

PROF. MADHU DANDAVATE: I introduce the Bill.

DR. VASANT KUMAR PANDIT: I introduce the Bill.

MR. CHAIRMAN: Dr. Pandit.

PROF. MADHU DANDAVATE: Sir, I have another Bill. Please see on the back side of the agenda.

MR. CHAIRMAN: It is not here. You may do that later.

Dr. Pandit.

PREVENTION OF RAGGING IN
EDUCATIONAL INSTITUTIONS
BILL*.

DR. VASANT KUMAR PANDIT (Rajgarh): I beg to move for leave to introduce a Bill to provide for prevention of ragging by senior students of junior students in educational institutions.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to provide for prevention of ragging by senior students of junior students in educational institutions."

The motion was adopted.

DR. VASANT KUMAR PANDIT: I introduce the Bill.

COMPULSORY MILITARY TRAINING
BILL*.

DR. VASANT KUMAR PANDIT (Rajgarh): I beg to move for leave to introduce a Bill to make military training compulsory for all able-bodied persons.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to make military training compulsory for all able-bodied persons."

The motion was adopted.

SMALL FARMERS AND AGRICULTURAL
WORKERS SECURITY
BILL.*

PROF. MADHU DANDAVATE (Rajapur): Prof. Ranga, I am introducing this Bill for you.

MR. CHAIRMAN: The two professors are combining.

PROF. MADHU DANDAVATE: I beg to move for leave to introduce a Bill to provide for payment by the Government to the small farmers and agricultural workers of compensation for injury by accident.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to provide for payment by the Government to the small farmers and agricultural workers of compensation for injury by accident".

The motion was adopted.

PROF. MADHU DANDAVATE: I introduce the Bill.

15.50 hrs.

INDIAN TELEGRAPH (AMENDMENT)
BILL—Contd.

(Amendment of Section 5)

MR. CHAIRMAN: The House will now take up further consideration of the following motion moved by Shri Bhogendra Jha on 19th January, 1982, namely:—

"That the Bill further to amend the Indian Telegraph Act, 1884, be taken into consideration."

Hon. Members only seventeen minutes are left. So...

*Published in Gazette of India Extraordinary, Part II, Section 2, dated 5th March, 1982.

SHRI XAVIER ARAKAL (Ernakulam): Sir, there is an important Bill. The time may be extended by half-an-hour.

MR. CHAIRMAN: Is it the sense of the House that the time may be extended by half-an-hour?

SOME HON. MEMBERS: Yes.

MR. CHAIRMAN: So, time is extended by half-an-hour.

SHRI E. BALANANDAN (Mukundapuram): Sir, my friends have already covered all the main points with regard to this Bill, and, as such, I will only touch a few points.

Sir, the present Bill seeks to amend the Indian Telegraph Act which was passed more than a hundred years ago, that is, in 1885. This Act of 1885 authorised Central Government and States Governments and the officers appointed by them to intercept any message or telegram for detailed examination. This I need not say is an infringement of freedom.

Sir, in the original Act of 1885 it is said 'class of people'. After attaining freedom we are now in 1982 and, Sir, in connection with that one day strike of 19 January 1982 all communications sent from trade unions to their respective head offices were only received by them after the strike. They were sent one month or two weeks before the strike but were received only after the strike. A telegram should be delivered immediately but telegrams sent two weeks before have been received only after the 19th January, 1982 strike.

Sir, during the Freedom Struggle any telegram sent by our Freedom fighters were to be delivered only after being decided by the policeman who was authorised to check. As Shri Bhogendra Jha has suggested, in his Amending Bill during the time of proclamation of emergency some kind of restriction can be there.

'But why should you have this kind of a restriction for all times? This Act affects all the people all the time, especially, it affects the working class more. Mr. Stephen, the hon. Minister is himself a trade unionist; he knows the position very well. Even in respect of a simple action by the worker, this Act is being used against him. This Act was originally meant to take action against the freedom fighters. But after attaining freedom, the Government is using it against certain political parties especially my party. I am constrained to say this. I don't know whether our party is still in the list or not; but I told this: Telephones, telegrams, letters etc. addressed to us are normally being tampered with. Sometimes they are not delivered at all.

So far as Protection is concerned there are sufficient provisions already there in the ordinary Codes. This kind of tampering with posts, telephone and telegrams etc. should be stopped forthwith. I hope Mr. Stephen will agree with the amendment suggested by Shri Bhogendra Jha. This 1885 model is outdated and should be scrapped. As I said, it was precisely intended to be used against freedom fighters of the country. And after we have attained freedom, this kind of an Act should go out of our Statute-book, as suggested by Shri Bhogendra Jha.

With these words I conclude.

SHRI XAVIER ARAKAL (Ernakulam): Sir, if you examine the Statement of Objects and Reasons of this Amending Bill, you will find that it deals with something relating to the functions of the Government. A part of the Statement of Objects and Reasons deals with the deletion of Section 5 of the Telegraph Act of 1885. He has incorporated an amendment to that effect.

Part B relates to the fundamental philosophy of the Government: the

right of the citizens and of the Government, to freedom and democracy, etc.

In this context, we have to examine how far a Government can go in the field of liberty of the citizens. If the Government has to function effectively, to safeguard freedom and right of citizens and safeguard the integrity of the nation, no doubt, Government is bound to take certain measures, to resort to certain methods and have some regulations and laws.

The hon. Mover, in his opening speech remarked that this Act is a very old Act, relating to 1885. This has become obsolete in the conditions now prevailing in our country. I disagree with the proposition.

Sir, we have a Constitution in which the right of the citizens and the role of the Government are clearly spelt out.

If there is any restriction in regard to fundamental rights etc. these are spelt out. Therefore, that argument, according to me, is quite irrelevant and unsustainable.

However, if you look at Section 5 of this Act you will see that this Section bears a heading which reads as follows:

'Power for Government to take possession of licensed telegraphs and to order interception of message.'

16 hrs.

I for one want that the private right of the individual should not be above the rights of the society and the Government. It must be subservient to the Fundamental Rights of the nation to safeguard the Government right to property of the citizens, etc. In that context, you refer to the proposed amendment clause sub-section (1) of Section 5 of the Indian Telegraph Act, 1885, which says as follows:

"(i) in sub-section (1)—

(a) for the words "On the occurrence of any public emergency, or in the interest of the public safety" the words "On the issue of a Proclamation of External Emergency by the President under article 352 of the Constitution of India declaring that the security of India is threatened by war or by external aggression and during the period in which such a Proclamation is in force"..."

I have a serious objection to that mainly because it says that this will arise in the case of external emergency alone. I think the mover of this Bill might not have pondered over the consequence and he might have just assumed that in the absence of an external aggression or emergency we should have a liberalised, uncontrolled and unchecked licence to resort to any sort of activities. This is not democratic. I do not think that any country in the world has adopted such a means. I fail to understand why the mover of this Bill has suggested this amending proposition in this clause. The only contingency which will attract or ought to attract, according to him, is the external emergency. Sir I have a serious objection to that.

The second Point is that there are already 15 amendments made to this effect. This is the 16th amendment which the Government is resorting to. We have so much experience in this field and so much advancement has been made in the field of communication. I therefore propose and also demand that there should be a comprehensive bill relating to all these aspects.

My last submission is that during peace time if the Government intends to intercept any of the communications, message or telegrams, there should be norms and conditions. Therefore, there will not be any

[Shri Xavier Arakal]

abuse. Arbitrary or discretionary exercise of that power will not be vested in the authorities. These are the two submissions which I wanted to make. To sum up my points, I may point out that restricting it to the period of the external emergency is not practicable and it is not adopted anywhere in the world. Secondly, a comprehensive bill covering all these aspects should be brought forward. Thirdly, in normal peace time, there should be norms and conditions in which this can be resorted to. These are my submissions.

श्री सत्यनारायण जटिया (उज्जैन) :

माननीय सभापति जी, यह जो बिल लाया गया है, इस का उद्देश्य बिल्कुल स्पष्ट है कि देश की आजादी के बाद भी ये प्रतिबंध लगे रहें जो कि देश की आजादी से पहले लगाए गये थे। आप यह कह सकते हैं कि सरकार चलाने के लिए, शासन चलाने के लिए कुछ ऐसे नियम बनाने होते हैं और उनमें कुछ इस प्रकार की चीजें रखना जरूरी हो जाती हैं। कहने के लिए अनेक बहाने हो जाते हैं, अनेक बातें कह दी जाती हैं। ऐसे समय पर जब कि देश में शांति और अमन हो, ऐसे कानून की कोई आवश्यकता नहीं है। इस प्रकार का कानून देश में अभिव्यक्ति की स्वतन्त्रता को कम करता है। देश में जब स्वतन्त्रता और प्रजातंत्र की बात हो तो ऐसे समय में स्वतन्त्रता को अभिव्यक्ति मिलनी चाहिए। इस पर कोई निगाह रखने की बात हो तो यह बात जंचती नहीं है। ऐसी बातों से हमारी अभिव्यक्ति की भावना सीमित हो जाती है।

हमें बहुत सी अपनी बातें कहनी पड़ती हैं, हमें अपने संदेश एक दूसरे तक पहुंचाने होते हैं, एक स्थान से दूसरे स्थान तक भेजने पड़ते हैं। जब हमें यह लगता है कि हमारा टेलीफोन टेप हो रहा है तो हमें अपनी बहुत-सी बातें छोड़ देनी पड़ती हैं।

हमें जो टेलीफोन की सुविधा मिली हुई है उसका भी हम पूरा उपयोग नहीं कर पाते।

इसी प्रकार हमारे पत्रों को जब सेंसर किया जाता है तो हमें उनका उपयोग करने से भी वंचित होना पड़ता है। जब हम विदेशियों के अधीन थे, हमें जब तक आजादी प्राप्त नहीं हुई थी उस समय हम क्रांतिकारियों को डिक्शनरी या पुस्तकों में रख कर सूचना पहुंचाया करते थे। उस समय तो हमें विदेशी शासन से लड़ना था। लेकिन आज तो हम आजाद हैं, हम अपनी सरकार को स्वयं चुनते हैं। आज हमारी अपनी ही सरकार है। उसमें इस प्रकार की स्थिति की आशंका करना ठीक नहीं है। हमारे देश के स्वतन्त्र नागरिक पर इस प्रकार की शंका करना उचित नहीं है।

यह जो बिल लाया गया है उसके पीछे यही भावना है कि यह जो पुराना कानून है, इसकी अब कोई उपयोगिता नहीं है। यह कानून उपनिवेशवाद के समय का है और आज उपनिवेशवाद नहीं है। दुनिया के बहुत से देश आजाद हुए हैं और उन आजाद देशों ने अपने अपने कानून बना कर लोगों को अभिव्यक्ति की स्वतन्त्रता दी है। हमने भी ब्रिटिश टाइम के बहुत से कानूनों को समाप्त किया है। यह जरूरी है कि ऐसे कानून को समाप्त करने के लिए हमारा संचार मंत्रालय आगे आए। लोगों की स्वतन्त्रता में बाधक होने वाली बात ठीक नहीं है। आजादी को ठीक रूप से रखने के लिए इस प्रकार के कानून में संशोधन किया जाना चाहिए। हां, अगर देश के अन्दर कोई संकट हो, या देश पर कोई बाहर से आक्रमण हो तो उस समय यह बात की जा सकती है। आज जब कि देश स्वतन्त्र है, हमारे देश में प्रजातंत्र की कार्यपद्धति स्थापित है तो इस प्रकार के कानून को समाप्त किया जाना चाहिए।

इतना ही निवेदन कर के मैं अपनी बात समाप्त करना चाहूंगा ।

श्री धृष्टि चन्द्र जैन (बाड़मेर) : जो भारतीय टेलीग्राफ संशोधन विधेयक प्रस्तुत किया गया है उसका मैं विरोध करने के लिए खड़ा हुआ हूँ । इसके समर्थन में विरोधी पार्टीज के लोगों ने दलील दी है विशेष तौर से वह यह दी है कि इंडियन टेलीग्राफ एक्ट 1885 जो है वह बहुत पुराना हो गया है इसलिए इसमें तब्दीली लानी चाहिए । परन्तु हमारा जो इंडियन एवीडेंस एक्ट 1889 है वह भी बहुत पुराना हो गया है । उसमें भी अभी तक हम कोई भी परिवर्तन नहीं कर सके हैं । इसी प्रकार हम अ ई० पी० सी० एक्ट में भी बहुत ही कम चेंजिज कर सके हैं । इसलिए यह जो आरगुमेंट दी गई है कि यह एक ओल्ड एक्ट है, इसलिए इसमें परिवर्तन होना चाहिए, यह आरगुमेंट कहीं स्टैंड नहीं करता है ।

दूसरी बात यह है कि देश की आजादी देश की स्वतन्त्रता, देश की एकता ये हमारी परसनल लिबर्टी से अधिक बड़ी हैं । व्यक्ति की स्वतन्त्रता देश की एकता, देश की सुरक्षा मजबूत रह कर ही बनी रह सकती है । आज अगर राष्ट्र की सुरक्षा या एकता को खतरा पहुंचता है तो हमारी स्वतन्त्रता भी कायम नहीं रह सकती । अभी भी हमारे देश में राष्ट्र विरोधी तत्व हैं और ऐसे राष्ट्र विरोधी तत्वों के लिए इस प्रकार का प्रोविजन रहना चाहिए । आज भी ऐसी राजनीतिक पार्टियां हैं जो इस तरह की कार्यवाहियां करती हैं, देश के विरोध में काम करती हैं । ऐसी नक्सलवादी पार्टियां हैं, जो देश के लिए खतरनाक हैं । इस प्रकार की विचारधारा के लोगों की गतिविधियों पर नजर रखने के लिए परसनल लिबर्टी को नियंत्रित करना आवश्यक

है । पाकिस्तान और चीन की गतिविधियों से कौन वाकिफ नहीं है, इनकी स्पाइस एक्टिविटीज को रोकने के लिए यह प्राविजन होना चाहिए ।

इसके साथ ही मैं इस बिल का विरोध करता हूँ ।

16.10 hrs.

[SHRI CHINTAMANI PANIGRAHI
in the Chair]

श्री मूल चन्द डागा (पाली) : सभापति जी, सभा पुराने कानून खराब नहीं होते और सभों पुराने आदमी बुरे नहीं होते और सभी नए आदमी और नए कानून अच्छे नहीं हो जाते । मुझे समझ में नहीं आया कि इस नए कानून में जो माननीय सदस्य लाए हैं क्या नया है । दोनों कानूनों में क्या फर्क है ? मुझे तो कोई फर्क मालूम नहीं पड़ता ।

मैं समझता हूँ कि आज भी पाकिस्तान की गतिविधियों के बारे में आप जानते हैं । पाकिस्तान के पास इतने हथियार हैं, आपने भी कई बार ध्यान दिलाया है कि खालिस्तान आदि पृथकतावादी शक्तियां काम कर रही हैं । तो इस प्रकार की गतिविधियों पर नजर रखने के लिए यह कानून आवश्यक है ।

इस कानून में नया क्या है ? गवर्नमेंट इफ सेटिस्फाई शासन को पूरा संतोष हो जाता है तो ऐसी पृथकतावादी ताकतें जो देश के हित में काम नहीं कर रहीं हैं, उनके विरुद्ध इस तरह की कार्यवाही करनी चाहिए । उनको तो कान्फीडेंशली करना चाहिए, एक्ट में तो सारी खुली हुई बात है । इसलिए इस कानून को ले कर कोई नई बात नहीं लाई गई है । इसलिए मैं चाहता हूँ कि इसे मेरे साथी वापिस ले लें ।

SHRI K. A. RAJAN (Trichur): Mr. Chairman, Sir, I feel that this is a Bill which is in consonance with our democratic traditions for upholding the democratic principles and values of the Constitution. The wonderful thing is that we are still on the legacy of the British imperialists who were very much in need of such an enactment to safeguard their interests and power and rule. Now, I do not understand what really is the necessity of this. If it is a question of dealing with other disruptive or other elements within the national orbit, of course, there are other laws and you can also deal such issues on political level. But, unfortunately there is a hue and cry even inside and outside the Parliament that even the MPs and other responsible people in political parties are not being spared by the censor machinery, I support the amendment because it is shame on the part of the Government to uphold this outdated law and thereby jeopardise the fundamental principles of liberty. I hope the Hon. Minister who was very much in the independence movement knows very well how it is being used by the ruling party, especially against the Opposition parties and individuals.

So, on that ground I support this amendment. The amendment is appropriate and proper in conformity with our democratic traditions.

THE MINISTER OF COMMUNICATIONS (SHRI C. M. STEPHEN): Sir, I am happy that this Bill was brought forward, because it gave an opportunity to have a look at the whole law, and also put forth my point of view—not necessarily as a part of the Government, but as a citizen of this country.

I was really amused to see the sudden upsurge of reformist zeal that was taken up by almost every one of the big gun on the other side. The top men of every party came up here, and in the other House, with the amendment of this Act and they were also speaking.

Many years have gone by, after independence. For the first time everybody has focussed to his attention this. I was wondering why it was not brought during the time when the Janata Party was in power, and why it has been brought up suddenly now. When the Janata Party came to power, they brought forth so many Bills to correct those provisions or Acts which were amendable for misuse. They identified Acts which they wanted to annual; and with great expedition, they brought forth annulment legislation for cancelling certain laws that were in existence earlier. And this law did not come under that purview—which means, in their long experience in the Opposition, they never felt that this Act was ever misused. If they had felt that, they would have brought a Bill along with the other Bills which they had brought on the ground that those Acts were being misused.

After they have gone out of power, they suddenly wake up to this and bring this Bill. I was wondering why; for the simple reason that when they were in power, they found that this was a provision which could be misused. Out of their own experience, by misusing this, they realized suddenly that this a provision which can be misused. So, from that subjective lesson, by a sort of subjective action to themselves, they misused this; they realized this can be misused. Now, they realise this might be misused. They are imagining it is being misused. Therefore, they want to amend it. That is how this has come.

I want to assure my friends from the other side that their imagination is absolutely baseless. There is no such misuse taking place, but unfortunately for me, I cannot place on the Table of the House which is being done, and which is not being done, except to give a positive assurance that we are the same that we were before 1977. In the same manner that we were not misusing it before 1977, we are not misusing it even to-day. This is the basic thing that I want to put across.

Mr. Jha has brought forward this Bill with the best of intentions. But I am afraid he has not realized, and many Members from the other side have not realized the significance of Section 5 which is in existence, and the implication of the amendment which has been brought in. Section 5 has two sub-clauses; and these two are for entirely different purposes. My friend Mr. Jha and many others on the other side conceded that when there is a real emergency in this country, and when extraordinary situations are there, then the Government must have power to interfere with this channel of communication. They conceded it.

Mr. Jha has very liberally conceded, and many other friends also conceded that position. The question is: having conceded that position, to what extent this provision must be there. Conceding this, they say: sub-clause (2) must go. And they say that sub-clause (1) must remain, with certain amendments. I forget the amendment for the time being.

Sub-clause (1) has only one purpose. We must understand that under the law, the power to operate—I quote:

“Within (India), the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs.”

it is so, not only in this country, but everywhere in the world. This is an exclusive privilege of the Government and the telegraph installations belong to the Government. Nobody else has got the freedom to run this communications service, the telegraph service, the telephone, wireless, whatever that be; entirely that is of the Government. The Government can license certain people to run them. But that running is only under a licence and the Government have got the power to cancel that licence. Anybody who is running a telegraph service or using any of these instruments without licence can be hauled up and the punishment is three years' imprisonment. And the

court can order the forfeiture of that to the Government. That is the law today in existence with which nobody has got any quarrel.

Now this sub-clause (1) is introduced for two purposes: Assuming that in an emergency, the same as Mr. Jha is saying, there is an emergency, or a real emergency, for example, apart from the external war, whereby there can be a certain situation in Assam, certain situation in Mizoram in Nagaland can be there, any Khalistan movement and so many other things; supposing they start using a wireless service, which can easily be done—it is not a high technology thing and all that—supposing that is being done, now would you agree that the Government has the power to take it over or would you allow them to carry on with that? The simple thing is that it is not an external war. It is not a proclamation of emergency, but there is a situation, assuming there is a situation, and assuming, we know they are using this wireless apparatus for conveying messages from one place to the other, and for monitoring any subservient situation in this country, would the hon. Member say that the Government must keep quiet and say, “you carry on with your activity”? Supposing if that situation arises then, under Clause (1) the Government has got the power to temporarily take over that. So long as it relates only to a temporary take-over, they can deprive them of that. This can be done even without subsection (1), by really withdrawing the licence; and then take over. This can be done. But without withdrawing the licence this can be taken over and kept. That is one purpose.

The second purpose is that a situation can arise when we want this apparatus itself. The apparatus may not be sufficient which is with us, we might have given the licence, to a large number of people to operate the apparatus. A real emergency situation may arise. Instead of manufacturing this, we want to take it over

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and use is in the defence of the national interest. It is for this purpose that Sub-clause (1) is provided. And you must understand that this is not a legacy of the British Government as such. Under the British law today in Britain, under Section 52 of the Telegraph Act of 1863, this law is operating there, not in a colonial country but in their own country. It is not as if they brought it here. You just address yourself to this particular position of the necessity or non-necessity of a provision which will enable the Government to deprive sub-versive elements of these illegal operators of the apparatus and making use of it in another situation for the defence of our country, for the service of our country. That is the simple purpose as far as sub-section (1) is concerned. Anyway, on that my friend Mr. Jha has absolutely no quarrel at all.

I will take a few minutes more.

Only he says it must be a proclamation of emergency. My simple answer to him is, forget about the proclamation. Assuming in Mizoram a certain situation is there; in Nagaland certain situation is there today; in Assam certain situation are there; Khalistan movement is there; may be the Naxalite activities come up from one end to the other. Would you or would you not agree that they must at least be deprived of operating a parallel telegraph service in this country to carry on their conspiratorial activities? This is a grave question as far as it is concerned I do not want to go any further to answer that question. I would only say that this question has been answered in the meanwhile. I will leave it at that.

Now we go on to Sub-clause (2). Sub-clause (2) provides for two things: One, if a telegram is delivered to me, if it comes under a particular clause, I will refuse to transmit it and secondly, if a message has been transmitted, in the process of transmission the

Government says that we must have the power to intercept it and to take it and to seize it. Thirdly, we must have the power in appropriate cases to hand over the telegram or the message to the Government if the Government decides that that particular class of telegram is necessary. The three are for three different purposes. This section is not what it was when the British Government left us. I am saying this because it was being repeated that the British Government left this law and you are keeping it. The law has completely changed. In 1972, when we were in power, we brought an amendment to sub-clause (2) and that amendment completely changed the law. Before this amendment, the law was like this:

"On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government, or any officer specially authorised in this behalf by the Central or a State Government may order that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order."

This was an arbitrary clause; anything could be brought in and taken over. In 1972, a sweeping amendment was brought in by us. That amendment made certain new provisions.

The law today is as follows:

"On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so

to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages...."

The rest of it follows. The important thing is, anybody just cannot order it. It is not enough that there is an emergency. It is not enough that public interest demands it. It is also necessary for the Government to be satisfied under article 19 that it is necessary in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence. That is not enough. It has to be for reasons to be recorded in writing. This is the new amendment brought in 1972. Without any non-official resolution, we brought in this amendment in 1972, amending the British legacy. We made it justiciable. We said, these are the conditions. We said, it must be an order for reasons to be recorded in writing and only then such an order can be promulgated. They will have to classify the type of messages; they must classify the class of persons who are to be interfered with. There is a very high grade officer in the Home Ministry to operate on it. The Director of the CBI will examine it and after a detailed written order specify that such and such persons messages may be intercepted for us to scrutinise. If any person has got any doubt, it is justiciable. You can go to a court of law and demand why your message is being intercepted. The court is bound for to ask for an explanation and ask us to produce the order with reasons recorded in writing. The court can go into the reasons and decide whether it is properly given or not. This is the major change that has been brought about. Anybody just cannot order and intercept any message. It can be done only on the basis of this order. It is not, as Mr. Jha or some other friend said,

that there is nothing secret about it. That is what is stated. It is entirely wrong. There is everything secret about it. That is the very essence of this service. There are different sections under which any violation of the secrecy is taken as a high penal offence, punishable with fine and imprisonment. Therefore, the secrecy is assured. If anybody intercepts, it is a penal offence. If anybody refuses to transmit it is a penal offence. If anybody reveals the contents of a telegram, it is a penal offence. These penal offences under section 26 are made drastically punishable. It is punitive. Unless there is a proper order, nobody will have the right to intercept or refuse to transmit it. That is why in an emergent situation, the Government is given the freedom to specify the persons in a detailed speaking order and to direct that interception may take place. Whoever intercepts, is accountable also. That has been made justiciable. The point I am emphasising is this is an entirely different provision from what the British Government left with us. We amended it in 1972 to be in line with the Constitution. We amended it 22 years after the Constitution came into force. The Government of Shrimati Indira Gandhi—we on our own basis—came forward with an amending law and made it drastically different. We made it justiciable and everything has been done to prevent misuse. If any friend has got any doubt that his message is being tampered with, it is open to him to go to a court of law and ask for a writ. Immediately we will be summoned and asked to produce the order whereunder we have tampered with that message, either to say 'yes' or 'no'. If we say 'yes' we will be asked to produce the order. (Interruptions). Nobody has intercepted; you are now labouring under an imagination. The only point for the House to consider is whether in a situation which I stated the people must be allowed to send telegrams as they choose. After all, the telegraphic net work in India is very big. The postal net work is very large. This net work is not to be placed at the

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service of people who want to subvert the nation and who want to work against the sovereignty and integrity of the country; they can do it otherwise.

DR. SUBRAMANIAM SWAMY (Bombay North East): You said, "they can do it otherwise". Do you stick to it?

SHRI C. M. STEPHEN: No; anyway, this must not be available to him. Nobody will deny that there must be an intelligence service—either CBI or an investigating service—which will have to investigate. Suppose I carry a letter on my person. The investigating officer can say, "Let me see that letter". He can go through that letter. Nobody can deny it. He can interrogate me. He can come into my house and make a search. Is it not a part of the investigatory process? But if it is put in the postal service or telegraph service, then the investigating officer must not interfere! Is this a reasonable proposition? As part of the investigatory process, he must have the power to go into this also, just as he has got the power to go into private correspondence and everything. If the investigatory process must be able to go into the other channels of investigation, merely because it is in this particular service, it must not be barred. As somebody going into some church or gurdwara or somewhere in a sanctuary and sitting there cannot be taken away, the telegraph service cannot be made a sanctuary where people can be allowed to operate that way. Investigatory process must be permitted to go into that also.

These are the purposes. This is fundamentally for the security of the country and for the preservation of the sovereignty of the country. There are dangers all around; subversive activities are going on. When all these are happening, it is absolutely necessary for the Government, for the intelligence service, to be on the lookout as to whether things bad are happening or not. We are not under obligation to carry the public message

of conspiratory elements. If somebody is found indulging in conspiracy and subversion, we must have the freedom to say, sorry, we cannot transmit your message, you do as you choose, we will not do that. This is the simple purpose of the Act.

I hope, the Bill will be withdrawn with a compliment to the Government that in 1972 we amended the Act to make it justiciable and absolutely fool-proof. All the interests and the Fundamental Rights of the people are taken care of. I oppose this Bill.

SHRI BHOGENDRA JHA (Madhubani): I am thankful to those hon. Members who have supported this Bill. I am also thankful to the Minister who has tried to make the best of a bad case. I wish I could have been thankful to my friends on the other side. But alas, I am helpless there.

Here several categories of people are involved like elected representatives, Ministers, institution of Parliament itself, press and then the citizens of the country. The Speaker in his ruling on the issue of privilege observed in this very House last August when he had quoted from the ruling of the Australian Parliament that the law of our country makes us helpless. Rather he has asked Parliament to amend this law, and only then the Members of Parliament and elected representatives can be defended against such type of tapping, seizure or censor. That was his helplessness.

About the law, the Speaker has observed:

"They do not, however, exempt the Members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a Member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws, unless there are good and sufficient reasons in interest of Parliament

itself to do so and unless so provided in the Constitution or in any law. The fundamental principle is that all citizens including Members of Parliament have to be treated equally in the eyes of law."

I would like to say that it is because of this that I have sought to amend the law not only for the Members of Parliament or elected representatives but also for all the citizens. Here the law makes Parliament helpless. I am again quoting Speaker's ruling:

"I would permit myself one observation before concluding the subject and that is about communications sent by my Office including the Lok Sabha Secretariat to Members. I hope the concerned authorities realise that such communications would not attract the attention of censoring authorities."

So, this is his pathetic appeal. There is no law which can protect the communication from Parliament, from the Speaker and from the Lok Sabha Secretariat, from censoring.

So, Sir, pathetically to Speaker had to appeal to the authorities concerned here. He means not the Communications Ministry, but the Home Ministry who do this business here and who are actually concerned with this. That is the pathetic state of affairs of the Sovereign Parliament of this country. It is also helpless.

Sir, with regard to the Australian quotation upon which our Speaker depended in giving his ruling. I wish the entire ruling could be placed before the House.

MR. CHAIRMAN: I hope you are not reading the whole thing.

SHRI BHOGENDR A JHA: The whole thing is not necessary. I am going to read the relevant thing.

MR. CHAIRMAN: It is because you must be brief now.

SHRI BHOGENDR A JHA: I will be simply quoting the relevant portion, I will not take much time. I am going to quote from the ruling of the Australian Parliament as reported in the *Economic Times*, dated 1st December, 1981:

"...At the same time, it declared: Interference with the mail of any citizen in peace-time is a serious matter, but under war conditions every effort must be made to ensure that no useful information can reach the enemy..."

MR. CHAIRMAN: You have already mentioned all these things.

SHRI BHOGENDR A JHA: So, that was about war time conditions of 1944. Here this ruling is irrelevant because it is concerned with peace time and that is why in my amendment I have provided for war time conditions when there is aggression.

The Minister has correctly understood me. Regarding sub-section (1) there is not much quarrel. Basically the thing is that the unity, integrity and sovereignty of the country must be defended. On that point there is no quarrel. But with regard to sub-section (2) of Section 5, I would say that the Communications Minister has not said anything, but the then Defence Minister, Mr. Jagjivan Ram, the present Member of Parliament, had stated before the Shah Commission that he was under surveillance, and he was under censor. The then Member of the Lok Sabha and President of the Ruling Party, Shri Chandra Shekhar, was under surveillance and his mail was censored and his telephone was tapped. The then Chief Minister of Tripura, Mr. Chakravorty, complained to the then Communications Minister, Mr. Brij Lal Verma, that his telephone was being tapped and the Communications Minister stated that he had no business to tap or censor.

MR. CHAIRMAN: Have you not covered all these things in your speech?

SHRI BHOGENDRA JHA: I am finishing. I have submitted that the Home Minister should be asked to reply because I think my friend, Mr. Stephen may also be in that category and his telephone may also be tapped or censored.

MR. CHAIRMAN: He is conscious of it.

SHRI BHOGENDRA JHA: He may not be conscious or he may be helpless.

MR. CHAIRMAN: He is conscious.

SHRI BHOGENDRA JHA: In such a situation here the press also comes in. One thing he has made it clear is that the law is not sacrosanct. It was amended in 1972 and I think my friends from the other side will take note of it.

MR. CHAIRMAN: Kindly conclude.

SHRI BHOGENDRA JHA: I will conclude. I will not take much time.

The Members here are also involved in this. The amended sub-section (2) as it stands now says:

“Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.”

Who will implement this sub-section? The Central Government or the State Government or any officer specially authorised in this behalf by the Central Government or the State Government. So, the Prime Minister's mail can be censored in any State. The law does not prohibit that. If the Chief Minister can be censored, any other Minister also can be censored. In such a situation there would be anarchic conditions because of this sub-section.

So, the press, the citizens, the elected representatives, Ministers or any one can be censored. What for? Not for emergency reasons and not for the danger to the country. But they do this in normal times. Tapping also takes place on telephones. I think, this must go and the Minister should pick up courage to accept this.

With regard to telegrams, when the telegrams are sent formally, they are taken away by the intelligence officers.

MR. CHAIRMAN: Now please conclude.

SHRI BHOGENDRA JHA: So, Sir, they take it away for one week to scrutinise it—whether there is any code word. And after 10 days, they return it. By the time, each letter in the telegram by itself becomes infructuous. Now the telegrams are also very costly. I am telling this because this happens in the case of Members in this House also. Without any written order, as in Chapter I, they take it away and in that process it gets delayed.

MR. CHAIRMAN: Now conclude.

SHRI BHOGENDRA JHA: I have mentioned only telegrams because in an envelope I can put something. But the telegram will go open. It is for any one to see. Suppose I send some message against the Ruling Party or Government, which is harmful, it is better that they know it. There, they are in a position to know it. None would like to send it open. In such a situation, it is the question of civil liberty which is the concern of our democracy. In our democracy, we know its limitations. It is a capitalist democracy. But we should not add one limitation after another to it so that the democratic structure becomes weak and the Ministers, Chief Ministers or Presidents' messages are censored.

I submit to the House that it should accept the Bill introduced by me

and the Minister should pick up courage not to oppose this.

MR. CHAIRMAN: The Minister has to oppose it. Are you withdrawing it?

SHRI BHOGENDRA JHA: No, Sir.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Indian Telegraph Act, 1885, be taken into consideration."

The Lok Sabha divided

AYES

Division No. 2] [16.56 hrs.

Balan, Shri A. K.
 Balanandan, Shri E.
 Chakraborty Shri Satyasadhan
 Choubey, Shri Narayan
 Dandavate, Prof. Madhu
 *Desai, Shri B. V.
 Giri, Shri Sudhir
 Gopalan, Shrimati Suseela
 Harikesh Bahadur, Shri
 Hasda, Shri Matilal
 Lawrence, Shri M. M.
 Maitra Shri Sunil
 Mandal, Shri Mukunda
 Masudal Hossain, Shri Syed
 Mukherjee, Shri Samar
 Nihal Singh, Shri
 *Patel, Shri Shantubhai
 Rajan, Shri K. A.
 Ram Kinkar, Shri
 Roy, Dr. Saradish
 Saha, Shri Ajit Kumar
 Shamanna, Shri T. R.
 Sharma, Shri Vishwa Nath
 Shastri, Shri Ramavatar
 Suraj Bhan, Shri

Swamy, Dr. Subramaniam
 Verma, Shri Chandradeo Prasad
 Yadav, Shri Chandrajit
 Zainal Abedin, Shri

NOES

Ajit Pratap Singh, Shri
 Anuragi, Shri Godil Prasad
 Arakal, Shri Xavier
 Bajpai, Dr. Rajendra Kumari
 Baleshwar Ram, Shri
 Bansi Lal, Shri
 Barot, Shri Maganbhai
 Barway, Shri J. C.
 Bhagat, Shri H. K. L.
 Bhatia, Shri R. L.
 Birbal, Shri
 Brijendra Pal Singh, Shri
 Chandra Shekhar Singh, Shri
 Charanjit Singh, Shri
 Chaudhary, Shri Manphool Singh
 Choudhari, Shrimati Usha Prakash
 Daga, Shri Mool Chand
 Dalbir Singh, Shri
 Das, Shri A. C.
 Dogra, Shri G. L.
 Gavit, Shri Manikrao Hodlya
 Gehlot, Shri Ashok
 Gomango, Shri Giridhar
 Hakam Singh, Shri
 Jaffer Sharief, Shri C. K.
 Jha, Shri Kamal Nath
 Karma, Shri Laxman
 Kosalram, Shri K. T.
 Kunhambu, Shri K.
 Lakkappa, Shri K.
 Mahabir Prasad, Shri
 Mahajan, Shri Vikram
 Mallikarjun, Shri
 Mallu, Shri Anantha Ramulu
 Mishra, Shri Ram Nagina

Misra, Shri Nityananda
 Murthy, Shri M. V. Chandrashekhara
 Narayana, Shri K. S.
 Nihalsinghwal, Shri G. S.
 Panika, Shri Ram Pyare
 Patel, Shri Ahmed Mohammed
 Patel, Shri C. D.
 Patil, Shri Vijay N.
 Prasan Kumar, Shri S. N.
 Quadri, Shri S. T.
 Ram, Shri Ramswaroop
 Rao, Shri Jagannath
 Rathod, Shri Uttam
 Reddy, Shri K. Vijaya Bhaskara
 Saminuddin, Shri
 Satish Prasad Singh, Shri
 Sharma, Shri Kali Charan
 Shastri, Shri Dharam Dass
 Shastri, Shri Hari Krishna
 Shukla, Shri Vidya Charan
 Sidnal, Shri S. B.
 Singh, Shri C. P. N.
 Singh Deo, Shri K. P.
 Soren, Shri Hari Har
 Stephen, Shri C. M.
 Sultanpuri, Shri Krishan Dutt
 Sunder Singh, Shri
 Tariq Anwar, Shri
 Tayyab Hussain, Shri
 Tewary, Prof. K. K.
 Tripathi, Shri Kamalapati
 Tytler, Shri Jagdish
 Vairale, Shri Madhusudan
 Varma, Shri Jai Ram
 Virbhadra Singh, Shri

Vyas, Shri Girdhari Lal

Yadav, Shri R. N.

MR. CHAIRMAN: Subject to correction the result†† of the division is: Ayes 29, Noes 72.

The motion was negatived.

MR. CHAIRMAN: We now go to the next item.

श्री रामनगीना मिश्र (सलेमपुर) : सभापति जी, होली के अवसर पर केवल एक दिन की छुट्टी है। हम आप से निवेदन करेंगे कि कम से कम एक दिन की छुट्टी और बढ़ाई जाए। मंत्री जी मौजूद हैं और इस पर हाऊस की राय ले ली जाए। यह सब के सेंटिमेंट्स से सम्बन्धित है। इसलिए होली की छुट्टी एक दिन की और बढ़ाई जाए।

SHRI SATYASADHAN CHAKRABORTY (Calcutta South): This is the Year of Productivity. What to talk about Holi?

MR. CHAIRMAN: Shri Eduardo Faleiro.

16.54 hrs.

FREE LEGAL SERVICES BILL

SHRI EDUARDO FALEIRO (Mormugao): Mr. Chairman, Sir, I beg to move*:

"That the Bill to provide free legal services to indigent persons in certain cases, be taken into consideration."

††The following Members also re-recorded their votes:

AYES: Shri Chitta Basu.

NOES: Sarvshri A. A. Rahim, Brajamohan Mohanty, Ranjit Singh, Nawal Kishore Sharma, Rajiv Gandhi, Mahendra Prasad, A. Senapathi Gounder, Acharya Bhagwan Dev, P. Namgyal, Virdha Ram Phulwaria, Virdhi Chander Jain, Shantubhai Patel and B. V. Desai.

*Moved with the recommendation of the President.