

Laljan Basha, Shri S.M.  
 Mahto, Shri Rajkishore  
 Malik, Shri Purna Chandra  
 Mandal, Shri Sanat Kumar  
 Manjay Lal, Shri  
 Misra, Shri Satyagopal  
 Mukhopadyay, Shri Ajoy  
 Murmu, Shri Rup Chand  
 Murthy, Shri M.V.V.S.  
 Pal, Shri Rupchand  
 Paswan, Shri Ram Vilas  
 Prakash, Shri Shashi  
 Rai, Shri Lall Babu  
 Rajesh Kumar, Shri

Ray, Dr. Sudhir  
 Raychaudhuri, Shri Sudarsan  
 Sethi, Shri Arjun Charan  
 Singh, Shri Hari Kishore  
 Singh, Shri Ramashray Prasad  
 Sur, Shri Mnoranjan  
 Syed Shahabuddin, Shri  
 Tej Narayan Singh, Shri  
 Tripathy, Shri Braja Kishore  
 Ummareddy Venkateswarlu, Prof.  
 Yadav, Shri Devendra Prasad  
 Yadav, Shri Ram Kripal  
 Yadav, Dr. S.P.  
 Zainal Abedin, Shri

MR. SPEAKER: Subject to  
 correction\*, the result of the division is:

**Ayes: 57**

**Noes: 48**

*The motion was adopted.*

[SHRI NITISH KUMAR *in the Chair*]

STATUTORY RESOLUTION RE:  
 DISAPPROVAL OF THE  
 PROTECTION OF HUMAN RIGHTS  
 ORDINANCE; AND PROTECTION  
 OF HUMAN RIGHTS BILL

**14.20 hrs.**

*The Lok Sabha then adjourned for Lunch  
 till thirty minutes past Fifteen of the clock.*

[English]

MR. CHAIRMAN: We shall now  
 take up Item Nos. 13 and 14.

**15.35 hrs.**

*The Lok Sabha re-assembled after Lunch  
 at thirty-five minutes past fifteen of the  
 clock.*

Shri Lokanath Choudhury — Absent.

Shri Santosh Kumar Gangwar — Absent.

Shri Shankersinh Vaghela — Absent.

\*The following members also recorded their Votes.

**Ayes:** Shri Oscar Fernandes

**Noes:** Shri Bir Singh Mahato and Dr. Faiyazul Azam.

Shrimati Geeta Mukherjee will now speak.

SHRIMATI GEETA MUKHERJEE  
(Panskura): Sir, I beg to move:

"That this House disapproves of the protection of Human Rights Ordinance, 1993 (No. 30 of 1993) promulgated by the President on the 28th September, 1993."

I know that this Statutory Resolution was taken up for the reason that when this Ordinance was promulgated, I have heard, that our hon. Minister for Home Affairs told the leaders of the other Parties that if we do not pass this Ordinance immediately, Pakistan will take advantage of the situation. The fact remains that the Ordinance was passed. Even then, Pakistan is creating trouble as earlier. If we study the situation, we will doubtlessly know that we will not gain anything just by this Ordinance. This is the first thing to know.

Secondly, a Standing Committee went into it and this is the second version of the Bill. But this subject is very important. Actually it requires a full debate. It is good that it was discussed in the Standing Committee. Even apart from the Standing Committee, Members have experience of various human rights violations. Naturally this requires a very wide discussion. Therefore, promulgation of an Ordinance has not helped us in any way.

Now, I come to the Bill itself. Since it is not my job to speak on the Bill, I will not take a long time. That is not my habit either. I will just put some questions to the hon. Minister.

After going through the Bill, I found that this Commission is more or less like our other Commissions— like the National Women's Commission, National Commission for Minorities etc.—except where there are special points with regard to human rights. I have certain doubts here with regard to the composition of the Commission. The composition of the Commission is somewhat broad. But if we take it into account we find that the Commission shall consist of a Chairperson who has been a Chief Justice of the Supreme Court; one member who is, or has been, a Judge of the Supreme Court; one Member who is, or has been, the Chief Justice of a High Court; two Members to be appointed from amongst persons having knowledge or, or practical experience in, matters relating to human rights. Then comes the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women.

The next Clause 4 (1) tells us whose agreement must there for appointment. There, we find that apart from the Prime Minister, the Speaker, the Home Minister, there is also the Leader of the Opposition in the House of the People; Leader of the Opposition in the Council of States; the Deputy Chairman of the Council of States. All these people are there. It is good that you are consulting the Opposition— at least the Leader of the Opposition whichever may be the Opposition in future. But I would like to know one thing. If there is no agreement among them, on what basis will the decision be made? Is it by voting or by consensus? What will be the procedure? This is very important. As I have said already, though the composition of the Commissioners somewhat broad yet it

[Shrimati Geeta Mukherjee]

not get any indication of what you have decided.

seems to me that all the others are likely to be nearer the Treasury Benches. The Leader of the Opposition will be the only person who will not be or may not be in agreement with the Treasury Benches. This is the composition. I am dealing with the aspect of whose assent is necessary to determine the composition. Consent is necessary. Among them, you will see the Leader of the Opposition. It seems that the rest of it will be more or less nearer the Treasury Benches or directly of the Treasury Benches etc. If there is a difference of opinion, will it be decided by vote or by consensus? It is very important with regard to the Human Rights Commission. It may not be that important with respect to the other Commissions. But for the Human Rights Commission, it is very important. What have you thought about it? You have not spelt out anything here.

With regard to the Armed Forces which is a very sensitive subject I find that there is no mention of the court-martial that is there in the Army itself. what will be the relationship with that court-martial system with this Commission? Through the Government, it may refer back, it may not pursue. But where does the court-martial system come into it? For the discipline of the Army, that is an important point. Undoubtedly, while we are very much interested in human rights, we also want that the terrorists should be seriously taken care of.

Sometimes that requires a lot of patience and also sometimes it is overdone. Therefore, this is one question on which I understand, there was a lot of discussion in the Standing Committee. I do not know about it. At least here, I do

Thirdly, excuse me if I am uncharitable to some of my colleagues about a decision of the National Commission for Women. But that does not mean any disrespect to the entire Commission. For example, the National Commission on Women the other day decided that if there are more than two children, then the woman employee will get leave but will not have the benefit of payment. Are women only responsible for producing children? It is the men who often force them to produce children. How is it that such a resolution could be carried like this? While I am all for family planning, we know about family planning, but this is not what should be done. It should have been dealt with on par or not dealt with at all-either this or that. But nothing was done. Therefore, it will depend very much again on the constitution of the Commission. I am sure that the Chairperson and some other Members of the Commission are to some extent, influenced by the Government's functioning. Here also, the same thing may happen. It will be very dangerous for the question of human rights about which there are enough violations in the country and we do not know what will happen in the country tomorrow because the situation in the country is very very volatile. Therefore, I think, the selection of the personnel must be such that one can really deal with this subject impartially and seriously. I do not understand from these two clauses together, that is, clauses three and four, how exactly that will be guaranteed. This is my query.

As far as rest of the things are concerned, I will not go into it because the important motion before us is to move the Statutory Resolution. And for giving the

reasons for moving the Resolution, these are some of the queries from my side. Our members will be participating in the discussion.

THE MINISTER OF HOME AFFAIRS (SHRI S.B. CHAVAN): I beg to move:\*

"That the Bill to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto be taken into consideration.

Over the past few years there has been growing concern on issues relating to Human Rights, the world over. In India, we have a strong and elaborate constitutional and legal framework for the protection and promotion of the rights of the individual in their widest form. The chapters of the Constitution guaranteeing Fundamental Rights and the Directive Principles of State Policy, and the legal and statutory provision flowing from them substantially cover virtually the whole gamut of human rights reflected in the various International Covenants which have been the subject of growing discussion in the recent past.

We have a strong and independent judiciary, which has all along acted to protect the rights, liberty and dignity of the individual. Special provisions have also been made in the law and the institutions established for taking measures to protect the rights and strengthen the status of the most vulnerable sections of the society.

There is a dynamic democratic Parliamentary system, a free, vigilant and vibrant Press, and a host of non-governmental organisations, which together act as a powerful watchdog mechanism to enforce accountability of the governmental agencies.

Factors such as population growth, economic development, increasing awareness and the rapid spread of mass communications, have brought new stresses and pressures of the obtaining systems. They have also affected the nature of crime and violence in the society. The phenomenon of terrorism has grown into a major challenge to the system and a threat to the peace and stability of the society at large. All this has made the task of the law enforcement agencies, and the system as a whole progressively more complex, difficult, and challenging.

Despite the constitutional and legal safeguards, complaints of deprivation and infractions of human rights continue to be voiced. It must be appreciated that no system, however elaborate, can be ideal and there are bound to be weaknesses and shortcomings. The problem is made more complex by the factors which I have just referred to. It is Government's effort to continuously review all shortcomings and take effective measures to rectify them and further strengthen the system.

A Chief Minister's Conference on Human Rights was convened in September, 1992. This Conference welcomed and endorsed the proposal to set up a National Human Rights Commission. A Committee under my Chairmanship, comprising the Union

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\*Moved with the recommendations of the President.

[Shri S.B. Chavan]

Ministers of Human Resource Development, Welfare, and Law and the Chief Minister of five States, cutting across party lines, was set up to look into the proposal. At the instance of this Committee, it was decided to have wide ranging discussions on the subject with eminent persons, representing a cross section of society such as jurists, lawyers, journalists, academicians, administrators, human rights activists and other public personalities. Four Seminars, one each in Bombay, Calcutta, Delhi and Hyderabad, were organised through the concerned State Governments. Another Seminar was organised under the auspices of the Bar Council of India. The Union Home Secretary had detailed discussions with Chief Secretaries and Directors General of Police of the State Government. I discussed the proposal with leaders of the political parties in Parliament. Thereafter, the proposal was discussed by the Committee, which I referred to earlier. After this elaborate exercise, the Human Rights Commission Bill, 1993 was prepared and introduced in the Lok Sabha on 14.5.1993.

The Bill had evoked widespread interest and reactions. When the Bill was listed for consideration in the last session a number of motions were moved by Hon'ble Members seeking inter-alia time to elicit opinion, and to refer the Bill to a Committee. The Hon'ble Speaker decided to refer the Bill to the Standing Committee of Parliament for the Ministry of Home Affairs. The Report of the Standing Committee is before the House. The Committee held a large number of meetings in some of which officials of my Ministry were also asked to be present. During these meetings and discussions

the main issues which apparently required reconsideration were identified.

In the meanwhile, keeping in view various developments on the global scene, Government felt that time was of the essence and that it would be in the national interest to speedily bring to fruition the year long exercise to set up the National Human Rights Commission. Accordingly, after giving due consideration to the various suggestions that had been received and incorporating several changes to the original Bill, the Protection of Human Rights Ordinance 1993, was promulgated on 28 September, 1993.

I am gratified to note the observation of the Standing Committee in its report that "almost all the amendments suggested by it on the various clauses of the Bill had been incorporated in the Ordinance". I need hardly stress that even while the Government considered it necessary to promulgate an ordinance, specific regard was given to the views that had been expressed about the Bill. The Committee has made some suggestions regarding the disciplinary and trial procedures of some of the paramilitary forces. We will examine these separately.

The main reservations that had been voiced in the context of Human Rights Commission Bill, 1993 pertained to the composition of the Commission which was considered to be excessively bureaucratic; the perceived inadequacy of its powers; the inclusion of terrorist activities within its inquiry jurisdiction; the special provisions pertaining to the armed forces; and the absence of provision to ensure the independence of the State Commissions in their composition, manner of constitution and functioning.

We have substantially tried to address all these concerns in the present Bill.

While we had good reason to provide for an element of administrative experience on the Commission, in view of the feeling that such a provision could affect the credibility of the Commission, the Government has modified the provisions and now a majority of the Members shall be persons with a Judicial background.

On the issue of effectiveness of the Commission, the main points raised related to the provision of an independent investigative agency to the Commission and that its finding should be binding rather than recommendatory. Right from the beginning, the Commission had been conceived as a fact finding body, and there appeared to be general consensus, even in the preparatory Committee, that there should be no duplication with existing structure and the Judiciary. The Commission is not conceived as a stand alone institution but as a body which, through its multiple function, including inquiry into specific cases, can bring about a much sharper focus on and awareness about human rights; promote the better enforcement of existing safeguards and bring in greater accountability into the system. Even so, a number of provisions have been made in the Bill to enhance the effectiveness of the Commission, viz its power to publish its reports immediately; reduction in the time period within which the concerned Government will report to the Commission; its ability to approach the higher judiciary for writs and order on its findings; and the power to intervene in ongoing judicial proceedings. There are now additional provisions to enable the constitution of Special Investigation

Teams, setting up of Human Rights Courts and appointment of Special Prosecutors.

As for the issue of terrorism, it has been the considered view of Government that such acts of organised violence constitute a gross violation of human rights and a serious obstacle in their enjoyment. This view is now being also widely accepted at the global level. We have, however, taken note of the view that the Commission could have constraints in actually inquiring into such acts. The provision in this regard have, therefore, been suitably modified and terrorist acts have been removed from the inquiry jurisdiction of the Commission.

A concern had been voiced about the provision of the original Bill in respect of the procedure of inquiry vis-a-vis the Armed Forces. This had been done in consideration of the extremely complex and vexatious environment in which they function when involved in internal security duties and, more importantly, in view of the fact that they are governed by statutes which lay down specific procedures for inquiries, trials and disciplinary action which are in many ways more speedy and effective than ordinary civil inquiry and trial procedures. We have, nevertheless, introduced modifications in the present Bill with a view to bringing in greater accountability and transparency, in a manner that would not adversely affect the morale of these Forces. Provision has now been made whereby the Central Government will have to inform the Commission of the action taken on the recommendations of the Commission within a stipulated period; and the Commission shall publish its report and also provide a copy of the same to the petitioner or his/her representative. We

[Shri S.B. Chavan]

feel that these are effective measures and should adequately address the concerns that have been voiced.

As for the State Commissions, specific provision have now been made regarding their composition, manner of selection and terms of service of the Members and the powers and functions of these Commissions.

The provision with respect to power of the Commission to visit jails has also been modified to do away with the requirement for prior approval of the State Government.

It would be seen that Government has made a sincere effort to address all major reservations which had been viewed in regard to this important Bill. At the same time it has to be realised that we are seeking to establish a new type of Institution, of which there is no experience within the country and relatively little elsewhere in the world. In any case the circumstances prevailing in different countries and consequently the focus of the issues to be addressed through such institutions vary widely; and there can be no single model which can be universally applied.

16.00 hrs.

The perceptions about such an institution would also vary among groups representing different activities and interests. In India, we are setting up the Commission as an institution which will have to co-exist with a host of others which are already concerned with different aspects of human rights protection and promotion. In my view, when the Commission has functioned for sometime,

we shall have better appreciation of the changes, if any, which require to be made in the future. For the present, I urge this august House to give its fullest consideration to the Bill so that the Ordinance that has already been promulgated can be converted into an Act of the Parliament.

With these remarks, Mr. Speaker Sir, I command the Bill for the consideration of this House.

MR. CHAIRMAN: Motions moved:

"That this House disapproves of the protection of Human Rights Ordinance, 1993 (No. 30 of 1993) promulgated by the President on the 28th September, 1993."

"That the Bill to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto be taken into consideration."

MR. CHAIRMAN: There are amendments to the consideration motion.

SHRI BHOGENDRA JHA  
(Madhubani): Sir, I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1994." (13)

[SHRI P.C.CHACKO in the Chair]

16.02 hrs.

[Translation]

SHRI GEORGE FERNANDES (Muzaffarpur): Mr. Chairman, Sir, I am sorry to say that this Bill is not very effective. The reasons are various. On the basis of my own past experiences, I would like to say that the background of the Bill and the circumstances in which it has been introduced and the intention of the Govt. in bringing this Bill are not very clear and that is why I do not have any expectations from this Bill.

Mr. Chairman, Sir, the weakness lies in the statement of the Objects and Reasons. The hon. Minister has stated that India has also signed International covenant on civil and political rights and International covenant on economic and political rights, accepted by UNO in 1966. If I remember correctly India accorded approval in 1975. I think the Universal Declaration of Human Rights of 1948 is a document which deals at length with the entire gamut of Human Rights. The two covenants to which our hon. Minister is making reference limits itself to the economic, social, cultural, civil and political clauses but it does not end here. Now, the Government says that it is not introducing this Bill on the basis of these covenants. The main characteristics of these covenants are already enshrined in constitution. I fail to understand what was the need of this Bill. Now it is a half-hearted effort. If all these factors have already been included in the constitution there must be some loopholes or shortcomings which have forced the Government to bring about this Bill. The Government is not prepared to admit the reasons behind the introduction of this Bill.

Mr. Chairman, Sir, the hon. Minister has said that a lot of concern is being

expressed regarding human rights in the country and in the world. I would not like to comment on the way this Human Rights are being used to comment on other countries because this is being done elsewhere also. Everyone is aware regarding America's concern for human rights. I do not think that America understands the basic reason for violation of human rights in other parts of the world. It is least bothered about taking steps to set things right. As for example America is not aware of human rights violation in Burma. Aang Sang Su Kyi is in jail for the last five years. Eighty percent of the people of her party have been elected in the elections but she is in jail. But America is not concerned at all. America; does not feel concern for Iraq. It launches a bomb attack on that country whenever America wishes. It has no concern for the human rights of the innocent women and children there. Even in this country America is least concerned about the impact of the GATT agreement and the exploitation to which we would be subjected to. America has no concern for the human-rights of people of India. It uses the baton of human rights violation as a political game. The Government does not seem to have enough courage to check the onslaught of this disinformation. Last year on June 26, an American Senator Burton got a legislation passed in the Senate in America which banned the financial aid to India on the grounds that there is human rights violation in this country. Our Ambassador Shri Abid Hussain tried his best to mobilise opinion against this move but in vain.

There is another institution, Asia watch. It is not a Government institution. But it is collecting information as to what is happening in the world. Amnesty International provides information

regarding the violation of human rights in every nook and corner of the world. All these agencies want that the question of human-rights in India should be discussed and wherever people are found guilty of violation of human-rights they should be punished. A campaign has been launched by them but even then the Government has not taken any effective steps against these campaigns. I feel concerned because if we do not accept honestly the basic reasons and truths behind the introduction of this Bill, we would reach half conclusion that is why my submission is that I do not see anything effective in this Bill.

SHRI RAM KIRPAL YADAV (Patna): Mr. Chairman, Sir, I am on a point of order. In the CCTV outside the chamber the name of Shri Nitish Kumar is being displayed as the chairman. It should be rectified.

MR. CHAIRMAN: It would be corrected.

SHRI GEORGE FERNANDES: The hon. Minister has mentioned the issues under the purview of the commission in the Statement of Objects and Reasons. I would not read all the salient features for example the mode of selection of its members and the style of its functioning etc. But sub-para three is very significant as it says:—

[English]

"The Commission will be a fact finding body with power to conduct inquiry into complaints of violation of human-rights."

That is all. A commission has been set up to simply enquire into such incidents. Is it a fact finding body alone? If there is firing somewhere four M.P's go through to ascertain the facts. They prepare the report and pass it on to the newspapers. The commission has been named as 'National Human Rights Commission' but in a single sentence the Government has exposed the status of the commission to the world. This is only a fact finding commission. It would enquire into the complaints being lodged before it and if violation of human-rights is being observed anywhere it would enquire into it. Is that all? If it is so then there is no need for it. According to the Government there are provisions enshrined in the Constitution also. It has been said that this commission would not enquire into the cases pending before the SC/ST Commission, National Commission on Women or the Minorities Commission. If this commission would not have any jurisdiction to enquire into the cases of Women's Commission, Scheduled Castes and Scheduled Tribes Commission and it is deemed as a fact finding body then what is the use of this commission? What are we going to show to the world. The committee set up by the UNO-United Nations Human Rights Committee had submitted.

[English]

"The human rights embodied in the aforesaid covenant stand substantial protected by the Constitution."

[Translation]

Whatever has been submitted by the Government of India had not been accepted by it and

[English]

"ICCPR's provisions did not seem to be applied in India and that a number of provisions and special laws currently in force contravene important rights provided in the covenant."

[Translation]

This is the point of view prescribed by the Committee. It has said that Armed Forces (Special Powers) Act, Terrorism and Disruptive Activities Act and National Security Act, Safety Act in Jammu and Kashmir all these violate the human rights and because these are being enforced by the Government it is the culprit. If the Government is not able to defend then who in the world would accept this fact that a legislation is being enacted in this country for safeguarding the human rights.

The hon. Minister has stated that this commission would enquire into the cases of human-rights violation in places where terrorism is prevalent like in Jammu and Kashmir. I would not like to comment on this at present. But the Government is spreading terror.

The two words State violence are there in our country which have been used continuously for the last 46 years by our people. Then what is the remedy of this State violence and the law attached to it, to which I have mentioned just now.

The discussion does not stop here. Just now you have mentioned armed forces of the union, it means that at present Military, Navy and Air Force do not mean armed forces. Previously the word military was use for the armed forces of the union and it consisted of all

the three forces Military, Navy and Air Force. Now not to talk of the Border Security Force even the Railway Protection Force is not given recognition because it is also considered as an armed force of the union since you have made an amendment in law to this effect. The Para-military forces like the Central Reserve Police force and other forces in India are being kept out of the scope of the law. Then the atrocities committed by the Government and the sufferers of such atrocities.

[English]

SHRI A. CHARLES (Trivandrum): Sir, I am on a point of order. In the Agenda, the names of 21 Members have been shown against the Statutory Resolution. May I know whether the hon. Member is speaking on this resolution?

MR. CHAIRMAN: Yes.

SHRI A. CHARLES: In that case, at this stage such an extensive speech is not allowed under the rule because the Members will also get another opportunity to participate in the discussion. If all the 21 Members speak like this then I am afraid it will take three or four days to complete this resolution.

MR. CHAIRMAN: The Chair is noting the time. The hon. Member has moved an amendment. The Chair is noting how much time the Member is taking. Please cooperate.

[Translation]

SHRI GEORGE FERNANDES: Mr. Chairman, Sir, Armed Forces have been committing atrocities on the people. It is far from the fact, if someone says that the

[Shri George Fernandes]

[English]

military and para-military of our country, are performing their duties in a non-violent way. Atrocities are committed and atrocities are being committed in Kashmir. Howsoever hard we may try to hide these facts but the fact is that atrocities are being committed in Punjab, Kashmir and in each State of North-East. The Armed Force Special Power Act empowers to this extent that if a person is shot dead by a soldier and if this Armed Force Special Power Act is in force then the enquiry will not be conducted as to how and why the person was killed. It is presumed that his death was ordained so all the things should be stopped there.

(b) After the receipt of the report, it may either not proceed with the complaint....

[Translation]

Injustice was done, atrocities were committed and the people were killed. Women were raped and various other kinds of crimes were committed.

[English]

"It may either not proceed with the complaint...

[Translation]

Sir, this law pinches me. Whatsoever has been written here regarding Armed Forces, it has been mentioned that:

You cannot do anything on that complaint and there is no need at all to do anything on it.

[English]

"Notwithstanding anything contained in this Act while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:

[English]

"or as the case may be make its recommendations to the Government.

[Translation]

(a) It will either on its own motion or on receipt of petitions seek a report from the Central Government;

Things comes to an end when you can not put forth your recommendations on the report of the Government. If the Commission has on right to summon the witnesses and to hold an enquiry, then this chain of Government atrocities will continue in this country. If there are no provision in this law to provide justice to the aggrieved ones then the Commission will be just helpless in doing so.

[Translation]

Then you can just ask for the report from the Government regarding the incidents in Sopore, Baramula, the incidents of day before yesterday in Anant nag, or in any village of Punjab or in the North East.

Mr. Chairman, Sir, as per the statement of the hon. Home Minister, this commission would prepare a report on the

activities of the militants as well as the places where police resorted to lathi charge. The rights of this commission would be confined to the preparation and submission of the report if police has set fire to the hut of a poor person or committed any wrong and the victim can go within a year to the court to file its complaints. Therefore, I firmly say that we hold the military and the security forces of the country in high esteem but it does not mean that we should regard them so even if they do something wrong. There is a peculiar logic prevails in our country that if someone points out the facts then they would be demoralised. This word is being misused in our country. Someone shoots somebody and if they shout afterwards and if we say that this crime has been committed, the person concerned gets demoralised. It is a very surprising logic. We have not levelled charges against all and sundry. We are not saying anything wrong against the whole military or the Border Security Force. Let me remind you that America had fought a big war in Vietnam. During that war, the American soldiers had committed grave atrocities in a village. They had burnt alive the people by throwing Napam bombs. The name of the village was Mayli. America had made it public. It was not covered under files or on the pretext of setting up a committee to enquire into that America did not try to suppress this issue. Therefore, I urge upon the hon. Home Minister through you that the remedy of the short-comings should be found. There is no need at all to lend our ears to America or any other country. But what can we expect from this commission, which cannot even conduct an enquiry into the atrocities on the down-trodden and the poor of our society. Those who have power, commit atrocities on the people.

Through whom this commission will conduct an enquiry? If we set aside the

Para-military, Military and Armed Forces only the police remains with the Government to commit atrocities. The law says that your police will conduct the enquiry. A provision has been made that this enquiry squad will be headed by the Director General of Police. It means that the sub-inspector or inspector cannot dare go against his seniors. He will have to keep in his mind the point of his next promotion and he would find ways to save his skin from the ire of his senior officers. Do you think that this law which is going to be constituted to cover up all these things will not be understood by the people.

Since long, there have been hundreds of organisations working to protect the human rights in India. The hon. Home Minister should also go through the History of such organisations. May be, you are not aware that Pandit Jawahar Lal Nehru was the National President of the All India Civil Liberties Union during 1935-36 and 37. The safeguarding of human rights was not only a part of our freedom struggle but our freedom fighters used to raise their voices throughout the world, where such atrocities were being committed. Today, I do not know if such things happen in North Block. Four Officers will sit in the Home Ministry to decide how the human rights are violated in our country. These four bureaucrats will decide in this regard. By empowering these people you talk about protecting the human rights of the people of our country. How, it is possible? Therefore, through you, I urge upon the hon. Home Minister not to insist on passing this Bill/Ordinance in this form. The Government had sent this Bill to a Parliamentary Committee, the report of which I have seen but many things are not clear in it. I am not surprised. I say so because I presume that the Congress

[Shri George Fernandes]

party has nothing to do with the human rights. May be, my thinking is like that of a militant since you had accepted the dictatorship in 1975-77. Things can undergo a change if the past has been forgotten and a new direction has been given but I do not expect anything from these people.

I have got experience of it also, and I remember that in 1980 the police opened fire with machine gun at Adivasis in Indiravalli, in which about 100 people were died. The matter was investigated, not by a Government agency but by PUCL. The hon. Prime Minister was present in the House at that time and we were in the opposition. The matter was discussed and I read out the facts from the report. All the hon. Members were astonished as to how all those facts were collected. At that time I had said that it was the report of PUCL whose Chairman was a retired judge. This gave rise to a hue and cry in the House and it was suggested that the matter should be left there because it was futile to discuss it anymore. The Congress party was not at all concerned about it.

I remember one more incident. The Prime Minister of Britain Mrs. Margaret Thatcher came to India. She held talks with the Prime Minister. Next day when the hon. Prime Minister arrived here, something was spoken by the members of the Congress party during Zero Hour. At that time the Prime Minister rose and said that she knew what was the demand of the hon. Member. During those days Bibisendz, a citizen of Ireland, had started fast unto death following the path of Mahatma Gandhi. Our Prime Minister requested Mrs. Margaret Thatcher to take essential measures to save the life of

Bibisendz which was welcomed by the House. Since I was in opposition of the Congress party, I stood with an intention to say something against it, but I could not say more than that I welcomed whatever the hon. Prime Minister had done. At this juncture there was clapping. I was glad but the very next moment I said just as the hon. Prime Minister requested Mrs. Margaret Thatcher to save the life of Bibisendz I would request the Prime Minister to save the life of Shri Nagbhusan Patnaik. At this the Prime Minister stood up and said.

[English]

"These are two different matters."

[Translation]

At this I said:

[English]

"I think, we were discussing human life."

[Translation]

She was concerned with the life of Bibisendz and not with the life of Shri Nagbhusan?

[English]

"These are two different matters."

[Translation]

This sentence is there in the record of the Parliamentary proceedings and it is an incident that took place inside the House. I am not referring to it with an intention to hit the feelings of anybody.

We would like the Government to take concrete measures to protect the human rights in this country. It is within the power of the hon. Minister of Home Affairs, and he can do great things through it. The Government can enact law in this regard and worthy citizens like retired High Court judges even of 70-75 years old would be ready to sacrifice their pension facilities etc. to fight for the sake of human rights. Today, it would not be proper to mention the names of persons to this effect but there are persons like Justice Bhagwati who, despite working as the Chief Justice of India, took measures to protect human rights which we can never forget. It was Sunday when I went to his house. It took just five minutes to ring to the concerned Officers in Hyderabad, telegrams were also sent wherever required and the life of Sitaramayya was saved in Kondpalli. I did not intend to mention only the name of Sitaramayya in this House, I just wanted to prove that still there are people in this country who are concerned about human rights.

If the Bill introduced in the House is to be given proper direction, certain amendments will have to be made in it. This would include giving adequate rights to all the sections of society either it is a higher Government Officer or an Army Officer, giving adequate rights to the investigating agency and giving punishment to the persons found guilty on the basis of their report and giving due consideration to human rights. At the same time TADA and NSA should also be enforced strictly, under which I can also be put behind the bars. Under TADA, people of Trade Unions to those of minorities, and from children of 8-10 years to old people of 80-82 years may be imprisoned. I have got this much knowledge and whenever the hon. Minister of Home Affairs want, I may give

an evidence in which the Government of Gujarat imprisoned a land lord under TADA when the land dispute went against the Government. The situation cannot improve as long as such laws of land are enforced in the country, justice is not provided and if provided, it would be very expensive. I do have great objection for this sentence:

[English]

"Government has been reviewing the existing laws, procedures and system of administration and transparency in them and devising more efficient and effective methods of dealing with the situation."

[Translation]

I do not know what laws have been enacted during the last two years in House. I do not know what reforms have been made outside nor do I know whether justice has been made easier for the poor people. However, as long as the Government fail to solve these problems, I do not think that it would be possible to give a new direction to the people, neither their rights would be protected nor those who do injustice would be punished. I have no hope that people in the world would consider it as a law of human rights, or even those who have been fighting for human rights would follow it.

Therefore I would like the Government to make an amendment into this Bill and introduce it in the House only when the shortcomings are removed, so that we may take a unanimous decision on such a unique and important matter. Mr. Chairman, Sir, with these words I conclude.

SHRI UMRAO SINGH (Jalandhar):  
Mr. Chairman, Sir, I rise to support this Bill. Just now Shri George Fernandes has referred to the culture and history of India we are proud of. Our history and culture as well as all the saints and great persons have always taught us to move on the path of humanity. My opinion is that we can consider India as the birth place of human rights, rather every aspect of our history is an evidence to it. That is why 'Gurvani' says that all human beings are equal.

[English]

There is no difference between a person and a person. That is what we have learnt from our forefathers.

[Translation]

That is what we have learnt from our history. In a country like ours propagation of human rights means following the path shown by our history.

I have gone through this Bill very carefully. Not only provisions for the protection of human rights have been made in it, but provisions for setting up National Commission at Centre and also at State level for this purpose has been made in it. Nobody has objection if the former Chief Justice of Supreme Court is appointed as the Chairman or Chairperson while the former judges are appointed as the Members of this Commission. In this manner senior most members of judiciary in State are taken. It is perhaps the first instance that such a provision has been made in the Bill according to which selection procedure will be adopted and the Committee will also be defined. It will consist of the hon. Prime Minister at State level, the hon.

Speaker, the Deputy Chairman of Rajya Sabha and the leaders of opposition are also to be included. My submission is that the commission having such eminent citizens as the Members would be a body in which all will have faith. I feel that it is very essential to generate confidence and faith with regard to human rights.

Just now, Shri George Fernandes implicated that the Bill does not propagate human rights nor inspire humanity. I feel that the way this commission has been constituted it will certainly inspire every section of people particularly the poor and the minorities who have been suppressed so far in the country. There are commissions for the poor and minorities and also for women. Women are also the hon. Chairperson of such commissions. People belonging to backward classes will also be the members. In this manner it is such a composite commission through which confidence will be generated in people. It would provide justice. All will have faith in it. I would like to congratulate the Government and the Minister of Home Affairs for that. They have generated confidence in people by introducing this Bill. The Human Rights Commission which is proposed to be constituted now will be of great benefit to people and people will have full faith in it.

Mr. Chairman, Sir, one more reason for the constitution of this Commission is that we have observed that there is a practice in Punjab that 2-3 persons join together to form the so called Human Rights Commission and speak highly about human rights. But neither they have any proper organisation nor public support or following. There was a man, I would not like to mention his name-who propagated human rights in Punjab and he felt that he was quite popular but when

elections were held in Jalandhar in which I was also one of the contestants, he was defeated, because the Human Rights organisation run by him was bogus. However, there has been a constant increase in the number of such organisations in Punjab. These organisations condemn even the good works done in the country. They create rift between the people of different communities working together which gives rise to communalism. If national commission is constituted nobody will bother about such people.

Mr. Chairman, Sir, the Commission proposed to be constituted will be at national level and its powers have also been defined. Under this Act adequate powers have been given to the Commission. It will have the authority to do suo-moto and a petition can also be filed there. It will have adequate resources. So far as the statement made by Shri George Fernandes is concerned in which he has stated that Inspector General of Police would not be entitled to enquire the matters in this regard. Now I am unable to understand what else will we have faith in if not in the police. When will we realise that they are capable of doing work properly. After all they are the citizens of our country and we do know them, we have seen their performance. Now again I would give an instance from Punjab. Hundreds of police officers and other employees died in encounters with terrorists, they sacrificed their lives. If we tell them that we do not have faith in them and that they cannot enquire things, how will they feel. I would like to ask what type of people would you like for holding the enquiry and what will be the proper way to investigate things. Therefore, we must have faith in our own police department.

There will be a senior officer of Secretary level in it having extensive powers through the Bill. The Commission would also deal with the matters relating to conventions held at international level, agreements made with other countries and also whether the international covenants are implemented or not. I feel this is very necessary. Of course this would create duplicacy in High Court and Supreme Court, however slowly and gradually their work will be defined. They will have their powers and will be able to resolve the problems of people by concentrating their attention on pending cases. They will also be able to give due consideration to the rights of people and see where human rights are violated. I would like to draw the attention of the hon. Minister of Home Affairs to section 12 at page 6. It states that:

[English]

"Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;"

[Translation]

What will the Commission do in this regard? Terrorists possess most sophisticated weapons like AK-47 etc. which are not even available in our country, but they get these weapons and training from the foreign countries not to engage in looting or dacoity but to disintegrate the country. In such a prevailing situation what will the Commission be able to do? The disturbed areas should come under their purview. We all are aware with the difficulties the police face when they apprehend the terrorists who were accused of killing

[Shri Umrao Singh]

people in thousands and had an award of Rs. 40-50 lakh.

People carrying A-47 are not apprehended by police in a cordial manner. Skirmishes are sure to take place at this point. If such a situation arises, this commission will visit the place and it will obstruct the functioning of our armed forces and police. It has been said here that

[English]

Terrorism itself is against human rights.

[Translation]

Agreed that terrorism curbs human rights and it is correct we have seen in Punjab and Jammu & Kashmir. We shudder at hearing how all those innocent unarmed people were forced to get down from buses and killed. The terrorists abduct kids and demand lakhs of rupees as ransom. Everybody condemns when women are defiled; gurudwaras and masjids and graveyards are misused. Who is responsible for violation of human rights? The persons who save and safeguard human lives must be rewarded. And this Act should make one more thing clear that the members of all the organisations declared out-law or illegal by the law will not be able to approach this commission because these have already become illegal and their actions are against the country and tend to divide the country into many parts. I believe that these unlawful organisations have no human rights because they lost their human rights, when they took arms against the country.

I must say that this commission should not be made applicable to disturbed areas also and the people having links/relations with members of banned unlawful organisation should not be allowed to come here to lend a charge that injustice has been done to them and our administration should check its activities.

I am most surprised to hear people saying that human rights are being curbed in Punjab and Jammu & Kashmir. People say it many times which only goes to show that they have never been to Punjab and Jammu & Kashmir recently. Mr. Ghulam Nabi Azadji was just present here. He kept coming to us and assured us. But our several friends, such leaders who are falsely propogating that human rights are being violated in Punjab. They do not seem to have visited Punjab to see how the people of Punjab have spent last 10 years in slavery.

People used to be ordered to shut their shops and they would shut them. They were ordered not to switch on the lights at night and all the villages and cities would, as a result, plunge into darkness. They would be ordered to keep indoors with their dogs chained inside. This kind of atmosphere was there in the Punjab for the last 7-8 years. Today, Punjab is peaceful due to the unwanted and concerted efforts of our Police, our Prime Minister Shri Narasimha Raoji, and our Chief Minister. The people of Punjab and the whole country congratulate them for it.

But it is distressful to see that at the so-called Human Rights conference held in Viena some people displayed banners demanding Prosecution of Mr. Beant Singh, Why? What was his fault? He restored peace in Punjab and saved our

country from being disintegrated in parts. I believe that Punjab has been saved and the country has been saved. If today the Punjab survives, tomorrow Jammu & Kashmir will also survive. What our Embassies, our Ambassadors or our Ministry of External Affairs do and why we remain tight lipped when such kind of slogans rant the air.

You may not be aware how we are putting up in Punjab, how much pressurised we are, how our families live under pressure, how dangerously our children live, how do they venture to go out to attend their schools, and how the children of Police personnel attend schools. This is something which one cannot perceive while sitting here in Delhi or elsewhere. I would like to tell the Members of this House through you that foreign countries supply arms to those terrorist stricken disturbed areas and I believe talking of human rights there would tantamount to treachery and that is not going to salvage our country.

It is correct that they have human rights but the human rights of those are being curbed who are being killed, abducted, confined, on whom excesses are being committed, who are being crushed. With these words, I commend and support this Bill.

17.00 hrs.

I think that our neighbour countries will never be placed and they can again create such sanguine situation in the country. I, therefore, would like to say that they should either be dealt with iron hand so as to prevent them from indulging in any anti-social activity or something should be done to avoid the situation coming to such a pass.

[English]

MR. CHAIRMAN: Before I call the next Member, I would like to point out that the time allotted for this subject is three hours and we have already consumed half of the time allotted for this.

SHRI RAMESH CHENNITHALA (Kottayam): This is a very important Bill. We want to speak. (*Interruptions*)

MR. CHAIRMAN: This being a very important subject, the Chair does not want to interrupt you in the midst of your speech. At the same time, please bear the time-limit in mind.

Shri Saifuddin Choudhury to speak now.

SHRI SAIFUDDIN CHOUDHURY (Katwa): Mr. Chairman, Sir, this Bill is meant to create a Human Rights Commission in the country which is long overdue. I welcome this Bill insofar as it starts a new chapter in the annals of our democracy. But I also believe that this Bill is deficient in many areas. I accept the fact that the original Draft that was circulated to us had been sent to the Standing Committee and it had been modified a lot which is evident from the composition of this Commission itself. While in the original Draft, the composition was very much bureaucracy-oriented and it would never have created any enthusiasm in the minds of the people and the question of the credibility of this Commission would very much have been there but in the Standing Committee, this matter was discussed thoroughly and changes were suggested. I am happy that certain changes have been accommodated also. But there are certain other areas where some other improvements could also

[Shri Saifuddin Choudhury]

have been effected which has not been done. I will come to them after some time.

Sir, I must also express my dissatisfaction at the fact that this Commission was created through an Ordinance while this Bill was being discussed by the Standing Committee. What was the hurry in doing so? Was it to satisfy some foreign powers? Or, is the Human Rights Commission to be there in the country for our own requirements? This is the vital question that comes to our mind. A Human Rights Commission is not a cosmetic thing; a Human Rights Commission is not an ad hoc thing but it is the reflection of the fact that we, as a civilised society, want to guarantee the rights of the people; we as a civilised State, want to ensure that the arms of the State do not injure the people, the community in a wrong way, in an uncivilised manner. So, this is our own need. So far, we thought that we have guarantees in the Constitution. We thought that we have chapters on civil rights, fundamental rights and we have chapters on rights for the citizens. We also thought that these are adequate to protect the human rights in this country. We have a very strong and independent Judiciary. They also play a very important role in safeguarding the human rights in this country. We have a very strong and independent-minded Press in the country which also plays a very important role to highlight the issues on human rights in this country. And, above all, we have this pluralistic Parliamentary Democracy which is also a very important guarantee for the human rights of the people of our country. But despite this, it is also a fact that day-by-day, violation of human rights takes place in our country. We have many

good laws which can equal with the good laws of the other countries.

They can measure up to the standard that is suggested internationally. But again we have laws which are black laws which hangs our head in shame before the International Community, some of which have been referred to by Shri George Fernandes. How can we in a very bright way talk about TADA, NSA or MISA or the Armed Forces (Special Powers) Act? Why are these types of acts necessary for our country to run our democracy? We have to very deeply think about it. Why should there be laws to have detention, detention without trial? These types of laws are there. They are anathema to democracy. We have to very deeply think about all this. Despite all this, I find that the need for an independent Human Rights Commission is very much felt in this country. Many people expressed their opinion and we are ultimately going in for that. Our opinion is that the human rights question has international features. We cannot ignore the issues of human rights by saying that this is matter internal to a particular country. There are certain things which are universal. How can as a neighbour of Burma, we remain even silent in this country where the verdict of the people is being violated by the Military Junta in that country and that courageous lady is behind the bars\_Aung San Suuky? I do not know what the international community is doing. What are we doing? We may not suggest that there should be a military intervention from the United Nations or from the neighbouring country. But there may be certain other measures taken. Is our democracy complete if in my neighbourhood, people cannot enjoy their rightful decisions, their rightful expression. These are the things that are to be taken

up. So in Burma if the Military Junta says, "how we rule our country is our own internal matter", and by that flagrantly violate human rights then I am not ready to concede to that assertion. There are certain things which are common to the humanity which are common internationally. But again there are dangers. There are interested parties, interested forces, acting internationally, those who want to use this human rights question as a tool to interfere into internal matters of other country.

17.08 hrs.

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

So we have to really draw a line, a demarcation line, thereby we will be doing good for ourselves if we are alert to ensure human rights for our own people. If we create institutions in our own country whereby the guarantees will be really transparent, it will be understood by people at large. This kind of thing is very important. Now criticisms are being made about the Committee that is there to select the panel for this Commission. Suggestions have been made that it is all right that the Prime Minister will be there, the Home Minister will be there, the Speaker, the Deputy-Chairman, the Leader of the Opposition will be there. But the people who are concerned about this have raised the point that there should have been a member from a non-governmental organisation, there should have been a member from the bar. I find force in this argument. Now what is important is to ensure credibility of this Commission, credibility of that panel which is going to give the names for this Commission. This is a very important thing. We have to take note of the right kind of suggestions that have been made by the people outside.

Now the question that comes is that it is not only a law and order question when we think about the Human Rights. Human Rights is not only a police question, not only an army question. Human Rights is a broader question. Now the powers that are given here, we find only are confined to law and order situation. Apart from that everyday we find human rights violations taking place in this country in the form of people not getting jobs, not getting right kind of education, not getting right kind of health care, not getting right kind of housing. People are evicted. They do not have the land. If they set up their hutments somewhere, they are victed the next day. I would like to know whether this Commission will have right to study these aspects also. These are very important things. Human right is not only a law and order question. I just refer to a gist of the features of the United Nations Human Rights Charter.

In this list we find right to life, right to liberty, right to security of person, right to a fair trial and public hearing by an independent and impartial tribunal, right to protection of laws, right to privacy, right to asylum, right to nationality, etc. In our country we have made many people nationalityless. In Assam we have that kind of a situation and we resented that in this House. Anywhere if this happens, it is wrong. Then there are right to family, right to property, right to election and participation in the governance, right to social security, right to work, right to enjoy arts and leisure, right to living standard, right to health, right to education, right to a share in the scientific progress and its benefits, right to peaceful assembly, right to participate in the cultural life in the community, freedom of thought, conscience and religion, freedom of opinion and expression, freedom from

[Shri Saifuddin Choudhury]

arbitrary arrest, detention, freedom of movement and resistance. In many areas these are violated. Let me take the last one — freedom of movement and resistance; that is also being violated. If people from one part of this country come to another part, they are targetted. They are told that they are foreigners and they are being humiliated and tortured. In the name of religion people are killed. In the name of caste people are killed. We have Scheduled Caste Commission, Minorities Commission, Women Commission and all that. We all understand that. But they are looking after a particular aspect of a particular people. We have to see the overall aspect of human rights. So it is very necessary that we have this kind of a Commission which will go into all this.

It is not only question that a particular political party engineer communal riots in this country and thereby human rights are violated. Then the Government has to be answerable. How can these forces go around in this country?

About northeast, we are listening to so many things. People had gone over to terrorism. It is true that the way the terrorist in Punjab and Kashmir or in any other part are killing people, they are also committing the human rights violation. We have to condemn them. The way they kill the innocent people shows that they have no respect for human rights. We have been telling this to international agencies that you just cannot condemn a Government. But in these countries of the third world terrorists are also a big danger. That has also become a big issue. Terrorists also are destroying the human rights of the people. But how can

we explain the situation where in a particular area in Kashmir or in particular area in Punjab terrorists are killing people and armed forces also go and kill the people? Should this happen? This should not happen. I have no accountability for the terrorists. But I have an accountability for our armed forces, for our police. When the question was raised that armed forces must be kept outside the purview of the Commission, we said no, this should not happen. If you do it, then there is no need for the Human Rights Commission. In our Standing Committee also we discussed that this Commission should have a right to investigate, to ask for facts, to enquire into the allegations. It is not that somebody writes to them and they refer that to the Government, then the Government makes a report and on that something is suggested. No. They should have the full right to investigate.

We agreed in the Standing Committee for one thing. The armed forces have a peculiar, a particular, a specific process of awarding punishment by court-martial. It is not necessary to bring them to the normal process of law in the normal courts. Their punishment or anything that is to be given to them should be done by their own process. That should be reported to this Commission also. But on investigation there is no bar. I do not know this. That is not clear. Mr. Home Minister, you must make it clear. Also, if in the category of armed forces certain wings of the paramilitary forces are taken and if they do not have the court-martial system, then you should introduce it there also, so that if they want to enjoy this specific provision, they should have the system of court marshal also.

So I find that this Commission will be helped by the investigating agencies of

the Government. That is good. This Commission cannot have separate and independent armed forces, police and investigating agencies. One thing which I feel deficient in this Bill is this. They must have some kind of an information gathering cadre system. They must do that. Independent of anybody else, their cadre can go, their research assistants can go, they can collect the information, come back, make a report, and if necessary, ask a report from the Government and then make this public. This is very important.

Another thing is this. Many a time, the reports are prepared and sent to the Government, the Government delays in taking action and make an action taken report. We said that, "you may separate these two". If the report is ready, make it public. If the action is taken by the Government and action taken report is given, then, you make that also public. There is no harm. This way, if we can give more teeth to this Commission, if more credibility is given to this Commission, that will help us. There is no wrong in saying that we are alert in ensuring the human rights of our people. We are going to take to task those errant people of our armed forces or law enforcing agencies who go out of their way to do harm to the people and when that is finished then that will never demoralise the armed forces. That will never do that. But, that will enhance the credibility of our armed forces also. We know that in very difficult circumstances, they are working in Kashmir and in the border areas. We all have high regard for our armed forces. But, there may be certain people who are not behaving in a proper manner that is demanded by the norms of the armed forces. Nobody is there and should be there to protect this kind of misdeeds. If they are pulled up, that will never

demoralise them; but, that will infuse more discipline in those forces. That will give a good name to this country also.

So, while recognising the fact that a lot more can be done, more important can be done, this Commission, when starts functioning, will overcome all the deficiencies, they will assert themselves, knowing that Indian community and the international community are standing by their side and they have nothing to fear; with a courageous attitude, they will move forward to assert and to examine the human rights situation in this country and overcome all the deficiencies thereby grow stronger and really start a new chapter in the parliamentary democratic system of our country.

With these words, I conclude.

SHRI PALA K. M. MATHEW (Idukki): Sir, I thank you very much for having given me this opportunity to speak a few words on this most unique Bill.

This Bill, brought forward by the hon. Home Minister is unique in so many ways, especially seen against the social background and the social milieu. So, I welcome this Bill. I not only welcome and support this Bill, but also I am very glad that such an excellent Bill has been brought forward before this House.

Sir, as I mentioned, the background and the social milieu against which this Bill is shaped is very significant. We have already accepted the international covenant of social and political rights. We have also accepted we are supporting and we are fully involved in the international covenant on economic, social and cultural rights.

[Shri Pala K.M. Mathew]

As explained in the Statement of Objects and Reasons, these rights are protected in our Constitution. Though these rights are protected in our Constitution, a new social situation is emerging all over the world. There are high-speed social changes that are taking place and very speedy social trends are also there. As a great writer Alvin Toffler has pointed out, we are not only presented with the impact of the social changes in the present, but we are also faced with the shocks of the social changes of the future.

Social changes and new trends are emerging at a fast speed. Therefore, there have to be so many safeguards and protections for human rights. It was found necessary, against this background, that there should be a provision for better protection of human rights. That is the background against which this Bill has been brought forward.

As the hon. Home Minister has mentioned, throughout the last so many months or perhaps a year, we have been hearing the views of representatives of the people, social leaders, opinion-makers and media. Again, this has been referred to the Standing Committee which had a threadbare discussion on the subject and submitted its report. On the basis of all these studies, the Home Minister has brought forward the Bill. Even at this late hour, he has accepted certain amendments also. Therefore, I think, this is wholly acceptable. In this Bill, the Commission is basically a fact-finding body. It is a watchdog with enough powers to conduct an inquiry etc.

There is also a provision for human rights court for speedy trial and all that.

This provides for an inquiry into the violation of human rights. Not only the violation but even the negligence is punishable. It has also powers to intervene in the proceedings of the court, visit jails, deal with acts of terrorism, take steps for effective implementation, research, etc.

In this, there is one thing which deserves a special mention, that is, to promote awareness about the safeguards available through publicity. This is a field where there should be a very effective work that has to be done by the Government and also by the non-governmental agencies.

Creating awareness among the people, especially educating the masses about the concept of human rights, is a very important thing. An overwhelming majority of our population is struggling to earn two square meals a day. Illiteracy and poverty are massively prevalent in the society. So, it is right and most appropriate that there is a programme to create awareness among the masses regarding the safeguards available to them. Human rights have attained universal recognition. It is a measure towards country's claim to be civilised. Therefore, this section is very important.

Because of the constraints of time, I do not want to go into the details of the Bill because these have been discussed earlier by my hon. friends. I would like to make a few suggestion which may kindly be noted by the hon. Home Minister. We know that in Europe, Africa and America, there are regional mechanisms for this. Therefore, India should take an initiative in having an Asian Convention on Human Rights.

It should not only take the initiative but India should also lead it. Secondly, we must see that these commissions and their measures would not derogate from the obligation to implement without reservation the existing national and international instruments and should not preclude the rights of the individuals and non-governmental organisation to petition against human rights abuses in any other more effective and higher mechanisms. Thirdly, there should be no overlapping between various mechanisms. There should be proper coordination and integration between the various agencies so that it could be very effective. I would also like to point out that redressal made through these courts should be more accessible and less costly. We know how costly it is to go to the courts and get redressal. There should be safeguards for absolute integrity and independence of the human rights courts and so also we should try to eliminate procedural and institutional delays. I am mentioning only the points due to lack of time. We must see that the best judicial expertise and experience are engaged to help the victims. There should be effective power and persons of integrity and commitment should only be appointed not only in the commission but in other agencies also which are expected to help the commission. We should be very careful not to circumscribe or limit the investigatory and adjudicatory powers of the commissions and the human rights courts. Lastly, I would suggest that we should make use of this opportunity for expanding the frontiers of human rights in our country.

MR. DEPUTY SPEAKER: The time allotted to this subject is three hours out of which we have taken almost two hours; only one hour is left more and there are ten Members to speak.

SHRI NITISH KUMAR (Barh): Sir, this is a very important Bill. Ten hours should have been given to this Bill and we also want to participate in the debate tomorrow. (*Interruptions*)

[*Translation*]

SHRI BHOGENDRA JHA (Madhubani): Mr. Deputy Speaker, Sir why have you left CPI half way?

[*English*]

SHRI E. AHAMED (Manjeri): Sir, while participating in the discussion on this very important Bill, on the one hand, I welcome this as a right step in the right direction and on the other hand, I would like to point out some of the deficiencies which I could just see in the Bill. If this Bill is passed into a law, then this would be a landmark in the history of this Parliament. By bringing such a legislation, Government of India have really done a very good job not only in the national interest but in the international interest of our country. Whether one would agree with it or not, it is an undisputed fact that in the international fora, India has been accused for gross violation of human rights.

They are, in particular, pointing out instances in Punjab earlier and now in Jammu and Kashmir. It is not simply a case of custodial deaths that have been taking place in every country. But it is the gross violation of human rights and this has really tarnished the image that India has in the international fora. This country's creed is *Ahimsa* or non-violence, a theory propounded by the Father of our Nation and accepted by many of the countries in the world. Even in the United States of America, Martin

[Shri E. Ahamed]

Luther King had taken Mahatma Gandhi's creed of *Ahimsa* as his source of inspiration. But quite unfortunately, a country whose ethos is *Ahimsa* has been a victim of these allegations, especially by some interested countries. Many of the Indians living in other countries keep on asking us to do something to save them at least from this sort of propaganda.

But there is one thing to be noted. India is the largest democracy in the world. Even the international media who report about these alleged human rights violation are getting the information from our national media. That itself shows that in India there is freedom of expression and freedom of faith. Because of this freedom that our media enjoy, whatever happening in this country is being published in other parts of the world. And ultimately it is going against us! We just cannot close our eyes to the reality and we have to take note of not only national interest, but also India's name and image in the international field. Under these circumstances, I feel that this is a very welcome feature and a right step in right direction. This will no doubt be a landmark Act in the annals of Indian Legislation.

Here I would like to mention just one point. As rightly pointed out by Shri George Fernandes, I am very sorry to find in the Statement of Objects and Reasons that this Commission would be a mere fact finding body. If you describe it as a fact finding body, the very importance of this body will be lost. In the preamble it is said that this Commission is for the protection of human rights. I may also quote para 2 of the Statement of Objects and Reasons:

"Having regard to the changing social realities and the emerging

trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and system of administration and transparency in them, and devising more efficient and effective methods of dealing with the situation."

With these objects and reasons, why should we call it only a fact finding body? It is not a mere fact finding body. If the purpose of the Government is to term it only as a fact finding body, this could have been brought under the purview of the Commission of Inquiry Act. Anything can be done under the Commission of Inquiry Act as a fact finding body. But this is more than a fact finding body. If there is any deficiency in the very constitution of this body or in the functioning of the Human Rights Commission, we are to make necessary amendments to make it more effective and for that purpose we will have to review whether the very purpose and credibility as well as the ability to function effectively can be served with these provisions? Will the provisions of this Act suffice?

Sir, I am of the view that we are to make certain amendments with respect to the functioning of the Commission. The function of the Commission is only to inquire into and ask the respective Governments to take action against offenders. As many of my hon. friends have pointed out here, I am of the view that the Commission must be given sufficient power of initiate proceedings against the offenders. Unless such power is given to the Commission the Commission will be only a fact finding body, as rightly or wrongly interpreted in the Statement of Objects and Reasons. Therefore, I have already given notice of some of the amendments. I hope the

Home Minister will examine and take them in the right spirit to make necessary changes.

The Committee to select the Members of the Commission consists of Six Members, Prime Minister, Home Minister, hon. Speaker, hon. Deputy Chairman of the Rajya Sabha and the Leaders of Opposition of this House and the other House. I am of the firm view that the Chief Justice of India should be a Member of the Committee which is to be constituted for selecting the Members of the Commission. The Chief Justice of India should be a central figure in this Committee. Respective State Committees to select State Commissions should also have representation of respective Chief Justices in the Committee. So, we can include the Chief Justices of the States also, in State Selection Committees.

The Commission is empowered to inquire into violation of human rights in the armed forces. My friend, Shri Fernandes referred to certain things which happened in our country. It is true, whichever regime we had, in all the regimes there was gross abuse of human rights and the violators went scot-free.

For example, what happened in Assam in 1982? What happened in Meerut during the time of late lamented Rajiv Gandhi's regime? What happened again in places like Gujarat? Shri Fernandes also referred to Hyderabad incident. I would like to ask him what was the record of the Government of which he was a Member. When Shri V.P. Singh was the Prime Minister, what happened in Jammu and Kashmir? After the death of Maulvi Farooq about 85 people were killed by security forces in the streets. It has been continuing. Did the Government at that time make any move? The then

Governer, Shri Jagmohan — I am sorry to mention the name of a Member of the other House— simply kept quiet. Even my friend, Shri Fernandes was a Minister in that Government. It did not stop then and there. What happened in the Hazratbal case? What purpose was served in opening fire against the innocent people? Does our Civil Law say that nobody shall go to a mosque for offering prayer, or a temple for worship or to a Church for his daily prayer? The Government have ordered magisterial inquiry in this regard. When Scores of people died in the police firing the Government did not even think it proper to conduct a judicial inquiry. At that time I happened to be in a foreign country representing my country. I could not show my face to the other delegates.

This is still happening. Therefore, we have to take necessary steps. This Commission will be in a position not only to make necessary investigation or inquiry but also they will proceed against the delinquent officers or whoever is responsible.

We must respect the discipline of the armed forces. We must respect the law which governs their discipline. But armed forces include, as was pointed out in this House itself, not only Army, Navy and Air Force but also CRPF, Assam Rifles, Border Security Force, Bihar Military Police or the Provincial Armed Constabulary. Because they are also dealing with the law and order situation. When they deal with the law and order situation, then, there may be chances of gross human rights violation. So, some Commission is necessary to go into these violations. When there is a statutory Commission after this law is passed—that Commission should be given sufficient power to go into this.

Therefore, if we exclude it, it may not be correct. In this respect, I may just quote what Mr. Sorabjee, the former Attorney General has given before the Standing Committee on this Bill. He said:

"There is no doubt that many things about their actions may be exaggerated. But if you say that the Commission is not going to have a look at any of the violations reported of the security forces, then one of the important concerns is not met. It is true that if there are wrong allegations or exaggerated allegations, it can have a demoralising effect on them. But what happens when there is a case of utmost cruelty and you do not want to take it up. If you do not include the armed forces, you will give an impression that you are just wanting to keep them outside the purview of the Commission. It will be in the interest of the armed forces, if the complaints of alleged human rights' violation against them are also inquired into by this high-powered Commission which will go into them with a sense of objectivity, understanding, the position of the armed forces had come to a conclusion. When the Commission concludes that there is no violation of human rights, it will increase the stature of the army and it will enhance their image."

This is what Mr. Sorabjee had deposed before the Parliamentary Committee.

Then, Sir, I find another one by Justice Mr. Sachar. He had also

"The Court says the action will be taken with regard to the armed forces. To a lay person, armed forces normally means the Navy, the Army and the Air Force. Now, armed forces includes, the BSF and the CRPF also. The BSF Act and the CRPF Act define them as armed forces. By such exclusion, what are you going to give to the Commission— only to inquire into some lathi-charges by the policemen and nothing else. You can inquire into charges against the BSF and the CRPF. You know the situation in Punjab, in Kashmir, in North-east or anywhere else. So, if the Commission is only to inquire into some violations by the police, it is a mockery because the major part of these violations are taking place precisely by these institutions and if they are not subject to a review by the Commission, it is a complete mockery."

Therefore, Sir, inquiring into the alleged violation of human rights by the armed forces should also be brought within the purview of the Commission.

Another suggestion I would like to make here is this. I hope, the Home Minister will give due consideration to this. Now the definition and other Clauses have given powers to the Commission to take action against those who commit human rights violations.

It also includes those who did not take steps to prevent the commission of human rights violations. Here, I would say that we should also include the conspirators for such violation of human rights because we always find conspiracy

is there for violation of human rights and whoever may be the conspirators should also be brought before law. Then only we will be able to get to the bottom of the problem.

With such amendments I have given notice and due to paucity of time I do not want to go into it in detail. But I welcome this Bill. This is the right time for it. This will definitely boost the image of our country in the comity of the nations.

SHRI SARAT PATTANAYAK (Bolangir): Mr. Deputy-Speaker, I rise to congratulate the hon. Home Minister for his able initiative to set-up a Human Rights Commission in this country thereby effectively silence the self-styled votaries of human rights activities in different parts of the country.

I would like to give only some points, without taking more time of the House.

MR. DEPUTY-SPEAKER: Very good.

SHRI SARAT PATTANAYAK: Since law and order is a subject matter of the States, it is heartening to know that the issue was deliberated upon in the Chief Ministers' Conference and other fora also. However, there are certain areas where the provision of the Bill should have been more explicit.

For example, the composition of the Commission should have included at least some public spirited individuals or voluntary agencies working in the field. There should have been regional offices of the Commission and it is heartening to know that the States also will have State

level commissions to enforce the observance of human rights.

There should have been an advisory committee to guide and oversee the functions of the Commission. The Chief Justice of India and the Chief Justices of the High Courts should be ex-officio members of the Commissions at the national and State levels respectively.

Under Clause 2 of the Bill, instead of providing for the regular employment of police and other technical persons, the Commission should seek the services of experts in various fields on deputation to meet the needs of the situation from time to time.

Under Clause 13 of the Bill, the powers of the Commission should have included public interest litigation, which affects the large interests of the community.

Under Clause 20(1) there should have been a provision for laying the annual report of the Commission on the Tables of both Houses of Parliament.

The Central Commission should have the powers to transfer the cases from the State Commissions, if it is reasonably satisfied. Where the rights involving the States are concerned, the matter should be adjudicated by the Central Commission.

The duration of one year for inquiry into violations of human rights should be extended to maximum of two years under Clause 36(2) of the proposed Bill.

Immunities should be provided to bureaucrats to appear before the Commission for tendering evidence

[Shri Sarat Pattanayak]

during the proceedings and the confidentiality of the name or the complainant should be maintained.

Under Clause 17 the Commission should have powers to initiate *suo motu* proceedings after any violation has come to its knowledge either through a person or a petition.

I conclude by saying that I support the proposed Bill.

[*Translation*]

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Mr. Deputy Speaker, Sir, I am grateful to you that you gave me an opportunity to speak on this Bill. The Human Rights Protection Bill has been introduced in this House and hon. Members have expressed their views on it. I do not know whether the rights provided in this Bill are meant for implementation or for the sake of mockery only. First the Human Rights should be analysed and defined. It should be made clear as to what rights are included in the Human Rights Protection Bill. Today, the police arrest innocent people under the Goonda Act. Is it any human right? I, therefore, request that the Government should not conceal anything from Lok Sabha.

Human Rights are not protected in a capitalistic society. Human rights are bound to be violated to remain in power. If somebody raises voice against the Government, the ruling party suppresses it through black laws. Therefore, until these black laws exist the Bill which has been introduced, will be of no use. As it has been told about the police force on

page no.1, s.no.19, Clause1 "if the police violates human rights, we will ask its report from the State Government or the Central Government and then we will give our intent". The Central Government will give report in your favour. Therefore, it is of no use.

There are severely oppressed people in the locality of a Jamak village in my constituency Jahanabad. Two brothers had come back after doing their day's labour and they had slept outside at night. The police of Jahanaad shot both of them while they were sleeping and nothing had happened. Therefore, it is useless to talk about human rights.

Is education included in human right? If it is included then what right does the Government have to deprive them of their right to education? There are so many villages in my constituency which do not have the facility for education. Against whom the law suit will be filed? There are hundreds of such villages in my area where the people are very backward. There are villages having population 500 to 1000 each but there is no school there. Even during the Congress Government, no school was opened there. Now there is the Janta Dal Government and still there is no school. I have raised this issue time and again. Is it not an issue of violation of human rights? While replying the debate, the hon. Minister of Home Affairs should reply to this also. He will promptly tell that education is subject under the State List. But it is duty of the Central Government to review it. Why the Government does not open Central School there? The State Government has virtually made the people animals by not providing education to them. Does the Central Government also intend to do so?

Here dispute is created in the name of forward and backward castes. A Harijan became the Chief Minister there but there was no improvement. I have been raising this issue all the times but of no use. Is it not the issue of the violation of human rights? We who have come to this august House, should tell honestly whether we do not violate human rights? Even today the poor are debarred from their franchise. Is it not the fact that a male voter in place of a female one and the female voter in place of male voter cast their vote. By virtue of this alone we have been able to become the Member of Parliament. The people in rural areas are not allowed to cast their votes. There is no school. Where should they appeal in this regard? The Government has done nothing to look into the matter and yet it boasts of human rights? The Government is signing the Dunkel proposals. Is it not the violation of human rights? Today, about 50 to 60 thousand those workers are being retrenched in Bihar, who have been working there for 15 or 20 years. Is it not the violation of human rights? Who will look into it?

Mr. Deputy Speaker, Sir, if this Commission is not given power, it means the government is deceiving the people. How can the Commission headed by a Chief Justice of India function without having any right? The Government is then merely putting financial burden on the country. It seems that one of the lawyers argues that it is genuine while the other emphasises that it is not genuine. One appreciates the step taken by the Government while the other argues that it is meaningless. I would like to ask the hon. Minister of Home Affairs as to what does this imply.

Mr. Deputy Speaker, Sir, I was arrested under the Goonda Act during the regime of Dr. Jagannath Mishra in Bihar, I have been elected thrice a Member of the Bihar Legislative Assembly and also a Member of Lok Sabha. I have been the Pradhan of the Panchayat there five times consecutively then how did I become goonda for which I was arrested under the Goonda Act? Here the question is that if I speak against the Government I become a goonda. I, therefore, would like to ask the Minister of Home Affairs whether he will make this Commission powerful or not. The issue of violation of human rights should be applicable to all—whether they are police or the Government. It will exert pressure, that there is an organisation more powerful than Lok Sabha which will not spare anyone. With these words I conclude.

[English]

SHRI RAMESH CHENNITHALA (Kottayam): Sir, I rise to support the Bill which has been introduced by the hon. Home Minister.

This is a very important subject which is now being discussed in the length and breadth of this world. Definitely, I can say that this is a turning point in the parliamentary history of our great nation. The United States of America and U.K. were critical to the situation which is prevailing in our country. These are the two nations which are criticising India on this very human rights issue.

The German Parliament discussed this issue. I was told that they are coming out with the report. We have good trade

[Shri Ramesh Chennithala]

relations with the countries of the European community and they are also insisting and pointing out the infringement of the human rights in our country.

The human rights movement has two dimensions. One is the dimension of Justice and the second is the dimension of publicity...*(Interruptions)*.

MR. DEPUTY SPEAKER: Just a minute, Mr. Ramesh. Shri Mukul Wasnik is to lay the Report of the Business Advisory Committee.

18.00 hrs

## BUSINESS ADVISORY COMMITTEE

### Thirty-fifth Report

*[English]*

THE MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF YOUTH AFFAIRS AND SPORTS) AND MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI MUKUL WASNIK): Sir, on behalf of Shri Vidyacharan Shukla, I beg to present the Thirty-fifth Report of the Business Advisory Committee.

MR. DEPUTY SPEAKER: Is it the desire of the House that we sit for a short while, at least for 5-10 minutes, so that Ramesh is able to finish his speech?

SOME HON. MEMBERS: He can continue tomorrow, Sir.

MR. DEPUTY SPEAKER: The difficulty is that tomorrow the time will be very short and if only 2-3 minutes are given to each Member, that does not look nice. Many Members will even be denied of an opportunity to speak.

SHRI RAMESH CHENNITHALA (Kottayam): Sir, this is a very important subject which we are discussing. So, we must be given enough time to speak.

THE MINISTER OF HOME AFFAIRS (SHRI S.B. CHAVAN): Sir, may I request all the hon. Members who would like to participate that they can complete their speeches today so that I am able to reply tomorrow?

MR. DEPUTY SPEAKER: That is a very good suggestion I think. What is your response to that suggestion?

SHRI SAIFUDDIN CHOUDHURY (Katwa): No, Sir, not today. No violation of human rights.

MR. DEPUTY SPEAKER: There are 15 to 17 names in the list before me.

SHRI GEORGE FERNANDES (Muzzaffarpur): It cannot be completed today under any circumstances....

*(Interruptions)*.

AN HON. MEMBER: Tomorrow we can adjust the time, Sir.

SHRI S. B. CHAVAN: Tomorrow also we shall find the same problem.