

raised. We will try and put in as many as we can.

SHRI BASUDEB ACHARIA(Bankura): Are you allowing a discussion on the Junior Engineers' strike?

SHRIMATI SHEILA DIKSHIT: We will look into it.

SHRI INDRAJIT GUPTA: Is the Home Minister making any statement on the killings in Delhi yesterday of two Councillors?

AN HON. MEMBER: Yesterday he made the Statement.

SHRI INDRAJIT GUPTA: Is he adding anything further to it?

SHRI BASUDEB ACHARIA: He should repeat it because we were not here in the House.

SHRI INDRAJIT GUPTA: Has any development taken place, has anybody been arrested, identified? It is a serious matter.

THE MINISTER OF HOME AFFAIRS (S.BUTA SINGH): In my statement I have already made it clear that we have been able to get the identification of one of the possible assailants and one person has been apprehended. He is being interrogated.

12.26 hrs.

NATIONAL SECURITY (AMENDMENT) BILL*

THE MINISTER OF HOME AFFAIRS (S.BUTA SINGH): Sir, I beg to move for leave to introduce a Bill further to amend the National Security Act, 1980 in its application to the State of Punjab and the Union Territory of Chandigarh.

MR. DEPUTY-SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the National Security Act, 1980 in its application to the State of

Punjab of the Union Territory of Chandigarh".

SHRI INDRAJIT GUPTA (Basirhat): I wish to oppose the introduction of this Bill. It may be asked that why do you object to a Bill which is meant to strengthen the capacity of the administration to deal with terrorism. Sir, we have been seeing over the past few years that this Government is by steps taking legislative measures, a number of them, tightening up the security regulation and every time these Bills are brought before the House, the explanation given is that unless these powers are given to the police and the administration, it will not be able to curb the activities of the terrorists.

It is rather a matter of irony I should say that this Bill is being introduced today by the Hon. Minister within a few hours of the latest exploits by these terrorists—not of course in Punjab or Chandigarh, but their extended activities which have now become a more or less regular feature in the capital city also. Only yesterday in broad day light one Councillor and the brother of another Councillor were gunned down in South Delhi.

We all know what has happened. It has happened in previous cases also. The police is never able either to catch anybody or even to arrive at the scene of the crime within a reasonable short time. Yesterday also people there have complained—as we see in the Press as they had complained a month ago when a mass killing of people took place in Greater Kailash area at some birth-day party—that the police turned up after one hour, after one and a half hours or after two hours.

Therefore, I would like to ask whether these terrorist outrages which are mounting everyday are due to the fact that the administration and police have not got enough legislative powers to control them or to curb them. Is that the reason? We have got Disturbed Areas Act, National Security Act, Prevention of Terrorist Activities Act and so many Acts which I don't remember. There is already a whole armoury of legislations. But I am saying that this legislation is useless so

[Sh, Indrajit Gupta]

long as your administration is so inefficient and your intelligence system is utterly useless. The intelligence system is failing completely. No amount of laws you pass in Parliament are going to remedy that situation. This is only an effort by the Government to try to show to the people in the country that they are very serious in the matter of combating terrorism.

Sir, I would like to point out here that in a statement given by the Government in answer to a question they have said that during the period from 12th May 1987 to 25th July 1987- that means a little more than 2 1/2 months-233 persons including 22 policemen were killed due to terrorist activities in Punjab. This Bill meant to be applied to the State of Punjab and the Union territory of Chandigarh. These figures that the Government has given in the statement show as to what is the scale of these terrorist activities, how they have increased and spread over new areas. Of course, the Bill does not take into account the fact that Delhi itself has become an arena for terrorists coming from Punjab to come and operate here.

PROF. N.G. RANGA (Guntur): Because of too much pressure over there, they say.

SHRI INDRAJIT GUPTA: So this Bill in my opinion is completely useless. All it is going to do is to tighten up certain security regulations which are not implementable at all.

I would like to say one more thing. Sardar Buta Singh knows that one of the factors which is being utilised to instigate and inflame the minds of the Sikh boys in Punjab to resort to these acts of terrorism is the continuous propaganda carried on by the Extremists in Punjab including those inside the Golden Temple that a large number of innocent Sikh youth are being arrested, tortured and even killed by the Police. That is what they are saying. Of course, this has been contradicted several times by the Government and police side also. Mr. Riberio said two days ago that no innocent youth is being tortured and harassed. Nevertheless I am

convinced from talks which I had with Sikh friends and even those who are not pro-extremists they have also begun to believe it at least partly. This is the propaganda which is going on that innocent youth are being tortured, harassed and killed.

Sir, as you know recently when massacre of the bus passengers took place in Haryana and Punjab a note was left saying that if you continue to kill innocent Sikh youth then they will take revenge and kill 500 people for every innocent Sikh youth killed. This propaganda is going on. It has penetrated into the minds of a large section of that community. Therefore, when we bring these Bills we should at least try to see whether something can be done here. I am not prepared to give a guarantee for the police that out of 100 cases there is not a single case of mistaken identity or innocent fellow- not deliberately perhaps- being arrested, tortured and harassed.

Sir, the only safeguard in this Preventive Detention Act is this provision for review by the Advisory Committee which is included in the NSA also. This is the only legislative provision providing some safeguard against mistaken identity or harassment of innocent people. Advisory Committee is set-up by the Government. It consists of judges-either sitting or retired judges. There is no reason why Government should have any suspicion about the Advisory Committee appointed by itself. What do I find in this Bill which the Minister is now introducing? In this Bill, the powers and the activities of the Advisory Committee are sought to be further restricted and curbed. You are trying to restrict and curb the activities of terrorists. But in this Bill you are restricting the arena and the powers of the Advisory Committee itself by saying.....

SHRI SHANTARAM NAIK(Panaji): Point of order, Sir, at the introductory stage, the scope of the discussion is very limited.

MR. DEPUTY-SPEAKER: You make a brief statement.

SHRI SHANTARAM NAIK: Are you discussing the merits of the Bill or what?

Whether the House is competent or not is the only question to be seen at this stage. But the hon. Member is discussing the merits of the Bill.

MR. DEPUTY-SPEAKER: Guptaji, please be brief.

SHRI INDRAJIT GUPTA: I don't know why the hon'ble Member is doing that. If the hon'ble Member wants to become the presiding officer of the House, he should apply to Mrs. Dikshit or somebody. I don't know to whom so long as you are there, Sir .

We are not talking something which is irrelevant. It is very important as it is affecting the liberty of citizens....(Interruptions)...I am only pointing out that in the National Security Act-as it stands at present before amendment-it says that:

" ...the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by itthe grounds on which the order has been made....."

MR. DEPUTY-SPEAKER: Guptaji, merits of the Bill cannot be discussed here. Anything regarding the competence of the House to legislate can only be discussed here.

SHRI INDRAJIT GUPTA: Merits or the competence of the House is not the question.

MR. DEPUTY-SPEAKER: You can discuss other things at the time of consideration of the Bill.

SHRI INDRAJIT GUPTA: It is a fundamental question affecting the liberty of the citizens of this country.

Mr. DEPUTY-SPEAKER: No, no. You can discuss the Bill when the debate comes up.

SHRI INDRAJIT GUPTA: Now they want

to change this. Please note this, Sir, that instead of "three weeks" from the date of detention, they want to make it "within four months and two weeks". "Four months and two weeks" shall be substituted. What is the point in this, I cannot understand. You don't even want these detenus to be produced before the Advisory Board which is constituted by you. Let the Advisory Board go into each case and decide. Then at least we have something to tell these people who are continually saying that all innocent youth are being harassed, arrested and all that. But you are saying something here which will only antagonise people more and add fuel to the fire. It will help the terrorists. It will not go against them. Therefore, Sir, I am against this Bill because such Bills are quite useless - it is being proved-in controlling the situation.

Let them improve their intelligence system. Let them teach their administration and police to behave in a way which is required. Without that, all that is happening is that the terrorist activities are spreading all the time. Now, the people in Delhi are living in terror. Previously it was a matter of Punjab. Now nobody knows in Delhi whose life will go the next day. And what is done about it? Just by passing this Bill, they are not going to improve matters at all. I know this Amending Bill this will be passed because they have majority. But this will not satisfy anybody just like saying that we are going to hold elections in Haryana. So, we are putting Punjab under President's Rule as the people will feel more secure. But what is the response of the terrorists. to that ? We know and we saw what happened. Therefore, they should not try the short-cut method. It is not going to help. I am pleading, Sir, that the Advisory Board's powers to review these cases of detenus should be enlarged instead of being restricted so that we can answer the propaganda of the extremists that every case is being looked into impartially by an Advisory Board of judges. And only if they are convinced that man should be detained, then they are confirming the order of detention. Otherwise, they are recommending his release. But you are going in the opposite direction. This will only and fuel to the fire.

[Sh. Indrajit Gupta]

Therefore, I am opposing this Bill and it should not be introduced. Let them reconsider it.

MR. DEPUTY-SPEAKER: Please be brief. I don't want you to discuss the merits of the Bill.

SHRI HANNAN MOLLAH (Uluberia): Sir, I oppose the introduction of this Bill because mainly I agree with the points raised by my esteemed colleague, Mr. Indrajit Gupta. What I want to say is that in our country there is no lack of rules, laws, regulations, etc., to curb the activities of the extremists or criminals. But the lack of will is there. That is proved again and again. Whenever there is a failure on the part of Government or Administration, they come before the House. With their majority, they bulldoze some Acts or pass some Bills. They promise that with that weapon every undesirable thing will be eliminated and everything will be okay even when the ink has not dried up, it starts to show its failure and it has been proved umpteen times that it is not the lack of our Acts, but it is the lack of will on the part of the administration and Government, which is responsible for failure and this is the story all over the country, specially in the terrorist-stricken places like Punjab etc. We are now told that because there is pressure in Punjab, therefore, it is spreading outside Punjab. This cannot be an argument. It is, in fact, surrender before the terrorist activities. It is going on every day. Sir, you are also an elected representative of the people like the Councillor, Metropolitan Council. He was sitting in front of his house and was killed. Like that anybody can walk into anybody's house and kill him. Can the Government guarantee that such amendment, or the draconian laws already in existence would be able to curb these things. Our objection basically is that the attitude of the Government is to constantly erode the fundamental rights of the people and they have always done that on one plea or the other. They have always taken the democratic rights of the people and have failed to curb the extremist activities. We think that if the Gov-

ernment have the will to contain and curb the terrorist and communal forces and not compromise with any such forces, and honestly implement them, the Government can sufficiently do it with the weapons that are already there in our laws. The failure of the Government is there because they have the lack of political will.

In view of what I have stated, I oppose the introduction of this Bill.

SHRI BASUDEB ACHARIA (Bankura): Mr. Deputy-Speaker, Sir, I oppose the introduction of the National Security (Amendment) Bill. I oppose this as this Bill violates Article 22 of the Constitution relating to the fundamental rights of a citizen.

When the original Bill was introduced and passed in the 7th Lok Sabha, we all opposed it at that time. We observe that this type of legislative measures would not help to curb these terrorist activities, rather this measure would be misused. We have seen time and again that the State Government have misused the National Security Act even to curb trade union activities as was done in the year 1981 to curb the railway workers' strike.

There are already a number of draconian measures, black Acts in the hands of Government, like the Anti-Terrorist activities Act, Disturbed Areas Act, Essential Services Maintenance Act and the National Security Act. In spite of all these measures, the Government is not able to curb the activities, rather it has been admitted that there had been no improvement in the effective prevention of these activities and I doubt whether with this amendment, the Government will be able to curb the terrorist activities which are now spreading beyond Punjab to Delhi and other places. The President's rule was imposed on 11th May. Now it is under Central Rule. In spite of that, we have seen from 12th May to 25th July, that 23 persons (including 22 policemen) were killed. So, by imposing President's Rule in Punjab, situation has not been improved and I also doubt that this piece of legislation to increase the period of deten-

tion, without trial, without taking advice or opinion of the advisory council, without giving any information about the ground of detention, from 10 days to 15 days will help the Government to curb these terrorist activity. So, Government should not introduce this Bill and rather take other administrative and political measures to solve the problem of terrorism in Punjab and other areas.

SHRI SAIFUDDIN CHOWDHARY (Katra): Sir, many basic points have been already covered and I fully agree with the idea that making the law more and more strong, we just cannot effectively curb terrorism. Now, what is the admission by the Hon. Minister in the Bill itself when he said in the Statement of Object and Reasons, "Although the entire State of Punjab and the whole of Union Territory of Chandigarh has been declared as 'disturbed areas'. Under the relevant Disturbed Area Act there had been no improvement in the effective prevention of this activity. While the deteriorating law and order situation has necessitated the imposition of President's Rule in the State of Punjab. Further strong action was found necessary to prevent the terrorists from indulging in activities injurious to the security of State and the maintenance of public order. Now, this is the clear proof that the Disturbed Area Act or the President's Rule has not effectively curbed terrorism.

Now, we have this NSA law since 1980. We had an amendment in 1984 and now again they have come to extend the time by which they have to communicate to the person the ground for his arrest and to produce before the Advisory body. Now, Sir, it is violative of the basic tenets of Constitution; I cannot say the whole of the Constitution, because the Constitution over the years through amendments has been studded with many un-democratic sections, many un-democratic articles. So, they can set certain examples. But that is an exception and for that exception there are certain safeguards; that you have to produce the person before the Advisory Committee. Now, that time is being extended; that for 6 months you cannot just produce him. A very vital point

has been laid by Mr. Indrajit Gupta. How can you answer to that allegation that the person has been taken in the custody and the authorities are not partial? And can Government tell us that those who have already been in the custody for committing various offences, what kind of prosecution has been started for them and what punishment has been given to them. What is necessary is that this prosecutory machinery has to be stimulated and you just cannot inform, within a certain period of time that is already there, to the particular person as to what are the reasons, for what he has been arrested. I just cannot understand any more inefficiency than this.

Another point I want to say is that the difference between the 1984 amendment and this amendment is that in Article 14A(1) of this NSA Bill, Notwithstanding anything contained in the foregoing provisions of this Act, this was there in the original and in the 1984 amendment.

Now, they have added 'or any judgment, decree, or order any court or any other authority'. This has been added now. This means that the person is denied his right to appeal to the court. We have seen in many cases, when they approached the courts, the courts have ordered their release. They gave their verdict that the arrests were not proper. Now you are taking away that right from a person to appeal to the court. What can be more repressive than this?

We all want to fight terrorism and we have to take necessary action in this regard. But this psychology of resorting to more and more stringent laws by itself will not be helping in any way. We have to utilise the existing powers effectively and implement the provisions properly. Our machinery to prosecute the offenders should be strengthened and exemplary punishment should be given to those who are committing heinous crimes. This is the need of the hour. Sitting in the North Block or the South Block and passing more and more stringent laws will not help.

[Sh. Saifuddin Chowdhary]
I oppose this Bill.

SHRIMATI GEETA MUKHERJEE (Panskura): I oppose the introduction of this Bill on constitutional grounds because this Bill is violative of the Fundamental Rights. Now Sir, many points have been covered by our friends and I would like to speak only a few words on how this law is being extended and is being used for violation of Fundamental Rights. I will give you just one example.

Under Section 14(a) which is being proposed, relaxation is being given with regard to the Advisory Committee, etc. What are the provisions for which this is being applied? It is stated herein that if anybody acts in any manner prejudicial to the maintenance of supplies and services essential to the community, then he can be detained. In 1982, Government had defined certain essential services and description for 14 different kinds of essential services was given in the list. And in the last clause, they have added 'any service in connection with the affairs of the Union or a State not being a service specified in any of the foregoing categories can be an essential service'. That means, everything under the sun can come within the definition of these 'essential services'. If this is not a violation of fundamental rights, what else can this be?

All these provisions are going to be counter-productive. These measures are of no help in Punjab. I would rather point out that the Minister and the ruling party should use their powers in a different manner. And I would like to give the example of what our own Party is doing in this regard. Though our party in Punjab is a small one, from 28th June onwards, for ten days we took 14 *Jatras* covering 2,000 villages in Punjab. Some of these villages are strongholds of terrorists. Braving all circumstances, we covered these villages and appealed for peace. Despite the fact that our comrades, other people and sometimes even whole families are being murdered, we had undertaken this task. Despite the murderous attempts, we did not shrink from our responsi-

bility. Our friends from CPI(M) also helped us, in a big way. I would rather invite the attention of the ruling party as well as the other parties to their duty in rousing the people to stand against this heinous crime of terrorism which seeks to disrupt our country. This is the answer to terrorism and not abridgment of fundamental rights as is being proposed in various permutations and combinations of this National Security Act.

Therefore, I oppose this Bill at the stage of its introduction.

SHRI DINESH GOSWAMI (Guwahati): Mr. Deputy Speaker, Sir, I will not go to any political side because we will have an opportunity when the Bill is discussed. But I oppose the introduction, on the ground that this Amendment is violative of the provisions of the Constitution and beyond the legislative competence of this Parliament. My reasons are that this amending provision-Section 14A(1)-is sought to be amended and 14A states that:

"Notwithstanding anything contained in the foregoing provisions of this Act, or in any judgement, decree or order of any court.....a person may be detained for the defence of India the security of India, the security of the State, the maintenance of public order" which covers everything under the Sun.

In such detentions, the opinion of the Advisory Committee will not be necessary. It is not necessary if the detention is for a period of three months or the maximum of six months.

This provision, it appears was struck down by the courts, if I am correct. Because in your amending Bill which you have given, there is no mention of Section 14A. It is not there in the original Act which you have produced. But whatever it is, what we are trying to do by this Amendment is that even if the judgement is given declaring 14A as violative of fundamental rights even then, 14A will be applicable. That means we are trying to exercise a judicial function on giving a judgement. This is what we precisely tried to do in the Indira Gandhi's case when we

passed a Constitution Amendment by amending an Act and saying that the judgement of Allahabad High Court was null and void and that part of the amending Act was declared null and void by the Supreme Court because we have the power to legislate but we have no effective power to act as a judiciary and say that the particular judgement of a court will not be operative. If we feel that a particular interpretation by a court is not correct, we may give the modality of the entire Act by giving different interpretations.

My second objection is that by an Act we cannot encroach upon the fundamental rights. If a particular provision of the Act violates the fundamental rights and thereby becomes null and void, can we pass an Act and say that the Court will have no right to declare this Act as violative of the fundamental rights, or even if it is declared as invalid being violative of the fundamental rights, that will not be affected?

I do not know how this Parliament can pass a law, an ordinary law, by saying that even the Courts will have no right to declare a particular provision of an Act as violative of the fundamental rights. This we do not possess by virtue of an ordinary law making power.

My third objection is that this is violative of Articles 21 and 22. Let us not forget. I do not know that there is a possibility that because of this, the original National Security Act itself, may be declared as *ultra vires* because the Supreme Court and the other courts, right from the beginning, have been very loathe and very reluctant to permit encroachment on the individual's freedom by these laws.

It is because the preventive detention law by itself, is a lawless law and you cannot curb lawless activities by lawless laws. In fact, I may point out that Mr. Patanjali Shastri in the Supreme Court declared in the first preventive detention law as a sinister looking fissure which is tensely out of place in the democratic which vests personal liberty with sacrosancity. But if because of the contin-

gencies, these Preventive Detention Acts were declared valid, because of the safeguards, the courts in all these judgements upheld that though fundamentally and on principle preventive detention was against these Articles 21 and 22 or against the principles of democratic polity and because of these safeguards mentioned in the Act—that means, the enquiry by an Advisory Committee and the various safeguards—we held the Act as valid. But by this provision we are saying that there will be no necessity to give grounds for four months and two weeks and that detention can be held to be justified and legal even if the courts decide to the contrary under Section 14A, I believe. we have no power to pass a similar Section.

13.00 hrs.

That is why, Mr. Deputy Speaker, there is Section 14A and the conferment of power, namely, that the reference to the Advisory Board is extended to four months and two weeks or that a person can be detained for more than three months. Article 22 clearly says:

“No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of....” etc. etc. Therefore, I submit, Mr. Deputy Speaker, in respect of Section 14A which says that no judgement will be operative—even a judgement declaring an Act violative of the Fundamental Rights—that we cannot pass a law, an ordinary law. We can make a Constitutional amendment. But an ordinary law passed by this Parliament has no power to over-ride the Fundamental Rights, No power to undo the judgement of the court. And, therefore, this law is beyond the legislative competence of this Parliament,—its amending power. And that is why I oppose the introduction.

So far as the other parts are concerned, as I said, by lawless laws you cannot prevent lawless activities—and I will deal with those

[Sh. Dinesh Goswami]
provisions at the appropriate time when the Bill comes up for discussion.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): At this stage, I believe I am called upon only to answer the objections raised on the ground that the Bill violates the Constitution, and that Parliament does not have the legislative competence to make a law of this nature.

As I listened to the submissions made by hon. Members, I believe the criticism is really in respect of Section 14A which is being introduced in this Act. The other provisions merely extend the time limit which is provided for in many Sections. For example, if you will kindly see the Bill, the crucial section is Section 3 of the amending Bill, and the attack is really on the first portion of that Bill. In Clause 2, various time limits have been extended by a few days. For example, in Section 3(4), the words "ten days" have been replaced by the words "fifteen days".

SHRI SAIFUDDIN CHOWDHARY:
Why?

SHRI P. CHIDAMBARAM: I will answer. You must be patient. You are here to ask why. I am here to answer why. But you must listen.

"fifteen days" have been extended to "twenty days", "seven days" have been extended to "fifteen days", "ten days" have been extended to "fifteen days", "three weeks" have been extended to.....*(Interruptions)*

SHRI DINESH GOSWAMI: That is very important.

SHRI C. MADHAV REDDI (Adilabad): You can take this up after lunch, unless you are going to finish within ten minutes.

SHRI P CHIDAMBARAM: I will finish within seven minutes.

These periods are being extended because of the special administrative difficulties one faces in Punjab today. For example, the courts have held that strict compliance with such a law is necessary. Even if we delay by one day in delivering the grounds of detention, even if we delay by one day the sending of the report to the Advisory Board, the detention falls to ground; and then to re-detain the person on the same grounds becomes very difficult. Because of the extreme pressure under which the Punjab Administration is working now, it is necessary to give them a little more time, to comply with the administrative requirements. That is why small extensions have been provided for in the periods which are there in the original National Security Act. I do not think there is any question of unconstitutionality or legislative competence touching upon these small extensions.

We can argue: "If you can do it in 15 days, why can't you do it in ten days?" My answer is: "Of course, we will try to do it in ten days; but because we find that there are serious administrative difficulties, we want a little more time from Parliament. But our endeavour will be not to do it on the 15th day, not to do it on the 20th day; but our endeavour will be to do it as quickly as possible. This is purely an administrative problem."

SHRI DINESH GOSWAMI: You said three months.

SHRI P. CHIDAMBARAM: I will answer it. That is a separate argument. I will have to deal with that.

The burden of Mr. Goswami's argument, and that of the other hon. Members is that Section 14A is unconstitutional because it violates Article 22(4) of the Constitution. Kindly see Article 22.

The scheme of Art. 22 is this. Under Art. 22, clause 2, it is stated as follows:

Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours."

That is the general rule and clause 4 is an exception to clause 2 clause 4 reads as follows:

"No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an advisory board has reviewed his detention."

Therefore, there is the rule of 24 hours and there is clause 4 providing that in a law of preventive detention, you need not produce him within 24 hours; you can detain him for a period of three months; and if the Advisory Board has not reviewed that detention within three months, it will fall to ground. But then what the hon. Member has overlooked is that clause 7 is an exception to clause 4. (*Interruptions*) You kindly see clause 7. You have not seen it Shri Saifuddin Chowdharyji. It reads as follows:

"Parliament may by law prescribe—
(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)".

So, clause 7 is an exception to clause 4. Parliament can make a law under clause 7 giving power to government in specified cases, enumerated cases the power to detain beyond three months and not for comply with clause 4. Now, really, there is no maximum limit. Here you may kindly look at section 14(A). It is not as though we have said that he will be detained beyond three months without any limit at all and without going to the Advisory Board. We have no doubt resorted to clause 7 to go beyond three months, but we have imposed an outer

limit of six months. This clearly falls under 22(7). This law is competent under 22(7)). On the merits of the law, we will debate and that we will answer. At the moment, on competency, this law is absolutely competent under 22(7). You may ask me why do we say notwithstanding anything contained in any judgment etc. I am conscious of that; that is because old clause 14(A) was struck down by a Division Bench of the Punjab High Court in a criminal writ petition No. 752 of 1985. They held that 14(A), as it stood, did not strictly comply with the requirement of 22(7). In fact, the reasoning of the learned judges is - I say it with great respect - that merely enumerating (a) to (e) in clause 14(A) would not satisfy the requirement of 22(7). Now, this is purely a legal question. We no doubt lost the case in the Punjab High Court we have filed an appeal to the Supreme Court and the Supreme Court has in a special leave appeal criminal No. 3838 of 1985 by order dated 20.12.85 - the Bench consisted of the Chief Justice Justice Madon and Justice Oza-had stayed the implementation of the judgment of the High court holding 14(A) is invalid. Therefore, the matter is pending before the Supreme Court. Whether the existing 14(A) falls under 22(7) or does not fall under 22(7) is a matter pending in the Supreme Court. If it is found that 14(A) does not satisfy 22(7), we will have to come forward with an amendment of 14(A). But we are advised, our legal advice is that 14(A) is perfectly within 22(7) and there is no infirmity and we will argue this matter before the Supreme Court. But there is no question of legislative competence arising at this stage because 22(7) contemplates a law to be made by Parliament exceeding three months and 14(A) is such a law.

SHRI DINESH GOSWAMI: As far as the legislative competency is concerned, can you say that a particular judgment will not be operative? If that is so, then you are acting as a superior court.

SHRI P. CHIDAMBARAM: No, that is not correct. Hon. Members know, and hon. members certainly have access to legal

[Sh. P. Chidambaram]
 advice also. Parliament has the power to pass a validating law; a validating law can override a judgment of court except that it has to validate and cure the infirmity.

SHRI DINESH GOSWAMI: Even in a fundamental right 8.

SHRI P. CHIDAMBARAM: A number of validating laws have been passed. Land legislation had been struck down. We have passed validating laws. A validating law is a well-known parliamentary instrument. We can pass a validating law. But then the question is academic here because we really need not validating any case which arose under the old 14A. We are now re-introducing 14A. We really need not validate anything which happened before. In the particular case a particular detention has been struck down on certain grounds. We need not really validate anything which happened earlier, but we have absolute power to pass a validating law. I can give you hundreds of examples of a validating law.

SHRI DINESH GOSWAMI: You are not validating.

SHRI C. MADHAV REDDI: I feel that you are not validating.

SHRI P. CHIDAMBARAM: That is the answer to Mr. Goswami.

SHRI C. MADHAV REDDI: I know.

SHRI P. CHIDAMBARAM: So, Mr. Goswami's point has been answered.

SHRI C. MADHAV REDDI: that is a bad law because you are enacting a law under the shadow of a supreme Court stay order.

SHRI P. CHIDAMBARAM: It is not correct.

SHRI P. CHIDAMBARAM: Your point-I am sure you agree with me-is that we are really not validating. We have the power to pass a validating law but here we are really not validating anything because we do not have to validate. It is prospective. 14A is

prospective, up to 1988 June, one year from the date of the Ordinance. But we are entitled to say that 14A is valid because 14A was introduced by Parliament, 14A has no doubt been struck by the Division Bench of the Punjab High Court but that judgment has been stayed. Therefore, the merits of 14A whether it falls under 22(7), is a matter to be decided by the Supreme Court.

SHRI C. MADHAV REDDI: You are resting on the stay order.

SHRI P. CHIDAMBARAM: I am not resting on the stay order. I am resting on parliament's power to make a law under Article 22(7), I am now coming forward asking you to make a new 14A for a period of one year. I am not resting on the stay order. I am mentioning the stay order to say that the matter is not final, the matter is still in the Supreme Court. The final court has not pronounced that 14A is invalid. If the supreme Court says that 14a is invalid, then 14A will go. I am resting my Bill.....

I am sorry. I said two years. It is wrong. It is only one year. June 1987 to 1988. Two years is wrong.

SHRI DINESH GOSWAMI: How will the Supreme Court inquire into the new 14A, when you have said, "Notwithstanding anything contained in 14A will be operative? Because, if the Supreme Court says tht 14A will show that the judgment of the Supreme Court is not operative,

SHRI P. CHIDAMBARAM: This, "notwithstanding anything, etc., " refers to the judgment of the Punjab High Court.

SHRI DINESH GOSWAMI: How?

SHRI P. CHIDAMBARAM: That is the only judgment which struck down 14A. We cannot forget the history behind the legislation. Kindly listen to me. When a High Court strikes down a particular provision and now we say, "Notwithstanding anything in that judgment,....."

SHRI DINESH GOSWAMI: That judgment?

SHRI P. CHIDAMBARAM: That judgment is the Punjab High Court judgment. That judgment had struck down a particular detention made before the 8th of June, 1988. We have said "notwithstanding anything is that judgment" you can make a detention under section 14A. Now this judgment is under appeal to the Supreme Court. We have the power to make a validating law. Of course, we are not really resting it on the validating power. The power is there. We are resting this Bill on 22(7) read with Parliament's power to make a law. We are making a new law. The old 14A was struck down but the judgment has been stayed and a new 14A has been added again. Whether 14A is valid or not, will have to be eventually pronounced by the Supreme Court.

Sir, I am absolutely clear in my mind and we have legal advice, that Parliament has the competence to make this law. Whether the law is valid or not—not the competence—whether 14A as it is worded now is valid or not will be decided by the Supreme Court. So, the question really does not arise. Now, we can debate the merits of the Bill.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the National Security Act, 1980, in its application to the State of Punjab and the Union Territory of Chandigarh."

The motion was adopted.

S.BUTA SINGH: Sir, I introduce the Bill.

**STATEMENT RE. NATIONAL SECURITY
(AMENDMENT) ORDINANCE, 1987.**

[*English*]

**THE MINISTER OF HOME AFFAIRS
(S.BUTA SINGH):** I bet to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate leg-

islation by the National Security (Amendment) Ordinance, 1987.

13.14 hrs.

The Lok Sabha adjourned for Lunch till fifteen Minutes past Fourteen of the Clock.

The Lok Sabha re-assembled after Lunch at twenty Minutes past Fourteen of the Clock

[**MR. DEPUTY-SPEAKER** *in the Chair*]

PAYMENT OF GRATUITY (AMENDMENT) BILL- CONTD.

[*English*]

MR. DEPUTY-SPEAKER: Now, we take up further discussion on the Bill further to amend the payment of Gratuity Act, 1972.

[*Translation*]

DR. G.S. RAJHANS (Jhanjharpur): Mr. Deputy Speaker, Sir, gratuity and provident fund are two such items on which the future of a worker depends. It is well known that these two are the source of malpractices and dishonesty in the industrial establishments. You may make any law. They will find out some loop-holes in it and the poor worker is always the victim.

You propose to amend the Payment of Gratuity Act, 1972, according to which the establishments engaging more than ten workers shall make payment of gratuity to the workers. But you must have seen reports that some establishments which engage 400 or 500 workers are avoiding payment of gratuity because they have appointed only nine or ten workers on permanent basis and the rest are shown as casual workers. Their plea is that only the casual workers work, so why would they employ permanent workers? The provisions of the law are mostly implemented by the State Government machinery. Government machinery is not