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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.

(1380)

INDIAN FINANCE (SUPPLEMENTARY) BILL

The Honourable Shri R. V. Shastri (Shastri): 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 price, having 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 suggest this duty for the next budget, I would 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. Azizullah (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 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 had to control the export of 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 the coarse and other handmade cloth has been allowed to Ceylon, Burma, Malay and some neighbouring countries like Afghanistan and Iran. This was done both to encourage handloom products and also supply the deficiency of those countries which have all along being 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
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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, Sir, which must be borne in mind is that in that part of the country the Police was 90 per cent of one country. 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, and because the troops were spread over the whole of that part of the country and were not then prevailing they were not in a position to take any action. Representatives were made to the Government of India by several people, under the Section 53 Administration of the Punjab Province, and also by the 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, expresses 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 to now they have been worked without harshness 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 come into operation. Sir, 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 in that area come into operation.

That in short is the history of this Bill and the provisions in that area which are contained in the Bill seem to be rather drastic; but I can assure the House that after the experience we have had so far and now we are convinced that the powers have not been misused and there have been no complaints from any part of the provinces. I hope the House when 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 not 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."

(1733)
Pandit Thakur Das 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 understood in the duty of the Courts, if the necessity is challenged, to inquire into the matter, and if the necessity is not established, then any persons or the carrying of weapons or 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, 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.

According to the provisions of the Criminal Procedure Code, the Magistrate has to give warning; and if he does not give warning, then the 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 world, in any part of the country, if the assembly is opened upon an innocent crowd, upon an assembly which may not be unlawful, it will be necessary for 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 not the right thing to do. But, if the law was right, if the lawyers would be right, in view of the words "assembly of five or more persons". In 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 of any law is an innocent person comes 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 will he 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 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 as I could understand it. But to define the occasion in such
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 so follow the order 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 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 114 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 cases of power, where the act which is supposed to constitute an offence is done in obedience to an order which is in fact unlawful. It is reasonable to believe 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 given with a very large discretion. In this bill the officer concerned has been given 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. He might view the strike terror he ought to 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 justification of such acts by the act is by reason of the necessity of cases. 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 supererogatory on my part to say that one ordinance was copied from another. The gentleman who drafted the original ordinance was under the mistaken belief that by enacting such an ordinance he would be able to help the civil authorities. The ordinance would not be required. 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 commissioner of police, 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 the end 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. Ananthagayar Ayyangar (one of the panel of Chauriya).]

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 any amendment for reference to Select Committee, nor am I moving any other amendment. I am merely asking 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—
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 it may be extended for a further period not exceeding one year. Moreover, it is one year is a short period and if during that period the circumstances change—say the police or the army—is going to be invested with very drastic and extraordinary powers, then it is a matter of thought that for once I say that even a single 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 us may not be abused? Power is all right so long as it is used for the benefit and the good of the people. But where are our troops so far that they may not abuse such powers conferred upon them? The powers are intended to meet such emergencies. We all know how to cost our own Indian Governments between 1942 and 1945. I am doubtful whether even in those days when the British Empire was about to crumble, when as Haul Haul 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 almost anything they say to be lawful 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 enough to meet any emergency. Only the other day Sardar Patel declared on the Floor of this House that "we are strong enough to meet any emergency." Yet, 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 is times. For instance, in process of disinfection and 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 this marked the end that brought about the fall of the Roman Empire. Sir, we know that 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 Brikshana 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 have been a great military movement, namely the increase 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 morals of the forces and that will teach them how to control the civil population, how to behave towards
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 first 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. And as my friend Pandit Thakurdas Bhargava sais, 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—alright some of which were adopted by the Constituent Assembly—were only a farce and what regarding the privacy of a citizen 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 and do not know the persons too on those premises; whether when the officers enter the premises they would assurely 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 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 sais, what about the women on the premises? Are they going to be searched with the armed forces? Are they going to be searched with the women? The primary function of an army is the defence of the country, the defence of the people against external aggression.

Pandit Bakhshish 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 the primary function of the army is to defend the country against foreign aggression, I think what I mean, or I mean what I said. But here, Sir, we have a measure or a dangerous area, then immediately certain things come into effect. I do not know—a because I am not very much conversant with the Indian history. I do not know what happened in the Punjab, Assam, Bengal, and the United Provinces—but in the provinces in the north of India, where and in the north of India, I have not been free from civil disturbances. And the most dangerous area is Punjab.

Pandit Baldev Singh: And yet the largest limit of armys has been in the Central Provinces.

Shri H. V. Kamath: I am not referring to those areas where armys were found, but certain civil areas which were declared as disturbed or dangerous areas which were declared as disturbed or dangerous areas by the Police, and there is a measure which includes the cases in which I have just cited. Suppose some Muslim gets murdered and there is a sort of rioting and there is a sort of breach of peace. And there is a sort of communal rioting and shooting. I am not joking; that is what the magistrate declares. There is a communal tension, and that is the declaration of a damaged area. Well and good, the Chief Secretary says—after all the Chief Secretary does everything for the Premier.

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
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 and we are still gathering round us our forces and our resources? 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; this 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 less—nothing less, it will do—that these powers will in no event be abused and I would request him to tell us that as far as practicable—as my friend Pandit Bhagavat remarked—the power to make arrests, entries, searches and dispersal of unlawful assemblies etc., provided by adequate safeguards as provided in the Criminal Procedure Code. These safeguards are not put in the Bill but they exist. But I would invite the Honourable the Defence Minister to make it clear. My friend Pandit Thakur Das Bhagvata made a point that as long as this Criminal Procedure Code is there, how it could abrogate all the safeguards. Of course, my friend this could abrogate anything, but after all we are not legislating in war time. There is peace in India and therefore 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 "arms", "weapons", "carrying" it would have been clearer. As my friend Pandit Bhagavat pointed out, what is a weapon? A gun, 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, bring even to the extent of causing death, then, you can 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 rightly—on the massacre of Jalianwala Bagh. 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 Jalianwala Bagh? What was it? Well, I was a mere schoolboy then—so you will excuse me if I make a statement, 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 who did not fire the first shot at Jalianwala Bagh, he fired it upon the crowd at Jalianwala Bagh. But, here, as my friend Pandit Bhagavat pointed, it is stated that warning is 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 an unlawful assembly is concerned, every time that occasion arises, 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, whoever 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 is the most spurious power. That means the officer can behave as he likes, arbitrarily. He may not give a warning. He may straightforwardly 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. What are the safeguards? What are the safeguards in this Ordinance? 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 simply say: "Here is the old score. 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 can 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. Kanath: 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 have passed such an Ordinance and not other Provinces. By passing this Bill, we are seeking to legislate for the whole of India and 5 or 4 or 5 Provinces has 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 evade the law. Having such a measure, I would request the Honourable the Defence Minister to assure this House that these weighty powers, these sweeping powers conferred upon the armed forces...
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 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 conscription 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. K. 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 that provision of this Bill which has 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 the country ought to be directed. The Criminal Procedure Code was passed in 1892. Its provisions were intended for the purpose of dealing with a situation where property and tranquility ordinarily reigned throughout 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 80 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 some way or the other with riots in Bombay since 1910—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 1910 and 1915 in Bombay. Those riots were of two rival gangs throwing soda water bottles at each other at the height of the season. Then, it took a communal turn—I am talking about 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 rare knives.

Pandit Lokshmi Kanta Malta (West Bengal: General): Why not whisky bottles?

Shri K. K. 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 two 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 report to the police and an eye; there is no restriction on the power; the military can shoot at anybody suspected of a crime; it can go into the people’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 another extremely advanced stage when it has to be handled 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 is 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 is 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. That is the 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 as each other. Something was said about a weapon of ‘lethal’ weapon being 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 knitting 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 are disturbing peace, but whole masses of men, tens of thousands, at the thrust of each other. That is the new tempo. In what situation is this provincial Government to do? Invoke the assistance of the Criminal Procedure Code? Do and get hold of a magistrate at 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. Santhanap (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. K. 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 cannot 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. K. Munshi: I think I am trying to make it clear that if the old of
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 most prudently to fall back on the military; as I said, the military used to be called in the old days when the riots were in isolated groups and a particular locality. When you find a whole locality being involved in lawlessness it is highly necessary that an atmosphere should be created of such power that the people will immediately turn back into normal ways of life.

Begum Aitzaz 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 Disappearances 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 B. R. General): Has any provincial Government made any reference to 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 saying that that basis 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 saying my personal view; I am not concerned with what the Honourable Minister may say.

Begum Aitzaz 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 missing 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. Shiban 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 aggravation of 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 tolerate. 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 murdher and anarchy. We do not want to have a repetition of that phenomenon in this country at this stage. And during the short time at our disposal - after 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 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 are maintained. Is it right to say that in the past some soldier did something or other and therefore the idea of free India is going to perpetuate the same thing? I think that that is the result of distrust. We have acquired for 30 years a distrust of all forces of Government. We do not like the police, we do not like the military; we do not like Government; we want that Government which is habitual. 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 Bhagwata 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 had an unhappy experience of martial law in the country and particularly in the Punjab where we have had the worst type of communal disturbances. Now, if the martial law is the only alternative that we can resort to.

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

The Honourable Sardar Baldev Singh: I do not deny that the provisions of this 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 drastic measures as possible.

Another point was made by my Honourable friend Pandit Bhagwata that never in the last two months we saw such a Bill brought before this legislature. That is true; but I may point out that not to speak of 50 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.
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 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 this 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 the 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 are 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 Thakurdas Bhardava 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 which make it unlikely that with these 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 must however be 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.

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

Mr. Chairman: Mr. Aney.

Mr. R. 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 counteract 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) (d). The attention of the Honourable Member is invited to my replies to Starred questions Nos. 92 and 221.

TRADE AGENTS APPOINTED BY LOAN 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.