

3.00 P.M.

**SHRI NIRMAL CHATTERJEE** (West Bengal): Let us congratulate her for her very eloquent maiden speech. I am only wondering why maiden speeches argue against the Government but support them. That they should explain.

श्री बो० सय्यनारायण रेड्डी (आंध्र प्रदेश): मेडम वाइस चैयरमैन जो एप्रोप्रियेशन बिल हमारे सामने है, इसमें 1318,40,40,000 का टोटल ब्राउट-लेज बताया गया है। लेकिन जो ग्रहम् समस्याएं हमारे देश के सामने हैं, उनको मद्देनजर रखते हुए जिन डिपार्टमेंट्स के लिए जो रकम एप्रोप्रियेशन बिल में बताई गई है, वह बहुत ही नाकामो है।

[उपसभापति महोदय पंठार्सन हुए।]

महोदय, जो ग्रहम् चीजें हमारे हैं, वह हैं—एरोगेशन, एरोकल्चर, एनर्जी, रूरल डवलपमेंट, प्रोजेक्शन फार इडिकेशन, वाटर, नेशनल हाइवे, न्यू रेलवे लाइन, रेमूनरेटिव प्राइसेज फार फारमर्स। यह चीजें देश को शक्तिशाली, देश को मजबूत बनाने के लिए जरूरी हैं और इन तमाम चीजों के लिए काफी रकम रखनी चाहिए। लेकिन इसके अंदर कोई ज्यादा गुंजाइश इन चीजों के लिए नहीं है ... (व्यवधान) ...

**MR. DEPUTY CHAIRMAN:** Mr. Reddy, you may continue tomorrow. We are now taking up the Resolution. Now Mr. Buta Singh to move the statutory resolution.

### STATUTORY RESOLUTION IN PURSUANCE OF ARTICLE 249 OF THE CONSTITUTION

**THE MINISTER OF HOME AFFAIRS (SHRI BUTA SINGH):** Sir, I beg to move the following Resolution:

That this House do resolve, in pursuance of Article 249 of the Constitution, that it is necessary in the national interest that Parliament should, for a period of one year from 12th August, 1986, make laws with respect to the following matters, namely:—

Public Order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power) (Entry I of List II—State List.);

Police (including railway and village police) subject to the provisions of entry 2A of List I (Entry 2 of List II—State List.);

Prisons, reformatories. Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other States for the use of prisons and other institutions (Entry 4 of List II—State List.);

Offences against laws with respect to any of the matters in this List (Entry 64 of List II—State List.);

Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List (Entry 65 of List II—State List.);

Fees in respect of any of the matters in this List, but not including fees taken in any court (Entry 66 of List II—State List.).

Sir, in the context of the anti-national secessionist and terrorist activities in some parts of the country, concern has been expressed in this House as also outside about the threat posed to the stability, unity and integrity of India and the need to take effective steps to meet the situation. There are also reports about assistance being

received by such elements from across the border. The time has come to pool our resources—organisational manpower, financial and technological—to fight terrorism and other anti-national activities. The Centre and the States must come together in this common endeavour having common goal to combat all forces that threaten law and order, peace and tranquility as well as our national integrity. Government treats it as a higher duty to rush to those areas where this phenomenon occurs and therefore, proposes that the Central Government should have ample power to effectively protect the border States.

After detailed consultations and discussions appropriate legislation under article 249 appears to be the expedient answer to the kind of problem that seems to affect our national interest. About this there exists a national consensus. Everyone irrespective of party affiliation, is profoundly concerned about the unity and integrity of the country. Indeed we have greatly benefited from our discussions with the Leaders of the Opposition. Accordingly, we have brought before this House the Resolution under Article 249 of the Constitution. This will give the Government necessary authority to frame legislation with respect to the matters that form part of the State List.

The Government experience concerning the problem of terrorism and anti-national activities and evidence coming to the Government suggests that it is not merely matter of internal disturbance but there are forces from beyond the borders which are behind such activities actively. The problem itself can hardly be dealt with by the border State alone. There is clear indication that the authority of the Centre should be activated. For that purpose Centre has to aim itself with the effective powers to legislate even on the subjects which happen to be in the State List.

Hon. Members will appreciate that in terms of Article 249(1) of the

Constitution the Resolution enumerates the matters in the State List, i.e., List II of the Seventh Schedule to the Constitution to make laws. The entries in respect of which it is proposed to empower Parliament have therefore been included in the Resolution as they are in the Constitution. Entries 64, 65 and 66 of the State List proposed to be included in the Resolution make a reference to "any of the matters in this List". In so far as the Resolution only provides for the application of entries 1, 2 and 4 of the State List in addition to the above entries, the reference to "matters in this List" occurring in these three entries would only relate to those entries in respect of which it is proposed to empower Parliament to make laws.

I may also mention that the laws will specify the areas in respect of which the Parliament would be given power to legislate. It is our intention to take power for Parliament to make laws only in respect of areas in our Western Borders. Looking to the troubled times and the terrorist menace, I would appeal to the House, which represents the will of the people, to unreservedly stand behind the Government which is determined to combat the terrorist forces that threaten the unity and integrity of this dear land of ours.

With these words, Sir, I commend the House to take up this Resolution for consideration and pass it.

MR. DEPUTY CHAIRMAN: Resolution moved. There are three amendments. Yes, Mr. Vajpayee.

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): Sir, I move:

1. "That at the end of the Resolution the following be added, namely:

'Provided that the laws so made shall be applicable only to the States of Punjab and Jammu and Kashmir.'

[The amendment also stood in the names of S/Shri Lal K. Advani Pramod Mahajan, Kailash Pati Mishra, Shanker Singh Vaghela, Chaturanan Mishra, Gurudas Das Gupta and Suraj Prasad].

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): Sir, I move:

3. "That at the end of the Resolution, the following be added namely:

"Provided that a Bill in respect of any State, in pursuance of this Resolution shall not be introduced in either House of Parliament unless the Legislative Assembly of that State, in exceptional circumstances and in the national interest, passes a Resolution in support of the proposed Bill by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting."

*The questions were proposed.*

SHRI NIRMAL CHATTERJEE (West Bengal): I am on a point of order. This Resolution states that 'for a period of one year from 12th August 1986...' Today is 12th of August. Does it mean that if it is not passed today, it will be given retrospective effect? Is it necessary that even at the introductory stage, the Government should introduce an amendment to change the date itself?

MR. DEPUTY CHAIRMAN: There is nothing factually wrong in the Resolution.

SHRI NIRMAL CHATTERJEE: Does it mean that we have to pass it today?

MR. DEPUTY CHAIRMAN: I am not astrologer to say whether you are going to finish it today or not.

SHRI NIRMAL CHATTERJEE: From the Chair it was announced that reply and the voting would be tomorrow. If that be so, then this will have retrospective impact.

SHRI CHATURANAN MISHRA (Bihar): There was an amendment in my name. Should I move it?

MR. DEPUTY CHAIRMAN: Amendment No. 1 has been moved by Shri Vajpayee.

SHRI GURUDAS DAS GUPTA (West Bengal): It means, they are all clubbed together.

MR. DEPUTY CHAIRMAN: There is no separate amendment in his name. I give floor to Shri Dipen Ghosh.

SHRI DIPEN GHOSH (West Bengal): Mr. Deputy Chairman, this is yet another instance of the ruling party at the Centre to invade the powers and the rights of the people and of the States we now confront while we discuss the Resolution put forth by the hon. Minister of Home Affairs just now.

Sir, at the outset, I make it abundantly clear that my party is second to none about appreciating the need to take affective steps to meet the situation arising out of growing divisive and secessionist activities in various parts of our country, aided and abetted by the foreign imperialists. But at the same time I consider that to contain the terrorist activities, and for that matter the activities of the divisive and secessionist forces, there is no necessity of assuming powers of the State Governments by the Centre and thereby invading the State List of the Constitution of India. When article 249 was sought to be incorporated in the draft Constitution, interestingly, the number was 226 in the draft Constitution. And at that time it evoked moderate interest. Nine members spoke; even Dr. Ambedkar who piloted this article in the Constituent Assembly did not prefer to intervene and give a reply at the conclusion of

the debate. The contingencies visualised at that time while framing this provision were vastly different from the purpose for which it is now proposed to be evoked. Many legal luminaries are here on the other side and this side also and they will agree with me that when the founding fathers conceived it, they conceived it to cover the situation that would require coordinated action—I repeat, coordinated action—by more than one State, such as the emergency in food position in parts of the country requiring a law for Central control and distribution of foodgrains. Law and order situation was farthest from their minds at that time. But here, by seeking this power, they want to supersede the contention of the founding fathers of our Constitution; the Government seeks to enforce this Article, Article 249, in order to assume powers to deal with the law and order situation in the country.

Sir, I oppose the Resolution on two specific aspects. One is from the point of view of Centre-State relations. Invoking of Article 249 by the Centre as such militates against the fundamental principle of federalism. It makes a serious inroad into State autonomy. It, in fact, invades the State List and enables the majority in the Rajya Sabha, the Council of States, to override the normal distribution of powers. The other day I said, when we were discussing the Commissions of Inquiry (Amendment) Bill, what this majority is. Again I repeat, whatever words Mr. Buta Singh may like, what this majority is; it is what may be called dumb majority, brute majority or obsequious majority. Simply by a whip of three sentences or three lines, the ruling party at the Centre tries to take away the right of the States. And this is sought to be done in the Council of States, as it is composed, all the States do not have an equal share in seats.

Sir, the main ground on which this power is proposed to be assumed by the Centre is—as the hon. Minister of

Home Affairs put it—national interest. If it is really a matter of national interest, I do not understand why the State itself will not pass a Resolution or consent to legislation by Parliament. Why should you presume that the State will take up an anti-national attitude? The very presumption, while seeking to invoke Article 249, that the States will not act in national interest is not correct. Mr. Buta Singh himself knows. Only the other day, the Chief Minister of West Bengal met him. The Centre was very ambiguous in its stand on the anti-national activities being indulged in by the Gorkha National Liberation Front in the name of Gorkhaland. The West Bengal Government has told the Centre that the GNLF is indulging in anti-national activities there, but the Centre is taking a very soft stand. The West Bengal Government has acted in national interest in this regard, but not the centre. Naturally that is my contention—when the Centre wants to invoke Art. 249, it presupposes that the State Governments will not assume that much of national interest as the Centre would do. If you start with such wrong assumption, then you will end in a wrong action.

Sir, I now refer to the statement which our hon. Minister of Home Affairs has made while moving the Resolution. I have a copy of the statement which he has just now read and I quote:

“The Centre and the States must come together in this common endeavour having common goal to combat all forces that threaten law and order, peace and tranquillity as well as our national integrity”.

So, here the Minister himself concedes that in order to tackle law and order situation, in order to tackle the situation that threatens law and order, peace and tranquillity, the common endeavour of the Centre and the State is necessary. This is in the statement of the Minister of Home Affairs himself.

[Shri Dipen Ghosh]

I again quote from another part of the statement:

"The problem itself can hardly be dealt with by the border State alone. There is clear indication that the authority of the Centre should be activated".

I repeat the word "activated". Here also willy-nilly he indicates that close cooperation and coordination between the Centre and the State is necessary to tackle the situation in which he proposes to assume more powers for the Centre or take away certain powers of the State.

So, Sir, I conclude from this statement itself that the Home Minister himself admits that the situation that warrants him to bring this Resolution requires close cooperation and common endeavour of the Centre and the State and though he has not mentioned in the statement, he assures..Sir, will another session there continue?

SHRI BUTA SINGH: Why do you look towards that side? Look towards this side.

THE MINISTER OF STATE IN THE DEPARTMENT OF AGRICULTURE AND COOPERATION (SHRI YOGENDRA MAKWANA): You are addressing the Chair and not him.

SHRI DIPEN GHOSH: I want this attention because he is a legal luminary.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): I am making a note of every point that you are making.

SHRI DIPEN GHOSH: Though he has not stated categorically, yet he has assured—and I quote:

"It is our intention to take power for Parliament to make laws only in respect of areas on our Western borders".

And since he has already stated that common endeavour is necessary, may I know from the Home Minister what steps had been taken by or what endeavour the Centre had made to enlist the support for common endeavour from the concerned State Governments falling on the Western border?

SHRI BUTA SINGH: After passing the Resolution, yes.

SHRI DIPEN GHOSH: Not after passing, because you have asked for it. Then you plead your inefficiency.

SHRI BUTA SINGH: No, no... (Interruptions)...

SHRI DIPEN GHOSH: Or, you accept that you are not placing all information, you are not giving all information to the Members of the Council of States.

SOME HON. MEMBERS: No.

SHRI DIPEN GHOSH: You tell me.

SHRI BUTA SINGH: Sir, I don't want to interrupt the honourable Member. But he is reading from my statement made today. After the Resolution is passed we will implement it and we would like to have close cooperation and we will endeavour with the States.

SHRI DIPEN GHOSH: I will quote it again. In the first paragraph you have said, "In the context of the anti-national, secessionist and terrorist activities..." After that you have said, "The time has come to pool our resources—organisational, manpower, financial and technological—to fight terrorism and other anti-national activities." After that you have stated in your statement, "The Centre and the States must come together in this common endeavour having common goal to combat all forces that threaten law and order, peace and tranquillity as well as our national integrity."

SHRI K. VASUDEVA PANICKER (Orissa): What is wrong there?

SHRI DIPEN GHOSH: You say, wrong there, but now you assume power to make laws in respect of certain subjects pertaining to the State List.

SHRI BUTA SINGH: Read the full paragraph.

SHRI DIPEN GHOSH: You Say, "it is our intention to take power for Parliament to make laws only in respect of areas in our Western Borders." So I assume that you require activated power for the Centre to deal with the situation arising out of the growing acts of terrorism or divisive forces along the Western Borders or in the States falling along the Western Borders. So, from that assumption, when you ask for common endeavour, I put this question: What steps have you taken to organise such common endeavour enlisting the support of the States or State Governments along the Western Borders to tackle this situation? I think it comes out of his statement... (Interruptions)...

SHRI NIRMAL CHATTERJEE: A Resolution for cooperation could be sought. Salveji might agree.

SHRI DIPEN GHOSH: I am in complete agreement with the Union Home Minister that common endeavour is necessary of the States and the Centre to tackle such a situation, but when you want to assume power to deal with such a situation along the Western Borders, what steps you have taken to secure consent of the concerned States, we must be told. If you have taken certain steps to mobilize, to enlist, support of border States in those areas and yet if you need activated power, what does it mean? Does it not mean that your efforts to enlist the support of the border States on the Western line failed and therefore you want to assume powers?

SHRI K. VASUDEVA PANICKER: Not like that.

SHRI DIPEN GHOSH: If it is not like that, then what for do you want that power?

SHRI K. VASUDEVA PANICKER: You are reading between the lines... (Interruptions)...

SHRI DIPEN GHOSH: If that is the situation, Mr. Panicker, then you will be treading dangerous ground.

AN HON. MEMBER: How?

SHRI DIPEN GHOSH: Because, if that is the situation...

SHRI N. K. P. SALVE (Maharashtra): You worry about yourself. Leave that to us.

SHRI DIPEN GHOSH: The point is: what are the circumstances, what are the compulsions for assuming power under Article 249 and to make laws?

I can read not simply the lines, but I can read also between the lines. That is my choice, not surely your's.

SHRI BUTA SINGH: That is a bad habit with you.

SHRI DIPEN GHOSH: Mr. Buta Singh the other day advised us not to read too much the newspapers, and today he will be saying not to read too much his statement. I do not know whether he is going to make such an advice.

Sir, I say that from the statement of Mr. Buta Singh it is clear that to tackle the situation Mr. Buta Singh has visualised for assuming power by the Centre hitherto pertaining to the State according to him, common endeavour between the Centre and the State is necessary or is a prerequisite.

AN HON. MEMBER: How many times will you repeat that?

**SHRI DIPEN GHOSH:** When you will speak, you will try to refute me. Don't interrupt because if you interrupt I will deduct the interruption time and then I will speak.

Therefore, Sir, I think, before trying to assume power, I consider that there may be a situation...Mr. Buta Singh, please.

**MR. DEPUTY CHAIRMAN:** Yes, Minister's attention is drawn, please.

**AN HON. MEMBER:** Address the Chair.

**SHRI DIPEN GHOSH:** I will address the Chair but surely for the benefit of the hon. Minister.

**SHRI BUTA SINGH:** Yes, yes.

**SHRI DIPEN GHOSH:** Sir, there may be a situation in which the authority of the Centre may have to be activated, in which the Centre may require to assume certain powers. But my point is that while seeking that power from the Council of States, that means, while seeking the power of the representatives of the States in the Council of States, their own powers, that is the State's power, the concerned State or the State Government should be taken into confidence because, Sir, once the Centre gets the activated power to deal with a situation, a specific situation whether it is on the western border or in some other places, how would the Centre deal with such a situation if the co-operation of the State Government of that area cannot be enlisted or is not enlisted, if the State Government of that area cannot be taken into confidence or is not taken into confidence? If the people of that area cannot be taken into confidence or are not taken into confidence, how would the Centre deal with that situation and can it deal with that situation simply by assuming certain powers? If that be the case, then, the Centre has already enough powers, adequate powers to

deal with such situations. They have got powers under the Disturbed Areas Act. They have got the powers under the Terrorist Affected Areas Act; they have got the powers under the Special Courts Act; they have got the powers under the National Security Act; they have got the powers under the Essential Services Maintenance Act. They have got adequate powers to deal with such situations. So, it is not that there is absence of power and that is why the Centre is failing in tackling the situations. Nor is it the fact that because the law and order or that particular subject is being dealt with by the State Legislature or by the State Government, that is why the Centre is not in a position to deal with that situation. If that be the case, Delhi is the Union Territory. It is under the control of the Central Government. And you know what the law and order situation in Delhi is. The other day this House discussed it. How Mrs. Gandhi could be assassinated in Delhi. Who was ruling in Punjab at the time when Sant Longowal was assassinated? It was the Central Government's rule there at that time. Day before yesterday the retired Chief of Army Staff, Gen. Vaidya, was assassinated. Where was the assassination? He was assassinated not on the Western border. Was it because the Centre had no power or was assassinated. Where was he assassinated other than the one ruling at the Centre? So, naturally it is not because the Centre has no such powers that the terrorists, divisive forces and secessionist forces are raising their heads.

Sir, for the first time during the last 36 years after the adoption of the Constitution Article 249 is going to be invoked. Before doing so we must know the real position. The hon. Minister himself has stated that to tackle such a situation, common endeavour is necessary. In order to ensure that common endeavour, the State Government should be taken

into confidence. So, let there be a meeting of the National Development Council; let there be a meeting of the Chief Ministers of the concerned State Government; let there be a meeting of the Inter-State Council. Let the issue be brought there and discussed threadbare. First let the common endeavour be ensured. And then, if necessary, let the concerned State Governments give their concurrence to the adoption of such powers. If there is a common endeavour, who is going to prevent whom? Nobody. So, naturally, it is not that lack of power that prevents the Centre to deal with the situation.

I think this invoking of Article 249 is absolutely unnecessary. Even at a point of time when the Debate was going on in the Constituent Assembly about the incorporation of this Article, some of the learned Members of the Constituent Assembly considered that incorporation of such an Article was unnecessary and irrelevant. If you go through the Debates of the Constituent Assembly, you will find that. I am not going to quote the names or speeches they made. Sir, I think, if it is adopted, it will invade the State list, it will erode into the State's autonomy and it will militate against the very concept of federalism. It will simply by brute, dumb and obsequious majority redistribute these powers.

DR. (SHRIMATI) NAJMA HEP-  
TULLA: Don't use unparliamentary words.

SHRI DIPEN GHOSH: Brute, dumb and obsequious are not unparliamentary words. Then please tell me which word you would prefer... (Interruptions)... Shall I say...

SHRI NIRMAL CHATTERJEE: Once Jinnah said that half of the Members are fools.

SHRI DIPEN GHOSH: So, Sir, I cannot associate myself, nor can the Members belonging to my party on this side associate themselves with

the passing of this Resolution. Thank you.

MR. DEPUTY CHAIRMAN: Mr. N. K. P. Salve.

SHRI PARVATHANENI UPENDRA: He always pleads for bad cases.

SHRI N. K. P. SALVE (Maharashtra): Mr. Deputy Chairman, Sir, this is a historic occasion... (Interruptions). This is a historic occasion in the life and functioning of this august House when we are discussing a Resolution under article 249 for the first time. Those Members in the Opposition who are likely to take this matter a little lightly, I would submit it to them for their consumption... (Interruptions)

SHRI PARVATHANENI UPENDRA: I object to it.

SHRI N. K. P. SALVE: Mr. Upendra please shut up.

SHRI PARVATHANENI UPENDRA: Why?

SHRI N. K. P. SALVE: Because you deserve.. (Interruptions).

SHRI PARVATHANENI UPENDRA: Sir, I am on a point of order. Mr. Salve you please sit down... (Interruptions)... He commented that Members on our side are taking the matter lightly... (Interruptions)... I objected to that, because it is a serious matter.

SHRI N. K. P. SALVE: I have...

SHRI PARVATHANENI UPENDRA: You please sit down and shut up.

MR. DEPUTY CHAIRMAN: Mr. Upendra you cannot say like that. You address the Chair. Please sit down.

SHRI PARVATHANENI UPENDRA: Don't teach me morals. Why don't you apply the same rule to that side also? I can return whatever compliments he pays. I will return hundred times. I objected to his remark that we are taking the matter lightly.. (Interruptions).

MR DEPUTY CHAIRMAN: Please sit down.



SHRI PARVATHANENI UPENDRA: You allowed me a point of order. You ask him to sit down... (*Interruptions*)...

MR DEPUTY CHAIRMAN: Please listen to me.

SHRI PARVATHANENI UPENDRA: Sir, let him sit down. You have allowed me a point of order.

श्री राम अवधेश सिंह (बिहार) :  
उनको सुना जा रहा है तो वे क्यों  
खड़े हैं। इनको बैठाया जाये।

MR. DEPUTY CHAIRMAN: Mr. Upendra raised the point. I was listening to it. He said, he has not used that word. (*Interruptions*).

SHRI H. K. L. BHAGAT: I am making a submission please. My respectful submission is that this expression 'shut up' whether used from this side or that side, to my mind, is not parliamentary; it should not be used. Mr. Salve, now, please sit down. What I am submitting is: every member has a right to speak and this is a habit of both sides. I am not talking of one side. This running commentary sometimes create provocations which should not be done. Either both the members withdraw their 'shut up' or they be expunged.

SHRI N. K. P. SALVE: Sir, so far as I am concerned, in the rush of the moment, because I think it is a serious matter and I do feel, I have a right to be heard, (*Interruptions*). Sir, I regret having asked Mr. Upendra to be 'shut up'. I was imploring, I was appealing to hon. Members to realise that a resolution which has come under Article 249 for the first time has its own significance. They say it is the authority under the Constitution... (*Interruptions*)...

MR. DEPUTY CHAIRMAN: If the words 'shut up' is used, it will be expunged (*Interruptions*).

SHRI PARVATHANENI UPENDRA: No, no. Why should it be expunged? I am prepared to withdraw if you withdraw but why should it be expunged? Let me ask this question? I am agreeable. Expunction means that we are reluctant to with-

draw. I am prepared to withdraw it. Let him withdraw it first. Mr. Salve, are you withdrawing it?

SHRI N. K. P. SALVE: Yes, I withdraw it.

SHRI PARVATHANENI UPENDRA: All right.

SHRI N. K. P. SALVE: Sir, it has to be realised that a resolution under Article 249 is the prerogative exclusively of this House. There are many matters, legislative matters, financial matters and other matters in which the authority of the other House is supreme but in a matter of resolution under Article 249, this House and this House alone is the repository of the decision to be taken. Sir, it must be understood, therefore, that the other House has nothing to do with this resolution. It is only after this is passed here and if we make law, then it will go to the other House. Otherwise, the other House has nothing to do with it. Therefore, I fervently plead with the hon. Members to realise that this is one matter in which previous and serious responsibility has been cast on this House. Let us, therefore discuss his resolution in a dispassionate spirit and if nothing else, transcending the affiliations and predilections so far as political parties are concerned. It is a very serious matter. I have listened to the speech of Mr. Dipen Ghosh. Now, he has left the House. He made large many comments including comments about common endeavour and he tried to determine the ambit and precise interpretation of the statement of Shri Buta Singh Ji. Sir, this is highly philosophical of what he said about common endeavour, it is actually beyond me to reply to him. It is equally beyond me to reply to him of the new principles of interpretation he seems to have enunciated in interpreting the statement of Shri Buta Singh Ji. I leave it to the Home Minister to deal with it but there is one aspect of the matter to which he has referred and I should say, I have a right to deal with it. He has not stated squarely that this Article does not fall in article 249, and whatever may be his views in achieving common endeavours and to the scope of the statement of Shri Buta Singh Ji. At least,

one thing he has stated categorically and unequivocally. He says, Article 249 is irrelevant, is unnecessary and will invoke, is making invasion into the principles of federalism divesting States of their rightful legislative powers. If this is his reading of the Indian Constitution, I am afraid he has completely misunderstood the entire scheme, the entire working, the entire philosophy of the Indian Constitution. Far from making an invasion into the principles of federalism and far from unduly divesting the State legislatures of their legislative power, the real state of affairs is that the provision of article 249 is considered by top-most constitutional lawyers as a very useful innovation particularly for imparting greater flexibility in the working of the federation. He is a very small authority as compared to Mr. Dipen Ghosh. He happens to be H. M. Seervai. All over the legal world, all over the world, he is considered the greatest living authority on the constitutional law of India. And what does he have to say about article 249? I am referring to page 14 of "Constitutional Law of India", second edition, by H. M. Seervai, Volume I. This is what the distinguished author says:

"The provision of article 249 listed in 2(a) above may now be considered. Article 249 introduced for the first time a useful innovation for securing greater flexibility in the working of the federation."

Commenting on the same article, the learned author further states:

"Article 249 introduces an innovation in our Constitution, namely, that if a subject-matter of State legislation acquires national importance for a time, then if the Council of States "declares by a resolution supported by not less than two-thirds of the Members present, that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, Parliament can make a law on such subject."

**SHRI NIRMAL CHATTERJEE:** Without that authority, was it not obvious?

**SHRI N. K. P. SALVE:** You may have your own views.....

**SHRI NIRMAL CHATTERJEE:** It is not a view.

**SHRI N. K. P. SALVE:** You may read the Constitution differently. So far as understanding of article 249 is concerned, if Seervai is right, then Mr. Dipen Ghosh is absolutely wrong in saying that any authority invoked under this resolution is a blatant invasion into the principles of federalism.

**SHRI NIRMAL CHATTERJEE:** Abuse of authority.

**SHRI N. K. P. SALVE:** If it is abuse of authority, it is a different thing. I am coming to that. But this article itself is an extremely useful innovation in the scheme of the Indian Constitution for imparting a certain degree of flexibility for the smooth functioning of federalism. This is the view of the greatest living authority on the Indian constitutional law. Therefore, whether this authority is being abused or otherwise is a story we will look into a little later when I go into the merits of the matter. But as it is, to say that invoking this article itself would mean that we are blatantly committing an outrage against the principles of federalism is totally erroneous and wrong.

There is a delicate balance of fragile federal polity in our Constitution and it must be maintained with absolutely uncompromising political integrity and honesty. And if we are not maintaining that, I have no doubt in my mind then that we are abusing the sacred right which has been vested in this House. Sir, my submission is that this is not the only article in the Constitution which empowers Parliament to make laws, to acquire legislative powers in respect of matters which are covered by items in the State List. There are so many other articles, 350, 371 and 352. And this is one of them. This is undoubtedly taking an extraordinary power of giving authority to Parliament to legislate in respect of matters which, in fact, are the preserve and domain normally of the State legislatures. But, Sir, if the founding fathers of the Constitution have inserted this particular innovation, this particular device and the authority is given only to the representatives of the States, directly to this House only. Which could be the more appropriate circumstance to

[Shri N. K. P. Salve]

invoke the authority, to invoke the powers, to invoke the necessary wherewithal, to exercise powers in respect of matters covered by the State legislatures normally? This House will, therefore, consider whether or not we are today in the midst of a circumstance and in the midst of circumstances where Entries 1, 2, 4, 64, 65 and 66 happen to be those entries for which in the larger national interests the Article itself provides. And that Article has two parts. The first part relates to making a resolution. The second part relates to making a law under the resolution in respect of matters which are otherwise in the State List. The Article itself contemplates it has three main ingredients. The first requirement of the Article is that a resolution has to be brought in the Rajya Sabha, in the Council of States, and it has to be passed by a majority of not less than two-thirds of the Members present. The second requirement, the cardinal requirement, is that it can only be brought when it is either necessary or expedient in the national interests to vest such an authority in Parliament to legislate in respect of matters for which normally the States legislatures have the authority. The third requirement, which is an extremely important requirement, is that only after the resolution is passed, a law can be made which law can be made applicable either to the whole of India or only to a part of India. I am dilating on the scheme of the Article for one reason and that is Mr. Upendra's amendment or that of Mr. Chaturanan's is palpably out of order for the simple reason that the Article only permits you to vest authority in Parliament to make enactments, to make laws, in respect of certain items which are eitherwise the preserve and prerogative of the State Assemblies. That is all. You cannot in the first part of the Article make such authority applicable to part of India or the whole of India. The second part of it, of course, provides that when you are making a law in pursuance of such a resolution which empowers Parliament to make laws respect of these items, these matters, which are in the State List, it is open to Parliament to decide whether they want such enactment for the whole of India or for part of India. If this be the correct

view of Article 249, then the amendment moved by Mr. Upendra or that of Mr. Chaturanan is palpably out of order. (*Interruption*) I would taking just two minutes on the Article because it is an Article which does not involve moot questions of interpretation. I would submit to you the the Resolution..."

"Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect of any matter enumerated in the State List specified in the Resolution..."

Does it for a moment say that this sort of a resolution can vest authority in respect of part of India or the whole of India as it does in the next part which says—

"...it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force."

[The Vice-Chairman (Shri G. Swaminathan) in the Chair]

In the same Article the latter part empowers us to make it applicable—that is making a law—either for part of India or for the whole of India. The earlier part leaves us no discretion,— "...where it is necessary and expedient in the national interests..."

to assume such authority. If such authority is assumed, then it cannot be assumed only for a part of India and not whole of India. Therefore, the resolution has been very well drafted. All that it does is that it gives the requisite authority in 4.00 p.m. respect of Entry 1, Entry 2, Entry 2A, Entry 4, Entry 64, Entry 65 and Entry 66, and that is the end of the matter. Had anything else been written in the Resolution restricting it to any part of India and not making it applicable to the whole of India, such a Resolution would have been *ultra vires* of the very article, article 249 itself. There is a very famous principle of statutory compliance and it is this: If a mode and manner

of statutory compliance is laid down in the law, the compliance must be made in very rigid manner in which it has been so laid down and any other mode of compliance will only be a violation of the law of compliance itself. Therefore, I submit that the Resolution as framed is squarely and fairly within the postulates of article 249 and the amendment moved *inter alia* by Mr. Upendra and by Mr. Chaturanan Mishra, unrelated to its own merits, is completely out of order and is outside the purview of article 249.

Sir, I will come to a more important matter and it is this that when we are passing this Resolution what the situation in the country is. What is the situation under which we are passing this Resolution? This is an extraordinary power which we are invoking. Isn't there any justification for this? Isn't the law and order situation such a special thing with reference to the border areas that we do need to assume that these powers are required by Parliament because, as a result of this, we would be able to pass on a greater responsibility to the Central Government in respect of matters mentioned therein. We want the Union Government to be responsible and we want Buta Singhji to be squarely responsible for the situation of law and order, for dealing with the problems created by the terrorists and the violence that has been unleashed by the terrorists in Punjab and in the border areas. Sir, Mr. Dipen Ghosh has asked whether the assassination of General A. S. Vaidya has taken place in the border areas. Sir, I am amazed at his logic because it is logic standing on its head. If there are terrorists, where are they trained? Where have they got their arms and ammunitions from? Where do they belong to? And what is your own real cause of action for the crime in Pune in Maharashtra? I think I can say squarely that if anyone points out that it is not to be confined to border areas while it is being confined and that we are trying to discriminate only lamentably lacks the vision and the awareness of the hard realities of the situation today. Sir, today, it is an extraordinary situation, an unprecedented situation, in the post-Independence India and if we are not able to meet the situation fairly and squarely and if we are

not able to vest the authority in Parliament and the responsibility on the Union Government to take care of the situation in Punjab, then, Sir, this House will be failing in its duty. That is why this Resolution and that is why my appeal, my fervent appeal, to the House.

Sir, the second aspect of the matter to which I would now refer is this: Someone has called it—he is not here now; I think it is Mr. Upendra—an omnibus Resolution. I am afraid that the people who have called it an omnibus Resolution have not understood either the legal meaning or the dictionary meaning of the word 'omnibus'. "Omnibus" means—I am referring to the law dictionary for the meaning of omnibus' clause or 'omnibus' Bill—"any draft Bill or Act or section containing miscellaneous unrelated provisions." Sir, if there are any provisions which are wholly unrelated and which would not be germane and which would not be or cannot be within the mandatory injunction of article 249, then it is the amendment of Mr. Upendra and of Chaturananji. If it were put, Sir, if ever anything else is added to this Resolution, well, that it will apply to the State of Jammu and Kashmir or Punjab or Gujarat or to anything else, that will make it an omnibus Resolution and not the Resolution as it stands. I am arguing with those who understand law and I am arguing with those who are willing to appreciate and consider my submissions, my arguments, with a sense of impartiality and with a sense of fairness. Of course, if one were to argue politically, we can go on arguing *ad nauseum* and *ad infinitum*, without coming in any way to a reasonable conclusion. If this Resolution had even to be saved from being an omnibus Resolution or an omnibus clause or an omnibus Bill, then it could not have been put in any other form except the one that it has been put in. We have saved it from becoming an omnibus Resolution. Sir, Buta Singhji has ultimately given a solemn assurance on the floor of this House. He has made a statement before this House. I cannot go into the philosophy which he has brought in or inducted or injected in his statement. So far as I am concerned, his statement is extremely simple. This power which we take in terms of law will

[Shri N. K. P. Salve]

only apply to the border State in the Western border. No more and no less. If this is the thing.....

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): I may bring to the notice of the hon. Members that 20 more Members have to speak and the time allotted for each Member is between 8 to 10 minutes except for party leaders who have been given 10 minutes. The hon. Member has been speaking for nearly 25 minutes now.

SHRI N. K. P. SALVE: I crave your indulgence, Sir.

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): If it is the sense of the House that more time should be allotted, I have no objection.

SHRI N. K. P. SALVE: I have not been repetitive, nor will I say anything irrelevant.

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): You are making very valid points. I am only bringing to the notice of the hon. Member the time allotted. If it is the sense of the House, I have no objection.

SHRI N. K. P. SALVE: Sir, in view of the categorical statement by Shri Buta Singh Ji on the floor of this House, it is an assurance that on the basis of this particular authority he will bring forward an enactment which will not apply to Karnataka or Andhra Pradesh or West Bengal or anywhere else, but it will be confined only to the border areas. If it is to be confined to the border areas, then the matters which are sought to be raised..... (Interruptions) Sir, the Home Minister can be hauled up for a serious breach of privilege if while making law he does not abide by the statement which he has made on the floor of the House. (Interruptions)

हृथ कंगन को आरसी का।  
बहुत जल्दी कानून बन कर आयेगा।  
तब आप द्वारा राग अलापेंगे। बहुत  
के लिये बहुत कुछ बकवास हो  
सकती है।

श्री चतुरानन मिश्र : साल्वे जी,  
एक बात बतइये कि कोर्ट आफ ला  
में इस एश्योरेंस का क्या होगा। प्रिविलेज  
वाला बात आपने वह, वह ठीक  
है, लेकिन कोर्ट आफ ला में इस  
एश्योरेंस की क्या वैलिडिटी होगी ?

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): I have already informed the hon. Members that the time is short and many more Members have to speak. If there are interruptions, more time will be taken and the time of the opposition leaders will be shortened.

श्री एन० के० पी० साल्वे : हम  
लोग इस सदन को चलाते आये हैं।  
पार्लियामेंट चलत आया है। पार्लियामेंट में  
लिया हुआ आश्वासन सब से ऊँचा  
होता है। कोर्ट में उसकी वा वैलिडिटी  
है या वैलिडिटी नहीं है इस को  
छोड़ कर अगर वे अपने आश्वासन  
से पीछे हट गये तो हट सकते हैं मगर  
वह हटने में अपने जगह पर नहीं  
रह पायेंगे, यह मैं आप को आश्वासन  
दे सकता हूँ।

श्री चतुरानन मिश्र : इस से हम  
को क्या ? (व्यवधान)

श्री एन० के० पी० साल्वे : उन  
का फलसफ, उनके सोच-विचार  
करने का तौर तरीका और है। हम  
वहाँ बात करनी चाहते हैं जो ईमानदारी  
से करना चाहते हैं और कर के बताते  
हैं।

श्रीमती रेणुका चौधरी (ग्रांध प्रदेश) :  
यह अधि ईमानदारी है और वा हम वम  
ईमानदारी है ? This is irrelevant talk.

SHRI CHATURANAN MISHRA: Motives cannot be imputed here. All of us have taken oath to the Constitution.

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): I will request the hon. lady Member to sit down and allow the Member to speak. There are opposition

Members and also leaders of the Opposition. They have got ample opportunity to speak. They can refer to the arguments. If the points are irrelevant, they can say so. They have all the right to do that.

श्री एन. के. पी. साल्वे : : कोई नाराज न हो। मैडम को तो हम बहुत ज्यादा इमानदार समझते हैं।

SHRIMATI JAYANTHI NATARAJAN (Tamil Nadu): On a point of order. Sir. The hon. Home Minister has made a particular statement. I want to know whether it is possible for anybody to cast aspersions on the hon. Home Minister and say that he might withdraw from it or go back on his statement at any point of time.

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): The point of order relates to the rules of the House. It is on the conduct of Members within the House. I think, when the hon. Member speaks, he can also ask the hon. Minister to clarify.

SHRIMATI JAYANTHI NATARAJAN: They did not ask whether he was going to keep it up. They said that he would withdraw from it and it will not have the validity in the court of law. That is the argument that I have just heard... (*Interruptions*)

SHRI N. K. P. SALVE: I want to reiterate and reiterate very categorically because aspersions had been cast on the functioning of this Party. Sir, my Party and my Leader are the people who in a matter such as this are people whose credibility, whose integrity, whose sincerity of purpose on this matter is absolutely above doubt. A worst enemy could never say. Are we trying to... (*Interruption*)...

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): That is the correct position regarding your point or order. When somebody disproves the matter and says whether you are going to stick up to the position, it is right either on the part of the Minister or the party Member to say that they are going to do it. That is what the hon. Member is doing. That is the answer to your point of order.

SHRI BUTA SINGH: The only answer I can give is 'yes, Sir.'

SHRI N. K. P. SALVE: Sir, I was coming on to this that this is not an omnibus resolution. This is only a resolution within the realm of Article 249. And the assurance given again and again, I want to submit, by Buta Singhji as the representative of a Government which is functioning under Mr. Rajiv Gandhi is the total and the entire guarantee of the intent of this Government.

SHRI RAM AWADHESH SINGH: Sir, on a point of information. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI G. SWAMINATHAN): Don't rise on a point of information. (*Interruptions*) Firstly, the hon. Member is not speaking from his seat as I understand. Is it your seat? You can rise on a point of order. There is no point of asking for a clarification.

SHRI N. K. P. SALVE: Sir, that is so far as the criticism on the Resolution is concerned that it is an omnibus resolution. I am coming to the next aspect of the matter. Another set of objections which I have read are those raised by the Chief Minister of Punjab. Sir, we all of us have been devoutly supporting the Barnala Government. We have been admiring the efforts which it has been taking in curbing and checking the activities of the terrorists. We congratulate the Barnala Government, we congratulate Buta Singhji for the magnificent work that the para-military forces and the police forces are doing in Punjab. Sir, what were the objections of Mr. Barnala? I want to deal with the objections on an extremely rational and a logical footing. Mr. Barnala has two objections. The first one is that the existing powers, according to him, are adequate to deal with this very problem in the security belt. The second objection has been that if we start making laws which in fact are the prerogative of the State Assembly, then about 70,000 people will be uprooted. I submit, Sir, that both the objections raised by Mr. Barnala are absolutely untenable on facts or in law. Firstly, he says that there are adequate facilities, there are adequate provisions in law. Then whatever we are making is at the most parallel to that. If according to the existing law we can take

[Shri N. K. P. Salve]

all the measures unrelated, even without making any laws related to Entries 64, 65 and 66, we still have power, and taking this power will not add to anything which we already had. And if as a result of what we already had, 70,000 have not been uprooted, how are we going to uproot something when we are not going to take anything more? The argument had to be a little more cogent. And a little more cogent argument should have been: Does it amount to distrust Shri Barnala Government? And if the answer is in the affirmative, I would vehemently oppose this resolution in this House. This is not a vote of no confidence in any manner whatsoever on the Barnala Government. It is only to supplement his efforts, to strengthen his hands that this power is being taken by passing this resolution. (*Interruption*) This is my view. You may have some different views. Therefore, Sir, the matter may kindly be appreciated. A very large issue is made on common endeavours. This is something which will enable us to go with common endeavours. And about the functioning of this Party, the functioning of this Government, my leader, as I do know him, is not the one who will go with authoritarian, arbitrary powers in the enactment. We will discuss this matter with the State Government. We will find out what are the laws in respect of which we need to take the responsibility because apart from anything else only when we make an enactment here by Parliament, shall we be able to hold the Union Government fairly responsible for the security of the people of the whole country and that is what we want. It is not merely taking the authority for the sake of taking the authority. This taking of authority is coupled with an obligation on the part of the Government and the obligation on the Government is of such a nature that they must along with the Barnala Government make foolproof arrangements so that people are not shot dead in the broad daylight as they have been.

Sir, I have only one more question and I have done. Sir, it must, however, be understood and I believe that the Home Minister who is sitting here is listening, that making of the laws is not going to finish the terrorist activity. It is the imple-

mentation of the laws which is very necessary and unless and until these laws are implemented effectively and efficaciously the terrorist activities will not come to an end and in that connection I would like to submit to him that the assassination of General Vaidya has raised certain very important questions. We do not want to minimise, we do not want to under-estimate the good work that has been done in Punjab. But all the same there have been several assassinations of our leaders, policemen and now, day before yesterday, the assassination of the Army General has taken place. How is it, Sir, that in all these cases where individual assassinations have been made, the assassins have run away without a single bullet having been fired on them? Does it not mean that our entire concept of security at least in respect of those who are put in the hit-list, one may say that hit-list is based on intelligence which has failed, has failed and it has failed in Pune. About that question there is no doubt whatsoever. Whatever our lapses are, we must accept them squarely and fairly. Then only we can improve. But, is it not the duty of the Union Government to augment the security, remove the deficiencies and inadequacies at least from the security of those who are on the hit-list? Can't you, Mr. Home Minister, impose certain restrictions on the movement of people who are on the hit-list? Could not the General have been told not to go to the market, to the marketplace, just to buy a few things because the assassins are on the look-out. In fact, if that had been done, the precious life of a noble son of India would have been saved. You must clamp certain restrictions on the movements of those who are on the hit-list. At the same time, if you want to provide them with security, let it not be the farce of a security. It has to be genuine security. The assassins should know that they can never get at anybody on the hit-list, and it will never be possible without an attack on them. At present the terrorists are striking as if they are just returning after a cinema show or they are just returning home after having a walk in a garden. This is an extremely unsatisfactory state of affairs. So far as the security of the people, especially of those who are on the hit-list, is concerned, one can understand that you cannot provide individual security to everybody. But

what about providing adequate security to everyone who is on the hit list. Please do not send sub-inspectors or head constables or other such type of people who have never fired from a revolver or even though they have fired, they have never been able to hit at the target in their life. What is the use of brandishing your revolver which you cannot use, which you can never aim at a target? Please for God's sake, you will have to reply to all these questions when you are replying to the debate. We are with you. The whole nation is with you in putting an end to this menace. We are with you in your resolve that there is going to be effective implementation of the laws which we are going to make. But we would like to know what are you going to do to ensure that there is adequate and foolproof security at least for the people who are on the hit-list? Thank you.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM (Tamil Nadu): Mr. Vice-Chairman, Sir, on behalf of the Anna D.M.K. I extend our support to the Resolution moved by our hon. Minister of Home Affairs, under article 249. The Resolution authorises Parliament to make laws with respect to certain entries in the State List of the Constitution. Though we are aware of the fact that the Resolution authorises Parliament to transgress into the jurisdiction of the States, we support this Resolution for the reason, Number one: it is honestly moved in the national interest; second, the law to be passed in pursuance of this Resolution is going to remain effective for one year; and number three: it has been moved to make law not in all Entries of the State List; there is a specification of the area in which Parliament is authorised to enact law.

Sir, it is a temporary measure but a permanent solution to the burning problem. It is an informal deviation of the federal principle but a formal way to meet the challenge. Therefore, our party lends its support to the Government. It is incorrect to say that it is being invoked for the first time. It had been invoked earlier in 1950 and 1951. In 1950 it was invoked to arrest increase in prices of essential commodities. I am only saying that as far as invocation of this article is concerned, it was invoked

early also. Parliament passed the Essential Supplies (Temporary Powers) Amendment Act, 1950. Then, on evacuee property, this article was invoked in 1951. But today, the Government is invoking it for a different national cause. It is not intended for commercial or trade purposes. It is for the national interest which is the most important national matter. Sir, there is no difference of opinion about curbing the menace of terrorism in Punjab. Terrorism in Punjab has ramified everywhere; it has spread its tentacles causing a great concern to the Government of India. The situation in Punjab is unprecedented, extraordinary and exceptional. Unchecked growth of terrorism has claimed the life of our beloved Prime Minister, Shrimati Indira Gandhi in the year 1984. Now, it has claimed the life of our former Army Chief, General A. S. Vaidya, and also hundreds of other innocent people. So, unless drastic action is taken against the people responsible for this terrorism and anti-national activities, the unity and integrity of the country will be in peril.

In this context, I may remind this House that All-India Anna DMK is a regional political party but with a national outlook. Though AIADMK is for maintaining Tamil history, Tamil culture, Tamil language, it will not give any room for anti-national elements, in order to ensure national unity and integrity of the country. We have been nursed and groomed by Anna to give utmost respect and honour to the nation first, then the principle endeared, then the party enrolled and then the leader to be respected. Anna has nursed us in that way. And Dr. MGR, the true heir and disciple of Anna, has proved to the world that regionalism and nationalism sail together in the national stream and he has proved to the country that regionalism nursed by Anna and followed by Dr. MGR also helps in the unity and integrity of the country. Because there are differences of opinion on this issue. I am explaining this aspect. I am aware that there are a few regional parties which are agents of communalism, religious fanaticism and divisive forces. It does not mean that all national political parties are free from this defect. The House is aware that there are some



[Shri Aladi Aruna alias V. Arunachalam]

national political parties headed by communal fanatics, religious heads and other divisive forces. Therefore, injury to the unity of the country has been afflicted by various political agencies, including some of the national political parties. Sir, the first and foremost responsibility of the Centre is, as defined in article 355, to protect the States against external aggression and internal disturbance and ensure that the State Government is carried on in accordance with the provisions of the Constitution. It cannot disown the responsibility of protecting the States against internal disturbances like the menace of terrorism. Putting an end to the menace of terrorism is the responsibility and Constitutional obligation of the Centre. I think, the Resolution has been moved to fulfil this obligation.

Sir, in the beginning, the Government thought of meeting the situation by moving an amendment to article 370 of the Constitution. But the idea that the situation can be easily and successfully tackled by invoking article 249 was mooted by none else than the Janata Party leader, Prof. Madhu Dandavate. Our Prime Minister magnanimously accepted this suggestion of the Opposition leader without any reservation. He was not particular about more powers. He was more particular about finding a solution to the problem. That is why when there was this suggestion from the Opposition, without standing on prestige and without any reservation, our Prime Minister accepted the suggestion. Unfortunately, the party whose leader mooted this idea is taking a stand contrary to their suggestion. I do not know why. I do not want to go into it further.

Sir, the right of the Centre to interpose into the jurisdiction of the States in extraordinary circumstances is an acknowledged principle of federalism. It has been clearly and precisely defined by Maddison, Hamilton and Jefferson, the outstanding Constitutional pundits of the United States. Sir, the founding fathers of our Constitution who largely tilted towards the Centre have incorporated some articles like 249, 250, 252, 256, 257, 356 and 365, conferring powers

on the Centre to make laws on State subjects, to give directions to the States and take-over of State administrations during the period of Emergency. There are differences of opinion in regard to the principles underlying these articles. Most of the political parties including the All-India Anna DMK—I want to put this on record—are against these articles. Each article is intended for a different purpose. For example, article 249, under which this Resolution has been moved, enables Parliament to make law with respect to a matter in the State List in national interest. Under article 250, Parliament can make any law when the Proclamation of Emergency is in operation. In the case of article 252, agreement among the States is quite essential. My apprehension is whether we are giving a correct interpretation of article 249, as was envisaged by the founding fathers of our Constitution. I doubt very much. If you go through the speeches of the founding fathers of our Constitution, you will find that they did not at all envisage any law and order problem in their discussion. Article 249, as I said earlier, was invoked in 1950 and 1951 for arresting prices and for protecting the interests of the evacuees. However, this is a matter of interpretation in which I am not competent. I leave the matter to be decided by Constitutional pundits.

[Mr. Deputy Chairman in the Chair]

At the same time, I must point out that neither the Constitution of the U.S.A. nor that of Canada or Australia is having such a provision. Even the Government of India Act of 1935 did not have such a provision. I must say that article 249 is against the basic principle of federalism. I would like to point out that during the discussion in the Constituent Assembly, most of the members were not happy about this provision. Mr. Alagesan, a former Minister in the Government of India, requested Dr. Ambedkar in his speech to withdraw this Article:

“I would request Dr. Ambedkar even at this late stage, if it would be possible for him, to withdraw the Article and assure that there will be no interference with provincial autonomy”.

Constitutional Pundits like Das have commented that this Article must be deleted from the Constitution. It is not with any political motivation. It is a fair and judicious comment. The political parties, including Anna-DMK which is always fighting for the autonomy of the States, no doubt prefer the deletion of this Article. In the Memorandum which we have submitted to the Sarkaria Commission, we have recommended deletion of the Article. In spite of all these facts, I support this Resolution only because it is moved to put an end to the menace of terrorism. We are against the anti-national activities of the terrorist forces; we are against the divisive forces. That is why we support this Resolution wholeheartedly to keep the unity and integrity of the country. Under a true federal structure, whatever measure the Centre takes, whatever law the Centre enacts, whatever force the Centre operates, Anna-DMK will extend its support without any reservation to strengthen the hands of our dynamic Prime Minister Rajiv Gandhi.

With these words, I conclude my speech.

**SHRI MURLIDHAR CHANDRAKANT BHANDARE:** Mr. Deputy Chairman, Sir, we participate in one of the most important and as aptly described by my friend, hon'ble Mr. Salve, historic debate under the shadow of the dastardly assassination of one of the most valiant soldiers, the most decorated General of our country, General Vaidya. The debate on this point as to what the Centre should do or should not do started with the cold blooded and brutal shooting of 9 innocent people and injuring of several others, taking them out of a bus at Muktsar and exposing the seriousness of the situation and the grave threat which terrorism posed to the entire society in our country. It is, therefore, surprising that instead of unanimous support to a measure like this, in a situation which is beyond any dispute very grave, very serious, which threatens the very unity and integrity of the country, threatens the very basic democratic fabric of our society and in which there is every danger that it may be swallowed by the evil forces of terrorism. I go back to the days when the Constitu-

tion was framed and I come to the circumstances which were then existing and compare them with what the present situation is. There was a Partition, consequent bloodshed and the problem of resettlement of refugees. Only a strong Central Government could deal with the problem of princely States, few of which had any semblance of government or effective administration or some inclination to cooperate with the new government. And there were other goals of social revolution and economic upliftment. Only a national effort could bring about these changes. Whatever others may say, I want to say that the task was achieved through several things such as the ushering in of the Green Revolution, the high industrial growth, the raising of the standards of the people. And it was possible only because of the existence of a powerful political party with a nation-wide authority and with a great leader, Pandit Jawaharlal Nehru, at the helm of affairs. So I am proud that it was my Party which was responsible for doing these things through a Constitution like this and it is again through the young and dynamic Prime Minister that we have chosen to-day this course of adopting this Resolution under article 249.

Now I will briefly deal with the Constitution that we have evolved. I would like to quote Dr. Ambedkar here and I am doing this to meet the argument of the honourable Member, Mr. Dipen Ghosh, who says that this is against the federal structure of the Constitution. This is what Dr. Ambedkar said:

"A strong Centre with equally strong States is the theme of our federalism. The Constitution is a federal Constitution inasmuch as it establishes, what may be called, a dual polity which consists of the Union at the Centre and the States at the periphery, each endowed with sovereign power in the field assigned to them respectively by the Constitution. Yet, the Constitution avoided the tight mould of federalism in which the American Constitution was caught. It can be both unitary as well as federal as per the requirements of time and circumstances."

[Shri Murlidhar Chandrakant Bhandare]

Therefore, this article 249 which is one of the key articles in converting this federal structure into unitary structure was incorporated.

Mr. Dipen Ghosh said that this was not conceived by the framers of the Constitution. He is entirely wrong because, if they had not conceived that, then they would not have used the words "necessary and expedient in the national interest." "Necessary and expedient in the national interest" may be (a) for improvement of social conditions, (b) for economic gains, and (c) for political stability which is the need of the day. Therefore, to say that we are going a little beyond what was originally conceived is not correct. In fact, the Founding Fathers of our Constitution, if they were to look at what we are doing today, would be complimenting themselves on the sagacity they had employed in this article of the Constitution. It must not be forgotten that ours is a cooperative federalism which produces a strong Centre and it does not necessarily result in weak provincial Governments. All these years Indian federalism, despite the variety in food habits, variety in dress habits, variety of languages, variety of religions and variety of even races has demonstrated this, and the arguments which have come from the honourable Member really do not stand any scrutiny so far as this Resolution is concerned.

It must not be forgotten that we are answerable to the nation for that we do here today, because it is not the only crisis. Today there is a crisis of confidence and, as has been rightly pointed out by honourable Mr. Salve, people are worried as to what is our intelligence system, people are worried as to what is our security system. But everybody also knows that the real origin and the real source of these things is in the border areas from where the mischief is growing. At no time was the border so sensitively affected in the recent past as today. Not only is the training of terrorists done by Pakistan, not only are they smuggled here but there is also large-scale smuggling of drugs which is eating into the vitals of our country, particularly the youth of

the country. At no time for the unity and integrity of the country was there more need than today to seal the borders, to protect the borders. Sir, it is for the Centre alone to protect the frontiers of our country. It is not a State Subject at all that the international frontiers, should be protected, and for the purposes of protecting those international frontiers and the western borders if we do not take over instruments given to us by our Constitution, we will be failing in our duty.

Today the entire nation is looking with great expectations because the measure itself is temporary, it is only for a period of one year, which clearly shows that we are treating this problem which is a serious problem, as a temporary problem. That is how it should be. We cannot say that terrorism will be a permanent problem in our country. By its very nature it is a temporary problem, and we mean to tackle it. As has been rightly pointed out by the hon. Home Minister, when we are equipped with the law, we will see and we will force the Government to make good their promise of safety to the citizens of our country.

There is one more aspect which I have to say, and then I will have done, because I do not want to repeat the points. The points are the same. I have demonstrated that this is not an attack on the federalism. In fact, on this aspect the very wise words of Justice Frankfurter come to my mind. And this is what he said:

"Every legal system for a living society, even when embodied in a written Constitution, must itself be alive. It is not merely the imprisonment of the past, it is also the unfolding of the future. Of all the means for altering the political life of a nation, a federal system is the most complicated and subtle. It demands most flexible and imaginative adjustments for harmonising national and local interests. Constitution is not a printed finality but a democratic process. Its application to the actualities of the need is not a mechanical exercise but a function of statecraft."

I am grateful that we are getting this opportunity today, the Members of this House—the exclusive jurisdiction is of Rajya Sabha, and not the other House—of performing this function of statecraft, the greatest statecraft for which, I think the succeeding generations will have something to say in our favour.

There are one or two points which I want to make.

Ours is not a federal structure by agreement, not like America where there were different states which came together and then they tried to join with a power of cessation. We were already there. All the States were there already. There was no State which agreed to join us. And under our Constitution there is no right to secede from the Union. It is, therefore, important to note that our states were members of a family, who, for the first time, came in possession of their own house, and they must find a way to live together in it. If their life is not to grind to an acrimonious halt, the members' relationship must be compromised, must be made mutually sacrificing. And it was this which was behind the theme of Article 249.

I think I have said enough. Ultimately it cannot be forgotten that if one is to test the requirement of national interest, there are occasions when a State subject contained in List II of the Seventh Schedule does not remain a State subject, it becomes a subject of national importance, it becomes a subject of national interest. And I ask myself whether or not the rest of the nation is expecting us to say that these subjects which are enumerated in today's Resolution have become subjects of national importance. in Punjab and border areas. And if the answer to that is in the affirmative, I see no reason why anybody should oppose this Resolution. But I cannot expect anything better from those who even chose to oppose us while we were fighting for our independence.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): We were all in the Independence movement.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You have not yet opposed. I am talking of those who have spoken. I do not know whether you are opposing.

SHRI B. SATYANARAYAN REDDY: But you are pointing out to something...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: All right, I would say some of those who opposed us during the Independence struggle.

The second point which I am making is this. Today unless we act with courage, unless we act with determination, unless we show some statesmanship in preserving the democracy, our coming generation will not forgive us. And when a lesser incident happened, what happened was the the Congress Government which was then in existence in Punjab was dismantled and we ushered in the Presidential rule. Today we are not choosing that extreme path. We are backing up the Barnala Government to the fullest. There is a complete understanding. If Mr. Barnala feels that he has not been consulted or he has not been taken into confidence and he is not agreeing to this sort of a resolution and the consequent steps on it, it is not because we are falling in our back up, but because of certain political compulsions in his own State, compulsions which we by this Resolution and a consequent legislation of this Resolution must eliminate and make him a free man and remove this threat of terrorism.

Today the clouds of terrorism are darkening every moment. There is a clear movement for secession though, of course, it is only a few who are indulging in it. Unless we contain it today, we will never be forgiven by the succeeding generations.

I would end up by saying that our is a house to share and not divide. And come whatever may, as long as this Government is in power, as long as this young dynamic Prime Minister is the Prime Minister, we will not allow these divisive, separatist, terrorist and extremist forces to succeed. I give you full assurance on that. I do not want to say, but

[Shri Murlidhar Chandrakant Bhandare] since it has come, I would only say that the day is not far off when these forces, if not eliminated, will at least be contained to an extent where we will return to normal life.

With these words, I request those who are opposing to realise that there is no destruction of the federal structure, but this is the sagacity of the founding fathers to give us an apparatus to face a national crisis and threat to the very existence of this country. I hope that every member in this House will rise to the occasion.

**SHRI M. S. GURUPADASWAMY** (Karnataka): Mr. Deputy Chairman, Sir, this august body is called the Council of States. It is composed of representatives of the States, not of the people. It is given to us to perform a very difficult and a very delicate dual task. Firstly, we have to bear in mind that the national interest remains paramount in our consideration. At the same time, it is our privilege, a proud privilege to see that the powers of the States which constitute Indian federation are not hijacked and suffered in any manner. We have to look at the present move of the Government while considering the needs, the imperatives, and the purposes of the present situation. Sir, there were exceptions in August, 1950 when two Resolutions were passed under article 249. There was no instance after 1951. We have not invoked this article since then. We have faced as a nation and as people grave emergencies, difficult times and trying times in the past. This Parliament has been a witness of such critical days in 1960's and 1970's. At those times we never thought it fit to invoke this article. We never thought even for a while in our mind that the State Governments will lag behind when the question of protecting the interests of the nation, the security, the defence and the national sovereignty were concerned. There was no occasion to think that the Parliament should make an inroad to the legislative powers of the State Governments. The State Governments and the Centre always went hand-in-hand when there was a national crisis. I do not think, Sir,

even today there is any change in the loyalties of the State Governments or the basic loyalty of the people by and large. We do not have any doubt about our own stand in regard to matter which involves paramount interest of the country. Then, why are we resorting to this measure? Sir, such an article 249, is never found in the leading Constitutional documents of any federation in the world. It was not there in the Government of India Act either. For the first time it was introduced in this Constitution for a specific purpose. I do not want to go into that question. There were two occasions when this article was invoked by Parliament before 1952 for the purpose of regulating trade, commerce and supplies; and to regulate rights of the evacuees at that time. Afterwards we never resorted to this article at all. Why now? The fundamental and over-riding consideration for this measure, according to my friend, Mr. Buta Singh is: there is no alternative there is no escape or choice before the country except to take powers under this provision to legislate certain matters which come under the State list. Sir, the compulsion is, according to Mr. Buta Singh is to protect the border, particularly in Punjab (*Interruption*).

**AN HON'BLE MEMBER:** Has they moved it?

**SHRI M. S. GURUPADASWAMY:** He is moving it. It has been circulated. Let us consider the situation in Punjab. Let us consider the situation in Punjab as it exists today. Sir, before Mr. Barnala took over as the Chief Minister of Punjab, there was President's Rule. The Government of India had all the powers of the State Government to function there. What was the situation then? It was very bad. We realised that a popular Government is necessary to bring about stability, peace and tranquility in that area. Therefore, elections were held. There was an accord. Now, the situation is still difficult. I understand the problems in the border areas have become more intractable. We understand that. But may I ask my friend, Mr. Buta Singh whether there are no adequate powers in the hands of the State Governments to deal

with the situation? We have already passed various Acts. My charge against the Govt. here and the Government in Punjab is the powers that are already available are not being utilised effectively. What prevents the Central Government to strengthen the border check posts? Pakistan border is open almost in spite of few check-posts established here and there. What prevents the Central Govt. and the State Government to strengthen these border posts in the border areas? What prevents the Central Government particularly to have a security belt, and a viable security belt? What prevents the Central Government from sending more para-military forces and C.R.P.F.? What prevents them from sending them which has been asked by the State Governments? Does the situation change if you pass this resolution, I want to ask? Till now, Mr. Buta Singh has not given us a position paper which was promised by the Prime Minister giving the assessment of the situation, the need and the purpose of this measure. Till now, he has not done that and there was no consultation between the Centre and the State Governments. My friends Mr. Bhandare and Mr. Salve have been waxing eloquence. They said, they have got respect for Mr. Barnala. We too have have respect for Mr. Barnala but I want to ask the simple question whether Mr. Buta Singh has consulted Mr. Barnala? Whether there has been communication between him and Mr. Barnala? Whether the consent of the State Government has been obtained before this resolution has been brought up before the House? Never. What prevented him from consulting him? Barnala's case is that there is room for strengthening the security system there. He feels strongly that the powers that are available already

5 P.M. are adequate to meet the situation. He further asserts that the situation in Punjab is improving since the last fortnight. What is the answer that Mr. Buta Singh has got so far as my question is concerned? What is the position?

Sir, this matter is serious. This article 249 was pointed out by some friends in the Opposition, I know. My friend referred to the name of my colleague in the

other House, Mr. Madhu Dandavate. I would only say this with a view to clarifying it, that when we were faced with the draft Constitution Amendment Bill, we said "No" to Mr. Buta Singh. We told him that we were not prepared to accept the Constitution Amendment Bill. We said the same thing to the Prime Minister when we met him. There Mr. Madhu Dandavate and perhaps some others pointed out that there is such a thing as article 249. It is only with a view to drawing their attention that it was raised. We never discussed whether this article should be utilised, should be used. We never discussed that. Therefore, let us not have any misunderstanding about this matter.

Coming back to the resolution, the resolution has to be passed by the Council of States, according to the Constitution. The Lok Sabha does not have this privilege, this power. This power has been given to the Council of States obviously because we, as representatives of the States, said earlier, should look into the matter whether anything we do here will militate against the powers of the States. Suppose this resolution is passed. According to the argument, it is only temporary; it is only for one year. But this one year can become many years. By passing successive resolutions every year, the so-called temporary resolution can be made a semi-permanent or permanent resolution. That is number one. (*Interruptions*)

SHRI DIPEN GHOSH: One year means 365 days. (*Interruptions*) The law will be made by a simple majority. Extension of the law can be made by a simple majority. (*Interruptions*)

MR. DEPUTY CHAIRMAN: Mr. Gurupadaswamy, please continue.

SHRI M. S. GURUPADASWAMY: Sir, by passing this resolution, we are going to change the federal structure, the federal character of our Constitution itself: we are disturbing the constitutional distribution of powers between the Centre and the States, even temporarily. This temporary period can turn out to be a long period, if not a permanent period. That is contemplated in the Constitution in article 249 itself.

[Shri M. S. Gurupadaswamy]

Therefore, my second point is that by passing this resolution and by bringing laws dealing with matters which come under the State List, we will be disturbing and eroding the powers of the State Governments, and destroying provincial autonomy or State autonomy.

SHRI N. K. P. SALVE: On a point of order. Sir, submissions have been made here that hereafter we can keep renewing this enactment by a simple majority. This is a complete misreading of the Constitution. Continuation of the enactment cannot be done merely by a simple majority. We will have to pass a resolution each year in the same manner as is provided here.

MR. DEPUTY CHAIRMAN: No point of order.

SHRI M. S. GURUPADASWAMY: Let my friend go through Article 249 carefully. It has got a dichotomy. The first part deals with resolution. Am I right?

SHRI N. K. P. SALVE: Yes.

SHRI M. S. GURUPADASWAMY: The second part deals with Bills which have been enacted by Parliament, by both Houses of Parliament, under the resolution for one year, but it can be extended, virtually it can be extended from year to year by means of a resolution.....

SHRI N. K. P. SALVE: I am reading the proviso—

"Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1)..."

That means it must be passed by two-thirds majority of this House.

SHRI M. S. GURUPADASWAMY: I am very well aware that the resolution has got to be passed by two-thirds majority...

SHRI VISHVAJIT PRITHVIJIT SINGH (Maharashtra) : Every year.

SHRI M. S. GURUPADASWAMY: Every year. And I think you have got the strength, the necessary strength, to pass the solution. And my fear is that if such a thing happens. (Interruption)

Don't disturb me. You don't understand the seriousness of the problem. My point is by this means which is meant for a temporary purpose, virtually you are destroying the federal structure of the nation, you are disturbing the constitutional division of powers between the Centre and the States for a long time to come. Thirdly, I think you would realise that when issues are settled, when issues are decided upon, under this resolution for one year, the after-effects of your actions will be longer than one year....

SHRI MURLIDHAR CHANDRAKANT BHANDARE: No, no.

SHRI M. S. GURUPADASWAMY: What no, no? The after-effects of your actions will remain longer...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Kindly see 249 (3) ..

"A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force..."

Therefore, after six months it automatically dies.

SHRI M. S. GURUPADASWAMY: My learned friend is a lawyer, but he has missed my point. It is true that this will come to an end; the law will come to an end. But the effects of the law which was implemented in that period will last for a long, long time. That is my point. I have said earlier at the beginning of my speech that we stand by national interests

SHRI JAGESH DESAI (Maharashtra) : It is very clear from the resolution...

MR. DEPUTY CHAIRMAN: Let him finish. You can raise it later.

**SHRI JAGESH DESAI:** "...that this House do resolve, in Pursuance of Article 249 of the Constitution, that it is necessary in the national interest that Parliament should, for a period of one year from 12th August, 1986, make laws with respect to the following matters..."

**MR. DEPUTY CHAIRMAN:** There is no point of order. You are getting your chance to speak. The debate is going on.

**SHRI M. S. GURUPADASWAMY:** Yes, the debate should go on. I want a debate. I am not in the least for giving any room for anti-social elements, anti-national elements, terrorists, separatists, secessionists we are all there to condemn it. It is a crime. Terrorism is a crime. Any act of anti-national character is a crime. What I want to know is whether with this measure you are containing it. You have all the powers already. But you are like a very weak butcher. You cannot cut anything at all. You are so weak. Powers are given in your hands, but you are unable to use them. I am reminded of a very historic incident. Perhaps all of us are aware about the French Revolution, the Great French Revolution. The French Revolution gave a message to the whole world and it was that France believed in liberty, equality and fraternity. That was the message and they wanted to carry this message throughout the length and breadth of Europe. Then what happened? Soon after the Revolution, excesses began, too many excesses. The revolutionaries began to butcher one another and there was the guillotine for eliminating others. The very guillotine was used to kill and remove the heads of the patriots, the revolutionaries like Marat, Danton and Robespierre. Robespierre carried the revolutionary spirit too far and to excess. Likewise, in the name of protecting the interests of the country, let us not carry anything too far, to excess, and undermine the very values which we want to cherish.

**SHRI MURLIDHAR CHANDRAKANT BHANDARE:** But liberty survived in France.

**SHRI M. S. GURUPADASWAMY:** What survived? Napoleon became the

dictator and liberty survived much later. I think you have forgotten history.

Sir, I would like to tell the Home Minister—I wish the Prime Minister had been here that in the name of eliminating terrorism, in the name of removing terrorism, you would like to subdue, subordinate and humiliate the State Governments. Why are you by-passing the State Governments in this matter? That is what I want to know.

**MR. DEPUTY CHAIRMAN:** Your time is up.

**SHRI M. S. GURUPADASWAMY:** I would be concluding very soon, Sir.

Now, why are you by-passing the Barnala Government? Is he against building up defences against Pakistan? Is he against strengthening our border? I charge you that you have failed to do that. It is your responsibility. Even now there can be a security belt and we are all for it and this Resolution is not necessary. Therefore, Sir, while recognising the need for vigilance on our part, national vigilance and eternal vigilance on the part of the Government, I say only that this has to be done under the powers that you have got already in hand. I say that we are definitely against the erosion of State powers. This Resolution gives ample powers to the Government of India to invade the domain of the State Governments. Therefore, Sir, in the conclave of the non-Congress (I) Governments which met some time back, they had recommended the deletion..... (Interruptions)... of this article, the total deletion of this article. Therefore, I am not going into that question now it will come up after the Sarkaria Commission gives its report and we will debate on that. But now I say, Sir, that this Resolution is superfluous, redundant, unnecessary, mischievous and objectionable.

#### RECOMMENDATIONS OF THE BUSINESS ADVISORY COMMITTEE—

**Re: Allocation of Time for disposal of Government Legislative and other business.**