

14.31 hrs. 1

**Statutory Resolution Re : Disapproval of Terrorist Affected Areas (Special Courts) Ordinance and Terrorist Affected Areas (Special Courts) Bill—Contd.**

**MR. DEPUTY-SPEAKER :** The House will now take up further discussion on the following Resolution moved by Shrimati Geeta Mukherjee on the 14th August, 1984, namely :—

“This House disapproves of the Terrorist Affected Areas (Special Courts) Ordinance, 1984 (Ordinance No. 9 of 1984) promulgated by the President on the 14th July, 1984.”

and also further consideration of the following motion moved by Shri P. Venkatasubbaiah on the 14th August, 1984, namely :—

“That the Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith, be taken into consideration.”

Three hours were allotted for this. We have already exhausted two hours and 32 minutes. Now we take up this and after this we have to take up the discussion on the Reports of the Commissioner for Scheduled Castes and Scheduled Tribes.

**SHRI RAVINDRA VARMA :** Has any time been fixed?

**MR. DEPUTY-SPEAKER :** We have to complete both, this Bill and also the report. Therefore, I would leave it to the good sense of the hon. Members how much time they are going to take. Now, Shri Ram Nagina Mishra. You have already taken 16 minutes, and you have to take only four minutes more.

**श्री राम नगीना मिश्र (सलेमपुर) :** उपाध्यक्ष महोदय, अभी तो मैंने भूमिका बांधी

थी और कोई बात कह भी नहीं पाया था कि मुझे कहा गया कि समय समाप्त हो गया है, अब आप कल अपनी बात कहिएगा।

**MR. DEPUTY-SPEAKER :** Had I been in the Chair, I would have told you to speak about most important things. I was not here at that time.

**श्री राम नगीना मिश्र :** यह विशेष न्यायालय का जो सवाल है जिसे कानून की शकल देने के लिए मंत्री जी ने बिल पेश किया है, इसकी आवश्यकता क्यों पड़ी? शुरू से ही हमारे विरोधी भाई प्रधान मंत्री जी से कह रहे थे कि मानवता के आधार पर बात हो और आपस के वार्तालाप से समस्या का समाधान हो। प्रधान मंत्री जी इन लोगों की बात मान कर के वार्ता से ही समस्या का समाधान करने की कोशिश कर रही थीं। लेकिन नतीजा क्या हुआ? जैसे किसी डकैत को, कतल करने वाले मुल्जिम को यह कहा जाय कि कतल करना मुनासिब नहीं है, डाका डालना या चोरी करना मुनासिब नहीं है, तो क्या वह मान जायगा? यही परिणाम यहां भी हुआ।

जितनी ही आपसी वार्ता चलती रही उतने ही उग्रवादी बढ़ते रहे। नतीजा यह हुआ कि देश के टुकड़े होने की स्थिति आ गई। घरी किलाबन्दी वहां हो गई, तरह-तरह के हथियार इकट्ठा हो गए, टैंक-बंधी तोपें उनके पास आ गई, अनेक लोगों की हत्या की जाने लगी। इतना सब कांड होने पर मजबूर होकर सैनिक कार्यवाही करनी पड़ी। इतने पर भी आप देखेंगे कि अभी-अभी वहां पर कुछ विशेष लोगों ने कहा है कि देश के सर्वोच्च व्यक्ति, राष्ट्रपति जैसे लोगों का बायकाट कर दो। इसका मतलब क्या हुआ कि देश का बायकाट करने जा रहे हैं। देश के सेनापति को कहते हैं कि हम बायकाट करेंगे। जिन्होंने दस-दस कत्ल किए हैं,

डाके डाले हैं, डाकखाने जलाए हैं, स्टेशन जलाए हैं उनके लिए विशेष न्यायालय की स्थापना की बात आई तो खुशी तो इस बात में होती कि सर्व-सम्मति से विरोधी भाई धन्यवाद का प्रस्ताव लाते ।

बड़ी भारी लिस्ट 15 आदमियों की है। किसके लिए ? जो विशेष न्यायालय की स्थापना की जा रही है, उसका विरोध करना है। चाहे विरोधी दल में बैठने वाले हों या सत्ता पक्ष में बैठने वाले हों, सभी जानते हैं कि जितने देश में मुकद्दमे चलते हैं, चाहे कत्ल के हों या डकैती के हों, दो-दो, तीन-तीन साल हो जाते हैं, कोई फैसला नहीं हो पाता है। नतीजा यह होता है कि मुकद्दमे जितने पुराने होते जाते हैं, उतनी ही गवाहियां टूट जाती हैं। जिसकी वजह से डकैती और कत्ल के दोषी लोग बरी हो जाते हैं। हमारी सरकार ने यह बहुत ही सूझ-बूझ से काम किया है कि विशेष अदालतें अलग से बनाई जाएं, जिनमें इन अत्याचारियों के मुकद्दमें जल्दी से जल्दी निपटाए जा सकें।

हमारे विरोधी दल के भाई बहुत परेशान हैं और कहते हैं कि इसका उपयोग कहीं पालिटिकल न होने पाए। मैं विरोधी दल के नेता-गणों को उस दिन को याद दिलाता हूँ, जब वे कुछ समय के लिए जनता पार्टी में थे। उस वक़्त उन्होंने कितनी अदालतें बनाई, वे भी बता देते। अभी समूचा पंजाब जल रहा था, उसका बचाया गया और स्पेशल अदालत बनाई गई। जनता पार्टी के राज में अधिक अदालत बनने की वजह से उसको आयोग राज ही कहा गया था। उस वक़्त मुकद्दमा किस पर चलाया देश की जो प्रधान मंत्री रह चुकी थीं। श्रीमती इंदिरा गांधी। उस अदालत में सौ-सौ मुकद्दमें दाखिल किए गए थे। मुझे यह बात कहते हुए संकोच होता है, लेकिन मैं कहता हूँ उनको शर्म आनी चाहिए। लेकिन आज उनको डर है कि

कहीं यह उनके ऊपर प्रयोग में न लाया जाए। इंदिरा जी आप जैसे लोगों में से नहीं हैं, आपने तो अपने ही राज्य में उनको घर से निकाल दिया था। सौ-सौ मुकद्दमें चलवाए, लेकिन वे फिर भी जीत कर यहां सदन में आई और आपने जबरदस्ती उनको यहां से निकाल दिया। आश्चर्य तो यह है कि उम ममय के जो गृह मंत्री थे, उन्होंने वारंट जारी कर दिया। जो देश की प्रधान मंत्री रह चुकी थी, उनको गिरफ्तार किया गया। जब अदालत में पेश किया गया, तो जुडिशियल मैजिस्ट्रेट ने यह कह कर उसको खारिज कर दिया कि यह कानून में नहीं आता है। इतने बेअकल के लोग इस दल में नहीं हैं। वे कानून बनायेंगे और इसलिए बनायेंगे कि सबको समान अवसर मिले। सबको मुविधा मिले। मैं शुरू से विरोधी दल की प्रवृत्ति देख चुका हूँ, कोई भी अच्छा काम हो, विरोधी दल ने उसका जहर विरोध करना है। मुझे इस पर एक बात याद आ गई है। एक पंडित जी थे। विवाह शादियों में जाते हैं, तो अक्सर लोग पूछते हैं कितने हल चलते हैं। उनका एक लड़का मूर्ख था। उन्होंने उसको कह दिया कि जब भी कोई पूछे कि कितने हल चलते हैं, तो कह देना कि खड्डालान—यानी छः—चलते हैं। जब शादी वालों ने उस लड़के से पूछा कि कितने हल चलने हैं? उसने कहा—खड्डालान। फिर पूछा गया कि कितने बैल हैं? उसने कहा—खड्डालान। फिर पूछा गया कि कितनी खेती है? उसने जवाब दिया—खड्डालान। फिर पूछा गया कि कितने भाई हैं? उसने जवाब दिया—खड्डालान। उन्होंने कहा कि भाई हर जगह खड्डालान मत कहो, मालूम हो गया कि तुम मूर्ख हो। इन लोगों को सिखलाने वाले जो गुरु हैं, वे विदेश में रहते हैं। खबर कभी चीन व मास्को से आती है और कभी कहीं-कहीं से आती है, इन लोगों में अपनी बुद्धि नहीं है। इन लोगों की तो वही खड्डालान

वाली हालत है। कोई भी देश का भला काम हो,

(श्रीमती राजेन्द्र कुमारी बाजपेयी पीठासीन हुई)

कोई भी तरक्की का काम हो, उसका विरोध तो इन लोगों को करना ही है। भाई अब तो चुनाव का माहौल है। मैं तो भगवान से प्रार्थना करता हूँ कि जैसी आपकी बुद्धि बनी है वैसी ही आपकी बनी रहे। आप किया करें विरोध कि इंदिरा जी ने क्यों फौज अमृतसर में इस्तेमाल की। आप यह विरोध करें कि खालिस्तान और पाकिस्तान का नारा लगाने वाले जो काश्मीर में अत्याचारी और अताताई हैं, उनको बन्द मत करो। पंजाब में कत्ले-आम करने वाले को छोड़ दो।

14.39 hrs.

[Dr. RAJENDRA KUMARI BAJPAL in the Chair]

इनके द्वारा यह कहा जाता है कि वहाँ से फौज हटा लो और "विनाशकाले विपरीत बुद्धि" का प्रचार करो। इस तरह की बातें कही जाती हैं। मैं जब गांव में जाऊंगा तो लोग मुझसे पूछेंगे कि स्टेशन को जलाया गया, उसका क्या होगा, गुरुद्वारे में टैंक भेदी तोप मंगायी गई थी, उसका क्या होगा? बसों से उतारकर हिन्दुओं को गोली से उड़ाया गया था, उसका क्या होगा? बड़े-बड़े नेताओं को गोली से मारा था, उसका क्या होगा? मैं चाहूंगा कि मंत्री जी अपने बयान में यह स्पष्ट करे कि जो विशेष न्यायालय बने हुए हैं, उनमें पंजाब को तहस-नहस करने वाले, और देश के टुकड़े करने वालों पर भी क्या मुकद्दमा चलेगा क्योंकि देहात के लोग यह समझते हैं कि कुछ चंद लोगों पर ही मुकद्दमा चलेगा। टूट-फूट का जो कार-सेवा द्वारा गुरुद्वारे का निर्माण हो रहा है, इसके

लिए कुछ लोग कहते हैं कि हम उसको बरबाद करेंगे। जहाँ पर सत्तर करोड़ लोग हो, वहाँ दस-बीस हजार आदमियों द्वारा आग लगाया जाना उचित नहीं है। मैं यह कहना चाहूंगा कि "धारों सठों से सठता सदैव; यह यीति कभी न भूलो नरेशः"। शेर के सामने यह कहा जाए कि शेर महाराज आप चावल, दाल और घी खा लीजिए तो वह नहीं खायेगा बल्कि मास ही खायेगा और खून ही पीयेगा। इसलिए इनका सम्बन्ध अमेरिका, इंग्लैण्ड, पाकिस्तान और चाइना से है देश की तरक्की को देखकर, इंदिरा जी की प्रभुता को देखकर इनके मन में जलन है। ये लोग देश टुकड़े करवाना चाहते हैं। मैं अपने कम्युनिस्ट भाईयों से कहना चाहूंगा कि "गर चाक है दामन तो बैठकर के सीलो, पेकिंग के दर्जियो से सिलाना हराम है"। क्या जूरत है वाशिंगटन और पेकिंग से राय लेने की? कुछ इंग्लैण्ड के लोग भी बैठे हुए हैं। विदेशों में संपर्क रखने वाले जो लोग यहाँ हैं, क्या उन पर भी आप केस चलायेंगे? देश की द्विफाजत करने के लिए यह स्पष्ट करना होगा। मैं यह देख रहा हूँ कि आज देश की आंख इन्दिरा जी पर लगी हुई है। कोई ऐसा नेता नहीं है, जो मुल्क को एक रख सके, सिवाय इन्दिरा जी के। लाखों आदमी रोज इन्दिरा जी के दर्शन के लिए आते हैं। उनमें ताकत है इसीलिए वह देश को एक रख सकती हैं। देश की एकता को खण्डित करने वाले जितने लोग हैं, उन पर भी सख्त से सख्त कार्यवाही होनी चाहिए। मैं, अपने विरोधी भाईयों से हाथ जोड़कर निवेदन करूंगा कि देशकी एकता और अखण्डता के लिए इस प्रस्ताव को वापस ले और सर्वसम्मति से इस प्रस्ताव को पास करें। भविष्य में भी इसका ख्याल करें।

SHRI RAVINDRA VARMA (Bombay North); Madam Chairman, I rise to support the Resolution moved with such...

exquisite logic and effect by my hon. friend from Panskura, and to oppose the Bill that my Right hon. friend from Nandyal, the Home Minister has placed before the House. It is a sad, strange coincidence, occasioned by some quirk of the parliamentary calendar of sittings, that my hon. friend presented this Bill, or commended this Bill to the House, on the eve of the Independence day, a day sanctified by the national ommitment to the concept of liberty, freedom, justice and defence of the rights of the people. I know my hon. friend, the Minister of State for Home Affairs, as well as the Right Hon. gentleman from Hanamkonda, who holds large of the portfolio today, are both erudite and enlightened gentlemen, extremely likable gentlemen. I can only say, therefore, that it must be the vagaries of politics as they are currently, practised that, made these enlightened gentlemen come before the House on the eve of the Independence Day with a bemighted Bill.

There may be some hon. friends, like my hon. friend from Salempur, and may be others who are in the queue, who say that I must speak with trepidation when I oppose this Bill. I feel no sence of trepidation whatsoever, because I am not opposing the suppression of terrorism. I am against terrorism, all manifestations of terrorism, insurgency and guerilla warfare in this country. I am against the heinous crimes that have been committed against the innocent; I am against the practice of inflicting vicarious sufferings on the innocent, in the name of some political objective.

I do not believe, as a man who believes in non-violence, like my hon. and venerable friend from Guntur, that noble causes can ever be served by terrorism and heinous violence. I also believe that the Government must have adequate powers and, if you do not mind my saying so to my right hon. friend, the political will to deal with terrorism.

Even as I have commenced by making this statement, I know my right hon.

friend has to commence by conceding that terrorism is a political phenomenon. What distinguishes terrorism from common murder, arson and dacoity is the fact that it is linked with political and social objectives. Therefore, he must concede that it is a political phenomenon, which has to be fought with political means, in the political field. It is not by driving it into the arena of police action or military action that you can cut at the root of terrorism.

My hon. friend will also have to admit that terrorists can flourish in a country or a state only when there are people who give them sympathy; may be misguided people misguided about the objectives, misguided about the means. But terrorists derive their substenance from public sympathy, from the fact that there are people who share their objectives, from the fact that there are people who share then disillusionment, from the fact that there are people who think that perhaps the creation of anarchy and uncertainty may create conditions in which their objectives would be fulfilled.

My hon. friend will also have, therefore, to admit that the fight against terrorism is a fight for the minds of men and women. My hon. friend will have to admit, whether he sits on the Treasury Benches or some other less dezzling areas of the House he will have to admit, that any drastic increase in the coercive power of the executive is likely to increase the facile, arbitrary abuse of such power by the executive. I am sure, you would agree with me. If, therefore, a measure is brought before the House, which drastically increases the powers of the executive, then we have the right to say, to demand, that it must be proved that these powers are necessary, that there are limit in safeguards against abuse.

There must be safeguards—safeguards against abuse, safeguards against facile use, safeguards against capricious use, safeguards against a situation in which the citizen becomes totally vulnerable before the leviathan State as far as de-

fence against accusations made against him. Such safeguards caused have been provided in the Bill, firstly, by limiting the duration of the law to a period which is synchronous or concurrent with the pendency of an extraordinary situation; secondly, by providing for initial scrutiny before approval and for a recurrent scrutiny whenever the government wants to put the law back on the Statute Book; thirdly by providing for scrutiny and approval when the law is made applicable to any declared geographical area; fourthly by ensuring that the need for expeditious trial is balanced with the need to ensure that no one is condemned or convicted of heinous offences without giving him a full opportunity to prove his innocence. The more the gravity of an offence, the more the severity of the punishment attached to it, the more necessary it becomes to ensure that there is full opportunity given to him to prove his innocence. My complaint with the Bill that the hon. gentleman has brought before the House is that the Bill does not provide any of these safeguards against abuses. If it had done so, then the bonafides of the Bill would have been above suspicion. My hon. friend's conscience itself would have been at rest—I am not quire sure of it now,—and he would have created a situation in which it would not have been possible for us on this side to say that this Bill has one ostensible intention and an other incipient intention. It is the absence of these safeguards which has made this Bill vulnerable.

My hon. friend from Panskura pointed out that the Hon. Minister has not restricted the duration of the validity of the Bill in terms of time and in terms of geographical area. This is going to be a permanent law on the Statute Book. Of course, it is going to be, unless you accept my amendments to the contrary.

Then, Sir, he has not made it necessary for Parliament to ratify the declaration of a zone as an affected area. These two deficiencies have resulted in the encroachment on the prerogatives of this House

as well as on the power of the judiciary to give protection to the citizen.

He has not put forward any political solutions for the problem of terrorism in the Punjab though my hon. friend from Salempur waxed eloquent on this matter. The convars of this Bill is not confined to the Punjab or to the North East as my hon. friend pointed out. Therefore, I do not want to get bogged down in history or bogged down in the Punjab or in the North East areas of our country.

Madam, the object of the Bill is not to define a new crime or a new offence. It is not to seek to increase the penalties attached to any offence. In fact, the long schedule lists offence that already exist. Therefore, my Rt. hon. friend is not inventing or defining a new offence. But then what is the object of the Bill? The object is to take powers and declare an area as affected and then to set up a special court and prescribe a special procedure for trial and thirdly to list offences which are called Scheduled offences, which can be tried under the prescribed procedure. Now, Madam, this is precisely what the British Government tried to do in the Rowlatt Act. My honourable and venerable friend from Guntur is here. There are not many Members in this House who would remember those days, when the country rose like one man against that Rowlatt Act. Why did it rise against the Rowlatt Act? It became the precursor of the non-cooperation movement and the Satyagraha movement in this country. Why? Many of us here like my hon. and venerable friends from Guntur and Varansi can not recall those days without a lump rising in our throat, without being overcome by emotion. And on occasions like that my friend from Nandial and I might have linked hands and sung :

Tholagipondi thellollu

Mee thavulaku meeru

Those were the days of values, of consicentiousness of national catharsis

and trauma and, Madam, I want to read out to you what Mahatma Gandhi said on that occasion :

“We cannot accept the Rowlatt Bill even under the reservation suggested by you, namely, that it is not to be enforced without the previous sanction of the Legislative Council. Our objection is not merely that it may be misapplied, but we object also to the arbitrary procedure laid down in it for the trial of offences enumerated in it. I would not let even a supposed anarchist be tried summarily or under a special procedural subversion of judicial checks and certainly not under any ordinary law giving extraordinary powers. Exceptional powers have been reserved for exceptional situations. Executive authority cannot be allowed to deal with exceptional situations in anticipation.”

Madam, I would submit that the Bill is patterned on the Rowlatt Bill. I submit that is so because the pattern of the Rowlatt Bill or Rowlatt Act is embossed on the sub-conscious of the administration in this country. I concede to my hon. friend this Bill is of high pedigree, perhaps it is bluer in blood than the Rowlatt Bill.

Mahatma Gandhi went on to say :

“The only thing, therefore, that I need to say to you is that I am embarking on civil disobedience because I am no longer able to bear the agony of remaining free while the Rowlatt Act is on the Statute Book.”

Madam, I would therefore like to examine and compare this Rowlatt Act with the present Bill which my hon. friend has put before the House.

The Rowlatt Bill also had the same there parts. You, Madam, are perhaps as familiar with this as I am—Part I which gave the power to declare an area affected and prescribed a procedure for initialing proceedings Part II which

empowered the Government to take restrictive action like preventing are from going out of one's house etc. and Part III the power to arrest and detain a citizen. Madam, I do not want to read everything and take the time of the House. But word to word this Bill is a copy of the Rowlatt Act except that some of the finer elements that gave a semblance of fairness in trials have become a victim of the vanishing trick of my hon. friend sitting opposite.

Madam, I have only to read Section 4(1) of Part I, Section 22(1) of Part II and Section 34(1) of Part III of the Rowlatt Act. Section 4(1) of Part I says :

“Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.”

Both Sections 22(1) of Part II and Section 34(1) of Part III—I will read only one of them—say whether it is detention or arrest or confining in one's house or whatever it is,

“Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in Section 21, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If, after considering such opinion, the Local Government is satisfied that action under the provisions of the section is necessary, it may by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 21, give all or any of the following directions.”

In both cases, therefore, submitting the evidence to a judicial authority of the rank of a Judge of the High Court and the satisfaction of this judicial authority are made per-conditions to taking action under this the Rowlatt Act. You have no such pre-condition, you have no such judicial scrutiny, you have, therefore no such protection, which this Bill gives to a man against the gross abuse of these additional powers.

15.00 hrs.

I will not go into the comparison in greater detail except to point out that even the Rowlatt Act had the safeguard of a preceding of judicial scrutiny which this Bill does not have. This Bill on the other hand has sought to establish the sovereignty of the subjective satisfaction of the Executive. Every clause of this Bill proves that all that you need is the subjective satisfaction of the Executive. It will be in the statute Book. You will pass it. Thereafter, you do not have to come to us. When you declare an are affected. You need not come to us for ratification. You will appoint a special court. Now the Public Prosecutor has been made a demi-God in this Bill and has been invested with enormous powers. Please look at the Bill. The ulimax of this procedure comes in Section 20 of this Bill which is a literal subversion of the basis of our judicial system, where you put the onus of proving innocence on the accused.

The other day my hon. friend said, that the shifting of onus has been done in the law regarding rape. I do not know whether it is the contention that the state victim of is a rape that the state is so powerless, an "abala" that it needs such a presumption of guilt. Here is the presumption of guilt in respect of a schedule, so long, miles long, it can be a part of the olympic record which we are trying to create and you say...  
(Interruptions)

THE MINISTER OF STATE IN THE  
MINISTRY OF HOME AFFAIRS

(SHRI P. VENKATASUBBIAH) : I just made a sort of illustration. The Evidence Act has been amended not only in the case of Rape Law but also in the case of Opium Act, Foreigners' Act, Prevention of Corruption Act, Essential Commodities Act, Customs Act, Foreign Exchange Regulation Act, etc.

SHRI RAVINDRA VARMA : I think the hon. Minister for pointing out the impugny with which they subvert the basis of the judicial system. My objection remains...

MR. CHAIRMAN : Please conclude.

SHRI RAVINDRA VARMA : I shall take five minutes more. It is a very important Bill.

What is the severity of the savagery of this Bill? The other day my friend was using the word 'savagery'. It militates against Article 9, 10 and 11 of the U.N. Declaration of Human Rights. I know that the U.N. Declaration is not a binding document on any Government. But it certainly contains your aspirations, your commitments—

Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 : Every-one is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11 : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

This Bill militates against each of the Articles of the declaration of Human Rights. What is the trial that you contemplated. Madam, have you read the Bill? You will be shocked if you read the Bill. What sort of a trial is contemplated in the Bill—because you can switch a case from one zone to another. I can understand the reason for providing for trial in another state. It is not that I do not understand. But I have to point out the gravity and the possibility of grave abuse. You have to think in those terms when you formulate a Bill—not merely of making by when the sun shines. What is your umbrella for the rainy day—trial in an unfamiliar state, trial while in captivity, trial without local assistance, trial in camera, trial with the names and addresses of the witnesses kept secret, trial with the presumption of guilt. All these add up to a mountain on the back of the man who is accused and who has to face the infinite resources of the leviathan state in a court where the public prosecutor will be breathing down the neck of the Judge.

I want to ask my hon. friend, what will happen a man is arrested in Sanjamala for an offence that he is supposed to have committed in Sanjamala six months before the notification came into effect and he is put on trial in Tarn Taran in Punjab. That gentleman from Sanjamala will go to the hon. Member from Nandyal to seek his assistance'.

SHRI P. VENKATASUBBAIAH : It is not like that. If it has to be taken outside the State, the State Government's concurrence is necessary.

SHRI RAVINDRA VARMA : Quite right. I will deal with every one of these points and prove it to you that what I have said is not incorrect, when it comes to the stage of amendments. Now, you said, State Government, Where does the accused come into the picture? You transfer him to another State and try him in an asphyxiating vacuum or suffocating vacuum, where he knows nobody, has no access of resources. Perhaps, he does not know,

the language, and he is put on trial and you think, you have given him ample, fair and just opportunities to prove his innocence.

Now, Madam, I have to deal very briefly with the definition of "terrorist" and *in-camera* trial. This is a very serious Bill. The definition of "terrorist" has been referred to by my hon. friends already. It is a wide canvas, an endless canvas. It is something like what Omar Khayyam described the sky as an inverted "Blue bowl".

SHRI MOOL CHAND DAGA (Palli):  
What is this ?

SHRI RAVINDRA VARMA : Have you heard of Omar Khayyam? (*interruptions.*)

In the days before prohibition he called the sky : an "Inverted Blue Bowl" over your head it covers everything. Madam, you have only to look at clause 2 (h) (ii) and (iii) :

"(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities ; or"

I think, this is, a very broad net. This is such a broad definition that it can cover everything like the sky. Then, come to 2 (h) (iii) :

"(iii) coercing or overawing the Government established by law ;"

If I look askance at the right hon. gentleman, the hon. Minister, with blood-shot eyes, I will be accused of trying to overawe him. Therefore, Madam, this definition is so vague, delightfully vague for the Government and the Public Prosecutor, frightfully vague for the citizen who is at the receiving end.

Now, on the previous day, there was a reference to *in-camera* trial. My hon. friend, the Home Minister is a very thorough man for whom I have very high respect. While answering my hon.

friend from Panskura, he said, "This House will appreciate the reason for providing in-camera trial is only to enable the court to keep the identity of the witnesses confidential". He went on to say: It is only an enabling provision. He slipped up which he generally does not do; or he has been grossly misguided. It is not an enabling provision. It starts by saying that it is compulsory and obligatory. Of course, I do grant, he need not interrupt me. I do grant that the court may have right to order a public hearing. Why? If the Public Prosecutor feels that in terms of propaganda, it will be useful to have a public hearing, then he can ask the court to order a public hearing. But it is not the court that decides "suo moto". It is the public prosecutor who files a petition and then the court allows public hearing. Otherwise, it will be an *in-camera* hearing and for an open hearing, the initiative lies in this Bill as my hon. friend has brought it before the House, with the public prosecutor. If the public prosecutor applies, the court can order a public hearing. The court has not been given the power to order in open trial suo moto or to turn down the request of the public prosecutor. There is nothing which gives any right or initiative to the accused. The choice is vested in the public prosecutor. Madam, everybody knows.....

SHRI P. VENKATASUBBAIAH :  
What type of accused are we dealing in this Bill?

SHRI RAVINDRA VARMA : Any-  
one accused of even the most heinous offences.

SHRI P. VENKATASUBBAIAH :  
Sir, it has been defined in this Bill. "Terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property. The offences have been scheduled in this Bill. We are dealing with that kind of accused. It is not an ordinary accused.

SHRI RAVINDRA VARMA : Right, but he is only accused. He has not been convicted. I am talking of the integrognum between your accusation and the court's conviction of that man. Now, I suppose, my hon. friend will realise the difference in what I am saying and what he is thinking. Open trial is a guarantee against the hush-hush trial that borders on per-secution against the abridgement of processes. I must now say a word about these witnesses.

My hon. friend from Panskura referred to the fact that practically every police station has a roll of professional witnesses who can be used. Almost every police station has got it. But now when you say that witnesses will have the benefit of anonymity, that even their names and addresses need not be recorded, it becomes a very serious situation indeed. My hon. friend opposite is a poet and, therefore, he can exercise his imagination and say, it is something like the disc of the moon on a new moon night in visible, yet very much present there. The conferment of anonymity on the witnesses creates a situation in which it may be possible for you to produce fake evidences. And who will know that? If the court, therefore, is given the option to decide whether, the names and addresses should be kept secret or not, as the Rowlatt Act had done, it would have been a different question. The court has not been given the option. The option has been precluded. I wish I could go into more details. I now come to the last point.

Now, I go to the Schedule. No doubt, it is again on the pattern of the Rowlatt Act. The Schedule is longer than that of the Rowlatt Act. There are more Acts referred to, more Clauses referred to. I do not have the time to go into all of them. But, of course, the number of Acts and the number of Clauses should increase because there is a general increase in the population, as my hon. friend was saying a little while ago. The Schedule exposes the fact

that drastic powers were already available to the Government. The long Schedule is a demonstration of the powers that the Government had, which it did not use. I leave it at that.

But the anonymity of an arithmetical number puts a veil on the variety and nature of the offences referred to in the Schedules. I shall invite you to lift the veil and look.

I shall give you only three examples. The Indian Railway Act is there; the Indian Penal Code is there; the Prevention of Damage to Public Property Act is there. All these Acts are there in the Schedule. Nothing is left behind. Take, for example, the Unlawful Activities Prevention Act. I believe, it includes offences under Sections 10, 11, 12 and 13, like, membership an association declared unlawful; taking part in its meeting; contributing in any way to assist its operations; dealing with the funds of an unlawful association; contravening of an order made in respect of a notified place, entry or attempt to effect entry into such a place; taking part in, advocating, abetting, advising commission of any unlawful activity, etc. All the unlawful activities have been defined. So, it is again an elastic definition.

Now, you come to the Indian Telegraph Act. The Sections referred to include establishing or working an unauthorised telegraph; intentionally damaging or tampering with telegraph; if any person intending to prevent..... intercept, .....commit mischief, damages, removes, tampers with a touches any battery, machinery, telegraph line, post or other thing, whatever being part of or used in or about any telegraph or in the working thereof". Even if you touch a battery or machinery or telegraph line, it comes under the scheduled offences, in this Act.

Coming to the Prevention of Damage to Public Property Act, the sections, to be included in the Schedule include mischief causing damage to public pro-

perty, being any building, installation or other property used in connection with the production, distribution, supply of water, light, power or energy;... (c) sewerage works..... and (e) any means of public transportation or telecommunication.... Even if you were to scratch a bus, it can be perhaps brought in.

In regard to the Railway Act, Sections 126, 126A, 127 and 128 which are included in the Schedule refer to "maliciously wrecking or attempting to wreck a train" that is understandable—but it goes further and says, "puts or throws upon or across a railway any wood, stone or other matter or thing...."

So, if you go by a bullock-cart which carries some faggots and if one piece fall on the railway line, you come under the mischief of this Act.

Now, I do not want to tax you any more. I shall not deal at length with the Evidence Act. I have mentioned it.

I shall, therefore, conclude.

AN HON. MEMBER: You are dealing with irrelevant things.

SHRI RAVINDRA VARMA: No. When you talk of Punjab, you are not dealing with irrelevant things. Whether what I say is relevant or not, those who understand will know.

I, therefore, conclude by saying that this Bill enthrones the satisfaction of the administration as sovereign, erodes the rights and prerogatives of the Parliament and judiciary and the citizen as far as self-defence is concerned.

It is a bad Bill. It is a black Bill. It is a barbarous Bill.

Its ostensible intention is to provide for a procedure to suppress terrorism. Its incipient intention, in the light of the absence of safeguards—is to compel the citizen to abdicate his right of

dissent, to compel the citizen to tender acquiescence and adulation in return for immunity,

I oppose the Bill.

श्री राम विलास पासवान : (हाजीपुर) सभापति महोदया, हम लोगों को यह जानकारी मिली है कि एन० टी० रामाराव की सरकार वर्खास्त कर दिया गया है। ..... (व्यवधान)\*\*

सभापति महोदय : आप लोग बैठ जाइए। जो कुछ आप लोग कह रहे हैं, वह रिकार्ड में नहीं जायेगा।

..... (व्यवधान)\*\*

सभापति महोदय : माननीय सदस्य, आप बैठिए, कृपा करके, मैं बात करती हूँ।

(व्यवधान)\*\*

सभापति महोदय : हाउस तो नियम के अनुसार ही चलेगा। आप अपनी जगह बैठिए।

(व्यवधान)\*\*

सभापति महोदय : रिकार्ड पर कुछ नहीं जाएगा।

(व्यवधान)\*\*

सभापति महोदय : आप बैठिए, मैं बात करती हूँ। (व्यवधान)\*\* इस सदन में जो कुछ भी होगा, नियमों के अनुसार होगा। आप बैठ जाइये।

(व्यवधान)\*\*

सभापति महोदय : यदि आप बैठ करके सुनेंगे, तब हम कुछ कहें (व्यवधान)\*\* ऐसे तो हाउस नहीं चल सकता (व्यवधान)\*\* अगर

आप शोर मचाना चाहते हैं तो कुछ नहीं होगा। हाउस तो रूलस के मुताबिक ही चलेगा।

(व्यवधान)\*\*

MR. CHAIRMAN : I shall conduct the proceedings only according to the rules of the House. If you want to discuss anything, it will be under the rules ; nothing else.

(Interruptions)\*\*

सभापति महोदय : इस बात को हम यहां पर डिस्कस नहीं कर सकते हैं, यह स्पीकर की रूलिंग हो चुकी है...

(व्यवधान)\*\*

श्री मूल चन्द डागा : सभापति जी, यह लोग सदन का काम नहीं चलने दे रहे हैं। इनसे आप कहिये कि सदन का काम चलने दें।

(Interruptions)\*\*

MR. CHAIRMAN : The Speaker has given the ruling that this is a State subject and it cannot be discussed here.

(Interruptions)\*\*

MR. CHAIRMAN : This type of shouting will not help you.

(Interruptions)\*\*

MR. CHAIRMAN : All of you please take your seats. You cannot discuss that here.

(Interruptions)\*\*

MR. CHAIRMAN : Nothing will go on record. Please sit down. Shrimati Shaktawat.

(व्यवधान)

सभापति महोदय : कृपया बैठ जाइये, नियम का उल्लंघन मत कीजिये। (व्यवधान)

यह स्टेट सबजेक्ट है, इस पर विचार नहीं किया जा सकता है। इस पर यहां कोई बात नहीं हो सकती।

(व्यवधान)

सभापति महोदय : अगर आपको किसी चीज के लिए डिस्कस करना है तो आप नोटिस दें। बिना नोटिस कोई बहस होती नहीं है। (व्यवधान) यह स्टेट सबजेक्ट है, यहां नहीं आ सकता है।

(व्यवधान)\*\*

MR. CHAIRMAN : Please sit down. You may speak one by one.

(Interruptions)\*\*

MR. CHAIRMAN : I am not allowing that. It will not go on record. This is not relevant. It has already been decided by the Speaker.

(Interruptions)\*\*

MR. CHAIRMAN : I am not allowing. It will not go on record. This is not relevant. It has already been decided by the Speaker.

(Interruptions)\*\*

MR. CHAIRMAN : Nothing goes on record.

(व्यवधान)

सभापति महोदय : जब तक आप कोई सव्स्टैटिव मोशन नहीं लाते, यह नहीं हो सकता।

(व्यवधान)

सभापति महोदय : जब डिसाइड होगा तब होगा। (व्यवधान) रूलस के मताबिक डिसाइड होगा।

After it is decided, we can have a discussion. Till such time, we have to wait and the House may continue as per the items mentioned in the Agenda paper.

(Interruptions)\*\*

सभापति महोदय : मैं रूलज के अगेंस्ट नहीं जा सकती। अगर आपने गर्वनर के बारे में कुछ कहना है तो आपको सबस्टैटिव मोशन लाना होगा। जब वह आएगा। तो हम उस पर विचार करेंगे। इस वक्त हाउस के सामने ऐसा कोई मोशन नहीं है। हाउस के सामने इस वक्त जो मोशन है, उस पर डिसकशन होगा।

(व्यवधान)\*\*

SHRI RAM VILAS PASWAN (Hajipur) : Parliament is within the Constitution. It is not out of the Constitution. There is a break-down in Andhra Pradesh. You will have to listen to us. The role of the Governor can be considered in the House. (Interruptions).

MR. CHAIRMAN : There is no such motion before us.

श्री राम विलास पासवान : हमने इस बारे में एजानमेंट मोशन दिया है।

सभापति महोदय : स्पीकर ने उसको स्वीकार नहीं किया है। इस लिए वह रिजेक्ट हो चुका है। इस वक्त हाउस के सामने जो मोशन है, उस पर डिसकशन होगा।

(व्यवधान)\*\*

MR. CHAIRMAN : I am not allowing anybody. I am not allowing on this issue.

(Interruptions)\*\*

सभापति महोदय : सवेरे जो एजार्नमेंट मोशन या दूसरे मोशन दिए गए थे, उन सब को स्पीकर ने डिसएलाऊ किया है। उस के बाद नयी बात नहीं उठायी जा सकती है। अब वह बातें रिजर्वेट हो चुकी हैं। इस समय हाउस के सामने जो डिस्कशन चल रहा है वही चलेगा। प्रो० निर्मला कुमारी शक्तावन, आप बोलिए।

...(*Interruptions*)\*\*

MR. CHAIRMAN : Not allowed.... You cannot discuss like this...There are rules (*Interruptions*)\*\*

Not allowed. Nothing should be noted. It is not our concern. It is a State subject. We are not going to discuss it here...(*Interruptions*)\*\*

Not allowed.

SHRI SAMAR MUKHERJEE (Panskura) : In protest, we walk out.

15.41 hrs.

*Shri Samar Mukherjee and some other hon Members then left the House*

THE MINISTER OF PARLIAMENTARY AFFAIRS, SPORTS AND WORKS AND HOUSING (SHRI BUTA SINGH) : Madam, it is really strange that today the opposition leaders have sought to discuss a matter which was the prerogative of the States. Whatever has happened, we do not know; there are no details available. The Governor is acting on the constitutional authority. Whatever has happened in Andhra Pradesh is purely a State matter and it should not have been discussed here. Unfortunately, the opposition wanted to bring up this

matter only to gain publicity. This is an election stunt and we should not have anything on record.

MR. CHAIRMAN : Nothing has gone on record.

प्रो० निर्मला कुमारी शक्तावन (चित्तौड़गढ़) : सभापति महोदय, एक बहुत बड़े तूफान के बाद मुझे बोलने का मौका मिला। ....(व्यवधान).... मैं इस विधेयक का समर्थन करने के लिए खड़ी हुई हूँ। मैं मंत्री महोदय को इस के लिए बधाई देना चाहूंगी कि उन्होंने देश की नब्ज को पहचानने हुए और वर्तमान परिस्थितियों को देखते हुए समय पर इस बिल को लाने का प्रयत्न किया। आज तीसरी दुनिया में केवल हिन्दुस्तान ही एक ऐसा राष्ट्र है जहाँ पर गरीबी, शिक्षा की कमी तथा कृषि प्रधान देश होते हुए भी 37 वर्षों से हमारा प्रजातंत्र पूर्णतया सुरक्षित है।

क्योंकि संविधान निर्माताओं ने हमेशा सोच-समझकर इस प्रकार का प्रावधान किया कि हम संविधान में समय पर संशोधन, संवर्धन और परिवर्धन कर सकें। आने वाला बिल जो है, हम जो आतंकवादी क्षेत्र विशेष अदालत अधिनियम पास करने जा रहे हैं, उसके लिए मैं मंत्री जी को धन्यवाद देना चाहती हूँ। हमारे कई विरोधी नेताओं-श्रीमती गीता मुकर्जी, प्रो० चक्रवर्ती एवं अन्य माननीय सदस्यों ने जो बातें कहीं, इस प्रकार की जो आशंकाएँ वे करते हैं, मैं समझती हूँ वह पूर्णतया निर्मूल हैं। उन्हें मालूम है कि पिछले कई वर्षों से विदेशी ताकतें आतंकवादियों से मिलकर देश को विघटित करने का प्रयत्न कर रही थीं।

[श्री० निर्मला कुमारी शक्तावत]

तमाम निर्दोष व्यक्तियों की हत्याओं की गई, कितने ही लोगों की सम्पत्ति लूटी गई, वस्त्रें जलाई गई, नहरें काट दी गई-इन परिस्थितियों में भी यदि उन क्षेत्रों को आतंकवादी क्षेत्र नहीं घोषित किया जाता तो आप सोच सकते हैं क्या नतीजा हो सकता है। इस देश की अखण्डता, सार्व-भौमिकता, धर्मनिरपेक्षता के लिए इस विन का आना बहुत आवश्यक ही नहीं बल्कि अनिवार्य था। इसलिए मैं इस बिल का हृदय से समर्थन करती हूँ। मैं मंत्री जी को बधायी देती हूँ कि उन्होंने इस विन को जम्मू-कश्मीर को छोड़ कर शेष सारे देश पर लागू किया है। आतंकवादी परिस्थितियाँ केवल एक स्थान पर ही नहीं होती, वह देश के किसी भी कोने में हो सकती हैं। चण्डीगढ़ और पंजाब में क्या हुआ, उसको दोहराकर मैं इस सदन का समय नहीं लेना चाहती, परन्तु इतना अवश्य कहना चाहती हूँ कि 1981 से 1983 तक वहाँ पर 183 घटनाएँ हुई थीं जबकि 1984 में जून के महीने तक 383 घटनाएँ हो गईं। यदि औसत लगाया जाए तो प्रति दिन 2 घटनाओं का औसत आता है। ऐसी स्थिति में भी यदि इस विन को न लाया जाता तो क्या किया जाता? फिर तो देश के लिए बड़ी विकट परिस्थिति पैदा हो जाती। इसके अनिश्चित इस विन को केवल पंजाब में ही लागू नहीं किया जा सकता, सारे देश में इसको लागू करने की आवश्यकता है। पिछले दिनों असम में जो परिस्थितियाँ पैदा हुईं, वह किसी से छिपी हुई नहीं। नार्थ ईस्टर्न एरिया में मिजोरम, त्रिपुरा आदि जा भी स्टेट्स हैं, वहाँ पर

भी इस प्रकार की बातें देखने को मिलती हैं। अभी-अभी कल ही पंजाब में दशमेश रेजिमेन्ट ने सात सरकारी स्कूलों को जला दिया। इससे बच्चों को कितनी असुविधा होगी, आप अन्दाजा लगा सकते हैं। इसी प्रकार से त्रिपुरा में ट्राइबल स्टूडेंट्स फेडरेशन ने छात्रावास में बम विस्फोट किया जिसमें कई विद्यार्थी घायल हुए। विरोधी दल के माननीय सदस्यों का कहना है कि इस बिल को किसी स्थान विशेष पर लागू न करके सारे देश पर क्यों लागू किया जा रहा है। लेकिन इन परिस्थितियों में जो इसको सारे देश पर लागू किया गया है उसका मैं स्वागत करती हूँ।

विरोधी दल के सदस्यों ने एक बात यह कही कि विशेष न्यायालयों की क्या आवश्यकता थी। मैं कहना चाहती हूँ कि स्पेशल कोर्ट्स की बहुत अधिक आवश्यकता थी। पहला कारण तो यही है कि अगर स्पेशल कोर्ट्स न होतीं तो आतंकवादी गवाहों को हमें गुमराह करने की कोशिश करते रहते। आपके सामने उदाहरण है, भिडरावाला धमकियां देकर न्यायालय के कर्मचारियों पर दबाव डालकर न्याय की प्रक्रिया में बाधा डालना करता था। ऐसी स्थिति में विशेष न्यायालयों का होना बहुत ही आवश्यक है। इस ही माँग पिछले बजट सेशन में सभी माननीय सदस्यों ने की थी और राज्य सभा में भी इसी प्रकार की माँग की गई थी। इसलिए सरकार द्वारा उठाया गया यह कदम बहुत ही स्वागतयोग्य है।

दूसरी बात मैं यह कहना चाहती हूँ कि स्पेशल कोर्ट इस लिए भी आवश्यक थी, क्योंकि वहाँ की कोर्ट में पहले ही फौजदारी और सिविल के मुकद्दमों की संख्या

अधिक है, यदि राष्ट्र द्रोह के मुकद्दमें भी उनको सौंप दिए जाते हैं तो उनके पास काम का बोझ ज्यादा हो जाता है। और ठीक से न्याय भी नहीं मिल सकता था। तीसरी बात यह है कि इसमें समय भी अधिक लगता और जब समय अधिक लगता है तो न्याय भी ठीक से नहीं हो पाता है। इस वजह से जो आतंकवादी लोग हैं, उनको हम सबक भी नहीं सिखा सकते हैं। इस प्रवृत्ति को दोबारा दोहराया न जा सके, इसके लिए विशेष अदालतों का बनाया जाना बहुत आवश्यक था। इसलिए विरोधी दल का सारी आशंकाएँ निर्मूल हैं कि विशेष अदालतें क्यों बनाई गईं।

मैं यह भी कहना चाहती हूँ, जैसा कि प्रो० चक्रवर्ती और गीता जी ने भी कहा कि यह कानून फण्डामेंटल राइट्स पर हस्तक्षेप करता है। मैं यह कहना चाहती हूँ कि क्या फण्डामेंटल राइट हमें यह बताता है कि रेलों की पटरियाँ उखाड़ डाला। क्या फण्डामेंटल राइट यह बताता है कि वस्त्रें जला दा। क्या फण्डामेंटल राइट यह बताता है कि हवाई जहाज का आहरण कर ला। बल्कि इससे तो फण्डामेंटल राइट को प्रोटेक्शन करके हर व्यक्ति को राइट आफ लिविंग और लाबर्टी-जिन्दा रहने और स्वतन्त्रता का अधिकार दिया है। इसलिए यह कहना कि फण्डामेंटल राइट के ऊपर किसी प्रकार का हस्तक्षेप किया गया है यह भ्रान्ति निराधार है।

अभी श्री रवीन्द्र वर्मा जी ने कहा और आशंका व्यक्त की कि इससे निर-अपराध व्यक्तियों को न्याय प्राप्त करने में कठिनाई हो जाएगी। निरअपराध व्यक्ति

प्रावधान किया गया है। फिर यह आशंका व्यक्त की गई कि इससे विरोधी दल के सदस्यों को परेशान करने के लिए इस का इस्तेमाल होगा। इस प्रकार उनकी यह आशंका भी निर्मूल हैं। यदि उनके दिमाग में डर का भूत सवार है तो उसका कोई इलाज हमारे पास नहीं है। हमने विरोधी दलों को सम्मान दिया, लेकिन जब आपका राज था, तो उस समय सम्मान देने की कोशिश नहीं की गई। इस बात को दोहराने की आवश्यकता नहीं है। शाह कमीशन का नाम लेते ही, वे सारी स्थिति को समझ जायेंगे। हमारे दिमाग में इस प्रकार की कोई भ्रान्ति नहीं है। यह भी कहा गया कि यह कानून और व्यवस्था सारी जगह के लिए क्यों लागू की गई? यह एक प्रकार से परमानेंट कानून पुस्तिका है। इसलिए सिर्फ पंजाब या चण्डीगढ़ के लिए ही लागू करना ठीक बात नहीं थी। कानून पुस्तिका का पूर्ण रूप से बनना बहुत ही आवश्यक है। क्योंकि आतंकवादी तो कहीं भी हो सकते हैं। अभी आपको मालूम ही है कि मद्रास एयरपोर्ट पर बम्ब विस्फोट किया गया। मैं आपको अरने ही निर्वाचन क्षेत्र चित्तौड़गढ़ की बात बताना चाहती हूँ। वहाँ एक कस्बे में बम्ब विस्फोट किया गया, जहाँ पर 12 व्यक्तियों की जानें गई और 15-20 व्यक्ति घायल हुए। क्या इस प्रकार की स्थिति सिर्फ एक ही स्थान पर विद्यमान हैं। इसकी आवश्यकता तो सारे देश के लिए थी। इसके अलावा यह भी कहा गया है कि इसकी अनुसूची में बहुत सारी बातें जोड़ दी गई हैं। मैं यह कहना चाहूंगी कि इस बिल के तहत जो शेड्यूल बनाया है, वह गलत नहीं है। इसमें 83 संश्लेष हैं जबकि 53 आइ० पी० सी० के

[प्रो० निर्मला कुमारी शक्तावत]

को मरने से बचाया जाए और सार्वजनिक सम्पत्ति की रक्षा की जाए, इसके लिए यह पेश किया गया है, जो कि बहुत आवश्यक है। "इन कैमरा ट्रायल" का यहां पर बहुत ज्यादा क्रिटिसिज्म हुआ है। पता नहीं क्यों विरोधी दल के सदस्यों को इससे भय लगता है। इससे तो गवाह को भी आतंकित नहीं किया जा सकेगा और अपराधी को भी प्रोटेक्शन ही जायेगा।

आतंकवादी व्यक्ति को सार्वजनिक कोर्ट में सुनवाई होती है इसलिए हो सकता है, उस पर अटैक हो जाए। इसीलिए मैं "इन कैमरा ट्रायल" का स्वागत करना चाहूंगी। यह भी कहा गया कि यह राज्यों के मामले में हस्तक्षेप है और हमारे फ़ेडरल स्ट्रक्चर को डिस्टर्ब किया गया है। मैं यह कहना चाहूंगी कि यह कोई डिस्टर्बेंस नहीं है। यह तो एक अच्छी व्यवस्था है क्योंकि राज्य तो आतंकवादी घोषित करने की राय भी दे सकते हैं। यह भी परिस्थिति आसवती है कि आतंकवादी घोषित करने की राय दे या न दें। ऐसे समय में देश की एकता नष्ट हो सकती है। इसलिए, यह अधिकार केन्द्रीय सरकार के पास होना चाहिए। इसमें जो न्यायाधीश नियुक्त किए जायेंगे, वह राज्यों के उच्च-न्यायालयों के जो मुख्य न्यायाधीश हैं, उनकी राय से होंगे। अभी वर्मा जी भी कह रहे थे कि एक आदमी बहुत दूर जाकर कैसे न्याय प्राप्त करेगा? राज्य में भी उसकी सुनवाई हो सकती है। यदि स्टेट गवर्नमेंट चाहती है कि सुनवाई उस राज्य में न होकर दूसरे राज्य में हो तो यह प्रोविजन कानून में किया जाना आवश्यक था। यह किया गया

है, इसके लिए मैं मंत्री जी को बधाई देना चाहूंगी। यह बहुत अच्छा है कि एन्टी-सिपेटरी बेल नहीं होगी। कभी-कभी ऐसा होता है कि आतंकवादी पहले से ही बेल ले लेते हैं और बच जाते हैं। हमारे जो शांति-प्रिय नागरिक हैं, उनको इससे बड़ी निराशा होती है। यहां पर कहा गया कि यह तो आपातकाल का पूर्वाभ्यास है, जिसको कि डायरेक्टली नहीं लगाया है। मैं यह कहना चाहूंगी कि आप लोग ही आपातकाल जैसी परिस्थितियां ला रहे हैं। देश की एकता और अखण्डता को कायम रखने के लिए इस बिल को लाना जरूरी था। इसके अलावा प्रोफेसर चक्रवर्ती ने जो बात कही, वह मेरे दिमाग में चुभ रही है। उन्होंने यह कहा कि श्रीमती गांधी का जो कार्य-काल है, वह ब्लैकसेट पीरियड आफ इंडियन हिस्ट्री है। उनका यह कहना गलत है। यह तो ब्राइटेस्ट पीरियड है। आपको अपने चश्में से अगर दिखाई नहीं दे रहा है तो हमारे चश्में से देख सकते हैं। वीस सूत्री कार्यक्रम की चमक, विकास योजनाओं की चमक और अन्तरराष्ट्रीय जगत में जो ख्याति हमें मिली है, वह चमक साफ दिखाई दे रही है। आने वाले 1985 में जब जनता अपना विश्वास पुनः व्यक्त करेगी तब आपको चमक और भी साफ दिखाई देने लगेगी। इसलिए इस पीरियड को हम स्वर्णिम-काल ही कहेंगे। मुझे यही कहना है कि यह एक बहुत ही महत्वपूर्ण बिल है। इसकी आलोचना न करें बल्कि सर्वसम्मति से पास करें क्योंकि संसद देश की एक सर्वोच्च संस्था है।

16.00 hrs.

और भारत की जनता यह देख सके कि हम सब पार्लियामेंट के मैनबर देश में

शान्ति, अमन और चैन चाहते हैं, देश की एकता चाहते हैं और इसीलिए हमने हिन्दुस्तान से आतंकवादी को मिटाने के लिए आतंकवादी क्षेत्र (विशेष न्यायालय) सम्बन्धी कानून को सर्वसम्मति से पस किया है। फिर इतना ही बह कर मैं आपका धन्यवाद करती हूँ।

\*SHRI ERA MOHAN (Coimbatore): Madam Chairman, on behalf of my party the Dravida Munnetra Kazhagam, I wish to say a few words on the Terrorist Affected Areas Special Courts Bill, 1984.

At the very outset, I am unable to understand the compulsions of the Government for bringing forward this Bill so suddenly now. After the Congress Party came to power in 1980, the agitation in the State of Assam reached an alarming stage. The massacre in Nelli was flashed all over the world. Hundreds of innocent men, women and children were hacked to death in Nelli and thousands became the victims of arson and looting. At that time the Government thought that they could tackle the situation with the legislative powers they already had. For three years in the State of Punjab there was dance of death. The responsibility for the continuing violence in the Punjab squarely lays on the shoulders of the Central Government. By presenting the White Paper, the Government in fact conceded the worsening state of affairs in the State of Punjab. As I said, I begin to suspect the sudden awakening of the Government for bringing forward this Bill. While I say that this Bill is an apt illustration of the inept functioning Government, I have also to state that such a Government is being clothed with extraordinary powers through this Bill. I do not know whether the Government will be able to maintain law and order in this vast country even

with legislative powers as contained in this Bill. I have seen that in each session of this House scores of laws are enacted. Some rigorous laws with deterrent punishments have been approved by this House. With all these laws, besides the new laws of the kind under discussion, the Government have failed miserably in governing the country effectively. The prevailing chaos in the country confirms my contention. If it is otherwise, could Bhiwandi communal clashes have occurred in which thousands became the victims and hundreds died? The Government which swears by secularism have not yet been able to contain religious intolerance. In spite of the Police, Special Crime Branch, RAW, CBI, etc. The Government could not get prior intimation about the impending calamity. Otherwise, the party in power would have decided to derive political advantage even from the communal conflicts, though intelligence information had reached the Government. The Government have not been able to avert the recurring communal flare-ups at the same places at regular intervals. What does this show? It shows that the Government have not tried to use the powers vested in them under the available enactments. I wonder how the new law is going to help this Government.

Only day before yesterday, i.e. on 15th August the Government amended the National Security Act passed in 1980. Today the Terrorists affected areas bill is being passed. How many such laws the Government require to usher in an era of stability and prosperity in the country? There is COFEPOSA for eliminating the smugglers. There is NSA for curbing violence in the country. There is Cr. P. C., IPC etc. to protect the State. When we question the necessity for this law, the Minister will say that it will not affect the law-abiding citizens of the country, political leaders and trade union leaders.

[Shri Era Mohan]

But the Government's past actions reveal the yawning gap between their profession and practice. When MISA was enacted, the same specious plea was put forth. But in one swoop all the leading political opponents were put behind the bar. I was a MISA detenu for about a year. Till today I do not know the grounds of my imprisonment. Thousands of people who were opposed to the Government were arrested under the MISA. This experience of ours compels us to doubt about the veracity of your assertions that this law would not be made applicable to political opponents. In the background of Government's past actions, we say that this is a savage law, that this is a barbarous law.

Under the powers vested in this law, you can declare any area as terrorist affected area. In the beginning you may arrest some petty miscreants. Later, if you find that there is danger to your authority, you will not hesitate to arrest the political opponents for the purpose of perpetuating yourself in power. Without declaring Andhra Pradesh as a terrorist affected area, the ruling party at the Centre has captured the power. In Karnataka some area may be declared as terrorist affected and some 50 MLAs belonging to the ruling party in the State may be arrested. Then the ruling party at the Centre will be free to capture power in Karnataka. None can question the Governor who dances to the tune of the Centre. I have to say that justice has become the casualty. I have to warn the Government that such wide powers may pose a serious threat to the Centre itself. I know that Shri Venkatasubbaiah is a veteran freedom fighter. He had valiantly fought the British and he had undergone imprisonment. During his reign this Bill as being enacted. Shri Venkatasubbaiah may be inherently reluctant to use this law against the political opponents, But, after him, his successors and the new set of people

here in this House, with powers vested in them through NSA and the Bill under discussion may run berserk. I have to warn the Minister of such dangerous portends, which may affect the ruling party itself. The Government should examine whether these powers are at all necessary.

Shri Venkatasubbaiah has given the definition of terrorist under clause 2 of this Bill. You kindly see section 2 (1) (h) (iii) in which the following is mentioned nonchalantly—coercing or overawing the Government established by law. Under this omnibus provision, any political opponent may be arrested any time for any silly reason. The political activities may be construed as coercing or overawing the Government. The trade union activities, particularly those of opposition parties, may be covered by this definition. It may be denied now that this Bill will not be used against the opposition party leaders or trade union leaders. But, when political opportunist gains the upper hand, there will be no hesitation to use the provisions of this Bill for arresting the political opponents. A trade union leader addressing a public meeting may be treated as overawing the Government and he may be arrested. I suggest that the Minister should consult Law Ministry again about this particular sub-clause. He should also ponder whether this Bill is at all necessary.

The Government have thought it necessary to amend the Indian Evidence Act, 1872 by incorporation a new section 111-A. I do not think that such tinkering here and there in this old and archaic law, enacted by the Britishers in 1872, will update the provisions of this Act. You will agree that the law enacted in 1872 cannot be in consonance with the prevailing conditions now. I suggest that the Government should scrap this old law and formulate a new Evidence Act which will be in tune with the present state of affairs in the country. The Opposition Parties

and the legal experts should be consulted while formulating the new Evidence Act.

Before I conclude, I would like to know whether the Disturbed Areas Special Courts Act is still in force. If this Act is in force, should we also have this Bill under discussion? If that Act had been repealed, I would like to know why it was repealed. Did the Government think that there would be no more disturbances in the country. I want the Minister to explain this in his reply to the debate.

I am of the view that the Government may repeat their past performance by taking recourse to the powers vested in them through this law. Hence, on behalf of Dravida Munnetra Kazhagam, I oppose this savage and barbarous law with all the force at my command. I also demand that this Bill should be withdrawn by the Government. With these words I conclude my speech.

श्री पी नामग्याल (लद्दाख) : सभापति महोदय, जी रट्टेचुट्टरी रेजोल्यूशन श्रीमती गीता मुहूर्जी और दूसरे साथियों ने इस ऐजेंडा में पेश किया है, मैं उसकी मुखालिफत करता हूँ और साथ ही टैररिस्ट एक्टिविटी एरियाज (स्पेशल कोर्ट्स) आर्डिनेंस जो बिल की शकल में लाया गया है, मैं उसका समर्थन करता हूँ।

बहुत से साथियों ने पंजाब के बारे में चर्चा की है। उससे भी पहले आसाम, नागालैंड, मिजोरम, मणिपुर और त्रिपुरा में जो वाकिआत पेश आए, हम उन्हें नहीं भूल सकते। ऐसे हालात पैदा हो गए थे कि इन्नीसेंट लोगों को कत्ल किया गया, बसों को रोक कर चुन चुन कर लोगों को मार डाला गया, रेनवे लाइनों को उड़ा दिया गया, प्रापर्टी को जला दिया गया,

गुलिला जंग करने की कोशिश की गई और पुलिस के हाथों से आर्म्ज एंड एम्पुनीशन छीन लिया गया।

हाल ही में सरकार ने पंजाब के बारे में जो व्हाइट पेपर शायी किया है, उसके मुनाबिक मार्च 1981 से दिसम्बर 1983 तक 198 मुख्तलिफ क्रिस्म के जरायम कमिट किए गए, जिनमें कत्ल भी शामिल है। जनवरी, 1984 से 2 जून, 1984 तक 383 ऐमे क्राइम किए गए। कहा जाता है कि गोल्डन टेम्पल में इतने हथियार और गोला-बारूद जमा थे, जो डेढ़ बँटेलियन यानी 1500, 1600 लांगों के लिए काफी थे। उनमें मुख्तलिफ क्रिस्म के माडर्न व्हेपन भी थे। ऐमे हालात में मौजूदा अदालतों का फंक्शन करना बहुत मुश्किल, बल्कि नामुमकिन, हो गया था।

आपने पढ़ा होगा कि श्रीनगर में-जब वहाँ पिछली सरकार थी-जिस जज ने मकबून बट्ट को फांसी की सजा सुनाई थी, उसके घर पर बम फेंके गए और एक्टिंग चीफ/जस्टिस के घर पर भी बम फेंके गए। इस तरह से बम फेंकने और गड़बड़ करने के और भी वाकिआत हुए थे। जो मुअजिज साथी उस तरफ बैठे हुए हैं, उनका लहजा इस तरह का था मानों सारे देश में स्पेशल कोर्ट्स कायम की जा रही हैं। यह बात नहीं है। पंजाब, चंडीगढ़, नार्थ ईस्ट बंगोर में जो हालात हैं, जहाँ ऐमे हालात होंगे, सरकार उनको डिस्टर्ब्ड एरिया डिक्लेयर करेगी और उन्हीं एरियाज में स्पेशल कोर्ट्स कायम की जाएंगी। यह बाद गजत है कि इस बिल में जो क्लॉजिज रखी गई हैं, उनसे लोगों के राइट्स या फंडामेंटल राइट्स को

[श्री पी० नामग्याल]

इनफ्रिज किया गया है। मैं समझता हूँ कि जो इस में खास-खास बातें हैं वह बहुत अच्छी हैं। खुफिया अदालत या ट्रायल इन कैमरा जिन को कहते हैं, उस की जो बात कही गई है वह बहुत जरूरी हो गया है क्योंकि पंजाब में कई ऐसे केसेज हुए हैं जिस में गवाह अदालत में पहुंचने से पहले रास्ते में ही कत्ल कर दिए जाते थे। गवाह अदालत में पहुंचने ही नहीं देते थे। ऐसी हालत में कैमरे में ट्रायल होना बहुत जरूरी हो गया है। उन की आइडेंटिटी आम लोगों के सामने नहीं आनी चाहिए, यह बहुत जरूरी है।

इस कोर्ट के सम्बन्ध में जितने भी बलाजेज हैं उन में यह भी प्राविजन है कि कोई चाहे तो सुप्रीम कोर्ट में भी अपील के लिए जा सकता है। इसी तरह से और बहुत से संशोधन हैं जिन में बहुत अच्छी बातें कही गई हैं। मैं डीटेल में नहीं जाना चाहता। मेरे और साथियों ने अपनी दलीलें पेश की हैं, मैं उन से सहमत हूँ।

लेकिन मैं एक चीज पर जोर देना चाहूंगा कि इस बिल का जो जूरिस्टिक्शन है वह आप ने आल इंडिया तो रखा है सिवाय जम्मू और काश्मीर के, मैं समझता हूँ कि इस बिल या इस ऐक्ट को जम्मू-काश्मीर पर भी लागू करना जरूरी है। वह इसलिए कि वहां पर जो लोग अपने गलत कामों की वजह से हुकूमत नहीं कर पाए और जो अपने गलत कामों की वजह से गिर गए उन की तरफ से वहां पर यह कोशिश की जा रही है कि वहां ऐसे हालात पैदा किए जायें जिस से वहां गड़बड़ी पैदा

हो और इनस्टेबिलिटी रहे। मिसाल के तौर पर मैं एक दो बातें आप की नोटिस में लाना चाहता हूँ। “नवाए सुबह” जो जम्मू काश्मीर के अन्दर नेशनल कान्फरेंस का आफिशियल आर्गन है उस में 9 अगस्त 1984 के ईश्यू में ये बातें कही हैं-14 अगस्त को वादी काश्मीर में पाकिस्तानी परचम लहराने का मंसूवा- तोड़-फोड़ की कार्यवाहियों के लिए नौजवानों के गिराह मुनज्जम-नेशनल कान्फरेंस के आफिशियल आर्गन में यह बातें कही गई हैं। वहां जो मौजूदा गुलाम मोहम्मद शाह की सरकार है वही वे यह हालात पैदा करने जा रहे हैं। मैं समझता हूँ कि उनका मंसूवा यह पहले से किया हुआ है। वह वहां की वादी में गड़बड़ करना चाहते हैं। बहुत पहले से उनके ये प्लान बने हुए हैं। वे यह दिखाना चाहते हैं कि यह वहां की सरकार करवा रही है। यह बात उन्होंने 9 अगस्त को कही है और उस के बाद कल का वाकया वहां पर हुआ है। इस के लिए वहां की सरकार जो कुछ कार्यवाही कर रही है, मैं समझता हूँ वह वहां के हालात को संभाल लीगी। टाइम्स आफ इंडिया के 10 अगस्त 1984 के ईश्यू में डाक्टर फारूक की 9 अगस्त 1984 की जो बात छपी है वह इस प्रकार है :

“Kashmir is for Kashmiris, says Farooq. ‘The former Chief Minister, Dr. Farooq Abdullah, today asserted that ‘Kashmir was for Kashmiris and no one could deprive them of it.’”

Addressing a public meeting at Mujahid Manzil to mark the anniversary of Sheikh Abdullah's arrest on August 9, 1953, he warned the people to be prepared to face even bullets in order to retain their free-

dom. But he said, with 'traitors like Gulsha, 'the country could never be free. He said the 'Hindustani' police had been sent to the State in the wake of G.M. Shah coming to power on July 2 in order to cow down the people. But the masses would not be cowed down by any repression.'

तो उनका जो स्टेटमेंट है उससे साफ जाहिर होता है, वे कहते हैं कि अभी हमें लड़ना है फ्रीडम के लिए। फ्रीडम के लिए लड़ने का क्या मतलब है? क्या वे कश्मीर को हिन्दुस्तान का हिस्सा नहीं समझते हैं? तो इस तरह के जो हालात पैदा किए जा रहे हैं ऐसी सूरत में मैं कह रहा हूँ कि यह जो स्पेशल कोर्ट्स का प्राविजन है उसका जुगिस्ट्रिडवशन जम्मू वश्मीर में भी होना जरूरी है। वरना जब वहां पर ऐसे हालात पैदा होंगे फिर वहां की सरकार इस एक्ट का जम्मू व वश्मीर पर लागू करने के लिए रेकमेंड करेगी तब यहां से नोटिफिकेशन जारी हो और तब वहीं यह हो सकेगा। इसलिए मैं गुजारिश करूंगा कि चूंकि कश्मीर में इस समय प्रो० डंडिया फोर्सेज पावर में है, उनकी कानफरेंस से आप इस बिल को वहां पर भी लागू कर सकते हैं।

इन चन्द शब्दों के साथ, यह जो रेजोल्यूशन है उसको तो मैं अपोज करता हूँ और आडिनेन्स की जगह पर जो बिल पेश किया गया है उसका समर्थन करता हूँ।

16.25 hrs.

[SHRI N. K. SHEJWALKAR in the Chair.]

श्री पी नाम गियाल (दख) सजापती भूदो-जो  
 10. सचोरी रियायतुशन श्रुति गिता कर्जो और दुसरे  
 साक्षियों ने अस आयान में पेश किया है, में अस की  
 مخالفت करता हूँ और साक्षी थ्रिब्युट इन्फिक्टेड अरियार  
 (अपिशु कोरुश) आरुथी निस जोब की शकल में लाया गया  
 है में अस का समर्थन करता हूँ।

बहुत से साक्षियों ने पंजाब के बारे में जो चर्चा  
 की है, उससे भी पहले आसाम, नागालैंड, मिजोरम, मणिपुर  
 और त्रिपुरा में जो वास्तव में पेश आये हैं उनमें से  
 बहल सिके, ऐसे हालात पैदा हो गये हैं कि जो  
 लोगों को फल दिया गया है, लोगों को रजिस्ट्रेशन  
 डाला गया, रेलवे लाइनों को अडाला गया, प्राइवेट  
 गिना, गोरु बलाजग करने की कोशिश की गयी और पोलिस के  
 हाथों से आर्म्ड आयुध चोरी होगी।

हाल ही में सरकार ने पंजाब के बारे में जो  
 वोट पेश किए हैं, उससे भी स्पष्ट है, 1981  
 से दिसम्बर 1983 तक 1981 तक 1981 तक 1981 तक  
 कैंडिडेट्स में फल भी शामिल हैं, जनवरी 1984  
 से 2 जनवरी 1984 तक 383 ऐसे कैंडिडेट्स  
 कैंडिडेट्स को गोलुडन थिल में अतने विचार और गोलुडन  
 जिनमें जो थ्रिब्युट थिलिन 1500-1400 लोगों के  
 लिये काफी हैं, उनमें से अतने के मादरन विधि भी  
 हैं, ऐसे हालात में जो अतने एडवोकेट्स का फलशन करना  
 बहुत शकल बल्कि नामुमकिन हो गया है।

आपने पूछा होगा कि श्री नगर में जब वहाँ पेश  
 सरकार नहीं, जो नज ने मजबूत को पेश की सारा  
 शान्ति है, उसके गहरा भी पेश कैंडिडेट्स और अकिंग जिन  
 जिनके गहरा भी पेश कैंडिडेट्स, उसमें से भी  
 पेश कैंडिडेट्स और अकिंग जिनके गहरा भी पेश कैंडिडेट्स

جو معزز ساستی اس طرف بیٹھے ہوئے ہیں، ان کا لہجہ اس طرح کا تھا مانو سارے دیش میں اسپیشل کورٹس قیام کی جارہی ہیں، یہ بات نہیں ہے، پنجاب چند ہی گروہ نارٹھ ایسٹ وغیرہ میں جو حالات ہیں جہاں ایسے حالات ہوں گے سرکار ان کو ڈسٹرکٹ ایریا ڈیکلیر کرے گی اور انھیں ایریا میں اسپیشل کورٹس قائم کی جائیں گی، یہ بات غلط ہے کہ اس بل میں جو کلاز رکھی گئی ہیں ان سے لوگوں کے رائٹس یافتہ امینٹ رائٹس کو انفریج کیا گیا ہے میں سمجھتا ہوں کہ جو اس میں خاص خاص باتیں ہیں وہ بہت اچھی ہیں، خیفہ عدالت یا ٹرائل ان کیمرا جس کو کہتے ہیں اس کی جو بات کہی گئی ہے وہ بہت ضروری ہو گیا ہے، کیوں کہ پنجاب میں کئی ایسے کیسز بھی ہوئے ہیں جس میں گواہ عدالت میں پہنچنے سے پہلے راستے میں ہی قتل کر دیئے جاتے تھے گواہ عدالت میں پہنچنے ہی نہیں دیتے تھے، ایسی حالت میں کیسز میں ٹرائل ہونا بہت ضروری ہو گیا ہے ان کی اسٹیٹمنٹی عام لوگوں کے سامنے نہیں آنی چاہیے، یہ بہت ضروری ہے۔ اس کو درشا کے سمبڑھ میں جتنے بھی کلاز ہیں ان میں یہ بھی پراڈیوز ہے کہ کوئی چاہے تو سپریم کورٹ میں بھی اپیل کے لئے جاسکتا ہے، اس طرح سے اور بہت سے سیکشنز ہیں جن میں بہت اچھی باتیں کہی گئی ہیں، میں ڈسٹریکٹ میں نہیں جانا چاہتا، میرے اور ساتھیوں نے اپنی دلیلیں پیش کی ہیں میں ان سے سہمت ہوں۔

سے حکومت نہیں کر پائیے اور جو اپنے غلط کاریوں کی وجہ سے گونگے ان کی طرف سے دہاں پر یہ کوشش کی جا رہی ہے کہ دہاں ایسے حالات پیدا کئے جائیں۔ جس سے دہاں گورنری پیدا ہو اور وہاں انسٹیٹیوٹس کے مثال کے طور پر میں ایک دو باتیں آپ کی نوٹس میں لانا چاہتا ہوں۔ "نوائے صبح" جو جموں کشمیر کے اندر مشینل کانفرنس کا آفیشل آرگن ہے اس میں ۹ اگست ۱۹۸۲ کے ایٹو میں یہ باتیں کہی ہیں۔ ۱۴ اگست کو وادی کشمیر میں پاکستانی پیرچم لہرانے کا منصوبہ، توڑ پھوڑ کی کارروائیوں کے لئے نوجوانوں کے گروہ منظم، نیشنل کانفرنس کے آفیشل آرگن میں یہ باتیں کہی گئی ہیں، وہاں جو موجودہ غلام محمد شاہ کی سرکار ہے وہ یہ حالات پیدا کرنے چاہتے ہیں۔ میں سمجھتا ہوں کہ ان کا منصوبہ یہ پہلے سے لیا ہوا ہے وہ دہاں کی وادی میں گزرتے کرنا چاہتے ہیں، بہت پہلے سے ان کے یہ چان بنے ہوئے ہیں، وہ یہ دکھانا چاہتے ہیں کہ یہ دہاں کی سرکار کو رو رہی ہے۔ یہ بات انھوں نے ۹ اگست کو کہی ہے اور اس کے بعد کل کا واقعہ وہاں پر ہوا ہے اس کے لئے وہاں کی سرکار جو کچھ کر رہی ہے میں سمجھتا ہوں وہ وہاں کے حالات کو سنبھال لے گی، ٹائمز آف انڈیا کے ۱۰ اگست ۱۹۸۲ کے ایٹو میں ڈاکٹر ساروق کی ۹ اگست ۱۹۸۲ کی جو بات چھپی ہے وہ اس پر کار ہے۔

"Kashmir is for Kashmiris", says Farooq.

"The former Chief Minister, Dr. Feroq Abdullah, today asserted that 'Kashmir was for Kashmiris and no one could deprive them of it.'

Addressing a public meeting at

لیکن میں ایک چیز پر زور دینا چاہتا ہوں کہ احمد بل کا جو رسد کشن ہے وہ آپ نے آل انڈیا رکھا ہے سوئے جموں اور کشمیر کے تو میں سمجھتا ہوں کہ اس بل یا اس ایکٹ کو جموں کشمیر پر بھی لاگو کرنا ضروری ہے، وہ اس لئے کہ وہاں بچے جو لوگ اپنے غلط کاریوں کی وجہ سے

Mujahid Manzil to mark the anniversary of Sheikh Abdullah's arrest on August 9, 1953, he warned the people to be prepared to face even bullets in order to retain their freedom. But he said with 'traitors like Gulsha,' the country could never be free. He said the 'Hindustani' police had been sent to the State in the wake of G. M. Shah coming to power on July 2 in order to cow down the people but the masses would not be cowed down by any repression."

श्री सूरजभान (अम्बाला) : संभाषित

महोदय, मैं श्री बंकटसुवैया जी का दिल से आदर करता हूँ लेकिन यह कहना पड़ रहा है कि एक अच्छे आदमी के जरिए बुरा बिल आ रहा है।

A bad Bill is being piloted by a good man.

दवे-तीन बूजहात पर मैं इसका विरोध करता हूँ। पहली बात तो यह है कि 14 जुलाई को आर्डिनेन्स जारी किया जाता है जबकि उसके 8-10 दिन बाद ही पार्लमेंट का सेशन शुरू होने वाला था। सिर्फ 9 दिन पहले आर्डिनेन्स जारी करने की क्या जरूरत थी-यह बात नहीं बताई गई है। यदि उसी वक्त यह बिल लाया जाता तो समझ में आ सकती थी जबकि निरंकारी बाबा गुरवचन सिंह का कत्ल किया गया था, जब लाला जगत नारायण का कत्ल किया था, जब डी. आर्डी. जी श्री पटवाल मारे गए थे, जब हिन्दी समाचार के एडिटर रमेश चन्द्र और प्रीतलड़ी के नौजवान एडिटर को मारा गया था, जब हरबंसलाल खन्ना को कत्ल किया गया था, जब बेसूर हिन्दुओं को इसलिए मार दिया गया था कि वे हिन्दू थे और जब भिण्डरावाला आपके कारण आसमान पर चढ़ा हुआ था। अगर उस वक्त यह बिल लाया जाता तो बात कुछ समझ में आ सकती थी। लेकिन ब्लू स्टार आपरेशन होने के बाद जब आतंकवादियों की कमर टूट चुकी है तब इस बिल की क्या अहमियत है। हालांकि मैं इस बात को मानता हूँ कि अभी वहाँ आतंकवादी खत्म नहीं हुए हैं। अभी कल ही सात स्कूल जला दिए गए हैं। अभी हालात सुधरे नहीं हैं लेकिन अगर यह बिल पंजाब तक

तوان کا جو اسٹیٹ مینٹ اس سے صاف  
نہا ہوتا ہے وہ کہتے ہیں کہ ابھی میں لڑنا ہے۔ فریڈم  
کے لئے۔ فریڈم کے لئے لڑنے کا مطلب کیا ہے، کیا وہ  
کشمیر کو ہندوستان کا حصہ نہیں سمجھتے ہیں، تو اس  
طرح کے جو حالات پیدا کئے جا رہے ہیں ایسی صورت

میں میں کہہ رہا ہوں کہ یہ جو اسپیشل کوریس کا پراویزن  
ہے۔ اس کا جیورسٹکشن جموں و کشمیر میں بھی ہونا ضروری  
ہے۔ ورنہ جب وہاں پر ایسے حالات پیدا ہوں گے  
پھر وہاں کی سرکار اس ایکٹ کو جموں و کشمیر پر لاگو کرنے  
کے لئے ریکمنڈ کرے گی تب یہاں سے نوٹیفیکیشن جاری  
ہوگا اور تب کہیں یہ ہو سکے گا۔ اس لئے میں گڈ آرٹس  
کروں گا کہ چونکہ کشمیر پر اس کے پرووائڈیا فورسز  
پاؤر میں ہیں ان کی کانٹریس سے آپ اس بل کو وہاں  
پر بھی لاگو کر سکتے ہیں۔

ان چند شہیدوں کے ساتھ یہ جو ریزالیوشن  
ہے اس کو تو میں ابوز کرتا ہوں اور آرڈی نیس کی جگہ  
پر جو بل پیش کیا گیا ہے اس کا سمرٹھن کرتا ہوں۔

16.26 hrs.

[SHRI N. K. SHEJWALKAR in the chair.]

[श्री सूजभान]

ही सीमा होता तब भी मैं इसको पसन्द कर लेता। एक महदद तरीक पर एप्रिषिएट करता लेकिन इसको तो पूरे देश में लागू किया जा रहा है। इसलिए हमें सरकार की नीयत पर शक होता कि सरकार के इरादे नेक नहीं हैं। हाउस में कहा जा रहा है कि विरोधी दलों के खिलाफ इसका इस्तेमाल नहीं किया जायेगा लेकिन यही एश्योरेंस मीसा के बारे में भी दिया गया था कि विरोधी दल के खिलाफ उसका इस्तेमाल नहीं होगा लेकिन इमरजेंसी में उसका इस्तेमाल हुआ। मैं भी मीसा के तहत 19 महीने जेल में रहा। मेरा कसूर यह था कि मैं बेकसूर था। इसलिए मैं कहना चाहता हूँ कि सरकार ने जो नेक-नीयती जाहिर की है वह वही बात है कि हाथी के दात खाने के और तथा दिखाने के और होते हैं। और इस सफेद हाथी पर तो यह बात और भी ज्यादा लागू होती है। सरकार के पास पहले से ही बहुत सारे ऐक्ट मौजूद हैं जैसे नेशनल सेक्योरिटी ऐक्ट, आर्म्ड फोर्सिंग पावर ऐक्ट, पंजाब चण्डीगढ़ डिस्ट्रिक्ट एरियाज ऐक्ट, एसभा दमंग्रह। फिर इसको लाने की क्या जरूरत थी। मैं पहले भी कहा था कि इस सरकार की वही हालत है कि एक आदमी के हाथ में दो तलवारें थीं, वह जा रहा था। किसी ने आकर थप्पड़ मारा, लेकिन वह कुछ नहीं कर पाया। किसी ने आकर कहा कि तुम्हारे मूँह पर थप्पड़ मारा है, कुछ करते क्यों नहीं हो। उसने कहा कि मेरे दोनों हाथों में तलवारे हैं। खाली नहीं हैं, मैं क्या करूँ। आप दोनों हाथों में

तलवार लेते जा रहे हैं, लेकिन कर कुछ नहीं सकते हैं और थप्पड़ खा रहे हैं। कानून बना रहे और कानून पहले ही बो हुए हैं, लेकिन थप्पड़ लगातार खा रहे हैं। बिल्कुल वही पोजीशन है, कानून से बोगा कुछ नहीं, हाँ विरोधी दल के ऊपर इस्तेमाल जरूर होगा। आपने कहा है कि कानून के मुताबिक जो सरकार बनी हुई है, उसके खिलाफ कोई काम करेगा तो कानून लागू हो जाएगा। इस प्रकार आप इसमें ट्रेड यूनियन एक्टिविटी को भी इसके अन्दर ले आयेंगे, लेकिन हाउस में सरकार उस बात को नहीं करेगी। यदि किसी महिला के साथ बलात्कार होता है और उसके खिलाफ एजिटेशन होता है, तो यह कानून लागू हो जाएगा। हरिजनों पर अत्याचार होता है तो आप इस कानून को ले आयेंगे। यह कानून आप जिसके हाथ में दे रहे हैं, पुलिस के हाथ में जो जिसको चाहे पकड़ ले। यह अधिकार आप इस किसम की पुलिस को दे रहे हैं, जिसके धन्धे आपके सामने हैं। यह वही पुलिस है, जिसने भागलपुर जिले में बेगुनाह कैदियों को अन्धा कर दिया था। यह वही पुलिस है, जिसने उडीसा में हरिजन महिला के साथ बलात्कार होने पर जब थाने में रिपोर्ट दर्ज कराने जाते हैं तो पुलिस इन्वार्ज कहता है—

You Harijans, you have always been raped and you are meant to be raped.

यह कल के इंडियन एक्सप्रेस की खबर है। एक रिसर्वासिवल पुलिस आफिसर ने इस बात को कहा है, जिसके खिलाफ कार्यवाही नहीं की गई। जुडिशियल मैजिस्ट्रेट के सामने रिपोर्ट जब जाती है, तो अखबार में खबर

आती है। कैसे आप उसका समाधान करेंगे, कुछ पता नहीं है, कुछ कहा नहीं जा सकता है।

मुल्क की एकता और लां एंड आर्डर के नाम पर आप मूलभूत अधिकारों को छीनना चाहते हैं, जो विधान में स्व० डा० अम्बेडकर और डा० राजेन्द्र प्रसाद तथा बड़े-बड़े नेताओं ने हमको दिये हैं। यह झूठा चमत्कार आप किस लिए दिखा रहे हैं। जहां पर कुछ होता है, वहां आप कुछ नहीं दिखाने हैं। यह भिड़रावाले के ऊपर क्यों लागू नहीं कर लिया गया। वहां तो होगा भी नहीं। यू० पी० में हो सकता है और आज आन्ध्र प्रदेश में हो सकता है। वहां भी कानून से बनी हुई सरकार को पलट कर रख दिया ....(व्यवधान)....

सभापति महोदय, इसमें आतंकवादी की डैफिनिशन दी गई है। मैं मिसाल देना चाहता हूँ कि आतंकवादी को कैसे डिफाइन किया जाता है। सतं निहाल सिंह हरिया-वेला वाले, एक दिन उनको गिरफ्तार किया गया। रेडियो पर न्यूज आई टी० वी० पर दिखया गया कि उनके पास से हथियार निकले हैं, मुखौटे भी निकले हैं। जिनको पहन कर वे लोगों के कत्ल करते हैं और डाका डालते हैं। लेकिन दो दिन के बाद उनको छोड़ दिया गया। क्यों छोड़ दिया गया? क्योंकि आज वह कार-सेवा में हिस्सा ले रहा है। उसको इज्जत बरखी गई कि अकाल तख्त की रिपेयर के लिए जो पांच आदमी, पांच प्यारे पहले काम शुरू करेंगे, उनमें से एक यह होंगे। एक आतंकवादी को गिरफ्तार किया गया, उसके पास से हथियार और मुखौटे निकलने

हैं और अगले दिन कहते हैं कि वह पांच प्यारों में शामिल है।

एक माननीय सदस्य : आप क्या कहना चाहते हैं।

श्री सूरज भान : मैं कहना चाहता हूँ कि जब तक कोई आपका समर्थक नहीं है, वह आतंकवादी है। जिस दिन वह आपकी गांदी में चना गया, वह आतंकवादी नहीं रहा। क्या इसके बारे में आपके पास कोई जवाब है। फैंफट क्या है, उसको जब गिरफ्तार किया था, तो क्या रेडियो की न्यूज गलत थी? उसके पास से हथियार निकले थे, मुखौटे निकले थे। जब यह सब कुछ था तो आज आतंकवादी की डैफिनिशन कैसे बदल गई। यह चीज विरोधी दलों के ऊपर लागू होगी, क्योंकि वह आपके हिसाब से आतंकवादी हैं। अगर वह आपकी शरण ले लेगी तो आतंकवादी नहीं रहेगी। आखिर इस कानून को आपने इस तरह तोड़मरोड़ कर क्यों रख दिया है।  
 ... (व्यवधान) ...

एक बात मैं और कह कर अपनी बात समाप्त करूंगा। क्लॉज—20 में कहा गया है ?

Clause 20 says:

“(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the Suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more

[श्री सूरजभान]

than one month, extensive disturbance of the public peace.

वह वहां मौजूद था और अब बीच की लाइन में छोड़ देता हूं और लास्ट में से पढ़ता हूं—

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used ... it shall be presumed, unless the contrary is shown, that such person had committed such offence. ”

यदि आप कहते हैं कि कहीं बम फटा और वह उस समय वहां मौजूद था तो उसको समझा जाएगा कि वह भी उसमें शामिल था। बम फेंकने वाला मोटर साइकल पर या स्कूटर पर अयेगा और बम फेंक कर फौरन भाग जाएगा। उस वक्त न पुलिस वहां होगी, न कोई और वहां होगा। हां, कुछ नमाशवीन वहां हो सकते हैं। बाकी न क्राइम करने वाला होगा और न क्राइम को दबाने वाला मौजूद होगा। या कुछ दूसरे लोग किसी काम से मौजूद हो सकते हैं, उनको ही इस कानून के तहत धर लिया जाएगा। यह मैं आपके कानून से ही कह रहा हूं।

सभापति महोदया, इस तरह किमी भी आदमी को कहा जाएगा कि वह प्रूफ करे कि वह बेकसूर है। इतना कठिन एक्ट तो रेप के सिलसिले में भी हमने नहीं देखा। लॉ कमीशन ने रिक्मैंड किया था कि जहां कहीं कोई आदमी रेप कमिट करता है, उसको दोषी समझा जाएगा। अब तक कि वह यह साबित न कर दे कि

वह निर्दोष है। लॉ कमीशन, की इस रिक्मैंडेशन को बाद में ज्वाइंट कमेटी ने नहीं माना। उन्होंने कहा कि उन हालात में अगर थाने में कोई महिला बंद है और वह अलैज करती है कि उसके साथ बलात्कार हुआ है तो उसको माना जाएगा जब तक कि थाने का आदमी अपने आप को बेकसूर साबित न कर दे। आपने इसको यहीं तक सीमित रखा। सरकार ने भी ज्वाइंट कमेटी की सिफारिशों से एग्री किया और उसके बाद इस हाउस ने भी वहां उतने ही मुझे पास किये। लेकिन यहां रेप के केस से हटकर आपने उसको सीधा जेल में धर दिया है। वह अपने आप को साबित करे कि वह निर्दोश है।

इसलिए अंत में यह बात कह कर समाप्त करता हूं कि इन कारणों से मैं इस बिल का समर्थन नहीं कर सकता क्योंकि यह बहुत गलत और अन्धा कानून है और हिस्ट्री में भी लिखा जाएगा कि यह बहुत गलत कानून किसी अच्छे आदमी ने पेश किया था। इसीलिए मैं इसका विरोध करते हुए आपसे भी उम्मीद रखता हूं कि यदि आप वाकई इसको लाना चाहते हैं तो कम से कम कुछ चीजों को तो अमैंड कर लीजिए।

श्री मूल चन्द डागा (पाली) : सभापति जी, मैं इस बिल के सम्बन्ध में कुछ विचारणीय प्रश्न आपके सामने रखना चाहता हूं। हमारे सामने आतंकवादियों और उग्रवादियों की गतिविधियों को रोकने का प्रश्न है। देश में सभी चाहते हैं कि आतंकवादियों और उग्रवादियों की गतिविधियों को रोका जाए, इधर हमारी

पार्टी भी चाहती है कि देश एक बना रहे, आपका उद्देश्य भी यही है कि देश से आतंकवाद और उग्रवाद को समाप्त किया जाए, लेकिन सवाल यह है कि क्या आप इस बिल के पास होने के बाद आतंकवादियों और उग्रवादियों को खत्म कर पायेंगे। क्या आप बताने का कष्ट करेंगे कि आज तक हिन्दुस्तान में कितने बेगुनाह लोग विभिन्न जगहों पर मारे गए हैं, जिनके बच्चे और बच्चियाँ रो रहे हैं, उनके आंसू पूछे गए। क्या आप पूछना चाहते हैं। आप एवीडेंस एक्ट की बात करना चाहते हैं, मूलभूत अधिकारों की बात करना चाहते हैं, विरोधियों पर हमले की बात करना चाहते हैं या देश के बेगुनाहों को बचाना चाहते हैं। सवाल यह नहीं है। मैं सारी बातों को बड़े ध्यान से सुनना चाहता था। आपने जो टैररिस्ट्स की परिभाषा दी है, मेहरबानी करके बताइये गृह मंत्री जी कि हिन्दुस्तान की भूमि पर आतंकवादियों और उग्रवादियों के द्वारा जिन बेगुनाहों की हत्या की गई, क्या आपके पास उसके एवीडेंस है। इसलिए शर्म खाओ। ब्रिटिश सरकार से जो कानून हमने ले लिया, हमने उनकी बातों को अपना लिया, कौन उन बेगुनाह लोगों के लिए गवाही देने आयेगा? मैं कहता हूँ कि आज हजारों लोग गवाही देने से मुकरते हैं। और मना करते हैं कि हम गवाही देने के लिए तैयार नहीं हैं। गवाह तो है ही नहीं। पुलिस वाले जब काम नहीं कर सके तभी तो आर्मी को लगाया गया। क्या गृह मंत्री जी यह बतायेंगे कि आपके पास सबूत कहां से पैदा होंगे? इस कानून से कौन से सबूत पैदा हो जायेंगे? सरकार यह बतलाए कि कितने स्टेच्यजस फाईल

पर मौजूद हैं? सिर्फ स्पेशल कोर्ट्स बनाने का बिल पास किया जाता है। कानून बनाकर आप रख लीजिए। लेकिन चार-पांच कानून तो पहले से ही रिकार्ड में हैं। उग्रवादियों और आतंकवादियों की कमर तो मिलिटरी ने तोड़ी है तो क्या इस तरह की कोर्ट्स काम करेंगी? मिलिटरी कोर्ट्स को दे दीजिए अगर हिन्दुस्तान में शान्ति कायम करनी है। आपकी कोर्ट्स न्याय नहीं दे सकती। यहाँ पर बड़े-बड़े विद्वान और वकील बोल रहे थे। मैं यह कहना चाहूँगा दावे के साथ कि उग्रवादियों के सामने कौन गवाही देता है? बड़े-बड़े जुल्म हो गए लेकिन आतंकवादियों के सामने आवाज उठाने की हिम्मत नहीं होती। इसलिए, मिलिटरी कोर्ट्स को सौंप दीजिए। हजारों आदमी मर गए और पांच आदमियों को फांसी की सजा दे दी। मर्डर केस ही होंगे और क्या होगा क्योंकि बहुत सभरी ट्रायल कर लिया। गृह मंत्री जी यह बताएं कि सैकड़ों आदमी मौत के घाट उतार दिए गए और कितने आदमियों को फांसी पर चढ़ाया गया? उधर से बोलने वाले, जरा ठंडा भी बोलते हैं। सीधी बात कहो नहीं तो बोट-क्लब, चान्दनी चौक या रामलीला ग्राउन्ड पर भाषण दो। आज दुनिया कहती है कि एक कदम उठाया गया है। लेकिन यहाँ आकर कानून का भाषण देते हैं। ब्रिटिश के जमाने में एवीडेंस बियान्ड डाउट था। बियान्ड डाउट क्या होगा? सरकार मूलभूत अधिकारों पर हमला नहीं करना चाहती। संविधान की रक्षा करना चाहती है। सरकार इन लोगों के लिए क्या करे? एक्सट्रीमिस्ट्स की क्या परिभाषा होती है? क्या आप यह चाहते हैं कि वह नहीं

[श्री मूल चन्द डागा]

छूटेंगे ? मैं आज दावे के साथ कहता हूँ कि गवाह नहीं आयेंगे और ट्रायल होने के बाद एक्वीटल होगा। इसलिए मैं चैलेंज के साथ कहता हूँ कि मिलिटरी कोर्ट्स बंटाइए। उधर बंटे हुए लोग तो सिर्फ यह कहते हैं कि सरकार नाकाबिल है। जब आतंकवादियों की कमर तोड़ दी गई तो हिन्दुस्तान में लोगों ने कहा कि हिन्दुस्तान में एक ऐसी बहादुर औरत है जो देश को काबू कर सकती है।

यहां बड़े-बड़े वकील बन गए हैं। मूलभूत अधिकार। उग्रवादियों के काहे के मूलभूत अधिकार ? ऐसे लोगों के मूलभूत अधिकार खत्म करो। ला बनाने वालो ने कभी सोचा है कि एक कैस सुप्रीम कोर्ट में आएगा तो सुप्रीम कोर्ट ला के अलावा फैक्ट्स को भी देखेगा। और अगर सुप्रीम कोर्ट को फैक्ट्स में जाने लगा तो कोई मुकदमा नहीं टिकेगा। सुप्रीम कोर्ट को ला प्वाइंट पर ही जाने दीजिए, फैक्ट्स पर नहीं। आप मिलिटरी कोर्ट्स बना दीजिये, वह समरी ट्रायल करके उचित सजा जल्दी देंगे। रोज अखबारों में पढ़ते हैं कि गवाह नहीं मिले इसलिए एक आदमी को सजा नहीं हो पाती। कौन जा कर कहेगा कि उग्रवादियों द्वारा यहां पर यह घटना हुई ? कोई नहीं कहेगा। क्या ऐसे लोगों के मूलभूत अधिकारों को आप रक्षा करना चाहते हैं ? उनके मूलभूत अधिकार तो खत्म हो गए जब उन्होंने मानवता खत्म कर दी। वह तो राक्षस हो गए। यह लंगड़ा कानून बना दिया, कोर्ट्स से एक मुकदमे में सबूत नहीं मिलेगा। बन्दूक की नौक के सामने कभी न्याय मिलता है ?

न्याय चेहरे पर लिखा होता है। न्याय देने वाला गवाहों पर भरोसा नहीं करता है। यहां तो किराये के गवाह मिल जाते हैं। इसलिए ऐसे अपराधियों के सारी ट्रायल होने चाहिए। अगर आपने सेशंस ट्रायल रखा तो मुकदमा लम्बा बिचता जाएगा और आपका परपॉ डिफीट हो जाएगा। इसलिए मेरा कहना है कि आरने जो कदम उठाया है वह मजबूती के साथ उठाईये। आतंकवादियों का सफाया करना है तो मजबूती से करो और कोर्ट्स को कहिये कि जल्दी न्याय दें और भ्राराधी लोगों को फांसी के तख्ते पर चढ़ा दें। तब जा कर काम बनेगा। अभी आका यह कानून मजबूत नहीं है, नहीं है, नहीं है।

SHRI V. KISHORE CHANDRA S. DEO (Parvathipuram) : Sir, I rise to support the Resolution moved by hon. Member Shrima i Gæta Mukherjæ and simultancously to oppose the Bill that has been moved by the hon. Minister of State, Shri Venkatasubbaiah.

I want to make it clear that we are not here to support the activities of the terrorists or to act as their advocates either here or anywhere else. There have been instances in our country in various parts wherein such activities have taken place; there have been terrorists who have been active in various parts of the country. In the last 37 years of rule, no Government found it necessary to have, Special Courts measure of this kind to deal with terrorists at any point of time. When I see this Bill, what I am worried about and what, I think, every Member of this House should be concerned about is whether this Bill has been brought actually to control the terrorists in this country or to strike at the civil liberties and human rights of the citizens of this country. This introduction of this Bill is the result of the situation that

this Government has created in Punjab. I charge this Government with having created the situation in Punjab...

PROF. N.G. RANGA (Guntur) : What happened when Naxalites were killing everybody in your estate ?

SHRI V. KISHORE CHANDRA S. DEO : I am not yielding. You were instigating. You were responsible for it. I charge You also ; I charge this Government...

PROF. N.G. RANGA : You were a landlord in your estate. What happened, tell me, when Naxalites were killing people.

SHRI V. KISHORE CHANDRA S. DEO : You did not have the Special Courts then to control them. But now you need this measure You created the situation in Punjab. Bhindranwale was your creation...

PROF. N.G. RANGA : You landlords created the situation there.

SHRI V. KISHORE CHANDRA S. DEO : He was a monster whom you created...

SHRI P. VENKATASUBBAIAH : By making the charge repeatedly, time and again, that Bhindranwala was the creation of the Congress Party, it will not become a fact. It has been amply stated on the floor of the House that the first condition that the Akalis put forward to enter into negotiations was that they wanted the unconditional release of Bhindranwale. He was not our creation. My hon. friend is trying to mislead the House. The facts are there. It has been repeated time and again that Bhindranwale was not our creation.

SHRI V. KISHORE CHANDRA S. DEO : I would still repeat my charge that Bhindranwale was the creation of

this Government, and the Government deliberately allowed the situation in Punjab to deteriorate to such an extent. It is because of this, the Bill has been brought. In spite of the Draconian laws which are already at the disposal of the Government, for example, the National Security Act with the recent Amendments, they were not able to control the situation. During the last four years similar situations existed in various States, in Assam, in Tripura, in Manipur, in Nagaland, and various other places. Government has failed in all these places to grasp the nature of the problem and then govern and rule problems and to govern after understanding the problems. Here I would like to state that this sort of tendency has appeared in States where there have been deliberate attempts to subvert democracy. For example, I would refer to something which has happened today ; in Andhra Pradesh the Governor was made use of by the Central Government to violate the norms of democracy and the spirit of the Constitution...

(Interruptions)

श्री आचार्य भगवान देव (अजमेर) : सभापति जी, इन बातों के कहने का क्या मतलब है ? वह वहां बहुमत के आधार पर गिरे हैं, अपने कर्मों से गिरे हैं ।

SHRI V. KISHORE CHANDRA S. DEO : The vicious and partisan manner in which this Government is behaving will destroy the State administration ; and I am sure you will try to create this situation, apart from Andhra Pradesh, in the other States also where you are going to put this Bill into force. This has happened ; we have seen this happening and we will see it happen in future also.

The provisions of this Bill, though they are meant for Punjab, can be applied anywhere wherever the Central Government wants to do so. In Clause 2 (h) of this Bill, the definition of

[Shri V. Kishore Chandra S. Dev]

'terrorist' is very ambiguous and vague.

"(h) 'terrorist' means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to—

- (i) putting the public or any section of the public in fear....."

This definition of 'terrorist' will, tomorrow, take away from the workers their right to strike. If the workers of a Railway Union or Posts & Telegraphs Union make a demand or want to force the Government to accept their demand.

Now they can also be called 'terrorists' and this law will be applied to those areas where the strike is taking place. You see the wording 'coerce or overawe a government established by law'. Also see clause 2 (h). It means it can also put this Bill into force in these areas where there are certain strikes...

SHRI P VENKATASUBBAIAH :  
Tampering with the telephone wires and damaging the railway track—is it a legitimate trade union activity—I would like to know from the hon member.

SHRI V. KISHORE CHANDRA S. DEO : I am not saying that damaging railway track is a legal activity. Even if there is an ordinary strike, you can always concoct these things. We have seen these things happen before. I am coming to that later.

Code is sought to be amended. When a person is arrested, normally he is produced before a Judicial Magistrate. Trial is supposed to take place within 24 hours. In certain cases only after the Judicial Magistrate is satisfied he can be taken into custody for 15-30 days. Now you have replaced this and in this Bill you are allowing an Executive Magistrate to enjoy these powers—not a Judicial Magistrate. ...

SHRI P. VENKATASUBBAIAH :  
Whoever is available there.

SHRI V. KISHORE CHANDRA S. DEO : And the Executive Magistrate is somebody who has been appointed by the Government—your government or any other government. This Executive Magistrate will certainly be liable to the abuse of this Bill in the sense that he can always be amenable to influence and pressures. That is why I say that you can always concoct a case and illegally detain a person, 15 to 30 days which is the maximum period according to Sec. 167 of the Criminal Procedure Code. Now you have made it one year—which means that even without filing a charge-sheet, for one year you can keep a person in detention in a jail. There is no question of bail now. Even that provision has been tightened over here because the onus of proof now will have to lie on the accused person. Now it might have been so in the case of rape or certain economic offences. Then to amend the Evidence Act so as to put the onus of proof in cases like these where the person is not guilty or until he is proved guilty and detain him for a period of one year, strikes at the very root of our legal system and all principles of jurisprudence we have followed.

This is the manner in which this Bill is sought to be brought before the House one day after the Independence Day. When there are several movements going on in different parts of the world and in various countries to establish human rights and human dignities and

civil liberties, we have sought to cut at these very fundamental principles and go back to middle ages with a feudal type of attitude and feudal laws to bring about something which we thought we have forgotten several decades ago.

I sincerely hope that the hon Minister will withdraw this Bill and if he wants to bring another Bill for terrorists, let him be specific about it, be clear and define the terms clearly and not leave them loosely and vaguely worded as they can be used to harm and harass innocent people whom you want to protect by this Bill.

श्री गिरधारी लाल व्यास (भीलवाड़ा) सभापति महोदय, मैं टेररिस्ट एक्टिज एरियाज (स्पेशल कोर्ट्स) बिल का समर्थन करता हूँ और इसके खिलाफ जो रेजोल्यूशन प्रस्तुत किया गया है, उसका मैं विरोध करता हूँ।

हमारे देश में जैसे हालात हैं, उनके सम्बन्ध में विपक्षी दलों के लोग बराबर कहते रहे हैं कि लोगों पर हमले हो रहे हैं, लोग गोली से उड़ाए जा रहे हैं, सरकार आतंकवादियों के खिलाफ कोई कार्यवाही नहीं करती है। सरकार ने उन लोगों के खिलाफ कार्यवाही की ओर टेररिस्ट्स को खत्म किया गया। जिन टेररिस्ट्स ने उन एक्टिविटीज में हिस्सा लिया है, उनके खिलाफ लीगल कार्यवाही करना आवश्यक है। अगर उन लोगों को कानून के सामने नहीं लाया जाएगा और सजा नहीं दी जाएगी, तो भविष्य में टेररिस्ट्स एक्टिविटीज पर रोक नहीं लगाई जा सकेगी।

17.00 hrs

इसलिए इस प्रकार का कानून लाया गया है कि ऐसे लोगों के खिलाफ जिन लोगों

ने इस प्रकार की कार्यवाही की है, जिन्होंने बहुत बड़े स्केल पर लोगों को मारा है और ऐसे लोगों को मारा है, जिन का किसी प्रकार से कोई लेना देना नहीं था, जो लूटपाट में शामिल है, जिन्होंने बैंकों को लूटा है, जिन्होंने रेल, तार या अन्य कम्युनिकेशन के साधन जिनके द्वारा देश की सारी व्यवस्था चलती है उस को डिस्प्ट करने की कोशिश की है और इस देश की इंडिप्रिटी और यूनिटी को तोड़ने की कोशिश की है, उस प्रकार के लोगों को सख्त सजा मिल सके, इस प्रकार की कोशिश इस बिल के द्वारा की गई है। इसमें यह भी कहा गया है कि जिन्होंने देश को टुकड़े-टुकड़े में बांटने के नारे लगाए, जिन्होंने देश के साथ गद्दारी करमे की कोशिश की, जिन्होंने विदेशी शक्तियों से मिलकर देश की व्यवस्था को बिगाड़ने की कोशिश की उन के लिए यह व्यवस्था की जा रही है। इस प्रकार की कार्यवाहियां देश के अन्य भागों में भी हो रही हैं जैसे आसाम या दूसरी जो नार्थ ईस्टर्न स्टेट्स हैं, मणिपुर है, मिजारेम है, नागालैंड है, त्रिपुरा है या और दूसरी स्टेट्स हैं जिनमें इस प्रकार की एक्टिविटीज टेरिस्ट्स बराबर करते आ रहे हैं, उन सब लोगों के खिलाफ इस प्रकार की कानूनी कार्यवाही की जा सके और जो लोग उममें हिस्सा ले रहे हैं, विदेशी शक्तियों से सहयोग लेकर के जो लोग देश की एकता को भंग करने की बराबर कोशिश करते आ रहे हैं और इस देश में अलगाववादी प्रवृत्ति फैलाने की कोशिश कर रहे हैं, उस प्रकार के लोगों के खिलाफ ऐसी कार्यवाही करना निश्चित तरीके से आवश्यक है।

इसके ऊपर बहुत सारी बातें कही गईं। विपक्षी लोगों ने तो कहा है कि बड़ा डैको-

[श्री गिरधारी लाल व्यास]

नियन कानून है और इसमें तो आप ऐसे लोगों को भी पकड़कर सजा दे देंगे जिन का कोई कुसूर नहीं है। ऐसे बिना कसूर के लोगों को पकड़ने का क्या सवाल पैदा होता है? लेकिन जहां पर फायरिंग हो रही हो, बन्दूक चलायी जा रही हो या गोलीबारी की जा रही हो जिसकी वजह से लोग मर रहे हों क्या वहां पर कोई आदमी तमाशा देखने के लिए खड़ा रहेगा। अगर ऐसे आदमी को पकड़ लिया जाय और उस से पूछा जाय कि तुम वहां पर क्यों खड़े थे तो क्या वह कहेगा कि मैं तमाशा देख रहा था? यह तो इनके दिमाग का दीवाला निकल गया है और ये लोग इस प्रकार के लोगों को प्रोटेक्शन देने के लिए, ऐसे गलत तत्व जो इस देश को बरबाद करना चाहते हैं, जो इस देश के टुकड़े करना चाहते हैं, उस प्रकार के लोगों को बचाने के लिए इस प्रकार की दलीलें दे रहे हैं। यह दलील बिल्कुल गलत है। विरोधी दल के एक माननीय सदस्य ने जो बहुत सीनियर आदमी हैं उन्होंने इसे ऐसा कानून बता दिया, यह कह दिया कि यह कानून तो रोलट ऐक्ट के मुकाबले में है। जिस ऐक्ट से, इस देश के लोगों को जो आजादी का आन्दोलन कर रहे थे, उनको सप्रेस करने का प्रयास किया गया, उनको सप्रेस करने के लिए जो कानून बनाया गया उसके साथ इसका मुकाबला कर दिया। उस आन्दोलन में तो सारा देश उनके साथ था, उस आजादी की लड़ाई में सारा देश शामिल हो रहा था, उनको सप्रेस करने के लिए जो कानून बनाया और यहां पर टेपरिस्ट्स के खिलाफ कार्यवाही करने के लिए जो कानून बनाया, इन दोनों के एक बता दिया। यह देखिए, इन

के दिमाग का दीवाला निकला है या नहीं निकला है? जिस कानून को अंग्रेजों ने बनाया था जिसे इस देश की तमाम जनता जो कि उस आन्दोलन में हिस्सा ले रही थी उसको दबाने की बात की जा रही थी उस कानून को और इस कानून को जो उनके लिए बनाया गया जिन्होंने पंजाब में लोगों को मार डाला, चन्डीगढ़ में लोगों को मार डाला, जिन्होंने आसाम, त्रिपुरा, मिजोरम; नागालैंड और मणिपुर में लोगों को मार डाला, ऐसे लोगों के खिलाफ कार्यवाही करने वाले कानून का मुकाबला कर दिया। रोलट ऐक्ट के साथ इसका मुकाबला वह कर रहे हैं। इस प्रकार का मुकाबला इतने पढ़े लिखे विद्वान आदमी करें तो निश्चित तौर से मेरी समझ में यह बात नहीं आती।

आप को विरोध करना है तो आप यह कह सकते हैं कि आप ने अलग-अलग जो ऐक्ट्स में तबदीली की है, ऐक्ट्स में या क्रिमिनल प्रोसीजर कोड में जो तबदीली की है और जो आपने समरी ट्रायल कर दिया या अन्य प्रकार की बातों की यह इस कानून की मंशा से ठीक या उचित नहीं जान पड़ता। यह बात तो कहना वाजिव हो सकता है। लेकिन इस प्रकार का मुकाबला करना कि यह तो रोलट ऐक्ट के मुकाबले का है यह बिल्कुल गलत बात है।

जिन लोगों ने इस देश में विदेशी शक्तियों से सहयोग करके इस प्रकार की कार्यवाही की, वह विदेशी शक्तियां जिन्होंने हथियार भेजे यहां पर, जिन्होंने फिफ्य कालमन्स्ट्स को यहां पर भेजा जिन्होंने लोगों को ट्रेनिंग देकर यहां पर इस प्रकार का बवाल पैदा करने की कोशिश की उन से मिलकर जिन्होंने पंजाब के अन्दर यह हालत

पैदा की उनके लिए यह कानून लाया गया है।

पंजाब का इलाका है, उसको सरसब्ज बनाया गया अरबों-खरबों रुपया लगाकर, वहां पर जब सोना पैदा होने लगा तो लोगों की निगाहें चकाचौंध होने लगी। इस देश के धन से जो काम हुआ है उसका लाभ इस देश को मिलना ही चाहिए। आज कुछ लोग जो विदेशों में बैठकर अरबपति हो गए हैं उनमें कोई प्रेसीडेंट बनना चाहता है और कोई प्राइम मिनिस्टर बनना चाहता है। अमरीका और कनाडा में बैठकर कुछ लोग इस तरह की बात सोच रहे हैं। उन लोगों के खिलाफ सख्ती के साथ कार्यवाही होनी चाहिए।

डागा साहब यहां पर एक बहुत सही बात कह रहे थे कि टेरोरिस्ट्स के खिलाफ कौन आदमी गवाही देने के लिए तैयार होगा। आपको एविडेन्स ही नहीं मिल पाएगा क्योंकि हर आदमी उनसे डरता है। इसलिए यह आवश्यक था कि बन्द कमरे में कार्यवाही की जाए और उन लोगों के नाम छिपाकर रखे जायें। उन लोगों की सेपटी के लिए यह नितान्त आवश्यक है वरना उनको रास्ते में ही गोली मार दी जायेगी। फिर कोई एविडेन्स देने के लिए तैयार नहीं होगा इसीलिए ऐसी व्यवस्था करना नितान्त आवश्यक था। उनको प्रोटेक्शन देने के लिए इस बात की नितान्त आवश्यकता थी।

इसके अतिरिक्त इसमें और भी कुछ व्यवस्थायें बहुत आवश्यक हैं जैसे 15 दिन की जगह पर 30 दिन के रिमाण्ड की व्यवस्था की जा रही है। जिसने सिशेसनिस्ट मूवमेंट चलाने की कोशिश की, देश की यूनिटी को खत्म करने की कोशिश की उनके

लिए अगर 15 दिन के बजाए 30 दिन का रिमाण्ड लिया जाता है तो इसमें क्या हर्ज है? उनके खिलाफ एविडेन्स कलेक्ट करना कोई मामूली बात नहीं होगी। उनके खिलाफ पुलिस एविडेन्स कलेक्ट कर सके, प्राइम-फेसी केस बना सके और उसको सजा दिला सके इसके लिए इस व्यवस्था की नितान्त आवश्यकता है।

डागा जी ने यह बात भी सही कही है कि फंड्ट्स की बिना पर एविडेन्स में अगर थोड़ी बहुत भी कसर रह जायेगी तो उच्च न्यायालय में वह फेल हो जायेगा। इसलिए जब तक प्राजीक्यूशन की कार्यवाही पूरी न हो जाए तब तक एक साल जेल में उसको रखना लाजमी है ताकि वह बाहर निकल कर टेरोरिस्ट्स एक्टिविटीज न चला सके। इससे उसकी एक्टिविटीज पर भी गोक-थाम हो सकेगी। इस तरह से यह कदम भी बहुत उचित है।

स्पेशल कोर्ट्स के बारे में प्रावधान है कि केन्द्रीय सरकार उनका गठन करेगी। विरोधी दलों का यह कहना है कि आप राज्य सरकारों की इजाजत नहीं ले रहे हैं लेकिन बहुत सी राज्य सरकारें तो हमारे कानूनों को लागू ही नहीं करती है। पिछले दिनों स्मगलर्स के खिलाफ कानून लागू करने की बात थी तो कुछ स्टेट्स जो कांग्रेस (आई) के खिलाफ हैं जिन्होंने उस पर कोई कार्यवाही नहीं की। ऐसी हालत में अगर राज्य सरकार स्पेशल कोर्ट नियुक्त नहीं करती है और भारत सरकार उसकी नियुक्ति कर देती है तो कोई बुराई नहीं हांगी। भारत सरकार का यह कर्तव्य है कि देश में एकता स्थापित हो और देश को टुकड़े होने से बचाया जाए। इसलिए किसी स्टेट

[श्री गिरधारी लाल व्यास]

में ऐसी कार्यवाही की जाती है तो वह बिल्कुल सही है।

मैं आपसे यह भी निवेदन करना चाहता हूँ कि एन्टीसिपेटरी वेल का कदम बिल्कुल सही कदम है। एन्टी-सिपेटरी वेल में कोर्ट में आपने देखा होगा कि बहुत से स्टाउट्स बाहर बैठे रहते हैं, जिनकी बहुत से लोगों से मिली-भगत होती है। ऐसी स्थिति में एन्टीसिपेटरी वेल उन टेररिस्ट्स को मिल जाए, जो देश को बर्बाद करने वाले हैं, जो देश को खंडित करने में लगे हुए हैं, तो सारा कानून बिल्कुल बेकार हो जाएगा। इसलिए यह व्यवस्था इस कानून में की गई है, जिसके द्वारा ऐसे लोगों को पकड़कर उनके खिलाफ कार्यवाही की जा सके। ऐसी व्यवस्था इस बिल में नितांत आवश्यक है।

इसी तरह समरी ट्रायल्स में पहले दो साल की सजा मिलती थी और उन केसेज में दो-तीन महीने की सजा मिल पाती थी। जिसको अब आपने तीन साल कर दिया है, यह बहुत ही अच्छा कदम है। लेकिन यह समरी ट्रायल मर्डर और दूसरे केसेज में लागू नहीं हो पाएगा। छोटे-छोटे मुकद्दमे जैसे तार काट दी है, अनेक प्रकार की कार्यवाहियाँ की हैं, ऐसे केसेज में निश्चित तरीके से जल्दी से जल्दी कार्यवाही होनी चाहिए। डिले-डिवाइड-इक्विटी वाला हिसाब है, जहाँ पर थोड़ी देरी होती है, निश्चित तरीके से कानून उसके पक्ष में चला जाता है। यदि इस कानून को जल्दी से और सख्ती से लागू करना है तो उसकी क्रियान्वित होनी चाहिए। इसके सम्बन्ध में निर्णय होना चाहिए, तब जाकर सारी व्यवस्था ठीक प्रकार से होगी।

स्पेशल कोर्ट के अभाव में यह कानून बिल्कुल लंगड़ा हो जाएगा। इसलिए इस व्यवस्था को रखना जरूरी है। जैसा कि अभी डागा जी ने गृह मन्त्री जी को कहा; ऐसे केसेज में जहाँ मर्डर हुआ है, जहाँ पर जान व माल की क्षति हुई है, ऐसे केसेज में सुप्रीम कोर्ट में फैक्ट्स के सम्बन्ध में वहाँ पर अधिकार मिलता है तो निश्चित तरीके से वहाँ पर उन लोगों को सजा नहीं मिल पाएगी। इसलिए इस प्रकार का प्रावधान कीजिए, जिससे जिन टेररिस्ट्स ने लोगों को जान से मारा है, भय और आतंक का वातावरण पैदा करने की कोशिश की है, देश की यूनिटी को खत्म करने की कोशिश की है, उनके खिलाफ सख्त कार्यवाही हो सके। इस प्रकार की व्यवस्था की जाए जिससे सुप्रीम कोर्ट में ऐसे लोगों के सर्कमस्टैंशियल एवीडेंस होने की हालत में उनको सजा मिल सके। यह मेरा सुझाव है।

इस शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

श्री आर०एन० राकेश (चैल) : सभापति महोदय, मुझे गृह मन्त्री जी से ऐसी उम्मीद नहीं थी जैसा कि उन्होंने यह बिल सदन में पेश किया है। मैं समझता हूँ कि उनकी आत्मा को दबाकर यह बिल सदन में लाया गया है। यह बिल ऐसे समय में पेश किया है, जबकि यह बिल इस सरकार के लिए दिशाशूल है। फिर भी मैं इस सरकार को बधाई देता हूँ कि इस सरकार ने इमरजेंसी में नसबन्दी का बिल पेश किया था और बिना नसबन्दी के आज जवानबन्दी का बिल पेश किया है। यह बिल जब मुरादाबाद की घटनाएँ हो

रही थी, कानपुर, इलाहाबाद, मेरठ में माइनोरिटीज के लोग मारे जा रहे थे, तब पेश किया गया होता, तो ज्यादा बेहतर होता। जब देवरिया, कफाल्टा, पिपरिया, साधुपुर आदि जगहों पर हरिजनों की सामूहिक हत्याएँ हो रही थी, उस समय पेश किया गया होता तो ज्यादा अच्छा होता।

ऐसे समय में पुलिस का कोई चरित्र नहीं रह गया है। उत्तर प्रदेश की पुलिस खुद सरकार को अपना रखल समझती है। वहाँ की पुलिस चुनौती के साथ यह कहती है कि मेरी पैदा की हुई यह सरकार है। उसके हाथ में इतनी बड़ी शक्ति देंगे तो उसका क्या अन्जाम होगा? मुझे याद है, जब श्री विश्वनाथ प्रताप सिंह, उत्तर प्रदेश के मुख्य मन्त्री थे तो उनके भाई किसी जंगल में किसी बदमाश की गोली द्वारा मारे गए। श्री सिंह ने आई०जी० और डी० आई०जी० को बुलाकर कहा कि तुम लोग बदमाशों का सफाया नहीं कर सकते हो तो वहीं को उतारकर रख दो।

आई०जी० ने कहा कि मुख्य मन्त्री जी सारे बदमाश तो आपके मन्त्रियों की गाड़ियों में बैठकर घूमते हैं और उनके घर में रहते हैं। ....व्यवधान....

SHRI. P. VENKATASUBBAIAH :  
 How is relevant Sir? Please decide on it.

MR. CHAIRMAN : He wants to prove his argument by including all these points.

SHRI. P. VENKATASUBBAIAH :  
 He can speak on some other occasion.

श्री आर०एन० राकेश : यह उत्तर

प्रदेश की हालत है। मैं इलाहाबाद से आता हूँ। मेरी कास्टीच्युएन्सी में 14 थाने हैं। वह ऐसे ही नीलाम होते हैं जैसे कि शराब की हवेलियाँ होती हैं।

MR. CHAIRMAN : Though relevancy has not to be determined, time has to be determined by me. Kindly take that into consideration and finish soon.

श्री आर०एन० राकेश : पुलिस के हाथों में इस तरह का कानून देंगे तो वह इसको खा जायेगी। जिस उद्देश्य के लिए यह कानून पेश किया जा रहा है, वह पूरा होने वाला नहीं है। वैसे इस कानून की वकालत करते हुए हमारे लायक दोस्तों ने पंजाब, असम, नागालैंड, मणिपुर, त्रिपुरा और अरुणाचल की घटनाओं के बारे में बताया है। यह कहा है कि देश को टूटने से बचाने के लिए इस बिल को सदन में पेश किया गया है। इस रिश्ति के लिए कौन जिम्मेदार है। इसके लिए मौजूदा सरकार जिम्मेदार है। इस बिल को जब पेश किया है जबकि यह सरकार चुनी हुई सरकारों को गिराने का नापाक इरादा रखती है। ऐसे समय में आप देश के लोकतन्त्र के लिए टैरर हो गए हो और अपोजीशन आपकी सरकार के लिए टैरर है। इस बिल का उपयोग किसके खिलाफ होगा? इस बिल को किस इरादे के तहत पेश किया गया है। मैं इस बिल का जोरदार विरोध करता हूँ। जब आपने नम्रबन्दी की थी तो उसका अन्जाम भोगा था, अब जुवान-बन्दी के बिल का भी अन्जाम भोगने के लिए तैयार रहिए। आपका हिसाब है कि न घोड़ा दूंगा और न मैदान।

SHRI A. T. PATIL (Kulaba) : Mr. Chairman, Sir, I would like to com-

(Shri A. T. Patil]

pliment the Government for bringing this piece of legislation at this time. In fact, I would have complimented the Government earlier, if this Bill would have been brought much earlier. The Government acted as a Government.

The Government has to govern the society, govern the State. Those who have no responsibility to govern may, perhaps, have no right to criticize or comment irresponsibly on the action of the Government.

(Interruptions)

I am not speaking for this party or that party being there in the Government. Let there be any party in the Government. But the party in the Government must discharge the responsibility to govern. To govern does not mean to act irresponsibly.

I heard several arguments made by Members from the Opposition. I am personally not prepared to believe that the arguments have been advanced honestly, because they know very well that the arguments they are advancing, are not correct ones. When they refer to the UN's Bill of Human Rights, they know it very well that the Bill of Human Rights is meant for human rights, for persons who believe in human rights, for persons who practise them, and not for persons who are inhuman beings. So, the arguments which have been advanced on the basis of the Bill of Human Rights, they know it very well, are not applicable to such a situation.

Any piece of legislation should be viewed from two angles: one is the body of the Statute, and the other is its application and implementation. Application of a Statute depends upon the approach of the persons who want to implement it. When an argument is advanced based on its application, it

betrays the mind of the persons who advance the argument. So, when several hypothetical, imaginary instances are given that the Bill or the Statute is likely to be misused in a particular manner, it simply betrays the way or approach of the persons who, if they come to power, are likely to misuse that Statute in that particular manner.

I will not go much into the details of the Bill. But the thing remains that when you judge a Bill or appreciate it, you have to take into consideration 3 or 4 things: the first is the scheme of the Bill together with its background. What is the use of saying things which have no relevance to the initiation of the Bill or the Statute? You have to judge the Bill from the background against which the Government was required to bring it forward, and the way in which it could be framed. One can look to any Bill which has been framed at any time, and if it is to be seen or viewed in a different way and an imagination is to be made that the Bill can be used for a certain purpose—there is a possibility that such an approach could be there, or such an imagination can be there. But if the Bill is viewed against the background in which it has been brought forward, I think such a possibility cannot be there. So, I submit that so far as the scheme of the Bill and background are concerned, it has been brought forward against the background of the happenings in Punjab and Chandigarh, although reference has been made to Assam, north-eastern region and to the happenings in the other States also. But the Bill has been brought forward particularly against the background of happenings in Punjab and Chandigarh. So far as these happenings are concerned, let us try to understand the provisions of the Bill against each event, that has happened, and see why a particular measure is sought to be incorporated in the Bill.

Against this background and in that light if you look to the scheme, I will first make a reference to Section 3

rather than other sections, because that is the main part, the principal part of the scheme, that is declaration of the terrorist affected areas.

Much has been said that this Bill is a permanent piece of legislation. Yes, it is a permanent piece of legislation, but it is not a permanent piece of legislation in the sense that it is not to be permanently applied to every or any part of the country. It is only a temporary provision applicable only when a declaration has been made and that too for a temporary period during which provisions of this are to be applied. It is covering the entire area of the country except J & K.

But again when you look to Section 3 you will find that the operation of the provisions of the Bill, of this particular Act will be made only in that area which is declared as a terrorist affected area; it is not the entire country; and that too for a specific temporary period; and therefore it is no use just arguing. Of course, one can argue, but whether that argument is an honest one is my point. To my mind, I don't think the arguments that have been advanced are honest if they look to the provisions of this Act from this point of view. Therefore, it is not as if it is a permanent piece of legislation in the sense in which they want us to believe; it is not such a provision which applies to the entire country which they want us to believe; it only applies to a specific area and that too for a temporary period; it is not a permanent Bill in that sense. Section 3 says as follows :

"If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this

Act, it may, by notification, declare etc."

Now, here is a reference to various ingredients of this section. The reference is that the Central Government is of the opinion " One of the hon. members has argued that there is no pre-condition about the satisfaction Subjective satisfaction of the executive is taken the basis. Now, as the hon. member knows it very well. I believe in his sense of integrity, I believe that he is honest, I believe in his understanding. But when he says that the subjective satisfaction of the executive is made sovereign and there is no provision for pre-condition to determine or to decide as to whether these conditions exist, the hon. member knows it very well that the decision is to be taken by the Central Government, the Government of India; and the decision taken by one Minister is not the decision of one Minister, it is the joint responsibility of the entire Cabinet and, therefore, the decision is taken by the Cabinet. Now, if there are 40 or 50 persons sitting together considering the situation in the country and practically, politically and they take a decision, how can 3 or 4 persons judge it? We have the experience. We have the experience of what these other people, people who have no practical experience can judge and say. They will always get tendentious to the reality. Therefore, my submission will be that the government is responsible to the people; they have to face people. and three or four persons, arbitrators or something like that may not be responsible to the people; and they may decide in any way they like. But the decision of the government of 40-50 persons sitting together and taking a decision, after taking the overall view of the political situation in the country; is a better decision, as to what is a 'terrorist-affected' area? It may be a better decision if it is taken by a group of people, than if it is taken by three or four people. That decision will be taken by the Government in accordance with realities regarding the crimes mentioned in the Schedule,

[Shri A. T. Patil]

whether such acts are committed by the terrorists or not. We have, also, to see whether they are committed on such a scale. The scale has to be taken into consideration, and the manner in which they are committed has to be taken into consideration, all these ingredients have to be taken into consideration before declaring an area as a terrorist-affected area. If anybody thinks that these provisions are going to be misused, I think it is nothing but their imagination. Action has to be taken against terrorists, because the terrorists have created terror in the country. A 'terrorist' situation calls for stern action and I think the Government will be the best judge of the situation.

MR. CHAIRMAN : Please conclude now.

SHRI A. T. PATIL : I will just enumerate two or three things and conclude. I have already spoken about the scheme of the Bill.

Then the second thing which we will have to take into consideration is that when the State has to deal with extraordinary and abnormal conditions in the society it has to use extraordinary and abnormal methods. Ordinary rule of law cannot be taken as the basis for dealing with such situations. The validity of the provisions of the Bill have to be seen in this context. I am not saying about just one proposition or ordinary rules of law. Ordinary rules of law or jurisprudence will have to be set aside when extraordinary situations develop. They say in international law *Inter Arma Leges Silent*. When there is an armed contention, the law is silent. When any such extraordinary conditions are created, ordinary rules of morality and ordinary rules of jurisprudence have necessarily to be silent and such rules of jurisprudence or rules of law have to be brought out to deal with the situation which will make the Government's action effective and speedy and prompt. Because, the survival of the society is

at stake. Therefore, schemes or rules under ordinary laws of jurisprudence have to be kept aside and we have to take recourse to those norms which will ultimately be effective in the achievement of their objective and there is no use in opposing such laws.

Then the other extraordinary situation is, the law has to be judged in its entirety and that is the touchstone for it. It cannot be seen piece by piece.

Many more things are to be said, but as the time is short, with these observations I wholeheartedly support this piece of legislation, and oppose the resolution moved by the hon. Members of this House.

SHRI G.M. BANATWALLA (Ponnani) : I share in the anxiety of the Government about the disturbed conditions in certain areas and the need to deal firmly with the situation. Indeed there can be no compromise with the forces that threaten the unity and integrity of the country. No quarters can be given to the forces that are out to challenge the sovereignty itself. However, the Bill that is before us suffers from several infirmities and serious drawbacks. No one is here to defend any terrorist. Every terrorist must meet with his fate at the hands of law. I also agree with the hon. Member, Shri A. T. Patil's generalisation that extraordinary situation may need extraordinary types of processes to be evolved. However, in the judicial process that we want to lay down, while we must take care to see that the terrorist is dealt and firmly dealt with, it is our duty to see that the judicial process is not such as to crush the innocent also. That is the main point that is there. There are umpteen laws; there is no dearth of laws to deal with the terrorist and anti-social elements. What I submit is that there is a need for a political will to deal with the situation.

I need hardly refer here to the

situation that is prevalent even now in various parts of the country. In Maharashtra we had an orgy of violence over there let loose by Shiva Sena. The Pramukh of the Shiva Sena there seems to possess an open general licence to indulge in all sorts of attacks upon the Muslims in his speeches provoking the people and even calling upon the Police for cooperation to drive out the Muslims from this country. Yet, however, he is still at large. The Government of Maharashtra, after there was a lot of bloodshed, has simply recorded a few cases, but does not have the political desire because of considerations of political expediency to take any action. So, that is the situation that must be taken into consideration.

In the year 1970 there were riots in Jalgaon, Bhiwandi and Mahad. After that, a commission headed by Justice Madan was appointed. After years of hard labour Justice Madan Commission submitted the report. In his report, he even named some Policemen, who had indulged in serious dereliction of duty and had aided and abetted in the commission of crimes. The riots took place in 1970. The report came somewhere in 1975-76. But no action was taken. I am sorry, I must correct myself. The Government of Maharashtra did take an action. I think, every policeman mentioned in the report, was fined. He was fined a sum of Rs. 10/- And the policeman, that uniformed terrorist was supposed to be so poor—that he could not shell out Rs. 10/- Therefor, it was decided that a sum of Re.1/- would be deducted every month from his salary for ten months.

I share in the anxiety of the Government to deal with the situation. But where is the political will? Again, justice jitendra Narain Commission's Report about the disturbances in Jamshedpur some time in 1978 or 1979 mentioned the policemen and the district authorities who were responsible for dereliction of duty and who were responsible for concoction of cases

against the Muslims over there. He said that if no action is taken against these officers, people will lose their faith in democracy and in administration of law. He recommended action. Even to this day, no action whatsoever has been taken on that Report. The question, therefore, is the question of a political will.

The present Bill is there before us and it is rather most unfortunate that the Bill is replete with provisions which vitiate the process of a fair trial. That is the gravest defect and the shortcoming and as I said, we have the perverse nature of the Bill. There is an attempt to acquire unbridled powers to declare any area as terrorist affected area and to apply the several provisions of this Bill which I said vitiate the process of a fair trial. The Bill shows the defeatist attitude presuming that we will always have to live with terrorism and disturbed situations. It is presumed that terrorism will be a normal feature of the national scene, so much so that the need will continue to arise to declare various areas as terrorist affected areas.

Then, Sir, no clear-out norms have been laid down as to which area can be declared as a terrorist affected area. The State Government is not consulted, the Government of the State which is being declared a terrorist area is not consulted, the notification declaring an area as a terrorist affected area is not placed on the Table of the House and the House is given no opportunity to give its opinion on the Government's move. Such is the nature of the acquisition of powers under the Bill. There may be a spurt in criminal offences in an area. Take the recorded number of some of the types of cases. The number of dacoities in the year 1964 was 5,287, in 1978 it went up to 13,195; number of robberies in 1964 was 8,336, by 1978 it became 22,923; thefts in 1964 were 2,73,676 and by 1978 the number rose to 4,37,187; the number of murders in 1964 was 11,748 and by

[Shri G. M. Bantwalla]

1978 it became 19,314. The point I am making is that in a particular area there may be a spurt in crimes, in violence but all crimes and all violence need not be manifestation of terrorism. Terrorist manifestations have certain characteristics—the characteristics of there being an organisation, planning, execution, preparation, and so on and so forth. These are the various things that have to be taken into consideration before which an area can be declared as a terrorist affected area.

But here no clear-cut criterion has been laid down, the State Government is also not consulted, this House is not taken into confidence and no notification is placed on the Table of the House. Therefore, I say that the various provisions that are there in the Bill give unbridled power and thus make them obnoxious in nature.

The Government has always to work on a tight rope against terrorism. It must be cautious to see that it does not get entangled in the cobweb of curfews, searches, arrests, investigations and prosecutions and, at the end of these prosecutions, the authorities may find themselves unable to marshal unimpeachable evidence, leading to wholesale acquittals. The situation then further deteriorates and your repressive reaction to any phenomenon of terrorism simply helps the cause of terrorism. Therefore, I must stress the need to have a balanced view and a broader approach. The Bill, however, represents a nervous reaction, a hysterical reaction, to a situation which calls for balanced thinking and firm action.

The various provisions of the Bill vitiate the very process of a trial. Even the definition of "terrorist" is so wide as to include legitimate trade union activity. Please apply your mind to this aspect. I can understand the violent disruption of means of communication, or

the provision of essential commodities. But the term which you use is not "violent disruption", but "disruption", which is such a wide word that even your thinking is not honestly translated into the provisions of the Bill. Therefore, I urge upon the Government to apply their mind and to coolly and calmly scrutinise the various provisions.

The special courts are to be established for scheduled offences. But, if in the course of trial it has been found that an offence has been committed, scheduled or not, punishment can be awarded. It is provided that the rules under the Act will not be placed on the Table of the House, the notification does not come before the House. There is also the presumption that the accused is guilty, unless he is proved innocent, merely because he was simply present in a particular area. I need hardly stress that the presumption of innocence of the accused is a basic tenet of criminal judicial process. A trial starts with the presumption of innocence. Let it be clearly understood, that the prosecution must stand on its own strength; it cannot stand on the weakness, the supposed weakness, of the defence.

We have such sweeping powers that where a person is a member of an unlawful assembly, and someone else commits a crime which is a scheduled offence then that person also will be deemed to have committed that offence. We have section 144 for dealing with unlawful assembly; five people gathering and listening to a speech, that is an unlawful assembly. A person may be there by chance. Somebody else has committed the offence. But here everybody else is deemed to have committed the offence and thus subject to a trial, which is not at all in conformity with the well-established norms of judicial criminal process. Such is, therefore, the nature of the Bill that we have.

I would conclude by saying that in

the sweeping nature of these provisions, the Bill reflects the legislative and executive nervousness which no civilized nation has hitherto exhibited.

Sir, the Bill reflects on the part of the Government a feeling of helplessness and desperation. It symbolises a hysterical reaction in an attempt to acquire permanently powers to impose an unreasonable modality and unjust process. A transient legislative majority cannot in its tantrum prescribe any unreasonable modality. The law, if it is to be a law, has to conform to certain essential standards, evolved by the experience of mankind.

And finally, Sir, there must be a political will to deal with the situation. Is there a will to deal with the present situation arising in Maharashtra also? Let them go forward and prosecute Bal Thakarey, which I urged upon them. But no, Sir, a political expedience is there. And because of the political expediency, we do not find the necessary action that should be taken. There are enough laws. Let political will prevail and then with sincerity those laws can be involved in order to deal with every situation.

With these words I thank you.

SHRI CHANDRAJIT YADAV (Azamgarh) : Mr. Chairman, I think in independent India this is for the first time that the Government is proposing through this Bill to give extraordinary powers to special courts in terrorist affected areas. Here this Bill is against the very basic principle of jurisprudence where the accused is supposed from the very beginning to be guilty. Through this Bill he is supposed to be guilty unless he proves to be innocent. Just it is the reversal of the universal acceptance of the law of jurisprudence. I think this shows the panicky mind of the Government. Government has really become panicky because of what has happened in Punjab, because a group of terrorists

had created an extraordinary situation in Punjab. Therefore, this Bill is being brought. This is also acceptance of a very serious situation perhaps that the Government feels that there has to be a permanent law on our Statute Book. They perhaps feel that there are going to be more areas affected by terrorists and therefore, this kind of law is necessary. That is another situation which emerges only out of a panicky situation. That is why I feel that the Government perhaps has become panicky.

I think that there was no need for this kind of an ordinance which was passed, when everything was over in Punjab. For so many years the situation in Punjab was worsening. The terrorists were having a totally free way. Whatever they wanted they did. The Administration was paralysed and the Government had not shown the will power in spite of the fact that the Parliament had time and again expressed very strongly to take firm action against the terrorists in Punjab. But the Government developed cold feet or the Government has a certain design. I do not know what was the reality. The result is that the innocent people in Punjab have suffered immensely.

I would like to pose some questions to the Home Minister. Why is it that you thought at the end of everything, even after the Army action, that now there should be a law on our Statute Book and this Bill has been brought? Really are you fearing that this is a tendency which is developing in this country? Do you feel that this philosophy of terrorism is a misguided philosophy based on violence and killings? And terrorism cannot be fought by law and Act. If it has to be fought, it must be fought politically.

This morning, you must have noticed that when our External Affairs Minister was making a statement about the situation in Sri Lanka, he made a very good formulation and he said that

[Shri Chandrajit Yadav]

the Sri Lankan Government must deal with this political situation politically ; it is a political situation which cannot be dealt with by the Army. I wish our Government could do the same thing in Punjab and could also have the same understanding that what is happening in Punjab cannot be dealt with only through passing certain laws here or by sending Army or taking certain administrative measures. That also remains basically a political question which this Government has failed to solve and therefore, the country has to suffer and the people in Punjab have to suffer.

The most important thing is that we must think as to why it is that after 37 years of our Independence this kind of a situation is happening in our country. It is not that you are going to have terrorism. The Prime Minister is going round the whole country and giving interviews after interviews in very well-known magazines all over the world that the national unity of this country is in danger, the security of this country is in danger and therefore, she is appealing that people must be alert and the Government must be given full powers, and she is seeking people's cooperation. Have you given a serious thought as to why is it that after 37 years of our Independence when our national unity should have been much more strong; there should have been this kind of fear that our national sovereignty and security is in danger ? Why has it happened so and who is responsible for this and are we going to solve these things only by passing certain laws here ? This needs very serious consideration. Sir, I think that instead of bringing this Bill the Ruling Party must have taken full care of its own house. The Ruling Party has miserably failed to fight politically these misguided elements in Punjab and time and again they wanted to use certain things for their own political interests, where the nation's

interest was given a go-by and the Party's interest was made supreme and therefore, this kind of a situation has happened. And we were warning time and again that the Punjab situation needs firm handling against those people who were going scot-free, killing innocent people. Had they been dealt with very firmly and according to the existing law, there would not have been any need for any other law. Had they been dealt with firmly in the very beginning, this situation would not have arisen. Did you send the Army to the Golden Temple complex through any law ? No It was a political decision only. Even when the Army was to be sent to the Golden Temple, you sent the Army though there was no law to send the Army. But you did fail to take firm administrative action against the terrorists in Punjab in the very beginning and I warn you people belonging to your Party—specially those who come from Punjab go on telling everyone of us, and they must be telling you also, that in Punjab the situation is not so simple. Most of the Government officials and Government servants are also harbouring certain ideas about Khalistan and have a lot of sympathy for all those misguided elements. This is the most serious situation. Why is it happening ? Why are to Government officials and Government servants are behaving like this ? Who does not know that the Punjab Government has miserably failed ? Who does not know that the Punjab police has totally failed and could not take any action ? What are you doing about it ? I would like to know. Before bringing this kind of law, what are you doing about all these things ?

Another thing is, it is a fact that my good friend, Mr. Buta Singh was in a great hurry when I was saying the other day that the entire Sikh community was unhappy, and he said, 'It is not because of Bhindranwale and his friends being killed. but because the Army went into the Golden Temple.' And I said, 'Had you a little

more patience to hear, I would have said the same thing.'

18.00 hrs.

To-day, it is a fact that the feelings and emotions of the entire Sikh-community has been hurt and injured immensely. They are not happy. You are making the entire people unhappy on the-border-of our country and a very sensitive border from where threat to our security comes. The entire sikh community is-unhappy. What are you going to do ? If somebody raises anti-India slogan in Jammu & Kashmir, the entire ruling party is on its leg. If anybody raises anti-India slogan in any part of the country,—it is a wrong act that-he does. But here in our own capital, under the nose of the Central Government...

SHRI BUTA SINGH : You must realise. All of us, not only I am having you in mind, when pro-Pakistani slogans are raised in Srinagar,—they are as serious as Khalistan slogans in Punjab. The gravity is not to be minimised.

SHRI CHANDRAJIT YADAV : This is what I said. Anywhere, in any part of the country,—any slogan against the country is an un-patriotic act. This is what I said.

THE MINISTER OF CHEMICALS AND FERTILIZERS (SHRI VASANT SATHE) : Whom are you blaming ?

SHRI CHANDRAJIT YADAV : I am blaming your Government.

SHRI VASANT SATHE : Only.

SHRI CHANDRAJIT-YADAV : I am blaming your Government because your Government has created this kind-of situation.

There are mis-guided elements. We do not support their philosophy of

terrorism, based on violence and killings I am-saying why the situation...

SHRI VASANT SATHE : Mis-guided elements, terrorists, about whom this Bill is...(Interruptions).

रसायन और उर्वरक मंत्री (श्री बसन्त साठे) : वह आग लगा रहे हैं, उसमें जो तेल डालने वाला हो उसको क्या कहेंगे, उन लोगों को आप क्या कहेंगे इतना बता दीजिये ?

श्री चन्द्रजीत यादव : मैं यह बता रहा हूँ उनको जो तेल और आग दे रहे हैं उनको क्या कहेंगे हम ? आप उनको तेल और आग दोनों दे रहे हैं, और आपने उनको पैदा किया है। यह बात है शुरू से ही।

आचार्य भगवान देव : आप इस तरह का बयान दे कर उसमें घी डाल रहे हैं, आप अनावश्यक बोल रहे हैं।

श्री बसन्त साठे : अपोजीशन के लोग उनका साथ दे कर अकाली या एस० जी० पी० सी० को कंडम न करते हुए टैररिस्ट का साथ देने में यदि तेल डालें तो आपका कहना है कि हमने आपको तेल दिया ?

श्री बूटा सिंह : आप तो हवा दे रहे हैं।

श्री चन्द्रजीत यादव : ठीक है।

The Home Minister of the same Government has admitted three times on the floor of this House that the Opposition made most valuable contribution in tripartite talks and narrowed down the differences. We brought the position where there was a possibility of an agreement. Really speaking, I blame

[Shri Chandrajit Yadav]

the Government and also I blame one Section of the Akali Dal leadership that they backed out. They created a situation where this agreement was not possible; otherwise there could have been the possibility.

I am still saying that bringing such kind of Bills, passing of this Act, is no solution. Ultimately, it is a political solution and it has to be found. You can find a solution for their religious demands. But you cannot find a solution for those problems which do not concern only one community or the entire Panjabi people—i.e. Chandigarh, the territories, water. For how long you want those problems to be hanging in the sky? A political solution for those problems has to be found. Therefore, I am saying that this is not a right kind of approach to attack this kind of problem or to find a solution for this kind of problem.—Therefore, please rise above all these things and go into the basic fundamental issues—why these problems are arising and how they have to be solved. This has to be considered.

Therefore, both these things are to be considered on those issues. I think the entire country is concerned, we are all concerned on those basic issues as to why these things are happening. I am saying that the time has come for much more serious consideration for solving more basic problems. After 37 years of our independence, certain problems today are coming. Even today certain problem has arisen in Andhra Pradesh. I am not saying. You may say, it is all right. It is not that people have left Telugu Desam and gone. It is not that considerable number of people have left and gone to the other side. But this is also a fact that the way the Government of Andhra Pradesh has behaved. Sir, 171 Members of the Legislative Assembly of Andhra Pradesh were going with full majority to the Governor saying that we have the majority in the Assembly. But the

Governor said, I have already taken a decision, dismissed the Government and called for another person to form the Government.

(Interruptions.)

SHRI SUBHASH CHANDRA BOSE ALLURI : No, this is not correct.

SHRI CHANDRAJIT YADAV : Is it going to strengthen democracy? I want to know is it going to strengthen democracy. (Interruptions.) This is a serious situation which has been created in this country. They are destroying democracy. They are destroying the federal polity in the country.

(Interruptions.)

MR. CHAIRMAN : Hon. Home Minister is here. Why do you worry?

SHRI CHANDRAJIT YADAV : Therefore, this kind of attitude of the ruling party is going to destroy democracy. It is not only unity but this will also destroy the federal structure in this country.

Therefore, with these words, I oppose this Bill and I think that this Bill will not solve the problem.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) : Mr. Chairman, Sir, I thank all the hon. Members who have participated in this discussion. Really, I am sorry for the way in which important Members from the Opposition have spoken. Our presumption was that they would find fault in the Bill and make some suggestions. But their presumption was utter desparation and ostrich live policy of not viewing things in proper perspective. I may tell my hon. friends that you are completely being alienated from public opinion in this country. You have

accused the Government that we have no political will. I emphasise that the Government has got the political will ; the Prime Minister has got the political will. That is why we have taken the step of solving the problem of Punjab.

By your words and deeds, covertly and overtly, you have created an impression that has vitiated the atmosphere. For Heaven's sake, with folded hands, I request you to join the main stream of the national consensus and what the people at large are feeling in the country instead of all the time making such frivolous and unfounded allegations. Don't think that you are winning the confidence of the people, eitherof.

Sikhs or somebody else. I may tell you and I may challenge you that you have lost the confidence of the people and the people of this country have realised this. They have said that it is only Mrs. Gandhi who can keep this country together from being disintegrated.

You are talking about Andhra. I do not want to say anything. Your national Parties have become irrelevant in that State. You find fault with our Party. You are trying to climb the bandwagon of that gentleman. All your Parties have become irrelevant. I can challenge you.

SHRI INDRAJIT GUPTA ; Challenging here, inside, is very easy.

SHRI P. VENKATASUBBAIAH : No. I am telling outside. Mr. Indrajit Gupta, I tell you, I challenge you outside. You search your own heart what your friends have been telling me in private. Private question is one and public question is another.

SHRI INDRAJIT GUPTA : I do not want to repeat private conversation I had here with some of your people.

SHRI VIKRAM MAHAJAN (Kangra):

I hope both of you would repeat and we will enjoy.

SHRI P. VENKATASUBBAIAH : Now, I will only deal with the relevant issues. The attitude of the Opposition has all along been "If so, why so and if not, why not ?"

Supposing we take an action, they will say, why we have taken the action. Supposing we do not take an action, they will say, why we have not taken the action. This is an extra-ordinary situation where we have to take certain actions. The terrorists are not ordinary terrorists. They are trying to disrupt the integrity of the country. They have been raising slogans of independent Khalistan. Only with the greatest reluctance the Government has come forward with this Bill. Instead of supporting wholeheartedly the measures which are being taken by the Government, they go on picking holes and telling as though this is a normal situation. We would not have come forward with this Bill if a normal situation had been prevailing in the country.

What has happened in Punjab ? What has happened in Chandigarh ? What has happened in certain other Parts of the country ? Why are they becoming hysterical ? We are not becoming hysterical. They have become hysterical for political considerations. This Government wants business and we want to administer the country in the best interest of the country and its people and to uphold the basic principles of the Constitution. (*Interruptions*) In West Bengal, the people are doing it. The people are ready to teach them a lesson. Let us go to the polls and get the verdict of the people. Out of six-by-elections, they have lost four by-elections. The people are the best judge. Let us accept the verdict of the people; The special Court will be presided over by a serving Judge appointed by the Central Government with the concurrence of the chief justice of the High

[Shri P. Venkatasubbaiah]

Court. Additional Special Courts for trial of selected cases can be established outside the State. The appeal lies to the Supreme Court. The Supreme Court can frame rules. It is not as though the Special Courts are unbridled. They will be governed by certain judicial rules. The appointment of a Judge is also being done with the concurrence of the chief Justice of the High Court. It is only for speedy trial that we have dispensed with normal ordinary Courts.

As regards the *in camera* trial, many of us are well aware of what has happened in Punjab and what has happened to certain witnesses. Will it be possible for the witnesses to give evidence if the trial is not held *in camera*? How many innocent people have been killed? Will anybody be coming forward to give evidence against these terrorists? It is only to safeguard these witnesses that *in camera* trial is necessary. There is also a provision that if the prosecution applies that the proceedings should be held in the open the proceeding may be so conducted.

As regards connected offences, if an offence is not a scheduled offence, it may be tried along with the scheduled offences by the Special court if they are consented and were committed by the accused. Another thing is that certain changes have been made with regard to bail. Under Section 167 of the Criminal Procedure Code, an arrested person can be in the police custody for a maximum period of 15 days. This has been raised to 30 days. All these things have been done to see that the investigation may be thorough and the culprits are brought to book.

A person accused of a scheduled offence can be released on bail. Only a sort of condition has been put in that the Public Prosecutor be given an opportunity to oppose and, if he opposes the bail application, the court will pass

an order for release only if the court is satisfied that they are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit an offence while on bail.

A provision has been made that the Special Court may take such measures, as it may deem fit, for keeping the identity and addresses of the witnesses secret. This may include holding of proceedings at protected places, avoiding of mention of names and addresses of witnesses in its order or judgment or in records of the case accessible to the public.

Some allegation has been made that the State Government is not being taken into confidence. Central Government has power to delegate all or any of the powers exercised by it under the Ordinance except the powers to establish an additional special court outside the State and assign a case to such an additional special court.

Supreme Court may transfer a case from one Special court to another.

Appeal against judgment of the Special Court lies to the Supreme Court.

Evidence Act has been amended and a new Section 111A has been inserted raising presumption against a person accused of having committed an offence under Sections 121, 121A, 122 and 123 of IPC or criminal conspiracy or attempt to commit or abet an offence under Section 122 or Section 123 of IPC. When a person accused of any of the offences is at a place from where firearms—or explosives are used, to attack or resist the armed forces engaged in discharge of their duties and such a place is in a disturbed area, in an area which has either been formally declared a disturbed area or an area in which there has been an extensive disturbance of public peace for a period of one month, a presumption will be raised

against such persons that they committed the offence.

A comment has been made about the powers being vested in the Central Government to declare an area as terrorist affected.

In a large number of cases, the terrorist activities are relatable to the security of the country and its integrity.

The Central Government, therefore, must have the initiative in dealing with such a situation. However, a provision does exist for delegating powers to the State Government. This could be made use of as necessary.

It is in public interest that names of witnesses should be kept confidential. So far raising of presumption is concerned, this is not a novelty as has been tried to be made out. For example, under Arms Act, if an offence is committed in a building, the person having control over the premises is also liable unless the contrary is proved.

The proviso with regard to the raising of presumption is, therefore, not all of other new, as is being made out.

It has been mentioned that the satisfaction of the Govt. of India to declare an area terrorist affected will be subjective satisfaction. I may mention, Sir, that this can not be arbitrary. The offences must be on such a scale and in such a manner that recourse to the provision of the Bill become necessary. No arbitrary action can, therefore, be taken.

Mr. Mool Chand Daga has been saying that we must dispense with these courts also, we must resort to military courts and summary trial. Our intention is to give a fair trial to the accused, to give as much opportunity as possible to

the accused, to go through the due process of law...

AN HON. MEMBER : Military courts are also governed by law.

SHRI P. VENKATASUBBAIAH : That is on the other side of the pendulum; it is going too far away from our thinking of dealing with the matter.

SHRI INDRAJIT GUPTA : Mr. Daga said like that; I think, this punishment should be done with. There should be only shooting.

SHRI P. VENKATASUBBAIAH : There can be no summary trial for crimes like murder. The accused has to be given a fair trial. In summary trial, evidence is not recorded in full. The power will be available both to the executive and to the judicial magistrates so far remand is concerned. Somebody said that we are giving the power only to the executive. It is not so. Power is not taken away from the judicial magistrates.

I think I have answered many of the points. Coming to Mr. Ravindra Varma, we used to be swayed by his speeches when he was President of the All India Students Congress. He is a great freedom-fighter himself. When he compared this Bill to the Rowlett Act; my heart sank. That was the time when we were fighting a foreign power...

PROF. MADHU DANDAVATE (Rajapur) : You have preserved your heart to sink.

SHRI P. VENKATASUBBAIAH : If I lose it, I will have your heart because you are a man of very stout heart.

PROF. MADHU DANDAVATE : It will be made available to you on a silver platter.

[Prof. Madhu Dandavate]

SHRI P. VENKATASUBBAIAH : There are elements unfortunately in this country. Mr. Chandrajit Yadav has put a question why, after 37 years of freedom, such things are there. He sought to minimise the danger of terrorism or extremism. I will go fifty per cent with him. Terrorism and extremism are also a socio-economic malaise. Put the question here is different. Socio-economic malaise or discontent should not lead people to disrupt the integrity and sovereignty of the country. That is the most important thing here. You cannot say that this country be divided. We are dealing with a situation, not completely connected with socio-economic developments. These are matters which have to be taken care of by the State Governments as well as by the Central Government. What happened in several districts where Naxalism was going on? Even in your own State of West Bengal, what have you done? Even now, what are you doing?

SHRI SOMNATH CHATTERJEE (Jadavpur) : What have you done?

SHRI P. VENKATASUBBAIAH : We have introduced socio-economic measures in several parts of the country to contain Naxalism. You were not able to do it.

SHRI INDRAJIT GUPTA : In Andhra Pradesh, now, the trend of Naxalism in the minds of young people is stronger than it ever was before.

SHRI P. VENKATASUBBAIAH : I agree. On that point I have no dispute with you. That is why we have been telling the State Governments that by Draconian measures, by their encounters, the problem cannot be solved; socio-

economic measures have to be taken. They have been taken, when our Government was in power, in Sriakulam and Vijayanagaram districts; we had taken several ameliorative measures when this area was the hot-bed of Naxalites.

That is why—let us not connect this and philosophise over it and give a sanctity for this sort of thing. Economic offences are different. Raising the banner of revolt against the integrity and sovereignty of the country is different. We have to deal with such a situation. That is why we have come forward before this House with this Bill for your approval.

SHRIMATI GEETA MUKHERJEE (Panskura) : First of all I would like to rebut the charge that the Opposition Parties including my Party naturally were fuelling the fire of terrorism. I would like the Minister to consult the proceedings of this very House to see how many times since Nirankari Baba was assassinated we have been raising the question of their firmly dealing with the terrorists. Let them see the records. I will not like to go into them.

Still I also want to make it clear that when the ruling Party was on the verge, of collapse, it is my Party along with many other Parties which mobilised Hindu and Sikh workers together and brought out demonstrations for the solidarity of the country and for Hindu-Sikh unity. Let them see. I am not going into all that at the moment because. I have to go to the specific provisions of this Bill. Before that we are all very serious about these terrorist tendencies and we believe there are ways to curb it and it has to be done. At the same time the terrorist attack that was made on the Andhra Legisla-

tive Assembly this afternoon, I consider it no less serious than the terrorists of Punjab. If you go on trying to have this kind of terrorist attack on the very institutions of parliamentary democracy, surely our country will be great peril.

So, without going into all those things, now I come to the provisions of the Bill. I do not think that the Home Minister did reply to many of the points which were made by us and also made by me in my initial speech. I will just raise one or two points for example. Just now see his logic. He said that in Srikakulam, etc. they have tackled the Naxalite danger very effectively. If that is so, the terrorists Bill was not there at that time. How did they tackle it? So either it is false that they could deal with it or the powers that already there are quite enough to deal with it, if the political will is there. I do not want to go into the polemics of that. Let us come to some concrete provisions.

Yesterday I raised this question of shifting of the onus of proof and to-day also very many of my friends including my very great friend, Ravindra Varmaji raised again very effectively this point. The reply to my charge as well as to his charge by the hon. Mr. Venkatasubbiah was that on this question of fortifying the Evidence Act in relation to those particular offences, he said that there is an enabling provision for rebuttal. What is the enabling provision? Let us see if there is really any enabling provision. What is there in the Bill? The Bill says—for the sake of brevity I will not repeat the whole paragraph, I will just read where the presumption is given. It says :

“...and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it

shall be presumed, unless the contrary is shown, that such person had committed such offence.”

‘unless the contrary is shown’. Is that rebuttal? Who will show the contrary? It is the accused who will have to show contrary. Is that rebuttal? It is no rebuttal, but my great friend, Mr. Venkatasubbaiah, out of certain other compulsions, blandly says that there is rebuttal.

Sir, like that, there are many other questions. The onus of responsibility of proof of his innocence is on him. It must be shown by him and by nobody else. Then there were many other points which have been raised in the course of the discussion but these have not been answered. If you take cursorily, for example, I raised a question of summary trial and sentence in the summary trial. In answering me, Shri Venkatasubbaiah said that there are offences for which three years’ imprisonment can be there. All these can be dealt with by summary trial. I also raised a point that in the summary trial the punishment limitation is only three months but here they have made it three years. They did not even listen to what I said. Whatever he said was wide of the mark. Because of shortage of time, I shall come to another aspect of this measure. I charge this Government that this Bill also violates and provisions of the Constitution. I shall read out Article 20(1) which says :

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

It clearly says that if any offence has committed earlier than any law that was promulgated, then, such person cannot be tried for such offences. This is the fundamental right guaranteed under

Art. 20(1) of the Constitution. I charge that this Bill violates this fundamental right. Why? Here it is said on page 3 of this Bill—

“(2) A notification issued under subsection (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Act, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date of issue of the notification, offences of the nature specified in the schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date.”

Sir, Article 20(1) makes it clear that if a law was not in force at the time of committing the offence, then the person can not be tried for that offence. But, from the backdoor this has been circumvented. One may call this with retrospective effect. This is a violation of the Constitution. Then, the Minister says regarding the issue of notification that this can be done six months earlier. When you make the notification, what are the things which can automatically come along with it? As soon as the notification is issued, then, all the provisions of this Ordinance—in the Bill—will be applied naturally. So, if an offence of this nature has been committed before the date of the issue of the notification, such offences will be tried under this provisions. About that, there is no doubt.

The Special Courts have started to function in Punjab. It is only after this is notified that the cases that will be happening will be coming under this provision. Then, what is the need for having the Terrorist act? According to to your own understanding, the terrorist

activities have been in existence only in the last few years. Will any of those offences committed at the time be also covered by this Ordinance—this Bill?

I am sure they will be covered. If that is so, then it will be a clear violation of the Article 20(1) of the Constitution. So, I charge that not only this Bill is not really intended to deal with the terrorists but it has its own designs which we have do already mentioned and I do not want to repeat them. This Bill is in violation of the Fundamental Rights enshrined in the Constitution, which this Government after its passage would often take recourse to. Not being convinced of his agreements, I again press for my Resolution for rejecting the Bill.

MR. CHAIRMAN: The question is:

“That this House disapproves of the Terrorist Affected Areas (Special Courts) Ordinance, 1984 (Ordinance No. 9 of 1984) promulgated by the President on the 14th July, 1984.”

*The Lok Sabha divided.*

18.42 hrs.

Division No. 3

AYES

Acharia, Shri Basudeb  
Bag, Shri Ajit  
Bhattacharyya, Shri Sushil  
Chatterjee, Shri Somnath  
Dandavate, Prof. Madhu  
Digamber Singh, Shri  
Giri, Shri Sudhir  
Gupta, Shri Indrajit  
Hasda Shri Matilal  
Horo, Shri N.E.  
Kodiyar, Shri P.K.

Maitra, Shri Sunil  
Mayathewar, Shri K.  
Mehta, Prof. Ajit Kumar  
Misra Shri Satyagopal  
Mukherjee, Shrimati Geeta  
Mukherjee, Shri Samar  
Paswan, Shri Ram Vilas  
Rai, Shri M. Ramanna  
Rakesh, Shri R.N.  
Roy Pradhan, Shri Amar  
Sayeed, Shri P.M.  
Sen, Shri Subodh  
Shastri, Shri Ramavatar  
Shejwalkar, Shri N.K.  
Sinha, Shri Nirmal  
Suraj Bhan, Shri  
Tirkey, Shri Pius  
Varma, Shri Ravindra  
Yadav, Shri Chandrajit  
Yadav, Shri Vijay Kumar

NOES

Ahmed, Begum Abida  
Ahmed, Shri Kamaluddin  
Alluri, Shri Subhash Chandra Bose  
Ansari, Shri Z.R.  
Anuragi, Shri Godil Prasad  
Arakal, Shri Xavier  
Bansi Lal, Shri  
Bhagat, Shri H.K.L.  
Bhagwan Dev, Acharya  
Bhakta, Shri Manoranjan  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birbal, Shri  
Brar, Shrimati Gurbrinder Kaur  
Buta Singh, Shri  
Chandrashekharappa, Shri T.V.  
Chaudhary, Shri Manphool Singh  
Chennupati, Shrimati Vidya  
Dalbir Singh, Shri  
Das, Shri A.C.

Dev, Shri Sontosh Mohan  
Dogra, Shri G.L.  
Dubey, Shri Bindeshwari  
Gadgil, Shri V.N.  
Godhavi, Shri Bheravadan K.  
Gavit, Shri Manikrao Hodlya  
Gireraj Singh, Shri  
Gogoi, Shri Tarun  
Gomango, Shri Giridhar  
Gounder, Shri A Senapathi  
Gouzagn, Shri N.  
Hakam Singh, Shri  
Jadeja, Shri Daulatsinhji  
Jain, Shri Virdhi Chander  
Jena, Shri Chintamani  
Raul, Shrimati Sheila  
Kaushal, Shri Jagan Nath  
Khan, Shri Arif Mohammad  
Kidwai, Shrimati Mohsina  
Kuchan, Shri Gangadhar S.  
Kunwar Ram, Shri  
Mahendra Prasad, Shri  
Mallick, Sqai Lakshman  
Mallikarjun, Shri  
Mishra, Shri Gargi Shankar  
Mishra, Shri Ram Nagina  
Mohanty, Shri Brajamohan  
Muttemwar, Shri Vilas  
Naidu, Shri P. Rajagopal  
Namgyal, Shri P.  
Netam, Shri Arbind  
Nikhra, Shri Rameshwar  
Nurul Islam, Shri  
Panika, Shri Ram Pyare  
Parashar, Prof. Narain Chand  
Pardhi, Shri Keshao Rao  
Parmar, Shri Hiralal R.  
Patel, Shri Amrit  
Patel, Shri Shantubhai  
Patel, Shri A.T.  
Patil, Shri Uttamrao

Patil, Shri Veerendra  
Patnaik, Shrimati Jayanti  
Phulwariya, Shri Virda Ram  
Pilot, Shri Rajesh  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Ram, Shri Ramswaroop  
Ranga, Prof. N.G.  
Ranjit Singh, Shri  
Raut, Shri Bhola  
Reddy, Shri M. Ram Gopal  
Roat, Shri Jai Narain  
Sahi, Shrimati Krishna  
Sajjan Kumar, Shri  
Saminuddin, Shri  
Sathe, Shri Vasant  
Satish Prasad Singh, Shri  
Satya Deo Singh, Prof.  
Sawant, Shri T.M.  
Shaktawat, Prof. Nirmala Kumari  
Shakyawar, Shri Nuthuram  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Dharam Dass  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Shivendra Bahadur Singh, Shri  
Sidnal, Shri S.B.  
Singaravadivel, Shri S.  
Singh, Kumari Pushpa Devi  
Sinha Shrimati Ramdulari  
Solanki Shri Babu Lal  
Soundararajan, Shri N.  
Sultanpuri, Shri Krishan Dutt  
Tiwary Prof. K.K.  
Thoart, Shri Bhausahab  
Thungon, Shri P.K.  
Tewary, Shri R.G.  
Tripathi, Shri Kamalapati

Vairale, Shri Madhusudan  
Varma, Shri Jai Ram  
Venkatasubbaiah, Shri P.  
Verma, Shri Deen Bandhu  
Vyas, Shri Girdhari Lal  
Wasnik, Shri Balkrishna Ramchandra

MR. CHAIRMAN : Subject to  
Correction, the result\* of the Division  
is as follows :

AYES : 31

NOES : 106

*The motion was negatived*

MR. CHAIRMAN : The question is :

“That the Bill of provide for the  
speedy trial of certain offences in  
terrorist affected areas and for matters  
connected therewith, be taken into  
consideration.”

*The motion was adopted*

MR. CHAIRMAN : The House will  
now take up clause by clause considera-  
tion of the Bill.

#### Clause 2—Definitions

SHRI RAMAATAR SHASTRI

(Patna) : I beg to move :

Page 2, lines 18 and 19,—

*omit* “Or in the disruption of services  
or means of communications essential  
to the community or in damaging  
property.” (1)

SHRI G.M. BANATWALLA : I beg  
to move :

Page 2, line 18,—

*for* “disruption” *substitute*—

“violent disruption” (12)

\* The following Members also recorded their votes :

AYES : Choudhary Multan Singh and Shri Mohammad Ismail

NOES : Shri Bishnu Prasad.

SHRI SUDHIR GIRI : I beg to move :

Page 2, line 17,—

after "who" insert—

"having some social, cultural, religious, economic or political ideologies". (16)

Page 2, lines 18 and 19,—

omit "Or in violence or in the disruption of services or means of communications essential to the community or in damaging property". (17)

SHRI SATYAGOPAL MISRA : I beg to move :

Page 2, line 18,—

for "disruption" substitute—

"serious violent disruption"

श्री रामावतार शास्त्री (पटना) : सभापति महोदय, मैं तीसरे वाचन के समय बोलूंगा, लेकिन अभी मैं सिर्फ अपना संशोधन आपके सामने पढ़कर सुना देना चाहता हूँ, जो कि इस प्रकार है :-

पृष्ठ 2 में पंक्ति 20 से 22 तक

या समुदाय के लिये आवश्यक सेवाओं या संचार साधनों को भंग करता है या सम्पति नुकसान पहुंचाता है का लोप किया जाये ।

SHRI SUDHIR GIRI (Contai) : I have moved the amendment that "the whole of India" should be substituted for "All such parts of the States and of the Union territories as may be declared as the terrorist affected areas by the States and Union territories respectively as the case may be", because I want to emphasise the fact that the State Government should be taken into confidence while an area is declared terrorist affected area. The State Government is formed on the basis elected repre-

sentatives who represent the whole State and so their opinion should be taken note of when the Central Government declares a particular area as a terrorist affected area. So I have moved this amendment and I expect that the Minister will accept it.

SHRI SATYAGOPAL MISRA (Jamluk) : This type of obnoxious legislation cannot be continued for a long time. That is why I have given a small amendment and imposed a time-limit to it. Again I am saying that this type of legislation can be imposed only in extraordinary situation and that type of extraordinary situation cannot be continued for an indefinite period of time. And that is why I have given the time-limit and I request the hon. Minister to accept my amendment.

SHRI P. VENKATASUBBAIAH : Sir, Shri Sudhir Giri's amendment to insert after "who" "having some social, cultural religious, economic or political ideologies" is not acceptable, because we are not concerned as to whether a terrorist has any ideological motive or not.

MR. CHAIRMAN : I shall now put all the amendments to Clause 2 to the vote of the House.

*Amendments 1, 12, 16, 17 and 74 were put and negatived*

MR. CHAIRMAN : The question is :—

"That Clause 2 stand part of the Bill."

*The motion was adopted.  
Clause 2 was added to the Bill.*

MR. CHAIRMAN : Now we take up Clause 3, Shri Banatwalla.

*Clause 3—Declaration of terrorist affected area.*

SHRI G.M. BANATWALLA (Ponnani) : I beg to move.

Page 3, line 16,—

after "any one time" insert—

"So that the total continuous period from the date of the first notification does not exceed one year." (2)

Page 3,—

after line 20, insert—

"(3) Every notification issued under this section shall be laid before each House of Parliament and shall, except where it is a notification revoking a previous notification, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolution of both Houses of Parliament." (3)

Page 3,—

after line 20, insert—

"(3) No area within a State shall be declared a terrorist affected area without the Central Government having first obtained the prior concurrence of the State Government concerned." (13)

SHRI SUDHIR GIRI (Contai) : I beg to move :

Page 2, line 35,—

after "opinion" insert

"on the basis of a report of the Governor or Governors who shall be advised in this regard by the Council of Ministers of the States or Union territories as the case may be." (18)

Page 2, line 42,—

for "it" substitute—

"the States or the Union Territories as the case may be." (19)

Page 3, line 2,—

after "period" insert—

"not exceeding two months in the first instance and in no case four months". (20)

Page 3, line 4,—

after "opinion" insert

"on the basis of the reports sent by the Governor/Governors who shall be advised by the Council of Ministers of the States or Union territories, as the case may be". (21)

Page 3, line 10—

for "six months" substitute "one month". (22)

Page 3, line 14,—

for "six months" substitute "two months". (23)

Page 3, line 15,—

for "six months" substitute "one month". (24)

Page 3, line 16,

after 'time', insert

"and not exceeding four months in total." (25) .

SHRI RAVINDRA VARMA : I am moving both my amendments. I beg to move :

Page 3, lines 3 to 8,—

omit "and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date". (40)

Page 3,—

after line 30, insert—

“(3) Every notification issued under clause (a) of sub-section (1) and clause (b) of proviso of this section shall be laid before each House of parliament for approval within ninety days of the said declaration.” (41)

SHRI SATYAGOPAL MISRA : I beg to move :

Page 2, line 35,—

after “opinion” insert—

“on the basis of the recommendations made by the concerned State Government of the Administrators of the Union territory.” (75)

MR. CHAIRMAN : Shri Dharam Bir Sinha is not here. Mr. Sudhir Giri, would you like to speak ?

SHRI SUDHIR GIRI : Yes, Sub-clause (1) of Clause 3 says : “If the Central Government is of the opinion that offences of the nature specified in the Schedule...”. My amendment wants to insert after “opinion”—

“on the basis of a report by the Governor or Governors who shall be advised in this regard by the Council of Ministers of the States or Union territories as the case may be.” -

In conformity with my amendment brought in under clause 2, I make it clear that every State Government should take this into account when a particular area is declared as a terrorist-affected area. In various parts of the country, we find that the Governors are acting on their own whim. So, I have put this amendment, viz. that when the Governor reports to the Central Government regarding the declaration of a particular area as a terrorist-affected area, he should be advised, and he shall be advised by the Council of Ministers.

My other amendment comes under (b) of clause 3 (1), and says :

Page 2, line 42,—

for “it” substitute—

“the States or the Union territories as the case may be”.

I say this because I think that the State Government has to clearly declare a particular area, not the whole of the State as terrorist-affected, if the State Government considers it fit to be declared so.

Then there is sub-clause (2) of clause 3. My amendment to this says, in respect of notification under sub-section (1) in respect of an area—

Page 3, line 2,—

after “period” insert—

“not exceeding two months in the first instance and in no case four months”.

I have said this because this clause has not provided any time-limit. In the absence of a time-limit, the Act will be a permanent feature in our Statute Book. There should be a limited period. So, I have brought this amendment.

I expect that the Minister will accept all of my amendments.

SHRI RAVINDRA VARMA : I have two amendments, and I shall speak first on my amendment No. 40.

Obviously, the lines that I have moved for omission are meant to cover the last six months in the Punjab, and the scheduled offences committed in the Punjab during the last six months. If this was the purpose of the Government, it could have been served, perhaps, by a clause which said : “Notwithstanding anything contained in this... etc. The scheduled offences committed in the Punjab which has been declared as a

terrorist-affected area, can be put up for trial before the Special Courts.” That would have been a straight forward, simple and adequate course. But by introducing this retrospective element in the clause now, Government has made it possible for them because of this retrospective element, to invoke it at any time anywhere in the future. Therefore, if their intention was a take care of the special situation that existed in Punjab before this Ordinance was promulgated, it could have been done in the manner I indicated.

Therefore, I have moved that these lines be omitted. My next amendment is no. 41 to clause 3. This is a very important amendment meant to insert a new provision. It says as follows :

“Every notification issued under clause (a) of sub-section (1) and clause (b) of proviso of this section shall be laid before each House of Parliament for approval within ninety days of the said declaration”.

As the Bill stands, since this law has no limit in terms of time, it will be a permanent feature of the statute book. The government acquires the right at any time to declare any area as a terrorist affected area. The Parliament, with the passage of this Bill, would have almost abdicated its right for recurrent scrutiny whenever an occasion of this type arises. This I think is an erosion of the parliamentary prerogative - I do not want to use the word ‘atrocious’—to scrutinise whether a situation of the kind has arisen which warrants the application of this drastic provision. I would, therefore, request my hon. friend to accept these two amendments.

**SHRI SATYAGOPAL MISRA**

(Tamluk) : My amendment is very simple regarding the definition of terrorists in clause 2, subsection 1 (h). It reads as follows :

“Terrorist means a person who indulges in wanton killing of persons or in violence or in the disruption of

services or means of communications essential to the community”

‘Here in place of ‘disruption I wanted to insert “serious violent disruption”. Only disruption in service may not be called as terrorist activities. Sometimes you may feel that some commodities are being sent by railways and some sort of mechanical failure or disruption is there. Will you call the Railway Minister as a terrorist ? That cannot be done. Therefore, I would request the Minister to accept my simple amendment that is in place of “disruption” substitute “serious violent disruption”.

**SHRI P. VENKATASUBBAIAH** : I do not accept.

**MR. CHAIRMAN** : Shall I put all the amendments together to the vote of the House ?

**SHRI RAVINDRA VARMA** : My amendment no. 41 should be put separately.

**MR. CHAIRMAN** : Now, barring amendment no. 41 moved by Shri Ravindra Varma, I shall put all the amendments together to the vote of the House.

*Amendments Nos. 2, 3, 13, 18 to 25, 40 and 75 were put and negatived.*

**MR. CHAIRMAN** : Now, I shall put amendment no. 41 moved by Shri Ravindra Varma to the vote of the House. The question is :

“Page 3,—

*after line 30, insert—*

“(3) Every notification issued under clause (a) of sub-section (1) and clause (b) of proviso of this section shall be laid before each House of Parliament for approval within ninety days of the said declaration.” (41)

19.00 hrs.

MR. CHAIRMAN : I shall now put amendment no. 41 to clause 3 moved by Shri Ravindra Varma to the vote of the House.

The question is :

Page 3,—

*after line 30, insert—*

“(3) Every notification issued under clause (a) of sub-section (1) and clause (b) of proviso of this section shall be laid before each House of Parliament for approval within ninety days of the send declaration.” (41)

*The Lok Sabha divided*

Division No. 4

17.05 hrs.

**AYES**

Acharia, Shri Basudeb  
Bag, Shri Ajit  
Banatwalla, Shri G.M.  
Bhattacharyya, Shri Sushil  
Chatterjee, Shri Somnath  
Dandavate, Prof. Madhu  
Giri, Shri Sudhir  
Gupta, Shri Indrajit  
Horo, Shri N.E.  
Kodiyan, Shri P.K.  
Maitra, Shri Sunil  
Mehta, Prof. Ajit Kumar  
Misra, Shri Satyagopal  
Mukherjee, Shrimati Geeta  
Mukherjee, Shri Samar  
Paswan, Shri Ram Vilas  
Rai, Shri M. Ramanna  
Rakesh, Shri R.N.  
Roy Pradhan, Shri Amar  
Sayeed, Shri P.M.  
Sen, Shri Subodh  
Shastri, Shri Ramavatai

Shejwalkar, Shri N.K.  
Sinha, Shri Nirmal  
Suraj Bhan, Shri  
Tirkey, Shri Puis  
Varma, Shri Ravindra  
Yadav, Shri Chandrajit  
Yadav, Shri Vijay Kumar

**NOES**

Ahmed, Shri Kamaluddin  
Alluri, Shri Subhash Chandra Bose  
Ansari, Shri Z.R.  
Anuragi, Shri Godil Prasad  
Bansi Lal, Shri  
Bhagat, Shri H.K.L.  
Bhagwan Dev, Acharya  
Bhakta, Shri Manoranjan  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birbal, Shri  
Bishnu Prasad, Shri  
Brar, Shrimati Gurbrinder Kaur  
Buta Singh, Shri  
Chandrashekarappa, Shri T.V.  
Chaudhary, Shri Manphool Singh  
Chennupati, Shrimati Vidya  
Dalbir Singh, Shri  
Das, Shri A.C.  
Dev, Shri Sontosh Mohan  
Dogra, Shri G.L.  
Dubey, Shri Bindeshwari  
Gadgil, Shri V.N.  
Gadhavi, Shri Bheravadan K.  
Gavit, Shri Manikrao Hodlya  
Gireraj, Singh, Shri  
Gomango, Shri Giridhar  
Gounder, Shri A. Senapathi  
Gouzagin, Shri N.  
Hakam Singh, Shri  
Jain, Shri Viridhi Chander  
Jena, Shri Chintamani  
Kaul, Shrimati Sheila

Kaushal, Shri Jagan Nath  
Khan, Shri Arif Mohammad  
Kidwai, Shrimati Mohsina  
Kuchan, Shri Gangadhar S.  
Kunwar Ram, Shri  
Mahendra Prasad, Shri  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mishra, Shri Gargi Shankar  
Mishra, Shri Ram Nagina  
Mohanty Shri Brajamohan  
Naidu, Shri P. Rajagopal  
Namgyal, Shri P.  
Netam, Shri Arvind  
Nikhra, Shri Rameshwar  
Nurul Islam, Shri  
Panika, Shri Ram Pyare  
Pardhi, Shri Kesharao  
Parmar, Shri Hiralal R.  
Patil, Shri A.T.  
Patil, Shri Uttamrao  
Patnaik, Shrimati Jayanti  
Pilot, Shri Rajesh  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Ram, Shri Ramswaroop  
Ranga, Prof. N.G.  
Ranjit Singh, Shri  
Reddy, Shri M. Ram Gopal  
Roat, Shri Jai Narain  
Sahi, Shrimati Krishna  
Sathe, Shri Vasant  
Satish Prasad Singh, Shri  
Satya Deo Singh, Prof.  
Sawant, Shri T.M.  
Shaktawat, Prof. Nirmla Kumari  
Shakyawar, Shri Nathuram

Shanmugam, Shri P.  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Dharam Dass  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Shivendra Bahadur Singh, Shri  
Sidnal, Shri S.B.  
Singaravadivel, Shri S.  
Singh, Kumari Pushpa Devi  
Sinha, Shrimati Ramdulari  
Solanki, Shri Babu Lal  
Soundararajan, Shri N.  
Sultanpuri, Shri Krishan Dutt  
Tewary, Prof. K.K.  
Thorat, Shri Bhausaheb  
Thungon, Shri P.K.  
Tiwari, Shri R.G.  
Tripathi, Shri Kamalapati  
Vairale, Shri Madhusudan  
Varma, Shri Jai Ram  
Venkatasubbaiah, Shri P.  
Vyas, Shri Girdhari Lal  
Wasnik, Shri Balkrishna Ramchandra  
Yadav, Shri Subhash Chandra

MR CHAIRMAN : Subject to correction, the result\*\* of the Division is :

Ayes : 029

Noes : 095

*The Motion was negatived*

MR. CHAIRMAN : The question is :  
"That clause 3 stand part of the Bill."

*The motion was adopted,  
Clause 3 was added to the Bill*

\*\* The following Members also recorded their votes :

Ayes : Shri Mohammad Ismail and Shri Motilal Hasda.

Noes : Shri Saminuddin.

*Clause 4—Establishment of special Courts.*

SHRI SUDHIR GIRI : I beg to move :

Page 3,—

omit lines 29 to 46 (26)

SHRI RAVINDRA VARMA : I beg to move :

Page 3,—

(i) for lines 21 to 24, substitute—

“4. (1) For the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, the Central Government may request the Chief Justice of the High Court of the State in which such judicial zone falls, to establish by notification, a special Court in relation to such judicial zone, within such judicial zone.”

(ii) omit lines 25 to 28 (42)

Page 3,—

for lines 29 to 34, substitute—

(1) Notwithstanding anything contained in sub-section (1), if having regard to the exigencies of the situation prevailing in a State the Central Government or State Government is of the opinion that it is expeditious to establish in relation to a judicial zone, or in relation to two or more judicial zones in the State an additional special Courts, outside the State, the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State—” (437)

Page 3,—

for lines 41 to 46, substitute—

“the Central Government of the State Government may request the

Supreme Court to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Supreme Court may, after taking into account the information furnished by the Central Government or the State Government and making such inquiry, if any, as it may deem fit, establish by notification, such Additional Special Court of such place outside the State as may be specified in the notification.”

(44)

SHRI G.M. BANATWALLA : I beg to move :

Page 3, line 22,—

after “the Central Government may” insert “with the concurrence of the Chief Justice of the High Court.”

(69)

Page 3, line 45,—

after “as it may deem fit, insert—

“and with the concurrence of the Chief Justice of India,” (70)

SHRI SUDHIR GIRI : I have moved the amendment for omission of lines 29 to 46. In these lines a provision has been made for the establishment of an additional special court outside the state. This leads me to think that the present Government is depending upon the police force and they have lost the popular support. If they have not lost the confidence of the people, then they would not have brought this Bill at all. Particularly this clause refers to the establishment of an additional court outside the state. The state which has been declared as an area affected by terrorists would not have any say in the establishment of a court. I think, this curtails the right of freedom as guaranteed in Article 19 of the Constitution. So, I totally oppose the inclusion of this clause in the Bill.

MR. CHAIRMAN : I put all the amendments to clause 4 together to vote.

*Amendments Nos, 26, 42, 43, 44, 69 and 70 were put and negatived*

MR. CHAIRMAN : The question is:

“That clause 4 stand part of the Bill”.

*The Motion was adopted.*

*Clause 4 was added to the Bill.*

*Clause 5—Composition and appointment of Judges of special courts.*

SHRI SUDHIR GIRI : I beg to move :

Page 4, line 2,—

*for “Central Government” substitute—*

“Governor of the State or the Union territory on the advice of the Council of Ministers of the State or the Union territory, as the case may be.”  
(27)

Page 4, line 4—

*for “Central Government” substitute—*

“Governor on the advice of the Council of Ministers”  
(28)

Page 4, line 9,—

*for “any State” substitute “the state concerned”*  
(29)

Page 4,—

*for lines 1 to 3, substitute—*

“5. (1) A Special Court shall be presided over by a Judge to be nominated by the Chief Justice of the High

Court or, if the Court is constituted under sub-section (2) of section (4) by a Judge of the Supreme Court.” (45)

Page 4,—

*for lines 4 to 6, substitute—*

“(2) The Chief Justice of the High Court or the Chief Justice of the Supreme Court made also Appoint Additional Judges to exercise jurisdiction in a Special Court or Additional Special Court established by his notification.”  
(46)

Page 4,—

*for line 9, substitute—*

“a Judge of a High Court or is qualified to be appointed as a judge of a High Court”  
(47)

MR. CHAIRMAN : Now, I shall put all the amendments moved in clause 5 to vote.

*Amendments 27, 28, 29, 45, 46 and 47 were put and negatived*

THE CHAIRMAN : The question is :

“That clause 5 stands part of the Bill.”

*The Motion was adopted.*  
*Clause 5 was added to the Bill.*

*Clause 6—Place of sitting*

SHRI SUDHIR GIRI : I beg to move :

Page 4, line 24 and 25,—

*omit “or otherwise expedient in the interests of justice”.*  
(30)

Page 4, line 27,—

*after “accused” insert—*  
*“or any witness”*  
(31)

SHRI RAVINDRA VARMA : I beg to move :

Page 4, lines 27 to 29,—

for "the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court to thinks fit to make any other order."

*substitute —*

"the Special Court shall, after hearing the accused, determine whether any change of place of sitting is warranted, and shall take such steps as are necessary in pursuance of its decision" (82)

SHRI SUDHIR GIRI : Sir, under this Clause provision has been made for trial *in camera*. I want that if the accused gives his consent to the court for his trial *in camera*, then only it should be done, otherwise the accused should not be tried *in camera*. If a person is accused of scheduled offences, then he should be tried in the open court, why should be tried *in camera*? This, therefore, leads me to conclude that the Government has been apprehending some activities in future which may destabilise themselves. Because they have already taken action for destabilising some State Governments, it is expected that definitely people will rise in utter disregard of the Central Government's directive, and to keep them tame, this provision has been included in the Bill. So, I have brought this amendment and I request that my amendment may be accepted.

SHRI RAVINDRA VARMA : This clause empowers the Special Court to decide whether it is to hold its sittings at some other place. The proviso, as it stands, restricts or inhibits the right of the court to take its decision because it say that "if a public prosecutor certifies to the Special Court that it is in

his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect....."

Therefore, it is stacked in terms of the acceptance of the submission or of the opinion of the public prosecutor. The court has the option to take a different decision that is contrary to the opinion of the public posecutor but should state the reasons in writing. That is what the clause, as it stands, says. This does not leave the court uninhibited freedom, is left with it inhibited freedom. Therefore, my proviso is meant to restore full freedom to the court.

MR, CHAIRMAN : Mr. Banatwalla.

SHRI G.M. BANATWALLA : I have nothing to say.

MR. CHAIRMAN : I shall put amendments 30, 31 and 82 to the vote of the House.

*Amendments Nos. 30, 31. and 82 were put and negatived.*

MR. CHAIRMAN : The question is :

"That clause 6 stand part of the Bill."

*The motion was adopted*

*Clause 6 was added to the Bill*

*Clause 7—Jurisdiction of Special Court.*

SHRI G.M. BANATWALLA : I beg to move :

Page 5,—

*omit lines 15 and 16. (4)*

Page 5,—

*after line 10 insert—*

“Provided further that no such declaration shall be made without the concurrence of the Chief Justice of the High Court.” (71)

SHRI SUDHIR GIRI : I beg to move :

Page 5,—

*omit lines 1 to 24.* (32)

SHRI RAVINDRA VARMA : I beg to move :

Page 5,—

*for lines 8 to 10, substitute—*

“Provided that no such declaration shall be made unless a Special Court or Additional Special Court in the State where the scheduled offence has been committed, after hearing the accused, has forwarded to the Central Government a report in writing containing a request for making such declaration.” (48)

SHRI SUDHIR GIRI : Sir, a provision has been made under this Section for the trial of the accused outside the state. I oppose it because if a state has no such circumstances to try an accused, then it must be considered that the state has no power to control law and order in its territory. I think such a situation may not arise in future at all. So, this provision should not find any place in this Section. I think the Minister will accept my amendment.

SHRI RAVINDRA VARMA ; The proviso, as it is drafted now, ignores the defendant altogether, ignores the legitimate reasons he may have to urge, that the trial should not be in an area where he is a stranger, where he has no access to lawyers, friends or relatives, who can arrange for legal assistance. The new

proviso suggested by me, therefore, would retain that right. It says firstly that the Special Court must have considered the application of the State Government or the Public Prosecutor to seek the transfer of the case to an Additional Special Court outside the state; secondly, the court must also have heard whatever the accused has to urge; thirdly, the court must endorse the application.

MR. CHAIRMAN : The Minister does not have anything to say in reply. I will now put all the amendments to clause 7 to the vote of the House.

*Amendments Nos. 4, 32, 48 and 71 were put and negatived.*

MR. CHAIRMAN : The question is :

“That clause 7 stand part of the Bill.”

*The motion was adopted.*  
*Clause 7 was added to the Bill.*

*Clause 8—Power of Special Courts with respect of other offences.*

SHRI G.M. BANATWALLA : I beg to move :

Page 5, lines 30 and 31,—

*for “whether such offence is, or is not a scheduled offence.”*

*substitute “if such an offence is a scheduled offence or an offence connected with the scheduled offence, (5)*

SHRI SUDHIR GIRI : I beg to move :

Page 5, line 25,—

*for “may also” substitute “shall not” (33)*

Page 5, line 27,—

*after “trial” insert “even” (34)*

Page 5, lines 30 and 31,—

omit "whether such offence is or is not a scheduled offence" (35)

Page 5, line 31,—

after "such offence" insert "if it is a scheduled offence" (36)

SHRI RAVINDRA VARMA : I beg to move :

Page 5,

(i) omit lines 25 to 28.

(ii) line 29,—

for "(2)" substitute "(1)". (49)

SHRI SUDHIR GIRI : This section of the Bill provides for trial by the Special Court of offences other than Scheduled Offences. The Special Court has been established for the trial of Scheduled Offences, but this section provides that even offences other than Scheduled Offences could be tried by the Special Court. Section 9 says that for every Special Court the Central Government shall appoint a person to be the Public Prosecutor. I apprehend that what is happening in the case of the Governor may happen here also. Like some of the Governors, the Public Prosecutor will look at the case in favour of the Central Government only; they would not look after the freedom or right of freedom, as enunciated in our Constitution. I, therefore, oppose this section. I request the hon. Minister to accept my amendment.

MR. CHAIRMAN : I will now put all amendments, moved to clause 8 to the vote of the House.

*Amendments Nos. 5, 33 to 36 and 49 were put and negatived.*

MR. CHAIRMAN : The question is :  
"That clause 8 stand part of the Bill"

*The motion was adopted.  
Clause 8 was added to the Bill.*

Clause 9—Public Prosecutors.

Page 5, line 42,—

SHRI G.M. BANATWALLA : I beg to move :

after "knowledge of law" insert  
"outside the terrorist affected area"  
(6)

SHRI SUDHIR GIRI : I beg to move :

Page 5, line 33,—

for "Central Government" substitute—

"Governor of the State or the Union territory as the case may be on the specific advice of the Council of Ministers of the State or the Union territory in this regard" (37)

Page 5, line 36,—

for "Central Government" substitute—

"Governor on the advice of the Council of Ministers" (38)

Page 5, line 40,—

after "has been" insert—

"a bona fide permanent resident of the State or Union territory concerned and" (54)

I have already remarked that the public prosecutor appointed by the Central Government should look after the interests of the Central Government and the Central Government has lost faith in the people. Therefore, this Bill has been brought about. I think the Governor of the State duly advised by the Council of Ministers should appoint the public prosecutor and that this amendment should be accepted by the Government.

MR. CHAIRMAN : I shall now put amendments to clause 9 to vote.

*Amendments No. 6, 37, 38 and 54 were put and negatived.*

MR. CHAIRMAN : Since there is no amendment to Clause 10, I would put Clause 59 and 10 to the vote of the House.

MR. CHAIRMAN : The question is :

“That Clauses 9 and 10 stand part of the Bill.”

*The motion was adopted*

*Clause 9 and 10 were added to the Bill.*

*Clause 11—Power of Supreme Court to Transfer case.*

SHRI SUDHIR GIRI : Sir, I move :

Page 6,—

*after line 37, insert—*

“Provided that any person committed to trial under this Act may apply direct to the Chief Justice of the Supreme Court for Justice.” (55)

I have moved this Amendment because every citizen has the right to freedom. And because he apprehends that he will not get justice from the Special Courts, he will have the right to apply to the Chief Justice of the Supreme Court for justice. I have moved this amendment and I expect that the Hon. Minister will accept my amendment

SHRI SATYAGOPAL MISRA (Tamluk) : Sir, I move :

Page 6, line 37,—

*add at the end—*

“and any person committed to trial under this Act may apply for justice directly to the Chief Justice of Supreme Court or to the Chief Justice of the High Court of his State.”

(76)

Sir, there is the constitution and there is the system of law and judiciary

under the Constitution. But under this Clause, the Bill intends to withdraw all the Constitutional rights and the system of judiciary from our country. A situation has been created in our country in which even a Speaker may be lifted from his Chair by physical force. Such is the position.

Now, the House of the Governor has become the centre of the terrorist activities threatening and killing and murdering democracy. By this Amendment. I have tried to establish the judiciary process which is well in our country to uphold the freedom, which is given in our Constitution.

By brute majority, these amendments may be defeated, but you know the Minister is silently encouraging our amendments and perhaps he is accepting these. Therefore, with these amendments I once again urge that the freedom which is given in our country should be accepted.

MR. CHAIRMAN : I shall now put amendments to clause II to vote.

*Amendments Nos. 55 and 76 were put and negatived.*

MR. CHAIRMAN : The question is :

“That clause II stand part of the Bill ”

*The motion was adopted*

*Clause II was added to the Bill.*

*Clause 12—Protection of Witness*

SHRI G.M. BANATWALLA : Sir, I beg to move :

Page 6,—

*omit lines 38 to 41. (7)*

SHRI RAVINDRA VARMA : Sir, I beg to move :

Page 6,—

for lines 38 and 39, *substitute*—

“12. (1) Notwithstanding anything contained in the Code, the Special Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such manner as it may direct, the publication or disclosure of its proceedings or any part of its proceedings, or order that the proceedings of a case or any part thereof may be conducted *in camera*.” (50)

Page 7, lines 6 and 7,—

omit “or in any records of the case accessible to public” (51)

Page 7,—

(i) *after* line 9, *insert*—

“(4) The Court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.”

(ii) line 10,—

for “(4)” *substitute* “(5)” (52)

SHRI SUDHIR GIRI : Sir, I beg to move :

Page 6, line 39,—

*add* at the end—

“if the person accused so desires specifically” (56)

Page 6,—

omit lines 42 to 45. (57)

Page 7,—

omit lines 1 to 12. (58)

SHRI RAVINDRA VARMA : Sir, I want to speak on my amendments. I have three amendments to this clause. The first amendment is on clause 12(1). Clause 12(1) as it stands in the Bill says :

“Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted *in camera*.”

I want to remind my right honourable friend that this is an obligatory provision, not an enabling provision as he seems to believe. Now, if you want to have an *in camera* trial, the arguments that have been advanced in favour of holding an *in camera* trial are that it is necessary to protect a witness and also perhaps to protect the Judge, though no mention has been made of it. A Judge may also be vulnerable. So, the objective is to give protection to the witness. My amendment is to say that it should be left to the Court to decide whether the proceedings should be held *in camera*. When the British were here—my hon. friend will get upset whenever I refer to the British—there was the Chittagong Armoury case, there was the Meerut Conspiracy case, there was Bhagat Singh's case. I can go on like this, and my hon. friend from Patna will bear me out;—in none of these cases was the subterfuge of an *in camera* trial resorted to. Therefore, I want that it should be left to the Court to decide whether in the interest of the protection or safety of the witness it is necessary to hold the trial *in camera*.

Clause 12(1) goes further to say :

“Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.”

That means that if the Public Prosecutor thinks that for the sake of propaganda it is necessary that it should be staged as an open trial, the court will do so. If the objective is to protect

the witness and not to afford a platform for propaganda for the Public Prosecutor, then it is the Court that should have the right. Therefore, I have moved :

“Notwithstanding anything contained in the Code the Special Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such a manner as it may direct, the publication or disclosure of its proceedings or any part of its proceedings, or order that the proceedings of a case or any part thereof may be conducted *in camera*.”

This means that the Court will exercise its right. Secondly, all the other points covered in this clause are covered here and are left to the discretion of the court.

I am speaking on all the three amendments together to save time.

On page 7, clause 12(3)(b) says :

“the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of the case accessible to the public.”

This is really something which should cause apprehension. If, as my hon. friend said the intention is not to avoid mention of the names and addresses of the witnesses in the records of the case, then his objective will be served by my formulation in which it is left to the discretion of the court to decide whether the publication or disclosure of its proceedings or any parts of its proceedings may be prohibited in such a manner as it may direct. So, I have moved that the words “or in any records of the case accessible to public” should be omitted.

Thirdly, my amendment No. 52 is moved for the insertion of a new subsection which says :

“The court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.”

Otherwise there is no record of the evidence.

SHRI P. VENKATASUBBAIAH :  
There is no objection.

SHRI RAVINDRA VARMA : If there is no objection to this, you can accept my amendment.

You add a new clause which says :—

“The Court shall cause the evidence of each witness who is examined to be recorded in full in such manner as the Court may direct.”

No. 9, 10 are consequential amendments.

(4) should read as (5).

SHRI SUDHIR GIRI :

Page 6, line 39,—

*add at the end—* (56)

“if the person accused so desires specifically”

If it is provided in the Section, then the freedom of the person can be protected.

Page 6,—

*omit* lines 42 to 45.

“A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.”

Keeping the identity of the witness secret will help the prosecutor. The

freedom of the accused person would be minimised. I, therefore, think that the identity of the witness may be made open to all concerned. If a concocted case is brought against an accused, witness may be guided to give false evidence. So, I think, the identity of the witness should be exposed to all.

Page 7,—

*omit* lines 1 to 12. (58)

I want to delete all the provisions for the holding of the proceedings at a protected place, avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public, the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

All these are directly against the protection of the freedom of the individual.

I have, therefore, brought these amendments and they may be accepted by the Minister.

SHRI P. VENKATASUBBAIAH :  
Not accepted.

MR. CHAIRMAN : I put all the amendments to Clause 12 to the vote of the House.

*Amendments Nos. 7, 50, 51, 52, 56, 57 and 58 were put and negatived.*

MR. CHAIRMAN : The question is :

“That Clause 12 stand part of the Bill.”

*The motion was adopted.*

*Clause 12 was added to the Bill.*

*Clause 13—Power to transfer cases to regular courts.*

SHRI SUDHIR GIRI : I beg to move :

Page 7, lines 14 and 15,—

*omit* “notwithstanding that it has no jurisdiction to try such offence,”

(59)

Page 7,—

*after* line 18, *insert*,—

“Provided that if the person or persons whose case or cases are taken cognizance of, shall be paid adequate costs.” (60)

It has been provided that Special Court has no jurisdiction to try an offence which is not a scheduled offence. In spite of that, provision has been made that the Special Court shall transfer the trial of this case to other courts. Why ?

I think this infringes the very basic principle of fair justice. So, I want to remove the clause that if a particular case is found that it is not within the jurisdiction of the Special Court, the special courts have no power to transfer this case. This may be tried as a separate case.

SHRI P. VENKATASUBBAIAH :  
I am not accepting the amendments.

SHRI A.K. ROY (Dhanbad) : Sir, on a point of order. After all, this is not a special court. One after another the amendments are moved and the reasons are given. But in no case, the Minister has come up to the reply. Would it be another special court also ?

MR. CHAIRMAN : You leave that to me. This is not a point of order.

SHRI SUDHIR GIRI : Sir, I come to amendment No. 60. I want to propose that whenever a person is arrested and brought before the Special Court, if

he is found subsequently not guilty of an offence, he should be adequately compensated. I have made a provision that adequate cost should be paid to such person because that person will have to incur sufficient expenditure to defend his case.

SHRI P. VENKATASUBBAIAH :  
No, Sir.

MR. CHAIRMAN : I shall now put all the amendments moved to Clause 13 together to vote.

*Amendments Nos. 59 and 60 were put and negatived.*

MR. CHAIRMAN ; The question is :

“That Clause 13 stand part of the Bill.”

*The motion was adopted.*

*Clause 13 was added to the Bill.*

*Clause 14—Appeal*

SHRI SUDHIR GIRI : I beg to move :

Page 7, lines 20 and 21,—

*omit “not being interlocutory order,”*  
(61)

Page 7,—

*omit lines 22 and 23* (62)

MR. CHAIRMAN : I shall now put all the amendments moved to Clause 14 together to vote.

*Amendments Nos. 61 and 62 were put and negatived.*

MR. CHAIRMAN : The question is :

“That clause 14 stand part of the Bill.”

*The motion was adopted.*

*Clause 14 was added to the Bill.”*

*Clause 15—Modified application of certain provisions of the Code.*

SHRI G.M. BANATWALLA : Sir, I propose that he may take a little rest and I may speak.

I beg to move :

Page 8, line 11,—

*for “and” substitute “or”* (8)

Page 7,—

*omit lines 35 to 37* (72)

SHRI SUDHIR GIRI : I beg to move :

Page 8,—

*omit lines 1 to 3* (63)

Page 8,—

(i) line 4,—

*for “no” substitute “the”*

(ii) line 6,—

*for “unless” substitute “if”*

(iii) line 8,—

*omit “and”*

(iv) *omit lines 9 to 15.* (64)

SHRI P. VENKATASUBBAIAH : I am not accepting.

MR. CHAIRMAN : I shall now put all the amendments moved to Clause 15 together to vote.

*Amendments Nos. 8, 63, 64 and 72 were put and negatived.*

MR. CHAIRMAN : The question is :

“That Clause 15 stand part of the Bill.”

*The motion was adopted.*

*Clause 15 was added to the Bill.*

*Clause 16—Overriding effect of Act.*

SHRI SUDHIR GIRI : Sir, I beg to move :

Page 8,—

*for lines 16 to 21, substitute*

“16. (1) The provisions of this Act shall have effect in so far as they are consistent with the provisions in the Code or any other law save as expressly provided in this Act and the provisions of the Code shall, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.”  
(65)

I would like to emphasize the fact that the provisions of the Criminal Procedure Code should be consistent with the provisions of this Act in regard to the penalty proposed to be meted out to the accused under the Act.

MR. CHAIRMAN : I shall now put Amendment No. 65 moved to Clause 16 to the vote of the House.

*Amendment No. 65 was put and negatived.*

MR. CHAIRMAN : The question is :

“That Clause 16 stand part of the Bill.”

*The motion was adopted.*

*Clause 16 was added the Bill.*

*Clause 17—Delegation*

SHRI G. M. BANATWALLA : Sir, I beg to move :

Page 8, line 29,—

*after “except the power under” insert*

“sub-section (1) of section 3, the power under” (9)

SHRI SUDHIR GIRI : Sir, I beg to move :

Page 8,—

(i) line 27,—

*for “may” substitute “shall”*

(ii) lines 27 and 28,—

*omit “subject to such conditions as may be specified.”*

(iii) line 28,—

*omit “or any of” (66)*

MR. CHAIRMAN : I put Amendment Nos. 9 and 66 moved to Clause 17 to vote.

*Amendments No. 9 and 66 were put and negatived.*

MR. CHAIRMAN : The question is :

“That Clause 17 stand part of the Bill.”

*The motion was adopted.*

*Clause 17 was added to the Bill.*

*Clause 18—Power to make rules.*

SHRI G.M. BANATWALLA : Sir, I beg to move :

Page 8,—

*after line 32, insert*

“(2) Every rule made under this Act, shall be laid as soon as may be

after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule." (10)

SHRI SUDHIR GIRI : Sir, I beg to move :

Page 8, line 31,—

after 'if any' insert

"with the concurrence of the High Courts," (67)

MR. CHAIRMAN : I shall now put Amendment Nos. 10 and 67 moved to Clause 18 to the vote of the House.

*Amendments Nos. 10 and 67 were put and negatived.*

MR. CHAIRMAN : The question is :

"That Clause 18 stand part of the Bill,"

*The motion was adopted.*

*Clause 18 was added to the Bill.*

*Clause 19 was added to the Bill.*

*Clause 20—Amendment of Act 1 of 1872.*

SHRI G.M. BANATWALLA : Sir I beg to move :

Page 9, line 6,—

after "their duties" insert—

"and it is further shown that such person has at any time in the past been convicted of any offence specified in sub-section (2)" (11)

SHRI RAVINDRA VARMA : Sir, I beg to move :

Page 8,—

(i) line 43,—

for "(2)" substitute "(5)

(ii) Pages 8 and 9,—

for lines 44 to 46 and 1 to 8 respectively, substitute.

(a) any area declared as a terrorist affected area under section 3 of the Terrorist Affected Areas (Special Courts) Act; and

(b) where the State Government or the Central Government is of the opinion that the trial of any person referred to in sub-section (1) should be held in accordance with the provisions of the Terrorist Affected Areas (Special Courts) Act;

it may order my officer of the Government to prefer a written information against such person, to the Chief Justice of the High Court of the State in which the offence is alleged to have been committed.

(2) The information shall state the offence charged and so far as known the name place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

(3) The Chief Justice may, by order, require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

(4) Upon such service being effected, and an application duly made to him, the Chief Justice shall nominate one of the Special Courts established under the Terrorist Affected Areas (Special Courts) Act for the trial of the information, and shall fix a date for the commencement of the trial."

(iii) Page 9, line 9,—

for "(2)" substitute "(5)"

(77)

**SHRI G M. BANATWALLA :** This is one of the most important provisions in this Bill and that is the presumption against the accused that he is presumed to be guilty unless otherwise proved.

It has already been pointed out in this House that the presumption of the innocence of the accused is the basic tenet of criminal judicial process.

While speaking on the Bill, I had also said that the prosecution must stand on its own strength. It cannot seek to stand on the strength of any possible weakness of the defence.

Article 11 of the Declaration of Human Rights has also been quoted over here.

I make once again this repeated attempt to urge upon the Government and this House to see that such a provision where the accused is presumed to be

guilt is not incorporated in the Bill.

How would it look if we presume that each and every Minister is corrupt unless and until he is proved innocent? It does not look good. That is not the judicial process. Let us hope that wiser counsels will prevail and the judicial process is not vitiated by such types of provisions.

**SHRI RAVINDRA VARMA (Bombay North) :** Sir, I agree with my hon. friend from Ponnani that this is in fact, one of the most crucial Clauses of this Bill.

Though many of the Clauses vie for the dubious honour, I say that this is the Clause which serves the *coup de grace*.

There are many aspects which are repugnant to civilised conscience in this Clause.

I shall deal with one of them because that is the most important. The attempt in this Clause is to delimit an area firstly as an area which has been declared as a disturbed area under any of the Acts that are today in vogue. In that case, one knows that these areas have already been declared as disturbed areas under a law adopted by Parliament.

But when you go to (b), any area—in this, there has been applicable for a period of more than one month extensive disturbance of the public peace.

**SHRI INDRAJIT GUPTA :** And or 'any'?

**SHRI RAVINDRA VARMA :** Or.

Therefore, it means that it does not necessarily have to be a disturbed area under any enactment passed by Parliament. It is purely a matter of the monopolistic satisfaction of the execu-

tive! If the executive feels that for more than a period of one month there has been extensive disturbance of public peace—it is adequate.

As I said in the morning, it is the most delightfully vague phrase for the Government and the most frightfully vague phrase as far as the citizens are concerned!

It goes further on to say that there will be a presumption of guilt. As I said earlier, the presumption of guilt is repugnant to all civilised consciences and we ourselves have subscribed to the UN Declaration on Human Rights which says that there should be no presumption of guilt but there should be presumption of innocence. The gravity of the offence does not entitle the Government to make light of the responsibility to prove guilt. If you make an accusation which is serious, a grave charge of heinous crimes, you must take up on yourself the attendant responsibility to prove guilt. Your declaration with bell, book and candle that somebody is guilty of crime does not make it so.

My hon. friend, right hon. friend from Nandyal this morning again slipped up when he said that "only we say so." That is the point. Your saying, your accusing is not enough. At least in our eyes. You are not the prosecutor and the judge—fused into one. There must be distinction between the prosecutor and a judge.

Therefore, it is necessary to prove guilt, not only to lay the blame on somebody's door.

This Clause goes revoltingly against the accepted norms of jurisprudence.

Therefore, I have moved substitution of the whole Clause. In view of the importance of this, I would crave your indulgence to be permitted to read this out. My amendment reads that :

Clause 20 reads :

"111A. (1) Where a person is accused of having committed any offence specified in sub-section (2), in—"

Then my amendment starts.

- "(a) any area declared as a terrorist affected area under section 3 of the Terrorist Affected Areas (Special Courts) Act; and
- (b) where the State Government or the Central Government is of the opinion that the trial of any person referred to 'sub-section (1) should be held in accordance with the provisions of the Terrorist Affected Areas (Special Courts) Act;'"

I am restricting the applicability to an area declared as a terrorist affected area because the purpose in the Bill is to deal with only such areas and not with all the sundry areas.

"it may order any officer of the Government to prefer a written information against such person, to the Chief Justice of the High Court of the State in which the offence is alleged to have been committed.

"(2) The information shall state the offence charged and so far as known the name, place of residence and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

(3) The Chief Justice may, by order, require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information

or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.

- (4) Upon such service being effected, and an application duly made to him, the Chief Justice shall nominate one of the Special Courts established under the Terrorist Affected Areas (Special Courts) Act for the trial of the information, and shall fix a date for the commencement of the trial."

With your permission, I may take the Rt. Hon. gentleman into confidence, I hold that this amendment strikes a balance between the requirements of an expeditious trial and the need to assure full opportunities to an accused, however heinous an offence may be, to defend himself. If I may take my Rt. Hon. friend into confidence at this hour in the evening, the words of my amendment are verbatim, reproduced from the Rowlatt Act. You do not like it. I would like you to retreat at least to the Siegfried line of the Rowlatt Act and not to make further forays against the people.

SHRI P. VENKATASUBBAIAH : I have already dealt with this matter. I would like to reiterate again that the presumption will be raised only in a few cases where it is absolutely necessary in the present circumstances; section 121—waging or attempting to wage a war or abetting waging of war against Government of India; section 121A—conspiracy to commit offences punishable by section 121; section 122—collecting arms, etc.; with the intention of waging war against the Government of India; section 123 of the IPC—concealing design to wage war with the intention of facilitating waging of war; then criminal conspiracy of attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code. So, this is limited, to

only four sections of the IPC. No presumption can be raised against any other scheduled offence. There are certain inbuilt safeguards also. It is not as though the provision with regard to presumption will be made use of indiscriminately. I have mentioned this while replying to the debate. Also it is not a new thing. Several other Acts have provisions with regard to presumption. So, my hon. friend need not be apprehensive that this will be misused or abused.

MR. CHAIRMAN : Shall I put the amendments together to the vote of the House?

SHRI RAVINDRA VARMA : My amendment may be put separately.

MR. CHAIRMAN : I will now put the amendments to vote.

I will put amendment No. 11 of Shri G.M. Banatwalla to the vote of the House.

*Amendment No. 11 was put and negatived.*

20.00 hrs.

MR. CHAIRMAN : I will now put the amendment of Shri Ravindra Varma.

The question is :

Page 8,—

(i) line 43,—

*for "(2)" substitute "(5)"*

(ii) Pages 8 and 9,—

*for lines 44 to 46 and 1 to 8 respectively* —

“(a) any area declared as a terrorist affected area under section 3 of the Terrorist Affected Areas (Special Courts) Act; and

- (b) where the State Government or the Central Government is of the opinion that the trial of any person referred to in sub-section (1) provisions of the Terrorist Affected Areas (Special Courts) Act;

it may order any officer of the Government to prefer a written information against such person, to the Chief Justice of the High Court of the State in which the offence is alleged to have been committed.

- (2) The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.
- (3) The Chief Justice may, be order, require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information of the amended information as the case may be, to be served upon the accused in such manner as the Chief Justice may direct.
- (4) Upon such service being effected, and an application duly made to him, the Chief Justice shall nominate one of the Special Courts established under the Terrorist Affected Areas (Special Courts) Act for the trial of the information, and shall fix a date for the commencement of the trial."

Page 9, line 9,—

for "(2)" substitute "(5)" (77)

*The Lok Sabha divided.*

20.02 hrs.

Division No. 5.

**AYES**

Acharia, Shri Basudeb  
Bag, Shri Ajit  
Banatwalla, Shri G.M.  
Bhattacharyya, Shri Sushil  
Dandavate, Prof. Madhu  
Das, Shri R.P.  
Giri, Shri Sudhir  
Gupta, Shri Indrajit  
Hannan Mollah, Shri  
Horo, Shri N.E.  
Kodiyar, Shri P.K.  
Maitra, Shri Sunil  
Mehta, Prof. Ajit Kumar  
Misra, Shri Satyagopal  
Mukherjee, Shri Samar  
Parmar, Shri Hiralal R.  
Rai, Shri M. Ramanna  
Rakesh, Shri R.N.  
Roy, Shri A.K.  
Roy Prathan, Shri Amar  
Sayeed, Shri P.M.  
Sen, Shri Subodh  
Shastri, Shri Ramavatar  
Shejwalkar, Shri N.K.  
Suraj Bhan, Shri  
Tirkey, Shri Pius  
Varma, Shri Ravindra  
Yadav, Shri Chandrajit

**NOES**

Ahmed, Shri Kamaluddin  
Alluri, Subhash Chandra Bose  
Ansari, Shri Z.R.  
Anuragi, Shri Godil Prasad  
Bansi Lal, Shri  
Bhagat, H.K.L.  
Bhagwan Dev, Acharya

b.s.

Bhakta, Shri Manoranjan  
Bhuria, Shri Dileep Singh  
Birbal, Shri  
Bishnu Prasad, Shri  
Buta Singh, Shri  
Chandrashekharappa, Shri T.V.  
Chennupati, Shrimati Vidya  
Dalbir Singh, Shri  
Das, Shri A.C.  
Dev, Shri Sontosh Mohan  
Dogra, Shri G.L.  
Dubey, Shri Bindeshwari  
Gadgil, Shri V.N.  
Gadhavi, Shri Bheravadan K.  
Gavit, Shri Manikrao Hodlya  
Gireraj Singh, Shri  
Gomango, Shri Giridhar  
Gounder, Shri A. Senapathi  
Gouzagin, Shri N.  
Hakam Singh, Shri  
Jain, Shri Virldhi Chander  
Jena, Shri Chintamani  
Kaul, Shrimati Sheila  
Kaushal, Shri Jagan Nath  
Khan, Shri Arif Mohammad  
Kuchan, Shri Gangadhar S.  
Kunwar Ram, Shri  
Mahendra Prasad, Shri  
Mallick, Shri Lakshman  
Mishra, Shri Gargi Shankar  
Mishra, Shri Ram Nagina  
Mohanty, Shri Brajamohan  
Naidu, Shri P. Rajagopal  
Namgyal, Shri P.  
Netam, Shri Arvind  
Nikhra, Shri Rameshwar  
Nurul Islam, Shri  
Panika, Shri Ram Pyare  
Pardhi, Shri Keshao Rao

Parmar, Shri Hiralal R.  
Patil, Shri A.T.  
Patil, Shri Uttamrao  
Poojary, Shri Janardhana  
Pradhani, Shri K.  
Ranga, Prof. N.G.  
Ranjit Singh, Shri  
Reddy, Shri M. Ram Gopal  
Sahi, Shrimati Krishna  
Saminuddin, Shri  
Sathe, Shri Vasant  
Satish Prasad Singh, Shri  
Satya Deo Singh, Prof.  
Shaktawat, Prof. Nirmal Kumari  
Shakyawar, Shri Nathuram  
Shanmugam, Shri P.  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Shivendra Bahadur Singh, Shri  
Singaravadivel, Shri S.  
Singh, Kumari Pushpa Devi  
Sinha, Srimati Ramdulari  
Sultanpuri, Shri Krishan Dutt  
Tapeswar Singh, Shri  
Tewary, Pro. K.K.  
Tripathi, Shri Kamalapati  
Vairale, Shri Madhusudan  
Varma, Shri Jai Ram  
Venkatasubbaiah, Shri P.  
Wasnik, Shri Balkrishna Ramchandra

MR. CHAIRMAN : Subject to corrections, the result\*\* of the Division is :

AYES : 28

NOES : 78

*The Motion was negatived.*

\*\*The following Members also recorded their Vots :

AYES : Shri Mohammad Ismail.

NOES : Sarvashree Mallikarjun and Babulal Solanki.

MR. CHAIRMAN : The question is :

“That Clause 20 stand part of the Bill.”

SHRI G.M. BANATWALLA : You put this obnoxious clause to the vote of the House. We do not want such a Clause. This is a gross violation. You may clear the Lobby.

MR. CHAIRMAN.: Lobbies have been cleared.

SHRI G.M. BANATWALLA : You may clear them again.

MR. CHAIRMAN : Wait for the machine. It is all right.

The question is :

“That Clause 20 stand part of the Bill.”

*The Lok Sabha Divided.*

20.06 hrs

Division No. 6

AYES

Ahmed, Shri Kamaluddin

Alluri, Shri Subhash Chandra Bose

Ansari, Shri Z.R.

Anuragi, Shri Godil Prasad

Bansi Lal, Shri

Bhagwan Dev, Acharya

Bhuria, Shri Dileep Singh

Birbal, Shri

Bishnu Prasad, Shri

Buta Singh, Shri

Chennupati, Shrimati Vidya

Dalbir Singh, Shri

Das, Shri A.C.

Dev, Shri Sontosh Mohan

Dogra, Shri G.L.

Dubey, Shri Bindeshwari

Gadgil, Shri V.N.

Godhavi, Shri Bheravadan  
Gireraj Singh, Shri

Gomango, Shri Giridhar

Gouzagin, Shri N.

Jain, Shri Virdhi Chander

Jena, Shri Chintamani

Kaul, Shrimati Sheila

Kaushal, Shri Jagan Nath

Khan, Shri Arif Mohammad

Kuchan, Shri Gangadhar S.

Kunwar Ram, Shri

Mahendra Prasad, Shri

Mallick, Shri Lakshman

Mullikarjun, Shri

Mishra, Shri Gargi Shankar

Mishra, Shri Ram Nagina

Mohanty, Shri Brajamohan

Naidu, Shri P. Rajagopal

Namgyal, Shri P.

Netam, Shri Arvind

Nikhra, Shri Rameshwar

Pardhi, Shri Keshaorao

Parmar, Shri Hiralal R.

\*Paswan, Shri Ram Vilas

Patil, Shri A.T.

Patil, Shri Uttamrao

Poojary, Shri Janardhana

Pradhani, Shri K.

Rakesh, Shri R.N.

Ranga, Prof. N.G.

Ranjit Singh, Shri

Reddy, Shri M. Ram Gopal

\*Roy, Shri A.K.

Sahi, Shrimati Krishna  
Sathe, Shri Vasant  
Satish Prasad Singh, Shri  
Shaktawat, Prof. Nirmala Kumari  
Shakyawar, Shri Nathuram  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Shivendra Bahadur Singh, Shri  
Singaravadivel, Shri. S.  
Singh, Kumari Pushpa Devi  
Sinha, Shrimati Ramdulari  
Solanki, Shri Babu Lal  
Sultanpuri, Shri Krishan Dutt  
Tapeshwar Singh, Shri  
Tewary, Prof. K.K.  
Tripathi, Shri Kamalapati  
Vairale, Shri Madhusudan  
Varma, Shri Jai Ram  
Venkatasubbaiah, Shri P.  
Wasnik, Shri Balkrishna Ramchandra

NOES

Acharia, Shri Basudeb  
Bag, Shri Ajit  
Banatwalla, Shri G.M.  
Bhattacharyya, Shri Sushil  
\*Chandrashekarappa, Shri T.V.  
Chatterjee, Shri Somnath  
Dandavate, Prof. Madhu

Das, Shri R.P.  
Giri, Shri Sudhir  
Gupta Shri Indrajit  
\*Hakam Singh, Shri  
Hembrom, Shri Seth  
Horo, Shri N.E.  
Kodiyan, Shri P.K.  
Maitra, Shri Sunil  
Mehta, Prof. Ajit Kumar  
Misra, Shri Satyagopal  
Mohammed Ismail, Shri  
Mukherjee, Shri Samar  
Raj, Shri M. Ramanna  
Roy Pradhan, Shri Amar  
\*Saminuddin, Shri  
Sayeed, Shri P.M.  
\*Shanmugam, Shri P.  
Shejwalkar, Shri N.K.  
Suraj Bhan, Shri  
Tirkey, Shri Pius  
Varma, Shri Ravindra  
Yadav, Shri Chandrajit

MR. CHAIRMAN ; Subject to correction the result\*\* of the Division is :

AYES : 72

NOES : 29

*The Motion was adopted*

*Clause 20 was added to the Bill.*

\*Wrongly Voted for NOES.

\*\* The following Members also reended their votes.

AYES : Sarvashree H.K.L. Bhagat, Manoranjan Bhakta, Manikrao Hodlya Gavit, Ram Pyare Panika, Prof. Satya Deo Singh, Sarvashree Nurul Islam, T.V. Chandrashekarappa, Saminuddin, P. Shanmugam and Hukam Singh.

NOES : Sarvashree Ramavatar Shastri, Subodh Sen, Hannan Mollah, A.K. Roy and Ram Vilash Paswan.

MR. CHAIRMAN : The question is :

“That Clause 21 stand part of the Bill.”

*The motion was adopted.*

*Clause 21 was added to the Bill.*  
*The Schedule*

SHRI G.M. BANATWALLA : I beg to move :

Page 11,—

*omit lines 1 to 3 (68)*

MR. CHAIRMAN : I shall now put the amendment moved by Shri Banatwalla to the vote of the House.

*Amendment No. 68 was put and negatived.*

MR. CHAIRMAN : The question is :

“That the Schedule stand part of the Bill”

*The motion was adopted*

*The Schedule was added to the Bill.*

*Clause 1—Short title; extent and Commencement.*

SHRI SUDHIR GIRI : I beg to move :

Page 1, line 5,—

*for “the whole of India” substitute*

“all such parts of the States and of the Union territories as may be declared as the terrorist affected areas by the States and Union territories respectively, as the case may be.”

(14)

Page 1,—

*for lines 6 and 7, substitute*

“(3) It shall come into force on the date it receives the assent of the President.” (15)

SHRI RAVINDRA VARMA . I beg to move :

Page 1, line 7,—

*add at the end*

“and shall remain in force upto the 14th day of August, 1985, unless extended by Parliament and no extension shall be made for a period exceeding one year at a time.” (39)

SHRI G.M. BANATWALLA : I beg to move :

Page 1,—

*for lines 6 and 7, substitute—*

“(3) It shall be deemed to have come into force on the 14th day of July, 1984 and shall remain in force for a period of twelve months :

Provided that Parliament may extend the period but no extension shall be for a period of more than six months at a time.” (53)

SHRI SATYAGOPAL MISRA : I beg to move :

Page 1, line 7,—

*add at the end*

“and shall remain in force for a period of not more than six months.” (73)

SHRI SUDHIR GIRI (Contai) : Sir, the provision under this Section of the Act extends to the whole of India except the State of the Jammu and Kashmir. But my amendment is that it should extend to all such parts as the State Governments would declare as the ter-

rorist activities affected area. Every State is entrusted with the responsibility of maintaining law and order in its own territory. So, why should the State Government not be taken into confidence in declaring a particular area as terrorist affected area? I have got my amendment to the Bill which should extend to all such parts of the States and of the Union Territories as may be declared as the terrorist affected areas by the States and the Union territories respectively, as the case may be. So, my amendment should be accepted by the Minister because the State's autonomy and the States rights should not be curbed in any way.

SHRI RAVINDRA VARMA : Mr. Chairman, Sir, I have moved an amendment to Clause 1(3). As it is non in the Bill, it says :

"It shall be deemed to have come into force on the 14th day of July, 1984."

My amendment is to add :

"and shall remain in force upto the 14th day of August, 1985, unless extended by Parliament and no extension shall be made for a period exceeding one year at a time."

There are three objectives I seek to serve by this amendment; one, to fix a definite period for the legal validity of the Act; namely one year; two, to make any further extension dependent on the scrutiny of prevailing conditions by the Parliament, scrutiny of the need for continuance, an extension dependent on the approval of Parliament, and three, to limit the duration for which the Act may be extended at any one time, to one year.

This amendment of mine, therefore, is moved with a view to restoring the prerogative of Parliament and enabling Parliament to discharge its responsibility to the people.

SHRI SATYAGOPAL MISRA : Sir, I have already made my point clear that such a legislation should not be continued for an indefinite period. Therefore, I have suggested a time-limit in my amendment. I have also said that the elected representatives of the State Government should also be associated and their recommendations and views should be taken in implementing this piece of legislation. I hope that the hon. Minister would accept my amendment.

SHRI P. VENKATASUBBAIAH : Sir, I am not in a position to accept any of these amendments.

MR. CHAIRMAN : I shall now put all the amendments to Clause 1 to the vote of the House.

*Amendments Nos. 14, 15, 39, 53 and 73 were put and negatived.*

MR. CHAIRMAN : The question is :

"The clause 1 stand parts of the Bill."

*The motion was adopted:*

*Clause 1 was added to the Bill.*

*The Enacting Formula and the Title were added to the Bill.*

SHRI P. VENKATASUBBAIAH : I beg to move :

"That the Bill be passed."

MR. CHAIRMAN : Motion moved :

"That the Bill be passed."

*Prof. Ajit Kumar Mehta.*

प्रो० अजित कुमार मेहता (समस्तीपुर) :  
सभापति जी, मुझे याद आता है वह समय  
..... (व्यवधान) मेरा ध्यान आप

लोग हटायेंगे तो ज्यादा समय लग जायेगा। मैं यह समझता था कि उधर के मित्रों को समय से कुछ सीख मिलेगी। जनता रिजीम में जब हम सत्ता में थे तो उस समय भी एक स्पेशल कोर्ट का विधेयक पारित हुआ था। और हमारे मित्रों ने जम कर के विरोध किया था। मैं अच्छी तरह जानता हूँ कि इस समय जिन लोगों ने विरोध किया, उनमें हमारे एक स्वर्गीय मित्र भी शामिल थे, जो अब हमारे बीच नहीं रहे। मैं समझता हूँ कि इस तरह के बिल लाने से यही प्रदर्शित होता है कि हमारे मित्रों को समय से सीख नहीं मिली है। मैं सोचता था कि शायद स्पेशल कोर्ट्स में उनको कुछ एलर्जी हो जाए, लेकिन वैसा कुछ नहीं हुआ और उल्टे उनको स्पेशल कोर्ट्स से प्यार हो गया। कोर्ट्स की जितनी अवमानना आप कर सकते थे, उस समय आप लोगों ने की। आपके मित्रों ने की। स्वर्गीय श्री संजय गांधी और उनके मित्रों ने जिस तरह से दिल्ली के न्यायालयों में उधम मचाया और न्यायालय की अवमानना की, उसका उदाहरण नहीं मिलता .....(व्यवधान)..... में कोई गलत नहीं कह रहा हूँ। यह सही है और स्पेशल कोर्ट्स के प्रश्न को लेकर उस समय ऐसा हुआ था। लेकिन आज हम वैसा नहीं करने वाले हैं। हमारे दिलों में न्यायालय के प्रति इज्जत और सम्मान है।

सभापति जी, इसमें एक क्लोज है "Special Courts shall be presided over by a judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court".

सैन्ट्रल गवर्नमेंट क्यों इस तरह के जिम्मेदारी वाले पद पर नियुक्ति करे, उसकी नियुक्ति

तो राष्ट्रपति महोदय द्वारा की जानी चाहिए। केवल सैन्ट्रल गवर्नमेंट द्वारा नियुक्ति की बात मेरी समझ में नहीं आती ... .. (व्यवधान) ..... आप जितना ऊधम मचायेंगे, मुझे उतनी ही देर लगेगी। जितनी देर आप बोलेंगे, मैं चुप रहूंगा, लेकिन अपनी बात कह कर ही बैठूंगा। मुझे भी अपनी बात कहने का अधिकार है। यदि आप समझते हैं कि हमें भी बोलने का अधिकार है तो हमें भी उतना ही अधिकार है। उधर देखने के बाद भी मेरे कान खुले हुए हैं। पहले आप अपने लोगों को शांत कीजिए, अपने लोगों को अनुशासित कीजिए।

मैं निवेदन कर रहा था कि इसमें सैन्ट्रल गवर्नमेंट क्यों बीच में आना चाहती है, उसके द्वारा नियुक्ति क्यों हो? राष्ट्रपति को यह कार्य सौंपा जाना चाहिए था। शायद सैन्ट्रल गवर्नमेंट के द्वारा नियुक्ति करने का प्रावधान इसलिए रखा गया है ताकि जिस जज की नियुक्ति की जाए, वह सैन्ट्रल गवर्नमेंट के व्यू और इच्छा से प्रभावित हो। शायद इसलिए यह प्रावधान इसमें रखा गया है।

(व्यवधान)

सभापति जी, दूसरी बात मैं आपके सामने यह लाना चाहता हूँ कि हमारे न्यायालयों की यह परम्परा रही है कि जिसको हम एक्यूज्ड कहते हैं, जब तक उसका न्याय न हो जाए, हम उसको अपराधी नहीं मान सकते। परन्तु क्लोज 20 के अनुसार, हम सब को अपराधी की श्रेणी में मान लेते हैं, उसको अपराधी प्रिज्यूम कर लेते हैं। वैसे तो इस सम्बन्ध में कई तर्क यहां दिये गए, लेकिन इतना आप भी तो मानेंगे कि जिसको हम एक्यूज्ड कहते हैं, जब तक उस पर मुकदमा चलाकर न्यायालय से उसका फैसला नहीं करवा लें, तब तक उसको

अपराधी न मानें। परन्तु जैसा इस क्लॉज में कहा गया है, मैं उस क्लॉज को आपके सामने पढ़कर बताना चाहता हूँ -

Under Clause 20, in the proposed Section 111A of the Indian Evidence Act, it is said :

“(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person committed such offence.”

मतलब यही हुआ कि जब तक वह सिद्ध नहीं कर दें कि वह अपराधी नहीं है तब तक आप उसको अपराधी मानते रहेंगे। यह फैसला देने का अधिकार कार्यपालिका का हुआ। संविधान की किस धारा के अनुसार अपराधी को फैसला देने का अधिकार ऐग्जीक्यूटिव को मिला हुआ है? मैं समझता हूँ कि इस कानून की यह धारा संविधान के विरुद्ध है; संविधान द्वारा प्रदत्त अधिकार में विरोधाभास है इसलिए इसका नहीं होना चाहिये। वादी और न्यायाधीश में फर्क है। जो किसी को अपराधी घोषित करता है और वही फैसला दे दे यह अनुचित है। कार्यपालिका द्वारा फैसला तो पहले ही हो गया। न्यायालय में मुकदमा गया किन्तु उसका क्या परिणाम निकलने वाला है?

दूसरी बात यह है कि जब ऐक्यूज्ड को आप जेल में बन्द कर देते हैं तब उसको प्रमाण जुटाने को कहते हैं तो वह कैसे अपने को निर्दोष होने का प्रमाण जुटाएगा? यही मतलब हुआ

कि हाथ पांव बांधकर कह दो कि तुम कहीं भी जाने के लिये स्वतंत्र हो। वह कैसे प्रमाण जुटाएगा?

अन्त में मैं आपका ध्यान धारा 12 की ओर दिलाना चाहता हूँ। इसमें आपने कहा है कि गवाहों का कोई रिकार्ड अगर न्यायाधीश चाहे तो कहीं भी रखें। मुझे न्यायाधीशों के प्रति बड़ी इज्जत है, परन्तु क्या न्यायाधीश भगवान की ओर से भेजे हुए देवदूत होते हैं क्या? वे भी मनुष्य हैं और मनुष्य की कमजोरी उनमें भी है। मानलीजिये कोई ऐसा न्यायाधीश हो ....

ऊर्जा मंत्री (श्री पी० शिवशंकर) : माननीय सोमनाथ जी इस बात को नहीं मानते हैं।

प्रो० अजित कुमार मेहता : सोमनाथ जी के मानने या न मानने से कोई फर्क नहीं पड़ता है, क्योंकि आपने बहुत से न्यायाधीशों को सजा दी है। तो जब ऐसी स्थिति है, एक न्यायाधीश बायेस्ड हो और और वह उचित न्याय न करे, जो प्रतिवादी है उसके विरुद्ध हों और गलत सलत प्रमाण रेकार्ड में ठूस दें कि वह गवाहों द्वारा कहे गये हैं .....

श्री सोमनाथ चटर्जी : आप सोचते हैं कि इसे पढ़ने से वह लोग समझेंगे?

प्रो० अजित कुमार मेहता : मैं तो समझता था कि शायद समझेंगे।

अगर कोई ऐसा व्यक्ति न्यायाधीश के पद पर हो, जो न्यायाधीश होने के लायक न हो, पूर्वाग्रह से ग्रसित हो, किसी प्रतिवादी का विरोधी हो, तो उस प्रतिवादी के विरुद्ध वह वह बहुत से प्रमाण ठूस देगा। गवाहों के नाम और पते उसको देने नहीं हैं, वह कह देगा कि

सुरक्षा के खयाल से नाम, पते नहीं दिये जा रहे हैं।

ऐसी स्थिति में प्रतिवादी के साथ जो अन्याय होगा, उसका निराकरण कैसे होगा? इन कारणों से मैं इस विधेयक का घोर विरोध करता हूँ।

श्री रामावतार शास्त्री (पटना) : सभापति महोदय, मैं आतंकवादी क्षेत्र (विशेष न्यायालय) विधेयक, 1984 का जोरदार विरोध करता हूँ। मेरे विरोध के तीन कारण हैं।

यह विधेयक हमारे जनतांत्रिक अधिकारों और मूल्यों पर कड़ा प्रहार करता है। यह विधेयक स्वतंत्रता संग्राम की उपलब्धियों को झुठलाता है। यह विधेयक देश में पुलिस राज्य बनाने का प्रयास कर रहा है। यह विधेयक फासिस्ट तौर-तरीकों का इस्तेमाल करने वाला है।

इन नजहों से इस विधेयक का समर्थन कोई भी विवेकशील, जनतंत्र-प्रेमी, स्वतंत्रता, समाजवाद और धर्मनिर्पेक्षता की नीति में विश्वास करने वाला व्यक्ति नहीं कर सकता।

बन्द कमरों में मुकदमे चलाने की बात कही गई है। अंग्रेजी साम्राज्यवाद के खिलाफ हिन्दुस्तान की जनता ने बगावत की और हम लोग वर्षों तक लड़ते रहे, बड़े-बड़े मुकदमों चलाये गये जिनका जिक्र यहां हो चुका है—आई. एन.ए. का मुकदमा चला; मेरठ कांसीप्रेसी केस चला, भगतसिंह पर मुकदमा चला, चिटागांव आर्मरी रेड का मुकदमा चला, ये सारे मुकदमे खुलीअदालत में चलाये गये, बन्द कमरों में नहीं चलाये गये। आज हमारा देश आजाद है, ऐसे आजाद मुल्क में आप बन्द कमरों की बात कर रहे हैं, आप खुले रूप में मुकदमा चलाने में डरते क्यों हैं? अगर आपके जज, पुलिस वाले

या स्वयं आप डरते हैं तो रक्षा की व्यवस्था कीजिये, लेकिन बन्द कमरों में मुकदमे चलाने का सिलसिला नहीं होना चाहिये।

जितने फी राजद्रोह के मुकदमों हमारे मुल्क में चले, वह सब खुली अदालत में चलाये गये, जनता को उन्हें सुनने का मौका मिला।

आतंकवाद बुरा है, हम आतंकवाद के समर्थक नहीं हैं, लेकिन आपके तौर-तरीकों के विरोधी जरूर हैं। इस तरह से आतंकवाद समाप्त नहीं होगा। आप उनसे राजनीतिक तौर से निपटने की कोशिश कीजिये, पूरे देश को एकताबद्ध करने की कोशिश कीजिये। बुरा काम करने वालों के विरुद्ध कार्यवाही कीजिये, लेकिन आप इस तरह का काला कानून बनाकर लोगों पर प्रहार करने जा रहे हैं, इसलिये मैं इसका विरोध करता हूँ।

इस विधेयक की धारा 2 (ज) में आतंकवादी की जो परिभाषा दी गई है, उसको देखते हुए हर ट्रेड यूनियन कार्यकर्ता, देश-प्रेमी, जनतंत्र, नागरिक आजादी और ट्रेड यूनियन अधिकारों में विश्वास करने वाला हर व्यक्ति इस बात का विरोध करेगा। मैंने यह संशोधन रखा था कि इस धारा में से ये शब्द हटा दिए जाएं :—

“या समुदाय के लिए आवश्यक सेवाओं का मंचार माधनों को भंग करना है या सम्पत्ति को नुकसान पहुंचाता है।”

मैंने यह संशोधन क्यों रखा था? आप जानते हैं कि हिन्दुस्तान के मजदूर और दूसरे लोग अपने अधिकारों और मांगों के लिए आन्दोलन चलाते हैं। हो सकता है कि अगले महीने रेलवे के मजदूर बोनस के सवाल को लेकर हड़ताल करें। और भी बहुत से संघर्ष चल सकते हैं। अगर रेल हड़ताल होगी, तो जाहिर है कि आवागमन में बाधा पड़ेगी; सामान

के लाने-लेजाने में बाधा होगी। तो फिर सरकार 17 लाख रेलवे मजदूरों को आतंकवादी घोषित कर देगी। (व्यवधान) हमारा अनुभव है कि इस सरकार ने राष्ट्रीय सुरक्षा कानून का गलत इस्तेमाल किया है। इस सदन के एक माननीय सदस्य के खिलाफ उसका इस्तेमाल हो चुका है। सरकार की कथनी और करनी में फर्क है दोनों एक नहीं हैं। यह सरकार जो कहती है, करती उससे उल्टा है। वह जनतंत्र और धर्मनिरपेक्षता का नाम लेती है, लेकिन यह वोट बटोरने के लिए साम्प्रदायिक शक्तियों का इस्तेमाल करती है और जनतंत्र पर हमला भी कर रही है। आज ही उसने आन्ध्र प्रदेश में जनतांत्रिक प्रणाली पर हमला किया है। ((व्यवधान))

एक ट्रेड यूनियन कार्यकर्ता की हैसियत से मुझे आशंका है कि सरकार इस कानून का इस्तेमाल ट्रेड यूनियन आन्दोलनों और संघर्षों के खिलाफ कर सकती है। इसलिए मजदूर आन्दोलन में काम करने वाला कोई भी व्यक्ति इस कानून का समर्थन नहीं कर सकता है। इस कारण मैं इस विधेयक का पूरी तरह से विरोध करता हूँ।

अगर सरकार में हिम्मत होती, तो वह इस विधेयक को जनता की राय जानने के लिए प्रसारित करती, लेकिन उसने ऐसा नहीं किया। क्यों नहीं किया? अगर वह ऐसा करती, तो पता चल जाता कि जनता सरकार के साथ है या उसके विरुद्ध है। खैर हम दोनों की हिम्मत का फैसला आगे होने वाला है।

इन शब्दों के साथ मैं इस विधेयक का जोरदार विरोध करता हूँ।

*(Interruptions)\*\**

MR. CHAIRMAN : All these side remarks need not be recorded.

SHRI SOMNATH CHATTERJEE (Jadhavpur) : This is an obnoxious and vile piece of legislation. It is clearly the product of a nervous Government's mind. The Government is afraid of the exercise of the democratic rights of the people. It is not surprising that this Government which revels in repression thrives on authoritarianism and excels in atrocities, should conceive of such a monstrous and perverse aberration. I have said earlier that their actions prove that this Government and the democratic rights of the people are sworn enemies of each other. By atrophy of the process of thinking and action they brought about a situation in a part of our country in which to extricate themselves they have come out with this anti-people and draconian piece of legislation. I want to tell the Government that they cannot continue to treat the minimal rights to the people as dispensable. They cannot treat the people in a manner that they should continue to be the victims of the their insatiable hunger and the minimal rights of the people can be the subject matter of maternal dispensation only. A law which makes a mockery of the peoples rights will never be accepted by the people. I can assure them that this will be another weapon for their own annihilation. We have been repeatedly assured that NSA will be very strictly enforced and there will be no abuse. Whenever this Government gives an assurance, we become more concerned.

We can cite specific assurances given on the floor of the House, but how MISA has been abused. This is the darkest chapter in the history of this country. If ever a truthful record of a post-independence exercise of the democratic rights of these people is written, it will be seen that is the darkest period in our history. MISA has been abused.

NSA has been abused. Whenever they say that it will not be used against political opponents, this will only be used against political opponents. Now, you have a law against smugglers, black-marketeers and other types of economic offenders. You have the Preventive Detention Law. Then against whom you have been using MISA and National Security Act except your political opponents, inconvenient people whom you cannot otherwise deal with? That is why our Comrade A.K. Roy was the first victim. It was said that by mistake he was detained under NSA; You make a law under which a Member of Parliament can be detained without trial by the reason of mistake. Therefore, there is no inherent control. There is no inbuilt check. It is prone to be misused. I had the occasion to defend citizens of independent India who were MISA detenus.

I have seen and I have produced before the court cyclostyled detention orders with names blank. These signed papers were being kept with Inspectors, Sub-Inspectors and constables. They have just to fill in the name. The whole thing became a mockery. Therefore, do not think that you have been able to control either of these vices or social aberrations like smuggling, etc. Have you been able to control smuggling by your COFEPOSA? By your Anti Black-marketing Act, have you been able to control black-marketing? You need political will; you ought to have administrative will which is lacking so far as you are concerned.

You may provide all sorts of laws but how you are implementing them? You are releasing Haji Mastans and Karim Lalas and you are talking of Control of smuggling. You are creating situations where terrorism is thriving, you do not take any action, you do not take Opposition into confidence, their suggestions are jettisoned and you create a situation and you now want to be a second edition of Mother Durga so far

as Hindus are concerned. This is not the attitude which will save the country. By this law, does the Government sincerely believe that they can contain terrorism?

THE MINISTER OF CHEMICALS AND FERTILISERS (SHRI VASANT SATHE): Because murders have not ceased, therefore don't have IPC, because thefts have not ceased, therefore don't IPC, this is the logic of your argument.

SHRI SOMNATH CHATTERJEE: I am not surprised. This shows the perversity of the thinking process, this is the perversity you are suffering from. Therefore, you think by arrogating to yourself greater and greater Draconian, uncontrollable or uncontrolled power, you can continue your hegemony. This is the attitude you are suffering from, this is the perversity. Therefore, don't think, try to rule under the normal laws of the land. Why can't you rule under the normal laws of the land? This is your wrong ideal. I would like the hon. Minister Mr. Venkatasubbaiah to cite a single instance where such concentration of Draconian laws has solved the situation. Therefore, you create terrorism, you cannot find a solution. You have to take recourse to army action against your own people. I am not going into that at the moment but the result, the fall out, has been such that you cannot manage it and you have to take all sorts of laws—in camera proceedings shifting of onus. When Section 123 of the Customs Act was amended to put the onus on the smugglers of only such precious things as gold and diamonds, people have accepted that situation because there will be full opportunity of hearing before onus was shifted. Now here, if you say that somebody is a terrorist, you will shift the onus on him. Kindly see what will happen. You say 'anybody passing through an area which is declared a disturbed area'. What are you talking? You say somebody is accused under Section 121, I am caught hold by saying

'you are passing through that area, I charge you under Section 121', the onus is immediately shifted. Is this the law of a civilised country. What is this 'in camera', what are you afraid of? They have themselves provided an appeal to the Supreme Court. There will be no trial by Supreme Court in camera. Then what is this camera business, I do not understand. Kindly see Clause 14 of the Bill. When the appeal has to be filed, paper book has to be filed, evidence has to be produced before the Supreme Court, and appeal is a matter of right...

*(Interruptions)*

SHRI RAVINDRA VARMA : Both on points of facts and law.

SHRI SOMNATH CHATTERJEE : Both on points of fact and law as correctly stated by Shri Ravindra Varma, Then, what is this protection of camera at the initial stage? Therefore, you want to create a situation by instilling a fear, by creating a fear psychosis, making it difficult for the accused persons to defend themselves. Nobody would know what is happening. You have got your own public prosecutors, you have got your own selected judges and you have your own law as if the people of this country should not have any sense of protection. You are alienating people from the mainstream of this country, you are alienating people from their commitment to the feeling of being part and parcel of India. By this process if you think you can achieve your object of continuing your so called hegemony in this country, you can think so but we can only give you a warning that this is not the way you can win the hearts of the people. You can for a time create governmental terrorism but you cannot contain and remove terrorism in this country by this obnoxious law.

PROF. N.G. RANGA (Guntur) : Mr. Chairman, I was trying not to take part in this debate. But, then, the remarks

of my hon. and eloquent friend, Shri Somnath Chatterjee, have provoked me. He asked us: whom are you afraid of? This Bill has said it—the terrorists. My hon. friend, Shri Venkatasubbaiah has already warned us, apart from so many other things, the security of the country, the integrity of the country, is being threatened by these terrorists. Then, in addition to that, there are racists in our country, language-mad people in our country. All these people are trying to create new terrorists, a new threat to our nation's unity. We have to deal with them. It is not the Government which is provoking these new enemies the inimical forces, to come to the surface, or to come into existence at all. But they have to be dealt with. In addition to that, terrorism has now become an international evil, which is in-laid. Behind it, there are other countries and their intelligence forces and there finances also.

My hon. friend has been speaking so very effectively about civil liberties. But what about Mr. Sakharav and his noble wife. There is an appeal being sent to all of us, with an envelope fully stamped, to make it easy for us to sign and send it round...

*(Interruptions)*

Why do they not think of those countries? Why do they want all the luxuries of freedom, bordering on licence in our country, while the people in those countries go on without any idea of liberties at all? I have to think many times whether I should sign that appeal or not. I have been in favour of the freedom of that great scientist, Sakharav and his noble wife. At the same time, am I to be the judge as between these noble people and the security of USSR, who happen to be our friends? The Same kind of consideration, I expect my hon. friends to show towards our own country.

As I was listening to him, I felt as if this Government is an alien government

of some other race from some other continent, from some other planet, and my hon. friend is here pleading for all these innocent people. This is the most extraordinary thing. I too happen to have pleaded for civil liberties from that side.

When my hon. friend, Shri Ravindra Varma, was making an eloquent appeal, not only myself but also my venerable colleagues, we were feeling very much impressed, and was not so very happy this piece of legislation that is being placed before us. But, unfortunately, we have to discharge our duty.

What is this Government? It is our government, let us realise that. For the time being, you find yourself on that side. At the same time, it is our Government. Indiraji is not interested in persecuting people, these innocent people. Some of my hon. friends on this side of the House are eminent lawyers in the Supreme Court as my hon. friend on the other side. They feel very unhappy about it. We do not want this kind of law at all. But, then, these are the forces, which are the social enemies, national enemies, who are threatening the nation. Our administration, our officers, feel that such a law is needed. We have had experience recently in Punjab. You are having your own experience also in Tripura. Not so long ago, you were having a similar experience in West Bengal. Can you really get on without this law? My hon. friend says, why this law, let us abolish all laws, all rules.

In spite of all the rules that we are having here. You know the spectacle that we are having in the Zero Hour for 15 minutes, for 20 minutes. What sort of rules my hon. friends are able to have and observe and respect among themselves? Therefore, we need this kind of a poison. It is a poison. You are privileged to say, you do not want this poison. Please for God sake sympathise with us that we are obliged to swallow this poison without enjoying

your liberty of being irresponsible. I cannot afford to be irresponsible. But I would like to give one piece of advice to the Government as well as to the Administration. Let them not have this law as a permanent law. Let them see how it can be worked with the help of the kind of administration that we are having in West Bengal as well as in other States all over India for one year. Afterwards let them advise their own administrative advisers in the law Ministry also to study amendments particularly those moved by Shri Ravindra Varma. Unfortunately we do not know whether those amendments were already part and parcel of the Rowlatt Act.

PROF. MADHU DANDAVATE :  
You are supporting his amendments after they have been defeated.

PROF. N.G. RANGA : I want the advisability of considering those Amendments in the light of the experience that our Government should have for the next one or two years. In the mean while I am prepared to go with the Administration as well as the Ministry and the Prime Minister and give the benefit of doubt and give them the opportunity of dealing with this terrible national menace. Let me tell you it is the worldwide menace, which is coming into our country with the endorsement of so many other countries all over the world, who are not so very friendly towards us.

Sir, Subject to these suggestions that I have made to the Government, I am sure that like myself so many of our Members are willing to accept this law with a clean conscience.

SHRI A.K. ROY : Mr. Chairman, Sir, this is a terrorist Bill and it is meant to terrorise others. I must add, not for that I am opposed to it. I am opposing it because this Bill is primarily meant to terrorise itself.

Sir, which are the factors by which we can combat terrorism? It is the moral of the people and the moral of the Government by which we can combat terrorism, communalism, racism and all sorts of diseases, which the ruling party has inflicted to this country. This bill hurts the very moral of the country and the Government.

Sir, I can understand, in the rape case the atrocities on the women could be tried in camera, because they are weak, indefensible and shy. So, that can be done; But here there is a crime against the Government—you see the Sections 121, 120 (b) and all sorts of things as if there is the war against the Government. And the Government has taken the position of that raped woman that it should be held in camera. It is a horrible position. It is not an individual, the Government is afraid of the terrorists not the individuals. And its public prosecutor is afraid, judge is afraid, witness is afraid, Minister is afraid and the whole institution is afraid.

Sir, are they morally entitled to govern? Either govern or get out. What is the fun of entering into the process of *in camera* trial? You have seen underground terrorists. But can there be an underground Government, an underground judiciary, an underground prosecutor and an underground witness? And this is the Bill with which they have come out and Prof. Ranga is standing and supporting it: Wonderful thing. He should have condemned it, these people should have morals. Publicity we must expose the terrorists. None of the hon. Members sitting in this House are supporters of communalism, racism, murder and all sorts of things, but they express their apprehensions and suspicions. Why? Because no Bill can substitute political will. A Bill is not a substitute for will. These people do not have that will. They know how to chit-chat and go. They can go to any length to fight against the social revolutionaries, against political oppo-

nents and against the radicals, but they are soft towards communalists, towards the racists and all sorts of people. I would like to know one thing. As soon as you have come to power, you have come with the National Security Act. What is the result of that? The result is that you have to come out with two amendments to make it harsher and harsher. Last time also I have said that when you take a medicine you expect to come back to your normal condition. But if you take a stronger dose of medicine, every day you go on taking medicines. That means that something is very vitally lacking in the body politic. Have you ever gone deep into it? That is the point. I was just reading Bertrand Russell. It will be very interesting to read what Mr. Bertrand Russell said. He ridiculed the Government and said,

“In the popular mind an Anarchist is a person who throws bombs and commits other outrages either because he is more or less insane or because he uses the pretence of extreme political opinion, as a cloak for criminal proclivities.....but for every bomb manufactured by an Anarchist many millions are manufactured by the Government and for every man killed by anarchist violence, many millions are killed by the violence of the State.”

That is why, the State is the symbol, is the embodiment of all the terrorist violence at least in a class society. That is why all these democratic forms and other things are there to rest rain. But here we are facing a situation that the State is entering into the underground and entering into the '*camera*', That is why, there is something very fundamentally lacking, this Government is seriously ill for something and the medicine should be found somewhere. The Minister said that they are trying to cure this illness with the poison of this terrorist Bill to contain terrorism. But, Sir, beheading cannot be a treat-

ment for headache. These people are having the treatment of beheading as a pretext for treatment of headache. And beware of those dentists whose only prescription is extraction. Sir, are we dealing with doctors or quacks or what? This is the way they are coming with this Bill and they have pushed the society to such an extent that soon there will be only terrorist areas and no areas which are normal.

21.00 hrs.

I do not want to go into the details of the mysterious definition of terrorists and misleading definition of the areas and all sorts of things.

I would like to tell you a very short story within one minute. Do you know how shoe was discovered? I narrated this once previously. Great Rabindra Nath Tagore told us how shoe was discovered.

There was a king. He had a cabinet just like this Government has. Once the king came. He had a feeling what type of kingdom he was having that while coming from his house to the place of his work the dust had spoiled his feet. He wanted to find out a way so that people might walk on the road without any dust. Immediately meeting of the Cabinet was held. The matter went to the Cabinet Sub Committee, then expert sub-committee, and other committees to decide. Ultimately they came out with the suggestion that one lakh brooms should be purchased and all the dust should be removed. Immediately on muster-roll appointment was made. Tenders were called for purchase of one lakh brooms. Contract was given and all sorts of things were done. They started sweeping the road. All the dust came on the head. The king became furious on the type of solution suggested. He was amazed to see that the dust which was previously touching their feet was now touching their head. Immediately, the king dismissed the Home Minister.

PROF. MADHU DANDAVATE :  
That is how Shri P.C. Sethi has gone.

SHRI A K. ROY : Another Minister was appointed. He was asked to suggest the way. He appointed a Deputy Minister. Minister of State. Then again the matter went to the Expert Committee, Technical Committee, Economic Committee, Political Committee to suggest the way. They suggested to purchase hose pipes to put water on the road. When the water was put on the road, it all became muddy. They could not walk. Ultimately, these Ministers were changed. The new Ministers came out with the solution that the whole earth should be covered with leather so that people could walk without touching the dust. Then a common man came and suggested that instead of covering the whole earth, why do you not cover your feet so that no dust can touch the feet. Then in the process shoe was discovered.

I say instead of trying all terrorists, instead of declaring everyone as terrorist, why do you not declare yourself as a terrorist so that everybody is safe.

MR. CHAIRMAN : Shri Harish Kumar Gangwar is not here, the Minister.

THE MINISTER OF STATE IN THE  
MINISTRY OF HOME AFFAIRS  
(SHRI P. VENKATASUBBAIAH) :  
The House should be happy for the entertainment that has been given by Shri A.K. Roy at the final passage of the Bill. We are happy that he has provided enough entertainment.

My burden has been lessened with an impassioned speech that has been made by Prof. Ranga, a veteran freedom fighter. His appeal has been moving and I think it will have the desired effect on the Opposition Members who have participated in this debate.

SOME HON. MEMBERS : Not on you.

**SHRI P. VENKATASUBBAIAH :** Sir, this Bill had to be brought forward before this House to meet a very extraordinary situation. It is not a pleasure to bring his sort of Bill. But in the country, certain subversive forces overtly and covertly, with the help and encouragement from abroad, are creating such conditions that our integrity and sovereignty are being threatened. Only to meet such a situation, we had to bring this Bill before the House.

We are as much zealous as the Opposition Parties are in protecting and defending the legitimate trade union rights and activities. It is not our intention to trample upon the legitimate trade union rights. I may assure you another thing which I have said earlier. This Act will be very sparingly used. It is not the intention of the Government to have any vendetta towards any political Party. I will make an appeal to the Opposition especially, to the Left Front parties. I have got great regard for them, as a matter of fact. For Heaven's sake, in order to spite the face, don't out the nose. Please help to mobilise the secular forces in the country and do not yourself align yourself with obscurantist forces, with the forces which preach regionalism and separatism. I may sincerely appeal to you that you should appreciate the action that is being taken in this regard.

In this Bill, the judicial processes are being adhered to. Nothing has been done to circumvent them, as I have explained earlier. The appeal lies to the Supreme Court. As a matter of fact, the *in-camera* trial has to be held because the witnesses are to be protected. The situation is grave, and you know what has happened in Punjab and in other places,

So, I would only appeal to my hon. friends to cooperate with the Government so that the disruptive forces are put down effectively and the country

remains safe for democracy, secularism and socialism.

**SHRI INDRAJIT GUPTA (Basirhat):** Sir, I am sorry. We are not at all convinced by what he has said. Prof. Ranga has said correctly that this is a poison which they have to swallow, which is their duty. We refuse to swallow. We are protesting against this black Bill and walking out.

21.08 hrs.

*At this stage, Shri Indrajit Gupta and some other hon. Members left the House.*

**MR. CHAIRMAN :** Now, the question is :

“That the Bill be passed.”

*The motion was adopted.*

21.09 hrs.

**MR. CHAIRMAN :** I have to inform the House that the following wireless message dated 16th August, 1984, addressed to Speaker, Lok Sabha, by the Superintendent of Police, Madurai, Tamil Nadu, has been received today :—

“I have the honour to inform you that Shri George Fernandes, MP, was arrested on 16-8-1984 at 10.45 hours in B1 Madurai Central Police Station, Crime No. 1103/84 under section 151 Cr. P.C. while trying to picket Canara Bank, Kamarajar Salai, Madurai with his partymen.”

**Motion Re :** Twenty-sixth and twenty-seventh Reports of Commissioner for Scheduled Castes and Scheduled Tribes and First and Second Reports of Commission for Scheduled Castes and Scheduled Tribes :—

**MR. CHAIRMAN :** The House may take up further discussion on the Reports of the Commissioner for Scheduled Castes and Scheduled Tribes.

Shri R.P. Panika may continue his speech.

एक माननीय सदस्य : आज तो बहुत देर हो गई है। इसको कल पर रखिए। (व्यवधान)

एक माननीय सदस्य : हम लोग बहुत थक गए हैं। (व्यवधान)

श्री राम विलास पारुबान (हाजीपुर) : सभापति महोदय, मेरा पायंट आफ आर्डर है। आप मेम्बरों को छोड़िए,\*\*। मैं आग्रह करूंगा कि इसको आप कल या मन्डे को ले लीजिए। यदि आप इसको पास ही करवाना चाहते हैं, तो सिर्फ मिनिस्टर बोल लें और आप इसको पास कर दें।

THE MINISTER OF PARLIAMEN-  
TARY AFFAIRS, WORKS AND  
HOUSING AND AFFAIRS.

SHRI BUTA SINGH : Sir, as per the wishes of the hon. Members, we may take it up tomorrow.

MR. CHAIRMAN : So, the House stands adjourned to meet again tomorrow at 11 A.M.

21.11 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 17, 1984/Sravana 26, 1906 (Saka).*