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Mr. M. R. Masani's intervention in the course of the
discussion on the Preventive Detention (Continuance)
Bill, 1960, in the Lok Sabha on 5th December, 1960.

Shri M. R. Masani: Sir, I had no intention of intervening in the Third Reading of this Bill, having said what I wanted to earlier. But certain things that have been mentioned by the hon. Home Minister this morning make it necessary for me to do so. I say that because, the hon. Home Minister's ~~aff~~ words, by virtue of his office, his eminent position in our public life and the weight of his personality are entitled to a great deal of weight in this House. I feel that if certain things he has said were not rectified, if some misunderstandings were not removed, it would not be right - to allow those remarks to pass without clarifying the matter further.

I am opposing this Bill at this stage to make it perfectly clear that I and my Party are opposed to the principle of preventive detention.

/hon. The /Home Minister referred to certain remarks I made in this House at the time of the original introduction of the Bill in 1950, and indeed, in my own earlier remarks here I had summarised from that speech. Even now, I would not like to take the time of the House to read a large part of it to prove what I want to say, but if the hon. Home Minister will look at page 8897, in the last sentence of my speech I had made that position clear. I said:

"I make this plea to the hon. Home Minister. It would be greatly appreciated if this Bill, which is a hasty improvisation, could be replaced at the earliest possible time by a well-conceived, 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."

If the hon. Home Minister casts his eyes through that speech, he will find I made a concrete proposal, that is, rather than threaten the individual liberties of individual Indians of all persuasions by preventive detention without trial, the more principled way would be to follow the example of countries which I mentioned, countries like Brazil and Chile, where Acts of Parliament had been passed to outlaw the Communist Party. Those Acts of Parliament were challenged in a court of law, and after hearing both sides, in the case of Brazil, the highest court of the country came to the conclusion that the Communist Party of Brazil did not believe in the democratic Constitution of the country, that wherever they came to power, in Brazil or outside, they were apt to establish a one-party dictatorship and liquidate all opposition, that they did not believe in the fundamental rights of the human being and that they were financially and otherwise directed by a foreign power. After that it became a crime under the ordinary law of the country to be a member of that unlawful organisation, and any member who was found participating in its activities was put before a court of law, convicted and sentenced.

Now, I am sure the hon. Home Minister may hold the view that this is much more drastic than what he is doing, but I do say that this is something quite different from preventive detention because, in this process, there is no stage at which a man is deprived of his liberty without being produced before a court of law, tried for a breach of the law of the country and then convicted and sentenced by a decision of the court. As I said, on this there may be different points of view. I am not

saying this should be done here and now. What I do say is that is a more principled path because it isolates a group of people who cannot be trusted to enjoy the liberties from the rest of the nation which is entitled to the rule of law and no preventive detention. It is important to make this distinction.

The hon. Home Minister referred to the fact, which was undoubtedly true, that in Britain during war time a similar power of preventive detention was given to the Home Secretary. But may I remind him that, even in the middle of the war, the Home Secretary, Mr. Herbert Morrison, decided to release Sir Oswald Mosley, well-known for his Fascist and pro-Nazi sympathies?

The Minister of Law (Shri A.K.Sen): Only in 1944.

Shri M. R. Masani: Well, during the war, if not in the middle. It was near the end of the war, but while war was still on, while Britain was still at war with Germany and the war had not ended in Europe. When that action was taken, no less a person than Mr. Winston Churchill, no soft, sloppy sentimentalist but a great upholder of the rule of law and also of law and order, as we know in our country, made the following observation:

"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."

I am mentioning this because the Home Minister did make a reference to the U.K. today, and I thought it was timely that the house should realise in what light the great leader of the British people during the war, Mr. Churchill, who was Prime Minister, interpreted it and was against the use of this power except in extreme danger when the existence of the State was threatened. I do not think any of us, even the Home Minister, would claim that we are in extreme danger, that the existence of our free Constitution and State is in danger today.

One final point. Reference was made to the case of Master Tara Singh, to whom I referred in my speech, and the Home Minister sought to give the House the impression that the report of the Punjab Enquiry Committee appointed by my own party, led by Dr. K.M.Munshi, had come to a conclusion that would support in any way the preventive detention of Master Tara Singh. I am very happy at this implied compliment that has been paid to the objectivity and fair-mindedness of Dr. Munshi and his colleagues, and therefore to my Party which appointed them, by the Hon. Home Minister who relied on that document. But in fairness both to Master Tara Singh, who is unable to speak for himself because he is being held in isolation under Act and also in fairness to the Munshi Committee, I think I should complete the record. The Home Minister quoted from one part of the report. May I just quote one or two other passages which will complete the picture? In the last sentence of the report, the last paragraph where "General Conclusions" is the heading, the Committee comes to the conclusion, while realising the difficulties of the Punjab Government, that the various actions taken by it to meet the emergency on the whole have been excessive, indiscriminate and taken with a view to strike terror. We are not concerned with the wider issue of Punjab and civil liberties, but we are concerned with the preventive detention of

Master Tara Singh. On that particular point, this is what the Committee has to say.

There are two pleas to justify the detention of Master Tara Singh to which it refers and then makes comments. The first is that of planned violence. It says:

"As regards the allegation of planned violence made by the Chief Minister of the Punjab on June 3, 1960, we note that presumably taking the cue from the Chief Minister, several persons of standing have repeated the charge in the press."

Mr. Deputy Speaker: It would not be in order to take up individual cases in the third reading.

Shri M.R.Masani: But the individual case was referred to, and injustice is being done both to a committee of enquiry and to the person concerned. You will permit me, in view of that, to correct the record because the facts should be known to the House.

Mr. Deputy Speaker: That was general discussion, and a reply was being made to the points made by hon. Members. Now it is third reading, whether the Bill be passed or not.

Shri M.R.Masani: The reason for opposing the passing of the Bill is that in my view it is being misused in a case where it should not be applied, and this is an illustration. In fairness to the parties concerned...

Mr. Deputy Speaker: Illustrations in the third reading?

Shri Ranga: It is only one or two sentences.

Shri M. R. Masani: I will read from the summary to make it just two sentences: I will not go into the details. The same ground is covered in the summary. Let me read one sentence each from the summary. These are the suggested motives for the preventive detention:

"Plea: planned violence:- We find no evidence to justify the charge of planned violence made by the Chief Minister against the Akali Dal.

Plea: Conspiracy with Pakistan:- The allegation of conspiracy with Pakistan made by the President of the State Congress, Sardar Darbara Singh, even if remotely true, is very serious. Without expressing any definite opinion about this charge, we would, in view of the gravity of it, permit ourselves to say that if the charge has the slightest justification, appropriate proceedings should have been taken by the State against Master Tara Singh; if unfounded, it was made with utter irresponsibility."

Sardar Iqbal Singh: What about the communal movement that Master Tara Singh is leading?

Shri M. R. Masani: I am not yielding.

It shows that on the specific charges or suspicions on which preventive detention is based, the finding of the Munshi Committee has gone clearly against those who think that any justification exists. Therefore, while it has said many things which are fair and has tried to understand both sides of the case, it would not be fair to

leave the impression that there is anything in this report which would justify for one day the continued detention of Master Tara Singh; and I hope it would be terminated immediately in the wider interests of this country.