12.40 hrs.

CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES (AMENDMENT) BILL.*

The Deputy Minister in the Ministry of Finance (Shri Janardhana Poojary) : I beg to move for leave to introduce a Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(Interruptions)

अध्यक्ष महोदय : मैं अपने लिए रूल नहीं तोड़ता, तो आपके लिए कहां से तोड़ूंगा।

...(**व्यवधान**) ..

MR. SPEAKER : I will not allow you to speak.

**(Interruptions)*

MR. SPEAKER : There is nothing in the Rules which can allow you to speak. It is all irrelevant. It does not fall under the Rules. I cannot help it. I am helpless.

SHRI SATYASADHAN CHAKRABORTY (Calcutta South) : I am violating the rules for a good cause, Sir.

MR. SPEAKER : I will not allow Professor. You are a law abiding citizen. Please sit down.

MR. SPEAKER : Now the question is :

> "That leave be granted to introduce a Bill further to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activies Act, 1974."

The motion was adopted

SHRI JANARDHANA POOJARY : I introduce the Bill.

*Published in Gazette of India Extrordinary Part II. section 2, dated 6.8.1984.
**Not recorded.

12.43 hrs.

STATEMENT *RE* CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES (AMENDMENT) ORDINANCE

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI JANARDHANA POOJARY) : I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1984.

12.44 hrs

NATIONAL SECURITY (SECOND AMENDMENT) BILL*

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRIMATI RAM DULARI SINHA) : I beg to move for leave to introduce a Bill further to amend the National Security Act, 1980.

MR. SPEAKER : Motion moved :

> "That leave be granted to introduce a Bill further to amend the National Security Act, 1980."

*Published in Gazette of India Extraordinary, Part II, section 2, dated 6.8.1984

PROF. MADHU DANDAVATE (Rjapur) : I have given notice to oppose it at the introduction stage.

SHRI SATYASADHAN CHAKRABORTY (Calcutta South) : We all want to oppose it. We want to kill it just now.

MR. SPEAKER : I have got the names who are opposing it.

SHRI SATISH AGARWAL (Jaipur) : In the name of national security.

MR. SPEAKER : Now Shri Chitta Basu.

12.46 hrs

[MR DEPUTY-SPEAKER *in the Chair*]

SHRI CHITTA BASU (Barasat) : I rise to oppose the introduction of the Bill. The reasons are as follows :

This Ordinance seeks to further curtail the already limited civil liberties now being enjoyed by the citizens of our country. It proves that the Government cannot govern without an extraordinary or draconian law of this nature. This has become the habit of the Government, i. e. to have such a draconian and anti-democratic law.

The National Security Act is by itself a diabolical piece of legislation ; and there is no doubt it. But even then, the parent Act had a modicum of relief for a person unjstly accused and falsely implicated. Under the perent Act, the grounds of detention were viewed as a whole. Even if one of the grounds of detention was held to be infirm, irrelevant or vague, the detention order was deemed to be bad in law, and the detention order used to be declared as invalid. Now, what this ordinance proposes to seek is that the detention order shall not be deemed to be invalid or inoperative, merely because one or some of the grounds of detention are considered to be vague, non-existent, irrelevant or unconnected with such persons. Even on such kind of vague grounds, a person can be detained for two years in Punjab, and for one year in the rest of the country. It is a reversal of the judicial process, of judicial interpretation. Earlier, the existing interpretation was one of severality. It has now been replaced by the interpretation of singularity. It means that it has reversed the entire process of judicial interpretation. Therefore, it is also a curb on the functioning of judiciary.

By this amendment, Government hands dangerous weapons in the hands of the Executive. I was a preventive detainee myself. I know what kind of charges are generally made against a person who is detained, falsely implicated. This National Security Act, as I have already mentioned, is nothing but a substitution of the MISA of the Emergency days, and the other preventive detention laws earlier.

That means it wants to have a law of preventive detention. We are on principle againstthis. We do not want detention without trial. If there are grounds for the detention of a person, he may be straightway put before a trial ; and if the court decides that he has committed an offence, he may be very well under the existing law, but there should not be any preventive punished detention.

MR. DEPUTY-SPEAKER : What are the constiutional grounds on which you oppose it ?

SHRI CHITTA BASU : It is curb on civil liberity ; it reverses the judicial interpretation. A statement has been made as regards the urgency of promulgating an ordinance on this subject. It reads as follows :

> "The State Governments have been asking for amendment to certain provisions of this NSA, 1980 in the light of practical

problems that have been encountered in operating it so as to streamline the working and make it more effective."

What is to be made practical ? You want the right to implicate a person on the false ground ; and you also want the right to detain that person without any trial for one year in the rest of the country and two years in punjab. This is the practical thing ; this is the practical thing which some of the State Governments in the country might have suggested. Even if you have agreed with the suggestion, what is the need of having an ordinance ? Which are the State Governments which suggested that practical measure, when they made such practical measures and why those suggestions were not incorporated in a Bill and passed in the regular process ? But why was an Ordinance promulgated I want to know the names of the State Governments which have made this practical suggestion to make it practical. What is practicability ? Please note the practicability they demand is that the bureaucracy should be given power to implicate falsely any political person for any dissent and without trial put him behind the bars for one year in the rest of the country and two years in punjab. This is the practicability which the State Governments want, if I believe in their statement. But on principle I am opposed to it. NSA is a draconian law ; it should not fine any place in the statu book of our country ; it should be deleted ; it should be repealed. Whatever modicum of relief was available under the parent Act is also being snatched away and the idea is to give more power to the bureaucracy in order to silense the disssent. I think this Act may also be applied against my friends there if they have got the voice of dissent.

Therefore, this Parliament, which is to uphold the civil liberity, to uphold the democracy of our country, should reject this Ordinance and thereby oppose the undemocratic principles. We know the misuses and therefore we should be guided by the misuse of it. I oppose the introduction of the Bill.

MR. DEPUTY-SPEAKER : There are 12 more speakers. I think the hon. Speaker has suggested that one member can speak from each party.

SOME HON. MEMBERS : No.

MR. DLPUTY-SPEAKER : I have only saidwhat he had suggested.

SHRI RAM VILAS PASWAN (Hajipur) : But we oppose it.

MR. DEPUTY-SPEAKER : If all of you want to speak I know that every one would like to speak-then every member shall not take more than 3 minutes. Shri Indrajit Gupta.

SHRI INDRAJIT GUPTA (Basirhat) : This amending Bill which flows from the ordinance, which, as usual, was promul gated, just a few days before the Parliament Session was to meet, in the usual practical which this government has started adopting, I can only describe it as the most obnoxious measure.

The point is that, it goes against the very spirit of the Constitution, the personal liberty of the citizen which is ensured under the Fundamental Rights of Article 21, where it says that "no person shall be deprived of his personal liberty except according to procedure established by law"

So, now we are discussing here what procedure is to be established by law, and such a procedure to be established by law, which amounts to something which can not be described as a reasonable restriction must be opposed. It goes against the very spirit of the Constitution. Any procedure laid down by law cannot be taken to be a valid or correct procedure even this amending

(Shri Indrajit Gupta)

Bill is meant to circumvent on this very point, a decision of the Supreme Court. There is a point here. The Supreme Court is a custodian also of the constitution and of the rights of the citizen under the Fundamental Rights Chapter. The Supreme Court has held, that if a person is detained, the grounds of detention if any one of the grounds of detention is false, or as the wording of this Bill also says, is found to be non-existent, vague, not reliable, invalid not connected or not proximately connected with the persondetained, if even onc ground of detention is found to be coming within this mischief, then the detention order is to be held to be not valid. That is the high value which the Supreme Court placed on the personal liberty of the citizen. As Shri Chitta Basu said, we have also — not once, but several times — been detained under the Preventive Detentien law. Any particular ground of detention which was supplied to us, if we were put in jail five or six grounds of detention were given, everyone was — or all were — patently false. They related to an alleged incident with which we had no connection whatsoever. Because, they had prepared such gaounds as an afterthought, after arresting and detaining a person, after that they sat down to decide what grounds of dctention to prepared, or what ground should be given. Now, the whole spirit of the Supreme Court's judgment is being sought to be undermined and sabotag by this amendment, which says just the opposite that out of five grounds for example: if all of them except one are found totally invalid, false, and so on and even if one is found to be valid, the whole detention order is to be considered as valid. That means the bureaucracy, the police and the authorities they are being given extra latitude to go on manufacturing all those bogus grounds of detention as an after thought and what is the kind of reflection is it on them, if a court finds or an Advisory Board finds that out of the five or six grounds of detention, except one all are bad, patently false and frivolous vogue and not connected with the person at all given then he must be kept in prison without trial because one ground of detention somehow or other avoids this definition? This is a matter of the citizen's personal liberty. It cannot be trifiled with in this way. It goes completely against the spirit of the Constitution. Is it a reasonable restriction? I ask you. You think obout it. Can you think that it is a reasonable restriction on the person's liberty? Therefore this is totally an obnoxious thing. There is no need for it whatsoever- In the existing iaw, which is bad enough, which we opposed when that law was brought also, the National Security Act, but now it is being sought to be made ten times more stringent and repressive, authoritarian, and draconian. We cannot possibly support this amendment. We have to oppose it tooth and nail. I remember when that Act was introduced, the then Minister in charge repeatedly gave assurances on the floor of the House that this is meant to safeguard the national security, "do not think that it will be used for political purposes against political opponents or against trade unions or against people who are conducting peaceful agitations for economic and demands and so on. It will not be used against them".

13 hrs.

PROF. MADHU DANDAVATE: Same things were said about MISA also.

SHRI INDRAJIT GUPTA: Before that under the Defence of India Act also the same assurances were given. If the Minister is interested I can supply him with a list of people against whom this NSA has been used for no other purpose than they were active trade unionists agitating for workers demands and the complainants in every case were found to be the employers of those particular factories, who complained to the authorities saying that these fellows should be locked up because they were creating trouble with the workers. What is this to do with the national security? May I know whether

man should be deprived of his liberty and without trial and he should be locked up even on concocted charges? obviously these trade unionists who are locked up, cannot be locked up on the ground that they have been doing trade union agitation. It would not hold water at all. So, some other charges have to be cooked up. Mr. A. K. Roy, who is sitting here, was the first victim after the National SecurityAct was passed. Then he had to be released because it was found that the only reason he had been locked up was that he was involved in some municipal elections there or something in Dhanbad and they wanted him out of the way and so, the National Security Act was used. This is a scandalous state of affairs. We cannot allow this kind of a thing to go on. Therefore, this amending Bill must be opposed tooth and nail. And the Government even now should retrace its steps and not paint sts own face blacker before the people of this country than it has alreadydone.

PROF. RUP CHAND PAL (Hooghly) : When the National Security Act was passed, we had, from this side, opposed it tooth and nail and it created a history when for a long time we continued our resistence. At that time we expressed our anxiety and fear because from our experience we had always seen that all such draconian measures were used to suppress democratic movements, trade union movements, etc. And that again has been proved. As has been said by Mr. Indrajit Gupta, even on flimsy grounds to settle personal accounts in political matters, just to curb the movement of political opponents, this has been used. We are also prepared to submit such a list. We just remind the Members of the Treasury Benches that it has also happened id history and it is an irony of hishory that people who have supported such preventive measures, have themselves fallen victims to it. We can name many persons belonging to the Treasury Benches who have supported such punitive measures and fallen victim to it.

The purpose of this amending Bill is to make the National Security Act more stringent. And the purpose has been stated that if any one of the grounds is proved to be valid, then the detainee can be kept imprisoned. That means, by this amendment, they are trying to further dilute the procedural safeguards available to a detainee which is againstthe very spirit of the Constitution and against the personal liberty that has been enshrined in the Fundamental Chapter. We are opposed to it and we will be opposing it tooth and nail for all times to come.

श्री राम विलास पासवान : उपाध्यक्ष महोदय,मैं इस बिल का द्वारा विरोध करता हूं इसलिए हार्दिक .. (व्यवधान)

श्री सतीश अग्रवाल : हार्दिक या मार्मिक ।

श्री राम विलास पासवान : सर्वप्रथम यह बिल, जो बुनियादी और मौलिक अधिकार लोगों को दिए गए हैं, उसका उल्लंघन करता है । यह नेशनल सिक्योरिटी नहीं है बल्कि गवर्नमेंट, पार्टी और इंडीविजुल की सिक्योरिटी के लिए हमेशा ऐसा बिल लाया गया है । हम कास्टीच्युशन को यह मानकर चलते है कि इस देश में लेजीस्लेचर, ज्युडीशियरी और एक्जीक्युटिव अलग हैं । लेकिन जब सरकार के पक्ष में सुप्रीम कोर्ट या हाई कोर्ट फैसला देता है तो वह सर्वोपरि हो जाता है । अभी जब उसको संसद द्वारा फायदा मिलने की बात आती है तो सरकार कहती है, संसद सर्वोपरि है । जब संसद और कोर्ट में कोई मामला गले से नीचे नहीं उतरता है तब एक्जीक्युटिव को हैड बनाने की कोशिश की जाती है । इसका मतलब वह हैड है, प्रधान मंत्री । नेशनल

(श्री रामविलास पासवान)

सिक्योरिटी के नाम पर सिर्फ एक्जीक्युटिव हैड दोनों को तहस-नहस करने के लिए, जिसमें पार्लियामेंट और ज्युडिशियरी की कोई वैल्यु नहीं रही है, उसको खत्म करने के लिए यह सब काम किया जा रहा है। एक तरफ तो सरकार नेशनल सिक्योरिटी एक्ट के तहत कहती है कि हम इसका इस्तेमाल तस्करों और ब्लैक मार्किटयर्स के खिलाफ करेंगे। लेकिन, इसका जब भी इस्तेमाल हुआ है वह हम लोगों के उपर, किसानों और ट्रेड यूनियन के नेताओं के ऊपर हुआ है। हाजी मस्तान और करीम लाला जैसे लोगों को आप छोड़ देते हैं। इस बारे में आज हम लोगों ने उठाया भी था। राव साहब तो बहुत सुलझे हुए विद्वान आदमी हैं। एक तरफ आप बिल को कड़ा करने के लिए लाते हैं कि हम पकड़ेंगे, और दूसरी तरफ पकड़े हुए आदमी को छोड़ रहे हैं। नेशनल सिक्योरिटी एक्ट के तहत हाजी मस्तान और दूसरे लोगों को गिरफ्तार किया हुआ था। सबसे बड़ी बात यह है कि आप एक्जीक्युटिव को ऊपर लाना चाहते हैं, ज्युडिशियरी, ससद और लेजीस्लेचर की गरिमा को समाप्त करने के लिए यह फण्डामेंटल राइट्स का उल्लंघन है। इसका पीरियड आप दो महीने से छह साल के लिए करने जारहे हैं। इसमें किसी को बतलाने का अधिकार नहीं रहेगा कि वह आदमी कहां बंद रखा गया और किस अवस्था में है? किसी को जानकारी नहीं हो सकेगी। यह राजनीति से प्रेरित है। यह उससे भी बदतर है जो एमरजेंसी के दिनों में मिला था। राव साहब से इतना ही आग्रह करूगा कि अपने माथे पर यह बदनामी मत लीजिए। पहले मां जिन लोगों ने दिया है, उनके

(2nd Amdt.) Bill

माथे पर कलंक का टीका लगा है। इसको विदड्रा कीजिए। हम लोग इसका विरोध करेंगे। आप, हम लोगों को अल्पमत के आधार पर गिरा सकते हैं। पब्लिक के दिमाग में इस बिल का क्या रिएक्शन होगा? इसको वह बर्दाश्त करने वाली नहीं है। वह इसका विरोध करेगी। हर स्तर पर हम लोग इसका विरोध करेंगे।

SHRI SATYASADHAN CHAKRABORTY : Mr. Deputy Speaker, Sir, I vehemently oppose this Bill which is not only Draconian but which is against the spirit of our Constitution. It is strange that since Independence, the ruling party, the Congress (I) cannot rule the country without preventive detention-either Preventive Detention Act, or Defence of India Rules or Maintenance of Internal Security Act or National Security Act. I do not understand why this is not possible. The disturbances that occur in our country are not quite different from the disturbances that occur in other countries where there is democracy. If those countries can rule without these Draconian measures-they use such powers only during war, under normal circumstances they never use such measures. I do not understand why in our own country the ruling party cannot rule without preventive detention. I would like to draw your attention to the fact that in my State of West Bengal, the Left-Front Government have declared that they will not employ the preventive detention. I would submit here that the law and order condition in West Bengal is far far better than in many of the neighbouring States, which are ruled by Congress(I) Even in Tripura, where there were disturbances on a large scale, they control it without resorting to preventive detention or the Security Act. I do not understand why the Congress (I) Government alone cannot do it. As my other colleagues have said, it is with a political purpose they are bringing it. Nowhere have they made use of it to suppress illegal activities or to apprehend criminals.

MR. DEPUTY-SPEAKER : I think you are opposing it with a political purpose

SHRI SATYASADHAN CHAKRABORTY : Yes, you are 100 per cent right. My political purpose is to protect the freedom of our people. My politics is pro-people, unlike theirs, which is anti-people.

I believe that this Bill is against the spirit of the Constitution, against democracy, against the fundamental rights of the people. That is why I oppose the introduction of this Bill tooth and nail.

SHRI HARIKESH BAHADUR (Gorakhpur) : I do not know what has happened to this Government. They are just trying to rule this country with the draconial measures. I know that the hon. Home Minister is not only a very gentle person and a very competent person, but he is also a freedom fighter. When he is the Home Minister, we never expected such an obnoxious legislation. But unfortunately, this Bill has been prought before the House, which is not only a draconian Bill, but also a Black Bill. I say so because it agges completely against the provisions of the Constitution and the fundamental rights of the citizen. Article 22 of the Constitution says :

> "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

So, this Bill goes completely against the article of the Constitution and this is a fundamental right of the citizen. So, this Bill is totally undemocratic, unconstitutional and against the fundamental rights of the citizen. It is not only draconian and obnoxious, it is a black Bill, which is going to be a substitute for MISA, which was applied to lakhs of people during the emergency. Perhaps, Governmet are thinking of bringing back those darkdays. But I would like to warn the Government at this stage itself that it will not be possible, because the people of India will oppose it tooth and nail. So, on the ground that it is draconian and undemocratic, I oppose it at the stage of introduction it self.

SHRI SATISH AGARWAL : Mr. Deputy-Speaker, Sir, without repeating what has already been said against the proposed legislation by my esteemed colleagues present here I am one with them in saying that this is an unconstitutional provision, this is a draconian anti-people and black Bill and what not. But, Sir, I fail to understand as to why this National Security is threatened when the Congress (I) comes to power. You formulated this Bill in 1980.

THE MINISTER OF HOME AFFAIRS (SHRI P. V. NARASIMHA RAO) : Is it your case that only the Congress (I) governments are using it ?

SHRI SATISH AGARWAL : I do not know about other people. Let me know, Because you have mentioned in your Statement of Objects and reasons,

SHRI P. V. NARASIMHA RAO : Don't comment until you hear from me.

SHRI SATISH AGARWAL : I am here to hear you.

SHRI INDRAJIT GUPTA : The Left Front Government has publicly declared that it will not use it. That is the only Government which has publicly declared that it will not use it.

SHRI SATISH AGARWAL : Rao Sahib, you have mentioned in your Statement of Objects and Reasons and I quote :

(Shri Satish Agarwal)

> "The State Governments have also been asking for amendments of the Act to remove these deficien cies.

I would like to know as to which those State Governments are. I wish to be enlightened on it.

SHRI P. V. NARASIMHA RAO : I will answer that.

SHRI SATISH AGARWAL : But this is a fact that you brought this National Security Bill in 1980. This was made a law in 1980, when you came to power. So, this National Security becomes threatened, hijaking takes place when you come to power. In total eleven hijackings have taken place during the last all these years. Out of them nine have taken place when you come to power. Only two took place when you were not in power. One took place when Janata Party was in power and that too by the Congressmen who have been made MIAS now.

MR. DEPUTY-SPEAKER : The people must put the opposition in power so that the hijacking does not take place. Is that so according to you ?

SHRI SATISH AGARWAL : That is true.

SHRI SATYASADHAN CHAKRABORTY : That is one hundred per cent correct, Sir.

SHRI SATISH AGARWAL : Sir, the experience has shown that governance of this country can be carried on without the assistance of such draconian measures. I understand and appreciate some of the preventive measures at certain occasions are necessary. There is no bar absolutely. Some measures have been supported by us. But you may be aware of the fact that under MISA we were detained on 26 th June, 1975. And what was the ground ? The ground of detention given to us at 2 O'clock in the night was that we were creating scenes on the nationnl highwy. It is ridiculous. I do not want to go into the history. So, these are most likely to be misused by all those who are implementing it. And the Prime Minister had also admitted that the Family Planning programme was very good, but this was misused by the officers then.

Sir, I would like to draw your attention to one more thing. This Proviso to Clause 3 provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order mado against that person, the maximum period for which such a person may be detained in pursuance of the subsequent detention order shall in no case extend beyond the expiry period of twelve months from the date of netention under the earlier detention order. But if you revoke that particular detention order, it means after that he can also continue for twelve months. This is very ambiguous and this will be struck down by the Supreme Court, as I visualise it as a lawyer in the case of Sant Longowal. So, you will have to come with another amendment before this House in that particular case. I am just projecting as a lawyer. That is all, nothing more than that.

Shri Buta Singh just now remarked when we were going to oppose the measure. He said, we are opposing National security. Sir, you do not understand Hindi, so I will explain that in English. When Mohammad Ghauri invaded India, he brought a lot of cows in front so that the Hindus will not slaughter those cows. And in the name of that he invaded the Whole country and conquered India. So, you put the cows before us saying it is national security and that we must pan it. So, that way you want every measure under the garb of cows being put in front national security, security environment, this and that so that we must pass all measures.

Of coure, some measures are understabdable, but not like this. So, I will urge upon the Home Minister who has been entrusted with a very dsfficult job at this juncture that he should be very cautious about his functioning in this Home Ministry, because we have seen many Home Ministers occpying during the last four years, with the Chief Minsters rolling heads, Home Ministers rolling heads. You are a very competent person. You have all sympathy of then Opposition as a man, gentleman, as a educated, and literate personality knowing seven or eight languages. Sir, he commands respect from the entire opposition. But do not fall into this trap of abiding by the dictates of your bureaucrats saying bring this piece of legislation and that piece of legislation. These instruments will not help. It is the implementing agencies are going to help in the matters. Sir, not under the COFEPOSA, but under the National Security Act, Haji Mastan and Karim Lalaand thirtynine others were arrested in Maharashtra. They were detained in Maharashtra for supplying arms to those who were involved in communal riots in Bombay. And those very people have been released by the State of Maharashtra and the Home Minister of Maharashtra said, 'You don't ask me the explanation for releasing them, you ask the Home Secretary. Now, the Central Government ean very will say, and you will be competent to say, that, 'we have nothing to do with it because it is the State Government which issued the detention orders, it is the State Gevernment which released the detention orders.' But, Rao Sahib, after all, this is a Central law and if it is being misused by some of the State Governments for some political purposes under some political pressure in order to have a patch up with the former Chief Minister and if some persons are being released, then this is the greatest security risk for the country and you have to guard against it, and that is why I oppose this particular measure.

SHRI SOMNATH CHATTERJEE (Jadavpur) : Sir, on 21st June we witnessed another midnight perversity. About four weeks before the House was to sit, this amendment was introduced by an ordinance. Sir, we find that this Government has been working overtime in denuding people of their very minimal rights and this amazing product from a vile mind—I can't think of any other expression—has come before the people which is nothing but an atrocity. Kindly have a look at it.

MR. DEPUTY-SPEAKER : I cannot go into the detailys of the Bill, nor can you do yourself.

(Interruptions)

SHRI SOMNATH CHATTERJEE : Sir, it is just to make you aware of this. Look at the enormity of the outrage and perversity that is being committed. A person may be arrested giving 10 grounds. Nine of them may be vague, non-existent, not relevant not connected or proximately connected with the person or invalid for any reason. But now, such an order of detention will have the blessings of the Government of India. This is the amazing situation. Therefore, there is an admission that this law has been utilised indiscriminately without even caring to give grounds which had any relation fact or any relation to reality. That is way I say, speaking for myself I am an admirer of Mr. Rao, but I do not know what deformed baby he has now to hold?

Sir, this country not only has had always a preventive detention law except during 1968-69 when you became a great admirer-I mean you leader-of the Communist Party because you needed their support. Then, the Preventive Detention Act was not renewed and those were temporary laws. So, In 1977 the Government came back with a slogan of *'caribi hatao'*. And the first legislation of 1971 Fifth Lok Sabha, Mr. Rao, you were there and you remember, was the MISA. Then in 1977 under the pressnre of all of us here in the House, the Janata Party had withdrawn that. But there was another law which was also in the form of a MISA, that is the Cr. P.C. Amendment. So,

(Shri Somenath Chatterjee)

that was witdrawn. There was no MISA the country survived. Now, I would like to know this from the hon. Minister. As soon as you have come back to power in 1980, you have again introduced this preventive detention law now in the name of national security, We were told that it will be utilised to save the country from disintegration.

Now, after the National Security Act of 1980, we have seen Assam; we have seen Punjab and we have seen disintegrating forces taking an upper hand in spite of their liberal misuse of the MISA or the NSA. Which problem did they solve in the early part of this particular year ? In April, this year, they came forward with an amendment of the National Security Act restricted only to Punjab, Haryana and Chandigarh. This has resulted in army action. I would like to know from the hon. Minister what was the utjlity of an amendment of the National Security Act particularly in relation to Punjab, Harayana and Chandigarh in early part of April, 1984.

This name of "national security" is nothing but a farce. We shall have an occasion to speak on the Bill in greater detail,. I know, unfortunately, the Government will not withdraw this Bill they will insist on introducing it and we shall oppose it at every stage. But why this farce of calling it "national security"? I say, the civil liberties are always in danger in this country, so far as my friends' Government and party are concerned. They are the enemy of the civil liberties. They are an anathema to this Government, That is why they cannot survive withont this. They are liberally misusing it against politicians, trade unionists, student leaders and the working class. This has been our experience. Therefore: we are opposed to this in principle; we are opposed to the cultre of this Government in introducing this Bill. It is anti-people and we shall go on opposing it at every stage.

PROF. MADHU DANDAVATE : Mr. Deputy-Speaker, we are told that this Bill is brought at a time when there is a grave threat to the security of the country; there are terrorist activities in some Parts of the country and there is instability in the country.

I have with me the proceedings of of the Central Legislative Assembly of 1929. I will go back to the debates in this very House on 8th and 11th April, 1929, when a very serious situation had arisen. The Public Safety Bill was coming up for debate in this House. Mr. Vithalbhai Patel was in the Chair. On 8th April, 1929, two bombs were thrown in this very House, Even under such a provocative situation, Mr. President, Vithalbhai Patel, blocked the Bill and gave his ruling that this Bill will have to be withdrawn saying. "I will not Permit it on the ground that the Meerut Conspiracy case was going on, the issue which courts were debating and discussing and also the issues which were connected with the Public Safety Bill. "He said, "I do not want to deviate and distort the proceedings of the courts when the same matter is going on" and he actually gave a ruling. "I am not going to permit this House to debate the matter further." This is not something which is imaginery...

SHRI RATANSINH RAJDA (Bombay South : Those were the golden days.

PROF. MADHU DANDAVATE : The days of Vathalbhai Patel were golden days. We shall never forget that.

The Trade Disputer Bill was already cleared. The Public Security Bill was going to come up. There was an interregnum and in that interregnum, Bhagat Singh and his colleagues threw two bombs. Here, it is reported ;

> "(At this stage two bombs were thrown from the Visitors' Gallery, and burst among the

Benches occupied by the Official Members, causing injury to certain Members. Confusion prevailed and Mr. President retired. After a few minutes, Mr. President resumed the Chair.)

Mr. President ; In view of the most shocking and deplorable incident, I propose to adjourn the House till Thursday morning, 11 of Clock."

They came at 11 O'Clock.

SHRI K. MAYATHEVAR (Dindigul): He was very bold enough like us.

PROF. MADHU DANDAVATE : 11th was the next day on which the Central Assembly met and the President said :

"I now proceed to give may ruling on the Public Safety Bill."

I will not give his entire argument in the ruling whether the Bill was introduced, whether it was moved for consideration and whether the debate was allowed for final Consideration.

"At any stage, I can exercise my authority and if I feel that in public interest and in the interest of the legislature, it is necessary to see that this discussion is stalled, in that case, I will give the ruling that this debate will not go on."

I will only read the last paragraph of his ruling :

"I am of opinion that, although power to rule this motion out of order is not expressed in so many words in any of the Rules and Standing Orders, it does arise by necessary implication and analogy, and I am further satisfied that, in any case, the chair has the inherent power to rule out a motion on the ground that it involves an abuse of the forms and procedure of this House as this motion, I hold, does. I therefore rule it out of order."

SHRI SATISH AGARWAL : This rule was made 35 years ago. You also give some historical ruling so that posterity can paste it and quote it after 35 years. Nothing was expunged in these proceedings.

SHRI RATANSINH RAJDA : You should draw the inspiration from this. They were giants ;

MR. DEPUTY-SPEAKER : I have been in the Opposition for many number of years.

PROF. MADHU DANDAVATE : You will soon have the opportunity to come back to Opposition. Don't worry !

MR. DEPUTY-SPEAKER : Even now, I am in the Opposition !

PROF. MADHU DANDAVATE : As far as the present Bill is concerned, I want to draw one more analogy.. In the Fifth Lok Sabha of which I was a Members in this very House, when MISA Bill was moved at the conclusion of the debate, when Prime Minister Shrimati Indira Gandhi was present, the Minister of Home Affairs Shri Uma Shankar Dikshit was present. I got up and said that "we have opposed this Bill at every stage during the debate. We would like to record the final protest and we want to warn you that looking to your past, it is very probable that you are going to utillise this MISA in order to arrest and detain some of the topranking political functionaries in this country, the trade unionists and the fighters for the kisan cause." Prime Minister Shrimati Indira Gandhi got up in this very House Shri Uma Shankar Dikshit got up and they said :"We give a solaumn assurance to this House that political leaders, political workers and trade unionists will not be arrested under MISA." All this appeared in the proceedings of

(Prof. Madhu Dandavate)

the Lok Sabha and when emergency came, the very first men to be arrested under MISA were Lok Nayak Jayaprakash Narayan, Shri Morarji Desai, Shri Atal Bihari Vajpayee and Choudhary Charan Singh. Lok Nayak Jayaprakash Narayan cannot be considered as anti-national or antisocial element who posed a threat to the security of India. But despite that, they were arrested. Large number of trade unionists were arrested. Large number of social workers were arrested and on the top of that actually the executive functioned in such a way during the emergency that taking advantage of this MISA and other laws, they prepared the cyclostyled orders on which the signatures of the authorities were taken and names were filled up afterwards. On one occasion, they went to Thane district in Maharashtra where one RSS Member was arrested. They served warrant and asked "Where is the gentleman ?" The lady of the house said "Four years back he was dead and if you want to serve the warrant, go to Heaven." That was the incident and so many of them. Actually some of the courts have passed very strictures against the manner in which these warrants were issued. I have given this background to indicate what was our experience of MISA. Then came the National Security Act. Again the same assurance was given and today we find that some of the trade unionists, social workers in Assam and Punjab and elsewhere are detained under this. The matter is already pending in the court of law.

There are only two points to which I would like to make a reference.

MR. DEPUTY-SPEAKER : please try to conclude. You have already taken more than twelve minutes.

PROF. MADHU DANDAVATE : There were a lot of interruptions. Your interruption was also there.

MR. DEPUTY-SPEAKER : I never interrupted.

PROF. MADHU DANDAVATE : What I want to point out is this. If you go through the proceedings of the High Courts and the Supreme Court you will find that in a number of cases of detention came up before the courts through writ petitions, they have said that, whenever the grounds are mentioned in the detention order, the concerned authorities must apply their mind:proper application of mind is the *sine qua non* of a proper detention order. Their contention was that repressive and autocratic authorities were likely to put frivolous grounds, 10 or 15 grounds, without applying their mind and just take a chance where by the law of probability one ground might survive, and in that case if the court said that the whole order survived...

MR. DEPUTY-SPEAKER : Therefore, you oppose the introduction. Please conclude.

PROF. MADHU DANDAVATE : Here they have brought out an amendment by which severability of grounds will not be accepted. They feel that if 20 grounds are given and only one ground survives and 19 are proved to be frivolous, even then the detention order will continue.

One more point, to which no reference has been made. The maximum period of detention has been increased to two years.

So, in every respect, this law has been more repressive. We were opposed to the original National Security Act. Now there are more reasons to oppose this amending measure. Therefore, even at this stage, I would request the hon. Minister to withdraw this. If the Minister adopts this measure, then history will record that this Home Minister is a soft-spoken hard-liner as far as civil liberties are concerned. I do not want him to go in the history

with that designation. I would request him to take cognizance of the feelings of the House and withdraw this Amendment Bill.

SHRI N. K. SHEJWALKAR (Gwalior) : Sir, I just want to submit a few points. Prof. Madhu Dandavate has just mentioned about the effect of several grounds given together. You know very well that the matters which go to the High Court in writ cases are not justiciable in the sense that the validity of the grounds or the objectivity of thd grounds is not be considered. The High Court sets aside an order only on the basis of subjective thinking. Actually the present amendment has been brought to undo the effect of the original case, in 1941, of Vishnu Talpade. Do you know how this will work. It is on the basis of the joint effect of all the grounds taken together that the detaining authority takes a decision. If any of them is wrong, how can it be argued that the remaining grounds are sufficient to order detention ? Can you in any way convince us how, without an application of mind, an order can be passed, how to judge what will be the effect of all the grounds taken together. ...(*Interruptions*) It means that the High Court cannot consider the grounds on merits. Subiectively, you do not allow, whether the mind has been applied properly or not. That also, you do not allow the court to decide. Is it not denying justice altogether ? You are putting a man behind the bars. You are not giving him any opportunity to say anything anywhere. Forget the merits of the case ; even the subjective thinking also,you are not going to allow. It is actually barring him from going to the court, and this, according to me is against Constitution. The Fundamental Rights are there and the courts are there. Sir, may I submit that in the case of Shri U. M, Trivedi, who was a Member of this House, one of the grounds given for his detention was that he was cutting the telephone wires climbing the telephone pole. His age at that time was 68 and one of his legs was defective. This was the ground provided in his case. So, we have suffered. I have myself handled 200 cases of detention. I have myself been detained several times. In one of the cases, one of the grounds for detention was :

"यह आदमी मूंछों पर ताव देता है।"

Can you imagine what harm you are doing by this. I am opposed to this because if any Government is not able to administer on the basis of the common law of the land and wants to seek some extraordinary laws...

MR. DEPUTY-SPEAKER : Then you had a moustache ?

SHRI N. K. SHEJWALKAR : I fought his case ...(*Interruptions*) Any government which cannnot run its government or administer properly on the common law of the land, I will say, it is a failure. All over these special laws are temporary laws. In every country, all over, they are temporary laws. However, I have opposed it when Choudhary Charan Singb wanted to bring an amendment to the Criminal Law Procedure Code, I was one who opposed it-I not only opposed but I got a signature campaign and the law could not be brought. Similarly, when Madhya Pradesh had this law of detention, I opposed it. I am among those very few who could oppose it,

I hold that this is a matter, this is a very serious matter and one must consider it. Ultimately, I can assure you, that you can go on marking any number of laws. But unless and until you have a proper implementing machinery you cannot do it, you will never be able to do it. Taking this power and denying justicc and taking away liberty-because a baby has been brought by your predecessor, you cannot help it. Now it is the prestige of the Government involved. I do not know why. I cannot go into the merits. One year or two years, it is absolutely against justice and fundamental rights. Therefore, I have to oppose it.

SHRI P. V. NARASIMHA RAO : It is well known that at this stage we do not go into the merits of the Bill. So I take it that the opposition of the Bill at the introduction stage is more of a symbolic character. Hon. Members of the opposition wanted to register their opposition right from the beginning starting with the introduction stage. That is why I would not go into many more details. I would only say that in the first place, this Bill which has been criticised as unconstitutional is not unconstitutional. That is one thing which I would like to refute. It flows from the provisions of the Constitution. That is No. 1...(*Interruptions*) Since this has been raised, I am only answering it in a very few words...

PROF. MADHU DANDAVATE : It is against the spirit of the Constitution.

SHRI P. V. NARASIMHA RAO : No. 2 this is an amendment to a statute which has already been on the statute book. It came in the form of an ordinance because of certain reasons which we can certainly discuss when we go into details.

This amendment is according to me a logical amendment. Mr Somnath Chatterjee said that out of 10 grounds if 9 grounds are vague and only one ground is valid, then this Bill says that the detention is valid I go to the other example. If 9 grounds are valid and one is vague, does it stand to reason that if the detaining authority is convinced that detention under this Act is necessary on substantive grounds, this one ground should over-rule that judgment ..(*Interruptions*) The decision, the subjective decision-we can go to the correctness of a decision in a given case. The subjective decision of invoking this law having been taken; you go to the procedural part. The procedural part is that grounds have to be given. Now out of 2o grounds, 10 may be good and 10 may be bad. The question is that each ground has to stand on its own validity. It is not a conglomeration of grounds. It is not a bunch of grounds.

SHRI N K SHEJWALKAR : The question is what made the detaining authority think that this is the ground on which the detention order is issued. It is not the number.

SHRI P. V. NARASIMHA RAO : This is what I am saying. If there are several grounds and each ground stands on its own validity, on its own accuracy and on its own facts...(*Interruptions*) If you are in principle against the preventive detention itself that is a different story. I am not going into that. We will go into that when we have a debate in this House on the desirability or on the need under certain circumstances of having it. The very fact that it is contained in the Constitution is proof positive that the framers of the Constitution had envisaged a set of circumstances under which this would become necessary. (*Interruptions*) We are on a limited point here as to whether the grounds are severable or not. The ground, I submit are certainly severable and if a decision has been taken that this law is to be invoked in a particular case, the mere fact that some of the grounds are vague should not invalidate the invocation of that law. This is the point on basis of which this amendment has been brought.

SHRI INDRAJIT GUPTA : That means you are challenging the Supreme Court's judgement.

SHRI P. V. NARASIMHA RAO: No We are not challenging the Supreme Court's judgement. We have a parallel law in COFEPOSA on the same lines, We are trying to see that the ligislaion becomes really effective, There is not point in legislating and finding my weapon is ineffective. I consider legislation a civilised weapon. If we find it is ineffective, then it is the duty of the legislature to make it effective.

PROF. MADHU DANDAVATE : COFEPOSA is for economic offenders. You are using it for political offenders.

SHRI P. V. NARASIMHA RAO : That is a different point as to how it has been used. Sir, the opposition members have given me the benefit of doubt, because I have just come into this Ministry, I thank them for this benefit of doubt. I would like to tell them that I am going to find out how this law has been used, The Central Government has not invoked it even in a single case. I shall certainly go into how it has been used ..

AN HON. MEMBER : It is just an excuse.

SHRI P. V. NARASIMHA RAO : It is not an excuse. It is a fact and ..

SHRI INDRAJIT GUPTA : You have fashioned the weapon-you have just described it as a weapon and handed it over to others to misuse it as much as they like.

SHRI P.V. NARASIMHA RAO : It is a weapon which becomes necessary in certain circumstances

AN HON. MEMBER : Instead of Centre doing it-you are getting us arrested by the State Government.

SHRI P. V. NARASIMHA RAO : Sir, this amendment is for a limited purpose and, therefore, we need not go into the details of the Bill.

SHRI SOMNATH CHATTERJEE : There is a possibility of its being misused, kindly think of it.

SHRI P. V. NARASIMHA RAO : I am certainly thinking of the possibilities of its use in a manner other than prescribed by law. That is also the case with every law. Every law can be misused and can be properly used. It is the duty of the legislature and the executive to see that every law is properly used. That is a different aspect altogether Sir, since all these points have been clubbed together in this opposition, it is not possible to club together my own defence. That will have to be done point by point when we go to the consideration of the amending Bill.

Interruptions)

MR. DEPUTY SPEAKER : The question is :

> "That leave be granted to introduce a Bill further to amend the National Security Act, 1980."

The motion was adopted.

PROF. MADHU DANDAVATE : Sir, as a symbolic protest, we walk out.

Prof. Madhu Dandavate and some other hon. Members then left the House

SHRI P. V. NARASIMHA RAO : Sir, I introduce the Bill.

13.50 Hrs.

STATEMENT *RE* NATIONAL SECURITY (SECOND AMENDMENT) ORDINANCE

The Minister of State in the Ministry of Home Affairs (SHRIMATI RAM DULARI SINHA) : On behalf of Shri P. Venkatasubbaiah, I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the National Security (Second Amendment) Ordinance, 1984.

TERRORIST AFFECTED AREAS (SPECIAL COURTS) BILL*

THE MINISTER OF HOME AFFAIRS (SHRI P. V. NARASIMHA RAO)

* Published in Gazette of India Extraordinary Part II, section 2, dated 6.8.1984,