

582

Mr. M. R. Masani's speech in the course of the discussion on the Preventive Detention Bill, 1963, in the Lok Sabha on 17th December 1963

Sir, I rise to oppose the Bill. I need hardly say that I do so for entirely different reasons from that which have been expressed by the previous speaker. I oppose the Bill because I consider it to be a blot on our statute-book. But before I discuss the Bill, may I spend two or three minutes considering the background against which this discussion takes place?

I feel, as the hon. minister said, that we have reason to be proud of our democracy. If we cast our eyes over the countries of Asia, I think it will be found that with the exception of two or three - Japan, Philippines and Malaya -

Shrimati Renu Chakravartty: What about Formosa?

Shri M.R.Masani: No; I have a sense of proportion which you lack. Except for these three countries, we in our operation of democratic policies shine in the whole of Asia.

An hon. member: Ceylon?

Shri M.R.Masani: I have mentioned three countries; I would not give place to a fourth in the whole of Asia. I think we have reason to be proud of this record.

Speaking on 7th October abroad, I had reason to say, referring to the situation in India since the last 12 months of the Chinese communist attack:

"On the side of the Government also, let me say there was no misuse worth mentioning of the special powers and the defence of India rules that they had acquired to suppress dissent at home. All of us functioned throughout the emergency without any limitation on our freedom of expression or our freedom of action. I think this is something for which in a new democracy like India - when we look around at Pakistan, Indonesia, Egypt and other surrounding countries - we have reason to be grateful."

I have no hesitation in repeating this on this floor. All of us and particularly the people of India have a right to take credit for this achievement, certainly the common people who have maintained this climate of freedom of discussion, perhaps some of us who have talked out of turn and maintained in practice the right to dissent, and also the Government. I have many times to say harsh things about our Prime Minister and our Government. I propose to continue to do so in the country's interest.

Let me say this that in so far as the maintenance of the climate of free discussion in this country is concerned, I would like to say that the Government and the Prime Minister who leads it have also played their part in maintaining this climate, in permitting freedom of discussion, which Governments in neighbouring countries have denied to their people. I would like to pay this tribute to the Prime Minister and the Government of India for having participated in this healthy democratic process. Why do I say so? This is very important. I think it is terribly important that whatever mistakes may be made, however frivolous and wrong Government policies may be, so long as there is freedom of discussion, so long as views can be expressed which are in complete defiance of the views of the Government, there is hope for the country, because it is only through exchange of ideas, clash of ideas, that the truth can be arrived at. This was said by a great revolutionary, Paine, many many years ago, when he said: "When opinions are free, either in matters of government or religion, truth will finally prevail."

There are exceptions; there are blots on this record. I could have mentioned the arrest of three young patriotic young men in Delhi. I could have mentioned the long detention of George Fernandes, which has come to an end, I am glad to say. I could refer to the arrest of Mr. Meherji Wadia the other day. But these, taken in perspective, are small blots. By and large, I would say that the Rules under the Emergency have been fairly and reasonably implemented.

It is precisely because I am proud of this record that I object to this Act, because this is one of the things about which we in India cannot be proud.

Let us consider the origins of this Act. Those origins were on Saturday,

25th February, 1950. I remember the scene in this House, Sardar Vallabhbhai Patel, that great Deputy Prime Minister, whose absence all of us miss so much today, came and reported on that day that if this Bill was not passed by the same evening, 350 of the most dangerous communist detainees would be released by the Calcutta High Court on Monday morning. In a way, it was an outrageous demand to make of the House. But he gave a reason and that reason was that there was a clear and present danger to the security of the country. It was this that persuaded the House and many of us to vote for that measure.

I was then a back-bench Congress member and I voiced my concern and disquiet. I called the Bill a "hasty improvisation" which should be replaced at the earliest possible moment by a more principled, well-conceived and well thought out measure, which does not shirk the issue, which goes to the root of the mischief and which frankly takes its stand for the defence of democracy against totalitarian aggression from within or without."

Sardar Patel's reply was apologetic. He said he had passed two sleepless nights. He said in reply to my criticism - I am quoting him from the record -

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

That pledge was given. We have been waiting for ten years for that promise to be carried out. Unfortunately, it has not been done, and this is becoming a permanent blot on our statute book.

What was the reason for the Bill? The Deputy Prime Minister and the Home Minister at that time did not hesitate to single out the Communist Party of India for engaging in a deliberate policy of fomenting violence and agitation. He said there was a biggest threat facing the existence of the free Indian State. He referred to a study entitled Communist Violence in India which the Government of India had prepared on the activities of the Communist Party.

Sir, as we have just learnt from the Home Minister, the Bill is not being used for the purpose for which it was originally introduced. It is being used to deal with patriotic Indians who have nothing to do with the Communist Party. Let me mention a few of the names of those who have been detained under this Act, distinguished citizens of our country -- Dr. Shyama Prasad Mookerjee, Master Tara Singh, Sheikh Mohammed Abdullah, Shri Nath Pai, Shri Trivedi, my neighbour who is not here at the moment, and Dr. Ram Manohar Lohia. So, from one specific purpose for which this Bill was introduced we have gone on to arresting normal, patriotic Indians under this measure, and the result is that the individual liberties of every Indian now are endangered by this measure.

Shri Bader: Was not Sheikh Abdullah arrested?

Shri M.A. Masani: According to the All-India Civil Liberties Council's statement submitted to the United Nations Committee on Arbitrary Arrest, Detention and Exile, which is published in the Indian Civil Liberties Bulletin of August 1957, it is stated...

Shri Bader: Sir, may I point out...

Shri M.A. Masani: No, I do not yield... (interruptions)

Shri Bader: The name of Sheikh Abdullah has been mentioned.

Shri M.A. Masani: No, I am not yielding.

Mr. Deputy Speaker: Order, order.

Shri Bader: Sir, on a point of order.

Shri M.A. Masani: There is no point of order. That statement says:

"India is, we believe, the only democratic country in the world whose fundamental law sanctions detention without trial in time of peace and in a situation which is not in the nature of an emergency."

Shri Bader: Sir, on a point of order.

Mr. Deputy Speaker: What is the point of order?

Shri Bade: The case of Sheikh Abdullah is sub judice. My learned friend is now saying that he was arrested without any rhyme or reason. Whether he was rightly arrested or not will be decided by the court. Therefore, he should not refer to that.

Mr. Deputy-Speaker: He was only referring to preventive detention.

Shri Bade: It cannot be done when the case is sub judice.

Shri M.R. Masani: My hon. friend's objection is completely misconceived. I am very glad that the case is before a Court of Law and I hope justice will be done. I am referring to the fact that, for several years on end, Sheikh Abdullah was detained without being put on trial. It is in this context that I would like to repeat the statement of the All-India Civil Liberties Council:

"India is, we believe, the only democratic country in the world whose fundamental law sanctions detention without trial in time of peace and in a situation which is not in the nature of an emergency."

Even the much hated and vilified Rowlatt Act of 1919 made preventive detention contingent upon a declaration of extremity on the part of the Government. Let me read the Act:

"If the Governor-General is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of public safety he may by notification in the Gazette of India, make a declaration to that effect....."

Look at the conditions referred to in that Act and you find a measure of liberalism, as compared to the Preventive Detention Act which we are asked to extend.

As far as I am aware, there is only one country among the non-Communist countries -- as far as I know; there may be others -- Ghana, which has a similar law. But even under that Act of Ghana, which is a backward African country compared to ours, only reasons of security of the State would justify detention; not a threat to law and order, not goondas or blackmarketing; no, only a threat to the security of the State. It cannot be enforced on the ground "seriously likely to disturb law and order." Now, even the people in Ghana, even the members of Parliament of Ghana, who have not got our traditions, our education and our administration, even they are not happy at what is happening in their country.

Let me read the remarks of three members of the Ghana Parliament when the Bill was being debated. One M.P. said: "What will the outside world be thinking? we are trying to prove that the Africans have a light to show to the rest of the world, and if we cannot do that, we had better leave." Another M.P. said: "There is not a single member of the House who can stand up and say he honestly likes this amendment." The third M.P. said: "We have come very close to South Africa." And no State is more reviled and hated in Ghana than the Republic of South Africa. Therefore, if we make a comparison with a backward African State, even they shine at our expense by having a more modest law.

Consider what happened during the time of war in Britain. Even during the time of war, this was not tolerated. Let me give the example of World War II. The Home Secretary, Mr. Herbert Morrison's decision to release Sir Oswald Mosley, the fascist leader, who was a supporter of Hitler during the war, a supporter of the enemy, was supported by Mr. Winston Churchill, who is no soft, sloppy sentimentalist. He got up to justify this release during the war in 1944 by saying:

"The power of the Executive to cast a man into prison without formulating any charge known to the law and, particularly to deny him judgment by his peers for an indefinite period, is in the highest degree odious and is the foundation of all totalitarian governments, whether Nazi or Communist. It is only when extreme danger to the State can be pleaded that this power may be temporarily assumed by the Executive. And even so, its working must be interpreted with the

utmost vigilance by a free Parliament."

That is what Britain did during the war. We are not at war, unfortunately, thanks to the misguided policies of the Prime Minister, but we have a act of emergency. So, in peace time, we are doing what Britain would not condescend to do even during the war.

Now, I will be asked by the minister what I have to say to meet his problem. I would refer him back to the origins of this Bill and the reasons given by his honourable predecessor. This Bill was a Bill meant to meet and combat the subversion and disruption of the Communists. Either it should perform that function, or it should not function at all. Let the Act lapse and let the minister and the Government bring forward concrete proposals, if they so desire, to face or deal with the activities of the Communist Party of India, for which this Bill was originally intended. Now, as a liberal democrat, I believe that such a measure should be resorted to, the outlawing of a political party, or banning a political party, only when there is a clear and present danger; not otherwise. The reason for it is this, that while, on the one side, the enemies of democracy like the Fascists and the Communists, should not be allowed to destroy democracy by utilising it with their tongues in their check, on the other hand, it should not be resorted to in a way which is arbitrary, which will result in the negation of democracy. We have to balance between the security of a free democracy from attacks from Communists and Fascists on the one hand, and on the other we have to see that this does not become a bad habit which can be extended to others. Therefore, I say that the test must be that of a clear and present danger, as laid down by the Supreme Court of the United States.

Last year, I would say, there was a clear and present danger. Last year, it would have been right and proper to ban the Communist Party of India, and that demand was made by my party, by the Praja Socialist Party and by the Jan Sangh, among others. Unfortunately, this Government, which is so keen to guard the security of the country, did not take that elementary step.

On the contrary, when the hon. Home Minister assumed his present office, a Communist paper of Delhi described him, and hailed his appointment with joy, as that of "the first democratic Home Minister since Independence." I wondered then what happened to Sardar Vallabhbhai Patel, Pandit Govind Ballabh Pant and Shri Lal Bahadur Shastri. Were they undemocratic? Is he the first democratic Home Minister of India? Well, Sir, the Home Minister is wise enough to know the flattery, this left-handed compliment, coming from the quarters it does, and I am sure that he will not fall for this kind of flattery coming from those quarters. So, it is necessary for us to say: let there be a Bill to ban the Communist Party of India if the Government feels that there is clear and present danger. I do not know if there is one today. Last year there was, and the Government would have had the enthusiastic and unanimous support of this country in bringing in such a measure, but they did not do so. Now, I do not think the Communist Party presents any danger at all worth mentioning. Therefore, I would say that we have to judge it from the point of view of a direct threat to the Constitution and to democracy from these quarters.

Other States and other democracies have resorted to this principled way for dealing with subversion. West Germany, one of the leading countries of the world, has by article 22 of the Constitution laid down - I would like the hon. Minister to study this -

"Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality."

Under this article of the Constitution, a Bill was passed in the German Parliament, by which the Communist Party of Germany was outlawed and the case went to the Supreme Court. The Communist Party was heard and, after hearing the Communist Party, the Supreme Court of West Germany held that the Communist Party was

outlawed properly under the Constitution.

Now, Sir, I would refer hon. members who believe in democratic socialism to a book called The Politics of Democratic Socialism by Mr. S.F.A. Durbin. Mr. Durbin was a junior member in the Labour Government. He was a great socialist constitutionalist, and in that book he has a whole chapter in which he argues closely and lucidly the case why Communist and Fascist parties have no right to exist in a democratic Constitution. They may be tolerated for the time being; they may not be serious enough to be a danger, as in England. But he argues that parties that do not believe in the freedom of Opposition, parties that abolish and liquidate all Opposition parties the moment they come to power, parties who do not tolerate a change of government by the ballot box, parties which establish a permanent dictatorship, as Communist parties do throughout the world without exception, such parties have no reason to be given any rights under the Constitution. Whether society should use that power or not, as I said earlier, is a matter for the democrats of the country to decide, whether the danger is clear and present or the danger is such that it can be met by normal democratic processes. That is a principled answer to the problem that the Home Minister has posed. I would like to direct his mind in these constructive and principled channels.

The fact remains that today this Preventive Detention Act suffers from three major defects - three major evils. The first is that it is devious and arbitrary. It is not a straight-forward measure to deal with a straight-forward threat. It endangers the liberty of every decent democratic Indian because a few people have to be dealt with. That is wrong. The Bill should be made to apply to categories of people described properly by their ideas or by their activities. It is devious. Therefore, it can be arbitrarily used.

Secondly, it is a bad precedent. When a man falls ill, he resorts to a drug. Many times, we know the man does not have the capacity to throw off the drug, and the drug becomes a habit-forming tranquilliser or sedative. They become habit-forming. Ultimately, the man becomes so paralysed in his will that he feels he cannot go on without the drug. Now, this Preventive Detention Act has become a habit-forming drug to our present government. I am sure they do not need it. I am sure they can maintain India on an even keel without this wretched Act. But they become like a man on crutches who does not dare to stand on his own legs at his command. So, like a cripple, they hobble along on this arbitrary measure contrary to the spirit of the law. This is the second reason why I oppose this Bill and my Party opposes this Bill.

Thirdly, this unfortunate measure prevents democrats from working together on an issue like this and it drives them, as it does today, into the opposite camps. I am sure the Home Minister will not deny the fact that the Praja Socialist Party or my Party or the Jan Sangh are as democratic in their processes and mentality as his own Party and yet we find ourselves today, unfortunately, on opposite sides. It also gives an opportunity to those who do not believe in freedom to masquerade as enemies of this Act and to criticise it with impunity. This is the contribution that this Act has made to confusing the minds of the people and to confusing the debate. It could have been a straight-debate between democrats on one side and the believers in totalitarianism, like the Communist Party, on the other.

Shri Vasudevan Aair: Are you supporting it?

Shri M.R. Masani: I am opposing the Bill and I want it to be replaced by a straight-forward ban on the Communist Party if the Government of India thinks that the danger is clear and present.

To conclude, I would quote the words of a great democrat and a great liberal, Benjamin Franklin. He said in another context but the words are as true today as in his time:

"They that give up essential liberty to obtain temporary safety deserve neither liberty nor safety."