THE

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Friday, 1st August, 1952.

The House met at a Quarter Past Eight of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(No Questions: Part I not published.)

FORWARD CONTRACTS (REGULATION) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to move for leave to introduce a Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

Mr. Speaker: The question is.

"That leave be granted to introduce a Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith."

The motion was adopted.

Shri T. T. Krishnamachari: I introduce the Bill.

PREVENTIVE DETENTION (SECOND AMENDMENT) BILL

The Minister of Home Affairs and States (Dr Katju): I beg to move:

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

The House would have noticed that the Report has appended to it a large number of dissenting minutes. It has been rather a curious experience for the Select Committee. The normal rule has always been that when a Bill is referred to a Select Committee it is presumed that the House acquiesces in the principle of the Bill and only details will be thrashed out. In this particular case hon. Members who became members of the Committee declared on the floor of the House that they were opposed to the Bill root and branch, every principle of the Bill and, therefore, no one would be surprised that they would not be satisfied and could not be satisfied.

Mr. Speaker: I would like to make one point clear here. When the motion for reference of the Bill to the Select Committee was put to the vote of the House it was pointed out that certain Members of the House did not feel themselves bound and they had some mental reservations of their own as regards the principle of the Bill. I had then clarified the position that whatever mental reservations individual Members may have, so far as the House was concerned, by the acceptance of the motion, the House as a whole was committed to the principle of the Bill and there would be no question of reopening any discussion on the principle of the Bill. Whatever one may have to say as regards the details is a different matter. The only difference in the usual or normal procedure and the present one is that the House was pleased to give instructions to the Select Committee not only to touch on and consider the clauses of the amending Bill but also all the sections of the original Act. That does not mean that the principle of the Act is open for discussion today.

Dr. Katju: Sir, I am indebted, and I hope the House as a whole is indebted, to you, Sir, for this clarification of the whole procedure. I was

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only going to suggest in passing that hon. Members who went into the Select Committee on that particular basis would not be satisfied, could not be satisfied, by any concession which might be made. They said openly that they were opponents of the Bill and they were there not with a view to try to improve the Bill in substance, but only, in so far as they could, to make it ineffective.

Shri N. C. Chatterjee (Hooghly): Sir, we must protest against these remarks. That was not the attitude of all the Members of the Select Committee. It is not fair to us.

Mr. Speaker: He said some of the Members.

Shri A. K. Gopalan (Cannanore): Sir, I have also to make some observations with regard to the hon. Minister's remark. Though on the floor of the House we said that we were opposed to the Bill, we went into the Select Committee with a view to improve the Bill by suggesting amendments. The main amendment we suggested was that if there is to be preventive detention, it must be used only in emergencies. It is not opposition to the Bill. Even though we did not agree to the principle of preventive detention, when we actually went into the Select Committee we said: "We agree to the preventive detention; but it must be used only when there is an emergency". Every amendment that we moved in the Select Committee was an amendment to the Bill: not with a view to set aside the whole Bill. I am sure the hon. Minister will accept this and proceed on that basis.

Dr. Katju: I only wish to say one thing, so that I may not have to repeat it again and again. If any interruption comes from any hon. Member, I shall take it and consider it absolutely a sort of presumptive proof that the cap fits his head.

Dr. S. P. Mookerjee: (Calcutta South-East): The cap fits your head very well.

Mr. Speaker: It is better not to rake up past controversies. The hon. the Home Minister will see that if he carries on in that attitude, he will be inviting replies which cannot be prevented then. If he goes on in that strain I must allow the other side also to go on. But, with all respect to the House, the hon. the Home Minister and the Opposition. I am of the view that such a procedure, though it may satisfy the urge of some of us to go at each other, is, on the whole, neither conducive to the growth of Parliamentary Government nor to the dignity of the House. That is the humble view I hold, in spite of there being scope for differences of opinion. On other grounds also, I should appeal to all hon. Members, including the Home Minister, not to go into the previous history but take the Bill as it is before the House, as amended by the Joint Committee, and on the assumption that Mr. Gopalan and Mr. Chatterjee and also Dr. Mookerjee.....

Dr. S. P. Mookerjee: I was not there.

Mr. Speaker: Anyhow, I take it he will not differ from me—agree that preventive detention may be there, should be there—whatever their mental reservations about it may be, that it should be so worked that it will not do any harm or mischief such as they are afraid of. That is the limited issue before the House. So, whether there should be preventive detention or not is not the question before the House now.

Dr. Katju: Sir, starting with your ruling, I shall immediately proceed to the main points that now arise on this Bill.

The first important point on which there has been a difference of opinion is about the duration of the Bill. The Bill as was originally moved by me provided that it should remain in force for two years, namely till 1954. I would have made it 1st of October 1954. But to summon the House in the month of August and September to re-enact the Bill would be very inconvenient. Therefore, we put down 31st of December 1954.

In future the House might consider a Bill like this without any great climatic inconvenience.

Now in the Select Committee amendments varied. I would not call it the extreme right or the extreme left. An attempt was made to reduce the duration to three months, namely, from 30th of September to 31st of December 1952. On the other hand, put it in any way you like, there were amendments that the Bill might be extended to 1955, 1956, 1957, and I think somebody also said 1958, and the Select Committee after a prolonged consideration thought that the

Bill as framed was proper. I suggest to the House that the Select Committee has arrived at a proper decision.

I am not going to cover the ground once again on the theoretic discussions and repetitions of principles, but I will beg the House to consider the prevailing conditions in the world, outside India and inside India. We are living almost in stormy conditions and I say again that the extension of the Act, if it is proved as desirable by two years instead of one year makes really no vital change in the situation. So far as I can see and speaking for myself, we cannot expect that there will be any great or material change in the world position and in the Indian position in the next coming two years. The House would always bear in mind that this is not an imperative Act in this sense that it must be acted upon. It all depends. Even today there are many States in which there is not a single person in detention, and we all hope and pray that the situation would gradually improve, and if it does improve, I am sure that no one would be more happy than the State authorities and the Central Government that the Act should remain on the statute book without any use whatsoever in the coming two years. But we must take a realistic attitude about this matter and while owing to a variety of circumstances, the situation has improved, there are still very many black clouds in the horizon and very many danger signals to be seen. I am not in a position and it would not be proper for me to say what sort of information is received from time to time, almost every week by Government and we cannot possibly be complacent about it. I do not want to injure anybody's feelings. The House would take it from me that I am speaking with a full sense of responsibility about these matters. We know the philosophies, the ideologies, the different passions and emotions which are prevailing over large groups of people, and as I said, this Act is not directed towards any political party; it is directed only against one and no other object, namely, that the purposes for which preventive detention is permitted under the Constitution should be always kept in view and those purposes should be achieved.

Now in the Select Committee one attempt was made to restrict the operation of the Bill. I make no insinuations of any kind, but the House would rather be surprised to hear that under the Constitution preventive detention may be used for several purposes and notably among them is the preservation of public order, the preservation of essential supplies and the preservation of friendly relations with foreign nations. An attempt was made—I imagine it is also made in the dissenting minute—that all those shall be cut out; there should be preventive detention directed only to two purposes and nothing else, namely, the security of the state and the defence of India. There should be no preventive detention for preservation of public order; there should be no preventive detention even for the stopping of anti-social activities, comprised in that description in the Constitution, namely, the preservation of essential supplies and essential services. They said: "We do not want it"

I will not say who sponsored that particular amendment. The House will gather it when the amendment comes before it—we say that it is no good saying that we want the Preventive Detention Act to continue on the statute book, but we want all the relevant and more important purposes to be cut out. Anyway the Select Committee came to the conclusion that two years was about the minimum period for which this Preventive Detention Act should continue on the statute book. I submit that it takes a lot of time, enormous parliamentary time. The House is here; the Government is responsible to the House of the People. The Constitution says so and there is nothing to prevent the Members of the House—the House as a whole—moving a resolution at any time they like, that in the opinion of the House, the Act should be repealed and through that resolution to convey the opinion of the House, after six months, after 12 months or after 18 months or at any time and I am sure that if there is any indication of such an opinion, namely, if the Opposition of the day should like the matter to be discussed by means of a resolution. I imagine facilities would be given for the ascertainment of the opinion of the House, but to have a discussion about ten days here and five days there and year after year is not desirable. Therefore, the first thing is two years.

The second point that was considered was, who should have the right to take the initiative. The Central Government, no objection; State Government, no objection, but the whole crux of the discussion lay on the clause as to whether the district

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magistrates and additional district magistrates—not every additional district magistrate, but only those additional district magistrates, who are specially empowered in that behalf by the State Government—may be entitled to take action. It was said that the district magistrates are—I put it colloquially—an untrustworthy lot. And it was said that they should not be entrusted with these enormous powers and therefore it should be cut out. On the one hand, the very purpose of the Preventive Detention Act is to see to it, among other things, that anti-social activities are put an end to, that essential supplies and essential services are not interfered with unduly. And on the other hand is this plea that there should be delay.

The House would remember that our district magistrates are not petty officials. I am more familiar with Uttar Pradesh. We have got now a population there of 620 lakhs, all divided into 52 districts, and there are altogether 52 district magistrates. Each district magistrate, on an average, therefore, looks after about 20 lakhs of people. In the course of his administrative duties he looks after the administration of the district, and the other laws—what are called normal laws, the Criminal Procedure Code and many other administrative Acts—give to him, in emergencies, great powers to act. He can direct the Superintendent of Police to arrest people on suspicion whenever there is a question of commission of any offence. He can—even magistrates of the first class can—issue orders banning meetings and so on and so forth. Now, to think that a district magistrate cannot be trusted to take action under this Act, and for a very limited number of days—I shall come to that —seems to me to be an argument based on hypersensitiveness. I suggest again that it is really not intended to make them have more power but to avoid any hampering or obstruction of the proper working of the Act. For instance there are many districts even in Uttar Pradesh, and I know in Orissa with which also I am familiar, where for long distances, hundreds of miles, there are no communications. In Orissa there are not even roads in some places. Or you take for instance Rajasthan, Bikaner, Jaisalmer and places on the border. Situations may develop at any time. Violent speeches may be delivered. There may be incitement to violence. And the district magistrate, if we hold him responsible, must act then and there.

The amendment that was suggested was: no, no, he must report. And there was a very touching confidence displayed in the ability—I take it the judicial ability, administrative ability and impartiality—of the Home Minister everywhere that he can be trusted to pass very fair orders. He became a sort of Lord Chief Justice, he was not a part of the administration for that purpose. And, therefore, the argument was that the district magistrate should report to him; the situation may be there but the district magistrate should report to him, report all the materials to him, and wait. The Home Minister might be away on tour, unfortunate individual. He may not be at headquarters. There may be riots going on, but no, no, you must wait. I suggest that the Select Committee was quite justified in saying that this was not the proper course to adopt.

I want to revert once again to additional district magistrates. I do not know about other Provinces. Hon. Members will forgive me if I am wrong. I am only acquainted with three of them, as I said, among the Part A States, namely Uttar Pradesh, Bengal and Orissa. The additional district magistrate everywhere is a senior officer. He is not an ordinary magistrate. He is really there as a sort of—and that is why he is so styled—an *additional* district magistrate. And he exercises in the branches of work entrusted to him almost equal authority with the district magistrate. Then there is this additional care that it is only that additional district magistrate that may be selected or specially empowered in that behalf by the State Government, who will exercise these powers.

The House would also remember that in many States there is separation of judicial and executive functions, for instance in Hyderabad. The district magistrate is in charge of the judicial administration, and the person who is in charge of the executive administration is called the collector. I am told that in some other States also the district magistrate, where there has been a separation of judicial and executive functions, has only judicial functions. So we have got to bear that also in mind.

Then comes another important change. If the district magistrate

intervenes and passes an order. formerly, under the Act of 1951, he had barely to report for information of the State Government—just for information. And the State Government might or might not intervene. Very likely the State Government might think that there would be the Advisory Board, so let the orders stand. Now we have made a very salutary and important change. We made it in the Bill, and we have altered it a little in the Select Committee also. The district magistrate, as the Bill had been framed, was directed to report the matter at once to the State Government with all relevant papers bearing on the necessity for making the order, and the papers must include the grounds for detention. And the State Government must approve, expressly approve, the order within fifteen days. There the venerable Home Minister would come on the scene. Objection was taken to this—look at it—that the district magistrate might suppress material. The Bill as framed says that he should only send papers bearing on the necessity for making the order—very punctilious. The Select Committee said: very good, it was never the intention that he would send half the papers and not send the other half. So the change has been made that the district magistrate should, along with the grounds of detention, send all the relevant papers bearing on the matter—both ways, this way and that way—and I am sure that if by that time, within the five or seven days, the detenu has already submitted his representation, the magistrate will send that representation also. So we get there.

Then came the period. Some one said it should be three days; some one said it should be seven days. In the Select Committee I ventured to suggest that the district magistrate will send it at once. He may send it within five days or seven days. But you must give the State Government time to consider. They said that it may be considered by the Secretary, by anybody, by the Deputy Secretary, by the Under Secretary. I venture to say that when the phrase used is State Government, it may be taken for granted that the matter will be disposed of by some Minister, either the Chief Minister or the Home Minister, I do not know, because in different States there are different official descriptions. Sometimes, the Home Minister is called the Police Minister; sometimes, the Home Minister may be called by some other designation. But, I am sure that every State Government will see to it and as a matter of course, it might be made clear by official instructions, that whenever a reference is received from a district magistrate, that reference will be considered and disposed of and action taken by him expressly approved in the name of the Central Government and on its behalf by some Minister and not by some Secretary, either Chief Secretary or Deputy Secretary or Under Secretary. The period was reduced. I was not very keen about it. But, out of consideration for the hon. Members who put forward that view, I said, very well, reduce it from 15 to 12 days. Here the situation is, either you get the order expressly approved within 12 days or the man is off. I submit that no more reasonable course can be taken. Do not let us be very tender for law breakers or prospective law breakers. During the course of the discussion one hon. Member, I remember, referred to the people who remain behind the screen and direct others to take action, to lead processions, to break the law. Some action has got to be taken. If those gentlemen remain there for four five or six days, no harm will be done. That is about 12 days.

Then comes the next stage. In the Bill it was said that as soon as the State Government makes an order on its own motion or approves an order of the district magistrate, it should send a report of it. I remind the House, for the information of the Central Government, because I do not want the Central Government to come very much into the picture. The primary responsibility for maintaining law and order or peace and tranquility and the continuance of essential supplies and everything else is that of the State Governments. I do not want to interfere with that. I do not want to take it over. Nor do I want to have a sort of a parallel Advisory Board set up here. Please remember that while the State Government is communicating for the information of the Central Government all these orders, simultaneously the papers will go also before an Advisory Board. We do not want to hamper the consideration of the Advisory Board by a parallel consideration here. I am not talking of exceptional and very rare cases. Leaving that aside, the normal procedure is that the papers come to the Central Government merely for the purpose of information so that we may keep a record. we might not gather from the newspapers as to which person has been detained or not detained, and we might have accurate official information as to what happens. Incidentally I might also say, while we

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are discussing this question of unauthorised or improper detention, that the House would recollect that the Government in every State and here is continuously, so to say, on the defence before the Legislature. There is the short notice question, there is the motion for adjournment, there is the long notice question. Whenever any person is detained by any district magistrate or State Government, it is open to any Member of the House here or the State Legislature to raise this matter immediately by way of a question and ask, why that man was detained. Every Government would be extra-careful to see that the order made is an order justified by the circumstances of the case.

Mr. Speaker: I may just make one observation here so that there may not be any misunderstanding. It is not in respect of every detention that a question or motion can be permitted in this House. It is only in the State Legislatures that that may be permitted, except in cases where the order is made by the Central Government.

Dr. Katju: I beg your pardon. When I said House of the People, I wanted to include State Legislatures as well: Legislature here and the Legislatures in the States. If it is an order by the Central Government, the matter can come up here. There is a State Legislature everywhere and they are very much alive to the importance of this matter.

Then, we come to the Advisory Board. In the original Act it was provided that the matter must go before an Advisory Board within a period of six weeks. We wanted to shorten the period and expedite disposal. That period has been reduced from six weeks to 30 days. Further more, there is the constitution of the Advisory Board. There is a direction laid down in the Constitution namely that it must consist of three classes of eligible persons; either sitting High Court Judges or retired High Court Judges or persons who are qualified to be appointed as High Court Judges. Under the third category, you can appoint advocates of ten years' standing; you can appoint Judges who are qualified to become High Court Judges. I circulated a list of the members of the Advisory Boards in the different States two months ago. You would find that in many States the Advisory Board consists either of High Court Judges *in toto*, or at least one or in several States, there are two High Court Judges. In some smaller States, there are people who are qualified to become Judges. A wish was expressed that there must be a senior man and he must be a High Court Judge. We thought, very well, we will make a change to that effect. The Select Committee has recommended that the Chairman of an Advisory Board should either be a sitting High Court Judge or an individual who has been a High Court Judge. The object I had in my mind was to ensure that the Chairman was a man mature in age, mature in learning and mature in experience, and you get that by having either a retired High Court Judge or a sitting High Court Judge. It seems to me that a High Court Judge on retirement does not become merely by retirement malleable to any external influence. It would be almost libel to say so. I know many and every High Court Judge is an embodiment of integrity and judicial honesty. So, that change has been made. The remaining two members, in the terms of the constitution, may be sitting or retired, or persons qualified to be High Court Judges.

Then, Sir, I made that suggestion myself. I said: "We have got these part C States, small units. There are no High Court Judges there, and it would be very difficult to have the Chairman as a High Court Judge for the mere reason that there is no High Court." So, the Select Committee has suggested that in regard to Part C States, the Central Government, in consultation with the State Governments, may reconstitute the Advisory Board so that each Advisory Board of each Part C State may have a High Court Judge of a neighbouring State as its Chairman. I suggest that that shows an anxiety on our part to see to it that the Advisory Board is a real, functioning and completely independent body.

Then comes the period, and what is to come before the Advisory Board. The House would recollect that beginning from 1950 in the first Act that was introduced, the Advisory Board came into the picture only when an order was made against persons for anti-social activities—hoarders, profiteers, blackmarketeers, and also for persons who wanted to interfere with communications, essential supplies—excepting that there was no recourse to an Advisory Board whenever public order was endangered. Last year a change was made and every case was to go to the Advisory Board, but it was said

that the Advisory Board would decide the case on paper, it may send for a person detained if it thought necessary. Now, we went further this year on our own accord, and we said if the detenu expresses a desire that he would like to be heard and should like to make his representations personally before the Advisory Board, well, he should be entitled to go. I thought to myself that this was a great privilege given, and a great improvement. In the Select Committee and during the debate in this House, there was a great discussion upon it, and they said there must be a lawyer, legal representation, and the right to summon witnesses, examine and cross-examine them. Now, I suggest once again that an allowance of this description. I mean if we were to allow any provision of this description, it will be totally destructive of the Act for a variety of reasons, and one reason I may say at once is: if you do so, then why should a detenu have the benefit of the service of three High Court Judges, retired, qualified or sitting. It is an expensive proposition. Send it to an honorary magistrate. He will hear the witnesses, examine, cross-examine and finish. It is a great privilege to have your case examined, simply because it is a case of preventive detention, by three officers, judicial officers, highest in the land. "No, no", they said "we must have examination and cross-examination".

Now, my next remarks, one or two —there are many lawyers here—might probably cause disapproval, perhaps even resentment. I am a lawyer myself and an advocate. I will not say of some standing, at least of some standing in point of years, and I have said over and over again—if my hon. friend wants to quote me again, I shall send him the book—that the best art of advocacy consists—I came to this conclusion—in the advocate keeping himself completely behind the prisoner, and not arguing the case at all. I tell you it is a great mistake by which we profit of course—I am not talking of legal rulings, legal discussions in the Houses and rulings and 9 A.M.
precedents of America, Australia, Germany, England or anywhere. Full Bench ruling or High Court ruling. I am talking of pure facts. My experience has been this. Mr. Chatterjee said that he was ashamed of me when he heard it, but I will repeat it again because it is my conclusion.

Shri N. C. Chatterjee: It is all right. We shall have our say.

Dr. Katju: The moment a Judge sees the seat of an advocate or a lawyer by the side of the accused vacant, he becomes suspicious.

Shri S. S. More (Sholapur): Is it not derogatory to the judiciary?

Mr. Speaker: That is his opinion.

Dr. Katju: The Judge becomes suspicious. I have seen that and the wisdom of our law-makers provides far it. You, Sir, would recollect that there is a section in the Criminal Procedure Code which says that every magistrate and every sessions judge of a criminal trial, even though there be a galaxy of legal talent before him, must examine the accused personally in regard to every circumstance appearing against him. I think it is section 342 of the Criminal Procedure Code. It says when all the prosecution evidence has been adduced, the Judge must solemnly say to the prisoner at the bar, "Now, what have you got to say? Guilty or not guilty?" He says "not guilty". Then: "What have you got to say about this circumstance appearing against you? Such and such a witness has said this against you. What have you got to say?" It covers pages. And there are many rulings of every High Court which say that if this examination is perfunctory, the whole trial is vitiated and there might either be a retrial or there might be an acquittal on that very basis. Now, why is it so provided? Because the Judges think and the legislators think that the Judge should like to have a look at the accused when he is either denying facts or not denying facts.

I venture to repeat again here that it will be doing a positive disservice to the detenu—I speak with a sense of responsibility, not as a Minister, but as an Advocate—to make him go before the Advisory Board accompanied by a lawyer. If the chances of the Advisory Board of releasing him were 50 per cent. they would diminish to five per cent. if the lawyer goes. You may take it from me, in spite of what all the jurists and the lawyers may say. Because, please remember there are three Judges. There is no court atmosphere there. A lawyer, in order to function—a pleader, a *vakil* or an advocate—requires a Judicial atmosphere. He requires the Evidence Act at his elbow. He requires the right to object—"I object to this question, it is relevant, it is irrelevant"—and there is cross-examination and there is citation of authority and so on and so forth. But look at these three Judges sitting across the table. No publicity. Then the poor lawyer must feel himself completely at sea. What has he to say? There is nobody to clap for

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him or report him. I sometimes think that judicial work and arrears would be diminished by ten per cent. if there were no reporters in the law courts. I will not proceed further on this line, but this question of lawyer representation is not a veritable boon.

And secondly, please consider what is the essence of preventive detention? It is not a one-pointed precise occurrence. It is not a trial for murder: "on such and such a date at eleven o'clock three people came and shot", or whether this document is a forgery or not. It is something spread over. I have seen files where it has been stated "On such and such a day you made such and such a speech; another speech you made on such and such a day, you were doing this for the last three or four months: from all this, the inference is that if you are not detained you would indulge in some activities which may be prejudicial to a variety of things". You require a man of commonsense to look into all that material, and there is no need for a cross-examination. Please remember also this. The Advisory Board consisting of these three competent persons meet him, and as the standing Acts says, they may hear the accused, they may call for all information which they think fit, from anybody and even the Government to whom they can say "Supply this or that". It is on this whole material that they come to a decision. Nothing is concealed from them, nothing can be kept secret from them. It is true that a State Government may keep away confidential secret papers on grounds of importance from the detenu, but they cannot do so in the case of the Advisory Board. Someone said "Supposing the demand is not complied with, what will happen?" My answer to that is very simple. If I were a member of the Advisory Board and if the Government do not supply me the information that I require, there is no question of my fighting with them, I would only say that "I shall release the accused, I do not confirm the order of detention, because the information that you do not send is very likely to be of some benefit to the accused, and therefore you are keeping it back from me". The case will then be finished and become all blank. So there can be no Government, State or Central which would dare to refuse the information to the Advisory Board, when that is required by them. It is open very likely to the Advisory Board to say: "We should like to have such and such a person before us, not as a witness, not for examination or cross-examination, but we should just like to see that man for ourselves".

There is a general idea that the Advisory Boards are purely nominal bodies which do nothing, and are just some sort of rubber-stamping machines. We looked into these figures—I supplied them to the members of the Select Committee. When Sardar Patel's Act, the first Preventive Detention Act was passed, cases did not use to go before the Advisory Board, and when the previous Parliament amended the Act last year, there was a huge carry-over, and we found from the figures that the Advisory Board during the 18 months—beginning from, I think, 22nd February 1950 to 31st May 1951, perhaps—examined altogether 4400 cases and released about 1200 persons, in about 28 per cent. of the cases, and confirmed the order of detention in about 72 per cent. of the cases. What is the inference from this that I draw? The inference is that the Advisory Board acts in a sort of judicial capacity, and they have got plenty of material before them on which they can form a judgment. If you were to look into the statistics of any appellate court, High Court, or the court of the district and sessions judge, you would notice that the number of successful cases is not more. It is something like 15, 20 or 28 or 30 per cent. Similarly here, the fact that in a large number of cases, the orders were confirmed would go to show that the State Governments were acting with great discretion and even the district magistrates were acting with caution. On an examination of the entire material, in about 28 per cent of the cases, very likely they may have thought "This man has been in detention for five or six weeks, let him go now", or that "there was no justification for the detention order". Therefore, I suggest that the Advisory Board plays a very important role, its Chairmanship has been strengthened, and care has been taken in this Bill that the duration within which a case should go before the Board should be minimised. In this way, the papers must be sent to the Advisory Board within 30 days. It is open to the Board to take two months. Formerly they could take only six weeks. The reason why we had said two months was that they can make a very detailed examination of the case, they may send for the detenu twice or thrice if they want to. So I am hopeful that the Advisory Board would be able to come to a conclusion within two months, and so the matter would be settled by that time once and for all.

Then came the question of the period of detention. We proposed the maximum period as one year from the date of confirmation of the order by the Advisory Board. There were various amendments. Someone said three months. I considered that, with all respect, as a joke. The Advisory Board may say "the order is well justified, please release him after three months." Then some one said six months. But the Bill provides one year. Please remember that one year is the maximum period only. After the Advisory Board ceases to function, there comes into play section 13 of the original Act, which authorizes both the Central and the State Governments to release any person if they so think fit. During the last six months, the State Governments have taken action upon it, and I believe, more than a thousand have been released. I can speak here again from personal knowledge, and I can assure the House that the case of every detenu is almost kept constantly under review. In the first place it may sound as a sort of anticlimax if I say that the State Government did not want to keep him, because he is an expensive proposition In Bengal, I think, they spend about Rupees three to four on him per day. It costs money to the State Government and secondly apart from that, they do not want to carry the odium. Why should they? Then there are representations made, by hon. Members of the Legislatur, by relations, and friends going to the Minister and saying "Here is a very innocent man, he has suffered enough". Then there is section 14 which says that a detenu may be released on parole. Hundreds of detenus are released on parole. So the maximum period of detention will come into operation and become effective only for extremely serious cases.

Then after the expiry of the maximum period of detention, I tell you with great respect that we have taken an extremely courageous step. I do not think that many State Governments will be happy about it, because we have said "Now your detention means a wash-out, all your past records will not be looked into, they may be looked into in connection with what type of person you are, but for a fresh detention order, there must be fresh material". The House would realise the importance of this on the merits and also in connection with another aspect of the case. When it is said that the Bill seeks to extend the Preventive Detention Act for two years, that evil is minimised by the fact that so far as any individual detenu is concerned, no detenu will remain in detention in spite of the continuance of the Act, for more than 12 months substantially or say 14 months. It does not matter to him whether the Act remains on the statute-book or not. He is going to be released.

I have covered almost the entire picture and I want to assure the House once again that so far as this review business is concerned, you may take it from me that every State Government reviews and I have no doubt that if they so advise, they would make it a point to review them every three months or six months. Some attempt was made to bring it again before the Advisory Board. Now to ask the Advisory Board to examine the case again—what would be the material? The detenu had been in jail. He says: "Look at my conduct; it has been very wonderful; I have been a very quiet, decent and law-abiding citizen in jail". It is for the State Government, the executive Government, to consider the change in the political situation, whether a particular detenu can be released without danger or cannot be released without danger. To ask the Advisory Board to take up the matter again, to consider it again, would be very unfair to the Advisory Board and, therefore, we have not taken that matter up.

Some attempt was made to say that there should be provision of family allowances. Now that is a matter entirely within the discretion of every State Government. I know about the State, with which I am very familiar, Bengal particularly. Such allowances are granted in needy cases and it is a matter entirely within the discretion of the State Governments. I have no doubt that where there is considerable hardship and any particular family is in distress, they would pass suitable orders. I cannot possibly lay down any hard and fast rule for them and I submit it to the House that you would not do it in the Act itself. And please remember that while for convicts of all types we have no sympathy, similarly for under-trials we have no sympathy. I have seen under-trials for eight months, ten months. So far as this preventive business is concerned, either you say that the Central Government or the State Government are embarking upon a course of tyranny and therefore there should be this extenuating circumstance—that they should soften their tyranny by giving something to the dependants—or say that it is for the prevention of crime that it is done

[Dr. Katju]

and we must, therefore, leave it to the good sense and the discretion of every State Government to take suitable action.

I imagine that I have covered the entire field and nothing remains to be dealt with at this instant. There is just one other provision which I would like to refer to and then conclude. We had this question before us: what about the people who are already under detention? Now, I shall be quite frank with the House. During the last three months there has been a most intensive review by all State Governments of old cases and very few of the old detenus still remain in custody. And State Governments have deliberately, after the most careful consideration, I imagine, by the Chief Minister, the Home Minister, probably by the entire Cabinet, come to the conclusion that they cannot possibly release some people. To insist that those people should be released forthwith would be extremely unfair to those State Governments. Now, so far as those cases are concerned, the provision is that whatever may be the situation, such persons must be released by the first day of April 1953 or if there has been a person who has been newly detained—supposing someone was detained on the 1st of February 1952—as to him it is said, twelve months. He would be released after the expiry of twelve months from the date of the order of detention. The result is that so far as older cases are concerned, the deadline is the 1st day of April 1953 and so far as more recent cases are concerned, the deadline is the expiry of twelve months from the date of the order of detention.

This practically covers the whole amending Bill and I submit that it has now become a very improved piece of legislation—I had almost said, a model piece of legislation, but I will not say that, it contains, if you accept the principle, every possible precaution that you can possibly think of. Safeguard No. one: If the district magistrate intervenes, 12 days; safeguard No. two: the State Government; safeguard No. three, the Advisory Board; safeguard No. four, the right of appearance by the person concerned, and negative, protecting him from lawyers. I seem to have made a hit.

Dr. Lanka Sundaram (Visakhapatnam): You will get it back on the rebound.

Dr. Katju: And strictly limiting the period of detention. So far as the conditions in detention are concerned, I do not want to go into them. I will just tell you the experience that I had. I went to Murshidabad. Some friends were in jail there. I went to them. They were rather sultry to begin with. But if you are determined to be friendly, no one can be sultry. Threfore, I just talked to them and told them: "I have not come to discuss with you the policy underlying this detention. That is not my concern. That is for the Ministers. I have come to ask you whether there is anything in which I can help you". This is what I saw, a big barrack—it reminded me of my old days also. Every cot furnished with a mosquito net, a library of books, and four detenus were entitled to have a newspaper; there were about 20 or 25 of them, so there were about ten newspapers or so; then pen, pencil, everybody can write...

Sardar A. S. Saigal (Bilaspur): It is tempting to the hon. friends opposite.

Dr. Katju: Then a daily allowance of rupees three. As soon as you are detained, you get an outfit allowance of Rs. 240. It reminded me of Governors.

Dr. S. P. Mookerjee: Are you prepared to exchange places?

Dr. Katju: That is what I saw. And no one could go there. The poor jailors said to me: "You had the courage to come here". So they were completely at liberty, in that particular way. Then games were provided —badminton, volley ball; about twelve servants for cooking, kitchen, and doctor—everything provided. I think about two crores of people in Bengal have not got the facilities which those people have there. That is about the so-called hardships and all that. Interviews, letters and everything else. Of course, I did not discuss with them the question of policy, but they looked pretty—shall I say—friendly, or whatever it is, as you like.

I confidently recommend to the House, every section of the House, to pass the Bill with their blessings.

Mr. Speaker: Motion moved:

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

Before we proceed with further discussion, I think, I must dispose of some amendments about circulation of the Bill as reported by the Joint Committee for eliciting public opinion, or recommittal of the Bill to the same Committee. Now, as regards these amendments I feel a difficulty. I am not giving my ruling just now but I am giving the ground on which I am going to rule them out of order. Before I do so, I should like to give the hon. Members concerned a chance, not to make long speeches but in a very short statement to say as to why these amendments should be held to be in order. The matter is covered by previous rulings starting from 1922. I would take up only the last one on this point and the principle enunciated there is as follows. When an hon. Member sought to move an amendment for recirculation of the Bill or recommittal this is what the Chair said. It was my predecessor—I may make it clear:

> "I do not think he quite appreciates the ruling I laid down a little while ago regarding a motion for recommittal."

—both are placed on the same footing—

> "It is the business of the Chair to protect the House against dilatory motions except where such motions are rendered necessary either by the manner in which a Select Committee have handled the Bill or by unforeseen circumstances arising since the Bill emerged from the Select Committee....."

In that particular case this condition was satisfied.

Now here, the Bill is coming before the House so soon after the report of the Committee that there is practically no case, there could not be any case of unforeseen circumstances having arisen since the Bill emerged from the Committee. The only question to be considered is: Was the Bill so handled in the Committee that the hon. Members' points of view were not considered, or have they no further chances of bringing in their points of view now before the House? It is a very small point. I think the Joint Committee took a very long time. The House gave instructions specially to have amendments to all sections, whether included in the amending Bill or not, and even now those hon. Members will have a chance of moving their amendments. Of course, I cannot say that whatever they move will or will not be in order. That is to be looked into when the individual amendment comes up. I should like, therefore, to know the points of these hon. Members who have tabled these amendments. Mr. Vallatharas—has he to explain as to why this Bill should be recommitted?

Shri Vallatharas (Pudukkottai): The only reason that prompted me to table this amendment is this. hon. Members had brought to the notice of the Government the extent of the abuses committed by the officers who either abused the detention order or caused the arrest. There were several cases in which persons were unnecessarily arrested. As a matter of fact, afterwards they were released by the Government themselves or by the Advisory Board. But there was no check upon those officers to prevent further abuses. There is a clause in the last section saying, "no suit will lie..." etc. as a provision of immunity for those officers. The abuses are committed at the initial stage whatever the fate of the detenu later on. And none of these officers have been prosecuted for such abuses.

Mr. Speaker: Order, order: I do not want him to argue on those lines. The only point is: Has the Select Committee in any manner so acted that this Bill requires a recommittal or recirculation? His point as he is developing it seems to be that there are certain things which he would have liked the Select Committee to take into consideration. The points were made in this House when the motion for reference to Select Committee was being discussed. But it is a matter of opinion: The Select Committee may agree or may not agree.

Shri Vallatharas: But they have not made any mention of it. If the Select Committee had considered it and come to some conclusion, I would not have minded. It concerns the people at large. My point is that individual cases should be considered.

Mr. Speaker: Order, order. When there was a debate in this House on this Bill a large number of Members who were members of the Select Committee were present. It will not be a quite correct presumption to say that they had not considered the point though there may not be any reference to it—and a reference to it is not necessary. I do not think he can be said to have made out that point.

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): Sir, the way in which you have explained the scope of discussion of my amendment makes me think that it is so restricted that there is no point in my saying anything more on that par-

[Shri Velayudhan]

ticular subject. At the same time, I may point out to you that certain new factors regarding preventive detention have come up. In my State about 200 people were arrested last week, most of them under the preventive detention legislation.

Mr. Speaker: After the Select Committee's report?

Shri Velayudhan: I do not know for certain—perhaps it might have happened during the time of the Select Committee itself.

Mr. Speaker: Let him be sure as to facts.

Shri Velayudhan: I am not sure of the facts, but I would like to speak on this...

Dr. Katju: May I, with your permission, Sir, add one sentence on the point of these officers acting.....?

Mr. Speaker: Order, order. I am not concerned at present with the merits of the action of the officers. I am concerned only with the admissibility of these amendments. At this stage we need not go into that question.

Dr. Katju: I only wanted to state what we did in the Select Committee. That point was considered and the Select Committee came to the conclusion that section 15 of the Act protects an officer who only acts in good faith. We considered that was quite sufficient. If there was any officer who was acting in bad faith he can be prosecuted.

Shri Seshagiri Rao (Nandyal): The powers of Parliament to enact the Preventive Detention Act are derived from Lists I and II, but all these powers are circumscribed under article.....

Mr. Speaker: Order, order. He is going into the merits. What I want to know from him is this: Is he in a position to show that the Select Committee acted in such a manner that there is a case for recommittal of the Bill to the Select Committee? That is the point. Whether a particular point is held in favour of an hon. Member or not is immaterial, but the question is whether the matter has been fully considered.

Shri Seshagiri Rao: The Select Committee has of course amended the existing clause and said that within five days the detenu must be supplied the grounds. But there is one other right which the detenu has under the Constitution, namely, the opportunity to make a representation. There are therefore two obligations, only one of which the Select Committee has discharged. The other one has not been considered at all.

Mr. Speaker: I do not think a case has been properly made out for allowing this dilatory motion.

Shri Veeraswamy (Mayuram—Reserved—Sch. Castes): It was agreed on the floor of this House that when the Select Committee considers this Bill it can make changes in the parent Act. The hon. the Prime Minister said so. But the Joint Select Committee did not consider the parent Act of 1950. Not even one clause of that Act seems to have been taken into consideration. Therefore, in my opinion, it is necessary that this Bill should be circulated for eliciting public opinion thereon.

Mr. Speaker: I am not concerned with the merits, but from the Select Committee report and the minutes of dissent it appears clear that the main Act was thoroughly gone into by the Select Committee. Whether it agreed with the views of the hon. Member or not, it went into the parent Act. Therefore, I do not see any ground made out for allowing this dilatory motion at this stage.

Shri Madhao Reddi (Adilabad): I have also a motion for circulation. I want to ask one question. Is it the pleasure of the Chair to suspend rule 97(2) of the Rules of Procedure?

Mr. Speaker: I do not propose to go out of the way. There is no occasion, or substantial reason, for it.

Shri H. N. Mukerjee (Calcutta North-East): I also have a motion for circulation. In the first instance, I submit that you may be pleased to reconsider your decision regarding interpretation of rule 97(2), because I feel that particularly in regard to motions of this description it is fair to the House that you interpret this rule as liberally as you should. In the second place, I think that the report of the Joint Committee is a kind of document which makes it imperative that it should be circulated for eliciting public opinion. This report is accompanied by as many as five minutes of dissent and in regard to the point which has been mentioned already about the authorisation of the Joint Committee to go into the parent Act, it seems to me to be the case that as far as the minutes of dissent are concerned, the provisions of the parent Act were not really gone into with

that kind of seriousness which was expected when the House by unanimous motion required the Select Committee to go into the parent Act as well. In the minutes of dissent also there are so many very distinct, concrete and objective proposals made in order to make this Act somewhat less objectionable than it is, and all those suggestions, it seems, were simply ruled out by the majority in the Joint Committee.

Besides, the report of the majority of the Committee is couched in such terms that it shows a complete indifference to the arguments advanced with so much care in the minutes of dissent by the representatives of different political parties as well as by independent Members of Parliament. In view of this particular character of the report of the Joint Select Committee and in view of the directive of the House which was so enthusiastically acclaimed when the Prime Minister intervened in regard to the discussion of this proposition, I feel it is only fair to the House as well as to the country that the report of the Select Committee goes to the country for eliciting public opinion. Let the people have an opportunity of going into the arguments made out by the dissenters from the majority from different points of view. Thereafter, I am sure Parliament will be in a position to understand the real implications of the Bill as it is going to be passed at present. I submit with all respect that the report of the majority of the Joint Select Committee has been drawn up not only without due care for the interests of the citizen but also without any real understanding of the significance of the measure which is under discussion. The minutes of dissent show a very wide, a very distinguished and a very learned exposition of different points which could have been incorporated in the measure in order to make it less pernicious than it is. In view of that, it ought to be circulated for eliciting public opinion.

Shri M. A. Ayyangar (Tirupati): I was the Chairman of this Committee. It is very wrong to say that we did not consider any of the points that were brought forward. We had been in the habit of recording the minutes of the proceedings from day to day and next day they were circulated to the members. In those minutes the individual names of members who sought to bring forward certain amendments have also been noted. If my hon. friend Mr. Hiren Mukerjee means that merely because the whole Act has been sent to the Select Committee, therefore it is tantamount to saying that every clause of that Act according to his lights ought to be amended, then the Select Committee did not perform that function. Otherwise, it only means that a chance was given to the Select Committee and to those Members who were anxious to get even the parent Act amended suitably to make representations there. We did allow more than ample opportunity. There was not a single gentleman there who ever raised an objection that we were hustling through. I am not letting out a secret when I say that I received encomiums for the manner in which I conducted the deliberations and they came from all sections. Therefore, no hon. Member, to whichever party he may belong, will say that ample opportunity was not given. If you, Sir, permit these minutes of the proceedings to be given to such of the hon. Members as want to read them—because it is supposed to be an official document—they will immediately find that not one of the points that have been raised was not noticed there but they were discussed at length and threadbare. All these hon. Members were there. Under these circumstances, I submit this is a dilatory motion.

Then again, Sir, you will please remember that only in cases where the Select Committee has so modified the Bill that it is necessary for the public to know the reasons or the views of Members of Parliament necessitating the modification, the Select Committee itself recommends that such a Bill may be circulated for eliciting public opinion. We have made so many improvements. Unless it is the desire of my hon. friend that those improvements should be lost and should be once again removed from the original Act. I do not see any reason why this Bill must go to the country at large. This is a purely dilatory motion and I hope you will not allow it to be discussed. So far as amendments are concerned, they can be tabled and the House will have an opportunity to consider them.

Shri S. S. More: I was one of the members of the Joint Select Committee. Of course, I can in fairness say that we discussed almost all the points. But there was one point in which we did not receive the necessary satisfaction and that point was raised by Dr. Kunzru.

Mr. Speaker: Order, order. The proceedings of the Select Committee are supposed to be confidential and the hon. Member should not mention

[Mr. Speaker]

any member's name in connection with any matter.

Shri S. S. More: Some of the members of the Advisory Boards who had gone into the different cases ought to have been examined by the Select Committee.

Mr. Speaker: Order, order. He is referring now to some specific points which, in his opinion, as also in the opinion of some other Members, the Select Committee did not take into consideration to his satisfaction, meaning that they did not agree with his conclusions. That is something different from saying that the Select Committee did not consider the points at all. In fact the hon. Member himself conceded that all the points were taken into consideration. His point now appears to be that in one or two points the Committee did not agree with his conclusions. That does not make any difference so far as the admissibility of this motion is concerned.

Shri S. S. More: May I have an opportunity to explain?

Mr. Speaker: That will be in the course of the debate. If on a relevant amendment discussion is allowed that point can be raised. The Deputy-Speaker has already pointed out how the motion is dilatory. The Select Committee itself in the concluding paragraph of its report says: "The Committee think that the Bill has not been so altered as to require circulation". There have been alterations; but they are not material alterations.

I do not accept these motions to be in order and the Bill will now be for consideration before the House.

Shri M. S. Gurupadaswamy (Mysore): I have got an amendment.

Mr. Speaker: Which amendment?

Shri M. S. Gurupadaswamy: That the Bill be withdrawn from the House.

Mr. Speaker: He can vote against the Bill and give effect to his amendment.

Dr. P. S. Deshmukh (Amravati East): May I rise to a point of order? In the minute of dissent appended to the report of the Select Committee, signed by Messrs. Sundarayya and Gopalan—it has probably escaped your notice—this Act has been described in as many as four places as a "black Act". I do not know if there are any instructions so far as the use of language in minutes of dissent is concerned, but it will probably be as well for you to lay down certain rules and direct that there should be a certain amount of restraint observed in writing minutes of dissent. I do not wish to refer to any other passages some of which, at any rate, are rather strongly worded. I do not know whether it is proper.

The reason why I am raising this point of order at this moment is that I do not believe there are any directions laid down so far and it would be as well to do so now so that there might not be instances of similar nature later on. It may be permissible to call a piece of legislation as "a black Act" in the course of a speech in the House. Whether some hon. Members could be allowed the use of such language in the course of a minute of dissent is a matter for examination and it would probably be necessary to check those tendencies at this early stage.

Incidentally, I would also like to draw your attention to the fact that one of the members of the Select Committee has really appended a note of assent and called it a note of dissent. I refer to the minute of Diwan Chaman Lal. How far that is permissible should also be examined. These are the two points which I would like to bring to the attention of the House.

Mr. Speaker: I have not gone through the dissenting minutes with the purpose of finding out what expressions in it are parliamentary or unparliamentary. The hon. Member has made a point which, I agree, requires consideration and he may invite my attention to other unparliamentary expressions that may be contained, not only in the minutes of dissent, but even in the report of the Committee and I shall be glad to consider and see whether I should expunge them or not.

Shri H. N. Mukerjee: May I at this stage rise on a point of order? I find that Rule 97(1) says:

> "After the presentation of the final report of the Select Committee on a Bill, the Member in Charge may move:
>
> (a) that the Bill, as reported by the Select Committee, be taken into consideration:
>
> Provided that any member of the House may object to its being so taken into consideration, if a copy of the report has not been

made available for the use of members for two days, and such objection shall prevail, unless the Speaker allows the report to be taken into consideration."

We got this report on the night of the 30th July and two full days have not passed. This being a document with so many dissenting minutes, it certainly requires a good deal of digestion.

Mr. Speaker: I had that rule in mind and, in fact, in the Business Advisory Committee, I believe this point was touched. Then Members wanted to be assured that they would have sufficient time for tabling amendments when the House proceeds with the clause by clause reading. The point of the rule is that they must have sufficient time to table amendments. I said that if the Business Advisory Committee was agreed—let me here repeat that that Committee consists of Members representing all sections in the House—I was prepared to waive notice under that rule and the discussion might take place This is being done with the agreement of all sections of the House and, therefore, the point of order really does not arise.

Let us now proceed with the further discussion.

Shri N. C. Chatterjee: When the Prime Minister made his announcement on the floor of the House that the Joint Committee was going to consider not merely the few clauses of the Bill, but that the principal Act and every section and clause of the Act would be open for consideration we thought, it was a genuine gesture. You know, Sir, that the Members of the Opposition were very reluctant to go to the Select Committee. But that statement of the Prime Minister dispelled to a large extent the atmosphere of suspicion and we went there with high hopes. We thought, not merely that the few clauses of the Bill would be considered there, but that there would be a dispassionate consideration of this, much-criticised and retrograde features of the Act, and that we shall be able to purge this Act of its very unsatisfactory provisions.

Our hopes were frustrated. It seems to me that there was somebody more powerful than the Prime Minister of India—possibly the Whip, we do not know. We effected some very minor amendments in the Bill, but when we came to the Act, I am sorry to say that each and every one of the suggestions for improvement and amendment was regularly turned down. There was somebody working behind. Not one, not even Dr. Kunzru's amendment, not even Acharya Narendra Deva's, nor ours was accepted.

I say in all seriousness that this House is on its trial; the Select Committee was on its trial; this Parliament, the first real Parliament, elected on the basis of adult suffrage, is on its trial. We thought we would be able to face the country by doing something to purge this pernicious Act of some of its most unsatisfactory and retrograde provisions We placed before the Committee some reasonable suggestions made by the Civil Liberties Union. Firstly the All-India Civil Liberties Union has been pointing out that it is nothing but a parody and farce of a hearing. There is hardly any hearing.

What is it that we are fighting for? It is not fair for the Home Minister to say "You are trying to sabotage and torpedo this Act". It is not our intention. We went there as responsible men to get some facts.

Shri P. T. Chacko (Meenachil): On a point of order, Sir. Is the hon. Member in order in referring to what all took place in the Joint Select Committee? He is giving even the names of certain persons.

Mr. Speaker: He is not going, so far as I am able to see, into the details of the matter but is only generally describing the position that they tabled a number of amendments and none of them was accepted. I think he can legitimately make that grievance. He will not go into the details of it. He knows it. I believe.

Shri C. R. Narasimhan (Krishnagiri): Can he characterize it as a farce?

Mr. Speaker: He should not have done it. But I do not think the word is unparliamentary altogether.

Shri N. C. Chatterjee: What is it that you are objecting to? We as responsible and reasonable men thought that possibly on the floor of the House, with people sitting in the public galleries, it will not be proper to expect that the Home Minister would give us all the details which would justify the continuance of this much criticized measure. Look at the Statement of Objects and Reasons. The hon. Minister says:

> "The primary reason for the enactment of this legislation was to protect the country against activities intend to subvert the Constitution and the maintenance of law

[Shri N. C. Chatterjee]

and order or to interfere with the maintenance of supplies and services essential to the community. Attempts to do so, though considerably reduced *in tempo*, have not ceased and it is considered essential that the powers conferred by the Preventive Detention Act should be continued."

We wanted facts. We expected some figures. I am not using the language of law, but the onus, the burden was clearly on the Government, on the hon. Minister to make out a case where this kind of thing was going on, where subversive activities were going on. Therefore we wanted some material. We pressed for some materials. None was given. We got no facts, no figures. In the placid atmosphere of the Select Committee we expected some tangible evidence. Nothing was forthcoming. Therefore we were handicapped. We thought that as this Parliament was on its trial we should be able to do something really to bring it in conformity with the spirit of the times. What is it that we are fighting for? We are continually saying that it is against the postulates of a civilized system of government to detain a man without trial, not to give him a real charge-sheet, not to give him adequate opportunity of hearing.

I appeal to this House even today, I appeal to Parliament to consider, in the year of Grace 1952, in Independent and Free India, under this Republican Constitution of which we are proud, with the high-sounding Preamble guaranteeing social justice and individual liberty, is it not fair at least that we should have those safeguards, those privileges given to the detenus which they enjoyed in war time under Regulation 18B of the Defence of Realm Regulations? That was the main stand we took. We were pressing, we pressed an amendment which stood in the name of Pandit Thakur Das Bhargava. That was nothing improper, nothing extraordinary. The amendment was in these words, that the detenu should be given.....

Mr. Speaker: Order, order. He should not refer to the detailed amendments, which amendments came in whose name and so on. It is not in order to refer to those proceedings of the Select Committee. At the most he can say that an amendment of this type came up.

Shri N. C. Chatterjee: Very well, Sir. That amendment was already before this House. That had been circulated.

10 A.M.

We pressed that there should be given three essential attributes, namely, a fair hearing, formulation of the charge, and an independent judiciary and a right to plead the case by counsel or lawyers of the choice of the detenu. It is an amazing statement. I have great respect for my hon. friend Dr. Katju. I did not say I was ashamed of him I told him I am amazed at his statement and at this stage of my life I have to hear his plea: "For Heaven's sake do not give the detenu a lawyer, that will finish him". Come with me to the Supreme Court. There are Judges who are very anxious to try to go out of their way to help the detenu. No detenu except possibly one in a thousand can present his case properly, even if the Judges are willing, sympathetic, attentive and anxious to help. The greatest tragedy—I appeal to your experience, to the experience of every lawyer Member of this House—the greatest tragedy that can befall a man is to be a litigant pleading his own case before any tribunal! After all it is a tribunal. You may call it a quasi-judicial tribunal, but it is after all a tribunal. We have got on it a High Court Judge and two other Judges. There are three Judges. Is it possible, is it feasible, is it practicable that a detenu will be able to put forward his defence properly? It is impossible. We know it cannot be done. Go to any High Court or to the Supreme Court. Any day when *habeas corpus* petitions are heard, the judges find the detenus impulsive, they have no sense of relevancy, materiality, cogency, they do not understand that hearsay evidence cannot be adduced. I am not thinking of technicalities of law. But there are fundamental maxims which must govern all proceedings where some kind of a semblance of justice is maintained. The Judges have said "You better stop, we will get a counsel" and that counsel would plead for him. Is it possible that before three Judges the detenu—some of them may be illiterate or may have no training in law—will be able to put forward his case? I do enter my emphatic caveat against the statement made by the hon. the Home Minister that the lawyer will be a nuisance, a handicap and will spoil the detenus. He will do nothing of the kind. It is his choice. If he says that he cannot himself do it, for Heaven's sake give him this elementary right, the right which you gave to a murderer, a saboteur, a traitor to the

country, to defend himself through a man of his own choice. That is all that we are pleading for.

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

In England they did it. Mr. C. K. Allen, one of the greatest authorities, who was himself a member of the Advisory Board in England, said that even in England it is impossible for the detenus to really represent their cases before the Advisory Board. The language is this. I am quoting from Mr. C. K. Allen's book *Law and Orders*:

> "Speaking from considerable experience of the examination of conscientious objectors, the present writer can say without hesitation that legal aid may make all the difference to that large class of persons who are inarticulate or discursive and quite unable to present their own cases; and this must be so however eminent, experienced or sympathetic the examining tribunal may be."

We know that the Home Minister has been good enough to accept one suggestion of ours, that there shall be a High Court Judge. Of course he has added an ex-Judge also. I am in difficulty in saying anything against ex-Judges of High Courts!

Dr. Katju: I have got very high opinion of ex-Judges.

Shri N. C. Chatterjee: But what I am pointing out is this. You have these three Judges. But even there you know Sir Walter Monckton was the Chairman of the Board in England. And Sir William Norman Birkett, one of the greatest Judges England has produced, was Chairman of the Board. And he says it is impossible for the detenus to really represent their cases. Remember the standard of education, the standard of literacy, the equipment in public life and the best traditions of England. Even there it is said that the detenus cannot present their cases, where the proceedings are conducted in the English language. There also, Advisory Boards have in case after case stopped them and sent for counsel.

One or two instances were appended in our minute of dissent. . . . .

Dr. Katju: On a point of order, Sir. Is not my hon. friend making a grave reflection upon the judiciary that they are unable to understand the cases without the assistance of the Counsel?

Shri N. C. Chatterjee: It is not a question of specific cases. What was Dr. Katju doing for 40 years in the different courts?

Dr. Katju: I told you I ceased to argu cases at the end of my career.

Shri N. C. Chatterjee: It is a libel on the Allahabad High Court and I hope some lawyers here will protest the Judges there.

From the statements of responsible Ministers in Parliament it will be seen that the detenus are given facilities for the purpose of presenting their cases. You have the statements with you already.

> "The English practice will be seen from the statements of responsible Ministers in the British House of Commons—Home Secretary (October 31st, 1939)"—again predecessor in office of Dr. Katju, ex-Governor of Bengal.

Dr. Katju: I am sick of quotations.

Shri N. C. Chatterjee: Because they are very inconvenient to you, I know. I quote:

> "The Advisory Committee have before them all the evidence which is in the possession of the Secretary of State. But the Advisory Committee call in any person who, in their opinion, may be able to assist in elucidating the matter with which the Committee have to deal."

We pleaded that at least the Advisory Committees should have all the materials which is in the possession of the Government. Even that was not accepted. Then we said that the Advisory Committee should be allowed to call any person who in the opinion of the Judges may be able to assist the Committee with which the Committee have to deal. Solemnly our friends in the Committee turned it down. Are you going to tell the people of India that you are putting this Act on the statute book? In the years 1941-42 when England was in the throes of a terrific war, when her existence was in danger and the foundations of her State were in jeopardy, when her cities and towns were bombed, Sir John Anderson could allow it; Sir Walter Monckton could allow it; Sir Norman Birkett could allow it: I ask what has the poor detenu done? What crime did he commit? When Congressmen were detained, when lovers of liberty were detained under the Criminal Law Amendment Act and Regulation 3 of 1818, they were very loud in their protestations; we were fighting for freedom from political bondage and we wanted to sweep away the existing repressive laws in order to secure the fullest

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development of human personality. Do not commit the mistake of thinking that you can eradicate or suppress Communism by this kind of preventive detention. The British imperialists also thought that they would crush the Congress through this Preventive Detention Act, but they could not do it. They could not suppress the liberty movement. You will also not be able to do it. This is not the way to do it.

I have my fundamental differences with the comrades who are sitting on the other side. But still I do not think this is the way to eradicate Communism. You are really giving these people a handle; you are doing the greatest disservice to India by acting in this manner. Look at the way you are treating them. We were then preaching that an independent India will build up a real commonwealth, a real republic, that justice shall be done, where the frontiers of despotism shall be pushed back, where the frontiers of liberty shall be extended and there shall be no one who shall be deprived of liberty without trial, without an opportunity to defend himself before an honest tribunal.

What does Dr. Katju say to that? He is saying that "this is a model Bill". It is a wonderful Act. This is a wonderful Bible which the Congress Government has today brought out and they are proud of it. I think they ought to be ashamed of it. What is it that you are going to say? I will give you three Judges with one High Court Judge or an ex-Judge but I will not give you a lawyer. I will not even give you a chance of having a representation or your defence or a statement written out by one who knows; I will not even give you a chance of consulting some lawyer for the purpose of preparing your case, even if it is a case of an *alibi*; I will not allow you to call any witness or cross-examine witnesses. These three handicaps Dr. Katju is removing: No lawyer, no examination of witness in support of the defence, no cross-examination of the police informer or informant who supplies some information to the executive officer, district magistrate or his 'wonderful' additional magistrate or the Commissioner of Police In the Uttar Pradesh there are 52 wonderful district magistrates—each one an ideal and a model.

You know there have been abuses of this kind; you know gross abuses of this type. We know that the Supreme Court and other High Courts have released detenus because they were convinced that this Act has been abused. Why was it abused? It was abused because it was left to the subjective satisfaction of one man, however well-equipped he may be. Will you allow him to arrest and then give him a chance of a fair trial? Detain him if you have some reasonable satisfaction, if you have some real information, but then immediately thereafter give him a chance of defending himself. What is the harm there? He is behind the prison bar; he cannot commit any prejudicial act. When he is behind the prison bar, why not give him a chance of defending himself of proving the incorrectness or the *mala fide* of the case against him. We pleaded that at least the detenu should have all the materials which you have placed before the executive officer. That was turned down.

When you are defending yourself properly how do you expect the detenu to defend himself if you do not give him a chance of knowing what the materials are on which the district magistrate or the additional district magistrate had ordered his detention. That is only fair; that is only minimum justice; that is only the barest justice. We also strongly protested against the continuance of this measure for two years. Our appeal—my appeal and those who are with me—was and is "extend it for one year". Why should you have it for two years. Come up before Parliament, convince us next year that conditions exist which make the continuance of this measure justifiable. Take Parliament into your confidence. Simply because of climatic reasons Members of Parliament may be under some handicap to consider this measure properly, therefore you have it for two years; have it for 20 years, so that Parliament will not have further trouble with this Act. Do not take away the Parliament's right. Parliament will be doing the greatest disservice to itself and will be committing a breach of trust if it allows a longer period than one year. After all power corrupts and absolute power, when granted to these officials, is liable to be abused. Therefore, I say that our amendment and our suggestion which was negatived was not properly negatived.

What do you want? It is no use the hon. Home Minister trying to ridicule our suggestion. We suggested the deletion of some words and sections. We said that the scope of the "prejudicial act" should be restricted to a reasonable degree. Please do not expand the scope of abuse. There was

nothing improper. Our suggestion was: "delete foreign relations". What is it? Why should you put a man behind the prison bar on suspicion that he may say something or do something which may imperil some foreign relations with some other countries. We know it was only meant for only one country and there is absolutely no necessity for it. It is our right. it is our duty; it is the duty of every citizen to speak out his mind if he thinks that something has been done in Pakistan or in another State which is detrimental to our interest, to the economy of India and to the self-respect of India. It is our right to do so. I say "delete it". You have read the comment of Pandit Kunzru; he is not an extremist nor a Communist; he is a sober, seasoned man and he pleaded for it. It is not that I alone pleaded for it, but it was turned down. To whatever we suggested the answer was peremptory, an unequivocal and unanimous 'No' from the majority. That is our fate.

We also suggested, for Heaven's sake, in India today, have a law on the same footing as was the law in England; do not entrust this unfettered discretion to one officer, or to one police officer however eminent he may be. We are going to trust the hon. Dr. Katju with the exercise of this power. We are going to take the risk of entrusting this subjective satisfaction to every Home Minister in every State in India. We said, for Heaven's sake, do not give it to any district magistrate or additional district magistrate or police commissioner. That is the English statute.

The English statute differs from our statute in three ways. Firstly, it is restricted to one particular emergency, that is war. Never during peace time have they had it. They repealed it; it died a natural death at the end of the war. Secondly they never gave the power to a district magistrate or county magistrate or any inferior officer. They gave it only to a responsible Minister of the Cabinet, a man in whom the country has confidence, Parliament has confidence and whose satisfaction is of some value. Thirdly, even there, the Home Minister can act only when he has reasonable grounds to believe that the person sought to be detained—I think I am quoting the language properly—the person sought to be detained was recently concerned in some prejudicial acts. Then and then only he can exercise the power. That was the suggestion that we made; that is the suggestion that we are making now. Do not turn it down because the Opposition has put it forward. For Heaven's sake consider it on its merits. We say, take this responsibility yourself; entrust it to responsible Ministers. But, tell them that they cannot act unless they are satisfied that the prospective detenu was recently concerned in some prejudicial act or in any instigation or preparation for violence. I am only suggesting this. There is nothing unreasonable, nothing improper in our suggestion.

Dr. Katju said these are people who wanted to sabotage the Bill. Nothing of the kind. It is not a fair statement; I never expected it of him. What we wanted is that this Act shall come into operation in any State or any part of a State in India where the Central Government in its wisdom will think that the conditions justify the application of this extraordinary statute. Can they not believe themselves? We are giving the power to the Central Government. Issue a notification in the Gazette any time you like. Do not extend it to the whole of India all at once. Do not allow all the district magistrates in all the districts in all the States of India to exercise powers under this Act. We have been told that in certain States no action has been taken. Not one detenu has been kept behind the prison bar. Obviously it is not necessary there. We feel that it is only a just, fair and reasonable suggestion: only have it in those areas where the emergency demands the application of this emergency measure. You cannot stand up and say against your own Statement of Objects and Reasons which says that there are parts of India where it is not at all needed and there is no question of the application of this Act there.

We made various other suggestions. I do recognise that small changes have been made. What are the wonderful changes that have been made? One is that each order of detention has got to be approved by the State Government within 12 days instead of 15. After three hours of passionate pleading, the hon. Minister conceded three days. I was lucky. The second is that the grounds must be disclosed to the detenu within five days of detention: a small mercy and I am thankful to him. The third is that each case must be referred to an Advisory Board within 30 days instead of 42 days. We are obliged for this small mercy again. Then, there shall be a Chairman of the Board, who will be a High Court Judge. Lastly, the executive officer has got to forward to the State Government all the materials that he has against the person detained. One thing I should

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point out in all fairness. The only gain which we have achieved is that there shall no longer be a repetition of the renewal of the first detention order exactly on the same grounds for which the man was detained. Dr. Katju saw the force of the argument. Therefore, a fresh detention order must be now issued on the happening of fresh facts and not the old grounds.

I still maintain that unless you radically alter the statute, this Act shall be a standing slander on India's right to self-rule. It is a great imputation on our capacity for democratic self-government. We have been passionately pleading that we shall remove all these statutes when we get freedom. After five years of freedom, you are solemnly re-enacting all those laws. You are still continuing to have this power to detain without a fair opportunity of trial. We are still prepared, and we were all along prepared, to consider the case of continuance of this measure where such a case is made out. Nothing was done. The hon. Minister was kind enough to mention certain facts and figures here. That shows that in 1241 cases the Advisory Boards have ordered release, that is, in about 28 per cent. of the cases, the Advisory Boards have released the detenues. Does it not show that in some cases, at least in a good number of 1241 cases innocent men were rounded up? You have got to act on suspicion. How can you possibly say that this man is a potential criminal, a potential saboteur? You know there is no question of your going to a court. The grounds are non-justiciable. You cannot invoke the jurisidiction of any court. You cannot do anything in a court of law. That position still continues. The onus which was primarily on the Government was not discharged.

The black spots—I will not call or use the term "Black Act"—in this Preventive Detention Act are still there. One: The detenu is not going to be supplied with all the material which the State has against him. I ask you in all seriousness to delete this provision. It is only a rudimentary canon of fairplay that what you have got against him and what the Advisory Board has got against him should be placed before him. Two: There will be still in a sense *ex-parte* hearing of the case. There will be no chance to cross examine and no chance to lead evidence. From our experience we can say that a majority of the detenus will be under a great handicap. In India, having regard to the situation and the standard of literacy or illiteracy, it is absolutely impossible for them to do justice. Three: We also urged, at least to bring our law into conformity with the English war-time law and put it on that basis.

I appeal once again before I sit down. Let us read the signs of the times. Let us do something to make the common man feel and be convinced that he is not a mere machine, that he is not a mere tax-payer, that he is not a mere blind recipient of all your orders, but that he has got a self, that he has got a personality which contributes to the making of the orders and also colours the nature of the orders. That is what we wanted. Then, he will have the supreme satisfaction of feeling—he may be hungry, he may be under many distresses, economic and otherwise—that he has not been denied justice. His deepening frustration will be removed. There will be real response. We can then face the public and tell them that those who are in authority today—Members of the Government who fought—fought not merely for freedom in the political field, but also for the enthronement of individual liberty—while they are in office, they are not going to cast to the winds all the cherished principles which they preached, and that they are going to practice, at least some of them, in free and independent India.

Dr. Rama Rao (Kakinada): I happen to be one who has enjoyed only one fundamental right, the fundamental right to detention without trial, and as a result of that detention and as a result of that terror regime in jails, I have been kept away even from coming to this House till recently. And now, in spite of all Dr. Katju's sweet arguments. I know I may not be able to come to this House again not because I have any motives, but just because I will exercise the same right of agitation against this Government as I did before, and I am likely, under this Preventive Detention Act, to be detained again.

Before I pdoceed further, I will read only one sentence from my detention order:

> "He was a staunch Communist worker. After the Chief Communist leaders went underground, he had been directing the Communist campaign in Ramachandrapuram Taluk. He presided over a number of Communist meetings in Ramachandrapuram Taluk, and had been exhorting Communist

minded workers to agitate for lifting the ban on the Communist news paper *Praja Shakti*."

Shri B. Shiva Rao (South Kanara—South): May I ask from which document the hon. Member is reading?

Dr. Rama Rao: The detention order served on me by the Government of Madras. I was detained not for asking people to break any law or any order, but to agitate and bring pressure on the Government of Madras to remove that unlawful ban on *Praja-Shakti*. *Praja Shakti* was a daily from Vijayawada which the Madras Government banned and suppressed. Of course, the fundamental rights give us so many freedoms, freedom of expression, freedom of public speech and all that, but when I spoke from a public platform of which the whole record was there with the Government, they could have prosecuted me for any unlawful statements I had made. But at the public meeting, I exhorted for the lifting of the ban.

Is there any time limit for the speech? I am speaking slowly owing to the after-effects of detention. I am feeling weak.

Mr. Deputy-Speaker: What is it that the hon. Member wants before he proceeds?

Hon. Members: Is there any time-limit?

Mr. Deputy-Speaker: Let him go on as he likes.

Dr. Rama Rao: I will read further:

> "He organised a large procession on 'May Day' on 1st May, 1948 from Ventur to Ramachandrapuram."

In the first place, it is not a fact. It is untrue. In the second place, it is perfectly lawful. There is no section 144 or any other section banning that procession:

> "The procession went about shouting objectionable slogans like 'Congress Government should be overthrown', 'Police should be rooted out'."

I do not know what is exactly meant by "Police should be rooted out" and whether the processionists shouted such slogans, and it does not say how I was responsible for that:

> "He instigated the workers to defy orders under section 144 Cr.P.C. at Pandalapaka, Kurmapuram and Ventur in Ramachandrapuram Taluk."

First, it is false. Secondly, the order itself does not show that I defied the order or any such thing:

> "Under his support, the Communists openly announced that they would open a conference at the Taluk Ryots Assn. at Edida on 4/5th June, 1948 in spite of orders under section 144 which were in force in that village."

Even then, it does not show that they defied the order. Again I repeat I had nothing to do with any of these meetings. Even till this date I have not gone to that village Edida.

Here are certain statements made: some of them are absolutely lawful activities, others absolutely false, but my point here is that I had no opportunity to prove that any of the facts were false, and there was no need for the police to prove that any of these statements was true.

Now, the present Bill before us practically gives the same power to the police, and places me in the same helpless position. You make certain statements. Of course, these are all vague, and subsequent judgments of the High Court showed it and according to those judgments I could have been set at liberty. But till now, if they make a specific statement that on such and such a date this Dr. Rama Rao did certain things, I am helpless to prove it is false.

I will give one instance. In 1941 I returned from the General Hospital, Visakhapatnam, after a major gastric operation. There was a conversation between the local medical officer and the sub-divisional magistrate. People sometimes become famous by the operations they have to undergo. During the conversation, the doctor mentioned to the sub-divisional magistrate that I had undergone such and such an operation. The sub-divisional magistrate was surprised. He said: "What, was he not in town?" "No, he returned only three days ago." "It is good you told me. I was about to sign a detention order against him on the ground that he received an underground Communist 20 days ago at such and such a playground". And for two months before that I had been in the General Hospital. This happened by accident. The sub-divisional magistrate told him: "I received information that he received . . . .

Mr. Deputy-Speaker: Is the hon. Member feeling feeble or too weak to stand?

Dr. Rama Rao: I shall just manage. After this I may not have this trouble again.

Mr. Deputy-Speaker: In which case I would allow him to sit and speak.

Dr. Rama Rao: Thank you very much, Sir.

Mr. Deputy-Speaker: Or he can come to one of the front benches.

Dr. Rama Rao: I am very much obliged.

Mr. Deputy-Speaker: On that account, it need not be too long.

Dr. Rama Rao: I will be very brief if not for your sake, at least for my own sake.

I was mentioning a case in which I escaped detention very narrowly by almost an accident. If that doctor had not met that sub-divisional magistrate on that date, probably in another four or five days I would have been detained. And I had absolutely no chance of proving the fact that on such and such a date I was lying as a patient in the General Hospital after a major gastric operation.

Shri B. Shiva Rao: May I ask what was the date of this particular incident?

Dr. Rama Rao: This refers to 1941. My point is not that Dr. Katju sent me to prison at that time. The fundamental fact is there. I had no opportunity of disproving a statement made against me on which I was likely to be sent to prison. In fact, this detention order in which the only fact is about the . . . .

Mr. Deputy-Speaker: What is the date of particular detention order referred to?

Dr. Rama Rao: There are a number of detention orders. I was first detained on 24th June, 1948. Subsequently, so many orders have been issued, but the fact remains that I was in prison on the same grounds, for more than three years.

Mr. Deputy-Speaker: That is removed by the recommendations of the Select Committee. On the same grounds no further detention order can be served.

Dr. Rama Rao: I am a man who has suffered, and I know how these things are carried out in practice. It is true the same grounds will not be supplied. I may be released and one week or ten days after that, they may give me a number of other grounds, that I handed over an atom bomb to some body—if not so suppose they say: "Three days ago, he handed over ten revolvers to such and such a person". There is absolutely no chance for me to prove that it is a downright lie. My point is that you are going to use, you have used, both the Congress Government and the British Government have used the law for certain political purposes. At least the British had this saving grace that they used it during war time, during a great emergency. But now there is no emergency in the country, and yet you are still using the same Act, and you are now seeking to extend it.

I am not for a moment going to believe that after two years this Act is going to stop. It is going to continue as long as this Government is in power. And they are going to use it not merely against any possible revolution, but against all opposition, and are going to use it as a blanket power. They are creating an atmosphere of lawlessness and irresponsibility amongst the officers so that they need not satisfy any rules of procedure, they need not satisfy any law, and that they can arrest and detain a person and send him to prison as to the Bastille, during their pleasure. Of course, all the other rules practically do not count for anything. It is not only the district magistrate that can do so, but even the lowest police officer may send a person to prison if he is pleased.

I can quote you a number of instances where people have been sent to prison for reasons other than political ones also. For instance in Vizianagaram, there was an advocate who was a Congressman. But he did the mistake of appearing on behalf of labour unions on payment before labour tribunals and boards, and unfortunately he won every case against the mill-owners, and so naturally the mill-owners got angry with him and did something by which he was sent to prison. Though he was a known Congressman, and was well-known to several Congress people, it took four to six months to get him out of the jail, just because he was detained under certain charges which were absolutely false but which he had no chance of disproving. In my own place, one advocate appeared on behalf of people who were kept in prison under section 151 of the Indian Police Act, and because he was able to bring out those people from jail on bail, the police authorities, the local Hitlers got angry with him and sent him to prison with a number of false charges for which he had to be in jail for nearly two years. I know of a large number of

cases, where for reasons connected with village factions, village parties were sent to prison because one particular party was in the good books of the local police officer who could therefore send the other party to jail on any number of charges.

My submission is that we must protest against the sense of lawlessness that has been created among the police and local authorities. In Andhra for instance, there was absolutely no rule of law during 1949, 1950 and part of 1951, because the police officers had the freedom to arrest any one, and send him to jail. Not only that, it led to the further freedom of harassing people, torturing persons and even murdering them. I know of a number of such cases also. In Pithapuram two Communists were arrested in a certain village four to five miles east of Pithapuram and were taken away and hundreds of people had seen them and thousands knew that on that particular evening these two Communists were arrested, but the next morning they were killed on a road west of Pithapuram. Then the usual statement came that an exchange of fire took place between the armed Communists and the police, two Communists died while the others escaped. This sort of statement you will find dozens of times in the old copies of *The Hindu* and *The Indian Express*: "Exchange of fire between armed Communists and the police—two Communists died, others escaped", and never a policeman injured. Of course, sometimes it is not in a mango-garden, but in a forest . . . .

Shri Thanu Pillai (Tirunelveli): Is this all relevant to discussion of the Bill now?

Dr. Rama Rao: Yes, Sir, my submission is that it is perfectly relevant, because there is a feeling of lawlessness among the police officers, because they need not satisfy the rules of ordinary law.

Mr. Deputy-Speaker: What the hon. Member evidently has meant is this. He might as well have wanted to say that the scope of the present discussion is only this much. The Bill has emerged from the Select Committee, and the Committee has done what it ought to have done. So we should not go into any other matters of policy or general matters concerning the lawlessness of police officers, etc. except in so far as they have a bearing on what the Select Committee has done or must have done.

Shri A. K. Gopalan: My submission is that.....

Mr. Deputy-Speaker: The hon. Member knows how to bring them in.

Shri A. K. Gopalan: What I wanted to say was this. Though these things are mentioned, they are not unconnected because there are so many amendments which have been given notice of, and which seek to say that there must be some principle behind all this detention, and it is as the basis for these amendments, that the hon. Member is now trying to bring out all these cases.

Mr. Deputy-Speaker: But hon. Members who speak, must have an idea of relevancy too. Other hon. Members can certainly try to bring them together and interpret in a different way. Of course, I do not attribute any motives to anybody.

Shri B. Shiva Rao: My submission is that even if you permit references of this kind, you will kindly ask the hon. Member to give the dates of these alleged occurrences.

Dr. Rama Rao: I give this offer to Mr. B. Shiva Rao. . .

Mr. Deputy-Speaker: There is no question of challenging anybody here. Whenever any statement is made by any hon. Member on one side, the other side must be able to answer that.

Dr. Rama Rao: If I cannot give the exact dates, these are there on record, and I will give the further offer for Mr. Shiva Rao to come to Pithapuram and see. . .

Mr. Deputy-Speaker: We have been accustomed to this kind of challenge and offer. Whatever is said here on the one side or the other must, as far as possible, be definite and specific, so that it can be answered by the other side. A general statement of policy is a different matter, the question of law is a different matter, but so far as particular facts are concerned, and specific allegations are concerned, the time, placed date, district, persons etc. must be given, so that the other side may be able to refute them or admit them.

Shri B. Shiva Rao: May I make one observation here, Sir? I am not asking for the precise date of any occurrence, but I think it is necessary that the hon. Member should specify the year in which it occurred, because only a few minutes ago, he mentioned an incident, which on an inquiry from myself, he said had occurred in 1941.

Mr. Deputy-Speaker: As far as possible these facts should relate to the period after 1947.

Dr. Rama Rao: This happened in 1950, and I may submit that I do not ask for any inquiry, judicial or public, into this. If the hon. Member Mr. Shiva Rao himself goes to Pithapuram and inquires from Congressmen themselves and then he says that "I do not find any proof of these things", and if he is satisfied that my statements are substantially wrong, I am prepared to resign from this House. Not only this, I am going to give you further instances also, and I shall place the whole list of cases before the hon. Member, and let him go to Pithapuram and satisfy himself. He need not satisfy me or the House, but if he is satisfied that my statements here are substantially incorrect, my resignation will be in his hands.

Why I am saying all this is because instead of establishing a rule of law, you are establishing a rule of lawless law. Not only are people detained without any trial, but an atmosphere is created of lawlessness. In 1948, one Mr. Mayurat Shankaran was arrested in Malabar, and the next day he was handed over to the jail authorities in a hopeless condition of injuries, and in a day or so he died. It was the hon. Member Mr. Kelappan who was at that time a very important Congressman, who made a statement to *The Hindu* bringing out all these facts. The detenu was tortured in jail while in police custody, and as a result in a day he died. How did the police get the courage to behave in this lawless manner? Because there was this lawless law.

Mr. Deputy-Speaker: I am afraid the hon. member is going into the principle of the Bill. The Bill is there with the principle having been accepted. It was sent to the Select Committee, and it has emerged now from the Select Committee. The scope of the Bill is therefore narrow. if the hon. Member wants to say that an opportunity should be given to the detenu to go before the Advisory Boards and make these complaints, then that is one matter, and if arguments are advanced, they must have a relevancy. But if any suggestions are to be made that this Bill may be amended or that such and such a thing was not done by the Select Committee, that is another matter. But all this talk about the general question of lawlessness etc. goes to the root of the matter that the Bill is not to be there. The hon. Member may reserve all this at this stage.

Dr. Rama Rao: This should be used only in an emergency and should not be used as a normal law. The suggestion that only when the President or the Government declare a state of emergency this should be used was rejected by the Select Committee. I was in Cuddalore Jail detained on what I consider to be absolutely false and unlawful grounds. I was there beaten, robbed of my articles. I was shot at and my health was broken. All these because I had addressed a public meeting asking people to agitate against the ban on .....

Mr. Deputy-Speaker: In what year?

Dr. Rama Rao: 1949. Now, several false statements were made against us, that we went to the jail offices with certain demands, that we refused to go, we used sticks and stones and all that. If the hon. Member, Mr. Shiva Rao, would go to the Cuddalore Central Jail and see the place of firing and beating where two of our comrades died on the spot and one lost an eye and another became permanently lame and see the mark made by the shot which was aimed at me, on an electric pole there and if he then says that my statement is untrue, I am prepared to resign. We were helpless in detention; we could not do anything.

Pandit Thakur Das Bhargava: (Gurgaon): Was any enquiry made?

Dr. Rama Rao: Certainly not. Two hundred of my, comrades, went on hunger strike for 27 days asking for an inquiry. No inquiry was made, unless you call it an inquiry when the district magistrate came there and asked the man who was guilty of this murder and went away, without seeing us or our memorandum. We definitely asked for an inquiry, though we did send the memorandum to the Government, and naturally it must have found its way to the wastepaper basket. Two hundred of us were on hunger strike for 27 days just asking for an inquiry. I think I must give some facts to the House.

Dr. Lanka Sundaram: Was it published?

Dr. Rama Rao: Not at all. There was no inquiry, no report and false statements were published. One thing more. On the previous day on some lame excuse, our interviews were stopped and our letters were cut off for one month, so much so that for one month we could not see any of our relatives or send letters. We

could not give any publicity to this. The next day we were going in a procession. Processions were then quite lawful and common. Processions were usual and the jail authorities never objected to them, not even to that procession on that day. We practically completed it. When we came to the last stage, the superintendent was outside the gate—of course most of the hon. Members know about jail except one or two who spoke as if they did not know. It was a double gate. Warders with arms, rifles and lathis were kept inside the gate. Only the superintendent was outside. If we had seen them with arms and lathis, there, we would have stopped the procession. If we had received a word that they did not want the procession to proceed, we would have stopped, because we knew in what temper the superintendent was. On the previous day he was thrusting his revolver on the chest of my leader, Mr. Gopalan. We knew he was out to shoot us. So we would not have gone there; we want to achieve Communism, not to die in jail like rats. So the next day, when we were going in procession, without warning, without even giving us an inkling that they were ready for some mischief, he pounced upon us. About 100 yards from the area.....

Shri B. Shiva Rao: I am reluctant to interrupt the hon. Member on a point of order. May I know if all these details are, strictly speaking, in order at this stage of the discussion of the Bill.

Shri A. K. Gopalan: The hon. Home Minister explained the jolly and happy conditions inside the jail when he went to see some friends in jail when he was Governor. He said they were happy, they had newspapers and all other things were supplied and so on. The hon. Member is only explaining the other side that the hon. Home Minister did not see.

Mr. Deputy-Speaker: It is not that every statement made by the Minister ought to be replied to, unless there is a positive suggestion either for amendment of this Bill or that the matter was not considered by the Select Committee. Every hon. Member may have his own experience in jail—both on this side and on that side, under one Government or another Government. Therefore, it will be endless. Let the hon. Member come to the point.

Dr. Rama Rao: Since they are not likely to suffer under this Bill and since we have suffered, I must tell them. I am just reminded of an incident when Pandit Motilal Nehru went to consult a physician and then he was telling a story; the physician was getting restless and finally asked Pandit Motilal Nehru: "What is your present trouble" and Pandit Motilal Nehru replied: "My present trouble is that I have a physician who has no patience to hear me". Of course, I cannot say the same thing to this House.

Shri C. R. Narasimhan: Can the jail administration be discussed here?

Dr. Rama Rao: It is this lawless law.....

Mr. Deputy-Speaker: I do not want to keep the debate prolonged by such statements. Some of the hon. friends in the Select Committee wanted various kinds of concessions in the jail administration, their allowances and so many conveniences, comforts etc. inside the jails. It is possible for them to say that so far as a man is put into a jail, he ought not to be forgotten. When such serious incidents occur in jail affecting some of the detenus, there must be some safeguards. It is not wrong for him to vent out his feelings here and then say such and such a thing ought to be done. It is the duty and responsibility of every Government—State or Central—before it exercises its powers under this Detention Act to see that the man is safe and healthy and that every precaution is taken inside the jail. I do not want to shut it out. Hon. Members will bear with that. But I would not like repetition of all those sorrowful and sickening stories. One incident is enough.

Dr. Rama Rao: I would only add that this is the sort of terror regime in jails. It broke down our health completely.

Mr. Deputy-Speaker: What is the remedy?

Dr. Rama Rao: The remedy is that it must be used only as an emergency and not as normal law which now the present Bill wants.

Mr. Deputy-Speaker: So in an emergency these murders in jail are allowed? I am not able to follow the argument of the hon. Member.

Dr. Rama Rao: At least it will be limited and that is all I want to submit. So this lawless behaviour of the police, where they looted and hundreds of women.....

Mr. Deputy-Speaker: We are now going into another story. It is true. I did not expect every hon. Member to know the details. I would only urge upon hon. Members to bear this constantly in mind: What is the Bill that was referred to the Select Committee? How has it emerged from the Select Committee? What are the points in the minutes of dissent which require consideration? These are the points on which the hon. Member must concentrate.

Shrimati Sucheta Kripalani (New Delhi): If he makes a constructive suggestion.....

Mr. Deputy-Speaker: I do not know how far the case is.....

Dr. Rama Rao: I will not trouble you, Sir.

Mr. Deputy-Speaker: There is no question of troubling. I must regulate the debate in the House. I am anxious to hear the hon. Member as much as possible; only he must be relevant.

Dr. Rama Rao: Coming to the point, this authority to detain a person should not be left to an executive officer like a district magistrate who in the ultimate analysis is the police inspector, but it must be restricted, at least as a brake, as suggested in the minutes of dissent, to the Home Ministers at the Centre and in the States. Otherwise, what happens is that the freedom given to the sub-inspector is misused. This lawlessness on the part of the police creates a situation where the people are compelled to take law and order in their own hands. Just because there was no law and order in the country and custodians of law and order went about raping and murdering, several incidents happened wherein people took law and order in their own hands. But the Party in Opposition has been blamed for so many unlawful and violent acts. This black Act—about which our friends are very sensitive—this black Act gives that power of lawlessness into the hands of the lower executive. Therefore, I submit it must be restricted at every stage. It should be used only in an emergency, and it must be used only by the Home Ministers at least whom we can expect to use it with caution and care. It should also be used very sparingly.

Shri B. Shiva Rao: So many eminent lawyers have taken part in this debate, both for and against this measure, that I felt the point of view of a layman would not be out of place, especially of one who served on the Select Committee, who listened very carefully and attentively to all the discussions that took place in the Select Committee and weighed each proposal made for the amendment of the Bill by various members of that Committee. I must say I was greatly disappointed with the speech of my hon. friend, Mr. Chatterjee. He first said that the majority in the Select Committee said a "peremptory no" to every proposal that emanated from members of the other groups. That that is an unfounded allegation is borne out by the report of the Select Committee itself. Later he modified this statement, and he grudgingly acknowledged, ridiculing them at the same time, that "some small changes" had been introduced. Speaking this morning, the Home Minister explained the main changes that have been incorporated in the Bill as a result of the labours of the Select Committee, and incidentally referred to the provisions of the principal Act in order to indicate the nature and the magnitude of the advance made. In view of the speech made by the last speaker, I think it would be relevant to refer very briefly to the changes that have been made in the application of the principle of preventive detention during the last four years. The Home Minister made certain casual references to that aspect of the case, and I propose to go into a little more detail than he did.

11 A. M.

Broadly speaking, preventive detention has passed through four stages during the last four years; and I maintain that at each successive stage there has been, on the one side, increasing restraints placed on the discretion of the executive, and, on the other, increasing safeguards provided for the detenu. Most of the criticisms that have been levelled against the principal Act and the report of the Select Committee might have been valid during 1948 and 1949. The last speaker misunderstood the point of my interventions and he seemed to think that I challenged the accuracy of his statements. That was not my object. I wanted to point out that many of the things to which he objected, and very rightly objected, took place, some of them before 1948, and all of them in either 1948 or 1949. I labour the point because it was only in 1950 that Sardar Patel brought the Central Government into the picture so far as the principle of preventive detention is concerned.

It is easy, sitting in this House, or even outside, in 1952 to be critical of

various acts of the administration in 1948 and 1949. 1948, need I remind the House, was the year in which the great tragedy took place in Birla House? We know there was a good deal of searching of hearts at various levels of the executive, both at the Centre and in the States, whether that tragedy could have been averted by more vigorous action, by greater vigilance on the part of the executive. In 1948, as an independent Republic we were a few months old, and inevitably the administration had to face the serious dislocation caused by partition. Many States, because of large-scale retirement of senior officers, were compelled to put junior and even inexperienced officers in charge of districts; and I have no doubt, not only from statements made here, but from judgments of the High Courts and even of the Supreme Court, that in a number of cases executive officers acted hastily or on insufficient grounds. But let us not forget the other side of the picture: where junior officers placed in responsibility, because there was no one else to take their palce, were faced with issue like this, were they to err on the side of the security of the State or on the side of the liberty of the citizen? They took the safer course and resorted to policies and actions which later, in some cases at any rate, did not bear the scrutiny of the High Courts. And who can blame them for acting in that manner in a very difficult situation? That, as I said, was the first phase, in 1948 and 1949, when cases of preventive detention were not referred to Advisory Boards.

It was in 1950, in the early part of 1950, that Sardar Patel brought this measure in this House in the light of experience gained in the previous two years. At that stage Sardar Patel felt that he could not go further than he did in providing more safeguards for detenus. The Home Minister referred to the fact that at that time, under the principal Act of 1950, though Advisory Boards were constituted, only in a very limited number of cases was reference made to those Boards: Cases connected either with the maintenance of supplies or essential services or of detention of a foreigner. I have taken the trouble to find out precisely what was the proportion of cases that were referred to the Advisory Boards under Sardar Patel's Act of 1950, and the answer I have got is very significant. Not more than two or three per cent. of those cases were referred to the Advisory Boards. In cases where a detention order was made for reasons connected either with the defence of India or the security of India, or the maintenance of public order, there was no provision in that Act for reference to an Advisory Board. It was open to the Government to review such cases in consultation with a Judge, or one qualified to be a Judge, of the High Court. But even there Mr. Chatterjee complained that the Home Minister gave no facts and figures to support the proposition that in 1950 the executive acted with a certain measure of restraint and circumspection. I have figures here before me, also obtained from official sources, which are of interest and relevancy in this connection.

It was in July 1948 that the Central Government made an attempt for the first time to obtain the figures of detenus from all States, but until a month or two later they could not obtain the figures from many of the Part B and some of the Part C States. Mr. Gopalan said in his speech on an earlier occasion that according to his information there were 15,000 cases of detention at the peak of the moment. That figure is wide of the mark. The highest was about 8,000 at any time.

Shri A. K. Gopalan: Including Hyderabad or excluding Hyderabad?

Shri B. Shiva Rao: 8090 on the 15th April 1950 and this includes according to my information which is based on an official statement all States, Part A, B and C. Anyhow, I will have that point checked.

Shri Nambiar (Mayuram): I want to know the total number so far dealt with under the Preventive Detention Act, not the figure on a particular date.

Mr. Deputy-Speaker: This is not question hour and the hon. Member is not giving replies to questions. According to his own data, he is giving the figures.

Shri Nambiar: But the clarification must be correct.

Mr. Deputy-Speaker: There is no harm in his stating his figures. Mr. Gopalan said it was 15,000 and the hon. Member is saying that it is only 8,000.

Shri B. Shiva Rao: In the first half of 1948, I may repeat, these were the figures available with the Government of India, but in the second half of 1948 the highest was 4,800 detentions in September of that year. In April 1949 the number rose to 5,400. Later it rose to 8090 and then there was a gradual policy of release, although there was no reference to Advisory Boards. The number dropped to 7,500

[Shri B. Shiva Rao]

in November 1949 and then there was again a slight rise and in April 1950 the figure was over 8,000. But after the summer of 1950 the number of detenus diminished considerably and at the end of 1950 it had dropped from 8,090 to 3,200. That was the second phase of the application of the principle of preventive detention immediately on the Central Government coming into the picture.

Sardar Patel's successor, Shri Rajagopalachari, introduced an amending Bill in February of last year, and the result of that amending Bill was that the working of the prinicipal Act was considerably liberalised so as to require the reference of all cases of detention to three-member Advisory Boards. That point is of particular significance, and I repeat it because Mr. Chatterjee was not here a few minutes ago, but he has now come into the House. Under the principal Act of 1950, 98 per cent. of the cases of detention were not referred to Advisory Boards, but after the amendment of the Act in 1951 all cases were to be referred to three-member Advisory Boards. Mr. Chatterjee made the point that as a result of such reference to Advisory Boards over 1,200 cases of detention were found to be on inadequate grounds and those detenus were released. I must confess that I am not able to grasp the significance of that statement. On the other hand, I should have thought that a fair-minded critic would have given credit to the Government of India for having had the fairness to refer all those cases, which previously had not been so referred, to Advisory Boards and for acting so promptly and so generously on the advice of these Boards. It was also provided in the amending Bill that in any case where the detenu so desired he could be heard in person. There was further an express provision enabling the Government to release detenus on parole.

Again, let me come to the other aspect of facts and figures. I said a minute or two ago that the number of detenus at the end of 1950 stood at 3,200. By the end of May 1951 the number had dropped to 2,100. At the end of August 1951 it was below 1,900. Figures were given by the Home Minister at an earlier stage of the debate, detailing month by month the releases of detenus since the beginning of this year, and at the end of May 1952 the number of detenus was 990 in the whole of India. This background is necessary to appreciate what I said at the beginning, namely, that many changes have been incorporated in the Bill as a result of the labours of the Select Committee and the first thing that any fair-minded person would readily concede is that the Bill has been considerably improved by the Select Committee.

There has been a good deal of complaint. Mr. Chatterjee said that unfettered discretion has been placed in the executive officer who passes the order of detention in the first place. He did not choose to point out that that officer hereafter must place all particulars bearing on any detention order before the State Government for its final approval and obtain that approval within twelve days. Under the old Act, he was expected to submit to the State Government only those materials which bore on the necessity of the order, in other words, materials which in his opinion justified the passing of the order.

Another important step taken as a result of the labours of the Select Committee is that the State Government, after giving its approval to a detention order, should communicate it as soon as may be to the Central Government for information. I would like to point out to the House that taking this amendment with section 13 which authorises the Central Government to revoke a detention order, the amended measure as it is now before the House gives the Central Government a much larger measure of authority and influence to ensure that the provisions of the Act are applied with due circumspection and restraint.

Another new clause that has been added ensures that the Chairman of every Advisory Board should be a person who is or has been a judge of a High Court. The period within which the reference to an Advisory Board should be made has been reduced from six weeks to thirty days.

Another point of importance—and this Mr. Chatterjee was candid enough to acknowledge—is that once a person has been detained and has served his period of detention a fresh order can be passed against him only on the basis of fresh facts. Therefore, I maintain that the result of the work of the Select Committee, taking in one sweep as it were the various Acts that have been in operation, both Central and State, has been a very considerable advance in favour of the detenus. This Bill, if placed on the statute book would, I submit, for all practical purposes be both fool-proof and knave-proof. I make this point because critics of this measure have indulged in a good deal of criticism and have

pointed out many unsatisfactory features in the administration of this Act, practically all of which relate to the first period of 1948 and 1949, since which time this measure has been changed beyond recognition. They have been flogging not only a dead horse, but a horse which died more than two years ago and they have had to exhume the bones of that dead horse in order to flog them on the floor of this House.

I have another complaint against the Members of the Opposition who have been indulging in criticism against the various provisions of the Act and the manner in which it has been administered. Mr. Gopalan read out, when he made a long speech, from this volume *Civil Liberties in India*. Unconsciously I hope, he gave the impression to the House that he was quoting from the actual texts of the various detention orders which were passed by the Madras Government under the Maintenance of Public Order Act. I took the trouble of obtaining a copy of that volume. It is a very interesting volume, and it is also very interesting to observe what use Mr. Gopalan made of this volume. Appendix No. I from which he read, does not contain the actual texts of any of the detention orders. It is in many cases a summary in three or four words prepared by Mr. S. Krishnamoorthy, Secretary of the Madras Civil Liberties Union, indicating the nature of the charges under the Maintenance of Public Order Act.

I will read just two or three of the summaries which were prepared by this gentleman to indicate the one-sided and the thoroughly mischievous nature of these summaries. One man is supposed to have been detained for participating in a mill strike; another man, because he appears in a red uniform; a third man is supposed to have been detained because he attacks Government's food policy; a fourth man because he spends his time reading Communist literature. And then, Sir, may I come to Mr. Gopalan himself.

Shri A. K. Gopalan: I read out the whole thing about the man who was arrested for wearing a red shirt and a white pyjama.

Shri B. Shiva Rao: I will have something more to tell Mr. Gopalan before I finish. I now come to Mr. Gopalan himself. I am prepared to place abundant material before the House to indicate the utterly irresponsible and mischievous nature of this sort of thing which has been bandied about on the floor of the House and my hon. friend has given the impression that these are textual reproductions of detention orders.

Shri A. K. Gopalan: I had the book with me and I clearly stated that it was a summary of the detention orders. I did not say that I was reading from the actual detention orders.

Mr. Deputy-Speaker: The hon. Member, Mr. Shiva Rao evidently wants to remove any doubt or misapprehension that might have been created in the minds of hon. Members. The impression that was left in the mind of several hon. Members was that wearing a red shirt and white trousers was all the charge against the detenu; whereas Mr. Shiva Rao wants to say that it was only one of the several other charges.

He may be allowed to proceed.

Shri A. K. Gopalan: Even if it was only one of the several other charges, that charge alone, wearing a red shirt and a white pyjama, makes the other charges illegal.

Shri B. Shiva Rao: I can see my hon. friend becoming very uneasy.....

Shri A. K. Gopalan: I am not at all uneasy. I have got a bundle of detention orders which I shall read out to you.

Shri B. Shiva Rao: May I seek the protection of the Chair, Sir? We listen to hon. Members opposite patiently.

Mr. Deputy-Speaker: Let me regulate the debate. It is not unparliamentary if an hon. Member speaks with force and emotion. According to Mr. Shiva Rao the hon. Member is feeling uneasy—that is his reading.

Shri B. Shiva Rao: Let me deal with my hon. friend himself. He said he had a copy of his own detention order in front of him, but he chose to read the summary. I am reading from the report of the proceedings of the House on that day:

> "Mr. Gopalan: The main grounds of detention are: 1947: ex-President of the Kerala Congress Committee; Resigned from the Congress Party; stood as a Communist candidate in Calicut; collected Rs. 8,000 for Communist party funds; demanded an enquiry into the conduct of corrupt officials and black-marketeers; condemned the Congress people for running after jobs, and so on."

[Shri B. Shiva Rao]

There is one little sentence which he did not want to read.

Mr. Deputy-Speaker: Is the order against Mr. Gopalan wholly extracted there?

Shri B. Shiva Rao: I am reading a passage from Mr. Gopalan's speech in which he has indicated the grounds of his detention. After all he knows his own grounds of detention very much better than anyone else. He created the impression in the House that what he was reading from this volume represented a fair summary of the grounds of detention given to him by the Madras Government.

Shri A. K. Gopalan *rose—*

Shri B. Shiva Rao: Let me proceed; I protest against this sort of interruption.

Mr. Deputy-Speaker: So far as facts are concerned, if an hon. Member says that is not what he said, I think he must be given an opportunity to explain.

Shri B. Shiva Rao: I am coming to the explanation. My hon. friend is so uneasy that he does not want me to proceed.

Mr. Deputy-Speaker: My recollection is what is reported in the speech is from his own detention order which he read *in extenso.*

Shri B. Shiva Rao: I will satisfy you in a minute, Sir, because I have here the full text of the detention order against Mr. Gopalan and I want you and I want the House to judge how far the summary that he read out and which he wanted the House to understand as a fair summary is correct. I am reading from Mr. Gopalan's own detention order issued by the Chief Secretary to the Madras Government, on the 9th of December 1948. I hope you will allow me a few minutes, because it is a point of some importance:

> "Mr. Gopalan is one of the accredited leaders of the Communist Party in Malabar. The Communist Party has of late launched a campaign of utter lawlessness in Malabar, committing dacoities in out of the way places, assaulting innocent persons, forcibly snatching fire arms from licence-holders and intimidating the public in many ways.
>
> In 1946 Mr. Gopalan incited the Mapalas of Eranad."—you and I know very well what exolosive atmosphere can be created in Malabar and particularly in Eranad—"Mr. Gopalan incited the Mapalas of Malabar to precipitate a communal revolt in furtherance of the party's plan to create widespread unrest and was arrested and proceeded against under section 107. He exhorted the Police to go on strike and to disobey the orders of their superiors when dealing with strikes sponsored by the Communist Party."

I have not the least objection to place the whole of the document on the Table of the House. I do not want to take the time of the House. *(Interruption).*

> "Speaking at Alathur on 3rd November, 1947.....

Shri A. K. Gopalan: If the whole charge-sheet is placed on the Table of the House, I am not against it, Sir.

Mr. Deputy-Speaker: The hon. Member himself is giving way. Various extracts were read by the hon. Member, Mr. Gopalan, on this side from various detention orders trying to make it appear that the grounds of detention were so absurd that any honourable man could be arrested and detained. So far as I can understand, the intention of the hon. Member, Mr. Shiva Rao, is to show that the grounds are not such harmless things as have been made to appear but more serious things. If he wants to refer to them, let him do so. I find that hon. Members start something and then collapse and put it to the Chair to intervene between the troubles here! I allowed Mr. Gopalan to read certain things. I have no objection to Mr. Shiva Rao reading certain other things. If I find that it is irrelevant I will tell him so.

Shri A. K. Gopalan: I am not against his reading the extracts. The whole charge-sheet may be read. I am not against it.

Shri Feroze Gandhi (Pratapgarh Distt.—West *cum* Rae Bareli Distt.—East): On a point of information, Sir. When Members of the Opposition are speaking, the Speaker does not allow any of us to make any interruption. We have to keep our mouths shut. May I know whether you intend to follow the same practice? When Members on this side speak, all the time there is interruption.

Mr. Deputy-Speaker: Certainly I will not allow any hon. Member to

interrupt. But the hon. Member himself ought not to invite interruptions!

Shri B. Shiva Rao: Sir, if truth invites interruptions I cannot help it. But I must in all fairness place the facts before the House, the actual grounds of detention in the words in which the order was communicated to the hon. Member.

Mr. Deputy-Speaker: Let him read.

Shri B. Shiva Rao:

"Speaking at Alathur on 3rd November 1947 he incited disaffection amongst the ranks of the Police suggesting that the policemen should do only six hours duty. * *

Speaking at Mannarghat on 10th November, 1947, he said that Sub-Inspector"—Sir, I shall omit the name—"so-and-so was going to create Hindu-Muslim riots and that the Collector and the Deputy Superintendent of Police had made use of this Sub-Inspector to prepare the scene for British rule to come back.

On 16th November 1947 at Talikkara he held out a threat that if the Sub-Inspector of Nadapuram was to continue his ways he would have to face the same fate as Sub-Inspector Kutti Krishna Menon who was killed in the course of a rioting a few years back."

Dr. Katju: That is soft language!

Shri B. Shiva Rao:

"Speaking at Tellicherry on 18th November, 1947, he incited the public against the Malabar Special Police by alleging that they were responsible for several atrocities and threatened them with dire consequences when the Communists came into power at a future date."

I am sorry that my hon. friend Dr. Syama Prasad Mookerjee is not here. Oh, he has come.

"Speaking on 5th December, 1947, he incited the public against Head Constable Ananda Kurup, advocating that he should be killed like Sub-Inspector Kutti Krishna Menon."

My friend comes in at a very convenient moment.

"He (Mr. Gopalan) spoke in contemptuous terms of the Government of India and said that it consisted of reactionaries like Syama Prasad Mukerjee, R. K. Shanmukham Chetty and Baldev Singh who were responsible for the communal riots in the country."

These are the actual grounds of detention communicated to Mr. Gopalan by the Madras Government from which he sought to create the impression in the House that he was giving a fair summary. It may be of passing interest...

Dr. S. P. Mookerjee: Please read the whole of it.

Shri A. K. Gopalan: The matter was decided by a court and I was acquitted in all the three cases to which he referred. When a case has been decided upon in court, is it in order...

Mr. Deputy-Speaker: We are going into what followed.

Shri A. K. Gopalan: I was acquitted.

Mr. Deputy-Speaker: The hon. Member, Mr. Gopalan, said that many of the charges were apparently so absurd that no charges could be made. It is another thing for the courts to come to the conclusion that particular charges have not been proved. We are in the initial stage now. Possibly the hon. Member may come to some more cases decided by the courts. There is a saying in my part of the country. "As soon as a Reddy or patil comes, once again the *purana* must be started". Merely because Dr. Syama Prasad Mookerjee has come in, should it be repeated once again?

Shri B. Shiva Rao: Sir, I will not start the *purana* once again—not the whole of it.

Mr. Deputy-Speaker: Yes, not the whole of it.

Shri B. Shiva Rao: It will interest the House to know that when Mr. Gopalan read out this summary from this volume regarding himself, he omitted one little sentence. The House will be interested to know the manner in which the summary was made, that Mr. Gopalan objected to the appointment of Mr. R. K. Shanmukham Chetty and Dr. Syama Prasad Mookerjee. That one sentence he did not read out to the House when he read out the summary. Of course I can understand...

Mr. Deputy-Speaker: What is the objection?

Shri B. Shiva Rao: ... the idea being that Dr. Syama Prasad Mookerjee has passed through a certain reformation and is a good little boy.

Dr. S. P. Mookerjee: What is the point? The police said that Mr. Gopalan said that Syama Prasad Mookerjee was an undesirable person in the Cabinet.

Mr. Deputy-Speaker: There is unfortunately some unnecessary misunderstanding created. The hon. Member evidently was reading, before Dr. Syama Prasad Mookerjee came in, from the authentic copy that was obtained from the Madras Government regarding the grounds of detention of Mr. Gopalan. Then he said that a reference was made even to such hon. Members like Dr. Syama Prasad Mookerjee as reactionaries in the Government.

Dr. S. P. Mookerjee: So far as I could gather, in the grounds of detention which were supplied it was mentioned that the police said that Mr. Gopalan said that so-and-so-was reactionary. Mr. Gopalan said he did not say it, and that was proved. That is the sort of grounds on which people are detained.

Mr. Deputy-Speaker: The hon. Member is now reading the grounds that were submitted to the detenu. He has not yet come to the next stage of the decision of the court.

Shri B. Shiva Rao:

> "In one of the speeches Mr. Gopalan said that if the present state of affairs continued, many incidents like the Jallianwala Bagh would be repeated in the history of the country. He also stated in one of his speeches that he told the Collector (of Malabar) once that if the Communists were to come to power they would dig a trench and bury those belonging to the Malabar Special Police".

This is the kind of...

Shri Nambiar: Cock and bull stories.

Mr. Deputy-Speaker: I have repeatedly asked hon. Members not to be so impatient. They lose their case by showing such impatience. It does not give them an advantage. I shall see to the best of my ability that there is no interruption unnecessarily, so far as hon. Members on either side are concerned. Let not the thread of it be disturbed. It applies to both sides.

Shri B. Shiva Rao: Sir, I shall leave Mr. Gopalan alone with the statement on the grounds of order given to him by the Madras Government. My only purpose was to indicate that in giving this House summaries of such orders, they should at least be fair and indicate what were the grounds which were communicated to them.

In the course of the debate the Home Minister put a straight question to hon. Members sitting opposite and said: Will you give a categorical assurance that you will abjure violence, then there will be no need for an Act of this kind on the statute book. And Mr. Hiren Mukerjee went into a long and very eloquent passage about people rising up in arms, people suppressed for generations and so on, and he said: If there is murder, if there is some bloodshed, after all it is like the prick of a thorn on a rose bush.

The other day Mr. Gopalan read a certain extract from the judgment of Justice Mack of the Madras High Court and he referred to it with approval. I too will quote a judgment given by Justice Mack and it was on a bail application case before the appellate side of the Madras High Court. It is dated the 3rd of November 1951. Mr. M. V. Sundaram and 42 other Communists in the Ramanathapuram conspiracy case appealed to the High Court for bail and this is what Justice Mack said on behalf of his brother judge and himself:

> "The accused were charged with conspiracy with the object of overawing the Government by criminal force and acts of violence between January 1949 and June 1950...".

Shri Nambiar: On a point of order, may I say that this case is *sub-judice* as the case is pending in the High Court and any reference to that is not justified.

Shri B. Shiva Rao: The bail application is complete.

Mr. Deputy-Speaker: So far as the bail application is concerned, the subject has been disposed of.

Shri B. Shiva Rao: The first accused, Mr. Sundaram had filed an affidavit before their Lordships and in the judgment Justice Mack observed:

> "This application for bail has been supported by an affidavit by Sundaram, the first accused"—

I am quoting the words of the Judge:

> "With rather an astonishing attempt to explain and justify throwing of bombs included in the overt acts alleged in pursuance of the conspiracy."

One paragraph in the affidavit stated the following and I am quoting from the judgment:

> "The unprecedented repression let loose by the Government on the members of the Communist Party had resulted in the members of the party resorting to these acts."

His Lordship said that this was an astonishing line of defence for the user of country-bombs and explosives in self-preservation—whether of the individual or party is not clear.

He added and again I am quoting from the judgment:

> "It was a very disturbing feature of this application. It could be regarded in fact as an invitation to the courts themselves to uphold and justify the use of bombs by a political party or its members which under no circumstances whatsoever could possibly be tolerated or justified. The affidavit reveals the existence of a most subversive doctrine seeking to justify resort to the use of bombs, explosives and all kinds of violence as self-defence against the alleged repression of the Government."

The last speaker complained that in Andhra, whereas the armed Communists were killed by the police, the police would not obligingly stand in the way of the bullets released by the Communists; and that is another act of repression on the part of the Government, I suppose!

Let me go back to Justice Mack's judgment:

> "A further disturbing feature manifest in the present trial is the facility with which the members of the Communist Party abscond when wanted in connection with cases against them and successfully evade arrest for long periods. The *modus operandi* plays fast and loose with the entire criminal machinery of the law, holding up cases indefinitely and results in absconding accused having to be tried over and over again in separate trials. It is extremely difficult to absolve the Communist Party organisation from responsibility for this technique. It is a reasonable inference that the organisation is aware where the accused absconding in the present case are."

I do not want to take more time of the House, but Mr. Chatterjee in the concluding portions of his speech said "Parliament is on its trial". I entirely agree with him that Parliament is on its trial. Whether the Bill should be put on the statute book, what should be its provisions, what should be its duration—these are not questions which are answered by the Prime Minister or the Members of his Government. These are questions which can be answered satisfactorily only by Members sitting opposite.

Dr. S. P. Mookerjee in one of his most eloquent passages in his last speech dramatized a certain incident in this House more than 20 years ago: that Pandit Motilal Nehru was sitting where Shri Gopalan was sitting and Vithalbhai Patel was sitting where you are sitting at present and he said that Pandit Motilal Nehru denounced the principle of preventive detention with all the vigour of which he was capable. That is perfectly true. At that time may I suggest to Dr. Mookerjee that the method of the ballot box was not open to the Swarajist Party. Entrenched on these Benches was insolence in all its might. The slogan at that time was: "Let the dogs bark but the caravan marches on". Is that the situation at the present moment?

Mr. H. N. Mukerjee threw a challenge at us and said: Why does not the Prime Minister or any member of the Congress Party contest the election in any part of the country? Why did we miss that opportunity six or eight months ago? They speak glibly of the millions of India, but for whom they speak? Dr. Mookerjee spoke of the millions whose views he reflects on the floor of the House. I looked at the results of the General Elections. There are not many millions. Dr. Mookerjee's party represents not even one million; not even half a million; it is 268,000. The Congress Party got 38 million votes out of the 52 million and that is the support behind this measure. If Mr. Chatterjee asks: How long is this law going to be on the statute book, I again repeat, the answer can be furnished not by Members of the Government sitting here but by the Members sitting opposite.

Shri Sarangadhar Das (Dhenkanal—West Cuttack): On this occasion I have no desire to go into the details of the Bill. As I said on a previous occasion, I as well as my party were opposed to the very principle of it. I went into the Select Committee to see if the provisions of the Bill as well as the parent Act could be moderated and brought nearer to the fundamental principles of democracy, namely, personal liberty.

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As my colleagues have already stated, we failed to convince the majority. It has been mentioned that certain improvements have been made and it has been said in such a way as if we were the beggars and our friends opposite were generous enough to give us something.

I wish to point out particularly about other countries where democracy is of a longer duration. Take, for instance, the United States of America, where I happened to live three decades ago and I lived there for over a decade. At that time, the Communist Party was not born, but the anarchists were bug-bears for the Americans. They had, in their immigration law, which may have been changed now, not mentioned the Communist Party. But, every immigrant who went from foreign countries had to say on oath that he did not believe in anarchism. In that way they were screening the anarchists and keeping them out of the country. In spite of that, some people became anarchists. There was a good deal of propaganda by their leaders all over the country and they preached anarchism and said that the Government should be changed by force. But, you will be surprised to know that there was no action taken. Their audiences were few. No action was taken in initiating proposals for a preventive detention law because that is absolutely against the fundamental rights of freedom of speech, and freedom of association enunciated in their Constitution. The principles of their Constitution are so sacred even to the ordinary man in the street that no Government ever dares to encroach upon those rights. Yet, anarchism would not spread there.

Since then, things have changed. From the reports that I read in the papers and books coming from that country, I find that to every American whether he is in the Government or a private citizen, Communism is like a red rag to a bull. Communists and Communism will subvert the American way of life. That is why they see red everywhere. Yet, as you know, Sir, there is no Preventive Detention Act. Lately, there have been Communists who, as spies for Russia, have delved into atomic secrets. Some of them were caught selling them to Russia. Even then America has not initiated any Preventive Detention Act. They have other laws by the due process of which they punish them. In that way Communism does not spread. The people who are anxious to protect their civil liberties are in such a position that Communism does not grow there.

Similarly, recently in Japan, the Constitution that was promulgated, I believe it is after the American pattern, because American occupation forces under General MacArthur were doing everything to introduce American democracy into Japan that had gone through all kinds of authoritarian rule. In that Constitution, there is no provision for a Preventive Detention Act. Recently there were riots against Americans. Some Japanese friends who came to India, only a few days ago, assured me that those riots were engineered by the Communists and perhaps some North Koreans resident in Japan. But, there is no preventive detention. Under the ordinary law, the leaders of such disruptive forces are taken in hand, they go to the law courts and there they are suitably punished.

So it is in the United Kingdom and I do not think it necessary for me to repeat all that, because the provisions and judgments in the United Kingdom have been often quoted here and I cannot improve on them.

In our counrty, if we go into the genesis of the Preventive Detention Act, we find that in Hyderabad, after the Police Action and after the defeat of the Razakars, trouble was created there by certain elements, which, I am bold to say, owed allegiance to another an extra-territorial power. However that may be, because of that trouble and because of the disturbances in the neighbouring Andhra country, the Preventive Detention Act was rushed through by the late Sardar Patel when he was the Home Minister. The impression was given at that time that it was a temporary measure. When our friends opposite say that the present Bill has many improvements that the original Act did not have, and that the number of detentions has been decreasing from 1950, I wish to present another aspect of this decrease. Does it not show that the trouble that was started, that was rampant in Hyderabad and the Andhra country in 1949-50 has subsided? All over the country, barring Hyderabad—the case of Saurashtra is mentioned now—barring these two places, there is no case for this Act to handle any disruption. There is no disruption.

Mr. Deputy-Speaker: I am afraid the hon. Member is going back to the second reading stage. The House has accepted the principle that this Bill is necessary and also sent to the Select Committee. Is it necessary to touch upon the parent Act now? What the

Select Committee has done, what the Select Committee has not done, that would be the subject matter at this stage.

Shri Sarangadhar Das: May I submit, Sir, that just now Mr. Shiva Rao went back to the past. I am trying to prove that the Act is not necessary and then I shall come to the second stage to show how the Act has been abused and so I will have to go back.

Mr. Deputy-Speaker: Mr. Shiva Rao referred to the cases of detention and grounds, etc. It had been alleged that the Act had been abused, that there must be something like a judicial tribunal. He said that the Act had not been abused, these were the grounds, the grounds had been quoted in part, that all the grounds had not been fully placed before the House, that only a portion had been placed and so on. That is quite relevant. There is no good going back to the parent Act now.

Shri Sarangadhar Das: I am going back only to this extent, about the beginning of the Act in 1950. I am not going back any further than that. What I mean to say is this that although the Home Minister and the speakers on the other side have always repeated in their speeches that this Act is not intended against any political party, but from all the speeches here as well as elsewhere, it is evident that the Communist Party is the target (*An Hon. Member:* No, no.) but I also agree with you that it is not the Communist Party alone but all political parties that oppose the Congress that are the targets. This is my point. I will give you.....

Mr. Deputy-Speaker: I am not going to allow this, whatever the hon. Member may feel. This is going back once again to the principle of the Bill. Whether it was to be accepted or not was discussed at length at the consideration stage, and if it was not acceptable, it could have been thrown out. The House has accepted the principle. All that the hon. Member can now say is that some of the rigours of the Bill may be removed, some other amendments may be made, or some improvements effected. That is all that is open to any hon. Member at this stage.

Shri Sarangadhar Das: I am coming to that.

Mr. Deputy-Speaker: There is no good coming to that in a dilatory manner like that.

Shri Sarangadhar Das: It is not a dilatory manner.

Mr. Deputy-Speaker: I will not allow any reference to the principles.

Shri Sarangadhar Das: On a previous occasion I was not allowed to speak, and now after giving me a chance...

Mr. Deputy-Speaker: I am sorry on the previous occasion he had no chance to speak. He cannot refer to all that now.

Shri Sarangadhar Das: I am not referring to that incident. I am coming to the point where the Act still needs some improvement, particularly that the Act should not be applied all over the country. It is not necessary. In order to prove that I have to give some of the incidents that have not been mentioned here.

About two years ago, this Act was applied in Assam in connection with a bye-election to the seat of the Chief Minister Shri Bardoloi when he died. Because the Socialist Party was contesting there, some four or five days before polling, there was a raid to arrest the R.C.P.I. people who were taking shelter in Assam. It was my Party that had informed the Assam Government that the R.C.P.I. were forming pockets in different places in Assam, and they should be watched, but nothing was done, but the Act was used in rounding up Socialists and Socialist sympathisers in that constituency due to which the Socialist Party lost and the Congress won.

Some Hon. Members: Absolutely false.

Shri Beli Ram Das (Barpeta): Absolutely false. I come from that constituency. I was member of that constituency for 15 years. There was not a single arrest of any Socialist.

Shri Sarangadhar Das: I do not want to be disturbed. I am here to speak. You can speak afterwards.

An. Hon. Member: He is uneasy now.

Shri Sarangadhar Das: Talk about uneasiness here, there is uneasiness on the other side rather.

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The same way it is being applied against inconvenient men in the trade union movement. In Bombay today there are about five or six trade union leaders under detention. There is one De Mello, a very powerful man and now Secretary of the Bombay Dock Workers' Union. He was named by my party as a candidate in that dock area, and in the month

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of August before nomination papers were to be filed, he was spirited away. He is still under detention in Bombay jails. If a man organises trade unions, and if there is a rival trade union trying to monopolise, then if the subedars of the Central Government, the Chief Ministers, find the man inconvenient, they clap him in jail under the Preventive Detention Act. Many a time challenges have been given and it was discussed in the Bombay Council lately, but the Chief Minister said that he is a dangerous man. Well I ask, if he is a dangerous man, if his Union demands that he should be tried in a law court, why is he not tried? That is why I say this Act is being used in order to oppose all Opposition whether it is Communist, Hindu Maha Sabha, Socialist or any other party. Any party that is opposed to the Congress is *persona non-grata* to my friends opposite and consequently the Act has to be used, because in the law courts, the cases cannot be won.

There is another instance in Orissa. Although the Preventive Detention Act was not on the statute book then, the Public Maintenance of Order Act which was in existence in some of the States was used against a Socialist worker who had gone among the tribal people. His movements were restricted. He was given notice to appear before the superintendent or the deputy superintendent of police and give his programme of tour. If he changed that programme, he must go back to the superintendent or deputy superintendent of police, although he might be 15 or 20 miles away, inform him, get his sanction and then alone could he start his new programme. This is another Act in line with the Preventive Detention Act that came later, which was used to stifle opposition. Fortunately for me, I was in that area when this order was passed on this Socialist worker. It was said the Adivasis, the tribal people, are excitable, and there should be no party propaganda among them. I went all over that area, many of the tribes that live in the Keonjhar district, and found them the most peaceable people. I saw one case in a village where this Socialist worker had helped the villagers to initiate a school. As our Governments do not establish any schools, a public organisation goes and initiates a school there, and they were building a little mud-house which was stopped by the police saying that the Government orders were such that they could not build this school for the ignorant village people. On the one hand, we have ignorance all over the country. Our Education Ministry says we must remove this ignorance within ten years or twenty years, whatever their Five Year Plan is, and when we go to the State Governments, there is no money to establish schools, and when some public organisation with a little bit of money wants to put up a school, it becomes the Socialist Party's school, consequently it must be stopped, prevented. That was done in the district of Keonjhar. I know of other instances which I do not want to say because they are similar.

Shri Syamnandan Sahaya (Muzaffarpur Central): Was the school closed under the Preventive Detention order?

Shri Sarangadhar Das: It was under the Orissa Public Maintenance Order, similar to the Preventive Detention Act, the elder brother, that was born before.

Pandit Thakur Das Bhargava: In what year?

Shri Sarangadhar Das: Although I have said that I do not see the necessity for this Act, it is being enacted this time for a longer period up to the end of 1954. We tried to have a shorter duration for the Act, so that Parliament may get facts and figures if necessary and review it from time to time, and then decide whether to prolong it or to stop it. But that also failed. My contention is that in the name of suppressing Communism and the Communist Party in India, the party that is now in power, and which is now well-known to be the supporters of vested interests, the supporters of the *status quo* of Indian Society...

Shri Syamnandan Sahaya: Where are the vested interests? They have been completely abolished.

Shri Sarangadhar Das: To maintain the *status quo* of our society, that party says to us "We know everything well. Whatever we say you must carry out, so that there cannot be any change in the structure of our society." It is not law and order, it is not peace and tranquillity that is really behind the mind of the mover of this Bill.

When you take into consideration the way it has been abused, I also have to point out another thing. If the Communist Party in the Telengana and in the Andhra areas created these troubles and these disruptions.

I ask what was our police and magistracy doing there? During the last four or five years, our police and our magistracy all over the country have become incompetent and inefficient. I should like to ask this question today, now is it then that although Laik Ali was put under house arrest instead of in jail, and how is it that although a very high officer of the police, such as the Deputy Inspector-General of Police or some other high officer was guarding the House, he did not know about the escape of Laik Ali till two days after he had departed? That is why I say, our police, and our C.I.D. are not watchful. I may recall here what an American writer, Mr. John Gunther who wrote a book on Asia said in this connection. He said that last time he was going through India, the Home Member or the Home Secretary of the British Government had said: "This time when Congress wants to do anything or wants to have *satyagraha* or cause any trouble during the war, we have their numbers. We have the number of every leader, every sub-leader, and every sub-sub-leader, and every village-worker, and we will nab them in 24 hours." I read that when I was in Jail under detention, and I felt that the British at that time were very efficient, in getting at everybody. But what is our police doing today? When there is some trouble in any place in Orissa or in any other State, and when it comes to the top, they get at those people who have sheltered these disrupters and harass them and put them under detention. Instead of improving the efficiency of the police, and getting at the proper officers in the proper places, what is Government doing? What the Governments in the States are doing is simply to cover up their inefficiency and incompetency through this Preventive Detention Act so that any one who criticizes Government and becomes a little inconvenient in any place where the Opposition Party begins to grow and the Congress begins to wane, may be hauled up under this Act which could be applied to him or against any party to which that person belongs.

I have also other cases that have happened recently. Dr. Syama Prasad Mookerjee had mentioned a case in Ajmer. I have here signed declarations by M.L.As., M.Ps., many municipal commissioners etc., who have pleaded for him and said that he is not guilty of the charges that have been framed against him. A large number of journalists also had signed there, because the person concerned was a journalist himself. (*Interruption*) The hon. Member can say what he wants to say after I have finished.

They have all pleaded for him...

Shri Jwala Prashad (Ajmer North): May I know the names of the M.Ps.?

Shri Sarangdhar Das: Two M.L.As. Mr. Arjun Das, Mr. Parasuram, one M.C., Mr. M. L. Baig, and other persons, municipal commissioners, advocates, medical practitioners, journalists etc.,...

Shri R. K. Chaudhury (Gauhati): May I know whether by M.P., medical practitioners are meant?

Shri Chattopadhyaya (Vijayavada): Or does it mean 'Major Poet'?

Shri Sarangadhar Das: It is some political jealousy under which the party has kept under detention the people from the Opposition. When famine conditions prevailed in Hissar, in Punjab, my party was asking the people to protest against it, and to go to the district magistrate or the deputy commissioner to represent their grievances. But there two people have been detained just a few days ago. (*Interruption*) From all this, you will see that it is the Communist Party which is using violence. I know that. But the Socialist Party does not.

Ch. Ranbir Singh (Rohtak): Will the hon. Member cite the names of the persons who have been detained?

Shri Sarangadhar Das: The Socialist Party believes in constitutional agitation, in performing *satyagraha* to fight any evil that is before us. It is all peaceful. (*Interruption*) By fasting they do not take the liberty of others. They are free to fast as they please. That is a personal matter.

Under these circumstances, how is it possible that these men who do not belong to the Communist Party are detained? It is just simply detaining every inconvenient man or woman who happens to belong to some Opposition party. And finally I put it before the House that although in the Select Committee we had given our notes of dissent, the amendments were rejected by the majority, that is, the Congress Party—about 30 of them. You must consider, Sir, whether there is such a necessity now to have this Act to cover the whole country. Barring Hyderabad and Saurashtra, there is no trouble anywhere. (*An Hon. Member*: Rajasthan) In Rajasthan it was incompetency. Since Rajasthan was formed, I remember the way the villagers killed a magistrate and some police officials in Karauli, when Sardar

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Vallabhbhai was living. That sort of thing you cannot throw at us without looking inwards and finding out what they have been doing. Because these disruptive elements are abroad and they can kill a magistrate, a law that was never known is being introduced. I know Rajasthan politics, I know what was happening in Rajasthan before the elections. I know some of my friends in Rajasthan, very dear friends, who were wanting to disfranchise the rulers. I was one who was unwilling to subscribe to it. I said I have not worked for the Rajas or Maharajas. I worked for ten years after giving up my industrial career to end feudal rule. Feudal rule is now ended. But the Raja or Maharaja is just as much a citizen as I am. However, my friends from Rajasthan were trying to win over the people by disfranchising the Rajas and Maharajas. That is not the way of democracy. What happened in Rajasthan? It is no use my telling here now, but I can say in short that with most of the States that were merged or formed into Unions, Congress organisations began to peter out from that time. There was no Congress work among the masses and consequently, the vacuum was filled by any other party that happened to be there. So my friends cannot give the instance of Rajasthan. I say no other State, except Hyderabad and Saurashtra, is disturbed and the Act should be applicable only to those two States and nowhere else until there is apprehension of imminent danger and the Central Government or the President declares that there is a disturbed condition in a certain area, and then only can Government take action.

Swami Ramananda Tirtha (Gulberga): I have to participate in the discussions at a stage where the principle of this enactment has been agreed to. I, therefore, do not want to go into the merits or otherwise of the necessity of enacting this legislation. I have been listening to the speeches of some of the Members and I thought it was necessary for me to say what I feel in the present context.

Do not consider us to be so mean as to feel that no Opposition should be allowed under a democratic regime. That is not at all the intention. We are wise enough to know that democracy cannot flourish except under the criticisms of the Opposition. It would be uncharitable on the part of the Opposition to say that this measure is directed against the Communists. Not at all. It is only directed against those elements, sections, individuals, who resort to violence, who resort to certain acts which are directed against the very fundamentals of the Constitution. I am not afraid of the Communists. Why should I? Because it is after all people who will decide whether they would like a particular order, economic or otherwise. I need not be afraid of any school of thought. Enough for us that we believe in a particular ideology, preach it and we shall convert the people to our own point of view. Therefore, the law that is being promulgated should not be construed to be a hit against the Communist Party.

My friend, Mr. Sarangadhar Das, has quoted certain instances. I have had the pleasure of working with him some years back, and I feel if there is any genuine grievance against the use or misuse of a particular law, it has to be voiced. But to feel that this law is being promulgated to crush the Socialist Party: I think it would be the greatest error on the part of any democratic Government to try to suppress any political party with the force and strength of the bayonet. We know Communism cannot be crushed by bayonets. We know that, but it is also clear that no society, no social order, no economic order can be ushered in or allowed to be ushered in at the point of the bayonet. That is all the purpose of this Act. I, therefore, appeal to my friends who differ from us not to cast aspersions and say that we want to crush you. Who are we to crush you? It is not bayonets that crush ideologies, as I have said. After all this democratic regime I do call it a democratic regime in spite of all the objections raised against it; it is a democratic regime—if at all this democratic regime is to survive, we know it is by bettering the lot of the people and not by promulgating such an Act. That we do realise. But I say we are passing through a period of transition and looking to the past. I have the boldness and the courage to say that the situation is still fluid. I do not know what situation may arise a two months hence. I am not a poet and I am not going to quote any verses here, but I can say that certain developments are taking place, certain incidents are being fostered, and we do not know where this is going to end.

Something has been said about Hyderabad. I do not want to dilate upon that subject. I do not want to say anything about Telengana also because the past is unhappy, and let us bury the past. There were atrocities on the part of the police in a particular context which was also atrocious.

So let us forget that. But today why should we not feel reassured that there will be no recurrence of violence? Is it too much to expect this of any political party? The right of vote is there and I do not think that those of us who are sitting on the Treasury Benches feel that for all times, as the proverb goes—यावत् चन्द्र दिवाकरय — we are going to occupy these Benches. Well, democracy works through jolts and changes, let it take its own course. But when a mentality is being created that it is the bayonet and the sten gun and recourse to violence that will change the social or the economic order, it is our duty to tell the people that it is not going to pay. I believe the purpose of this Act is not to hit any political party. I would humbly submit that in Hyderabad so far as I know no such hit has been given under a popular regime and it will not be given in future. I can assure my friends about that. But there are certain democratic practices and conventions, methods and ways. If they are followed I do not think that the Home Minister of this Government would ever feel the necessity of putting into execution any of the provisions of this Preventive Detention Act. An argument has been advanced that this Act should be applied to particular parts of India only. I do not know what parts are entitled to its application. My friend, Mr. Sarangadhar Das said that Hyderabad may be considered as a suitable place. My friends of the opposite section who differ from Mr. Sarangadhar Das would say that it is not at all necessary in Hyderabad. So, it is the whole situation that you visualise and the country as a whole that you consider, and when you feel that it is necessary to prevent recurrence of such subversive and violent activities, the Act becomes applicable to all the parts of India. In what parts it will actually operate depends upon the situation.

I would humbly submit to the Home Minister that the misgivings being entertained by friends on the other side are because there were certain misuses, wrong uses to which such Acts were directed, and it is our duty to remove those misgivings, to do away with them, and to reassure our friends that this Act is not directed against any political party, be it the Communists, the Hindu Mahasabha, the Socialists or any others. I would in all humility submit that as democrats we have to see that every party has the freedom to propagate its ideas democratically and that no such liberty is suppressed.

One word more and I shall have finished. I know that India is passing through a critical period. There is a clash of ideologies and it is bound to be there because the world is in such a stormy atmosphere. But it is also equally true that the storm and the excitement and the turmoil can be pacified only by bettering the lot of the people. That is a positive approach and with that positive approach if we proceed I am sure the day will not be far off when this Preventive Detention Act will not be found necessary in this land of ours.

I hope I have put before the House what we on this side feel about this enactment. It is an extraordinary legislation, no doubt, but it is necessary, and the sooner the necessity for such an enactment goes the better for all of us because then we shall feel that in India there is not any activity which may go against the very fundamentals of the Constitution.

Shri Seshagiri Rao: I will not speak on the principle of the Bill because hon. Members who preceded me have spoken on it at length. There are four fundamental rights that have been conferred under the Constitution of India on the detenus, namely, firstly, the right of enquiry before an Advisory Board, secondly, that the detenu must be able to get the grounds of his detention "as soon as may be", thirdly, that he must be given the earliest opportunity to make a representation, and, fourthly and more important than all these, that the maximum period of detention should be given in the Act. The peculiar feature of this Preventive Detention Act is that it contains verbatim the exact words that are found in the Constitution. Article 22(5) of the Constitution says:

> "When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

How far these two mandatory provisions have been followed in this Bill is an important point. In section 7 of the Act it says:

> "When a person is detained in pursuance of a detention order, the authority making the order nicate to him the grounds on shall, as soon as may be, commuwhich the order has been made and shall afford to him the earliest opportunity of making a representation....."

[Shri Seshagiri Rao]

They are the same words, "as soon as may be", as are found in the Constitution. What is intended in the Constitution is that a certain time-limit should be given so that the authorities may not say that the reasonable time is a month or two months. The Select Committee has rightly come to the conclusion that not more than five days at the latest should be given. The time-limit is important because the detenu must have the earliest opportunity to make the representation. What is the opportunity that is going to be given? The important point is that within a week or three or four days the detenu must be taken to the State Government so that he may make the representation. What is the earliest opportunity? Is it only giving him some pencil and paper? Or is he going to be taken to the State Government? Under the Constitution, the only important right which a detenu has is of making representations to Government and also the right of enquiry by the Advisory Board. This is not clearly defined in Section 7 and the same phrase "earliest opportunity" is used. Is it one month or two months? Especially when the order is going to be followed by a reference within twelve days, he must be given the earliest opportunity to appear before the State Government and express his case.

I am not inclined to support the representation of a detenu by a legal practitioner. Article 22 (1) says:

> "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

But 22 (3) 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."

Therefore, as long as the Constitution remains as it is and is not amended, representation by legal practitioners is not possible. It would be against the Constitution. But I want to know whether by liberalising the provisions this right can be conferred upon the detenu.

One new provision that has been made is that a fresh detention can only be made if certain fresh facts are brought to light. But what would be the position if certain facts are brought to light when the man is in detention? Could he be detained again on the basis of those facts? I want to have clarification on this point.

Shri Altekar (North Satara): As a legal practitioner for the last thirty years and also as a student of law and the philosophy of law, I would like to state that the civil law of a free nation is the reflection of the behaviour and culture of the society and the sections of society in that nation, and the criminal law is the reaction of the State towards the behaviour and culture of the society or sections of society in that nation. When it is said that we are enacting a black law or that this Preventive Detention Act is an unusual Act, we have to take into consideration the objective conditions in the country. If you simply sit in a room like a philosopher or a professor of law and lay down how the law should be, what the individual rights should be and how they should be protected, without any relation whatsoever to the behaviour of the sections of the society in the nation, then you will be doing a thing which is entirely unconnected with the objective conditions in that nation. I beg to point out that when we are enacting this Preventive Detention Bill and certain provisions are made therein, we do so because of the necessity imposed by conditions that obtain at present. When it is stated that in the Select Committee certain proposals were made and that they were not accepted, I beg to submit that the whole attention to this Bill has been given by taking into consideration the conditions that obtain in the country and, as a matter of fact, the utmost concessions have been given and the clauses that are now before the House after return of the Bill from the Select Committee are such as are necessitated by the circumstances that obtain to-day. When various demands are made by the Opposition that the detenu should have the help of a legal practitioner when the case comes up before the Advisory Board or that all the facts available to the Government should be given to the detenu, it ultimately comes to this that there should be a regular trial and nothing more and nothing less. The only question is whether the circumstances that obtain today can permit such a facility, that is, whether we can rule ac-

cording to the normal law. I beg to submit that the provisions are such as are necessitated by the circumstances of the time.

There is a great obsession in the mind of the Opposition that this Act is intended to crush political opponents. There is nothing of the kind. If you look at the various parts of the country during the last few years, you will find that a sort of technique, a mechanism, a method has been employed by some anti-social elements that makes it almost impossible to bring the culprits to book. It is impossible to maintain peace and order and tranquillity through the ordinary law of the land and the provisions envisaged here are necessary for this purpose.

In certain districts of Bombay State, the villagers come and say that there is no regular rule by the Government in their area, because crimes and murders are committed; arson and looting are indulged in. An ordinary person finds it difficult to lead a peaceful life. The difficulty is felt when it is stated that there should be witnesses; there should be cross-examination; there should be the help of a pleader and so on. For, these villagers are living under such terrorism that they are unable to come forward and state what is actually happening. They come to you and say: "These acts have been perpetrated. Please do not mention our names, but somehow or other bring the offenders to book." When the people concerned are themselves so much terror-stricken, you can imagine how difficult it would be for witnesses to come and state what has happened. I shall just state how these people behave. I have nothing to say with respect to any political party. I only speak of certain anti-social elements who want to thrive, by preying upon the common man. They have got unlicensed arms; they form themselves into a gang; and the victims are so terrorised that when the police come they are afraid of giving any information. The witnesses too are afraid of coming forward and giving evidence.

Another technique which is usually resorted to by these culprits is to efface altogether any trace of evidence that may be available. I will just cite a few cases that happened after the elections. In a certain village there was a person, a patil, who was said to be a Communist. He was kidnapped. No one knows where he is. There was another person who stood as a candidate on the Socialist ticket. He was kidnapped by three persons with unlicensed arms. They are known to be criminals. No one knows where the kidnapped person is. A friend of mine who also happens to be a friend of that Socialist says that both these persons have been done away with and as a matter of fact they will never see the light of the world again.

The technique that is usually followed by these persons is this. They take the victims to a very distant, remote and secluded place. They cut him to pieces and these pieces are thrown into the deep waters of a river where great fishes eat them away. So, there will not be any trace of the victims. Such persons we have to deal with; such persons have to be brought to book. The poor villagers are not in a position to raise their little finger, or even their voice, against these persons. They are very much afraid on account of the atrocities committed by them. They are afraid to seek the help of the police and the magistracy. They say: if we seek the aid of the police or the magistracy, the next day our houses will not be there; we do not know where we ourselves would be.

We have, therefore, to root out these unsocial elements who, as a matter of fact, are having a rule of no law in several villages. Here in this House we hear sermons on civil liberties and individual rights, and the protection of rights of a detenu. It was said that the detenus should be given legal aid, that he should be allowed to lead evidence and also that he should have the right to cross-examine witnesses. I submit that on account of the rule of terror that obtains in several of the villages, no witnesses would come to give evidence. In these circumstances we have to see whether the rights of such persons who are a menace to society, and who, as a matter of fact, if I may use a strong word, are preying upon society as ferocious animals, are to be protected. If we give legal help and the right of cross-examination to such detenus who are behaving in this manner, no witness would come forward to give evidence.

Shri B. S. Murthy (Eluru): On a point of order, Sir. The hon. Member used the words "ferocious animals" and immediately referred to detenus.

Mr. Deputy-Speaker: So long as he has not referred to any hon. Member here, he is in order. He thinks they are all in the nature of animals. We have not evolved from that stage.

Shri Nambiar: There are ex-detenus here.

Mr. Deputy-Speaker: The ex-detenu is an hon. Member of this House now.

[Mr. Deputy-Speaker]

he is no longer a detenu. Many hon. Members on the other side of the House too are ex-detenus.

Shri Altekar: I myself am an ex-detenu.

I am only speaking of persons who are a menace to any civilised society. I do not at all refer to any political party, or persons holding particular ideologies. I am only pointing out that such precautions and such measures are necessary for the purpose of maintaining peace and tranquillity in the country. If there is no such measure it will be absolutely impossible to catch hold of such persons and bring them to book. That is what we are actually experiencing in the Bombay Presidency for so many years. Here are the figures I have with regard to Bombay Presidency.

On the 28th February 1951 there were only 21 political detenus and 66 criminal detenus; on the 21st August 1951 30 political detenus and 94 criminal detenus; on 29th February 1952, 34 political detenus and 146 criminal detenus; on 30th June 1952, 29 political detenus and 214 criminal detenus.

An Hon. Member: What is meant by criminal detenus.

Shri Altekar: Persons who have been detained for committing criminal acts like arson, murder, dacoity, etc., and whose previous history shows that they have indulged in such crimes.

I submit that unless there is such a measure, there will not be any peace and tranquillity in the country. What people actually say is not that there should not be such an Act, but that it is not being used properly and sufficiently. They ask: why are you so much restrained in using it against such persons.

So far as these persons are concerned, I may say that many of them are persons who are not connected with any political party or opinion. They are anti-social elements and their activities have got to be curbed in an effective manner so that such crimes may not take place again. When afflicted persons come to us they say: unless you are in a position to bring these persons to book you have no right to rule the country. When we ask them who these people are they say that they come near you; some times move round you. But you do not know them. You go only by their outward appearance. They are not like the *Rakshasas* of *Ramayana*. They appear to be ordinary persons, but as a matter of fact we know exactly how they behave and what they do. I am reminded here of an incident in *Ramayana*. Rama, after Sita was kidnapped, was going in search of her and was moving towards the South. He then came near lake Pampa. Having come there he saw a white bird with tall legs, a long beak and white feather (*An Hon. Member*: Not a white cap?) and he said to Lakshmana: "Oh, Lakshmana, see on the bank of this Pampa this white bird; he appears to be a saintly one—

पश्य लक्ष्मण पंपायां बकः परमधार्मिकः।
रानैर्मुञ्चति पादाभ्रं प्राणिनां वधरांङ्क्षया॥

He lifts his toe gently and paces forward very slowly so that no insect may die underneath." When these words of Rama were heard by a fish in the lake, that fish is reported to have said:

सहवासी विजानानि सहवासि विचेष्टिनम्।
बकः किं वर्ण्यने राम येनाह तिष्कुलिकृतेः॥

"Only an associate knows the behaviour of his comrade, Rama, what praise are you bestowing upon this white bird who has totally annihilated my family!"

So, when such sort of persons are there moving in society and the ordinary law is not sufficient to catch hold of them, to curb their activities and to bring them to book, we have to enact measures that will as a matter of fact enable the Government to prevent such sort of crimes happening, to prevent such atrocities being committed. And we can do this by the measure that is before the House. I submit that the measure that is before us and that is being enacted by us has given almost all the concessions that could be given so that the individual liberty of the detenu or his rights may be protected to the extent that they can be protected. The other alternative before us was to drop the measure altogether and to have recourse to the ordinary laws and say let there be any sort of chaos in society and let the lives of millions of people be subjected to the atrocities and tortuers of some anti-social

elements. Are we going to do that? That is the question before us. If we are to maintain peace and tranquillity in the country, if we are to maintain the civil liberties of millions of people in this country, if we are to maintain that the social life of the vast number of villagers that are dwelling in the lakhs of villages in this country should go on smoothly and peacefully, then such a measure as is being enacted here is absolutely necessary, and we have enacted only such provisions as are necessary for the purpose of bringing these persons to book.

I submit that if we look at the Bill as it has emerged from the Select Committee it can be seen that we have, as a matter of fact, while considering the main Act, given four concessions to the Opposition's demands. Originally, section 7 was not in any way sought to be amended. But when a demand was made by the Opposition we agreed to make an amendment. What was originally provided in section 7 was that the grounds may be made known to the detenu as soon as may be. When there was a demand that a specific time should be put in there, we agreed and we have put in " as soon as may be, but not later than five days from the date of detention". That was the concession that has been given.

1 P.M.

Then in section 8 it was asked what should be the composition of the Advisory Board.

Mr. Deputy-Speaker: Is the hon. Member concluding?

Shri Altekar: No, Sir, I shall require another fifteen or twenty minutes.

Mr. Deputy-Speaker: Then he may continue in the afternoon.

MESSAGES FROM THE COUNCIL OF STATES

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

(i) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States at its sitting held on the 31st July 1952, agreed without any amendment to the State Armed Police Forces (Extension of Laws) Bill, 1952, which was passed by the House of the People at its sitting held on the 15th July, 1952."

(ii) "I am directed to inform the House of the People that the Code of Criminal Procedure (Second Amendment) Bill, 1952, which was passed by the House of the People at its sitting held on the 11th July, 1952, has been passed by the Council of States at its sitting held on the 31st July, 1952, with the following amendment:

'That in clause 7 of the Bill at the end of clause (a) of the proposed section 132A of the principal Act, the words "so operating" shall be added.'

I am, therefore, to return herewith the said Bill in accordance with the provisions of rule 126 of the Rules of Procedure and Conduct of Business in the Council of States with the request that the concurrence of the House of the People to the said amendment be communicated to the Council."

CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL

Secretary: Sir, I beg to lay on the Table of the House the Code of Criminal Procedure (Second Amendment) Bill, 1952, which has been returned by the Council of States with an amendment.

RESERVE AND AUXILIARY AIR FORCES BILL

PRESENTATION OF REPORT OF JOINT COMMITTEE

The Minister of Defence (Shri Gopalaswami): I beg to present the Report of the Joint Committee on the Bill to provide for the constitution and regulation of certain Air Force Reserves and also an Auxiliary Air Force and for matters connected therewith.

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