

MR. DEPUTY-SPEAKER: No point of order in Call-Attention. Under that rule are you raising the point of order?

SHRI A. K. ROY: The rule is the residuary power of Members.

MR. DEPUTY-SPEAKER: Which rule has been violated? I say which rule has been violated?

SHRI A. K. ROY: As you have got residuary powers, members also got residuary powers and I am raising the point of order, under that residuary power.

MR. DEPUTY-SPEAKER: There is no point of order. I am not allowing you.

SHRI A. K. ROY: Allow me to exercise my residuary power.

MR. DEPUTY-SPEAKER: There is no point of order. Let me go to the next item.

PROF. P. J. KURIEN: Only one question.

MR. DEPUTY-SPEAKER: I am not permitting you.

STATUTORY RESOLUTION RE. DIS-  
APPROVAL OF CODE OF CRIMI-  
NAL PROCEDURE (AMENDMENT)  
ORDINANCE—Contd.

AND

CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) Bill—Contd.

MR. DEPUTY-SPEAKER: Shri Jagannath Rao.

SHRI JAGANNATH RAO (Berhempur): I do not know why so much opposition should be there to this Bill. This Bill only speaks to tighten up some of the provisions of the Code. First, the power to take cognizance of the proceedings under Sections 108, 109 and 110 of the Criminal Procedure Code is now being vested with the Executive

Magistrates. Executive Magistrates are Magistrates of First Class because these sections say that they can be tried only by First Class Magistrates. In the 1973 Code the Judicial Magistrates were vested with the powers to take cognizance of these sections. Now the power is given to the Executive Magistrate. The reason is that the Judicial Magistrates do not have a clear idea of the law and order. They are confined to the disposal of cases. They do not consider the circumstances under which these offences are being committed by these persons. Therefore, it is necessary that the Executive Magistrate who is also incharge of law and order should get these powers. That is the reason for this amendment . . .

SHRI ATAL BIHARI VAJPAYEE (New Delhi): What a simple reason you have put forward?

SHRI JAGANNATH RAO: Then the other clause relates to giving of sanction. There are some offences which cannot be prosecuted without the previous sanction of the government. Previously the power vested with the Central Government or the State Government. Now the District Magistrate is being authorised to give the sanction before prosecution is launched under Section 153A, 153B, 295A and so on. Therefore, I do not see any reason why there should be any objection to this. These are very serious offences under these sections and there can be no prosecution without the sanction of the Government or the Magistrate, as the case may be.

Clause 4 adds section 44A after Section 116. Clause 5 deals with granting of bail. Section 437 of the Criminal Procedure Code speaks of bail in respect of non-bailable offences. It says that the non-bailable offences bail may be given in certain circumstances. Now this amendment seeks to tighten the granting of bail for these non-bailable offences, and for valid reasons. The reasons are given here . . .

**SHRI SATISH AGARWAL:** None has opposed it.

**SHRI JAGANNATH RAO:** Therefore, bail should be restricted in non-bailable offences in certain circumstances enumerated in this clause. Clause 6 speaks of forfeiture of the bond executed by the accused person and the surety. Not only the bond will be forfeited but both of them will have to undergo simple imprisonment for a period of 6 months in addition to the forfeiture of the bond which shall be recovered as if it was a fine imposed by the court. So, there should be nothing wrong in it. The power of the executive magistrates can also be transferred to the judicial magistrates. All proceedings pending the trial in the Judicial Magistrates' courts will continue till this Bill comes into force and becomes an Act.

Therefore, I do not find any controversy in any of the clauses in the Bill. I need not, therefore, speak more on it and I support this Bill.

**MR. DEPUTY-SPEAKER:** Shri Rajnath Sonkar Shastri.

**श्री राजनाथ सोनकर शास्त्री :** (सैदपुर) माननीय उपाध्यक्ष जी, जो दण्ड प्रक्रिया संहिता (संशोधन) विधेयक आज सदन में पेश है उस का मैं पूर्ण विरोध करता हूँ। मैं समझता हूँ कि यह दण्ड प्रक्रिया संहिता संशोधन विधेयक जो पेश किया गया है वह इस सरकार की अक्षमता का परिचायक है। लगता है कि इस सरकार का विश्वास अपनी न्यायपालिका पर नहीं रह गया है और सरकार किसी प्रकार से घबरा कर या किसी ढंग से भयभीत हो कर यह विधेयक लायी है। इस विधेयक में कहा गया है कि न्यायपालिका कमजोर है और राजद्रोहात्मक बातें फैलाने वालों के खिलाफ कार्यवाही करने के लिए इस प्रकार दंड प्रक्रिया संहिता में संशोधन किया जा रहा है।

माननीय उपाध्यक्ष जी, इस में यह भी कहा गया है कि इस से ला एण्ड आर्डर

की स्थिति सुधरेगी। 108(1) के (क) में राजद्रोहात्मक बातों का जिक्र करते हुए यह कहा गया है कि यदि कोई ऐसी बात फैलाता है जिस का प्रकाशन भारतीय दंड संहिता की धारा 124(क) या धारा 153 (क) या धारा 153 (ख) या धारा 295 (क) या धारा 292 के अनुसार अस्लील वस्तु विक्रय, उस का निर्माण करना, उसका उत्पादन करना, आयात करना अथवा प्रेस और पुस्तक रजिस्ट्रीकरण अधिनियम, 1867 के विरुद्ध कार्य करना जैसी बातों के लिए कार्यवाही हो जाएगी।

धारा 109 में संदिग्ध व्यक्तियों से सदाचार के प्रतिभूति का वर्णन है। महोदय, मैं बताना चाहता हूँ कि ये जो बातें इस विधेयक में कही गई हैं कि हम इन उक्त परिस्थितियों के कारण इस संहिता का संशोधन कर रहे हैं, मैं समझता हूँ कि ये बातें पहले से ही संविधान में वर्णित हैं और यदि संविधान का नियमपूर्वक पालन किया गया होता तो ऐसे ढंग से इस प्रकार के अमेंडमेंट की कोई जरूरत आज नहीं होती।

धारा 110 में लुटेरों, गृहभद्रक, चोर कुट रचयिता, अथवा इनकी संरक्षा करने वालों, एवं अपहरण कर्ता, उद्यापनकर्ता, छली, जमाखोरों, मुनाफाखोरों के विरुद्ध कार्यवाही करने का जिक्र है। यह बातें इस विधेयक में कहीं गयी हैं जबकि पहले से ही संविधान में पर्याप्त कानून बनाकर इन बातों की रोकथाम अच्छे ढंग से कर दी गयी है। इस विधेयक के द्वारा पुलिस को विशेष पावर दी जा रही है, एकजीक्युटिव मैजिस्ट्रेट को विशेष पावर दी जा रही है और यह कहा जा रहा है कि पुलिस किसी भी व्यक्ति को बगैर वारन्ट के भी पकड़ सकती है और उस व्यक्ति की जमानत नहीं हो सकती है, जमानत आदि लेने से इंकार भी किया जा सकता है। मैं समझता हूँ, जैसा कि मैंने पहले कहा है कि यह सरकार की कमजोरी है। मुस्क में कानून तो है लेकिन

कानून का पालन करने के लिए ऐसा कोई नियामक आज देश में नहीं रह गया है जिस से कानून का पालन कराया जा सके। हमारे देश में जो सरकार काम कर रही है यदि वह संविधान का पालन बिना किसी भेदभाव के करे और जाति के आधार पर न करे तो ऐसी कोई बात नहीं हो सकती है जिन बातों के लिए यह संशोधन किया जा रहा है।

मान्यवर, मैं अपने कानून मंत्री के समक्ष एक बात रखना चाहूंगा। कानपुर में अभी तीन चार दिन पहले एक हरिजन विधायिका श्रीमती कमला दरियावाही पर पुलिस के एक आदमी ने संगीन पिस्तौल से हमला किया। क्या यह विधेयक उस पुलिस के आदमी को गिरफ्तार करा सकता है या उस पर मुकद्दमा चलवा सकता है। यदि वह विधायिका भाग न गयी होती तो निश्चय ही पुलिस का वह आदमी, जो कि शराब के नशे में धुत था, विधायिका को मार डालता। कहा जा रहा है कि एग्जीक्यूटिव जिम्मेदार होगी। एग्जीक्यूटिव की यह हालत है कि देश में चारों तरफ जहां अपराध होते देखा जा रहा है वहीं एग्जीक्यूटिव ही सामने आ जाती है। अभी आप देखें दिल्ली में एक महीने पहले एक घटना हुई। एक व्यक्ति अनिल कुमार शंकर सिनेमा देख रहा था, तभी पुलिस इंस्पेक्टर ने उस को हाल के अन्दर से खींच कर मारा, इतना मारा कि आज वह अस्पताल में अंतिम सांसें गिन रहा है। क्या इस अध्यादेश के मृताबिक उस पुलिस अधिकारी को प्रोटैक्शन नहीं दिया जा रहा है? क्या पुलिस इस अध्यादेश को प्राप्त करने के बाद या देश की एग्जीक्यूटिव अध्यादेश के आधार पर अपना ताण्डव नृत्य जो आज हो रहा है, उस से बढ़ कर और ताण्डव नृत्य नहीं करेगी? वाराणसी के तमाम याने जैसे मुड़वाडीह, चपेलापुर, चौबेपुर, बड़ागांव आदि इस के ज्वलंत उदाहरण हैं जहां रामजोर बर्म के लोगों को, पुलिस के पास जितने पावर हैं, उन के आधार पर

उन को पकड़ कर जेल भेज रहे हैं। उन को पीटा जा रहा है और इतनी बुरी तरह पीटा जा रहा है कि मैं बता नहीं सकता और उसके बाद उन्हें अस्पताल तक पहुंचाने तक की मानवता भी पुलिस के अंदर नहीं है।

महोदय मैं समझता हूं कि जितने अत्याचार मुल्क में हो रहे हैं उन को और बढ़ावा देने के लिए यह अध्यादेश लागू किया जा रहा है। इस से एग्जीक्यूटिव मजिस्ट्रेट, डिस्ट्रिक्ट मजिस्ट्रेट, को विशेष अधिकार दिए जाएंगे, जैसा कि मैंने पहले कहा है, क्या यह अधिकार प्राप्त करने से, हम कानून मंत्री महोदय से पूछना चाहते हैं कि जरा वे हम लोगों को यहां समझाएं कि इन अधिकारों के बाद, जितने अधिकार उनके पास हैं, उन से अधिक इस अध्यादेश द्वारा दे देने से क्या उन की स्थिति और बदतर नहीं होगी? क्या और अत्याचार नहीं बढ़ेगा?

महोदय, तर्क दिया जा रहा है कि इस अध्यादेश के माध्यम से अपराधी की आदत सुधरेगी, बार बार के अपराधी या सजायाफ्ता अपराधी सुधरेंगे, अपराधों में कमी होगी, अपराधी डरेंगे, ला एण्ड आर्डर की व्यवस्था मजबूत होगी। महोदय, मैं आप के माध्यम से माननीय गृह मंत्री महोदय से कहना चाहूंगा कि ध्यान दीजिए कि डंडे के बल पर कभी कोई सरकार चला सकती है क्या? यह सरकार डंडे के बल पर चलाई जा रही है। क्या इस सरकार के पास मस्तिष्क नाम की कोई चीज नहीं रह गई है? क्या इस अध्यादेश का सहारा ले कर अब सरकार चलाई जाएगी?

महोदय, मीसा और इमरजेंसी के पहले क्या हुआ था उस समय देश का क्या हसर हुआ था और वर्तमान सरकार जो 1974, 1975-76 में थी उसका क्या रूप था? यह सारे का सारा हिन्दुस्तान जानता है। यह भय और आतंक का वातावरण यह अध्यादेश लाकर के देश में

[श्री राजनाथ सोनकर शास्त्रि]

पैदा किया जा रहा है। मैं समझता हूँ कि यह एक मीठा जहर है और अपने पापों को छिपाने के लिए एक गहरा षडयंत्र किया जा रहा है, इससे तमाम राजनीतिक व्यक्ति या जो लोग आंदोलनों में या सही बातों को कह देने में कभी नहीं हिचकते उनके उपर इस अध्यादेश के माध्यम से कार्यवाही की जाएगी।

महोदय, मैं इस अध्यादेश का बहुत ही कठोर शब्दों में विरोध करता हूँ और मैं हाउस में अपने सभी साथियों से आग्रह करता हूँ कि वे दिमाग से और दिल से सोच कर इस अध्यादेश का विरोध करने में हम लोगों की मदद करें।

श्री मूल चन्द डागा : (पाली) : मैं यह कहना चाहता हूँ कि यह क्रिमिनल प्रोसीजर कोड अमेंडमेंट जो आप ला रहे हैं इसको पेश करने से पहले आप पढ़ लीजिए। आप उसको पढ़िए और श्रीमान उपाध्यक्ष महोदय आप ही कृपा करके उस लाइन को पढ़ लीजिए।

The ordinance, *inter alia*, sought to:—

(iv) Vest the power to take security proceedings under sections 108, 109 and 110 of the code in Executive Magistrates; and

(v) provide for transfer of the power to take security proceedings under the aforementioned Sections 108, 109 and 110 of the Code to Judicial Magistrates."

आप किसी को पावर्ज ट्रांस्फर करना चाहते हैं? ज्यूडिशल मैजिस्ट्रेट्स के पास तो पहले से ही पावर्ज हैं। इस आर्डिनैंस को आप पढ़िये। आलूम ऐसा होता है कि सेक्शन 108, 109 और 110 में आप ज्यूडिशल मैजिस्ट्रेट्स को पावर्ज ट्रांस्फर करना चाहते हैं। या तो यहाँ पर एग्जिक्यूटिव

मैजिस्ट्रेट होना चाहिये लेकिन आप ग्राव-जैक्ट्स एंड रीजंज में खुद कह रहे हैं कि आप ज्यूडिशल मैजिस्ट्रेट को पावर्ज ट्रांस्फर करना चाहते हैं। एग्जिक्यूटिव मैजिस्ट्रेट में आलरेडी पावर्ज हैं। मैं समझ नहीं सका हूँ कि आप क्या करना चाहते हैं।

एक माननीय सदस्य : टाइपिंग मिस्टेक हो सकती है ?

श्री मूल चन्द डागा : जब मैं इसका पढ़ रहा था तब गाडगील साहब ने मेरी मदद की। अब आप ही बताइये कि क्या यह टाइपिंग मिस्टेक हो सकती है।

बिधि, न्याय और कम्पनी कार्य मंत्री (श्री पी० शिवशंकर) : उन्होंने आपको गलत राय दी है।

श्री मूल चन्द डागा : गलत राय नहीं दे रहे हैं आपका काम गलत है।

श्री जी० एम० बनातबाला : (पोन्नानी) : आप थोड़ा रुक जाइये। मिनिस्टर साहब समझने की कोशिश कर रहे हैं। वह आफिसरज को कंसल्ट कर रहे हैं।

श्री मूल चन्द डागा : आर्टिकल 50 जो संविधान का है उसको आप देखें उस में यह कहा गया है :

The State shall take steps to separate the Judiciary from the Executive in the Public Services of the State.

15.28 hrs.

(Shri Chintamani Panigrahi in the Chair).

1950 में संविधान बना था तब हम ने सोचा था कि हम ज्यूडिशरी को

एग्जिक्यूटिव से अलग करेंगे और वह इंडिपेंडेंट होगी। साथ ही सेजिसलेचर भी अलग होगी। 1973 में हमने इसके बारे में एक एक्ट पास किया, क्रिमिनल प्रोसीजर कोड पास किया और हम ने यह कहा कि ये सारी पावर्ज एग्जिक्यूटिव मैजिस्ट्रेट के पास न रह कर ज्यूडिशल मैजिस्ट्रेट के पास रहेंगी। आज 1980 में हम कह रहे हैं कि ये सारी पावर्ज एग्जिक्यूटिव मैजिस्ट्रेट के पास रहनी चाहियें।

मैं जानना चाहता हूँ कि पिछले तीन सालों में सैक्शन 108, 109 और 110 में कितने चालान हुए और एक्जीक्यूटिव मैजिस्ट्रेट के पास यह पावर न होने के कारण प्रासीक्यूशन में कितनी ढील हुई है। मैं समझता हूँ कि अगर एक्जीक्यूटिव मैजिस्ट्रेट के पास कैसिज जाने लगे तो और ढील होगी और जनता को और ज्यादा नुकसान होगा। मैं समझ नहीं पाया कि सरकार सैक्शन 108 को क्यों एमेंड करना चाहती है, जबकि हमने सोच समझ कर क्रिमिनल प्रोसीजर कोड में यह एमेंडमेंट की थी कि यह पावर जूडिशल मैजिस्ट्रेट के पास रहनी चाहिए।

मैंने इस बारे में दो आर्टिकल पढ़े हैं, जिनमें से एक स्टेट्समैन में छपा है। एक्जीक्यूटिव मैजिस्ट्रेट्स की बैकडोर एन्ट्री होती है, क्योंकि सैक्शन 20 के अंतर्गत उनकी एपायंटमेंट स्टेट गवर्नमेंट के द्वारा होती है, जबकि जूडिशल मैजिस्ट्रेट्स को हाई कोर्ट एपायंट करती है। इस सैक्शन में कहा गया है :-

"In every district or in every metropolitan area the State Governments appoint as many persons as they require to the post of Executive Magistrates and shall appoint one of them to the post of District Magistrate."

सरकार संविधान के आर्टिकल 50 की मंशा को न मानते हुए और 1973 में पास किये गये प्राविजन के खिलाफ जाते हुए हाई कोर्ट की पावर्ज एक्जीक्यूटिव को देना चाहती है।

यह आर्डिनेंस 23 सितम्बर को जारी किया गया था। 28 सितम्बर को स्टेट्समैन में यह एडिटोरियल कमेंट आया था :-

"Such activities are undoubtedly condemnable but the danger now is that an overzealous executive may treat allegations as proof. By setting aside judicial magistrates, the ordinance makes this both possible and easy. The executive Magistrate and the District Magistrate can play havoc if they are so minded. Herein lies the threat to the freedom of the press."

दूसरे अखबारों के कमेंट्स पढ़ कर मैं सदन का समय नहीं लेना चाहता हूँ। मंत्री महोदय सोचें कि क्या यह जूडिशरी की इंडिपेंडेंस पर हमला होगा या नहीं।

श्री पी० शिव शंकर : नहीं होगा।

श्री मूल चन्द डागा : यह बहुत अच्छा एगोरेंस हैं। ऊपर बैठने वाले यह एगोरेंस देते हैं।

सरकार सैक्शन 108 के अंतर्गत चालान करने की पावर्ज डिस्ट्रिक्ट मैजिस्ट्रेट को दे रही है। पहले ये पावर्ज स्टेट गवर्नमेंट के पास थीं। अब डिस्ट्रिक्ट मैजिस्ट्रेट को भी यह पावर दी जा रही है कि वह भी चालान कर सकता है।

SHRI P. VENKATASUBBAIAH: You have referred to the articles. You please read out those articles.

SHRI MOOL CHAND DAGA: I shall read out this:

"... except with the previous sanction of the Central Government or of the State Government or of the District Magistrate."

पहले डिस्ट्रिक्ट मैजिस्ट्रेट नहीं था। हम लोग अभी जल्दी-जल्दी बिल पास कर रहे हैं और बिल पास हो भी जायेगा। पहले 108, 109 और 110 के अंदर जो चालान करने के पावर्स थे वह स्टेट गवर्नमेंट या सेंट्रल गवर्नमेंट को थे। आज वह डिस्ट्रिक्ट मैजिस्ट्रेट को दे दिया। (शुद्धि) हां, तीनों को दे दिया। डिस्ट्रिक्ट मैजिस्ट्रेट को पहले नहीं था, उस को भी दे दिया। तो उस के ऊपर 27 सितम्बर के बिजनेस स्टैंडर्ड में कमेंट्स निकली हैं जिस में लिखा है :

#### "Erosion of rights.

But there is hardly any justification for the provision for empowering district magistrates to sanction proceedings under Section 153B of the Indian Penal Code and subsection 2 and 3 of Section 505 of the IPC. If these powers were hitherto vested in the Union and State Governments there were good reasons for it. This was conceived of as a necessary safeguard against misuse of such powers by executive magistrates. The law in vesting these powers in the executive had prescribed that the sanction for prosecution must come from a high and responsible level. If such sanctions take a longer time to come than necessary action has to be taken to simplify and streamline official procedure rather than to vest such powers to sanction proceedings in district magistrates. Power not only corrupts but also leads to tyranny. This is not to deny that occasions for such prosecutions are today numerous than before. But that is no reason for putting an end to the safeguard which was to vest the power to sanction such proceedings in top level authority. The press, in particular, is threatened by the

removal of this hitherto operating safeguard. And this is in violation of the commitment to a free press given by Mrs. Gandhi on more than one occasion."

आप ने डिस्ट्रिक्ट मैजिस्ट्रेट को पावर दे दिया। वह इस को यूज कैसे करेगा? उस के ऊपर भी मैंने बताया कि इस प्रकार की जो पावर्स हैं वे अच्छी नहीं हैं।

अब वेल अप्लीकेशंस को लें। हिन्दुस्तान में अभी भी सुप्रीम कोर्ट के अंदर कोई अंडर ट्रायल प्रिजनर्स के कैसेज है जो कई सालों से जेलों में पड़े हैं। बिहार में पांच पांच सात-सात साल के अंडर ट्रायल प्रिजनर्स चौदह-चौदह साल के हैं और उन का कोई इलाज नहीं है।

AN HON. MEMBER: Anti-social elements.

SHRI MOOL CHAND DAGA: What do you mean by anti-social elements? You have to prove them anti-social. We must safeguard the interests of the people.

किसी आदमी की आजादी को खत्म करना आसान नहीं है। हम सफेद पोश लोग सब बहुत अच्छे हैं जो उनको ऐंटी सोशल ऐंटी सोशल कह दिया। हम हर एक आदमी की स्वतंत्रता की रक्षा करना चाहते हैं। कांस्टीच्यूशन यह कहता है। वेल अप्लीकेशन में आप ने अमैंडमेंट कर दिया। इस में आप देखेंगे 437 में :

"If it appears to such officer or court at any stage of the investigation, enquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further enquiry into his guilt, the accused shall pending such enquiry be released

on bail, or at the discretion of such officer or court. . . ."

MR. CHAIRMAN: You have already taken 15 minutes.

SHRI MOOL CHAND DAGA: I will take only a few minutes. Read that Section 446-A again. It is a new addition. He said it is substitute of 446. For what purpose it is a substitute? It is an addition. Do not see this word 'substitute'.

अब आप ने 446(ए) भी अमेन्ड कर दिया। आप उस को पढ़िये।

This is an addition. But they say it is substituted.

अब यह जो ड्राफ्टिंग की जा रही है इस को कौन कर रहा है? ला डिपार्टमेंट कर रहा है या कौन सा डिपार्टमेंट कर रहा है? अगर आप बिल को पास करना चाहते हैं तो ठीक है लेकिन मैं फिर कहना चाहता हूँ कि आप जुडीशल मैजिस्ट्रेट से पावर मत लीजिएगा। अगर आप ने एग्जीक्यूटिव मैजिस्ट्रेट को पावर दे दी तो गांवों में जो लोग रहते हैं उनकी हालत और भी बिगड़ जाएगी। वे गरीब लोग और भी परेशान हो जायेंगे। जुडीशल मैजिस्ट्रेट अपने माइन्ड को जुडीशली एक्सर्साइज करेगा लेकिन एग्जीक्यूटिव मैजिस्ट्रेट अपने माइन्ड को जुडीशली एक्सर्साइज नहीं करेगा। इसलिए आप मेहरबानी कर के एक बार फिर सोचिए और इस पर पुनर्विचार कीजिए। मैंने अमेन्डमेंट इसलिए नहीं दिए हैं कि लोग कहने लगते हैं कि डागा ने अमेन्डमेंट दे दिए। लेकिन आप किसी बिल को हरीडली पास करने से पहले सोच लीजिए और विचार कर लीजिए। 1973 में इसी पार्टी ने इसी सदन में इसी संविधान के आर्टिकल 50 का अन्दर करते हुए पास किया था कि जुडीशली मैजिस्ट्रेट को पावर होनी चाहिए। आज अगर उस से यह पावर छीन कर एग्जीक्यूटिव मैजिस्ट्रेट को आप यह पावर दे देंगे, तो उचित नहीं होगा। आज

करफेशन कितना रैम्पेंट है, यह कहने की जरूरत नहीं है। रोम-रोम में करफेशन भरा हुआ है। सेक्शन 108, 109 और 110 की पावर्स अगर आप एग्जीक्यूटिव मैजिस्ट्रेट को दे देंगे तो यह अच्छा नहीं होगा। इस तरह से आप एन्टी सोशल एलिमेंट का नाम लेकर, उसकी आड़ में शिकार मत खेलें। मैंने होम मिनिस्टर से एक प्रश्न पूछा था, उन को हिम्मत के साथ यह फीगर देनी चाहिए थी कि 108, 109 और 110 के अन्तर्गत तीन सालों में इतने चालान किए गए। मैं कहता हूँ 110 में केसेज पेश नहीं हुए होंगे और अगर पेश भी हुए होंगे तो उन का निर्णय नहीं हुआ होगा।

इसलिए मेरा निवेदन है कि इस बिल को पास करने से पहले आप दो तीन बातों को सोच लीजिए। आप एग्जीक्यूटिव मैजिस्ट्रेट को जुडीशल पावर्स मत दीजिए। साथ ही साथ आप बेल के मामले में इतना स्ट्रिक्ट मत बनें। बेचारे अन्डर ट्रायल प्रिजनर्स सालों तक अन्डर रहते हैं। और ये लोग वही होते हैं जिन के पास साधन नहीं होते, जो कि गरीब लोग होते हैं। लीगल एड हमारे ला मिनिस्टर साहब अभी तक नहीं दे पाए हैं। बीस साल हो जाने के बाद भी अभी तक उन को लीगल एड नहीं दी जा सकी है। इसलिए उन के अधिकारों की रक्षा करते हुए इस बिल पर पुनर्विचार करने की मैं आप से प्रार्थना करता हूँ।

SHRI C. T. DHANDAPANI (Pol-lachi): It is very interesting to discuss this Bill, because it deals with anti-social elements as well as habitual offenders. But there are many more laws and rules of Government to deal with these anti-social elements and other criminals.

Of course, this Bill is a small one. It deals with 2 or 3 points. It deals with the question whether we must have judicial magistrates or Executive Magistrates. All these years, we have been practising certain conven-

tions and procedures, by having some sort of a judicial system. Through this Bill, we are converting it from judiciary to executive officials.

As our friends have already stated here, it is mentioned in clause 2 thus:

‘...for the words “a Judicial Magistrate of the first class”, the words “an Executive Magistrate” shall be substituted.

The Executive Magistrate, as Mr. Daga said, is a State Government employee. So, he has to toe the line of the State Government. Actually, I thought this Bill should have been presented in a better form, and drafted somewhat wisely. But it has not been done. I feel that appointing an Executive Magistrate will result in a chaos.

Not only that; we are giving more powers to the State Governments. Of course we in the DMK, are asking for more powers to the State Government, but not to crush the political opponents or others. That is a different issue. In this case, the powers have been given to the State Governments. For example, I have my own experience. A tenant was cultivating a piece of land for more than 15 years. One day, he was asked to vacate the land—by an MLA of the local ruling party. It was about a year ago. The tenant went to the Court against that particular MLAs atrocities. The case went up to the High Court. The Executive Magistrate gave the verdict in favour of the MLA. Judicial Magistrate gave the judgment in favour of the tenant. But the MLA went to the High Court. The question was this: who was in possession of the land. The High Court passed orders in favour of the tenant. The judgement was delivered around 11 A.M. or 11 NOON. The same day, that night itself, before the verdict reached the Pollachi town, the local MLA engaged some goondas and evicted that tenant. The next morning,

the RDO, the so-called Executive Magistrate, promulgated orders under section 145 of the Criminal Procedure Code. It means that nobody can enter the field. So, myself and my district secretary, namely, a former Minister Mr. Kannappan and others went to that place, to meet that Executive Magistrate. On our way, we were arrested and imprisoned for a week, for the reason that we had an intention to defy the orders promulgated under Section 145. In that case, we were imprisoned. If this power is given in the hands of the Executive Magistrate, certainly the power will be misused. If the government wants to deal with a particular criminal or a particular section, what I suggest is that we can appoint a Special Magistrate with the powers of a District Magistrate so that they can deal with other cases, because there are various cases pending in all the courts. They may be in a position to deal with a particular criminal. So, I suggest that we can appoint a Special Magistrate instead of the Executive Magistrate. I hope the Minister will consider this suggestion.

Secondly, the State Government has been given larger powers in this matter. At the same time, another important thing is about bail. Here the power is given in the hands of the police. A police officer can say whether a bail can be granted or not. So, in this thing, the State Government has acquired more power and they can crush the opposition parties. As far as my State is concerned, if anybody says, “MGR or ADMK Government of Tamilnadu,” nobody knows about it. Our present government is called “307 Government,” because even for a simple offence, 307 is being imposed. For example, in my constituency, a college student of about 18 years of age, threw a stone on a bus and he was arrested under 307. Even for taking out a procession 307 is imposed. For everything 307 is imposed. On page 2 of the Bill, it is stated: “Such person shall not be so released if such offence is



a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence." In that case, any political man or political parties' workers can be arrested and put behind the bars. Some Ordinances are being promulgated in Madras, in Tamilnadu. An Ordinance on prohibition had been promulgated. If anybody takes liquor, he will be punished. Do you know, Mr. Chairman, what will be the punishment? The punishment will be in imprisonment for five years or for seven years or fine also or both. This is a non-bailable section. This Ordinance is being implemented in Tamilnadu. Suppose a person drinks twice or he is convicted twice, he will never get bail in any court. In that case, everybody will be punished in many ways. I am quoting from *The Economic Times*, New Delhi, dated 3rd October, 1978, regarding TN Ordinance on prohibition. It says "A feature of the ordinance is that it empowers the authorities to remove persons convicted of offence from the area for a stipulated period." So, a person can be expelled from his place to another place. In that case, what will be the position of the public? I do not want to say many things about that. In the same way, another Ordinance is being promulgated. Suppose the cane growers or the agriculturists do not pay arrears. They will also be penalised. The offence is punishable for a minimum period of two years and the maximum period of five years; and the minimum fine is Rs. 3000 and the maximum fine is Rs. 5000. Then there is another Ordinance. That is what the state government is doing. It is doing it in such a way, all this oppressive activity. The state government will also utilise this Bill to suppress the opposition parties in Tamilnadu and in many other places also. Shri Jagannatha Rao referred to it and stated that because judicial magistrate did

not know about law and order problem and society, this power was being given to the executive magistrate. The police are there; the police themselves are doing all these things. It is not necessary; it is not that the executive magistrate alone can understand all these things. The executive magistrate does wrong and creates the situation according to the convenience of the local government, state government. It is not good for the people who are there. In clause 5(c), it says that for the words 'reason' in sub-section 4, the words 'reasons or special reasons' should be substituted; I do not know what it means. Reason means reason. What would be the special reason? Something may be said. But in that case what is the government going to do? This type of wording is misleading the public.

In clause 7(b) it says that hereafter no person shall be released only on his own bond. In that case the powers of the police officers should be taken away. I can understand the court. But the police officer is in the hands of the state government.

In clause 8 it says that if the legislative assembly of a state by a resolution permits the state government may after consultation with the High Court implement the Act. Powers have been given to the state government to do all these things. You have given powers to the state, to the district magistrate, judicial magistrate. But when the state government themselves indulge in such activities what are you going to do? Is there any provision? No provision at all. Take Villupuram in Tamilnadu. It has been stated in the statement of objects and reasons that those who create enmity between different groups and communities will be dealt with. In Villupuram one of the ruling party MLAs himself created trouble between Harijans and other communities. Many Harijans were killed. A commission was constituted and a report was submitted a year and half

[Shri C. T. Dhandapani]

ago. No action has been taken. What provision are you going to incorporate in this Bill when a state government violates the spirit of this Bill like that? In another place, Palakode, Muslims were butchered and their shops were set on fire by the former M.P. who belonged to the ruling party in Tamilnadu. He was an M.P. in the very same House. He was responsible for all those things but no action was taken. In Peranampet the ruling party was responsible for clash between Hindus and Muslims. In Kerala also this is happening; there is clash between the ruling party and RSS. Shri Namboodiripad, a learned man stated—it appeared in papers—that if RSS attacked 'us, certainly we will retaliate'. It is not proper for a big leader, international leader like Namboodiripad to say like that. What are you going to do? On page 7 it says: "any offence under one or more of the following Acts, namely, Foreign Exchange Regulation Act, 1973..." I got some information from our hon. friend, the former Minister, Shri Satish Agarwal, our good friend. The Chief Minister of Tamilnadu, he was involved in a case or violation of Foreign Exchange Regulation Act.

16 hrs.

MR. CHAIRMAN: Let us not being in these things now.

(Interruptions)

SHRI K. MAYATHEVAR (Dindigul): He is not bringing. He is only illustrating.

SHRI XAVIER ARAKAL (Ernakulam): Even though he is illustrating, this is highly improper. This is unparliamentary. That too, hearsay, hon. Member, Shri Satish Agarwal is there. (Interruptions)

SHRI C. T. DHANDAPANI: Shri Arakal is my friend.

(Interruptions)

SHRI K. MAYATHEVAR: He should also know.

(Interruptions)

SHRI C. T. DHANDAPANI: Mr. Arakal also knows it.

SHRI K. MAYATHEVAR: Cannot Vakalat for M.G.R.

MR. CHAIRMAN: You kindly go to the other point.

SHRI C. T. DHANDAPANI: That is what I am saying. There was a case against him for violating the Foreign Exchange Act. That case went on for more than eight years. That case was dropped during Janata Party Government.

AN HON. MEMBER: For what? Why?

(Interruptions)

SHRI C. T. DHANDAPANI: I do not know the reason why it was dropped.

(Interruptions)

SHRI P. VENKATASUBBAIAH: You could have asked him.

(Interruptions)

SHRI K. MAYATHEVAR: The former Prime Minister wanted it to be dropped.

SHRI C. T. DHANDAPANI: I came to know of it from Mr. Satish Agarwal himself that it was dropped.

(Interruptions)

SHRI SATISH AGARWAL: Lot of things you come to know from conversation, they are not to be quoted.

(Interruptions)

SHRI SATISH AGARWAL: It was an inquiry. It was not a case. Inquiry is always conducted with a doubt. Some inquiry was going on for the last eight to ten years.

SHRI G. M. BANATWALLAI: It was dropped. Was it dropped?

SHRI SATISH AGARWAL: Yes, it was dropped. It was also an inquiry.

SHRI C. T. DHANDAPANI: I am not accusing anybody. He is not present here. That is not my object.

SHRI G. M. BANATWALLA: You are stating facts.

SHRI C. T. DHANDAPANI: For the benefit of Shri Arakal also. So, in this case, in such a way, through this Bill, the Central Government is putting some powers in the hands of certain people—executive or judiciary whoever it may be—who may indulge in such activities which may be against the rule of law. What is going to be done by this Government, I want to ask all these things, in connection with this Bill. So, by saying this I want to mention that this Bill actually will not help the judiciary. Therefore, I request the hon. Minister to consider these things and bring a comprehensive Bill which can help the public as well as the judiciary.

SHRI A. T. PATIL (Kolaba): Sir, I rise to support this Bill in its entirety. This Bill seeks to entrust the powers under sections 108, 109 and 110 of the C.R.P.C. to executive magistrates. The first attack on this provision is that the executive is being strengthened at the cost of the judiciary and that there is erosion of judicial powers. My respectful submission would be that nobody here is interested in eroding the judicial powers. Our judiciary should be strengthened, but within its jurisdiction. If sections 108, 109 and 110 refer to the question of crime where the person charged or proceeded against is to be ultimately declared as a criminal and a blot is to be cast on him and throughout his life he will be looked upon as a criminal, then the matter should not be taken out of the jurisdiction of the judicial magistrate and an opportunity should be given to the person concerned to defend himself according to all the niceties of procedure. But sections 108, 109 and 110 refer properly to

executive action for checking effectively the habitual offenders. Therefore, this is properly within the jurisdiction of the executive and so, the matter should be entrusted to the executive agency. In fact, some years back, in my State the powers under these sections were entrusted to judicial magistrates and it was found to be very inconvenient from the point of view of doing justice to the parties concerned. Once they are kept under surveillance under the so-called judicial powers, no decision is given for several days. Therefore, the powers under these sections were again sought to be entrusted to the executive magistrates.

One point made by Shri Jaganatha Rao is equally important namely, the executive magistrates are in the better know of the law and order situation. Therefore, they can dispense justice better in such cases. For one thing, by this piece of legislation, we are not advancing the cause of law and order to a great extent. It is a very simple and small piece of legislation. The law and order situation may arise out of environmental pollutions, out of social circumstances, out of economic conditions and so on. Here we are restricting ourselves to one sector, i.e. criminal activities in social factors. If there is environmental pollution, if due to the bulging of the cities, there is breakdown of the infrastructures such as transport, water, electricity, etc., then there is bound to be a rise in crimes. This Act will not in any way help directly to reduce such crimes or criminal activities. Similarly this Act does not enter into the economic sphere also, where you find that the level of poverty line is increasing. In 1964-65 it was 44 per cent. Now it has gone up to more than 48 per cent. So, when the level of poverty is increasing, there is bound to be a rise in crimes. This Bill is not in any way an improvement on that in respect of that condition. Its scope is very small and limited, having reference only to the social sector,

[Shri A. T. Fatil]

the habitual offenders, the criminals and anti-social elements and it has no reference to the increase in crimes due to environmental pollution or economic deterioration. This Bill seeks to take some effective steps in respect of those offences alone.

So far as the first provision is concerned, since it is specifically within the jurisdiction of the executive magistrate, there is no objection. In fact, it is welcome that the powers under sections 108, 109 and 110 have been transferred to the executive magistrate.

There is essentially a misconception about these powers and the provisions of section 478. The principle under section 478, which has got to be amended now, is not a different provision altogether, a different principle altogether. The principle is already accepted under the old law. This is a welcome principle. I in any State you are not satisfied with this power being entrusted to the executive magistrate, you are welcome to transfer it to the judicial magistrate, if your Legislative Assembly permits it by a resolution. Previously, it had to be done by the Legislature. But the principle is the same. I do not understand why we should quarrel with this provision, when there is only a little difference. The difference is that formerly the powers were given to the "Legislature". The wording was "If the State Legislature by a resolution so requires". The present provision says "If the Legislative Assembly of a State by a resolution so permits". If you use the terms "Legislature", if there are two Houses, then both the Houses should pass the resolution. Since the present provision refers to the "Legislative Assembly", if the lower House passes a resolution, it is sufficient. So, it is only a permissive provision. You are welcome to transfer the power under sections 108, 109 and 110 to a judicial magistrate. Nobody restrains you

from conferring them on the judicial magistrate. Really speaking, if these two sections are read together, there ought to be no quarrel, because the principle is already accepted; it has been implemented. How many States, or Legislative Assemblies, or Legislatures have passed such a resolution is altogether different; but they were already empowered and it is not as if we are enunciating a new principle. The principle has already been accepted.

In the Statement of Objects and Reasons it is stated:

"provide for transfer of the power to take security proceedings under the afore-mentioned sections 108, 109 and 110 of the Code to Judicial Magistrates."

But there is no contradiction. There appears to be some misconception or misreading of the provision. What is mentioned in the Statement of Objects and Reasons is correct.

So far as the other aspects are concerned, we are trying to strengthen the administration of law and order. In that process, we are giving concurrent power to the District Magistrate in respect of specific offences and not in respect of all offences. It is only in respect of section 153-B and sub-sections (2) and (3) of section 105 of the IPC, because both these sections refer to similar offences. Section 153-B refers to dissemination of information or circulating something to bring about a clash between two groups of persons on the ground of religion or caste, etc. These sections are similar and refer to the same object. The new provision has been made so as to enable the District Magistrate to take action in respect of this and not in all respects.

So, when we examine the provisions of law, we must do it in the proper perspective, in the proper light. Here the District Magistrate is given power to grant sanction for prosecution. He does not

prosecute, he gives only sanction; he does not convict anybody. You must kindly appreciate to that he does not convict a person; he simply says "I sanction the prosecution of that person". Instead of the Central Government or the State Government taking action in these matters, the District Magistrate does it.

There was a lot of discussion in this House about communal conflicts and riots. Many hon. Members complained that Government do not take action quickly and speedily. In order that the Central Government or the State Government could take action speedily, it is necessary that the report should come from the District Magistrate or the authorities in the district concerned. Then only the Central or State Government can consider the matter, take a decision and act on it. Since the District Magistrate or the officer in the district knows the matter much better than a distant authority, either in Delhi or in the State capital, is it not better to give him concurrent power? We should remember that power is restricted to the grant of sanction for prosecution. These are small things, small spheres in which concurrent power is given to the District Magistrate. In order to have speedy disposal or speedy action in matters like this, and that too in the limited sphere where there are communal conflicts, especially when time and again there is a demand in this House for deterrent action, if we provide something which will enable the authorities to take quicker action under the law, I do not see why there should be any objection to it.

Then I come to bail. In the case of bail, the complaint is that the liberty of the citizen is deprived. I am of the opinion that it is a philosophy of criminal justice. The question is whether there should be the theory of retributive punishment or the theory of reformative punishment. Under the head Reformative punishment will come prohibitory punishment. In the circumstances of the day, when crimes are rising at a rapid rate and when criminals are being

instigated sometimes by persons interested in the instigation of the crime to bring about a breakdown in the law and order situation in the State, I think we must follow the prohibitory theory. This section, to a very small extent, says that we shall follow that theory and says that if he is a known criminal, then he should be under the custody of the Magistrate concerned and he should not be released on bail if he is already convicted for a particular offence twice. The section reads:

"such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence;"

When the criminality of a person is well-established, if you are going to give him an opportunity to go on bail, I think you are permitting him to take law in his own hands. If you want crimes to be curbed, then you will have to deal with criminals with a harder hand and it is necessary that strict action should be taken. So, I support this provision.

There should be no fear or apprehension in the minds of anybody that he will be kept there for a very long period. If he is not released on bail, the responsibility is on the prosecution to ensure that the case is expedited and the matter is disposed of very early. And if he is convicted, in that case the period which he has undergone will be deducted from the entire period of his sentence. Therefore, in a way this is a welcome provision for such persons and for the entire society as well.

I need not go into the provision of imprisonment in civil jail under clause 6, because in civil law you will find such provisions and therefore, there is nothing wrong about it.

In respect of cancellation of bond under clause 7, it is necessary that professional sureties who are a nuisance to the society should be checked. I, therefore, welcome this Bill and I wholeheartedly support the Bill and request the Minister to kindly give his support if any such Bills are brought forward.

SHRI RATANSINH RAJDA (Bombay South): Sir, throughout the history we have marked that whenever rulers or the powers that be want to assume dictatorial powers in their hands, they always clamour for more powers. The provisions of the present Act, the Indian Penal Code and the Criminal Procedure Code, I submit, are enough to deal with the present situation. But the rulers would say that times are extraordinary, demanding extraordinary measures. Then, under that pretext they would try to arm themselves with more powers which are completely unnecessary and they would go on arming themselves with those powers.

Sir, the present ruling party has been continuously clamouring for more powers after they took over the charge of the Government as if a hungry man who comes from a famine stricken area clamours and wants to grab more and more food from wherever he gets. In the same way, it has been seen that the present Government has been clamouring to arm themselves with more powers. (Interruptions)

Sir, there is a cause for arming themselves with these powers. A Conference of Chief Secretaries was held in April and they recommended strengthening of the provisions of law on habitual offenders and those spreading communal discord. Now, looking superficially there is nothing wrong if habitual offenders are punished and for spreading communal discord and disharmony people are brought to book. Then, everybody would bless the Government, there is nothing wrong in it. If that was the real objective and if you try to do that, then there is no objection.

But there is something more than what appears on the surface. Now, the Ordinance was brought in. Before that, in this Chief Secretaries' Conference several recommendations were made by them. That was followed by the Chief Ministers' Conference. The same chorus, the same pining for arming with more powers was also voiced at the Chief Ministers' Conference. That Conference was held on 23rd September. What did the Chief Secretaries and Chief Ministers say? They stated that the provisions of the present Criminal Procedure Code are not enough. They demanded amendment of the Criminal Procedure Code to facilitate crime detection. That was the excuse given.

SHRI A. K. ROY (Dhanbad): Did the Chief Minister and Chief Secretary of West Bengal also demand it?

SHRI RATANSINH RAJDA: That you can ask Mr. Venkatasubbaiah. I was not present there.

SHRI A. K. ROY: That you should clarify, otherwise it will give a wrong impression as if they also joined.

SHRI RATANSINH RAJDA: I appreciate and understand what you say.

They said this amendment was imperative to facilitate crime detection, as if there was anything in the Code as it stood which impeded that purpose.

What are the salient features that they are proposing by bringing this amendment? There are some provisions regarding previous convicts, convicted of cognizable and non-cognizable offences. Ordinarily they would not be granted bail by the court. The court would release them only after recording the reasons in special circumstances. For non-appearance, the surety is to be imprisoned. Then there is cancellation of the bail bond. These are all routine amendments that are visible on the surface.

But the main point is this, that the amending Bill confers powers on ex-

cutive magistrates. Anybody who cares for the liberty of the common man, the citizen, would really raise his voice against these provisions.

The code demarcates the functions of judicial magistrates working under the Sessions Judge and under the close supervision of the High Courts as against those of the executive magistrates who work under the district magistrate. Why? There is an interesting reason for this.

Certain powers of the district magistrates and superintendents of police were curtailed by the amended Code of 1973. The Chief Ministers want that they should be restored. Here, the cat is out of the bag.

**SHRI RAM SINGH YADAV** (Alwar): What more powers have been given to the superintendents by this?

**SHRI RATANSINH RAJDA**: The States are not reconciled to the separation of the judiciary from the executive which the 1973 amended Code brought about. So, a hue and cry has been raised, and they want those curtailed powers to be restored. That is the main purpose of this Bill.

The system of checks and balances is sought to be removed completely. Vast powers would be given to the executive magistrates who would be under the thumb and influence of the ruling party people, and they may arrest any person, they may play havoc with the machinery of law, they may take the law into their own hands indirectly through the executive magistrates. This is the greatest danger that is looming large. I would request the hon. Minister not to be a party to such a draconian amendment which would curtail the liberty of the citizen. I would like to request the hon. Minister that he should think thousand times from this point of view before bringing this amendment. The question thereafter would arise about the freedom of the press. Under these provisions, I submit, freedom of press would be severely curtailed. We are all aware that this amending Section 108 is the villain of the piece. It could be compared or likened with

40th amendment of the Constitution which was introduced during emergency. The Publication of Objectionable Matters Act was put in the IX Schedule and that objectionable piece of legislation was thus protected. The same type of amendment is being brought about and any material to be published by the press would be curtailed, would be prevented from being published and whosoever publishes that, on the slightest excuse would be sent behind the bars or would be punished. At least they would be pressurised. From this point of view also, I would submit, that this amendment or these amendments are anti-people and are draconian as they curtail the liberty of the people.

With these words, I would once again submit that these amending provisions should be withdrawn. I would submit that the present provisions in the Act are sufficient enough to deal with the situation as it prevails today.

With these words I conclude my submission.

**श्री वृद्धि चन्द जैन** : (बाड़मेर) : सभापति महोदय, ग्राज सदत में कोड ऑफ क्रिमिनल प्रोसीजर (अमेन्डमेंट) बिल 1980 प्रस्तुत किया गया है। उस के संबंध में मैं यह जानना चाहता हूँ ऐसी कौन सी स्थिति पैदा हुई, 1973 में हमारी खुद की, कांग्रेस पार्टी की, सरकार थी, उस वक्त हम ने इस में बहुत बढ़िया-बाढ़िया अमेन्डमेंट्स किए थे, जो कि वास्तव में जनता के हित में थे। लेकिन ग्राज एसो क्या आवश्यकता हुई कि फिर कोड ऑफ क्रिमिनल प्रोसीजर में अमेन्डमेंट कर रहे हैं। जब हम जुडीशियरी को महत्ता देते थे, हम ने कर्नियरली मान लिया था—सुपरेमन ऑफ जुडीशियरी को। हम ने आर्टिकल 50 ऑफ दी कान्स्टीट्यूशन में मान्यता दी। लेकिन अब कौन सी स्थिति पैदा हुई और ऐसे कौन से बड़े भारी जुर्म हो गए हैं कि हम को इस में अमेन्डमेंट करना पड़ रहा है। 107 के अन्तर्गत जब कि ज्यादा आर्टिकल

[श्री बुद्धि चन्द बैन]

होते हैं और मैजिस्ट्रेट को एकजीक्यूटिव पासवर्स भी हैं कि वह स्थिति को सख्ती से कन्ट्रोल करे और सख्ती से कन्ट्रोल करने के लिए 151 में अरैस्ट करने का भी प्रावधान है, जिस से कि वह लाँ एंड गार्डर को कन्ट्रोल करते हैं। आज 109 के अन्तर्गत ससपैक्टेड वैगरेन्ट-पर्सन्स को, मैं खुद प्रैक्टिस करता था, मुझे मालूम है कि पुलिस जनरल आदमियों को, निरभ्रपराध आदमियों को पकड़ लेती थी और ऐसे केसेज कोर्ट में आते थे। इसलिए मैं कहना चाहता हूँ कि इस से लाँ-एण्ड-गार्डर सिचुएशन पर कोई बहुत बड़ा इफैक्ट नहीं पड़ता है।

दूसरे, मैं हैबिचूअल आफेंडर्स के बारे में कहना चाहता हूँ। जो हैबिचूअल आफेंडर्स हैं, उनके खिलाफ आपने इस बिल में स्ट्रिक्ट प्रोविजन बना दिए हैं, बेल के लिए स्ट्रिक्ट प्रोविजन बना दिए हैं, जिसको मैं सपोर्ट करता हूँ। इसमें कोई शक नहीं कि अभी तक बेल के जो प्राविजन हैं, वे काफी स्ट्रिक्ट नहीं हैं, लीनिएन्ट हैं और आफेंस करने वाले उन का अनड्यू एडवान्टेज उठाते हैं। इस लिये इस बिल में अब जो प्राविजन किया गया है वह खास तौर से हैबिचूअल आफेंडर्स के लिये है। जो आदमी दो बार आफेंस कर ले उसके लिये कागनिजिबिल और नान-बेलेबल प्राविजन होना चाहिये, जिस की इस बिल में व्यवस्था की गई है, इस लिये मैं इस प्राविजन को सपोर्ट करता हूँ। लेकिन जहां तक एकजीक्यूटिव को अधिकार देने का ताल्लुक है, मैं यह कहना चाहता हूँ कि एकजीक्यूटिव मैजिस्ट्रेट्स के पास पहले ही बहुत काम है। रेवेन्यू के मामले होते हैं, दूसरे मामले होते हैं। एक महीने के अन्दर हमारे सब-डीविजनल मैजिस्ट्रेट 20 दिन तो दूर करते हैं, जिस से दफा 107 के

केसेज के डिस्पोजल में भी दो-दो और तीन-तीन साल लग जाते हैं और जब इन केसेज के डिस्पोजल का भार उन पर पड़ेगा, तो जाहिर है कि इस में बहुत ज्यादा डिले होगी।

इस लिये मैं आप से निवेदन करना चाहता हूँ—डागा साहब ने जो जानकारी चाही थी, आप पहले उस सम्बन्ध में जानकारी प्राप्त कीजिये, पूरी तरह से केसेज के सम्बन्ध में जानकारी प्राप्त कीजिये। जहां तक मेरी जानकारी है—दफा 108, 109 और 110 में इस प्रकार के केसेज बहुत कम होते हैं। इस लिये मेरा कहना है कि जुडीशियरी में डिस्पोजल जल्दी होगा। मेरी समझ में नहीं आ रहा है कि इस में परिवर्तन की आवश्यकता क्यों पड़ी है? आर्डिनेन्स को जारी करने की आवश्यकता क्यों पड़ी? यदि एक महीने बाद यह मामला आता तो इस में कौन सा आकाश टूट जाता? आप की इस कार्यवाही से आज हम को अपोजीशन का क्रिटिसिज्म सुनना पड़ रहा है। डेमोक्रेसी में हम इस प्रकार का क्रिटिसिज्म क्यों सुनें। गवर्नमेंट की भूल से हमें इस प्रकार का क्रिटिसिज्म सुनना पड़े यह ठीक नहीं है।

इस के अन्दर एक प्रावीजो है—

“Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason.”

इस में जो “स्पेशल रीजन्स” का प्रावधान किया है, बेल के मामले में लोग इस का फायदा उठा लेंगे, क्योंकि इस में कोर्ट्स का डिस्क्रिशन है। यदि कोर्ट्स ठीक ढंग से अपनी डिस्क्रिशन को एक्सरसाइज नहीं करती है तो फिर इन्चाफ नहीं होगा। इसलिये “स्पेशल रीजन्स”



को स्पेसिफिकली डिफाइन करना चाहिये या ताकि स्पष्ट हो जाय कि वे रीजनल क्यों हों ।

शोयटी के बारे में जो प्रावीजन किया है; वह ठीक है। आज कल शोयटी देने वालों की एक प्रोफेशनल क्लास बन गई है, कोर्टस में बैठे रहते हैं और शोयटी देते रहते हैं। अब इस में जो प्रावीजन किया गया है कि यदि कोई शोयटी न दे तो उस का इम्प्रीजमेंट हो सकता है—यह अच्छा प्रावीजन है और मैं इस का समर्थन करता हूँ ।

इस के क्लॉज 8 में धारा 478 को बदला है, जिस में यह प्रावीजन किया है कि अब यह अधिकार एकजीक्यूटिव मैजिस्ट्रेट के पास भी होगा। मैं यह समझता हूँ कि यह काम तो असेम्बली चाहती तो स्वयं कर सकती थी, आप को इस प्रकार के प्रावीजन की आवश्यकता क्यों पड़ी? जुडीशियल मैजिस्ट्रेट के यहां इन्साफ जल्दी होतः है। इसलिये मेरा कहना है कि जुडीशियल मैजिस्ट्रेट का जो क्लॉज है वह इस में रहना चाहिये। मैं एक बार और कहना चाहता हूँ— इस में जो ओरिजनल प्रावीजन था, वह 1973 में बहुत सोच समझ कर किया गया था। उस समय श्री राम निवास मिर्घा जी ने उस बिल को पायलोट किया था, उस पर पूरा डिस्कशन हुआ था और उन्होंने ने उस वक्त उन सब बातों का बहुत अच्छी तरह से जवाब दिया था, पूरी तरह से रीजनल दिये थे। इसलिये मेरी समझ में नहीं आ रहा है कि अब कौन सी स्थिति पैदा हो गई है जिस से इस को बदला गया है। मैं यह चाहता हूँ कि इस बारे में जो हम ने अमेंडमेंट रखे हैं उन को आप मान्यता दें और "जुडीशियल मैजिस्ट्रेट" शब्द जो है, वे इस में रहने दें।

इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूँ परन्तु कंडीशनली और पार्सियली इस को सपोर्ट करता हूँ ।

MR. CHAIRMAN: Mr. Bhogendra Jha.

SHRI SATISH AGARWAL: Mr. Bhogendra Jha was a member of the Joint Committee.

SHRI BHOGENDRA JHA (Madhubani): Mr. Chairman, Sir, my friend has reminded the House that I was a member of the Joint Committee. I happened to be a member of the Joint Committee and after the Joint Committee failed to accept some of my suggestions, I had to give a note of dissent. The Bill had been passed by the Rajya Sabha. Again, I with the help of some friends in the Lok Sabha, got the whole Bill referred back to Rajya Sabha and then some better provisions were accepted. So, the Criminal Procedure Code became a bit less intolerable for the average citizens of India, for the common man; not that it is ideal; not that it is what it should be; but it became a little bit less intolerable than what it was previously. But, since that time, the intransigent bureaucracy and the repressive mentality of the Police became assertive and some State Governments began suggesting to take us back to the colonial past. During the Janata Party rule, for two and a half years, an attempt was made to incorporate the provision of keeping in prison without trial, in this very Code, in the Criminal Procedure Code, and this House was made to accept an amendment that some persons could be kept in jail without any trial, without any proceedings. Fortunately at that time in the Rajya Sabha, the Janata Party did not have the majority and Congress was in the Opposition and they also supported our standpoint against the then Government and that Amendment was rejected there. Now, incidentally, this is not the position now, in the Rajya Sabha, the position is not such that, if we commit some mistake here, the Rajya Sabha will correct it. So, this House has to be more responsible and in that sense, I am happy to hear some saner voices from that side, from the side of the ruling Party.

[Shri Bhogendra Jha]

In the Statement of Objects and Reasons, two main points have been raised. One is to amend the provisions regarding bail so as to make it more difficult for habitual criminals committing serious offences to obtain bail. That itself is contradictory because the provisions that are here with regard to bail—which the Law Commission had discussed and recommended and the Joint Committee had approved and the House passed, are that bail is not a mercy thing. To keep a person while under trial in prison should not be the right of the executive, of the State or of the police. Here some people are discussing that once you are prosecuted, you should be kept in jail. Why and when he should be granted bail is being discussed. I will put it the other way. Why should anyone be kept in jail even for a single day unless he has been proved guilty? Suppose—why suppose, it is happening in many cases. People are kept in prison as prisoners under trial and they are declared innocent, totally innocent. Not that they are released on the question of benefit of doubt, but on the ground that they are totally innocent. They are kept in prison for years together. Who is going to compensate them—for the loss of liberty to a person who has been declared totally innocent? Who is going to compensate? The society? The Bench? The Bar? Or this House? Who will compensate? So the question is not that should anyone be released on bail; the question should be why should anyone be kept in jail for a single day unless he or she was declared guilty. Therefore, I think the question of bail should not have been put the way that it has been put here. It is on that basis the Joint Select Committee has recommended certain things and the House had accepted that at that time and it has helped the conditions in our country.

Secondly, to give the power to the executive in preventive proceedings, here again, the cart is being put before the horse. The prosecutor should

not be allowed to become a judge. When any proceeding is started, it is started by the executive on the orders of the executive and should the executive be made the judge of that also? That is why the Joint Select Committee and the Law Commission had recommended that it should be taken out of the hands of the executive and given to the Judiciary—not that in the judiciary you have better men or there are worse men in the executive but on the principle that the same person should not be the prosecutor and Judge at the same time. If you want more powers for the executive, I would like the Minister to tell us in his reply. The new Criminal Procedure Code gave much powers to the executive which it lacked previous to that. In the new Cr. P. C., in Sec. 110 new provisions were made to cover:

“any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940;

(b) the Foreign Exchange Regulation Act, 1973;

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952;

(d) the Prevention of Food Adulteration Act, 1954;

(e) the Essential Commodities Act, 1955;

(f) the Untouchability (Offences) Act, 1955;

(g) the Customs Act, 1962; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, . . .”

So these provisions were made. I would like the Minister to tell the House whether a single proceeding has been started against a single

hoarder or a single black-marketeer or a single adulterator or a single person violating the Untouchability (Offences) Act throughout the country. Even in the centrally administered areas or even in the capital of Delhi has a single person been proceeded against? Who has prevented that? Did the executive start proceedings and the Judiciary come in the way? Did the Judicial Magistrates come in the way? I would ask you to give even a single instance. Why were proceedings not started? It is their government. It is the State of black marketeers, it is the State of hoarders. It is the system which they are dominating. That is why the power was given under Section 110 but not a single person has been proceeded against in the last six years. So, the executive has got the power but the Government lacks the will. Even the Janata Party or the former Congress (U), or whatever it was, also lacked the will.

Not a single proceeding was launched against the people who indulged in blackmarketing, hoarding and adulteration. So, where they have got the powers, they did not use them. They want powers to harass the people. This amendment is sought to be made because if one has been convicted twice—more than two times—he will not be granted bail. There are scores and thousands of workers, peasants and youths in this country who have been convicted four times or even five times for waging a struggle—the trade unions and the students—and who will not be granted bail. The landlords committing one murder after the other and those converting the black money into white get acquitted because of money power. In such a situation, this amendment is uncalled for. It will be very harmful; the ordinance is totally unjustified even from the point of view of Government. There is no urgency for this ordinance. This is a blatant misuse of the power of issuing of the ordinances.

Lastly, Sir I want to say one thing.

It has been put here that the State Assemblies by passing a resolution can give the power to the judicial authority. I suggest that you put it conversely. Why don't you give this power to the States? The present Cr. P.C. has already given the power to the Executives. It is already there. So, what is the necessity for this here? Let all the Congress (I) Governments or Assemblies give this power to the executives. Why should Parliament be goaded into committing the sins against democracy? Sir, the main effect of this is that the jurisprudence is being violated if we enact this into a law.

SHRI JAGDISH TYTLER (Delhi Sadar): You say that the Parliament should not commit this sin. That means you want the States to commit that sin. You cannot have both the things. You say that the Centre should not commit the sin. Why should the States commit it?

MR. CHAIRMAN: Let him finish.

SHRI BHOGENDRA JHA: If the government wants more powers it has got them in the Cr. P.C. You can utilise those powers (Interruptions). If you are determined to implement it in your own states, we will oppose you in the assemblies too.

MR. CHAIRMAN: Mr. Jha, kindly conclude now.

SHRI BHOGENDRA JHA: I say that Parliament should not be a party to that sin. That is what I am saying. So, Sir, the Bill, as it stands, on the whole is unjustified and it will not help in maintenance of law and order. Rather it will help only the repressive forces and the anti-people forces. So, this Bill has to be rejected. I think the Minister will think over it whether it is warranted or not. According to me, it is wholly unwarranted. I have one question to the hon. Minister. I hope he will reply. You should compel him to reply. I want to know whether a single person was proceeded against for an economic

[Shri Bhogendra Jha]

offence. Not a single person has been proceeded against in the Centrally administered union territory of Delhi against the economic offence.

MR. CHAIRMAN: Shri Ram Singh Yadav.

श्री राम सिंह यादव (अलवर) : सभापति जी, माननीय मंत्री जी ने जो भारतीय दण्ड प्रक्रिया संहिता के संशोधन हेतु विधेयक पेश किया है उसका मैं समर्थन करता हूँ और मैं विशेष रूप से मेरे साथी वक्ता और अधिवक्ता जो हैं, जिन्होंने कुछ शंकाएं व्यक्त की हैं उन के संबंध में कुछ कहना चाहूंगा। उन्होंने कहा है कि धारा 108, 109, 110, 145 और 147 में एकजैक्टिव मैजिस्ट्रेट को श्रवण करने के जो अधिकार दिये गये हैं वे उचित नहीं हैं। मैं उनका ध्यान मौजूदा दंड प्रक्रिया संहिता की धारा 117, 121, 122 की ओर आकर्षित करना चाहता हूँ। धारा 373 में कहा गया है कि इन धाराओं के अन्तर्गत सजा पाए हुए व्यक्ति के विरुद्ध जो अपील दायर करना चाहता है वह सेशन जज के यहां दायर कर सकता है, डी० एम० के यहां अपील दायर नहीं होगी। यह शंका कि एजैक्टिव मैजिस्ट्रेट का जो निर्णय होगा वह सरकार के ही पक्ष में होगा निर्मूल है क्योंकि यहां भी अपील की पावर सेशन जज को ही दी गई है, डी० एम० को नहीं।

कानून और व्यवस्था का प्रश्न भी उठाया गया है। हमारे विरोधी दल के सदस्यों को भी मौका मिला था शासन करने का। आज जब वे पुलिस या एजैक्टिव मैजिस्ट्रेट्स की आलोचना करते हैं तो मैं पूछना चाहता हूँ कि उन्होंने अपने कार्यकाल में कौन से कदम उठाये थे जिस से पुलिस की पावर्स सर्कमवेंट होती और उन्होंने सी और पी में कौन से एमेंडमेंट किए थे जिन से पुलिस की पावर्स पर अंकुश लगता। कार्य-

पालिका को ला एण्ड ग्रांडर मेन्टेन करने की जिम्मेदारी आपने दी है, दायित्व दिया है और हमारा अनुभव और हमारा तजुर्बा यह बताता है कि ज्यूडिशियल मैजिस्ट्रेट को ला एण्ड ग्रांडर की पावर्स जब दी गई हैं तो उससे हालत बिगड़ी ही है, सुधरी नहीं है। उसका कारण यह है कि एक काम दो में विभक्त कर दिया जाता है और आधा काम एजैक्टिव को दे दिया जाता है और आधा ज्यूडिशियल मैजिस्ट्रेट को तो वह काम कभी भी सही नहीं हो सकता है। काम को सही रूप से करने के लिए जरूरी है कि एजैक्टिव मैजिस्ट्रेट के पास ही यह पावर रहती।

मैं यह भी कहना चाहता हूँ कि गवर्नमेंट ने आर्बिट्रेरी पावर्स हासिल नहीं की हैं और वह इसलिये कि धारा 478 सी और पी सी की जो हैं उसमें राज्य सरकारों को पावर दी गई हैं कि वे अगर जरूरी समझती हैं तो धारा 108, 109, 110, 145 और 147 के तहत यदि विवादों का निपटारा करवाना चाहती हैं, निर्णित करवाना चाहती हैं तो ज्यूडिशियल मैजिस्ट्रेट से करवा सकती हैं। इस वास्ते यह जो विधेयक पेश किया गया है यह किसी भी दृष्टि से अनुचित नहीं है और जो शंकायें उन्होंने ने व्यक्ति की हैं, वे उचित नहीं हैं।

437 में यह व्यवस्था की गई है कि आदतन आफेंस करते हैं, जो आफेंडज हैं उनकी बेल नहीं ली जाएगी। जो इससे सम्बन्ध रखने वाले व्यक्ति हैं या जो ड्राफ्ट करने वाले लोग हैं उन से मैं निवेदन करता चाहता हूँ कि दफा 437 का तो आप ने संशोधन कर दिया है, 436 का कर दिया है वहीं पर 116 और 446 के प्राविजज को कोई सरपास नहीं कर सकता है, उसकी तरफ भी आप क्यों नहीं देखते हैं और इसी तरह का संशोधन 438 में करते हैं। जिस व्यक्ति के ऊपर कत्ल का मुकदमा है, जिस को सजा हो चुकी

है या वह व्यक्ति जिस को दो बार से अधिक बार सजा हो चुकी है उसको भी इसमें एंटीसीपेटरी बेल मिल जाएगी। 436 और 437 और 439 में तो बेल नहीं मिल सकती है लेकिन 438 में मिल जाएगी। आप को चाहिए था कि आप यह देखते कि 438 में भी उस को एंटीसीपेटरी बेल न मिलती और उस का संशोधन आप करते।

एक व्यक्ति जो किसी का कत्ल करता है, मर्डर करता है तो जो बीरीव्ड फैमिली है उसको आप कम्पेन्सेट करवाना चाहते हैं लेकिन आप दर तय नहीं करते हैं। आप को दर भी तय कर देनी चाहिए थी। आप लाजिमी कर दें कि कम से कम इतना कम्पेन्सेशन बीरीव्ड फैमिली को जरूर मिलेगा। जिस तरह से एक्सीडेंट होने की सूरत में पचास हजार या एक लाख आप कम्पेन्सेशन देते हैं उसी तरह से जिस का कत्ल हो उसके परिवार वालों को मुआवजा मिलना चाहिये और उस की दर तय कर दी चाहिये।

17 hrs.

सैक्शन 110 में यह प्रावधान है कि ब्लैक मार्केटियर्स, होर्डिंज और स्मगलर्स, हेविचुअर आफेंडर्स और जो लोग सिविल, लिबर्टीज एक्ट के तहत आफेंसिज करते हैं उनके खिलाफ कार्यवाही की जा सकती है। मंत्री महोदय यानों या डिस्ट्रिक्ट मैजिस्ट्रेट्स से इनफार्मेशन मंगा कर देखें कि इस सैक्शन के तहत कितने चालान पेश हुए हैं। अगर ऐसे व्यक्तियों के खिलाफ पुलिस ने जानबूझ कर चालान पेश नहीं किये हैं, तो पुलिस वालों को दंडित करने के लिये प्रावधान किया जाना चाहिए।

बिरोधी पक्ष की ओर से कहा जाता है कि पुलिस की पावर्ज की करटेल किया जाये, लेकिन मुझे दुःख है कि इस बारे में एक भी सुझाव नहीं आया है कि पुलिस की पावर्ज को कैसे करटेल किया जाये जो जिम्मेदारियां

सरकार ने पुलिस को दी हैं, अगर वह उन्हें पूरा करने में सक्षम नहीं है, उस के द्वारा लापरवाही या नेगलीजेंस की गई है, तो पुलिस के खिलाफ एक्शन लेना चाहिए।

मुझे बार का एक्सपीरियंस है कि बहुत से मर्डर केसिज में इन्वेस्टीगेटिंग आफिसर असली मुलजिम को छोड़ देता है और गलत आदमी के खिलाफ चालान पेश करता है। मैं सुझाव देना चाहता हूँ कि अगर सेमन्ज जज या हाई कोर्ट या सुप्रीम कोर्ट यह स्ट्रिकचर्ज देता है कि असली मुलजिम को छोड़ दिया गया है, और किसी गलत आदमी को हीनस आफेंस में फंसा दिया गया है, तो उस निर्दोष व्यक्ति को इन्वेस्टीगेटिंग आफिसर से कम्पेन्सेशन क्यों नहीं दिलाया जाता है उस के खिलाफ एक्शन लिया जाना चाहिए।

हम उम्मीद करते हैं कि भविष्य में दंड प्रक्रिया संहिता की धारा 304 को लिबरल उदार, बनाया जाएगा और ऐसे एक्यूज्ड को डिफेंड करने के लिये प्रावधान किया जायेगा, जिस के पास मीन्ज नहीं है। सेशन कोर्ट हो, या हाई कोर्ट या सुप्रीम कोर्ट, बड़े वकील उस की पैरवी करने के लिए जल्दी से तैयार नहीं होते हैं। मेरा सुझाव है कि हाई कोर्ट और सुप्रीम कोर्ट के लेवल पर यह रूल बनाया जाये कि ऐसे लोगों को अच्छे वकीलों की पैरवी कम्पलसरीली दी जा सके।

इस बिल के द्वारा नया सैक्शन 446ए जोड़ा गया है, वास्तव में वह उन लोगों के लिए है, जो हेबीचुअली जमानत देते हैं। अगर उनसे सम्बन्धित अभियुक्त अदालत में उपस्थित नहीं होता है तो उनसे जमानत वसूल न होने की स्थिति में उन्हें सजा देने का प्रावधान किया गया है। लेकिन इस धारा के मुताबिक उस आदमी को भी उतनी ही सजा दी जायगी, जो बीमारी की वजह से या गलती से अदालत में हाजिर न हो सके। इस में कम्पलसरीली छः महीने की सजा का प्रावधान किया

[श्री रामसिंह सादव]

बया है। इस में मैजिस्ट्रेट को डिस्क्रीशन देनी चाहिये थी कि अगर वह समझे कि कोई व्यक्ति रीजनेबल ग्राउंड्स की वजह से नहीं आ सका है, तो उसे सजा न दी जाये। इस बारे में दोबारा सोचने की जरूरत है।

जिस तरह जुडीशल मैजिस्ट्रेट फर्स्ट क्लास का प्रावधान किया जाता है, उसी तरह इस में यह स्पष्ट होना चाहिए कि एकसीक्यूटिव मैजिस्ट्रेट फर्स्ट क्लास हो, क्योंकि सैकंड क्लास और थर्ड क्लास के एकजीक्यूटिव मैजिस्ट्रेट भी होते हैं। इस में इस बात को स्पेसिफिक नहीं दिया गया है।

बेल सम्बन्धी प्राविजन में 'स्पेशल रीजन्ज' की बात कही गई है। मुझे इस पर आपत्ति है। विधि शब्दावलि, लीगल फेजालोजी, में 'स्पेशल रीजन्ज' की कहीं जरूरत नहीं है, सिर्फ 'रीजन्ज' ही काफी है।

'Reasons' mean that those reasons are being applied by a Judicial Magistrate or by a Judge who has got judicial discretion.

जहाँ एक व्यक्ति जुडीशल डिस्क्रीशन एक्सरसाइज करता है, वहाँ "स्पेशल रीजन्ज" की जरूरत नहीं है। इसलिए "स्पेशल" शब्द अनावश्यक और निरर्थक है, इस से कोई मतलब हल नहीं होता है।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

SHRI A. K. ROY (Dhanbad): Mr. Deputy-Speaker, Sir, I very humbly like to submit, Sir, that this Code of Criminal Procedure (Amendment) Bill is itself a criminal amendment. I say, this Code of Criminal Procedure should be so amended as to prevent such types of Amendments being

brought up before the House. Sir, the question is not about the small facilities that were extended earlier which have been withdrawn. It is nothing but a criminal assault on Article 50 of the Directive Principles of the State Policy in the Constitution. It says—

"50. Separation of judiciary from executive:—The State shall take steps to separate the judiciary from the executive in the public services of the State."

In the Constituent Assembly debate, it was very widely discussed. At that time, it was under Article 39-A. At that time Dr. Ambedkar said as follows:—

"It has been the desire of this country from the very long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolution of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out."

Sir, next day, that is, on the 25th November, 1948, Pandit Jawaharlal Nehru intervened in this particular debate and he said as follows:

"I may say straight off that so far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions. I may further say that the sooner it is brought about, the better."

Sir, it was the Congress Resolution on that day. Now, it is not the Congress Ministry. This is the Congress-I Ministry. I hope that our quasi-Home Minister, while replying to the debate will elaborate whether the Congress-I Ministry has got any obligation to

respect the Congress Resolution which was passed long back. (*Interruptions*).

AN HON. MEMBER: Now, this is Congress-I.

SHRI A. K. ROY: This is Congress (I), there is Congress (U) and now there will be Congress (They)... (*Interruptions*). You start with adding after your party name all the alphabets 'A', 'B', 'C', 'D' etc. and with 'Z'. Then everybody will be included. (*Interruptions*). Mr. Zail Singh is now sitting there and it will end with Congress (Z). And that is the end of it.

Mr. Deputy-Speaker, Sir, they have argued that it is a small piece of legislation. But its mischief-making power is not small. It is immense. You will find that it deals with sections 108, 109 and 110. I would like to say that this Section 110 is a perennial mishap for the poor people who are the people who are to suffer, not the rich people, not the people sitting on the Treasury Benches, not the propertied people, not the people with means and all those sorts of things. It is the poor people who suffer and they languish in the jails and they have to face all those ordeals. It is claimed that this amending bill has been brought forward to deal effectively with the anti-social elements and habitual offenders. If you go through the history, you will find that after 1942 movement, the British Government used to call all the persons involved in the national movement as anti-social and habitual offenders, and they used to give advertisement. At that time, they were not there; only the Congress party was there. They used to be declared as anti-social elements, habitual offenders and all sorts of things. The discentres of today may be the rulers of tomorrow. Naturally, the law should take care of that.

Various aspects of the Bill have already been argued well and I would

not like to repeat them. I wonder how you are giving all the judicial powers to the prosecutor, who is also prosecuting. Is it with an idea so that he can handle them more brutally? Now, the Congress (I) Party has a big majority in the House; they rule at the Centre as also in almost all the States; they rule on the land, they rule in the air and they rule in the water. Why are they getting afraid? Why are they bringing forward one legislation after the other with or without your permission, and clipping the wings of the judicial system.

MR. DEPUTY-SPEAKER: They do not require my permission.

SHRI A. K. ROY: They came with the Bill for restricting blackmarketing and profiteering, which afterwards would flourish under the protection of these people. Then, they came with that 'anti-social' National Security Bill which is pending in this House and now they have come with this Bill. These are nothing, but preventive detention measures: No proof is needed to show that a particular person is anti-social or not, mere apprehension will do. Poor people, Harijans, Adivasis, backward, toiling people and black people will be affected by this. They say that they are anti-social people, and they would put them behind the bar. But what about propertied and rich people? A provision has been made for anticipatory. Who will make use of that? Only the rich people and the top executives. The persons responsible for blinding a number of undertrials in Bhagalpur have taken anticipatory bail. For that, no amendment has come. These are the stark realities, which we should not forget to see.

I would like to conclude by giving a warning to all the Ministers, half-Ministers, quasi-Ministers of the consequences of such measures. Justice V. R. Krishna Iyer, while he was a judge, gave a speech in Madras and he said:

[Shri A. K. Roy]

"Law without politics, is blind; politics, without law is deaf. We suffer terribly from blind justice and deaf politics to such a degree that the day, hopefully is not far off when the common millions, now busy 'licking their wounds and burying their dead, will begin to see and hear things for what they are and call the bluff of the Administration of Injustice."

And further:

"When the court collaborates with Law against Justice, the story of the Bastille will be writ again in blood."

With these words, I conclude.

SHRI XAVIER ARAKAL (Ernakulam): I won't take more than three minutes because I really congratulate Mr. Satish Agarwal for supporting the Bill. If you were here you would have really appreciated his arguments. He appreciated all the provisions except one, that is, Clause 2 which affects the power given to the Executive Magistrate for which Mr. A. T. Patil, the Hon. Member here, very logically, legally, has analysed the proposition of law. Now, Mr. Vajpayee has understood what I have said. Those who come late may refer to the speeches given by some other hon. Members. If you refer to the statement of objects and reasons, there are five reasons given. Does anybody in this House disagree on those points? Many Members have expressed strongly on these five points in support of this Bill. The only point where they disagreed was whether the power should be given to the Executive Magistrate or not. My submission, Sir, is if you refer to Sections 108, 109 and 110 of the Act, you will see why this power is given and for what purpose it is given. Sir, if you do not have the Cr.P.C. you may refer to the Annexure. On page 6, it is given. Mr. Roy made an eloquent speech here. I do

agree with that. But, what is the substance of it? It won't take us anywhere. We have to be objective in approaching the offences being committed under these Sections. At page 7, Sir, any offence under one or more of the following Acts namely (a) Drugs and Cosmetics Act, 1940, (b) The Foreign Exchange Regulations Act of 73 and (c) The Employees Provident Funds and Family Pension Fund etc. etc. You mean these are committed by the poor Harijans and poor people, Mr. Roy? I do not know. As far as my reading goes, Sir, the aim and object of this Act is to apprehend those who commit offences and make it non-bailable. There we stand together and the Congress Party is committed to that object.

Sir, I am referring to these provisions because they are imperative and mandatory. My submission is that this amendment should have been brought earlier. There are other provisions of the Criminal Procedure Code which require immediate attention and amendment. Those lawyers here who are practising in Magistrate Courts, will know what is happening there. We know that very well.

It is already over-burdened, delayed, lot of procedures are there, unwarranted and unrequired. My submission is by this amendment, those unwarranted procedures can be eliminated.

You do not agree with that. Where is your logic? On the one hand, you talk, delay and deny. Delay means denying the justice. Here we want to do justice. This House has been diligent enough to deliberate on the points raised here. We had the privilege to hear many people here. So, I submit that when we approach issues of economic and other offences pertaining to Sections 108, 109 and 110, this is imperative and mandatory. It ought to have been brought in earlier and implemented.

With these words, I wholeheartedly support the Bill.



श्री जयपाल सिंह कश्यप (आंबला) :

उपाध्यक्ष महोदय, क्रिमिनल प्रोसीजर कोड के संशोधन का जो बिल इस समय सदन के सामने प्रस्तुत है, मैं इस के बारे में यह कहना चाहता हूँ कि यह प्रजातन्त्र की ओर से तानाशाही की ओर बढ़ते हुए कदम है। यह सरकार की मनोदशा का प्रतीक है। इस देश के लोगों को भारतीय संविधान में कुछ पण्डामेंटल राइट्स दिये गये हैं, उन राइट्स को किस तरह से छीना जाय, यहां के लोगों के अधिकारों को कैसे कम किया जाय—इस बात का प्रयास इस बिल में किया गया है। संविधान की धारा 50 के अनुसार क्रिमिनल प्रोसीजर कोड में जो पहले संशोधन किया गया था, उस में एक्जीक्यूटिव से जुडीशियरी की तरफ ले जाने का प्रयास था। लेकिन आज उन निदेशक सिद्धान्तों के विपरीत दिशा में ले जाने का प्रयत्न किया जा रहा है। मैं ऐसा समझता हूँ कि आप को उस दिशा को बदलने या उस दिशा में चलने के बाद वापस आने का अधिकार नहीं है। इसलिये मैं यह चाहता हूँ कि आप जो संशोधन लाये हैं, पहले हमें इस बारे में सर्वोच्च न्यायालय की राय लेनी चाहिए कि क्या हम को इस बात का अधिकार है कि हम एक बार जुडीशियरी को अधिकार दे दें और उस को एक्जीक्यूटिव से सैपरेट कर दें, उस को फिर से जुडीशियरी से छीन कर एक्जीक्यूटिव को दे सकते हैं? इस प्रश्न को सुप्रीम कोर्ट के समक्ष भेजा जाय और उन से राय लेनी चाहिए, अन्यथा नतीजा यह होगा कि हम यहां बिल को पास कर देंगे, लेकिन आगे जा कर कानून के इण्टरप्रेटेशन में यह अवैध करार होगा।

इस देश में अब तक के जो तौर-तरीके रहे हैं, उन में कानून ने गरीबों पर अंकुश रखा है, लेकिन इस देश के गरीबों के लिए

खुली छूट रही है। उन पर किसी कानून का कोई अंकुश नहीं रहा है। अच्छा तो यह होता कि इस देश में पुलिस का जो राज कायम है, नौकरशाही और पुलिस की जो तानाशाही बढ़ती जा रही है, उस पर रोक लगाने के लिए कोई प्रयत्न किया जाता। लेकिन आप ने ऐसा नहीं किया, बल्कि पुलिस को ज्यादा से ज्यादा अधिकार दे कर, नौकरशाही को ज्यादा से ज्यादा अधिकार दे कर इस देश में आप तानाशाही की हालत को लादना चाहते हैं। आपकी मंशा और उद्देश्य यही मालूम होता है।

यदि कानून में ऐसा संशोधन होता कि जिन गरीबों पर अत्याचार होते हैं, जो बोट क्लब पर बैठ कर धरना देते हैं, माननीय गृह मंत्री जी और प्रधान मंत्री जी के दरवाजे खटखटाते हैं लेकिन उनकी कोई सुनवाई नहीं होती, ऐसे व्यक्तियों को राहत पहुंचाने का प्रयास होता तो हम इस का समर्थन करते, लेकिन ऐसा कोई प्रयास इस बिल में नहीं है। पुलिस स्त्रियों के साथ बलात्कार करती है, लोगों की आंखें फोड़ देती है, उत्तर प्रदेश में जिस तरह से लोगों को गोलियों से मारा जा रहा है—उन के खिलाफ इस कानून में व्यवस्था होनी चाहिए थी। पुलिस का सताया हुआ अगर पुलिस के खिलाफ कोई केस रजिस्टर कराये तो वह रजिस्टर किया जाय और पुलिस के खिलाफ भी उसी तरह से कार्यवाही की जाय जैसी दूसरे मुलजिमों के साथ होती है, तब हम इस कानून का समर्थन करते।

माननीय मंत्री जी, एक मंत्री की हैसियत से नहीं, बल्कि एक साधारण नागरिक की हैसियत से आप मेरे साथ किसी थाने में चलिए, यदि आप वहां कोई रिपोर्ट लिखाना चाहेंगे, तो वह रिपोर्ट वहां नहीं लिखी जायगी, जब तक आप उन को पैसा नहीं देंगे। हिन्दुस्तान के किसी भी थाने में आसानी से रिपोर्ट नहीं लिखी जाती

[श्री जयपाल सिंह कश्यप]

है, बहुत से राज्यों का तो मुझे भी अनुभव है। मैं तो यहाँ तक कहता हूँ बहुत से ऐसे लोग हैं जो खुद पुलिस के लिए दफ़ा 109 में लोगों को फंसाते हैं। दफ़ा 109 का हर तरह से हनन होता है और वही पुरानी रटी-रटाई कहानी कोर्ट में दोहरा दी जाती है। रात को 12 बजे पकड़ा, उस की जेब से "आला-नक्रब" और एक बीड़ी का बंडल निकला। हालांकि 109 का जुर्म जुर्म नहीं है, लेकिन लाखों लोगों के साथ यही होता है, वही कहानी अदालत में दोहराई जाती है। न्याय व्यवस्था पर इन कानूनों का क्या असर पड़ेगा, यह आप देखिए। पुलिस के हाथ में आज शासन है, आप का शासन आज नहीं है। मंत्री जी, आप यहाँ बैठे हुए हैं, आप का शासन नहीं है। आज तो शासन पुलिस कर रही है। आप के हाथ में कोई बागडोर नहीं है, पुलिस पर कोई अंकुश नहीं है। आज पुलिस में भ्रष्टाचार व्याप्त है और जो इन्वेस्टीगेशन मशीनरी है, उस का तो कहना ही क्या? जिस को चाहा, छोड़ दिया जैसे लेकर और जिस को फंसाना चाहा, फंसा दिया कत्ल के मामले में फंसा दिया या डकैती के मामले में फंसा दिया। जैसा वह चाहे कर सकती है और आप उन को रोक नहीं पा रहे हैं। आप उन को पकड़ नहीं पा रहे हैं। उन पर आप अंकुश लगाइए। अगर आपने इस देश में पुलिस के जो बढ़ते हुए अधिकार हैं, उन को न रोका और उस के लिए कानून में संशोधन न किये, तो मैं यह कहूँगा:

"हृद से बढ़ जाती है जब इन्सान की मजबूरियां अमनपसन्द लोग भी बगावत की बात करते हैं"।

इस देश के गरीब लोगों की आँखें निकलवा कर के देश के प्रजातंत्र की रक्षा आप नहीं कर पायेंगे। आप इस देश की स्त्रियों की थानों में बेइज्जती करा कर पुलिस के अवि-

कारों की बात करते हैं और इस तरह के इस नये कानून को इस देश में ला रहे हैं। कमाल है। आप 153 बी और 505 बी में हिन्दुस्तान के सारे मुकदमों को उठा कर देख लीजिए। केवल पालीटीकल आदमियों पर मुकदमों चलाए जाते हैं चाहे वह ललित सिंह यादव पर मुकदमा चलाया गया हो या राम स्वरूप वर्मा पर मुकदमा चलाया गया हो और चाहे वह जयपालसिंह कश्यप पर चलाया गया हो। जो जाति-विरोध की बात करें, जो जाति-तोड़ने की बात करें, उस पर आप की पुलिस मुकदमा कायम करती है, जो बैकवर्ड क्लासेज और शेड्यूल्ड कास्ट्स की बात करता है, जो वर्ण-व्यवस्था को तोड़ने की बात करता है, आप की पुलिस उस पर मुकदमा कायम करती है। अदालत छोड़े या न छोड़े लेकिन आप की पुलिस ऐसे ही लोगों पर मुकदमों कायम करती है। आप इस बिल के द्वारा कानून में जो संशोधन ला रहे हैं, उस में डी० एम० को अधिकार दे रहे हैं। इस के लिए आप डिस्ट्रिक्ट जज को अधिकार दीजिए। 153-बी और 505 बी में सैक्शन पावर डिस्ट्रिक्ट जज को होनी चाहिए। यह इन्सान के फण्डामेंटल राइट का सवाल है, उसके बोलने के अधिकार का सवाल है, जो संविधान ने उस को दिया है। इसलिए मेरा कहना यह है कि डिस्ट्रिक्ट जज की सैक्शन के बाद ही ये मुकदमों चलने चाहिए न कि डिस्ट्रिक्ट मैजिस्ट्रेट को यह अधिकार दिया जाना चाहिए क्योंकि उस को जिधर आप घुमायेंगे वह घूमेगा। आज पूरी एकजीक्यूटिव जिस तरह से बेनकाब हो रही है, बेमिसाल हो रही है, वह सब को मालूम है। चारों तरफ नौकरशाही के कारण घोर अन्याय व्याप्त है। इस बिल को ला कर और उसको आप बढ़ा रहे हैं।

यह कहते हुए मैं इस बिल का विरोध करता हूँ और आप ने जो मुझे समय दिया है, उसके लिए मैं आप को धन्यवाद देता हूँ।

**SHRI G. M. BANATWALLA** (Ponnani): Mr. Deputy-Speaker, the government has expressed grave concern and anxiety over the need to deal effectively with habitual offenders, anti-social elements and those fermenting communal mischief. I share this anxiety and concern. My only submission to this House is that Clauses 2 and 3 of the present Bill are unwarranted by this anxiety and concern. Clause 2 of the Bill seeks to transfer the powers from the Judicial Magistrate to the Executive Magistrate. It would be the duty of the government to give this explanation to this House how this vesting of the powers with the Judicial Magistrate and not with the Executive Magistrate, as it is today, has prevented the government from dealing effectively with the present situation. I must say that this transfer of powers from the Judicial Magistrate to the Executive Magistrate is an unfortunate scuttling of the process; it is a destruction, I should say, of inbuilt safeguards that are there in the procedural matters in our laws. I must point out to the House that, even as Section 478 of the present Criminal Procedure Code stands, the power is with the State Legislature and the State Legislature is, in its own wisdom, competent to assess the situation and to pass a resolution, if the situation is so bad. I would submit that—the powers may be transferred from the Judicial Magistrate to the Executive Magistrate, this is a very good provision in the present law—if the situation so deteriorates, if the situation so warrants, let the State Legislature meet and let it pass a resolution and let the concerned State Government in terms of section 478 consult the High Court of the state and then let the powers be transferred in accordance with the advice given by the High Court from the judicial magistrate to the executive magistrate. It is too much on the part of the government to try to make this House a party to defeating the spirit of article 50 of the Constitution which refers to separation of judiciary from the executive.

In order to be brief, I will take up several other things when my amendments come up. I may now refer to clause 3 of the Bill which makes a provision that sanction for prosecutions with respect to 153B or sub-section 2 of sub-section 3 of section 505 of the Indian Penal Code may be granted henceforward by even district magistrates. As the situation stands today, it is the state government or the central government that can sanction such prosecutions. Power is now sought to be given even to the district magistrate. A question has been asked as to what is wrong in giving this power? Only two or three days back, we had a full-fledged discussion on communal riots and at that time also I had pointed out that it was a well known fact that the local authorities were unfortunately, not immune to communalism and they did not, unfortunately, reflect an impartial attitude. It is an unfortunate state of affairs with respect to the local authorities. We have been complaining again and again with respect to it that they act with trenchant partisan attitude. That is because of the local influences. The law as it stands today is a little safeguard, an imperfect safeguard I should say, to see that local influences did not result in such prosecutions. If the power of sanctioning prosecution is given to the district magistrate, he will, we know very well, be actuated by local influences. As of today there is a lot of misuse and abuse of powers. The Powers of sanctioning prosecution have been misused not once or twice but umpteenth times. Today it is rather unfortunate that we have a Bill which seeks to give remedies but which are wrong remedies and they would on the contrary aggravate the situation.

**THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. VENKATA-SUBBIAH)**: Mr. Deputy-Speaker, I thank the hon. Members who have participated in this debate and contri-

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buted constructive suggestions. I do not want to answer some of the personal references made against some of our Ministers sitting here. It is due to frustration that such personal references are made. I am sure that in course of time, in course of several years to come the hon. Member who has referred to half-Minister and quasi-Ministers will not even in his wildest dream hope of becomes even a quarter of Minister. I expected that these discussions are conducted in a very objective and dignified manner. Some of these Opposition Members are suffering from a sense of frustration. That is the tragedy of it with some Members. I can only say, where ignorance is bliss, to be wise is folly. Having said, that I will only refer to the basic object and idea behind bringing those amendments. Some of the hon. Members are suffering from a misconception that these are all of a punitive nature. As a matter of fact, they are security proceedings, designed to play a role only in the prevention of crime and especially assisting the maintenance of law and order. This is only a preventive sort of a measure. It is not designed to be a punitive nature and as a matter of fact any action taken under these sections can be referred for an appeal to the Sessions Judge. So, it is as though this is arbitrary, and also it is final. And, No. 2, Shri Satish Agarwal has said that these three sections were formerly in 1973, in the jurisdiction of judicial magistrates. And he now says, Sir, that this Government for fear of certain things, they are trying to arm themselves with some punitive powers so as to make their position safer. I would like to remind the hon. Members that even this amendment which was made in 1973, it has been done by our Government led by the present Prime Minister, Smt. Indira Gandhi. There are certain compelling reasons. As I have said in my introductory remarks there are certain compelling reasons as to

have a second look at these matters and I had said, I quote again:

'In view of the prevailing law and order situation and in order to enable the law enforcing agencies to deal effectively with anti-social elements, habitual offenders and those creating enmity between groups and communities, it was considered imperative that the law should be strengthened urgently.'

This was the compelling reason and the Government which is in charge of the administration and which has come into power after obtaining a massive mandate of the people thinks that it is its duty to maintain law and order to deal with these habitual offenders and anti-social elements, people who are creating disharmony among communities and groups, black marketeers and smugglers. These are the anti-social elements that are creating trouble in the country. So, we thought that it is necessary that these sections should be brought to the jurisdiction of the executive magistrates. Even then, when the Criminal Procedure Code was amended in 1973, an option was given to the State Governments, if a resolution is passed by the State Assembly, and with the concurrence of the High Court, they can opt even for an executive, to endorse these matters to the executive magistrates. I am referring, in this connection, to the State Governments of Bihar, Haryana, Himachal Pradesh, Rajasthan and Uttar Pradesh. Even the Delhi Administration had opted for keeping these sections under the jurisdiction of the executive magistrates. Here also in the present Bill we have said that with the permission of the State Assembly and with the concurrence of the High Court, if any State Government so chooses to still retain them with the judicial magistrate, they can do so. So, in this connection, Shri Mool Chand Daga—an eminent lawyer as he is—he did not comprehend properly and he started saying that in the objects of the Bill it has

been stated that we are retaining this provision for transfer of the powers to take security proceedings under the aforementioned Sections 108, 109, and 110 to the Code. He has forgotten or by oversight he could not see item (iv) in the statement of objects and reasons which says:

"vest the power to take security proceedings under sections 108, 109 and 110 of the Code in Executive Magistrates".

Clause 8 says that "for section 478 of the principal Act, the following section shall be substituted." So, if Mr. Daga reads the new section 478 given under clause 8, then he will understand the true position.

The whole discussion has centred round the point that the Central Government are trying to arm themselves with more punitive powers, trying to become dictatorial and give more powers to the executive magistrates. In this connection, I may refer to the speeches of Shri Jaganatha Rao and Shri A. T. Patil, who have clarified the position. The executive magistrates are in charge of maintaining law and order and therefore, the power has been given to them to see that the habitual offenders and anti-social elements are dealt with quickly and expeditiously. There is nothing wrong in what this amendment seeks to provide.

Shri Satish Agarwal has quoted the 41st report of the Law Commission in defence of his contention because the 41st report states that these should be with the judicial magistrates. But I refer the hon. member to the 37th report of the Law Commission where it is categorically stated that these should be with the executive magistrates. So, if the Law Commission gives one opinion at one time and another opinion at another time, we have to take the totality of the circumstances into account and come to a conclusion.

Sections 109 and 110 are directed against suspected persons whose acti-

vities may lead to committing a cognizable offence or habitual offenders like robbers, house-breakers, etc. (Interruptions). It has been made time and again very clear that no politician will come under habitual offender and I am sure none of our hon. members about whom I have got the highest regard can be taken a habitual offender or antisocial element. Hon. Members of Parliament are leaders in their own right; they are representatives of the people. It is not the intention of the Government to direct these things against any of our friends opposite. They are only trying to create an impression in the country that this is intended for political purposes.

SHRI SOMNATH CHATTERJEE (Jadavpur): I only hope your wishes prevail!

SHRI P. VENKATASUBBAIAH: If the executive magistrate charged with the responsibility of maintenance of law and order binds a person for a period for good behaviour, I do not know why hon. members should take objection to it. I have mentioned about the 37th report of the Law Commission. They have laid emphasis on the preventive nature of the proceedings under sections 108 to 110 and their vital impact on the maintenance of law and order. In fact, there had been a recommendation that the powers under all these sections should be vested exclusively in the Executive Magistrates. That was the opinion given by the 37th Report of the Law Commission.

Some hon. Members have raised objections with regard to the amendment of section 196, whereby concurrent powers have been given to the District Magistrates. I will point out that it is only in respect of sections 153B and sub-section (2) and (3) of section 505 that concurrent powers are proposed to be given to District Magistrates, and these sections relate to offences dealing with prejudicing the national integrity and communal harmony. This is very

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limited in nature. I can understand the feelings of Shri Banatwalla. But we cannot say with one stroke that all the officers or the bureaucracy is communal-minded. We have to repose some confidence in it if the State or the country is to be administered through the bureaucracy. This amendment is of limited nature. When the Chief Secretaries met, they also recommended that this provision should be suitably amended.

**SHRI ATAL BIHARI VAJPAYEE:** Including the Chief Secretaries of West Bengal and Kerala?

**SHRI P. VENKATASUBBAIAH:** I am referring to the consensus of opinion of the Chief Secretaries. I am not in a position now to mention whether the Chief Secretaries of West Bengal and Kerala have approved of this; I can only say that the consensus emerged out of the Chief Secretaries' meeting is that this change was to be effected.

**SHRI A. K. ROY:** When I raised this point whether the representatives of the West Bengal and Kerala Governments subscribed to this view, I was told that the Minister will clarify this point while replying to the debate. So, let him clarify that.

**SHRI P. VENKATASUBBAIAH:** I have replied to that point. What more does he require?

Then I come to making the bail provision more stringent. This clause seeks to make it very difficult for habitual criminals falling within the specified category to obtain bail. It seeks to provide that if any person has already been convicted for a cognisable and non-bailable offence twice, or has been convicted once for an offence with death, or imprisonment for life, or imprisonment for 7 years or more, or had been previously convicted on two or more occasions of a non-bailable and cognisable offence, he will not ordinarily be granted bail by the court. The grant-

ing of bail in such cases would only be for special reasons to be recorded in writing. Some Members have said that under the cover of "special reasons", the court may do anything it likes. It has been specifically and categorically stated that the reasons must be minuted by the presiding officer. He has to say what are the special reasons. He cannot *suo motu* arbitrarily grant bail without giving any reasons.

Further, there is a provision that this will not be applicable if the person arrested is under the age of 16 years, or is a woman or is sick or infirm. That will answer the points raised by some hon. Members.

I may state here that this provision is to curb criminal activities by habitual offenders, who take advantage of the liberal bail provisions and commit crimes while released on bail. Some information collected from Delhi would bear this out. In Delhi, as reported by the police authorities, 1,805 persons with previous convictions were arrested for different offences after 1st January, 1978. All of them were released on bail, despite opposition by the administration. All of them were involved in offences subsequently.

Sir, the Delhi Administration has reported that "records in respect of 90 of these have been checked further which show that 67 had convictions in offences punishable with imprisonment for 7 years, RI or more etc. or had 2 convictions in cognizable non-bailable offences." 37 out of these have since been detained under the National Security Ordinance.

Sir, about the position of the under-trial prisoners that has been mentioned, while the Government of India are sympathetically considering the recommendations of the Law Commission in its 78th Report to bring down incidence of unduly long detention of under-trials, the State Government of Tripura were anxious to amend Section 167 Cr.P.C. in its

application to the State of Tripura so as to provide a maximum period of detention in custody of 300 days of an offence punishable with death or with imprisonment for life or imprisonment of 3 years or more. The present Government of Tripura wants the maximum period of such custody to be raised to 200 days. (The position in the Code is that remand in custody is allowed up to a maximum of 60 days ordinarily and up to a maximum of 90 days if offence is punishable with death or with life imprisonment or imprisonment of 10 years or more). The Tripura Government had asked for this change in view of the disturbances that erupted there. By quoting this, I am not trying to cast any aspersions on the State Government. But, here, depending upon the circumstances prevailing in that area, the Tripura Government which is supposed to be a left government and a progressive government, was compelled to come forward with this suggestion that detention period must be raised to 200 days. And in the case of offences, eventually approval was given for allowing a maximum remand in custody of 120 days ordinarily and up to 189 days in case the offence was punishable with death or life imprisonment or with imprisonment of 10 years or more.

The States were consulted and most of them including West Bengal and Kerala agreed to such amendment regarding bail. (Interruptions).

Sir, another thing is about the people who give sureties. We have also made this very stringent because there are some habitual surety givers. So, care has been taken in respect of these people.

Sir, in clause 7 we have inserted a new section 446A. This provision is proposed to be inserted to provide for the cancellation of a bail bond of a person whose bond for appearance has been forfeited and that after such forfeiture of the bond, he shall not be released only on his own bond unless he is able to show sufficient

cause for his failure to appear. This provision is meant to avoid the misuse of the liberal provisions by the accused not to appear in the court and delay the trial of the case. The courts would even now on their own be cancelling the bail bond of such a person. But this provision has been inserted by way of abundant caution.

Now, I come to clause 9. This is a saving clause and seeks to provide how the proceedings already commenced before the commencement of the Bill should be dealt with.

So far as consultation with the State Governments is concerned, I have already submitted that if any of the State Governments want that these powers should be retained with the judicial magistrates, they can do so after passing a resolution in their respective State Assemblies and getting the concurrence of the State Government.

In so far as the provisions relating to bail are concerned, consultations with the States started in early 1979, and most of the States, including West Bengal and Kerala, expressed agreement with the provisions that have now been introduced in the Bill in Clauses 5, 6 and 7. So far as Clauses 2 and 3 are concerned, these were included after the Chief Secretaries' Conference, as already mentioned in my speech.

These are, as I said, measures to see that preventive action is taken so as not to allow these anti-social elements to disturb the peace, create a law and order problem and take the law into their own hands.

These are the facts of the matter. Some of the hon. Members may not have studied the implications of the Bill very thoroughly. Anyway, they are free to express their own opinion, but I may reiterate that this Government is determined to maintain law and order and to give justice to those who have been denied the same for

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ages, who have been oppressed and suppressed. We want to take them out of the clutches of the oppressive and anti-social elements.

With these words I request the hon. Members who have given notice of amendments to withdraw them and vote for the Bill.

MR. DEPUTY-SPEAKER: Shri Satish Agarwal.

SHRI RAMAVATAR SHASTRI: The House should adjourn at 6 O'Clock.

MR. DEPUTY-SPEAKER: No, it will have to be passed. It will take only 15 minutes.

I want to make it very clear that three hours were allotted to this Bill. Shri Ramavatar Shastri is objecting now, but the time allotted to his party was five minutes.

SHRI RAMAVATAR SHASTRI: Why are you mentioning my party?

MR. DEPUTY-SPEAKER: Should I not tell you what the actual position is? He knows it is a weak point for him.

The time allotted is three hours. Had we stuck to it, I would have asked every speaker to sit down after four or five minutes. I have not done that, I have given all opportunities. Now I want this Bill to be passed today. We will sit for some more time. Let us not stand on technicalities. On other occasions the opposition wants something and we agree. Therefore, I would like to take the pleasure of the House.

Is it the pleasure of the House to continue?

HON. MEMBERS: Yes.

SHRI ATAL BIHARI VAJPAYEE: Every day you cannot have it like

this. Yesterday we decided to sit for a longer period. Is this going to be the order of the day every day?

MR. DEPUTY-SPEAKER: You are a very senior Member. We will stick to time hereafter, whoever be the speaker. Three hours were allotted. But more than 3½ hours are over by now. (Interruptions)

18 hrs.

SHRI SAMAR MUKHERJEE (Howrah): Generally the extension of the House is agreed upon. But today do not try to impose.

MR. DEPUTY-SPEAKER: I am not imposing.

SHRI SAMAR MUKHERJEE: It will be taxing our patience. You can very well understand it. Psychologically, everybody is now tired. Members want to go. Many of us have appointments. I have to go just now. I have fixed an appointment considering that at 6 O'Clock the House will adjourn. In this way many hon. Members have appointments. If the sitting of the House is to be extended ... (Interruptions)

THE MINISTER OF PARLIAMEN-TARY AFFAIRS AND WORKS AND HOUSING (SHRI BHISHMA NARA-IN SINGH): Whatever time has been fixed by the Business Advisory Committee will have to be adhered to to finish the business of the House in time.

MR. DEPUTY-SPEAKER: The time allotted by the Business Advisory Committee will have to be strictly adhered to.

(Interruptions)

MR. DEPUTY-SPEAKER: At times we have agreed to your request. We have to adjust the time. There should be give and take. Mr. Satish Agarwal is not going to take much time.

(Interruptions)



**SHRI SAMAR MUKHERJEE:** To-day you adjourn the House.

**SHRI A. K. ROY:** We are not interested to sit any more.

**MR. DEPUTY SPEAKER:** Then in that case as soon as the time allotted by the Business Advisory Committee is over, I shall have to ring the bell.

**SHRI SAMAR MUKHERJEE:** Late sitting happens daily.

**SHRI P. VENKATASUBBAIAH:** It is not our mistake. Members want much time to speak. We, therefore, want that it should be completed to-day.

(Interruptions)

**MR. DEPUTY-SPEAKER:** Shri Ramavatar Shastri, please sit down. You belong to a small party. (Interruptions). You take much time. From the time point of view I am telling.

**SHRI SAMAR MUKHERJEE:** It cannot happen every day. To-day you adjourn. We will accommodate you on some other day.

**SHRI P. VENKATASUBBAIAH:** To-morrow, there is a meeting in the Central Hall.

**SHRI SOMNATH CHATTERJEE:** It is not deliberate on our part. To-day everybody is in difficulty. Let it be to-morrow.

**MR. DEPUTY-SPEAKER:** To-morrow we have a function in the Central Hall. We have to adjourn at 5 O'Clock.

**SHRI SAMAR MUKHERJEE:** Fix it for day after tomorrow.

**SHRI ATAL BIHARI VAJPAYEE:** Shri Satish Agarwal has to reply. Then the House will have to take up clause by clause consideration and amendments.

**MR. DEPUTY-SPEAKER:** It shall be over by 18.30. (Interruptions)

**SHRI ATAL BIHARI VAJPAYEE:** It is not possible. To-day we have engagements.

**SHRI BHISHMA NARAIN SINGH:** We give co-operation. We do not stick to the timings fixed by the Business Advisory Committee. When we want co-operation, all sorts of objections come from that side. I am very sorry. (Interruptions)

श्री सोमनाथ चटर्जी : आज मत कीजिए ।

श्री भीष्म नारायण सिंह : कल कैसे करेंगे । कल तो सोवियत प्रेजीडेंट आयेंगे और परसों रेम्यूनेरेटिव प्राइस पर डिस्क्रिप्शन करना है । सब एक साथ कैसे होगा । हम आपका सहयोग चाहते हैं । I appeal to all the hon. Members and the leaders of various parties who are sitting here to please cooperate. I always cooperate with them.

**SHRI NIREN GHOSH (Dum Dum):** It does not get concluded within the allotted time. You take all the Lok Sabhas. This is what happens. Is it something new? (Interruptions).

**MR. DEPUTY-SPEAKER:** You must find out some solution.

**SHRI P. VENKATASUBBAIAH:** The only solution would be to strictly adhere to the time allotted by the Business Advisory Committee. In this case, you have been liberal ...

**SHRI BHISHMA NARAIN SINGH:** In every case.

**SHRI P. VENKATASUBBAIAH:** Certainly, we expect cooperation from them. Let them cooperate with us. (Interruptions)

**MR. DEPUTY-SPEAKER:** Everybody's convenience cannot be looked

[Mr. Deputy-Speaker]

after, we have got to complete the business.

SHRI A. K. ROY: I have got a simple solution. If they come out with a good Bill, we will see that it is passed. If they come out with a bad Bill, we cannot cooperate there.

SHRI BHISHMA NARAIN SINGH: That is for the House to consider. (Interruptions)

MR. DEPUTY SPEAKER: I am calling Shri Satish Agarwal.

SHRI RAMAVATAR SHASTRI: You take the opinion of the House.

MR. DEPUTY-SPEAKER: Please cooperate.

श्री रामावतार शास्त्री : जितना आप को अधिकार है, उतना हम को भी है । हमारी बात मान जाइये, कल देखा जायगा ।

श्री भीष्म नारायण सिंह : कल कैसे देखिएगा । कल तो ब्रेजनेव साहब का भाषण सुनियेगा । इसलिए इसका आज ही करना ठीक है ।

MR. DEPUTY-SPEAKER: Tomorrow we have got that function. Day after tomorrow there is another discussion fixed at 4 O'Clock. Without "give and take", it is not possible to run the House. The Government is making an appeal. At times, you also make an appeal. Both sides have got to adjust. Unless it is technical or something like that, most of the points have been discussed by the hon. Members and they have been replied to. Now, Shri Satish Agarwal has to reply. Otherwise, that tempo will be lost. Shri Satish Agarwal

SHRI RAMAVATAR SHASTRI: What will happen from tomorrow

PROF. MADHU DANDAVATE: We would listen to your appeal today. But my request is let it not be come a precedent every time. In this case, it is all right.

MR. DEPUTY-SPEAKER: It will not become a precedent.

SHRI SATISH AGARWAL: Mr. Deputy-Speaker: Sir, I have heard with rapt attention the learned speeches of the hon. Members from both the sides on my Resolution seeking disapproval of the Ordinance and on the motion for consideration of this particular Bill moved by the hon. Minister.

Excepting four hon. Members, that is Shri Jagannath Rao, Shri A. T. Patil, Shri R. S. Yadav and Shri Arakkal, the rest of the hon. Members have criticised the tendency of the Government in so far as the issuing of the Ordinances is concerned or certain provisions in the Bill are concerned.

The hon. Minister, while replying to the Resolution that I moved before this House, has quoted certain extracts from the 37th Report of the Law Commission, thereby strengthening his argument that the Law Commission, in its 37th Report, had recommended—for Clauses 108, 109 and 110—that the system of executive Magistrates should be there. Now, the advocate-friends of both sides will appreciate that an over-ruled judgement or a revised judgement or a dissented judgment has no sanctity in the eye of law. If the Supreme Court has given a particular judgment and that is revised and modified later on by the same Supreme Court, that judgment cannot be cited in support of any contention before any court of law, that amounts to professional misconduct. With due regard to my learned friend, Mr. Venkatasubbaiah, I would like to remind this hon. House and through you, Sir, the Minister also of the 41st Report of the Law Commission which I cited in this House. I would

like to read the concluding paragraph of their introductory preface in this connection. The 37th Report of the Law Commission was with regard to sections 1 to 176 of the Code of Criminal Procedure. Thereafter, that Law Commission was wound up. Another Law Commission was reconstituted and that Law Commission carried on a detailed study of all the provisions, including the Reports submitted by the previous Law Commission. To what they say in their 41st Report, I would like to draw the attention of this hon. House:

"Although the first fourteen chapters of the Code have been exhaustively analysed in the previous Report of the Law Commission and a number of amendments have been proposed, we have found it unavoidably necessary to review their recommendations, to modify or alter them here and there, and to suggest in places a different line of revisions. A finely integrated and comprehensive law like the Code of Criminal Procedure cannot possibly be revised piecemeal since amendments suggested in one part of the Code naturally affect provisions in other parts to a greater or lesser extent. We therefore, propose in this final Report on the Code to consider it chapter by chapter starting from the beginning and to present the Commission's recommendations in a consolidated form."

This Law Commission, in its 41st Report, took into consideration the interim recommendations made by the previous Law Commission in its 37th Report, which was only in relation to sections 1 to 176; they took a comprehensive view, an integrated view, of the whole Code of Criminal Procedure, they considered the recommendations contained in the earlier Reports; they themselves revised it, modified it, and then submitted an integrated, consolidated Report to the Government of India; and this, they did after inviting the opinion of various High Court judges, Supreme

Court judges, Bar Associations, etc. etc. . . . A much more elaborate procedure was undertaken by this Law Commission and so, I would only humbly submit that Mr. Venkatasubbaiah's reference to the 37th Report in support of his argument in favour of Executive Magistrates for sections 108, 109 and 110 is untenable and, in the legal language, I can say that that was overruled, modified, revised; the over-ruled Report should not have been referred to; in the legal sense, it amounts to professional misconduct. So, that ends the matter there.

So far as the other points are concerned, I would like to remind him and other hon. Members also that, in respect of this particular Code of Criminal Procedure amendment, the process was initiated after the submission of the 41st Report. The Bill was submitted by your Government; there is no doubt about it; I never said that it was submitted by any other Government. The Bill was introduced in the Rajya Sabha on the 10th December, 1970. It was referred to a Joint Select Committee in December 1970. Thereafter the Lok Sabha was dissolved and again this Bill was referred to another Joint Select Committee after the reconstitution of the Lok Sabha on 31st March, 1971 in the Rajya Sabha and on 2nd April 1971, in the Lok Sabha. So in April, 1971, a Joint Select Committee comprising of members of both Houses and the Chairman belonging to the ruling party and majority of the members belonging to the then ruling party was formed and the matter was entrusted to them. I do not want to go into much detail and I would only say that this Joint Select Committee received 154 memoranda from all Bar Associations in the country, from all individuals, from many eminent jurists, legal luminaries, and advocates of the Bar and other public bodies. This particular Joint Select Committee examined 72 witnesses including prominent lawyers.

(Shri Satish Agarwal—Contd.)

Advocates, Inspectors General of Police of various States, Chief Secretaries, Home Secretaries, Police Commissioners and many others whose list is given here in the Joint Select Committee report. They toured the country and they held 44 sittings and then they drafted the report, adopted it on 4th November 1972 which was then placed before the House and then a discussion clause by clause took place in both Houses which went on till the end of 1973 . . . .

**SHRI RAM SINGH YADAV:** Your government in Rajasthan empowered the Executive Magistrates.

**SHRI SATISH AGARWAL:** It may be any government for anybody. If your government has done a good thing I support it. I supported your Jute Nationalisation Bill. If a good thing is done by this government, I support it and I stand by it. I am not a man who belongs to that tribe which believes that whatever the government does is a good thing. I am not aware of the decision which you say, was taken by the then Government of Rajasthan. If it was taken, I do not support that as many of the hon. Members sitting on that side have not supported clause (2). This is a matter of conscience and I never supported all actions of my government even when I was a Minister and I had my own opinions on that. Let it be quite clear in this respect.

So far as the reference to the 37th Report is concerned, that does not stand, that does not hold good because it was modified and reversed by the 41st Report. So far as this particular report of the Joint Select Committee is concerned, after all this thorough procedure—examining witnesses, having memoranda, discussing it technically for one full year in both Houses of Parliament and not only this, certain clauses were passed in Lok Sabha but they were re-opened and were again debated and the gov-

ernment accepted certain amendments, so with that elaborate procedure of a referee to a Select Committee, inviting memoranda, examining witnesses and coming to a definite conclusion with regard to the powers being vested in the Judicial Magistrates so far as clauses 108, 109 and 110 are concerned—that is the crux of the whole matter and now only on the recommendations of certain Chief Secretaries or certain Police Commissioners or Home Secretaries, the government has come to a different finding and how they are feeling the necessity that in order to curb or control the law and order situation in the country, they deem it desirable to amend those provisions which have been incorporated in the Code of Criminal Procedure after such long and due deliberations. With all due defence, I would submit that the law and order situation cannot be controlled by merely delegating those powers to the Executive Magistrates, because, as rightly pointed out by some hon. Members on that side also, the Executive Magistrates have got many more duties to do than to discharge their functions in the court of law. Not only that, the powers are delegated to the Judicial Magistrates of First Class but now you are delegating them to the Executive Magistrates without any distinction of class. Mr. Ram Singh Yadav is aware of the fact that in the Executive Magistrates, there are. First, Second and third class magistrates also. The tehsildars are magistrates of third class. Now, if you simply make a reference to the "executive magistrate—not first-class—it means that even a tehsildar sitting in a tehsil will be competent to initiate proceedings and take cognisance of Sec. 108, 109 and 110. So, this is the recommendation of the Chief Secretaries and Police Commissioners that this power should be delegated to the executive magistrates who are third-class magistrates. If that is done, then the results will also be third-class. I may tell you that you will

not be able to control the law and order situation. We are one with the Government that the law and order situation in the country should not deteriorate. So, it is not a political question but it is a question of political stability in this country. It is a question of integrity of the country. It is a question of keeping the country united. I really fail to understand why, after such due deliberations for practically three or four years from 1970 onwards the provision was for vesting the powers in judicial magistrates, First Class and you are now substituting the 'Judicial Magistrate' by the words 'Executive Magistrates' without any designation of first, second or third class? Even the third-class magistrate will be empowered under this new amended provision to exercise the powers under Sec. 108, 109 and 110. I will be the last person to accept the amendment which, in place of a judicial magistrate, First-class, authorises an executive magistrate, III Class to exercise the powers under Sections 108, 109 and 110.

So, Sir, there is a very big lacuna here. If the hon. minister or the government feels that some amendment has to be moved, whereby some class of the executive magistrate is to be incorporated into Clause 2. It is for the hon. Minister to seek an adjournment from the Chair and move the necessary amendment to that. I would also appeal to the Minister for Parliamentary Affairs that this should not be a party question. If you are going to replace or substitute the judicial magistrate, first-class then at least substitute something at par. It cannot be a donkey for a horse or *khachhar*. Anyway, I leave it to the good sense of the Parliamentary Affairs who is looking after the whole parliamentary business. I leave it also to the good conscience of the hon. Minister of State for Home Affairs Shri Venkatasubbaiah. It is for him to meet out that point.

Shri Arakal made a point that these cases will be delayed. In judicial

magistrates courts, the judicial magistrates have got no other work to do except disposing of the cases. As you are well aware, the executive magistrates have got to discharge 101 functions more apart from the court work. I do not have much experience of the lower courts for more than 25 years because, in the initial five years of my practice, I used to go to the courts from 1950 to 1955 or 1956. Thereafter, I left it. I am aware of this fact as a Member of the Legislative Assembly in Rajasthan for fifteen years. The magistrates or S.D.Os. are generally on tour—sometimes for famine relief work, sometimes for flood relief and sometimes for attending to V.I.Ps. visiting the places. So, they won't be able to dispose of cases earlier. My friend Mr. Arakal if you want early disposal of the cases, that can only be in the courts of the judicial magistrates because they have no other job to attend to except disposing of cases.

Now, Sir, in this particular case, some hon. Members have expressed the fear that this Government has got all regards for the judiciary. I am not going into that point again. I can only say that it was during the emergency—I wish to remind only one thing; we have forgotten about it—in the whole country, out of 400 district magistrates and collectors, who issued the detention orders, those detention orders had to be extended every quarter by stating that 'I am hereby satisfied that the detention is necessary in the interest of emergency. And so their detention has been extended'. Can you point out even one single district magistrate in the whole of the country who said 'I am not satisfied. So, the detinue is hereby released even after one year'. That is why I am saying that the district magistrate and the executive magistrate act in accordance with the wishes of the ruling party. But we have judicial magistrates who—whether this party in power or that party in power—here in Delhi released Mrs. Gandhi in 1978. This is the judiciary. Whether this party or that party in power the independence

[Shri Satish Agarwal]

of the judiciary and the dignity of the judiciary should be maintained. There should be no efforts by this government to denigrate the judiciary. That is why I said that I am strongly in favour of keeping these matters within the jurisdiction of judicial magistrates because as a matter of fundamental principle we have accepted the principle of separation of judiciary from executive. Sir, I do not want to quote in this respect the views of the national leaders like Jawahar Lal Nehru and others.

Sir, one particular point which very hesitatingly Mr. Jagannath Rao made and which was repeated by my friend, Mr. Patil was that the judicial magistrates do not understand the problems of law and order. They do not understand and they do not appreciate the law and order situation. It may be true. But they are not concerned with that. It is for the police. It is for the police to control it. It is for the police to make cases. It is for the police to frame out charges. It is for the police to submit papers to the magistrate for his satisfaction. How is the judicial magistrate concerned with that? When you want an executive magistrate it is because you think he can be better utilised and you can direct him that such and such situation has arisen and he should take action. Mr. Daga knows who ordered firing in Bikaner and also in Jauhri Bazar. So, Sir, the executive magistrates who are looking after the law and order situation and who are involved in ordering lathi-charge and firing should not be given the powers under Section 108, 109 and 110. This is all the more the reason that they should be kept away from this particular process and these quasi-judicial proceedings should be given to the judicial magistrate.

Sir, one argument has been put forward by Mr. Patil and supported by the Minister of State for Home Affairs that there is provision U/S 478 whereby some of the States have already amended the provision. After a resolution passed by the Assembly and

concurrence of the High Court sought, these powers U/S 108, 109 and 110 have been delegated to the executive magistrates. If some of the States have done it why unnecessarily bring this piece of legislation. Let other States do so if they feel like doing so. Where is the bar? He mentioned that States like U.P., Bihar, Himachal Pradesh, Delhi etc. have done it. So, without amending Clause 2 and without amending Section 478 of the Old Code of Criminal Procedure if this desired result can be achieved by a mere Resolution of the Assembly then you have got a massive mandate in majority of the States then those Chief Ministers if they are in favour of delegating this authority to the executive magistrate they can take advantage of Section 478 as it exists in the Old Code of Criminal Procedure and delegate these powers to the executive magistrate and do away with the whole mischief. Where is the problem? But you are as a matter of principle trying to defend and justify that judiciary is not able to do justice to the law and order cause. I do not agree with you on that score. It is a question of fundamentals and when you are doing it in that way it is something with which I do not agree. The hon. Minister has also referred to certain other conferences, to what happened in Tripura, what happened in West Bengal, what happened in Kerala and so on. And he has cited in that particular connection that there was a suggestion from Tripura and that suggestion was read out by him in the House and he said some other State Governments have agreed to that. So far as Tripura is concerned, we wish that the whole of the country does not get converted into Tripura. Let Tripura be Tripura; let Tripura remain Tripura. Tripura is not ideal for the rest of the country. Whatever has happened in Tripura, we do not want to follow in the country. We know those unfortunate events which happened in Tripura. Sir, whether it is a Government headed by Marxists or headed by Leftist, bad is bad everywhere, whether it is done by a Communist

Government or a Janata Government or a Congress Government. That is why I am not going to support it. I hold no brief either for Tripura or for West Bengal or for Kerala. We know the onslaughts that we are facing in Kerala and it is we who are fighting against it and that is why you also joined hands with us in the 1980 January Assembly elections there. A situation may develop in this country when all the nationalist forces may have to come together to fight these undemocratic forces. There may be realignment of nationalist democratic forces in this country. We should not be susceptible about anybody and everybody. We are all patriots here; we have the good of the country and the integrity of the country at heart. For certain political considerations sometimes you criticise us; we criticise you; but on basic fundamental questions relating to the security and integrity of the country we are all one. We defended Tripura. I am only citing it. (Interruption) In Kerala he says, BJP and Congress-I are one. Here we and you are one; somewhere we and they are one, but the question is this. In the changed political situation in the country which may take place within the next year, I do not know what will be the realignment. I am not going to predict that. I am not on that political plane. But I was only referring to and replying to the citation made by Mr. Venkatasubbaiah regarding Tripura, as if Tripura is some Supreme Court for us. We are not going to follow Tripura in all matters. Of course, we defended the right of the Tripura Government to remain in power and settle their problems and not to be superseded or dissolved. Whatever has happened in Tripura, may God forbid, should not happen anywhere else in the country. So, that is not the argument you should cite at this time, which has got some basic, binding effect. You have cited 37th Report, completely modified and reversed by the Law Commission itself.

**SHRI P. VENKATASUBBAIAH:**  
Mr. Agarwal, it is not a court where

one report supersedes the other report. The report is the 37th Report. It is not like a sessions court judgment being reversed by the High Court Judgment and all that. It is a report given by eminent jurists. That report stands. It does not mean that the 41st report will supersede the 37th Report. So, it is not like that.

**SHRI SATISH AGARWAL:** That will be correct when? When the previous report, interim report, partial report, is not modified by the later authority of the same State. In his case the Law Commission constituted by your Government modified that report, reversed that report; that report has no sanction; that report is non-existent so far as this report is concerned. That is the basic fundamental question. I don't want to enter into argument. You may have your own argument. Regarding the reply of the Minister with reference to Clause 2, I wish to say this. I do not touch the other provisions of the other clauses. I have fundamental opposition to the principle of issuing ordinances and the principle of exercising power by the President under Article 123 by issuing ordinances, now and then. I am basically opposed to that. I have been opposing it right from the very beginning. So I oppose it on that ground. I oppose Clause 2 particularly without making any reference to the other clauses of the Bill. And the hon. Minister, while replying, has not given any cogent reasons. He has not given any satisfactory reply as to why this retrograde step is being taken after 7 years. We are now in 1980. Your Government amended the law in 1973 on the basis of the recommendation of the Law Commission, on the basis of memoranda, on the basis of hearing witnesses, on the basis of the opinion of eminent jurists and lawyers and advocates of Supreme Court Bar Association and the Bar Association of the entire country. This Government has brought forward this law and it trying to include in the Directive Principles under "Separation of judiciary from the Executive" and vest these powers in the Judicial Ma-

[Shri P. Venkatasubbaiah]

gistrates. This is a retrograde step. You are taking the country backwards. So, I strongly condemn the attitude of the Government. I appeal to the hon. Members of this House, without any consideration of party affiliation, to adopt my Resolution for which I seek the approval of this august House.

**SHRI P. VENKATASUBBAIAH:** Sir, I would like to clarify one point which Mr. Satish Agarwal has raised. He has said that there are categories and classifications in the Executive Magistrates. I think he must be referring to the old report in this regard. But now, as it stands at present, there is no classification in the Executive magistrates. There is no Class-I Magistrate, Class-II Magistrate or Class-III Magistrate. Executive Magistrates are executive magistrates, according to me.

**MR. DEPUTY-SPEAKER:** I shall now put the Statutory Resolution by Shri Satish Agarwal to the vote of the House.

The question is:

"That this House disapproves of Criminal Procedure (Amendment) Ordinance 1980 (Ordinance No. 12 of 1980) promulgated by the President on the 23rd September, 1980."

*The Lok Sabha divided:*

Division No. 6]

[18.44 hrs.

**AYES**

Agarwal, Shri Satish  
Barman, Shri Palas  
Chaudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Lawrence, Shri M. M.  
Maitra, Shri Sunil

Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

**NOES**

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Charanjit Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Santosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani



Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina  
Krishan Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakkappa, Shri K.  
Mahabir Prasad, Shri  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mallu, Shri A. R.  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha  
Motilal Singh, Shri  
Mukhopadhyay, Shri Ananda Gopal  
Nair, Shri B. K.  
Namgyal, Shri P.  
Nehru, Shri Arun Kumar  
Oraon, Shri Kartik  
Pandey, Shri Krishna Chandra  
Panigrahi, Shri Chintamani  
Panika, Shri Ram Pyare  
Patil, Shri A. T.  
Patil, Shri Balasaheb Vikhe  
Patil, Shri Chandrabhan Athare  
Patil, Shri Uttamrao  
Patil, Shri Veerendra  
Poojary, Shri Janardhana  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Prasan Kumar, Shri S. N.  
Quadri, Shri S. T.  
Ram, Shri Ramswaroop  
Rao, Shri M. Satyanarayan  
Rathod, Shri Uttam  
Raut, Shri Bhola  
Rawat, Shri Harish Chandra Singh  
Reddy, Shri P. Venkata  
Satish Prasad Singh, Shri  
Sethi, Shri Arjun  
Shakyawar, Shri Nathuram  
Shankaranand, Shri B.  
Sharma, Shri Chiranji Lal  
Sharma, Shri Kali Charan

Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Singh Deo, Shri K. P.  
Sparrow, Shri R. S.  
Stephen, Shri C. M.  
Sukhbans Kaur, Shrimati  
Sunder Singh, Shri  
Tapeshwar Singh, Shri  
Tayeng, Shri Sobeng  
Tayyab Hussain, Shri  
Tewary, Prof. K. K.  
Thorat, Shri Bhausahab  
Tripathi, Shri R. N.  
Vairale, Shri Madhusudan  
Venkataraman, Shri R.  
Venkatasubbaiah, Shri P.  
Virbhadra Singh, Shri  
Vyas, Shri Girdhari Lal  
Wagh, Dr. Pratap  
Yadav, Shri Ram Singh  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

Ayes : 20

Noes : 100.

*The motion was negatived.*

MR. DEPUTY-SPEAKER: Now, amendments to the motion for consideration.

SHRI MOOL CHAND DAGA: I seek leave of the House to withdraw my amendment to the motion for consideration.

\*The following Members also recorded their votes for NOES: Shri P. V. Narasimha Rao, Shri Mundar Sharma, Shri S. B. Sidnal, Shri Shankarrao Patil, and Shri C. Pallanappan.

MR. DEPUTY-SPEAKER: Has Shri Daga leave of the House to withdraw his amendment?

SOME HON. MEMBERS: No.

MR. DEPUTY-SPEAKER: I shall put the amendment to the motion for consideration moved by Shri Mool Chand Daga to the vote of the House.

The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1973, be referred to Select Committee consisting of 12 Members, namely:

- (1) Shri Banwari Lal
- (2) Prof. Madhu Dandavate
- (3) Shri Harish Kumar Gangwar
- (4) Shri Krishna Kumar Goyal
- (5) Shri Nihal Singh Jain
- (6) Dr. Karan Singh
- (7) Shri Y. S. Mahajan
- (8) Shri T. Nagaratnam
- (9) Shri Arjun Sethi
- (10) Shri Dharam Das Shastri
- (11) Shri P. Venkatasubbaiah;  
and
- (12) Shri Mool Chand Daga

With instruction to report by the 31st January, 1981." (1)

*The Lok Sabha divided:*

Division No. 7]

[18.47 hrs.

AYES

Agarwal, Shri Satish  
Banatwalla, Shri G. M.  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Ghosh, Shri Niren  
Giri, Shri Sudhir

Hasda, Shri Matilal  
Horo, Shri N. E.  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Verma, Shri Ravindra  
Zainal Abedin, Shri

NOES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Charanjit Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Giriraj Singh, Shri

Gouzagin, Shri N.  
 Jain, Shri Viridhi Chander  
 Jamilur Rahman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam

Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Chiranji Lal  
 Sharma, Shri Kali Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

AYES : 21

NOES : 103

*The motion was negatived.*

\*Shrimati Mohsina Kidwai also voted for NOES.

MR. DEPUTY-SPEAKER: I shall now put amendment No. 10 to the motion for consideration, moved by Shri A. K. Roy. The question is:

That the Bill further to amend the Code of Criminal Procedure, 1973, be referred to Select Committee consisting of 12 Members,  
Halder

(1) Shri Krishna Chandra Halder

(2) Shri Mukunda Mandal

(3) Shri Sanat Kumar Mandal

(4) Shri Manni Lal

(5) Shri Ram Swarup Ram

(6) Shri Bhola Raut

(7) Shri Amar Roypradhan

(8) Shri Ajit Kumar Saha

(9) Shri Gadadhar Saha

(10) Shri Babu Lal Solanki

(11) Shri Sunder Singh; and

(12) Shri P. Venkatasubbaiah

with instruction to report by the 26th January, 1981.

The Lok Sabha divided:

Division No. 8] .. [18.53 hrs.

AYES

Agarwal, Shri Satish

Banatwalla, Shri G. M.

Barman, Shri Palas

Chaudhury, Shri Saifuddin

Dandavate, Prof. Madhu

Dandavate, Shrimati Pramila

Ghosh, Shri Niren

Giri, Shri Sudhir

Hasda, Shri Matilal

Horo, Shri N. E.

Lawrence, Shri M. M.

Maitra, Shri Sunil

Mandal, Shri Mukunda

Musudal Hossain, Shri Syed

Pal, Prof. Rup Chand

Rajda, Shri Ratansinh

Roy, Shri A. K.

Roy, Dr. Saradish

Saha, Shri Ajit Kumar

Shastri, Shri Ramavatar

Varma, Shri Ravindra

Zainal Abedin, Shri

NOES

Abbasi, Shri Kazi Jalil

Anand Singh, Shri

Ankineedu Prasad Rao, Shri P.

Appalanaidu, Shri S. R. A. S.

Arakal, Shri Xavier

Baitha, Shri D. L.

Baleshwar Ram, Shri

Barway, Shri J. C.

Bhardwaj, Shri Parasram

Bhuria, Shri Dileep Singh

Birendra Singh Rao, Shri

Chandra Shekhar Singh, Shri

Charanjit Singh, Shri

Chavan, Shri S. B.

Chennupati, Shrimati Vidya

Chingwang Konyak, Shri

Choudhury, Shri A. B. A. Ghani Khan

Dabhi, Shri Ajitsinh

Daga, Shri Mool Chand

Dev, Shri Sontosh Mohan

Dhandapani, Shri C. T.

Dogra, Shri G. L.

Doongar Singh, Shri

Fernandes, Shri Oscar

Gadgil, Shri V. N.

Gadhavi, Shri Bheravadan K.

Gehlot, Shri Ashok

Giriraj Singh, Shri

Gouzagin, Shri N.

Jain, Shri Virdhi Chander

Jamilur Rahman, Shri

Jena, Shri Chintamani

Karma, Shri Laxman

Kaul, Shrimati Sheila

Kidwai, Shrimati Mohsina

Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Chiranji Lal

Sharma, Shri Kali Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishan  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zainul Basher, Shri

MR. DEPUTY SPEAKER: Subject to correction, the result\* of the division is:

AYES : 22

NOES : 102

*The motion was negatived.*

MR. DEPUTY SPEAKER: Now the question:

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

*The Lok Sabha divisions:*

Division No. 9] [18.85 hrs.

AYES

Abbasi, Shri Kazi Jalil

\*The following Members also recorded their votes for NOES: Shri Zail Singh, Shri Krishna Dutt, and Dr. Pratap Wagh.

Anand Singh, Shri  
 Ankineedu Prasad Rao, Shri P.  
 Appalanaidu, Shri S. R. A. S.  
 Arakal, Shri Xavier  
 Barway, Shri J. C.  
 Bhardwaj, Shri Parasram  
 Bhuria, Shri Dileep Singh  
 Birendra Singh Rao, Shri  
 Chandra Shekhar Singh, Shri  
 Charanjit Singh, Shri  
 Chavan, Shri S. B.  
 Chennupati, Shrimati Vidya  
 Chingwang Konyak, Shri  
 Chinnaswamy, Shri C.  
 Choudhury, Shri A. B. A. Ghani Khan  
 Dabhi, Shri Ajitsinh  
 Daga, Shri Mool chand  
 \*Dandavate, Shrimati Pramila  
 Dev, Shri Sontosh Mohan  
 Dhandapani, Shri C. T.  
 Dogra, Shri G. L.  
 Doongar Singh, Shri  
 Fernandes, Shri Oscar  
 Gadgil, Shri V. N.  
 Gadhavi, Shri Bheravadan K.  
 Gouzagin, Shri N.  
 Jain, Shri Viridhi Chander  
 Jamilur Rahman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Kidwai, Shrimati Mohsina  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 \*Maitra, Shri Sunil  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha

Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Chiranji Lal  
 Sharma, Shri Kalj Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 \*Shastri, Shri Ramavatar  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng

Tayyab Hussain, Shri  
Tewary, Prof. K. K.  
Thorat, Shri Bhausahab  
Vairale, Shri Madhusudan  
Venkataraman, Shri R.  
Venkatasubbaiah, Shri P.  
Virbhadra Singh, Shri  
Vyas, Shri Girdhari Lal  
Wagh, Dr. Pratap  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

NOES

Agarwal, Shri Satish  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
\*Gehlot, Shri Ashok  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Lawrence, Shri M. M.  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
\*Sparrow, Shri R. S.

\*Sunder Singh, Shri  
Tripathi, Shri R. N.  
Varma, Shri Ravindra  
Zainal Abedin, Shri

MR. DEPUTY SPEAKER: Subject to correction, the result\*\* of the division is:

Ayes : 96

Noes : 22

*The motion was adopted.*

Clause 2—(Amendment of Section 108, 109 and 110).

MR. DEPUTY-SPEAKER: We now take up clause by clause consideration of the Bill. Now clause 2, Shri Bhogendra Jha is not here. Shri G. M. Banatwalla.

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

"Page 1, line 7,—

Omit "108". (7)

MR. DEPUTY-SPEAKER: Mr. Daga, are you moving?

SHRI MOOL CHAND DAGA: I am not moving it.

SHRI G. M. BANATWALLA: At this late stage I once again appeal to the Government and to the entire House to rise above party considerations and see to it that the powers which are to be exercised by the judicial magistrate are not given to the executive magistrate and the country is saved from the annihilation of the democratic principles of separation of the executive and the judiciary.

MR. DEPUTY-SPEAKER: I shall now put amendment No. 7 moved by

---

\*Wrongly voted for NOES.

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

AYES: Shri Kartik Oraon, Shri D. L. Baitha, Shri Krishan Dutt, Shri Uttamrao Patil, Shri Giriraj Singh, Shri Ram Singh Yadav, Shri Sunder Singh, Shri R. S. Sparrow and Shri Ashok Gehlot;

NOES: Shrimati Pramila Dandavate, Shri Ramavatar Shastri, and Shri Sunil Maitra.

Shri Banatwalla to the vote of the House. The question is:

Page 1, line 7,—

Omit "108", (7).

The Lok Sabha divided:

Division No. 10] [19.01 hrs.

AYES

Agarwal, Shri Satish  
Banatwalla, Shri G. M.  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
\*Kaul, Shrimati Sheila  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

NOES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh

Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Charanjit Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani  
Khan

Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kidwai, Shrimati Mohsina  
Krishan Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakkappa, Shri K.  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mallu, Shri A. R.  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha  
Motilal Singh, Shri  
Mukhopadhyay, Shri Ananda Gopal  
Nair, Shri B. K.  
Namgyal, Shri P.  
Nehru, Shri Arun Kumar  
Oraon, Shri Kartik  
Palaniappan, Shri C.  
Pandey, Shri Krishna Chandra  
Panigrahi, Shri Chintamani

\*Wrongly voted for AYES.



Panika, Shri Ram Pyare  
Patil, Shri A. T.  
Patil, Shri Balasaheb Vikhe  
Patil, Shri Chandrabhan Athare  
Patil, Shri Shankarrao  
Patil, Shri Uttamrao  
Patil, Shri Veerendra  
Poojary, Shri Janardhana  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Prasan Kumar, Shri S. N.  
Quadri, Shri S. T.  
Ram, Shri Ramswaroop  
Rao, Shri M. Satyanarayan  
Rao, Shri P. V. Narasimha  
Rathod, Shri Uttam  
Raut, Shri Bhola  
Rawat, Shri Harish Chandra Singh  
Reddy, Shri P. Venkata  
Satish Prasad Singh, Shri  
Sethi, Shri Arjun  
Shakyawar, Shri Nathuram  
Shankaranand, Shri B.  
Sharma, Shri Chiranji Lal  
Sharma, Shri Kali Charan  
Sharma, Shri Mundar  
Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Sidnal, Shri S. B.  
Singh Deo, Shri K. P.  
Sparrow, Shri R. S.  
Stephen, Shri C. M.  
Sukhbuns Kaur, Shrimati  
Sunder Singh, Shri  
Tapeswar Singh, Shri  
Tayeng, Shri Sobeng  
Tayyab Hussain, Shri  
Tewary, Prof. K. K.

Thorat, Shri Bhausahab  
Tripathi, Shri R. N.  
Vairale, Shri Madhusudan  
Venkataraman, Shri R.  
Venkatasubbaiah, Shri P.  
Virbhadra Singh, Shri  
Vyas, Shri Girdhari Lal  
Wagh, Dr. Pratap  
Yadav, Shri Ram Singh  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

AYES : 22

NOES : 102

*The motion was negatived.*

MR. DEPUTY-SPEAKER: I shall now put clause 2 to the vote of the House.

The question is:

"That clause 2 stand part of the Bill"

*The Lok Sabha divided:*

Division No. 11] [19.04 hrs.

AYES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri

\*The following Members also recorded their votes:

AYES: Shri Mukunda Mandal;

NOES: Shri B. K. Gadhavi, Shri Mahabir Prasad and Shrimati Sheila Kaul.

Chandra Shekhar Singh, Shri  
 Charanjit Singh, Shri  
 Chavan, Shri S. B.  
 Chennupati, Shrimati Vidya  
 Chingwang Konyak, Shri  
 Chaudhury, Shri A. B. A. Ghani Khan  
 Dabhi, Shri Anjitsinh  
 Daga, Shri Mool Chand  
 Dev, Shri Sontosh Mohan  
 Dhandapani, Shri C. T.  
 Dogra, Shri G. L.  
 Doongar Singh, Shri  
 Fernandes, Shri Oscar  
 Gadgil, Shri V. N.  
 Gadhavi, Shri Bheravadan K.  
 Gehlot, Shri Ashok  
 Gireraj Singh, Shri  
 Gouzagin, Shri N.  
 Jain, Shri Virldhi Chander  
 Jamilur, Rahman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Kidwai, Shrimati Mohisna  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare

Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar. Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Chiranji Lal  
 Sharma, Shri Kali Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. L.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal

Wagh, Dr. Pratap  
Yadav, Shri Ram Singh  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

**NOES**

Agarwal, Shri Satish  
Banatwalla, Shri G. M.  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
\*Sunder Singh, Shri  
Varma, Shri Ravindra  
Zainul Abedin, Shri

MR. DEPUTY SPEAKER: Subject to correction, the result\*\* of the division is:

Ayes : 101

Noes : 022

The motion was adopted.

\*Wrongly voted for NOES.

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

AYES: Shri Uttamrao Patil, Shri Ram Nagina Mishra and Shri Sundar Singh.

NOES: Prof. Roop Chand Pal.

Clause 2 was added to the Bill.

Clause 3 (Amendment of section 136).

MR. DEPUTY SPEAKER: Shri Banatwalla.

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

Page 2, line 9,—

omit "or of the District Magistrate" (8)

Page 2, lines 12 and 13,—

omit "and the District Magistrate may, before according sanction under sub-section (1A)" (9).

At present, the power to sanction prosecutions under Section 153B of IPC is with the Central Government and the State Governments. It is now sought to give the power also to the District Magistrates. And it is an unhappy experience of the minorities that they have been the victims of local influences and pressures on local authorities. The hon. Minister has said that the Government stands by the oppressed and suppressed people and by the minorities and weaker sections. I appeal to the Government not to give, unnecessarily, this power to the District Magistrate who is susceptible to local influences and local pressures. Let the inbuilt safeguards exist. I say that the present deteriorating situation also does not warrant the transfer of this power to the District Magistrate.

MR. DEPUTY-SPEAKER: I shall now put amendments No. 8 and 9 to clause 3 moved by Shri G. M. Banatwalla to the vote of the House.

The question is:

"Page 2, line 9,—

omit "or of the District Magistrate" (8)

Page 2, lines 12 and 13,—

omit "and the District Magistrate may, before according sanction under sub-section (1A)." (9)

The lobbies have been cleared already.

*The Lok Sabha divided.*

Division No. 12] AYES [19.10 lrs.  
AYES

Agarwal, Shri Satish  
Banatwalla, Shri G. M.  
Berman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Roop Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainul Abedin, Shri

NOES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.

Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Charanjit Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina  
Krishan Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakkappa, Shri K.  
Mahabir Prasad, Shri  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mallu, Shri A. R.  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha  
Motilal Singh, Shri  
Mukhopadhyay, Shri Ananda Gopal  
Nair, Shri B. K.  
Namgyal, Shri P.  
Nehru, Shri Arun Kumar

Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Chiranji Lal  
 Sharma, Shri Kali Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sindal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhabuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorai, Shri Bhausaheb

Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbalah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result of the division is:

Ayes : 22

Noes : 104

*The motion was negatived.*

MR. DEPUTY-SPEAKER: Now, the question is:

*"That Clause 3 stand part of the Bill."*

*The Lok Sabha divided.*

AYES

Division No. 13] [19.14 hrs.

Abbasi, Kazi Jalil  
 Anand Singh, Shri  
 Ankineedu Prasad Rao, Shri P.  
 Appalanaidu, Shri S. R. A. S.  
 Arakal, Shri Xavier  
 Baitha, Shri D. L.  
 Baleswar Ram, Shri  
 Barway, Shri J. C.  
 Bhardwaj, Shri Parasram  
 Bhuria, Shri Dileep Singh  
 Birender Singh Rao, Shri  
 Chandra Shekhar Singh, Shri  
 Charanjit Singh, Shri  
 Chavan, Shri S. B.  
 Chennupati, Shrimati Vidya

Chingwang Konyak, Shri  
 Choudhury, Shri A. B. A. Ghani Khan  
 DabM, Shri Ajitsinh  
 Daga, Shri Mool Chand  
 Dev, Shri Sontosh Mohan  
 Dhandapani, Shri C. T.  
 Dogra, Shri G. L.  
 Doongar Singh, Shri  
 Fernandes, Shri Oscar  
 Gadgil, Shri V. N.  
 Gadhavi, Shri Bheravadan K.  
 Gehlot, Shri Ashok  
 Gireraj Singh, Shri  
 Gouzagin, Shri N.  
 Jain, Shri Virdhi Chander  
 Jamilur Rahman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Kidwai, Shrimati Mohsina  
 Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mishra, Shri Ram Nagina  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao

Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kali Charan  
 Sharma, Shri Mundar  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam

Zail Singh, Shri  
Zainul Basher Shri

NOES

Agarwal, Shri Satish  
Banatwalla, Shri G. M.  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Jha, Shri Bhogendra  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masuda Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavtar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result of the division is:

Ayes : 101

Noes: 23

The 'Ayes have it, the Ayes have it.

The motion was adopted

Clause 3 was added to the Bill.

Clause 4 (Amendment of Section 436).

MR. DEPUTY-SPEAKER: There is no amendment to clause 4. The question is:

"That clause 4 stand part of the Bill."

The Lok Sabha divided:

AYES

Division No. 14] [19.17 hrs.

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Charanjit Singh, Shri  
Chavan, Shri S. B.  
Chennupati Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Girera] Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina

\*Shri Hari Natha Mishra also noted for AYES:

Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kall Charan  
 Sharma, Shri Munda

Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbans Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

## NOES

Agarwal, Shri Satish  
 Barman, Shri Palas  
 Choudhury, Shri Saifuddin  
 Dandavate, Prof. Madhu  
 Dandavate, Shrimati Pramila  
 Ghosh, Shri Niren  
 Giri, Shri Sudhir  
 Hasda, Shri Matilal  
 Horo, Shri N. E.  
 Jha, Shri Bhogendra  
 Lawrence, Shri M. M.  
 Maitra, Shri Sunil  
 Mandal, Shri Mukunda  
 Masudal Hossain, Shri Syed  
 Pal, Prof. Rup Chand  
 Roy, Shri A. K.



Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

AYES : 103

NOES : 21

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5—(Amendment of section 437)

SHRI BHOGENDRA JHA: Sir, I beg to move:

"Page 2,—

for lines 31 to 34, substitute—

"of an offence punishable with death or imprisonment for life (5)."

Page 2, line 34,—

add at the end—

"except in cases connected with agrarian or trade union disputes or movements concerning collective demands of any section of the people." (16).

Sir, here the question is that the amendment sought by this Bill contravenes the spirit of new Cr. P.C. because here, in this clause 5 it is going to be made more difficult for the granting of bail to a person who has not been proved guilty. At that stage, I have moved a minor amendment.

In clause 5, sub-clause (a)(1)(ii) reads:

"such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable

with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence;"

This is the amendment as proposed in the Bill. I would like the whole House to appreciate that it is very dangerous. Suppose one person has been convicted or sentenced to one month's RI or SI or two months' RI or SI—let it be RI—then he shall not be granted bail in a new case when he is not proved guilty. Afterwards he may be cleared as innocent and gets clean acquittal. But if he is kept in jail as an undertrial prisoner on account of his previous conviction for one month or two months, then in that case for one year he will have to be in prison and then he gets acquittal. That will be a crime against justice it is a crime not against that individual, but against the very system itself. So, I think that will be modified and here the amendment is in modification only. Here, the amendment is a modification, so that the last three lines are deleted. That is the minimum. So, I insist that this should be accepted, and I appeal to them also because it is not we alone who will be affected, the whole system will be affected by it. I urge that my amendment be accepted.

MR. DEPUTY-SPEAKER: I shall now put amendment Nos. 5 and 16 to Clause 5 moved by Shri Bhogendra Jha to the vote of the House.

The question is:

Page 2,—

for lines 31 to 34, substitute—

"of an offence punishable with death or imprisonment for life." (5)

\*The following Members also recorded their votes:

AYES: Shri P. Nangyal;

NOES: Shri Ratansinh Rajda.

[Mr. Deputy-Speaker]

Page 2 line 34.—

add at the end—

“except in cases connected with agrarian or trade union disputes or movements concerning collective demands of any section of the people.” (16)

The Lok Sabha divided:

Division No. 15]

[19.28 hrs.

AYES

Agarwal, Shri Satish  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Jha, Shri Bhogendra  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

NOES:

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.

Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virldhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina  
Krishna Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakappa, Shri K.  
Mahabir Prasad, Shri  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mallu, Shri A. R.  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha  
Motilal Singh, Shri  
Mukhopadhyay, Shri Ananda Gopal  
Nair, Shri B. K.  
Namgyal, Shri P.  
Nehru, Shri Arun Kumar  
Orson, Shri Kartik  
Palaniappan, Shri C.

Pandey, Shri Krishna Chandra  
Panigrahi, Shri Chintamanj  
Panika, Shri Ram Pyare  
Patil, Shri A. T.  
Patil, Shri Balasaheb Vikhe  
Patil, Shri Chandrabhan Athare  
Patil, Shri Shankarrao  
Patil, Shri Uttamrao  
Patil, Shri Veerendra  
Poojary, Shri Janardhana  
Potdukhe, Shri Shantarana  
Pradhani, Shri K.  
Prasan Kumar, Shri S. N.  
Quadri, Shri S. T.  
Ram, Shri Ramswaroop  
Rao, Shri M. Satyanarayan  
Rao, Shri P. V. Narasimha  
Rathod, Shri Uttam  
Raut, Shri Bhola  
Rawat, Shri Harish Chandra Singh  
Reddy, Shri P. Venkata  
Satish Prasad Singh, Shri  
Sethi, Shri Arjun  
Shakyawar, Shri Nathuram  
Shankaranand, Shri B.  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Sidnal, Shri S. B.  
Singh Deo, Shri K. P.  
Sparrow, Shri R. S.  
Stephen, Shri C. M.  
Sukhbuns Kaur, Shrimati  
Sunder Singh, Shri  
Tapeswar Singh, Shri  
Tayeng, Shri Sobeng  
Tayyab Hussain, Shri  
Tewary, Prof. K. K.  
Thorat, Shri Bhausahab  
Tripathi, Shri R. N.  
Vairale, Shri Madhusudan

Venkataraman, Shri R.  
Venkatasubbalah, Shri P.  
Virbhadra Singh, Shri  
Vyas, Shri Girdhari Lal  
Wagh, Dr. Pratap  
Yadav, Shri Ram Singh  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

MR. DEPUTY-SPEAKER: Subject to correction result of the division is as follows:

AYES : 22

NOES : 102

*The motion was negatived.*

MR. DEPUTY-SPEAKER: The question is:

"That Clause 5 stand part of the Bill."

*The Lok Sabha divided:*

Division No. 16]

[19.30 hrs.

AYES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandfa Shekhar Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani KJ  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand

Dev, Shri Sontesh Mohan  
 Dhandapani, Shri C. T.  
 Dogra, Shri G. L.  
 Doongar Singh, Shri  
 Fernandes, Shri Oscar  
 Gadgil, Shri V. N.  
 Gadhavi, Shri Bheravadan K.  
 Gehlot, Shri Ashok  
 Gouzagin, Shri N.  
 Jamilur Rahman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Kidwai, Shrimati Mohsina  
 Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Namgyal, Shri P.  
 Nehru, Shri Arun Kumar  
 Oraon, Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamanj  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana

Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kali Charan  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbung Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

NOES

Agarwal, Shri Satish  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Jha, Shri Bhogendra  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
\*Tripathi, Shri R. N.  
Varma, Shri Ramindra  
Zainal Abedin, Shri

MR. DEPUTY-SPEAKER: Subject to correction the result\*\* of the division is:

AYES : 98

NOES : 22

*The motion was adopted.*

*Clause 5 was added to the Bill.*

MR. DEPUTY-SPEAKER: The question is:

"That clause 6 stand part of the Bill."

*The Lok Sabha divided:*

Division No. 17] [19.39 hrs.

AYES

Abhasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Chaudhury, Shri A. B. A. Ghant  
Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Viridhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina

\*Wrongly voted for NOES.

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

AYES: Shri R. P. Panika, Shri Gireraj Singh, Shri Viridhi Chander Jain and Shri R. N. Tripathi;

NOES: Shri Niren Ghosh.

Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallick, Shri Lakshman  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagima  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Nangyal, Shri P.  
 Oraon Shri Kartik  
 Palaniappan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Shankarrao  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.  
 Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Rrjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kali Charan  
 Sharma, Shri Nand Kishore

Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati,  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

## NOES

Agarwal, Shri Satish  
 Barman, Shri Palas  
 Choudhury, Shri Saifuddin  
 Dandavate, Prof. Madhu  
 Dandavate, Shrimati Pramila  
 Giri, Shri Sudhir  
 Hasda, Shri Matilal  
 Horo, Shri N. E.  
 Jha, Shri Bhogendra  
 Lawrence, Shri M. M.  
 Maitra, Shri Sunil  
 Mandal, Shri Mukunda  
 Nasudal Hossain, Shri Syed  
 Pal, Prof. Rup Chand  
 Rajda, Shri Ratansinh  
 Roy, Shri A. K.  
 Roy, Dr. Saradish  
 Saha, Shri Ajit Kumar

Shastri, Shri Ramavatar  
Varma, Shri Raviindra  
Zainal Abedin, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

Ayes : 101

Noes : 21

*The motion was adopted.*

*Clause 6 was added to the Bill.*

MR. DEPUTY-SPEAKER: The question is:

"That Clause 7 stand part of the Bill."

*The Lok Sabha divided:*

Division No. 18]

[19.43 hrs.

AYES

Abbasi, Shri Kazi Jalil  
Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parasram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudary, Shri Chitturi Subba Rao  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Doongar Singh, Shri  
Fernandes, Shri Oscar

Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Sheila  
Kidwai, Shrimati Mohsina  
Krishan Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakkappa, Shri K.  
Mahabir Prasad, Shri  
Mahala, Shri R. P.  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mallu, Shri A. R.  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha  
Motilal Singh, Shri  
Mukhopadhyay, Shri Ananda Gopal  
Nair, Shri B. K.  
Namgyal, Shri P.  
Oraon, Shri Kartik  
Palaniappan, Shri C.  
Pandey, Shri Krishna Chandra  
Panigrahi, Shri Chintamani  
Panika, Shri Ram Pyare  
Patil, Shri A. T.  
Patil, Shri Balasaheb Vikhe  
Patil, Shri Chandrabhan Athare  
Patil, Shri Shankarrao  
Patil, Shri Uttamrao  
Patil, Shri Veerendra  
Poojary, Shri Janardhana  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Prasan Kumar, Shri S. N.  
Quadri, Shri S. T.

\*Shri Niren Ghosh also recorded his vote for NOES.

Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Satish Prasad Singh, Shri  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kali Charan  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Birbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri  
 Zainul Basher, Shri

## NOES

Agarwal, Shri Satish  
 Barman, Shri Palas

Choudhury, Shri Saifuddin  
 Dandavate, Prof. Madhu  
 Dandavate, Shrimati Pramila  
 Giri, Shri Sudhir  
 Hasda, Shri Matilal  
 Horo, Shri N. E.  
 Jha, Shri Bhogendra  
 Lawrence, Shri M. M.  
 Maitra, Shri Sunil  
 Mandal, Shri Mukunda  
 Masudal Hossain, Shri Syed  
 Pal, Prof. Rup Chand  
 Rajda, Shri Ratansinh  
 Roy, Shri A. K.  
 Roy, Dr. Saradish  
 Saha, Shri Ajit Kumar  
 Shastri, Shri Ramavatar  
 Varma, Shri Ravindra  
 Zainal Abedin, Shri

MR. DEPUTY-SPEAKER: Subject to correction, the result\* of the division is:

Ayes : 102

Noes : 21

The Ayes have it, the Ayes have it.

*The motion was adopted*

*Clause 7 was added to the Bill*

**Clause 8—(Substitution of new section for section 478)**

SHRI BHOGENDRA JHA: I beg to move:

Page 3, line 36,—

after "sections" insert "107," (6)

Sir, this is a very formal amendment...

MR. DEPUTY-SPEAKER: That has already been circulated.

SHRI BHOGENDRA JHA: It is a formal amendment to clause 8. My

\*The following Members also recorded their votes:

Ayes : Shri G. L. Dogra;

Noes : Shri Niren Ghosh.



amendment is very material and seeks to include Section 107 also in the category of sections 108, 109 and 110 to enable the State Assembly through a resolution authorise the Judiciary in a particular State to take the proceedings under all the three preventive sections. The present Bill does not include Sec. 107. In Sec. 107 in the new Cr. P.C. limitation was given that if within 6 months there is no decision made, then the proceedings will lapse unless for special reasons to be recorded the Magistrate decides that it is necessary to extend the time. There also the Sessions Judge could decide otherwise. I have known in many cases the Executive Magistrates are prolonging the proceedings for one year, two years and so on, I would like the Home Minister to know it, in violation of the new Cr. P.C. There are two reasons for this. One is that the Executive Magistrates are...

MR. DEPUTY-SPEAKER: Please be short... Mr. Roy, he is speaking and I am asking him to be short. Why do you get up? I do not want your advice.

SHRI BHOGENDRA JHA: Sir, I do not disturb anyone or like to be disturbed...

SHRI JAMILUR RAHMAN (Kishanganj): How much time has been allotted to Mr. Bhogendra Jha to speak on this particular amendment?

MR. DEPUTY-SPEAKER: Please now conclude.

SHRI BHOGENDRA JHA: With all respect to you, Sir, I do not want to be disturbed like this.

Sir, we are authorising through this Bill under Clause 8 the State Assemblies. If the assembly passes a resolution, then Sections 108, 109 and 110 will come under the purview of the judicial magistrate. But Sec. 107 is being excluded. That is what I submit. That should also be included—

clubbed with Sec. 108, 109 and 110. Sec. 107 is mainly against peasants, workers and other sections of the people. The object of the Bill says that it is for maintenance of the law and order and for preventing the crimes or controlling the crimes—not that it is for suppressing the movement, democratic movement, of the peasants, workers and other sections of the people. So, Sir, it is pertinent that you give at least to the democratic movement a place in our judicial system. But Sec. 109 & Sec. 110 are for controlling the crimes. So, my submission is that Sec. 107 must also be included because the Executive Magistrate has belied us. Please include Sec. 107 also. It is the experience in the last so many years that openly they are violating it. From one court they get into the other court. Sec. 107 is not for any offence. If there is any apprehension, the possibility, of a breach of peace, then, one proceeding is started. I am submitting to the Minister also that this is one of the cases of violence in the country. If you commit a violence, you will be tried under Sec. 326 IPC or 324 I.P.C. and if the guilt is proved, sentence is four or five years imprisonment. But, under 107, if they have committed any offence or if there is an apprehension or possibility of a breach of peace, on the basis, you are proceeded against for imprisonment to one year or two years. Cr. P.C. is being violated. The limit is put at six months. This is what the executive is doing. At least do not exclude 107. That is why I appeal to the Minister and also to the friends or that side that they should club Section 107 along with Sec. 108, 109 and 110.

SHRI A. K. ROY: The Minister should reply.

MR. DEPUTY-SPEAKER: If he wants, he can reply. I cannot compel him to reply. Please listen. It is left to the Minister. If he does not reply, I cannot force him to reply.

SHRI A. K. ROY: You give him time to think.

MR. DEPUTY-SPEAKER: I am a Presiding Officer. I am observing everything. I shall put amendment No. 8 moved by Shri Bhogendra Jha to the vote of the House.

SHRI BHOGENDRA JHA: We want a division on this.

MR. DEPUTY-SPEAKER: The lobbies have been cleared. The question is:

• Page 3, line 36,—

after "sections" insert "107," (6)  
The Lok Sabha divided:

Division No. 10]

[10.56 hrs.

### AYES

Agarwal, Shri Satish  
Barman, Shri Palas  
Choudhury, Shri Saifuddin  
Dandavate, Prof. Madhu  
Dandavate, Shrimati Pramila  
Ghosh, Shri Niren  
Giri, Shri Sudhir  
Hasda, Shri Matilal  
Horo, Shri N. E.  
Jha, Shri Bhogendra  
Lawrence, Shri M. M.  
Maitra, Shri Sunil  
Mandal, Shri Mukunda  
Masudal Hossain, Shri Syed  
Pal, Prof. Rup Chand,  
Rajda, Shri Ratansinh  
Roy, Shri A. K.  
Roy, Dr. Saradish  
Saha, Shri Ajit Kumar  
Shastri, Shri Ramavatar  
Varma, Shri Ravindra  
Zainal Abedin, Shri

### NOES

Abbasi, Shri Kazi Jalil  
Ahmad, Shri Mohammad Asrar

Anand Singh, Shri  
Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Xavier  
Baitha, Shri D. L.  
Baleshwar Ram, Shri  
Barway, Shri J. C.  
Bhardwaj, Shri Parastram  
Bhuria, Shri Dileep Singh  
Birender Singh Rao, Shri  
Chandra Shekhar Singh, Shri  
Chavan, Shri S. B.  
Chennupati, Shrimati Vidya  
Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dahbi, Shri Ajitsinh  
Daga, Shri Mool Chand  
Dev, Shri Sontosh Mohan  
Dhandapani, Shri C. T.  
Dogra, Shri G. L.  
Doongar Singh, Shri  
Fernandes, Shri Oscar  
Gadgil, Shri V. N.  
Gadhavi, Shri Bheravadan K.  
Gehlot, Shri Ashok  
Gireraj Singh, Shri  
Gouzagin, Shri N.  
Jain, Shri Virdhi Chander  
Jamilur Rahman, Shri  
Jena, Shri Chintamani  
Karma, Shri Laxman  
Kaul, Shrimati Shella  
Kidwai, Shrimati Mohsina  
Krishan Dutt, Shri  
Kuchan, Shri Gangadhar S.  
Kusuma Krishna Murthy, Shri  
Lakkappa, Shri K.  
Mahabir Prasad, Shri  
Mahala Shri R. P.  
Mallick, Shri Lakshman  
Malikarjun, Shri  
Mishra, Shri Ram Nagina  
Misra, Shri Harinatha

477 Rly. accident AGRAHAYANA 18, 1902 (SAKA) at Samuria near 478  
Barauni (C.A.)

Motilal Singh, Shri  
Nair, Shri B. K.  
Namgyal, Shri P.  
Oraon, Shri Kartik  
Palaniappan, Shri C.  
Pandey, Shri Krishna Chandra  
Panigrahi, Shri Chintamani  
Panika, Shri Ram Pyare  
Patil, Shri A. T.  
Patil, Shri Balasaheb Vikhe  
Patil, Shri Chandrabhan Athare  
Patil, Shri Shankarrao  
Patil, Shri Uttamrao  
Patil, Shri Veerendra  
Poojary, Shri Janardhana  
Potdukhe, Shri Shantaram  
Pradhani, Shri K.  
Prasan Kumar, Shri S. N.  
Quadri, Shri S. T.  
Ram, Shri Ramswaroop  
Rao, Shri M. Satyanarayan  
Rao, Shri P. V. Narasimha  
Rathod, Shri Uttam  
Raut, Shri Bhola  
Rawat, Shri Harish Chandra Singh  
Reddy, Shri P. Venkata  
Satish Prasad Singh, Shri  
Sethi, Shri Arjun  
Shakyawar, Shri Nathuram  
Shankaranand, Shri B.  
Sharma, Shri Kali Charan  
Sharma, Shri Nand Kishore  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Sidnal, Shri S. B.  
Singh Deo, Shri K. P.  
Sparrow, Shri R. S.  
Stephen, Shri C. M.  
Sukhbun, Kaur, Shrimati  
Sunder Singh, Shri  
Tapeahwar Singh, Shri  
Tayeng, Shri Sobeng  
Tayyab Hussain, Shri

Tewary, Prof. K. K.  
Thorat, Shri Bhausahab  
Tripathi, Shri R. N.  
Vairale, Shri Madhusudan  
Venkataraman, Shri R.  
Venkatasubbaiah, Shri P.  
Virbhadra Singh, Shri  
Vyas, Shri Girdhari Lal  
Wagh, Dr. Pratap  
Yadav, Shri Ram Singh  
Yazdani, Dr. Golam  
Zail Singh, Shri  
Zainul Basher, Shri

MR. DEPUTY SPEAKER: Subject to correction the result of the Division is:

AYES : 22

NOES : 101

*The motion was negatived.*

MR. DEPUTY SPEAKER: ---  
question is:

"That Clause 8 stand part of the Bill."

*The motion was adopted.*

*Clause 8 was added to the Bill.*

*New clause 8A*

Mr. DEPUTY SPEAKER: There is Amendment No. 13 for the insertion of New Clause 8A. It is a Government amendment.

*Amendment made:*

Page 3,—

*after line 38, insert—*

"Consequential } 8A. Section 72  
amendment of } of the Delhi Police  
Act 34 of 1978. } Act, 1978  
} shall be omitted." 13

(Shri P. Venkatasubbaiah).

MR. DEPUTY SPEAKER: The question is:

"That New Clause 8A stand part of the Bill."

*The motion was adopted.*

*New Clause 8A was added to the Bill.*

MR. DEPUTY SPEAKER: Consequential re-numbering of the other clauses will be done.

There are no amendments to Clauses 9 and 10. So, I will put them to vote.

The question is:

"That Clauses 9 and 10 stand part of the Bill."

*The motion was adopted.*

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

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. VENKATASUBBAIAH): Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. DEPUTY SPEAKER: Motion moved:

"That the Bill, as amended, be passed."

Now, we have got three speakers. They have given their names. They must be very short in their speeches. They should not take more than three minutes. Mr. Niren Ghosh, you should not take more than 3 minutes.

SHRI NIREN GHOSH (Dum Dum): Sir, the more isolated the Congress (I) Government is, the more draconian measures are being adopted by them to restrict people's

rights. They are the inheritors and the 'continuator' of the much-hated British police system. They have done it through all these years. They have followed the same colonial system, Cr. P.C., I.P.C. and so on and in the final round they come forward with this amendment. They have amended it in a retrograde way and they have proved themselves to be more reactionary than the Britishers. The Janata Government also tried to amend the Indian Criminal Procedure Code with regard to detention, but due to pressure within their party and from outside they had to make a hasty retreat. But this Government, even on the brink of a precipice, knows no retreat.

Sir, this Bill has equated the Magistrate with the Central and State Governments, with equal powers in certain respects. They have lost all senses and they have come to this stage. They say 'habitual offenders'. What is the definition of 'habitual offenders'? A criminal magistrate, in collusion of the Police, thinks that certain number of people are 'habitual offenders'. That is all. They become 'habitual offenders' thereby. I tell you, no underground world can exist without their support, without the collusion and the connivance of the Police. (*An hon. Member. That is what happens in West Bengal.*) Now, I will tell you a story.

20.00 hrs.

MR. DEPUTY-SPEAKER: You don't relate any story or anything now. You have got only one minute. Please conclude.

SHRI NIREN GHOSH: There was a division of spoils. Then the police wanted more. But the underworld retaliated by declaring a strike. They wanted to commit thievery, offence, etc. Then the police yielded to the underworld... (*Interruptions*)

MR. DEPUTY SPEAKER: Three minutes are over for you. I am not

permitting you. Now, Mr. Ramavatar Shastri.

(Interruptions)

SHRI JAMILUR RAHMAN: Sir, his time is over. He should not be allowed to continue his speech.....

(Interruptions)

MR. DEPUTY SPEAKER: Mr. Ramavatar Shastri, are you willing to speak or not?

(Interruptions)

MR. DEPUTY SPEAKER: Mr. Ramavatar Shastri, I am permitting you only to speak. I am not permitting others.

श्री रामावतार शास्त्री : उपाध्यक्ष जी, किसानों, मजदूरों, मध्यावर्गीय कर्मचारियों और आम गरीब जनता के आन्दोलनों से घबरा कर ही सरकार ऐसे जन-विरोधी कानूनों का आश्रय ले रही है। अगर ऐसी बात न होती, तो इस कानून को लाने की कोई भी आवश्यकता नहीं थी।

दूसरी बात मैं यह कहना चाहता हूँ कि उन्होंने इस विधेयक के समर्थन में सात कानूनों का जिक्र किया है, जिन का उल्लंघन करने वालों के खिलाफ ये कार्यवाही करना चाहते हैं। उस में इन्होंने बटमारों, मकान तोड़कों, चोरों, उच्चकों, जाली लोगों का जिक्र किया है। यदि ऐसे लोग होंगे तो उनके खिलाफ कार्यवाही करेंगे। मैं केवल एक जवाब चाहता हूँ—अब तक आप ने ऐसे कितने लोगों के खिलाफ कार्यवाही की है। अगर आप यह बतला दें तो शायद हमारा विरोध कम हो सके। लेकिन आपने अब तक यह बात नहीं बतलाई है कि पिछले ढाई महीनों में, अध्यादेश के जारी करने के बाद से, इस तरह के कितने लोगों के खिलाफ, चोर-बाजारी करने वाले लोगों,

दवा छिपा कर बेचने वाले लोगों, गल्ला छिपा कर बेचने वाले लोगों, मुनाफाखोरों, को जेल में डाला है। आप चाहें तो अभी भी बतला सकते हैं।

तीसरी और अन्तिम बात—पुलिस का गलत इस्तेमाल किया जाता है। मैं इसका उदाहरण देना चाहता हूँ... (व्यवधान)... कौशलनगर कालोनी के गरीबों के मकानों पर बार-बार छापे मारे जाते हैं। चोरी का सामान कुछ भी नहीं निकलता है, फिर भी छापे मारते हैं—यह कहां का न्याय है। पटना में इस तरह के छापे मारे गए हैं। चोरी कोई नहीं करता है, फिर भी पुलिस वाले तंग करते हैं—आपकी पुलिस उन को तंग करती है... (व्यवधान)... वहां लोगों की हत्या कर दी गई, फिर भी आप ने कुछ नहीं किया। अफसर लोग जो मन में आता है, करते हैं। इन शब्दों के साथ मैं इस विधेयक का विरोध करता हूँ... (व्यवधान)...

MR. DEPUTY SPEAKER. Now the question is:

"That the Bill, as amended, be passed."

Let the lobbies be cleared.

The Lok Sabha divided:

Division No. 20] [20.12 hrs.

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Abbasi, Shri Kazi Jalil  
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Ankineedu Prasad Rao, Shri P.  
Appalanaidu, Shri S. R. A. S.  
Arakal, Shri Zavier  
Baitha, Shri D. L.  
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Barway, Shri J. C.  
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Chingwang Konyak, Shri  
Choudhury, Shri A. B. A. Ghani Khan  
Dabhi, Shri Ajitsinh

permitting you. Now, Mr. Ramavatar Shastri.

(Interruptions)

SHRI JAMILUR RAHMAN: Sir, his time is over. He should not be allowed to continue his speech.....

(Interruptions)

MR. DEPUTY SPEAKER: Mr. Ramavatar Shastri, are you willing to speak or not?

(Interruptions)

MR. DEPUTY SPEAKER: Mr. Ramavatar Shastri, I am permitting you only to speak. I am not permitting others.

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Dabhi, Shri Ajitsinh

Daga, Shri Mool Chand  
 Dev, Shri Sontosh Mohan  
 Dhandapani, Shri C. T.  
 Doongar Singh, Shri  
 Fernandes, Shri Oscar  
 Gadgil, Shri V. N.  
 Gadhavi, Shri Bheravadan K.  
 Gehlot, Shri Ashok  
 Gireraj Singh, Shri  
 Gouzagin, Shri N.  
 Jain, Shri Virdhi Chander  
 Jamilur Rehman, Shri  
 Jena, Shri Chintamani  
 Karma, Shri Laxman  
 Kaul, Shrimati Sheila  
 Kidwai, Shrimati Mohsina  
 Krishan Dutt, Shri  
 Kuchan, Shri Gangadhar S.  
 Kusuma Krishna Murthy, Shri  
 Lakkappa, Shri K.  
 Mahabir Prasad, Shri  
 Mallikarjun, Shri  
 Mallu, Shri A. R.  
 Mishra, Shri Ram Nagina  
 Misra, Shri Harinatha  
 Motilal Singh, Shri  
 Mukhopadhyay, Shri Ananda Gopal  
 Nair, Shri B. K.  
 Nangyal, Shri P.  
 Oraon, Shri Kartik  
 Palanippan, Shri C.  
 Pandey, Shri Krishna Chandra  
 Panigrahi, Shri Chintamani  
 Panika, Shri Ram Pyare  
 Patil, Shri A. T.  
 Patil, Shri Balasaheb Vikhe  
 Patil, Shri Chandrabhan Athare  
 Patil, Shri Uttamrao  
 Patil, Shri Veerendra  
 Poojary, Shri Janardhana  
 Potdukhe, Shri Shantaram  
 Pradhani, Shri K.  
 Prasan Kumar, Shri S. N.  
 Quadri, Shri S. T.

Ram, Shri Ramswaroop  
 Rao, Shri M. Satyanarayan  
 Rao, Shri P. V. Narasimha  
 Rathod, Shri Uttam  
 Raut, Shri Bhola  
 Rawat, Shri Harish Chandra Singh  
 Reddy, Shri P. Venkata  
 Sethi, Shri Arjun  
 Shakyawar, Shri Nathuram  
 Shankaranand, Shri B.  
 Sharma, Shri Kali Charan  
 Sharma, Shri Nand Kishore  
 Shastri, Shri Hari Krishna  
 Shiv Shankar, Shri P.  
 Sidnal, Shri S. B.  
 Singh Deo, Shri K. P.  
 Sparrow, Shri R. S.  
 Stephen, Shri C. M.  
 Sukhbuns Kaur, Shrimati  
 Sunder Singh, Shri  
 Tapeswar Singh, Shri  
 Tayeng, Shri Sobeng  
 Tayyab Hussain, Shri  
 Tewary, Prof. K. K.  
 Thorat, Shri Bhausahab  
 Tripathi, Shri R. N.  
 Vairale, Shri Madhusudan  
 Venkataraman, Shri R.  
 Venkatasubbaiah, Shri P.  
 Virbhadra Singh, Shri  
 Vyas, Shri Girdhari Lal  
 Wagh, Dr. Pratap  
 Yadav, Shri Ram Singh  
 Yazdani, Dr. Golam  
 Zail Singh, Shri.  
 Zainul Basher, Shri.

NOES

Agarwal, Shri Satish  
 Choudhury, Shri Saifuddin  
 Dandavate, Prof. Madhu  
 Dandavate, Shrimati Pramila  
 Ghosh, Shri Niren  
 Giri, Shri Sudhir