

THE PREVENTIVE DETENTION
(SECOND AMENDMENT) BILL,
1952 — *continued.*

MR. CHAIRMAN : We have to take up the clause by clause consideration today. We have received now 87 amendments and if there is not to be any hustling towards the end, we have to distribute our time properly and I do hope that Members who are anxious that every amendment should be given proper consideration will see to it that more time is not taken in the earlier stages.

Motion moved :

That clause 2 stand part of the Bill.

SHRI KISHEN CHAND (Hyderabad) : May I rise on a point of order ? The Chair gave a ruling that this Bill can be considered but the Chair did not give a ruling that clause 2 of the Bill which extends the life of the Preventive Detention Act is legal and can be discussed in this session. As I pointed out, the Regulation of 1818 has been in existence for the last 134 years and the Preventive Detention Act was also in existence for the last 2 1/2 years, Government chose this particular session to repeal that Regulation of 1818. As an after-thought the Government now wants to extend the life of the Preventive Detention Act by making it look like an amendment changing the date of 1st October 1952 to 31st December 1954. This is only change of words but it materially affects the life of the Act and as such I submit that when the two Acts have been co-existent for the last 2 1/2 years, to select this session for repealing that Regulation and to extend the life of this Act is a direct contravention of the principle that in a session two amendments or two portions of a Bill which are exactly opposite to each other cannot be brought up. I submit that this cannot be permitted.

MR. CHAIRMAN : I think I gave my ruling last time on the whole question but still I may say that the Preventive Detention Act contains the law on the subject and it has therefore superseded the Regulations and Acts for all

practical purposes and some of the provisions contained in the Bengal State Prisoners' Regulation were considered to be of doubtful validity in view of the Constitution. I do not think that this point of order is well taken.

Now we are proceeding with clause 2. The amendments are for limiting the duration of the Act. I feel that if we permit Pandit Kunzru who has given the longest period—30th day of November 1953—if we permit him to move his amendment and if his amendment is accepted or rejected, consequences will follow with regard to the other amendments.

SHRI P. SUNDARAYYA (Madras) : Why not move all the amendments ?

MR. CHAIRMAN : Let us see what happens to this amendment.

SHRI P. SUNDARAYYA : Why not all the amendments be moved at the same time ?

MR. CHAIRMAN : All that I am thinking of is that if the Government is so pleased as to accept the longest period, then the shorter periods will go. If the Government rejects the longest period, then you can take up the other amendments.

SHRI P. SUNDARAYYA : I would suggest, Mr. Chairman, that we move all the amendments and there be a general discussion. If the Government does not accept, then we can put them to the vote.

MR. CHAIRMAN : What will happen is this. I say that Dr. Kunzru, whose amendment prescribes the longest period, be permitted to move his amendment, and whatever may be the result of that, on that amendment all of you can speak. After that, certain consequences will emerge. But he (Mr. Sundarayya) says "Let us move all the amendments and let there be a general discussion. After that, let the last amendment be put to the vote first and then the resulting thing may follow." I don't mind.

SHRI J. R. KAPOOR (Uttar Pradesh) : But, Sir, under the Rules of

Procedure prescribed by you, it is provided that out of several amendments that may be there on the same subject and of a similar nature, the Chairman may select one which is the most appropriate. That is what is provided for in the Rules. If there are more than one amendment on the same subject, covering the same point, and they are all similar in nature, then it is for the Chair to decide which one of these is the most appropriate and suited to the occasion.

SHRI B. C. GHOSE (West Bengal) : The dates are different and, therefore, they are substantially different.

You were saying that the Government might accept the longest ; they might accept the shorter date also.

MR. CHAIRMAN : Might accept or might not.

SHRI B. C. GHOSE : Why are you presuming that if the Government rejects November 1953, they will not accept a shorter date ?

MR. CHAIRMAN : Am I presuming, Mr. Bimal Comar Ghose, that if they are against the longest date, they will be accepting the shorter period ? I just want to ask you whether that presumption is legitimate or illegitimate.

SHRI B. C. GHOSE : Then, all the amendments be moved.

MR. CHAIRMAN : All right.

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1, line 9, for the figures and words '31st day of December, 1954' the figures and words '1st day of April, 1953' be substituted.

SHRI B. V. KAKKILAYA (Madras) : Sir, I move :

That at page 1, line 9, for the words and figures '31st Day of December 1954, the words and figures '31st day of December 1952' be substituted.

SHRI B. RATH (Orissa) : Sir, I move :

That at page 1, line 9, for the figures and words '31st day of December 1954' the figures and words '31st day of March 1953' be substituted.

SHRI P. V. NARAYANA (Madras) : Sir, I move :

That at page 1, line 9, for the figures and words '31st day of December 1954' the figures and words '15th day of August 1953' be substituted.

SHRI S. MAHANTY (Orissa) : Sir, I move :

That at page 1, line 9, for the figures and words '31st day of December 1954' the figures and words '30th day of September 1953' be substituted.

SHRI S. BANERJEE (West Bengal) : Sir, I move :

That at page 1, line 9, for the words and figures '31st day of December 1954' the words and figures '1st day of October 1953' be substituted.

SHRI H. N. KUNZRU (Uttar Pradesh) : Sir, I move :

That at page 1, line 9, for the words and figures '31st day of December 1954, the words and figures '30th day of November 1953' be substituted.

MR. CHAIRMAN : Now, the amendments are before you. Nobody wishes to speak. You get along, Dr. Kunzru.

SHRI P. SUNDARAYYA : You called Dr. Kunzru earlier and so we kept quiet.

SHRI H. N. KUNZRU : Mr. Chairman, I explained my general point of view on this question during the discussion on the Select Committee's Report. I shall, therefore, be very brief in placing my arguments on this point before the House.

Sir, Government, by offering to place a Resolution before both the Houses of Parliament a year later to review the situation, have agreed that there is need for a reconsideration of the position. The question now only is what form of reconsideration will best serve the public interests. Will the motion, or the Resolution, that my hon. friend, the Home Minister proposes to move, better serve the purpose that we have in view or the method suggested

[Shri H. N. Kunzru.]

by me ? Now, what my hon. friend desires is that the House should have an opportunity of only saying whether the Preventive Detention Act should be continued or not. He was very explicit on that point. His words were : "the only point will be, is there a case for keeping the Act in continuance ?" I ask hon. Members to consider whether that is the only point that we should consider when we review the situation. Is it not possible, Sir, for us to take the view that though the Act may be continued some provisions of it should be amended ? I think it is quite reasonable to assume that though we may not be against the continued operation of the Act, we may yet desire that it should be amended in some particulars, and why should we not be given an opportunity for that ?

Now, it is quite possible, Sir, that even if the procedure that I have suggested is accepted, Government, may, by merely proposing that the period during which the Act can continue should be extended, stop the discussion of any other question. Sir, whatever the rules may be, I doubt whether this procedure will be acceptable to either House. We have seen the dissatisfaction that arose in connection with the Bill that we are considering when it was sought to restrict debate only to the provisions of the Bill. The matter was regarded as so important by the other House that it decided, by a Resolution, to permit the consideration of the whole Act. It is by no means improbable that a similar situation may arise next year and I don't think that any harm will be done if the whole Act is reconsidered. My hon. friend, the Home Minister said, in the other House, that it was desirable that the debate should not be of a prolonged character. He said here too, the other day, that by the time the Bill was passed, the discussion on it would have lasted for about 3 weeks. Now, Sir, it should be borne in mind that the Preventive Detention Act was passed not by the present Parliament but by its predecessor. It was, therefore, reasonable for the new Parliament to ask that it should be given an oppor-

tunity of going over the whole ground. I doubt whether the same position can be taken up next year ; but, it can. Discussion, therefore, is bound to be shorter, but there is the disadvantage that if experience shows that some provisions are defective or that some of them are not needed in the present form on account of the improvement in the situation, Parliament would have no opportunity of introducing such changes as the situation might warrant as the procedure proposed by the Home Minister would be rigid and would prevent the consideration of anything but the continuance or the discontinuance of the Act. The House can see easily for itself which proposal is more flexible and whether the suggestion that I have made would take up the time of the other House or of this House unnecessarily. Even if my hon. friend sticks to his proposal I doubt whether he would be able to finish in a day the discussion on the Resolution that he will move. I am certain that the discussion will last longer. Then is it not decidedly better that the procedure that I have suggested should be accepted ? The object of limiting the life of the Bill is not merely to review the position as a whole, but to see whether such an improvement had taken place that we do not require a special law in order to maintain the security of India or of a State or to maintain law and order. There are many other things that can be considered, and although Government may not accept any amendment brought forward by hon. Members, still the very fact that all points of view will have been taken into consideration and that the need for specific amendments will have been fully considered, will by itself be an advantage. I have no doubt, Sir, that the procedure suggested by me is much better than that suggested by the hon. Home Minister. But I do not know whether arguments can change his mind. We can only put forward a case that seems to us to be unanswerable. But we realise that our case cannot be as strong as that of the hon. Home Minister because he has a larger number of persons behind him to support him.

SHRI B. V. KAKKILAYA : Sir, I feel that as long as this Preventive Detention Act exists on our Statute Book there can be not even an iota of democracy in our country. We know how this Act has been working in our country for the last two or three years. My leader Shri Sundarayya in his speech gave a vivid picture of the excesses committed by the police, by the military and by the officials in Hyderabad, in Telangana and in Andhra during the last several years when the Preventive Detention Act was in force and was being used in that part of the country. In the State of Madras when this Act was first put into force and warrants were issued against hundreds of people there, we know to what great difficulties our people were subjected. The mother of a detenu, a sixty years old mother, was arrested and prosecution was launched against her simply because she gave shelter and food to her son against whom there was a warrant. In our country, it is said and it is being preached by our hon. Ministers and others, that there are great traditions. They speak of the traditions of India and say that in India we have got the great traditions of love, of freedom and all these things. But when a mother offers food to her son, when a mother offers shelter to her own son, and that too an old mother of sixty, she is arrested and taken to the police lock-up, tortured and prosecution is launched against her. This is what happened in a district neighbouring mine—Malabar. I know what happened in my own district of South Kanara. Warrant was issued against me. It was kept pending and the story was given out that I was underground. Later on of course, I was arrested and when I was released recently during the election days, they again brought the charge against me and prosecuted me for absconding for some months. Sir, this is the state of affairs. If you give unlimited power to the executive, unlimited power to the Government, then you cannot expect democracy to exist in the country.

We know why this Act is being enacted and why the Government want

to extend the life of the Act for the next two years. The hon Home Minister told us that this Act is necessary because there are some people who have arms in their hands, because there is trouble in Saurashtra and there is violence in some other parts of the country. But I say it is not for these reasons that the life of this Act is being extended. For the last so many years this Act was there in the Statute Book and it was being used ruthlessly against the people. They have not put down blackmarketing in the country. They have not put down corruption in the country. They have on the other hand used this Act, this obnoxious Act, against the workers, against the peasants, against the students and against those sections of the people which demanded food, which demanded work and a living wage from their employers and from Government. We know what is happening in this country. Factories are being closed. Thousands of workers are being thrown out of employment. The Government knows that the situation is not going to be very peaceful for some years to come. When workers demand jobs, when they demand a living wage.....

MR. CHAIRMAN : Please speak about the duration of the Act.

SHRI B. V. KAKKILAYA : Yes, Sir, I am speaking on it. When they make these demands, the Government come down upon them and help the capitalists to carry on their exploitation. That is why they want this Act to continue. That is why they want to extend the life of this Act, and they want these unlimited powers to be continued in the hands of the executive.

I may mention another thing. In this Act it is said that any person who does anything or says anything against the interests of friendly relations with foreign States or anything affecting our foreign relations can be detained. What is the meaning of—this? We know that recently there was a question in the other House about the recruitment of Gurkhas into the British army. The Prime Minister the other day denied the report. Recently again the

[Shri B. V. Kakkilaya.]

Prime Minister came forward and made a statement in that House and though he had denied it at one time during the course of another debate and had said that Gurkhas were not being recruited as soldiers into the British army in our country, he had to admit it in that statement. Sir, it is to cover such activities and it is to allow foreigners to come here and recruit our countrymen into the British army, to recruit soldiers on our soil, it is to cover these things that the Government want this Act to be extended. It is to barter our country, to barter our freedom and to suppress democracy in our country that they want to extend the life of this Act. I submit that the life of this Act should not be extended even by a single day. I would request the hon. Minister to bring forward a Bill to repeal this Act and not a Bill to extend its life. However, if they are so keen on extending its life, let the hon. Minister extend it till the end of this year and not a day more than that. Let us not carry the dead weight of this nefarious Act into the year of Grace 1953. Let us enter 1953 with a clean slate and let us afford all opportunities to our people. Let the life of this Act end with 1952. So my amendment is this that the existing words may be changed and you may say that the life of this Act be extended only upto the 31st of December 1952.

SHRI P. V. NARAYANA : If my amendment is adopted, Sir, it will give a fresh lease of life to the Preventive Detention Act till 15th August 1953. Even according to the Statement of Objects and Reasons attached to the Bill, the activities intended to subvert the Constitution, etc., have been considerably reduced in tempo and so while we feel that there is no necessity at all for the Government to come to this House with a Bill to extend and amend the existing law, it is most unfair on the part of Government to try to extend it till the end of December 1954—that is by about 27 months. On a previous occasion it was extended for a period of six months and prior to

that about a year. That means in all about 18 months. Now it is sought to extend the Act by about 27 months which is about 1 1/2 times all the previous extensions put together. Again 15th August is also a significant day for us. That is an auspicious day ; that is the day on which the Britishers gave us Independence. So more than what the Britishers gave us, let what the so-called National Government have been taking away from us from time to time end on that day so that it would synchronise with our day of Independence and our Government can exhibit themselves as to how democracy was restored. Also if it is extended up to 15th August 1953 that will give Government about a year and I hope that Government will accept my amendment.

SHRI S. MAHANTY : Mr. Chairman, the character, disposition and the optimistic note of which we got an indication in the hon. the Home Minister's speech concluding the debate have prompted me to suggest this very simple amendment and I want to substitute—30th day of September 1953 for 31st day of December 1954. Sir, the only argument which the hon. the Home Minister advanced in the course of his lucid speech, for extending this Act for a period of two years was that he wanted to save both the Houses from the yearly 'excitement'—that was the word he used. He did not want that every year tumultuous scenes should be staged in both the Houses. Sir, with all respect to the hon. the Home Minister, who is talking by the way, not listening to me.....

MR. CHAIRMAN : You talk loudly.

SHRI S. MAHANTY : Sir, I cannot talk loudly. Sir, with all respect to his age and experience, the argument that he wants to spare us from the yearly scenes of tumult seems to me to be rather somewhat childish. We are not here by the sufferance of either the Home Minister or anyone else. We are here at the command of the people. Though this House has been indirectly elected, still it has to be

borne in mind that it has been elected by the elected representatives of the people. We are here to stage yearly tumultuous scenes at their behest.

MR. CHAIRMAN : You are here to stage annual tumultuous scenes ?

SHRI S. MAHANTY : Over this Bill, Sir.

SHRI GOVINDA REDDY (Mysore) : Very justifying thing, Sir.

MR. CHAIRMAN : Yes, get along.

SHRI S. MAHANTY : In Sanskrit, it is said, Sir “महाजना येन गतः स पन्था” (“Mahajano yena gatah sa pantha”). They were mahajans. We are simply following the way they followed. We are here to stage yearly tumultuous scenes. His only argument was that if this Bill was extended by only one year, then probably he would be suffering from another nervous excitement next year with all the tumultuous scenes. That is no reason why this extraordinary piece of legislation should be extended for a period of two years. I only suggest that you have it for 11 months and 29 days so that at the end of that period we can again review the position. As it has been said in the Objects and Reasons, the conditions are getting better. Undoubtedly, the conditions would get still better, because our influence, the little influence that we wield, will be in the cause of peace, it will be in the cause of non-violence and this little gesture of goodwill will go a long way to improve the position. Therefore, I would most humbly request the Home Minister, of whose catholicity and charitable disposition, I had enough experience in Orissa—he may be Home Minister today, but he has got his other side too—that he would not extend this extraordinary piece of legislation, this lawless law for two years. After all, it is a great blot on our freedom. And once again before concluding my remarks, I would beseech him to extend this Act only for one year so that at the end of that period we can review the situation and if we feel that there is necessity for it, undoubtedly we will give our support

to extend the Act. I hope he will kindly accept this simple amendment.

SHRI S. BANERJEE : My amendment, Sir, only extends the period suggested in Shri Mahanty's amendment by one day, that is, instead of extending it by 11 months and 29 days, my amendment provides for 11 months and 30 days. I said the other day that there was a periodicity in the recurrence of the consideration of these Draconian Bills. We thought however that after the transfer of power there should be no occasion for consideration of this measure, but no sooner had the ink with which the Constitution of India was written dried, the then Home Minister, Sardar Vallabhbhai Patel brought in a Bill in 1950, but he was gracious enough to make this law operative only for one year. Then came Shri C. Rajagopalachari ; he was also gracious enough to extend it only by another 12 months. But now the situation has become normal and in this period of normalcy, the present Home Minister has thought it desirable to extend the period by two years. I do not find any reason for this. If as he says—he said it in the other House more than once—the tempo of violence that was visible a few months or a year or two back has diminished, then give us your seal of approval to that and either withdraw the Bill or alter it. We would have been all very happy if this Bill had not been placed at all before us or if the Bill were withdrawn even at this stage. But when that is not to be, let us hope and trust that he will at least extend the period of this Bill only by 11 months and 30 days as is provided in my amendment.

I am sorry, but I concur with my hon. friend Dr. Kunzru when he said, that arguments do not enter the head of the Members of the Treasury Benches and their supporters. I am reminded of a story. I do not know whether it is correct. The hon. the Law Minister who was a member of the Bar and the Bench will perhaps be in a better position to say whether that story is correct. It is said of that great, eminent jurist, the late Dr. Rash Behari Ghosh, that

[Shri S. Banerjee.]

when he was arguing a case, the Judge told him : "What are you saying, Dr. Ghosh ? Your words are entering through one ear and getting out through another ear." And Dr. Rash Behari Ghosh, with his usual repartee, said : "No, wonder, my lord, because there is no brain intervening between the two." I wished not to go so far as to say that, but I could not help it, however, I may say this much, knowing the hon. Dr. Kailas Nath Katju in Bengal, and his simplicity and his sympathy for the sufferings of the poor—though I saw and knew him at a distance—I did not expect such a piece of legislation, which will act very hardly and harshly upon the liberty-loving people of the land, to be brought before us by such a person having such a large heart. We did not expect him to bring before us this extraordinary, this atrocious, piece of legislation.

He has to a certain extent accommodated the Opposition point of view. Let him go a step further. Let him not bring a Resolution next year in November ; let him bring a Bill, if the situation at that time demands it. We shall then discuss what this Government proposes. Sir, a democratic Government is a Government which carries on by and through discussion, a Government which continues with the support of public opinion. And public opinion is focussed in this Parliament. The public opinion which is expressed outside is focussed by their representatives here. And we shall see if the public opinion outside desires this Bill, Sir, my submission is that these measures have a tendency to be a permanent feature, as this measure shows this tendency from 1950 to 1951, from 1951 to 1952, and from 1952 to 1954, and who knows it will not be a permanent blot on the Statute Book of this country ? Therefore, I would ask in all humility, I would beg of the hon. the Home Minister, that he should reduce the period by one year and relieve the people of their anxiety.

THE MINISTER FOR HOME AFFAIRS AND STATES (Dr. K. N. KATJU) : Mr. Chairman, the House

would hardly expect me to accept any of the amendments, for reasons which I have already stated here. But I must really say one word about the assumption that a minority is always in the right and a majority is always in the wrong. I have been brought up in an atmosphere where a majority judgment has always prevailed and we have had to bow to the majority, and wherever any learned Judge begged to differ from the majority of his colleagues, he differed in a spirit of great humility, great respect and great diffidence. Here, in the new atmosphere, of course, the impression which is sought to be created is : "Brute majority, sensible minority" : all things that proceed from the minority benches are founded on reason, on patriotism, on common sense, and everything that proceeds from this side is based upon cussedness, upon inability to listen—there being nothing between the ears. I really do not know where I stand. And I may say in passing that I appreciate the anxiety of my hon. friend opposite to appropriate every good thing for Bengal, which I love still, but the story which is narrated is really an Irish story of Curran, the famous barrister who, when he was interrupted by a Judge who said, "Mr. Curran, what you are saying is entering through this side and passing through the other," being—as Irishmen always are—a very witty man, said : "My lord, there is nothing in between to stop it." I never knew about it. Bengalis are always very excitable gentlemen. However, Sir, I leave that aside.

I really was looking for some compliments. But that has not been my good fortune this side. When this point was put forward, it was put forward on the basis that an opportunity should be given to either House of Parliament or both Houses of Parliament to discuss this matter and express their views in between the period of two years. We thought over the matter, and first we thought of leaving it to the discretion of the Central Government to extend the Act by an extra year. I thought that in the present

temper of Parliament that would not be a suitable proposition. So, if you are appropriating the discretion to yourself, then make it for one year, extendable by Resolution by both Houses of Parliament. I had advice given to me that under the Constitution not only the propriety but the legality of such a step was open to question. It cannot be done ; there are some rulings of the late Federal Court. Then I thought that this was the best method. It is not only a question of discussing whether the Act should be extended or should not be extended. We are all Members of Parliament. We are representatives of the people. It is open to everybody to make suggestions. We would do our best, and I do say that we did our best. In the Select Committee in the course of discussion there were one or two suggestions made, but the main additions and alterations—I do not want to use the word improvements—were made by the Government themselves. Now, what is the assurance that I have given repeatedly ? We will first of all ascertain the views of the State Governments. I wish to emphasise this aspect over and over again, that primarily it is the responsibility of the State Governments. And I do say that hon. Members, having heard the speech of the Leader of a group, should pause and consider as to where we stand. It is a very serious matter. I do not want to go over that ground again, but it is a very serious matter. Nowhere in any part of the world can that position be taken ? You do not keep arms to play with them like children. You keep arms for one specific purpose. I do not touch upon that now. As I said, we shall ascertain the views of the State Governments. I do not know what the situation will be in the next twelve months. I shall pray—if prayers count in that quarter for anything—I shall pray that conditions may continue to improve and return to normal. Very well. Having done that we shall deliberate among ourselves and see what the actual position is, what in our judgment the interests of the country demand and if we come to the conclusion that the Act should be done away with or should not

be utilised, we shall certainly consider that. If in our opinion there is a case for extension of the Act or continuance of the Act, then we shall debate upon it.

Now please remember that from the 9th of July this Bill has been under consideration and today is the 11th of August. For 35 days I do not know how much newsprint has been spent upon it, how much printers' money and how many millions of words. Of course it is an expression of views. I do not deny it. But it is unhealthy. You may discuss Kashmir in one day. You may discuss during the Budget Grants the whole of foreign policy of the Government in one day. You may discuss anything of vital importance in the country in one day. But here my hon. friends say that the Preventive Detention Bill requires two days. And if a Bill is going to be introduced, it will require 15 days. Well, go on. Who can prevent it ? Because under the rules I may speak for two hours, my hon. friends may speak for three hours.

Therefore, I thought that in the public interest the course that I have suggested is the most appropriate one. Parliament gets an opportunity to discuss this matter fully. On the collection of the views of the State Governments they have no complaint,—the collection of statistics in the form of a note or a report to Parliament before the debate starts. Then we get one day ; may be two days. We may sit for 8 hours. It all depends upon the exigency of the Bill.

SHRI ABDULRAZAK (Travancore-Cochin) : Will the opinion of the representative organisations in India be taken into consideration ?

DR. K. N. KATJU : I shall gather the opinions. I do not know how many representative organisations there are. Therefore, Sir, my hon. friend Dr. Kunzru has said "30th day of November 1953". I anticipate that this discussion of the Resolution, if the Act is to continue, will very likely be placed before the 30th of November and his

[Dr. K. N. Katju.]

object would be served. He is a very reasonable man. I praise him. He does not praise me. I attach great value to his opinion, not today only, but have done so for years past and whatever suggestion he makes towards improvement will have the fullest attention and consideration at the hands of the Government. So with these words, Sir, I oppose all the amendments.

MR. CHAIRMAN : I put Dr. Kunzru's amendment because everything except that takes you to a date earlier than the 30th day of November 1953.

The question is :

That at page 1, line 9, for the words and figures "31st day of December 1954" the words and figures "30th day of November 1953" be substituted.

The House divided :

AYES—29

Abdual Razak, Shri
Arman Ali, Munshi
Banerjee, Shri S.
Bhanj Deo, Shri P. C.
Deshmukh, Shri N. B.
Dhage, Shri V. K.
Dube, Shri B. N.
George, Shri K. C.
Ghose, Shri B. C.
Gour, Dr. R. B.
Gupta, Shri B.
Guruswami, Shri S.
Imbichibava, Shri E. K.
Kakkilaya, Shri B. V.
Kishen Chand, Shri.
Kunzru, Shri H. N.
Mahanty, Shri S.
Manjuran, Shri M.
Mathur, Shri H. C.
Mazumdar, Shri S. N.
Misra, Shri C. G.
Naidu, Shri Rajagopal.
Narasimham, Shri K. L.
Narayana, Shri P. V.
Ranawat, Shri M. S.
Rath, Shri B.
Raut, Shri R. B.
Sundarayya, Shri P.
Suryanarayana, Shri K.

NOES—85

Abdul Shakoor, Molana.
Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad Hussain, Kazi.
Aizaz Rasul, Begam.
Akhtar Husain, Shri.
Amolakh Chand, Shri.
Anant Ram, Pandit.
Anup Singh, Dr.
Barlingay, Dr. W. S.
Bhuyan, Dr. S. K.
Bisht, Shri J. S.
Biswas, Shri C. C.
Biswasroy, Shri R.
Boroah, Shri L.
Budh Singh, Sardar.
Chauhan, Shri N. S.
Das, Shri Jagannath.
Deogirikar, Shri T. R.
Dharam Das, Shri.
Doogar, Shri R. S.
Dube, Dr. R. P.
Gilder, Dr. M. D. D.
Hardikar, Shri N. S.
Hemrom, Shri S. M.
Hensman, Shrimati Mona.
Inait Ullah, Khwaja.
Italia, Shri D. D.
Jain, Shri Shriyans Prasad.
Jalali, Aga S. M.
Kalelkar, Kakasaheb.
Kapoor, Shri J. R.
Keshvanand, Swami.
Khan, Shri A. S.
Khan, Shri P. M.
Khan, Shri Samiullah
Kishori Ram, Shri.
Lal Bahadur, Shri.
Lall, Shri K. B.
Leuva, Shri P. T.
Madhavan Nair, Shri K. P.
Maithilisharan Gupta, Shri.
Majumdar, Shri S. C.
Malkani, Prof. N. R.
Misra, Shri S. D.
Mitra, Dr. P. C.
Mookerji, Dr. Radha Kumud.
Mujumdar, Shri M. R.
Mukerjee, Shri B. K.
Nagoke, Jathedar U. S.
Narayan, Shri D.

Narayanappa, Shri K.
 Nihal Singh, Shri.
 Onkar Nath Shri.
 Pande, Shri T.
 Pheruman, Sardar D. S.
 Pillai, Shri C. N.
 Prasad, Shri Bheron.
 Puri, Shri M. L.
 Pustake, Shri T. D.
 Rajagopalan, Shri G.
 Rao, Shri Rama.
 Rao, Shri Krishna Moorthy.
 Ray, Shri S. P.
 Reddy, Shri Channa.
 Reddy, Shri Govinda.
 Saksena, Shri H. P.
 Sambhu Prasad, Shri.
 Seeta Parmanand, Dr. Shrimati.
 Shah, Shri M. C.
 Sharma, Shri B. B.
 Shetty, Shri Basappa.
 Singh, Capt. A. P.
 Singh, Shri R. K.
 Sinha, Shri R. B.
 Sinha, Shri R. P. N.
 Sumat Prasad, Shri.
 Surendra Ram, Shri V. M.
 Tajamul Husain, Shri.
 Tamta, Shri R. P.
 Tankha, Pandit S. S. N.
 Tayyebulla, Maulana M.
 Vaidya, Shri Kanhaiyalal D.
 Valiulla, Shri M.
 Varma, Shri C. L.

The motion was negatived.

MR. CHAIRMAN : That means that the other amendments Nos. 10 to 15 fall. The question is :

That clause 2 stand part of the Bill.

The motion was adopted.

Clause 2 was added to the Bill.

MR. CHAIRMAN : There are no amendments to clause 3.

Clause 3 was added to the Bill.

MR. CHAIRMAN : The motion is :

That clause 4 stand part of the Bill.

There are a series of amendments here.

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1, after line 15, the following be inserted :—

“(ia) in clause (a) of sub-section (1) for the words, ‘if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to’ the words ‘if there is sufficient evidence with respect to any person that he is going to commit overt acts prejudicial to, and so with a view to preventing him from doing those acts prejudicial to’ shall be substituted.”

SHRI V. K. DHAGE (Hyderabad) : Sir, I move :

That at page 1, after line 15, the following be inserted, namely :—

“(ia) in clause (a) of sub-section (1), for the words ‘if satisfied’ the words ‘for sufficient cause’ shall be substituted.”

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1 after line 15, the following be inserted, namely :—

“(ia) in sub-section (1),—

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

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

(c) clause (a)(iii) shall be omitted; and

(d) after clause (b), the following new clause shall be inserted, namely :—

“(c) if there is sufficient evidence with respect to any person that he is indulging in blackmarketing, in profiteering, in oppressing peasants and workers and thus acting prejudicially to the maintenance of essential supplies and services to the community.”

SHRI B. GUPTA (West Bengal) :
Sir, I move :

That at page 1, after line 15, the following be inserted:—

“(ia) in clause (a)(ii) of sub-section (1) the words ‘or the maintenance of public order’ shall be omitted.”

SHRI B. GUPTA : Sir, I also move :

That at page 1, after line 15, the following be inserted:—

“(ia) to clause (a) of sub-section (1) the following Explanation shall be added:—

‘Explanation.—Acting in a prejudicial manner, for the purposes of the Act, shall mean acting in such a manner as may give rise to reasonable grounds for apprehending any immediate threat to the security of India.’”

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1, after line 15, the following be inserted:—

“(ia) to sub-section (1), the following provisos shall be added, namely:—

‘Provided that no member of Parliament or member of any State Legislature shall be so detained except with the previous permission of Parliament or State Legislature or of any committee of the Parliament or State Legislature constituted for this specific purpose :

‘Provided further that if any member of the Parliament or State Legislature is detained, he shall be given all facilities to attend the Parliament or State Legislature when they are in session’.”

SHRI P. SUNDARAYYA : Sir, I also move :

That at page 1, after line 15, the following be inserted, namely:—

“(ia) sub-section (2) shall be omitted’.

SHRI V. K. DHAGE : Sir, I move :

That at page 1, after line 15, the following be inserted, namely:—

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

‘(c) Chief Presidency Magistrate of Bombay, Calcutta, Madras and the Chief City Magistrate of Hyderabad’.”

SHRI B. GUPTA : Sir, I move :

That at page 1, after line 15, the following be inserted:

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

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

Provided further that the appropriate Minister may confirm such order when he has reasonable grounds to believe that the person against whom the order is sought to be confirmed has recently been directly connected with acts prejudicial to sub-section (1) (a).’”

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1, lines 16-17, for the words ‘have a bearing on the necessity for the order’ the words ‘in his opinion have a bearing on the necessity for the order’ be substituted.

SHRI B. V. KAKKILAYA : Sir, I move :

That at page 1, line 20, for the words ‘twelve days’ the words ‘seven days’ be substituted.

SHRI B. GUPTA : Sir, I move :

That at page 1, lines 26-27, for the words ‘as soon as may be’ the words ‘within five days’ be substituted.

SHRI B. V. KAKKILAYA : Sir, I move :

That at page 1, lines 26-27, after the words ‘as soon as may be’ the words ‘but not later than seven days after making the order’ be inserted.

SHRI S. MAHANTY : Sir, I move :

That at page 1, line 29, for the word ‘such’ the word ‘all’ be substituted.

SHRI B. GUPTA : Sir, I move :

That at page 1, line 29, the words ‘in the opinion of the State Government’ be deleted.

SHRI B. V. KAKKILAYA : Sir, I move :

That at page 1, line 29, for the words ‘as in the opinion of the State Government’ the words ‘in the possession of the State Government as’ be substituted.

SHRI B. V. KAKKILAYA : Sir, I also move :

That at page 1, line 30, the words 'the necessity for' be deleted.

SHRI B. GUPTA : Sir, I move :

That at page 1, line 30, after the words, 'for the order', the following be added, namely:—

"and the Central Government may vary, suspend or revoke such orders passed or approved by the State Government:

Provided that no such variation shall be made to the detriment of the person detained thereunder".

SHRI S. N. MAZUMDAR (West Bengal) : Sir, I move :

That at page 1, in line 23, for the word 'sub-section' the word 'sub-sections' be substituted, and after line 30, the following be inserted, namely:—

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

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

MR. CHAIRMAN : The clause and amendments are before the House.

SHRI P. SUNDARAYYA : Sir, I have moved all my amendments. Clause 4 of the amendment Act which is section 3 of the principal Act, is the very centre of the Act. It deals with the powers of the Government to detain anybody against whom they are satisfied that he should be detained. I have given the amendments to give sufficient safeguards for the prospective victims under this Act. My first amendment is that the clause should read "if there is sufficient evidence with respect to any person that he is going to commit overt acts prejudicial to" instead of "if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to". My amendment will make it necessary for the

Government to have sufficient reasons, sufficient proofs to detain him. It would mean also that if there are no sufficient proofs, if the Government cannot adduce sufficient proofs even before the court of law, then that detention has to be cancelled. The court can enquire into the grounds of detention and get that cancelled.

Of course this means that it will take some time even for challenging it in a court and the court will have to go into it. So my amendment does not take away the right of the Government to detain, which they are anxious to retain. But it is only a check on the abuse on the part of Government and a protection for the prospective victim so that the courts can intervene and find out whether there is sufficient reason or not. Then the object of the whole Act is to prevent any overt acts being committed that may be prejudicial to Government. That is why I have introduced the words "if there is sufficient evidence with respect to any person that he is going to commit overt acts prejudicial to." The existing clause gives such wide powers that any man can be brought under the mischief of the Act. He need not commit any overt act but even the advocacy of theoretical principles of what the State should be constituted of and how the State should function in the interest of the people and not like this Government which is primarily interested in safeguarding the blackmarketeers, big monopolists and feudalists and even imperialists—even the advocacy of these can be brought within the mischief of this Act. Therefore, I have brought forward my amendment to the effect that people who are going to commit overt acts only should be detained and not others.

There is another amendment that I have moved. The original Act empowers Government to detain any person who, in its opinion, is about to commit anything which may be prejudicial to the relations of India with foreign powers. This is too wide a power. It is no use bringing the argument that it has been used only against

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4 or 8 persons. If there is no necessity of using it, then there need not be this power in the hands of the Government whatsoever, but this is kept to detain people if they start agitation against certain foreign policies of the Government. Take an instance. India has become independent and one of our sovereign rights is that our soil should not be a recruiting ground for any foreign power. What has actually happened? The Government has entered into a 10 years', if I remember aright, agreement with Nepal and the British Government to allow recruitment of Gurkha soldiers on the soil of India into the British army and when it was brought to the notice of Government, they denied it but when time and again proofs were given, then the Prime Minister agreed that there is such a pact and because it is a pact for 10 years, he is unable to immediately revoke it. Our criticism is that this is not an isolated act. The Government has been doing these in the economic sphere, in the military sphere, in the political sphere, in its persistence in continuing to be in the British Commonwealth and because we go on criticising it—these foreign policies of the Government—the pro-British policy of the Government, they can easily bring the people who criticise under the mischief of this Act saying that we are acting in a way which is prejudicial to the foreign relations with the British Commonwealth or British Empire. That is exactly the reason why we say that this wide power to detain any person on the mere flimsy ground that Government is satisfied that he is acting prejudicial to India's relations with foreign power should not be there and that it should be withdrawn. I have given another amendment that 'maintenance of public order' should also be omitted from the clause and a new sub-clause should be inserted as follows :

“(c) if there is sufficient evidence with respect to any person that he is indulging in blackmarketing, in profiteering or in oppressing peasants and workers and thus acting prejudicial to the maintenance of essential supplies and services to the community.”

This should be a ground for detention. With regard to the first omission, I may say that if any person is going to commit any overt act prejudicial to the maintenance of public order then there are a number of sections in the Criminal Procedure Code from Section 107 to 113. Similarly Section 151 is also there. If the object of the Government is to preserve public order in a particular place, then under these sections they could proceed and even keep the person for 15 days without any trial. For day to day administration the Criminal Procedure Code is more than enough. When it is there, why is the Government so anxious to have this extraordinary piece of legislation and to detain persons depriving them of any right to go to courts? That is why I say we oppose this Act and say that this will not be necessary to maintain public order. The Government spokesman said that it is to be used not only in emergencies, that this Act is necessary even in ordinary times, even when there is no disturbance, even if the Central Government did not declare an emergency. If that is the position, why do the Government want to resort to this extraordinary piece of legislation while they have so much powers under the Criminal Procedure Code? It is because they don't want their acts to be questioned in a court of law and the most convenient way of suppressing any public opinion which they don't like is to bring them under the mischief of this Act and say that in the interest of public order we are detaining them. That is why we are opposed to this. The Government again and again say that this Act is necessary to suppress blackmarketeers, profiteers and jagirdars' violence and even to maintain essential supplies and services. If I am to take the Government at its word, if their main object is not to suppress political parties who are opposed to them, that they want this only in the interest of the people, then they should accept my amendment and it should be very welcome to them. We hold that the maintenance of supplies or maintenance of essential supplies to the community is not being disrupted. If they are

affected, the fault is not to be laid at the door of the peasants and workers but at the door of the blackmarketeers, landlords and profiteers. If the Government want to maintain supplies and essential services to the public then they must tackle the people who are responsible for these *i.e.*, the blackmarketeers who hoard the grains, the landlords who oppress the peasants and also the capitalists who refuse the workers the very basic demands, their moderate demands and leave them no other way except to strike; it is they who should be dealt with. That is why I have moved my amendment. I would like to point out here that even blackmarketeers should not be detained at the sweet will or for the mere satisfaction of a District Magistrate. I have, in my amendment, provided for even such persons to approach a court of law and take their cases before a court. If any police officer or District Magistrate takes it into his head to arrest any person, then that person can go to a court. My amendment provides for this. So they need not be afraid that the blackmarketeers of whom there are many champions on the other benches will be put to any hardship if my amendment is accepted. If this amendment is not accepted that would only lead us to the conclusion that this Act is not going to be used against profiteers, blackmarketeers, landlords and jagirdars who commit so much violence of which so many instances have been given here by other speakers also, coming from Rajasthan and other places, but it will be utilised against opposition parties, against political parties which are very critical about the Government's acts and behaviour.

Lastly, I may say that I have given notice of an amendment to the effect that no Member of Parliament or of a State Legislature shall be detained without previous permission. I have suggested it as a proviso :

"Provided that no Member of Parliament or Member of any State Legislature shall be so detained except with the previous permission of Parliament or State Legislature or of any committee of the Parliament or State Legislature constituted for this specific purposes :

Provided further that if any Member of the Parliament or State Legislature is detained, he shall be given all facilities to attend the Parliament or State Legislature when they are in session."

Sir, for any democratic Administration, for any democratic Parliament to function, the immunity of the representative of the people from being arrested and detained—especially from being detained—should be guaranteed. In the earlier days of bourgeois democracies even, this has been an accepted principle. They had accepted the principle that no representative should be arrested without the previous permission of the Parliament. Even today in the French Chamber of Deputies there is a clause giving this immunity to the member of the Chamber of Deputies. He cannot be arrested without the previous permission of the Chamber. We have been asked, "Why do you always quote the example of America and Britain? Why are you keeping silent about the Eastern democracies, of the Soviet Union?" Even in the Soviet Union, in the so-called "totalitarian" State, apart from the fact that there is no detention without trial, there is a specific provision in their constitution that no member of the Supreme Soviet could be arrested without the previous permission of the Executive Committee of the Supreme Soviet. It is true that Parliament is not always in session and this causes some difficulty. If such an emergency should arise I have provided that a Parliamentary Committee should be set up without whose permission no Member of Parliament could be arrested.

The second part of the amendment that I have moved says that if a Member of Parliament or a Member of a State Legislature is detained, he must at least be given the facilities to attend the session of the Parliament or the Legislature so that he may be able to represent the interests of the people who elected him. This is a very modest proviso that I have suggested and it is very necessary. Even when we are present, even in our face, the statements made by us have been interpreted and

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presented in a different fashion by the Government and they read a meaning in them which is not there. And some of the interested organs of the press also give a wrong headline, giving an entirely wrong impression of what we had said here. I will give just one instance. The other day in my speech I said that we had been offering to surrender our arms, to surrender the arms which the Telangana peasant guerillas had with them so that there could be an entirely new democratic beginning, a new atmosphere from October onwards. We had submitted a memorandum with respect to that to the Hyderabad Government as early as 1951 December and we requested them that they should declare an amnesty so that the atmosphere could be cleared and those people who were forced to live underground could come out and do their bit in the service of the people. In spite of this representation no action was taken. Government has continued the same old policy and these things are continuing. In this atmosphere it is not possible for those people, nor is it possible for us to persuade them to surrender arms to Government. The Government has taken it and the Press has featured this as "Red's condition to surrender arms". Government has again and again said that we are negotiating as a rival government, though in my speech I have repeatedly made it clear that we are not a rival government. It is only a charge which the Government hurls against us so that they can conveniently carry on their repression. I have made it quite clear and I have said it in this House that we are not a parallel government, that we are not bargaining, that we are not making it a condition. All that we are asking is for a declaration of amnesty and the declaration of amnesty is the job of a government. It is not a question of our laying down conditions before we lay down arms. We are only asking for the creation of a new atmosphere. Please create that new atmosphere. That will only show the magnanimity of the Government. It will be to the credit of the Government if they are

prepared to do it. Sir, there have been occasions even in this country when a foreign government did come out with an amnesty. If a foreign government could come forward with an amnesty of that kind, why can't a government which claims to be a democratic one, a government which claims to be a national government and when our Prime Minister again and again has said, "Let past things be forgotten", why can't we have such an amnesty? I am not raking up the past. But the Prime Minister has asked for a new spirit to prevail. Taking his own declaration, when we ask the Government to come out with a declaration of amnesty, they take it as if we are putting down conditions for surrender, that we are behaving as a rival government and that we are trying to rule. Nobody tries to rule here. They rule and they can rule as we know from our own bitter experience. Of course they have got the power to rule and they will rule. But if you actually want a new democratic atmosphere, if you do not want to continue the old policy of repression, then it is for you to declare an amnesty, because you have got the power to do it, not we who do not have the power.

This is what we have said, but it has been interpreted to mean that we are laying down conditions for surrender. If such a thing can happen even when we are present here and make speeches, if these speeches are entirely misinterpreted and made to give a wrong impression, then in our absence, when a Member of Parliament is spirited away at the sweet will and pleasure of a District Magistrate, then there will be nobody to represent the people who have sent him over here and Government can go on doing what it likes, without being criticised, or without things being brought to the notice of Parliament or anybody. That is why, I have said, in my amendment that no Member of the Parliament or Member of any State Legislature should be detained under this Act without the previous permission of Parliament or the State Legislature concerned or of any committee of the Parliament or

State Legislature constituted for this specific purpose, and if he is so detained, he should be given facilities to attend the Parliament or State Legislature. This should be accepted, because if we attend, we are not going to commit any acts prejudicial to the grounds on which we are likely to be detained. If the Government refuses to accept this amendment, the only conclusion that can be drawn is that Government is not so much interested in the democratic functioning of Parliament, that it wants the right even to detain Parliament Members without even referring to any Parliamentary Committee that may be constituted for this purpose and leave it to the District Magistrates to arrest Members of Parliament. If a Member comes here, he comes as the representative of 7 lakhs of people and as such the people have shown their confidence in him ; they naturally want him to point out and represent their grievances and that is why this privilege should be afforded to a Member of Parliament.

There is another amendment which I have given notice of. It is that a District Magistrate, after passing the order of detention should submit all the material which is in his possession to the Government. My amendment is No. 30. The Bill, as it stands, says "the Magistrate should submit all particulars which, in his opinion, have a bearing on the necessity....." My amendment only means the omission of the words "in his opinion" because we are very apprehensive of the District Magistrates not submitting all particulars which have a bearing on the particular detention order. The option, 'in his opinion' should not be there and he should submit whatever material there is, so that Government can come to a proper conclusion. Even this minor amendment, that a District Magistrate should be asked statutorily that all the material which he has got with regard to a detention order and a particular detenu should be submitted to the Government, is not being accepted by the Select Committee. They said that the option should be left to him. The argument given at that time was that if the words "in his

opinion" were there, then the detenu concerned can go to a court of law and say that all the material has not been submitted, but that only certain material has been submitted by the District Magistrate and, therefore, the order is *mala fide* which means that he should be released. They say that he may claim that protection. Sir, it is a very queer argument that because the District Magistrate does not send all the material but sends only certain material, the order becomes *mala fide*. If the order is *mala fide* why should not that be questioned in a court of law? To prevent a detenu questioning in a court of law even a *mala fide* order, the Government is not prepared to omit the words "in his opinion". That is why I have to move an amendment.

There is one extraordinary argument which the Home Minister was advancing the other day when he introduced this Bill here. He said that the wording of Section 3 is a verbatim reproduction of what is there in the Constitution and said 'If you want to change any wording in this, then the Constitution itself should be changed'. Of course, I am not an eminent lawyer who could argue anyway to bring out a case ; but, the Constitution does not make it mandatory for the Government either to bring out a Preventive Detention Act or to arrest and detain people on the grounds which have been enumerated in the Constitution. What the Constitution does is to give you power to enact a Preventive Detention Act and it also gives you the grounds on which any Government can bring an Act to detain persons. It does not mean that when you bring out a Detention Act you should include all the grounds which are given as permissive grounds. This is a common point of view and if the logic of Dr. Katju's argument is to be accepted, then whatever is there in the Constitution should be mandatorily implemented. There is the clause about emergency powers of the President. Does it mean, therefore, that the President should immediately declare an emergency and if he does not do so he is disobeying the Constitution? You can't say that the

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Constitution has given you powers and you are implementing the Constitution which is mandatory and that you have no other option. It is very clear that the Government can certainly drop some of the grounds and keep some of the grounds. So, don't put it at the door of the Constitution. It is the purpose of the Government because it wants the widest powers to suppress opposition, to suppress civil liberties of the people and to suppress the people themselves. It is for this purpose that they have incorporated the fullest powers given by the Constitution, a Constitution framed by the Congress members themselves. Again and again it is being repeated that the Constitution is made by the people of India. Sir, many who spoke on this side of the House have said that the Constitution was not made by the people of India because those who made the Constitution were not elected members nor was there a plebiscite. It was done only by the Congress members and as such we will be questioning the very basic thing, we will be trying to change the very Constitution itself. Even the Congress admits, and even their own Leader has accepted, that there are many things in the Constitution which have to be changed, it requires many amendments. So, that being the position, to bring the sanctity of the Constitution as an argument in support of this black Act is not proper on the part of the Minister for Home Affairs.

Sir, that is why I move my amendments and, of course, I don't have much hope that the Minister for Home Affairs will accept anyone of them or that the hon. Members who are behind him are going to concede but, well, we have our duty, in spite of the huge majority that the Congress commands today, to voice the people's demands. And, therefore, I am moving all the amendments for the consideration of this House.

SHRI H. N. KUNZRU : Mr. Chairman, I rise to support the omission of the words "the relations of India with foreign powers". Sir, during the

general discussion, I paid a tribute to the firmness, knowledge and wisdom of my hon. friend the Home Minister, but, it seems, that he is not satisfied with what I have said.

It is customary for pious Hindus, Sir, to begin the day with an invocation to the Almighty. As he is the lord of the Parliamentary Universe at present, I shall begin my speech, although I am not a pious Hindu, with an invocation to him. May his greatness, wisdom and mercy shine on us and may something that we say be worthy of his acceptance.

Now, Sir, I shall say a few words with regard to this particular amendment that I am supporting. This question was considered last year too and I should like the House to know what the then Home Minister said on this subject to show the need for the retention of these words. He said : "I would ask the House to remember that it is not exactly an easy affair to deal with. It is not easy to say that every man can talk whatsoever he likes in regard to our relations with Pakistan. Let me put it very bluntly : what is the danger that we are having in mind with reference to Pakistan?" And then he went on to say : "It is not merely a matter of liberty of speech, but probably a matter of war. The danger that we are preventing here is something enormously important. Does any citizen look upon the likelihood of a war with Pakistan—could any person look on that possibility with equanimity?" However good this argument may be, is it seriously contended that what the newspapers write here may embitter the relations between Pakistan and India to such an extent as to lead to war? And if the matter is so important, is it not pertinent to enquire whether there is such a law in Pakistan to restrain the papers there from commenting unfairly on the relations between the two countries? Sir, perhaps the Government is afraid that severe criticism of the foreign policy of the Pakistan Government or Great Britain or America or the Commonwealth countries or Russia may lead to very undesirable consequences. But neither England, nor America, nor any

of the self-governing countries of the Commonwealth has, so far as I know, any law to prevent the papers from expressing any opinion they like with regard to the foreign policy of India or of America or of any other country. How is it then that we alone consider it necessary to have such a provision in our Preventive Detention Act ? If the Government were to ask us to pass a law to punish a man who speaks disrespectfully to the Head of a State or defames its representatives in this country, I can understand the reasonableness of their request, but taking power to detain a man without trial for criticising adversely the foreign policy of any country seems to me to be highly arbitrary. Sir, it may be contended by Government that they have actually not used this power or they have used it only very sparingly. This is true. Some time ago there was only one man detained under those provisions of Section 3 which relate to the defence and security of India and the maintenance of foreign relations with other countries. On the 15th June 1952, the total number of such persons was four ; only four. I do not know whether any of them has been detained for doing anything supposed by Government to be prejudicial to the maintenance of good relations between India and Pakistan or England or America or any other country. If it is undesirable to have this power on general grounds and the Government has not exercised it, why should the scope of Section 3 be allowed to remain as wide as it is ? It is not enough, in my opinion, for Government to say that they have not used the power that I have referred to. I go further and say that it is neither necessary nor desirable that this power should be exercised. We should allow our people as much freedom as the Governments of, say, Pakistan, America and England allow their citizens in regard to the criticism of the foreign policies of other countries. Sir, I have never been able to understand the need for the retention of the words that I have referred to at the commencement of my speech. Shri Raja Gopalacharis advocacy seemed

to me to be special pleading. It is true that the amendment that was made in the Constitution last year enables Government to pass a law on this subject, but to pass a law providing for the trial of a person is one thing and to pass a law allowing the detention of a person without trial for commenting adversely on the foreign policy of another country is another thing.

Let us take the foreign policy of Pakistan. Can the detention of any number of persons under the Preventive Detention Act make the people of this country feel satisfied with the policy of Pakistan and if Government did not have public opinion behind them, how are they going to achieve the purpose that they have in view ? In regard to detention of persons without trial, they have had the general public opinion of the country behind them, but if they use their power to detain a large number of persons for criticising severely the foreign policy of Pakistan, I venture to say that they will not have the support of any section of the people of this country.

PROF. G. RANGA (Madras) : You say they have not used it.

SHRI H. N. KUNZRU : My hon. friend, Prof. Ranga, is always anxious to see the strong points in the Government's case, and he reminds me of what I have already said with regard to the very small number of persons detained in connection with those provisions of Section 3 which relate to the defence and security of India or the maintenance of good relations between India and other countries. But I have already said that I am concerned not merely with the exercise of the power that the Government of India enjoy, but also with the scope of Section 3. However wisely the Government of India may use their powers, it is still desirable that the scope of Section 3 should be narrowed and that these words should be deleted from it—"the relations of India with foreign powers."

SHRI V. K. DHAGE : Sir, my amendment to the clause is very reasonable and it incorporates the words "for

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sufficient cause" from article 22 of the Constitution itself.

We have in Hyderabad a People's Defence Committee, of which I am the President, and that Committee has several cases which make us move this amendment to this clause. The Defence Committee in Hyderabad consists of people of various shades of opinion and from various walks of life. One of the members is a retired Judge of the High Court of Hyderabad ; some are lawyers ; some are politicians, including Radical Democrats of M. N. Roy, and there are also some Communists. Here, I may say that I have been put down as a Communist. I am a member of the P. D. F. It is only your kindness that has transported me to this side.

Sir, this Committee has been looking after the defence of the people in Hyderabad. The reason for the formation of the Defence Committee is this. After the police action in Hyderabad, a certain policy was pursued by the Government by which tribesmen—Koyas and Lambaras—were uprooted from their villages and concentrated in different places known as rehabilitation camps. The result was that those people had several difficulties to face with regard to cultivation, with regard to protection of their cattle, etc. I will not go into that. But many of those people were arrested and sent to jail—several hundreds of them—rustic people, illiterate people, people who could not understand what was the cause for which they were arrested. In the grounds of detention it was stated in many cases that that particular person had given food and shelter to another person whom the police or the authorities called a Communist.

These people were in such large numbers that the jail precincts were not enough for them, and therefore they had to make barricade arrangements in several places in Hyderabad, and these people were detained for a year or more. The Defence Committee has also found that people have been detained without an order being served

on them ; not only that, but even the grounds of detention were not given to them. They were taken into police custody and were interrogated, and in the very grounds of detention it is narrated that after interrogation or during the course of interrogation so and so deposed that he had given food or done something of that kind and therefore he had been detained. I would like to read just one example to show how detention took place. This is Memorandum No. 82/50-MS, dated 19th August 1950 :

"In pursuance of section 7(1) of the Preventive Detention Act, 1950 (Central Act IV of 1950), Damodhar Rao, son of Ramchandra Rao Phatak, of Village Nalakunta, is informed that the grounds for his detention are the following :—

During interrogation, it was ascertained that it is suspected to be stolen property. He had intentionally delayed to reveal the real facts only because that his co-workers may get a chance to escape."

Another ground was :

"On interrogation, he stated that he is an ardent worker of the Communist Party and had truck with some of the leading Communists who are now underground."

My point is that if a person has to be detained, the grounds of detention must be ready at the time the detention order is served. It is a very strange thing, Sir, that you arrest a person and take him into police custody, then you give him the grounds of detention and in those grounds of detention you say that "during interrogation" he said such and such a thing. This cannot be considered proper.

Another point is that the detention order contains grounds which cannot be substantiated ; which are not true. The veracity of those grounds cannot be questioned. When the matter went to the High Court, the High Court stated that, so far as the veracity of the ground was concerned, they were unable to go into it. What is required under the Act is whether the authority passing the order is satisfied. How is he satisfied whether it was justified or not? The judicial authorities are unable to go into that question.

I will quote only one instance, and that is that of K. Radhakrishna Rao. It was stated that he was burning a police

thana on a particular day and therefore he was put under detention. The fact was that he was at the Collector's office making an application or in connection with some such work. The judges said that so far as they were concerned they could not go into it. The Preventive Detention Act did not permit it. They had to see only whether the authorities who passed the order and gave the grounds were satisfied. The judgement is by Justice Jagan Mohan Reddy and Justice S. Ali Khan of the Hyderabad High Court. It states :

I am sorry, Sir, I could not get a certified copy. This is a copy written in hand and sent to me by our Secretary. It says :

"This contention is on par with the setting up of an alibi defence and the courts under the Preventive Detention Act are unable to make enquiry or investigation into the truth or otherwise of this contention. What we have to see is whether the order of detention and the grounds furnished to the detenu show on the face of it that the detaining authority was satisfied."

MR. CHAIRMAN : The hon. Member will lay it on the Table.

SHRI V. K. DHAGE : Yes, Sir, I will lay it on the Table. Now this is the reason why I say that in the Act itself the amendment must provide not merely that the detaining authority is satisfied but that there must be a sufficient cause for it. In this connection, Sir, I would refer to article 22 (4)(a) of the Constitution which clearly says :

"An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

Therefore, Sir, it would not be improper if we put in some such provision here that there should be sufficient cause.

I will cite another case of a lady where the grounds of detention that have been given are that she is the wife of a top-ranking leader Ramachandra Reddy. She was addressing

meetings, etc. These are the grounds that are given for the purpose of detaining a person. Therefore, Sir, I think it would be quite reasonable if the hon. Home Minister would accept the amendment of 'sufficient cause' being inserted in the Bill.

One more thing that I would like to say is that in the original Act, so far as Hyderabad is concerned, it is the Collector who is authorised to issue a detention order and also the Police Commissioners of the City of Bombay, Calcutta, Madras and of Hyderabad. While in other places it is the District Magistrate or any other judicial authority that is empowered to issue this order, in Hyderabad it is the Collector. I, therefore, feel that instead of the Collectors being given the power to issue detention orders, it would be better if a judicial authority, that is, the Chief Presidency Magistrate of Bombay, Calcutta, Madras and the Chief City Magistrate of Hyderabad is empowered to issue detention orders.

SHRI B. GUPTA : Mr. Chairman, I have seen that the hon. Dr. Kunzru began his speech on this particular amendment with a sort of invocation. I wonder if the Almighty ones of the Congress can be propitiated that way. For, in the apostolic order of the Congress they begin their say with the invocation of Preventive Detention ! However, Sir, I am passing to the amendments. Now, Sir, the object of my amendment is only to seek deletion of the words "or the maintenance of public order". Sir, I would not say what our leader has already said here. But I would only add certain other points to his arguments. Sir, the phrase "maintenance of public order" is far too wide. As you know, in our law the phrase "public order" has acquired a very wide connotation. That was also said in the case of Ramesh Thakur in the State of Madras. It has been pointed out in many other cases also. In fact it covers almost everything. In other countries the word "public order" is understood strictly in a

[Shri B. Gupta.] narrow sense. It certainly is not interpreted with a view to covering almost anything that takes place there. But here in our country the thing is quite different. In this country if there is even a small procession or even a small meeting or demonstration taking place somewhere ; the Minister has powers to invoke this particular section and contend that such actions are likely to disturb the public order. I understand, Sir, nowadays the expression "law and order" is being given up and something is being eloquently put in its place. It does not matter to us if you say "public order" or "peace and tranquillity" in this Bill. It matters two hoots for the public just as it matters two hoots for a fish whether it is fried in butter or margarine. Similarly what does it matter whether we are fired in the name of "public order" or "peace and tranquillity"? It gives no consolation to us, if the hon. the Prime Minister speaks with eloquence what his predecessors spoke with brutality. It does not help us at all. Therefore I said that this word should be deleted. In Regulation III of 1880 certain provisions had been made to detain people without trial. Even there they did not talk about "public order" as loosely and as widely as it is talked of today. There it was "public commotion", a term which has a different meaning altogether. Here we are talking about "public order".

MR. CHAIRMAN : What do you mean? "Maintenance of public commotion?"

SHRI B. GUPTA : In Regulation III it was 'civil commotion'. They wanted to prevent public commotion. But here, Sir, the words "public order" will cover almost everything on earth. This phrase means almost a licence to the Ministers in the States. I am not talking about the hon. Minister in charge of the Bill here. I am not telling anything to him at this stage with regard to his activities. But what happens in the

States? We have a Government in our State in West Bengal Dr. B.C Roy, the Chief Minister, calls it a *happy family*. In that happy family, nobody is happy. Whenever there is a little expression of opinion which is not congenial to it, it calls out the police. All the penal measures are invoked and steps are taken under the Preventive Detention Act. If we go to a court of law, there is nothing they can do about it, because this is not justiciable. Therefore, whatever Dr. Roy, the Chief Minister, lays down goes as law. That is the position. That is why I say that, unless these terms are defined and their exact and precise definition is given, this will be interpreted to the detriment of the people. Whatever the hon. Minister might say, these are very wide powers, powers not only of discretion but of execution, to the Administration on the spot, whether it is a district magistrate or a funky Minister. Very wide powers are given to them, with which they could play fast and loose with our civil liberties. I do not know how to protect ourselves against such encroachments, until and unless these words are deleted. Therefore I suggest that they should go out of this Bill.

Then, Sir, my third amendment seeks to introduce an explanation of the words "prejudicial manner". Here is a legacy of the British. Under the Defence of India Rules also, these words "prejudicial manner" were there, and many people including Congressmen were detained not only during the Second World War but also during the First World War. I suppose the hon. Dr. Katju was one of the victims of this expression "prejudicial manner". Therefore, this expression has got to be defined. Otherwise, anything which is prejudicial to a particular Ministry—as distinct from the State—or to the party in power or even to certain groups within that party, can be interpreted as prejudicial. Therefore it is very necessary to define this term. My definition reads :

"Acting in a prejudicial manner, for the purposes of the Act, shall mean acting in such a manner as may give rise to reasonable grounds for apprehending any immediate threat to the security of India."

Sir, we are not unmindful of the security of India. India's security we all want. Nobody wants our country to fall into a state of insecurity.

SHRI TAJAMUL HUSAIN (Bihar): Question.

SHRI B. GUPTA : You may question. You may spend your whole life in questioning. The hon. Dr. Katju said so many things, about Robin Hood, murderers and what not. He is an intelligent man, and he knows how to speak. He said something like this : "They say you are robbers. Some say you are Robin Hoods." I can also use such expressions.

MR. CHAIRMAN : But you would not do it !

SHRI B. GUPTA : I have also got a certain amount of command over the language, and I can also use these things, even though I am not as good a lawyer as he is. I am not really a lawyer for that matter, as Dr. Katju is.

PROF. G. RANGA : You are a Barrister.

SHRI B. GUPTA : These words "prejudicial manner" are very vague. What happens is this : I can only speak from the experience that I have, because I have been suffering detention from my boyhood. I started jail-going in 1930. Therefore it is not a new game to me. I have been there a number of times and a number of years. "Prejudicial manner" would cover anything that the Administration considered uncomfortable or inconvenient to it during the British days. Now here again, "prejudicial manner" would come to mean anything which is inconvenient or uncomfortable to the Ministry in power. There is one particular case which I would mention, though I will

not mention the name. A certain gentleman in Bengal was in the Congress. He was very much in the close quarters of the Congress. He was given some sort of training. Some sort of military training was then being given in Bengal. It was also given to this gentleman. He fell from grace of a certain Minister. Before the elections, whatever the reason, he thought that the Congress should not be supported. He turned his back upon the Congress. What happened ? Suddenly, to our great surprise, we found this gentleman, who was known for his staunch anti-communism in the Dum Dum Central Jail as a detenu. We were all very much surprised. We made enquiries and we found that a certain Minister had been displeased, and so for that prejudicial act, he was landed in the Dum Dum Central Jail. An affidavit was filed in the High Court, and certain allegations were made against that Minister. That Minister is no longer there in office ; the people have thrown him out of office. However, he was dealt with under the Preventive Detention Act, and he could not succeed in his *habeas corpus* application. This shows that even an individual Minister can act, when a certain person who had been his friend or even his disciple falls from grace. Therefore I say that these terms should be defined. In the American courts, when they discuss about the security of the State and other things, they say, 'present danger' to the State or something like that. The definition is made; which the court interprets with a view to restricting the encroachment of the executive upon the rights and liberties of the people. That had been done in the U. S. A. in the 19th century. Sir, if his term is not defined it is likely to lead to dangerous abuses on the part of the executive, especially when the executive is based on a minority of votes. In West Bengal, the Congress Government is based on 39% of the votes of the electorate. 61% have gone against them. They are therefore all the time afraid. They are nervous people, and so

[Shri B. Gupta.]

whenever they are criticised, they get very much funky and take immediate steps against those persons. The Preventive Detention Act is there at their beck and call and it is invoked and people are sent to jail. Therefore, I say that if the hon. the Home Minister wants to secure the State against any internal disorder or external danger, then let him accept this amendment. Let not the expression "prejudicial act" be so construed as to endanger the liberty of the individual, whenever any Minister gets into a state of fear or panic. In all other countries, this safeguard exists. In England, there are a number of laws, and the hon. the Home Minister knows everything, with regard to the security of the State. In our country also, we have got certain legal enactments in our Penal Code and also certain powers are given to the executive under the Criminal Procedure Code. These can be used. If something happens of a very serious nature which cannot be covered by any of these enactments, you may have some excuse in using this Act, only if there is a threat to the peace and tranquillity of the country, only if there is a threat to the security of the State. That is why I say that this amendment should in all fairness be accepted by the hon. the Home Minister.

My third amendment is as follows :

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

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

Provided further that the appropriate Minister may confirm such order when he has reasonable grounds to believe that the person against whom the order is sought to be confirmed has recently been directly connected with acts prejudicial to sub-section (1)(a)."

The definition of the words 'prejudicial acts' is—although I know what will happen to that assumption—that if a certain man has to be arrested,

then these things should be done. That is to say, the Home Minister of the Central Government or the Home Minister of the State confirms the order within 5 days. The time-limit is to be there. I understand there may be certain difficulties and then, of course, the time-limit can be extended, but I say, five days, in my judgment, are sufficient to give him enough time to reflect upon the case and to apply his mind so that he can pass orders for confirmation. Otherwise what happens is this. Things go by default and injustice is done to the person who is arrested and a remedy which might have been otherwise available gets lost. The other thing is, when he confirms it, he should ensure two things. Firstly that there are reasonable grounds to detain that person against whom the order is sought to be confirmed, and secondly that he has recently been directly connected with the acts prejudicial to sub-section (1)(a). I know the hon. Ministers have got their ideas—some of them are ill-conceived. Even so I would ask them to be a little more reasonable. Nothing is lost by being a little reasonable. Therefore he should see also that the grounds for which the Detention Order has been made are reasonable, not just grounds. That gives a limited sense of security to the persons who are going to be arrested ; otherwise they could have no remedy at all. If it is stated here that they are being detained on reasonable grounds then they can fight their case before an Advisory Board and make representation. Also it indirectly and to some extent directly, restricts the executive, over-enthusiastic executive—whether District Magistrates or somebody else, to rush to this kind of detention orders. He probably would in that case apply his mind to the problem much better than otherwise. Therefore I say that this should be accepted ; otherwise what happens ? What kind of detention order is given ? I have a copy of one detention order—Government of West Bengal, Home Department, Special Section, No. 15157-H. S. dated the 31st August

1950. The grounds were stated against one Shri Ganesh Ghosh, a detenu, with whom I was in the Dum Dum Central Jail. One of the grounds of detention was this :

"That originally you were a member of the Chittagong Jugantar Party under Surja Sen and were arrested on 25-10-24 under Regulation III of 1818 and subsequently dealt with under the B.C.L.A. Act, 1925 but were however released on the 19th September 1928. After release you became active again and collecting firearms, ammunition and explosives, took leading part in the Chittagong Armoury raid along with Ananta Singh, Loke Nath Bal, Ambika Chakraborty and others under the leadership of Surja Sen. You were convicted in this case and sentenced to transportation for life. While undergoing imprisonment in Jail you accepted communism as your creed and formed a communist consolidation there and soon became one of the most important members and organisers of the Party."

Now, an offence which he committed—offence according to the British but according to our definition it is a patriotic performance—in 1930 for which he spent 17 years in jail. When in 1950 he is arrested, the same offence is mentioned. Now, it is cruel that a person who had suffered 17 years for a certain offence is again arrested, detained without trial and the same thing is brought out as a charge against him. Nothing can be more scandalous, nothing can be more ridiculous, nothing can be more derogatory to our national prestige than this. When the case of another detenu who had been connected with the Chittagong Raid came up before the Calcutta High Court, the hon. Advocate General brought forward certain charges about participation of the detenu in the Chittagong Armoury Raid Case. The hon. Justice observed something like this : 'I should have thought that he was a hero.' This sort of remark was made by a Judge. Yet, unblushingly these are stated in the charge-sheet. That is why I say it should be a reasonable ground because these particular items will not pass. Whoever confirms the order, he will see that this is the most unreasonable charge that one can make against a detenu in 1950 or 1952. Therefore it has to be set aside. The

point is this that the executive which brings up such charges is utterly irresponsible to be entrusted with any public responsibility whatsoever. If you carry this further, the normal inference would be that that particular magistrate is not trust-worthy. So I want this to be excluded because these charges have become a thing of the past, otherwise the people will suffer for the offences they committed, for the part they took in the national liberation movement for which I myself was detained. One of the charges about me was that I made a speech on the 12th August 1947 before the so-called transfer of power in which it was said, I demanded a certain trial of the corrupt officials. At that time the Muslim League Ministry was in office in Bengal and the Chairman of the meeting was Mr. J. C. Gupta who at that time was the Deputy Leader of the Congress Party in the Bengal Legislative Assembly. I should have thought that if I were to be taken into jail, Mr. Gupta would also be paired with me, and sent to jail.....

MR. CHAIRMAN : Mr. Gupta, next amendment.

SHRI B. GUPTA : I hope it will be considered. There is vehemence without reason, if I may follow your manner of expression.

The other thing is quite minor to me but might seem very major to other minds. My amendment is No. 30 and reads as follows :

"At page 1, lines 16-17, for the words 'have a bearing on the necessity for the order' the words 'in his opinion have a bearing on the necessity for the order' be substituted."

MR. CHAIRMAN : Mr. Sundarayya has spoken on that.

SHRI B. GUPTA : In the original Act.....

AN HON. MEMBER : What is the number of the amendment ?

SHRI B. GUPTA : It is a substitution.

MR. CHAIRMAN : Three gentlemen gave notice of this : Mr.

[Mr. Chairman.]

Sundarayya, Mr. B. Gupta and Mr. K. L. Narasimham. Mr. Sundarayya spoke about it at length.

SHRI B. GUPTA : I would only add that the words "in his opinion" could be deleted, because we have had a very good exhibition of "his opinion" for a number of years. All the materials should be placed before the Government. The officer or the magistrate should not be given any right whatsoever to reserve in his hand anything without putting it before the Government.

Now I come to amendment No. 33 which reads :

"At page 1, lines 26-27, for the words 'as soon as may be' the words 'within five days' be substituted."

I will be very brief. To leave the words "as soon as may be" as they are would be bad. The hon. Home Minister may think "as soon as" to be five days or ten days. But others may think otherwise. Due to mental laziness or political reasons or for other reasons, an officer may take twelve or fifteen days for the purpose. Therefore a definite time limit should be fixed so that there is no vagueness about it and the executive officer is not given any chance to exercise his discretion and hold back certain things just because he wants that.

Next I come to amendment No. 36 where I want the deletion of the words "in the opinion of the State Government" from this clause. I submit that all matters relating to the detention should be placed before the Central Government, all the related documents and papers. It should not be a matter of opinion of any State Government as to what is relevant and what is not. I say all matters should be placed without exception. The State Government should not be given any discretion. The State Government has the power of detention without trial and that is arbitrary enough. No more power should be given to them to decide which

documents or which evidence should be placed before the Central Government and before the enquiry. Sir, I hope my amendment will be accepted. I know what will happen to it. After all reason is something which has to be fought for always, and also advocated. Galileo stated something which was not acceptable to the rulers, but a few years later what he said was accepted by the world, though he died for it.

My next amendment is :

That after the words "for the order", the following be added :—

"and the Central Government may vary, suspend or revoke such orders passed or approved by the State Government:

Provided that no such variation shall be made to the detriment of the person detained thereunder."

I have suggested this because we want the intervention of the Central Government with a view to the protection of the rights of the citizen and the redress of the grievances of the detenu. We do not want to invest the Central Government with indefinite powers or with powers to make things more difficult for the detenu. The State Government is a tough enough customer so far as the detenu is concerned, and we want the Central Government to step in only with the object of setting right wrongs that might have been done. That is our object. The Central Government's order whether varying or suspending or revoking the orders passed by the State Government should always be made with the object of giving some relief to the detenu and not to his detriment. That will at least give some relief to the people who are subjected to gross abuses of these Acts.

Sir, these are my very brief and reasonable amendments and I hope the hon. Home Minister will not get unnecessarily annoyed with me. After all I am no match for him as long as he sits in the place he now occupies. But I hope he will try to understand the arguments not only of a Communist, but of a younger man of his

profession, so as to find his way to accepting some of them. It is no use calling us names. We have been called all names in various parts of the world. People who called us names are dealt with by history in a way not very encouraging for the great Home Minister of any country. Therefore I would urge upon the hon. Home Minister to be a little more considerate, a little more reasonable, and to see that there is something in what we say. We know we will be victimised, not because we are undemocratic, but because the executive is autocratic. Therefore we say, even at this late hour when this measure is going to emerge out of this Hall, please be reasonable, and as far as possible, make this measure less rigorous. The rigour of it cannot be eliminated. The fundamental injustice and criminality of this measure remains as long as preventive detention remains. But still I urge upon the hon. Home Minister to detract a little from the criminality of the measure, diminish the dimensions or magnitude of it so that at least we shall have some feeling that in this House of elders, wisdom prevailed. The younger people who somehow or other were made to pass this measure will some day regret, if not today, at the time of the next elections.

Sir, I hope the hon. Home Minister will consider these amendments.

SHRI S. MAHANTY: Mr. Chairman, I have only two very innocent and innocuous amendments.

SHRI GOVINDA REDDY: They are all innocent.

SHRI S. MAHANTY: By the first I want the words "seven days" substituted for the words "twelve days". That is amendment No. 31. And I want this substitution because there is nothing immutable about the concept of twelve days. There is no reason whatever why the period should be twelve days instead of just seven days. My other amendment is No. 35 which says:

At page 1, line 29, for the words 'such' the word 'all' be substituted.

I need say only a few words in support of these amendments. But before I do so, I wish to make just one introductory remark. During the debate on the general principle, I characterised this measure as a lawless law and I still continue to do so. But I want to make this piece of lawless law conform to the maximum extent to natural justice. It is towards that end that my amendments are directed. Sir, the position is like this. The hon. Home Minister wants to suppress lawlessness in the country, and strangely enough he is taking recourse to a legal lawlessness. I am not saying it; they are saying it in the streets. In order to put down lawlessness in the country this Act may be justified. But it will be all the more justifiable to detain the Home Minister himself under the Preventive Detention Act because he is here enacting a piece of legal lawlessness and is a greater menace to liberty. Therefore, to save him from that eventuality.....

SHRI GOVINDA REDDY: Have you not detained him sufficiently?

SHRI S. MAHANTY: To save him from that eventuality I have just proposed these amendments.

In one amendment I have suggested the substitution of 'seven days' for 'twelve'. The position is like this.

DIWAN CHAMAN LALL (Punjab): Will the lawless law become lawful then?

SHRI S. MAHANTY: It will at least accord more with natural justice.

The words in the clause are:

".....no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government."

So the period of twelve days has been provided for this purpose and I

[Shri S. Mahanty.]

want to reduce it to seven days because human liberty is at stake. I listened to the speech of the hon. Home Minister. He asked us to suppose that at some far off corner of the state a man was arrested and detained. The grounds for that detention have to be communicated to the State Government—that means the Home Minister, I suppose—and he says that that officer or Minister may be away on tour. Therefore the hon. Home Minister has put down the period of twelve days. He seems to think that twelve days is the minimum time within which all this process could be completed. But, Sir, man has not conquered time for nothing. If time could be conquered for war, if time could be conquered for destruction, time must also be conquered for human liberty and, therefore my submission to you, Sir, is 12 days should be reduced to 7 days. There is nothing immutable about 12 days. Twelve can be made into 7. It is only for the hon. the Home Minister just to extend a charitable gesture.

Then, I come to the new clause which they are inserting as sub-clause (4). Really it is going to make the operation of this Act, what should I call it somewhat less mischievous. It says that as soon as the State Government confirms the detention order, they have to send it to the Central Government,—the amendment stipulates,—with the grounds on which the order has been made and such other particulars. I want the word 'such' substituted by 'all'. The Home Minister may say that those persons who would be detained under this Act will be State prisoners; they will be the prisoners of the respective States over whom the hon. the Home Minister at the Centre can have no jurisdiction. But, I would only submit, Sir, that a man who is detained under this Act is a prisoner of the Central Government for all practical purposes. The State Government is merely carrying out a command or behest. Therefore, the prisoner is a prisoner of the Central Government and that

Government, in all fairness and in the name of justice, should provide for 'all other grounds' instead of 'such' other grounds of detention; which presupposes discretion. It should be mandatory and the State Government should communicate "all other grounds" relating to detention. It does not make much difference. It makes the least difference. 'Such' presupposes that it is discretionary and the State Government might keep away some of the grounds which probably may prejudice the case of the State Governments. The fact here is, the Centre is run by a Congress Government and in all the States also there are Congress Governments and, therefore, you should have no fear on that account. If a man has been arrested under this Act, in fairness to things, and in conformity with justice you should substitute 'all' for 'such' as the State Governments only carry out your command and behest.

These are my innocent and innocuous suggestions and I would appeal to the House not to think of and be carried away by party interests. They should not always think on party lines. These are two innocent and innocuous amendments and I believe the hon. the Home Minister will accept them so that posterity may feel what a magnanimous Home Minister we had in those times. I think that would be the best compliment of history. Thank you, Sir.

MR. CHAIRMAN : Mr. Kakkilaya.

SHRI B. V. KAKKILAYA : No, Sir.

MR. CHAIRMAN : Mr. Tajamul Husain.

(Shri S. N. Mazumdar rose.)

Mr. Mazumdar, your amendment is covered by amendment No. 25. I think we have had enough on this matter.

11 a.m.

SHRI TAJAMUL HUSAIN : I am not moving any amendment.

MR. CHAIRMAN : The Home Minister is going to answer.

SHRI S. MAHANTY : The Home Minister is there.

SHRI B. RATH : Is it open for discussion or not?

MR. CHAIRMAN : It is being discussed all the time. We have been discussing.

MR. TAJAMUL HUSAIN : Mr. Chairman, Sir,.....

MR. CHAIRMAN : I would like you to be brief because I want the Home Minister to answer soon.

SHRI TAJAMUL HUSAIN : I shall be very brief, Sir.

Now Sir, the principal Act of 1950 empowers Government, either Central or State, to prevent any person, if he is about to do some act in a manner prejudicial to the relations of India with foreign powers. An amendment has been moved by my hon. friend, Dr. Kunzru, in which he wants the words "the relations of India with foreign powers" to be deleted. His main argument had been, Sir, that if any person were to criticise the policy of a foreign power, he is liable to be detained. I do not agree with it. It is not only as regards criticism, because one country does criticise the foreign policy of other, it is with regard to the particular action which may be prejudicial. Sir, I give you concrete examples. Supposing these words had been deleted as a result of acceptance of Dr. Kunzru's amendments, and supposing Indians go and organise raids on Burma, Nepal, etc., we cannot hold up the persons under this Act because the words will not be there. These acts of ours amount to Prejudicial acts. Again, supposing, we start propaganda, serious propaganda to start war against a foreign power say against Russia or China, what will my friends say? They would like these words not to be deleted then. But, if I start propaganda against other countries, e.g., United

Kingdom or United States of America, they would like those words to be deleted.

Now, Sir, take the Pakistan side of Bengal. Due to trouble there, people of Hindu Community have to leave East Bengal and come to West Bengal. Supposing, we start reprisals, we start trying to imitate them, where will this end? The very purpose of the Nehru-Liaquat Pact will be frustrated. Then we may go on abusing each other in a wretched manner if these words were to be removed. Now, I gather from the learned speech of my hon. friend that he only spoke about Pakistan and no other foreign country. Does this section say that it is with regard to Pakistan only? It is with regard to all foreign powers. It does not deal with Pakistan only.

My friend, Mr. Gupta said that the words "maintenance of public order" should be deleted. I submit, Sir, that if Government cannot prevent a person from doing an act prejudicial to the maintenance of public order, this Bill will become useless. I submit, Sir, that this Bill is primarily and mainly to see that public order is maintained. If public order is not maintained, there may be chaos and anarchy in this country.

Then, my hon. friend, Mr. Gupta said that the word "prejudicial" has not been defined by the hon. the Home Minister. I have got a dictionary. This word does not need any definition. The word 'prejudicial' in the dictionary means causing prejudice or injury, injurious, mischievous, tending to obstruct; this is how the word has been defined here. I think it will be dangerous if these words are removed. I think these words are absolutely essential, otherwise we will go on doing something prejudicial whereby a foreign country may be so much prejudiced against us that there might be a war and it is very necessary to prevent war. For the prevention of war, it is the most important thing that we should have this clause in the Bill. So in the interests of peace, these words must remain there.

[Shri Tajamul Husain.]

Now, Sir, this Bill is nothing new. Its basic principles had been discussed exhaustively on several occasions in the past. The whole country knows about this Bill. The present Act is going to expire on the 1st October this year and therefore it is absolutely essential that Government should come before Parliament and get it extended. What I am saying is this, Sir. This Act was before the public. It was passed only a few months before the last general elections. Everybody knows about it. There was great opposition to it in the provisional Parliament, although our Communist friends were not there then. I was there at the time. So the whole country knew about it and in the last elections in the constituencies people talked about it. Everybody knew about it and still they have sent us here ; they have elected us. What does it mean ? That means that they want this Bill and that they want this section 3 of the Act to continue, that is, about relationship between ourselves and foreign countries and so on I am sorry my friend Dr. Kunzru is not here now. I say, Sir, these words should be in the Bill.

Then, Sir, I think only those persons are against this Bill whom it affects most. And those persons who are against this Bill are enemies to the country. I am sorry to say that, Sir. Now, I shall give two concrete examples of which I have personal experience. When I was a member of the Bihar Assembly, a Bill called the Money-lenders' Bill was brought forward. Now, what did actually happen with regard to that Bill ? All the money-lenders of Bihar waited on deputation before the Chief Minister and also saw the members of the Assembly requesting them not to support the Bill. What actually happened inside the Assembly was all those who were money-lenders among the members, they opposed the Bill and all those who used to borrow money, they supported the Bill, because they were the people affected and they were paying very high rates of interest. The Bill was in the interests of

the borrower but against the interests of the lender with the result that the borrowers supported the Bill and the lenders opposed it. Similarly, here, it is only those, who want to break law and order in the country, who want anarchy, who are opposing this Bill.

AN HON. MEMBER : Sir, the hon. Minister is not there.

SHRI TAJAMUL HUSAIN : Sir, I am not going to sit down. I am not going to be interrupted, unless it is a point of order.

MR. CHAIRMAN : He was saying that the hon. Minister is not there.

SHRI TAJAMUL HUSAIN : Well, Sir, you are here. I am not addressing any Minister or any Member. I am addressing you, Sir. You represent the House.

MR. CHAIRMAN : You go on.

SHRI TAJAMUL HUSAIN : What does it matter whether there is the Minister or not ? This Bill is essential and I am supporting it.

SHRI ABDUL RAZAK : On a point of order, Sir. Is it in order to treat the Whip of the Congress Party as representative of this Government ?

MR. CHAIRMAN : I did not consider the Whip as the representative of Government.

SHRI ABDUL RAZAK : But the hon. Member was referring.

MR. CHAIRMAN : No, no.

SHRI TAJAMUL HUSAIN : Then I shall give another example—a recent instance. I have got experience of Bihar and also some experience of U. P. In these two Provinces the Abolition of Zamindari Bill was brought forward. I tell you, Sir, all the Zamindars opposed the Bill, while those who were not Zamindars, they supported the Bill. The Zamindars took the extreme step of taking the case to the Supreme Court, because they

were being affected by the abolition of Zamindari. Now I am going to become a pauper, but what can I do ; it is for the benefit of the people. So it is just the people who are affected by the Bill, who oppose it. Now this Bill is going to affect these people and that is why they are opposing it.

Now, Sir, the question is: Do conditions exist at present to justify section 3? My answer is, conditions do exist at present and they will continue to exist as long as the Communist believe in achieving their object by violent methods. If today, Sir, they declare that they have given up their creed of violence, their idea of achieving their goal by overthrowing Government by force, by terrorising people and all that, then this Bill will not be necessary. Then it will not apply to them ; it will apply to black-marketeers and other anti-social elements. Sir, Communism may be a good thing. The other day I was going to speak on this, but I was irrelevant, but today I am relevant. Sir, Communism.....

MR. CHAIRMAN : We are not going to discuss Communism, its methods, its principles and all that here now. We can have a debate on that outside the House if we so desire.

SHRI TAJAMUL HUSAIN : Sir, this Bill deals with those people who want to overthrow the Government—democratic Government—by violent methods. Every democrat tries to defend himself. I am a Democrat ; I want to defend myself. I feel those people who do these things are communists. There are two objectionable features in them. Firstly, they draw inspiration from foreign powers. That is very bad. I won't dilate on this matter. I won't go deep into this matter. But I am sorry to say that any Indian citizen who draws inspiration from a foreign power is a traitor to the country. And if I were the Home Minister, I won't be so lenient ; I would shoot the whole lot. It is high treason and the only punishment that could be awarded to persons who

commit treason and who are traitors, is to shoot them. The whole trouble is this, that they want to adopt violent methods. Suppose they—that group which believes in overthrowing Government by violent methods—were in power—which I think they never will be, because they believe in violent methods—but suppose they were ever to come into power, the same theory would apply : the opposition party would then take to violent methods to overthrow that party which would be in power. Then that would go on like a pendulum for ever and ever. There would be no end. I do not want to mention Communists, but I hope that those people will accept my advice, as they have been asking the hon. Minister to accept their advice. My advice is a very simple piece of advice—give up violent methods ; do not pursue your aims in the manner in which you are pursuing them.

SHRI S. MAHANTY : You stand for psychic violence.

SHRI TAJAMUL HUSAIN : Let them take to mental violence and give up physical violence. I would welcome that. But they do not believe in mental violence ; they believe in physical violence. My advice to them is this. If they want to form the Government, they should go on appealing to the people.....

SHRI J. S. BISHT (Uttar Pradesh) : Are we discussing the amendment, or are we discussing forms of violence ?

SHRI TAJAMUL HUSAIN : We are discussing amendments to section 3, which is the most important section.

Let them go on appealing to the people. So far they have not succeeded. Why ? Because they have not given up belief in violence. They will succeed—but only when they have given up their belief in violence.

I should like to tell you a story. It is a true story. It is the true story of people who believe in violence. It is

[Shri Tajamul Husain,]
a story which everybody knows. (*Interruption*). I am discussing this section. If you delete this reference to foreign powers, there will be danger to this country.

There is a lady whose name is Anna Paukar.....

MR. CHAIRMAN : That is not relevant now.

SHRI TAJAMUL HUSAIN : If you do not allow me to proceed with this story I will not. That was a very interesting and true story. It shows how ruthless these people are.

In conclusion I shall say a few words. We won our freedom only four years ago. We are now in a transitory stage. Government has to face many problems. They have to do many things. And my hon. friends have got to admit that there are anti-social elements. There are dacoities going on. There are murders going on. There are disturbances going on in this country. Therefore, Government must have power to check all these. It is the duty of every one of us to see that there is peace in the country. If you ask me, I would pass this Bill. The Bill is not to punish people for committing crimes. It is only for preventing crimes. It is only a preventive measure. We talk of civil liberties. Why should we not attack the civil liberties of a handful of people if it means the protection of the civil liberties of millions and millions of people ? What is civil liberty ? Enjoy civil liberty, but do not injure others. If you obstruct others, if you injure others, you have no right to enjoy civil liberty.

Therefore, Sir, as long as these gentlemen believe in violence, this Bill will be necessary. It is in their hands whether this Bill continues or not. I wanted to say much more, but you do not wish me to say it and therefore I sit down.

DIWAN CHAMAN LALL : May I interrupt this flow of oratory for just a minute or two ? The reason

why I do so is to explain the position as regards the case referred to by my hon. friend Mr. Gupta and the document to which he referred. I am grateful to him for giving me permission to refer to this document, because I do not want that any wrong impression should be created in this House and through this House in the Press of this country that something drastic and terrible has been done by this Government.

In reference to the particular paragraph that the hon. Member read out, I entirely agree with him, and I think the House will agree with me, that there should be no desire on the part of the Government or the authorities to rake up a man's past, particularly when a man has suffered as this particular individual happens to have suffered. But I do not think that he need have that particular apprehension any longer, because under the new provisions of this measure it is no longer possible for the authorities to arrest a man once again for anything that he had done in the past, because unless and until there are fresh grounds of detention, he cannot be arrested once again. But apart from that, in the case of this particular individual—his name is Shri Ganesh Ghosh—when he was arrested, an order was passed against him. It is true that he has suffered for long. But in the order that was presented to him by the Bengal Government it was stated in paragraph 3 that in the past he had acted in this particular manner and that he had been arrested on the 25th October 1924, under Regulation III. Subsequently he was tried under the Bengal Criminal Law Amendment Act, 1925. He was released on 19th September 1928. After the release he became active again in collecting fire-arms ammunition and explosives and took part in what is known as the Chittagong Armoury Raid Case, for which he was sentenced to life imprisonment. After his release he was engaged in consolidating the work of the Communist Party and particularly took part in organising and training "Red Guards".

Now, the point I want the House to remember is this, that at the time when the Government issued this particular order on this individual, the Communist Party in Bengal had been declared an unlawful association under the Bengal Criminal Law Amendment Act. Any part that he took, therefore, in the activities of that party was liable to make him suffer for those activities. This is a record in paragraph 3 of what this particular individual did in the past. It lays down the historical background of this particular individual. Having been released, he takes part in the collection of arms and again suffers for a long, long period of time unfortunately, and again is released and takes part in organising what are known as the Red Guards, which is stated to be a militant Communist organisation, also with the object of collecting further arms, etc. So, the House must not be misled into believing that this was the only ground on which this particular individual was detained.

SHRI B. GUPTA : I did not say that.

DIWAN CHAMAN LALL : He did not say that. But I quite agree that he need have no apprehension any longer that under the provisions of this Act any such matter will be raked up again for the purpose of arresting my hon. friend or somebody else who may be engaged in activities of this nature. Further again, the order goes on to relate the part which this particular individual has played and one of the things said against him is this, that during that time "You along with other Red Commanders were being trained by Bo-Tain-Dan, a Burmese Red Guard Commander, who visited Calcutta." After having been so trained, in May 1948, "Guerilla Bahini" or Red Guard Volunteers were organised, and he was reported to be an expert guerilla fighter. During this time he was also reported to be responsible for Communist troubles in Ganjam. And from Ganjam he went to Madras and made contact with Communists there who wanted

rifles, handgrenades, etc., from the Bengal Party. And, as the order says :

"It was you who passed on this news to the Bengal Party."

Further, in September 1948, it was reported that he, along with Shome Nath Lahiri, who was absconding, left for Burma.....

AN HON. MEMBER : He is not absconding.

SHRI P. SUNDARAYYA : He is working openly.

DIWAN CHAMAN LALL : But at the time of the order he was an absconder. He left for Burma to contact the leader of the Burma Communist Party and get supplies of arms, ammunition, etc. from there. I need not read any more of this Order merely to state that the grounds there were sufficient in the opinion of the authorities to take action. He must rest assured that there will be no such case, nor was even this case based upon his activities in the past but the activities of this individual at the time when the order was passed against him. So there need be no apprehension in the minds of the hon. Members here.

MR. CHAIRMAN : I should now like the hon. Members to confine their speeches to five minutes each.

SHRI B. RATH : Sir, it is very difficult after this provocative speech of my hon. friend Mr. Tajamul Husain to confine my answer to five minutes and further I would submit that this clause is so important that it is really impossible to do justice to the subject within five minutes.

Sir, before I go into the merits or demerits of this clause, I would first submit that the grounds of detention of Shri Ganesh Ghosh as given by my

[Shri B. Rath.]

friend Diwan Chaman Lall, seem to have no relation to facts. I did not know the grounds of detention actually, but as my friend was reading them, I came to know that the grounds of detention were something like these: "He went to Punjab, then to Orissa and from there he went to Madras." All that I can say, knowing fully well about the activities of the Communist Party in Orissa in 1948 and not being underground, is that I repudiate the suggestion that has been made that he had been to Orissa. I repudiate it very strongly. He was never in Orissa. I can challenge that statement. Therefore I submit that the grounds of detention were tendentious.

After that I would submit that my friend Mr. Tajamul Husain in very sweet and provocative words was trying to make insinuations against the Communist Party and their activities while speaking on this Bill. Sir, I have given some amendments to the effect that "the relations of India with foreign powers" be omitted. I have not been able to move that. My amendment is also to remove the words "or the maintenance of public order". Sir, we have heard the speech of hon. the Home Minister, wherein he said that the Communists want to remove all hard provisions from this Bill for instance "prejudicial to the maintenance of supplies and services essential to the community". His argument was that Communists do not want the maintenance of supplies and services essential to the community. May I ask the Home Minister to say how many strikes have taken place during the last 4 or 5 years? And in how many cases the Communist Party has been directly involved in those strikes? If he can make some accusations against the Communist Party, I can also make similar accusations against him. Sir, is it not a fact that the I. N. T. U. C. was started in 1946? And they wanted to strengthen themselves and see that the A. J. T. U. C. the organisation of the working class should be suppressed to the extent that the working class submits to the Government through their pocket organisation I. N. T. U. C.

It was with the *malu fide* intention that they started I.N.T.U.C. so that in the name of 'essential services' they would be able to suppress the workers of the trade unions affiliated to the A.I.T.U.C. That is why when in 1948 the words "reasonable satisfaction" were included in the then legislation, these words were removed in 1950. Why, because all the High Courts found that in the order of detention the grounds given were such that no reasonable person could accept them. No sufficient reasons were given. Therefore I support the amendment of comrade Bhupesh Gupta that reason must be brought into this Bill. If that is not done, then any ground can be given and no court can take any notice of the grounds of detention.

Then with regard to the relations of India with foreign powers, Sir, I really cannot understand by any stretch of imagination the argument given by Mr. Tajamul Husain. His argument is that it must be there. Otherwise some people from India may take it into their heads to go to any foreign country and jeopardise the relations of India with foreign countries. If that is the reason for my friend to support this Bill, I would submit that I entirely disagree with him. I submit this phrase should be removed so that everybody will understand what this Government is doing. Sir, we have seen the Home Department Circular, which said that visitors from Soviet Russia and China must be discouraged from coming into this country. There is another Home Department Circular which has advised the Education Department of the Government of India that no Indian students should be sent to Czechoslovakia for getting technical education there. And there is another circular which says that Soviet literature should not be sold on the Railway bookstalls because it is tendentious. Sir, as an eminent educationist, you can judge whether what we see everyday in the cinema-houses—from Hollywood and other companies of America—is tendentious or not. Do such pictures create an adverse moral effect on the very youth

of our country or not ? Do they make our people imbecile or not ? Government has started several organisations in the country. Even the Ministers, even the Governors are connected with several institutions which are dealing in American literature in this country. Even eminent people are there. We know what is the character of the Government. We know from their circulars, to which way they are tending. We know that this is a country where unfortunately even for education American experts are necessary, where even for irrigation purposes American experts are necessary. We know that this is a country where no technician is available and Anglo-American technicians are therefore necessary.....

MR. CHAIRMAN : That will do. Mr. Kishen Chand.

SHRI KISHEN CHAND : Mr. Chairman, Sir, I will speak only for two minutes.

As pointed out by Mr. Dhage to the hon. Minister, in Hyderabad the executive and the judiciary have been separated and so by giving permission to the Collector to pass this order, we are really giving it to the executive. The hon. Minister has explained in detail that the application of the Preventive Detention Act has been left in the hands of the District Magistrates except in so far as the Presidency towns are concerned. But in Hyderabad, all the Collectors have been given power to utilise this Preventive Detention Act and that goes against the spirit of this law where it is the judiciary that has been given this power. So, I would submit that Collectors should not be authorised to pass orders under this Act.

My second submission is that as has been pointed out by Mr. H. N. Kunzru, a continuous propaganda of the most obnoxious type is being carried on in Pakistan against India. It is not only poisoning the reading public of Pakistan but of the whole world, and it consists in all sorts of

false stories against India. The hon. the Prime Minister has often drawn attention to this fact in several of the Press Conferences. In view of this, Sir, I submit that the words suggested by Mr. Kunzru should be deleted from this amending Bill. This is the case not only in Pakistan, but the Pakistan writers are contributing to papers in the Middle East, and even in the United Kingdom this propaganda against India is being carried on. There is a Press Law, and if any writer in a newspaper abuses his power, he can be hauled up under this law. I submit that we should not bypass the Press Law and insert a clause here about persons who criticise the policies of foreign governments. Therefore, I submit that this amendment should be accepted.

SHRI GOVINDA REDDY : Sir, I wish to say a few words about amendment No. 17. Amendment No. 17 seems to imply that, it is not sufficient that the Central Government or the State Government should be satisfied that a prejudicial act will be committed by a person for the purpose of detaining him, but that there should be sufficient evidence that the persons concerned is going to commit overt acts prejudicial to the State. If this amendment is accepted, the whole purpose of the Bill will be vitiated. This Bill contemplates using its provisions against those who are outside the arm of the law. If a person commits an overt or prejudicial act, then the other laws will be set in motion against the perpetrator of that act ; it is only in cases where there is no overt act as such and where the aim of the person concerned is to perpetrate such overt or prejudicial acts, it is necessary for the Government to restrain his movements so as to prevent him from perpetrating that act. So, Sir, if by evidence is meant that evidence should be on oath and should be tested by cross-examination, then it is clear that there cannot be such evidence in the case of one whom the Government wants to detain. If there is any such evidence, then the other law will come into operation and not this Act.

[Shri Govinda Reddy.]

Therefore, this amendment is against the spirit of the Act and cannot be accepted.

SHRI S. GURUSWAMI (Madras) : Mr. Chairman, Sir, my silence should not be construed to mean that I support the Government's present legislation in any manner whatsoever. There is one aspect of the present legislation which has been sufficiently enlarged upon and in connection with which Comrade Sundarayya has been good enough to table an amendment in sub-section (a) of section 3 of the present Act. This is an Act which empowers the competent authorities to detain persons, if they are satisfied that there is an attempt to interfere with the maintenance of supplies and services essential to the community. In the name of protecting the community, *bona fide* trade unionism is being crushed by resort to this Act. I particularly refer to what happened in 1949. There was a strike ballot taken by the All India Railwaymen's Federation. There was a difference of opinion inside the ranks of the Federation on whether the strike should be proceeded with or not. The Federation decided not to go on strike, but there was a certain section—the communist section—which decided to pursue the strike to secure redress of the grievances. The question was not whether they were right or wrong, but the question was whether they were entitled under the law to proceed with the strike in a *bona fide* manner. I say that they did so in a proper *bona fide* manner, but only the merits of their action were in dispute. When such was the case, many railwaymen were arrested. They were sent to prison and detained without any trial. They have been discharged from service. The present Act enables the authorities to crush *bona fide* trade union action in the country. As such, I strongly oppose this measure which seeks to crush trade union activities in the name of law and order or in the name of the movement of essential supplies to the community. I have therefore no hesitation in giving my

support to the amendment (No. 22) which has been given notice of by hon. friend, Mr. Sundarayya, and I would request the Government to voluntarily accept the amendment moved by Mr. Sundarayya, because there is already an existing legislation governing illegal strikes. If they want to act, the present Industrial Disputes Act gives them ample powers for taking action against those who conduct illegal strikes. When there is such a specific legislation, this measure is redundant ; it is a class legislation intended to suppress the civil liberties and the working class movement. Therefore I hope that the hon. the Minister will accept the amendment which has been tabled by Mr. Sundarayya, i.e., Amendment No. 22.

THE MINISTER FOR HOME AFFAIRS AND STATES (Dr. K. N. KATJU) : Mr. Chairman, Sir, I wonder whether hon. Members have tried to put all these amendments together and then seen the picture that would emerge and what would remain of the existing Act or the Bill. This is really—I do not complain of it—not an attempt to improve the particular provisions in the Bill, but this is an indirect attempt to emasculate the whole Act and to condemn it root and branch. My suggestion is that, if you are opposed to the Bill, say so. You have been saying so for the past—let us see how many years—5 years. I do not know whether some at least of the hon. Members were here between the years 1942-1945. Then the position was slightly different. Anyway say that you don't want it. The principle of the Bill is that there should be vested in the Executive authority—the State Government or the Central Government—power to detain according to the direction given in the Constitution. Inasmuch as judicial tribunals, understood in the ordinary sense, would be excluded from operating over this particular area, you have very elaborate clauses relating to the constitution of an Advisory Board, high-powered, highly experienced people, who will go into it and examine all these matters and

then you have a maximum period of detention—12 months—and you finish the whole previous record by that. Before the Advisory Board, you have got some provision to ensure that, there would be as fair a hearing as possible and the Advisory Board would have all the material before it on which to pronounce on each individual case. That is the picture which is presented by the Bill. Now you analyse these amendments. They are firstly, 'Eliminate this, eliminate that and eliminate a third thing, eliminate foreign affairs, eliminate public order, eliminate essential services eliminate essential supplies, eliminate everything'—What remains? It is the security of India. Of course the security of India at present is not in danger. If it were in danger, it would not be necessary to elaborate all these. Therefore you limit that. Secondly, my hon. friend from Bengal says 'Here is another soft amendment'. What is the amendment? Define the word 'prejudicial' and he defines that. He says 'Acting in a prejudicial manner for the purpose of the Act shall mean acting in such a manner as may give rise to reasonable grounds', mark the words 'reasonable grounds for apprehending any immediate threat to the Security of India.' Just look at the softness and gentleness. In the first instance there should be reasonable grounds. In the second place, immediate threat to the security of India from a foreign army on the border, that they are going to attack and therefore you want this Act. The word 'reasonable' is very important.

My hon. friend over there touched upon another soft amendment. He proposes :

"If there is sufficient evidence with respect to any person that he is going to commit overt acts, etc."

Sir, the word 'reasonable' has given rise to infinite trouble in the law courts. I wonder Mr. Chairman whether you are aware or not.

SHRI GOVINDA REDDY : He knows that.

Dr. K. N. KATJU : The argument has been that the moment you introduce the word 'reasonable', it means an examination by a law court, by a judicial court because 'reasonable' supposes it must be reasonable and I cannot judge in my own case that in my opinion it is reasonable. It is for the superior Courts of Justice and in this case, it would be by a writ of *habeas corpus* or it will have to go elsewhere. There were the most elaborate arguments about this in the British courts and five judges thought one way and the other Judge thought another way and I don't know what is the existing situation.

Then comes the other point. The order is passed by the district magistrate. We thought we had made an improvement and we had limited it to 12 days so that Government may approve of it, the State Governments may approve of it. We thought there should be papers—materials—sent to the State Governments so that they might be able to judge. In the original Act the provision was that the district magistrates should send—remember, for information, not for approval, such material which may be necessary to show that the order was properly made. It was, I quote the Act, 'to show the necessity of the order'.

Another gentle amendment is that he must send all the materials. The amendment which has been made in the Select Committee—I thought it had been made to mollify all the opinion—was that it should not be only for the necessity of the order but to bring the whole matter. There may be a cart-load. You must have somebody to judge as to which is material and which is not material. Therefore it is stated in the Bill as reported by the Select Committee that 'He should send material or papers which, in his opinion, have a bearing on the whole matter'. My hon. friend says 'In my opinion it is no good, cut that out'. I don't know how the district magistrates have got to act. For example, in the case, which my hon. friend quoted, of a very estimable gentleman, patriotic

[Dr. K. N. Katju.]

man, who took part in the Chittagong Armoury Raid, what should we send? A whole cart-load had been sent—a sort of “Who is Who.” Therefore we have proposed the present amendment about the material to be furnished.

Then comes the third point. We provide that the approval of the State Government should be obtained within 12 days. We had provided 15 days, then we cut it down to 12 days. Now the amendment brought says that we should make it 7 days. Please remember the papers are to be sent and the idea is that the matter should be examined carefully by a State Minister. If the unfortunate individual is away on tour, the papers will have to follow him. If he is in bed, laid up with influenza, the matter may have to wait for a day or two. Now you say ‘this must be done within 7 days or 5 days’. I respectfully submit to the House to consider—I don’t want to use any disrespectful language—that this is an attempt—I exempt my hon. friend Dr. Kunzru from that—it is an elaborate camouflage to cut this, cut that, dot the ‘i’s’ and cross the ‘t’s’ so that the whole Bill may be done away with. Take it clause by clause. My hon. friend Dr. Kunzru said ‘Why interfere with foreign affairs?’ I don’t want to repeat myself. I said “If you have any quarrel, have it with the Constitution. Why have it with me?” The Constitution states that it was desirable. There is a particular procedure prescribed for the change of the Constitution. Adopt that and have it done away with.

SHRI H. N. KUNZRU : Is it the hon. Home Minister’s position that he is bound to pass a law including the reference to the maintenance of good relations between India and other countries because the Constitution contains such a provision ?

DR. K. N. KATJU : What I say is this. The way in which it was put was that there should be liberty to

criticise. I am not referring to Pakistan or Tibet or China or Timbuctu surveying the whole world, from China to Peru but the Constitution states that it was desirable that friendly relations between foreign powers may be kept by India and therefore Preventive Detention on that account might be necessary. My hon. friend himself said that there are only 4 cases—may be more or may be less. What is this ? He speaks like a Don Quixote viz., fighting against imaginary wind-mills. He is trying to show ‘Look at me, the great saviour of liberty, I am fighting against these’. If the thing has not been used, very well it is there, we will just see. He does not probably know. I cannot give him all the information that I possess as to what may happen or may not happen. He cannot have it both ways. Let him say ‘Here is a case of legitimate criticism which has been interfered with’—criticism which has interfered with the relations with Pakistan—sometimes friendly and sometimes unfriendly. The atmosphere varies this way or that. Sometimes it is hot, sometimes it is cool and sometimes it is humid. That is the experience I have of the eastern part of this great Union. So far as the western part is concerned, there is almost a clearance. But so far as the eastern part is concerned, we have Hindus living over there, about a crore of them. Muslims are living over here about 35 lakhs, I don’t know how many, may be five millions. Therefore we must have a little regard to repercussions in the international sphere and repercussions in our internal spheres. There is no desire to interfere with any legitimate comment or even with illegitimate comment. But look at the newspapers here. I entirely agree that the comments in the Pakistan Press are sometimes deplorable. But the main question is of such tremendous importance that you cannot deal with it on these theoretical grounds. I say that this provision about foreign affairs has stood the test of time—from 1950, and has not been misused or abused. Then why should we quarrel about it ?

PRINCIPAL DEVAPRASAD GHOSH : (West Bengal) : What about Mr. Asutosh Lahiri's case in April 1950 ?

DR. K. N. KATJU : I do not want to answer.

Then comes public order. Cut out the words "public order" and then I frankly say, you cut out the whole Act. I don't really know if the House is interested in public order or not. They say, there is the law of the land. I agree. But it is forgotten that the law of the land—I am repeating myself—contains what are called preventive provisions. In the Criminal Procedure Code you have provisions to prevent the commission of offences, not for their punishment. The deficiency is two-fold. The first is that you can get rid of it by giving security. Secondly it is of limited operation. You can defy and snap your fingers at it by just going from one place to another. It is not a provincial affair, not a State affair, not an all-India affair. As I said the other day, the district magistrate of Delhi may pass an order calling upon a certain person to give security. The security is given. He just crosses the Jumna, or goes to some other place some eight miles off, say to Ghaziabad, or goes to Meerut or Bulandshahr or Gurgaon, and then he is completely outside the jurisdiction of the district magistrate. These sections are preventive, intended to keep the peace and to prevent habitual offenders, as we call them, habitual thieves, robbers and persons of that character, from committing offences. You ask, "Take advantage of them". I wish I could. It will save a lot of bother, and the time of three judges and a lot of public money. Having an Advisory Board of this kind is no joke. It means so much money. But the reason why we have this provision is this—I talk bluntly—there is no question of paying security. We want detention so that we may know where the person is, his whereabouts and he cannot do acts which the Advisory Board would think, are dangerous to the security of India or to public order or—that ill-favoured phrase—the maintenance of essential

supplies and essential services. Detention is the object and not the paying of security, because security 12 noon. can be found in no time. I need not go into the details here. We all know what is going on in the country. Money is in plenty—goodness knows where it comes from. People are travelling here and there. Persons run bookshops, printing presses and so on. The payment of security will serve no purpose. And when you go before the magistrate and have a public trial, all secrets are exposed. Do you want that ? I am only here, not because I love detention without trial, but because I love my country more. I love ordered liberty more. One hon. Member said the other day that these are the speeches which used to be delivered by Maxwell and other—what shall I say—ancestors of mine. But what they said or did was for the preservation of an alien rule. Everyone who delivered those speeches wanted that alien rule to be strengthened. And now we want the infant Union of ours to grow in strength, and anybody who comes in the way of that,—will—must take the consequences.

I am astonished again at what my hon. friend from Hyderabad said. I don't know, where he was elected from. (An Hon. Member : "Hyderabad".) I am astonished at what he said. Look at the reasonableness of the offer that I make. You surrender your arms first. It never struck me before as it strikes me now—the enormity of the thing that has been done. Do you mean to say that in this land there should be any community, any section, any group, any number of individuals who should keep arms illegally and use them ?

SHRI P. SUNDARAYYA : Mr. Chairman, if I get time, I would like to reply.

DR. K. N. KATJU : He says, "We are willing to surrender, let Government show us its magnanimity." Not I, but the Government of Hyderabad will show it. Don't talk terms to

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them. Go to them and surrender the arms first. They are Hyderabad people, you are Hyderabad people. Explain the circumstances and I am sure they will consider if they were actually people misled, dupes, cat's paws, ignorant people. They might deal with them gently. I do not know what attitude they would take with the leaders. I was sorry to hear what my hon. friend said here. He said, "I have been elected here and I enjoy liberty. With what face can I go to them and ask them to surrender their arms without any terms?" Well, if that is the spirit, I don't know what attitude the Hyderabad Government would take. They might be willing to be gentle to the cat's paws, the dupes and to the ignorant followers, but they may say, "We would like to be a little more strict with the leaders who had led these people and who did all this mischief which brought about all this catastrophe there." I am not going into the merits of it one way or the other. But the result has been that hundreds were killed either by the police or the army or the gentle Communist people who had the arms. But, the fact remains that women were killed, murdered, violated, villages were burnt and so many things, goodness knows what, were done. Now, the first duty of an Indian citizen is.....

SHRI B. GUPTA : What about the leaders of the Congress ?

DR. K. N. KATJU :if there is a warrant, go and surrender ; if there is a detention order, go and surrender. Having done that, you can then make your representation. You cannot keep away and say that we are not giving up. Every amendment, Sir, is calculated to defy that essential principle. I ask every section of the House to reject it without the least compunction. It is not a question of going this way or that way. I said on the last occasion that I did not want to go to the back of history—I have not seen the charge sheets, the grounds of detention. Very likely, the officers, probably did not know how to go about and I am in-

debted, I believe the House is also indebted, to my hon. friend, Diwan Chaman Lall who took the trouble of seeing the detention order. What was read was, 'there is a great patriot'—I entirely agree that here is a great patriot who took part in the Chittagong Armoury Raid. It is an historic event in our national story and they said : "Look at this rotten Government. They are clapping up in jail these great patriots." I knew about it—it is not my function, but as a matter of history—in Bengal in the month of March 1948, before I went there as Governor, the Communist Party was banned. Banning of a party means that it dissolves itself and there should be no active members. That is the result of the banning of a party. Now, in the order, rightly or wrongly, it was said "this is what we have done ; this is what we have done and so on". Now, I ask was it fair to the House to read out only just the opening portion ?

SHRI B. GUPTA : But, I showed it to Diwan Chaman Lall. He came here.

DR. K. N. KATJU : You did it in private ; you ought to have read it out yourself to the House and not left it to be done by Diwan Chaman Lall. That is my complaint against you. You ought to have read the whole of it. It is better that way than allowing him to read it.

SHRI B. GUPTA : You should be knowing it.

DR. K. N. KATJU : Well, that man was sentenced to life imprisonment and then he did these things. I have got many friends among the Communists ; many of them, I like ; you won't believe it, but I like them extremely. You may dislike their policy but not the persons.

AN HON. MEMBER : A great honour.

DR. K. N. KATJU : You may dislike the conduct of a man, but you may never dislike a man, and his persistence, even in his persistence in

violence, the persistence is the very life of it. I do not want to go into it, but, you ought to be fair to the House. If you read anything, don't read half. I have noticed it in the law courts ; the only sure way of losing a case is if the Judge comes to think that you are suppressing from him something in the law book that you are reading or from the evidence that you are discussing. The best thing is that you must be frank.

And, the third thing is about essential supplies and essential services. There was some criticism about that in the other House. My friend, probably on his own or because of that, said that you better enact this Act if it is to be used against blackmarketeers, hoarders, profiteers and all people of that sort...

AN HON. MEMBER : It has not been used so far.

DR. K. N. KATJU :.....but, so far as the essential services are concerned, these are gentle people, don't rub them the wrong way. My hon. friend over there said that this is great interference with the liberties. If there is incentive to what we call unprovoked, illegal and completely unjustified strikes in the railway services, postal services, the telegraph services, and in all communications intended to paralyse the life of the community, my hon. friend says, "No, no. No preventive detention".

SHRI S. GURUSWAMI : There is special law on the subject.

DR. K. N. KATJU : I won't be interrupted. That is the picture that is being painted. But, I am not prepared to make all these subtle distinctions between one group and the other group of law breakers. One law breaker to me is as bad as another law breaker. One inciter of violence to improper anti-social behaviour is as bad as another. There are no comparisons. You remember, Sir, that "comparisons are odious". I do not want to compare one with the other. They are all equally condemned.

Then, there is just the other point ; and, that is important, it is of some constitutional importance. I notice that my hon. friend from Hyderabad has tabled an amendment which he moved. I believe it is No. 25, relating to immunity of Members of Parliaments and Members of Legislature of States and I noticed further, Sir,—so that I may not have to repeat it again—that there are later amendments 86 and 87 which deal with the same matter. Now, I should like the House to consider that thing in a non-party and completely objective manner. We are all Members of Parliament. There are Members of the Legislature in the States. One basic rule is that in so far as Criminal law is concerned, there should be no difference whatsoever, no distinction whatsoever between a Member of Parliament or a Member of the Legislature and a private citizen. It goes back into long history, centuries old. Hon. Members who may be interested in this affair will find some material in the report which I submitted as Chairman of the Committee on Privileges in the other House ; this question was raised there and it goes back really to 400 years. Our Constitution says that the same immunities and privileges shall be enjoyed till we pass our own Act. There should be no distinction between a private citizen and a Member of the Legislature.

Now, take this Preventive Detention. In England, in the House of Commons, they decided in what is known as Ramsay's case in 1940, that there is no distinction between a man detained under the preventive detention act and a man who has been convicted. The idea of a judicial trial does not come there at all because everybody will realise that detention is a substitute for criminal conviction. The moment a man's liberty is encroached upon it is, so far as he is concerned, a gross interference with his right. It is some criminal penalty imposed upon him. The fact is that detention without trial or detention after trial makes no difference. The question is whether there is a proved offence and here there is no

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proved offence. I repeat once again that in the preventive jurisdiction exercised by the magistrate, supposing I am tried because I am dangerous to the community or for a variety of reasons and the magistrate tells me 'If I let you free, there is great danger that you may commit some offence. You may commit dacoity or break the peace.' Therefore, the order is that I should deposit a security of Rs. 10 lakhs or Rs. 500, or that I go to prison for a year. Either I have not got the money or I have got no friend who will give me the money or sureties are not forthcoming, then I do not pay the security and I go to jail.

Supposing I am a Member of the Legislature, Now I have committed no offence, but the magistrate has found that there is great danger, that if I remain at large, I may commit some offence. It has been a judicial trial in this case, namely, that this matter has been investigated into openly, but the matter remains the same. There has been no conviction for any offence, but the magisterial finding is that I am a habitual robber or receiver of stolen property or a desperate character and my remaining at large without security shall be a danger to the community. There is no offence, but he sends me to jail and I am a Member of the Legislature. Is that the argument that because I have been elected by a majority of a lakh of voters, therefore as soon as the House begins to sit, I should be let out from jail? That is number one. There is another amendment tabled that we must consult Parliament and obtain the sanction of Parliament before we lock him up. The amendment says : "...except with the previous permission of Parliament or State Legislature." That means you are going to convert Parliament into an Advisory Board under the Preventive Detention Act or a magistrate or Sessions Judge under the Criminal Procedure Code. Has anybody ever heard of it? Are we here proceeding upon that judicial basis? In the olden days, about 150 years ago, in the House of Commons, election petitions were heard and dis-

posed of by the House itself. In my college days I used to read Fox's speech on the election of Westminster." The whole procedure was found so obnoxious that they completely got rid of that and I believe in 1840 Parliament itself passed an Act that election petitions must be heard by Judges and that is the procedure there. But here is this amendment which says, "that no Member of Parliament or Member of any State Legislature shall be so detained except with the previous permission of Parliament....."

SHRI P. SUNDARAYYA : It is there in French Chambers.

DR. K. N. KATJU :..... or State Legislature or of any committee of the Parliament or State Legislature constituted for this specific purpose." I say the whole procedure is bad. The amendment goes on : "Provided further that if any Member of the Parliament or State Legislature is detained, he shall be given all facilities to attend the Parliament or State Legislature when they are in session." Why? Supposing a Member of Parliament—there is no question of any act of moral depravity—suppose there is some dispute; hot words were exchanged and a Member of Parliament slaps his neighbour and the magistrate gives him two months. The House is in session.

SHRI P. SUNDARAYYA : We are referring to persons detained.

SHRI B. GUPTA : Reference is to detention under this Act. Slapping comes under Criminal Procedure Code.

DR. K. N. KATJU : Let us be quite clear. They would require that that man—whether he is there for this offence or for anything, even if he is a detenu—they would come here and say : "Please give him facilities. He should be brought here." I do not know what they would say. From the Government point of view he is a most dangerous man, but they will say : "Send him on parole." The House may be in session for three months; the State Legislature may be in session for two months. There was another

suggestion : " Bring him daily in charge of police escort." Is it enhancing the dignity of Parliament ? The police would be there in the lobby so that the individual may not run away. He is brought in a prison truck and taken back in a prison truck. Is this all enhancing the dignity and prestige of Parliament ? And the reason is that if you do not do it, what about the electorate who have shown their confidence in him ? The other alternative may be that if a man is detained or convicted, you at once unseat him and declare his seat vacant and give the electorate a chance of having another man. There is no harm in that, because it is not only the case of a detenu—in any case he will be released within one year—that is the maximum period—there may be other convicts. Supposing I go—I am not a Communist—I make a terrific speech, inciting people to violence. I am tried in a court of law and the magistrate gives me 18 months. I do not know what the attitude will be. The electorate will be deprived of the services of their chosen representative and the House would be deprived of the assistance, benefit and the wisdom of their colleague. The better procedure would be the moment a man is detained or convicted for a term exceeding a short period, it is a matter for the consideration of Parliament—I am not expressing any opinion one way or the other—I am just mentioning as an alternative—whether the electorate should not be given an opportunity of sending another representative who can be physically present at the House to represent them, but these amendments, I submit, are utterly bad and I oppose them. I have nothing more to add, Sir.

MR. CHAIRMAN : Amendment No. 17 (by Shri P. Sundarayya and Shri K. L. Narasimham).

The question is :

That at page 1, after line 15, the following be inserted:—

"(ia) in clause (a) of sub-section (1) for the words 'if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to' the words 'if there is sufficient evidence with respect to any person that he is going to

commit overt acts prejudicial to, and so with a view to preventing him from doing those acts prejudicial to' shall be substituted."

The motion was negatived.

MR. CHAIRMAN : Amendment No. 18 (by Shri V. K. Dhage).

The question is :

That at page 1, after line 15, the following be inserted, namely:—

"(ia) in clause (a) of sub-section (1), for the words 'if satisfied' the words 'for sufficient cause' shall be substituted."

The motion was negatived.

MR. CHAIRMAN : Amendments Nos. 19, 20 and 21—they have not been moved as the Members were absent. But nothing is lost because Amendment No. 22 incorporates all these suggestions.

Amendment No. 22 (by Shri P. Sundarayya and Shri K. L. Narasimham).

The question is :

That at page 1, after line 15, the following be inserted, namely:—

I shall put the rest clause by clause:

"(ia) in sub-section (1)—

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

The motion was negatived.

MR. CHAIRMAN : The question is :

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

The motion was negatived.

MR. CHAIRMAN : The question is :

"(c) clause (a)(iii) shall be omitted;"

The motion was negatived.

MR. CHAIRMAN : The question is :

"(d) after clause (b), the following new clause shall be inserted, namely:—

'(c) if there is sufficient evidence with respect to any person that he is indulging in blackmarketing, in profiteering or in oppressing peasants and workers and thus acting prejudicially to the maintenance of essential supplies and services to the community ;'

The motion was negatived.

MR. CHAIRMAN : A amendment No. 23 falls, because it has already been voted upon. Amendment No. 24.

The question is :

That at page 1, after line 15, the following be inserted:—

“(ia) to clause (a) of sub-section (1) the following Explanation shall be added:—

‘Explanation.—Acting in a prejudicial manner, for the purposes of the Act, shall mean acting in such a manner as may give rise to reasonable grounds for apprehending any immediate threat to the security of India.’”

The motion was negatived.

MR. CHAIRMAN : No. 25. The question is :

That at page 1, after line 15, the following be inserted:—

“(ia) to sub-section (1), the following proviso shall be added, namely:—

‘Provided that no Member of Parliament or member of any State Legislature shall be so detained except with the previous permission of Parliament or State Legislature or of any committee of the Parliament or State Legislature constituted for this specific purpose:

Provided further that if any member of the Parliament or State Legislature is detained, he shall be given all facilities to attend the Parliament or State Legislature when they are in session.’”

The motion was negatived.

MR. CHAIRMAN : No. 26. The question is :

That at page 1, after line 15, the following be inserted, namely:—

“(ia) sub-section (2) shall be omitted.”

The motion was negatived.

MR. CHAIRMAN : No. 27 was not moved as the hon. Member was not present here when I called upon him to move it. No. 28.

The question is :

That at page 1, after line 15, the following be inserted, namely:—

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

‘(c) Chief Presidency Magistrate of Bombay, Calcutta, Madras and the Chief City Magistrate of Hyderabad;’”

The motion was negatived.

MR. CHAIRMAN : No. 29. The question is :

That at page 1, after line 15, the following be inserted:—

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

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

Provided further that the appropriate Minister may confirm such order when he has reasonable grounds to believe that the person against whom the order is sought to be confirmed has recently been directly connected with acts prejudicial to sub-section (1)(a).’”

The motion was negatived.

MR. CHAIRMAN : No. 30.

The question is :

That at page 1, lines 16-17, for the words “have a bearing on the necessity for the order” the words “in his opinion have a bearing on the necessity for the order” be substituted.

The motion was negatived.

MR. CHAIRMAN : No. 31.

The question is :

That at page 1, line 20, for the words “twelve day” the words “seven days” be substituted.

The motion was negatived.

MR. CHAIRMAN : No. 32 was not moved. No. 33.

The question is :

That at page 1, lines 26-27, for the words “as soon as may be” the words “within five days” be substituted.

The motion was negatived.

MR. CHAIRMAN : No. 34.

The question is :

That at page 1, lines 26-27, after the words “as soon as may be,” the words “but not later

than seven days after making the order" be inserted.

The motion was negatived.

MR. CHAIRMAN : No. 35.

The question is :

That at page 1, line 29, for the word "such" the word "all" be substituted.

The motion was negatived.

MR. CHAIRMAN : No. 36.

The question is :

That at page 1, line 29, the words "in the opinion of the State Government" be deleted.

The motion was negatived.

MR. CHAIRMAN : No. 37.

The question is :

That at page 1, line 29, for the words "as in the opinion of the State Government" the words "in the possession of the State Government as" be substituted.

The motion was negatived.

MR. CHAIRMAN : No. 38 was not moved. No. 39.

The question is :

That at page 1, line 30, the words "the necessity for" be deleted.

The motion was negatived.

MR. CHAIRMAN : No. 40.

The question is :

That at page 1, line 30, after the words "for the order", the following be added, namely:—

"and the Central Government may vary, suspend or revoke such orders passed or approved by the State Government :

Provided that no such variation shall be made to the detriment of the person detained thereunder."

The motion was negatived.

MR. CHAIRMAN : No. 41 has already been voted upon under No. 25.

The question is :

That clause 4 stand part of the Bill.

The motion was adopted.

Clause 4 was added to the Bill.

(MR. DEPUTY CHAIRMAN in the Chair.)

SHRI K. L. NARASIMHAM (Madras):
Sir, I beg to move :

That after clause 4 of the Bill, the following new clause 4A be inserted, namely:—

" 4A. *Amendment of section 4, Act IV of 1950.*—In section 4 of the principal Act,—

(i) for clause (a) the following shall be substituted, namely:—

"(a) to be detained in a central jail nearest to his usual place of residence under such conditions as to give him reasonable personal maintenance allowance, family allowance, provision for interviews, correspondence, newspapers, books, games, discipline and punishment for breaches of discipline, as the Central Government may by general or special order specify and such orders shall be placed before the Parliament ;"

(ii) clause (b) shall be omitted."

Sir, I am suggesting this in place of section 4 of the principal Act. The Bill before us is an extraordinary Bill. It arbitrarily restricts the personal liberty of a person, and on mere suspicion a district magistrate can send a person to jail. Just now our Home Minister has stated that if a district magistrate suspects a Member of Parliament and thinks him to be an undesirable man or a desperate man, he can send even a Member of Parliament to detention camp. If the Act stands in its present form, it means that that particular detenu will be governed by the rules framed by the appropriate Government. The appropriate Government means the State Government. I have personal experience of these detention camps. I was myself a detenu from April 1948 to April 1951. During those three years I knew what the life of a detenu in jail, especially in Madras State, is.

KHWAJA INAIT ULLAH (Bihar) :
Were you not a detenu before 1947 ?

MR. DEPUTY CHAIRMAN :
Order, order.

SHRI K. L. NARASIMHAM : When the State Governments frame rules, one State will frame one set of rules, and another State will frame another set of rules in a different way. In Madras we are governed by certain rules. In other States, detenus are

[Shri K. L. Narasimham.]

divided into two categories, Class I and Class II detenus. Class II detenus are treated just like ordinary criminals. They are made to work, and they are given C class diet. They are not governed by uniform rules throughout the country. There is also a provision that the detenu can be transferred from one State to another. The Central Government once tried to send all the detenus to one corner of the country, to a place near Sikkim. They passed legislation to that effect also. If a State Government takes the permission of another State Government, the detenu can be transferred from one State to another. This transfer from one State to another will be governed by the rules framed by the State Government. Instead of this procedure, I make a concrete suggestion, that Parliament may make special rules governing the conditions of detention or that special orders should be passed with the approval of Parliament specifying under what conditions these detenus will be treated in jails. I think we are asking for too many conditions. I carefully followed the speech of the Home Minister which he made in the other House describing the conditions in our jails. He described that the conditions in jails are better than the conditions outside. I do not think that he will make that statement here again. If he makes that statement, my only submission to him is that it would be better to send all people to jails who say that the conditions are better inside the jails. Let them have their residence in jails. I do not think that any ordinary person who wants to enjoy liberty, who wants to live with his people, who wants to advocate the cause for which he stands will willingly go to a jail and submit himself to the tortures of the Congress Government. One hon. Member came forward with a statement that whether a person is a Member of Parliament or not, Government has got sufficient powers to shoot down all the Communists or send them to jail and it is enough if the District Magistrate is satisfied. I know how this Act has been abused in the Madras State. In the Madras State

I know a case wherein some Chittivalasa workers were charged with unlawful assembly and they were facing a trial. They were allowed to be released on bail. Immediately the District Magistrate comes there with a detention order and sends them to jail and later they were transferred to Vellore Central Jail. When they asked to pend the transfer order for some days, the detenus were lathi-charged and were dragged like animals from that jail to another jail and again in Cuddalore jail, four were shot there. Shri A. Sitaram Rao beloved leader of Andhra peasants was murdered before my very eyes. It was accidental that I was not killed. The Superintendent made an attempt on the life of comrade A. K. Gopalan. They made an attempt on the life of any leading member of the Communist Party in the Vellore Central Jail. The jail authorities beat them severely and asked them to give an undertaking. If they did not give an undertaking, they were tortured till such undertaking was given. They were made unconscious and in that state of unconsciousness they took their signatures and sent them to another camp. I know a case of one Socialist who was brought to Vellore Jail. He was ruthlessly beaten in order that he should say that he is not a Socialist. And that particular Superintendent who did that is under suspension and the Government refuses to enquire into those things. And you are asking by this Bill that the State Governments will frame their rules. The State Governments consist of persons of a party which has a mentality of crushing every sort of opposition that comes from different parties. I do not think that they are going to treat us humanly or treat the detenus humanly. I only ask you to give human treatment inside the jail. I was sent to jail. I know my grounds of detention. I only say that I was detained on one ground that I was the General Secretary of the Union of which Shri Guruswami was the President. I was detained simply because I was carrying on a propaganda against a rival Union which was sponsored by the Government agents. I was carrying on the legitimate trade union activities. Simply

because there was some strike at one place, a Magistrate of Madras detained me for an offence that I committed at Rajahmundry on the basis of the reports from the Congress agents or from their own stooges. Those reports give a Magistrate sufficient reason to satisfy himself. This is a preventive detention action. I should say that it is a punitive action. In jail you are locked up at 7 o'clock. You are asked not to move from your barracks. You are asked not to read papers. Your papers are censored. Your letters are censored. If your wife wants to interview you, she must get the consent of the police officer and the police officer must be satisfied that she is the wife of such and such man. Then, even after that, if she comes to the jail, the police officer remains there all along the time of interview, even when a particular detenu (her husband) talks to her. I can challenge our friend, Mr. Rama Rao who stated that he comes from Andhra and exhibited Fascist Mentality. Let him go and address the people of Bapatla and then see what happens. Let him come to realities. He is not in touch with the people of Andhra.

I strongly oppose the Bill that is before this House. Even our constructive and simple suggestions are not accepted. At least give human conditions to a detenu whom you are sending to jail on mere suspicion, on the basis of false reports. You may release him only after the Advisory Board's recommendations. My humble request to you is that you should give a detenu maintenance allowance, special allowance to his family, newspapers, books and other things that are essential. The police officer who cannot understand things only writes that this is unsuitable. Even an interview with his near relatives is unsuitable. We are not asking for prohibited books, but books that are allowed for ordinary citizens and that too through their own agencies. You can in this respect frame necessary rules governing the life of a detenu.

And further I have only to mention that apart from four murders committed by the Congressmen in Cuddalore jail, they sent some detenus to the mental

hospital. What was the reason? The man had nothing to do with a political party. He is arrested on mere suspicion, because some rival to him or some Congressman gives a false report and takes the Magistrate into his confidence. I know one case of a person from West Godavari District. As soon as he entered the jail, he lost his mental balance. There are six cases like that and 20 were permanently disabled. One of our comrades P. Ramana, who was a worker in Vishakhapatnam, suffered from a disease during his detention. Even after his release he suffered from that disease simply because he was implicated in a false case and ultimately he died. After some time, the case was withdrawn by the Madras Government, because they knew that their secrets would be out, that the whole world would know them. My hon. friend the Home Minister says that he cannot put these people to a public trial, because he thinks that the people would come to know the unreasonableness of the way in which he is handling these cases. Our experience is that two M. L. As. one from Andhra and another from Tamil Nad—of the previous Legislative Assembly—were sent to detention camps under this Act. In this way, you are trying to send all the Opposition Members to detention camps. This is fast becoming a Fascist State, but I will ask you to read history. Hitler did it; Chiang-Kai-Shek did it and so many others did it. I will tell you history will repeat itself again. You will go their way. With these few words, I ask the hon. Minister to accept my reasonable amendment.

SHRI GOVINDA REDDY : Sir, I must confess that this is a very interesting amendment. My hon. friend, them over of this amendment, while moving the amendment, has given reasons as to why he has provided in the first part of the amendment that the detenus should be confined in the Central Jail nearest to his usual place of residence, instead of in sub-jail. He has mentioned some incidents, the truth of which he should vouchsafe.....

SHRI K. L. NARASIMHAM : Yes, I can.

SHRI GOVINDA REDDY : I cannot speak for that, but if it were true that such incidents did occur, he should not have kept that information to himself so long, but he should have advised persons affected and complained against the perpetrators of those acts.

SHRI P. SUNDARAYYA : We did complain before the public. We did bring it to the notice of the Government.

SHRI GOVINDA REDDY : I know the reason why they want that the detenus should be detained in the Central Jail instead of in the sub-jail. The sub-jails are of course small places and there they will have very few disciples. On the other hand the Central Jail will have hundreds, and there they will have more scope to get fresh apprentices in trade to their group. That is why they say that the detenus should be detained in the Central Jail and not in the sub-jails. That is the object of the amendment. Sir, the hon. mover of this amendment has taken care to list the comforts, and the list is so exhaustive that I myself feel inclined to court detention.

SHRI K. L. NARASIMHAM : Yes, go.

SHRI GOVINDA REDDY : This list includes "such conditions as to give him a reasonable personal maintenance allowance, family allowance, provision for interviews, correspondence, newspapers, books, games, discipline"—I am very glad that he has added one more to the list "punishment for breaches of discipline". The list is so exhaustive that one can save all the trouble of earning a livelihood by courting detention. If this amendment is accepted, I am afraid the whole lot of them there will court detention, but we want them to be here. Therefore I oppose the amendment.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N.

KATJU) Mr. Deputy Chairman. I imagine my hon. friends and the whole House know that in so far as the provision of amenities is concerned, this is a matter entirely within the province of the State List. I do not want at this late hour to enter into details. This matter was very much discussed in the other place, and I ventured to say there what I had seen with my own eyes in Bengal. It may excite again a good deal of passion and therefore I do not repeat that mistake. It may be that from State to State the conditions differ. I myself was in detention in the year 1942. Well, I can say for myself that for about 8 months I did not have a single interview. I did not have a single letter, and knew nothing of what was happening outside in the world ; not a single newspaper.....

AN HON. MEMBER : Not even a place to sleep.

DR. K. N. KATJU : This might give you some comfort. We were receiving—there were two classes—9 annas a day and 12 annas a day for everything. You have to get your meals, tea, fuel and everything on 9 annas a day. Of course, I am not saying that we were very virtuous.

AN HON. MEMBER : Four annas.

DR. K. N. KATJU : I stand corrected. It may be that the third class people were getting only 4 annas. So, it is not a question of comparison. I shall send for information, if we have not already got it in the Ministry even now, about the rules in the different States. I have heard views expressed in the Parliament, in both the Houses, and I shall write to the different State Governments to have some uniformity. Please remember that I do not mean to say anything definitely. We are not trying to put the detenus on a very high pedestal, but my heart goes out—I tell you—I have visited about a hundred jails—to the boys and adults waiting for trial. After long trials some of them are proved to be innocent. What I say is that I shall look into these rules

and regulations. I cannot of course dictate to the State Governments, but I can tell them, "Here is a State Government doing this and there is another State Government doing that. But there should be some uniformity, because this is a Central Act. All reasonable grievances should be removed. Treatment should be not only humane but should be as convenient and as proper as possible. So far as this matter of allowances is concerned there again there are divergences. In Bengal they are giving a substantial allowance. They also give a family allowance to destitute needy people. I do not know what the other States are giving. I would go much further and say—and the House must take me on that assurance that as soon as this debate is over and after this Bill is passed into law, I shall undertake that examination. We shall write to all States. So far as this amendment is concerned, I cannot accept it as it stands.

SHRI B. GUPTA : Some reference has been made to Bengal. It is true, Sir, that there are certain amenities which are now available to detenus in Bengal. It is again true that these amenities are not available to the detenus in many other States. That was found out when our people came here to the Supreme Court for *habeas corpus*. Certainly, it is important that there should be an improvement on the conditions obtaining in Madras and Bihar. There is no uniformity in that matter, and whatever we have got in Bengal is the result of many hunger-strikes. Four people died before these amenities could be obtained. It would be useful if the Central Government takes up this matter so that the detenus in all States get more facilities and amenities. These are not available to many for instance the detenus in Bihar.

DR. K. N. KATJU : I confess my ignorance of the rules and regulations in different States. As I said, I shall send for all these rules and I shall get them examined. I shall write myself to the various State Govern-

ments by way of advice or suggestion that, in so far as their local conditions would permit, there should be some uniformity of treatment of detenus all over the country. I cannot go further than this.

SHRI B. GUPTA : Some detenus get small family allowances in Bengal.

MR. DEPUTY CHAIRMAN : The question is :

That after clause 4 of the Bill, the following new clause 4A be inserted namely:

" 4A. Amendment of section 4, Act IV of 1950.—In section 4 of the principal Act—

(i) for clause (a) the following shall be substituted, namely:—

'(a) to be detained in a central jail nearest to his usual place of residence and under such conditions as to give him a reasonable personal maintenance allowance, family allowance, provision for interviews, correspondence, newspapers, books, games, discipline and punishment for breaches of discipline, as the Central Government may by general or special order specify and such orders shall be placed before the Parliament.'

(ii) clause (b) shall be omitted."

SHRI K. L. NARASIMHAM : In view of the sentiments expressed by the hon. Home Minister, I wish to withdraw my amendment.

The amendment was, by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN : Amendment No. 43 is a negative amendment.

It is out of order. No. 44 Mr. Sundarayya.

SHRI P. SUNDARAYYA : I move the amendment. Shall I speak ?

DR. K. N. KATJU : You can finish in 2 minutes.

SHRI P. V. NARAYANA : Are all negative amendments to be disallowed ? Is it in accordance with the Rules ?

MR. DEPUTY CHAIRMAN : Yes.

SHRI P. SUNDARAYYA : Sir, I move :

That at page 1, line 32 after the words 'shall be renumbered as sub-section (1) thereof' the following be inserted:—

"and in sub-section (1) as so renumbered—

(i) in clause (a), for the words and figures "sections 87, 88 and 89" the word and figure "section 87" shall be substituted and the words "and his property" shall be omitted ; and

(ii) in clause (b), for the words "to one year or with fine or with both" the words "to three months or with a fine not exceeding rupees two hundred and fifty", shall be substituted ;".

In clause 6 of the parent Act the two sub-sections are like this that if a person on whom a detention order is passed does not come to surrender, then a notification has to be issued and action under the Criminal Procedure Code has to be taken against him. Sections 87 to 89 deal with that. My amendment is if the Government wants a person to be detained and if he does not come, then Government can proceed against him and issue warrant of arrest and take any action but the Criminal Procedure Code sections 88 and 89 not only proceed against the person concerned, it proceeds against his property. That property is not only his, but his family is there and the attachment of property and selling away his property, because the husband or son has not come to Government, is only punishing the family concerned. It is very unjust and very undemocratic. Even though Dr. Katju may get angry when I say.....

DR. K. N. KATJU : I always smile.

SHRI P. SUNDARAYYA : You should not penalise the family for the crime if that is called a crime of escaping the illegal order of detention. It is very unjust on the part of Government to attach the property of detenu and make the family starve. My first amendment says that if the detenu refuses to surrender himself to the Government, you may proceed against him but not against his family. My amendment says that sections 88 and 89 be omitted.

My second amendment is that if a detenu refuses to come before a Magis-

trate, he should not be punished for more than 3 months or with a fine not exceeding Rs. 250. If you are prepared to agree, I will certainly move that. I thought I may move the heart of the hon. Minister. He may also say outside that even Mr. Sundarayya has agreed with it.

KHWAJA INAIT ULLAH : After all you agree to punishment ?

SHRI P. SUNDARAYYA : Provided you agree also to my amendment. If you don't, I also don't agree to punishment. The act makes the maximum period of detention as one year. If the maximum period is one year and if a detenu refuses to come to Government then why should he be again sentenced for one year more because the detention order is not cancelled? He is going to be detained for one year and why should he again be sentenced for another year for not surrendering? The reasonable thing would be not more than 3 months or a fine not exceeding Rs. 250. I commend my amendment to the House.

MR. DEPUTY CHAIRMAN : Mr. Kakkilaya.

SHRI B. V. KAKKILAYA : I want to speak on that.

The Council then adjourned for lunch till three of the clock.

The Council re-assembled after lunch at three of the clock. MR. DEPUTY CHAIRMAN in the chair.

MESSAGES FROM THE HOUSE OF THE PEOPLE

I. THE ESSENTIAL SUPPLIES (TEMPORARY POWERS AMENDMENT BILL, 1952

II. THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1952

SECRETARY : Sir, I have to report to the Council the following messages received from the House of the People, signed by the Secretary to the House : I

In accordance with the provision of Rule 148 of the Rules of Procedure and Conduct of Business in the House of the People, I am directed to inform you that the House of the People, at its sitting held on the