

[*Translation*]

SHRI RAJVEER SINGH (Anola): The day before yesterday, an instruction was given by the Chair that the hon. Minister of Home Affairs would make a statement on the situation obtaining in Kashmir before the current session is adjourned sine die. The hon. Minister of Home Affairs is present in the House at the moment.

MR. SPEAKER: Neither the hon. Minister of Home Affairs nor we are aware of it.

SHRI RAJVEER SINGH: It was clearly said that statement would be made before the current session is over.

MR. SPEAKER: At least this much you are witnessing yourself that he is sitting before you and we all are also sitting before you.

[*English*]

SHRI CHETAN P. S. CHAUHAN (Amroha): Sir, we met the Home Minister and directions were also given from the Chair that the Statement could be made. The issue of Jammu valley is very serious. I think it will take only five minutes for the Minister to make the Statement.

MR. SPEAKER: He has been so busy and we too have been very busy. There is no time. If you curtail the activities that start at 12.00 noon, we will have more time.

(*Interruptions*)

MR. SPEAKER: How much time do we need for these Bills? I think we can take item No. 19 and 20 together and item Nos. 21 and 22 can be taken up separately.

This matter has been discussed more than once on the floor of the House while discussing the president's Address, while discussing the Home Ministry's Demands, while discussing the Bombay Bomb blast and it was discussed even today also. So, it may not be necessary to

go over the points again and again. If we can do it quickly, we will be very happy.

MR. SPEAKER: The House shall now take up item Nos. 19 and 20 together.

18.40 hrs.

TERRORISTS AND DISRUPTIVE
ACTIVITIES (PREVENTION)
AMENDMENT BILL

AND

CRIMINAL LAW (AMENDMENT) BILL

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

"That the Bill further to amend the Terrorist and Disruptive Activities (Prevention) Act, 1987, as passed by Rajya Sabha, be taken into consideration."

As the hon. Members are aware, the Terrorist and Disruptive Activities (Prevention) Act, 1987 (No. 28 of 87) was enacted on 3rd September, 1987 to meet the extraordinary situation created by wide spread terrorist violence in many parts of the country. It was envisaged at that time that it would be possible to overcome this problem to a large extent within a period of two years. It was, therefore, provided in the said Act that it would remain in force for a period of 2 years i.e. till 23rd May, 1989. The life of the said Act was further extended by 2 years each time in 1989 and 1991.

We have to concede that this is a harsh law which will be out of place in normal situation. But hon. Members will agree that Terrorism cannot be tackled with velvet gloves. The law has to be available so long as terrorism shows its ugly face.

However, it is a fact that sometimes the provisions have been misused and this has created problems. We carefully considered how

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to soften the provisions to reduce scope for such misuse. Some important changes have been proposed. Thus investigation can commence only if the S.P. authorises it and prosecutions launched only with approval of I.G. The provisions about extra judicial confessions being admissible have been deleted. In camera trial will be at the discretion of the Court. Remand during investigation under Section 167 would require judicial application of mind and the progress made in the investigation will be considered if remand is to be extended beyond 180 days. Other meaningful changes have also been made.

The amendments to the Act further concretize the Confiscation Agreement signed recently with the United Kingdom for mutual assistance in investigation and prosecution of terrorist crime and the tracing, restraint and Confiscation of the proceeds and instruments of crime and it propose to extend the Act for a further period of two years up to 23.5.1995.

Now, the second Bill.

I beg to move:

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1973, as passed by Rajya Sabha be taken into consideration."

Sir, Kidnapping or abduction with the objective of securing ransom in the form of money or any other advantage is a dastardly, etc. The threat or apprehension of violence, hurt to the kidnapped or abducted person arouses insecurity and panic amongst relations of victim and the public. No society can allow itself or its citizens to be trampled over in this manner. Most deterrent punishment is, therefore, called for in such cases. The Law Commission also had, in its 42nd Report recommended that the kidnapping and abduction for ransom purpose should be made a specific offence.

The Bill seeks to amend Indian Penal Code to provide for deterrent punishment to persons committing such heinous crimes and to make certain consequential amendments to the Code of Criminal Procedure, 1973.

I commend the Bills for the consideration of this august House.

MR. SPEAKER: Motions moved:

"That the Bill further to amend the Terrorist and Disruptive Activities (prevention) Act, 1987, as passed by Rajya Sabha, be taken into consideration."

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

MR. SPEAKER: I think, Mr. Bhavani Shankar Rawat should have spoken, but I am asking Shri Shal abuddin to speak because it seems he has to go.

Before that, as the hon. Members were asking for Statement on Kashmir, now they have sent me a notice. I will allow them later.

SHRI SAYED SHAHABUDDIN (Kishanganj): Mr. Speaker, Sir, the hon. Minister has placed before us the history of this piece of legislation which can only be called as black Act. It was passed in 1985 in the hope that it shall help us contain, if not eliminate terrorism from the face of our country. Then, it was renewed in 1987, 1989 and 1991. We are all conscious of the fact that during these eight years, terrorism has risen not only in its horizontal spread from some States to many more States, but has also become more destructive, more violent and the State appears to be helpless against this phenomenon of terrorism. I can only draw one conclusion either this Act is not the right medicine or it has not been used against terrorists, but used against the wrong people, the non-terrorists.

Sir, this law goes against the very spirit of our Constitution. I do not think anything like this was ever promulgated, enacted by the British, when they were in power. Rowlatt Bill was a child's play compared to these black Acts that have come into force in independent India.

All the same, it is in the interest of the country and I am not questioning the bona fides of the Government that these such Acts are brought into being when necessary. However, there has been extensive misuse of the Act the statistics can easily prove it but the Government should have provided them today, the statistics, Statewise as how the powers under this Act have been used by various State Governments.

The hon. Minister should tell us how many times has it been used, how many persons were arrested or detained under the Act? How many of them were released after interrogation and how many of them were released on bail on the order of court? How many were finally charge-sheeted or prosecuted and in how many cases was the State able to get a sentence from the court? How many were acquitted? We have no such statistics before us. The hon. Minister is silent about it. But off and on we have been asking question. Innocent people have been detained under this Act in thousands. And it has been used, I must confess, without any discrimination, as to age, as to sex, as to economic status, as to professional status, against young and old, against children; it has been used against women, against people who are members of the elite; it has been used against all sorts of poor people.

I do not have the time to give you the details. But, I am sure that the House is aware of the extensive misuse of this Act against the weaker section of the society, against the poor people, against the minorities and even against political and social workers. The Minister should take us into confidence and tell us in how many cases was it used against the children, against women, against political and social workers? What is the proportion of the persons who belong to the minorities?

I cannot particularise a particular State Government. All State Governments have made use of it more or less. The power is an intoxicant; and an alcoholic and drinks it excessively.

Therefore, if one state is vested with these black powers, with extensive powers, the Government are prone to use their power excessively. But, on the whole, I maintain that the National Front and the Left Front Governments had been more restrained in the use of this power. I would like to know from the hon. Minister about State-wise break-up of the use of this power.

We have a number of cases in which we have been subject of appeal on the floor of this House. There are cases where the State Governments have asked the Central Government for review. Some prime facie innocent cases and we were made to oscillate But in between the Centre and the State Government, the Central Government saying that the State Government has to make up its mind, the State Government telling us that we have sent a report to the State Government and is particularly the Central Government and the Home Minister to decide and to tell us what to do. Whether on the basis of the experience for the last eight years have the Government worked out a procedure for this internal review, for administrative review, for an executive review between the State Government and the Central Government on the application of this Bill? After all, this is a central Bill; this is a central legislation. Therefore, we do think that it is the duty of the Central Government to keep an eye on how and in what manner it is being used by the various State Governments so that at least there is no arbitrariness; and there is some degree of uniformity about the nature of the cases in which it is to be applied, the nature of the offences, the nature of circumstances in which this Bill shall be applied by the various State Governments. I would like to have very categorical answer from the hon. Minister, whether he has no devised a procedure on the basis of eight years of working of this law in order to take away this sting from it, in order to make it at least susceptible of some

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human touch in application about how to review cases when they are brought to the notice of the Central Government?

The Home Minister, therefore, must exercise a greater sense of responsibility if we are to vest him with this power.

In the Statement of Objects and Reasons of this Bill, in paragraph 3 again a foreign country has been invoked. This is the second time that this has been done. I don't now why is it necessary that we must have interal legislation in order to oblige a foreign government? Why must we do so? Of course, it is part of the executive responsibility of the Government to have such arrangement with foreign countries if necessary. But, when we come before our own sovereign Parliament, the case must be made out on its own merit; the case cannot be made out on teh basis that we have to fulfil a certain contractual obligation or a certain agreement or meet a situation in whcih the other country is involved.

I have also submitted some brief amendments.

Because I would not lime to speak again on this Bill. There is one clear legal lacuna in Section 4, Page 2, it says

"Whoever holds any property derived or obtained from commission of any terrorist act..."

the ad nauseam is missing. A person must knowingly be doing something wrong. A person who knowingly holds any property derived or obtained from commission of any terrorist act obviously is culpable but if the person, somehow in certain circumstances, is innocently found to be in posséssion of such property he is not culpable, I think that goes against the basic principle of Indian jurisprudence.

There is another instance here in Section 7

(A) in which it is proposed to interpose the prior permission of the officer making such order between the designated court and the person accused. The permission of the officer himself is irrelevant. I do not see why could that be necessary. Once the case is to be brought before the designated court then the prior permission of the officer should not be necessary.

Then again it is stated that:

"the investigating officer shall duly inform the designated court within forty-eight hours of the attachment of such property and the said court shall either confirm or revoke the order of attachment so issued."

If the case goes directly to the designated court, there is not question of the officer later informing the court. Therefore, I have asked for the deletion of that proviso.

There are instances where the period of 120 days is being extended to 180 days. I think it makes the Act more severe. It makes the Act more draconian then it originally was. Therefore, I have suggested in these cases, the period of 180 days should be reduced to 120 days.

There is one point where the investigation period can be extended upto one year at one go. Why should that be so?

SHRI S.B. CHAVAN: It is not in one go. It is six months.

SHRI SYED SHAHUBUDDIN: You are taking initially six months and after that you want another extension of one whole year. Why cannot you take it in driblets say of in three months so that the police is also on its toes that the investigation authority is more efficient, more effective? Because it knows it is have to come back to your and get a further extension. Therefore, if you are going to make a provision in this Bill for one time extension of whole one year or mix months it is bound to have deleterious effect on the course of investigation. It is not going to make

police more efficient, it is going to make police less efficient.

Finally, there is a phase here "no information about the commission of an offence under this Act shall be recorded by the police." I have proposed that instead of the word recorded there should be "it should not be taken cognizance of" or the sentence should be, as it is said in the code of criminal procedure generally that "the FIR shall not be recorded or the information shall not be taken cognizance of". Either of these two amendments should apply.

As the law stands and on the basis of the experience that we have for the last eight years of the working of this Bill which has been very indiscriminate and which has been rather arbitrary, which has been harmful to a lot of people, which has brought down the dignity of the State in many cases, which has brought down the prestige of the Government concerned in many cases, which has made them appear arbitrary and work in total disregard of human rights, of fundamental rights in many such instances, I would suggest that this Bill should be dropped. I therefore, appeal to the Home Minister to reconsider his Bill and to withdraw his Bill. His armoury is full of other devices with which he can control the menace of terrorism. He cannot make out a case that with the help of this Bill he has been able to control terrorism, he has only been able to, as I said, bring down the fair name of the Indian State.

Therefore, with these words, I oppose this Bill and request him either to withdraw this Bill or at least to accept the amendments that have been proposed.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra): Mr. Speaker, Sir, TADA Amendment Bill and also two other Bills related to it have been introduced. In this context I would like to submit that the Government continue to widen its scope, it has again felt the need to amend it.

However, we have to see, whether the TADA fulfils the motive for which it was enacted. I was going through it and I found that there was a reference in the aims of this Act that the prevailing problematic conditions in Kashmir, Assam and Punjab at that time is necessitated the enforcement of this Act. However, after it was implemented, the situation continued to deteriorate in the States like Uttar Pradesh, Gujarat, West Bengal, Rajasthan, Madhya Pradesh, Himachal Pradesh, Maharashtra etc. In other words, the disease aggravated with each dose of medicine. There is no meaning in implementing a law which rather adds to crimes. Our Government lacks the will-power to enforce it strictly and get obeyed the spirit with which TADA was enacted.

I would like to submit that it was enforced on May 23, 1985. Since then, about 52,998 persons have been challenged. However, it is just ridiculous that only 434 persons out of them were punished. The ratio does not come even to 1 percent what will be a blind law other than which is being misused at large and which completely suppresses the individual independence. The matter to this effect has been pending in Supreme Court.

Articles 14, 16, 21, and 22 are being violated to suppress the individual independence and deprive people of their right to freedom of expression as also their right to property. However, despite wide spread misuse of the Constitution, the Government failed to achieve the actual motive of the law. No law is effective unless it is enforced to punish the culprits. Since, the Government lacked will power, the culprits were not punished. About 14007 cases in total were filed in Punjab while only 52 persons were prosecuted. Similarly it was enforced effectively neither in Kashmir nor in Assam. Gujarat was only state where this law was enforced. I would like to submit gracefully that this law was enforced to suppress the political rivals like BJP in Gujarat, but not in Kashmir where wide spread terrorism has brought the valley on the breaking point. I would like to

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submit to the hon. Minister that out of the total 1400-1500 cases filed in Kashmir not even a single culprit was prosecuted, all of them were released. What is the utility of enacting a law under which a culprit is not prosecuted.

The hon. Minister has made stringent provisions, I would like to appreciate him that despite harsh criticism the hon. Minister has tried to restore some human rights in place of harsh provisions in the Bill. For instance the time limit for the charge sheet has been decreased from a year to 180 days. A provision has been included that with the permission of the Court the hon. Judge will go through the diary of the investigation agency and then only he may increase the time limit only if he finds it justified. Secondly, so far as the camera trial by the prosecuting agency is concerned, it would be done only with the permission of the judges.

19.00 hrs.

Though, the Government of late, has diverted, yet this diversion is the result of only the failure of the policy adopted so far. The Government is aware that the stringent provision in itself is of no utility because evidences against the culprits are not proved. TADA is meeting the same fate as that met by the Gangster Act. Therefore, there is no use of making stringent provisions. There was some dispute with regard to its application in the marriage cases, and the police started misusing it in them also. In this context I would like to relate an incident that occurred in Amritsar. A dispute arose between the family of the groom living in Amritsar and that of the bride living in Delhi. The bride's father lodged a case against the groom's family under TADA, as a result of which groom's brother was arrested and kept in jail in Lucknow. This incident created a risk for the service of a senior officer. Delhi is the capital of the country, the matter was intervened. Similarly even persons carrying cartridges are being challenged under TADA. The verdict of the special court has been challenged in Supreme

Court, therefore it is proving of no utility, rather it is causing loss.

Mr. Speaker, Sir, this law is against the true spirit of the Constitution and the ethics of the criminal law, the provision of which has been made in this Act. The culprit in this case himself has to prove his innocence and the stringent principles also go against him. Now, TADA is being enforced on M.Ps. Recently, I heard about the incidents of bomb-explosions in Bombay. Shri Madhukar, an MLA was arrested under TADA, and in prison under NSA, but had to be released after three months. He was not involved in riots, that is why he had to be released. This is how the Act is being misused, it is of no use.

Mr. Speaker, Sir, recently, one of our colleague's son Sanjay Dutt was arrested while the actual culprits were spared. I would like to allege that he was arrested without any evidence so as to spare the actual culprits. My submission is that it is of no use to challan an innocent person and spare the actual culprits. Apart from it, the Government has now started taking action under TADA against those who fail to get their licences renewed within time. A licence has to be got renewed once in three years, but the period can be increased by paying penalty; still the Government has been taking action under TADA. A person was challenged for delivering a provocative speech, it is of no use. There are many other provisions for the purpose.

Mr. Speaker, Sir, at the same time, the matter of political rivalry has also been raised of course it was applied during the rule of Shri Bhairon Singh Shekhawat. It was applied against 34 persons. It is an eye opener, illustrative for the Government 206 bombs were seized in Kota while 32 were seized in Jaipur. Besides, a large quantity of ammunition was seized and the Government of Rajasthan did apply TADA against the culprits in this regard. Had the law been enforced in the proper spirit, it would certainly have proved a success. But since it was not implemented effectively, it failed. Its validity has been challenged in the Supreme Court and the

judgement kept reserved there. Therefore my submission is that the Government must wait and see what fate it meets. hereafter it would take action I would also like to point out that we have listened to the views of the former Governor of Kashmir with regard to the State of affairs in the valley.

It has been evident from the incidents of kidnapping of Shri Mufti Mohammed Sayeed's daughter and the killing of four Indian Air Force officers that the law was not at all enforced effectively. The result is that the law has become in effective. My submission is though the provisions for penalising the hijackers are effective, yet the question is who the hijackers are. These are the persons having political protection. A Hijacker named Hari Singh was apprehended, and the world knows that this hijacker had contacts with one of the Cabinet Ministers of India. Therefore, I would like to submit that these mal-practices should not be allowed to go on. Bhole Pandey was given Congress ticket to contest the elections while he was already involved in the hijacking of an aircraft. The situation cannot improve at all particularly when hijackers are provided political protection and respect. Had the Government been determined to tackle the situation boldly, these things would not have taken place.

I would like to quote the example of Israel. America took action against the terrorists in Libya and Panama. Italy, Columbia and France also took the initiative to destroy the terrorist dens in the neighbouring countries. Did the Government of India take any action under TADA against the terrorists being aided by Pakistan? How many such persons were challenged? What was the total number of terrorists who took active participation in terrorist activities? Only those people were challenged who were found guilty of offering tea or snacks to the actual culprits. Though you, I would like to know how many of the actual culprits involved in terrorist activities were challenged or punished? Yesterday, we were having a discussion on the working of Verma Commission

set up to investigate into the case of the assassination of Shri Rajiv Gandhi. Earlier, General Vaid was assassinated and his killers Sukha and Jinda were challaned under the same law. They were challaned for murder, and they were challaned under TADA also. But it is very surprising that the charges against them were not proved under TADA though, of course, they were punished under Indian Penal Code. It is very shameful that on one side the accused persons in murder case are being awarded the death sentence under the criminal laws but the some accused persons go scot free under TADA. Therefore, my submission is that the Government should strengthen its willpower and take effective measures in this regard.

[English]

MR. SPEAKER: Shri Loknath Choudhury. How much time you need?

SHRI LOKNATH CHOUDHURY
(Jagatsinghpur): I know my limitation Sir.

MR. SPEAKER: Let me know the time that you need. I have to organise it because four Bills are there.

SHRI LOKNATH CHOUDHURY: I will take maximum seven minutes Sir.

MR. SPEAKER: O.K., you take ten minutes.

SHRI LOKNATH CHOUDHURY: Sir, I stand to oppose this Bill because extension is being taken for another two years. It is seen from the statement of Object and Reasons and from the statement given by the Home Minister that this Act has not been able to check terrorism or disruptive activities. They are spreading and will be spreading.

This type of Act, which we have been calling a black Act, is not new. Since the coming of the Congress Government, this Act has been there either in the form of preventive Detention Act or in some other form the words might have

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changed. I myself was a victim of the Preventive Detention Act, for which I had to stop my studeis and I had to remain in jail for few years. The ground of detention was that I am a dangerous and a deperate Communist, and it was never reviewed. Even when the High Court released me, the Government again put me inside the jail.

'Government' means the power is given to the police. Here the Home Minister has already said that this had been misused. But, not to have further misuse, he has brought out some amendments by giving the powers to the Inspector General of Police and the Superintendent of Police. No case will be taken cognizance of without the permission of the Director General. The cognizance of the court will not be there unless the Director General approves it. But this will never check terrorism. 'Terrorism' means spreading terror. Here we should take the whole thing into consideration, the totality of it, taking the international and national factors and correcting our view, so that we can check terrorism. So, fighting terrorism by putting some people in jail will not do. I agree with Mr. Shahabuddin that it is misused, it is never used against real terrorists; the terrorists have gone scot free. I want to ask one question because throughout the day we have been discussing something about terrorism. For two days we have been discussing matters relating to terrorism. I think the Home Minister must be tired of replying and, Sir, you yourself must be so tired of it as to ask us to limit our submissions and not to repeat the same thing. But I want to tell the Government that this Act had never been reviewed by the Government. Only the Government goes on extending it without going through the causes of these activities which are growing. So, there are two or three reasons. The first reason I want to give is that terrorism has become an international factor because of certain developments in the international arena. Now there is no question of war. The war merchants are there, they want to sell their arms and they spread this culture throughout the world so that

they will be able to save their industry and make profit. So, in our country today, you go to any cinema. What do you see there? Wherever there is discontentment and dis-satisfaction or oppression, they show the oppressed people taking to arms. So, unless the Government takes the whole thing in totality, it will not be able to check terrorism. Our police force will never use this power for the purpose for which it is being given to them. Here, I would like to state that Mr. L.D. Arora, Additional Collector of Customs was shot down at Allahabad because when he was in Bombay he took the Mamon brothers to task and he was transferred from Bombay to Allahabad. It was he who informed the Bombay police from Allahabad in January, much before the Bombay blasts, that there is a large-scale arms smuggling in Bombay. So, after the Bombay blasts, the Bombay Police wanted to take his assistance and called him to go to Bombay on Sunday. He was shot down on Wednesday before going to Bombay. So, the question is that nobody inquires into it about his transfer and about his murder. Why? Because the growing terrorism has kept the Administration under control. The ideological question is the main question and unless people are ideologically educated, they will not be able to face terrorism and enacting this legislation this way will not serve the purpose. What is required is to educate the people, make them conscious ideologically so that they oppose terrorism in every sphere. Unless the Government thinks in that way to check terrorism and an effort is made ideologically to remove the discontentment of the people, you cannot fight terrorism. You cannot fight terrorism by arresting some people and giving all powers to the police. The police use this power not against the terrorists, but more against the innocent people and people who fight for their just cause.

So, Sir, I am opposed to this Amendment. If the police fails and if the Act fails, the Home Minister will again come with another amendment with much more stringent measures which, instead of solving the problem, will give more boost to terrorism. I have seen in my State how

it was used.

So, naturally it is high time now that the Government should review the whole thing in totality and the Government should come out with some new measures so that terrorism never spreads and the Country's stability is not disturbed. So, for that purpose some more efforts are necessary. This Act will never serve the purpose and the Home Minister will again come for another extension after two years. Then, the State will become a repressive State without understanding the problem of the people. It is a stigma that such a statute remains in our country and we should all be ashamed of it.

With these words I oppose this Bill.

19.16 hrs.

SHRI SUDARSAN RAYCHAUDHURI (Serampore): Mr. Speaker, Sir, I oppose this Bill. The objective of TADA when it was introduced first was to curb terrorism. It was said that this special Act is meant for a special situation and it was expected then that within a span of two years we would be able to curb terrorism, but what we have seen is, repeated attempts of the Government to continue with this Act. The present Bill also seeks to give a fresh lease of life of two years. But, is there any guarantee that it would not be a permanent thing in our statute book?

Sir, secondly we are opposed to the very way in which this Act is being used. The most authoritarian, anti-democratic and often cavalier manner with which the Government uses this Act. We know that this Act has been used against political adversaries, trade unionists and common citizens with impunity. In Tripura we have seen how the earlier State Government used TADA against democratic movements of the State. It is reported that in Rajasthan too, during the earlier Government's regime, when the trade union workers belonging to the Electricity Board were on strike, they were arrested under TADA. The total approach of the Government would be clear from this fact that I

have one statistics in which according to the official figures, during July, 1992 26,553 people were detained under TADA. But the most shocking statistics is that, despite so many arrests, there have been only 78 convictions so far. So, this is the true picture.

Sir, barring a few exceptions this Act has been more misused than properly used. I know that problems of terrorism are there and the problem of narco-terrorism, communal riots and secessionism have taken alarming proportions. I must say that apart from socio-economic causes, the various acts of omission and commission of the Central Government and other Congress (I) Governments in the States are to be blamed for it. But problems are there and we must deal with the terrorists, secessionists and the persons with whose activities the country's unity and integrity are affected. We should deal with those people with a strong hand. But the existing laws should be utilised for that purpose and if necessary, suitable amendments should be made of Acts like the Criminal Procedure Code, Indian Penal Code etc. This cannot be done without sharpening the teeth of existing laws and without trying to have the necessary political will to fight against terrorism and secessionism. So, this attempt of bringing TADA type of acts cannot be supported.

Here there is an amendment to the Bill to obviate misuse of power. Superintendent of Police has been given the power. But we know that in Tripura SP or IG Police functioned under the orders of political bosses during last year.

In the circumstances, we cannot guarantee that this Act will not be misused.

So, my point is that the Government should come with suitable amendments to the existing laws and after strengthening the existing laws, we can deal with the problems of terrorism and disruptive activities. But this Act is reminiscent of the Acts like the Preventive Detention Act or DIR or MISA or NASA.

We cannot support this Bill. Under the circumstances, we are opposed to this Bill.

[Translation]

SHRI GUMAN MAL LODHA (Pali): Mr. Speaker, Sir, two Bills have been taken up for discussion simultaneously. So far as the question of Criminal Law Amendment Bill is concerned, the amendments proposed to deal with the matters of abduction and kidnapping are worth welcome. We do welcome it. The hon. Minister of Home Affairs may please get it passed, we extend our support to him for this purpose. However, the amendment proposed with regard to TADA is a matter of grave concern and needs a serious discussion. The principle of Criminal Procedure Code which is a very old, constant and full of Justice, is being amended, because under the present law, the culprit is not to prove his innocence but the Government or the prosecutor are supposed to prove the crime of the culprits. We strongly oppose this amendment as it is totally against the fundamental principles of justice. The amendment proposed in this regard is very dangerous. We would not find any precedence to this effect in the world history. It has been stated that the statement given by the accused before the police officer will be treated as an evidence in the court. It is against the spirit of Section 168 of the Criminal Procedure Code.

Shri Chavan has added another dangerous point that in case there are two culprits, the statement of one accused will be used against his accomplice. It means that if the number of accused ranges to five to ten, the police may apprehend one of them and treat the statement given by him as an evidence against all of them in the court. It is against the fundamental principle of Criminal Law, it also violates human rights. This is something very detestable heinous. I would urge upon the Government not to adopt an attitude of injustice in the name of eliminating terrorism. The Government should review the situation in this regard.

Our colleagues have also given suggestions with regard to the implementation. The matter had been raised a few days back while we were

having an extensive discussion with regard to the matter of Shri Rajiv Gandhi's assassination. A heinous crime was committed by LTTE in Madras, the way the suicide squads of LTTE have been working, it is encouraging terrorism at large scale in the country. However, as per the available figures, only 147 cases were filed in Tamil Nadu, the place where Shri Rajiv Gandhi was assassinated and terrorist activities of LTTE are most frequent. I do know that the hon. Minister of Home Affairs would say that the Central Government is not at all concerned with it, and that it was the responsibility of the State Government. The Central Government enacts law, thereafter it is the responsibility of State Governments to enforce it strictly.

The argument likely to be given in his defence by the hon. Minister may be correct, even then it is the responsibility of the Central Government to monitor the functioning of the State Governments and the implementation of the Law as also holding conference with the State Home Ministers. In Tamil Nadu, where Shri Rajiv Gandhi was assassinated, only 147 cases were filed during the last several years not to talk of punishing the culprits this is an evidence of nothing but the ineffectiveness of the law. On the other hand, in a state like Gujarat from which Mahatma Gandhi and Sardar Patel hailed, 14094 cases were filed. This law was enacted primarily to deal with the situation in Jammu & Kashmir. But the total number of cases filed in the State was just 1826. It is the State where terrorism is prevent in every nook and corner. This proves that enacting a law in itself is not sufficient unless it is enforced effectively. Rather, this law is being misused, as it has been in Gujarat. Every time an amendment is moved, the hon. Minister of Home Affairs gives an assurance that the law would not be applied against the political rivals but in practice it is very frequent. In brief, I would like to submit that the law has been widely applied against the BJP MPs. Not only this, a case was filed against them under National Security Act and then under TADA. Thus, these things should not be used as political weapon to harass, torture or eliminate the political rivals.

Therefore, my submission is that if TADA is misused constantly in this (*Interruptions*) there will be total confusion, because a particular party rules in a particular State while the other in other State, however, the law is in force everywhere, and in that case the law can be used against each other then what will be the position. This law is being used as a medium to spoil the legal provisions in the Constitution, therefore I oppose it.

I would like to submit that in principle, we oppose those laws which violate the constitutional traditions, conceptions and also human rights, and this very law also comes into the same category. Therefore, the hon. Minister of Home Affairs may kindly think over it. In view of the Bombay blasts if such a law may be enforced effectively there, it can be well understood and it may be considered as a right step, but, as has been told, in Bombay too, the B.J.P. workers were handcuffed and taken around the city, therefore it is a matter of grave concern.

With these words I oppose the Amendment Motion with regard to TADA and support the Criminal Law Amendment.

SHRI RAM VILAS PASWAN (Rosera): Mr. Speaker, Sir, I would like to oppose this Bill on three-four points. Just now hon. Lodhaji has told about the powers of police officials. As you know it is not a big thing to tell a lie before a police official for the sake of one's own defence. But it is not right to ruin another person on the basis of that statement. I would like to say that the Home Minister should review it seriously. In reply to a question in Rajya Sabha on 10th March, it was said that 52,268 persons had been arrested under TADA, this should make you realise the gravity of this situation.

In the objectives and reasons of this Bill the hon. Minister has said that earlier it was imposed in two states only. But when TADA was not there, terrorists activities were taking place only in Punjab and Jammu and Kashmir, but now it has spread in Uttar Pradesh, Madhya Pradesh,

Himachal Pradesh, Maharashtra, Haryana, Delhi, Gujarat, and West Bengal also. This shows that by imposing TADA, terrorists activities are increasing. You should withdraw it immediately as it is spreading the disease. (*interruptions*)

The second point is that you should take it for granted that if a problem could not be solved by ordinary law then imposing TADA or Terrorist Area Act can also not solve it, this is a basic principle and you had been a jurist also. (*Interruptions*)

What do you think about the hon. Speaker. (*Interruptions*) Mr. Speaker, Sir, the law consider the common man as honest and the Government and police officials have to prove that it is not so. But this Bill is contradictory as the common man is considered guilty and they have to prove themselves honest, so it is contradictory to the basic principle of law and it is openly violated. The third point is that you should know the reasons behind a person becoming a terrorist. You have to find the reasons behind a person becoming a terrorist. You have to find the reasons behind the rise of terrorism in Punjab and Kashmir. As you can destroy mosquitoes by spreading DDT but it is also necessary to clean the dirty gutter first. Hon. Lodhaji has said rightly that different State Governments are headed by various political parties but they all should be equal before the law. You can not stop terrorism if incident like 6th December take place, but you should have adopted strict measures to control it. In recent incidents in Bombay I saw that the persons who should be arrested under TADA, is still issuing whips and Sanjay Dutt who was in possession of illegal arms was arrested under TADA, and not under ordinary Law or illegal Arms Act. A person with a terrorist background can be arrested under TADA. A person from the film industry is being made a terrorist and somebody who is continuously involved in such activities has been issuing whips, this reveals the hollowness of TADA. So I strongly oppose this Bill.

[Sh. Ram Vilas Paswan]

(Interruptions)

The second Bill pertains to criminal law. I approve this and would like to say that law and order situation in Bihar is bad but the good thing is that according to the statistics at least 190 persons have been arrested under TADA in Bihar as compared to some other States. regarding criminal law I would like to say that incidents of kidnapping are increasing not only in Bihar but in various other parts of the country. It is all happening with the connivance of police and this has become a easy-money-earning source for police. You kidnap a child and get a ransom of Rs. 5 lakh then give some amount to the police stations and rest is yours. This has become a business at the national level. It should be taken seriously. What my friend from BJP has said about kidnapping, I support it, whether they are from Congress, or persons like Bhola Pandey or persons who know big leaders like Atal Bihari Vajpayee, these people should not only be condemned publically but political parties should demand their arrest and they should not be given tickets for contesting the Assembly elections.

In support the Bill pertaining to the criminal law brought by the hon. Minister and I oppose TADA

SHRIGIRDHARILALBHARGAVA (Jaipur): Mr. Speaker, Sir, these two Bills are being discussed here simultaneously. The Bill pertaining to terrorism has two aspects. It was first brought in 1985 then amended in 87, 89 and 91, now on May 23, 1993 the period of enforcement of the Act is going to be over. The Government should review seriously, the need for extension of its enforcement for a period of two years. Terrorism is also growing in the country with the extension of the period of this Bill. Earlier terrorism was contained in Punjab and Jammu and Kashmir only and now it has spread to North-east, Uttar Pradesh, Madhya Pradesh, Himachal Pradesh, Maharashtra, Hayana, Delhi Gujarat and West Bengal also. I think in this manner terrorism will spread all over the country.

MR. SPEAKER: This has already been discussed you please speak on amendment.

SHRIGIRDHARILALBHARGAVA: I would like to state the reasons why this Bill has not been used where it should have been and as several other members have said why it has been used on political workers and that too from opposition parties only. So I would like to say that if the Government's intentions are clear then there will be no need to extend its time anymore.

Sir, as former orators were saying that Kashmir and some other places are more afflicted by terrorism, this should be reviewed. Secondly I appraise the agreement signed between India and Britain which has a provision that anybody who is under imprisonment in India for 12 months or more and if he escapes and reaches Britain, his property in Britain will be confiscated and he will be brought back to India. I think no body has mentioned it earlier and I welcome this amendment.

Sir, as you know terrorism is spreading in Kashmir. Memon brothers have been involved in bomb explosions and they are not being brought here the agreement with Britain all these things are all right but I would like to say that TADA is not a panacea, we should make efforts for signing agreements, with other countries also, as we have now with Britain. TADA is not an appropriate solution for terrorism. It is like a hammer to kill mosquitoes.

Sir, statistics reveal that only 434 persons were actually found guilty and punished under TADA out of the total 50 thousand person arrested under this act, this proves that 50 thousand people have been victims of police dictatorship and it also reveals that terrorism had spread during the Congress regime as this act was brought by hon. Buta Singh in 1985 and till today in 1993 more than 50 thousands have become its victim. It is being said that this act has the approval of the State Governments. I would like

to point out that if any innocent person is arrested under TADA and State Government request for his release, even then the Central Government refuses to act accordingly. TADA cases are decided by the Central Government in which the State Government do not have any say. So I would like to suggest that the State Government should be given the power to decide whether a person arrested under TADA is guilty or not and it should be reviewed carefully.

Today during Congress Rule the terrorism has come to such a pass. According to official figure, 5614 persons in Andhra Pradesh, 10779 in Assam 14094 in Gujarat, 1826 in Jammu and Kashmir 1125 in Maharashtra and 14457 in Punjab have been charged of being terrorists. TADA has been enforced to settle the cases of terrorists expeditiously but it has been noticed that the Longowal assassination case could not be solved even after five years because of TADA. Even other matters have not been resolved and while the State Governments are supporting TADA I feel that the State Governments are feeling helpless.

Sir, the case of assassination of General Vaidya (*Interruptions*) I would like to submit that agreements should be signed with other countries also on the lines of agreement made with England. (*Interruptions*)

MR. SPEAKER: You have welcomed it.

(*Interruptions*)

SHRI GIRIDHARI LAL BHARGAVA: Although I rise to oppose the TADA Act, I would like to support and welcome the criminal Law Amendment Bill being introduced but it is my submission that although its objectives are good yet its scope is very limited. A provision of life imprisonment and life-sentence has been made for kidnapping of girls and children, who are sent to Gulf countries for camel races and for kidnapping minor children and businessmen. This amendment is correct but its scope should have been extended and a comprehensive Bill

should have been introduced. I welcome the Criminal Law Amendment Bill introduced here.

To conclude, I would like to submit that I welcome the agreement with British but I oppose the TADA and I feel that there is no need to extend its period. This Act is not being used on those people for which it had been framed, therefore, oppose TADA. I thank you for granting me an opportunity to speak.

(*English*)

SHRI JAGMEET SINGH BRAR (Faridkot): Mr. Speaker, Sir, maximum number of arrests were made in the State of Punjab and that has been mentioned in the Home Minister's reply in the Rajya Sabha. Other Members have also mentioned that it is more than fifteen thousand. Now peace has returned in the State and there has been no act of violence. Today also in the newspapers there were reports that there has not been a single incident of violence in the State. The Act was basically brought to curb militant activities in the State of Punjab. I would like to request the Home Minister that since the State is booming with political activities, will he consider to withdraw and lift this TADA from Punjab because there is already Armed Forces Act 1983 and Punjab Disturbed Areas Act 1983 in the State? Since there is total peace in the State now, I would like to request the Home Minister to lift this, I must say, black Act from the head of the people.

That is all I wanted to say.

SHRI S. B. CHAVAN: In fact I never expected that these two Bills would provoke so much of discussion. As the hon. Members seem to be very much interested in knowing all the details, I must clarify one point.

There seems to be a total misunderstanding of the entire application of TADA. Every hon. Member seems to be under the impression that the central Government is enacting this legislation and it is the responsibility of the

[Sh. S.B. Chavan]

Central Government to see that it is properly used. I must inform the House that this is just an enabling provision; there are States which have not resorted to TADA at all. You have the power to notify whether you would like to attract the provisions of the TADA or not. There are designated courts which have been established. But the State Governments have taken decisions not to apply TADA. We have not forced anyone. Even now if the State Governments feel that without TADA they can handle the situation, it is entirely for them to take a decision. Certainly, the Government of India is not going to force any of the State Governments.

There is no running away from the fact that in Punjab, in Jammu and Kashmir, in Assam there have been situations. I have the full facts as to how many people have been arrested, how many have been detained, how many have been charge-sheeted, how many have been convicted, how many have been released by the court, in how many cases bail has been granted. Every information is available with me. I am in full agreement with Shri Lokanath Choudhury that it will have to be a three-pronged attack. Merely by a provision we would not be able to bring back normalcy in a state. That is why wherever naxalite activity is on the increase, I have taken a meeting of all the Chief Ministers concerned and requested them that they have to attack this problem first by implementing the poverty alleviation programme, and to prepare a special programme to see that the benefits reach the targeted groups. Thereafter if there is anyone who tried to exploit the poverty of the people or there are land problems where the big landlords are trying to exploit them, then certainly there is a case for penal action.

So, both the things will have to be considered together. Merely by invoking TADA, I do not think that we will be able to solve this issue. Both the things will have to be considered together; and that is why, instead of going through all the details, I say this. Hon. Member Shri Syed

Shahabuddin is not here, he wanted me to give the State-wise figures. I have the State-wise figures also. For the kind of amendments that he has given, first of all, it is very difficult to prove a haram transaction. He wants an amendment that the man holds the property knowingly that it is out of the proceeds of terrorism mens rea which he wants to attach to it, which in fact, is going to be almost an impracticable thing. Even otherwise also, it is going to be extremely difficult to establish, in fact, that the holder is holding the property on behalf of a terrorist; it is also going to be equally difficult. But, unless we have the enabling provisions, I do not think that the State Government will be able to take any action in the matter. This has been bodily lifted when I have the agreement with the UK Government. They also had the problem on the Northern Ireland; and they were creating a problem in UK. We just exchanged ideas; and adopted certain ideas from them; we also have certain ideas to them. And this is how, this thing has been brought about. I am happy to say that it has sent the proper message. After we signed the extradition treaty and also the confiscation treaty with the UK Government, all over Europe it has sent a proper message. Through havalas transactions a huge amount of money which used to come via London has diminished considerably. I fully agree with the hon. Member who said that it is not only with the UK, we have to have extradition treaties with other countries also.

Certainly I agree with him and we will have to take up this issue of having extradition treaties with Arab countries, the Gulf countries. UAE and other countries are very friendly countries; but somehow, I do not know why they have not been able to react positively in the case of Bombay blast culprits, who in fact had gone there; and from there, they seem to have taken asylum in Pakistan. Sir, I would not like to go into the details of it.

Shri Syed Shahabuddin has given other amendments also. Unfortunately he is not here. I do not think that it is necessary for me to give all the details. Certainly, we have taken

precautionary measures to see that police officer at the lower level may not misuse this; and that is why even the investigation is also being done after he gets the consent from the Superintendent of Police; and the prosecution can be launched only after the I. G. of Police were to allow the same. I think these are sufficient safeguards by which we will be able to reduce the misuse to the extent possible. I cannot possibly say that there will be no misuse, even the other Acts can also be misused. I cannot possibly make a claim that these are not going to be misused. To the extent possible, we have been sending all the guidelines. I specially try to have a meeting of the Chief Ministers. I cannot possibly monitor because monitoring will give a different kind of impression. After all, we work in a federal structure; and in a federal structure, I would not like to give an impression as if we are superior lords who are asking the information from the subordinates. That kind of impression should not go; and that is why, in fact, I tried to persuade them. To the extent they should not try to use this Act or misuse this Act against the political opponents, against the trade union leaders and against other innocent people; but to concentrate only on those who in fact, are creating a kind of disruptive activity and destabilising the country. These elements will have to be dealt with very severely. There should be no compromise on this issue; and that is why, we would like to have the extension for two years. Every hon. Member has welcomed the other Act also; and that is why, I do not think, it is necessary for me to explain the provisions of the Criminal Law (Amendment) Bill.

I will request first all those hon. Members who have given their amendments to kindly withdraw. Of course, he is not there and so, automatically it gets withdrawn. But, if they do not withdraw, then, I will request all the hon. Members to reject their amendments and pass the Bill. Thank you.

SHRI LOKNATH CHOUDHURY (Jagatsingpur): Sir, I have only one question. The Act is enacted by the Centre. As we have a general structure, you can leave it to the States

to enact. The States could notify. The Central Government has got the power to review it and see that it is properly used.

SHRI S.B. CHAVAN: So long as the State Governments have been authorised, I do not think, we can consider that it is a review.

SHRI LOKANATH CHOUDHURY: You give the power to them.

SHRI SOMNATH CHATTERJEE (Bolpur): No, no. The Central Government is not the headmaster.

SHRI S.B. CHAVAN: That is the kind of spirit in which we would like to work.

MR. SPEAKER: The question is:

"That the Bill further to amend the Terrorist and Disruptive Activities (Prevention) Act, 1987, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

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

Now I will take up amendments. Shri Syed Shahabuddin not present. Shri Girdhari Lal Bhargava not moving.

MR. SPEAKER: The question is:

"The clauses 2 to 10 stand part of the Bill."

The motion was adopted.

Clauses 2 to 10 were added to the Bill.

MR. SPEAKER: The question is:

"That clause, the enacting formula and in long title stand part of the Bill."

The motion was adopted.

Clauses 1, the Enacting Formula and the long Title were added to the Bill.

S.B. CHAVAN): I beg to move:

"That the Bill be passed."

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

MR. SPEAKER: The question is:

"That the Bill be passed."

"That the Bill be passed."

MR. SPEAKER: The question is:

The motion was adopted.

"That the Bill be passed."

19.54 hrs.

The motion was adopted.

(v) Situation in Jammu and Kashmir

MR. SPEAKER: Now the House will take up Criminal Law (Amendment) Bill. The question is:

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1973, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. SPEAKER: Now the House will take up clause-by-clause consideration of the Bill. There are not amendments.

The question is:

"That clauses 2 to 4 stand part of the Bill."

The motion was adopted.

(Clauses 2 to 4 were added to the Bill.)

MR. SPEAKER: The question is:

"That clauses, the enacting formula and the long title stand part of the Bill."

The motion was adopted.

Clauses 1, the Enacting Formula and the long Title were added to the Bill.

THE MINISTER OF HOME AFFAIRS (SHRI

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI RAJESH PILOT): Sir, the House is fully aware of the large scale violence and terrorism that has been unleashed in Jammu and Kashmir by Pakistan during the last three years. A very large number of people, mostly the youth were lured, and in many cases forced to go across the border for training and indoctrination. They were infiltrated back into the State with huge quantities of sophisticated arms and equipment. The scale and the volume of violence which continues unabated, and the massive recoveries of weapons which include nearly 8000 AK Series rifles, indicate the dimension of what has been built up into a virtual "proxy war" in the territory of India. The reprehensible atrocities have led to the migration of nearly 2,50,000 people from the valley to Jammu division and other States.

Although Pakistan is known to be under considerable pressure to desist from sponsoring cross-border terrorism, there is no evidence to show any let-up in its activities on the ground. During the recent months, as a result of sustained pressure and information and intelligence based operations we have been able to apprehend or neutralise a large number of terrorists, including many important self-styled leaders of various terrorist outfits.

This has created disarray in the ranks of the militant and led to serious inter-gang clashes and growing number of atrocities on the common