

PREVENTIVE DETENTION

BY MINOO MASANI, M.P.

This general power is unnecessary and unworthy; let the Government take special powers to deal with Communist subversion if they think it necessary.

We have reason to be proud of our democracy. If we cast our eyes over the countries of Asia, with the exception of two or three—Japan, Philippines and Malaya—except for these three countries, we in our operation of democratic policies shine in the whole of Asia.

The Government and the Prime Minister who leads it have played their part 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. 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.

There are exceptions; there are blots on this record. I could have mentioned the arrest of three 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. Maurya only the other day. But these, taken in perspective, are small blots. By and large, 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.

Waited ten years

Let us consider the origins of this Act. On Saturday, 25th February, 1950, Sardar Vallabhbhai Patel, that great Deputy Prime Minister, whom all of us miss so much today, reported that if this Bill was not passed by the same evening, 350 of the most dangerous communist detenus 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, that there was a clear and present danger to the security of the country.

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, "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.

For other purposes

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 delibe-

rate policy of fomenting violence and agitation. He said there was a threat to the existence of the free Indian State. He referred to a study entitled *Communist Violence in India* which the Government of India had prepared.

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 those who have been detained under this Act, distinguished citizens of our country—Dr Shyama Prasad Mookerjee, Master Tara Singh, Sheik Mohammed Abdulla, Shri Nath Pai, Shri Trivedi, and Dr. Ram Manohar Lohia. 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.

The only country

The All-India Civil Liberties Council's statement submitted to the United Nations Committee on Arbitrary Arrest, Detention and Exile, published in the *Indian Civil Liberties Bulletin* of August 1957, 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."

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.

Special powers

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 meant to combat the subversion and disruption of the

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Communists. Either it should perform that function or it should not function at all. Let the Act lapse and let the Minister bring forward concrete proposals to deal with the activities of the Communist Party of India.

Clear and present danger

As a liberal democrat, I believe that such a measure should be resorted to, the outlawing of a political party, only when there is a clear and present danger; not otherwise. 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 cheek; 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 to see that this does not become a bad habit which can be extended to others. The test must be that of a clear and present danger, as laid down by the Supreme Court of the United States.

Last year 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.

Let there be a Bill to ban the Communist Party of India, if the

Government feels that there is a 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.

No right to destroy rights

West Germany has by article 22 of the Constitution laid down, "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. After hearing the Communist Party, the Supreme Court of West Germany held that the Communist Party was outlawed properly under the Constitution.

I would refer hon. Members who believe in democratic socialism to a book called *The Politics of Democratic Socialism* by Mr E. F. M. 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. 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. That is a principled answer to the problem that the Home Minister has posed.

Danger to all citizens

Today this Preventive Detention Act suffers from three major defects. The first is that it is devious and arbitrary. It is not a straightforward measure to deal with a straightforward 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. 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. 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. This is the second reason why I oppose 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 opposite camps. 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. It could have been a straight debate between democrats on one side and the believers in totalitarianism, like the Communist Party, on the other.

I am opposing the Bill and I want it to be replaced by a straightforward ban on the Communist Party if the Government of India thinks that the danger is clear and present.