

THE
CONSTITUENT ASSEMBLY OF INDIA
(LEGISLATIVE) DEBATES

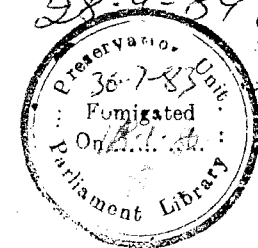
Official Report

45

Volume II, 1947

(29th November to 10th December, 1947)

First Session
OF THE
CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)
1947



REPEALING AND AMENDING BILL

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I beg to move for leave to introduce a Bill to repeal or amend certain enactments.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to repeal or amend certain enactments."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I introduce the Bill.

INDIAN TARIFF (SECOND AMENDMENT) BILL

The Honourable Shri N. V. Gadgil (Minister for Works, Mines and Power and Commerce): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Tariff Act, 1934.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Tariff Act, 1934."

The motion was adopted.

The Honourable Shri N. V. Gadgil: Sir, I introduce the Bill.

ARMED FORCES (SPECIAL POWERS) BILL

The Honourable Sardar Baldev Singh (Minister for Defence): I am due to introduce the Bill on the 8th. As I will be away at Lahore on that day, I would like to introduce it today.

Mr. Speaker: As it is only an introduction, I do not mind.

The Honourable Sardar Baldev Singh: Sir, I beg to move for leave to introduce a Bill to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas."

The motion was adopted.

The Honourable Sardar Baldev Singh: Sir, I introduce the Bill.

ARMED FORCES (EMERGENCY DUTIES) AMENDMENT BILL

The Honourable Sardar Baldev Singh (Minister for Defence): Sir, I beg to move for leave to introduce a Bill to amend the Armed Forces (Emergency Duties) Act, 1947.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to amend the Armed Forces (Emergency Duties) Act, 1947."

The motion was adopted.

The Honourable Sardar Baldev Singh: Sir, I introduce the Bill.

INDIAN FINANCE (SUPPLEMENTARY) BILL

The Honourable Shri R. K. Shanmukham Chetty (Minister for Finance): Sir, I move:

"That the Bill to give effect to the supplementary financial proposals of the Central Government for the year ending on the 31st day of March, 1948, be taken into consideration."

Sir, there is at present an *ad valorem* duty on cotton cloth and the cotton yarn exported out of this country. It is more or less a nominal duty and the proceeds are given for the textile fund. Our controlled price of cotton textiles is very much below the parity prices and we have been told that in the countries to which our cotton textiles are exported, the ruling prices are very much higher than our controlled prices. The difference between these two prices is really taken by the middle-man. We think that there is no justification to allow middlemen to appropriate all this profit and we have therefore decided to levy an export duty of four annas per square yard on all cotton cloth exported and six annas per pound on all yarn that is exported. I have no doubt that in view of the very high prices that prevail in the markets to which our cloth and yarn go, there would not be any difficulty that the export trade might feel on this account. It has been suggested to me that the more appropriate manner of levying this duty will be an *ad valorem* basis, because on the basis of a specific duty the incidence on the coarse varieties will be greater than that on finer varieties. I am fully alive to this difficulty. The bulk of our exports consists of the coarser varieties and I have been told that the duty of four annas per square yard can very well be placed even on the coarse textiles that are exported from our country. Anyhow, I would watch the operation of this duty for the next two or three months and if I decide to continue this duty for the next budget, I will then consider whether there is any case for converting the duty into an *ad valorem* duty.

Sir, this measure seems to have the approval of the public as a whole, and I have no doubt that this House also will give its consent to this measure being put on the statute book. Sir, I move:

Mr. Speaker: Motion moved:

"That the Bill to give effect to the supplementary financial proposals of the Central Government for the year ending on the 31st day of March, 1948, be taken into consideration."

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, normally an export duty would not be levied for revenue purposes but would be resorted to in emergencies when the Government wants to augment its revenues. There is, no doubt, an export duty on jute. Likewise, having regard to the central finances there may be justification for a duty of this kind. Another reason for imposing an export duty is to prevent the export of a commodity which is in short supply. It is true that we have not got either sufficient yarn or cloth and therefore an export duty may be imposed on that ground. Even during the war when we were hard pressed for cloth and yarn, Government did export cloth and yarn to neighbouring countries so that in times of peace we may not lose the market. When normal conditions return we may be able to develop the markets. For that purpose some export was and is being allowed. As a matter of fact the export controls have been relaxed recently and export of *lungi* and other handmade cloth has been allowed to Ceylon, Burma, Malaya and some neighbouring countries like Afghanistan and Iran. This was done both to encourage handloom products and also to supply the deficiency of those countries which have all along been depending upon our country for cloth. But I am not able to know what purpose this export duty will serve. Perhaps it is intended to augment the revenue. There is one disadvantage in regard to cotton. If an export duty is imposed on finished goods, either yarn or cloth, it will become

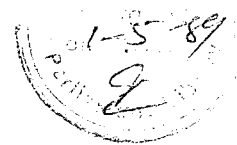
Constituent (Legislative)
Assembly Debates
vol III

11-12 Dec
1947

180 P.L

VE)

1-94



The Honourable Sardar Baldev Singh (Minister for Defence): Sir, I beg to move:

"That the Bill to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas, be taken into consideration."

Sir, in the beginning of this year when communal riots broke out in the Punjab on an unprecedented scale, the administration of that part of the country completely broke down. The Police there failed to perform its duties and in some cases they even refused to work. Another factor which must be borne in mind is that in that part of the country the Police was 90 per cent. of one community. The communal riots took a very ugly shape and the Provincial Government requested the Government of India for military help. We sent a large number of troops, but the presence of troops there did not very much improve the situation. It was not on account of the inadequacy of the troops, but because the troops were spread over the whole of that part of the country and under the laws then prevailing they were not in a position to take any action. Representations were made to the Government of India by several people, by the Section 93 Administration of the Punjab Province, and also by publicmen that additional powers should be given to the armed forces. In deference to the wishes of the local administration and other bodies, an Ordinance was promulgated which is before the House. This Ordinance, Sir, expires early in January or sometime in the middle of February and if we do not pass this Bill, the Ordinance will lapse and the armed forces will find themselves in a difficult position. It is for this reason that this Bill is placed before the House so that we do not have to resort to an Ordinance again.

The provisions of the Bill, Sir, may look drastic, but I wish to point out that up till now they have been worked without any hardship to anybody. The powers cannot be used unilaterally by the armed forces. Firstly, the provincial Government has to declare an area as a disturbed area; and, secondly, the provisions of the Bill are only for a year. If at the end of this year we consider that it is necessary to extend the provisions of the Bill for another period of one year, only then the Bill will be so extended. Upto now this Ordinance was in force only in the Punjab and later on when the communal situation in other parts of the country deteriorated the Governments of the U.P., Bengal and Assam asked the Government of India to extend the provisions of this Ordinance to those parts of the country also. So at present the position is that this Ordinance is in force in four provinces of India. Under this Bill we will be taking power which will apply to the whole of India, but it will be open to the provincial Governments to enforce this Bill in any way they like. They have complete power first to declare an area as disturbed area, and then only will the provisions of this Bill come into operation.

That in short is the history of this Bill and the provisions that are contained in the Bill seem to be rather drastic; but I can assure the House that after the experience we have up till now we are convinced that the powers have not been unnecessarily used and there have been no complaints from any of the provinces. I hope the House will be convinced, if amendments are moved, that these powers will be used in the right way and there will be no complaint about it.

Another thing is that we have no intention at all to extend the period beyond one year. Some Honourable Members may have a feeling that perhaps we will go on extending it beyond one year or even later. I can assure the House that we have absolutely no such desire and it will be extended only if the communal situation does not improve. Sir, I move.

Mr. Speaker: Motion moved:

"That the Bill to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas, be taken into consideration."

(1732)

Pandit Thakurdas Bhargava (East Punjab: General): Sir, this is a Bill of a very special nature and I should like to make a few observations as regards its utility and also its legality. In my humble opinion this Bill is rather misconceived. I know that certain provincial Governments have passed certain Ordinances which are mentioned in clause 4 but, as was said in the debate on controls, it is a vicious circle. At a time when the Legislatures was not sitting certain Ordinances are passed; and when these Ordinances come into use it is taken for granted that since they have been there for a certain time they have thereby become sacrosanct. The reason advanced is that as no particular grievances have been brought before the House or before the country there is no reason why these Ordinances should not be regarded as having proved successful. My humble submission is that if you look into these Ordinances and the drastic nature of their provisions you will be convinced that they are nothing less than lawless laws. In the first place you have to consider the effect of a declaration under section 15 of the Police Act (V of 1861) which runs as follows:

(1) "It shall be lawful to the Local Government by proclamation to be notified in the official Gazette and in such other manner as the Local Government may direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state or that from the conduct of the inhabitants of such area or class or section of them it is expedient to increase the number of police"

(2) "It shall thereupon be lawful for the Inspector-General of Police or other officer with the sanction of the Local Government to employ any police force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation."

The heading of the section is "Quartering of additional police in disturbed or dangerous districts."

The only purpose of making this declaration according to the Police Act was that power was taken by the Local Government to add to the number of police. This proclamation was intended for no other purpose. Now I understand the proclamation if made will entitle the military and air forces of the Crown to have certain powers. A reading of the Police Act will show that the situation contemplated by the Act is consistent with the idea that the civil authorities shall have power and authority in the province and not the military authorities. Now, Sir, we have just heard from the Honourable Mover of this Bill that in the Punjab there was complete chaos and the administration completely broke down and we have also heard that even troops could not give any protection. I know that in the Punjab there was an abnormal situation; I myself was a witness to that situation because I was in the Punjab in those days and I saw how the police and the troops were working. If a situation develops in such a manner as it developed in the Punjab my humble submission is that no provincial Government can properly control that situation. That was a case for declaration of martial law; that was not a case in which Ordinances like the one sought to be propounded would have been of any great use. When there is such a breakdown as we witnessed in the Punjab, and as has been admitted by the Honourable Mover of the Bill, it was a case where the civil administration should have stayed its hands and handed the administration over to the military authorities. In 55 Bombay, page 263 the conditions in which martial law can be declared have been laid down thus:

"Where a state of war, or insurrection amounting to war, exists, it is competent for the Crown in the exercise of its prerogative to place the country affected under martial law. Martial law in that sense. . . is no law at all."

The judgment then goes on to say:

"The civil authorities are not entitled to abrogate their duties and to hand over control to the military except in cases of necessity—in as much as martial law is no law at all. The existence of martial law places all citizens in the area to which it extends under the unfettered control of the military authorities, whose acts are not justiciable by the civil Courts. . . It is plainly the duty of the civil authorities, assisted by

law

[Pandit Thakur Dass Bhargava]

all loyal subjects, whether civil or military, to carry on the civil administration, and not to hand over control to the military, unless the necessity of the case demands it . . . It is undoubtedly the duty of the Courts, if the necessity is challenged, to enquire into the matter, and if the necessity is not established, then any persons who have committed acts not sanctioned by the ordinary law are liable to be attacked in the Courts at the instance of those who have suffered from their lawless acts."—(*Ratanlal and Thakore's Law of Crimes*, page 153.)

My humble submission is that in this situation, which has been compared to the situation as it existed in the Punjab, the civil authorities should have ceased to function and the country should have been made over to the military authorities and the military authorities would certainly have rendered such service as they were capable of. But as long as this is there, under Section 15 the law assumes that even the additional police would have been able to restore orders. This is the plain meaning of Section 15 because after the declaration the consequences are that the Local Government is authorised to have additional police. Therefore my submission is that the law of the country is quite clear and I will refer you to sections 127—132 of the Criminal Procedure Code by virtue of which if the Magistrate is unable to disperse any unlawful assembly, he can call in the aid of the military to help him and certain restrictions are given in section 132 by virtue of which the military does not have their own way. And if we compare the provisions of these sections (127-132) with the provisions contained in this present measure, you will be astounded to see the difference.

My humble submission is that either the civil authorities can function or they cannot function. If they cannot function, it is a case of making over the command to the military authorities. As long as the civil authorities function, it is the civil authorities who have the last say in the matter. It is the Magistrate or the Courts who will decide the rights and liabilities of the persons affected by that situation and not the military. According to the provisions of section 127 to 132 when a riot cannot be quelled by the civil authorities, then in that case alone the Magistrate is entitled to call in the aid of the military and the military then acts under the supervision and under the control of the Magistrate as long as he is there. If he is not there and the military is called in, then in that contingency the military are given certain powers, but those powers are very limited.

As regards this Bill, there is another point of view from which I wish to place the provisions of this Bill before you and it is in this contingency. Suppose the magistrate or civil authorities call the aid of the military and the question arises about quelling the disturbance or the riot, would the provisions of this Act apply or the provisions of the Criminal Procedure Code? I submit there would be conflict between the two authorities; but according to the authority of the Criminal Procedure Code, the Magistrate has the last say in the matter. But the military have no right if the Magistrate is there. According to the provisions of this Act, independent of the fact that the Magistrate is there or not, the military have the last say and they can shoot and kill any one they please. As long as the Criminal Procedure Code is not abrogated, this law will not have any force. In such circumstances, when a riot is quelled, this Bill shall have no force.

Now let us see to what cases and contingencies this Bill shall apply, and I wish to read to you the first section which shall show how misconceived and mischievous this Bill is:

"Any commissioned officer, warrant officer, or non-commissioned officer of His Majesty's military or air forces may, in any area in respect of which a proclamation under sub-section (1) of section 15 of the Police Act, 1861 (V of 1861) is for the time being in force or which is for the time being by any form of words declared by the Provincial Government under any other law to be a disturbed or dangerous area,—

(a) if in his opinion it is necessary so to do for the maintenance of public order, after

giving such warning, if any, as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person, who is acting in contravention of any Law or order for the time being in force in the said area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons;"

After having read this, I will invite your attention to the salient points.

The first point is that any commissioned officer need not give any warning at all, because the words are "after giving such warning if any. . ." According to the provisions of the Criminal Procedure Code, the Magistrate has to give warning; the police officer has to give warning; every person who disperses an unlawful assembly has to give a warning. If an unlawful assembly is sought to be dispersed, the magistrate and police officer have to give definite warnings. According to these provisions, if from the air there is bombing over the nationals of this country, if firing is opened upon an innocent crowd, upon an assembly which may or may not be unlawful, it will be the right of this commissioned officer to shoot or kill people in any manner he likes.

Now, Sir, this is not all. Then the words are: "who is acting in contravention of any law or order prohibiting the assembly of five or more persons". What is this assembly? I will give you an instance which happened with me. In Gurgaon sometime back there was a riot and it was a fairly serious riot. After three or four days I went to Gurgaon because I received a wire from a lawyer friend of mine. The authorities had taken upon themselves to arrest hundreds of persons. Many of them were lawyers. I went to a lawyer friend. I called some lawyers to know from them what the matter was but they could not come to my place because they said that five persons could not assemble. I asked them to come but they said they would not. I know it was wrong for the lawyers to think like that. But, if this Bill was there, the lawyers would be right, in view of the words "assembly of five or more persons". If such an ordinance is made, I think a commissioned officer will be within his right to go into a person's house and shoot the people there.

Then the words "who is acting in contravention of any law"—not that he is doing any particular act. "Acting in contravention" is too vague and any innocent person can come within the clutches of law. But if one or two persons are engaged in the act of looting—they cannot be fired at. If they are murdering people they cannot be fired at. If they are committing arson they cannot be fired at. But if they are acting in such a manner that they make an assembly of five or more persons however lawful, then they can be fired at.

Further on, there are the words: "or the carrying of weapons". What is a weapon? It is not defined. A *lathi* or a walking stick may be a weapon, a *danda* may be a weapon, a penknife may be a weapon. Suppose a person has licensed firearms; even then he will come within the mischief of this Act. Then the words: "or of things capable of being used as weapons". This passes my understanding. Anything may be called as a thing capable of being used as weapons. This is very vague.

Pandit Balkrishna Sharma (U. P.: General): May I interrupt my Honourable friend? I think there is a certain amount of misinterpretation regarding this clause of weapons. It is clearly said in clause (a) of sub-section 2 in contravention of any law prohibiting the carrying of weapons. So that the law under which the carrying of weapons will be prohibited will define what weapons are.

Mr. Speaker: Let him have his say. The Honourable Member may explain later on.

Pandit Thakur Das Bhargava: I was submitting that in my opinion if there was a law that if a person was committing murder, arson or loot and then he got fired at I could understand it. But to define the occasion in such

[Pandit Thakur Das Bhargava]

a vague manner that any innocent person could be fired at the sweet will of a commissioned officer, is too much. Then again under the provisions of the Police Act a police officer must be on duty. A police officer belonging to any of the districts of the Punjab will not be on duty in Gurgaon unless he is posted there. But a commissioned officer is on duty wherever he is. There is no condition that he should be on duty or should be charged with the duty of maintaining peace and order. He is at liberty to act as he pleases. When an area is proclaimed as a dangerous or disturbed area, for a few days the emergency is there when disturbances are taking place and when control of freedom of action is necessary. But as soon as the emergency is over after a few days for some weeks thereafter there is a condition of suspense, when these powers can be abused a great deal.

I now come to the other powers. Clause (b) runs as follows:

"arrest without warrant any person who has committed a cognizable offence, or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence."

Sir, the armed forces of a country usually have the same character as the people of that country. If the police are bad, then I cannot say that our troops will be found to possess much higher character. According to the admission of the Honourable the Mover the police is corrupt and police rule has failed and therefore military is called in. What happened during the disturbances in the Punjab? When the Muslim police failed, the Baluchis came in and did things which the police could not do. So far as these powers are concerned I am of opinion that if these powers can be abused by the police, they can be abused much more by the armed forces. The words in section (b) are when a person is "about to commit a cognizable offence". According to the provisions of the Criminal Procedure Code no police officer is given powers to arrest a person who is about to commit a cognizable offence. Under Section 54 no powers are given to police officers to arrest persons who are about to commit an offence. It is a very dangerous power that a person should be authorised to arrest a man who is about to commit a cognizable offence. When a man is going on the road how can you say that he is going to commit an offence. He may be going to a temple. In my humble opinion it is too great and arbitrary a power.

The safeguards which are given in the Cr. P. C. about arrests are not provided in this Bill. Those safeguards may not be observed by those who may not be fully conversant with the processes of law. The powers given in clause (c) are very drastic. Any commissioned or non-commissioned officer can enter any person's house at night or day, where ladies live and search and when they find nothing, they may prepare false records as the police usually do. In order to safeguard against the abuse of this power section 103 is provided in the Cr. P. C. that the search should take place in the presence of witnesses, that a person cannot enter a house without giving proper notice to the occupants and without giving all kinds of facilities to purdah ladies to avoid the police when a search is made. No such provision is found in clause (c). Giving of these powers without the safeguards is very dangerous.

Section 3 is more dangerous than the rest. Section 132 of the Cr. P. C. says:

"No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Provincial Government."

So when the military is called in, they are saved from prosecution. Another safeguard is in clause (2) of Section 130 of the Cr. P. C. which is very important. It says:

"Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons."

There is no such safeguard here that the military should do as little harm as possible. On the contrary power is given to kill or behave in any manner they please. The only protection afforded is under Section 132. According to the provisions of Sections 76 and 79 of the I.P.C. you will see that the law is very strict. When a commander asks a soldier to shoot and the soldier shoots, he does follow the orders of his superior but in spite of his duty of obedience he is also liable under the civil law. The soldier is under a double liability. If he does not obey his commander he is liable to be court-martialled and if he obeys an illegal order, he is liable under the civil law and can be imprisoned by the civil court. On page 141 of the Law of Crimes it is said:

"A mistake of law in either case would afford no protection, though it might go in mitigation of punishment, and thus military discipline, while it regulates the conduct of the soldier in military matters, is made subject to a higher law in favour of public safety, when the act which the military discipline attempts to enforce or to justify is one which affects the person or property of another. In such a case the civil law looks to the surrounding circumstances to see whether they are of such a character as would lead a man of ordinary intelligence to entertain a reasonable belief that he is bound by law to obey the command of his superior. Obedience to an illegal order can only be used in mitigation of punishment but cannot be used as a complete defence."

In this bill the officer concerned has been vested with a very large discretion. If he thinks necessary to do a particular act for the maintenance of public order, he can do so. An officer might think that unless he struck terror into the minds of the civil population he would not be able to maintain public order and with a view to strike terror he might behave in a particular manner. The provision under section 3 is far too wide of the mark. No prosecution, suit or other legal proceeding can be brought against him. The Cr. P. C. only gives immunity against prosecution suit or legal proceeding can be brought against him if he does any act without lawful excuse, without believing that he is acting rightly. In Sections 76 and 79 of the I.P.C. the words 'good faith' are used. They constitute a very real safeguard. In this bill no such words are used. It is just possible that the frame of the ordinance might have made a mistake when he drafted the ordinance. I hope it will not be supererogation on my part to say that one ordinance was copied from another. The gentleman who framed the original ordinance was under the mistaken belief that by enacting such an ordinance he would be able to help the civil authorities. The civil authorities will not be helped. They ought to be helped when there are unlawful assemblies and a riot is going to take place. In that contingency if there is a magistrate and a commissioned officer it is the magistrate who should have precedence and who should be responsible for peace and order. As between these two officers who will have precedence. This new act will only have reference to the assembly of five or more persons. I therefore submit that this law if passed will not help the civil authorities as it purports to do. The provisions of the Bill are too drastic and might result in a set of circumstances when people will be put to great hardship and suffering on account of these provisions.

[At this stage the Honourable Mr. Speaker vacated the Chair, which was then occupied by Shri M. Ananthasayanam Ayyangar (one of the panel of Chairmen.)]

Shri M. S. Aney (Deccan and Madras States Group): May I ask the Honourable Member whether he is going to move an amendment for reference to Select Committee or any other amendment?

Pandit Thakur Das Bhargava: I am not moving an amendment for reference to Select Committee, nor am I moving any other amendment. 4 P. M. I am not moving any one of my amendments. The Honourable Member is perhaps getting bored. He will please excuse me for I am just going to finish. I know I have taken some time of the House—perhaps more.

[Pandit Thakur Das Bhargava]

than I ought to have. My only apology is that we are not taking the proper view of the legal provisions as contained in the Criminal Procedure Code with respect to this Bill. I am one of those who want that there should be peace in this land. I do not want that the scenes enacted in the Punjab should be re-enacted here. I do wish that the authorities were armed with full provisions to meet such contingencies. I wish that our civil authorities had more power and that in the proper way and by the proper laws they were authorised to deal with the situation as effectively as possible because I have myself seen the situation with which the people are confronted when there is no peace in the land and when the areas are disturbed or are dangerous. But this Bill will not go a long way in providing a solution to those difficulties. On the contrary, as soon as the emergency is over there will be such a reign of terror, as happened in the Punjab, which will be more terrible than the emergency itself when killings were going on. I have seen in Lahore that after the killings it was the Police and the Baluchis who were setting fire to the houses of Hindus and when the Hindus came forward to quench that fire they were fired at.

Shri Balkrishna Sharma: Did anything like that happen in East Punjab also?

Pandit Thakur Das Bhargava: I am only submitting to the House what I saw. I know that these things are not likely to happen in East Punjab. But where are those contending communities now?

Pandit Balkrishna Sharma: What happened when the communities were there?

Pandit Thakur Das Bhargava: The point has to be remembered that this measure applies to the whole of India. Therefore it is all the greater reason that we should be circumspect and not inflict any great hardship on the people whom you are not taking into consideration. If an Ordinance has been enacted in some provinces where is the occasion to make this an all-India measure, it is a very drastic measure as has been admitted by the Honourable the Mover. It really affects the rights of the public in general. It gives more power to the army than we are accustomed to. For the last, say, eighty years we have not seen such powers being given to the army. I submit there is no occasion for giving these powers to the army. Why not straightaway say that when an officer sees anybody committing loot, arson, etc. he should be allowed to fire at him or to kill him? There is no such provision. It is only in respect of one matter, that is 'acting in contravention of any law or order for the time being in force in the said area prohibiting the assembly of five or more persons or the carrying of arms'. This power should have been given in respect of more serious matters. The matter in respect of which power has been given is of not much consequence. The assembly of more than five persons may be for the purpose of combining together and going and seeing the authorities for help, and may be unarmed. But even then the powers will be exercised. I cannot agree to the powers given in this Bill. I cannot support the measure.

Shri H. V. Kamath (C. P. Berar: General): Mr. Chairman, for me it goes against the grain to welcome this measure on the morrow of our freedom and I have no doubt whatever in my mind that the Honourable the Defence Minister has brought this measure before this House with the utmost reluctance. There is a saying somewhere in the English language that desperate diseases need desperate remedies. But we have to consider here whether our body politic is suffering from such a desperate disease as to need such a desperate remedy. I believe today that we have tided over the worst crisis and that we have turned the corner so far as our internal disturbances are concerned. The Honourable the Defence Minister referred to the tumult, the shouting and commotion in the Punjab and other parts of our country and

on that ground sought to defend the enactment of this very extraordinary measure. This measure is intended to be temporary no doubt. Clause 1 says it will remain in force only for a period of one year and later on may be extended for a further period not exceeding one year. It may be that one year is a short period. But if during that period a certain section of our forces—be they the police or the army—is going to be invested with very drastic and extraordinary powers, then it is a matter for thought. I for one would say that even a day of unbridled tyranny will entail a very great deal of suffering. Who can say, looking at the provisions of this Bill, that these wide and sweeping powers sought to be conferred upon the armed forces of our country may not be abused? Power is all right so long as it is used for the benefit and the good of the people. But are our troops so perfect that they may not abuse such powers conferred upon them? The powers are intended to meet certain emergencies. We all know well to our cost how our own Indian troops behaved in 1942. I was inside a prison just before August 1942. I am doubtful whether even in those days when the British Empire was about to crumble, when as Haw Haw said Churchill was fast becoming the undertaker of the British Empire—he had undertaken so many things in his lifetime that he was going to become the undertaker of the British Empire—I am doubtful whether even in those days our troops were invested with these sweeping powers, for instance arresting and searching without warrant. Fortunately I was not arrested without a warrant. A police officer came to me and when I asked for the warrant he produced it all right. Now the troops are to be clothed with these wide powers, namely arrest without warrant, search without warrant, and do almost anything they like without any order or warrant. This, to my mind, Sir, is an appalling measure to be brought before this House by a popular government which claims that it has got the backing of the whole nation, that the people are behind it and that they are strong to meet any emergency. Only the other day Sardar Patel declared on the floor of the House that "we are strong to meet any emergency". Then, Sir, the question arises, if we are strong to meet any emergency, why invest our troops, the army, the land forces and the air forces, with these most astounding powers? I do not know, Sir, whether there is any precedent in any other state, in peace time at any rate, for such a measure. There are times, I agree, when a state in process of disintegration. Far back, during the days of the Roman Empire, when the empire was crumbling and was fast declining, the army became so powerful that there was a day when the Roman crown was put to auction for a mere song. The army could do anything and that marked the end that brought about the fall of the Roman Empire.

Sir, we know what the military mind is. We know what military methods are. I concede there are exceptions to the rule among them. Everywhere there are exceptions.

Pandit Balkrishna Sharma: You are an exception to the rule also.

Shri H. V. Kamath: My Honourable friend is an exception to many things. There are exceptions. There have been great military officers in the past, there are even now, and I have no doubt whatever there will be in the future. In recent times there has been a great military movement where the correct bias was given to military training. I refer, Sir, to the Azad Hind Fauj of Netaji Subhas Chandra Bose. In addition to ordinary methods of military training, they were given what was called spiritual training. That was why that army did such wonderful things. I do not know whether our Government, our Defence Minister, has under consideration the imparting of such spiritual training to our armed forces. If he has that in mind I feel very gratified and I welcome such an innovation in our military methods. That would give a completely new bias to military training and will reorientate the standards of the army. That will improve the morale of the forces and that will teach them how to contact the civil population, how to behave towards

[Shri H. V. Kamath] them, and how to mix with them as part of the people, as part of the nation. A movement of a similar sort came into being some 300 years ago in our own country, and that was through the agency of another leader, namely Shivaji. He also sought to inculcate a new outlook in his forces, and though it was a mere ragged army, a rabble in arms that force achieved something which perhaps we think today was an impossible feat. So my point is when we seek to clothe our army with powers, we should take care to see that they will use those powers, and not abuse them: and for that purpose, Sir, the cultivation of an outlook, of a mentality, of what the Germans would call *Weltanschauung*, is very necessary. Otherwise, Sir, we drift into disaster. We would merely make the army a dictator, make the army a totalitarian force, the very thing which we have been condemning all these years; the Nazi mentality, the Fascist mentality, the totalitarian mentality we will seek to foist on the soil of our mother country. Such a force might prove in emergencies, and even in peaceful times, a terror to the people, because there is a saying in the English language "So much a long communion tends to make us what, we are." There was a prisoner in a dungeon for twenty years, and when the time came for his release, he said he did not want to go and retain his freedom. So also our troops, if they are clothed with these powers and if they start exercising these powers for a considerably long period, I fear that that might become a habit with them, and as the saying goes, habit is second nature. Therefore we should be very much on our guard because, Sir, we are a popular legislature and we have a popular government; we must be on our guard to see that we are not putting on the Statute Book something which even the British Government in its worst days, in the days of the severest oppression and repression, did not dare to do. I do not think that the British Government even in 1942 and 1948 sought to clothe the army with these powers. After all, Sir, what is the function of an army in a modern state? The primary function of an army is the defence of the country, the defence of the people against external aggression.

Pandit Balkrishna Sharma: What about internal aggression?

Shri H. V. Kamath: I am coming to that shortly. That is the primary function of the army. There are occasions and emergencies when the assistance of the army is sought in civil disturbances: but when I said the primary function of an army is to defend the country against foreign aggression, I said what I meant, or I meant what I said. But here, Sir, we have a measure where if the provincial government declares a particular area as a disturbed or a dangerous area, then immediately certain things come into effect. I do not know, because I am not very much conversant with what happened in the Punjab, Assam, Bengal, and the United Provinces, but in the Central Provinces and Berar whence I come, some areas were declared as disturbed or dangerous on the very flimsiest pretext. After all you all know that the C.P. and Berar have been very free from communal disturbances.

Pandit Balkrishna Sharma: And yet the largest find of arms has been in the Central Provinces.

Shri H. V. Kamath: I am not referring to those areas where arms were found, but certain rural areas which were declared as disturbed or dangerous just because there was a sort of tavern brawl and here is a measure which confers upon the land forces and air forces certain powers which they would exercise in the cases which I have just cited. Suppose some Muslim *murgi* walks into a Hindu's compound and there is a sort of brawl, there is commotion. And there is a commotion and tumult and shooting. I am not joking; that thing has happened. And the next day the Deputy Commissioner or the Magistrate declares, "Here there is communal tension, and therefore it is declared a dangerously disturbed area". Well and good, the Chief Secretary says—after all the Chief Secretary does everything for the Premier

The Honourable Sardar Baldev Singh: But it is responsible government.

Shri H. V. Kamath: I know, that is why I say a popular Government should not bring such a measure. Well, the fiat goes forth from the Provincial Government saying that, "such and such an area is disturbed, send your forces, arrest people without warrant, detain people without warrant, search people without warrant". And as my friend Pandit Thakurdas Bhargava said, especially in the searches, no safeguard has been provided. Most astonishing that searches of houses could be conducted arbitrarily by armed forces! I remember, Sir, if my memory does not betray me, that the fundamental rights—at least some of which were adopted by the Constituent Assembly only a few months ago—did regard the privacy of a home as more or less sacrosanct; but here, Sir, is a measure which confers upon the Armed Forces this power to enter and search without warrant any premises, make any arrests, recover any person wrongfully restrained, any property reasonably supposed to be stolen property, or any arms kept in the premises. I do not know whether the premises include persons too on those premises; whether when the officers enter the premises they would studiously refrain from searching the persons on those premises. I do not think that the military mind and the military method could pursue such a course as merely searching the premises and leaving out the persons on the premises. When the officer comes into the premises and if he has come for recovering stolen property or unlawfully kept arms, certainly if he does not find anything on the premises, I have no doubt whatever that he will go and search the person; and as my Honourable Friend Pandit Thakurdas Bhargava said, what about the women on the premises? Are they going to be searched without any safeguards? Are they going to be searched without even those safeguards which the British Government did include in the Statute Book as part of the provision relating to any searches by even the police? As I said, the primary function of the Army is to defend the country against aggression but there may arise certain emergencies where they may usurp the powers of the police. I deliberately use the word "usurp" because when the Army is clothed with these powers then all but martial law comes into effect. Then the police and the Civil Authorities are put out of action, are completely put out of action; and the army assumes command and takes responsibility for maintaining law and order. There is one aspect of this matter which I would like to stress and that is that there is not always much love lost between the Army and the Police—unless of course we seek to cultivate, our Government and our people seek in that direction and attempt that there should be cordial relations between the civil population, the Army and the Police. If on the flimsiest pretext the police begin to feel that "For our part we are not trusted",—and today we have got the Police, the Armed Police, the Special Constabulary and these special police to meet grave emergencies—but on the slightest excuse or pretext if the police are put out of action and the Army comes in on the spot, the Police are likely to have the feeling, "What are we for? We are not trusted, we have nothing to do here; the Army comes and takes up and performs our functions". Thereby it is very likely that bad blood will be created between the Police and the Army. Sir, on the eve of the Russian Revolution the Army and the Police fired at each other. It is not a laughable matter—it is a very serious matter. On the eve of the Russian Revolution the Police and the Army fired at each other. I do not want that such a state of affairs should arise in our country. I want—and I am very keen on it—that the civil population, the common people, and the Police and the Army must be on the most cordial relations.

Sir, when the State is in a process of disintegration, when the State is crumbling, then the Army steps in as I have said and the Army becomes a dictator. There is perhaps another case when the Army may step in, and

[Shri H. V. Kamath]

that is when the State is in the process of formation, when it is still inchoate, when it is still formless, when it is still gathering round itself all its forces, all its resources. Are we, Sir, today in that position that we are still inchoate? Are we still moving towards form? We have a name already. Does our Defence Minister say we are moving towards that day when we shall be clothed with a perfect form? Then, perhaps that will be a ground to justify this extraordinary measure of clothing our Armed Forces with these extraordinary powers.

I shall not take much more time of the House. There are just another couple of points to be dealt with and then I will have done. War deteriorates and lowers all values and all standards. Soon after the conclusion of any war, there is no greater need than for a transvaluation of values; a re-evaluation of values. A devastating, destructive war in human history has just now ended and all over the world there has been deterioration in human standards, human values and spiritual values. Our Army too has not been free from it. Our Army has been to Europe, has been to the Far East, has been to most of the battlefields of the world, and our Army there along with the armies of the world, has suffered this deterioration in standards. It is not that it is a permanent deterioration—I would not say that—but, at present, all over the world there has been a very grave deterioration in values and standards and there is all round a tendency to regimentation, and from that too our Army has not been free. With this mentality of our Armed Forces it is a dangerous game to play. It is very dangerous to invest our Armed Forces with these powers. I would request the Honourable the Defence Minister to give us a positive assurance on the floor of this House—nothing short of it will do—that these powers will in no event be abused and I would even request him to tell us that as far as practicable—as my friend Pandit Bhargava remarked—the power to make arrests, entries, searches and dispersal of unlawful assemblies etc. will be tempered by adequate safeguards as provided in the Criminal Procedure Code. Those safeguards are not put in this Bill in so many words, but I would like the Honourable the Defence Minister to make it clear. My friend Pandit Thakurdas Bhargava made a point that as long as this Criminal Procedure Code is there, how it could abrogate all the safeguards. Of course, an emergency law like this could abrogate anything, but after all we are not legislating in war time. There is peace in India and we are legislating for certain emergencies. But the emergencies envisaged here are such that power has been given to “prohibit an unlawful assembly of five or more persons” or “the carrying of weapons”. At least, if it had been said, instead of “weapons”, “dangerous weapons” it would have been clearer. As my friend, Pandit Thakurdas Bhargava pointed out, what is a weapon? A pen knife could be described as a weapon. Even to forks the same term can be applied. Unless therefore we state definitely what is a weapon and what is a dangerous weapon, it is very misleading. When you want to clothe the Army with these powers, going even to the extent of causing death, then, you should be more explicit in what you say. Just saying “carrying of weapons” is not adequate to my mind. After all, when our National Movement was born, it took its birth on the morrow—if I remember aright—on the massacre of Jalianwalabagh. That massacre gave the impetus to our National Movement, gave birth to it under the leadership of Mahatma Gandhi. What was it, let me ask, that Gen. Dyer did at Jalianwalabagh? What was it? Well, I was a mere school boy then—so you will excuse me if I make a misstatement, I am speaking subject to correction—Gen. Dyer was an Army Officer, and here is a measure which seeks to clothe an Army Officer with extraordinary powers. Gen. Dyer was an Army Officer, he had extraordinary powers, but he did give a warning before he fired upon the crowd at Jalianwalabagh. But, here, as my friend Pandit Bhargava pointed, it is stated that warning is not necessary to be given. It is merely

stated, “such warning, if any, as he may consider necessary”. This is most amazing.

So far as dispersing of an unlawful assembly is concerned, every time that occasion has arisen, in all times, and in all climes a warning has been given, unless it was in the deepest crisis of a war. If that was so, it is a different matter. But in peace time, in an emergency arising in peace time, no assembly has been dispersed without warning by an officer, whosoever he may be. But here, Sir, you are clothing the Army with certain powers and you have said “such warning, if any, as he may consider necessary”. This beats me. It is the most appalling power. That means the officer can behave as he likes, arbitrarily. He may not give a warning. He may straightaway fire upon the crowd, and as my friend remarked in his speech, the assembly may be going to the district officer to make a representation to ask for help in a certain emergency. Where are the safeguards for them? As they proceed, without any arms actually, where is the safeguard for them from death? You will very well say “Death is preferable to tyranny”, but the common man will not say that. After all, there must be something worth dying for. It is all right that death is preferable to tyranny.

*muhurtam jvalitam shreyo
nacha dhumayitam chiram*

Better to live for a minute like a flame and not for hundred years like smoke. It is all very well to say that. But, Sir, there should be something worth dying for. These people proceeding in a peaceful procession to make a peaceful representation to the Magistrate or the District Officer have no safeguards; and the Army Officer if he takes it into his blessed head—if he has one—to fire upon these people, there is nothing to prevent him. After all, we are human beings. We may have grudges to settle; we may have old scores to pay off. Paying off old scores is an ancient custom. I consider it quite possible that there may be an Army officer who may have been annoyed by certain civilian members of the population and if he likes to pay off his old scores, he may fire upon them. He may think: “Here is the occasion. I am the master. Who is there to question me?” “You can’t question me,” he will tell the people. “Here is no question of your escaping. Either do or die”. Do or die not in the sense of Mahatma Gandhi, but in a quite different sense. He won’t let the people question him. Where is your authority? How can you stop him? Nobody could stop him. And these people who were going without arms, who were going to make a peaceful representation, will die. Perhaps, Sir, I am trying to draw the dark side of the picture. After all, every picture has got two sides and it may be that I am overpainting the dark side.

An Honourable Member: Certainly.

Shri H. V. Kamath: May be, Sir. But it is necessary, when we are clothing the Army with such powers that we must see the darkest side possible of this picture and I for one would not like that such a measure should go on the Statute Book. It will become law. After all, every province has passed some law. The C. P. and Berar has passed, I hope Madras and Bombay Governments have also passed, Public Safety Acts, the Goonda Act and so on which have met the situation in quite an adequate measure. Then, as my Honourable Friend remarked, after all one or two provinces had passed such an Ordinance and not other Provinces. By passing this Bill, we are seeking to legislate for the whole of India and 3 or 4 or 5 Provinces had not pressed for such an Ordinance, and they have merely adopted the promulgation of the Public Safety Act and the Goonda Act. Speaking of C. P. and Berar, we have been able to cope with the situation without having such Ordinances at all. Therefore I would request the Honourable the Defence Minister to assure this House that these weighty powers, these sweeping powers conferred upon the armed forces

[Shri H. V. Kamath]

through this Draconian measure will not be abused, and if any army officer, if any officer of the Land and Air forces' who is clothed with this power, if he abuses these powers, he will be subjected to the severest punishment. It will be good if the Honourable the Defence Minister assures this House that if such an officer trespasses his powers, if he oversteps his powers, if he abuses his powers, it may be that the punishment meted out to him will be to the point of causing death. If he was instrumental in causing the death of another man, he too must be prepared to meet his death and on such an assurance only that the Honourable the Defence Minister may give us, we can agree to such an extraordinary measure which is designed to meet certain grave emergencies in the country. Thank you, Sir, for the patience which you and the House have exercised, I have done.

Shri K. M. Munshi (Bombay: General): Sir, I beg to intervene in the debate only because I feel that the Honourable Members who spoke last, forgot the reality of the situation altogether. Sir, I wish to bring to the notice of the House the provisions of this Bill which have been ignored largely in the last two speeches. But before that, I may mention to the House a little change in the situation to which I think, the attention not only of the House but of the country ought to be directed. The Criminal Procedure Code was passed in 1882. Its provisions were intended for the purpose of dealing with a situation where peace and tranquillity ordinarily reigned through the country and when it could be brought under the control of the ordinary normal police force. Sir, it has been found during the last 30 years that the Criminal Procedure Code is entirely inadequate to deal even with ordinary riots in the country, leave aside the present situation. It has been my—shall I say good or bad fortune—to have been associated in one way or the other with riots in Bombay since 1919—except as a rioter, of course. The evolution of the technique of rioting has been so speedy and so dangerous that an ordinary police force finds itself impossible to cope with it. I remember the riots of 1919 and 1923 in Bombay. Those riots were riots of two rival gangs throwing soda water bottles at each other, or at the highest, coming out with *lathis* and breaking each others' heads. Then, it took a communal turn—I am talking only of Bombay about which I have some knowledge. When even that happened, it did not take any serious shape. Soda water bottles was the fashionable missile in Bombay—soda-water bottles and sticks and very rarely knives.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Why not whisky bottle?

Shri K. M. Munshi: Whisky bottles are rather costly, and being a prohibitionist city, we do not believe in using whisky bottles. The riots then were really nothing as compared to the riots during the last ten years. But, Sir, even in those days sometimes when the situation became very acute, the military had to be called in and Martial Law had to be proclaimed. When Martial law is proclaimed, the whole locality is handed over to the Military. There is no resort to any magistracy; there is no restriction on the power; the military can shoot at anybody suspected of a crime; it can go into anybody's house. The very nature of Martial Law presupposes that the military are in complete control of the area.

What this Bill proposes to do, in the first instance, is to interpose an intermediate stage between a normal rioting in a city or a place which can be handled by the police and an extremely advanced stage when it has to be handed over to the military to be dealt with under martial law. That stage, according to this Bill, is when the 'Provincial Government' which means, under the present conditions, the responsible Ministry in the Province, feels that it cannot cope with the situation with the aid of the Police in a particular area. Then, what does it do? Under Section 2 it declares that a particular area is a disturbed or

dangerous area. Once that is done, the powers given to the Military by this Bill come into operation; but not till then. It is only when the Provincial Government feels helpless to deal with the situation with the ordinary police, that it will issue a proclamation under Section 2 and when that proclamation is issued the military comes in. But it does not exercise all the powers which would be exercised by it if Martial law were proclaimed. Under this Bill the charge of the area remains with the Provincial Government for all purposes except that the Military is used for restoring public order. The great safeguard under this Act is that it is only when the Provincial Government confesses its inability to deal with the situation that this Act comes into operation.

Since the last war the riots have changed their nature and temper. They are not the result of two rough gangs quarrelling, but masses of men flinging themselves on each other in a particular disturbed area; whole communities are at each other. Something was said about a weapon. We have a class of 'lethal' weapon as known to the criminal law. But is it not a fact known to everybody that even pocket knives, of late, have been dangerous weapons? Is not knifing going on in a manner unknown to the Criminal Procedure Code? In Bombay even to carry a pen-knife, a pocket knife, may be sufficient to draw upon the owner a penalty of six months or more. The reason is very simple. Today men have evolved a technique of using even something which is not a weapon, the most innocent thing, the knife with which to mend a pencil, as a dangerous weapon. Therefore it would not be right to use the word 'lethal' or dangerous before weapon. A weapon is a weapon with which you kill or injure somebody.

During the last one year—after the world war—the situation has deteriorated. The sanctity of human life has disappeared; and it is not a riot; it is not five men who are disturbing peace, but whole masses of men, tens of thousands, at the throat of each other. That is the new tempo. In this situation what is a provincial Government to do? Invoke the assistance of the Criminal Procedure Code? Go and get hold of a magistrate at 12 midnight, before somebody is shot at?

The only other alternative; if you do not pass the Bill, will be immediately to declare martial law in an area as soon as riot begins. And once martial law is introduced then of course the military will use all the force that they possess. Therefore the whole approach of my two Honourable friends who spoke last is not correct. This deals with the situation as it is today; and the Bill is only to be in operation for one year. If the present situation goes on, possibly it may run for a year more. Anyway Government will come before the House if an extension of the Act is required. But for the moment I submit that it is essential that the provincial Governments should be given the power to declare an area disturbed in which they can secure the assistance of the military.

Shri K. Santhanam (Madras: General): May I ask one question? If the Bill is so essential and inoffensive why should it be only for one year?

Shri K. M. Munshi: The reason is that the present deterioration of the situation renders it necessary. It may be that within a year Honourable members may find that the situation is such that we can go back to the Criminal Procedure Code days; of course if you cannot go back, the Act may have to be extended. But as we see the situation around us there is no alternative but to take stringent measures for the purpose of maintaining law and order.

Pandit Thakurdas Bhargava: Even if this law is not enacted, cannot the military be called in?

Shri K. M. Munshi: I think I am trying to make it clear that if the aid of

[Shri K. M. Munshi]

the military is called martial law will have to be proclaimed. The whole area would be handed over to the military. In the circumstances as at present it is not possible to merely call in the military; as I said, the military used to be called in the old days when the riots were in isolated groups of a particular locality. Now when you find a whole locality blazing with enthusiasm for murdering men it is highly necessary that an atmosphere should be created of such power that the people will immediately sink back into normal ways of life.

Begum Aizaz Rasul (U. P.: Muslim): May I know whether the legislation that has been enacted by the provincial Governments like the Public Safety Act and the Communal Disturbances Act are not enough?

Shri K. M. Munshi: A provincial public Safety Act can only amplify the functions of the provincial Governments. The Provincial Legislatures have no power to give any additional powers to the military because the army is a central subject. This Bill has become necessary because even the Public Safety Acts which have been passed in the Provinces are not adequate to deal with the situation in some parts of the country.

Dr. P. S. Deshmukh (C. P. and Berar: General): Has any provincial Government made any reference about it?

Shri K. M. Munshi: That is a question which could better be addressed to the Honourable Minister and not to me.

Dr. P. S. Deshmukh: When my Honourable friend is arguing on that basis he ought to have got that information beforehand.

Shri K. M. Munshi: I am arguing as one who tries to study the present situation in the country and who has had something to do with riots for several years. I am giving my personal view; I am not concerned with what the Honourable Minister may say.

Begum Aizaz Rasul: The fear is that these powers will be abused and misused.

Shri K. M. Munshi: Therefore the first condition prescribed is that the provincial Government should declare an area disturbed. If, however, a provincial Government finds that the military is misusing its power it can certainly issue a proclamation saying that it is no longer a disturbed area and the powers will cease. In the last resort it is the provincial Government which is the sole judge of the situation and it can in effect recall the powers given to the military.

Prof. Shibban Lal Saksena (U. P.: General): What is the guarantee that it will not be used against labour movements?

Shri K. M. Munshi: If the labour movement is peaceful, no one will ever dream of using any force. If a labour struggle is an ordinary disturbance of tranquillity the police will deal with it. But if a labour struggle assumes such proportions that it threatens the existence of the public order or the State, not only this Act but the whole force of India must be used to suppress it. I refuse to be frightened by words. In the name of labour trouble we cannot allow the Government of this country to be reduced to Kerenskyism. We know what labour struggle means in some hands: Government in power should be made so weak and so frightened in the name of civil liberties that it may not take any drastic action, and totter. That situation I think no citizen of India is prepared to accept. We are passing through an unusual phase. One regime is over; the British Empire is gone; and we have secured a peaceful transfer of power. When the Moghul Empire collapsed there were 150 years of misrule and anarchy. We do not want to have a repetition of that particular phenomenon in this country at this stage. And during the short time at our disposal—the coming two, three or five years till we settle down to peaceful

conditions—it must be the duty of Government and of every citizen of this country to see that the Government functions as a Government and not as a Government run by Kerensky.

Sir, only one word more and I have done. My Honourable friend Mr. Kamath talked of the military. This House and the country realise—and I think my Honourable friend will realise—that the army of today is not the army which was built up by the British as a mere adjunct to the army of military occupation which was principally British. Our army is manned by some of the finest and most patriotic young men in this country today; and I claim for them that when they will discharge their duty they will do it not as an instrument of a foreign power to keep this country in subjugation but as patriotic citizens whose sole interest is to see that law and order is maintained. Is it right to say that in the past some soldier did something or the other and therefore the lads of free India are going to perpetuate the same thing; I think all that is the result of distrust. We have acquired for 30 years a distrust of all forms of Government. We do not like the police, we do not like the military; we do not like Government; we want that Government should not be powerful: that is our habitual approach. But we are conscious of the reality too; this is our Government and we want it to be strong. If we want our Government to be strong I submit that these powers must be given to the military.

Several Honourable Members: The question may now be put.

Chairman: I think there has been a sufficient discussion of this matter and so I will accept closure.

The question is:

“That the question be now put.”

The motion was adopted.

The Honourable Sardar Baldev Singh: Sir, it is not necessary for me to say anything more as my Honourable friend Mr. Munshi has made the position absolutely clear. I want to reply to one or two points raised by my Honourable friend Pandit Bhargava about the provisions of this Bill. One of the points he made was that it is not at all necessary, to have such a drastic Bill; in case the situation is beyond the control of the civil authorities the military should take it over under martial law. During the recent riots that we had in different parts of the country this situation was considered particularly in the Punjab when the communal riots went beyond the capacity of the local administration. I have not the slightest hesitation in saying that if to restore law and order and communal peace it is necessary to resort to martial law I will not hesitate to do so. But we have got an unhappy experience of martial law in this country and particularly in the province of the Punjab where we have had the worst type of communal disturbances. Now short of martial law this is the only alternative that we can resort to.

Dr. P. S. Deshmukh: This is very little short of martial law.

The Honourable Sardar Baldev Singh: I do not deny that the provisions of the Bill are drastic; and, as I have explained if we have to maintain law and order and avoid communal disturbances we should not hesitate to take as drastic measures as possible.

Another point was made by my Honourable friend Pandit Bhargava that never in the last 80 years was such a Bill brought before the legislature. That is true; but I may point out that not to speak of 80 years, never in the history of this country did we have to face such a situation as in the last two months. Even during the Moghul times such a situation never arose; there were complaints of communalism, but it was possible for Hindus and Sikhs to live under that rule. Then there were other rulers also but such a situation never arose.

[Sardar Baldev Singh]

Unfortunately it was during the last few months that we had to face the situation that is now before us.

Another point made was that we should give sufficient warning and that no action should be taken by the military without giving warning. I may cite one case in this connection. A military officer was living in a hotel and a crowd of about 6 or 7 thousand people attacked that hotel. This officer, finding the situation getting critical and feeling that he was doing a duty to his country and to his fellow beings, came out with a tommy-gun that he had with him and opened fire. No doubt he acted against the instructions and was responsible for killing a few people, but by that immediate action he saved the lives of hundreds of people. I give this example to show that if we lay it down that an officer must give warning, there were many occasions in the present communal disturbances when an officer had absolutely no opportunity to give due warning to the mob. I of course entirely agree with those of my Honourable friends who have criticised the Bill that warning should be given, but we must not forget that we are passing through extraordinary times. Hardly three months ago we got our independence after 150 years of slavery. And if we cannot manage the affairs of this country successfully we will stand condemned in the eyes of the world. It is therefore in order to enhance the prestige of the Government and to save innocent lives that it is necessary for us to have these powers.

A criticism was made that none of the Provincial Governments has asked for the enforcement of this Ordinance. I may inform my Honourable friend Dr. Deshmukh that three provincial Governments—U. P., Bengal and Assam—have asked for the enforcement of this Ordinance. I made that absolutely clear at the beginning of my speech.

A lot has been said about the risk of this power being misused by the army. My friend particularly mentioned the name of Baluchis. May I remind him that this power is not to be used by the Baluchis any more but it is to be used by our own troops, the troops who are your own men and are under your control. If these provisions of the Bill were to be used by the military under the British rule, I would certainly have opposed it myself. Now the accredited leaders of the country are at the helm of affairs; the military is under them and not under a foreign power. Therefore, I do not feel that the army will in any case misuse the powers that are provided in this Bill.

A point was made by Pandit Thakurda Bhargava about the Provincial Governments. He conceded the point that in case of an emergency we may have the provisions of this Bill. But he pointed out what happens if the emergency does not exist. In that case I wish to say that it is open to the Provincial Governments to withdraw that declaration of emergency any time they like. Take the case of the East Punjab Government. If they feel that the communal situation in the province is normal, it is for them to declare that the emergency does not exist and the provisions of these special powers will also cease to exist.

Therefore, as has been pointed out by my friend, Mr. Munshi, there are safeguards in this Bill and I think that with those safeguards we should have no fear that the provisions of this Bill will be misused.

I do not wish to add anything more as the different provisions of the Bill have been explained and I hope although the provisions in the Bill are drastic, it is necessary to meet the present emergency. I can say without hesitation that but for these powers it would have been impossible for us to check the situation that had arisen in Delhi and other parts of the country. Some hardships are however done to the people. There is no doubt about it and it is our duty to see that these powers are not misused. But in the circumstances we

are placed at present, and in view of the communal situation that prevails in the country, I am sorry to say that I have to insist on requesting the House to pass this measure.

Shri H. V. Kamath: Will the Honourable the Defence Minister tell us why he is not in favour of the customary safeguards so far as searches are concerned?

Mr. Chairman: He has explained that already. They will take all necessary precautions!

Mr. Chairman: The question is:

"That the Bill to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas, be taken into consideration."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 2 stand part of the Bill."

Clause 2 was added to the Bill.

The Honourable Sardar Baldev Singh: Sir, I move:

"That in the heading of Clause 3 of the Bill for the word 'Ordinance' the word 'Act' be substituted."

Mr. Chairman: The question is:

"That in the heading of Clause 3 of the Bill for the word 'Ordinance' the word 'Act' be substituted."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clauses 4 and 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sardar Baldev Singh: Sir, I beg to move:

"That the Bill, as amended, be passed."

Mr. Chairman: Motion moved:

"That the Bill, as amended, be passed."

Shri K. Santhanam: Sir, I do not think it is right for me to allow this Bill to be passed without a word of protest. I do not think the popularity of a ministry is proportional to the extraordinary powers it takes or proportional to the restrictive legislation it introduces. This is the second black bill we have passed in the legislature, the first being the deprivation of the liberties of the press. Sir, I protest.

Dr. P. S. Deshmukh: Sir, I join the protest.

Mr. Chairman: At this stage have we not had sufficient protests?

Mr. R. K. Sidhwa (C. P. and Berar: General): I am not protesting. I am congratulating the Government for bringing this measure.

Several Honourable Members: That will do.

Mr. E. K. Sidhwa: Pandit Thakur Das Bhargava and Mr. Kamath took an hour and a half and I am entitled to at least five minutes.

Mr. Chairman: Mr. Aney.

Mr. E. K. Sidhwa: Sir, I am on my legs.

Mr. Chairman: The Honourable Member can stand on his legs again.

Shri M. S. Aney: Sir, I beg to point out that there is a motion before the House. No debate on that motion has taken place and I do not think that if any member wants to raise a debate any pressure can be put upon him. If there is a motion before the House and members of the House want a debate on it, so far as I know there is nothing to prevent such a debate.

Mr. Chairman: I do appreciate the position. One of the Honourable Members who rose up said that he wanted only one minute and another said that he wanted only three minutes. I therefore thought that the whole debate will be over in four or five minutes.

Prof. Shibban Lal Saksena: Sir, I want to speak for a longer time.

The Assembly then adjourned till Eleven of the Clock on Friday, the 12th December, 1947.

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

Friday, 12th December, 1947

The Assembly met, in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

STARRED QUESTIONS AND ANSWERS

(+) WRITTEN ANSWERS

ANTI-INDIAN PROPAGANDA IN THE MIDDLE EAST

833. *Shri Deshbandhu Gupta: (a) Will the Honourable the Prime Minister be pleased to state whether Government are aware of the intensity of anti-Indian propaganda now being carried on in the Middle East and Arab countries?

(b) Are Government aware that appeals to Pan-Islamism and religious sentiments are being made?

(c) If so, what action, if any, have Government so far taken to counter-act such propaganda?

(d) On account of the urgency of maintaining Asian solidarity and the consequent necessity of maintaining friendly relations with all the Middle East and Arab countries, do Government propose to expedite setting up of our embassies in these countries, and in the meantime to send a goodwill mission there?

The Honourable Pandit Jawaharlal Nehru: (a) Reports received indicate that anti-Indian propaganda is being actively carried on in the Middle-East and Arab countries.

(b) Yes.

(c) and (d). The attention of the Honourable Member is invited to my replies to Starred questions Nos. 32 and 221.

TRADE AGENTS APPOINTED BY ~~THE~~ GOVERNMENT

834. *Shri Mohan Lal Saksena: (a) Will the Honourable Minister of Commerce be pleased to lay on the table of the House a statement giving particulars of the persons who were appointed Trade Agents by the Interim Government and the names of the countries to which they were posted?

(b) How many of them have opted out to Pakistan?

The Honourable Shri N. V. Gadgil: (a) and (b). A statement containing the information required by the Honourable Member is laid on the table.

*Answers to these questions were laid on the table, the question hour having been dispensed with.—Ed. of D.