

[Shri Pataskar]

circumstances of the society, and I hope it will receive the support not only of those who are anxious to have the Hindu Code early—because that is the common desire of at least the majority of us—but also of other sections who also I am sure will on a deeper consideration come to the conclusion that what we are doing now would have been done by Manu if he were alive today.

**Mr. Deputy-Speaker:** I shall now put the motion to the vote of the House. The question is:

“That this House while concurring in the recommendation of the **Rajya Saha** that the House do join in the **Joint Committee** of the Houses on the Bill to amend and codify certain parts of law relating to minority and guardianship among Hindus made in the motion adopted by the **Rajya Sabha** at its sitting held on the 25th August, 1954 and communicated to this House on the 27th August, 1954:

(a) recommends to the **Rajya Sabha** that the **Joint Committee** be instructed to report on or before the 31st March, 1955; and

(b) resolves that the following Members of the **Lok Sabha** be nominated to serve on the said **Joint Committee**, namely, **Shri Narendra P. Nathwani**, **Shri Moreswar Dinkar Joshi**, **Shri Badshah Gupta**, **Shri Sohan Lal Dhusiya**, **Shri P. Ramaswamy**, **Shri B. L. Chandak**, **Shri Liladhar Joshi**, **Shri Mathura Prasad Mishra**, **Shri Mahendra Nath Singh**, **Shri Bheekha Bhai**, **Shri Raghubar Dayal Misra**, **Shri M. L. Dwivedi**, **Dr. M. V. Gangadhara Siva**, **Shri C. R. Narasimhan**, **Shri H. Siddanajappa**, **Shrimati Subhadra Joshi**, **Shrimati Pa Palchoudhuri**, **Shri Kanhu Charan Jena**, **Shri Bimalaprosad Chaliha**

**Shri Bhola Raut**, **Shri P. R. Kanavade Patil**, **Sardar Hukam Singh**, **Shri S. V. L. Narasimham**, **Shrimati Renu Chakravarty**, **Shri Anandchand**, **Shri Shankar Shantaram More**, **Shri Jaswantraj Mehta**, **Shri K. S. Raghavachari**, **Shri Bhawani Singh**, and **Shri H. P. Pataskar.**”

*The motion was adopted.*

#### PREVENTIVE DETENTION (AMENDMENT) BILL

**Mr. Deputy-Speaker:** The House will now take up the Preventive Detention (Amendment) Bill.

**Shri S. S. More** (Sholapur): It is a very innocent 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, be taken into consideration.”

I find that notice has been given of motions to refer this short Bill to a Select Committee and there is also a motion to circulate it for eliciting public opinion. In the normal course I would not have had any objection for reference of the Bill to a Select Committee or Joint Committee but in this particular case I am unable to take that course, for really there is nothing to consider about. The Bill is one of the shortest imaginable. It merely desires the House to change “1954” into “1957”, to extend the Act by another period of three years.

You must remember that two years ago, this House spent a considerable time, I believe days and days, in going over this Bill or rather this Act in great detail. Clause by clause it was considered. At that time, the Select Committee went into the Amending Bill at very great length and then it was open to a general discussion in this House. By consent

of the Government, the whole Bill was thrown open to amendment and discussion. The present Act represents the considered views of this Parliament—I emphasise this aspect—of this Parliament and the Bill as it emerged was one of the most sensible and from the point of view of the detenu himself, the most lenient that could be conceived of. There are many persons in India, competent persons, responsible persons, many State Governments who hold the opinion that this Parliament has gone to the length of making the Bill quite insufficient and inadequate to serve the purpose in hand. Therefore, there is nothing in this Bill which cannot be conveniently considered on the floor of the House in a measurable time: The time which the hon. Speaker has allowed for this discussion is, in my opinion, more than sufficient for a discussion of a Bill of this nature. Nothing is to be gained either by circulating it for eliciting public opinion or by referring it to a Select Committee. We represent public opinion here: I mean the whole Parliament.

**Shri K. K. Basu** (Diamond Harbour): We do not.

**Dr. Katju**: My hon. friends may say that they do not represent public opinion. It is open to them to say so. I claim that I represent the public opinion of the whole of India.

**An Hon. Member**: Which India?

**Dr. Katju**: There is nothing to be considered by a Joint Select Committee. Let us proceed to discuss it and finish it.

Yesterday, I had the honour of placing on the Table of the House a statement which gives all possible information from every angle which the House may require, for getting factual information. I should like to repeat it here for your preliminary consideration. The statement covers the year beginning with 1st October, 1953 and ending with 30th September,

1954. On the 1st October, 1953, there were under detention throughout India 154 detenus. I respectfully submit that the very size of this figure will go to show that the Act had been very very carefully and sparingly used by the State Governments.

**Shri K. K. Basu**: Then, why have it?

**Dr. Katju**: In many States, it had not been used at all. The State Governments either were too lenient or they did not find it necessary to utilise it. But, in the big States, in the important States like Bombay, West Bengal and some others, recourse had to be had to the Bill. Because in Calcutta, there is the great Ochterloney monument where you can hold meetings of all sorts and description and in Bombay you have the great maidans—I do not know what they call it there.

**Shri Gidwani** (Thana): The Azad Maidan. It was used by us to fight the freedom struggle.

**Shri K. K. Basu**: He has forgotten all that.

**Mr. Deputy-Speaker**: Freedom has been won.

**Dr. Katju**: Mr. Deputy-Speaker, am I to be interrupted in this way or am I to go on?

**Shri K. K. Basu**: We can also go on.

**Mr. Deputy-Speaker**: Let the hon. Minister continue.

**Dr. Katju**: The second thing that I would like the House to apply its mind to is that it would be a travesty of facts to say that this Act has been used in the past for the purpose of suppressing any political party—none at all.....—

**Shri V. G. Deshpande** (Guna): That is true.....

**Dr. Katju**:.....to those doctrines or political theories I do not subscribe. The Act was used for the

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purposes strictly defined by Parliament. I shall come to that feature of the case in a moment. During the year, 154 was the stock with which we started. In the 12 months ending 30th September, 1954, altogether 280 people—I am not sure about 280, between 250 and 260 persons—were detained;

**Shri K. K. Basu:** In addition to that number?

**Dr. Katju:** Some by the order of the State Governments passed directly, but in the majority of cases, the orders were passed by subordinate authorities like the District Magistrate, Additional District Magistrates specially empowered in that behalf, and Commissioners of Police. You may remember that the Act prescribes that a person may be detained by an order passed by the State Government or he may be detained by the District Magistrates order. But in such cases, the District Magistrate is directed to communicate at once to the State Government and unless the State Government ratifies or approves of that order within 12 days of its passing, the order stands revoked. Therefore, while the District Magistrates had passed orders in many cases, in 227 cases throughout the whole of India, the orders were approved and in 54 cases, the orders were not approved.

Then came the subsequent procedure. You are familiar with that procedure. As soon as a man is detained, he is to be supplied with a very detailed statement called the grounds of detention. The High Courts and the Supreme Court have laid down very clearly that this statement of grounds of detention should not be a vague one, should not be an indefinite one, but should be precise and specific so that the detenu may know clearly and absolutely definitely as to why he has been detained. In some cases, I believe altogether in about 15 cases or

14 cases, the High Courts and the Supreme Court have ordered release on the ground that this statement of grounds of detention was not sufficiently specific. Then, the cases go to the Advisory Board. I may say here at the outset that the Advisory Board is a purely judicial body. It consists of three persons who are either Judges of the High Courts or who have been Judges of the High Courts or who are qualified to be appointed as Judges of High Courts. The Chairman must be either a Judge of a High Court or an individual who has been a Judge of a High Court. They are entitled to ask for any information they like, and allow any person they like to appear before them. The detenu is entitled to appear before them as a matter of right. They considered this matter most carefully. What was the result? The result was, while they ordered release in the case of 65 detenus—they thought that the grounds were not sufficient or that having been in detention for some time, it was enough—and they need not be detained any more—they confirmed the Government action in 123 cases. They thought that the Government's action was justified. Twenty-nine cases were pending when the year closed on the 30th September. I would remind the House that under the Act, the case must be referred to an Advisory Board within 30 days and the Advisory Board is enjoined to convey its opinion on the advisability or the propriety or otherwise of detention within six weeks. The decision of the Advisory Board is, therefore, available within ten weeks of the date of detention.

It may be interesting to note, Sir, that detenus took full advantage of the right of appearance before the Advisory Board. I remember in 1952 during the course of the debate I attached the greatest importance to this privilege which was being conferred upon detenus, and I said then, it is true that there was no right of

representation by lawyers before the Advisory Board, but they will find the members of the Advisory Board very sympathetic. They can talk with the detenus face to face, man to man and they can form their opinion as to the strength of the case whether it was well-founded or ill-founded. Indeed, if they were lawyers, the judges may become suspicious; but if they have a talk with the litigant, the natural tendency is to take a sympathetic view of the case. I found that 119 detenus took full advantage of the privilege given to them to consult lawyers and to have their statement by way of defence prepared with legal assistance and no less than 174 persons were present. They sought permission to appear before the Advisory Board and to put their case before the members of the Board. The Board sent for further information from the State Governments—they did so in 57 cases—and at the instance of the detenu, further information was called for and they considered 47 cases. The result of that was that at the end of the year 245 persons had been released either on the recommendation of the Advisory Board or by the State Governments themselves directly prior to the expiration of the period of one year or by the order of the High Court. Some people served out their period of one year and the net result was that on the 30th September, 1954, there were 131 persons in detention. I understand that out of these, some have been released during the next two months. I am not quite sure what the number to-day is.

The House would also have noticed this pamphlet entitled "Statistical information regarding the working of the Preventive Detention Act". In that book which was circulated, Hon. Members will find at page 14 that 104 persons were ordered to be detained for violent activities, indulging in such activities or preaching violence; 40 for goondaism; 8 for student agitation; 2 for impeding essential supplies by inciting workers

to strike; 25 for communal activities; 7 for espionage and anti-State activities; 28 for criminal activities; 5 for terrorism; 1 for bad character and 43 for harbouring dacoits. That makes a grand total of altogether 261 persons who were detained during the last twelve months.

Now, I suggest to you that the Act has been most carefully worked and you will not find a single individual who can claim to say with confidence that he has been or was detained for mere expression of political opinion. Mere expression of political opinion is not enough. You must proceed further and you must also either preach violence or indulge in acts of violence.

Therefore, I submit that for a population of 360 millions, such an Act serves a most useful purpose. I have stated in the Statement of Objects and Reasons that the value of the Act is psychological. I repeat that it has a restraining effect. Speaking personally for myself, I am astonished at the moderation with which it has been used. Please remember what happens. When there is an agitation it leads to riots; it leads to shooting; it leads to firing. We have had during the last two or three months several cases. We had a case—which is now under judicial enquiry—at Indore. What happened? There was a student gathering. There were members of different parties—I would not indulge in any acrimonious details here—they surrounded the Secretariat; they wanted to get into the offices. They went and set fire to the High Court building.

**An Hon. Member:** This is a sub judice case.

**Dr. Katju:** When that took place, we had to open fire and ten people were killed. What do you want? Do you want in the name of what you call constitutional freedom...

**An Hon. Member:** Who killed the ten people—police or...

**Mr. Deputy-Speaker:** Saying that 10 people were killed, is it also *sub-judice*? Order, order. The hon. Minister must sit down. I am only trying to intervene to have smoothness in the House for the Hon. Minister to go on. All that I am saying is that when a matter is *sub-judice*, no doubt it ought not to be raised on the floor of the House. But the Hon. Minister is only stating a fact that ten persons died on the spot, whoever may be responsible for that. The point is not that the police fired or somebody else fired. It will be decided by the Enquiry.

**Shri K. K. Basu:** He said that members of different parties were there and they surrounded the Secretariat and so on.

**Mr. Deputy-Speaker:** Surely, it cannot be said that animals went into the High Court. Men went into the High Court and they must belong to some political party. Even goondas have come within this. Non-political goondas may take advantage of this and may bring some dispute with the political parties. That will be a matter for decision by the High Court or any other Court. But the Hon. Minister is entitled to say, this is what happened without stating that this party was responsible or this individual was responsible. Whoever might be the goonda, he does not say this or that.

**Shri Raghavachari** (Pennkonda): The only point is whether the Preventive Detention Act is required to control that situation. The ordinary law is more than enough.

**Mr. Deputy-Speaker:** The hon. Member, if he gets a chance, will argue that way. The hon. Minister may go on.

**Dr. Katju:** The point I was making was that either you take action under the Preventive Detention Act in time or you face these further difficulties, namely, riots, firing and all sorts of troubles, murders and tragic in-

cidents. Such things have taken place in many places during the last few years. I am not blaming either this side or that side, but the point remains that this Act is a most salutary Act and is intended to serve a good purpose, is not intended and does not in any way and has not in the past in any way interfered with or obstructed or put any ban on political activities. This I am entitled to say.

Now, a point has been made in the course of public discussions and I am absolutely in no doubt that it will be made here in the course of the debate. You will have, if I may be allowed to say so, torrents of eloquence on the copy book style, viz., freedom and fundamental rights and so on and so forth, but...

**Shri S. S. More:** May we know, Sir, what is this copy book style?

**Shri Bogawat** (Ahmednagar South): There should not be any interruption. He should be allowed to speak.

**Mr. Deputy-Speaker:** Why are they so touchy? I am only saying...

**Shri S. S. More:** Why should they be so rude?

**Mr. Deputy-Speaker:** There is no question of rudeness. The hon. Minister means slogans, they are all copied.

**Shri S. S. More:** They are the Congress slogans.

**Mr. Deputy-Speaker:** It does not matter. I can be asked to intervene only in cases where an expression is unparliamentary. There is nothing unparliamentary...

**Shri S. S. More:** Nothing.

**Mr. Deputy-Speaker:** Saying "to be parrot-like", "copy book" and so on are quite parliamentary.

**Shri Gidwani** rose—

**Dr. Katju:** If there is a single Member who is entitled to make a complaint that all sorts of things are said against him, it is myself, and I never complain. But these gentlemen, I tell you, are of such tender skin that they are hurt even by a very gentlemanly word like "copy book".

I am saying it is desirable that we should understand the structure of our Constitution. I have heard it said by some people: "Oh, where is the emergency? You can only have a Preventive Detention Act in a state of emergency." Now, I say that our Constitution framers did not think in that way at all. They had put it, so far as the emergency is concerned, in a separate Chapter. Mr. Deputy-Speaker, you will remember there is a provision in the Constitution. The articles from 352 of the Constitution...

**Shri B. S. Murthy (Eluru):** Is it a copy book?

**Mr. Deputy-Speaker:** Order, order. No such reference should be made to the Constitution.

**Dr. Katju:** ...which deal with emergency provisions. Article 352 authorises the President, when he is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, to declare a state of emergency. When he does that, certain consequences follow, and one of the consequences is embodied in article 353; and more particularly in article 358 it is provided that when a proclamation of emergency is in operation, nothing in article 19 shall restrict the power of the State to make any law or to take any action. Then, all our fundamental rights are suspended. To borrow the language of the English law, in a state of emergency the writ of *habeas corpus* is suspended, and then what occurs is that the executive Government of the day is empowered to put any person under any restraint and there is

no recourse to any law Court. And here, in our Constitution also, article 359 provides for that, viz., you may do what you like, you may frame any rule you like, and you may also stop or restrict recourse to law Courts for the time being while the emergency lasts.

So far as the Preventive detention is concerned, it is a part of Part III, and it is considered by the Constitution-makers as an ordinary piece of legislation. Please remember....

**Pandit Thakur Das Bhargava (Gurgaon):** Fundamental right?

**Shri K. K. Basu:** Routine and simple piece of legislation.

**Shri Gidwani:** Then, why this one year, two years, three years business?

**Shri S. S. More:** So, preventive detention is part of our fundamental rights?

**Shri V. G. Desphande:** Yes.

**Pandit Thakur Das Bhargava:** Yes.

**Dr. Katju:** Mr. More intends to be and endeavours to be humorous, but sometimes I do not see the humour at all.

**Shri S. S. More:** I cannot help it.

**Dr. Katju:** Article 22 provides that no person who is arrested shall be detained unless he is produced before a Magistrate. Then, it provides for legal advice or legal assistance. Then comes clause (3). This is a part of the fundamental rights as modified or as circumscribed:

"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".

—not by any law passed during an emergency, but by any law providing

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for preventive detention. And then you have further provisions as to....

**Shri M. S. Gurupadaswamy** (Mysore): That is a blot on the Constitution.

**Dr. Katju:** ...what is to happen in the case of preventive detention.

**Mr. Deputy-Speaker:** Hon. Members must know that we are subject to a Constitution. Again and again I would like to say that whenever the character of a high personage is impeached or any reference is sought to be made to the Constitution, unless it is a specific motion relating to the amendment of the Constitution or relating to his conduct where his conduct is impeached and some step is sought to be taken against him, such references either to the Constitution or to the high dignitary are out of order, ought not to be made.

**Shri M. S. Gurupadaswamy** rose—

**Mr. Deputy-Speaker:** Order, order. The hon. Members who have come here have taken a solemn oath that they will abide by the Constitution. Making such casual references that there is a blot in the Constitution, until by a proper process the Constitution is changed, will be a breach of the privilege of this House and the manner in which the hon. member has come to this House. After having taken the oath, this kind of slighting of the Constitution is improper, is a breach of privilege of the whole House, and a neglect of duty on the part of any hon. Member who does so.

**Shri M. S. Gurupadaswamy** rose—

**Shri N. C. Chatterjee** (Hooghly): Is it not open to us to say that the hon. Minister is clearly wrong when he says that it is a fundamental right to be preventively detained under this Constitution?

**Mr. Deputy-Speaker:** That is another matter. That is not the matter I am referring to. I am now on the point raised by Mr. Gurupadaswamy

that this clause or article in the Constitution is a blot on the Constitution. I would say that so long as any hon. Member has come to this House owing allegiance to the Constitution, having taken a solemn affirmation or oath, he is not entitled to say that a particular clause or article is a blot on the Constitution except in a case where the Constitution itself is the subject matter under discussion and an attempt is made to remove that particular blot in the article. Then, it is open to him..

**Shri Bogawat:** He must withdraw.

**Mr. Deputy-Speaker:** ... to say so. Not otherwise.

**Shri S. S. More:** May I bring to your notice that many of us are elected on the specific platform of amending the Constitution, because there are certain reactionary principles in it, according to us. You took the oath in 1937 to the Constitution as it then prevailed and you came in to rectify the Constitution. Can we not go in the same direction to some extent?

**Shri Bogawat:** If the hon. Member does not withdraw...

**Mr. Deputy-Speaker:** Hon. Members might have said anything elsewhere, and all that is over-ruled by their having taken the oath of allegiance here.

**Shri S. S. More:** You took the oath in 1937.

**Mr. Deputy-Speaker:** There is no good referring to my actions in 1937.

**Shri S. S. More:** I am referring to the Congress, not to you.

**Mr. Deputy-Speaker:** It is wrong. I can only say that I was not called upon, nor was I Deputy-Speaker, then to give a ruling. Now, the matter has arisen. Hon. Members might have said so many things, that they would change the whole character of the

State. Let them do so. It is open to Hon. Members to come into the House and carry on any kind of agitation subject to restrictions of law. In so far as they have come to this House and have taken a solemn oath that they will abide by and carry out the Constitution, nothing will be allowed here to be said against the articles of the Constitution, derogatory to the Constitution. They can have any kind of interpretation of the Constitution. But to say that the Constitution is a blot is against the Rules of the House, against decorum and order and ought not to be allowed.

**Shri S. S. More:** Under what rule? We ought to know the rule.

**Mr. Deputy-Speaker:** The rule is that I am in charge of the privileges of the House. The privilege of the House is that Members who have come here have taken an oath of allegiance and are bound by the Constitution, and nothing derogatory to the Constitution can be said.

**Shri S. S. More:** May I bring to your notice that if there is any breach of privilege, you will have to refer it to the Privileges Committee? You cannot give an *ex parte* ruling.

**Mr. Deputy-Speaker:** I cannot go on allowing all sorts of abuse about the Constitution and then refer it to the Privileges Committee.

**Shri A. K. Gopalan (Cannanore):** It means that we cannot say anything about the Constitution, we cannot show the defects in the Constitution.

**Mr. Deputy-Speaker:** You cannot abuse the Constitution here. (*Interruptions*). I won't allow that. That is my ruling.

**Shri A. K. Gopalan:** It is not a question of abusing the Constitution.

**Shri K. K. Basu:** Under which rule are we required not to criticise the Constitution? (*Interruptions*).

**Shri H. N. Mukerjee (Calcutta North-East):** This is a very important matter and you must listen to 550 LS

our position very carefully. I wish to say that we are here certainly after having taken a certain oath which is this, that we shall act here in accordance with the provisions of the Constitution, we shall not be disloyal to the Constitution. But, at the same time, we have come here with certain political ideologies—good or bad or indifferent—and it is our job not only in the country, not only outside Parliament, but also inside this House, to convince this House during discussion of different provisions which come before us, that this Constitution is not adequate in order to serve the interests of our people. We have been elected on the express understanding on the part of our people that we want a radical change in this Constitution.

**Dr. Suresh Chandra (Aurangabad):** You cannot abuse the Constitution.

**Shri S. S. More:** This is not abusing the Constitution.

**Shri K. K. Basu:** Learn the English language and know what is meaning of 'abuse'.

**Shri H. N. Mukerjee:** We do not otherwise abuse, unless we are driven to do so by rowdies opposite. It is only...

**Mr. Deputy-Speaker:** I am not going to allow the hon. Member to say that Members on the other side are rowdies (*Interruptions*).

**Acharya Kripalani (Bhagalpur-cum-Purnea):** When you say that a particular thing is a blot on the beauty of a person, that means that the person is beautiful. This is really commending our Constitution. We do not want to be blemished. (*Interruptions*).

**Shri H. N. Mukerjee:** I do not know whether it is to be explained away by the facetiousness of the Acharya. But I want you very seriously to consider this. We are here from time to time to express ourselves certainly



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in regard to the legislation which Government may bring before us. That, necessarily, drives us from time to time to express ourselves in regard to the inadequacies of the Constitution. Inside this House we do not say anything which goes against the Constitution. But we want to convince this country by our work inside the House, and not only by our work outside the House, that this Constitution requires to be changed. That being so, I do not see how you can rule that any reflection on the Constitution is so unparliamentary that it has got to be discountenanced altogether. In regard to the expression 'a blot on the Constitution', you have to give your ruling. You must make up your mind as to whether an expression like that is tantamount to the expression of a desire to be actively disloyal to the Constitution. As long as we are here, we are determined to express our views, within the ambit of the Constitution, but we do not conceal our desire to tell our people as well as our Members in this House that this Constitution is not adequate. We shall take advantage of this Constitution in so far as it goes, but we want it to go very much further than it does. That being so, I wish you would consider your ruling very carefully and not, on the spur of the moment, say something which will unnecessarily damage the interests of the smooth proceedings of this House, particularly in regard to this very serious legislation which the hon. the Home Minister...

Shri N. C. Chatterjee: rose—

Shri N. M. Lingam (Coimbatore): On a point of order. The hon. Member referred to Members on this side as 'rowdies.' I want your ruling on that, as to whether it is parliamentary or not.

Shri S. S. More: Whether they are 'rowdies' or not?

Many Hon. Members: rose—

Mr. Deputy-Speaker: I do not like the expression by the hon. the Deputy Leader of the Communist group, the expression that Members on the other side are 'rowdies'. I do not know what words are used in other Parliaments. So far as I am concerned, I feel that this expression seems to be out of taste and I do not think the hon. the Deputy Leader of the Communist group ever meant this to apply to the others. I would be glad if he says that he did not mean it and would therefore withdraw it.

Shri H. N. Mukerjee: I would certainly say that we are not interested in abusing the other side. I said only that if we abuse, it is because of provocation, but certainly I did not want to reflect on any particular Member.

Some Hon. Members: No.

Shri N. M. Lingam: He said he abused because of the 'rowdies' opposite. We take the strongest exception to it.

Mr. Deputy-Speaker: In a democratic set-up like this, in Parliament, good will must be maintained.

If an hon. Member accuses others as 'rowdies', he can easily out of goodness, withdraw that. I would only say that it will be right that he should withdraw. There is no harm in saving so. (Interruptions). It always redounds to the credit of the hon. Member to say that he withdraws it.

Shri H. N. Mukerjee: I have no objection to withdraw that.

Shri N. C. Chatterjee: May I now draw your attention...

Mr. Deputy-Speaker: I would immediately say one thing. It is, no doubt an important matter. I do not want to lay down any rule just now. I gave what I felt to be the first impression. It is a very serious and very important matter. I do not want to curtail the privilege of any

hon. Member or any group of Members, if consistent with their allegiance to the Constitution, they make any observations relating to the Constitution. I will look into this matter in detail. If hon. Members want to say a few words, I am prepared to hear them, but I will reserve my ruling regarding this matter till I have deeply considered it and looked into the other authorities.

**Shri N. C. Chatterjee:** The oath that each of us took was:

"I..... do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter".

I maintain that to criticise any article out of the 395 articles of the Constitution is not at all repugnant to our oath, and we are perfectly within our rights to do so, and we are not doing anything to show lack of allegiance to the Constitution of India, simply because we point out that there is a flaw in it which should be remedied to bring it in conformity with certain concepts which are embodied in this very Constitution, like freedom of speech, freedom of expression and also freedom of movement. I think that has nothing to do with the violation of our oath.

**Shri S. S. More:** According to this very oath, we are under a deep obligation to discharge our responsibilities. So if we are to discharge our responsibilities, we are to discharge our responsibility to the fundamental rights of the people, the fundamental conceptions of democracy, which are the basis and foundation of democracy, and not a paper book.

**Mr. Deputy-Speaker:** The only limited point is....

**Shri S. S. More:** My submission is that when we are seeking by legitimate and peaceful means the amendment of the Constitution, we are discharging

the most sacred part of our obligation to the people, because it is the people who are sovereign.

**Shri M. S. Gurupadaswamy:** I am second to none in my allegiance to the Constitution. (*Interruptions*).

**Mr. Deputy-Speaker:** It is superfluous.

**Shri S. S. More:** The double negative is for emphasis.

**Shri M. S. Gurupadaswamy:** I am as much eager as any others in defending the provisions of the Constitution. By merely saying that a particular provision of the Constitution is wrong, is slur on the Constitution, it does not in any way mean that I am violating the spirit of the Constitution, that I am violating the oath of allegiance to the Constitution. It does not mean anything of the kind. I believe that every Member of the House is entitled to have the privilege of expressing his opinion on the various provisions. In the past, we have seen many expressions of opinion. Members have expressed their opinions on various provisions and criticised the provisions of the Constitution. My expression here does not in any way go against my allegiance to the Constitution. I am certainly entitled to say that a particular provision is a blot on the Constitution.

**Dr. Suresh Chandra:** No, no.

**Shri S. S. More:** Why not?

**Shri M. S. Gurupadaswamy:** If I am deprived of the right of expression, I am deprived of a valuable right; it is my privilege and it is my right to pass my opinion on any part of the Constitution, on any provision of the Constitution, and that right should not be abridged or abrogated.

**Shri V. G. Deshpande:** I wish to make a submission for one minute. My contention is this. We have taken an oath that we will be loyal to the Constitution and that very Constitution to which we are loyal has put

[Shri V. G. Deshpande]

upon Parliament another duty and responsibility, that is, the amendment of the Constitution. And, when it is the duty of the Members of Parliament to amend the Constitution wherever they feel that it is not adequate or is inconsistent with the fundamental rights guaranteed by this very Constitution. I say, it is not only not wrong to criticise a particular article of the Constitution, but it is the duty of every Member, if he feels so, to move an amendment of the Constitution with the object of amending that particular article. We can make a reference to it without losing the dignity and if we, in a constitutional manner, say that this Preventive Detention Act shows that this article of the Constitution is a blot on the great Constitution which we have created. I think, it is not only not doing any wrong but it is the duty of all of us to express an opinion. Without expressing these opinions, we will not be discharging our duty as Members of Parliament and, therefore, I request that no ruling should be given barring us from expressing our opinions on particular provisions of the Constitution.

**Acharya Kripalani:** May I say, Sir, in England they say, 'The King is dead, Long Live the King'. The English people have executed their kings, sent them into exile, have kicked them away and they have taken the oath of loyalty to the King. It is an oath of loyalty to the institution and not to a person.

**Mr. Deputy-Speaker:** Nobody denies the right of the hon. Member or Members to amend the Constitution. but when the amendment of the Constitution is not before the House, day in and day out to say that this Constitution is wretched, is a blot and so on and so forth.....

**Shri Asoka Mehta (Bhandara):** Nobody has said that this Constitution is wretched. We are all with you when you say that nothing should be said or done in this House or outside

which would cause disrespect towards the Constitution. No one present here would permit anyone to do that. All that is being argued out is that there are certain provision in the Constitution which were put in there (*interruption*) because of the peculiar circumstances in which the Constitution was drafted. After all, this country was partitioned; after all, we achieved our freedom after great travail and suffering. The imprint of these circumstances is there on our Constitution and some of us feel that the time has come that the imprints of those particular circumstances should be removed. We also feel that the Constitution should enshrine the noblest ideals that we have cherished during our long freedom movement. If a certain compromise had to be made at a particular time, we feel that the time has come and that we should be given an opportunity to convince you, to convince our fellow-Members and to convince the larger public outside that the time has come when some of the limitations in which the Constitution was framed should be removed. Surely, Sir, that is the only right that we are asking to exercise. We are not here to spread disrespect towards the Constitution. If your ruling is towards disrespect to the Constitution, not one of us is going to object because we all respect the Constitution and the basis of democracy lies in respecting the Constitution. The Constitution is a living document, it is a document that has got to change, it is a document that is expected to respond to the wishes and aspirations of the people. And, because that document was drawn up in peculiar circumstances, that is all the more reason why this first Parliament, elected on the basis of adult franchise, should be given the opportunity to express its opinion from time to time, may be through resolutions, may be through motions, but if need be, through *obiter dicta* and other expressions on other provisions and also to say what we

Members, consider to be relevant as far as the provisions of the Constitution are concerned.

**Shri A. K. Gopalan:** I have only to say there is an article in the Constitution about compensation. Are we not entitled to say that there should be no compensation or compensation should not be given? Are we not entitled also to say why this clause on compensation was there in the Constitution? I do not want to enlarge on it, but I want only to say, we have every right to speak about the Constitution, to amend the Constitution and to point out that, as far as the people, a large majority of the people outside are concerned, there are very serious amendments to be made. If that is not so what else is it? You have raised a very fundamental point and that is a very important point. What we have to say is whether we have any right at all to say that certain provisions or articles in the Constitution are against the interests of the people of this country and so we do not want them here. If we have no right, then there is no question of changing or amending the Constitution at all.

**Shri T. K. Chaudhury (Berhampore):** I have only to point out that the Minister was justifying this Bill with reference to this particular provision of the Constitution. So, we have also a right at least to express our opinion on that aspect. If the hon. Minister had not brought up this point, perhaps, this acrimonious debate in the House would not have arisen.

**Shri Keshavaiengar (Bangalore-North):** I do not think you are not saying that the hon. Minister or anybody in this House has not the right of amending the Constitution. It is only to prevent an abuse of the Constitution. To say that it is a blot on the Constitution is a blot on the Member who said it (*Interruption*).

**Shri Gidwani:** Sir, is it right to say that it is a blot on the Member?

**Shri Tek Chand (Ambala-Simla):** Mr. Deputy-Speaker, we have to draw a distinction between offering our comments on one feature of the Constitution and the whole of the Constitution. We have also to remember that our Constitution is the *Magna Carta* of our freedom, of our democracy and of our liberty. That being so, it is a sacred document, it is a solemn document and any word of a derogatory nature, any word which is derisive or any word which casts an opprobrium on the Constitution as such should be taboo and ought not to be indulged in.

**Mr. Deputy-Speaker:** I will reserve my ruling on this point. I have heard all sections of the House. There is no denying the fact that in a constitutional manner, as provided in the Constitution, and amendment of the Constitution can be tabled and, on that occasion, every one of the features of the particular portions which are sought to be amended can certainly be referred to on the floor of the House. On this, all sections are agreed.

When that is not the regular subject matter, to say generally by way of obiter dicta, as said by Shri Asoka Mehta, whether that has to be allowed or not will require serious consideration. Excepting on the proper occasion where a motion is tabled or the appropriate procedure is taken for amending the Constitution, in all other side ways reference to the Constitution in derogatory terms is allowable or not, is the main point for consideration. This matter arose with respect to the use of the expression, 'That is a blot on the Constitution' by Shri Gurupadaswamy. I will consider the position (i) whether such expressions are derogatory and (ii) whether, incidentally, when the matter is not directly coming up before us, any hon. Member is entitled to say that this is not in conformity with the latest development of political institutions here or elsewhere: and when we are acting under the Constitution to say that the Constitution itself is wrong—whether that is proper or not—I will consider.

[Mr. Deputy-Speaker]

Regarding Shri Chaudhuri's remark that the whole thing was provoked or has arisen on account of the hon. Minister referring to this, I say, the hon. Minister referred to this because he has to justify the Bill and he is entitled to say why we should have this preventive detention. There are so many items like the freedom of speech, the liberty of action that are guaranteed under the Constitution. This is a kind of restriction, according to the Home Minister, intended to guarantee the very rights that have been guaranteed under the Constitution. In general, the majority of the population have been guaranteed certain rights. If there are certain persons who interfere with that right, that interference will have to be done away with and for that a safeguard is provided. Therefore, when he referred to preventive detention as an ordinary one, and not as an emergency provision, that is intended by way of safeguarding the very fundamental rights given under the Constitution, I would say he is not irrelevant. I find that he has done well in referring to this portion which has given him, under the ordinary law, a right in exceptional cases.

**Shri T. K. Chaudhuri:** I never said that he was irrelevant. He was perfectly relevant in referring to that particular article in the Constitution. We are also equally relevant in referring to that article of the Constitution, how far retaining that article itself is a wrong as against the Constitution.

**Acharya Kripalani:** Before you give your ruling, you will please consider the Constitution as one thing and one article of the Constitution as another. One particular article or section is different from the whole. A person may be loyal to the Constitution and yet may want to change any one particular article.

**Mr. Deputy-Speaker:** The hon.

Member has not understood the implication of my suggestion completely. Today, a certain action is being taken under a particular article of the Constitution. We are not trying to amend the Constitution. Even if this Preventive Detention Bill is thrown out, that article will still remain in the Constitution. Therefore, any reference to that article, commending it or opposing it, is not going to alter the present position so far as the Constitution stands. So long as appropriate proceedings are not taken to amend the Constitution, whether, incidentally one can go on casting aspersions on a particular portion or portions of the Constitution is the only point for consideration and I will consider it deeply.

4 P.M.

**Shri Asoka Mehta:** There are two points; one is whether there is any derogatory expression and the other whether it can be made about the Constitution or any clause or article in the Constitution. This question has arisen from the fact that a certain statement was made. Whether that statement is derogatory or not: because Acharya Kripalani has raised that and said that a particular thing is a blot on the Constitution or a blot on a person is really praising that thing or person. I do not know whether he was quite serious about it.....

**Acharya Kripalani:** I was serious.

**Shri Asoka Mehta:** .....but we know this is a very important point. If your ruling is 'that the expression like 'blot on the Constitution' is not derogatory, then the whole question of giving a ruling does not arise.

**Mr. Deputy-Speaker:** 'Blot on the Constitution' is not a complimentary statement.

**Shri Asoka Mehta:** If it is your ruling that it is not a derogatory statement, then the larger ruling does not arise from it.

**Shri V. G. Deshpande:** On a point of order. A rule has been made by the Business Advisory Committee that private Members cannot move any amendment to the Constitution. Under such circumstances, the remedy of moving an amendment to the Constitution is not open to us. I want a ruling on this point.

**Mr. Deputy-Speaker:** No ruling is called for now. This does not arise out of the proceedings before us or out of any behaviour in the House.

**Dr. Katju:** I was referring to a very small matter, namely, that when we are talking of fundamental rights, then those fundamental rights should be taken in the contexts which are described and with all the contexts in which they are described. I was not saying that the Constitution may or may not be amended in this matter. I am taking the Constitution as it stands. Every Constitution, as you were pleased to say just now, takes particular care to see that law and order should be maintained, should prevail in the country, and every Constitution provides and must provide that tranquil conditions should prevail. Take our Code of Criminal Procedure which we discussed for so many days. You are aware that there is Part IX beginning with section 106 and the heading of it is "Chapter VIII, Prevention of Offences". So, this doctrine of action is intended not only to punish the offenders committing offences, but also to check and prevent the commission of crimes, and it is an unquestioned doctrine of jurisprudence everywhere in every country of the world. Similarly, they were providing in the Criminal Procedure Code, and here, when the Constitution granted our fundamental rights, the Constitution-framers became aware at once that these fundamental rights may be violated, may be exercised against or may be professed for their exercise which may lead to violent commotion, violent disturbances, violent disorder.

**Mr. Deputy-Speaker:** Let me understand the scope of the Bill. The House passed a Bill last time, extending the Preventive Detention Act, 1950, for a further period. Therefore, we are not going into the justification of passing that legislation from day to day but we are concerned with this, that is, what is the justification today, for continuing that legislation today, and extending it for a particular period. That is the main point. Whether the House has got a right to pass a law or not, so long as an article, a law, remains on the statute-book, the rights flow to us through that law. That law should be exercised, but how it is to be exercised, and if it is exercised, in what manner—whether by continuing it or not—is the only point for discussion before the House. The hon. Minister has to satisfy hon. Members here with whatever material he has. But if he thinks he has already supplied them with statistical information, then he cannot explain further. The matter that has to be clenched is: what are the peculiar circumstances which necessitate the continuance; whether those considerations which were prevalent at the time when this House accepted this Bill last time continue in all their force or whether they have become softened; whether it is necessary to continue the measure or not. Let us focus attention on this particular point instead of going into generalisations. Nobody denies the right.

**Dr. Katju:** You will hear them now—they will deny it.

**Mr. Deputy-Speaker:** I think hereafter they would not deny it. I am only saying that so long as the Constitution stands, there is no good denying it. The right is there. Whether the exercise of that right is proper or not proper is the only point.

**Dr. Katju:** I think it is worthwhile, before I develop my main point, to remind the House that the Constitution gives full power to Parliament to

[Dr. Katju]

pass any law. The law, as it stands is not lightly worded. May I remind the House of the activities which are contemplated by the Preventive Detention Act which Parliament has passed last time? They are activities which are prejudicial to the defence of India, to the relations of India with foreign powers or the security of India or the security of the State or maintenance of public order and the maintenance of supplies and services essential to the community. These are the matters to which the Preventive Detention Act is directed and action can only be taken under this Act to secure and maintain these particular objectives. That is a matter of fundamental importance. Then the Act says, in compliance with the Constitution, that man who is ordered to be detained, has got a fair trial, a fair investigation, before an independent officer. Under the Criminal Procedure Code, we have got preventive sections where the matter goes before a Magistrate. These are matters of vital importance. The judicial machinery which is provided has the right to hear the man. The man has the right to appear before an Advisory Board. As I said at the beginning of my speech, the Advisory Board consists of the highest of lawyers or judges of the highest rank. It is a judicial tribunal. It is not an administrative tribunal. It is perfectly correct that before that judicial tribunal there is no right of representation through lawyers and there is no right of representation that way. You can go there in person, and there is no open trial.

**Shri Gidwani:** He is not coming to the point.

**Dr. Katju:** Every one knows—and my friend Shri N. C. Chatterjee knows it—that it is not the essence of a judicial enquiry either, to receive representations through lawyers or to have an open trial. Every day, in courts of law, when an application is

made to a judge, because public interests may require secrecy or the departmental interests may require secrecy, he may order a trial to be held *in camera*. The judge may order that the court may be cleared. Secondly, you are establishing panchayats, courts of minor description where lawyers should not be permitted to come in. So, the basic point must be remembered. Here, the Board or the body which is sitting in judgment over the executive action is an independent body. Then the question is, is their opinion binding or is it purely an advisory body purely in its executive capacity? The Advisory Board is a judicial body and its opinion is final. I therefore submit that it was a mockery to say that the Preventive Detention Act is an arbitrary Act, that it invests the executive with enormous powers and that there is no remedy given to the person. An hon. Member asked me to come to the point. The point is this: that we are passing through difficult days; it is not only India that is concerned with all sorts of opinions prevailing but the outside world also. There are many things which I cannot say in public here. (*Interruption*).

**Shri S. S. More:** Are we concerned with it?

**Mr. Deputy-Speaker:** The outside world. The article is misplaced. That is all.

**Dr. Katju:** If one hon. Member interrupts, I might answer, but if six Members stand up, I cannot speak with six voices.

Now, I respectfully submit that I do not want to make any assertion or any reference to any political party, but my hon. friend, Shri H. N. Mukerjee, in his eloquent manner and Shri A. K. Gopalan also, said that they had come here under open professions. I agree. I have got

here before me a reproduction of the Resolution which was passed by the Communist Party two or three years ago. Now, in this they have said plainly: "We do not believe in parliamentary action; we believe in force; we believe in dictatorship."

**Shri T. B. Vittal Rao** (Khammam): Give reference of that Resolution. Place it on the Table of the House.

**Mr. Deputy-Speaker:** What is the meaning of interrupting the hon. Minister every minute?

**Shri T. B. Vittal Rao:** Sir, he is referring to a Resolution.

**Mr. Deputy-Speaker:** Order, order. Each hon. Member develops his argument in his own way. First of all, the Minister gives the substance and later on before he sits down without giving the reference I will allow hon. Members to put any questions.

**Several Hon. Members:** Order, order.

**Mr. Deputy-Speaker:** The hon. Minister may get up. Instead of my saying 'order, order' other said it.

**Dr. Katju:** Now, Sir, my hon. friends believe in Marx and Lenin. That is the basic exposition of their faith. In the Communist manifesto Marx declared:

"The proletariat during its contest with the bourgeoisie is compelled by the force of circumstances...."

I won't go to Marx. In 1951, the Communist Party said:

"Marxism and history have once for all decided the question for the party and the people of every country in the world long ago. All action of the masses in defence of their interests to achieve their liberation is sacrosanct."

No constitutional action; that is what they pray for.

**Shri S. S. More:** May I know if even non-violence is a force?

**Mr. Deputy-Speaker:** Why should there be interruption at every stage? All hon. Members, I am sure, without exception know English on the floor here and whoever does not know English he can get up and ask for explanation later on. Other hon. Members need not interpret and interrupt. Otherwise hon. Members will have no other time to speak. If I go on like this the hon. Minister may speak for all the five hours and hon. Members will have to sit like this.

**An Hon. Member:** It is 15 hours.

**Mr. Deputy-Speaker:** 15 or 5; whatever it may be.

**Dr. Katju:** Sir, I will continue my quotation.

"History sanctions all that the people decided to do to clear the lumber-load of decadence and reaction in their path to progress and freedom."

Then there is another passage:

"Even the most hardened liberal would now feel ashamed to maintain, let alone the Communist Party and other democrats and revolutionaries, that this Government and the classes that keep it in power will ever allow us to carry out a fundamental democratic transformation in the country by parliamentary methods alone. Hence, the road that will lead us to freedom and peace, land and bread, as outlined in the Programme of the Party, has to be found elsewhere."

**Shri K. K. Basu:** Don't add "elsewhere".

**Dr. Katju:** Sir, I admire them. They are perfectly right in their denunciation, but when they come here, I tell you, they become democrats and they talk on the terms of peace, liberty, devotion and all



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sorts of things, namely they swear by parliamentary methods. That is what we have to contend here when they come in this House, and the Government. When that comes, goodness knows what they will believe in.

**Mr. Deputy-Speaker:** Is it a resolution passed by the Party?

**Dr. Katju:** Yes, Sir; in 1951 and they have repeated it times out of number. They cannot deny it.

**Shri K. K. Basu:** Lay it on the Table of the House.

**Shri S. S. More:** I can have so many quotations from Panditji supporting this view.

**Dr. Katju:** Someone, a strong pillar of the Party, is supposed to have said that the answer would not be finished by elections and that it would be finished by the strength of the *kisans* and *mazdoors*. (*Interruption*).

**An Hon. Member:** What is wrong?

**Dr. Katju:** They were sometimes in PEPFU also.

Now, I come back to the main point. My point is this: that a legislation on the lines of the Preventive Detention Act is compulsory; it is essential and it is also not honest to say that it will be meant for the suppression of political opinion. Please remember one thing that out of the 280 people or less who were detained in the year 1953 and 1954, 117 or 109 were politicians of this variety or that. 171 were people who were not connected with politics but who were simply indulging in crimes. There were 46 who were harbouring dacoits. There were many people in Bombay who were *goondas* and who were indulging in crimes. Now, the main object of every State Government has been to take action with a view to prevent commission of crime and I repeat once again, Sir, that it is much

better that action is taken at the early stage before any riots start; before riots break out; before there is disturbance of peace and before people are killed, no matter whoever is to be blamed—whether the police may be blamed or the rioters may be blamed—for the terrible loss of lives. Then we have arson. We had such action taken in Hyderabad. We had such action taken in some districts of U.P. And, afterwards there is a sort of *post mortem* examination, demands for official enquiry, demand for public enquiry and so on. If action is taken now, before-hand, two, three or four people are locked up, statement of objects given to them as to why they have been locked up and enquiry conducted before an Advisory Board, the matter would be settled. No argument can be founded upon the fact: "Oh: look at this statement. There are many States where Government has not found it necessary to detain anybody. In several other States action has been taken but the number is small." The number is small because the Act may have exercised a sort of purifying or restraining effect; or, secondly the Act itself was not properly utilised. I do submit that this is a matter in which no risks can be taken. Parliament would be justified in saying that these are critical times. There is a sort of convulsion of ideas. We have got here different types or people with different minds working in different ways and with different morals. As I said, in abroad, we read every day all sorts of political motions and political doctrines. We ought to really congratulate ourselves that, in India today, conditions reign or prevail where there is security and safety and that is partially due to the existence of the Preventive Detention Act. It may be said: "You can take action under the Penal Code". But sometimes, it will be wholly insufficient. It may be a sort of trying to catch the bird when the bird has flown. It is much better

that you take action in time and stop the commission of all crimes—dangerous crimes, crimes dangerous to society, to the security of the State and crimes leading to the prevention of relations. I do not wish to refer to any particular case because it would not be fair here; otherwise it is worth mentioning. All State Governments, everyone who are charged with the maintenance of law and order, who have to shoulder heavy responsibility have said that this Act should continue.

Mr. Deputy-Speaker, I should like to make this point that Preventive Detention Act was passed in 1950, then the second Act was passed in 1951 and the third in 1952. In 1952—two years ago—Parliament undertook a most exhaustive examination and have made it almost perfect to see that the detenu gets a fair deal; that he is protected in every way; that he gets an opportunity of putting his case and that the period of detention is not too long. Formerly in the previous Act there was no maximum period and now it is a maximum period of one year. Any attempt to brush it aside, I submit, will be detrimental to the State and it will jeopardise maintenance of law and order in this country. It is from this point of view that I venture to place it before the House.

In the opening comments that were made it was said:

"In a democratic set-up it was absolutely necessary that those who did not see eye to eye with the policies of the Government, should have every right to organise themselves and show their protest in the manner which they think appropriate."

I entirely agree with that. "Which they think appropriate" means that it must be lawful and I challenge Members opposite to quote a single instance where this law has been abused and members of political parties detained. I can wait for that. (Interruption).

Mr. Deputy-Speaker: Motion moved:

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

There are amendments tabled to this motion.

Shri M. S. Gurupadaswamy: I move the amendment standing in my name.

Mr. Deputy-Speaker: Just wait. I will allow opportunities for hon. Members to speak after I put all these amendments before the House. While I have generally no objection to motions for circulation of the Bill or for reference to Select Committee.....

Dr. Krishnaswami (Kancheepuram): I rise on a point of order, Sir.

Mr. Deputy-Speaker: At this stage or immediately after I put these amendments before the House?

Dr. Krishnaswami: I have no objection to wait till you put them before the House.

Shri S. S. More: Possibly it may be regarding the validity of the Bill itself.

Dr. Krishnaswami: I rise on a point of order. It is, I believe, sufficiently important to warrant an interruption of business. Mr. Speaker, to whom I gave prior intimation of my intention, has kindly permitted me to do so immediately after the consideration motion has been moved by my hon. friend, the Home Minister. I am thankful to Mr. Speaker for having given me the opportunity to raise this issue at the outset. In the event of your ruling being in my favour, either partially or wholly, there will be time for hon. Members to give notice of amendments to the parent Act, and the Government also would be in a position to have a timely notice of procedure.

Mr. Deputy-Speaker: The hon. Member must know that a point of order is not to be so lengthy as he has started. Let him state the point,

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and if I want further elaboration, then I will ask him to elaborate. What is the point now?

**Shri Raghavachari:** The point of order is about the validity of moving amendments to the parent Act.

**Mr. Deputy-Speaker:** No amendment has been moved to the parent Act. There are certain amendments and when I come to the amendments, I will hear them, and then accept or reject them.

**Shri Raghavachari:** But this is an amendment to the parent Act.

**Mr. Deputy-Speaker:** I must understand what the point is. What is the amendment to the parent Act? Let him have his full say.

**Dr. Krishnaswami:** After your ruling, we will be in a position to move the amendments.

**Mr. Deputy-Speaker:** What I would like to know is this. I want the hon. Member to tell me what the point of order is and then elaborate. Forget all the arguments, what exactly is the point?

**Dr. Krishnaswami:** Can amendments be moved to the parent Act in this case?

**Mr. Deputy-Speaker:** Hypothetically I am not called upon to give a ruling. What is the trouble here to which he refers?

**Dr. Krishnaswami** rose—

**Shri H. N. Mukerjee:** The point is this. The Speaker has given a ruling in 1951, according to which, if there is a continuatory legislation then the parent Act cannot be re-opened except in some very exceptional cases, and possibly this is one such case...

**Mr. Deputy-Speaker:** The hon. Member is a Doctor of Literature and let him make his point clear. I am not here for a general discussion on jurisprudence and parliamentary practice. I have been enough in the

jail and I know the difficulties that arise. But what is the point of order? This ought not to be extended. If it is to be extended, the hon. Member, who is a Doctor of Literature, can help himself and I do not want any other hon. Member to intervene. The hon. Member may be able to tell me the point of order.

**Dr. Krishnaswami:** Can a Bill, which is merely an extension Bill, permit of amendments being moved to the parent Act?

**Mr. Deputy-Speaker:** To the clauses in the parent Act?

**Dr. Krishnaswami:** I am taking this particular Bill for consideration and, therefore, I should be permitted to make this point at some length as it is a matter of some complication. Since this is a matter which falls outside the ruling which has been given by the Speaker in 1951, I have to elaborate it at some length and I would request your patience, Mr. Deputy-Speaker, to allow me to elaborate it in my own way.

**Mr. Deputy-Speaker:** I am here to judge the relevancy or irrelevancy and hear the point of order and the hon. Member ought not to dictate to me.

**Shri S. S. More:** We are only suggesting.

**Mr. Deputy-Speaker:** The point raised is purely a hypothetical point. There are, I find, amendments and any point of order can be raised only in respect of the amendments that have been tabled. No hon. Member can seek the advice of the Chair and after the Chair gives its ruling one way or the other, give his amendments.

Hon. Members have tabled amendments that the Bill must be referred to a Select Committee or circulated for eliciting opinion. So far as those amendments are concerned, I have the least objection to their being moved, except regarding the reference to the Select Committee. Even

there, if it is said that for 1958, it may be 1957 or 1955, there is some point before the Select Committee and let there be arguments there. Technically, I do not find anything wrong in these motions except Shri Gurupadaswamy's motion, where no date is fixed. I would have invited him to give a date, but there are other motions of a like nature which have given the dates. Therefore, I am not allowing Shri Gurupadaswamy to fill up the gap.

So far as clause 2 is concerned, except for the amendment of '1954' into '1957', there is no change in the clause. Formerly in 1952 when the discussion came in, the point was raised and the Speaker ruled that this should be referred to the Select Committee with the directions that clauses not touched by the Bill could also be touched. In that Bill, not only was it an extension, but some clauses of the original Act were touched. Here what is the position?

**Shri Raghavachari:** In clause 2, it says:

"for sub-section (2), the following sub-section shall be substituted...."

So, this is an amendment. There is a whole sub-clause which they seek to substitute by another.

**Mr. Deputy-Speaker:** It is merely an extending Act. So far as an extending Act is concerned, there are two things. If there had been amendments to the parent Act already tabled here, then I would be called upon to consider whether I would allow those amendments or not. Now, the point is purely academic.

**Shri Raghavachari:** My only point is that this Act is not merely an Act for extension. It is also an Act for amendment of a clause of the parent Act. The present Act extends to the whole of India and also to Jammu and Kashmir except in some particulars. They now propose to omit the whole clause and make it applicable only to India excluding Jammu and Kashmir. There-

fore, there is a substantial amendment in this clause.

**Mr. Deputy-Speaker:** Even if there are already amendments tabled, I can consider if those amendments are in order or not. No amendments have been tabled to that effect, and if the hon. Member wants the ruling of the Chair so that he may act upon that ruling, it is a hypothetical point and I am not going to allow it.

**Dr. Krishnaswami:** It is not as hypothetical as it seems, because the reasons for my suggestion for this procedure are these. Should the ruling happen to be given in my favour, there will be time for giving notice of amendments to the various provisions of the parent Act for the consideration of the House, immediately after the motion for consideration is taken up. Secondly, if the ruling is favourable to me, the Government also will have timely notice of the procedure to be followed. Therefore, when this Bill comes up for consideration, I do think this has got some relevance and that was why I suggested to the Speaker and made this point of view before you. I am afraid I have not made myself clear. It is not hypothetical; it is just practical and it affects the liberties of all Members of the House and I thought I would co-operate by just suggesting this.

**Mr. Deputy-Speaker:** My ruling is this. I am not going to give a ruling on what ought to be done and what hon. Members can do hereafter. As the hon. Member is a good lawyer, he knows that no Court commits itself to any particular ruling apart from the facts that arise. Now, there is no amendment here which seeks to amend any clause of the parent Act, in which case I would be called upon to give a particular ruling. Even then, when the amendment comes in I will take note of it; if there is any amendment to a particular clause, then the matter may be raised and I will come to it.

Now I will only place those general amendments before the House. We

[Mr. Deputy-Speaker]

are not going clause by clause, in which case we shall consider what has to be done. Hon. Members may now move their amendments.

**Shri A. K. Gopalan:** I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1955."

**Shri V. G. Deshpande:** I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st February, 1955."

**Shri T. K. Chanduri:** I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 28th February, 1955."

**Mr. Deputy-Speaker:** There is another amendment tabled by Shri V. G. Deshpande. Is he moving that also?

**Shri V. G. Deshpande:** Yes, Sir. There is one clause, but as was rightly pointed out by my hon. friend Dr. Krishnaswami, I want the Select Committee to examine all the provisions of the principal Act.

**Mr. Deputy-Speaker:** Let him satisfy the House. I will allow it.

**Shri V. G. Deshpande:** I beg to move:

"That the Bill be referred to a Select Committee consisting of Shri N. C. Chatterjee, Shri A. K. Gopalan, Shrimati Sucheta Kripalani, Sardar Hukam Singh, Shri Shankar Shantaram More, Shri Tek Chand, Pandit Thakur Das Bhargava, Shri Bhagwat Jha Azad, Dr. Ram Subhag Singh, Shri K. G. Deshmukh, Her Highness Rajmata Kamlendu Mati Shah, Shri P. N. Rajabhoj, Dr. A. Krishnaswami, Shri Nand Lal Sharma and the Mover, with instructions to report before the 22nd February, 1955."

**Shri Thirumalaiah (Kolar—Reserved Sch. Castes):** I have given an amendment.

**Mr. Deputy-Speaker:** That will come when we come to the clauses. I will place the amendments before the House.

**Amendments moved:**

(i) "That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1955."

(ii) "That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st February, 1955."

(iii) "That the Bill be circulated for the purpose of eliciting opinion thereon by the 28th February, 1955."

(iv) "That the Bill be referred to a Select Committee consisting of Shri N. C. Chatterjee, Shri A. K. Gopalan, Shrimati Sucheta Kripalani, Sardar Hukam Singh, Shri Shankar Shantaram More, Shri Tek Chand, Pandit Thakur Das Bhargava, Shri Bhagwat Jha Azad, Dr. Ram Subhag Singh, Shri K. G. Deshmukh, Her Highness Rajmata Kamlendu Mati Shah, Shri P. N. Rajabhoj, Dr. A. Krishnaswami, Shri Nand Lal Sharma and the Mover, with instructions to report before the 22nd February, 1955."

Now discussion on the Bill as also on these four amendments (Nos. 2, 5, 8, and 6) will proceed.

Shri M. S. Gurupadaswamy—I have disallowed his amendment. Hon. Members will be as brief as possible because a number of hon. Members seem to be interested in speaking on this.

**Shri Raghavachari:** There are fifteen hours allotted for this Bill. It is better some time is fixed for the general discussion and the other stages; it need not be hurried at this stage.

**Mr. Deputy-Speaker:** How long for general discussion?

**Some Hon. Members:** Twelve hours.

**Mr. Deputy-Speaker:** Then for clause by clause?

**Shri S. S. More:** There is only one reading.

**Shri Asoka Mehta:** There are two clauses. One is about Jammu and Kashmir and the other is about the period. Two hours may be allotted for that and one hour for the third reading.

**Shri S. S. More:** Yet the point is not clear whether Members are competent to propose amendments to the substantial provisions of the parent Act. You have said that you cannot give a ruling on a hypothetical proposition. Suppose some amendments come, you will have to change the allotment of time. It must be elastic to provide for that emergency.

**An Hon. Member:** Tomorrow we can decide it.

**Mr. Deputy-Speaker:** We will decide it after the consideration stage is over. When the Bill is taken into consideration, when we take the Bill clause by clause, then alone is the opportunity for deciding it.

Hon. Members may go into the previous rulings and make up their own mind so far as that matter is concerned. We are bound to follow certain precedents, unless the precedents were wrong.

As at present advised, we will fix twelve hours for the general discussion. Then two hours for the clause by clause stage—one hour for Jammu and Kashmir and the other hour for extension of the period, or for both together. And one hour will be devoted for the third reading.

Hon. Members who are Leaders of Groups, who speak in a representative capacity, will have half an hour each. Other hon. Members will have fifteen minutes each, except that there will be discretion to the Chair to

extend fifteen to twenty minutes in appropriate cases.

Now, Shri M. S. Gurupadaswamy. Is he the spokesman of his Group, I would like to know.

**Shri M. S. Gurupadaswamy:** I am one of those who will speak.

**Mr. Deputy-Speaker:** Then he will have fifteen minutes, with the right of the Chair to extend it by five minutes in its discretion.

**Shri M. S. Gurupadaswamy:** When this measure was first debated in Parliament some years back, the then hon. the Home Minister said that this Act would not continue longer than one year. When this Parliament met in session after the General Election, there was an amendment of this Act, and the Home Minister again said that it would be extended only by two years. The argument advanced on those two occasions was the same. It was that the conditions prevailing in the country at those times warranted a very special Act of this nature. The argument was that the law and order situation in the country was deteriorating, and that the anti-social elements were very active and so it was imperative, for this piece of legislation to continue for some time to come. Now the hon. the Home Minister comes forward and says again that this Act should be extended for three years that is, till after the next General Election.

What is the meaning of this? What is the purpose of this extension? If the hon. Minister wants to establish and maintain law and order in the country, if he wants to detain people who are anti-social, anti-national, he could have come forward with a demand for a limited extension of this Act for six months or eight months or for one year. But even here the argument is not sound. But if the over-riding purpose is to maintain law and order and to curb the anti-social activities of a few miscreants or *goondas* then he could have taken the help of ordinary law of the land. So I ask: what is the purpose working behind

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his mind? It is obvious. He is already looking at the coming general election and he wants this Act to be on the statute-book at the time of the General Election for fulfilling the ends of his own party. He says there is no political or partisan or any biased or prejudiced purpose in this move. He says, it is not meant for curbing public opinion, it is not meant against political parties. But we cannot believe that is true. We cannot take these words as they are, because if his purpose is only to establish law and order, if his purpose is to check the illegitimate or anti-national activities of a few hooligans or *goondas* or mischief-makers, and if that was not possible by resort to ordinary law, then he could have asked for the extension of this Act only for a period of one year or so. But he wants its extension for three years. The purpose to me seems to be to apply this Act more rigorously to the political activities of various parties or persons who are working in the various parties against the Congress. That is very clear and obvious. The Minister cannot get out of that. He said, three years are enough. If he wants to keep this permanently on the statute-book, let him say so. Let it be a permanent measure; let it be part and parcel of our permanent statutes. Let him keep it for 100 years if he wants. That is his intention I know. But, let us understand the true working of his mind. Let us understand the truth behind the suggestion for extension.

Previously, when we had not won our freedom, we know the feelings in the country against the Rowlatt Act. The entire country was agitated when the Rowlatt Act was brought forward by the Britishers. The Rowlatt Act is similar to the Preventive Detention Act. There is no difference between the two Acts. But, we know how the entire country was agitated at that time. The entire nation became psychologically upset over that Act. What were the consequences of the Rowlatt Act? Many people died. Many people had to witness the

death of their brethren. So many people became martyrs in Jallianwala-Bagh. The same Act has been enacted in our free India. This I call an Act of depravity. This is not an Act of grace. It is most pernicious because it takes away the power of the Courts and condemns a man before he is properly tried. In a normal atmosphere, in a society where the ordinary laws prevail, it is expected that before a man is condemned, he should be properly heard before a Court of law under the ordinary law. That is a fundamental right. That is a right that should be guaranteed in any law. Sir, I venture to ask where is the necessity for such an Act as this? What are the conditions prevailing today? The conditions are normal. The Minister can quote figures. He may say the figures of detention have increased. Increase of figures is a justification for the continuation of the measure. Sir, figures can be increased. There may be more detenus or there may be less detenus. Whether there are more detenus or less detenus depends on the caprices of the Magistrates, caprices of the Government. If they want to take more people to jails, they can take them at any moment. If there are more detenus today, it is because they have arrested more people and put them in jails. If there were less it is because they have not taken action against more people. That should not be a justification or an argument. The present times are most normal. The atmosphere in the country is quiet and calm. There is no disturbance. There is no violence; there are no *goonda* activities in violation of the ordinary laws. The whole country is now in a state of peace. So far as law and order situation is concerned. Then where is the necessity for continuing this Act for three more years.

The Home Minister said just a few minutes ago that this Act has got a psychological effect and that it is a sort of a psychological Act. I am sorry, I do not know what psychological effect it has. The Home Minister

provides a psychopathic case which we cannot understand. For the purpose of creating a sort of psychological atmosphere in the country, should we pass Acts of this nature? Is that the attitude? Are we to believe this? For the purpose of creating a proper atmosphere, for the purpose of deterring the people from committing offences against society: should that be made a ground for continuing this abnoxious Act. This is a most absurd and irrational argument. We cannot accept that argument at all. He said in the beginning that this Act is not meant for curbing the activities of political parties. I thought I could believe him. But, at the end of his speech he gave the impression that it is meant for curbing the activities of political parties meaning Communist Party. There is a basic contradiction in his statement. I cannot understand this. He quoted communist literature and he was saying that the Communists were creating a lot of confusion in the country and so there is necessity for this Act. I am not very much enamoured of communism; I am not a subscriber to Communist Philosophy. But, I want to know whether this Act is meant to smother political opposition. I feel that the way that things are being done, the way that the Act is being extended from time to time drives one to inevitable conclusion that it is meant to buttress the Congress.

There is a saying that politics is a conspiracy of power. This is a saying of Mr. Dennis, a famous political thinker. I think that Dr. Katju must have taken his lessons under Mr. Dennis. Politics is a conspiracy of power. This Preventive Detention Act is a conspiracy of power for power. That is what I feel about it. We know that democracy is the rule of the majority. We agree that it should be the rule of the majority. It cannot be a rule of the minority. It is only the Congress Party which has to rule because it has got the majority.

**Shri S. S. More:** That is not a correct statement. They have not got the majority.

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**Shri M. S. Gurupadaswamy:** I am coming to that. But should all the Acts of the majority be obeyed. Should all the legislations or measures brought forward by the majority be obeyed? I think all the Acts of the majority should be obeyed so long as those Acts are proper or perfectly legal. All the Acts of the majority should be obeyed if the Acts of that majority respond to the spirit of the age and fulfil the spirit of the age. The question is, are they in response to the spirit of the age? The Acts must have the sanction of time, and should reflect the spirit of time. What is the present spirit of the age? The spirit of the age is freedom. You want freedom; everybody wants freedom. Freedom should be expressed explicitly in all the Acts. If there is any attempt on the part of the majority to go against the dominant spirit of the age, then there is no moral sanction or sanction of the time behind the majority rule.

I remind the House here of a famous statement of Tocqueville. He is a nineteenth century political thinker, but his statement is even today worth-while remembering. He says that "the moral authority of the majority is partly based upon the notion that there is more intelligence and more wisdom in a greater number". That is the assumption. Why do people want majority rule? They want majority rule because in a majority there will be more people and more people are better than a few. That is why they always say that democracy should be rule of the majority and power should be with the majority. But, Sir, if the majority acts in an illegal fashion, if the majority becomes a steam roller as we find it here to-day, that rule cannot be called a democratic rule. The Congress has become a majority no doubt, but it has become a steam roller. It is acting like a bull dozer, crushing everything, all the virtues of democracy.

**An Hon. Member:** Should there be a minority rule?

**Shri M. S. Gurupadaswamy:** What I say is there should be a corrective



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for the majority mis-rule. By a simple majority you cannot carry on.

There is another ground why majority rule is supported. The majority interests are to be preferred to minority interests. That is perfectly true when the majority interests represent the true interests of the nation. If the majority interests do not represent vested interests or interests of a few people who rule this country, then that majority interest should be taken as an interest to be supported.

**Shri Raghbir Sahai** (Etah Dist.—North East cum Budaun Dist.—East): How is it relevant?

**Shri M. S. Gurupadaswamy**: You are enjoying majority in this House; but it is not a real majority rule. It is a minority rule as it reflects the selfish interests of a small coterie of Ministers.

**Mr. Deputy-Speaker**: I pointed out to the Hon. Minister, the most relevant issue here would be that after 1952 there has been an increase in crimes and ordinary law could not deal with them. He placed a book here containing some statements. Hon. Members must apply their minds and see whether there is need for this Act.

**Shri M. S. Gurupadaswamy**: Sir, I pointed out earlier that the ordinary law as it is to-day should be able to control crimes. If there is any lacuna in the ordinary laws of the country, it is fit and proper that you should fill up the lacuna. But there is no necessity for a special measure.

**Mr. Deputy-Speaker**: The hon. Member cannot continue for more than one minute.

**Shri M. S. Gurupadaswamy**: I have taken about 12 minutes.

**Mr. Deputy-Speaker**: The Hon. Member started at 4-35 and the time is 4-55 now.

**Shri M. S. Gurupadaswamy**: I do not take much of the time. I reiterate once again that the conditions that are prevailing in the country do not warrant the continuation of the

Act any longer. These figures which have been supplied by the Home Minister do not also justify this, because these figures can be changed according to the caprices and fancies of the Magistrates. I may also point out that this Act has been misused in many cases. I come from the Carnatic area and I think the Deputy Home Minister may know what happened sometime back. A number of people—70 to 75 people—were detained on flimsy grounds. The grounds were cooked up. People who were working honestly in political parties, decent and honourable men, were charged as *goondas*. They were named as anti-social elements. Honourable men are made dishonourable by this Act. Sir, therefore it is a black Act. This lawless Act should not be continued for long. By this Act the people who are working in various political parties are condemned. That is why I say it is worse than the Rowlatt Act. It is a disgrace for all of us if you pass this measure. It is a disgrace to continue this. It is a disgrace to Government which brings it again and again; and it is also a disgrace to the country. If foreigners look at this, what will they think of us? They will think that these people cannot be ruled by the ordinary law—they should be ruled by a special law—the Preventive Detention Act. Sir, I cannot understand this mentality of the Government.

By this Act democracy will be slaughtered. You are hanging democracy and making a corpse out of it. Sir, I would ask the House not to do this. If you do this, you will not only murder democracy but you will be enacting 'slavocracy'.

5 P.M.

**Mr. Deputy-Speaker**: Shri A. K. Gopalan.

**Shri A. K. Gopalan**: Mr. Deputy-Speaker, Sir, detention without trial had been there even in 1947.

**Mr. Deputy-Speaker**: The House will now stand adjourned. The hon. Member may continue tomorrow.

*The Lok Sabha then adjourned till Flenen of the Clock on Friday, the 16th December, 1954.*