Mr. Deputy-Speaker: The ruling shall not be disobeyed.

Shri Kanungo: I beg to differ in the sense that the Chairman of the Joint Committee is not the Speaker and I do pay my tributes to the Chairman of the Joint Committee without whose efforts and without whose great physical strain we would not have achieved these results.

Mr. Deputy-Speaker: The question is:

That the Bill, as amended, be passed.

The motion was adopted.

Mr. Deputy-Speaker: I am in an embarrassing position in the Chair; I should not say anything. But if something complimentary can be said, perhaps somebody may differ and something derogatory may be said. So, it is not desirable. I am thankful to the hon. Members and also to the hon. Minister who have said these nice words about me.

We shall take up the next business now.

PREVENTIVE DETENTION (CONTINUANCE) BILL

The Minister of State in the Ministry of Home Affairs (Shri Datar): Mr. Deputy-Chairman.... *(Interruptions.)* I am sorry; I came from the other House. Mr. Deputy-Speaker, Sir.....

Shri Braj Raj Singh (Firozabad): What has happened to the hon. Home Minister? This is a very important measure and we would have liked the Home Minister himself to move this.

Mr. Deputy-Speaker: There is distribution of work among themselves and there ought not to be any objection if something is brought forward by Shri Datar; he has been doing it very well so often.

Shri Braj Raj Singh: I am quite conscious that their duties could be divided but this is an important measure concerning the whole of the political life of the country and it would have been much better if it was moved by the hon. Home Minister himself.

Mr. Deputy-Speaker: It would not make much difference. The provisions are there. The arguments have to be heard. If some hon. Members perhaps feel that it would not be presented so ably now, then they would have an advantage.... *(Interruptions)*

Shri Braj Raj Singh: I say this because the House should not be held in contempt, howsoever high a person may be. The Home Minister knew very well that this Bill was coming up for discussion on the 1st; still he has absented himself from the House.

Mr. Deputy-Speaker: There is no reason for using such words and I do not feel that there is any disrespect or contempt to the House in this. We are experiencing this daily; if one Minister is absent, the other presents the case. Where is the disrespect or contempt of the House?

Shri Tangamani (Madurai): Sir, yesterday a similar question arose. When Shri Mahanty wanted that the hon. Prime Minister might be present for the discussion on the Canal Water Dispute, the Minister concerned was pleased to state that the Prime Minister would come and intervene. Similarly, a request has now been made and it would be advisable if the Home Minister is present or if he intervenes. We would like to know the views of the Government.

Mr. Deputy-Speaker: Shri Datar's views are different from those of the Government?

Shri S. M. Banerjee (Kanpur): The situation in U.P. is so bad that he may not be able to come here at all!

Mr. Deputy-Speaker: It is not necessary to say that.

Shri H. N. Mukerjee (Calcutta—Central): I wish to make a small submission. Only the other day the Deputy Chief Whip of the Congress Party had mentioned in the House with reference to the allotment of time for discussion on the Companies (Amendment) Bill that discussion on that Bill should be finished in time for the Home Minister to open discussion on this Bill because the Home Minister, according to him, was particularly keen on doing so. Naturally, we take it that he was really keen and he should have come. But it seems that political expediencies have taken him elsewhere to decide a matter which is a matter for his Party to determine.

Mr. Deputy-Speaker: It is only the conjecture of the hon. Member: there may be other more important reasons .... *(Interruptions.)* I do not think that anything can be said on this.

Shri Datar: Sir, on behalf of Shri Govind Ballabh Pant, I beg to move:

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

Shri Naushir Bharucha (East Khandesh): Shame.

Shri Datar: Sir, I know that when this Bill was sought to be introduced in this House, certain hon. Members raised certain objections and ultimately the Bill was allowed to be introduced. This is a matter which unfortunately, has often to come before this House but we must find out the circumstances as to why the Government is compelled to ask for the extension of the Bill from time to time. I need not go into them in detail now. Even when the Constitution was passed, it was made clear in article 22 that it would be open to Parliament to pass a law for preventive detention and ironically enough within one month of the inauguration of the Constitution, the then Home Minister, Sardar Vallabhbhai Patel, had to ask for the passage of the Preventive Detention Bill in this House, and he described the circumstances very realistically, though pathetically. He stated that he was anxious to see if this matter could be avoided but that in the interests of the security and public order in the country he had to move for the passage of this Bill. We had to seek the indulgence of the House four or five times when we asked for the extension of this Act. Let us try to find out whether we are completely free from the circumstances referred to at that time so far as the security of the nation is concerned or so far as the anti-social forces which disturb public order are concerned. You are aware of the circumstances in which we have to fight for maintaining public order in various parts of the country. When last time the Bill was passed by this House, an assurance was given by the Home Minister that the Government would place statistical information before the House as to the manner in which this Act was applied and these powers were used by the State Governments and we are having debates in this House and in the other House about the working of this Act. The Act is likely to expire towards the end of this year. As you are aware, we had to consult a number of States about this for the simple reason that they are responsible for law and order and for curbing subversive elements in their areas. So, we consulted the State Governments and we found that they were of the opinion that in the interests of the nation the life of this Bill should be extended by a further period of three years.

Two points have to be understood in respect of these provisions whether there ought to be a law on the statute book of this type and secondly whether this Act has during the years immediately preceding this year been used in a proper manner and sparing

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manner. These are the two questions to which I shall confine myself so far as the need for the present Bill is concerned.

In the first place, in respect of the provisions of this Bill may I point out in all humility that so far as the lawless elements are concerned, so far as the unruly elements are concerned, so far as the subversive elements are concerned, we have to take into account this very clear fact in as realistic a manner as possible that the presence of this Act on the statute-book has itself a great restraining influence. This fact should not be lost sight of. If this Act had not been there the condition would have been extremely difficult. In a number of States—I do not want to single out any State at this stage—I should like to point out, but for this particular Act having been in force it would have been difficult for the State Governments to deal effectively with the lawless elements which we find unfortunately here and there.

Now, a question is often asked as to why when we have got penal Acts like the Indian Penal Code and others there should be a Preventive Detention Act at all. My simple answer to that question is that there are certain forces which are working from behind the scenes and which it may be very difficult to lay hands upon. They are the conspirators, in a way, they are the fomentors of trouble in the other way and it becomes very difficult to deal with them.

Shri Naushir Bharucha: Sir, may I rise to a point of order. I have been looking into this Bill and I find that there is no recommendation of the President under article 117 of the Constitution. Such a recommendation would be necessary, because if this Bill were enacted into law it would necessitate expenditure from the Consolidated Fund of India on the constitution of the Advisory Board.

Shri Datar: I shall deal with that question also.

Shri Naushir Bharucha: First let me deal with my point of order and then he may deal with it. It is true, Sir, the Bill says that the date is to be changed to 1963. Article 117 is very clear. It says:

> "(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

Now, Sir, the Act as it stands says under section 8 that the Central Government and each State Government shall whenever necessary constitute one or more advisory boards for that purpose. We know that various boards have been constituted. Therefore, the effect of this Bill if enacted would be that it would involve expenditure from the Consolidated Fund of India. I, therefore, submit, that the recommendation of the President is necessary under article 117.

Mr. Deputy-Speaker: The Minister has said that he will answer this question also. Let us hear him. If there is still some objection he way raise it then.

Shri Datar: Had the hon. Member raised this question in the beginning I would have answered it then. Just when I was developing a particular point he raised this point of order. Therefore, I shall deal with the point that I was placing before the House. I pointed out that there were cases where the fomentors of trouble were working from behind the scenes and the actual persons who would have worked would be entirely different. It is for this very purpose.....

Shri Braj Raj Singh: Sir, unless the point of order raised by Shri Bharucha is disposed of I do not think we can proceed.

Mr. Deputy-Speaker: It is not necessary that it must be decided immediately.

Shri Braj Raj Singh: Shall I, Sir, with your permission read out this article? It says:

> "(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States."

I think it cannot be moved.

Mr. Deputy-Speaker: Now you cannot say that it cannot be moved.

Shri Sadhan Gupta (Calcutta-East): Sir, if Shri Bharucha is right in his point of order under the Constitution we cannot proceed with the Bill at all and the time of the House will then be wasted. Therefore, it is desirable that the point of order should be first settled before the Minister proceeds with the merits of the Bill.

Mr. Deputy-Speaker: This is another argument that it is deirable that it hould be decided at this moment of time because if a decision is arrived at later and this objection is upheld then this would be a waste of time. That is quite a different affair from the fact that we cannot proceed at all with this. The Minister has assured us that he will be dealing with it and answering this point. Let us hear him. If we are not satisfied and the hon. Members have got some points of objection I will hear them and then give a decision.

Shri M. R. Masani (Ranchi-East): Sir, I understand the procedure to be that the point of order should be disposed of before the substance of the speech can proceed. The hon. Minister can certainly reply to the point of order but, Sir, your ruling will be required before the House can proceed with the Bill.

Mr. Deputy-Speaker: This is a question that can be decided even when this motion is made. For the present he is trying to make that motion. Nothing is before the House for the present. Let us hear him and let the motion come, because that has to be supported by a speech. He is still making out his case. This is not about the introduction because the Bill has already passed through introduction stage. Therefore, let us hear him and then we will take up the objection. He says he has an answer. I have also to call upon him to give that answer. He says he is answering that.

Shri Datar: Sir, I was dealing with the question as to the necessity of such an Act and I was pointing out, in spite of the interruptions that were raised here and there, how it was absolutely essential to have an Act of this type on the statute-book for the purpose that it will serve a restraining influence on at least certain elements of the society.

Then I pointed out to this House that we consulted State Governments. May I point out that all the State Governments were of the view that the period of this Act ought to be extended for a further period, for about three years more? That is why this Bill has been brought forward (*Interruption*).

So far as the first part is concerned, I have already made out that it has got an influence which is likely to affect well so far as these unruly elements are concerned.

Then I would take the second question. The second question was being debated formerly very strongly. It was contended that the Act was being used even in cases where it ought not to be used at all and that there was a large scale abuse of the Act for that purpose. I am placing certain figures before the House. I will also incidentally answer, in the course of my dealing with these figures, that

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Government are not in any way taking recourse to this Act for stifling any legitimate activity at any time—that should be understood very clearly. I shall be giving various figures. Only in case where certain individuals took recourse to violent activities (*An Hon. Member*: Question) or to subversive activities it became necessary to take action against them. Hon. Members of the House have been supplied with satistical information so far as the use of this Act is concerned. During the last three years—from 1957 to the end of September, 1960—there were as many as 569 cases of detention. It does not mean that in all these cases, the full period of one year as prescribed by the Act was allowed to pass. In some cases, as it is very clear from the information supplied, the detention was only for a very short period. But let us take into account the fact that during those three years, preventive detention cases amounted only to 569. If these fifures are further analysed, you will find that there were only 22 cases under section 3 (1) (a) (i). 500 cases were under section 3 (1) (a) (ii) dealing with activities which were affecting adversely either the security of India or which were likely to disturb public order in the country. The largest number was under this section. Then, under section, 3 (1) (a) (iii) there were only 45 and under section 3 (1) (b) there were only two. On 1st Janurary, 1960, there were in all 96 persons in detention in the whole of India.

The House will kindly understand that it is almost a very small number that was actually in detention on 1st January, 1960. Out of this, 14 were in the State of Bombay and 56 in West Bengal. These were the two States that had a very large number of detentions, making a total of 70 out of 96. Out of the 56 persons in West Bengal, as many as 54 had been detained for habitual goondaism.

Shri Tyagi (Dehra Dun): Not political.

Shri Datar: I would request the hon. House to note the circumstances. Goondaism in the first instance and the habitual act of goondaism were threatened or were being committed. That is the reason why out of the 56 persons in West Bengal as many as 54 had been detained for habitual goondaism. Similarly in Bombay, out of 14 persons, 13 had been detained for goondaism. I am quite confident that all hon. Members will agree that wherever there is goondaism, that has got to be checked at all events. (*Interruptions*).

Shri Braj Raj Singh: What about the ordinary law?

Shri Da'ar: Wherever there is goondaism, it has to be checked, either it is directly connected or is threatened to be connected. I have stated it clearly, and let the House understand it. Naturally, it has got to be properly checked. It has got to be eliminated.

Shri Braj Raj Singh: By the process of the ordinary law.

Shri Datar: It should be noted that the bulk of the detenus has been detained for entirely non-political reasons and it was mainly in order to curb the activities of habitual goondas in the cities of Bombay and Calcutta. I was pointing out that the number is extremely small, taking into account the magnitude of a country like India. All the same, as I have stated, the number is very small and that is a clear answer to show that the State Governments do not have recourse to the provisions of this Act only for the purpose of detaining. Only when it became absolutely essential that recourse was had in the interests of either the security of the nation or the prevention of disturbance of the public order. It was only for these two purposes mainly that it was done.

During the last year, the number was still very small. From 31-12-1959 to 30-9-1960, the number of detenus

was only 153. Out of this, 116 were under section 3(1)(a)(ii). I have already made a reference to this section. 37 were under section 3(1)(a)(iii). Out of the 116 that were actually in detention, the smallest number was with regard to persons who were directly concerned with parties and that number was only eight. (*Interruptions*).

This gives a complete answer to the allegation of hon. Members—which is often made,—that the provisions of this Act are being used for the purpose of stifling the activities of certain political parties. That is entirely incorrect, and that will show that only for the purpose of security of the nation and only for the purpose of keeping the public order quite safe and quite intact were the provisions of this particular Act used at all.

Shri P. N. Singh (Chandauli): May we know the break-up of the figure relating to those who were arrested in connection with political parties, with the year for such arrests? I want each and every year.

Shri Datar: I must point out that this Act is being very sparingly used and much less against parties as such. Unfortunately, it is likely . . . (*Interruptions*).

Mr. Deputy-Speaker: The hon. Members desire to have the break-up of those figures. If possible, the Minister may give those figures.

Shri Datar: We have given the break-up.

Shri Braj Raj Singh: It has not been given.

Shri Datar: So far as the statistical information was concerned....

Shri P. N. Singh: I have the figures with me. I have got them from the Reference Section. In 1959, 113 persons have been arrested in connection with activities relating to political parties.

Mr. Deputy-Speaker: He will have an opportunity to speak.

Shri P. N. Singh: I am saying that the number is 113. (*Interruption*).

Shri Datar: He will have opportunities to speak later. The Chair has already said that five hours have been allotted for this. So, he will have sufficient opportunity. I was pointing out that this Act was not being used.... (*Interruptions*).

Mr. Deputy-Speaker: Order, order. At least I should not be compelled to resort to preventive detention!

Shri Datar: I was trying to point out here that the Act was most sparingly used.

Now, may I refer to certain things that have happened recently in Assam as well as in Punjab? In Punjab, as you are aware, though there were a number of arrests—the arrests had to be made—still, the Preventive Detention Act was used only in one case. That should be understood.

Shri M. R. Masani: One too many.

An Hon. Member: Master Tara Singh. (*Interruption*).

Shri M. R. Masani: Shame.

Shri Datar: If that is 'sharme', it is for the hon. Member to have his opinion. But there was only one case there. So far as Assam is concerned, we are aware of the unfortunate happenings in Assam, but still, may I point out that only in one case there was first the application of this section for detention, and long afterwards, in September, there were four cases. These are two very local instances which would clearly show that the provisions of the Preventive Detention Act are used only when it becomes absolutely essential. Otherwise, they are not used at all. Similar is the case so far as the

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territory of Manipur is concerned. *(Interruptions)*. Unfortunately, if the running commentary goes on, I cannot go on with my speech.

15 hrs.

Mr. Deputy-Speaker: I would request the hon. Members that there ought not to be simultaneous speeches and so many of them. We should allow the Minister to explain his case and then afterwards hon. Members will have their chance.

Shri Datar: In Manipur, a highly ill-advised agitation was started.

An Hon. Member: Question.

Shri Datar: In Manipur, certain hon. Members of the Opposition wanted to have what they called a responsible Government. That was a matter for the Parliament to decide. It was certainly open to hon. Members to bring in Bills for introducing what they called responsible Government. In fact, according to us, it is already a responsible Government in the sense that the affairs of the territory of Manipur are under the control of the hon. Members of this House and the other. All the same, what they wanted was to force the administration there to yield before them. I will give certain figures to show..... *(Interruptions)*.

Mr. Deputy-Speaker: I am sure it is not the intention that I should be made to feel that I am quite helpless.

Shri Braj Raj Singh: That is never the intention.

Shri Datar: So far as that is concerned, only 8 persons had to be detained. As a matter of fact, as many as 238 persons had to be proceeded against under section 188 of the Indian Penal Code. 215 persons were released on tendering apology, 74 before prosecution.

Shri Braj Raj Singh: He is pointing at me. May I know the definition of tendering apology?

The Minister of Law (Shri A. K. Sen): The hon. Member is a lawyer.

Shri Braj Raj Singh: He is also a lawyer.

Shri Datar: Ultimately the movement fizzled out completely. As regards 238 convictions, if Government had recourse to the Preventive Detention Act only in the case of 8 persons, the House will agree that the Government have been using the provisions of this Act as sparingly as possible, perhaps more sparingly than what they ought to do. This is because Government are anxious that this is a measure which has to be used as sparingly as possible.

On both the grounds I mentioned—firstly the need of the Act even at present and secondly the sparing use of this particular Act—if these two circumstances are taken into account, you will agree that the Government is compelled in view of the circumstances of the case as they are, to bring forward this Bill. On the one hand, we are having developmental projects everywhere. We are trying our best to establish a Welfare State in the whole of India. On the other hand, we have got also certain lawless elements. This fact cannot be lost sight of. Therefore, we have to work on both the planks and we have to see that the developmental activities for the progress of the country are carried on as properly and as progressively as possible. It is for these two reasons that Government have been compelled to bring forward this Bill.

As I have stated, there are also certain other difficult problems. Espionage is there.

Acharya Kripalani (Sitamarhi): Are the Plans to be carried out to be shown as defence of the Preventive Detention Act? *(Interruptions)*.

Shri Datar: Wherever it is necessary, it has to be carried out, so far as our people are concerned.

Shri A. K. Sen: Acharyaji is putting words in the Minister's mouth which he never said.

Acharya Kripalani: He said that. (*Interruptions*).

Shri Datar: I stated that Preventive Detention Act has to be used. It is perfectly open to him to criticise us, but let him not put something into my mouth which I never stated. For carrying on our developmental activities as best as possible and secondly, for the purpose of removing all other difficulties which are in the way of the Government, which are in the way of the progress of the people, Government have to keep on the statute-book the Preventive Detention Act for a further period of three years.

May I point out one more circumstance? It was perfectly open to the Central Government to have placed the Preventive Detention Act permanently on the statute-book. (*Interruption*). I was going to point out that we have certain rulings of the High Court to which I shall not make a reference at this stage, except to point out that whenever there are such activities, they have got to be curbed and they have no reference to what are known as the fundamental rights under the Constitution. Fundamental rights are there, but if, for example, there are any unlawful elements, they have to be curbed. We make out proper cases and whenever any action is taken, that action goes to the advisory board, This is a point which hon. Members will kindly note.

Between 1st January, 1960 and 30th September, 1960, 84 cases were referred to the advisory board and the advisory board released the detenus only in 15 cases. This is also a circumstance which we have to take into account. The High Courts have rightly held that the machinery that has been provided is a proper machinery and is a judicial machinery and it is perfectly open to the detenus.

Acharya Kripalani: May we know in how many cases reference to the High Court was made? That is more material.

Shri Datar: So far as references to the High Court or Supreme Court are concerned, the number is still smaller. Only in a further small number has the reference been allowed.

Acharya Kripalani: May we know the figures of the references made to the High Court?

Mr. Deputy-Speaker: That he says is still smaller.

Acharya Kripalani: Let him give the figures. What is the point in saying all this?

Shri Datar: That is exactly what I have stated. The High Courts and the Supreme Court have clearly pointed out that this Act should not be considered as being opposed to article 19 of the Constitution, which gives certain rights. Whenever certain acts of an anti-social nature have been committed, then naturally it must be open to the executive—this is what is what their Lordships have stated—it must be open to the executive to satisfy themselves, not satisfying others. This is a subjective satisfaction. I am not offering my opinion here, I am quoting the opinion of the Supreme Court and the High Courts. There ought to be what is called subjective satisfaction. They only desired that the power should be used properly, in the sense there are no *mala fides* about it. Subject to this reservation and subject to the advisory body's opinion, to which I have made a reference, it can be done. I have pointed out that the High Court judges have stated that the advisory board machinery is a machinery for the purpose of ventilating the grievances of the detenus. They will go through all those circumstances and they would come to an independent judgment. Under the Preventive Detention Act we are bound to follow the orders of the advisory board. I was pointing out that the number of releases at the instance

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of advisory boards is extremely small; much smaller is the number of cases in which a reference has been accepted either by the High Court or by the Supreme Court.

If all these circumstances are taken into account, you would agree that this particular Act is not being used in a manner which is either unfair or improper, and taking all the circumstances into account you would agree that the period that we have asked for—we have asked for only three year period—is rasonable.

This morning I saw in the newspapers a reference to a certain letter addressed by certain hon. Members, including Acharya Kripalani. So far as that is concerned, my brief reply wiuld be this. This is a policy matter. It is not a question of the constitutionality or otherwise of the provisions of the Preventive Detention Act. On that point we have got the authoritative adjudication of the various High Courts that the provisions of the Preventive Detention Act are perfectly *intra vires*, they are within the Constitution. Article 22 itself states that it would be open to Parliament to make a law for preventive detention, and making such a law does not mean any inroads on the fundamental rights of the people. This has been made clear by the High Courts and the Supreme court. Under these circumstances, I fail to understand why there ought to be a reference to the Law Commission at all. The Law Commission would come into the picture provided there are certain matters of a constitutional nature which require that they should be properly scanned. Now, it is a question of policy, and a question of policy has naturally to be considered by the Government and by the hon. Members of Parliament. Therefore, I submit that so far as this particular point that arises out of the letter of my hon. friend, Acharya Kripalani and others, is concerned, that has no force at all.

Acharya Kripalani: What point?

Shri Datar: His contention that it should be referred to the Law Commission. I have answered that question.

The second point that was raised—it has appeared in today's newspapers—is to the effect that if it is to be continued, it should be continued only for a short period so as to enable the new Parliament to exercise its own discretion. So far as that point is concerned, normally we shall have the general elections in March, 1962, and the new Parliament would be starting its labours sometime in May 1962. Now all that we say is that the new Parliament should have sufficient time to consider this question. Parliament is always over-burdened with work. Therefore, some time must elapse before the new Parliament elected in 1962 will have time to come to this particular Preventive Detention Act.

Acharya Kripalani: How much time do you require?

Shri Datar: We have asked for three years. In May 1962 the new Parliament would be starting its labours and in December 1962 this Act would expire, giving sufficient time for the new Parliament to consider the whole question.

According to newspaper reports, they wanted these two points to be taken into account. I have pointed out that so far as the first ground is concerned, there is absoultely no substance or force in it. So far as the second ground is concerned, it is virturally accepted in the sense that the new Parliament will have about a year and some more time to consider the question of either extending the period or not extending the period. If that is taken into account, you will agree that what has been done is a perfectly proper thing and there is nothing wrong so far as the extension that we are seeking is concerned.

The last point is with regard to the point of order. So far as the point of

order is concerned, this is the sixth time that this Bill has been coming before Parliament from 1950 and may I point out that on no occasion was the President's consent at all required....

Shri Braj Raj Singh: Is that the reason why President's consent should not be obtained?

Mr. Deputy-Speaker: The hon. Minister should realise that it is no reason why it should not be obtained.

Shri Datar: I am merely pointing out the whole circumstance. It is not a money Bill, nor does it require the sanction of the President. So, I submit this Bill for the approval of the House.

Mr. Deputy-Speaker: Now Shri Bharucha may raise his point of order.

Shri Naushir Bharucha: This Bill is hit both by article 117(1) and 117 (3). That article should be read with clause (4) of article 22, which says:

> "No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—
>
> (a) an Advisory Board consisting of persons who are, or have been, or are qualified be appointed, as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention....."

Mr. Deputy-Speaker: That is right. If this Bill is passed, certainly Advisory Boards shall have to be appointed, as laid down in the Constitution. The Act cannot work unless the Advisory Board is also there. Does that involve expenditure from the Consolidated Fund of India? If this Bill is not enacted certainly the provisions of the Act would expire on 31st December 1960. That is right. Therefore, if this Bill is enacted, it means it is to be continued for another three years. Then the Advisory Board shall have to be appointed.

Shri Datar: Or continued.

Mr. Deputy-Speaker: Whatever it might be. Even if they are to be appointed or continued, that involves expenditure from the Consolidated Fund of India. But the point is that Article 117(3) only lays down that the Bill shall not be enacted into law.

Shri Naushir Bharucha: What I venture to submit is that this Bill would involve expenditure from the Consolidated Fund.

Mr. Deputy-Speaker: This Bill would involve expenditure, that I admit.

Shri Naushir Bharucha: It says that it shall not be moved.

Shri Datar: No, it does not say 'moved'.

Shri Naushir Bharucha: It says that it shall not be introduced or moved.

Mr. Deputy-Speaker: That would be about other Bills. He has confined himself to article 117(3) and he cannot go back again to 117(1). Article 117(3) is very clear. It says:

> "A Bill which, if enacted and brought into operation, would involve expenditure from the Concolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

Shri Braj Raj Singh: It says about consideration.

Mr. Deputy-Speaker: That is what I am coming to. This Bill shall not be passed by either House unless the

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President has recommended to that House the consideration of the Bill. If the recommendation for consideration is not there, we cannot pass it.

Shri M. R. Masani: Or consider it.

Mr. Deputy-Speaker: No, we cannot add words from our side. It is very clear. It has been held many a time before as well. It cannot be passed. Government has got time while we are discussing it to obtain that permission.

Shri Naushir Bharucha: Let them obtain the permission and then later on we shall consider it.

Mr. Deputy-Speaker: I think it involves expenditure and permission ought to be there. But I also feel that the Government can obtain the permission while it is being discussed. We cannot pass it till the permission is there.

Shri Datar: So far as the point that you have raised is concerned, I shall consider that question. But as you have rightly pointed out, article 117(3) says "shall not be passed by either House". We are still at the consideration stage. Therefore I shall deal with this matter. *Prima facie* I am pointing out that whenever an advisory board is appointed, we are appointing High Court judges who are already paid out of the Consolidated Fund.

Mr. Deputy-Speaker: You have authority to appoint those judges who are retired and even advocates. I know of a tribunal that is working in the Punjab. There is one man there who is a retired Sessions Judge. Therefore some expenditure does come in.

Shri Datar: We come into the picture only indirectly. I was pointing out that the advisory boards have to be appointed by the State Governments. To that extent we do not come into the picture. The Consolidated Fund is not taken into account. But I would agree.....

Mr. Deputy-Speaker: It is right that the administration will be with the States, but the passing of this law would involve expenditure from the Consolidated Fund of India in so far as Union Territories are concerned.

Shri Nath Pai (Rajapur): Not all the administration will be with the States. What about the centrally-governed territories?

Mr. Deputy-Speaker: Whatever it might be, the passing of it would involve expenditure.

Shri H. N. Mukerjee: May I make a submission? You are diffrentiating between certain processes of legislaton and because the expresson "shall be passed" is there in the Constitution your ruling seems to be that we can have the motion moved, we can have the consideration of the clauses of the Bill, but only we cannot pass it. My submission is that passage of a particular Bill is a continuous process which involves certain stages and which, according to parliamentary practice, is fairly well-known and is standard. There can be no deviation from it. When Government puts forward an item in the agenda in the form of a particular Bill it is absolutely incumbent on Government to see that it is passed. It is only with a view to its being passed that the motion is being moved and consideration of the clauses is taking place. We are having the motion moved, we are having the consideration of the clauses and are waiting for some eventuality which may or may not take place. This is a precarious state of affairs. In view of that and in view of the continuity of the whole thing, I feel you should rule that this matter should not be discussed at all in this House at the present moment.

Mr. Deputy-Speaker: I am very sorry that in that respect I cannot agree with the hon. Member because that has happened before also. If I remember aright, once I raised that very point myself and I was overruled. There are rulings here by the

different Speakers and that has been interpreted like that. Therefore I am obliged to go with those decisions and I cannot depart from that.

Let us proceed now. Motion moved:

Shri Raghubir Sahai (Budaun): Before you place the motion before the House, I would like to put a question to the hon. Minister.

Mr. Deputy-Speaker: There is ample time for that. Let me place the motion before the House. Then I will allow him. Motion moved:

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

There are some amendments also. Is Shri Braj Raj Singh moving the first one?

Shri Braj Raj Singh: Yes, Sir. I beg to move:

> That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th December, 1960. (1).

Mr. Deputy-Speaker: He is going to move the second also?

Shri Braj Raj Singh: Yes, Sir.

Shri Naushir Bharucha: I am bracketted with Shri Braj Raj Singh as regards amendment No. 1 for circulation of the Bill is concerned. So I am also entitled to move it.

Mr. Deputy-Speaker: I call the hon. Member whose name is first. All others are deemed to be included in that.

There is another amendment by Shri S. M. Banerjee and Shri Aurobindo Ghosal.

Shri S. M. Banerjee: I beg to move:

> "That the Bill be circulated for the purpose of eliciting opinion thereon by the 20th December, 1960. (4).

Mr. Deputy-Speaker: The other amendments relate to the clauses. Now Shri Braj Raj Singh might move his other amendment by reading out the names of hon. Members.

Shri Naldurgkar (Osmanabad): I have also given notice of some amendments. My amendments are Nos. 5, 6 and 7.

Shri Datar: Then there are amendments Nos. 8 to 11 also.

Mr. Deputy-Speaker: They are to the clauses. Those amendments relate to the contents of the Bill.

Shri Nath Pai: Mr. Deputy-Speaker, Sir, I am just seeking a clarification from the hon. Minister. He made a reference to a letter which was written by certain hon. Members of this House to the hon. Leader of the House and Prime Minister. Are we to assume that what he says purports to be the reply of the hon. Prime Minister? Was he giving the reply to the contents of the letter on behalf of the hon. Prime Minister or was he just giving his views? This is a very novel method. Letters written as confidential letters to the hon. Prime Minister are replied to in this manner, whether they happen to be quoted in the press or not is a secondary matter. We would like to be enlightened on this whether he purported to give the hon. Prime Minister's reply on the issues which were raised and in some of which we are interested. We seek this clarification from the hon. Minister because he brought in the issue of the letter.

Mr. Deputy-Speaker: My first reaction would be that if it had been written to the hon. Prime Minister and if the reply was intended to come from him, it will not have been given to the press. When it has been published in the newspapers it becomes public property. Everybody can comment on it, deal with it or criticize it. With that he would agree.

Shri Nath Pai: Yes, Sir. But the press says that it is rumoured, heard or learnt and no text of the letter has appeared in any paper so far as I know. All that the paper says in its usual smartness is that it is learnt that a letter has been sent and it may cover these points. What he has said as a member of the Government is something very different. It does raise some questions of propriety. But leaving that aside, may I ask him whether he purported to give a reply to the points raised in that letter on behalf of the hon. Prime Minister or is it that he was just airing his views?

Shri Datar: I have replied to the points said to have been raised in that letter. It has been reported in today's papers and that was the reason why I referred to that.

Mr. Deputy-Speaker: It is not the reply on behalf of the hon. Prime Minister?

Shri Datar: No. It is only my reply to what has appeared in the press.

Shri Nath Pai: We never called upon him to reply to that.

Shri Raghubir Sahai: I wanted to ask a question of the hon. Minister the reply to which would facilitate the discussion on this motion. My question is whether any State Government has recommended to the Central Government the extension of this Act. If so, which are those Governments?

Shri Datar: The hon. Member was not possibly present when I referred to it. All the States have agreed to it.

Mr. Deputy-Speaker: Shri Braj Raj Singh might now move his amendment. Then the motion and all the three amendments will be before the House for discussion and we will proceed.

Shri Braj Raj Singh: Sir, I beg to move:

> **That the Bill be referred to a Select Committee consisting of** Shri Kanhaiya Lal Balmiki, Shri S. M. Banerjee, Shri Naushir Bharucha, Shri Tridib Kumar Chaudhuri, Shri B. N. Datar, Shri Bhaurao Krishnarao Gaikwad, Shri S. C. Gupta, Shri Khushwaqt Rai, Shri Surendra Mahanty, Shri S. A. Matin, Shri Hirendra Nath Mukerjee, Shri Nath Pai, Shri Kashi Nath Pandey, Shri Raghubir Sahai, Shri Shivram Rango Rane, Shri Jaganatha Rao, Shri Diwan Chand Sharma, Shri Prakash Vir Shastri, Shri Prabhu Narain Singh, Dr. Ram Subhag Singh, Shri Mahavir Tyagi, Shri Atal Bihari Vajpayee, Shri Ramsingh Bhai Varma, and Shri Braj Raj Singh with instructions to report by the 15th December, 1960. (2).

Mr. Deputy-Speaker: Has he obtained the permission of all the hon. Members included here?

Shri Braj Raj Singh: I have obtained the permission of all except Shri Datar's.

Mr. Deputy-Speaker: The motion and the amendments are now before the House.

Shri Rane (Buldana): I have not given my consent.

Shri D. C. Sharma (Gurdaspur): I also have not given my consent.

Mr. Deputy-Speaker: Even if he had not included the names of these hon. Members, he could have moved it.

Acharya Kripalani: May I submit that the names of those have not given their consent may be dropped?

Mr. Deputy-Speaker: It is very easy to say like that, but the hon. Member should have taken care before he moved it in the House to take permission and not mention the names of those hon. Members from whom he has not got the permission. He ought to have taken that much care. Even if he gives seven, eight or ten names, he could move it without including those who may be unwilling. Why should he include them, if he has not consulted them?

Shri Braj Raj Singh: Only one or two persons were not there. The others, I met. Shri Raghubir Sahai was there. So many Members, I have taken their consent.

Mr. Deputy-Speaker: The hon. Member shall take greater care in future to see that he gets the consent of those whom he wants to include or he may include those who do consent.

Shri Achar (Mangalore): Can he move such an amendment?

Mr. Deputy-Speaker: I will see that those who do not want to be included are excluded and only others remain on that.

There is one other point. Shall I have to place a time-limit also on this? That must be done because there would be so many Members wishing to participate.

Some Hon. Members: Fifteen minutes.

Mr. Deputy-Speaker: Fifteen minutes except the Leaders. They may require a little more.

Some Hon. Members: And those in the Select Committee.

Mr. Deputy-Speaker: They should not speak at all. Others should advocate for them.

Shri H. N. Mukerjee: I regret to have to say this, but not even from our good friend Shri Datar did I expect a speech so unconvincing, so inept and so unmindful of the gravity of the subject and the depth of feeling in the country about it, and that is why I feel that we have got on to a rather bad start. That is not surprising because this whole Bill is so unsavoury that it is only natural for it to have a bad start.

You will recall, because you were in the Chair, that when this Bill was sought to be introduced, in spite of there being a general convention in this House that we do not oppose a Bill at the introduction stage, we did oppose it at that time because this is kind of Bill which has to be opposed lock stock and barrel at every stage of the proceeding. This is a Bill which is repugnant to all that is held to be decent and precious in the political life of a country. It is only a pity that it finds its place in the Constitution in the same Chapter as the Chapter on Fundamental Rights. Surely when the Constitution was promulgated, the idea at the back of the mind of those who were responsible for it must have been that this was a measure which could be used in an emergency, only when there is a special situation. But, the Government of the country has proceeded as if this is a matter which could be put permanently on the statute-book. As a matter of fact, Shri Datar, at one stage, said in a manner which could almost be interpreted as threatening, that the Government could have put it permanently on the statute-book, but because of the benevolence of the administration, they have not done so and they have extended it only for a mere three years.

You remember, Sir, because we were together in this House in 1952, when a battle royal was waged over this question of preventive detention and it was at that time that in many of our minds, the iron had entered because, we discovered that the Government of this country, in spite of mouthing certain pharses, is intent upon repressive measures and upon a vindictive policy in regard to political opposition. I recall that on that occasion we were told how, when in 1950, a time which was a great deal more troubled than it is today, this measure was first proposed by the Home Minister who was by no means a supporter of progressive moves, he said in this House, which was functioning before Parliament came into the picture, that he had spent some nights without sleep, because, he did not know how he was going to justify before his country the idea of preventive detention in Independent India. That

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was in 1950. The justification was given that it was only a temporary measure which will last a mere twelve months. When twelve months were over, it was given an extension. Then began the period after universal suffrage comes into the picture and after this Parliament of elected representatives of the people begins to function. Then, we find preventive detention makes a permanent settlement on our statute-book by indirect and devious methods which deserve no kind of support and this kind of law is being put on the statute-book.

I feel surely the intention was to use it in an emergency. If the Government could come forward today, rather if Shri Datar could tell us that there was an emergency in the country or an emergency which was threatened in the country, if he could give us any facts in support of the proposition, we may have given some serious consideration. But, the way in which he has proposd this motion is absolutely frivolous, and therefore, I feel that if the House is going to judge this motion on its merits, it should be discarded at once, and if it cannot be pushed out on account of technical reasons, it should be pushed out by the intelligence and conscience of the Members of this House.

Shri Datar has referred to the working of the Act and he has told us how very considerate the Government is because, only a very few people are preventively detained. I should have thought that, according to all canons of reason, the very fact that, with all the ill-will in the world against the opposition, the Government could preventively detain only a few people, should be an argument against the the continuation of the Preventive Detention Act. We do not accept the figures here. Shri P. N. Singh said that many of these figures cannot be taken on trust. But, even as these figures are, if we take them on trust, what is the position? The total number of persons detained according to Government figures on 31st December, 1959, was 96. Out of them, as many as 69 were held up for goondaism, 12 for Naga hostile activities, 5 for harbouring dacoits, 3 for espionage, 2 for smuggling, 2 for preaching violence, 2 for violent activities and 1 was a foreigner who get entangled. I should think that as far as goondism is concerned, as far as harbouring dacoits is concerned, as far as smuggling is concerned, as far as espionage is concerned, as far as violent activities are concerned, surely, it was open to the Government to proceed against whom they had proof. In the case of espionage or in the case of Naga hostile activities, I can concede that there may have been a conceivable justifition for preventive detention. But, what are the other cases? There can be no possible reason why, when the Government has in its armoury so many other weapons, it should take recourse to preventive detention. There is section 107 Cr. P.C. The Government can arrest, an ordinary policeman can arrest a man and after some time, have remand for 15 days. There is section 115 of the Criminal Procedure Code. They are bad enough; they are pernicious enough; they are already on the statute-book. People could be bound down for good behaviour and that sort of thing. At the same time, the Government does not use whatever weapons there are in its armoury, but, on the contrary, takes recourse to preventive detention, and in cases which, on its own competence, ought to have been proceeded against in a court for judicial adjudication, they take recourse to this step of preventive detention.

Then again, I find that compartively speaking very few people are detained under section 3(1)(a)(iii) because this sub-clause refers to the maintenance of supplies and services. Most of the people who are detained are detained under 3(1)(a)(ii) because the maintenance of public order is supposed to be in jeopardy on account of the activities, or the suspected future activities, of these people, but

as far as the people who are hindering the maintenance of supplies and services are concerned, we find Government extremely solicitous in regard to that kind of people. I could have understood the position if Government comes forward and says that anti-social activities are being perpetrated by blackmarketeers, profiteers and hoarders, who are there on the scene; they have not to be hunted for because they are so very well known, they are so notorious. If Government wanted really to proceed against anti-social characters, then those who are hindering the maintenance of supplies and services would have figured very much more than they do in the list, but we find on the contrary that under the specious plea of the upsetting of public order, in the name of the maintenance of public order, generally speaking those who are the political opponents of the Government are being put in jug, and that is why we oppose the administration of the Act. The administration shows how very vindictive, how very motivated, how very tendentious it is.

I remember the days, just over a year ago, when in West Bengal there was a movement on the part of the people who were asking for cheaper prices of food. While that movement was going on—and it had definite and almost universal popular support which was demonstrated in so many different ways—87 people were put in preventive detention, including 17 members of the Legislative Assembly. We did not find on that occasion one single profiteer, one single blackmarketeer being preventively detained. On the contrary, preventive detention was being used against people who were only asking for a reduction in the price of rice, a morsel of which is necessary for the poor man; against those people who were trying to conduct an agitation for a reduction of the price of foodgrains; but not a single case was there when Government went forward in order to put under arrest, under preventive detention, any person charged with blackmarketeering and that kind of offence.

We noticed also how on that occasion the appeallation of habitual goondas was being given to political opponents. On t hat occasion, new pharseology was also employed, "habitual disturbers of the peace", and they were given a lower classification in jail when they were in detention. This kind of addition to the lexicon of British criminology took place because the vindictive processes of the administration had to be satisfied.

This happened at a time when the people wanted satisfaction of their legitimate desires, and what they got was the repression of the Government, a repression conducted in a manner which was so patently partial and which showed how the Government was not going to proceed against really ati-social elements. That was exactly what was demonstrated very clearly in those days.

As Members of this House, we know very well how political vindictiveness plays a large part in the operations of Government under the Preventive Detention Act. We have a Member, very influential in South India, Shri Thevar, who is not often here because he is very ill I am told. This colleague, who, in his own area, is a highly popular person, was preventively detained, and in the period when he was preventively detained, the police prepared some kind of a case against him, though he was let off after detention. The case was brought against him and he was released by the court because the case could not stand on its own legs. Here is a political figure of considerable importance in South India who comes to this House with a very large popular backing who is detained just like that, only because the police wanted some kind of opportunity in his absence to have all sorts of evidence, perhaps even manufactured, in order to bring a case against him, but the case had no legs to stand upon and he had to be released.

Then there is the case of Shri P. N. Singh. He is himself here and he will

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speak on it, I know. We raised the matter in this House because we were flabbergasted to learn that a Member of this House goes from here and immediately he is taken away because he happens to be a leader of a particular party whose look perhaps the Government does not like. TThat party m have at that point of time declared its intention of going on a certain kind of agitation against the Government, but surely it is the inalienable right of all organised bodies in this country to register their protests against Government activities in whichever way they like; and if they chose a heroic way, God bless them. It seems Government did not like it. And he went back home immediately to be arested in conditions which made it so suspect. Mr. Speaker was in the Chair at that time, and I know that even though he perhaps felt that we were going rather outside the technical aspects of the matter, he listened to us when we said that there were very genuine grounds for believing in the *mala fides* of the Government transaction. I am sure Shri P. N. Singh will bring up this case in greater detail, but I have seen details of the High Court judgment in this matter in *The Leader* early this month, and the judgment makes it very clear that not only was there no real reason for his detention and they got him released, but they examined his charge of *mala fides* against the Government; and the High Court's decision is couched in such expressions as almost amount to finding that there was *mala fide*. They of course, said they could not determine the *mala fides* of the matter but that there were some very suspicious circumstances. They did not say the *mala fides* had been proved, but that there had been some very suspicious circumstances. The High Court's observations are such that they give a very definite feeling that the hon. Judges felt that something was very wrong as far as Government's proceedings in that case was concerned.

In the recent instance of the Central Government employees strike, we also know how the weapon of preventive detention was utilised. It is a very recent story, everybody knows about it, and we know how political vindictiveness was surely behind that picture.

Then, in Lucknow recently there have been renewed disturbances, but I was rather surprised to discover that in August when the disturbances took place last time, a number of students were preventively detained.

Shri P. N. Singh: They are still in detention.

Shri H. N. Mukerjee: Even now eight of these students continue to be under preventive detention for something which happened in August, 1960. The position has become so scandalous that even the Vice-Chancellor of the Lucknow University, according to a circular issued by the University, was approaching Government in order to secure the release of these prisoners. And the students of Lucknow, according to newspaper reports, are going about demonstrating, asking for the release of these prisoners, and that has created another tempestuous situation in that State of Uttar Pradesh which is today the home of all kinds of troubles for the administration.

I do not understand why it is that students of a university who figure in certain disturbances, rightly or wrongly we do not know, in august should continue to be detained; for having been suspected to be likely to do certain things in, the month of August, they continue to be in detention in the month of December, 1960. This is how the administration proceeds, and this is why this kind of report regarding the working of the Preventive Detention Act satisfies nobody. It is merely an example of the utter ineptitude which Government can show, and if this is supposed to be the justification for the prolongation of a much hated measure, then surely I do not know how to characterise Government's attitude in this regard.

I know also how Government proceeds in regard to this kind of thing. The other day, for instance, we discovered on what kind of information Government proceeds. The Prime Minister himself had referred in this House the other day to three names of people who, in regard to the India-China dispute, were supposed to have made statements which went against the interests of our country. We know very well that the press does not publish these things. When the Prime Minister read out the names, everybody placarded those names. When those who were named denied it altogether, then, of course, the press keeps comparatively silent. In regard to these three cases, I have got telegrams and letters which have all been sent to the Prime Minister. In regard to one of these names, a member of the West Bengal Legislative Assembly, he has, on the floor of the Legislative Assembly, made a statement completely repudiating the accusation, and he has informed me that he has written to the Prime Minister in reference to this accusation which he repudiates completely. In regard to another man here, a gentleman of the name of Kameshwar Pandit, he also has written to the Prime Minister and sent me a copy, denying the whole thing altogether, and saying how the report was truly a concoction. In the third place, the other man has also sent a letter to the Prime Minister, a copy of which ne has sent to me, in which he repudiates the whole thing.

Shri Asoka Mehta (Muzaffarpur): May I know whether any of them was preventively detained?

Shri Chintamoni Panigrahi (Puri): It was based on police reports.

Shri H. N. Mukerjee: These reports are made, and on the basis of these reports, action is taken. These reports may or may not be correct. It is one man's word against another. The police informers' words are against another man's word; and these words are placed before us. This gives an idea as to how Government proceeds when it makes up its mind in regard to the character of a man or to the possibilities of his conducting subversive activities at present or in the future. This kind of thing makes it very clear that unless Government changes its ways, unless Government ceases to continue to depend upon the kind of police information which used to come from a certain type of people, unless, that is to say, there is an entire change in the spirit of the administration, nothing really good and happy can happen in our country. And yet, we find Government proceeding in this kind of way. That is why it is very relevant that Government answers Acharya Kripalani's question when he asked how many cases of the Preventive Detention Act go up to the High Courts and how many of them are upheld, not so much against the advisory boards saying one thing or the other, but among those cases which can be taken to the High Courts, how many are upheld, how many detention orders are upheld, and how many are not upheld. That is a very important matter, because the High Court's decision in regard to this kind of thing is certainly a very important and reliable criterion. Yet, we find that Government wants extension of the Preventive Detention Act.

I may say, perhaps though I may be repeating it, because it must have been said earlier, that when in Kerala, the Communist Government was functioning, and when against that Government, there was a movement which openly declared its intention of subverting the administration, there was not one single instance of that Government taking recourse to Preventive Detention. We, I suppose, are believed to be people of a rather authoritarian temperament, and if we wanted it, perhaps, in Kerala, the Communist Government of that State might have adopted certain steps in this regard, but they did not do so because they felt that in the conditions which prevail in our country today, it would be foolish, it

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would be fantastic, it would be absolutely wrong, to adopt the kind of tactics which Government seems to adopt habitually in our country.

By this continuance, Government is making the Preventive Detention Act a permanent measure on our statute-book. At one time, when our exhilaration about national life was very much more pronounced, we used to describe such things as lawless laws or the black Acts. This is an ugly blot on our statute-book, and the sooner it is wiped out, the better, but Government does not seem to have any intentions in that regard. I really cannot understand why Government is so nervous about it, when all over the country, there is a desire, only if Government holds out a helping hand, to go it together; let us all move together; we all want to do so; it is only Government's guilty conscience, or God knows, what, which stands in the way, and that is why this ugly blot continues on our statute-book, and as I said earlier the sooner it is moved out, the better for all concerned, but I do not have any hopes about the administration, particularly after having heard the kind of frivolous justification of a very serious measure which Shri Datar has wanted to put forward.

Shri A. K. Sen: Mr. Deputy-Speaker, Sir, have you reserved your ruling on the question of the President's recommendation, or have you directed that such a recommendation under article 117(3) should be forthcoming? I had a few words to say, but suddenly I was called to the other House, because one of my Bills had come up.

Mr. Deputy-Speaker: At that time, the hon. Minister in charge did not say that he wanted any legal advice; he gave his answer straightway.

Shri Datar: I said that I would examine this question.

Shri A. K. Sen: I am making my submission really for your assistance.

Mr. Deputy-Speaker: If he has to say anything about that, I shall be prepared to listen; I am always open to conviction, if there is something new, but I have expressed my view.

Shri Nath Pai: On a point of order, Sir. A ruling has been given now.

Shri A. K. Sen: No.

Shri Nath Pai: Yes, the hon. Minister was absent at that time. We are always interested in listening to the views of our Law Minister, particularly, the present occupant of the position, since he is an eminent lawyer, but there is a question of a point of order involved in this. A matter was raised in this House, and you were pleased to hear both sides, and then you gave your ruling. Now, is it open to anbody, because he was absent then, to come forward now and give his views, howsoever esteemed he may be and howsoever learned he may be? If you are going to allow him, then I would like you to consider that this right will have to be extended to other Members, for, even when a ruling has been given, an hon. Member can still come and say something. This is the point that is involved, and I would like to be guided by you.

Mr. Deputy-Speaker: If something is said before me, that has not already been argued, I would be prepared to listen to the Law Minister as also to the other Members. Really, it is a legal question; if the same arguments are going to be adduced, I am not going to review my order.

Shri Nath Pai: What about the validity of your ruling? Are you going to reopen it?

Mr. Deputy-Speaker: That stands, but every hon. Member has got the option to convince me. That has been said here so many times.

Shri Naushir Bharucha: Even after the ruling has been given?

Mr. Deputy-Speaker: I have given that ruling. Let me hear, if there is some new point, and then I shall consider. I should not be anticipated beforehand.

Shri H. N. Mukerjee: Could I seek a clarification? Later on, if a ruling is sought to be reopened by a private Member, a very humble Member from this side, would the Chair be as considerate to him as you, Sir, happen to be in the case of the Law Minister?

Mr. Deputy-Speaker: Surely, if it is a legal question, I must be considerate.

Shri A. K. Sen: I am very obliged to you, Sir, and I am also obliged to the hon. Member Shri Nath Pai for the compliments he has paid me, but I am very sorry to say that his objection does not appear to be very sound, because the Speaker is entitled to revise his opinion, if he thinks that a good case is made out for revision of his ruling.

I have a recollection that I had argued this point before, namely that article 117(3) would be attracted only if the provisions of the Bill by themselves result or would result in expenditure from the Consolidated Fund of India. Simply because there is a supposition that in carrying it out, Government might employ people and incur expenditure from the Consolidated Fund of India, this article would not be attracted, because I can tell you for information that there is no reason to believe that any expenditure would be involved. A High Court judge who presides generally does not charge anything.

An Hon. Member: What about retired High Court judges?

Shri A. K. Sen: The Bill by itself does not contain any provision which would involve expenditure from the Consolidated Fund of India. Hon. Members are only supposing that it might result in employment of people or doing something which would result in expenditure. But, where is the provision which involves expenditure?

I have a recollection that I have argued this question before you,. . .

Shri Braj Raj Singh: Section 10 of the original Act provides for expenditure.

Shri P. N. Singh: The whole position is this . . .

Mr. Deputy-Speaker: Order, order. Let him argue his case.

Shri A. K. Sen: I have a recollection that on an earlier occasion I had argued this point, and you were good enough to sustain my contention.

An Hon. Member: Was it in the Rajya Sabha or here?

Shri A. K. Sen: Might be.

Mr. Deputy-Speaker: If the hon. Law Minister can give me an indication as to when this point arose and when I had given that decision, it would be better.

Shri A. K. Sen: I shall try to find out from the other House also whether I had argued it there or here.

Mr. Deputy-Speaker: Does the hon. Minister say that I gave that decision?

Shri A. K. Sen: I have a recollection that I had argued this point, and there was a decision; perhaps, it might be in the other House.

Mr. Deputy-Speaker: Rather, I had observed that on an earlier occasion, I had raised that point, and I had been overruled. That was what happened to me ten years ago. I have that recollection rather the other way. So if really the hon. Law Minister can find that out, we can consider that.

16 hrs.

Shri A. K. Sen: I will find that out tomorrow.

Mr. Deputy-Speaker: So the ruling stands so long as no other point is urged.

Shri Asoka Mehta: I felt depressed when I was listening to the speech of my hon. friend, the Minister on the other side. I felt depressed because it appeared that the use of such measures blunts the sensitivity of persons, because he was assuring us, 'After all, why worry about this measure when the liberties of only 500 and odd persons have been taken away?' This is an astounding argument. Never in the history of the world has the liberty of individuals been measured in terms of quantity. I can understand making out a case and saying, as he said himself, that when Sardar Patel moved this Bill for consideration, he made out a case pathetically. That was the word he used. There was pathos in his heart, the heart of the man of iron and steel. His heart was bleeding when he said that a measure like had to be put on the statute-book. This is not what I am saying. This is what the Minister said. And what was he saying today? Everything is perfectly all right. All his adjectives were superlative, because after all the liberties of only 500 and odd persons have been taken away That is the blunting of the sensitivity, because liberty means, as has been defined over and over again by the highest judicial authorities in the country, the right of locomotion. It is the right to move about, and when the right to move about of even one person has been taken away, I believe that the conscience, of the people has to be roused and they have to be careful about a Government that comes forward and argues that way.

Why do you worry? Only 500 and odd people have been affected. Only two Members of this House out of 500 have been detained. Therefore, the 498 have not been affected. Why worry about it? Is this thing to be measured quantitatively? The fact that this quantitative approach has come from Government is a measure of the debasement and decay that has already occurred as far as the handling of this matter in this administration is concerned.

The Minister told us that there have been all kinds of judicial pronouncements even at the highest level. May I invite his attention to what the Supreme Court had to say in early as 1953 in the case of Asutosh *vs* the State of Delhi? This is what the Court said:

> "There can be no better proof of *mala fide* on the part of the executive authorities than the use of the extraordinary provision contained in the Act for purposes for which the ordinary law is quite sufficient".

The Supreme Court has gone to the extent of saying that this would be *mala fide*, where the ordinary law is sufficient. It has to be established and proved; the onus is on them. That has not been done. Whether that has been done or not, we are told that the Constitution permits it. Of course, the Constitution permits such legislation being enacted. If it could not be enacted, it would have been struck off straightway by the courts. This House would never have passed such a piece of legislation for which we have not the competence and which is repugnant to the Constitution. This House would not have entertained any such thing. You, Sir, in the Chair would not permit us to do so. That is hardly an argument. The argument is: Yes, it may be a legitimate law, but are the circumstances such as to justify it? And how has it been used? And what is the attitude behind it? In matters of this kind, the attitude is paramount, because ultimately it is a subjective judgment where the criterion is that of subjective satisfaction. I think Shri Datar would be satisfied very easily if all the 498 of us had been arrested and put under detention, because his whole attitude—

subjective attitude—is one of total indifference.

That is why I said that I felt utterly distressed and depressed that we have in an important position a person who seems to be so complacently satisfied about the way this measure has been used. This smugness in a matter where the basic liberties of the people are concerned is a matter of the deepest concern to all of us.

This particular piece of legislation was introduced in 1950, for what purpose? Not because there was some violence, some *goondas* and something there. Surely in this big land of ours, there will always be a few wrongdoers. Sardar Patel pointed out why this measure had to be there. In the course of his speech on the 25th February 1950, he said:

> "The Communists in India who have been by far the largest number constitute a danger to the existence nad security of the State. I should like to say here that our fight is not with Communism or with those who believe in the theory of Communism, but with those whose avowed object is to create disruption, dislocation and tamper with the communication, to suborn loyalty and make it impossible for normal government based on law to function. Obviously, we cannot deal with these people in terms of ordinary law".

I do not know whether the Communists are still wedded to this policy or not. I am not. But one thing is obvious, that this law is not being used against the Communists. I am happy about it because I do not want this law to be used against any one. But the point is that these were the conditions, this was the situation, envisaged for which this law was there. But now this handy weapon is, of course, to be wielded, and Shri Datar enjoys wielding it, in all kinds of ways! Because he says, 'After all, I am going to cut off the heads of only 539 persons; the rest of you are going to be quite comfortable with your heads on'.

I have mentioned the context in which this legislation was introduced. That context has completely changed. He did not point out, 'Yes, there are these kinds of elements against whom we have been using this Act'. He gave us a lot of figures. But I also have tried to analyse his figures. 569 persons may have been detained in the last three years. Out of the total number of those who have been in detention, some were in detention even before the end of 1957, when the Act was extended. Out of the 668 persons who have been detained, who were either detained earlier or were detained during the period—he says 569 were detained during this period—as many as 140 were ordered to be released by the Advisory Boards, 31 were released by the orders of the High Courts and the Supreme Court and the Government *suo motu* released 284—probably they were released even before their cases were brought to the Advisory Boards. Therefore, out of the 668, I imagine about 20 per cent were ordered to be released by the Advisory Boards and almost 30 per cent were released by the Government *suo motu*. Is this not a misuse of those powers?

Shri A. P. Jain (Saharanpur): It only shows honest motives.

Shri Asoka Mehta: Honest motives? Of arresting people and taking away their liberties? You are a distinguished lawyer. You are the Chairman of the Police Commission. You know that a person cannot be detained even for 24 hours without being produced before a court.

Shri A. P. Jain: Mistake rectified.

Shri Asoka Mehta: Here people's liberties are taken away. That is the whole trouble with this Congress Party—that you can take away the liberties of the people for a week, ten

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days, twenty days, three months. What does it matter? After all, we are rectifying it. I do not know how long my honourable colleague here was in detention.

Shri P. N. Singh: More than six months.

Shri Asoka Mehta: You know what the High Court had to say about it. What has been rectified? His constituency was denied the privilege of being represented by him in this House. He got only Rs. 500 for costs. There is no provision for any demages. And what adequate damage can there be if a Member is deprived of his legitimate right and honoured privilege of representing his constituency here, and keeping the Government on the proper rails? To say that this was rectified, coming as it does from the Chairman of the Police Commission, is astounding. I am surprised what kind of reforms he is going to produce. I am sorry for the state of U.P. where not only conditions are pretty bad but even the persons in whose hands the question of recommending reforms has been entrusted have this kind of approach and this kind of attitude.

Acharya Kripalani: Chairman of which body?

Shri Asoka Mehta: Shri A. P. Jain is the Chairman of the Police Commission in U.P.

Acharya Kripalani: He acts as a policeman.

Shri Asoka Mehta: About these M.Ps. In the last 3 years, 3 M.Ps. were detained, 30 M.L.As. and M.L.Cs—all goondas probably. I do not know. And, not one of them belonged to the Congress Party, but belonged to all other parties; every single party sitting here has the honour or discredit of having at least one of its M.Ps. or M.L.As. or M.L.Cs., barring, of course the Swatantra Party. Of course, the Swatantra Party is swatantra and they can never be caught. But, barring the Swatantra party every single party here has had the honour or the dishoner of having a Member of Parliament or Member of the Legislative Assembly or a Member of the Legislative Council being detained. Is this not tarring us with a foul brush? Each one of us has not merely harboured some goondas in our ranks but have goondas among our closest and intimate colleagues; and yet it is being said that it is not being used for political purposes.

Again, if we analyse it, this Act has been used in West Bengal on 343 occasions, in the last 3 years, in Bombay 113 times, in Orissa not at all, in Kerala not at all, in Madras not at all, in Mysore only once and in Bihar 4 times, and in Andhra Pradesh 5 times. Am I to understand that there are a lot of evil-doers or wrong-doers whatever you call them, who endanger the security of the State or whatever it is, in West Bengal and in Bombay? And, that in Orissa, Kerala and Madras they are absolutely clean and there is no trouble and they carry on without the use of this measure at all; only my friend Dr. B. C. Roy cannot carry on without this Act? Surely, no the use of this measure at all; only the people of Bengal than to say that they behave in such a manner that in that State this particular Act had to be used 343 times and there are no other weapons or measures with the Government. This only shows that these Governments, the Governments of Bengal and Maharashtra, of Bombay, have been behaving in a kind of lax, lackadaisical manner. They do not mind. I hope my hon. friend Shri Ajit Prasad Jain will look into this matter. His State also is not quite free from this. I find the number there is 15. Therefore, this is lax use of these powers. These powers, these special powers, as the Mover said, which were sought to be placed upon the statute-book by Sardar Patel with

a sob in his throat, with a sense of pathos in his heart, are being used by the Governments of Bengal and Bombay, particularly, and to a lesser extent by many other Governments in an indiscriminate manner. Because, how is it that in the States of Madras, Orissa nad Kerala, in the last 3 years, nothing happened where the use of these measures was not necessary? Surely, it cannot be. But, if it is so, tell us what the reasons are. What is the use of coming here and making a kind of speech which has been made 5 times in the past? You have to explain the special reasons why in certain States this Act had to be used and why those special reasons are likely to be expected in the coming three years for which this Act has to be extended.

Has one single person been detained in the last 3 years for the Defence of India? The number of people detained for furthering or safeguarding the Defence of India is zero. The number detained for the security of India is 15. I can understand that. I do not know what the cases are. I have not been able to go into them. But, one may understand that. But, an overwhelming majority, 500 of them as the Minister pointed out, were for the security of the State or maintenance of public order. Surely, about the maintenance of order and security of the State, I think, Shri Datar agrees with the interpretation offered by Shri Mukerjee. Shri Hiren Mukherjee said that the people in Kerala tried to support the government. Of course, it is my fundamental right to subvert any government. That was what Lokamanya Tilak taught us. You cannot subvert a State. Subversion of the government is an inalienable right that ever makes democracy meaningful. As Prof. Laski said, 'around all order there must be a penumbra; there has got to be a contingent of anarchy; that only makes any government democratic'. But what does he mean by the security of the State?

My friend and colleague Shri Nath Pai was put into prison, was detained. I don ot know how he was trying to undermine the security of the State. I do not know how Shri P. N. Singh was trying to undermine the security of the State. And, if these people are guilty of undermining the security of the State, I do not know why they are allowed to sit here and participate with us in the sacred task of framing laws for our country. Men who may be guilty of playing with the security of the State should have no place whatsoever in this august House. And, if they have not been guilty—as I know and I can vouch for it and everyone can vouch for it that they are not guilty—of these charges, then, I say, it is monstrous that before the bar of history they should be condemned like this without having been given an opportunity to be heard.

Let us look at this case of Shri P. N. Singh. The court said, as Shri Mukerjee pointed out, that *mala fides* were not fully established. I do not want to go into *mala fides*. But, look at the way in which it was done; look at the procedure that was followed. Three different orders were served on him. First, by the District Magistrate; the State Government approved the orders served by the District Magistrate; and finally, the State Government on its own served certain orders on him. And, all the 3 orders are entirely different. He was realeased because the High Court held that all the 3 orders were completely different. Unfortunately, I have not got the full text of the judgment. I have to rely upon extensive reports of the judgment that have appeared in the newspapers of U.P. But, I am sure the Law Minister as well as the Home Minister have got the judgment with them. (*Interruption*). If in this case this kind of administrative mess was possible, whether it was *mala fide* or not, I do not know; it is for them to say. But, assuming that *mala fides* could not be fully established, accepting that judgment of the court, the fact remains that this matter was handled in a manner not only ineptly and inefficiently and in a manner where it appeared as

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if somebody was playing with the rights and liberties of not only an ordinary citizen but an eminent citizen, a Member of Parliament.

Acharya Kripalani asks how many people went to the High Court and the Supreme Court to seek redress and in how many cases was redress given. I do not know how many went because these figures are not given. I do not know why the Minister is not coming out with those figures. But the fact remains that in the last 3 years 27 persons were released by the High Court and 4 persons by the Supreme Court; in all 31. We want to know from the Minister how many cases went to the Supreme Court or the High Court—31 cases out of how many. It is not everyone that can go to the High Court or the Supreme Court; not all.

The law only lays down that the judgment has to be subjective. The Administration is to satisfy itself that in a particular case somebody has misbehaved or is likely to misbehave in a manner that would be injurious to the safety and security of the State. Even when there is subjective judgment, in so many cases the High Court and the Supreme Court have asked these persons to be released.

In the case of Shri P. N. Singh where we have all the documentations before us in this House, we find that the way various orders were served showed a complete lack of application of the mind at all. Subjective thinking must also have a certain consistency. Subjective judgment does not mean that 10 different people have 10 different judgments. If that is so, then, it ceases to be the rule of law of any kind. That it was possible for 3 different orders to be served upon him and all the 3 orders completely dissimilar shows to what extent this law has been abused. If we can establish it even in one case, the case of an eminent person, that the law has been abused in such a manner, I believe the onus of showing that such abuse will never take place in future and that circumstances are such that such a law is necessary is on them. And, I am surprised to find that no effort, not even an iota of effort, has been made to establish such a case. As I have said, for the defence of India nobody has been touched.

Now, almost every day, some Member or the other gets up and enquires about the activities of certain undesirable aliens. There is one particular country which does not hesitate to send out certain persons to create mischief in our country. So many cases have been brought up to their attention. In how many cases has this particular Act been used? Just in two cases of undesirable aliens has this been used—one in 1959 and one in 1960. I do not know whether the same person has been detained in both the instances. It may be one in that case; or it may be two at the most. Now, if these powers were used for purposes about which Sardar Patel spoke in such eloquent terms when he moved this piece of legislation, I can understand it. But this is being used against all kinds of people in an indiscriminate manner. We are, for instance, told that 226 persons were detained because of violence, 198 for goondaism, 21 for communal activity, six for espionage and 26 for harbouring decoits and 21 for helping the Naga hostiles. Is it not possible to deal with violence and goondaism with the ordinary laws of the land? Are goondas so powerful in this country? If they are so powerful, who is responsible for letting them grow to that power? It rests upon those who have been handling the affairs of the country for the last 15 years. Again, how do we know who is a goonda? How is it established?

You, Sir, said that I was objecting when Shri Mukerjee was speaking on this subject. I was not objecting. But what did he say? He was trying to suggest. I was surprised and shocked

—that the Government should not depend upon police reports. Of course, Government must depend upon them. But Government must not depend upon police reports for taking away the liberties of a person before producing him before a court. I do not know whether he is a lawyer or not but I am surprised that Shri Mukerjee should have confused such a thing. He had a very weak case and he wanted to take advantage of this debate in order to bolster up a totteringly weak case. There is, therefore, no need to come out and say that the Government should not depend upon the police reports. Police is the limb of the Government and police reports are important but on the basis of police reports to put a person in detention and deprive him of the rights and liberties, before hearing him and cross-examining those who are accusing him—it is that which we object to and that, I believe, has been objected to by all those who love liberty and who accept the democratic way of life.

This was an emergency measure and an emergency measure has a meaning only in certain context in our Constitution. There are certain emergency powers and those powers have to be exercised only in a set, definite, clear, pricise context. You cannot change the context and say: these are the emergency powers and we will use them. You cannot shift from one position to another to suit the exigencies of the administration's needs and moods.

It has been said: we are merely asking for the extension of this power. Therefore we suggested that this should be referred to the Law Commission I am glad that the hon. Minister said that he was not replying on behalf of the Prime Minister because the Prime Minister has, with his characteristic courtesy, and quickness, replied to our letter. I do not think that the Prime Minister would like that this matter of referring this whole thing to the Law Commission for a detailed report from them should be brushed away in the manner in which that has been done—again that is his characteristic way by the hon. Minister sitting opposite, brushing away everything suggested by those who sit opposite, as if it matters not at all. I wish he would emulate his own leader, the leader of the House, who at least shows responsiveness to suggestions placed before him. Therefore, the suggestion that it should be referred to the Law Commission should not be brushed aside this way.

We suggested that this should not be extended at all. If a case can be made to extend it, do it in such a way that this should be the very first measure the newly elected House should take up. The liberty of one single individual in India is far more importance—of course there are questions of war and peace—than any other business. To say that it will take up two years before the new House will settle and take up this business or that there is so much of work to do and there will be no time—it shows the abysmally low priority the hon. Minister assigns to a matter of such peramount, profound and decisive importance—the liberty of the citizen. Therefore, we desire that this should not be extended. If a case can be made out, if we can be convinced at all, there can be no extension for a period of three years; the maximum period should be 18 months.

Fortunately for us, Jammu and Kashmir are part of our country. Unfortunately, in Jammu and Kashmir, there is a piece of legislation which is much worse than that here. I do not think in matters of this kind, where the vital liberties of the people are concerned, it should be permitted any kind of autonomy. Autonomy may be there in economic development and on questions of social policy. But in matters of Fundamental Rights and the basic rights and liberties of the people, no part of India—even a village panchayat—can be given the right to say; I shall have some autonomy . . .

An Hon. Member: Yes.

Shri Asoka Mehta: This is one matter where, I hope, even the the Swatantra Party will agree. There ought to be total centralisation when the liberties of the people are concerned—centralisation, meaning thereby, that protection has got to be uniform.

Shri Ranga (Tehali): Quite right.

Shri Asoka Mehta: Occasionally we do agree. One more word and I have done. Shri Datar said: look at the way we have used this Act; in the whole of Punjab in this agitation, we have detained only one person. Wonderful! May I say that the detention of that one person—Master Tara Singh—let loose, let open the flood gates of all these troubles and difficulties. His wrong and premature and unwise detention has created a situation in which the Government now finds itself . . . *(Interruptions.)*

Shri D. C. Sharma: Are you for Punjabi Suba?

Shri Asoka Mehta: That is a different matter. The question is whether the Government was right or wise in detaining him. I would not have brought up this matter if the hon. Minister had not got up and said that in the whole of Punjab only one man had been detained. If only one man is detained in the whole of India, if he is the crucial, central, pivotal man, it can bring about total disturbance and total dislocation. It is this kind of activities and actions on the part of the Government which make us very careful and cautious—apart from any theoretical propositions on practical grounds which make us critical about allowing this kind of powers to remain in their hands.

Therefore, I would submit that no case had been made out. If the powers are to be extended on the basis of the speech that the hon. Minister has made, there is no case whatsoever. This Bill must be rejected, lock, stock and barrel. If at all any case can be made out, if we get convinced, it should be extended not for a day more when the new Parliament will assemble and the newly-elected representatives of the people will apply their minds to this subject of such vital, profound and decisive importance to the country.

Shri M. R. Masani: Sir, I cannot claim the privilege, claimed by my hon. friends who spoke before me or of their associates who have experienced preventive detention under the present law. But both my colleague, Prof. Ranga and I have undergone the same process of detention under British rule and therefore, we can sympathise with the present victims of this Act . . . *(Interruptions.)*

I think, Sir, it is necessary again to recall the circumstances in which this Bill was accepted in the first instance by Parliament. It was on the 25th of February, 1950, a Saturday, that Sardar Vallabhbhai Patel came before this House and made the plea that the Bill should be passed by the House because, he pointed out, 350 of the most dangerous Communist detenus were in danger of being released on Monday morning by the Calcutta High Court if this Act was not put on the statute-book. It was only under this immediate threat to the security of the country and the clear and present danger that this House was persuaded or, in a way, bludgeoned into passing that Bill. Sir, as a back bench Congress Member at that time, I took the liberty to voice my grave concern and disquiet about the Bill that was being placed before the House by the Deputy Leader. I said then that the Bill was a "hasty improvisation" which should be replaced at the earliest possible moment by "a more principled, well conceived and well thought out measure which does not shirk the issue, which goes to the root of the mischief and which frangly takes a stand for the defence of democracy against totalitarian aggression from within or without."

Acharya Kripalani: They have done that now.

Shri M. R. Masani: Sir, Sardar Patel in his reply was very apologetic. He did not show the smugness that was exhibited earlier this afternoon. He was unhappy and he was apologetic in his reply and he said:

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

16.32 hrs.

[SHRI JAGANATHA RAO *in the Chair*]

That, Sir, was his assurance, that the Bill would be there for just one year and before the year was out a thorough examination of the kind that has been suggested, by the Law Commission or otherwise, would be undertaken and this Bill, which was an unprincipled Bill, would be replaced by something based on better principle.

Well, since then we have been waiting for ten long years. This three-yearly renewal has become a mockery. I am glad it is there because it gives Parliament every three years a chance to scrutinise that measure, but, for all practical purposes, it has become a permanent blot on our statute-book.

Is that emergency which we faced then in existence or not? Sardar Patel in justifying the measure referred to the sacrifices and sufferings of millions of our people in the achievement of independence which was then so new. He said:

> "It would be a poor return for those sacrifices and sufferings if we fail to preserve the liberties which we have won after so much struggle and surrender them...."

—he was referring to the Communists—

> "....to the merciless and ruthless tectics of a comparatively small number of persons whose inspiration, methods and culture are all of a foreign stamp and who are, as the history of so many countries shows, linked financially, strategically, structurally and tactically with foreign organisations".

Now, either that emergency exists or it does not. There is one emergency that does exist—the attack on our frontiers and the existence of a Fifth Column in this country which actively subserves the aims of the foreign aggressors. But, Sir, I listened to the hon. Minister. He talked of goondas, as if this Act was passed for goondas and, in any case, you can use it as you like. This, Sir, is an act of policy at a very high State level and in the reasons given by the minister Chinese aggression and the subversion of its Indian agents was nver referred to. Th one thing that might have justified the continuation of this measure is absent from the Government's thinking.

Sir, ironically enough, the fact remains that this Act which was fashioned to fight Communist subversion of this country is being used for all purposes except for dealing with that subversive element. If a Bill, Sir, were introduced in this House on a principle of that kind to outlaw that Party or to make its activities difficult. I for one would be prepared to examine it if it comes from the Government of the day. It is for the Government of the day to decide whether the truncation of that liberty is necessary, if there is a clear or present danger or not. Sir, the best democrats have admitted and acccepted this proposition that Communists and Fascists have no right to exist in a free society because they stand for destruction of that freedom the moment they come to power. They believe in establishing a one party dictatorship the moment they get to power, and therefore their sincerity in questioning a measure of this kind cannot be very well accepted. Therefor, I should like to make it clear that we on these benches oppose

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this Bill, we will vote against it, but for extremely different reasons, very different motives from those which the Communist Party may have.

That is the real issue, but the Government is funking it. This Government has not got the guts to come out with a straightforward anti-subversive measure against those who are trying to disrupt the unity of our country. They are going about it in a round about way. In not fighting the real menace they are endangering the liberties of every individual Indian, however patriotic he may be, and I say this, Sir, that this Act has been grossly misused. It has been used for party warfare, it has been used against patriotic Indians when it should have been used against traitors against whom it is not used.

Let me give some examples. We, first of all, had the long detention of Shaikh Abdullah—I am glad to say that later on it was transformed into a proper prosecution, very belatedly.

Shri A. K. Sen: Sir, may I object to that case being referred to? It is *sub judice*. The charges on which he was detained under the Kashmir Act are very similar to the charges on which he is prosecuted now.

Shri M. R. Masani: I referred to his long detention, and I am very glad that the Government have come forward now with the charges.

Shri A. K. Sen: The hon. Member said "patriotic Indians" and then immediately referred to Shaikh Abdullah.

Shri Ranga: There was no need to have detained him.

Shri A. K. Sen: Opinions may differ very much on this point. But immediately after saying that "patriotic Indians have been detained" to mention the name of Shaikh Abdulla would certainly not raise unanimous support from this House.

Shri M. R. Masani: I am not asking for the unanimous support of this House. Every one has a right to judge ones fellow citizens until they are found guilty in a court of law. Here we live under the rule of law and believe that a man is innocent until he is found guilty, and in my opinion Shaikh Abdulla remains a patriot until he is found guilty in a court of law and the proper facts are established.

The next case is a much less controversial one, which even the hon. Minister would not deny, and that is the case of Master Tara Singh: I make bold to say that his patriotism at least is as good as the patriotism of any hon. Member of the Treasury Bench, absent or present today. What is his crime? He advocates a reorganisation of a territorial nature. We may agree with that reorganisation or we may be opposed to it (*Interruption*). We may have our own views on the subject whether or not agree it is a communal movement. Surely, being a communalist is not a thing to be brought under the Preventive Detention Act; in that case millions of people in India would be locked up today. Being communal is a bad thing. I am against communalism in any state or form; I have never practised it, I abhor it. But that does not mean that if a man is communal I would lock him up. Then again, who decides who is communal? Therefore, what I am saying is this. A person makes a claim of a territorial nature for a reorganisation of a State as has been done in other parts of India. You may fight it politically. I may agree with you if you fight it politically. But have you any right to use this Preventive Detention Act and to lock up a patriotic Indian who is exercising his civil liberty of agitating peacefully for a particular solution, for a particular right (*Interruption*)?

An Hon. Member: He created violence.

Shri M. R. Masani: He created no violence. You locked him up before

anything happened. You were responsible for that violence.

My third example my hon. friend Shri Asoka Mehta referred to my hon. friend Shri Nath Pai. I also would like to refer to that. Several hundred trade unionists were rounded up throughout India on the eve of that strike. In the city of Bombay alone there were 36. Shri Nath Pai might have been leading the strike. But I know of a more gross case of a friend of mine who was opposing the strike, who was actively canvassing his own union to stop the workers going on strike when the police came and rounded him up for the alleged act of supporting a subversive momement! This, Sir, is the lawless way in which this lawless law is being operated.

A strike may or may not be right. If you want to declare it illegal, pass an Ordinance and prosecute people under that Ordinance. But you have no right to use the Preventive Detention Act to fight a strike, which may be justifiable or unjustifiable, but certainly the fundamental right of an Indian worker.

Let me give another example to show how the Act is misused inc'pient-ly. I have with me a copy of the notice served by the Chief Minister of Madhya Pradesh on the Maharaja of Bastar. The terms are that the Government of Madhya Pradesh has come to the conclusion that you must leave Bastar and stay in some other place which we shall nominate. I, therefore, ask you to come and see me within one week of the service of this notice. It was served on him on the 17th November this year. Then it says that if you do not come and see me within one week so that I can tell you where you should stay, the Government of Madhya Pradesh will be forced to take other steps to deal with you—an obvious reference to the Preventive Detention Act. This disgraceful notice which no Chief Minister of an Indian State should have the impertience to serve on any Indian citizen, could never have been served if the Preventive Detention Act was not there, because then the Chief Minister's threat would have been worthless. He is in a position to address such a communication to a free Indian citizen, violating his fundamental rights of residing as he likes and moving as he likes, because he has got this disgusting weapon which has been provided by our Parliament to him with which any Indian citizen can be bludgeoned into leaving his home and going into exile within this free country. We do not want that Indian citizens should be sent to exile within India, as the Czar used to send Russians to exile in Siberia.

An Hon. Member: Hear, hear.

Shri M. R. Masani: Not only this. When someone on behalf of the Maharaja goes and sees the Chief Minister—a former Minister of the State, Mr. Agnibhoj—and says to him, All right, I will persuade the Maharaja to come and see you. Will you give him facilities to go back home safely without hindrance, the Chief Minister says: No. In other words, they want to decoy this man to Bhopal, away from the Adivasis who are loyal to him and devoted to him, so that he can be kidnapped and taken under detention under the Preventive Detention Act. This is the way in which the Preventive Detention Act is being misused not only when it is worked but when it is dangled over the heads of innocent citizens. These are the reasons why I and my colleagues will vote against this measure.

I mentioned Sheikh Abdullah, and I would refer to him to this extent to say that at least one of the things that should be done is that if this Act is going to be placed in the statute-book, let it be made operative in Jammu and Kashmir also, because worse things prevail under the law there. There is a reign of terror under the State law there—people can be detained continuously for ten years without in-

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terruption as against one year in this country.

As my hon. friend Shri Asoka Mehta said, the least that we expect is for all Indian citizens—since Kashmir is part of India, they also are our citizens—there should be uniformity—not centralisation, for, I will not accept that word—but certainly uniformity of rights in so far as the Fundamental Rights of Indian citizens are concerned.

Sir, I oppose this Bill and we shall vote against it.

Shri Naldurgkar: Mr. Chairman, I am rising to support this Bill. I am of the opinion that this Bill should be entered in our statute-book as a permaent law. *(Interruptions)*.

Shri Braj Raj Singh: You could also be made a permanent Member of this House!

Shri Naldurgkar: It is my opinion and I again repeat and stress the point that this law should be in the statute-book as a permanent law. Much criticism has been levelled against this measure. We have, first of all, to see what is the meaning of preventive detention. Preventive detention has not been defined anywhere, but it is used in contradiction to the word 'punitive'. To quote the words of Lord Finley in *Rex* vs. *Haliday*, "It is not punitive but precautionary measure".

Shri Ram Sewak Yadav (Barabanki): Can the hon. Member read from a printed speech?

Mr. Chairman: The hon. Member cannot read his speech. He may refer to the notes.

Shri A. K. Sen: The hon. Member is quoting from a judgment.

Shri Naldurgkar: Yes; Lord Finley has said:

> "The object of it is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it."

So, the object of this Act is preventive and not punitive. This Act has been in the statute-book since 1950. The whole measure was under the consideration by the Lordships of the Supreme Court also, and the same argument as were advanced here by the Opposition were advanced in the Supreme Court also in connection with a case. I would like to quote the decision of the Supreme Court. The case has been reported in A.I.R. 1960 on page 27. At pages 75-76, paragraph 119. The decision is as follows:

> "The outstanding fact to be borne in mind in this connection is that preventive detention has been given a constitutional status. This sinister-looking feature, so strangely out of place in a democratic constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the promises of its preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the infant Republic. It is in this spirit that clauses (3) to (7) of Article 22 should, in my opinion, be construed and harmonised as far as possible with Article 21 so as not to diminish unnecessarily the protection afforded for the legitimate exercise of personal liberty. In the first place, as already stated, clause (3) of Article 22 excludes a person detained under any law providing for preventive detention from the benefits of the safeguards provided in clause (1) and (2)."

This decision was given by Justice Patanjali Shastri in *Gopalan* vs. *The State of Madras*.

Therefore, in view of the decision of the Supreme Court, it is quite essential that such a law should be in exist-

ence. Some hon. Members have criticised the Bill and said that we must be sorry for the existence of such a law in our statute-book. I want to say that we must also be very sorry for those who have created the circumstances which have necessitated the enactment, existence and extension of the law of preventive detention. (*Interruptions*).

Shri Braj Raj Singh: You are the people who have created the circumstances.

Shri Naldurgkar: Therefore, I want to make this point very clear. I do not want to refer particularly to any Member of Parliament here, but would like to tell those people outside Parliament also that if they do not want the existence of such a law in our country, it is for them to create such circumstances that this law could be repealed. Therefore, I have already tabled an amendment and at the time of moving the amendments, I shall speak on them.

I am of the opinion that this law should form part of our statute-book. We have seen how the situation has developed. There is abundant evidence of it. There has been discussion in Parliament referring to facts as to how forces of separatism, anti-nationalism, communalism, parochialism, provincialism, linguism, etc., have been let loose. Not only will such elements endanger our internal security but they will also jeopardise our national interests. Therefore, in the interests of our nation and in the interests of our internal security also, it is necessary that such a law should be in existence at the present time.

Is it not a fact that some anti-social elements have been active in our border areas at the present time, when there are incursions by China on our frontiers? Is it not a fact that there has been anti-Indian and pro-Chinese propaganda in frontier area? These facts have been admitted and they have been discussed in Parliament and outside, by the press and the whole country, and it is known that those elements are purposely acting in such a way that our whole national security should be jeopardised. What has to be done in such circumstances? (*Interruption*). I am fully convinced that these activities unless restricted properly in time will no doubt encourage the activities of those persons who want to indulge in subversive activities, and act against our national interests. No doubt, those anti-social elements are anxious because their activities will be hit by the provisions of this law.

Various people have argued that their fundamental rights have been suppressed. But in the same way, I want to point out that the Constitution has guaranteed the fundamental rights only for the legitimate exercise of those rights. If by illegitimate exercise of our fundamental rights we want to trample upon the rights for the fundamental rights of the other people, it is the Constitution and the law of the land that must come forward and safeguard the interests of our nation and also the fundamental rights guaranteed by the Constitution. Therefore, the arguments which have been advanced against the existence of this law or against the extension of this Act are fallacious are based on some presumptive motives and are based on such facts which are not justifiable as far as this measure is concerned. When our frontiers have been endangered, when there are incursions by China into India, when we want national unity and national concord, when we want to safeguard our territorial integrity, in these circumstances, it is quite essential that those elements who are acting against all these things must not only be prevented and detained temporarily, but they must be brought under the provisions of this law and detained permanently.

So many arguments have been advanced, but nobody has pointed out that there was no justification for the extension of this law. Some have

[Shri Naldurgkar]

stated that it is a sort of encroachment upon the fundamental rights. But they forget that there are constitutional restrictions upon them in the general interest of the society. I am quoting from the same decision—page 29:

> "Per B. K. Mukherjea, J.—Article 19 of the Constitution of India gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law, so that they may not conflict with public welfare or general morality. On the other hand, articles 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which State control should be exercised. Article 19 uses the expression 'freedom' and mentions the several forms and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21 and 22 on the other hand do not make use of the expression 'freedom' and they lay down the restrictions that are to be placed on State control where an individual is sought to be deprived of his life or personal liberty."

In this Act, there is a provision for the constitution of an advisory board. There is also a provision that the grounds on which the detention is made should be mentioned and referred to the board. In the same way, the detenu is given a chance of representation. After considering all the points, the board is at liberty to come to its own opinion. If in the opinion of the board the detention is not justified, the person is released. There are some constitutional provisions there and those provisions have been upheld by the various High Courts and the Supreme Court.

So, all the arguments advanced against the extension of this Act are not justified and they are fallacious. Therefore, I support the extension of the Act and I also want to stress that this Act should be given permanent life in the statute-book.

Shri Achar: Mr. Chairman, Sir, I fully agree with the sentiments expressed by the opposition that liberty must be given the highest priority. Even 99 persons who are guilty may be let off, but even one innocent person should not suffer. I agree fully with the sentiments expressed by Shri Asoka Mehta, the leader of the P.S.P. and even by Shri Hiren Mukerjee. But the point we have to consider is, as the position stands in our country now and the way the law is respected, whether we can get on without a law of this kind. It is often said that you cannot find such laws in democratic countries. That is not correct. In a country which is often quoted as the most democratic country, the United States of America, even there we find an Act of this kind which empowers the Government to detain a person when necessary.

Shri Braj Raj Singh: The Act is there but not a single individual has been detained under that Act.

Shri Achar: I would like my friend to read a little about the United States of America and their laws.

Shri Braj Raj Singh: I know there is a law there, but not a single individual has been detained under that law.

Shri Achar: So, to say that in a democratic country you should not have such a law is not correct. Then it is said "take the case of England". In England they have not got anything of this kind and it is a most democratic country, there is no doubt about it. But then comes the difference regarding the respect to law between India and England. We have got friends here who will start a disobedience of

law and *satyagraha* because everybody must speak in Hindi. There is a party and they will start *satyagraha* for that.

Shri Braj Raj Singh: Mr. Chairman, he is making an allegation against my party, which I repudiate. No *satyagraha* was started for the speaking of Hindi by everybody. That is not so.

Mr. Chairman: Order, order. Let the hon. Member have his say.

Shri Achar: I am not going to yield. I know that he is getting disturbed.

This is one extreme case. They have absolutely no respect for law. Then, on the other side, there are people who will say "we hate Hindi". They will erase every word if it is inscribed in Hindi. For that purpose, they will disobey the law. Of course, we have got the other linguistic extremes. Take, for instance, Assam or Punjab. Not only that. I remember, hardly about six months ago or a year ago—I do not remember the exact time—in a border dispute regarding Mysore and Bombay the Maharashtrians and the Kannadigas started a civil disobedience.

Mr. Chairman: Is the hon. Member likely to take much more time?

Shri Achar: Yes.

Mr. Chairman: In that case, he might continue tomorrow.

16.59½ hrs.

BUSINESS ADVISORY COMMITTEE

FIFTY-EIGHTH REPORT

Shri Rane (Buldana): I beg to present the Fifty-eighth Report of the Business Advisory Committee.

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17 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, December 2, 1960/Agrahayana 11, 1882 (Saka).