

CO-OPERATIVE SOCIETIES (FOR  
UNION TERRITORIES) BILL\*

श्री अर्जुन सिंह भदौरिया (इटावा) :  
जयप्रकाश महादेव, मैं सदन से केन्द्र द्वारा  
वाकित और संचालित कानों में सहकारी  
समितियों से सम्बन्धित इस विधेयक को  
प्रस्तुत करने की अनुमति चाहता हूँ।

Mr Deputy-Speaker: The question  
is—

"That leave be granted to intro-  
duce a Bill to consolidate and  
amend the law relating to co-ope-  
rative societies for the Union  
Territories"

*The motion was adopted*

श्री अर्जुन सिंह भदौरिया मैं इस विधेयक  
को प्रस्तुत करता हूँ।

14.34 hrs.

CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) BILL (OMIS-  
SION OF SECTIONS 107, 109  
AND 110 AND AMENDMENT  
OF SECTION 161)—Contd.

Mr Deputy-Speaker: The House  
will now resume further discussion  
of the motion for consideration of the  
Code of Criminal Procedure (Amend-  
ment) Bill, moved by Shri Jagdish  
Awasthi on the 14th August, 1959  
Out of 2 hours allotted for the dis-  
cussion of the Bill, 1 hour and 58  
minutes have already been taken up  
on the 14th August, 1959, and two  
minutes are now available for its  
further consideration, today.

Shri Datar is to continue his speech.

Shri Braj Raj Singh (Ferozabad):  
May I point out that the other day,  
while the hon. Minister was speak-  
ing—

Shri Datar: I myself was going to  
make a reference to it.

Shri Braj Raj Singh: Not a mere  
reference; he must apologise for it.

Mr. Deputy-Speaker: Let the Min-  
ister have his say After that, if the  
hon Member is not satisfied, and if  
he wants to say something, he might  
say it then

Shri Braj Raj Singh: Repeatedly he  
stuck to the point that Shri Jagdish  
Awasthi had tried to—

Mr. Deputy-Speaker: The hon  
Minister says that he is going to refer  
to it

Shri Braj Raj Singh: It is not a  
matter of reference It is a very seri-  
ous thing He must apologise uncon-  
ditionally

Mr. Deputy-Speaker: If he does not  
apologise, then what happens?

Shri Braj Raj Singh: Then it is all  
right

Mr. Deputy-Speaker: Let us listen  
to the hon Minister first

The Minister of State in the Minis-  
try of Home Affairs (Shri Datar):  
Had the hon Member allowed me to  
speak, I would have referred to it in  
a few minutes I would have made  
the position very clear Now, I am  
sorry that my reference was wrong.  
There was no derogatory reference  
by the hon Member to the Constitu-  
tion

Mr Deputy-Speaker: Is the hon.  
Member satisfied?

Shri Datar: There was some in-  
stance relating to the Code of Criminal  
Procedure, etc I am not going to

refer to it. So far as the reference in question is concerned, it was entirely wrong. I am withdrawing that reference. That satisfies the hon. Member. I hope.

**Shri Braj Raj Singh:** He said twice that "I am very happy that this time....." etc.

**Mr. Deputy-Speaker:** Twice he has said that he was wrong.

**Shri Braj Raj Singh:** He said, "I was almost amused to find that this time the hon. Member has started swearing by the Constitution in the sense....." He was then interrupted. It seems as if he has never sworn by the Constitution.

**Mr. Deputy-Speaker:** What does the hon. Member desire now?

**Shri Braj Raj Singh:** He said: "If I remember correctly, my hon. friend wanted to burn a copy of the Constitution"—a portion of the copy of the Constitution here, in this House. He said further, "I remember and I speak quite correctly that he was stopped when he made certain references....." He wanted to say, "the Constitution" but he was interrupted.

My point is that it is not enough to say now that he withdraws his remarks. Such remarks should have never been made by him in this House. This is a very serious thing. It is sacrilege to say that a Member wanted to burn a copy of the Constitution. He must apologise unconditionally and must show the largest amount of regret.

**Mr. Deputy-Speaker:** I agree that it is a serious matter. There is no doubt about it. But I do not know what other method can be adopted. He has said, "I withdraw it. I am sorry for it." Is it not enough apology? What else can an hon. Member demand of him in this House. He has said that he was sorry that that statement was incorrect. He said he is withdrawing it. So, if the hon. Member is not satisfied what else can we do? When the Minister says that he is sorry for it, "I withdraw it and I was wrong", then I do not think there is anything left.

**Shri Easwara Iyer (Trivandrum):**  
We take it as an apology.

**Shri Datar:** May I add one thing?

**Mr. Deputy-Speaker:** I would request the hon. Minister not to refer to it but to continue his speech.

**Shri Datar:** Now, so far as the main points regarding this Bill are concerned, I was pointing out that it would not be possible for Government to accept such a Bill of a sweeping character. What the hon. Member wants is the deletion of sections 107, 109 and 110 from the Code of Criminal Procedure. As regards this aspect, in the Bill itself, portions of sections 107, 109 and 110 have been added. I would not go into the details.

Section 107 is of a general nature. "Any person is likely to commit a breach of the peace or disturb the public tranquillity. Therefore, such a provision of a preventive nature is absolutely essential. It is not confined to any class of persons. A number of hon. Members here spoke about what they called the abuse of the powers under sections 107, 109 and 110. May I point out that these preventive provisions are of a general nature and for the purpose of maintaining law and order Government or the magistrates must have power to check the doing of certain acts before they are done. So, they are what are known as preventive sections of the Code of Criminal Procedure. Under the circumstances, especially when they cannot apply to a particular class of persons unless by their possible acts which come within the mischief of that particular section, what is the purpose of this Bill? This aspect may kindly be noted. If there is a likelihood of a breach of the peace or disturbance of public tranquillity, I hope my hon. friend would agree that breach of the peace or a disturbance of public tranquillity is a thing which has to be avoided and which has to be nipped in the bud as early as possible.

I pass on to the next two sections to which the hon. Member referred.

Section 109 says: "any person is taking precautions with a view to committing any offence." The offences are defined in the Indian Penal Code and the prosecution in such a case has to prove that a person is trying to take precautions, for instance, by hiding his presence—that is one of the things provided—with a view to committing any offence, if any such conduct is found on the part of any particular person, that person will have to be proceeded against with a view to prevent his committing an offence. Prevention of an offence is far more important than allowing the offence to be committed. The words "for committing any offence" may kindly be noted.

Section 110 deals with habitual classes of offenders. It has been stated here 'by habit a robber house-breaker thief or forger'. This section does not deal with the cases referred to by hon Members. There are unfortunately in every society members who are of an anti-social character, who want for the purpose of self-aggrandizement, to do certain acts by way of robbery house-breaking, theft or forgery. The words used are "by habit". That means not a single act, but a course of acts, that is absolutely essential. The words have been repeated in sub-section (b)—"by habit a receiver of stolen property". When a man is a habitual receiver of stolen property he is as bad or even worse than one who actually commits theft. So, when it is found that a man is habitually carrying on these things certain preventive actions have to be taken. Sub-section (c) says "habitually protects or harbours thieves or aids in the concealment or disposal of stolen property". So in every sub-section there is the word "habitually" or "by habit". Sub-section (d) says "habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace". There might be persons who might be dangerous and desperate, so as to render their being at large without security hazardous to the community.

Hon. Members referred to certain cases. Had they given particular reference, I would have looked into them, certainly with a view to see whether there was any abuse at all. In any case, even apart from my looking into the cases, there are in such cases further remedies open to the person concerned. The remedy would be by way of an appeal. An appeal has been specifically provided so far as most of these provisions are concerned.

Shri Narayanankutty Menon (Mukandapuram) There is no remedy against misuse at all.

Shri Datar. It is not sufficient merely to put it in a general way.

Shri Narayanankutty Menon. I point out to him the particular case where a man's security has been asked for, he executes an interim bond and the case proceeds. After a year, the whole security becomes infructuous and he is discharged, because there is no evidence. What is the remedy for that man against the harm done to him?

Shri Datar. The hon Member refers to these cases in a general way. If he gives me full details I am prepared to look into it.

Shri Khushwaqt Rai (Kheri) What can you do?

Shri Datar. To the extent that is necessary, administrative action can also be taken.

Shri Braj Raj Singh. The Minister asked for specific reference. My friend, Shri Prabhu Narayan Singh mentioned his specific case. While he was in Banaras, he was challenged under section 117 Cr P C only with a view to preventing him from taking part in political activities. So many Assembly Members of UP were challenged under section 117.

को न० ना० सिंह (बन्नीकी) हमारे सूर्य में कुछ एजिटेशन बिल कर के लिये चला था, लेकिन उस कुछ एजिटेशन को १०७ (१७) के क्लेज आप भी चला रहे हैं। दो महीने पहले तक जब कि हमारे सूर्य में कुछ एजिटेशन नहीं है, मेरे खिलाफ १०७(१७) के क्लेज विरुद्ध नहीं हुए, बल्कि सेसन को कनिट किये गये हैं और मेरी प्रतीति वैदिक है।

राजा महेंद्र प्रताप (मधुरा) जनाब वजीर साहब से मैं कुछ मन्त्राज कहना चाहता हूँ। शर्ज यह है कि हम लोगों को जो सिकायत है वह आप के प्रबन्ध से है। आप जिन के जरिये लोगों को पकड़वाते हैं वह बहुत दफा बन्दे भावनी नहीं हात। इस लिये मेरा कहना यह है कि बजाय इस के कि आप ऐसा कानून बनाय कि इसे पकडा, उसे पकडो—बहुत दफा अवानत की बजह से लोग पकडे जाते हैं, बहुत दफा पार्टी की बजह से पकडे जाते हैं, बहुत दफा किन्ती बो बढ़ाने के लिये न पकडे जाते हैं—बहुतर यह होगा कि जो चार की सिका दी जाय आप इस तरह की सस्थाये बनाये

उपाय गज महोब बम इतना ही काफी होगा।

श्री लक्ष्मण राय चकि स्पेसिफिक क्लेज की बात कही गई है

उपाय गज महोबय उन का जबाब तो मिनिस्टर साहब ने दो तीन दफा दे दिया है।

श्री लक्ष्मण राय जो स्पेसिफिक क्लेज की बात कही गई है, मैं मंत्री जी से पूछना चाहता हूँ कि पिछले साल उत्तर प्रदेश में जो कुछ एजिटेशन चला था, उस में जो दफा १०७ (१७) के क्लेज चलाय गये थे, उन के बारे में क्या वह एन्वारी करेगे ?

Shri Datar: Hon Members are bringing out certain cases Here we are concerned only with what can be stated to be the legislative aspect of this matter

Shri Khushwaqt Rai: What about your offer to enquire? (Interruptions)

Mr. Deputy-Speaker If it is the desire of hon Members that I should ask the Minister to sit down, I will do that Should he continue or not?

Shri Khushwaqt Rai Let him continue with the offer

Mr. Deputy-Speaker: He has to say whatever the hon Members desire?

Some Hon. Members: No, Sir.

Shri Datar: The particular types of cases referred to by hon Members are in connection with certain agitation or agitations They have not made reference to other normal ordinary cases where certain offences of a serious and reprehensible nature are likely to be committed I understand their reference to certain cases which for facility of reference we shall call "political cases" But so far as the general trend of such offences or possible offences is concerned, Government must be armed with authority to take preventive action against such anti-social people I hope the hon Member agrees so far as this is concerned

Regarding the provisions of the Bill, he wants sections 107, 109 and 110 to be completely removed from the Criminal Procedure Code He will kindly contemplate the dangerous possibilities if such sections are committed altogether I would submit that the Bill is more sweeping in its nature than what the hon Member has in view

In respect of cases which might be called political cases, naturally two things have to be noted One thing is that the agitation, public agitation or whatever it is, has to be carried on so as to avoid a breach of the peace or disturbance to public tranquillity In such cases, apart from other things which they have in view, action can be taken only provided there is the possibility in the case of

[Shri Datar]

such political agitation, of its getting out of control I would appeal to hon Members here that we are not sitting here as party members or anything like that I am appealing to the hon Members to understand this particular aspect

It is true that whenever there are certain public questions, it ought to be open to the party that is aggrieved with the policy that the Government follows to express its views unequivocally That is understandable But they should also take care to see that if they carry on an agitation, if they are holding certain demonstrations which are likely to go beyond the limits of control—I am purposely underlining this express—then Government will have to step in for the purpose of protecting the peace, or avoiding a disturbance to public tranquillity It is in such cases that difficulties arise I understand that there are often times questions on which certain parties hold very strong views But while holding strong views and having certain demonstrations in contemplation they should also consider the possibility of such demonstrations getting out of control, and only when there is such a reasonable possibility—I am prepared to put that specifically here—that the Government as the protector of law and order, will have to step in Often times, when such agitations are being carried on, we talk in terms which are not necessarily temperate, often times we speak on occasions in a spirit of excitement, and such excitement or such inflammable speeches are likely to have a worse effect and in some cases—I am not here referring to any particular sort of agitation—what is spoken of amounts almost to, say, defiance of the orders or disturbance of public tranquillity In such cases, the hon Members are aware that carrying on the agitation

Mr. Deputy-Speaker: If I may intervene, there is one thing The hon Members on this side have argued that

these sections have been abused, their application has not been on proper occasions and the hon Minister is arguing what the intention or the objective of the legislation is Therefore, these two are the extremes Hon Members wanted to know whether in the administration or application of the section, as has been done by the executive, we can formulate any safeguards so that they may not be abused, as has been done in the past

Shri M. C. Jain (Kaithal) It is the experience of not only the Opposition but ours also

Shri Datar: I am pointing out the possibilities of the Government being compelled to take action That is the reason why I made a reference to this When the situation is likely to get out of control, then some power must be vested in the authorities to take action That is one thing

Mr. Deputy-Speaker It would be agreed that there are occasions when actions under these sections become necessary and action has to be taken It would also be agreed that there are many occasions when these have been abused and so there is an apprehension

Shri Datar There are some occasions I would rather use the term some occasions

Shri P. N. Singh They used to check even the normal political activity

Shri Datar So far as the first part is concerned, I have made it clear So far as the second part is concerned, whenever in the opinion of certain parties these are likely to be abused, there are two remedies One is that they can take up the matter to the appellate authority, the matter can be taken up even before the High Court

An Hon. Member: It remains pending there for one year

**Mr. Deputy-Speaker:** He is coming to that point

**Shri Datar:** So far as these cases are concerned, where it has been proved by the judiciary that there was an abuse of authority, then what we do is this. In the case of proceedings under the preventive sections, or whenever there are criminal cases, sessions cases etc. when the magistrate or the court, as the case may be, feels that there has been an abuse of the powers or there has been harassment, then in that case we look into the matter. And in all the cases in most of the States, so far as we are concerned, we always take account or cognizance of the adverse remarks about the executive authority against the investigating authorities etc. and satisfy ourselves as to whether those statements those judicial statements have a real foundation in any sense or whether they are made entirely in a casual manner. And may I tell the hon. Members on both sides that whenever it is found that any police officer has acted in a manner which is not covered by his authority then we take strong action against him. In some cases we proceed against him departmentally. In other cases

**Shri Jagdish Awasthi (Bilhar):** They are generally put in other posts

**Shri P. N. Singh:** In our State they are promoted

**Mr. Deputy-Speaker:** The hon. Member will have another opportunity.

**Shri Datar:** In some cases we even prosecute such officers when we find that very serious inroads into the criminal law have been committed by these officers.

**Shri Narayanankutty Menon:** If you can point out one instance where a police officer has taken action under section 107 and you have prosecuted him for misuse of authority we will withdraw the Bill.

**Shri Datar:** It is not sufficient to say in a general way that there has been an abuse of authority.

**Shri Braj Raj Singh:** In Mathura 14 Socialists were going just to demonstrate before the Minister. They had only expressed their intention to demonstrate before the Minister. Before the demonstration could take place the police arrested them, put them into the *thana* and everything was done.

**Shri Datar:** My simple answer is this. If in view of the particular situation there are dangerous possibilities behind this demonstration, then action has to be taken. All demonstrations are not harmless. All demonstrations are not necessarily innocent.

**Shri Braj Raj Singh:** Only 14 people.

**Shri Datar:** Perhaps it is likely that the leaders of the demonstration may or may not contemplate it, but the Government or the protectors of law and authority have to contemplate the possibilities of threat to public peace. Therefore I would submit that in such cases naturally Government will take care to see that legitimate rights are not interfered with but when such demonstrations have a possibility of getting out of control in a manner not necessarily contemplated by the agitators or political people Government must have the authority to take action.

Then as I have pointed out, there is an appellate authority and in appropriate cases whenever the Judge himself or the magistrate, makes comments, we take account of them and we make further enquiries and we either place him for a departmental enquiry or, in a case where the evidence is sufficient, we even prosecute such officer. But may I tell you that such instances are not many. There might be some instance here or there. Also, all State Governments are fully seized of this question. They are anxious to see that the police administration is as efficient as possible. Therefore whenever there are such real

[Shri Datar]

instances, we shall surely look into those matters. Then, as this is a subject which concerns all State Governments, action has naturally to be taken by the State Governments. We come into the picture only when it is a concurrent subject. So, the views of the State Governments also have to be taken into account.

But we find that the hon. Member's proposals are of such a sweeping character that there can be no possibility of any State Government agreeing to the principle of the hon. Member's proposals. It is for these reasons that I have to oppose this Bill.

15 hrs.

Shri Braj Raj Singh: Is the hon. Minister prepared to at least assure this much that this section 107(17) will not be applied to suppress political agitations, that it will not be applied to arrest political leaders of different parties from their houses and from their offices and that it will not be left to the police officer or to the sub-divisional magistrate to judge whether breach of peace is to take place if the man is not arrested?

Mr. Deputy-Speaker: Should the Sub-Inspector on the spot write to the hon. Home Minister to tell him whether

Shri Braj Raj Singh: I am saying about only political agitations.

Mr. Deputy-Speaker: It would be judged on the spot. I agree with him that there are really possibilities of abuse. Abuses have taken place. I do not rule it out. I know of those cases and I agree with him. But how can we remedy it here? That is the question that has to be seen. The hon. Minister says that simple deletion of this section is taking the other extreme.

Shri Narayanankutty Menon: What about section 161? There is another part of the Bill about which he has not said anything.

Shri Datar: I am obliged to the hon. Member.

So far as section 161 is concerned, it deals with the statements or the collection of evidence. Under the amended Code of Criminal Procedure, which was amended by this hon. House, it has been made clear that so far as the FIR and all other documents collected during investigation are concerned, copies thereof have to be given to the opposite party. This is one of the most important and salutary provisions that have been introduced through the last amending Bill, I believe, of 1955. You will find that within a few days after the case has been started, all the documents will be made available to the opposite party including the FIR. In fact, some of the State Governments have been finding this particular provision of a highly difficult nature in the sense that so many copies have to be prepared. They have to establish a special copying department. Some of the State Governments are not very happy about it. But for the purpose of the point that the hon. Member has made, I pointed out that a copy of all the statements under section 161 would be made available to the accused. Therefore there can be no possibility of any tampering with either the FIR or the other statements. In other cases also these statements and FIR go to the magistrates. My information is that as soon as a FIR is filed, copies thereof go to the magistrate.

Shri Narayanankutty Menon: Section 161 does not deal with FIR at all.

Shri Datar: Actually we have got our rules and according to these rules they are sent to the magistrates.

Shri Narayanankutty Menon: I do not know if it is your rule, but as far as the Criminal Procedure Code is concerned, section 161 does not deal with FIR. It deals with evidence recorded during the course of investigation.

**Shri Datar:** In important cases, like in cognisable cases, copies are sent to the DSP or the Superintendent of Police as the case may be.

**Shri Narayanankutty Menon:** He made a very wrong statement of law. There is no rule which makes it incumbent upon the police officer investigating the case to send a copy of the case diary to the magistrate until the stage of the filling of the charge sheet is there. The whole speech made in support of the amendment was that the possibility of misuse during investigations is there. There is no rule at all under which the Inspector should send a copy to the magistrate.

**Shri Eami Reddy (Cuddapah):** When the remand report is sent to the magistrate he must send the statement.

**Shri Datar:** My point is

**Raja Mahendra Pratap:** I want to ask the hon. Minister one question. Can you add one more clause saying that MPs and MLAs will never be arrested in any case?

**Mr Deputy-Speaker:** That would lead us to world federation then.

**Shri Datar:** What I have pointed out here is that whatever evidence is collected under section 161 etc. copies thereof will be available to the accused as early as possible before the case actually starts. That is the greatest safeguard against possible tampering with of the documents. Cases of tampering with are extremely few. May I tell the House that such cases are not many? Sometimes

**Pandit Thakur Das Bhargava (Hisar):** Tampering with always takes place before the case goes to the court. Copies are supplied in the court.

**Shri Datar:** In the court, enquiry is made whether copies have been received at the time when, for example, a charge sheet is filed.

**Pandit Thakur Das Bhargava:** A copy is given when a person is challenged. At that time he gets a copy but the tampering with takes place before that.

**Shri Datar:** Let my hon. friend state how many cases are there in his long experience in which such documents have been tampered with. Otherwise we speak more or less in a manner that we think that there is something.

**Mr Deputy-Speaker:** The hon. Minister should not address this question to the lawyers. They have always been appearing for the accused.

**Shri Datar:** Here he is an hon. Member of this court. He is an advocate for the whole country. Therefore I am quite confident that he will give us a correct opinion.

There is one point that remains. The contention was that the copies should be sent to the district judge. I think it is the sessions judge which possibly he has in view. So far as that is concerned, it is not necessary to do so in all cases. Imagine that he wants the evidence in all cases to be sent to the sessions judge. Now the cases are more than a lakh, or even some lakhs in a number of cases. The district judge or the

**Shri Narayanankutty Menon:** One lakh in one district?

**Shri Datar:** No, no. Whatever it is, the number is extremely large.

**Shri Narayanankutty Menon:** According to your own statement the maximum in a district court comes to very few cases and not lakhs.

**Shri Datar:** He wants all these cases to be sent to the district judge, even whether they come to the district judge or not. Let the hon. Member understand its wide implications. He wants



**Shri Narayanankutty Menon:** We expect a reasonable reply at least, if the Government is not accepting it.

**Mr. Deputy-Speaker:** He is replying. Whether it is reasonable or not

**Shri Datar:** Let the hon. House see clause 3.

"A copy of the police diary, the information recorded under section 154 and 155 and the statements recorded under sub-section (3) of that section shall be sent to the district judge."

That means that they have to be sent in all possible cases and not only in those cases which are finally to go to the sessions judge. The hon. Mover has not limited the provisions of his Bill to any particular class. In all cases, even if it might be a petty case . . .

**Shri Narayanankutty Menon:** Within the jurisdiction of that court.

**Shri Datar:** Even that he has not said. My objection is more fundamental. So far as the sessions judge is concerned, he is a judicial officer, he already has a lot of work and it would not be necessary, neither would it be desirable, to send all these papers to the sessions judge as it is. Now if the copies are given at an earlier stage to the accused that would serve the purpose that he has in view.

**Shri Braj Raj Singh:** Are you prepared to send them to the magistrate?

**Mr. Deputy-Speaker:** Shri Awasthi: I hope he will be very brief now.

**Pandit Thakur Das Bhargava:** A question was asked of me by my hon. friend. Will you allow me to answer that?

**Mr. Deputy-Speaker:** The answer is not wanted now perhaps.

**Pandit Thakur Das Bhargava:** If he does not want it, it is a different matter. But if he wants it I will be ready to give it.

**Shri Braj Raj Singh:** Let it come. We shall be very much enlightened.

**श्री जगदीश श्रवस्थी :** उपाध्यक्ष महोदय जो मैंने यह विधेयक सदन के समक्ष उपस्थित किया है उसमें मैंने यह मांग की थी कि कानूनी पुस्तक में से धारा १०७, १०६, ११० का लोप कर दिया जाय और दफा १६१ में कुछ संशोधन कर दिया जाय। इसके सम्बन्ध में कई माननीय सदस्यों ने अपने विचार व्यक्त किये और मैं उनको धन्यवाद देता हूँ। मंत्री महोदय ने जिन तर्कों के आधार पर इस विधेयक का विरोध किया मैं समझता हूँ कि वह तर्क ऐसे तर्क हैं जो कि सबमूच आज के जमाने में जबकि हम प्रजातन्त्री युग में रह रहे हैं, वह हमारे हृदय को स्पर्श नहीं करते हैं। इसके साथ ही मंत्री महोदय ने अपने भाषण में जो यह कहा कि अगर हमारे सामने धारा १०७ और १०६ के विशेष करके ऐसे केसेज लाये जायेंगे जिनमें कि उनका दुरुपयोग हुआ हो तो निश्चित रूप से हम उन पर विचार करेंगे और कार्यवाही करेंगे। लेकिन मैं कहना चाहता हूँ कि यदि आप सारे प्रदेशों के ऐसे केसेज इकट्ठा करने लगे जिनमें कि पुलिस ने १०७ और १०६ दफाओं का दुरुपयोग किया हो तो मैं समझता हूँ कि उनकी संख्या इतनी अधिक होगी कि शायद यह मंत्रालय इसी काम का होकर रह जायगा और उसको अपने तमाम दूसरे काम बन्द कर देने पड़ेंगे। अगर वाकाई में सबमूच मंत्री जी के मन के अन्दर यह भावना है और वह इस बारे में विस्तृत जानकारी चाहते हैं तो मेरा उनसे यह निवेदन है कि वे इसके लिये एक जांच समिति नियुक्त करें और उस समिति का चेअरमैन हाईकोर्ट अथवा सुप्रीम कोर्ट का जज हो जो कि सारे प्रदेशों घूम घूम कर इस बात का पता लगाने की

स्वातन्त्रता प्राप्ति के समय से लेकर इन पिछले १२ वर्षों में धारा १०७, १०९ और ११० का कितना दुरुपयोग हुआ है और वह उनके सम्बन्ध में पूरी जानकारी इकट्ठा करे तब मन्त्री महोदय को इस बात का विश्वास हो जायगा कि जो मैं कह रहा हूँ वह सही है कि नहीं। तथ्य यह है कि इन दफाओं का पिछले १२ वर्षों में पुलिस ने भीषण तौर पर दुरुपयोग किया है।

मन्त्री महोदय ने यह तर्क दिया कि बजाय इसके कि रोगी रोग में पीड़ित हो उसका पहले में परहेज कर लेना अच्छा होता है। उनका यह तर्क वैम तो मुझे मे ठीक ही लगता है लेकिन वहाँ हालत दूसरी है। वहाँ तो रोग ही नहीं है और मेरी समझ में यह नहीं आता कि ऐसे व्यक्ति का जिसे कोई रोग नहीं है उसका परहेज करने में मरीजों का क्या होगा। उल्टे देना ना यह कहा गया है कि उन व्यक्ति को जिसे कोई रोग नहीं है उसको यदि परहेज कराया जाय और दवा दी जाय तो निश्चित रूप से बीमारी हल होने के बजाय बढ़ती जायगी। चायें दिन हम देखते हैं कि धारा १०७ और १०९ हानाकि चलती रहती हैं लेकिन अपराधों में कमी होने में बजाय उनमें बढ़ावा हो रहा है, इसका बड़बन्दे में प्रयोग होता है लेकिन अपराधों की मख्या कम होने के बजाय बढ़ती जा रही है। इसका मतलब यह हुआ कि जिस उद्देश्य का लेकर और जिस धारणा भंग होने की आशंका का लेकर इन धाराओं का प्रयोग किया जाता है ताकि समाज में कोई अव्यवस्था पैदा न हो व्यवहार में हम देखते हैं कि इन पिछले १० वर्षों में समस्त राज्यों में जिस उद्देश्य को लेकर इन धाराओं का व्यापक प्रयोग किया गया है, वह उद्देश्य पूरा हाता नहीं दिखाई देता। इस सम्बन्ध में मैं अपने कानपुर जिले का ही उदाहरण दू जहाँ कि पुलिस द्वारा १०७, १०९ और ११० का बहुत व्यापक पैमाने पर उपयोग किया जाता रहा है। कानपुर के जिलाधीश महोदय ने अभी तीन

महीने हुए एक प्रेस सम्मेलन में कहा था कि इधर तीन महीनों में कानपुर में जितनी हत्याएं और इकतिया हुई है उतनी पिछले १० वर्षों में भी नहीं हुई। कहने का मतलब यह कि इन धाराओं का व्यापक प्रयोग होते हुए भी अपराधों की मख्या में वृद्धि ही हो रही है। इसमें यह भी निश्च हो जाता है कि धारणा यह धाराएं प्रभावहीन साबित हुई है। हमारे जो कि माननीय सदस्य ने कहा कि अगर फला जगह पर धारा १०७ का प्रयोग नहीं किया गया होता तो क्या पर ६ कल्प हो गये होते। लेकिन मेरा जवाब यह है कि इस इसके दुबक उदाहरण में कोई इन धाराओं की उपयोगिता तो निश्च त्रा क जा सकती जबकि हम देखते हैं कि देश भर में इन १०७ और १०९ धाराओं के चलते चारों ओर इकतिया बढ़ती जा रही है। इसलिये यह तर्क खरा नहीं उतरता कि अगर यह धाराएं नहीं रहेंगी तो देश में ना एवट आइंग लम्ब हो जायगा।

मन्त्री जो ने यह भी कहा कि जो व्यक्ति धारा १०७ और १०९ के अधीन दण्डित होता है और यदि वह समझता है कि उसको गलत चानान किया गया है तो वह अपनी मजा में खिलाफ मेगन कोर्ट में अपील कर सकता है। लेकिन मैं पूछना चाहता हूँ कि जिन लोगों को १०७ और १०९ के मातहत लोघर काट म दी इन १०७ दिया जाता है उनमें से कितनी परमेटेज ऐसी है जो कि मेगनकोर्ट में अपील लेकर पहुंच पाते हैं? आम तौर पर लोग मेगन कोर्ट में अपील नहीं कर पाते हैं। न्याय इतना महंगा हो गया है कि वह अपील नहीं कर सकते।

यह भी कहा गया कि जूडिशियल आफिसरों में नियुक्त कर दिये गये हैं और अगर कहीं पर पुलिस कोई ज्यादाती करती है और इन धाराओं को बेजा और गलत इस्तेमाल करती हैं तो जूडिशियल आफिसर उनको चेक कर सकते हैं और सम्बन्धित लोगों को न्याय

## [श्री अणवीश्वर शर्मा]

दिना सकते हैं। अब मैं आप से उत्तर प्रदेश की बाबत बतलाना चाहता हूँ जहाँ कि यह क्रिमिनल प्रोसेच्यूरिटी ऐक्ट तैनात है लेकिन जैसे कि एक माननीय सदस्य ने कहा था कि चूँकि यह टेम्पोरेरी है इसलिये हाफ हाउटेंडमी काम करते हैं और इसके अलावा उनको डिस्ट्रिक्ट प्रजिस्ट्रेट के मातहत रक्खा जाता है और चूँकि यह एक्जीक्यूटिव के अन्तर्गत है इसलिये उनसे पूर्णतया निष्पक्ष होकर न्याय देने की आशा कम ही की जा सकती है। वह हमेशा एक्जीक्यूटिव के अन्तर्गत रहते हैं और इसीलिये मैं तो उत्तर प्रदेश के जो लोअर कोर्ट्स हैं उनको मैं हमेशा पुलिस कोर्ट्स कहा करता हूँ। वहाँ पर जनता को पुलिस के विरुद्ध सही और सच्चा न्याय मिलना दुर्लभ है।

मैं समझता हूँ कि बिषय कितने भी स्वतन्त्र राष्ट्र हैं उनमें कहीं की भी पुलिस उतनी भ्रष्ट और अन्यायी नहीं होगी जितनी कि इन पिछले १२ वर्षों में हमारे देश की पुलिस रही है और इस मामले में उत्तर प्रदेश की जो हालत है वह किसी प्रदेश की भेरी ब्याल में नहीं होगी। विशेष कर कानपुर में दफा १०७, १०६ और १४४ का बहुत ही व्यापक पैमाने पर और बेजा तरीके पर पुलिस द्वारा इस्तेमाल किया जाता रहा है। अब मैं आपको बतलाऊँ कि जनता की पुलिस के बारे में क्या राय है और हमारे लोगों के दिलों पर पुलिसमैन की जो तस्वीर है वह इस तरह है कि जबान पर तो उमक गाली है, एक हाथ में डंडा है और एक हाथ में कानून की तलवार और जब मैं रिश्बन का पैसा है। पुलिस के यह चार गुण हैं बन गये हैं और जब ऐसी हालत हो तब आप इस तरह की क्रूर पुलिस से यह कैसे उम्मीद रखते हैं कि यह इन दफाओं का सही तौर पर इस्तेमाल करेगी? मेरे अतिरिक्त अन्य माननीय सदस्यों ने और कांग्रेस पार्टी के भी सदस्यों ने इस चीज

को कहा है कि पुलिस द्वारा इन दफाओं का गलत और बेजा इस्तेमाल किया जाता है और मैं नहीं समझता कि हमारे मंत्री महोदय का यह कहना कि हमारी पुलिस एक्जिज्यूटिव होती जा रही है कहा तक पुस्त है? मंत्री महोदय स्वयं इसकी जांच करा सकते हैं कि पुलिस इन दफाओं का कितनी दुरुपयोग करती है।

मन्त्री जी ने अभी यह कहा कि धारा १०७, १०६ और ११० अगर नहीं रहेंगी तो शायद हमारे समाज में बहुत अव्यवस्था फैल जायगी तो मैं कहना चाहता हूँ कि इन धाराओं का प्रयोग होता रहता है फिर भी लुट्टाई, झगड़ होते रहते हैं। मैं समझता हूँ कि अगर सारे प्रदेशों के प्राक्टिस को इकट्ठा किया जाय तो सारे देश भर में २०, २५ हजार आदमी १०७ और १०६ धाराओं के अन्तर्गत जेलों में बन्द होंगे और मैं समझता हूँ कि अगर जेलों की दीवारों के जवान होती तो आपका मालूम हो जाता कि कितने निरपराध व्यक्ति इन दफाओं के मातहत जेलों में बन्द पड़े हैं। किसी भी कानून के रखने की मशा यह है कि समाज में सुधार हो न कि समाज में बुराई फैले। हमारे स्वतन्त्र भारत में इन कानूनों का जिनका कि इतना भीषण दुरुपयोग होता है उनको बन्द होना चाहिये। मेरा तो यह निश्चित मन है कि जब तक पुलिस में सुधार नहीं होता है तब तक आप इन कानूनों को रद्द कर इनके सदुपयोग की आशा नहीं कर सकते। इसलिये अगर आप सचमुच में चाहते हैं कि समाज में से बुराई खरब हो तो फिर इन दफाओं को हटा दीजिये या फिर अपनी पुलिस को ठीक कीजिये।

अब पुलिस और यह कानून दो समानान्तर रेखाएँ बन गयी हैं और हालांकि भारत को स्वतन्त्र हुए १२ वर्ष हो गये लेकिन आप अपनी पुलिस को सुधार नहीं पाये हैं और ऐसी दशा में यह आशा करना कि पुलिस इन दफाओं का सही इस्तेमाल करेगी, गलत है। इसलिये

अन्यत्र को मजबूत करने के लिये और भारतीय संविधान जिसकी कि मंशा है कि हर एक व्यक्ति की प्राणादी सुरक्षित रहे, उसको अग्न्य प्राण पूरा करना चाहते हैं तो इन धाराओं को हटा दीजिये।

श्री जी जी में उस दिन कहा था कि किसी भी प्रादमी ने जाकर हाईकोर्ट या सुप्रीम कोर्ट में इसको चैनेज नहीं किया है कि इन दफाओं से भारतीय संविधान में लोगों को जो व्यक्तिगत स्वतन्त्रता की गारण्टी दी गई है, उसका हनन होता है। अब मेरा इसके लिए कहना यह है कि आपने मूल संविधान में भाग में कितनी तबदीली कर दी है और मैं नमस्कार है कि आपने भारतीय संविधान में १०७, १०९ और १४८ दफाओं को बनाये रखने के लिये मशौघन किया है और भारतीय संविधान की जो व्यक्ति स्वातन्त्र्य की मूल भावना की उसको एक तरह में यह मशौघन करके दबा दिया है। ऐसा मान्य पड़ता है कि हम सरकार को संविधान कम प्यारा है और यह दफाएं ज्यादा प्यारी हैं। इन दफाओं को कानूनी किताब में रखने के लिये ही आपने मूल संविधान में मशौघन किया है। मैं कहना चाहता हूँ कि आप इस चीज पर पुनर्विचार करें और इन धाराओं का तोप हमारी कानूनी पुस्तक में से हो जाना चाहिये।

दफा १६१ को संशोधन करने के लिये मैंने केवल यही कहा था कि पुलिस प्रारम्भिक अवस्थाओं में जो जनरल डायरी भरती है या स्पेशल डायरीज भरती है उनमें अक्सर यह दफा गया है कि वह उनको मनमाने ढंग से भरती है और जिनका कि हकीकत से कोई वास्ता नहीं होता। यह देखा गया है कि एक व्यक्ति जिसका कि एक ० धार् ० धार ० में नाम तक नहीं होता उसको पुलिस पकड़ लेती है और जेल में भेज देती है। इसलिये मैं चाहता हूँ कि कुछ ऐसी व्यवस्था की जाए जिससे पुलिस जो रिपोर्ट दर्ज करती है उसकी एक कापी केवल जब के महा २४ घंटे के अन्दर पहुंच जाय और यदि ऐसी व्यवस्था करदी जाय तो

फिर निश्चित रूप से उसमें कोई गड़बड़ नहीं होगी। श्री पुलिस ४, ५ कापी तैयार करती है। एक कापी बाने में रहती है, एक कापी डिस्ट्रिक्ट मजिस्ट्रेट के यहां जाती है और एक कापी पुलिस सुपरिन्टेंडेंट के यहां जाती है। और यह देखा जाता है कि चूंकि ये एग्जीक्यूटिव के अंग हैं इसलिये अग्न्य पुलिस एक दो सप्ताह बाद भी डायरी भरती है तो वे उस पर पिछली तारीख में दस्तखत कर देते हैं। यदि डायरी की प्रतिनिधि मेसन कोर्ट में भी जाए तो यह सम्भावना नहीं हो सकती और पुलिस इस तरह से छेबरकेषण और टविस्टिंग नहीं कर सकती। इसलिये मैं चाहता हूँ कि यह मशौघन कर दिया जाए। हमने न्याय मिलने में बहुत लाभ होगा और जो पुलिस कानून का दुरुपयोग करती है उस पर हम अक्रुष लगा सकेंगे। मैं उम्मीद करता हूँ कि जो विधेयक मैंने प्रस्तुत किया है उस पर मदन गम्भीरता के साथ विचार करेगा और जब मतदान होगा तो माननीय सदस्य यह देखेंगे कि यह कानून के लिये अच्छी चीज है या नहीं और जो हम लोग यहां संविधान की कसम खाकर और लोकतन्त्र का नाम लेकर बैठे हैं उसके अनुसार यह चीज है या नहीं।

Mr. Deputy-Speaker: The question  
is

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration"

The motion was negatived

15.09 hrs

STATES REORGANISATION  
(AMENDMENT) BILL  
(Amendment of Section 51)

Shri Saswara Iyer (Trivandrum):  
Mr Deputy-Speaker. I beg to move:

"That the Bill further to amend the States Reorganisation Act, 1956, be taken into consideration."

By this Bill, I seek a clarification of section 51 of the States Reorganisation