

PROF N.G. RANGA (Guntur): Discussion under Rule 193 also deals with the same subject. What is the use of speaking on the same subject again and again? The time of the House has to be economised.

SHRI C. MADHAV REDDI: We have allotted eight hour for all these items. We will finish these within this time; we will not exceed that.

SHRIMATI SHEILA DIKSHIT: Two hours for discussion under 193, three hours for items 12, 13, and 14 and then Supplementary Demands - one hour. That comes to six hours.

SHRI C MADHAV REDDI: Let us fix 3 hours, 2 hours, 2 hours and one hour respectively.

MR. DEPUTY-SPEAKER: We fix three hours for items 12 and 13; one hour for item 14, two hours for item 15 and two hours for item 16.

First we will take up items 12, 13 and 14, for which the total time is four hours.

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STATUTORY RESOLUTION RE: DISAPPROVAL OF TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ORDINANCE, 1987

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) BILL

AND

PUNJAB STATE LEGISLATURE (DELEGATION OF POWERS) BILL

[English]

SHRI SAIFUDDIN CHOWDHARY

(Katwa): I beg to move:

"That this House disapproves of the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (Ordinance No. 2 of 1987) promulgated by the President on the 23rd May, 1987."

Sir I oppose this Bill on the ground that it violates a Constitutional provision. I have no objection to plugging the loopholes, which may be there, in our normal laws, in our Constitutional laws. We have to strengthen our machinery to tackle the terrorism. We have to strengthen our machinery to prosecute, to nab and to curb the terrorists' activities. But when it comes to the point that the Government only thinks in terms of bringing more and more laws.....

SHRI AJAY MUSHRAN (Jabalpur) You are speaking like a gentleman today. I am quite impressed.

SHRI SAIFUDDIN CHOWDHARY: I always speak like a gentleman. But something the emphasis is only on the administrative aspect of the problem and that has been really harmful to my mind.

Now, in this Bill my main objection is that the Clause 7 of the Bill enables the Central Government to confer on any officer of the Central Government powers exercisable by a Police officer under the Code of Criminal Procedure Act, 1973, in a State or part thereof. This is ultra vires of the Constitution because the Constitution clearly defines that the power for the police is under the State List. As you will find, the Seventh Schedule of the Constitution and even Forty-Second Amendment did not undermine this position. But you are bringing a Bill undermining the very frame of the Constitution and you are not explaining it in terms of Constitution. How can you do it? So long the police remains part of the State List, how can you take up the power and confer it on to the Central

[Sh. Saifuddin Chowdhary]

Government officers? This is not only anti-Constitutional, ultra vires of the Constitution but this has very serious implications also. We may have some complaints about some police officers, may be they are indulging in some terrorists activities, may be there are some lapses and we have to rectify them but that does not mean that you enact a law by which the whole lot of the set up in a State stands condoned. This is not what we should do in a very critical situation like this. This is my first objection to the Bill.

Secondly, Sir, the sweeping power that the Bill is going to provide, I must say are so sweeping and are inclusive of the definition of the key terms that it will be hard to prove to anyone's satisfaction that one is not involved in some disruptive action.

I quote Mr. Malgaonkar, who described this Bill:

"The blackest peice of legislation on Independent India's statute."

On these two grounds I oppose this Bill and I oppose that very mind which is working behind such kind of enactments.

We have so many laws. Just two or three days ago, you have amended the National Security Act where by you have taken certain powers and we opposed it on the ground that it was unconstitutional and it was against liberty and freedom. You have the Disturbed Areas Act, Armed Forces (Special Powers) Act, Terrorist Affected Areas (Special Courts) Act and so on. And now you are bringing this Bill. You originally promulgated this law in 1985 and after two years, just after the Session was over, you enacted an ordinance. How is it that during the long span of that session, you did not feel the need to bring such amendments or laws? Why do you always bring them just after the Session? Whenever you think of some im-

portant issue, you either bring it when the Session is over or when there is no Session. That is why we suspect some kind of a mala fide intention. It is always a *fait accompli* on your part. Why cannot we debate and discuss the issue, particular when it is connected to the Punjab on which we have to take steps unitedly because it is a national problem? We have emphasised this point over and over again.

Just now I mentioned the names of a number of repressive laws that you have passed. But have you been able to improve the situation even then? In the statement on the NSA amendment, the Minister himself has admitted that they have not been able to prevent terrorism. Nothing is done to curb terrorism with all these stringent measures which have resulted in curbing liberty and freedom of the people only. You are making the terrorists happy by letting them know that you have become nervous because of their activities. This reaction makes the terrorists very happy. We are very unhappy over the situation.

You have brought forth so many laws when Parliament is in Session and you have come with ordinances when there is no Session. And you have this President's Rule also. I will deal with all these aspects when we discuss the issue under Rule 193. We have to say so many political and other things. But now, my main question is whether the situation has improved even a bit, with so many laws, ordinances, the President's Rule and so on and so fort. The answer is 'no'. That is the reason why I request the Government not to bring all these laws and amendments, all these undemocratic and repressive measures. You have enough laws. You please apply these laws properly. You strengthen Your machinery. You encourage people to come out and fight terrorism. And please do not meddle with what is given to the States by the Constitution. That will again alienate a whole

lot of States, which will become a breeding ground for terrorists whom you are supposed to fight out.

With these words I oppose this Bill and I request the Minister to withdraw it.

THE MINISTER OF HOME AFFAIRS  
(S. BUTA SINGH): Sir, I beg to move\*

"That the Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto, be taken into consideration."

"That the Bill to confer on the President the power of the Legislature of the State of Punjab to make laws, as passed by Rajya Sabha, be taken into consideration."

Sir, the hon. members are aware that the Terrorist and Disruptive Activities (Prevention) Act, 1985 was enacted by Parliament to meet the grave situation in May 1985 which manifested in the form of widespread terrorist activities in Delhi and many other parts of the country. The Act had a limited life of two years. The Act was intended to help law enforcing authorities in dealing with the situation. The evil designs of the terrorists and disruptionists are aimed at subverting the State, creating disharmony among various sections of our society and destroying the very foundation of our democracy.

It is difficult to deal with this extraordinary situation except by strong measures. It was therefore considered necessary to bring forth a comprehensive and deterrent piece of legislation on the lines of 1985 Act with suitable modifications. As the Parliament was not in Session and the circumstances so warranted, the President

promulgated on 23rd May, 1987, the Terrorists and the Disruptive Activities Prevention Ordinance, 1987. The Bill is to replace the ordinance to make special provisions for the prevention of and coping with the terrorists and the disruptive activities and for matters connected therewith.

Regarding the second one which I have moved just now, I must say something on that also.

As you know the proclamation, dated 11th May, 1987 made by the President under Article 356 of the Constitution in relation to the State of Punjab *inter alia* provides that the powers of the State Legislature shall be exercisable by or under the authority of our Parliament.

Under Section 357 (1) (a), it is permissible "for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf."

The Bill therefore seeks to confer on the President, the power of the State Legislature to make laws in respect of States. It has been the normal practice to undertake such legislation in relation to the State under the President's Rule and the present Bill is on the usual lines.

Provision has been made in the Bill for the constitution of a Consultative Committee consisting of 45 Members of Parliament, 30 Members from Lok Sabha and 15 Members from Rajya Sabha, in this regard.

Provisions have also been made to empower Parliament to direct modification in the laws made by the President, if consid-

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\* Moved with the recommendation of the President.

[S. Buta Singh]

ered necessary.

I now request my hon. colleague to meet some of the points—the constitutional points—which Shri Saifuddinji has mentioned.

SHRI E. AYYAPU REDDY (Kurnool):  
Sir, one point.

MR. DEPUTY SPEAKER: No. I will call you.

SHRI E. AYYAPU REDDY: I am not speaking, Sir. I am just drawing his attention.

The Bill has been introduced by the hon. Minister. We want vital information with regard to this Bill, because you have not stated as to how many designated Courts were constituted under the Act of 1985; how many trials were held by the designated Courts; how many persons were put up for trials; how many of them were convicted; how many of them were acquitted; what was the experience of the designated Courts? These vital informations, you have not furnished to us.

THE MINISTER OF STATE IN THE  
MINISTRY OF PERSONNEL, PUBLIC  
GRIEVANCES AND PENSIONS AND MIN-  
ISTER OF STATE IN THE MINISTRY OF  
HOME AFFAIRS (SHRI P. CHIDAMBA-  
RAM): During the course of the debate, we  
will give you that.

SHRI E. AYYAPU REDDY: No, no. You  
have not given us that information. You  
have stated that the Act has expired. You  
have stated that the Act of 1985 as for a  
period of two years and thereafter you want  
this. You are now making more drastic  
changes in this Act. You have not stated  
that.

SHRI P. CHIDAMBARAM: Where?

SHRI E. AYYAPU REDDY: You have  
not made certain special provision in  
this particular Bill, after the passing of  
the ordinance. Even the ordinance did not  
contain certain provisions with regard to  
the confessions to police officer and all  
those things.

SHRI P. CHIDAMBARAM: I will give  
you that.

SHRI E. AYYAPU REDDY: Now the  
House must be informed whether any  
designated Courts functioned under the  
Act of 1985.

SHRI P. CHIDAMBARAM: We will give  
you that information. We will give it  
to you. It cannot be given in the  
Statement of Objects and Reasons.

SHRI E. AYYAPU REDDY: We want  
that information because that is  
essential. The Statement of Objects  
and Reasons does not contain that  
information. So, why this reservation?

SHRI P. CHIDAMBARAM: It cannot be  
there. It can only be given during the  
course of the debate. How can that be  
given there?  
(Interruptions)

Mr. Reddy, you know very well, the  
Statement of Objects and Reasons  
explains the purposes behind the Bill.  
Information behind the Act.....

(Interruptions)

SHRI E. AYYAPU REDDY: Even then  
the previous Bill was found to be  
deficient. You must at least tell us  
how they were found defective?

SHRI P. CHIDAMBARAM: I will give  
you that information. I am not saying  
that I won't give that information. I  
am only saying that is not the place  
to give that information.

Sir, the hon. Member Shri Saifuddin Chowdhary has opposed the Bill on the ground that it is unconstitutional. In fact, if I understood him correctly, he was opposing Clause 7 of the Bill, as unconstitutional. The other remarks made by him are really remarks of a general nature, where he says that the Government is taking only the path of more and more legislation to control the situation in Punjab. That is a matter which we will answer during the course of the debate. At the moment, may I confine my reply only to Clause 7 of the Bill? We are conscious that Clause 7 of the Bill is an innovative provision, where the Central Government has been given power to appoint any officer of the Central Government to exercise the powers of a police officer. the question is:

Is this violative of any provision of the Constitution?

The hon. Member Mr. Chowdhary did not refer to any specific provision of the Constitution (*Interruptions*) I am answering; please listen to me—except to say that since the entry 'Police' occurs in List II of the Seventh Schedule, it would not be open to the Central Government to appoint any officer and confer any police powers upon such an officer. The answer to this is as follows:

Firstly, the entries in the three Lists of the Seventh Schedule do not confer legislative power, but they are only heads of legislation. The power of legislation is traceable to Article 246 of the Constitution. The Supreme Court has repeatedly said that the legislative power is under Article 246 of the Constitution, but for the heads of the legislation, you must refer to the three Lists. If you will kindly see Article 246 of the Constitution, Article 246 (1) says;

"Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in

the Seventh Schedule (in this Constitution referred to as the "Union List").

Article 246 (2) says:

"Notwithstanding anything in clause (3) Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule..."

12.47 hrs.

[SHRI SHARAD DIGHE *in the Chair*]

Parliament's power to make a law in respect of matters enumerated in List I and matters enumerated in List III are plenary, and are not subject to any other List.

If hon. members will kindly look at List III of the Seventh Schedule, they will find that entry 1 of List III deals with—

"Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in list I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power."

Entry 2 says:

"Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution."

Parliament, therefore, has over-riding plenary power to make a law which is a criminal law, and to lay down a procedure which will fall under Criminal Procedure. What does this add to?

SHRI SAIFUDDIN CHOWDHARY: It is not there.

SHRI. P. CHIDAMBARAM: You must have a copy of the Constitution and follow it.

SHRI SAIFUDDIN CHOWDHARY: Your interpretation is wrong.

SHRI P. CHIDAMBARAM: I am giving the correct interpretation..... (*Interruptions*) and I will justify it in the course of my speech. Parliament has got the power; Parliament makes the Indian Penal Code, is deemed to have made the Indian Penal Code. Parliament can amend the Indian Penal Code. This very Parliament amended the Indian Penal Code and introduced a new..... (*Interruptions*) No running commentary please. Listen to me Give me five minutes.

Parliament amended, in the last Session, the Indian Penal Code, adding Section 304B, including a new offence known as dowry deaths. Macaulay did not invent dowry death. This Parliament.... (*Interruptions*) Don't punctuate every line. It is not fair. It is not good behaviour.

Parliament made Section 304B. Parliament can create an offence, and Parliament can lay down a procedure. What does TADA do? This Bill, if it is passed by Parliament, would have created two new offences—an offence under Section 3 and another offence under Section 4—as also an offence under Section 5. Offences known as a terrorist act and offences which are known as a disruptive activity are not offences which are in the Indian Penal Code today. These are not offences which are in any other law today. We are creating a new offence, by specifying the ingredients of an offence.

Parliament has got ample power to create such an offence. This will fall under Entry 1 of List 3. Once the Parliament creates a new offence. (*Interruptions*)

SHRI E. AYYAPU REDDY: Parliament does not create an offence..... (*Interruptions*)

SHRI P. CHIDAMBARAM: Parliament defines the ingredients of an offence in which conduct which is not otherwise offensive becomes offensive today. (*Interruptions*) As long as I am creating an offence and you are committing an offence..... (*Interruptions*)

12.51 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

SHRI SAIFUDDIN CHOWDHARY: What is that interpretation.

(*Interruptions*)

SHRI P. CHIDAMBARAM: Sir, I will wait until he finishes his interruptions.

MR. SPEAKER: What do you want? If you go on interrupting like this, then what can he do?

SHRI P. CHIDAMBARAM: He only wants to interrupt; he does not want to speak. (*Interruptions*)

THE MINISTER OF HOME AFFAIRS (S. BUTA SINGH): Disruption is also an offence.

SHRI P. CHIDAMBARAM: Therefore, Parliament defines the ingredients of a new offence and recognises an offence and makes certain conduct offensive or makes certain conduct penal. What we are doing under this Act is we have defined the ingredients of 2 new offence: (1) Terrorists Act and (2) Disruptive Activities; and I don't think any one can question Parliament's right to define a new offence by laying down the ingredients. So, this is well settled and I don't think there is any argument against that. The

next question is once parliament has defined two new offences, then under Entry 2 of List 3 Parliament has also got the right to lay out the criminal procedure. Criminal procedure code today can be amended by Parliament; in fact, we have amended the criminal procedure code by shifting the burden in certain cases. So, we have the right to lay down the procedure. What does Clause 7 of the Bill do? Clause 7 is a procedural provision. What is criminal procedure? Criminal procedure consists of three parts: registration, investigation and prosecution of an offence. We can register an offence; we can investigate an offence and we can prosecute an offence. Clause 7 of the Bill gives power of registration investigation and prosecution through an officer of the Central Government, and these powers are part of the powers of criminal procedure. It is well within Entry 2 of the List three; and we have an opinion of a very eminent counsel that this is within the power of Parliament. I will read only a portion of the opinion given by the then Attorney-General Mr. Niren De(?) way back in 1970. He said,

"Thus the power of investigation of crimes has been conferred on the police by the criminal procedure code. I see no reason why competent legislature cannot, by law, confer power of investigation of certain offences on authority other than the police."

Even on an officer other than the police we can confer the power. I do not agree with so and so. The power of investigation of all crimes must be exclusively with the police. What we are now doing is because of the difficulties that we have experienced in Punjab and in the light of debate which took place last time on the famous Section 18 of the old TADA, the Central Government says we can confer power of registration, investigation and prosecution upon an officer of the Central Government. This of course is equivalent to a police power, but it is not

prohibited in respect of Parliament because Parliament has got the preliminary system to make such a law under Entry 1 of List 3 read with Entry 2 of List 3. There is nothing unconstitutional about this provision. We are satisfied that this provision is valid and this provision is sustainable under Article 245 of the Constitution.

SHRI E. AYYAPU REDDY: Mr. Deputy Speaker, Sir, I rise to speak on the Bill and also on the Punjab issue with heavy heart.

MR. DEPUTY SPEAKER: What about the lunch?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRIMATI SHEILA DIKSHIT): I would like to propose that we should dispense with the lunch hour, but it is for the House to decide, because we are very short of time.

MR. DEPUTY-SPEAKER: I think the House will agree to it.

SEVERAL HON. MEMBERS: Yes.

MR. DEPUTY-SPEAKER: So, the House has decided to dispense with the lunch hour.

SHRI C. MADHAV REDDI (Adilabad): We will sit upto 6 P.M.

MR. DEPUTY-SPEAKER: Yes.

SHRI E. AYYAPU REDDY: As I said, I rise to speak with a heavy heart on the Bill. At the outset, let me offer my sincere condolences to Buta Singhji who lost some of his very near relatives in the recent terrorist dastardly attack. Let me also take this opportunity to pay on behalf of my party, homage to all those people who fell to the terrorist bullets and lost their lives, especially political activists belonging to almost all the parties.

[Sh. E. Ayyapu Reddy]

I take this opportunity to suggest that those families who have lost their kith and kin, near and dear and those political activists who have been singled out and victimised for their political convictions must be treated on par with freedom fighters and that they must get all the benefits which the freedom fighters are entitled to.

On this painful subject, Punjab this House has been debating and the debates run into more than a thousand pages. For more than two years we have been discussing Punjab. Punjab, which was the pride of our country has now become the State of sorrow for India and as I have said, the discussions and debates on Punjab have created a record in the history of parliamentary discussions and debates. They run into more than a thousand? It is therefore not necessary for me to inflict any painful speech on this occasion but it will be just to recognise that we have come back to square number minus one - they do not even call it square number one, they call it square minus one - and all the efforts which have been made and the bright patch which appeared by the Rajiv -Longowal Accord, they have been dissipated by subsequent inefficient handling of the Punjab issue. I am very sorry to say but the result is there for everybody to see.

That our policy on Punjab has been a failure has been recorded in the Statement of Objects of this Bill itself. The very Bill itself records that what we thought we could tackle within two years we are not able to tackle it. And, apart from that, it has become necessary to introduce certain drastic provisions on a permanent basis to cope up with the present situation in Punjab.

At the time of the introduction of the President's Rule itself. I and our party opposed the imposition of the President's Rule. At that time the main advisor or the Chief

Advisor on Punjab Shri Ribeiro and Shri S.S. Ray they thought, they could dispose of the terrorist problem in no time. Shri Ribeiro identified that there were about one hundred hard core terrorists and if he was given a free hand he would be able to tackle them and he would be able to dispose of the terrorist problem once for all. Poor man, he thought that he would be able to gain lot of glory. Similarly Shri S.S. Ray, appears to have thought that he would go down in the history as a person who has put down terrorism. But today, what is the position? What is the position today?

13.00 hrs.

Now, whether they gave the proper advice or whether the intelligence that was available to the Home Ministry was proper or not, they have made Buta Singhji get on the back of a roaring tiger. Now he is actually in an unenviable position of a person, riding a roaring tiger and we do not know how he can dismount from this roaring tiger. What are the methods and means by which he can dismount from this roaring tiger? The gravest mistake that was committed was, dismissing the Barnala's Government. Now it is very unfortunate that Shri Chidambaram, the hon. Chidambaram is not here now, on August 17, made a statement which runs contrary to the record. Of course, this appeared in an article published in The Times of India. This is what he has said. He said that there was no one in Punjab whom the Government could contact and that therefore it had no option but to continue its efforts to crush the terrorists. He also doubted whether Mr. Barnala has ever enjoyed any real support in the State. This is really surprising.

I must remind the treasury bench that the Cabinet itself in the Presidential address made in the Budget session, came forward with copious eloquent testimony, paying compliments to Barnala's Government for

withstanding extremists and terrorists. Was not Mr. Chidambaram a party to that? Contrary to what is contained in the Presidential address, how could he make the statement in the Rajya Sabha on August 17, 1987. This clearly shows how irresponsible the statements are being made and how inconsistent the stands of the Government had been.

Now, at that time when Barnalaji's Government was abolished, there was totally no justification. Some friends on the other side also supported it and we were surprised that some of the political parties also supported it, forgetting the basic fact that a Government elected by the people should not lightly be dismissed and President's Rule should not easily be imposed. On some flimsy grounds, which do not hold any ground whatsoever, Barnalaji's Government was dismissed. Now apply the very same standards to your performance, to the performance of the Home Ministry after the imposition of the President's Rule, then you must have the moral courage to resign. Judge not that thou, that you should also be judged. If you apply the same standards which you had for dismissing the Barnalaji's Government, then you must equally apply the very same standards to yourself. Who is there to sit in judgement against your performance?

Now, I do not want to give the tragic figures, but the figures are already given. In three months, there were 168 killings—from Jan. to March. During Barnala's Government's time, the rate of killing was at about 65 or 67. Then, in the month of April, there was a slight spurt, it went up to 98. Subsequently what has happened? You have been hitting sixers after sixers and the rate of killings have gone two hundred per month. Now, it is more than six hundred. Now, everybody in the newspapers—people jocularly ask what is the score in Punjab? It is the most unfortunate situation that we are now taking it so callously and so indifferently, mere asking

what is the score in Punjab? Who has created this situation? Who is responsible for this situation? Barnalaji went out of the way. Who was responsible for making him unpopular? Is it not the Government of India? Did it give full support to Barnalaji's Government? Did he have complete and free hand? No. He wanted the Punjab Accord to be implemented. But there was no cooperation from your side. What is the position today? You do not find anybody to speak to on behalf of the Sikh community, except the militants, the boys who are called the militants. It is noted here that after the President's rule, the boys or militant youths who have now taken *amrit*, their number is 200 per day. How do you account for it? That as not so when Barnalaji's Government was there. There is absolutely nobody between the Government of India and the terrorists. We know that majority of the Sikhs are not for Khalistan. Akali Dal leadership was not for Khalistan. They wanted a solution. An accord was arrived at. Even Badalaji's and Tohrajji's groups wanted some more concessions and nothing more than that. But what has happened? It is no use repeating the sad story again. But what is the Government of India trying to do? How is it going to solve it? A responsible paper 'The Times of India' in its central page has written two articles—'Impasse in Punjab, and 'Wrong moves in Punjab'. Probably there is nobody to take responsibility to speak on behalf of the Sikh community—neither Barnalaji nor Badalaji nor Tohrajji nor Darshan Singh ji. You yourselves have given the leadership to the extremists. Now, very strangely the interpretation of Mr. Ray's speech delivered at Jalianwala Bagh, shows as though he is trying to please the terrorists. He compares them with martyrs like Bhagat Singh and others. Is he trying to curry their favour?

Sarbat Khalsa is to take place on Diwali day. Diwali day is the deadline for you. Before that something has to happen. Of course, it is difficult for us to suggest solu-

[Sh. E. Ayyapu Reddy]

tions, which can be foolproof, which can surely ensure success. But none theless with my little knowledge of Punjab I may suggest a few things.

Punjab problem is a national problem. All parties are wedded to integrity of India, unity of India and the Constitution. They have identical views on these things. Therefore, an all-party committee must be constituted by the Government of India immediately. It should not be treated as a Government's duty or Government's problem alone, but it must be an all-party issue and all party leaders must be taken into confidence. And all-party committee must be constituted immediately for the purpose of solving the Punjab's problem. Last Vaisakhi there was an all-party meet. You did not pursue it. It should have been pursued. Unless there is People's movement, the terrorists problem cannot be solved. For this purpose, you have to mobilise and unite the village artisans, auto-drivers, lorry drivers, lawyers, doctors, the housewives and so on. The people's movement has to be generated in Punjab if we want to tackle effectively the terrorists and drive out the curse of terrorism. The most important problem today, the most important issue facing India today is not merely the secessionist issue, but the vital issue is whether terrorism, as a political instrument, can be allowed to succeed in this land of Gandhiji and Guru Nanak who preached non-violence and affection. I want to know whether a few people, an insignificant minority of people resorting to terrorism can be allowed to perpetrate terrorism as a political instrument for achieving political ends. There can be no doubt that all sections of people are united that we must fight terrorism. It may be for a good purpose, it may be for a noble purpose, but as an instrument for political achievement, everybody is agreed that this abhorrence should be prohibited from this land. So, to fight this force of terrorism you have to mobilise the

people's movement and that has to be done by all parties.

My next suggestion is with regard to Akali Dal Party itself. Now, Barnalaji, Tohraj and other important leaders of the break-away Akali Group, under U.A.D. are dabbling under detention. I take this occasion to say that it is in the interest of the Sikhs and the Punjabis that there should be a 'Samjhouta' between Barnalaji and Badalji Group and Akali Dal must get united. It is not merely for the country but in the interest of the Sikhs themselves. The Akali Dal leadership must assert itself and say, Look here, the position is so pitiable that the acting Jathedar Darshan Singh Ragi has retreated'. Practically the Akali Takht is being governed or supervised or is under the control of the extremists. Whoever might be responsible for this sorry state of affairs, the Government of India must take initiative to bring all those people who are against terrorism, to come on one platform, to unite all those persons who are against 'Khalistan' under one platform. For bringing about all these things, certain steps may be necessary. In fact, Barnalaji has been demanding for release of Jodhpur detenu. What is the difficulty in reviewing all these cases as was promised by the Union Minister, Shri P.V. Narasimha Rao, more than a year ago? What is the difficulty in reviewing all those cases? Then, there are some other problems connected with the persons involved in the military disciplinary actions. Their cases may also be reviewed. All these things should have taken place and even now it is not too late. This issue may be taken up as a preliminary step for the purpose of uniting all the moderate Sikhs and I submit that there are no longer any valid ground for detaining Badalji and Tohraj. Kindly release them. You get into contact with them and try to get the Akali Dals united, at least on some basic issues that they are against terrorism.

Having said these few words, I now

come to the Act. My main object is this. Mr. Chidambarams said, he would give the details. But he has not given any details. The Act of 1985 came into force in June, 1985. But the rules under the Act came into force on 13th November, 1986. More than a year and a half after the Act came into force, the rules were made. You come here, saying these things are necessary; these Bill are necessary or such and such enactment is necessary to meet an emergency situation. But immediately after you get the Bill passed, it takes months and months together for getting the rules under the Act framed and a subordinate legislation to take a shape. These rules were framed on the 13th November, 1986 and they contain the most draconian provisions, with regard to the Press also. These provisions lie only on paper. They are never implemented. Even at the outset, I requested for information from the hon. Minister as to how many designated courts were constituted under the Act of 1985. I have been trying for the last one week to get information from our Parliament Library Reference Section, but no information is available. Kindly even now tell us, whether you constituted any designated courts under the Act of 1985 and whether they tried any one of the terrorists. What exactly is your experience with regard to the functioning of these designated courts? Before you come forward with improvements or amendments or extension of an Act, we are entitled to know how the provisions of the previous Act worked, what exactly were the results, what exactly were the deficiencies. You must satisfy us as to why the previous Act failed to work and failed to produce the result. Unfortunately, you have not done that. I take it for granted that no designated correct functioned in Punjab under the Act of 1985. Even in the ordinance, you did not think of introducing certain drastic provisions. Mr. Chidambaram is not here. Unfortunately, you have introduced a provision of law which is unknown to criminal jurisprudence. Now, you have introduced a provision that a con-

fession made to a Superintendent of Police must be admissible in evidence. This is one of the fundamental principles or criminal trial which has stood the test of time for decades and decades, and for centuries and centuries. Now, that confession made to a police officer by an accused person is not admissible in evidence, is a well-accepted principle in all civilised societies, in all civilised, advanced and modern societies. This principle has been there right from the time of Evidence Act of 1872. During the worst days of British imperialism, when the Home Ministry and the police were manned only by the white men, even they did not think of introducing such a draconian and drastic provision that a confession made to a police officer will be admissible in evidence. The deficiency has not been of the law but of the investigating agency, of the prosecuting agency, of your inability to go in for clues, of your inability to do your duty. Now, in spite of the fact that you have got para-military forces and all those things, may I read to you, how your machinery has failed? This has appeared in the *Times of India*, in an article written by Mr. Satya Pal Dang. He has given instances where the CRP was not there. I do not want to waste the time of the House by quoting all those instances where the CRP was not found there. You want to clothe the Police with extraordinary powers. This is something astounding. This is negation of the entire criminal jurisprudence that a confession made to a Police Officer should be admissible. Why? If that is so, this provision of law will not stand the test of Article 14 of the Constitution because equality clause ensures that the law must be equal. Now if you say that a confession made for a person charged under the Terrorist Activities Act is admissible in evidence, why should not a confession made by a smuggler to a Police Officer not become admissible? Why should not a person who has been accused of dacoity, murder and worst crimes like smuggling and COFEPOSA not be admissible? The position is this. If a person is accused of

[Sh. E. Ayyapu Reddy]

having committed theft of Rs. 5/-, a confession made by that man to the Superintendent of Police is not admissible. The Superintendent of Police, going into the witness box, says, "He has stolen Rs. 5/-." Judge will say "This is not admissible." Don't give such evidence." But, if the same Superintendent of Police says "He told me that he is a terrorist." That becomes admissible. What is still worse, you have made a confession of co-accused admissible against the accused also. That means if a person is accused of an offence and if he goes before the Superintendent of Police and writes there "He confessed to me that he talked to Mr. Ayyapu Reddy, went to his house and thereafter, probably, he visited his house," I also become an accused. As a co-accused, I also become admissible. He can implicate anybody and that person immediately becomes an accused and, what is strange, he will not be entitled to even an anticipatory bail because when once he becomes the accused, the provisions which were introduced in the Cr. P.C. with regard to granting of anticipatory bail will not be available to him.

These are the draconian provisions which you have incorporated in this Act negating the very fundamental and basic provisions of the criminal jurisprudence. Have the implications of reversing the entire criminal jurisprudence been discussed and debated? Has the opinion of experts been taken, the Attorney-General, the Law Ministry and others? In fact, many of the jurists with whom I had discussed this provision have expressed shock and surprise that such provisions should appear in any law in any State which calls itself modern. Are we travelling towards the 21st century? Even the Britishers, even during the worst days of Jalianwallabagh and subsequently even during the worst days of suppression, did they make confessions made to Police Officers admissible and even in cases where people were charged for waging war against

the State? Why do you bring in all these draconian laws? How is it going to help you? It would not help you. Even if you make it, it would not help you. What is essential is we must have good, honest, investigating, officers and good, honest, efficient, judges. If the salt of the earth loses its flavour, where shall it be salted? If the administrative machinery fails and if it does not come up to that standard of human dignity and values, then any amount of drastic changes and amendments in the law will not help us. Of course, I have tabled the amendments and when they come, I will speak on the amendments.

SHRI SHARAD DIGHE (Bombay North Central): Mr. Deputy-Speaker, Sir, I wish to restrict my remarks only to the Terrorist and Disruptive Activities (Prevention) Bill, 1987 which is before this House. I would not like to go into the general and political questions as far as Punjab is concerned. Nodoubt the situation in Punjab is very exceptional and nobody should grudge giving wide powers to the Government by way of a legislation in order to cope with the terrorist and disruptive activities in that State.

Sir, it is not merely a problem of one State but it has become a stigma on the whole of this nation. Therefore, I would also not like to merely find faults with the Government by saying: "ample powers were given to you but still you have not been able to make much progress and even today, innocent people are being killed everyday". We have been reading very pathetic stories of such killings everyday in the newspapers. Therefore, in a general way, I would welcome this Terrorist and Disruptive Activities (Prevention) Bill that is before this House which seeks to give more power to the Government, which seeks to establish certain special machineries to deal with the terrorist activities and disruptive activities in Punjab. Really speaking, my hats off to the Inspector-General of Police of Punjab Shri Ribeiro who is trying his best to control the

disruptive activities and now of course as there is President's rule, it is for the Central Government to try their best and to find out some solution as far as this is concerned. It is easy to find faults with the Government and say: "You have not been able to solve this; the Rajiv-Longowal Accord has failed; the dismissal of that Government has failed". It is easy to find faults and make all these submissions here. But it is very difficult to point out exactly what steps should be taken in order to solve this problem. Therefore, I said that I would like to welcome and support this Bill which is before this House. But going through the provisions very carefully and from the point of view of a lawyer, I would like to make certain observations, as far as certain provisions are concerned. I confess that I am not very happy as far as two or three Sections of this Bill are concerned. The first such a Clause is Clause 15. This Clause seeks to allow or makes admissible confessions of an accused, which are made before the Police Officer. I must say that in order to have control, with enthusiasm we are giving more and more powers to solve this problem. While doing that, we are introducing a very dangerous proposition as far as the Criminal Law and the Indian Evidence Act is concerned. Therefore, I would like the Government to review and re-think about this provisions. Now, this Act, really speaking, is not confined only to Punjab. It applies to the whole of India. When we introduce some dangerous proposition in a criminal law and evidence act, we should think twice before we go ahead with such provisions.

As far as we know, the investigating machinery of the police is not, I should say, very impartial and many times it is the experience that police use third-degree methods while investigating in a criminal matter. If we introduce this dangerous proposition that confession made before a police officer would be admissible in evidence, I think we are trading very dangerous path as far as criminal law and Indian Evidence Act are

concerned.

No doubt, we may feel at this stage that for meeting the challenge posed by these terrorists anything is necessary, any drastic thing is necessary and must be done. *Prima facie*, on the first thought, I also thought that what is wrong if this is given. But when we examine it carefully, from the point of view of principles which are laid down for a number of years under the criminal law and the evidence act, I must humbly submit that we should not go ahead and we should not go to this extent, even as far as meeting a very dangerous disruptive activity is concerned, and we should not stoop so low as far as the criminal law and the evidence act are concerned. Therefore I humbly submit that it would be a dangerous proposition to accept that confessions made before police officers should be made admissible in evidence.

No doubt, some precautions are taken under this clause viz., for that purpose also the police officer, before recording this will explain to the person making it that he is not bound to make confessions and all that. These are on the lines of the present provisions as far as confessions made before the magistrates are concerned that magistrates have to take these precautions while recording the confession. On those lines certain precautions have been taken. But even with these precautions, I again humbly submit that it will not be a very salutary practice to introduce this proposition as far as the confessions before the police are concerned. Then we might expose ourselves to the possibilities of innocent people being also implicated when police are not able to find out the real culprits. Therefore, my submission is that the Government may be pleased to rethink about Clause 15.

Similarly, I would like to point out Clause 21, Sub-clause (1), Part (c) where confession of a co-accused will raise presumption against another accused. My submission

[Sh. Sharad Dighe]

here also is that this would be a very dangerous proposition to introduce this as far as criminal law is concerned. One man can implicate another in order to save himself or when he has got some grudge or enmity against a third party and he will give confession with respect to the other accused and that other accused will have no option but to defend himself without having presumption that he is innocent. Therefore, my submission is that this also introduces a very serious and dangerous proposition as far as the criminal law and Evidence Act is concerned and I would urge upon the Government to re-think on these two Clauses.

I would also like to refer to Clause 8 where it has been provided that before conviction the property of the accused can be attached and after conviction it can be forfeited. My submission is that when we are dealing with criminal offences it is not necessary to deal with the properties of the people. If we have got sufficient powers to punish the accused and punish the persons who are convicted with the present law and the law which you are laying down then it is not necessary to go towards the forfeiture of their property, etc.

God save us but if this has the effect of implicating innocent people and if it has the effect of forfeiting the property of innocent people then it will have a very bad effect as far as the Punjab situation is concerned. Therefore, we must hasten but we must hasten very cautiously and very slowly as far as the Punjab situation is concerned and should not introduce dangerous propositions which may help police or some other persons to implicate innocent people and thereby consequently have a very bad effect on the general public. They will be losing confidence in the executive machinery and the police machinery itself. So such provisions should not be made. You may take wide powers. You may have very very strict

measures whereby punishment is very harsh if a person is found guilty but while doing so we should not lay down certain propositions which will not only affect the morale of that State itself but which may be a beginning of introducing certain propositions to certain other parts of the country. Once having got such powers we may be tempted to introduce such propositions in some other laws also and thereby we will be hitting at the root of the criminal jurisprudence and hitting at the root of the Evidence Act which are the basis of freedom of the citizens of this country. With these words I support this Bill.

SHRI SATYENDRA NARAYAN SINHA (Aurangabad): Sir, I rise to support this Bill. This law was made in 1985 in the face of threats from the terrorists who are indulging in mass killings. Two years have passed and it is time now for us to review our achievements in this regard. I agree with Mr. Ayyapu Reddy that the Government should tell us whether the designated courts were set-up? How many of them were set-up? How many of those people were arrested, prosecuted and with what result because the idea was to arrest these people and put them on a speedy trial? So this information has to be given to us. In the meantime the killings have gone on unabated.

The Government of India dismissed Shri Barnala's Government and imposed President's rule to be able to curb the terrorists' menace. But from all reports, that are appearing in the newspapers, it appears that we have not been able to do so and the terrorists appear to be on a killing spree. Despite what Mr. Riberio has been doing—it is commendable and we all give full support to him - the atmosphere in Punjab continues to be full of apprehensions, fear and terror. It appears death is lurking in every bush, on the highway, in every bus or in every corner. People are really terror struck. The political leadership has withdrawn from the field of activity. Even the United Akali Dal also similarly has become dormant. Barnala's Akali

Dal is also not on the scene. Prof. Darshan Singh Ragi who had been elected acting Jathedar of the Akal Takht and was trying to follow the path of negotiations, has also made a retreat from the Akal Takht for his life. It appears now clear that the militants are increasing their grip on the SGPC or the Akal Takht. They are planning to convene a Sarbat Khalsa on Diwali day when they want to secure legitimacy of what they have been doing so far and the militants' control on the Golden Temple, Akal Takht and the Sikh politics will be complete. It should be our duty and anxiety to prevent this from happening. How do you do this?

At one time, we did try to go to the people - all political parties worked for carrying on a campaign to explain the situation to the people. We have now again to see that we approach the people. For that, we need the support of all the political parties and explain to them the dangerous possibilities of the activities of the terrorists. We should try to isolate them from the rest of the Sikhs. If the Sikh masses are not coming forward, it is entirely because of the terrorists' fear from which they are suffering.

We have noticed, Sir, that the terrorists have been indulging in killings. They have killed the police informers. They have killed Government collaborators. In fact, they have shown a kind of daring audacity and desperation even in killing the close relatives of our Home Minister, which is a shocking thing. I join Mr. Reddy in offering my condolences to the Home Minister on his bereavement. We should open our eyes and see how daring they are.

What do we do about it, Sir? I have to make certain suggestions. Firstly, I want that we should identify the districts which are greatly disturbed by the terrorist activities. I think the districts of Amritsar, Gurdaspur, Jalandhar, Patiala and Kapurthala, in the main, are greatly disturbed.

We should try to group together villages contiguous to each other and then create a security ring around them. It is very necessary that we must create confidence in the minds of the people and make them fearless. And this can only be achieved if we follow the policy of cluster of villages being provided with protective cover being given a ring of security so that nobody can go and come easily. The ingress and egress movement should be strictly regulated and if possible, within that ring identity cards should also be issued. This was done in Malaya when the guerilla menace was very much there. I understand Major Thompson had provided a ring around certain villages and issued identity cards and that provided protection from the guerilla menace and he had succeeded in eliminating the terrorist menace to a large extent. There are certain examples before us and we can take lessons from them and try to solve this problem.

The police is doing a commendable job, but along with it, we have also to see that the political parties are brought into the field. We did carry on a campaign for some time and it had yielded results. While speaking on the Bill last year, Dr Rajendra Kumari Bajpai had spoken about the fruits that we had gained by those campaigns. It is necessary now that we should invite all political parties to join in political campaign to explain the situation to the people. Rumours are going on that many innocent people are being killed. This is creating a kind of hostility in the minds of Sikhs. We have got to combat this by approaching them and by explaining to them that this is not so and that these are rumours and these have to be stopped. We can only do so by having an all-party campaign. Shri Reddy has also suggested that there should be an all-party Committee for this purpose, and help of all the political parties should be elicited. CPI has been at the receiving end in this respect. In the local areas where they have got influence, they have been carrying on their ceaseless

[Sh. Satyendra Narayan Sinha]

campaign against terrorism and they having been paying for it with their lives. Congressmen have also lost their lives, but it is time that we should work collectively in this regard and create a situation where the terrorists will not find any kind of haven among the people. People would be bold enough to refuse any kind of shelter or give any kind of assistance to these terrorists. As I said earlier, this can be done by creating a security ring around a cluster of villages. This way we should cover all these districts which are infested with terrorists and are greatly influenced by them so that confidence would be restored in the people and they would become fearless.

At the moment Akali Dal is hibernating and is not doing anything. It is time that we should encourage them and bring them out and along with them go to the people. Without this it will not be possible to create desirable conditions. This law was there for the last two years. It has not yielded the required results. The instrument that we enforced has not so far yielded result. But still we would like to hear from the Minister to what extent he has succeeded? To what extent this has been done?

These terrorists have been trying to kill the minority people in that particular area. Even in Delhi, the other day they killed the Metropolitan Counsellor and a relative of the Metropolitan Counsellor. There was no resentment. No doubt the procession was taken out but I must say that they have acted admirably. There was no backlash and the objective of the terrorists to create backlash has been defeated. So far so good but we have got to have some kind of permanent solution. How do you go about it? This is the main problem today. No political element is coming forward not even the Akali Dal. They have all been rendered irrelevant by the terrorists. So, we have got to deal with this ruthlessly and at the same time carefully, in

these cluster of villages which were given security arrangements.

Then, Sir I wanted certain clarifications. There is a provision empowering the State Government to notify certain areas. From that I understand that wherever these areas are disturbed, the State Government may notify those areas in which this law will operate. Now while moving the Bill on the first occasion, Mr. A.K. Sen has taken lot of pains to explain that this was not intended against political organisations. Sir, there are political organisations, underground organisations, which indulge in violence to achieve their objectives. Their immediate objective is to strike terror, create terror in the minds of the people and see that those people leave the areas so that they can take possession of the land so left by them. They had been indulging in mass killings also. Sporadic killing has been going on. What is the position there? Should not this law apply there? This is the point which is bothering me a lot because only recently in my own area in the course of the year, I think about 100 people have been killed and there is the same kind of terror and fear among the people. Normal avocations have been suspended. There is a deployment of force all over with the result that people are able to go out, but by dusk nobody goes out. So, whether or not this law will apply to that area has to be clarified by the Minister because I personally feel that under the cover of political ideology or under the veneer of ideology incidents of killings and worst kinds of crimes bordering on the ranks of criminality are created? Are we there to allow ourselves to be governed by ordinary laws because my experience is that nobody has been brought to book so far, has been prosecuted, convicted and sentenced? They have been in jail for a long time, they are getting bails but no action has been taken so far and no effective measures have been taken to curb these activities. So, this is the situation which I would like the Hon. Minister to clarify.

Whether this law will be applicable in those areas which are infested by the so called Naxalite movement but actually they are terrorists and are indulging in large scale violence? A kind of parallel Government is running there. No kisan, no farmer, can cultivate his land unless he agrees to pay 30 per cent of his produce. No contractor can start work unless he pays certain percentage of the total value of work awarded to him. With that money, they also buy arms and pursue their activities underground. As I said, a kind of parallel government is running there. We have got to combat it. I am sorry about it. But perhaps the real situation prevailing in those areas is not available to the Government here. So, my submission would that this law should be made applicable in those areas also because these are not lawful political movements in the sense that they believe in constitutional, peaceful and democratic means.

Now I will come to the objections raised by Shri Reddy and supported by Shri Dighe. Well, if you take a very legalistic view, the provisions run contrary to the criminal jurisdiction and also to the Evidence Law. But Sir, it should not be forgotten that this law has been made because an extraordinary situation is prevailing in Punjab. As I told you, the immediate provocation for this law was provided by the situation in Punjab today. We should see that in order to meet that extraordinary situation, this law was made. Secondly, the law has a duration of only two years. It is not only to meet a particular situation that this law has been made. Power has been given to the Superintendent of Police that if a confession is made before the Superintendent of Police either in writing or in recorded cassettes, etc., that will be admissible in the trial. Under Section 164, the confessions made to the Magistrate alone are admissible. So, in a way, it is amended. But why is it done? Mr. Reddy and Mr. Dighe have stated that it is shocking. They have said that the entire legal profes-

sion is shocked at it. True. But do they know that in such an abnormal situation as is prevailing in Punjab today, you are not going to get any witness? Even for crimes committed in the daylight, no witness is coming forth to give evidence. Because of the situation there, people are afraid and they are terrified to say anything.....

SHRI E. AYYAPU REDDY: That is one side of the picture. There are a number of cases where due to lack of evidence, guilty persons are escaping. This is very well known throughout India and throughout the world. But the other side of the picture is whether an innocent person can be convicted on a mere confession made to police officer. And whether he made it or not, God alone knows! If the police officer says that a person has confessed, thereafter nothing further will be investigated. There will be no incentive for any further effort by the investigating agencies. All efforts to investigate will come to an end. This law has been there even in the worst days of British imperialism. But we did not think of amending the law for trying the assassin of Gandhiji or for trying even the assassin of Indiraji.

SHRI SATYENDRA NARAYAN SINHA: I see your point and I appreciate your objections. But I also submit to you to kindly see the situation prevailing in Punjab or in those areas which may be notified by the Government. Is the situation conducive to anybody to come forward and depose evidence? This is the point. We will not be able to get any evidence. That may be one of the reasons why this law has not been proved effective in nabbing people and prosecuting and convicting them.

SHRI E. AYYAPU REDDY: That is why we want the Minister to enlighten us. In 1985 Act, certain designated courts... (*Interruptions*)

14.00 hrs.

SHRI SATYENDRA NARAYAN SINHA: The Minister has already promised to give you the information. On the basis of my experience, I want to submit this.

In an abnormal or extraordinary situation like this where worst kinds of crimes are committed, the outrages are committed by them and still no person is coming forward to depose against them. What will happen, then? If this kind of enabling provision is not made and if the law of procedure is not changed by giving powers to the Superintendent of Police or some such officer to record the confessions or unless we presume that they are guilty in certain circumstances, then it is for them to rebut that presumption. Because in the Prevention of Corruption Act, you will find that the onus is placed on the person against whom the allegation had been made. It is for him now to disprove that.

Here also, the onus is being placed on the person who is accused because of the extraordinary situation. There is no presumption now under the British jurisprudence which is applicable to us, i.e. a man should be presumed innocent unless he is proved guilty. Here on account of the prevailing situation, if he makes a statement or somebody else makes a statement about him or something is found, say arms and ammunition, on his person, then the presumption is that he is guilty. At least, it is for him to disprove that.

Mr. Reddy should know that it is also a temporary measure to deal with the abnormal situation. Today, it will not be permanent on the Statute Book. If we are able to restore normalcy, normal law will apply, not this abnormal extraordinary measure.

Therefore, I would appeal to them to withdraw their objection to the law and I wholeheartedly support this Bill with the

provisions that have been incorporated in this Bill.

I also wanted to seek one clarification from the hon. Minister. Mr. Reddy has also raised this point and that is, the circumstances in which the Governor of Punjab had made this statement equating those revolutionaries at the time of *Jallianwallah Bagh* or Bhagat Singh and others—those legendary figures with the terrorists who have been killed by the police forces. What were the circumstances? In which context he made that statement? It has created a lot of confusion.

Therefore, a clarification is necessary in this regard.

14.03 hrs.

[SHRI SHARAD DIGHE *in the Chair*]

SHRI SYED SHAHABUDDIN (Kishan ganj): Mr. Chairman, Sir, I rise to support the Statutory Resolution moved by the distinguished colleague Mr. Saifuddin Chowdhary and to oppose the Bill before us. The Bill as it stands can well be called a 'Black Bill' because it has many draconian provisions which are not new to the Statute Book. But we thought that in 1985, when the Parliament passed this Act, this time limit would prove to be adequate for the Government in exercise of these additional powers to find a solution to the problem that we face in Punjab. The Government appears to have become a prisoner of circumstances. As I said, the other day in the course of the discussion on the National Security Act, they are wanting to have more and more powers. It seems to have an insatiable appetite for power. But its actions have not been marred by efficiency and its thinking seems to have been characterised, if I may say so, by amnesia and even confusion. But what I find most objectionable about the Bill is the various provisions which amount to an erosion

of our jurisprudence of the rule of law as we have known it and as it has been enshrined in our Constitution. Not only that. I can hear the faint but quite audible steps of the creeping of authoritarianism which may, one day, take our country into the benighted world of Fascism, unless we can have some breaks.

On the Punjab situation, I would like to say that our experience should tell us that terrorism cannot be countered by terrorization, that repression does not eliminate terrorism, but that it generates and breeds terrorism, particularly when, under the campaign of anti-terrorism there is a possibility of many innocents suffering. Every innocent who suffers is a starting point for the recruitment of many more terrorists. I would like to say that Government must review its entire thinking towards the Punjab problem. It was very correctly said that we are not only back to square zero, but in fact we have gone to square minus one. The Punjab Accord is more or less dead. The problems which were sought to be resolved by the Punjab Accord have been totally forgotten. They do not seem to figure anywhere on the national agenda today. The Barnala phase and the present phase of the President's rule have not improved matters; and the public is becoming more and more disenchanted, more and more frustrated, more and more anxious about what is happening in Punjab. Every day there is a new toll, and we are unable to take the people into confidence, unable to place the facts before them, unable to establish a political dialogue, unable to set into motion any conciliation machinery, unable even to fill the political vacuum, unable to review any of the steps that we have taken.

There is unanimity in the country that terrorism is an enemy of the nation, and that it must be fought with all the powers that we can command. There is no difference in the country on this strategic objective; but what we say is that the tactics which the Govern-

ment has employed are counter-productive. We are not fighting about the end, but we are fighting about the means, because relying totally on repressive machinery cannot possibly bring us to a political solution.

There is no doubt that despite the enormous powers that we have vested in the Government, terrorism has been on the increase. It has reached the city of Delhi, and the State of Haryana. I would like to know, just as the speakers who preceded me have asked the Government, to take us into confidence about the experience under the 1985 Act: how far we have been able to handle the terrorists and the disrupters within these two years; how many have been captured, how many prosecuted, and how many convicted; and if I may say so, how many have been encountered—under the Barnala regime and under the Presidential regime.

I would like to know why it took us 18 months to draft the rules under the 1985 Act, and how many designated courts were set up, and with what results. One would like the Government to take the people into confidence about the identity of the terrorists, about the crimes that they have committed. That should be publicised in order to create a public opinion against them, and in order to assure the people that the powers vested in the Government are not being misused or abused.

I recall that in one of the meetings of the Parliamentary Consultative Committee, the hon. Minister of Home Affairs told us about the handful of terrorists. I do not recall the figure exactly, but the figure was somewhere below 100. He even told us that so many of them have already been either killed or captured.

And then he really gave us an impression that there was a matter of months before the situation could be pacified. But every

[Sh. Syed Shahabuddin]

day we hear of terrorists being killed; and there is an impression that any body who is shot by the police under any circumstances is labelled as terrorists in a sort of *ex-post facto* justification, and his Act is therefore used in order to cover up a lot of violence which should not have been there.

Coming to the Bill, as it is, it violates some basic principles of our jurisprudence. For example, under Clause 5 the mere possession is taken to be a crime. I would have imagined that the possession should at least be compounded by a likelihood of using the things possessed for a criminal purpose. The intention must be of an element in defining the offence under Clause 7 which the hon. Minister has sought to explain.

SHRI P CHIDAMBARAM: Mere possession is not a crime; unauthorised possession is a crime, not mere possession.

SHRI SYED SHAHABUDDIN: But unauthorised possession is also a question of fact nearly...*(Interruptions)*

SHRI P CHIDAMBARAM: Unauthorised means unlicensed arms. *(Interruptions)*

SHRI SYED SHAHABUDDIN: But since Clause 5 today indicates punishment upto imprisonment for life, a certain precaution is necessary. Merely unauthorised possession is not enough in my own view; there has to be a likelihood or a certain set of facts to prove that this unauthorised possession was going to be used for certain offence purposes.

Under Section 7, the hon. Minister has sought to explain as I read it; it is not a question of the legislative competence of the Parliament or of the Central Government; it is really a question of creating a concurrent jurisdiction in the establishment of a system

where the State police force in the implementation of this Act is subordinated to an officer nominated by the Central Government; to that extent, it constitutes a great interference in the police jurisdiction of the State. That is why I supported the view presented before you by the mover of the Resolution that this particular section 7 is *ultra vires* of the Constitution. The Constitution as we have or the administrative structure as we have been running for the last so many years, really operates through one single unified police system; it does not speak of parallel police system or of concurrent jurisdiction. Even the central investigating agency finally operates through the normal police system and yet that particular element of our system is now being replaced by what I call 'an innovation', a system of concurrent police jurisdiction; and not only that subordinating normal police system by the Central Government.

On Clause 25, many speakers have commented. It is indeed contrary to the basic principles of our jurisprudence, and if I may say so, of the administration of criminal justice, as we have had for the last 100 years. It is a dangerous precedent. What it says? It says that the police officer shall not be lower in rank than a Superintendent of Police, etc. The task of interrogation, torture shall be conducted by a very very subordinate official and merely the signatures of the Superintendent of Police shall be found on a piece of paper. This is what happens; this is what is happening. We know how the police operates. Therefore, I do not look upon this clause as anything more than a sentimental sob. What difficulty does the Minister face. That statement can be recorded before a Magistrate. In the disturbed areas, there is a Magistracy. There is an administrative system. Why can't the suspect or the accused be taken for their statement to be recorded under the normal criminal procedure Section 164 of the criminal procedure code? Under Clause 21, why again shift the onus? It is not

a question of the civil liberty as was pointed out; it is a question of the criminal liability where a life is at stake; and there we have shifted the onus. We have placed the burden of proof on the accused who is deemed to have committed an offence even before he is proved to be guilty. Sir, this is a reversal of our jurisprudence. This is in my view a negation of natural justice. And what is worst is that the accused who has been tortured who has been forced to sign a statement or a confession can even implicate any number of people whose names may be placed or introduced into the statement by the police concerned. Therefore, this is a very very dangerous provision.

In clause 22 there is a possibility. It increased the possibility of innocent suffering. The police has been authorised, or to prove that they are very efficient and very active, they can, without this procedure about proper identification, implicate any number of innocent people

Finally, I would I like to caution the Government that the time is running out in Punjab. At present, we have no one to talk to. As they say in French, there is no "*Introluctor Valable*" there is a total breakdown of communication. There is a political vacuum.

I would suggest to the Government, review the situation, think again, ponder over the political possibilities, try to consider the possibilities of resumption of negotiations. You may even think of releasing those Akali leaders, at least those who have been repeatedly stating that they are against Khalistan, that they are not secessionists that they are not separatists, that they are not in favour of terrorism. Give them a chance.

You should mobilise, in my view, the patriotic sentiments of the Sikh community, their nationalist impulses, of the Punjabi ethos, their desire for peace, and their desire

for development. The people of Punjab are a very progressive people. They have transferred Punjab with their labour and they do not like their achievement to be soiled and destroyed. They want peace. But by the draconian measures that the Government has adopted you are merely igniting spark after spark. You are lighting a prairie fire which you shall not be able to quench. That is why I plead that the Government review the entire approach. I am not so much against the Bill as I am for this mentality of the Government that by force and repression and coercion, by violence you can find an answer to the Punjab imbroglio. You cannot.

I would, therefore, plead finally that as far as the Punjab Accord is concerned, let us once again talk about the problems. Let us once again talk about the unfinished agenda. Let us try to work out a national consensus. On the one hand fight the terrorism and on the other try for a political solution.

With these words I oppose the Bill as it stands.

SHRI JAGAN NATH KAUSHAL (Chandigarh): I rise to support the Bill. This Bill as we all know, has been brought forward because of a certain situation which is prevailing in the country, especially in Punjab. Number of honourable speakers who have participated have tried to review the situation as it has developed in Punjab. They have also stated that the Punjab situation has been discussed on the floor of this House number of times, all aspects of the situation have been discussed, and it is really unfortunate that the situation has not improved to that extent to which we were all expecting it to improve.

Now, I do not want to go very much back, but one thing is obvious. A valiant effort was made to solve the situation when

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accord was arrived at and everybody in this country hailed the accord and we all thought that this accord will succeed, and ultimately the thorny problem will be solved. But Sir, what has happened? Sant Longowal was assassinated—this act clearly indicated that those who believed in terrorism, those who believed in militancy, they did not believe in the accord. On the other hand, they tried to torpedo the accord by killing one of the authors of the accord.

Sir, in spite of it, another valiant effort was made and that was—although the contrary opinion was also very strong, that no elections will be possible in Punjab. Yet elections were held and elections were more or less peaceful. Then, the elected Government functioned, but again, the unfortunate situation arose. The factions in the Akali Government never wanted their Government to succeed. Now, this unfortunate situation went on developing. The house, I must say sometimes or more often has been unanimous in trying to give support to the elected Government. Undoubtedly that Government did try to combat the situation as best as they could. But again, due to various reasons, they were weakened by their own comrades, their own comrades did not want them to succeed. Some of their own Ministers were indulging in activities which we all thought are shameful. Unfortunately, in spite of all our support to the Barnala Government, the Barnala Government did not succeed. Now, to say that the Punjab problem has not been reviewed from time to time and the House has not spent that much time as it should, is not correct. In fact the Punjab had received greater attention at the hands of the Central Government as well as at the hands of this august House. Now, if an elected Government fails, then what is to be done?

One is we sit with the folded hands and let the situation go on deteriorating. But

when a time comes, then the Central Government has to play its role. The time came, and the President's Rule was imposed. Now to say that President's rule has not completely succeeded, I will agree, but to say not at all—some friends do not know because they have not visited Punjab.

SHRI BASUDEB ACHARIA (Bankura): I myself inaugurated on Patha Yatra in Chandigarh itself.

SHRI JAGAN NATH KAUSHAL: If you think by going on Patha Yatra in Chandigarh, you have known Punjab....

SHRI BASUDEB ACHARIA: Is it not a fact that I have visited Punjab?

SHRI JAGAN NATH KAUSHAL: I am very sorry. This is an unfortunate situation where people try to pass comments without knowing the full situation.

SHRI BASUDEB ACHARIA: The situation has not improved yet.

SHRI JAGAN NATH KAUSHAL: You may be knowing the partial situation. Mr. Acharia, I will again say, I started by saying you can say, it has not completely improved, but to say no improvement is there, it is only misinformation. I will tell you what has happened. The situation has improved to this extent. — that the lost confidence in the population which was complete, and its lowest ebb has returned. Now, people there has confidence that there is a Government which can protect us. Otherwise, when fundamentalism was at its peak, then everybody thought that it is an end of the Government because parallel Governments were functioning. Now, that parallel Government has vanished, that fundamentalism has vanished which, in the garb of social reform, was trying to say, stop this trade, do not sell this article, send so much money to us by way of extortion. Well, those things have

almost vanished. People in Punjab have got restoration of confidence. The only unfortunate situation is, terrorism has not completely vanished. Terrorism is still there. But what is the solution which my hon. colleagues and friends are suggesting? True, whenever we take part in this debate we take part with anguish; we take part with a heavy heart. As Mr. Reddy has said, whenever the situation in Punjab is discussed, we discuss it with a heavy heart. But then with all sense of responsibility, we are trying to find a solution. Then the only alternative left for us was that we should impose President's rule for some time and when the situation improves, obviously popular Government should be brought back.

SHRI H.A. DORA (Srikakulam): Do you expect that?

SHRI JAGAN NATH KAUSHAL: Of course. The moment the objective of imposing the President's rule is achieved, nobody is interested in continuing the President's rule. Obviously it cannot be continued. As we see the unfortunate feature, the terrorism is there still, and people are being killed. But again we cannot shut our eyes to one fact. Policemen have now stood up. Policemen are now being killed in the process. Earlier Police was totally demoralised. Police was not trying to perform its duty for various reasons. Some people have said that they are mixed up; some have said that they have political support. But now people have come to know that the Police is now standing up, trying to do its duty as best as it can, with the result the policemen are being killed in the process. Therefore, a situation has been built where we can hope to succeed. Given a little more time and the support which now the Government is trying to get from us in the shape of this Bill, I have no doubt in my mind that we will succeed in curbing the terrorism if not completely eliminating it.

When this Bill is being brought forward,

then ordinary criminal jurisprudence is being discussed. The hon. Members know that we are not dealing with normal peaceful times. We are dealing with extra-ordinary times. Shri Satyendra Narayan Sinha has said that not only for Punjab but do something for Bihar also because in the garb of political party etc. greater terrorism is prevailing there also. With earnestness I request the hon. Members to keep one thing in mind. It is a temporary measure. It is a measure which is being passed only for two years and it will lapse the moment the situation improves. Now, of course, the figures are with the Minister and he will give them. But otherwise, I can tell you, what is happening in Punjab. No witness is prepared to come forward. Even in ordinary crimes, ordinary murders which take place out of revenge etc., there also, witnesses are very chary to come forward. Who come forward? It is the relations of the deceased. The Supreme Court has also said, the relations of the deceased can be believed, if their evidence is worth believing. Otherwise, there used to be a time when I started my practice—of course, that was 50 years back—our main criticism was, he is the relation's witness and the court will say, yes you forget about it. Now, they say, relative witness is a most desirable witness because he will not implicate an innocent person but at the same time, he will not absolve a person who has committed a crime. So, apart from relative witnesses, nobody comes forward. Or, if it is from inimical witnesses, then there is a chain of murders. You have murdered one person from that side and they will murder another person from this side. But in terrorism, nobody has the courage to come forward. And we all know that the terrorists have succeeded in getting sometimes persons, who are being taken to the courts, freed from police custody. They have seen people being taken out of the jails. So far as ordinary trial is concerned, that is out of question, in this case. We are thinking that if by some amendment in law, may be to a criminal

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lawyer, it may be of a drastic nature. Even the Chairman who is sitting in the chair now, has criticised two or three provisions of this Bill. May I say, I have all respect for all persons who deal on the criminal side but I have the experience of dealing with the criminal cases. May I submit that there is a very strong thinking in the country that this present criminal jurisprudence needs review. I have seen great judges writing, jurists writing, what is this law—let 10 guilty persons escape, let not one innocent be punished? They say, how long? Shall I tell you my experience? 70% people get themselves acquitted till the matter goes to the highest court. Only 30% people get conviction. Is it not very extraordinary? What is sacrosanct about this jurisprudence? In France, the law is just the other way round. In France, the burden of proving innocence is on the accused. That is also a democratic country, a civilised country, a country about which nobody can say that they are not following the rule of law. Rule of law means, once Parliament frames the law, we should follow it. But while Parliament framing laws, to say that Parliament should shut its ears and eyes to what is happening around, then those laws are meaningless. All laws are passed according to the prevailing situation in the society. As the hon. Minister said, new offences are being created. Of course, they are being created. Dowry deaths were not known. Now, if people come forward with new crimes, surely Parliament will try to deal with them. Mr. Shahbuddin was even saying—who is not here—it is a black law. It is a wonderful situation! May I ask him, can he with all equanimity say, please talk to so and so in Punjab and the problem will be solved? He himself said there is nobody to talk to. Whom shall we talk to? Nobody. Now we talk to the terrorists. I for one say "We are prepared to talk to the terrorists provided they come forward and say "We abjure terrorism. We believe in the integrity of India. Please talk to us." Have they at any stage come

forward and said that terrorism has been completely relinquished and abjured by them? The Akali party, which was the duly elected party by the people, has failed to tackle the problem. That is the most unfortunate part and Akali Party today—it was stated by some hon. speaker, Mr. Sinha himself—that Mr. Darshan Singh Ragi who was appointed acting Jathedar of the Akal Takht was trying to play some sort of a role where he says "Dialogue should succeed, not the bullet." Where is that poor fellow? Retreated. He has gone to his house and says "No, no. I am not available." The whole thing is left to the terrorists with the result that SGPC, Akal Takht, and all the highest seats of the Sikhs, are under the domain of the terrorists. Is the House really serious in telling us that "Now we should have ended the path of dealing with them and we should come to the path of dialogue?" With whom? Nobody will tell us.

We all believe that ultimate solution will lie in coming to terms with those people who can deliver goods and bring normalcy to the State. Nobody can deny this.

But surely the present terrorism, militancy and the revolt against the very integrity of the country is due to the people who say "We believe in Khalistan and nothing less than Khalistan." We should talk to those people. They have said so, "Our only aim is Khalistan."

The whole House has, on more than one occasion, said "We will not concede Khalistan." Who is prepared to sacrifice the sovereignty of the country?

I would only request the hon. Members, while they try to be as objective as they can, but sometimes, by some of their observations, do give a fillip to the terrorists.

This is the one propaganda which I think should stop. Time has come when this

should stop in any case that fake encounters are taking place in Punjab. This propaganda must stop. I seek the cooperation of all Members sitting on the Opposition benches in this matter.

The whole House has paid tribute on more than one occasion to the Police Chief. That man is fighting with his back to wall. Even his life was in jeopardy. He could have been killed but for a flash which came to him. He lay on the ground and was saved. His wife did suffer injuries. That man has stated more than once that "Bring even one fake encounter to my notice, I will take the Police to task." We should not otherwise say so. If we go on saying that there are fake encounters, that encourages terrorism.

What has happened since Punjab has been placed under President's rule? A systematic hunt is there now, not only for terrorists, for the people who give shelter to them, people who harbour them, people who provide support to them. That systematic effort has started under the President's rule because that political support has vanished political support which was accepted by some of the people who were in power that they were given support. That has vanished. Systematic things are taking place. Actually, two very good suggestions have been given by Shri Satyendra Narayan Sinha. One of them is being practised probably in another form i.e. at the village level and then at the cluster of villages level, now people are coming forward to form peace corps, to form into societies who will stand up against terrorism. The other suggestion which my hon. friend gave was that all political parties should not retreat; they have got to go to the villages, to the farthest corner of Punjab and even if they have to face the bullets somewhere, sometime, ultimately it is the dialogue which will succeed; to tell people that these persons who are believing in terrorism, who are believing in the secessionist policy, who are believing in fundamentalism

that they are the enemies of not one section of the society, but they are enemies of the entire nation. Now, these two suggestions have got to be given a practical shape.

I will now come to the one or two provisions which have been criticised either by one hon. Member on the other side or by one friend on our side. I would only say that if you examine this Clause 21, I think it is a Clause which Shri Sharad Dighe should have accepted. Shall I read it for the benefit of the House?... It says:

"In a prosecution for an offence under sub-section(1) of section 3 , if it is proved—

that the arms or explosives or any other substances specified in section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence"....

Now, two things are proved that is, recovery from his possession is proved and if there is further reason to believe that they have been used in some such crime, then the section says: "the Designated Court shall presume, unless the contrary is proved that the accused had committed such offence". Even drawing presumption by the proof of these two things is doing violence to criminal jurisprudence? I don't follow. Recovery of a weapon is proved. It is also proved to the satisfaction of the Court that that weapon has been used in the commission of a crime. Then, what else remains? Now, the thing which will remain is that the Court will say: "I will not insist on any other evidence. Now, I will presume you are guilty. But you can still prove you are not guilty". Similarly, as far as all the two or three other Clauses are concerned - regarding which again the onus has

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been changed - I would request you to examine them a little dispassionately and ultimately, the House will come to the conclusion that these powers which the Government is now giving to the Courts, they are very very necessary. These powers are ultimately being given to the Courts. The Courts will have to accept the innocence or the Courts will have to accept the plea of the guilty. The other provision which has been criticised is this. They say that the confession before the police officer, although he may be of the rank of a Superintendent of Police or may be of a higher rank, this power should not be given. The reason which they gave reads like this. They say: Don't you know that the police extorts confession or the police uses third degree methods etc. etc?" That is their first point. Sir, I am also practising on the criminal side. (*Interruptions*). I am still practising. The criticism against the police may be true in some cases. But to condemn the police wholesale is not correct. I have never accepted it. The only argument which one of our hon. friends advanced was that the confession should be recorded by the Superintendent of Police. He says like this: "ultimately, it will be recorded by an Assistant Sub-Inspector of Police and the S.P. will only put his signature". This is too much. He should not try to unnecessarily denigrate every officer. An I.P.S. officer of the rank of S.P. or a higher one will not, any, put his signatures on a confession which has been recorded by an Assistant Sub-Inspector of Police. Therefore, I again say that, when we are dealing with an extraordinary situation, ordinary laws will not help us. Whatever change is being brought in the procedural law is necessary; whatever change is being brought for having some convictions is necessary. Otherwise, we know how difficult it is to get conviction even in an ordinary case, not to speak of a case of terrorist activity. Therefore, I would pray to the whole House that they should give their unanimous support to

this Bill rather than trying to find fault here and there, because this Bill has the laudable object of trying to secure conviction of those people who indulge in terrorist and disruptive activities.

SHRI D.B. PATIL (Kolaba): Mr. Chairman, Sir, at the outset I would say that I agree with the intention of the Government that terrorism should be rooted out *in toto*. But the way in which the Government is trying to do so by making some amendments, I am not in agreement with that. It has been admitted by the Government in the Statement of Objects and Reasons that the Government has failed to check terrorism; therefore, they wanted some more powers and they have taken more powers. In the last week itself we have passed a law authorising the Government to detain persons without trial for two years. Now the Government is coming before the House that certain provisions as regards burden of proof, confession of the accused, confession of the co-accused, identification, etc., should be amended in such a way that the accused in terrorist cases can be convicted. There cannot be two opinions about conviction of the accused in terrorist cases. But looking to the way in which the Government is trying to do so, I fear, the very basic structure of the legal system as well as the basic structure of evidence law is being destroyed by the amendments which are being brought forward by the Government. I will come to those amendments later on.

To check terrorism, to root out terrorism, Government have tried so many ways. In the first instance, the Government had the Rajiv-Longowal Accord. It has failed. Thereafter, Sant Longowal was assassinated. In spite of that, elections were held in the hope that there would be some improvement after the elections. In spite of the fact that the terrorists were against holding elections, elections were held and people had voted in a very large scale. It was stated at "time that

the terrorists were isolated. I am for that, that the terrorists should be isolated. And from the voting pattern that took place at the time of elections, it appears that the terrorists were isolated. But, unfortunately, so far as Punjab is concerned, the Punjab Accord was not implemented and, therefore, there was disappointment among the Sikhs, and the terrorists took full advantage of this disappointment among the Sikhs because of non-implementation of the Punjab Accord. Therefore, terrorism increased, even though there was a popular Government. The popular Government could not check terrorism, and according to certain sections of the society, the Barnala Government was not as strict as it should have been with the terrorists. So, the President's rule was imposed to check terrorism. The experience is after the imposition of President's Rule, terrorism has increased on such a large scale that it has become everybody's concern. No doubt it was everybody's concern then also. But now every State is concerned about the common citizen of our nation and so everybody wants that the terrorists should be rooted out. But the way in which the Government wants to root out, I don't think, Government will succeed in this matter because everybody has said and I am also of the same opinion that until and unless some political solution is found out to the Punjab problem, peace is not going to come out there. But the present trend of the Government is that so far as the Punjab problem is concerned, it is only a law and order problem and so, until and unless that law and order problem is not solved, Government is not going to negotiate at all.

Shri Jagan Nath Kaushal, who spoke before me said about "whom to speak." There are many segments in Punjab itself who are opposed to Khalistan, who are opposed to terrorism. They all should be together. It is said that by having brought them together, the terrorists are being isolated. But it is not happening. The terrorists are not being isolated. On the contrary, it can

be inferred that instead of being isolated they are being given protection in Punjab itself. Terrorists are coming over, shooting and walking over. Terrorists come over on bicycle, shoot and go away. They come over in scooters, shoot and go away. They come in cars, shoot and go away. It would not have happened unless and until they are given protection in some parts of Punjab. This fact should be taken into consideration very seriously. Only taking super power is not going to solve the problem. On the contrary, the powers which have been provided here will vitiate the problem in Punjab.

Nowadays, there are allegations against Government that they are threat-encounters and in those threat-encounters, innocent people are being killed and, therefore, there is much disturbance in sikh community in Punjab. (*Interruptions*)

PROF. N.G. RANGA (Guntur): It is all wrong.

SHRI D.B. PATIL: It is my opinion. It may be wrong according to you but it is my analysis.

PROF. N.G. RANGA. Why do you give wrong analysis?

SHRI D.B. PATIL: Sir, Governor of Punjab has challenged that certain sections of the people who said, who alleged that some of the leaders from Akali party, I don't say that those allegations are true. (*Interruptions*)

PROF. N.G. RANGA: But you should not mention that allegation here.

SHRI D.B. PATIL: I don't know what the Hon. Member wants to say. I want to say openly that he had addressed the Government in a letter citing two concrete examples about such encounters challenging Government. It has come in the paper. It has come

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in the paper and may be it is a false allegation. But if the Government is not going to enquire into the matter, the inference, the impression will be that the Government is not prepared to face this enquiry. What is the result of those things? The result of those things on the minds of people of Punjab will be very negative. This should be taken into consideration.

So far as law of confession is concerned, it is now being put forward that confession to police officer should be taken into consideration. All over the world - Mr. Jagan Nath Kaushal has cited the example of France and I will see to it - burden lies upon the accused to prove it. The basic principle is that until and unless the accused is convicted, he is supposed to be innocent. Under special circumstances, it is true that the burden lies upon the accused to prove his innocence. What are those special circumstances? The special circumstances are enumerated in Section 21, I agree with him, that in (a) if any explosive is found with him and in (b) if any finger-prints are found with him, the burden of proof should shift over to the accused. I agree with this. But what about (c) where it is said "that a confession has been made by a co-accused that the accused had committed the offence"? Under this circumstance, the accused is supposed to prove his innocence. How to prove the innocence? I don't understand. The burden of proof getting shifted under other circumstances is all right. But, in so far as the confession of the co-accused is concerned, it is very very difficult to understand.

About this, I will just quote a statement of Mr. Black Stone who is an authority on the jurisprudence of extra-judicial confessions. Mr. Black Stone says that:

"even in cases of felony (Felony has been described as has been enunciated in the Act, as crime regarded by

the law as grave usually involving violence) at common law, they are weakest and suspicious of all testimony, very liable to be obtained by artifice, false hopes, promises of favours or menaces, seldom remembered accurately or reported with precision and incapable (it is very important) in their nature being disproved by other negative evidence."

That is being envisaged under the law that if some terrorists are dealing with crime involving violence, they should be dealt with very strictly. It is completely all right. In Section 21 it has been provided that the accused has made a confession to the offence of any person other than a police officer. That is the extra-judicial confession. Here in this case, what type of negative evidence the accused is expected to show to prove that he is innocent? Is it only bringing some 10 or 20 witnesses and making them say that he is not involved? That may not be the case expected by the law.

As far as the accused and the co-accused are concerned, the confession of the co-accused till now has been accepted whenever the co-accused, the maker of the confession, inculcates himself in full equal to, if not more than the accused against whom the confession is made. Only in such cases the confession of the co-accused is accepted as evidence against the other accused. But here it is not sought to be enacted like this. Adverse burden of proof should shift to the accused after a confession has been made by the co-accused that the accused had committed the offence. But it says nothing about the maker of the confession, whether he inculcates himself or not. If he does not inculcate himself, then the confession of the co-accused is not at all relevant, acceptable so far as the jurisprudence is concerned.

Many of our friends have said that the

jurisprudence should be thought over again. Even in British regime there were parallel governments run by the patriots. In Satara district of Maharashtra there was a parallel government run by the patriots who challenged the authority of the British Government. Even at that time the British Government had not brought a legislation of this type to book the culprits (according to the British Government, the imperialists) and to sentence them this way. But we are doing this after 40 years of independence. It is very wrong. Therefore, the law of confession of the co-accused is to be thought over again.

15.00 hrs

All these things will vitiate the problem further in the sense that innocent persons will be involved in these cases. Innocent persons on the basis of the provisions of this Bill will be convicted and after those convictions of innocent persons from where they were coming just then that what effect it will have on the people there. If without solid proof persons are convicted then it is not going to improve the situation of Punjab. So far as the present situation is concerned I agree that evidence is not forthcoming but because of that to change the basic structure of criminal jurisprudence, I think, and to change the basic structure of Evidence Act is not the solution. That means the Government is not prepared to have political solution to the problem. In Marathi there is an adage - if somebody kills a cow the other should not kill a cow. No doubt the terrorists are doing wrong things but it does not entitle the Government to make such provisions which are against the criminal jurisprudence and Evidence Act.

In the end I would request that simply taking powers is not going to solve the problem. It has been mentioned that people cannot be convicted for want of evidence and, as such, this Bill has been brought forward. As I said earlier in the last week we

passed a legislation authorising to detain a person without trial for two years if no evidence is forthcoming against him. We read from the newspapers that the number of terrorists detained in Punjab may be running into hundreds and thousand. Recently we were told that the terrorists are being eliminated. They are on the run. They are desperate because they are not in a position to do anything. On the contrary we find they are dominating and doing the things at their choice. If it is so then what does the intelligence of the Government doing? Therefore, the intelligence machinery of the Government has failed. I would like to urge that all sections in Punjab which are anti-khalistan and anti-terrorism should be brought together and some consensus should be arrived at so as to put an end to these terrorist activities. Until and unless this is done the Punjab problem is not going to be solved. There will be no peace in Punjab. So I oppose this Bill.

SHRI KAMAL CHAUDHRY (Hoshiarpur): Respected Chairman, Sir, may I first thank you to allow me to share my views with the House. Punjab is burning. The legend goes that in the rivers of Punjab milk used to flow but they are now drenched with blood. There is hatred all over. What is at democratic solution for Punjab? The items on the agenda which are being discussed are - Statutory Resolution against Terrorist and Disruptive Activities (Prevention) Ordinance, 1987. Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities. Bill to confer on the President the power of the Legislature of the State of Punjab to make laws. Discussion under Rule 193 regarding continued killings of innocent people and increasing terrorist activities in Punjab and other parts of the country.

It reminds me of my school days when we used to make paper missiles and aircraft and fired at each other. There is a second

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solution. We have peace marches. We have all-parties peace rallies in Punjab, in Delhi and in other parts of the country. There was also a Padyatra starting from Bombay right up to Amritsar by Sunil Duttji. I respect him a lot. I told him: Your intentions are good but you will fail miserably. He has failed. This nation has failed him.

Just a little while ago, one of our Hon'ble Members paid his condolences to the Union Home Minister. But I want to ask the Hon'ble Members of this House: Do you hear such condolence messages every day in Punjab? How many people are dying every day? How many people do not eat? How many children are rolling on the dust every day? How many women are beating their breasts every night? We feel the pinch only when our near and dear ones get killed. I said so last year. Some of our Hon'ble Members might not have liked it. I would like to repeat it again. Kindly go and ask Mr. Shankar Dayal Sharma: How did it pinch him when his daughter and son-in-law were killed? Also please go and ask the Prime Minister of this country how he felt when his mother was killed. If you cannot approach him, you may ask me how it feels like when a father is lying dead on the floor.

Now I have a solution. Give me a gun and a licence to kill. If you want to eliminate terrorism and violence in this country, then this is the solution. Terrorists of the past have also been dealt with like this. I will quote a few examples. Lord Vishnu, who is called 'Murari', had killed Mur and Ari. Lord Shiv, who is called 'Tripurari', had killed Tripur and Ari. Bhagwan Ram had killed Maricha, Tarika, Khar, Dushan, Kumbhakaran and Ravan. His brother Lakshman had killed Meghanadh. Hanuman had killed Sursa, Ravan's son Akshey Kumar and Ahiravan. Lord Krishna had killed Putna (Rakshashi), Kans and Shishupal. Bhim had killed Duryodhan, Dushashan and Jarasindh.

Bhagwan Parusram had killed Arjun Kartoy. Goddess Durga had cut the head of Bhairon. In the past, the terrorists have always been killed. There was no other solution to them.

I would also make another request. As far as the Jodhpur Detenus are concerned, given them general amnesty. Talk to the youth. They also may be having a problem. Something may be pinching them. I have been meeting some of the terrorists. I will give you an example. It was at the time of Diwali in 1985. I had gone to District Jail, Hoshiarpur with some sweets. There were some labourers who were in prison. As I was coming out, one of the terrorists asked me from inside if those sweets were not for them. I made a request to the Jail Superintendent to allow me in. He created a lot of fuss about it. Even the Deputy Commissioner was not allowing me to enter the jail saying that my life will be in danger in the jail. This is the state of affairs in jails. The terrorists are ruling the roost. Finally, I managed to go inside, spoke to the terrorists and distributed the sweets to them. I do understand the problems of the youth and the present terrorists.

I again appeal to the Government to set free all the Jodhpur Detenus. Give them a general amnesty. But if anyone of them thereafter indulges in terrorism, then shoot him to death. This is the same country where we had Sardar Patel. Sardar Patel did not believe in paper work; that was not necessary for him. He was a lion at heart, a tiger in the field and had an iron hand to act. That is the strength of our democracy. He was very much here as the Home Minister of this country. And what is the position today? That shows the weakness of our democracy.

I would request the hon. Home Minister as also his Deputy, who is also a learned lawyer, to kindly shed this weakness, not to be always behind the papers that he is writing here, have a strong will and act tough.

The whole country will be behind him. If he cannot do that, I would request this House to allow me to join the terrorists and I would show what I am capable of.

Finally, I would request the Members from the opposition not to keep on crying over these powers being given to the Government. They have brought this Bill. Let them have these powers and try to do miracles, though they have not succeeded in doing that for the last several years.

**SHRIMATI GEETA MUKHERJEE**  
(Panskura): Mr Chairman, Sir, we have given a Statutory Resolution opposing the Ordinance not because we do not want very tough action, against the terrorists; we are all for very tough and very effective action against the terrorists.

It is well known that in Punjab terrorists are killing innocent people and they have also made a special target of communists who are in the front rank of the fight against the terrorists, for finding a solution to the Punjab problem and for Hindu-Sikh unity. It is well known that our leaders have laid down their lives and every day our leading activists are laying down their lives. They are not sitting in their houses, but they are fighting against the terrorists.

But what is the Government doing? On the one hand, they are taking no concrete measures to have a political solution of the problem. That is well known. What has happened to the Punjab accord? As I said, on the one hand, no serious attempt has been made for a political solution and on the other hand, no proper security measures have been provided. I will prove what I have said. What is taking place is only extension of power and every time this extension of power necessarily does not produce effective results in curbing terrorism. However, there is a big possibility of these powers being misused and that is what had hap-

pened all these years I said that political solution is not being attempted at. I also said that no proper security arrangements are there. Our hon. colleague Shri Rangaji laughed when I said that no proper security measures had been taken. I would again emphasise that it is true. Here I would like to point out a few facts which are published in the Times of India by my well known friend and colleague Shri Satyapal Dang whose life is threatened every moment but even then he is a great fighter. I am really proud of him. I would like to quote the published facts.

"On August 7, 1987, Shri Satyapal Dang with many others visited village Khadoor Sahib in Amritsar district to attend the funeral of a CPI activist and leader of the para-medical employees, Tilak Raj, who had been shot dead by the terrorists. The village is a stronghold of the terrorists. Not a single CRP man or a policeman could be seen either in the village or anywhere in the vicinity."

Then he further says:

"The people in village Jagdeo Kalan in which 12 persons belonging to the minority community were shot dead during the same night told that there was no patrolling by the CRP or any other security force at night."

Then he quotes another village:

"Village Nagoke is another stronghold of terrorists. (He was there in that village on August 11, 1987, for the funeral of Dalbir Singh) The village has a CRP Chowki but Satyapal was told that the CRP is nowhere to be seen after 7 p.m. It can be safely said that whatever the reason, there is no night patrolling by security forces."

How are the security measures being

[Shrimati Geeta Mukherjee]

taken? All the powers are there, but how are they being used? Then he further says:

"Karam Chand was shot dead by terrorists in the evening on August 6, 1987, in a village near Patti. The terrorists told the group, "We have shot dead the comrade. He is asking for water. You may go and give it to him". The terrorists escaped at leisure."

I myself have been to Patti. It is a famous place. There terrorists can escape at their leisure. So, these are the security measures that the Government are taking. So, as far as the question of actually taking the security measures is concerned, the Government has totally failed and at the same time you are taking more powers. As I said, these powers are likely to be misused. May I seek the permission to read Clause 15, sub-clause (2). Clause 15 is that if a person makes a confession then that can be used against him. The second part is about the evidence. Rangaji please listen. It says:

"Police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him."

This appears to me a very interesting point. Then it further says:

"And such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

Just imagine the scene. A police officer while recording a confessional statement in the police station has to be satisfied that the poor fellow is making the confession voluntarily. Does this ever happen? What is the

fun of having these two lines in this Bill? Is there any meaning in it? Sir, these fig leaves are not going to cover the intention of the Government to take extensive powers into its hands. (*Interruptions*)

My point is that the powers that are being taken by the Government are arbitrary. Even the laws passed earlier also were meant to give power to Government quite arbitrarily. But did those powers help the Government in curbing terrorism? They did not help. This issue has to be solved in a different manner. This is not at all a question of more and more powers. On the one hand, what is needed is very serious political action. On the other, actual security measures should be taken, for which you already have enough powers with you. No more powers are necessary.

As regards political measures, I would like to mention one point here. I am very sorry to say this. At the fag end of Shri Barnala's Government, there was at least some serious attempt to start an all-party effort to isolate the terrorists. Some meetings started taking place and different parties started participating, though I must say that that was not enough. All those parties who were attending the meetings did not throw their entire weight in solving the problem. But in any way, at least some effort or some beginning was made to find out a solution. Today, even that effort is not there, and everything is falling through.

How are you going to isolate the terrorists really, unless certain political measures are very seriously taken up? I have told the same earlier also, and I reiterate it today as well. In spite of the situation prevailing in Punjab, our party went there. We had covered about 2,000 villages in *Jathas*, though there was every risk of our people getting killed. They still visited these troubled areas, knowing it fully well that they might be killed any moment. In one month 2,000 villages

were covered in this way. We were not allowed to go everywhere and so naturally we took the help of all the secular forces who were willing to join us in this task. Because, on these issues we should not think that we alone could do it and feel rather elated about it. Our other Marxist friends were also there with us. All secular forces should throw their weight together in this task of eliminating terrorism. Unless we aim at concerted and joint efforts, terrorists will not be isolated. But here, I must say with sadness in my heart that the Ruling Party has not through its weight. I implore the Government..... (*Interruptions*)

SHRI P. CHIDAMBARAM: One day you say that we are not secular. And the next day you say that all the secular parties must join. Just three days back, you were saying that the Congress was not a secular party. Today, you say that all secular parties must join, but the Congress did not throw its weight. Is Congress a secular party or not?

SHRIMATI GEETA MUKHERJEE: Congress is a secular party. But in Congress there are very many people who do not believe in secular way of thinking and you have not been able to discipline your party members.

SHRI ANIL BASU (Arambagh): Any way, whether Congress is a secular party or not is beside the point. The point that is emphasised by her is that you have not joined the campaign.

SHRI P. CHIDAMBARAM: We will answer that. (*Interruptions*)

We will answer about the participation. I am grateful to Mrs. Mukherjee for conceding that Congress is a secular party. We will now tell you what have we done. (*Interruptions*)

SHRI SAIFUDDIN CHOWDHARY: In

theory the Congress is a secular party but in practice they are not secular.

SHRIMATI GEETA MUKHERJEE: I say with great anguish not to score points. I expect the other side also to do so. It is too serious a thing.

SHRI P. CHIDAMBARAM: Yes, it is.

SHRIMATI GEETA MUKHERJEE: It is much more serious than scoring points. It is a fact that all secular forces have not thrown their entire net. It is true. Let that be faced squarely, if we want to do something. That is my point.

There was lot of discussion on communal situation. One saw, who spoke secularly and who did not spoke secularly. All your people did not speak in the same voice. But that is not my point again. I say this campaign has taken a very serious proportion.

I would like to say another thing. One day I saw in the newspapers that the Punjab Governor, hon. Shri Siddhartha Shankar Ray had said - I do not know whether he had said it or not - that there are 12 very well known dreaded terrorists. The Government know who are they. If they could catch them, then the situation can be put an end to. I was very much surprised, if not 12, he might have meant 12 heads or something like that. So, what prevents the Government to bring them to book? If they know who they are and their whereabouts, they can really catch them and give them as much punishment as they desire. Is it because the law is not there or the earlier law is not enough that was the main reason why they are not bringing them to book? Just because of these reasons, they have not been able to gear the situation in a way either politically or securitywise. Therefore, I say, let us take up really the jobs that we have to do, instead of taking such wide powers which may lead such a situation that may not help anybody.

[Shrimati Geeta Mukherjee]

This is my submission. That is why we moved this Statutory Resolution.

SHRI BIPIN PAL DAS (Tezpur): Mr. Chairman, Sir, I welcome this Bill. I am wholly in favour of giving more powers to the law enforcing authority to tackle this menace of terrorism.

Mr. Jagannath Kaushal said that some achievements have been made, but terrorism still remains. It is not that nothing has been achieved at all in Punjab after President's Rule has come into being. But he had said that terrorism still continues. Therefore more powers have to be given to the law enforcing authorities. The problem of terrorism has to be solved by strong security measures. There is no doubt about it. The security measures are important and indispensable. But at the sametime, I would submit that in the ultimate analysis, if we want to isolate the terrorists and fight them tooth and nail, then we have to rouse the people to consciousness. Give them courage and conviction.

If the people as a whole rise up with courage and conviction in favour of peace and secular forces, then alone perhaps, it will be easier for the security forces to isolate the terrorists and deal with them according to law.

I am not going to devote much time to Punjab. Punjab has been discussed exhaustively by a large number of friends. But I would like the Home Minister to note that terrorism is not only there in Punjab but it is also there in Delhi. It is also there in North-Eastern Region and in various parts of the country. So, I would like to confine myself - in order to cut down and shorten the time - to terrorism in the north-eastern region.

So far as terrorism in the north-eastern region is concerned, in order not to waste the

time of the House, I would like to quote a few lines from the editorial of "Assam Tribune" dated 21st August which gives the substance of the terrorist activities in the entire north-eastern region. I quote:

"It is a known fact now th. at the different rebel groups have of late been trying to come closer and it was again Sri Muivah along with his self-styled Foreign Secretary, Sri Angelius Shimray who formed the Manipur-Tripura-Nagaland Consolidation (MTNAC) during 1982. The partners of this conglomeration of guerilla outfits are the United National Liberation Front (UNLF) of Manipur, Tribal National Volunteers (TNV) of Tripura, NSCN of Nagaland and United Liberation Front of Assam (ULFA). In fact, activists of these rebel outfits are having a common base at Tongyu in the jungles of Burma. They are having a joint military command there from where groups of rebels are believed to have been sent to China for such training. Sri Muivah is the brain behind all these activities and he is getting full cooperation from his able lieutenant Sri Issac Swu. While the TNV chief Sri Bejoy Hrangkhawl is believed to have been sending occasional peace feelers, the UNLF chief Sri Rajkumar Meghen of Manipur is reportedly bent upon making his so-called pro-Mongoloid alliance a reality. The ULFA is believed to have been looking after the finance sector of the joint command at Tongyu."

This is from the editorial of "Assam Tribune" dated August 21. This is the substance of the editorial. It is a very responsible paper. They do not write any nonsense. They have given the substance of the entire situation prevailing in the north-eastern region. All these terrorist groups of Manipura, Tripura, Nagaland and Assam are cooperating and operating with their centre located some-

where in the Burmese jungles; and the Assam terrorists are looking after the finance, as per the editorial of this paper.

I also draw the attention of the hon. Home Minister to the 'Statesman' of 3rd August, at page 4. The headline of this news item is - I am not going to read out the whole thing - "Terrorists Spilling Blood in Assam". It is a long report. I will not waste the time of the House. I will read out small portions of this item:

"The list of people murdered by the ULfa reads like a who's who of Assam politics; Mr Tarakeshwar Dihinga, a former Congress (I) Minister; Mr Kalipada Sen, the then president of the United Minorities Front; Mr Manotosh Das, former vice-chairman of Dibrugarh Municipal Board; Mr Saurav Bora, a student leader of Dibrugarh University; Mr Rajiv Rajkhowa, a Youth Congress (I) leader and son of the former Congress (I) Minister Mr Dioanath Rajkhowa; Mr Ranjit Baruah, a Congress (I) worker and Mr Jatin Barman, president of a village panchayat in Nalbari district.

Several leaders have had miraculous escapes. Among them are Mr Bhumidhar Burman, former Health Minister of the State, and Ms Kalyani Mukherjee, a prominent INTUC leader...."

Ms Kalyani Mukherjee belongs to the Congress (I) party.

These are the incidents that took place. These people have been murdered. If you give me a little more time, I would like to quote 1 or 2 more passages from the same issue of "Statesman".

"The ULfa has already forged links with either underground organisations

indulging in terrorism in the north-east region. There is evidence of the ULfa having links with the National Socialist Council of Nagaland; the People's Liberation Army of Manipur and the United Nationalist Liberation Front. Besides being trained in arms by the NSCN the ULfa has been time and again aided by the PLA and NSCN members in the killings and bank de-coities."

It further states as follows:

"According to intelligence reports, Rajib Rajkhonwar, Chairman of the ULfa is at present in Burma trying to secure help from the Kachin Independent Army which is involved in a guerrilla war in Upper Burma.

The Chief Minister of Assam. Mr. Mahanta, also said as follows:

"There were reports of some ULfa activists receiving training in the use of weapons from the NSCN"

The present Chief Minister of Assam has himself admitted that this is a fact that the extremists and the terrorists of Assam are receiving training somewhere else with the help of NSCN. I do not want to quote from more reports which are available with me. For example, there is *Assam Tribune*. What happened in the town of Bongaigon. A heap of bodies had been found, one after another, 3-4. Nobody was arrested; no action has been taken. All these things are done by the so-called terrorists as people believe. I do not want to waste the time of the House. I will conclude by saying this that the last incident that took place at Barpeta Town will give an idea about how things are going on. Shri Ranjit Barua, a youth Congress I leader, was coming home in a scooter. He was stopped by one man. Who was that man? He was that man who was arrested two years ago for

[Sh. Bipin Pal Das]

distributing Ulfa leaflets. That man stopped him just for a talk. In two minutes, two persons approached him. One of them shot him in his abdomen. The people around him raised a hue and cry. The other fellow ran away and this man was caught by the people. Ranjit Barua was taken to the Guwahati Medical College. He arrived there at 9 P.M. on 26th July. He was alive and talking to the people there; he gave a description of what happened. He died at 5.25 the next morning. No operation was done. I am told nothing was done in the Guwahati Medical College. If any operation was done and the bullets were removed from his abdomen, he would have survived because he ultimately died by profuse bleeding according to the doctor's report. Now the Guwahati Medical College is under supervision of Shri Chandu Mohan Patwari. On that day when Shri Ranjit Barua was shot at Barpeta, Shri Chandu Mohan Patwari, the Health Minister, was sitting in the Circuit House at Barpeta. I do not want to make any link; I do not want to suggest anything. But it is a fact that on that day Shri Ranjit Barua was shot at Barpeta town by one man who belonged to Nalbari and Shri Chandu Mohan Patwari also belonged to Nalbari; he was also the Health Minister; he was camping in the Barpeta Circuit House; and he being the Health Minister, knowing the incident very well, why he did not take any precaution to see that his life was saved by the Guwahati Medical College; but nothing was done and that fellow died the next morning of profuse bleeding, according to the death certificate of the doctor.

I do not want to draw any conclusion; I leave it to the House; I leave it to the public to draw a conclusion. I am only stating the facts as I have come to know.

Who are these terrorists in Assam so-called Ulfa, NLF of Assam? One SP, one Superintendent of Police, told me that they

were only a handful; they could be caught and brought to book. But there is interference from above. Because of this interference from above, the S.P. says that it is not possible for them to go ahead in catching hold of those terrorists who are only handful according to him. Again, I am not drawing any conclusions. I am stating what I have come to know. But the fact remains that this United Liberation Front or the terrorist movement in Assam is an off-shoot against the movement against the foreigners. It is an off-shoot. Some of those who took part in the movement, ultimately became terrorists, took to the path of violence. They are nobody else. And these terrorists are therefore \_ people say \_ being given shelter by some people. I do not want to name anybody because I have no proof. People say that they are being given shelter by interference from above. The police say that they can handle the situation very well even now, it is not difficult. But they are incapacitated because of the interference from above.

I would therefore like to draw the attention of the Home Minister and Government of India and request them to look into this affair and if need be, if possible, if necessary not only to apply the provisions of this Act, or of this Bill, but also to entrust this case to CBI to look into it whether the terrorists are involved in Assam or in the North Eastern region.

[*Translation*]

SHRI ANOOPCHAND SHAH (Bombay North): Mr Chairman, Sir, I rise to support the Terrorists and Disruptive Activities (Prevention) Bill presented before the House. I am not going into its legality; nor I am going to discuss it clause by clause but I would like to say a few words as to what the people of the country think about terrorism.

Today terrorism has not remained confined to Punjab only. It has rather spread to every corner of the country. The same terror-

ism which exists in Punjab is making its presence felt in Delhi and Maharashtra also. When we saw the murder of General Vaidya, we came to know what area it has spread upto. If we have to curb it and finish it, then levelling charges against one another or raising legal points will not help us in controlling this evil. If we want to finish it, we should show will power to do it. The Government has that will power.

The Government has brought this Bill and has included certain very strict provisions in it. I would say that certain provisions which may provide for death and imprisonment should also be included in it. When it is proved that some terrorist has committed a murder, no other question should be raised then.

[English]

Rather he must be awarded death punishment or imprisonment.

[Translation]

If we do not use an iron hand, then I do not think we will be able to root out terrorism or will be able to control it. It is possible that in the name of democracy we may allow certain things to happen but have we thought about the killings of the innocent persons? If we have to take the strictest possible measures that also should be taken against those who kill innocent children and the earning hands of the families and a provision to this effect should be included in the Bill. I will go to the extent of saying that the terrorism that has spread in Punjab, Delhi and in other places is not going to be controlled by taking certain security measures here and there. We know as to wherefrom these terrorists are getting training; wherefrom they come and after committing murder where do they go? There being no similarity of views between the two countries, we are unable to take further effective measures.

We all know that we have a vast stretch of border and any person can cross the border. This is the reason that we are not able to control terrorism. If we want to seal the border then a 5 km long belt along the border will have to be brought under the control of Central Government. If this arrangement is made, I think we will be successful in stopping those people who enter India from across the border after getting training from Pakistan.

On the Independence Day, i.e. 15th August last, there was apprehension in everybody's mind that something might happen. But nothing happened. Although nothing untoward happened, yet the terrorists created a fear psychosis in the minds of the people. I would like to tell my Opposition friends that the feeling of fear that has gone into the minds of our people should be removed and controlled language in regard to terrorism should be used. The language used in our speeches should be of restrained nature. What we say in this regard sometimes arouses the feeling of fear in the minds of the people. We should all unitedly try to control and wipe out terrorism.

Just now it was being mentioned that after elections the Barnala Government took over. The Congress never thought whose Government would come to power in Punjab. The Congress Party thought of only one thing that a popular Government should be installed and people should elect their representatives. As a result of this, the Barnala Government came to power. Every type of assistance was provided by the Central Government to that Government but even then the State Government could not control terrorism.

Our colleague from Bombay, the hon. Member of Parliament Shri Sunil Dutt, undertook a long 'Padyatra'. When he was to enter the Golden Temple at the end of the 'Padyatra' he had to go there under protec-

[Sh. Anoop Chand Shah]

tion. Could he convey the message of the people to Shri Darshan Singh Ragi? So far as we know instead of that he brought a message from Shri Ragi. But could Shri Ragi convey to the terrorists what was conveyed to him by Shri Sunil Dutt? I would like to tell in Gujarati what the Father of the Nation, Mahatama Gandhi had said. It is our principle that:

"Hano na papi ne dwigun ban se pap jagana,  
Lado papn same, adang dil na gupt balathi."

Sins cannot be wiped out by killing the sinners. We have to wipe out sins, terrorism etc. Terrorism cannot be wiped out by doing away with the terrorists. If terrorism is to be fought against, then it would have to be fought with courage and determination. Time has come when they do not want less than Khalistan. How can we sit across the table with those who want to disintegrate the country? I would submit that every person in the country wants that this terrorism should be rooted out permanently. Wherever we go, people ask us as to what is happening in Punjab? What is going to happen in Punjab? What is your Government doing? Why your Government is sitting silent? Such allegations are levelled against us. I would like to submit to the Government that if time demands to take stricter action than what has been provided in the Bill, that should also be taken. We should not bother for anyone in rooting out terrorism. We all will have to work unitedly to protect integrity of the country and the lives of the innocent people. We will have to restore peace in Punjab. Presently, Punjab is under the President's rule but we do not want that it should continue, nor can it continue for a long time but to bring back the popular Government and make it successful and to create an atmosphere of peace, we will have to wipe out terrorism. If we have to go in for even stricter action to

crush terrorism, we should do that. I thank the Government for bringing forward this Bill and would request them not to hesitate in bringing even a more stringent Bill and taking even stricter action in future if need arises to do so.

Certain people try to gain publicity in the newspapers etc. by delivering long lectures and by saying many things but if they are really interested in seeing the terrorism wiped out, then they should assist us in this work. Nothing is impossible to do in this country and it is not a very difficult task to wipe out terrorism but for that we should have will power and unity. All the people should fight unitedly against terrorism. Atmosphere of peace should be created not only in Punjab but in the entire country.

Nowadays when we see that every hon. Member has to move with two security guards, we feel sorry. What type of situation is this that in a democratic country, we cannot even move freely? To end this situation, if the Government has to resort to even stricter action, that should be taken without any further delay.

In the end, I support the Bill and thank the Government for bringing forward this Bill in the House.

[English]

SHRI DINESH GOSWAMI (Guwahati)  
I did not want to participate in this discussion because I did not think that I had anything new to say. But certain comments have been made by Mr. Bipin Pal Das and I feel that it is my duty to strongly repudiate the allegations that the terrorist activity in the north-eastern region or Assam is an off-shoot of the last movement. He probably forgets that terrorist activities were there in Assam, Nagaland, Mizoram, Manipur and Tripura long before the Assam movement came into existence. We do not believe in the politics of violence.

And the Government of Assam has tried its best and a number of terrorists have been arrested recently. Therefore, the allegation is totally unfounded.

The other point I would like to make is that all kinds of laws have been passed in this House giving all the powers to the Government of India. But terrorism cannot be contained only by the method of law and order. A political approach must be made, because what is terrorism to some is patriotism to some others. Unless we try a two-front attack on terrorism - both through the law and order machinery and also through political approach - I do not think this problem can be solved. But I have a feeling that in Punjab we have given up the political approach. We have only taken the second approach of law and order with the result that more and more people probably have become sympathetic to the terrorists. This is another point on which I think, the Government and the entire House should ponder, because merely saying very strong words against terrorists mere in this House, is not going to resolve the problem in any way.

I thought it proper to my intervene because a point was made by Mr. Bipin Pal Das which I strongly repudiate.

SHRI P. CHIDAMBARAM: I wish to briefly intervene to reply to some of the points made by the hon. Members.

I have listened very carefully to the criticism of certain provisions of this Bill. I do not deny that some of these provisions appear unusual. But that is because, we live in unusual time and we are faced with extraordinary problems.

SHRI E. AYYAPU REDDY: What about information on the designated courts?

SHRI P. CHIDAMBARAM: I am going to give it. I just barely started.

So, it is because we live in unusual time and we are faced with extraordinary problems. If hon. Members look at the statement of objects and reasons, we have quite frankly said that when a Bill of this nature was brought before Parliament in 1985 we believed that terrorism could be contained. When that Bill was brought, it was on the eve of the Punjab Accord which was followed by elections to the Punjab Assembly and the ushering in of representative, popular Government. In fact, the Act which Parliament gave was a potent instrument in the hands of the State Government and we believed that the State Government would fight terrorism, would eliminate terrorism and would bring back peace and normalcy to Punjab.

In fact, on the 12th of May, when Parliament debated the imposition of President's rule, we pointed out how it became imposition of President's rule. According to our judgement, it is because the Barnala Government lost the will to fight terrorism; the Barnala Government disintegrated under the weight of its own contradictions, because of the people within the Government who worked against the Government, and because of these contradictions, the Government collapsed and disintegrated.

SHRI E. AYYAPU REDDY: In February, you paid compliments to him in the Presidential Speech.

MR. CHAIRMAN: No interruptions.

SHRI P. CHIDAMBARAM: Nobody is denying that. In fact, even in May, I paid tribute and said: Shri Barnala was a well-intentioned person. Then, I narrated all the events which took place from the 26th of January, 1987 up to May to show how day after day, week after week, the Government lost its will to fight terrorists, and disintegrated and collapsed under the weight of its own contradictions. I gave names; I gave instances of what the Ministers did; I gave

[Sh. P. Chidambaram]

instances of what the Barnala Government did. Anyway, we are not going into them now.

After two years, we find that the law has not yielded the results. The Members wanted to know what steps have been taken under the law and what is the experience of working the law? 12 States have applied the law and they have set up designated courts. In Punjab, 4 designated courts were set up. 1495 cases were registered up to May, 1987. 1927 persons were arrested; 334 cases were challenged in courts. 6 cases were decided. 3 cases ended in conviction of 6 persons.

In Jammu & Kashmir, there was no conviction and there were 4 acquittals. In Haryana, the Government secured 10 convictions but also received 15 acquittals. In Gujarat, there were 10 convictions and 113 acquittals. In Rajasthan, there were 5 convictions and 3 acquittals. In Chandigarh, there were 2 acquittals.

That law did not yield the result which we hoped that the law would yield. That law was basically patterned upon the traditional penal laws of India. That law followed the same procedures which were applicable in trying other offences and as hon. Member, Shri Jagannath Kaushal and some other Members have pointed out, the approach to trying the terrorist offences, the procedure followed in trying terrorist offences, proved quite ineffective. We swear by the rule of law. What is the rule of law? The rule of law is what Parliament in its wisdom and consistent with the Constitution, says should be the rule of law. We have heard criticism against confession to a Police Officer. If you are living in England today, a confession to a Police Constable is admissible in a court of law.

16.00 hrs

[SHRI VAKKOM PURUSHOTHAMAN in  
the Chair]

In the United States, confession to the Police Officer is admissible.

Everywhere in the world, confession to the Police Officer is admissible.

May be for good reason, when the Indian Evidence Act was made in 1872, Sir James Fitz Stephen felt that in India a policeman is untrustworthy. But that perhaps was good in 1872.

Perhaps it is correct and good among many levels of Police Officers. But are we going to live with that kind of a slur on the entire police for 120 years? Are we going to say for ever and ever there will be nobody in the police force, no Indian, no son, no daughter in India, if he or she joins the police force will ever be fair, just and objective? All our children will join the police force. They will rise to the SG of Police. They will rise to the GIG of Police and IG of Police. Yet, is Parliament going to say for ever and ever that this will be the only country in the world where a confession to a high police officer, whatever the safeguards, will be an untrustworthy statement? Are we going to live with that kind of a slur? What we are trying to do is, for a period of two years, in an extraordinary situation, dealing only with one kind of offence namely, terrorist offences, we say, that a confession made to a high police officer of the rank of Superintendent of Police and above, under very restricted conditions, will be admissible in a court of law.

SHRI E. AYYAPU REDDY: You yourself asked why should we suspect our police officers. Why should we suspect our SIs and Constables? What is the sin committed by them? Simply because a person is ICS Offi-

cer, is confession to him alone is admissible? Why not a SI and why not Constable? Why do you doubt their integrity?

SHRI P. CHIDAMBARAM: Mr. Ayyapu Reddy swings like a pendulum from one end to the other.

SHRI E. AYYAPU REDDY: You argue this way and that way. Then he himself can be the judge. Then he himself can pass the sentence.

SHRI P. CHIDAMBARAM: There is no logical answer when I pointed out that in England and America and other Western European countries, confession to a police officer is admissible. Mr. Ayyapu Reddy swings like a pendulum. On the one hand, he says we shall never agree to a confession to a police officer. On the other hand, he says why not a confession even to a police constable? No. I say that a confession to a police officer should not per se be made admissible, whatever the circumstances in 1872 were.

SHRI E. AYYAPU REDDY: Then it should be any police officer.

SHRI P. CHIDAMBARAM: We are living in 1987. Are we going to say that for ever and ever, there will be no confession to a police officer? What I am trying to say is when we are making a provision of this nature, we do not want to say that confession to any police officer is correct. We know that we are making a departure from what has been the rule of evidence in this country for 120 years. When we make the departure, we want to make a very careful departure, from graduated response to an extraordinary situation. We want to build in a large number of safe-guards. We do not want this provision to be abused. We want to take care. We want to hasten slowly and we want to see how our experience works. That is why, we have built in these safeguards. Look at the safeguards.

Let me enumerate the safeguards. Firstly, the police officer has been mandated to read out what are traditionally the world-over recognised as accused's rights namely that he should inform that he need not speak.

Secondly, if he speaks, the evidence will be used against him.

Thirdly, to ensure that the confession or the statement is being made voluntarily.

If it is proved that Section 15(2) has been violated, the confession will be thrown out of court. The first safeguard is 15 (2).

The second safeguard is he shall be a high police officer of a rank of not less than Superintendent of Police because we believe that people who are graduates, who are post-graduates who are taken, who are trained, who go to the National Police Academy, who are officers, who are trained to be officers, who are groomed to be officers, officers of those levels, will not stoop so low as to record false confessions.

So, Police Officer of the rank of Superintendent of Police, either in writing or in a mechanical instrument. We have now said that it shall be in an audio or a video cassette, we will record the confession. Such a confession is admissible in an evidence. We all know that a confession can be retracted. It is not as though conviction will be based straightaway on the confession. In fact, I certainly hope that conviction will not be based on confession alone. Look at the Constitution of our Designated Court. A Designated Court under Section 9, Sub-Section 4 of the Act defines: "A Designated Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of a High Court". I assume that the Chief Justice of a High Court, while granting his concurrence to the appointment of a person as

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a judge of a Designated Court, he will choose a person who has great experience in criminal trial, will choose a person who is well-versed in Criminal Law and the Judge will take care to see that the conviction is not based on a confession alone. Secondly, an appeal against a judgement of a Designated Court lies both on facts and law directly to the Supreme Court. In the Supreme Court, - I would presume - there are very learned judges, very experienced judges, people have been judges for 20 years and 30 years, they will certainly scrutinise the records and will not very lightly uphold a conviction based solely on confession. Why do we not trust these provisions? Why do we not trust the Chief Justice of a High Court?

SHRI E. AYYAPU REDDY: Will you not agree with me that the Supreme Court is not admitting the criminal appeals now unless the accused has served atleast a minimum of four sentences. *(Interruptions)*. Even Special Leave Petitions are directed not to be posted... *(Interruptions)* Now, what is the purpose of taking it to the Supreme Court?

*(Interruptions)*

SHRI P. CHIDAMBARAM: You are wrong. You are not reading the Bill. Under Section 19, as a matter of right, he has a right of appeal on facts and on law. This is not a Special Leave Petition.

*(Interruptions)*

SHRI E. AYYAPU REDDY: As a matter of fact, appeals which are there, as a matter of right, they are coming up after 12 years and 15 years and not before that. Can you point out a single case where the criminal appeal has came up earlier?

*(Interruptions)*

SHRI P. CHIDAMBARAM: The hon.

Member does not read the provisions of this Law and he is speaking generally, from his memory. What can I do?

*(Interruptions)*

SHRI E. AYYAPU REDDY: The appeal is there as a matter of right. Kindly tell us as to where the Supreme Court has been in a position to dispose of criminal appeals earlier. We are not talking about the ordinary appeals. We are talking about the criminal appeals... *(Interruptions)* Even the Special Leave Appeals are already there. It has already been over-burdened.

*(Interruptions)*

SHRI P. CHIDAMBARAM: We assume that an appeal being made as a matter of right both on facts and on law and when the appeal goes to the Court, Supreme Court, it is heard and cleared expeditiously. We can ask them to hear it expeditiously. But, today, we have secured so few convictions. Where is the question of appeal? We must secure a conviction before there is the right of appeal for the accused to go to the Supreme Court. The law which was made in 1985, has got a very few convictions. Therefore, I would submit that it is not correct to start from any *A Priori* position and attract Section 15. In fact, there is no *A Priori* normative rule of jurisprudence which shows there shall be no confession to a Police Officer. In fact, even under the Evidence Act... *(Interruptions)*. Why don't you look at the Evidence Act? A confession in a letter to the Police Officer is admissible under the Indian Law. Admission of an incriminating fact is admissible under the Indian Law. A judicial confession under Section 26 is admissible. A confession leading to a discovery is admissible under Section 27 of the Evidence Act. A confession of a co-accused is admissible under Section 30 of the Evidence Act. It is not as though every confession is inadmissible. The Indian Evidence

Act recognises a large number of exceptions to the rule contained in Section 25 where a confession to a Police Officer is not admissible. What we are making in Section 15 is another exception, another exception very carefully restricted to conditions, an exception of one kind of opinion under one law in every unusual circumstances dealing with a very grave threat to the integrity, to the polity, to the sovereignty, to the very existence of our country. I would, therefore, most humbly submit that Section 15 should be supported by the hon. House.

Sir, some comments were made about Section 5 and I sought the leave of Shri Shahabuddin to point out that Section 5 is not to be read in the manner that he reads. Section 5 will apply only in a notified area. It is not applied in every area. Secondly, Section 5 applies only in case of unauthorised or otherwise in respect of unlicensed arms. If a person in a notified area is in possession of unlicensed arms, I would think that he is bound to explain. If I am in a notified area and I have unlicensed arms which are found in my possession unauthorisedly, I don't see that why I should not be called upon to explain? Why I am in possession of those arms? This, I think, is a very simple duty which every citizen owes. If he is in possession of unlicensed arms, he should come and explain, and if he is not able to explain how he came to be in possession of those arms or why he did not take a licence, certainly he is punishable under Clause 5.

Then criticism was directed against Clause 21 of the Bill which embodies the rule of evidence. Hon. Members know that, under the Evidence Act, there are three kinds of presumptions regarding proof. One is, the court may presume certain facts: in such a situation, the court either may presume and call upon the defendant or the respondent to disprove it or may not presume and call for proof of the act. The second circumstance is, the court shall pre-

sume and that fact is proved unless it is disproved by the other side. The third is the conclusive presumption, the conclusive proof in which no evidence contrary can be admitted. We are not saying that no contra-evidence can be admitted. And that we say is that in four specified circumstances - I will read out each one of them and the hon. Members may tell me why it is wrong - where the prosecution has discharged its initial burden, where an overt act has been proved to the satisfaction of the court, then the burden shifts to the accused to show that he is not guilty of the charge under Clause 3 (1). This law defines three offences under Clause 3 (1), under Clause 4 and under Clause 5. There is a related offence of Clause 3(3). If you read Clause 21, you will find that the onus of proof shifts to the accused only in respect of the offence under Clause 3(1). There is no shifting of the burden in respect of offence under Clause 3(3). That comes later. There is no shifting of the onus in respect of offence under Clause 4, no shifting of the onus in respect of offence under Clause 5. In respect of the offence under Clause 3(1), namely, a terrorist act resulting in death, etc., etc., we have specified four circumstances. I think, one of the hon. Members read the four circumstances. The first one is:

that the arms or explosives....were recovered from the possession of the accused and there is reason to believe that such arms or explosives... were used in the commission of such offence;"

He should explain how he was present in the place, how the arms were found in his possession and how they were recovered from him. If he has a convincing explanation, certainly the court will take that into account.

Now, look at the second one:

"that by the evidence of an expert, the

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finger prints of the accused were found at the site of the offence.

I had an occasion to point out earlier to this hon. House how we nabbed one accused in Greater Kailash shoot-out. We found the finger-prints of one accused on the Datsun Car and by establishing the identity of the accused, we were able to arrest one person. If the finger-print of a person is found on the scene of the crime, the onus shifts to the accused and it is his duty to come and explain how his finger-print was found on the scene of the crime, and if this fact is not established, the onus will never shift.

Now look at the third one:

"that a confession has been made by a co-accused that the accused had committed the offence;"

have already pointed out that the confession of a; co-accused, even under the present Evidence Act, is admissible - under section 30 of the Indian Evidence Act. So, when there is an admitted confession under section 30 and that is taken into consideration, the onus should rightly shift to the co-accused to come and show why he is not concerned with the offence,.

The fourth one is:

"that the accused had made a confession of the offence to any person other than a police officer;"

This is an extra-judicial confession, and extra-judicial confession is admissible even today under the present Indian Evidence Act. Where there is an extra-judicial confession to a person other than a police officer, certainly the accused must come and explain the circumstances under which he made the confession.

These four circumstances have been very carefully selected - either an overt act or an admissible confession. In these four cases we see that the onus will shift to the accused and the accused should come and explain.

I am obliged to hon. Member Shri Jagan Nath Kaushal for pointing out that, in France, today the onus is also upon the accused; there is no absolute onus upon the prosecution. The French system is not an uncivilized system; the French system is not opposed to the rule of law. Under the French criminal jurisprudence, there is an equal onus upon the prosecution and upon the accused: an equal onus upon the prosecution to show that the accused committed the offence and an equal onus upon the accused to show that he was not there in the scene of the offence. (*Interruptions*) Our system works well. (*Interruptions*)

I am trying to point out that don't say it is an uncivilised system. Don't say that it is not supposed to the rule of law. The France is a civilised society. France has the rule of law. There it works well. What we are trying is we have worked our system. But our system does not work. As long as we continue to cry down our Indian character, your son, my son, your grandson my grandson, as long as we continue to cry down our system, our system will never rise to any level of character. We must have faith in our children, we must have faith in the young men and women, we must have faith in the young police officers who join the high police service. But we, as a nation indulge in self-flagellation and we say nothing will improve in this country. I have faith that by training by education we can have faith in them and who will go and assume this position.

I say, Sir, this Act is broadly patterned on earlier Act. We have tried to take some more powers but with adequate safeguards. We have taken legal advice, we know some

of these provisions. We may be close to somebody finding fault with us. But we have deliberately taken this step because we think we are in a very difficult situation in Punjab. And if terrorism must be fought, it cannot be fought with sinked-hearts. Today, policemen are fighting terrorism. The Hon. Home Minister, while replying to the debate will certainly go into greater details. In the last three months since the President's Rule, 130 terrorists have been killed which is exactly the same number which were killed during the period of Shri Barnala's Government. In the last three months 21 policemen have laid down their lives. Let us not belittle this. 21 policemen have laid down their lives fighting terrorism. 21 families have suffered because policemen today are motivated to fight. We must give them tools to fight, we must give them all the legal powers to fight terrorism.

Hon. Members have spoken about finding a political solution. We have never quarrelled with that proposition. In fact, we have constantly said that you cannot put down terrorism only through the police. It is not the policeman who is going to bring peace to Punjab. Eventually, we will have to find new political initiatives, new political methods. That is not to say that we must cripple our police force, we must cripple our criminal system by not giving them adequate powers. Since they are faced with extreme situation, we have to take some power which might otherwise seem extraordinary. We are taking these powers for two years. Earlier the Act expired on the 23rd May, 1987. We, therefore, had to promulgate an ordinance on 24th May, 1987. The ordinance worked for some time. Then we called the police officers, we took a meeting, we analysed the working of the ordinance. Then we were advised that some more provisions were necessary. These provisions have been drafted with great care. We have taken the opinion of our legal advisers. We think, that we are on the right path. We think, we can

sustain this law before the Supreme Court and High Court by pointing out the grave and grim situation that the nation is facing in Punjab. So, I would only appeal to Hon. Members to support us, to give us these powers. I certainly don't claim that the moment you give us these powers, terrorism will be put down. It is not certainly so. What I am trying to say is that these are necessary. These are extraordinary but necessary. Give us these powers. Let us give it to the State administration in Punjab. Let us see what they do with these powers. Let us see that they are able to secure some more conviction. Let us see if by applying rule of law for fighting terrorism resolutely, we can contribute a little to the total task of fighting terrorism and bringing back peace to Punjab.

MR. CHAIRMAN The question is:

That this House disapproves of the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (Ordinance No. 2 of 1987) promulgated by the President on the 23rd May, 1987."

*The motion was negatived*

MR. CHAIRMAN: The question is:

"That the Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matter connected therewith or incidental thereto, be taken into consideration."

*The motion was adopted*

MR. CHAIRMAN: The House will now take up clause by clause consideration of the Bill.

The question is:

"That Clauses 2 to 4 stand part of the Bill"

*The Motion was adopted.*

*Clauses 2 to 4 were added to the Bill.*

*Clause 5*

**Possession of certain Unauthorised  
arms, etc. in specified areas.**

SHRI K. RAMACHANDRA REDDY  
(Hindupur): I beg to move:

page 4, line 33, —

for "imprisonment for life" substitute —

"seven years." (9)

A person just for being in possession of weapons is sought to be punished upto life imprisonment. Even for serious crimes like dacoity or murder the punishment may be less. Even in case of murder, in extraordinary circumstances, concessions are shown and the punishment is reduced. But just for being in possession, not using it, of any weapon, the punishment is very exorbitant and severe. That is why I seek to make an amendment to reduce it to seven years. I think the Minister will accept this.

SHRIP. CHIDAMBARAM: Sir, in clause 5, we have provided for imprisonment of a term which shall not be less than five years, but which may extend to imprisonment to life. That is a matter which has to be decided by the court on the gravity of the offence. If large caches of bombs and explosives are found, it is not a matter which we can decide here about what the punishment should be. All that we are trying to say is that today explosives are the single biggest threat to large population. Shooting; yes. But please don't under-estimate the effect of explosives. If caches of bombs, dynamites, explosives are found, I think very many inferences can be drawn. Firstly, they have access to

large amounts of money, they have access to places where these are manufactured and perhaps even an inference that these explosives came from external sources can be legitimately drawn. In such a case it is not an individual acting in a moment of anger, but it is an organised gang, an organised group of terrorists who are acting. I don't think that we can take it lightly. We are leaving it to the discretion of the court either to impose a punishment of five years which is the minimum punishment or extend it upto to imprisonment to life. I don't see why we should put a maximum there; we should leave it to the judicial discretion.

MR. CHAIRMAN: I shall now put Amendment No. 9 moved by Shri K. Ramachandra Reddy to the vote of the House.

*Amendment No. 9 was put and negatived*

MR. CHAIRMAN: The question is:

"That Clauses 5 to 7 stand part of the Bill"

*The Motion was adopted.*

*Clauses 5 to 7 were added to the Bill.*

*Clause 8*

**Forfeiture of property of certain  
persons**

SHRI D.B. PATIL: I beg to move:

page 5, (i) line 31,

for "be attached",

substitute "not be disposed of till the end of such trial".

(ii) Line 32 for "so attached" substitute "not disposed of" (2)

It has been provided in this clause that the property of the accused shall be attached till the decision of the case. It is not proper to make such a provision that unless and until accused is convicted, his property should be attached. This means that all his movable and immovable property will be attached. If there is some income from this, which may be the means of livelihood for the persons depending on the accused, even that will be taken away and they will be deprived of this income. Therefore, it will not be proper. So far as justice is concerned until and unless a particular person is convicted his property should not be attached.

SHRI P. CHIDAMBARAM: Again, Sir, I do not see the point of resentment. It is not an ordinary crime. It is a very heinous crime. Then, Sir, when a person is accused his property stands attached. We are not forfeiting the property at that time. Further, Sir, it is not mandatory. It shall be open to the designated court. Attachment does not mean that enjoyment of the property is taken away. His family will continue to live there. It is only that they cannot dispose of the property. After he is convicted the property shall stand forfeited.

MR. CHAIRMAN: I shall now put amendment No. 2 to Clause 8 moved by Shri D.B. Patil to the vote of the House.

*Amendment No. 2 was put and negatived.*

MR. CHAIRMAN: The question is:

"That Clause 8 stand part of the Bill."

*The Motion was adopted*

*Clause 8 was added to the Bill.*

*Clauses 9 to 13 were added to the Bill.*

*Clause 14*

### Procedures and powers of Designated Courts

SHRI D.B. PATIL: Sir, I beg to move:

Page 9, line 13, —

*omit* "without the accused being committed to it for trial," (3)

Page 9, line 45, -

*omit* "the accused or his" (4)

Page 9, line 45, -

*after* "pleader" insert "for the accused" (5)

Sir, so far as my amendment No. 3 is concerned it deals with Clause 14. There it is provided that the designated court may take cognizance of the offence without an accused being committed to it for trial. Until and unless an accused is produced before the court and the trial is to take place in the presence of the accused his right is taken away by this provision. So I have moved this amendment.

As regards my amendments No. 4 and 5 I would like to say that it is proposed that examination-in-chief can take place in the absence of the accused and even in the absence of the pleader. It is a bad provision. In examination-in-chief leading questions may be asked. If leading questions are asked and the accused is not present or his pleader is not there these leading questions will not be objected to and they will go on record without any challenge.

SHRI K. RAMACHANDRA REDDY: Sir, I beg to move:

Page 9, -

*after* line 22, insert -

[Sh. K. Ramachandra Reddy]

"Provided that the accused or the counsel on his behalf shall be heard with regard to summary trial and the reasons for such summary trial shall be recorded." (10)

Sir, the procedure that is adopted is under Sections 263 to 265. In summary trial the summary of evidence is alone recorded and not whole of evidence is recorded. The accused is not likely to get full justice. That is why I say while deciding by the court whether a case should be tried summarily or otherwise the accused or his pleader should be given opportunity to argue whether his case should be tried summarily or otherwise. Only after hearing the arguments of the accused or his pleader, it should be decided whether the case is to be tried summarily or not.

SHRI P. CHIDAMBARAM: Sir, section 14(1) has been, with great respect, misunderstood. All that we are trying to see is that the committal procedure is eliminated and the case can be tried straightaway on a complaint. It is not unusual. The Criminal Procedure Code provides for it even today. Therefore, we are trying the case on a complaint. When the complaint is filed before the Designated Court, the Designated Court will take that as the report of investigation and will begin to try the accused. No right of the accused is being trampled with that.

As far as sub-clause (5) of clause of 14 is concerned whereas an accused is a proclaimed offender and he is absconding, we can't hold up the trial until we apprehend the accused. The trial has to go on. Maybe there are five people who are co-accused. One person is a proclaimed offender. He is absent. We have to try the other four. If you want all the accused to be arrested and tried in person, we may never go through any trial. Therefore, this is again a provision not unknown to criminal law. You can try an accused in his absence if he is declared a

proclaimed offender and absconder. I don't think this is an unusual provision.

As regards sub-clause (2) of clause 14, Hon'ble Member has not looked into the proviso. it says:

"Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses....."

So, it is open to the accused to point out to the Designated Court that the trial should not be a summary trial.

Another point is only in a case where the maximum punishment is three years. Under section (3), (4) and (5), you cannot try offences summarily. The only offences contemplated by clause 14(2) are offences for violation of the rules where the maximum punishment can be two or three years. Only those offences can be tried summarily. Even there, the accused can tell the court that it is not desirable to try it summarily in which case the court will not try it summarily if it is satisfied that the argument is correct.

MR. CHAIRMAN: I shall now put amendments No. 3, 4 and 5 moved by Shri D.B. Patil to the vote of the House.

*Amendments Nos. 3 to 5 were put and negatived.*

MR. CHAIRMAN: I shall now put amendment No 10 moved by Shri K. Ramachandra Reddy to the vote of the House.

*Amendment No. 10 was put and negatived.*

MR. CHAIRMAN: The question is:

"that Clause 14 stand part of the Bill."

confession was recorded. (11)

*The Motion was adopted.*

SHRI E. AYYAPU REDDY: I beg to move:

*Clause 14 was added to the Bill.*

Page 10, —

*Clause 15*

*after line 14, insert—*

**Certain Confessions made to police officers to be taken into consideration**

"Provided that such a confession shall be recorded and attended to by two respectable persons and shall be submitted to the Designated Court or to the nearest Magistrate forthwith." (12)

SHRI D.B. PATIL: I beg to move:

Page to, line 4, —

*after "police officer" insert.*

"in the presence of the first class magistrate" (6)

Page 10, line 10, —

*after "making it" insert*

"in the presence of first class Magistrate" (7)

SHRI D.B. PATIL: According to the proposed amendment, the confessions by the accused before the police officers may be taken into consideration as evidence against the accused. the Hon'ble Minister's reply has cited USA and UK. I don't want to go into the details of all this. But this House is well aware of the atrocities that are committed by the police force in our country against poor persons and others. Atrocities are committed even by the officers of the IPS cadre who are highly respected by the Hon'ble Minister. I don't say that they are not respected. Some of them are very good officers. But it is not that all the officers are good. At present, only confessions made before a Magistrate are admissible. Now, confessions recorded before the police officers are sought to be made admissible. In view of what I have stated, I have moved my amendment that such confessions before the police officers should be recorded in the presences of the Magistrates.

SHRI K. RAMACHANDRA REDDY: I beg to move:

Page 10, —

*after line 14, insert —*

"Provided that such a confession shall be recorded in the presence of two respectable persons who shall be gazetted officers not connected with the police department and after the said confession shall certify that the confession had been made voluntarily:

SHRI K. RAMACHANDRA REDDY: Sir, I have moved my amendment to Clause 15.

Provided further that such a confession shall be submitted forthwith to the Designated Court or a Magistrate of First Class in whose jurisdiction the

The Minister was just now telling that these confessions are to be made before the IPS officers. We do not say that all the police officers are bad, but among the police offi-

[Sh. K. Ramachandra Reddy]

cers there are some officers who do not follow the Cr. P.C., who do not follow the rules of procedure etc. Only yesterday, we read that a lady IPS officer has been arrested for theft. I do not know, whether Shri Chidambaram has been practising in the High Court or the lower courts. Those who practise in the lower courts are aware of the vagaries of the police officers. For instance, a number of sections are there which are intended to safeguard the interest of the accused. But, almost all the police officers are not following those sections. For example, according to the rules, an accused would not remain in the police custody for more than 24 hours; he has to be produced before a magistrate before that. I can say with certainty that in 99 per cent cases, the accused are not produced within 24 hours. They go on keeping them for days together.

Further, as soon as the panchname is prepared, the police officers do not send it to the court. Lot of time is there before they present the charge sheet. It is fabricated only at the time of pliable witnesses.

As far as the Evidence Act is concerned, the Minister was saying that Section 27 is an exception to Sections 25 and 26. I do concede that. Under Section 27, the confession is admissible only when it leads to discovery of property, otherwise it is not admissible. This is the guarantee that the confession is genuine. But here, under Section 27 of the Evidence Act, police officers recover property, keep it with them for days together and then arrest the accused at a very late stage and fabricate the panchname to the effect that the accused confessed before them and the confession led to the discovery of the property and use the property that has been recovered many many days prior to the arrest of the accused and this panchname is signed by witnesses who are police informers.

I have moved my amendment with an idea to safeguard the interest of the accused. Let the confession recorded by the police officers be in the presence of two gazetted officers, not related to police department. Sir, those two gazetted officers should not be connected with the police department. As far as the laws relating to corruption are concerned, this is the practice which is followed and that is why I have moved the first proviso that the confession must be recorded in the presence of two gazetted officers who are not connected with the police department. The second thing is that they are expected to record the statement immediately. They are expected to record the confession and send it to the court on the same very day.

I think these two provisions have very salutary affect and justice will be done immediately. In this way it will help the accused person.

SHRI E. AYYAPU REDDY: Mr. Chairman, Sir, please permit me to elaborate on this point because this is a principal clause in the Act. First and foremost, the provisions contained in the Act of 1984 are not there. We are introducing a provision departing from the well accepted principles of communal jurisprudence that, "Confession made to a police officer is not admissible." Even in the ordinance that was issued this provision was not there. In the Objects and Reasons this is what is written. Subsequent to the promulgation of the ordinance it was felt that the provision requires to be strengthened in order to cope up with the menace of terrorism. This was there after the ordinance was passed. Now, that means it was not on account of any experiment, failure or any discovery of lacuna in the enforcement of the previous Act that we are bringing in this provision. He has given the statistics of cases which were tried in Punjab. Out of these 6 cases, 3 cases involved in conviction and the other 3 in acquittal. In these cases 6

persons were convicted. These are the figures and they speak for themselves. Now, he says, this is a special provision resulting from an extraordinary situation, i.e. the revolting nature of the crime, the terrorism. Therefore, the likelihood of paucity of evidences and all such things are pleaded for departing from the well accepted principles.

My first point is this. We are not distrusting our police. Why should we go on distrusting our police? Certainly not. If we take this to logical conclusion then we can as well make our police officers as judges. They can themselves pass the judgement and then execute it. If he believes that the statement is voluntary and if he is satisfied that he has committed the offence, why take the trouble of having another gentleman? Why should he go into the witness box and tell that Sir he has confessed and I am satisfied that the confession is right? Therefore, the short cut is to convert the police themselves as the officer who can dispense with justice. This will be the surest and the swiftest way to put down terrorism.

The other point is that we want to introduce this system of making confession to police officers admissible. So, bring the law and delete Sections 24 and 25 of the Act and replace it with the provision that the confession made to police officers are also admissible. But if you want to have a via media police, then unfortunately Article 14 will come in your way.

I will explain presently how Article 14 will come in your way. It is now well settled and the Supreme Court has stated that the revolting nature of a crime is no reason at all for watering down or taking a liberal attitude towards the evidence. The graver the offence, the stricter is the proof, because the gravity of the offence is likely to prejudice the judge against the accused. If a man is accused of a very heinous crime, that very accusation is itself likely to create a hostile

atmosphere against him. Therefore courts have cautioned themselves against the severity of the crime or the heinous nature of the crime prejudicing the courts adversely against the accused and they have been cautioning themselves that in such cases they must insist upon stricter proof. The concept of proof as a crime is totally different, from the severity, gravity or the heinousness of an offence. You cannot mix up both. One has nothing to do with the other.

Now, if you say that a confession by a person so far as it relates to terrorist activities is admissible, but other crimes by the same person are not admissible, how will it stand the test of Article 14 of the Constitution? I will give you an instance. Suppose a terrorist says that he has attacked a bus and afterwards he has gone to a field where he has raped and strangled a girl. If the whole confession is made to the very same police officer, what will be the result? The first part is admissible while the latter part is not admissible because it is not a terrorist activity. If a very gruesome murder is perpetrated by someone and if he is not a terrorist, the confession made by him to the police officer would not be admissible, whereas a confession by a terrorist is admissible. How can you say that the other offences are less heinous or less serious? How do you classify all these things? Even if you want to classify these offences, the classification must stand the test of reasonableness. If an accused person confesses to a superintendent of police that he has committed a theft of five rupees, that confession is not admissible. But if he says that he has shot at a person and that he is a terrorist, then that will be admissible.

Let us have one consistent principle. If you want to change the principles of Criminal Jurisprudence, very well, amend Section 24 of the Evidence Act, to make confessions made to police officers admissible. Let us try and see it. We have no objection. Hon. Shri

[Sh. E. Ayyapu Reddy]

Chidambaram has also stated that in the United States confessions are admissible. But the United States of America has a totally different system. There the country judges, public prosecutors and even the Chief Justices of the States are elected. So, what is use of picking one point? Let us follow the US system in its totality. So far as the French system is concerned, I am ignorant about it. If we want to have a French system, French way of living with a French Constitution, we have no objection. But let us have it full. Do not simply pick one point or the other at random.

I want to point out another inconsistency. In the Criminal Procedure Code, statements made to the police officers shall not be signed by the police officers. They are not admissible as evidence and can be made use of only for contradicting the witness. In this particular terrorist activities case, if the Superintendent of Police has examined a witness under Section 162 and if the witness is not coming forward or he is not willing to depose or if he is absent, is he entitled to say that he has made certain statements before him and that they may be taken?

The witness has made this statement that he is not entitled to get it admitted because Article 162 comes in as a bar. Such sort of half-hearted measures to meet such hard situations will not help. Hard cases make bad law. This is one of the cases, where some genius, probably, I would like to say, Mr. Chidambaram's contribution is there to the Bill. He gave the improvement. Of course I have got great admiration for him and for his ability but sometimes people with lot of ability prove themselves to be more dangerous than with ordinary abilities.

SHRI P. CHIDAMBARAM: Sir, long years in defending the accused leads one to believe that every accused is an innocent. It

leads one to believe that every criminal is a farce. I cannot accept such a slur on our criminal system nor can I accept such a slur on our police system.

All that we are trying to say is that we are facing an extraordinary situation and therefore we have to take certain unusual procedural steps to ensure that criminal justice system works. Our assessment is that the criminal justice system in Punjab is practically paralysed because of the grave threat of terrorism. It is not possible to try these offences under the ordinary Criminal Procedure Code or under the ordinary rules of evidence. We have therefore come forward with a Bill. This Bill will either stand or fall when it is tested on the anvil of Article 14. If the whole Bill is upheld by the Supreme Court or the High Courts, as a proper classification to deal with certain kinds of crimes and certain kinds of offenders, then this Bill will be upheld. If this Bill is struck down, Article 14 and Section 15 will also go. I do not think it is possible to take each Clause and dissect it and say one part of this Bill will stand the test of Article 14 and another part of this Bill will not stand the test of Article 14.

When the earlier Bill of 1985 was introduced, Shri Asoke Sen took great pains to explain why a special law, for a special situation, for a limited purpose can be upheld, can be sustained before the Court. I frankly said, "the earlier law did not work. the ordinances were promulgated on the date earlier which and expired - 24th May." After that we could not afford a gap. Therefore, the ordinance was promulgated on the 24th May. After that we have gone into it in great detail. We have consulted the Police officers. We have consulted the State Administration.

Mind you, this is not applicable only in Punjab. This Act will apply wherever there are terrorists and disruptive activities. I would commend to you, to take this law to

your Chief Minister and tell him to fight Naxalites with this law. Perhaps, it will help.

MR. CHAIRMAN: I now put amendment numbers 6 and 7 moved by Shri D.B. Patil to the vote of the House.

*The Amendments Nos. 6 and 7 were put and negatived.*

SHRI P. CHIDAMBARAM: If you permit me, Sir, I would like to tell you one thing. I have taken note of the suggestion that the confession recorded by the Police Officer may be sent immediately to the Court. I have taken note of the suggestion and I will try to provide it in the rules. We have powers to make rules for procedural part. I will try to provide it in the rule.

MR. CHAIRMAN: I now put Amendment number 11 moved by Shri K. Ramachandra Reddy to the vote of the House.

*The Amendment No. 11 was put and negatived.*

MR. CHAIRMAN: I now put Amendment number 12 moved by Shri E. Ayyapu Reddy to the vote of the House.

*The Amendment No. 12 was put and negatived.*

MR. CHAIRMAN: The question is:

"That Clause 15 stand part of the Bill."

*The Motion as adopted.*

*Clause 15 was added to the Bill.*

*Clause 16*

### **Protection of witnesses**

SHRI D.B. PATIL: I beg to move:

Page 10, —

(i) line 16, —

for "in camera" substitute "in open court."

(ii) omit lines 17 and 18 (8)

SHRI E. AYYAPU REDDY: I beg to move:

Page 10, line 17,—

after "Public Prosecutor" insert "or the accused" (13)

Page 10, line 22, —

for "for keeping the identity and address of any witness secret"

substitute —

"for providing adequate security to such witness (14)

SHRI D.B. PATIL: It has been provided under Clause 16 that all proceedings before the designated court shall be conducted *in camera*. I am very vehemently opposed to this idea of conducting all the proceedings in camera, because secrecy breeds contempt. It has perhaps been reported that even though provisions are there in the clause itself, witnesses are not coming forward because of fear of the terrorists. It is true that the fear is there; but from the figures which the hon. Minister has just now given, it is clear that there are 50% convictions and 50% acquittals. You have given those figures now.

SHRI P. CHIDAMBARAM: Because 328 cases are pending trial. Only six cases were decided in two years and six months. In 328 cases we cannot proceed with the trial.

SHRI D.B. PATIL: Is it only because of want of witnesses?

SHRI P. CHIDAMBARAM: Because of a whole host of circumstances, one of them being that witnesses are unwilling to appear.

SHRI D.B. PATIL: So, holding all the proceedings *in camera* is not acceptable to me. So, I have moved that amendment.

SHRI E. AYYAPU REDDY: I have moved my amendment. The entire system of holding the trials by the judiciary *in camera* will be in very exceptional circumstances — it has been made out so. But my amendment is this: when the Public Prosecutor applies for it, the court may hold it in the open court that is, only when the Public Prosecutor wants it, at his choice, there will be an open court. This, again, will lead to a sort of discrimination. Therefore, the accused also; must be entitled to ask for an open trial. How can you say that only the Public Prosecutor will be entitled to ask for an open trial, while you are denying the very same right to the accused? So, naturally, the accused also must have the right.

SHRI P. CHIDAMBARAM: The Public Prosecutor, my learned friend knows, is not in an adversary position to the accused. That is a popular misconception. A Public Prosecutor owes a duty as much to the court, to the State as well as to the accused. A Public Prosecutor is not an adversary of an accused. A Public Prosecutor, if he is satisfied that a particular trial can take place in an open court, may apply.....(*Interruptions*)

AN HON. MEMBER: That is not only the theory. Anyone who has been a Public Prosecutor, anyone who has donned that garb, must obey that code. A Public Prosecutor is not an adversary of the accused. A Public Prosecutor is prosecuting on behalf of the people, on behalf of the State; and, therefore, when the Public Prosecutor is

satisfied that the trial may be held in an open court, he may apply. Otherwise, the normal rule in these offences, we say, should be an *in camera* trial. I am sorry, with great respect, I cannot accept the amendment.

MR. CHAIRMAN: I now put amendment No. 8 moved by Shri D. B. Patil to the vote of the House.

*The Amendments No.8 was put and negatived.*

MR. CHAIRMAN: I now put amendments No. 13 and 14 moved by Shri Ayyapu Reddy to the vote of the House.

*The Amendments No. 13 and 14 were put and negatived.*

MR. CHAIRMAN: There are no amendments to Clauses 17 and 18. So, I will put all these clauses together.

The question is:

"That Clauses 16 to 18 stand part of the Bill."

*The Motion as adopted*

*Clauses 16 to 18 were added to the Bill.*

*Clause 19*

**(Appeal)**

MR. CHAIRMAN: Now Clause 19 — Amendment No. 15: Shri Ayyapu Reddy.

SHRI E. AYYAPU REDDY: I beg to move:

Page 11, —

(i) line 9, —

for "the Supreme Court" substitute —

"a Full Bench of the High Court"

(ii) line 17, -

for "the Supreme Court" substitute —

"a Full Bench of the High Court"  
(15)

17.50 hrs.

So far as Supreme Court is concerned, I would say this: Providing a right to appeal to the Supreme Court theoretically, on paper, appears to be very attractive. But, unfortunately, from a practical point of view, we find that it is not possible to get relief at all from the Supreme Court, for the simple reason that the former previous Chief Justice had clearly stated that even for Special leave petitions, in cases where persons have been sentenced for life, the Special Leave petitions are directed to be posted, not immediately but four years after the accused has undergone imprisonment. It is for purposes of admission after four years. Now the Supreme Court cannot be made to confer the jurisdiction to the Supreme Court for every thing, for commission, for this and that; you are only bringing down the Supreme Court, you are not able to fill up the places. It is not able to function. 1973 appeals are going on in 1987. If you go through the papers you will find that appeals of 1973 are now being posted — 14 years later. It is not that we do not have confidence in the Supreme Court, but the Supreme Court itself is not able to discharge its work. Even if you confer the additional power to the Supreme Court and suggest them to hear the cases directly, the Chief Justice is not in a position to do it. Every day applications are filed for hearing the urgent cases. Even in spite of those orders, they are not coming up. Therefore, what I suggest is that instead of having a Supreme Court, have a full Bench of the High Court; a full Bench of the High Court will

be able to dispose of cases. What is a big thing about Supreme Court? Why should it come all the way to the Supreme Court? Why not have a full Bench of the High Court? After all, the judges of the High Court alone come here. Ends.

SHRI P. CHIDAMBARAM: This provision was on the earlier law and we have merely copied it. I cannot deny that there is force in what Mr. Reddy says. I shall keep this in mind and based on the experience, we will come forward with an amendment.

MR. CHAIRMAN: Now I shall put amendment no. 15 moved by Sh. E. Ayyapu Reddy to the vote of the House.

*The Amendments No. 15 was put and negatived.*

MR. CHAIRMAN: The question is:

"That Clause 19 stand part of the Bill."

*The Motion was adopted.*

*Clause 19 was added to the Bill.*

*Clause 20*

**Modified application of certain provisions of the code**

SHRI E. AYYAPU REDDY: I beg to move:

Page 12, —

after line 23, insert —

"Provided that, where the accused has been charged on the basis of the confession or a co-accused only, he shall be entitled to apply for bail under section 438 of the Code." (16)

This is a provision where the provisions

[Sh. E. Ayyapu Reddy]

of the criminal procedure code are the provision with regard to bail under 438 are sought to be denied to a person who is accused of an offence under this Act. No doubt a person accused of this Act is definitely a serious matter. Ordinarily, no court will grant a bail to him. So far as my amendment is concerned, what I have stated is where evidence against a person is only that of a co-accused person. Then such a person must be entitled to the provision of the 438 of the Criminal Procedure code; 439 is anticipatory bail.

SHRI P. CHIDAMBARAM: Not regular bail.

SHRI E. AYYAPU REDDY: Now you have made a confession of co-accused also admissible as evidence against the other accused.

SHRI P. CHIDAMBARAM: Not now; earlier also it was there; it was admissible earlier also, not now.

SHRI E. AYYAPU REDDY: Under section 30 of the Evidence Act is to ally different from what you have stated here. If it is admissible and the judge shall presume that he committed an offence, there is no alternative. There under section 30, when the entire evidence is taken into consideration and the court is satisfied, even otherwise there is proof that the accused has committed an offence, then the confession of an accused is taken into consideration for assuring, for re-assuring himself; the judge has to take a confession of an accused for the purpose of re-assuring himself for the confession, but the confession of an accused cannot be a case for conviction. You have adopted a different principle here. A terrorist can implicate X, Y and Z; he may implicate me also or implicate anybody. Even if I say, I have nothing to do simply on the basis of it, I will be denied the beneficial provision of 439 criminal procedure code. Therefore, I have stated

that only he will be entitled to the provision of 438 when the entire evidence is against him, the confession of an accused only, and no other evidence.

SHRI P. CHIDAMBARAM: Section 438 deals with anticipatory bail, not bail after production before a Magistrate. This is anticipatory bail. Now the section which the hon. member referred to about shifting of an onus is a stage we come to only in the stage of trial. Now, all that we say is that if a person is accused of an offence he has to be arrested. Or he has to be arrested, or he has to submit himself for arrest. He cannot go to a court and get anticipatory bail. But after he is produced before the Magistrate or produced before the court he can always ask for bail. That is not taken away. And, I cannot think of a relationship between Clause 20 sub-clause (7) and Clause 21. Clause 21 is about arrest after trial commences. At this stage there is no question of anticipatory bail. I think the hon. Member is putting the cart before the horse. We are now talking about anticipatory bail. I think that in a case where a person is accused of such a grave crime he should submit himself to the court and he should not get anticipatory bail.

MR. CHAIRMAN: I put Amendment No. 16 moved by Shri E. Ayyapu Reddy to Clause 20 to the vote of the House.

*The Amendments No. 16 was put and negatived.*

MR. CHAIRMAN: The question is:

"That Clause 20 stand part of the Bill."

*The Motion was adopted.*

*Clause 20 was added to the Bill.*

MR. CHAIRMAN: Clause 21.

*Clause 21*

**Presumption as to offences under  
section 3**

SHRI E. AYYAPU REDDY: I beg to  
move:—

Page 13, line 7, —

for "shall" substitute "may" (17)

Page 13, —

after line 8, insert —

"Provided that no person shall be  
convicted only on the principal evi-  
dence of confession of a co-accused."  
(18)

I have merely said that the word used  
here is "shall". Here what is said is the court  
'shall' presume; it reads,

"the Designated Court" shall presume,  
unless the contrary is proved, that the  
accused had committed such of-  
fence."

What I have suggested is instead of the  
word "shall" the word 'may' may be used. It  
is open to the designated court to presume,  
having regard to the evidence, it is not nec-  
essary to mandate that it shall presume  
unless the contrary is proved. I suggested  
that it may be amended to read, "The Desig-  
nated Court may presume....."

SHRI P. CHIDAMBARAM: We have  
carefully considered the alternatives. We  
had three choices. We could have used the  
words, "may presume", "shall presume, "or  
conclusive proof." We thought that conclu-  
sive proof" was out of the question. We  
cannot have conclusive proof in these  
cases. "May presume" may be too weak.  
Perhaps, the courts may take the easy way  
out and may not draw the presumption at all.  
Again, presumption according to Section 4

or the Indian Evidence Act is, "Wherever it is  
provided the court presume the fact, it may  
deem that fact as proved unless and unless  
it is provied or may be consequent to that  
....." This is too weak a provision. We have,  
therefore, used "shall presume". I have great  
respect for the hon Member, I see the force  
in the argument, but I also hope that he will  
see the force in my argument and not press  
the amendment.

1708 hrs.

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

MR. DEPUTY-SPEAKER: I shall now  
put the amendments moved by Shri E.  
Ayyapu Reddy to the vote of the House.

*The Amendment Nos. 17 and 18 were  
put and negatived.*

MR. DEPUTY-SPEAKER: The ques-  
tion is :—

"That Clauses 21 to 26 stand part of the  
Bill."

*The Motion was adopted.*

*Clauses 21 to 26 were added to the Bill.*

MR. DEPUTY-SPEAKER: Clause 27.

Mr. Ayyapu Reddy.

*Clauses 27*

**Power of the Supreme Court to  
make rules**

SHRI E. AYYAPU REDDY: Mr. Rama-  
chandra Reddy is moving the amendment.

SHRI K. RAMACHANDRA REDDY: I  
beg to move:

page 13, line 42, —

[Sh. K. Ramachandra Reddy]

*for "Supreme Court" substitute "High Court" (19)*

Here Clauses 27 and 28, they are enabling clauses. They give power to make rules. As far as Clause 28 is concerned, it enables the Government to make rules. I do not know how these two things are there. In the Amendment, as I have suggested, in place of 'Supreme Court', you make it as 'High Court'. Here I would like to submit that when the 1985 Act, even though that act had been passed in one single day, on 23rd May 1985, the rules under this Act could not be framed till November 1986. That means, the Government took nearly a year and six months to frame the rules. Even when the Government Department itself takes so much of time, leaving it to Supreme Court, the delay will be much more due to paucity of Judges. Even the Government has not chosen to appoint the Judges. Pending work is very heavy. Even when Government itself took one and a half years to frame the rules, I do not know how many years Supreme Court will take. That is why, it is better that the High Court of the State is given this power, to avoid delay, in framing the rules.

SHRI P. CHIDAMBARAM: Sir, Clauses 27 and Clause 28 deal with two different situations. Clause 27 deals with rules to be made for designated courts. Clause 28 deals with other rules. There is overlap. There is no duplication. Clause 27 is a copy of the earlier Act. We think that there must be uniform rule for all the designated courts. If the High Court make rules, then there may be variations in the rules from one State to another State. If the Supreme Court make rules, then the rules will be uniform. Anyway, there are not too many rules to be made for designated courts.

As far as Clause 28 is concerned, Sir, it is a matter of record that under the earlier Act, because of the structure of the Act, the

rules were not made for a long time. I inherited the situation when rules were not made. You know, whom I inherited from. When I inherited the situation, we made the rules. But the point is that the structure of that Act was so that they thought the rules need not be made. Today, we have taken a hard look at it and we are satisfied that the rules have to be made for six items. We have spelt out those six items. We have also conferred broad rule making power to carry out the purpose of the Act. In this case, as soon as this Bill is passed, rules will be made. We will not give another opportunity to you to criticize us for not making the rules in time.

MR. DEPUTY-SPEAKER: I put Amendment No. 19 to Clause 27 to the vote of the House.

*The Amendments No. 19 was put and negatived.*

MR. DEPUTY-SPEAKER: There are no amendments to Clauses 28, 29 and 30.

The question is:

"That Clauses 27 to 30 stand part of the Bill"

*The Motion was adopted*

*Clauses 27 to 30 were added to the Bill.*

*Clause 1*

**Short title, extent application  
Commencement, duration and  
savings**

SHRI D.B. PATIL: I beg to move:

Page 1 —

*omit lines 9 and 10 (1)*

Sub-clause 2 of clause 1 refers to the

jurisdiction of the Bill. As far as (a) and (c) are concerned, it is all right.

As far as (b) is concerned "to persons in the service of the Government wherever there may be"—the term "Wherever there may be" apply outside India also. There is a category in the Government service — the employees under one particular category go to our embassies in foreign countries. If it gives that impression, I would like to have clarification on that.

SHRI P. CHIDAMBARAM: The hon. Member is reading, which is something which is not there. All that it means, is the Government Servant wherever he is, this Act will apply to him. He may be working in India. He may be posted abroad.

SHRI D.B. PATIL: You are already saying in Clause 1 (2) (a), that it applies to citizens of India outside India. Why this duplication?

SHRI P. CHIDAMBARAM: It is necessary. The person in Government service may be posted outside India—this Act has to apply to him. The point about the citizenship is slightly different. Now, we have in India a certain number of Government servants who are not citizens of India. You know, in Army, we have taken some people. Therefore, there are people in the Government of India, who are not citizens of India. This is to take care of that class.

SHRI D.B. PATIL: I seek leave of the House to withdraw my amendment No. 1 to clause 1.

MR. DEPUTY-SPEAKER: Has the hon. Member leave of the House to withdraw his amendment?

*The Amendments No. 1 was, by leave,  
withdrawn.*

MR. DEPUTY-SPEAKER: The question is:

"That Clause", the Enacting Formula and the Title stand part of the Bill."

*The Motion was adopted.*

*Clause 1, the Enacting Formula and the Title were added to the Bill*

SHRI P. CHIDAMBARAM: I beg to move:

"That the Bill be passed".

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill be passed".

SHRI SOMNATH CHATTERJEE (Bolpur): On one question I draw the attention of the hon. Minister, who is very much adapt with the frame of this Bill. I refer to clause 7. It says:

"Notwithstanding anything contained in the Code or in any other provision of this Act, the Central Government may, if it considers it necessary or expedient so to do, —

- (a) for the prevention of, and for coping with, any offences under section 3 or section 4; or
- (b) for any case or class or group of cases under section 3 or section 4, in any State or part thereof, confer, by notification in the Official Gazette, on any officer of the Central Government, powers exercisable by a police officer under the Code in such State or part thereof or, as the case may be for such case or class or group of cases and in particular, the

[Sh. Somnath Chatterjee]

powers of arrest, investigation and prosecution of persons before any court."

Subject to correction, this appears to be the first time when the Central Government seeks to arrogate to itself the powers of police function in a State through its own officers. The Constitution, Seventh Schedule, categorically reserves exclusively to the State Government in List 2 this power. It says:

"Police (including railway and village police) subject to the provisions of entry 2A of List 1."

So far as Entry 1 of List 2 is concerned it says:

"Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof) in aid of the civil power."

Therefore, matters of law and order, matters of police are exclusively served under the Constitution of India by the Seventh Schedule to the State Government.

Now, Entry 2(a) in the List 1 says:

"Development of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; ....."

What is being contemplated here is not deployment of any armed force or any other force or any contingent or unit in aid of the civil power. Here Central Government is being conferred power to appoint its own

officers to exercise or expressly discharge powers of police under the Code. I have raised this matter in another form also. But I would request the hon. Minister to tell us under what entry in the Constitution this power can be exercised by the Central Government, Indian Parliament to appoint a Central Government officer for exercising the police power under the Code. This is very important. The powers conferred by the Criminal Procedure Code on the State Police authorities will be now permitted to be conferred, subject to any challenge that may be made, on any officer of the Central Government and including powers of investigation, power of arrest, power of prosecution of persons before any Court. Therefore, for the ordinary, normal courts, not a Designated Court, any court in this country, now on the plea of prevention of any offence as indicated there, powers are not laid down under this Act,—Police powers are referred to in the Criminal Procedure Code, except for whatever additional powers that might have been conferred. I do not understand the reason for this. There is one comparable provision in the Delhi Special Police Establishment Act. That is there. There is a provision for deputing a Central Police authority or agency to work as a Police Authority in a State but under two circumstances, two pre-conditions. The first condition is that the consent of the State Government will have to be taken and those designated police officers from the Central Government will be treated as State Police Authorities. They have, first of all, to take the prior consent of the State Government and even then after the police officer is sent from here, to exercise the powers under the Delhi Special Police Establishment Act, he will be treated as Police Officer in charge of a particular police station which has been allotted to him for the purpose of discharging the duties. That is how it keeps with the Constitutional set up and the distribution of powers between the Centre and the State. So, we have not been told any reasons. I have gone

through the Statement of Objects and Reasons—for the first time in India, in 40 years, such a law is being promulgated, is enacted by the Parliament of India—it has subject to correction, no parallel in the past, except the Special Police Establishment Act, I have indicated 'with the consent of the State Government it can — and not — single word has been mentioned in the Statement of Objects and reasons. Why this power is being taken away? What is the deficiency there? How many Central Government Officers will be sent with Police powers and to which State for the purpose of discharging the ordinary functions under the Criminal Procedure Code? Therefore, why this new class of officers, contrary to the Constitution, is being set up which abrogates the power to itself and takes away from the States. This is creating a serious constitutional deadlock. It disturbs the constitutional distribution of powers. It shows the so-called declaration of non-confidence by the Central Government which think that they know more than others — mistakenly though; they think they are more experts than the State Government Police — mistakenly again, not necessary they are correct. Therefore, why do you create this tension between the Central Government and the State Government? Why this division among the police force; between the law enforcement agencies? Why this distinction is sought to be created? More are those species of Central Government officers who are necessarily better policemen. Therefore, I would request the hon. Minister to teach us also. I would like to be informed under what entry, which list of the Constitution this law can be enacted and how the powers can be conferred, State Police powers can be conferred on the Central Government officers without making them State Government Police force, part of the State Government Police force. On this basis, I have to oppose this entire Bill.

SHRI P. CHIDAMBARAM: I am hardly competent to teach or explain to Mr. Somnath Chatterjee...

SHRI SOMNATH CHATTERJEE: I am a very humble student. Why don't you try to teach me?

SHRI INDRAJIT GUPTA: We have been overcome by this mutual admiration.

SHRI P. CHIDAMBARAM: We have just formed the Mutual Admiration Society.

This is the point on which the debate started. Hon. Member Shri Saifuddin Chowdhary raised the question about the constitutionality of Clause 7 of the Bill. Hon. Member Shri Somnath Chatterjee did not do us the honour of being present when his colleague Shri Saifuddin Chowdhary raised the question.

SHRI SOMNATH CHATTERJEE: I had requested him to do it.

SHRI P. CHIDAMBARAM: I wish you had been present. I tried to answer it to the best of my ability. I have pointed out that we have good legal advice that, by virtue of article 246 (1) and article 246(2), read with Entry (1) of List (III) and Entry (2) of List III, Parliament has the power to define a new offence and to prescribe the procedure, what we call 'criminal procedure' for that offence...

SHRI SOMNATH CHATTERJEE: It amounts to a police function.

SHRI P. CHIDAMBARAM: I have explained. We have the power to create...

SHRI SOMNATH CHATTERJEE: You have been wrongly advised.

SHRI P. CHIDAMBARAM: We can hardly argue here as if in a court of law. I can only say that we have received good legal advice that, under article 246(1) and article 246(2), read with Entry (1) of List III and Entry (2) of List III, Parliament has the power to

[Sh. P. Chidambaram]  
define a new offence and to lay down the procedure. I do not wish to repeat it. These are the Constitutional provisions under which we are bringing Clause 7. Of course, it has to be tested in a different forum, and it will not be proper for me to engage in a long debate....

SHRI SOMNATH CHATTERJEE: Entry (1) is in the Concurrent List.

*(Interruptions)*

SHRI P. CHIDAMBARAM: This is how we started in the morning. I do not mind repeating it. But what is the purpose? Secondly, if you will kindly recall, soon after....

SHRI SOMNATH CHATTERJEE: I gave an opportunity to realise and withdraw that Clause.

SHRI P. CHIDAMBARAM. I have realised that and I have answered that. I thought Mr. Saifuddin Chowdhary would have briefed him adequately that we had given a fairly convincing answer.

SHRI SAIFUDDIN CHOWDHARY: I was not satisfied.

SHRI P. CHIDAMBARAM: I thought you were satisfied

You will also recall that, immediately after the Muktsar bus tragedy, Parliament pilloried the Government and pointed out section 18 of the old TADA; if I remember right, Prof. Madhu Dandavate and many other hon. Members said that we had the power under section 18 of the old TADA. We said that section 18, as it was then worded, did not confer the power upon the Central Government but conferred the power upon the State Government. The hon. Members of the Opposition said, "No; section 18 confers the power upon you and you are not

acting; if the State Government is not acting, what are you doing? Section 18 gives you the power." We took advice from the Attorney-General who advised us that section 18, read with section 3 and Rule 5 of the then Act and the then Rules, did not confer the power on the Central Government and that, if we needed this power, we had to amend the Act. Today Clause 7 has been redrafted keeping in mind what the hon. Members of the Opposition said on the last occasion when the long debate on section 18 took place; nobody could have forgotten the kind of debate that we had on section 18. We were criticised and pilloried for not acting under section 18, and today when I am coming forward with a straightforward clause where we have a clear provision which spells out that the Central Government has got this power of investigation, registration and prosecution, to raise the question of Constitutionality, to me, is unacceptable. I think, we have been correctly advised. I hope we are correctly advised, and if we are correctly advised, then the Clause is correct.

MR. DEPUTY-SPEAKER. The question is:

"That the Bill be passed "

*The motion was adopted.*

MR DEPUTY-SPEAKER: Now we take up the Punjab State Legislature (Delegation of Powers) Bill. The question is:

"That the Bill to confer on the President the power of the Legislature of the State of Punjab to make laws, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

MR. DEPUTY-SPEAKER: The House will now take up clause-by-clause consideration of the Bill.

The question is:

"That Clauses 2 and 3 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

THE MINISTER OF HOME AFFAIRS  
(S. BUTA SINGH) Sir, I beg to move:

"That the Bill be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed."

*The motion was adopted.*

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MR. DEPUTY-SPEAKER: The House will take up Supplementary Demands for Grants (Punjab)-Discussion and Voting. Mr. Ventaka Ratnam.

*(Interruptions)*

SHRI N. VENKATA RATNAM (Tenali): Sir, it is unfortunate that I have to oppose the Supplementary Demands for Punjab State.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRIMATI SHEILA DIKSHIT): I would like to inform the Members of the House that we are going to sit late, today. After this Half-an-House discussion... *(Interruptions)*

The Hon. Minister Shri Chidambaram has suggested that it is a request to all but command to Shri Somnath Chatterjee. So, we would be taking this Half and Hour dis-

cussion, then we get back to this Supplementary Demand... *(Interruptions)*

You don't listen to what I say. The Members of the BAC decided this. They took a decision this afternoon because we are short of time.

MR. DEPUTY-SPEAKER: Whether the House agrees or not?

SHRI SOMNATH CHATTERJEE (Bolpur): Let the Half and Hour discussion be at 7.30 P.M.

MR. DEPUTY-SPEAKER: This way Half and Hour cannot be postponed.

SHRI SOMNATH CHATTERJEE: When so many things are happening, with consensus it can be done.

MR. DEPUTY-SPEAKER: Half and Hour discussion will be according to time... *(Interruptions)* It is scheduled for 5.30 p.m. Therefore, we are taking it up.

THE MINISTER OF HOME AFFAIRS (S. BUTA SINGH): Tomorrow we are going to have full dress debate on communal situation in the other House. My colleague and myself will have to be there. Therefore, let us sit for some more time and finalise this discussion today.

So, Sir, you can ask the House.

MR. DEPUTY-SPEAKER: It is for the House.

SHRI BASUDEB ACHARIA (Bankura): Can we make it tomorrow?

MR. DEPUTY SPEAKER: Tomorrow he has to go to Rajya Sabha.

SHRIMATI SHEILA DIKSHIT: That way, he would not be able to reply tomorrow

[Shrimati Sheila Dikshit]  
also.

S. BUTA SINGH: Soon after the Question Hour, we can take it up.

SHRI V. SOBHANADREESWARA RAO(Vijayawada): Supplementary Demands can be taken up tomorrow.

MR. DEPUTY-SPEAKER: Let us finish Half and Hour Discussion first.

Mr. Shantaram Naik..

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17.33 hrs.

#### HALF-AN-HOUR DISCUSSION

#### Intensive Monitoring System for 20-Point Programme

[English]

SHRISHANTARAMNAIK (Panaji): Sir, I am raising an half-an-hour discussion on the 20 Point Programme. It was given to the nation on the 1st July 1975 by Smt. Indira Gandhi, which was one of the best gifts given by any leader to this country after Pundit Jawaharlal Nehru gave the Five Year Plans. It is on the basis of Five Year Plans that we started to shape our economy. In 1975 when Madam Gandhi felt that we should stress on certain aspects of our economy, on 1st July 1975, she gave to the nation the 20th Point Programme, which I would humbly say, has become the Economic Constitution of this country.

This country has got a political constitution which we cherish and honour. Similarly we have got this economic constitution which the poor masses of this country are cherishing and honouring. Because it is through this economic constitution. in the form of 20 Point Pro-

gramme, that the poor masses of this country derive the benefits given under the political constitution, viz., the Constitution of India.

This economic constitution or the 20 Point Programme was subsequently amended on 14th January 1982 and on 20th August 1986. During the course of these last more than ten years, any independent survey will indicate that the common man has been immensely benefited by this 20 Point Programme, amended from time to time.

As I said, it is not a programme which is a substitute for Five Year Plans; but this Programme lays stress on certain aspects of our Five Year Plans. Therefore, this laying of stress has benefited this country.

Out of all the points which are stressed in the new 20 Point Programme 1986, one point viz., the 20th Point is one of the most important points on the basis of which the implementation of the rest of the Programme lies. This 20th Point lays stress on five aspects; viz., simplify procedures, delegate authority, enforce accountability, evolve monitoring system from block to national level and attend promptly and sympathetically to public grievances.

Although I have said that the people of this country have immensely benefited by this; but due to certain lack of monitoring at some level or due to some sort of percolation, we are not getting the benefit of the 20 Point Programme as we ought to have got. In certain aspects where stress ought to have been laid, has not been laid. The Hon. Minister may inform me about this. He is looking after the Programme Implementation Ministry. I would like to point out at this stage that the 20 Point Programme concerns several Ministries. It is difficult for him, as I understand, to throw light on certain aspects of some points which are directly dealt with by some other Ministries. Therefore, I would