

**14.55 hrs.**

**Title: Consideration of the Explosive Substances (Amendment) Bill, 2001.**

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI CH. VIDYASAGAR RAO): Sir, on behalf of Shri L.K. Advani, I beg to move:

"That the Bill further to amend the Explosive Substances Act, 1908, as passed by Rajya Sabha, be taken into consideration. "

Sir, as the hon. Members are aware, the Explosive Substances (Amendment) Bill, 1998 was passed by this august House on 17.12.1988 but before the consideration of the Bill in the Rajya Sabha, the 12<sup>th</sup> Lok Sabha was dissolved and the Bill accordingly lapsed. For the information of this august House, it may be informed that incidents of bomb explosions have been on the increase in the recent past in various parts of the country, particularly in the States of Punjab, Jammu & Kashmir, Tamil Nadu, Andhra Pradesh and North East and have caused immense loss of life and property. The frequent occurrence of such incidents has adversely affected the security environment in the country and created serious law and order situation. Enquiries have revealed that terrorists and anti-national elements are increasingly using sophisticated variety of explosives like RDX (Research Development Explosive), PETN (Penta Erythritol Tetra Nitrate) and other similar types of explosive substances in carrying out their nefarious activities. These improved varieties of explosives are difficult to detect in the normal course and are far more lethal and damaging than conventional explosives.

Since the existing Explosive Substances Act, 1908 makes no distinction between offences involving use of conventional types of explosives as compared with the improved and sophisticated types of lethal explosives, a review of the provisions of the existing Act was conducted by the Ministry of Home Affairs so as to make its provisions more stringent in respect of explosions carried with the use of sophisticated explosives like the RDX and PETN.

The Bill was introduced again in the Rajya Sabha on 23.12.1999 and considered by the Parliamentary Standing Committee on Ministry of Home Affairs in its meeting held on 8.2.2000. In their Report, the Committee had made some recommendations which have been considered in consultation with the Ministry of Law, Justice and Company Affairs and the Ministry of Commerce and Industry and had been accepted by the Government by and large and based on the recommendations of the Committee, certain amendments were also made to the Bill, mainly the following :-

1. Clause 2(b) of the Bill to be amended to enable the Central Government to include any new special category 'explosive' substance by issue of a notification;
2. To recast the wordings of Sections 3, 4 and 5 of the Act so as to prescribe minimum punishment for various offences and to enhance the level of punishment under these Sections of the Act to the level of death penalty and rigorous imprisonment for life in case where RDX, PETN and other similar types of explosives or combination thereof and remote control devices are used to cause such explosions; and
3. To add a new clause in the Bill as to provide for the exercise of powers of sanction of prosecution by the District Magistrate in the States/UTs in place of the Central Government.

I am happy to inform the hon. Members that this Bill has since been considered and passed by the Rajya Sabha on 20.11.2001.

With the above, I request that the Explosive Substances (Amendment) Bill, 2001 as passed by the Rajya Sabha be considered and passed by this august House also.

MR. CHAIRMAN : Motion moved:

"That the Bill further to amend the Explosive Substances Act, 1908, as passed by Rajya Sabha, be taken into consideration. "

SHRI ADHIR CHOWDHARY (BERHAMPORE, WEST BENGAL): Mr. Chairman, Sir, the piece of legislation under the title, 'Explosive Substances (Amendment) Bill, 2001' was moved and it had already been passed in the Rajya Sabha, with an apparent aim of invoking more stringent laws in dealing with the ever explosive situation prevailing in India, which has been created by numerous terrorist outfits in propagation to their causes unmindful of the consequences whatsoever.

**15.00 hrs.**

Thus culminating into destruction of properties worth crores of rupees and the perishing away of thousands of innocent lives in India. Terrorist organisation is hard to be distinguished without having the expertise in triggering off

explosion. It becomes a convenient tool to propagate their causes in a violent way so that it may easily draw the attention of the common people.

Sir this legislative document has sought new Sections for Sections 2, 3, 4 and 5 of the Explosive Substances Act, 1908. The origin of this Bill 1908, which consists of seven Sections, lies in Bengal which had erupted into a serious and severe political violence in the aftermath of Bengal Partition. This was conspired by the British imperialists to weaken the anti-British political agitation in Bengal. In the present world, more stringent measures are required to snuff out the menace of terrorism which has not only crossed the national borders but also assumed a global dimension. I cannot but support the Bill. But a few questions need to be addressed with cogent clarification.

First, the Bill is not free from apprehension in its content. The proposed legislation, I must say, indicates a casual and superficial approach. A comprehensive and holistic approach is the need of the hour because the pangs of terrorism are being experienced not only by the people of India but also by the entire world. Here, only the provisions of Sections 2-5 of the principal Act are sought to be amended in order to intensify punishment. Here, the explosive material has been categorised in view of the lethality of the concerned substances such as RDX and so many other materials which the Minister has said earlier.

**15.04 hrs.** (Dr. Raghuvansh Prasad Singh *in the Chair*)

But discrepancies are at many places in this Bill. Here I would like to point out one thing. As far as punishment is concerned, one may be punished with death or imprisonment for life under clause 3, but the same is found guilty under clause 4 may be punished with only imprisonment for life.

It is like two kinds of rewards for the same results. May I ask the hon. Minister whether there is a semantic nuance between 'imprisonment for life' and 'rigorous imprisonment for live'? This needs to be cleared.

As per clause 5 of this Bill, 'Any person who makes or knowing has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished' Here, it is assumed that the burden of proof being incumbent upon the accused. How do you define 'reasonable suspicion'? What are the parameters in this Bill to denote 'reasonable suspicion'? This point needs to be clarified.

Further, this Bill has sought to amend Section 7 whereby the sanctioning authority would now be entrusted upon District Magistrate. It was hitherto under the control of the Central Government. May I know whether the District Magistrate's Office is equipped enough to dispose of this kind of cases? Here you have talked about special category explosives with high plasticity and low evaporation. I would like to know whether any special court is going to be installed to dispose of such cases.

May I know how many explosions have taken place during the last ten years and how much amount of explosive materials have been seized so far? I would like to know whether you are going to deploy any special category of armed personnel to deal with the people who are in possession of highly explosive materials like RDX.

The aspect of *mens rea* has also been raised by the Standing Committee on this. It also has to be cleared.

We know that India is on tinderbox. From Kashmir to Kanyakumari and from Gujarat to the North-East, the entire country is awash with a plethora of terrorist organisations. Explosion has become the order of the day. The mournful demise of innocent passengers in 1985 when the aircraft Kanishka was blown in mid-air is still haunting us. Our beloved leader Shri Rajiv Gandhi was blown into pieces. In Bombay, explosions had taken a toll of hundreds of lives. In the recent past, there was a bomb fidayeen attack on the Jammu and Kashmir Assembly. It also took a toll of many innocent lives. These are just a few cases.

The entire world had observed with horror the crashing of passenger planes into the WTC towers and the Pentagon. This is the first time we are experiencing that passenger planes could be converted into fixed-wing missiles, which could create a horror. Only 19 terrorists had played havoc and we had observed it on our TV screens, where it was flashed 'USA under attack'.

Are we prepared to deal with such situations? All of us are familiar with car bombs, truck bombs and human bombs.

But, now, it is bio-terrorism; chemical-terrorism; and radio-active terrorism, which are appearing on the horizon.

Sir, today, I have observed in the newspapers that a balloon bomb is also in the arsenal of terrorist organisations, that is, Al Qaeda. I would like to know whether we are prepared to deal with such situations because these are all exotic explosives hitherto unknown to us. I would like to suggest to this Government that we should explore some

preventive measures because without having effective preventive measures, we cannot snub out this terrorism.

Sir, first of all, we have to find out as to how these explosive materials have been penetrated into this country and whether the terrorist organisations are able to procure these materials indigenously or they are being catered by any foreign country.

Sir, as we all know, our terrorist organisations from Kashmir to North-East are being aided and abetted by hostile countries. Therefore, we have to build up such kind of Armed Forces. Our border post, our BSF men, so far, I know, are not well equipped to detect such explosive materials with their equipment and machineries in their possession. Therefore, it needs a special category of armed personnel to deal with these anti-national activities.

Sir, it is also sometimes coming up in the newspapers that some kind of pilferage is also going on in our Ordnance factories. So, we are besieged by internal and external enemies. Therefore, these kinds of clandestine activities have to be stopped and more stringent laws are required in this regard.

Sir, as we all know, in foreign-airliners, sniffer dogs are being used to detect the explosives. Airline is a conduit for carrying explosive materials.

Therefore, I am supporting the Bill. However, again, I would request the Government not to say anything about POTO. I know to have it implemented is Government's moto. But this POTO should not be passed in toto because we have decided to put a veto.

PROF. R.R. PRAMANIK (MATHURAPUR): Mr. Chairman, Sir, I rise to speak on the Explosive Substances (Amendment) Bill, 2001. I spoke on this Bill when it came before the House in 1999.

Now, I shall confine my speech mainly on my amendments, which I am placing on the Table of the House.

Firstly, in this Bill, under section 2, the definition of Explosive Substances is not clear. It is very casually drafted. An explosive substance is defined as an explosive substance. Is it a definition?

Sir, I know that you are a Professor in Mathematics. An explosive substance is an explosive substance. Is it a definition? Also apparatus, machine or implement can it be called an explosive substance? It is very casually drafted.

Now, an explosive substance should be defined in a law. It should be very clear, without any ambiguity. It should be like this:

There are two types of explosive substances. One is the conventional one and the other is the non-conventional one, that is the nuclear explosive. According to my submission, in the conventional sense, the explosive substance is defined as a solid, gas or liquid material and not an apparatus. It is only a material which, when triggered, will release a great amount of heat and pressure by way of a very rapid self-sustaining exothermic decomposition. That is exactly the definition of an explosive substance. But here, in the Bill, it is an apparatus, it is a machine. These are all explosive substances as defined here. This should be corrected. It is a very weak definition.

As regards the non-conventional one, last time also I pleaded to include the non-conventional explosive, that is the nuclear explosive in this Bill. You know and every nuclear scientist knows that even a sub-critical mass is harmful. For a nuclear bomb, for an atom bomb, the critical mass is there from 2 kilograms of Uranium-235 to 100 kilograms and less quantity for Plutonium. Now, a sub-critical mass can be rendered to critical mass by suitable pressure and suitable configuration. As it is possible, a small atom bomb is now a reality. It is called a 'DAT' atom bomb or a 'trash can' atom bomb. The 'trash can' atom bomb has got a different mechanism. I will explain it later on. Now, if this sub-critical mass of small quantity, a few kilograms, say one kilogram or two kilograms of Uranium-235 explodes, it is a sub-critical atom bomb which is equivalent to 320 MT of TNT. It can demolish this Parliament House totally. So, the sub-critical atom bomb is a reality. The small atom bomb is a reality. The 'trash can' atom bomb is a reality. It is an explosive substance. It is like the suitcase bomb. You can see in the newspapers that Osama Bin Laden is carrying 125 such atom bombs. They can be carried in a suitcase which can be exploded anywhere.

The 'trash can' atom bomb is a very dangerous bomb. There is some nuclear waste, either Plutonium or Uranium-235 being sold in the black market in the world that is coming from the erstwhile Soviet Union, Kazakistan. That can be purchased. These terrorists are in possession of those nuclear waste of Uranium-235 and Plutonium. A 'trash can' bomb of a quantity of one kilogram or two kilograms can be put inside a conventional bomb. If such a thing explodes in Delhi, then radio-active materials will come in the air and instantaneously some hundreds of people will die and thousands of people will later on be attacked by cancer and the whole of air and water will be polluted radio-actively and the whole population will have to evacuate. This is the danger of this 'trash can' bomb. This is the opinion of the scientists of an institution CERN in Switzerland. This is the opinion of the topmost nuclear scientists there. I want to request the hon. Minister concerned, through you, to include this non-conventional nuclear device

also in this Bill.

Sir, if you permit, I will read from *The Statesman* of 22<sup>nd</sup> September, 2001 a news story titled : 'Trash can bomb' can fall into the hands of terrorists. It is a small one. It says:

"Top nuclear scientists are calling it the 'trash can' bomb. The bomb, actually a possible rough-and-ready nuclear device, could fall into the hands of terrorists in the next few years.

Leading scientists from CERN or The European Council for Nuclear Research and the Commissariat a l' Energie Atomique, now in India, speak of the distinct possibility of large quantities of uranium falling into the hands of terrorists in the near future and then, a shower of radioactivity over targets, usually big cities. There will be no conventional bomb, a CEA official said. What the terrorists do is package some nuclear waste or uranium or plutonium which are used to make nuclear weapons in an ordinary bomb."

"When the bomb, placed in the middle of a big city for effect, explodes, it would spray radioactive material over large areas. It would not mean a conventional fire ball as seen over say, Hiroshima or Nagasaki and the deaths of hundreds of thousands of people. But surely, several hundred people would die immediately and thousands would receive huge doses of radioactivity causing cancer or other terminal disease in the future. The economic and psychological impact would be very high. The area would have to be evacuated and this would hurt the economy of the country, said Mr. Jurguen Schukraft, a senior CERN official. The area would be contaminated and unusable for years. Just how contaminated an area can become would depend on the quality and quantity of fuel used. Plutonium, for example, usually has a longer 'half-life' than uranium. Even with uranium, it has to be seen if it is weapons-grade uranium or depleted uranium or anything in between. The explosion, whatever the fuel, would cause tremendous panic, he felt. Such a possibility was very likely in the near future, he said. In Turkey, he said, officials found people trying to sell one kg of weapons-grade uranium-235 in the black market. A kg. of U-235 would be enough to contaminate a large area for many years, he said. Much of these substances are being smuggled out of Russia and other Republics that were once part of the USSR, he said. There are defunct nuclear power stations even in the Central Asian Republics – at one time, Kazakistan had the largest stockpiles of nuclear weapons. Though terrorists may find it very difficult to get their hands on nuclear weapons or manufacture one, they are perfectly capable of making trash can bombs, he said."

So, 'trash can' bomb' is a reality and it should be included in this Bill.

Sir, now I would come to clause 2, sub-clause (B) about many explosives that could come up in future. Many of us would know that the RDX was invented in the year 1899 but it was used as an explosive in the year 1920. So, it took some 20 years to be used as an explosive. So, there are many such things that could come up in future, so, this clause must have this provision to include those substances that may come in future. I would give my amendments to Section 2, sub-clause (B) where mention has been made about explosions being effected by remote control devices and any such other substances. I would like to mention that it should not be mentioned as 'any other substances'. It needs to be qualified as to 'what substance'. I would give my amendment to the effect that it should be mentioned that any other substance that may come in future to be included in the special category of explosive substances. It should be made clear. There should not be any ambiguity in this regard. It has to be appropriately qualified that that substance would be included later on as a special category explosive substances. You cannot name 'any other substances' to be included in the list of explosive substances.

Mr. Chairman, Sir, mention has been made about according heavy punishments from rigorous life imprisonment to giving death sentences.

Advanced countries are trying to abolish capital punishment and we are trying to introduce it here in this Bill! I want the Government to introduce here the words 'knowingly and wilfully'. Apart from unlawfully and maliciously, Mr. Minister, a person must do this wilfully to be punished. I am a lay man. Suppose somebody puts one kilogram of this substance in my pocket and I do not know that it is illegal to carry it. What will happen under the provisions of the Bill is that I will be hanged. You are providing for death punishment for just possessing this substance.

A similar case came up under British rule in Calcutta High Court. At that time Ashutosh Mukherjee the lawyer pleaded the case on the grounds of the accused not doing it 'knowingly and wilfully'. It is very meaningful. Doing something only unlawfully and maliciously should not be enough. You are accusing somebody and you are trying to hang that person. You must be 100 per cent sure that he is guilty of the crime. In our law, there is the concept of benefit of doubt. As per Indian law, you cannot hang an innocent person. So, the words 'knowingly and wilfully' should be included here. Only 'unlawfully and maliciously' is not correct.

See how casually Section 3(a) and (b) are drafted. According to 3 (a), any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished for life, etc. Under 3(d), any person who unlawfully and maliciously causes by any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, etc. So, if you kill a person with a pipe gun, you are imprisoned for life. And if you kill a person with a pistol, you will be hanged. Can it be like that? It is drafted like that. For the same consequence, punishment is different. One consequence is caused by an explosive substance and the other is caused by a special category explosive substance. The consequence is the same but punishment is different. How can that be? For killing a person, either by a sword or by a pistol, punishment should be the same. Moreover, nobody needs to die here. Whether any injury to a person or property is actually caused or not, the accused would invite this punishment.

Mr. Chairman, Sir, through you, I would request the Minister concerned not to introduce capital punishment. That is my urgent request. In England, in the remote past, there was an anti-smoking law under which penalty for smoking was death. One person was hanged for smoking though he did not know that smoking would invite capital punishment. On that issue, the British people agitated. Death penalty was later abolished in Britain forever. At a time when many advanced countries are thinking of abolishing death penalty, you are providing death penalty only for possessing explosive substance! I would request the Minister to remove this portion that talks of capital punishment from the Bill.

Father of the nation Mahatma Gandhi said, 'God alone can take life because God alone can give life'.

So, God can take life because he gives it. We cannot take life. Life is very precious. Many innocent people may be hanged, if this Bill is enacted. So, I will request the Minister concerned, through you, Mr. Chairman, not to introduce death punishment here; I would request him to have even rigorous imprisonment. For possessing ordinary explosives, he could give life imprisonment and for possessing high explosive substances, he could give rigorous imprisonment, and not death sentence. Kindly do not give that.

**सभापति महोदय :** आपका भाषण जारी रहेगा। अब हम प्राइवेट मैम्बर्स रिजोल्यूशन लेंगे।

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