

16.05 hrs.

STATUTORY RESOLUTIONS RE.
DISAPPROVAL OF MAINTENANCE
OF INTERNAL SECURITY ORDINANCES AND MAINTENANCE OF
INTERNAL SECURITY (AMENDMENT) BILL

MR. CHAIRMAN: Now, we take up the next item—item No. 18. But, before that, I want to know from the hon. Minister how much time is allotted to this.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHURAMAI-AH): Sir, I suggest four hours for the consideration stage and one hour for the clause-by-clause and Third Reading.

MR. CHAIRMAN: I think the House agrees that we shall have four hours for consideration of this Bill and the Statutory Resolution and one hour for the clause-by-clause consideration. At present, we have five hours—four hours for the Statutory Resolution and the Bill and one hour only for clause-by-clause consideration and third reading.

Let us first take up item No. 18—Statutory Resolution. Shri Chandrapan or Shri Indrajit Gupta.

SHRI INDRAJIT GUPTA (Alipore): Sir, I beg to move:

“This House disapproves of the Maintenance of Internal Security (Third Amendment) Ordinance, 1975 (Ordinance No. 16 of 1975) promulgated by the President on the 17th October, 1975.”

Of course, the discussion will cover the other Ordinance too and, therefore, perhaps, I want to make my remarks covering all aspects of this question. I am here to oppose both the amendments.

I have tried to understand what exactly the Government is trying to do. You might remember that during the

last session, in the month of July, an amending Bill was brought to the same Maintenance of Internal Security Act and those amendments also were criticised by us here.

On the 25th of July, in the discussion here, the hon. Home Minister had said this—I am not now reading from the extensive records but from this printed summary which will serve my purpose.

“In an extraordinary situation where the entire administrative machinery throughout the country was continuously engaged in maintaining extreme vigil against the activities of subversive elements, it became also necessary to prevent the diversion of law enforcement agencies to other work that might arise from litigations started by persons which fell within the course of the above action. The Presidential Order was, therefore, issued under Article 359 on the 27th of June, 1975 suspending the right of any person to move a court for the enforcement of certain specific fundamental rights mentioned in Part III of the Constitution which were relevant to the preventive action which the Government had been compelled to take in the larger interests of the country as a whole”.

This is what the Minister has said in part. Now, from this what I understood was that their main purpose was to tighten up the provisions of the Maintenance of Internal Security Bill in such a way that there would be no loophole left for any person detained under that Act to start any kind of litigation or to go in for any kind of an approach to the courts which may require judicial process. The Minister was quite frank and he said that if that happened, then all our administrative machinery might get diverted to trying to combat this litigation. So, in order to save them from that bother and to let them concentrate on fighting subversion and so on, this Presidential Order had been promulgated. Then, even at that

time, in the month of July, Section 14 of MISA was also amended to provide that the detenu even after the expiry of his detention could be re-detained again even without any new facts having come to the notice of the Government subsequently. That was also done at that time and a new Section 18 was added to the Act at that time so that a detenu could not claim any right to personal liberty by virtue of natural law or common law—if there was any at that time but now we do not know whether there is any common law or natural law which guarantees a person's personal liberty. Any way.

Sir, this inter-session period has been used to promulgate by ordinance some further amendments—not once but twice—and all those have now come in a consolidated form in the new Amending Bill. I am not a lawyer but as far as I am able to understand this present Bill which is now being considered—the amendments which are being proposed—I really do not understand what is the purpose of these amendments. As far as I have understood them I find that there are five or six purposes.

The purport of these amendments is firstly that if a person's detention is terminated by virtue of either expiry or revocation of the detention order—not only expiry but the detaining authority may itself decide to revoke the detention order—even after that a fresh detention order can be issued against that person even without new facts being there after that expiry or revocation. This was already there as a result of the amendment passed in July last year. What does the new amendment say? It seems to be a great act of generosity on the part of the Government. There is a proviso. quote:

"Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for

which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order or the expiry of the defence and Internal Security of India Act, 1971, whichever is later."

So, here even if no fresh facts have come to light after the expiry or revocation of the earlier detention order—and to that extent I am eligible to be set free—I can be re-detained but the Government is saying with great magnanimity that I will not be kept behind the bars for more than 12 months. The words used here are 'whichever is later' and not 'which ever is earlier'. This is the first amendment as I understand it though I should like him to state also that where the order is revoked—I can understand where it expires of its own accord under the existing law—by the detaining authority I think they will revoke it on the basis of some considered decision and then why do they visualise immediately that a person will have to be re-detained. If it is so why did they revoke the earlier order? I do not know what does this mean. Please explain the legal intricacies.

The second amendment is that the mere declaration by a State Government of the detention of any person is henceforth to be taken as approval of the State Government. If some officer somewhere has detained somebody, the approval of the State Government in terms of what approval should mean is not necessary now. As long as they issue a declaration to the effect that such and such a person has been detained, that declaration will be equated with the approval by the State Government. This is how I understand this.

Thirdly, of course there will be no communication of the grounds of detention or of the materials or informa-

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tion or anything on which the detention is based, nor will the person detained have any opportunity of making a representation against the declaration in respect of the detention. If Government says, "We cannot supply him with the grounds of detention because they are based on confidential matters submitted by our intelligence service", I understand. But when you detain somebody, even if you do not supply him the grounds, why should you prevent him from making a representation if he wants to? I do not understand this at all. You lock me up. You do not give me any grounds. You just issue a declaration saying "You are detained under MISA". Therefore, I am not entitled even to make a representation against it? Why not? If I feel that I have been detained unjustifiably, why should I not be permitted to say, "This is what I was doing and I have been locked up unjustifiably"? What is the idea? After all, I cannot represent against the grounds because the grounds are not supplied to me. But you will not allow me to make even a representation against the detention. They have thought up this one during the inter-session period and come forward with it!

Fourthly, in the unamended Act, the Central Government was supposed to receive a report in respect of the order of detention from the State Government. Instead of that, now the following words have been substituted "report the fact to the Central Government". I have not got so much legal acumen to understand it. Of course, we know what report in respect of an order of detention and what reporting the fact of detention mean. Mere declaration will mean approval. Reporting the fact is enough in place of sending a report. Of course, they have taken the power that if the Central Government want, they may call for a report from the State Government, but the State Government is not called upon on its own to forward a

proper report on the detention to the Central Government. The whole question of shutting out the courts and advisory boards is a far cry now. Now something else is going on. Even within the administrative structure of the Central Government, the State Governments and the officers entrusted with the power of executing it, every attempt is being made to see that there is no kind of reporting, no kind of accountability, no representation and no facilities to be provided. Perhaps that was not clear before and subsequently in the light of the judgments they have made it clear that the grounds, materials or information on which the grounds are based must be treated as confidential as though they are matters of State involving public interest. That means, they cannot be divulged not only to the detained person but to anybody, including the courts. The last one is that certain detention orders which on the admission of the Government, were passed between 25th of June and 29th of June, are now found to have been, what should I say, illegal and certainly not done properly and they are being validated retrospectively. This is what I find in this Bill as far as it goes. I would like to ask the Government, what exactly are they trying to do? Why are they suffering from this kind of panic? I do not know whether there is any kind of coordination at all between the legal pandits of the Government who are entrusted with the job of working out and drafting these amendments and the so-called political leadership of the Government. I doubt it very much because, for example, we are being told and I agree with that that a big campaign is being carried on even in certain quarters abroad, in certain Western countries, abroad, against India. People who are big imperialist powers or former imperialist powers and who have always been sworn enemies of democracy are now attacking India for suppressing democracy and so on. So, we can understand the motives of those persons and I am not worried about that. Nobody has got any longer any illusion

about what are the motives of the people in certain quarters whether they are in America or in Britain or in those countries which are carrying on this campaign. But I am saying: what politically are you trying to do? Are you trying to supply more ammunition to those people to carry on more propaganda against us?

These latest amendments have come before us not in a vacuum but they have come before us in the context of certain Presidential Orders which have been passed under Articles 358 and 359 of the Constitution as a result of which Articles 14, 19, 21 and 22 have been suspended for the duration of the emergency. Now, I will come to that just now. The Presidential order at least has this much virtue in it that it is only for the duration of the emergency. I do not know when the emergency is going to end but that is a separate matter. It is assumed, once the emergency ends, the Presidential Order is also revoked. But, here we are not dealing with the Presidential Order but we are dealing with the amendments which are sought to be put on the statute book permanently and not for the duration of the emergency. Even if the emergency is withdrawn, these amendments if they have been passed, will remain on the statute book. This is a much more serious affair. But I want to know what is the necessity of these amendments because in the meantime these Presidential Orders which have suspended the operation of the articles particularly 19, 21 and 22, bear on the question of arrests and detentions. What are its implications? Who am I to interpret the implications? And the Supreme Court is now seized of the matter; arguments are going on there. The Supreme Court have not delivered its judgment yet but at least I have the right to quote briefly what has appeared in the Press as to the interpretation given by the Counsel appearing on behalf of the Government as to the implication of the Presidential Order. After all, they are

appearing on behalf of the Government and they are speaking on behalf of the Government. Even Shri Brahmananda Reddy does not say that this is what the Presidential Order means but his Attorney-General and Deputy Attorney-General have said it there and argued at great length for hours together before the Supreme Court and it is extensively quoted in the Press. Mr. Niren De is reported as having said: "The Attorney-General, Mr. Niren De submitted in the Supreme Court that as long as an order under article 359 had been passed by the President, a detenu under MISA could not challenge his detention, no matter whether there was a breach of any law." That means that in spite of the right that is given in the Constitution that only by due processes of law his liberty can be taken away or restrictions can be placed on him, the Attorney-General has argued that his detention cannot be challenged, no matter whether there is breach of any law.

Then it says:

"The Attorney-General said an order by a Secretary to the Government would be an official action on the face of it. It was for the other side to show whether it was done in an official capacity and the courts could find out if that was so."

At this stage Mr Justice Beg interrupted and said:

"It has at least to see whether there is an order."

Mr. De replied:

"the court might say that it would like to see the order. He agreed with Mr. Justice Beg that the process of moving the court would begin only when the order was shown."

The implication of this, Sir, as I understand, is more horrifying. It is that I can be detained even without an order of detention, because I can-

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not go to the court. I cannot go to the court to plead that I have been illegally detained, because there is no order of detention. Perhaps if I go to the court and if no order of detention was produced, I would be set at liberty. But Mr. Niren De has said that the Presidential Order under Article 359 was absolutely unconditional and totally bars any kind of approach to the court. So, I can be detained even without an order of detention. I don't think you will do it. I hope not. But see the power you are taking; and see what Mr. Niren De is arguing. This is being read not only in this country, it is being read abroad; and then when those people start propaganda against us, you get angry against them. But what kind of image is this? I have not, unfortunately, got that cutting in which you will recall. Sir, Mr. Niren De had said in another place in his argument that you can even be shot; and you cannot have any remedy against it, so long as this Emergency and this Order are there. Somebody can shoot you, but you cannot go to the court; you cannot have any remedy against them. Is this kind of an argument to go on being ventilated in the Press every day. Is it painting a good image of yourself abroad and in this country. Then, Sir, in another place Mr. De has contended that

"the width of the Presidential Order issued on June 27, under Article 359... was such that theoretically speaking, it was open for an executive officer of the State to detain a person in an Emergency in the interest of security of State though there was no law empowering him to do so."

Some friends have been telling me. "The Presidential Order is very comprehensive; but after all, if you want to detain a person, where is the law? You must have a law under which you can detain." But your Attorney-General is arguing that it is not necessary even to have a law. Even if there is no law of detention and even

if there is no order of detention, I can be detained so long as this Presidential Order is in force.

Then, Sir, here is Mr. Raman, Additional Solicitor General. He argues that the court has no powers to go into a detention order,

"even to examine whether or not the detention was due to personal malice."

This was on the question of *mala fide* detention. Mr. Justice P. N. Bhagwati asked him:

"haven't there been a number of cases where the courts have looked into complaints of illegal detention due to alleged malice on the part of a Chief Minister or others?"

Mr. Raman stood his ground and repeated that even in such cases, once the government's reply to the allegation of 'mala fide' detention was received by the court, further action was barred..".

So, there is no remedy, it seems, against *mala fide* detention but I would like to know from the Government whether this MISA Act is meant to justify *mala fide* detention.

Then, Sir, in another place, the Additional Solicitor-General said:

"A citizen has absolutely no recourse to legal or constitutional remedy to safeguard his right to liberty during the period of emergency. even if he is totally innocent and is illegally and wrongfully detained on wrong and false information and material or non-existent grounds, Mr. V. P. Raman, Additional Solicitor-General of India, told the Supreme Court on Friday."

"Since these rights had been suspended a citizen was not entitled and have no claim whatsoever to the enforcement of his right of personal liberty...."

Sir, with your permission, one more quotation I would like to read, an

exchange between Shri Raman and some of the hon Judges:

"Mr Justice Khanna What is the redress to a man who has been wrongly detained on false information in the context of this aspect of the rule of law that no man will be deprived of his life and liberty without the authority of law? Does this aspect of rule of law exist or not irrespective of fundamental or other rights?"

MR RAMAN Unless a detenu is given grounds it is not possible for him to know whether the grounds on which he was detained were right or false. Precisely this right to furnish grounds to him had been taken away. So, this right does not exist during the period of emergency."

So I cannot know whether I am detained on *bona fide* or *mala fide* grounds. The grounds may be false. I cannot know.

'Mr Justice Chandrachud Supposing a man has nothing to do with politics and he goes morning and evening to a temple but he is detained on some false information. How can he get his right to personal liberty enforced under the rule of law?'"

To this question Mr Raman's reply was:

He has no right to know the grounds or any information or material regarding his detention. His rights are suspended with the suspension of Articles 21 and 22.'

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[MR SPEAKER in the Chair]

Sir I do not want to go on quoting in view of this all-pervasive and all powerful Presidential Order—of course provided the Government's arguments in the court are upheld, I do not know what the Supreme

Court may do in its wisdom—if these arguments are upheld, I think the Minister should agree that there is absolutely no need to bring forward any more amendments to the Maintenance of Internal Security Act. I would say that at least they should have had the decorum to wait until the Supreme Court gave its judgment on these very interesting arguments which are going on before it.

SHRI H N MUKERJEE (Calcutta-North East) Sir on a point of propriety. Is it not a disrespect to the House that that Minister of Law, as far as I can find out does not choose to be present here. The Lok Sabha has witnessed a great deal of ignominy and that kind of indifference on the part of the Government which I personally find very difficult to put up with. Could you please direct that an intimation be sent by the Home Minister or whoever there is to get the Law Minister present?"

SHRI INDRAJIT GUPTA So, at this stage, the point I am making, the broad point on which I wish to conclude is this. I am not arguing at the moment that this MISA is liable to be misused. We are worried about the possibility of misuse. It is a very serious aspect, no doubt which we have raised last time to which I shall refer again before I conclude. At the moment I am not on that point of misuse. I am on the point that this MISA and the amendments to MISA, which are being brought forward now are totally unnecessary and, as a matter of fact they are trying to prejudge the hon Supreme Court before which these arguments are going on, about the scope and width of the Presidential Order. If Mr Niren De's arguments are upheld, you can suspend even this MISA instead of suspending the fundamental rights for the duration of the emergency. You can rely wholly on the Presidential Order. What can anybody do after that? They cannot go anywhere they cannot do anything, they cannot approach anybody, what are you worried

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about? The only thing left for any detenu is a representation made to the executive. I do not know whether even that is permissible under the new amendment which has been brought forward. I do not know whether he would fall within the mischief of the proposed sub-section (5) of section 16(a) which says:

“without indicating or disclosing any information or material to the person concerned or affording him any opportunity of making any representation on the declaration in respect of him...”

It does not say that it refuses him an opportunity to make representation only to the courts. It says that it refuses him opportunity to make any representation against the declaration. So, if I am locked up, my entrance to the courts is barred, I understand that, but if I make a representation to Brahmananda Reddy, then also I may come within the mischief of this Act. Why should I be at the mercy of Brahmananda Reddy? Then, why do you want laws here if we have to leave everything to the mercy of you gentlemen sitting there?

So, we are totally opposed to these amendments, and I think that the least that the Government could have done was to wait for the Supreme Court's judgment, at least have that much confidence in their own counsel and Attorney General, and if the Supreme Court upholds his interpretation of the Presidential Order, what are they so scared and frightened about? In that case, MISA can be suspended at least until the end of the emergency instead of suspending other things and other rights of citizens.

Government knows very well that we have supported any strong action that it has taken against those people and those sections and those groups which have really been carrying on or may still be carrying on subversive activities either on their own or with

some foreign assistance to subvert the democratic system in this country or to create chaos and disorder and that kind of thing. And surely Government must tell us that they do not yet feel that they have got adequate powers to deal with such people. Is that what they want to say?

They have arrested quite a lot of people. I do not know the number because they will not tell us even that. When we discuss the MISA (Amendment) Bill here, the least that you can do is to give the House some information as to the number of people who are in detention, but that is supposed to be a closely guarded secret, with the result that outside, in the market place and in foreign countries also, all sorts of figures are being given. Nobody knows what is correct and what is not correct because the Government's lips are sealed and they will not tell anybody.

But you have locked up many people, and I am not shedding any tears for those among them who were connected with RSS, Anand Marg and Jana Sangh and all that type of activity, but, as we have said earlier, every new amendment of this Act, and I am sorry to say with all due respect to the President the Presidential Order also has the practical effect—what the legal effect will be the Supreme Court has to decide—of encouraging irresponsible, motivated and vindictive officers among the bureaucracy,—I do not say they are all like that—because what it means is that you are handing over more and more power, tremendous power, such power as they never had before, to the bureaucracy.

We are sorry we cannot share this confidence that the Government has in this bureaucracy, because we have given many cases to them showing that this same bureaucracy has been releasing by executive action a number of people who are closely connected with Jana Sangh and RSS. You do not do anything about that. They are being released. Some fellow just

writas, "I have decided to leave the Jana Sangh and join the Congress" and he is released by some officer. He comes out and starts his old activities again. What is the vigilance of the Government against these people? I think the Prime Minister had something of this kind in mind, about the defective performance of some State Governments on this score, when she spoke in Chandigarh. If they want more names and instances, I can give, but we have become fed up with it because nothing has been done. I can point out high officers sitting in Government departments who are actively carrying on propaganda against your Government. What are you doing about that? You do not lay a finger on those people.

So, we cannot trust this bureaucracy which is releasing in some places, particularly in Northern India in the Hindi-speaking states, I know, many Jana Sangh and RSS elements. Many of them have never been arrested and are carrying on all sorts of activities. Leaflets are being printed, posters are being printed, satyagraha are being carried out and so many things are being done. If you are serious about it, how is it that you are taking no action against those people?

So, what I want to say is that such a bureaucracy, if it is allowed to rule the roost in this way, will produce results which are contrary to the professed aims of the emergency. And as far as misuse of power is concerned, I do not want to go on repeating this every time. But, as a matter of fact, in the interest of landlords, in the interest of big land-owners, in the interest of employers, many officials, corrupt officials are misusing their powers under MISA.

People, who cannot, by any stretch of imagination, be identified, with this kind of right reactionary or pro-imperialist or communal forces have been locked up under MISA. Is that the purpose of the emergency, I want

to know? Do you want to use these powers in certain political directions or do you want to leave it to the bureaucracy to do whatever they like.

In Bihar, we have repeatedly made representations. Even now, in Bihar, apart from that people who are held under the Defence of India Rules, at least 17 of our people are held under MISA. From Pondicherry, I had just now received a letter from a veteran freedom fighter of the old freedom struggle against French Imperialism, V. Subbiah. I think many people know him. He has written to me saying that just because some of their trade union workers in Pondicherry observed a peaceful hunger strike on the 6th at the call of the AITUC to protest against this bonus Ordinance four hundred people have been arrested. Many have been released. But among them, 12 people have been held under detention. As far as the Ambarnath Defence Factory is concerned, our union people, two or three of them, have been detained under MISA, because they made some alternative proposals to the management about how the working hours should be staggered. In Tripura, NGOs, State Government employments, were on a prolonged strike last year and the strike was called off on the appeal of Opposition MLAs and the Chief Minister of Tripura went on record with the statement giving an assurance that if the strike was withdrawn, no kind of victimization will take place.—I have got that Chief Minister's declaration.—What is the result? The result is that out of these Tripura NOGs who went back to work, nine of them are still held under MISA. I am giving you examples of the kind of things. In Basti, of eastern U.P., two sweepers belonging to some sweepers' trade union, have been under MISA since the emergency was clamped on the 26th of June. And many people including my friend, who comes from there Mr. Jharkhande Rai, has been making repeated efforts to get these sweepers released. They are not going to overthrow your Government.

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They are not American Agents. But they were locked up. Somebody must be annoyed because it is better to keep that union out of the way they think.

Here in Delhi, two young ladies, the father of one of whom, I think, is quite an illustriously well-known gentleman, a solicitor-general in one of the States, an advocate-general in one of the States, his daughter, and another lady, her friend, two of them were detained soon after the emergency within two or three days, perhaps on that day itself. What was their crime?

As per the Prime Minister's appeal that the conditions of these poorest farm labourers should be improved, and the 20-point programme also says that their minimum wages should be raised and so on, they have formed a trade union of farm labourers. Here, round about Delhi, there are a number of farms, and they were working among those farm labourers. These two girls had been locked up at the time of emergency. I came to know about it much later, because the parents of one of them approached me. Then I tried to find out what was happening. I was told repeatedly that the cases were being considered and they might be released and all that. One of them had been badly beaten up by the *goondas* of one of these farm owners. Her spine was injured. She has got a little child, it cannot be with her; the child is with the grand parents. She is locked up since June. What is going on? You should use these powers for which they were meant to be used, they should not use these powers in a distorted fashion.

They say there is provision for review every four months. How many four-months have passed since then? At least two, I think. What happens in that review? Who does the review? I do not understand. If the farm owners put some pressure on the reviewing officials, that is the end of

it. For the rest of their lives those two girls will be in prison; those two sweepers will be in prison. Who is looking into these things.

The hon. Minister will say: if you bring any particular case of misuse to our notice, we shall look into it. As if to say that the Bill is very good; the Act is very good; it is misused a little here and there and we will look into that. I am not arguing that point. I have mentioned some of the cases—because they are so obnoxious; they are to repugnant to me. It is not the purposes of the emergency that is not why those powers have been taken. They are not using them properly against the forces against which they should be used. In view of the Presidential order which has come subsequently suspending article 19, in addition to articles 21, 22 and all that, there is no need for going on every time, nervously bringing in new amendments to MISA and trying to tighten up things, the whole administration, what you consider to be loopholes even within your own administration, so that nobody can even breathe. What is the idea? You want to shut out access to courts. You have done that. The presidential order will do the rest. You want to prevent the detenu from knowing why he had been detained; that is being done. You want to prevent him from making any representation. You did away with the advisory board. The advisory board is nominated by the Government. The Government can put anybody they liked in the advisory board. They are not bound to follow its advice. Then at least there was some scope for some review by a body which was not completely official. Some retired judges and others will be there and even if it recommended that so and so should be set free, government is not bound to do so. The recommendation of the advisory board is not made public. With all that they did away with the advisory board. I am sorry that by all this you

are projecting a public image which will ultimately help only our enemies, the enemies of the country and nobody else and all those things will be quoted back to you by the American or West German press. How are you going to counter that? In which country claiming to be democracy does the Government's counsel get up any say: you can be shot; there is no remedy; you could be locked up even without any law, even without any order? Is this the way to go on advertising? What are you doing today? I say: better think over those things a little seriously. The government will not drop this legislation even if I say so; but let them at least hold these amendments in reserve let them have at least that much patience, that much confidence to wait till the Supreme Court delivers its judgement on those very convincing arguments being advanced by Mr. Niren De and company. Let them at least wait; if the Supreme Court goes in their favour they have won the battle; they need not bother; they need not more have nightmares. Therefore, our party cannot support these amendments; they are totally uncalled for: they are unnecessary. Some kind of process has been set in motion by which certain officials and the law department, the law ministry had been told: you go on, each time you examine and read and see if you can put in two words here or three words there so that there is absolutely no risk. I do not think there is much scope for anybody to be set at liberty now by the courts or any other independent body. But my trouble is that the same power is used against my people; I do not know what to do.

SHRI SURENDRA MOHANTY
 (Kendrapara): That is your worry?

SHRI INDRAJIT GUPTA: Is it your worry? Because it depends upon what you do. If you try to defend the interest of the people against landlords and employers, you will

have a lot of cause for worry. I do not think your party is bothered about these things.

SHRI SURENDRA MOHANTY:
 That is your impression.

SHRI INDRAJIT GUPTA: I will be happy if my impression proves wrong. At least our party will co-operate with the Government as far as external danger and the danger of right reactionary forces are concerned; we certainly are not going to allow the emergency to be used to attack the interests of the people of the country. With whatever strength or capacity we have, we will resist it because that is a wrong way to go about it. That is the way to make people hostile, to drive them into the arms of the Jan Sangh and all that. So, sometimes, we think, you are talking here politically and sometimes your legal wing comes forward with something which is quite contrary to your political profession. So, Sir, with these words I conclude and we are opposed to these amendments and I would request the Government to at least wait till the Supreme Court gives its judgement. Do not be in such a devil of hurry. Otherwise you may land yourself into some unnecessary ditch as a result of over-zealousness in this respect.

SHRI SURENDRA MOHANTY
 (Kendrapara) I beg to move:

"This House disapproves of the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975 (Ordinance No. 22 of 1975) promulgated by the President on the 16th November, 1975."

Mr. Speaker, Sir, the leader of the C.P.I. group made a very lucid analytical speech opposing this amendment. But, Sir, with all due respects to him, I feel his objections suffered from a schizophrenia. I understood him as though he was supporting these draconian measures, all these amend-

[Shri Surendra Mohanty]

ments of the MISA. But his only grievance was that it was being allegedly employed against his party members.

SHRI INDRAJIT GUPTA: Was that my only grievance?

SHRI H. N. MUKERJEE (Calcutta-North East): I had raised what I call if not a point of order but a point of propriety and you, Sir, will remember that in the first Parliament when this Preventive Detention Act was discussed, the Prime Minister, Shri Jawaharlal Nehru along with the entire set of his colleagues would be present almost all the time. You remember also that his colleagues Shri Rajagopalachari and Shri Vallabh Bhai Patel said that they had sleepless nights because they had to bring in some kind of legislation impinging upon the liberties of the people and that sort of thing in 1950. And today I do not know what business the Prime Minister has in the House and we see her car outside every day coming in and going out of this place. But she is never in the House except the Question Hour on Wednesday. Apart from her, the Law Minister is not here, nobody is here. Mr. Brahma-nanda Reddy has gone out perhaps, his Deputy is here .. (Interruption)

AN HON. MEMBER: The Law Minister is coming.

SHRI H. N. MUKERJEE: Sir, you will please recognise that we are all holding the Chair in the highest dignity because you are the symbol of the power of Parliament. If we have no power, you also would have no power. But you being there could at least ask those Ministers to be present and not to show disregard to this House. The Law Minister has chosen to come back now.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I was here all the time.

SHRI SURENDRA MOHANTY: Sir, what I was submitting was to some it may be politically justifiable but their only grievance was about its implementation. It was administratively inept. But, Sir, I oppose this was even though it may not have been used against myself or my party members who are hostile. Still I oppose these amendments because these are conceptually medieval, barbaric and this MISA and its series of amendments extinguish the last flickering flame of civilised citizenship that we have in this country.

SHRI S. M. BANERJEE (Kanpur): Ganatantra Parishad?

SHRI SURENDRA MOHANTY: Ganatantra Parishad means democracy and the Communist Party which is more loyal than the king. Why should it suffer from schizophrenia? I do not understand Support yet oppose?

SHRI S. M. BANERJEE: What loyal, I do not understand.

SHRI N. K. P. SALVE (Betul): His speech is specimen of that loyalty.

SHRI S. M. BANERJEE: Yes, yes.

SHRI SURENDRA MOHANTY: have got my regards for my senior Member. Please do not provoke me in passing some observations. If I am provoked, I will reply.

MR. SPEAKER: Please don't get provoked.

SHRI SURENDRA MOHANTY: would request Mr. Salve not to interrupt me.

What I was saying was that even though these draconian measures would have been employed against my political enemies, still I would have opposed them because these are medieval, barbaric, measures which have extinguished the last flickering flame of the norms of civilised citizenship which we have in this country.

Sir, you will recall that on 7th May, 1975, when the second MISA Amendment Bill came before this House and the debate remained inconclusive, the Home Minister, Shri Brahmananda Reddy said that the MISA was being retained only for safeguarding the north-eastern region. This is what he had said. I quote:

"After all, the intention is that in the north-eastern region, there is insurgent activity and there is likelihood of its continuation. You must give sufficient opportunity to the security forces to apprehend these insurgent activities."

The hon. Home Minister was pleased to say so on the 7th May, 1975 on the floor of the House. He gave this House and the country to understand that the MISA was only intended to contain insurgent activities in the North-East Region. Because he could not convince the House, he had to withdraw that Bill and that Bill lapsed.

I may also point out that his predecessor, Mr. K. C. Pant also had given a solemn assurance on the floor of the House. I quote:

"I assure you and this is a positive assurance that the MISA will never be used against political parties or political leaders."

It made no distinction between political parties and political leaders.

AN HON. MEMBER: That was in 1971.

SHRI SURENDRA MOHANTY: It was in 1971. Since then, a spate of amendments have been made to the MISA. Today, for the fourth time the MISA is being amended.

With due respects, I would venture to say that these amendments in a short span of time remind one of the proclamations of Mussolini and Hitler with which they were out to rule their respective nations. We are being called fascists. (Interruption) I think,

my hon. friend knows much about history. If I ask him to tell me the root from which the word 'Fascist' is derived, I know, he will remain silent. It is the fascists only who rule by these kind of proclamations and ordinances. I am sorry to say that the cap is on the other head. While they are calling us fascists, I say, it is they who are fascists. This is how Mussolini and Hitler administered their countries and removed the last vestiges of opposition. But I would assure the hon. Minister that the opposition is like the veritable "Raktavirya" whose blood spills and yet millions sprout out of it to take up the flag. By this kind of draconian measures, you cannot suppress the opposition, you cannot extinguish the opposition. The opposition is bound to survive these on slaughts and assert itself.

17 hrs.

Now, coming to some of the aspects of this Bill, what do these amendments seek to achieve? As the previous speaker very eloquently explained, first you made a provision that the grounds of detention must be provided to the detenu within a period of 5 days. If you fail to do so, then the detention was either revoked or it is annulled. Then you said that the grounds of detention should be provided within twelve days and now, again, you amend it and you come to the position that the grounds need not be given at all. And when the courts wanted to know the grounds in a particular case—I think it was in Kuldeep Nayar's case that the Delhi High Court wanted to know the grounds or at least to have a look at the grounds of the detention order—you suddenly came up with another amendment that even the courts need not be shown the grounds of detention, nor the order, nor even the material and information which led to the detention, and you passed yet another Ordinance so as to shut the door of the Judiciary so that the citizen cannot even invoke the Judiciary to safeguard his rights. Yet you have the chicanery to call us fascists.

[Shri Surendra Mohanty]

Now, regarding officers, what is the definition of an 'officer'? An officer can be even an Assistant Sub-Inspector of Police. He is an officer and that officer can detain you. I am very happy that the Home Minister is nodding his head, but can he show me where the term 'officer' has been defined in the Central Act? An officer can be a Sub-Inspector of Police or even a Jamedar as my friend Mr. Banerjee has rightly pointed out. Now, according to the scheme of the MISA, that officer was to communicate to the State Government the grounds of detention and the State Government was to have considered whether the detention has been adequately justified and proper. But now the officer need not give it even to the court if it is in the 'public interest'. Sir, these words are being pulverised, if not prostituted. What is meant by 'public interest'. Suppose a man—as the previous speaker was saying—is, again, a landlord and he was doing something to subvert your twenty-point programme, he was doing something to subvert the unity and sovereignty of the country, it is in the public interest to expose him, to show him before the country and say 'look here, this is the type of man he is; he has been indulging in this kind of activities; he has been subverting the unity and sovereignty of the country and he has been working to safeguard the interests of the landlords'. That would have been in the interest of the State. But now, this amendment comes whereby the grounds of detention become a 'parda' lady whose veil cannot be lifted either in a court of law or anywhere else.

Then, you have brought in this amendment, the concept of 'mistaken belief'. Now, if an officer detains a person under the mistaken belief that he is not Mr. X but Mr. Y, then also, he has got no remedy, as it has been stated in the Statement of Objects and Reasons:

"In the case of certain orders of detention made by such officers between the 25th June, 1975 and the

29th June 1975 under the mistaken belief that a declaration under Section 16A(2) in respect of persons detained was sufficient, the State Governments concerned had not approved the orders of detention as required by sub-section (3) of section 3."

What happened? Certain officers had detained certain persons under the mistaken belief that they were not to provide any grounds, and the State Governments had to revoke their detention. Now, you are going to legalise that what do you want to achieve? Why don't you be honest and say that in this country while an unspecified number—You have not given the number of political detenus—political detenus are rotting behind the prison bars. You can pass a sort of fiat saying that you can detain anybody whose nose you may not like or whose face may not please you? Why should you come here and make a farce of Parliamentary democracy? Why should you make a farce that you are respecting the rule of law while this is a rule of jungle?

The House may be interested in knowing this. I shall give two instances, what happened in Cuttack, I do so not in any partisan spirit; I beg of the hon. Home Minister not to consider it in a partisan spirit, but since he is the custodian of our liberty and freedom, I am just mentioning these to him. He wanted specific instances, and I am giving specific instances on the floor of the House.

On the eve of the Chandigarh Congress Session, a few young Youth Congress workers were collecting some money to go to Chandigarh to project their point of view which was not, perhaps, palatable to the power that be. What happened? A young Christian boy—and that was Christmas night—was dragged from his home by a police officer under MISA because he had the temerity to realise funds for taking his friends to the Chandigarh Congress Session where they could have projected a point of view

which was not palatable to the power that be. I think, this must have come to the notice of Mr. Brahmananda Reddy and due to his intervention, those young boys were released a few days later. I think him publicly for that. Their subsequent release is not important. What is important is in what an impromptu manner, in what a cavalier fashion citizens are being detained today under MISA.

I will juxtapose it by another instance. There was a multi-millionaire in Cuttack who was arrested for economic offence. When he was approached by his friends and well-wishers as to why he should not engage a lawyer—at that time MISA was not put beyond the scope of justiciability; it was justiciable—he said, “I belong to the Chata Party; ‘Chata’ means umbrella; I belong to the ‘Umbrella Party’; whichever Party comes to power, my umbrella is inclined towards that Party; why should I waste money on the lawyers and run from pillar to post, run from Cuttack to Delhi, to the Supreme Court?”. Surprisingly enough, he was released.

SHRI SOMNATH CHATTERJEE:
 What about Mr. Bharat Harj Singha-
 ma?

SHRI SURENDRA MOHANTY:
 can go on multiplying instances. I have now given an instance on the floor of the House with a sense of responsibility. An economic offender was released overnight whereas freedom fighters like Naba Krishna Chowdhury were rotting in prison. He had to suffer strokes before he could be released on parole. Economic offenders are being released while patriots like Shri Jayaprakash Narayan have to be released lest he should die in the police custody and the odium should fall on the Government. I say so not in anger but in anguish. These amendments are nauseating, medieval, barbaric and they extinguish the last flicker of the flame of civilized norms of existence.

I only conclude by praying to God—if there be God—to save us, not from the clutches of this Home Minister, but from the ignominy of living in a country like this where citizenship has no meaning, where freedom and liberty have no substance, where men are slaves of this Leviathan.

With these words, I oppose the Ordinance.

17.15 hrs.

[SHRI BHAGWAT JHA AZAD in the Chair]

MR. CHAIRMAN: Resolutions moved:

“This House disapproves of the Maintenance of Internal Security (Third Amendment) Ordinance, 1975 (Ordinance No. 16 of 1975) promulgated by the President on the 17th October, 1975.”;

“This House disapproved of the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975 (Ordinance No. 22 of 1975) promulgated by the President on the 16th November, 1975.”.

THE MINISTER OF HOME AFFAIRS (SHRI K. BRAHMANANDA REDDY): Mr. Chairman, Sir, I beg to move:

“That the Bill further to amend the Maintenance of Internal Security Act, 1971, be taken into consideration.”

Hon. Members would recall that in July, 1975 this House had approved the Maintenance of Internal Security (Amendment) Bill, 1975. These were the basic amendments to the Act, made in the perspective of the proclamation of the Emergency of the 25th June, 1975. That provided for detentions for effectively dealing with the Emergency by insertion of a new section Section 16A in the Act. The circumstances that had necessitated these amendments were fully explained by me in the House then. The proposed

[Shri K Brahmananda Reddy]

amendments, now in the present Bill are essentially a sequel to the amendments passed earlier and seek to remedy some legal difficulties encountered in the administration of the Act

In the perspective of the Emergency, the Government had felt that grounds information or material pertaining to a detenu who was detained to prevent him from indulging in prejudicial activities and for effectively dealing with the Emergency, should not be disclosed because security of State demands that the information or intelligence available with the State relating to plans and activities of persons and groups whose machinations and manoeuvres had led to the Emergency, should not be compromised. It was in appreciation of this situation that the provisions of Section 16A, particularly its sub-clauses (5), (6) and (7) were made in the Maintenance of Internal Security (Amendment) Act 1975. Despite the intention being made clear and despite the Presidential Order dated the 27th June 1975 issued under Article 359(1) suspending the right of any person to move a court for certain fundamental rights, attempts were being made to defeat the above objectives by seeking the assistance of courts.

SHRI SOMNATH CHATTERJEE A very bad thing

SHRI K BRAHMANANDA REDDY to require the detaining authorities to produce such grounds, information and materials

SHRI DINEN BHATTACHARYYA Courts were imported from USA?

SHRI K BRAHMANANDA REDDY Please try to listen and understand

SHRI SOMNATH CHATTERJEE Is there any reason in what you say? It is an atrocious thing

SHRI K BRAHMANANDA REDDY To make matters abundantly clear, it is proposed to substitute sub-section (5) of Section 16A and to introduce a

new sub-section (9) in the Act. The proposed sub-section (9) of Section 16A firstly imposes a responsibility on every authority having in its possession information, material and grounds relating to the detention of a person not to disclose them to anyone and such information, material and grounds will be treated as confidential and deemed to refer to matters of State and against the public interest to disclose. That is the new amendment that is proposed by me.

Secondly, it lays down that the person detained has no right to communication or disclosure of any such grounds, information or material. It is, however, felt that restriction on non-disclosure of grounds, information and material should not stand in the way of the Central Government effectively exercising its power of revocation of orders of detention. With this end in view changes have been made in Section 16A(7).

SHRI S M BANERJEE Is that final?

SHRI K BRAHMANANDA REDDY and a new sub section 16A(8) has been introduced in the Bill to empower the Central Government to call for information material and grounds and such of the reports, that may be necessary, on which detention orders have been made by the State Governments.

Detentions made—I am coming to the fourth one—between 25th June 1975 and 29th June, 1975 for effectively dealing with the Emergency required procedural compliance with two steps. The first requirement was that under sub section (3) of Section 3 of the principal Act, any order made by an officer sub-ordinate to the State Government was required to be approved by the Government within 12 days. Non-approval would mean that the order ceases to have effect. The second requirement was that the State Government under Section 16A(2) should make a declaration that the detention is necessary to effectively

deal with the Emergency This declaration was required to be made within 15 days from the date of promulgation of the first Amendment Ordinance, i.e. 28th June, 1975. Some of the State Governments under the mistaken belief that the declaration under Section 16A(2) is itself adequate, did not issue the approval order under sub-section (3) of Section 3 of the principal Act in respect of detentions made between 25th June and 29th June 1975 although they had issued the declaration under Section 16A(2). Since the intentions of the State Governments were clear and a lapse had occurred due to a mistaken belief as to the interpretation of law and release of a number of detenus on this technical lapse would have posed a threat to the Emergency situation, it was considered necessary to rectify and validate the orders. Accordingly, the Maintenance of Internal Security (Fourth Amendment) Ordinance, 1975 was promulgated on the 16th November, 1975 and necessary provisions have been incorporated in the Bill by introduction of sub-section (2A) in Section 16A and amending Section 3(3).

Section 14(2) of the principal Act provided that the revocation—this is what Mr Gupta also raised

SHRI DINEN BHATTACHARYYA
 Please read his speech

SHRI K BRAHMANANDA REDDY
 Section 14(2) of the principal Act provided that the revocation of detention order shall not bar making of another detention order under Section 3 against the same person. It was considered necessary that when a fresh order of detention is passed on revocation or expiry it should not mean that by this process the maximum period of detention of a person could be extended beyond the maximum permissible limit under Section 13 of the Act. In order to make this position clear Section 14(2) of the MISA was amended by the Fourth Amendment Ordinance and is sought to be amended through the present Bill also.

While replacing the provisions of the Third and Fourth Amendment Ordinances through this Bill we have taken the opportunity also of making amendments of clarifying nature in Section 18 and Section 16A(9).

The House is aware of the exceptional and extraordinary situation that had led to the emergency. As one of our High Courts had reiterated the widely accepted position in a recent MISA case—

"In times of grave emergency, certain restrictions have to be placed on personal freedom of the individual for the common good"

'The choice' as Justice Jackson had aptly observed, "is not between order and liberty. It is between liberty with order and anarchy without either."

SHRI SOMNATH CHATTERJEE
 You are quoting Justice Jackson but you are not following it. You are quoting only that which suits you.

SHRI K BRAHMANANDA REDDY
 Of course when the entire discussion is over, I shall reply exhaustively all the points raised by the hon. Members.

There is a misconception. My friend from Orissa has mentioned that any Head Constable or police Constable, any Sub-Inspector could detain a person. I think it is a wrong conception. Mr Chatterjee knows that it can be done either by a District Magistrate or Additional District Magistrate.

SHRI SOMNATH CHATTERJEE
 What happens is that the District Magistrate signs a blank Order and it is filled in by the constable.

(Interruptions)

SHRI K BRAHMANANDA REDDY
 About the mis-use in certain cases and non-use in certain other cases an allegation which Mr Indrajit Gupta has made, I will be able to give you some information to the extent that I can gather.

[Shri K. Brahmananda Reddy]

Now another question has been raised by Mr. Indrajit Gupta viz., these provisions, these amendments that are sought to be made are going to be permanent on the statute? I say, as you know, 16A of the amended Act, was amended in 1975—first amendment, second amendment is there for twelve months and, therefore, the life of 16A itself is for twelve months. Therefore you cannot say that any amendments made in 16A and things like that are permanent. Therefore, some of the mis-conceptions which he had had, I wanted to clear

I move the Bill for consideration of this House.

MR. CHAIRMAN Motion moved

"That the Bill further to amend the Maintenance of Internal Security Act, 1971, be taken into consideration"

(Interruptions)

SHRI SOMNATH CHATTERJEE:
Mr Chairman, I oppose this Bill, I oppose every word, every comma, semi colon, and full stop of this Bill. This is a lawless law which is sought to be incorporated in our statute book and it will be a perennial, perpetual blot on the jurisprudence of this country and the legal set-up of this country.

What was done not to defile the Constitution during the last Session of this House by incorporating in the Ninth Schedule—an Amendment Act like the MISA Amendment Act to take away citizens' rights as it was done to incorporate a Constitutional Amendment and Election Law Bill in the Ninth Schedule for the sake of an individual in this country. Therefore, you defile the Constitution permanently. You are going to defile the statute book of this country by incorporating this legislation. This outrageous Bill is an obnoxious piece of

legislation and is nothing but a declaration of war on the people of this country and the judiciary and the opposition parties. MISA has become the most hated word in this country. By the misuse of MISA, you want to stifle all legitimate political activities of all political parties. No right-thinking man will support you. You have used it against political workers, you have used it against trade unionists. You have used it against lawyers. You have used it against Doctors. You have used it against teachers and journalists—all in the name of effectively dealing with internal emergency. Even Members of the ruling party have not been spared. Those who had the authority to counsel restraint and reason, even they have not been spared. I wish to tell this to my hon friends on the other side that they need not think that they are immune from this; if you fail to get their favour, you are also going to be a similar victim of it as others. Don't gloat over it. Don't think you will annihilate the people of the country or their voice permanently. You may be the victim as you know from this experience. Members of your party are now rotting in jail without even being told what they are guilty of, only because they raised their voice of dissent, as it dissent is a crime a treason in a democratic country. When is the justification for the use of MISA? I charge this Government that the justification is no longer the interest of the people of this country. The justification is to provide the prop and the methodology to this Government which wants to misrule this country only with the help of draconian laws like this. They want to rule under the leadership of one individual, using not ordinary laws, but under such draconian laws like these. The ordinary laws will not suit the party which has been the rulers for the last 25 years. Such ordinary laws do not suit your party any longer. When leader, party and country becomes the order of priority

then, this is the situation which you see this country. When democracy has to subserve the political interests of certain groups of individuals or any particular individual this is the result which we find because you cannot tolerate any comment, any opposition, any objection. That is why my voice cannot be heard outside this House.

How is this MISA being utilised? During the last 5 months all the meetings called by the CPI(M) and the left political parties in West Bengal have been banned. The meetings which were called inside private halls which were rented have been banned under the DIR, the Calcutta Police Act, the Suburban Police Act, etc. A meeting which was due to be held on 30th June was banned in the University Institute. The meetings which were to be held on 31st August, 14th September, 9th January and 19th January were banned. One of the meetings which was due to be held on 16th January was a condolence meeting on the passing away of the Chinese Prime Minister and that was banned under the DIR and on that very day we found from the newspapers that the Prime Minister had gone to the Chinese embassy to pay her condolence and respect. And on that very day when she was going through that, was it a ceremony she was performing in Delhi? And her henchman in Calcutta, the Governor of West Bengal, was issuing orders prohibiting the condolence meeting inside the hall, on the plea of public order? This is the way you utilise the emergency for furthering whose cause, we know very well. This is the position with regard to emergency.

Now, Sir, What is the basis of the present Ordinance and the Bill which it seeks to replace? When MISA was introduced in 1971, we were flooded with promises and solemn assurances

that this will never be utilised against political opponents; this will never be utilised for political purposes. But, Sir, the people have lost all faith in the Government as they have never believed in keeping promises. They shamelessly have gone back on their promises and this Bill is sought to be utilised as a part of the political campaign which the ruling party is carrying on against their political opponents by use of these laws

During 1971 when Pakistan attacked us, when the war of liberation of Bangladesh was being fought, what MISA law we had. The old MISA we had and the only change that was made was regarding the period of detention. That was challenged before the Supreme Court because that provided that during the period of emergency, a person has to continue to remain in detention. The Supreme Court upheld that law. This judiciary which is being castigated by this Government upheld that law, what we call "draconian law".

And, Sir, after that, even with that MISA such wide powers were not taken then. With that MISA you could successfully fight the external aggression. But we cannot fight the so-called internal disturbance unless more and more draconian powers are conferred and taken, making the people slaves. This is what is happening. I want to know from this Government how could they successfully wage a war or defend this country's integrity and freedom, with the MISA that existed then. When the security of India was actually at stake—not theoretically at stake—that was sufficient. But, now, for so-called internal disturbance, that MISA does not suffice for you! I am charging this Government that this MISA has been conceived by them for the purpose of ostensibly justifying a make-believe and spurious emergency which was proclaimed stealthily at midnight. It

[Shri Somnath Chatterjee]

was followed by these amending ordinances which have taken away a detenu's right to know why he is under detention, the detenu's right to make a representation and his right to be brought before the Advisory Board—these were being held to be the minimum checks on arbitrary action. And these minimum checks on arbitrary action have been taken away.

Sir, the protections were taken away by the amendment which this House passed, unfortunately, during the last session. Now what has happened? I am very sorry and I consider this a tragedy in this country that some of us sitting here, some of our esteemed friends, sitting on this side felt persuaded at that time to support that law. I am very sorry that some of the Members here who are represented here and who are governing a part of the country in one corner, they are utilising such law for the purpose which, according to us, is not *bona fide* for arresting the trade unionists and workers.

Then something came and Shri Brahmananda Reddy was quoting from Mr. Justice Rangarajan with a great smile as if he was supporting Justice Rangarajan's observation which he did not disclose; that was Mr. Justice Rangarajan's judgment and we are proud that the Indian judiciary still consists of some judges who are able to rise to the occasion and are keen to preserve the human dignity and human freedom and personal liberty of the people. Mr. Justice Rangarajan said:

"I cannot compel the Government to give grounds so that Mr. Kuldip Nayyar will have opportunity to make representation against his detention; he will have no opportunity to go before the Advisory Board." But, I want to know, as a judge I am obliged by the oath I

have taken to uphold the Constitution, whether there were any materials or any grounds, whatever for his detention?

I do not know how many of us here know that the Government, in its affidavit said that they were not aware that Mr. Kuldip Nayyar was a journalist. I have got the judgment here and Shri Kuldip Nayyar, in his petition, said,

"I am a journalist of repute; I have only been in the profession of journalism; I have never been a politician; I never have taken part in any political demonstrations and I am not a member of the political party."

The Additional District Magistrate or the District Magistrate who passed the order did not know that Mr. Kuldip Nayyar was a journalist—I am reading from that judgment:

"The third respondent only knew that the detenu was the author of the three books mentioned in the petition; in other words, he did not even know about the detenu being a journalist and the other facts concerning him which have been set out in the petition."

Sir, this was the fate of a journalist of Mr. Kuldip Nayyar's standing. Even anybody reading the newspaper will know his name but the District Magistrate it seemed, was not even reading the newspaper. This Government is saying that the court was wrong in asking the District Magistrate to tell the court without giving an opportunity to the detenu—please remember the detenu will not be able to make any representation to the Government on the basis of those grounds but the detenu cannot be permitted to say that the grounds are vague but the court wanted to know what information or material they had.

Sir, it was solemnly argued by Mr. Ramran and Mr. L. N. Sinha, the solicitor general that even in the case of arrest by mistake or on mistaken identity the detenu had no remedy. Therefore, if Mr. X was desired to be detained and Mr. Y was detained why cannot he say I am not Mr. X. Is this not the law of jungle? I will not read extracts from the judgment except for one passage. Shri Brahmananda Reddy found out one sentence from Justice Rangarajau's judgement and tried to...

SHRI K. BRAHMANANDA REDDY: Justice Jackson.

SHRI SOMNATH CHATTERJEE: I know you have quoted from Justice Rangarajan. You do not know yourself it has been given in your typed speech.

Sir, Justice Rangarajan has quoted from an American author. I will read only two passages from the judgement:

"How are we to get effective, vigorous government action, and yet limit the power of governmental bodies so as to forestall the rise of despotic concentration of power? Logically it is a paradox, but practically it has been done. The task requires all the wisdom man can muster. The prize in his greatest achievement: freedom."

And, Sir, the last sentence of Justice Rangarajan's judgement is:

"What we have been at pains to explain is that the rule of law will not permit arbitrary executive action."

Sir, the judge is a very bad judge because he says that there should not be any arbitrary executive action and, as such, the judiciary is standing in the way of implementation of a so-called emergency. This is the attitude of this Government and we are called upon as representatives of the people to

support. I pity my learned hon. friends on the other side. They cannot possibly support this but they are made to support. At least I have till today—till 5.40 p.m.—that much of freedom.

After Mr. Kuldip Nayyar was released then the Government found that with all the legal ingenuity of the learned solicitor general or the additional solicitor general or Mr. Khambatte they could not at least take away this little power of the court to see that there was no arbitrary executive action and that the remnants of the rule of law were still prevalent in the country. Then the Government said that it will not suit them to go on detaining persons on political motive or on no ground. Many other writ petitions came up and the courts were going to hear the same. Then this amendment came by Ordinance. What is this amendment? I am not going to elaborate because Shri Gupta has indicated the lines on which the amendment has been sought. This amendment stops consideration of all matters on merits by the courts. If the court, if a Judge, wants to know whether the executive, a constable, a sub-inspector, a District Magistrate, a Joint Secretary, even a Minister, has been acting *bona fide* or not, they cannot do so. Can you imagine a more disgusting or more dangerous piece of legislation? It says that whatever is there in the possession of Government shall be treated as confidential and shall be deemed to refer to matters of state and to be against public interest to disclose. Can you imagine that by a fiction something is treated to be in the national interest which, in fact, is not in the national interest? A fictional something is being treated to be in the national interest and public interest when national and public good may not have anything to do with it. And this law he wants to have passed by merely saying that it is of a clarificatory nature!

[Shri Somnath Chatterjee]

This is a calculated, deliberate attempt to suppress people and stop people from having the last chance of any remedy which is very very very minimal. You can take it from me; I have some experience of these MISA cases. I have had the proud privilege of trying to help a large number of detainees. I have known—take it from me, Mr. Gokhale will admit it, whether he can do it on the floor of the House, I do not know; but he will admit it—how difficult it is even for the courts to give relief in view of the previous, existing, law. Only within a very very limited sphere the court could give some relief to the citizen. I can assure the hon. members there, and the Home Minister, if he cares to go through the statistics, that very few cases of writ petition succeed. I can give the figures.

The position, therefore, today is that if this Ordinance becomes law, then even in times of war when the previous MISA was there, even during alien rule, even under British rule, we had been somewhat free, but in times of peace, we have become total slaves to the executive. My charge is that the object of this amendment is to stifle all attempts to seek redress against *mala fide* detentions. Now the executive and the bureaucracy have been put above the law. I have no remedy against the bureaucracy. You are one day going to become the victims of this bureaucracy. Today you go on giving more and more power to the bureaucracy, but a day may come when this bureaucracy will turn round and use the power against you. You do not know. Today you are unable to govern without giving excessive powers, either arrogating excessive powers to yourselves or giving

excessive powers to the bureaucracy and the executive. One day you will be the victims of that.

I want to know this, Is it in the national interest and public interest that the people of a free country should not enjoy freedom according to law? Is it in the interest of the people that a district magistrate and a police officer should have to be the unrestrained arbiters whether I shall be free or I shall rot in jail indefinitely? Do not forget—we should remind ourselves—that even today before this amendment, there was not even a fixed period of detention. So long as the emergency will last, detention without trial will continue because until the DIR is revoked, these detentions will continue. Once I go to jail, I have no right to be released until the emergency is over. And everybody knows that this emergency will never be over until something, what it is we do not know, is achieved, because everything is spurious. There have been umpteen instances of abuse. I cannot give details because of lack of time. Thousands of trade union workers have been detained, including those belonging to my hon. friend, Shri Indrajit Gupta's Party. Political party workers had been detained, government employees in both the State and the Centre had been detained. Members of Parliament including those whom nobody could accuse of being right reactionaries had been detained. Members of the Legislative Assembly in Tripura had been detained with a view to get a majority for the Government; they include members from CPM, even two Congress MLAs of Tripura, they are in jail under MISA. Journalists had been detained. Kul-dip Navvar and Gaur Kishore Ghosh in Calcutta had been detained. Doctors, college teachers, even lawyers had been taken into custody for the ostensible reason that they appeared for some persons whom they do not like. Mr. Bhim Sen Sachar, an old man of 81 was detained for writing a letter,

along with a number of other persons who are not active members of any political party, including an advocate Mr. K. K. Sinha whom Mr Gekhale may be knowing

What about the ill treatment in the jail? How are things happening? Mr Bharat Bhartiya, an old freedom fighter—he had been in jail fifty times, starting from the freedom struggle in his case the detention order was issued. What was the ground

‘On the 27th June, after the declaration of the emergency you indulged in violent activities and attempted to disturb the public peace at Nagda.

He was alleged to have participated in violent activities on 27th June. But what is the actual position he had been detained on 28th June and was already in jail on 27th June, 1975. One of the grounds is You are an active member of the CPM and engaged in labour activities. His son was not allowed to meet him while he was in jail. Ultimately he died in jail. Son could not see father, in spite of repeated representations to the then Chief Minister of Madhya Pradesh. Probably for his performance he has been promoted and brought here. In this case they ran from pillar to post, from MP to Delhi. Father was languishing and dying in jail but the son was not allowed to meet him and ultimately he died.

Government had been ‘gracious enough to supply the grounds in the case of detention of one of the Members of this House, and if you permit me, I shall read it out so that the country and Members here may know what is happening in the country.

MR CHAIRMAN You can quote but you have only five minutes.

SHRI SOMNATH CHATTERJEE The first ground is

‘You, along with other leftist leaders, signed a memorandum

which was submitted to the Deputy Commissioner, Cachar on 10th June, 1975, which writer also criticised the Government and Gauhati University for holding pre-university examination from 11-6-1975 in allegedly undemocratic manner before considering the demands of AOTA (Assam College Teachers Association) and demanded immediate release of persons arrested in connection with PU examination and charged Government for allegedly thwarting civil liberties”

If I say that the examination system followed by the Gauhati university is not proper, that you ought to listen to the demands of the teachers association, that you are thwarting the civil liberties of the people, then I am liable to be arrested under MISA. This happened to Mr Nurul Huda. The charge is after the result of the Allahabad judgment, you demanded the resignation of the Prime Minister of India. Therefore he should be in jail.

Take the case of Shri Jyotirmoy Bosu. He was detained on 5th July. We went to the Delhi High Court. I had the privilege of appearing for him. We made an application and the High Court issued notice. When the case came up, the Government found that there was difficulty in answering to my objection and they changed the order. They withdrew the order and issued a fresh order signed by another officer which necessitated a fresh application. That will mean at least two weeks delay. When the second order was challenged, a third order was issued on the ground of security of State. That was all now. Therefore, from July to September it was a public order and it became a security of State overnight except that different persons issued different orders which made us file fresh petitions.

{Shri Somnath Chatterjee}

Now, Sir, I do not think anybody in his sense can say that Mr. Bosu is a right reactionary man. Mr. Bosu was kept in complete isolation, in a solitary cell in Hissar jail. No person other than those on duty were allowed to go in. The cell had no window or door excepting a small ventilator at ceiling height and a grilled iron gate. When there was a dust storm, he had no protection from such storm. The cell also got flooded when there was a down-pour. We further understand that to make the isolation complete, the jail authorities had fixed two thick blankets on the courtward gate so that nothing outside was visible for him. Over and above, kutcha brick and mud mortar buffer-wall had been erected to make the invisibility doubly sure. For a number of days there were no switches for the lights in the cell. So he had to sleep with a powerful bulb on throughout the night which attracted thousands of insects. Subsequently the bulb was removed but he had to live and at in darkness. The fan which had been provided for him hardly worked due to frequent voltage fluctuations, part from load-shedding. There were a number of open latrines and drains near his cell as a result whereof the place was infested with flies. The open water reservoir adjoining the latrine was also a source of danger. This is the position, Sir.

Now, I want to ask the Government why have you made the court your targets? Why do you suspect that the courts will do something which will in any way bring about any situation which will be against your emergency?

Now, I will give the figure of the Government. When the previous MISA was there, a liberal MISA compared to this it was the most liberal MISA, during July 1972 to June 1973, these are from Government figures, out of 3152 detainees only 896 were released by the court. It is less than 15 per cent. There are so many det-

enues who have not been released even under the liberal MISA. Then why are you afraid of the court? I say that they do not want to disclose the grounds for the very simple reason because you do not have any grounds to detain them. If you have any grounds to detain them, you would have gladly disclosed the grounds and if you had been honest in the implementation of this law, you would have invited judicial scrutiny a far less shielded away from it. That you don't want to do.

Sir, my time is short. I want to read one of the passages. Kindly give me more time. I want to read one sentence from the speech of the present Prime Minister. On 8th of November 1969 when she had either to lead a revolt in her party or to face a revolt in her party, said: "The subversion of free debate constitute a danger to democracy not only within our party but in our country." That was what she felt in November, 1969 when there was trouble in her own party.

I am now going to quote from two persons. One is a very great statesman and the other is an infamous dictator. I request my friends to find out which was the utterance of the dictator and which was the utterance of the statesman. The first quotation is:

"Comrades, being interested in psychology, I have watched the process of moral and intellectual decay and realised even more than I did previously, how autocratic power corrupts and degrades and vulgarises.

Of one thing I must say a few words, for to me, it is one of the most vital things that I value. That is the deprivation of civil liberties in India.

A government that has to rely on the Criminal Law Amendment Act—

that was the younger brother of MISA during the British days—

'and similar laws, that suppresses the press and literature, that bans hundreds of organisations, that keeps people in prison without trial and that does so many things that are happening in India today, is a government that has ceased to have even a shadow of a justification for its existence

I can never adjust myself to these conditions, I find them intolerable. And yet, I find many of my countrymen complacent about them, some even supporting them, some who have made the practice of sitting on the fence into a fine art, being neutral when such questions are discussed "

This was what Jawaharlal Nehru said in 1936. See how he has been repudiated! The other quotation is:

"Men are weary of Liberty, they have had a surfeit of it. At this new dawn of history there are other words which move more deeply, the words are Order and Discipline "

This is the voice you are hearing today and this is what Mussolini said when he took over as Dictator of Italy. Order and discipline must have predominance over civil liberties. It seems to us that all the ideas and dreams of Jawaharlal Nehru have been buried and Mussolini has been revived on the soil of India. This is what this Government is doing.

श्री मुहम्मद अली जुरहुज्जान (किशन-
गंज) : मुहतरम केबरमन साहब ।

मैं आपका मुकदमा शुरू हूँ कि आपने मुझे इस बिल पर बोलने का मौका दिया । मैं एक शेर बर्ष कर देना चाहता हूँ और फिर मैं अपनी तकरीर कल जारी रखूंगा ।

'जी' जान मांगो तो ज्ञान दे देंगे
जो साथ संघो तो साथ दे देंगे
पर यह न होगा हम से इन्तिष
कि मुल्क के बकवार और भ्रमान
आहोज्ञान दे देंगे ।

[شہری محمد جمال الرحمان]

(کشف کلج) : مستکرم چهرمهن
صاحب - میں آپکا شکر گزار ہوں
کہ آپ نے مجھے اسی بل پر بولنے
کا موقعہ دیا - میں ایک شعر عرض
گو دیتا چاہتا ہوں اور پھر میں
لہلی تقریر کل جاری رکھونگا -

دو جو جان مانگو تو جان دے
دینگے

جو سال مانگو تو سال دے دینگے
پر یہ نہ ہوگا ہم سے ہوگز
کہ ملک کے وقار اور امان
جائے و جلال دے دینگے -

सभारपति महोदय : आप कल जारी
रखें ।