

Whatever I did I did in order to promote justice for the people. This is a utilitarian law; the greatest good of the greatest number is the bases of this Bill. Here is the Minister in the Ministry of Law and here are my hon. friends like Shri Warrior and others who do not believe that the greatest good of the greatest number is possible with this Bill; they believe that the greatest good of the people is only possible if a small number of people direct it. So, what can I do? I cannot help it. But I would say very humbly and respectfully to my hon. friend Shri Warrior and others that both these things hang together. Why do you amputate only one leg of a human being? You should amputate both the legs, so that he can have artificial limbs from Poona or elsewhere. But you amputate only one leg and ask him to walk on one leg only. My Bill had two legs, but you want to cut out one leg. Anyhow, what can I do, because the Minister of State in the Ministry of Law acts as the surgeon and he thinks that this simple Bill which has two legs to stand upon should go about only with one leg. I do not bother about that. I am very happy that at least one leg is saved.

**Shri C. R. Pattabhi Raman:** May I point out that the word 'directly' was there in the original enactment, but it had been removed later on, with the result that anybody interested could take up the matter? So, it is much wider now.

**Shri D. C. Sharma:** So, I am glad that my Bill will be able to walk with one leg. I am glad that both legs are not going to be amputated. I thank the hon. Minister for his kindness. I hope that the hon. Minister will bring forward a new Bill and when he does so he will remember that this idea was given to him by this humble person on the floor of this House.

So far as the report to which the hon. Minister referred is concerned, I think with due deference to the great man who presided over that com-

mittee which submitted the reports and whose feet even I think I would not be worthy to touch, I must say that it is a compromise report. Compromises in these things do not do any good. All the same, I am a law-abiding citizen, and since the hon. Minister says that I should withdraw the Bill . . .

**Shri Warrior:** That is the discipline in the Congress Party. That has nothing to do with law-abidingness.

**Shri D. C. Sharma:** . . . I withdraw this Bill, because I know that even though I withdraw this Bill, this Bill will still live; it will migrate into another Bill and it will have another life, just as a Hindu who believes in transmigration goes from one life to another and has life all the time.

**Mr. Chairman:** Has the hon. Member leave of the House to withdraw the Bill?

**Several hon. Members:** Yes.

*The Bill was by leave, withdrawn.*

15.26 hrs.

#### CONSTITUTION (AMENDMENT) BILL

(Amendment of articles 22, 32 and omission of article 359) by Shri Madhu Limaye.

**Mr. Chairman:** We shall now take up Shri Madhu Limaye's Bill seeking to amend certain articles of the Constitution. 2 hours have been allotted for this Bill.

श्री मधु लिमये (मुंबेर) : मैं प्रस्ताव करता हूँ कि भारत के संविधान में प्रागे संशोधन करने वाले विधेयक पर विचार किया जाये ।

अध्यक्ष महोदय, मैं जो विधेयक सदन के सामने रख रहा हूँ वह छोटा लेकिन बहुत महत्वपूर्ण विधेयक है । इस समय हमारे देश में बहस चल रही है

### [श्री मधु लिमिये]

संकटकालीन स्थिति और कानून के बारे में और उस में बड़े लोग हिस्सा ले रहे हैं। . . . (व्यवधान) मैं तो 15 मिनट केवल लूंगा क्योंकि मेरे मित्र चटर्जी साहब कुछ बोलना चाहते हैं और उनको जाना है इसलिए मैं पन्द्रह मिनट से अधिक नहीं लूंगा।

तो मैं यह निवेदन कर रहा था कि संकट कालीन कानून के बारे में बड़े बड़े लोगों ने कहा है कि अब परिस्थिति में काफी परिवर्तन हुआ है और संकटकालीन स्थिति को समाप्त करना चाहिए। जब राष्ट्रपति के भाषण पर चर्चा हुई, और उस के उत्तर में प्रधान मंत्री जी जब जवाब देने के लिए खड़ी हुई तो हम उम्मीद करते थे कि शायद संकटकालीन स्थिति को समाप्त करने का एलान वह करेंगी। लेकिन खेद की बात है कि यह नहीं हुआ। क्यों नहीं हुआ यह मेरी समझ में नहीं आता क्योंकि अगर कोई ऐसी बात इस वक्त है कि जिस में कांग्रेस का दलीय स्वार्थ है, प्रधान मंत्री जी का निजी स्वार्थ है और राष्ट्रहित भी है, इन तीनों का अगर किसी चीज में मेल है, तो यह संकटकालीन स्थिति हटाने की बात है। इसको समाप्त करने से, यहां हाथी साहब हैं, मेरी बात को वह प्रधान मंत्री जी तक पहुंचायें कि, उनकी व्यक्तिगत लोकप्रियता भी बढ़ेगी, कांग्रेस दल का भी फायदा होगा और जहां तक राष्ट्रहित और प्रजातंत्र का सवाल है उसका भी इस में लाभ होगा। तो मेरी इस बात को हाथी साहब जरूर पहुंचायेंगे प्रधान मंत्री जी के कानों तक।

अब इस विधेयक की जो विशेष बातें हैं उनकी ओर मैं अध्यक्ष महोदय, आपका ध्यान दिलाना चाहता हूं। इस में एक बात संविधान की 22वीं धारा का जो चौथा अनुच्छेद है उस में परिवर्तन करने की और दूसरी बात संकटकालीन स्थिति के बारे में एक धारा है 359 उसकी इस के अन्तर्गत कहा गया है कि जब देश में संकट कालीन स्थिति रहेगी

तो जो बुनियादी अधिकार हमारे नागरिकों को इस संविधान के अन्दर मिले हैं उन पर प्रमल कराने के हेतु वह अदालत के सामने नहीं जा सकते हैं। संविधान की 32वीं धारा में अदालत के सामने जाना और अपने अधिकारों पर प्रमल करवाना यह भी एक बुनियादी अधिकार माना गया है, लेकिन धारा 32 की उपधारा (4) के अन्तर्गत कहा गया है कि विशेष स्थिति में इस अधिकार को मुलतवी रखा जा सकता है। यह विशेष स्थिति कौन सी होगी?

अगर राष्ट्रपति संकटकालीन स्थिति का एलान देश के अन्दर करते हैं तो वह स्थिति लागू हो जाती है और जब ऐसी स्थिति होगी, ऐसी घोषणा होगी तो कोई भी नागरिक अदालत के सामने नहीं जा सकता है, न उच्च न्यायालय के सामने और न सर्वोच्च न्यायालय के सामने। अब मेरी तरफ़ीम का यह मकसद है और मैं चाहता हूं कि साधारण स्थिति में किसी भी व्यक्ति को उसके ऊपर बिना अभियोग लगाये, मुकदमा चलाये, उसको अपनी रक्षा करने का मौका दिये, नजरबन्द न रखा जाय, उसे स्थानबद्ध न रखा जाय। इसलिए अगर मेरी तरफ़ीम को माननीय मंत्री महोदय स्वीकार करेंगे, तो उसका नतीजा यह होगा कि साधारण स्थिति में किसी भी व्यक्ति को नजरबन्द नहीं किया जायगा। उसका साफ़ मतलब है कि इस वक्त नजरबंदी का जो कानून बनाया गया है उस पर प्रमल कराना कानूनम गैरकानूनी हो जायेगा। तो यह तो साधारण स्थिति की बात हो गई लेकिन साथ-साथ मैं जानता हूं कि असाधारण और विशेष स्थिति भी देश में पैदा हो सकती है। और जब ऐसी असाधारण संकटकालीन स्थिति पैदा हो जायेगी तो मैं मानता हूं कि शासन को विवेकहीन अधिकार जरूर होना चाहिए क्योंकि उस स्थिति में हर एक को अदालत के सामने खींचना, उस के ऊपर अभियोग लगाना और बह साबित करना

शायद सरकार के लिए सम्भव नहीं होगा। तो ऐसी हालत में वर्तमान संविधान की 22वाँ धारा के अन्दर नज़रबन्दी का प्रिवेन्टिव डिटेन्शन का प्राज जो कानून है वह लागू हो जायेगा। मैं उस का विरोध नहीं कर रहा हूँ लेकिन साधारण स्थिति में नज़रबन्दी के कानून का इस्तेमाल नहीं करना चाहिये। मैं चाहता हूँ कि जब असाधारण संकटकालीन स्थिति पैदा हो जायेगी तब उन कानूनों पर अमल किया जाये। प्राज संकटकालीन स्थिति के रहते हुए आप देखिये, 358 धारा को देखिये, 19वीं धारा के अन्दर वाणी स्वातंत्र्य, भाषण स्वातंत्र्य, संचार स्वातंत्र्य आदि जो बुनियादी अधिकार हमें प्राप्त होते हैं उन के खिलाफ़ भी कानून बनाने का अधिकार इस संसद् को मिल जाता है। उस को तो मैं हाथ नहीं लगा रहा हूँ। वह बनायें कानून, लेकिन बाक़ी जो बुनियादी अधिकार हैं कम से कम उन को ख़त्म करने की बात संकटकालीन स्थिति में भी सोचनी नहीं चाहिए।

15.32 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

जब भारत सुरक्षा कानून बना तब उस के अन्दर नियम बना 30 (अ) जिसके मातहत सब को नज़रबन्द किया जाता है तो उन धाराओं का नतीजा क्या हुआ? अंग्रेजों के ज़माने में जो स्थिति थी वही स्थिति शायद हिन्दुस्तान में, एक प्रजातांत्रिक देश में, कायम आई। इन नियमों को लेकर कई लोगों को सरकार ने गिरफ़्तार किया है कहा यह गया कि जो देशद्रोही तत्व है, जो समाजद्रोही तत्व है, जो विदेशों के साथ मिल गये हैं उन को बन्द करने के लिए यह भारत सुरक्षा कानून का इस्तेमाल किया जायगा, जासूस आदि लोगों को इस के मातहत पकड़ा जायेगा। लेकिन मैं निवेदन करना चाहता हूँ कि सरकार ने इन नियमों का और उन विवेकहीन अधिकारों का इस तरीके से इस्तेमाल किया है

जिसको स्वेच्छाचार, मनमानी और तानाशाही ही कहा जा सकता है।

मेरे मित्र जार्ज फरनांडिस हैं जिनकी कि देशभक्ति के बारे में कोई भी आदमी शक़ नहीं कर सकता है। मैं कह सकता हूँ कि इस सदन में जितने लोग हैं उन से उन की देशभक्ति और देश निष्ठा कम नहीं है लेकिन चूँकि वह सरकार के विरुद्ध थे सरकार ने भारत सुरक्षा नियमों के अन्तर्गत उन को 1963 साल में बन्द किया था। उस के बाद इन नियमों का दुरुपयोग सरकार ने, अख़बारों की स्वतन्त्रता को ख़त्म करने के लिए पत्रकारों के खिलाफ़ किया है। यह आप जानते हैं, मद्रास में हुआ है, पटना में हुआ है, अन्य जगह भी हुआ है और अभी 16 फरवरी को जिस पर सर्वोच्च न्यायालय ने अपना फैसला दे दिया वह किरोसीन के एक छोटे से व्यापारी का मामला है। यह तीन उदाहरण मैं ने दिये। मैं ने तथाकथित वामपंथी कम्युनिस्टों का इसलिए उदाहरण नहीं दिया क्योंकि अगर उन का उदाहरण मैं देता तो मंत्री महोदय कहते कि ये तो देशद्रोही हैं, चीन से मिले हुए हैं। अब मैं बहस नहीं छेड़ना चाहता हूँ बाक़ी मेरा अपना ख़याल है और मैं महसूस करता हूँ कि गोपालन जैसे वामपंथी कम्युनिस्टों का चीन से कुछ लगाव हो भी सकता है लेकिन किसी हालत में मैं यह मानने के लिए तैयार नहीं हूँ कि वह देशद्रोही हैं या उनको नन्दा साहब देशद्रोही साबित कर सके हैं। मैं तो यह कहूँगा कि उनके देशद्रोह को नन्दा साहब साबित नहीं कर सके हैं। और उन्होंने हमारे सामने जो किताब रखी उसमें अपने अभियोगों की पुष्टि में उन्होंने कुछ भी सबूत नहीं दिया और न हमें कोई जानकारी दी थी। इस से साफ़ हो जाता है कि भारत सुरक्षा कानून के अन्तर्गत उनको जो विवेकहीन अधिकार मिले हैं उन अधिकारों का वह दुरुपयोग करना चाहते थे, अपनी मनमानी चलाने के लिए और अपनी तानाशाही कायम करने के लिए। सर्वोच्च न्यायालय ने यह अपने फैसले में कहा है कि

## [श्री मधु लिमये]

मौजूदा भारत सुरक्षा कानून और जो नियम 30 (घ) है वह संविधान के खिलाफ है। संविधान में हमें बनियादी अधिकार दिये गये हैं, जैसे धारा 14 है जिसमें कहा गया है कि कानून का समान संरक्षण मिलना चाहिए। आप के भारत सुरक्षा कानून के अन्तर्गत जो नियम हैं वह संविधान की 14वीं धारा की हत्या करते हैं। यह केवल मेरी राय नहीं है बल्कि सर्वोच्च न्यायालय ने भी यह अपने फैसले में कहा है।

उसी तरह 21वीं धारा है जिसके अन्दर गिरफ्तारी के 24 घंटे के अन्दर अन्दर सबसे करीब जो मजिस्ट्रेट होता है उस के सामने पकड़े गये व्यक्ति को हाजिर करना, उपस्थित करना यह सरकार का कर्तव्य होता है। इस का भी हनन भारत सुरक्षा कानून के अन्तर्गत जो नियम बने हैं उन नियमों के कारण हुआ है। उसी तरह जो 22वीं धारा है जिसके अन्दर नज़रबंदी के लिए तो आवश्यकता है, लेकिन यह कहा गया है कि किसी को जब कभी नज़रबंद करते हैं तो कम से कम इतना संरक्षण तो आप उन को जरूर दें जिसके अन्तर्गत उन को उनकी गिरफ्तारी के कारण बतलाये जायेंगे उन को उन कारणों के खिलाफ अपना निवेदन देने का अधिकार मिलेगा। तीसरी चीज एक सलाहकार बोर्ड रहेगा जिसमें उच्च न्यायालय के न्यायाधीश या जो न्यायाधीश होने के लिए योग्य हैं ऐसे लोग इस एडवाइजरी बोर्ड में, सलाहकार बोर्ड में रहेंगे। कम से कम इतना संरक्षण मौजूदा 22वीं धारा के अन्तर्गत नज़रबंदों को मिलता है। लेकिन संकटकालीन स्थिति का फायदा उठा कर यह जो एक मामूली संरक्षण नज़रबंदों को है उस को भी आप ने छीन लिया है उस को भी खत्म किया है और नतीजा यह हुआ है कि कई लोग सर्वोच्च न्यायालय के सामने गये लेकिन सर्वोच्च न्यायालय ने कहा कि हम इस के बारे में कुछ भी नहीं कर सकते हैं क्योंकि 32वीं धारा

उपधारा (4) और संविधान की धारा 359 के अन्तर्गत हमें कोई अधिकार ही नहीं है इस बात पर निर्णय करने का। हम जानते हैं कि भारत सुरक्षा नियम संविधान के विपरीत है लेकिन चूंकि संकटकालीन स्थिति है और हमारे अधिकारों को छीन लिया गया है इस लिए हम इंसाफ नहीं कर सकते हैं। यह हुई सर्वोच्च न्यायालय की राय तो ऐसी हालत में मैं चाहता हूँ कि यह 359 धारा को हमेशा के लिए समाप्त किया जाय। चाहे साधारण स्थिति हो या असाधारण संकटकालीन स्थिति हो। सर्वोच्च न्यायालय और उच्च न्यायालय के सामने जाकर अपने बनियादी हकूकों के ऊपर अमल करवाने का अधिकार हमें अग्रथ होना चाहिये। यह रास्ता हमेशा खुला रहना चाहिए चाहे संकटकालीन स्थिति हो या न हो। संकटकालीन स्थिति में मैं यहां तक जाने के लिए तैयार हूँ और इसीलिए 22वीं धारा में मैं परिवर्तन चाहता हूँ कि संकटकालीन स्थिति में किसी भी व्यक्ति को नज़रबंद रखने का अधिकार सरकार को मिले लेकिन इस हालत में भी जैसे कि 22 धारा के अन्दर कहा गया है कि न्यूनतम संरक्षण नज़रबंद को होना ही चाहिए। उस को आप कारण बतलायें, उस को भीका बोजिये अग्नी सफाई देने का और तीसरी बात एक एडवाइजरी बोर्ड भी रहे। मेरी तरफ़ीम अगर मंत्री महोदय स्वीकार करेंगे तो निजी स्वतन्त्रता के लिए शहरी आजादी के लिए बड़ा काम होगा।

जब यह संविधान पास हुआ तो उस पर आईन बनाने वाली जमात में बहस हुई उस वक़्त मेरा खयाल है भूतपूर्व मंत्री त्यागी जी ने डा० अम्बेडकर साहब से कहा था कि अंग्रेज़ों के जमाने में तो आप को कैदखाने में नहीं जाना पड़ा लेकिन हम लोगों को कैदखाने में जाना पड़ा था। अगर आप को

अंग्रेजों ने कैदखाने में रखा होता तो आप को पता चलता कि मनमानी का और तानाशाही का क्या नतीजा होता है ? त्यागी जी ने उन को चेतावनी भी दी थी कि जो संविधान की धारा आप बना रहे हैं उन का इस्तेमाल आप के खिलाफ होने वाला है। डा० अम्बेडकर तो ज्यादा दिन जिन्दा नहीं रहे लेकिन उन के अनुयायियों ने जब भूमिहीन लोगों का आन्दोलन चलाया था तो इसी की तरह उन को भी नज़रबंद करके रखा गया था। तो मैं निवेदन करना चाहता हूँ कि साधारण स्थिति में सरकार को किसी को भी नज़रबंद करने का अधिकार नहीं होना चाहिए। असाधारण स्थिति में अनुच्छेद 22 के अन्दर सरकार इस अधिकार को रखे और मेरी तरफ़ीम के अनुसार अनुच्छेद 22 तभी लागू हो, जब हमारे देश में संकट-कालीन स्थिति हो।

इस सम्बन्ध में हमारे देश में जो स्थिति है और दूसरे देशों में जो स्थिति है, उस के बारे में मैं दो-तीन वाक्य कहना चाहता हूँ। आप जानते हैं कि जब हिन्दुस्तान में संविधान बना, तो संविधान के अनुच्छेद 21 अर्थात् "ड्यु प्रासेस" और "प्रोसीड्युर एस्टाब्लिश्ड बाई ला" पर बड़ी बहस हुई। अमरीका में तरफ़ीम 14 के अनुसार यह कहा गया है :

"Nor shall anybody be deprived of his life, liberty or property without due process of law."

अमरीका के संविधान में यह वाक्य है। इसका मतलब यह है कि जो सामान्य कानून है, उस में ही किसी को सजा हो सकती है। अमरीका में इस तरह की नज़रबन्दी साधारण स्थिति में नहीं चल सकती है। लेकिन अमरीका के संविधान के सेक्शन 9 की उप-धारा 2 में अदालत में जाने के अधिकार को, जिस को हेबियस कोर्पस का अधिकार

कहा जाता है, स्थगित रखने की व्यवस्था है। उस में कहा गया है :

"The privilege of the writ of habeas corpus shall not be suspended unless when in casts of Rebellion or invasion the public safety may require it."

इसका अर्थ यह है कि अमरीका में अदालत में जा कर हेबियस कोर्पस याचिका पेश करने का अधिकार केवल संकट-कालीन स्थिति में ही छीना जाता है। मेरा निवेदन है कि अगर हिन्दुस्तान में भी सरकार लोगों को नज़रबन्द रखने का अधिकार संकट-कालीन स्थिति में अनुच्छेद 22 में दी गई शर्तों का पालन करते हुए रखे, तो मुझे कोई एतराज नहीं है।

यहां पर इंगलिस्तान के बारे में हमेशा बातें की जाती हैं, लेकिन मैं बताना चाहता हूँ कि अंग्रेजों के दो रूप हैं। वैसे तो सभी यूरोपियनों के दो रूप होते हैं—जब वे स्वैज के पश्चिम में होते हैं, तब उनका एक रूप होता है और जब वे स्वैज के पूर्व में काले लोगों के इलाके में आते हैं, तब उनका एक बिल्कुल दूसरा राक्षसी रूप हो जाता है। अगर सरकार अंग्रेजों की परम्पराओं का पालन करना चाहती है, तो अंग्रेज स्वैज के पश्चिम में जिस रूप में हैं, इंगलिस्तान में वे जो कुछ करते हैं, वह उन को अपनाएं, न कि उस बर्बरता और हैवानियत को, जो कि वे साम्राज्यवाद के जमाने में अफ्रीका और एशिया में चलाते थे। सरकार उस साम्राज्यवादी परम्परा के अनुसार और उन के अनुकूल कायदे-कानूनों पर अमल न करे, यह मैं मंत्री महोदय से निवेदन करना चाहता हूँ।

जहां तक इंगलिस्तान का सवाल है, द्वितीय महायुद्ध के अवसर पर उस के ऊपर जितना बड़ा संकट आया शायद हिन्दुस्तान

[श्री मधु लिमये]

पर इतना बड़ा संकट नहीं आया। हमारे यहां जो लड़ाई हुई, वह तो सीमावर्ती इलाकों में ही हुई। लेकिन द्वितीय महायुद्ध के अवसर पर जिस वक्त इंग्लिस्तान लड़ाई में फंसा था, वह एक जमाना ऐसा था कि जब इंग्लैंड अकेला लड़ रहा था फाशिस्टवाद और शास्त्रीवाद के खिलाफ परन्तु उन लोगों ने हमेशा इस बात का ख्याल रखा कि जो निजी स्वतंत्रता है, शहरी आजादियां हैं, उन की रक्षा युद्ध-कालीन स्थिति में भी होनी चाहिए और नजरबन्दी बगैरह के बारे में जो कानून है, किसी भी हालत में उनका दुरुपयोग नहीं होना चाहिए।

मेरे पास चर्चिल साहब की किताब का पांचवां खण्ड है, जो लड़ाई के बारे में उन्होंने लिखा है। मंत्री महोदय वैसे तो काफ़ी काम में व्यस्त रहते हैं, लेकिन अगर वह थोड़ा साहित्य भी पढ़ते रहेंगे, तो अच्छा होगा। इस किताब के अन्त में वह पत्र दिया गया है, जो उन्होंने उस वक्त के गृह मंत्री, मारिसन साहब, को लिखा था। यह पत्र बहुत अच्छा है। मैं मंत्री महोदय की जानकारी के लिए इस में से कुछ वाक्य पढ़ना चाहता हूँ। यह समय है 21 नवम्बर, 1943, जब कि लड़ाई चल रही थी और बड़े जोरों से चल रही थी। यहाँ जो लड़ाई हुई, वह दिखावटी थी। लेकिन उन की लड़ाई में एक एक दिन में तीस, चालीस हजार लोग मरे थे। वह एक बड़ी लड़ाई थी, लेकिन इतनी बड़ी लड़ाई होते हुए भी चर्चिल साहब ने अपने गृह मंत्री को यह लिखा :

"I expect you will be questioned about the release of the Mesleys."

ये इंग्लैंड के फाशिस्ट नेता थे।

"No doubt the pith of your case is health and humanity. You might however consider whether you should not unfold as a background the great principle of *habeas corpus* and trial by jury,

which are the supreme protection invented by the British people for ordinary individuals against the State. The power of the Executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him judgment by his peers for an indefinite period, is in the highest degree odious, and is the foundation of all totalitarian Governments, whether Nazi or Communist."

तो चर्चिल साहब के अनुसार यह आप की सरकार प्रजातांत्रिक नहीं है, क्योंकि उस ने इस वक्त अपनी नीति का आधार भारत सुरक्षा कानून को बनाया है, जो कि नार्स्ताबाद और तानाशाही की निशानी है।

आगे चर्चिल साहब कहते हैं :

"It is only when extreme danger to the State can be pleaded that this power may be temporarily assumed by the Executive, and even so its working must be interpreted with the utmost vigilance by a Free Parliament. As the danger passes, persons so imprisoned, against whom there is no charge which courts and juries would accept, should be released, as you have been steadily doing, until hardly any are left. Extraordinary powers assumed by the Executive with the consent of Parliament in emergencies should be yielded up when and as the emergency declines. Nothing can be more abhorrent to democracy than to imprison a person or keep him in prison because he is unpopular. This is really the test of civilisation."

सरकार के प्रतिनिधि ताशकंद करार कर के आये हैं और चीन के साथ लड़ने की उन की तबियत नहीं है—उस वक्त भी नहीं थी और अब भी नहीं है। ऐसी हालत में मैं सरकार से निवेदन करूँगा कि जैसे चर्चिल साहब ने कहा है, संकट-कालीन

स्थिति की गम्भीरता और तीव्रता जैसे जैसे कम होती चली जायेगी। सरकार को चाहिये कि वह अपने विवेकाधीन अधिकारों को छोड़ती जाये, "योल्ड" करती जाये, लेकिन यहाँ हाथी साहब और नन्दा साहब . . .

एक माननीय सदस्य : श्री एल. पी. सिंघ साहब ।

श्री मधु लिमये : . . . सत्ता की लालसा में इतने फंस गये हैं कि अपने विवेकाधीन अधिकारों को छोड़ने की बात उन के मन में, ख़ाब में भी नहीं आ रही है ।

मैं अन्त में यह निवेदन करूँगा कि जैसे तो सरकार के दल का यहाँ पर बहुमत है और मेरी इस तरफ़ीय को वह ठुकरा सकती है । लेकिन अगर वह सचमुच चाहती है कि हिन्दुस्तान में प्रजातंत्र पनपे, शहरी आजादियों का विस्तार हो, तो मंत्री महोदय से मेरी दरखास्त है कि वह मेरे संशोधन को स्वीकारें । अगर वह इस वक्त इस को स्वीकारने के लिए तैयार नहीं हैं, तो वह कम से कम सदन को यह आश्वासन दें कि वह जल्द ही इस पर गौर कर के इस को पारित करने के बारे में कोई कदम उठावेंगे ।

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Constitution of India be taken into consideration."

Two hours are allotted. So, Members may take about 5 to 10 minutes.

Shri N. C. Chatterjee (Burdwan): In the context of the growing volume demanding the revocation of the emergency, I think this Bill has come in proper time and I must felicitate my hon. friend Shri Limaye.

I had the privilege to represent this country in a number of international conferences. The first time I went to

London in 1955, I represented the great Bar of India, in the First Commonwealth Law Conference that was held in Westminster Hall in the British Parliament House. Standing there, on the floor of Westminster House I declared that we have not only got rid of British domination completely, and got rid of the domination of White Hall and Westminster completely, but we have also given ourselves a Constitution, the like of which you will never get in any part of the world.

We have a Bill of Rights, that guaranteed fundamental rights, that is basic human rights to all our citizens, guaranteeing freedom of speech, freedom of expression, equality of treatment and other cherished human rights. But you may remember the great judgment of Patanjali Sastri, Chief Justice of India, when he accepted our humble submission as against that of the Attorney General and declared that article 32 was a departure from every other Constitution in the world. Our Constitution not merely guarantees basic human rights to the citizens but makes a departure from every other constitution and makes it a remedial right and makes that remedial right a fundamental right. Any citizen of India from Cape Comorin to Kashmir can come up to the Supreme Court of India if there is any deprivation of his freedom guaranteed in part III of the Constitution. What a tragedy that all that is now put in cold storage for years together due to the so called emergency which is making a parody of the Emergency which is really a convenient device in the interest of power politics! The greatest lawyer in India, Mr. Motilal Setalvad the ex-Attorney-General of India and also the President of the Bar Association and the President of the International commission of Jurists has declared that there is a constitutional dictatorship because of articles 358 and 359 and the manner in which this Proclamation of emergency has been kept up without any justification: I remember we

[Shri N. C. Chatterjee]

attended a meeting the other day here when Mr. Setalvad addressed the Members of Parliament, when the President also was here and the President told him: I remember Mr. Setalvad your words that we have got a constitutional dictatorship. Attending the recent Commonwealth Law conference I could not stand up in that conference and declare that we have got basic human rights in the same manner as we promised our citizens in 1950 when we inherited our Constitution. To be quite frank article 359 is a blot on the Constitution and that article really means the annihilation of all the Fundamental Rights. I had the privilege of appearing in the Allahabad High Court which struck down the Defence of India Rules as illegal and unconstitutional because it was opposed to our basic rights. Unfortunately the Supreme Court had taken a different view. But the Supreme Court had warned the Government that there has been a frank concession made by the Attorney-General, very candid concession, the Attorney-General had to concede in the face of Mr. Setalvad's and my arguments that the DIR is repugnant to the fundamental Rights; it is repugnant to articles 14, 21 and 22 and other basic human rights. Chief Justice Gajendragadkar has mentioned that when this emergency is lifted, you will have to lift it one day, you will have to face a large number of litigations demanding damages for unlawful detention. That is why when the Constitution (18th amendment) Bill came, I had to voice the opinion of the citizen against it and I appealed to the late Pandit Jawaharlal Nehru, the Prime Minister: "You are called the greatest living democrat but you are going to preside over the liquidation of democracy in your own country when you are alive." He withdrew that Bill. I am glad that the Bill had been withdrawn. That was a gesture. Smaller men are ruling us and I am sorry to say that the smaller men are continuing to behave in that manner keeping up this emergency without any justification. You have seen, Sir,

that an appeal has been issued to the President of India and the Prime Minister of India by three ex-Chief Justices, Shri Mehr Chand Mahajan, Shri S. R. Das, and also Shri B. P. Sinha, three men of great distinction—they have nothing to do with party politics or politics at all—and other eminent educationists, vice-chancellors of universities, eminent journalists and lawyers; they have demanded that there should be revocation. We are hoping that Shrimati Indira Gandhi would have a fresh look on this and we are hoping that she would be advised to revoke the emergency without any further delay. Otherwise this blot will continue and our republican government will be falling into derision and be condemned by the people. Now, look at article 359 which gives a power *carte blanche*:

"Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order."

That means not merely suspension but annihilation of all fundamental rights. They have only got to issue a notification executive notification, and mention only articles 358 and 359. Article 19 is automatically suspended. Article 359 enables the executive by a fiat directly to nullify all the other articles and such a notification had been issued and the Fundamental Rights and the basic human rights have been suspended. Every Member of Parliament is elected by suffrage of the constituency; You are so elected; I have been so elected and all of us represent about five lakhs of voters.....(An Hon. Member:



Seven lakhs). Five lakhs of voters at the least; ten lakhs of people in the constituency and five lakhs of them are your voters. Thirteen Members have been deprived of their rights and that means 65 lakhs of voters have been disfranchised under the plea of article 358 and proclamation of emergency. What does it mean? It means that 1.30 crores of people have been disfranchised and no representation is given to at least 65 lakhs of voters. Is it not a parody of democracy? I appeal to Shri Nanda the Home Minister. He is not here but Shri Hathi is here and the least that you can do is what the British had done. You know that when London was being bombed every day and the industrial towns were destroyed by relentless bombing by the Germans, even then Lord Atkin said in the *Liversidge* case: Amidst the clash of arms, laws are not silent; habeas writ should go. But here there is no *habeas corpus*; article 32 cannot operate. We have got the right given to every citizen to go to the Supreme Court of India but you cannot do it now. I appealed to the Home Minister: for heaven's sake appoint an ex-Chief Justice, either Mr. Das or Mr. Mahajan or anybody you like and also appoint the present Chief Justice Gajendragadkar and have an advisory board and place all your materials before them and let them constitute a quasi judicial tribunal and find out whether your charges are proved or really there is complicity with the Chinese aggressors. He said he would consider it; he is still considering it and I do not know how long he would go on considering it. Nothing has been done. That brings the law and the Constitution into disrepute. Something should be done and I hope the Ministers present here will take the public feeling into account and do something to redeem India's tradition and to rescue our parliamentary government and our democracy from this contemptuous disregard of the basic principles of the rule of law. That is absolutely essential. No constitution has got this kind of a provision like article

358 or 359. Even in England, if you have got to suspend the *habeas corpus*, you must pass a *Habeas Corpus Suspension Act* by parliamentary legislation. But here it is all automatic under article 358 and 359. You know what is happening. One Member of Parliament, next to my town, Dr. Saradish Roy, sent word to me that even his family allowance has not been given to them. He had been writing to me. Of course, his profession is that of a doctor, but apart from that, he had been writing to the authorities, but there was no reply: nothing of the kind, because articles 358 and 359 are there. These articles should, therefore, be removed from the Constitution and something more civilised and more in consonance with the democratic principle should be adopted.

16 hrs.

Shri Ranga (Chittoor): Mr. Deputy-Speaker, Sir, I wish to associate myself, and sympathise with, this Bill. I am glad that on the legal side, my hon. friend Shri N. C. Chatterjee has pleaded the case in his usually able and lucid manner. This Bill is not a radical one if it does not seek to deprive the Government, this or any future Government, of its right to take people into detention: nor does it seek to deprive it of the right to declare an emergency. But it wants to prevent the Government from having these two powers separately: one, to detain people whenever it thinks fit to do so and the other to declare an emergency, and have a blanket power in order to suspend so many other articles of the Constitution and set at naught the fundamental rights, the chapter on fundamental rights, and deprive people of their civic rights, threaten them with this terrific power of the Government to take them into detention without any trial for any and every objective and on any pretext only under the guise of this emergency. Therefore, its purpose is very limited and it is also constructive, because it admits the

[Shri Ranga]

need, under certain special circumstances, for any government of the day, to take some of our citizens under detention, but, at the same time, it does not want to give them the extensive power that the present Government has come to exercise.

Like so many of my hon. friends on the other side, quite a number of us also on the Opposition side have had the experience of being detenus when the British were here in power, and in addition, having had the experience of going to jail on several occasions after having been convicted in the courts of law. Let me remind the House of the kind of psychological difference that we have found of being a detenu and also as a prisoner. When we were convicted and we went to prison, as prisoners, we knew when we were going to be released. Every day passed was considered by us as one day gained in the sense that that day has gone and then so many less days remained, when we would have to be in the jail. But when it came to detention, no day had any meaning at all. Days were passing and months and years were passing, and yet we did not know when we were going to be released. That aspect used to have a deleterious effect upon our mind, our nerves, on our health and on our general condition, and we could see it, in its visible effects, upon our fellow prisoners. Some were convicted prisoners and some were detenus, and we could see the difference even by just looking at them.

Therefore, to be a detenu is a double curse inflicted upon a person, when this Government wants to have this power to put anybody under detention any time it chooses. Therefore, the Preventive Detention Act has advisedly provided that no one should be taken under detention for more than three months, and if he was to be kept in jail for more than three months, there was a procedure provided in order to help him to go before a tribunal and get his detention cancelled. Anyhow there was a

maximum period. Now, under the DIR, is there any maximum period? Is there any chance for him to go to the court, the high court or the Supreme Court? If I were taken as a detenu, I can at least go to the Supreme Court and invoke the aid of the *habeas corpus*. The Supreme Court may, in its wisdom, release me; it may order my release or it may not, but anyhow we have that right. But now, under the DIR, I would not have that right.

What this Bill seeks to do is that you must exercise these powers only in an emergency but not ordinarily. Surely, it is a very reasonable plea, and it ought to appeal to the Government and to the conscience of the Government. It is not as if this Government or the Minister has not had any experience of the prisoners or the detenus. Therefore, I would like to appeal to them to think of their own past experience and respond properly.

In addition, even supposing we are prepared to give them this right to keep people in detention during an emergency, where is the guarantee that this Government would use these powers to declare an emergency in a sensible, decent, humanistic and wise manner? All that we have to do is to look at the manner in which it has used, misused or abused these powers. The Chinese were coming. The whole House was unanimous, including my hon. friends the Communists also, and in those days, those who had come to be treated as Left Communists also happened to be here in this House and all of us rose as one man and agreed to this declaration of emergency and offered our co-operation. But how did the Government use it?

After that threat was gone, cease-fire was declared. We wanted that the emergency should be put an end to, but the Government would not agree. Under some pretext or other, they went on prolonging it and prolonged it in such an unconscionable manner

that they used it in an unwise fashion in Kerala, with a very bad effect to the Government itself and to the ruling party. It is wrong for anybody to think that the man who is being detained is the only person who is going to be punished. No. Those who are interested in him are sought to be punished. Not only that: all the ordinary citizens are sought to be frightened, and the consequences flow, any moment and every moment if one is under this threat, and it is this which inhibits the sense of freedom, the sense of civil liberties that the ordinary citizen can enjoy in this country, and at the end, they have made it worse by prolonging it.

They said that here was the India Pakistan struggle and therefore they are having it. But that also is over now. The Tashkent declaration has come. Is it not to inspire or to enlighten the relationship between Pakistan and ourselves? Is it not to release our people from the fear of this DIR? Is it not to encourage our people once again to begin to think that the Constitution would be there to protect them and not to be negated in the manner in which it has been done?

Therefore, that was the reason why we moved that amendment to the motion of thanks on the President's Address the other day. I was very happy indeed—while I was away from the House—to learn that all the Opposition parties in this House had ranged themselves in support of that amendment. In the light of that at least, I wish to appeal to the Government and my hon. friends here, Shri Nanda, who had also been through jail and Shri Hathi who understands these problems with as much humanity as we can expect anybody to do, to respond in a generous manner, in a sensible manner and in a civilised manner, to our call, to our plea, and accept this Bill if they can. If they cannot do it here and now, first of all, let them withdraw the DIR or say at

once that they would come forward with some legislation in order to limit the powers of Government for misusing and invading the civil liberties of the people.

**Shri P. R. Chakraverti (Dhanbad):** Mr. Deputy-Speaker, Sir, Prof. Ranga has now reminded us of our period of agony and affliction while we had been held in detention, and, as one, who had to suffer this form of punishment, namely, detention without trial for years together, I have to express my sincere feeling of concern over this legislation, and also the provisions in the Act which have today compelled the Government of India to keep in detention a number of people. The other day, while speaking in this House, I said that it was Mr. Nanda and Mr. Hathi who were responsible for the success of the left communist party in Kerala. I made that charge against them because the moment one is detained, he is given a sense of glamour and the moment he seeks the verdict of the people even from within the jail, the electorate switches on in their favour. That was our experience upto 1946. We swept the polls because we had been in detention for dozens of years.

The issues raised by Mr. Limaye have to be considered a little seriously. The first question he raised was that the provision for detention without trial gives an easy handle to the executive to abuse the provisions of law. This is a moot question whether the executive today, which is responsible to the elected representatives of the people all over India—unlike the British regime which had nothing to do with the people—is entitled to act in a manner which goes against the fundamental rights of the people and their liberty. We will never tolerate the executive authority exercising its powers to transgress our fundamental rights. It must be recognised that there must be two provisions—one for emergency and another for peace time. When we declared war against the British, they put us in detention and there were so many lawless laws

[Shri P. R. Chakraverti]

in Bengal. Everybody knows detention was a household term there. It does not hold good now. But, even during peace time, the master-minds who framed the Constitution, headed by Dr. Ambedkar, thought there must be some provision, by which people suspected of indulging in activities which are obviously detrimental to the interests of the country may have to be detained. So, they provided article 22 and along with so many other safeguards, gave definite directives to the executive to go to the advisory board for reviews and other things.

Coming to the question of emergency we should bear in mind that India is menaced by aggressive activities from outside and subversive activities from within. People feel insecure because there are some minority sections indulging in activities which are not in the interests of the nation or the people. So this emergency provision was inserted into the Constitution. How can we do away with both these provisions? No doubt, the Preventive Detention Act gives the government certain powers to hold in custody certain people. But, there are clauses which compel the government to fulfil the conditions laid down there, so that it is not treated as an arbitrary measure. Obviously, the executive will never be allowed to transgress the peoples' rights in their own way.

It is this Parliament which passed the P. D. Act which has been extended till December, 1966. It is not an ordinance passed by the executive, as was done during the British regime. It is an Act of Parliament passed with the consent of the elected representatives of the people. It is up to us to move an amendment to the Act. To my friends who feel that the Government of India is taking advantage of these provisions and is acting in a manner which smacks of the British dictatorial regime, I submit that the executive today is responsible to us, the elected representatives; they are amenable to the people's will. They are accounta-

ble to us. I would request the government to take the viewpoints of the House and assess the reactions of the various parties to the emergency laws. That is what swept the polls in favour of the communist party in Kerala. When the portraits of persons under detention were shown all over the State, it gave additional glamour to the detenus and they were elected from within the precincts of the prison. That was my charge against the Government.

So, it is up to the Government to review it. It is up to us to bring an amendment to the P. D. Act. But so long as the present situation continues as it is today, these provisions in the Constitution have to remain, consistent with the idea of safeguarding the general interests of the people, without transgressing the fundamental rights of the individuals.

**Dr. Ranen Sen** (Calcutta East): Sir, I rise to support the amending Bill moved by Shri Limaye. After Mr. Chatterjee's speech, one need not go into the juridical or constitutional aspects. I simply want to state the experience of our people during these three years of emergency and how the emergency powers have been used by the ruling party to rule over this vast land which is known as India. We always hear something about patriotism, defence of frontiers and integrity and sovereignty of the country. But it is known to all that this government is getting more and more isolated. Today the citizens of India, irrespective of political opinion, are more and more condemning the continuation of emergency.

Mr. Chakraverti referred to the Kerala elections. Just on the eve of the Kerala elections, knowing fully well that the congress party has no support in Kerala, they wanted to gag the people there and they arrested hundreds of communists. In spite of arrests and Mr. Nanda's propaganda throughout the world that they are traitors of the country, no man in

Kerala accepted the verdict of Mr. Nanda. The poll revealed that the people did not want the congress government to rule in Kerala.

To cite another example, in West Bengal, there was a strike in the famous Jay Engineering Works of Lala Shri Ram and Lala Bharat Ram. Within a month of the strike, the emergency power was used against the workers. In one day 200 workers were arrested in 1964. This emergency power has been used to suppress the peasants' movement also. It was used a few days ago in Kerala and today it is being used in West Bengal on a mass scale. Within a fortnight, more than 1500 persons have been arrested under DIR.

Sir, under these emergency powers the people of West Bengal are being suppressed today. Tomorrow, just like the people of Kerala or the people of West Bengal, if people in other States ask for food, because the condition everywhere in India is very bad, thanks to the misrule of the Congress Government, these emergency powers will be used.

I am opposed to this preventive detention without trial, whether it is there in the Constitution or not—I am not concerned with that. When the Preventive Detention Act was in force we were the victims of that Act. We remember, as today there are Members of Parliament, members of legislative assemblies were deprived of their fundamental rights. In 1952, during the first general elections, we were arrested under the Preventive Detention Act and put in jail. From inside the jail we contested assembly seats and defeated the Congress candidates. Even after that the late Chief Minister of West Bengal made a statement that we were enemies of the people and therefore he was not going to release us even though we were elected. These are only samples of instances that have taken place.

The application of preventive detention in our country today is more shameful. In the name of defending

the frontiers of our country, in the name of defending the integrity of the Indian Union, this Act is being used very mercilessly. I will cite one other example. After the Tashkent Declaration what happened. After the Tashkent Declaration everybody expected normalcy inside the country. This question was raised in this House. But even a Member of this House—he is not a Communist, neither left nor right, he has not even anything to do with communism or any political movement—Shri Badrudduja, has not been released. It has raised feelings in that part of the country among many Muslims in West Bengal. If in the name of secularism people who are not liked by the satrap of the State are kept inside the prison, it is a damn shame that we experience today in India. This is what is happening today in India. Members of legislative assemblies, Members of Parliament and others are even today kept inside jail without trial.

These preventive detention measures, these emergency measures were described by our national leaders as lawless law. When the Rowla Act was passed, it was called by Mahatma Gandhi as a lawless law. When the Criminal Law (Amendment) Act was passed in the then united Bengal, Deshabandhu Chittaranjan Das, Shri Motilal Nehru, Shri Jawaharlal Nehru and other Congress leaders called it as a lawless law. When they became the rulers, they now make use of those lawless laws and try to glorify them and continue this misrule. That is what we find today in India.

Therefore, I want to state clearly that the sooner we get rid of these emergency measures, these preventive detention measures, better it is for democracy in India, better it is for the common people in India. Therefore, as a man who is connected with the common people, as a man who is connected with the movements of the common people, I demand that this Government take care of this situation correctly evaluate as to exactly what the position today is and then end the emergency, abolish these measures

[Dr. Ranen Sen]

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and together with that accept the amending Bill moved by my hon. friend, Shri Madhu Limaye. This is a very appropriate amendment conducive to the flourishing of democracy in our country.

**Shri D. C. Sharma** (Gurdaspur): Mr. Deputy-Speaker, Sir, my feeling was that after the assurance given by our Prime Minister while she was replying to the debate on the President's Address, no such Bill was necessary. When I read her speech, I came to the conclusion that she was the most fit person in charge of the fundamental rights of citizens. She did not say only that much, but she said that she would see to it that nobody was able to violate the fundamental rights which the Constitution grants to any citizen. She further said that she would examine this and if there was any necessity for having a second look she would do so. After this assurance having been given by the Prime Minister of India, who is known for her sincerity, for her love of liberty, for her love of democratic principles, I do not think this Bill should have come forward, even though this Bill comes before the House at the instance of my hon. friend, Shri Madhu Limaye for whose parliamentary experience I have a great deal of regard.

Now, Sir, people say that things have changed, and there is no emergency in this country. They say that the waters of Ganges are running smoothly, there is no force in the current, no bridge is going to be washed away, no lands are going to be inundated and no banks are going to over-flow. People who say things like that, I believe, generalise from the experience of a few persons whom they know. For instance, there may be a gentleman who may not like the preventive detention of Shri so and so. There may be another hon. Member who may think that the preventive detention of a person like somebody there is not called for. Now, all the persons who have spoken have

referred to two or three persons and they think that since those two or three persons have been detained, according to them, under a pretext which is not justifiable, the whole of this emergency apparatus should go. I think this is generalising too much on the basis of a few particular cases.

Only last evening we were discussing the Mizo liberation front. What has happened to that? Sometimes we are told about the National Liberation Front in one part of the country or another. In Jammu and Kashmir we have the Plebiscite Front. We have the Holy Relic Action Committee. In the Punjab we have sometimes incitement of the people not to pay their revenue, not to pay their taxes. In some States people are asked to stage hunger-strikes against this thing or that. When you look at the map of India today you find that for one reason or the other India is not as peaceful as it should be. This is not due to the fact that we have emergency or the Preventive Detention Act. This is due to the fact that we have a large number of saboteurs in this country, people who owe allegiance not to this country but to some other country. We have underground movements of all kinds. We have such movements in this country which would like to disrupt our entire life.

The other day I put a question in the Lok Sabha about one of the leaders from Kerala. People have been talking about Kerala and they say that since they have won the elections every thing is beautiful in the land of Kerala. He had stated "I am not going to ask my people to subscribe to the gold bond; I am not going to ask by people to miss a meal because these people want to build a road to Aksai Chin or do something else in the border" I ask you, Sir, can the freedom of expression be misused to that extent in any other country.

**Shri Rajaram** (Krishnagiri): This was said by the Kerala Governor. **Shri A. P. Jain**, that he is not going to miss a meal.

**Shri D. C. Sharma:** Can the fundamental rights which we enjoy enable any person to go so far as to have truck with those forces which mean danger to my country, which imperil the life of my country?

I have not got facts and figures with me today but I think the Minister will be able to tell you that the Preventive Detention Act and the emergency have not been applied on a very large scale. Whenever the Preventive Detention or emergency has been used, facts and figures have been given. I must say that this power has been applied with the utmost strictness, stiffness and the utmost regard and the utmost consideration for the democratic rights of the democratic citizens of this democratic country. If sometimes things have gone wrong, the persons who have been wronged according to their view have moved the Supreme Court, have moved the High Court. The whole apparatus of law has been before them. And whatever our law courts have said, I do not think the law courts have given to these persons the right to do whatever they like.

I, therefore, say that this is a wholesome provision which is being exercised with the utmost caution, which is subject to revision, which is subject to scrutiny, which is subject to the all powerful vigilance of our courts of justice.

Why should this provision be kept? Only recently, we had aggression from Pakistan. Some years back we had aggression from China. The other day I read in the papers that on the borders of India the Chinese have built a wall of men, of soldiers. Can anybody deny that there are in this country some persons who have more allegiance towards China than to this country? Can anybody deny that in this country there are some persons who would vote for disruption so that they can reap the good fruits of disruption? They read of *coup* in this country and that country. They read about subversion in this country and

that country. Then they ask themselves: why is this country wedded to democracy, working under a Constitution, running so well, running so smoothly; why should we not disturb the waters here also? Therefore, I believe that we should see to it that this provision is kept going as long as the external needs of the country require and also as long as the internal emergencies of this country require.

**Shri Vasudevan Nair:** (Ambalapuzha): What is "internal emergency"?

**Shri D. C. Sharma:** At the same time, I believe that the assurance which has been given by the Prime Minister that nothing would be done to curtail the fundamental rights of the citizens of India should be borne in mind by those persons who bring forward these Bills.

**Shri Vasudevan Nair:** Are you supporting it? What are you doing?

**Shri D. C. Sharma:** I am opposing this Bill. You have not listened to my speech. Therefore he should withdraw this Bill.

**Dr. L. M. Singhl** (Jodhpur): Mr. Deputy-Speaker, Sir, the matter under consideration is a wider one than that of the continuance or discontinuance of the emergency, in which matter most of us are at one. I feel that so far as the continuance of the emergency is concerned, there is a powerful consensus in this country which the Government would ignore only at its own peril. More than the charge that has been levelled by some of my hon. friends that this has been used in party interest is the consideration that the continuance of the emergency will redound to the greatest disadvantage of the Government itself and in its own interest it would be appropriate for the Government to consider its revocation and discontinuance.

[Dr. L. M. Singhvi]

All men of goodwill, all men who have a dedicated and committed faith to the principles of democracy and rule of law enshrined in our Constitution have risen in this country with one voice....

**Shri C. K. Bhattacharyya (Raiganj):** No.

**Shri Hari Vischnu Kamath (Hoshangabad):** Except Shri Bhattacharyya.

**Dr. L. M. Singhvi:**...that the revocation of the emergency now is an imperative need of the hour. I hear a dissenting voice, a lone voice....

**The Deputy Minister in the Ministry of Home Affairs (Shri P. S. Naskar):** No.

**Dr. L. M. Singhvi:** Now there are two solitary voices, a voice and an echo which perhaps are prompted more by partisan considerations than by national considerations.....

**Shri C. K. Bhattacharyya:** If it is tested, it will be thousand voices.

**Dr. L. M. Singhvi:** Let us test it. This, Sir, is a voice which is perhaps to be heard in deference and loyalty to the party to which the hon. Member belongs rather than as a matter of rational conclusion, after consideration of what our constitution stands for, what the nature of our government is, and what the validity of an emergency law even after it has lost the warrant, the rationale on which it stands.

It is quite obvious that the emergency law is an extraordinary dispensation. It is not a dispensation to be clamped upon the people of the country without extraordinary and compelling reasons. I had occasion to point out that the only yardstick which can apply in the matter of continuing the emergency is the yardstick of an imminent, clear and present danger of external aggression. Is the Government by its own conduct able to justify the claim that there is an imminent, clear and present danger of

external aggression today against the country?

**Shri C. K. Bhattacharyya:** Yes there is.

**Dr. L. M. Singhvi:** It seems, Sir that some people are more loyal than the king himself; that in deference merely to party affiliations a voice would be raised to say that the emergency should be continued. I would like the hon. Member, Shri Bhattacharyya, to rise and participate in the debate and to substantiate the contention, if he can, that there are such clear and present dangers of external aggression today and that this Government is functioning in response to these dangers which are clear and imminent. If this is the thinking process of the Government and of the ruling party, which has a fine tradition of its own, which has stood for the liberal ideals in the history of this country and which has actually ushered into an era of this liberal constitution, I am afraid what is intended is to imprison us into a perpetual state of emergency.

I do not think that there is any rationale in the continuance of the Emergency today.

My friends have spoken of the opinions of men like Mr. Setalvad, the ex-Attorney-General of India and the greatest living jurist in the country. Mr. Setalvad has spoken fearlessly and he has spoken well.

A reference has been made to the statement of three former Chief Justices of the Supreme Court of India who had supported the revocation of the Emergency. My friend, Mr. N.C. Chatterjee, has spoken in the name of civil liberties and has spoken in a manner which is convincing and which carries conviction.

**Mr. Deputy-Speaker, Sir** I do not say, as is sought to be said in the Bill, that Article 359 should be removed summarily and should be repealed. I do not say that article 324



should be repealed summarily as is sought to be stated in this amending Bill. This is a matter of very serious importance and if this House is ever to consider it, I am sure, we would first remit it to an appropriate committee of this House before we can consider such an important matter of far-reaching constitutional significance on the floor of the House.

This Bill comes mainly because there has been an unwarranted continuance of the Emergency provisions of the Constitution. This Bill would not have come about if the Emergency had been revoked in good time and gracefully. I would request that the greatest moral that is to be drawn from the debate on this Bill, the most compelling lesson that is to be drawn from a discussion in this House in respect of this Bill, is for the Government to come forward and say that we will repeal Emergency in deference to the sentiments expressed in this country, in deference to the intellectual ferment in which this country and those dedicated to the ideals of democracy find themselves. I hope that the hon. Minister of State for Home Affairs will, when he rises to reply to the debate, not merely say that Emergency will be sparingly used, because this is an extremely unsatisfactory statement to make, but he must say that the Emergency will be repealed very soon.

Before concluding, I would like to remind the hon. Minister that the Prime Minister herself has said that the Emergency will not be continued a day longer than is necessary and, I think—already a few unnecessary days have elapsed—it would not be an hour too soon if the Emergency were revoked here and now.

With these words, I thank you very much for the opportunity you have given to me for taking part in the debate on this Bill.

**श्री शिव नारायण (बांसी) :** माननीय उपाध्यक्ष महोदय, हमारे मित्र ने अभी कहा कि तीन महीने के बाद डिटेन्शन एनाउड नहीं है। मेरे सामने सुप्रीम कोर्ट के जजिज के नोट हैं, जिनमें कहा गया है :

"In case of an act of preventive detention passed by the Parliament, clause 7 of article 22 contained in the chapter on Fundamental Rights permits detention beyond a period of three months..."

सुप्रीम कोर्ट के जजों ने यह डिजिजन दिया है और कांस्टीट्यूशन में इसका प्राविजन है। प्राइम मिनिस्टर साहब ने यह एशोरेंस दे दिया है कि इमर्जेन्सी को आवश्यकता से एक दिन भी ज्यादा नहीं रखा जायेगा। इसके बाद श्री मधु लिये श्री दूसरे लोग इस लिए शोर मचा रहे हैं कि इसका क्रेडिट उन को मिल जाये, गवर्नमेंट को न मिले। प्रोफेसर रंगा भी उनके साथ मिल गए हैं। जब चीन ने हम पर हमला किया, तो होम मिनिस्टर ने डी० आई० आर० लागू किया। इस बारे में पंडित जवाहरलाल नेहरू का नाम भी लिया गया। मैं निवेदन करना चाहता हूँ कि पंडित नेहरू वृहत्तरिनी लाइवर थे, बार-एट-ला थे, बैल एड्यूकेटिड थे, वह कम अक्लमन्द नहीं थे। जब वह प्राइम मिनिस्टर थे, तब डी० आई० आर० लागू किया गया। यह उनका डिजिजन था।

कल इस हाउस में बताया गया कि ग्रामाम में क्या स्थिति है, मिजो ट्रिब्युनल में क्या स्थिति है। इस स्थिति की बैकग्राउण्ड में कम्युनिरटों का हाथ है। गरीब सालों से इस की तैयारी की जा रही है। यह कोई छिपी हुई बात नहीं है। आज ही एक सज्जन ने मुझे कहा कि वहां पर इस प्रकार की घटनायें कोई राज की तैयारी के बाद नहीं हुई हैं। इस बात को मैं भी समझता हूँ और माननीय सदस्य भी समझते हैं। लेकिन वे समझते हैं कि सारी अक्ल हमारे

## [ श्री शिव नारायण ]

पास है और दूसरों के पास कोई अवल नहीं है। आज चीन हमारी सीमाओं पर खड़ा है। कल हमारे मन्त्री महोदय पाकिस्तान के साथ बातचीत करके आए हैं, लेकिन वहां पर कोई समझौता नहीं हो पाया है। मालूम होता है कि पाकिस्तान का रुख बदल रहा है। इन बातों के बावजूद हमारे मित्र कहते हैं कि यहां पर कोई इमर्जेंसी नहीं है।

आप जानते हैं कि हाल ही में केरल में क्या हुआ। कुछ लोग कहते हैं कि जैन साहब ने यह स्थिति पैदा की। मैं कहना चाहता हूँ कि यह स्थिति कुछ दूसरे लोगों की पैदा की हुई है, जो वहां पर भेजे गए चावल का समुन्दर के रास्ते आगे खिसका देते हैं। इसी तरह जो चावल बंगाल को भेजा जाता है, वह चीन को चला जाता है। मैं बांडर के क्षेत्र से आता हूँ। इसलिए मुझे इस का एक्स-पीरिएंस है।

इन हानानात में डिटेंशन की व्यवस्था बिल्कुल मुनासिब है, वह गलत नहीं है। पीस टाइम में भी डिटेंशन का अधिकार रहा है और रहना चाहिए, ताकि डाकू, गुंडे और बद्रमाश लोगों को बन्द किया जा सके।

संविधान के आर्टिकल 359 के अनुसार इमर्जेंसी के समय फ्रण्डमेंटल राइट्स के सस्पेंशन की व्यवस्था की गई है। श्री गोपालन का केस हमारे सामने है। उनके केस के सम्बन्ध में सुप्रीम कोर्ट ने कहा है कि उनका डिटेंशन प्रल्डा-वायरस नहीं है, इन्डा-वायरस है। वह डी० आई० आर० के अधीन बन्द है। वह लैफ्ट कम्बुनिरट है। उनकी पार्टी मुक्त में बगावत कराना चाहती है। इसलिये उन लोगों को जेल में रखा गया है। इसमें हम ने कौनसा गुनाह किया है? जो लोग यहां की गवर्नमेंट को उखाड़ कर हम को गुलामी की जंजीरों में जकड़ना चाहते हैं, क्या उन को जेल में रखना कोई गुनाह है?

आज बड़े बड़े धर्मालो लोगों की तरफ से हम को धर्मोपदेश दिये जा रहे हैं। मैं उनसे

पूछता हूँ कि क्या वे देश के प्रति लायस हैं। आज देश में क्या स्थिति है? हम को मित्रो हिल्ड में मिलीटरी भेजनी पड़ रही है और माननीय सदस्य कहते हैं कि देश में बिल्कुल शान्ति है, सब ठीक है।

मेरे मित्र ने, जो बड़े विद्वान् हैं, चीफ़ जस्टिसिज का हवाला दिया। मैं यह जानना चाहता हूँ कि क्या चीफ़ जस्टिसिज ही इस देश के मालिक हैं, क्या जनता का कोई अधिकार या आवाज नहीं है। जब हमारी गवर्नमेंट सिन्सीयर है, तो उसके आश्वासन पर विश्वास करना चाहिए। हमारे होम मिनिस्टर और दूसरे मिनिस्टर भी जेल जा चुके हैं। खाली बनर्जी साहब ही जेल नहीं गए हैं। वे अंग्रेजी रेजीम में जेलों में रहे हैं, जब कि माननीय सदस्य नहीं गए। वह नये लीडर हैं।

हम सिटीजन्र का फ्रीडम का हनन नहीं करना चाहते हैं। हमारे प्राइम मिनिस्टर ने इस बारे में एशोरेंस दिया है। मैं गवर्नमेंट से अपील करता हूँ कि वह शान्ति स्थापित होने पर प्रिवेंटिव डिटेंशन एक्ट और डी० आई० आर० आदि के बारे में विचार करे।

इन शब्दों के साथ मैं इस बिल का विरोध करता हूँ।

श्री हुकम चन्द कछवाय (देवास) :  
उपाध्यक्ष महोदय, मैं इस बिल का समर्थन करता हूँ।

Mr. Deputy-Speaker: How much of time does the Minister want to reply?

The Minister of State in the Ministry of Home Affairs and Minister of Defence Supplies in the Ministry of Defence (Shri Hathi): About 15 to 20 minutes.

Mr. Deputy-Speaker: Then he may begin after Mr. Kachhavaia.

श्री हुकम चन्द कछवाय : मैं प्रस्ताव करता हूँ कि इस बिल के लिए एक घंटा और बढ़ाया जाये।

**Mr. Deputy-Speaker:** The question is:

"That the time allotted for this Bill be extended by one more hour."

Those in favour may please say "Aye".

Some hon. Members: 'Aye'.

**Mr. Deputy-Speaker:** Those against will please say 'No'.

Several hon. Members: 'No'.

**Mr. Deputy-Speaker:** I think the 'Noes' have it. The motion is negatived.

Some hon. Members: The Ayes have it.

**Mr. Deputy-Speaker:** I shall put it again.

The question is:

"That the time allotted for this Bill be extended by one more hour."

Now, those in favour will please rise in their seats. The number is 14.

Those against will please rise in their seats. I see a large number against.

The motion is lost.

The motion was negatived.

**Mr. Deputy-Speaker:** Mr. Kachhavaia.

**Shri S. M. Banerjee (Kanpur):** Mr. Hathi is here. There is a serious news. Rs. 86,000 have been stolen from an MP's house. It has come in today's paper.

**Mr. Deputy-Speaker:** How can he raise it now?

**Mr. Kachhavaia.**

गृह-कार्य-मंत्रालय में उप-मंत्री (श्री पू० शं० नास्कर) : क्या किसी प्रापोजीशन मेंबर के घर चोरी हुई है ?

श्री हुकम चन्द कछवाय : एक कायेसी मेंबर के घर में चोरी हुई है ।

उपाध्यक्ष महोदय, मैं इस बिल का स्वागत श्रीर समर्थन करता हूँ । उपाध्यक्ष महोदय, आज डी० आई० प्रार० का उपयोग किस प्रकार किया जा रहा है, मैं जहाँ तक समझ पाया हूँ इसका उपयोग अपनी पार्टी के हित के लिये ही किया जा रहा है ।

श्री शिव नारायण : देश के हित के लिये किया जा रहा है ।

श्री हुकम चन्द कछवाय : यदि सरकार को इस बात का डर है कि देश में जो देशद्रोही लोग हैं उनके लिये इसका उपयोग किया जाता है, तो उपाध्यक्ष महोदय, मैं यह मानता हूँ कि हमारे पास नजरबन्दी के श्रीर भी कानून हैं । जिससे भी हमें खतरा है, उसको नजरबन्दी में डाल सकते हैं श्रीर फिर उसके ऊपर केस भी चला सकते हैं । लेकिन इस शासन ने तो केवल अपने दल हित के लिये इस को लागू कर रखा है । मैं कोई नई बात कहने नहीं जा रहा हूँ । पिछली बार राष्ट्रपति जी के भाषण पर जब हमारे भूतपूर्व विधि मन्त्री ने भाषण दिया तो उन्होंने जब यह कानून बना था, उस वक्त समर्थन किया था, लेकिन जब वह मन्त्री नहीं रहे तो उन्होंने इस हाउस में कहा कि इस कानून की अब कोई जरूरत नहीं है, यह बंकार का कानून है, इसे हटाना चाहिये, इसका कोई महत्व नहीं है । जब भूतपूर्व विधि मन्त्री ऐसा कहते हैं श्रीर कांग्रेस के

### [ श्री हकूम चन्द कठवाय ]

बहुत से लोगों ने भी इस बात को स्वीकार किया है, तो मैं समझता हूँ कि माननीय हाथी जी भी इस बात से सहमत होंगे कि यह बात ठीक है लेकिन सरकार की जो नीति है वह इसे छोड़ना नहीं चाहती। चाहे वह यहाँ पर न कहें, लेकिन अगर मैं उनको इस हाउस से बाहर ले जाकर पूछूँ तो वह भी यही कहेंगे कि इसे हटाना चाहिये।

अध्यक्ष महोदय, मैं यह कहना चाहता हूँ कि आज सारे देश के अन्दर जिस प्रकार से इस का लाभ उठाया गया है, जिस ढंग से लाभ उठाया गया है कि अगर किसी नेता की किसी से लड़ाई है, या किसी कलेक्टर से किसी की दुश्मनी है तो उसे डी० आई० आर० के अन्दर बन्द कर दिया जाता है। मैं आपको उदाहरण बताता हूँ। मन्सौर जिले में वहाँ के जनसंघ के अध्यक्ष की कलेक्टर से अन्वय थी। उन्होंने डी० आई० आर० के अन्दर उनको बन्द कर दिया और उनके ऊपर केस चला और उस केस में हाईकोर्ट का फैसला है कि इनकी आपसी रंजिश थी, इन के ऊपर कोई ऐसी चीज नहीं लगती, अपनी व्यक्तिगत दुश्मनी निकालने के लिये इन्हें डी० आई० आर० के अन्दर बन्द कर दिया गया है। इस तरह के अनेकों किस्से हैं देश के अन्दर। आज इस कानून का कोई महत्व नहीं रह जाता है और मैं समझता हूँ कि चूँकि चुनाव पास हैं इसलिए आप इसको जारी रखना चाहते हैं। ऐसे बहुत से किस्से हैं जहाँ चुनाव हार जाने का खतरा है, जब देखते हैं कि यह व्यक्ति काफ़ी वजनदार है, इसकी लोग मानते हैं, इसका असर है, इसलिये इसे बन्द कर दो, ताकि चुनाव लड़ने में कोई दिक्कत न हो। कई बार इस प्रकार का नुस्खा उपयोग किया गया है। मेरी समझ में नहीं आता कि चीन का खतरा बना हुआ है, पाकिस्तान का खतरा था लेकिन वह भी अब ताशकन्द वार्ता से समाप्त हो गया है। ऐसी कोई बात नजर नहीं आती कि जिससे इसकी जरूरत हो।

मैं एक बात और कहना चाहता हूँ कि जिस प्रकार से आपको शक है कि ये देश के लिये घातक है या देश के लिये खतरा है, ऐसे व्यक्तियों पर केस चलाइये और केस नहीं चलता तो नजरबन्द कीजिये। मैं इस सम्बन्ध में यह कहना चाहता हूँ कि आज कोई खास बात बची नहीं है कि जिसके आधार पर आप इसको टिकाये रखें। सब दल, जितने भी राजनीतिक दल हैं देश में, जितने बड़े बड़े लोग हैं, मैं समझता हूँ कि कांग्रेस बेंच से भी इसका विरोध किया गया है और देश में सब जगह इस का विरोध किया गया है। उपाध्यक्ष महोदय, मैं समझता हूँ कि यह बिल जो लाया गया है इसे माननीय मन्त्री जी को बिना हिचकिचाहट के स्वीकार करना चाहिये, इस बिल को पास करना चाहिये। मैं समझता हूँ कि इससे काफ़ी लाभ होगा। हमने देखा है कि जब लोग मांग करते हैं, रोटी चाहिये, बोनस चाहिये, हड़तालें हान्ती हैं तो वहाँ डी० आई० आर० लागू कर दिया जाता है, ताकि रोटी मत मांगो, बोनस मत मांगो, रोज़ी मत मांगो, बच्चे भूखे मरते हैं तो मरने दो।

हम मांगें रोटी, मिले जेल,  
यह देखो कांग्रेसियों के खेल।

यह खुली बात है कि इस कानून का उपयोग जहाँ तक हुआ है, अनुभव में यह आया है, अपने हित के लिये किया गया है और अपने दल के हित के लिये किया गया है, अपने व्यक्तिगत स्वार्थ के लिये किया गया है। इस कानून की आज कोई जरूरत नहीं है, इसे तुरन्त वापस लेना चाहिये और यह बिल जो इस वक्त पेश है, इसे पास करना चाहिये।

**Mr. Deputy-Speaker:** Now, Shri Hathli.

**श्री यशपाल सिंह (कैराना):** यह हाउस पाँच बजे तक है, या पाँच बजे के बाद तक चलेगा।

**Mr. Deputy-Speaker:** I am sorry I cannot call the hon. Member now. We have got only 31 minutes left for this Bill, and the hon. Minister wants 30 minutes, and I must give at least ten minutes to the hon. Mover. At 5 P.M. we have to take up the calling-attention-notice.

**Shri S. M. Banerjee:** You can increase it by one hour.

**Mr. Deputy-Speaker:** No. The time allotted has not been increased.

**Shri Hathi:** I have heard with rapt attention the speeches of the hon. Mover of the Bill, Shri Madhu Limaye, Prof. Ranga, Shri Chatterji and Dr. Singhi. All of them have really dealt not actually with the provisions of the Bill as such but with the general subject of emergency and the fundamental rights of citizens.

In any democracy, specially in India, there are fundamental rights. We have provided in our Constitution fundamental rights for citizens. When the Constitution has provided for fundamental rights, it has also taken into consideration certain extraordinary circumstances where fundamental rights may have to be suspended. This is not a new thing. It may be argued—and it is true also—that fundamental rights could be suspended only in an emergency and under conditions where the security of the country is in grave danger or when there are circumstances which are paramount in consideration whereof these rights should be suspended.

My hon. friend, Shri Madhu Limaye...

An hon. Member: It is 'Limaye'.

**Shri Hathi:** All right. I will gladly call him Madhubhai, if he does not mind.

He really tried to bring the subject, in common parlance, of lifting the emergency for discussion in the House

But as Prof. Sharma and other members have already said, the Prime Minister herself has declared here, and the Home Minister has also reiterated it in his statement, that we do not want to continue this proclamation of emergency in force any longer than is necessary.

The question whether these provisions should remain in the Constitution or not should, I think, be discussed from a normal background.

**Mr. Deputy-Speaker:** He may continue on the next day.

16.59 hrs.

### CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

#### STRIKE BY INDIAN AUDIT AND ACCOUNTS DEPARTMENT EMPLOYEES

श्री हुकम चन्द कछवाय (देवास) :  
प्रविलम्बनीय लोक महत्व के निम्न विषय की धोर में वित्त मन्त्री का ध्यान दिलाता हूँ और प्रार्थना करता हूँ कि वह इस बारे में एक बक्तव्य दें :

“भारतीय लेखा परीक्षा तथा लेखा पालन विभाग के कर्मचारियों द्वारा हड़ताल।”

वित्त मंत्रालय में राज्य-मंत्री (श्री व० रा० भगत) : इसके बारे में अभी पूरी सूचना उपलब्ध नहीं है और कन्ट्रोलर और आडिटर जनरल भी यहाँ नहीं हैं। इसलिए सारी सूचना हासिल करने के लिए अगले हफ्ते में मैं इस बारे में बयान देने की अपेक्षा से अनुमति चाहता हूँ।

**Mr. Deputy-Speaker:** Will he be able to do it on Tuesday?

**Shri B. R. Bhagat:** Tuesday or Wednesday.

**Shri S. M. Banerjee (Kanpur):** I submit the Finance Ministry is not responsible for recognition....