The House reassembled after lunch at three of the clock, MR. DEPUTY CHAIRMAN in the Chair.

THE PREVENTIVE DETENTION (CONTINUANCE) BILL, 1960

SHRI BHUPESH GUPTA (West Bengal): Sir, before he takes it up, I have to raise a point of order. As you know, we demanded, in order to facilitate discussion, that a number of charge-sheets made under the Preventive Detention Act should be made available to the Members of the House, so that we could consider how the measure was being applied. Repeatedly we had asked for the charge-sheets and up to date we have got nothing but the statistical report, which gives practically no information. We want to understand from the Government through such material as to how the charge-sheets are made, on what grounds they are being applied and the Members are put in a . . .

MR. DEPUTY CHAIRMAN: You can make it a ground for the rejection of the Bill.

SHRI BHUPESH GUPTA: That I will see. But the Government should give an explanation. In this House they did not introduce the Bill.

MR. DEPUTY CHAIRMAN: You can make it one of your grounds for the rejection of the Bill.

SHRI BHUPESH GUPTA: I do not want to fight for their detention . . .

MR. DEPUTY CHAIRMAN: Order, order. The House is not yet in possession of the Motion.

SHRI BHUPESH GUPTA: There is no introductory stage and, therefore, we could not raise it.

MR. DEPUTY CHAIRMAN: There is no point of order in a blank House. We have no business now. Unless he moves the Motion, you cannot raise any point of order.

SHRI BHUPESH GUPTA: It is not a point of order. I did not raise a point of order. I only drew your attention to the fact how the Members are treated.

MR. DEPUTY CHAIRMAN: You can make this as one of the grounds for the rejection of the Bill.

SHRI BHUPESH GUPTA: That I will make. I have many more grounds. They have to offer an explanation before the House.

MR. DEPUTY CHAIRMAN: Home Minister.

SHRI BHUPESH GUPTA: Why is the wise man wasting his time on the Preventive Detention Act? He is a very wise man.

MR. DEPUTY CHAIRMAN: Order, order.

THE MINISTER OF HOME AFFAIRS (SHRI GOVIND BALLABH PANT): Sir, I move:

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

As the very name of the Bill indicates, it is only a measure which seeks to continue the Preventive Detention Act that is in force today. In substance it purports to seek extension of the measure by three years. Identical and allied Bills have been the subject of full-dress debates and close scrutiny in this House on several occasions. They have been thoroughly discussed in the other House too. This Bill has come to this House after being very minutely examined in the other House. It has been our endeavour to the maximum extent feasible to enhance the liberties and the rights of the people of the country. We have adopted a number of measures towards this end. Hon. Members may be remembering that we have repealed the Press (Objectionable Matter) Act, the Whipping Act, and we have also passed the Probation of Offenders Act and also taken other measures such as the overhaul of the entire Arms Act. So, it is not palatable to me to be connected with any measure that may even remotely have a restricted tinge. But we owe a duty to the

[Shri Govind Ballabh Pant.]

country, to the millions living in the country and everyone of us has to see to it that peace and order are properly maintained, the decency and dignity of public life are not in any way vulgarised and that an atmosphere which would be conducive to the growth of the democratic spirit and which would enable us to concentrate on the measures planned for the progress and advancement of the country are carried out fully. It is with this view and under the compulsion of events that we have brought this Bill before this House. As hon. Members are aware, we have no law for declaring any association as unlawful in our country. There is no sort of restriction on the expression of opinion or on the right of association, which has been guaranteed by the Constitution. The framers of the Constitution, who could look far ahead, had also provided for measures of this type and immediately the Constitution came into force a Bill was passed which made a provision for detention. That Bill gave almost unfettered licence to the executive. Many changes have been made since and the present Bill has got a number of safeguards. As hon. Members are aware, the local authority, that is, the District Magistrate cannot pass an order of detention for more than ten days. Unless the State Government confirms such an order within twelve days, the order is nullified. Then all such cases should be referred to Advisory Boards within 30 days of the date of detention. The Advisory Boards are judicial bodies presided over by a High Court Judge and having two more judges associated with him. The Advisory Board is required to give its decision or its advice, whatever you might call it, which is binding on the Government and which is invariably carried out within ten weeks of the date of detention. The person detained can appear before the Advisory Board, and if the Advisory Board wants any additional material, it can send for it, and the Advisory Board can also take into consideration all that is said in the representation and give consideration to the points raised therein. In addition to these safeguards, anyone who is so detained can apply to the High Court or to the Supreme Court for a writ of *mandamus*. So it will be seen that the Bill has been hedged round with so many safeguards that the chances of its being used in a light-hearted manner are very few and far between, and it can seldom be misapplied.

Sir, during the last ten years there has been also a continuous decrease in the number of persons detained. In the year 1950 this number came to about 11,000. On 30th September 1957 the figure came to about 205, and the corresponding figure on 30th September of this year does not go beyond 106. So, that indicates to some extent the care and circumspection with which all such cases are examined. This conclusion is further confirmed by the fact that the High Court released only two persons in consequence of the applications made by way of writ of *habeas corpus*. So, this fact that the Act has been put into effect by those who are charged with the responsibility of maintaining peace and order and of carrying out the other purposes which are laid down in the Act and that they have discharged their duties with the utmost care might well be conceded.

Sir, as I just said, during the current year the number of detentions has come down substantially. As will appear from the statistical abstract that has already been circulated, the total number of persons who were placed under detention throughout the year was 153. Out of this number, about 47 were released in the course of the year itself. So on the 30th of September there were only 106 persons. It will be of some help to the hon. Members if they will refer to Statement XI. It shows that 116 persons were detained for reasons connected with section 3(1)(a)(ii), that is for the maintenance of public order and the security of the State. Now,

this figure of 116 might be further analysed, and you will find that out of these 49 were detained for violent activities, 48 for goondaism, 9 for Naga hostile activities, 7 for communal agitation, 2 for instigating breaches of the law and 1 for espionage. These make up the total of 116, and 37 were detained for reasons connected with section 3(1)(a)(iii), that is for the maintenance of supplies and services. So far as the provincial or State figures go, out of these 153, 66 were detained in Bombay, 53 in West Bengal, 14 in Uttar Pradesh, and the rest in a few other States, while several States did not detain anyone such as Kerala, Madhya Pradesh, Madras, Mysore, Rajasthan, Delhi, etc. So, from this it will be seen that the reasons for detention were not in any way connected with associating with any political party or expressing any political views or opinions. There were reasons, which I hope this House will find it perfectly adequate, for taking action of this type. And it will be further confirmed by the fact that out of these persons, only eight were known to owe allegiance to political parties and that no one was actuated by political motives in taking this action. It has been repeatedly affirmed and emphasized on the floor of this House that this Act has nothing to do with political opinions. The purposes for which this Act is meant are stated in section 3 and I think they are laudable purposes and no one here would like to do anything that would undermine the defence of India or the security of the State or other matters which are mentioned in that section. So, there can be no doubt about the utility of the Act or about the purpose for which it was framed, and I venture to submit that the figures for the year as compared with those for the previous years also indicate that great care is being taken in applying this Act.

It is unfortunate that there are still many occasions when organised resistance against authority, against laws that are passed by Parliament, is offered by groups of people under the leadership of persons who have some responsibility and who carry some influence also. Democracy rests on the foundation of law. Law is also the instrument through which it functions. Unless the supremacy and majesty of law is accepted, I really wonder if democratic methods can by themselves prove effective in maintaining and protecting democracy itself. We are seeing today that the world is in a disturbed state, in a tense state. In many countries things seem to be altogether topsyturvy. Civil wars are going on in some of the States which have been lucky otherwise in gaining freedom in recent years and also we notice the changes that have taken place in countries which are all close neighbours. There is a setback to democracy and it has almost collapsed in several places. So, the gravity of the situation must be recognised and we must be vigilant and adopt all legitimate and reasonable means to guard against any such mishaps either creeping in or taking place in any part of our country.

Sir, I regret that the name of *satyagraha* is often used in a perverse sense and attempts are made to infringe laws, to break them and to carry out campaigns in a systematic manner in order to violate the laws of the country. In a democracy, the laws passed by Parliament are binding on all. Whether a person agrees or does not agree is hardly material. We may not agree and we may try to educate public opinion. But howsoever sharply one may differ, one would not be justified in going against the law. Much less would anyone who is connected with Parliament and who has a share in the making of these laws be justified in defying the law or inciting others to do so. It is really something which is repugnant to the elementary canons of democracy, good government and administration. Yet, many have been the occasions when such scenes have been witnessed and such tragedies have occurred. I do not want to give an account of the various incidents that have happened during the last three years in the various parts of the country. We have

[Shri Govind Ballabh Pant.]

seen the rule of law being almost paralysed and the entire administrative machinery being brought to a stagnation. Communications have been brought to a standstill; even railways have not been allowed to move; post-office buildings and railway station buildings have been set on fire, and many other misdeeds of a like character have been done. But for the attitude of the Bengal Government, I do not know what would have occurred in Calcutta even yesterday.

SHRI BHUPESH GUPTA: What would have occurred?

SHRI GOVIND BALLABH PANT: I do not catch the word.

SHRI BHUPESH GUPTA: I want to know what would have occurred. In Calcutta there was a peaceful general strike.

SHRI GOVIND BALLABH PANT: If the tramways had been allowed to function and if the State had not withdrawn them, if the State buses had been plying, then I think the hon. Member can well imagine what would have followed.

SHRI BHUPESH GUPTA: May I extend an invitation to the hon. Minister to come to Calcutta and find out whether what I am saying is true or not?

SHRI GOVIND BALLABH PANT: I would not take that risk. I know what happened in the past. Well, perhaps, if I go with Mr. Bhupesh Gupta and under his umbrella, he may be able to protect me. That is possible. Well, Sir, similarly we have had many movements and there are still pointers and trends which should keep all of us on our guard. The committees of action are still there and new ones are being formed. Direct action has no place in democracy. Either we abide by the rule of law or we are out of law.

SHRI BHUPESH GUPTA: But you indulged in direct action in Kerala.

SHRI GOVIND BALLABH PANT: But what I am saying applies as much to Kerala as to West Bengal, as to any other State. The law should be observed, and those who are disgruntled or aggrieved can educate the people and see that they succeed in replacing the Government that may have been responsible for laws which they cannot themselves accept or which in their view are detrimental to the interests of the country. But this cult of direct action is altogether incompatible with any notion of democracy. Sir, this has happened in many places and now. I would not like to give a list of what has happened; it would not make a very pleasant recital. But even now notices are being given that *satyagraha* will follow after a few days. The Samyukta Maharashtra Samiti has, in a way, stated that if the Mysore State does not surrender certain areas which they claim to be theirs, and which have been in dispute for some time, then *satyagraha* will be launched in Maharashtra itself; though the fault may be of the Mysore Government, that *satyagraha* is to be launched in Maharashtra itself in order to coerce the Mysore Government or those who may be connected with this matter to satisfy their demand. Well, I am not concerned with the merits of the demand but with the methods of *satyagraha*. And there are similar threats from other places. I respectfully submit that in these circumstances, when we are living under these threats, can we give up the measures which have proved effective in some way and which have so far been put into effect with the utmost care? I submit, Sir, that that does not seem to be a wise step. After all we have to see that the liberty of the masses, of the vast number of people living in this country, is protected. I regard the civic liberty of every citizen as sacred. But we have penal laws, we have preventive laws so that the liberty of the millions living in this land may not be put into jeopardy and imperilled in other ways because of the misdeeds of a microscopic minority. Sir, it is because of these

considerations that I had ventured to place this Bill before this House. We must remember that we have been able to make steady progress in our country. Our stature and our position has also been sufficiently—I think—respectable in other countries. We have never been treated with that consideration and regard and—if I may venture to say so—respect as a nation at any time as we are being treated today. We have also achieved something substantial in the economic, cultural and other fields. But all this is to a large extent due to our country's ability to face stresses and strains, trials and tribulations, with fortitude and with tranquillity and equanimity. It is because we have been able to maintain peace and order in our country, which has so many races, so many classes, so many castes, so many creeds, and where fanaticism in the matter of language, region or province is growing, we have to be particularly careful since this malady of linguism, regionalism or provincialism is fraught with danger. So the climate does not seem to be very healthy. So whatever we can do to stave off these things or to keep them in proper form and proper order, we should readily agree to do. Here in Delhi itself we have seen demonstrations in recent weeks of which the obscenity, the vulgarity, cannot possibly be imagined by those who have not witnessed such demonstrations themselves. The places of worship are being used for carrying on political propaganda and for undermining the faith of people in the Government and in law.

There are so many forces working and working with energy and vigour. We have also got a new threat in the north and we have also got the difficulties inside the country itself. So, I would most respectfully and earnestly request hon. Members to co-operate with the Government in the maintenance of public order and in keeping in tact the dignity and high principles for which our country has been famed from very ancient times. Let that credit be maintained. So, I hope that hon. Members will be pleased to accept the motion that I have made.

The question was proposed.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, we have just heard the speech of the hon. the Home Minister and one felt as if it was a kind of Sermon on the Mount. He spoke of so many things—tranquillity, peace, public order, ancient tradition, our prestige and name and so many other things—in order to justify a hideous, perverse, foul measure as the Preventive Detention Act.

Sir, it has been my misfortune—and I have shared the misfortune with many hon. Members in this House—that during the last nine years we have been here, from time to time we have come up against these meaningless, hollow and cynical arguments on the part of the Government in regard to the Preventive Detention Act, and in our humble way, from this side of the House, we have tried to meet their arguments by counter-arguments and, what is more, their perverse facts with real facts. Now, I would appeal to the hon. Members, who are sitting opposite, for a while not to be carried away by blind, narrow, party loyalty. Party loyalty, of course, should be there but blind, narrow party loyalty, just because the measure has come from the Home Minister, therefore it has to be supported, would not be a right approach over a measure of this kind.

Sir, this matter has to be judged in the light of experience on merits and grounds of principle and in the light of the tenets of parliamentary institutions and democracy. This should not be judged from the point of view of petty arguments and incidents that are cited with a view to supporting the motion of the Government. The question before us is not whether, as we say, some little incidents took place in some place or another. The question before this Parliament over the last nine years has always been whether having been committed to the

[Shri Bhupesh Gupta]

institution of parliamentary democracy, having provided for Fundamental Rights in our Constitution as they appear there, whether having regard to the Directive Principles of the Constitution that we have got, whether recollecting the past pages of history in respect of the Congress leaders in their struggle when we were fighting for political independence, we are going to support a measure of this kind Here is a question of principle, question of fundamental postulates, a life question, of how we approach the context of our institutions and democracy That is how it should be done Let us not judge a big question like a small man Let us rise to the occasion and judge this big question in a big way, in a manly way, if I may say so

As you will remember, Sir, when this matter was discussed nine years ago, tooth and nail from this side of the House we fought I was privileged to be one of them The hon Home Minister was not, of course, here, he was holding people in detention in Uttar Pradesh But then he had another of his colleagues, Dr Katju, decorating the place here which he is occupying today He gives more or less the same arguments given then when the Preventive Detention Bill was moved originally, and they want a rehash of the entire old thing But then they had to make a little concession on the principle, they did not yield At that time we were told by the then Home Minister, Dr Katju, that the situation was still not stable, that certain incidents had taken place and were still taking place, and therefore the measure was needed We were also told by many people in the course of the debate that, if the country's position improved in such matters then, of course, there would be no need for the Preventive Detention Act and that the measure would be dropped That is how we have been told all this time Every time we raised this question, they said it was unpalatable to them but they would like to have the full plate, not only eat it but eat it at once That is their position

Now, Sir, when they say that this thing is unpala able, nobody takes them seriously because it is very, very palatable to them That is why the plate that has been left by . .

SHRI H P SAKSENA (Uttar Pradesh) On this side of the House also here are victims of the Preventive Detention Act

SHRI BHUPESH GUPTA. I know. That is our trouble all the time The victims of the Preventive Detention Act of yesterday have become the protagonists of this Act today Here is the Home Minister, that tragedy personified Our teacher, Mr Saksena, is quite right

Now, Sir, this is the position At that time we were told, "Look here, there are ten thousand people in detention, or seven thousand or five thousand It shows that it is necessary, otherwise all these people would not be there, so many would not be there in detention" Today what the Home Minister says is all against that argument According to them, there are only 106 in detention but the Act is necessary Heads we win, tails we lose, no matter At that time the number was quoted as an argument for the justification of the continuance of this measure, pointing out that five thousand or seven thousand were still in detention, therefore that measure was needed by the State Today we have been told that there has been no detention under the Preventive Detention Act He has tried to make his arguments on the basis that there are few in detention—total number in detention at the end of September this year is 106 He has made that as a ground for retaining this measure It is like running with the hare and hunting with the hound Probably if nobody is detained, they will argue that since nobody is detained there is greater argument for the retention of the Preventive Detention Act They will say that only because of the Preventive Detention Act nobody is

detained, therefore, have it That have got that logic It is not logical at all Tell us what you have in your heart That should be divulged before the House Therefore, that argument is gone I think the Governmen. has not kept its pledge to Parliament when it gave us to understand that a situation might arise in the course of a few years when such a measure would no+ be necessary Today, on their own reckoning, in a number of States this was not at all applied and in other States, there are some cases and even that is made into an argument for the retention and continuance of this measure Tell us which argument to take? Are we to remember Dr Katju of that time, of the year 1952, and stick to his argument or are we to adopt our Home Minister today here and his new argument to be the criterion for judging the measure? They are both honourable men and which honourable man have we to go by? It is for the Government to tell us, it is for the Home Minister to tell us.

SEVERAL HON MEMBERS: Both

SHRI BHUPESH GUPTA. Therefore, hon Members would see that that argument does not hold good Much was said about linguism towards the end of his speech and also about provincialism, etc Well, I enjoyed it when he made that statement Only recently, this year, only a few months ago, we had one of the most violent linguistic outbursts in a State like Assam where thousands of houses were burnt, many people were uprooted, hooliganism was let loose, and with Congressmen sometimes as leaders on the top of it, in front of the processions Was there a single case under this Act? Let him tell us How is it that if the Preventive De'ention Act was meant for dealing with violent situations such as obtained in Assam, in June-July of this year, how is it that not one person was arrested under this Act? The answer is simple The answer is that those riots there were organised, not by the Assamese people as such, not by the common man nor even by Shrimati Pushpalata Das and others That was organised by some small sections . .

SHRI SHEEL BHADRA YAJEE (Bihar): By the Communists . . .

(*Interruptions*)

SHRI BHUPESH GUPTA. Do not get up Did you go to organise the riots in Assam? Tell us That was organised by a small number of people belonging to the Congress party specially That is why the Preventive Detention Act was not used It shows that this Act, as far as these things are concerned, as far as political matters are concerned, are directed against the opposition parties The Congressmen are aboveboard The Congressmen are not to be touched Good, they should not be arrested under this Act but then, do not arrest us also That should be our approach Therefore, it is no use talking like that Whom is the hon Minister trying to bluff when he talks about linguism and provincialism because the test is not what you say? The test is how you behaved in a situation like that during the Assam riots, which if at all any situation, warranted this kind of action under this Act Therefore, let us not talk about it

One does not feel like seeing this abominable, atrocious measure and a cultured man does not even feel like speaking on it Now, as a matter of public duty, I have to make a speech and others also will have to make speeches from this side of the House This measure was passed as an extraordinary step in 1950 when the Government was confronted with the possibilities of the release of 350 or so detenus in West Bengal as a result of the judgement by the High Court In order to anticipate the judgment of the High Court, lest these people should be released the then Home Minister, Sardar Patel, said that he had passed a sleepless night and so the measure had to be put through within 24 hours and before the sun was down in the sky, the measure was passed He had dreamt of it at midnight Hon Members of the Constituent Assembly at that time, constituting themselves also for such purposes as the Legislative

[Shri Bhupesh Gupta.]

Assembly, were not given time even to ponder over what they were passing. It was done in a great huff and in a hurry and the measure was passed. Only on one occasion a legislation like that was brought in the annals of Parliamentary history. It was when Mr. Lloyd George went to the Parliament and passed the Defence of the Realm Act. He said: 'I conceived it in the morning and by evening the Defence of the Realm Act was passed.' Such is how this measure was passed in order to circumvent the decisions of the judicial court. It was born in abysmal sea, it was conceived with malice. The measure was meant to frustrate a judicial judgment of the highest Court of a State, to place the dictum, to place the fiat of the executive before the wisdom of the judiciary. That is the birth history of this ugly measure.

Then it has gone on. In 1952 many restrictions were made in the measure but it is continuing. First three years, then three years, and three years in perpetuity it will continue. In 1952 it was for five years, then it was for three years and now for another three years. It will go on, I know, if many of us live—and many of us no doubt will—and another three years will come because this Government cannot think of continuing in office without this repressive measure. It must have the weapon of the Preventive Detention Act to be used against the political opponents, the organised trade union movements, mass movements and so on, in order to crush the legitimate aspirations of the people and flourish on the vanquished aspirations of the masses, suppressed aspirations of the masses.

Here again you will see that according to the statistical reports, in the course of the 3 years under discussion now, between 1957 and 1960, there were 569 cases of detention, in all categories. Now, let us examine it a little dispassionately, as to how the Government has behaved. Now, as many as 140 of these 569 were ordered to be released by the Advisory Board plus 31 by the High Courts. That is how you find that 171 out of 569 were released either by the Board or by the High Court. I shall come to the High Courts' difficulties in this matter, otherwise many more would have been released. What does it show? It shows that this Act has been used at least in 171 cases in such a manner where it should not have been used at all. There have been abuses of this authority because if these cases were brought within the framework of this Act, then the Advisory Board would have confirmed them. Similarly, if these cases had something to do with the provisions of the Act and the mischief that the Act was to deal with, then the High Court would not have dismissed so many cases. As you know, the High Courts here cannot go into the grounds and the reasonableness of the application of this Act. They are debarred. When we pressed in this House that the High Courts should be given the right to go into the question of reasons, that a judicial mind should be allowed to be applied there, that was not done. The High Court goes by technicalities. Its powers are crippled, everybody knows it. The High Court cannot go into the reasons. Therefore, writs of *habeas corpus* or *mandamus* do not work as long as a certain letter of the law is fulfilled. The High Court cannot call other evidence or the charge-sheets. If the High Court had the power to look into the charge-sheets and examine them and see whether there was a reasonable and probable ground for the person to come under the mischief and for his apprehension, then these things would not have happened. Many more would have come out. Even so, 171 cases, according to the Government statement, were such as did not in the least warrant the application of the Preventive Detention Act at all.

4 P.M. Now, may I ask this question? Those people who took away the liberty of those 171 persons and who abused the authority given under the Preventive Detention Act in so blatant a manner, have they been punished? Have they been called

to book? Have they been penalised or reprimanded in any fashion? No. They are not. They trifle with the liberties of the people, throw them into jail. Any District Magistrate or Police Commissioner, any Tom, Dick or Harry of the administration can at will put any person under arrest and even if he is released by the Advisory Board or discharged, well, nothing happens, to the person who committed that act, that violation of the fundamental right of the citizen. Is this the test of civilized society? Is it the right way of dealing with the fundamental rights and liberties of the people? This is the question, I ask. In England this is inconceivable, I tell you. I was there at the time of the war and there was an uproar when Oswald Mosley, the Fascist member, was arrested under the Defence of the Realm Act and even the Conservative Party thought that, if they went in for this kind of detention, then they would be doing something which would not be in accord with their understanding of the constitutional rights of the citizen. Ultimately, they had to do it, but soon they were released after two years or so, even before peace was signed. So that is the position there. But here a District Magistrate can go and do such things.

Then in the same account, in this statistical information, you find that the Government themselves have released *suo motu* 284 detenus. What does this show? Of course, the hon. Minister will try to make out an argument and say, "How great we are How liberal we are. We steal your money, keep it for a little while and then give you part of it". This is good argument indeed. But this is how it should not be viewed. They arrest anybody at will even to deal with a temporary situation. This is the case in Bengal. They arrest members of the State Legislature, keep them for some time and then release them. You may ask, "What is wrong in that? After all they are released" But somebody may ask, "Is this the way to deal with the citizens and their liberties? Is this the way to deal with Members of the Legislature or with Members of Parliament"? When there is no war or anything, you arrest the person. You go and catch the man with the scruff of the neck and put that man in prison and then you release him in order to deal with a situation, which might perhaps have been easily dealt with under the ordinary law of the land. There is no need for it. Therefore, you will see that in the overwhelming majority of the cases, as their figures themselves show, there was really no justification for the application of this Preventive Detention Act This is the greatest condemnation of this measure. This is the argument that I wish to make. Surely, if all these 284 people who were released *suo motu* by the Government, had they been such dangerous persons, they would not have been released and their detention would have been shown in the list. That is not so. This is one aspect of the matter which I would ask hon. Members to bear in mind.

(*Time bell rings.*)

MR. DEPUTY CHAIRMAN: You have one more speaker.

SHRI BHUPESH GUPTA: We will both speak I know . .

MR. DEPUTY CHAIRMAN: But there are fourteen speakers

SHRI BHUPESH GUPTA: Let me continue. That is all right. We had a talk with the Chairman and . . .

MR. DEPUTY CHAIRMAN: Not more than twenty minutes for each speaker.

SHRI BHUPESH GUPTA: But that was not the position when we dis-

MR. DEPUTY CHAIRMAN: Five hours is the time-limit

SHRI BHUPESH GUPTA: Five hours is not the time-limit. It was six hours the whole day.

MR. DEPUTY CHAIRMAN: Five hours.

SHRI BHUPESH GUPTA Please listen to me You were not present there You may say I am wrong, but the decision was, time from 12 to 6 and if necessary, sit for more Therefore, it is six hours It was settled and the Secretary will bear me out Anyway, Sir, I may

MR DEPUTY CHAIRMAN I understand that five hours is the time-limit

SHRI BHUPESH GUPTA If that is so I certainly cannot take more time But I made it very clear that if that arrangement was not there, then the Business Advisory Committee's recommendation or decision would be a majority decision But it was only when it was agreed to that I said "All right" and that was the unanimous decision of the Business Advisory Committee to which I was invited And now it is sought to be changed Anyway I am finishing This is not right and I am very sorry

DR H N KUNZRU (Uttar Pradesh) What was settled so far as I can remember, was that if five hours were not enough the lunch-hour was to be taken We might take the lunch recess that is to say, there would be no recess and that is how we were to have six hours

SHRI BHUPESH GUPTA I think we accept that position Therefore, we started at 3 o'clock and we go up to 6 o'clock That is three hours today and tomorrow we will have no lunch interval Therefore there will be the cut of the lunch-hour also

MR DEPUTY CHAIRMAN We should give time to all Members

SHRI BHUPESH GUPTA I am grateful to Dr Kunzru I hope he also will speak on this subject

Therefore, I say this has been used against political parties It was made out that it was not used against political parties But you will find that in Bengal in 1958 10 M L As and some M Ps were put under detention In 1959 20 were put under detention and they belonged to all parties, the Communist Party, the Forward Bloc and the R S P They included Shri Hemanta Kumar Basu, Shri Jyoti Basu and Shri Jyotindra Chakrabarty Hemanta Kumar Basu is of the Forward Bloc, Jyoti Basu is of the Communist Party and Jyotindra Chakrabarty belongs to the R S P So all the parties are there And there were others also So practically all the opposition parties came In 1960 they put 4 persons under detention and in other places the same thing has been done So let it not be said that it has not been used against political parties After all, I do not think the hon Minister will say that the West Bengal Members of Parliament or M L As are *goondas* And if he were to say that, he would be hauled up for contempt of the West Bengal Legislature He will not say it, though others might like to say it I hope he will not say it Now, I am quoting from his own list to show how this Act is being used in this way Then again, you find that some 204 persons were under detention under the Security of the State, Maintenance of Public Order Act and 39 were under detention under the Supplies and Services Act This is how things are done And during the Central Government Servants' strike two M L As from Bihar were detained under the Preventive Detention Act In U P two Members of Parliament and others were put under detention In Manipur today we have got five persons under detention Shri Thiyam Meghachandra is detained He is of the Communist Party So also Shri Moirangthem Ibohal is detained There is Shri Achaw Singh who is an M P of the Socialist Party and he too has been detained under this very Act These are the people under detention And there are others also You have got in Punjab Master Tara Singh under detention We do not support his policy certainly but neither his detention without trial Such people ought to be released They should have been released a long time back We demand that all

of them should be released, all of them, including Master Tara Singh Therefore, do not say that you are not using it against political opponents You are using it against your political opponents You have to make out a case for it and you have not made out any case Much is said about the food movement, about the tramways movement, about the refugee movement What are we to do? What are the people to do? When their rights and liberties are attacked when they are not given minimum wages, when they are thrown out of their homes, when the tram fares are sought to be increased because the British like to have it that way, when such things happen, what are the people to do? Are the people of Calcutta, for example, to live in mute submission to the dispensation of the Government? Or are they to exercise their democratic right of pacefully agitating and seeking redress of their grievances? Let us not talk of direct action We know they conducted a direct action The Congress conducted their direct action in Kerala What happened? Well, at that time we were in the Government, but we stuck to our principles We could have put some people in jail But we did not do so under the Preventive Detention Act, because what we preach we practise You conducted a little direct action and the Congress workers were the biggest organisers of that direct action Therefore, all the members of the Congress Working Committee made themselves liable to be dealt with under this Preventive Detention Act But they are all safe We did not ask the hon Home Minister, Pandit Govind Ballabh Pant, "Put yourself in the Delhi Central Jail for a while" We did not ask him to do that Nor did we use it against others We did nothing of that kind So let us not talk about that I say this is used in a light-hearted manner Against textile workers and trade union workers it has been used I pointed this out to Dr B C Roy in Bengal and he wrote me a letter to say they are habitual disturbers of the peace It is a new term and the lawyers will kindly note that habitual disturbers of peace" They are all executive office-bearers, Assistant Secretary of the Union, General Council members of the B P T C, another member of the Kesoram Cotton Mills Union, the mill which is working under the aegis of the Government They are all described as habitual disturbers of peace What do they disturb? Certainly they caused a little disturbance to the Birlas and others because they were fighting for the cause of the working classes but the Indian security was not disturbed by them at all so that they have to be apprehended and put in detention in this manner I have got the charge-sheet presented against Mr Ranen Sen, an M L A of the West Bengal Legislative Assembly Mr Niranjan Sen, another M L A, spoke at the meeting about food I have not got the charge-sheet in respect of Mr Jatin Chakravarti but I found out from him even before the debate that he was put in under some flimsy charge He is the leader of the R S P in the West Bengal Assembly He was also detained in this manner There is no justification for this The only thing that I can say towards the end—since the time is short I have to close I could have spoken at length otherwise—is that this Government has made up its mind that the Preventive Detention Act must continue to disfigure and disgrace the statute book of our country They lack moral courage and therefore they do not bring in a measure for permanently retaining it but they have chosen a device a subterfuge and that is to continue it in instalments of three years This Parliament will go the Lok Sabha will so Why are you binding the next Parliament which will come? Why cannot you leave it open? Let the next Lok Sabha decide this question Make it an issue in the elections but you will not do it This is how they go on in this matter

Well Sir, the Advisory Boards cannot test the witnesses The High Courts cannot go into this thing and the detenus cannot cross-examine the

[Shri Bhupesh Gupta]

witnesses and that is a handicap Mr P R Das an eminent lawyer—and he is not a Communist—has said

> 'I have always held and still hold that Preventive Detention is repugnant to the elementary conception of democracy It is remarkable that the Preventive Detention Act has been provided for in our Constitution in the same chapter which deals with the Fundamental Rights"

He says further

> 'The British invented Preventive Detention for consolidation of its Empire and the Congress Government is following in the footsteps of the British"

Mr Das adds

> "After the close of the Great War in Europe and while the war with Japan was still going on, the then Home Secretary of England, Mr Herbert Morrison wanted to release all persons who had been detained without trial under the Defence of the Realm Act The Conservatives opposed Mr Morrison and Mr Winston Churchill was then not in England and he wrote a letter to Mr Morrison supporting the decision to release all detenus Mr Winston Churchill said in his celebrated letter 'The personal liberty was the test of civilisation'"

Then Mr Das said

> 'If you apply that test to India our Government is not civilised at all'

This is what has been said by one who is one of the eminent jurists in our country, not by any member of the Communist Party in opposition Well I would not call this Government uncivilised but I would call this Government uncivil in its attitude I would call this Government oppressive Apart from the Preventive Detention Act they have got another Act which was passed the other day I would call this Government politically mendacious and malicious in this matter They want to attack the democratic movements and use this measure for their political aggrandisement, for suppreasing democratic movements and for retaining themselves in power not only by political fraud and deception of the people but by terror, intimidation and Preventive Detention It is a shame today, Sir, that after thirteen years of our independence, I have to argue on the floor of this august House that this measure should be scrapped It is a shame that the Congress party which at one time fought against this kind of thing is today the greatest advocate and protagonist of this kind of measure which civilisation has not got a word to describe Sir I would appeal to the hon Minister, if he is still amenable to reason and appeal, to the dictates and promptings of decency and civilised conduct in political life, that this disgraceful and ugly measure which has tarnished the statute book should be withdrawn here and now by the Home Minister before we adjourn this House this session

SHRI G S PATHAK (Uttar Pradesh) Mr Deputy Chairman, having been concerned with civil liberties to a certain extent I can say, and I am proud to say, that since 1950 ever since we attained independence, civil liberties have grown in this country The impact of the Constitution and of the laws made by Parliament has raised the stature of the citizen in India and when we talk of the United Kingdom and the U S A—the hon'ble Member has referred to England—I am not sure whether the civil liberties enjoyed by the people there are greater than the civil liberties enjoyed by us I will give you one example There is a Memorandum issued by the United Kingdom Government which was first issued in 1948 and again repeated in 1957 The Ministers there have got to select certain services as security risk services and they have got to make a list of such services If there is any person in such service

found to be a Communist or who has been a Communist or has been under Communist pressure, he is at once to be given leave with pay. The matter goes before an advisory board consisting not of judges but of three civil servants. That advisory board makes a recommendation to the Minister and the Minister is entitled either to transfer that civil servant or to dismiss him. This is a recent scheme evolved by them though there may be no law. But there is no such scheme in our country.

DR A. SUBBA RAO (Kerala): How many are there like that in India?

SHRI G. S. PATHAK: You better ask the Minister there.

Now, Sir reference has been made to England. Can it be said in all conscience that the conditions in England are the same as the conditions here? Can it be said that the English mind has got the same indiscipline as has been evidenced in the Indian mind? I am not generalising. But there are some such classes of people. Can it be said that the borders of England are as sensitive as the borders of India? Can it be said that there are at the borders of England, on the sea-shores, people who are engaged in anti-national propaganda, who are engaged in misleading other people, who themselves remain behind but allow the misguided to act, and who may welcome with open arms foreign elements, if necessary? Are these the conditions in England? What is the use of comparing England with India? Our Constitution-makers in their true wisdom and with a foresight, commendable if I may say so, visualised the situation that might arise in India. They were fully conversant with the historical aspects of Indian life; they were fully conversant with the lingual and religious aspect of Indian life; they were also conversant with the question of the borders and some of the people living here. They made a provision in the Constitution—article 102—that if it is found that a legislator is either not a citizen of India or is under any acknowldgement of allegiance or adherence to a foreign State he shall be disqualified. The Constitution-makers made a provision in article 11 of the Constitution that it will be open to Parliament to make law for depriving a person of his citizenship under certain conditions. Now, all these provisions have been made by the Constitution-makers for some purpose. They knew the conditions in India and therefore it would not be right to compare England with India on this question.

Now, Sir, for the development of any rights, for the development of civil liberties, for economic and social progress, it is essential that the conditions should be normal and peaceful. Personally, I would always attach greater importance to civil liberties if there could be any priority between civil liberties on the one side and economic and social growth on the other. But it is clear that there can be no progress of any kind in any direction unless the conditions are peaceful and normal. Now, Sir, Mr. P. R. Das has been quoted today and a challenge has been made to the principle of this Bill. I would however, respectfully adopt the view taken by the Home Minister, which in my submission is correct, that this is not the stage when the principle of the Bill can be examined.

SHRI BHUPESH GUPTA: Why not?

SHRI G. S. PATHAK: Because the Bill had been passed by five Parliaments at least. The principle had been discussed but I am prepared to attack the expediency of bringing the principle of this Bill, you are attacking the Constitution. You may attack the expediency of bringing the Bill today.

SHRI JASWANT SINGH (Rajasthan): Why don't you have a permanent Bill?

SHRI G. S. PATHAK: We may have to have it if necessary, if you compel us.

Sir, the question is, can we attack the principle of any legislation which was authorised and permitted by the Constitution itself? Did not the Constitution-makers adopt the principle underlying the Preventive Detention Act? And when they have adopted it, the reason, I submit, is two-fold. I may be forgiven by hon. Members for placing before you the reasons but I am really compelled to do so by the speech which we have heard just now. The reason is two-fold. One is the fundamental principle which is a very old concept, namely, *salus populi est suprema lex* that is to say regard for the welfare of the people is the highest law and this principle has been interpreted always to mean that if the liberty of a few has to be delimited in the interests of the general welfare it must be delimited. That is the principle. It has been followed in England and in India and it is the basis of our provisions like section 107 and other sections of the Code. Justice is not merely punitive justice; justice is also preventive justice. To secure preventive justice also is the duty and obligation of the State. That is what the books on jurisprudence say.

SHRI BHUPESH GUPTA: Which books?

SHRI G. S. PATHAK: After this I will give you the reference.

Sir, it is the obligation of the State not only to punish crimes but also to prevent crimes and to prevent acts which may be prejudicial to the existence of the State or to the security of the State. That is the duty of the State.

SHRI BHUPESH GUPTA: Quite a different proposition.

SHRI G. S. PATHAK: And therefore justice in these matters is not only punitive justice where you can punish a person after he has committed an act but it is also preventive justice. If the State comes to know that a certain person is going to commit a crime, it is the function of the State, the obligation of the State, to prevent him from committing the crime. As against Mr. P. R. Das, I may be permitted to quote the Chief Justice of England.

SHRI P. RAMAMURTI (Madras): May I just remind the hon Member . .

MR. DEPUTY CHAIRMAN: Order, order.

SHRI P. RAMAMURTI: I am just asking a question.

SHRI BHUPESH GUPTA: Let him, Sir. The hon. Member may be helpful.

SHRI P. RAMAMURTI: Can he just enlighten me whether he is aware of the fact that there are provisions in the Criminal Procedure Code under which they can detain persons for these purposes?

SHRI G. S. PATHAK: I am obliged to you but I would have come to that.

Now, I will quote from the Chief justice of England on this preventive justice. This argument always is missed in the Opposition arguments which end in vituperative epithets. So far as this Act is concerned, two points are always missed. One is the principle which I have already mentioned and which is the foundation of article 22 of the Constitution and the other is the principle of preventive justice. Now, Sir, I will read this. If he wants to have the reference he can have it. It is 1948, 2 King's Bench.

SHRI BHUPESH GUPTA: Name the Judge.

SHRI G. S. PATHAK: Lord Goddard, Chief Justice:

> "There is a consensus of opinion to be found in the books extending back for some 400 years that is this Act . . ."

The Act was similar to section 107

> ' which was described by both Coke and Blackstone as an Act for preventive justice does enable justices at their discretion to bind over a man, not because he has committed an offence but because they think through his behaviour he may himself commit or cause others to commit offences against the King's peace It is an exercise of the powers which have been exercised by justices for many centuries as a measure of preventive justice, to take security from persons whose behaviour leads them to suspect will cause a breach of the peace, although up to the time they are brought before the court they have not done anything which could form the subject of a criminal charge He is merely taking a precaution against the defendant committing an offence"

SHRI BHUPESH GUPTA You are a lawyer I seek enlightenment not being so good a lawyer as you are Will you please

SHRI G S PATHAK I am not under cross-examination

MR DEPUTY CHAIRMAN Order order

SHRI BHUPESH GUPTA It is wholly irrelevant 107 goes to the court of law

SHRI G S PATHAK This distinction between section 107 and the Preventive Detention Act was known to the Constitution-makers They did not rest content with the Criminal Procedure Code They considered the Criminal Procedure Code inadequate and it is inadequate It provides for a different set of circumstances and this distinction, I submit, is a distinction which is very often missed in the arguments of the Opposition Now, while the Constitution-makers gave power to Parliament to make law relating to preventive detention, the Constitution-makers limited that power The limits you will find in List I, Entry 9, in List III, Entry 3 That is to say the law must be for reasons connected with the defence of India, foreign affairs, the security of India, the security of a State, maintenance of public order and maintenance of essential supplies

DR H N KUNZRU What has been left out?

SHRI G S PATHAK What is left out is what is contained in section 107 One has only to read it Section 107 does not concern itself with any of these items These are matters which are very vital They are the very essentials on which a State can exist If the defence of India is gone, if the maintenance of order is gone, the State cannot exist Now, therefore, the distinction between section 107 and the Preventive Detention Act is this vital difference, namely the former relates to matters where if nothing is done, the entire State is *not* affected The latter relates to matters where if no action is taken—if there is no law on these matters—then the *entire nation* can be affected This is the difference

Now, Sir, a question was put to me, why not the courts? The answer is that a High Court Judge is presiding over the Advisory Board And I can say from my knowledge—I have known some of the High Court Judges who have presided over these Advisory Boards—that they are above reproach It will be a very sad day for the country if anybody says that we do not have faith in our High Court Judges It is an unjustifiable reflection, with all respect I say, on a High Court Judge, to say that a High Court Judge sitting on an Advisory Board will not be exercising his functions properly and that a magistrate should be entrusted with a function like this and not a High Court Judge The magistrate belongs to the lowest grade in the hierarchy of judicial

[Shri G S Pathak]

officers The High Court Judge functions with two more safeguards in the Advisory Board He has got the entire particulars of the matter before him He has also got the power to call for other particulars and information whenever he likes In 1960 there is a case reported where the detenu addressed the Advisory Board for two days The High Court Judge does all this with the safeguards contained in the Constitution which he must observe, namely, he must give the fullest opportunity for making a representation And there must be a copy of the charges to be handed over immediately after the extension There is a further safeguard that unless the High Court Judge is of the opinion that it is necessary that the person in question should be detained, the Government has no power to detain him The Government must release such a person I submit that what is missed in the argument of the other side is the position and status of a High Court Judge All the safeguards which are laid down and guaranteed under the Constitution will continue That is the reason why the Constitution entrusted this work to a High Court Judge and not to a magistrate And if the Constitution did so, is it for anybody today to say that the Constitution is wrong or any law which has entrusted that function to an Advisory Board of that character is abominable? If we attack the very principles, which are laid down in the Constitution, I submit that we are attacking the Constitution itself

Now, Sir, we are living in difficult times The real question is not one of principle of the Bill The real question is, what are the conditions today? They have been described by the hon Home Minister When you have got 600 million people residing as your neighbours with a large militia, when you have got the fact that their mental processes are coloured by the background of how they rose to power, the militant background when that is the ideology, is it not necessary to protect our borders? Protection of our borders does not merely mean protection against external attack Protection of our borders also means protection internally against sabotage These two must go together When the people of India are clamouring for the strengthening of our borders, I submit that the Government will be failing in its duty if it is not to take measures for the strengthening of the borders in both the manners This is a very important matter It is very easy for a person inciting others to remain behind the curtain, himself not doing an act which may bring him under the clutches of the law How can that person be caught, unless there is some law for preventing him from doing these deeds or causing them to be done? This, I submit, is a very important matter We cannot shut our eyes to what has happened in Assam We cannot shut our eyes to what is going on in the Punjab Therefore, I would submit that conditions are such that it cannot be said that the preventive detention law should not exist What is the value of the Government's action, after the act is done? Suppose somebody wants to commit murder or arson The Government knows that he is going to commit it Government does not prevent it And after innocent lives are lost and after public and private properties are lost, then you might punish him I could give you, from reported cases, some typical cases The whole railway work could be stopped A person from a certain place declares the intention of coming to Delhi and breaking and violating public order and even preaching murder I would submit that this Bill should be passed I support this Bill And I say that the Government has acted properly by bringing this Bill before the House and if it had not done so, it would have failed in its duty

PROF. M B LAL (Uttar Pradesh): Sir, the learned Home Minister and one of the most distinguished jurists of northern India have raised certain

fundamental issues and I feel that those issues must be properly taken into consideration before we come to a conclusion whether the continuance of the Preventive Detention Act is necessary or not. The distinguished Home Minister says that the supremacy of law is the foundation of democracy I beg to submit that the supremacy of law is the foundation of democracy, provided law is founded on basic principles of democracy. Supremacy of law will cease to be the foundation of democracy if the laws that we frame are not based on fundamentals of democracy. We all know that liberty is a basic principle of democracy Political freedom no doubt is a prerequisite of democracy, but political freedom by itself cannot constitute democracy Civil liberty is the life-breath of democracy, and you cannot think of democracy if there is a law which tends to violate the basic principle of civil liberty which is also the basic principle of democracy.

I beg to submit that the law which is under consideration is not in consonance with the basic principles of democracy It violates the rules of law It is a negation, I should say, of the supremacy of that law which can be the foundation of democracy

Sir, again the question of the security of the State is raised. No doubt the security of the State is as necessary as the freedom of the individual. But how are we to secure the security of the State? The security of the State is to be secured through proper legal process, through due process of law, if I may say so. I beg to submit, Sir, that much more than lawlessness of individuals, a lawless law is a grave danger to social order based on principles of democracy, and I am opposed to the Preventive Detention Act, because I feel that it is a grave danger to the democratic freedom of the people of this country

Sir, the learned Home Minister has made a number of observations on *satyagraha* and direct action He maintains that *satyagraha* and direct action have no place in democracy, and that democracy is based on obedience to law I will submit, Sir, that this is not the conception of the democrats of the world Right of resistance against autocracy is the basic principle of democracy

DR W S BARLINGAY (Maharashtra) Even violent resistance?

PROF. M B LAL I am talking of non-violent resistance of *satyagraha* which is supposed to be non-violent resistance When the learned Home Minister talked of direct action, he did not make any distinction between non-violent direct action and violent direct action There was a time when strikes were taboo in a number of democracies in Europe, but today strike which is a form of direct action is recognized as a fundamental right of the workers of the world Sir, no less a scholar than Prof Ernest Barker, who is conservative in his political convictions, in his latest works recognizes the right of civil resistance for the protection of civil liberty Sir, who is the father of *satyagraha*? Mahatma Gandhi.

SHRI BHUPESH GUPTA: He is dead

PROF M B LAL. Mahatma Gandhi used to recognize Prahlad as the first *satyagrahi* Against whom did Prahlad engage in *satyagraha*? Against his own father. If Prahlad could be recognized by Gandhiji as the first *satyagrahi* because he resisted an unjust order of his own father, we, the citizens of India, can surely offer *satyagraha* against the unjust orders of the Government of our own.

DR W S. BARLINGAY: Has a non-violent person ever been detained under this Act?

PROF M B LAL: I will come to that also

SHRI M GOVINDA REDDY (Mysore). I want to correct the hon Member. Prahlad did not resist his father's order. He obeyed his father's order but maintained his own conviction

PROF. M. B LAL: Even now when a *satyagrahi* is arrested, he does not refuse to be arrested

[Prof M B Lal]

Sir, our distinguished Home Minister maintained that decency of public life is not to be allowed to be vulgarised That means that the Preventive Detention Act is to be utilised for preventing acts which, according to the Home Minister or the State Government or, may I say, the District Collector or the Police Commissioner of Bombay, are a vulgarisation of public life What is to happen to democracy in India if a District Collector or a Police Commissioner is to judge whether a particular act of a man is a vulgarisation of public life or is not a vulgarisation of public life?

Sir, in this connection I am reminded of a booklet written by a distinguished Congress leader who once occupied the distinguished post of Chief Minister of a State In that booklet he complained of certain acts of vulgarisation of public life by the opposition party, and he ended by remarking that sometimes one felt that a modicum of autocracy would not be a bad thing for our infant democracy It is this spirit, Sir, that is pervading in certain circles who once were the custodians of freedom and liberty, who fought for the freedom of this land but who now wish to preserve their authority by downtrodding that freedom for which they fought for life

SHRI BHUPESH GUPTA Has he joined as Mundhra's adviser?

PROF M B LAL Sir, another question has been raised that there has been no misuse of power Suppose there has been no misuse of power, are we justified then to pass this law? My own feeling is that even if this contention be true the enactment of a lawless law will hardly be justified Sir, we all know that our Home Minister is very human, very kind, he does not wish to kill even an animal for his food, will not like to harm any innocent man Knowing all this, will this Parliament be justified in enacting a law enabling him to kill any person at his sweet will?

SHRI AKBAR ALI KHAN (Andhra Pradesh) No killing

PROF M B LAL We will not be justified in doing so Why? If we do so, democracy will be replaced by benevolent despotism which is bound to degenerate into pure despotism, because power corrupts and absolute power corrupts absolutely That is the experience of the world in political life

SHRI SHEEL BHADRA YAJEE That is bourgeois theory

PROF M B LAL I would point out to you a case of misuse of power also and that is the case of a Member of Parliament Mr Prabhu Narain Singh, a Member of the Lok Sabha, was kept under detention for a long time and was let off by the High Court on some technical grounds He was detained by the District Magistrate for the purposes of preventing him from acting in any manner prejudicial to the maintenance of public order and to the maintenance of supplies and services essential to the community When the case went to the State Government, it dropped the second contention, that is the contention of acting prejudicial to the maintenance of supplies and services essential to the community and he was detained on the ground that his detention was necessary to prevent him from acting in any manner prejudicial to the maintenance of public order The grounds that were submitted did not mention any case whereby it could be said that his free life would be prejudicial to the maintenance of supplies and services All the grounds referred to the maintenance of public order, all the grounds referred to his activities concerning the civil resistance movement which Dr Lohia and his party decided to launch That means that in the name of the maintenance of public order, a promoter of *satyagraha* or civil resistance can be detained without proper and fair trial When I read this case, I was reminded of the Dandi March of Mahatma Gandhi Mahatma Gandhi declared that there would be civil disobedience movement He marched for a number of days to Dandi The Government knew what

effect his words had but they did not touch him until he broke the law by taking into his possession a lump of salt You may say that there is no comparison between Mahatma Gandhi and Mr Prabhu Narain Singh I admit it Therefore I say that Mr Prabhu Narain Singh could be ignored by this Government much more easily than Mahatma Gandhi could be ignored by the imperialist power You might say that it is a case of imperialism, and here we are in a democracy I admit it The present social order or public order is as dear to us as an imperialistic order was dear to the British Government, and I may submit that when Mr Prabhu Narain Singh was engaged in organising a civil disobedience movement, he was not questioning the sovereignty of the State, he was not questioning the Constitution of the State, he was not questioning the democracy of the country, he was only questioning certain laws promulgated by the State and he was perhaps questioning the authority of the present Government And what did Mahatma Gandhi do? Mahatma Gandhi was questioning the very authority of the British Crown in India The Civil Disobedience Movement was started by Mahatma Gandhi after the Congress had declared complete independence as their goal, which was interpreted at that time by a large number of Congressmen as severance of British connection Now, what does all this mean? It means that our present Government is not even as considerate to the rules of law, to the basic principles of law as a great imperialist power was when every authority was to be undermined or questioned by the great powerful personality, Mahatma Gandhi who ultimately secured to us the freedom of this country

SHRI BHUPESH GUPTA Have they forgotten it?

PROF M B LAL Sir, in that particular case the judges came to the conclusion that there had been a clear breach of sections 3 and 7 of the Preventive Detention Act and on that ground, set aside his detention and asked the Government to set him free I do not want to go into details how those sections 3 and 7 of the Act were violated by administrators but I wish to invite the attention of this House to certain observations made by the judges in the course of their judgment in that case They observed that every day in cases that came before them they noted serious lapses and irregularities committed by authorities and that there was a general deterioration of efficiency in those matters Sir, the question was raised whether there was a case of *mala fides* or not The judges went in detail into this matter It was not possible for them to come to any positive decision on the question All that they said was that it was possible that the case might be a case of *mala fides* and it was also possible that it might not be a case of *mala fides*, it was a border-line case Even the judges who have their own strict criterion of judgment come to the conclusion that it is a border-line case of *mala fides* What wonder if the people of Uttar Pradesh feel that it is a positive case of *mala fides*?

Sir let us understand what all this means Does it justify us to entrust to the executive the authority embodied in the Preventive Detention Act? We talk of safeguards Yes, there is an important safeguard in the Preventive Detention Act The safeguard is that all cases are ultimately to be referred to the Central Government, and I am sure that that case also must have been referred to the hon Home Minister at the Centre The hon Home Minister knows Mr Prabhu Narain Singh who is also a Member of the Lok Sabha and who comes from the State from which the Home Minister comes, and yet he could not protect him from the consequences of the irregularities and the high-handedness of the executive The distinguished jurist thinks of the Advisory Board presided over by a High Court Judge as a very great safeguard Only the other day, I was having a talk with a retired judge of a High Court He was of the opinion

[Prof. M. B. Lal.]

that this was a lawless law and pointed out to me that the provision that a judge would preside over the Advisory Board was not sufficient. He says judges do come to the conclusion when they hear both the sides properly. Here is an almost *ex parte* judgment. However, I am tempted to feel that we are not only corrupting democracy; we are also corrupting our judges when we ask judges to express their opinion in such a delicate matter without properly hearing the accused. Sir, the distinguished jurist talks of the Constitution and the provision of the Constitution. The provisions of the Constitution permit us to pass laws on a large number of subjects. Are we therefore bound to pass laws on all those subjects?

5 P.M.

SHRI G. S. PATHAK: I never said that. I said of expediency.

PROF. M. B. LAL: I beg to submit, Sir, in spite of that provision in the Constitution, it is our duty to judge whether a law of that nature is necessary for the Indian Union or not.

(*Interruption.*)

MR. DEPUTY CHAIRMAN: Please address the Chair.

PROF. M. B. LAL: I am glad, Sir, that he has conceded that point to us.

SHRI BHUPESH GUPTA: The hon. the Deputy Chairman is very much impressed by your arguments. Please address him.

PROF. M. B. LAL: I beg to submit further that the learned jurist of U.P. says that this particular law is examined and found useful by so many Parliaments and that therefore this particular measure is not to be examined in detail by us. I am simply surprised at this statement of the jurist of the twentieth century. If he had been *Manu* or a jurist of that age who believed in *Sanatan Dharma* and irrevocable laws, it might be said by that distinguished jurist that this is *Sanatan* law and so that law cannot be changed. But then Parliament will have no right to exist, will have no reason to exist, if the laws passed by Parliaments that preceded a Parliament are not to be modified, are not to be revised in the light of our experience today. That a distinguished jurist of northern India should say so is the greatest surprise of my life.

SHRI BHUPESH GUPTA: And he quoted Lord Goddard.

PROF. M. B. LAL: Sir, much is said about preventive justice and preventive law. And our learned friend also quoted section 107 in addition to his quoting the distinguished jurist of England, the Lord Chief Justice of England.

SHRI BHUPESH GUPTA: It was completely irrelevant.

PROF. M. B. LAL: May I put it to him, can he quote a single judgment of a High Court Judge of Great Britain wherein the High Court Judge had justified the use of the application of section 107 by the executive magistracy? Separation of the executive and the judiciary is the fundamental principle of democracy, which is the fundamental principle of the political system of Great Britain. And here I know there is hardly any separation of the executive and the judiciary Even when there are judicial magistrates they continue to be subordinate to the executive magistrates. They do not feel themselves even as independent as the Munsiffs in charge of civil suits, and yet you say that the judicial system in India is at par with, if not better than, what prevails in Great Britain. I am in no way less nationalist in my sentiments than my distinguished friends, and nothing would please me more than to know that we are more democratic, that our judicial system is more perfect than the British system. But unfortunately this is not the case, and we have to bow our head in shame that even after thirteen years of independence we

have not been able to bring our judicial system at par with the British system. Since 1875 we had been condemning the British Government for not separating the executive and the judiciary. Every year the Congress used to pass resolutions.

(*Interruption.*)

MR. DEPUTY CHAIRMAN: That is a different matter altogether.

PROF. M. B. LAL: I am just coming to that, my dear friend.

As I said they were passing resolutions on the separation of the executive and the judiciary, and once they came to power they felt, "This is democracy; this is our own rule, and the separation of the executive and the judiciary is not necessary". I know that Mr. Rajagopalachari as Chief Minister of Madras made that statement. I know, Sir, when the new Constitution of the United States of America was going to be framed, there were some distinguished American statesmen who were of the opinion that fundamental rights are to be provided in the Constitution against encroachment by the executive in a country which is not democratic while in a country which is democratic the provision of fundamental rights is not necessary. The American statesman, Jefferson, opposed that idea and created public opinion to such an extent that fundamental rights had to be incorporated in the American Constitution, and since then, in every democratic constitution fundamental rights are provided.

MR. DEPUTY CHAIRMAN: Your time is up.

SHRI ROHIT M. DAVE (Gujarat): He has only spoken for twenty-five minutes; he is the only person who is speaking on our behalf.

MR. DEPUTY CHAIRMAN: He has spoken for half an hour.

PROF. M. B. LAL: I am the only speaker on behalf of my party.

MR. DEPUTY CHAIRMAN: You have already taken half an hour.

PROF. M. B. LAL: All right, Sir; I shall finish in a few minutes.

Now, Sir, this is the position. I do admit that there are the Fundamental Rights embodied in our Constitution, but as pointed out by Mr. Thakurdas Bhargava in the Constituent Assembly, a Fundamental Right is a limitation on the powers of the executive and the legislature, and I beg to submit that unfortunately in the Constituent Assembly the then majority party so framed the Fundamental Rights that the arbitrary powers of the executive were not properly curbed and the vagaries of the majority of the legislature were not sufficiently restricted and restrained. Therefore, the defective Code of Criminal Procedure continues to exist; today, not the Constitution, but the Criminal Procedure Code has become the measure of our civil liberty. There are sections like 107 and they are used by the executive magistrates. Sir, a defective application of a defective law by an executive imbued with a sense of bureaucratism and by a magistracy in no way independent of the executive undermines our civil liberties like anything, and whatever remains is undermined by the Preventive Detention Act. I beg to submit that the law of preventive detention denies the due process of law to the accused. It violates the basic principles of natural and legal justice and the fundamentals of democracy. It is a lawless law and is absolutely anti-democratic both in form and in spirit. Detention without trial offends democracy and justice. And if we wish to establish the supremacy of law, if we wish to establish democracy on sound foundations, we will have to give the go-by to the Preventive Detention Act.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Deputy Chairman, Sir, I rise to support this Bill I have listened with rapt attention to the eloquent speech made by my friend, Mr Bhupesh Gupta. He thinks that

[Shri M P Bhargava]

by simply using high-flown words and giving all kinds of adjectives to the Bill he will be able to convince the House that this Bill is not necessary Now, what is the point at issue? The point at issue is a simple one It is a continuing Bill, whether to continue the Bill or not to continue it In his speech he has used all kinds of adjectives for the Bill But his intentions seem to be otherwise, as is evident from the notice of amendment which he has given I am very happy to find that there at least he agrees with us on this subject, at least on one fundamental point, that is, that the continuance of the Bill at the present moment is necessary

SHRI BHUPESH GUPTA I do not agree with the hon Member Let me make that clear I will say this kind of thing only if you stick to your rigidity, otherwise we are opposed to this Bill tooth and nail

SHRI M P BHARGAVA Mr Bhupesh Gupta, you have given an amendment saying

> 'That at page 1 line 7, for the words 31st day of December, 1963", the words "31st day of July, 1961" be substituted"

SHRI BHUPESH GUPTA That will come if we fail to hit the target It will come only if we fail to prevent the consideration of the Bill

SHRI M P BHARGAVA Mr Bhupesh Gupta, you did not take the House into confidence and did not give your reasons why you wanted this Act to continue only up to 31st July, 1961 and not up to 31st December, 1963 Please give your reasons why you want it to continue till 31st July, 1961 We shall give our reasons for continuing up to 31st December 1963

SHRI BHUPESH GUPTA To detain Mr Bhargava for a while

PROF M B LAL It means you want the Act

SHRI M P BHARGAVA This is one side of the picture The second side of the picture is that he cited several cases of detention in Manipur, in U P, in West Bengal and other places Again, he did not take us into confidence and did not tell us why they were detained, why they were let off, what the reason was and where the *mala fide* intention of the Government in detaining all these people was

SHRI BHUPESH GUPTA Mr Deputy Chairman did not give me enough time I have got all those things with me

SHRI M P BHARGAVA You were given enough time You spoke for over 45 minutes In your very eloquent speech you could have mentioned all these points Anyway

You have said that the same kind of arguments are given every time for the continuation of the Bill Well, the substance of the arguments has to be the same since the same Bill is being discussed in this House You can change the language in 1960, but the substance of your speech in 1957 or your speech today is about the same

SHRI BHUPESH GUPTA Have you read my speech of 1957?

SHRI M P BHARGAVA Yes, Sir let us examine what were the conditions when this Bill was introduced in 1950 and what are the conditions today If the House will permit me, I will read from Sardar Patel's speech while moving this Bill for the first time in 1950 He said

> 'I should like to say here that our fight is not with communism or with those people who believe in the theory of communism but with those whose avowed object is to create disruption, dislocation and tamper with communications, to subvert loyalty and make it impossible for the normal Government based on law to function Obviously, we cannot deal with these people in terms of ordinary law Obedience to law should be the fundamental duty of a citizen When the

law is flouted and offences are committed, ordinarily there is the criminal law which is put into force, But where the very purpose of law is sought to be undermined and attempts are made to create a state of affairs in which, to borrow the words of the distinguished patriot, the father of our Prime Minister, 'man would not be man and law would not be law', we feel justified in enforcing emergent and extraordinary laws

There are also other anti-social elements raising their heads and troubles of very serious dimensions are well above the horizon I know hon Members are already concerned about some of the recent developments I am sure the House would like to be fully armed and equipped with the means of dealing with any emergency that might arise There is, therefore, a full justification for the enactment of a special measure to deal with persons of the type we propose to cover by this Bill"

Now, this Bill was first intended for one year only, up to the 1st of April 1952 The position was reviewed by the then Parliament and they came to the conclusion for the first time that it should be extended up to the 1st October 1952

Then, the new elected Parliament came and they again considered this question All kinds of arguments were given by this side by our friends opposite both in the Lok Sabha and here and after mature deliberations they came to the conclusion that it was necessary to extend the Act up to 31st December 1954

The matter was then referred to a Select Committee and they provided some safeguards which were incorporated in the Bill After expiry of that extension the matter again came up and again there were full opportunities for discussing the thing, and it was decided by both Houses of Parliament that the Act be extended up to the 31st December, 1957 That was with a view to giving opportunity to the newly elected second Parliament to scrutinise the Bill and find out whether its continuation was necessary or not

Again Mr Bhupesh Gupta had his say and his friends in the other House had their say, and it was decided that the Bill be continued till 31st December, 1960 Today we are considering the Bill for the continuation of the Act up to the 31st December 1963

My hon friend, Mr Bhupesh Gupta, wants it to be extended up to only 31st July 1961

SHRI BHUPESH GUPTA I do not want its extension at all

SHRI M P BHARGAVA I say what your amendment says I am not saying anything else

SHRI AKBAR ALI KHAN He has given his amendment

SHRI M P BHARGAVA Now, Sir, what is the reason behind the bringing forward of such an amendment? He wants that this Parliament should again consider this question Before it has outlived it must come before this Parliament Now, our contention is that this Parliament has considered this twice and it has come to the conclusion that its continuance is necessary Therefore, it should be left to the third Parliament to decide whether this Act should be continued or not

I might state here that the very fact that the Government has come to this House or to its predecessors again and again shows that they are not happy about the continuance of this Act But the circumstances in the country are such that it is necessary to continue the Act Now, again, I may be permitted to read from what the hon Home Minister, who has moved the Bill today, had to say in 1957 when he moved the Bill He said

> I would have been delighted if I had not found it necessary to introduce this Bill But we have to look to the safety, tranquillity and

[Shri M P Bhargava]

public peace of the country We have to do all that is necessary to preserve and maintain the liberty of millions of individuals living in this country We have a vast territory We have also certain traditions, some wholesome and some not equally helpful to the cause of democratic development The caste system religious cleavage, disruptive tendencies, efforts at sabotage, smuggling, occasional bursts or explosions of bombs and the like have to be taken note of, and we have to see that the minimum necessary must be done in order that the freedom of the vast mass of people living in this country may be protected and they may carry on their vocations smoothly and in an undisturbed manner That is the only reason why this Bill has been brought before this House"

Now, probably the House would have been convinced how our own Home Minister has been feeling about the Bill The Act is intended 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

Let us see what the hon Home Minister has to say in the Statement of Objects and Reasons

> The Preventive Detention Act, 1950, is due to expire on 31st December 1960 The primary reason for the enactment of this legislation was to protect the country against activities intended to subvert the Constitution and the maintenance of law and order or to interfere with the maintenance of supplies and services essential to the community Experience in the working of the Act has shown that this legislation has proved an effective instrument especially in the maintenance of law and order In these circumstances, it is considered essential that the powers conferred by the Preventive Detention Act should be continued It is accordingly proposed to extend the Act for a further period of three years"

Now if we see the situation in the country, what do we find? Day in and day out, we find here and outside how the forces of separatism regionalism, linguism anti-nationalism, provincialism and several other 'isms' are at work from time to time. These forces not only endanger the security and safety of hundreds and thousands of our countrymen but also endanger our internal security and jeopardise the national interests To deal with such a situation this kind of preventive law is absolutely necessary. *(Time bell rings)*

My time is up and so I will thank you and sit down

DR H N KUNZRU: Mr Deputy Chairman, the law, whose life we are asked to extend today, was passed in very special circumstances in 1950, when the Communist Party, I am sorry to say, was indulging in violent activities on a large scale in Hyderabad Its activities threatened the foundations of law and order in that State and it was because of the existence of this lawlessness that the Preventive Detention Act was passed Indeed I do not think that I shall be far wrong if I say that the things that I have mentioned—the threats to law and order in various parts of India—were in the minds of the Members of the Constituent Assembly when article 22 of the Constitution was considered and passed There were many Members of the Constituent Assembly who, even at that time, thought that it would be dangerous to allow such a power to be taken by the State but there was no strong opposition to article 22 because of the circumstances that existed The Home Minister himself has told us how many people were in detention soon after this Act came into force I am sure that the other things mentioned by him and by other people—the existence of provincial feelings and communal feelings as well as linguistic differences—have

been found here for years and years. Nevertheless, it was not thought necessary to have an Act of the character that we are considering now or the extension of whose life we are considering today Can we, considering the vast difference between 1950 and 1960, justify the extension of this Act merely on the ground that even now conditions are not absolutely normal and that the powers conferred on the Government by this Act have been sparingly used? Are these two grounds to be allowed as a sufficient justification for the passing of this law by this House? If these circumstances alone had existed when the Constituent Assembly was carrying on its work, I doubt very much whether article 22 would have been enacted then In any case, I do not think that the existence of linguistic and communal differences can be any justification for virtually placing such an extraordinary law permanently on the Statute Book I know that the Government has asked that the law should be continued for 3 years more only but this is a process that has been followed every 3 years Can anybody say when linguistic differences will disappear or when *Satya Yug* will come back when no man's hand will be raised against his brother? I mean, if we want to be satisfied with the normal law only when conditions are so peaceful that even the criminal law of the land may not be used, then it is obvious that this law will be continued so long as the Congress Government remains in power

Sir, this law was defended by the hon Member, Shri Gopal Swarup Pathak, by reference to the power taken by the State in England to screen civil servants But is the screening of civil servants the same thing as depriving people of their liberty? Is there no difference between what is being done in England and what is being attempted to be done by the Government of India here? Sir, I shall point out to my hon friend with great respect that our Constitution is based largely on the British political ideas Can he tell me, Sir, any book explaining the British constitutional ideas, in which the principle of detention without trial has been defended?

SHRI J S BISHT (Uttar Pradesh): Because such circumstances never arose there

DR H N KUNZRU Sir, circumstances in any two countries are never the same Difficulties were experienced both in England and in America, even after the war Take England. The dock strikes are of a very serious nature Work is held up there for days and days and sometimes for weeks The trade and commerce of the country is disrupted But has there been any resort to a law of the kind that we are being asked to pass and that the apologists for the Government are trying to defend on every possible ground that they by their ingenuity can think of? Sir, we were told again by Shri Pathak to consider that the case of every detenu was to be considered by an Advisory Board consisting of Judges of High Courts Well, I am sure he knows as well as anybody here that these Advisory Boards are not in the same position as regular law courts They may, for instance, ask for information relating to the case put forward by a detenu They may allow the detenus to get legal help in drafting their representation But no detenu can as a matter of right, ask for the help of a lawyer or call witnesses in support of his case Besides, the whole atmosphere of the Advisory Board is entirely different from that of a court of law And it cannot, therefore, be said that scrutiny by an Advisory Board may be accepted as equivalent to scrutiny by a regular law court.

Sir, I shall now refer to the working of this Act. We have been told that the Act has been used with great restraint and that the number of people in detention on the 30th September 1960 was only 106 Now, those who use this argument should ask themselves whether if people

[Dr. H. N. Kunzru.]

whom they knew, a small number of people whom they knew, were arrested like this and the authorities said to them, "Why are you discontented? We have arrested only a small number of people", would they be satisfied with this reply? I am sure they will regard the existence of a law which authorises the executive to arrest people without putting them on their trial as in itself a serious violation of the liberty of the individual. That the number of detenus is not larger than it was on the 30th September, 1960 can be no ground for not taking the principle underlying this Bill into consideration. It is a principle that is dangerous and the operation of which can be extended to any extent. The extension of the operation of this law depends entirely on the sweet will of the executive.

Again I will ask the House to consider one other factor. We have been told as I have already pointed out, that the Act has not been used indiscriminately to deprive people of their liberty and that it may also be said that the Government of India has hardly ever used it, and that the States have resorted to it only when they found themselves in serious difficulties. Now, one of the grounds on which people have been detained is what Government calls goondaism. But goondaism is not defined anywhere in this Preventive Detention Act. Goondaism is what the executive considers to be a form of activity which would justify calling a man a goonda.

SHRI J. S. BISHT: It is defined in the various Goonda Acts.

DR. H. N. KUNZRU: But where are the Goonda Acts referred to here? Is there any reference to a Goonda Act in the Preventive Detention Act? And if there are Goonda Acts, why is it necessary to detain people for goondaism under the Preventive Detention Act? Why not the ordinary law of the land be used for that purpose?

AN. HON. MEMBER: There are certain limitations.

DR. H. N. KUNZRU: Sir, the total number of men under arrest in 1959 was 288. Taking the people under detention on 1st January, 1959 and the people arrested during the calendar year 1959, it makes the number of people under detention 288. And what was the number of people detained for goondaism out of this? That number is 119. Sir, is this exercise of the power conferred on the Government of India by the Preventive Detention Act justified? Again, Sir, if you take the year 1960, the maximum number of people in detention during the year ending 30th September, 1960 was 249 and no less than 115 or nearly one half of the people detained were deprived of their liberty because they were accused of goondaism. Sir, I do not think in view of the figures that I have given that the exercise of the power to detain people without trial can be regarded as something that may be allowed to exist on the Statute Book every three years as a matter of course. Sir, what I feel is that there is no country in the world where circumstances are normal in the sense that they could have been normal before the outbreak of the Second World War. Consider, Sir, what the position in France was after 1945. Think of the number of Communists in the French Parliament at that time, the activities that were being carried on in France by the Communist Party and by some other parties. The position was not normal. It was undoubtedly clearly abnormal but did the French Government ever resort to a law of the kind that our Government wants us to pass now? Take England. It is well known that after the First World War and after the Second World War it was confronted with serious difficulties and the strikes that I have mentioned even now create serious situations there but has the Government to which reference was made by Shri Gopal Swarup Pathak ever thought of putting a law like the Preventive Detention Act on the statute book? There

was a law passed after the First World War which allowed the executive to arrest people under certain circumstances but they could be arrested and detained, I think, only for a maximum period of twenty days. I do not know whether that law is still in existence but in any case there is a vast difference between the British law and the law that we are being asked to consider. The argument, therefore, that the situation is not normal because India consists of a number of States and territories and people of different communities live here will not hold water. This can be no justification for the passing of this law unless we reconcile ourselves to the idea of having such a law permanently.

Just one word more, Sir, before I sit down. The Home Minister not content with referring to what had happened in the past asked us to consider what might happen in the future. He said that *satyagraha* might be started in Maharashtra to get back from the Mysore State the areas which in its opinion should be included within its boundaries. So, Sir, we are to pass this law not merely because of existing difficulties but in anticipation of other difficulties.

SHRI GOVIND BALLABH PANT: What I said was that they have resolved that they are going to start *satyagraha* again.

DR. H. N. KUNZRU: Yes, Sir, we are all readers of newspapers.

SHRI GOVIND BALLABH PANT: Then, I do not understand the argument. I said, why we want an extensions is because *satyagraha* in this form or other is going to be continued hereafter. You may not agree with that, that is a different issue, but I am not saying that this *satyagraha* is coming after three years after the Members anticipated.

DR. H. N. KUNZRU: I did not say that. I said the hon. Minister wanted us to anticipate the agitation that might be carried on in Maharashtra and asked us to consider whether in those circumstances, a preventive law of the kind that exists now should not be continued.

SHRI SONUSING DHANSING PATIL (Maharashtra): On a point of clarification, the agitation has already started.

DR. H. N. KANZRU: My answer to that is this. Can in any State the situation be worse than it is in Punjab or than it was little while ago in Assam? How have the Government used their powers there? They pride themselves on the fact that they never once brought the Preventive Detention Act into operation in Assam and that in the whole of Punjab in spite of the Akali agitation only one man, Master Tara Singh, has been arrested under the Preventive Detention Act. Well, why can't they then do without the Preventive Detention Act in other States? Is Maharashtra likely to be more violent, more lawless and more dangerous to the maintenance of peace and order than Punjab and Assam? We all know, Sir, what happened in Assam, but the Government never thought of using the Preventive Detention Act then. They did not find a single person who could legitimately be detained under this Act. With what face do they come to us today and say to us that since an agitation is likely to be started in Maharashtra, a *satyagraha* is likely to be commenced there, in order to compel the retrocession of areas which it considers should belong to it by the Mysore State, this should be continued? I do not think that in these circumstances the grounds given by the Home Minister can be regarded as satisfactory by the Members who sit on this side of the House. Look at it from any point of view, I think whatever the situation might have been in the past, the time has come when we must do without such a law. To say that the States have been asked and that all of them are in favour of the continuance of this law does not seem to me to mean anything. Suppose a State passes a law giving extraordinary powers to the police and keeps that law in force

[Dr. H. N. Kunzru.]

for three years and when the time comes for reconsidering the continuance of this law and the State Government asks the police authorities in the different districts whether their powers can be taken away from them, would the authorities in any district ever say that the time had come when they could do without these extraordinary powers? I feel, Sir, therefore, strongly, and I do not say this as a matter of mere forensic skill or for the purpose just of a debate in this House but as a matter of conviction that there is no justification for the existence of the Preventive Detention Act at this time and that it is a great injustice that the Government has come to us to ask us to extend its life for three years.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, Sir, I rise to support this Bill and I must say at the outset that I am in respectful agreement with all that the hon. Home Minister has stated on the floor of this House in support of this Bill. Sir, I have listened with great patience and care the arguments that have been advanced on the other side against the passing of a measure of this sort and I have also had the pleasure and the opportunity of listening to a very balanced argument that has been put forward against this Bill by Dr. Kunzru. Sir, it seems to me that it is not necessary for a person who supports the Bill to agree with all that may be said in support of the Bill on our side of the House. I think it must be conceded and rightly conceded—as fair-minded people we ought to concede—that this Act is capable of being misused and easily misused. There is no doubt at all about this and that is because of the very simple reason that all the powers of detention are concentrated in the executive and there is no restriction on, or no revision of, what the executive does by any public authority like the courts of law. I think that goes without saying and that is the main reason why this sort of provision was opposed in old days and why to some extent this sort of provision is being opposed today. Now, to that extent I feel that there is some justification in what the Opposition do say with regard to this Bill but then after all, whenever any law is made, it has to be made in relation to the circumstances that exist in the country.

Sir, there are two main points involved in the consideration of a Bill of this sort. One is the consideration of principles, namely, whether, as Shri Mukat Behari Lal stated, this is not after all a lawless law. I think it is a very legitimate question to ask, whether the principles underlying the Bill are according to the principles of reason, or whether, as he said, this law is not unreasonable. I think it is a perfectly legitimate question to ask and it is for us to prove to the other side that this is not really a lawless law, that it is according to the fundamental principles of jurisprudence as we know it and that it is necessary for the security of the State. It is for us to prove all these.

The second question that will arise in the consideration of a Bill of this sort is whether, even granting that this is not a lawless law, that this is according to the fundamental principles of jurisprudence, the circumstances in this country are such as to warrant the passing of a law of this kind. Now, these two questions are entirely different and even if we answer one question in the affirmative, the other question may be answered in the negative.

I shall deal with the first question first, namely, the question of principle as to whether this law is a lawless law, whether this law is unreasonable, whether this is contrary to the principles of jurisprudence under any circumstances or whether there can be certain circumstances in the State in accordance with which it would be necessary to have a law of this sort. Now, Sir, the Opposition has completely gone wrong in one matter. They have extolled the principle of life and liberty, the principle behind the

Fundamental Rights enshrined in the Constitution. Now, who does not want liberty? Who is there who does not extol the principle of life and liberty? Who does not want to respect the dignity of the individual citizens in this State? We are all for it but when this particular principle of the liberty of the individual has been put before us as the basis for opposition to a law of this sort, I say, Sir, with the greatest respect that we must differ. The opposition in this case is not between liberty and a restraint on liberty at all. That is not the case. If that were the case, if it were simply a case of not having civil liberties in this land, I would immediately agree with the other side and I would immediately vote down this sort of legislation but unfortunately that is not really the dichotomy; these are not the opposing principles. The real opposition is not between liberty and restraint on liberty at all; the real opposition is between two different positions which we have to understand quite clearly. The position is this. Shall we interfere with the liberty, if I may so, of a person who in turn wants to interfere with the liberty of other persons or shall the State not interfere with the liberty of that sort of a person. Sir, if I am a goonda, if I believe in violence, then to that extent I have forfeited the right to be free in the State in which I exist; to that extent I say and no more. After all, we must remember that all our rights—our Fundamental Rights for instance—are the product of the law of this land. They are not just natural rights; there are no such things as natural rights. There are no natural rights in a state of wilderness. The liberty that we have in this country is the product of our laws; the rights and duties that we enjoy are on account of the law that the State makes for us. Take the case of the Supreme Court. The writ of the Supreme Court runs freely throughout the length and breadth of this land. We respect the decisions of the Supreme Court but, Sir, suppose there was no State at all in existence. Suppose the executive in this country does not respect, let us say, the judiciary and it does not want to carry out the decisions of the Supreme Court. Then all the decisions of the Supreme Court will be decisions just on paper. Therefore, the presupposition of all that we say with regard to our Fundamental Rights is the existence and the security of the State. If there is no State, if there is no order, if there is no law in this land, if no decisions can be carried out, then there can be no liberty at all. Any talk of liberty in such circumstances will be simply empty talk; it has no validity whatever. Therefore, as I have stated in the very beginning, the opposition is not between liberty and restraint on liberty as the Opposition has put it. That is not the position at all. We all respect liberty. We want civil liberties to the fullest possible extent but what are the conditions for the enjoyment of this liberty, of these Fundamental Rights that we are supposed to have? There must be security of the State. The State must exist and must continue to exist. There must be law and order in the country before all these rights can be enjoyed. Therefore, I say that the State has got the right to interfere with the liberty of every individual who wants to resort to violence, who wants to interfere with the life and liberty of any other citizen of the State.

PROF. M. B. LAL: The Home Minister says that it will apply even in the case of *satyagraha*, which is not violent.

DR. W. S. BARLINGAY: If I have understood the Home Minister correctly, he has never stated anywhere—and I have followed his speech with the greatest possible attention—that this law would be applied against non-violent persons. I do not think that he has ever stated this on the floor of this House. If he uses this against a person who is completely non-violent and who does not incite violence in any manner, then I would say further, with the greatest respect to him, that he would

[Dr. W. S. Barlingay.]

be wrong to that extent. There was the other day a so-called *satyagraha* in Raipur, as the hon. Home Minister knows himself. I do not suppose the Home Minister here or the State Home Minister ever used the powers given under the Preventive Detention Act for detaining that person in jail. As a matter of fact, I know there are several agitations. Take, for instance, the Vidarbha agitation. I am prepared to say that there have been certain cases, so far as the Vidarbha agitation is concerned, where this law has not been properly used. I am prepared to go to that length. That would however show not that, in principle, this law is wrong, but that this can be misused in certain circumstances. Every good law can be misused. What good law cannot be misused? Dr. Kunzru pointed out that originally this law was made in 1950 and today it is 1960 and there is a world of difference between the situation as it existed in 1950 and as it now exists. He also pointed out that the Preventive Detention Act was not, for instance, used in Assam. He asked if it was not used in Assam, why was it necessary to enact it now, only to prevent the agitation in Maharashtra? After all, there are two horns of a dilemma. If he can pick up one horn, I can pick up the other. I would say this that if the Preventive Detention Act was not used in Assam, then that was, in a way, a wrong thing to do, and in a way a correct thing to do. Why? That would show that this Government, although it is armed with all these powers, nevertheless wants to use these powers in a very sparing way . . .

6 P.M.

SHRI BHUPESH GUPTA: Wonderful.

DR. W. S. BARLINGAY: . . and even when a situation like Assam arose in this country, the executive was so very considerate, the Congress Government was so very considerate that even in that situation it did not want to use that.

SHRI BHUPESH GUPTA: If they had used it there, Congressmen would have been in jail. Why do you not say that?

DR. W. S. BARLINGAY: I am not pleading for violent Congressmen at all. I would say if Congressmen are violent, then they certainly deserve to be detained in jail. And I would say that this logic ordinarily does not apply to Congressmen, who believe in non-violence, but it certainly does apply to our Communist friends. I would say this that I am not against individual Communists. I must say that I hold some of them in great respect for the way they fight for the underdog. I certainly have respect for all that they do . . .

(*Time bell rings.*)

SHRI BHUPESH GUPTA: Just for a while he has said a good thing. Kindly allow him to speak.

DR. W. S. BARLINGAY: Am I supposed to stop or shall I go on?

MR. DEPUTY CHAIRMAN: Please wind up.

DR W. S. BARLINGAY: I want some five or ten minutes.

MR. DEPUTY CHAIRMAN: Not ten minutes. Just take two or three minutes. We have no time.

DR. W. S. BARLINGAY: Well, Sir, since there is not much time, I will take about five minutes and finish this.

So far as the Communists are concerned, as I said, if they fight for the underdog . . .

SHRI BHUPESH GUPTA: Why 'if'?

DR. W. S. BARLINGAY: . . . I have got respect for them individually. But I have never been able to understand Communists coming into this House and talking about democracy, for instance. It is contrary to all principles of Communism as I understand it. Since there is not much time left, I will come to the second point.

Granting that, in principle, this sort of law can be defended, the question then is whether circumstances now exist in this country which would

justify an Act of this sort. Now, Sir, only a few hours ago, the Prime Minister referred to certain speeches that were made by Communists on the 6th December, 1960 in one of the border States. And who does not know the situation as it exists now on our northern borders? What about the infiltration that goes on every day from the North? I do not want to expand this point any further, but the whole point is that there are elements in this country who are wedded not to non-violence but to violence. So long as there are people who want to subvert our democracy, who want to resort to violence, who want to intimidate our State, who want to destroy our State, who want to threaten our State, who want, if I may say so with very great respect, to join our enemies and threaten the very existence of this country . . .

SHRI DAHYABHAI V. PATEL (Gujarat): Are they enemies? Are they not Bhai Bhai?

DR. W. S. BARLINGAY: As long as these elements are there, so long, I say, Sir, there is every justification for a law of this sort.

Dr. Kunzru said that the conditions in 1950 and 1960 were very different. Of course, they are different to some extent.

DR. H. N. KUNZRU: To a large extent.

DR. W. S. BARLINGAY: If the conditions were not different, that would not be a compliment to our Congress Government. They are different I know, but then even if there are a few elements today, which are of a subversive sort, which believe in violence, then I say even with that change of situation . . .

SHRI BHUPESH GUPTA: Did you find such elements in Assam, when you went there for enquiring?

DR. W. S. BARLINGAY: There is need for an Act of this sort. I would say that there has been a change but the change has not been such that there would be no justification for an Act of this sort. There has been a change undoubtedly, but even with that change it seems to us that an Act of this sort is necessary. With these words I support this Bill wholeheartedly.

MR. DEPUTY CHAIRMAN: Is it the sense of the House that the House sits for another half an hour? There is one more speaker.

SEVERAL HON. MEMBERS: No, no.

MR. DEPUTY CHAIRMAN: There is a message from the other House.

MESSAGE FROM THE LOK SABHA

THE INDUSTRIAL FINANCE CORPORATION (AMENDMENT) BILL, 1960

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

> "In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Industrial Finance Corporation (Amendment) Bill, 1960, as passed by Lok Sabha at its sitting held on the 21st December, 1960."

Sir, I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at nine minutes past six of the clock till eleven of the clock on Thursday, the 22nd December 1960.

GMGIPND—RS—818 RS—21-1-61— 550.