

give you everything in writing. I would appeal to you. If Dr. Lohia is permitted once to make a statement *ex tempore*, in future that becomes a precedent. What we are worried about is, some rules are applied in one case and some other rules are applied in other cases.

Mr. Speaker: Only the same uniform rules are applied always.

डा० राम मनोहर लोहिया : यह ब्यान हो लेने दें, मैं उनका बहुत शुक्रगुजार होऊंगा ।

अध्यक्ष महोदय : आपस में शुक्रगुजार हो लें, मुझे कोई एतराज नहीं है ।

एक माननीय सदस्य : बाहर ।

डा० राम मनोहर लोहिया : खास तौर से श्रीमती रेणु चक्रवर्ती का शुक्रगुजार होऊंगा ।

12.24 hrs.

BUSINESS OF THE HOUSE

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): Mr. Speaker, Sir, you have admitted a motion under rule 193 to raise a discussion on the statement made by the Minister of Food and Agriculture on the 12th December, 1963 regarding sugarcane prices. The Lok Sabha Secretariat have asked my department and the Ministry of Food and Agriculture to indicate a date for this discussion. Some Members of Parliament from different sections of the House have approached me to find time for this discussion, which they feel would lose its importance and topicality if postponed to the next session. I am inclined to agree with them and in defence to their wishes I propose that this item may be put down in the List of Business for being taken up on the 21st December 1963, after the discussion on the steps

to root out corruption. I hope you and the House would kindly agree.

..Shri Shivaji Rao S. Desmukh (Parbhani): We agree.

Shri Surendranath Dwivedy (Kendrapara): That means the report of the University Grants Commission cannot be discussed.

Mr. Speaker: That is so.

Shri Vasudevan Nair (Ambalapuzha): You might remember that it was put down in the last session.

Mr. Speaker: Yes, but now the desire or the feeling is that the food situation is most important.

Shri Vasudevan Nair: It is a very strange way of proceeding with the business.

Mr. Speaker: That is for the House to decide.

Shri Hari Vishnu Kamath (Hoshangabad): Why not another day be given for it—Monday?

Mr. Speaker: No.

Shri Hari Vishnu Kamath: Why should not more time be given to Parliament for public business?

Mr. Speaker: Order, order. Shri Nanda.

12.25 hrs.

PREVENTIVE DETENTION (CONTINUANCE) BILL

The Minister of Home Affairs (Shri Nanda): Sir, I beg to move:

"That the Bill to continue the Preventive Detention Act, 1950, for further period, be taken into consideration."

It gives me no pleasure at all to ask the House to continue the legislation

[Shri Nanda].

relating to preventive detention. In fact, I look upon it as an ordeal. If I still come forward for consideration of this Bill, it is because I am convinced, I feel, that it cannot be helped. There are compelling reasons. The compulsion arises out of the circumstances and conditions and it is related to the logic of facts. I am compelled by my sense of duty to the nation. I realise the gravity of the issues involved. I have thought about them with the utmost seriousness.

As I have had a look at the record of the earlier debates. I recall the impassioned speeches made by some of the hon. Members at various times and at various stages. Also, I am familiar with the powerful arguments made in favour of preventive detention. I asked myself, if I were sitting there among the Members of the Opposition, would I favour the re-enactment of this piece of legislation.

Shri Tyagi (Dehra Dun): You would be interned if you were there!

Shri Nanda: I may submit to the House with a certain amount of sadness but with deep conviction that it is not possible to avoid the continuance of this piece of legislation.

An Hon. Member: Even in spite of the DIR?

Shri Nanda: We cannot avoid it and we cannot evade our responsibility. I am not called upon, in the present circumstances, to embark upon any lengthy exposition of the principles or the structure of this law, much less its detailed provisions, because I am not bringing before the House any new measure, any new set of proposals. It is a continuance of the existing piece of legislation. This law has its origin and derives its sanction from the Constitution of the country. Its foundations have been laid in the Constitution, in article 22. The first Act on the subject was passed in February, 1960. It was

amended in the same year; it was continued once in 1951, twice in 1952, and then again in 1954, 1957 and 1960.

Shri Hari Vishnu Kamath (Hoshangabad): Make it permanent!

Shri Nanda: This was subjected to Parliament's scrutiny about eight times already. Every aspect of it has been fully thrashed out.

I wish to refer to that part of the Constitution, the fundamental rights, in which the provision relating to the very basis of this law figures. The principle is not in question. Still, I would like to explain briefly what it is. The basis has not to be discussed of course; that is, the basic principle. But I am sure that the House must have some frame of reference. The discussion has to be related to that frame of reference. The discussion must keep in view in the background the principle which is embodied in the Constitution which is not in question.

The primary source of the Preventive Detention Act is article 22 of the Constitution. In that part—Part III of the Constitution—there is a string of fundamental rights. I would like to refer to them for a certain purpose, because it is not only one right with which we are concerned, but a variety of them. There is, for example, the right to equality; there is the right to freedom of religion; there is the right against exploitation. Several such rights are there.

Shri Hari Vishnu Kamath: And lastly the right to be detained without trial.

Shri Nanda: There is the right to property. My purpose in mentioning all this is that along with each right it will be found that there is a qualification. There is a qualification which modifies the scope of that right, which restricts its operation. There are reasons in every case for that restric-

tion. The operation of the right is circumscribed for certain purposes. Article 14 refers to the right to equality. Then the qualifications are contained in article 15 saying that nothing shall prevent the State from making any special provision for women and children and for the socially and educationally backward classes. The other rights are similarly qualified. I do not want to go into the details.

Shri D. C. Sharma (Gurdaspur): Let him go into the details; that will make the picture more clear.

Shri Nanda: There is so much other ground to cover. I was only explaining that each right is qualified. For example, the right to property. Some of the hon. Members opposite may not like that, but the right to property has been properly qualified.

Shri M. R. Masani (Rajkot): Improperly.

Shri Nanda: You may not like our Constitution, our ways and our aspirations.

Shri Hari Vishnu Kamath: On a point of order, Sir. May I know whether the Minister is in order in saying that nobody here likes the Constitution? We have all taken oath to abide by the Constitution. How can he dare say that none of us like the Constitution?

Shri Nanda: He said "improperly". Therefore, I said the hon. Member may not like that. The hon. Member, Shri Kamath, did not hear what Mr. Masani said.

Shri M. R. Masani: I said the amendments were beautiful; let us go back to that.

Shri Tyagi: May I say, Sir, that the word "you" does not mean any particular person. It is just used as a pronoun meaning anybody. When it is used in Parliament, it is never directed to any particular person,

except when it is addressed to you, Sir.

Mr. Speaker: "You" is always "I".

Shri Nanda: Public interest, national interest, larger interest of the community impelled the framers of the Constitution to provide these limitations on certain rights.

Mr. Speaker: Even when the Minister is provoked, he should not address any Member direct, because that would create difficulties.

Shri Nanda: I am very sorry, Sir.

Shri Hari Vishnu Kamath: You are the buffer, Sir.

Mr. Speaker: I will advise him not to face them even. (Interruptions).

Shri Prabhat Kar (Hooghly): They do not face the people.

Mr. Speaker: Here in the House they have to face me. Otherwise, outside the parties can face each other; I am not concerned with that.

Shri Tyagi: The faces that side are so attractive that one cannot help facing them.

Mr. Speaker: Here I will be the target of all assaults, all attacks and the like.

Shri Nanda: These rights are not to be viewed as abstract ideas. They have to be enforced and worked. They have to be made workable. This is not one right to be practised or exercised in isolation. There are a number of rights. Together that makes the fabric of life. The exercise of these rights and of this right to freedom and protection of liberty is to be taken as a whole. There are so many considerations—economic, social, moral—which have to be . . .

Shri Frank Anthony (Nominated—Anglo-Indians): Moral also?

Shri Nanda: Yes; moral also. If the hon. Member has no use for moral considerations, I need not deal with it.

Shri Tyagi: Everything good is moral.

Shri Nanda: There is the question of striking a balance. There may be certain excesses on one side and correctives have to be provided for that. That makes the harmonious whole. We are thinking of a balanced structure, of a harmonious whole, in which certain rights have to be limited by certain qualifications. The content of the right has been stated and in the case of preventive detention, that is a limitation about which I shall say a few words.

Articles 21 and 22 have to be taken together for the purpose of consideration of the matter before the House. Article 21 says:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Therefore, Parliament is invested with the power to frame laws to regulate that right. So, article 21 has given a very essential basic right to Parliament and the right of Parliament cannot be questioned to frame laws to regulate the right. Next clause again provides protection against arrest and detention in certain cases. I need not go into details of that, because clause 3 of article 22 contains the limitation. It says:

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

- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention."

That is what the Constitution says. But the Constitution does not stop there. The limitation being there, certain safeguards are provided. Clause (4) says that no law providing for preventive detention shall authorise the detention of a person for more than 3

months unless certain other conditions are fulfilled. There are provisions for the appointment of an Advisory Board consisting of persons of a certain status and it is called upon to report before the expiration of the said period of 3 months.

Shri Hari Vishnu Kamath: May I know why the Law Minister has drifted so far from the Home Minister? I am somewhat intrigued by the Law Minister sitting so far away.

Shri Frank Anthony: As a lawyer, his conscience is pricking him.

Mr. Speaker: What would be the advice of the hon. Member? Should I apply preventive detention?

The Minister of Law (Shri A. K. Sen): May I express my appreciation of the satirical instincts of Mr. Kamath?

Shri Nanda: The limitation relates to certain purposes of national good. They are given in the Lists—the Union List and the Concurrent List—defence and security of India, security of a State, maintenance of public order and services essential to the community. So, it will be obvious that here is a balanced structure. Within that article, there is an in-built safeguard provided, which balances the impact of the main right with certain other provisions, which will make it fully workable in the interests of the entire community. Now, certain object has to be secured through this provision, the fundamental rights and others. What is that objective? The objective is, if the article is taken as a whole, we have to preserve the democratic structure that we have. We have to ensure the fullest play to the freedom and civil liberties in the country.

Shri Surendranath Dwivedy (Kendrapara): By detaining without trial?

Shri Nanda: Whatever the hon. Members may say, it must be clear to them that the country does not

consist of a few followers which they have; the country is composed of 45 crores of people and it is the interests of 45 crores of people which is in question, the interests of the entire nation.

Shri Nambiar (Tiruchirapalli): Since he is giving, let him be prepared to take also.

Mr. Speaker: Each hon. Member will have his turn when he can say as much as he wants. Now he should listen.

Shri Bhagwat Jha Azad (Bhagalpur): One thing I can say. If they do not behave well and allow speeches to be made without interruptions, they will also receive the same treatment. We will not allow them to speak (*Interruptions*).

Mr. Speaker: Order, order. No challenges or cross-challenges here. I will see that every one has his turn and he is allowed to speak. That is my duty. Others, need not have any fears on that score.

Shri Surendranath Dwivedy: There should not be any threat like this.

Shri Nanda: I was referring to this vast country, vast nation, the totality of whose interests are in question, not the interests of a small section. We must also consider the condition in this country. What is it that we are out to protect? It cannot be denied or questioned that there are tensions and there are anti-social elements. Apart from that, even taking the ordinary law, there is no question of any absolute liberty. When encroachments are made on the freedom and liberty of others by some persons within the community, the State is charged with the responsibility of protecting the freedom and liberty of the people against those encroachments. For that purpose, there is a list of offences, the process of law and, finally punitive action.

In the conditions of this country today, this does not suffice. Because, the larger freedom of the community

is menaced by certain anti-social elements. There are tensions in the country, there is incitement to violence and there is provocation created from time to time. If the situation is normal, it can be dealt with by the normal law, by whatever legal apparatus that we have.

Shri Hari Vishnu Kamath: Prosecute them.

Shri Nanda: But there are conditions, situations and times when this conflict arises. Shall we let these forces to raise their head and do nothing about them, or shall we protect the liberties of the people by some large powers with which the State is invested in order to discharge its responsibilities to the nation? It is always being thought as if the only threat to the liberty of the people arises from arbitrary action on the part of the Government. That is not so at all. That is not the major threat. What is happening in this country is that certain forces are inciting people to violence and creating disturbance.

Shrimati Renu Chakravartty (Barrackpore): They are there in every country.

Shri Nanda: I hope I shall have the occasion to explain what the difference is, and I hope we shall reach that stage here also when we may not have recourse to these extra powers. These powers are being required, not for restricting in totality the liberty of the people but for enlarging it. So, there need not be any apology for it. That is the test that has to be applied. I concede that any restriction of freedom is not good, it is evil, but it may be necessary to avert a much worse evil. It is not a question of any philosophy but it is a question of facing the facts of the situation.

I mention two kinds of encroachments. I may say that the situation in India is such that the State has to be invested with special powers. Those powers have to be exercised, as has been provided in the law itself, sub-

[Shri Nanda].

ject to very rigorous safeguards. The democratic freedom which has been provided in the Constitution is something of which we are proud. We want to cherish, value and preserve it. I agree that simply because there is a power given to us by the Constitution to frame a law of this kind, that by itself cannot be a justification for framing such a law; I immediately concede that. There has to be something more, to justify the enactment of such a law. We have to prove, we have to substantiate that there are conditions in existence which necessitate, which compel us, and impose on us this obligation, and those conditions should be such that I could justify them as involving considerations of such value that I can place them on par with the fundamental rights themselves. For otherwise the fundamental rights will not be complete without the exercise of these safeguards and precautions. I am placing this Bill for the continuation of the law at that level.

As I said, in a normal well-developed democracy in those conditions the arms of law should reach out and should be able to cope with anti-social elements and activities. But, then, we have to remember that there are special factors at work. Further, we have to see, we have to make sure that this tender plant of democracy takes roots in this country. After all, it is not very long in existence, considering the history of this country. The hon. Member, Shrimati Renu Chakravartty, should have thought of the long history of the development of democratic spirit and respect for law. This plant, this tender democratic plant has to grow. In order that it can grow, we have to provide a hedge around it. A hedge is needed for its protection. But it is my own view that the hedge may not be needed for very long. No hedge is needed when the plant has grown properly. So, I do hope that before long it will be possible for us to dispense with it. We have to work towards it. It is a challenge

to the whole nation. It is not a party question. It is a question for all the parties. It is a challenge for all of us to work in a spirit, in a manner, so that the conditions which now exist are altogether removed, so that this legislation, this law can be scrapped. I feel that we all should sit together and work for that without any party considerations.

Shri Hari Vishnu Kamath: Why not detain all the parties?

Shri Nanda: It is the duty of all the parties to see that the spirit of lawlessness is eradicated from the country. Here I am not referring to any one act of lawlessness but the very spirit of lawlessness, and it is that which has to be dealt with.

Shri Hari Vishnu Kamath: Your policy generates lawlessness.

Shri Nanda: It may be that the freedom of a few people has to be curtailed for the sake of the larger interests of the nation . . . (Interruptions).

Mr. Speaker: Order, order. At least I should be spared of this duty. There should be no lawlessness here. I have appealed to hon. Members so many times that we should listen to the Minister.

Shri Nanda: I have explained that whatever we are doing now, the powers we are asking for, are not to be normal powers. They are to be exercised in dealing with special situations and we hope that the time will come when we could dispense with these special provisions. But I may add that if the situation remains, the conditions exist, which call for the use of these powers and for the State to be armed with those powers, then it would be a violation of the spirit of the Constitution not to have those powers just as it would be the violation of the spirit of the Constitution to use these powers when the conditions

do not exist. If the conditions do exist, then all the circumstances demand of us to have these powers and to use them. There should be no apology for it. This is something which is for the good of the nation. There should be no hesitation about it; no apology for it.

Now, what would be the consequences if we do not keep these powers in hand and use them for proper legitimate purposes? Let us look at the analysis of those cases of detention. Who are the people involved? It is not any member of a political party as such—not at all. Who are the people involved and should we have any kind of sympathy, any kind of softness for those people? These are people who are working against the interests of the nation and against the security of the country. They are spies; there are persons who are being detained because they harbour dacoits; there are persons who inflame communal passions. These are the categories of persons. If we do not deal with them in that way and if the normal machinery of Government is not able to cope with them, what are the consequences? It is not simply that there are a few lives that are lost and a little more property is destroyed. The damage goes much deeper. The consequences are much more far-reaching. The people will feel that the Government cannot protect them and, therefore, there will be the use of private force, organised private force. That is the answer, when the Government is not able to protect them. It would be a very much worse situation. Therefore, to avoid that cult of private force and despair among the people which again can have its own very dangerous consequences—we have to avoid them—we have to create respect for law. Therefore, the use of these powers has to be viewed from this angle. Here we have to compare with the other things at stake? What is the balance of advantage and disadvantage to the nation, is really the test.

Then, the question will be: what about the conditions? I am laying

stress on the conditions. I am saying that the use of these extra powers is for the purpose of dealing with, coping up with a certain set of conditions. Naturally, this is the point at which we can pause and think as to whether the conditions in this country are such that they really represent that kind of threat. That is a factual question. But its answer is not going to be a legal answer that can be given. The answer has to be in terms of fulfilment of the obligations of statemanship. A view has to be taken which will have to take into consideration the entire situation of the country and a proper assessment of what is going on and what are the forces at work in the country. It has to be seen if in these conditions the Government uses these powers or not for that purpose. I might refer to the figure of the use of these powers. But much more important is not the question of the number of spies, etc. etc. but it is our experience and the general situation in the country which creates the great risks against which we have to provide through this means. That is the issue.

Now, let us compare what were the conditions at the time when, say, three years ago, this Bill for an extension of time was before this House and it was adopted and the continuance was accepted. Are the conditions better than those obtaining then? Are the conditions same or similar to those obtaining then? That may be one way of looking at it. As I said, it is not simply a limited view. It has to be taken in a wide sweep and a general view about the situation where it is not the question of figures only. If the hon. Members look at these things dispassionately without any kind of bias in one way or the other, they will themselves be forced to agree with me. Take, for instance, this question of the communal situation. Can we say even through our experience of the last two or three years that we have been free from that trouble? No. We have not been able to free ourselves from that trouble. Take, for instance, the question of

[Shri Nanda]

spies, the espionage. In the circumstances of the country don't we have to deal with it more rigorously than ever before? So, all these powers which we have got are meant for certain specific purposes. About those purposes, there can be no difference of opinion. But I would be asked this question—I anticipate that question and I would like to answer that—and this would be: When do you think the conditions will have changed so that you will be in a position to set aside this special law, the Preventive Detention Act? Can we conceive of a time when there will not be a single spy or a single *goonda* or someone who is creating trouble? As long as we can point out to the presence of a *goonda* or a spy, have we therefore to put the plea that for that reason there should be these powers and this legislation? But that is not my case. I believe two things will happen. One is that we will be able to strengthen our administration more and I may add at this moment that my justification for this legislation is not on the ground that there are deficiencies in our machinery and they have to be made up by this law. If there are any deficiencies, they should be made up otherwise and we should not seek the help of this legislation for the purpose of carrying our normal functions. I am saying this apart from that. It is not a question of a single person here and there. It is a question of the whole set of circumstances. If there is a network of spies, the espionage, if the communal hatreds and passions are being inflamed in several quarters, if that respect for law, the keen desire to respect other person's freedom has not grown to that extent, it is all those things that are to be dealt with and I have this hope, I have this faith, that with the help of our friends, in all the parties, we will create in the country those conditions where the respect for law grows and people do not want only go and incite others to acts of lawlessness and violence. The violence is the more important thing, the intimidation of other people. I am not at

all afraid of demonstrations or processions. By all means in a democracy, there must be avenues for expression of discontent.

Shri Hari Vishnu Kamath: You were the Labour Minister yourself.

Shri Nanda: But I only stop short there. Where one creates terror, somebody else is not able to move out and it is not known what will happen at the next step, where people would not come forward to give evidence—it is not the ordinary slight aberration of somebody or lapse on the part of somebody—these are the conditions which we can visualise. I believe, our effort at national integration will succeed and all those various antagonistic elements, various tensions and those conflicts within the nation will be resolved. That is the answer and there is another answer also.

Shri Hari Vishnu Kamath: How long will it take?

Shri Nanda: There are other answers, where the responsibility is not on the other party, but the responsibility lies on the Government—it is the deeper causes of discontent—where enough education is not there, where enough means of living are not there, where the prices are so high that some people are not able to live within their means. All these are the deeper causes. That is frankly the situation whatever may be the causes. Maybe these things could not have been helped. It may be that we might have been able to do somewhat better. But it is these things to which the country and the Government and the whole nation have to address themselves, namely to ensure greater equality and greater scope for the realisation of the aspirations of the masses of people in the country. These are the things to which we must devote our attention so that all genuine grievances may be redressed and the basic causes of economic and social discontent are removed. This is the situation to which we are looking forward.

One question was asked of me, and that was about the emergency and the provisions of the Defence of India Rules. I was asked at the time of the introduction of the Bill 'You have got these special powers under the Defence of India Rules . . .

13 hrs.

Shri Frank Anthony: You will continue them indefinitely.

Shri Nanda: . . . and so, why do you have this also?'. That was the question asked, and it struck some people as if it was a very cogent question and there might not be an easy answer to it. But the answer is very simple. We have now the Defence of India Rules, and I would suggest that the provisions thereof may be compared with those of the Preventive Detention Act. There are two instruments here. One is a sharper instrument, and that is the Defence of India Rules. The other is the Preventive Detention Act which has got much greater safeguards. Therefore, even during the emergency, why should we apply the more rigorous measure against cases which can be dealt with under the Preventive Detention Act which has provided much greater safeguards for the citizen? For example, the provisions of the Preventive Detention Act are much more favourable. Within five days, the grounds have to be supplied.

Shri Frank Anthony: Much more favourable for whom?

Shri Nanda: Within thirty days, the matter has to go before an advisory board. There is the right of written representation, and there is also the right of personal hearing before the advisory board, and within six weeks the case before the advisory board has to be decided. There are some other provisions also which help somewhat the persons who are detained. Unless the advisory board finds that there are sufficient reasons for keeping a person in detention, the

person has to be released. That is, the advisory board has the veto in this matter. There is a maximum period of detention also laid down under the Preventive Detention Act.

In the case of the Defence of India Rules, the things are different, and the situation is also somewhat different. Therefore, to say that because there are the Defence of India Rules, therefore, the Preventive Detention Act should disappear is no argument at all. The purposes may be the same, the situation in each case may be different, and it might call for the use of the milder powers under the Preventive Detention Act.

I have covered so far the ground regarding the situation which calls for the continuance of this Act and which compels us to keep intact the existing Act relating to preventive detention.

One other thing which will possibly interest hon. Members is how this legislation has worked. This is a very relevant question. This is something to which greater attention should be paid, because it is quite possible that in a large country, so many persons are concerned, the authorities, the officials etc., and there is the possibility of lapses, and we would welcome anything of that kind being pointed out so that one could take greater precautions about it and take proper action about it.

As far as I can see about the working of this Act, I would say this. Here, I may submit that I am not building any kind of case on numbers. The detention of even a single person would hurt my feeling and my sense of freedom if that case is not fully justified. But I am referring to numbers for this reason that over a period, this number is not so large, in the sense that the trend is somewhat downward. The trend over a period is somewhat downward, and that is a gratifying feature. The latest position is that the number is 209, of which 206 are on account of maintenance of public order and 3 are in relation to security.

[Shri Nanda]

This is the present position, that is, as at the end of September last. The total number detained in the year was 288. Among these, the largest number was regarding violent activity.

Shri Hari Vishnu Kamath: From which State?

Shri Nanda: The hon. Member has got the State-wise analysis with him, and I have also got those figures with me here, but I do not want to take the time of the House on that at this stage. There was communal activity in 24 cases; then there were 15 cases regarding Naga hostile activity and espionage, and about 10 cases relating to the maintenance of services and supplies essential for the community.

डा० राम मनोहर लोहिया (फर्रुखाबाद):

अध्यक्ष महोदय, क्या मैं इन्तिला के लिए एक सवाल पूछ सकता हूँ ? गृह मंत्री जो आंकड़े दे रहे हैं, वे केवल नज़रबन्दी वाले हैं। पहले डिफेंस आफ इंडिया ऐक्ट तो था नहीं—सिर्फ नज़रबन्दी कानून था। चूंकि इस वक़्त ये दोनों हैं, इसलिए अगर वह डिफेंस आफ इंडिया ऐक्ट और नज़रबन्दी कानून, इन दोनों के आंकड़े जोड़ कर बतायें, तब जा कर पहले आंकड़ों से तुलना हो सकेगी।

Shri Nanda: It is a very relevant point, but it has also a special answer, and situations are there which call for the use of the Defence of India Rules; other occasions are there where those powers have to be employed . . .

डा० राम मनोहर लोहिया : अध्यक्ष महोदय, आप हमें बचायें और मंत्री महोदय को पूरे आंकड़े देने के लिये कहें। अगर वह तुलना कर रहे हैं, तो डिफेंस आफ इंडिया ऐक्ट और नज़रबन्दी कानून, इन दोनों के आंकड़े बता कर करें।

अध्यक्ष महोदय : माननीय सदस्य ने अपनी बात कह दी है। अगर मिनिस्टर साहब दे सकते हैं, तो दे देंगे।

Shri Nanda: We have got several hours to run the course of this discussion, and I shall give the precise figures. But let me cover the whole period to indicate the trend. Of course, as I have said already, I am not building my argument on that at all. Therefore, hon. Members may be saved from any worry on that account. I am only giving the facts.

डा० राम मनोहर लोहिया : आप तो हमेशा तंग करते हैं।

Shri Nanda: During the period from 1950 to 1953, for about two or three years, the total figure was 1016. For a period of three years from 1954, the number was 1041. For about three years from 1957, the number was 569, and from 1960, the number was 684. Therefore, even apart from the Defence of India Rules, the situation is somewhat worse in this period from the point of view of numbers. Therefore, I need not reinforce the argument by quoting the figures under the Defence of India Rules.

Taking the causes into account, I find that so far as communal tension is concerned, there is some kind of evidence that it is at a somewhat lower level than before. Regarding the harbouring of dacoits, the position is somewhat the same. Regarding that element which has got the name of goondaism here, it is on the increase.

Shri Frank Anthony: Political goondaism is on the increase.

Shri Nanda: That element which is characterised here as goondaism is on the increase.

There is one thing which I might say even at this stage and acknowledge before the House, and it is this. I have looked into these figures. There are figures also relating to the use of these powers against persons who penalise the community because they have got hold over certain resources and commodities; they exploit the

helplessness of the community. This relates to essential commodities and services and to people who have command of those commodities and services. But considering the extent to which exploitation is rampant, I believe it calls for a fuller use of the powers against those people.

Shrimati Renu Chakravartty: We have not got that figure at all in this.

Shri Hari Vishnu Kamath: Your statement is blank on that.

Shri Nanda: I gave the figure 10 for 3 years.

At this stage, I do not think I should take much more time of the House. But I would say this before I conclude. I have to appeal to Members to approach this question with an open mind. I have heard that some of the hon. Members have been sharpening their weapons—these were the words used—for a major offensive.

Shri Hari Vishnu Kamath: On both sides.

Shri Nanda: I know this Act has been the battleground where fierce battles have ranged round its provisions. But I would just make this request: let us concentrate on the real issues; let us deal with them. I would be happy to hear from them on that and if there is any response called for from our side, we will not be lacking in that response. I would request hon. Members to approach this question with a spirit of constructive co-operation.

Shri Hari Vishnu Kamath: On a point of information. With a view to facilitate a fruitful discussion, could the Home Minister tell the House in how many countries where the system of parliamentary democracy prevails there is today the law of preventive detention? Could he also give the names of those countries?

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Shri M. R. Masani: In peace time.

Shri Indrajit Gupta (Calcutta South West): Nowhere.

Shri Nanda: Later.

Shri Hari Vishnu Kamath: Could he not give it now?

Mr. Speaker: Motion moved.....

Shri Hari Vishnu Kamath: 'Only Ghana—it appears.

Shri Tyagi: China.

Shri Hari Vishnu Kamath: Is China a parliamentary democracy?

Mr. Speaker: May I continue?

Motion moved:

"That the Bill to continue the Preventive Detention Act, 1950, for a further period be taken into consideration".

There are two amendments. One is by Shri Ram Sewak Yadav for circulating the Bill for the purpose of eliciting opinion thereon by the 1st May 1964. Does he want to move it?

Shri Ram Sewak Yadav (Barabanki): Yes.

Mr. Speaker: It is out of order. The Act expires on the 31st December.

Shri Nambiar (Tiruchirapalli): It is exactly for that purpose that it is done.

Mr. Speaker: Therefore, it is dilatory. It cannot be allowed.

The second one is by Shri S. M. Banerjee. It is for circulation for eliciting opinion by the 15th December.

Shri S. M. Banerjee (Kanpur): It did not come up earlier.

Mr. Speaker: He has amended it to the first day of the next session. That would be after the Act expires.

Shri S. M. Banerjee: Till that time they can have DIR. That is always there.

Mr. Speaker: I am not concerned just at present with the DIR. So that is also out of order. Only the main motion is before the House.

Shrimati Renu Chakravartty: Mr. Speaker, this House is going to debate whether or not we should continue this Act, which everybody, beginning from 1949-50 right down to today, has called a lawless law.

Shri Hari Vishnu Kamath: I am sorry to interrupt the hon. Member. What is the allocation of time as between the first reading and second reading? 10 hours have been allotted to the entire Bill.

Mr. Speaker: We have not yet come to that. It will be as Members desire.

Shri Hari Vishnu Kamath: Will 8 and 2 be all right?

Shri Frank Anthony: 9 and 1 will be enough.

Shri Gauri Shankar Kakkar (Fatehpur): The time taken by the hon. Minister should be excluded.

Shri Hari Vishnu Kamath: Why not extend the time by half hour? We will have 10 hours for the general discussion, and half hour for the rest.

Shrimati Renu Chakravartty: This is the seventh time that this House has been asked to give its approval for the continuance of this Act on the statute book. We have seen Ministers coming and going. We have heard in the early days, and read, the debates in the Provisional Parliament, the speeches of that iron man, Sardar Patel, and after that of Rajaji. After that, when we came to this House, we have seen the performance of Dr. Katju, blunt, very crude sometimes but anyway straightforward—Look, I have got to exterminate

those who are my enemies'. Then we have seen the debating qualities of Shri G. B. Pant and now we have a performance which, I think, has excelled everybody else's, and that is the performance of our new Home Minister. When I was listening to him, I really felt pity for him because when he was arguing the case, I could not believe if we have known him during the last few years as a Planning Minister as well as Labour Minister—that he really believed in what he was speaking.

Shri Hari Vishnu Kamath: His heart is not in it.

Shri Tyagi: It is complimentary.

Shrimati Renu Chakravartty: He talked about in-built balance. I felt that his entire speech was an in-built imbalance—everything that he spoke. At one time, he postulated something; at the very next moment, he contradicted it. Then he talked about the basic questions and real issues.

Shri Nanda: I do not wish to interrupt the hon. lady Member. But I want to say this in reply to her statement that I did not believe in it that I do believe in it fully, I have deep convictions about it. It is not a question of any imbalance; it is a question of perfect balance.

Shrimati Renu Chakravartty: The hon. Minister protests too much (*Interruptions*). That is my feeling. I will come to Shri Azad a little later.

In regard to the continuance of this measure on the statute-book, actually each one of the Ministers in charge has pleaded one thing or the other. There is the "Situation" always posed before us—with a capital S. After 1947, in 1949-50, we were told that in the country there were communal tensions. There were communal tensions of the worst kind. Then they talked about a "nascent democracy". Of course, the violence of the Communists—everything—was brought for-

ward as an important reason for passing such a law. This 'situation' was there. Then when we came to Parliament, when the entire policy of the Communist Party with regard to Telengana itself had changed, 'We must have the Preventive Detention Act'. Then again the 'situation' was brought forward that there were anti-social elements and we must have this power; we are still only a few years from independence. Then this continued constantly and we are now in 1963. We should be at least a little older from that nascent democracy, from the stage when we were supposed to be just an infant democracy.

Shri Hari Vishnu Kamath: Adolescent.

Shrimati Renu Chakravartty: We should have become a little more adolescent. It is said 'Here is a tender plant.....'

Shri Hari Vishnu Kamath: But not yet adult.

Shri Indrajit Gupta: Juvenile delinquency.

Shrimati Renu Chakravartty: The trouble is this. This tender plant will never have firm roots however much we try to keep it strong by utilising such ruthless measures. Article 22 of the Constitution has always been quoted. It is not a question whether it is there in the Constitution or not. Have we not amended the Constitution? There were certain situations at that time. Has nothing changed? Now we are told—the hon. Minister has made so many interesting points—that there is a spirit of lawlessness, that there is a large section of the community whose freedom has to be protected. Are we the only country in the world where there are such problems? In the United States of America, what is it that we have seen? Not only the Al Capones and criminals; we have seen organised violence of the worst type in Alabama, in the South. We

have seen Negro children being lynched, killed; we have seen the President of the United States killed. Do they have in peace-time such an Act? We are always told that after all the communist countries are dictatorships. All right, take the countries that have got parliamentary democracy. Is it that our country is so immoral, that our people are so bad that we have got to have such a law, just because article 22 is there? I think this is demeaning for our people. I think this is only an excuse for hiding the immorality of many of the policies of Government.

The basic question is why this Act has to be used? I would like **Shri Bhagwat Jha Azad** to look into the blue book giving us statistical information. I think the time is coming when it will not only be Members on this side of the House who will be affected . . .

Shri Bhagwat Jha Azad: You are anti-national, all Communists.

Mr. Speaker: As I said earlier, we will have to listen to the speeches of Members, whether we like it or not.

Shrimati Renu Chakravartty: I am afraid he does not want even to listen to what is there in the statement itself.

Shri Indrajit Gupta: His turn is coming also.

Mr. Speaker: The hon. lady Member is also turning towards **Shri Azad**.

Shrimati Renu Chakravartty: I do not know if this is one of the rules of procedure that I should not occasionally look at the Members whom I am addressing.

The point which I would like, in all seriousness, even Congress Members to understand, is this. If we put such a law on the statute-book, it is not always going to be used against Communists, or maybe, other political opposition parties. It is very interesting to see from Statement No. 11

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that among the persons detained under the Preventive Detention Act, there is one in Maharashtra for goondism, a rebel Congressman. Did a Congressman have to be a rebel in order to be a goonda, I do not know. We see so many divisions being created in the Congress Party itself. I hope they are ideological differences, —there should be in every party, there is nothing wrong, but then it may be used against them also occasionally.

There is also one person belonging to INTUC who has been arrested, and I presume he is also a rebel Congressman.

So, I say let us not look upon it as a party question, but as a much wider issue. There is no doubt that the Defence of India Rules and the Preventive Detention Act have been and are being used mainly against the Communist Party, and, to a certain extent, other opposition parties. We cannot forget the history of what has happened. I would urge the hon. Home Minister to see that it is actually not used against anti-social elements. What is goondism? We are not goondas to be put in jail. There are cases where political people have been put in jail, calling them goondas. No classification has been given. We can give such examples of case after case.

13.24 hrs.

[MR. DEPUTY-SPEAKER in the Chair].

The new element in this year's debate is this, that we have got not only the Preventive Detention Act, but also the Defence of India Rules. This House unanimously gave those powers to Government because the situation was such, and we believed that Government would use them for the defence of the country. I do not think there is anybody in the House who would not have given those powers in an extraordinary situation,

but we are sorry to say—and I think many of the Members of the Opposition who totally disagree with each other on the basic policies that should guide our country are all united in this—that even the Defence of India Rules have been used in a manner not warranted. They have not been used in the manner that Parliament had wanted them to be used.

The hon. Minister has quoted figures and pointed out that the arrests under P.D. Act have either gone down or remained steady. Why? Because political people have been arrested under the Defence of India Rules. It is not a question of a year ago, but only yesterday or this morning there were agitators in regard to gur in Ghaziabad, and there, one of the Members of the Upper House, belonging to the PSP I think, an elderly Member of the Rajya Sabha has been arrested.

Shri Hari Vishnu Kamath: Chairman of the U.P. Party.

Shrimati Renu Chakravartty: Because he had agitated with the kisans that gur should be permitted to be got out of the cordoned area, he has been detained under the Defence of India Rules.

Shri Maurya, our colleague in this House, made a speech six or eight months ago, and we are told he has been arrested.

Shri Hari Vishnu Kamath: A difficult speech to study perhaps!

Shrimati Renu Chakravartty: Not only that. A few months ago there was the Bombay strike, and we again found the Defence of India Rules being used. So, we know very well that where political opponents have been arrested, they have been arrested during the last one year under the Defence of India Rules, and those powers have not always been utilised for the purposes for which Parliament had given them.

If it is a question of subverting national security, what about the hoarders and blackmarketeers? How many have been arrested? In the statistical information given to us, we find there are arrests for espionage, violent activity,—what violent activity is no one knows—anti-Indian propaganda, goondaism, communal agitation, refusal to contribute to the National Defence Fund and harbouring of dacoits. Was there any person arrested on blackmarketing and profiteering? There have been rice hoarders, everybody knows it, but when the question came up, our Chief Minister gave them a good chit and it was said that they were not hoarding. It was the people who showed the world that they had been hoarding.

What about those who steal our foreign exchange? Is that not also subverting our national security? What about those who parade with black money? Only yesterday we heard the Finance Minister saying that there is a huge amount of black money in the country, a thousand crores or something like that.

Shri Indrajit Gupta: Ten thousand crores.

Shri Tyagi: The normal law deals with it.

Shrimati Renu Chakravarty: If they are taken care of by the normal laws, who are the others left? It must be the political opponents who agitate for the demands of the people.

When the Samyukta Maharashtra Movement was taking place, many were arrested for "violent activity". Actually, the Preventive Detention Act was used long before one single act of violence took place in the streets of Maharashtra. Similarly, when the question of Bengal-Bihar merger came, people were put in jail. After that, when such issues as food came up, even before one single violent action took place, all of them were clamped in jail, and it was proved

beyond the shadow of a doubt that it was violent activity brought about by the provocative action of Government which resulted in creating a furore and there was firing and after that violence took place. You are putting the cart before the horse.

It has been rightly stated by the hon. Minister that the real issues are food, cloth, prices. These are the basic issues, and they cannot be tackled by the rod, but in a much more basic manner.

On this question of emergency, nobody says that we have solved the question of our border. We know that the situation can at any moment flare up, but certainly the situation in the country is that there cannot continue a long stage of emergency. The feeling is not there in the country. You have not created that feeling. You cannot have it only on one side. You have not stopped the rising spiral of prices, blackmarketing, and controlling those holding the community for ransom. All these things are continuing, corruption continues. Therefore, people now want that there should be an end of the emergency, and that the Defence of India Rules as well as the Preventive Detention Act should go.

Why do we say so? Not because we want that goondas should go scot free. There is the law of the land. If it is the contention of our Government that our jurisprudence is such, our law courts are such, that our people are such that they cannot rule except by lawless laws, then, I am afraid it is time for the Government to quit.

I got hold of a copy of a note which had been circulated on the Preventive Detention Act by the Congress Parliamentary Party, and I was surprised and shocked to find what it contained. Here, in this very house, a man like Sardar Patel, when he brought forth this legislation, said that he had spent sleepless nights over it. What did Rajaji say? Now, of course, he has

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joined the Swatantra Party. He was then on that side. He said:

"I agree that it is an abnormal thing that makes me ask for these powers. I regret it. It is an infringement of what is normal criminal procedure."

He said it. Today what are we being told? I suppose this is the concept which is being sought to be produced upon the minds of the Congressmen because I cannot believe that the Rowlatt Act was supported by anyone; in fact, it was talked about as a lawless law. The very Central Assembly had heard the voice of Motilal Nehru against it. I cannot believe that the congressmen accepted it. But then the note says: "The concept of 'Preventive Detention' was not new to this country.....In India, the East India Company Act, the various provincial regulations, the Defence of India Acts during the two world wars and the Rowlatt Act, 1919, had, in one form or another, embodied the idea."

An Hon. Member: Ridiculous.

Shrimati Renu Chakravartty: But the Rowlatt Act was challenged in the period of our national struggle, and today, that is being whitewashed as if this piece was a normal thing, and as if that is part of our tradition and part of our custom. Not only that. The more I have read it, the more I am surprised. It goes on to say:

"The availability and use of that power in India, unlike in USA and UK, has not been explicitly contingent upon a state of Emergency."

In the United States and the United Kingdom, there are similar laws which the hon. Minister is trying to quote before us. I agree. But in the United States and the United Kingdom, things are a little different. There, the only difference is, they do

not have such laws in peace-time. But the note says:

"Rather, the adoption of this concept presupposes an intermediate state between normalcy and Emergency."

The people will not accept this. The PD Act is being put forward for a Situation—'Situation' with a capital S—in between "normalcy and Emergency." It says:

"in other words, existence of a special situation requiring an effective weapon to forestall the arising of internal emergencies."

Not only that. We find a reference to the ordinary criminal law of the land. I am quoting from the Congress Parliamentary Party's brief; I suppose it is a brief. It says:

"...the ordinary criminal laws of the land—founded as they are upon the premise that a man is innocent until proven guilty and designed to ascertain and assess facts and not to proceed on suspicion, are undoubtedly deficient."

So, now are we being asked that people should be adjudged guilty without being given the right to prove their guilt? We have been told by the Minister that certain safeguards have been provided, and we ourselves participated in the great and historic debate in 1952, when this House heard our leader Shri A. K. Gopalan, Shri Shyama Prasad Mukerji and all those stalwarts in the debate for days. We did put in certain clause by which provision was made for an advisory committee, etc. But what is the actual fact? The actual fact is that the grounds of detention cannot be challenged! The policeman or the CID officer gives his grounds, and those grounds are made the reason for the detention of the person concerned. When the high court judge actually goes into the case, the man who is being put behind

the bars is not even allowed to have his say. I do not think even lawyers are permitted to argue the case. I do admit that it is a little better than the DIR. But then it is like going from the frying pan to the fire? In any case, I cannot say that the Preventive Detention Act really stands up to the basic tenets which have been inscribed in our Constitution on civil liberty.

What is the real reason for wanting such an Act. I know that reason, and that is, the Government wants slowly to wear down the Opposition to such a statute and to make it a permanent measure. One question was put by an hon. Member on this side of the House to the hon. Minister. When do you think that the tender plant will have enough strength in its root to be able to stand up without these lawless laws? We got no answer.

Shri Nanda: The answer has been given: that it depends on the hon. Members there, the Communist party. (Interruptions).

Shrimati Renu Chakravartty: That is exactly my point. Actually it is meant for crushing the Opposition. This is the real reason, and I am glad that this has been admitted. I would like the hon. Minister to go back a little to past history. Not only big mass movements have taken place in the country, where the majority of the people did not agree to certain decisions taken by the ruling party, and therefore, by this House—because they are the majority in this House—and they struggled to get them changed. I spoke of Maharashtra State and I spoke about the Manipur agitation. I do not know whether I mentioned it then, but I would like to mention it here. The Manipur agitation was for responsible Government and an Assembly. They were all arrested and put in jail. But today, all those things have had to be conceded. Why? We were told at that time, "Can a minority force the majority?" They said this is a law made by Parliament and it must be obeyed. But then the people have a

right to change what goes against their interests. I am glad that the Home Minister has conceded we have the right to oppose, we have the right to demonstrate and have a right to do all these things.

In this connection I would like to mention the case in regard to my hon. friend Shri Indrajit Gupta. He is here. Many Members know him. He was arrested. Why? Because as a trade unionist he is supposed to have attended a meeting. I do not know; possibly he may not even have attended it at all. But in any case, the point is, it is stated that he was arrested because in a meeting he had asked the jute workers to ask for a bonus. "You must all go and surround the IJMA, the biggest monopolist concern in India, jute traders and demand a bonus." Therefore, he was arrested under the PD Act. A similar case was also brought against my hon. friend Shri Muhammad Elias who is not here now. He was arrested on account of his activities as a trade unionist: "the workers of the A. J. Mill & Co., Shenoy & Co., and Shalimar Paint & Co. (All British concerns) staged a demonstration on the 11th September, 1963 and demanded of the British company three months' pay as bonus. The hon. Minister was also the Minister of Labour and I think he will not go back on what he said: staging demonstrations for bonus, such meetings protesting against certain things, for demanding bonus, all these things— (Interruptions).

Shri Nanda: Even 30 months' bonus, you can ask for.

Shrimati Renu Chakravartty: Yes, and we can stage demonstrations. We are within the law when having a strike. We succeeded also by staging a strike. Nobody strikes just for the sake of violence or just for the love of it. What happened in West Bengal recently. People asked "We want food; the prices should be brought down." But nothing was done, and when the people took action, when they go into action, we are

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told, "you are violent". Unless the Government redresses the grievances of the people, no amount of PD acts or any other Act is going to remedy the situation. It is necessary that the ruling party must convince the people, at least ethically and morally, and not through the PD Act, but by action, actually showing that they can give the people food and education to a little—a little more extent today than yesterday. No body says you must give all these things to us in one jump. But certainly, as Dr. Lohia pointed out, a situation has been created where the living conditions of the people have gone down below any subsistence level.

We are told about social cohesion. Is that going to be brought about by the PD Act. Never. It can never be done. I am sure the hon. Home Minister does not believe, it can be done in that way. But that is given in the brief which has been prepared by the Congress party.

An Hon. Member: How did she get it?

Shrimati Renu Chakravartty: A person against whom this was used tried to give it to me.

Shri Indrajit Gupta: Some rebel Congressman.

Shri Ravindra Varma (Thiruvella): Some fellow-traveller.

Shrimati Renu Chakravartty: Every country has to deal with some situation like this, of course, and the hon. Minister said: "I will show how our country is different from any other country." Sir, I tried to show him that what prides itself as the biggest democracy and which calls itself the "free world" the United States of America, many things take place which are not taking place in our country. There are many things that take place in our country that will not take place there. I agree. But does that mean that the very basic concept of democracy which is inscribed in the Constitution should

be given up? We take shelter under article 22 which has been there because a situation may arise in a certain emergency. But the entire aim today is, I feel, to make this a permanent measure. Actually, I will show you what has been stated in the last paragraph of this very illuminating document. It says:

"The state of Emergency is not a permanent phase and sooner or later it may be terminated."

This is realised by everybody. Then continues:

"Although some of the persons who would have been normally detained under the PD Act may now have been proceeded against under the D.I. Rules, this cannot be an adequate argument to prove that the powers under the PD Act should not be held in reserve so as to be available for timely application the moment the state of Emergency formally ceases;"

Then it says:

"The Government might be faced with the prospect of a number of undesirable elements being let loose in the country—

Who are these undesirable elements? I presume it is the communist party. Certainly the Communists will fight for the rights of the people and the PD Act cannot cow us down. The brief then says:

"...it does not appear that detentions in the context of the Emergency under the Defence of India Rules have negated the use of the PD Act to any significant extent. The number of persons (288) detained under the Act during the Emergency does not indicate any departure from the average of the previous years."

Therefore, we have the DIR plus the PD Act. We have got many other

Acts to check communalism, which this very House has passed. There are the amendments to the Industrial Disputes Act, for taking care of essential industries and public utility services. For that you have got wide powers. All these are there. In spite of that, to demand extension of this Act is nothing more than trying step by step to throttle all opposition and rule by wide powers of suppression and oppression.

I remember Dr. Katju told us, when he was pressed tremendously by this side of the House, that a motion can be brought in one year's time and we might see that it is not necessary for us to continue this Act. I say, he knew very well that as long as there is this brute majority on the other side, it will not be permitted to lapse. But it is also true that the very demand for passing such a law shows that there are cracks in the confidence of the ruling party. The ground on which Government party is standing today is showing increasing trends of weakness, giving way under the stress of growing no-confidence which the people are showing in the Government and against many measures brought by the Government. The ruling party was to rule, not by conviction, not by actually solving the problems of the people, but by the Preventive Detention Act. Even if you pass this law—this extension is demanded now for three years, but even if it is there for 300 years—the spirit of the people to fight against injustice and to fight for their rights will not be given up.

As far as we are concerned, in our fight against anti-social elements like blackmarketeers, profiteers, corrupt people, we shall be certainly one with Government to suppress them, but that must be done under the normal law of the land. That is what we demand; nothing more, nothing less.

Shri M. R. Masani: Sir, I rise to oppose the Bill I need hardly say that I do so for entirely different reasons from that which have been express-

ed by the previous speaker, I opposed the Bill because I consider it to be a blot on our statute-book. But before I discuss the Bill, may I spend two or three minutes considering the background against which this discussion takes place?

I feel, as the hon. Minister said, that we have reason to be proud of our democracy. If we cast our eyes over the countries of Asia, I think it will be found that with the exception of two or three—Japan, Philippines and Malaya—

Shrimati Renu Chakravartty: What about Formosa?

Shri M. R. Masani: No; I have a sense of proportion which you lack. Except for these three countries, we in our operation of democratic policies shine in the whole of Asia.

An Hon. Member: Ceylon?

Shri M. R. Masani: I have mentioned three countries; I would not give place to a fourth in the whole of Asia. I think we have reason to be proud of this record.

Speaking on 7th October abroad, I had reason to say, referring to the situation in India since the last 12 months of the Chinese communist attack:

“On the side of the Government also, let me say there was no misuse worth mentioning of the special powers and the Defence of India Rules that they had acquired to suppress dissent at home. All of us functioned throughout the emergency without any limitation on our freedom of expression or our freedom of action. I think this is something for which in a new democracy like India—when we look around at Pakistan, Indonesia, Egypt and other surround-

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ing countries—we have reason to be grateful.”

I have no hesitation in repeating this on this floor. All of us and particularly the people of India have a right to take credit for this achievement, certainly the common people who have maintained this climate of freedom of discussion, perhaps some of us who have talked out of turn and maintained in practice the right to dissent, and also the Government. I have many times to say harsh things about our Prime Minister and our Government. I propose to continue to do so in the country's interest.

Let me say this that in so far as the maintenance of the climate of free discussion in this country is concerned, I would like to say that the Government and the Prime Minister who leads it have also played their part in maintaining this climate, in permitting freedom of discussion, which Governments in neighbouring countries have denied to their people. I would like to pay this tribute to the Prime Minister and the Government of India for having participated in this healthy democratic process.

Why do I say so? This is very important, I think it is terribly important that whatever mistakes may be made, however frivolous and wrong Government policies may be, so long as there is freedom of discussion, so long as views can be expressed which are in complete defiance of the views of the Government, there is hope for the country, because it is only through exchange of ideas, clash of ideas, that the truth can be arrived at. This was said by a great revolutionary, Paine, many many years ago, when he said:

“When opinions are free, either in matters of government or religion, truth will finally prevail.”

There are exceptions; there are blots on this record. I could have men-

tioned the arrest of three young patriotic youngmen in Delhi. I could have mentioned the long detention of George Fernandes, which has come to an end, I am glad to say. I could refer to the arrest of Mr. Maurya only the other day. But these, taken in perspective, are small blots. By and large, I would say that the Rules under the Emergency have been fairly and reasonably implemented.

It is precisely because I am proud of this record that I object to this Act, because this is one of the things about which we in India cannot be proud.

Let us consider the origins of this Act. Those origins were on Saturday, 25th February, 1950. I remember the scene in this House, Sardar Vallabhbhai Patel, that great Deputy Prime Minister, whose absence all of us miss so much today, came and reported on that day that if this Bill was not passed by the same evening, 350 of the most dangerous communist detenus would be released by the Calcutta High Court on Monday morning. In a way, it was an outrageous demand to make of the House. But he gave a reason and that reason was that there was a clear and present danger to the security of the country. It was this that persuaded the House and many of us to vote for that measure.

I was then a back bench Congress Member and I voiced my concern and disquiet. I called the Bill a “hasty improvisation” which should be replaced at the earliest possible moment by “a more principled, well-conceived and well thought out measure, which does not shirk the issue, which goes to the root of the mischief and which frankly takes its stand for the defence of democracy against totalitarian aggression from within or without”.

Sardar Patel's reply was apologetic. He said he had passed two sleepless nights. He said in reply to my

criticism—I am quoting him from the record—

“As has been pointed out by my friend, Shri Masani, the Bill has been brought in to meet an emergency. It requires to be closely examined whether a better substitute of a more or less permanent nature based on scientific principles can be brought in or not.”

That pledge was given. We have been waiting for ten years for that promise to be carried out. Unfortunately, it has not been done, and this is becoming a permanent blot on our statute-book.

What was the reason for the Bill? The Deputy Prime Minister and the Home Minister at that time did not hesitate to single out the Communist Party of India for engaging in a deliberate policy of fomenting violence and agitation. He said there was a biggest threat facing the existence of the free Indian State. He referred to a study entitled *Communist Violence in India* which the Government of India had prepared on the activities of the Communist Party.

Sir, as we have just learnt from the Home Minister, the Bill is not being used for the purpose for which it was originally introduced. It is being used to deal with patriotic Indians who have nothing to do with the Communist Party. Let me mention a few of the names of those who have been detained under this Act, distinguished citizens of our country—Dr. Shyama Prasad Mookerjee, Master Tara Singh, Sheikh Mohammad Abdulla, Shri Nath Pai, Shri Trivedi, my neighbour who is not here at the moment, and Dr. Ram Manohar Lohia. So, from one specific purpose for which this Bill was introduced we have gone on to arresting normal patriotic Indians under this measure, and the result is that the individual liberties of every Indian now are endangered by this measure.

Shri Bade (Khargone): Was not Sheikh Abdulla arrested?

Shri M. R. Masani: According to the All-India Civil Liberties Council's statement submitted to the United Nations Committee on Arbitrary Arrest, Detention and Exile, which is published in the Indian Civil Liberties Bulletin of August 1957, it is stated....

Shri Bade: Sir, may I point out....

Shri M. R. Masani: No, I do not yield.... (*Interruptions*).

Shri Bade: The name of Sheikh Abdulla has been mentioned.

Shri M. R. Masani: No, I am not yielding.

Mr. Deputy-Speaker: Order, order.

Shri Bade: Sir, on a point of order.

Shri M. R. Masani: There is no point of order. That statement says:

“India is, we believe, the only democratic country in the world whose fundamental law sanctions detention without trial in time of peace and in a situation which is not in the nature of an emergency.”

Shri Bade: Sir, on a point of order.

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

Shri Bade: The case of Sheikh Abdulla is *sub-judice*. My learned friend is now saying that he was arrested without any rhyme or reason. Whether he was rightly arrested or not will be decided by the court. Therefore, he should not refer to that.

Mr. Deputy-Speaker: He was only referring to preventive detention.

Shri Bade: It cannot be done when the case is *sub-judice*.

Shri M. R. Masani: My hon. friend's objection is completely misconceived. I am very glad that the case is before a Court of Law and I hope jus-

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tice will be done. I am referring to the fact that, for several years on end, Sheikh Abdulla was detained without being put on trial. It is in this context that I would like to repeat the statement of the All-India Civil Liberties Council:

"India is, we believe, the only democratic country in the world whose fundamental law sanctions detention without trial in time of peace and in a situation which is not in the nature of an emergency."

Even the much hated and vilified Rowlatt Act of 1919 made preventive detention contingent upon a declaration of extremity on the part of the Government. Let me read the Act:

"If the Governor-General is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of public safety he may by notification in the Gazette of India, make a declaration to that effect...."

Look at the conditions referred to in that Act, you find a measure of liberalism, as compared to the Preventive Detention Act which we are asked to extend.

As far as I am aware, there is only one country among the non-Communist countries—as far as I know; there may be others—Ghana, which has a similar law. But even under that Act of Ghana, which is a backward African country compared to ours, only reasons of security of the State would justify detention; not a threat to law and order, not *goondaism* or black-marketing; no; only a threat to the security of the State. It cannot be enforced on the ground "merely likely to disturb law and order". Now, even the people in Ghana, even the Mem-

bers of Parliament of Ghana, who have not got our traditions, our education and our administration, even they are not happy of what is happening in their country. Let me read the remarks of three Members of the Ghana Parliament when the Bill was being debated. One M.P. said:

"What will the outside world be thinking? We are trying to prove that the Africans have a light to show to the rest of the world, and if we cannot do that we had better leave."

Another M.P. said:

"There is not a single member of the House who can stand up and say he honestly likes this amendment."

The third M.P. said:

"We have come very close to South Africa."

And no State is more reviled and hated in Ghana than the Republic of South Africa. Therefore, if we make a comparison with a backward African State, even they shine at our expense by having a more modest law.

Consider what happened during the time of war in Britain. Even during the time of war, this was not tolerated. Let me give the example of World War II. The Home Secretary, Mr. Herbert Morrison's decision to release Sir Oswala Mosley, the Fascist leader, who was a supporter of Hitler during the war, a supporter of the enemy, was supported by Mr. Winston Churchill, who is no soft, sloppy sentimentalist. He got up to justify this release during the war in 1944 by saying:

"The power of the Executive to cast a man into prison without formulating any charge known to the law and particularly to deny him judgment by his peers for an indefinite period, is in the highest degree odious and is the founda-

tion of all totalitarian governments, whether Nazi or Communist. It is only when extreme danger to the State can be pleaded that this power may be temporarily assumed by the Executive. And even so, its working must be interpreted with the utmost vigilance by a free Parliament.

That is what Britain did during the war. We are not at war, unfortunately, thanks to the misguided policies of the Prime Minister, but we have an act of Emergency. So, in peace time we are doing what Britain would not condescend to do even during war.

Now, I will be asked by the Minister what I have to say to meet his problem. I would refer him back to the origins of this Bill and the reasons given by his honourable predecessor. This Bill was a Bill meant to meet and combat the subversion and disruption of the Communists. Either it should perform that function or it should not function at all. Let the Act lapse and let the Minister and the Government bring forward concrete proposals, if it so desire, to face or deal with the activities of the Communist Party of India, for which this Bill was originally intended. Now, as a liberal democrat, I believe that such a measure should be restored to, the outlawing of a political party, or banning a political party, only when there is a clear and present danger; not otherwise. The reason for it is this, that while on the one side, the enemies of democracy like the Fascists and the Communists, should not be allowed to destroy democracy by utilising it with their tongues in their cheek, on the other hand, it should not be resorted to in a way which is arbitrary, which will result in the negation of democracy. We have to balance between the security of a free democracy from attacks from Communists and Fascists on the one hand, and on the other we have to see that this does not become a bad habit which can be extended to others. Therefore, I say

that the test must be that of a clear and present danger, as laid down by the Supreme Court of the United States.

Last year, I would say, there was a clear and present danger. Last year, it would have been right and proper to ban the Communist Party of India, and that demand was made by my party, by the Praja Socialist Party and by the Jan Sangh, among others. Unfortunately, this Government, which is so keen to guard the security of the country, did not take that elementary step.

On the contrary, when the hon. Home Minister assumed his present office, a Communist paper of Delhi described him, and hailed his appointment with joy, as that of "the first democratic Home Minister since independence". I wondered then what happened to Sardar Vallabh Bhai Patel, Pandit Govind Ballabh Pant and Shri Lal Bahadur Shastri. Were they undemocratic? Is he the first democratic Home Minister of India? Well, Sir, the Home Minister is wise enough to know the flattery, this left-handed compliment, coming from the quarters it does, and I am sure that he will not fall for this kind of flattery coming from those quarters. So, it is necessary for us to say: let there be a Bill to ban the Communist Party of India if the Government feels that there is clear and present danger. I do not know if there is one today. Last year there was, and the Government would have had the enthusiastic and unanimous support of this country in bringing in such a measure, but they did not do so. Now I do not think that the Communist Party presents any danger at all worth mentioning. Therefore, I would say that we have to judge it from the point of view a direct threat to the Constitution and to democracy from these quarters.

Other States and other democracies have resorted to this principled way for dealing with subversion. West Germany, one of the leading countries of the world, has by article 22 of the

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Constitution laid down. I would like the hon. Minister to study this—

"Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality."

Under this article of the Constitution, a Bill was passed in the German Parliament, by which the Communist Party of Germany was outlawed, and the case went to the Supreme Court. The Communist Party was heard and after hearing the Communist Party, the Supreme Court of West Germany held that the Communist Party was outlawed properly under the Constitution.

Now, Sir, I would refer hon. Members who believe in democratic socialism to a book called *The Politics of Democratic Socialism* by Mr. E.F.M. Durbin. Mr. Durbin was a junior member in the Labour Government. He was a great socialist constitutionalist, and in that book he has a whole chapter in which he argues cogently and lucidly the case why Communist and Fascist parties have no right to exist in a democratic Constitution. They may be tolerated for the time being; they may not be serious enough to be a danger, as in England. But he argues that parties that do not believe in the freedom of Opposition, Parties that abolish and liquidate all Opposition Parties the moment they come to power, parties who do not tolerate a change of Government by the ballot box, parties which establish a permanent dictatorship, as Communist Parties do throughout the world without exception, such parties have no reason to be given any rights under the Constitution. Whether society should use that power or not, as I said earlier, is a matter for the democrats of the country to decide, whether the danger is clear and present

or the danger is such that it can be met by normal democratic processes. That is a principled answer to the problem that the Home Minister has posed. I would like to direct his mind in these constructive and principled channels.

The fact remains that today this Preventive Detention Act suffers from three major defects—three major evils. The first is that it is devious and arbitrary. It is not a straight-forward measure to deal with a straight-forward threat. It endangers the liberty of every decent democratic Indian because a few people have to be dealt with. That is wrong. The Bill should be made to apply to categories of people described properly by their ideas or by their activities. It is devious. Therefore, it can be arbitrarily used.

Secondly, it is a bad precedent. When a man falls ill, he resorts to a drug. Many times, we know, the man does not have the capacity to throw off the drug and the drug becomes a habit-forming tranquilliser or sedative. They become habit-forming. Ultimately, the man becomes so paralysed in his will that he feels he cannot go on without the drug. Now, this Preventive Detention Act has become a habit-forming drug to our present Government. I am sure they do not need it. I am sure they can maintain India on an even keel without this wretched Act. But they become like a man on crutches who does not dare to stand on his own legs at his command. So, like a cripple, they hobble along on this arbitrary measure contrary to the spirit of the law. This is the second reason why I oppose this Bill and my Party opposes this Bill.

Thirdly, this unfortunate measure prevents democrats from working together on an issue like this and it drives them, as it does today, into the opposite camps. I am sure the Home Minister will not deny the fact that the Praja Socialist Party or my Party or the Jan Sangh are as democratic in their processes and menta-

lity as his own Party and yet we find ourselves today, unfortunately, on opposite sides. It also gives an opportunity to those who do not believe in freedom to masquerade as enemies of this Act and to criticise it with impunity. This is the contribution that this Act has made to confusing the minds of the people and to confusing the debate. It could have been a straight debate between democrats on one side and the believers in totalitarianism, like the Communist Party the other.

Shri Vasudevan Nair (Ambalapuzha): Are you supporting it?

Shri M. R. Masani: I am opposing the Bill and I want it to be replaced by a straight-forward ban on the Communist Party if the Government of India thinks that the danger is clear and present.

To conclude, I would quote the words of a great democrat and a great liberal, Benjamin Franklin. He said in another context but the words are as true today as in his time:

"They that give up essential liberty to obtain temporary safety deserve neither liberty nor safety".

Shri Karuthiruman (Gobichettipalayam): Mr. Deputy-Speaker, Sir, this Bill is for an extension of the Preventive Detention Act. One thing that the hon. Members on the Opposition side have said is, why only for the sake of a few people should this Act be extended? That is very important and a vital thing. Even a cupfull of milk will be spoiled by a mere drop of a lime. Only the so-called few people, the undesirable elements, the anti-national and anti-Indian elements, are going to spoil the entire country and the entire people. Only just for its prevention, it is necessary that this Act should be extended. Of course, they say that it is not anywhere, in a democratic set up of any country. But they should find out in some form or other that in any democratic country and even in a dictatorship there is a detention Act for the sake of maintenance of peace of that country.

As far as this Act is concerned, the action taken under this Act is so little and even it has been submitted by our hon. Minister that only a few people have been affected by that. But we should see whether the fundamental rights have been affected or not. There is no question of fundamental rights being taken away. Suppose one has got so many children in a family and one child misbehaves or is mischievous. It is the duty of the parent to see that he is given proper treatment and his character and conduct is set in a god way. So also even in a big country like ours, we should see that these undesirable elements should be checked at a proper and appropriate time. There is an ordinary proverb that prevention is better than cure. There is no use simply allowing everything going on in its own way and taking to severe steps afterwards. We should see that prevention should take place. The prevention is better than a cure itself.

As far as our country is concerned, since 1947, after the refugee problem and after the so-called underground activities of the Communists in Telengana and all those things, the Preventive Detention Act was necessary. Even in this Emergency period, it is so essential and we should see that every anti-social element is dealt with. Even here, there are two lobbies in the Communist Party, one supporting the Chinese action and another supporting the Russian communism. This is even in the Communist Party itself. They have taken action against one of their leaders that he should not take part in a line of action. He has been censured by the Party itself. When that is the case and in a multi-lingual country there are not only one or two parties but there are hundreds and hundreds of parties based on communalism, based on religion, based on so many things in the name of labour movements....

Shri U. M. Trivedi (Mandsour): The vote is also canvassed on the basis of religion, on the basis of caste and all that.

Shri Karuthiruman: I think the hon. Member comes out of the communal sect. That is why he sees in the mirror his own face (*Interruption*).

Shri U. M. Trivedi: The whole difficulty is that you are the only person who has kept the communalism alive in India. This is my allegation against Congress. But for Congress communalism would have died a long time ago in this country. (*Interruption*).

Shri Karuthiruman: The hon. Member opposite feels that his Party has the background of all those things—the Jan Sangh—and that is the most communal Party and it is all the more necessary that this Preventive Detention Act should be extended. It is not only the question of extension. It should be the permanent feature. There should be no question of coming again and again for the extension of the Act. It is for the security of the nation, it is for the integrity of the nation, it is for the maintenance of the independence of our nation, that this Act is necessary. It is not taking a dictatorial attitude. Let them face the General Elections and say it is because of this Act that they have been affected. They can face the General Elections and get a majority and do whatever they like. Even according to our constitution, it is necessary that there is safeguard for our social activities of our country. So far as this Act is concerned, it expires on 31st December this year, and Government have sought for an extension of this Act through this Bill. If all the people of our country, irrespective of their political or communal bias etc. realise their responsibilities, and if they feel that they have a nationality in themselves and they feel they have the nation's interest at heart, then there will be no necessity for the exercise of the powers under the Preventive Detention Act quite often. But the difficulty is that we need national character, and nobody realises that our nation should be defended. Even at the time of the

emergency, when the Defence of India Act was passed here, hon. Members had opposed it. As the hon. Home Minister has already stressed it, the Preventive Detention Act is a milder thing compared to that, and during the emergency also, this Act is necessary, and we should see that it is properly worked. If there is anything wrong, hon. Members can come to Parliament and point out that the Act has been misused, and the causes were such and such.

In conclusion, I would just cite one thing from the *Ramayana*. My hon. friend who belongs to the Jan Sangh has said that only we are responsible for the situation. I would like to tell him that it is we who are responsible for the guardianship of our democratic socialism. We have proved that and we are going to prove that. We find in the great epic *Ramayana* that Shri Rama wanted a passage to Lanka in order to win over the demons. The term 'demon' may now mean anti-social elements and anti-national elements. Shri Rama wanted a passage to Lanka, but Varuna never yielded to that. But when Rama became so powerful and he became so furious and he was about to shoot his arrow, Varuna came and surrendered to Rama. So also, this Preventive Detention Act is like Shri Rama's arrow which will punish only the sinners, and the good people will not be punished. This Preventive Detention Act is like Shri Rama's arrow which will punish only the sinners and the undoers of peace and the anti-social and anti-national and communal elements. If a person is afraid of that, it means that he is an anti-social and anti-national element. So, why should good people and innocent people, who have got the nation's interest at heart be afraid of that? The people who will be afraid of it are only those people who are doing something wrong and something under-ground and something that is not in the national interest; it is because of the sins that they have committed that they are afraid. According to the Government

and according to the hon. Minister, this Act will be applied only on the sinners and not on the good people. So, I would submit that not only do I welcome this extension of the Act, but I would suggest that there should be a permanent Act like this on the statute-book for the successful establishment of democratic socialism in our country.

Shri K. C. Sharma (Sardhana): There is no doubt that law is a departure from what is called the normal measure to ensure law and order in society. The four basic factors that govern the essentials of law had been defined two thousand years before, when the Greek founded their great republics on the secular law, and those basic factors were justice, order, reason and humanity. I base my argument on the constituent of reason and humanity.

Here is a situation in our country where there are large armies standing on the other side of the Himalayas, ready to pounce upon the Indian soil at any moment they like, and down below the Himalayas, there are 450 millions of people, by tradition peaceful, by political independence only 15 years old, and by resources one of the poorest countries in the world. As I said the other day, the greatest injury to human soul and human character is malnutrition, and further, ignorance. In India, the people get only about 2080 calories of food per head, which is not enough for doing any hard work. Educationally also, we are a backward country. So, situated as we are, we are in great difficulty.

Now, I shall put to you this case. Everybody is entitled to walk on the road as he likes. Suppose there are school children who are walking on the road, and a man who has drunk heavily runs amuck, is not a passer-by entitled to catch hold of him and tell him 'Please get away, the children are walking here'? This is a

case in point. There is nothing absolute in the world. There is no final truth. As one philosopher has said, no man goes to the same river twice. That is to say, as soon as the second moment comes, the water has passed on already and the river has changed, and the man himself has also changed. So, there is no such thing as absolute rationale of law. In the 20th century, jurisprudence has become dynamic. A dynamic law means a law framed and enacted and executed for the welfare and good to the people. There is no such thing as abstract absolute principle of law. As I said, two thousand years, before, even the Romans, when they laid down the foundations of the secular law, had four principles, and two of them were reason and humanity. Humanity means the good of the people. The constituent of reason means that within a certain limitation man should work and he should not run amuck. Man is conditioned, only beast is free.

Putting this condition here, when we are facing difficulties, it is obvious that difficult days call for special remedies. So, there is nothing in the Preventive Detention Act which is fundamentally wrong and which would warrant its characterisation, as the hon. lady Member had done, as a lawless law. When the Rowlett Act was there, there was a difference, because there was no will of the people behind it. We were not a people then who had any freedom to think; we had no freedom to think and no freedom to act. Now, my hon. friend has the freedom to say that this law is bad. And when she says that this law is bad, it does not mean that because we have a majority here, therefore, her voice carries no weight. That is an impossibility. Have we reduced ourselves to the position of a tyrant? By having a majority of four hundred or so in the House, we have not turned ourselves into a Timur. We respond to the feelings expressed here, as much as any citizen would

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respond to the feelings of another brother-citizen. But the point is that when we are facing a situation where war is on or where the tension of war is on, special laws have to be enacted. To give an example, ordinary detention is like this that it is equal to the capacity of a man to walk nine miles; a man works so much ordinarily that he can walk nine miles. But when war is on or when the tension of war is on, he works so hard that he walks even 45 miles. Preventive detention is just like that. An ordinary communist is a dangerous animal as a simple citizen, but . . .

Shri Sham Lal Saraf (Jammu and Kashmir): Dangerous man, not animal.

Shri K. C. Sharma: Man is an animal when he is devoid of rationalism.

Shri Hari Vishnu Kamath: Man is the highest animal.

Shri K. C. Sharma: A communist becomes five times more dangerous when the tension of war is there, because the tension then is five times more than what it is in normal times, and a communist who commits an act at that time commits an act which will injure the public good five times more than it would otherwise do.

I would further like to point out to my hon. friends that even under the normal law there are preventive provisions. For instance, in the Criminal Procedure Code, there is section 107 providing for demanding security for keeping peace, section 108 relating to security for good behaviour when a man is disseminating something which is dangerous for the peace and order of society, and section 110 to deal with a man, who, if let at liberty, would become dangerous to the peace of society. The object of all these sections in the Criminal Procedure Code is prevention and not punishment of offence. These sections are intended to deal with persons who cannot

readily be brought under the ordinary law, and who, for special reasons, cannot be convicted under the Penal Code in respect of the offences committed by them. This is the principle of the preventive sections in the Criminal Procedure Code. Under the Criminal Procedure Code, that is, under the normal law, only if some unsocial elements behave in that way, preventive action is to be taken against them. But when the tension of war is there, the capacity of the man also increases five times; because the tension is five times more, the capacity of the man goes up from a 9-mile walk to 45-mile walk. So this preventive section of the Criminal Procedure Code, simple law as it was, has also to be turned into a more rigid law.

Shri Sarjoo Pandey (Rasra): Why not keep the whole nation in jail?

Shri K. C. Sharma: That cannot be because a nation means always a free nation. You do not understand what 'nation' means.

So there is nothing wrong in the law in principle, nor is it wrong in practice taking into consideration the situation as it exists in India. Even in England, Oswald Mosley was taken into custody under the corresponding Act. No freedom or democracy can give absolute freedom to the citizen without any condition, because nothing in human life is absolute. If you have got liberty, you have a corresponding liability, that is obedience to law. No country, no law can give absolute freedom to the citizen unless he is pledged to the obedience of law. Obedience to law is necessary. Therefore, a citizen must have respect for the legal authority. Authority has to be respected because it is authority with the will of the people.

As a lawyer and as a citizen, in normal peacetime I do not like that such an Act should be on the statute-book. But situated as we are, with conditions prevailing as they are, with

the difficulties India is passing through, this law is not only necessary but is a welcome piece of legislation. The Government would be failing in its duty if it does not have such a law on the statute book at such a time.

As to the criticism that without this, Government can maintain peace and order and can steer clear of difficulties, I beg to submit again that I have very great respect for my leader and my friends on the Treasury Benches. But it cannot be ignored that we are politically only 15 years old. In the realm of democratic government, we are mere children. Children have strict rules of guidance for their conduct. As we grow, more liberty will be got, better norms will be established and lesser restrictions will be there on our conduct. But at this time, this restriction is necessary. This law is not bad in principle; it would not be bad even in practical application.

Even in Rome, citing Broom's *Legal Maxims* where on the first page is written, *Calus populi suprema est lex*—regard for the public welfare is the highest law. In time of war, what is public welfare. That no obstruction is caused to governmental activity. War is an abnormal thing. Modern war is not a war fought by authority only or by the military only; it is a war to be fought by every citizen of the country with every resource at his command. In war operations, certain difficulties are bound to arise. You have to have less sugar, less cloth, less even of food. The other day I was reading about General Rommel. When English prisoners were brought to a German camp, Rommel was eating only half a piece of bread. The English Colonel said 'I cannot live on this little food'. Rommel replied: 'My whole army lives on this ration. We cannot help it. But I do not want to have my way so far as you are concerned because you people can afford. If your people in England can send you the food, I will allow you to take your full ration.' He allowed the

English soldiers to get their food from England, but he had no food whatsoever to give. A great general Rommel putting up a hard fight with insufficient food was a miracle.

श्री रामसेवक यादव : वहां भेदभाव नहीं रहा होगा ।

Shri K. C. Sharma: You do not understand what भेदभाव means. You are only two days old.

Shri Ram Sewak Yadav: There you are right.

Shri K. C. Sharma: As I said, there is nothing wrong at this time in putting this law on the statute book. We should welcome it. We should behave in such a way that the country grows so powerful that the shame of defeat is washed off.

Shri A. S. Alva (Mangalore): I also welcome this Bill. The Communist and Swatantra leaders opposed the Bill on different grounds. Their main argument is that there should be freedom, and a person's freedom should not be curtailed except when there is sufficient evidence for the court to pronounce him guilty. But as the previous speaker mentioned, there are provisions in the Cr. P. C. itself where some kind of action is taken against persons who are likely to contravene the law. That is, preventive measures are taken. That will extend only to taking some sureties and setting the man at liberty. But in certain circumstances, when there is really a grave danger to the State and when even law and order are threatened to be broken in a large measure, those safe-guards will not be of any avail.

Now, let us see the provisions of the Preventive Detention Act which empowers the State Government and the Central Government to detain a person. They are detailed in section 3(1) and read as follows:

"The Central Government or the State Government may—

(a) if satisfied with respect to any person that with a view to preventing

[Shri A. S. Alva]

him from acting in any manner prejudicial to—

- (i) the defence of India, the relations of India with foreign powers, or the security of India, or
- (ii) the security of the State or the maintenance of public order, or
- (iii) the maintenance of supplies and services essential to the community, or”—

The following will apply only to foreigners—

“(b) if satisfied with respect to any person who is a foreigner within the meaning of the Foreigners Act, 1946, that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.”

My submission is whether my friends opposite seriously mean to say that persons who are doing these things detailed in section 3(1)(a), sub-clauses (i) to (iii), should be left at large, whether those people who are acting in a manner prejudicial to the defence of India and the security of the State or the maintenance of public order or to the maintenance of supplies and services essential to the community, should be left at large? I do not think they are seriously saying that these persons should not be taken into custody or that they should not be prevented from committing the threatened acts. As a matter of fact, the Home Minister was pleased to say that it certainly will not apply to peaceful processions or to legitimate ways of expressing grievances or any of these things so long as it does not

contravene any of the things mentioned in those three sub-clauses. At the time that this Act was passed there was really some trouble from the Communist Party, and they were also behaving in a dangerous manner so as to subvert public order. That was why this Act was introduced for the first time.

Now the conditions are changing. A lot of anti-social elements are thrown out and they are trying to undermine not only the Government but also public order and are trying to see that democracy does not work properly. It is for this very reason that the Home Minister now seeks to extend this Act for another period of three years.

Let us see the safeguards that are provided in the Act itself and let us see whether there is any arbitrariness or whether the Government can act by itself without taking it to any judicial authority. One thing will be clear that in the matter of being prejudicial to the defence of India, this power is to be exercised only by the Central Government or the State Government and they alone can detain a person. In respect of the other two things, some district magistrates or Commissioner of Police and some Collectors in the old Hyderabad State are given powers to detain a person. But what they should do is that within twelve days they must report to the State Government, and unless the State Government agrees, the detention order will be cancelled.

Then, there are a number of further safeguards viz., that after a man is detained, within five days, he must be given the grounds of detention—all the grounds should be mentioned,—unless it be that in some cases in the interests of the security of the State they cannot be given. Within five days that is to be given. And then the detaining authority must give every opportunity to that person to make his representation and within

thirty days it must be referred to the Advisory Board.

The composition of the Advisory Board also will make it clear that it is a body independent of the Government. Of the three persons who constitute the Board, one, namely the Chairman, must be either a High Court judge or a retired High Court judge, and the other two are either judges or who have acted as judges or persons who are competent to be appointed as High Court judges. So that, practically you can take it that it will be like a Bench of a High Court. Such high judicial authorities, persons who know the law, are to constitute the Advisory Board. The Chairman must be either a High Court judge or a retired High Court judge. It is provided that within thirty days the Government must refer the case to them. They have wide powers. As a matter of fact, they can demand better particulars from the detaining authority. They can take representations from the man detained. The Advisory Board can ask him to appear before the Board and make his own statement. All these powers are given. They can examine all those records. Only, lawyers are not allowed to appear before the advisory body. All these precautions are there. The grounds have to be placed before them, and if the Advisory Board comes to the conclusion that there are certain more particulars to be asked for, they can ask the Government and the Government is bound to produce them unless, as I said, there is something which in the interests of the State they need not disclose. Otherwise they are bound to give. Then they can examine the person. He can make his representation.

My submission is whether with all these things it is not possible for the Advisory Board to say, "Well, here is a person who is going to act in a manner prejudicial with respect to one or the other of these three sub-clauses". My submission is that with that safeguard practically there will not be any miscarriage of justice and

it will be a justifiable case where a person will be detained if they also come to that conclusion.

Then there is one more thing. As a matter of fact, within twelve weeks they must also give their verdict. They must say whether the detention may be continued or the man must be let free. And if they say that he should not be detained and there are no grounds to detain him, Government is bound to release him. They have no option. So that, it will be clear that within a period of twelve weeks, if the Advisory Board comes to the conclusion that there is nothing in the conduct of the person which requires some further detention, immediately he is released.

Shri Nambiar: What is the Advisory Board made of? Who are the personnel?

Shri A. S. Alva: It is mentioned in the Act itself. One must be a judge. The Chairman must be a High Court judge or a retired High Court judge, and the other two are either judges, retired judges, or persons eligible to be appointed as judges of a High Court. So that, there cannot be any comment that could be made about the Advisory Board. It is really a judicial body. It does not consist of either a Government Secretary or government servants; they are not there. So, when such is the constitution of the Advisory Board, what more is required? When a person is detained, or if anything adverse is done to a person, he goes to the High Court. This Board has as much status as a High Court, and nobody can question the independent nature of the advisory body.

And then, if the Board pronounces that the man is required to be detained for a further period, even then Government is not bound to detain him. They can say, "Conditions have changed". The utmost they can do is to detain him for one year. So that, when all these precautions are taken, should not democracy also survive?

[Shri A. S. Alva]

Should any set of persons, anti-social elements, be given free play? Because, there is no question of any political party as such. Mr. Masani wanted to say that they could have banned the Communist Party; he did not clearly say it, but he had no objection to say that that party could be banned under it. There is absolutely nothing like that. It is not directed against any party. It may apply to the opposite party or to any Congressman. It does not matter who indulges in these things. And unnecessarily Mr. Masani quoted some persons who have been detained. It is said that some CID gives information. Naturally, somebody must give information. They gather some information; they gather information from so many sources and Government formulates it. As regards the authority also, it is not every magistrate or sub-inspector who orders detention. A District Magistrate is surely a man of some status who knows things. He, the State Government and the Central Government examine the reports and come to a conclusion that the man should be detained. Then all the other things follow.

It may be said that Government is acting capriciously or against one party. It is not so. Shri Masani mentioned a lot about Germany and Japan. But we must also see the condition of the people there. They do not want to subvert, they do not proclaim that their country's credit is low, they do not decry their Government or leaders.

It is in the interest of the entire nation, because democracy is meant not only for the ruling party or one set of people but it is meant for all people. So the Home Minister is justified in saying that we must have this so long as the present conditions prevail.

Sugar is in short supply, as also other things. Things are not moving freely, or people subvert. There are

people who indulge in sabotage. We read of it every day in the papers, and most of it turns out to be true. Especially when the danger of the threat from China is not yet over, can we say that these are normal times?

The Home Minister said he was not very happy to move this Bill. Nobody would like to detain a person even for a day. Within 24 hours a man must be produced before the nearest Magistrate. That is the normal law. But for protecting democracy it is necessary to take some preventive action.

The objections from the other side say that it effects political parties, or Government wants to make capital out of it, and they quote one or two instances, but that will not be of any avail. I submit that it is correct that the Home Minister has come in time to save democracy and the country. It is absolutely necessary that this Act must be extended for another three years.

Shri U. M. Trivedi: This is the third time that I have risen to speak on this Act. I know that the voice coming from the opposition is merely a cry in the wilderness.

Shri P. R. Patel (Patan): No, no. We respect your views.

Shri U. M. Trivedi: I shall be very happy if that is so. Now this law is criticised by even learned pandits in law like Shri Sharma. It has been said that this a lawless law, and it only indicates that after you make up your mind you do not allow anything to enter it and your conclusion is that of a made up mind.

Why do we call it a lawless law? In article 22 we have laid down certain principles of natural justice, namely that the man taken into custody should not be denied the right to consult or be defended by a legal

practitioner of his choice, but this right is denied to a detenu. That is why we say it is a lawless law.

Secondly every one who is detained shall be produced before the nearest Magistrate within 24 hours, and this is also denied.

Shri Hari Vishnu Kamath: On a point of order. I am sure you will agree that when Shri Trivedi speaking there should be quorum in the House.

Shri C. K. Bhattacharyya (Rai-ganj): I believe there is quorum. I do not know if Shri Kamath is so quick in counting.

Mr. Deputy-Speaker: The bell is being rung . . . Now there is quorum.

Shri U. M. Trivedi: So far as logic is concerned, there is everything to call this a lawless law. This Act was passed in February 1950. Since then it has been extended five times and this is the sixth time. What were the conditions in existence when this law was made? In 1950, 10,962 persons were detained. If we do not take into consideration the goondas who are always arrested in West Bengal—it could have been done under the Gunda Act if necessary—the total number of people under detention comes to 16 at the end of 1963. Is this law to be put on the statute-book and the time of this House wasted for two days and a huge expenditure incurred for the sake of detaining 16 persons? These 16 persons are not detained all over India but only in two States which get unnecessarily frightened, Maharashtra and Gujarat. I therefore, say this law is not at all necessary, particularly when Government has got the Defence of India Rules. Why this double process of law?

My hon. friend who appears to be a lawyer wanted to show that advi-

sory boards exist with High Court Judges who go into the Reports against detenus, come to a conclusion and then ask Government to take steps. In statement No. IX we find that in West Bengal 102 detenus were assisted by lawyers or friends in drafting their representations, and 183 detenus appeared before the Advisory Board but in not a single case was further information called for by the Advisory Board, even though false and baseless allegations are always made, nor was the man examined on oath. What use is such an advisory board for the detenus. It is not at all useful. The records are there and the District Magistrate, Police Officers, Commissioners etc. attend and supplement whatever information they have got, not the truthful information. I know it definitely that in the case of many detenus in whose case I appeared, and in my own case, the information furnished by the police to the District Magistrate who passes the order was false and false to the knowledge of the officers who furnished it. In one case, Lajpat Rai was arrested and information was given that he was collecting arms. But he was delivering a lecture at a particular place in Punjab—in Batala—about 900 miles away from Ahmedabad. When that man was actually in Ahmedabad on that day, the orders for arrest were given. The second case was that of Dr. Mahajan, a man from Gurdaspur, a relative of the Chief Justice, Mr. Mehr Chand Mahajan, who was taking his meal with the hon. Chief Justice, Mr. Mehr Chand Mahajan, at Rouse Avenue on a particular day, at a particular hour. At that particular house, he was alleged to have been collecting pistols for shooting Government officers and the Congressmen. Such a false allegation was made and the man was put behind the bars. I do not want to repeat all these things. I have collected such instances, and I may publish a booklet. There are 53 such petitions, and in all these cases, false and baseless allegations were made, and on the basis of these allegations, the people have been put

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behind bars. Whether the man belongs to the communist party or to the Hindu Maha Sabha or to my party or to the socialist party is not my concern. So far as the operation of this Act is concerned, I hate it from the bottom of my heart.

I was very much surprised when Shri Nambiar in the last session moved a motion that the Preventive Detention Act should not be used against communists. I would have been one with him if he had said that it should not be used against anybody. This is a lawless law. There is no doubt about it in my mind.

It is unfortunate that when this law is discussed there are some ignoramuses in the Congress party who just give out the show. Very recently one gentleman said that this is necessary to put every Jan Sangh man behind the bars. The cat is out of the bag. We have got a saying in Gujarati:

घर मां बोले डोकरा

बाहर मां बोले छोकरा

That is, the elders of the Congress party must have talked inside the party and that is what the children have started talking about here. That gives out the show. There is something behind the back of this Bill, to run down some particular party for this particular purpose. I am not going to reply to the question that has been raised by the hon. Member, but I am firmly of the opinion that if there is any party in existence in our country, it is the Congress party which has created this communalism, which nurses communalism and which lives on communalism and which has up-to-date carrying on with communalism.

As a lawyer, I honestly feel that if a man commits an offence we have got the huge Indian Penal Code. Apart from the preventive sections to which my hon. friend Shri D. C. Sharma referred, there is section 120, and it goes right up to section 140.

So, 20 sections are there in the Indian Penal Code under which you can rope in anybody you like. Why not anyone who has got extra-territorial affinity be tried and prosecuted under any of these sections? I cannot see any reason. Why do you put him under the Preventive Detention Act and give him an opportunity to carry on propaganda against us? Because the information that is given to us is not worth the paper on which it is written, and that is why I should say that we are unnecessarily taking advantage of the provisions of the sections under the Preventive Detention Act to put behind bars mostly people who are not correctly charged with the offences that are being brought against him. Goondas escape; action is not taken. Corrupt officers escape; actions are not taken. Big guns of the corrupt people escape, but nothing is done against them. The Preventive Detention Act is not used against them, but it is used against those who are the smaller fry and who have no say in the matter of administration of this country.

The question was raised by Shri Masani about Sheikh Abdulla. I am not going to refer to it because it is a matter which is *sub judice*. It was a fit case; a man being arrested and prosecuted for high treason, but action was not taken, and he was sheltered behind the Preventive Detention Act. That also is a sort of misuse on the part of the Government to have resorted to the Preventive Detention Act.

I would ask, would it not be possible for this Government, at this juncture, when the preventive measures have been embodied in the Defence of India Rules and are available to them, to allow at least this law to die a natural death? Because in the operation the difficulties are not felt by the Members of the Lok Sabha and perhaps the Ministers do not care to look into it.

I had a case very recently where an order was sent out, signed by some-

body who never described himself who he was, and then the man was detained and put behind the bars. The whole point was questioned before the high court, and the high court wanted to get out of it by saying that "this is Government paper and so the order must be a Government order." A wonderful explanation was given. Because it is written "Secretary", he must be a Secretary to the Government! Therefore, the order was considered to be valid, and the man had no money to approach the appellate court and so he had to remain behind the bars. It took the good offices of some Home Minister to get that man out after six months. This is what is happening in our country. Therefore, I should say whatever safeguards you are talking of, these safeguards are not of any value and of no use whatsoever to the persons who are being detained. The machinery is not functioning. We have from the very beginning said that the process of law shall not apply. Dr. Ambedkar in his wisdom said that those who are fond of the due process of law will get something out of this. What is due process of law? He wanted that process. The process is, the man who is put behind the bars must be informed of the grounds and within 30 days it should be confirmed. What is the procedure here? Today, when the man is being detained, what benefit does he derive? As I had said, he derives absolutely no benefit. He is kept in a solitary cell.

I shall give an instance. For three months and odd, one Mr. Nank Ram Salig Ram Sawhney of Ajmer was kept in solitary confinement or imprisonment simply because he was a detenu and could not be kept like anybody else. If such solitary imprisonment can be imposed upon anybody this is not detention but it is killing the man and making mad.

Shri Bade: It is persecution.

Shri U. M. Trivedi: Take next another aspect of the problem. The grounds are generally given by the District Magistrate. What is the District Magistrate? Does the go about

himself? Who gives him this information? The Sub Inspector of Police. Who gives the information to the Sub Inspector of Police? The ordinary Head Constable. One man had the misfortune of criticising a District Magistrate for a certain action. The District Magistrate felt he could not put him into trouble, on account of the ordinary law. Everytime the man was charged, it was challenged in the high court and the high court always decided in favour of that gentleman. Then ultimately came this Preventive Detention Act, with powers of detention. Then false reports were made out against him that at a particular hour on a particular day at a particular place he delivered such and such lecture, and therefore he was a very dangerous man and that he must be put behind the bars. Only the police prepared the papers, and the District Magistrate swore the affidavit: "I say this to be true on information received by the district police." The officer escapes. We still take no action against the *mala fide* action that was done. But everyone in that particular city knew it. If the hon. Minister wants the name, I shall say it. I say it was in Ajmer, where the man was put behind the bars, because there was trouble with the District Magistrate. Everyone knew that the District Magistrate and the Superintendent of Police were annoyed with that man. Why was the Superintendent of Police annoyed with him? Why was the Deputy IGP annoyed with him? Because the lawyer was able to catch hold of a book where the accounts were maintained showing how bribes and extortion money were gathered, and how they were collected and how this money was disbursed to the various officers concerned, and because this book was caught by him, because it was in his preserve, and because he helped the policeman who was able to bring the book to his knowledge, the police were very much annoyed with him. And what happened to the poor man was his whole practice was ruined. He was put behind the bars under the Preventive Detention Act

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for six months. This is the type of case and this is how this Preventive Detention Act is being worked. Therefore, do not look at the law. Look at the spirit behind it. The spirit behind it is, as has been given by Mr. Karuthiruman, that they want to put down the opposition parties. If that is the object, I would say Heaven help us; God alone help us. We know that we are up against a mighty force; we want honestly to fight. But we have got our own convictions; they might have their own convictions. But there is no reason whatsoever that the Preventive Detention Act must be utilised for this purpose.

In 1950, in a very touching speech, Sardar Patel said, "I will not need it after one year." Perhaps he was justified; in those days, he wanted to arrest 10562 persons. But today when the number has come down to 50 and 60, why do you want this law? To remain on the statute-book? It is a black law. If the Rowlatt Act can be criticised—for the sake of the Rowlatt Act, we had to suffer tremendous agonies—I do not see why this law should remain on the statute-book.

15 hrs.

Shri Bade: This is *kala kanoon*.

Shri U. M. Trivedi: This is worse than *kala kanoon* because we are consciously trying to make out and justify the actions taken by the executive against ordinary citizens. You may have made a law and certain provisions are there. But are those provisions of such nature as to give any protection whatsoever to an innocent man? The protection is merely a mirage; it is no protection.

Very recently a man was arrested in the present Maharashtra State by name Chavan. He was arrested under the orders of our Defence Minister and put behind bars? Why? Because he led the wives of the police constables and head-constables to make a demonstration before the Chief Minister that "we are not getting full salary; we are dying and starving; our children

do not get better education; we do not get good food and we have no rest; please come to our rescue and help us." Because of this, he was put behind bars. This Preventive Detention Act is being used for the purpose of drowning the voice of any man who has got a right to express his wishes and to make his demand before the Government.

The Minister says that protection is being granted by the Advisory Boards. Orders are always passed in English. People who are put behind the bars do not know English and even Hindi or any language. Translations are not furnished and he is asked to make a submission within 5 days. As soon as the five days are over, within 30 days, he must go before the Board. He cannot consult his lawyer; his lawyer cannot be present before the Advisory Board. The chances are the man may be asked to make a representation and that is thrown into the waste paper basket. As I have already said, none of the representations have either resulted in any of the Advisory Boards calling for further information on the points raised.

It is high time that the Government made up its mind. If there is emergency, you have vast powers under the DIR to prevent any man from doing any mischief in any manner. I whole-heartedly support the provisions of the DIR. But I do not support this measure which gives you only power, which, as that gentleman opposite said, is to be used against the Jan Sangh people and against the opposition parties. It is this thing which is pinching us, against which we stand up, one and all. I join with the desire of each one of the opposition parties that this lawless law must go.

Shri P. N. Kayal (Joynagar): Mr. Deputy-Speaker, Sir, I have listened to the hon. Members of the opposition as well as of the treasury benches speaking about this Bill and I feel

that they have virtually supported the utility of this Bill. But their grievance is that sometimes this is not being properly used and at times it is being misused. Otherwise, they support this sort of drastic measure. I have also to disagree with the Home Minister in this that we are having this Preventive Detention Act, but we are using it for a limited purpose. Only 63 or 64 cases are involved every year. But he, of course, does not want to ignore the fact that the circumstances and the situations in the country as it is today do permit such sort of Bill to be brought in. He quite welcomes this Bill in the circumstances as they are today in this country.

For myself, I feel that the first duty of any Government of any country is to govern the country. I have heard many people in the country saying sometimes, "We feel that there is no government in this country". So many times I have heard people saying like that. Why? It is because there are circumstances and situations where Government do not come forward and come to the rescue or help of the people. This is the right measure—the Preventive Detention Act—which is being adopted by the Government to deal with the situation and I hope that the Government will apply it where it suits properly.

Now I will just mention some of the circumstances that are prevailing in this country. First, let me take journalism in this country. The other day in some paper—I do not mention its name—in the front page there was a very devastating and scandalous information about the personal character of a most dignified personality of this country. I know that a large section of the Indian community was shocked to read that news. I know some of the journalists come out fresh from the universities and they feel that they know everything about journalism; so they write all nonsense in some of the papers. I say this with due regard to the journalism.

Then there is this corruption in the administration, particularly. I say

this with due regard to those uncorruptible and most honest officers in our administration. In West Bengal, I know in the Food and Supply Department, in the supply of cement to the consumers, anybody who applies for a permit for getting some quantity of cement, will get the permit immediately if he pays Rs. 2 per bag. It is said that during the British period things were far better. Today some of the corrupt officers are there and are asking for bribes openly and the Government are sitting idle. So, the people are feeling absolutely helpless and they rightly feel that there is no government in this country. So, I would submit that the first duty of the Government is to govern.

An Hon. Member: The Government should administer and not govern.

Shri P. N. Kayal: I know. Then again even *Sadhus* are travelling in train without tickets.

An Hon. Member: The Home Minister is the President of the *Sadhu Samaj*.

Shri P. N. Kayal: I am not referring to all the *sadhus*, only some of them. They are travelling without tickets in train. Students sitting for examination copy from text-books while answering questions and they assault or stab the invigilators who challenge them. Teachers absent themselves from schools and colleges, thereby are ruining the future generation of this country. Then, I know that some of the political leaders, mainly belonging to the opposition but some belonging to others also, are trying to make political capital. They also try to provoke or agitate the workers to go on strike with the result that our production is going down year by year. It is very unfortunate that at a time when the whole economy of this country is straining its nerves to produce more, at a time when we are utilising not only the wealth of this country but even the wealth that we are borrowing from foreign countries to produce more, at a time when we are gearing

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up our means of production and distribution it is very unfortunate that some sections of the political leaders, the so-called political leaders, try to disturb the economic system, the peaceful system of production in this country.

Then we all know that there is large-scale adulteration of not only foodstuffs but even medicine.

An Hon. Member: What about the mind?

Shri P. N. Kayal: It is a very sad thing indeed. Is it not a situation which warrants the application of the Preventive Detention Act? Is it not a proper situation when we should come forward with a summary method of handling the anti-social under the Preventive Detention Act? I am sure the whole House will support the Government if they take the initiative to deal with the corrupt and anti-social elements in this country? The hon. Home Minister was referring to lawlessness, violence, communal tensions and all that. In my opinion, they are flimsy and vague grounds for the application of this Act. There are much more devastating and ruinous grounds which affect the country where this Act should be applied with all firmness. If the normal law fails to carry out the intentions properly, if the law fails to help the people of this country, we are here in Parliament to make laws. If we feel that the ordinary law of the land fails to function, to help the people, to remedy the grievances of the people, we must welcome a drastic measure like this.

Here in this country we are talking of socialism and democracy. We are talking of democratic planning and adult franchise but we must know that this is a very grave and great experiment that we are carrying out, especially when the average adults are literate or not. So, democracy becomes very expensive. We see the papers also writing nonsense these days. Therefore, democracy becomes very expensive in this country. So, I

would request the Home Minister to apply his brain to this Bill or any other Act or measure and apply it in the proper way for proper purposes.

I can give this assurance that the people are behind the Government. You may do whatever you like to eliminate the grievances of the people. You can do whatever you like; they do not care. So, you need not be afraid of anything. I would submit to all in this House that we should all join hands with the Minister and the Government so that we can go ahead for the elimination of poverty and distress, torture and exploitation in this country.

Shri Nath Pal (Rajapur): Is it suggested that by enacting the Preventive Detention Act we can destroy poverty? What is the connection between poverty and the Preventive Detention Act?

Shri P. R. Patel: Mr. Deputy-Speaker, Sir, I rise to support the Bill. In the beginning I may say that I was myself a victim of the Preventive Detention Act. I was detained in 1942, just like most of my friends on this side of the House.

Shri Surendranath Dwivedy: That was under the Defence of India Rules.

Shri P. R. Patel: That is also a similar law. What I am saying is: it is not a pleasure for the Government or for the members on this side of the House to support such a legislation, but the circumstances compel the Government and the Congress Party to support such a Bill. In ordinary times, nobody likes to put any restriction on the liberty of an individual. The framers of our Constitution, who have put in the fundamental rights, have also been wise enough to put a clause that, if necessary, restrictions may be put on the elementary and fundamental rights of the people.

The opposition to this measure was mainly from the Communist Party,

but there is nothing new in what they say. I would like to ask the members of the Communist Party whether there is such a Constitution in any Communist country, whether Russia or China or any other country, which gives or permits individual liberty to the extent to which our Constitution grants. They get their inspiration from Russia or China and criticise our policy from that point of view. When they talk of democracy, it is just like the devil preaching the bible. I cannot just understand it. They must remember that this is the only democratic country where the Communist Party can function, as it is functioning today. Can a democratic party like the Congress Party function in China or Russia as the Communist Party is functioning in India today? They are here to abuse the Government for all their actions. In the Communist Party too, there are two groups—one is pro-Peking and the other is pro-Moscow. I am not able to understand the difference between the two. Both are anti-national, to my mind, because their loyalty is not to the motherland. It has been proved on many an occasion. It is not a new thing. Their loyalty was not with us in our freedom struggle. Whenever any occasion has arisen, their hidden loyalty has always been with a country other than our country. Under the circumstances, if some people of the Communist Party for doing anti-national work are put in detention, why should my friends complain so much about it? I do not understand it. Here also, we know, in the country the Communist Party is playing a very intelligent game. On one side, they would praise our Prime Minister and at the same time in the same breath they would abuse the Government. I have never seen such a Party doing so. But they are doing it very intelligently. They do not want to displease the Prime Minister. At the same time, they try to bring a slur to the Government and their administration. I think, this game is very dangerous to the country and I think the newspapers also

—I would not say Communist papers—having the ideology of the Communist Party do the same thing every day. Whether it is proper to safeguard our democracy and Independence, to have some such extra measure or not, is a matter to be considered. Let us consider the situation in which we are today. On one side, one enemy, that is, China is on our border and the pro-Peking or pro-Moscow, whatever they may say amongst themselves, desire to have communism in the country. If we look to the history of communism, we will find that they have spread communism in other countries not by sending army but by creating enemies of the nation in the country and supporting them. So, China is on our border on one side. Personally, I believe, whatever the Communist Party or any Member of the Communist Party may say, that the Communists of this country are not loyal to our mother-land. But their loyalty is somewhere else.

There is another thing also which we have to consider. On the other side, there is Pakistan and that is also creating trouble on our borders. We know that in our country there are some sympathisers, some traitors, maybe Hindus or Muslims—I do not attach any importance to the religion—there may be traitors amongst the Hindus and the Muslims too and in other communities also. Whenever democracy is in danger, whenever freedom is in danger, if we just restrict the liberty of individuals, why should there be so much uproar? Whether we should restrict the liberty of individuals or allow the danger to our democracy and Independence, is the problem before us. We have to choose either of the two. We cannot allow anybody to put our democracy in danger and to put our freedom in danger.

My friend, the leader of the Jan Singh Party is a good lawyer and he said that there are so many penal laws and so many sections in the penal code and the man may be hauled up

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under any of these sections. Well, he is a lawyer and I also have worked at the bar for several years and that too on the criminal side mostly. Let us consider it. Wherever there has been a communal riot, well the police will arrest those who came out openly because they are a party to the rioting. But they are instruments in the hands of some one or two or three people and those wire-pullers will not come out in the open. If you look to the history of all these communal riots, you will find that there were some wire-pullers who were responsible for these riots and these people were only instruments in their hands. (Interruption). Why should it perturb them so much?

Shrimati Benu Chakravartty: He has forgotten what he spoke last time; he spoke against it.

Shri P. R. Patel: So, unless there is a law like the Preventive Detention Act, how can these wire-pullers be hauled up? There is no evidence absolutely and nobody would come forward to give evidence before the court. In order to stop any danger to the country, such a power is required to be used. It is not a happy thing. But the circumstances compel the Government to use the power. There are some *goondas*. Well, *goondas* are detained under the law. And these *goondas* are so powerful that nobody could dare to give evidence in the open court. I think that will be an experience of Members of the Opposition also. (Interruption) Well, Sir, anywhere such *goondas* are there and if such *goondas* are detained under this law or that power is given to the Government to detain them under this law, why should there be so much fuss about it? So, I submit, under certain circumstances, the Act is to be used for the defence of oppressed and depressed by the *goondas* who could not be challenged in the open court.

Then some of my friends said that this is used only against the Opposit-

ion Members so as to curb the Opposition. Well, my experience is otherwise. My hon. lady friend, the Communist Member, said that a Congress Member was also detained under the law. There is no discrimination whether it is a Congress Member or a non-Congress Member. If something is done which is harmful to the nation and if it comes under this Act, the suitable action is taken. Why then should be such a fuss about it?

I will end my speech with one word more. I was not happy to hear my friend, the Jan Sangh leader. He said that the Defence of India Act is there and you can detain anybody under that law and then why should we have this another law? That means that detention under the Defence of India Act would not be objectionable to him, but if a man is detained under this law, then his objection would be there. I do not understand the principle behind this objection.

In conclusion, I would submit that this is a measure which Government have been obliged to bring, and it is not the pleasure of Government to bring it forward or the pleasure of the Congress Party to support it, but the circumstances are such, and our country is in danger from two enemies, namely China and Pakistan, and this is a measure which can give some relief to us.

15.30 hrs.

[SHRI THIRUMALA RAO in the Chair]

Shri Hari Vishnu Kamath: I rise to oppose the motion for consideration of this unnecessary, undersirable, anti-democratic, fascist and totalitarian communist measure. I am sorry the Home Minister did not answer the question that I had put to him when he concluded his speech. As far as I am aware, India today

is in the unenviable company of Ghana, Indonesia and South Africa, which are not parliamentary democracies of the India pattern; they are at best bogus democracies and at worst veiled, very thinly veiled, dictatorships. I do not know whether the Home Minister would like to be in the company of these three very notorious bogus democracies. I leave it to him to choose. I have pointedly and advisedly referred to the totalitarian communist regimes also, because I would like to advise my communist friends, those on my extreme right here, before they oppose this measure, to forswear their communist creed and then with an honest heart they can oppose this measure here in this House.

Dr. P. S. Deshmukh (Amravati): Not otherwise.

Shri Hari Vishnu Kamath: A well known author, Koestler, in his celebrated book *Darkness at Noon* has given us a very lurid picture of how protective custody, protective arrest and all that used to work and even today works in communist systems.

The Preventive Detention Act stems from or rather derives from that curious freak of the Constitution, namely article 22 which is a blot on the escutcheon of our Republican Constitution, the article which confers on every Indian citizen, man, woman and child the fundamental right of being detained without trial.

There is more than a touch of irony in the fact or in the strange synchronisation of the consideration of this measure in the House with the observance of the Human Rights Week all over the country and all over the world, rather the observance of the Universal Declaration of Human Rights. Very recently, the Chief Justice of India broadcast from the All India Radio network, a very readable, a very instructive and edifying discourse on the rule of law. Even he had to painfully admit that this is a

serious departure from the rule of law which should be the corner-stone of a parliamentary democracy such as we have in India, for which we laboured, and for which Mahatma Gandhi and Netaji Subhas Chandra Bose and hundreds of thousands of people suffered and thousands of martyrs laid down their lives in order to usher this free parliamentary democracy in our country, and for three years, you and I and a few hundreds more in the Constituent Assembly forged this parliamentary democratic constitution for our country. This article is a serious blot on the escutcheon of our democracy.

When Sardar Vallabhbhai Patel, the first Home Minister of India, the first and the greatest so far, introduced this measure in the Provisional Parliament, I and several of my colleagues opposed this measure. And even he who has been very well described as the Iron Man of India, had to plead with the House in a very earnest manner. And what did he say? These are the very words which he uttered on that occasion. The Attorney-General had to be called in to give his valuable opinion on this measure, and Sardar Patel said:

"I assure the House that I have passed two sleepless nights."

I wonder how many sleepless nights my hon. friend the present Home Minister passed before he decided to move for the continuance of this measure.

Shri Nambiar: It must be more than two sleepless nights.

Shri Nath Pai: He never sleeps.

Shri Hari Vishnu Kamath: Sardar Patel said:

"I assure the House that I have passed two sleepless nights when I was asked to take up this measure. When this legislation is brought in, it is done with a heavy heart. It is not one with

[Shri Hari Vishnu Kamath]

a light heart. It is not a pleasant task to bring a Bill of this kind in this House immediately after freedom and the Republican Constitution has been adopted."

Now, we are in the fourteenth year of our Republican Constitution. Today, in an apologetic voice and in a manner that betrays his guilty conscience, the Home Minister has moved for the continuation of this measure. I think that it would have been more honest on the part of Government to come before the House with a Bill to put it permanently on the statute-book and not waste parliamentary time every two or three years, to the extent of ten to fifteen hours every two or three years. If he wants to put it permanently on the statute-book, let him do so with an honest heart and not merely continue this measure from time to time with his tongue in his cheek.

The present Bill or rather the present motion has been accompanied by a very elaborate pamphlet prepared by the Home Ministry giving us statistics of various kinds. It is amazing to see that whereas the provision has been made in the Act for detaining persons who interfere with the maintenance of supplies and articles and services essential to the community, there is not a single case shown in this blue book where a person has been detained in that connection. There have been various reasons listed at various pages of this pamphlet, and we find among the reasons listed espionage, violent activities, anti-Indian propaganda, communal agitation and goondaism. I do not know what exactly goondaism means, because the term "goonda" is not an English word, and there are different anti-goonda Acts in different States . . .

Shri Indrajit Gupta: The hon. Minister referred to the element known as goondaism.

Shri Hari Vishnu Kamath: The other reasons mentioned are communal agitation, exhorting people not to contribute to the National Defence Fund and harbouring of dacoits. These are the various reasons for or the circumstances in which the powers conferred under the Preventive Detention Act have been used by Government. I find that a large number of people have been detained in connection with goondaism. 255 people have been detained in West Bengal for goondaism. I do not know whether there is a bumper crop of goondas in West Bengal. I leave it to my hon. friends from Bengal to dilate upon this point, as to why there are more goondas, according to this statistics, in West Bengal.

Shrimati Renu Chakravartty: Ask the West Bengal Government.

Shri Indrajit Gupta: Ask the Food Minister.

Shri Hari Vishnu Kamath: But there is one very salutary outcome of the Preventive Detention Act, in that in one of the statements that have been made in the blue pamphlet, along with the recognised parties on the Indian political scene—the Hindu Mahasabha, the Bharatiya Jan Sangh, the Communist Party of India, the Workers Party of India—a new party has emerged which has been given official, legal recognition—because it is a government booklet—which has been invested with official status as the Rebel Congressmen's Party. I think they have been rather squeamish about this action. They should have said 'Congressmen'. Why was the word 'Rebel' put in? There is no party as a Rebel Congressmen's Party. You are a Congressman yourself—not when you are sitting in the Chair.

Mr. Chairman: Please leave the Chair out of this.

Shri Hari Vishnu Kamath: I meant no reflection on you. When you come

down below you are a Congressman, not up above.

And what has he been detained for? For nothing less and nothing more than goondaism. If a rebel Congressman can be described as a goonda, I want to ask the Minister whether he really wants to hide the fact that Congressmen also can be goondas, because perhaps there are more goondas than Government would like to confess in the Congress Party also. But anyway it is comforting that Rebel Congressmen all over the country have been recognised as a party.

Shri Nanda: They thought they had the monopoly.

Shri Hari Vishnu Kamath: No, no. You taught other parties to produce goondas.

Mr. Chairman: I think some goondas in the Congress have become ex-Congressmen.

Shri Hari Vishnu Kamath: It is comforting that Rebel Congressmen all over India, in the various States can now pride themselves in the fact that they are a party given pride of place along with other recognised parties of India. I hope that the Rebel Congressmen will act on that basis henceforth.

Shri Surendranath Dwivedy: They can take note of this compliment.

Dr. M. S. Aney (Nagpur): Once they were Congressmen; now they are Rebel Congressmen.

Shri Hari Vishnu Kamath: Here may I ask why persons who have been arrested and detained for espionage have been shown in category (a) (ii)? (a) (ii) is security of the State, maintenance of public order, while (a) (i) is defence of India, security of India and relations with foreign powers. I thought the official mind was working soundly enough, the ministerial mind anyway, and those arrested under 'espionage' should have been shown in category (a) (i). I do not know why
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this offence has been differently categorised, namely, espionage.

As regards 'violent activities', are the police—who, I believe, are distinct from the Sadhu Samaj—not competent enough to investigate the offences connected with violent activities, connected with goondaism? Unless the police are Sadhus, they should be able to trace out goondas and curb goondaism, and also deal with offences under communal agitation and harbouring dacoits. I do not wish to make an invidious statement here, but certainly there were policemen who accompanied Acharya Vinoba Bhave in Madhya Pradesh when he tried to reform the dacoits, effect a change of heart in them. The dacoits were taken from village to village. Some of them were even garlanded, I am told. The police, I am sure, are trained and equipped well enough to trade and bring these offenders to book, these offenders whose offences have been listed as espionage, violent activities, communal agitation and harbouring dacoits.

If they have not been brought to book. I have no hesitation in saying that detention is only a cover for the inefficiency of the police and their investigation efficient machinery. Let them confess straightway that they have no machinery to investigate these offences, that it is not adequate enough or competent enough to investigate these offences and bring the offenders to book. That will be an honest confession on the part of the Minister. But this method of detaining people without trial just because the machinery cannot bring offenders to book is wholly undemocratic, anti-democratic, fascist, totalitarian and communist.

The Minister himself has in his statement of objects and reasons said that it is 'to protect the country against activities intended to subvert the Constitution'. This seems to be slightly different from the categories listed in the statistical handbook.

[Shri Hari Vishnu Kamath]

What is listed in the statement of objects and reasons is, 'to subvert the Constitution and the maintenance of law and order or to interfere with the maintenance of supplies and services essential to the community'. What does experience show? It goes on to say:

"Experience in the working of the Act has shown that this legislation has proved an effective instrument specially in the maintenance of law and order".

But statistics belie this statement. A fairly large number of persons were arrested for reasons not connected with maintenance of law and order. Law and order is a separate category (ii). So the statistician, the hand-book-walla who prepared the hand-book has confused so many categories and has contradicted the observation made in the statement of objects and reasons.

Now, may I ask why it is that this pamphlet is completely silent on a vital issue, namely, of persons arrested and detained in connection with interference with the services and supplies essential to the life of the community? Recently, there was an agitation in Bengal when rice was hoarded. There was profiteering. But nobody was arrested, I believe. Recently, in the south, members of my Party in Madurai were arrested. The Home Minister told us in his speech that he is not opposed to demonstrations and peaceful processions. But members of my Party—about 50 or 60 of them—in Madurai who had planned a peaceful demonstration on the occasion of the Prime Minister's arrival in Madurai, where he went a fortnight ago, just because we are opposed to his China policy, were arrested long before the Prime Minister reached the spot. They were put in detention. Yesterday, a colleague of ours in Parliament, a Member of the Rajya Sabha, Shri Mukut Behari Lal, Chairman of the P.S.P. in U.P.

and 150 members of my Party were arrested on the Ghaziabad-Delhi border. An M.L.C. in Bihar belonging to my Party, and former Chairman of the Bihar P.S.P., Shri Basawan Singh, was arrested the day before yesterday for similar activity. Activity on behalf of the people, as people's representatives, is sought to be curtailed in his emergency. For the emergency, they have got the Defence of India Rules. Now the Minister asks us that this measure also be continued during this emergency.

May I ask why it is that no profiteer, no hoarder, has been proceeded against? I have in my hand documentary proof showing the Minister's, Government's apathy, indifference to proceeding against profiteers. A question was put to the Minister of Industries the other day—last week—as regards citric acid used in industry. He admitted the first part of my question concerning the landed cost, that the landed cost of citric acid in India is Rs. 120 per 50 kg. The second part was whether the current market price is round about Rs. 600 per 50 kg. That is, Rs. 120 per 50 kg. is the landed cost and Rs. 600 per 50 kg. is the market price! What is the answer to the second part? 'Government are not aware'. With such a big machinery at their disposal, they are not aware whether the current market price of citric acid is as high as Rs. 600 per 50 kg.

This has been going on. I make this charge against the Government that such profiteering in citric acid and many other commodities, fish and rice in Bengal, all this has been going on, has gone on and will go on because they have got a brute majority behind them here. This will go on, I am sorry to say, with the connivance and consent of the Government. I have got a postcard here sent by a dealer in citric acid, Shri P. Singaravelu. Perhaps he is a licensee also. In response to an enquiry, he says, 'I thank you for letter.... The selling price of

citric acid is now Rs. 600 per 50 kg.' Let the Minister investigate this matter. I want this party to be booked and put in detention. I want the Government to use its powers not merely against the political parties as they do now, and the new political party, rebel Congressmen, but also against hoarders, profiteers and black-marketeters.

These statistics are interesting. Here is proof, if proof where needed, of Government's inability to bring any offender to book or trial. There are no figures in the statistics of even one detenu prosecuted subsequently. There is a curious column in Statement VIII: number of detenus prosecuted under section 6(1) for non-compliance with detention order. Even there—the detenus have apparently been very well behaved—it is a cipher, not one has been prosecuted. Therefore, I would ask the Minister to tell the House why not a single case like this has been prosecuted. In other countries there are trials for espionage. We do not know why our Government fights shy of bringing spies to book. The other day they would not even mention on which country's behalf Group Capt. Sharma was functioning. Why this strange, sneaking effection for some country? Why not give the name of the country?

Shri U. M. Trivedi: Afraid of displeasing that country.

Shri Hari Vishnu Kamath: I do not know why these things should be hidden from the Parliament of India. This fear will not do them any good, it is an ill wind that blows nobody any good.

The Home Minister did not give us at the initial stage the number of persons that have been proceeded against under the Defence of India rules. If he had given the consolidated figure it would have been better. As it is I wholly endorse Government's action in so far as detention of pro-Peking elements, enemy agents are concerned, and the action has been very well

taken against them on suspicion of being in league with Peking, but the other categories, so far as I can see, cannot be justified under the present circumstances. But for these elements there is the Defence of India Act and Rules.

Before I close, may I say that what is wanted, above all, today in the country—now that the new Home Minister has taken over charge, I would appeal to him with all the earnestness at my command—is a good, clean and efficient administration which will make the people happy and contented, at peace with the Government and with the world at large. We want that peaceful harmonious community. Let them bring that about and not continue these preventive detention measures that are fascist and dictatorial. Even though he is asking for continuing this black, not merely black but pitch black, Act for another three years, I have faith in his good conscience. Though today he has a guilty conscience, I hope it will be set right and that before the next year is out, he will come forward with another Bill to repeal this measure just as I have sought to amend. I hope my amendment to repeal the Act could be accepted by the Minister, and this House will have the satisfaction of having repealed this measure during the emergency because we have conferred far more powers under the Defence of India rules. I hope this will be repealed at an early stage, and the earlier the better for Shri Nanda the new Home Minister.

Shri M. P. Swamy (Tenkasi): I welcome this Bill. It seeks to extend the life of the Act for another three years.

This Act was passed to preserve the integrity, safety and security of India. The Statement of Objects and Reasons attached to the Bill shows that this Act has served a useful purpose. According to the old adage, prevention is better than cure, it is the duty of the Government to prevent crime, and it is the duty of the

[Shri M. P. Swamy]

police to save the people from loss of life and property. Detention is of two types: one is punitive and the other is preventive. In punitive detention Government put the man in jail for having done a wrong or illegal thing. Under preventive detention a person who is designing to do a wrong thing is taken into custody and intercepted before he does that. So Preventive Detention has the advantage of preventive criminal action.

We have got statistics showing how many were arrested, how many were released and how many were let out on parole. It is not as if a detenu is without any remedy. He has certain safeguards. Firstly he gets the grounds supplied to him, which is not the case in the United Kingdom as is clear from the decision in *Liveridge vs. Sir John Anderson*, 1942, Appeal Cases 206. In this case *Liveridge* filed a suit for a declaration that his detention was illegal and he wanted Government to furnish the grounds of detention. The House of Lords held that the Secretary of State could not be compelled to furnish grounds where it involved the security of the nation as *Liveridge* was in hostile association and against the security of the nation. But our detenues are given grounds within five days of detention.

Some Members asked how the Advisory Board is composed. Let him read the Act. The Chairman is a High Court Judge. The detenu has also got the remedy of going to the High Court. The two forums, the High Court and the Advisory Board, are different. Thus, before the grounds are supplied and the Advisory Board gives its opinion, the detenu has the right to move the Court under article 226. If the grounds supplied are insufficient or vague, the High Court orders his release, and it is done in many cases. There also we find that if the Board decides that there is no sufficient cause for the person to be detained as a detenu, the Board's deci-

sion is given effect to by the Government and immediately he is set at liberty.

16 hrs.

Shri Nambiar: What happens to the person who has been so far kept in jail for no reason whatsoever? When the Board says there is no reason, what happens to the person who, for instance, has been in detention for three months or so and thus has already been in jail? What is the remedy for that? (*Interruption*).

Mr. Chairman: Order, order. Let the hon. Member continue.

Shri M. P. Swamy: Now comes the question as to who should decide the requirements of the safety of the nation. The answer is, those who are responsible for the national security. They are the sole judges to decide what security requires, that is, the Government, which has the power.

Some political parties are not wedded to constitutional agitation to remedy the wrong. We have seen in our State how some parties have gone to the extent of saying or showing their grievances against the Government by even burning some of the parts of the Constitution. We attach much sanctity to the Constitution, irrespective of any political affiliation. We attach much respect to the Constitution, and if such parties agitate by burning the Constitution, in such a case, the Government has to take drastic measures against the parties.

Those who are plotting against the safety, security or the defence of the nation are guilty of nothing short of treason. To an infant Republic, self-preservation is vital to its continued existence. For treason, the normal punishment is death, and no Indian who has the interest of his country at heart could possibly demur to the infliction of any punishment or restraint on individual freedom to secure the safety of the nation.

Much was said about the liberty of the person. But there is some qualification also to claim such liberty. For example, if a man walks along a street, unfolding his umbrella carelessly, he has the liberty to hold the umbrella like that so long as it does not hit anybody who passes by. If it hits anybody, any passer-by, the liberty ends. He has to fold his umbrella so as to protect the man from being hit.

We welcome the criticism from the Opposition Members, we welcome healthy and constructive criticism. Only if one instigates the people to rise against the Government and create commotion, the law of preventive detention takes its course. Parties have got the right to propagate their ideas; they have the right to say whatever they can legitimately say, but if they are saying things and preach things which result in imminent danger to the security of India, then comes the Preventive Detention Act. So, under these circumstances, the Home Minister has not brought any new measure, as he himself said in his opening remarks. It is an old one coming up for renewal for another period of three years. Therefore, I whole-heartedly support it, and I hope the House will agree with this measure brought by the Home Minister.

Mr. Chairman: Shri Gauri Shankar Kakkar.

Shri Nambiar: Sir, only the Minister of State in the Ministry of Petroleum and Chemicals is there. No Minister who is concerned with this subject is there. There is nobody to know what we are speaking and how.

Shri Gauri Shankar Kakkar: They are under preventive detention.

Shri Nambiar: There is no quorum.

Mr. Chairman: The bell is being rung.

Shri Nambiar: If the Bill is allowed to lapse like that, it will be better!

Mr. Chairman: Now, there is quorum. I hope the Members who have come inside will co-operate by continuing to sit so that there will be quorum.

Shri Gauri Shankar Kakkar: Mr. Chairman, Sir, it was really an occasion for great pleasure, when our hon. Home Minister with much of over-zealousness and much of over active-ness was trying to make out a case for extending the term of this Preventive Detention Act. As far as I could follow, he was taking shelter under article 22 of the Constitution. The whole argument which was advanced by our hon. Home Minister centred around the four corners of that article. May I ask, is this the only article for which so much of sanctity is being attached, and may I also ask, what about other salient provisions of the Constitution? Are they not also to be observed and given the same sanctity? If I may be permitted, I would also ask, what about the salient provision in regard to free and compulsory primary education, in regard to the raising of backward, the Scheduled Castes and the weaker sections of the community? We have to see that if any sanctity is attached to the Constitution, it should not be only to one word, "detention", under article 22. Our Government especially should be careful to see that the Constitution is a sacred document indeed, and if there is any sanctity, we have to abide by all the provisions of the Constitution and all the salient features of the Constitution.

What is there if one word "detention" is given? That would not make out a case for extending the term of this Act. We have already introduced the Defence of India Act and framed the Defence of India Rules. We have already taken it for granted that we are going through the emergency. Once the provisions of the Defence of India Act and Rules are there, they are a more effective weapon. So, I would ask what is the necessity, in the presence of more effective measures, for this Preventive Detention Act, which is a lesser measure than those enactments which are

[Shri Gauri Shankar Kakkar]

already in forde? There is a definite provision in the Constitution with regard to fundamental rights. The crux of the fundamental rights chapter is that it is expected that the citizen is well-defended if any charge is brought against him. I fail to understand why this Preventive Detention Act, which was actually passed in 1950, is being pursued still.

Regarding the provisions of this Act, section 3, part 3 relates to maintenance of supplies and services essential to the community. There is a basic mistake when we define what are the actual anti-social elements in the country. The actual mistake is caused by the definition of these anti-social elements. Somehow the Home Minister and the ruling party have confined its definition to activities of certain persons actually involved in it. But what about black-marketing, rise in prices and other things, which we are facing and which we are not able to combat? Is there any case under this Act against any black-marketeer? I would welcome the provision provided it specifically mentions that it would relate henceforth only to such persons who are actually responsible for creating these anti-social elements.

As a matter of fact, once we have passed our Constitution and pledged for welfare state with a socialist pattern of economy, how can we tolerate this ever-growing corruption in this country? How can we shut our eyes and not take any effective steps to root it out? I am reminded of one incident of the mediaeval age. A servant against whom there was a corruption report was brought before the King Emperor. The punishment he awarded was that he deputed the servant to the ocean and his only duty was to count the actual waves and keep account of it. Probably he was under the impression that corruption could be rooted out with regard to this employee by this method. But what the corrupt servant did was, he asked every vessel that was coming that side, "Where is the order? You have

to give so much money before you can pass through this way". I find actually that stage has come. There have been various new avenues, with the coming of independence, for ever-growing corruption. What is the actual step taken about it? We thought that with the coming of the China war and the emergency and with the enforcement of the Defence of India Rules and Act, Government would take some steps actually to root out the black-marketeers and profiteers who are actually committing dacoity in broad day light. But we find that Government is actually tolerating them and there is absolutely no step to curb such activities.

As a matter of fact, these are the very causes which are creating this blackmailing in the society and if they are not rooted out, simply if some persons are hauled up under the Preventive Detention Act and detained for a certain period, that would not be any remedy.

My submission is that there is actually no circumstance and reason for giving any extension to this Preventive Detention Act. As a matter of fact, when you are having the emergency and you are still pursuing with the DIR and the Defence of India Act, what is the necessity for this second measure? I am a lawyer practising at the Bar and I fail to understand the logic or argument advanced from that side that within the purview of the present codified law, it is difficult to control the goonda element. May I say that at the district level, the ADM, the DM and the Magistrate First Class, functioning with the IPC and CrPC can take strictest measures against any such anti-social elements. You have to give a fair trial. On the one side we are boasting that we have got the ideal democratic set-up of a welfare State under our Constitution. On the other, is it proper that after so many years of independence, we are still continuing with this *kala kanoon*? There are other countries who also believe in a democratic set-up and as has been pointed out, there

been no such Act there under which citizens are detained without any chance given to them for a fair trial or for being defended according to law. I fail to understand this logic.

We had seen the performance of our Home Minister and we had much expectations from him. We believed that he has had leanings at least towards the socialist pattern of economy and welfare State. We thought there would be a sort of survey about the set-up of these enactments. It would have given us much pleasure if our new Home Minister would have come forward with such an enactment of detention with regard to such persons, who with white clothes and white caps are actually indulging in corruption, profiteering and other anti-social practices.

At this stage, I do not want to point out any particular party, be it the communist or any other party. I would simply point out one thing. There is a very great danger not from those parties who have actually declared their aims and objects, but the greatest danger comes from that party who call themselves democratic and national, but in the grab of that nationalism and democracy, I can assure you there are fellow-travellers who are communal and communist-minded. That is the great danger. As Mr. Kamath pointed out, with the coming of the Kamaraj Plan, we find a new party emerging out and that is a rebel party or you may call it by any name. But I call it a party which is actually coming forth to patronise Kamaraj instead of Ramraj. So, there should be an attempt to root out such elementary and basic things which are responsible for this black-mailing in the society and which are actually responsible for this deterioration in our social outlook, for corruption, black-marketing and other activities.

Lastly, I will submit one thing. There were so many extensions to the Preventive Detention Act, as it was passed in 1950. Even though the cir-

cumstances do not warrant it and there is no justification for it, it has become a habit for the Government to have it extended. Probably, they have a mind to make it perpetual, till eternity, for an indefinite period. That is not doing justice. Really speaking, it is the denial of the elementary and fundamental rights of a citizen living in an independent country, a country which is posing that it has been able to establish an ideal form of democracy. So, it is all the more shameful that such a Government should continue this Preventive Detention Act. The sooner it is scrapped the better it will be for all concerned, and there will be a chance for the Government to say that we believe in democracy, we are actually acting upon it and we are ushering in the socialist society in this country. That can be done only if we do away with this Act; not so long as it is on the statute book.

Shrimati Lakshmikanthamma (Khammam): Mr. Chairman, I support the Preventive Detention Amendment Bill. Even the hon. Members opposite have supported the Bill unknowingly. For example, Shri Masani will have no objection if this Bill is used against the Communists. Similarly, Shrimati Renu Chakravartty has no objection if the black-marketeers and the profiteers are sufficiently punished under this Act. Then, another hon. Member opposite said that this Bill has popular support and it should be used more effectively against anti-social elements because it has the popular consent.

Then, I do not agree with the hon. Member who said that such Bills or Acts do not find a place in countries like USA or UK. I may say for the information of my hon. friend that in the United States, there is an Act known as the International Security Act, 1950, authorising preventive detention under certain circumstances. So, also, in India. It is not something new for us. Such an enactment was there even during the British period. The only difference between

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that and this is, this has the popular consent. The constitution-makers wanted to make freedom as secure as they could in the Constitution. They have given equality of rights to both the sexes and to all the communities. They envisage social, economic and political justice to each and every citizen of this country. But article 22, which has been permanently incorporated in the Constitution envisages the need for preventive detention. If we bring such an enactment before Parliament, which considers and passes it, then we cannot say that Government has brought forth something without the consent of Parliament; it is with the consent of Parliament. The popular consent is also implied.

As has already been stated by the hon. Minister, this Bill is meant to be used against those who are out to disintegrate this country against the anti-social elements, against communal elements, *goondas*, spies and others who endanger the liberty of the vast majority of the people of this country.

Something has been said about the Defence of India Rules. Every Member of the opposition is accusing that the Defence of India Rules are being misused. There was a discussion on this subject some time back on a resolution by Shri A. K. Gopalan when I also participated in the debate. Now I do not want to repeat all that I said on that occasion. But I would like to say that in the name of the Defence of India Rules and the emergency, my friends opposite take advantage of every opportunity to criticise the Government. Of course, they take every opportunity to criticise the Government, the Prime Minister and the Congress Party, taking advantage of the opportunity to speak on the emergency and the Defence of India Rules. Then, some hon. Member asked why we should bring forth an Act for the extension of Preventive Detention when the D.I.R. is there. We must remember that the state of emergency is not permanent and may

be terminated at any time. Hence the need for the extension of this Act.

Shri Namblar: Then we can bring in another legislation. We are not going anywhere? Why are you in a hurry?

Shrimati Lakshmikanthamma: Then, as the hon. Minister and many hon. Members have mentioned, there are many safeguards against such detention. Preventive detention shall not be in force for more than 12 days unless it is approved by the State. Then, within 5 days the grounds of detention must be communicated to the detenus, who shall be afforded an opportunity to make a representation. There are other safeguards also. The detenu can move the High Court or the Supreme Court by a writ of *habeas corpus*.

Further, in a country with a population of 45 crores, which consists of all sorts of people—communal, anti-social and otherwise—only a few hundred have been arrested under this law. So, hon. Members should not have any grievance on the score of large-scale misuse of this enactment and, therefore, they should wholeheartedly support the move of the Government in the interests of the country.

Sir Alden Gladhill, in one of his books entitled *Fundamental Rights in India* says that preventive detention:

“is likely to cause less human misery than might result from likely alternative measures to deal with persons who cannot be successfully prosecuted for their activities, though they are a menace to public security and order.”

It is necessary to restrict the anarchical freedom of some individuals in order to ensure the fulfilment of other forms of freedom to a greater number. The object of preventive detention is to curtail the

freedom of the individual in a case where the imminence of the threat posed by his activities to the security of the State and public order, or to the maintenance of supplies and services essential to the life of the community, necessitates the removal of such a person from the scene of his activities or where the nature and details of his activities are such as cannot be made public.

The arguments in favour of preventive detention are more than those against it. As the Minister has stated, a larger section of the society has to be protected from a small section of mischievous anti-social and undesirable elements. The argument of the hon. Members opposite that because there are only a few instances because only a few hundreds of people have been arrested, so there is no necessity for this enactment is not correct. I may say that even one individual or one bullet can play havoc and cause the worst damage to the world and the country concerned. If such an incident has occurred in the USA, it does not mean any credit to the police administration. It is not up to the mark. At the same time, we should also be alert and should take proper precautions to safeguard our country, our leaders from such risks.

This Bill is also only against those people who create conditions for outbreak of violence. I sincerely believe that it is the duty of the Government to prevent such circumstances, which are provocative, which have the provocative influence of any breakdown of violence, communal or otherwise. Our friend, Mr. Trivedi, was also saying that this Bill was not properly used against Communists and others. We know for certain that in this country certain communal tendencies do prevail. I only appeal to the Home Minister that if we want to safeguard this country from any such influences, the best method is to introduce Indian culture or the proper spirit of religion in the schools. It is said, though religion is misunderstood by several propaga-

tors, that the real meaning of religion is going back to the origin or the supreme spirit from which man is supposed to come and the real spirit of religion will only unify the people, not create differences or disintegration. So, such a sort of influence should be brought into the minds of the people, even from younger days by introducing Indian culture or the religion in the proper spirit of it during the school days. Then, I think, when our people are educated properly and when everyone of them realises the proper spirit of our culture, there will be no need for enacting any such law.

Several Members have mentioned that the necessity, in the beginning, of bringing forth such an Act was because of the conditions prevailing in Telengana. I myself come from Telengana and specially from a district where thousands of murders had been committed by the Communists, *goondas*, in those days. (*Interruption*) I do not say they are *goondas* now, but at that time the behaviour....

Shri Nambiar: She is saying about something which happened several years back and she says, *goondas* . . . (*Interruption*).

Shrimati Lakshmikanthamma: Even now, within six months, two of my Mandal Congress Presidents were murdered brutally. Because it is *sub judice*, I do not want to mention it here. (*Interruption*).

Shri Bhagwat Jha Azad: She says, those Communists who tom-tom themselves to be Communists. They may not be so.

Shrimati Lakshmikanthamma: They were Communists. There should be no mistake about that.

Then, during my tour of those villages, I saw in one of the villages, four widows in one family. One night the Communists raided the house of those people; they were not even rich or aristocratic feudal families. They were ordinary common people. I do

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not know what reason prompted them to kill those people. One night four of them were shot dead and I saw four widows in the same family. In another place, in an interior village, I saw one gentleman whose throat was cut. Taking it for granted that the person had died, they left the village and after some time the person got consciousness and he held his throat with the hand and went on horse-back to a nearby hospital.... (Inter-ruption).

Shri Namblar: They are all cock and bull stories.

Shrimati Lakshmikanthamma: I saw the person myself. Even today he has got that cut. 3,000 innocent persons, women and old persons, were all killed. In my one district, 3,000 persons were killed. (Interruption).

Shri Namblar: Is it believable?

Mr. Chairman: Order, order.

Shrimati Lakshmikanthamma: If you want to verify if these facts are correct, along with my friend in the committee, you can appoint a committee to go into this and submit the report of the atrocities of my friends.

Mr. Chairman: I should like the hon. Member to conclude.

Shri Namblar: Yes; that is the best.

Mr. Chairman: Because her time is up, not for any other reason.

Shrimati Lakshmikanthamma: I also agree that this Act should work more effectively as my friend has already said. He has brought forth certain very interesting things to light about the copying in examinations, about the adulteration of food and all that. Though these are common things every day, we do not know whether they are brought within the purview of this Act. I know a certain instance where. . . .

Mr. Chairman: The hon. Member should conclude now. I cannot extend the time.

Shrimati Lakshmikanthamma: Only one minute more and I will finish. I know of a certain instance where the students' indiscipline is concerned. I know of a particular High School and the way in which the copying was being carried out. The mikes were kept inside the class room and somebody from outside was giving the Question No. and the answer and things like that and if the teacher tries to punish the children, his head is broken. Like that, there are so many other instances.

Mr. Chairman: The hon. Member must conclude now.

Shrimati Lakshmikanthamma: With these words, I support this Bill.

Shri Sham Lal Saraf: Mr. Chairman, Sir, I support the Bill. I will be very brief in my observations. There is no doubt that due to abnormalcy, when you have abnormal conditions in the country, certain abnormal laws are inevitable. When I heard Mr. Masani, I was much enamoured of one point that he made and that is that when we have laws on the statute book wherein it is possible for the Government to curb criminals, does the necessity for a law like the Preventive Detention Act exist in the country? And also, when on the contrary, we have the Defence of India Rules, should that law be on the statute book? Personally, I feel that he has made an important point which, I think, the Government may consider. He said that in case it is found necessary that the Act should find a place on the statute book, what is necessary is that it may be specified that this law will come into motion only when certain specified crimes are involved. But may I submit what is the condition in the country? My friends specially from the Communist Party should know it. Just before the Chinese attacked us, especially in Ladakh sector, what happen-

ed was that a few months earlier a gentleman appeared by the name of some Singh—I do not remember the name—from U.P. in a Chinese officer's army uniform and he began to propagate: "Be prepared, your liberators are coming." Till then, nobody knew that somebody was going to attack us. For some months he was roaming about in those high mountains. And immediately he was caught. Later, it was found that he had some more men with him who were carrying on such a nefarious propaganda. Now, I ask my friends from the Communist Party, what should happen with men like him who betray the country at a time when other things should have been done, when things should have been done in a way that would safeguard the very security of the country. Not only that. Even in the Communist Party itself—I said before also—a part of it, a majority or minority—I do not know—have certainly given full support to the Government in this period of Emergency in enacting laws or in other activities. But at the same time, there is another group which is openly working for China, openly working against the very interests of the country. Therefore, I ask, what should be done? I personally feel at the moment, let this law be introduced. There is no other way. It is inevitable. It must pass and it must come on the statute book. The one thing that I request the Government is, as this point has been made by Mr. Masani with which I perfectly agree, that the Government may look into this. In case this law is to find a place on the statute book, the crimes should be specified in respect of which the powers under this Act will be applied and action taken to bring the offenders to book.

16.40 hrs.

[MR. SPEAKER in the Chair]

Therefore, speaking briefly on this motion, I would say that because of the conditions prevailing here, because of certain things that have come to light, because of certain actions that

have been performed which have been, anti-national, because of such anti-national acts done by some people in the past, it is absolutely necessary that a law like this must be on the statute-book. At the same time, Government may please look into the point raised by Shri M. R. Masani, namely that the list of the crimes should be specified, in respect of which the powers under this law would be applied. With these few words, I support this Bill.

Shri H. V. Koujalgi (Belgaum): I rise to support the measure before this House. The question before the House is whether this Act should be extended for a period of three years, that is to say, whether a fresh lease of life for three years should be given to this Act or not.

The utility and the urgency of this Act has been discussed on the floor of this House many times, first, when the original Bill was introduced and later on when it was extended from time to time. I need hardly say that it is the primary duty of Government to maintain peace and tranquillity in the country. We should see that there is no smuggling or blackmarketing. It is also the duty of Government to see that there are no anti-social activities. If that is the case, now we have to see whether such things are still continuing which necessitate an Act of this nature or whether the circumstances are such that there is no necessity for this Act, as has been argued by some hon. Members of the Opposition.

On hearing the Members from the Opposition, I find that they do not exactly say that this Bill is not at all necessary. Except one or two Members, most of them say that it has been misused or wrongly used in some cases or it has been used only against a particular party. Some say that the Act should be used against a particular party, while others say that the Act has been wrongly applied only in the case of some parties. So, on the whole, the circumstances are still there which

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warrant the continuation of this measure.

Some hon. Members have further said that a fresh Bill of this nature should be brought on the statute-book and a permanent law should be there. If that is the case, then, it indirectly means that the circumstances are such or such an emergency still continues that there is a necessity to extend this law.

It has been stated that this legislation is more or less aimed against a particular party. But if we go through the clauses, we shall find that this Act is not against any particular party or any group of persons, but it is against only that individual or that group of persons who indulge in anti-social activities. I may say that there are still anti-social activities in this country, and therefore, there are compelling reasons to continue this Act.

We read in the papers now and then that smuggling is going on on a big scale, that espionage work is going on against the interests of the nation, that there are unconstitutional activities going on which are working against the Government. So, is it not necessary, or is it not advisable to apply this Act against such persons?

Sir, I come from a rural area, where these anti-social activities are going on, on a large scale. Just a little while ago, the hon. lady Member had said that in Telengana murders had been committed on a large scale by the people belonging to a particular party. But I may say that even in the area where I come from, murders are very common, and that too, committed by anti-social people. They commit those things for the sake of money or because of party considerations, and usually, no evidence comes forward against them. When such murders are committed because of disputes regarding land, they see to it that no evidence comes forward, and even if the matter is taken to the court, they see

to it that the suit does not become successful. When there are such people, it is but natural that at least to maintain the peace and tranquillity of the area such measures as this should be applied against them.

Mr. Speaker: Is the hon. Member likely to conclude within a minute or two?

Shri Koujalgi: I shall continue tomorrow.

Mr. Speaker: If he has not concluded, he may sit down. This debate will be continued tomorrow.

16.45 hrs.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

ENTRY OF NAGA HOSTILES INTO BURMA THROUGH MANIPUR ON THEIR WAY TO EAST PAKISTAN

Shri Swell (Assam—Autonomous Districts): I call the attention of the Prime Minister to the following matter of urgent public importance and I request that he may make a statement thereon:

"The reported entry of 400 Naga hostiles into Burma through Manipur on their way to East Pakistan."

The Prime Minister and Minister of External Affairs and Minister of Atomic Energy (Shri Jawaharlal Nehru): The facts of this case are as follows:—

The outward movement of some 200 hostile Nagas out of Nagaland started a little over two months ago. There were two batches of Naga hostiles originally, each about a hundred strong, one led by Dusoi and the other by Hoito Sema. Due to the effective action taken by the security forces, the movement of the group headed by