

और आप हमें कापियां दे दें। उसके बाद हाउस एडजर्न कर दें और फिर ठाई बजे डिस्कशन शुरू करें।

SHRI SANGH PRIYA GAUTAM:
Madam, I am on a point of order.

THE DEPUTY CHAIRMAN: What is your point of order?

SHRI SANGH PRIYA GAUTAM:
Madam Deputy Chairman, I quote from Rule 93 of Rules of Procedure and Conduct of Business in the Council of States. It says, "After the presentation of the final report of a Select Committee of the Council or a Joint Committee of the Houses, on a Bill, ... (*Interruptions*)..."

THE DEPUTY CHAIRMAN: No.

SHRI DIGVIJAY SINGH: Rule 93, doesn't speak about the Standing Committee.

SHRI V. NARAYANASAMY (Pondicherry): A select Committee or a Joint Committee is different from a Standing Committee. Therefore, Madam, his point of order is ruled out.

उपसभापति : संघ प्रिय जी, आप मेरी कलिंग सुनिए। आप अच्छा भाषण करते हैं, जो आपने एस.सी., एस.टी. के ऊपर किया, मगर यह जरूरी नहीं कि आप स्पीच बुक के ऊपर भी अच्छा भाषण कर सकें। इसलिए कृपया अपने आप जो आप बोले हैं, उसको वापस ले लीजिए।

जी संघप्रिय गौतम : ठीक है, मैडम।

THE CRIMINAL LAW AMENDMENT BILL, 1995.

THE MINISTER OF HOME AFFAIRS (SHRI S. B. CHAVAN):
Madam Deputy Chairman, I move:

"That the Bill to make special provisions for the prevention of,

and for coping with, terrorist and disruptive activities and to supplement the criminal law, be taken into consideration."

Against the background of escalating terrorist and disruptive activities in several parts of the country, the Terrorist and Disruptive Activities (Prevention) Act, 1985 was first enacted on 23rd May, 1985. It was to remain, in force for a period of two years. However, in the context of continued terrorist violence in the country, the Terrorist and Disruptive Activities (Prevention) Act, 1987 was enacted. It was extended from time to time and is currently due to expire on 23rd Bill, 1995.

The question of extension or repeal of TADA will have to be viewed in the light of the overall security environment in the country. The continued aid and assistance from across the border received by various terrorist groups in India has to be taken note of. In fact, I have no hesitation to say that a war by proxy is being unleashed. Terrorism, which was initially confined to the States of Punjab, Jammu and Kashmir and the North Eastern region has spread to several other parts of the country. The acquisition by terrorist groups of highly sophisticated weaponry, remote control devices, rocket launchers and professional training have added a new dimension to the problem.

The Constitutional validity of the said Act was upheld by the Supreme Court in *Kartar Singh vs. The State of Punjab*. However, there has also been criticism of certain provisions of the Act. The Government has consulted the Chief Ministers/Governors of States/Union Territories and leaders of the various political parties in this regard. In the light of the views expressed by the Chief Ministers and Governors as also the leaders of the various

political parties, the Government has decided not to extend the TADA but to bring forward a new legislation, namely, the Criminal Law Amendment Bill, 1995, for the prevention of and for coping with the terrorist and disruptive activities. While doing this, every effort has been made to address the concerns of human rights and the requirements to fight terrorist forces and a balance is sought to be maintained between the two.

The essential points of difference between the existing TADA Act and the proposed new legislation are that such of those provisions which have been misused/have the potential for misuse, have been deleted.

These are as follows:

(i) Section 5 of the TADA Act which makes unauthorised possession of arms in a notified area an offence, has been deleted. The Arms Act, amended already, provides for a deterrent punishment for possession of certain classes of unauthorised arms. Therefore, there is no need to repeat the provision in the new legislation. Further, this section is the one which is alleged to have been most widely misused.

(ii) Section 15 of the TADA Act provides that confessions made to a police officer are admissible in evidence. This is against the grain of the normal provision of the Evidence Act, whereunder statements made to the police are not admissible as evidence. This section also is, therefore, deleted.

(iii) Section 20(8)(b) provides that a Court shall not grant bail unless it is satisfied that there are reasonable grounds for believing that the accused is not guilty of an offence under the TADA. This provision had made it extremely difficult to obtain bail in the TADA cases. No such provision has been made in the new law.

Over and above the said deletions, certain additional safeguards have been proposed. These are as follows:

(i) Presently under the TADA Act, an appeal from the designated court lies only to the Supreme Court. It is argued that under Indian conditions, it is difficult for people to approach straightway the Supreme Court. In the new legislation, an appeal has been provided to the High Court.

(ii) As suggested by the Supreme Court, a provision has been made that investigation in the cases relating to terrorism and disruptive activities should be done by an officer not lower in rank than that of an Assistant Superintendent of Police or a police officer of equivalent rank. This would cut down the misuse substantially.

(iii) A new section has been provided for punishment to any police officer, who corruptly, maliciously; proceeds or threatens to proceed against any person for an offence under this Act without reasonable grounds.

The new enactment provides for a definition of 'terrorist act' and 'disruptive activities' and it also provides for a deterrent punishment for the perpetrator of these offences, as well as for people who attempt or abet such activities. To ensure speedy trial, provisions have been made for setting up Special Courts. The Bill also provides for forfeiture of property belonging to the accused as well as ensuring protection of witnesses. In view of the longer time required to investigate terrorist offences, which are complex and often have inter-state ramifications, provisions have also been made for a police custody of 30 days (instead of normal 15 days) and for judicial custody of 180 days (instead of normal 96 days). However, judicial

remand in the first instance, will be up to 90 days and additional 90 days will be given by the Court only if it is satisfied that substantial progress has been made in the investigation and additional time is required to complete the same. A lot of apprehensions are being expressed about the fate of the pending cases under TADA. I wish to state that as provided under sub-section (4) of section 1 of the Terrorist and Disruptive Activities Act, 1987, the investigation/prosecution will continue. However, the Supreme Court in its judgement dated 11.3.94, in the case of Kartar Singh vs. the State of Punjab had specially directed that the Screening Committees be constituted to review all pending cases. I quote from the Supreme Court decision.

"In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a Screening Committee on a Review Committee constituted by the Central Government consisting of the Home Secretary, the Law Secretary and the other concerned Secretaries of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, there must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, the Home Secretary, the Law Secretary, the Director-General of Police (Law and Order) and other officials as the respective Government may think fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on."

From the Ministry of Home Affairs,

I will continue to press the Governments of States/Union Territories to periodically convene these meetings and give speedy relief. Proper and detailed guidelines will be issued to all the State Governments to make the reviews more meaningful and effective. As per available information, the Screening Committees at the Central Government as well as at all the States/Union Territories have been constituted. So far, a total of 2,718 cases have already been reviewed and the provisions of TADA have been dropped in respect of 5,051 persons. This item of work which is of a continuous on-going nature will be closely monitored by the Ministry of Home Affairs.

In view of the above, I request this august House to consider and pass the Criminal Law Amendment Bill, 1995.

The question was proposed.

SHRI RAM JETHMALANI (Maharashtra): Madam, if you permit, we may have some slight clarifications. (Interruptions) Is the hon. Minister prepared to instruct the State Governments to tell their Review Committees that the review must take place in the light of the provisions of the new Act?

SHRI S. B. CHAVAN: They are supposed to take the review so far as the pending cases are concerned. The pending cases are going to be considered under the TADA provisions.

SHRI RAM JETHMALANI: So, the TADA will continue to apply to all the pending cases. That is the provision. Now, we know where we stand.

THE DEPUTY CHAIRMAN: I think we can adjourn the House now till 2.30 P.M. so that I can get the copies circulated. We can have a longer lunch. (Interruptions)

mittee are. It would be quite unfair if we proceed with the discussion straightaway without your giving us an opportunity to have, at least, a perusal of the Report.

श्री संघ प्रियः गौतम (उत्तर प्रदेश) :

उपसभाध्यक्ष जी मेरा एक व्यवस्था का प्रश्न है—पोइंट ऑफ़ ऑर्डर। ऐसा है कि हर विधेयक के पीछे कोई कारण होता है कि किसलिए वह बनाया जा रहा है। इसमें जो कारण दिया है उसमें टाडा की पुष्टि की है और इसलिए कोई बजह नहीं है। जो पहला एक्ट था उस बनाये रखना चाहिए।

"In the background of escalating terrorist and disruptive activities in several parts of the country,..."

भाषने जो दिया है, आपने टाडा की पुष्टि की है :

"... the Terrorist and Disruptive Activities (Prevention) Act, 1935 was first enacted on 23rd May, 1935. It was to remain in force for a period of two years. However, in the context of the continued terrorist violence in the country, the Terrorist and Disruptive Activities (Prevention) Act, 1987 was enacted. It was to remain in force for a period of two years, but was extended from time to time and is currently due to expire on 23rd May, 1995."

"The constitutional validity of the said Act was upheld by the Supreme Court in *Kartar Singh Vs. State of Punjab*."

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): No, don't read.

श्री संघ प्रियः गौतम (उत्तर प्रदेश) : अप्रिम कोर्ट ने टाडा को सही ठहराया है और जिन कारणों से टाडा लागू किया था वह कारण एगजिस्ट करते हैं। लास्ट में आपने कहा है :

"The question of extension or repeal of the Terrorist and Disruptive Activities (Prevention) Act,

1987 will have to be viewed in the light of the overall security environment of the country. The aid and assistance from across the border received by various terrorist groups in India has to be taken note of. Terrorism, which was initially confined to the States of Punjab, Jammu & Kashmir and North-East, has spread to several other parts of the country. The acquisition by terrorist groups of highly sophisticated weaponry, remote control devices,..."

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): No, no. Kindly don't read. We don't have the time. The Objects and Reasons have been mentioned.

SHRI DINESHBHAI TRIVEDI (Gujarat): Let him say, Sir.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): No, he cannot read. Everybody knows the Objects and Reasons.

श्री संघ प्रिय गौतम : उपसभाध्यक्ष जी एक तरफ आप कह रहे हैं कि टैरेरिस्ट की एक्टिविटीज बढ़ी हैं और पहले तीन सूबों में थी तथा फिर सारे देश में फैली। इनको बाहर से हथियार और अन्य सामग्री मिल रही है। तो फिर इसको खत्म करने का कारण क्या है, आपने इसमें नहीं दर-साया? अगर इसमें कुछ ऐसे क्लोज हैं जिनका मिसयूज हो रहा है, तो उनका प्रमेंडमेंट हो सकता है। तो आप संशोधन बिल क्यों नहीं लाए कि इनका मिसयूज हो रहा है इसलिए संशोधन किया जाए। इसलिए मैं दरखास्त करूंगा कि :

In the absence of any reason this cannot be discuss in this House. The Home Minister should take back the Bill.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): This is not a point of order. This is a point of information which you have given to this House. It is for the hon.

Home Minister to react to whatever you have said. As far as what Jagannath Mishraji has said about some of the recommendations made by the Standing Committee, is concerned, it is for the Government to decide about it. I think all the hon. Members have got the copy of the Bill.

SHRI SATYA PRAKASH MALAVIYA: Sir, I have not got it.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Some hon. Members have got it. Copies of the Bill are being circulated. All the Members will be getting it in due course. Shrimati Sushma Swaraj.

श्रीमती सुष्मा स्वराज : धन्यवाद उप-सभाध्यक्ष जी। मुझे बहुत दुःख के साथ कहना पड़ रहा है कि जो बिल डाटा को रिप्लेस करने के लिए गृह मंत्री जी ने इस सदन में प्रस्तुत किया है, उसकी बुनियाद ही चालाकी और घोर बदनियती पर आधारित है। बिल का शीर्षक दिया गया है "द क्रिमिनल लॉ अमेंडमेंट बिल, 1995"। यह शीर्षक अपने आप में मिसलीडिंग है। यह शीर्षक अपने आप में भ्रामक है। "क्रिमिनल लॉ अमेंडमेंट बिल" यह शीर्षक देखते ही मन में आता है कि ज्ञायक वे फौजदारी कानून जो इस समय देश में चल रहे हैं, उनमें सरकार कोई संशोधन ला रही है, कोई तरमीम कर रही है लेकिन यह "क्रिमिनल लॉ अमेंडमेंट बिल" हमारे फौजदारी कानूनों में तरमीम नहीं कर रहा बल्कि अपने आप में एक स्वतंत्र कानून बन रहा है। "क्रिमिनल लॉ अमेंडमेंट बिल" हम कोई पहली बार नहीं ला रहे हैं, बहुत बार हम लोगों ने देश के फौजदारी कानूनों में संशोधन किया है और इसी शीर्षक से हम बिल लाए हैं। एक बिल की कॉपी मेरे पास मौजूद है और मैं आपको पढ़ कर सुनाना चाहती हूँ। "द क्रिमिनल लॉ अमेंडमेंट ऐक्ट 1993"—एक्जेक्टली, यही बडिंग्स, यही शीर्षक "द क्रिमिनल लॉ अमेंडमेंट ऐक्ट", यह बिल है इसलिए इस पर बिल लिखा है। जब यह ऐक्ट बन जाएगा तो इस पर भी ऐक्ट लिख दिया जाएगा। "द क्रिमिनल लॉ अमेंडमेंट ऐक्ट 1993" किसलिए है?

"An Act further to amend the Indian Penal Code and the Code of Criminal Procedure, 1973."

यहां यह शीर्षक सार्थक है कि वह क्रिमिनल लॉ अमेंडमेंट बिल जो आई० पी० सी० या सी० आर० पी० सी० में किसी तरह के संशोधन करता है, वह क्रिमिनल लॉ अमेंडमेंट ऐक्ट या क्रिमिनल लॉ अमेंडमेंट बिल कहा जाता है लेकिन यह बिल जिन उद्देश्यों के लिए बनाया गया है, वे उद्देश्य बिल्कुल वही हैं जो पहले "टेररिस्ट्स एंड डिसरप्टिव ऐक्टिविटीज ऐक्ट" के थे। यह मैं "टेररिस्ट्स एंड डिसरप्टिव ऐक्टिविटीज ऐक्ट" में से पढ़ रही हूँ डाटा का जो उद्देश्य था।

"An Act to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities."

और इसका भी आप उद्देश्य पढ़ लीजिए।

"A Bill to make special provisions for the prevention of, and for coping with terrorist and disruptive activities."

यानि बिल्कुल उन्हीं उद्देश्यों की पूर्ति के लिए एक बदले हुए शीर्षक से और एक अनुपयुक्त शीर्षक से यह बिल लाया गया है। यह केवल एक चालाकी भरी बात है और मैं गृह मंत्री जी से कहना चाहूंगी, गृह मंत्री जी, राज चालाकी से नहीं चलता, राज बहादुरी से चलता है। हमारी पार्टी ने भी कभी डाटा को पूर्णतः समाप्त करने का पक्ष नहीं लिया लेकिन हमने यह बात किसी संकोच के साथ नहीं कही। हमने यह बात पूरी दृढ़ता से कही, पूरे हिन्दुस्तान के सामने कही और पूरे तर्कों के साथ कही। हमने तर्क दिए कि जब भी किसी ऐक्ट को, जब भी किसी कानून को समाप्त करने की बात आती है तो जांचने की एक कसौटी होनी चाहिए और वह कसौटी क्या कि जिन परिस्थितियों के लिए, जिन कारणों की वजह से वह बिल लाया गया था, वह कानून बनाया गया था, क्या वे परिस्थितियाँ समाप्त हो गई हैं? अगर जवाब "हाँ" में आए तो वह कानून एक क्षण भी कानून की किताब में नहीं रहना चाहिए लेकिन अगर जवाब "ना", में आए तो उस कानून को समाप्त करने

का कोई औचित्य नहीं बनता और आज देश में सिर्फ मेरे कहने की बात नहीं, आज देश में जब पंजाब में सिख उग्रवादी सक्रिय हैं, जे० एंड के० में जे०के०एल०एफ० सक्रिय है, असम में उल्फा सक्रिय है, दक्षिण में एस० टी० टी० ई० सक्रिय है और पूर्वोत्तर में बी० सी० बागी संगठन..... (व्यवधान)...

बीराज बख्शर (उत्तर प्रदेश) : उग्रवादी न कहा जाए।

श्री एस० एम० अहलुवालिया : (बिहार)
आप उग्रवादी न कहिए।

श्रीमती सुष्मा स्वराज : "उग्रवादी" मैं वापस लेती हूँ। कोई दिक्कत नहीं है।

डा० मुरली मनोहर जोशी (उत्तर प्रदेश)
आपकी बात बिल्कुल ठीक है। वे वापस ले ली है।

श्रीमती सुष्मा स्वराज : पंजाब में उग्रवादी सक्रिय हैं। एक क्षण लगा, लिखिए, पंजाब में उग्रवादी सक्रिय हैं और पूर्वोत्तर में बी० सी० बागी संगठन सक्रिय हैं। क्या इस समय इस देश में इन असंघारण परिस्थितियों से निपटने के लिए किसी असंघारण कानून की आवश्यकता है या नहीं? और अगर आवश्यकता है तो फिर उस कानून को समाप्त करने का कोई औचित्य नहीं बनता। हाँ जितनी जोर से हमने यह बात कही कि इसकी समाप्ति के हम पक्षधर नहीं हैं, उससे ज्यादा जोर से हमने इस बात की बयानलत की कि इस टाडा का दुरुपयोग रद्द करना चाहिए। क्योंकि हम स्वीकार करते हैं कि टाडा का दुरुपयोग केवल हुआ नहीं है, भयंकर रूप से हुआ है और मैं तो आरोप लगाना चाहती हूँ कि कांग्रेस शासित प्रदेशों में इसका दुरुपयोग ज्यादा हुआ है। मेरा अपना प्रदेश इसका उदाहरण है। हमारे यहाँ हिसार से चुने हुए विधायक श्रीम प्रकाश जिवल को देश के जाने-माने उद्योगपति भी हैं, उनको वहाँ के कांग्रेस मुख्य मंत्री ने अपनी राजनैतिक खुल्लस निकालने के लिए टाडा में गिरफ्तार किया। लखनऊ में भारतीय जनता पार्टी के सचिव को

टाडा में गिरफ्तार किया गया। गुजरात में अपनी मांगों के लिए प्रदर्शन कर रहे किसानों को टाडा में गिरफ्तार किया गया। यह दुरुपयोग भ्रमंकर रूप से हुआ है और यह दुरुपयोग कांग्रेस शासित प्रदेशों में ज्यादा हुआ। हमने कहा था कि इसका दुरुपयोग रोकने के लिये तुरन्त प्रभावी कदम उठाने चाहिए, टाडा के प्रावधानों में कुछ संशोधन किये जाने चाहिए ताकि प्रभावी रूप से इसका दुरुपयोग रक सके। लेकिन हमें इस बात को कहते हुए दुःख होता है कि आपने जिस चालाकी का सहारा लिया, उस चालाकी के चलते न आपने हमारी बात मानी और न आपने इनकी बात मानी और अपना टाडा को पूर्णतया समाप्त भी नहीं किया और न आपने इसके दुरुपयोग को रोकने का कोई प्रावधान किया। आपका कहना है कि हमने बीसियों प्रावधान किये हैं। लेकिन मैं आपका ध्यान धारा 3 की तरफ आकृष्ट करती हूँ। धारा 3, जो बुनियादी जड़ है दुरुपयोग की, जो प्राण रेखा है, इस ऐक्ट में, जिसमें आप टैरि-रेस्टों के परिभाषित करते हैं, उसमें बाकी सारे प्रावधान जो हैं वे प्रोसीजियरल हैं। प्रोसीजर में आपने बदल किया है, लेकिन जो बेनिया आफेंस जहाँ से पैदा होता है, वह है धारा 3 और इस ऐक्ट की और धारा 3 टाडा की धारा 3 को, अगर आप पढ़ लें, तो कौमा और फुलस्टाप का भी अन्तर नहीं है। अगर किसी दूसरे व्यक्ति को टाडा की किताब पकड़ा दें और स्वयं क्रिमिनल अमेंडमेंट ऐक्ट को लें और अगर उनको कहा जाय कि इसको पढ़ लो, तो उससे ऐसा लगेगा कि जैसे मैं मोथ दिला रही हूँ या वह मुझे मोथ दिला रहा है। एक-एक सब्ब वैसा का वैसा है। मैं इसे थोड़ा सा पढ़ देती हूँ इससे आपको पता लग जाएगा। यह क्रिमिनल नॉ अमेंडमेंट ऐक्ट है और यह टाडा है। इनके 3(1) में है :

"Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the

people or to adversely affect the harmony amongst different sections of the people..."

"Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people...."

मान लिया न दोनों में कोमा और फुलरटाप का भी अन्तर नहीं है। और यही बनियादी जड़ दुरुपयोग की है। क्योंकि यहां से आपने टैररिस्ट एक्ट को डिफाइन करना शुरू किया है, टैररिस्ट एक्ट की परिभाषा देना शुरू किया है। हम इस परिभाषा के चलते राजनैतिक विरोधी टाडा में गिरफ्तार किए जा सकते हैं। आपकी इस परिभाषा के चलते किसानों पर टाडा लगाया जा सकता है। आपकी इस परिभाषा के चलते निर्दोष लोगों को टाडा में वर्षों वर्ष तक पकड़ कर लटकाये रखा जा सकता है। आप मुझे बतलाइए कि इस परिभाषा को जैसे के तैसे बरकारार रखने में क्या इस बात की गुंजाइश नहीं है कि आप भी निर्दोष लोगों को टाडा में इसी तरह से पकड़ कर रखा जाएगा, जिस तरह से पहले रखा जाता था क्योंकि केवल टैररिस्ट एक्टिविटी आपने इसको नहीं माना है। जो व्यक्ति देश की सुरक्षा और अखण्डता के साथ खिलवाड़ करता है यह उसी के विरुद्ध इस्तेमाल नहीं होगा, बल्कि आपने ट्रेड यूनियन एक्टिविटीज को भी इसमें ले लिया है। आपने तो डाकुओं को भी इसमें ले लिया है। जो चार इन्टेशन आपने लिखे हैं, उसमें सेंकेशन इन्टेशन है

or to strike terror in the people or any section of the people.

गृह मंत्री जी आतंक डाकू भी फैलाता है। किसी भी गांव में डाकू घड़ाघड़ अपना गिराह लूट जाता है और वहां भय फैलाता है। उनको देखकर उस गांव के बच्चे अपनी मां के सीने पर चिपक जाते हैं और धीरे-धीरे गांव के भय-ग्रस्त लोग एक कोने में इकट्ठे हो जाते हैं।

लेकिन उस डाकू का भय फैलाने का उद्देश्य देश की सुरक्षा को खतरा पैदा करना नहीं है। उस डाकू द्वारा भय और आतंक फैलाने का उद्देश्य देश की सीमाओं को तोड़ना नहीं है, देश की अखण्डता को समाप्त करना नहीं होता, उस डाकू का उद्देश्य भय फैलाकर पैसा लूटना होता है। इसलिये वह डाकू है और दूसरा आतंकवादी है। डाकुओं से निपटने के लिये आपके यहां कानून है। मैं आपसे कह रही थी कि आपका यह एक्ट डाकू और आतंकवादी में तमीज नहीं करता क्योंकि आपके यहां यह अलग से बात है—

"or, to spread terror among the people or any section of the people"

यानि कोई भी आदमी यदि आम लोगों में या लोगों के समूह में आतंक फैलाता है, वह तो आपकी इस परिभाषा के मुताबिक आतंकवादी हो गया, लेकिन आप को अन्तर करना पड़ेगा, मलखान सिंह और कुख्यात आतंकवादी बिट्टा में। दोनों को आप एक श्रेणी में रख कर डील नहीं कर सकते। हिन्दुस्तान में बीसियों कानून हैं। आई०पी०सी० की धारा है, एंटी राबरी एक्ट है और पच्चास कानून हैं, जिनसे आप डाकुओं से निपट सकते हैं। उसके लिए एंटी टैररिस्ट एक्ट, टाडा या टाडा जैसे कानून की कोई जरूरत नहीं है। इसी तरह से आपकी इस परिभाषा में है

"or, disruption of any supplies and services essential to the life of the community"

अगर पूरे का पूरा वर्ग किसी विभाग का हड़ताल पर चला जाए और वह इंसेंसियल कमोडिटीज जो जनजीवन के लिए बुनियादी जरूरत है, उनकी सप्लाई में डिस्रप्शन पैदा कर दें, तो आप उसको टाडा में गिरफ्तार करेंगे। वह एक ट्रेड यूनियन एक्टिविटी है, नामेल ट्रेड यूनियन एक्टिविटी है। देश के लिए अच्छी बुरी हो सकती है। उसके ऊपर हम लोगों के मतभेद हो सकते हैं लेकिन आतंकवादी गतिविधि नहीं है, उन ट्रेड यूनियन-निस्ट्स एक्टिविस्ट्स को, आप टाडा के अन्दर या किसी क्रिनिमनल एक्ट के अन्दर गिरफ्तार नहीं कर सकते। अगर

आपकी जा परिभाषा है, उसके अनुसार गिरफ्तार होंगे। आपने तो यहाँ तक कहा है कि—

“or, detains any person and threatens to kill or injure such person or threatens any other person to do or to abstain from doing such act”

आप जरा एक दृष्टि सामने रखिए। डाक कर्मचारियों की हड़ताल हो गई है। एक डाकिया कहता है कि मैं तो जा कर डाक बांटूंगा। जो उसके साथी हड़ताल पर हैं, वह उसे उठा कर एक कमरे में बन्द कर देते हैं और कहते हैं कि तुम को आज डाक नहीं बांटनी है। वह उसको एक्स्टेन कराते हैं। उसको पकड़ कर बन्द करने वाला व्यक्ति हड़ताली कर्मचारी आपकी निगाह में आतंकवादी हो गया। उसको आप टाडा में गिरफ्तार करेंगे। यह कौन सी परिभाषा है, यह किस तरह की टैरिस्टि एकटीविटी है। इसलिये मैं आपसे कहना चाहूँगी कि यह सामान्य ला भण्ड आर्डर की समस्या से इस एक्ट से आप डील नहान कर रहे हैं। यहाँ तक पब्लिक आर्डर से भी आप डील नहान कर रहे हैं। ला एड आर्डर स्टेट सब्जेक्ट है। पब्लिक आर्डर रेस्टोर करना, बनाए रखना स्टेट सब्जेक्ट है। हर राज्य में अपने प्रदेश की कानून और व्यवस्था में निपटने के लिए बड़े सक्षम कानून बना रखे हैं। बीमियों वानूनों की लिस्ट में आपको दे सकती हूँ। यातायात डिस्टर्ब एरिया एक्ट है, महाराष्ट्र स्लम डेवलपमेंट एक्ट है। इसी में मुझे याद आया कि महाराष्ट्र स्लम डेवलपमेंट एक्ट है, आपने कह दिया आतंक इन दी सेक्शन आफ दो पीपल-महाराष्ट्र में बम्बई को किसी बस्ती का दादा अपना आतंक फैला कर उस बस्ती के लोगों में हफता वसूलता है। आपकी परिभाषा है वह टाडा में गिरफ्तार किये जाने वाला आतंकवादी होना चाहिए। व्यक्ति जो आतंक फैलाता है, हफता वसूलता है, उसके लिए महाराष्ट्र स्लम डेवलपमेंट एक्ट है। ड्रग पेडलर्स और बूटलेगर्स में निपटने के लिए आपके पास एक्ट है। कितने एक्ट हैं, मैं आपको गिना सकती हूँ जो राज्य सरकार ने बना रखे हैं। जैसे

The Assam Disturbed Areas Act, the Punjab Security of State Act, the Bihar Maintenance of Public Order Act, the West Bengal Prevention of Violent Activities Act, the U.P. Gangsters and Anti-social Activities Act, the J&K Enemy Agents Ordinance, the Maharashtra Prevention of Dangerous Activities, Slum Lords, Bootleggers and Drug Offenders Act, the Karnataka Prevention of Dangerous Activities, Bootleggers, Drug Offenders, Goondas, Gamblers, Immoral Traffic and Slum Dwellers Act.

हर राज्य ने, हर प्रदेश ने अपने अपने यहाँ कानून बना रखे हैं। यह जितनी इस तरह की एकटीविटी है, यह असामान्य नहीं है। यह सारे के सारे अपराध सामान्य जीवन को अस्त-व्यस्त करने वाली गतिविधियाँ हो सकती हैं लेकिन यह आतंकवादी गतिविधियाँ नहीं हैं। यह गतिविधियाँ विध्वंसक गतिविधियाँ नहीं हैं। ऐसी तमाम गतिविधियों में डील करने के लिए राज्यों में कानून मौजूद है। उनको आप अपनी परिभाषा में नहीं ले सकते हैं क्योंकि आपने अपने स्टेटमेंट आफ ओब्जेक्ट्स एंड रीजंस में कहा है कि इस एक्ट को बनाने का आपका सोर्स डिफेंस आफ इंडिया है। आपने धारा 248 का हवाला दिया है। आपने यूनियन लिस्ट के नाम पर जो 97 का हवाला दिया है 248 आपको रेजीड्यरी पावर के तहत ऐसा इनेक्टमेंट करने की पावर देती है। यूनियन लिस्ट को इट्री 97 आपको रेजीड्यरी पावर्स देती है, जिन चीजों पर कानून पहले नहीं बने हुए हैं उसमें बकाया सोर्स आपने डिफेंस आफ इंडिया माना है। डिफेंस आफ इंडिया जिस एक्ट का लेजिस्लेशन का सोर्स हो, 248 के तहत संविधान में दिए गए रेजीड्यरी पावर्स के तहत जिस एक्ट को इनेक्ट करने जा रहे हैं यूनियन लिस्ट की भी एट्री 97 जो बिल्कुल असाधारण परिस्थितियों में आपको रेजीड्यरी पावर्स देती है उसके तहत आप इनक्वैमेंट करने जा रहे हैं और आप अपनी परिभाषा को इतना व्यापक कर दें कि उसमें कोई भी आदमी-सामान्य अपराधी आपके अपने आई० पी० सी० के तहत अन्य अपराधों में जाने वाला व्यक्ति भी इस एक्ट के तहत गिरफ्तार किया जा सकता है तो आपके इस एक्ट की नीयत, इस एक्ट

का उद्देश्य ही खत्म हो सकता है। आपको याद होगा, आपने कहा है कि सुप्रीम कोर्ट ने इसकी कांस्टीट्यूशन वैलिडिटी को अप-होल्ड किया है। लेकिन सुप्रीम कोर्ट ने क्या कहकर इसकी कांस्टीट्यूशन वैलिडिटी को अपहोल्ड किया है? आपको मालूम है जब सारे के सारे लायस अरम्भ कर रहे थे कि ला एण्ड आर्डर का पब्लिक आर्डर का सब्जेक्ट नहीं है उस समय आपके एडीशनल सालिसिटर जनरल ने कहा था कि यह ला एण्ड आर्डर का सब्जेक्ट नहीं है, यह पब्लिक आर्डर का सब्जेक्ट नहीं है, ये उसमें कहीं ज्यादा देश की सुरक्षा और अखंडता के प्रश्न से जुड़ा हुआ सब्जेक्ट है। कहा था न आपके सालिसिटर जनरल ने? इस बात को मानते हुए जो पैरा लिखा गया था उस समय के जजमेंट में मैं जरा वह पैरा 72 आपको पढ़कर सुनाना चाहती हूँ। क्यों अपहोल्ड किया था इस एक्ट को क्यों अपहोल्ड किया था सुप्रीम कोर्ट ने? पैरा 72—“The terrorism; the Act TADA contemplates, cannot be classified as mere disturbance of public order disturbing the even tempo of life of community of any specified locality.”

यानी सामान्य जनजीवन के अस्त व्यस्त होने तक की बात को भी उन्होंने कहा था कि यह इस एक्ट का पैरामीटर नहीं है— but it is much more, rather a grave emergent situation created either by external forces particularly at the frontiers of this country or by anti-nationals throwing a challenge to the very existence and sovereignty of the country in its democratic polity.

यह है वह इंटेशन जिसके कारण इसकी कांस्टीट्यूशनल वैलिडिटी को अपहोल्ड किया गया था। यह है वह इंटेशन कि डेमोक्रेटिक पालिटी के अंदर अगर एण्टी नेशनल्स एक चैलेंज शो करते हैं टु द वेरी एक्जिस्टेंस एण्ड साबरेनिटी आफ दि कंट्री तब इस एक्ट का इस्तेमाल होना होगा। यह है उसकी इंटेशन। लेकिन आपने वह परिभाषा जो उस तब रखकर उसको उतना ही व्यापक रखा है क्योंकि यह बदनीयती है आपकी कि आप नाम लेंगे आतंकवाद का लेकिन जब चाहें जिसको चाहें गिरफ्तार करना चाहेंगे इसके अंदर। यह आपकी बदनीयती है

जिसके कारण से इतना हो हल्ला मच रही है। मैं आपसे कहना चाहती हूँ कि अगर आप वाकई आतंकवाद से निपटना चाहते हैं तो आपको अपोलोजेटिक होने की जरूरत नहीं है। इस देश का कौन सा नागरिक आतंकवाद से निपटना नहीं चाहता। अगर आप आतंकवाद से निपटना चाहते हैं गृह मंत्री जी तो खड़े होकर छाती तान कर कहिए कि मैं यह बिल केवल आतंकवाद से निपटने के लिए लाना चाह रहा हूँ। केवल उन लोगों के लिए, उन आतंकवादियों के लिए जिन्हें देश की जनता आम भाषा में आतंकवादी मानती है। बंदूक की नोक पर जो हिन्दुस्तान की सुरक्षा के सामने प्रश्न-चिन्ह लगाने वाले हैं, बंदूक की नोक पर हिन्दुस्तान से अलग होने की दुहाई देने वाले हैं, बंदूक की नोक पर देश से अलग रहने के लिए आतंकवाद फैलाने वाले हैं। वह आदमी जिसके लिए आम जनता नाम ले कि आतंकवादी है या जो छवि बनती है उसकी निगाह में आतंकवादी की, अगर उस तरह के आतंकवादी से निपटने के लिए यह कानून लाना चाहते हैं तो मैं केवल अपने दल की तरफ से नहीं कहती, सभी साथियों की तरफ से यह विश्वास दिला सकती हूँ कि इस सदन और उस सदन का एक भी सदस्य आपके इस कानून की मुखालिफत नहीं कर सकता। देश का कोई भी नागरिक इस कानून की मुखालिफत नहीं कर सकता। लेकिन चूंकि आप आतंकवाद और विध्वंस के नाम पर इस परिभाषा को इतना व्यापक बनाकर लाए हैं तो आपने अपनी विश्वसनीयता खो दी है। अगर आपकी विश्वसनीयता बनी होती, टाडा का मतलब केवल आतंकवादियों को पकड़ना होता और इस तरह की आपकी विश्वसनीयता बनी होती कि केवल देश की सुरक्षा में खिलवाड़ करने वाले लोगों के लिए आपने यह कानून बनाया है तो कभी इतना हो हल्ला नहीं मचना। लेकिन क्षमा कीजिए आपकी विश्वसनीयता गिरी है। जिस भी एक्ट का फारमूलेशन बेग होता है उसका इंप्लीमेंटेशन कभी सिर नहीं चढ़ सकता है। यही कारण है कि आपके इस एक्ट का इंप्लीमेंटेशन भी सिर नहीं चढ़ा। क्या इंप्लीमेंटेशन की बात आप करते हैं। केवल आपके अपने दिए हुए आंकड़ों की— अगर काश्मीर और गुजरात के आंकड़ों की

तुलना कर ली जाए तो आपके आकड़ों के मुताबिक तो काश्मीर से ज्यादा आतंकवाद गुजरात में होना चाहिए। गुजरात ज्यादा आतंकवाद से ग्रस्त होना चाहिए जितने लोग गुजरात में बंदी बनाए गए हैं काश्मीर के मुकाबले में। यह है आपकी विश्वसनीयता क्योंकि आपकी विश्वसनीयता इस बारे में बनी नहीं, गिरी और बुरी तरह से गिरी इसलिए यह सारा हो हल्ला मचा।

3 P. M.

लेकिन मुझे दुख है कि आपने उस हो-हल्ले से भी कुछ सीखा नहीं, उसके बाद भी जैसे कानूनीसा प्रोविजन आप लेकर के आए हैं। मैं अपने साथियों से एक गुजारिश जरूर करता चाहूँगी कि वे भी इस "टाडा" पर बहस करते हुए या इस एक्ट पर बहस करते हुए इसे अल्पसंख्यकों या बहुसंख्यकों की बहस में न उलझाएं। अगर वे इस बहस का मौजू यह बना देते हैं कि "टाडा" का इस्तेमाल अल्पसंख्यकों के खिलाफ हुआ था तो बहस हल्की हो जाती है, बहस बेमानी हो जाती है क्योंकि सरकारी आंकड़े भी जो यहां प्रस्तुत किए गए हैं, वे भी डम आरोप को झुठलाते हैं, स्वीकार नहीं करते। लेकिन अगर आप इस बिल को, उसकी मुखालफत नागरिकों के आधार पर करना चाहते हैं—पूरे हिन्दुस्तान के नागरिक, ट्रेड यूनियन ऐक्टिविस्ट, राजनैतिक विरोधी, वे इस परिभाषा के अंदर आ रहे हैं, अगर इस तरह की बहस होगी तो बहस काफी सार्थक हो सकेगी, बहस की बहुत उपलब्धि हो सकेगी। मुझे दुख है इस बात का कि खुद केबिनेट में बैठे हुए मंत्रियों ने इस बात की धमकी दी है कि अगर "टाडा" की मियाद बढ़ाई गई तो हम देखते हैं कि सरकार चलती कैसे है? एक मंत्री तो यहां बैठे हैं, जिन्होंने विरोध किया इसका, लेकिन वो दूसरे तो बैठे नहीं जिन्होंने धमकी दी, जिन्होंने धमकी दी कि सरकार चलने नहीं देंगे। क्षमा कीजिए, गुलाम नबी जी, अगर केबिनेट में बैठे हुए दो मंत्री बहस इस तरह में करें कि हम सरकार को चलने नहीं देंगे अगर इसकी मियाद बढ़ा दी जाएगी तो

केबिनेट में भी वहस सार्थक रूप से नहीं हो सकती क्योंकि फिर कंसिडरेशन बदल जाती है और इस सरकार की कंसिडरेशन बदली है। इसलिए मैं आपसे कहना चाहती हूँ गृह मंत्री जी, पूरे अदब के साथ कहना चाहती हूँ कि आप इस पूरी की पूरी परिभाषा को, जो आपने चार इंटेंशन रखी है, उन चारों की चारों इंटेंशन को निकाल दीजिए, केवल एक बात रखिए

whoever with an intent to threaten the security, unity, integrity and sovereignty of India.

इसके आगे आप जो मरजी कीजिए

this act, that act, many acts, bomb explosion,

जो मरजी रखिए इसमें, हमें कोई ऐतराज नहीं है, हाजाकि इस सारे की जरूरत नहीं है, ऐक्स्प्लोसिव में बम्ब आ जाता है, ऐक्स्प्लोसिव में डायनामाइट आ जाता है, लेकिन यह डेलिब्रेटली, आपने वेग रखा है, उसकी कोई हमको चिंता नहीं है। देट ऐनी एक्ट में जो मरजी एक्ट करिए, लेकिन अगर आप उसकी भूमिका में से बाकी चारों चीजें निकालकर के ये चीजें डाल देंगे whoever with an intent to threaten the sovereignty, unity and integrity of India

तो आपकी यह परिभाषा उपयुक्त परिभाषा हो जाएगी क्योंकि जो यह एक्ट है वह अपने आप में पविशेबल नहीं है, उस एक्ट के तहत इंटेंशन पविशेबल है और वह इंटेंशन बहुत ग्लेरिंग रूप में सामने आ जाएगी, फिर आप कोई भी काम करें, अगर सप्लाई भी आप डिसरप्ट कर रहे हैं तो उसकी इंटेंशन देखी जाएगी कि यह सप्लाई डिसरप्ट इसलिए हो रही है कि वह देश की मिक्चरिटी, इटिग्रिटी, यूनिटी, सोवरनिटी को खतरा है या किसी सामान्य ट्रेड यूनियन ऐक्टिविटी के तहत हो रही है और यह अकेली कसौटी होगी, कहेंगे साहब, इंटेंशन यह नहीं है इसलिए ऐप्लीकेबल नहीं होना चाहिए।

SHRI MD. SALIM: This is a valid point, we support it.

श्रीमती सुवमा स्वराज : मलूम जी, मैंने मूव किया है, इसी प्वाइंट पर मूव किया है और यही चार शब्द लिखकर दिया है कि बाकी सारी चीजें हटा दीजिए केवल यह चार शब्द रखिए, आपकी इंटेशन क्लीअर हो जाए। हमने कहा कि बाकी की जरूरत नहीं है

to strike terrorism, abduction of people, etc.

किसी चीज की जरूरत नहीं है, केवल ये चार शब्द रखिए, उससे इंटेशन जब क्लीअर हो जाती है तो कोई भी ऐक्ट को इस ऐक्ट की गिरफ्तारी में आने के लिए जांचने की कसौटी होगी उस आदमी की इंटेशन और अगर उस व्यक्ति की इंटेशन देश की सुरक्षा से खिलवाड़ करने की है, अगर कोई भी ऐक्ट देश की प्रभुसत्ता के सामने सवालिया निशान लगाने के लिए किया गया है, अगर कोई भी काम देश की सुरक्षा, एकता या अखंडता को तोड़ने के लिए किया गया है तो निश्चित तौर पर वह आपकी इस परिभाषा में आना चाहिए और आया और उसके लिए यह कानून बनना चाहिए, लेकिन सामान्य गतिविधियां या सामान्य अपराधी जो हिन्दुस्तान के आपके कानूनों के तहत ट्राइ किए जा सकते हैं, उनको अगर आप इस ऐक्ट का विषय बनाए रखेंगे तो केवल इसका दुरुपयोग ही नहीं होगा बल्कि इसकी मुखालिफत भी होगी, दुरुपयोग भी होगा और कई लोगों को यह लगेगा कि आप उसी बदनीयती से यह ऐक्ट ला रहे हैं जिस बदनीयती से आप पहला ऐक्ट लाए थे। मैं आपको याद दिलाना चाहती हूं कि जब "टाडा" पारित करने के लिए सदन में रखा गया था तब भी मेरी पार्टी ने उसका विरोध किया था और यह आशंका व्यक्त करके कहा गया था कि इसका दुरुपयोग होगा, आपने कहा था कि नहीं होगा, लेकिन वर्षों के चलते हमारी आशंका सच साबित हुई। इसलिए हम आप से कहना चाहते हैं कि आप बाकी प्रावधानों पर ढिलाई कर रहे हैं और मुझे तो सरकार की सोच पर सच भावनों में हंसी आती है और मैं बहुत बेबाकी से आप से बात कर रही हूं। जरूरत वक्त की थी कि आतंकवाद विशुद्ध आतंकवाद से निपटने के

लिए कानून बनता और उसकी प्रोसिजरल प्रोविजन स्ट्रिजेंट होती। लेकिन आप उल्टा कर रहे हैं। आप परिभाषा को तो व्यापक बना रहे हैं, टैरोरिस्ट ऐक्ट की लपेट में आप तमाम चीजों को ले रहे हैं और प्रोसीजर में ढिलाई दे रहे हैं। इस का अर्थ क्या होगा, इसका परिणाम क्या होगा, आप जानते हैं? इसका परिणाम होगा कि मुकदमे तो फिर एक लाख दर्ज होंगे, लेकिन कनविकांस 10 की भी नहीं होगी जबकि होना यह चाहिए कि आप का यह कानून ऐसा स्ट्रिजेंट हो कि मुकदमे केवल 80 बनें और कनविकांस 80 की हो। इतना एवीडेंस आपके पास होना चाहिए। जरूरत इस बात की थी, लेकिन आप ने उस जरूरत को झुठला दिया। आपने 77 हजार मुकदमे दर्ज किए हैं, 77 हजार से ज्यादा का आंकड़ा आप ने चीफ मिनिस्टर्स कांफ्रेंस में दिया है, 77 हजार से ज्यादा मुकदमों, आप मुझे बताएं, आप क्या कहेंगे अंतर्राष्ट्रीय जगत में? इस देश में लाखों में ऊपर आतंकवादी हैं? क्योंकि 77 हजार आप ने बंद किए हैं, तो 20—22 हजार बाहर भी होंगे जोकि ये सारा-का-सारा काम कर रहे हैं? तो जिस देश में एक लाख आतंकवादी हों, क्या उस देश की एकता बनावटी नहीं हो जाएगी? कैसे आप इंडिया की यूनिटी की दुहाई देंगे? इस देश में टाडा में गिरफ्तार हुए एक लाख आतंकवादी का आंकड़ा जब आप अंतर्राष्ट्रीय जगत में रखेंगे और उसके साथ कहेंगे कि हमारा देश "यूनिटी इन डायवर्सिटी" वाला देश है, तो थू-थू करेगा अन्तर्राष्ट्रीय जगत आप के ऊपर। इसलिए मैं आप से कह रही हूं कि जरूरत इस बात की है कि आप खड़े होकर कहिए पूरे देश के सामने कि, देश के आतंकवाद से निपटने के लिए हम एक कानून बनाना चाहते हैं, बिना एपॉलोजेटिक हुए कहिए, पूरा देश आपका साथ देगा, पूरा सदन आप का साथ देगा, वह सदन भी आपका साथ देगा और फिर प्रोसिजर्स को स्ट्रिजेंट करिए उस तरह का आतंकवादी जो देश की सुरक्षा से खिलवाड़ करता है, देश की एकता और अखंडता को तोड़ने के लिए, उसके लिए किसी तरह के रहम की गुंजाईश नहीं रखनी चाहिए। वह किसी तरह के तर्क का पात्र नहीं होना चाहिए। उस के लिए हमें

गिड़गिड़ाकर नहीं कहना चाहिए कि हम ने तुम्हारी "बेल" की प्रोवीजन हल्की कर दी है, हम ने डिप्टी सुपरिटेण्डेंट आफ पुलिस को पावर्स दे दिए हैं, हमने पुलिस आफिसर्स को पनिश करने के लिए अधिकार दे दिया है। ये बातें आतंकवादियों के लिए होती हैं? अगर वाक्यी यह बिल आतंकवाद में निपटने के लिए है तो मैं पूछना चाहती हूँ कि ये सारे तरस और रहम के प्रोवीजंस क्या आतंकवादियों के लिए किए गए हैं? क्या आतंकवादी इस तरस के पात्र होने चाहिए? लेकिन नहीं, चूंकि आप की नीयत दूसरी है, आपकी परिभाषा व्यापक है, आपको पता है कि आतंकवादियों को नहीं राज-नीतिक विरोधियों को शाप को इसमें पकड़ना है, ट्रेड यूनियन एक्टिविस्ट्स को भी इसमें पकड़ना है, इसलिये आप प्रोमिजर में डील दे रहे हैं। आप वक्ता की जरूरत को पहचानिए। देश में आतंकवाद बहुत तेजी से बढ़ रहा है। आई०एस०आई० की गतिविधियां काश्मीर और पंजाब में निकनकर पूर्वांचल तक पहुंच गई है। देश में अस्थिरता फैलाने की बात आई०एस०आई० कर रही है और यह मैं और आप नहीं कह रहे हैं, यह यूनाइटेड स्टेट्स की रिपब्लिकन पार्टी की छपी हुई रिपोर्ट कह रही है। उसके बावजूद हम एक एकट ला रहे हैं, टाडा को खत्म करने हुए, किमिनल अमेंडमेंट एक्ट के नाम में, गुमराह गीर्षक के नाम में एक एकट ले आएँ और उसके अन्दर हम प्रोमिजर में ढिनाई दे दें, इन दोनों बातों का कहीं कोई मेल है? लोग कहते हैं कि यह तो नई बोतल में पुरानी शराब है, लेकिन जब मैं आपके स्पेशल कोर्ट्स के प्रावधान देखती हूँ, तो मुझे लगता है कि नई बोतल में पुरानी शराब नहीं, ये तो बोतल भी पुरानी है और शराब भी पुरानी है, केवल लेवल बदला है। जैसे मैंने पैरा-3 पढ़कर सुनाया, अगर मैं आपके स्पेशल कोर्ट्स और टाडा के डेजिगनेटेड कोर्ट्स के वर्बेटिम पढ़ूँ तो एक-एक शब्द, शब्दशः वही है बिना कामा, फुलस्टाप के। आपने नाम बदल दिया है क्योंकि आपके डेजिगनेटेड कोर्ट्स बदनाम हो गए, इसलिये आपने उसमें नाम स्पेशल कोर्ट्स का

रख दिया। इसलिये मैं आपसे कहना चाहती हूँ कि यह जो एकट वास्तव में आप "टाडा" का संशोधन करके ला रहे हैं, क्यों नहीं आप इसका नाम सेक्युरिटी आफ इण्डिया एक्ट रख सकते हैं? क्यों नहीं आप इस का नाम एंटीटैरोरिस्ट्स एक्ट रख सकते हैं? क्यों नहीं आप इसकी परिभाषा में आतंकवादियों के लिए उपयुक्त परिभाषा दे सकते हैं? फिर आप मांगिए देश से समर्थन, हम देखते हैं कि देश से आप को समर्थन मिलता है कि नहीं? लेकिन बदनीयती और चालाकी से लाए गए किसी भी प्रावधान वाले बिल के लिए देश का समर्थन आप को नहीं मिल सकता, क्योंकि आपके "टाडा" की विश्वसनीयता गिर चुकी है।

इसी तरह आपने धारा-24 में एक प्रावधान किया है। आप मुझ से कह सकते हैं कि हमने परिभाषा वैसी-की-वैसी रखी है, मगर दुरुपयोग रोकने के लिए कई प्रावधान कर दिए हैं। उसमें सबसे प्रभावशाली प्रावधान आप मुझे बताना चाहेंगे धारा-24 का जिसमें आपने कहा है कि किसी भी पुलिस आफिसर को अगर वह करप्टली और मैलिंसियसली किसी आदमी को फंसाता है, तो उसको आप ने एक साल तक सजा का प्रावधान कर दिया है। गृह मंत्री जी इसमें जो कानून की जानकारी न रखता हो, उसको तो आप बहला सकते हैं, ऐसी बात कह कर, लेकिन जो कानून की जानकारी रखता है, वह यह जानता है कि इस देश के सामान्य कानून में इससे ज्यादा कड़ा प्रावधान पहले से मौजूद है। महोदय, मैं आपको आई०पी०सी० की धारा 211 पढ़कर सुनाना चाहती हूँ... (समय की घंटी...) महोदय, मेरा तो अभी काफी समय बाकी होगा कितना समय है, मेरी पार्टी का?

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): There are two names from your party. Therefore, I have just reminded you.

श्रीमती सुवमा स्वराज : मैसेक्शन 211 आपको पढ़कर सुनाना चाहती हूँ —

"False charge of offence made with intent to injure—Whoever, with intent to cause injury to any person institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death (imprisonment for life), or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

क्या अर्थ है इसका ? यह सामान्य ला के अंदर पहले से प्रावधान मौजूद है और यह वैसे सेक्शन 195 से 211 तक लगातार चल रहे हैं । मैं आपको बता दूँ कि मंत्रसे लाइटेस्ट जो प्रावधान है, वह मैंने पढ़कर सुनाया । इससे पहले जो प्रोवीजन है, वह इससे कहीं ज्यादा सख्त है, लेकिन मैंने 211 सबसे लाइटेस्ट प्रावधान जो आई० पी० सी० का है, पढ़ा । इसमें इंटेन्शन केवल इन्जोर करने की है, इन्जोर कोई घायल करने की नहीं, उसकी रेपुटेशन को इन्जोर करने की है । अगर किसी व्यक्ति को इन्जोर करने के लिए कोई आदमी इस तरह का झूठा केस बनाता है, जिसे कि वह स्वयं जानता है कि यह झूठा है, इसकी कोई ग्राउन्ड नहीं है तो उस व्यक्ति को दो वर्ष तक की सजा होगी या जुर्माना होगा या दोनों होंगे, लेकिन अगर वह ऐसा आफेन्स बनाता है जिस अपराध की सजा मौत या आजीवन कारावास या दस वर्ष की कैद है तो उसको सात साल की सजा होगी और आपको मालूम है आपके इस एक्ट

में जितने ग्रेव आफेन्सेस हैं उसमें वह दस साल से कम सजा का प्रावधान नहीं करते । मैंने जो सेक्शन 211 पढ़कर सुनाई, उसका जो लेटर पार्ट है वह इस पर लागू होता है । आपके यहां इस एक्ट के तहत किए गए किसी भी आफेन्स की सबसे कम सजा है दस साल या आजीवन कारावास या मृत्युदंड । तो इसमें अगर कोई आदमी यह जानते हुए कि वह केस झूठा केस बना रहा है तो आई० पी० सी० की धारा 211 के तहत उसे सात साल की सजा का प्रावधान है और अगर 211 से ऊपर का पढ़ दूँ तो उसमें इतनी ही सजा का प्रावधान है जितना कि इस आफेन्स के लिए है । ऐसे भी प्रावधान आई० पी० सी० में है कि अगर आपने ऐसा केस बनवाया, जिसमें मृत्युदंड मिल सकता था या आजीवन कारावास हो सकता था या दस वर्ष की कैद हो सकती थी तो झूठा केस बनाने वाले को भी या तो मृत्युदंड मिलेगा या आजीवन कारावास मिलेगा या दस वर्ष की कैद मिलेगी । आपका यह जो प्रावधान है, यह एक्ट दस साल से कम की सजा का प्रावधान चूँकि नहीं करता और अगर लाइटेस्ट प्रावधान भी लें तो भी सात साल की सजा उस अफसर को मिलेगी इस आई० पी० सी० के तहत, लेकिन आपने इसमें यह प्रोवीजन डालकर, डायलूट करके कह दिया कि एक साल की सजा मिलेगी अगर सरपसियशली और मैलासियशली वह करेगा । आप लोगों को गुमराह कर रहे हैं, आप लोगों को बहला रहे हैं । आप यह आई० पी० सी० की धारा 211 को क्यों ओवरराइड कर रहे हैं इसके अंदर ? कोई आदमी अगर झूठा केस बनाए तो आई० पी० सी० की धारा 212 के तहत उसको सात साल की सजा क्यों नहीं मिलनी चाहिए ? लेकिन, आपने अब प्रावधान करके कहा है कि उसको एक साल की सजा देंगे और इतना बड़ा दम भर रहे हैं कि हमने बड़ा प्रभावी प्रावधान कर दिया, दुरुपयोग को रोकने के लिए हमने कह दिया कि उस पुलिस आफीसर को सजा मिल जाएगी, जिस पुलिस आफीसर ने झूठा केस बनाया, सरपसियशली और मैलासियशली बनाया ।

महोदय, जो सेक्शन का प्रावधान है वह कम किया आपने इसमें । यह 211 के तहत क्यों नहीं मिलती सजा ? क्योंकि

सेक्शन का प्रावधान है, वह 195 के अंदर आपको सेक्शन लेनी पड़ती है। वह सारे प्रोसीजर तो आपने नहीं बदले, लेकिन आपने यह प्रावधान करके आई० पी० सी० की ओवरराइडिंग एक्सेप्ट कर लिया। इसलिए मैं आपसे कहना चाह रही हूँ कि यह पूरे का पूरा बिल चलावी से भरा हुआ है, पूरा का पूरा बिल बदनीयती से भरा हुआ है और इसलिए इसका समर्थन आपको मिले, इसकी गुंजाइश नहीं दिखती है। आप आतंकवाद से निपटने का सहस रखिए। मुझे तो यह आरोप लगाना पड़ता है आप पर, यह बिल देखकर, कि आतंकवाद से निपटने का न इस सरकार में साहस है और न इस सरकार की इच्छाशक्ति है। वरना "टाडा" की भी मियाद बढ़ाने की बात आप कर सकते थे इस तरह के संशोधन लाकर के, उसकी परिभाषा को व्यापक-सीमित करके, किसी तरह का संशोधन न रखकर, लेकिन नहीं, वह शीर्षक तक देने की आपमें हिम्मत नहीं है, नया ऐक्ट लाने की हिम्मत आप में नहीं है। त्रिमिनल एमेंडमेंट नाम से, एक गुमराही शीर्षक से आप यह बिल लेकर आए हैं।

एक तीसरी बात मैं आपसे पूछना चाहती हूँ कि आपने "टाडा" एक्स्टेंड हो या न हो, इस पर मुख्य मंत्रियों का एक सम्मेलन बुलाया था। मुख्य मंत्रियों के उस सम्मेलन में 17 मुख्य मंत्रियों ने आपको लिखकर दिया था कि वे मियाद बढ़ाने के पक्षधर हैं लेकिन साथ ही उन्होंने मेरी बात कही थी कि "टाडा" का दुरुपयोग भी रोकना चाहिए क्योंकि कोई नहीं चाहता कि इस देश में "टाडा" का दुरुपयोग हो। उन्होंने कहा था कि दुरुपयोग रोकने के लिए हम कुछ सुझाव देते हैं, कुछ सुझाव सुप्रीम कोर्ट ने दिए हैं, उन दिशा-निर्देशों को "टाडा" के अंदर डाल दीजिए और "टाडा" की मियाद बढ़ा दीजिए। कहा था कि नहीं कहा था आपसे? लेकिन उनके वह बात कह देने के बाद आप नया जो ऐक्ट लाए हैं उस पर आपने उनसे कोई चर्चा करने की जरूरत भी नहीं समझी। आप जानते हैं कि आपका यह ऐक्ट किसी भी राज्य का मुख्य

मंत्री रद्दी की टोकरी में फेंक सकता है क्योंकि इसका इम्प्लीमेंटेशन इसका अमलीकरण राज्य के द्वारा किया जाना है और फेंक सकता ही नहीं है, फेंका है पहले लोगों ने। बैठे हैं मेरे सी० पी० एम० के साथी उन्होंने जब "टाडा" आया था उसी समय ज्योति बसु ने कह दिया था कि हमारे यहां हम किसी एक को भी गिरफ्तार नहीं करेंगे "टाडा" में। उन्होंने "टाडा" का उपयोग अपने यहां नहीं होने दिया।

श्री एम० ए० बेबी : एक दिन हुआ।

श्रीमती सुजमा स्वराज : एक दिन हुआ और उसके बाद भी अगले दिन छोड़ दिया। उन्होंने कहा कि हम नहीं करेंगे इसका इस्तेमाल। आज भी जो राज्यों के मुख्य मंत्री हैं, ये ठान लें, जिस किसी राज्य का मुख्य मंत्री यह ठान ले कि हम इसका उपयोग नहीं करेंगे, तो आप कुछ नहीं कर सकते। तो क्या यह जरूरी नहीं है कि जिस मशीनरी ने इसका अमलीकरण करना है, कम से कम उससे पूछ तो लिया जाए कि साहब यह बिल हम लेकर आए हैं, इस पर तुम्हारी क्या राय है? कौन सा पहाड़ टूट जाता अगर चीफ मिनिस्टर्स की कंसेंसस पहले आ जाती? उन मुख्य मंत्रियों का रूप तो जान लीजिए जिन मुख्य मंत्रियों ने इसको प्रभावी और अमली जामा पहनाना है? एक चीफ मिनिस्टर्स की काफ़ेंस बुला लीजिए, इस बिल को उनके सामने रखिए और कहिए कि आपने कहा था कि "टाडा" की मियाद बढ़ा दो, कुछ ने कहा था कि मत बढ़ाओ अगर हम ऐसे शीर्षक से एक बिल लेकर आए हैं जरा पढ़कर बता दो हमें कि तुम इसके पक्ष में हो, विपक्ष में हो या कोई संशोधन सुझाना चाहते हो, कोई प्रोविजन वह डिलीट कराना चाहते, कोई एंड कराना चाहते तो क्या यह बिल पास होने के बाद उनके मत्थे मढ़ दिया जाए, उससे पहले यह जरूरी नहीं है कि वे सारे राज्यों के मुख्य मंत्री, जिन्होंने इस पर अमल कराना है, उनकी एक काफ़ेंस बुलाकर के उनसे बातचीत की जाए? क्या नहीं आप यह कर सकते? मैं तो समझती हूँ कि आज इस चर्चा के बाद बजाए इसके कि आप यह बिल पारित करने के लिए हमारे सामने रखें, आपको यह कहना चाहिए कि इस

मुझाव को स्वीकार करने हुए आप मुद्दय मंत्रियों का सम्मेलन बुलाएंगे और उनकी भी राय चाहेंगे। इसमें क्या हर्ज है? बल्कि इससे अमलीकरण में आपको मदद मिलेगी क्योंकि अगर उनके मुझाव पारित होने के पहले आ गए और आपको जम गए और आपने वे मुझाव मान लिए और रख दिए, यहाँ सदन के सामने तो एक प्रभावी इनेक्टमेंट हो जाएगा, एक प्रभावी लेजिस्लेशन हो जाएगा। क्या दिक्कत है इसमें? आप यह कह सकते हैं... (सभा की घंटी)... और बार-बार घंटी बज रही है मेरे पास बोलने के लिए प्वाइंट्स तो बहुत हैं लेकिन चूंकि उपसभाध्यक्ष महोदय का निर्देश है और मैं उसको माने बिना रह नहीं सकती मैं पुनः आपको उसी चीज पर ले जाकर के खड़ा करना चाहती हूँ कि धारा 3 के अंदर जो आपने इंटेंशन रखी है, उन सबको काटकर केवल एक लाइन की इंटेंशन with an intent to threaten the security, sovereignty, unity and integrity of India, does an act...

आगे अनेक हैं, उनको आप डाल दें, मुझे नहीं लगता है कि उसके बाद जयपाल रेड्डी आपके बिल का समर्थन न करें या पिप्लर दासगुप्त आपके बिल का समर्थन न करें या "टाडा" के कट्टर विरोधी राज बब्बर आपके बिल का समर्थन न करें क्योंकि आतंकवाद, शुद्ध आतंकवाद से निपटना इस देश का हर नागरिक चाहता है बशर्ते आप अपनी नीयत में यह बता दें कि आप केवल आतंकवाद से निपटना चाहते हैं और आतंकवाद से निपटने के लिए यह ला रहे हैं, वरना मैं आप से कहना चाहूँगी कि अगर आप इसको वेग रखेंगे, अगर इसमें ऐम्बिग्विटी रहेगी, जो डेलिब्रेट ऐम्बिग्विटी है तो मैं आपसे कहना चाहूँगी, गृह मंत्री जी, कि जो कानून वेग होता है, न तो नागरिकों की अद्वा उस कानून के प्रति बनती है, जो इम्प्लीमेंटेशन मशीनरी है उसमें अप्टाचार बढ़ता है, देश का इयूमन राइट्स रिकार्ड खराब होता है, देश की छवि बिगड़ती है और सब में बड़ी बात, जिस उद्देश्य की पूर्ति के लिए वह अधिनियम लाया जाता है, उस उद्देश्य का क्षरण होता है, उस उद्देश्य की पूर्ति नहीं हो पाती है।

इसलिए यदि वाकई आतंकवादी और विध्वंसक गतिविधियों से निपटने का उद्देश्य लेकर आप इस बिल को लाना चाहते हैं तो इसको सीमित रखिए और प्रॉसिजर स्ट्रिजेंट रखिए, पूरा देश आपके साथ खड़ा रहेगा। बहुत-बहुत धन्यवाद।

डा० जगन्नाथ मिश्र : उपसभाध्यक्ष जी, धन्यवाद आपने मुझे मौका दिया कि इस महत्वपूर्ण विधेयक पर मैं अपनी राय जाहिर करूँ। सबसे पहले मैं प्रधान मंत्री जी को विशेष रूप से धन्यवाद देना चाहूँगा कि राष्ट्रपति जी के अभिभाषण के लिए प्रस्तुत धन्यवाद प्रस्ताव के वाद-विवाद पर जो उन्होंने घोषणा की थी कि टाडा पर पुनर्विचार करेंगे और उचित संशोधन प्रस्तुत करेंगे। प्रधान मंत्री जी के उक्त आश्वासन के अनुसार माननीय गृह मंत्री जी ने यह विधेयक हमारे समक्ष प्रस्तुत किया है—दंड विधि संशोधन विधेयक, 1995, उसका हम पूर्ण समर्थन करते हैं।

जित पृष्ठभूमि में यह संशोधन विधेयक प्रस्तुत किया जा रहा है, अभी माननीय सदस्या मुषमा स्वराज जी को हम मुन रहे थे कि टाडा कानून आवश्यक है। आतंकवाद को, विध्वंस को रोकने के लिए कोई कानून होना चाहिए। मानव अधिकार के अध्यक्ष श्री रंगनाथ मिश्र जी ने भी टाडा का विरोध करते हुए कहा था कि इस देश में असाधारण परिस्थिति के लिए सामान्य दण्ड प्रक्रिया के अन्तर्गत कोई कानून होना चाहिए, अलग से टाडा की आवश्यकता नहीं है। अभी प्रारम्भ में गृह मंत्री जी ने उन बिन्दुओं की चर्चा की जो इस विधेयक में प्रस्तुत की जा रही है। टाडा कानून एक खास परिस्थिति में संसद ने तब बनाया था 1983 में जब पंजाब की हालात बहुत बुरी थी इस कानून का इस्तेमाल कुछ राज्य तक ही सीमित था। बाद के दिनों में इस कानून का विभिन्न राज्यों में विस्तार हुआ। गृह मंत्री जी ने भी सदन में स्वीकार किया, प्रधान मंत्री जी ने स्वीकार किया कि इस कानून का कुछ राज्यों में दुरुपयोग हुआ है। यह नहीं है कि सभी राज्यों में इस कानून का दुरुपयोग हुआ है। लेकिन दुरुपयोग के कारण जो आतंकवादी शक्तियाँ

है उसे छूट दे दी जाए और कोई कानून असाधारण रूप में निबंटने के लिए नहीं रखा जाए, नों इस समय जो कानून है वह पर्याप्त नहीं है। इसलिए इस संशोधन की आवश्यकता है कि कैसे कानून पाया जाए, ऐसे तत्वों पर, ऐसी शक्तियों पर जो देश की सुरक्षा के लिए खतरा है, खास तौर से इस समय जो पाकिस्तान की तरफ से हमारे देश में आतंकवादी गति-विधियों का प्रस्थ दिया जा रहा है, साधन दिए जा रहे हैं। विभिन्न राज्यों में शक्तियां सक्रिय हो रही हैं। इस देश में साम्प्रदायिक शक्तियां भी संगठित हो रही हैं और हमारी राजनीतिक बनावट के लिए चुनौतियां बन रही हैं। लोकतंत्र के लिए आवश्यक है कि हम लोकतंत्रीय ढांचे का कायम रख सकें और कुछ शक्तियों का हम उठने नहीं दें जो हमारे देश के विरुद्ध जाएं और हमारे लिए कठिनाइयां उपस्थित करें। इसमें टाडा के कानून की जो वटियां थी, जो कमजोरियां थी उन्हें चिन्हित किया गया है, आइडेंटिफाई किया गया है और लोकतंत्र में मानव अधिकारों की रक्षा करते हुए जो अंतर्राष्ट्रीय मानव अधिकार चार्टर 1947 में बना था या भारत के संविधान में जो हमने मूल अधिकार दिए हैं और समता का आर्थिक, सामाजिक व राजनीतिक और अभिव्यक्ति की, धर्म की आजादी हमने दे रखी है उसका निर्वहन करते हुए अपने देश की बनावट को हम सुरक्षित रख सकें। इस लिए ऐसा कानून होना चाहिए। चूंकि टाडा बहुत ज्वलित हो चुका था, टाडा के संबंध में अनेक प्रकार की भ्रांतियां लोगों में फैल चुकी थी और उसमें कुछ प्रावधान ऐसे थे जिनका मानव मूल्यों के विरुद्ध कहा जा सकता है या मूल अधिकारों के विरुद्ध कहा जा सकता है। इसलिए इस प्रस्तावित संशोधन में उन बिन्दुओं को हटाया जा रहा है इस बात से मुझे प्रसन्नता है। इस कानून में जो प्रावधान था कि अपराधी पक्ष अपने अपराध को स्वीकार करे, वह संविधान के मूल अधिकार के विरुद्ध है। कहा गया है कि अपराधी को बाध्य नहीं किया जा सकता है, अपने विरुद्ध गवाही देने के लिए, साक्ष्य देने के लिए। इसलिए इस प्रावधान को हटाया जा रहा है जो टाडा में सबसे आपत्तिजनक अंग था।

हमारा जो अनुसूचित क्षेत्र है, वहां कोई अवैध शस्त्र मिनता है, किसी के पास तो वह टाडा का अपराधी बन जाता है और उसी कानून का दुरुपयोग बहुत सारी जगहों पर हुआ है, इसलिए इस नए संशोधन में उसे भी हटाया जा रहा है। साथ-साथ यह भी एक भ्रम फैला हुआ था कि जमानत की प्रक्रिया इतनी जटिल है, कठिन है कि समान ढंग से लोगों का जमानत नहीं मिलती है। इसे भी शिथिल किया जा रहा है, इस संशोधन के जरिए से, यह भी कहा जा रहा है कि इस कानून का इस्तेमाल अल्पसंख्यकों के विरुद्ध बड़े पैमाने पर हुआ है और यह मानते भी हैं कि सारे देश में एक माहोल, एक वातावरण बन गया है टाडा के विरुद्ध और अल्पसंख्यकों के मन में भी यह लग रहा है कि इस कानून का अधिकतम उपयोग उन्हीं के विरुद्ध हो रहा है। कुछ घटनाएं घटी भी हैं, इसे हम लोग अस्वीकार नहीं कर सकते। गुजरात में जहां सारे देश में 77,000 मुकदमे चले, उनमें से केवल 18,000 मुकदमे तो गुजरात में चले और उनमें अल्पसंख्यकों की संख्या ज्यादा थी। महाराष्ट्र में भी बम्बारी हुई, मुकदमे चले, वहां भी अल्पसंख्यकों की संख्या कुछ ज्यादा थी, लेकिन सारे देश में 77,000 मुकदमों को देखते हुए देखें तो साढ़े चार प्रतिशत से अधिक अल्पसंख्यकों की संख्या उन मुकदमों में रही है, लेकिन जो गुजरात और महाराष्ट्र में घटनाएं घटीं, साम्प्रदायिक दंगों के बाद, बाबरी मस्जिद के ध्वस्त होने के बाद या बम्बई के बम काण्ड के बाद, वहां दुर्भाग्य से जनमानस में यह भावना फैल गई है कि अल्पसंख्यकों के विरुद्ध इस कानून का अधिकतम इस्तेमाल हो रहा है और राजनीतिक कारणों से भी इसका इस्तेमाल हुआ है। इसे भी हम स्वीकार करते हैं कि इस कानून का इस्तेमाल पुलिस ने भ्रष्ट कारणों से, अपने स्थानीय विभागों से या राजनीतिक दबाव से किया है और निरीह लोगों की गिरफ्तारियां हुई हैं और उन पुलिस जुल्मों से लोगों को बचाया जाए, उनकी रक्षा की जाए। इस कानून के संशोधन में प्रावधान किया जा रहा है

कि एक तो पुलिस के समय जो मवाहियां दी जायगी, उनकी मान्यता नहीं होगा। दूसरा जो प्रावधान किया जा रहा है वह यह है कि असिस्टेंट सुपरिटेन्डेंट आफ पुलिस से नीचे के अफसर इन मुकदमों की सुनवाई नहीं करेंगे और सबसे महत्वपूर्ण संशोधन कि कोई कोर्ट इस मामले का संज्ञान नहीं लेगा अगर आई.जी. की पूर्व स्वीकृति प्राप्त नहीं होगी। इसलिये टाडा का दुरुपयोग जिन वजहों से हो रहा था, जिन वजहों से स्थानीय प्रशासन निरीह लोगों को गिरफ्तार कर रहा था, उस पर अपने आप पाबन्दी लगेगी। खास तौर से यह प्रावधान कि जो पुलिस अफसर ऐसे पाए जायंग कि उन्होंने निरीह लोगों को गिरफ्तार किया है, उन्हें तंग किया है, भ्रष्ट कार्यों से तंग किया है, उनके विरुद्ध मुकदमे चलाये जा सकते हैं, एक साल तक सजा का प्रावधान किया जा सकता है। इसलिए इसमें, इस संशोधन विधेयक पर विचार करते हुए हमें यह देखना चाहिए कि टाडा की जो त्रुटियां थीं, जो कमजोरियां थीं या जिन जिन वजहों से लोगों की स्वतन्त्रता छीनी जाती थी या जो मूल अधिकार की हमारी अवधारणा है, लोकतन्त्र की अवधारणा है, उस पर अधिक अतिक्रमण हो रहा था, उससे इस विधेयक से हम रोक पा रहे हैं या नहीं रोक पा रहे हैं। हमें लगता है कि विचार-विमर्श कर लें, या गृह मंत्री के वक्तव्य को सुन लें और उनकी समीक्षा करने से यह मामला स्पष्ट होता है कि अब तक टाडा कानून की जो शिकायतें थीं, उन शिकायतों को उन्होंने संकलित करते हुए उसका परिमार्जन करने की कोशिश की है और यह दण्ड विधान में आ जाने से उस कानून से जो माहौल बन चुका था, वह दूर हो जाएगा। चूंकि हमारे देश में आतंकवाद है, विध्वंसकारी तत्व हैं, इसे हम अस्वीकार नहीं कर सकते, इसलिए कानून हमारा होना चाहिए, लेकिन उस पर रोक होनी चाहिए, हकावटें होनी चाहियें। दो-तीन महत्वपूर्ण बातें हैं, इस पर विचार करने के लिए।

गृह विभाग की स्थाई समिति की बैठक में सभी सदस्यों की यह राय थी कि जो टाडा के कानून के तहत अभी तक 35,000 लोगों को गिरफ्तार कर मुकदमे चल रहे हैं, हालांकि चल थ, 77,000 मुकदमे, व अब घट कर 35,000 हो गए हैं और जल में भी 5700 लोग बन्द हैं, आखिर उनकी अवस्था क्या है? आखिर उनकी अवस्था क्या होगी? रेल मंत्री ने स्वयं स्वीकार किया है, गृह मंत्री ने स्वयं स्वीकार किया है, सदन के सभी दलों के सदस्यों ने स्वीकार किया है कि इस कानून का दुरुपयोग हुआ है और निरीह लोगों को इसमें फंसाया गया है। संशोधन होने के बावजूद अगर उन पर मुकदमे इसी तरह से चलते रहे, जैसा गृह मंत्री जी ने अपने भाषण में कहा कि यह प्रावधान है तो फिर जिन वजहों ने आप यह संशोधन ला रहे हैं, उसका कोई प्रभाव नहीं पड़ेगा। जो लोगों के अंदर टाडा के खिलाफ भावना बनी है इससे वह बात जारी रहेगी। इसलिए मैं गृह मंत्री जी से अर्ज करना चाहता हूं कि जो वर्तमान कानून है और उसके तहत जिन पर मुकदमें चल रहे हैं उन तमाम मुकदमों का तत्काल रिव्यू किया जाए। सुप्रीम कोर्ट ने ठीक कहा था अगर इसका रिव्यू होना चाहिए। लेकिन अगर आप इसको भी कानून का हिस्सा बदेगा क्योंकि जब आप कानून पारित कर देंगे यह और जो टाडा का कानून था उस के प्रावधान भी चलते रहेंगे तो क्या इससे एक ही शासन में, एक ही देश में दो प्रकार की प्रक्रिया चलती रहेगी? इससे लोगों में भ्रम उत्पन्न होगा। इसलिए इस पर गृह मंत्री जी को विचार करना चाहिये जो लोग हैं उन्हें हम इसका लाभ कैसे दें हमारी राय में और आम लोगों की, राय में यह स्पष्ट है कि निर्दोष लोगों के बड़े पैमाने पर इसमें फंसाया गया है। उनको राहत मिलनी चाहिए।

दूसरी बात, इस देश में राष्ट्रीय सुरक्षा अधिनियम भी चलता है इस देश में सीसा भी चलता था। इन कानूनों का राजनैतिक इस्तेमाल न हो या इसका राजनैतिक इस्तेमाल कम से कम हो, इसके लिए

उस कानून में प्रावधान था कि हाई कोर्ट के जज की सदारत में एक रिब्यू कमेटी होगी और सरकार के द्वारा प्रस्ताव पेश करने के बाद उन मामलों को रिब्यू किया जाएगा और अगर माफ्य नहीं है, पर्याप्त कारण नहीं है और अगर रिब्यू कमेटी संतुष्ट नहीं होती तो मामला समाप्त कर दिया जाता है। मैं चाहता हूँ कि इस कानून को आप इस रूप में लाइए ताकि लोगों को भरोसा मिल सके कि हम अपनी फारियाद कोर्ट के सामने तत्काल पेश कर सकते हैं और कानून के अन्तर्गत कार्यवाही करने से हमें राहत या मदद मिल सकती है। इसलिए हम चाहते हैं एन० एस० ए० की तरह एक एडवाइजरी कौंसिल, एडवाइजरी कमेटी का प्रावधान इस कानून के अन्तर्गत आप निश्चितरूप से रखिए और जो सुप्रीम कोर्ट का डाइरेक्टिव है, रिब्यू करने का, उसे खाम कांटेक्ट में अगर इस कानून को बदलकर नया कानून ला रहे हैं तो मैं अनुरोध करूंगा कि इस कानून में रिब्यू का स्थायी उल्लेख कर दीजिए कि हर तीन महीने पर हाई कोर्ट के जज की सदारत में जिसमें गृह सचिव और विधि सचिव, हों, उनकी कमेटी इस पर विचार करे और वह यह काम करे। साथ ही साथ मैं यह भी चाहता हूँ कि सारे देश के सभी राज्यों में राजनैतिक कारणों से इसका दुरुपयोग हुआ है, इसमें कोई दो मत नहीं है। आज भी लोगों में यह आशंका है कि आगे आने वाले दिनों में सरकार इसका गलत इस्तेमाल कर सकती है, मजदूर संघों के खिलाफ और अपने विरोधियों के खिलाफ पुलिस का उपयोग कर सकती है। इस कारण इसमें यह प्रावधान होना चाहिए कि हर तीन महीने बाद मामलों को रिब्यू किया जाएगा और निर्दोष लोगों को छोड़ा जाएगा।

तीसरी बात, टाडा कानून अस्थायी है और इसकी मियाद 23 मई को खत्म होने जा रही है तो क्या इस अस्थायी कानून को आप स्थायी कानून बनाने जा रहे हैं? जो संशोधन विधेयक है, उसके अनुसार यह स्थायी स्टेच्यू बुक में आने जा रहा है। इसमें क्या हम यह अनुमान लगा लें कि आगे आने वाले दिनों में यह कानून हमारे लिए आवश्यक होगा। इसके

लिए इसमें ऐसा किया जाना चाहिए कि तीन साल तक के लिए या किसी निश्चित अवधि के लिए इस संशोधन को स्वीकार करके लागू करें और फिर देश की हालत पर गौर करके इस पर विचार करें कि कब टाडा की अवधि समाप्त हो। आज देश में टाडा के खिलाफ एक माहौल बना है। इसलिए हम इसकी तीन माल की व्यवस्था करें और देखें कि इन अवधि में इस कानून का उपयोग कैसे होता है, दुरुपयोग कैसे होता है और कितना यह कानून विश्वसनीय तत्वों और आतंकवादी तत्वों को रोकने में समर्थ होता है। फिर हम इस पर पुनर्विचार करें और अगर आवश्यकता हो तो फिर इसका उल्लेख करें। लेकिन इस कानून को इस प्रकार से स्थायी रूप देना, हम समझते हैं कि उचित नहीं होगा।

साथ-साथ आज कुछ अर्थात् देश में टाडा के खिलाफ फैली हुई है। इन अर्थात् को समाप्त करने के लिए सरकार को थोड़ा आगे आना पड़ेगा। थोड़ी उदारता दिखानी पड़ेगी खास तौर से अल्प संख्यक वर्ग में यह भावना फैल गई कि यह कानून हमारे विरुद्ध है। आज संसद में यह कानून पारित करने हुए देश को आश्वस्त करना चाहिए कि हमारे संविधान में सब को बराबरी का हक है, बराबरी की नागरिकता है, सब को संविधान ने आजादी दे रखी है, हमारे देश में धर्म पर, जाति पर, लिंग के आधार पर कोई भेद नहीं होगा। यह जो भावना देश में फैली है कि कोई खास कानून खास लोगों के खिलाफ ही इस्तेमाल होता है, मंशा नहीं थी इस कानून की। 1985 का यह कानून था लेकिन बातें हो रही हैं पिछले एक साल, 6 महीने में यह भावना जोर से फैली है कि इस कानून का इस्तेमाल अल्पसंख्यकों के खिलाफ हुआ है। इतना हम स्वीकार करते हैं कि गुजरात और महाराष्ट्र में हुआ है लेकिन यह कहना ठीक नहीं है कि सारे देश में अल्पसंख्यकों के खिलाफ इसका दुरुपयोग हुआ है। इस वातावरण को समाप्त करना चाहिए और सरकार को आगे आकर के सुनिश्चित करना चाहिए लोगों को आश्वस्त करना चाहिए देश के अल्पसंख्यकों को कि यह कानून असाधारण परिस्थिति के लिए है और असाधारण लोगों के खिलाफ इस्ते-

माल करने के लिए किया जा रहा है, जो अधिकार इस कानून के अन्तर्गत दे रहे हैं, इसका सही रूप में इस्तेमाल होगा और होना चाहिए। एक बात और, ठीक है कि इन्क्वायरी की बात आपने कही है संशोधन में डी. एस. पी. के नीचे के स्तर के अधिकारी को नहीं देगे लेकिन व्यवहार में चूंकि पावर डेलीगेट हो जाती है सब इंस्पेक्टर, अस्सिस्टेंट सब इंस्पेक्टर को, इसलिए आपको वह आश्वसन देना चाहिए कि पावर्स डेलीगेट नहीं होगी। किसी भी हानत में पावर का डेलीगेशन नहीं होगा। इस पावर का इस्तेमाल एम० पी० ही करेगा या डी. एस. पी० करेगा जिसका आप प्रावधान कर रहे हैं। क्योंकि शिकायतें आती हैं साधारणतया इस कानून का दुरुपयोग स्थानीय पुलिस अधिकारी करते रहे हैं। साथ ही साथ जो आप आई० जी० की पूर्वानुमति लेने का प्रावधान कर रहे हैं, इसकी प्रैक्टिकल मशीनरी क्या होगी, प्रक्रिया क्या होगी। सारे देश में प्रदेशों में इस तरह की घटनाएं हासकती हैं, क्या प्रक्रिया होगी, इसे स्पष्ट कर दिया जाए तो सब को आसानी होगी, संबद्ध व्यक्ति को भी आसानी होगी और प्रशासन को भी आसानी हांगी। इस प्रक्रिया के विषय में अलग से डायरेक्टिव हो और नियम में आपको हिदायत कर देनी चाहिए कि आई० जी की प्रायर परमिशन के मायने क्या हैं और इसका व्यावहारिक रूप क्या होगा, उसका इस्तेमाल कैसे करेंगे। यह बात साफ तौर पर होनी चाहिए। इसलिए इस कानून में जो संशोधन किये जा रहे हैं हमको लगता है कि उचित है खास तौर से सुप्रीम कोर्ट को एपीलेट अथॉरिटी मान लिया गया था वह अधिकार अब हाई कोर्ट को दे रहे हैं। हाई कोर्ट को दे रहे हैं तो हाई कोर्ट मावधानी से करे स्पेशल कोर्ट की अपील सुनने में। एक बात यह है कि स्पेशल कोर्ट के जो जज होंगे वह अस्थाई होंगे, हाई कोर्ट के वकिंग जज जाएंगे सेवा निवृत्त होने के बाद, वह सेवा में बने रहेंगे तो फिर मामलों का निष्पादन नहीं होगा। स्पेशल कोर्ट आप क्यों कर रहे हैं? इसलिए कर रहे हैं कि सामान्य कोर्ट अनेक मामलों के संदर्भ में इन मामलों को प्राथमिकता नहीं दे सकता। इसलिए आप विशेष कोर्ट दे रहे हैं। यदि आप अवकाश

प्राप्त जज को स्पेशल कोर्ट का जज बना कर रखेंगे तो मामलों को लीगर करते रहेंगे। विभिन्न प्रकार के आयोगों के क्रियाकलापों को हम देखते हैं कि रिटायर्ड जज मामलों का शीघ्र निष्पादन नहीं करना चाहता। टाडा अपराधी ऐसे नहीं हैं जिनके मामलों को वर्षों वर्षों तक लम्बित रखा जाए और उन्हें प्रताड़ित किया जाए। इसलिए हमें आशंका इस बात की होती है कि स्पेशल कोर्ट का कनसेप्ट तो ठीक है, आप त्वरित निष्पादन के लिए व्यवस्था करिए लेकिन वकिंग जज को रखिए। आवश्यकता हो तो हाई कोर्ट में जजों की संख्या आप बढ़ा दीजिए क्योंकि असाधारण परिस्थिति के मुकाबले के लिए असाधारण कानून आप बना रहे हैं तो आपको असाधारण रूप से हाई कोर्ट को भी शक्ति देनी चाहिए, जजेज संख्या बढ़ानी चाहिए। रिटायरमेंट के साथ साथ स्पेशल कोर्ट के जजेज भी सेवा निवृत्त हो जाए और फिर नये जजेज काम करने के लिए आएँ तभी गति आएगी। जो तीव्रता लाना चाहते हैं आप वह आपको प्राप्त होगी अन्यथा काफी दिनों तक यह लम्बित रह जाएगा। साथ साथ कहना चाहते हैं कि जो सुप्रीम कोर्ट की रिव्यू की बात कही है जैसे मैंने प्रारम्भ में आपसे कहा है वह रिव्यू बहुत धीमी गति से हुआ है। काफी दिन पहले सुप्रीम कोर्ट ने रिव्यू करने की बात कही थी लेकिन आज भी भिन्न राज्यों में मामले निष्पादन के लिए लम्बित हैं। न उन मामलों की सुनवाई स्पेशल कोर्ट में हो रही है न उन्हें सम्मन मिल रहे हैं, न उन मामलों का रिव्यू हो रहा है। इसलिए सुप्रीम कोर्ट का जो डाइरेक्टिव था, जो मत था, उसके मुताबिक यह जो कानून है इसका रिव्यू जल्दी जल्दी वर्तमान अवस्था में करना चाहिए। जब नये कानून में उसे स्वरूप दे देगे, अंगीकार कर लेंगे, उसका हिस्सा बना लगे तो आपको और आसानी होगी। इस समय जो लोग नजरबंद हैं या गिरफ्तार हैं या जिन पर मुकदमें चल रहे हैं और वे लोग हैं जिन्हें आपने रिव्यू में देखा है, हम आपसे निवेदन करना चाहेंगे कि सुप्रीम कोर्ट के डाइरेक्टिव को तत्काल लागू करा दें।

भारत ने नयी दुनिया में मानवाधिकार की रक्षा करने में एक ऐतिहासिक भूमिका अदा की है। आजादी के संवर्ष के दिनों में हमने यह अपनी बुनियादी रखी है। हमने अपने संविधान में उसको स्वीकार किया है। आज अगर मानवाधिकार आयोग का गठन हमारी सरकार ने किया है तो दुनियां ने उसकी सराहना की—कि भारत मानवाधिकार के प्रति कितना सतर्क और सजग है। इसलिए उसके अध्यक्ष ने जो सुझाव आपको दिए थे और देश के विभिन्न हिस्सों का दौरा करने के बाद सुझाव दिए थे, विभिन्न राज्यों की स्थिति को देखने हुए उन्होंने सुझाव दिए थे जो अनुभव किया था कि इस कानून का दुरुपयोग हुआ है और इस कानून का जो उद्देश्य था उसका लोगों ने खल्लमखल्ला उल्लंघन किया है अपने राजनैतिक स्वार्थ के लिए और अपनी स्थानीय दुर्भावनाओं को शांत करने के लिए, उन सुझावों पर एक बार पुनः आप विचार कर लीजिए। उन्हें भी इस कानून को अंतिम रूप देने समय भरोसा और विश्वास दिलाइये ताकि इस देश को और दुनिया को लगे कि मानवाधिकार आयोग को आपने शक्ति सम्पन्न बनाया है। केवल टेक्निकल खानापुरी आपने नहीं की है। आपकी भावना है आपका उद्देश्य है कि अपने नागरिकों को मूल अधिकार हम देंगे, मानवीय अधिकारों पर हम कोई आक्रमण नहीं होने देंगे और बराबरी और श्रमता मूलक समाज बनाने का जो हमारा निश्चय है भारत के संविधान में उसे हम पूर्ण रूप से चरितार्थ करेंगे, लागू करेंगे। इसलिए मानव मूल्यों में कोई गिरावट नहीं होने देंगे किसी कीमत पर। प्रधान मंत्री की इसे संसद में लाने के पीछे यही भावना रही है। इसलिए गृह मंत्री जी उस भावना का समादर करते हुए अपने संशोधनों में कुछ संशोधन और सम्मिलित करेंगे जो आशंकाएं हमने व्यक्त की हैं या जो तीन सुझाव हमने मुख्य रूप से रखे हैं।

पहला यह कि जो वर्तमान लोग डांडा के अभियुक्त हैं उन्हें कैसे राहत मिले, इसके लिए उन मामलों का अलग रिव्यू किया जाए और वे मामले उठाए जाएं। जब वर्तमान कानून में वे अपराधी नहीं होंगे, जो नया कानून बना जाये है उसमें आप-

राधी नहीं होंगे तो आप पुराने कानून के साथ उन्हें अपराधी बनाकर क्यों सजा देना चाहेंगे।

दूसरा यह कि आप हाईकोर्ट के एक जज की अध्यक्षता में एक स्थायी रिव्यू कमेटी इसके साथ बनाइये। तीसरा इस कानून को स्थायी रूप न दीजिए। इसे तीन साल के लिए एक कार्यविधि दीजिए। 3 साल के पहले फिर आवश्यकता हो तो बाद में आकर कर दें। फिर आपन जो संशोधन रखे हैं वृष्टियां दूर करने के लिए उनका कार्यान्वयन कैसे प्रभावकारी ढंग से राज्य सरकारें करें इसके लिए राज्य सरकार के कानून को देखने के लिए सुप्रीम कोर्ट की तरफ से समय समय पर जजेज जाएं जो उसका रिव्यू किया करें कि राज्य सरकारें इसका राजनैतिक उपयोग तो नहीं करतीं। वास्तव में आतंकवादियों के खिलाफ निवृत्त करने वालों के खिलाफ इस कानून का इस्तेमाल हो रहा है अथवा राजनैतिक स्वार्थ के लिए तो इस कानून का उपयोग कोई राज्य सरकार नहीं कर रही है। इसके प्रति देश को आश्वस्त करने के लिए सुप्रीम कोर्ट में एक स्थायी अधीक्षण, निरीक्षण होना चाहिए विभिन्न राज्यों के प्रशमन का। बहुत बहुत धन्यवाद।

SHRI S. JAIPAL REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, I find myself in a quandary. In fact, I think our House is finding itself in a mess. Just now, a report of the Standing Committee on Home Affairs, has been circulated to us on this very important Bill. The Standing Committee met only twice. It met on 19th and it met this morning. They drafted the report. I will come to the merits of the report a little later. Mr. Vice-Chairman, Sir, what is the status of this report? Do we see any store by the report of the Standing Committee? This report has been submitted by majority of the Members, including the Congress Party Members, such as Shri Jagannath Mishra. Now, I would like the Home Minister or anybody to stand up and say that the Bill, along with the circulated amendments, reflects

the recommendations of the Standing Committee. They do not, reflect. They have ignored this Report of the Standing Committee with unconcealed contempt and unbounded contempt. Mr. Vice-Chairman, what does the Report say? It is very important to refer to it because all the Members of the House have not received the copies of this Report. The Committee did not have the time to apply its mind. Even within the limited time, during which the Government of India was breathing down the neck of the Committee, the Committee did manage to produce the Report. What did the Report say?—I am not referring to the dissent report of BJP Members. I am referring to the majority report.—No. (1) recommendation, Mr. Vice-Chairman, is: "The present Bill was not necessary as the existing laws of the land were adequate to curb the menace of terrorism." What will happen to this recommendation? The Committee believes that this law is not necessary. you may ignore the view of Mr. Jaipal Reddy because Jaipal Reddy has always been a perverse libertarian, but it is the recommendation of the Standing Committee. What do you do with it? "The Bill should be circulated to all Chief Ministers for their views and public opinion should be elicited." What will happen to this recommendation? "The present law should not be a permanent statute; it should be periodically reviewed after every three years." I find no amendment tabled by the Home Minister to this effect "Compensation should be given to innocent victims of TADA." Of course, the Home Minister may make some statement. I am trying to be very charitable to our Home Minister. Of course, so far as contemplation is concerned, he does perform Pooja for two hours a day, that I consider a contemplation "The direction of Supreme Court regarding reviewing Committees should be made a part of the new legislation." What will happen to this recommendation? There is no provision for

review. It is, of course, not there in the Bill which has been circulated. It could be incorporated in one amendment. "An integrated view should be taken of the whole situation and the existing laws, such as NSA, DIR, were quite adequate to meet the problem of terrorism and disruptive activities. So, there was no need to incorporate certain provisions of TADA in the new legislation". What will happen to this view of the Committee.

SHRI P. UPENDRA (Andhra Pradesh): Mr. Jaipal Reddy, can you yield for a minute? Mr. Vice-Chairman, I am on a point of order. As page 7 of the Report, para 12; it is stated: "While adopting the Report on the Bill on 22nd March, 1995, the following suggestions were made:—

(1) The present Bill was not necessary as the existing laws of the land were adequate to curb the menace of terrorism."

The second point says that the Bill is necessary to counter terrorism and disruptive activities. I feel that they have summarised the suggestions received from various Members and have not given their opinion as a Committee. Everybody knows that. Will the Chairman or the Members clarify what exactly it means? Are they recommendations of the Committee or are they suggestions received by the Committee?

SHRI MD SALIM (West Bengal): If you go through it fully, ... (Interruptions)...

SHRIMATI KAMLA SINHA (Bihar): You read clause 12. (Interruptions).

THE VICE-CHAIRMAN (Shri V. Narayanasamy): Mr. Jaipal Reddy, yield for one minute.

डा० जगन्नाथ मिश्र : उपसभाध्यक्ष जी; यहाँ एक भ्रम हुआ है। अंत में हम लोगों ने यह कहा कि हम लोगों की राय संकलित कर दी जाए। कमेटी की जो ओपीनियन है जैसा कि रेड्डी साहब कह रहे हैं रिकमंडेशन नहीं हुई। मदस्यों ने जो राय दी थी, उन रायों को संकलित करके एक साथ रख दिया गया है।

श्री एस० जयपाल रेड्डी : राय का मतलब क्या है ?

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): According to him, it is not a recommendation, (*Interruptions*)... It is only a suggestion given by various Members and it has been incorporated.

SHRI S. JAIPAL REDDY: No, Mr. Vice-Chairman. Let me clarify. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): He is a Member of the Committee.

SHRI S. JAIPAL REDDY: I think, Sir, you should moderate the proceedings. Mr. Vice-Chairman, to the best of my knowledge there is no difference between a suggestion and a recommendation. Even a recommendation is not binding. A recommendation is a recommendation and a suggestion is also a suggestion. Both of them are not binding.

Secondly, Mr. Upendra tried to refer to one part.

SHRI S. B. CHAVAN: Mr. Jaipal Reddy, if you don't mind, may I put you a question? Normally, what goes in a Standing Committee is entirely a matter between the Members of the Standing Committee. It should not be allowed to become a part of the proceedings of the House. (*Interruptions*)...

SHRI S. JAIPAL REDDY: No, no Sir, (*Interruptions*)...

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY) Kindly come to the point. (*Interruptions*)... Mr. Jaipal Reddy, kindly come to the point, please.

SHRI S. JAIPAL REDDY: Will clear the doubts of the Home Minister. (*Interruptions*). These are not the proceedings of the Committee. This is the Report of the Committee. Our Home Minister is getting confused between the in camera proceedings and the published Report. Published Report should be drawn upon and can be quoted in extenso (*Interruptions*)...

SHRI JAGDISH PRASAD MATHUR: (Uttar Pradesh): If the view of a Member who is opposing it, is deleted, it is censoring of his speech. (*Interruptions*)... If can't be done. (*Interruptions*)...

SHRIMATI KAMLA SINHA: Mr. Vice-Chairman. . (*Interruptions*).

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Madam, kindly take your seat... (*Interruptions*)... Madam, kindly take your seat. (*Interruptions*)... Mr. Jaipal Reddy knows how to make his point of view. (*Interruptions*)... Kindly take your seats... (*Interruptions*)...

SHRI S. JAIPAL REDDY: Mr. Vice-Chairman, these suggestions were made by the majority Members of the Standing Committee as part of a consensus. If the BJP Members of the Committee submitted a dissenting Report it also needs to be taken into consideration by the Committee. But these are part of the official majority Report of the Committee.

Now, let me deal with the recommendation that Mr. Upendra has been intelligent enough to refer to. the Bill is

necessary to counter terrorism and disruptive activities. This refers to the need to define terrorism and disruptive activities very properly very narrowly. The definitions of terrorism and disruption in the Bill are very loose, very broad and can lend themselves to terrible misuse. In fact, these definitions have been literally lifted from the TADA and put herein. Therefore, the Committee expressed concern about the loose definitions. So, Mr. Vice-Chairman, my point of submission is this: How does the House go about with the business in the midst of this confusion? The Standing Committee did not have time and the Standing Committee made suggestions, observations and comments which, in my view are not different from recommendations and our Government is absolutely insensitive to the considered suggestions of the majority Members of the Standing Committee. Therefore, I would seek your guidance as to how the House should go about with the business. This is without a precedent and a parallel in the history of our Parliament. This is playing a fraud on the Committee system. This is making a mockery of the Committees of Parliament. How do we go about it?

I know that TADA is expiring tomorrow, the 23rd May. When TADA was first introduced, I happened to be in the Eighth Lok Sabha. I was also among those who expressed serious reservations at that time. In the last eight years, terrorist and disruptive activities have grown. I would like to know whether TADA has had something to do with the growth of terrorism because we did not have such a flurry of terrorist activity when we passed this law. If it has not been responsible or giving a fillip to these activities, it certainly failed to present these activities. Why are you in such a nervous hurry? I would not call it devilish because I don't suspect your motives in this regard. I don't challenge your motives. But your Government today is a nervous wreck. It does not have a sense of direction. If the law

lapses tomorrow and if there is no law for a week or two, are you trying to tell us that heavens' will fall and this country of nine hundred million people will not do without a law of this kind for just a week or two? I am not able to understand the logic behind it. Mr. Vice-Chairman, Sir, I as a person, and my party are both opposed to any special draconian piece of legislation. They do not redound to the credit of Indian democracy. They are repugnant to our democratic sense. They are an antithesis to the ethos of our Constitution. Forget about the great principles. What is the preventive efficacy of this law? Apart from the experience of our country, have such laws been effective in rooting out terrorism or disruption in any part of the globe? I visited Northern Ireland about a year back. I had an occasion to meet the Police Chief who was to retire in six days from that day. I asked him as to what his experience was because he had combated terrorism in Northern Ireland for 23 years more than half of his police career. He said only one thing. He had only a few days to go for retirement. He said, "Mr. Reddy, I can say only one thing. We policemen cannot prevent terrorism. You politicians, bad as you are, alone are capable of providing a solution." This was a confession made by the Police Chief on the eve of his retirement to me in person.

Now, look at our problems, i.e. the problem of Punjab. Who can deny that this problem was partly created by ourselves? I don't want to go into the genesis of the Punjab problem. Who can deny the fact, the historical fact, that the T&K problem in its virulent form was created from the day when Dr. Farooq Abdullah Government was removed in the early 'eighties? Who can say that the LTTE was not given birth to and brought up by our people? If there is a problem of naxalism in Andhra Pradesh and some other parts, it is because we as a polity have failed to address ourselves to the land reforms question. Therefore, I cannot understand how the Government believes that TADA or any such special law is going to meet any such problem.

Mr. Vice-Chairman, TADA as bad as it was and as it is because it still remains until tomorrow, has one saving grace.

It required renewal after every 4 P.M. two years. That is how this

Government was compelled to allow the TADA law to lapse. Now this law which you are bringing forward will adorn the Indian statute book for eternity.

SHRI P. UPENDRA: You can change it later.

SHRI S. JAIPAL REDDY: You can also change the Constitution of India.

It is not conceived as a temporary, transient measure or a feature. That saving grace of the TADA is also not reflected in this Bill. So, I would like to know from our Home Minister whether he expects this situation to remain in our country for the next 100 years to come. I agree that there are some special conditions obtaining special problems afflicting our polity in some parts of the country. Do we think they will remain for all times to come? Therefore, the Committee itself made a recommendation that it should be meant for a specific period maybe two years, maybe three years. Many amendments have been moved by Members on this side. I would request the Home Minister not to stand on prestige and agree to the amendments. This law will be applicable throughout India. It will be applicable in every part of India, in every nook and corner of India. If you can make the Law applicable to some parts like J&K, this House would have no difficulty in passing the law. You are making it applicable to all parts of India. That is the real problem. Mr. Vice-Chairman, everybody including the Home Minister has, on more than one occasion, admitted that the TADA law has lent itself to terrible misuse. But why did it happen? It happened because the definition was very loose. The scope provided was very broad. You say, 'harmony among different sections.' I may recall that many trade union leaders, who were engaging themselves in legitimate labour activities, were taken under the TADA in Ahmeda-

bad. I am talking of the late eighties. I am not talking of the recent past. Our CPI and CPM friends keep launching land reform movements. You can say that the landlords have become endangered species, this segment is being really endangered, and therefore, all these fellows must be taken under the TADA. What prevents a police officer from doing so? The definition must be very very concrete. You should not leave any scope for such abuse. Now I know this law is an improvement on the TADA law because you have given some concessions to the protests of people, political observers and the Members of this House including those of your party. I do not hesitate to acknowledge this point. But let me refer to one concession that you have made i.e., "Punishment for a police officer who is proved to have misused the power under this law." Can the affected citizen go to the court straightaway? He will have to obtain a sanction from the Government.. (Interruptions)... Mrs. Sushma Swaraj, with her, I don't agree generally but I do agree with her on this question. There is a provision in the IPC. That provision has proved to be a dead letter.

SHRI S. B. CHAVAN: I will explain that.

SHRIMATI SUSHMA SWARAJ: That is why not a single public servant has been tried under 211.

SHRI S. JAIPAL REDDY: It has historically proved to be a dead letter. This will also prove to be a dead letter because special permission of the Government will have to be obtained. You bring forward an amendment to say that a person, who thinks that he has been victimised can straightaway go to the court without reference to the Government. You bring forward that amendment. Then, this provision will become meaningful, will become effective and will be truly a deterrent.

Now, I draw attention to section 20(A), "A permission has to be obtained from the Inspector-General of Police or the Commissioner of Police with

regard to an offence not with regard to an offender. The Supreme court, in the case of the State of West Bengal vs. Md. Khaliq, 1995, stated. 'The permission contemplated under the section is *qua* an offence, not *qua* an offender. So, with regard to an offence, permission can be secured from the Inspector-General of Police. Then, any number of persons can be booked because permission is obtained on the basis of an offence and not on the basis of the background of each offender. When you give permission for a public servant to be prosecuted, you do so on the merits of the case of each public servant. So, this should be so amended as to say that the Inspector-General of Police must apply his mind in the case of every accused, not on the basis of a reported crime or alleged crime.'

Now, the Supreme Court in Kartar Singh's case suggested that there should be a review committee. You are, of course, having a review committee. The Home Secretary is heading it. There are so many preventive laws—the NSA, the DIR, the COFFEPOSA. Of what use are they? You know more than I do. But be that as it may, the fact remains that in all these pieces of legislation, there is a provision for a review committee. Why is there no provision or a review committee in this case? Why are you leaving it to the mercy of powers that be? Some bad fellow may succeed you tomorrow and he may not be very genuine about the review committee. So, the law must take care in specific terms of the provision for a review committee.

Now, Mr. Vice-Chairman, the TADA will lapse tomorrow. It is a matter of relief. But it is not a case of unrelieved happiness because such of the people that are facing prosecution under the TADA, as of now, will continue to suffer under the incubus of TADA. What are you doing to provide relief to them. Why can't you be generous to say that after the TADA lapses, the pending cases will be dealt with under the new law? Do you think that less heinous crimes less outrageous atrocities will be committed from the day

after tomorrow than they were in the past? Why can't you allow the provisions of the new law be made applicable to the people who have been prosecuted under the TADA upto now? You have said nothing in this regard.

So, Mr. Home Minister, I would like you to reflect on this. My final appeal is, "Don't rush through. I have gone through the amendments in regard to the definition of a terrorist act. Even the B.J.P., which has its own reservations in regard to the lapsing of the TADA law, has tabled an amendment in regard to the definition of a terrorist act. There is clear scope for improving the definition of a terrorist act. We have no quarrel on the definition of the disruptive act. We have problem in regard to the definition of terrorist act. Therefore, take your time; let us sit in the evening; let us try and improve on this definition.

Mr. Vice-Chairman, I would like to appeal to the Government, through you, that there is no need for hurry whatsoever, Heavens will not fall at all. Let us remember, heavens have never fallen. Therefore, we can take our time. There is no need for us to rush with this Bill. This kind of speed must be reflected in some other areas, not in Parliament. There, of course, they have administered anaesthesia to themselves and gone into long and deep slumber and here they rush through the Bill with the speed of a rocket. So, Mr. Home Minister, my earnest appeal to you is to see that a consensus is evolved among all parties. This is a national issue. This is not an issue over which you alone are exercised. This is an issue over which all of us are exercised, irrespective of our ideologies, irrespective of politics. Therefore, it is not too late to evolve a consensus. Let the debate go on, but before the Bill is passed, let us try and see if you could evolve a consensus.

[Vice-Chairman S (Shri Md. Salim) in the Chair].

DR. BIPLAB DASGUPTA (West Bengal): Mr. Vice-Chairman, Sir, you

will recall that when the Prime Minister spoke on the President's address, towards the end of it, he gave a categorical assurance that the TADA would be repealed. When he gave this assurance there was a loud applause and jubilation in every corner of this House. What I am speaking, I think, reflects not only the opinion of my party or other parties on this side, but also the opinion of a large section of Congressmen. I don't see it as a party-political issue. I see it as an issue which should be considered by each and every Member of this House with the utmost seriousness. The Prime Minister did say, when he mentioned that the TADA would be repealed by a new Bill which will be introduced to fight terrorism, that it would be based on consensus. Immediately after that our Home Minister called a meeting of the Opposition leaders and we went there expecting that some concrete Bill would be suggested which we could discuss. Instead we found that a note was circulated and in that note actually the Home Ministry tried to justify the TADA saying that the TADA had been approved by the Supreme Court, TADA was not misused and all that and eventually made a recommendation that the TADA should be extended for another two years. That was after the categorical assurance given by the Prime Minister, and the Home Minister did issue a note in which he did say that the TADA should be extended for another two year's period. I don't know how this Government functions where the Prime Minister says something and the Home Minister says something else within a matter of two-three days.

Now, this Bill has been brought before us. Knowing the reservations of the Home Minister on this issue, I have no doubt that he has been forced by some collective pressures perhaps or by political pressure, perhaps, but I don't think that his heart is here in this Bill which is why what has come before us, it one sense, rectifies some abuses, but actually it is the same TADA with some cosmetic changes. I would not say, "It is an old wine in a new bottle," which means

something different. It is an old rotten fish in a new crate. This is what we find with this new TADA. I have gone through the new Bill... (*Interruptions*)..

SHRI JAGESH DESAI (Maharashtra):
I could not follow.

DR. BIPLAB DASGUPTA: I said, it is an old rotten fish in a new crate.... (*Interruptions*)

THE VICE-CHAIRMAN (SHRI MD. SALIM): Please don't make it a fish market.

DR. BIPLAB DASGUPTA: I have compared the TADA with the new Bill clause by clause and section by section. I find that out of 30 clauses in the TADA all but, maybe three or four or five, have been changed and all the rest have been incorporated in this new Bill. Sir, there are no further changes and even if there are, they are very few. But, the essential features of TADA remain. For instance detention in police custody is still for a period of one month as compared to 15 days under the Criminal Procedure Code. The judicial custody for six months which can be undertaken in two instalments is there. The most serious is, someone who is accused of terrorism can be kept in jail for a minimum period of five years, his property can be confiscated. Moreover, the trial may be conducted in camera. Witnesses may not be identified. Their names may not be given. There is also a procedure for summary trial. Sir, it is a very unusual law, very extraordinary law, and a draconian law which should not have been introduced as a part of the general law. Until now TADA was a special Act. It had certain time-limit. Now, TADA has become a part of the general law with all its draconian features. The features which have been opposed by those who fight against the infringement of the people's liberty, those who fight for the human rights, have all been retained in this new Act. Worse

still, it is now a part of the general criminal law. What did we want? When the discussion took place in this House, what did we say again and again? We said, we wanted terrorism to be handled by the general law. We want to fight terrorism. On this, there is no dispute. We want terrorism to be defeated. It should be handled as far as possible by the general law. Moreover, it should be subject to certain time-frame so that it is not abused. Now, it can only be justified if it is directed against terrorists and nobody else. We have seen what our experience is. Our experience is that whenever there is a new law like this, it has been used not against those for whom it ought to have been used, but against us. When preventive detentions were there and in various forms, we had been the victims. We had been the victims when the Maintenance of Internal Security Act was passed. Although it was told that it was mainly against goondas and anti-socials, actually we became the victims. The statistics of the Government show that something like 18,000 people were arrested by the Government of Gujarat and the Government itself admits that there was no question of terrorism involved, but they could use this provision of TADA still. These provisions were used to put 18,000 people behind bars! We also found that out of the 70,000 odd people who have been arrested under the TADA, very few were found to be terrorists. Only a small fraction, something like 5,000 who are now in custody. Others had to be released which shows that there is a tremendous scope for the abuse of TADA and it has taken place already. It is well documented. When such features still continue, be possibilities of abuse would still be there in this new Act. These have not been changed. If it were directed against terrorists we have no objection. But the way we have seen, it can be directed against the innocent people and against political opponents. I will give you one or two examples. We have moved a number of amendments. First, we said that it should be limited to 3 years, maybe

it should be reduced to 2 years from 3 years as in the case of TADA before,

Now, look at clause 3, Clause 3 says— I will not read out that there is an intent part and an act part. 'Intent' is, if anybody is intending to alienate some section of the population. 'Alienation' is a very general expression. There may be alienation between husband and wife, alienation between different communities, etc. And, if there is a case of disharmony between different sections of population, etc. Disharmony is again a very general expression. It can certainly be abused. Then you have two different parts—some dealing with terrorism and some dealing with disruptive activities. In our opinion, there is no need for such a distinction. You do away with this distinction. What you call disruptive activities could be taken as terrorist activities and that part can be removed. What is this 'terrorist activity'? Make it very short, make it very simple. In our amendments we have moved that only those who are antinationals, those who question the sovereignty of the country, who question the territorial integrity of the country, are the terrorists. This is the way in which you can define it. Otherwise, it will not be possible to avoid its abuse. I am glad to know that the amendments which have been moved by the BJP side also are substantially similar to the amendments that we have already moved. I am happy that a consensus is emerging on this issue on this side of the House. If this consensus emerges, I would request the Home Minister to change the law. This definition is to be sharpened. It is not to be directed against the non-terrorists. That possibility remains there and that is why we wanted to remove this distinction between the terrorist and disruptive activities by lumping them together and defining terrorism simply in terms of anti-national activities and activities which are prejudicial to the national integrity and sovereignty of the country. (Time Bell) I will take a few minutes more.

Another point I would like to mention is this. Some-one said that all kinds of terrorism cannot be tackled by this. This is right. But, certainly, terrorism of the Kashmir type can be covered, terrorism of the Punjab type can be covered, terrorism of the ULFA type can be covered, and, may be also the LTTE kind if you can show that there is some connection with foreign sources. Certainly, Naxalism can be covered by this. Let us fight it politically. But each and everything cannot be fought in terms of a draconian kind of law. So, if these amendments that we have moved are accepted certainly there will be a certain measure of unanimity on this issue on all sides of this House, at least on this issue. I hope the hon. Home Minister would accept the amendments and would not make it necessary for us to force a division on this issue. I would also suggest that there should be a review of all the cases and those who are already suffering under TADA, should be tried not in terms of the old TADA but in terms of the new legislation which is going to come. One of the points on this particular issue is that there is a provision that many of the judges will be sitting in special courts. This is only one difference that I find between the old TADA and the new law. Under the old TADA they were called the designated courts and now they will be called the special courts. Otherwise, all the powers remain the same. I would like to suggest that in the case of these courts, the judges should be sitting judges and should not be retired judges so that they are not subjected to political influence one way or the other. Lastly, I would like to say that this is a law which should not be rushed through. This point has already been made by Shri Jaipal Reddy. The Standing Committee has given its report. I do not understand the time-schedule because the first meeting with the Home Minister took place on the 1st May. Now, today is the 22nd of May. Three weeks were there. During this period of three weeks, there was sufficient time with the Home Minister to have consultations with us and then refer it to the Standing Committee.

The Standing Committee should have had sufficient time to come out with its conclusions. But, neither was there any proper consultations with us. Shri Balanandan and myself went to the Home Minister to see him and we talked for one minute or so. That is the time that he could allocate to us. The Standing Committee had hardly any time to go through it. But, now you are rushing through this in the House. I would say that we do not want to go in for a division. We do not want it. We want to fight terrorism but not in a way in which it is being done here which will mean actually legitimising TADA as a part of the Criminal Law. This we do not want. We request you to consider this and do not rush through it. You refer it to the Standing Committee and the Standing Committee can go through it again properly, clause by clause maybe, even taking into account the amendments that have been moved and may try to redraft the Bill so that it focused on anti-nationals; it focuses on those who are violating territorial integrity and national unity. It should not affect those who are innocent. With these words, I am concluding. Thank you, Sir.

श्री एस० एस० अहलुवालिया : उपसभाध्यक्ष महोदय, मैं दण्ड विधि संशोधन विधेयक, 1995 का समर्थन करने के लिए खड़ा हुआ हूँ। महोदय, यह कोई नई बात नहीं है। जब से भारत आजाद हुआ है तब से आतंकवादी गतिविधियाँ और विध्वंसक कार्यकलापों को रोकने के लिए इस संसद ने बहुत तरह के विधेयक पास किए हैं—जैसे कि 1970 में प्रिवेंशन ऑफ डिटेन्शन एक्ट, 1967 में अन्तर्जातीय एक्टिविटी प्रिवेंशन एक्ट उसके बाद मेन्टि-नेंस इंटरनल सिक्योरिटी एक्ट, सीसा, 1971 में पास हुआ। इसके साथ साथ डिफेंस ऑफ इण्डिया रूल एक्ट के तहत काम करते रहे जो कि पहले से, 1916 से लचता आ रहा था। नेशनल सिक्योरिटी

एक्ट, 1980 में पास किया गया। महोदय, देश की आतंकवाद और अलग-वाद की ताकतें दिन प्रति दिन बढ़ती जा रही हैं। हम जब इस विधेयक का समर्थन या विरोध करने के लिए उठते हैं, तो हमें यह नहीं भूलना चाहिए कि हमारे देश के एक प्रधान मंत्री की हत्या उनके अपने घर में ही हुई। हमें यह नहीं भूलना चाहिए कि हमारे भूतपूर्व प्रधान मंत्री राजीव गान्धी की हत्या आतंकवादी और विध्वंसकारी शक्तियों द्वारा की गयी थी। अभी कल ही उनके बलिदान दिवस का पालन किया गया है। महोदय, बहुत सारे ऐसे लोग हैं। डी०आई०जी० अटॉल की हत्या की गयी। पुलिस कमिश्नर और आई०जी० पुलिस रिबरो के कैम्प पर हमला हुआ, यहां तक कि उनको मारने के लिए रोमानिया तक पीठा किया गया और रोमानिया में उनके ऊपर गोली चली। हम डिप्टी हाई कमिश्नर, यूनाइटेड किंगडम के अपने रविन्द्र कुमार म्हात्रे को नहीं भूल सकते जिसका अपहरण किया गया इन्हीं आतंकवादी गतिविधियों के कारण। यही कारण था जब चारों तरफ आतंकवादी और विध्वंसकारी काले बादल छाए हुए थे कि ऐसे विधेयक को पास करने की जरूरत पड़ी और समय समय पर इस संसद ने सब संसदों ने मित्रकर, ऐसे निर्णय लेकर सरकार के हाथ को मजबूत करने के लिए ऐसे विधेयक पास किए हैं।

उपसभाध्यक्ष महोदय, जहां तक टाडा का सवाल है, 1985 के बाद 1995 का यह जो शतक है, यह ऐसी गतिविधियों से भरा हुआ है। इस वक्त हमने देखा कि हमारी काश्मीर के सूफी संतों को नहीं छोड़ा गया, वीरों को नहीं छोड़ा गया, वाइस चांसलर को नहीं छोड़ा गया, इंटेलेक्चुअल्स को नहीं छोड़ा गया, जहां जिसको मौका मिला घात लगाकर मार डाला। टाडा का प्रयोग जिस मकसद के लिए था - पर हमारी मशीनरी जो है जो इस विधेयक को इम्प्लेमेंट करती,

मंशा सरकार की और मंशा संसद की यह थी कि किसी तरह भी आतंकवाद और अलगवाद की ताकतों को रोका जाए, विध्वंसकारी ताकतों को रोका जाए, पर मुश्किल यह है कि इसको इम्प्लीमेंट करने की एजेंसी जो है वह बेईमान हो गयी, महादमा में आपके माध्यम से यह बताया जाएगा कि ऐसे बहुत सारे इन्सिडेंट केसेज हैं, जिनको कि नेशनल ह्यूमन राइट्स कमिशन ने सरकार के सामने रखा है, जहां इन्सिडेंट लोगों को टाडा के तहत छिपे हुए किया गया है। यही कारण है कि जब यह चारों तरफ चर्चा का विषय बन गया है, तो आज इस टाडा एक्ट को वापस लेकर किमिनल प्रोसिजर कोड में अमेंडमेंट लाने की बात सोची गयी है। महोदय कुछ दिनों के लिए ऐसा महसूस होने लगा था कि "टाडा" एक्ट शायद इस देश के अल्पसंख्यकों के लिए ही बना हो। "टाडा" एक्ट एक ऐसा चाबूक हो जिससे कि इस देश के अल्पसंख्यकों को हांका जा रहा हो। चाहे वह जम्मू-काश्मीर हो चाहे वह पंजाब हो या चाहे गुजरात हो और चाहे महाराष्ट्र हो इसका भरपूर दुरुपयोग हुआ और उस दुरुपयोग के कारण क्या हुआ कि अल्पसंख्यकों को कुछ समय के लिए ऐसा महसूस होने लगा कि शायद भारतीय संविधान बहुसंख्यकों के लिए अलग है और हमारे लोगों के लिए अलग है। ऐसी विचारधारा जागने लगी। यही कारण है कि हमारी पूर्व वक्ता सुषमा जी ने कहा कि कुछ मंत्रियों ने सरकार को धमकी दी। सरकार को धमकी देने की बात नहीं है। सरकार के सामने यह मुद्दा उठाया गया और यह सिर्फ विपक्ष के सांसदों ने नहीं ट्रेजरी बेंच के सांसदों ने भी यह मुद्दा पार्टी के अंदर उठा और सरकार के सामने रखा कि इस कानून का दुरुपयोग हो रहा है और भरपूर दुरुपयोग हो रहा है। महोदय मैं बहुत अच्छी तरह एक केस जानता हूँ।

श्री संघ प्रिय गौगमः साइनो रिटी के तो श्री बूटा सिंह जी भी हैं उन्होंने तो नहीं उठाया यह मुद्दा।

श्री एस० एस० जहलवालिया : उपाध्यक्ष महोदय बम्बई के सिख ट्रांसपोर्ट को "टाडा" में बंद किया गया और 5 साल के बाद "रिव्यू कमेटी" ने यह कहा कि "रॉग आइडेंटिटी" में यह आदमी गिरफ्तार हो गया है। इस रॉग आइडेंटिटी में 5 वर्ष में उसका पूरा ट्रांसपोर्ट का विजनेस तबाह और बर्बाद हो गया। महोदय मैं आपके माध्यम से सरकार से यह मांग करता हूँ कि जो-जो केसेज जहाँ-जहाँ पाए गए हैं और इनो-सेंट लोगों को गिरफ्तार किया गया है और रिव्यू कमेटी ने जब उसे देखा और गलती महसूस की है तो उसके लिए उनको कम्पेन-सेशन देने का प्रावधान आपने रखा है या नहीं ? आप उनको कम्पेनसेशन देंगे या नहीं ? आपने एक तरफ कहा है कि जो पुलिस आफिसर गलत पाया जाएगा उस पर कार्यवाही होगी किन्तु जो बेचारा गिरफ्तार होकर दो साल पांच साल या दस साल जेल में रहेगा बाद में उसको आप छोड़ेंगे तो उसको कम्पेनसेशन देंगे या नहीं या उसको रिहैबिलिटेड करने के लिए आप क्या प्रावधान रख रहे हैं ? इस बारे में विचार किए जाने की जरूरत है। महोदय इस संबंध में मैं गृह मंत्री जी को ऐसे लोगों के नाम व एड्रेस सब दे दूंगा जोकि बंबई में "टाडा" में गिरफ्तार हुए और बाद में पता लगा कि रॉग आइडेंटिटी है जिस वजह से उसका पूरा ट्रांसपोर्ट का काम तबाह हो गया बर्बाद हो गया। ऐसे लोगों को रिहैबिलिटेड करने के लिए जिसमें कि सरकार की गलती है या इस कानून को इम्प्लीमेंट करने वालों की गलती है उसके लिए आप क्या कार्यवाही करेंगे ?

महोदय इसके साथ-साथ मैं कहना चाहूंगा कि हम सी० आर० पी० सी० में अमेडमेंट लाने की बात तो करते हैं पर हमें यह भी विचार करने की जरूरत है कि इंडियन पेनल कोड जिसके तहत सारा कानून हमारे यहां चलता है यह 1860 का बना हुआ कानून है। महोदय जब देश आजाद नहीं हुआ था तब का यह फ्रेमवर्क बना हुआ है और इंडियन पेनल कोड जब बना था तब क्या प्रावधान थे कैसी अवस्था थी क्या गरीबी रेखा थी क्रिमिनल्स का एटीट्यूट क्या था और क्या उनका "मोडस ओपरेण्डि" था ? आज तो वह बहुत

कुछ बदल गया है और आज पूरा का पूरा इंडियन पेनल कोड रिव्यू करने की जरूरत है। महोदय उसी तरह इंडियन एवीडेंस एक्ट भी बहुत दुर्बल है। आज "टाडा" जैसे प्रावधानों की जरूरत क्यों पड़ती है ? इसलिए पड़ती है कि हमारा इंडियन एवीडेंस एक्ट इतना दुर्बल है कि अगर रंगे हाथों भी आदमी पकड़ा जाता है तो उसको भी सजा देने के लिए कई साल लग जाते हैं क्योंकि उस पर भी गवाही मांगी जाती है और यही कारण है कि आज पूरे देश में करीब दो करोड़ केसेज पेंडिंग हैं फिर चाहे वे सिविल के हों या क्रिमिनल के हों। पूरे हिन्दुस्तान में कश्मीर से कन्या कुमारी और कच्छ से कोहिमा तक दो करोड़ केसेज पेंडिंग पड़े हैं। महोदय "जस्टिस डिलेड इज जस्टिस डिनाइड" वाली बात यहां पर पूरी तरह से "फूल-फूफ" उतरती है। इसी तरह हमारे क्रिमिनल प्रोसीजर कोड का बेस 1872 का बना हुआ है जोकि 1882 में चेंज हुआ 1898 में चेंज हुआ फिर 1973 में चेंज हुआ और उसके बाद 1978 में हुआ। महोदय इसके पूरे फ्रेम वर्क पर विचार करने के लिए कोई आयोग विठाए जाने की जरूरत है क्योंकि हमारे यहां जो आतंकवादी या विध्वंसकारी शक्तियां हैं उनको डील करने के लिए जो हमारी साधारण पुलिस है वह सक्षम नहीं है। अभी जयपाल रेड्डी साहब भी फरमा रहे थे कि हमारी पुलिस नार्मल क्रिमिनल्स को डील करने के लिए ट्रेड है या हमारे कानून नार्मल क्राइम्स को डील करने के लिए बने हुए हैं क्योंकि इंडियन पेनल कोड जिस वक्त बना था या सी० आर० पी० सी० जिस वक्त बनी थी उस वक्त ऐसी विध्वंसकारी शक्तियां नहीं थीं। इसे डील करने के लिए एक सेपरेट विभाग की जरूरत है जोकि टैररिज्म को डील कर सके क्योंकि टैररिज्म आपने आप में एक नया आइडिया है।

Terrorism is an idea. You have to kill the idea by another idea. By killing a terrorist, you cannot kill the idea. If the idea is alive, terrorism will continue to revive.

महोदय, कितना दोहरा उदाहरण हम लेते हैं, हमने जे०के०एल०एफ०, अल्फा, के०एल०एफ०, पी०डब्ल्यू०जी० और नक्स-लाइट्स को डील करने के लिए जगह-जगह, हर तरह से कानून बनाए हैं, किन्तु हम को सोचना चाहिए कि एक क्रिमिनल जो क्राइम करता है; वह अपने पैठ की जरूरत के लिए, चोरी करने जाता है और यहां एक आदमी है जो कि टेरेरिस्ट है, सेपरेटिस्ट है या सेसे-सनिट है जिसका कि वैन वाश किया गया है, वह इलिगैट है, उसके दिल में एक ऐसी भावना जगायी गयी है और उसको वाश करने के लिए, उसको क्लियर करने के लिए एक न्यू सिस्टम की जरूरत है और वह सिस्टम बन्दूक में नहीं निकल सकता है। उसके लिए कोई उपाय करने की जरूरत है, जिन उपायों का अभाव है। मैं समझता हूँ कि हम यह जो क्रिमिनल प्रोसिजर एक्ट पर अमेडमेंट ला रहे हैं, इसमें यह प्रावधान रखने की भी जरूरत है। आज तक 'टाडा' में जितने डिटेन्यूज हैं, उपाध्यक्ष महोदय, अपरेशन ब्लू-स्टार के पकड़े हुए लोग आज तक डिटेन्यूज हैं और उनके केसेज रिव्यू करने की जरूरत है या और भी जो लोग "टाडा" के तहत पकड़े गए हैं, उनके केसेज जो कि रिव्यू करने हैं, उन्हें रिव्यू करने के लिये एक नयी कमेटी बननी चाहिए। पुराने जितने भी टाडा के डिटेन्यूज हैं, उनका भी नए सिरे से रिव्यू किया जाए, क्योंकि अगर मजा मिलनी थी, वह तो काफी मिल चुकी है, इसलिए उनके केमेज रिव्यू कर के नए कानून के तहत उन पर कार्यवाही होनी चाहिए, पर जैसाकि अभी सदन में आवाज उठ रही है, इसकी परिभाषा पर, परिभाषा आप कोई भी रखिए, लेकिन परिभाषा का दुरुपयोग मत करने दीजिए। वह दुरुपयोग कैसे रोक सकते हैं, उसके लिए अंकुश लगाने की जिम्मेदारी आपकी है?

श्रीमती सरला महेश्वरी : (पश्चिमी बंगाल)। परिभाषा गलत है?

श्री एल०एस० अहलुवालिया : परिभाषा बहुत साफ लिखी है, लेकिन उस का दुरुपयोग करने से रोकिए और वह अभी एक सकता है जब कि आपका अंकुश मजबूत हो। महोदय, इस सदन

में जब सब लोग कहेंगे कि इस विधेयक का पूरा सदन समर्थन करता है, तब वहां उसका सदुपयोग और दुरुपयोग निर्भर करता है, लेकिन जब पुलिस ऑफिसर को लगता है कि इस पर इस पर सदन बंटा हुआ है। आधे लोग विरोध में है और आधे लोग समर्थन में है, तो वह भी बंट जाते हैं और उसका दुरुपयोग होने लगता है। महोदय, पंजाब में उसका दुरुपयोग इस तरह हुआ कि पुलिस ऑफिसर ने किसी आदमी को थाने में बन्द कर के रखा और थाने में आकर जिसने जमीन थानेदार के नाम लिख दी, वह छूट गया और जिस ने नहीं लिखी, वह टाडा में चला गया, जिसने गहने बेच कर पैसे पहुंचा दिए, वह छूट गया और जिस ने नहीं पहुंचाए, वह बन्द हो गया। तो यह दुरुपयोग रोकने की जरूरत है और क्या इसके लिए कमेटी बनेगी? मैं गुजरातिश कहूंगा कि जहां "टाडा" की "रिव्यू कमेटी" बन रही है, उसमें ऑफिसर्स को छोड़कर वहां के रिनाउंड सोशल वर्क्स को मैम्बर रखा जाय जो कि इस पर विचार कर सकें।

यही कहते हुए मैं इस विधेयक का समर्थन करता हूँ। धन्यवाद।

SHRI S. VIDUTHALAI VIRUMBI: Sir, today I feel it is the saddest day in my life and this is a black day in the history of independent India. Sir, we are going to deal with a draconian law. This country lost many lives to fight against the Rowlet Act. Now, it has subjected itself to the Rowlet Act in another form. This particular Bill has been brought before us for discussion, because the Government itself has agreed that the same Act was misused by the officials, particularly the police officials, utilising the obnoxious provisions of the Act. Sir, nearly 77,000 people were arrested. When we are talking about the provisions of this Bill, the people detained in the cells throughout India are now wondering what would be the outcome of their fate. Whether this Bill is passed or not, it is not going to make any difference as far as the detenus are concerned, because the people who were arrested and kept

in jail are going to be tried only by the old TADA Act. That means de jure it is going to be repealed, de facto it will form part of the Statute Book. This is the situation. In that condition we have now to go through this Bill.

Sir, before I go further into it. I would like to say that we, the DMK people, have ab initio been opposing these types of laws. For example, when Mr. Jayaprakash Narayan and Morarji Desai the late lamented people of this country, were arrested, Dr. Kalaignar, the former Chief Minister of Tamil Nadu as well as one of the great statesmen in India, warned the Central Government at that time that action taken by it was not proper. Sir, we sent a message from Madras asking them to release the national leaders, revoke the Emergency, repeal the MISA, restore normalcy and re-establish democracy. Sir, Tamil Nadu was the only State at that time where the people could have some sort of freedom. If the people wanted to enjoy freedom, they had to come to Tamil Nadu. That was the situation. Not only that, I tell you that our cleague sitting behind me. Mr. Misa Ganesan; had his name as R. Ganesan. He has changed it to 'Misa' because he was arrested under the Maintenance of Internal Security Act. Now, it has become part and parcel of his name. That was added during the Emergency. Misa was not his name. Similarly, Mr. Murali Maran, the leader of the DMK Parliamentary Party, was attacked in the jail. He has got the blow. His spinal chord was attacked. Even today, he cannot walk in an upright manner, because his spinal chord was completely damaged. Sir, M. K. Stalin, the son of the former Chief Minister of Tamil Nadu, that time had got married just then. Flowers were not still removed from his person when he was arrested and taken into custody and was brutally beaten up. We can never forget it. Sir, I bowed my head before I started my speech for one Mr. Chitti Babu, ex-mayor of Madras who laid down his life.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Virumbi, your party had been allotted only six minutes. You have taken four minutes to start the speech.

SHRI S. VIDUTHALAI VIRUMBBI: I hope you would be generous. It is a very important issue. Please bear with me. One Mr. Sathur Balakrishnan was killed. One Mr. Dhanas ekharan, when he participated in a rally to oppose the TADA on the 3rd February, 1992, received a bullet injury. On the 5th February, he expired. I bow my head to the people who have sacrificed their lives to save democracy in this country. They wanted to wipe out this type of draconian law from this country. I bow my head to those people.

As far as this Bill is concerned, I want to say, this is nothing, but a replica of the Terrorist and Disruptive Activities (Prevention) Act, except for one or two things. It is just like removing one or two things from the camel's back. As far as the provisions of this Bill are concerned, they are more or less the same. This Criminal Law Amendment Bill, 1995 seeks to replace the ten year old Terrorist and Disruptive Activities (Prevention) Act. I want to say the TADA was a draconian Act. We did not accept it in principle. The saving grace of this Act was it was a time-bound one unlike the present Bill which is going to become a permanent law in our Statute Book. There is no need for this Bill to make it a perpetual one. I suggest that this Bill should be in operation for a three year time limit after which it may be reviewed according to the needs of the time.

Clauses 3 and 4 define terrorism and disruptive activities. These definitions are not precise, but they are nebulous and capable of misuse. Why I had used the word nebulous because the Government has indicated in clause 3, "any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of or injuries to any person... disruption of any supplies

or services essential to the life of the community." What does it mean? Suppose a trade union announces a hartal and before the hartal day, they convene a meeting to see that the hartal succeeds and if a knife is placed on the table, then, the police officials can say, "This is hazardous." They can put the trade union activists behind bars under this Bill. If some women carry broomsticks and oppose the sale of arrack by a shop in a particular area, then, broomsticks would be treated as "otherwise". Under these words "substances and otherwise" these women can be arrested and put behind bars. These words would pave the way for the police to arrest them. Mr. Vice-Chairman, don't you think that there are obnoxious provisions in this Bill?

The British people had exploited us economically. But here I see our Government is not only exploiting us economically, but culturally also they want to exploit us.

During the November, 1984 riots, 2000 people were killed. I want to know from the Government, how many people were punished for those riots? How many people were taken into custody? How many people were sent to gallows, for these killings? The Government could not take any action. They have arrested some 77,000 people throughout the country. The Government says that only police officers are going to take action against them. "We know how police officers are going to take action. I will give you one example. One IAS officer was arrested. He had given a confessional statement. That confessional statement had been corrected by an IPS officer. He had done without the consent of the IAS officer. I took a xerox copy of the confessional statement and handed over to the Home Minister. I hope he would recall this matter. This is the way the police officers in the rank of DGP and IG are functioning. Now, the Government is talking of involvement of the DSP and the SP. Where will it go?

If the Government wants to minimise terrorism, they should bring land reforms and they should create employment opportunities. Out of every rupee that we spend, only 15 paise go to the village. That is what Rajiv Gandhi said. Instead of 15 paise, if at least 85 paise go to the village, I feel that terrorism and violence will automatically be subdued. Therefore, the mistake does not lie only with those who are involved in it. We must see now to tackle it politically. You have not done that. This Bill is not going to solve the problem.

Clauses 3 and 4 define 'terrorism and 'disruptive activity' respectively. These definitions are not precise but nebulous and capable of being misused. Clause 3 contains 15 independent offences. It is nothing but a re-arrangement of the offences against the State as enumerated in the Macanlay's Penal Code. This clause should be made precise so as to exclude trade union activities and political activities like a peaceful hartal.

Clause 4 deals with 'disruptive activity'. It also enumerates several independent offences. And it is a re-statement of the provisions dealing with public tranquility'. In this clause, they have included the words 'propresies, predicts', 'pronounces', etc. also. Even astrologers come under this. We know that some politicians are going to Kancheepuram to meet some godman. In case the godman says something, he will also come within the purview of 'terrorist'. Who has to take action?

As far as judges are concerned, even after superannuation, they can continue to hold the Special Court! How is it possible? In that case, we feel that it will give the 'blessed pick-up' to some select judges. Therefore, this provision should be deleted.

Clause 14 provides for keeping the identity and address of the witness a secret. If the identity of the witness is kept a secret, where is the chance for any cross-examination? Where there no

cross-examination, how can you have a fair trial? When there is no fair trial, how can the judgement be appropriate? What I feel is, the judgment is not going to be delivered, but is, more or less, going to be bought. That is why I say that this is a draconian law.

On the provision of remand to police custody, they say, "We are not giving 60 days now; we are giving only 30 days." As politicians, we know how the police can do all atrocities within even 15 days. Physically they can torture. Do you think 60 days' time is essential? Even five days are enough for them to torture. Police custody means torture. Nothing else. That is what we experience in India. When this is so, even if you give 30 days, people can be tortured. Sometimes, what do the officers do after torturing innocent people? They say, "If you go and reveal this outside, your family will be brought and before your eyes, they will be tortured family including ladies." This is the threat you get from the officers. Therefore, I feel, as far as remand to police custody is concerned, this is an eye-wash. The number of days are reduced, but the effect of the law will stand as it is.

On Review Committee, views are expressed that a Review Committee should be there. I would like to ask this. What is the Government going to do for people who have already languished in jail without any cause? The Government itself has accepted that thousands of cases have been cancelled. That means hundreds of officers have misbehaved. They have misused the provisions. What action are you going to take against them? Even if any person is convicted of the offence of giving false evidence, he has to go to jail for five years. But in the case of its officers, the Government is so generous. They will suffer imprisonment only for one year. Do you think officers will co-operate in an inquiry against a colleague? No. None of them will be affected. But innocent people will be affected.

I want to quote "The Hindu" of 21st May. It says, "The DMK President Mr. M. Karunanidhi (Dr. Kalaignar), today lambasted the Tamil Nadu Government for attempting to foist a case against the Janata Party President, Dr. Subramanian Swamy, and arrest him on the basis of an affidavit filed by a TADA accused in the Designated Court.

The accused himself in his sworn affidavit has disowned any link with the alleged Ammapet bomb blast case and said a case had been foisted on him. If the Government believed the version of the accused that he had stayed in Dr. Swamy's residence in Delhi leading to an all-out cry for the arrest of the Janata Party President, should not the same Government believe the charge of the accused that he had been framed in the blast case?

There were reports that the Dravida Kazhagam legal wing Secretary, Mr. S. Doraisami, was going to appear on behalf of the accused. "If re (Mr. Doraisami) accepts the version of the accused that he was not guilty and that the bomb blast case was foisted on him, how will the allegation that the accused had stayed with Dr. Swamy stand?" asked Dr. Kalaignar.

Behind the Government's desperation to somehow nab Dr. Swamy lay the Chief Minister Ms. Jayalalitha's vindictiveness to wreak vengeance against him for having succeeded in obtaining Governor's sanction for prosecuting her on charges of 'corruption and criminal misconduct.'

SHRI G. SWAMINATHAN (Tamil Nadu): Sir, we are not discussing Subramanian Swamy.

SHRI S. VIDUTHALAI VIRUMBHI: It happened recently. You ask Mr. Chidambaram. When he landed at Tiruchi, he was going to be assaulted. His car was attacked. (Interruptions) Yes this has happened.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Virumbbi, you cannot read out the whole thing.

SHRI S. VIDUTHALAI VIRUMBBI: "When Dr. Kalaignar was addressing a public meeting in Mylapore to formalise the merger of Thayaga Marumalrechi Kazhagam led by Mr. T. Rajendar with the DMK.

He assailed those who found fault with him for defending Dr. Swamy. The DMK had always vehemently opposed the TADA Act and did not fail to criticise the Government when it arrested the former Minister Mrs. Subbulakshmi Jagadeesaa. If the DMK went in support of Dr. Swamy it was because the party believed firmly in human rights and opposing the "dictatorial ways" of the Government in harassing all those whom it considered its detractors. It causes heart-burning. Even the late Shrimati Indira Gandhi was shot dead by her own security people. In the whole world nobody can have any compassion for this type of atrocity. She was shot dead by her own security men. How does anybody know that his own security man is going to shoot her? We are public men. So many people are coming and staying with us. So many people are taking photographs with us. In fact, we do not know who they are. If a particular fellow does something against the nation, then they say: "You are harassing them. That is why I say this Bill is obnoxious and contains obnoxious provisions. Secondly, still there is a chance to misuse the provisions of this Bill. It was misused, it is being misused and it is going to be misused. This is my second point. Therefore, I want to say, that the Government should repeal the TADA first. Secondly the Government should withdraw this Bill. If you want to have any provision, there are so many laws already existing in the Statute Book. If you want to strengthen the Act so that the unity and integrity of this country is saved in that case you can rely upon what is already available. But don't impose it like this. It is not going to strengthen the democracy in this country.

When the people are affected by this type of State terrorism, they may come to the streets and fight against that. Therefore, this type of law is going to increase terrorism, it is going to increase violence. It is not going to minimise violence and it is not going to benefit them in any way.

Therefore, on behalf of the DMK party to which I belong, I strongly oppose this Bill and I request the Government to see to it that it is withdrawn. If it is not withdrawn, then it is going to be a permanent stigma. It is a social stigma that is going to be there. I hope the hon. Home Minister will consider that such a Bill is not there in the Statute Book in his tenure. With these words, I conclude. Thank you.

5 p.m.

SHRI RAM JETHMALANI: Mr. Vice-Chairman, I am obliged to you for giving me this opportunity to express my views on this piece of legislation. I must state that I am opposing this measure on the ground that the underlying philosophy of this measure is bad, I am opposing it on the ground of the manner in which it is being hustled and passed and I am opposing it on the ground that the Bill is not so obnoxious in what it does, but it is more obnoxious in what it does not do. And it is the last part which I propose to deal with first.

Sir, it is gratifying that a move for the expiry of TADA or the repeal of TADA has come from the Treasury Bench themselves. I am obliged to them and I appreciate their sensitivity to public opinion. They have taken note of the World-wide condemnation of TADA. It has been condemned by students, by professors in universities and campuses. It has been condemned in seminars by social workers, by jurists, by journalists of all kinds, and those who matter in society have also condemned it and I have not seen any sensible public opinion expressed in favour of TADA, except, of course, the opinion which emanates from the Home

Ministry and which is recorded in the Report which has been submitted to this House by 2.30 today.

Sir, why is it that you allow this TADA to expire? The Home Minister told us that we passed this in 1985. 1985 was a very crucial time in the history of this country. A most despicable crime had taken place. Most despicable crimes had taken place thereafter consequence of the initial crime, and Sir, the atmosphere was such that we had problems in Punjab, we had problems in Kashmir and, therefore, the intellectuals in this country saw the evils of this law, and, in spite of perception of this evil, we kept quiet in view of the fact that it was an extraordinary situation they were dealing with. But the Home Minister told us today—and I am surprised that the Home Minister does not understand the logic of his own facts which we gave us—that from 1985, ever since this statute was passed, terrorism has not decreased; terrorism has increase in volume and in the extent of its operations. It has increased in the most horrid nature of the crimes that are now being committed. After all, the great Prime Minister of this country who originated this law, himself became ultimately a victim of this law after a few years. He became a victim of the acts of terrorism. So, the law is thoroughly useless. The bomb blasts in Bombay took place even after the TADA had remained in existence for a period of at least six or seven years. This shows that something is wrong with your remedy. This shows that the crime that you are dealing with is not susceptible of being dealt with by these methods. I wish there were some educated people to advise the Home Minister, educated people who are not formally educated in the sense of being graduates or law graduates or practising lawyers, but some persons who had some intimate knowledge of criminology, some persons who had knowledge of the theory of legislation and the theory of penal legislation at that, they would have realised that terrorism is one of those rare and peculiar offences which does not lend itself to treatment by law, to treatment by more-law

and to treatment by more and more strict law. Why doesn't the Home Minister realise that if the law was not necessary to curb terrorism—and terrorism goes on increasing from 1985—logically he should now tighten the TADA, rather than relax it. But he does not understand his own logic. I regret to say that. The trouble is that the Government is not concerned with crime, the Government is not concerned with terrorism, but the Government wants to stand on two stools—(a) under bureaucratic pressure, they want to retain power in their hands, power to deal with those who are inconvenient people in this country. They want, and the bureaucracy advising them wants, to retain this method of aggrandisement. Mr. Ahluwalia is a friend for whose eloquence and for whose intellectual gifts I have profound respect; but I am waiting for the day, and I have been waiting for years and years now, when he uses his talents not for the purpose of supporting the questionable actions of his party but for lending some support to the arguments of the Opposition. Does he not know that every SHO. distinguished exceptions to the contrary apart, in the State of Punjab, where you have this draconian law, has practically become a millionaire? They have vested interest in making money by the misuse of this law. How do you expect these officers, to whom this is a method of enrichment, to advise the Home Ministry that it should repeal the law? They will not do that. The Home Minister and his other advisers at a higher level must rise to the highest principles of understanding before they can do something sensible

As I pointed out, you want to stand on two stools. The second stool on which you stand is not only to retain the power, to retain the methods of aggrandisement, but also to create a method of deception. You know that you have lost elections as a result of this TADA. You know, and you know perfectly well, that you have to go back to the electorate very soon. If you think that you are doing the right thing today, if you think that this is

the right response to the disastrous reverses, which you have suffered at the hands of the electorate, please don't pass this law today. Wait, Go back to the electorate and see what happens to you in the country. If you go back to the electorate with this law, I predict that you will get out of power much sooner than you imagine. The people will not forgive you for this deception. Your MPs from the Congress—Mr. Murlī Deora from Bombay, my friend, Mr. Sunil Dutt from Bombay, and other Members of Parliament belonging to the ruling party, who do not wish to be identified but would like to remain anonymous—they are the persons who today say that TADA must go. But they do not have the courage to openly say so. There are two persons, who have openly said so, at least the Press says so, my friends, Mr. Jaffer Sharief and Mr. Ghulam Nabi Azad. Mr. Jaffer Sharief is supposed to have said at a meeting somewhere in the South that अगर टाडा को नहीं उड़ायेगे तो हम इस सरकार को उड़ा देंगे।

This is the expression which he has used. But both of them are my friends. I know them very well. And I also know that for the last 30 years no Congress Minister has ever resigned on a question of principle. So, it is most unlikely that they are going to resign. I don't want them to resign. They are good, decent people. Let them continue. Don't resign for the sake of an object which is not attainable. The Home Secretary has given a Press interview. I am not going into the propriety of that interview. These days everybody is going outside his fixed domain. The Home Secretary spoke to the Press and he said, "We have now made amendments. We are going to make amendments to the TADA. The obnoxious features of TADA have been removed and now there is no justification for throwing out the baby with the bathwater." This is a very felicitous expression which he has used. But my thesis and submission to this august House is that there is no baby, there is no bathwater. It is some filthy, stinking stuff. The earlier you get rid of it, the better. It contains

germs of disease and those germs will ultimately swallow you up. The Opposition will thrive, but will go down and you will be the next victim of this disease. Wait till 1996 elections and you will see the results of this. You have made promises to the whole country including the minorities, particularly to the minorities, "Yes, we are conscious of the injustice. We feel that injustice has taken place." Even Mr. Ahluwalia, who used this, is now trying to say that the law enforcement authorities are to blame. Nobody suggested that the Home Minister is misusing the TADA. Why put wrong arguments in our mouth? We have never said that. It is the law enforcement agencies which are misusing this law. But you have recognised injustice. Haven't you? Haven't you gone round and told the people of this country since last January, for the last five months, "Yes, TADA has produced voluminous injustice and we want to do something about the injustice? What injustice were you talking of? You were talking of the injustice which had taken place to the people in flesh and blood, who today are rotting in custody, who for five years and ten years have not been able to get bail in spite of the fact that they are innocent. You have created a law of which any decent person should be ashamed. A Judge is not supposed to release a person on bail even if there is no evidence against him because in addition to that the Judge must certify that he is not likely to commit an offence, if he is released. There may be no evidence at all. But because the Judge cannot certify his future conduct, he must be refused bail. So, every Judge is supposed to be first an astrologer in this country. He must find out if he releases a man, whether that man will commit an offence. How can a Judge certify it? No Judge, even if he wants to certify, will be willing to certify it. Who wants to take that risk? Having created this shameless law, you are seeing to it that hundreds and thousands of innocent people are now waiting for justice. For the last six months, you have been misguiding them and telling them that you are

going to do justice. If you don't make the new law applicable to those victims of injustice who have suffered for years and years, I warn you that there is an inexorable moral law and you will be the victim of that moral law and that moral law is going to eat you up. This instrument of deception will not be tolerated by the people of this country, will not be tolerated by intellectuals. Don't think that the poor people of this country can be misguided for all times. The poor people have now become intelligent. They have voted right on every occasion when the situation has demanded it. I am sure that you are digging your own grave. In your interest I am telling you that if you want to take credit for having shown some sensitiveness to injustice and this widespread injustice which TADA has perpetrated, at least, make the TADA applicable to those who are languishing in custody and who are suffering from the effects of TADA for whom there is no light at the end of the tunnel, whose lives have been ruined, whose family life has been disrupted and destroyed. I don't want to take names. I have some experience of the working of this law. I know the kind of innocent people who are today languishing. Their curses alone will create a moral force who is going to be destructive of the polity which we wish to sustain.

Unfortunately, the Home Minister says that TADA was approved by the Supreme Court. The Supreme Court does not approve TADA. The Supreme Court does not approve the policy of law. The Supreme Court does not tell you whether it is a good law or a bad law. It only tells you that technically it is in consonance with the provisions of the Constitution. The Supreme Court told it two years ago. The two Judges went out of their way and said, "This is a provision with which our conscience will not reconcile itself." The two Judges told you that admissions and confessions to the police you have made admissible. Why did not you react to this advice? Why did not you repeal, at least, that provision which makes confessions admis-

sible? Why did not you do this two years ago? The trouble is that you are worried about the Constitutional realities. You have no concern whatsoever with the eternal principles of liberty. You are only concerned with the electoral results. People have defeated you in the last two or three elections. Now, you are reacting to it. You are reacting to it not with a clear conscience but you are reacting to it as a new instrument of fraud which you are creating—that you have repealed the law. The law is not repealed. My friend just said that it will continue to disturb our Statute Book for the next 50 years because your prosecutions are not going to end. Sir, the first such principle of criminal justice is that the punishment which has to be meted out for a crime must be swift, must be prominent and must be adequate. See the bomb blast cast in Bombay. So many people lost their lives. Doubtless, it is a very serious offence. I would have expected, if punishment has any purpose to serve that within one year or two years you should have convicted a principal accused and hanged him on a public road. But the case has not even started. The Judge is still hearing arguments on framing of charges. The case will not start. Now another long series of litigation will start, running to the Supreme Court. Please tell me: How will you ever justify before any court of law that a man who was arrested on the 23rd May will be tried by the TADA and a man who is arrested on the 24th May will be tried by the new provisions? How will you sustain the rationale of this distinction which you are drawing? It is true that you are not bound to make every law retrospective in effect. No. But then you must be able to sustain on some valid principle, the reason for not making the law applicable to all and the reason for passing a future legislation. Sir, I am sorry to say it. I do not wish to attack those who have no methods of defence. But you have in your report, which was given to us this afternoon, given the opinion of the Home Secretary. The Home Secretary gives you an opinion

that criminal laws are always prospective. Where did this Home Secretary receive his legal education? I want to know. It is a matter for the Parliament to decide whether a law will have retrospective effect or not. All criminal laws are always prospective and they do not come into operation retrospective, this is a new theory which I have heard from the Home Secretary. Please ask this Home Secretary not to make Press statements because the Press statements do you no credit. They, on the contrary, bring more disrepute to the Government. Sir, the Supreme Court has sustained this law, because the Supreme Court was told by an affidavit and details were given about infiltration from across the border, internal rebellion and mutiny, disloyalty of officers — Sir the Judges are also human. The judges said 'Yes, maybe, this is not because of public order.' We argued that this is a case at the most of vicious disturbance of public order. But the Government persuaded the judge to hold that this is beyond vicious disturbance of public order. It is a case which relates to the defence of India. So, in pith and substance, this legislation has been sustained by the Supreme Court because the Supreme Court was told, "We alone know the secret facts which we cannot disclose to you and this legislation is intended to deal with a threat to the defence of India." Now, let us assume that this is a legislation for the defence of India. If it is a defence of India legislation, the threat to the defence of India must be reflected in every section of this law. What about section 3? Regarding section 3, your Home Secretary has told the Press that section 3 requires to be amended. In spite of your Home Secretary's advice, in spite of the amendments made by the Members of your own party, in spite of the amendments which I have made, in spite of the article which are appearing from day to day in the Press, you have not chosen to take away that obnoxious phraseology from section 3. Every small disturbance between one Member of the community and another to alienate a section of the people has been retained in section 3. I am glad that my distinguished Friend, Mr. Mamta Banerjee, has moved an

amendment in the other House which is now fortunately before us. At least, please apply your mind to the sensible advice you are receiving from the Members of your own party and amend this law accordingly. Section 3 does not, in its present form, stand the test. I have suggested, by an amendment, that you must introduce the words 'not only overawe the Government' but you must also add 'to overthrow the Government'. You must also put in words which say, 'or to weaken or jeopardise the defence of India against external aggression or armed rebellion or mutiny inside India.' But the trouble is that nothing is sensible. How can anything sensible have effect if, in two days you ask the Committee to produce a report on a measure which has been in operation from 1985? The Committee sits for two days and produce a report. I do not wish to say anything. My friend, Mr. Sahu, who is the Chairman of the Committee is a very very dear friend of mine. I have great love and affection for him. A report of a sub-committee is meant to serve one great purpose. That purpose is that the busy Members of this House should have a well-argued brief of both sides and they must, without wasting too much time, be able to form an intelligent preference between the views that are adumbrated in the report. Sir, the Report merely says this: "We sat on such and such date. Somebody said that the TADA was not necessary and another said that the TADA was necessary. In the light of these submissions, we recommend..." Sir, I have never seen a more worthless Report... (Interruptions)...

SHRI RAJNI RANJAN SAHU (Bihar): I have sent the report for the consideration of the House and you are considering it. You read the last paragraph.

SHRI RAM JETHMALANI: Let us read the last paragraph... (Interruptions)...

Sir, in fairness to Mr. Sahu, that is the paragraph which requires to be read. "In the light of the suggestions, views, observations and amendments moved by the Members, the Committee adopts the report..."

SHRI RAJNI RANJAN SAHU:
And...?

SHRI RAM JETHMALANI: And sends the Bill for consideration of the House. This is what it is. (*Interruptions*)

SHRIMATI SARALA MAHESWARI:
You have not considered it and you want it to be considered by the House! (*Interruptions*)

SHRI RAM JETHMALANI: Sir, may I appeal even today, at the fag end of the day to the Home Minister that this is a matter of the greatest importance to our whole system of Constitutional law and our Constitutional principles. Do not hustle us, for God's sake. Let us apply our mind a little more. Talk to the Members of the Opposition. Talk to some people who know their job and receive their advice and tackle the problem of terrorism. Law is not the method of solving the problem. So much literature has appeared today on terrorism—from the country of Israel, America and from various countries which are the victims of terrorism. Who has read that literature? The trouble is that terrorism is not an ordinary crime. It is a crime which is serious enough. But there is a crime of waging war against the State. There is a crime of sedition in the Indian Penal Code. But the trouble with terrorism is that a terrorist is usually actuated by a motivation which, from his own subjective point of view, he considers a very desirable motivation. It is desirable either politically, or sometimes economically or sometimes both. But the worst of it is that he considers it desirable sometimes spiritually and even religiously. Now, it is this kind of motivation which makes the act of terrorism a dangerous act, because once you have

this motivation, no sanction of the law is going to operate upon that motivation which is actuating you all along and that is why you find that from 1985, terrorism increases. But your law continues to disfigure our Statute Book, it continues to make nonsense of our civilised jurisprudence and it continues to make nonsense of the people of this country because an incompetent politician always tells the people, "Don't worry. I have passed a very strict law now". A strict law is not the solution. And, who are you? Are you not trying to put dust in our eyes when you tell us that you have created safeguards? One safeguard they have created is that the victim of a police officer can prosecute the police officer and get him convicted and get him sentenced to jail for one year. Sir, it is a great gift that Mr. Chavan has conferred upon the House and upon the victims of this law. There are ten sections in the Indian Penal Code which already penalise this offence. This is nothing new. There are sections 211, 182 and so on—at least half-a-dozen of sections in the IPC—under which the police officer, who corruptly uses his powers, can be punished. Tell me, how many police officers have gone to jail. The TADA accused must first secure his liberty. Either he will die in custody, because most of the people die, or if he is finally acquitted, the man will himself think of leaving this world rather than engaging himself in a new fight with the police force of this country, to be booked under the TADA all over again. So, this is nothing.

You talk of a review committee. The review committee is purely an executive phenomenon.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. Jethmalani, I don't want to disturb you. But you have to be concerned about time also.

SHRI RAM JETHMALANI: I will not take more than three or four minutes.

Sir, the Supreme Court suggested a review committee. But, surely, the Home Minister knows as to what has happened to the review committee. The review committee made some recommendations for some cases to be withdrawn and the Court very rightly asked, "Who is this review committee? Who is this review committee that they are asking us to dispose of the cases in accordance with the wishes of an executive committee created by the executive?" It is almost a contempt of Court to go to the court and say, "Sir, you are proceeding with this prosecution, you have framed a charge after judicial consideration, but we in the secretariat in our meeting decided that this man is innocent. Now, let him go." It is contempt of court, if you go. And, today, we are fighting the matter in the Supreme Court and the Supreme Court has said, "Doesn't matter. Now we understand that the magistrate cannot do anything. So, let us see what we can do under our extraordinary powers under article 142 of the Constitution." So, the Supreme Court now, in good measure, in July or August, is going to decide this matter as to whether justice could be done to those about whom the review committee have already said that these people are innocent and they should be let off. Sir, the review committee has no statutory basis and this is no consolation to anybody.

Sir, section 4 is a disgusting piece of legislation. It is a restriction on free speech. And, I said in my comments on the amendments which I sent to the Committee, that if a person says today, if an intellectual in this country says, "We have no right to retain Kashmir. Let us have plebiscite", he commits an offence. He commits an offence. If a person says that the actual line of control now should become the international border, then you are seceding consenting to the secession of the POK which is technically ours, you commit an offence under section 4 of the

TADA. Shrimati Indira Gandhi should have been convicted under that section. That is the kind of law which they are making. Sir, they just don't realise what they are doing because there are no sufficiently educated persons to advise this Government. There are realities of the Indian Constitution that free speech has to be tolerated even if it is distasteful, even if it is obnoxious. You cannot control free speech and particularly speech on political occasions. Section 4 is totally unnecessary and must be scrapped and scrapped for all times.

Sir, if you cannot make the new legislation retrospective, if you cannot make the whole of it retrospective, at least, make section 5 retrospective. Do you know the history of section 5? The history of section 5 is that section 5 of the TADA was construed by three High Courts, namely, the Bombay, the Gujarat and the Punjab High Courts. They had construed it in the sense that mere possession under section 5 is not an offence. It must be connected with some terrorist activity. In the Supreme Court the matter was fully argued. Four judges expressed 'No opinion', one Judge, Mr. Justice Sahai, said "I accept the opinion of the three High Courts and this is the correct view that you cannot invoke section 5 unless it has connections with the terrorist activity." Sir, unfortunately, I don't want to go into what happened when the second Sanjay Dutt case was being heard in the Supreme Court. At that time, Sir, some very brilliant lawyers had taken over and the matter was argued and Mr. Justice Sahai's view and the view of the three High Courts was overruled by the Supreme Court in a somewhat badly argued case and I am not giving out any secrets, but even the Supreme Court today is not pleased with the judgment because some Supreme Court judges did say that this indictment itself is a pure *per incuriam*. But, Sir, now you are restoring—I

am grateful to you that you are restoring—the view of Mr. Justice Sahai you are restoring the view of those three distinguished High Courts. But that view was expressed by section 5 of the TADA. At least give the benefit of that law to them because it is at their instance and with their intellectual and juristic fight that this interpretation was secured. If you prefer that interpretation, at least, see to it that those who are languishing in jails and some of them are persons who are connected with your political party—I do not want to name them—but persons who are totally innocent and they are there because they have to prove their defence after the defence evidence is laid. That day will come after they are dead and gone because the defence will come after about six or seven years in the history of that court, I can tell you.

Then, Sir, they have got one section. Sir, I will take two minutes more. They have section 21 in which they are preserving some presumptions. Some presumptions were declared *ultra vires* by the Supreme Court, but two Mr. Chavan seems to be very fond of them. One is, if today there is a bomb explosion, say in the corridor of this Parliament House, any person whose fingerprints are found—my fingerprints will be there, his fingerprints will be there, your fingerprints will be there, the fingerprints of all these Ministers and the Home Minister himself will be there—we are all guilty under the TADA, until we prove to the contrary, and Sir, we will require at least five or six years to prove it.

Sir, I don't know whether the Home Minister applies his mind and does his home work when he passes such kind of legislation—you come to the court, you come to this House and insult our intelligence by telling us that it has been recommended by our Home Ministry and our bureaucracy. The Home Ministry, with respect, consists of morons if they have advised you to create these kinds of

presumptions under section 21 of the Act. What is the second presumption? They don't even bother about the words of the section. If a terrorist act takes place in Calcutta in which, say, a revolver is used, not used not proved to be used, suspected to be, somebody has reason to believe that a revolver was used in the Calcutta bomb blast case if a similar type of revolver - 32 - all are .32 bore revolver is found in the possession of a man, the presumption is that he has committed an offence in Calcutta. Sir, this is not jurisprudence. Instead of all these, you could have made a simple law that whoever Mr. Chavan considers to be guilty shall be presumed to be guilty until he proves to the contrary.

SHRI V. NARAYANASAMY (Pandicherry): Vice-Chairman, Sir, after hearing Mr. Jethmalani, who pleaded TADA cases in the Supreme Court, and who has used the same arguments in this House also, I would like to support the Bill that has been moved by the Home Minister.

There are terrorist activities and disruptive activities going on in this country. There are also a number of legislations which have been giving remedy to the affected people. I would like to say that this particular piece of legislation which is a special enactment, was there in the Statute Book, was challenged several times by various jurists and it has been upheld by the Supreme Court. The provisions have also been upheld by the Supreme Court on several occasions.

TADA was used by various State Governments for the purpose of protecting the interests of the innocent people who are affected by terrorist activities and also disruptive activities going on in this country. Unfortunately, Sir, it has also been accepted by the jurists and by the human rights activists in the country, that some of the State Governments have been misusing the provisions to

take political revenge on their political opponents. In this House also we find, right from 1988-89, the Members of Parliament cutting across party lines, have raised the issue that the TADA has been misused enormously in many of the States, irrespective of the party in power, whether it is the Congress-ruled States or the Opposition-ruled States. Whenever it suits the Chief Minister, the Ministers and the respective administration, the TADA was misused. There was also a general impression that it had been used against the minorities. Therefore, the Government has taken a right decision to repeal it for the purpose of assuaging the wounded feelings of that particular community. Now, there should be an enactment for the purpose of protecting the innocent people who are affected by the terrorist activities in this country. It is a known fact—whether it is Assam, Punjab or Jammu and Kashmir—how the innocent people are being killed by the terrorists, how the anti-national slogans are being raised by terrorists, groups and how some declarations have been made, how the country's people are being kidnapped and taken outside the country's border, given training and brought back into India for the purpose of waging a war against this country. There should be some specific provisions to punish those people. Therefore, this law has been brought. Wholesale criticism of the Act, whether it has been properly or rightly implemented by some of the State Governments or not, and condemning this Act are not proper. I would like to say that in this Criminal Law Amendment Bill, safeguards have been given. Number one is that, as far as the bail provisions are concerned, the statutory period for the purpose of getting bail has been reduced. Secondly, the police officer who is misusing the provisions to punish innocent people, when it came to the knowledge of the Government, specific provisions have been made to the

effect that an officer not less than the Deputy Superintendent of Police has to investigate into the offences. Sir, liberty has been given to the individual. Therefore, the FIR is filed, the investigation goes on and the trial takes place. Thereafter, the punishment is being given if they are found guilty. Then how can you say that it is a draconian law? So, one should have a sense of proportion and that liberty is given to the people concerned to come and defend their cases and when the contrary is found and if those people are found to be guilty, they are being punished. Therefore, Sir, that safeguard has been given for the purpose of those people who defend themselves in the courts, in the specified courts. Sir, there is another provision which clearly says and the hon. Minister has also said, that there should be a review and I feel the hon. Minister should also consider this because various queries have been made by the Members because there is an observation by the Supreme Court which clearly says that the Act has to be reviewed after three years or four years so that there will be a provision for safeguard to the people and also to get the public opinion in the Parliamentary forum and also from outside whether these provisions are being misused as it has been charged in the earlier period. This, I think, the Home Minister will consider because the observation made by the Supreme Court to this effect is there. Sir, there is a clear indication which I find from this provision, which has also been according to the Standing Committee Report, and it says that a proper provision which is already there is that the person who has already been punished, is to approach the Supreme Court only. But, now he can approach the High Court for getting remedy. Therefore, Sir, for approaching the High Court also to ventilate the grievances, even if the judgment was considered to be wrong, this provi-

sion has been made so that the personal liberty is protected by the judicial forum. Therefore, the provision has been brought for the purpose of removing the feeling in the minds of the people, especially the minorities, and also the innocent people, who have been charged. According to the new Criminal Law (Amendment) Bill, these doubts are being cleared and the protection has been given to the innocent people to defend themselves, if these people are wrongly charged by the police officer concerned. Sir, I have been hearing the argument of Shrimati Sushma Swaraj. She has been telling that if it is affecting the sovereignty and integrity of this country then her party would support it, as far as part four is concerned. I would like to remind the hon. Member that in clause 4 sub-section 2 says, "For the purpose of sub-section one, disruptive activities mean any act or any speech or through any other media or anything or in any other manner whatsoever, which questions, disrupts or intends to disrupt, whether directly or indirectly, the sovereignty and integrity of India..." Sir, there is a provision in the Act which itself defines and which clearly says, "If the sovereignty and integrity of this country is directly or indirectly questioned or being disrupted or intended to be disrupted, then this provision is applicable." Therefore, Sir, in this Act the Home Minister has clearly mentioned-I will refer to it-"There should be a special law for the purpose of curbing terrorism in the various parts of this country, and disruptive activities which are going on-aided and assisted by Pakistan for declaring some of our territory as occupied and some of the people have been trained to wage war against our country." So, Sir, this piece of legislation should be there in the Statute Book so that the people who are indulging in disruptive activities or who are involved in the terrorist activities can be tracked down. Sir, some of the hon. Members from the

other side have forwarded an argument that this is a draconian law and it has been widely misused and therefore, it should go. Sir, there are umpteen legislations in this country. And the persons who are implementing them at the State level or at the district level, when they misuse it, how can the public say or even the political leadership say that all the legislations have to be scrapped? Sir, the law of the land has to prevail and innocent people should be protected. And the persons who have really committed the offence have to be punished. For that, the State machinery has to function. But to my surprise I find that this is a draconian law and it should be removed. I find, Sir, that they have been arguing as if the TADA is enforced in this country though it has been repealed. The argument comes from the other side that the Criminal Amendment should not be there on the Statute Book, therefore, the terrorist activities can continue and the people who are involved in the disruptive activities are declaring war against this country. Such instances are continuing in this country.

DR. BIPLAB DASGUPTA: Sir, I want to make a point. Such a statement has not been made about terrorism. Nobody has said that action should not be taken against terrorism. Such statements have not been made by anybody in this House.

SHRI V. NARAYANASAMY: As far as terrorism is concerned they have been arguing that the term 'Terrorism' which has been defined in Section 3(1), has been loosely made. But, Sir, I would like to say that we cannot specifically pinpoint and say that this particular act alone is an act of terrorism. It has got a wider gamut. Terrorism is an act by which a person tries to injure or tries to create confusion, or tries to scare away people by using a gun and shooting at people. All those things cannot be brought under the definition. The definition should have a wider gamut

so that people who are involved in such offences can be trapped into it. Therefore, Sir, I am very glad that the hon. Member, Dr. Biplab Dasgupta, has accepted that we are not against terrorism, we are not against people, we are not against the provision, Clause 3(1). You said that it has to be further modified or even the provision should be specific. That is what you want. As far as the disruptive act is concerned, I think you don't have any objection to it. Sir, only a legislation is there and the time of implementation of the legislation...

DR. BIPLAB DASGUPTA: There is a confusion. If you ask for our view, it is already there in the amendment which you have given. We are saying that there is no need for having two kinds of definitions, one on terrorism and one on disruptive activities. Merge them into one one definition on terrorism and that definition is not the definition which is in Clause 3(1). we are completely changing the content of it. We want the definition to be specific in relation to the sovereignty of the country and the territorial integrity of the country. That is the point we are making.

SHRI V. NARAYANASAMY: Sir, it is a question of discussion. He want a "terrorism" and "disruptive act" should be combined into one definition. That is what he means. Sir, as far as my knowledge goes, terrorism is a different one which is confined to a particular area of activity. And as far as a disruptive act is concerned, it goes a little beyond terrorism. Therefore, you cannot have a combined definition for both the terms. That I would like to make it clear. They may have a different perception of it. Therefore, Sir, generally I would like to say that to curb terrorism in this country and also the disruptive activities which are going on in the border areas and also in the Southern parts of this country, by Naxalite movement and so on, I for one agree with Mr. Jaipal

Reddy that these are the areas where terrorism is going on, where we have to control them by a specific legislation, for which the legislation has been proved to be successful. In regard to misuse of the provisions of the Act, there was no provision earlier. A provision has been made now against misuse. This was the concern of many hon. Members.

Sir, I would say that, by and large, everybody agrees, in principle, that this piece of legislation should be there for the purpose of protecting the innocent people and punishing the people who are involved in terrorist and other disruptive activities.

As you know, this legislation has to be implemented by the State Governments. I would like to point out, in this connection, that many State Governments are using it sparingly. Some of the State Governments are using it for their political convenience. T.A.D.A. would go. It is now the duty of the hon. Home Minister, it is the duty of the Central Government, to see that this legislation which has been brought forward, when it is brought into force, when it is implemented, gives protection to the innocent people and the real culprits who are involved in these crimes are brought to book.

It has been stated by hon. Members from the other side that this legislation is draconian and it should not be there. I do not agree with them. They may have their own arguments. They may have their own grievances. But I would say that whatever provisions that have been brought forward are absolutely necessary. The Supreme Court's observations are also there. The Home Minister has made it very clear that review is also necessary. During the course of the implementation of the Act, if the Government finds that some modifications have to be made, some

amendments have to be made, definitely, the Government can approach the House for the approval of those amendments.

I would also suggest that the implementation of the Act should be monitored by the Central Government. I say this because I find that when the Central Government writes a letter—this is so, particularly, in the case of some States—the Chief Minister writes back to the Home Minister saying: 'You have no business to interfere in our implementation of the Act'. They say that this is a State problem. Therefore, the Central Government has to act cautiously. On the other hand, I find a peculiar thing happening. For the mistakes committed by the State Governments, the Centre is being blamed, but not the State Governments concerned which are implementing the Act. The strange thing is that when the State Governments misuse the law, the Centre is being blamed, the hon. Home Minister is being blamed. The State Governments which misuse the law, the State Governments which are not implementing the Act properly, are not being blamed by Parliament. This attitude should go. The State Governments should also have a sense of proportion to see that when this law comes into force, the real culprits are brought to book while, at the same time, the innocent people are not unnecessarily harassed and punished. I think everybody would agree with this.

Therefore, Sir, in conclusion, I would say that this legislation is a must and it should be implemented with right earnest so that the terrorists and other people who are indulging in disruptive activities are punished by nabbing them under this Act. Thank you.

SHRI G. SWAMINATHAN (Tamil Nadu): Mar. Vice-Chairman, Sir, during the last one month, there were

three meetings called by the hon. Home Minister. In one of the meetings, a general review was given. Certain statistics were given to us, the leaders of the Opposition, in that meeting. In another meeting, there was again a discussion and certain views were expressed by the various leaders. Thereafter, the leaders of the different parties were invited separately, as has been mentioned by my hon. friend. When I went there, I thought that many other leaders would be there in that meeting and that we were going to have a thorough discussion on the matter. But in that meeting, only a few of us were there. I took up the matter with the hon. Home Minister to find out whether the other leaders are attending. He said that the other leaders had already attended for which they were given separate time and everybody had given his views.

Sir, these were the only three meetings which were held by the Home Minister and there was no occasion for the Opposition leaders to go into the subject very deeply to arrive at a sort of consensus. The matter has been raised here by many. That is why some general views have been expressed in the House.

I find that a very strange argument has been given here. Now, we have told the Home Minister. We have placed our view, the view of our State Government. Our view was that T.A.D.A. should continue; of course, with some amendments. This was our view. An argument has been put forward here that T.A.D.A. has been there for the last ten years and more and, generally, terrorism has also been increasing in the country. This kind of an argument has been put forward by some hon. Members. It has been said that one of the reasons why terrorism has increased is because T.A.D.A. is there, and, therefore, it has to be removed. This is the argument which has been

given. This is a very strange argument. I would say that in spite of T.A.D.A. being there, in spite of the various Acts we have got against terrorism, terrorism is flourishing. Some hon. Members have said that it is only because of T.A.D.A. that terrorism is increasing. I am not able to accept this argument. My view is that in spite of the fact that we are taking rigorous action against so many people, there is more terrorism. They say that, had there been no Act like the TADA, there had been no other Act to contain, there would not have been more terrorism in the country. We cannot say like that. Because there are hospitals everywhere, people go to the hospitals and take medicines. In spite of the fact that so many people are going to the hospitals and taking medicines, more patients are coming. If you say that because medicines are being given and more patients are coming, the supply of medicines should be stopped. You cannot stop supplying medicines. In my view, this will not be a good argument.

A very important point that I want to stress is that everybody is now talking about human rights. We are concerned about human rights of the persons who have been arrested under the TADA. It is also very clear that many innocent persons have also been arrested and put behind bars. My hon. friend, Mr. Narayanasamy who is always capable of arguing a case, has also said that the State Governments had taken action on many matters and that they had told the Centre not to interfere with them. He asked: why do you blame the Central Government for the wrong actions taken by the State Governments? The only point is that thousands of people have been arrested. It is not a question of the States or the Centre. It is about the same party Government which is ruling at the Centre and in the States. It is the Congress Party in which Party States have

thousands of people been arrested? They are the Gujarat State and the Maharashtra State where thousands of people have been arrested. Innocent people have been arrested and jailed there under the TADA, not because they were terrorists but because they have been opposing the Government. So, the odium against the TADA has been brought. It has been said that the minorities have been affected. It is only because the Congress-ruled States have brought this problem to the Centre, and no other State has done so. Even in Tamil Nadu, a number of terrorists were there. We had to cope with the LTTE and others. We had arrested about 300 to 400 persons. Now there are only 150 prisoner. There are some Congress-ruled States where thousands of people have been arrested. Consequently, the people are against the very Act.

Another argument has also been raised here. The minorities, especially the Muslims, are feeling that the TADA has been misused against them. The Congress Party and all other parties are now going in for elections. Unless you repeal the law or allow the law to lapse, you cannot get votes. That is the reason why you are doing this. This is the argument. I don't know why you are doing this. You are allowing it to lapse. My point is that the Government should not have allowed the law to lapse. They should have brought in an amendment to see that the law is not used against innocent persons unnecessarily.

Sir, one problem that everybody is now forgetting is that we are arguing for the human rights of the people who have been affected, both about terrorists and innocent people who are behind bars. What about the innocent people who have been killed by terrorists during the last ten years? Within this period of ten years, hundreds of people have been killed everywhere. When the human rights organisation took up the matter

ter with our Home Minister and with Central Government, somehow, the European countries also complained to him, saying, "In your country human rights have been very much affected. People are being arrested and tortured in custody in Punjab, in Kashmir and everywhere else." This was taken up with the Home Minister. I think, the Home Minister rightly took up the matter again with them, saying that human rights are not only for terrorists but also needed for innocent people.

Terrorism is not only an Indian phenomenon but it is a world phenomenon. There are terrorists everywhere in the world. Then, there is a lot of difference between a terrorist and a freedom-fighter. A terrorist cannot be taken as a freedom-fighter. A freedom-fighter is one who attacks the Government. He tries to destabilise the Government, directly attacking the people who are in charge. But, a terrorist is a person who attacks innocent people everywhere. Innocent people are being killed for no purpose.

The terrorists are shooting indiscriminately at people travelling in planes or in buses or who are standing somewhere. Hundreds of innocent people have died. We have forgotten all those things now. There were hundreds of such cases in Punjab. The same thing is happening in Kashmir. The same thing happened in Tamil Nadu also. Many people who had nothing to do with them have been killed. The former Prime Minister, Rajiv Gandhi, when he was there, was killed by a terrorist. So, terrorism is something which has nothing to do with fighting for freedom. Terrorism has nothing to do with destabilisation of the Government directly. Terrorism is attacking innocent people. The Government should see that the human rights of innocent people also have to be guarded. That is why, the Government is bringing this law.

One more thing is that there are certain things that can be dealt with in a proper manner under the present Bill. But, then, ultimately we are not able to support the Criminal Law (Amendment) Bill also because of the reason that this has been brought in in a haphazard manner. There is a lot of confusion in the mind of the Government. The Report of the Standing Committee on the Bill has been given here and it has recommended certain things. Even its final recommendation has not been brought forth by way of an amendment and we have not been given adequate time to study this matter. The Government has also not come with a clear idea about what they are going to do and how they are going to remove all the abuses present in the earlier Act. So, I personally feel that we are not able to support the Criminal Law (Amendment) Bill. I join with my friends in saying that the definition has to be very clear, otherwise there will be misuse of the law. Even though the BJP and Marxist friends do not agree in this House on almost all issues, this is an issue on which both of them agree. I also agree with them that the definition has to be crystallised. Amendments given by the Leftist Members, Shrimati Sarala Maheshwari and Md. Salim and by the BJP Members, are almost the same. The amendment given by the Leftist Members says: "Whoever with intent to question or disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or intends to bring about or support any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union; and uses terror for achieving this aim by using bombs..." etc. The amendment given by the BJP Members says: "Whoever intends to question or disrupt, whether directly or indirectly the sovereignty and territorial integrity of India" and so on. The definition given by the Bill is: "Whoever in-

tends to overawe or overthrow the Government as by law established or to strike terror on the people or any section of the people or to alienate any section of the people or to adversely affect the harmony among different sections of the people, by any act or by using bombs etc..."

Ultimately when the definition is not very clear, then many people may be unnecessarily arrested by the State Government. Naturally this kind of a law which is very necessary for the country, where terrorists have to be contained, will be adversely affected and confusion will arise, if it is not properly defined. Therefore, I would request the hon Minister to take some more time to meet the leaders again and come to a consensus on the point of definition so that every section of the House is able to support it wholeheartedly.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Shri N. Giri Prasad.

SHRIMATI KAMLA SINHA: Sir, it is already 6 o'clock, How long are we to continue?

THE VICE-CHAIRMAN (SHRI MD. SALIM): There are speakers sitting here. Let them speak.

SHRIMATI KAMLA SINHA: The House must know till what time we are going to sit.

THE VICE-CHAIRMAN (SHRI MD. SALIM): The House has to decide it.

SHRIMATI KAMLA SINHA: What has been decided?

DR. BIPLAB DASGUPTA: For how long are we going to sit and when is the voting going to take place? I would suggest that we have had a good round of discussion, and let us have come more time to contemplate. We close the discussion at 6 o'clock and tomorrow we discuss it further. The Home Minister will also apply his mind on this.

SHRIMATI KAMLA SINHA: And let the voting take place tomorrow.

THE VICE-CHAIRMAN (SHRI MD. SALIM): He has to speak for four minutes. Let him speak. Yes, Mr. Giri Prasad.

SHRIMATI KAMLA SINHA: So, what is the decision?

THE VICE-CHAIRMAN (SHRI MD. SALIM): I will take the sense of the House.

SHRI N. GIRI PRASAD (Andhra Pradesh): Sir, there is a general consensus in the country, in the House and among the people that there is a threat from terrorist forces in our country. Kashmir is subjected to terrorism. Punjab was also subjected to it for some time. It has got reduced now. There has been terrorism in the North-Eastern States and in some other areas also. There are determined forces which want to disrupt the unity of the country either for secessionist purposes or for other ulterior motives. Of course, you may not be able to deal with these forces in normal circumstances with the ordinary laws, which are applied to other groups of people who violate the law.

6 P.M.

So, there is an understanding that there should be a Bill to curb these activities. We have to take into consideration how best this Bill should be framed. The best course for us is to draw upon the experience which we have got on the TADA for the last ten years. This so-called TADA was in force for the last ten years. It was applied. It was used, rather misused. Now, the whole experience is there. What has happened with the imposition or applying this TADA on some occasions for legitimate purposes? and on some other occasion for illegitimate purposes? both at the political level and at the administrative level, the ruling party has paid its price es-

pecially in the two States, Maharashtra and Gujarat, where the TADA had been misused. This had cost the ruling very much. But they have not drawn any proper lesson from this.

(Interruptions)...Of course, we can do it but not at the cost of the country. That is why I request the hon. Minister and the government to have some introspection into this aspect. What was the Government using the TADA for the last ten years? Why did the Government fail in four or five States? They must have gained some results in Punjab. The other day I was there. There also it had been misused though terrorist forces were contained. Some of them were liquidated. Some normalcy is being maintained. To that extent, the credit should go to the administration and to the Central Government which provided help. But, at the same time, people were also discontent with the administration. They were not happy with the activities of the administrative forces or the police forces because they did not consider the human sufferings. They have extracted money. They subjected a good number of people to repression. All these things were there. That is why I say the Government has not learnt any lesson. Instead of reviewing this whole thing, the Government is hustling through this Bill in this House on the eve of the TADA getting lapsed. The Government is also not clear whether this Bill should be prospective or retrospective. Our hon. Home Minister said a few minutes back that the old cases would be continued under the TADA which would lapse tomorrow. How can it happen? That means there are going to be two Acts, one for future cases and the other for the past cases. Is it a law? I will call it a law of the jungle. There cannot be two yardsticks. The TADA was not withdrawn, but it will get lapsed tomorrow. Instead of looking at it from a legal angle or a technical angle, the Government should look at it from a political angle. If some injustice had

been done to the victims, it should be reviewed and they should be set free or some remedy should be found.

Mr. Vice-Chairman, Sir, I would like to point out two aspects in this Bill. There is no effort on the part of the Government to bring about a consensus. So, the talks by the Home Minister with the Opposition leaders were just perfunctory. They were not serious. There was no attempt to understand each other as to what were the areas of agreement or disagreement and how to bridge them. There was no attempt. 'Just we want to bring this legislation, you please think over it.' Similarly, the Parliamentary Standing Committee on Home Affairs was subjected to the same position. They were given hardly one or two days. And they have to produce a report. They produce some report with all their opinions, suggestions, etc. Is this the way? They called the Chief Ministers also. I would like to ask the Government whether this is the way to achieve a political consensus on such a major issue like this. This costs not only the people, the political parties, but the whole polity. This is not the way to hustle matters. Where there can be a proper consensus the Government is unnecessarily dividing. If it is serious about bringing about a consensus, still it can find out ways. They can talk to the political parties; they can talk to the Chief Ministers; they can talk to other people also; they can have a proper discussion in the House also; they can have a discussion in the Standing Committee also, with an open mind. Where is the political party, partisan interest here? Why should the Congress Members support this Bill and the opposition Members oppose this Bill? There is no need. Unless the Government wants to take a partisans and in this matter there is no need to have a partisan or dividing approach. There can be an effort to have a consensus on this matter.

Even if this Bill is passed by a majority or whatever it is, not going to help the Government very much. The TADA did not help them either to contain terrorism or to improve the prospects of the ruling party. In both the ways, it was a failure. Even this legislation, I think, will meet with the same fate. That is why I request the Government. Even now, it is not too late. Even if there is no law from tomorrow, nothing will happen. The old law, according to the Home Minister, is there and it will look after its own things. About the future at least, there will be some time to think over and bring about a consensus.

Broadly, there are two aspects to this Bill. There is a provision to contain terrorism. Mostly, it is dealt with under clause 3. Clause 4 talks about disruptive activities. What is a disruptive activity? How to define it? Who will define it? It is very difficult. It can be used and misused. At least in the case of terrorism, there may be some hard physical evidence of using bombs, etc. But here, even uttering a word may be disruptive. Our Government, the earlier Government under Pandit Nehru, referred this Kashmir issue to the UNO and suggested a referendum or a plebiscite. We ourselves proposed. Under this provision, you cannot talk about that! As Mr. Jethmalani has said, you cannot talk anything even on the basis of the Simla Agreement as it goes against the spirit of this Bill. Our people, our leaders and political parties are talking to some leaders in Kashmir who do not subscribe to the idea of abiding by the Constitution. Some of those people want Azad Kashmir and some of them want to join Pakistan. Of course, the people who want to join Pakistan may not be amenable for us. But our Government is trying with other people. They, the Huriyat leaders, have come here. Shabbir

Shah and other gentlemen came here. Many political parties held talks with them. Their idea is to have an independent Kashmir. If you pass this law, if you want to strictly implement this law, you have to first book them, not bring them here and hold talks with them. They may hold opinions and speak out their opinions on any issue. These are all real political issues. The Nagaland people also want some independent Nagaland. Like-

There are so many other people. My approach is, you have to completely differentiate between 'containing terrorist activities' and 'controlling disruptive activities'. On the other aspect, I think, we can manage even without clause 4, if some amendments to clause 3 are made.

Clause 5 is also redundant. Except for providing for a higher, more stringent, punishment there is no other provision there. They are dealt with under the Explosives Act and other Acts. So, instead of complicating the whole thing, I request the Home Minister to re-assess the situation in the light of the discussions here and try to arrive at a consensus. There is a large amount of consensus on curbing terrorism. Curbing terrorism is the real issue. We cannot simply ignore that. The ordinary laws may not be sufficient. And the laws may have to be strengthened only to that extent. If you want to go beyond that, we have to oppose it. The Left parties and the democratic forces were fighting for democratic rights against the Preventive Detention Act. in the pre-independence days. Afterwards also, whenever there was an attack on democratic liberties like imposition of emergency, the people had opposed it. The imposition of emergency did not help the ruling party. That did not help our party which had given some support to it. People generally hate imposition

of undermocratic laws. That is why I request the Home Minister to make reassessment and withdraw the present Bill a consensus and bring a new legislation which is in the interest of the country and which also may help in containing terrorism. Thank you.

THE VICE-CHAIRMAN (SHRI MD. SALIM): As demanded by some of the hon. Members, would you like to continue and complete the discussion or would you like the House to be adjourned?

SOME HON. MEMBERS: No. It is already six o'clock. We can take it up tomorrow.

THE VICE-CHAIRMAN (SHRI MD. SALIM): The House stands adjourned till 11 AM tomorrow.

The House then adjourned at eleven minutes past six of the clock till eleven of the clock on Tuesday, the 23rd May, 1995.