

श्री राम विलास पासवान (हाजीपुर) : \*\*  
(व्यवधान)

(viii) Providing adequate relief to flood affected people of Radhopur and Vaishali of Bihar

श्री राम विलास पासवान : सभापति महोदय, मैं अत्यन्त लोक-महत्व के एक विषय की ओर सरकार का ध्यान दिलाना चाहता हूँ।

बिहार के वैशाली जिलान्तर्गत राघोपुर प्रखंड प्रत्येक वर्ष बाढ़ के प्रकोप से बुरी तरह प्रभावित रहता है। प्रतिवर्ष लाखों रुपए की फसल की बर्बादी होती है तथा हजारों एकड़ जमीन गंगा एवं गंडक की बाढ़ में फटती है तथा हजारों बेघरबार होते हैं। इस वर्ष भी गंडक का कटाव काफी जोरों पर है।

राघोपुर प्रखंड के छोकिया तेरसिया एवं हाजीपुर प्रखंड के हरबंशपुर गांव में मैं स्वयं गया था। 500 से अधिक घर गंडक में फट कर विलीन हो गए हैं। सैंकड़ों परिवार गृह-विहीन हो गए हैं। एक हरिजन की मृत्यु हो गई है। बार-बार मांग करने के बावजूद सुरक्षा की कोई व्यवस्था नहीं की गई है।

अतः सरकार से मांग है कि सरकार तत्काल राघोपुर एवं वैशाली जिला में बाढ़ से प्रभावित लोगों के पुनर्वास की व्यवस्था करे, जिनका घर एवं जमीन कट गई है, उन्हें मुआवजा दे, कटाव को रोकने की व्यवस्था करे तथा गरीबों के बीच राहत-कार्य चलाए।

14.30 hrs.

STATUTORY RESOLUTION RE :  
DISAPPROVAL OF NATIONAL  
SECURITY (SECOND AMEND-  
MENT) ORDINANCE  
AND  
NATIONAL SECURITY (SECOND  
AMENDMENT) BILL

MR. CHAIRMAN : Now, we take up

Statutory Resolution regarding disapproval of the National Security (Second Amendment) Ordinance, 1984 (Ordinance No. 6 of 1984) Promulgated by the President on the 21st June, 1984 and National Security (Second Amendment) Bill together.

SHRI GEORGE FERNANDES  
(Muzaffarpur) : I beg to move :

"This House disapproves of the National Security (Second Amendment) Ordinance, 1984 (Ordinance No. 6 of 1984) promulgated by the President on the 21st June, 1984."

Before making my case why I oppose this Ordinance, I would like to deal with the Statement explaining the circumstances which had necessitated the promulgation of the National Security Ordinance 1984, which the hon. Home Minister presented to the House on 25th of July. So, in the Statement, the Home Minister says that the Ordinance was necessitated because the State Governments have been asking for amendments to certain provisions of the National Security Act in the light of the practical problems that have been encountered in implementing the provisions of the Act, especially in areas where conditions are generally disturbed. The National Security Act was passed by this House in December 1980 following an ordinance that was issued in September, 1980. Between September 1980 and April, 1984, in other words, for almost a little over 3 1/2 years, the State Governments, the Central Government and all those who were concerned with implementing this law, must have been concerned with the changes that this law needed according to their wisdom. In April, 1984 when the Government came forward with a Bill to amend the law and that Bill was passed by this House again—thanks to their steamroller majority over there—one would have assumed that whatever suggestions and recommendations, etc. in order to streamline this law and to make it more effective must have been received by you. What is that happened between April, 1984 and 21st of June, 1984 i.e. about 2 1/2 months time that makes the

State Governments suddenly realise that things were not working properly and this law needed amendment second time and this Ordinance was promulgated ?

I go to the second part of the explanatory statement. It says that the extraordinary situation which has arisen in certain parts of the country also necessitated immediate action in the above direction to enable the Government to deal stringently with anti-national, extremist and terrorist elements as also for enabling the concerned authorities to take preventive action which is required in the prevailing circumstances and larger interests of India. If there is extraordinary situation prevailing in certain part or parts of the country — I am assuming, the Minister has perhaps, the situation that the Government has created in Punjab, in mind—should the entire country be subjected to or should the people in other parts of the country where this extraordinary situation was not prevailing be subjected to an amended law which I am going to submit to the House is the most savage piece of legislation that has been introduced in this House so far ? I would, therefore, like the Home Minister to be very specific in regard to the statement that he has made and clarify both these points.

Insofar as this law is concerned, I do consider this to be an extraordinary piece of legislation, which, in my view, once again, clubs India to sit in the same club as the banana republics of Latin America and also Marco's Philippines and such other countries where the rule of law generally does not prevail.

Look at clause 2 of this Bill that has been introduced.

“5A. Where a person has been detained in pursuance of an order of detention...under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—...”

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

- (i) vague,
- (ii) non-existent,
- (iii) not relevant,
- (iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention ;”

That is why I said that this is the most extraordinary piece of legislation that has come from a Government that has had never much respect for human rights, civil liberties, and, for that matter, even the rule of law. Further, in Section 5A(b), the new law suggests that—

“(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.”

In other words, what the Government is now trying to do is to empower the detaining authority and as we know, under this law the detaining authority can be anyone from the Government of India to the State Governments, Home Ministry to the Superintendent of Police at the district level, or the District Magistrate. You are today giving them authority to detain a person on grounds that are vague, and I want the House to understand this perfectly that by this law you are telling the District Magistrate, you are telling the police officer that he can detain a man, he can take away from

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a person his civil liberties, his rights on grounds that are vague, on grounds that do not exist on grounds that are irrelevant, on grounds that are not connected or proximately connected with such person or on grounds that are totally invalid. I would like to submit with the greatest respect that the Government is now acquiring powers which so far at least it had shied from acquiring.

The earlier amendment that was made to this Act in April 1974, enables the Government in the first place, to keep a man in detention for fifteen days without even telling him the causes for his detention. They can pick up a man, put him in jail and not let him know for about a fortnight as to why actually he was arrested. You sought powers then and acquired powers in April 1974 to not go before the Advisory Board for at least six months. In other words, you detain a person even if the Advisory Board were subsequently to discover that his detention was invalid, that it was illegal, that it was entirely unjustified. You acquired the powers to detain that man for at least six months and you also had then acquired the powers to detain a man for a period of two years as against the earlier provision of detention of a person for one year under this law. What you are now trying to do is that having acquired these powers, you are now creating a facade of legitimacy, through this new amendment you are trying to create a facade of legitimacy over totally irrelevant, invalid, non-existent grounds under which you would now like to deny a citizen his liberty and his freedom. This Section 5A(b) also raises several interesting points. When you say that the grounds which are considered as legitimate, as valid, your detention under those grounds is supposed to have been made by an officer after being satisfied as provided for under this Section, what happens in respect of the grounds which are then established, in your own words, to be vague, non-existent, not relevant, not connected or invalid.

I would like the Home Minister to

enlighten the House of this distinction that he seeks to make. Because, among other things, you are exposing your officers also to a certain amount of ridicule, when your detention order says that it has been issued with the due exercise of his mind. But what about those grounds which are subsequently discovered to be falling under section 5A(a). While making the detention order under these five different categories of invalid grounds that you have recorded, is the officer supposed to have been at that particular moment, under the influence of drug or under the influence of alcohol, that there is total dereliction of duty? How exactly do you define the officer's state of mind, or his action? If the legitimate grounds are with the proper application of mind, when they are illegitimate grounds, as I would like to define them for want of definition, in what state of mind the officer is, when he makes an order of detention in respect of the grounds under section 5A(a)? I would like the Home Minister to give us a very categorical explanation on this count also.

When the original Bill came before the House, we described it as a draconian piece of legislation. When you came with your amendment in April this year, we thought that you were doing bargaining in a certain sense. And I must say that what you have now come forward with in this House a piece of legislation which is really savage, because the kind of powers that you are taking in your hands are powers that no civilised government can take, and no civilised government has in my view, so far taken the powers which you are now seeking to acquire.

But I believe that this is a part of a pattern. If such a law had not come, I would have been surprised. I am not surprised that you have come with this law. Because, look at your performance in the last four years and each of the laws that you have come forward with, more in the area of human rights, in the area of civil liberties.

First you started nibbling on our fundamental rights and civil liberties. Then you started attacking them with greater force.

Now, it seems to me, that you are really poised to finally destroy any semblance of the rule of law, so far as the fundamental rights enshrined in the Constitution are concerned. The question is, why is the government doing it and why do they want to attack the fundamental rights. My submission is, it is not merely a frame of mind, where the government of the day is moving towards a fascist order; it is not merely a frame of mind, it is primarily the failure of the Government in the political, social and economic area that is now compelling it to come forward with such legislation.

I do not want to dwell at length on these failures, but look at the political situation that you have created in the country. From Assam, through Punjab, now in Jammu and Kashmir and across the country, you have created political conditions everywhere, deliberately I feel, to meet your ulterior political objectives or political ends, where you have let the people run riot. And having created the conditions, you would now like to attack those who are, through legitimate political means, trying to counter the situation that you have created, and you feel, therefore, that you need a law like this to deal with the present situation, which, as you yourself have called it, is an extraordinary situation.

Then the Government have also created conditions where communal riots have become the order of the day, where caste riots have become the order of the day. Again, having created those conditions, we see the results in Bhiwandi, Thana and Bombay and in many other parts of the country, irrespective of which party is in power in which State; because, you are capable of creating conditions irrespective of which party is in power, and we see this in Hyderabad and we saw this early in Jammu and Kashmir, before the overthrow of Farooq Abdullah, where we saw your handiwork in Jammu and Kashmir.

**SHRI SUNIL MAITRA :** In Bengal also they are trying.

**SHRI GEORGE FERNANDES :** Yes,

they are still trying in Bengal. We see this everywhere. So, you have created these conditions where communal riots have become order of the day. In Uttar Pradesh and Bihar particularly you have been creating these conditions where the socially handicapped people—the Scheduled Castes and the Scheduled Tribes particularly—are under tremendous attack from your people. Now, you have reached a point today where the State is engaged in total violence against these people. So, at one level you are creating the conditions of chaos—political and social—and then you acquire these powers so that you deal with the extraordinary situation as you call it.

Sir, I believe that there is another reason why the Government is indulging in creating these caste, communal and political diversionary situations. That reason in my view is the colossal or the massive failure of the government on the economic front. I must say as a Member of the Opposition in this House, as a person who is a part of the Opposition parties in this country, I must say that the Government has succeeded famously in diverting the attention of the people from the basic issues which really are worrying the people.

Now, the government has reached a point and time in its own mind where it thinks that it is not possible to carry on with all these diabolic diversionary methods. Therefore, they have come forward with this Legislation so that any person who is going to raise the issues which are worrying the people of the country, such people can be dealt with.

Sir, in 1980, the Government came with the original law. They believed that this original law was well enough. And I again want the Home Minister to be very pointed in making my point that in 1980 the law as you enacted, you felt was enough to deal with whatever frightening situation that you believed was existing in our country. Sir, there was no preventive detention law in 1980 when the Congress Party was voted to power. Their infamous MISA was repealed by the Janata Party Government. For the

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first time for many years in this country there was no law of preventive detention. The people were breathing in relief that they will not be arrested at the dead of the night, that they would not be put in prison without trial, that due process of law in this country will apply to every citizen. And then you came with this law and believed that in its form, in its content, it was adequate enough to deal with whatever situation, whatever mess, as you like to call it in-quotes-unquotes, which the Janata Party had created. We are supposed to have created a mess. Every one of your Ministers, when he had no explanation to give for the total failure on every front, the only thing he will do was to get up and say that the Janata Party and the Janata Government had created this mess. All right, tremendous amount of mess that we created, let us assume according to you, necessitated this law. Now, what happened between 1980 and April 1984 in the first place and June in the second place that has made you come forward with this savage law ?

SHRI SUNIL MAITRA : More mess.

SHRI GEORGE FERNANDES : What happened in these four years and more ? You have to answer this question, because the obvious answer can be that you have created now a mess in which you feel that the earlier draconian measure is not adequate ; that you now need a measure after four years and six months of your magnificent rule in this country whereby you can deny the citizen his Fundamental Rights and you must take recourse to law whereby you can detain a person on grounds that are not valid, that are not relevant, that are non-existent and put him in the prison without even producing before the Advisory Board for a period of six months.

Now, why such a situation happened ? I mentioned about the total deterioration in the economic situation that has taken place in the country. I know how the Congress and Government benches are going to react to this, because they have the usual clap-trap : the Janata Party made a mess, the

Janata Government made a mess and we are now still trying to clean up the mess. That is their usual clap-trap with which they come forward ? But there are certain statistics which I need to present to the House. And I am not trying to propound any new theory, but I would certainly like to suggest to the House today that by the measure by which the economic situation in the country is getting deteriorated, the Government is coming forward with laws and measures that deny to the citizen his fundamental rights, his civil liberties and his human rights. Take the question of unemployment. What is your performance ? You are coming forward with this law today denying the citizen his liberty. But let us take your performance in the economic area, and I am taking the question of unemployment. Take your own statistics. Don't take our statistics because according to our statistics we have 6 crores of unemployed in India at the moment. But let us take your own statistics, the statistics of whichever Ministry that puts out these figures. In 1979 when the Janata Government was voted out, or when the Janata Government stepped down, according to the figures that your Ministry has now put out, the total unemployed in this country was 1,46,00,000. And according to the figures which you have put out for March of this year, the number of unemployed in this country has shot up to 2,26,00,000. Sir, unemployment is not merely statistics, unemployment is social tensions, unemployment is young people particularly those who are coming out of the schools, colleges and universities, roaming around desperately without my hope, the hope that was denying to them. I was to ask in this House a question exactly a year ago, about this time last year, and any question was : How many young people will be coming out of the high schools, colleges and universities in India during the year 1983 and how many jobs will be created for these educated people who will be coming out of the universities, colleges and high schools ? The Minister for Labour and Employment was to answer my question and he was to say that according to the Government, four million young people would be coming out of the high schools, colleges and

universities during the year 1983 and for the second part of my question the answer was : 'The Government is not in a position to say how many jobs will be created for the educated people in this country in 1983.' Of course, the Government would never be in a position to say that because it is not creating the jobs that need to be created. If anything the Government is creating, it is creating unemployment in the country today closing the textile mills you have today all over the country. Over two lakhs of people employed in the textile mills were unemployed. These are social tensions. You are creating conditions for them. The other day the House discussed the communal riots situation, the Bhiwandi question. Who does not know that in Bhiwandi the major issue involved is the economic issue ? Powerloom workers are there, the textile workers in the city of Bombay are unemployed ; you are creating conditions where such tensions get built up. So when I talk of unemployment, of the crisis which this Government is creating, I am not referring merely to the statistics, I am talking of the social tensions which the Government's policies in the area of employment have created.

**SHRI GIRDHARI LAL VYAS (Bhilwara) :** What is your contribution, Mr. Fernandes ?

**SHRI GEORGE FERNANDES :** We will discuss that later.

At another level, look at the price index. We were discussing a little while ago the agricultural prices question and, Sir, between 12th January 1980, the day the elections were held—these are the statistics which were presented to this House a few weeks back—and August 1984, the increase in prices that you have brought about, not just with respect to certain items, but the overall increase in prices that you have brought, is again phenomenal. The wholesale price index in January 1980 was 227. You have successfully taken it to 343 according to the newspapers this morning.

**SHRI SATISH AGARWAL :** It is 343.6.

**SHRI GEORGE FERNANDES :** Why did I say that ? I gave them the benefit of 0.6. In fact it is 343.6. Now, again it is not merely the question of statistics. And in fact, when one discusses the wholesale price index, the real misery of the people is hidden behind it. If you look at the prices of such essential articles of human consumption like rice, the index which was 191 in 1979, has shot up to 281 in 1984. We were discussing earlier the agricultural prices. The Agriculture Minister was waxing eloquent about prices being contained on this item or that item and how the farmers are well of, and he was talking about gram, he was talking about pulses. Sir, gram for which the wholesale price was 239, has shot up to 440.

Groundnut oil from 189 to 352, coconut oil from 188 to 517 ; tea which is the common man's beverage from 245 to 524, fish, I do not know whether the Home Minister consumes it, but there are a large number of people in this country whose quota of protein comes from fish, from 259 to 433, meat from 239 to 406, potatoes, again ultimately an essential item of daily consumption, from 88 to 160 ; another essential item like kerosene from 272 to 346.

I am making this point of rising prices and rising unemployment to drive out another point and I intend giving statistics. The figures that I have presented to the House indicate that in the area of unemployment, you have in the last 4½ years nearly doubled unemployment in the country. In the area of price you have also nearly doubled. In certain items of essential commodities you have more than doubled the prices and against the backlog of this doubling of unemployment and doubling of prices emerges the statistics which one must take from the Home Ministry record that between 1979-80 and 1984-85 the police Budget of the Government of India has also doubled. Your police Budget was Rs. 242 crores in 1970 and from Rs. 242 crores your police Budget in the current year 1984-85 is Rs. 487 crores. This is the nexus. This is the backdrop against which we have to understand this attack on

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human rights, on civil liberties which the Government is indulging. You create political problems. You create social problems in order to divert the people's attention from the economic problems and then when the things become far too hot for you, you double the police budget and when you find even that kind of situation—you are unable to deal with peoples aspirations, you come and attack us with this law.

There is another aspect of this ordinance or this law as the Government is enacting it. It comes in the wake of certain developments in Punjab, not in terms of what happened in Punjab as this House discussed in the House. It comes in the wake of a case that was filed on behalf of a person who was detained under the National Security Act. I am referring to Sant Longowal. Sant Longowal's case was filed in the Supreme Court. We know, it is public knowledge, the kind of difficulties Government side faced on that point of time. Interviews were refused to those who were appearing for Sant Longowal. The court had to order to someone to go and interview the concerned detainee, viz., Sant Longowal. When the court representative went to prison, the prison authorities tell the court representative that we have no instructions, we are unable to act on any court order. When it was finally discovered by the Government that the ground which have been given for the detention of Sant Longowal, Prakash Singh Badal, Tohra the whole lot of Akali leaders who are currently in prison, are not sufficient, Government came forward with this ordinance in order that a problem they had created could be overcome. There are, it is obvious to me that irrespective of what the protestations of the Government may be in regard to this law, irrespective of whatever assurance that they may try to give us, this law ultimately is going to be used against political activists against political opponents, against people who are going to agitate, who are going to fight for the rights of the people. I am making this statement against the backdrop of what the then Home

Minister, your predecessor, who is now occupying President's palace was to say when this Bill was introduced. He was speaking after my esteemed friend Shri Atal Bihari Vajpayee had moved a Resolution opposing ordinance at that time. This is what the then Home Minister Sardar Zail Singh said while introducing this Bill :

“यह बिल केन्द्र सरकार को किसी भी व्यक्ति की गिरफ्तारी का आदेश देने का अधिकार देता है। यदि यह आश्वस्त हो जाए कि भारत की सुरक्षा के खिलाफ किसी भी ढंग से, उसे काम करने से रोकने के लिए ऐसा करना आवश्यक है।”

“आश्वस्त” शब्द है।

15.00 hrs.

And from that point, *Ashwastata* you have now reached the point of vague, irrelevant, non-existent and invalid on any account and not even remotely connected with the persons who is to be detained. I am thankful to you for correcting my Hindi.

PROF. MADHU DANDAVATE (Rajapur) : Sir, the Home Minister then, at that time did not know the meaning of the word “*Ashwastata*.”

SHRI GEORGE FERNANDES : Therefore, your intentions so far as the law is concerned are very clear. From that *Ashwastata* position, to have come here. The then Home Minister was also to make this point.

“राष्ट्रीय सुरक्षा बिल 1980 में, इनके गलत इस्तेमाल को रोकने के लिए जरूरी उपाय रखे गए हैं और यह नजरबन्द किए जाने वाले व्यक्ति के लिए न्याय भी सुनिश्चित करता है।”

This was said by the then Home Minister, Sardar Zail Singh. Now, of those so-called safeguards that were available in the original law, you withdrew some of them. You now

seek to withdraw just now every one of them. Therefore, sir, it is my submission, also, by past experience, the way you used MISA, I, remember when the MISA was enacted in this House, everybody was told that this was meant for the anti-social elements, for the criminals, for the people who indulged in anti-national activities. We know the greatest anti-national happened to be Babu Jaya Prakash when on the 25th of June, 1975, you used the Maintenance of Internal Security Act to pick him up at well past midnight and the whole lot of other people. I know there are Members on the other side who have no respect for JP ; who even now believe that Babu Jaya Prakash was anti-national and anti-social. But I would only like to remind those Members that irrespective of what their views on Jaya Prakash and his memory, there is a Memorial Committee. There is a Memorial Committee set up for Babu Jaya Prakash and this committee was set up after his death. Do you know who presides over this committee, Mr. Chairman ? The Prime Minister of this country presides over that committee. It is necessary to point this out because people are accustomed very often to trade abuses, very glibly make charges and then to get away with them. You have set up a committee to honour the memory of Babu Jaya Prakash with the Prime Minister of India as its chairman. What is the Committee doing ? It is not my business. I am not concerned with it. But I am making this point because you used the Maintenance of Internal Security Act then to pick up J.P., to pick up Morarji Desai, to pick up Atal Bibari Vajpayee and to pick up a whole lot of people in this House who are now Members from this side. Some of them perhaps may be sitting on your side. (*Interruptions*).

So, Sir, I have reasons to believe that this law in its present form is also going to be used against political opponents. You may, of course, say that there are other reasons for which you are going to enact it.

15.03 hrs.

[SHRI CHINTAMANI PANIGRAHI  
in the Chair]

Sir, I remember that last week, we had discussed in this House another piece of some draconian law, the amendment to COFEPOSA. Hon. Member Shri Virdhi Chander Jain—I saw him a little while ago in the House and I hope he will be present in the debate—asked a very interesting question. He said and I am quoting him. He referred to the detention of Haji Mastan, Karim Lala and other anti-socials, criminals, smugglers and other elements in Bombay and posed a question. It is part of the record in the House. I heard him sitting in this House. He said : Why were they released ? There were other Members also who came with a brilliant suggestion that lawyer-member in this House should not appear in the court of law on behalf of smugglers in this country and of course they went on to name a Member of this House. A Member of this House was named by a Member on the other side and that Member of the House was named by more than one Member on the other side as a man who stood up in a court of law with a brief for the smugglers. Now, Sir, I would like to make a point. The Government is today responsible for creating in the first place those conditions where criminals and anti-social elements have a field day.

Then, you arrest them. Because you are under tremendous pressure from some quarter or other or for motives which I am unable to fathom at the moment, you release them. But where political leaders are concerned, Sant Longowal, Mr. Badal, Mr. Tohra and others, they must live in prison today. But Mr. Karim Lala and Mr. Haji Mastan whom you arrested must be released.

I want to charge this Government, particularly the Government of India, for being responsible to release such criminals and anti-social elements in Bombay in recent times. For what consideration, it is for the Government to clarify ; for what consideration, it is for the ruling Party to clarify.

PROF. MADHU DANDAVATE : They may be candidates if hijackers can be candidates.

**SHRI GEORGE FERNANDES :** Now, I have a letter which the member of the ruling Party writes to the Deputy Chief Minister of Maharashtra...

**MR. CHAIRMAN :** What letter ? Here is a direction of the Speaker that a member is not allowed to lay on the Table a private correspondence.

**SHRI GEORGE FERNANDES :** I am not laying it on the Table.

**PROF. MADHU DANDAVATE :** A letter written by the Member of Parliament to the Deputy Chief Minister of Maharashtra is not a private letter. It is on a matter of public importance that he has written a letter to the Deputy Chief Minister of Maharashtra.

**MR. CHAIRMAN :** He cannot quote it.

**SHRI SATISH AGARWAL :** Supposing a member writes a letter to the Home Minister, can it not be quoted ?

**MR. CHAIRMAN :** It cannot be quoted.

**SHRI SATISH AGARWAL :** Why not ? It is not a love letter ; it is not a letter written between husband and wife. It is a letter from a Member of Parliament to the Home Minister. Why can't it be quoted ?

**SHRI GEORGE FERNANDES :** Let me first read out the letter. Then you decide about it. If you come to the conclusion that it is a private letter, then you rule it out.

**SHRI SATISH AGARWAL :** Then you expunge it.

**SHRI GEORGE FERNANDES :** Let me present the document. Then it is open to you to say whether it is private or it is public.

**THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA RAO) :** Sir, I want to say something. It is upto the hon. Member and upto the Chair to take

whatever decision you like. I would like to clarify that so far as I am concerned, I would not like to quote from the letters which I receive from hon. Members.

**MR. CHAIRMAN :** That is correct. Please don't quote. Mr. George Fernandes, if you have to quote, you have to lay it on the Table of the House.

**PROF. MADHU DANDAVATE :** Not necessarily. If somebody demands, then he must place it on the Table.

**MR. CHAIRMAN :** Therefore, without quoting the letter, you can make a reference to it. Please don't quote anything.

**SHRI ATAL BIHARI VAJPAYEE (New Delhi) :** The other day, Mr. B.R. Bhagat quoted from a letter written by the Governor, Mr. B.K. Nehru. That was not objected to by any member from the ruling Benches.

**MR. CHAIRMAN :** May be, somebody had not objected to that. But the rules are there ; the directions of the Speaker are there.

**SHRI ATAL BIHARI VAJPAYEE :** Have you seen the letter ?

**MR. CHAIRMAN :** I have not seen it.

**PROF. MADHU DANDAVATE :** It is a very interesting letter. You will like it.

**SHRI RAVINDRA VARMA (Bombay North) :** He has written the letter as a Member of Parliament to the Deputy Chief Minister of Maharashtra. It is not a private letter. (*Interruptions*)

**SHRI SOMNATH CHATTERJEE :** That is not a private letter. (*Interruptions*)

**MR. CHAIRMAN :** You kindly make a reference to it. You please do not quote it.

**SHRI GEORGE FERNANDES :** It is not only a question of quoting the letter.

I am making my submission that when smugglers or anti-national or anti-social elements in the country are detained, under the National Security Act, we have the Government of India which releases them. There are members of the ruling party which runs the Government of India who would like Mr. Ram Jethmalani not to take up the case of a smuggler; they name him and they have no hesitation in naming Mr. Ram Jethmalani or any other member on this side of the House for such legal activities that he may be carrying on. But if an hon. Member of the House from the other side holds a brief...*(Interruptions)*

**SHRI RAVINDRA VARMA :** Say who, ? Who is the member ?

**SHRI GEORGE FERNANDES :** He is\*\* *(Interruptions)*

**SHRI RAVINDRA VARMA :** A member of this House.

**MR. CHAIRMAN :** I am not allowing.

*(Interruptions)*

**MR. CHAIRMAN :** I am not allowing this.

**SHRI GEORGE FERNANDES : \*\***

**MR. CHAIRMAN :** I have disallowed it. Don't read that letter.

**SHRI SATISH AGARWAL :** How can you prevent it ?

**SHRI SATYASADHAN CHAKRABORTY :** How can you prevent it ? Is it because it is the case of the ruling party ?

**MR. CHAIRMAN :** I have disallowed it.

**SHRI GEORGE FERNANDES : \*\***  
You are telling me that this is a private letter.

**MR. CHAIRMAN :** I have already told you that a Member is not allowed to read any correspondence of another Member.

**SHRI GEORGE FERNANDES :** I am not raising any private correspondence. This letter is addressed to the hon. Deputy Chief Minister of Maharashtra, Shri Ramrao Adik.

**MR. CHAIRMAN :** I have already disallowed.

**PROF. MADHU DANDAVATE :** It is not a letter privately written to Shri Adik, about something what happened in aerodrome. It is a letter written to the Deputy Chief Minister of Maharashtra in public interest. How can it be disallowed ?

**SHRI GEORGE FERNANDES :** How can you disallow it ?

**SHRI SATYASADHAN CHAKRABORTY :** Under what rule ?

**MR. CHAIRMAN :** You are well aware of the rules. I have disallowed it. Please see p. 225-A of the Manual of Directions of the Speaker :

"A Member is not allowed to refer to or lay on the Table, private correspondence of another Member."

**SHRI SATYASADHAN CHAKRABORTY :** Is this a private correspondence of a Member ?

**PROF. MADHU DANDAVATE :** I want one information. Does the Government treat this letter as secret and confidential ?

**MR. CHAIRMAN :** No, no. It is not a question of secret and confidential. It is a private letter.

**THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA) RAO :** Mr. George Fernandes, what is all this ? Mr. George Fernandes also seems to be forgetting the Government of India. I am surprised.

**MR. CHAIRMAN :** It is a private correspondence.

**PROF. MADHU DANDAVATE :** When the copy is already submitted to the Speaker, since the rule says that if it is not private, it can be allowed.

**MR. CHAIRMAN :** It has been seen by the Hon. Speaker.

**PROF. MADHU DANDAVATE :** Hon. Speaker must have also consulted the Minister of Home Affairs because it concerns the Government also. Let the letter be read out to the Minister of Home Affairs in the House and let him say whether it is secret or confidential.

**MR. CHAIRMAN :** If a Member quotes from a paper or document whether public or private, he may be asked to lay it on the Table. Before laying it on the Table, the Member has to . . .

Therefore, I am not allowing it.

**PROF. MADHU DANDAVATE :** In Kaul and Shakhder, it is clearly written . . .

**THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) :** This is a letter by a private Member to the Maharashtra Government. Where does the Central Government come in ?

**MR. CHAIRMAN :** A member has written to somebody.

**PROF. MADHU DANDAVATE :** I am on a point of order. There are two aspects.

**MR. CHAIRMAN :** Would you listen to me ? It is a private correspondence and I have given my final ruling. I hope you will cooperate.

**PROF. MADHU DANDAVATE :** Don't be in a hurry to give ruling.

**SHRI RAM VILAS PASWAN (Hajipur) :** How can you say that it is a private letter ? It is a letter of a Member of Parliament. This is a letter written by a Member of Parliament.

**PROF. MADHU DANDAVATE :** I am on a point of order.

**MR. CHAIRMAN :** Mr. George Fernandes, you go to other points and then conclude. I have already given my ruling.

**PROF. MADHU DANDAVATE :** You are referring to the Rules of Procedure regarding quoting the correspondence. As far as this letter is concerned, it is written by a Member of Parliament who tells the Deputy Chief Minister of Maharashtra about certain actions and he further says that.\*\* The letter is addressed to the Deputy Chief Minister.

**MR. CHAIRMAN :** Can there be a point of order when the Chair has given its ruling ? I do not think. You are well aware of the rules.

**PROF. MADHU DANDAVATE :** Unfortunately you will go down in the record that you have given a ruling which is likely to be challenged. Therefore, I would request you to withdraw your ruling.

**MR. CHAIRMAN :** I have already given my ruling . . .

**SHRI RAM VILAS PASWAN :** On a point of order . . .

**MR. CHAIRMAN :** There can be no point of order on the ruling of the Chair.

**SHRI RAM VILAS PASWAN :** Please go through rule 353 . . .

**MR. CHAIRMAN :** I have disallowed it. Can there be a point of order on the ruling of the Chair ? I am not going to allow anything on that. Mr. Fernandes, kindly try to conclude.

*(Interruptions)*

**SHRI RAM VILAS PASWAN : \*\***

**MR. CHAIRMAN :** I have not given him permission. I have not allowed him.

**SHRI SATYASADHAN CHAKRABORTY :** He is on a point of order. You may allow or disallow the point of order. But you have to hear him.

**MR. CHAIRMAN :** The Chair has not broken any rule. On the ruling of the Chair, there cannot be a point of order.

**SHRI GEORGE FERNANDES :** What you are suggesting is that he cannot place the letter on the Table of the House....

**MR. CHAIRMAN :** He will not even refer to it.

**SHRI GEORGE FERNANDES :** My point is this. While we were debating COFEPOSA last week, in this House, hon. Members from the other side wanted to know—they took the names of certain people like Mastan, Karim Lala ; you can refer to the records of this House—why they were released, who released them, why they were not put behind the bars. (*Interruptions*) I am raising the point that they were released because there were Members of the ruling Party... (*Interruptions*), there were Members of the ruling Party who demanded that they should be released ; they said that if they were not released, they would raise the matter with the Prime Minister, if they were not released they would raise the matter in the House ;\*\*

**SHRI P. VENKATASUBBAIAH :** Sir, they have tried to circumvent your ruling in several ways...

(*Interruptions*)

**SHRI GEORGE FERNANDES :** I am not yielding. You cannot listen to him.

**SHRI P. VENKATASUBBAIAH :** Whatever has been said in contravention of the

ruling must be expunged from the record.

**MR. CHAIRMAN :** I will go through the record and see,

**PROF. MADHU DANDAVATE :** Go through the record as to what you have said. You have said that he need not quote or read, but he can refer. He is only referring to it.

**MR. CHAIRMAN :** I never said that. What I said was...

**PROF. MADHU DANDAVATE :** You have said it. Check up the record. You have said that he need not quote, but he can refer to it.

**MR. CHAIRMAN :** Reference does not mean quoting from the letter.

श्री राम विलास पासवान : कल प्रेस कान्फरेंस में बोला जाएगा, आप कितना रोकिएगा ? यह कोई प्राइवेट लैटर है ?

**SHRI GEORGE FERNANDES :** I am not quoting from the letter. I am making a statement that Karim Lala was released because of pressure from Members of the ruling Party belonging to this House. I am making a statement that a Member of this House threatened the Deputy Chief Minister of Maharashtra with raising the matter in Parliament in regard to detention of Karim Lala if he was not released forthwith. I am making a statement that an hon. Member of this House went to the Deputy Chief Minister, Maharashtra, and said that he would take up the matter with the Prime Minister. I am making a statement that an hon. Member of this House... (*Interruption*)

**MR. CHAIRMAN :** These are all allegations. I will go through the record. Any allegation will not go on record.

(*Interruptions*)

**MR. CHAIRMAN :** If there is anything of a defamatory nature...

AN HON. MEMBER : No name has been mentioned.

MR. CHAIRMAN : I will go through the record. Name has been mentioned.

*(Interruptions)*

PROF. MADHU DANDAVATE : Let the hon. Member deny on the Floor of the House that he has never written such a letter. *(Interruptions)*

MR. CHAIRMAN : Please conclude. Nothing will go on record without my permission.

*(Interruptions)\*\**

श्री रामस्वरूप राम(गया) : सभापति महोदय, मेरा पायट आफ आर्डर है। माननीय सदस्य ने जो एलीगेशन लगाए हैं, उनको प्रोसीडिग्स से निकाल दीजिए।

*(व्यवधान)*

MR. CHAIRMAN : I have already said that I shall look into the proceedings and if there is anything of a defamatory nature...

PROF. MADHU DANDAVATE : Sir, what will you look into ? You will be wasting your energy.

*(Interruptions)*

SHRI D.K. NAIKAR (Dharwad North) : Sir, I rise on a point of order. The hon. Member has referred to a letter allegedly written by our party Member. Sir, the hon. Member can raise a matter of privilege...

PROF. MADHU DANDAVATE : Sir, let the letter be referred to the Privileges Committee.

SHRI GEORGE FERNANDES : Sir, I support it.

MR. CHAIRMAN : I have not allowed

it. So, the question does not arise. Please conclude:-

*(Interruptions)*

SHRI SATISH AGARWAL : Sir, what is your ruling about referring it to the Privileges Committee ?

PROF. MADHU DANDAVATE : Sir, I am supporting the proposal by the hon. Member opposite.

*(Interruptions)*

SHRI SOMNATH CHATTERJEE (Jadavpur) : Sir, when you go through the record don't forget it is Karim Lala.

SHRI GEORGE FERNANDES : In so far as the anti-social and such other elements against whom this Bill is intended are concerned, there are enough people in the Government and the ruling party to safeguard their interest and this law as it is going to be enacted will be used against political leaders, against the opposition, against the trade union people and against all those who are fighting against the political, economic and the social mess that you have created in this country and it is for this reason that I oppose this Ordinance.

MR. CHAIRMAN : Motion moved :

"That this House disapproves of the National Security (Second Amendment) Ordinance, 1984 (Ordinance No. 6 of 1984) promulgated by the President on the 21st June, 1984."

Shri Narasimha Rao.

THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA RAO) : I beg to move :

"That the Bill further to amend the National Security Act, 1980, be taken into consideration"

Sir, Mr. George Fernandes, has made a long speech with which he had come here to make. That is all that I can say.

SHRI CHITTA BASU (Barasat) : Whether his speech is long or short, that is irrelevant.

SHRI P.V. NARASIMHA RAO : The speech with which he came here to make irrespective of whether it is relevant or not, that I did not say, but since you have raised it I am amplifying it. (*Interruptions*) Sir, there is a story about a student like Mr. George Fernandes going to appear at an examination in which he was to write an essay. Somebody told him "you are going to get a question on cricket". So, he prepared all the details about cricket starting from Den Bradman and what not and when he landed in the Examination Hall, he found to his horror that he was asked to write an essay on a crow. Of course, like Mr. George Fernandes, he was very resourceful and he wrote "the crow is a bird, it lives on trees, the tree is embedded on earth, the earth is round like a cricket ball" and then he added all that he had prepared on cricket. (*Interruptions*)

Sir, we were on a limited point, on an amendment which does not create anything substantive. It only clears certain doubts that had been created as a result of certain decisions. Now, I would not like to go into all the details. I would only quote what the Supreme Court had said. This was in 1981 in a COFEPOSA case where preventive detention was resorted to. It is not any other provision. It is preventive detention itself. The Supreme Court has very clearly said about Section 3-A which is as follows :

"What the Act provides is that where there are a number of grounds on detention covering various activities of the detenu spreading over a period or periods, each activity has a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of the detention. The reason for enacting Section 5A of the

COFEPOSA Act is that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be a vogue or irrelevant, then the entire order is vitiated because it cannot be predicated to what extent subjective satisfaction of the authority could have been known by a vague or irrelevant ground which was to displace the basis of these decisions that the Parliament enacted Section 5-A in order to make it clear that even if one of the grounds is irrelevant, but the other grounds are clear and specific, that by itself would not vitiate the order of the detention".

And this was upheld by the Supreme Court.

Now, this is my simple answer to the long, lecture given by Mr. George Fernandes. The simple answer is : when you say one of the grounds is irrelevant, another ground is vague, it pre-supposes that out of many grounds, some grounds are irrelevant, some grounds are vague, some are invalid and others are valid. We are not considering a situation where all the grounds are invalid. That falls through without anybody arguing about it. The very fact that we are saying that some of the grounds are irrelevant, or invalid shows that they are severable from the others. This severability is established by the very first sentence in which we say....(*Interruptions*)

PROF. MADHU DANDAVATE : That means there is no proper application of mind...(*Interruptions*).

SHRI SOMNATH CHATTERJEE : May I seek a clarification. We understand what you are saying. The severability means, it does not matter, they may talk nonsense, they may talk lies, the policemen may say anything they like, may fabricate grounds, and on that basis try to make out a case for detention, and they can come and say, one of them is good, therefore, everything is all right. That is the attitude of the Government.

**SHRI P.V. NARASIMHA RAO :** You are bringing in distortion where it does not exist....(*Interruptions*). These things have been listed out, because these are the objections raised in some of the cases. When it is agreed that some are invalid and others are valid, the presumption is that the authority is deemed to have made that order based on the valid grounds. This, in simple explanation, is what it means. This has been upheld by the Supreme Court in 1981 and they have also said why this has been brought. I do not see anything which can be objected to because subjective satisfaction is something which is to be gathered from attendant circumstances, the court cannot gather it, it is the authority making that order who has to satisfy himself and what we say is that since they are severable, the person who is detained, does not suffer, there is no prejudice done to him, because he can say : Ground No 1 is fake, ground No. 2 is non-existent, therefore, I do not want to answer ; there is nothing to answer. Ground Nos. 3, 4 and 5—if they happen to be valid, he is at liberty to answer those charges.

**SHRI SOMNATH CHATTERJEE :** Do you sincerely believe in it ?

**SHRI P.V. NARASIMHA RAO :** There is no question of sincerely believing it or insincerely believing it. You tell me how it is wrong.

**PROF. MADHU DANDAVATE :** The entire basis and *raison d'être* is that when you prepare a number of grounds, justice demands that there must be proper application of mind so that no frivolous grounds are just added on to valid grounds.

**SHRI P.V. NARASIMHA RAO :** This is a bit of moralising that you are doing...(*Interruptions*). I will put another question. Suppose the authority says : I am convinced on each of the grounds, grounds No. 1, 2, 3 and 4, that there should be detention. Then what? One of them may be wrong, may be found to be wrong ; at that time, he did not believe it to be wrong, but that happened to

be wrong....(*Interruptions*).

**SHRI SOMNATH CHATTERJEE :** This is a very important question. A very little judicial review is permitted. The Home Minister is surely aware that the court cannot go into the truth or falsity of the charges. The only question is that some relevance or nexus has to be seen. I would request the Home Minister to consider how many District Magistrates prepare these grounds, it is the Sub-Inspector who does it....(*Interruptions*). I have seen with my own eyes cyclostyled detention orders signed by Magistrates, where names were just added....(*Interruptions*).

**SHRI P.V. NARASIMHA RAO :** I do not mind these questions being raised because I want to clarify them. We are as zealous for the human rights and liberty as they claim to be. We are acting according to the same Constitution ; we have no separate Constitution. We are interpreting the same Constitution.

The Courts have interpreted the same provision of the Constitution. So, we need not try to score points over each other. Here is a question which has been raised. I say that if there is an authority and that authority comes to know of certain facts on the basis of which certain grounds of detention present themselves, he raises those grounds. (*Interruptions*)

You are quoting from the same and I am also quoting from the same.

**SHRI SOMNATH CHATTERJEE (Jadavpur) :** This is the latest.

**SHRI P.V. NARASIMHA RAO :** This is what I am saying. As a result of certain decisions given by the High Courts, one High Court says one thing on the same set of facts, and on a similar set of facts, another High Court has said something else. Therefore we have thought it fit to sort it out because we have to see that there is a fixity in this. You cannot create so much of flexibility that from case to case, the authority does not know what to do. That is why

we have said that if 1, 2, or 3 of the grounds are not valid the detention would stand on valid grounds. When we say 'vague' or 'non-existent', these are illustrative and the same words were used in some judgements of the High Court. They have been bodily lifted and put here. They need not have been put. They have been put by way of abundant caution. If they were not there, Shri George Fernandes would not have had an occasion to stress those words. But those words are there only for the sake of repeating what the Courts have stated and nothing more. Some grounds are invalid for some reasons. Others are valid. We say they are severable and severability is established. We believe that the presumption should be that the authority has applied his mind to all these severally and based on the remaining grounds which appear to be or which happen to be proper, has given the order.

**PROF. MADHU DANDAVATE (Rajapur):** You are taking only the convenient cases. Suppose there are cases where nine grounds are frivolous and one is valid, then what? What do you say to that?

**SHRI P.V. NARASIMHA RAO:** We need not put any extreme terms. You say out of ten, nine frivolous and one good. I say nine good and only one frivolous. So we do not lead anywhere by these questions. The question is one of principle.

**SHRI SOMNATH CHATTERJEE:** It is a question of attitude.

**SHRI P.V. NARASIMHA RAO:** Here is an authority. This authority has passed an order. Now we have to interpret the order in such a way that while the liberty of the individual is not eroded, at the same time, the safety and security of the society also is ensured. And this is the balance which the Courts have again and again and again stressed. It is not as though under Article 22, they are only talking of liberty. I can show you any number of cases where they have stated that there ought to be a balance between these two. So, if the balance is upset for the sake of one individual, he may be a smuggler as you were saying, if for that person, the safety of

the society is to be jeopardised, then I do not think that you are really maintaining the balance. That is why, the presumption would be that, on those grounds which are valid, he has made this order. Now there is no prejudice, as I said, caused, to the prisoner, to the detenu. It is not for the courts to go into these things because the Court itself has said, the judges themselves have said that they cannot predicate on what grounds he has done this. So, there may be a doubt created in the mind of the Court. But there is no doubt created in the mind of the prisoner or in the mind of the detenu. Therefore, he is able to meet these grounds individually, vague ground, he will say is vague and invalid ground he will say is invalid. He will answer the valid grounds and then it goes to the Advisory Board. So, with all these protections built into it, I do not see what objection there can be to this Bill. Therefore, this is eminently practicable.

**SHRI GEORGE FERNANDES (Muzaffarpur):** It is a most impractical and most astonishing Bill.

**SHRI P.V. NARASIMHA RAO:** There is nothing astonishing about it. This is eminently practical and this has been upheld by the Supreme Court, and I do not have to add anything more to it.

*(Interruptions)*

**MR. CHAIRMAN:** Have you finished?

**SHRI P.V. NARASIMHA RAO:** Yes Sir. I have finished, except that I did not speak as long as he spoke.

**MR. CHAIRMAN:** There are some amendments to this Motion. Shrimati Pramila Dandavate! *(Interruptions)*

**PROF. MADHU DANDAVATE:** He did not quote any letter, but he referred to certain situations. Regarding that the Home Minister has nothing to say.

**MR. CHAIRMAN:** Motion moved:

"That the Bill further to amend the National Security Act, 1980 be taken into consideration."

Now, Mrs. Pramila Dandavate is not here. Mr. Satyagopal Misra : do you want to move your amendment ?

SHRI SATYAGOPAL MISRA (Tamiluk) : Yes ; I am. I beg to move :

That the Bill further to amend the National Security Act, 1980, be referred to a Joint Committee of the Houses consisting of 25 members, 15 members from this House, namely :—

- (1) Shri Ajit Bag
- (2) Shri Ajoy Biswas
- (3) Shri Somnath Chatterjee
- (4) Shri Sudhir Kumar Giri
- (5) Shri Matilal Hasda
- (6) Shri Sanat Kumar Mandal
- (7) Prof. Ajit Kumar Mehta
- (8) Shrimati Geeta Mukherjee
- (9) Prof. Rup Chand Pal
- (10) Shri P.V. Narasimha Rao
- (11) Shri A.K. Roy
- (12) Shri Amar Roypradhan
- (13) Shri Nirmal Sinha
- (14) Shri Zainul Abedin
- (15) Shri Satyagopal Misra

and 10 from Rajya Sabha ;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee ;

that the Committee shall make a report to this House by the first day of the next session ;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make ; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee. (8)

SHRI SUBODH SEN (Jalpaiguri) : I rise to oppose this amending Bill. Laws relating to detention have always been there in our country. It is a pity that our national Government, on the morrow of Independence, started using this preventive detention in several ways. During the British days, there was the Defence of India Act. After independence, the State Security Acts were there. Since 1950, we had the Preventive Detention Act, and it continued right upto 1970. In 1971, the MISA was enacted, and it continued right upto the time of accession of Janata Party to power. The Janata Government abolished it.

The Congress came back to power in 1980. Since then, several draconian laws have been enacted. This National Security Act came first ; then ESMA and the Disturbed Areas Act ; and then we have the contemplated Terrorist Affected Areas (Special Court) Bill which will be coming very soon. All these four, taken together, I must submit, augur a regime of undeclared Emergency. We have seen how the Disturbed Areas Act has provided military rule in certain parts of the country. It is not a mere disturbed area legislation. It is an euphemism for military rule.

Coming particularly to the precise amendment, I should say that the contemplated section 5A takes away whatever rights and guarantees there are for a detainee. After all, when the Advisory Board sits, takes the totality of the charge-sheet, and the totality of grounds supplied to the detainee into consideration ; and on that it takes its view, whether the detention should be continued,

or not. The amendment allows that out of 4 or 5 grounds supplied, even if three or four are irrelevant or invalid, then also simply because one ground stands proved, for that reason a man should be kept detained. That will be really doing a mockery of justice to that person. I don't think that any comprehensive view about an accused can be taken simply on one ground. If one ground is stated, and that comes true, then I can understand it. But if several grounds are given, and excepting one, all others are not acceptable, it shows the utter callousness and casualness of the authority, as to how they trifle with individual liberty of our citizens. I have seen that the grounds are also frivolous and absurd. I have seen the grounds supplied to a male freedom fighter while in detention under PD Act that he was the resident of Mohila Samiti. I have come across such grounds sometimes ; and I have seen that these are sometimes not only cyclostyled but a sense of utter casualness prevails and these are concocted. So, I think that these amendments cannot be accepted.

Secondly, in regard to amendment no. 3 in section 14 of the Principal Act, etc. etc. here practically it seeks to make the Advisory Board a mockery ; it vitiates clause 2 of section 12 of the Original Act. There it was stated that a man, could be detained even after the revocation or expiry of the order if there were fresh facts which have arisen. But here it says that irrespective of the fact that there are no fresh facts that have arisen, the detention will continue. This is something which cannot be accepted ; this is something which negates the finding of the Advisory Board and the Advisory Board practically becomes a show-piece. So, this also is not tenable. Section 12, clause (2) of the Original states that if the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of a person the appropriate government shall revoke the detention order and cause the person concerned to be released forthwith. Now, this amendment seeks that in case where no fresh facts have arisen even after the expiry or the revocation of the earlier detention order, the parti-

cular detenu may be kept in detention for a period not more than 12 months from the date of detention under earlier detention order. I think this vitiates the natural justice and practically takes power from the hands of the Advisory Board ; and we have seen that these Acts are generally used against the democratic movement, we have seen in 1981 when loco running staff was on strike, NSA was used against them and several of them were arrested ; and we have seen in Modi Nagar some workers were arrested under NSA. So, I am sure that this Act will go against the democratic movement and the workers' movement. As I said earlier, again I repeat that these four will constitute a veritable regime of emergency in our country. So, I strongly oppose this amendment.

**SHRI JAGANNATH RAO (Berhampur) :**  
Mr. Chairman, Sir, Preventive Detention is envisaged in the Constitution. Parliament has passed P.D. laws in several forms from time to time and they have been upheld by the Supreme Court. Where certain circumstances come to exist in the country which have the effect of affecting the country's unity and the integrity of the country or the security of the country, the Government of the day has a duty to see that such disturbances or the persons who are at the root of those disturbances are brought to book and are detained. It is not a case where a Fundamental Right is being denied to any citizen who indulges in such anti-national activities. Where there is a Fundamental Right there is also a fundamental duty of a citizen to observe so that his conduct does not go against the national interests of the country.

We passed this National Security Act in 1980, and the usual objection of the Opposition is that it is intended to be used against the Opposition leaders. From 1980 till today I do not think that any opposition leader has been detained under this Act. My friend, Mr. Fernandes in his eloquent speech has not quoted even a single instance when a political leader has been brought to book.

**SHRI GEORGE FERNANDES :** Shri A.K. Roy was the first man to be detained under the National Security Act. Shri Shankar Guha Niyogi was the second man to be detained.

**MR. CHAIRMAN :** Please sit down.

*(Interruptions)*

**SHRI GEORGE FERNANDES :** Four MLAs of Jammu and Kashmir were also arrested under the N.S.A. I am only responding to him. He took my name.

**SHRI JAGANNATH RAO :** No Member of Parliament is above law. If a Member of Parliament commits an offence he is booked under the law, he has to be punished under the law. No privilege is attached to the Member of Parliament to commit any offence.

**SHRI GEORGE FERNANDES :** You are now contradicting yourself.

**SHRI GIRDHARI LAL VYAS :** He is a disturbing element.

**SHRI JAGANNATH RAO :** This amending Bill seeks to bring about two points. One of them is when a person has been detained under several grounds, and some of the grounds are non-existent, unrelated, etc., but if there is one ground which is valid, then the detention order is to be taken as valid. This is done in pursuance of the observations of the Supreme Court as quoted by the Home Minister. Therefore, this Clause does not create any thing new; it should not create any sensation. If all the grounds of detention are struck down then the question of detention does not arise. It does not exist. But even if there is one ground which is valid then the detention order must be deemed to be valid, though the grounds which are non-existent or not relevant fall to the ground. This position has been made clear by this amendment.

Take an instance where an accused person is charged under four counts in a criminal

case. If under three counts there is no evidence and he is discharged, but if the fourth ground if he is proved, he is convicted under that count. The same principle is involved in the grounds of detention also. If one ground of detention is valid, then the detention is valid. Therefore, there is nothing objectionable in this and nothing can be seen through it. If they see a ghost, there is nothing like that. There is no reason why there should be any apprehension. The opposition was unanimous in saying that the situation in the country is grave, but the Government has been toeing a soft line and now the Government has taken a measure to put down these activities. Otherwise, the freedom of the country will be in danger, and the security of the country will be in danger. In pursuance of this, the Government have now come forward with this amendment to the National Security Act, 1980.

The second amendment that is sought to be brought by this Bill is that where a person is released, or the detention order is revoked, if he is detained again and in the absence of any fresh ground the further detention cannot exceed twelve months from the date of the original detention order.

Therefore, circumstances may exist after the detention period expires, where there may be reason that the person may be further detained, but the period of detention is limited to 12 months from the date of original order while in the case of Punjab and Chandigarh it is two years. Everybody agrees that the situation in Punjab is very extraordinary. The extremist and terrorist acts and wanton killings of innocent people cannot be controlled unless we apply a measure of this kind. Every person cannot be brought to book because there will not be evidence. Therefore, circumstances exist and in the opinion of the detaining authority there are grounds which require a person to be further detained even though fresh facts are not before him. Therefore, these are two simple amendments which this bill seeks to introduce in the parent Act.

Mr. George Fernandes, in his usual elo-

quence, has said that this measure is intended to be used against political opponents, which is a common point of attack of the opposition. He says that economic ills are responsible for the communal clashes. All right. But that is altogether a different matter. The Government cannot be made responsible for communal clashes either in Maharashtra or in Hyderabad. These things are happening. Unfortunately, the nation today is weaning away from national discipline. We have to maintain the unity and integrity of the country. Every one of us should cultivate the feeling that the country is ours. Discipline should be a way of life for everyone of us. During the freedom struggle everyone of us was surcharged with national spirit. The main reason for today's ills is that the people are drifting away from national unity and integrity and separatist tendencies are coming to the fore. It is the duty of every citizen to be disciplined so that the nation can be united, can grow strong and thereby maintain our territorial integrity and sovereignty.

I am not going to make a long speech on these two amendments in this Bill. I commend them for acceptance of the House.

श्री राजेश कुमार सिंह (फिरोजाबाद) : मान्यवर सभापति महोदय, सरकार का आजकल कुछ ऐसा रवैया बन गया है और राष्ट्र उससे अच्छी तरह वाकिफ है कि यह सरकार बिना प्रिवेंटिव डिटेन्शन और आर्डिनेंस के चल नहीं सकती और यह इसकी एक बुरी आदत बन गई है। लेकिन लोकशाही की दिशा में यह कोई उचित कदम नहीं है और हम इस तरह लोकशाही की तरफ अग्रसर नहीं हो रहे हैं।

मान्यवर, अपनी बात को आगे बढ़ाते हुए, मैं कहना चाहूंगा कि आर्डिनेंस के बाद यह बिल यहाँ आया है जो विधेयक के रूप में हमारे सामने है और कुछ समय बाद शायद यह कानून बन जाएगा। मैं माननीय मन्त्री जी से स्पष्टीकरण चाहूंगा कि आपने 1980 में नेशनल सीक्यूरिटीएक्ट बनाया, पहले तो आपने उस समय ही हमारी

संविधान में प्रदत्त आजादी को कटौत किया, हमारी लिबर्टी को छीना गया और जैसा आज जार्ज साहब की तकरीर के दौरान मुझे माननीय मन्त्री जी के जबाब को सुनने का अवसर मिला, उन्होंने जिस चतुराई के साथ सारी बातों को बहुत सुन्दर तरीके से समझाने की कोशिश की कि हिन्दुस्तान की आत्मा कानून की पेचीदगियों में फंस सकती है, लेकिन वे भी अहसास करते हैं कि उसकी स्वतन्त्रता को तोड़ने का प्रयास कहीं न कहीं चल रहा है। यदि सही मायनों में यह कानून सिर्फ पंजाब के सम्बन्ध में बनाया गया होता तो वह पंजाब तक ही सीमित रहता। लेकिन वैसा कुछ नहीं हुआ। मान्यवर, आप देखेंगे कि इन्होंने इस विधेयक के उद्देश्यों और कारणों में भी उल्लेख किया है कि राज्य सरकारें एक लम्बे असें से दबाव डाल रही थीं, उनकी निरन्तर मांग थी कि ऐसा कानून बनाया जाए। दूसरे, ऐसी स्थिति बन गई, जिसके कारण आपने यह कानून बनाया...

16.00 hrs.

सिर्फ पंजाब ही नहीं, राज्य सरकारों की भी यह मांग थी। जब आपने 1980 में कानून बनाया तो यह ग्राउन्ड जस्टीफाई किए कि कम्युनल डिस्-हार्मनी, कास्ट कनफ्लिक्ट, सीशल टेंशन, ऐसट्री-मिस्ट्रेस ऐक्टिविटीज, शैड्यूल कास्ट्स और ट्राइब्स पर ऐट्रोसिटीज हो रही हैं इसलिए इसकी आवश्यकता को सरकार ने समझा। मैं कहना चाहता हूँ कि सरकार की मशीनरी का रवैया हो गया है कि देश का शासन ऐसे कानूनों के बगैर नहीं चल सकता। आई० सी० सी० और क्रिमिनल प्रोसीजर कोड ऐरो कानून लगते हैं कि वह लागू नहीं हो पायेंगे। थोड़ी देर बाद दूसरा बिल भी आ रहा है स्पेशल कोर्ट्स वाला, इन दोनों के सम्बन्ध में यदि आप देखेंगे तो सरकार के रविये के बारे में तस्वीर साफ हो जाएगी कि सरकार किधर बढ़ रही है। 1950 से लेकर 1970 तक प्रिवेंटिव डिटेन्शन ऐक्ट था, 1971 में आपने एम० आई० ए० ए० बना दिया और उसके तहत इमरजेंसी में जो जुल्म हुए देश के लोग आज भी उन्हें नहीं भूले हैं। मैं

[श्री राजेन्द्र कुमार सिंह]

सरकार को चेतावनी देना चाहता हूँ कि आज भी समय है सरकार इन सारी शक्तियों को उन लोगों के हाथ में न दे जिन्होंने इसरजेंसी में इसका दुरु-पयोग करके आपको इधर से उधर भेज दिया था। कहीं ऐसा न हो कि पुनः आपको इधर आना पड़े और हमें मजबूरी में उधर जाना पड़े।

इस एक्ट के प्रावधान देखें तो मालूम होगा यह एक्ट सेंट्रल और स्टेट यवर्नमेंट्स दोनों को शक्ति प्रदान कर रहा है। और इसमें साफ कहा है :

“Government can detain a person on grounds of activities prejudicial to the defence of the country or to its security or the security of the State.”

यदि इसका जुडिशियल इंटरप्रिटेशन करें, कंट्री और स्टेट वाली बात सोंचें तो कुछ समझ में नहीं आता कि यह दोनों शब्द कहां से जोड़ दिये। समूचे राष्ट्र की बात होती तो भी ठीक था। सबसे बड़ा मुद्दा जो माननीय जाज ने उठाया ग्राउन्ड्स का, आपने साफ कहा है, मन्त्री भी बता रहे थे कि मान लीजिए 6 रोजन्स हैं उनमें से 5 इनवैलिड हैं लेकिन एक भी यदि उतमें नैसिड है तो उस व्यक्ति को डिटेन किया जा सकता है। 5 इनवैलिड हों और एक सही हो तो व्यक्ति को डिटेन किया जा है। सेटिस्फेक्शन किसका होगा ?

“ओन सेटिस्फेक्शन आफ आफिसर्स” उस अधिकारी के सेटिस्फेक्शन पर वह वैलिड है। मैं एक बात पूछना चाहता हूँ कि सेटिस्फेक्शन क्या यह सेंटल प्रोसेस नहीं है? मान लीजिए कोई अधिकारी मुझसे प्रीजुडिसिड है, जो अधिकारी ग्राउन्ड्स बना रहे हैं 6 ग्राउन्ड्स में से 5 इनवैलिड हों तो छठे में कह देगा कि मैं सेटिस्फाइड हूँ। सेटिस्फेक्शन को इतना बृहद बना दिया है, आपने जो कहा कुछ ग्राउन्ड्स होंगे कुछ नहीं होंगे, जो मन्त्री जो सफाई दे रहे थे, वह ठीक मालूम नहीं पड़ता है। किस चीज का सेटिस्फेक्शन है, इसको आपको

साफ करना चाहिए।

हाजीमस्तान की बात मैं क्या कहूँ, उनकी पहले बहुत चर्चा हो चुकी है, कभी-कभी लोगों के दिमाग में शक पैदा होता है...

निश्चित इस कानून के तहत ऐसे लोगों की गिरफ्तारी और उसके बाद उनकी रिहाई, बचा आने वाले चुनावों के लिए कोई कोष बनाने की कोशिश तों नहीं की जा रही है, जिसे चुनावी कोष कहा जाता है ?

श्री गिरधारी लाल व्यास : आपको गलत फहमी है।

श्री राजेश कुमार सिंह : गलतफहमी तो आपके तरीकों ने पैदा की है।

(व्यवधान)

यदि ऐसी परिस्थितियां बन जाती हैं तो नेशनल सिक्योरिटी एक्ट के बारे में लोगों को शका पैदा हो जाएगी। इसकी लीगल जुरिस-प्रूवेंस क्या है? कोई न्याय की पद्धति है, उसका दर्शन है, उसको भी आप तोड़-सरोड़कर रख देंगे तो बात नहीं बन पाएगी।

श्री पी०वी० नरसिंहराव : “परित्रणाय साधूनां विनाशाय च दुष्कृताम्”।

श्री राजेश कुमार सिंह : आपने विधि के दर्शन को भी इस तरह तोड़-सरोड़ दिया है कि जिसकी कोई इन्तहा नहीं रही।

आप ऐसी परिस्थितियां प्रदा करने जा रहे हैं कि आने वाले लोग लोकशाही में यह यकीन करने लगेंगे कि संविधान में जो आजादी है, बोलने की स्वतन्त्रता है, मैं यह नहीं कह रहा हूँ कि तोड़फोड़ की स्वतन्त्रता है, उसे आप चन्द अधिकारियों के हाथों में सौंपने जा रहे हैं।

इसलिए मैं पुनः अनुरोध करूंगा कि आप इसे गंभीरता से लें। पंजाब के उग्रवादियों की जो चर्चा की गई है, आपने कहा कि पंजाब में 24 महीनों के लिए लोग डिटेन किए जा सकते हैं, इसमें एक साल है, एक ग्राउण्ड और कहा कि यह कोई जरूरी नहीं है कि उसकी अवधि समाप्त होने के बाद उसे पुनः गिरफ्तार नहीं किया जा सकता है, बन्द नहीं किया जा सकता है, कोई कारण हो या न हो।

श्री पी० बी० नरसिंह राव : ऐसा नहीं है।

श्री राजेश कुमार सिंह : लगता ऐसा ही है। आप इसे जरा साफ कर दें।

श्री राजेश कुमार सिंह : आप पुनः उस अधिकारी की मर्जी पर चाहेंगे।

श्री पी० बी० नरसिंह राव : कारण नहीं होगा तो बिल्कुल नहीं होगा।

श्री राजेश कुमार सिंह : कारण वाले में एक बड़ा कन्फ्यूजन क्रीएट कर रखा है, उसमें बड़ा झगड़ा है।

दुनिया के किसी भी न्यायालय में आप जायेंगे तो लोगों को निश्चित मालूम है कि न्याय के पक्ष में अधिक बात चली जाए तो मान लिया जाता है कि एक बात गलत हो सकती है, यह गलत नहीं है, लेकिन यहां दूसरी बात कह दी गई है। अगर 5 लोग आकर कहें कि यह बात सही है और एक कहे कि गलत है तो उसे मान लिया जाएगा।

आप आने वाले दूसरे बिल पर देखेंगे तो निश्चित रूप से न्याय पद्धति को तोड़-मरोड़ कर रख दिया है। मैं सरकार से यह कहना चाहता हूँ कि सरकार यह मुद्दा बनाकर न चले कि वह हिन्दुस्तान की आजादी को अपने हाथ में केंद्रित करना चाहती है। वह अपने अधिकार की आदत को सुधारे। हिन्दुस्तान में जाप्ता फौजदारी में कानून में कोई ताकत नहीं है, सिर्फ एक ताकत बन गई है

कि आपको डिटेनशन करनी है। मैं सरकार से कहना चाहता हूँ कि अगर सारे कानून बेकार हैं तो उनको आप संशोधन कर दीजिए, उनको समाप्त कर दीजिए।

यह सारी प्रक्रिया जो चल रही है, देश के हित में नहीं है न्याय के हित में नहीं है, लोकतन्त्र के हित में नहीं है। देश की आजादी और स्वतन्त्रता जिन लोगों ने साकार की है, उन्होंने जो सपना देखा था, उनकी दिशा, दर्शन ब धारणा के विपरीत आप चलने की कोशिश कर रहे हैं।

SHRI G. NARSIMHA REDDY (Adilabad) : Mr. Chairman, I rise to support the amendment. The opposition leader, Shri George Fernandes, gave a very lengthy speech. He is a very senior member. I was trying to listen to him very attentively. The most surprising thing which I found from his speech is that he has not understood for whom this Bill is meant.

I would only like to remind the hon. Member through the Chairman that the Bill is specially meant against the anti-national extremist and terrorist elements in the country.

SHRI INDRAJIT GUPTA : The first victim of it was Shri A.K. Roy sitting there. He was first to be detained under this National Security Act.

SHRI G. NARSIMHA REDDY : So, Mr. Chairman, what I was trying to say is that from the recent experience we had seen that the activities of the anti-national activists and terrorists had proved beyond doubt to be against democracy and freedom which our national leaders have earned for us. So, it is also clear that extremism and terrorism means that they would like to enforce by force their will on the people. This Bill simply tries to protect the other law-abiding people, other people of this country who believe in democracy and freedom.

Now, the question is whether we will have

[Shri G. Narsimha Reddy]

to protect the anti-national extremists and terrorists or to protect the people of this country and protect democracy and freedom of this nation from the activities of these extremists and terrorists. That is the problem before us.

When one of the Members was speaking our Home Minister replied that if a person is arrested on ten grounds and nine grounds are proved to be invalid by the court and if one ground is valid, even then he continues to be detained. My friend asked 'How was it just' ? I would give him an example. Suppose a person is detained under only one ground and if that is proved to be valid, he is going to be detained then in the earlier case also he has to be arrested because we have not provided any minimum number of grounds so that he should be detained. Therefore, the law which is now being introduced, seems to be absolutely valid. There is no question of any misunderstanding on that aspect.

The Hon. Minister said in his reply that this is a balance between the two, for which the opposition people are fighting to protect the extremists and the terrorists. We want to protect the law-abiding people and democracy and freedom of this country, which is being attacked by the anti-national extremists and terrorists, who have been thinking of dividing the country also. Now, when our Hon. Home Minister says this provision is a balance, my question is, it is a balance between whom ? So, far as I understand we are trying to strike a balance between the activities of the extremists and terrorists who are anti-national and the others of the rest of the country who believe in democracy, freedom and our Constitution. This is not fair. I would appeal the Hon. Home Minister that the activities of the terrorists which we have seen in this country recently have gone too much far ahead. Now, everywhere in the countryside or in Punjab or anywhere, wherever the activities of the terrorists and extremists have gone, the people are not feeling safe and secure. So, is it not the duty of the Government, whichever party may rule this country, to

protect the law-abiding people of this country by whatever rule or Act they would like to introduce ?

With these few words, I would only like to add one more sentence and take my seat. (*Interruptions*). I do not want to hit anywhere or all around like Mr Fernandes did. He is a senior man, he can hit all around with all the statistics, while I would only like to stick to the Bill which has been moved for consideration.

Lastly, I would only like to say on behalf of all the citizens, who are law-abiding, and who believe in democracy and freedom — I am also sure all the Members who are sitting on the other side equally believe in democracy and freedom, and to protect this unity of this country. . . .

SHRIMATI PRAMILA DANDAVATE :  
Thank you.

SHRI G. NARSIMHA REDDY :  
Naturally, I hope, and I am confident. If I am wrong, you tell me that my understanding about the Opposition people is wrong.

With that assumption, I would like to request the Home Minister to give a serious thought to provide, if necessary, more active means of defence through appropriate preventive or pre-emptive actions against terrorist groups before they strike. Thank you.

SHRI N.K. SHEJWALKAR (Gwalior) :  
Mr. Chairman, Sir, at the time of the introduction of this Bill itself I had opposed. Again I get this chance for saying something more regarding the matter.

From the very beginning I am totally opposed to such a legislation, and I had made it clear earlier also that at the time when we were in power, then also I had opposed it and I do not believe in any extraordinary law, which I consider as a failure of the Government to administer the country by the existing law. On the one side it is said that the circumstances are

extraordinary and at the same time permanent laws are being made. I cannot understand how these two things can go together. Even this Statement of Objects and Reasons said, 'The extraordinary situation which has arisen in some parts of the country has necessitated the review of certain provisions of the National Security Act'. If even this Statement of Objects and Reasons is taken into account, it does not say that all over India the situation has become extraordinary. It says, 'The extraordinary situation has arisen in some parts'. If it has arisen in some parts, why should you make a law for the whole of India? And if the extraordinary situation is there, in the whole country, then why don't you make a permanent law? I could have understood if you made a law for a specific period of two years saying that it will be commenced from this period and you will terminate it on such and such date. I can understand that. But to say 'extraordinary situation in some parts' and at the same time make a permanent law, these two things will not go together.

Ultimately I am coming to the merits of the case. Last time the hon. Home Minister, Mr. Narasimha Rao, said regarding some orders which he quoted. After all it is not we who pass the orders, it is the State Governments which pass the orders. I want to bring it to his kind notice, and I would like to submit for his consideration that even today what will happen? Is the Central Government going to pass any orders under these provisions? The order will be executed by the State Governments themselves and not only the State Governments, but the respective police officers in a particular State are going to execute the order, and I think that you know what Justice Mulla has said in his judgment in the Allahabad High Court, and at the same time, I remind the hon. Minister that only three days ago while commenting on the situation, hon. Member, Mr. Chavan, Chairman of the Finance Commission, said: 'I do not know what has happened to the police'. This was his phrase. And if you are going to rely upon such sort of police or such sort of executive machinery, Mr.

Rao, how can you assure us that it will not be misused?

How can you ensure?

**SHRI CHITTA BASU** : It is being put to misuse.

**SHRI N.K. SHEJWALKAR** : I have great respect for Shri Narasimha Rao. I cannot directly put the charge.

What had happened with me? I had the privilege of being detained quite a few times. Last time the detention was in the month of June during emergency. I was underground for about a month. I said that I would come in the open on such and such a date. Then the police arrested me. They took me to the police station. Remember, the detention authority the Collector, I do not give his name, was sitting there. He said, 'Are you ready to give your surrender or not?'

वरना तुम्हारे खिलाफ डिटेन्शन आर्डर बनाते हैं।

Had I given that, that detention order would have been torn out. What is this? Tell me. Is it not political exploitation? It was not only in my case, there were so many cases. All those things had been forced upon at that time. What does that indicate? Does it not indicate that it was just to suppress the opposition and mis-use that thing for political purpose? Can there be any other explanation.

Not only that, at that time there were so many goondas who were working as agents of the police. Some times they take shelter of the ruling party. They used to exploit.

आज तुम्हारे खिलाफ डिटेन्शन आर्डर बनाते हैं।

They used to make money by force. These things were going on and if you are not prepared to take into account all these things, how can you ensure that there will not be misuse? Technically all these things are there. Those may be set right.

The other day, I quoted—Shri Uma Shankar Trivedi a leader of the Opposition along with Shri Shyama Prasad Mukherjee

[Shri N.K. Shejwalkar]

His age was 68 and one of his legs had a defect. He was charged that he was going to cut a telephone wire after climbing the telephone pole. So many such cases are there. I can give you a list of such detentions. You will not believe. So many fictitious and wrong grounds are given. Ultimately, what happens as these things are manufactured by the police for the purpose of detention. What is the escape? In 99% cases of habeas corpus I have been able to get the order quashed because by that time these people were not trained. On very technical and academic grounds one could get out from the High Court. It is a matter of satisfaction which has been argued. You said that, after all, satisfaction can be on one ground or the other also. It may be severable thing. True. It may be severable. If the detention order makes a mention that on each and every ground I am satisfied separately, that is enough ground for detention. Then the High Court cannot come in the way. What is the need of legislation, I do not know? It was not at all necessary. That order is passed, it is enough. High Court is out.

I plead for justice, for the preservation of human rights, fundamental rights, freedom, which our Constitution has guaranteed to us for this purpose. Is it proper to have recourse to this? If the Government has bona fide desire to have treatment of a certain case, let it be for that case only. But this is a general law. You should not make a general case.

You are a Home Minister and if the State Government passes any order, how can you set that aside?

SHRI P.V. NARASIMHA RAO: If there is a wrong order and if representation comes to the Central Government, the Central Government has to set it aside according to the provisions of law.

SHRI N.K. SHEJWALKAR: That is right, but how can you determine whether it is right or wrong? Ultimately, justitia-

bility or the decision has to be on merits.

As an academic discussion, I want to submit that earlier in Bombay High Court, they held two views. There were several grounds in a case from Satara. It was an old case, may be of 1947-48—Vishnu Talpade's case.

That is, there are several grounds.

SHRI P.V. NARASIMHA RAO: It was 1945, Federal Court.

SHRI N.K. SHEJWALKAR: After that. I am saying that later on there was a Bombay High Court judgement which said: There are several grounds and out of them even if one is false ground, naturally he cannot be detained. The argument is there is a balance. You put certain weight and go on putting it and there is a complete balance. After all, the balance is correct. But if you put on any of the weight or if you take out any of the weight, the other pan is bound to be disturbed and bound to go down. That is how the balance of mind works. The distinction was made later on that if there is a vague ground, it cannot have any effect. There was a distinction made between vague ground and incorrect ground. It is an incorrect ground and on the basis of incorrect ground, of course, the detention order can fail. But if this is a vague ground, if it is a superfluous ground which is added later on, the order cannot fail. This was the difference. At that time, the distinction was drawn.

Any how, the basic principle according to me is that ultimately the grounds are going to serve if they are of the valid nature and you said, why do you take the extreme case. Mr. Madhu Dandavate said, if 9 grounds are wrong and one ground is right, even then it is valid, according to you. You said, why do you take extreme case? But extreme case is supposed to be taken into account by your law itself. On page 2 of the Bill it is said:

"and it is not, therefore, possible to hold that the Government or officer

making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention."

So, it is not all grounds. You are taking into account the extreme case also where out of 10 grounds even if only one ground survives, according to you, according to this law, that order is good and is not bad in law. This is a case you are taking into consideration yourself. I do not understand what Mr. Reddy was just saying. He said, take a case where only one ground is mentioned. What happens? I have said clearly that the effect is the joint effect on the mind and not one ground. If there is only one ground, the effect will be joint of one ground. There is no question of other grounds being invalid. Therefore, to my reason, it does not appeal that such sort of legislation should at all be passed. You cannot give guarantee for the proper execution. You cannot guarantee us. After all, what is the second necessity, I do not know. On fresh grounds you want to extend the time of detention. When the person is there inside for one year or six months living in detention, you want to extend the period of his detention further. How? Again, for certain reasons, you have made the period for two years.

My first and humble request is ultimately you assure us that this is a sort of legislation which is not going to be a permanent law. This is going to be abolished as soon as its purpose is served. It should not be misused or abused against anybody—may be political person, common man or anybody. It should not be misused. What guarantee is the Government prepared to give? It is very relevant that what assurance is the Government ready to give us in this connection. Has this legislation been drawn with good intention or is just a sort of cover-up to cover the failures of the Government relating to the matters of law and order?

**SHRI GEORGE FERNANDES :** It is a total failure in the country.

श्री राम प्यारे पनिका (राबर्टसगंज) : सभापति महोदय, मैं नेशनल सिक्यूरिटी (एमेंडमेंट) बिल का समर्थन करने के लिए खड़ा हुआ हूँ।

16 29 hrs.

[SHRI SOMNATH CHATTERJEE in the Chair]

मान्यवर, हमने विरोधी दलों के नेताओं को सुना और अभी शेजवलकर जी बोल रहे थे, उनको भी सुना। अभी उन्होंने मीसा की चर्चा की थी; मैं उनको याद दिलाना चाहता हूँ कि जब उनकी सरकार पदार्कृद्ध हुई थी और खास तौर पर मध्य प्रदेश में जब उनका चीफ मिनिस्टर था, तो सरकार के गठन के बाद मध्य प्रदेश सरकार ने मिनी मीसा बनाया था। मैं आपको याद दिलाना चाहता हूँ। आप अपनी बातों को भूल जाते हैं और सारी चीजों के लिए कांग्रेस सरकार को दोष देते हैं। आपकी कर्नाटक में सरकार है। क्या आपने कर्नाटक सरकार को यह कहा है कि वह इस एक्ट को लागू न करे? कर्नाटक की सरकार ने 34 केसिज में इस एक्ट का उपयोग किया है। आंध्र प्रदेश में तो बहुत ज्यादा केसिज में इसका उपयोग हुआ है। इसके अलावा राज्यों में और भी प्रिवेन्टिव एक्ट्स बने हुए हैं और उनका उपयोग भी वहाँ किया जाता है।

मान्यवर, मैं कहना चाहता हूँ कि इस अमेंडमेंट का एक सीमित और निश्चित उद्देश्य है। देश की सुरक्षा, एकता और अखण्डता का जब प्रश्न उठ खड़ा होता है, देश में कालाबाजारी, चोरबाजारी और स्नगलिंग को रोकने का जब प्रश्न उठ खड़ा होता है, देश की आम शांति-व्यवस्था का प्रश्न जब उठ खड़ा होता है तो इस प्रकार का कानून बनाना पड़ता है। अभी राजेश कुमार सिंह जी बोल रहे थे। मैं बताना चाहता हूँ कि सन् 1967 में जब चौधरी चरण सिंह उत्तर प्रदेश के मुख्य मन्त्री बने थे तो उन्होंने वहाँ गुण्डा एक्ट लागू किया था। वह गुण्डा एक्ट भी इसी तरह का एक्ट है। समय-समय

[श्री रामप्यारे पनिका]

पर हमारी नेता श्रीमती इन्दिरा गांधी ने यह स्पष्ट कर दिया है कि इस एक्ट के प्रावधानों का पोलिटिकल उद्देश्यों के लिए उपयोग नहीं किया जाएगा क्या विपक्ष के सदस्य कह सकते हैं कि किसी भी पोलिटिकल उद्देश्य के लिए इसका कभी उपयोग किया गया है? इस उद्देश्य से अब तक कोई कार्यवाही नहीं की गई है।

क्या यह बात सही नहीं है कि देश के कुछ हिस्सों में इस समय एक असाधारण स्थिति है। चाहे इधर बैठने वाले लोग हों, चाहे उधर बैठने वाले लोग हों कोई भी इस बात से इन्कार नहीं कर सकता है। फिर इस अमेंडमेंट बिल में विशेष क्या है? इस बिल में दो ही बातें हैं। एक तो एक साल को दो साल किया गया है। दूसरे ग्राऊंड्स के बारे में अमेंडमेंट है कि अगर एक भी ग्राऊंड ठीक न हो तो उसे छोड़ दिया जाए। अब किसी एक ग्राऊंड के भी ठीक न होने पर किसी अपराधी को छोड़ा न जा सकेगा। ये दो-तीन बातें इस अमेंडमेंट बिल में हैं। लेकिन मुश्किल यह है कि जब लोग सत्ता में होते हैं तो दूसरी बात करते हैं और सत्ता से हटने पर व्यक्तिगत स्वतन्त्रता और मौलिक अधिकारों की याद आने लगती है।

मान्यवर, यह एक्ट देश में प्रायः सभी जगह लागू किया जा रहा है। केवल 9 राज्य ऐसे हैं जो इसको लागू नहीं कर रहे हैं। लेकिन उन राज्यों में इस प्रकार के दूसरे कानून बने हुए हैं और आवश्यकता पड़ने पर वे उनका उपयोग करते हैं।

मान्यवर, मैं यहां एक बात कहना चाहता हूँ। इस एक्ट के अधीन 154 केसिज में चालान हुआ है। उनमें से एक भी ऐसा केस नहीं है जिसमें कि किसी पोलिटिकल आदमी के खिलाफ कार्यवाही की गई हो। फिर विरोधी दल के लोग कैसे आरोप लगा सकते हैं कि सरकार किसी पोलिटिकल उद्देश्य के लिए इसका अमेंडमेंट करना चाहती है? इस एक्ट के मिसयूज करने की गुंजाइश नहीं है।

इसमें सैफगार्ड्स की पूरी व्यवस्था है। फिर ऐसे आरोप लगाना कि पोलिटिकल उद्देश्यों के लिए यह कानून लाया गया है, बिल्कुल गलत होगा।

मैं अपने विरोधी दल के साथियों से पूछना चाहता हूँ कि क्या 1977 में और उसके बाद देश में इस तरह की स्थिति थी जैसी कि आज है? आज देश में अलगाववादी, आतंकवादी और उग्रवादी ताकतें सिर उठाने लगी हैं। ऐसी ताकतों से निपटने के लिए ऐसे कानून की बहुत जरूरत है। कुछ विरोधी दल के माननीय सदस्यों ने श्री ए० के० राय साहब के केस के बारे में कहा। उस केस में भी सुप्रीम कोर्ट ने इस एक्ट को अनुचित नहीं ठहराया था। उसने कहीं नहीं कहा कि इस एक्ट से मौलिक अधिकारों का हनन होता है। सुप्रीम कोर्ट ने अपनी एक ओबजरवेशन की है जिसको कि मैं कोट कर देना चाहता हूँ—

"We hope that the Central Government will without further delay bring Section 3 of the 44th Amendment Act into force. That Section, be it remembered, affords to the detenu an assurance that his case will be considered fairly and objectively by an impartial tribunal."

सुप्रीम कोर्ट ने कहीं यह नहीं कहा कि इस एक्ट के अधीन कोई कार्यवाही नहीं हो सकती है। राय साहब की बात को लेकर यह कहना कि पोलिटिकल उद्देश्य से कार्यवाही की गई है, ठीक नहीं है।

मान्यवर, आज जरूरत इस बात की है कि कारगर ढंग से इन तत्वों से निपटने के लिए कानून हो। दूसरी कोई बात नहीं है। लोग तरह-तरह की बातें करते हैं। आज यह सरकार है, कल दूसरी सरकार होगी, लेकिन सबसे ज्यादा महत्व इस बात का है कि समाज में शांति रहे। अराजकता को समाप्त किया जाए। देश की स्वतन्त्रता और अखण्डता ठीक रहे। क्या ऐसी परिस्थितियां बनाने का अधिकार सरकार को नहीं है? जिन कारणों से यह कानून बनाया गया है, वे कारण अभी देश में विद्य-

मान हैं। पंजाब और जम्मू-कश्मीर में जिस तरह से टेरोरिस्ट एक्टिविटीज हुईं, वे हमारे देश की अखण्डता के लिए चुनौती बन गई हैं। उन सब चीजों से निपटने के लिए निश्चित रूप से इस कानून की आवश्यकता है और सरकार जो यह कानून लाई है, उसका मैं तहेदिल से समर्थन करता हूँ।

एक बात और कहना चाहता हूँ। सरकार ने इसमें जो आश्वासन दिया है कि पोलिटीकल पर-पजेज के लिए इसका उपयोग नहीं किया जाना चाहिए, उसका पूरी तरह से पालन किया जाबा चाहिए। मैं भी उन लोगों में से एक हूँ जो यह कहते हैं कि इसके लिए इसका इस्तेमाल नहीं किया जाना चाहिए। जो लोग स्मगलिंग में लगे हैं, ब्लैक मार्केटियर, प्राफिटिअर, कम्युनल हारमनी के खिलाफ जो कार्यवाही करते हैं, शांति-व्यवस्था को डिस्टर्ब करते हैं और जो लॉग देश की सुरक्षा के लिए खतरा पैदा करते हैं, उनके अलावा किसी भी निर्दोष व्यक्ति के खिलाफ इसका उपयोग नहीं किया जाना चाहिए। शेजवलकर साहब भूल जाते हैं कि 1977 में जब जनता पार्टी की सरकार बनी थी, उस वक्त को वे भूल जाते हैं। जनता के जनमानस को भडका कर सत्ता में आये थे और उस वक्त मध्य प्रदेश में कांग्रेस जनों ने न्याय प्राप्ति के लिए आवाज उठाई थी। उनको दबाने के लिए इनकी सरकार ने "मिनी मीसा" का प्रयोग किया था। इस पर इनको उस वक्त इस्तीफा दे देना चाहिए था। लेकिन ऐसा नहीं किया। आज जार्ज फर्नांडिस कहते हैं। इनकी सरकार ने इसका उपयोग किया था उस वक्त ये कहां थे। इनका तो अपना कोई भरोसा नहीं है। 4 साल में कभी लोकदल में रहे, कभी जनता पार्टी में रहे, इनका विरोधी दल के लोगों का कोई ठिकाना नहीं है।

श्री रामावतार शास्त्री : सब के बारे में आप ऐसा नहीं कह सकते।

श्री रामप्पारे पनिका : मैं आपके बारे में नहीं

कह रहा हूँ, लेकिन आप भी ऐसे तत्वों से गठबंधन करते हैं। 1967 में उत्तर प्रदेश में चौधरी चरण सिंह से मिलकर जनसंघ ने काम किया। इसलिए इन लोगों का कोई भरोसा नहीं है। आज ये देश की जनता को विरोधी दल को सबल बनाने की बात कहते हैं। 1980 से जब से हम लोग सत्ता में आए हैं, तब से ये लोग एक होने की बात कर रहे हैं। कहीं कोई ग्राउंड नहीं है। ये लोग देश की एकता की बात करते हैं। आज ये इस तरह की बातें करके अवाम को धोखा नहीं दे सकते। जनता इनको जान चुकी है कि जब ये इधर होते हैं तो किस तरह की बात करते हैं और जब इधर होते हैं तो किस तरह की बात करते हैं। इस तरह का कानून आपने भी बनाया था। शाह आयोग को बिठाने वाले लोग आज भूल गए हैं। आज वे प्रजातन्त्र की दुहाई देते हैं। जार्ज साहब बैठे हैं। इन्दिरा जी 75 हजार वोटों से जीतकर आई थीं। आज वे लोकतन्त्र का हिमायत कर रहे हैं। उस वक्त इनको क्या हो गया था। लोकतन्त्र के सच्चे हिमायती कांग्रेस के लोग हैं। दल की नेता श्रीमती इन्दिरा गांधी प्रजातन्त्र की हिमायती हैं जिन्होंने समय रहते ही परिणामों की चिन्ता किए बगैर चुनाव करा दिए। लेकिन आपने क्या किया। आपके दिल में केवल बदला लेने की बात थी। प्रजातन्त्र की बुनियादी बातों का ख्याल केवल हमारी पार्टी में रखा जाता है। समाजवाद, लोकतंत्र, धर्म-निर्पक्षता, गुट-निर्पक्षता इन सबको मानने वाली हमारी कांग्रेस पार्टी है। विरोधी दल के पास आज कोई दिशा नहीं है। आज मेरी भगवान से यह प्रार्थना है कि देश की अखण्डता और सुरक्षा के लिए इन सब तत्वों को निकालकर बाहर कर देना चाहिए जो अराजकता पैदा करते हैं। जो लोग देश को कमजोर करते हैं। जो लोग राष्ट्रीय सुरक्षा को हानि पहुंचाते हैं, उनके खिलाफ इस कानून को पास किया जाए।

अगर आज की कार्य सूची देखें तो इस बिल का विरोध करने के लिए सभी विरोधी दल के नेताओं ने अपता नाम दिया हुआ है।.....(ब्यवधान)

[श्री रामप्यारे पनिका]

मैं तो यह कहना चाहूंगा कि इनकी दाढ़ी में तिनका है। इन लोगों को इस बात की शंका है कि हम लोगों का जो काम है, वह इस एक्ट में आने वाला है। इसी वजह से ये लोग डर रहे हैं। किसी सिद्धान्त पर एक हो या न हो लेकिन इस बारे में सब एक हैं जब कि देश की सुरक्षा के लिए यह कानून आ रहा है। मैं निवेदन करना चाहता हूँ, विरोधी पक्ष के लोगों से कि देश में शान्ति-व्यवस्था बनाएं। जो असामाजिक कार्य.....(व्यवधान) अन्त में विरोधी दलों से देश की खातिर अपील करना चाहता हूँ कि जितने अमेंडमेंट इन्होंने दिए हैं, उनको वापिस लें और इसको पास कराएं।

SHRI T. NAGARATNAM (Sriperumbudur) : Mr. Chairman, Sir, I am very grateful to you for giving me this opportunity to participate in the debate on the National Security (Amendment) Bill, 1984. I totally oppose this Amendment Bill. When the National Security Ordinance, 1980, was to be approved and when the National Security Bill, 1980, was to be passed by this House, several Opposition Members at that time vehemently opposed this measure. Again they opposed when the Home Minister introduced certain amendments specified in sections 3 to 5, specially in the disturbed areas of Punjab and Chandigarh.

On behalf of the DMK Party, I want to say that we have full faith in the national security, but at the same time, I want to point out, no citizen of our country should be treated as a step-son or an alien or be put in bondage of slavery.

In 1971, I want to recall in this House, during the time of Bangladesh war, to safeguard our national integration and national security, my beloved leader, Dr. Kalaignar, the then Chief Minister of Tamil Nadu, invited our Prime Minister Shrimati Indira Gandhi and gave her Rs. 6 crores on behalf of the Tamil Nadu people. No other Chief Minister in India has given such a huge amount for national security.

But the Central Government, whatever may be the Party that comes to power, want to have the supreme power; they simply forget democracy and they consider the States to be under slavery. The Centre is already having the supreme power; still, they want to usurp the powers of the States.

I vehemently oppose this Amendment which is sought to be introduced in the National Security Act as the provisions of this Bill are Draconian in nature. The intention and inclination in introducing such a Bill is only an attempt to strangle democracy and to erode seriously the rule of law. No civilized country would apprehend a person without disclosing the reason for his arrest. The National Security Act and the amendments cut in toto at the root of the Fundamental Rights guaranteed to the citizens under article 19 of the Constitution.

It also violates Articles 14, 21 and 22 of the Constitution.

Sir, the Bill gives a long rope to the authorities, namely, police to suppress the Opposition parties in our country. Therefore, my party, DMK and the leader have been persistently and consistently opposing this piece of legislation. It is an attempt at strangulation of democracy. It is totally a lawless law.

Sir, people who believe in government, people who believe in human rights and civil liberties will be in great danger. At the moment the Government's intention may be right but in due course many of us will not be spared under this Act.

Sir, I would urge upon the hon. Members to see that the democratic voice is not made dumb, deaf and blind by the use of this National Security Act and amendments thereto. The House is very well aware that during Emergency in June 1975 in Tamil Nadu the DMK party was in power. If my party and my leader had accepted MISA and Emergency then the DMK government would not have been dissolved on 31st January, 1976.

Now, Sir, MISA has been misused. More

than 500 persons were put in jail without trial and one of our Member of Parliament, Mr. Chittibabu was brutally assaulted in Central jail, Madras and he died as a detenu. Similarly, another person died in Madurai jail on account of ill treatment.

Sir, so many atrocities have been committed by the police in the entire country. Now, you have brought forward further amendment to the National Security Act but there is no security to the human lives. Here I would like to quote what Shri H.V. Kamath said during the debate in the Constituent Assembly :

"This is a day of sorrow and shame. God help the people of India. I find no parallel to this Chapter of Emergency in the Constitutions of the democratic countries of the world."

This is what Shri H.V. Kamath said during the debate in the Constituent Assembly. Many friends say it is 'mini MISA' whereas I want to say that it is not 'mini MISA' but 'major MISA'.

Sir, again I would like to quote what Shri Biswanath Dass said in the same debate in the Constituent Assembly :

"During the last great war the Nazis took away iron and metals from the householders not only in their own country but also in conquered territories. Why should Government of India like the Nazis expropriate the revenues assigned to the States in an Emergency."

Sir, according to Central Government they have dismissed the Dr. Farooq Abdullah government in Kashmir to safeguard the interests of the country. What is the fate of the Speaker in the House ? Is there any security for his Chair and his body ? He was manhandled and removed. We should not think that the majority can do anything.

In September, 1979, my beloved late Anna's birthday celebration was held in

Madras when Shrimati Indira Gandhi was invited. While speaking to the Tamilnadu people in a meeting organised for celebrating the late Anna's birthday at the Marina Beach, Madras, Shrimati Indira Gandhi gave an assurance to the people and also appealed to them to forget the past, namely, the imposition of Emergency, and said that for thousand years to come, Emergency will not be imposed in the country. But after coming to power in 1980, in the month of June 1980, she had brought forward this will before this House and the Government passed the National Security Act. Sir, according to the present National Security Act, if a person is arrested, he will not be kept in detention for more than a year. But according to the present amendment to the Act, a person could be kept under detention for two years in Punjab and Chandigarh only. Sir, this is violative of Article 14 of the Constitution, namely, Equality before Law.

Sir, under the present Act, a person detained in Tamil Nadu or Andhra Pradesh or Karnataka or Orissa or Bihar or anywhere cannot be kept for more than one year. But I do not understand why this present amendment to the Act wants to increase the period by one more year. This is clear violation of the Fundamental Rights of a citizen of this country. Here I would like to clarify one point raised by an hon. Member from the Treasury Benches. He said that under the National Security Act, 1980 no political leader was arrested. I am surprised to hear this statement. In Tamilnadu, the Agricultural Toilers Party-leader, Mr. Narayanaswamy Naidu was arrested and kept in detention under National Security Act.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH) : It was done by the State Government.

SHRI T. NAGARATNAM : No. It was done by the State Government but arrested under N.S.A. Over this, our beloved leader Dr. Kalaignar Karunanidhi also agitated and he appealed to the Central Government for the release of Mr. Narayanaswamy. When

[Shri T. Nagaratnam]

Sbrimati Indira Gandhi visited Tamilnadu at that time, the feelings of the DMK agitators' over the arrest of the political leader, was conveyed to her and she immediately advised the Tamilnadu Government to release Mr. Narayanaswamy Naidu. Then only he was released without any condition.

Sir, in the entire country, more than 336 people have been detained under N.S.A. Therefore, I apprehend that this draconian measure will be a great menace to the democracy in future. Therefore, I appeal through you, Sir, that Government should withdraw this Amendment to the Bill so that the democracy of our country is preserved and the people of the country can live in peace and secure. Thank you.

**SHRI BRAJAMOHAN MOHANTY (Puri)** : Mr. Chairman, Sir, I support the Bill. Sir, in the year 1980, the National Security Act was brought forward before Parliament and after it was enacted it was brought into the Statute Book. After this Act was brought into the Statute Book, it was reported in the press on 10th May, 1982, that during this period 1837 persons were detained. Out of them 1411 were released either by the High Court or by the Supreme Court. The reason given for releasing those people was mostly on account of technical difficulties. In some cases, the ground of detention was not explained in the language known to the person detained. In some other cases, there was lacuna in the detention order. In some other cases, some mistakes were made in framing the ground.

In certain cases, representations given by the detainees were not explained to them. These are the few instances I am placing before the House. As a matter of fact, out of 1837 persons, only 426 were detained. My submission is that the purpose for which this legislation was promulgated was not being achieved, because the provisions of the statute were inadequate.

Now, nobody from the opposition says that things have improved, economic situa-

tion has improved, the internal situation has improved and that we are in a comfortable position. Naturally, there is no question of encroaching upon the liberties of the citizens. But my submission is that things are very complicated today, we are confronted with an internal conspiracy against us, we are confronted with a very difficult economic situation and a new phenomenon of terrorism has developed in the country. We also know that the terrorists have links with the international terrorists, and apart from that the economic situation also deserves very serious attention.

In this background, my submission is that the statute must be very effective and adequate, so that it can bring about an improvement in the situation and can translate the purpose for which it has been promulgated into a reality.

Sir, the amending Bill covers only two aspects. The other aspects have not been taken care of in this legislation. I do not know the reason for leaving them, may be for some technical ground.

A number of friends here are practising lawyers also and they know about the subjective satisfaction. If a number of grounds have been made out for detention and if out of them one falls through, in that case, the satisfaction has not been complete, because the authority may have been influenced by the ground which has not been established. That is a technicality. Because of this, a number of known criminals, known smugglers and known offenders were set at large. That is the situation. We have to meet that situation. That is why, I support the Bill and I would like the Home Minister to explain why other technicalities have not been covered in this statute.

16 58 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

There is another political aspect. Nobody says that this is an ideal thing, but it is a necessary evil ; we are constrained to adopt it. Even today all over the world, for ex-

ample, there is an agitation against capital punishment. We have got a provision for capital punishment in our Indian Penal Code. Our society has not yet attained that position where we can do away with such a stringent punishment. That is why, the society as it stands today, needs this very much, and it ought to be adopted.

I would submit that some friends from the opposition are shouting so much, but when they were in power what did they do? They are shouting so much because the election is very near. When they were in the Government, they wanted to amend the Criminal Procedure Code to incorporate all the preventive detention measures, which would have become permanent measures. This is not a permanent measure, but they attempted to do it. Not only that, though the Forty-Fourth Constitutional Amendment, amending Article 22, was passed, but that was not implemented by them, although they were in Government for more than two years.

17.00 hrs.

**SHRI CHITTA BASU :** What about your rule ?

**SHRI BRAJAMOHAN MOHANTY :** That is a different thing. We believe in social values. I am coming to you, as I have not yet touched that part, Shri Basu. We believe that it is necessary to protect the social values of the community. We believe that it is necessary to protect our economic and political system. There is no hide and seek about it. What is the Janata Government doing? What about Shri Hegde? He is in favour of introducing the preventive detention law. Not only that, he spoke in an interview given in *Patriot* paper in support of the measure. What about Andhra? They have already adopted it to counteract the communal elements. And what about Tamil Nadu?

**SHRI SOMNATH CHATTERJEE :** What problem has been solved by this preventive detention? It is there for the last 37 years.

**SHRI BRAJAMOHAN MOHANTY :** I am surprised that Shri Somnath Chatterjee has put this question. It is working since Ram Raj. People are restrained by laws. Under the Indian Penal Code, theft is punishable with stringent punishment. But theft is still there. The principle is that laws do create social values and social restraints. This is why the provision is there. Sir, I am very happy to tell you now that the West Bengal Government have also agreed to implement the COFEPOSA Act. It is very good. Wisdom has dawned upon them at last.

**SHRI SOMNATH CHATTERJEE :** Who said so? It is not true.

**SHRI BRAJAMOHAN MOHANTY :** Shri Pranab Mukherjee has spoken, and no contradiction has been there. If there is any contradiction, please show me and I shall correct myself. I am quoting the press reports. I have no authentic documents to support them. If you wish, I will place those press reports for your perusal.

I want to say one thing to Shri Somnath Babu. When the Soviet Prime Minister visited France, do you know what happened? In their meeting, the French President put one question to the Soviet leader as to why Sakharov has been detained and why he is not allowed to go to another country. The reply to the French President was—"What about the millions of people starving in the suburbs of Paris?"

*(Interruptions)*

So Sir, my submission is that he has rightly replied because they believed that to protect their system if such and such a person, howsoever eminent or distinguished he may be, should be detained, and his freedom must be curtailed, they would do that. And they have done it. So, naturally each country has its problems. Some hon. Members said that wherever this type of law was there, that country was not a civilized one. If so, I would ask them: Are all the Socialist countries not civilized? Is China not civilized? Every system has its own problems; and they want to solve those

[Shri Brajamohan Mohanty]

problems by their own methods. So, there should not be so much of an excitement. The Bill should be passed.

श्री बिजय कुमार यादव (नालन्दा) : उपाध्यक्ष महोदय, यह राष्ट्रीय सुरक्षा कानून में जो दूसरा संशोधन विधेयक पेश किया गया है, में इस का विरोध करता हूँ। यह विधेयक 1980 में लाया गया था। बाद में इसमें संशोधन किया गया और फिर आज हृद्य लोग दूसरे संशोधन के दौर से गुजर रहे हैं। अंग्रेजों के पीरियड में प्रिवेंटिव डिटेन्शन ऐक्ट था और कांग्रेस के लोग जब और पार्टियों के साथ आजादी की लड़ाई लड़ रहे थे तो वह लोग व्यक्तिगत आजादी और नागरिक स्वतन्त्रता के लिए प्रिवेंटिव डिटेन्शन ऐक्ट के मुखालिफ थे। लेकिन जैसे ही कांग्रेस पावर में आई उस ने प्रिवेंटिव डिटेन्शन ऐक्ट इस्तेमाल किया और अपने पूरे शासन के पीरियड में उन्होंने इस चीज को जारी रखा। केवल उस थोड़े से समय को छोड़ कर जब कांग्रेस की मैजोरिटी समाप्त हो गई थी और सी० पी० आई० आदि कुछ ऐसी पार्टियों की मदद से इन की सरकार चलानी पड़ती थी, केवल उन दिनों में इन्होंने इन पार्टियों के दबाव में आकर इस ऐक्ट से छुटकारा दिया था।

पहले भी जब प० जवाहर लाल नेहरू मौजूद थे तो उन्होंने भी यही वादा किया था कि इस का इस्तेमाल विरोधियों के खिलाफ नहीं किया जाएगा लेकिन उस समय भी इस का इस्तेमाल विरोधी पार्टियों के खिलाफ किया गया और राष्ट्रीय सुरक्षा कानून 1980 में इन्होंने पास किया उस समय भी इन्होंने यह वादा किया था कि इस का इस्तेमाल अपने विरोधियों के खिलाफ नहीं करेंगे। लेकिन तजुर्बा यह बताता है कि इन्होंने अपने विरोधियों के खिलाफ इस का इस्तेमाल किया। 1980 में बहुत घनघोर बहस इस पर हुई थी और हम लोगों ने यह आशंका जाहिर की थी कि देश के अन्दर कांग्रेस की सरकार अपनी नीतियों की वजह से असफल होती जा रही है। उस की वजह से जन-आन्दोलन

जब होंगे तो उस के नेताओं के खिलाफ इस कानून का इस्तेमाल किया जाएगा। इन्होंने वादा किया था इस्तेमाल नहीं करने का, आज भी वह यही वादा करेंगे लेकिन फिर भी वह इस का इस्तेमाल हम लोगों के खिलाफ करेंगे।

कहा गया है कि असाधारण परिस्थिति है जिस की वजह से इस कानून में संशोधन की बात की जा रही है। यह बात उस समय भी कही गई थी क्यों कि वह कानून असाधारण है और जब कोई भी सरकार इस तरह का कानून पेश करेगी तो वह यही कहेगी कि परिस्थिति असाधारण है जिस की वजह से यह लाया गया है। इस कानून के रहते हुए भी परिस्थिति साधारण नहीं बन सकती। आज जो देश की सुरक्षा और अखण्डता की बात कही जाती है, उपवादियों की बात कही जाती है, कानून तो यह मौजूद था, लेकिन इस के रहते हुए भी देश की स्थिति साधारण क्यों नहीं बन सकी और फिर इस बात की क्या गारन्टी है कि इस कानून के जरिए आप देश की असाधारण स्थिति को साधारण स्थिति में तब्दील कर देंगे?

देश के अन्दर जो असाधारण स्थिति है उस का कारण क्या है? आपकी जो नीतियां हैं, जिस तरह आप सरकार को चला रहे हैं, आपने जो आर्थिक नीतियां अपनाई हैं। जिससे देश में बेरोजगारी है, भुखमरी है, राज्यों का विकास समान तरीके से नहीं हो रहा है, राज्यों का असंतुलित विकास हो रहा है, बहुत सारे राज्य पिछड़े हुए हैं, कुछ ही राज्य आगे हैं, चन्द मुट्टी भर लोभ जिस तरह से देश की आर्थिक व्यवस्था पर हावी हैं, काले घन का राज जिस तरह से चल रहा है—इस प्रकार की स्थिति में देश में तरह तरह की समस्याए होंगी ही। पंजाब की बहुत चर्चा की जाती है। पंजाब के सवाल पर एक बार नहीं, कई बार सदन में बहस हुई है। बार बार पंजाब के सवाल पर कहा गया है कि पंजाब की परिस्थिति के लिए शासक दल के लोग ही जिम्मेदार हैं। पंजाब की स्थिति में जो उपवादिता आई, उसको जिस तरह से बढ़ने

दिया गया और परिस्थिति में जो भयंकरता आई उसके लिए अगर कोई जिम्मेदार है तो वह शासक दल है। शासक दल वे बार बार कोशिश की कि पंजाब की समस्या को राजनीतिक रूप में इस्तेमाल करे और यही वजह है कि वहाँ की स्थिति लगातार उग्र होती गई। आज भी वहाँ की समस्या का राजनीतिक हल ढूँढ़ने में यह सरकार नाकाम हो रही है। सरकार चाहती है कि इस समस्या को एनेक्शन में सुनाए, वोट हाँ मिल करके पुनः सत्ता में आए। जब इस तरह की बात होगी तो जाहिर है जब शासक दल देश की सुरक्षा, देश की एकता, देश की अखण्डता और आर्थिक व्यवस्था, देश की जनता का अमन चैन, साम्प्रदायिकता, भाषा की समस्या तथा अन्य समस्याओं के प्रति राजनीतिक तौर पर स्वार्थ सिद्धि का व्यवहार अपनायेगा तब तक इन समस्याओं का हल नहीं हो सकता है। वही वजह है कि आज देश में तरह तरह की समस्याएँ खड़ी हो रही हैं और उनका समाधान नहीं हो रहा है। समाधान इसलिए नहीं हो रहा है क्योंकि सरकार समाधान करना नहीं चाहती है अपने राजनीतिक स्वार्थ के लिए और तभी उसको इस तरह के कानून का सहारा लेना पड़ता है। इस प्रकार के कानून का सहारा लेकर आतंक के राज्य को कायम करके वह देश में हुकूमत करना चाहती है। इसीलिए आज इस का विरोध हो रहा है। देश में जो हमारा संविधान कानून है उसमें वैयक्तिक स्वतन्त्रता की बात कही गई है कि कोई भी व्यक्ति बगैर किसी कारण के गिरफ्तार नहीं किया जाएगा, बगैर मुकदमा चलाए हुए जेल में बन्द नहीं किया जाएगा। यह कानून जो पहले से बना हुआ था एक तो वही लोगों के लिए निरदण्ड था और अब इसको आप और भी ज्यादा कड़ा बनाकर लोगों के ऊपर प्रहार करना चाहते हैं, वैयक्तिक आजादी और संविधान पर चोट करना चाहते हैं। इसको कबूल करवा किमी भी व्यक्ति के लिए, जो कि वैयक्तिक स्वतन्त्रता में विश्वास करता है, सम्भव नहीं होगा। हमारी पार्टी तो इसका बराबर विरोध करती रही है। कांग्रेस के लोगो को पता नहीं इस तरह के

कानून से क्या फायदा होने वाला है। कौन सी समस्याओं का समाधान वे इसके द्वारा करना चाहते हैं? इस तरह के कानून के जरिए किसी भी समस्या का समाधान नहीं हो सकता है। हिन्दुस्तान जिस व्यवस्था से गुजर रहा है, हम कहते हैं कि हमारे वहाँ जनतांत्रिक पद्धति है, नागरिक आजादी है, वैयक्तिक आजादी है, जिस संविधान ने बहुत सारे अधिकार लोगों को दे रखे हैं, उसी संविधान के विपरीत आप आचरण कर रहे हैं और संविधान का घोर उल्लंघन इस कानून को बनाकर यह संशोधन लाकर आप कर रहे हैं। इसीलिए मैं इसका विरोध करता हूँ और उम्मीद करता हूँ कि सन्नी जी दोबारा सोचेंगे और इसको वापिस लेंगे।

श्री उमाकांत मिश्र (मिर्जापुर) : उपाध्यक्ष जी, चाहे कोई शासनप्रणाली हो, राजतन्त्र हो, लोकतन्त्र हो, अधिनायक तन्त्र हो, सेनातन्त्र हो, इतने सारे तन्त्र आज संसार भर में हैं लोकतन्त्र तो बहुत ही कम देशों में है, गिने-चुने देशों में ही है, ज्यादातर अधिनायक तन्त्र है या सेना तन्त्र है या राजतन्त्र है। बहरहाल कोई भी तन्त्र हो, किसी-भी राज-प्रणाली का पहला कर्तव्य होता है कि वह राष्ट्र और देश की रक्षा करे। प्राचीन काल में भी शासन प्रणाली का काम बाहरी आक्रमण और आन्तरिक आक्रमण से, दोनों प्रकार के तत्वों से, देश की, राज्य की रक्षा करना पहला काम होता था। जो राज-प्रणाली देश की, समाज की, रक्षा करने में असमर्थ है वह राज-प्रणाली नहीं है, वह असमर्थ है, अक्षम है। इसलिए कोई भी तन्त्र हो, लोकतन्त्र हो, राजतन्त्र ही, अधिनायक तन्त्र ही, उनका कोई महत्व वही है, महत्व है राष्ट्र का, देश की जनता का और जो प्रणाली देश की जनता और राष्ट्र की रक्षा त कर मके, उस प्रणाली को बदल देना चाहिए, छोड़ देना चाहिए। मैं तो यह कहूँगा कि जो कानून आज गृह मन्त्री जी लाए हैं, वह नर्म है, इससे ज्यादा सख्त कानून की आवश्यकता है। मेरा निवेदन तो यह है कि देश की रक्षा के लिए बाहरी तत्वों और आन्तरिक तत्वों, जो पृथकता-

[ श्री उमाकांत मिश्र ]

बादी, सम्प्रदायवादी, क्षेत्रीयतावादी तत्व जो हैं, देश को तोड़ना चाहते हैं, उनसे लड़ने के लिए, उन से देश की रक्षा करने के लिए यह कानून बहुत नर्म है, इसको और अधिक सख्त करना चाहिए।

इसमें क्या है—जहां पहले 6 महीने के लिए बन्द किया जाता था, अब दो वर्ष कर दिया है—इससे कुछ भी होने वाला नहीं है। इससे कठोरतम कानून होना चाहिए।

श्री एन० के० शेजवलकर (ग्वालियर) : आपने जेल नहीं देखी है।

श्री उमाकांत मिश्र : मैंने बहुत जेल देखी हुई है। हमारे पुरखों ने देखी हुई है। हमारे लोगों ने वर्षों जेल में रह कर आजादी हासिल की है। मैं निवेदन कर रहा था कि कोई भी प्रणाली हो, देश की ओर राष्ट्र की रक्षा करना पहला कर्तव्य है, इसलिए यह कानून और अधिक सख्त होना चाहिए।

आज जो स्थिति है—उसमें एक तो बाहरी आक्रमण है, दूसरे आन्तरिक विद्रोह है, संगठित विद्रोह है—इस तरह के आक्रमणों में जहां तक बाहरी आक्रमण का सम्बन्ध है उससे सेना रक्षा करती है लेकिन जो आन्तरिक तोड़फोड़ होती है, जिसमें आन्तरिक शक्तियां देश को कमजोर करना चाहती हैं, निर्बल करना चाहती हैं, राष्ट्र को छिन्न-भिन्न करना चाहती हैं, क्षेत्रवाद, सम्प्रदायवाद, उग्रवाद, हिंसावाद—ये सब जितने वाद फैले हुए हैं या जैसे तस्कर हैं, जमाखोर हैं, इस तरह के जो आर्थिक अपराधी हैं उनसे लड़ने के लिए आन्तरिक रूप से सख्त कानून चाहिए, कठोरतम कानून और कठोरतम न्यायालय की आवश्यकता है। जब आन्तरिक शक्तियों के साथ मुकाबला होता है तो उन से सेना नहीं लड़ेगी, यहां उसकी आवश्यकता नहीं है, उनसे लड़ने के लिए कठोरतम कानून और कठोरतम न्यायालय

की आवश्यकता है। इसलिए इस समय इस देश को अखण्ड रखने के लिए, एक रखने के लिए, इस देश को शक्तिशाली बनाये रखने के लिए, लोकतन्त्र की रक्षा करने के लिए कठोरतम कानून, और कठोरतम कदम और कठोरतम न्यायालय की आवश्यकता है। ये लोग जो सामने बैठे हुए हैं इनको इसकी चिन्ता नहीं है—इनको चिन्ता केवल कुर्सी की। इस लिए मैं फिर से कहना चाहता हूं देश में लोकतन्त्र हो या कोई भी तन्त्र हो, देश की एकता, देश की रक्षा के सामने किसी भी तन्त्र का कोई महत्व नहीं है।

मैं तो यहां तक कहूंगा—देश की अखण्डता, राष्ट्र की एकता की रक्षा करने के लिए यदि हमारा संविधान भी कमजोर पड़ता हो तो इस संविधान का कोई महत्व नहीं है, उसको भी बदल देना चाहिए। देश रहेगा, राष्ट्र रहेगा, समाज रहेगा तभी लोकतन्त्र, राजतन्त्र या कोई भी तन्त्र रहेगा। आज विरोधी पक्ष के लोग बहुत घबराए हुए हैं, उनको चिन्ता है कि यह जो कानून बन रहा है, इसका इस्तेमाल उनके विरुद्ध होगा। क्यों होगा ? जो अराजक तत्व हैं, देश-विरोधी तत्व हैं, राष्ट्र विरोधी तत्व हैं, देश-द्रोही तत्व हैं, जो तस्कर हैं, जमाखोर हैं—ऐसे लोगों के विरुद्ध इस कानून का इस्तेमाल होगा।

आप लोगों के खिलाफ यह कानून लागू नहीं होगा लेकिन जो भी व्यक्ति या दल चाहे राजनीतिक हो या गैर राजनीतिक हो, राष्ट्र-द्रोह होगा, देशद्रोह होगा या समाजद्रोह होगा, वह इससे बच नहीं पाएगा और न ही उसको बचना चाहिए। यही मेरा निवेदन है। अगर कोई राष्ट्रद्रोह करता है, देशद्रोह करता, समाजद्रोह करता है या देश और राष्ट्र को अखण्डता में बाधक होता है या देशद्रोही और पृथकतावादी तत्वों का बढ़ावा देता है, उसके खिलाफ यह कानून लागू होना चाहिए। (व्यवधान) जैसा कि मालूम हुआ है और अभी मैंने पढ़ा है, काश्मीर के भूतपूर्व मुख्यमन्त्री के बारे में जो रिपोर्ट आई है; जो विवरण आया है, वह बहुत

खतरनाक है। उनकी गतिविधियां खतरनाक थीं। वे देशद्रोही तत्वों से मिले थे, वे उग्रवादियों से मिले थे, वे काश्मीर लिबरेशन आर्मी से मिले थे और खालिस्तान की मांग करने वाले लोगों से मिले थे। अगर वे यह कहें कि हम राजनीतिक नेता हैं और हमारे खिलाफ यह इस्तेमाल नहीं होना चाहिए, यह ठीक बात नहीं होगी। इस तरह के लोगों के खिलाफ यह इस्तेमाल होना चाहिए और जो इस कानून का इस्तेमाल करने वाले हैं, वे अगर ऐसा नहीं करते हैं, तो यह उनकी कमजोरी है। देश सर्वोच्च है, राष्ट्र सर्वोच्च है। इसलिए मैं यह कहना चाहता हूँ कि आप भयभीत क्यों हैं। अगर दिल काला है, तो भयभीत रहेंगे। सच्चे अर्थों में अगर आप लोकतान्त्रिक हैं, तो आपको इसका समर्थन करना चाहिए। अगर आप देश-प्रेमी हैं, राष्ट्र-प्रेमी हैं, राष्ट्रभक्त हैं और सच्चे माइनों में इस देश के हितैषी हैं, तो खुले दिल से इस विधेयक का आप को समर्थन करना चाहिए।

इतना कह कर मैं अपनी बात समाप्त करता हूँ और इस बिल का समर्थन करता हूँ।

**SHRI CHITTA BASU (Barasat) :** I rise to support the Resolution moved by my esteemed friend, Mr. George Fernandes, and at the same time, I oppose the Bill.

I want to take you back to the day when this National Security Ordinance was first promulgated. While promulgating that Ordinance it was stated as grounds for the promulgation that exist 'communal disharmony, caste conflicts, social tension, extremist activities, atrocities on Scheduled Castes and Tribes'. These were the grounds which were stated while the original Ordinance i.e. National Security Ordinance was promulgated in 1980. Even before 1980 there were social tensions, caste conflicts and this kind of phenomena, but no Government considered it necessary to have such an Ordinance which is draconian and which deprives civil liberties and democratic rights of the people. The main reason for the enactment of this kind of legislation is that our executive or bureaucracy has been in-

creasingly used to exercise extraordinary powers provided by extraordinary laws even during the ordinary times; otherwise, there is no reason of having this kind of legislation.

The preventive detention is becoming a part of our statute right from the day when this Government was brought into existence. As has been pointed out by many hon. Members, there has been only one year, that is I think 1970-71 when there was no preventive detention law on the Central statutes. The reason is quite known to everyone. In 1971, there was MISA. Everybody knows, and I think you also cannot forget, the glaring examples of misuse of MISA during the Emergency.

**MR. DEPUTY-SPEAKER :** I forget the past, I only see the future. Of course, I take lesson from the past.

**SHRI CHITTA BASU :** The future also is that this National Security Act is nothing but the substitute of the MISA. This is the future. You are always interested to look at the future, then look at this future and know it for certain and MISA is past, MISA is dead, but the National Security Act is there and that National Security Act and this Ordinance are also different. This Ordinance is much more stricter and whatever modicum of relief the original National Security Act ensured for those who were falsely implicated and accused, has been taken away by this Ordinance. As I have stated earlier and as many hon. Members, particularly George Fernandes, have made it clear, you are taking away the civil rights of an accused when it is found that the charges are invalid, non-existent, vague, irrelevant and even remotely not connected. And by depriving the accused of this modicum of relief, you are automatically strengthening the hands of the bureaucracy or the executive. It is my personal experience, as also the experience of many of us, that on frivolous grounds, on vague grounds, on non-existent grounds, we have been detained for months together.

**PROF. MADHU DANDAVATE :** Be ready again.

**SHRI CHITTA BASU :** I know for myself and I can also mention the name of Mr. Banki Mukherjee who was an important trade union leader in West Bengal ; he was dead, he was not alive, but the police issued a warrant to arrest him under preventive detention. That was the practice and I think that still remains the practice. They have got a list of persons who ought to be arrested on political grounds. Whether dead or alive, whether living or not, preventive detention orders are issued. This is our experience and I am quite sure, as Prof. Madhu Dandavate was saying, that we should also remain prepared for that eventuality. Example is very much here. Here is a man—I must say he is an hon. Member of this House—who was arrested under this so-called patriotic Act, as if the Government cannot be run if this Act is not there on the Statute Book. Anyway, this is undemocratic, unjustified, unnecessary and a bad law. This amendment curbs the iota of civil liberties which are still left. It gives further arbitrary right, arbitrary authority to the executive to arrest anybody whom they like.

Some questions have been raised by Mr. Mohanty. I know the history. Janata Party also wanted to smuggle in this pernicious provision of preventive detention law through amendment of Criminal Procedure Code. We all opposed it. Many of the members of the Janata Party also opposed it. If the Janata Party has set a good example, why don't you accept that example of Janata Party ? When the Janata Party Government was in power, there were courageous members in the Janata Party who opposed it and the Government had to withdraw the Bill. So, the Janata Government has done something good.

**PROF. MADHU DANDAVATE :** Sir, do not expunge it.

**SHRI CHITTA BASU :** I am referring to the Constitution (Forty-fifth Amendment) Act, which relates to article 22. It reads :

"No law providing for preventive

detention shall authorise the detention of a person for a longer period than two months."

— the present provision provides for three months —

"unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention :

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court."

Even under that amendment, there were certain greater procedural improvements. The members of the Advisory Board should be Judges.

Now a question has been raised why it has not been given effect to. It is because there were certain limitations. The clause says :

"It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act."

The Janata Party is being held responsible and it is being asked why it did not immediately enforce it by notification. We can very well ask : What about you ? The Law Minister says "we are as jealous as many of you to defend the civil liberty". Then, what stands in the way of their issuing a notification for enforcing the Forty-fifth Amendment to the Constitution ?

This matter was referred to by the Supreme Court in Shri A.K. Roy's case. It said :

"It is odd that even after 2-1/2 years the Act has not been enforced. It is for Parliament to take notice of it."

Now Parliament has taken notice of it ; we have all taken notice of it. If you have got any sincerity and if you really want to provide certain safeguards, why should you not issue the notification for the enforcement of that Act, to prove your sincerity ? (*Interruptions*)

So, I conclude by saying that this Bill is not necessary and all the offences which are being mentioned can be dealt with by the ordinary laws in our country. We are also second to none in the defence of our national security. That point must be made clear to you. We are also very much serious to defend the national security. But for that administrative measures are necessary, political measures are necessary and by an illegal and unlawful Act like this, the national security cannot be guaranteed or strengthened. For that I must mention a series of political and administrative actions are necessary and for that we are always ready. On the other hand if you permit me to say, it is your administrative policies and political policies which are strengthening the divisive and separatist forces, which are working against the interest of the nation and the unity of the nation.

MR. DEPUTY-SPEAKER : The ruling party Members will take less time because the Minister has to reply. The Minister will cover all the points.

PROF. N. G. RANGA : But there must be some Members to support the Minister also.

श्री गिरधारी लाल ध्यास (भीलवाड़ा) : माननीय उपाध्यक्ष महोदय, नेशनल सिक्योरिटी अमेंडमेंट बिल, 1984 का मैं समर्थन करता हूँ। यह बिल जिस भावना से लाया गया है, उसके पीछे सरकार की यह भावना है कि देश में जो एक्सट्रीमिस्ट्स और टेरोरीस्ट्स हैं या जो देश के टुकड़े-टुकड़े करना चाहते हैं, इस कानून से पाबन्दी लगा-

कर उनको ठीक तरह से व्यवस्थित किया जाए। आपको इस बात की पूरी जानकारी है कि इस देश में तीन ऐसे प्रान्त हैं, जिनमें खासकर विरोधी दल के लोगों ने गड़बड़ कराने, अव्यवस्था फैलाने, आतंकवाद को प्रोत्साहन देने और सब प्रकारों की प्रवृत्तियों में अपने आपको सम्मिलित किया है। हमारे देश में चाहे वह आसाम, पंजाब या काश्मीर का मामला हो, जिस प्रकार से विरोधी दलों ने इसको प्रोत्साहन दिया है, निश्चित तरीके से वह हिन्दुस्तान के इतिहास में लिखा जाएगा कि हिन्दुस्तान का विरोधी दल किस प्रकार का दल है। जिसने देश को खण्डित करने का प्रयत्न किया है। अकाली दल को ही ले लीजिए। इनको किसने समर्थन दिया? ... (व्यवधान) भारतीय जनता पार्टी ने इनको प्रोत्साहन दिया। इनकी मदद से ही उन्होंने वहाँ पर सरकार बनायी और उसके बाद जनता पार्टी तथा दूसरे लोगों ने वहाँ जा-जाकर अकालियों को प्रोत्साहित किया? वहाँ पर जो आतंकवादी थे उनसे किस प्रकार यह मिले और किम तरीके से प्रोत्साहन दिया, क्योंकि वे इस बिल का विरोध कर रहे हैं। इसके पीछे मंशा यही है कि इन सारी चीजों का पोलिटिकल फायदा उठा कर अपना वचस्व कायम किया जाए। वैसे हिन्दुस्तान की जनता ने इनको ठुकरा दिया क्यों कि जनता को पता लग गया है कि ये ऐसे आदमी हैं, जो व्यवस्था को नहीं संभाल सकते। इनके जमाने में देश की जो हालत बिगड़ी थी, उसकी वजह से जनता के दिमाग में असंतोष पैदा हो गया है। जो लोग देश को खण्डित करना चाहते हैं, टेरोरीस्ट एक्टीविटिज को बढ़ाना चाहते हैं, लोगों को डराना-धमकाना चाहते हैं, ऐसे लोगों के ऊपर अंकुश लगाना बहुत आवश्यक है क्योंकि यह आजादी बड़ी मुश्किल से प्राप्त की है। इस प्रकार के लोग जो पोलिटिकल फायदा उठाकर अपने दृष्टिकोण से सारी व्यवस्था को चलाना चाहते हैं, ऐसे लोगों के ऊपर आज अंकुश लगाने की बहुत आवश्यकता है। हमारे जार्ज साहब ने बहुत लबा-चौड़ा भाषण यहाँ पर दिया।

मैं आपसे निवेदन करना चाहता हूँ कि जिस

[श्री गिरधारी लाल व्यास]

समय सारे देश में इमर्जेंसी लगी हुई थी।\*\*  
ये अन्दरघात चले गए।\*\*

ये लोग इस तरह के आतंकवाद को पूरे देश में प्रोत्साहन देते रहे हैं।

MR. DEPUTY-SPEAKER : You cannot call an hon. Member this and that.

श्री गिरधारीलाल व्यास : यह बिल्कुल सही है कि ये अन्दरघात चले गए थे।

MR. DEPUTY-SPEAKER : He is an hon. Member of the House.

श्री गिरधारी लाल व्यास : मेरा मतलब है ये ऐसे लोग हैं जिन्होंने देश में आतंकवाद को प्रोत्साहन देने की हमेशा कोशिश की। ये पाकिस्तान होकर भी आए और वहां के तत्कालीन प्रेजीडेंट से भी इन्होंने मुलाकात की, पाकिस्तानी लोगों से भी मिले। इस तरीके से इन्होंने देश को अव्यवस्था के कगार पर लाकर खड़ा कर दिया, आतंकवाद को बढ़ाया, जो लोग इस देश में गड़बड़ फैला कर इस देश के टुकड़े-टुकड़े करना चाहते हैं, उनके साथ मिलना इन्होंने अपना धर्म बना लिया। ये इस तरीके के लोग हैं।

अब मैं इन वैस्ट बंगाल के लोगों के बारे में कहना चाहता हूं। जब यहां प्रिवेंटिव एक्ट लागू हुआ तो बंगाल स्थित कस्टम के अधिकारियों ने स्मॉलिंग के खिलाफ प्रिवेंटिव एक्ट के तहत छापा मारने के लिए बंगाल पुलिस की मदद चाही, जो वहां पर स्मॉलिंग का घंटा कर रहे थे। जब वैस्ट बंगाल पुलिस के सुपरीन्टेंडेंट और दूसरे निपाही वगैरह उनकी मदद के लिए आए तो चूकि इन्होंने पुलिस फोर्स में भी फिफथ कालमिनिस्ट्स को भर्ती कर रखा था, सब जगह उनको तैनात कर रखा था, उन लोगों ने मदद करने की बजाए पुलिस

सुपरीन्टेंडेंट को अटक करके जान से मार डाला तथा पुलिस के दूसरे अफसरों को मार डाला। इस प्रकार की आतंकवाद को सी० पी० एम० के लोगों ने वैस्ट बंगाल में फैलाने की कोशिश की। उन को पकड़ने की बजाए उनको प्रोत्साहन दिया।

SHRI SATYASADHAN CHAKRABORTY : Sir,...

MR. DEPUTY-SPEAKER : Mr. Vyas, are you yielding ? He wants some clarification. Are you yielding ?

SHRI GIRDHARI LAL VYAS : I won't yield, Sir.

MR. DEPUTY-SPEAKER : He is not yielding.

SHRI SATYASADHAN CHAKRABORTY : Sir, I am on a point of order.

SHRI GIRDHARI LAL VYAS : There is no point of order.

(Interruptions)

MR. DEPUTY-SPEAKER : What is your point of order ?

SHRI SATYASADHAN CHAKRABORTY : My point of order is this. He can attack the Opposition Parties and all that. In a democracy and in the Parliament it can be done. But he is calling a distinguished Member of the Opposition\*\*and the CPI(M) Members and others\*\*. Are we living in a fascist State ? Is there a fascist leader ? Only in a fascist State, a fascist party dubs the Opposition like this. I want a clarification on that. Otherwise, when we reply, we will have to use all these terms. That you will have to keep in mind. It is the nature of the Ruling Party. He is freely using all these terms—\*\*Sir, you understand what this means. He should understand that.

MR. DEPUTY-SPEAKER : I will go

through the record.

श्री गिरधारी लाल व्यास : मैं साफ करना चाहता हूँ कि मेरा फिफथ कालग्निस्टस से यहां पर मतलब उत लोगों से है, जिन्होंने सी०पी० एम० के कैंडिडलेस लोगों को पुलिस में भर्ती कर लिया और जिन्होंने वहां इस तरह से अव्यवस्था फैलाने की कोशिश की।

MR. DEPUTY-SPEAKER : I will go through the record.

श्री गिरधारी लाल व्यास : इस तरीके से इन्होंने बारे देश में अव्यवस्था फैलाने की कोशिश की। सैन्ट्रल गवर्नमेंट ने जितने भी कानून बनाए, चाहे वह स्मगलर्स के खिलाफ बनाए गए हों, चाहे टैरोरिस्टस के खिलाफ बनाए गए हों, चाहे सक्सेशन-निस्टस के खिलाफ बनाए गए हों, बेंस्ट बंगाल के लोगों ने उस कानून को लागू करने की कभी कोशिश नहीं की। इनके दिल में इस तरह की भावना है कि ये हर स्थान पर हमारा विरोध करना चाहते हैं। ये नहीं चाहते कि हिन्दुस्तान की एकता कायम रहे, हिन्दुस्तान में यूनिटी बनी रहे, हिन्दुस्तान अखण्ड रहे, हिन्दुस्तान ताकतवर बने, दुश्मन का मुकाबला कर सके। इसी तरह की अव्यवस्था इन्होंने हमेशा फैलाने की कोशिश की। ये सारे लोग इसी तरह की गड़बड़ी फैलाने में आज भी लगे हैं।

माननीय उपाध्यक्ष महोदय आप उन राज्यों में भी देख लीजिए, जहां इन विरोधी दलों की सरकारें सत्ता में हैं, जैसे आन्ध्र प्रदेश है, कर्नाटक है, त्रिपुरा है या बेंस्ट बंगाल, कहीं पर भी इन्होंने हिन्दुस्तान की एकता के लिए, हिन्दुस्तान की यूनिटी को बनाए रखने के लिए, हिन्दुस्तान की अखण्डता के लिए अपना समर्थन व्यक्त नहीं किया। इसी कारण देश की आम जनता इनसे सख्त नाराज है। आगे चुनाव आने वाले हैं और चुनाव जरूर होंगे और शायद इसीलिए ये कोशिश कर रहे हैं। मगर हिन्दुस्तान की जनता समझ गई है, जनता पार्टी, भारतीय जनता पार्टी, सी०पी०

एम० या चाहे किसी भी पार्टी के लोग हों, हमारी जनता ने इन लोगों को अच्छी तरह से पहचान लिया है, हिन्दुस्तान की जनता यह समझती है कि ये लोग कोई गुड डिलीवर करने वाले नहीं हैं। और देश की यूनिटी को कायम रखने में इनका विश्वास नहीं है। यह देश की जनता ने अच्छी तरह समझ लिया है और आने वाले चुनाव में इनको जनता उखाड़ फेंकेगी। जहां यह आज सरकार बनाकर बैठे हैं वहां भी सरकार आगे नहीं बना पायेंगे। इसलिए यह ब्लोग इस तरह की व्यवस्था में विश्वास नहीं करते हैं, और इसीलिए इस बिल का विरोध कर रहे हैं। 4 जगह विरोधी दलों की सरकारें हैं क्या वहां एन०एस०ए० के अधीन इन्होंने कार्यवाही की? हाई कोर्ट्स, सुप्रीम कोर्ट और ऐडवाइजरी बोर्ड्स ने जब टेक्नीकल ग्राउन्ड्स पर लोगों को छोड़ दिया तब हमारी सरकार ने कार्यवाही नहीं की, लेकिन जो आतंकवादी हैं उनके खिलाफ अगर सख्त कार्यवाही नहीं होगी तो व्यवस्था ठीक नहीं चल सकेगी।

माननीय जार्ज फर्नांडीस ने संत लोंगोवाल और अकाली दल के दूसरे नेताओं की परबी की, मैं उनसे पूछना चाहता हूँ क्या उन्होंने देश को खंडित करने में अपना योगदान नहीं किया? क्या स्वर्ण मन्दिर में हथियार जमा करने की कोशिश नहीं की? क्या विदेशों में रहने वाले लोगों के सहयोग से देश को टुकड़े करने का काम नहीं किया? ऐसे लोगों को अगर इस कानून में गिरफ्तार न किया जाय, तो किनको गिरफ्तार किया जाय? क्या हमें गिरफ्तार करें? जो लोग इस देश की अखंडता में विश्वास नहीं करते, इसको खंडित करना चाहते हैं ऐसे लोगों का भी यह समर्थन करें और पार्लियामेंट में आकर ऐसी बातें कहें तो मानना पड़ेगा कि उनके दिल दिमाग में और प्रकार की भावनाएं हैं। यह देश को ताकतवर नहीं बनाना चाहते जिससे यहां का गरीब आदमी ऊपर उठ सके। बात बहुत लम्बी चौड़ी करते हैं कि आर्थिक हालात खराब है। लेकिन आपने उसको सुधारने की दिशा में क्या मदद की? क्या आपने

[श्री गिरधारी लाल व्यास]

कभी कोई कंस्ट्रिक्टिव सुझाव दिया है जिससे देश की जनता अपने पैरों पर खड़ी हो सके, और सरकार ने जो आर्थिक कार्यक्रम चला रहे हैं जिससे देश की गरीबी दूर हो उसके बारे में किसी कार्यक्रम में कभी सहयोग दिया है ? नहीं दिया। इनका कार्यक्रम डेस्ट्रिक्टिव है। ऐसे लोग देश को ऊंचा नहीं उठा सकते हैं। इसलिए यह कानून जरूरी है और ऐसे लोगों के खिलाफ जो देश को खंडित करना चाहते हैं उनका 1 साल तो क्या सारे जन्म भर भी जेल में रखा जाय तो भी कम है। ऐसी व्यवस्था इस कानून में होनी चाहिए।

इन शब्दों के साथ मैं इसका समर्थन करता हूँ।

**SHRI N.K. SHEJWALKAR :** If Shri Girdhari Lal Vyas becomes the Home Minister, then what will happen ? You can yourself imagine. It will be a horror.

**SHRI P.V. NARASIMHA RAO :** He will then speak what I am going to speak.

**SHRI SATYASADHAN CHAKRABORTY :** If he is in power, it will be great danger. (*Interruptions*)

**MR. DEPUTY-SPEAKER :** Shri Banatwalla.

**SHRI G.M. BANATWALLA (Ponnani) :** The question of detention without trial is most unpleasant, most repugnant to all those who love freedom and liberty. Such laws violate the sanctity of the rule of law which occupies the prime position in the higher values of life.

All those who believe in the rule of law, therefore, find it extremely difficult to reconcile themselves to any phenomenon of detention without trial. Mr. Deputy-Speaker, Sir, no doubt, there is another side to the picture. No doubt, there is another view point also. Though we may cherish the ideals of freedom, liberty and so on, we

cannot remain indifferent to the needs of the security of the State. There is much weight in the argument that the personal liberty cannot be so extended as to jeopardise the security of the State. Now, Sir, we have these two conflicting and competing points of view and we have to solve the conflict. We have to have a balance between these two competing points of view. We have to strike a balance between the concept of personal liberty and the needs for the security of the State. Fortunately, this is what our Constitution tries to do. And in its various articles 21, 22 and so on, several procedural safeguards have been included. No doubt, the Constitution of India is the only Constitution in the world which speaks of preventive detention. India is the only country in the world where preventive detention is a matter of peace-time legislation. During the II World War, several countries had these laws regarding preventive detention and by the end of the War, we had the horrors of concentration camps, horrors of torture, killings and so on and so forth. Now, our Constitution lays down clear-cut safeguards in order to see that there is no misuse of powers and that the powers are exercised in a *bona-fide* way. It is, no doubt, stated in our Constitution that the life and liberty of any person cannot be taken away save in accordance with the procedure established by law. Now, here, the procedure does not mean any procedure. The procedure must be reasonable. It has to be just and fair. It cannot be arbitrary, whimsical or fanciful. It cannot be any procedure that may be laid down by law. It has to be a procedure "established by law". "Established" means, such things as have relevance.

The human rights granted by the Constitution are too valuable to be sacked by any prescription regardless of the essential standards. I submit that in the name of law, there cannot be a capricious command. Sir, law is law when it conforms to established norms and refrains from reducing life and liberty to a mere plaything.

This is what exactly the amending Bill tries to do. Here, the amending Bill defeats the very concept of liberty enshrined in the

Constitution and reduce the right and respect to life and liberty to a mere plaything.

Now, let us look at some of the provisions of this amending Bill. We have Clause 3 which lays down that a second detention order can be made even if there are no fresh grounds and even if the first detention order stands revoked. The first detention order stands revoked ; there are no fresh grounds and even on the same grounds, the second detention order follows. This is nothing but a mockery of what is called the procedure established by law, that is, the procedure which has the sanctity of a civilised nation. Such second detention orders can always defeat a discharge by court ; they are nothing but a more extension of the prior detention order.

Then, there is another provision in this amending Bill. Clause 2 provides that a detention order will not be invalid despite one or more grounds of detention being irrelevant, non-existent, not connected with the person concerned and so on and so forth. It is submitted here that when several grounds are given for the detention of a person, it cannot be ascertained with any degree of exactness as to which particular ground has acted upon the satisfaction of the detaining authority to make the order. Here, I must say that one cannot be certain which of those grounds helped the authority in deciding to make the order.

Sir, you take a very simple example. There is a glass of pure water which the hon. Home Minister wants to drink ; there is a drop of foul liquid in that full glass of pure water and surely he will throw away the whole of it. He will not drink it. He will not see or try to separate the foul element from the good element and look at the satisfaction and try to drink some water and leave the other. Even one drop of foul liquid in a full glass of pure water fouls the entire water. The entire detention order, therefore, I submit remains invalid if there are grounds, which are irrelevant, if there are grounds which have nothing to do whatsoever with the person

concerned, if the grounds are non-existent and so on and so forth.

There are umpteen cases of gross misuse or abuse of powers of detention. Therefore, the wider the powers, the greater is the need for caution. Here, I may be permitted to refer to one matter which has created a lot of heat and dust in this House as well as outside the House and that is about the detention and the release or I may say specially about the release of Mr. Haji Mastan, Mr. Karim Lala and others.

18 00 hrs.

I must say that I am not concerned with their alleged activities involving violation of Custom laws or the violation of foreign exchange laws and so on and so forth. That is not the question. The Government has sufficient laws with them to take action against any person. The detention orders that were served on these persons, Shri Haji Mastan, Abdul Karim Khan popularly known as Karim Lala and Shri Rashid Arba and others specifically mention their involvement in the riots that took place in Bombay and other places in the month of May and I submit that these detention orders are an example of the gross misuse and abuse of powers under the National Security Act on the ground of their involvement in the riots. A lot of heat and dust has been raised in this House and outside, as I said, upon their release instead of questioning their detention on these grounds which were fabricated and totally baseless. Instead of challenging those grounds, unfortunately, the heat and dust was created on their releases. Not a word was said, unfortunately, about the sudden release of those in the Shiv Sena. Which Shiv Sena people had an open general licence to attack the Muslims over there. Not a word has been said upon the release of the Shiv Sena people but, all the heat and dust has been raised about the release of these people. I am not talking about their activities. I am talking of their detention on the grounds of their involvement in communal riots.

Here I may be allowed to read a few lines

[Shri G.M. Banatwalla]

from the "Daily" newspaper of Bombay dated the July 30th, 1984 from the first page. I quote with respect to Shri Karim Lala and Haji Mastan and such people :

"The release was effected by lack of sufficient evidence, documentary or otherwise to prove their involvement in the May communal clashes in the city."

The attack ought to have been against the Government, against the authorities passing orders despite the fact that there was no clear evidence against these people. The same newspaper again says and I quote :—

"Investigations revealed that after his detention, Lala had produced documentary evidence to prove that he was out of the country in Pakistan for four months during the period of riots."

\* The person was not even in the country.

PROF. MADHU DANDAVATE : That shows that there was a foreign hand.

SHRI G.M. BANATWALLA : The person was not even in the country. There are some people who are obsessed with foreign hands. I am not.

I say those persons Karim Lala and Rashid Arba were not even in this country for months at a time when the riots took place and yet they were detained. What gross misuse of the powers ! Hence there is the greater need for proper safeguard to be there in the procedure of detention.

Again in the same "Daily" newspaper of August 1, 1984 from page 3, I quote.

We are told :

"The truth is that the grounds supplied to all the detenus were of a general nature, frivolous, full of fallacies and fabrications."

There is a whole article here, examining each and every ground that was mentioned in the detention order and showing how the ground was totally fabricated...

MR. DEPUTY-SPEAKER : Please conclude.

SHRI G.M. BANATWALLA : Mr. Deputy-Speaker, Sir, before I conclude, the ends of justice must be met. Before I conclude, the Home Minister should also make up his mind to rise and withdraw this obnoxious piece of legislation.

I was referring to those people about whom a lot of heat and dust have been raised....

MR. DEPUTY-SPEAKER : Let the Minister reply ; then we shall see whether the ends of justice are met by him or not.

SHRI G.M. BANATWALLA : One of the grounds mentions that arms and ammunitions were passed on. Here it is very surprising to know that one Mr. Kazi was mentioned as the person, and still the police were not able to show whether they had recovered any weapons from his person or from Kazi's residence. The same paper goes on to say, and that is a fact, that the police even raided the office of the organization of which Haji Mastan is the President in order to recover the so-called weapons which he was supposed to be supplying to the people. We are told :

"The police could recover only two bottles of acid one of which was meant to clean the lavatory."

It is not their release that is to be called into question, it is their detention and the misuse and abuse of the powers of detention that had to be called into question. Further, in the same order of detention, we were told that perhaps a meeting took place on a particular date and at a particular place and that meeting was attended by Karim Lala and Rashid Arba, and so on and so forth, whereas even the passport entries, the emigration and other entries, will show

that at that time they were not in India at all. These are all figments of imagination. It is very strange that while allegations were made that, what are called, 'Molotovcock-tails' were manufactured by these people and stored, these things were not found anywhere...

MR. DEPUTY-SPEAKER : From this, what actually do you want to arrive at ?

SHRI G.M. BANATWALLA : You have understood already.

MR. DEPUTY-SPEAKER : You have not come out with that. Shall I help you ? Maybe 'executive excesses.'

SHRI G.M. BANATWALLA : Therefore, here, I must raise my voice of protest against this heat and dust that had been created in this House and outside also, and let the matter go on record. Here it was said that one hon. Member of the ruling Party tried to secure their release. I am not concerned with that as to on which ground the release was tried to be secured. But then let it be clearly known, and let it go on record, that I myself led a Delegation consisting of people of all shades of opinion to the Maharashtra Chief Minister pointing out to him the gross abuse of the powers under the National Security Act, as you say, the misuse by the executive of the powers, and among various other things that we placed before him, we had also called upon him for release so that justice is duly met. This has only to do with the allegations on them about involvement in riots, not on other grounds; that is a different thing about which the Government has all the options open to it. I must, therefore, express my great distress that while such heat and dust was raised at the release of these people, not a word was uttered about the release of those Shiv Sena leaders who were there having a licence to indulge in all sorts of activities....

PROF. MADHU DANDAVATE : The grounds of their release were mentioned because they abstained in voting during the Chairman's election.

SHRI G.M. BANATWALLA : That is a thing known to one and all that I deal for abstention was struck between Congress (I) and the Shiv Sena to get their Chairman elected in the Legislative Council and if there was any such deal—I am convinced that there was—it was most condemnable. Most condemnable. No doubt about it.

MR. DEPUTY-SPEAKER : Please conclude now.

SHRI G.M. BANATWALLA : Sir, since you are a little restless and your restlessness can be understood because we have a very obnoxious piece of legislation before us and you do not want...

MR. DEPUTY-SPEAKER : You know the time allotted was 2 hours but we have taken 4 hours and we have to conclude this. Therefore, I am restless.

SHRI G.M. BANATWALLA : It is only in deference to your restlessness that I may conclude by saying that this amending Bill seeks to defeat even the most elementary Principles of criminal procedure evolved by the experience of civilised mankind. This amending Bill seeks to allow such premium on abuse or misuse of powers of detention that preventive detention can easily operate as preventive liquidation in effect.

श्री वृद्धि चन्द्र जैन (बाड़मेर) : उपाध्यक्ष महोदय, यह जो नेशनल सिक्योरिटी एक्ट का सैकण्ड अमेंडमेंट बिल प्रस्तुत किया गया है, मैं उसके सम्बन्ध में अपने विचार सदन के समक्ष रखना चाहता हूँ। इस बिल में दो अमेंडमेंट्स प्रस्तुत किये गये हैं—इसके पहले संशोधन से तो मैं सहमत हूँ लेकिन जो दूसरा संशोधन है उससे मैं बिल्कुल सहमत नहीं हूँ। पहला संशोधन जो 5(ए) है उसमें जो ग्राण्ड्स दिए जाते हैं उनमें अगर एक भी ग्राण्ड्स रिलेवेन्ट है तो डिटेन्शन आर्डर को रिजेक्ट नहीं किया जाना चाहिए—इस राय से मैं बिल्कुल सहमति प्रकट करता हूँ। जहाँ तक दूसरे अमेंडमेंट का ताल्लुक है—अगर कोई भी डिटेन्शन आर्डर रिवोक हो जाता है तो उसके

[श्री वृद्धि चन्द्र जैन]

बाद भी उसको फिर से डिटैन करना—मैं इस सिद्धान्त के खिलाफ हूँ और मेरी दृष्टि में यह मोरेलिटी के खिलाफ है। यह कानून की इन्टेन्शन के भी खिलाफ है क्योंकि जब आपने किसी को छोड़ दिया और उसके बाद फिर कोई रीजन न देकर फिर से डिटैन कर दिया तो डिटैन्शन का यह जो तरीका है यह कानून की मंशा के खिलाफ है। इस सम्बन्ध में जो एमेंडमेंट प्रस्तुत हुआ है, उससे मैं कतई सहमति प्रकट नहीं करता हूँ।

अब प्रश्न यह उठता है कि अपोजीशन साइड बार-बार इस प्रिवेंटिव डिटैन्शन के कानून की मंशा के विरुद्ध विचार प्रकट कर रही है। 1977 में जनता पार्टी का राज्य आया और आर्टिकल 22(7) आफ बि कांस्टीट्यूशन में प्रिवेंटिव डिटैन्शन का प्रोविजन है और उस वकत जनता पार्टी ने उसको हटाने के लिए कोई एमेंडमेंट नहीं किया। अगर वे समझते कि इस प्रकार के कानून नहीं बगने चाहिए तो जितने भी कानून नेशनल सेक्यूरिटी एक्ट या प्रिवेंटिव डिटैन्शन या दूसरे इस प्रकार के कानून बने हुए थे, उनको एमेंड करती। कोफी-पोसा का कानून 1974 में बना था लेकिन उसको नहीं बदला। 1977 में जनता पार्टी का राज्य आया था और उसी समय मध्य प्रदेश की सरकार ने मिनी मीसा का कानून बनाया और उस समय जनता पार्टी की सरकार को कम्युनिस्ट भी सपोर्ट करते थे। उन्होंने भी प्रिवेंटिव डिटैन्शन के कानून को बदलने के लिए नहीं कहा। मैं ऐसा समझता हूँ कि उस समय उन्होंने भी यह आवश्यक समझा कि इस प्रकार की जो शक्तियाँ हैं, जो टेरॉरिस्ट शक्तियाँ हैं, जो सेसेनिस्ट शक्तियाँ हैं, राष्ट्रविरोधी शक्तियाँ हैं, उनके खिलाफ कार्यवाही करने के लिए प्रिवेंटिव डिटैन्शन की तरह के कानून बनाना आवश्यक है। इसलिए बार-बार इस बात का विरोध करना अपोजीशन पार्टीज द्वारा कतई उचित प्रतीत नहीं होना।

आज इस प्रकार की स्थिति हमारे देश में है

और पंजाब की जो स्थिति है, उसमें अगर हम एक्शन न लेते, तो क्या हालत होती। हमने वहाँ पर बड़े-बड़े लीडर्स को एरेस्ट किया है और प्रिवेंटिव डिटैन्शन एक्ट के अन्तर्गत एरेस्ट किया है। उन लीडर्स के नाम मैं आपको बताना चाहता हूँ।

**SHRI KRISHNA CHANDRA HALDER (Durgapur):** He said that at the time of the Janata regime, we, the Communists supported this Preventive Detention Act. It is not true. I want to make the record straight. We opposed the Preventive Detention Act in Janata Regime also. You go through the records and you will be convinced. So, don't comment without knowing the facts.

**श्री वृद्धि चन्द्र जैन :** आपने जनता पार्टी को, मोरारजी देसाई जी की सरकार को समर्थन दिया था और पूरी तरह से उनको समर्थन दिया था।

**SHRI SATYASADHAN CHAKRABORTY:** In Kerala, there is Muslim League. That does not mean that they also support Mr. Banatwalla's speech.

**श्री वृद्धि चन्द्र जैन :** नेशनल सेक्यूरिटी एक्ट का प्रयोग करके इन लोगों को किरफ्तार किया गया है :

Shri Gurcharan Singh Tohra, Shri Harchand Singh Longowal, Shri Prakash Singh Badal, MLA Shri Surjit Singh Barnala, former Union Minister, Shri Harbinder Singh Sindhu and Shrimati Amarjit Kaur.

प्रिवेंटिव डिटैन्शन एक्ट के अन्तर्गत अगर एरेस्ट न करते...

**श्री राजेश कुमार सिंह (फिरोजाबाद):** भिडरावाला को आपने एरेस्ट नहीं किया ?

**श्री वृद्धि चन्द्र जैन :** भिडरावाला तो समाप्त हो गए हैं।... (व्यवधान)... आप भी चाहते हैं कि प्रिवेंटिव डिटैन्शन एक्ट हो और इसका मतलब यह हुआ कि आप भी इसके कानून को सपोर्ट करते

है। यही मैं कह रहा हूँ कि आप भी इसका समर्थन करें। हम यह चाहते हैं और बिल्कुल यह चाहते हैं कि इस कानून का राजनीतिक दृष्टिकोण से उपयोग नहीं करना चाहिए। हमारी प्रधानमंत्री जी ने इसको स्पष्ट किया है कि हम इस कानून का उपयोग राजनीतिक तौर पर नहीं कर रहे हैं और कभी भी नहीं करेंगे। हम इस कानून का उपयोग टेरोरिस्ट्स के खिलाफ कर रहे हैं, उग्रवादियों के खिलाफ कर रहे हैं, ऐसी शक्तियों के खिलाफ कर रहे हैं जिन्होंने हिन्दुस्तान का विभाजन करने का प्रयास किया। आज पंजाब में जो स्थिति है वह देश को विभाजित करने का प्रयास रहा है। इसलिए वहाँ सरकार की तरफ से एक्शन लिया गया और इस कानून की भी आवश्यकता पड़ी।

पंजाब में जो टेरोरिस्ट्स हैं उनको सजा दिलाने के लिए इस प्रकार के कानून की आवश्यकता थी। क्योंकि टेरोरिस्ट शक्तियों के खिलाफ शहादत प्राप्त करना मुश्किल होता है। उनके खिलाफ शहादत प्राप्त नहीं की जा सकती है। इस कानून का इस्तेमाल वास्तव में देशद्रोहियों के खिलाफ किया जाएगा जो राष्ट्र की सुरक्षा के लिए किया जाएगा। उन शक्तियों को दबाने के लिए किया जाएगा जो साम्प्रदायिक दंगे कराती हैं। अपोजिशन वालों ने कहा कि हाजी मस्तान और करीम लाला को पहले डिटेन किया गया फिर छोड़ दिया गया। मैं सरकार से जानना चाहता हूँ कि उन्हें रिलीज क्यों किया गया? आपने यह कानून में प्रोविजन कर रखा है कि बिना ग्राऊण्ड बताये फिर से किर्स; अपराधी को अरेस्ट कर सकते हैं—हालांकि इस कानून को मैं ठीक नहीं समझता—तो फिर आपने उन स्मगलर्स को फिर गिरफ्तार क्यों नहीं किया? आज हमें ऐसी शक्तियों के खिलाफ सबूत कार्यवाही करनी है। हमारे सामने यह क्लियर पिक्चर होनी चाहिए कि ये स्मगलर्स राष्ट्र विरोधी कार्य करते हैं और उनके खिलाफ सबूत कदम उठाएँ। अगर गवर्नमेंट ऐसा करेगी तो इससे हमारी ईमानदारी प्रकट होगी।

SHRI A.K. ROY (Dhanbad): Mr.

Deputy-Speaker, Sir, National Security Act has raised the question about the security of the government despite having vast majority. This amendment to the National Security Act has raised question about the basic sanity of this government. I am not talking of thundering Fernandes but many sober members and genuine friends of the government would feel worried about the future of this ruling party.

Sir, this Act is an indication that this government is seriously ill. This is the symbol of illness of the government. This is what worries us. Why are they feeling afraid and insecure? They have got a hand—both hand of this country and outside—but why even having hand they are feeling insecure. The insecurity is the basic cause.

Now, they are ruling in most of the States and some States which might come as a bottleneck have been toppled also. You should feel yourself quite normal. It is not a qualification of a government if it fails to rule a country with a normal law. It is definitely something of a serious concern if it takes every day farther from the normality. That is what worries us. We are, not the legal experts. We are not experts on law. We are the poor victims of law. What is the basic philosophy of this amendment? This seemingly simple amendment would raise many political and ethical questions and it will be on record. I ask: what is the basis for these two amendments that each ground should be taken in a disjointed way and a person's detention could be extended even after the end of the detention period? What does it mean? Everybody knows that it is a necessary evil and our Constitution has got a provision for this. But this provision is applicable in rare case and with all seriousness the Supreme Court or any High Court cannot go into the merits. What do they say about the satisfaction? Satisfaction does not reflect on the merit of the Government. But there are opportunities and provisions about how the executive authority exercises its mind and that is most important. You are entrusting the charge of judiciary and executive, you are just combining the two, compounding the two and giving the respon-

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sibility to a person. So, it is expected that you would exercise your mind, think coolly and then thunder. How is it that you are making several grounds whatever may apply? Can this be the basis for any jurisprudence from the Roman Days to the present day? You consider one year first and afterwards suddenly you will start telling again one more year should be the detention period when the person is already in custody.

In this context, I may give some instances. I was just studying History, particularly on the Preventive Detention Act in British time. At that time also, there used to be Preventive Detention Acts. No bourgeois Government, no Capitalist Government was having such a stringent Act as the present measure. The Government of India Act has got this in Article -2. Now, you are putting it in Article 123. You were bringing forward Ordinances to the extent of 10 per year and now you are bringing forward about 20 Ordinances per year. I am not going into that. But if you go into the details of two previous Preventive Detention Acts, you will find that with the enactment of the Rowlatt Act, there were so many agitations all over India and massacre of Jallianwalabagh took place. It was Act No. 11 of 1919. It was called the "Act to prevent the revolutionary and anarchical crimes". But in that Act also, they made a provision that that Act would remain for three years. That means, they expected that after three years things would become normal. Abnormality cannot be a perennial phenomenon. There is a basic premise on which every civilised society moves forward. Emergency and abnormality cannot be a perennial phenomenon. In the Public Safety Bill on which Prof. Madhu Dandavate mentioned about Bhagat Singh's—bomb throwing incident, the then Chair declared it out of order. Sir, there also a provision was made that it would prevail for five years. That means the British Government also thought that the situation would definitely improve within the period of five years. But here you came forward with the National Security Act in

1980 and you did not mention the period as to how long it will remain. Today you are going to leave, at least we expect that you leave us at the point when you took over the power. That means, even after the National Security Act was enacted, it should be more diluted, more liberal or it should be withdrawn, but instead, as the days are passing, you are feeling more and more insecure, you are tightening it more and more. In which direction you are going? That is the most important point. If you take the medicine to cure your disease, you should also know that there is a certain time when you should leave the medicine. You will have to live without medicine after a certain period. But if you go on increasing the doses, what does it mean? That means, you have lost certain elementary vitality and for which solution should be seen in other places. What is the basis of this type of jurisprudence? Is there any law or precedent anywhere? Yes, one precedent is there against this type of reasoning. Where is it? It is in Aesop's fables. What is that precedent? Have you read the story of wolf and lamb? When the lamb replied that he was not contaminating the water, because the lamb was in the downstream, the wolf said that in that case, his father or grand-father would have contaminated the water, and ultimately he told the lamb, then he was to eat him up. Why to amend and re amend this Act? You come out with a simple two-line legislation that the Government can detain under Article 22(A) any person any time for any period subject to the satisfaction of the detaining officer. I may vote for or against it, that is a different matter. What is the necessity of so many clauses, sub-clauses and provisos? Why waste time of the House unnecessarily? Just have a two-line simple law that the Government can detain any person for any period subject to the satisfaction of the detaining authority. Finish. What is the fun of all this?

Lastly, I would like to make two more points. Fortunately, there is some direction before the Government on the National Security Act, and that flows from the judgement of the Supreme Court in the case of

my detention. That was the famous judgement.

MR. DEPUTY-SPEAKER : That means, you are the author of this amendment.

SHRI A.K. ROY : There was some direction. This Government may not be legally bound to obey that direction, but Government is morally bound to respect that direction. It was said that there was a provision of preventive detention in the Constitution, but that could be used only under certain conditions and restrictions. In that judgement, the judges upheld the detention of a person acting in a manner prejudicial to the defence of India, security of India, security of the State and to 'relations with foreign power'. These are the serious charges like security of the State, defence of India, national interest etc. Can there be any ground of such serious charges which could not be relevant, not connected or not approximately connected, or invalid for any other reasons ? All these things, for which you have given latitude to the person, can that be valid ? That is why, I am saying that every Act has got its own way, its own premise, and certain limitations, it has got certain basic character. Rule of law does not permit rule of discretion and arbitrariness, to which the Government is lending a hand.

Now my last point is regarding the Janata Party. Shri Chitta Basu was very soft to them, but I will not be that soft. I can deal with the autocracy of the Congress, but I cannot deal with the hypocrisy of the Janata. That is the first thing I want to mention.

PROF. MADHU DANDAVATE : Why are you spoiling your speech ?

SHRI A.K. ROY : I may be spoiling my speech. But I must speak the truth. Because it is like the pot calling the kettle black. They passed the law and the Congress sided them. Any Constitution Amendment Act can be passed only when two-thirds majority is obtained and 50 per cent of the members remain present. For that the help of the

Congress is needed and that is why Janata and Congress, both together, passed the amendment to Article 22. Why ? Because they wanted that even preventive detention should come under some judicial scrutiny. That is why they reduced the period from three to two months and also stated that the Advisory Board will be appointed by some Chief Justice. But what happened ? After that the Janata Government remained for three months. They got a provision 1(2) where they said that each and every amendment will be implemented and notified by issuing individual notifications and they notified every amendment. The first batch of notifications was issued on 20.6.1979 and the second batch on 1st August 1979. After four months, the Janata Government fell. They did not notify the amendment to Article 22, for which whom to blame ? For that lapse of the Janata Party, we will have to answer to the people.

But now, what do these Congress people have to say ? The Supreme Court judgment is against these people. They are feeling happy because I made some comments against Janata. But this judgment is against these people. It says—

"It is odd that even after two and a half years, the Act has not been enforced, but it is for Parliament to take notice of it...It is difficult to appreciate what practical difficulty could possibly prevent the Government from bringing into force the provisions of Section III of the 44th Amendment after its passing two and a half years ago..."

Again it says—

"The remedy is not a writ of mandamus, but Parliament having seen the necessity of introducing into the Constitution a provision like Section III of the 44th Amendment, it is not open to the Central Government to sit in judgment over the wisdom of the policy of that Section."

The Janata Party and the Congress Party have passed it unitedly. I would like to

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say Sir that this entire amendment is proceeding in that direction. The entire direction of the Government is from normality to abnormality. The entire direction of the Government is not towards broadening the base of democracy but more and more to curtail it. It reflects on the very health of the Government.

Sir, lastly I would like to tell you that you can act with a bayonet, but you cannot sit on it and by this amendment you are going to sit on the bayonet.

MR. DEPUTY-SPEAKER : Now the Minister will reply to the considered Motion.

THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA RAO) : Sir, I do not find much to reply to because I have already placed before the House the rationale of these amendments. In the first place, I have explained that there is no substantive addition in these amendments. If we have made any substantive provision over and above what was there in the April amendment, I would certainly have had to explain what happened between April and June which necessitated this addition. But since there has been no such substantive addition, I would like to submit that the question of explaining what happened between these two dates does not arise. This is more an amendment to get over certain difficulties created by the multiplicity of judicial pronouncements.

I can read several judgements which have given opinions and decisions which are not entirely in line with one another. I have already read out from the COFEPOSA judgement where again preventive detention provisions have been used, where it has been upheld that the grounds are severable; and, therefore, I don't have to go into them. I have already said that.

In another judgement, for instance, the very last paragraph says :

"Nothing in this judgement, how-

ever, shall preclude the State Government or District Magistrate, if so advised, from passing fresh orders of the detention of the petitioners or any of them after full and meticulous compliance with the procedure prescribed by law."

They found that, in that case, the grounds were not bad; but the procedure which was adopted was defective. They said that while the grounds were all right, the procedure, technically, that had been adopted, had been found defective. Therefore, nothing in this judgement will preclude Government or the detaining authority from issuing a fresh order of detention.

So, there are instances like this, each case depending on its own merit, but the cumulative effect is that a lot of doubt has been created, and not only in the minds of those who are concerned but also in the minds of the general public: what exactly is meant by one decision which is not completely in line with another, which again is not completely in line with the third, and so on. Therefore, this is the reason, this is the ground on which these amendments have been brought in.

The other point that has been raised is about amendment of Section 14. I would like to submit that amendment to Section 14 runs like this :

"(2) The expiry or revocation of a detention order (hereafter in this subsection referred to as the earlier detention order) shall not...bar the making of another detention order... under section 3..."

This is precisely what I have read now. This last paragraph from a judgement of the Supreme Court where it says that if there are any technical flaws where a procedure has not been complied with, this does not preclude the authority from issuing a fresh detention order. Now, it is firstly meant to cover such cases; and the other type of cases is this—after all, it is not the district magistrate, it is not the primary authority

which issues the detention order, which can also revoke that detention order. Revocation is done by the State Government or the Central Government, as the case may be. So, suppose the State Government, in a particular case, comes to the conclusion that although an order given by the District Magistrate has been revoked, certain grounds, certain fresh instances have meanwhile come to the notice of the State Government, which the State Government, feels are weighty enough to warrant another order of detention. What this amendment says is that in such a case, the State Government would be well within its power to issue another order of detention and normally that order also would be available for one year. But, in this provision what has been done is that if another order is given, that cumulative period for both the orders shall not exceed one year so that the duration of the second order has been limited to the remaining period after deducting the time elapsed since the issue of the original order. So, in a way this is a concession given to the detainee and not any fresh hardship caused to him. So, these are the two or three points which I wanted to stress.

And on the other question of principle, etc. etc., now much has been said. We can reel off principle from both sides. The fact remains that preventive detention has been bound necessary right from the beginning—I can read from the speeches of Sardar Patel, from the speech of Dr. Ambedkar and others who were very fully involved in the debate that everyone in the Constituent Assembly considered such a provision necessary and that is why it was enshrined in the Constitution. Now, having done that, there are certain provisions flowing from that, certain logic flowing from that ; and it is only on the basis of this logic that we have been having all this controversy from time to time ; Bills being passed into laws ; then again being repealed but somehow being brought from the back door etc. etc.

If the Janata Government had brought some changes and if the Congress at that time supported changes, it only means that

those who are running the government know where the shoe pinches and therefore they have to be a little more realistic than Mr. A.K. Roy. That is all. This is the background of the whole thing and I would like to say that this has to be seen as something which has become necessary. Now, I do not have to go into all the details of what has happened and how it has become necessary. But one thing is clear that in this country for various reasons, law and order has become a very difficult to maintain and new legal interpretations are springing which make the maintenance of the implementation of the existing law more and more difficult and complicated. That is why there seems to be a regular tussle. In article 22 there are only 5 words 'as soon as may be', which have been interpreted in judgement after judgement in such a way that the implementation of any law emanating from those words has gone on becoming more and more difficult. I am not blaming anyone ; I am not criticising anyone ; I am only placing before you the history of the case law on this. Now, it is quite possible to have a second look whether we should have allowed all this to happen and still the matter to remain uncertain today or is there anything that could be done to make it quite clearcut so that everyone knows where he stands ; the detaining authority knows where he stands ; the court knows that there is no ambiguity there and there is no need for bringing in fresh ideas in every case by way of interpretation. For instance, severability of the grounds', has been established in many cases ; in one or two cases, it is said that if one of the grounds is bad, then everything falls through. Now, how do you understand this ? How do you reconcile these two judgements ? It is just not possible. Therefore, some clarity has to be brought into this ; this is what is sought to be done. In the same way, in none of the earlier judgments, was the question of prejudice to the detainee discussed in detail. That has come in later judgments. That is why in my earlier speech I said that by this procedure no prejudice is caused to the detainee, if there is a vague charge, he says that it is vague, if it is non-existent he says that it is non-existent, it came to be incorporated in

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the order because the detaining authority in good faith thought that these are all good grounds, some turned out to be not good later, but on the basis of that, as Mr. Shejwalkar was saying, suppose the authority has said that he thinks that on each of these grounds the detention is justified, then as he says the Court cannot object to that. Suppose someone asks, should the detention be bad because the authority has not said this? Is it because of this *Bhool Chook* that the whole detention should fall through? This is not good logic. This is not correct, and in the administration of a country with so much complication, where grounds are to be written within a very short time, there is not much extension of the time, and suddenly if many cases are happening in a particular area—as has happened in some areas recently—it will not be possible under the stress of circumstances in which the officials are working to be absolutely meticulous in writing down all these grounds and if one of the grounds happens to be wrong, if one ground turns out to be irrelevant,—after all relevancy is something relative—so if it is not very relevant or not quite relevant—does it mean that the entire order should fail? This is not the correct way of looking at things.

SHRI N.K. SHEJWALKAR : It is subjective.

SHRI P.V. NARASIMHA RAO : That is what I am saying. You yourself raised the point. If subjectively he thought, or he said, 'I feel, I am convinced that each one of the ground is good enough for detention', then you say there is an end of the matter. That is precisely what I say. If for any trivial or technical reason one authority has said so, and another has not said so, where is the distinction?

SHRI N.K. SHEJWALKAR : How can you distinguish?

SHRI P.V. NARASIMHA RAO : That is what Justice Jagannath Das has said. That is what other Judges have said. If the

grounds are severable and the Court comes to the conclusion, after severing the good from the bad, if the good ground is good for detention, then the detention order stands. That is what he said. Do you want me to read?

SHRI N.K. SHEJWALKAR : Another court has said it.

SHRI P.V. NARASIMHA RAO : I have gone through it. That is so in one judgement. In some other judgement the opposite has been said. That is why this doubt has arisen, that as a result of or in view of the multiplicity of judgements one ground may be good for detention and another ground may not be.

PROF. MADHU DANDAVATE : Really, this debatable point arises out of the fact that the detaining authority gives ten or twelve grounds. One of the reasons for giving so many grounds is that they are not sure of any ground at all. Therefore, they would like to give many grounds under the law of probability.

SHRI P.V. NARASIMHA RAO : It may be so. This is one presumption you are making. I am prepared to make another presumption, which is equally correct, which is equally applicable, that he may be getting the reports on the basis of which he can write out five or six grounds but later on it appears that all the five or six grounds are neither completely valid nor totally invalid, some of them are valid, some of them are invalid. It is quite possible, there may be some confusion in the minds of the people. That I do not deny. That is why supplementing this later, something needs to be done on the administrative side. I should later tell them, I agree with that. I think Mr. Somnath Chatterjee said that may be the Collector is not writing out the grounds, may be a Sub-Inspector is writing. I do not know. It is possible. In the heat of the moment there may be some lapses. Those lapses will have to be looked into administratively but not by opposing the legislation. That is something which we can look into.

**SHRI SATYASADHAN CHAKRABORTY :** How can you look into those things administratively later on ?

**SHRI P.V. NARASIMHA RAO :** Administratively, we can give them some instructions, that 'you can approach the matter this way', or that this is the way have to satisfy yourself. Your subjective satisfaction is to be arrived at in such and such manner." These are the instructions that can be given and that need to be given. I am not talking in terms of individual cases. That we cannot do.

**SHRI N.K. SHEJWALKAR :** Instructions were issued to the Collector that he should go to the jail, call everybody to see that they should give the undertaking. If they give the undertaking, release them. This was the joint instruction and not individual.

**SHRI P.V. NARASIMHA RAO :** I do not think there were any instructions like that.

**SHRI N.K. SHEJWALKAR :** I can prove that if you want.

**PROF. MADHU DANDAVATE :** Even if you go by mere experience, cyclostyled orders were ready during Emergency and for some Members who were dead actually, orders were given and the members when they were traced, were told that they had gone to the Heaven, go to the Heaven to issue the order.

**SHRI P.V. NARASIMHA RAO :** We are talking of something else, a different situation, a different context, a different law, a different amendment. Let us not really start picking a things which will not really lead us anywhere. If it comes to that, I have got a list of those who have been detained. (Interruptions) Yes, Mr. A.K. Roy has been detained under this. I would have been happier if he had not spoken. According to the report which I have received, the detention order made by the District Magistrate, Dhanbad, was not approved by the State Government on test of proximity. That is

all. I am not finding fault with Mr. Roy. Since you have become the subject-matter of discussion in this House and since you have also chosen to speak, you asked for only this much. There is nothing wrong in this. The State Government only said that Mr. Roy made that speech or whatever he did, long ago, so, why detain him now and we therefore release him. So, he was released by the State Government. Under the same law, under the same constitutional principles he was released. It is not as though he got released from any other source.

**SHRI A.K. ROY :** In my speech even remotely I said. (Interruptions)

**SHRI P.V. NARASIMHA RAO :** That was a matter for the advisory board. The State Government released you on the ground that you made a speech so long ago that it need not be made a subject of detention now. That is the point. That is the ground on which you were released. I am happy that you have been released. But the point is that such releases are also taking place. I can give you the percentage of releases made by the State Governments and the Central Government. Taking those percentages into account, no one can say that this law has become draconian. It has not become draconian and it is as fair as it should be. There is no question of calling it draconian. (Interruptions)

**PROF. MADHU DANDAVATE :** Since you have chosen to give illustration of Mr. A.K. Roy and tried to explain to us how the State Government actually acted and released him, since you have raked up that problem, let me tell you how the executive functions. In the case of those of us who were detained in the Bangalore jail during Emergency under the order of the Bangalore Commissioner of Police, what happened ? We went to the court of law. When we went to the Karnataka High Court and filed a writ petition, strangely enough the Central Government intervened and they released us early in the morning and within five minutes when we were out of the jail, the Central Government re-arrested all of us and we were told that the writ petition had become

[Prof. Madhu Dandavate]

infructuous. That is the way Government functions.

**SHRI P.V. NARASIMHA RAO :** Under this law the State Government can release. The State Government have released in umpteen cases. The Central Government can release. The Central Government have released in umpteen cases. On the other hand, if the release effected in a particular case happens to be such that it should not be sustained and that there are other grounds, a man can be detained again. That also is possible.

19.00 hrs.

So, it is possible on both sides.....  
(*Interruptions*).

**PROF. MADHU DANDAVATE :** I am only trying to tell you that in order to avoid the judicial scrutiny, what type of manipulations you are capable of doing.

**SHRI P.V. NARASIMHA RAO :** Let me tell you. In the very first discussion at the stage of introduction I said that every law can be misused. Not only this, any law in this country or in any country can be misused. Sagacity lies in seeing to it that these laws are not misused. That is what I have been saying now. So, let us agree on that.

**SHRI N.K. SHEJWALKAR :** I agree ; but what is your machinery ? Your machinery is the State Government, police about which, of course, I have quoted and Mr. Chavan has also said. What is the machinery that you are going to use ? That is the whole point.

**SHRI P. V. NARASIMHA RAO :** What machinery do we have, I really do not know. Can you think of a new machinery, can you think of a machinery descending from heaven, can the Collector be changed between one government and another, can the sub-Inspector be changed between one government and another ?.... (*Interruptions*)

**SHRI N.K. SHEJWALKAR :** Practically you should not do that.

**PROF. MADHU DANDAVATE :** Which government we are giving the power, to that is what we have to decide.

**SHRI P.V. NARASIMHA RAO :** That is all right, that the people will decide. It is not for you and me to decide, the people will decide. People having decided that, nothing else changes, only you and I change. You change sides, we change sides, but those who are really implementing the laws remain the same. Let us understand that.

**SHRI N.K. SHEJWALKAR :** Academically I do not dispute that.... (*Interruptions*).

**SHRI P.V. NARASIMHA RAO :** Not only academically but practically also.... (*Interruptions*).

**SHRI N.K. SHEJWALKAR :** Practically you should not do that. When they are misusing, you should not try to give them more powers. That is my submission.

**SHRI P.V. NARASIMHA RAO :** I am not trying to give them more powers. As I said, in this amendment there is no more power given, not an iota of more powers given. This is exactly what I maintain. I am not saying anything which is out of line or out of tune with the facts of the case that this is not adding any substantive power to what is already contained in the previous Act. Thank you, Sir.

**MR. DEPUTY-SPEAKER :** Now Mr. George Fernandes.

**AN HON'BLE MEMBER :** The House was extended up to seven O'clock.

**MR. DEPUTY-SPEAKER :** You reply, I will take the permission of the House to continue and complete it....

(*Interruptions*)

**MR. DEPUTY-SPEAKER :** That is my

business, I have to conclude it. We have got lot of business for tomorrow....

(*Interruptions*)

**MR. DEPUTY-SPEAKER :** All right, I want the permission of the House to continue and complete this Bill.

**SOME HON'BLE MEMBERS :** Yes, yes.

**PROF. MADHU DANDAVATE :** Whatever you say, they will permit. Even if you say sit up to 12 O'clock they will say yes.

**SHRI GEORGE FERNANDES :** Mr. Deputy-Speaker, Sir, I had expected the Home Minister to reply to the various points that had been raised by me in the course of my submissions on the Resolution and also on the points which other speakers from this side had raised about this law. Instead of doing that, he has tried to justify this measure and, in the process, said that there have been certain judgements of the Supreme Court, one of which he sought to cite earlier and referred to again just now and said that since there have been different judgements, it was necessary for the Government....(*Interruptions*)

**SHRI P.V. NARASIMHA RAO :** I said one of the reasons, not the only reason... (*Interruptions*)

**SHRI GEORGE FERNANDES :** ...to come with this Ordinance which now is sought to be enacted into law. What is surprising, or may be not surprising, is that the Government has chosen to take shelter behind that judgement which enables it to use this severability idea and has chosen to ignore such judgements.

**SHRI P.V. NARASIMHA RAO :** I have only said there are judgements which are not in line with one another and hence we need to bring clarity into this according to what the Government thinks.

**SHRI GEORGE FERNANDES :** The

clarity which the Government now seeks is to use the severability idea, to make things difficult for the person who is going to be detained, rather than help the person, who becomes the victim of the high-handedness of the executive. In this the Government assumes to itself certain wisdom, and then chooses to transfer that wisdom to the executive through this amendment, which they have sought under section 5A.

The Minister relies on a judgment, which I think is dated 1981. I have here a judgment, which was delivered by the Supreme Court on the 12th April 1984. I have reasons to believe that this is perhaps one of the reasons which prompted the Ordinance and the subsequent legislation. I am citing from *All India Reporter*. Justice Shri Chinnappa Reddy said :

"It may not be said that those who are responsible for the national security or for the maintenance of public order must be the same judges of what the national security or the public order requires. It is too perilous a proposition. Our Constitution does not give a *carte blanche* to any organ of the State to be the sole arbiter in such matters. Preventive detention is not beyond the judicial scrutiny. While adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are certainly grounds of challenge."

Now you are trying to undo precisely what Justice Shri Chinnappa Reddy sought to convey in this judgment.

**SHRI P.V. NARASIMHA RAO :** That judgment undid what was done earlier ; don't forget that.

**SHRI GEORGE FERNANDES :** At the moment, what you are trying to do is to contradict this judgment. You did make this point that there are conflicting judgements and that you would like to take shelter behind that which suits your purpose for the present.

[Shri George Fernandes]

I must say that the Minister did make the point that he would not stand by the speeches which some of his party members have made in this House.

**SHRI P.V. FARASIMHA RAO :** As far as the other side is concerned.

**SHRI GEORGE FERNANDES :** As far as those who have spoken from this side of the House is concerned, I will deal with them separately.

I want to make this point here that what some of the members on the other side have spoken in the course of the debate has really been frightening. I want to say that it did give a shudder, at least down my spine, not because I am worried personally, that there were members here who referred to me personally and thought that laws like this are needed to deal with people like me. As my friend has said, this shows the thinking of the members of the ruling party. Because, they went to the extent of saying, what are the rights we are discussing, what is important is the nation, what is the Constitution that we are discussing, what are the constitutional safeguards that we are discussing? In other words, judiciary, the rule of law, all these are not important, what is important is the nation and, of course, the leader, because without the leader none of these gentlemen would be here. So, the leader and the nation alone matter and nothing else matters; this is precisely what the hon. Members on the other side have said. Some of them went to the extent of demanding that the detention should not be for one or two years, as this law now seeks to have, but they went to the extent of suggesting that detention should be for the life-time of the person against whom they have reasons to feel that he should be detained.

**PROF. MADHU DANDAVATE :** During their life time...*(Interruptions)*.

*(Interruptions)*

**SHRI GEORGE FERNANDES :** There were Members who then suggested that not only they believed in the law of Preventive Detention, but they believed that such laws should be made so stringent that a person once detained is not able to challenge these laws. Now, if this is the thinking of the Members of the ruling Party, I do not know what is in store for this country assuming that you continue to be there for a few months.

*(Interruptions)*

As far as I am concerned, I want to make my position very clear that I am opposed to preventive detention in principle irrespective of the specific law that you may try to bring forward. I have opposed your COFEPOSA in the same terms as I have opposed the Maintenance of Internal Security Act. In the same terms I am opposing the National Security Act. I oppose any detention without trial. And this is where I sympathise with my esteemed friend Shri Banatwalla when he says that what was discussed here in so far as certain individuals are concerned is their release and not the total irrelevance of the grounds of detention. When I cited a letter from an hon. Member of this House written to the Deputy-Chief Minister of Maharashtra in August 1983, I was not referring to the detention of last month, about which you read out the irrelevance of the grounds and total stupidity of detaining a person and charging him with holding meetings, when the concerned person was not even in the country.

I was referring to his detention last year in 1983 when Shri Ramarao Adik was the Deputy Chief Minister. He is no more the Deputy Chief Minister. The letter was addressed to the Deputy Chief Minister and the letter said that the detention of this person is creating difficulties for our party.

**SHRI P.V. NARASIMHA RAO :** You did not say that.

**SHRI GEORGE FERNANDES :** I did say that. Unfortunately in the din that you

all raised, what was said was not heard by you. I made the point that your Member writing to the Deputy Chief Minister said that\*\*

AN HON. MEMBER : A ruling had been given by the Chair on this. He cannot quote from it.

SHRI GEORGE FERNANDES : I am referring to the point raised by Shri Banatwalla.

MR. DEPUTY-SPEAKER : He is quoting ? He is referring to Shri Banatwalla.

SHRI GEORGE FERNANDES : I am only clarifying a point. Therefore, Sir, as far as my own personal approach to this problem is concerned, any kind of preventive detention is obnoxious and needs to be opposed.

Sir, the Hon. Minister referred to Shri A.K. Roy's detention and stated the order of the State Government. I would like to refer to the detention of one other person. If Shri A.K. Roy was the first victim of the National Security Act, Shri Shankar Guha Neogi of Madhya Pradesh, a distinguished Trade Unionist, was the second detenu under the National Security Act. Do you know the reason why he was detained under the Act ? Do you know the reason why he was detained under the Act ? He was detained under the Act because he conducted a campaign through the Union against the drinking of alcohol by the workers in that region. This created a situation where the local liquor contractor suddenly discovered that his business had gone down from Rs. 35 lakhs to Rs. 4 lakhs. And the next thing was that he brought about the detention of Shri Shankar Guha Neogi. He brought about—yes, he brought it about through the local legislator who also happened to be a Minister in the State Government. The matter finally went to the Advisory Board and the Advisory Board, after two-and-a-half months, when the papers were presented to it, ordered the

unconditional release of Shankar Guha Neogi.

AN HON. MEMBER : What is he doing now ?

SHRI GEORGE FERNANDES : He is doing his trade union work.

PROF. MADHU DANDAVATE : He is not drinking ?

SHRI GEORGE FERNANDES : He is continuing his campaign against alcoholism among the people in that region and he is doing the work that he has always been doing. I know of the work which does not suit your temperament, which does not suit the temperament of the Ruling Party in that area. He is still engaged in that work. But the point is that you are formulating laws which enable the Executive to use them against people who are engaged in legitimate political activity and I think this point has been brought out very well by those Members of the Congress benches who spoke on this Resolution and on the Bill when they said that it is not merely the anti-social, anti-national, terrorist elements, but it is also those who are politically creating difficulties for the Ruling Party against whom this Bill was being introduced. (Interruptions). Sir, my point is, a Member from this side spoke, I have given another instance, I can give you innumerable instances. Members named Longowal, they named Badal, they named Tohra, they named people of the Akali Dal who have been detained under the National Security Act. If this law is not to be used against political people, then....

SHRI P.V. NARASIMHA RAO : *Per se*.

SHRI GEORGE FERNANDES :...I would now urge the Home Minister to immediately order the release of all the Akali leaders who are detained under the National Security Act.

(Interruptions)

MR. DEPUTY-SPEAKER : Please sit down.

SHRI GEORGE FERNANDES : Sir, I have opposed the arrest of all the Akali leaders, I have demanded the release of all the Akali leaders and today I am citing the arguments which the hon. Members from the other side have given to demand that the Akali leaders who are today in jail to be released. I am making a formal demand of the Home Minister....

*(Interruptions)*

SHRI SATYASADHAN CHAKRABORTY : I wanted keeping them behind the bars. You did not agree to it. You are now entering into Akali politics—this Kar Seva which Buta Singh is doing. That is exactly what you people are doing for political purpose.

*(Interruptions)*

SHRI GEORGE FERNANDES : That was as far as this law is concerned. I am not at all convinced by the arguments that have been made by the honourable Home Minister and I commend my Resolution for acceptance by the House.

MR. DEPUTY-SPEAKER : Now I put the Statutory Resolution moved by Shri George Fernandes to the vote of the House.

The question is :

“This House disapproves of the National Security (Second Amendment) Ordinance, 1984 (Ordinance No. 6 of 1984) promulgated by the President on the 21st June, 1984”.

Those in favour may say Aye.

SOME HON. MEMBERS : Aye.

MR. DEPUTY-SPEAKER : Those against may say ‘No’.

SEVERAL HON. MEMBERS : No.

MR. DEPUTY-SPEAKER : Noes have it.

SOME HON. MEMBERS : Ayes have it. We want division.

MR. DEPUTY-SPEAKER : All right, let the lobbies be cleared.

The lobbies have been cleared. I will put the Statutory Resolution to the vote of the House. The question is :

“This House disapproves of the National Security (Second Amendment) Ordinance, 1984 (Ordinance No. 6 of 1984) promulgated by the President on the 21st June, 1984”.

*The Lok Sabha divided.*

Division No. 2

19.24 hrs.

AYES

Acharia, Shri Basudeb

Bag, Shri Ajit

Banatwalla, Shri G.M.

Basu, Shri Chitta

Biswas, Shri Ajoy

Chakraborty, Shri Satyasadhan

Dandavate, Prof. Madhu

Dandavate, Shrimati Pramila

Dhandapani, Shri C.T.

Era Mohan, Shri

Fernandes, Shri George

Ghosh Goswami, Shri Bibha

Gupta, Shri Indrajit

Halder, Shri Krishna Chandra  
Hasda, Shri Matilal  
Kodiyar, Shri P.K.  
Maltra, Shri Sunil  
Mandal, Shri Sanat Kumar  
Misra, Shri Satyagopal  
Mukherjee, Shrimati Geeta  
Rai, Shri M. Ramanna  
Riyan, Shri Baju Ban  
Roy, Shri A.K.  
Sayeed, Shri P.M.  
Sen, Shri Subodh  
Shastri, Shri Ramavatar  
Shejwalkar, Shri N.K.  
Sinha, Shri Nirmal  
Varma, Shri Ravindra  
Yadav, Shri Vijay Kumar  
Zainal Abedin

NOES

Ahmed, Shri Kamaluddin  
Ankineodu Prasada Rao, Shri P.  
Balrwa, Shri Banwari Lal  
Bansi Lal, Shri  
Bhagat, Shri H.K.L.  
Bhakta, Shri Manoranjan  
Bhardwaj, Shri Parasram

Birbal, Shri  
Buta Singh, Shri  
Chandrakar, Shri Chandu Lal  
Chandrashekharappa, Shri T.V.  
Chennupati, Shrimati Vidya  
Daga, Shri Mool Chand  
Dalbir Singh, Shri  
Das, Shri A.C.  
Gaekwad, Shri R.P.  
Gireraj Singh, Shri  
\*\*Giri, Shri Sudhir  
Gomango, Shri Giridhar  
Jain, Shri Virdhi Chander  
Jena, Shri Chintamani  
Jitendra Prasad, Shri  
Kaul, Shrimati Sheila  
Kaushal, Shri Jagan Nath  
Khan, Shri Arif Mohammad  
Khan, Shri Zulfiquar Ali  
Krishna Pratap Singh, Shri  
Kurien, Prof. P.J.  
Mahendra Prasad, Shri  
Mallanna, Shri K.  
Mallick, Shri Lakshman  
Mallikarjun, Shri  
Mishra, Shri Gargi Shankar

Mishra, Shri Uma Kant  
Motilal Singh, Shri  
Nagina Rai, Shri  
Naik, Shri G. Devaraya  
Namgyal, Shri P.  
Nurul Islam, Shri  
Panigrahi, Shri Chintaman.  
Panika, Shri Ram Pyare  
Patel, Shri Shantubhai  
Patil, Shri Chandrabhan Athare  
Patil, Shri Shivraj V.  
Patil, Shri Veerendra  
Pattabhi Rama Rao, Shri S.B.P.  
Poojary, Shri Janardhana  
Pradhani, Shri K.  
Quadri, Shri S.T.  
Ram, Shri Ramswaroop  
Rana Vir Singh, Shri  
Ranga, Prof. N.G.  
Rao, Shri M.S. Sanjeevi  
Rao, Shri M. Satyanarayan  
Rao, Shri P.V. Narasimha  
Raut, Shri Bhola  
Rawat, Shri Harish  
Reddy, Shri K. Vijaya Bhaskara  
Sahi, Shrimati Krishna

Sathe, Shri Vasant  
Satish Prasad Singh, Shri  
Sawant, Shri T.M.  
Shaktawat, Prof. Nirmala Kumari  
Sharma, Shri Chiranjil Lal  
Sharma, Shri Kali Charan  
Shastri, Shri Dharam Dass  
Shastri, Shri Hari Krishna  
Shiv Shankar, Shri P.  
Shivendra Bahadur Singh, Shri  
Sidnal, Shri S.B.  
Singh, Kumari Pushpa Devi  
Sinha, Shrimati Ramdulari  
Sultanpuri, Shri Krisban Dutt  
Sunder Singh, Shri  
Tapeswar Singh, Shri  
Tewary, Prof. K.K.  
Thungon, Shri P.K.  
Vairale, Shri Madhusudan  
Venkatasubbaiah, Shri P.  
Vyas, Shri Girdhari Lai  
Yadav, Shri Ram Singh  
Zainul Basher, Shri

MR. DEPUTY-SPEAKER : Subject to Correction; the result of the Division is as follows :

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\*The following member also recorded his vote.  
NOES : Shri Bishnu Prasad.

Ayes .. 31

Noes ... 82

*The Motion was negatived.*

MR. DEPUTY-SPEAKER : There is an amendment by Shri Satyagopal.

The questions is :

“That the Bill further to amend the National Security Act, 1980, be referred to a Joint Committee of the Houses consisting of 25 members, 15 members from this House, namely :—

1. Shri Ajit Bag.
2. Shri Ajoy Biswas.
3. Shri Somnath Chatterjee.
4. Shri Sudhir Kumar Giri.
5. Shri Matilal Masda.
6. Shri Sanat Kumar Mandal.
7. Prof. Ajit Kumar Mehta.
8. Shrimati Geeta Mukherjee.
9. Prof. Rupchand Pal.
10. Shri P.V. Narasimha Rao.
11. Shri A.K. Roy.
12. Shri Amar Roypradhan.
13. Shri Nirmal Sinha.
14. Shri Zainal Abedin.
15. Shri Satyagopal Misra.

and 10 from Rajya Sabha ;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee ;

that the Committee shall make a report to this House by the first day of the next session ;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees, shall apply with such variations and modifications as the Speaker may make ; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and Communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee.”

*The Motion was negatived.*

MR. DEPUTY-SPEAKER : The question is :

“That the Bill further to amend the National Security Act, 1980, be taken into consideration.”

*The Motion was adopted.*

*Clause 2—Insertion of new Section 5 A.*

MR. DEPUTY-SPEAKER : Shri Ramavatar Shastri, Shri G.M. Banatwalla, Shri Sudhir Giri, are you moving your amendments ?

SHRI RAMAVATAR SHASTRI (Patna) : I beg to move :

Pages 1 and 2,—

omit lines 16 to 19 and 1 to 8 respectively. (1)

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

Page 2,—

After line 12, insert—

“Provided that this section shall cease to apply to an order made on such grounds a majority of which are found to be invalid for any reason or reasons.” (7)

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

Page 2,—

after lines 8, insert—

“Provided that where one of the two or more grounds on which the detention has been made is proved to be vague ; non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, the person so detained shall not be detained for more than one month.” (9)

**MR. DEPUTY-SPEAKER :** Shall I put all the amendments moved together ?

**SHRI SUDHIR GIRI :** I want to speak on my amendment.

**SHRI RAMAVATAR SHASTRI :** I am only reading my amendment.

**MR. DEPUTY-SPEAKER :** Then, you will say, time is up and we should adjourn. There should be some give and take spirit. Your amendment has been circulated. Everybody knows the amendments.

श्री रामावतार शास्त्री (पटना) : उपाध्यक्ष जी, मेरा अमेंडमेंट पृष्ठ एक और दो से, क्रमशः पंक्ति 15 से 18 तक और एक से नौ तक का जोड़ किया जाए।

(क) ऐसे आदेश के बारे में यह नहीं समझा जाएगा कि वह केवल इस कारण अविधिमाम्य या अप्रवर्तनीय है कि आधाराओं में से एक या कुछ आधार :—

(1) स्पष्ट नहीं है ;

(2) विद्यमान नहीं है ;

(3) सुसंगत नहीं है ;

(4) उस व्यक्ति से संबद्ध नहीं है या उससे निकटतः संबद्ध नहीं है ; अथवा

(5) किसी भी अन्य कारण से अविधिमाम्य है, और इस कारण यह अभिनिर्धारित करना सम्भव नहीं है कि ऐसा आदेश करने वाली सरकार या अधिकारी ने, वैसा समाधान हो जाने पर जैसा कि शेष आधार या आधारों के प्रति निर्देश से धारा 3 में उपबंधित है, निरोध-आदेश किया था ;

मैं चाहता हूँ कि इन पंक्तियों को संशोधन विधेयक से हटा दिया जाए।

**SHRI SUDHIR GIRI :** Sir, I think, clause 2 of the Bill is contrary to the provisions of the Constitution. Please read lines 14 and 15 at page 1 :

“5A. Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the National Security (Second Amendment) Act, 1984) under section 3...”

This implies that a person who has been detained before this amendment was passed will also be taken into the purview of this amendment. Article 20 of the Constitution provides :

“(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an

offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

That is, when he was detained first, the law prevailing at that time should be applicable to him and the person who was detained before this amendment came into force would also taken in purview if this amendment is carried on. I, therefore, think that this is contrary to the provision of law.

Further more, I want to add a provision :

"Provided that where one of the two or more grounds on which the detention has been made is proved to be vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, the person so detained shall not be detained for more than one month."

As regards the provision made for 12 months' detention, I think, the persons detained should be released immediately. But as the intention of the Government is to detain them for some time, this period should be limited to one month, not to 12 months. So, I would urge upon the hon. Minister to accept my amendment.

SHRI P.V. NARASIMHA RAO : Sir, in general, I would like to submit that this amending Bill is not of a substantive nature. The amendments to change the period of six months to two months or two months to one day are substantive amendments, and, therefore, I will not be able to accept any of these amendments. This is more of a technical nature.

Mr. Ram Avtar Shastri's amendment wants the main Clause itself to be deleted. It amounts to his opposition rather than an amendment. So, I cannot accept it.

MR. DEPUTY-SPEAKER : I shall now put all the Amendments together moved to

Clause 2 to vote,

*amendments Nos. 1, 7, 9 were put and negatived.*

MR. DEPUTY-SPEAKER : The question is :

"That Clause 2 stand part of the Bill."

*The Motion was adopted.*

*Clause 2 was added to the Bill.*

*Clause 3—Amendment of Section 14.*

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

Page 2, line 26,—

*for "twelve months" substitute—*

*"six months" (3)*

Page 2,—

*after line 27, insert—*

"Provided further that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, no State Government shall make any subsequent detention order without obtaining the prior consent of the Central Government." (4)

SHRI SUDHIR GIRI : Sir, I beg to move :

Page 2, line 26,—

*for "twelve months" substitute "one month" (10)*

SHRI SUDHIR GIRI : Sir, Clause 3 of the Bill entirely stands against the spirit of the Constitution itself. If you go through articles 19, 20, 21 and 22, you will find the

[Shri Sudhir Giri]

nowhere in the Constitution the founding fathers had provided for the detention of any person who is not guilty at all. Clause 3 provided that if a person is found not guilty and even if no new facts have come out, then that person will also be detained for 12 months more. I think, this is against the principle and against humanity. I, therefore, urge upon the Government, for the sake of humanity, to accept this amendment of mine.

SHRI P.V. NARASIMHA RAO : I have already replied to that. Only about Mr. Banatwalla's amendment which seeks to bring in the Central Government and says that the subsequent detention order shall be made by the State Government only with the prior consultation of the Central Government, I would like to submit that this is not a practicable proposition. This is why I am not able to accept it.

MR. DEPUTY-SPEAKER : I shall now put all the Amendments together moved to Clause 3 to the vote of the House.

*Amendments Nos. 3, 4 and 10 were put and negatived.*

MR. DEPUTY-SPEAKER : The question is :

"That Clause 3 stand part of the Bill."

*The Motion was adopted.*

*Clause 3 was added to the Bill.*

*Clause 4—Amendment of Section 14 A.*

SHRI RAMAVATAR SHASTRI : I beg to move :

Page 2,—

*omit lines 33 to 37. (2)*

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

Page 2, line 36,—

*for "two years" substitute—*

*"fifteen months" (5)*

SHRI SUDHIR GIRI : I beg to move :

Page 2, line 36,—

*for "two years" substitute "one month" (11)*

MR. DEPUTY-SPEAKER : I shall now put amendments moved to Clause 4 to the vote of the House.

*Amendments Nos. 2, 5 and 11 were put and negatived.*

MR. DEPUTY-SPEAKER : I shall now put Clause 4 to the vote of the House. The question is :

"That Clause 4 stand part of the Bill."

*The Motion was adopted.*

*Clause 4 was added to the Bill.*

MR. DEPUTY-SPEAKER : There are no amendments to Clause 5. I shall put it to the vote of the House.

The question is :

"That Clause 5 stand part of the Bill."

*The Motion was adopted.*

*Clause 5 was added to the Bill.*

MR. DEPUTY-SPEAKER : The question is :

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

*The Motion was adopted.*

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

MR. DEPUTY-SPEAKER : The hon. Minister may now move that the Bill be passed.

SHRI P.V. NARASIMHA RAO : I beg to move :

"That the Bill be passed."

MR. DEPUTY-SPEAKER : Motion moved :

"That the Bill be passed."

Now, only Shri Indrajit Gupta will speak.

SHRI RAMAVATAR SHASTRI : I want to speak.

MR. DEPUTY SPEAKER : No, only Shri Indrajit Gupta will speak. I am not allowing you.

SHRI RAMAVATAR SHASTRI : Anybody can speak.

MR. DEPUTY-SPEAKER : Your party representative has already spoken. I will not allow you.

SHRI GEORGE FERNANDES : It is not a party affair.

SHRI INDRAJIT GUPTA : You need not be so rigid about it. It is not a party affair. Any Member can speak.

PROF. MADHU DANDAVATE : It has nothing to do with the party. At the time of Third Reading, there is a partyless democracy.

MR. DEPUTY-SPEAKER : You leave it to the Chair.

(Interruptions)

PROF. MADHU DANDAVATE : Rules cannot be left to the Chair. Don't threaten us.

(Interruptions)

SOME HON. MEMBERS : We will now walk out.

SHRI INDRAJIT GUPTA : You have no right to change the rules.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill be passed"

Those in favour may say "Aye"

SEVERAL HON. MEMBERS : Aye.

MR. DEPUTY-SPEAKER : Those against may please say "No".

SOME HON. MEMBERS : No.

MR. DEPUTY-SPEAKER : I think the 'Ayes' have it, the 'Ayes' have it.

The Bill is passed.

*The Motion was adopted.*

(Interruptions)

MR. DEPUTY-SPEAKER : The Lok Sabha now stands adjourned to reassemble tomorrow at 11.00 AM.

19.38 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, August 14, 1984|  
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