[श्री शिवमूर्ती स्वामी]

ऐक्टिविटीज में इंट लेता है, या पब्लिक सेफ्टी (public safety) के खिलाफ़ हो, आर्म्ड मूवमेंट (armed movement) शुरू करना चाहता हो ऐसे लोगों के वास्ते यह ऐक्ट इस्तेमाल होगा। इस बात को साफ़ कह कर अगर आप जिला अधिकारियों को अधिकार देते हैं तो कोई परवाह नहीं है। और अगर आप इस तरह से तब्दील नहीं कर सकते और खास कर इन मुबहम अलफ़ाज के साथ तो सिर्फ स्टेट के मिनिस्टर के हाथ में यह ताक़त देना ज्यादा मुनासिब होगा।

मझे ज्यादा बात नहीं कहनी है। लेकिन यह जरूर कहना है कि जो हमारा मूवमेंट है, "अहिंसा का" उस की रक्षा किये बग़ैर देश की तरक्क़ी नहीं हो सकती और न देश की आजादी फूलेगी और फलेगी।

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1 P.M.

REPORT OF JOINT COMMITTEE ON PAYMENT OF SALARY AND ALLOWANCES TO AND ABBREVIATIONS FOR MEMBERS OF PARLIAMENT

Pandit Thakur Das Bhargava (Gurgaon): I beg to present the Report of the Joint Committee, including Minutes, Appendices and Debates in the House, on payment of salary and allowances to and abbreviations for Members of Parliament.

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

The House re-assembled at Half Past Two of the Clock.

[MR. SPEAKER *in the Chair*]

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

Shri M. S. Gurupadaswamy: I want to confine my remarks to foreign affairs which has been included in this section. I feel that the inclusion of this item is superfluous, unnecessary and quite irrelevant. You are aware, Sir, that we are still an infant democracy and our foreign policy is still in a state of flux I may say that we are still evolving a foreign policy which is suitable for India. It has not yet achieved any clear form, solidity or definiteness. When such is the case, it is natural that there may be all sorts of opinions prevailing on matters of foreign policy.

When the Government itself has no certainty in the matter of its foreign policy, it cannot expect the citizens of India to hold certain views, or to put them under detention if they hold certain views. Again public opinion on foreign policy has not yet very much developed in this country. It is not sufficiently articulate and dynamic. In such a situation there may be expressions from individuals which may cross the limits of normal standards, which sometimes may look unreasonable. In the initial stages when we are yet to evolve a foreign policy such a thing is quite natural. So, if we control or put a check on expressions of opinion by people on foreign relations at this stage it will discourage them from participating in foreign and international affairs. For a successful working of democracy positive participation of all sections of people in so far as international relations are concerned is absolutely necessary. But by adding the words "international relations" in the section of the Preventive Detention Act we will in a way be creating a sort of feeling in the mind of the public that to take about foreign affairs itself is a crime.

I came across an official in Mysore, who was discussing certain provisions of the Preventive Detention Act. When he was dealing with this particular aspect of the Act he said that foreign affairs means affairs foreign to us, or matters which do not refer to us. When such is the ignorance of an official who is educated, then you can very well imagine the position of the ordinary common man. So, by including this particular item, you will be only discouraging our people from participating in matters of foreign policy, and condemn them to ignorance.

I may draw your attention to one or two things to make my point clear. It is very difficult to define which opinion on foreign policy is dangerous to the country and which is not. We have been discussing for long our attitude towards Indians in South Africa. We have been trying in the councils of the world, through the United Nations. Through negotiations and in all sorts of way to bring about some sort of settlement which is favourable to Indian settlers. We have been accustomed to speak very

clearly in this matter. There may be free expressions which may cross the limits of reason, which may appear a little reckless. But we cannot help it. When suppression is going on in a foreign country of our nationals, we cannot sit quiet and we cannot always use very moderate expression. It is not possible at all. Human nature being what it is, we are often led by emotion to extreme expressions and it is not conducive to check such expressions on the ground that it will prejudice relations between this country and another country.

When we say that South Africa is undemocratic, when we say that Dr. Malan is imitating Hitler, we do not in any way cross the reasonable boundaries. We are just drawing an analogy between Malan's policy and the policy of Hitler. On that account if you persecute us then it is rather against public opinion. I do not think it will be the intention of the Government either. But having given power to detain persons under this item—foreign affairs—you cannot expect a district magistrate to perform his duties in a way that we expect him to do. District magistrates are not proper judges of matters which pertain to foreign policy. It is a very complicated matter and by entrusting this power to a district magistrate or a Government official we will be surrendering the right of a nation, or the right of the people to the whims and fancies of an official. I do not mean to say that the official will always be wrong. It may so happen because of his ignorance. He may not understand the subtleties of foreign policy. He may not know whether a particular expression will prejudice the relation between this country and another country. You cannot allow such an official to operate this particular portion of the Act. It is, therefore, better to remove these words, because, as I said, we are yet to develop a foreign policy.

In this connection I may bring to the notice of the House that only yesterday our Ambassador in America has in one of his speeches expressed some opinion which was of course later contradicted by him. Even he, an official spokesman of India, cannot properly interpret the policy of India, which is such a delicate thing. How can you expect an ordinary district magistrate to judge whether an expression on foreign policy is right or wrong, or whether a particular individual who has used an expression should be detained or not? It is rather unreasonable and illogical to give power to the district magistrate to arrest and detain a person on this account.

In Russia, I gather that no free expression against the official policy of the Government is allowed. In all democracies people are allowed to have their say, to criticise Government's policy on foreign affairs. And there is complete freedom and opportunity for them to criticize and also to make suggestions to the Government. Only in Russia such expressions are prevented. If you include foreign affairs in this Act it will only mean this that you do not want people to talk about foreign policy, that you do not want opposition parties to criticize your policy on foreign affairs. The Government itself has on many occasions prejudiced many countries of the world by expressing its opinion on various international subjects. For example, the Government of India or the hon. the Prime Minister endorsed the policy of the Persian Government on the question of nationalising the oil refineries. By supporting the Government of Persia on this issue, naturally he has prejudiced the Government of England. In the same way the Prime Minister, when he said that the armies of the United Nations should not cross the 38th Parallel, to that extent he has prejudiced, in a way, the Government of America. So, if you say that whoever acts in a manner prejudicial to our foreign relations or in a manner which will bring about odour between two countries shall be punished, then the Prime Minister also will come under this. It does not make proper sense. The Government of India itself is indulging in such expressions which may or may not be liked by other countries of the world. So, to expect an individual who is not an expert on foreign affairs to keep himself within limits is to expect an impossibility. You must give him adequate freedom to talk about foreign affairs.

Today, as I said, foreign policy is still regarded as foreign to us, is still considered as alien. You must bring home to the people that foreign policy is as important as home policy. I appeal to the Home Minister to consider this point. It is very important, it is very serious. And by deleting the word 'foreign relations' it will not in any way be hurting the nation, it will not in any way take away peace and tranquillity from the land. There is law and order. It has been included here. Take any action against any anti-social activity. Any man who acts against the peace and tranquillity of the land can be put into jail. There is that provision. And there is also the provision as regards the defence of India and the security of India. They are important questions. Take any

[Shri M. S. Gurupadaswamy]

action against those who betray India. Take any action against those who go against the defence of India and the security of India. That is a separate matter. But to take action against those who express something against the foreign policy of India on the ground that it may prejudice the relationship between this country and the other country is something which we cannot understand.

In fact, on foreign affairs people should be allowed too much of latitude. After all, as I said, many people do not understand foreign policy. It is only a few political parties who can give a lead to the country in this matter. We are now discussing the question of bi-partisanship in foreign policy, that is that all the parties of the nation should agree so far as our foreign policy is concerned. That is the attitude of many political parties, I understand. It has not yet evolved itself. When we are in such a state of flux or fluid condition, by putting a check upon free expressions of opinion you will be alienating the sympathy of the masses in this respect and will moreover be taking away opportunities from political parties and groups to educate the men and women in this country on foreign affairs.

So I make a humble submission that these words are irrelevant and unnecessary. They have got a touch of mischief in them. These words may be removed. It will not in any way affect the other provisions of the Act and it will not in any way come in the way of the Government in establishing peace and tranquillity in the land, in defending the country against internal and external enemies, in keeping its security. So these words, I say, are redundant and they can be removed. By removing them you will be making this Act a sane Act, that is to that extent you will make the Act a little bit reasonable. Otherwise you will make this Act very ugly. That is my submission.

Shri B. Shiva Rao: I am intervening in this debate for a very limited purpose. On the last occasion that I spoke I quoted at some length from the detention order passed on my hon. friend Mr. Gopalan on the 9th of December, 1948. And I pointed out that the summary that he had read out of that particular detention order was very far indeed from being fair—and that, Sir, is putting it extremely mildly. This morning my hon. friend, undeterred by that experience, made certain very serious charges against the Madras Government. He said he was quoting from a detention order passed on him on the 23rd January, 1951 and he said the charge-sheet that was given to him contained nothing more than reports of various speeches he had been making. But more serious than that was the charge he made against the Madras Government that that particular detention order contained statements which he is alleged to have made in 1949 and he went on to assert that he was in jail from 1947 to 1951. I believe I have quoted my hon. friend correctly of what he said this morning.

Shri A. K. Gopalan: Yes.

Shri B. Shiva Rao: I have obtained a copy of the detention order which was passed on him, not on the 23rd January, 1951 but I think it was on the 23rd February, 1951. Perhaps that was an error in reading which he committed this morning. It was 23rd February.

Shri A. K. Gopalan: Yes.

Shri B. Shiva Rao: I shall read one or two paragraphs only to point out that there is no mistake of any sort in the grounds of detention that were given to him on the 23rd February, 1951.

Shri A. K. Gopalan: Sir, for your information may I say that I was reading just this paragraph only. I did not read the whole thing, nor did I go into the whole grounds. If this is to be discussed, then I must be given an opportunity to discuss the whole of it, all the three paragraphs, the grounds of detention, what are the acts said to have been done, when they had been done, and so on. I read only this portion. Even now I do not say that there is anything in the grounds of detention—according to him it may be, but according to me it is not—to justify detention. If everything is taken up, if it is taken up paragraph by paragraph, I can explain and prove. There are many things. I have not taken the whole thing. I took one sentence for asking whether the ground warrants detention or not. I mainly wanted to quote that there are some speeches mentioned there whereon I had already been convicted. If the whole detention order of mine is the subject of discussion here, I have nothing to say absolutely. But I must be given an opportunity to take the whole of the detention order. If the question here is of my detention order, whether the authorities were satisfied, and whether on this detention order I must be detained, I have no objection. But, as I said, I must be given an opportunity. I say there is nothing in any paragraph

in this which according to law warrants detention. It has been said by the Judges also after analysing everything. I have no objection to this being taken up because on most of those grounds I had already been convicted. What I say is that if only two or three or four paragraphs are taken into consideration and if Mr. Shiva Rao says that for these reasons, I must be detained, I wish that I must be given an opportunity to go through the whole thing and to go through the other portion.

The other day my hon. friend talked in the House. I had no opportunity to speak. My contention in speaking today was about the public order and I made a reference to these speeches. It is a very important thing because the Judges have gone through the detention orders. If my detention order is so important to be discussed here, I have no objection. On the other hand I am glad obout it.

Shri B. Shiva Rao: Last time I spoke I had the unfortunate experience of being interrupted at the end of every sentence and minor speeches were made by my hon. friend, and some of his friends on the other side. When they speak we listen with great patience. . .

Shri A. K. Gopalan: I am not going to interrupt...

Shri B. Shiva Rao: I am not now dealing with all the grounds of detention but with one objective; and that is to controvert the statement he made this morning that in the grounds of detention which were given to him on the 23rd of February 1951, the Madras Government said that he was guilty of certain acts which he could not have committed because he was in jail at that time. I am only on that particular and very limited objective, to point out that again he has been guilty, unfortunately, of misleading the House. I therefore, ask for your protection that I may be allowed to proceed with my speech without these frequent interruptions. I am not going to discuss the grounds of detention at all.

Mr. Speaker: I have not been able to follow the exact point that he has in mind. So far as the relevancy of the present discussion is concerned obviously, I think, both parties are agreed that the particular detention order is not the matter of debate here. Am I right in that?

Shri B. Shiva Rao: I am not discussing the order of detention at all.

Mr. Speaker: What the hon. Member is trying to do is to point out a certain misstatement by the hon. Member, Mr. Gopalan and his contention, as I guess it, is that the statement that he could not have committed that particular act mentioned in the detention order because he was in jail, that seems to be inaccurate according to him. He means to suggest that he was out of jail at that time?

Shri B. Shiva Rao: No, Sir, if you will allow me, I will make it very clear.

Mr. Speaker: The view seems to be specifically clear that it is not the detention order which is under discussion but a particular statement of the hon. Member as regards the facts.

Shri B. Shiva Rao: That is right. I was saying that my hon. friend asserted that he was in prison from 1947 to 1951. Therefore, the grounds of detention, as stated by the Madras Government in the order of detention dated 23rd of February 1951, could not be correct. On this point....

Shri A. K. Gopalan. What I said was only about this paragraph.

Mr. Speaker: Order, order. Let me hear him. If I find that there is anything to be explained, I will just call upon the hon. Member to explain. Let me follow what he has to say.

Shri B. Shiva Rao: The Madras Government was fully aware of the fact that my hon. friend was in prison in 1949 because paragraphs nine and ten of the grounds of detention given to my hon. friend on the 23rd of February 1951 run as follows:

> "His reported participation in the disturbances in the Central Jail, Cuddalore on the 11th August 1949 clearly proves that he is still violent in character and will not hesitate to carry out his illegal activities."

Paragraph ten gives some of the instances in which he proved himself a dangerous person. I am quoting from the grounds of detention:

> "On 2nd October 1949, he is reported to have threatened the warders of the Central Jail, Cuddalore, by saying that he and his comrades would kill two or three warders as a reprisal for the incident in the jail on the 11th August 1949. He is reported to have added that the police and the Inspector General of Prisons would arrive at the scene after everything was over. On the night of 6th October 1949 Warder No. 80 Krishnamurthi of Cuddalore Central Jail searched the convict prisoners of the jail under the orders of the Jail Superintendent. This news was taken to the Communist detenus and as a protest

[Shri B. Shiva Rao]

they observed a hunger strike on 7th October, 1949. In this connection, he along with detenu M. R. Venkataraman is reported to have questioned the authority of the said warder to search the convict prisoners and also threatened him with violence. The Superintendent, Central Jail, Cuddalore took disciplinary action against the two convicted prisoners who misbehaved on 10th October 1949. He and detenu M. R. Venkataraman headed a party of detenus, took up the cause of the convicted prisoners and staged a demonstration on 11th October 1949 and then surrounded the Jail Superintendent and his staff and attacked them. Fire had to be opened by the Jail Superintendent in self defence. In the course of this scuffle, one detenu was killed and 17 were injured. He was prosecuted both for the part he took in the disturbances in the jail on 11th August 1949 and on 11th October 1949."

Then follows the statement by the Madras Government also in the grounds of detention in which good care is taken to point out the general tendency of the Communists in Malabar among whom according to the earlier grounds of detention which I read out to the House last time and from which I repeat only one sentence:

> "Mr. Gopalan is one of the accredited leaders of the Communist Party in Malabar and wields considerable influence in North Malabar. The Communist Party has of late launched a campaign of utter lawlessness in Malabar, committed dacoities in out of the way places, assaulting innocent persons, forcibly removing fire arms from licence-holders and intimidated the public in many ways."

I am reading this because it is necessary to bear that paragraph in mind in studying the implications of the two grounds of detention mentioned here in the grounds of detention of the 23rd of February 1951.

I am reading again from the latest detention order:

> "In Malabar, particularly, the militant group of Communists has been persistently indulging in activities subversive of law and order. Details of the lawless and violent acts committed by them are given below:
>
> Defying the ban imposed on Communist *Jathas*, the Communists took out *Jathas* at Kadirpur Chombal and Mayyannur and Kozhikode on various dates and had therefore to be dispersed by force."

I am not interested in reading the other parts of the grounds of detention. My hon. friend asserted this morning and when I read out this summary of the notes which I have taken of the speech, he admitted that they were correct. He made an assertion that he was in prison when the Madras Government had alleged that he took out *jathas* in 1949. This paragraph makes it very clear that they were not accusing him of leading *jathas* but that Communists were leading *jathas* in Malabar, and having regard to the fact that he was one of the accredited leaders of the movement in Malabar, therefore, they felt that it was necessary to keep him in detention. To make it quite clear, I am reading the penultimate paragraph of the last detention order:

> "Having regard to the past activities it will be dangerous to allow him to move freely in the State. The grounds above show how he has been actively concerned in engineering and executing a violent programme. An order of detention has therefore been passed."

3 P.M.

I am not interested in discussing the general grounds of detention. But, I do want to point out that it is not fair to the House that he should so grossly mislead us and have us labour under the impression that the Madras Government is so guilty of inaccuracies that it passes grounds of detention against a man while he is still in prison. That is all I have to say on this occasion.

Shri A. K. Gopalan: I understood the other day and today also Mr. Shiva Rao was trying so much to prove that my detention order was correct and that the Government is correct in doing so. I wish him success. But what I have to say is this. I read this para. I will read it again:

> "In Malabar, particularly, the militant group of Communists has been persistently indulging in activities subversive of law and order. Details of the lawless and violent acts committed by them are given below:"

Before that he read something else, which I did not read. There were some charges about me inside the jail. A case was launched against me. It was said there, that as a matter of

grace in compliance with the request of a large number of detenus, the case was withdrawn. Why should there be grace when there was a charge against a man? Why should there be grace and the case withdrawn? It was not a question of grace. It was a case where there was absolutely nothing inside the jail to show that something wrong was done. The Minister in charge of jails, when this thing happened, made a statement outside, which was contrary to the charge-sheet that was supplied by the police officer. When the case was before the court, we appeared before the court on 15 days. We pointed out this thing and then the case had to be withdrawn. It was said, "with grace we withdraw the case". That was also in the court. Prosecution witnesses had been examined and the case was proceeding for three or four months. Then it was withdrawn with grace. Let it be grace; I do not mind. I only gave the facts.

What I said was this. This is the para. in the grounds of detention. Whatever the activities of the Communists in Malabar were, how is it that the Government knows that when I go outside, I will be in a *jatha*? They cannot. I was detained in 1947 and 1951. One of the reasons given for not releasing me was as I said, the activities of the Communists in 1949. Was there a *jatha* in 1951? Was there any other activity in 1950 or 1951? This is what I said. If there had been activities, if this para contained the activities of the Communists in Malabar in 1951, 23rd February or March or December, 1950, I can say the activities are there. What I wanted to show was that this is not only irrelevant, but the Government gave the detention order saying that there were activities of the Communists in Malabar in 1949, that they took out *jathas*, they created some disturbance and so in 1951 I must be detained. For this, I do not know why Mr. Shiva Rao is persistently saying that I wanted to see that misrepresentation is made. No. It may be that I am not a lawyer like him and may not be able.....

Shri B. Shiva Rao: I am not a lawyer.

Shri A. K. Gopalan:.....to put my case better. My case is this, Sir. There are certain things happening in Malabar. For that I am detained. When did they happen? Did they happen on 23rd February 1951? Or, in the month of January?

Shri B. Shiva Rao: On a point of order, Sir.....

Mr. Speaker: Let the hon. Member proceed. I shall hear the point later.

Shri A. K. Gopalan: This is the order. It says:

> ".....particularly the militant group of Communists..... Defying the ban imposed on Communist *jathas*, the Communists took out *jathas* at Kadirpur on 28-8-1949,...

Without explaining the activities of the Communists in Malabar, it gives the year 1949. What I said was that it should not have been there. It should never be there. As a ground for further detaining a man in 1951, to continue his detention after four years, this event of 1949 is mentioned. I would not have been sorry if the Government had mentioned some incident in 1950 or 1951. Let them have the year 1951 or 1950; not 1949. That is what I wanted to say. Even now I say that for this para to be there is unreasonable. This para should never be there in the detention order because that is something that happened.

Shri G. H. Deshpande: On a point of order, Sir,.....

Mr. Speaker: Order, order.

Shri G. H. Deshpande: I want to raise a point of order.

Mr. Speaker: Let us be a little more patient and try to understand what the dispute is. I have been trying to follow what the difference is. The main point is not whether the order is reasonable or unreasonable, or the statement of the Government was proper or improper. What I have understood by following the two hon. Members is this: An allegation is made that he was guilty of misleading the House. His explanation to my mind is very clear, that he did not want to mislead the House by suppressing anything from the order. But, the point at issue was that the Government in giving the grounds in the year 1951 laid stress on certain events in 1947 and took into consideration the subsequent events in 1949 and attached these as the grounds for detention in 1951. That is what he wanted to show, as he tells me now and as I understood him.

Shri A. K. Gopalan: Yes.

Mr. Speaker: The allegation is made that he tried to mislead. The explanation is given as to what the object was. I do not see how a point of order arises. We are not here sitting to discuss whether a particular order was correct or incorrect. We

[Mr. Speaker]

are not concerned with the merits of the order at all; nor are we concerned with the defence of the Madras Government. I do not think there is any charge against the Madras Government. His argument is only to show how the Act has been worked previously. That seems to be the plain thing unless we read something beyond what the plain words show. I do not think there is any point of order. But, I should like to hear Mr. Shiva Rao's point of order.

Shri B. Shiva Rao: The point of order really does not now exist. I thought when I was speaking, you laid it down very clearly that what we are discussing are not the general grounds of detention. I gave you an assurance that I was not doing it. Yet, to my regret, I found Mr. Gopalan was allowed to discuss very freely the grounds of his detention. I said clearly at the beginning.....

Mr. Speaker: I will not admit that. I allowed him to go on because I wanted to understand exactly what argument he was making. Even now, on the explanation given by him I do not see how he intentionally wanted to mislead the House. He was arguing a particular point.

Shri B. Shiva Rao: I must have explained myself very badly if that is how you understood me to argue. My point was this. Mr. Gopalan made a statement this morning that the Madras Government passed an order of detention on him on 23rd February 1951 and among the grounds of detention it was said that he had led the Communist *jathas* in 1949. He said, "How can I do it since I was in prison from 1947 to 1951?". My point is that nowhere in the grounds of detention of 23rd February 1951 has it been said that it was Mr. Gopalan who led these *jathas* in 1949. The Madras Government was only pointing out that having regard to the very great influence that Mr. Gopalan wields on the Communist Party in Malabar, it was dangerous to allow him out of jail. I am not discussing whether that order was proper or improper. I am only pointing out that the Madras Government has certainly not been guilty of inventing a charge and accusing Mr. Gopalan of having led Communist *jathas*, because from the order of detention which I have just read out to the House, that charge has not been made, and that therefore Mr. Gopalan misled the House by giving us the impression that the Madras Government was doing something so absurd and fantastic as that.

Shri A. K. Gopalan: If I have said all that—I remember not to have said like that—if I have said.....

Mr. Speaker: Let us not carry on this controversy. Mr. Shiva Rao's statement is there. Mr. Gopalan's statements now and on the previous occasion are also there. I think one can rely on the intelligence of the Members and public outside to judge as to who was misleading and who was not misleading. Let us not pursue that matter further, because I am anxious to save time. All the time taken in this discussion is taken from the time allotted to the particular measure.

Shri H. N. Mukerjee: I do not wish to refer to Mr. Shiva Rao's particular solicitude for Mr. Gopalan's political morals.....

Mr. Speaker: Let us drop that item as if it has not happened in this House.

Shri H. N. Mukerjee: There is another matter to which he has made reference which I fear I ought to make a few comments on and I hope you will permit me. He has put it on record in the proceedings of this House that in Cuddalore Jail in a certain period there were certain disturbances and from the report which he has read out of Government documents, it appears that one detenu was killed and 17 were injured as a result of whatever disturbances happened. This has reference to what I said in one of my previous statements during this debate, that inside the jail the balance of physical forces is always against the detenus and if there are incidents which are suppressed in a manner which has been acknowledged openly by the Madras Government, then, it only shows a point which I am sure my hon. friend Mr. Shiva Rao did not wish to admit. That point is that the Government of our country has been behaving in regard to detenus inside jail in such a fashion that there had to be certain incidents and as a result of those incidents, not one policeman was injured, not one warder was injured, as far as his facts disclose—I do not have the facts—so far as the Madras Government's facts are concerned, they show in Cuddalore one detenu was killed and 17 were injured, while on the other side.....

Dr. Katju: On a point of order, Sir. May I just point out that we are discussing clause 4, as to what should be the ground for detention, and who should issue the order of detention. The time is short. So I want.....

Shri H. N. Mukerjee: I shall come to that point.

Mr. Speaker: There seems to be a tendency towards a sort of chain argument. Somebody makes some statement. It is caught up by somebody else and the argument turns to that something, without any reference to the point at issue before the House. That is very regrettable in a sense. Let us not go into these details. After all, these are side statements, side issues which really do not affect the matter before us. Let us come to the real issue.

Shri H. N. Mukerjee: I am very sorry, Sir, if that was an irrelevant reference, but in any case I was coming to a discussion of the particular amendments before us.

I would say in the first instance with reference to certain speeches which have been made that I am by no means persuaded by the logic of the arguments put forward from the other side.

Some time back, my hon. friend Mr. Chacko said that speakers on this side have referred to the fact that there are in the criminal law of the land several provisions which are a sufficient safeguard against subversive influences at work, particularly in normal times. And Mr. Chacko wanted to counteract that argument by saying that section 107, for example, is a bailable section and people who were charged under that section could be granted bail by the judiciary, and therefore it was not a sufficient safeguard. I do not understand this sort of argument at all, except on the supposition that our judiciary is so wrongheaded that it grants bail in those circumstances where the police prosecution tries to show that bail should not be allowed, and yet in very perverseness, our judiciary grants bail. If there is an extremely emergent situation, if there is a terribee crisis, then, of course, the whole thing goes overboard, but that is a different matter altogether. But how is it that in a fairly normal period you are asking for certain rights, and you are saying that the ordinary law of the land does not cover certain contingencies which are likely to arise, and, as an illustration of the position, how several of the different provisions of the Indian Penal Code and the Criminal Procedure Code etc., etc., are so hedged in with restrictions, that are bailable sections and so on and so forth, and therefore absolutely inadequate.

Shri P. T. Chacko: That is not what I said. I want to correct him.

Shri H. N. Mukerjee: The ordinary law of the land is absolutely sufficient to deal with whatever circumstances are likely to arise in the near future.

In regard to the amendments before us, I would like to refer to the words "relations of India with foreign powers" in particular, and it has been sought to be made out by Government that acts prejudicial to the relations of India with foreign powers should be punished by preventive detention. This point has already been made, I only want to emphasize it, that we do not really know where we stand if this clause is permitted to remain as it is. In this House, as well as outside, many of us, not only on this side of the House, but also many people in the ruling party, are critical from time to time of the foreign policy of our country. If to be critical of the foreign policy of our country, if to suggest from time to time whenever we think fit certain changes in the foreign policy of the country, is to disturb our relations with foreign countries and therefore invite the action of the Preventive Detention Act, then surely that is an absolutely intolerable proposition. I remember in this House we have had occasion to make so many references to our relations with foreign powers. I would say for example, Britain today is a foreign power. We may be in the Commonwealth, but Britain today is a foreign power. As far as our relations with Britain are concerned, they are within the jurisdiction of the External Affairs Ministry. I myself have referred, and so many others, also to what we call the hated flag of Great Britain flying over this House. If we said the flag of Britain was a hated flag because of certain historical circumstances, that might very well be construed as jeopardising the present relations as they exist between Britain and this country. From time to time, we have had occasion to think—we may be right or wrong—that American imperialist forces are behaving in such a fashion in regard to our country in particular, that we should beware, that we America. We say that in all good should change our foreign policy in regard to the United States of faith. We want our country to pursue a foreign policy which is in utter conformity with the interests of

[Shri H. N. Mukerjee]

the people of this country. If in pursuance of that belief we criticise, very strongly if occasion arises, the foreign policy which is being pursued for the time being by our Government, that could not by any possible stretch of imagination be construed to connote something like treasonable conduct. That is exactly what Members on the other side are trying to make out. If, therefore, a very elastic and comprehensive phrase like "relations of India with foreign powers" is permitted to remain in the Preventive Detention Act, it might be used by Government—Government has not been particularly scrupulous in regard to the use of the Preventive Detention Act—in a manner which is absolutely prejudicial to the interests of the people of this country.

I remember for example in 1948 when I was detained for a while, one of the charges against me was that I was in touch with foreign Communists. I came back from foreign countries in 1934, and I have never set foot on foreign soil since that time. Now, I do not know what exactly was meant by the very precious expression "in touch with foreign Communists". I expect, if I was a dangerous person—my correspondence was tampered with—and if I was corresponding with foreign Communists, they could have placed the facts, the documents in regard to my conduct. Nothing of that sort was said against me. I could only write in a peculiar fashion in answer to this charge because there was no charge at all. Luckily, I was let out after three months, possibly because that charge was found to be absolutely unsubstantial. This kind of charge is brought against us by the Government of our country, and if, in addition to all the other enormities which are a part of the Preventive Detention Act, there is inclusion of this phrase "relations of India with foreign powers", then I am sure from time to time certain situations would arise which will be extremely undesirable.

I do not want to refer to many other points which have been made, but I should refer to one more point before I close, and that is the authority vested in district magistrates and in commissioners of police in places like Calcutta and Bombay. A lawyer friend on the Congress side upbraided me a few days ago for having referred only to the minority judgment of Lord Atkin in the famous case of Liversidge *versus Anderson*. He tried to tell me that I was almost misleading the House by referring only to the very classic judgment of Lord Atkin and not referring to the majority judgment of Lord McMillan and company. Now, in the majority judgment of Lord McMillan and Maugham and others, as far as I remember, and I think my memory is not playing me false, there was reference to the safeguard of the liberty of the subject, as far as detention without trial in wartime in England was concerned. And they used there an expression which has stuck in my memory, which is "the forum of the Minister's conscience". The question arose as to whether there should be objective satisfaction or subjective satisfaction in regard to the guilt or otherwise of the detenu concerned and their Lordships decided by a majority that if the matter is adjudicated upon in the forum of the Minister's conscience, then the Home Secretary, being a very responsible person, perhaps should be allowed that discretion, and therefore in spite of Lord Atkin, they passed a majority judgment.

Now, we say that in our country today conditions are such that we do not envisage a very large-scale application of the Preventive Detention Act.

Let us not be so pessimistic and so panicky as to imagine that tomorrow or the day after there is going to be such a very dreadful situation all over the place that in talukas and subdivisions and towns and villages we shall be arresting people under the Preventive Detention Act and that therefore the officers like the district magistrate should be vested with powers to have the final say in regard to this matter. I would say that considering the present posture of our country, it is very reasonable to insist that the judgment in this sort of matter should be vested in the Home Minister of the Central Government or the Home Minister of the State Government or any other Minister of the Central or the State Government who may be specially authorised in this behalf. There is an amendment by my hon. friend Sardar Hukam Singh to that effect, and I think it is an extremely salutary provision.

In regard to the commissioners of police in places like Calcutta and Bombay—I have some experience of how they behave in a place like Calcutta—I may give an instance of the kind or irresponsibility with which these officials of the Government who are used to a policy and tradition which are absolutely hostile to all ideas of our own in regard to our patriotism, be-

haved in a particular fashion, which we cannot easily forget. I remember that in 1949 there was shooting in the streets of Calcutta. There was a procession going on, led by women who were demonstrating their sympathy for certain people who were on hunger strike in different West Bengal jails at that time. Four women who were in the forefront of the procession were shot at point blank range and killed in the streets of Calcutta. On that occasion, the public asked all kinds of very uncomfortable questions, of the commissioner of police and the Government of West Bengal and it was asked for example "When the police think that it is absolutely necessary to shoot, should they shoot so that the people die straightway, should they not shoot lower down in the body where the damage might not be fatal?" That question arose, and the commissioner of police in Calcutta at that time had the insolence and audacity to say "We shoot to kill", and that it is economical in terms of human life if they shoot to kill. This kind of statement had never before been made here even in the worst days of British excesses in this country. Four women were shot down in cold blood at point blank range and there was not one police casualty of a serious nature. On that very same occasion and also after that the commissioner of police had the gumption to say that he "shoots to kill" because that means economy in human life.

These commissioners of police when they come to imagine that they are in the good books of the Government of the day, when they put on a *khadi* cap and go and attend certain parties and try to prove themselves extremely patriotic, they get an idea in their heads that they ought to behave with these Congress bigwigs in a fashion which would satisfy them, and when they are convinced that the Congress Government wants to pursue a particularly stringent policy then they overdo it. They have done such things in the past, and such instances have happened. If these people take charge of a place like Calcutta or Bombay as commissioners of police, I am sure we are not going to allow them, if we possibly can, to behave in their own way, and be vested with such powers as this legislation proposes to vest them with. And that is why I say that these officers who have no tradition of political understanding, these officers who have always been strong on the stronger side like certain hon. Members on the other side, and are in the old way running the department of the police should not certainly be vested with the kind of jurisdiction which the present Bill proposes to do. I say that the ultimate responsibility for such very serious decisions as preventive detention should be vested in people like the Home Minister either at the Centre or in the States.

Mr. Speaker: Before I proceed further, I should like hon. Members to be clear with regard to the time-table. I think our arrangement was that the second reading should finish by this afternoon, and then it was thought of revising it, and now the time has been extended for the second reading upto 1 P.M. tomorrow. The third reading was to start at 3-30 P.M. Tomorrow, we have made a little change in the timings. We shall meet from 3 to 6 P.M. instead of from 3-30 to 6-30 P.M. for various reasons which need not be disclosed in this House. As the discussion of the second reading stage is up to 1 P.M. tomorrow, we can go on with the discussion. Even otherwise also, I am not concerned very much about the shortening of the debate, but I am naturally anxious that hon. Members should have an opportunity of taking up all the amendments which they have taken the trouble to table.

Shri A. K. Gopalan: I have got with me here a copy of the report of my speech made in the morning here, and I want to place it on the Table.

Mr. Speaker: The hon. Member will see that the speech which is reported will be duly before the House...

Shri A. K. Gopalan: I have read it, and there is nothing in it.

Mr. Speaker: I shall look into it.

श्री माधव रेड्डी: मैं ऐमेण्डमेण्ट नं० १५, १७ और ४२ पर अपने विचार प्रकट करना चाहता हूं । अब तक इस बिल पर कई लोगों ने बहस की । कई प्रकार के आर्गूमेंट्स (arguments) और काउंटर आर्गूमेंट्स (counter-arguments) पेश किये गये । मैं उन सब को दोहरा कर हाउस का समय नहीं लेना चाहता । मैं इन ऐमेंडमेंट्स पर एक दूसरे ही पहलू से अपने विचार प्रकट करूंगा ।

सवाल यह है कि इस बिल का जो उद्देश्य था, जिस मक़सद के लिये यह क़ानून बना किस हद तक वह मक़सद पूरा हुआ ? किसी आनरेबुल मेम्बर ने इस पर रोशनी नहीं डाली । तीन साल का तजुर्बा हमारे सामनें है । जब कभी मुझे मि० ए० के० गोपालन

[श्री माधव रेड्डी]

वर्सस स्टेट का जो मशहूर केस है वह याद आता है तो मैं सोचने लगता हूं कि अगर इस बिल ने और कुछ नहीं किया तो कम से कम इतना तो जरूर किया कि कुछ लोगों को खामख्वाह प्रामिनेण्ट (prominent) बनाया । मैं इस मौक़े पर मि० ए० के० गोपालन के बारे में कुछ नहीं कहना चाहता क्योंकि मुझे इस बात का हक़ नहीं है कि मैं किसी आनरेबुल मेम्बर के बारे में, उन की सलाहियत या उन की शोहरत के बारे में कुछ रिमार्क करूं, मगर मैं अपने बारे में सोचता हूं कि शायद इसी तरह के एक रेगुलेशन (Regulation) का शिकार न हुआ होता तो इतनी आसानी से मैं यहां बैठा हुआ न होता ।

इस बिल के बारे में आनरेबुल होम मिनिस्टर ने कहा कि इस की जरूरत इस लिये है कि देश में अभी गड़बड़ है । देश में कुछ ऐसे लोग हैं, ऐसे ग्रुप्स (groups) हैं जो तशद्दुद पर तुले हुए हैं। कुछ ऐसे लोग हैं जो अंडर ग्राउण्ड (underground) हैं जिन के पास अनलाइसेन्स्ड आर्म्स (unlicensed arms) हैं। लेकिन मेरी समझ में नहीं आता कि जो अंडर ग्राउंड लोग हैं जिन के पास आर्म्स हैं, जिन को पकड़ने में पुलिस अब तक नाकामयाब रही, उन को पकड़ने में यह बिल कहां तक मदद कर सकता है । लेकिन सवाल यह है कि कहां तक इस क़ानून का मक़सद पूरा हुआ । इस क़ानून का सब से ज्यादा इस्तेमाल तैलंगाना में हुआ जहां से कि मैं आता हूं । और मेरा यह विश्वास है कि अगर तैलंगाना में इस क़ानून का इस हद तक इस्तेमाल न हुआ होता तो वहां के हालात आज मुख्तलिफ़ होते । मुझे मालूम है कि कई लोग जो डिटेन (detain) किये गये उन पर तरह तरह के चार्जेज (charges) थे, उन्होंने तरह तरह के क्राइम्स (crimes) किये थे, और उन्हें प्रासिक्यूट (prosecute) किया जा सकता था । मगर उन को प्रासीक्यूट नहीं किया गया । सब को मालूम था कि उन्होंने डाके डाले और क़त्ल किये लेकिन उन को प्रासिक्यूट नहीं किया गया । मामूली क्रिमिनल ला (Criminal Law) का इस्तैमाल नहीं किया गया, उन को डिटेन किया गया । उन को प्रासीक्यूट इसलिये नहीं किया गया कि अगर ऐसा किया जाता तो उन के खिलाफ़ मुक़दमा लाना पड़ता, मेहनत करनी पड़ती, मुक़दमा बनाना पड़ता, शहादत फ़राहम करनी पड़ती । पुलिस ने सोचा कि यह सब कुछ करने की क्या जरूरत है, प्रिवेन्टिव डिटेन्शन ऐक्ट मौजूद है । इन्सान में शार्ट कट (short cut) ढूंढने की फ़ितरत है । चुनांचे प्रासीक्यूशन नहीं किया गया डिटेन्शन किया गया । इस का नतीजा क्या हुआ । नतीजा यह हुआ कि मामूली क्रिमिनल्स को हीरोज (heroes) बनाया गया । अगर कोई किसान पकड़ा जाता था तो ऐलान किया जाता था कि नोटोरियस कम्युनिस्ट (notorious Communist) पकड़ा गया है । यह तजरबे की बात है कि जब किसी क्रिमिनल को ऐक्स्ट्रा जुडीशियल (extra judicial) तरीक़े से डील (deal) किया जाता है तो उस की इज्जत बढ़ जाती है, उस का मर्तबा बढ़ जाता है । हर क्रिमिनल, जिस का क्राइम किसी अदालत में साबित नहीं किया जाता जिस को अदालत से सज़ा नहीं दिलाई जाती बल्कि जिस को डिटेन किया जाता है, वह नासमझ अवाम और नौजवानों का ऐडमिरेशन (admiration) हासिल कर

लेता है । इसलिये में हरगिज यह मानने के लिये तैयार नहीं हूं कि जिस मक़सद के लिये यह बिल बनाया जा रहा है इस से वह मक़सद पूरा होगा । इसलिये मैं चाहता हूं कि जहां कहीं प्रासीक्यूशन की गुंजाइश हो और जहां कहीं मामूली क्रिमिनल ला से काम चल सकता हो वहां इस क़ानून का इस्तेमाल नहीं होना चाहिये । यहां कई आरग्यूमेंट्स दिये गये कि मामूली क्रिमिनल ला से काम नहीं चलता । मामूली क्रिमिनल ला से इसलिये काम नहीं चलता कि मामूली क्रिमिनल ला में पुलिस को मेहनत करनी पड़ती है, मुक़दमा बनाना पड़ता है, और ईमानदारी से शुरू से आख़िर तक मुक़दमा चलाना पड़ता है । अगर किसी स्टेज में प्रासीक्यूटिंग इंस्पैक्टर (Prosecuting Inspector) या सब-इंस्पैक्टर से ग़लती हो जाती है तो मुक़दमा छूट जाता है । इसी वजह से मुक़दमे अक्सर कामयाब नहीं होते और मुलजिम छूट जाते हैं और नतीजा निकाला जाता है कि क्रिमिनल ला से काम नहीं चलता । चुनांचे प्रिवेन्टिव डिटेन्शन ऐक्ट चाहिये । लेकिन मैं तो इस को हरगिज मानने के लिये तैयार नहीं हूं । अगर आप के क्रिमिनल ला में डिफैक्ट (defect) हैं तो उन को दूर कीजिये । मुझे बड़ा अफ़सोस हुआ जब परसों श्री एन० वी० गाडगिल ने यह कहा कि मेरे ग्रुप को तो इसी तरह के रिमार्क करने की आदत है । अगर क्रिमिनल ला ऐमेण्डमेंट बिल आता तो भी वह ऐसे ही विरोध करते । मुझे यह सुन कर बड़ा अफ़सोस हुआ । हम यहां महज अपोजीशन (Opposition) के लिये नहीं बैठे हैं । अगर आप के क्रिमिनल ला में डिफेक्ट हैं तो उन को दूर कीजिये, अगर इंडियन ऐ वडेंस ऐक्ट (Indian Evidence Act) में डिफ़ैक्ट्स हैं तो उन को दूर कीजिये । हम को कोई ऐतराज नहीं होगा ।

अमेंडमेंट ४२ की भी मैं ताईद करता हूं । मैं मानता हूं कि इस क़ानून का बड़ी हद तक मिसयूज (misuse) हुआ है यह समझा जाता है कि डिटेन करने वाली आथारिटी (authority) कलक्टर, या डिस्ट्रिक्ट मजिस्ट्रेट या सब-डिविजनल मजिस्ट्रेट है । हमारा तो यह तजुरबा है कि हमारे इलाक़े में तो डिटेनिंग आथारिटी (detaining authority) कलक्टर या सब-डिविजनल मजिस्ट्रेट या मजिस्ट्रेट नहीं होता बल्कि असली मानों में डिटेनिंग आथारिटी हमारे ख्याल में तो सी० आई० डी० का जमादार या पुलिस का सब-इंस्पैक्टर होता है । इसलिये इस क़ानून का काफ़ी हद तक मिसयूज हुआ है और आयन्दा भी होगा । इस की कोई गारंटी इस बिल में नहीं है कि इस का ऐसा मिसयूज नहीं होगा । मैं समझता हूं कि जरूर इस का मिसयूज होगा । मेरे इलाक़े से कई पिटीशन्स (petitions) इस हाउस को दिये गये जिन को मैं ने पेश किया और उन का एक पेपर (paper) इस बिल के साथ सरकुलेट (circulate) हुआ था । उस में उन्होंने कहा था कि इस क़ानून का नाजायज इस्तैमाल हुआ है जिस की वजह से उन के ऊपर काफ़ी मज़ालिम हुए, उन की रोजी छीन ली गई, उन की खेती उजड़ गई और वह सताये गये । अब भी वह लोग डिटेंशन में हैं । मेरे इलाक़े में डेढ़ साल के अन्दर कोई चार सौ लोग डिटेन किये गये । उन में से ३५० लोग छूटे हैं अभी ५० आदमी डिटेंशन में हैं । मैं ने उन में से हर एक के ग्राउण्ड्स आफ़ डिटेंशन (grounds of detention) को स्टडी (study) किया । मैं ने यह जानने की कोशिश की कि

[श्री माधव रड्डी]

यह कहां तक जायज हैं। मैं ने देखा कि हर एक डिटेंशन ग्राउण्ड में लिखा गया है कि उन का जुर्म यह है कि उन्होंने कम्युनिस्टों को चन्दा दिया। वह लोग मामूली किसान थे। रात में कम्यूनिस्ट आ कर उन की छाती पर बन्दूक रखते थे। ऐसी हालत में अगर वह न देते तो क्या करते? आप भी अगर उस हालत में होते तो आप भी जरूर देते। मैं यह अच्छी तरह से जानता हूं कि खुशी से तैलंगाना में किसी किसान ने कम्युनिस्टों को चन्दा नहीं दिया, न खाना दिया और न वोट दिया...

एक माननीय सदस्य: ग़लत।

श्री माधव रेड्डी: हम साबित करने को तैयार हैं। चैलेंज (challenge) करो।

मैं कहता हूं कि तैलंगाना के किसानों ने पुलिस से मजबूर हो कर, सरकार से मायूस हो कर कम्युनिस्टों से अमन खरीदने की कोशिश की, कभी पैसा देकर, कभी शैल्टर (shelter) देकर, कभी खाना देकर और कभी वोट देकर। उन्होंने तीन साल तक कम्युनिस्टों से अमन खरीदने की कोशिश की मगर तैलंगाने में जिस अमन के लिये हम मुद्दत से तरस रहे हैं वह आज तक हमें नसीब नहीं हुई है।

इस के बाद कई दफ़ा यहां तैलंगाना के बारे में जिक्र आया। कांग्रेस बेंचेज की तरफ़ से और इधर से भी ग़लत तरीक़े से तैलंगाना की तस्वीर पेश की गई। अफ़सोस है कि डाक्टर जयसूर्य आज यहां नहीं हैं। उन्होंने पिक्चर की एक साइड (side) को पेश किया। मैं उस पिक्चर की दूसरि साइड भी बता सकता हूं जो कि उस से भी ज्यादा भयानक है। लेकिन मैं तफ़सील में नहीं जाना चाहता। मुझे पहले बोलने का मौक़ा नहीं मिला। इस वक्त बोलने का स्कोप (scope) महदूद है। इसलिये मैं तफ़सील में नहीं जाना चाहता। लेकिन मैं इतना जरूर कहूंगा कि अगर इस क़ानून का इस तरह इस्तैमाल न होता तो इतनी गड़बड़ी नहीं होती। खुद अपने गांव की बात मैं बताता हूं। मेरे गांव से ६ लोग डिटेन हुये। यह ६ महीने की बात है। अभी उन में से कुछ लोग डिटेन्शन में हैं। वह अभी छटे नहीं हैं। उन में दो बूढ़ी औरतें थीं। एक ६५ साल की थी। रात में कम्युनिस्टों ने आ कर उस की गरदन पर छुरी रखी और कहा कि चन्दा दो। तो उस बूढ़ी औरत ने पांच सौ रुपया जो कि उस ने पैसा पैसा कर के अपनी छोटी लड़की की शादी के लिए जोड़ा था दे दिया। पुलिस को पता लगा तो उस को डिटेन किया गया। उस को जेल में बन्द कर दिया गया; ६ महीने तक वह बूढ़ी औरत जेल में बन्द रही। इस के बाद कई रिप्रैजेन्टेशन (representation) करने पर छोड़ी गई, वह भी परोल (parole) पर। वह अभी छूटी नहीं है, पैरोल पर है। मैं आनरेबुल होम मिनिस्टर से दरियाफ्त करना चाहता हूं कि क्या वाक़ई इस बूढ़ी औरत से स्टेट की सिक्योरिटी (security) की खतरा था। क्या होम मिनिस्टर साहब समझते हैं कि तैलंगाना के जो किसान जेलों में हैं उन से स्टेट की सिक्योरिटी को वाक़ई खतरा है। क्या यह जो हमारे बगल में बैठे हुये साथी हैं इन से ज्यादा खतरनाक़ हैं वह जो जेलों में बन्द हैं? सरकार की लाजिक (logic) क्या है?

मुझे बड़ा ताज्जुब हुआ जब आनरेबुल होम मिनिस्टर ने और प्राइम मिनिस्टर

ने बार बार इस हाउस में यह दुहराया कि कम्युनिस्टों को जिन्होंने तरह तरह के क्राइम किये थे और जिन को डिटेन किया गया था उन को हम ने छोड़ कर चुनावों में हिस्सा लेने का मौक़ा दिया और इस तरह अपनी सच्ची जम्हूरियत परस्ती का सबूत पेश किया । दुनिया के किसी और देश में ऐसा नहीं हुआ । बार बार इस बात को दुहराया गया । मगर मैं निहायत अदब से अर्ज करना चाहता हूं कि मैं इस दलील को मानने के लिये तैयार नहीं हूं । आप ने कम्युनिस्ट्स को इसलिये छोड़ा कि आप लेफ्ट वोटों को डिवाइड (divide) करना चाहते थे । सोशलिस्ट और दूसरी जम्हूरी जमाअतों से आप को डर पैदा हो गया था । गवर्नमेंट ने कम्युनिस्टों से कोई खतरा इसलिये महसूस नहीं किया क्योंकि वह जानती थी कि उन की आसानी से कुचला जा सकता है । क्योंकि कम्युनिस्ट उनके डेमोक्रेटिक राइवल्स (democratic rivals) नहीं हैं । इसलिये मैं अर्ज करूंगा कि मैं इस दलील को मानने के लिये तैयार नहीं हूं । आपने अपनी इस हरकत से जम्हूरियत की कोई सेवा नहीं बल्कि दुश्मनी की, पता नहीं आप कैसी जम्हूरियत इस देश में लाना चाहते हैं ।

इस बिल को पेश करते हुये आनरेबुल होम मिनिस्टर ने बड़े झिझकते हुये कहा कि यह लॉ तो किसी ग्रुप (group) के खिलाफ़ नहीं है, किसी पार्टी के खिलाफ़ नहीं है, यह तो महज उन इंडिविजुएल्स (individuals) के खिलाफ़ है जिन से कि स्टेट की सिक्योरिटी को खतरा होगा और जिन की ऐक्टिविटीज (activities) से अमन में खतरा पड़ने का संदेश होगा । मगर मैं उन से अर्ज करूंगा कि अगर स्टेट की सिक्योरिटी को खतरा होगा तो वह इंडिविजुएल्स से नहीं होगा, दुनिया की किसी तारीख में इस की मिसाल नहीं मिलती कि किसी इंडिविजुएल ने किसी स्टेट की सिक्योरिटी के लिये खतरा पैदा किया हो, खतरा जब होगा तब ऐसे ग्रुप्स और ऐसी पार्टीज से होगा जो तशद्दुद के बल पर ऐसी हुकूमत का तख्ता उलटने की कोशिश करती हैं और अपनी डिक्टेटरी क़ायम करना चाहती हैं । मैं हाउस का और ज्यादा वक्त नहीं लेना चाहता । आखिर में मैं इतना ही कहूंगा कि "सारे एशिया में" जैसा कि प्राइम मिनिस्टर ने परसों कहा, हालांकि मैं उन की सारी बातों से मुत्तफ़िक़ नहीं हूं, "कि सारे एशिया में न चीन है, न जापान है और ना ही पाकिस्तान है, बल्कि हिन्दुस्तान ही अकेला एक ऐसा देश है कि जहां के लोगों ने मुद्दतों की क़ुरबानी के बाद इंसानियत और जम्हूरियत और आजादी का परचम इस देश में बुलन्द किया" कहीं ऐसा न हो कि वही जनता जिहालत, भूख और ग़रीबी से तंग आ कर इस परचम को अपने ही हाथों से उतार कर फेंक दे । मैं इन अमेंडमेंट्स की ताईद करते हुये अपनी स्पीच खत्म करता हूं ।

श्री पी० एन० राजभोज : (शोलापुर—रक्षित—अनुसूचित जातियां) : आज यहां पर मुझे जो बोलने का मौक़ा दिया गया, उस के लिये मैं धन्यवाद देता हूं । यह जो बिल यहां हाउस के सामने पेश है और कई पार्टियों के लोगों ने उस पर भाषण दिये हैं आप जानते हैं कि हमारे इस देश में क़रीब क़रीब पांच छै करोड़ हरिजन मेरे दलित जाति के भाई हैं । मुझे इस बिल के बारे में कोई खास विरोध करना नहीं है और उस कांस्टीट्यूशन (Constitution) के, जिस में कई बातें हमारे देश के लिये लिखी हैं और जिस को हमारे नेता डाक्टर

[श्री पी० ऐन० राजभोज]

अम्बेडकर ने बनाया है, खिलाफ़ मेरा जाने का विचार नहीं था । लेकिन मुझे डर है कि मुझे उस के विरोध में कुछ कहना अवश्य ही पड़ेगा क्योंकि आज के दिन अछूतों के साथ न्याय नहीं होता है, देहातों में उन के साथ मारपीट की जाती है और पब्लिक सेफ्टी (public safety) के लिये जो प्रीवेन्टिव डिटेंशन ऐक्ट है, उस का उन के खिलाफ़ इस्तेमाल होता है और उस के नाम पर हमारे ऊपर बहुत जुल्म किया जाता है । मैं होम मिनिस्टर साहब का ध्यान इस की तरफ़ दिलाना चाहता हूं और प्रार्थना करता हूं कि वह हमारी हालत सुधारने की ओर ध्यान दें और ऐसा प्रबन्ध करें ताकि हमें न सताया जाय । यह ठीक है कि आप का उद्देश्य इस ऐक्ट को इंडिविजुएल्स (individuals) पर इस्तेमाल करना है या किसी पार्टी विशेष के खिलाफ़ भी हो सकता है । लेकिन हमें इस क़ानून से इसलिये डर लगता है कि हमारे मित्र भी हैं तो दुश्मन भी अनेक हैं और हमें भय है कि हमें सवर्ण जातियों द्वारा इस कानून की आड़ ले कर सताया न जाय । मैं पूछना चाहता हूं कि यह जो नित्य नये नये पार्टीज के लीडर्स (leaders) बनते जाते हैं, वह हम पिछड़ी हुई हरिजन जातियों के लिये क्या कर रहे हैं, वह पार्टीज व उन के वह नेता हमारे लिये क्या करना चाहते हैं । यहां इस हाउस में ऐसी कितनी पार्टीज व लीडर्स मौजूद हैं, मैं कम्युनिस्ट पार्टी (Communist Party) के भाइयों से पूछना चाहता हूं जो इतना सब बोलते हैं और चिल्लाते हैं कि आप हम दलित-वर्ग की दशा सुधारने के लिये क्या करना चाहते हो लेकिन उन के पास भी अछूत जाति के लिये कोई प्रोग्राम नहीं है । इन्हीं हमारे कम्युनिस्ट भाइयों ने बम्बई में गत चुनावों में अछूत जाति के सर्वमान्य नेता डाक्टर अम्बेडकर के विरुद्ध अपना उम्मीदवार खड़ा किया और उन को चुनाव में गिराने की कोशिश की, और वह अभाग्यवश हार गये । मैं पूछता हूं कि आप हमारे किस प्रकार के दोस्त हो । यह ठीक है कि हमारा कांग्रेस से फंडामेण्टल डिफ़रेंस आफ़ ओपीनियन (fundamental difference of opinion) हैं, लेकिन कांग्रेस के पास कोई प्रोग्राम तो दलितों के उद्धार के लिये है । यह दूसरी बात है कि वह उस प्रोग्राम को कहां तक चला रही है हम उस के लिये उस से झगड़ा करेंगे, लेकिन आप जो यहां इतनी पार्टीज के लोग बैठ कर बोलते हो, मैं आप सब से पूछना चाहता हूं कि आप हमारे लिये क्या करोगे और क्या कर रहे हो ?

Mr. Spaker: Order, order. The hon. Member will come to the Bill. There is no mention that the Bill will operate against communalists.

श्री पी० ऐन० राजभोज: यह तो बैकग्राउण्ड (background) में बयान कर रहा हूं, यहां कई स्पीकर बोलते हैं, मुझे बहुत कम समय मिल पाता है । अब जो यह अमेंडमेंट्स हैं, मैं उन पर अपनी तक़रीर के दौरान में आ जाऊंगा, इसलिये मैं आपकी इजाजत से बताऊं कि मध्य प्रदेश सरकार ने मुझे गुण्डा ऐक्ट (Goonda Act) के मातहत जबलपुर जेल में गिरफ्तार कर के दो महीने रक्खा, मेरे ऊपर यह चार्ज (charge) लगाया गया कि मैं रजाकारों की मदद करता था, लेकिन मैं बतलाऊं कि यह चार्ज कतई एकदम ग़लत है और मैं ने उन की कोई मदद नहीं की, बल्कि उल्टे रजाकारों के खिलाफ़ मैं ने आन्दोलन किया

है। लेकिन मुझे दो महीने तक गिरफ्तार रक्खा, लेकिन मैं बतलाऊं कि अगर अभी कोई दूसरी पार्टी का आदमी कोई मूवमेंट (movement) करता है, तो उस को सिर्फ़ सात, आठ रोज की सजा हो जायेगी। मुझे लखनऊ में दफ़ा १४४ के तोड़ने पर ६ महीने की सजा दी गयी, लेकिन अगर यही काम अगर कोई दूसरी पार्टी के लोग करते हैं तो उन को ८-१० दिन की सजा दी जाती है, तो इस प्रकार की भेदभाव की नीति हम अछूत जाति वालों के साथ बर्ती जाती है और मुझे डर है कि इस प्रीवेन्टिव डिटेंशन ऐक्ट के जरिये हमारे ऊपर सख्ती होगी और ऊंची जाति वालों द्वारा अन्याय होगा। हमारी इस देश में क़रीब पांच छै करोड़ की आबादी है, हमारी आर्थिक और सामाजिक दशा सुधारने के लिये सवर्ण हिन्दुओं को हमारी मदद करनी चाहिये। हम कोई देश के दुश्मन नहीं हैं, हम इस देश में बसने वाले हैं और इस को छोड़ कर कहीं जाने वाले नहीं हैं, इस के अलावा मैं आप को बतलाऊं कि मैं कम्युनिस्टों के साथ भी अभी तक नहीं हूं, लेकिन अगर आप इस प्रीविन्टिव ऐक्ट के जरिये दूसरी पार्टियों को कुचलेंगे, दबायेंगे तो मैं समझता हूं कि उस रिप्रैशन (repression) का असर उल्टा ही होगा और जैसा कि हम सब लोगों का तजुर्बा है वह पार्टियां ताक़त पकड़ती जायेंगी। मैं नहीं समझता कि आप कम से कम यह चाहते हैं कि ऐसी खतरनाक़ पार्टियां ताक़त पायें और आगे बढ़ें। मैं आप को एक मिसाल दे कर बताऊंगा कि किस प्रकार सवर्ण जाति वाले हमारे साथ बर्त्ताव करते हैं। रांची में एक सवर्ण जाति की लड़की के साथ एक अछूत जाति के लड़के का प्रेम हो गया और उन की आपस में शादी होने वाली थी, रांची से वह आदमी जमशेदपुर आ गया और किन्हीं हमारे हिन्दू माइंडेड (Hindu-minded) हिन्दू सभा माइंडेड लोगों ने उस को एक मास्टर के पास ठहराया और उस को डराया धमकाया कि अरे अछूत जाति का हो कर दूसरी हिन्दू जाति के साथ शादी करना चाहता है, ऐसा करने से धर्म भ्रष्ट हो जायगा, बड़ा हाहाकार मच जायगा और उस बेचारे को डरा धमका कर भगा दिया गया। वह लोग जिन्होंने उसे इस तरह डराया और मारा पीटा वह चाहे हिन्दू सभा के रहे हों या राम राज्य परिषद् के वह सब एक ही बात है, और हम एक ही मां के दो बच्चे हैं।

Speaker: Order, order. The hon Member is going into some different subject altogether. Now, if he persists in repeating that kind of a thing I shall have to ask him to resume his seat.

श्री पी० ऐन० राजभोज: मैं यह बतला रहा था कि किस प्रकार सवर्ण जाति वाले हिन्दू हमें दबाते हैं और हमारे साथ अन्याय करते हैं। मेरे पास थोड़े दिन बाद पत्र आया जिस से मालूम हुआ कि वह लड़का जिस मास्टर के वहां ठहरा हुआ था, उस को और तीन मास्टरों को स्कूल में से निकाल दिया गया, तो इस तरह की आपत्ति हमारे लोगों पर आती है। हमारे मित्र भी हैं और दुश्मन भी, इसलिये मुझे डर लगता है कि कहीं इस प्रीवेन्टिव डिटेंशन ऐक्ट का प्रयोग हमारे विरुद्ध न किया जाय। सिद्धान्ततः तो मैं इस ऐक्ट के ही विरुद्ध हूं और मैं चाहता हूं कि यह देश में लागू नहीं होना चाहिये। लेकिन क्या किया जाय, मजबूरी है सरकार के सामने क्योंकि देश में ऐसे लोग हैं और ग्रुप्स (groups) हैं जो बग़ल में छुरी और मुंह में राम राम

[श्री पी० ऐन० राजभोज]

लिये फिरते हैं, उन का सामना करने के लिये तो सरकार इस की आवश्यकता का अनुभव करती है। मेरी होम मिनिस्टर से प्रार्थना है कि वह हमारी जाति की दशा की तरफ़ ध्यान दें और यह जो डी० सी० और पुलिस के कर्मचारियों द्वारा हम लोगों पर जुल्म व अत्याचार किये जाते हैं, उन को रोकने की कोशिश की जाय। मैं कई बातों के विषय में बोलना चाहता था, लेकिन इस समय मेरे पास वक़्त नहीं है। और मेरी तो बिल्कुल इस पर बोलने की इच्छा ही नहीं थी क्योंकि यह कांस्टिट्यूशन जिस के अधीन यह क़ानून बन रहा है हमारे डाक्टर अम्बेडकर द्वारा बनाया गया है, लेकिन सोचा कि आप को अपनी दुर्दशा की तरफ आकर्षित करूं ताकि आप हमारी अवस्था सुधारने की कोशिश करें।

Mr. Speaker: Order, order. I think the hon. Member is unable to leave his subject and come to the Preventive Detention Act. I will call upon Mr. Verma.

श्री रामजी वर्मा : विरोधी पक्ष के बहुत विरोध करने के बाद भी बहुमत के बल पर आखिर हमारे गृह मंत्री जी इस प्रीवेन्टिव डिटेन्शन बिल (Preventive Detention Bill) को पास करा लेना चाहते हैं। लेकिन विरोधी पक्ष ने जब यह देखा कि हम बिल को वापस नहीं करा सकते तो हमारे बहुत से साथियों ने उस की धाराओं में संशोधन दे कर उस की ताक़त को कम करना चाहा। लेकिन मेरा ऐमेण्डमेंट (amendment) जो है बिल्कुल इस के विपरीत है। मैं यह नहीं चाहता। यदि यह बिल खामख्वाह के लिये पास हो रहा है तो मैं चाहता हूं कि थोड़ा और तगड़ा सख्त और तेज हो। इसलिये मैं ने यह ऐमेण्डमेंट दिया है कि जहां आप ने डिटेन (detain) करने के लिये 'एनी पर्सन' (any person) लिखा है उस में 'इन्क्लूडिंग ईवन मिनिस्टर्स, गवर्नमेंट सर्वेण्ट्स एटसेट्रा' (including even Ministers, Government servants, etc.) भी लिख लिया जाय। शायद आप कहेंगे कि 'एनी पर्सन' में तो यह है ही। लेकिन नहीं, इस का कारण है। और इसलिये मैं इस ऐमेण्डमेंट को पेश कर रहा हूं। आप के इस के स्वीकार कर लेने के जितने कारण बतलाये हैं वह और मजबूत हो जायेंगे। लोग यह समझेंगे कि इस मर्तबा पालियामेंट में हमारे माननीय काटजू साहब ने एक ऐसा क़ानून बनाया है कि जिस से न सिर्फ़ जनता को बल्कि मिनिस्टर्स और आफ़िसर्स (officers) तक को भी इस बिल के मातहत जेल भेजा जा सकता है। जब आप कहते हैं कि हम पब्लिक की रक्षा कम्यूनल फ़ोर्सेज (communal forces) हिन्सावादी ताक़तों से और ब्लैक मार्केटर्स से करना चाहते हैं, उस को ज्यादा जनरल बना दीजिये और उस में सब लोग होंगे तो वाक़ई जो आप का मक़सद इस बिल के पास करने का है पूरा हो जायगा। इसलिये मैं चाहता हूं कि आप इसे मंजूर कर लें। मेरा तो ऐसा ख्याल है कि हमारे मंत्री जी इस को फ़ौरन ही स्वीकार कर लेंगे, लेकिन अगर जरूरत हो तो इस के दूसरे ग्राउण्ड भी हैं जो मैं आप के सामने रखना चाहता हूं।

आप कहते हैं कि जनता की रक्षा के लिये, हिंसावादी ताक़तों से हमें बचाने के लिये, हमारी जान व माल की रक्षा के लिये यह क़ानून बनाते हैं, और इसीलिये सभी पुराने क़ानूनों के बावजूद आप को इस प्रिवेन्टिव डिटेन्शन ऐक्ट की जरूरत पड़

रही हैं । और आप कहते हैं कि यह पास होना चाहिये ।

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

तो मैं आप से कह रहा हूं कि जहां हिंसावादी ताक़तें जनता को मार रही हैं, वहां हमारी गवर्नमेंट भी लोगों को मार रही है, देश में लोग मर रहे हैं । मैं सारे देश की बात न कह कर उत्तर प्रदेश के पूर्वी जिलों की बात कहता हूं जहां का कि मैं रहने वाला हूं । वहीं का उदाहरण आप के सामने रखना चाहता हूं । देवरिया भी एक जिला है । वहां भुखमरी है, लोग भूखों मर रहे हैं यह आप ने अखबारों में पढ़ा होगा । क्यों मर रहे हैं यह मैं दो मिनट में आप के सामने रखना चाहता हूं । वहां की भुखमरी का....

Mr. Deputy-Speaker: He should address himself to the amendments.

श्री रामजी वर्मा: वहां की भुखमरी की हालत को हमारे कांग्रेसी एम० पी० साहबान ने रखा, ऐम० ऐल० ए० साहबान ने रखा और यह कहा कि हम स्तीफ़ा दे देंगे । इस पर उन पर अनुशासन की तलवार लटकाई गई । "सोशलिस्ट पार्टी ने लोगों के सामने यह रक्खा कि भूखों मरने से तो अच्छा है कि लोग सत्याग्रह कर के जेल जायें", यह अखबारों में हैडिंग (heading) निकली । हमारे खाद्य मन्त्री जी ने हमें बुलाया और कहा कि तुम्हारे देवरिया में यह क्या हालत है ? मैं ने कहा कि आप ने चूंकि वहां पर व्यवस्था नहीं की है इसलिये वहां भूखों मर रहे हैं । उन्होंने हम को यहां से भेजा, मैं गया और सोशलिस्ट पार्टी के सत्याग्रह को स्थगित कराया । खाद्य मन्त्री ने ८ जुलाई को प्रोग्राम बनाया कि वह खुद देवरिया जायेंगे और वहां की हालत को देखेंगे । खाद्य मंत्री यहां से गये । लखनऊ तक पहुंचे, लेकिन लखनऊ की सरकार ने यह मुनासिब नहीं समझा कि वह देवरिया जायें । इसलिये कह दिया गया कि देवरिया में इतना पानी बरसा है कि आप की मोटर जा ही नहीं सकती । लाचार हो कर उन्हें वापस आना पड़ा । लखनऊ की सरकार ने अब यह मान लिया है कि देवरिया में भुखमरी है और वहां पर जमींदारी ऐबालिशन (Zamindari Abolition) स्थगित कर दिया गया है, इसलिये कि वहां की हालत नाज़ुक हो गई है । जनता के सब लोग भूखे मर रहे हैं .....

उपाध्यक्ष महोदय: भूखों मर रहे हैं या नहीं इस से यहां क्या मतलब ?

श्री रामजी वर्मा: मैं इस को छोड़ता हूं, कोई बात नहीं ।

उपाध्यक्ष महोदय: इस के बारे में और कुछ बोलने से मैं बैठा दूंगा ।

श्री रामजी वर्मा: जो कुछ वहां की स्थिति है उस को मैं ने खाद्य मंत्री को बतलाया और सरकार कबूल कर रही है कि वहां की हालत खराब है ।

Mr. Deputy-Speaker: The difficulty is that there is no relevancy. I am not going to allow him to continue. The time of the House is precious and already we have had three general discussions. I cannot allow the hon. Member this kind of indulgence and let him proceed in this fashion.

Shri Ramji Verma: I am relevant.

Mr. Deputy-Speaker: Order, order. He will resume his seat. Obviously, he has nothing more to say on his amendment. He is saying not a word on the matter at issue, which is whether the district magistrate should be clothed with this power or not.

Sardar Hukam Singh: He has a different amendment. That may be all right.

Mr. Deputy-Speaker: Which is that one?

Shri Ramji Verma: 119.

Mr. Deputy-Speaker: Whatever his amendment may be, he is not relevant. His amendment may be relevant, but his speech is not so. I do not want to shut out legitimate discussion but he should not repeat the same story.

श्री रामजी वर्मा: तो मेरा कहना यह है कि अगर आप मिनिस्टर्स को भी इस में ले लेते हैं तो यह जो स्टेट्स में या और जगहों पर आफिसर्स हैं वह डरेंगे और जनता की कुछ फिक्र करेंगे। इसलिये मैं चाहता हूं कि आप स को स्वीकार कर लें। एक आर्गूमेन्ट (argument) मैं और देना चाहता हूं हमारे ग्रह मंत्री जी ने यह बतलाया कि.....

Shri G. H. Deshpande: On a point of order, Sir. I would like to know whether his amendment is in order. When you say "any man" it includes Ministers, Government officers and everybody else.

Mr. Deputy-Speaker: But the hon. Member has a right to speak not only on his amendment but on the other amendments also.

Shri G. H. Deshpande: My point of order is not in regard to his speech, but in regard to his amendment.

Mr. Deputy-Speaker: "Any person" includes all those people whom he mentions.

Shri G. H. Deshpande: That is exactly my point of order.

Mr. Deputy-Speaker: That is all right. I am now concerned not so much with his amendment as with his speech. His speech is not relevant to the matter on hand. He has spoken sufficiently long and has exhausted himself. I shall call on some other hon. Member.

Shri V. P. Nayar (Chirayinkil): Sir, I want to speak on my amendment No. 103.

Mr. Deputy-Speaker: It is not necessary that every hon. Member who has tabled an amendment should speak.

Shri V. P. Nayar: I want to speak because that aspect which is covered by my amendment has not been discussed so far.

Pandit S. C. Mishra: Sir, I have tabled two amendments.

Mr. Deputy-Speaker: Are they not covered by the amendments so far discussed. In this clause we are concerned with three things: (i) categories of prejudicial acts on account of which a detention order may be made; (ii) categories of officers and (iii) procedure.

It is open to an hon. Member to say that the district magistrate ought not to be clothed with this power; or certain categories like foreign relations or law and order ought to be omitted.

Has the hon. Member got any amendment which does not fall into any of these categories? I have no objection to his speaking, if he feels that he can contribute something new.

Pandit S. C. Mishra: I feel I can contribute something.

Mr. Deputy-Speaker: Then he may proceed.

Pandit S. C. Mishra: The amendments which I have tabled do not go beyond the categories that you have outlined, but I wish to lay stress upon certain aspects.

It has been stressed by the hon. the Home Minister and by many friends on the opposite side that this is one of the most important things for which this Act should continue on the statute book. I shall now cite certain examples to show that this law and order business is the one subject for which this Act is never used. We were given very many examples of how the Act is abused. Now I shall place before the hon. the Home Minister instances to show how this Act is never used by the district magistrate where it ought to be used. This Act is not kept on the statute book for the purpose of maintaining peace and order, or tranquillity, or whatever you may call it. Since it is never applied to cases where it ought to be applied, it is better that the words "maintenance of public order" are deleted from this section.

An Hon. Member: If you are assured that it will be used henceforth?

Pandit S. C. Mishra: Then it will be a source of consolation to me.

In the district of Shahabad there is a sub-division called Sahasra. In that sub-division about January or February a rape was committed on some ordinary girl.

An Hon. Member: How is it relevant to the clause under discussion?

Pandit S. C. Mishra: I shall show in a moment how it is relevant.

Mr. Deputy-Speaker: Can we not think of any other example than this? Was there application or want of application of preventive detention? The hon. Member wants this to be applied to every such case.

Pandit S. C. Mishra: If an occasion arises where the ordinary law has failed, this measure should be applied.

Shri Bhagwat Jha (Purnea-*cum*-Santal Parganas): On a point of order, Sir. The case is *subjudice* and the hon. Member should not be allowed to proceed.

Pandit S. C. Mishra: The hon. Member does not know. I am not referring to any case in court.

Shri Bhagwat Jha: Is he not referring to the lady doctor's case of Sahasram?

Mr. Deputy-Speaker: It is open to any hon. Member to bring to the notice of the Chair that a case is *subjudice*. I will put the question to the hon. Member. Is he aware that this is a matter which is pending in a court of law?

Pandit S. C. Mishra: No, not at all. This matter did not go to the court at all. Only four or five days back there were questions about the case I am referring to in the Patna Assembly. May I ask my hon. friend whether he is aware of it?

Mr. Deputy-Speaker: Independently of the proceedings of the Patna Assembly, the hon. Member must be satisfied that the case is not *subjudice*.

Pandit S. C. Mishra: The case to which I am referring has not gone to any court.

Mr. Deputy-Speaker: If it is such an insignificant matter which had not even gone to a court of law.....

Pandit S. C. Mishra: It is such a big matter that it could not be taken to the court. The sub-divisional magistrate ordered an enquiry and the girl was taken to the hospital. In the hospital there was a lady doctor, a graduate of the Patna Medical College. Certain people approached that lady doctor and persuaded her not to give a report that there had been any rape. She waited for a day. She was convinced that it was a clear case and that she could not suppress the facts. So she submitted a report.

Mr. Deputy-Speaker: Unfortunately, that is not one of the categories in section 3. I, therefore, rule it out. Does the hon. Member want this measure to be applied to rape cases?

Pandit S. C. Mishra: In Sahasra this type of cases have been going on for some months and the people feel insecure. And yet this Act is not applied.

Mr. Deputy-Speaker: The hon. Member is satisfied that the Preventive Detention Act should be utilised for these cases. On the other hand members have been complaining that this Act is used in all sorts of cases.

I will not allow the hon. Member to proceed. I am convinced that his point is absolutely irrelevant.

Pandit S. C. Mishra: I will not refer to the case of that girl again. I am speaking now about that doctor.

Mr. Deputy-Speaker: How does the doctor come in under 'public order'?

Pandit S. C. Mishra: I have given up that case.

Mr. Deputy-Speaker: The hon. Member says that "public order" ought to be omitted from clause (a) of section 3 which refers to "the security of the State or the maintenance of public order". What are the grounds for omitting it? The hon. Member has been saying the ground is that in proper cases it has not been used and in improper cases it has been used. I will certainly allow him to refer to one or two proper cases where it has not been used. Is it his contention that in all offences under the Penal Code it should be used? In that case it will be abused. I do not follow the hon. Member,

Pandit S. C. Mishra: If you say, Sir, that it is not relevant, you can expunge it. I have no objection. If you say that I am not at all in order in pointing out that it is not being used where there is a case, then I will sit down.

Mr. Deputy-Speaker: I am convinced that so far as an offence of this particular kind is concerned that does not come under 'public order'.

Pandit S. C. Mishra: I was going to say that in one sub-division where there are five cases there is no action taken under the Preventive Detention, Act, whereas in another sub-division for one looting of a zamindar three hundred people are put under detention. This is the only reference I want to make and I wish to know whether I am in order. On the one side gross criminalities are not dealt with under this Act, and on the other side the flimsiest things are taken up under this Act. I therefore wish to say, take it out and do not embark on such powers. That is all. I want to know whether I am in order. I will abide by your decision.

Mr. Deputy-Speaker: If his argument is that it is abused with respect to a single case of looting, etc., he can expatiate on it.

Pandit S. C. Mishra: Can I go on, Sir?

Mr. Deputy-Speaker: Certainly, so long as he is relevant.

Pandit S. C. Mishra: Now, within four weeks of that day on which she was asked to submit a report, in the hot days of April, when day light is brightest, the lady doctor went to her quarters.....

Mr. Deputy-Speaker: Again he is going into that matter. I am afraid the hon. Member has nothing more to say.

Pandit S. C. Mishra: In the other sub-division, Sir.....

Mr. Deputy-Speaker: No, no.

पंडित ठाकुर दास भार्गव : इस क्लाज पर काफी बहस हो चुकी है और हम इस क्लाज पर चन्द एक घंटे जाया कर चुके हैं, और मैं अदब से अर्ज करूंगा कि जहां बहस शुरू होने पर यह मामला था, उस से हम इस सारी बहस के बाद आगे नहीं बढ़े हैं। हमारे होम मिनिस्टर साहब ने कई वजूहातें बताई थीं कि क्यों जिला मजिस्ट्रेट को इस क़िस्म के अख्तियारात होने चाहियें उसके बारे में और बहुत सी मिसालें तो दी गयीं, लेकिन इस वजह का जो मिनिस्टर साहब ने फ़रमाई थी, किसी मेम्बर ने जवाब नहीं दिया कि बहुत से वाक़यात अमल में आते हैं कि अगर फौरन आन दी स्पोट (on the spot) अगर कोई जिला मजिस्ट्रेट एक्शन (action) न ले तो फिर बाद में उसमें कोई ऐक्शन लेने से कोई फायदा नहीं होता। यह रीजनिंग (reasoning) और बहस कि जिला मजिस्ट्रेट सब जगह खराब होते हैं और लोकली (locally) वह जो काम करते हैं वह इंसाफन नहीं करते हैं, अगर मैं एक मिन्ट के लिये उनकी इस बात को मान लूं तो मुझे यह कहना पड़ेगा कि हिंदुस्तान का इंतजाम आगे आने वाले अर्से में कभी भी ठीक नहीं हो सकेगा। यह जिला मजिस्ट्रेट हर एक जिले के, जो कम से कम १० लाख के करीब आबादी के और इस से भी ज्यादा के हैं लोगों की डेस्टेनी (destiny) पर एक तरह से काम करते हैं। वह बड़े जिम्मेदार अफ़सर होते हैं और अगर यह सारे जिला मजिस्ट्रेट ऐसे हों, जैसा कि मेरे दोस्तों ने उनको बतलाया है, तो मैं नहीं जानता कि किस तरह यह सारा मामला ठीक होगा और देश का काम काज और प्रबन्ध ठीक तरह से चल पायेगा। हमारे दोस्त केन्द्र के होम मिनिस्टर साहब और स्टेटस के होम मिनिस्टर्स पर ऐतबार रखते हैं, मैं इस के लिये

उन को मुबारकबाद देता हूं कि उन पर सारा हाउस ऐतबार करता है और दूसरे होम मिनिस्टर्स पर भी ऐतबार करता है लेकिन मुझे तो हैरानी होती है कि यह बीस होम मिनिस्टर्स किस तरह खुद सारे देश का सारा काम काज चला सकते हैं, अकेले इन बीस मिनिस्टर्स के जरिये सारा काम होना नामुमकिन है यह तभी संभव हो सकता है कि जब देश में ऐसे आदमी पैदा हो जायें जिन पर आप विश्वास कर सकें मैं समझता हूं कि आपकी इस तरह की भावना रखते हुए किसी मुल्क का इंतजाम इस तरह से चलना गैरमुमकिन है आप का ऐसा ख्याल कि सिवाय होम मिनिस्टर्स के कोई दूसरा शख्स ईमानदार नहीं है जो कि इस तरह के मामले में दखल दे सके और यह काम कर सके, मैं समझता हूं कि इस तरह देश का काम चलने वाला नहीं है, हमें अपने अफसरों पर और कर्मचारियों पर भरोसा करना है। अब तो नई तरमीम से यह सारी की सारी बहस खत्म हो चुकी है। पिछले ऐक्ट पर यह बहस हो सकती थी, अब होम मिनिस्टर स्टेट या होम मिनिस्टर साहब सेंट्रल गवर्नमेंट जब तक ऐप्रूवल (approval) नहीं देंगे उस वक्त तक यह प्रीवेन्टिव डिटेंशन (preventive detention) नहीं हो सकता। आज यह कहना कि होम मिनिस्टर दस्तखत करने के वास्ते तो ईमानदार हैं, और वही होम मिनिस्टर साहब ऐप्रूवल देने के वास्ते बेईमान हैं, मैं इसे हरगिज मानने को तैयार नहीं हूं। अब जो तरमीम हमने इस ऐक्ट में की है, मैं समझता हूं कि हमारी उस तरमीम को पूरी तौर से ऐप्रीशियेट (appreciate) नहीं किया गया। यह एक बड़ी और अहम तरमीम है इस के अलावा एक तरमीम हमने यह भी की है कि पुराने फैक्टस (facts) ऊपर नया डिटेंशन (detention) नहीं हो सकता। यह तरमीम भी उतनी ही महत्वपूर्ण है और उसी पैमाने की है इस को भी अच्छी तरह से मेरे दोस्तों ने ऐप्रीशियेट नहीं किया। अभी मेरे एक दोस्त फोरम आफ दी कांशेंस आफ दी होम मिनिस्टर (Forum of the Conscience of the Home Minister) का जिक्र कर रहे थे जो हर एक स्टेट के प्रीवेन्टिव डिटेंशन के ऊपर मोहर लगा देंगे। स्टेट के होम मिनिस्टर ईमानदारी के साथ उस काम को नहीं करेंगे। मैं इस चीज को सही नहीं मानता। इस लिये हम को मानना चाहिये कि जहां तक इस असल के सवाल का ताल्लुक है, हमने यह एक बड़ी अहम तरमीम मंजूर की है और हमने आखिरी फैसला जिला मजिस्ट्रेट पर नहीं छोड़ा है, बल्कि प्रविन्सेज (Provinces) के और सेंटर (Centre) के होम मिनिस्टिर पर इस मामले में आखिरी फैसला करने का अधिकार छोड़ा है। यह इतनी बड़ी तरमीम है कि जिस के वास्ते हम को गवर्नमेंट को मुबारकबाद देना चाहिये कि उस ने इस तरमीम को मंजूर कर लिया है। मैं अदब से अर्ज करना चाहता हूं कि दरअस्ल इस सेक्शन (section) और इस कानून की जो असली मंशा थी उस को हमारे बहुत से दोस्तों ने नहीं समझा है। मुझे अफसोस होता है जब मैं बारबार इस हाउस के अन्दर ऐसी मिसालें सुनता हूं कि फैलां आदमी को यहां रक्खा गया और उस के साथ यह किया गया, तो मेरा ख्याल होता है कि दरअस्ल मेरे दोस्तों ने प्रीवेन्टिव डिटेंशन ऐक्ट का जो अस्ली मकसद था और जिस उद्देश्य के लिये हमने उसे बनाया है उस को हमारे इन दोस्तों समझा नहीं है। फिर मेरे दोस्त कहते हैं कि जहां जुर्म होते हैं वहां पर यह

[पंडित ठाकुर दास भार्गव]

उपाय किया जाना चाहिये और अभी तेलगाना के मेरे दोस्त ने जो सब कुछ बताया, मैं उन को उन की स्पीच के लिये मुबारकबाद देता हूं और ऐसे मामलात में, जिन में वाकई कोई जुर्म ऐसे हुए हों, वहां पर यह ऐक्ट आमतौर पर इस्तेमाल नहीं होना चाहिये। ऐसे मुजरिमों के वरखिलाफ हमारी पुलिस मौजूद है, मजिस्ट्रेट मौजूद हैं। उन को चाहिये कि वह ऐसे मुजरिमों को सजा दें। यह भी क्या मजाक है कि एक आदमी एक बुढ़िया के गले पर छुरी रख कर जबरदस्ती चन्दा वसूल करे, और फिर उस आदमी से कुछ न कहा जाये और उल्टे बेचारी बुढ़िया को प्रीवेन्टिव डिटेंशन ऐक्ट में धर लिया जाये।

जिन लोगों ने ऐसे काम किये, मेरे दोस्त ने ठीक किया कि होम मिनिस्टर साहब की खिदमत में उन वाकयात को ला दिया। दरअसल जिस औरत के साथ ऐसा हुआ वह बड़ा जुल्म है। लेकिन जिस शख्स ने यह बताया कि जो छुरी लगा कर रुपया लेने को तैयार हो, उस को प्रिवेन्टिव डिटेंशन ऐक्ट में रक्खा जाये, उस को सुन कर मुझे ताज्जुब होता है। मैं अदब से अर्ज करना चाहता हूं कि उस को तो कम से कम सात साल की सजा देनी चाहिये जो इस तरह के काम करता है। अगर हमारी पुलिस और गवर्नमेंट यह समझती है कि प्रिवेन्टिव डिटेन्शन का इस्तेमाल ऐसी सूरत में होना चाहिये जहां कि जुर्म होते हों और वह साबित हों सकते हों तो मेरी राय में वह गलती करते हैं, । इसी तरह से वह जज गलती करता है जो यह समझता है कि ऐसे केसेज (cases) में प्रिवेन्टिव डिटेन्शन लगाना जायज होगा। यह जो प्रिवेन्टिव डिटेन्शन का कानून बना उस के लिये हम ने कान्स्टिट्एंट ऐसेम्बली (Constituent Assembly) में फंडामेन्टल राइट (Fundamental Right) करार दिया। मेरे दोस्तों ने पहले भी पूछा कि उस में क्या फंडामेन्टल राइट है। आप एक कानून बनाते हैं कि एक आदमी को प्रिवेन्टिव डिटेन्शन में रक्खा जाये और उस को फंडामेन्टल राइट करार दिया जाये। जनाब वाला, मैं अदब से अर्ज करना चाहता हूं कि इस प्रिवेन्टिव डिटेन्शन का इस्तमाल उन लोगों के वास्ते होना चाहिये जिन के खिलाफ कोई शहादत नहीं मिलती कि जुर्म किया या नहीं किया। ऐसे फेल में जो जुर्म के बराबर हैं लेकिन जिनका साबित करना मुश्किल है कि जुर्म है या नहीं, ऐसे फेल जो जुर्म की हद तक नहीं पहुंचते, लेकिन जो स्टेट के खिलाफ प्रेजुडिशल (prejudicial) हैं। जो पब्लिक आर्डर (Public Order) और सिक्योरिटी आफ स्टेट (Security of State) के वास्ते प्रेजुडिशल हैं, वह सब के सब फेल जो कानून के जद में नहीं आते वह भी इस के लिये काफी है कि यह कानून लागू किया जाये ताकि मुल्क में ला ऐंड आर्डर (Law and Order) रहे और सोसायटी (society) के इन्टरेस्ट (interest) को नुक्सान न पहुंचे। मैं अदब के साथ अर्ज करना चाहता हूं कि जो साहबान कहते हैं कि पब्लिक आर्डर को इस दफा से निकाल दो, वह सख्त गलती कर रहे हैं। क्या मतलब है इस चीज का कि इस कानून से पब्लिक आर्डर निकाल दो। यहां तीन दिन बहस होती रही है, मैं ने सिवा पब्लिक आर्डर की मिसालों के और कोई चीज नहीं सुनी। किसी दोस्त ने ऐसी मिसाल नहीं बतलाई

जिस के अन्दर फारेन रिलेशन्स (Foreign Relations) के सिलसिले में कोई गिरफ्तार हो गया हो। जब किसी शख्स ने कोई शिकायत की है हमेशा डिफेन्स आफ इंडिया (Defence of India) और सिक्योरिटी आफ स्टेट के ही सिलसिले में कहा है। आज यहां सौराष्ट्र और राजस्थान की दिल हिलाने वाली बातें मेरे दोस्तों ने बतलाई हैं। जब मैं श्री सारंगधर दास को, जो कि एक पार्टी के लीडर हैं, कहते हुऐ सुनता हूं हाउस म कि सौराष्ट्र और तैलंगाना में यह कानून मुफीद है, जब मैं डाक्टर मुखर्जी को कहते सुनता हूं, श्री० ऐन० सी० चटर्जी को सुनता हूं कि क्यों आपने इस कानून को पहले नहीं लगाया, क्यों आप ने ऐसी कंडिशन्स होने दीं, तो मेरी समझ में आता है कि इस कानून की बड़ी सख्त जरूरत है, और जरूरत है, पब्लिक आर्डर की खातिर। बार बार अर्ज किया जाता है कि इमर्जेन्सी कंडिशन्स (emergency conditions) के जमाने में जब प्रेजिडेन्ट इमर्जेन्सी डिक्लेयर (declare) करे, उस वक्त यह कानून लागू करना चाहिये, तब मैं सोचता हूं कि जो दोस्त ऐसी तजवीजें पेश करते हैं उन्होंने शायद हमारा कान्स्टिट्यूशन (constitution) नहीं पढ़ा। इमर्जेन्सी की हालत वह हालत होगी जिस को देख कर लोग थर्रा उठेंगे। हम यह कानून इस लिये रखना चाहते हैं कि इमर्जेन्सी आने ही न पाये हमारे मुल्क में। जिस दिन इमर्जेन्सी होगी लोगों के होश गुम ही जायेंगे। मैं नहीं चाहता कि इमर्जेन्सी पैदा हो। उस के न आने देने के लिये ही यह कानून बनाया गया था। ऐसी सूरतों में, जुर्म की सूरतों के अन्दर नहीं बल्कि ऐसी सूरतों में जब कि किसी तरीके से मुल्क बदअमनी की तरफ़ जाता हो, जिन से जुर्म होते हों, जिन से डिफेन्स आफ इंडिया खतरे में पड़ता हो, उन को रोकने के लिये हम ने दफा २२ बनाई थी, वर्ना दफा २१ और २२ एक दूसरे की काम्प्लीमेन्टरी (complementary) हैं। जिस वक्त जुर्म हों या न हों, लेकिन खतरा बढ़ता हो, हमारे देश की पब्लिक लाइफ (public life) खतरे में पड़ती हो, इस के वास्ते प्रिवेन्टिव डिटेंशन की दफा बनाई गई थी। लोग क्या करते हैं कि वह इस तरह के जुर्म करते हैं कि एक गरीब आदमी आ कर कोर्ट आफ ला (Court of Law) में उनके खिलाफ दर्खास्त नहीं दे सकता, कोर्ट आफ ला में कोई गवाही नहीं दे सकता, मुल्क के खिलाफ कान्स्प्रेसी (conspiracy) करता हो, ऐसे शख्स को जुर्म करने के लिये इनसाइट (incite) करता हो कि जिस के खिलाफ सुबूत न हो, लेकिन हमें दिखाई पड़ता हो कि अगर हम इन्तजाम नहीं करते तो बाद में नुकसान हो जायेगा और बदअमनी पैदा होगी तो ऐसे आदमियों के खिलाफ इस कानून को लागू करना चाहिये कहा गया है कि इसे पार्टी के लिये न लागू किया जाये। इस में कोई शक नहीं कि हमारे होम मिनिस्टर साहब ने फरमाया था कि पार्टीज के बर्खिलाफ इस का इस्तमाल नहीं किया जायेगा। मेरे कुछ लायक दोस्तों ने कहा कि किस के खिलाफ करना चाहिये। डा० एन० सी० चटर्जी और दूसरे साथी फरमाते हैं कि किसी के खिलाफ न इस्तेमाल होता हो लेकिन कम्यूनिस्ट पार्टी के खिलाफ इसे इस्तेमाल करना चाहिये, बल्कि इस से ज्यादा सख्त चीजें इस्तैमाल करनी चाहिये। मैं इस पर अपनी कोई राय नहीं देना चाहता, मैं तो यह चाहता हूं कि जहां तक इस की मंशा है यह इंडिविजुअल्स (individuals) के खिलाफ इस्तेमाल हो, जो पब्लिक

[पंडित ठाकुर दास भार्गव]

आर्डर के बर्खिलाफ हो उस के खिलाफ इस्तेमाल हो । मैं बतौर पार्टी के नहीं चाहता कि कम्यूनिस्ट पार्टी पर यह लगे । इस का तो मतलब यह है कि जब तक किसी का बिहेविअर (behaviour) ठीक हो गवर्नमेंट उसे गिरफ्तार करे क्योंकि इस में दर्ज यह है कि "हू एवर ऐक्टस प्रेजुडेशली" । मैं ने दफे तीन के बारे में भी ऐमेंडमेन्ट भेजे थे, लेकिन आज मैं ने जान बूझ कर पेश नहीं किये । "हूएवर ऐक्टस प्रेजुडिशली" में यह जरूरी नहीं जिस के खिलाफ कोई नुक्ता-चीनी कर सके, अच्छा से अच्छा आदमी इस में आ सकता है और इस वास्ते मेरी ख्वाहिश थी कि हम इस को और दुरुस्त करते, लेकिन हमारी गवर्नमेन्ट पर्मेनेन्ट ला (Permanent Law) नहीं बनाना चाहती है । यह इस गवर्नमेन्ट की ही तारीफ है कि वह इस तरह का कोई पर्मेनेन्ट ला नहीं बनाना चाहती है, वर्ना जब कि कान्स्टिटुएंट ऐसेम्बली में हम लोग थे हम समझते थे कि डिटेंशन के लिये पर्मेनेन्ट ला बनेगा । खैर, म इस झगड़े में नहीं जाना चाहता । अगर मौका मिला तो दूसरे मौकों पर मैं इस के मुताल्लिक अर्ज करूंगा कि किस लिये हम ने जरूरी समझा और किन खास हालात में यह डिटेंशन ला जरूरी चीज है ।

मैं आप की खिदमत में निहायत अदब से अर्ज करना चाहता हूं कि दरअस्ल यह प्रिवेन्टिव डिटेंशन को हम ने दफा २१ की काम्प्लीमेन्टरी बनाया है । मैं पूछना चाहता हूं कि अगर पब्लिक आर्डर के वास्ते इस का इस्तैमाल न हो तो इस हिन्दुस्तान के अन्दर किस गर्ज के वास्ते यह इस्तैमाल हो सकता है । जनाब वाला को मालूम है कि मैं खुद इस हाउस में पाकिस्तान की तरफ जो हमारी गवर्नमेन्ट की पालिसी है उस का शाकी रहा हूं । रोज रोज गवर्नमेन्ट क्या करती रही है हम देख रहे हैं और मैं उस से मुतमैयन नहीं हूं । मेरे लायक दोस्त मि० चैटर्जी और कितने ही और दोस्त इस बारे में गवर्नमेंट से पूरा इत्तफाक नहीं कर सकते लेकिन क्या गवर्नमेंट ने किसी को इस कानून के मातहत गिरफ्तार कर लिया है । इस के अन्दर उस के लिये रिजर्व पावर (Reserve Power) है । खास बातों में जिस में स्टेट गवर्नमेंट या होम मिनिस्टर यह जरूरी समझे । और वह बड़ी जिम्मेदारी से काम करेंगे इस लिये हम ने यह रिजर्व पावर्स दी हुई हैं । हां, अगर आप इस के अल्फाज में कुछ तब्दीली चाहते तो हम सोचते यह तो एक या दो साल के लिये बनाया जा रहा है, आइन्दा की इमर्जेन्सी के वास्ते है, इस लिये इस के अन्दर जाने की जरूरत नहीं । मेरे लायक दोस्तों ने यह बहस की कि जिला मैजिस्ट्रेट को इजाजत न दी जाये, इस की बहस की कि इस में से पब्लिक आर्डर को निकाल दिया जाये । यह चीज मुनासिब नहीं है । यह चीज खास जरूरत के वक्त इस्तेमाल होने के लिये है इसमें इस तरह की नुक्ता चीनी करना जायज नहीं है । मैं बहुत अदब से हाउस के सामने अर्ज करना चाहता हूं कि जो मिनिस्टर साहब की तजवीज है उसको पास कर दिया जाये ।

Dr. S. P. Mookerjee: There is one matter to which I would draw the attention of the Home Minister. Of course, it is a formal thing, but I believe that it will require a consequential amendment. I refer to clause 4. Clause 4 has already been amended by the Select Committee and the words "have a bearing on the necessity for the order" have been substituted by the words "have a bearing on the matter" and the reason for that change has also been explained in the report of the Select Committee. But this

change has not been made at the end of the clause, where the old wording has been left as it is.

Mr. Deputy-Speaker: That has been done deliberately. It was considered.

Dr. S. P. Mookerjee: I feel that if a report is to be sent to the Government of India, there is no reason why the statement which is placed before the Provincial Government will not also be forwarded to the Central Government. After all, what is the power that you are giving to the Central Government?

An Hon. Member: None.

Dr. S. P. Mookerjee: Here it simply says that the Central Government shall be informed. It does not say that the Central Government will have the right under the law to revise the order.

Mr. Deputy-Speaker: The purpose of section 13 is where fresh facts have arisen after the date of expiry, there is no bar to make a fresh detention order. It is not an appellate or revisional jurisdiction.

Dr. S. P. Mookerjee: The Central Government has already under it the power to revoke that order. But how will that power be exercised unless complete information is placed before it? I see no reason why a similar wording should not be adopted here. It deliberately suggests a distinction that the facts which will be before the Provincial Government need not come before the Central Government.

Mr. Deputy-Speaker: What was said was that whereas in the one case it was a district magistrate who had to decide which information had a bearing on the necessity of the order, there may be some points in favour of a detenu and if it is withheld, to that extent the State Government will not have the opportunity to look into both sides and come to an understanding. Here it is the State Government that has to send the papers and not all sorts of papers, but only those papers which show the necessity for the order. The State Government will certainly decide whether it is necessary or not. That is all the difference.

Dr. S. P. Mookerjee: Still, there is no harm in making that change. At any rate it will enable the Central Government to have access to complete information. Then, questions may be asked here and the Central Government may act of its own accord. However, that is a matter to which I thought I should draw the attention of the hon. Home Minister.

The next point is this. I will not go into the details. What is the nature of this clause? If we read it along with the original section, we find we have copied verbatim the provisions in the Schedule of our Constitution. The purposes for which preventive detention law can be passed have just been incorporated here. It will be admitted by all that the wording is very wide. Anything can come under any of these categories. The Home Minister will say, that is an advantage. We are giving complete powers to the authorities to detain a man for any reason connected with the following subjects: defence, foreign relations, security, public peace, maintenance of supplies, etc. It is too late now to suggest any amendment. Nor will Government be prepared to make any amendment. I would like to make a suggestion to the Government that some enunciation of policy should be made by the Central Government as regards the types of cases where these powers should be exercised.

As I was listening to the debate during the last so many days, one thing has come out very clearly. We need not consider it as Government or Opposition as such. One painful thing has come out, and that is, under a variety of circumstances, which on no reasonable grounds could be justified, people have been detained. I do not blame the Home Minister of the Central Government or even of the State Governments because these powers were left in the hands of the district authorities. The Home Minister may reply that in future, the responsibility will be taken by each State Government and therefore some sort of uniformity will gradually be evolved, and each district magistrate residing within a particular State will not be entitled to act according to his own wishes. Let us admit that there is a safeguard to that extent. But, I would like some sort of Central policy also to be laid down by the Central Government.

I do not wish to give any illustration. One of the cases to which I drew the attention of the Home Minister in one of my previous speech relates to Mr. Trilok Chand Gopal Das of Ajmer. He is still a detenu. I do not know whether the Home Minister

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had time to make enquiries about this case. But, last night I got information about the latest developments. He is a very respectable citizen of Ajmer. As I said the other day, he was the President of the District Congress Committee, he was a member of the A.I.C.C. and so on, while he was in Sind. He has now come as a refugee to Ajmer. He is held in high esteem by thousands of people there. I shall not go into the details of the particular circumstances under which he was detained.

A Hindu girl was abducted from Bombay by a Muslim. There was some agitation and he was arrested.

Dr. Katju: May I just intervene? I have studied the case. I know all the details. But I think I should suggest it to the hon. Member that it may be fair and proper that we observe the rule that when cases are *subjudice*, they are not referred to in the House. Of course, there is no trial. This very case is before the Advisory Board. My hon. friend may say one aspect of the case because he is now being approached from one party. I may be compelled to say something else. It may prejudice the case. I do not want to say. I would like to have your ruling on that point whether it would not be desirable that when a case has gone to the Advisory Board, and when the Advisory Board is presided over by judicial officers, in the interests of both, namely the State Government and the detenu, the matter should not be discussed at this stage. Otherwise, I shall be in great difficulty.

Dr. S. P. Mookerjee: I had no intention to go into details now. But, there is one fact which has happened, which is public property and that shows the extent to which police can go. It is, that this gentleman was put in hand-cuffs and taken from the police station to the district judge's court a few days ago and that led naturally to very great public agitation. So much so, two days ago, the Ajmer administration had to issue a Press Note. I am not going into details.

Dr. Katju: That has relation to a separate case, some prosecution which is pending.

Dr. S. P. Mookerjee: Just see the Press Note which has been issued:

> "It was brought to the notice of the police authorities that Shri Trilok Chand Gopal Das, a detenu in the Central Jail, was taken to the court of the district judge with handcuffs on. This treatment meted out to him is very much regretted, and the head constable responsible for this misdemeanour has been suspended pending enquiry against him."

Here somebody has taken prompt action. But, this indicates how careful we must be.

Dr. Katju: I intervene once again and say that that refers to a separate case. It has nothing to do with the Advisory Board. There must have been a separate judicial case in connection with which this responsible gentleman was taken from the Central Jail where he was detained which involved the mistake or whatever it was of the head constable.

Dr. S. P. Mookerjee: That makes it still worse. A person is arrested and detained. Then, immediately a criminal case is brought against him. Then he becomes both an under-trial prisoner and a detenu.

Dr. Katju: My hon. friend does not know the details.

Dr. S. P. Mookerjee: Mr. Gopalan was a convict and a detenu. Here is a case of an under-trial and detenu. I do not wish to go into the details of the matter.

Mr. Deputy-Speaker: The hon. Member evidently wants that some instructions must be issued to be followed uniformly so that as far as possible, this weapon may be used sparingly, at the same time, in appropriate cases, avoiding abuses.

Dr. S. P. Mookerjee: That is the point which I would urge with all earnestness before the Home Minister. The time has now changed; the situation has eased; we can evolve some sort of central policy as to the exceptional circumstances under which this power should be exercised.

So far as foreign policy is concerned, I would like to know from the Home Minister, in the course of the last one year, how many persons were detained for criticising any foreign power. The number has been very few.

Dr. P. S. Deshmukh (Amravati East): Probably, none.

Dr. S. P. Mookerjee: Dr. Deshmukh knows more of the Home Ministry than even the Home Minister.

Dr. P. S. Deshmukh: I said, probably.

Dr. S. P. Mookerjee: I think it is correct. That also indicates that perhaps one of the items may be dropped. There was a little fallacy in

the argument which the Home Minister advanced this morning. He said all these matters were included in the Constitution. I submit with all respect that the reason why the wording was made so wide in the Constitution was obvious. We were framing some fundamental rights. We were giving power to every citizen to go to the Supreme Court and High Court if these fundamental rights were transgressed. At the same time, if occasion arose, there would be the need for a preventive detention law. How could that be done? It could be done by Parliament, provided power was given to Parliament to enact laws on suitable occasions. Now, when such exceptions were incorporated in the Constitution, obviously they had to be put very widely. But, that did not mean that even when there was no occasion, we would copy verbatim the language in the Constitution and embody it in the law that Parliament may enact. I am not saying that no occasion will arise. An occasion may arise when we may have to embody these wide provisions as found in the Constitution. But, statesmanship and prudence demand that while we pass a law, we should word the clauses in such a way that they may be in conformity with the situation which is in existence in the country, covered by the Constitution.

Now, if that amendment as we have suggested is not possible, if you cannot omit "foreign relations"—you have no need for it, you can exclude it—if you say, you are not prepared to accept that amendment, you are not going to change it, my modest proposal would be to request the Home Minister to issue instructions to the Provincial Governments for some sort of uniform application of the provisions of this exceptional measure only in cases where they are really necessary, where violence is involved, keeping in view the circumstances now obtaining in the country.

Shri V. P. Nayar: As the clause stands at present, there is a grave danger to the detenu. You will see, Sir, that as regards the application of this Preventive Detention Act, its misuse was the rule and its adherence was the exception. You cannot expect the State Governments to communicate to the Government of India details regarding the misuse of the provisions of this Act by such Governments. It is very clearly laid down in the new clause now inserted that only those grounds on which the order has been made and such other particulars as in the opinion of the State Government may have a bearing need be communicated. It is therefore for the State Government to exercise its discretion and decide which facts should be communicated to the Government of India and which should not be. As we have seen from the working of the Preventive Detention Act in all States, it is impossible to expect a State Government to communicate all the facts to the Government of India on which a detenu has been detained Several instances in which State Governments cannot disclose all facts to the Government of India can be quoted, but I do not propose to take up the time of the House, but I may be permitted to read out one or two irregularities as found by certain High Courts in India. I shall give one instance from the Madras High Court, one from the Bombay Government and one from Allahabad High Court. I request I may be permitted to quote these in view of their significance.

Mr. Deputy-Speaker: Do all these rulings relate to the absence of material?

Shri V. P. Nayar: Of course, they do. I shall read out only the relevant portions. In the case of M.R.S. Mani *vs.* the District Magistrate of Madura, reported on page 175 of *A.I.R., Madras,* 1950. you get this sentence:

> "The cyclostyled forms which incorporate all these three reasons found in the section are not even corrected before the orders are issued so as to indicate which of the three grounds apply to the particular case. One would have expected that if more than one of these grounds enumerated are relied upon in any particular case the word 'or' would have been scored off."

When the Government of Madras wanted to detain that particular person, there were cyclostyled forms in which all the grounds which would justify preventive detention were given. There were mistakes in these forms. That there was no application of the judicial mind of the detaining authority can be seen from this. The High Court was constrained to observe that the cyclostyled forms were used even without correcting the mistakes. Do you expect that in such a case especially at a time when the good friend of our Home Minister, Mr. C. Rajagopalachari is the Chief Minister of Madras that Government will communicate all details to the Government of India. He declared himself the other day to be the enemy number one of the Communists. How can we expect that when his Government detains a Communist of whom the Chief Minister is a declared enemy, a sworn enemy, all details will be furnished to the Central Govern-

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ment? Where there is gross abuse, the full details will never be furnished to the Government of India.

I shall give another instance. This is from *A.I.R. Journal*, 1949. There is a passage in this on page 95:

> "The demand for a trial by a court of law, coming as it does from the Communists, can only be described as of academic importance."

It was only the other day we heard from the Prime Minister that the discussion here was academic. But the Bombay Government had anticipated the Prime Minister, in the academic importance of matters arising out of this Act!

> "The Government have already appointed a retired Judge of the High Court to review the cases of all the detenus."

Note the taunt words "coming as it does from the Communists". Here also when a Government comes out saying that this demand for trial for a person in detention can only be considered as of academic importance, you cannot expect such a State Government, which detains a person, will immediately after the detention serve you with a copy of the details. No detenu knew that he was not entitled to the process of law in a court. You cannot expect every detenu to be looking up the provisions of this section to find whether he has any means of escaping, with the assistance of Law. So, naturally when they were detained in a particular jail, they wanted to have their case tried by a court of law, and then the Bombay Government would say that this demand is only of academic importance. Do you expect that in such a case where persons have been detained contrary to the provisions or in gross misuse of the provisions of this Act, such Governments will communicate to the Government of India the reasons for which these persons have been detained.

Then, I can point out another instance also, as to how this will be misused, and how if they are misused, such facts will never be disclosed to the Government of India.

Dr. Katju: Are we in a court?

Mr. Deputy-Speaker: He is only trying to build up the argument for sending of all related papers and not leaving to the State Government which in many instances has abused the power, according to him.

Shri V. P. Nayar: There is also another case, S. G. Sardesai, applicant *vs.* The Provincial Government, opposite party, reported in *A.I.R.*, 1949, *Allahabad*, page 395.

Dr. Katju: Which year is that?

Shri V. P. Nayar: 1949. Allahabad, I said, Sir.

Mr. Deputy-Speaker: Instead of referring to these rulings, direct observations may be made that all the facts should be sent to the Central Government.

Shri V. P. Nayar: I am coming to that too. My point is that in cases where there has been a gross misuse of the Act, with a view to having in detention a particular person inimical to some authority in the State, the facts will not be disclosed to the Government of India. If you leave it completely to the option or opinion of the State Government as to what papers may be sent to the Government of India it will be disastrous to the detenu. You will find in this case, which I have been referring to, a very interesting passage. One of the reasons for detaining the applicant was that he said in a public meeting *Jiski lathi uski bhains* I did not know at first what this meant I am now told that *Bhains* means a buffalo and the proverb means, whom soever is the stick, his is the buffalo. Their Lordships observed in that case:

> "It has been stated that the said applicant advised the *kisans* to take possession of land by force. The applicant denies this. He says that in his speeches made in 1947 he referred to the proverb *Jiski lathi uski bhains* by which he meant it was necessary for the *kisans* to organise themselves in order to bring pressure on the Government to legislate in their interests. The proverb means that it is power which matters in the world. A party which has strength by organising itself actually gains its point; but it does not necessarily mean the use of *lathi* for achieving the objects....."

So, in such a case where the provincial Government has determined that such and such a person who is considered to be dangerous to their own interests is to be detained and for that they invoke the provisions of the Preventive Detention Act, how can we expect that such a Government will exercise its opinion in such a manner as to favour the detenu? It is impossible to do so. We have had the Preventive Detention Act working now for some years. As I submitted before, from

the cases to which I made reference, it will be found that there has been more irregularity than regularity. As a matter of fact irregularity was the rule in preventive detention. So I submit that the option of the State Government to forward to the Government of India whatever papers, they think necessary in their opinion, should be taken away and instead of that "as far as possible certified copies of the records should be sent to the Central Government" be substituted.

Shri K. K. Basu: I just want to bring one point to the notice of the hon. Minister so that he may give the answer in his reply.

Mr. Deputy-Speaker: Many points have been brought to his notice already. I shall now call upon the hon. Minister.

Dr. Katju: The House has had the advantage of listening to great and many-sided expositions of all the amendments which have been put forward. My task has been very much lightened by the speech made a few minutes ago by my hon. friend from Gurgaon, Pandit Thakur Das Bhargava.

Now I should like to present a few considerations. I have heard very touching stories of all kinds of cases which occurred in the four years between 1946 and 1950. I do not use the word 'touching' by way of sarcasm, but as the hon. Prime Minister has said, there may have been unnecessary cases of detention. But I would beg of the House to remember that we are not fully acquainted either with the circumstances of those cases or with the language of the Acts under which these detentions were made. The House will recollect that prior to 1950, the year in which first preventive detention measure was enacted here by the provisional parliament, each State had its own Act, and each one of those Acts varied from one State to the other. Some were stringent, some were less stringent, and some were more stringent, and it may be that the language was much too wide in some cases, and the House will also remember that even sub-divisional magistrates were empowered under these State Acts, and that power was continued in this Act of 1950 also, by the Central Government.

It may also be that the officers concerned, not having the proper legal advice available to them, were not properly versed in the drawing up of the grounds of detention. They might have been much too indefinite, and the grounds of detention may have been in a way a copy from the entries in *Who's who*, beginning right from the man's college career, and so a good deal of argument may have been founded on it, and the grounds of detention might have started with the statement that in 1925 he graduated from a Mission College, then he joined the Congress, then he did this or that and so on.

All that is past, dead and gone. Whatever was suffered was suffered. We are concerned today with the year 1952. The first Act of 1950 was passed in four hours at one sitting. How I wish we could have transacted our business now also with that much expediency! Then the nation would have stood to save at least Rs. five lakhs. Anyway, that Act was passed and it gave powers to sub-divisional magistrates to issue orders of detention. Then came the year 1951 when the amending Bill was introduced and passed. I have got with me certificates so far as my part is concerned, that it was a great improvement. Now I should have liked to know what happened in the year 1951. All these court rulings which were cited were of the year 1948, Allahabad—1949, Madras—1950, Bombay—1949, and so on. All these grounds of detention that were read out to the House by my hon. friend from Malabar were also of the years 1947 to February 1951 or so, and then there was a great controversy between my hon. friend over here and my hon. friend from Malabar as to what exactly was meant and what was not meant. But the point is that the position is now settling down.

In the 1951 Act, we have a clear policy. The same law, good or bad, like the Penal Code, prevails all over India. In this Act I am very glad to hear that there has been some attempt made at liberalisation, at clarification and at making it fairer. I have no doubt whatsoever that the cases of the kind to which reference was made in the previous years would become less and less in number, and that the grounds of detention would be more precise, accurate, and may be good or bad—I am not saying anything about that.

Secondly, please remember that up to the year 1950, there was no Advisory Board of any kind anywhere. When the first Act was passed by us here, the Advisory Board's functions were limited to cases which dealt with essential supplies and essential services, and other cases relating to public order, foreign relations security, defence etc. were all excluded,

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and it was open to the Central Government either to refer them or not, and they were really not bound to refer them at all. It was in 1951 that we had this compulsory reference to the Advisory Board, and I explained to the House the very beneficent part which has been played by the Advisory Board during the last year. I also circulated to the Members of the Joint Select Committee a list of the personnel of these Advisory Boards, consisting of High Court Judges, retired High Court Judges, sessions judges, retired sessions judges and advocates qualified to be High Court Judges and of repute, and in as much as 28 per cent of cases, the detenus were discharged by the Advisory Boards.

5 P.M

I, therefore, suggest respectfully that when we pay attention we ought undoubtedly to pay attention to the previous history. Anyway, so much water has flowed down the Jumna. We are concerned with the water which will now come down from the hills rather than that which has joined or very likely reached the Bay of Bengal by this time. That is not of much importance. The important matter is, what is to be done today? I therefore suggest to you, here is this one Act which we are trying to liberalise as much as possible; I venture to repeat without intending any offence that it is, if you once concede the necessity for passing a Preventive Detention Bill, as near perfection as human ingenuity could make it. Change a comma here or a full stop there, that does not matter, but it is almost the limit.

Then there is another matter to which I would like to refer immediately. Some hon. Members suggested: What about the preventive sections of the Criminal Procedure Code? We all know them, every lawyer knows them. Section 107 deals with apprehended breach of the peace; section 108: propagation of seditious doctrines—goodness only knows where we stand now regarding sedition; section 109: ostensible means of subsistence—I do not know whether that cap fits anybody anywhere, people might suggest many things, but there it is; section 110: in Uttar Pradesh it is known as the *badmashi* section—habitual robbers, habitual dacoits, habitual receivers of stolen property, desperados. Now, the one point is this: that the magistrate may start proceedings, but the magistrate cannot lock you up. He can only demand security and security only in his territorial jurisdiction. If he is a magistrate of a lower rank, then in his own sub-division; if he is a district magistrate, throughout his district. And again, speaking without any offence, people whom we are dealing with here, they will not lack any security at all. Supposing the order is, deposit a security of Rs. 10,000 or you are to be imprisoned for a year or two years, immediately Rs. 10,000 would be forthcoming. Anti-social activities, black-marketeers, hoarders—do you mean to say that they would lack Rs. 10,000?

I was rather surprised when my friends of the Communist Party objected to this power being given at all and they have now endeavoured to urge that this should be cut out completely. I really wondered because I thought that if there was one group or one party there should be one method, but against black-marketeers, hoarders, profiteers against whom (*Interruption*). They would be inclined to hang them. I said: "What is the mystery?". The mystery turned out to be that the same clause covers two things: essential supplies and essential services. In so far as essential supplies are concerned, they are entirely with me; so far as essential services are concerned, they are entirely against me. Their heart is with the railway services, their heart is with the postal services; the greater the number of strikes the better, the greater the disturbance the better! The more the confusion created in the essential services of India, the better! Well, they will not like it, of course, on these Benches, but probably people outside might like. Therefore comes the opposition, namely, cut them both out.

Now, please remember—I come back to the preventive sections—that there are two great points: One is, the only order that can be made is for deposit of a security and finding sureties. That would not be difficult either for a trade union leader or for a black-marketeer or for people who, we think, are interested in the disturbance of public order or in a variety of other things. Secondly, and that is much more important, the territorial jurisdiction. Supposing the district magistrate makes an order here in Delhi, the man gives security and can snap his fingers at the district magistrate of Delhi by going to Okhla which, I believe, is four or five miles from here. The district magistrate's orders will not run there I know it from my own experience. And so far as political parties are concerned or persons who are so inclined are concerned, they can transfer their centres from one place to another—Bombay to Madras. If they find

Bombay is much too hot and Madras is much too congenial, well, they go there. They transfer themselves from one district to another. Therefore, the preventive sections of the Criminal Procedure Code are entirely useless—completely. I refer at some length to this aspect because very often appeals have been made under the preventive sections and people who read them summarily say: "Look at this Government. Detentions without trial". Of course, under these preventive sections you can give hearsay evidence. Witness after witness goes before a magistrate and says: the accused in the dock is a dacoit. How do you know? That is what everybody says in the village. This man produces another 40 witnesses and they say: "Perfect gentleman, *Bhala Manas*. Everybody knows him, loves him" and there it is decided on this recommendation. *(Interruption)* But the end of the order is security and nothing else and territory. This is completely ineffective from our point of view.

Dr. S. P. Mookerjee: The law may be amended.

Dr. Katju: That is a different matter. I have been trying to control my argumentative bent of mind for the last two days. To change the law! If I change the law, you will raise a thunder: "Here is this black man, he is trying to make another black law".

Dr. S. P. Mookerjee: No thunder, but showers of blessings.

Dr. Katju: You will say: "Here we have the Advisory Board consisting of High Court Judges, paid Rs. 35000 a month, acme of Judicial experience for many years, and now here is a magistrate entirely new". You do not have confidence in the district magistrate; will you have confidence in the ordinary magistrate?

Dr. S. P. Mookerjee: We will not say that. Try it.

Dr. Katju: I am only putting some aspects of the case before you. That is a feature which hon. Members would completely bear in mind. I should like to make it clear that this Act is not intended against parties or groups, it is intended against individuals. One hon. Member there made a very attractive suggestion. He said: "Do you mean to say that security or public order can be disturbed by only one man? It requires groups, parties to create chaotic conditions. And then what will your Act do?" I have made a complete mental note for all time of the speech which was delivered by my hon. friend from South Calcutta.....

Dr. S. P. Mookerjee: South-East Calcutta.

Dr. Katju:...Last year in which he accused the Government—I do not want to read it at this stage—of not proceeding in a definite manner. He said: "You are proceeding in a wishy-washy way. Nobody knows where you stand. If there is any party"—he named the party and he said there were grounds for believing that it was acting in that way—"well, deal with it sternly" and he suggested banning the whole party—purely administrative action.

Dr. S. P. Mookerjee: If there is evidence that they are spies of a foreign power.

Dr. Katju: I know, I was under the impression that if you banned a political party that, ban could not be examined in the High Court or the Supreme Court.....

Dr. S. P. Mookerjee: The hon. Minister knows that my very next sentence was to the effect that if that party declares that it will work in constitutional ways, it should be given full opportunity to participate in the public life of the country. Let him read the whole of it. If he is so anxious to follow my advice, let him do so in all matters.

Dr. Katju: I always deal with the gist of the matter and in the law report I only read the heading and not the whole judgment.

Dr. S. P. Mookerjee: It is convenient for you.

Dr. Katju: So I only want to assure the hon. Member who raised the point that the law may be ineffective, it may not be able to deal with groups and parties. My reply to that is that this Act will only deal with individuals, but if parties misbehave —whatever party it is—there is the suggestion of my hon. friend always to guide us: Ban them, deal with them in a strict manner . He used very strong, very emphatic, very lucid, very clear language to which the House is accustomed.

Dr. S. P. Mookerjee: I said bring evidence before Parliament.

Dr. Katju: Yes.

Dr. S. P. Mookerjee: Do it—you have not the courage.

Dr. Katju: I never heard of Parliament as a court of law—it is a court of debate in which all sorts of allegations can be made and mud cast at other people.

Dr. S. P. Mookerjee: The House of Lords is the highest Court of Appeal in England.

Dr. Katju: Very good. That is about the third point. The fourth point to which I now come has really four clauses—the ground has been covered over and over again. The first one defines the judicial scope. If hon. Members would take every amendment into consideration and give effect to it. I tell you nothing would be left. It is such a wonderful thing Gentlemen opposite have got no interest in public order. Unfortunately, I have, and also Members of this party. They have no interest whatsoever in the maintenance of supplies and essential services, they have no interest in friendly relations with foreign powers. The only thing in which they have interest is the defence of India and the security of India. And if you make a Preventive Detention Act for that purpose, the answer would be: Well, let us have, first, the war. So long as the war does not come and emergency does not come into being what is the good of making the law? And they would quote us the example of the United Kingdom and of the first Act that was passed— DORA, as it was called —after the outbreak of World War I. The second Act was passed when war again broke out. Having regard to the principle of the Act, having given a vote for it, having gone into the Select Committee for it, there is another round about, circuitous way of completely knocking this Bill out by saying: "No public order—we are not interested in it. There is the law dealing with it. Catch hold of the man first and deal with him later. If the man is underground leave him alone. If there is any property of his do not touch it. Leave it for his family, otherwise the family would be starved." That was what was moved in the Select Committee. You may gazette the man, you may issue a notification, but do not touch his property. So far as his person is concerned, he has gone underground. Therefore, public order gets out.

So far as relations with foreign powers are concerned my hon. friend, when the Constitution was framed, put that in. I ask other hon. Members here: What was it for? Was it for a joke that they put in there relations with foreign powers? It is a question of life and death. India has now become independent, we have got our own foreign relations we want to pursue a particular foreign policy which the House has approved. We know here that there are several parties which are interested in upsetting the apple cart. Some say, "Do not go into that bloc," some others say, "Go into that bloc". Some people say, "There is the northern border, there is the eastern border, there is the southern border". So far as public order is concerned, it is vitally connected with our friendly relations with foreign powers and I suggest that it is not only a mere conventional thing. You may say, "Wait and see, there is some sort of attempt on the part of the Government to stifle public debate on our relations with Power A, or Power B, or Power C". That is not so. This House is a great forum for the expression of public opinion, for discussion on our foreign affairs—nobody prevents those things from being debated in the proper manner. What is being prevented is doing it in a way which causes public disturbance, which excites public feeling, which runs great dangers—and upheavals. If something happens—I have seen it with my own eyes, my hon. friend has seen it—in Dacca, the repercussion is in Calcutta—Howrah—where people suffer. If any news comes from Karachi you may have the repercussion in Delhi. Therefore, it is not merely a convention. I tell you it has been put in deliberately, I believe, by the Constitution framers. I respectfully suggest that in the two Acts that have been passed, one of them with the concurrence of many Members present here, that phrase will stand, the purposes will stand.

Then comes the second part—district magistrates. I do not want to dwell upon it at any length because I cannot deal with it more forcibly than was done by my hon. friend, Pandit Bhargava. Sub-divisional officers were first given the power—and there are four or five sub-divisional officers in each district. That has been reduced. I have got some figures here. I will casually mention them. I sent a wire enquiring how many cases had been dealt with in Bengal by the State Government on its own and by the district magistrates, and the answer is this. They say that every so-called political case, cases which had anything to do with political parties, was dealt with by the State Government directly and in 1951 they dealt with 120 cases. So far as the district magistrates were

concerned, only 20. I am citing these figures to show that in every important case the district magistrate must take the advice of or keep the Government informed—this was before we made the amendment that the Bill now incorporates. Similarly, in the six months ending 30th June, 1952, the cases are 54 and 24. Most of these cases dealt with by the district magistrates—30 and 24—were, I am informed, for anti-social activities. In Madras the situation is about the same. There the number is very small: 12 by the State Government in 1951 and 12 in the six months of 1952 —some were only orders. Cases dealt with by the State and district magistrates were 12 and two respectively.

So, I would repeat once again: Please do not forget that in our official hierarchy the district magistrate occupies a very high position. He has got enormous powers. I am not very much disturbed by the past history when the district magistrate used to do this, that or the other. I should like to know of any single case—of course, there may be rare exceptions—where the district magistrate has acted deliberately arbitrarily. He may be misled. There are many murder cases where prosecution takes place, the magistrate commits, the sessions judge commits and ultimately a sentence of death is passed. The condemned man remains a condemned prisoner in a condemned cell. I cannot think of a more horrible life than the life of a man who has a sentence of death hanging over him. I have got the figures from one State, and out of 155 appeals against sentences of death passed 55 were allowed, and the men were acquitted after two years of mental torture and open trial. Therefore, the district magistrate may make an error here or make an error there. He may be misled by reports he receives, but speaking from personal knowledge I may say that the district magistrates are our own men. They are not foreigners. There may have been a conflict of loyalties prior to 1947 but there is no conflict of loyalty now. The old stock is gradually vanishing and younger people—some of our fine young men—are in charge. You go to them and look at them. You somehow feel impressed. The Session is closing; otherwise, I would like some of them to go to Metcalfe House and meet them. We are proud of them. They are the flowers of our Universities, brought up in the democratic tradition. They manage the show now. Therefore, the suggestion that the district magistrate should go out of the picture has got no substance.

Then, one hon. Member spoke harshly about the commissioners of police. I rather wondered. Speaking, again, from personal knowledge of Calcutta I do not think the commissioner of police passed any order in Calcutta without first informally consulting the State Government. He is there on the spot and may issue an order under section 144 or something like that, but when detaining a man of any importance from any political party he would never think of doing it on his own. He would just go to the Minister's house and say, "What am I to do?" or "This is what I propose to do". He will informally consult him. There is no question of oppression. That is the apprehension which I want to remove from the mind of the House.

Then comes this most emphatic clause—I mean the new clause—which we have introduced, that every district magistrate shall send the papers to the State Government and give it an opportunity to see the case and thrust upon it the responsibility of either upholding the order or revoking it. There is no question of mere information. Further, the period is reduced to 12 days. I wrote to some State Governments and they said to me, "Do you not think that the period of 12 days is much too short?" In any case., whatever I did, I stand by it. I only want to ask you not to minimise the importance of the innovation made and also to remember that we have asked the district magistrate to send all the relevant material.

That brings me to the last point, namely, the fourth sub-clause here. I should like to make the position quite clear, so that there may be no misunderstanding. We get the papers purely for information. I am not talking of the most rare and exceptional cases. They are a different matter. Even in exceptional cases, if any hon. Member were to come to me, or for that matter any one in India were to come to me and say, "Here is the material. There has been grave injustice", I tell you honestly that what I will do is—my successor may proceed in a different manner—but what I will do is.....

Dr. S. P. Mookerjee: Why are you thinking of your successor?

Dr. Katju: ..... I would immediately telegraph to the State Government and say, "Here is this new material put up before me. You had better reconsider your order". But then, we cannot take away the responsibility from the State Government in these matters. Leaving aside exceptional cases, what will happen is that the State Government will confirm the order within twelve days. Then within three weeks or twenty days, the case has got to go before the Advisory Board. The State Government will take a week or ten days to send the papers to the Central Government. Do you want that there should be two parallel revising authorities functioning? It would be highly inappropriate, I suggest to you, barring the most exceptional cases for the Central Government to intervene, having regard to the fact that you have got an Advisory Board —a high-powered Advisory Board— with great latitude, with the power to go into all matters and examine the detenu and ask for information. Would any Central Government be justified in saying that they will examine the case for themselves and see what could be done? This proposed sub-section (4) was inserted in the Bill and approved by the Select Committee for the specific purpose of securing accurate information as to what was happening, so that we may have a register of these cases. When the Advisory Board has finished its labours and says that there is no ground for this order, the man will be released. If the Advisory Board confirms the order, then both the State Government and the Central Government will watch the developments and there may arise a change of circumstances when the State Government or the Central Government may say, "We shall revoke the order partly or we shall revoke the order completely".

Lastly my hon. friend asked for an assurance that the Act will be administered, so to say, on regular and uniform lines everywhere and that there will be no sort of haphazardness with one State going one way and another State going another way. I repeat—I believe for the umpteenth time—that the number of persons now in detention is very small and that is a tribute to the very cautious and careful way in which the State Governments have themselves been proceeding.

Dr. S. P. Mookerjee: And to the people.

Dr. Katju: So far as Part A States are concerned, that is the position. So far as Part B States are concerned, I have read in the newspapers that some hon. Members belonging to certain shades of opinion say that the alphabets B and C should disappear and every State should become a Part A State. If that happens, my sphere becomes only a sphere of giving advice or making suggestions or offering friendly cooperation. So far as that is concerned, I should like to assure the House that I would let the State Governments know that they should act carefully and cautiously as they have been doing, not vindictively, but after carefully examining the case, and that they should see that no avoidable injustice is committed in any case. I cannot go farther than this.

With all this discussion, I would now humbly request the House to let the Joint Select Committee report stand on this clause as it is.

Shri Raghavaiah (Ongole): Will the hon. Minister get the details of the case where a detenu was killed in Madras by the police on the occasion of his release?

Mr. Deputy-Speaker: With respect to such cases, I would suggest that instead of springing a surprise on the hon. Minister or the House, the hon. Member concerned may communicate with the hon. Minister or talk to him and give him the particulars, and I am sure the hon. Minister will send for the papers and look into every one of the cases, whenever a serious case is brought to his notice. That is an assurance which he has given to the House and he has said that he will write to the State Governments also.

I shall now put the amendments. The question is:

In page 1, after line 15, insert:

'(i) in clause (a) of sub-section (1), after the words "any person", the following shall be inserted, namely:—

"(including ministers, Government officers, and Ambassadors etc.)".'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) in sub-section (1)—

(a) in clause (a) (i) the words "relations of India with foreign powers" shall be omitted, and

(b) in clause (a) (ii) the words "or the maintenance of public order" shall be omitted; and

(ia) for sub-section (2), the following shall be substituted, namely:—

"(2) The power conferred by sub-section (1) shall be exercised by the Minister of Home Affairs of the Central Government or by the Home Minister of a State Government or any other Minister of the Central Government or the State Government or in a State where there is no Ministry by an officer of the State Government specially authorised in that behalf:

Provided that the Minister or the officer passing an order of detention has reasonable cause to believe that the person against whom the said order is going to be passed has been recently concerned in acts prejudicial to matters mentioned in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1) or in the preparation or instigation of such acts and by reason thereof it is necessary to exercise control over him".'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) in clause (a) of sub-section (1)—

(a) in sub-clause (i) the words "the relations of India with foreign powers" shall be omitted; and

(b) in sub-clause (ii) the words "or the maintenance of public order" shall be omitted:

(ia) for sub-section (2) the following shall be substituted, namely:—

"(2) The power conferred by sub-section (1) shall be exercised by the Minister of Home Affairs of the Government of India or the Minister-in-Charge of Home Affairs of a State Government or any other member of Cabinet rank in the Central Government or a State Government as the case may be; or in a State where there is no Ministry, by the Lieutenant Governor or as the case may be, the Chief Commissioner:

Provided that the Minister or any other officer passing an order of detention under this Act has reasonable grounds to believe that the person against whom the said order is going to be passed has been recently associated actively in acts prejudicial to the defence of India or the security of the State or to the maintenance of supplies and services essential to the community, or in the act of instigating such prejudicial acts".'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) in sub-section (1)—

(a) in clause (a) (i) the words "the relations of India with foreign powers" shall be omitted,

(b) in clause (a) (ii) the words "or the maintenance of public order" shall be omitted, and

(c) clause (a) (iii) shall be omitted.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) in clause (a) of sub-section (1)—

(a) in sub-clause (i), the words "the relations of India with foreign powers" shall be omitted, and

(b) in sub-clause (ii), the words "maintenance of public order" shall be omitted.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) in sub-section (1)—

(a) in clause (a) (ii) the words "or the maintenance of public order, or" shall be omitted; and

(b) clause (a) (iii) shall be omitted.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 15, insert:

'(i) to sub-section (1), the following *Explanation* shall be added namely:—

"*Explanation.*—No person shall be deemed to be acting in a prejudicial manner unless he is directly connected with such actions which are sought to be prevented hereunder and the commission of such act if not prevented would constitute offence under the laws.";

[Mr. Deputy-Speaker]

(ia) to sub-section (2), the following Proviso shall be added, namely :—

"Provided that the Home Minister of the Central Government or the Home Minister of the State Government, as the case may be confirms such order within five days of passing of such order hereunder:

Provided further that the minister may confirm such order when he has reasonable ground to believe that the person against whom the order is going to be confirmed has recently been directly connected with acts prejudicial to sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1)".'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, for lines 16 to 22, substitute:

"(i) sub-sections (2) and (3) shall be omitted";

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, for lines 16 to 22, substitute:

'(i) for sub-section (3), the following shall be substituted, namely :—

"(3) Prior to any order is made under this section by an officer mentioned in sub-section (2), he shall furnish to the State Government to which he is subordinate all the grounds and particulars which have a direct bearing on the necessity for the order and obtain permission for the execution of such order".'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 16, after "sub-section (3)" insert:

"for the words 'such other particulars as in his opinion' the words 'all other particulars as' shall be substituted and".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 16, before "have a bearing" insert "in his opinion".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 20, for "twelve days" substitute "five days".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 22, for "approved by the State Government" substitute "approved by the High Court".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, for lines 25 to 30, substitute:

"(4) when any order is made by the High Court the High Court shall as soon as may be, report the fact to the Supreme Court together with the grounds on which the order has been made and such other particulars as in the opinion of the High Court have a bearing on the necessity for order."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, lines 26 and 27, for "as soon as may be" substitute "within five days".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 27, after "Central Government" insert "for approval."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, —

(i) line 29, for "such" substitute "all";

(ii) line 29, omit "in the opinion of the State Government"; and

(iii) line 30, omit "the necessity for".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, lines 29 and 30, for "such other particulars as in the opinion of the State Government have a bearing on the necessity for the order" substitute "all papers and particulars connected thereto, and may vary.

suspend or revoke such orders passed or approved by the State Government".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, lines 29 and 30, for "as in the opinion of the State Government have a bearing on the necessity for the order" substitute "including certified copies of all records connected therewith".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 30, after "for the order" add "and it shall be open to the Central Government to revoke or modify the said order on examination of such grounds and other particulars".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 30, insert:

"(5) (a) Nothing in this section shall entitle any officer, a State Government or the Central Government to detain a member of a State Legislature or a member of Parliament without prior sanction of that legislature concerned or Parliament.

(b) If any member of a State Legislature or of Parliament is detained he shall be allowed all facilities to attend the sessions of the Legislature or of Parliament as the case may be."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 30, insert:

"(5) The circumstances and facts in full against the detenu for his detention under sub-section (1) shall be intimated to him and his legal representative for the public interest."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

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New Clause 4 A

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

In page 1, after line 30, insert:

"4A. *Amendment of Section 4, Act IV of 1950.*—For clause (a) of section 4 of the principal Act, the following be substituted, namely:—

'(a) to be detained in such places and under such conditions as to maintenance, discipline, punishment for breaches of discipline, granting of family allowances, interviews, newspapers, books, food and other privileges, which the Parliament will decide for the whole of India; and'"

According to the present arrangements, the Home Minister said every Government shall decide what must be the conditions of detention as far as interviews, food, family allowances, newspapers and similar privileges are concerned. In this respect conditions vary from province to province. As was pointed out on earlier occasions, there have been firings in almost all the jails in which detenus have been kept. For instance in Vellore and Cuddalore jails in the South there have been firings. In Bengal, in Punjab and in U.P. jails there have been similar happenings.

As far as food is concerned, it varies from province to province. In some places like C class prisoners they are given rations. In other places they are given a certain amount of money. In yet other jails detenus are given only C class diet, that is prescribed in the Jail Manual.

So far as family allowances are concerned, which have been referred to by so many speakers, the hon. Minister gave us some details. When Congressmen were detained in 1942, in most cases family allowances were given, even in the case of person whose families were not starving. To my knowledge there were about 500 cases like that.

Some Hon. Members: No, no.

Shri A. K. Gopalan: I do not know whether in some cases family allowances were not given. But in almost all cases such allowances were given.

In this connection we have to differentiate between the case of an under-trial and a detenu. The hon. Minister said that he is very sympathetic towards an under-trial. There is in fact a difference even between an

[Shri A. K. Gopalan]

under-trial and a convicted prisoner. An under-trial is one the charge against whom is yet to be proved. On the other hand a convict is one who is proved to have committed an offence and is sentenced for that. He has naturally to take punishment for his offence.

so far as the detenu is concerned he is detained on the suspicion that "he is about to act in a manner prejudicial to public safety". He has not actually done anything or committed any offence .He is sent to jail to prevent him from doing any act prejudicial to public safety. You do not want him to commit an offence: you want to prevent him from committing an offence. It is only on suspicion that a man is detained.

For instance a railway employee or worker is detained and kept in jail for one or two years. So far as his family is concerned, there is a moral obligation to see, as long as he is not convicted, that his family is not made to starve. In fact, there must be a difference made between a man who has committed a crime and one who is detained in jail, on suspicion that he is about to act in a manner prejudicial to public safety.

Even as between the undertrials and the convicted prisoners, the privileges vary, as far as interviews and similar facilities are concerned. As far as interviews are concerned, an under-trial has more privileges than a convicted prisoner. The only thing is, in the matter of food he has not the same facilities as some A or B class prisoners have. So, when there is difference between a convicted prisoner and an under-trial, there must certainly be a difference between a detenu and an under-trial or convicted prisoner, because the detenu is one who has not committed any offence. It is on mere suspicion or doubt that he will commit an offence that he is detained.

In the matter of newspapers there is certainly a difference between an under-trial prisoner and a detenu. For convicted prisoners and under-trials certain newspapers are allowed which are not allowed to detenus. Not only that even when papers are allowed, it is under the supervision of the Special Branch. I brought it to the notice of the House the other day that even for legal interviews, the C.I.D. are present. I once took this matter to the High Court that the C.I.D. should only watch what they are doing and not hear what they are saying. The general practice is that the Superintendent has no right to allow an interview to a detenu. The interview is allowed with the permission of the Special Branch officers, and a list of the relations of the detenus has to be given.

When you submit a list of relations and family persons, that will be submitted to the Special Branch officers, and after a month or two some of them may be sanctioned and others may not be sanctioned and only those that are sanctioned will be allowed to interview. As far as interviews are concerned there have been so many cases, which I have brought to notice, where even the wife or the mother has not been allowed. And when the Superintendent has been asked the reason he has said "you submitted us a list, in that list this has not been allowed".

Then, as far as books are concerned, there are several books which are not allowed though they are not proscribed outside. The books that are allowed outside which are not banned or prescribed and which you can get in the shops or bookstalls, even those are not allowed. Not only that. The censoring of books has become so strict in some jails that there were instances of the *Bhagvat Gita* and the Bible not being allowed. In the hurry of censoring so many books they did not read or see what they contained and all these were banned because they were considered to be prejudicial and therefore the detenu should not read them. What I say is this. As far as the privileges are concerned, when a man is detained and when he is not given a trial, when the Government thinks that a man must be detained and passes a detention order, it is the duty of the Government to see that at least inside the jail—the object is only to detain him and see that he does not do any prejudicial act—he is given the papers that are not banned outside.

As far as interviews are concerned there are the jail regulations and the detenu must be allowed to see his relations and others without obstruction from the Special Branch authorities. Also, family allowance and other things must be given.

If this is given to the State Governments what happens is this. In some States the Government will be doing something. In other States where they are prejudiced, where they do not want to do anything, the condition will be worse. It is the Central Government that is passing the Bill

here. We are not allowing the Provincial Governments to have Preventive Detention Acts. When we are passing this Bill, it is the duty of the Central Government to see that with regard to all these things, namely maintenance, discipline, family allowance, food, books, interviews and other privileges, they make rules so that they may not be left to the mercy of the State Governments. There is a great difference from place to place. Newspapers that are allowed in certain jails are not allowed in certain others. Books that are allowed in certain jails are not allowed in others. In food, and in fact in every item there is a very great difference between one detention camp and another. So far as interviews also are concerned, there is difference. There should not be such difference. The Preventive Detention Act is the same everywhere. As far as convicts are concerned there is no difference between a convict in Bengal and one in Madras or Punjab. Because, there is a manual which regulates these things wherever they belong to. Food, interviews, everything is determined by the jail manual. It is the concern of the whole of India. If a convict in Madras is transferred to Bengal or Punjab, instead of rice he may get wheat, but there is no difference in the amount or the quality of the food. It will be the same because there are certain rules regulating convicts as well as under-trial prisoners. There is a manual concerning under-trial prisoners also. The condition of the convicted prisoners or the under-trial prisoners is the same everywhere.

I do not want to go into details. It has been said that there was firing in one place and three to four persons were killed. An enquiry was held but the report of the enquiry has not been published. Here it is not left to the jail authorities. Under the detention rules, as far as the maintenance of these detention camps is concerned, whenever we reported something to the Superintendent he said "This is entirely under the control of the Special Branch officers" and it is they who say whom a detenu can interview, which books he should be allowed and so on. The books are censored by the Special Branch. You can see it there. If you get a book by parcel, the Superintendent will first send it to the Special Branch and after fifteen or twenty days it will come back. There will be one signature of the Superintendent and another of the Special Branch C.I.D. in it. You will see the words there "Censored by the Special Branch". One thing will be allowed and so many disallowed. Out of twentyfive or thirty you will get one because the Special Branch says "They cannot be allowed, this is the only thing that can be allowed".

As far as the principle of detention is concerned, certainly we know that the detention is only to prevent the man from acting in a prejudicial manner, in a manner prejudicial to public safety. But after detaining the man you must give him the normal opportunities and privileges. Jail reforms are talked of everywhere. We found that in Bombay they are thinking of jail reforms. As far as ordinary prisoners are concerned it is said you must give them books, you have to engage them, they must read something. If ordinary people outside do not read the books and they are banned or proscribed, certainly I can understand your not allowing those books to the detenus. But even general books and papers and other things that are published outside, which people outside read, are not given to the detenus. The Superintendent does not do it. He has no right to say which is the book they should read and which they should not. It is entirely under the control of the Special Branch. Books, food, interviews and all the other things are under the control of the Special Branch. That is the reason why I say that the conditions of the detenu inside the jail are not the same as they were in the old days. I do not want to go into details. But inside jails there have been so many firings, lathi charges and beatings and there have been hunger strikes for twentyfive, thirty or forty days. In the days of 1930 and 1932 in the British days we had gone on hunger strike inside the jail for postcards, letters and other things. Even taking the hunger strikes in the last three or four years inside all the jails all over India, we will understand that in a year on about 150 days throughout the year the detenus have gone on hunger strike, because they are allowed even interviews and the reading of books. Interviews of their own family members have not been allowed for many many months, and in some cases not allowed at all. As far as letters are concerned, there were some people—I do not say about myself because that will be personal and might be objected to—who were not allowed to write a letter even to their mothers. A letter to a ninety year o'd mother is not allowed.

[Shri A. K. Gopalan]

That mother will know nothing about politics. But if she writes a letter to her son, the detenu, even that will be blacked out in such a way that you will find only four or five words there. Similarly, whatever letters you send outside to your relations are blacked out like that.

That is why I have brought this amendment, because it is the responsibility of the Central Government. Just as there is one jail manual for under-trials and convicts in the whole of India, for the detenus also there must be certain rules and regulations and they must not be left under the control of the State Governments. When making those rules my hon. friends may consider what are the things that happened in those years. I say this because even those hon. Members who sit on the other side have been inside jails as detenus and as convicted prisoners, before 1947. In Vellore jail when we went on hunger strike in 1941 even Congress detenus were there. Mr. Sambamurthi, Mr. Prakasam and others were there. We were given only twelve annas allowance. After a hunger strike for seventeen days it was changed to Rs. 1-4. The detenus were given only twelve annas under the British regime. The Congressmen excepting three or four said "we do not want to go on a hunger strike because it is against our principle". Even then we were about a hundred people and we went on hunger strike. As a result of that the allowance was changed from twelve annas to Rs. 1-4. There were so many other struggles also inside the jail, about interviews and other things. So, hon. Members of the other side know what should be the rules and conditions under which persons who are detained inside the jail should be maintained. The Central Government has to make them so that the detenus may not be at the mercy of the State Governments, and not only the State Governments or even the Superintendents but, as I said, the Special Branch that is entirely ruling over this matter.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

I refer to the Special Branch Police.

Mr. Chairman: Jail is a transferred subject and the local authority is the State.

Shri A. K. Gopalan: It is on their authority that interviews are allowed; it is on their authority that books are allowed. It is there written "such and such a man you cannot interview". We had not been able to interview certain persons and there was also correspondence on that.

I say that this amendment is very reasonable and when persons are detained just like the convicted persons and under-trial prisoners, there ought to be a general law. If this is not done the person detained would be left to the tender mercies of the Provincial Government.

As for the lathi charge and firings that took place inside the jails, they were done with a specific purpose. The next day after the lathi charge or the firing the jail authorities go into the lock-up and ask them: "Why do you suffer like this. We will give you a piece of paper. You write out an apology and say that you will not take part in political activities". They generally open out two camps in each jail and they put those who have given the apology in one camp and the others in the other camp. People are also beaten. New people are also arrested and brought to the jail and they do not know why they have been brought there and when they see that people are beaten it demoralizes them. As was done in the British regime the same incidents are happening and they are simply done in order to demoralize the people. The prisoners are asked to apologize and they are kept inside the jail.

Why I say all this is not because a certain man is beaten and an apology is obtained from him. A man is detained in order that he may not do any prejudical act and according to the principle of preventive detention it is only a prevention and it is not a punishment. Hence he must be treated as a man who has not committed any crime. He must therefore be treated as an ordinary man. In one of the judgments in the Supreme Court it was asked: What is the difference between punitive detention and preventive detention? As regards preventive detention he also gets a certain punishment, that is the man is not allowed to move. The rules must be so framed as to prevent his movement only. About reading, interviews, newspapers and other things, there should be no restriction and a central law must be enacted.

Dr. Katju: I have really not very much to say. There is one observation which I may be permitted to make because of the reference to under-trials for whom my affection is really deep-seated. The hon. mover of the amendment said that under-trials are there because they are suspected of having committed

offences and detenus are there because they are suspected of having committed no offences. It is preventive detention in one case, namely that they have got a very clean record and the under-trials are really suspects. The basic principle of jurisprudence which we are working is that every man is supposed to be innocent till he is proved to be guilty. On that basis so long as a magistrate does not convict him, he should be treated as a detenu and therefore, on that basis every thing my hon. friend has said should apply to an under-trial, but it cannot be done. This attempt to put the detenus as if they were on a pedestal of their own really is not justified.

Secondly, so far as this question is concerned that this matter should be dealt with by Parliament is really too much because conditions differ from State to State and not only dietary conditions.....

Mr. Chairman: Jail is a transferred subject.

Dr. Katju: It is a transferred subject, but the conditions differ very much. I will give you just one instance. It is not a matter of amusement.

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

It came to me as something rather new. In Bengal in every jail even C class prisoners are allowed a fish diet twice or thrice a week. In U. P. jails no fish or meat was being given. It all depends on local conditions and I submit that it would be very improper for us to deal with these matters of detail sitting here in Delhi and thus overstep the State Governments. It is a sad subject but this question was raised in 1951 also and I should like to repeat what my hon. predecessor said:

> "The only reason why I do not propose to accept the amendment is that it is totally unnecessary to provide for such particular matters in a general provision of this kind. The words included here are quite enough to cover this and many other things that may be necessary. The reason why 'maintenance' has been put in is because it is not usual to give maintenance allowances in the case of prisoners, but with regard to correspondence, local holiday visits and the like, even ordinary prisoners enjoy such facilities and it would be unnecessary to introduce them here and I have no doubt whatsoever that the State Governments do keep these principles in mind."

I cannot pretend that I have seen all the rules in every State, but I have seen some and they are fairly liberal.

Dr. S. P. Mookerjee: I would like to ask whether all State Governments grant allowances to detenus.

Dr. Katju: I may tell you that some State Governments may be more liberal and others may be a little more strict

Dr. S. P. Mookerjee: There are some who do not give at all.

Dr. Katju: I really do not know, if they get sufficient food. It all depends

Dr. S. P. Mookerjee: I want to know if family allowances are given by all the State Governments.

Mr. Deputy-Speaker: Madras gives.

Pandit Thakur Das Bhargava: Punjab gives.

Dr. S. P. Mookerjee: If I can make a suggestion to the hon. Home Minister there is the difficulty in giving this power to Parliament, but will not the hon. Minister agree to contact all the State Governments and have a uniform policy regarding the grant of family allowances to detenus?

Dr. Katju: I will not say anything which I am unable to do. What I will undertake to do is that I shall write to all the State Governments and tell them that it would be better if they were to adopt a sort of uniform policy, I shall convey to them the wishes of Parliament about this matter and then leave it to them. It would not be proper for me to go any further than this and so far as interviews and these things are concerned, I shall do my best.

Shri G. H. Deshpande: My hon. friend, Mr. Gopalan said that in 1942 most of the detenus were given family allowances. His information might be different but in the Bombay State there were a very large number of detenus and it was only in a very few cases that some family allowances were given, and in many cases nothing was done, many did 6 P. M. not get it. I know Mr. Gopalan holds the Government that was in power in 1942 in high regard and respect and according to him, it was very liberal but it is not a fact.

Some Hon. Members: No, no.

Mr. Deputy-Speaker: That is not a fact. It is admitted that in some

[Mr. Deputy-Speaker]

States Government gives family allowances.

Dr. Katju: In needy cases.

Mr. Deputy-Speaker: Not in all cases. Wherever it is given, the position, Status, the income and expenses of the detenu are taken into consideration—certainly. Suppose a millionaire is put in detention for black-marketing. His family need not be maintained. They have too much to maintain others. Therefore, that matter does not arise. The only point is that in some States, detenus have not been granted family allowances. The hon. Minister says, this being purely a State subject, he will certainly convey the wishes of Parliament that a uniform practice should, as far as possible, be adopted and some provision should be made for that purpose. In view of this assurance, I believe the hon. Member is not pressing his amendment.

Shri A. K. Gopalan: I do not press the amendment.

Shri K. K. Basu: I want to ask one question.

Mr. Deputy-Speaker: I shall dispose of all these first and then if any clarification is necessary, the hon. Member may ask questions.

Dr. Rama Rao (Kakinada): There is one point which I want to bring to the notice of the Home Minister. I refer to my amendment that the detenu will not be liable to hard labour and should get fair family allowances.

Mr. Deputy-Speaker: What about his amendment for insertion of new clause 4A?

Dr. Rama Rao: The mater is more important than the technical form.

Mr. Deputy-Speaker: That has been put under clause 10.

Dr. Rama Rao: I want to bring this matter to the notice of the hon. Minister. Although it is on a different clause, it can be finished now.

Mr. Deputy-Speaker: Does not matter. The amendment is that the detenu shall not be liable to hard labour, or to do any work during his detention.

Dr. Rama Rao: I am surprised at this question. In the Madras State, I was not subjected to any hard labour. Recently, a few days ago, some detenus were brought from Hyderabad to the Supreme Court. I was surprised to hear from them that they were made to work every day and at the least objection, beaten. Beating is not allowed in law; but they were made to work under the rules. I request the hon. Home Minister to see that detenus, whether or not they are eligible to defend themselves, they are at least not liable to hard labour.

Mr. Deputy-Speaker: Has the hon. Member made it certain that this hard labour is not as a punishment for breach of discipline?

Dr. Rama Rao: I did not mean that. Hard labour as part of the detention order: just like rigorous imprisonment, etc.

Dr. Katju: Hard labour can never be part of detention.

Dr. Rama Rao: I too was very much surprised. At least he can bring it to the notice of the Hyderabad Government.

Dr. Katju: I shall see what can be done about it.

Dr. Rama Rao: I shall be satisfied with that.

Mr. Deputy-Speaker: It seems to be the practice to ask them to do work as punishment for breach of discipline. I do not think there is hard labour as part of detention. I think that is covered by the assurance given.

Shri S. S. More: May I move an amendment that I have given?

Mr. Deputy-Speaker: Under what clause ?

Shri S. S. More: Separately as new clauses. In view of the assurance given, I do not think I need press that.

Mr. Deputy-Speaker: It also relates to family allowance. That is, addition of clauses 14A and 14B. In view of the assurance given, the hon. Member is not pressing.

Shri B. Shiva Rao: Is the hon. Member withdrawing the whole of his amendment?

Mr. Deputy-Speaker: Not moving it. These are all the amendments to section 4 of the Principle Act. That section is not touched by the Bill. Therefore, I may proceed straightway to the next clause, clause 5. Am I right? I do not want to commit a mistake. All the amendments relating to section 4 which is not touched by the present Bill are not pressed in view of the assurance given. So

nothing more has to be done with respect to that section. That section is already in the Act.

Shri K. K. Basu: Before you proceed to the next clause, I have one question. I would request the hon. Home Minister to make available to the detenus the Detenus Manual. Unless this manual is available, they do not know actually under what rules interviews are granted, maintenance allowance is given, etc. That is the difficulty. The Jail Code is available; not the Detenus Manual.

Dr. Katju: That may be a matter for the State Government. You may write to them and get a copy of the book.

Shri K. K. Basu: I would like there to be an all India rule.

Mr. Deputy-Speaker: As far as possible, if there is any difficulty, the hon. Member may write to the State Government. This is a Central Act for the purpose of coordinating.

Dr. Katju: I shall get a copy for my own benefit also.

Shri K. K. Basu: I should like to see it myself.

Dr. S. P. Mookerjee: It may be placed in the Library of the House also.

Mr. Deputy-Speaker: If a Member is put under detention, he must know what the rules are.

Shri K. K. Basu: We must share the same knowledge.

Mr. Deputy-Speaker: There is no objection to that.

Clause 5.—(*Amendment of section 6 etc.*)

Mr. Deputy-Speaker: Shri S. S. More's amendment for omission of clause 5 is out of order. He can oppose the clause.

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

In page 1, lines 31 and 32, for "Section 6 of the principal Act" substitute:

"In section 6 of the principal Act—

(i) for the word and figures 'Sections 87, 88, and 89' the word and figures 'Section 87' shall be substituted,

(ii) the words 'and his property' shall be omitted;

and the section".

Mr. Deputy-Speaker: Amendment moved:

In page 1, lines 31 and 32, for "Section 6 of the principal Act" substitute:

"In section 6 of the principal Act—

(i) for the word and figures 'Sections 87, 88 and 89' the word and figures 'Section 87' shall be substituted,

(ii) the words 'and his property' shall be omitted;

and the section".

Shri S. S. More: I beg to move:

In page 1, for clause 5, substitute:

"5. *Omission of Section 6, Act IV of* 1950.—Section 6 of the principal Act shall be omitted."

Mr. Deputy-Speaker: Amendment moved:

"5. *Omission of section 6, Act IV of 1950.*—Section 6 of the principal Act shall be omitted.

That is if a person absconds, and a detention order is passed against him, the measures for apprehending him ought not to be enforced. The order will be passed, but it ought not to be executable. I am giving a gist for the clarification of hon. Members because they do not have the books with them.

According to Mr. Gopalan's amendment he does not want that the steps which have to be taken against an absconder under Sections 87 and 88 of the Criminal Procedure Code should be taken. He wants the omission of those provisions which relate to attachment and sale of property that is, a proclamation may issue but under the proclamation, in the case of a detenu, the further course of attaching and selling the property ought not to issue.

Then, the amendment of Mr. V. P. Nayar. He wants something to be inserted to the effect that proceedings should be taken against misuse of the provisions, and that when there is a complaint against an officer, the matter should be investigated by a judge etc. Is it relevant?

Dr. S. P. Mookerjee: Relevant to the Act.

Pandit Thakur Das Bhargava: It is outside the scope of the Act. Even if the principal Act is repealed and a new Act is brought, it would not be admissible.

Mr. Deputy-Speaker: Hon. Member may consider my suggestion. When we come to section 15 of the Act dealing with the immunity of officers for *bona fide* acts, this may be a little appropriate. This may stand over till then.

Shri V. P. Nayar: Here we have a sub-section added now declaring as a cognizable offence certain acts. Will it not be better to have abuses also declared as offences in this place.

Mr. Deputy-Speaker: This is for the purpose of apprehension.

Shri V. P. Nayar: The other is for the purpose of preventing misuse, Sir.

Mr. Deputy-Speaker: True. The question of misuse or proper use comes under section 15 where immunity is given, that is, protection of action taken under this Act. It will be more appropriate to bring it there, and say whoever misuses shall be punished in a particular manner.

Shri V. P. Nayar: It is a matter of opinion, Sir.

Mr. Deputy-Speaker: I would advise him to allow it to stand over.

Shri V. P. Nayar: If you give me an assurance that I will be given a chance to move the amendment then, I shall have no objection for that.

Mr. Deputy-Speaker: I have the least objection; if otherwise it is relevant under section 15, it will be more appropriate there. But I do not know how many amendments are likely to be moved, and it may not be possible to move many before the guillotine is applied. At the rate at which we are progressing, the discussion may close at one o'clock before some amendments are taken up. It is well to let it stand over subject to that limitation. I am only giving a suggestion to hon. Members that there are many important changes to be made, and that they will have an opportunity to speak on them.

Shri S. S. More: I can understand where a person who has committed certain crimes and who evades the warrant, certain proceedings may be started against him and sections 87, 88 and 89 of the Criminal Procedure Code may come into operation against him. But in this case, a certain officer entertains a certain suspicion about the prejudicial act of X. This X has no knowledge of it. He may be quite innocent. This officer does not make an honest effort, nor do his subordinates, who are entrusted with the execution of the order, make a serious attempt to investigate. X may have gone out of their jurisdiction and be somewhere else. These persons who have been very lax in executing the warrant may safely make a report just to cover their negligence, and the result will be the whole axe will be brought down upon the property of that man, he shall be considered to be a person absconding, and if he is not in a position to present himself before a particular Magistrate by a certain time, then he is supposed to commit an offence.

My submission is that in view of the fact that all these proceedings are started on the basis of mere suspicion, possibly without any basis, no firm ground for that sort of suspicion, all these clauses should not come into operation. The officer who issues the detention order should instruct his subordinates to make vigorous efforts to bring that person within the net of the warrant. That is my only contention. A person against whom a detention order has been passed should not be treated on a par with the person who has been accused of the commission of a certain crime and against whom a warrant for trial has been issued. That is my contention.

Shri A. K. Gopalan: In some places like Malabar where there is a joint family system, the other members of the family will be put to difficulty. Suppose a man has left his family ten years ago and the members of his family do not know about his whereabouts. He may be somewhere in India, and a detention order is passed against him. He may not know about it, and if the joint family property is attached and sold, the family cannot do anything. So, as far as this section is concerned, it is not punishing the man, it is the whole family that is punished. After all, a man is detained to prevent him from doing something. But, if the property is sold, the whole family will have to starve and they will have to suffer. So this drastic action should not be taken. The property should not be sold. After all, members of the same family may have different political beliefs, and the whole family should not be made to starve.

Dr. Katju: I said some time ago.....

Shri G. H. Deshpande *rose*—

Mr. Deputy-Speaker: Some of our hon. Members want to speak, but I am trying to get through. He may speak later.

Dr. Katju: I said there was greater anxiety to preserve property because if the property is safe, then the under-grounders are also completely safe. My hon. friend for whose legal experience I have great regard says: "Treat the detenu like a person against whom a warrant has been issued" but a detention order is a warrant and the opening language in section 87 is this:

> "If any court has reason to believe, whether after taking evidence or not, that any person against whom a warrant has been issued has absconded or is concealing himself in such a way that the warrant cannot be served....."

Now, it is only after that judicial satisfaction that proceedings under section 87 and the remaining two sections can be taken. In the first, I am prepared to lay a bet that almost one hundred per cent of the people against whom orders of detention are issued know that the orders have been issued. Nobody issues orders against ordinary people Black-marketeers and others have got their own agents.

Shri A. K. Gopalan: You give information and then issue the order. Is it?

Dr. Katju: Gentlemen who belong to groups have got their own agencies about these matters. They know fully well, and therefore, I suggest that it is the duty of every citizen to obey the order of law now, particularly because it is so easy. You obey. You go before the Advisory Board. You get rid of the order within two months if it is not justified, and if it is justified, you just remain there a year and then go back to your family. There is no question of detention for three years or five years. It is all so simple, so speedy. There is no question of a sentence of five, ten, 15 or 20 years.

Secondly, hon. Members should take note of the fact that there is a long time taken in this matter. I worked out for the first time today the time that will be taken. First, there is this notification, then the proclamation, then the attachment. The attachment means that notice has to be given to everybody in the world 'Have you got any objection, is this property yours or is it a belonging of the person against whom a warrant has been issued?' After disposing of all these objections, if the magistrate finds that the property is really of the person concerned, then he will not sell the property unless it is perishable property, and he has to keep it intact for six months. After having kept it intact, he sells it, and having sold it, he keeps it for another two years for the benefit of the gentleman who has absconded. In between if the absconder returns and satisfies the magistrate that he had no information about the warrant, he gets back the property. I have now worked out for the first time, and I find that it is such a protracted process that it may take even five years. The moment the property is attached and seized after the proclamation, all the members of the family about whom Mr. Gopalan has spoken so tenderly should be able to give information to their dear and beloved and say: 'Here is a detention order against you, so please come and surrender'.

Dr. S. P. Mookerjee: How will they know?

Dr. Katju: Is it sought to be contended that the members of the family will not know anything about the whereabouts of the person?

Dr. S. P. Mookerjee: If they know, they will also be detained.

Dr. Katju: I suggest Sir, that the whole matter is becoming a farce, and I would ask my hon. friend to withdraw the amendment.

Shri A. K. Gopalan: What I said was this. A person has left a certain place some ten years ago; supposing a student goes to Banaras or Allahabad for study, he may remain there for ten years or so, and the members of his family may not know anything about him. After his study, he may get some employment elsewhere. Does it mean that the members of his family should always know about him and his whereabouts?

Dr. Katju: Does my hon. friend mean that the person goes to Allahabad or Banaras and remains there for three or five years in secret?

Mr. Deputy-Speaker: The question is:

In page 1, for clause 5, substitute:

> "5. *Omission of Section 6. Act IV of 1950.*—Section 6 of the principal Act shall be omitted."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, lines 31 and 32, for "Section 6 of the principal Act" substitute:

"In section 6 of the principal Act—

(i) for the word and figures 'Sections 87, 88 and 89' the word and figures 'Section 87' shall be substituted.

(ii) the words 'and his property' shall be omitted;

and the section."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6.— (*Amendment of section 7 etc.*)

Pandit Thakur Das Bhargava: The Joint Select Committee has recommended that the period may be five days. But my submission is that three days or so may be taken in transit. Supposing a person is arrested at the farthest corner of Uttar Pradesh, and is to be brought to his district. It will take two or three days, because there is no rail communication etc. So I have suggested the substitution of 'seven days'. Anyhow, I leave it to the hon. Minister, and I do not want to press it.

Mr. Deputy-Speaker: The complaint is that on the date on which the detention order is passed, there must be sufficient ground for the detention. It is only a question of indication as to what the term 'as soon as may be' may mean; the expression is vague; so it was thought that an upper limit should be there, and it was with that object, these five days were specified. Is the hon. Minister accepting this? Is the House accepting this, if the hon. Minister accepts this?

Pandit Thakur Das Bhargava: The complaint is that the grounds of detention are not definite but vague, and not well-founded. I do not want to see that the detenu is any way prejudiced, but I do want that in cases where the detenus may have to be brought from a distant place to the place where the grounds of detention are to be given, it may take two or three days even in transit only. Even under section 64 of the Criminal Procedure Code, a person is arrested and brought and is not produced within 24 hours, and the time taken in the journey from one place to another is excluded. It will mean five days in some cases, where the detenu is not going to be arrested in a far away place. But if the arrest is made at a long distance, there must be some time given to the State authorities also to frame the grounds and then give it to the detenu. I shall leave it to the hon. Minister to see the justice of this, but I think that he should give more time.

Dr. Katju: I leave it to the hon. members opposite.

Sardar Hukam Singh: Whether it is five days or seven days would not make much difference. What we were much concerned with was whether the grounds of detention are to be prepared by the district magistrate after the detenu has been arrested, or whether he has to apply his mind before he issues the order and prepares the ground, whether the grounds should be ready with him beforehand and so on. Only when the grounds are prepared subsequent to the detention, the time asked for is necessary. The police officer makes a report, the person is arrested, and then takes up the preparation of the grounds of detention. So, what we were concerned with was that the time allowed to him should be the minimum for communication of the grounds to the detenu, and so he should apply his mind to the preparation of the grounds before the detention order is issued. That is why the period was definitely specified as five days. Otherwise, the period does not make much of a difference.

Pandit Thakur Das Bhargava: When the police arrest a person, it takes about 15 days to prepare the case against the arrested person, after thorough investigation. It is not as if a warrant can be issued all of a sudden, and immediately the grounds can be supplied, in that case nothing can be done. But it is but fair to the detenu that the grounds must be seen, looked into, and framed properly. Otherwise, the complaint is made that the charges are vague and ill-founded. I do not want to prejudice the case of the detenu in any way. I do want that every justice should be done to him, and so specific grounds should be supplied to him after proper investigation, and additional grounds may be given also, which will be definite. As I was saying a little while ago, there are cases of persons who are arrested at far off places, and who have to be brought to the place where the grounds of detention are to be supplied to him. Is it necessary that before the warrant is

issued, all the grounds should be ready? I do not think so. In many cases, we find that additional facts also are found, and I submit that these also may be included in the grounds of detention so as to make it definite. That will also be in the interests of the detenu. So, I submit that two days will not matter.

Sardar Hukam Singh: When I said that the period of five days did not make any difference, my point was that the original approach itself is different. My hon. friend has brought in the analogy of the police report where the police officer takes 15 days for the preparation of the case. That is not the point which I am stressing. We have to see that the case is not cooked up during the meantime, and so it is that we want that the case should not be made out after the arrest has been made. My point is that the district magistrate himself should find out beforehand as to whether there are any grounds for detention before the arrest of the person, and satisfy himself as to whether a warrant can be issued against him or not, and not investigate the whole case afterwards and then supply the grounds to him.

Dr. Katju: I personally think there is a good deal of force in the argument of my hon. friend Pandit Thakur Das Bhargava. But I am rather restrained by two considerations. One is the respect which I owe to the Joint Select Committee. Secondly, there is the other string, namely that the State Government has to dispose of the case and approve of the detention within 12 days. If we raise this period from five days to seven days, then we will be leaving too short a time for the State Government to approve of the detention. The Minister may not be in headquarters, the papers may take some time to reach the place where he is, and so in that case the period at the disposal of the State Government will become very short. A great deal of time has been spent in the Joint Select Committee over this question, and if the matter had not been covered there, I would have agreed that here it should be five days, and it should be fifteen days in the other case. So as it is, I feel rather restrained by this consideration in accepting the change.

Shri K. K. Basu: I beg to move:

In page 2, line 4, after "shall be substituted" add:

"and for the word 'grounds' the words 'grounds and other materials' shall be substituted"

Mr. Deputy-Speaker: Amendment moved:

In page 2, line 4, after "shall be substituted" add:

"and for the word 'grounds' the words 'grounds and other materials' shall be substituted."

Pandit Thakur Das Bhargava: I must submit it for the consideration of the hon. Minister and I leave it to him to accept or reject it. My humble submission is this. We had a full discussion in this House whether this Detention Act should be there or not. We have agreed that there should be a Detention Act. Now, as the hon. Minister has himself stated, the detenu in the eye of the law is innocent just as an under-trial is. I accept this statement of law. My humble submission is that now from this point whatever law can do must be in favour of the detenu. He may be given full opportunity to meet his case. The Advisory Board should be a fully authorised body and should be able to dispense full justice and at the same time the detenu himself should have full opportunity for preparing his case. Now, what happens. The grounds are given there. I do now know exactly what the word 'grounds' means. Ordinarily speaking the grounds are drafted by lawyers generally. We know what those grounds are. Now, I understand from some of the rulings of the Supreme Court that the word 'grounds' has been commented upon. The ground may be a mere conclusion from certain facts.

What I am anxious about is that the person detained must know what are the allegations against him so that he may be able to make a proper reply. I know at the same time that under article 22(6) of the Constitution, discretion is left with the Government. It may not supply such information to the accused or to any other person as is not consistent with public interest. I also want that such information may not be supplied either to the Advisory Board or to the accused. I can understand that. But short of that, anything which would enable him to make a proper defence must be given to him; otherwise, it means that we are not giving proper opportunity to the detenu to make his explanation. Now, we have heard the complaint very much in this House that the grounds are given in such a way that the accused cannot make head or tail of it and at the same time, sometimes in a vague and general way, the grounds are given.

I do not like that the grounds should be given in such a way. He should

[Pandit Thakur Das Bhargava]

be told the specific thing so that he may be able to say whether he is guilty of it or not. Suppose, it is said that a person made a speech at Calcutta. Now, if the date is not given, if the time is not given, if the objectionable portions are not given to him, what reply will he be able to give? I want, as in section 342 of the Criminal Procedure Code, the accused should be put question to afford opportunities for explaining all the incriminating circumstances against him. Similarly, he should be enabled, when the case is before the Advisory Board to make a statement in regard to each incriminating circumstance—whether he is guilty of it or not. It may so happen, as was pointed by one of the hon. Members on the other side, that a person may be in one place and the allegation against him may be that he made a speech at another place. He will be able to say that he was a student at Banaras and he was not present in Calcutta at all. Unless he knows the full facts of the case, he will not be able to make a full explanation. It is from this point of view that I am submitting that, consistent with public interest and public safety, all the grounds should be given.

In fact some grounds are not necessary for him, they may or may not be given but at the same time, if he is allowed to appear before a court higher than the ordinary court—the first class magistrate can give two years' imprisonment, the sessions judge can award the death sentence, but here we have the Advisory Board, consisting of High Court Judges—when he is allowed to appear before the Advisory Board, with a view to enable the Advisory Board to do justice, it is necessary that the elementary principles of law should be followed in this case. If he is not allowed to know what he is charged with, I do not know in what way the accused will be able to meet the case against him. I, therefore, submit that such opportunities may be given to him. The words are: "and subject to the provision contained in sub-section (2) of section 7 furnish him with the particulars on which the order of detention is based". If by the word 'grounds' the implication is that every opportunity will be given to explain, then I have nothing to complain. I am only anxious that he should be furnished with all the relevant grounds in a detailed manner as are ordinarily furnished to the accused when he appears before a judge. That is all I have to say. If the hon. Minister will accept it, I will move it; otherwise I am not moving it.

Mr. Deputy-Speaker: I will first call upon hon. Members who have tabled amendments. Then both the amendments and the clause will be thrown open for discussion.

Shri S. S. More: Did the hon. Member make a speech without moving the amendment?

Pandit Thakur Das Bhargava: No, Sir. I have not moved it. This is the practice in this House. I will move it only when I know the reaction of the hon. Minister.

Dr. Katju: I do not accept it for reasons which I will give later.

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

In page 2, line 4, after "shall be substituted" add:

"and the words 'and shall furnish him with all particulars as are necessary for him to present his case' shall be added at the end."

Mr. Deputy-Speaker: Amendment moved:

In page 2, line 4, after "shall be substituted" add:

"and the words 'and shall furnish him with all particulars as are necessary for him to present his case' shall be added at the end".

Mr. Deputy-Speaker: Mr. Pocker Saheb wants in sub-section (2) of section 7 of the principal Act to substitute 'it' by 'the Advisory Board'. 'Nothing in sub-section (1) shall require the authority to disclose facts which the *Advisory Board* considers to be against the public interest to disclose'. Even that seems to be opposed to the Constitution, under article 22(6): Nothing shall require the authority making the order to disclose facts which such authority considers to be against the public interest to disclose. That is, even the Advisory Board has not got the right to call upon the authority to disclose facts which that authority considers to be opposed to public interest. Therefore the ultimate decision rests with the authority and not with the Board. On that ground, it is out of order.

Shri Pocker Saheb (Malappuram): It is quite in order, Sir. I want to say a few words, Sir.

Mr. Deputy-Speaker: I do not want to be dogmatic, I shall hear the hon. Member. I only want to say how to me it does not appear to be in order —subject to what he might say. What he wants to do by way of his amend-

ment is to modify section 7 of the parent Act. Now sub-section (2) of section 7 of the Act says:

"Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

He wants a modification which will make the sub-section read as follows:

"Nothing in sub-section (1) shall require the authority to disclose facts which *the Advisory Board* considers to be against the public interest to disclose."

Now, in article 22(6) of the Constitution it is stated:

"Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose."

It is not left to any other person than the detaining authority to decide whether it is in public interest or not.

Now I will hear the hon. Member.

Shri Pocker Saheb: I am fully aware of the provisions in the Constitution, but it is not incumbent on Parliament to keep that wording as it is. It is left to the discretion of Parliament to enact as to which is the authority to disclose and how far disclosure of any facts is prejudicial to public interest. My amendment suggests that that right to decide must be left to the Advisory Board and not to the Government.

Mr. Deputy-Speaker: The Constitution says that the authority to decide the question of public interest is the authority which has issued the detention order.

Shri Pocker Saheb: What the Constitution says is not mandatory. It gives discretion to Parliament. The option of Parliament to give discretion is not taken away by the Constitution. The provisions of the Constitution do not make it incumbent on Parliament that Parliament should only so legislate that the discretion should vest only in the detaining authority.

Mr. Deputy-Speaker: We will assume that this is omitted. Notwithstanding the omission, the provision in the Constitution will apply and the authority to decide will be the authority ordering detention.

Shri Pocker Saheb: "Nothing...shall require"—that is all what it says. It does not mean that that authority alone has got the discretion to decide.

Mr. Deputy-Speaker: It is a point of order. I have heard the hon. Member sufficiently—I do not agree with him. His amendment is opposed to clause (6) of article 22 of the Constitution. Therefore, I rule it out of order.

Dr. S. P. Mookerjee: Are you ruling that even the Advisory Board will not be entitled to that information?

Mr. Deputy-Speaker: No, no. All that I say is that nothing in this sub-section shall require the authority to disclose such facts which it considers against public interest to disclose to the detenu. We have not yet come to the Advisory Board.

Dr. S. P. Mookerjee: That is all right.

Shri Pataskar (Jalgaon): Sir, I think the same objection holds good also with respect to the amendment moved by Shri Gopalan and that too seems to be out of order for the same reason.

Mr. Deputy-Speaker: Sub-section (2) will govern that amendment. The hon. Member who has moved the amendment does not want as a corollary to this the omission of sub-section (2). Subject to being governed by sub-section (2), this amendment can be effected. I do not find any difficulty here. The amendment is in order.

Shri A. K. Gopalan: It is said here that the detenu has to make a representation. Only that power of making a representation is given to him. If the detenu can make a good representation stating that the grounds of detention are vague or the facts given are not correct, then certainly he has a chance of not being detained. We have heard at length on the question of the nature of the grounds of detention and I do not want to repeat it. All that the detenu wants, apart from the grounds given in the detention order, is that all the other matters that are relevant to his detention may be given to him so that he may be able to present his case satisfactorily. If the detenu is not given particulars of how the information against him was obtained, or what is its basis, he cannot present his case satisfactorily. If it was a speech made by the detenu and he is told so, he will be able, in its context, to present his case and make a very strong representation so far as he is concerned.

[Shri A. K. Gopalan]

So, in order to enable him to make a strong and effective representation his only basis will be all the material connected with or related to his detention and such material should be supplied to him. That alone will help him to make out a strong representation and it is essential that it should be given to him.

Shri K. K. Basu: I want to emphasise the point which has also been dealt with by the hon. Member, Pandit Thakur Das Bhargava. I feel his amendment is much better worded but as he is not moving it I have to press my amendment. If we go over past events—though the hon. Minister has said that we are in 1952, forget the past—we can see how supplementary grounds for detention were supplied to the detenu after four or five months of the supplying of the original ground. Since the time of the famous judgment of Justice Mahajan releasing the detenus on the ground that the grounds of detention were vague, we see that supplementary grounds are supplied to the detenu putting in particulars or events which could not possibly be in the hands of the authorities when the original grounds were supplied.

Now, the whole idea of supplying the grounds of detention is to enable the detenu to make proper representations to the detaining authority. The detaining authority, at the time when the detention order is issued, must have sufficient material to substantiate its case against the person who is detained. Therefore, if the detenus are not supplied all the materials that are in possesion of the detaining authority it is very difficult for the detenus to make their representations properly. I have known of some cases of detenus being faced, when taken before the Advisory Board, with charges or grounds that they had never heard of before and they were simply surprised. I hope I will not be divulging any secret if I say that I heard this from some of the members of the Advisory Boards. While the present amendment provides for the detenu himself asking to be produced before the Board, the principal Act left the discretion to call for the detenu to the Advisory Board. Unless the detenu knows all the facts or charges which led to his detention it will not be possible for him to make a proper or satisfactory representation. That is why I say that all the necessary particulars must be supplied to him. Otherwise, the result may be the same as we experienced in the past: When the grounds supplied to the detenu were challenged before a court of law the detaining authority supplied two or three supplementary grounds in order to obviate a judicial decision. Therefore, I move that the words that I have suggested be included in the section.

Dr. S. P. Mookerjee: I had thought that the Home Minister who has great regard for the arguments put forward by Pandit Thakur Das Bhargave would at least accept this amendment which has the support of the Opposition. As the hon. the Home Minister knows, in view of the decision of the Supreme Court and some High Courts it has been held that grounds may mean only conclusions. I have got the judgment before me.

Dr. Katju: Which year?

Dr. S. P. Mookerjee: It is the Supreme Court judgment, 1951.

Dr. Katju: What is the date of the judgment?

Dr. S. P. Mookerjee: 6th April 1951.

There, only the grounds were communicated. The difficulty arises specially in cases where a person is detained for having delivered objectionable speeches, and the point is developed in the judgment of Mr. Justice Bose that the grounds are stated to be that such and such speech was delivered on such and such a date at such and such a place which had the tendency to arouse communal feelings. He refers to a case like that. But exactly what was spoken is not stated and if it is expected that the detenu should make his representation, then naturally he should know what is the nature of the objectionable speech to which he has to give an answer. As the learned Judge of the Supreme Court points out, it is not only what he actually said, but what the police who were at that meeting thought he said; I am sure Dr. Katju realises the difference. The Judges point out that two points arise in this connection. One question is: did he actually say it? The other question is: what is the interpretation put on the words he used by the police and is that interpretation capable of being sustained? This matter is fully discussed in the judgment, although the Supreme Court was helpless and said that the law as it stands says that grounds have to be given and the grounds have been given and so it cannot help. The Supreme Court did not interfere, but actually in the judgment which was delivered there were two sets of judgment: one set of judgment deli-

vered by the Chief Justice, which was the majority judgment, and the other set of judgment delivered by Mr. Justice Bose, which was the dissenting judgment.

Dr. Katju: To which are you referring?

Dr. S. P. Mookerjee: I am referring to both. There is no difference on the main principle. The difference is on the question whether the grounds are completely insufficient and the detenu should be released. The Chief Justice holds that when it is stated that grounds have to be given—grounds meaning conclusions, and they have been given to the detenu, there is an end of the matter. The district magistrate is satisfied that the man should be arrested and the Court cannot interfere: that was the finding. But Mr. Justice Bose went a step further and said that these grounds were no grounds at all. You must give particulars and therefore the detenu should be set at liberty. That was the difference.

What is the objective here? As the Home Minister said, once the position is accepted by the House that there will have to be a Preventive Detention Act, then everything reasonable should be done so as to enable the detenu to make out his defence. This is the beginning of the opportunity that you are giving him. If he does not get his materials, whatever case he has to build for the future will be lost, because that will depend upon the grounds that you give. What the amendment of Pandit Thakur Das Bhargava sought to put forward was quite reasonable. No one is suggesting that secret information in the possession of the district magistrate should be given. We are not trying to re-open that question. No one has suggested that those matters should be communicated to the detenu, but barring them, give the detenu full particulars; give him the circumstances on which your conclusions are based and thus give him a reasonable chance. I hope the Home Minister will consider this. Whether he accepts the amendment of Mr. Gopalan, or that of Mr. Basu, or that of Pandit Thakur Das Bhargava, or drafts one himself, is not material. I am just drawing his attention to the matter.

Section 9 of the original Act refers to the Advisory Boards. There, it is not only necessary that the materials should be placed before the detenu for the sake of the detenu but also to enable the Advisory Board to come to a decision; let us see what are the materials which go to the Advisory Board. Section 9 of the original Act says:

> "In every case where a detention order has been made under this Act, the appropriate Government shall, within six weeks from the date specified in sub-section (2) place before the Advisory Board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in a case where the order has been made by an officer, also the report made by such officer under sub-section (3) of section 3".

The last one relates to something to which the detenu is not entitled and I am not suggesting that that confidential report should be handed over to the detenu.

Dr. P. S. Deshmukh: And such information as may be required.

Dr. S. P. Mookerjee: That comes later. I am coming to it. At a later stage, the Advisory Board has a right to call for further information and I take it that your ruling does not include the clause on the Advisory Boards. The Advisory Board can call for any information from the Government, but it is not the Advisory Board's power to call for information with which I am concerned, but it is with the question of making materials available to the detenu, so that he can make a proper representation. Now, that goes to the very root of the matter and if you do not place all reasonable materials—draft the language in any way you like—but if you do not place reasonable materials before him, you practically shut out the possibility of his fighting out his case at a later stage. We are going to adjourn now, because it is nearing seven o'clock. I suggest that the Home Minister may give a little thought to the matter and come prepared tomorrow morning with his proposals.

Mr. Deputy-Speaker: What is the reaction of the hon. Minister?

Dr. Katju: My reaction is that with very great respect to my hon. friend, I beg to differ in this particular case. I differ from all my hon. friends and for a variety of reasons and in the interests of the detenu himself. In the first place, I am a great stickler to the Constitution. The Constitution-makers in their wisdom have said:

[Dr. Katju]

"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."

This is not merely a debating point. To suggest that the grounds of the order would be insufficient to enable the detenu to make a representation is to cast an aspersion on the Constitution itself.

Dr. S. P. Mookerjee: I think the Home Minister has not understood my point. So far as the interpretation of the grounds is concerned, if it had been left to the Home Minister or to Parliament it would have been different, but the Supreme Court has already interpreted "grounds" to mean that they include only conclusions. That is why we have to interpret the intention of the Constitution-makers and say that "grounds" mean this and this. That is all that we are asking for.

Dr. Katju: It is for this Parliament to decide, not for the Supreme Court. We are not bound by any judicial decisions. We are here to construe our own Constitution. We are the lawmakers. Of course, we pay the utmost respect to judicial interpretations, but here we have to consider the Constitution. You leave it to anybody and he will say that the Constitution says that the grounds for detention should be such as to enable the detenu to make a representation.

Pandit Thakur Das Bhargava: May I respectfully ask the Home Minister if in his opinion the word "grounds" includes such things as will enable the detenu to base his entire defence upon them? Will he get all the materials?

Dr. Katju: Is that a point of order or a point of interpretation?

Dr. S. P. Mookerjee: A point of clarification.

Pandit Thakur Das Bhargava: I only want to know what the word "grounds" means according to him. The Supreme Court has placed a certain interpretation, but if he says that the word "grounds" can be interpreted in such a way as to get over that interpretation, I shall be satisfied. That is all I want.

7 P.M.

Dr. Katju: My hon. friend knows that Judges differ. Judges are after all human beings. I, as an independent citizen of India, am entitled to my own conclusion. The Supreme Court has said in many cases that the grounds are vague and the grounds are not such as were contemplated by the Constitution, therefore, the whole proceedings are invalid. This is the basis on which the Supreme Court has proceeded: that the paper which you have given to the detenu is not the grounds of detention contemplated by the Constitution makers—that is something else. Therefore, the proper way to proceed with grounds of detention must be supplemented by particulars, so that the detenu may be able to make a representation.

Suppose you tell the detenu: you made a speech—you do not give the date, you do not give the place, you do not give the substance of it—then it is no ground at all. It is absurdity. You may say he might have spoken in Timbactoo. I have been away from the law courts for some time now, but in all the detention orders read out by my hon. friend from Malabar, in his own, the grounds of detention have been clearly given—on such and such a day at such and such a place you said: "Go and shoot the police". You said: "Go and rob police stations, or do this or that".

I am most anxious that we should not multiply the grounds for contention between the Supreme Court and the High Courts. This matter has now been rubbed out, completely levelled and everybody now knows what the grounds of detention are. The Supreme Court and the High Courts have come to a clear decision as to what are proper grounds and what are not proper grounds. The profession knows it: Governments know it and even the prospective detenus know...

Dr. S. P. Mookerjee: Who are the prospective detenus?

Dr. Katju: I am a prospective detenu.

Everybody now knows what the grounds are. Now if you introduce a provision that the grounds must be supplemented by particulars, then there will be another battle royal in every High Court that these are not the particulars: therefore, the whole thing is bad.

Lastly, I wish to say—and this is a very important fact—that all these decisions were given before the Advisory Board began to function—cases of 1946, 1947, 1948, 1949, 1950.

Dr. S. P. Mookerjee: Also 1951.

Dr. Katju: Originally when the Bill was introduced by Sardar Patel, the Advisory Boards had power to interfere only in the black-marketing cases. No political cases went to them. In the case quoted by my hon. friend, though the date of the judgement is 6th of April 1951, the grounds of detention must have been of 1950. It could never have been of the time of what I may call again my predecessor's Act when the Advisory Boards began to function.

The Supreme Court and the High Courts were very anxious that the grounds of detention must be such as are contemplated by the statute. It may be that at that time nobody thought that this matter could possibly go to a court of law. I think the State Governments' legal advisers may have thought that it is a matter for the State Governments, that the representation would come to them and that it was a purely administrative matter. Probably there was some slackness. The lawyers took a hand in the matter and they said this was an imperative condition and writs of *habeas corpus* were moved and the result was that the Supreme Court and the High Courts knocked the proceedings on the head right from the beginning that the grounds of detention have not been supplied—therefore all subsequent proceedings are bad.

Now the Advisory Boards have come on the scene. Rulings have been given—please remember this very important point—in the first place the grounds of detention should be such as are in accordance with the Supreme Court decisions, High Court decisions and the Constitution. Secondly, the matter goes before the Advisory Board before which the detenu appears. If the Board asks: "Any complaints" the detenu can answer, "I do not know what the particulars are; what am I to answer?" The Advisory Board, as the House knows, consists of three judges. They say: It is very good. The grounds say that he made a speech and he is entitled to ask: "Please tell me what I am supposed to have spoken" and the Advisory Board will tell him.

The main reason why I am not able to accept the amendments moved by hon. Members is that I do not want to multiply further litigation and further subtleties in courts of law. I shall, however, further consider the matter in the light of what my hon. friend has said.

The House then adjourned till a Quarter Past Eight of the Clock on Wednesday, the 6th August, 1952.