep right with the Speaker you will never have this forum—you will merely draw your allowances and go back and find your forum elsewhere. I would therefore ask the Communist friends that they must observe the rules of the game. They must follow the parliamentary procedure and in the end they will find that this gives them a greater dividend than mere walk-outs and not very orderly interruptions. The point is there is.....

An Hon. Member: Is this all relevant to the Bill?

Mr. Speaker: Order, order. Let him proceed. I think he is not irrelevant altogether. If I felt that he was irrelevant, then I should have stopped him myself, but it is no use the hon. Members taking the power in their hands and trying to reply by their interferences. That is not proper. I need not go into the question as to how it is relevant.

Shri Gadgil: What I wanted to make out was that more than need has been made out by the hon. Home Minister. I would not like to refer to what many Members of the Opposition Parties have said in the course of the election campaign because election time is a time when men are off their normal mental balance. But I know of a leader of the Peasants and Workers' Party who said, not in connection with the election campaign but when the election was months ahead, in one of the towns in Maharashtra that if he and his Party come into power the first thing that they will do will be to behead all the Congressmen. I am glad that time has not come yet and perhaps on this side of his grave it will never come. Then again the same leader, more with an eye to brilliance than to balance, said: "The Congress High Command and the Government are a gang of Bhupats."

Shri Punnoose (Alleppey): Can we ask the name of that leader?

Mr. Speaker: Order, order.

Shri Gadgil: Worse things have been said but as I said they may say anything because there is no ban put by Government on thought and expression. Freedom of thought is complete and there is no intention to curb it—and if the Government does anything of that kind I shall humbly oppose it, because the channels of thought and expression must be free so that there may be new conquests of truth and knowledge. In fact, freedom of speech is to the life of the community what the heart is to the body. Therefore, freedom of thought and expression should always be there. No prosecution to my knowledge has been initiated against anybody for any speech made so far. Therefore the need has been established for this measure: Only acts or intended acts have been contemplated, not what they think or what they preach. Their philosophy is not in the dock—their action is the subject-matter of this piece of legislation.

The third question is: Are the provisions in respect of this need excessive? I have gone through the various clauses and I feel that if anything the provisions are made more simple, more to the advantage of the detenu. Here I would like to refer to a memorandum I have received from the All-India Civil Liberties Council. This Council did very good work while the Constitution was in the making. In this memorandum they have repeated their objection and said that there should be no provision for preventive detention in the Constitution itself. Then it says that there should be no legislation, but if there is a clear need for it then certain things ought to be done. The memorandum says: The three essentials for the proper functioning of an investigating body are that full information concerning the circumstances in which detention has been ordered be made available, that the detenu be allowed to appear in person or by legal representation, that he is enabled to call evidence and cross-examine the witnesses. So far as giving of information is concerned, the Advisory Board are entitled to call for all the information that the Government has in its possession. As regards audience this is conceded as you will find in the Bill. As regards the third point, namely evidence and cross-examination, obviously this is not possible because it is not a trial in the full sense of the word and if recording of evidence and cross-examination is allowed then the main object of keeping a certain portion of the facts confidential and not making them out public in the interest of the public is frustrated. Because much of the work of cross-examination will be done by lawyers and lawyers and politicians have no great reputation for keeping secrets. Therefore the provision as regards this is perfectly right. But at least two of the three demands made by the Civil Liberties Council have been met. They also say that last time they waited upon Shri Rajagopalachari and wanted that this power should be confined to the Home Ministers of the States requiring them to look personally into such individual cases.

4 P.M.

You will find that in clause 4 the procedure laid down is that the District Magistrate or whosoever is initially responsible for the arrest has to report immediately, and the State Government has to approve of it within fifteen days. That means that the matter goes not only before the Home Minister but before the State Cabinet. Not only that. A further step has been taken, namely, that all such cases will have to be reported as early as possible to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity of the order. Here then are provisions which will safeguard against the abuse of the power. Therefore, there is nothing in this Bill which is against any party or any individual, and any one who obeys the law has nothing to fear from it. You cannot allow either an individual or a group of men to endanger the peace and tranquillity

[Shri Gadgil]

of the country. You cannot allow a group of merchants to corner a particular commodity which is vital and essential for the life of the community. You cannot allow traders to speculate in such a manner that they may completely throw the economic order of this country out of gear. Gradually, we are building up order and laying the foundations of our freedom. We are trying to build up political habits which are appropriate to a democratic community. All things which go contrary to this must be checked in the initial stage itself; otherwise, they will assume large proportions and the results will be disastrous to the community.

In the end I would think this occasion to be one for holding a test of responsibility, of anxiety to help the progress of the country, of regard for good order and the freedom of this land. It is not a political question on which our votes should be on party lines. I am not speaking on these lines. There may be someone who has a conscientious objection to the very principle of preventive detention, without considering whether it is justified on grounds of political expediency or not. Such a person may abstain from voting, or he may vote against, but all of us here are practical men who are anxious to see certain programmes of economic betterment put through. It is for us to consider whether or not during the next five or ten years we should make ample and speedy progress by having this Bill or make no progress without having it. A prudent peasant takes away the unnecessary thorns and surrounding growth from his field, divides it into small plots, waters the plots and then plants the seedlings. Similarly, Bharat is a big garden. All those little undesirable growths which prejudice the growth of real democracy must be weeded out and in this effort all of us must cooperate. Some of us may not like this Bill. In fact, I also do not like preventive detention to be in the Constitution or anywhere else. But as I said in the beginning, you cannot ask a Vaishnava suddenly to take meat. He will quiver. But if he is advised by the Doctor that he must take meat and there is absolutely no alternative, then he may take it. In the same way, apart from all these democratic—I would not like to say claptrap—honest beliefs, we should set aside our party differences and think that our progress is of the first importance. This Bill should be considered in that atmosphere and the debate should not be followed up by 'walk-ins' and 'walk-outs'. Let us meet argument by argument and fact by fact. Let us try to persuade each other. After all, I do not believe, like the cynical English parliamentarian who said that "speeches change views but not votes", that we may not convince each other. But let us do it not by what we did in the morning but what we may do in the afternoon.

Shri H. N. Mukerjee: I wish that we were spared the pompous frivolities which the hon. Member who has just sat down has chosen to inflict on the House, because we have met together this afternoon to consider a measure of the most fundamental importance to the interests of our country and the future development of our country. This morning, certain things happened—certain very unsavoury things—which we shall not forget for many a long day, but those unsavoury things emanated from something which was the most unsavoury of all, namely, that stinking piece of legislation which the hon. the Home Minister has introduced into this House, the Preventive Detention (Second Amendment) Bill. It stinks from every pore of it and I shall tell this House how, if we are going to live up to the pretensions which we so often make, we ought to do something about shedding the habits of clinging to certain kinds of legislation which are represented by the measure under discussion.

I shall not weary the House by repeating that preventive detention is something which is alien to all democratic concepts, because that is a point which has been made over and over again, but I do feel it necessary to refer to it because much has been made of the proposition that preventive detention figures as such in our Constitution and that therefore it is a sacrosanct proposition and that at any time you wish you can get up in Parliament and propose a Preventive Detention Bill. I say with all respect to the Constitution and to the makers of it that nothing is so sacrosanct as all that, and if we in India are going to say that we are proud of the singularity of our country; if we in India are going to say that even after five years of so-called independence the people of India are not yet attached enough to the administration and have to be brought to book by measures like the Preventive Detention Act, then surely that is by no means a desirable state of affairs. There is in our Constitution something which is unique by itself. That is a point on which we all agree. No democratic Constitution allows a provision like preventive detention. But why should we be proud of this uniqueness?

Why should we say over and over again that the Constitution sanctions it and therefore let there be an end to all discussion about its reasonableness. If the Constitution at a particular time, for particular reasons which we need not go into, made certain provisions, that is no reason why we should in season and out of season invoke that particular provision of the Constitution when that particular provision goes against the grain of all decent political life. I say this not merely because as Marxists we know that as long as the capitalist system continues, that system may from time to time have to make certain concessions to the democratic upheaval of the common people but it always reserves to itself the right to retain real power in the hands of the vested interests. That is why in all bourgeois constitutions, which I am sure the Prime Minister has made a very serious study of, fundamental rights are mentioned in the general clauses and then they are negated in the other clauses which follow.

Now, we find that in our Constitution in Article 21 there is a provision in fairly broad terms regarding individual liberty. But in Article 22, which is the stock-in-trade of the Treasury Benches and the party in power today, there is sanction for preventive detention. Now, I shall not merely quote Marx to say that this is the way of all capitalist constitutions however democratic seemingly they might appear to be. I shall quote the judgment of one of the Judges of the Supreme Court of India, Mr. Justice Vivian Bose, who in the case of Ram Singh *V.* the State of Delhi made these observations:

> "I fully agree that the Fundamental Rights conferred by the Constitution are not absolute. They are limited. In some cases the limitations are imposed by the Constitution itself. In others Parliament has been given the power to impose further restrictions and in doing so to confer authority on the executive to carry its purpose into effect. But in every case it is the rights which are fundamental, not the limitations. And it is the duty of this court and all courts in the land to guard and defend these rights jealously. It is our duty and privilege to see that rights which were intended to be fundamental are kept fundamental and to see that neither Parliament nor the executive exceed the bounds within which they are confined by the Constitution."

Here, therefore, is a learned judge who says that it is the right which are fundamental, not the limitations. But the hon. the Home Minister makes so much of the limitations and points out that in the Constitution there are references to certain provisions which limit the fundamental rights granted and these provisions are so important that they have got to be invoked today. Now I submit that this is an extremely dangerous proposition.

We know that judges in this country have generally pronounced themselves in regard to preventive detention with reference to cases which came up before them in the regular course of things in a manner which redounds to the credit of our judiciary. I could give so many quotations from their judgments. But it is pertinent to remember that when cases of preventive detention have been brought up before High Courts, or before the Supreme Court of India, the general tendency on the part of most of our judges has been to say that preventive detention is on principle objectionable and those particular instances which were placed before them of the application by the bureaucracy of preventive detention were cases which were extremely badly managed and in most cases the judges have expressed themselves in favour of the liberty of the subject. It is only because of certain very technical difficulties that perhaps in all cases they could not order the release of the detenus who appeared before them with *habeas corpus* applications.

I know that justice is not a cloistered virtue, and our judges may well stand criticism in Parliament and the country. Perhaps, I might say that not all our judges do come up to the standard which we expect of them. Perhaps, some of our judges feel more or less in the words of Chancellor Bacon who once advised one of the judges in England to be like one of the twelve lions under Solomon's throne. Bacon said they must be lions, but yet lions under the throne. Now at that time Coke protested against it, for he did not like judges being lions under the throne. Now, it is my pleasure and privilege to say that most of our judges have tried to behave not as lions under the throne of Treasury Benches, but as lions who try to interpret the law of this country in an independent fashion. That is why they pronounce themselves in almost every case in a manner which suggests that the application of the Preventive Detention law has proceeded in this country in a wooden, unimaginative and absolutely frivolous and damaging fashion, as far as citizens' liberty is concerned.

[Shri H. N. Mukerjee]

Now in regard to this point regarding the necessity of the Preventive Detention Act, it is good to recall its history. Now, we had the Constitution which came into operation in January 1950. In February 1950 the Preventive Detention Act was passed and you know the history of its passage. You presided, I am sure, over the deliberations which ended in a dramatic fashion, or pathetic fashion, I should say. You would surely remember how the late Sardar Patel said that he spent two sleepless nights over this measure. He spent two sleepless nights for two very specific reasons. One was that after all immediately after the promulgation of the Constitution he was going to propose in Parliament a piece of legislation which on any computation was pernicious. That was one reason for his passing sleepless nights. Another reason was, as he did not hesitate to say very bluntly, that in Calcutta at that time there were nearly 500 detenus whose cases had come up before the Calcutta High Court. The observations of the learned Judges of the Calcutta High Court in the case of those five hundred detenus or near about that number, were already giving an indication of their mind and everybody could anticipate that on Monday when the Bench was going to re-assemble the *habeas corpus* applications would be granted and the petitioners would be set at liberty. Everybody knew it. That was why by a record process of expedition in the history of legislation, perhaps, in any country in the world, the House proceeded to pass the Preventive Detention Act. But at that time Sardar Patel could point out that in Calcutta there was an explosive situation. Now this argument of explosive situation in Calcutta which is repeated so many times by the Home Minister rankles me, that I want to lay it at rest by giving a suitable answer, but I am afraid I have not got the time for it.

At any rate in 1950, Sardar Patel said in Calcutta there was going to be an explosive situation, and Government could not allow those 500 detenus to be set at liberty. That was exactly the proposition which he made and hurriedly the Preventive Detention Act was passed. But in spite of the supposed existence, which I deny, of an emergent situation in Calcutta at that time, Sardar Patel made no secret of his opinion that this was an emergent piece of legislation which was not going to be continued. He gave it out very clearly that this was a kind of legislation which could only be justified by reference to current events. If only the emergency continued this kind of legislation could have any real validity. That was the proposition which he made and that was why the life of the Act was to last till the first day of April 1951. In February 1951 it got an extension of another year by another amending Act which simply stated that for the figures "1951" the figures "1952" be substituted. Then again in March 1952 there was another amending Bill which was passed into an Act. On that occasion, as far as I remember, Dr. Mookerjee made some sort of a statement to that effect, that the Home Minister Shri Rajagopalachari who was in charge of the measure...

Dr. S. P. Mookerjee: It was Dr. Katju himself.

Shri H. N. Mukerjee: I am sorry. Dr. Katju himself, who is here before us, made a statement more or less essentially to the effect that he was asking for an extension of the Act for only six months or so and that the new Parliament which would be meeting would review the situation and if the emergency was found to be a real, live fact of social history in India of the present day, then, of course, the whole thing would be considered and it might or might not extend the Act.

I challenge Dr. Katju to prove before us with facts and figures and not with ejaculations as to what exactly is the emergency which he is contemplating today. Yesterday the hon. the Home Minister began as Dr. Jekyll and today he ended as Mr. Hyde. That was the impression I got. Yesterday the way he began suggested to everybody that all was well in the country, the communist detenus are so few in number, because there is no communist movement which endangers the security of the country or the maintenance of law and order, or whatever else you have got in your head when you try to pass the Preventive Detention Act.

Now that is the picture he tried to give yesterday. Today he changed his mind and poured all his venom against communism and communists, advertising his ignorance of the philosophy and the practice of communism, in the process. The result was we are left where we were. We are told that an emergency exists, but we are given no facts whatever by any spokesmen of the Congress party in this House or anywhere else to prove that a real emergency exists, an emergency which justifies invocation of these very special powers granted under the Constitution in regard to preventive detention.

I do not want to go into the due process clause in the United States and the protection that British courts give to the subject. I need not talk to you about wnat Lord Atkin said in the famous case of Liversidge *versus* Anderson. Even in times of war the laws of Britain are not silent. They are noble words from which you could draw a lesson. When in England they take such an attitude why do we, in the month of July in the year of grace 1952—due to some inner inspiration, or perhaps inspiration from somewhere else—why do we come to feel that there is such a danger facing the country that we must have a preventive detention law. I ask this question in all seriousness, and I am happy that the hon. the Prime Minister is here.

The other day when discussing the Criminal Procedure Code Amendment Bill, which was passed into law, on that occasion also we found the same thing. We found that the Government wanted additional provision in regard to the employment of armed forces for the suppression of civil disturbances. The Government, of course, later gave an assurance that the air force will not be allowed to bomb people from the air and the navy would not be allowed to bombard the country from the sea. But at any rate the Government came forward with that sort of proposition which is fantastic. Today, in order to quell civil disturbances in this country, we want from time to time to requisition the services not only of the army but also of the navy and the air force—and Heaven knows what other forces we might have in contemplation.

What is the point of all this? Are we going to have a real police State? We talk of the welfare State. Representatives of the Ministry often talk in terms of having in this country what is called a welfare State for the common people. But why are you getting all the wicked paraphernalia of a police State? And that is exactly what the Preventive Detention Act is. What are the reasons that you make out for it?

Today my learned friend Mr. Gadgil referred to Calcutta and the burning of trams in Calcutta. I think my hon. friend Dr. Katju also said something about the burning of trams and that sort of thing. I wish I could give you those Calcutta papers which give photographs of the lathi-charging, the teargassing and the shooting which has taken place there. I wish I could show you also the reports by Congress newspapers which show how—I find Dr. Katju nodding in disagreement. *Jugantar* is a Calcutta daily which is a supporter of the Congress party in this country. The Special Staff Reporter of this paper gave clear instances of these things, which Dr. Katju can have translated by whatever staff he has got in this place. If he does that he will find out how the reporter of a newspaper which is anti-Communist, which misses no opportunity of slandering us, is giving a picture of the Calcutta situation, how the patience of the people is tested in such a fashion that they are coming out in demonstrations on the streets. The point is made: the Calcutta people demonstrate, the Hyderabad people demonstrate, the Madras people demonstrate, they are a wicked lot, they have got to be taught a lesson. Why should this kind of attitude be advertised in this House? Have we forgotten our past altogether? Does not Dr. Katju know how and why people come down from a tramcar or a bus and how and why a refractory tram-driver is sometimes molested by the crowd for his lack of response to the popular feeling? Can I go out in the streets of Delhi and stop a Delhi Transport bus merely by shouting myself hoarse? Could I make ten Members of Parliament and other passengers in a bus to come down from it and stop all transport arrangements? We could not do so unless there was in the atmosphere of Delhi an objective situation which made the people feel that they were at one with the demonstrators in the streets and they wanted to impress upon the government of the day what their demands were. Unless that happened we can never get public co-operation. Congress Members must have forgotten...*(Interruption)*.

Mr. Speaker: No interruptions now.

Shri H. N. Mukerjee: Congress Members must have forgotten the days when the Congress used to lead struggles in its own way. Otherwise this kind of phenomenon would never be seen. It is only on the basis of real, genuine popular support that a demonstration can be successful. You may have a stray instance of excesses being committed. Where excesses are not committed, I do not know. Everywhere in the world, whenever there is an upheaval something like that happens. As I said once before in this House, to pluck a rose you cannot always prevent a prick. Excesses would happen. Why do you look only at those excesses? Why do you not look a little further? Why do you not see that behind those excesses there is a real, genuine popular feeling that the Government of this country is going absolutely against the interests of the people of this country. On this point I would like to throw out a challenge. My friend Dr. Deshmukh speaking this morning had the temerity to say that

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the Congress party has won the elections with an election manifesto of its own and therefore the Congress party had a mandate, so to speak,—that was the substance of what he said, it may not have been in the same form—of the people to bring up the Preventive Detention Bill. I challenge Dr. Panjabrao Deshmukh or any Congress Member of this House, not excluding the hon. the Prime Minister, to resign his seat in whichever constituency he or she represents on the issue of preventive detention and fight an election. It is a very serious thing.

Shri Raghunath Singh (Banaras Distt.—Central): I am ready.

Mr. Speaker: Order, order.

Shri H. N. Mukerjee: I have an experience of elections. I know what happens. When our Congress worthies in those provinces with which I am familiar were carrying on their election campaign they could not face the people and say: this is our programme, this is what we have done in the past, and this is what we propose to do in the future. They could not do so. Now they are coming forward with this pernicious legislation. Let them put it before the country. They are not ready even today to accept the simple proposition to circulate this Bill so as to elicit the opinion of the people on this measure. They can only justify their stand if they can say: look here, the country is in very grave danger, we are passing through an emergent period, any day we might be attacked, inside the country there is such an explosive situation, civil war might ensue at any point of time. Is that the proposition which is being made? Are we as Members of Parliament asked to believe that in this country there is such an explosive situation? We are not. Then why this extremely frivolous and hazardous proposition which has been placed before the country? I do not understand it. And I ask the Members to ask themselves this very simple question: why must we have the Preventive Detention Act, why must we prolong the existence of an Act about which we must be shame-faced if we are going to have any democratic conscience? But they do not ask themselves this question. They are forbidden to ask themselves this question because of—Heaven knows what, or the devil knows what, I should say. I should not go into those reasons which perhaps are propelling them to this kind of activity. Why threaten us with a police State when circumstances certainly do not warrant the assumption that there is any kind of emergency in operation?

Now apart from the fundamental viciousness of this Bill and its absolute irrelevance when there is no visible emergency either now or in the immediately discernible future—apart from the fundamental viciousness of the Bill,—let us see how the Preventive Detention Act has worked. I have already referred to what the learned Judges of the High Courts and the Supreme Court in India have said in regard to the working of this Act. Now in one case, in the case of Atma Ram, the Chief Justice of the Bombay High Court made this observation about the grounds of detention which were placed before them. He said "In all the matters which have come before us we have been distressed to find how vague and unsatisfactory the grounds are which the detaining authority furnishes to the detenu. We are compelled to say that in almost every case we have felt that the grounds could have been ampler and fuller without any detriment to public interest."

This is how Bureaucracies operate. If I give you a selection of the grounds which are supplied to detenus it would take hours and hours of the time of this Parliament and I do not propose to do so. I want to mention a very few typical cases. I am sure you are very familiar with the history of the movement for freedom and you know the great days of 1930 when in March-April of that year the Chittagong Armoury was raided by the revolutionaries of Bengal. It is an incident which is graven for ever in the memory of every patriot in this country. Those Bengal terrorists challenged the British and showed that we had shed our reputed cowardice, that we are really and truly ready to shed our blood for the freedom of our country. They were the salt of our Indian earth. We have forgotten them now but at one time they rendered tremendous service to the cause of freedom. One of those with whom Dr. Katju was perhaps familiar in Calcutta was Ganesh Ghosh. He was detained first under the Bengal Criminal Law Amendment Act which was declared *ultra vires* by the judiciary and then under the Preventive Detention Act and among the charges preferred against him was this: You had participated in the raid on the Chittagong Armoury in 1930. I am not manufacturing the statement. I will refer the hon. Minister to his files. He might see it there. I have seen it with my own eyes. That was the accusation made against him. There was another person Niranjan Sen who was associated with the Machua Bazar Conspiracy

case in 1926 or 1927. Some time ago in the charges against him there was this statement: "You were one of the principal organizers of the Machua Bazar Bomb Conspiracy. That is one of the reasons why we shall keep you in detention."

There was the case of Abdur Razaak Khan who has spent about 15 years in jail during the British regime and he was told that he was organizing the peasantry of Bengal in 1936 and 1937, and therefore in 1948 he was put under detention and he was only let out in 1952.

There were other cases too. In the case of a very well known labour leader, S. S. Yusuf in Cawnpore one of the charges against him was: "You are associated with the Communist International." Now, Sir, Mr. Nehru knows very much better than most of his colleagues that the Communist International was dissolved in 1943 and in the year 1948 or even later than that he was told that because of his association with the Comintern he was supposed to be very dangerous to the security of this country. There are many other instances which I could offer you. For example, there was the case of a university lecturer in Allahabad University, Dr. Asharam and it was said against him that he had organized a strike and a demonstration in the Allahabad University by the students on the 29th January 1950. Actually the date of the strike deserves notice because it was a Sunday and the University was closed on that day. This is the kind of charge which is preferred against people. I will come nearer home to this Parliament and I find there also outrageous instances of the application of the Preventive Detention law by the bureaucrats in power. A political worker Santosh Chatterjee was detained in 1950 and one of the three grounds of detention against him was that he had been inciting ladies not to join the British Commonwealth. I suppose he addressed some women's meetings and called upon everybody including the women present to agitate against our being members of the British Commonwealth and he was put in the jail, among other reasons, for inciting ladies not to join the British Commonwealth. I find so many other cases. In the case of Shri Tushar Chatterjee, who is a Member of Parliament one of the charges against him was: "On the 11th December 1948 you attended a meeting at 249, Bow Bazar Street, Calcutta where resolutions were passed expressing full confidence in Mrinal Kanti Basu. President of the Bengal Trade Union Congress and supporting the strikes at Liptons Limited and other firms." This is the kind of grounds which are brought against our people who are stowed away from their liberty, from their lives, from their homes and their spheres of activity merely because somebody somewhere blunders in this most egregious fashion. There was a case in 1951 of an illiterate, colliery worker Sumali Bhuiyan in Bihar. He was detained on the ground that he was a militant communist. When the case came up to the Supreme Court, Mr. Justice Chandrasekhara Ayyar remarked that there was nothing wrong in being militant. In fact he said a lawyer who argued his case briskly can easily be called militant. These are some and there are so many other cases which I could quote but I am afraid I have not got the time and I should not impinge on the time of the House too much.

I think I have been able to show that the working of the Preventive Detention Act by whoever has been in charge in different parts of India has been of such a character that we ought to be ashamed of it. I happened to be in the Presidency Jail in Calcutta in 1949, and there as well as inside the Alipore Jail Calcutta and in the Dum Dum Jail near Calcutta, there were shootings by the armed sentries under the orders of the Superintendent or the Commissioner of Police, I do not know who, and as a result four people lost their lives and many were very badly injured. I would like you to imagine the life inside the jails with which so many of you are familiar. Inside the jail the balance of forces is always against those who are detained. You possibly cannot fight with books, and with whatever you can wrench from the furniture in the room where you are staying. You cannot fight with those weapons against a military force when they are requisitioned against you. The balance of forces inside a jail is always against those who are imprisoned and in spite of that these shootings had happened in West Bengal. They happened in Madras, Hyderabad and other places. In the case of Hyderabad we find that there are instances when people were taken out from jail and shot. There are two cases, at any rate, which I can mention, but there are many more cases which I have not got with me now. Raja Rao and Reddi were taken away from the Central Jail in Hyderabad, taken out somewhere and then they were shot without ceremony. This kind of thing happened in the Salem Jail some years ago. It is more or less common knowledge. These incidents are almost reminiscent of what the Americans are doing in an unspeakable fashion in the Koje prison.

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I do not press this comparison seriously, but we must be on our guard and we must not be behaving in a fashion which would besmirch us with the same ugly, foul ink as the Americans are getting from the public opinion all over the world today because of their misdeeds in Koje prison and the way in which they were behaving. Why has our Preventive Detention Act been operated in this fashion? I have been told that in Hyderabad life was impossible. Life had to be organized somehow or other and civilized standards must be restored. We on this side of the House have said before and I repeat the challenge that we had put forward on that occasion. I repeat—if there is a real impartial investigation made into the circumstances of Hyderabad, then we shall find out which side was guilty of violence and which side was not. The abstract question of violence has been raised in this House this morning and you, Sir, told me at that time that if I get an opportunity of speaking I shall also be permitted to answer that charge. I have been asked: as a Communist, do I abjure violence? I would say this is a most negative, an abstract and unrealistic way of posing a question. Nobody, Communist or other wants violence for violence's sake but the Communists have a political philosophy, they have an ideology which affects the understanding of the development of social processes. They know it is a fact of history—and Pandit Nehru knows very well, as well as anybody else—that when changes happen, vested interests always try to prevent that change and fight till the last ditch to prevent the change materialising. When common people who are suppressed for generations, for thousands of years, rise to throw off their shackles, when they try to rise in revolution in order to build a new society close to their hearts' desire, what happens? Those who want to exploit them, those who have fattened on the sweat and blood of the common people, they fight till the last ditch in order to perpetuate their authority. When they do so, do you expect the common people to take it all lying down? Do you expect us to practice *Ahimsa*? Did Mahatma Gandhi himself advise the common people under those circumstances to practice *ahimsa*? Did he not say, "*Ahimsa* is all right but I do not preach cowardice". When people rise in their anger, in their righteous anger, against society of a particular order, and when those people who are benefiting because of the existence and continuation of that society, when they try to prevent, to drown in blood the upsurge of the common people, will they say, we do not practise violence; we will turn the other cheek. We do not say so. I do not think Pandit Nehru says so. I do not think any Member of the Congress party says that. I do not think that any man with his head over his shoulders, with some gray matter in his cranium will say anything of that sort. That is why I say, it is not any question of abjuring violence or not abjuring violence. Who cares for violence for violence's sake? The greatest philosophers of communism, the leaders of the communist movement have been the most humane of men judged by all reasonable and decent standards. That is because they have made a study of the social processes. They have found out the laws of social dynamics and they have called upon the people to organise in order that only a kind of society which is in conformity with all civilised standards may be established in this world.

I find the Congress party speaks a different language today. I am reminded of what Bernard Shaw once said. He said; "There are two tragedies in life: one is to get one's heart's desire and the other is not to get it." The Congress party has perhaps got its heart's desire: power and pomp in New Delhi. That is the tragedy of our patriotism; that is the curse of our society, a tragedy from which we have got to fight our way out. That is a duty to which I think even Congressmen and Congress patriots may be called. That is a duty of which they can be reminded when they discuss a piece of legislation like the Preventive Detention Bill. I would submit therefore that the Preventive Detention Act, in its operation so far, has produced such disastrous and deleterious effects that we should not any longer extend its operation, particularly because we do not see any tenable reason, any possible reason that can stand the test of logic, or the test of any argumentation. There is no reason for its continuation and therefore we should say that a 'halt' should be called to the kind of proceeding which the Congress Ministry is taking.

The Preventive Detention Bill reminds me of what was said about the Bourbons. The Congress party learns nothing, forgets nothing. At one time possibly, they developed an animus against communism. They learn nothing from the past and they learn nothing from the present. They do not learn anything from what is happening in the world outside today. They do not see the writing on the wall. People are on the move. The upsurge of the common people all over

the world is a patent fact. Today, the phenomenon met with in Calcutta is, people are on the march in the streets. This is not a phenomenon to be dismissed as an airy nothing, as having been manufactured by a few professional agitators. It has its roots deep in the blood of the common people. There is no getting away from it. That is a fact which we have got to take notice of. Why do we not do so? A Government which forgets its responsibility to the people, a Government which is not responsible to what people are thinking, hoping, pining, yearning for, that Government has no right to exist.

Dr. Katju treated us this morning to a homily on law and order. Then he remembered Pandit Nehru's abjuration of the term 'law and order' and used the terms peace and tranquillity. He developed a new philosophy of his own. He said, "look here, you can break laws when you are fighting against the foreign Government; when you are fighting against the Government of your own countrymen, you cannot break the laws". That was the new philosophy which he propounded with some gusto. I should say, what Gandhiji, whose mantle has fallen on our Prime Minister in apostolic succession, once said quoting Thoreau, an American citizen, who was living in America in freedom: If a just man is sent to prison, then, the place of all just men is also a prison. That is what he said. I am not defending what Thoreau said or what Gandhiji said. Thoreau was an American citizen in an America which was free in those days. I do not know if the America of the present day is really free. He said that if a just man is sent to prison for unjust reasons, others should also break the law and go to prison. Why cannot we have a legitimate right, a birthright as we have always called it, of going against a particular piece of legislation if it is so pernicious, if the social conscience revolts against it in such a strident fashion that you cannot possibly accept it. I do not accept the proposition of Dr. Katju that it is only a country which is struggling for its national freedom that can break laws with some moral justification. I do not say that laws have to be broken with impunity. You cannot do it. You cannot get the support of the people. You must have the sanction of popular approval behind what you do and what you say. I just cannot go about and ask people to break every law that comes at hand. If the patience of the people is tried so sorely that they cannot stand the strain any longer, if you go on imposing the kind of police apparatus which you are building step by step, and brick by brick, you do not know what will happen. Do not try the patience of our people in that fashion. The dividing line between hunger and anger is so very thin. You have to learn the lessons of history. Do not forget that the people today want certain things. That have certain illusions about your leadership. They have still some expectations from the Ministry which rules the country today. Do not play with their desires, their aspirations, and their ambitions. Do not goad them into fury because, after all, a patient man can be infuriated, and the fury of a patient man is something for which you may have to pay a very heavy price. Do not let us go in for this kind of thing. Do not let us go in for Preventive Detention Acts, oppressive, repressive and suppressive acts of this description. They are absolutely alien to all standards of civilised administration. Except on occasions of real emergency, the special powers under the Constitution should not be assumed. I shall not therefore go into further details.

I shall warn the Congress Government not to go on in this fashion. There is no reason why they should feel so panicky. Why does it feel so diffident about itself? There is no reason for that. If they only pursue policies which are beneficent to our people, then surely this panic will vanish, this diffidence will evaporate and they can do something for the common people. If they go on at this rate, I am sure, they will be dragging our country towards a tragedy. If you dig a pit, you are going ultimately to fall into it. I beseech the Government not to dig a pit in this fashion because ultimately this will lead to the ruination of our country. Because, if you goad and provoke our people, their passions will be roused in such a fashion that they would respond in a manner which the Government of the day would certainly not like. Therefore I submit that from all points of view, whether we consider the fundamental viciousness of the Bill, whether we consider the way in which the Bill has worked so far, whether we consider the presence or absence of an emergency situation in our country today, there is no reason at all why we should lend any support of any description to the proposition which has been brought forward by the hon. the Home Minister. I therefore oppose this Bill. As a second best measure, I support the idea of the circulation of this Bill to elicit public opinion, because I am sure public opinion will almost unanimously— I say almost unanimously because some opinion can be manufactured by the resourcefulness of the other side,—

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throw out the measure which has been laid before this House.

Shri Raghuramaiah: I was not surprised at the speech delivered by Mr. Hiren Mukerjee because I expected him like many of his tribe, to plead for a certain set of things: there should be no preventive detention, there should be no military, no Police.

An Hon. Member: He did not say that.

Shri Raghuramaiah: I said I had expected. I hope in the course of the debate he will make it clear what things he wants and what things he does not want. I have some experience. I come from a portion of the country where we have seen what their peace messages are. It is one thing to sit here and talk of democracy. In a way, it was rather amusing to me because day in and day out they quote not Great Britain and U.S.A., but certain other countries, Russia, China and what not. For a change perhaps, and it suits them well I agree, they quote today Great Britain and the United States. I may tell them that in totalitarian countries, in the Police States to which reference has been made by Mr. Hiren Mookerjee, it is not a question of preventive detention, but one of final dissection of human beings who oppose. Well we draw a line. There is a certain danger inherent in our situation to which Mr. Gadgil has already referred. Danger to the country need not be external. Mr. Mookerjee was insistent on asking what is the emergency. The emergency is there for those who want to see it. It is always there, and it will be there so long as there are parties in this country who are wedded to the undemocratic procedure, of cutting down the very roots of social progress by violent means. I am not for the moment talking of blackmarketeers. They are there. They come only as a handmaid to these violent parties. The blackmarketeer deprives a man of his food, and when a man is starving, our friends go about, exploit the situation, and create a situation where there is a mass resort to violence.

Mr. Mookerjee was asking "Could I go into the streets of Delhi, and attack a tram?" Well, he could if he uses the other arm of his movement. There are two forces there—the u.g., *i.e.*, underground, and another u.g., *i.e.*, upperground. The lower arm permeates very subtly into the masses, exploits the known and the unknown, the existing and the imaginary grievances, rouses the feelings of the people, prepares a nice platform and gathers them there, and then the other arm the great leaders appear on the scene and issue orders: "yes, attack", "no, do not attack" and so forth.

If it is merely a question of preventive detention without trial, I for one having been trained in the process of British jurisprudence, perhaps would not have agreed. But it is wrong to call this detention without trial. There is a trial, however summary it is. It is there. It is a detention, I would say, subject to judicial satisfaction. The High Court Judges or those qualified to be High Court Judges constitute the Tribunal. The man aggrieved, the detenu, has to go before the Tribunal, and the Tribunal has to be satisfied that there is proper ground for detention. And even then, the maximum period is fixed. I would like such of those as quote British precedents to read again Regulation 18-B. What does it say? Does it require the Home Secretary to appoint a High Court Judge? It does not say anything like that at all. The Home Secretary can appoint anybody he likes. He need not be a High Court Judge. And what is more—and this is very significant and all of us ought to know it—the Home Secretary in Great Britain is not bound to accept the advice of the Tribunal. But here we have made it obligatory so that there is nothing like the *zulum* of the Executive. Of course the procedure has to be necessarily summary.

Some people say, "Why not give the right to cross-examine? Why not give the right to appear by Counsel?" Well, that would make it a regular procedure. We wanted a summary procedure, and here I may say why the summary procedure is necessary. A regular trial requires proper evidence. You want witnesses. Many of the movements in which our friends have indulged themselves are such that there is no scope for proper evidence being brought forward.

I will tell you one instance. There is a certain gentleman against whom a detention order has been pending. He was actually sitting in the verandah of the Sub-Magistrate's Court. The Police van was waiting outside.

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

The Police who were outside had no personal knowledge of this particular person whom they wanted to detain. Everybody in the Sub-Magistrate's Court knew that this was the man who had committed loot, murder, and yet nobody did come forward and tell, be-

cause his home, hearth and life would be in danger if he came along and gave evidence.

You talk of the hardships of detenus. Yes, I know. But do you recollect the innocent wife in the Achampet Police Station? You attacked the Police Station. You took away the guns. Perhaps that is understandable on a battle front. But why did you break into the House and shoot the wife of the Police Sub-inspector? Why have you to do that. I can quote hundreds of instances, but I do not want to rouse the temper of the House. It is unfair to come here and give us big lectures on peace and democracy and world security and what not. Have you abjured violence as a matter of policy? I want a straight answer.

Mr. Deputy-Speaker: The hon. Member will address the Chair.

Shri Raghuramaiah: I am addressing through the Chair, Sir. I would like to know whether the friends on the other side have abjured violence. I would like to be told what country in the world, with a democratic form of Government, tolerates violence as a matter of agitation.

If this democracy of ours is to survive, as Mr. Gadgil said, it has to resort to new methods to meet new situations. There is no other country in the world today which is at the inception of democracy and which has such a band of marauders ravaging the whole country, working underground, upperground, trying to destroy the very foundations of state, exploiting all kinds of situations. There are only two courses open to us. Shall we efface those anti-social elements or shall we treat them as human beings and try to correct them. As a man brought up in British jurisprudence, I prefer the latter. I do not want to efface them. I want to give them a chance. At least, in course of time I trust they will become gentle members of society who will try to propagate their ideals on a higher moral and political level.

I am in a way puzzled. Why does the spokesman of the Communist Party alone of all people raise his thumb against this Bill. Is there a word about Communism in it? It is intended to protect the defence of this country, the security and the maintenance of supplies. Why should the Communist Party feel so much about it? Are they not for the defence of this country? Are they not for the security of this country? If they are—they say they are—if they are, why should they object to this? Or is it a mere question of procedure? Do they want a full trial? There is some catch in it. The more I followed the speech of Mr. Mookerjee, the more it struck me that he feels a particular sting, I should say, a guilty conscience. Why should he of all people invoke words such as wicked, unparallelled, devastating, all those strong expressions in the English literature? Why should he pour forth all those on, in Dr. Katju's words, this innocuous measure? Why should he pour out all that venom on this Bill? Why should he attach so much importance to this measure which he does and not to any other measure? I would like a straight answer to it. It is merely because of the procedure, because you are accustomed to British jurisprudence, you want a regular trial, or is it because you do not want this Bill at all? If you want a regular British trial, in matters of this nature I have already explained it is impossible. You cannot get evidence. We have given much more than what the situation warrants. We have incorporated provisions more liberal than those in Regulation 18-B. We have gone a long way which even the Mother of Parliaments in Great Britain has not gone. And then there is a grave emergency. The emergency need not be external. It can be internal.

5 P.M.

This country, Sir, has lost its freedom in the past, not by war from outside, but from internal dissensions, by the kind of smouldering which starts and spreads from under, the ground. We had lost freedom once that way. We do not want to lose it once again. And that is the only reason why we want to put this measure on the Statute Book. There is no other reason. There is no other secret. If the Communist Party are going to be law-abiding, if they have no intention to subvert the foundations of society, if they have no intention to jeopardise the safety, and the security of this land, then why should they object to this Bill? I am one of those who are not very happy about a measure of this nature. But like Mr. Gadgil I feel it my painful duty to support it because I see no other way of securing the peace and tranquillity of this country. The other day one gentleman who had visited China said that certain classes of people there have no legal existence at all. Law puts a ban on blackmarketeers, counter-revolutionaries, and all those who oppose the existence of the present regime. They have no protection whatever. Anyone can hinder, harass and torture them. The long arm of law does not extend to them. We do not want to follow

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that procedure. That procedure may be all right in China. But we are a democratic people and so we cannot adopt that here. The only alternative for us is to cull out what is best in the democratic systems and find out some *via media*. A kind of trial, however summary it may be, will satisfy jurists. I would therefore once again emphasise that this is not detention without trial, but detention with a trial however summary and subject to the satisfaction of the judiciary. And we stick to this legislation only because of the impelling circumstances surrounding us.

Shri Meghnad Saha (Calcutta North-West): I listened with very great interest to the speech of the hon. the Home Minister. He has pleaded his case with very consummate skill and a good amount of learning. But I am afraid that as a lawyer he has presented only one side of the case. But there is one thing to which I may invite the attention of the House. After I was elected—I was elected on a non-party basis, because politics is not in my line—I got a number of letters from detenus who have been rotting in the different jails of Bengal, asking me whether I could take up their case and do something. Well, I have been reminded in this House by no less a personage than the hon. the Leader of the House that as a scientist I should take up the matter scientifically. I did that before that advice was given to me. I told my friends that before I could take up their case, I must first read all those charge-sheets and I insisted that those charge-sheets should be read in a very objective way to find out whether the persons who have been detained in jail without any trial for months or for years together, had really committed any offence or had planned to commit any offence which justified the application of this Preventive Detention Act to them. Myself and my other friends made a thorough study of about 400 to 500 charge-sheets, and what did we find there? All those charge-sheets opened with one set phraseology—just as the Hindu scriptures start with one common phraseology "नमो गणेशाय"—that "You belong to the Communist Party." That was the preamble to all the set of accusations. Then some time ago I think the High Court Judges found that this kind of charge that a certain person belonged to a certain political party could not be held as a sufficient ground for his detention. After the High Court had expressed this opinion, the cases of these detenus were not revised. Secondly, I found that in a large number of cases, most of the detenus did not belong to any political party. At least 50 per cent. of them were trade unionists, persons who belonged to some trade union organisation and had taken part in activities calculated to further the welfare of the members of that trade union. They had also been put in detention without any trial. I shall give you one example. There was one man by name Mr. Arvind Ghosh—not the philosopher of Pondicherry—but a young man who was an employee of one of the industrial firms of Calcutta. The charge against him was that he had organised a strike and had abused the Manager of that Firm. There was no other charge against him. And he had been put in jail for about three years without any trial. I throw this as a challenge to my hon. friend the hon. the Home Minister, who was then the Governor of Bengal. How could such a case be tolerated in any civilized country, that a man who has been a trade unionist and had committed no act of violence can be put in jail and be allowed to rot in jail for three years without any trial? Then I found that some powerful person was interested in that industrial concern, and in order to help his industrial friends, he had put in jail all these trade unionists. I found also other cases. The case of my hon. friend Mr. Tushar Chatterjee, who is a Member of this House has been already mentioned. He was under warrant for a long time, and had evaded the vigilance of the police for a long time. I know what kind of life these detenus were living. They say that they were living on Rs. 17 a month. You know that Rs. 17 per month does not even support a rat nowadays. After some time, the police got him and put him in the Dum Dum jail, the Bastille of India. The inside of the Dum Dum jail is not a father-in-law's house, and therefore his health was completely broken. I am asking my hon. friends opposite why this man who is a fine product of the Calcutta University, who holds a philosophy of life which is as good, I think, as any other philosophy of life, should be condemned to rot in jail for simply promoting trade union activities and for organising one particular political party. He is here now amidst us and you have all seen him, he does not look like a criminal, he does not look like a law-breaker, and I do not think he has ever broken law in his life.

Another case which has been referred to by my hon. friend Mr. Hiren Mukerjee is that of Ganesh Chandra Ghosh. I think I should elaborate a little on

that case. In 1930 when the oppression by the British ran rampant all over the country, when the great leaders like Pandit Motilal Nehru and Mahatma Gandhi and a great many others were being put in detention without trial, it excited—as you may say—the misguided patriotism of a number of young school-boys.

They were hardly 15 to 16 years of age and they took the resolution of forming themselves into a militant party, raid the armoury, get themselves provided with arms, occupy Chittagong and provoke an armed rising. Well, they did raid the armoury and Ganesh Ghosh was one of them. He was a boy of 15 or 16 at that time. And after that, of course, the long arm of the British *raj* was there. Most of these revolutionaries were battered to death, many of them were killed and others died in jail. This man somehow escaped the British arm and after that he had been a member of the Communist Party, he had been doing political work and we find that there is not much against him. But after the day of independence in 1947, the charge has been brought against him that he had taken part in the Chittagong Armoury raid. Now what a tragedy it is? Should the man who had shed his blood for the independence of his country be accused of taking that particular line of action after independence had been won? I think he should be hailed as a hero instead of being allowed to rot in the Congress jail. Whatever may be the opinion of my friends opposite about him, the people of Calcutta had given the just verdict because he stood as a candidate for the Bengal Assembly and was returned with an overwhelming majority. I think the verdict of the people is a better verdict than that of my friends on the other side.

I do not wish to treat you with a long lecture. My friend, the Home Minister, is a very human person. He is flowing with all kinds of kind expressions and I know that he is a very kindly man. I have enjoyed his friendship over long periods at a time when he was also probably put in jail for this kind of activity. But I can tell him that he may be framing this particular Bill with the best of intentions. But this is not administered by Dr. Katju or Pandit Jawaharlal Nehru. The administration is in the hands of the district officers and other officials. The information is provided by what is called the Intelligence Branch. I do not know who has given the name 'Intelligence Branch' to it, but it is one of the most unintelligent branches of Government administration which I have found. I found when going through these charge-sheets that the charge against one of the persons—I forget his name, I think it was Abdul Razak Khan, to whom reference has been made—that he had somewhere said that he would raise an army in Manipur, with that army he would occupy Pakistan and after occupying Pakistan he would occupy Calcutta. Now this was the charge against him preferred by the great Intelligence Branch! I think the man who had given this information ought to have been sent to Berhampore. Now probably you do not know what I mean by Berhampore. That is the place where formerly we sent lunatics. So he ought to have been sent to the lunatic asylum, but our benign Government instead of looking into the charge had taken it as gospel truth and has clapped this man in jail for three years without trial.

Now, I give you another sample of the intelligence of this Intelligence Branch. One man was accused of going to Manchuria and procuring arms there and of getting arms into India and provoking an armed rising. If Dr. Katju reads all these charge-sheets, as I have done, he will find that all the facts are corroborated. Now the people who will act as the eyes and ears of this Government is the Intelligence Branch and the personnel of this Intelligence Branch is almost the same which we have inherited from the British times. We have inherited from the British times not only the Intelligence Branch, but their very unintelligent ways of reporting and we have inherited from them almost all their vices. Gentlemen, so in the application....Mr. Deputy-Speaker, I apologise to you for this lapse. The framers of this Bill may have the best of intentions, but knowing the Intelligence Branch, knowing the persons who would administer it, who would be responsible for operating this Bill, I know that it will be grossly abused. You may clap in jail one or two guilty persons, but 98 per cent. of the persons are innocent. Therefore, I think that it is not advisable to place this Bill on the Statute Book at the present time. We have started just on a new career in our politics. Most of the political parties have eschewed violence and they have contested the parliamentary elections, that is to say, they want to prove their worth by taking part in these parliamentary debates and thinking about the problems of the country according to their own philosophy. So I think a good gesture should be made and a Bill like this should not be tried to be forced upon the public.

[Shri Meghnad Saha]

I would only conclude by referring to another remark which had been made by my friend, the hon. Mr. Gadgil. I am sorry he is not here. In referring to the incidents which happened in Calcutta during the last two days, he had said that that was one of the justifications for introducing this Bill, and he had held the Communist party responsible for these demonstrations in Calcutta. I do not think he had read the papers very critically. These demonstrations were organised by the *Durbikah Pratirodh Samiti*—Society for the prevention of famine—of which I am the Chairman. It had nothing to do with the Communist party. As a matter of fact, the Communist party had taken no active part in it and they have of course, only expressed sympathy. This is an organisation which has spontaneously grown among the citizens of Calcutta and people round about the districts in Calcutta and most of them are non-political people. The reason behind it is not any political philosophy, but it is the logic of hunger, and I would particularly impress on my friend, the Home Minister, about it. The people are dying in the villages round about Calcutta out of starvation, there is no food there and we find there is a conflict of opinion between the Bengal Government and the Central Government about the supply of food. So people are confused and it is hunger which has driven them to these demonstrations. It has nothing to do with the Communist party, and now my friend, Mr. Gadgil, has just told us that this was the reason why you want a Preventive Detention Act. I think that if the people of this country are allowed to suffer from hunger, if they have to take only one meal per day, if thousands of them die of starvation which can be prevented if the Government takes the right measures, then no amount of Preventive Detention Acts will prevent this country from going into a kind of revolution. If you look into history, you will find that it is hunger which has been at the bottom of most of the revolutions. Take, for example, the French Revolution. What was at the bottom of it? The French King and his nobles were having costly dinners in the Palace whereas the people of Paris were suffering from hunger. They had no bread, they had no meat, they had no food for days together. Then a group of them, mostly women, famished women, formed into a procession, marched to the Palace and they brought out the King forcibly and said that he must not live in luxury, he must come and see how they were dying of hunger in Paris on account of the extortion by his tax-gatherers and other officials. If you look to the Russian Revolution, you will find it was hunger at the principal cities, particularly Petrograd, which forced it. The first Revolution of 1917 had brought about the Bolshevik Revolution. If anybody thinks that these Calcutta demonstrations had been organised by the Communists, he is very wrong. It is hunger and famine which is at the bottom of these demonstrations.

I do not want to make a very long speech. I would appeal to the Treasury Benches that this black Bill should be dropped, a gesture should be made to the public. We should try to solve the problems of the country from an objective point of view. We should all put our heads together so that the problem of food, the problem of cloth and of shelter can be solved in the proper manner which I think is not impossible if the Government thinks rationally and does not try to force this kind of unpopular Bills on the public.

Dr. Krishnaswami (Kancheepuram): As I was listening to the speeches of the Home Minister and others from that side, I was reminded of a description applied by Henry Grattan to another Parliamentarian which eminently sums up the feelings which passed through my mind: "Great generosity of assertion, great thrift of argument, fury in the temper and famine in the phrase". The hon. the Home Minister in the course of his speech pointed out that we were a motley crowd, that we were a heterogeneous group, that we did not know our minds and that we ought not to oppose this measure because there were great necessities of state which compelled the Government to introduce it. But during his speech I wondered what the necessities were which influenced the Cabinet in resorting to this highly restrictive measure on our civil liberties. Of course, the hon. Home Minister is entitled to his opinion as indeed others are on this side of the House and I do not grudge him the satisfaction of thinking that hon. Members of the Opposition are not capable of giving expression even to a single constructive thought. It happens that Members on the other side assume that no good can come from Nazareth and therefore, any suggestion that comes from Nazareth is looked at askance.

Let me dispose of one or two arguments which have been put forward by Members on the other side. There was the first argument trotted out that so

far as this Bill was concerned it was in conformity with the provisions of the Constitution. It has to be in conformity with the provisions of the Constitution! If it were not in conformity with the strict letter of the Constitution you would not have the power to enact this measure. The limitations on the Sovereignty of Parliament have been embodied in the Chapter on Fundamental Rights, and unless and until there was a provision authorising the enactment of a preventive detention measure it would have been impossible for the Government to have introduced any Preventive Detention Bill. But from this should we jump to the conclusion that circumstances justify the enactment of a preventive detention measure, that there is an emergency which authorises such a serious restriction on our individual civil liberties, and that therefore we ought to look not with alarm at the development that has taken place but rather extend support to the Government? Whatever might have been the merits of the constitution-makers in providing for a preventive detention clause in the Chapter on Fundamental Rights,—and into these I do not propose to enter—those who were the makers of our Constitution did not envisage the invocation of the right of preventive detention by the state on all and every conceivable occasions. The makers of the Constitution probably thought it right and proper that there should be a clause dealing with preventive detention in the Constitution because in the event of war or some other grave emergency the Government need not be handicapped by lack of power and thus be reduced to subserviency to the force of chaos and disorder. Therefore this provision was incorporated as a sort of safeguard to be availed of in the ultimate resort. But to suggest that today it is necessary to enact this measure, and to suggest that it is a simple measure, does not seem to be convincing at all to those who have given some thought.

It seems to me, that on all such occasions when there is a fundamental restriction on civil liberties it would be worth while re-examining some of the basic assumptions on which Democracy rests, unless and until you understand what the essence of civil liberties is you will not be able to understand why we are so much opposed to many features of this measure, why we are pleading with you to drop this measure, and why we are suggesting that this measure as such should not have been envisaged at all. History informs us that people have rebelled against this idea of preventive detention. Article 5 of the Petition of Rights in language which certainly bears quotation reads as follows. This was language employed, let me remind this House, by Members of Parliament in the days of the Stuarts:

> "Nevertheless against the tenor of the State statutes and other good laws and statutes of your Realm, to that end provided, diverse of your subjects have of late been imprisoned without any cause shown; and when for their deliverance they were brought before Your Justices by Your Majesty's writ of *habeas corpus* to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detention, no cause was shown but that they were detained by Your Majesty's special command signified by the laws of Your Privy Council, and yet were returned back to the several prisons without being charged with anything to which they might make answer according to the law."

The men who protested against preventive detention were on the side of liberty and their reason for protesting thus was simple. Firstly, it is opposed to all canons of natural justice that we should detain a man without trial. Secondly, and this is an important point which should be borne in mind by administrators and those interested in the growth of democracy, it often happens that when you introduce such restrictive measures there is a great danger of the sins of one group being utilised for diminishing the liberties of others and for constructing a gigantic precedent for diminishing the liberties of all. That is why, irrespective of the political differences that divide us—and there are many differences that divide us from one another—we, on this particular measure, have come to the view that we ought to stand together and not be divided and speak with different voices.

This idea of preventive detention has to be examined at greater length. We have to realise that this is the third time that Parliament is called upon to enact this measure. In 1950 we enacted the Preventive Detention Act. In 1951 we amended it, though not in material particulars, and now in 1952 we are called upon further to extend its life by another two years. How long is this state of emergency to continue? Would we ever reach a normal state of affairs? Would it be possible for us to envisage a day when the Preventive Detention Act will not be on the statute book at all? It often happens that when repressive measures are enacted there is a tendency on the

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part of officialdom to think that they are certainly laws which ought to be there on the statute book and if they are not on the statute book, the security of the country and the security of its component parts would be jeopardised. On this matter the time has arrived when we should review the working of the Preventive Detention Act and find out whether we should not have resort to more normal legislation. Imagine for a moment what the essentials of preventive detention are. I would beg of my hon. friends to apply their minds to this aspect of preventive detention carefully. The *raison-de-etre* of preventive detention is that it is preventive in nature and that materials on which the action is taken admittedly fall short of proof and are merely grounds of suspicion. How is this apparatus of suspicion built up? The hon. the Home Minister knows as well as we do that this apparatus of suspicion is built up either on the report of a police spy or on the report of agents provocateurs or on the report of so many other busybodies who might be taking a prominent and not altogether healthy interest in the victims. A formidable *dossier*, as it were, is built up day after day by many people who affect an interest in the welfare of the state, but who are more interested in bringing the individual to book. The file mounts up and one fine morning the file goes to the District Magistrate and then the detention order is served on the detenu, who does not know the grounds on which he is actually detained and has to wait for a long while before a few of the grounds are made known to him. The highly restrictive nature of detention will be realised if we consider some of the Articles of our Constitution and find out how far preventive detention curtails the liberty of ordinary citizens. Article 22(2) of the Constitution ensures the benefit of production before a judge in the case of a normal citizen accused of crime in a court of law. This freedom is denied to a detenu. This article further requires the disclosure of the grounds of arrest to the person arrested, but this is also denied to the detenu. Moreover, Article 22(6) enables the Government to refuse disclosure of the grounds to the detenu in public interest, and thus the benefit of the provision made in Article 22(5), namely, that all the grounds should be revealed to the detenu, is virtually taken away in most if not all cases. No one knows what public interest is, but the hon. Minister knows that if in several cases it is necessary in public interest not to reveal the grounds of detention to a detenu, and the authorities who pass the detention order do not reveal the grounds of detention, the result would be that the detenu would be considerably handicapped in making representations, when the time arrives, before the Advisory Board or a court of law in order to get the order quashed on the ground of its being *mala fide*. This morning, as I was listening to the Home Minister, I was wondering whether all these difficulties that we envisage are really swept away as a result of the amendments that have been suggested in the new amending Bill. After having examined the Bill with some care, let me affirm that in many respects it is not an improvement on the old Act and I shall substantiate my statement by quoting chapter and verse.

What is the safeguard that an individual enjoys in normal times when charges are made against him? He is brought before a court, tried, and if found guilty convicted. But under the Preventive Detention Act, we have only the safeguard of an Advisory Board and that safeguard is illusory, because there is no mandatory duty on the part of the Government to place all the materials before the Advisory Board. If there is no such requirement, how is it possible for the Advisory Board to arrive at a conclusion which is fair to the detenu and just to the State? It may be pointed out that it is not necessary to reveal all the grounds and that if some grounds are revealed it is quite enough and Government may place only such materials as they think fit before the Advisory Board. But would it not be legitimate to point out that if there are undisclosed grounds, there would be a natural feeling of suspicion on the part of the Advisory Board and therefore the chances of the detenu being released or of his case being heard properly are much less than if all the grounds are made available to the Advisory Board? Great play was made of the detenu being given under the new Bill, right of making a representation in person to the Advisory Board, even this is an illusory advantage, because he has no right to demand a full disclosure of the grounds nor cross-examine those who have deposed against him and therefore cannot convince the Board of his innocence, nor is there a duty on the part of Government to disclose all the reasons which have led them to take action against an individual. May not the suspicions arising from undisclosed grounds powerfully influence the Advisory Board in favour of keeping the man under detention?

The other point to which I want to advert is this,—and here I thought that the Government were on the right track—I am referring to the new procedure that has been envisaged, namely, that if a magistrate or any other officer detains an individual, he should within two weeks report to the State Government and the State Government should confirm the detention. As I listened to the Home Minister I thought that here was a valuable right given to the detenu, because if the State Government had the opportunity to apply its mind afresh to this question, a very valuable right was undoubtedly granted to the detenu and many cases of injustice might be rectified by the Government re-examining the cases. But what do we find in sub-clause (3) of clause 3 of the Act. It says:

> "When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the necessity of the order."

What does this means? It implies that the officer need report only such materials as in his opinion should be brought to the notice of the State Government. All that is necessary is for him to sum up his impressions and give out only such information as in his opinion is necessary for putting the individual in detention. If what I have described is done, that by itself would place the State Government in a disadvantageous position, for the State Government would not be in a position to review the whole matter and if it does not have all the various factors which have weighed with the officer in passing the detention order, how is it possible for the State Government to apply its mind afresh? This idea of confirmation which has been introduced in the new Bill is ostensibly designed to help the State Government to apply its mind afresh. This in itself is a salutary check on official excesses, because the State Governments can call for the evidence and then examine the whole thing afresh. But as it is, as the section is worded, the magistrate who passes the detention order is under no legal duty to disclose all the facts which operate in favour of the detenu. All that we insist on is that he should make a report giving to the State Government the reasons for his having arrived at a particular decision that X should be detained for a particular period and the grounds on which he thinks he should be detained. This is indeed a very serious limitation on the State Government's capacity to find out whether the detention order was based on valid reasons or not.

Let me, however, analyse this section a step further. The new sections that have been inserted relating to the Central Government's being apprised of the facts of the case have to be examined more thoroughly. What is the duty cast on State Governments? The State Government has a duty only to show the necessity for the detention order, not the full facts relating to the detenu. That is how I read this section and if the hon. the Home Minister thinks differently, I should like to have a clarification of this particular section. If you read that section it is stated there very clearly that only the necessity for the detention should be shown to the Central Government. The section reads as follows:

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

What was the purpose and intention of making the State Government report to the Central Government. Is the Central Government a post office; is the Central Government merely to receive reports from the State Governments? If that is not the intention, has a duty been cast on the Central Government to go into the matter or apply its mind afresh?

Nor is there any provision in the new Detention Bill that the detention order should not continue in force after a stated period, unless approved by the Central Government. Were there such a provision in the new detention amendment bill, I could have understood that the Central Government would have been in a position to certainly review the facts as they were and certainly the detenu's case would be examined afresh. Even if it be on a high administrative level, where questions of satisfaction are of a subjective character, had provision been made in the Detention Bill that the Central Government or the State Government should have the opportunity of re-examining these questions thoroughly and fully the hardships of detenus could in some measure have been mitigated and there would have

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been some satisfaction to us that the detenu has a chance—though a remote chance of having his case considered afresh.

Let me, analyse this provision a step further. It does not appear that the State Government is bound by the opinion of the Central Government, if the latter considers that there are not sufficient grounds to confirm the detention order. Therefore, there are no real safeguards for the detenu. Has not the time arrived—and this is a question which I should like to put forward in all earnestness to members of the Treasury Benches—when we ought to revise the rules relating to the hearing of detenus by the Advisory Board? After all the advisory boards do not meet in public. There is not that glare of publicity and there is not the opportunity to report the proceedings of each advisory board. Public interest is adequately safeguarded, according to the judgment of the Government which has enacted this measure, by our having these advisory boards to review the matters fully and to give an opportunity to the detenu to have his legal representative. But in order that this procedure might be useful, I suggest that the Central Government or the State Government, whichever authority has been responsible for detention, should supply to the detenu full grounds of his detention and not just partial grounds, because if partial grounds are given, there would be no possibility of the detenu making valid representation. What public interest is in peril that we should put such a high premium over it as to say that even the Advisory Board should not be apprised of these facts.

It has now been held by courts of law that even speeches can be prejudicial acts and a man may be detained merely on the strength of the speeches that he has delivered without anything more and in such a case there is not even a duty to disclose offending passages. Only the other day, when I was reading the case of Ram Singh If the State of Delhi. I came across a passage in the judgment of the Supreme Court which opened my eyes to the seriousness of the Preventive Detention Act. Here is a case in which an individual is charged with having delivered a seditious speech and is detained by the authorities and when he is detained the offending passages are not even read out to him and the court finds itself powerless to enquire into it because, as the judges point out, it is not for them to find out what the offending passages are; it is only for the authority to be satisfied that what he has delivered is a speech with a prejudicial intent. Against this procedure of our Government Mr. Justice Bose valiantly protested and his dissenting judgment will rank high in the history of liberty and will go down through the corridors of time as a remarkable protest against official tyranny and official secretiveness.

Dr. Katju: Did my hon. friend say 'dissenting judgment'?

Dr. Krishnaswami: The dissenting judgment of a Supreme Court Judge is often more important than the majority judgment of the Supreme Court because it opens our eyes to the lacunae in our law. In this particular matter, I crave the indulgence of my hon. friend the Home Minister to whom I shall read out the relevant passage in Mr. Justice Bose's judgment. Mr. Justice Bose remarks thus:

> "The next point is this. When a man is told that his speech excited disaffection and so forth, he is being given the final conclusion reached by some other mind or minds from a set of facts which are not disclosed to him. If the premises on which the conclusion is based are faulty, the conclusion will be wrong. But even if the premises are correct, the process of reasoning may be at fault. In either event, no representation of value can be made without a reasonably adequate knowledge of the premises.
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> Envisage for a moment the position of the Board. In the ordinary course, it would have before it a speech with the offending passages in full, or at any rate the gist of them. From the other side it would have a bare denial, for that is about all a detenu can say in answer to the grounds given to him when he is not told the premises on which the conclusion is based. In most cases, that sort of representation would have very little value. Consider this illustration. Let us assume the detenu had spoken about Hindus and Muslims."

Mr. Deputy-Speaker: It is not the practice in this House to quote long extracts.

Dr. Krishnaswami: I am only giving the gist of it.

Mr. Deputy-Speaker: Already it is long. The hon. Member may refer to one or two lines here and there. A whole book cannot be quoted.

Dr. Krishnaswami: I have been always reluctant to quote from any authority and if I have been led to quote this particular passage, it is with a view to bringing home to the Home Minister the lacunae in the Preventive Detention Act. But let me quote one other passage which would illustrate the point that I am seeking to establish.

Dr. Katju: From the same dissenting judgment?

Dr. Krishnaswami: Yes. Mr. Justice Bose said:

> "I am anxious not to be technical and I would be averse to an interpretation which would unnecessarily embarrass Government but I do conceive it to be our duty to give a construction which, while falling strictly within the ambit of the language used, is yet liberal and reasonable, just to the detenu, fair to the Government. And after all, what does a construction such as I seek to make import? It places no great or impossible strain on the machinery of Government. All that is required is that the authorities should bestow on the cases of these detenus a very small fraction of the thought, time and energy which the law compels in the case of even the meanest criminal who is arraigned before the courts of this country. The fact that there is absent in the case of these persons all the usual safeguards, the glare of publicity, the right to know with precision the charge against him, the right to speak in his own defence is all the more reason why Government should be thoughtful, considerate and kind and should give them the maximum help."

I suggest that in cases of preventive detention, where even the offending passages' are not revealed to the detnu, he suffers from a very serious handicap and he cannot make valid representations to the Advisory Board. From all points of view, even from the point of view of public interest, has not the time arrived when we should at least have a full disclosure of the facts made to the detenu and to the Advisory Board, so that he might be in a position to clear himself to the satisfaction of the Advisory Board?

We were told, that we were passing through a very critical period, that there were very many dangers facing our country. I hold a very different view. After all, we have certainly passed through the worst period of our national career and we have now emerged into a period of relative calm and tranquillity. In the whole of South East Asia I venture to submit that ours is possibly the only normal administration; the general elections have been held without any degree of disturbance and with minimum cost to social security. I do think that this is the most propitious period, if even there is one, in which the Preventive Detention Act should be repealed it is this and this alone.

Some reference was made to Saurashtra and Rajasthan. I do not understand what exactly the Home Minister meant to convey by referring to Saurashtra and Rajasthan. I do not know whether it would be possible to control the disturbances—assuming that they exist—by an application of the Preventive Detention Act. If the Home Minister comes to the conclusion that Saurashtra cannot be controlled except by an application of the Preventive Detention Act, why should he not have its application narrowed to one small region instead of having it extended to the whole of India? That is a point of view which he can consider. It is no use trying, as I said at the outset, to utilize the sins of one group for the purpose of diminishing the liberties of all. For if once we compromise on this matter and diminish the liberties of one group after the other, we will soon become totalitarian in our outlook. The hon. the Home Minister gave an assurance this morning that he would undertake not to apply this Act against political parties or other individuals. I accept this assurance as very sincere and high-minded. But I ask my friends whether these assurances are worth anything. What counts is the actual text of the Bill and Bill alone. And if we have forgotten this elementary lesson, we have forgotten our duties as legislators. The hon. the Home Minister knows that the Bengal and Bombay ordinances were passed in order to deport certain 'noisy Frenchmen who were causing a great deal of trouble to the native settlements and the country' in those difficult times. But eventually these ordinances lent themselves to the interpretation that this could be employed against all persons. And the authorities of the succeeding period took advantage of that ordinance for deporting many of our people.

Therefore if you are introducing this measure—and I do not see the necessity for introducing this meas-

[Dr. Krishnaswami]

ure—but if you are introducing this measure, consider again the safeguards that you have provided, reconsider again whether the time has not arrived today to see that the safeguards are increased and that there is greater justice done to the detenu. The scales have hitherto been weighted more in favour of the executive rather than in favour of the subject. The time has arrived when the scales should be weighted in favour of the detenu. Therefore it was that I suggested that the Central Government and the State Government should have all these facts disclosed to them, so that they might be in a position either in the initial or in the appellate stage to review all the facts relating to the detenu and, by reviewing them, see to it that they release them where no necessity exists for their detention.

I should feel happy if this measure is withdrawn. But if you are not prepared to withdraw this measure, consider at least these amendments and the safeguards carefully so that, as a result of liberal safeguards being inserted, we might have a chance of restoring in some small measure the liberty of the subject.

Shri N. P. Nathwani (Sorath): The hon. Member, Shri Hiren Mukerjee, at the outset of his speech generally referred to various judgements of the Supreme Court in regard to the nature of preventive detention. Now, in the various judgments delivered by the Supreme Court the learned Judges have made some observations on the nature of preventive detention. They said, what is generally admitted namely, that the power of preventive detention is generally repugnant to democracy and that it is not generally used unless there are special circumstances or unless there is an emergency. But they did not say and they could not say that in fact there did not exist in the country any emergency. On the contrary they have observed on several occasions that it is for the Parliament, and for the Parliament alone, to decide whether in fact an emergency exists and whether the Preventive Detention Act is necessary or not.

All the hon. Members sitting on the opposite side have argued, and some of them very vehemently, that at present there are no circumstances in the country justifying the continuance of this measure. I come from the State of Saurashtra where so far as the maintenance of law and order is concerned a very menacing situation developed; and the situation which developed and which still lingers on there is not peculiar to the tiny State of Saurashtra. I understand a situation, on similar lines, more or less the same, is developing in other States, namely Rajasthan and PEPSU. I would therefore like to recount briefly the circumstances under which a grave danger to the maintenance of law and order developed in Saurashtra, and how the Government was forced to resort to the Preventive Detention Act to control the situation and how the circumstance still exists there to justify the continuance of this measure. It is only against this background that we may have a proper perspective to consider the necessity of continuing this Bill.

6 P.M.

The hon. Members have heard about the dangerous criminal activities carried on by a gang of dacoits headed by the notorious dacoit, Bhupat. He and his associates started their career of crime in 1949 but what is important to be noted is the fact that in the beginning their only object in committing robberies and dacoities was loot. There was no political purpose behind these dacoities. But soon thereafter, they obtained valuable supporters in some of the *girasdars*. Now the House knows something about the *girasdari* system. *Girasdars* are a class of land-holders. During the old regimes, they occupied a position of special advantage; they are related to the princely order by ties of blood. So far as land was concerned, they enjoyed special rights. But the tenant class was in a sorry plight. With regard to possession, the tenants were at the absolute mercy of this class of landholders and having no other means of livelihood, these tenants had to yield themselves to various exactions which their masters chose to impose upon them. This was the condition when the new State of Saurashtra was formed in the year 1948. The Government, therefore, immediately addressed themselves to the task of giving some relief to this tenant class. They began to proceed to fix the shares of the tenant class and this land-lord class. They also abolished various taxes which amounted in all to 30. This created a lot of resentment and bitterness among this landlord class. They began to take law into their hands; they began to oust the farmers and they began to burn their crops etc. But the Government took firm steps to check these elements, with the result that this landlord class did not succeed in ousting the farmers. This made the feeling of resentment go deep among this class,

with the result that some of their leaders thought of a very ingenious plan of utilizing this gang of dacoits.

Then with the support of some of the leaders of this class, Bhupat and his gang entered on the second phase of their criminal activities. Now their object was to terrorize the agriculturists, to coerce the Government into abandoning their land reform policy, if not that at least in whittling down the policy of land reform so as to make more and more concessions in their favour. Ultimately in or about the middle of 1951, this question was settled. When the *girasdars* realized that the Government was firm and was determined to implement its policy of land reforms they joined and tried to co-operate with the Government and ultimately the land reform Bill was passed as an agreed measure. This apparently set at rest the cause of dissent. But then again this action of some of the leaders of the *girasdars* was not liked by a section of their community. Again there were some ex-rulers, their supporters and their *Bhayats* who had their grievances against the Government. They felt that all power and influence had left them overnight. They felt that these commoners, which the Congress people are, were perhaps not fit to govern. It was perhaps a false sense of pride of caste or rank on their part.

With the approaching general elections, therefore, some of these feudal elements and some of the ex-rulers thought that it afforded a good opportunity for them to contest the elections and with the support, if necessary of other parties, to win the elections and to form a Ministry. In this plan of winning the elections they thought of utilizing this gang of Bhupat and his associates. With their support started the third phase of the activities of this gang of dacoits. Thereafter there was a wave of crime culminating in the assassination of 12 persons in Kharachia on the night of 21st January 1952. The Chief Minister Shri Dhebar in whose constituency this particular village is situated was to go there and address the meeting. Fortunately, he could not do so. Soon after the meeting was dispersing there was a raid, there was shooting at random and 11 persons were murdered. During this period, between September and January when the election campaign was carried on by all the parties, there were 16 raids and about 28 murders committed in this manner. The object was two-fold. Firstly it was to discredit the Government and to tell the people that the Government was not competent to maintain law and order. The second object was to terrorize the people not to vote for the Congress. They knew that the people were overwhelmingly behind the Government and that they wanted to support the Congress. Therefore, the only thing they could do was to terrorize them not to go and vote for the Congress. In this latter object, I may say they succeeded in a large measure at first. In some parts this terror continued to last even to the end.

May I say about my personal experience? In my constituency in the rural area of Jayatpur till the end neither myself nor the Congress candidate for the State Assembly could get persons among the villagers willing to act as our polling agents. The reason was not that they were not with the Congress; they told us that they were with us, but they were afraid of being victimized by this gang of dacoits when they knew that this gang of dacoits was supported by an influential section of the people. That there was a political motive behind these crimes, robberies and dacoities committed during this period becomes evident from the notes of intimidation which were left by the decoits after committing these offences. I shall refer to one or two such notes to make it clear to the House that there was a political motive behind this crime. May I read the translations of some of the *jassachithis* as they are called in Gujarati? There was a dacoity committed on 23rd September 1951 at Lilakha where two agriculturists were murdered. It said:

> "These murders were committed with this purpose that we came to know through our correspondent that hon. Shri Dhebarbhai Saheb is going to come for giving a lecture for election propaganda in the adjoining village.....so we thought we need not present money but let us send Dhebarbhai two cocoanuts (meaning two human heads)".

They further say:

> "We have decided to murder persons from each village which will not vote in favour of us but will vote in favour of the Congress .....Now we shall freely murder them (people of Saurashtra) if they will vote for them (Congress Ministers.)".

> "According to our Code, it is an offence to vote for Dhebar, Bhimji Ruda or any Congress candidate and the punishment for the offence is death. So, if any one votes for the Congress, he will be liable to punishment of death."

[Shri N. P. Nathwani]

There are other circumstances also which go to show that there were powerful sections of the Princely order and feudal elements to support this reign of terror. For instance, if you look at the quality and quantity of the arms and ammunition which was used by these dacoits, it becomes clear that they must have been supplied by some ex-rulers or some Members of the *Girasdari* association. They have used ·303 rifles; they have also used pistols of prohibited bore, pistols which are generally not used. Most of the cartridges were manufactured in Government arsenal and they are not available to any persons unless they happen to be rulers. Ex-rulers are exempt from the operation of the Arms Act and they can get as much quantity of these arms and ammunition as they liked. *(Interruption).*

Mr. Deputy-Speaker: Order, order; why this running commentary?

Shri N. P. Nathwani: That was the position in Saurashtra in December 1951 and January 1952. Some information began to trickle; Government could not get any definite information about the whereabouts of this gang. Government took all steps to curb this element. They increased their police force. They requisitioned extra armed forces from the neighbouring State. They declared a reward of Rs. 50,000 for giving information about these dacoits. They also obtained the services of several experienced and able police officers from other States, but still these dacoits remained at large. Why? Because they were backed, they were supported, and they were harboured by these powerful people. Now, it was in these circumstances that Government had to act under the Preventive Detention Act.

Sometime a question is asked why do you not proceed against them in a court of law, if you have got evidence. Now, by this time, some information has reached Government about the complicity of some of the Members of this association, and some of the ex-rulers or their *Bhayats*. You must bear in mind one thing. People are still afraid and will continue to remain in fear to give evidence in an open court of law against some of these ex-rulers. They know very well that this is a powerful and influential class and is capable of taking vengeance even after the lapse of considerable time. It is in these circumstances that Government could not proceed against them in a court of law. After the elections were over, Government took steps and put in preventive detention all these elements. What was the effect? Mark, with the arrest and detention of several of these persons, the situation at once improved. One of the associates of this gang was killed very soon. One other associate was arrested. Bhupat and the remaining dacoits had to run away to Pakistan. We have only scotched the trouble; we have not killed it. There are other dangerous criminals still at large. The persons who were at the back of these dacoits are powerful and influential people. They will not take their defeat lightly, though these elements are lying low for the time being. It is therefore imperative, it is therefore absolutely necessary, to watch the situation in Saurashtra very carefully, lest there might be another wave of crime only to belie the assertion that these persons who are now in detention were at the back of all the crimes.

There is an amendment for circulating this Bill for eliciting public opinion. May I say that, so far as my State is concerned, even during the election times, even two or three months prior to the taking of action by the Government, people clamoured that some kind of stern action should be taken against these powerful persons who were at the back of all this trouble. People knew; they can sense; they can understand that these dacoits who used to come in jeeps and cars, who were dressed impeccably in a spotless manner, could not be so unless they were supported by some powerful persons. People have welcomed this action on the part of the Government. They have breathed a sigh of relief so far as my State is concerned. There cannot be, and there is not any question of eliciting public opinion. People have approved it.

I have narrated these circumstances at some length to show the situation which we have had to face in the past, and which we are likely to face in the future. Again and again the question is asked by Members opposite whether there is any parallel, any counterpart of the Preventive Detention Act in any other country. May I ask them, through the Chair, whether there is any party, any group of individuals existing in any other part of the democratic world, who with a view to achieving their objects, not merely resort to some violent methods, but also resort to utilising professional dacoits? If such a situation were to be found in any other democratic country, I have no doubt that the people will give power, and the Government will arm themselves with power as drastic as, if not more drastic than, the Preventive Detention Act.

In this connection, may I point out the position which prevails in the United States of America. It is a great democratic country. I know there is no Preventive Detention Act in the U.S.A., but there are certain measures which have been recently adopted by the Executive and the Legislative branches of the Federal Government.

Babu Ramnarayan Singh (Hazaribagh West): On a point of order, Sir. The hon. Home Minister is expected to listen to the debate, but he is indulging in conversation with other Ministers.

Mr. Deputy-Speaker: I take it that it is said in good humour. Let us not think that the Home Minister should be constantly looking at the Member. I do not know if that position is taken, how far the hon. Member himself was hearing all this.

Babu Ramnarayan Singh: I was hearing it.

Shri Jawaharlal Nehru: Sometimes I have to look away from the hon. Member opposite too.

Shri N. P. Nathwani: May I refer to the measure which has been recently enacted by the U.S.A. Government? It is known as the Non-Communist Affidavit Requirement of the Labour Relations Act of 1947. Before I deal with the provisions of this Act, the hon. House will bear in mind that the U.S.A. is not at war with any other country. There is no urgency, there is no emergency whatsoever. Still, they have passed a measure which encroaches in a very serious manner on some of the most fundamental rights, what we call civil liberties. The Act requires that any officer of any representative labour union must not belong to a Communist group or to the Communist Party. He must not associate himself with that party or with that organisation. The hon. House will remember that the Communist Party is not banned in the U.S.A. There is no prohibition against Communist organisations. Still, this Act requires that any person who happens to occupy a position in a labour association, must not belong to the Communist group. He must not associate himself with any Communist association. If he does so, then that Association loses its right of representing that particular union. Now, may I ask the hon. House what is this? It denies the right to freedom of thought to an officer. Mind you, he need merely say: "I believe in Communism. I belong to a particular association". There might be no intention on his part to commit any violent act. He does not prepare himself to do such act. Nothing is found against him except this fact that he is a member of an organisation known as a Communist organisation.

Then, may I refer to other measures? Under the Loyalty Order issued by the President, power is delegated for listing by the Attorney-General of numerous organisations without any hearing whatsoever. Now, the Attorney-General has the power to say whether particular institutions or associations are subversive or not. Mind you, that organisation is not given any chance of being heard. They are not supplied or furnished with any particulars. No opportunity is given to them to confront the various witnesses. But, under this power given to the Attorney General, that organisation is declared a subversive organisation, and any person who happens to be a member of that organisation loses his private or public appointment in certain circumstances. I have referred to these instances to show that civil liberties do not exist in the air. They are conditioned by the peace, tranquillity, and absence of disturbing or violent methods in society.

Now, some of the speakers on the Opposition said that the powers given under this Bill were arbitrary, that there were no sufficient safeguards, that it was liable to be misused, and that, in fact, it was misused. Now, may I deal with the first question as regards the Bill giving wide powers to the Central Government, to the State Governments and other officers mentioned in the Bill? It has been suggested several times that power should not be given to the States or to the officers concerned who are made the final judges of the necessity, whose satisfaction is final. It has been suggested that the Act should make some provision, should lay down some objective standard so that the Court can determine whether there is sufficient compliance with the requirements of law and that the satisfaction of the Government or the officer should not be considered as final. But, now, it is not possible to lay down any objective standard of conduct in relation to preventive detention except laying down a conduct which tends to achieve or avoid a certain objective. I am fortified in this view by the observations made by the Late Chief Justice of India. May I refer to a passage in the case to which the hon. Member Shri Gopalan who is not present now

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in the House has lent his name? The observations occur at Page 121:

"Section 3 is also impugned on the ground that it does not provide an objective standard which the Court can utilize for determining whether the requirements of law have been complied with. It is clear that no such objective standard of conduct can be prescribed except as laying down conduct tending to achieve or to avoid a particular object. For preventive detention action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period. As observed by Lord Finlay in The King V. Halliday, a Court is the least appropriate tribunal to investigate the question whether circumstances of suspicion exist warranting the restraint on a person.

"The contention is urged in respect of preventive detention and not punitive detention. Before a person can be held liable for an offence, it is obvious that he should be in a position to know what he may do or not do, and an omission to do or not to do will result in the State considering him guilty according to the penal enactment. When it comes, however, to preventive detention, the very purpose is to prevent the individual not merely from acting in a particular way, but, as the sub-heads summarized above show, from achieving a particular object. It will not be humanly possible to tabulate exhaustively all actions which may lead to a particular object. It has, therefore, been considered that a punitive detention Act which sufficiently prescribes the objects which the legislature considers have not to be worked up to is a sufficient standard to prevent the legislation being vague."

So much about the argument that satisfaction of the State Government or any other officer should not be considered final.

Then, I go to the next question whether there are sufficient safeguards in this Act. Now, the critics ignore that provision has been made in the Act to see that the orders passed by the officers concerned are reported forthwith to the State Governments.

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

Shri N. P. Nathwani: Yes, Sir. I will take about ten minutes more—ten or fifteen minutes more, Sir.

Mr. Deputy-Speaker: The House is impatient. The House will now adjourn.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 21st July, 1952.