C.B. (II) No. 201

LOK SABHA

THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

(Report of the Joint Committee)

(Presented on the 20th November, 1967)

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI
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REPORTS OF THE JOINT/SELECT COMMITTEE PRESENTED TO LOK SABHA DURING 1967.

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LOK SABHA SECRETARIAT

C_O_R_R_I_G_E_N_D_A

to

the Report of the Joint Committee

on

The Unlawful Activities(Prevention) Bill, 1967.

Report

1. Page iv, against S.No. 35 for "Parathasarathy" read 'Parthasarathy'
2. Page v, in the foot note for '19 7' read '1967'.
3. Page viii, line 5, for 'Sub-clause' read 'Sub-clauses'.
4. (i) Page xi, line 8 of para 2, before 'कोई' insert 'निश्चित ही नहीं'
   (ii) line 5 of para 4 after 'इन insert 'वे
   (iii) line 7 of para 4 for 'सुपदा read सुरक्षा
   (iv) line 11 of para 4 for 'प्रयाग read प्रयोग
5. Page xii, line 12 of para 5, for 'न्यायाधीस' read 'न्यायाधीश'
6. Page xvi, line 2 of para 4, for 'provise' read 'proviso'.
7. Page xvii, omit the whole matter.
8. Page xix, line 1 of para 2, before 'distinct' insert 'a'.
   (ii) line 5 of para 3, for 'tentamounts' read 'tantamounts'.
   (iii) line 9 of para 3, for 'seocession' read 'secession'.
9. (i) Page xx, line 1 of para 2, for 'cloaths' read 'clothes'
   (ii) line 2 of para 3, for '(1) cessation' read '(1) secession' and '(2) cessation' read '(2) cession'.
   (iii) line 1 of para 4, for 'cessation' read 'secession'.
10. Page xxii (i) line 12 of para 13, after 'to' insert 'any'
   (ii) line 19 of para 13, for 'persuing' read 'pursuing'

P.T.O.

11. Page xxiii, last line for 'agrees.' read 'agrees." '
12. Page xxv,(i) line 1 of para 4. for 'धारा' read 'उप-धारा'
(ii) line 3 of para 4, for 'जिनक' read 'जिनके'
13. Page xxvi, line 3 of para 5, for अज्ञा read आज्ञा
14. Page xxix, line 5, for 'SUNDR' read 'SUNDAR'

Bill as reported

15. Page 2,(i) line 5, for 'claim' read 'claim'
(ii) line 3 from bottom for 'has' read 'has,'
(iii) correct the line numbering.
16. Page 3, (i) marginal heading to clause 4, for 'Trihunal' read 'Tribunal'.
(ii) line 24, for 'to' read 'of'
17. Page 4, line 30 for 'attendence' read 'attendance'
18. Page 5, in the margin, against line 9, for '1896' read '1898'
19. Page 6,(i) line 8, for 'credit' read 'credits'
(ii) line 2 from bottom, in the margin, for '5' read '40'
20. Page 7, (i)line 13, for 'order' read 'orders'
(ii)line 31, for 'in' read 'in,'
(iii)line 32, for 'then' read 'then,'
21. Page 8, (i)line 16, for 'Distrct' read 'District'
(ii)line 24, for 'an' read 'in'
(iii)line 39, for 'Whosoever' read 'Whoever'
(iv)line 44, for 'oredr' read 'order'
22. Page 10,(i)marginal heading to clause 17, for 'Procecution' read 'Prosecution'
(ii)line 24, for 'Provisions' read 'provisions'
(iii)marginal heading to clause 20 for 'ect.' read 'etc.' and for 'enactmen s' read 'enactments'

Appendices

23. Page 15, between S.Nos. 20 and 21, insert 'Rajya Sabha'
24. Page 16, insert '3.' at the beginning of line 9.
25. Page 19, S.No.22 for 'Sunder' read 'Sundar'
26. Page 22, line 15, for 'diclaims' read 'disclaims'
27. Page 24, line 5, for 'Shushila' read 'Sushila'
28. Page 25. line 2, for 'Srinivasaradhan' read 'Srinivasavaradhan'
29. Page 27, in the marginal heading for '1889' read '1898'
30. Page 28, para 19 for 'Council' read 'Counsel'

New Delhi,
The 4th December, 1967.

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JOINT COMMITTEE ON THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

COMPOSITION OF THE COMMITTEE

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Kushok Bakula
4. Shri S. M. Banerjee
5. Shri Bedabrata Barua
6. Shri R. D. Bhandare
7. Shri Krishna Kumar Chatterji
8. Shri Tridib Chaudhuri
9. Shri N. T. Das
10. Shri Devinder Singh
11. Shri Surendranath Dwivedy
12. Shri Ram Krishan Gupta
13. Shri V. Krishnamoorthi
14. Shri Madhu Limaye
15. Shri Raja Venkatappa Naik
16. Shri Jagannath Pahadia
17. Shri Nanubhai N. Patel
18. Shri P. Ramamurti
19. Shri K. Narayana Rao
20. Shri A. S. Saigal
21. Shri B. Shankaranand
22. Shri Prakash Vir Shastri
23. Shri Vidya Charan Shukla
24. Shri S. S. Syed
25. Shri Atal Bihari Vajpayee
26. Shri Y. B. Chavan

Rajya Sabha

27. Shri Abid Ali
28. Shri Surjit Singh Atwal

29. Shri Sundar Singh Bhandari
30. Shri Babubhai M. Chinai
31. Shri Chandra Shekhar
32. Shri Surendra Mohan Ghosh
33. Shri Dayaldas Kurre
34. Shri Balachandra Menon
35. Shri R. T. Parathasarathy
36. Shrimati C. Ammanna Raja
37. Shri M. Ruthnaswamy
38. Shri Niranjan Singh
39. Shri A. M. Tariq

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri L. P. Singh, *Secretary.*
2. Shri T. C. A. Srinivasavaradhan, *Joint Secretary.*
3. Shri G. K. Arora, *Deputy Secretary.*
4. Shri N. Vittal, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced on the 31st May, 1967. The motion for reference of the Bill to a Joint Committee was moved in Lok Sabha by Shri Y. B. Chavan, the Minister of Home Affairs, on the 10th August, 1967 and adopted on the same day (Appendix I).

3. Rajya Sabha discussed the said motion on the 14th and 16th August, 1967 and concurred therein on the 16th August, 1967 (Appendix II).

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 18th August, 1967.

5. The Committee held five sittings in all.

6. The first sitting of the Committee was held on the 12th September, 1967 to draw up their programme of work. The Committee at this sitting decided to hear the Attorney-General of India on the constitutional aspect of the Bill. At this sitting the Committee also decided to issue a Press Communique inviting memoranda on the Bill from the interested parties etc.

7. Two memoranda were received by the Committee from the Delhi Bar Association, Delhi and the Delhi Administration on the Bill which were circulated to the members.

8. At their second sitting held on the 16th October, 1967, the Committee heard the evidence given by the Attorney-General of India. The Attorney-General was requested by the Committee to express his opinion on the vires of the Bill and also on the question whether the restrictions proposed to be imposed by the Bill on the fundamental rights of speech and expression, assembly and to form associations or unions were reasonable. The Attorney-General was of the opinion that the proposed legislation came clearly within the ambit of clauses (2) to (4) of article 19 of the Constitution and as such the Bill would not be capable of being challenged as unconstitutional. He also was of the opinion that the restrictions which have been proposed to be imposed by the Bill on the

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*Published in Gazette of India, Extraordinary, Part II, Section 2, dated 31st May, 19 7.

Fundamental rights of individuals and associations were reasonable restrictions within the meaning of clauses (2) to (4) of article 19 of the constitution. He held the view that having regard to the situation prevailing at present in some parts of the country, some kind of legislation of the proposed nature was necessary. According to him, the subject matter of the proposed legislation is not covered by any existing law and as such the proposed legislation is not a superfluous or over-lapping one. The Attorney-General, however, considered that some sort of safeguard ought to be provided in the Bill in respect of the powers which have been given to the Government to extend the period of the ban on an unlawful association by means of a notification.

9. The Committee have decided that the evidence given before them should be printed and laid on the Tables of both the Houses *in extenso.*

10. The Committee considered the Bill clause-by-clause at their third and fourth sittings held on the 17th and 18th October, 1967 (both in the forenoon and afternoon).

11. The Report of the Committee was to be presented on the 13th November, 1967. As this could not be done the Committee requested for extension of time for presentation of their Report upto the 20th November, 1967, which was granted by the House on the 14th November, 1967.

12. The Committee considered and adopted the Report on the 12th November, 1967.

13. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

14. *Clause* 2—The Committee are of the opinion that since the expression "sovereignty and integrity of India" has been used in the Constitution (Sixteenth Amendment) Act, 1963, that expression should be used as a whole and should not be split up into two so that the implications of that expression may not be lost. Items (ii) and (iii) of sub-clause (f) have, therefore, been combined into one.

The other changes made in sub-clauses (a), (d) and (g) of the clause are of a drafting nature.

15. *Clause* 4—The Committee consider that where a notification issued under sub-clause (1) of clause 3 has been referred by the Central Government to the Tribunal for adjudication, the Tribunal must decide the matter within some time limit. The Committee have, therefore, amended sub-clause (3) to provide for a maximum period of six months from the date of issue of the said notification, within which the Tribunal must decide the matter referred to it.

The other amendment made in sub-clause (3) is to make the intention clear.

16. *Clause* 5—The Committee are of the view that in order to inspire confidence of the public in the Tribunal and from the point of administrative convenience, the Tribunal should consist of a sitting Judge of a High Court.

The clause has been amended accordingly.

17. *Clause* 6—The Committee are of the opinion that it was not desirable that the Government should have the power to continue the ban on unlawful association without a fresh judicial determination with regard to such continuation.

Proviso to sub-clause (1) has, therefore, been omitted.

18. *Clause* 7—The amendment made in sub-clause (1) is clarificatory in nature. The Committee feel that investigation under this clause should only be entrusted to an officer belonging to a Gazetted rank.

Sub-clause (2) has been amended accordingly.

Amendment in sub-clause (5) is of a consequential nature.

19. *Clause* 8—The Committee are of the view that articles used in the ordinary course of living or articles of a trivial nature should not be listed as moveable properties and that near relatives of any person, who is a resident of a prohibited place, should be exempted from the provisions of sub-clause (4). The Committee also consider that under sub-clause (4) the District Magistrate himself and not any officer authorised by him should issue an order and further under sub-clause (6) police officer not below the rank of sub-inspector should have the power to carry on searches etc.

Sub-clauses (2), (4) and (6) of this clause have been amended accordingly.

20. *Clause* 10—In view of omission of proviso to sub-clause (1) of clause 6 which in effect restricts the operation of notification issued under that clause to two years without fresh notification, the Committee consider that the ends of justice will be met if the punishment provided under this clause, for being a member of an unlawful association, is reduced from three years to two years.

The clause has been amended accordingly.

21. *Clause* 12—In view of the reasons given for reduction of term of punishment under clause 10, the Committee have also decided to reduce the punishments provided under sub-clauses (1) and (2) of this clause

from three years to one year. The other amendments in sub-clauses (1) and (2) are of a drafting nature.

Consequent to insertion of a new clause, namely, clause 14, sub-clause (3) has been omitted.

22. *Clause* 13—Sub-clause (1) and (2) have been amended to reduce the punishments from ten and seven years to seven and five years respectively.

23. *New Clause* 14—The Committee feel that all offences under the Act should be made cognizable irrespective of the maximum period of imprisonment provided thereunder.

A new clause has, therefore, been added for the purpose.

24. (*Original Clause* 15)—It was stated on behalf of Government that as in the case of parent associations, in the case of succeeding associations also all the processes envisaged under the Act will be initiated and gone through before declaring it unlawful.

The Committee consider that since the Government proposes to take all the steps afresh in such a case, this clause is a superfluous one and as such its retention is not necessary. The clause has, therefore, been omitted.

25. *Clause* 18—The word 'Central' has been omitted in sub-clauses (1) and (2) to cover both the Central and the State Governments within the scope of this clause.

26. The Joint Committee recommend that the Bill as amended be passed.

SUSHILA NAYAR
Chairman
Joint Committee

NEW DELHI;
The 12th November, 1967.
Kartika 21, 1889 (*Saka*).

MINUTES OF DISSENT

I

I am totally opposed to the Bill. In spite of the weighty opinion of the Attorney-General of India that the Bill is a permissible legislation under exception to Article 19 of the Constitution, I still consider that the Bill contains provisions curtailing the Fundamental Rights guaranteed by the Constitution. I do not agree that the restrictions are reasonable within the meaning of Article 19. True, clauses to Article 19 do not prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of any right conferred by the said Article in the interest of sovereignty and integrity of India.

2. The wording of the clauses to Article 19 has to be carefully noted especially the words "Nothing..... prevent" and the words "imposes reasonable restrictions".

3. The State is not prevented from making the necessary legislation in the interest of sovereignty and integrity of India. The Hon. Home Minister while introducing the Bill has not made out a case regarding any threat to the sovereignty and integrity of India. If there is no such case, the Government certainly is prevented from bringing forward such legislation.

4. Again, the question whether the restrictions are reasonable has to be gone into very carefully. The wording of section 2 which defines unlawful activity is so wide that any honest expression or suggestion even for a peaceful settlement of a border dispute might come within the mischief of the provision. One can understand violent activities by a group of persons with the intention of bringing about the cession of a part of India or the secession of a part of the territory of India to be unlawful but words spoken or written or mere signs etc. are now within the purview of "unlawful activity". This will result in stifling honest opinion and criticism.

5. A notification issued under section 3 and confirmed by the Tribunal remains in force for a period of 2 years. This is a real threat to the right of organisation. A notification after confirmation by the Tribunal should have validity only for a period of six months. The powers to prohibit the use of funds (section 7), to notify places (section 8), to conduct search [section 8(6)] and the penalty imposed under Chapter III are all excessive and drastic and not required under conditions now existing in the country.

6. Further, in a big country like ours where free and full development of various nationalities has yet to take place and where the so called "backward classes and tribes" have yet to advance, a legislation of this type can only help to create suspicion and mistrust among such people and may prove even disruptive.

NEW DELHI;
The 13th November, 1967

BALACHANDRA MENON

यह बड़ा सराहनीय उद्देश्य है कि देश की एकता, अखण्डता तथा प्रभुसत्ता को बनाये रखने का ध्यान रखा जाये परन्तु यह विधेयक, जिस रूप में यह संयुक्त समिति से आया है, सत्तारूढ़ दल के अधिकारों में एक और अधिकार बढ़ाने के लिये ही है जिससे कि देश में उसके विरुद्ध जो तनाव बढ़ रहा है उसे वह रोक सके। इस कानून को बनाने में सरकार का उद्देश्य भारत की प्रभुसत्ता और क्षेत्रिय अखण्डता को बनाये रखने और उसकी रक्षा करने का नहीं है अपितु अपने को सत्ताहीन होने से बचाने के लिए है।

2. किसी भी देश ने, स्वतन्त्र होने के बाद, स्वेच्छापूर्वक इतना अधिक क्षेत्र नहीं खोया है जितना कि भारत ने कांग्रेस शासन के अधीन पिछले बीस वर्षों में। सत्तारूढ़ दल के सदस्यों के लिये देशभक्ति और राष्ट्रीयता के अर्थ समय-समय पर, स्थान स्थान पर और व्यक्ति-व्यक्ति के संदर्भ में बदलते रहे हैं। भारत के पहले प्रधान मंत्री ने अपनी इच्छा से, संसद् से भी परामर्श लिये बिना ही, बेरूबारी क्षेत्र पाकिस्तान को देने के लिये संधि कर ली। दूसरे प्रधान मंत्री ने भी, चाहे दबाव में आकर ही सही, हमारे राज्य का काफी बड़ा भाग, ताशकन्द में पाकिस्तान को बदले में दे दिया। क्या पहले दो प्रधान मंत्रियों के ये कार्य भारत की राष्ट्रीय प्रभुसत्ता और क्षेत्रीय अखण्डता को बनाये रखने के लिए थे? कोई भी नहीं जानता कि भारत की तीसरी प्रधान मंत्री अन्तराष्ट्रीय शान्ति को खरीदने के अपने उत्साह में, राज्य क्षेत्र के रूप में पाकिस्तान और चीन को क्या कीमत चुकायेंगी।

3. मेरा यह दृढ़ विश्वास है कि जब तक संसद् द्वारा बनाये गये कानूनों को, जिनका पहले ही बाहुल्य है, उनकी भाषा और भावना दौनों दृष्टिकोणों से, कार्यान्वित नहीं किया जाता, तब तक चाहे कितने ही कानून बनाये जायें राष्ट्र की एकता एवं अखण्डता बनाये रखने में सरकार को कोई सहायता नहीं मिलेगी।

4. वर्तमान विधेयक द्वारा जिन दैत्याकारी शक्तियों की मांग की गई है, वे संविधान के अनुच्छेद 19(2)(3) तथा (4) के अन्तर्गत निहित "भारत की प्रभुसत्ता तथा खण्डता के हितों के लिये" उचित प्रतिबन्ध नहीं कही जा सकती। विधेयक के साथ संलग्न 'उद्देश्यों तथा कारणों के विवरण' से भी सरकार द्वारा इतनी विशाल शक्तियां प्राप्त करने का औचित्य प्रतीत नहीं होता। इस विधेयक से इन परम्परागत न्याय सम्बन्धी सिद्धान्तों की भी अवहेलना होती है कि किसी व्यक्ति को स्वयं उसके द्वारा किये गये अपराध पर ही दण्ड दिया जा सकता है "संबंधों द्वारा हुए अपराध" पर नहीं। इस प्रकार के अपराध की धारणा राष्ट्र की सुपक्षा निकट भविष्य में गम्भीर विपत्ति की अवस्था में ही न्यायोचित है और इस अवस्था से निबटने के लिये संविधान में प्रर्याप्त उपबन्ध है। यदि इस विधेयक को, संयुक्त समिति द्वारा की गई सिफारिश के रूप में विधान का रूप दे दिया तो क्या सरकार ये शक्तियां उन संस्थाओं और अनेकों "मोर्चों" के विरुद्ध प्रयाग करेगी जो खुले आम राजद्राह और अलगाव का प्रचार करते हैं? सच तो यह है कि सत्तारूढ़ दल "भारत की प्रभुसत्ता तथा अखण्डता" बनाये रखने के लिये इतना इंच्छुक नहीं है जितना वे अपने दल की प्रभुसत्ता और एकता बनाये रखने के लिये है। डर यह है कि ये असीम

शक्तियां उन दलों के विरूद्ध काम में लाई जायेंगी जो भारत भूमि के पूर्ण एकीकरण और एकता, के समर्थक हैं। शासक दल अपनी सत्ता, जो उसके हाथों से धीरे धीरे निकलती जा रही है बनाये रखने के लिये ऐसे कानून बनाने के लिये इच्छुक रहती है जो राष्ट्र हित में न हों और जिनसे दलगत उद्देश्यों की पूर्ति हो। यह विधेयक इस बात का एक ज्वलन्त उदाहरण है।

5. विधेयक के खण्ड 5 में एक न्यायाधिकरण स्थापित करने की व्यवस्था है जो यह निर्णय करेगा कि अधिसूचित किसी संस्था को अवैध घोषित करने के लिये न्यायोचित आधार है या नहीं। यह सर्वविदित है कि इस देश में न्यायाधिकरण सफल नहीं रहे हैं। उन्हें जन-साधारण का विश्वास और सम्मान प्राप्त नहीं हुआ है। यह स्थिति नहीं है कि उनकी निष्पक्षता के बारे में सन्देह न किया जाता रहा हो। इन न्यायाधिकरणों के लिये न तो सिविल प्रक्रिया संहिता आवश्यक है और न दण्ड प्रक्रिया संहिता ही। नैसर्गिक न्याय के सिद्धान्तों का भी वे सम्मान नहीं करते। अतः कोई संस्था विशेष अवैध संस्था है या नहीं, इस बारे में अन्तिम निर्णय करने का काम उच्च न्यायालय को सौंपा जाना चाहिये न कि सरकार द्वारा नियुक्त न्यायाधिकरण को। जब तक इसकी प्रक्रिया सरकार द्वारा निर्धारित की जाती रहेगी और सरकार को न्यायाधिकरण के सदस्यों के चयन का अधिकार प्राप्त रहेगा, तब तक इस बात से कोई अन्तर पड़ने वाला नहीं है कि न्यायाधिकरण का सदस्य एक वर्तमान न्यायाधीश है या कोई अन्य बाहरी व्यक्ति है, हालांकि किसी अन्य बाहरी व्यक्ति की अपेक्षा एक न्यायाधीस को जनता का अधिक सम्मान प्राप्त होगा। मेरा यह दृढ़ विश्वास है कि इस प्रकार के विषयों को न्यायाधिकरणों के लिये न छोड़ा जाये। इस तर्क में कोई जान नहीं है कि उच्च न्यायालयों में पहले ही अत्याधिक काम है क्योंकि यदि अधिकारों का प्रयोग ठीक प्रकार से केवल भारत की प्रभुसत्ता तथा क्षेत्रीय अखण्डता बनाये रखने के लिये किया गया तथा उसका प्रयोग किसी अन्य बाह्य प्रयोजन के लिये नहीं किया गया तो इस अधिनियम के अन्तर्गत मामले अधिक नहीं होंगे। इस विधेयक के अन्तर्गत इस प्रस्तावित न्यायाधिकरण की आड़ में सरकार द्वारा तानाशाही अधिकार प्राप्त किये जा रहे हैं।

6. इस विधेयक के खण्ड 19 के अन्तर्गत जिस सीमा तक शक्ति का प्रत्यायोजन प्रस्तावित है वह आपत्तिजनक है। इस खण्ड में यह व्यवस्था की गई है कि धारा 7 और 8 के अन्तर्गत केन्द्रीय सरकार गैर-कानूनी संस्था की धन-राशियों के उपयोग पर रोक "लगाने" तथा जिन स्थानों को गैर-कानूनी कार्यवाहियों के लिये प्रयोग किया जा रहा हो उनकी घोषणा करने का अधिकार केवल राज्य सरकारों को ही न देगी बल्कि राज्य सरकारों को भी यह अधिकार होगा कि वे यह अधिकार आगे अपने अधीनस्थ "किसी व्यक्ति" को पुनः प्रत्यायोजित कर दे और यह निर्धारित नहीं किया गया है कि ऐसा व्यक्ति कम से कम किस श्रेणी का होगा अथवा उसका शासकीय स्तर क्या होगा।

7. मेरा विचार है कि संयुक्त समिति द्वारा प्रतिवेदित रूप में वर्तमान विधेयक असफल रहेगा और उससे वे समस्यायें हल नहीं होंगी जिनको हल करने के लिये यह विधेयक लाया गया है।

नई दिल्ली ;
15 नवम्बर, 1967

प्रकाशवीर शास्त्री

It is a very laudable object that unity, integrity and sovereignty of the country is ensured but the Bill, as it has emerged from the Joint Committee, only seeks to add one more power to the elbow of the party in power in order to enable it to check the growing tension against it in the country. The motive of the Government in getting this law passed is not to maintain and protect the sovereignty and territorial integrity of India but to protect itself from going out of power.

2. No country has, after gaining independence, ceded so much of territory voluntarily as India has done during the last twenty years under the Congress rule. For the members of the ruling party the meanings of patriotism and nationalism differ from time to time, from place to place and from person to person. The first Prime Minister of India, on his own, without even consulting Parliament, made a treaty for handing over Berubari to Pakistan. The second Prime Minister also, may be under duress, bartered away large chunks of our territory to Pakistan at Tashkent. Were these acts of the first two Prime Ministers of India for the preservation of national sovereignty and territorial integrity of India? Certainly not. No body knows what price the third Prime Minister of India would, in her enthusiasm for purchasing international peace, pay to Pakistan and China in terms of territory.

3. It is my firm belief that unless the laws enacted by Parliament, already in abundance, are faithfully implemented both in letter and spirit no amount of legislative enactments would help the Government in maintaining the unity and integrity of the nation.

4. The draconian powers sought to be assumed under the present Bill could not be justified as reasonable restrictions "in the interests of the sovereignty and integrity of India" as envisaged under Article 19(2), (3) & (4) of the Constitution. Even the "Statement of Objects and Reasons" appended to the Bill does not justify assumption of such vast powers by the Government. The Bill throws overboard the traditional juristic principles that a person may be penalised only for his *personal* guilt and not for "guilt by Association". The concept of "guilt by Association" could be justified only in conditions of grave imminent peril to the nation's security and to deal with such a contingency the Constitution contains adequate provisions. If the law is enacted as has been recommended by the Joint Committee, will the Government use its powers against those institutions and numerous "fronts" which openly preach sedition and secession? The fact remains that the party in power is not so much interested in the maintenance of "sovereignty and integrity of India" as they are in

building up "sovereignty and integrity of their own party". There is a lurking fear that these sweeping powers will be used against those parties which stand for the complete unity and integration of Bharat Bhumi. The ruling party in order to retain power, which is slowly slipping from its grip, is always eager to enact laws intended to be used not for national interest but for party ends and this Bill provides a glaring instance.

5. Clause 5 of the Bill seeks to set up a tribunal for adjudicating whether or not there was sufficient cause for declaring a notified association as an unlawful association. As is very well known, tribunals in this country have been a failure. They have not commanded the confidence and respect of the people. Their impartiality has not been beyond doubt. For these tribunals neither Civil Procedure Code nor Criminal Procedure Code are necessary. They will not have regard even for principles of natural justice. Therefore, the machinery for making a final decision whether a particular organisation is an unlawful association or not should have been left to the High Court instead of to a Tribunal appointed by the Government. So long as its procedure is determined by the Government and the Government has power to pick and choose the personnel of the Tribunal, it makes little difference whether the Tribunal is manned by a sitting judge or an outsider, although the former will tend to command greater respect of the people than the latter. It is my firm belief that matters like this should not be left to Tribunals. The plea that High Courts are already burdened with overwork does not carry conviction because the cases under this Act would not be much, if the powers are judiciously used only for the maintenance of sovereignty and territorial integrity of India and not for some ulterior purposes. The proposed Tribunal under the Bill would be only a smoke screen behind which the dictatorial powers are being sought for the Government.

6. The extent of delegation of power contemplated under Clause 19 of the Bill is objectionable. It seeks to authorise not only the Central Government to delegate power "to prohibit the use of funds of an unlawful association" and "to notify places used for the purpose of an unlawful association" under Section 7 and 8 to the State Governments but also the latter are being empowered to redelegate that power to "any person" subordinate to the State Government without laying down or specifying any minimum rank or official position which such person must hold.

7. I feel that the present Bill as it has been reported by the Joint Committee will be a failure and cannot solve the problems which it is intended to solve.

PRAKASH VIR SHASTRI

NEW DELHI;
The 15th November, 1967.

III

I oppose this drastic measure as unnecessary at the present juncture. As far our party is concerned we are unmindful of this legislation but I would ask those who lend their support to this Bill, when we have repulsed the Pakistan aggression and Chinese invasion, we have managed without a legislation of this type. But why this bill is required so urgently? This Bill, as agreed by the Attorney-General brings within its mischief anything honestly spoken as an opinion even a theoretical and idealistic discussion for a peaceful settlement with our disputed neighbours. This measure places restrictions which are unreasonable on the exercise of the freedom of speech, expression and association.

2. The provisions of this Bill, which put the burden of proof on the persons or associations concerned in an abnormal judicial process. The Bill is liable to be misused by the persons in authority against their political opponents and thus drastic measure is unwarranted, ill-timed and unnecessary at this time when we need unity in everything.

NEW DELHI;
The 18th November, 1967.

V. KRISHNAMOORTHI

The explanations offered by the Government during the course of the discussion in the Joint Committee have not persuaded me to change my view that this Bill is not only not necessary but positively harmful. This Bill marks a stage in India's steady march towards authoritarianism.

2. The purpose of the Bill is ostensibly to curb activities of a secessionist character and prevent propaganda in favour of cession of parts of Indian territory to foreign powers.

3. But the Government's parleys with secessionist groups give a lie to this. As far as cession is concerned, it is not any "individuals and associations" who have been responsible for acquiescing in the occupation of large chunks of Indian territory by China and Pakistan but the Government and the ruling party themselves. The ceasefire in Kashmir in 1948-49, occupation of Kailas, Mansarover and Minsor by the Chinese, encroachments by Pakistan in the Lathitilla—Dumabari area and Chinese aggression in Longju, Barahoti and Ladakh regions and the Government's submissive policy in relation to these violations of our sovereignty and territorial integrity show that they have no moral justification for introducing this Bill. Their refusal to accept my amendment seeking to authorise the citizen to prosecute government agents/authority for supporting cession of Indian territory, whether in fact or in law or both, reveals the Government's real intentions in this regard.

4. Coming to those provisions of the Bill which the Government refused to modify, let me state that I am opposed to the provise to section 3 (3) of the Bill conferring on the Government the right to declare an association as unlawful without first going before the Tribunal. I also cannot support the proviso to section 3(2) empowering the Government to withhold reasons. I am also opposed to the two year period prescribed in section 6(1) for the operation of the notification.

5. Although the rigour of the punishments has been somewhat reduced in the Bill as reported by the Joint Committee, I feel that these provisions need to be further liberalised.

6. It would be better if the Tribunal for the purposes of this Bill would be a bench of the High Court.

CALCUTTA;
The 17th November, 1967.

MADHU LIMAYE

4. Coming to those provisions of the Bill which the Government refused to modify, let me state that I am opposed to the proviso to section 3 (3) of the Bill conferring on the Government the right to declare an association as unlawful without first going before the Tribunal. I also cannot support the proviso to section 3(2) empowering the Government to withhold reasons. I am also opposed to the two year period prescribed in section 6(1) for the operation of the notification.

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MADHU LIMAYE

CALCUTTA;
The 17th November, 1967.

V

The Bill, even as amended in Committee, is like the curate's egg, good in parts. But an egg good in parts is a bad egg. The Bill suffers from two opposite defects it attempts too much and at the same time does not include enough. It tries to legislate against secession. Secession is a fact not a right conceded or accepted in or for any State. Argument is possible against any speaking or writing on secession as was done by Daniel Webster against Calhoun in the U.S.A. And when secession occurred as a matter of fact it was fought in a war and subdued and ended. It was conceded by the Attorney-General at the second meeting of the Joint Committee that opinion or argument in favour of secession would not come under the condemnation of the Bill, only incitement to secession. And that can be proceeded against under the provisions of the Indian Constitution which defines what constitutes the Union Territory (Articles 1, 2 & 3) and Indian Penal Code (section 141) which prohibits unlawful assembly. And the fact of secession would be met by action by the Army.

2. The Bill suffers from the defect of deficiency. Only two chief kinds of unlawful activities are to be proceeded against—secession and disruption of the country as defined in the Indian Constitution (Articles 1, 2 & 3). The other kind of unlawful activity legislated against by the Bill, overthrowing the Government by law established is provided against in the Indian Penal Code (sections 121 and 121A). But no provision is made against those activities which consist in preaching (with incitement to action) a doctrine which repudiates the fundamental constitutional principles embodied in the Constitution of India which is the supreme law of the country, i.e. the doctrine and practice of the Communist Party. In fact all the unlawful activities provided against in the Bill are prohibited either by the Constitution or the criminal law of the country. The Bill therefore is a work of supererogation.

3. Nor have some of the amendments made in Committee been an improvement. For instance, in clause 5 which deals with the constitution of the Tribunal, the Chairman who under the original Bill was to be a retired judge of a High Court is under the amendment to be replaced by one who is a sitting judge of the High Court. The argument used in favour of the amendment was that a retired judge could not be as impartial and independent as a sitting judge—as if a judge's habit and practice of independence and impartiality would be lost immediately he retired.

M. RUTHNASWAMY

NEW DELHI;
The 18th November, 1967.

We have gone through the report of the Joint Committee carefully. We tried our best to modify the Bill as far as possible during the stage of consideration in the Joint Committee and we must say that changes accepted by the Committee have substantially improved the Bill.

2. Although clause 5 as amended by the Committee is distinct improvement, we are not satisfied only with this change. The present change states that a Tribunal consisting of one person who will be a sitting judge of a High Court would be appointed. In spite of the fact that a time-limit has been put for a decision by the Tribunal, we feel that on such fundamental matters like this which will deal with the justification of curbing the right of an association to function legally, it is always better that the final decision be let with the High Court. A Bench of the High Court would inspire greater confidence and the parties concerned would be able to get better legal advice and assistance. We would therefore suggest a further change.

3. After giving full consideration to all aspects of the question, we are not convinced that such a bill is at all necessary. The fundamental right of association should not be curbed on such flimsy grounds and the Executive should not be vested with such arbitrary powers. We admit that any trend or movement which tentamounts to the disintegration or threatens the sovereignty and territorial integrity of the country must not be permitted and in no case any person or association should be permitted to indulge in activities for the cession of a part of the territory of India or for the seccession of a part of our territory from the Union of India. This would be more than a treasonable act. But the powers already vested in the Executive in different Acts are, according to us, sufficient to deal with any such contingency. The real difficulty is that these powers are not being exercised in the proper manner and at the proper time in the interest of the nation.

4. Under the circumstances, we feel that such a measure is unnecessary and unwanted and the Parliament would do well to reconsider the entire position.

SURENDRANATH DWIVEDY
NIRANJAN SINGH
S. M. BANERJEE
MADHU LIMAYE
T. K. CHAUDHURI

NEW DELHI;
The 18th November, 1967.

The Unlawful Activities (Prevention) Bill, 1967 has undergone some changes in the Select Committee; but the Bill has remained basically the same as was introduced in the Lok Sabha.

2. It is wholly an obnoxious Bill, and cloaths the executive with powers to declare Associations unlawful which can be used by the Party in power against Political parties which challenge its rule.

3. Ostensibly, the Bill seeks to prevent organised activities aimed at (1) cessation of any part of the country; and (2) cessation of any part of the country to a foreign power.

4. As far as the question of cessation is concerned, the passing of this Bill is not in any way going to help the solution of the issue where it has been raised as in Nagaland or the Mizo Hills. As for Kashmir, it is equally political question. The demand has not been raised anywhere else. The D.M.K. of Tamil Nad which had the aim of a separate Sovereign Dravida Nad, had given up this demand and is now running the State Government.

5. The unity of this multilingual country was forged during the struggle against British rule, and if this great heritage is not taken forward to further cement the unity of the country and its people speaking different languages, the causes are to be looked for in the policies pursued by the Government in regard to economic development, languages and administration. If these policies are persisted in, centrifugal forces will certainly get strengthened which cannot be fought by repressive laws. These forces can only be fought by pursuing different policies.

6. As for the second object, *viz.*, prevention of cessionist activities, no one desires the cession of any part of the country to a foreign power. If today, a part of Kashmir is under occupation of Pakistan and Aksai Chin is under occupation of China, it is not because of the desire of any one in this country. It is the Government of India that is solely responsible for this state of affairs. The reality is, that whatever might be on paper, in actual physical terms, it is the Government of India that has ceded these areas. The Government has offered many times a 'No war Pact' with Pakistan, which means that the Government of India is not going to attempt to wrest the area from Pakistan by military means. Not only that, it is known that in the talks with Pakistan in 1963, our Government actually offered to settle the international boundary at the present cease-fire lines. Had such a settlement come about, one may question the wisdom of the Government of India, but cannot accuse it of treachery, because the offer was made in good faith in the best interests of the country, as the Government conceived.

7. If it is correct for the Government to make such an offer and seek a particular settlement of a border dispute with a neighbouring country, it cannot be penalised in the case of a political party or an association. This is exactly what the Bill seeks to do.

8. Constitutionally also, this Bill, if enacted, would infringe the provisions of the Constitution. The provisions of the Bill go beyond the purview of the reasonable restrictions on fundamental rights contemplated in the Constitution.

9. In this connection the evidence of the Attorney-General, before the Joint Committee has great relevance. Some of us in the Joint Committee wanted a number of jurists to be examined on the constitutionality of the provisions of the Bill. But the Home Minister opposed it and agreed to examine only the Attorney-General and the majority of the Committee concurred with him. Hence, he alone was examined.

10. It is true that in his opening statement before the Committee Shri C. K. Daphtary said:

"I think it is permissible legislation under the exceptions to Article 19 of the Constitution."

But his answers to questions do not bear this out. I am giving below the relevant extracts from the record of the evidence.

11. I had quoted some instances of the Supreme Court in regard to "reasonable restrictions" and had asked him how he could call the restrictions provided for in this Bill reasonable. In answer to that, Shri C. K. Daphtary stated:

"Shri C. K. Daphtary: May I answer, though it is not easy to answer. Let me start with the Judgement first. That was in 1952. The outlook on fundamental rights and what is reasonable or proper protection, has, as you are aware, gone through a series of changes in that particular court. There was a time in the beginning when the fundamental rights were quite firm. There came a period when they were eroded and gradually Article 14 almost ceased to exist. Then again came a period when the fundamental rights were put up firmly and everything was tested. Perhaps we are again coming to a period when they will not be looked at seriously *as before*. The dicta has varied from period to period. There was a time when everything was looked upon very strictly. There was a period when the court was inclined to be much more generous in its looking upon the adequacy of safeguards."

What does all this boil down to? The Attorney-General feels that if the Constitution "was looked upon very strictly," the restrictions imposed in this Bill cannot be construed as reasonable, but he hopes that although just now we are in a period wherein "the fundamental rights were put up firmly and everything was tested. Perhaps we are coming to a period when they will not be looked at as seriously as before."

12. It is only on this assumption, that he was able to say that the restrictions are reasonable. What basis there is for this astrological forecast of the behaviour of the Supreme Court, he did not tell the Committee. At any rate, Parliament can go only on the basis of what is the present position of the Fundamental Rights, and cannot undertake legislation on the basis of such astrological forecasts of the future behaviour of the Supreme Court. If it should do so, then it should take advice on constitutional questions not from the Attorney-General, but from the astrologers, and there must be a Ministry of Astrology in Government.

13. Then again, the Attorney-General was questioned regarding the scope of Section 2(f)(i). Both in his opening statement and in answer to questions by some Members that the wording of the section means that an expression of opinion will not come under the purview of the Bill, but only any incitement to action will be actionable. I then pursued this matter with him and am giving below the relevant portions of the questions and answers :—

"Shri P. Ramamurti: You will see sub-clause (3) of section 13 says:—

> 'Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to negotiations therefor carried on by any person authorised in this behalf by the Government of India.'

Therefore the Government of India is authorised to negotiate with any other country even for the purpose of cession of a part of our country or territory purely from a political point of view. Now, you said, an expression of opinion is not barred. Supposing, a political party thinks that the policies that the Government of India is persuing in a certain border dispute is not correct and, therefore, it thinks that there must be a political settlement which may be 'give and take', while an expression of opinion by an individual is considered to be correct, but a political party, in the interest of the country and genuinely thinking it to be in the interests of the country, in view of the power which the Government is authorised to exercise, in order to make the Government do that thing, it tries to mobilise the people, it tries to canvass support for the public opinion, will that be penalised under this Act?

Shri C. K. Daphtary: As I understand it, if you express an opinion collectively or singly, provided it is an opinion.

Shri P. Ramamurti: It is a question of acting when you say 'it incites other people', when it asks the Government of India to act in this particular manner. Therefore, it is wrong to ask the Government to do a particular thing which the Government is entitled to do under this Act. This Act provides that the Government of India can enter into negotiations etc. and act in a particular manner. How do you say that it is reasonable?

Section 13 is very clear that the Government can act. If I ask the Government to act—after all democracy means popular opinion—and the popular opinion asks the Government to act in a particular way, how is that wrong? For me to mobilise public opinion to go in a particular way, is not considered unlawful.

Shri C. K. Daphtary: The wording used is: "which is intended or supports any claim to bring about on any grounds whatsoever the cession and the rest.

Shri P. Ramamurti: Without supporting any claim—I need not support any claim—but in the interests of peace and in the interests of our country.

Shri C. K. Daphtary: The party collectively expresses an opinion; you meet together and say 'we express the opinion'.

Shri P. Ramamurti: Political parties in this country function not only among its members, in a democracy the political parties go to the people, ask their opinion, give their opinion, and ask the people to express themselves in favour of that. That means something going and inciting people to act in a particular way. Therefore, if we incite the people in a way as provided for under section 13, then you say: 'You can express an opinion, but you cannot ask the people to do that'. Then it becomes an offence. How is it a reasonable restriction? I can understand your saying 'you cannot question the territorial integrity' correct, I do not question. But in a particular set of circumstances, I may consider it to be in the interest of my country that a particular dispute must be resolved in a particular way, and that is provided for under the Bill itself. Under the Bill itself, the Government may do that. And if I ask the Government to act in that particular way, which is provided for and which is not unlawful, and I mobilise the people of the country for that purpose, then you will say 'you are inciting people. It is not merely an expression of opinion. Therefore, you are liable to be punished under this law'. How is it a reasonable restriction when I do something? If the Government is prohibited from doing anything, there I can understand your saying 'you could do that', but the Government is empowered with these powers.

Shri C. K. Daphtary: Why do you put into the Constitution 'integrity and sovereignty of India'. It is to preserve it.

Shri P. Ramamurti: But the Government in certain circumstances is authorised to do certain things. Therefore, in a democracy, people can certainly ask the Government to do a thing in a particular way. How is it unlawful?

Shri C. K. Daphtary: I agree. It did not strike me then.

Shri P. Ramamurti: Yes, he agrees.

At last, the Attorney-General had to agree that such restrictions are not reasonable.

14. Suppose at a general election, a political party decides to raise the issue of a political settlement of our border disputes as a major issue and defeat the ruling Party on that issue. It is perfectly a lawful and democratic procedure. The Bill would prevent it. The unreasonableness of the restrictions, thus become patent.

15. The Bill, therefore, is constitutionally improper. Politically it is inexpedient and will not serve the purpose of fighting centrifugal forces.

16. On the other hand it will become a weapon in the hands of the ruling Party to unscrupulously fight its opponents.

17. I, therefore, urge the dropping of the Bill.

P. RAMAMURTI

NEW DELHI;
The 18th November, 1967.

जैसा कि विधेयक के उद्देश्य व करण में दिया गया है कि यह विधेयक राष्ट्रीय एकीकरण और क्षेत्रीयता समिति के सर्वसम्मत सुझाव पर आधारित है, पर यह याद रखने योग्य है कि उस समिति का सुझाव विशिष्ट परिस्थितियों पर आधारित था जब कि मद्रास के एक बड़े राजनैतिक पक्ष ने स्वतंत्र द्रविड़नाड की मांग की थी, अब तो इस पक्ष ने वह मांग छोड़ दी है, इस कारण हम विरोध पक्ष के लोगों का मत रहा है कि इस प्रकार के कानून की अब कोई आवश्यकता नहीं रही। हमें आशंका है कि इस कानून से सरकार को ऐसे विशेष अधिकार प्राप्त हो जायेंगे जिनके दुरुपयोग की बहुत बड़ी संभावना है।

2. हम स्वीकार करते हैं कि आपात्कालीन स्थिति में राष्ट्रहित की दृष्टि से इस प्रकार के कानून की आवश्यकता हो सकती है, तथा देश द्रोह की स्पष्ट परिभाषा करके उसे एक दण्डनीय अपराध स्वीकार किये जाने वाला एक स्थायी कानून बनाया जाना चाहिये परन्तु इस विधेयक के लिये हम सहमत नहीं हो सकते जिसमें राष्ट्र विरोधी कार्य की लचीली परिभाषा करके सरकार के सहन न होने योग्य किसी भी काम को लपेट में लिया जा सके। हमें आशा थी कि प्रवर समिति इस विधेयक के दुरुपयोग की संभावनाओं को रोकने की व्यवस्था करेगी, पर इसमें यह असफल रही है। अतः इस विमति-पत्र द्वारा हम बहुमत के प्रतिवेदन से असहमति प्रकट करते हैं।

3. जब विधेयक की विभिन्न धाराओं पर विचार हो रहा था तब हमने सुझाव दिया था कि धारा 2 (एफ) में गैरकानूनी कार्य की व्याख्या इतनी स्पष्ट रखी जाय कि सरकार द्वारा उसका मनमाना अर्थ न लगाया जा सके। मूल विधेयक में इस उपधारा के तीन उपभाग थे। पहले में पृथकता की कार्यवाहियों के लिये व्यवस्था थी, जब कि दूसरे उपभाग में देश की प्रभु-सत्ता को किसी भी कोने में चुनौती को गैरकानूनी माना गया था तथा तीसरे में देश की एकता को चुनौती देना दण्डनीय था। यद्यपि अब उपधारा दो व तीन को मिला कर तथा संविधान की भाषा के अनुसार ही प्रभुसत्ता व अखंडता का उल्लेख कर मूल विधेयक में काफी सुधार कर दिया गया है, फिर भी हम यह आवश्यक समझते हैं कि 'अखंडता' (Integrity) शब्द के पूर्व 'क्षेत्रीय' (Territorial) शब्द अवश्य जोड़ दिया जाना चाहिए। अन्यथा 'अखण्डता' (Integrity) शब्द की व्याख्या होनी चाहिए क्योंकि आजकल यह शब्द अनेक अर्थों व भावों को व्यक्त करने के लिए प्रयोग किया जा रहा है।

4. धारा 3 में दो उपबन्ध हैं जिनसे हम सहमत नहीं हो सकते। धारा (2) का उपबन्ध सरकार को अधिकार देता है कि वह अपनी विज्ञप्ति में जनहित के नाम पर चाहे, तो उन तथ्यों को प्रगट न करे जिनक आधार पर संगठन को गैर कानूनी घोषित किया गया है। हमारी यह मान्यता है कि जनसाधारण को संतुष्ट किये बिना तथा अपने निर्णय को खरा दिखाये बिना सरकार को यह अधिकार नहीं दिया जाना चाहिए। इस उपबन्ध के द्वारा सरकार को दी गई संरक्षण से अन्ततोगत्वा कानून का दुरुपयोग ही होगा।

5. धारा 3(3) का उपबन्ध तो और भी अधिक आपत्तिजनक है। इसका लाभ ले कर इस कानून में न्यायाधिकरण के लिए की गई व्यवस्था द्वारा रोके जा सकने वाले अन्याय को ही सरकार टाल जायगी। सरकारी आज्ञा को लागू करने के पूर्व अधिकरण की स्वीकृति की अनिवार्यता को ही समाप्त कर दिया गया है।

6. अधिकरण के गठन के संबंध में भी हमारी मान्यता है कि इसमें तीन सदस्य होना चाहिए जिनमें से अध्यक्ष सर्वोच्च न्यायालय का तथा शेष दो उच्च न्यायालय के न्यायाधीश होने चाहिए। एक सदस्यीय अधिकरण पर पक्षपात के आरोप लगाये जाने का भी भय है जिसका अर्थ न्यायाधीश पर व्यक्तिगत आक्षेप भी होगा, जिसे दुर्भाग्यपूर्ण माना जाना चाहिए। तीन सदस्यीय व्यवस्था से इसका निराकरण संभव है।

7. गैर कानूनी कार्यों के लिए लम्बी सजा की व्यवस्था भी अतर्कसंगत है। धारा 13 में गैर कानूनी कार्य करनेवाले को 7 वर्ष तक के कारावास का प्रावधान है। पर धारा 6(2) के द्वारा केन्द्र सरकार अपनी इच्छा से गैर कानूनी घोषित करने की अपनी आज्ञा को रद्द कर सकती है। वैसे भी न्यायाधिकरण द्वारा सरकारी आज्ञा को उचित माने जाने के बाद भी 2 वर्ष बाद स्वयमेव आज्ञा निरस्त हो जाती है। अतः विधेयक में ही इस बात की व्यवस्था होनी चाहिए कि आज्ञा की समाप्ति के साथ ही वे सभी व्यक्ति जो इस कानून के अन्तर्गत बंदी हों, उन्हें भी मुक्त कर दिया जाय।

8. धारा 13 की उपधारा (3) से भी हमारा मतभेद है। जो कार्य किसी व्यक्ति अथवा संगठन द्वारा किये जाने पर गैरकानूनी माना जाय, उसी कार्य के लिए इस उपधारा के अधीन सरकार को दोषमुक्त किया गया है। यह तर्क दिया जाता है कि सर्वोच्च सत्ता को यह अधिकार प्राप्त होना चाहिए कि वह अपनी भूमि के संबंध में सौदे कर सके। हम इसका विरोध करते हैं। हमारे देश का संविधान तो संसद् को भी यह अधिकार नहीं देता। संविधान की धारा 1 में जहां देश की सीमाओं का उल्लेख है वहां भी क्षेत्र जोड़ने का प्रवाधान है, तोड़ कर अलग करने का नहीं। पर यदि यह अधिकार सर्वसत्ता सम्पन्नता का अभिन्न अंग माना भी जाता हो तो भी इस अधिकार को संसद को ही देना होगान कि सरकार को। अतः सरकार यदि कोई भी ऐसा काम करना चाहती है (जो धारा 13(3) के न होने पर गैर कानूनी कार्य माना जा सकता है) तो उसके लिए अनिवार्य होना चाहिए कि उस पर संसद की पूर्व स्वीकृति ली जाय।

9. अन्त में हम इतने महत्व के प्रश्न पर राज्य सरकारों की राय न लिए जाने की निन्दा करते हैं। यह अत्यन्त आश्चर्य का विषय है कि प्रवर समिति को भी इस बात पर रजामन्द कर लिया गया कि राज्य सरकारों के राय की अवश्यकता नहीं है जब कि राज्य सरकारों के सहयोग पर ही इस कानून का सफल कार्यान्वयन बहुत हद तक निर्भर करता है।

10. अपने इस मत के आधार पर हम चाहते हैं कि सरकार इस विधेयक को वापिस ले। हम फिर दोहराते हैं कि राष्ट्र विरोधी कार्यों की रोक थाम के लिए स्पष्ट रूप से देशद्रोह को रोकने वाला एक स्थायी कानून बनाया जाना जाहिए।

नई दिल्ली;
18 नवम्बर, 1967

सुन्दर सिंह भंडारी
अटल विहारी वाजपेयी

[English Version of the above]

It has been stated in the Statement of Objects and Reasons of the Bill that this bill is based on the unanimous suggestion of the Committee on National Integration and Regionalism. But it should be remembered that this suggestion was based on specific circumstances when a major political party of Madras had demanded an Independent Dravidnad. Now therefore when they have given up this demand, we, of the Opposition, are of the opinion that this kind of legislation will be of no use now. We are afraid that Government would be saddled with such special powers through this legislation as are most likely to be abused by Government.

2. We admit that in an emergency, such a law could have been needed in the national interest and that a permanent law should be enacted which acknowledges unpatriotic activities as a punishable offence after clearly defining it. But we cannot agree to this Bill wherein any such activity which is not tolerable to Government could be called to account by giving an elastic definition of anti-national activity. We hoped that the Joint Committee would provide for the prevention of the scope for misuse of this Bill but the Committee has failed to do so. Therefore, we express our disagreement with the report of the majority through this Minute of Dissent.

3. At the time of clause-by-clause consideration of this Bill, we had suggested that the definition of unlawful activity in section 2(a) should be so specified as to prevent the Government from attaching whatever meaning to it they liked. There were three parts of this sub-section in the original Bill. The first part contained provisions regarding separatist activities, whereas, in the second part, challenge to country's sovereignty was accepted as illegal and in the third part, it was penal to challenge country's unity. Although, sufficient improvement has been made in the original Bill by combining the second and third parts and making a mention of sovereignty and integrity according to the language of the Constitution, even then we consider it necessary that the word 'territorial' must be prefixed to word 'integrity' therein. Otherwise the word 'integrity' should be clearly defined because these days this word is being used to convey different meanings and emotions.

4. We cannot agree to two provisions of section 3. The provision of sub-section (2) empowers Government not to disclose any fact which it considers to be against the public interest to disclose on the basis of which any association has been declared unlawful. We maintain that such power should not be given to Government without satisfying the people and without justifying their decision. This law would only be abused ultimately by shielding Government under this provision.

5. The provision made in section 3(3) is still more objectionable. Taking its advantage, the Government would come in the way of the removal of injustice by the tribunal for which a provision has been made in the Bill. The obligation of the tribunal's approval before the enforcement of the Government Order has been nullified.

6. In regard to the constitution of the tribunal also we maintain that it should consist of three members with the Chairman as the judge of the Supreme Court and the remaining two members as the judges of High Courts. Besides, it is also feared that there would be allegations of favouritism against the one-member tribunal which would also mean personal attack on the judge which should be considered unfortunate. This fear can be eliminated by making a provision for three-member tribunal.

7. The punishment for longer period for unlawful activities is also unreasonable. In section 13, a provision for imprisonment upto seven years has been made for the persons indulging in unlawful activities. But under Section 6(2) the Central Government can, on its own accord, cancel its own order declaring an association to be unlawful. Otherwise also, Government order ceases to operate *suo motu* after the expiry of two years even when approved by the tribunal. Therefore, it should be provided in the Bill itself that all the persons imprisoned under this law should be released as soon as the order ceases to operate.

8. We differ also in regard to sub-Section (3) of Section 13. Under this Section, the Government has been exempted from being charged with unlawful activities while any person or association can be declared unlawful if they indulge in any such activities. An argument is advanced that the Supreme power should have the right to enter into transactions in regard to its territory. We oppose this argument. The Constitution of our country does not give this right even to the Parliament. Even in Article 1 of the Constitution which refers to the territory of India, there is a provision for including some territories and not to dismember and separate the same. But even if this right is considered to be an integral part of Sovereign Power, then it has been given to the Parliament and not to the Government. Therefore, in case, Government want to embark upon any such activity which could be considered to be unlawful in the absence of Section 13(3), the prior approval of the Parliament should be made compulsory.

9. Finally, we disapprove the fact of not taking the opinion of the State Governments on the question of such a great importance. It is very strange that the Select Committee was also made to agree that there was no need for the opinion of the State Governments while the successful implementation of the law, to a very large extent, depends upon the cooperation of the State Governments.

10. On the basis of these views of ours we would like the Government to withdraw this Bill. We reiterate that in order to check the anti national activities, a permanent comprehensive legislation to stop treason should be enacted.

SUNDER SINGH BHANDARI
ATAL BEHARI VAJPAYEE

NEW DELHI;
The 18th November, 1967.

THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

(AS REPORTED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.

BE it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and extent

1. (*1*) This Act may be called the Unlawful Activities (Prevention) Act, 1967.

(2) It extends to the whole of India.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "association" means any combination or body of individuals;

* * * * *

(*b*) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;

(*c*) "prescribed" means prescribed by rules made under this Act.

(*d*) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(*e*) "Tribunal" means the Tribunal constituted under section 5;

(*f*) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)—

(*i*) which is intended, or supports any claim, to bring about on any ground whatsoever the cession of a part of the territory of India or the secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession;

(*ii*) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and integrity of India.

* * * * *

(*g*) "unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members* undertake such activity.

CHAPTER II

UNLAWFUL ASSOCIATIONS

Declaration of an association as unlawful.

3. (*1*) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(*2*) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(*3*) No such notification shall have effect until the Tribunal has by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette;

Provided that if the Central Government is of opnion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:—

(a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association, or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed.

Reference to Tribunal.

4. (1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication to the notification under the said sub-section refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the* manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

Tribunal.

5. (1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government:

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

* * * * *

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) **All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.**

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its function including the place or places at which it will hold its sittings.

* * * * *

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908

(a) the summoning and enforcing the attendence of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

45 of 1860.
5 of 1898

Period of operation and cancellation of Notification.

6. (1) Subject to the provisions of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of two years from the date on which the notification becomes effective.

* * * * *

(2) Notwithstanding anything contained in sub-section (1) the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3, whether or not the declaration made therein has been confirmed by the Tribunal.

Power to prohibit the use of funds of an unlawful association.

7. (1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credit which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code of Criminal Procedure, 1898, for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business. 5 of 1898

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.

Power to notify places used for the purpose of an unlawful association.

8. (1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation—For the purposes of this sub-section, "place" includes a house or building, or part thereof, or a tent or vessel.

(2) On the issue of a notification under sub-section (1), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing-apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written order of the District Magistrate.

(4) The District Magistrate * * * * may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District

Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4),

and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

Procedure to be followed in the disposal of applications under this Act.

9. Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims and the decision of the Tribunal or the Court of the Distrct Judge, as the case may be, shall be final. 5 of 1908.

CHAPTER III

Offences and Penalties

Penalty for being members of an unlawful association.

10. Whoever is a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of, any such unlawful association, or an any way assists the operations of any such unlawful association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

Penalty for dealing with funds of an unlawful association.

11. If any person on whom a prohibitory order has been served under sub-section (1) of section 7 in respect of any moneys, securities or credits pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the Code of Criminal Procedure, 1898, the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit. 5 of 1898.

Penalty for contravention of an order made in respect of a notified place.

12. (1) Whosoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an oredr made under

sub-section (4) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

* * * *

13. (1) Whoever— Punishment for unlawful activities.

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

14. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognizable. Offences to be cognizable.

5 of 1898.

CHAPTER IV

MISCELLANEOUS

15. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. Continuance of association.

* * * *

16. Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate shall be called in question in any court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Bar of jurisdiction.

Prosecution for offences under this Act.

17. No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf.

Protection of action taken in good faith.

18. (*1*) No suit or other legal proceeding shall lie against the* Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

(*2*) No suit, prosecution or other legal proceeding shall lie against the District Magistrate or any officer authorised in this behalf by the* Government or the District Magistrate in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

Power to delegate.

19. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

Effect of Act and rules, ect., inconsistent with other enactmen s.

20. The Provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Power to make rules.

21. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association.

(*b*) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(*c*) any other matter which has to be, or may be, prescribed.

(*3*) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to be validity of anything previously done under that rule.

Appendix I

(*Vide* para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to Joint Committee

"That the Bill to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith, be referred to a Joint Committee of the Houses consisting of 39 members, 26 from this House, namely:—

(1) Seth Achal Singh
(2) Shri Kushok Bakula
(3) Shri S. M. Banerjee
(4) Shri Bedabrata Barua
(5) Shri R. D. Bhandare
(6) Shri Krishna Kumar Chatterji
(7) Shri Tridib Chaudhuri
(8) Shri N. T. Das
(9) Shri Devinder Singh
(10) Shri Surendranath Dwivedy
(11) Shri Ram Krishan Gupta
(12) Shri V. Krishnamoorthi
(13) Shri Madhu Limaye
(14) Shri Raja Venkatappa Naik
(15) Dr. Sushila Nayar
(16) Shri Jagannath Pahadia
(17) Shri Nanubhai N. Patel
(18) Shri P. Ramamurti
(19) Shri K. Narayana Rao
(20) Shri A. S. Saigal
(21) Shri B. Shankaranand
(22) Shri Prakash Vir Shastri
(23) Shri Vidya Charan Shukla
(24) Shri S. S. Syed

(25) Shri Atal Bihari Vajpayee

(26) Shri Y. B. Chavan

and 13 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 13 members to be appointed by Rajya Sabha to the Joint Committee."

Appendix II

(*Vide* para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:

(1) Shri Abid Ali
(2) Shri Surjit Singh Atwal
(3) Shri Sundar Singh Bhandari
(4) Shri Babubhai M. Chinai
(5) Shri Chandra Shekhar
(6) Shri Surendra Mohan Ghosh
(7) Shri Dayaldas Kurre
(8) Shri Balachandra Menon
(9) Shri R. T. Parthasarathy
(10) Shrimati C. Ammanna Raja
(11) Shri M. Ruthnaswamy
(12) Shri Niranjan Singh
(13) Shri A. M. Tariq."

Appendix III

Minutes of the Sittings of the Joint Committee on the Unlawful Activities (Prevention) Bill, 1967

I

First Sitting

The Committee sat on Tuesday, the 12th September, 1967 from 15.00 to 16.00 hours.

PRESENT

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Kushok Bakula
4. Shri S. M. Banerjee
5. Shri Bedabrata Barua
6. Shri R. D. Bhandare
7. Shri Krishna Kumar Chatterji
8. Shri Tridib Chaudhuri
9. Shri N. T. Das
10. Shri Surendranath Dwivedy
11. Shri Ram Krishan Gupta
12. Shri V. Krishnamoorthi
13. Shri Madhu Limaye
14. Shri Raja Venkatappa Naik
15. Shri Nanubhai N. Patel
16. Shri P. Ramamurti
17. Shri A. S. Saigal
18. Shri B. Shankaranand
19. Shri S. S. Syed
20. Shri Y. B. Chavan
21. Shri Abid Ali
22. Shri Surjit Singh Atwal
23. Shri Babubhai M. Chinai
24. Shri Chandra Shekhar
25. Shri Surendra Mohan Ghosh

26. Shri Dayaldas Kurre
27. Shri R. T. Parthasarathy
28. Shrimati C. Ammanna Raja
29. Shri Niranjan Singh
30. Shri A. M. Tariq.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri T. C. A. Srinivasavaradhan, *Joint Secretary.*
2. Shri G. K. Arora, *Deputy Secretary.*

Shri N. Vittal, *Under Secretary.*

LEGISLATIVE COUNSEL

Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee first considered whether any evidence should be taken on the Bill. Some Members felt that certain provisions in the Bill appeared to impinge on the Fundamental Rights provided in the Constitution and suggested that the Committee might hear the views of the (i) Attorney-General of India; (ii) Solicitor-General of India; and (iii) Shri H. M. Seervai, Advocate General of Maharashtra. After some discussion it was decided that the Attorney-General should only be sent for.

On the question of the *vires* of the Bill the Chairman referred the Committee in this connection to the following ruling given by the Speaker :

> "It is not for Chair to decide the vires of a Bill. The House also does not take a decision on the question of vires of a Bill. It is open to members to express any views in the matter and in the light of that, instead of taking a decision separately on the vires of the Bill they could take such decision as they deem fit on the motion before the House with regard to the Bill." [*L.S. Debates*, 22-4-63 cc. 11211-12.]

3. Earlier, Sarvashri Madhu Limaye, P. Ramamurti and S. M. Banerjee gave a formal notice of the following motion seeking to call for the 3 legal experts referred to above:

> "I formally move that Shri S. V. Gupte, Solicitor General of India and Shri H. M. Seervai, Advocate General, Maharashtra may be heard in connection with the constitutionality and

original clauses of the Bill. The Attorney-General of India may also be called as a witness in case his appearance is not against the Constitutional provisions."

But on the Joint Committee agreeing to hear the Attorney-General of India only, they did not press it.

4. On a point being raised about the scope of the examination of the Attorney-General, the Chairman referred to Rule 273 and pointed out the procedure for examining the witness. It was decided that the Attorney-General should be examined only on the constitutional aspect of the Bill.

5. It was then decided to issue a Press Communique inviting memoranda on the Bill from interested parties etc. by the 29th September, 1967 at the latest (Annexure).

6. The Committee also decided that it was not necessary to address any communication to the State Governments inviting their comments and suggestions on the Bill.

7. On the point whether a date might be fixed by which amendments should be sent, an objection was raised by Shri S. N. Dwivedi who contended that it should be left open to the Members to give notice of amendments from day-to-day, as the Committee proceeded with the Bill. It was, however, explained that while Members could give notice of amendments one day before the Committee took up the Bill clause-by-clause and also on the same day with the permission of the Chairman as laid down in Rule 300, it would facilitate their consolidation and circulation not only to the Members but also to the Ministries of Home Affairs and Law, if these could be given a few days before the Committee met. This also applied to the Government amendments. It was then decided that, as far as possible, notices of amendments should be given by the 13th October, 1967.

8. The Committee then decided to sit daily from 3.00 p.m. from the 16th October, 1967 onwards to hear the Attorney-General of India and thereafter consider the Bill clause-by-clause.

9. The Committee then adjourned.

ANNEXURE

(*See* Para 5 of the Minutes dt. 12-9-1967)

PRESS COMMUNIQUE

The Joint Committee of Parliament on the Unlawful Activities (Prevention) Bill, 1967 at their first sitting held today under the Chairmanship of Dr. Sushila Nayar, M.P. decided that public bodies, organisations, associations or individuals desirous of submitting memoranda on the Bill for the consideration of the Committee should send 55 copies of each memorandum so as to reach the Secretary, Lok Sabha Secretariat, Parliament House, New Delhi on or before the 29th September, 1967.

The Unlawful Activities (Prevention) Bill, 1967, as introduced in Lok Sabha, was published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 31st May, 1967.

NEW DELHI;

Dated the 12th September, 1967.

II

(Second Sitting)

The Committee sat on Monday, the 16th October, 1967 from 16.10 to 17.35 hours.

PRESENT

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh.
3. Shri Kushok Bakula.
4. Shri S. M. Banerjee.
5. Shri Bedabrata Barua.
6. Shri Krishna Kumar Chatterji.
7. Shri N. T. Das.
8. Shri Surendranath Dwivedy.
9. Shri Ram Krishan Gupta.
10. Shri Madhu Limaye.
11. Shri Raja Venkatappa Naik.
12. Shri Nanubhai N. Patel.

13. Shri P. Ramamurti.
14. Shri A. S. Saigal.
15. Shri B. Shankaranand.
16. Shri Prakash Vir Shastri.
17. Shri S. S. Syed.
18. Shri Atal Bihari Vajpayee.
19. Shri Y. B. Chavan.

Rajya Sabha

20. Shri Abid Ali.
21. Shri Surjit Singh Atwal.
22. Shri Sunder Singh Bhandari.
23. Shri Babubhai M. Chinai.
24. Shri Chandra Shekhar.
25. Shri Surendra Mohan Ghosh.
26. Shri Dayaldas Kurre.
27. Shri Balachandra Menon.
28. Shri M. Ruthnaswamy.
29. Shri Niranjan Singh.
30. Shri A. M. Tariq.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri L. P. Singh, *Secretary.*
2. Shri T. C. A. Srinivasavaradhan, *Joint Secretary.*
3. Shri G. K. Arora, *Deputy Secretary.*
4. Shri N. Vittal, *Under Secretary.*

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Shri C. K. Daphtary, *Attorney-General of India.*

2. In the absence of the Chairman, the Committee chose Shri Y. B. Chavan as the Chairman in terms of sub-Rule (3) of Rule 258 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Chairman then moved the following Resolution condoling the death of Dr. Ram Manohar Lohia, M.P. ;

> "The Joint Committee place on record their profound sense of sorrow on the sad passing away of Dr. Ram Manohar Lohia, a great freedom fighter and patriot, who had dedicated his life for the cause of the nation."

The members then stood in silence for a short while.

4. The Attorney-General of India then commenced his exposition of the various provisions of the Bill in so for as their bearing on the Fundamental Rights provided in the Constitution was concerned.

5. Dr. Sushila Nayar, Chairman of the Committee took the Chair at 16.15 hours.

6. The Attorney-General concluded his evidence at 17.30 hours and then withdrew.

7. A verbatim record of the evidence given was taken.

8. The Chairman then mentioned to the Committee that amendments to the Bill so far received including those which stood referred to the Joint Committee under Rule 301 of the Rules of Procedure and Conduct of Business in Lok Sabha had already been circulated to the members. The members were requested to send notices of their further amendments, if any, by 10.00 hours on the 17th October, 1967.

9. The Chairman apprised the Committee about the leave of absence sought for by Sarvashri K. Narayana Rao, M.P. and V. C. Shukla, Minister of State in the Ministry of Home Affairs, both members of the Committee.

10. The Committee then decided to sit daily from 10.00 to 13.00 hours and again from 16.00 to 18.00 hours from the 17th October, 1967 onwards to take up clause-by-clause consideration of the Bill.

11. The Committee then adjourned to meet at 10.00 hours on Tuesday, the 17th October, 1967.

III

Third Sitting

The Committee sat on Tuesday, the 17th October, 1967 from 10.00 to 12.50 hours and again from 16.00 to 17.40 hours.

PRESENT

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri S. M. Banerjee
4. Shri Bedabrata Barua
5. Shri Krishna Kumar Chatterji
6. Shri N. T. Das
7. Shri Devinder Singh
8. Shri Surendranath Dwivedy
9. Shri Ram Krishan Gupta
10. Shri Madhu Limaye
11. Shri Raja Venkatappa Naik
12. Shri P. Ramamurti
13. Shri A. S. Saigal
14. Shri B. Shankaranand
15. Shri S. S. Syed
16. Shri Atal Bihari Vajpayee
17. Shri Y. B. Chavan

Rajya Sabha

18. Shri Abid Ali
19. Shri Surjit Singh Atwal
20. Shri Sundar Singh Bhandari
21. Shri Babubhai M. Chinai
22. Shri Chandra Shekhar
23. Shri Surendra Mohan Ghosh
24. Shri Dayaldas Kurre
25. Shri Balachandra Menon
26. Shri M. Ruthnaswamy
27. Shri Niranjan Singh
28. Shri A. M. Tariq.

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1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*

2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee took up clause by clause consideration of the Bill.

Clause 2.—The following amendments were accepted:—

(i) Page 1, line 10-11,—
omit "whether the same is known by any distinctive name or not."

(ii) Page 2, line 6,—
for "right" *substitute* "claim"

(iii) Page 2,—
for lines 20—23, *substitute* "(ii) which diclaims, questions, disrupts or is intended to disrupt the sovereignty and integrity of India"

(iv) Page 2, line 27,—
omit "habitually"
The clause, as amended, was adopted.

4. *Clause* 3.—The clause was discussed at some length by the Committee in the light of a number of amendments moved in respect of proviso to sub-clause (3) of this clause. The Minister-in-charge, however, gave an assurance that the proviso would be resorted to in absolutely extraordinary situations.

The clause was then adopted without amendment.

5. *Clause* 4.—In regard to this clause it was suggested that some time limit should be fixed within which the Tribunal must decide the matter referred to it.

The Committee then accepted the following amendments:—

(i) Page 3, line 34,—

for "in the prescribed manner" *substitute*—"in the manner specified in section 9"

(ii) Page 3, line 38,—

after "as expeditiously as possible", *insert*—

"and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3".

The Clause, as amended, was adopted.

6. *Clause* 5.—In order to create confidence of the public in the authority envisaged under the Bill for the purpose of adjudicating whether or not there was sufficient cause for declaring an association unlawful, the following alternatives were suggested:—

(i) that the power of adjudication should vest in High Courts; or

(ii) that the Tribunal should consist of a sitting Judge of a High Court, instead of Retired High Court Judges or of persons qualified to be the Judges of High Courts.

After considerable discussion the following amendments were accepted:—

(i) Page 4,—

for lines 6 to 30 *substitute*—

"of one person, to be appointed by the Central Government; Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than temporary absence) occurs in the office of the presiding officer of the Tribunal then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled."

(ii) Page 4, line 36,—

for "The Tribunal shall", *substitute*—

"Subject to the provisions of section 9 the Tribunal shall".

(iii) Page 5,

Omit lines 1 to 4

The clause, as amended, was adopted.

7. *Clause* 6.—The Committee felt that it was not desirable that the Government should have the power to continue the ban on unlawful associations more or less indefinitely without any judicial determination. The following amendment was, therefore, accepted:—

Page 5,—

Omit lines 28 to 32.

The clause, as amended, was adopted.

8. The Committee then adjourned to meet again on Wednesday, the 18th October, 1967 at 10.00 hours to continue clause-by-clause consideration of the Bill.

IV

Fourth Sitting

The Committee sat on Wednesday, the 18th October, 1967 from 10.00 to 13.30 hours and again from 16.00 to 17.00 hours.

PRESENT

Dr. Shushila Nayar—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri S. M. Banerjee
4. Shri Bedabrata Barua
5. Shri Krishna Kumar Chatterji
6. Shri N. T. Das
7. Shri Devinder Singh
8. Shri Surendranath Dwivedy
9. Shri Ram Krishan Gupta
10. Shri Madhu Limaye
11. Shri Raja Venkatappa Naik
12. Shri Nanubhai N. Patel
13. Shri P. Ramamurti
14. Shri A. S. Saigal
15. Shri B. Shankaranand
16. Shri Atal Bihari Vajpayee
17. Shri Y. B. Chavan.

Rajya Sabha

18. Shri Abid Ali
19. Shri Surjit Singh Atwal
20. Shri Sundar Singh Bhandari
21. Shri Babubhai M. Chinai
22. Shri Surendra Mohan Ghosh
23. Shri Dayaldas Kurre
24. Shri Balachandra Menon
25. Shri M. Ruthnaswamy
26. Shri Niranjan Singh
27. Shri A. M. Tariq.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri T. C. A. Srinivasaradhan, *Joint Secretary.*
2. Shri G. K. Arora, *Deputy Secretary.*
3. Shri N. Vittal, *Under Secretary.*

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 7.—In regard to sub-clause (1), some members suggested that personal accounts of the persons indulging in unlawful activities should be frozen so as to prevent their use for unlawful activities, others said this would cause harassment to the individuals and their families.

The Minister-in-charge stated by way of elucidation that the restriction was intended to apply for freezing the funds which were intended to be used for unlawful activities. It was not contemplated to apply this restriction so as to deprive such person from the use of personal accounts for legitimate purposes.

The Committee were of the opinion that the investigation under the clause should only be entrusted to an officer belonging to a Gazetted rank.

The Committee then accepted the following amendments:—

(i) Page 6, lines 13-14,—

for "in such manner as may be prescribed", *substitute* "in the manner specified in sub-section (3)"

(ii) Page 6, line 17,—
for "officer" *substitute* "Gazetted officer"

The clause, as amended, was adopted.

4. *Clause* 8.—The Committee were of the view that articles used in ordinary course of living should not be listed—and that near relatives of any person who is a resident of a prohibited place, should be exempted from the provisions of sub-clause (4).

The Committee, therefore, accepted the following amendments:—

(i) Page 7, line 22,

after "Movable properties", *insert*—

"(other than wearing apparel, cooking vessels, beds and beddings, tools of artisans, implements of husbandry cattle, grain and foodstuffs and such other articles as he considers to be of a trivial nature)".

(ii) Page 7, lines 30-31,—

Omit "or any officer authorised by him in writing in this behalf"

(iii) Page 7, *after* line 34, *insert*—

"Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at a date of the notification".

(iv) Page 8, line 1,

after "police officer" *insert* "not below the rank of Sub-Inspector"

The clause, as amended, was adopted.

5. *Clause* 9.—Some members suggested that a right of cross-examination should be specifically provided in the Act regarding the evidence led by affidavit and not be left to the discretion of the Tribunal.

It was explained that under Order XIX of the Civil Procedure Code if a party bonafide desires for production of a witness for cross-examination, the court shall have to grant the request to cross-examine the witness.

The clause was then adopted without amendment.

6. *Clause* 10.—The Committee considered that since it had been decided that the notification declaring an association unlawful would remain in force for only two years, the punishment for being a member of an unlawful association under this clause would be reduced from three years to two years.

The following amendment was accordingly accepted:—

Page 8, line 42,—

for "three" *substitute* "two".

The clause, as amended, was adopted.

7. *Clause* 11.—The clause was adopted without amendment.

8. *Clause* 12.—The Committee decided to reduce the punishments

for offences under this clause and accepted the following amendments:—

(i) Page 9, lines 13 and 14,—

for "in respect of which a prohibitory order has been", *substitute* "in contravention of a prohibitory order in respect thereof".

(ii) Page 9, line 16,—

for "three years" *substitute* "one year";

(iii) Page 9, line 17,—

after "Whoever" *insert* "knowingly and wilfully",

(iv) Page 9, line 20,—

for "three years" *substitute* "one year"

(v) Page 9, omit lines 21-23.

The Clause, as amended, was adopted.

9. Clause 13—The Committee having decided to reduce the punishments for unlawful activities laid down in sub-clauses (1) and (2) of this clause, accepted the following amendments therein:—

(i) Page 9, line 28,
for "ten" *substitute* "seven".

(ii) Page 9, line 34,—*for* "seven" *substitute* "five"

The clause, as amended, was adopted.

10. The Committee then discussed at some length the implications of an amendment to sub-clause (3) of clause 13 which sought the prior approval of Parliament before any exemption to any treaty, agreement or convention being entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India was given. A view was, however, held by some members that the prior approval of Parliament would frustrate all efforts of negotiations by the Government of India with other countries and would thus make the administration by Government difficult. All that was sought for in such cases was that Parliament must put its seal on any such treaty, agreement or convention before it could be implemented. The Committee, however, did not accept the proposed amendment.

11. New Clause 13A—The Committee felt that all offences under the Act should be made cognizable irrespective of the maximum period of imprisonment provided thereunder.

The Committee then adopted the following new clause:—

Page 9, after line 40, insert—

Offences to be cognizable 5 of 1898

"13A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognizable."

12. Clause 14.—The clause was adopted without amendment.

13. Clause 15—The Committee were of the opinion that all the processes envisaged under this Act should be initiated even in respect of succeeding association as in the case of parent association, and therefore, the retention of this clause was not necessary.

The clause was accordingly omitted.

14. Clauses 16 and 17.—The clauses were adopted without amendment.

15. Clause 18.—The following amendment was accepted:—

Page 10, lines 27-28,—

Omit "Central".

The clause, as amended, was adopted.

16. Clauses 19 to 21.—The clauses were adopted without amendment.

17. Clause 1, the Title and the Enacting Formula were adopted without amendment.

18. The Chairman then drew the attention of the members of the Committee to the provisions of Direction 87 of the Directions by the Speaker under the Rules of Procedure regarding minutes of dissent.

19. The Committee directed the Legislative Council to correct the patent errors and to carry out amendments of consequential nature in the Bill and to submit an attested copy thereof, as amended, by Saturday, the 28th October, 1967 at the latest.

20. The Committee also decided that the evidence given by the Attorney-General before the Committee should be printed and laid before the Houses.

21. The Committee then adjourned to meet again on Sunday, the 12th November, 1967 at 11.00 hours to consider their draft report.

On a suggestion being made by some members, that as there would be very little time available to them to give their minutes of dissent in case the report was to be presented to the House on the following day *viz*, the 13th November, 1967, as scheduled, it was decided to ask for an extension of time for a week in this behalf.

The Committee then authorised the Chairman to move a motion in the House for extension of the time upto Monday, the 20th November, 1967 for the presentation of the report.

V

Fifth Sitting

The Committee sat on Sunday, the 12th November, 1967 from 11.00 to 11.30 hours.

PRESENT

Dr. Sushila Nayar—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Kushok Bakula
4. Shri N. T. Das
5. Shri Nanubhai N. Patel
6. Shri K. Narayana Rao
7. Shri A. S. Saigal
8. Shri B. Shankaranand
9. Shri Vidya Charan Shukla
10. Shri S. S. Syed
11. Shri Atal Bihari Vajpayee
12. Shri Y. B. Chavan

Rajya Sabha

13. Shri Surjit Singh Atwal
14. Shri Sundar Singh Bhandari
15. Shri Babubhai M. Chinai
16. Shri Chandra Shekhar
17. Shri Surendra Mohan Ghosh
18. Shri Dayaldas Kurre
19. Shri Balachandra Menon
20. Shrimati C. Ammanna Raja
21. Shri Niranjan Singh.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri T. C. A. Srinivasavaradhan, *Joint Secretary.*

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Additional Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Chairman apprised the Committee of the telegram received from Shri R. T. Parthasarathy, M.P., regarding his inability to attend the sitting.

3. The Committee then took up consideration of the Bill and adopted it.

4. The Committee then considered the draft Report and adopted the same, subject to the Minutes of Dissent, if any, being given by members by 11.00 hours on Saturday, the 18th November, 1967.

5. The Committee also decided to authorise the Legislative Counsel to correct the patent errors and to make consequential amendments in the Bill.

6. The Committee decided that copies of the memoranda received by them from (i) the Delhi Bar Association, Delhi and (ii) the Delhi Administration might be placed in the Parliament Library for reference.

7. The Committee authorised the Chairman and, in her absence, Shri Atal Bihari Vajpayee, to present the Report on their behalf and to lay the evidence on the Table of the House on the 20th November, 1967.

8. The Committee also authorised Shri Chandra Shekhar and, in his absence, Shri Babubhai M. Chinai to lay the Report and the evidence on the Table of the Rajya Sabha on the 20th November, 1967.

9. The Chairman then thanked the members and the Minister of Home Affairs for their cooperation extended in the efficient and smooth passage of the Bill at the Committee stage.

The Committee then adjourned.

C.B. II No. 202

LOK SABHA

JOINT COMMITTEE

ON THE

UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967.

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI

November, 1967
Kartika, 1889 (Saka)

Price : 30 *Paise*

JOINT COMMITTEE ON THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

COMPOSITION OF THE COMMITTEE

Dr. Sushila Nayar—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh.
3. Shri Kushok Bakula.
4. Shri S. M. Banerjee.
5. Shri Bedabrata Barua.
6. Shri R. D. Bhandare.
7. Shri Krishna Kumar Chatterji.
8. Shri Tridib Chaudhuri.
9. Shri N. T. Das.
10. Shri Devinder Singh.
11. Shri Surendranath Dwivedy.
12. Shri Ram Krishan Gupta.
13. Shri V. Krishnamoorthi.
14. Shri Madhu Limaye.
15. Shri Raja Venkatappa Naik.
16. Shri Jagannath Pahadia.
17. Shri Nanubhai N. Patel.
18. Shri P. Ramamurti.
19. Shri K. Narayana Rao.
20. Shri A. S. Saigal.
21. Shri B. Shankaranand.
22. Shri Prakash Vir Shastri.
23. Shri Vidya Charan Shukla.
24. Shri S. S. Syed.
25. Shri Atal Bihari Vajpayee.
26. Shri Y. B. Chavan.

Rajya Sabha

27. Shri Abid Ali.
28. Shri Surjit Singh Atwal.
29. Shri Sundar Singh Bhandari.
30. Shri Babubhai M. Chinai.
31. Shri Chandra Shekhar.

33. Shri Surendra Mohan Ghosh.
34. Shri Dayaldas Kurre.
35. Shri Balachandra Menon.
36. Shri R. T. Parthasarathy.
37. Shrimati C. Ammanna Raja.
38. Shri M. Ruthnaswamy.
39. Shri Niranjan Singh.
40. Shri A. M. Tariq.

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2. Shri S. K. Maitra, *Additional Legislative Council, Miny. of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri L. P. Singh, *Secretary, Ministry of Home Affairs.*
2. Shri T. C. A. Srinivasavaradhan. *Joint Secretary. Ministry of Home Affairs.*
3. Shri G. K. Arora, *Deputy Secretary, Ministry of Home Affairs.*
4. Shri N. Vittal, *Under Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. C. Chawla, *Deputy Secretary.*

Witness Examined

Serial No.	Name of witness	Date of hearing	Page
1.	Shri C. K. Daphtary, Attorney-General of India.	16.10.1967	

JOINT COMMITTEE ON THE UNLAW FUL ACTIVITIES (PREVENTION) BILL, 1967

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967

Monday, the 16th October, 1967 at 16.10 hours.

PRESENT

Dr. Sushila Nayar—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Kushok Bakula
4. Shri S. M. Banerjee
5. Shri Bedabrata Barua
6. Shri Krishna Kumar Chatterji
7. Shri N. T. Das
8. Shri Surendranath Dwivedy
9. Shri Ram Krishan Gupta
10. Shri Madhu Limaye
11. Shri Raja Venkatappa Naik
12. Shri Nanubhai N. Patel
13. Shri P. Ramamurti
14. Shri A. S. Saigal
15. Shri B. Shankaranand
16. Shri Prakash Vir Shastri
17. Shri S. S. Syed
18. Shri Atal Bihari Vajpayee
19. Shri Y. B. Chavan.

Rajya Sabha

20. Shri Abid Ali
21. Shri Surjit Singh Atwal
22. Shri Sundar Singh Bhandari
23. Shri Babubhai M. Chinai
24. Shri Chandra Shekhar
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28. Shri M. Ruthnaswamy
29. Shri Niranjan Singh
30. Shri A. M. Tariq.

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REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri L. P. Singh, *Secretary.*
2. Shri T. C. A. Srinivasavaradhan, *Joint Secretary.*
3. Shri G. K. Arora, *Deputy Secretary.*
4. Shri N. Vittal, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri C. K. Daphtary, *Attorney-General of India.*

Shri Babubhai M. Chinai: In the absence of the Chairman, I propose Shri Y. B. Chavan, the Home Minister to the Chair.

Shri A. S. Saigal: I second it.

(Shri Y. B. Chavan *in the Chair*)

Mr. Chairman (Shri Y. B. Chavan): I move that the Joint Committee express its profound sense of sorrow on the sad passing away of Dr. Ram Manohar Lohia, a great freedom fighter and patriot, who dedicated his life for the cause of the nation.

As a mark of respect to his memory I would suggest that we may stand in silence for a minute.

(*The members then stood in silence for a minute*)

Shri C. K. Daphtary, Attorney-General of India

(*The witness was called in and he took his seat*)

Mr. Chairman: Mr. Daphtary, the members of the Joint Committee felt that they should hear you on the Unlawful Activities (Prevention) Bill. You may give your views on this Bill.

Shri C. K. Daphtary: Am I supposed to make a speech or answer questions?

Mr. Chairman: You may say something in the beginning so that members may ask questions based on that.

Shri C. K. Daphtary: I suppose I am expected to say something about the constitutionality of these provisions. Looking at it generally, I may say this; that there was an original draft of this which was submitted to me when I took exception to some of the provisions, whereupon certain matters were cut out and some were amended so that, as it stands now, with the incorporation of the suggestions which were made in order to bring it to a stage where it would not be capable of being challenged as unconstitutional; with those changes I think it is permissible legislation under the exceptions to article 19 of the Constitution. In other words, these are reasonable restrictions in the interests of the security, sovereignty and integrity of India. Of course, I suppose I am not called upon to express any opinion except the legal one. There I do feel that it is going as far as one can go. These are drastic powers. But, having regard to the fact that the Constitution was specifically amended so as to include sovereignty and integrity of India as matters which have to be preserved at all costs, and having regard to the situation, which is not so satisfactory in some parts of

the country in regard to this very matter, some kind of legislation of this nature was necessary, and if one is going to have legislation of this kind, then one might as well have it.

Now, there are one or two things which perhaps may have struck the hon. Members also. I may first call attention to section 2 where "unlawful activity" is defined. It reads:

> '"unlawful activity" in relation to an individual or association means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)—
>
> (i) which is intended, or supports any claim to bring about on any ground whatsoever the cession of a part of the territory . . .'

Now, you will notice that the words are "whether by committing an act or by words, either spoken or written". So, it is impossible that anything honestly spoken as an opinion will come within the mischief of this section, because "in relation to an individual" it says "an act or by words, either spoken or written... which is intended, or supports any claim to bring about on any ground whatsoever the cession of a part of the territory". It is conceivable that some one may, as a matter of suggestion for peace, quite honestly say "well, I think it would be better if we give up a part of our territory". Now the words "on any ground whatsoever" appear more than once in the Act and the other words are "an act or by words, either spoken or written, or by signs or by visible representation or otherwise" which clearly means words which incite to something done actively to bring about a particular result. So, even what is called a theoretical discussion or an idealistic discussion would not come within the scope of this clause. That is all that strikes me at the moment. There are some other matters of detail which can easily be got over.

The next thing, of course, is the rather drastic power taken by this Bill. The scheme is that a declaration has to be made, but it will not be effective for 30 days, during which period the matter will be referred to a Tribunal, who will then decide whether there is a just cause for doing this or not. But there is an exceptional power; n an emergency, if government thinks fit to do so, to make an order which may be effective forthwith, subject to the approval of the Tribunal. This kind of power is often found in other enactments. For instance, in section 165 of the Code of Criminal Procedure, the normal process is to go to a magistrate for a search warrant. But, in a given case, after recording the reasons, the police officer may issue a search warrant. Similarly, here the reasons have to be recorded why such emergency power is really necessary. One assumes that those who are going to exercise those powers will do so honestly and properly. That assumption must always be there.

(Dr. Sushila Nayar *in the Chair*)

Whether that will be so or not, one cannot say.

This is all that I wanted to say. With such matters as what the wording ought to be I am not going to trouble the Committee. For instance, in sub-section (12) of section 5 in clause (c) "reception of evidence on affidavits" is something which I can put to the Ministry of Law. That wording has led to a good deal of trouble and I would suggest some sort of an amendment should be made. The normal rule under the Code is that the court cannot have evidence on affidavit except with the consent of the other side. Surely, that is not what is meant here.

This is supposed to be and I believe is a reasonable restriction. As to what is reasonable and what is not

reasonable, there may be a difference of opinion and that is ultimately resolved by a court. In the court itself it is not judged by our personal idiosyncracies and ideals but we must look at it broadly having regard to the necessity of the times. Therefore, if I am asked whether I think it reasonable and I say "Yes", somebody may say that he does not think so. That is all that I have to say.

Shri A. M. Tariq: You say that it is your legal opinion. What will be your opinion as a citizen of India? Secondly, while speaking about clause (f) you said as to who is going to define this honest opinion. Let me explain my own case as I am concerned personally. For instance, Sheikh Mohammad Abdullah says something about Kashmir and the same thing is said by J. J. Singh, no one takes any action against J. J. Singh but action is taken against Sheikh Mohammad Abdullah. Then, today General Cariappa is in Pakistan and is meeting President Ayub, but if by accident I meet the Pakistan High Commissioner in Delhi who is going to find out wether this is an honest act of mine or whether it is a dishonest action?

Shri C. K. Daphtary: The ultimate resort is the court. Whoever has the authority, he will first ask himself this question, namely, whether the opinion is expressed by a person who is responsible and, secondly, whether he merely expresses an opinion or whether he incites people to act in order to bring about the fulfilment of this provision. That must be the ultimate test.

Shri A. M. Tariq: What is your opinion as a private citizen?

Shri C. K. Daphtary: Am I supposed to express my opinion as a citizen also Madam Chairman?

Madam Chairman: I do not think so. You are here as the Attorney-General. You can only give your opinion as the Attorney-General.

Shri Krishna Kumar Chatterji: Are we to presume that if this Bill is passed it would not amount to curtailment of the fundamental rights enshrined in the Constitution?

Shri C. K. Daphtary: It is a curtailment of the fundamental rights which are there in article 19 and article 19 itself provides as follows:

> "Nothing in sub-clause so-and-so shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty or integrity of India."

So, it is a restriction on the fundamental right which is guaranteed by the Constitution, but it has to be reasonable.

श्री मधु लिमये : मैं एटार्नी-जनरल का ध्यान पृष्ठ 2, पंक्ति 36, 37, 38 की तरफ दिलाना चाहता हूं, जिनमें कहा गया है :

Shri Madhu Limaye: I want to draw the attention of the Attorney-General to page 2, lines 36, 37 and 38 wherein it has been said that:

> "Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose."

क्या इस तरह की बातें गुप्त रखना विवेकपूर्ण निर्बन्ध, रीजनेबल रेस्ट्रिक्शन, के मुताबिक होगा, क्योंकि संघ स्वतंत्रता का हमारा अधिकार इतना पवित्र अधिकार है कि सरकार की ओर से जनता को सम्बन्धित जानकारी से वंचित रखने का अधिकार देना संवैधानिक नहीं होगा ?

[whether to keep such things secret would be in accordance with 'reasonable restrictions', because our right of freedom of association is so sacred that it would be unconstitutional for Government to authorise it to withhold the relevant information from the public?]

Shri C. K. Daphtary: This is a power given entirely to Government. If you will remember, it occurs also in the Preventive Detention Act. There also it is provided that in a given case if it is against the public interest the grounds need not be disclosed. One can conceive that there may be situations where the grounds may be such as that to disclose them might bring about a worsening of relations between us and our next door country or some other country; or, it may be that to disclose that particular information may prejudice further inquiries which may bring to light other unlawful activities which would disappear or which would not be found if immediate disclosure is made of any of the grounds. That is a possibility. Here again, it is to be presumed that Government will exercise that right only in special circumstances. The normal rule would be to disclose what the grounds are but in an extraordinary case they may not. That power has to be left to the Government.

श्री मधु लिमये : प्रिवेंटिव डिटेंशन एक्ट में एक या दो व्यक्तियों का सवाल आता है, जब कि इसमें पूरे संघ दल, ट्रेड यनियन या समूह का सवाल है : अगर इस तरह की बातें गुप्त रखी जायेंगी, तो हमारे अधिकारों का अतिक्रमण होगा ।

[Shri Madhu Limaye: While one or two persons are covered by the Preventive Detention Act, the entire association, party, Trade Union is covered by it. If such things are kept secret, that would be an encroachment upon our rights.]

Shri Y. B. Chavan: I may clarify it. The position is that those facts may not be disclosed in the notification but they will not be concealed from the tribunal which is to decide these things.

Shri P. Ramamurthi: What you say is not clear from the Bill.

Shri Y. B. Chavan: The whole section refers to notifications.

Shri C. K. Daphtary: Yes. It says:

"Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that...."

Shri Y. B. Chavan: Complete facts will be disclosed to the court or tribunal which is going to take a view of the matter. Certain things will not be disclosed in the notification.

श्री मधु लिमये : यह कहां साफ हुआ है कि ये सारी बातें ट्रिब्यूनल के सामने आयेंगी ?

[Shri Madhu Limaye: Where has it been made clear that all these things would come before the Tribunal?]

Shri Y. B. Chavan: The whode section refers to notification.

श्री मधु लिमये : अगर नोटिफिकेशन में ये बातें नहीं आयेंगी, तो आप ट्रिब्यूनल के सामने भी यही दलील ले सकते हैं। सरकार के लिये बन्धन कारक तो नहीं है कि वह सारी बातें ट्रिब्यूनल को बताए ।

[Shri Madhu Limaye: If these things are not given in the notification, you can give this very argument before the Tribunal. It is not obligatory on the Government to bring all these points before the Tribunal.]

Shri C. K. Daphtary: Before the Tribunal, the Government will have to justify its action.

Shri Y. B. Chavan: Naturally, when you want to go into a case, it is always open and all the facts necessary to prove a case will be placed before them. What will be placed before the court will not entirely be disclosed.

Shri C. K. Daphtary: There is a distinction between 'grounds' and 'facts'. The grounds will be disclosed but any particular fact may not be disclosed.

Shri S. M. Banerjee: The hon. Attorney-General has himself said in reply to so many questions that there is a reasonable restriction on the fundamental rights. In reply to a particular question of Shri Madhu Limaye, he has said that it is presumed the Government will not misuse it. Our opposition to this Bill right from the beginning is that there are already wide powers in the hands of the Government which they have been misusing.

The Preventive Detention Act, the D.I.R. and all other things are already there. My question is: When during the Emergency certain fundamental rights which have been guaranteed to the people of this country by the Constitution are already mortgaged in the Ministry of Home Affairs, is it necessary at all to bring forward this kind of a Bill and whether this is a reasonable restriction or curtailment of the fundamental rights?

Shri C. K. Daphtary: As to whether Government has misused these powers or not, I am not called upon to say anything.

Shri S. M. Banerjee: You know it.

Shri C. K. Daphtary: There have been instances which have come to light and have found their place in courts where ultimately it has been found that powers have been misused. That is the utmost I can say As to other legislation, there is no section in the Indian Penal Code which covers any of these things exactly. As to the other legislation, such as the Defence of India Rules and the Preventive Detention Act, no doubt there are certain powers vested in Government but they also cannot be used for this purpose.

Shri B. Shankranand: You say, this Bill is perfectly constitutional...

Shri C. K. Daphtary: Not 'perfectly' constitutional; I say, it is constitutional.

Shri B. Shankaranand: There is certain section in Parliament which says that this will be a redundant piece of legislation when the D.I.R. is there. Is it so?

Shri C. K. Daphtary: It is not redundant. It covers an area which is not exactly covered by other legislation.

Shri Y. B. Chavan: The D.I.R. is also not a permanent measure. It is only meant for a certain period.

Shri P. Ramamurti: With regard to the reasonableness of the restrictions, I suppose, you are aware of the judgment of the Supreme Court in the case of the State of Madras v. Row in 1952. I would just read a particular part of it. It says:

> "The formula of subjective satisfaction of the Government and its officers with an advisory Board to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen may be viewed as reasonable only in very exceptional circumstances (e.g., in law providing internment or externment for the security of the State), and within the narrowest limits, and not to curtail a right like the freedom of association..."

That is, just merely providing for a tribunal and that kind of a thing should not be considered to be sufficient to come to the conclusion that this restriction is a reasonable restriction.

That was the opinion held by the Supreme Court in 1952. Then, I would like to read from the same judgment another thing:

> "The fundamental right to form associations or unions guaranteed by Art. 19(1)(c) has such a wide and varied scope for its exercise and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of the authority in the executive Government to impose restrictions on such right without allowing the grounds of such imposition, both in their *factual and legal* aspects to the duly tested in a *judicial* inquiry, is a strong element which should be taken into account in judging the reasonableness of restrictions imposed on the fundamental right under Art. 19(1)(c)."

Therefore, the test ultimately is whether a proper basis or a proper procedure has been laid down by means of which you can test both factually and legally the particular action taken.

Now, in this Bill that is before us, it is stated that as far as the onus of proof is concerned, it is for the affected party to prove that he is innocent. The action is taken by the Government and it is not for the Government to come and prove it. That is the provision here. Is that the normal judicial process to test the correctness of the action?

Then, clause 4 (1) says:

> "Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal...."

Then, sub-section (2) says:

> "On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful."

I am aware of sections 108, 109 and 110 of the Indian Penal Code. Even in those cases, what happens is that, normally, it is the prosecution that lets in the evidence and it is subject to thorough cross-examination. The normal procedures laid down in the Criminal Procedure Code and the Evidence Act are in operation there. But here, under this Bill, none of these things are in operation Here, sub-section (3) says:

> "After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the prescribed manner..."

That is, it is not in the prescribed manner under the existing Acts like the Indian Penal Code or the Evidence Act which have been accepted to be fair and reasonable means of testing the correctness and the veracity of the action taken but it is in the manner prescribed by the rules laid down by the executive authority. Nobody knows what those rules are going to be. It is not to be tested in any court of law. Under these conditions, when it does not give the opportunity to test both factually and legally the facts disclosed and the circumstances disclosed by means of cross-examining all those things, how do you say that this is a reasonable restriction?

Shri C. K. Daphtary: May I answer though it is not easy to answer. Let me start with the judgment first. That was 1952. The outlook on fundamental rights and what is reasonable or proper protection has, as you are sure aware, gone through a series of changes in that particular court. There was a time in the beginning when the fundamental rights were quite firm. Then came a period when they were eroded and gradually Article 14 almost ceased to exist. Then again came a period when the fundamental rights were put up firmly and everything was properly tested. Perhaps we are again coming to a period when they will not be looked at as seriously as they used to be. The dicta have varied from period to period. There was a time when eveything was looked upon very strictly. There was a period during which the court was inclined to be much more generous in its looking upon the adequacy of safeguards. Coming to the actual position, I am told incidentally that it has been said even in a judgment of this very court that the fact that an appeal lies to Government is a sufficient safeguard. That is a statement which any one of you may question because when you speak of Government, you speak of something very high. Possibly some one can lay down the scale. Yet the court has said that an appeal to Government is a sufficient safeguard. I am only illustrating how the matter has fluctuated. Therefore the dicta of judgments do not carry us anywhere.

Then, there is a question which you asked me whether it is reasonable. True, normally you would expect in a prosecution, if it was a prosecution, that the proseeution should discharge the burden of proof. This is not a prosecution. This is a tribunal and the Act deals with a set of circumstances which are not the usual set of circumstances. Further, it depends on what the situation in the country is and whether it calls for legislation in which case you would not expect to have anything more than the safeguard of a tribunal. I am reading of a situation in the country of which I have been informed—I am not aware of it personally because I do not go about the country unfortunately—that certain measures are necessary if we have to stop various things and I think that, in the circumstances, the safeguard is sufficient. Someone else may say that the circumstances do not warrant it. I cannot go further than expressing my personal opinion. I may express a further personal opinion. I think it is regrettable that the State has reached such a position that it is necessary to pass this legislation.

श्री मधु लिमये : पेज 5, लाइन 31-32 यह एक प्रावाजो है एक्सटेंड करने के बारे में—

[Shri Madhu Limaye: There is a proviso re: extension on page 5, lines 31-32—]

Provided that if the Central Government considers that since the issue of the notification there has been no material change in the circumstances under which the notification was issued, the Central Government may, from time to time, extend the period of operation of the notification by any period not exceeding one year at a time.

इसके ऊपर हम लोगों ने एक तरमीम भी दी है उस से मुझे क्या बात अभिप्रेत है, इस का पता चल जाएगा। मेरी तरमीम [है :—

[We have given notice of an amendment to the above proviso, the purport with which we have given the notice would become clear. My amendment is—]

The Government may, from time to time, apply to the Tribunal for the extension of the period of operation of the notification

for any period not exceeding one year at a time, and upon the Tribunal's granting the application after hearing the parties concerned, the notification shall continue in operation for the said period.

मैं केवल इतना ही जानना चाहता हूं कि सरकार को यह जो अधिकार दिया गया है उस से जो निर्बन्ध हमारे ऊपर लग जाता है, वह विवेकपूर्ण नहीं है, लगता है कि विवेक हीन है, अनरीजनेबिल है। इस में जो आबिट्रेटर पावर्स दी गई हैं, उस के बारे में मैं आप की राय जानना चाहता हूं कि संवैधानिक दृष्टि से क्या ट्रिब्युनल की इजाजत लिये बिना इस तरह का जो पाबन्दी है, उस को बढ़ाने का अधिकार सरकार को देना उचित होगा ?

[I would like to state that the restriction imposed upon us by this right given to Government is not reasonable, it appears that it is unreasonable. I want to know your views about the arbitrary powers given in this proviso whether constitutionally it would be proper for the Government to extend such a restriction without the consent of the Tribunal?]

Shri Y. B. Chavan: May I intervene for a minute? We have also moved an amendment on behalf of the Government to this very clause saying that a time there cannot be a notification for more than three years' period in all. First of all the order will be for two years; then there will be only one extension. If further extension is necessary, the idea is that we will go back to the Tribunal again. That is the amendment. Your question can still stand.

श्री मधु लिमये : उस में एक साल के एक्सटेंशन की बात फिर रह जाती है। इसलिये मेरा सवाल एक्सटेन्शन के बारे में है क्या ट्रिब्यूनल की इजाजत के लिये बिना इस अवधि को बढ़ाने का अधिकार सरकार को देना संवैधानिक दृष्टि से रिजनेबिल रेस्ट्रिक्शन में आ सकता है ?

[**Shri Madhu Limaye:** The point re: one year's extension still remains. My question, therefore, is regarding extension. Whether giving the power of extension of this period to Government without the consent of the Tribunal could be covered under 'reasonable restriction' constitutionally?]

Shri C. K. Daphtary: I think there is something in that. If the circumstances are the same, it may be considered. Otherwise the power is there and it will go on extending. Of course, we are going to modify it.

Shri Y. B. Chavan: We are only taking power for one extension for one year. We can certainly move an amendment.

Shri C. K. Daphtary: It may be considered whether some safeguards should not be put at that stage also.

श्री सुन्दर सिंह भंडारी : सभापति महोदया, मेरा इसमें एक निवेदन है। यदि सरकार किसी एसोसियेशन को ट्रिब्यूनल में जाने के पहले सेक्शन 3(3) के प्रावीजो के अनुसार ट्रिब्यूनल में जाने से पहले ही अनलाफुल डिक्लेअर करे और वह एन्फोर्स हो जाता है और फिर एन्फोर्स होते ही सैक्शन 10 के अनुसार—whoever is member of the association declared unlawful. अब ट्रिब्यूनल डिसीजन नहीं लेता, ट्रिब्यूनल के सामने मामला अभी गया ही नहीं, गवर्नमैंट के डिसीजन के आधार पर ही उस एसोसियेशन को अनलाफुल करार दे दिया और एक आदमी को जो कि उस अनलाफुल एसोसियेशन का मेम्बर है उस पर पेनलटीज आफसेन्सज सब लागू हो गई है, फिर ट्रिब्यूनल में जाने के बाद ट्रिब्यूनल उसको अनलाफुल करार नहीं देती, उस आदमी को जिसको सरकार के ही डिसीजन के कारण सजा दी गई है, उस के ऊपर जो जर्म आयद हुए हैं, उसके बारे में आपकी क्या राय है ?

[**Shri S. S. Bhandari:** Madam Chairman I have one submission to make. If Government declares any association unlawful under proviso to section 3(3) before the case comes before the Tribunal and that decision is enforced and after the enforcement of this decision, whoever is member of the association declared unlawful is penalised and charged with all kinds of offences under section 10, and thereafter, the Tribunal does not declare it unlawful and the member is penalised in accordance with Government's decision itself, and the charges levelled against him. I would like to know your opinion in this regard?]

Shri C. K. Daphtary: I appreciate what you say—that things may be put in force before the Tribunal decide the matters.

Shri S. S. Bhandari Giving some power which will not be used?

Shri C. K. Daphtary: Suppose you use it and ultimately explain that it is not an unlawful assembly. That is the power which is not likely to be used. After all, some credit should be given for that.

Shri A. B. Vajpayee: Where the Central Government feels that the Association is unlawful, let them go to the Tribunal and place all the facts before them. Let the Tribunal investigate and find out whether the organization is inciting anybody to engage in the unlawful activities.

Shri S. S. Bhandari: Are we to understand that before declaring an Association as unlawful, the Government should go to the Tribunal? I think that is not the scope of the Bill.

Madam Chairman: There may be very special circumstances in which they may have to act immediately.

Shri S. S. Bhandari: What is the guarantee about that?

Madam Chairman: The Government know that they may lose their case when they go to the Tribunal later.

Shri Surendranath Dwivedy: I think that point needs clarification from the Attorney-General. The point is whether, before declaring any Association as unlawful, the concurrence of the Tribunal is necessary or if they think that it is urgent, they will do it and then go to the Tribunal. Is that what you mean by special circumstances?

Shri C. K. Daphtary: See the proviso to clause 3. The issue of notification will have no effect until the Tribunal has taken up the matter. The proviso is for an extraordinary case where it will have effect subject to reversal by the Tribunal. That is the position.

Shri Surendranath Dwivedy: We are now discussing about the Tribunal. We know also how the Tribunals in this country work. Of course I am not making any aspersion. But, in a Bill of this nature, would you not think it advisable for a Bench of the High Court to deal with this matter as we have now done in election cases? The High Court constitutes a Bench or appoints a judge to look after these cases. Instead of creating a Tribunal for a very specific purpose, if a High Court directly deals with it, will that not be a greater safeguard from the points of view of the fundamental rights of the citizens?

Shri C. K. Daphtary: I think the Allahabad High Court has 38 judges. The Supreme Court has 11 and possibly it is going to have 14. And if the election matters are to come up to them more and more, the High Courts will have to have more and more judges. Till such time, the High Courts are not to be burdened with all these cases. The argument cuts bothways. If I say that they are not likely to be more than four or five for the High Court to deal with the cases, there is no reason why the Tribunal should not deal with these four or five cases?

Shri Surendranath Dwivedy: I think the High Court is better.

Shri C. K. Daphtary: That is a matter for the Government to consider. I agree that the public has much more faith in the High Court than in the Tribunal.

Shri S. M. Banerjee: May I draw the attention of the Attorney-General to page 2 of the definition—Declaration of an association as unlawful? Please see clause 2(g):

> "unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members habitually undertake such activity"

Also see 3(1):

> "(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful."

That means the powers for declaring any association as unlawful rests with the Central Government and not with the Tribunal. I think this has been accepted by you. Now, I wish to know whether any union or association of political parties which is registered under the Act of 1926 also falls within the definition of these unlawful activities and whether Government has a right to declare such association or union which is registered under a particular Act as unlawful? If not what is your opinion about that?

Shri C. K. Daphtary: If the conditions are fulfilled, I should say 'yes'.

Shri S. M. Banerjee: Our contention is that this Bill has been brought in to further curb the activities of the recognised associations or unions or the political parties by the ruling party which is unfortunately in the Centre. This is what I feel.

Shri C. K. Daphtary: I understood you to say that there should be something to safeguard all recognised political parties. As the matter stands, it is unlikely that an association becomes guilty of unlawful activities not because one or two people getting up and saying something. You please look at the actual definition.

> "(g) 'unlawful association' means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity.."

Shri S. M. Banerjee: The object is very wide.

Shri C. K. Daphtary: It is made in the form of preventing groups of people consisting of an association from undertaking any unlawful activities. The point is that it is likely that any recognised party will, by and large, have the object of this kind. Even though it is entirely unlikely, this is an academic thing.

Shri P. Ramamurti: But the Government can do it.

Shri C. K. Daphtary: You presume that it is the object of the Government. I personally am not called upon to explain as to the government's honesty or dishonesty.

Shri Babubhai M. Chinai: In clause 2(f), regarding the unlawful activity, it has been stated as follows:

> "(f) (i) which is intended, or supports any claim, to bring about on any ground whatsoever the cession of a part of the territory of India or the secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession".

That means if anybody expresses anything in a public platform or says 'let us enter into a pact or come to some agreement' that will also fall under the mischief of this section.

Shri C. K. Daphtary: No. I say this for this reason. You will look at it.

"Unlawful activity", in relation to an individaul or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)..."

Judicially it is interpreted to mean inciting anyone to action for the purpose of obtaining a particular end. May I say that in my opinion that if we have to give away something or half of our territory and so on, that does not come within that mischief?

Shri Babubhai M. Chinai: There is another point on which I want to know your opinion. Does this not prevent the Government from taking any action when there is secession of one or two territories?

Shri P. Ramamurti: Mr. Attorney-General, in substance what you say is that the Government is bound to act honestly. Therefore, if we give any wide powers to the Government, it does not matter. In substance it comes to that.

Shri C. K. Daphtary: Powers given . . .

Shri P. Ramamurti: . . . will be exercised honestly.

Shri C. K. Daphtary: Subject to safeguards as in circumstances..

Shri P. Ramamurti: Therefore, the question of the reasonableness of the safeguards arises. Now, what you have stated even in your original statement is that section 2, the definition clause does not refer to any expression of opinion.

Shri C. K. Daphtary: Theoretically.

Shri P. Ramamurti: You will see that sub-clause (3)of Section 13 says:

"Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

Therefore, the Government of India is authorised to negotiate with any other country even for the purpose of cession of a part of our country or territory purely from a political point of view. Now, you said an expression of opinion is not barred. Supposing, a political party thinks that the policies that the Government of India is pursuing in a certain border dispute is not correct and, therefore, it thinks that there must be a political settlement which may be 'Give and Take', while an expression of opinion by an individual is considered to be correct, but a political party, in the interests of the country and genuinely thinking it to be in the interests of the country and a power which the Government is authorised to exercise, in order to make the Government do that thing, it tries to mobilise the people, it tries to canvass support for that public opinion, will that be penalised under this Act?

Shri C. K. Daphtary: As I understand it, if you express an opinion collectively or singly, provided it is an opinion.

Shri P. Ramamurti: It is a question of acting when you say 'it incites other people'. Therefore, it asks Government of India to act in this particular manner. Therefore, it is wrong to ask the Government to do a particular thing which the Government is entitled to do under this Act. This Act provides that Government of India can enter into negotiations, etc. and act in a particular manner. How do you say it is reasonable? Section 13 is very clear that the Government can act. If I ask the Government to act—after all democracy means popular opinion—and the popular opinion asks the Government to act in a particular way, how is it wrong? For me to mobilise public opinion to go in a particular way, is not considered unlawful.

Shri C. K. Daphtary: The wording used is: 'which is intended, or supports any claim, to bring about on any ground whatsoever the cession' and the rest.

Shri P. Ramamurti: Without supporting any claim—I need not support any claim—but in the interests of peace and in the interests of our country . .

Shri C. K. Daphtary: The Party collectively expresses an opinion; you meet together and say 'We express the opinion . .'

Shri P. Ramamurti: Political Parties in this country function not only among its members; in a democracy the political parties go to the people, ask their opinion, give their opinion and ask the people to express themselves in favour of that. That means something—going, inciting, people to act in a particular way. Therefore, if we incite the people in a way as provided for under section 13, then you say 'You can express an opinion but you cannot ask the people to do that. Then it becomes an offence.' How is it a reasonable restriction? I can understand your saying 'You cannot question the territorial integrity'. Correct, I do not question. But, in a particular set of circumstances, I may consider it to be in the interests of my country that a particular dispute must be resolved in a particular way and that is provided for under this Bill itself. Under this Bill itself the Government may do that and if I ask the Government to act in that particular way which is provided for and which is not unlawful and if I mobilise the people of this country for that purpose, then you will say 'You are inciting people. It is not merely an expression of opinion. Therefore, you are liable to be punished under this law.' How is it a reasonable restriction when I do something? If the government is prohibited from ceding anything, then I can understand your saying 'You cannot do that', but the Government is empowered with those powers.

Shri C. K. Daphtary: Why do you put into the Constitution 'integrity and sovereignty of India'. It is to preserve it.

Shri P. Ramamurti: But the Government in certain circumstances is authorized to do certain things. Therefore, in a democracy people can certainly ask the Government to do a thing in a particular way. How is it unlawful?

Shri C. K. Daphtary: I agree. It did not strike me there.

Shri P. Ramamurti: Yes, he agrees.

Shri Krishna Kumar Chatterji: To meet special situations concerning the integrity and security of the country powers have been given to the Government under this Bill. Then there is a Tribunal to go into the matter. Then, Government have come forward with an amendment that only a sitting High Court Judge will preside over the Tribunal. Therefore, when the presiding officer of the Tribunal will be a sitting High Court Judge, will that not create the same amount of confidence in the people as the High Court? Will the Attorney-General kindly enlighten us on this?

Shri C. K. Daphtary: It is intended to inspire confidence—a High Court Judge to preside over the Tribunal. It ensures a judicial attitude.

Shri A. M. Tariq:

کوئی نیشنل معاملہ ہو یا انٹر نیشنل - کوئی انڈیویجوال یا آرگنائزیشن اس کے بارے میں جنتا کے سامنے کوئی سجیشن رکھے کہ اے کانگریس یا سی کانگریس کے لوگ مل کر طے کریں - اس میں وہ کوئی نیچر کی بات نہیں کرتے ہیں - ٹیریٹوریل انٹیگریٹی کے خلاف کوئی بات نہیں کرتے ہیں - لوائی جھگڑا نہیں کرتے ہیں - اس کے ساتھ اس معاملہ میں تمام جنتا کو اپنے ساتھ کر لیتے ہیں - کیونکہ آخر ہمارا ملک ، ایک ڈماکریٹک ملک ہے - یہاں الیکشن لڑے جاتے ہیں سوشیلسٹوں کے اوپر اور سوشیلسٹوں کے اوپر ہی جنتا ووٹ کرتی ہے - ایسی حالت میں اگر کسی خاص مسئلہ پر کسی پولیٹیکل پارٹی کو جنتا کو حمایت ملتی ہے - تو اس وقت

سرکار کی پوزیشن بڑی آکورڈ ہو جاتی ہے -

جیسا آپ نے اپنی قیلیفیکشن میں کہا ہے اوپینین آف انڈویجوال - تو اس اوپینین لفظ کی صفائی کون کریگا - ہمارے ملک میں کتنی ہی جگہوں پر لفظ تلوار سے زیادہ کام کرتا ہے - منہ سے نکلی ہوئی بات پستول سے زیادہ خطرناک ہو سکتی ہے - اس کے لئے آپ نے اس پر اویزن میں کون سا حصہ رکھا ہے -

Shri A. M. Tariq: On a national or international issue, if any individual or an organisation makes a suggestion to the people that people of country A, country B or country C should settle the issue themselves. In such a case they do not talk of violence or say something against the Constitution or resort to violence. They want to carry the people along with them on the question. After all our country is a democratic country. Elections are fought here on manifestos and people vote on those manifestos. In these circumstances, if on any particular issue, any political party gets the support of the people, then it makes the position of Government very awkward.

In your definition, you have mentioned about 'opinion of individual', but who will clarify the word 'opinion'? In several parts of our country a spoken word may prove more dangerous than a gun. You have not made a provision for that.]

Shri C. K. Daphtary: Government will take action.

Shri A. M. Tariq:

جیسا آپ نے کہا اوپینین کا ہر شخص کو حق ہے - اوپینین پر کسی قسم کی پابندی نہیں ہے - اوپینین کسی کی بھی آ سکتی ہے - ولیولیشن سے ہم نے ریزولوشن کیا ہے - اہنسا سے ہم نے اپنی آزادی حاصل کی ہے - اہنساتمک طریقے سے بہت سی باتیں ملک میں ہو سکتی ہیں - اہنساتمک طریقے سے لوگ اپنی رائے دے سکتے ہیں -

[**Shri A. M. Tariq:** As you have stated every body has a right to express his opinion and no restriction can be imposed on it. We have brought revolution in the country through opinion and by adopting non-violent methods we got freedom. By adopting non-violent methods many things can be done in the country and the people can express their opinion.]

श्री अटल बिहारी वाजपेयी : पेज 2 पर "अनलाफल एक्टिविटी" को डिफाइन करते हुए तीन बातें कही गई हैं ।

[**Shri A. B. Vajpayee:** Three things have been said while defining 'unlawful activity':—]

> "which is intended or supports any claim, to bring about on any ground whatsoever the cession of a part of the territory of India or the secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession;
>
> which disclaims or questions the sovereignty of India in respect of any part of the territory of India;
>
> which disrupts or is intended to disrupt the integrity of India.

हम यह नहीं चाहते कि हमारी कोई टैरीटैरी बाहर जाये । हम यह भी नहीं चाहते कि भारत का कोई हिस्सा भारत से निकले । हम इस बात की भी इजाजत नहीं दे सकते कि कोई देश की सोविरेन्टी को चेलेंज करें । लेकिन इटेंग्रिटी को डिसरप्ट करने वाली जो तीसरी बात कही गई है, उस की क्या जरूरत है ? क्या यह सैशन सिसेशन को सपोर्ट करने और सोविरेन्टी को चनौती देने में नहीं आ जाता है ? मैं समझता हूं कि पहली दो बातों में सब कुछकवर हो जाता है ।

[We do not want that any portion of our territory be lost. We also do not want that any part of India might secede. Also, we cannot allow anybody to challenge the sovereignty of our country. But where is the necessity of making a mention of the third thing regarding disruption of integrity? Does this provision not include supporting cession or secession and challenging the sovereignty? I feel that everything is covered in the first two provisions?]

Shri C. K. Daphtary: There is overlapping. The third condition is not superfluous if you have already cession and secession.

Shri A. B. Vajpayee: And sovereignty is also there.

Shri C. K. Daphtary: The integrity of India goes a little further than mere sovereignty. It is a question of oneness of India.

Shri A. B. Vajpayee: When conditions 1 and 2 are there, the third condition is not necessary.

Shri C. K. Daphtary: Possibly the third condition goes a little further.

Shri P. Ramamurti: Integrity of India is a beautifully vague term. Suppose I have a strike, it might be called into question. A dispute between Maharashtra and Kerala or a dispute between Mysore and Kerala can also be termed as disrupting the integrity of India.

Shri C. K. Daphtary: I will give you many more such instances.

Shri P. Ramamurti: It is too wide a term.

Shri Y. B. Chavan: Our intention is to move an amendment, making this word 'integrity' to read 'territorial integrity of India'.

Shri A. B. Vajpayee: It is covered It presupposes that there should not be any cession or secession. It is stated that nobody will be allowed to question the sovereignty of India in respect of any part of the territory of India.

Shri Y. B. Chavan: The term 'integrity' is certainly something wider, comprehensive, than the term 'territorial integrity of India' Take for example, the question or the concept of common citizenship which is being corroded.

Madam Chairman: A citizen of one State is a citizen of India. But all of us know that there are trends to disrupt this concept.

Shri C. K. Daphtary: Territorial integrity is perhaps near to cession or secession. India is one territory; it is one democracy, one nation. You destroy the integrity of India by saying that a part of this territory must go out. I am not sure whether 'integrity' is not a better phrase than 'territorial integrity of India'.

Madam Chairman: May I request you to please define for the benefit of hon. Members the concept of sovereignty and integrity so that we know what line to adopt.

Shri C. K. Daphtary: Sovereignty is obviously the concept of the governance of a particular territory like a particular agency; Government may be this or that. But this is a democratic agency. "We, the people of India, . . . adopt; enact and give to ourselves this Constitution." Then the second question is that this sovereignty *vis-a-vis* outsiders is to be emphasised very often, like 12 miles of national waters or international arbitration etc. We have to emphasise our sovereignty very often in this way. Integrity is oneness of the country, not honesty; integrity actually means oneness and undivided. Personally speaking the term integrity is wider than territorial integrity.

Madam Chairman: Your opinion is that 'integrity' is a better word than 'territorial integrity'.

Shri P. Ramamurti: You may say that it is a wider term, but it is susceptible to different interpretations by different people.. This word is undefinable.

Shri C. K. Daphtary: Dictionary gives the meaning of this word.

Shri P. Ramamurti: Any action can be termed as disrupting the integrity of India. It depends upon the existing Government.

Shri C. K. Daphtary: It happens to every word. The word 'security' can be interpreted in different ways.

Shri Y. B. Chavan: Coming back to the question of common citizenship which I referred to a little earlier, now a citizen of a State is a citizen of India and he can work anywhere in India and live anywhere in India. This is one of the attributes of common citizenship. If this concept is corroded then the integrity of the country is in danger.

Shri S. M. Banerjee: Then you define it.

Shri Abid Ali: How can we ensure that the decision of the Tribunal remains final and no party may be able to approach the Supreme Court?

Shri C. K. Daphtary: You suggest there should be no further appeal.

Shri Abid Ali: Now the Supreme Court or the High Court can be approached in connection with any issue arising out of an Act. The Supreme Court has the inherent right. Of course there is no provision for appeal here.

Shri C. K. Daphtary: Here there is provision that no suit will lie. Clause 16.

Shri Abid Ali: That inherent right of the Supreme Court will remain.

Shri C. K. Daphtary: Will remain.

Madam Chairman: The Home Minister had asked if there is an erosion of common citizenship right—right of employment, settling down, and working anywhere etc.—will that be an attack on the integrity of India.

Shri C. K. Daphtary: Could be.

Shri B. Shankaranand: Art. 19 was amended in 1963 and these two words were introduced i.e. "integrity" and "sovereignty".

Shri Y. B. Chavan: That is exactly why we are using both the terms.

Shri B. Shankaranand: So that is proper.

Shri Surjit Singh Atwal: In view of what is happening at present in the country, in order to ensure the right of citizenship—i.e. right to work, stay or settle throughout the country—some other word should be there in place of "sovereignty and integrity".

Shri C. K. Daphtary: It is wide enough.

Shri S. S. Syed: Clause 3 lays down: "If the Central Govt. is of opinion that any association is, or has become, an unlawful association, it may, by notification in the official gazette, declare such association to be unlawful".

Then clause 4 says: "Where any association has been declared unlawful by a notification issued under subsection (1) of section 3, the Central Government. shall, within thirty days from the date of the publication of the notification under the said subsection, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful".

So here I feel that the Govt. will declare the association unlawful and then there will be reference whether there is sufficient cause for doing so or not. This procedure, in my opinion, is not proper.

Madam Chairman: That has been discussed right in the beginning. Normally when it is notified, it will not become operative till the Tribunal confirms the decision of the Govt. But in extraordinary situations, it may take effect. Even then it may be reversed by the Tribunal if the Tribunal does not agree with the Govt's reasoning. That is the safeguard.

Shri Babubhai M. Chinai: What would be your reaction if a proviso is added to clause 2(g) that any suggestion for the settlement of any border either by exchange of territories or otherwise made in good faith shall not be deemed to be an unlawful activity.

Shri C. K. Daphtary: You mean suggestion made to Govt. Having regard to what an hon'ble member said here, a single or collective appeal to Govt. itself to do a particular thing might be perhaps an exception.

Shri Y. B. Chavan: Even Govt. cannot do it unless it brings it before Parliament.

Shri P. Ramamurti: No. A treaty can be signed and later on you can bring it before the Parliament.

Shri Y. B. Chavan: Govt. will have to bring everything before the Parliament.

Shri P. Ramamurti: You can mobilise public opinion.

Shri S. S. Bhandari: In the case of Berubari, something was signed before and then it was brought before Parliament.

Shri Y. B. Chavan: Even if it is signed, it cannot be implemented.

Shri C. K. Daphtary: In the case of Berubari, they held that it cannot be done without an amendment of the Constitution.

Madam Chairman: If no other member has to ask any question, I would like to thank you, Mr. Attorney-General, very much for elucidating so many points in such an able manner.

Shri C. K. Daphtary: It was most pleasing.

(The Witness then withdrew)

GMGIPND—LS I—2964 (E)LS— 14-11-67—950.