

(ix) Need for professionalisation in Agriculture Ministry and the National Seeds Corporation.

SHRI H. N. BAHUGUNA (Garhwal) : Sir, despite high quality seeds being the most important input, on which depends the success of maximising agricultural production the Government has not so far worked out crop/plantation-wise optimum annual requirements of seeds for the country.

In fact, there have been surreptitious exports of seeds including best quality paddy seeds, by falsely labelling these as 'rice-in-husk'. No country in the world including India exports or imports rice in the form of paddy except as seeds. There is need for professionalisation of agriculture Ministry including the management of National Seeds Corporation and in the States.

श्री मन्दीराम बागही : अध्यक्ष महोदय, कपास में जो कीड़ा लग गया है

अध्यक्ष महोदय : उस के लिए क्या करें ? कुछ गड़बड़ हो ही गई है।

श्री मन्दीराम बागही : दवाई से भी वह नहीं मरते हैं।

एक माननीय सदस्य : बीज कुछ गड़बड़ रहा है।

12 28 hrs.

STATUTORY RESOLUTION RE : DISAPPROVAL OF TERRORIST AFFECTED AREAS (SPECIAL COURTS) ORDINANCE

AND TERRORIST AFFECTED AREAS (SPECIAL COURTS) BILL

MR. SPEAKER : The House will now take up items 10 and 11 together for which three hours have been allotted. Shrimati Geeta Mukherjee may move her Statutory Resolution and speak.

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

“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.”

It should be first noted that an ordinance-happy Central Government chose to promulgate this ordinance just 9 days before the Parliament Session was to begin. This is now no wonder ; it has become a tradition with this Government and I emphatically protest against this practice. In the name of curbing the terrorist activity, this hideous ordinance, in my opinion in fact it is nothing but a codified assassination of the normal process of law covering a vast field of offences. It is not only a dangerous addition to the arsenal of the executive, to the already saturated arsenal of the executive to rob the citizens of normal legal protection but also adds a new dimension to the thinly veiled drive of the Congress Government towards a police raj and towards an undeclared emergency.

12.32 hrs.

MR. DEPUTY SPEAKER *in the Chair.*

This is my estimation of the ordinance that was proclaimed and which will be made into a law in no time.

It should be recalled that this is not the first ordinance or law of its kind. Already there are several laws that give extraordinary powers to the executive. Those are the National Security Act which was strengthened only yesterday. Then there is the ESMA. Then there is the Armed Forces Special Powers Act and such other Acts. Then there is the Disturbed Areas Act and various other draconian laws.

This ordinance enables the Government to declare an area terrorist affected and place the citizens of that area outside the pale of the existing judicial protection. If an area is declared terrorist affected area, then the persons charged by the Police with various

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charges will be summarily tried by Special Courts an *in camera* and under special stipulations regarding laws of evidence and with the very limited scope of appeal. If you look through the various provisions of the Ordinance this will be amply borne out. I will come to the details later.

The Police will be armed with extraordinary advantages in framing charges against the accused and the accused will be in an extra-ordinary disadvantage in defending himself. Now I charge that once an area is declared a terrorist affected area, anybody accused of the various charges listed in the Schedule and so-called connected charges will be practically at the mercy of the Police. That is the intention of this ordinance and that is the subject of this ordinance. Let us see whether I am harling baseless charges. First of all, I said that you place a very large number of people outside the pale of normal legal protection. So, this Terrorist Affected Areas (Special Courts) Act it is an Ordinance at the moment is not only for Punjab but it is curious that when Bhindranwalla was at his height of glory and power. Government never thought of this kind of Ordinance. It was only after that they thought that it was very necessary. Sir, it is not really to deal with Punjab alone. The Government itself has made it clear that any area of a county can be declared as terrorist affected area. So, this is not a transient Ordinance. This is going to be a permanent acquisition in our legal provision. Let us see how and when this Government can declare an area as terrorist-affected area.

Sir, in our times, almost there will be many who had been accised of being terrorists. Even in our slightest imagination, we could not think that the word 'terrorist, can have such a wide meaning to declare any area as terrorist-affected area. And then the special courts can be imposed by Government for the summary trial and all the attendant things with that. A terrorist, according to the ordinance, is a party who is indulging in wanton killing of persons or in violence or in the disruption 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.'

Then there are many other things.

"(ii) It is coercing or overawing government established by law, etc., etc."

The definition for wanton killing is all right. What about disruption of services? In to-day's India, can you name any democratic movement be it on price rise, be it any other protest against a particular undemocratic action of the Central Government or be it even for a social law like the one which the women had been demanding we even protested against the atrocities committed on harijans, Scheduled Castes or weaker sections of the population worth the name which had indulged in disruption of means of communication? Why should they do? That is because they have no other means to redress their demand. So, they have to take to recourse to all possible forms of protests. If a telephone system has failed, then one of the means to disrupt the communication on behalf of the democratic movement is to take recourse to *rasta rokho, rail rokho*, to declare bandh and so on and so forth. I think all the parties including the ruling party of my State have to take to recourse to this particular form of protest if they want to redress their grievances. In West Bengal, our Central Minister, only the other day had given a clarification call for the Congress to do this, that and what not. Sir, in that I am sure this will be included. Further it is said 'putting the public or any section of the public in fear'. I can understand as far as public as a whole' is concerned but not 'any section of the public in fear'. Sir, You are a trade unionist or at least your were a trade unionist.

MR. DEPUTY SPEAKER : I have been a trade unionist.

SHRIMATI GEETA MUKHERJEE : Now, how serious it becomes to the workers of a Union if they go in for any one of their demand naturally a section of the public,

namely, the owner of that particular organisation will be in fear. Therefore, since a section of the public is being put in fear so it can be declared a disturbed area. The hon. Minister may say I am stretching it too far. No, Sir, It is written in so many words.

Therefore, Sir, this Ordinance can be declared in a variety of circumstances which the government thinks that they may be forced to face. That is why I say this is a premium demanded from the public for the inefficiency and lack of will on the part of government to seriously settle various political questions well in time and to take a policy which can really alleviate the economic difficulties of the people.

Sir, it does not end here. Even if somebody had committed some offence of this nature six months earlier on the force of this promulgation of the Ordinance can be there and because of the six months old things now a person can be subjected to all the trials that one will have to face. Further another six months can be taken. This will have a retrospective effect as far as offences are concerned and as far as that person is subject to these conditions.

Sir, if this is the situation with regard to the area now how about the process of law that is being visualised by this Ordinance. First of all where there is a summary trial, in camera trial and where the accused will not be committed for trial in the normal machinery but straightaway referred by the police through a report the court will take cognizance of the offences.

Sir, what is the range of offences which is visualised? It visualises all kinds of offences. It is given in the two pages long schedule. I don't need to read the whole of it but at least I must illustrate some of those. These are the offences for which the persons will be summarily tried.

When I looked at the Schedule of the Bill, I was amazed on two counts. Firstly, these offences range from waging a war against the Government or conspiracy to

do so to ordinary robbery or dacoity and criminal intimidation. Of course, the offences relating to harming national integration, communal etc, must be there in such a law, nobody can do otherwise and those are there definitely. Then, there are endless offences under the provisions of the Explosives Act, the Indian Telegraph Act, Indian Railways Act, Explosive Substances Act, the Arms Act, the Unlawful Activities (Prevention) Act, the Anti-Hijacking Act, the Suppression of Unlawful Acts against Safety of Civil Aviation Act, and the Prevention of Damage to Public Property Act, which have been brought under the purview of the Terrorist Affected Areas (Special Courts) Bill. I want to know two things. Some of these Acts are as recent as 1932 and 1984. Obviously, nobody can call them archaic Acts. In these Acts, the various offences are listed and for that there is absolutely normal procedure. Even those offences covered in these Acts have been brought under this ordinance to deprive those people from getting normal assistance of law. When such provisions were there already and are parts of some of the existing Acts, what was the difficulty in trying the culprits under the normal law. If you really want to manipulate the process of justice, then something more has to be done and here that something has been done.

There is one more curious aspect of this legislation. It is not only the offences which are indicated in the Schedule, but the offences connected therewith are also there. That is the interesting part of it. That means, anything can be connected with anything else in police reports. I would give some of my personal experience, how the connected offence can come about. In my young days, I was charged of an offence connected with a conspiracy to wage an armed revolution in the South-East Asia. The charge was that I had arranged some demonstration and that was connected to that. The armed revolution was in the South-East Asia, not in India. I was also charged with leading Santhal rebellion armed with bows and arrows. At that time I had not even seen that area because I was a student.

MR. DEPUTY-SPEAKER : They wanted to make you the Rani of Jhansi.

SHRIMATI GEETA MUKHERJEE :
I do not know. I have great admiration for her, and I do not think I will ever reach that stage. What I meant was that the police can make anybody into a hideous monst, who is always coercing the established Government by law. Everybody is coercing them of course. In view of this, the question of connected offence is very dangerous.

Then, there is the most heinous provision in this ordinance ; an amendment is sought to be brought about in the Indian Evidence Act. Shri Venkatasubbaiah is here, and before I go into the merits of this, surely he will ask me that it was I who fought valiantly for changing the law of evidence in the rape case laws. Now Sir, this is not the way to look at it. Where is the case ? There, a woman is at a potential disadvantage in our society and that is a heinous crime which can be perpetrated only on women. There was a very special case for that. Here it says that in certain cases, the people, i. e. the accused persons will have to prove that they are innocent. The police will not prove. That is the presumption. So one has only to read this presumption to see how sweeping the whole thing has been made and also how unnecessary it is. Sir, what does the amendment to this Clause 20 of the Ordinance say ? I quote—

“Where a person is accused of having committed any offence specified in subsection (2), in:-

(a) any area declared to be a disturbed area under any enactment”- not only under this enactment, but in 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 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, etc...”

Sir, I come to the brass tacks now. What is happening here ? We often say bombing takes place. Some terrorists come and throw a bomb and go away. Yes, it happens and I am not denying it. Some murder takes places. Somebody comes in a scooter, throws a bomb and gets away. What does the police do ? Are they, i.e. the police, present on that spot when that thing happened ? Mostly not. Mostly they are not there. The terrorists would get away. Both the terrorists as well as the police would be absent. But what will happen ? Some people, who never knew that this damn thing is going to take place, they would be present there.

SHRI RAVINDRA VARMA (North Bombay) : Please don't use the word 'damn'. It is not parliamentary.

SHRIMATI GEETA MUKHERJEE : We have been damn fools. If Shri Ravindra Varma advises me not to use the word, I take it back.

THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA RAO) : What did he advise ? And what did you change ?

SHRIMATI GEETA MUKHERJEE : Nothing substantive. The word 'damn' which is unparliamentary is being removed.

So, some onlookers will be standing there and police will come at that time. This is the whole situation. According to this amendment, the persons who are there on the spot will be arrested and then they have to prove that they are innocent. Just imagine that ! Not only that. According to the other Provisions of the ordinance, they are to prove under what circumstances. The case may

be taken to some other State. It is stipulated that the Special Courts can try cases of one State in another State as well. So, a person who is not a terrorist, who has no quick communication or the other backings that the terrorists may be having, this innocent person has to prove his innocence. How on earth, will he ever Prove that he is not connected with the bombing. Never, never I know about disturbed areas in Manipur. What is happening in Imphal town? One day at a particular place, some terrorists threw bombs and opened fire and they went away. Unfortunately for us, in that very area, our party was having a party-school for three days. They were inside, not knowing what was going to happen. After that, when the law-enforcing machinery's representatives came, they arrested the students of our party-class, not knowing anybody else, i.e. as being connected with terrorist activities. They took them under arrest, because it was a terrorist-affected area.

This is not the only case. There are many others. According to present experience, this is what normally happens, because of the level of efficiency which our police machinery has. It has not changed. It may be said that this provision is meant only for offences under Section 121 A or 122 etc. of Indian Penal Code. It means: only in respect of waging war against Government. But here comes the question of 'connected offence'. Who knows what will be the connected offence?

For example, actually the police may like to write anything about me about my past and present as a connected offence to these Sections. Naturally, I will be arrested in respect of anything connected with that offence. But it means that I am being deprived of my right viz. of the prosecution proving that I am guilty. This the real meaning of this.

These are not the only abridgements of democratic rights. There are many others. They may not be as heinous as this, but nonetheless they are very serious modifications of the existing process of law. In the summary trial, 3 months' jail sentence can

normally be awarded. But here, for very serious offences, the summary trial is being resorted to. The trial will be summary, but the person can be jailed for upto two years. So, even though the trial may be a summary one the sentence will not be so. It will be for a long period. This is another modification. There are other modifications also.

I will now say certain things about its implications and about how the public at large feel about it. You may think that because I am from the Opposition, and that too from the red opposition...

SHRI RAVINDRA VARMA : Wearing red to-day...

MR. DEPUTY SPEAKER : You are the right Opposition.

SHRIMATI GEETA MUKHERJEE : It is a wrong understanding.

MR. DEPUTY SPEAKER : I meant : Opposition in the right.

SHRIMATI GEETA MUKHERJEE : I shall remain a person of the Left Opposition so long as we do not come to power.

I was saying that it is not only the people in the Opposition who feel seriously disturbed over this amendment. It is known that the situation on the economic front is going out of the hand of the Government. Prices are increasing. We have unemployment, people's discontent, workers' movement etc. So, all kinds of suppressive acts have to be done. Acts like NSA are very bare. They can be immediately understood as being coercive; but if there is something like a provision made, which looks like a judicial process, then some people can be fooled for some time. That is the reason for this amendment.

13.00 hrs.

Even such sources as *The Statesman* also not only strongly disapproved but I

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shall end with the quotation from their editorial for the benefit of all the States who are run by their own class brothers, not by our left people. On the 18th July, in an editorial titled 'Beyond the law', this paper says as under :

"The Ordinance is as bad as it is unnecessary for its stated purpose; MPs, including those of the ruling party, would be failing in their duty to their constituents if they neglect to expose the intentions of a government that chooses to rely on such repugnant executive orders."

I have quoted it for the benefit of my hon. friends on the other side as well. They have to go back to their constituencies and they have to seek re-election. With such draconian measures, they would not expect that people will be raising both hands either in the name of suppressing them or anything else. They should take the warning of that class brothers at least seriously and make a common cause with me at the moment in opposing this draconian Ordinance. With these words, I move my resolution of disapproval.

(SHRI P. V. NARASIMHA : Well spoken. Much better than many others.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) : While agreeing with the compliments made by the hon. Home Minister that Shrimati Geeta Mukherjee has spoken much better than many other members, I also entirely agree with him. There cannot be two opinions about this matter. My hon. friend has tried to make out a case that this is a very draconian legislation and it is going to affect the fundamental rights of the normal citizens of this country. The Ordinance was promulgated on 14th July, because conditions were such in some part of the country, Punjab, for example, that any delay on the part of the government would have helped

the conditions to deteriorate further. The government had no intentions of showing any disrespect to the Parliament but because of the very compelling circumstances this Ordinance had to be brought into force.

My hon. friend, the mover also said that by this Act we are going to encroach upon the normal trade union rights of the parties and it may be used to curb legitimate trade union activities. It is not correct to say that this is designed to obstruct any legitimate trade union activities. Disruption meant causing damage and also causing certain things which will go against the sovereignty or integrity of the country, I don't think these are legitimate trade union activities. The Act has very clearly stated in this which are the scheduled offences an act that is being done to create certain conditions as listed. In clause 2, of the Bill, the definition has been given. It says 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 or in damaging property with a view to—putting the public or any section of the public in fear; or

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

coercing or overawing the government established by law ; or

endangering the sovereignty and integrity of India."

Only a disruption activity that encourages certain things is being construed as disruption not any normal legal trade union activity.

The main aim of this Bill, as I have earlier said, is to safeguard the territorial integrity and sovereignty of the country and to put down the terrorist activities which are causing great harm to the country's interests.

I would like to mention some of the aspects of this legislation. This Bill covers, as did the Ordinance, only certain specified offences which the terrorists usually commit. These are listed in the Schedule, which include such offences as waging war against the State.

She has also taken objection to as to why we have included so many offences in this schedule. Many of these offences are included in other Acts also. This Bill, includes offences in connection with the Railways, communications; they are already there. We have only included there offences and brought them under the Schedule so that these are relatable to the disruptive activities.

SHRIMATI GEETA MUKHERJEE : You are begging the question. I did not ask why you have included so many offences. I only asked, that since these offences are in those laws also, why you are depriving the people of that procedure.

SHRI P. VENKATASUBBAIH : These offences are being listed so as to facilitate the courts and the Government to deal effectively with the secessionist activities of those elements to deal with them firmly, they have been brought under the purview of the Special Courts. The Special Courts will deal with offences listed in the Schedule, to the Bill and they include such offences as waging war against the State, murder, sabotage of railway lines, telegraph lines and hijacking of planes, etc. The Special Courts will be manned by Sessions Judges who will be appointed with the concurrence of the Chief Justice of the High Court of the State in which the Special Court will be located.

She was mentioning that we have taken the law into our hands. We have not. There is no semblance of any truth in it. The legalistic aspect of the matter is that all care has been taken. The Judges will be appointed with the concurrence of the Chief Justice of the High Court of the State in which the Special Court will be located. Appeals from the orders of the Special Courts will lie direct to the Supreme Court;

We have only removed the intermediary Stage of going to the other courts, and these appeals can go to the Supreme Court direct.

The House will appreciate that the reason for providing the camera trial is only to enable the court to keep the identity of the witnesses confidential. As a matter of fact if an application is made and if the prosecutor wants it, and the judge feels that it can be had in an open court, it is possible to do so. The provision is already there. It is not abridging the rights or privileges of the accused or anybody. If the court feels that the identity of the witnesses was to be kept confidential because of valid reasons, then the court can give such direction. When circumstances of the case do not require any such protection, no such direction will be necessary. A special prosecutor will be appointed for speedy conduct of the trials. Normally the courts will be set up within the State, inside or outside the same judicial zone. Provision has been made for setting up of an additional special court, corresponding to a special court, outside the State for trial if such a step is necessary in the opinion of the State Government. Here the state Governments' opinion shall prevail to ensure a fair and speedy trial. The Central Government may establish such additional courts only at the request of the State Governments.

The hon. Member was kind enough to refer to the Evidence Act. This we have done under special circumstances. The 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 abett an offence under section 122 or section 123 of the IPC. There is enabling provision of rebuttal also even though we have tried to amend the Evidence Act. When a person, accused of any of the above offences is at a place from where fire arms or explosives are used to attack or resist the Armed Force engaged in discharge of their duties and such a place is in a disturbed area i.e. in an area which has been formally declared as a disturbed area or an area in which there has been

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extensive disturbance of public peace for a period of one month, a presumption will be raised against such a person that he committed the offence. But there can be rebuttal of the presumption. We have not taken any arbitrary powers so far as this matter is concerned.

There is another point raised about the connected offences. Connected offences mean that two offences may be brought under the purview of this as connected offences. For example, murder is a scheduled offence but not rioting. If both offences have been committed they should be tried together as connected. There is nothing wrong to club these two offences. If in the process of trial it is found that this person is also accused of other minor offences in the same transaction, such offences become connected offences.

The hon. Member has mentioned of the summary trials. The provision for summary trials is only in cases punishable with three years imprisonment. Even under the existing provisions of Cr. P. C. offences punishable with imprisonment upto two years can be tried summarily. That is already there.

She has referred to camera trial. I have already mentioned about it.

We are not going to circumvent the judiciary. The Special courts have been established only because of certain circumstances prevailing in the country.

You know the circumstances incidents have happened in punjab and the Union Territory of Chandigarh involving whaton violence by terrorists, including killing of innocent persons, looting of properties, disruption of communications and threats to individuals and groups. They have been attacking pickets of security forces and looting armouries. Different aspects of these have

been brought out in the white Paper. In order to give speedy justice and to but down such acts of violence which endanger the sovereignty of this country this Bill has been brought. This is only to replace the Ordinance that has already been promulgated. These are the salient features which I wanted to bring to the notice of the House.

A mention has been made as to why it has been made applicably throughout the country. You know that certain things have been happening in the North Eastern region. For instance, insurgency. Important persons are being killed. A former Chief Minister, Mr Saiza has been killed recently. Even in Tripura certain things have been happening. We have been asking the Chief Minister to declare the perturbed area as disturbed area so as to take appropriate steps to put down the activities of terrorists in that area. So when that sort of happenings are not only in punjab but in other areas of the country also, we thought that this Bill should be applicable not only to punjab and Chandigarh but to other parts of the country also. With this, I would like to request the hon. Member to withdraw her Resolution I beg to move :

“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.”

MR. DEPUTY SPEAKER : Motions moved : *

“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.”

“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.”

Now Mr. Satyasadhan Chakraborty.

SHRI SATYASADHAN CHAKRABORTY (Calcutta South) : Mr. Deputy Speaker, Sir, the rule of the party headed by Shrimati Indira Gandhi, is the darkest period of Indian history and these pieces of Draconian legislation are going to make the darkness complete. The Home Minister who has introduced this piece of legislation, has to justify his action. He has tried to justify it in the Statement of Objects and Reasons by saying that the Members of Parliament expressed their concern and demanded action. Obviously, the hon. Home Minister was referring to the situation in Punjab, in Punjab, when the situation was such that the extremist elements were killing innocent people, we demanded stringent action but nothing was done at that time. Now, when the hurly burly is almost over, when most of the criminals, who were in the Golden Temple complex, are dead and gone due to the operation Blue Star, when under the leadership of the Congress (I) they are doing *kar seva* and so holding which I do not understand - this 179 years *Sabat Sammelan* or something, when they are virtually, with the help of police and military, in occupation of the Golden Temple, why is it that they now come out with this piece of legislation I suspect the motive of the Government, I question the honesty of the Government and I am convinced they have an ulterior motive which at the present moment, most probably most of us cannot fathom, but I believe in the coming future situation will unfold itself so that most of the people would understand and fathom the ulterior motive and the deep-laid conspiracy that is in the minds of the ruling class, that compelled them to bring such pieces of Draconian legislation - this Terrorist Affected Areas Bill and also the National Security (Amendment) Bill.

The stated purpose of the Bill is to protect the sovereignty of the country. Mr. Deputy Speaker, Sir, I would like to remind you that the darkest deeds have always been done in the name of security, law and order. Today, in the names of protecting the sovereignty of the country, in the name of law and order, they are out to take away not only the Fundamental Rights, but also whatever limited rights the Constitu-

tion guarantees; they are trying to rob the people of those rights.

If the purpose or object of the hon. Home Minister is to curb terrorist activities, will he please explain how in Assam and Punjab these activities continue, in spite of our protests and in spite of our demand to control these activities ?

We are seeing a new trend in India. All these activities are instigated, directly or indirectly, by the administration. In all the bands in Assam, even the wives of the officials of the district administration took part; yet, nobody could be arrested. Even when the national flag was insulted, no action was taken. Why ? The administration in Assam conceded that the administration was fanning the movement and the administration was being run by the AASU and the Gan Sangram Parishad. Your administration is involved and your police officers are involved. Will the hon. Home Minister tell me how he is going to curb the activities when his administration is involved in it ? In Punjab also the administration was involved in it. Because, these are not simple movements; linguistic and regional sentiments are involved. The agitators or the movement leaders take advantage of the frustration of the people, because of the non-fulfilment of the democratic aspirations. Because of the absence of strong democratic movement in certain areas, the movement leaders take advantage of the sentiments of the people. This is a big question, which has to be solved. No piece of legislation can really tackle the political problems, the political questions that have been thrown. Unfortunately, like the Britishers, the Government are trying to tackle the problem through administrative and legislative measures.

They say they want to control terrorist activities. Here I raise a very relevant question. The other day one leader in Punjab was arrested, because the army people found arms in his possession. Later on, he was released when he promised that he would take part in *Kar Seva* and he is doing it. It means what ?

SHRI GIRDHARI LAL VYAS
(Bhilwara) : He has reformed himself.

SHRI SATYASADHAN CHAKRA-
BORTY (Calcutta South) : If anyone is
willing to be the tool of Congress (I), he no
longer remains a terrorist or extremist, even
though he has unlicensed arms. You may
have unlicensed guns or arms, but if you
are ready to toe the line of Congress (I),
if you become a willing partner in their
political adventure, you are no longer a
terrorist. You are no longer an extremist.
You are above law. You are protected by
the ruling party. Otherwise how will you
explain it ?

Now, see Mr. Home Minister what
are you doing today ? You have not
outlawed the Akali Party. It is a political
party. All their leaders are in jail. Punjab
is under Army occupation. You are free
to conduct all your political activities.
Even you are trying to change the Gurud-
wara Act. You are entering into the
religion and trying to occupy all the
Gurudwaras. What is your aim ? In Punjab
you can act freely. In spite of the presence
of the Army, you can carry bus loads of
people to Amritsar where our Parliamentary
Minister, Shri Buta Singh, addresses a
gathering; where the Congress (I) leaders
of Punjab take part : but no other party
can work so freely. That is what you
have done in Punjab. And taking advan-
tage of the situation what are you now
trying to do ? You are trying to change
the Gurudwara Act so that you can control
the Gurudwaras. That means in spite of
the Akali leaders, you want to be the leaders
of the Sikh religion.

SHRI HARISH RAWAT : Sikhs are
demanding so.

SHRI SATYASADHAN CHAKRABO-
RTY : So, what you are trying to do ? You are
using the Army in the name of protecting
the sovereignty of the country. And in the
name of law and order, you are restricting
the activities of your political opponents.
You are keeping fields open for you because
you are divorced from the people. These

laws and these administrative machinery
are going to help you since you are
isolated from the people. Otherwise you
would have created democratic conditions
where all the parties could work and go to
the people. After all, what is democracy ?
It is going to the people to put forward
your opinion and it is to capture the
hearts of the people. You are not trying to
do it.

Exactly the similar thing you have
done in Kashmir. The Government there
has been toppled. Why was curfew imposed
there ? It was imposed so that no party
except the Congress (I) could hold meetings
there. Even our Party leader, Comrade,
E.M.S. Namboodiripad was kept in a
hotel and even his electric connections
were severed. Why ? Why is it that the
other parties would not be allowed to go
to the people, to appeal to the people ?
In a democracy it is the people who matter.
The voice of the people is the voice of the
God. They can go to the people, they can
appeal to the people.

SHRI P. VENKATASUBBAIAH : Sir,
whenever the Members speak about West
Bengal, the Hon. Member immediately
gets up and says it is a State matter, but
now he is mentioning about Jammu and
Kashmir State. Is it at all relevant to his
argument ? Please ask him.

SHRI SATYASADHAN CHAKRA-
BORTY : I am sorry. The Hon. Minister
is unnecessarily betraying ignorance, because
this law applies to the whole of India. But
here I am telling your political purpose.
I am telling what you are trying every-
where.

Now, Sir, the Hon. Minister was
referring to Tripura.

SHRI P. VENKATASUBBAIAH : He
can speak in any manner, but he would
not like us to criticise the West Bengal
Government.

SHRI SATYASADHAN CHAKRA-
BORTY : Yes, I can. You were referring

to Tripura. The Tripura Chief Minister demanded not this Act, but more battalions of the BSF to guard the border. So, instead of justifying this Act as necessary in Tripura you should send more BSF there. This is why I have said that I suspect the motive of the ruling party. They are invoking everything to destroy democracy in this country, in their drive for one party rule, in their for authoritarianism. Yesterday, when some of the Members were speaking, it appeared to me really strange. I shuddered to hear. Louis-XIV used to say 'I am the State. To go against me is to go against the State.' Today also they say, 'the Congress (I) is the State, Indira Gandhi is the State. If you go against the Congress (I) if you go against Mrs. Gandhi, it amounts to treason and going against the State.' Yes, that is what you are trying to do.

SHRI P. VENKATASUBBAIAH : That is the greatest obsession they have. (Interruptions).

SHRI SATYASADHAN CHAKRABORTY : It is not obsession because you know, the test of the pudding lies in the eating. Will you be judged by what you say here? No. You will be judged by what you do and what you have been doing with all the draconian laws by you trying to restrict the activities of the Opposition parties. You are using all the laws - when the coal miners are on strike, when the workers are on strike, when the people fight for the democratic rights, you utilise all these draconian laws to stifle their voice. (Interruptions).

It is strange that a new definition of 'terrorism' has been given. Mr. Deputy-Speaker, Sir, for the information of the hon. Home Minister, who is supposed to be well-informed, there can be terrorism from the people, there can also be State sponsored limited, low-key terrorism. In India what you find today is the State sponsored low-key terrorism for political purposes. They have done it in Assam, and they have done it in Punjab.

SHRI P. VENKATASUBBAIAH : He knows by experience (Interruptions).

SHRI SATYASADHAN CHAKRABORTY : Yes. And what is the definition of a terrorist? 'Terrorism' is an act to create terror with a political purpose and also to capture power. You have made no distinction. Every one who is disrupting some communication is a terrorist. Is it the true definition of terrorism? The Minister has to explain. Anybody can be described as a terrorist.

PROF. RUP CHAND PAL : Even the Minister himself.

SHRI SATYASADHAN CHAKRABORTY : It may so happen.

MR. DEPUTY-SPEAKER : One minute only for me with your permission. Your Party has been allotted 11 minutes. You have already taken 15 minutes. You know, sometimes we are not able to call the last Members. By taking less time you are only helping your own colleagues.

SHRI SATYASADHAN CHAKRABORTY : It is a very important Bill.

SHRI RAVINDRA VARMA : We have to discuss this thoroughly. It is a very important Bill.

MR. DEPUTY-SPEAKER : That is all right. I have to allow all the Members of all the Parties. That is what I am telling.

SHRI SATYASADHAN CHAKRABORTY : Thank you. I shall try to be brief. Have patience. (Interruptions).

MR. DEPUTY-SPEAKER : Only for that same purpose I am asking him not to take more time.

SHRI SATYASADHAN CHAKRABORTY : Mr. Deputy-Speaker, Sir, it is

(Shri Satyasadhan Chakraborty)

an irony of history. In West Bengal there was preventive detention. Sir, they are trying to use preventive detention to put the Communists behind the bars. But because of their internal feud many Congress (I) leaders were put behind the bars. The Communists and the Congress (I) people who supported the preventive detention were side by side in the jails. I do not know what will happen to the Minister because you don't know against whom this will be applied. Hitler first destroyed the Communists. Then he started attacking the liberals. That is the lesson of history.

13 34 hours

(SHRI CHINTAMANI PANIGRAHI
in the Chair).

SHRI SATYASADHAN CHAKRABORTY : I am happy, the Chairman is now is the Chair

MR. CHAIRMAN: But not for extension of time.

SHRI SATYASADHAN CHAKRABORTY : You are a very liberal man.

This Bill says that any region of India can be declared by the Indian Government as a terrorist-affected area. India is a federation. Law and order is the duty of the States. The Constitution empowers the State to maintain law and order, they are responsible for it. Now, it is the Central Government that without any reference to the State Government, without any consultation with the State Government, without waiting for the opinion of the State Government, without seeking the opinion of the State Government can declare a particular State, the whole State, as terrorist affected area. Does it conform to the principles of federation? The Home Minister will have to answer. If a particular State Government is of the opinion that it is not a terrorist affected and if the Central Government

is of the opinion that it is terrorist affected, is it not going to create tension between the State and the Centre?

What are the agencies on which you will depend to decide whether a particular region is terrorist effected or not? The Constitution says if in a particular State certain things happen, the Governor will give a report to the president. In that case until and unless the Central Government choses to be autocratic, the Governor will have to depend on the opinion of the Council of Ministers, because the people have voted them to power, not the Government. I do not understand why this provision has been made. The Minister will have to make it clear - this runs counter to the federal principle that is enshrined, though in a limited way in our Constitution.

What is the period? Six months. Then you go on increasing it by instalments. How is it that it can be continued for an indefinite period? This is the danger. Extra-ordinary powers which can be utilised for an indefinite period! The whole decision is a political decision by the political party. All the leaders of jurisprudence, all the political scientists have warned against executive despotism. Despotism may also be legal despotism. Despotism may also be extra-Constitutional or illegal. If a particular thing is legal, that does not make it democratic. The American Supreme Court has made it amply clear while striking down many laws passed by the American Legislature, declared them to be *ultra-virus* because they go against the democratic spirit of the Constitution. I would like the Home Minister to explain why this indefinite period?

The Home Minister will have to explain why special courts will be outside the State? They have not explained it. It will effect the accused and the Minister has not given sufficient reasons why this should be necessary.

Two new things have been introduced-prosecution in camera. Previously it was

the accused who could demand prosecution in camera. Now it is becoming a regular feature. It all depends upon the public prosecutor who has been given wide powers which goes against the rule of law, and also...

SHRI P. VENKATASUBBAIAH : Judge can also.

SHRI SATYASADHAN CHAKRABORTY : Also summary trial. What is all this thing. Is it not partly undeclared war on judiciary ?

SHRI P. VENKATASUBBAIAH : Not only the prosecutor, but judge also can recommend.

SHRI SATYASADHAN CHAKRABORTY : Here the accused has no option.

You are quite acquainted with Roman law, Roman jurisprudence, which dominates the Anglo-Saxon world. Roman law says that the onus of proving the guilt is with the accuser, not the accused. Until and unless one is proved to the contrary, one is innocent. That is the basic understanding of Roman law. It is now going to be reversed. The onus of proving the guilt remains with the accused.

As I said at the very outset, on the question of honesty of the Government, from our experience we have seen how these laws are used against their political adversaries and how innocent people are harassed. Also, from our experience, we would like to warn the Government that already the police are trigger-happy and the more power to the police, the more power to the executive, will simply take away even the minimum fundamental rights of the people. There is that danger. I do not know whether they are going towards that. But this Bill is going to strengthen the hands of law-enforcing machinery, and in the name of law-enforcing machinery, they will only be taking away the fundamental rights of the people. That is why I warn the Government about that.

Again, I would like to quote Madison, the American Federalist, the warrior of American Independence, who says that "if the people who are in the executive authority were angels, no independence of judiciary was necessary at all. You are fallible ; you may commit mistake. The Government and the executive authority who can commit mistake must be made responsible not only to the people but they must be answerable to the judiciary."

Here, they are trying to curtail the powers of judiciary ; they are trying to curtail the powers of the people. As Mrs. Geeta Mukherjee has already said, how ridiculous is the position that even a person who resides in a particular locality who has no connection with any violence can be arrested and tried and it is his duty to prove that he is innocent.

So, I would request you to stop what you are trying to do. You ponder and think over it and withdraw the Bill and don't destroy even the limited freedom that the Indian people now enjoy.

SHRI JAGANNATH RAO
(Berhampur) : Mr. Chairman, Sir, the Opposition criticism of this measure and the Ordinance is on the usual lines...

SHRI INDRAJIT GUPTA (Basirhat) : The defence is also on the usual lines ; the Bill is also on the usual lines.

SHRI JAGANNATH RAO : It is said that there was no need for an Ordinance because Parliament was to meet 9 days later. But my friends should appreciate the urgency of the matter. Several persons had been behind the bars and they had to be tried. Secondly, the State Government had to send a report to the Central Government to declare a certain area as a terrorist affected area ; there was to be the appointment of special courts in judicial zones and it was to be seen that the appointment of Special Judge should be a serving Sessions Judge with the concurrence of the Chief Justice of the High Court. All this procedure and all

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the infrastructure had to be built. It takes time. So, on 14th July when this Ordinance was issued, immediately all the steps were taken by the State Government of Punjab and by the time Parliament met, everything was ready and my friend Shri Satyasadhan Chakraborty suspects and doubts the bona fides of the Government in issuing the Ordinance by President or in introducing the Bill by the Minister. What is the dishonesty of the Government in this regard ?

The usual fear of the Opposition is that these measures are intended to be used or applied against the leaders of the Opposition. That is usual fear. Well, if an Opposition Member or a Leader becomes a terrorist, naturally it is to be applied against him. If he is not a terrorist, he is not affected by this provision or by the definition of the terrorist.

Secondly, this law does not create any new substantive offence. It is a procedural law which amends the ordinary procedure of the trial of criminal offences. It introduces the principle of summary trials in respect of offences which are scheduled under the Ordinance to be tried summarily by a special court and by a Special Judge. That is all. That does not mean that the procedure in the Criminal Procedure Code or the rights that vest in the accused for defending himself are taken away. Therefore, it is only a procedural amendment that is sought to be introduced because these terrorists have to be tried expeditiously in a court of law.

A terrorist had been defined as one involved not in a casual case of murder or dacoity or in disruption of communications but as one involved in wanton killing, indulging in violence, destruction of property and cutting away the vital supplies necessary for communities creating mutual hatred and disaffection among various Sections of people. All these are serious offences which have the effect of disturbing or destroying the national unity. Therefore, these offences have been clubbed together and have come under the definition of a terrorist. A terrorist is one

who commits these offences and these offences are serious and heinous in nature and are under Schedule of Ordinance. Therefore, it is not that every offence committed by any person is triable by Special Court. This is my first submission.

The objection has been raised to in camera trial. In camera trial is a protection to the witnesses as well as the accused. In a case where a terrorist is involved and if a trial takes place in open court, will the witness be in a position to depose frankly and freely having taken the oath to speak the truth ? He is afraid of the terrorists who are still outside. Therefore, to give protection to witness, in camera trial is contemplated. Also in the interest of the accused himself where the accused is brought before the court and in an open trial, the crowd that attend the court in an angry mood may indulge in violence on the accused. Therefore, to avoid recurrence of violence and to give it protection and freedom and safety to witness, this in camera trial has been contemplated. But it is open to a public prosecutor to apply to the court that the entire case or a part of the trial can be held in open court and the court agrees to it. Therefore, in camera trial of these offences does not take away the right of the accused nor curtail his right nor give special arbitrary powers to court to dispose of the case. That objection raised by the Opposition has no basis.

Then I come to presumption. Under Indian Evidence Act, under certain circumstances, presumption can be drawn. But this presumption is always a rebuttable presumption. The right of rebuttal is given to the accused to prove that the presumption does not exist against him, that the circumstances go the other way. Therefore, he will have to prove that he is innocent and that he cannot be convicted because of the presumption under the Indian Evidence Act. Certain circumstances may give rise to a presumption. Take, for instance, a case like this. In a disturbed area, there is firing; innocent people are gunned down; a person stands as a by-stander and he is booked by the police as one of the culprits. Is it not correct for the police or for the court to infer the presumption that he is part of the gang

which indulged in firing? Or, is it a fact that he was only a by-stander witnessing the fireworks displayed on a Diwali day? Therefore, the presumption must be there. Secondly, where a member of a lawful assembly is present on the scene of Commission of an offence, even though he may not commit any positive act, he is equally guilty as the perpetrator of the crime. That is the law. If you take the common intention, section 34 of the Indian Penal Code, we have the famous case of VIRENDER KUMAR GHOSH VS. KING EMPEROR where four persons were involved in the murder of a postmaster. Only one person went inside the post-office and murdered him; the other persons were only loitering outside; but they were all booked even though they said that they had nothing to do with it, Privy Counsel held that they shared the common intention, though they were standing outside to watch that nobody came there; therefore, they were equally guilty as the person committing the murder. These are the circumstances in which the presumption can be drawn. But it is open to the accused to prove that he is innocent and has nothing to do with the offence that has been committed, for which he is charged along with others. In any event, this Special Courts Bill is intended only to expedite the trial of offences which have been listed in the Schedule and not all offences under the Indian Penal Code or any other Act only the offences which are serious in nature, which are heinous in nature. The presumption also is limited to certain sections of the Indian Penal Code section 121 is waging war against the State; section 121A is conspiracy to wage war; thirdly, collection of arms; fourthly, abetting the offence and so on. Only in such cases and in the disturbed areas, this presumption is allowed to be drawn, not in the case of all the offences. The presumption applies only in respect of these four sections which I have enumerated waging war against the State, conspiracy to wage war, and so on. Establishment of Special Courts does not take away the Fundamental Right of the accused to defend himself, nor does the trial of the case *in camera* take away his right to defend himself, nor does Clause 20, by which a new Section IIIA is sought to be introduced, take away the general principle

that a person is presumed to be innocent until the contrary is proved. This principle is also not being done away with; that stands. It is only presumption under the Evidence Act which is sought to be applied in certain circumstances in respect of certain offences which are limited. This Bill only deals with the procedure to expedite the trial, introduces summary nature of trial in respect of certain offences specified in the Schedule, so, that there can be speedy justice.

An appeal is provided to the Supreme Court. The Supreme Court can make rules, and there is provision for transfer of a case from one court to another. If the public prosecutor thinks that trial of an offence within the affected area is not in the interest of the accused or the witness, he may request for transfer of the case to a place outside the State. That is only in favour of the accused or the witness. It does not create any hardship to the accused. Supposing in the State of Punjab which is a terrorist affected area, it is not possible to hold a trial even *in camera*, the State can possibly request that it may transfer the case to the neighbouring State. That is in the interests of all concerned. Therefore, I would request the Opposition not to read anything which does not exist, not to imagine a ghost in all these provisions or laws the Government is bringing. The intention of the Government is quite honest. This measure is intended for the speedy trial of the terrorists so that the area becomes peaceful. Still the terrorists are outside. When certain areas are combed and mopped up, the terrorists are raising their heads like poppies in other areas of the State. Still the terrorist movement is there and it should be prevented from spreading to other areas of the State. And this can be done only by stringent measures and the Opposition themselves want the Government to take stringent measures. But when the government comes forward with stringent measures, the Opposition call it as draconian or authoritarian or say that they bring it with some ulterior motive. Therefore, let us not read anything which does not exist. Let us examine and view the intention of the Government as honest and straight forward

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and I would request the House to accept this measure.

श्री राजेश कुमार सिंह (फिरोजाबाद) : सभा-पति महोदय, इस आतंकवादी क्षेत्र (विशेष न्यायालय) अध्यादेश, 1984 के स्टेटमेंट ऑफ रोजन्स एण्ड ओब्जेक्ट्स में कहा गया है कि

“The law and order situation in certain parts of the country has been disturbed because of the criminal activities of terrorists.”

और बीच में है कि—

“In this situation proper and fair conduct of criminal trials had become very difficult.”

मान्यवर, सरकार कहती है कि

“A government like Caesar's wife ought to be above suspicion.”

लेकिन इस सरकार ने अभी कोशिश नहीं की इस संदेह से परे कहीं चली जाती।

मान्यवर, सरकार के पास बहुत सी ताकत और कानून हैं और हमारे इण्डियन पीनल कोड में भी बहुत से कानून हैं, खास तौर पर रौबरी, इंटेमिडेशन, हार्बरिंग क्रीमिनल आर्म्स एक्ट, मर्डर आदि के लिए जिनको बनाया गया है। सारी चीजों के लिए कानून हैं। Unlawful Activities Prevention Act.

लेकिन मैं आपके माध्यम से सरकार से पूछना चाहूंगा कि क्या आपने कभी नोटोरियस ऑफेंडर्स के खिलाफ इस कानून का उपयोग किया, क्या कभी स्मगलर्स के खिलाफ इसको

इस्तेमाल किया और जो लोग रिलीजस प्रीचिंग हमारे देश में करते हैं, उन कम्यूनल हेड्रेड के खिलाफ कभी इसका प्रयोग हुआ ? यदि कभी किया भी तो जैसा कल डी मुद्दे पर हुई बहस के दौरान किसी माननीय सदस्य के द्वारा हाजी मस्तान का नाम लिए जाने पर सरकारी पक्ष के लोग चिल्लाने लगे। इसीलिए मैं कहना चाह रहा हूँ, मान्यवर कि यदि आप अदालतों के समय-समय पर दिए गए फैसलों को देखें तो उनसे यही मालूम पड़ता है कि पुलिस की लापरवाही और प्रशासन की सुस्ती के कारण अपराधियों को छोड़ दिया जाता रहा है। क्या स्पेशल अदालतें स्थापित करने से पहले आपने इस बात का अध्ययन किया कि पिछले अदालतों के फैसलों में क्या लिखा हुआ है। उनमें साफ लिखा है कि पुलिस की लापरवाही और सरकार की काली करतूतों के कारण अपराधी को छोड़ने के लिए अदालतें मजबूर थी। क्या आपने कभी उनको सुधारने की कोशिश की। क्या आपने कभी नेशनल सीक्यूरिटी एक्ट का इस्तेमाल भिण्डरावाले के खिलाफ किया। वैसे तो आप टेररिस्ट्स की बात करते हैं, लेकिन आप दिल पर हाथ रख कर बताइये कि क्या आपने कभी नेशनल सीक्यूरिटी एक्ट का प्रयोग भिण्डरावाले के विरुद्ध भी किया। क्या कारण थे, और आप क्यों नहीं कर सके। आपके पास कानून हैं लेकिन उनके पीछे सरकार की मंशा और लक्ष्य क्या हैं, मैं अब उनकी तरफ जाना चाहता हूँ। मान्यवर यदि आप इसकी डेफिनीशन को देखें—

“terrorist” means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communication essential to the community.”

14.00 hrs.

मान लीजिये कि कहीं रेलवे के मजदूर स्ट्राइक कर डालें या किसान महाराष्ट्र की तरह रास्ता रोको आन्दोलन शुरू कर दें तो आप फौरन यह कहेंगे कि ये टैरेरिस्ट हो गये। आपके ब्रिन के माध्यम से ये मजदूर आन्दोलन करने वाले, डिमोंस्ट्रेशन की बात करने वाले टैरेरिस्ट हो गये और उम लिस्ट में आ गये।

आपकी टैरेरिस्ट्स की परिभाषा इतनी विकृत है, जिसकी कोई सीमा नहीं है। इससे साफ जाहिर है कि श्रमिक का डेमोक्रेटिक राइट और क्रिमान की आवाज का जो अधिकार है कि उसके पिछे आपकी साजिस यह है कि जनता अपनी मांगों को लेकर जब सरकार पर दबाव डालेगी तो आप उसके डेमोक्रेटिक राइट्स को किस तरह हे समाप्त करेंगे, कटौत करेंगे और किस तरह से छीनेंगे।

लाइक मिलैट्री कोर्ट्स, इस सैक्शन को आप देखेंगे तो इसमें लगता है कि इन अदालतों के बारे में लोगों की धारणा होगी कि मिलैट्री कोर्ट। ये आम न्यायालय नहीं होंगे। आप आम जनता को न्याय देने के लिये कोर्ट न बनाकर मिलैट्री कोर्ट स्थापित करेंगे। इसके सैक्शन 12(1) में लिखा है—

All proceedings before a special court shall be conducted *in camera*."

"Sec. 7 (1) Notwithstanding anything contained in the Criminal Procedure Code or any other law, the offences listed in the Schedule of the Ordinance, shall be triable only by the Special Courts."

जहाँ अदालतें हैं, अगर वहाँ स्पेशल कोर्ट की स्थापना हो जाती है तो उन अदालतों का

भी जूरिस्टिक्शन खत्म हो जाता है जो अदालतें नार्मल फंक्शन कर रही हैं। आपने स्पेशल कोर्ट बनाये, इसमें एक खासियत और है कि एक महीने से अधिक जब कहीं स्थिति अच्छी नहीं है, किसी ने सेना पर हमला कर दिया या कहीं बलवा हो गया तो वहाँ स्पेशल कोर्ट स्थापित करने की स्थिति बन जायेगी।

आपने यह भी कहा कि अगर कोई व्यक्ति वहाँ ऐसा पाया जाता है कि जिसने अपराध किया हो या न किया हो लेकिन उसे अपराधी प्रैज्यूम कर लिया जायेगा, वह अपराधी है। दुनिया के किसी भी न्याय में ऐसी बात नहीं लिखी है कि मैंने अपराध नहीं किया है, फिर भी अपराधी हूँ।

मैं चम्बल और आगरा के बीच के इलाके का प्रतिनिधित्व करता हूँ। हमारे यहाँ एक डाकू-विरोधी एक्ट है, उसके अन्तर्गत किसी को भी बन्द किया जा सकता है कि तुम डाकू को शूटर देते हो। मैं इसी संदर्भ में कहना चाहता हूँ कि हमारे यहाँ एक मलखान सिंह डाकू था। वह हमारी कांस्टीटुएन्सी के एक गांव में गया और उसने वहाँ किसी से 5 किलो अनाज चना मांगा। वह 5 किलो चना किसान ने उसे दे दिया। डाकू पैसे देना चाहता था, उसने पैसे नहीं लिये तो डाकू ने स्टेनगन दिखाकर कहा कि पैसे लो। जब वह डाकू वापस चना गया तो किसी ने पुलिस को कह दिया। पुलिस आई और उसको पकड़कर ले गई। उसकी बीबी ने कैलक्टर के सामने यह कहा कि मेम साहब हम जंगल में रहते हैं, हमने तो डाकू मलखान सिंह को 5 किलो चना दिया है लेकिन अगर आप होतीं तो आप पलकों पर बिठाकर उसे पराठे खिलातीं। परिस्थितियां ऐसी बन जाती हैं।

(श्री राजेश कुमार सिंह)

आपने पंजाब में परिस्थितियों को देखा है। लोग डर के मारे गवाही नहीं देते हैं। अगर कोई टैरेरिस्ट हमारे घर पर आकर राइफल के बल पर हम पर काबू कर लेता है तो इसमें हमारा क्या दोष है? आप हमारे जीवन की सुरक्षा नहीं कर पायेंगे लेकिन मैं वहाँ मौजूद रहूँगा, मेरी इच्छा नहीं है, मैं एक्टिव नहीं हूँ, मैं पार्टिसिपेट नहीं कर रहा हूँ, मैं निर्दोष हूँ, लेकिन उसके बावजूद भी मुझे बन्दी बना लिया जायेगा और यही नहीं मुझे अपने निर्दोष होने का सबूत अदालत में स्थापित करना पड़ेगा। यह क्या मजाक है? यह क्या न्याय है? इस पर हमें गंभीरता से विचार करना चाहिये।

मान लीजिये कि कोई पुलिस अधिकारी किसी से जैलेसी रखता है और उसे लेजाकर बन्द कर देता है। अभी तक तो यह होता था कि वह अधिकारी साबित करे कि हमने रौबरी की है, डकैती की है या किसी को शैल्टर दिया है, लेकिन आज हमको यह सोचना पड़ेगा और फिर उसका ट्रायल कैमरा में होगा।

वह कैसे साबित कर पाएगा कि वह निर्दोष है? एक तरफ उसपर पुलिस का दबाव है और दूसरी तरफ उसका मुकदमा बन्द अदालत में चलता है। पब्लिक प्रासीक्यूटर के कहने पर ही मुकदमे की प्रोसीडिंग्स ओपन कोर्ट में हो सकती हैं। पब्लिक प्रासीक्यूटर या विटनेस यह भी कह सकते हैं कि विटनेस का नाम और पता रिकार्ड में नहीं आना चाहिए। आप जानते हैं कि बहुत से ऐसे प्रोफेशनल गवाह होते हैं, जो पुलिस थानों में बैठते हैं और गवाही देते हैं। ऐसे गवाह का नाम रिकार्ड पर नहीं होगा और डिफेंस कौंसल यह नहीं कह पाएगा कि यह प्रोफेशनल विटनेस है। क्या

सरकार ने गंभीरता से सोचा है कि कानून और जूरिप्रुडेंस का कितना मजाक उड़ा रही है?

यह भी व्यवस्था की गई है कि अपील हाई कोर्ट में नहीं, बल्कि सुप्रीम कोर्ट में हो सकेगी। या तो कोई प्राइम मिनिस्टर के सामने सम्पर्ण कर दे और कार्रवाई में लग जाए, वरना उस पर मुकदमा चलाया जाएगा। अगर कोई इन्तोंसेंट व्यक्ति पकड़ा जाता है, तो क्या वह बैस्ट बंगाल से आ कर सुप्रीम कोर्ट में अपील कर सकेगा? आपको मालूम है कि सुप्रीम कोर्ट में क्या हालत है और लाइयर की फीस कितनी है। क्या सरकार ने कभी आम आदमी की आर्थिक स्थिति के बारे में सोचा है?

उत्तर प्रदेश में कई नौजवानों को डकू कह कर गोली से उड़ा दिया गया। आप उन लोगों की लिस्ट मंगा कर देखिए। आप उत्तर प्रदेश विधान सभा की कार्यवाही को देखिए कि ऐसे कितने लोगों को मारा गया है। इस सरकार ने देश में ऐसी सिचुएशन पैदा कर दी है कि देश के सब नागरिकों को विपत्ति का सामना करना पड़ रहा है। यह कितना बड़ा अन्याय है कि पेशेवर गवाहों की गवाही के आधार पर किसी भी व्यक्ति को अतंकवादी करार दिया जा सकता है? इंडियन एविडेन्स एक्ट, 1872, जूरिसप्रुडेंस, न्याय शास्त्र के अनुसार किसी को तब तक अपराधी नहीं माना जा सकता, जब तक कि उसका अपराध साबित न हो जाए। लेकिन इस कानून के अनुसार किसी भी व्यक्ति को पहले अपराधी घोषित कर दिया जाएगा और तब वह अपने आप को निर्दोष साबित करे। मुझे ऐसा लगता है कि रूनिंग पार्टी की असफलताओं की कीमत देश के साधारण नागरिकों को चुकानी पड़ रही है। मैं सरकार से पूछना चाहता हूँ कि क्या मुट्ठी भर उग्रवादियों का

दमन देश के नामल लाज और एडमिनिस्ट्रेशन के द्वारा नहीं किया जा सकता, जो सारे देश के लिए यह कानून बना डाला गया है। (व्यवधान) अगर उग्रवादी सारे देश में हैं, तो फिर इस सरकार को सत्ता में रहने का कोई अधिकार नहीं है। इस सरकार का प्रशासन इतना ढीला और निकम्मा है कि वह उग्रवादियों को काबू नहीं कर सकता। मैं यह कहना चाहता हूँ कि श्रीमती इंदिरा गांधी की सरकार ने ही यह स्थिति पैदा कर दी है। उनके इस सन्देह के पीछे कोई बड़ी साजिश चल रही है। आपातकाल के समय की तरह से वे सिविल लिबर्टीज को छीनने की कोशिश नहीं कर रहे हैं बल्कि इन इंस्टालमेंट्स इसको छीनने की कोशिश की जा रही है। एक व्यक्ति तथा एक पार्टी की तानाशाही कायम करने की साजिश हो रही है जिसको रोका जाना चाहिए। मैं आपके माध्यम से इस सदन से दरखास्त करूँगा कि लोकशाही को बचाने का प्रयत्न होना चाहिए तथा स्वस्थ परम्परायें कायम की जानी चाहिए। तथा जो न्याय है वह सर्व-साधारण को उपलब्ध कराया जाना चाहिए। और इसमें डरने की कोई बात नहीं होनी चाहिए।

SHRI CHIRANJI LAL SHARMA (Karnal) : Mr. Chairman, Sir, I have been listening to the eloquent speeches of the hon. members in the Opposition. Prof. Chakraborty had very unhappy beginning because he has made uncharitable observations against the period of our Prime Minister, Calling it the blackest period of the nation forgetting that this period of the Prime Minister, Shrimati Indira Gandhi is the brightest of the Indian history since independence. Asiad games were played in Delhi in the recent past. Nonaligned meet (NAM) in which 103 heads of nations of the world participated, was also held here in March, 1983.

AN HON. MEMBER : Wasting 60 crores of rupees of people's money. It was a criminal waste.

SHRI CHIRANGI LAL SHARMA : Why don't you think of the prestige of the nation that was enhanced? Why do you talk of costs? How much money has been spent in Olympics. Do you mean to say that we should not play games? I am sorry that he made these observations knowing fully well what the facts are. Facts are facts and they must be equiely faced.

Shri Chakraborty made another observation. He suspects the motive of the Government. He doubts the honesty of the Government, only because this Government is bringing this piece of legislation. And Sir, I am sorry that he should have any reason to doubt the *bonafides* of the Government even after reading the Statement of Objects and Reasons which explicitly says that the law and order situation in certain parts of the country has been disturbed because of the criminal activities of terrorists. They have been indulging in wanton killings of innocent persons, looting of properties, disrupting the lines of communication and committing other heinous crimes on a scale and in a manner which has made the life of the people in the affected areas extremely difficult and have threatened the security and the territorial integrity of the country. Will they deny when I put it to them that *Nahar Roko Andolan* was there? Will they deny when I put it to them that *Rasta Roko Andolan* was there? Will they deny when I put it to them that *Nahar Todo Andolan* was there? Not only the *Andolan* was there, but the *nahar* has been cut not once but twice, creating havoc in Haryana and Rajasthan where people are suffering from the pangs of hunger. There is no water even to drink even. Sir, they forgot that the Government considered it desirable not to run the railway trains on *Rail Roko* day so that there may not be killings of innocent people. They fail to appreciate as to what were the circumstances which obliged the Government to bring in this legislation.

Who is a terrorist? Shall I refer to the dictionary? I need not, because the definition there is not very exhaustive. Section 2 of this Bill defines a terrorist. It says :

(Shri Chiranji Lal Sharma)

“... (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 ; or
- (ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities ; or
- (iii) coercing or overawing the Government established by law, or
- (iv) endangering the sovereignty and integrity of India ; ...”

It is against such persons that this legislation is brought, and not against innocent, gentle citizens of this country.

What happened in Punjab during the last two years ? I need not go into the history, because again and again it has been repeated. Thirty-seven years have since elapsed since India gained Independence. And probably it is for the first time that this sort of legislation has been brought in.

There was trouble in Nagaland. There was a solution. There is a popular Government there. There used to be trouble in Mizoram. Now you find a popular Government there. Then we had the Agand Marg is who had created havoc in the country. You do not hear its name now.

What was happening between 1967 and 1971 in West Bengal when there was a CPM Government there. It might hurt the sentiments of my friends from West Bengal. But is it not a fact that innocent persons were being killed ? No such legislation was brought even then. Then what happened in Assam since 1978 when the Janta Party was

guiding the destiny of the nation ? Now there is popular Government in Assam.

Now, when we switch over to Punjab, we have to look back Why all this ? There was a calculated, regular, systematic and methodical campaign of terror. What for ? Why ? Punjab and Haryana as a matter of fact were one 18 years back. Haryana came into being only 18 years ago, on the 1st of November 1966 There was no trouble. When two brothers separate, there are minor disputes. But here in Punjab, we saw the passing of the Anandpur Sahib resolution in 1973 You may recall that it was in 1970 that Chandigarh was given to Punjab.

The Shah Commission's award had given the whole of the Kharar district, including Popar and Chandigarh to Haryana. But Sant Fateh Singh went on a fast, and threatened to immolate himself on the roof of the Darbar Sahib. As a result, Government decided that Chandigarh would be given to Punjab, and in lieu thereof, 114 villages in Abohar and Fazilka Tehsil were to be given to Haryana. Then again in 1976, there was the award on Ravi Beas waters. Thirty-five lakh feet of water was to be given to Haryana, and an equal share to Punjab. I will not touch about the share of Rajasthan. There was no dispute. When this Award was modified in 1970 there was happiness, rejoicing all over Punjab. 11 youths from Haryana were shot down by police because they tried to take the lynch if law into their own hands and protested against the modification of the ward, when Chandigarh was given to Punjab. Punjabis were happy. From 1977-80, it was the Akalis who were just at the helm of affairs in Punjab. The government was headed by Prakash Singh Badal. They had their representatives like Sardar Bhana Singh Gulshan and Sardar Surjit Singh Barnala in the Government of India. When Janata Party was there: there was no demand of Chandigarh, no dispute about water, nothing of the sort.

Now, after 1980 when the Congress staged a come back.....

MR. CHAIRMAN : Should we discuss all these things in this brief Bill ?

SHRI CHIRANJI LAL SHARMA : I am taking just a reference when we talk of terrorism ; I am giving the background and I would also refer to the chaotic conditions which created at the instance of foreign powers I refer to various news papers of yesterday is date for "How Pakistan conceived Khalistan 20 years ago" probably, all the members of this House must have referred to this news that appeared in all the papers. The mischief was created in Punjab in particular on the pretext of this dispute over water and Chandigarh and all that. This is why I am referring to otherwise, there is no need to refer to this. These disputes could be solved. Meetings were arranged not once but 26 times, tripartite talks were held and as and when sometalk was to be held, these terrorists would create a situation so that solution may not be found out. Who was at the bottom of the mischief? Who was playing this havoc ? When the situation went out of control, and the local police could not cope with the situation, the Government of India considered the desirability of sending BSF and CRP ; and when CRP and BSF personnel were fired at from the roof of the Darbar Sahib, a very unhappy decision had to be taken to send the army. What was implicit became explicit. Only after the army action, when facts were revealed after the army action, how many American girls were recovered from there ; How many Pakistanis in the garb of Nihangs were there ? These were the circumstances that obliged the Government of India to bring in this piece of legislation.

On the 9th March of this year, the Deputy Speaker Haryana, Chaudhary Ved Pal, while travelling in his car on G.T. road, at 8 P.M. was fired at 56 shots were fired at his car. Luckily for him he had a narrow escape. Smt. Shanti Devi, MLA, was there. His driver was killed, his gun man was injured. Sardar Darbara Singh had a miraculous escape. God was kind to him. And the court, in Punjab did not have the guts to say, no, when applications of bail were presented. I am glad that the Home Minister has considered the desirability of bringing this legislation where pre-arrest bail was not allowed. What is actually happening ? What for such

legislative measures ? Why opposition has been very critical about holding the court in camera ? Prof. Chakraborty was very particular about it ? Only the wearer knows where the shoe pinches. You have to hold the court in such cases in camera. Otherwise, there can be no dispensation of justice.

The witness as for the prosecution will not be allowed to go to the courts, and I am glad that this legislation... (*Interruptions*)

SHRI SATYASADHAN CHAKRABORTY : It is an admission of the failure of the administration.

SHRI CHIRANJI LAL SHARMA : Because of the mischief-mongers, because of the terrorists, because of the training that has been given by your Party particularly in Bengal... (*Interruptions*).

MR. CHAIRMAN : Sharmaji, you do not look at Satyasadhan babu, you look at me.

SHRI CHIRANJI LAL SHARMA : His face is so attractive that I am compelled to just have a look towards his face as well.

SHRI RAVINDRA VARMA : Are all these declarations of affection are covered by the definition of terrorism ?

SHRI CHIRANJI LAL SHARMA : Here I must pay a compliment to the Home Minister, while referring to Section 12, which says -

"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 in its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret."

(Shri Chiranji Lal Sharma)

Further, "the holding of the proceedings at a protected place; the avoiding of the mention of names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;"

It is on the basis of the past long experience that this provision has been introduced in this legislation. Why? I mean terrorists - had created such an atmosphere that for months and years together to come, witnesses would not think of appearing as witnesses for the prosecution, knowing fully well that they may be no more after appearing as witnesses. So, the Government does deserve compliments for this specific provision. So much so that the names of the witnesses would not appear in any of the judgments. Suppose, the special court trying a terrorist is pleased to conclude that he is innocent, that he is out of the woods, at least he would not be able to know who were the persons who had the guts, and temerity of appearing as prosecution witnesses. (Interruptions)

MR. CHAIRMAN : You do not get diverted.

SHRI CHIRANJI LAL SHARMA : The hon. Member from the Opposite, was attacking the honesty and integrity and the motive of the Government, referring to unlicensed arms. According to him, if a person is holding unlicensed arms, is an ally of the Government, is a supporter of the Government, no law will apply to him. I do not know why he should doubt the *bona fides* of the Government. I think he is a professor and he has been in the legal profession.

SHRI CHITTA BASU : No; not legal profession.

SHRI CHIRANJI LAL SHARMA : And I also do not think that he is having

any unlicensed arms. Then again, law and order is a state subject and the Government of India does not come into the picture at all no far as West Bengal is concerned. So, he should not worry.

Then he says we are using the Army in the name of the integrity of the country.

SHRI SATYASADHAN CHAKRABORTY : I did not say so.

SHRI RAVINDRA VARMA : He has said worse things.

SHRI CHIRANJI LAL SHARMA : This is with specific reference to the use of the Army in the Punjab. During the Budget Session which was held hardly three months back, there was practically a unanimous demand from the entire Opposition to hand over Punjab to Army.

SHRI CHITTA BASU : Do not get provoked.

SHRI CHIRANJI LAL SHARMA : No, I will not. There was a demand from the entire Opposition, rather rebuking the Government, and the Prime Minister saying an to why she was reluctant to send the Army. Madam Prime Minister did not think it proper to send the Army at the stage.

She was giving ample opportunities to the Akalis and other interested parties to sit round the table, have discussion and come to some conclusions. Army had to be sent when matters came to such a pitch. Now, they I means the opposition want the Army to be withdrawn I have great regards for Prof. Chakraborty. Does he know that even after Army action circumstances are being created forcing the government to retain army in Punjab. What has happened to the Bhakra canal i.e. *nahar todo*? And this has happened when the Army is there. Heavens would fall if the Army is withdrawn in the present circumstances. Even now, do you think that terrorism has been done away

with? Do you think that there are no more terrorists in Punjab? Do you think that there is perfect calm and peace in Punjab warranting withdrawal of Army? If not, this argument of my learned friend, does not sound well.

This is a piece of legislation which I thought, the opposition should have put a premium of confirmation on without any discussion. As a matter of fact they should have congratulated the Government for bringing forward this piece of legislation, because it is for maintenance of law and order and that too in the interest of the integrity, unity and solidarity of the country.

With these words, I support the Bill.

SHRI SATYASADHAN CHAKRABORTY : I did not say anything about the Army. I said that the Army is to protect the country. The Army is there to take action against the extremists and not to protect the interest of the ruling party i.e. Congress (I). Taking advantage of this, that is exactly what you are doing there.

SHRI CHITTA BASU (Barasat) : I am sorry that in deference to the wishes of my esteemed friend, who spoke just before me, I cannot congratulate the Government for bringing forward this Ordinance and now the Bill. If you allow me to say, I am inclined to make this comment at this stage that this Ordinance and now the Bill is nothing but an unallowed attempt at legitimising emerging despotism in our country. This action of the Government, I am really disappointed to mention, betrays political nervousness to deal with a political situation which has been the end result of the anti-people policies pursued by this Government for decades. This Bill and the Ordinance betrays the lack of faith of the Government in the existing laws of the land, in the existing system of jurisprudence, in the existing political system of our country and ultimately on the wisdom of a large section of our people. They have lost faith in the institutions which this system in our country has built up as super structures. And all these actions lead not only me and other

persons on this side but some from your side also to believe that you are in quest of a new system. Mr. Sathe is there to hint at the new system you are searching or aiming for. We know it for certain this country of ours and the great democratic masses outside are determined to retain, preserve and further strengthen the democratic institutions that we have built up. Therefore, don't get nervous, have some faith in the democratic institution that this great country has developed.

SHRI RAVINDRA VARMA : In the people as well.

SHRI CHITTA BASU : Yes, naturally. That democratic institution can be preserved only with the willing partnership of the great masses of our people. By this Ordinance, preceded by the National Security Act (Second Amendment) Bill and the enactment of the Essential Services Maintenance Act and host of other repressive measures in your hand, I am driven to this conclusion that the Government today enjoys almost all the powers of the Emergency period although they have not formally declared it to be an Emergency period. The people have got this impression about you. Whatever might be the provisions, whatever might be your explanations, whatever might be the explanation from my friend Mr. Sharma, whatever philosophy might be coming from the Minister of Home Affairs, but the whole impression that has been conveyed is that you are searching for a new system in substitution of the existing one and the people ought to resist it.

SHRI RAVINDRA VARMA : Monarchy or Dynastic Presidential form?

SHRI CHITTA BASU : Dynastic Presidential form.

MR. CHAIRMAN : It is not in this Bill I think, Mr. Chitta Basu.

SHRI CHITTA BASU : That is right, but this is the impression. Anyway, I have given my impression, I am sorry that that impression has not been liked by you.

(Shri Chitta Basu)

Then, Sir, looking at the coverage, I find that this Bill covers the entire country, Of course, after notification. You can notify the operation of the provisions of the Act for certain areas at a certain given point of time... (Interruptions).

SHRI P. V. NARASIMHA RAO : Under certain conditions also.

SHRI CHITTA BASU : Yes, under certain conditions also, that is all right. Does it mean that you have got this assessment of the situation that there would be necessity of this kind of Special Courts, anti-terrorist activities in almost all parts of the country? Otherwise, it could have been limited to a particular area where you might have come to the conclusion that there are dangers and which ought to be met in this particular way. Punjab, I can understand. When Punjab was passing through the greatest of the ordeals, you unleashed other weapons, that is, Army (Special Powers) Act, Disturbed Areas Act and all other Acts which are available with you, but you did not, at that time, consider the necessity of having such a Draconian law. Even now I will be glad if the Home Minister comes out with an assessment of this nature that there are dangers-Punjab like dangers or Assam like dangers - in almost all the States and, therefore, it necessitates such a comprehensive and wide covering law. Let them make that assessment and justify it. You are upsetting the federal relations between the Centre and the States. You declare a particular area, say West Bengal, which is very much condemned place. In West Bengal 40 lakhs are the registered unemployed youth. You can very well say that there are possibilities of insurgent secessionists in West Bengal.

At any point of time, it will be your assessment. What is your assessment? It is the Government's report. It is the report of the State police which you will consider, or perhaps your own secret intelligence.

Suppose you find that a particular area of the country is to be declared as a terrorist

affected area. What is the role and position of the State Government, which is ruling there, which may be your party? Over their head, you can declare a particular part of UP as a terrorist affected area. Does it strengthen the relationship between the Centre and the States? Therefore, it upsets the existing political system.

Coming to the offences, the coverage is very wide and all-embracing-wanton killing of persons disruption of services or means of communication essential to the community, damaging property with a view to putting the public or any section of the public in fear, affecting adversely the harmony between different religious, language or regional groups or castes or community, coercing or over-awing the Government established by law or endangering the sovereignty and integrity of India : dacoity, murder, hi-jacking. For these offences there are specific penal provisions for dealing with them. So, Why do you want to bring all of them under one umbrella? There is the anti-hijacking law. Suppose a person commits the offence of hijacking, he can be tried under that Act. If somebody is accused of murder, there are certain provisions to deal with them. Why do you bring in all the offences under one umbrella in order to provide "proper and quick trial"?

SHRI RAVINDRA VARMA : And to protect the witnesses.

SHRI CHITTA BASU : Therefore, all the charges here are vague and in general terms. The wooden-headed bureaucracy and the trigger-happy police are the only agencies which will be happy and which will congratulate you nobody else will congratulate you.

Then I come to the onus of proof. You have shifted it on to the accused from the prosecution, which upsets the existing system of Jurisprudence.

SHRI P. VENKATASUBBAIAH : No, no; There is already such provision in some enactments.

SHRI CHITTA BASU : Perhaps, you are referring to rape cases. If that is the example to be emulated, I do not know what to say. In the criminal law this provision was made to help the poor, innocent, helpless women in police custody, who is raped and who cannot protect herself. If you have that analogy in mind, I take pity on you.

SHRIMATI GEETA MUKHERJEE :
The Government is in that condition of late.

SHRI CHITTA BASU : Then there is in camera trial, which creates an apprehension that in the trial you are going to give a certain arbitrary decision.

SHRI P. VENKATASUBBAIAH : In the in camera trial also the advocates will be present. In camera only means that outsiders will not be allowed to watch the proceedings.

SHRI CHITTA BASU : The terrorists are every where, even in this House. Even the Court rooms will be occupied by the terrorists. You have abandoned open courts; you have abandoned ordinary legal measures. Certainly, at a later stage. You will close the doors of this Parliament.

MR. CHAIRMAN : You are extending terrorism to this House from Punjab.

SHRI CHITTA BASU : If the open court is dangerous, the ordinary laws are not suitable, I am feeling that one day, which day is not far off, you would say "let us close the Parliament gate itself".

AN HON. MEMBER : It is already closed.

SHRI CHITTA BASU : Therefore, there are indications which bid still for the democracy of our country.

Sir, I would only like to quote what J.B. Kriplani once told about it your role in defending democracy, while he was in your party. While this House was debating the

necessity of Preventive Detention, he said addressing the ruling party: "It is not the Opposition, it is not the Goondas, it is not the black-marketeers, it is not even the Communists, it is you who are the bigger enemies of infant democracy".

Therefore, Sir, they are the danger for democracy. We are not. The Opposition is not causing danger to democracy. I think had Kriplani been alive, he would have repeated these very words himself. Therefore, they should take note of these words.

Sir, I urge upon the Hon. Minister to withdraw the Bill and thereby strengthen the roots of democracy. It is only the roots of democracy which can bring about the strength prosperity and unity of the country.

श्री राम नगीना मिश्र (सलेमपुर) :
सभापति महोदय, हमारे विद्वान मंत्री जी ने स्पेशल कोर्ट अध्यादेश को बिल का रूप देने के लिए इस सदन में जो बिल पेश किया है, मैं उसका समर्थन करने के लिए खड़ा हुआ हूँ।

मैं कुछ कहने के पहले यह कहना चाहता हूँ कि मैं एक साधारण किसान परिवार का हूँ, देहात से आया हूँ। मैंने सोचा था कि ये हमारे विरोधी दल के बड़े विद्वान लोग बैठे हैं, ये कुछ ऐसी भूमिका निभायेंगे जिससे यह लगे कि इस सदन में गम्भीरता से विचार कर रहे हैं। ये एक ऐसा माहौल बनायेंगे जिससे देश में शांति हो और देश का माहौल अच्छा बने, किन्तु बड़ी निराशा हुई, विरोधियों के अन्दोलनों से।

हमारे विरोधी हमें माफ करेंगे, हमें अफसोस यह है कि इस बक्त सती को उपदेश कौन दे रहा है? जो बाजार में औरतें हैं वह दे रही है। मैं बड़े अदब के साथ कहना चाहता हूँ कि हमारे प्रोफेसर बड़े लर्नेड हैं, वह ईमानदारी से अपने दिल पर हाथ रखकर कहें,

(श्री राम नगीना मिश्र)

लेकिन जिनको प्रजातंत्र में विश्वास नहीं, वोट में विश्वास नहीं वह हमको उपदेश दे रहे हैं प्रजातंत्र का उनके नेता जो विश्व के बड़े नेता थे, हमें याद है कि अपनी बात मनवाने के लिए अपने जूते मेज़ पर पीटते थे। अगर उनके यह अनुयायी हैं तो आप अभी भी उनसे कम बोल रहे हैं,

क्या यह बात सत्य नहीं कि आप उस दल को विलांग करते हैं, आपके यह नेता आदर्श हैं जिन्होंने अपनी बात मनवाने के लिए अपने साथियों को हथौड़े से पीटवाकर मारा ? इतना ही नहीं, अपने विरोधियों की लाशों को निकालकर उससे वैर साधा। आज वह उपदेश देना चाहते हैं प्रजातंत्र का ? यह भी उसके आर्ग्यूमेंट में आता है, जैसा आपने कहा था।

हमें अफसोस है कि हमारी सरकार इतनी, उदार है कि अभी जो करना चाहिए वह नहीं कर रही है। अभी-अभी अखबार में हमने देखा कि कुछ लोग कहते हैं कि वह हमारी मिलिट्री के सेनापति, राष्ट्रपति का बहिष्कार करेंगे। क्या यह देशद्रोह नहीं है ? हमारी सरकार उनके खिलाफ क्या कर रही है ?

संविधान जलाया जा रहा है। कुछ लोगों को जेल में बन्द किया गया और तुरन्त छोड़ दिया गया, क्या यह उदारता नहीं है ? मैं तो कहता हूँ कि शासन को इतना उदार नहीं बनना चाहिए। आज इतना उदार बनने का ही फल मिल रहा है।

दिल्ली में खालिस्तान का मारा लगाया जाता है और हम खामोश बैठे हैं। अभी एक मामूली स्पेशल कोर्ट की बात है, कितना हल्ला मचा रहे हैं ?

पंजाब में इतने कांड हुए, निरीह लोगों की हत्याएँ हुई, यह ऐलान किया गया कि सच्चा अकाली वह है, जो कम से कम तीन हिन्दुओं को मारो।

श्री जी.एस. निहाल सिंहवाला (संगरूर) :
35 को।

श्री राम नगीना मिश्र : अब भी कहा जा रहा है कि खालिस्तान ले कर रहेंगे। मैं मन्त्री महोदय से पूछना चाहता हूँ कि वह इस बारे में क्या करने जा रहे हैं। स्टेशन जलाये जा रहे हैं और ट्रेनें लूटी जाती हैं। ये स्पेशल अदालतें तो बहुत पहले बननी चाहिये थीं। माननीय सदस्य आतंकवादियों को दो साल तक डीटेन करने के बारे में कह रहे हैं। जो लोग देश के टुकड़े करने जा रहे हैं, जो बगावत करने जा रहे हैं, उनको केवल दो साल तक रोक कर क्या करेंगे ? उनके खिलाफ कठोर कार्यवाही होनी चाहिये। मैं विरोधी नेताओं से पूछना चाहता हूँ। कि क्या इस सदन में उन्होंने कभी किसी अच्छे कदम का समर्थन किया है। हमें वे दिन याद हैं, जब पंजाब में आतंकवाद का जोर था। उन्होंने कभी भी प्रधानमंत्री से आग्रह नहीं किया कि वह पंजाब की घटनाओं को रोकने के लिये आगे बढ़ें, हम आपके साथ हैं।

जब आतंकवाद चरम सीमा पर पहुँच गया और प्रधानमंत्री ने देखा कि देश के टुकड़े हो जाएंगे और तब उन्होंने फौज इस्तेमाल की, तो यह देख कर शर्म आती है कि बिरोधी खेमे के बड़े बड़े नेताओं ने कहा कि पंजाब में फौज का इस्तेमाल नहीं करना चाहिये। आज विरोधी दलों के मन में बोखलाहट है। आम जनता में यह चर्चा है कि पता नहीं, विरोधी दलों की क्या सूझ बूझ है कि वे देश के टुकड़े करने जा रहे हैं आप गाँवों में जाइये, सब लोगों का यही मत

है। कुछ नेताओं ने जरूर कहा कि यह कार्यवाही ठीक हुई है, यह पहले होनी चाहिए थी। मैं उनकी सराहना करता हूँ।

जब यह बिल सदन में आया, तो विरोधी दलों को इसमें अमेंडमेंट देने के बजाये सरकार के प्रति घन्यावाद का प्रस्ताव लाना चाहिए था उन्हें कहना चाहिए था कि स्पेशल अदालतें पहले बननी चाहिये थीं उन्हें यह संशोधन देना चाहिये था कि जो लोग देश के टुकड़े करने जा रहे हैं, जो राष्ट्रपति और सेना के उच्च अधिकारियों का बायकाट करने जा रहे हैं, उनकी लिस्ट बना कर उनको सख्त से सख्त सजा दी जाए। लेकिन वे क्या कर रहे हैं ?

गाय और भेंस पर जो जोंक लगती है, वह केवल खून पीती है, दूध नहीं पीती है। उसी तरह इन लोगों को हर बात में केवल बुराई नजर आती है, अच्छाई किसी बात में नजर नहीं आती है। यह चश्मे का अन्तर है। इनकी दृष्टि में कोई विकास का काम अच्छा नहीं है, देश की रक्षा का काम अच्छा नहीं है।

हमारे लिये यह गवं की बात है कि भारतवर्ष का एक नौजवान अंतरीक्षा में गया और सकुशल पृथ्वी पर लौट कर आया। सारे देश में इस पर खुशी मनाई गई। लेकिन विरोधी दल के एक बड़े नेता ने कहा कि इससे देश का भला नहीं होगा। इनसे पूछिए कि किस बात से देश का भला होगा। यह वह देश है, जहां हम एक सूई भी नहीं बना सकते थे। उस देश का एक नौजवान सफलतापूर्वक अंतरिक्ष में गया है। अगर इन लोगों के हाथ में देश के शासन की बागडोर आएगी, तो वे देश को रसतल में ले जाएंगे। एक बार लोगों ने इनको शासन दिया था। उस समय इन्होंने क्या चमत्कार किया ? - इन्होंने केवल यह काम किया कि श्रीमती

इन्दिरा गान्धी के परिवार को समाप्त करो, उनके घर की खुदाई करो, उनको जेल में बन्द करो। (ब्यवधान) यह भी एक तर्क है। कोई बात सिद्ध करने के लिए बाहरी बातें भी कहनी पड़ती है।

एक आदेश दिया जाता है : मारो मत, छोड़ो। हम कहते हैं कि उसको मत मारो, छोड़ दो। लेकिन प्रोफेसर साहब के पास बहुत बुद्धि है। वह इसको उल्टा पढ़ देते हैं। वह कहते हैं : मारो, मत छोड़ो। इसका इलाज क्या है ?

मारो, मत छोड़ो—ये पिछवा देते हैं, हम तो कहते हैं छोड़ने के लिये और ये पीछने के लिए कहते हैं। इसमें हमारा दोष क्या है ? यह स्पेशल अदालतें इसलिए बनी हैं कि जितने भी आततायी हैं उनको जल्द से जल्द सजा दी जाए जिससे कि देश में शांति स्थापित हो। लेकिन ये कहते हैं कि उनको क्यों बन्द किया जा रहा है। और बन्द कमरे में सुनवाई करने की जो व्यवस्था की गई है वह तो में समझता हूँ आतंकवादी के हक में हो रहा है कि कहीं उसके ऊपर अन्याय या जूलम न होने पाए एक अत्याचारी जिसने 10-20 कत्ल किए हैं उसको अगर खुली अदालत में पेश कर दिया जाए तो क्या वहां की जनता इसको बर्दाश्त करेगी ? अदालत के फैसले के पहले ही जनता अपना फैसला दे देगी। इसलिए मैं सोचता हूँ बन्द कमरे में कार्यवाही करना उसके हक में रहेगा, वहां पर यह पता चल सकेगा कि कहीं उसको गलती से तो मूर्जरिम नहीं बनाया गया है इसलिये मैं समझता हूँ विरोधी दल को इसकी तारीफ करनी चाहिए न कि विरोध।

अभी एक बुजुर्ग नेता, सुभाष बाबू के दल से सम्बन्ध वाले, ने कहा कि हमारे दरवाजे लोकसभा के लिये बन्द हो जायेंगे। मैं समझता

(श्री राम नगीना मिश्र)

हूँ इन विरोधियों का कोई आदर्श होता तो कोई पैरेलल नियम बनाकर पेश करते और कहते कि शासक दल इन नियमों को एक्सेप्ट करे, इससे देश में शांति आ सकेगी। पैरेलल नियम तो इन्होंने कभी बनाए नहीं क्योंकि ये जानते हैं कि कभी शासन में तो आना नहीं है इसलिये केवल विरोध ही करो। केवल विरोध करने के लिए ही विरोधी दल नहीं हुआ करते हैं लेकिन हमारे देश का दुर्भाग्य है, इस देश के विरोधी दलों की भूमिका तो यह होनी चाहिए थी कि अगर शासक दल ठीक से काम न करे तो उसको सजेस्ट करें कि राष्ट्र की भलाई के काम करो। और जब हम राष्ट्र के हित में काम करते हैं तो ये चाहते हैं कि देश में आतंक फैले। हमारे कम्युनिस्ट भाइयों की तो यह थ्योरी है कि देश में जितनी अराजकता फैलेगी, उनका उतना ही काम होगा। लेकिन उनको मालूम होना चाहिए कि यह भारतवर्ष है, रूस और चीन नहीं है। यह देश बड़े बड़े ऋषियों का देश है जिन्होंने तपस्या करके एक-एक चीज की रिसर्च की थी। यह दुर्भाग्य है कि अभी आप लोग जीवित हैं, आपकी पार्टी जीवित है। वह दिन दूर नहीं जब लोकसभा के दरवाजे आपके लिये बन्द होंगे, किसी और के लिए नहीं। मान्यवर, मैं थोड़ा सा भावावेश में आ गया था विरोधी दलों की बातें सुनकर।

जहां तक इस बिल का सवाल है मैं मन्त्री जी से कहना चाहता हूँ कि जब हम लोग देहात में जाते हैं तो लोग कहते हैं कि अरे भाई, पंजाब में इतना नरसंहार हुआ, आज भी तमाम हथियार, बम और बन्दूकें मिल रही हैं, आज भी डकैतियां हो रही हैं और लोग मारे जा रहे हैं- क्या ऐसे लोगों के केसेज भी स्पेशल अदालतों में पेश हो सकेंगे? जिन्होंने दस दस, बीस बीस

कत्ल किए हैं उनके फैसले इन अदालतों में होंगे या नहीं ?

श्री जगपाल सिंह : आपको मालूम नहीं है कि आपकी मिलिट्री के 80 प्रतिशत वीपन्स टेरोरिस्ट्स के हाथों में हैं। आपकी सरकार क्या करती रही ?

श्री राम नगीना मिश्र : जिसमें शक्ति होती है वह धैर्य रखता है। हमारी पार्टी और श्रीमती इन्दिरा गांधी में शक्ति है। वे तब तक बर्दाशत करती हैं जब तक कि पानी नाक तक नहीं आ जाता। यदि पानी नाक तक आ जाए तो वे तुरन्त फँसला करती हैं। श्रीमती इन्दिरा गांधी ने ऐसा चमत्कार किया है कि आपका कोई नामलेवा नहीं रहेगा। इसीलिए आप परेशान हो रहे हैं। पंजाब के आतंकवादियों ने इतना नरसंहार किया, वे इतने हथियार ले आये थे कि हमारी श्रीमती इन्दिरा गांधी एक हफ्ते भी लेट हो गई होतीं तो उन्होंने कश्मीर और पंजाब को इस देश से अलग ही कर दिया होता।

15.00 hrs

इतने हथियारों को लाने में जो तमाम लोग शरीक हैं, तो क्या अदालत में फैसला करने के लिए कोई प्रावधान किया है। जिन्होंने दस-बीस कत्ल किए, राष्ट्र को तोड़ने का काम किया, उनके लिए दो साल की सजा होगी या उसके लिए भी कुछ प्रावधान है। जब ऐसे लोगों को कठोर दंड नहीं दिया जाएगा, तब तक ऐसे अत्याचारियों के हौंसले पस्त नहीं होंगे। आप जान लीजिए यदि पंजाब में ऐसा न हुआ होता तो और भी प्रदेशों में ऐसी स्थिति न होती शास्त्री जी जानते हैं कि बिहार में भी कुछ लोग

इस प्रकार की राष्ट्र विरोधी कार्यवाही करने के लिए सिर उठा रहे हैं।

सभापति महोदय : मिश्र जी अब आप परसों अपना भाषण जारी रखिएगा।

15.01 hrs.

MOTION RE : TWENTY-SIXTH AND TWENTY-SEVENTH REPORTS OF COMMISSIONER FOR SCHEDULED CASTES SCHEDULED TRIBES AND FIRST AND SECOND REPORTS OF COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES

MR. CHAIRMAN : Now, we take up the next item, Shrimati Ram Dulari Sinha.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRIMATI RAM DULARI SINHA) : Mr. Chairman, Sir, I beg to move :

“That this House do consider the Twenty-sixth and twenty-seventh Reports of the Commissioner for Scheduled Castes and Scheduled Tribes for the years 1978-79 and 1979-81, laid on the Table of the house on the 22nd December, 1980 and 11th August, 1982 respectively and the first and second Reports of the Commission for Scheduled Castes and Scheduled Tribes for the period from July, 1978 to March 1979 and April 1979 to March, 1980, laid on the Table of the House on the 22nd December, 1980 and 11th August, 1982 respectively.”

As the hon. Members of this house are aware, the Twenty-sixth Report of the Commissioner for Scheduled Castes and Scheduled Tribes was placed on the Table of this House on the 22nd December, 1980 and the Twenty-seventh Report of the Commissioner was placed on the 18th August, 1982. Apart from these two Reports of the Commissioner for Scheduled Castes and

Scheduled Tribes the First Report of the Commission for Scheduled Castes and Scheduled Tribes was placed on the Table of this House on the 22nd December, 1980 and the Second Report of the Commission on the 11th August, 1982.

The Commissioner and the Commission have made valuable suggestions. These four Reports may now be taken into consideration for discussion by the hon. Members.

The Government of India is fully conscious of the problems of Scheduled Castes and Scheduled Tribes. The great concern and commitment of the Government of India to the cause of socio-economic development of these communities who is about a quarter of our population have been reflected in the vigorous measure taken by this Government as soon as they came to power in 1980.

The acceleration of the pace of development of Scheduled Castes and Scheduled Tribes has been included as point No 7 in the new 20-point Economic Programme announced by the Prime Minister on 14th January, 1982. The massive investment has been made for the development of Scheduled Castes and Scheduled Tribes through the strategy of Special component Plan and Tribal Sub-Plan combined with special Central assistance evolved for the purpose during the Sixth Five Year Plan. The process is on and will continue during the Seventh Five Year Plan with still more vigour.

The strategy for the development of Scheduled Castes and Scheduled Tribes during the ensuing Seventh Plan period is being discussed and we in the Home Minister took the initiative to discuss the strategy in two meetings with the hon. Members of both the house Parliament belonging to Scheduled Castes and Scheduled Tribes.

We are grateful to the hon. Members who so continuously responded to our invitation and participated in the discussion and gave us their valuable suggestions in those two meetings.