

cussion should start immediately and concluded without avoidable delay. We highly appreciate the spirit of understanding and cooperation shown by the representatives of the Staff side in their discussions with us on this important matter. We hope that the same spirit will prevail in future as well

17.35 hrs.

CODE OF CRIMINAL PROCEDURE
BILL—contd.

[SHRI S. A. KADER in the Chair]

Clause 129—(Dispersal of assembly by use of civil force).

SHRI DINESH JOARDER: I beg to move:

Page 42, lines 38 to 40,—

omit "or officer in charge of a police station or, in the absence of such officer in-charge, any police officer, not below the rank of a sub-inspector." (177)

Page 43, line 1,—

omit "or police officer referred to in sub-section (1)," (178)

This comes under the Chapter "Maintenance of Public Order and Tranquillity". Here, it is stated:

"(1) Any Executive Magistrate or officer incharge of a police station or, in the absence of such officer incharge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly or of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly."

I have put an objection to sub-clause (1) and also to sub-clause (2). What we see is that in the name of dispersing any unlawful assembly, these provisions are applied very often.

Suppose some procession of hungry millions comes in front of the Parliament House or in front of the Governor's house or somewhere else just to demonstrate their demands that they are without any food and they are hungry. Even in that case, such assemblies are declared unlawful assemblies, not to speak of trade union movements or peasant movements which I am referring to in the context of other provisions of the Bill.

In the case of such assemblies which do not go in favour of the party in power, the police officer becomes very prompt in taking action in dispersing such assemblies. Very often, they use these sort of provisions to term such assemblies as unlawful assemblies and order dispersal of assemblies.

The powers have been given to police officers also. Generally, what police officers also. Generally, what or at the time of unusual circumstances prevailing in any part of the country or in any part of the city, the Magistrates do move with the police force or with the armed force from one place to another to assess the situation prevailing at that time. So, the Magistrates do move with the police force when the occasion arises. In that case, why do you empower the police officers with these sort of powers to disperse unlawful assemblies?

Sometimes, the police officers who do not possess that much of patience or that much of sobriety or that much of respectability, to the political leaders of trade union movements or peasant movements become so much irresponsible at times. Why do you empower these police officers with such powers to disperse such assemblies which have a legitimate ground

[Shri Dinesh Joarder]

to demonstrate their demands. Very often, they declare a lawful assembly as an unlawful assembly and use this power to disperse it.

So, I have moved the amendment to omit the words "or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector." I would request the Minister to accept it and to omit these words from the clause.

SHRI RAM NIWAS MIRDHA: Normally, if the Magistrate is there, he will issue orders regarding dispersal of an unlawful assembly, but circumstances do arise when the Magistrate is not available, and in such circumstances when an unlawful assembly, bent upon doing mischief, is there. I think some provision must be made....

SHRI DINESH JOARDER: Because of non-availability of administrative people, because the Magistrate will not be available, you want to deprive people of their democratic rights? Is this the ground?

SHRI RAM NIWAS MIRDHA: A democratic protest carried on in a peaceful manner would not come within the definition of 'Unlawful assembly'. 'Unlawful assembly' is one which is bent on creating some unlawful acts or violence. People who want to carry on a democratic protest in a peaceful manner have nothing to fear by this provision. It is intended for those people who form themselves into an unlawful assembly and do violent acts.

Sir, I find it difficult to accept those amendments.

MR. CHAIRMAN: I shall now put amendments 177 and 178 to Clause 129 to the vote of the House.

Amendments Nos. 177 and 178 were put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 129 stand part of the Bill."

The motion was adopted.

Clause 129 was added to the Bill.

Clauses 130 and 131 were added to the Bill.

Clause 132—(Protection against prosecution for acts done under preceding sections).

SHRI DINESH JOARDER: I beg to move:

Page 43,—

omit lines 33 to 45. (179)

Page 44,—

omit lines 1 to 3. (180)

Page 44, line 4,—

(i) omit "(B)"

(ii) omit "this section and in".
(181)

In the Bill, under clause 132, it is stated:

"No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

(b) with the sanction of the State Government in any other case."

What does this mean? If any excess is done or if any unlawful torture is made to any of the persons, in the name of dispersing the unlawful assembly, you want to give them protection. Already you have the power to use the members of Armed Forces to disperse assemblies even by using force. All these things are provided in sections 129, 130 and 131. You will not allow democratic rights to the people. You would not allow the labourers, peasants and political workers to organize their processions and demonstrations. Very often you will declare them as 'unlawful assemblies' and you will use Armed Forces to disperse these assemblies. And what is more peculiar is this. Applying all such provisions, you will give no protection to the general people against the excesses made by

such members of Armed Forces and officials and police forces and you want to protect the members of Armed Forces and police forces from unlawful activities committed by them. The general people, the free citizens, are discriminated against. You want to immune those police officers and Member of Armed Forces from the crimes and unlawful activities that they may commit at the time of dispersing unlawful assemblies. No protection should be given to them when they use force. Usually they go in excess of their powers and in excess of what the situation warrants. So, I want that this provision should be amended accordingly and no protection should be given to the Police Officers or the Army officers or any Government officers when they use in excess the power which they have. I want my amendment to be accepted.

SHRI RAM NIWAS MIRDHA: This is a provision to give protection to the Police or the Armed forces who act in good faith. If this protection were not available to them, they would hesitate to take action that is necessary under the law and this provision applies only when the act has been performed in good faith and in accordance with the legal provisions. Any excess of the type mentioned by the hon. Member would not be covered by this. So, I cannot accept the amendments.

MR. CHAIRMAN: Now, I will put Mr. Joarder's amendments to the vote of the House.

Now, the question is—

"Page 43.—

"omit lines 33 to 45." (179).

The Lok Sabha Divided:

Division No. 9] [17.51 hrs.

AYES

Bade, Shri R. V.

Banera, Shri Hamendra Singh
Bhagirath Bhanwar, Shri

Bhattacharyya, Shri Dinen
Bhattacharyya, Shri S. P.
Bhaura, Shri B. S.
Chandrappan, Shri C. K.
Chaudhary, Shri Ishwar
Dandavate, Prof. Madhu
Deb, Shri Dasaratha
Dutta, Shri Biren
Hazra, Shri Manoranjan
Joarder, Shri Dinesh
Limaye, Shri Madhu
Mavalankar, Shri P. G.
Mohammad Ismail, Shri
Pandeya, Dr. Laxminarain
Reddy, Shri B. N.
Saha, Shri Gadahar
Singh, Shri D. N.
Vajpayee, Shri Atal Bihari
Verma, Shri Phool Chand

NOES

Bajpai, Shri Vidya Dhar
Banamali Babu, Shri
Barman, Shri R. N.
Basumatari, Shri D.
Besra, Shri S. C.
Bhatia, Shri Raghunandan Lal
Bhattacharyya, Shri Chapalendu
Bist, Shri Narendra Singh
Chandra Gowda, Shri D. B.
Chaturvedi, Shri Rohan Lal
Chikkalingaiah, Shri K.
Darbara Singh, Shri
Das, Shri Anadi Charan
Das, Shri Dharnidhar
Dhamankar, Shri
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gomango, Shri Gridhar
Gotkhinde, Shri Annasahab
Gowda, Shri Pampau
Hansda, Shri Subodh
Hari Kishore Singh, Shri
Ishaque, Shri A. K. M.
Jaffer Sharief, Shri C. K.
Jamilurrahman, Shri Md.
Jha, Shri Chiranjit
Kadam, Shri J. G.
Kailas, Dr.
Kamla Kumari, Kumari
Kapur, Shri Sat Pal
Karan Singh, Dr.
Kotoki, Shri Liladhar
Kotrashetti, Shri A. K.
Krishnan, Shri G. Y.
Kushok Bakula, Shri
Lakkappa, Shri K.
Laskar, Shri Nihar

Majhi, Shri Kumar
 Mandal, Shri Jagdish Narain
 Maurya, Shri B. P.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G. S.
 Mohsin, Shri F. H.
 Naik, Shri B. V.
 Painuli, Shri Paripoernanand
 Pandey, Shri Krishan Chandra
 Parashar, Prof, Narain Chand
 Patil, Shri T. A.
 Raghu Ramaiah, Shri K.
 Rajdeo Singh, Shri
 Ram Swarup, Shri
 Rana, Shri M. B.
 Rao, Shri M. S. Sanjeev
 Rao, Shri Nageswara
 Reddy, Shri M Ram Gopal
 Reddy, Shri P. Ganga
 Reddy, Shri P. Narasimha
 Richhariya, Dr. Govind Das
 Rohatgi, Shrimati Sushila
 Roy, Shri Bishwanath
 Samanta, Shri S. C.
 Shailam, Shri Chandra
 Shambhu Nath, Shri
 Sharma, Shri A. P.
 Sharma, Shri Nawal Kishore
 Shenoy, Shri P. R.
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Stephen, Shri C. M.
 Suryanarayana, Shri K.
 Tula Ram, Shri
 Unmkishnan, Shri K. P.
 Venkatasubbalah, Shri P.
 Venkatswamy, Shri G.
 Verma, Shri Sukhdeo Prasad
 Yadav, Shri Karan Singh
 Yadav, Shri R. P.

MR. CHAIRMAN: The result* of the division is: Ayes—22; Noes—77.

The motion was negatived.

MR. CHAIRMAN: Now I put amendments Nos. 180 and 181 to the Vote of the House.

Amendments Nos. 180 & 181 were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 132 stand part of the Bill."

The motion was adopted.

Clause 132 was added to the Bill.

MR. CHAIRMAN: I am told that by 6 O'clock we have to finish this Bill. It was agreed yesterday.

SHRI DINEN BHATTACHARYYA (Serampore): If you take it in that way we are totally against you. We want to put amendments to all the Clauses

MR. CHAIRMAN: You do put amendments, if necessary. Please be brief. That is all I say.

SHRI MADHU LIMAYE: No guillotine on this Bill.

MR. CHAIRMAN: This is what the Deputy Speaker said:

"I think the sense of the House is very clear, that the Bill be taken up this Thursday, that is, day after tomorrow and finished on that day."

SHRI DINEN BHATTACHARYYA: He has expressed his wish. It cannot be compulsion.

MR. CHAIRMAN: No, please. This is not the way.

श्री मधु लिनये : यह सवाल ऐसा है कि उस पर गिलोटिंग नहीं कर सकते हैं । यह पर्सनल लिबर्टी का सवाल है ।

*Shri Bijoy Modak also recorded his Vote for AYES

THE MINISTER OF PARLIAMEN-
TARY AFFAIRS (SHRI K. RAGHU
RAMAIAH): I am as much anxious
not to cause any inconvenience to
Members as anybody else. Let me
explain the position. Yesterday when
this matter came up I explained that
we have to send it to Rajya Sabha and
Rajya Sabha has to pass it in this
session. Therefore, I was pressing that
it should be passed i.e. day before
yesterday. But some Opposition Mem-
bers, I think, said that it should be
postponed until Thursday. Then, I
made it very clear that I had no objec-
tion in postponing it to Thursday pro-
vided we sit and pass it on that day.
And, therefore, the Deputy-Speaker has
endorsed the view. There was no
dissentient voice. Tomorrow we have
got—according to the Business Ad-
visory Committee to take up Fifth
Five Year Plan discussion. There is
no option. What are we to do?

I, therefore, request the cooperation
of all the hon. Members of the Op-
position.

श्री कृष्ण लिंगमः : जिन्दगी हमारी रहेगी
तो फिफथ फाइव इयर प्लान प्रायेगा । यह
तो लाइफ और लिबरटी का मवाल है ।

MR. CHAIRMAN: Why are you so
pessimistic? The other question is:
how long are we going to sit? That
we have to decide.

SHRI DINEN BHATTACHARYYA:
If the Government is so much anxious
to pass this, let them take it up on
Monday. Or, if necessary, let them
extend the session of the Lok Sabha
as they have done it for the Rajya
Sabha.

श्री कृष्ण लिंगमः : राज्य सभा वाले तो
बार बार एक्स्टेंशन करते ही रहते हैं ।

SHRI DINEN BHATTACHARYYA:
What will the public think about us?
We will not do this.

श्री कृष्ण लिंगमः : एक बेरी निती सुन
लीजिये । इसमें आपने देखा होगा कि
मिनिस्टर ने भी कोई ऐसा आवस्ट्रेशन का
रुख नहीं अपनाया है और आपोजीशन ने भी
नहीं अपनाया है । जिन चीजों के बारे में
हम बहुत ज्यादा फील करते हैं जन्हीं के
बारे में डिबीजन करवा रहे हैं । कई चीजें
मिनिस्टर ने मान भी ली हैं । तो आप
जल्दबाजी करके इसको खत्म मत करिये ।

सभापति महोदय : सवाल यह है कि
उनके पास और कौन सा टाइम है ?

श्री कृष्ण लिंगमः : फिफथ फाइव इयर
प्लान अगले सेशन में जायेगा । इन प्राइसेज
के चलते इनका सारा प्लान फिनीव्स्टर हो
गया है ।

श्री अइल बिहारी बाजपेयी (स्वाभियर):
अध्यक्ष महोदय, इसमें जल्दबाजी नहीं हो
सकती है । आप स्वयं मानेंगे कि बड़ा
महत्वपूर्ण विधेयक है । असाधारण अविकार
सरकार प्राप्त करने की कोशिश कर रही है ।
तो इस पर चर्चा करने का तो कम से कम
मौका देना चाहिये । इनके अन्तर्गत हमें
जेल में तो बन्द किया ही जायेगा । यह तो हम
जानते ही हैं । लेकिन उसके पहले बोलने की
तो हमको इजाजत मिलनी ही चाहिये ।

MR. CHAIRMAN: Then, I think we
will have to sit as long as we are able
to pass this Bill.

SHRI DINEN BHATTACHARYYA:
How much more time we may have to
sit?

SHRI DINESH JOARDER: Already
we have sacrificed our lunch period.
Sir, the Criminal Procedure Amend-
ment Bill which you are going to
enact contains as many as more than
500 provisions. If you cannot give us
the proper opportunity to discuss the
provisions of this important Bill, it is
not fair.

SHRI ATAL BIHARI VAJPAYEE: We thought that our amendments would be accepted by the Minister.

SHRI DINEN BHATTACHARYYA: Let them take one more day.

श्री एम० रामगोपाल रेड्डी (निजामाबाद) : प्राप से अर्ज यह करनी है कि हम लोग 5 सितम्बर, से ज्यादा यहां नहीं बैठ सकते हैं क्योंकि अभी अभी बहुत अच्छी वर्षा हो रही है और वहां जा कर प्रोडक्शन वगैरह का काम देखना है। इसलिये आज यह बिल पाम होना चाहिये। श्री बाजपेयी जी यह क्यों समझते हैं कि कांग्रेस ही क्यामत तक हुकूमत करेगी। अगर किसी वक्त उनके हाथ में हुकूमत आ जाय तो वह हम कानून को हमारे ऊपर लागू कर सकते हैं। तो अपोजीशन को यह क्या हो गया है कि वह समझते हैं कि हम हमेशा उनके ऊपर हुकूमत करेंगे और उनको हुकूमत में आने का मौका नहीं मिलेगा।

SHRI K. RAGHU RAMAIAH: I have got one suggestion to make which will be very constructive and it will not be obstructive on your side from tomorrow onwards. The suggestion is that we have no objection to sit. If you all cooperate, we shall just sit for one hour more to-day and then finish as much as we can and we shall finish the rest of it tomorrow from 6 to 7 P.M. within one hour provided there is no obstruction from your side again tomorrow. I am agreeing to this.

SHRI DINESH JOARDER: We have been sitting without lunch.

DR. KAILAS (Bombay South): I suggest that instead of sitting late we may sit on Saturday and pass the L.P.C. Bill in this session.

MR. CHAIRMAN: I would like to know how much more time would be required.

Now we are in the second reading.

SHRI DINEN BHATTACHARYYA: Eight hours may be necessary.

MR. CHAIRMAN: I do not think at this stage eight hours are necessary.

SHRI MADHU LIMAYE: Criminal Procedure code Amendment is of fundamental importance to all of us.

MR. CHAIRMAN: I would like you to tell me how much more time we may require for this.

18 hrs.

SHRI DINESH JOARDER: This Bill was allowed, in the last session, 15 hours. One or two speakers had made their speeches out of the 15 hours. At that time it was decided that the Bill might be postponed. Even after that, three or four hours of that day were left, and those three or four hours have been wasted by some speakers for nothing. Shri Raghu Ramajah was catching one speaker after another in the Central Hall and was just bringing them in to the House and asking them to speak. They spoke nonsense and actually no discussion was there on the Bill proper.

श्री अटल बिहारी वाजपेयी : डा० केलाम ने सुझाव दिया है कि हाउस शनिवार को बैठ सकता है।

श्री रामावतार शास्त्री (पटना) : 6 बज चुके हैं, अगर और काम करना है तो कल किया जाय, आज हम लोगों को छुट्टी दी जाय। लंच आबर भी खत्म है, हाफ-एन-आवर भी खत्म है, मेरा निवेदन है कि यह कल हो जायगा। आज जो चाहेंगे वह बात हो जायगा।

समापति महोदय : आज 7 बजे तक बैठें। (ब्यवधान)

श्री शम्भुनाथ : विरोधी पार्टियों की तरफ से आवाज आ रही है कि यह बड़ा

इम्पोर्टेड बिल है—जा सही है। इसको माइन्सूटनी एक्जामिन करना चाहिये—यह जान ठीक भी है। ऐसी हालत में मैं यह रिजॉल्यूट कलमा कि सैटर्ज को बैठ कर इसको पाम कर दे।

SHRI DINEN BHATTACHARYYA: We have sat already for more than five hours. But you have been in the Chair only for half an hour. The Deputy-Speaker has left and the Speaker had left the Chair long ago. But we have been sitting here continuously.

श्री इन्सूनाब इलीलिये मैंने सुझाव दिया है कि इसको शनिवार को बैठ कर पाम कर दे।

SHRI DINESH JOARDER: No, we shall not sit on Saturday at all.

MR. CHAIRMAN: We have got two proposals. One is that we may sit for one hour more today and one hour more tomorrow. The other is that we sit on Saturday and finish all stages of this Bill. Of course, the Speaker's orders will have to be taken for Saturday, and if they are forthcoming, then the problem is solved.

SHRI DINEN BHATTACHARYYA: We have not covered even half the number of amendments. So, it will take a long time.

श्री इन्सूनाब जिहारी वाजपेयो एक तीमरा सुझाव भी है—वे इन बिल को पास करने में इसलिये जल्दी कर रहे हैं कि यह राज्य सभा में भी जाना है। लेकिन राज्य सभा एक दिन धीर बैठने का फैसला कर सकती है। इस तरह में सब काम हिसाब में हो सकता है।

MR. CHAIRMAN: Meanwhile, shall we go on with the clauses? Till the Speaker's order comes, we shall go on with the clauses.

SHRI B. V. NAIK (Kanara): Since the initiation of the discussion of the five year Plan will be tomorrow, there will be a break of two more days, and therefore, along with this Bill, the discussion of the five year Plan which is very important can take place on Saturday.

MR. CHAIRMAN: Anyhow, we shall wait.

Now, there is clause 133. There are two amendments.

Mr. Goswami are you moving—?
—No. So they are not moved. I put clause 133 to the vote of the House. The question is:

“That clause 133 stand part of the Bill.”

The motion was adopted.

Clause 133 was added to the Bill.

Clauses 134 to 148 were added to the Bill.

SHRI DINESH JOARDER: Sir, what is this half-hearted discussion? We are anxious to know what you decide about the sitting.

MR. CHAIRMAN: When the time comes we will decide.

Clause 144—(Power to issue order in urgent cases of nuisance or apprehended danger).

SHRI DINESH JOARDER: I move:

Page 47, line 26,—

after “case” insert “and the reasons therefor” (138).

Page 47, lines 30 and 31,—

Omit, obstruction, annoyance or injury to any person lawfully employed or” (236).

Page 47, lines 31 and 32—

Omit "or a disturbance of the public tranquillity, or a riot, or an affray" (237).

Page 47,—

omit lines 33 to 38. (238).

Page 48, lines 9 and 10,—

for "by it under the proviso to sub-section (4)" substitute "under this section" (240).

SHRI MADHU LIMAYE: I move:

Page 47, lines 21 and 22,—

omit "a sub-divisional Magistrate or any other Executive Magistrate" (198).

Pages 47, and 48,—

for lines 39 to 44 and 1 to 3 respectively, substitute—

"(4) No order under this section shall remain in force for more than seventy-two hours in the first instance:

Provided that the District Magistrate may extend the order for a further period of fifteen days after holding public hearings in the manner prescribed on the necessity or otherwise of extending the order." (199).

Pages 47 and 48,—

omit lines 41 to 44 and 1 to 3 respectively. (200).

Page 48,—

omit lines 8 to 10. (201).

SHRI DINESH JOARDER: Sir, the provisions in clause 144 are very dangerous. Often the provisions of this clause are applied against mass movements, trade union movements, labour movements and political movements. Very often, some places are declared as places coming under section 144 where no person accompanied by four or more persons is allowed to enter such premises, where orders under section 144 have been applied. (*Interruptions*).

AN HON. MEMBER: Ordinary assembly.

SHRI DINESH JOARDER: You are not allowing persons to come near the Parliament House. Now, I want to read out the clause:

"In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate to specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134 direct any person to abstain from a certain act or to take certain order with respect, to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."

The objectionable words are: "obstruction, annoyance and disturbance to public tranquillity." All these words are objectionable, because generally what you see in the villages, particularly, where there is a dispute over a land when the peasants want to take possession of waste land or excess land or fallow land and they want to cultivate it or they want to take possession of the land which is being held in excess by the landlords according to the provisions of the land forms Act, the police generally apply section 144 and prevent the peasants from taking possession of the land, and indirectly they appoint a receiver and then give possession to the landlords. Similarly these provisions are also applies to the case of trade union movement. What do these words ob-

struction and annoyance mean? If the workers of a factory or an industry want to realise some demands and demonstrate in front of the factory, the employer may say that he is obstructed by such assembly of such workers. When the provisions of section 144 are applied and they are declared to be unlawful assembly, they are asked to disperse. The police use force. The Army officers will be employed to disperse the assembly on behalf of the employer, and the police will create a riot and then innocent workers will be victimised. So, this is very objectionable provision which we see in practice every day. These provisions are applied to crush and curb the land movement, the trade union movement and the political movement and very often in Calcutta from times immemorial the provisions of 144 are being applied to barricade the Writers Building and the Governor's palace. No person is allowed to proceed towards the Governor. Even hungry marchers are not allowed to give a representation in the hands of the Governor or submit a note saying that they are not getting food and they are not being provided shelter. All these things are debared and so I want these words, obstruction, annoyance, disturbance of public tranquillity etc. should be deleted from this provision. If not the entire clause, atleast these words should be deleted from this Bill and that is why I have moved my amendments.

I also want that the proviso to this section should be omitted. Proviso reads as follows:

"Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such

order, expired, as it may specify in the said notification."

Generally these orders cannot exist after the expiry of two months. In this proviso power is given, so that this order can be extended upto six months. So this proviso should be omitted and that is why I have moved my amendment.

श्री जय लिंगम . अध्यक्ष महोदय, क्रिमिनल प्रोसीजर कोड की यह जो धारा है वह व्यक्ति स्वतन्त्रता पर कुठाराघात करती है और इसलिये इसमें बुनियादी परिवर्तन की आवश्यकता है। मुझे इस बात पर अफसोस है कि मंत्री महोदय ने इसके बारे में जो सुझाव हम लोगों के द्वारा दिये गये हैं उनके ऊपर सहानुभूतिपूर्वक विचार नहीं किया है। अब दफा 44 क्या चीज है इसको हम पहले समझ ले। इसके बारे में स्वयं सुप्रीम कोर्ट ने कहा है कि माघारण स्थिति में लागू करने के लिए यह दफा नहीं है, आपत्कालीन स्थिति में, सकटकालीन स्थिति में ही इसका इस्तेमाल होना चाहिए लेकिन अगर मंत्री महोदय से आप बयान दिलवायें कि दफा 44 कितने जिलों में, कितने शहरों में, कितने सूबों में लागू की गई है तो आपको पता चलेगा कि देश के बहुत बड़े हिस्से में सारी व्यक्तिगत आजादी समाप्त हो चुकी है। सुप्रीम कोर्ट कहती है।

"The list of action under Section 144 is the urgency of the situation and its efficacy in its being able to prevent some harmful occurrence. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification."
(AIR 1971, P. 2488)

यह तो सुप्रीम कोर्ट ने कहा है लेकिन वास्तव में बिना सोचे समझे, बिबेकहीन ढंग में दफा 44 की तहत आर्डर जारी किये जा रहे हैं। मेरा पहला विरोध यह है कि

[श्री मधु सिन्हा]

आपने इसमें सभी मजिस्ट्रेटों को अधिकार दे रखा है, भेरी राय में डिस्ट्रिक्ट मजिस्ट्रेट के बलात्ता और किसी मजिस्ट्रेट को—सब डिप्टी कमल मजिस्ट्रेट या दूसरे फर्स्ट क्लास मजिस्ट्रेट को—यह अधिकार नहीं देना चाहिए। अगर डिस्ट्रिक्ट मजिस्ट्रेट तक ही यह अधिकार सीमित रखा जायेगा तो कम से कम वह सोचेगा और कुछ न कुछ सरक्षण लोगो को मिल जायेगा लेकिन सभी मजिस्ट्रेटों को यदि यह अधिकार मिल जायेगा तो मनमाने ढंग से उसका इस्तेमाल होगा।

मेरा दूसरा आक्षेप यह है कि दो महीने के लिए एन्सोल्यूट आर्डर जारी करने का अधिकार इसमें मजिस्ट्रेट को दिया गया है। किसी भी प्रगतिशील लोकतन्त्रवादी देश में इस तरह का प्रायर रेस्ट्रेंट स्वीकार नहीं जाता है। अमरीका में जब मिजिल राइट्स के सम्बन्ध में नीग्रो का आन्दोलन शुरू हुआ तो अमरीका के सुप्रीम कोर्ट ने कई फैसले दिए हैं जिनमें प्रायर रेस्ट्रेंट की बुराई की है। इसलिये मैंने सुझाव दिया है कि पहले अगर हुकम जारी करना है तो 72 घटो के लिए हो—यह भी जो हम लोगो के बीच में बातचीत हुई उसके बाद में इसके लिए मैं तैयार हो गया—तो 72 घटो के लिए अन्तरिम आर्डर वह जारी करे और अगर 72 घटो के अन्दर काबू में परिस्थिति नहीं आती है तो वह एन्सोल्यूट आर्डर 15 दिनों के लिए जारी करे बशर्ते कि 72 घटो में वह पब्लिक हियरिंग करे। सार्वजनिक और खुली चर्चा में, पब्लिक हियरिंग में यदि साबित होगा कि इस तरह के आर्डर की जरूरत है, यह पब्लिक हियरिंग की जो बात है उसके मान लीजिये। अगर कोई साम्प्रदायिक दंगा हुआ तो क्या आप समझते हैं केवल पुलिस मैथड से वह दंगा काबू में आयेगा? जब पूना में दंगा हुआ तो सभी सार्वजनिक कार्यकर्ताओं और सभी दलों के प्रतिनिधियों को बुलाया गया और सभी ने मिलकर, साम्प्रदायिक दंगे का कैसे

मुकाबला किया जाये, इसका निर्णय किया। तो इसलिये केवल पुलिस मैथड से इस तरह के जो दंगे फसाद होते हैं उन पर आप काबू नहीं पायेंगे। मेरा सुझाव है कि 72 घटो का अन्तरिम आर्डर जारी करने का अधिकार डिस्ट्रिक्ट मजिस्ट्रेट को दिया जाये, उसके बाद सार्वजनिक हियरिंग हो और उन हियरिंग के बाद यदि डिस्ट्रिक्ट मजिस्ट्रेट उचित समझे तो 15 दिन तक के लिए इस आर्डर को जारी रखे इस में और बात है। यह आर्डर मिर्फ विशिष्ट व्यक्ति के ऊपर नहीं है, यह तो साधारण जनता के ऊपर भी जारी किया जाता है। इसके बारे में भी सुप्रीम कोर्ट ने कहा है

“Ordinarily, the order will be directed against a person found acting or likely to act in a particular way. But a general order may be necessary when the number of persons is so large that distinction between them and the general public cannot be made without the rest mentioned in the section. A general order is thus justified but if the order is too general, the order may be questioned by appropriate remedies for which there is ample provision in the law”

144 के आर्डर जितने हैं उनको आप देखें कि उनमें जनरल आर्डर कितने हैं। 99 परसेंट जनरल आर्डर हैं जब कि सुप्रीम कोर्ट कहती है कि साधारणतः, आर्डरिंगली जनरल आर्डर नहीं होने चाहियें। उसी तरह से एक्स आर्टी आर्डर की बात है। बिना सुने उनको जारी कर दिया जाता है। दो महीने के लिए इस तरह से आर्डर जारी किया जाएगा? इसलिए मैंने कहा है कि 72 घटो के लिए आर्डर रहें। बाद में उन लोगो को आप हियरिंग का मौका दें। आज भी उसका मौका है। लेकिन मजिस्ट्रेट के ऊपर

यह जिम्मेदारी डाली जाए कि वह सार्वजनिक कार्यकर्ताओं की राय ले ।

आगे चल कर राज्य सरकारा को यह अधिकार दिया गया है कि दो महीने तक आर्डर को बढ़ायें और आगे भी बढ़ाएं । इस तरह के अधिकार आप राज्य सरकारो को देंगे तो व्यक्तिगत स्वतन्त्रता, शहरी आजादिया नाम की कोई चीज नहीं रहे जायेगी । मेरी प्रार्थना है कि मेरे इन सारे सुझावों पर आप विचार करे । उत्तर देने की जल्दी न करे । जल्दबाजी की कोई बात नहीं है । अभी इसको एडजर्न कर दें । रात में खूब सोचें समझें । बड़ी सोच समझ वाले ये मंत्री हैं । इसलिए मेरी बातों पर गौर करें अच्छी तरह और कल सुबह ताजा दिमाग लेकर, नई दृष्टि लेकर आएं मदन मे, ऐसा करेंगे तो मेरा खयाल है कि कोई गमना बीच का निकल आएगा ।

श्री रामावलार शास्त्री : धारा 144 का अयनाही इनिहाम रहा है । जब तक पूजावादी व्यवस्था रहगी इसका वही हाल रहेगा जो अब तक रहा है । मजदूर आन्दोलन, किसान आन्दोलन आदि के खिलाफ भ्राम तौर से इसका इस्तेमाल किया गया है और किया जाएगा । इस धारा को इस वास्ते में बहुत खतरनाक समझता हूं । जहा कही मजदूरों का आन्दोलन होता है शूट इस धारा को लागू कर दिया जाता है और पुलिस को भेज कर वहां जो जाते हैं, उनको गिरफ्तार कर लिया जाता है और जेल में डाल दिया जाता है । मैं ताजा मिसाल आपको देता हूं । 31 मार्च को दानापुर मे थोड़ी सी रोड़ेबाजी हो गई । रेल मंत्री वहां गए हुए थे । लेकिन उसका निशाना आपने तमाम उस शहर के बाशिन्दों को बनाया और दो महीने तक 144 धारा लागू कर के मजदूरों पर, भ्राम नागरिकों पर सभा करने की पाबन्दी लगा दी । जो दोषी थे वे तो आज भी धूम रहे हैं लेकिन जिन्होंने रोड़ेबाजी में कोई हिस्सा

नहीं लिया उनके ऊपर मुकदमे चल रहे हैं । इस धारा का बेजा इस्तेमाल करके मजदूरों को दबाया जाता है ।

1970 में ही बही दानापुर में कैरेज गेंड वीगन डिपार्टमेंट के मजदूरों ने एक आन्दोलन चलाया । वहां भी यही धारा लागू कर दी गई । कोई गड़बड़ी नहीं हुई। शान्ति के साथ आन्दोलन चल रहा था । फिर भी उनके नेताओं को पकड़ कर जेल में आपने डाल दिया । मेरे साथ भी ऐसा ही किया गया । 1971 में हम लोगों ने जमींदारों के पास जो बहुत जमीन है उस पर बेजमीनवालों द्वारा कब्जा करवा कर उनमें ज्यादा अनाज पैदा करने का प्रयास किया । भूमि मुक्ति आन्दोलन हमने चलाया जिसको विरोधियों ने लीड ग्रैव आन्दोलन का नाम दिया । तमाम देश में, बिहार में, उत्तर प्रदेश में यह आन्दोलन चला । इस दफा का तब भी इस्तेमाल किसानों के आन्दोलन को दबाने के लिए किया गया । श्री लिये ने ठीक ही कहा है कि अगर कहीं कोई साम्प्रदायिक दंगे का खतरा हो तो वहा इन तमाम दलों के लोगों को तुरन्त बुला कर के उनके राय विचार मे जरूरत पड़े तो इसका उपयोग कर सकते हैं । लेकिन अभी तक इसका इतिहास यह रहा है कि जन आन्दोलनों, नौजवानों के आन्दोलनों विद्यार्थियों के आन्दोलनों और किसान मजदूरों के आन्दोलनों को दबाने के लिए ही इसका इस्तेमाल किया गया है । अब भी उनके दिमाग में यही बात है । इसलिए इस तरह की धारा नहीं होनी चाहिये ।

MR. CHAIRMAN: The Minister of Parliamentary Affairs is to make some announcement.

SHRI K. RAGHU RAMAIAH: After talking to our friends and the hon. Speaker inside his chamber, I am in a happy position to state that after this clause, we shall adjourn..... (Interruptions). We can adjourn now. But kindly listen to me. I have not yet completed. We shall sit on Satur-

[Shri K Baghu Ramaiah]
day and pass this Bill and, also, there is a small Government Bill, the Coking and Non-Coking Coal Mines (Nationalisation) Amendment Bill already passed by the Rajya Sabha. I think, you agreed to pass that Bill also. So, we finish these two Bills on Saturday

MR CHAIRMAN Is it the agreement of the House? There will be no Calling Attention and no question Hour on Saturday So, these two Bills will be finished

SHRI SHYAMNANDAN MISHRA (Begusarai) On Saturday, there can be a Calling Attention

MR CHAIRMAN I think, the Speaker will not accept any Calling Attention on that day

SHRI DINESH JOARDER So, I am on my legs

MR CHAIRMAN We stop here, at clause 144.

Mr Dinesh Joarder has finished, Mr Madhu Limaye has finished, Mr. Ram Avtar Shastri has finished

Now, Mr. Vajpayee. Those who want to speak afterwards can speak.

Mr Vajpayee, you can just begin.

श्री मदन बिहारी राजपेशी अध्यक्ष महोदय . .

MR CHAIRMAN. So, Mr Vajpayee is on his legs.

Now, before we adjourn, I take it that these two Bills will be finished on Saturday That is the opinion of the House That is clear

SHRI SHYAMNANDAN MISHRA We cannot say that We will see

MR CHAIRMAN This Bill will be finished The other Bill ...

SHRI SHYAMNANDAN MISHRA We will see

MR CHAIRMAN Now, we adjourn to meet again tomorrow at 11 A M

18 28 hrs

The Lok Sabha then adjourned till Eleven of the Clock on Friday August 31, 1973/Bhadra 9, 1895 (Saka)