

police to disperse the unlawful and violent assembly by using tear-gas. This resulted in the demonstrators falling back for a while. They, however, returned in large numbers and resumed throwing stones and other missiles at the police. Tear-gas had to be used again until the demonstrators finally withdrew and stopped throwing missiles. Throughout this violent demonstration, the police acted with commendable restraint. 86 officers and men on duty including the Deputy Commissioner, the Deputy Inspector-General of Police and the Superintendent of Police and the Additional District Magistrate received injuries. In all 61 demonstrators were arrested. It is apparent that the demonstrators had planned in advance to use force and to attack police personnel on duty. This is evident, from the large quantities of boulders, stones, brickbats and other missiles that were used by the demonstrators and the plentiful supplies of water that were kept ready by them to counteract the effect of tear-gas. I am sure that all sections of the House will join me in condemning such acts of violence and hooliganism. Cases have been registered against the demonstrators and are under investigation.

12.16½ hrs.

STATEMENT RE: DISCUSSIONS
BETWEEN THE CENTRAL GOVERNMENT
AND GOVERNMENT OF WEST BENGAL REGARDING
TRANSFER OF BERUBARI TO
PAKISTAN

Mr. Speaker: The hon. Prime Minister.

Shri Nath Pai (Rajapur): On a point of order. When the House was discussing the admissibility of an adjournment motion relating to Berubari, you were pleased to remark:

"Under the Constitution, this House is not entitled to go into the kind of advice that is given by the Ministers to the President".

Article 74(2) of the Constitution reads like this . . .

Mr. Speaker: What is the point he wants to make?

Shri Nath Pai: I am adumbrating it.

Mr. Speaker: Let him hear me. Then I will allow him to raise his point. I have ruled—and it is part of the Rules now—that a point of order must relate to a matter which is immediately before the House. A point of order does not arise, as I have been saying, in a vacuum. Nobody is entitled to raise a point of order in this House unless the matter is such that if the point of order were accepted by me, no further proceedings relating to that matter could go on. I said something that day. He can move me to consider this matter. I will hear both sides and if there is a point of law arising and requiring further elucidation, I will certainly hear them. But so far as this is concerned, it is an independent matter. It might have arisen somewhere. A statement might have been made, but it has nothing to do with Berubari.

Therefore, he can write to me that there is such and such point to be discussed on the floor of the House concerning which I should revise my decision regarding a particular matter which is raised by way of a point of order and so on. It can be brought to my notice. Then I will also come prepared.

Shri Nath Pai: The reason why I did not raise it then is that it required a study of the matter.

Mr. Speaker: It also requires study on my part.

Shri Nath Pai: This is the first opportunity after Friday to raise it. I was only going to adumbrate it; I was not going to demand a ruling immediately.

Mr. Speaker: All that I am saying is this. He does not want to state anything before the House without studying. I hope he does not expect me to give answers without studying.

Shri Nath Pai: I am only adumbrating by point.

Mr. Speaker: He must have written to me and I would have come prepared. Now I will take notice of it. As early as possible he can write to me and I shall look into the matter. If it requires revision, I shall certainly do so.

Shri Hem Barua (Gauhati): On a point of clarification . . .

Mr. Speaker: Order, order. He will also write to me.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Mr. Speaker, two or three days ago, when the House was meeting last, the question of Berubari came up, and I promised to make a statement in regard to the various matters which had been referred to. The way this question came up here and the way it has been brought up by the West Bengal Government and the West Bengal Assembly has been in regard primarily to certain legal approaches and legal issues. I shall endeavour to deal with those matters. I fear I may have to seek your indulgence and the indulgence of the House for some time in order to do so.

12:19 hrs.

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

When a State Government and a State Assembly express their opinion challenging the legality of some step that we have taken, it is only right that we should give full thought to it and give a considered reply. Therefore, I have to deal with this matter at some slight length.

The issue of Berubari, apart from the pure merits, has various questions of legality involved—how far we have acted in pursuance of the Supreme Court's advice, and further, how far the reference made by the President in this matter to West Bengal was the correct method or not. The West Bengal Assembly and the Government

have challenged that reference and I shall come to that later.

As regards the pure legality of it, the West Bengal Legislative Assembly has passed a resolution moved by the Chief Minister of the State expressing the opinion that the Acquired Territories Merger Bill 1960, which was referred by the President to the State Legislature under the proviso to article 3 of the Constitution for expressing its opinion thereon is invalid and unconstitutional. The resolution sets out the grounds on which the State Legislative Assembly has formed its opinion. I shall deal with those grounds.

May I add that as I thought that many hon. Members might like to refresh their memory about the Supreme Court's advice on this matter, I have had it printed and sent this morning enough copies for supply to all the Members so that, when the House would be considering it here, it is available to all the Members (*Some hon. Members:* We have not got it). I know that. The House had begun sitting when it arrived. But it is available to all the Members.

In order to examine the points raised by the West Bengal State Legislative Assembly regarding the validity and the constitutionality of the aforesaid Bill, it would be helpful to recapitulate, at the outset, the events leading to the proposed legislation. With a view to remove causes of tension and establish peaceful conditions along the Indo-Pakistan border areas, the Prime Ministers of Pakistan and India discussed various Indo-Pakistan border problems in September, 1958, as a result of which an agreement was arrived at between India and Pakistan on the 10th September, 1958 relating to 10 items. Certain other outstanding disputes and doubts were also settled later by two other agreements, one dated 23rd October, 1959 and the other dated 11th January, 1960. The agreements dated the 10th September, 1958 and the 23rd

October, 1959 dealt with border problems with both East Pakistan and West Pakistan while the agreement dated the 11th January, 1960 related to border problems with West Pakistan only. All the settlements made under the three agreements involve transfer by India of certain areas in India to Pakistan and the acquisition by India of certain territories in Pakistan as well as certain minor border adjustments.

West Bengal is concerned with the first two agreements only. The items in the first agreement respecting West Bengal are:

- (1) equal division of Berubari Union No. 12 between India and Pakistan;
- (2) exchange of all Cooch-Bihar enclaves in Pakistan and Pakistan enclaves in India;
- (3) adjustment of boundaries between *Khulna* in 24 *Parganas* and *Jessore*.

The items in the second agreement affecting West Bengal relate to the demarcation of the boundary between West Bengal and East Pakistan in the areas of *Mahananda*, *Burung* and *Karatoa* rivers.

A doubt having arisen regarding the method of implementation of the agreement relating to Berubari Union and the exchange of Cooch-Bihar enclaves, the advice of the Supreme Court under article 143 of the Constitution was sought. On the question, *inter alia* whether if any legislative action was necessary for the implementation of the agreement relating to these items, a law of Parliament relating to article 3 of the Constitution was sufficient for the purpose or whether an amendment of the Constitution was necessary in accordance with article 368 of the Constitution.

It may be mentioned that when the reference was heard by the Supreme Court, the State of West Bengal was given an opportunity to place its views on the reference, and the Advocate-

General of that State appeared at the hearing for the State of West Bengal. Several political parties also intervened in the matter and were represented by Shri N. C. Chatterjee, Senior Advocate. The opinion of the Supreme Court was reported in the *Supreme Court Journal*, 1960. For the Purposes of this, the following views, as expressed by the Supreme Court are relevant:

- (1) There can be no doubt that under international law, the essential attributes of sovereignty are the power to acquire foreign territory as well as power to cede national territory in favour of a foreign State;
- (2) Acquisition of a foreign territory by India in exercise of its inherent right as a sovereign State automatically makes the said territories part of the territory of India. After such territory is thus acquired and factually made part of the territory of India, the process of law may assimilate it either under article 2 or under article 3 (a) or (b);
- (3) As an illustration of the procedure which can be adopted by Parliament in making a law for absorbing newly acquired territory, reference may be made to the *Chandernagore Merger Act, 1954*:
- (4) Article 3 deals with the internal adjustment *inter se* of the territories of the constituent States of India. The power to cede national territory cannot be read in article 3(c) by implication;
- (5) Agreement in respect of Berubari Union involves the cession of the territory of India. *A fortiori* the agreement in respect of the exchange of Cooch-Bihar enclaves also involves the cession of Indian territory:

[Shri Jawaharlal Nehru]

(6) Accordingly, acting under article 368, Parliament might make law to give effect to and implement the agreement covering the cession of part of Berubari Union No. 12 as well as some of the Cooch-Bihar enclaves which by exchange are given to Pakistan. Its implementation would naturally involve the alteration of the content of and the consequent amendment of article 1 and of the relevant part of the First Schedule to the Constitution.

(7) Parliament may, however, if so chooses, pass a law amending article 3 of the Constitution so as to cover cases of cession of the territory of India in favour of a foreign State. If such a law is passed, then, Parliament may be competent to make a law under the amended article 3 to implement the agreement in question. On the other hand, if the necessary law is passed under article 368 itself, that alone would be sufficient to implement the agreement.

I have given you a summary of the various points referred to in the Supreme Court's opinion. It will be observed that according to the opinion of the Supreme Court, India has the power to acquire foreign territory as well as power to cede part of its territory, within the framework of the present Constitution. The cession of territory has to be implemented by an amendment of article 1 of the Constitution and the First Schedule under article 368, while the territory acquired automatically becomes part of the territory of India and can be assimilated by law under article 2 or 3(a) or (b).

The Supreme Court also suggested that article 3 might be so amended as to cover cases of cession of the terri-

tory of India and after such amendment the cession of territory could be implemented by ordinary law passed by a simple majority in Parliament.

Government was not in favour of this suggestion of amending article 3, as suggested by the Supreme Court, because this would make it easy in future to enable cession of territories. We wanted this to be difficult and that it should not be done by a bare majority of Parliament because if that amendment suggested by the Supreme Court is adopted, then, the Parliament, by a bare majority, could cede territory. We thought that the cession of territory should be made a difficult operation and not easy. The only course open then was to give effect to a cession of territory by an amendment of article 1 of the Constitution and the First Schedule in accordance with article 368 and to assimilate the acquired territory by an order relating to article 3, as pointed out by the Supreme Court.

12.30 hrs.

[MR. SPEAKER in the Chair]

This procedure necessarily involves two Bills: one for amendment of article 1 of the Constitution and the First Schedule and the other appropriating the added areas of the States, namely Pakistan Enclaves, under article 3. The Supreme Court itself has indicated the necessity of two Bills, one necessitating the amendment of article 1 and the First Schedule and the other involving an ordinary Bill only. The two Bills cannot be rolled up into one as the procedure for the two and the conditions for passing are different. I am saying this because the West Bengal Government has laid stress that there ought to have been one Bill and not two. According to the advice given to me and my own views, this could not have been done and if we have tried to do that, it would not have been in conformity with the Supreme Court's advice in the matter. The

Attorney General of India was also consulted in the matter and he too advised that two separate Bills should be prepared.

The Bill relating to article 3, the Acquired Territories Merger Bill, 1960 was required to be referred to the State Legislatures concerned under the proviso to article 3. The order of reference was accordingly made by the President and was transmitted to the Chief Secretary to the Government of West Bengal with a covering letter in which he was requested to bring the matter to the notice of the Chief Minister and make arrangements for the reference to be considered by the State Legislature. 400 copies of the Bill were sent to the State Government for circulation among the Members of the State Legislature. 400 copies of the other Bill Constitution Amendment Bill were also sent to the State Government. Both the Bills were examined by the State Government and they submitted certain comments.

As regards the Acquired Territories Merger Bill, 1960, they stated that no comment is called for except that there was no provision relating to the citizenship of the residents of the territories acquired. The question of validity or constitutionality of the Bill was not at all raised.

The grounds on which the West Bengal Assembly had passed the Resolution that the Bill is invalid and unconstitutional may now be examined.

The first ground is a statement of fact and calls for no comment.

The second ground is also a statement of fact but it describes the agreement as one and indivisible. The agreement cannot be aptly described as indivisible as it cedes certain territories and acquires certain other territories. The provision regarding the cession of territories is separable from the provision regarding the acquisition of territories. By advising two separate methods of legislation to imple-

ment cession and acquisition of territories, the Supreme Court itself has indicated that the agreement is not indivisible and the opinion of the Supreme Court necessarily involves two separate Bills, one for cession of territory and the other for absorption of the acquired territories.

The third ground is not in conformity with the opinion of the Supreme Court. As stated above, the Supreme Court has held that Parliament can make a law relating to article 3 for the purpose of implementing the agreement in so far as it relates to acquisition of territories. It is only in respect of cession of territories that the Supreme Court has held that the law relating to article 3 is not competent.

As regards the fourth ground, the Supreme Court has suggested two ways for implementing the agreement: one by amending article I and the First Schedule of the Constitution in accordance with article 368 to implement the agreement for cession of territory and a law under article 3 to absorb acquired territories. While passing, they mentioned another way, namely, amendment of article 3 itself so as to cover cases of cession of territory and enabling, after such amendment, cession of territory by an ordinary Act under the amended article 3. The latter method has not been accepted by Government who have, therefore, adopted the former. It has not been accepted, as I have said before, as we do not wish to make it easy to cede territory by a law by a simple majority. It is, therefore, not correct to say that none of the methods indicated by the Supreme Court had been adopted in drafting the Bill.

With reference to the fifth ground, it is true that the provisions of article 3 are being utilised to give effect to part of the agreement only in so far as it relates to the acquisition of territories and this method is in accordance with the opinion of the Supreme Court.

[Shri Jawaharlal Nehru]

It is said that the acquisition of territories is nothing but the result of an exchange involving cession of territories and that to give effect to the agreement by piecemeal legislation relating to matters which are inseparable is unconstitutional. It is not wholly correct to say that the acquisition of territory is the result of exchange involving cession of territory. The exchange of territories is in respect of Cooch-Bihar Enclaves only. The other items of cession of territory and acquisition of territory are decided on merits. It necessarily follows from the opinion of the Supreme Court that there are to be two separate laws and the two Bills drafted in accordance with that opinion are not therefore unconstitutional. Whether the agreement can or cannot be said to be inseparable is unimportant in view of the Supreme Court opinion necessitating the passing of two separate Bills.

The sixth and the last ground states that the method of implementing the agreement by two Bills is objectionable since the State Legislature is deprived of the right to express its opinion in respect of the cession of a part of its territory. Such a result flows from the provisions of the Constitution itself. While a Bill under article 368 does not require reference to the State Legislature, the Bill under article 3 alone requires such a reference. The Constitution does not give the State Legislature an opportunity to express its opinion in respect of cession of territory. Dealing with this aspect, the Supreme Court has observed that this incidental consequence cannot be avoided. In defence of such a position, the Supreme Court adds:

"The Bill has to be passed in each House by a majority of the total membership of the House..."

That is, the Central Legislature.

"... and by a majority of not less than two-thirds present and voting."

That is to say, it should obtain the concurrence of a substantial number

of the House which may normally mean the consent of all the major parties of the House and that is the safeguard provided by the article in matters of this kind.

It may be mentioned that with a view to enabling the State Legislature to have an idea of the complete picture, sufficient number of copies of the Constitution (Ninth) Amendment Bill were also sent to the State Government. It is not known if these copies were circulated to the Members of the West Bengal Legislative Assembly. It is thus submitted that the Acquired Territories Merger Bill, 1960 has been framed in accordance with the opinion of the Supreme Court and cannot be regarded as invalid or unconstitutional.

Sir, I have taken so much time over this point because they have said in the West Bengal Assembly that this is unconstitutional and I have to point out that we have acted in strict accordance with the advice given by the Supreme Court.

Now, there is another point viz., that the procedure adopted by the President was not correct: that is what they say. At the end of the Resolution of the West Bengal Legislative Assembly, there is an objection to the effect that the procedure that had been adopted in referring the Bill to the Legislature through the State Government is not in accordance with the provisions of the proviso to article 3 read with article 168. This proviso to article 3 states that the President shall refer the Bill to the Legislature of the State for expressing its views thereon within such period as may be specified in the reference. In the present case, the order of the President stated:

"Now, therefore, in pursuance of the proviso to article 3 of the Constitution of India, I hereby refer the Bill to the Legislature of each of the States for expressing its views thereon within a period of

one month from the date of this reference."

The House will remember that there were several legislatures concerned—Assam, Punjab, as well as West Bengal. The President's reference to the legislature was dated 23rd October. As he gave a month, the period of reference expired on the 23rd November last. There is no doubt that the reference was made to the legislature. It said so, and in fact, it is recognised in the preamble of the resolution of the West Bengal Legislative Assembly which says:

"Whereas the Acquired Territories Merger Bill, 1960 has been referred by the President through the State Government to the legislature of the State for expressing its views thereon" etc.

The objection taken apparently is that the reference to the legislature by the President was made through the State Government. The requirements of the introduction of such a Bill are two: namely, (a) there must be a recommendation of the President; and (b) the President must refer the Bill to the State legislatures concerned for their views where the Bill proposes to alter the boundaries, etc. This latter requirement does not specify the procedure by which the President has to refer the Bill for the views of the legislature concerned. It is a settled principle of law that where the principle for the exercise of the statutory power is not laid down, the authority exercising the power can follow its own procedure so long as it is not arbitrary or capricious.

The procedure followed in the present case for sending the reference through the State Government for obtaining the views of the State legislature concerned was followed throughout, ever since the Constitution came into being, namely, in the case of the formation of the State of Andhra; in the case of the States Reorganisation Act; in the case of the alteration of the Bengal and Bihar boundaries; and in

the case of Assam and Bhutan boundaries and so on. The same procedure was also followed when the President sent his recommendation to the Lok Sabha under article 117 which he does frequently. The recommendation is sent to the appropriate Ministry for being conveyed to the Lok Sabha, the procedure for sending the recommendation to the Lok Sabha directly not being laid down in the Constitution. There is, therefore, nothing of substance in the objection on this point.

Apart from this, how else is the President to function? Has he to write to the Speaker directly on the subject and in such a case who is to move the motion in the House? Or, has the President to send it to the Governor? If so, the Governor will have to send it to the State Government. It is only the State Government that can take action in the Assembly on such a matter. Thus, from the legal point of view as well as from the common sense point of view and the practice hitherto consistently followed, the sending of the reference by the President to the State Government to be placed before the legislature was correct, and cannot be objected to.

I might add that the rules of business of the West Bengal legislature even do not provide for any procedure for obtaining its views under article 3.

Thus far, on these legal matters which have been raised, I am sorry I have taken up so much time in a rather dry dissertation on the subject. But I wanted to make it clear that we have throughout taken the greatest care in taking the steps. Originally, when this matter came up, that is, after the agreement, we considered how we have to give effect to it. The House will remember that most of these things—not the Cooch-Bihar enclave—were interpretations of the Radcliffe award. That is, the view of Pakistan and the view of India differed as to the interpretation. In other words, if the interpretation was a particular one, that interpretation was right from the very beginning of the

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Radcliffe award. It is not that any step was taken, that is to say, as if an arbitrator or some judicial authority made it clear that this is the interpretation. According to us, that interpretation really applied from the very day of the partition. It was not a cession of territory as such. Though it resulted in a cession, it was a recognition of something which Radcliffe had stated.

Shri H. N. Mukerjee (Calcutta-Central): Since the Prime Minister knows that Berubari was not an enclave, it is a matter for acquisition or cession. It is not a matter for negotiation in regard to the award given by Radcliffe or Bagge.

Shri Jawaharlal Nehru: Berubari, as I shall presently show, was one of the matters in dispute. It is not an enclave, of course. The enclave was a separate question. The Cooch-Bihar enclave had nothing to do with the Radcliffe award. They are separate things between the two Governments—exchanged for convenience.

Shri H. N. Mukerjee: Purely on merit, you are going to see which to cede and which to acquire.

Shri Jawaharlal Nehru: Berubari Union was one of the matters in dispute in regard to the interpretation of the Radcliffe award. But the interpretation of Pakistan and India differed and this has been before us for a number of years.

I was merely saying how we proceeded with it legally. So, technically, if it was not a cession in that sense, but a clarification of what Radcliffe had decided, the question about cession normally does not arise. Nevertheless, we attached value to this and we decided—

Shri Tridib Kumar Chaudhuri: Just one point.

Mr. Speaker: Let the hon. Prime Minister go on and let him finish. Hon.

Members will note down the points and I shall allow them later on to put questions if any.

Shri Jawaharlal Nehru: But we decided nevertheless that this was such an important point that it should be brought before Parliament for Parliament's decision. Later, subsequently,—it was I think on the 1st of April, 1959 or later—on the question of how best to do it, what was the best method to do it, there was some argument. So, we advised the President to refer it to the Supreme Court, and so it was referred and the Supreme Court gave its opinion after about a year.

Then again naturally the question arose. Obviously we had to follow the advice of the Supreme Court. And the Supreme Court gave two or three alternatives how to follow it. As I have already stated, one proposal was that we should change the whole constitution so as to enable future cases of cession to be decided by a simple majority of Parliament. They did not approve of it but they said this can be done. We did not approve of it, as I said, because we did not want to make this a simple affair.

I want to refer to one fact which has been repeatedly referred to, namely, the question how far the West Bengal Government or their representatives were consulted in this matter. As a matter of fact, a year and a half ago nearly, I made a statement in this House. Perhaps hon. Members have forgotten what I said then about this very matter. So, I would like to go into some detail as to the process of consultation that took place. This dispute about Berubari was raised by Pakistan in 1952. It had since been the subject of much correspondence, as well as discussion between the Governments of India and Pakistan. Both India and Pakistan claim the whole of the Berubari Union according to their interpretation of the Radcliffe award.

I do not wish to go into every year's correspondence and all that. The West Bengal Government of course was, as other State Governments, often participating in this correspondence. There was no two opinion between the West Bengal Government and the Government of India, because our interpretation was that the whole of Berubari Union should come to India. So was theirs in fact. We were following their advice in this matter. Then, ultimately, matters arrived at a stage when all these various disputes between Pakistan and India in regard to the frontier came to a head and we tried to solve them to the best of our ability. Even in Pakistan there was that feeling because, as the House well knows, there were almost daily troubles in the frontier, questions here, motions for adjournment and all that. We thought we should try to settle where the frontiers were, because most of the trouble arose on account of disputed frontiers.

There was a conference in August 1958 at the level of Secretaries. No agreement was reached then though a number of proposals and counter-proposals were made. In September 1958 the then Prime Minister of Pakistan and the Prime Minister of India met in Delhi. They asked their Secretaries to consider the remaining matters which had not been agreed to and discuss the various proposals made for settlement. The two Secretaries met. Now, when this argument arose with the West Bengal Government, soon after that, that is, a year and a half ago or so, the Commonwealth Secretary, who is most intimately associated with the talks right from the beginning, put down a long note and I am quoting from that.

"The two Secretaries met"
that is, Pakistan and Government of India Secretaries.

'After some discussion of the various proposals, the Commonwealth Secretary suggested that the representatives of the State

Governments concerned in India (that is, Bengal, Assam and Punjab) should be invited so that their reactions may be taken to these proposals. The Chief Secretary of West Bengal as well as the Chief Secretaries of Assam and Tripura were called in from the Indian side and the Pakistan Foreign Secretary called in the Chief Secretary of the East Pakistan. The State Chief Secretaries of India said that they would like to consult their Directors of Land Records and other officials. The Chief Secretary of West Bengal stated that the proposals regarding West-Bengal—East Pakistan boundary were practical but he would consult his colleagues.

May I say that they were considering a number of proposals, a package proposal, not merely this? This was not the only one but it was a package proposal both in regard to western and eastern sides. Bengal, of course, is concerned only with the eastern one. But there were several matters.

Shri Tyagi (Dehra Dun): Beubari inclusive?

Shri Jawaharlal Nehru: Oh yes, of course. So, the Chief Secretary of Bengal said—it is not a question of liking or disliking but taking a matter in all its aspects and approving of the deal, if I may use that word or not.

"The Chief Secretary of West Bengal said that the proposals regarding West Bengal—East Pakistan boundary were practical but he would consult his colleagues. The Commonwealth Secretary pointed out that there were two Cooch-Bihar enclaves shown in the maps as adjoining Berubari Union No. 12 and any decision regarding the Berubari Union required careful consideration, because of the question of access to these enclaves. The Chief Secretary of West Bengal consulted his colleagues and on return

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stated that the division of Berubari Union should be so made as to allow for communications to be maintained with one of the Cooch-Bihar enclaves to be retained by West Bengal, the other enclave along with half of the Berubari Union going to East Pakistan. This was agreed to by the Pakistan Foreign Secretary and the formula for the division of the Berubari Union was worked out in consultation with the West Bengal officials and incorporated in the recommendations of the Secretaries.

The above represents the facts of the case and the discussion on the 10th September at the official level. So far as the question of Berubari is concerned, according to this it is correct to say that the West Bengal officials did not recommend the division of the Berubari Union; neither did the officials of the Government of India. But the division of the Berubari Union was a part of a number of counter proposals made by the Pakistan Government and the question at issue was whether we should accept these proposals as a whole. The West Bengal officials did not object to the acceptance of the counter proposals and worked out a formula for the division of the Berubari Union which would retain the area through which the essential communications passed in West Bengal. That is to say, as stated by the Prime Minister, an *ad hoc* decision was taken after consultation between the officials of the Government of India and the Government of West Bengal. The responsibility, of course, for the decision is that of the Government of India. It would not, however, be correct to say that the Chief Secretary of the West Bengal Government and other officials were not asked for any opinion in regard to Pakistan's counter-pro-

posals in respect of Berubari Union."

I should like the House to remember that these two Chief Secretaries had come here for this purpose. They were constantly discussing these matters with the officials of the Government of India and, naturally their opinions we have been asking for. But Berubari does not stand out; it is a whole scheme of things that we discussed.

Now, it may be, as I said on another occasion, that certain misunderstandings may have taken place; it is very difficult to say. But one thing is quite clear that they were consulted throughout and that they gave the impression, actively or passively, or may be they have done so because they thought this is the only way, whatever it may be, even without approving of it. But that is the impression that was given and that is what was conveyed to me. There is no doubt as to what was conveyed to me because I asked a straightforward question on Bengal as to who represented their Government, whether they were senior officials and so on. I was told that there was the Chief Secretary, the Joint Secretary of the Home Department and the Director of Land Records.

Soon after the conference with Pakistan was over, a meeting was held with the Ministry of External Affairs the very next day, 11th September, to consider the implementation of the agreement arrived at. At that time the Chief Secretary of the West Bengal Government had left but the other officials were still there. The following is taken from the minutes of the meeting in regard to Berubari Union:

"With regard to the division of the Berubari Union the Commonwealth Secretary explained that the horizontal division agreed to did not mean that the demarcation

should take place along a straight horizontal line regardless of the effect of such a division on the existing system of communications etc. which should be kept intact as far as possible."

After that, it is noted: "Action to be taken by West Bengal": usually there is a note as to who has got to take action. The minutes of the meeting were sent to the State Government on the 18th September, 1958, that is, within a week of that conference, together with the documents regarding the agreement reached with Pakistan with the request that necessary action might be taken. Subsequently, a letter was received from the West Bengal Government dated October 10, 1958, from the Chief Secretary. The only question raised in this letter was whether the change in Government in Pakistan—the change had taken place just a little before—whether that change had made any difference to the implementation of the decisions reached between the two Prime Ministers. The Commonwealth Secretary replied that the new regime in Pakistan had intimated that it will stand by all commitments made by the previous government, and therefore, the implementation of these matters should not be held up. On the 30th October, 1958 a request was made to the West Bengal Government for population and other local data regarding the Berubari Union in answering questions in Parliament. On the 14th November the West Bengal Government supplied the information and added that the Deputy Commissioner at Jalpaiguri had been asked to furnish further information. This further information was supplied with the letter of the 24th November 1958. On the 15th November the West Bengal Government went so far as to propose certain amendments to the schedule to be attached to the draft Bill regarding the exchange of Cooch-Bihar enclaves on the basis of the accepted division of the Berubari Union.

I cannot go on taking too much time but I have got a number of let-

ters, long letters, my letters and our Secretary's letters to the West Bengal Government Chief Minister dealing with this matter. It would thus be seen from all this correspondence which followed soon after the decisions taken at the conference that the West Bengal Government did not give any indication that the decisions were not acceptable. In fact, the indications were exactly to the contrary.

13 hrs.

On the 9th December, 1958, the Prime Minister dealt with the statement on the Berubari Union in the course of a debate here in Parliament on the international situation. On the 15th December a question was put in the West Bengal Assembly by Shri Joyti Basu about the Prime Minister's statement. The Chief Minister of West Bengal replied to it to the effect that the Director of Land Records had not suggested a division. He asked me for the text of my statement and I sent it to him. I said, "I take the responsibility for this decision; it is not the Director's." I did not wish to drag the poor Director in taking such a big decision.

Then I made a statement in the Raja Sabha on the 16th December. All that is on the record. On the 29th and 30th December the West Bengal Assembly and Council debated the transfer of Berubari Union and passed resolutions to the effect that the Berubari Union should remain part of India. Subsequently there was a good deal of further correspondence between the Prime Minister and the Chief Minister of West Bengal.

I should like to repeat that throughout this period of our talks with Pakistan the senior State officials were present in Delhi and obviously in touch with the negotiations. There was no indication at any time from them that the decisions were not acceptable to them. So also in subsequent correspondence even though the West Bengal legislature had passed resolutions disapproving of this. But I accept entirely, of course, that the

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major responsibility was the Government of India's and more particularly mine. The point is that I do not think it is at all right to say that people were not consulted. I can understand that as regards giving approval or not, some misunderstanding arose and the parties were not quite clear as to what they agreed to and what they did not. But even so tacit approval was shown throughout—then and in subsequent proceedings.

The legal interpretation of the Radcliffe Award made the position of Berubari rather doubtful. If no settlement was arrived at, not only the question of Berubari but any other questions included in the settlement would have been left over. The matter would have been referred to a new tribunal. We definitely thought that the settlement as a whole was to the advantage of India and West Bengal. I should like to say frankly that we thought that it was advantageous for West Bengal and for India, of course, that this agreement should be arrived at not merely as a whole, but I would like to say even in regard to Berubari itself, that is, the division of Berubari. The other alternative was of sending it to a tribunal which may have decided either way, either in favour of Pakistan or in favour of India. If it decided in favour of Pakistan, we would have lost the whole of the Berubari Union. So we thought that it was fair both in the larger context and in regard to this. Naturally, we knew we did not like it but things which one does not like have to be agreed to sometimes. So in the balance we thought that that was right.

This took place then. Later, as I said, on the 1st April, 1959, it was referred to the Supreme Court and they gave their opinion on the 14th March—almost exactly a year later.

Looking at this matter one has to keep in view that for eight years this was a pending matter on which there

was a great deal of correspondence and discussion previously. Later the discussion became rather more pointed because it so happened that both parties, that is, we of course, but even Pakistan, had arrived at the decision to come to a settlement. Many of our conferences, this House knows, have not been productive because the attitude taken up by Pakistan had not been helpful. In this matter they were definitely helpful. They wanted things to be done and we certainly wanted things to be done to get a peaceful frontier and put an end to it.

I should like the House to look at it in that context. This meeting takes place, each person desiring a settlement—West Pakistan, East Pakistan and all that—and as regards Berubari naturally we would prefer the whole of Berubari to remain with us. But it was a question not only of the larger context but of coming to a commonsense decision, which we did not like, in order to avoid something which we liked still less. I still feel, therefore, that the agreement was a right one and a worth-while one both from the point of view of West Bengal and India.

It is unhappily true that, may be, a number of people who might be affected by this would have to leave their homes. The population of whole of Berubari Union is a little over 12,000. Half of Berubari would be about 6,000. There are some Muslims.

Shri Tyagi: Have you some idea of the proportion between the Hindus and Muslims there?

Shri Jawaharlal Nehru: I understand—I do not know the exact figures; in fact, the exact line is not drawn—there are not many Muslims. They may be some hundreds. About two-thirds of that population of this half are refugees from East Pakistan. It certainly is a most unfortunate thing, namely, that persons who have been

uprooted once should have to face a contingency which might lead to their being unrooted again. I think all of us anyhow—whatever our views may be—must sympathise with them and consider it our duty to help them if any need arises to the extent possible for us.

All the history that I have placed before the House indicates not some sudden decision suddenly arrived at but after giving consideration to it repeatedly and fairly. I must say that at this conference the discussion was a fair and just one and there were no pressures from Pakistan which would compel us to do something. We agreed to it, to each thing individually and severally and having regard to it we gave our word to Pakistan. We signed that document. Later it came up before Parliament in various ways. All this history I have related.

I need not remind the House that if I functioned there it was not in an individual capacity. Obviously I functioned in the capacity this Parliament has given me, that is, of the Prime Minister of India. Every matter, obviously, cannot come to Parliament as many things are being done daily in that capacity. The word of the Prime Minister of India, apart from being the individual concerned, is not a light thing. An agreement arrived at on behalf of the Government of India also has a certain not only importance but sacredness about it. It is the word of a Government and the word of a country. I do not want anyone in the wide world to say that we do not honour our pledges and our undertakings. I have no doubt in my mind that we must hold to our pledge. I do not like, as has recently been said not in very happy terms, that we do not hold to our pledges. We have been accused that we did not hold to our pledges and our undertakings. So we have to face that issue. Of course, when there is an agreement between two parties, that agreement has to be fulfilled. The only possible way might be some agreement to vary the other

agreement. There is no other way to that. Whether that is possible or not, I cannot say at the moment. I do not understand how at this stage we can just say that for this or that reason we renege from that agreement.

I am sorry, Sir, I have taken so much of the time of the House. But, the matter is important.

Several Hon. Members rose—

Shri Naushir Bharucha (East Khandedh): The Prime Minister's statement may be circulated.

Mr. Speaker: There won't be any discussion on this.

Shri Naushir Bharucha: The statement may be circulated.

Mr. Speaker: The whole speech?

Some Hon. Members: Yes.

Shri Tyagi: It will be better if the two Bills which have been sent to the West Bengal Legislative Assembly could also be circulated amongst the Members, so that we can know what they are.

Mr. Speaker: I shall have copies of the speech kept in the Notice Office.

Some Hon. Members: No, no.

Shri Naushir Bharucha: We won't be able to study it. It is an important matter. It may be circulated.

Mr. Speaker: Hon. Members fight shy to go to the Notice office which belongs to them.

Shri Nath Pal: Why this economy?

Mr. Speaker: Very well. I will circulate copies to all hon. Members. So far as copies of Bills are concerned, I will keep a few copies in the Library or Notice office. Hon. Members may refer to them.

There is no discussion on this matter now. For clarification, one or two questions are allowed.

Shri H. N. Mukerjee: I beg of you to bear with me a little while because the Prime Minister has raised certain important questions.....

Mr. Speaker: That would lead to a discussion. Let us understand the scope. The Prime Minister has made a statement. It is a long statement. It is not an easy matter to decide if they have got any objection to it either in law or in fact. These are two different things. On a question nothing is settled. For clarifications one question may be put. On the other hand, if he wants to have a discussion, let us consider if it is necessary to have a discussion at all, what are the matters to be discussed and how are they going to be bettered by discussion. If they write to me, normally as a matter of notice, let me see. Today, they will stop with putting one question. There will be no discussion. Let him clarify what is his doubt. What is his doubt regarding this matter.

Shri H. N. Mukerjee: If I may formulate the question, since it is an attribute of sovereignty that a country which is free can acquire foreign territory or cede territory, since any internal legal complications might very well be settled by legal ingenuity, since the whole question of cession on merits of a particular area the inhabitants of which are largely refugees from East Pakistan, has come into the picture, since the Prime Minister has reiterated his determination that he is going to stand by the view which he has indicated to the then Prime Minister of Pakistan, since the matter is agitating the minds of.....

Mr Speaker: What is his question? What does he want?

Shri H. N. Mukerjee: I feel it is necessary for Parliament, in view of the people of the locality themselves never having been consulted and now being transferred like human cattle, to another country, to have a discus-

sion on the implications of the statement which the Prime Minister has made. I beg of you, I tell you earnestly, to give some time after the Government also cogitates a little more carefully in regard to this matter. I do not wish that the Government should act in a huff because the Prime Minister was saying that the honour of India is involved. Let us consider this matter carefully and sympathetically and let this House have an opportunity to discuss it at some future time, as quick a time as possible, so that we will really be able to put forth the case which is felt by the people of our part of the country. I do not want any disturbance. I know very well that in West Bengal there is.....

Mr. Speaker: He wants a discussion on the statement. Very well. Shri Tridib Kumar Chaudhuri.

Shri Tridib Kumar Chaudhuri: The Prime Minister, at one stage, said that this agreement with regard to Berubari arises out of the interpretation of the Radcliffe Award. I only wanted to draw his attention to this opinion of the Supreme Court in the judgment:

"...we cannot accede to the argument urged that it does no more than ascertain and determine the boundaries in the light of the award. It is an Agreement by which a part of the territory of India has been ceded to Pakistan and the question referred to us in respect of this Agreement must therefore, be considered on the basis that it involves cession or alienation of a part of India's territory."

The Prime Minister has said that they took it that the Government of West Bengal expressed their tacit approval. I want to know whether the Government of West Bengal or the officials who represented them at the time of the Agreement or at the Karachi

Conference expressed their disapproval of this whole thing before this opinion was expressed by the Supreme Court or after this opinion was expressed by the Supreme Court.

Shri Jawaharlal Nehru: The matter before the Supreme Court was what procedure should be adopted, what steps should be taken to give effect to certain decisions. There is no doubt that the question of Berubari arises from the manner you interpret the Radcliffe Award. That is obvious. The point that the Supreme Court decided was that even so, this is the procedure that should be adopted, and not a procedure that this was *ab initio* part of Pakistan and therefore, nothing should be done. I submit that is a point quite clear. We ourselves were in doubt about this and we referred it. Naturally, we accept the Supreme Courts opinion. As for West Bengal Government, as I said, in 1958, in December, I think, they expressed their disapproval, and the West Bengal Assembly passed a resolution to which I referred. Later, I do not know the dates, this time, the matter came up after the Supreme Court's opinion, when we started taking steps, the West Bengal Assembly again repeated their resolution. That is so. There is no question of approval. Nobody likes many things. But we have to do that because if we do not do that, something we dislike more comes. In the balance, one approves a thing and carries on with it.

Some Hon. Members rose—

Mr. Speaker: No more discussion now.

Shri Nath Pai: One question, Sir.

Mr. Speaker: There is no more discussion. I am not going to allow any more questions. I have allowed Members who come from Calcutta to put certain questions for clarification.

Some Hon. Members: This is an all-India question.

Shri Nath Pai: Let us transfer it to the Bengal Assembly. Why have a debate here if only the Bengal Members are to be allowed? (*Interruptions*).

Mr. Speaker: Shall I start a discussion now? If hon. Members will go through the whole statement and table whatever questions they want to ask, that would be much better, instead of merely hearing it and each one raising a particular question. The question may be very important. Let them consider leisurely. Tomorrow or day after tomorrow, let them put questions. I will send them on to the hon. Prime Minister and try to find out if any clarification is necessary. So far as Shri Mukerjee's request is concerned, let us consider it in due course when the matter comes up.

Shri Tyagi: On a point of order. If the House already envisages a discussion on a particular point—of course, the Bill is coming—we cannot have a separate discussion on the very same subject.

Shri Vajpayee (Balrampur): Why not?

Shri Tyagi: Of course, not, because it is against the Constitution, against the whole practice. If we are going to have a Bill, we give the verdict on that Bill, but before that on that very particular point we cannot have a discussion, as we have to vote in a discussion also. We cannot take one decision one day and another decision on the Bill that is different. How can that be possible?

Mr. Speaker: I will bear this in mind.

Shri Ranga (Tenali): Such a lot of uncertainty has been created in regard to the facts of the case in view of this dispute between the Bengal Government and the Union Government and the discussion that has taken place in that legislature. Therefore, it would be a proper thing for us, as you yourself suggested, for some of us to be

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permitted to put some questions and ask for some elucidation.

For instance, the hon. Prime Minister said that the Union Government or he himself understood that the Bengal Government had given their tacit approval, rightly or wrongly as he put it. I would like to know whether, when he decided to attend this conference of the two Prime Ministers, he thought of consulting the Bengal Government through its Ministry and not through the officers, and if he did not do so, whether he was under the impression that the Chief Secretary, however highly placed an officer he might be, could possibly be expected to speak for the Bengal Government and represent the Ministry. Under what impression did they call for the officers from the Bengal Government? If they wanted to consult the Bengal Government, surely it was the Ministry which should have been consulted, and when the Prime Minister himself was taking part here in those discussions, one would have expected the Prime Minister to have invited the Chief Minister there.

Mr. Speaker: I do not want to take up the role of the hon. Prime Minister, but from what I heard—other Members also have heard—the hon. Prime Minister said that the details were worked out in the presence of the officers who came there. Thereafter, the notes of whatever happened were sent to them and the only objection was—from the long statement this is what I gathered—that the settlement officer did not accept it.

Shri Ranga: May I be permitted to ask whether on the day the two Prime Ministers signed the agreement, they did not think it was an agreement but only a kind of understanding between them which would be subject to alteration, amendment or complete annulment after having had the opportunity of consulting the Bengal Government? Surely they thought it was an agreement; there-

fore, it was not merely an exploratory thing. Before they came to this agreement, why is it that the Union Government as represented by the Prime Minister did not think it proper to send for the Chief Minister of Bengal and consult him and only thereafter put the imprimature on the agreement?

Mr. Speaker: I think the hon. Prime Minister has answered this already.

I am in a fix. What is it that the hon. Members want me to do? Shall I take up a discussion on this matter now?

Shri Vajpayee: Not now.

Shri Ranga: What was the state of mind of the Prime Minister at the time of putting his signature? Was he doing it on behalf of himself and the Bengal Government, and if so, could he have expected the Bengal Government to have been represented by the Chief Secretary? Was it not an ordinary commonsense view that he should have taken the consent of the Chief Minister there before thinking that the Bengal Government would also be committed by what he was doing?

Mr. Speaker: A statement has been made. It is unusual to allow questions on statements. I have allowed one or two questions. I have agreed to circulate copies of this.

So far as cession of territory is concerned, without the consent of this House or passing of the Bill by this House, and without the opinion of others concerned,—whether their opinion has been taken in time or not is for them to decide—nothing will happen. In the circumstances it is a question whether we should have a discussion immediately or later on when the Bill actually comes before the House.

It is not as if we will not have an opportunity. Government is entitled

to enter into negotiations. Ultimately, so far as cession of territory is concerned, it has to be approved by this House, the constitutional amendment has also to be approved by this House. Whatever step is taken in accordance with the opinion of the Supreme Court to implement the agreement will require the approval of this House. In the circumstances, I shall consider whether it is worth while having a discussion. I am not now giving any opinion regarding this.

Hon. Members will kindly read the statement at leisure, and if they want further clarification, as I have already said, on the points on which they want clarification they may send questions to the office. I will pass them on to the Prime Minister. If there are any particular points to be elucidated, they will be elucidated.

Shri Yajnik (Ahmedabad): May I know whether this Bill is to be introduced in this session?

Mr. Speaker: I do not know. He can ask that question also.

13-26 hrs.

PREVENTIVE DETENTION (CONTINUANCE) BILL—contd.

Mr. Speaker: The House will now take up further consideration of the following motion moved by Shri Datar on the 1st December, 1960, namely:

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

The hon. Home Minister.

Shri Braj Raj Singh (Firozabad): May I be allowed a few minutes?

Mr. Speaker: I allowed a Member from his group half an hour the other day.

The Minister of Home Affairs (Shri G. B. Pant): I have to apologise to you and also to the hon. Members for my absence from the House when this motion for the consideration of the Bill was placed before it on Thursday last. I am particularly sorry.....

Mr. Speaker: I am afraid the members of the press gallery are too eager to catch every word that is uttered here. I will ask the hon. Members to speak a little louder. Let the members of the press gallery keep within the rails there. It is only the book that fell now. I am afraid a member of the press gallery will fall upon me! Let us avoid it.

Shri G. B. Pant: I had just started by offering my apologies to you and to the hon. Members for my absence from the House on Thursday when the motion for consideration of this Bill was made by my colleague, Shri Datar. I am sorry also that owing to my absence I missed the opportunity of listening to the eloquent, and to some extent I think, spirited speeches of eminent leaders of the opposition. I appreciate their sentiments, and perhaps, to some extent I share them, but I wish that the whole question had been looked at and examined from the correct perspective. If the position as it exists and if the history of the last ten years had been kept in view, I personally feel that hon. Members would not have raised their voice against this Bill.

It has, perhaps, some sort of an unpleasant savour about it. I am also speaking to the hon. Members about the Bill, but it does not give me very great pleasure to say what does not and will not agree with some of the views expressed by some of the hon. friends whom I respect and whose opinions I attach weight to. There has been considerable improvement, so far as the enforcement of the detention law is concerned, during the last ten years. In the first year when the Bill was passed, the number of persons detained came to about 10,000, but on the 30th September of this year, the