

[Shri Lal K. Advani]

should know when these Constitution Amendment Bills are particularly to be taken up.

MR. DEPUTY CHAIRMAN: I think that should be done.

श्री हुस्मदेव नारायण यादव (बिहार) .
उपसभापति महोदय, यह सारे कानूनों को पास कराने के लिये तो आपक पास समय है और आपने सदन का समय तीन दिन के लिये बढ़ाया भी है, लेकिन हम लोग जो देश के 54,56 फीसदी लोग है और जिन से यह मंडल कमीशन संबंधित है, जिनके बारे में आप लोग भी बान करते रहे हैं, उनके लिये आप के पास कोई समय नहीं है। पहले कहा गया था कि इनके बारे में राज्य सरकारों से प्रतिवेदन मांगा गया था और उनका जवाब आने पर हम बहस करेंगे। इसलिये मैं चाहता हूँ कि आप इसके बारे में कोई दिन निश्चित कर दें और उस पर आप बहस कराइये, यही मेरी प्रार्थना है।

MESSAGE FROM THE LOK SABHA The University Grants Commission (Amendment) Bill, 1984

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of Rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 21st August, 1984, agreed without any amendment to the University Grants Commission (Amendment) Bill, 1984, which was passed by Rajya Sabha at its sitting held on the 1st August, 1984."

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ORDINANCE 1984 (NO. 9 OF 1984) PROMULGATED BY THE PRESIDENT ON THE 14TH JULY, 1984

II. THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) BILL 1984.

MR. DEPUTY CHAIRMAN: Now we shall take up the Resolution seeking to disapprove the Terrorist Affected Areas (Special Courts) Ordinance, 1984, and the Bill replacing the Ordinance. This Bill has to be completed today. The time allotted is two hours, but I think, with your cooperation, it can be completed earlier... (Interruptions). Order, order. Those who want to talk, may please go out. Please do not disturb the proceedings.

✓ Shri Jaswant Singh may move his Resolution.

✓ SHRI JASWANT SINGH (Rajasthan): Sir, I beg to move:

"That this House disapproves of the Terrorist Affected Areas (Special Courts) Ordinance, 1984 (No. 9 of 1984) promulgated by the President on the 14th July, 1984."

While speaking on the grounds of disapproval that I had on the National Security (Second Amendment) Bill, 1984, I had occasion to say various things which I will not repeat. I pointed out the various objections that I had against governance by Ordinance. Then I have had a chance to say about the state of the nation generally and I do not want to repeat that either. But I do feel that I could not put across with clarity one particular point. It is from that point of view that I would like to list to you various grounds of disapproval that I have for this particular enactment

which is being brought forward to combat what we call terrorism. I am going to take into account, how this Bill defines 'terrorism'. I think it is pertinent for me to come forward and submit to you that terrorism is not dependent on an individual. What is necessary for terrorism is a cause. If you work from that proposition or theory, then you will see that terrorism is the child or the off-spring of a cause. (*Interruptions*)

MR. DEPUTY CHAIRMAN: Please do not talk in the House. Order, order

✓
SHRI JASWANT SINGH: Mr. Deputy Chairman, I was attempting to draw your attention to the definition of 'terrorism' as contained in this Bill and I have started by suggesting that terrorism is not as much dependent on an individual or collection of individuals, as it is on a cause. Now we have to start investigating what causes that cause to come into being.

During the earlier debate I started by suggesting what a very wise Indian once told me. He said that there are three constituents of the Indian State. They are essential constituents. They have historically been proven as the absolute *sine quo non* of an Indian State to exist. And the three, Sir, are *iqbal*, *izzat* and *arz*. I will take a minute to put across what I mean by *iqbal*. *Iqbal* is the prestige, the status, the standing, the respect, in which an authority is held. *Iqbal* is the ability, without law, by the sheer moral presence, to be able to convey to the nation to society, that because of this sheer weight of *iqbal*, because of the sheer moral dignity of *iqbal*, nations do not thrive on laws alone. That is moral component. And it is to that moral component I refer when I talk of *iqbal*.

Sir, the second component of any State, more particularly Indian State, is *izzat*. And *izzat* is both of the governed and the governing. If the governing class at any stage assumes

or treats without *izzat* the governed or in their turn the governed do not have *izzat* for the governing, then, Sir, anarchy results. And I put it to you that what we are witnessing in the country today is on account of the loss of *izzat*. That loss of *izzat* is a two-way traffic. Once the governing the Government, loses *izzat* or treats with scant *izzat* those that it is governing, then the second absolute essential pre-requisite of the Indian State is removed.

The third, Sir, is *arz*. *Arz* is not supplication *arz* is not begging. *Arz* is with dignity for a citizen of this country to be able to come up to and tell the governing body. A class anybody "/>This is my right, this is the wrong, that is how I am affected and that to be heard and set right."

These three components should be with the Indian nation-*iqbal*, *izzat* and *arz*-and it is because these three components are lacking in our national life today that we are facing all the grave difficulties we are facing, and we have to come forward with Bills like the Terrorist Affected Areas Bill. I revert, Sir, to what causes a terrorist. It is not the individual that causes terrorists. It is the causes that we create in the process of nation formation that creates terrorists. And it is that aspect which has to be cured not the symptoms of it. And that is my second objection, Sir. It is without attempting to go into a deeper examination of why the nation has come where it has come to why we call them terrorists. Sir, an impression is attempted to be created as if terrorists are proliferating all over the country suddenly. And if that were so, it is a very serious situation. But it is again not because of individuals. It is very deep, fundamental, underlying causes and it is that cause we have to examine identify and set right. Not the mere symptoms of it. And that is the second aspect. What this Bill is doing is a kind of palliative, superficiality, cosmetic effort which will attempt to cure, but in the process of

(Shri Jaswant Singh)

curing. I put it to you, Sir, seriously, so turn malignant the malady that we have to cure that the cure may be **worse than the disease itself.**

Sir, I do not want to take too much of your time. On an earlier occasion I have expressed a sentiment like this. And I feel that today is an appropriate day for me to repeat what I said in an earlier debate, that a sense of order is inherent, intrinsic to society. If once you break that sense of order because of misgovernance then you do not re-impose order by law.

Every society, and more particularly Indian society, has this order inherent in it by some *sanskars*, by our very subscription to faith, irrespective of the faith we subscribe to. This provides the necessary cement to our social order and that sense of order within society is integral to Indian society. If on account of misgovernance you break the social order, you fragment it then it is not by laws that you can bring about social order. That again is an objection that I have against this particular legislation. What this Bill has attempted to do is to treat only the superficiality. I shall not talk about the other generality because I will have time while attempting to reply to the debate.

I now come to my specific objections to this particular enactment. This is in the context of Punjab. The origin of the Bill is in the context of Punjab and yet it has been extended to any disturbed area. Therefore, when a disturbed area is talked of, one necessarily comes to the definition of a disturbed area. Sir, I find that in disturbed areas, what this Bill is talking of, even an A Class Magistrate can declare any area as disturbed area. Another query arises in my

mind. Whenever Section 144 is imposed anywhere in this country, it is on account of that being a disturbed area and Section 144 is a routine enough occurrence in a country as large and as wide as India. If the imposition of Section 144 is tantamount to declaration of that area as a disturbed area, then the entire provisions of this enactment are attracted every time there is section 144 imposed. Section 144 is declared routinely in front of Parliament House. Section 144 is declared as a matter of course whenever a call for strike is given section 144 is declared in anticipation of difficulties. Therefore, Sir, when it is a question of what constitutes a disturbed area and if an A Class Magistrate can declare any area as disturbed area and if a mere declaration of Section 144 would be enough to attract the provisions of this Bill, then I think it is an extremely objectionable situation and it is an extremely objectionable provision.

Sir, before I come on to my next point, I would very briefly like to point out to you that what this particular Bill does is to provide the Police with such enormous powers, so many powers, that I find it extremely difficult to understand it in the present context of the Indian situation, in the present law and order context of the country. If the law and order of the country were normal, then three successive enactments, three successive ordinances, about COFEPOSA, N.S.A. and Disturbed Areas would not be necessary. If the law and order situation is disturbed and if the National Security Bill had to be brought by the Government, it is because they find that the existing Police force and the Para-military organisations, whether it be C.R.P.F. or the B.S.F., are inadequate for the task. Now, they are creating the National Security Guard with a huge expenditure of nearly 75 crores of rupees annually. That is altogether a different question. If there is going to be a proliferation of additional Police force and para-military forces, it only points to yet

another proof that the existing law and order situation is disturbed, that the existing Police Forces are unable to cope with it. Despite the existence of this lack, what does this Bill do? This Bill gives the Police such enormous powers, not just in the context of Section 144 and the declaration of disturbed areas, etc. It gives the Police very wide powers. To my mind, the Bill has been drafted in such a hurry that sufficient attention has not been paid to the powers that are being vested with the Police.

I would, therefore, urge upon you, Sir, that the Treasury Benches ought rather to reflect very deeply about what powers they are conferring on an organisation in which they themselves have lost faith.

Sir, I will now go on to what this Bill attempts to do in another respect is the radical changes that it is attempting to bring about in the Indian Evidence Act, 1872. Pages 8 and 9 of the present Bill cover all those aspects and I do not want to read them out at the cost of the time that I have. It attempts to do two things. It transfers the burden of proof on the accused, which find very objectionable. But simultaneously you have built into it certain provisions like pardon to be granted by the executive to anybody who turns an approver to the satisfaction of the executive. Now, Sir, if the two are combined, that the burden of proof is on the accused, and the executive has the power to pardon anybody whom they treat as an approver, then there is grave potential for mischief in the provisions that you have made available under this Bill and I would request the hon. Minister to throw some light on this. I have been informed, Sir, that there is an equation made to the accused having to prove his innocence with cases like rape, dowry, where such provisions already exist. To my mind, that is over-simplifying the situation. Such an enabling provisions

for rape offences or dowry offences was brought about only after the Parliament had had a chance to apply its mind to them and it had the chance to say what it had to say and they were to combat deeprooted, long-standing social evils. Such is not the case when you have vested police with so many powers. The 'disturbed areas' definition itself being questionable, and when you have put transfer and simultaneous arrest, the nexus between the accused having to prove his innocence and it being within the power of the executive to create an approver, then the potential for harassment is very great, and this is a genuine fear that I have about the provisions of this Bill.

Sir, I would like to go on to the definition of "terrorist" which is on page 9, where what I find of very great difficulty to accept is that the mere presence in a disturbed area, terrorist affected area, will suffice for arrest. I may happen to be travelling through Punjab. Theoretically, I have gone through an area which is terrorist affected and the Government would then be well within its right to say, Jaswant Singh, because you were in the terrorist affected areas, therefore, you have come under the provisions of the Terrorist Affected Areas (Special Courts) act and we are, therefore, going to arrest you. I am not stretching the point. Perhaps, in Jaswant Singh's case, because I happen to carry a suffix, a tail of two letters, which is, 'M' and 'P', because I am an M.P., the Government may think twice before doing it. But, what about an ordinary citizen? If he happens to be travelling through Punjab, and if some Magistrate did not like his face, he will be arrested. This is a very serious objection. Mere presence in the terrorist affected areas is enabling the executive to arrest a person. (C has to express serious doubts about This has, of course, been sufficient impressed earlier also and if no measures of protests like strikes

(Shri Jaswant Singh)

would fall within the ambit of the definition, 'terrorist', I do not know where it is going to lead us to.

Sir, page 3 of this particular Bill has a provision which I find most objectionable and it says in explanation, and this merits to be quoted in full: "For the avoidance of doubts it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of the commencement of this Act. Sir," the Government is attempting to make a provision whereby if the Ordinance is issued today, you may apply all its provisions retrospectively.

7.00 P.M.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH): But only within six months.

SHRI JASWANT SINGH: I am not unaware of that enabling provision. I do not want to go into the debate of how that enabling period of six months has also been vetted over by other measures. You have retrospective legislation; you bring the law today and say this is the law of the land but six months earlier whosoever may have been in Punjab, because Punjab today happens to be a terrorist-affected area, whosoever happens to have been in the North-East, or in Nagaland, because six months ago it was a terrorist-affected area, though the Bill has come only today, he is therefore guilty under this Bill.

SHRI P. VENKATASUBBAIAH: How can he be guilty? Only if he commits an offence as mentioned in the schedule, then only he can be guilty.

SHRI JASWANT SINGH: I will come to that. The hon. Minister will have time to refute all these points.

the point is that mere presence
ough to brand me as a terrorist;
ere presence in the terrorist-af-
area is enough-I repeat this is
vision in this Bill; my mere
in a terrorist-affected area is
to brand me as guilty, as

being potential suspect, and I can be arrested. And if the enabling provisions in this Bill are retrospective, then six months ago if I happened to be present in a terrorist-affected area, theoretically, the law stands, and it is not sufficient for the Minister to say that I am stretching the case; I am not stretching it; the case deserves not to be stretched because any retrospective legislation, more particularly criminal legislation, is so bad, is so uncivilized that the facts that we have expressed, have to be expressed about the innocent people being caught in the net that the executive is attempting to lay. I would like to take this point up. Breach of canal incidents have occurred recently in Punjab on 3 separate occasions. The breach of canal is caused by X, Y or Z who has perpetrated a grave wrong, to the nation. And because that X, Y or Z has perpetrated a wrong on a particular point, and because villages are contiguous to that point, and because those villages have existed in that area for centuries past, they are branded as criminals. That is being done now. I am not putting across a hypothetical case. This is happening in Punjab. We have witnessed it, and now this Bill comes and says that what is being attempted to be done now covers the whole country; it is not for one particular area.

I will go on to 'in camera' proceedings, on page 6, section 12, it specifically says that even after all this has been done as 'retrospective', 'terrorist', 'disturbed area' etc., whatever you do, whatever investigation you do, you are going to do it in camera. None of what takes place in a court of law, none of what takes place here will be open to public scrutiny. I cannot refrain from calling any such procedure as an enactment to establish kangaroo courts. Law is open; I do accept that it is not axiomatic that if you have law, justice will automatically follow. But I think if you shut the doors of even apparent justice and rely only on the letter of the law, then I think we are creating what is really a blind law and by 'in camera' proceedings,

we are creating a situation wherein kangaroo courts will come into existence. Certain powers have been given to special courts in this Bill to which I have objection. Sections 7, 8 and again section 10 covers 'any offence' and pardons. There were provisions for summary trial; right to appeal is considerably curtailed; scheduled offences, cognizable offences merit a little greater attention.

Scheduled offences as mentioned on page 6 of this Bill. A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial. Please let me repeat it for the benefit of the House. It says:

"A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts."

An accused is accused. Here is a situation wherein a Special Court on a police report will take cognizance of any offence, any offence whether in the chargesheet or not. The trial will be held in camera. The Indian Evidence Act will then per force compel him to prove his innocence, not working on the basis that unless the prosecution proves him guilty he is innocent, but he will be forced to prove his innocence and the Special Courts will take cognizance of the offence just on the facts contained in the police report. After that whatever trial is to be held is to be held in camera and this is the way in which you say that you are creating an edifice which is to go towards justice, equity and fairplay. Page 7 here talks about cognizable offences. It is said here and I quote:

"Notwithstanding anything contained in the Code or any other law,

every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, etc. etc...."

What you are doing is extremely dangerous. In addition to the powers otherwise existing in the Bill, all that has centrally accumulated is also there. The executive is enabled to take action under any provisions of these Acts, and at any situation charge an accused, arrest him, try him in camera without the necessary shelter of assumed innocence, and which are these enactments which he will have to combat with whenever he is charged under the Special Courts Bill. They are: The Indian Penal Code, the Explosives Act, the Indian Telegraph Act, the Indian Railways Act, the Explosive Substances Act, the Arms Act, the Unlawful Activities (Prevention) Act, the Anti-Hijacking Act, the unlawful Acts, against Safety of Civil Aviation Act and the Prevention of Damage to Public Property Act.

SHRI P. VENKATASUBBAIAH: They are already there they are part of the Schedule.

✓ SHRI JASWANT SINGH: This is the provision by which you can change any citizen of this country, hold him without trial, try him without necessary evidence, try him in a court which is held in camera like a kangaroo court. These are only some of the objections that I have which prompted me to move this Resolution.

SHRI P. VENKATASUBBAIAH: Sir, I beg to move:

"That the Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith as passed by the Lok Sabha, be taken into consideration."

Sir, I am very happy that Shri Jaswant Singh preceded me in these two Bills. I have heard him with rapt attention. He has made some points. Before proceeding with my speech, I

[Shri P. Venkatasubbaiah]

would like to clarify certain things. He said that police have been given more powers. No powers have been given to the police. It is only that we have extended the period of police remand from 15 days to 30 days police custody for proper interrogation. No special powers have been given to the police.

Sir, I will deal with some of his points raised with regard to various aspects of this Bill. As this House is aware, this Bill has been passed in Lok Sabha and it has come for the approval of Rajya Sabha. I would like to give the background of this Bill. The immediate background to the legislation is the extensive disturbances in Punjab and the Union Territory of Chandigarh involving wanton violence by terrorists, including killing of innocent persons, looting of properties, disruption of communications and threats to individuals and groups. They have been attacking pickets of security forces, looting armouries etc. Different aspects of these have been brought out in the White Paper published by the Government on July 10, 1984. The House is fully aware of these tragedies.

Sir, fear and terror among people at large has been their chief weapon. Persons registering and investigating cases against them, witnesses, magistrates and judges have been their targets. In such a situation, it has become almost impossible for the normal processes of law and justice to operate and for the terrorists to be prosecuted and brought to book. The objective of the legislation is to provide for trial by Special Courts with certain procedural changes so that speedy trial can take place. There has been no circumvention of the judicial process. Only some changes have been made so that a speedy trial takes place. The appeal lies to the Supreme Court. Appeal to the High Court has been dispensed with. All

the processes required in a trial are there.

I would like to highlight some of the important aspects of the legislation. The Bill covers, as did the Ordinance, only certain specific offences which usually the terrorists commit. These are listed in the Schedule to the Bill and include such offences as waging war against the State, murder, dacoity, sabotage of railway lines and telegraph lines, hijacking of planes etc. The Special Courts will be manned by serving Sessions Judges. They will be appointed with the concurrence of the Chief Justice of the High Court of the State in which the Special Court will be located. Appeals from the orders of the Court would lie directly to Supreme Court.

The House will appreciate the reasons for providing for trial in camera in these courts. This is to keep the identity of the witnesses confidential. However where circumstances of the case do not require any such precaution, trial will be held in open court. Special Prosecutors may be appointed for speedy conduct of trials. While normally courts will be set up within the State inside or outside the concerned judicial zones, provision has been made for setting up an additional Special Court corresponding to the Special Court outside the State for trial of such cases which in the opinion of the State Government ought to be tried outside. In the interest of fair and speedy trial, the Central Government may establish such an additional court only at the request of the State Government.

Provisions relating to amendment to the Evidence Act deserve due appreciation. There have been some comments in this regard which do not appear to be quite well informed. It is to be noted that the proposed amendment would apply only to offences concerning waging war against the State and conspiracy or preparation to commit such an offence. These are not every day occurrence. Again a presumption can be raised only when

the area where the offence was committed was disturbed either having been so declared under some law or was in a state of disturbance for over a month. It will apply only when the accused has been at a place from where firearms or explosives were used against armed forces to attack or resist them when they were discharging their duties and not otherwise, if Mr. Jaswant Singh just happens to pass that way. It is not directed against such people. It may be also noted that the presumption is rebuttable. Again, I may mention that shifting the burden of proof or raising presumption is not unknown in our legal system.

Mr. Deputy Chairman, Sir, I would like to submit that the Bill is very much limited in scope, is not likely to be misused and is necessary to deal with cases concerning such offences. Sir, there have been occasions when situations of insurgency or terrorism have been there in the country and fair and quick trial of offences in such situations becomes difficult. The legislation has been made applicable to the whole of the country, of course excepting Jammu and Kashmir, and will be available for use in areas which may become subject to such terrorist action in future. Sir, he asked why it should be extended to other parts of the country. Sir, when we saw certain things happening in other parts of the country—especially in the north-eastern region there has been a near-insurgency; a former Chief Minister was killed; there were conditions which were very disturbing—we thought that this should be applicable to other parts of the country also so that as and when such circumstances arise—though we hope that such circumstances should not arise—proper pre-emptive action is taken to extend this law to such parts of the country also.

Sir, there are also some other points which have been raised by Shri Jaswant Singh. He quoted some of the offences and mentioned of the Telegraph Act and some other Acts.

They are already on the Statute Book. What we have done is that they have been brought under the Schedule of Offences. I may make it very clear that it will not be used against any legitimate trade union activities. Sir, if a railway line is sabotaged, if electric wires are cut and if some essential services are disrupted, these cannot be taken as legitimate trade union activities. Sir, we have every respect for legitimate trade union activity. As a matter of fact, any procession or any other form of expression of opinion on acts of omission and commission of the Government are legitimate activities in a democratic set-up and nobody would take them as acts of some terrorists and resort to try them in these courts. It is not our intention. It is only as a necessary measure in certain situations that this Bill has been brought out.

Sir, I commend the Bill to the honourable House.

The questions were proposed.

MR. DEPUTY CHAIRMAN: There is one amendment of Shri Satya Prakash Malaviya. He is not here. Now the Resolution and the motion for consideration of the Bill are open for discussion. Now every party got a little time but I would request hon. Members to speak only up to ten minutes because we have got . . .

SHRI DIPEN GHOSH (West Bengal): We can discuss tomorrow. What is the use of discussing it today? . . . (Interruptions) . . . The House has been extended up to the 29th and we are having enough time. We are sitting on Saturday also . . . (Interruptions) . . .

MR. DEPUTY CHAIRMAN: The pressure is so much that even with the extended days the time is limited.

SHRI DIPEN GHOSH: I implore—just take into consideration the fact that we are sitting on Saturday also and again for another three days.

MR. DEPUTY CHAIRMAN: All the days are full (Interruptions)

[Mr. Deputy Chairman]

Tomorrow the same thing will happen. Today there are four Bills. (Interruption) . . . Yes, Mrs. Mohanan (Interruptions) . . . Sorry, there is no time.

SHRI DIPEN GHOSH: All right, we will sit till midnight.

SHRI K. MOHANAN (Kerala): Sir, the House adopted another Draconian law, the NSA, and now another Bill in the same category is before us. I do not know whether this Bill is the elder brother or the younger brother of the NSA which has already been passed by this House. (Interruptions) . . .

SHRI R. RAMAKRISHNAN (Tamil Nadu): Cousin!

SHRI K. MOHANAN: Cousin or twins. Anyhow, I am not surprised that the Government which is continuously engaged in oppression and adopting a policy of authoritarianism has brought such Draconian laws and such monstrous legislation before this House. Sir, this Bill they have brought in the name of defending the unity and integrity of this country. But I would say that the most dangerous threat to the unity and integrity, and even to the democratic system, of this country is from the ruling party, the Congress (I) and its present Government. They are engaged in real political terrorism throughout this country. You are dividing the people, encouraging terrorists and all kinds of communal elements, undermining the Constitution for your political motives. Sir, through this legislation, the legislation like NSA and other draconian laws, the Government claims that they are going to save this country. But they cannot save this country from the danger of terrorists or any other danger because this Government and this ruling party is worse than the terrorists of Punjab. Sir the terrorists in Punjab . . . (Interruptions) What is happening there? (Interruptions)

SHRI DIPEN GHOSH: Come to Bengal and see . . . (Interruptions) . . . you are exported.

SHRI K. MOHANAN: The Punjab terrorists indulged in indiscriminate killing of innocent people, the terrorists headed by . . .

SHRI DARBARA SINGH (Punjab): The Punjab terrorists or the terrorists in Punjab?

SHRI K. MOHANAN: Thank you. The terrorists in Punjab were indulging in the killing of innocent people indiscriminately. But here there is a terrorists' gang. They are indulging in indiscriminate killing of non-Congress (I) governments and democracy in this country. (Interruptions) Yes. We are dealing with terrorists. I do not think your terrorism will stop with Andhra Pradesh; it will continue. And with that aim you are arming yourselves with such kind of draconian laws one after the other. But I would like to warn this Government that this anti-democratic and anti-people policy followed by your Government will encourage the trend of terrorism throughout this country. Through these methods, through these anti-democratic acts of yours, you are creating a sense of desperation among the young generation of this country, and they are forced to take arms into their hands to agitate and express their protest. You people are responsible for this loss of faith of the new generation in the well established democratic institutions of this country. So, through your actions, all anti-democratic actions, you are encouraging the trend of terrorism in this country. (Interruptions) Yes; yes. Everybody knows. I am not going into the terrorists activities in Punjab, who were there, who were behind all these activities. I am not going into that portion now.

As far as the Bill is concerned, Mr. Jaswant Singh has already pointed out many issues which we can agree with. But one basic thing which I would like to point out and I want to repeat is which has already been point-

ed out by Mr. Jaswant Singh also. That is, this Bill is against the very basic principles of jurisprudence. The accused here is supposed from the very beginning to be guilty unless he proves to be innocent. The Minister may say that it is an enabling provision.

SHRI P. VENKATASUBBAIAH: No, I did not say that.

SHRI K. MOHANAN: According to this Bill, it is obligatory on the part of the accused. So, it is against internationally accepted norms of jurisprudence.

Sir, under the provisions of the Bill the accused is guilty unless he proves that he is innocent merely because he hails from a particular area which the Government declares as a terrorist area, or even passing through that area. I am not repeating all those points already explained by Mr. Jaswant Singh. This provision is against the principle of justice. The principles of justice is that an accused is innocent unless he is proved guilty. According to the provisions of this Bill there is shifting of the onus of proof—I have already explained—in an obligatory manner. The only job on the part of the prosecution is to register a case against anybody and to file it in a court.

He has already mentioned on page 6. It says:

“A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.”

On the ground, or on the basis, of a mere police report, the Special Court can put on trial anybody from a particular area which has been declared as a terrorist area. Sir, I have no hesitation to say, the Bill is intended to curb, to check, the normal function of the democratic organisations including the trade unions and other mass organisations in this country. This is a

calculated attempt towards an undeclared emergency in this country. We have the bitter experience of the emergency before us. You have done it. You have misused the rule of law under the sun against the common democracy-loving people of this country. You have suspended even the Constitution of this country, and you put the leaders of this country, eminent leaders of this country, genuine leaders of this country behind the bars without trial for months together. You misused. (*Interruptions*)

Mr. Thangabalu, you do not know all these things.

SHRI T. THANGABALU (Tamil Nadu): Do not teach me. I know better than you.

SHRI K. MOHANAN: You know something else. That I know. The definition of terrorists is so wide and all embracing. Here the definition of a terrorist is:

“ ‘terrorist’ means a person who indulges in want on killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to—

(i) putting the public or any section of the public in fear, or.” etc. etc. Sir, according to this provision, it includes any legitimate activity or an agitation of a democratic movement including the trade union movement. According to this list you can include anybody as terrorist.

SHRI P. VENKATASUBBAIAH: It is not correct.

SHRI K. MOHANAN: I am coming to that. You can register any number of cases against your political opponents simply for throwing a stone at a State-owned bus from the mob. From that mob you can arrest your political opponents simply for throwing a stone.

MR. DEPUTY CHAIRMAN: That will do.

SHRI K. MOHANAN: You can do it. Sir, I am concluding. Terrorism cannot be controlled by law. The State of Punjab itself is the example for that. Every day they are issuing Ordinances—every day they are coming before the Parliament with these Ordinances, Acts and Legislative Bills.

They have deployed para-military forces in Punjab to contain the terrorists activities. They have sent BSF and CRPF but failed to control the terrorists activities. They have also sent Army but failed to solve the problem of terrorists. Sir, the problem of terrorism should be fought on political grounds. We know that in States like West Bengal and Kerala naxalite activities were controlled where left and democratic forces are strong enough to find out a solution to control the naxalite activities. But you have completely failed to control the terrorists activities in Punjab despite all these draconian laws.

MR. DEPUTY CHAIRMAN: Please conclude.

SHRI K. MOHANAN: I am concluding.

SHRI P. VENKATASUBBAIAH: Don't compare Punjab terrorists with naxalites in West Bengal and Kerala my dear friend. You are committing a mistake by comparing.

SHRI DIPEN GHOSH: They are all your children.

SHRI K. MOHANAN: So through this kind of legislation you are burning the very house to kill the rat. I repeat it is the intention of the Government to move in the direction of emergency, to have an undeclared emergency. But the people of this country will fight it out and oppose this Bill with all their mite.

MR. DEPUTY CHAIRMAN: Mr. Sushil Chand Mohunta. You have only five minutes to speak.

SHRI DIPEN GHOSH: There cannot be any time-limit.

MR. DEPUTY CHAIRMAN: I will give you five minutes. You can speak for ten minutes. That is all.

SHRI SUSHIL CHAND MOHUNTA: (Haryana): Sir, I will not take more than ten minutes.

MR. DEPUTY CHAIRMAN: You all agree for a time-limit in the BAC meeting. But there you want one full hour each to speak. Please don't waste the time of the House. You are expected to know some rules.

SHRI SUSHIL CHAND MOHUNTA: Sir, don't cut out this time from my ten minutes.

Mr. Deputy Chairman, Sir, the vagaries of politics has perhaps compelled the Treasury Benches and the Government to come up with this Bill which, the least to say, seems to be a precursor to the darkest period of post Independence era. It at once reminds one of the imperialistic style of administration. Greater trust is reposed in the politically stringed executive rather than the impartial independent judicial wisdom. This legislation also reveals the utter helplessness and frustration which has overtaken the incompetent and tyrannical Government. To clog and to thwart the open avenues leading to the free flow of justice can but be the work of a Government which has lost its bearings and faith in the true functioning of a democratic system and struggles to cling desperately to the last vestiges of a satanical design.

Barely a few decades previous from now, we were fighting the imposition of similar laws against an alien Government under the astute and powerful leadership and guidance of Gandhiji. (Interruptions)

श्री उपसमापति : कृपया शांति रखें । जो लोग बात करना चाहते हैं वे लार्बा मे जाकर बात करें । हाउस की प्रोटेक्टिज को डिस्टर्ब न करें । आप बोलिये ।

SHRI SUSHIL CHAND MOHUNTA: I was saying, Sir, that barely a few decades previous from now, we were fighting, our countrymen were fighting the imposition of similar laws against an alien Government under the astute and powerful leadership and guidance of Gandhiji, a person who shaped the political, social, moral, religious and economic life of our whole country. And today we find ourselves leaning heavily on the prudence and administrative sagacity of the British and realising as if it were the futility of Gandhiji's thinking and actions. I would at this stage quote what Gandhiji said at the time of the passing of the Rowlatt Act. This Rowlatt Act, I may remind the Members of this House, was a pernicious piece of legislation brought out in the same way in which this Government is bringing out this particular legislation, with the same intentions, with the same designs. I would like to quote what Gandhiji said regarding the Rowlatt Act at that time. He said:

"We cannot accept the Rowlatt Bill even under the reservation suggested by you, namely, that it is not to be enforced without the previous sanction of the Legislative Council. Our objection is not merely that it may be misapplied, but we object also to the arbitrary procedure laid down in it. I would not let even a supposed anarchist....."

Mark these words, note them properly underline them. He said:

"I would not let even a supposed anarchist be tried summarily or under a special procedural subversion of judicial checks, and certainly not under any ordinary law giving extraordinary powers. Exceptional powers have been reserved for exceptional situations. The executive authority cannot be allowed

to deal with exceptional situations in anticipation."

Gandhiji went on to say:

"The only thing, therefore, I need to say to you is that I am embarking on civil disobedience because I am no longer able to bear the agony of remaining free while the Rowlatt Act is on the statute book."

These were the golden words uttered by Mahatma Gandhi on whose inspiration we are at least trying to show to the world that we are working. You are doing everything against which Gandhiji fought and our countrymen fought. You are trying to do what was done by the British imperialists. The same thing you are copying and you are walking on their foot-prints. I have got the Rowlatt Act with me.

संसदीय कार्य विभाग में राज्य मंत्री (श्री कल्पनाथ राय) : १८ मिनट हो गए ।

श्री सुशील चन्द महन्त : ऐसी बड़की-बड़की बातें तुम्हारे को अर्थों तो आपको बहुत बहुत मालूम होंगी । यह रालेट ऐक्ट है, १९१९ का कानून है । इस कानून की परिभाषा को मिलाकर देख लीजिये । एक ही कानून है, एक ही इंटेंशन है, एक ही तीर तरिका है ।

(अवधान)

I would leave it to the hon. Minister to make a thorough study of the Rowlatt Act and reconsider the present Bill in the light of what Gandhiji said about the Rowlatt Act.

"The honourable Minister should know that he is subjecting the people of this country to the provision of a similar law which was powerfully opposed by Gandhiji by means of disobedience. We would all have been happy if the Government of today, instead of treading on the footprints of British Government, tries to ameliorate the misery of the masses on Gandhian lines."

I would read Section 4(1) of Part I, Section 22(1) of Part II and Section

[Shri Sushil Chand Mohunta]

34(1) of Part III of the Rowlatt Act where it provides judicial scrutiny. Here in this Bill there is no scrutiny. The Government has to declare an area to be a terrorist affected area. The Public Prosecutor decides to put any case that appears to him before the Special Court. But you will see in Section 4(1)—

"Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person."

This was the first safeguard.

Then Section 22(1)—

"Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in Section 21, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If, after considering such opinion, the Local Government is satisfied that action under the provisions of this section is necessary, it may by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 21, give all or any of the following directions,"

It is only after obtaining the opinion of a judicial officer who is to be promoted as a Judge of the High Court—the officer has to be such a senior officer. Then Section 34(1)—there are many other provisions, but that will take a long time; the whole Act is relevant—

"Where, in the opinion of the Local Government, there are rea-

sonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon."

Everywhere the opinion of such a superior judicial officer was taken; otherwise the case was not through. Even in 1919 the Britishers had given this concession to the people of this country even though they were foreign rulers. But in this Bill we have left it to the Public Prosecutor. The Public Prosecutor or the executive authority decides the case without any judicial scrutiny. Section 20 is a novel innovation where you have taken away the right of the accused. Throughout the whole criminal jurisprudence the idea is that the accused should be considered to be innocent till he is proved guilty by a regular trial. Even before he is tried, merely because a case relates to a particular area, you have changed the whole process. I can understand after an accused is convicted, a different type of treatment is meted out to him. But before he is found guilty, you cannot change the process of the whole system of law depending upon this cardinal principle that the accused is believed to be innocent till he is proved to be guilty. I want to make a slight reference to one other point here that these offences which are mentioned in this schedule, already exist on the statute book. But when you want to make them a part of this and provide a lesser opportunity for the accused to defend himself What is the purpose behind it? If the purpose is to adjudicate and give him proper justice, then these provisions are not necessary. If the purpose is that he should be handicapped in his defence, that would not be an idea consistent with the provisions of our Constitution under which every citizen is entitled to equally before law.

These provisions in the Bill are draconian in nature and they cannot

form the basis of a free and democratic India.

Now I am talking of the malady. When the problem relates to a large number of people in a geographical area or a particular class of people, it is political in nature. If there are some demands from a particular group of people in a particular area, they cannot be dealt with in this rough manner. They must be dealt with politically. It is only a political solution of this problem that can bring lasting peace to this area. If you keep on trying these draconian methods, then what you are going to see is what you see in Kashmir, what you see in Punjab, what you see in Assam and what is happening in Andhra Pradesh. Please do not take this country along that wrong path. If you do it, it will spell disaster to the whole country. When these people have given you a mandate to rule and govern, it is not fair to treat them like this. Take these people into confidence and deal with their problem politically and try to satisfy their aspirations and win their hearts. That is the method of running the affairs of the country.

श्री राम नरेश कुशवाहा (उत्तर प्रदेश) : माननीय उपसभापति जी, आतंकवाद से निपटने के लिये यह बिल लाया गया है। लेकिन आप जितने कानून बनाते जायें, अंग्रेजों ने इससे कम कानून नहीं बनाये थे और न इससे कम अधिकार अपने हाथ में लिये थे, लेकिन फिर भी उनको जाना पड़ा था, इसलिये मैं यह कहना चाहता हूँ कि इससे समस्या का समाधान होने वाला नहीं है। आतंकवाद का कारण आप छुद पैदा करते हैं। अगर आतंकवाद से लड़ना है तो कानून बनाकर नहीं लड़ा जा सकता है, हथियारों से नहीं लड़ा जा सकता है। इसके लिये आपको राजनीतिक, सामाजिक और आर्थिक स्तर पर लड़ाई लड़नी होगी और तभी आतंकवाद को समाप्त किया जा सकता है। मैं आप से कहना चाहता हूँ कि

जब रॉटी की लड़ाई छिड़ती है, जमीन की लड़ाई छिड़ती है, इज्जत की लड़ाई छिड़ती है, तो सत्ता में बैठे हुये लोग कुछ नहीं कर पाते हैं। सत्ता का मतलब केवल सत्तारूढ़ दल से नहीं है बल्कि नम्बर दो के उन लोगों से भी है जो नौकरशाह हैं और तीसरे वे लोग हैं जो इनसे जुड़े हुये होते हैं। नम्बर एक में सत्तारूढ़ दल को रखता हूँ। बिहार में 72 आदमियों की आँखें फोड़ दी गई। मैं पूछना चाहता हूँ कि किस कानून के मुताबिक उन लोगों की आँखें फोड़ दी गई? क्या उनके दिल में कोई गुस्सा नहीं होगा? उनके परिवार के लोगों के दिल में कोई गुस्सा नहीं होगा? जिनके माथे का सिंदूर धो दिया गया है, जिसके बाप की आँखें फोड़ दी गई हैं, क्या उनके दिल में कोई गुस्सा नहीं होगा? नवल्ला इट कहकर पता नहीं कितने आदमियों को बिहार में मार डाला गया है और उसी तरह से देश के दूसरे हिस्सों में भी मार डाला गया है। आखिर उन लोगों का क्या कसूर था? वे लोग गरीबों के खिलाफ लड़ रहे थे। सिद्धांतों के बारे में मतभेद हो सकता है, उनके हिंसक कामों की मैं सराहना नहीं करता हूँ, लेकिन उनका गरीबी हटाने का उद्देश्य पवित्र था। मैं आपसे पूछना चाहता हूँ कि देश के किस कानून के मुताबिक इन लोगों को मारा गया? उत्तर प्रदेश में पांच हजार आदमियों को पेड़ से बांधकर मार दिया गया। उनका क्या कसूर था? वे पिछड़े वर्गों के, हरिजन और आदिवासी थे। उनको इसलिये मारा गया कि वे सरकारी पक्ष के गुण्डों का मुकाबला करने की तैयारी कर रहे थे। हो सकता है कि उनके सिद्धांतों गलत भी हों और सही भी हों, लेकिन चुन-चुन करके उन लोगों को मारा गया जो सरकारी पक्ष के गुण्डों का मुकाबला करने की तैयारी कर रहे थे। अगर आप इस प्रकार के मापदण्ड देश में बनायेंगे तो शांति और व्यवस्था कैसे रह सकती है? फाजिल नगर में चुनाव

[श्री राम नरेश कुशवाहा]

हुए। गुखलिया और मुगलपुरा के कातिलों की एस० पी० और कलक्टर ने ज़ार पकड़ी लेकिन मुलजनों को भालगपुर के पुल के पार कराया गया। दूसरी तरफ मलवनी कांड में जो लोग नहीं थे उनको भी जबरदस्ती फंसाया गया। मान्यवर, अर्भी मीसा के बेटे नासा की प्राण प्रतिष्ठा उन्होंने की है। ठीक है, आप प्राण प्रतिष्ठा कीजिये। लेकिन अगर यह मापदण्ड देश में चलता रहेगा तो इससे शांति और व्यवस्था कायम नहीं हो सकती। मैं आपसे कहना चाहता हूँ कि श्री कल्पनाथ राय का क्या कसूर था। कल्पनाथ राय जी को गोली मारने के लिये तत्काल न डी० आई० जी० इस्लाम मुहम्मद गोखपुर में खड़े हुये थे और अगर एक लड़की बीच में न आती तो वह मार दिये गये होते। क्या कसूर था इनका? मैं आपसे कहना चाहता हूँ कि ग्राम लोगों के लिये, गरब लोगों के लिये कोई कानून नहीं है, कोई शासन नहीं है कोई अचार-संहिता नहीं है। धारा 323 का क्या मतलब है? धारा 323 का सीधा-सादा मतलब है कि गरीब को जब चाही, जहाँ चाही उसके घर को लूट लो। 250 से कम की अमर चोरी होती है तो मुकदमा नहीं चलता। यह आज का कानून नहीं है, यह 1960 का कानून है जबकि हाथा मन गेहूँ और हाथा मन चावल मिलता था। आप गांवों में गरीबों के घर में चले जाइये, किसी घर में 250 का माल नहीं मिलेगा। इस लिये गरीब को अगर लूट लो तो कोई हर्ज नहीं। मान्यवर, 426 और 427 धारा, शायद उनका नम्बर बदल गया, चराई और कटाई का माल किसान अपने खेतों और खलिहानों में रखते हैं। वहाँ न कानून पहरा देता है और न पुलिस पहरा देता है। वह पड़ा रहता है बाहर। उसके लिये क्या है। जब तक 250 रुपये की धास न काटी जाए तब तक कोई मुकदमा

नहीं चलेगा। 250 रुपये की धास अगर रात भर हम सभी मिलकर भी काटेंगे तो वह नहीं होगी। इसलिये वह 250 रुपये का ताम्रपात्र है, फान के रूप में नहीं देखते धानेदारों को भगवान ने अपने हाथ से बनाया है और 24 घंटे में एक धानेदार को बनाया है। वे उस धान का 10 पैसे, 5 पैसे बोझा दाम लगाते हैं, चाहे जितने फन पड़े, कोई न पछने वाला नहीं है। किसान अपने बच्चों को चाहे मार डालें लेकिन उसकी फन के बारे में पूछने वाला कोई नहीं है। मान्यवर, पुलिस का पहरा वहाँ होता है जहाँ नि धन निजियों में रहता है, पुलिस वहाँ पहरा देती है जहाँ रात भर बिलाव जाता है। हमारा मारा धन खेतों और मज्जिहानों में रहता है। न वहाँ पुलिस पहरा देती है और न कानून पहरा देता है। यह पुलिस किस काम के लिये है? केवल इतनिये कि अगर आधे रात को निता धनो व्यक्ति को चाय पाने का इच्छा है तो वह गराब के लड़के को कहेगा कि 5 किलोमीटर चले जाओ...

श्री उपसभापति : छोड़िये।

श्री राम नरेश कुशवाहा : मान्यवर, मैं बता रहा हूँ कि रात को चाय पाने के लिये अगर वह गरीब का लड़का कहता है कि मैं नहीं जा पाऊंगा तो दूसरे दिन वह धाने में जाकर शिकायत करता है कि यह लड़का बदमाश हो गया है, इसको दुरुस्त कर दो और उस गरीब लड़के को धारा 107, 116, 147, 148, 149, 151 आदि धाराओं में उठाकर जेल में बन्द कर दिया जाता है।

श्री उपसभापति : अब समाप्त करिये।

श्री राम नरेश कुशवाहा : गरीब का लड़का जो बुरा नहीं होता जबरदस्ती बुरा बनता है। जहाँ कानून को यह हालत है,

जहाँ पर गरीबों की सुरक्षा की यह हालत है, जहाँ न गरीबों को जान को रक्षा है, न माल की रक्षा है और न इज्जत को रक्षा है, तो मान्यवर, कैसे आप शांति बाँचे रखेंगे और न्याय दिलाने को क्या उम्मीद रखते हैं ? आप कौन सा रास्ता बताते हैं जिससे जिनके पास कुछ नहीं है उनको न्याय मिल सके । . . . (व्यवधान) . . . मान्यवर, मैं आप से कहना चाहता हूँ कि जब तक इन बुराइयों से निपटने के लिये राजनैतिक, आर्थिक और सामाजिक स्तर पर आप तैयारी नहीं करेंगे तब तक चाहे आप रोज कानून बनाते रहें, समस्या का कोई समाधान होने वाला नहीं है । आपको भी वैसे ही जाना पड़ेगा जैसे कि अंग्रेजों को जाना पड़ा । जिस तरह शांति और ताकत के बल पर भी अंग्रेज चले गये, उसी तरह से आपको भी जाना पड़ेगा । नहीं तो फिर आपको राजनैतिक, सामाजिक और आर्थिक स्तर पर इतना नड़ाई को लड़ना पड़ेगा । इतलिये मान्यवर, मैं इस बिल का घोर विरोध करता हूँ और मैं आप से निवेदन करना चाहता हूँ, सत्ता पक्ष ने भी निवेदन करता है कि . . .

श्री उपसमापति : समाप्त कीजिये ।

श्री राम नरेश कुशवाहा : एक कहावत है, कहा जाता है कि पारस मणि होता है, होता था या नहीं होता था लेकिन कहा जाता है कि पारसमणि से लोहे को अगर छुआ दो तो वह सोना हो जाता है । लेकिन यह मैंने कभी नहीं सुना कि किसी आदमी ने इसे अपनी दरिद्रता मिटाई हो, पारस के द्वारा लोहे को सोना बनाकर । मान्यवर, ठीक उसी तरह से आज इस देश की राजनीति में एक आदमी पारसमणि पत्थर है, वह कभी पारसमणि पत्थर रहा हो या नहीं रड़ा हो लेकिन आज श्रीमती इंदिरा गांधी पारसमणि पत्थर हैं । जो उन को छू दे वह समाजवादी है, प्रगतिशील है, देशभक्त है, पता नहीं क्या-क्या है और जो उनको नहीं छू देता वह प्रतिक्रियावादी है, वह देश के प्रति प्रेम नहीं

रखता है और पता नहीं क्या-क्या करता है । (व्यवधान) यह लागू पता नहीं क्या करता है और झंझट मचाते हैं (व्यवधान) मान्यवर, ये लागू जवान बन्द करना चाहते हैं और इन्हे कानून बना करके जवान बंद कर के आप यह बाँहे कि हम सब कर लेंगे मैं यह कहता हूँ कि नही हांगा, नही हांगा, नही हांगा और जिस तरह से हमारे बले गये उसी तरह से आपको भी जाना हांगा । जय हिंद ।

SHRI AMARPROSAD CHAKRABORTY (West Bengal): Mr. Deputy Chairman, Sir, the hon. Minister has moved this Bill in the background of Punjab. We can presume that the statement of the Minister made herein is correct. Anywhere in India, a judicial zone can be declared. If a movement is run by the people in villages, they can go and declare it as a judicial zone. They can do so anywhere in the country. I do not know how the Minister has said this because Section 3 says . . . (Interruptions) Please learn the English language.

MR. DEPUTY CHAIRMAN: Please address the Chair and do not address them.

SHRI AMARPROSAD CHAKRABORTY: The hon. Minister should see the definition of terrorism and then the definition of judicial zone. Then in Section 3, it is said:

"If the Central Government is of the opinion that offences of such nature as specified in the Schedule, etc. they can declare any portion as judicial zone."

So, Sir, if you kindly see the Schedule, different sections of 12 Acts have been taken. I am trying to draw the attention of the Minister to this thing. Even Section 505, Section 506 and Section 507 have been included in the Schedule. The Indian Penal Code has laid down the procedure for trial of the accused persons who are accused of these offences. They can take action even if the Central Government is of the opinion that any

(Shri Amarprosad Chakraborty)

offence of this nature has been committed. Section 505 is applicable if somebody restrains himself against the insult meted out to him. Section 326 is the offence where a person with some weapon tries to attack somebody. Sir, under section 507 there is a specific procedure laid down in the Indian Penal Code and under the Criminal Procedure Code all the things are mentioned. The hon. Minister has said that for any offence in the Schedule if the Government is satisfied then it can declare a judicial zone.

Now, Sir, I come to clause 4(1)(L). Now you see what happens. It says, if the Central Government having regard to the exigencies of the situation prevailing in such judicial zone considers it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

Sir, my eyes are not co-operating with me. Sir, the Minister says that they have done it in the background of the Punjab situation. But they can do it in any part of India, in any village, in any State or city. They can declare in the whole of India any judicial zone for the offences given in the Schedule. For the offences given in the Schedule there is already a procedure in the Criminal Procedure Code and in the Indian Penal Code. So, Sir, I fail to understand the Statement of the Minister that this has been done only in the background of the Punjab situation. It is not correct. At least we are not going to believe it. Sir, I have to say with a painful heart that we find in it the footsteps of a fascistic approach aimed at controlling the entire India. Even if in a small village there is some incident, under section 505 or 506 they can set up a court and they can declare a judicial zone. It is dangerous. Even under the Bengal Criminal Law (Amendment) Act, which was imposed by the British—you are also a freedom fighter and you know it—we were sent to jail under security Act. This is a replica of that thing. Already my

friend, Mr. Mohunta, has said that it bears the footprints of fascism and authoritarianism and curbing of the progressive movements. Sir, under this Bill the Central Government is taking the power to declare in any part of India a judicial zone. (*Interruptions*).

Now, Sir, I will take you to clause 10 regarding Special Courts.

SHRI K. MOHANAN: Sir, if they are not interested in the debate, we are interested.

SHRI AMARPROSAD CHAKRABORTY: Sir, it has been said here that a Special Court may take cognizance of an offence upon a police report. Do you remember how in British days we were arrested on the basis of police reports? We know how these imperialist Acts worked. Am I to see in a free country such an Act being passed by this Parliament and at the behest of the Government? We are talking of democracy, we are talking of fundamental rights, we are talking of individual freedom, and this is what is happening. You know how we were harassed on police reports. Then you take section 12. I would only say that it is because of their brute majority that they will be passing any such legislation; but time will come, I warn them '*Vinash kale buddhi bhrastha*' (*Interruptions*).

SHRIMATI KANAK MUKHERJEE (West Bengal): My humble submission is that such a serious matter cannot be treated so lightly in such light atmosphere by Treasury Benches and if you want that we speak on it, then they should show some respect and hear us patiently.

SHRIMATI USHA MALHOTRA (Himachal Pradesh): I am on a point of order. The hon. Member said that we want to pass it with brute majority. Why should he say so? It is by the will of the people that we are here, not because of these friends. . . (*Interruptions*). It is a sheer reflection on the will of the people. If they could not have the majority, why should they blame us?

SHRI AMARPROSAD CHAKRABORTY: Now, I come to section 12. Because you have the experience of the past...

MR. DEPUTY CHAIRMAN: That is why I am saying please conclude now.

SHRI AMARPROSAD CHAKRABORTY: You know how from Gandhiji to Pandit Nehru, and Netaji Subhas Bose, everybody condemned this kind of measure by the Britishers. But we are adopting the same procedure. I warn them. You see how the Bill has been drafted. I can understand the situation in Punjab; you apply it in Punjab; you control the situation; you control the elements who are acting against the sovereignty and integrity of the country. But to make it applicable for the whole country, you are indirectly trying to suppress the people, which is a very serious situation and I warn 'Vinash kale buddhi bhrashta' the time will come when people will give a fitting reply. With these words, I oppose this Bill tooth and nail.

श्री दरबारा सिंह: डिप्टी चैयरमैन सर, इरादा तो नहीं था बोलने का, लेकिन पंजाब का बार-बार नाम लिया गया है। मैं अर्ज करता हूँ कि जो... (व्यवधान)

श्री अमर प्रसाद चक्रवर्ती: आपने बैक-ग्राउण्ड को... (व्यवधान)

श्री दरबारा सिंह: आपको किसने कहा, आपका नाम तो नहीं लिया मैंने।

मिनिस्टर साहब ने वाजपेयी तौर पर कहा है कि जस्टिस भी देना है, लेकिन जरा प्रो-जीजर बदला है। अगर प्रो-जीजर बदला है, तो क्यों बदला है? यह टेरोरिस्ट के बारे में जो इन्होंने डे फेमिशन की है, मैं कहना चाहता हूँ कि इनके वास्ता नहीं पड़ा उन टेरोरिस्ट्स का, इन्होंने देखा नहीं कि कहाँ-कहाँ क्या-क्या खोखिलियाँ हुई हैं।

बड़ी आसानी से मेरे दास्त जसवंत सिंह है कि हाँ कुछ गांव वालों को नकड़ा जा

रहा है। डिप्टी चैयरमैन साहब, कितनी गांवों में, देहात में नुकसान हुआ है, शायद इनको अंदाज नहीं है। एक कट नहीं, दूसरा कट नहीं, तीसरा कट नहीं, चार कट लग चुका है। कौन हैं, कहाँ मानते हैं। जब पकड़े जाते हैं तो भी बयान देते हैं कि हमने यह काम किया है। तो क्या टेरोरिस्ट्स से कम वह काम है। बेगुनाह लोगों को मारकर, एक देहात से दूसरे देहात में, दूसरे देहात से तीसरे देहात में, मैं जिक्र नहीं करना चाहता, जो मैं कह चुका हूँ वहाँ जो कुछ हुआ है टेरोरिस्ट्स ने गुरुद्वारे के अंदर जो किया है, गुरुद्वारे के बाहर जो किया है।

... (व्यवधान) मैं सब से निवट लूंगा। कोई बात नहीं आपको भी जवाब दे सकता हूँ, मुझे पता है, मैं जानता हूँ... (व्यवधान)

I am quite competent to reply to the questions that they are raising here.

मैं यह बात कह रहा हूँ कि टेरोरिस्ट की तारीफ करते वक़्त आप क्यों भूल जाते हैं कि टेरोरिस्ट एक जगह का हो या दूसरी जगह का हो, क्या मतलब है, दुकानें ही नहीं लूटी, अकेले डकैतियाँ नहीं की हैं, अकेले राहजनी नहीं की है, पैट्रोल पंपों को नहीं लूटा है, आते-जाते की बेइतियाँ नहीं की हैं, बल्कि मर्डर किए हैं और जब पकड़े जाते हैं तो हम उनको कहेंगे कि बहुत भलेमानस आदमी हैं? टेरोरिस्ट्स मुल्क के इस हिस्से में हीं या उस हिस्से में हीं, जो आदमी एक प्लांड तरीके से मासूमों को कत्ल करने के लिये आते हैं वे टेरोरिस्ट्स हैं। बेशक वे एक जगह के हीं या पंजाब के हीं। पंजाब में हैं तो क्या वे दूसरे इलाकों में जाते नहीं हैं? गये हुये हैं। उनको प्रोटेक्शन मिल रही है। हम जानते हैं वे क्या-क्या कर रहे हैं और मैं उसमें जाना नहीं चाहता। ... (व्यवधान) आपको कोई तकनीक है तो मुझे बता दें। ... (व्यवधान) ... फिक्र नहीं करें। मैं इनको सम्भाल लूंगा। आप एक्टिविटी का जिक्र बार-बार कर रहे हैं,

[श्री दरबारा सिंह]

हमें इस बात का पूरा अहसास है कि इंदिरा गांधी की लीडरशिप को सिर्फ आप कैरेक्टर एपेसिनेशन के जरिये खत्म करने के लिये कहीं से बात लायें बात नहीं आती है। चाहे टेरोरिज्म की हो, किसी जगह की हो। मैं कहना चाहता हूँ कौन से लोग एथोरिटेरियन हैं? मैं यह कहता हूँ कि जो डेमोक्रेसी में बिलीव नहीं करते वे हमको नतीहत दे रहे हैं। ... (व्यवधान) ... लपू शुभ नाट टेमें माई टाइम। मैं यह कहना चाहता हूँ, मुझे इस पर कोई एतराज नहीं कि आप क्या कहते हैं, एतराज इस बात पर है कि जिस बात में आप यकीन नहीं करते उसको आप बार-बार क्यों कहते हैं? हमें डेमोक्रेसी में यकीन है। मैं आप को यकीन दिलाता हूँ कि डेमोक्रेसी पर जब भी कोई चोट होगी तब हम उस बात के पूरी तौर पर खिलाफ होंगे। लेकिन मैं यह कहता हूँ कि डेमोक्रेसी को खत्म करने के लिये जो लोग आगे आ रहे हैं, ... (व्यवधान) ... यह अन्दर ही अन्दर चिड़-चिड़ मत करो। नहीं तो मुझे इस पर बहुत कुछ कह देना पड़ेगा। मैं कहे देता हूँ आप जो बातें वहाँ कह रहे हैं, खैर, छोड़िये इस बात को। मैं अभी जनरल बात कर रहा हूँ। अगर आपने जनरल बात इन पार्टीकुलर सुननी है तो वह भी सुनाने के लिये तैयार हूँ। ऐसी बात नहीं है। हम रोज पास बहुत मेटिरियल है। मैं यह कहना चाहता हूँ कि इसमें टेरोरिस्ट्स को पकड़ कर और उन पर पाबन्दी लगा करके वहाँ हम उनको मुक्त तो क्या हर्ज है? हमने अदालतें लगाई हैं। अदालत के खिलाफ में फैजला हो सकता है। तो आप आगे पहुँच सकते हैं। मिनिस्टर ने कहा कि वे अदालत में जा सकते हैं। चीफ जज ने जज मुकर्रर करने हैं और हमने तो नहीं करने हैं। जज जो करेगा वह अन्दर बैस कर ही करेगा। आपको पता है कि वहाँ क्या हुआ है? जो जजेज सुन रहे थे कोर्ट में, उन पर कैसे हमले किये गये और बाहर से तलवार, बंदूक और

पिस्तौल लेकर उस पर हमला कर दिया गया और लोगों को छुड़ाकर ले गये हैं। यह बात आपको पता है? ... (व्यवधान) आप चिड़-चिड़ मत करो। और कुछ वहाँ तो कहो मगर चिड़-चिड़ मत करो। आप चिड़-चिड़ मत करो। और कुछ वहाँ, तो वहाँ, चिड़-चिड़ मत करो।

तो मैं यह कह रहा हूँ कि आपको यह बात समझ लेनी चाहिये। ऐसी बातें जा होती रही हैं, उसका आपको अहसास नहीं है। आपसे दूर से बात करते हैं, नजदीक से बात नहीं करते। आपने हालात को जाना नहीं। मुझसे आप सारी बात सुन लें। मैं फेक्चुअल बात कहता हूँ। फेक्चुअल से इधर-उधर नहीं जाऊंगा। मैं ऐसे इन्स्टान्स दे सकता हूँ। मैं पार्टियों की बात नहीं करता कि पार्टियाँ किस तरह से उस टेरीरिज्म को हुवा देने का काम करतीं रहीं। यह कहतीं रहीं हैं कि इनकी डिमांड्स अच्छी हैं... (व्यवधान) ... आप चिड़चिड़ मत करो। बाद में बोल लेना। आपके जुबान लंबी है, तो बाद में बोल लेना।

मैं कहता हूँ कि वहाँ जो कुछ हुआ है, उसकी अगर चिनोनी तस्वीर पता नहीं तो वह आप क्यों नहीं जानना चाहते? यह पंजाब के हालात अब दूसरे सूबों में भी हो रहे हैं। लोगों के, एम० एल० ए० के घर जलाये जा रहे हैं, उनको डराया-धमकाया जा रहा है, उनके परिवारों में लोगों को मिट्टी का तेल डाल कर जलाया जा रहा है, मारा जा रहा है। यह क्या हो रहा है? अगर ऐसा हो रहा है, तो सरकार को उसकी रोक-थाम करने के लिये आगे आना चाहिये या नहीं? पंजाब में जो अदालतें बनी हैं, वे इसलिये बनी हैं कि जिन्होंने टेरोरिज्म किया है उनके विरुद्ध केस हैं, उन्होंने मर्डर किए हैं, एक नहीं, दस-दस मर्डर किए हैं। आप वहाँ बाँधी आये नहीं, आपने बाँधी देखा नहीं। आप मारने वालों में रहे हैं, मरने वालों में नहीं। ... (व्यवधान) ...

श्री नेपालदेव भट्टाचार्य (पश्चिमी बंगाल) : आपको तो जाना पड़ा। यह शर्म की बात है। . . .

श्री दरबारा सिंह : मुझे मत छेड़िये। मैं आपको बहुत कुछ कह सकता हूँ। . . . (व्यवधान) . . . मैं उन पार्टियों का जानता हूँ, जो आज भी पंजाब में यह कह रही हैं कि मासूमों को पकड़ा है। मासूमों का नहीं पकड़ा हमने, हमने उनका पकड़ा है, जिन्होंने कत्ल किये हैं, जिन्होंने मासूमों का खून फिया है, जिन्होंने लूटमार की है। यह कुएं के अन्दर, जो गुफाद्वारे में हैं, उसमें लूट का माल मिला है। आपने देखा नहीं है। अगर आखें बंद करके समझना चाहते हैं, तो बात अलग है। मैंने खुद कोई नमी नहीं रखी जितना हो सका, वहीं काम किया है। लेकिन सवाल यह है कि हमने इनसेंट फिसिंग का पकड़ा नहीं है। आप इनसेंट को मारने वाले मुझसे बात करते हैं। मैं यह कहता हूँ कि वहाँ की पार्टियों ने, मैं किसी पार्टी का नाम नहीं लेता, लेकिन उभरेंगे, जब मैं हूँगा, वहाँ ऐसी पार्टी मौजूद है, जो आज भी यह कह रही है कि यह इसलिए हुआ कि फैला पहले नहीं हुआ। यह पहले कभी कहते रहे कि यह ठीक किया है। सब पार्टी ने ठीक कहा, सिवा एक पार्टी के, सबने कहा— ठीक हुआ है, जो एकशन हुआ है और उसके बाद मुझे पता था कि आगे कुछ दिनों के बाद यह कहेंगे अच्छा तो हुआ, लेकिन लेट हुआ है और फिर कहेंगे कि यह लेट जान बूझ कर दिया है और फिर यह कहेंगे कि जान बूझ कर इस लिये दिया है कि इन्वेक्शन जो है, उसमें कितनी मदद हमें मिल सकती है। यह कैसा बात है। यह हुआ और इसको सबूत तो यहाँ मौजूद बैठे हैं। पहले पार्टी ने कहा— ठीक किया है। मैं समझता हूँ कि इनकी पार्टी से भी समझदार इनका लीडर है, जिसने लंदन में भी जाकर यह बयान दिया कि वहाँ ठीक हुआ है। लेकिन हमारी राय हो सकती है कि—देर से है। उसकी, अपने लीडर की

बात तो मालो। बड़ा भला आदमी है, वहाँ काम करने वाला है। क्यों उसकी मिट्टी पलीत करने के लिये यहाँ बैठे हो?

तो मैं कहना चाहता हूँ कि डिप्टी चैयरमैन साहब, पार्टियों ने यहाँ यह कहा कि वैसे पकड़े जा रहे हैं, अंधाधुंध पकड़े जा रहे हैं। मैं कहता हूँ कि मैं इनको चैलेन्ज करता हूँ, जिन आदमियों के चालान हुये हैं, वे पकड़े गये हैं। उनमें आप बताएं कौन से आदमी हैं, जो गलत राह पर पकड़े गए हैं? यह कहने की बात क्या है? इस सब को खाने का मतलब यह नहीं है कि हम वेगुनाहों को पकड़ने के लिये सारी कोशिश कर रहे हैं। यह बात डेमोक्रेसी में आती नहीं है। हम डेमोक्रेसी को बाहर जाना नहीं चाहते। लेकिन डेमोक्रेसी में कितने लोग धकीन करते हैं, इस पर बहस होगी तो मैं बताऊंगा कि सारी पार्टियाँ क्या करती हैं और किस हद तक वे डेमोक्रेसी में धकीन करती हैं। आज डिस्ट्रिक्ट प्रेशन की फोर्सिंग को हवा देने की आप कोशिश करेंगे और जो यह बिल आया है उसके खिलाफ कहने की कोशिश करेंगे तो आप उन लोगों को सपोर्ट करेंगे जो टेरेरिज्म चला कर मुल्क से इंटीग्रेशन को तोड़ना चाहते हैं। मैं आप को बताना चाहता हूँ कि बाहर की फोर्सिंग लगी हुई है। मैंने पहले उसके सबूत दिये हैं और अभी भी दे सकता हूँ। अमेरिका में जो मीटिंग हुई है वहाँ क्या कुछ नहीं हुआ है? जो जिया कह रहे हैं वह ठीक कह रहे हैं? जो छोटी-छोटी ताकतें उठ रही हैं क्या वह टेरेरिज्म पैदा नहीं कर रही हैं। उनका इन्तजाम करने लगे हैं—एक राहबान कहा—, बुजुर्ग हैं, कहते हैं यह तरीका नहीं है, इकोनोमिक फ्रंट पर काम होना चाहिये— ठीक है, सारे फ्रंट पर मदद होनी चाहिये—लेकिन पंजाब में जो हम से लड़ रहा है उसका पेट भरा हुआ है। वह खाली पेट नहीं लड़ रहा है, भरे पेट से लड़ रहा है। यह गलत है कि इकोनोमिक लाइन पर दी हुई मदद से लोगों को इस रास्ते से हटाया जा

[श्री दरबारा सिंह]

सकता है। उनके दिमाग में अपनी ताकत दुबारा बहाल करने के लिये एक वहम है और उसको पूरा करने के लिये एक्सट्रीम स्टेप्स की तरफ चले गये हैं और मैं समझता हूँ कि जो लोग इन्डायरेक्ट उनको सपोर्ट करते हैं वे भी उतने ही जिम्मेदार हैं। जितना मारने वाला जिम्मेदार होता है उतना ही पीछे प्लान करने वाला होता है।

डिपुटी चेयरमैन साहब, मैंने थोड़ा इस लिये कहा क्योंकि इन्होंने पंजाब का नाम लिया है। इस पर फिर कभी बहस होगी तो फिर बोलेंगे लेकिन आज मैं इतना ही कहना चाहता हूँ कि यह जो बिज है, जो आप के सामने है उसमें कहीं उन लोगों को पकड़ने की बात नहीं है जो पोलिटिकल वर्कर हों, सिविलाइज्ड हों। ऐसे-ऐसे अल्फाज कहे हैं सिविलाइज्ड नाम नहीं है। नाम यह है कि खुली छूट दे दी जाय जिसको चाहे मार ले, जैसा वह इन्तजाम करना चाहे कर ले, जवानों के लिहाज से कर ले, तलवार से कर ले, बंदूक से कर ले, देश का डिस्टर्बेशन कर दे। इस सब को रोकने के लिये यह बिल लाया गया है।

अभी जो बुर्जुआ बोलें व जोर लगा कर कह रहे थे कि यह डेमोक्रेटिक नहीं है। क्या है डेमोक्रेटिक? मैं दूसरे मुल्कों की बात नहीं करता। डेमोक्रेती के खिलाफ कई मुल्कों में बहुत आवाज है। डेमोक्रेती के नाम पर हमारी डेमोक्रेती को खत्म करने की कोशिश की जा रही है। मैं नहीं अर्ज करता हूँ कि चारों तरफ जा रहा है उससे आग धाकिक है, उसके बारे में मैं कुछ नहीं कहना चाहता। उसके लिहाज से आप सोचें कि इस टेरेरिज्म को बन्द करने के लिये हमें कोशिश करना चाहिये या नहीं करना चाहिये। इसका इस्तेमाल गलत हो मैं उसके खिलाफ हूँ। इसके साथ आप अन्दाज जरूर करें कि जो लोग टेरेरिज्म कर रहे हैं; जरायम कर रहे हैं, नाजायज तौर पर लोगों पर हारवा होने की कोशिश कर

रहे हैं, किसी भी ढंग से कर रहे हैं, किसी लिहाज से कर रहे हैं उसको रोकने की जरूरत है। इन अल्फाज के साथ मैं खत्म करता हूँ।

श्री सुरज प्रसाद (बिहार) : महोदय, मैं इस बिल का विरोध करने के लिये खड़ा हुआ हूँ अभी सरकार के खूनी पंजे में बहुत से ऐसे कानून हैं जिन कानूनों के द्वारा लोगों के अधिकारों का हनन किया जाता है। यह कानून भी सरकार के खूनी पंजे में एक ऐसी ही हथियार होगा जिसके जरिये लोगों के जो अधिकार हैं उनका अपहरण होगा। सरकार ने जहाँ आतंकवाद की परिभाषा की है उसके दायरे में साधारण से साधारण एजिटेशन भी जा होगा और जहाँ पर यह कानून लागू होगा उसके दायरे में वह लाया जा सकता है। सरकार ने परिभाषा की जो समूची बातें हैं उनकी ओर ध्यान नहीं दिलाया है। मैं आपका ध्यान महज दालानों की ओर खींच कर दिलाना चाहता हूँ जो इस प्रकार हैं :—

“coercing and over-aweing the Government established by law and disruption of services and means of communication”

ये ऐसे व्यापक शब्द हैं जिनके दायरे के अंदर जनता का कोई भी स्वस्थ और पवित्र आंदोलन लाया जा सकता है और सरकार यह कहेगी कि यह आंदोलन कानून के द्वारा स्थापित जो सरकार है उसका कोअर्स करने और उसका ओवरथ्रो करने के लिये चलाया गया है इस लिये मैं इस कानून को राक्षसी कानून की संज्ञा देता हूँ और इसके द्वारा सरकार के राक्षसी हाथ और भी अधिक मजबूत हो जायेंगे। यह कानून महज पंजाब तक ही सीमित नहीं रहेगा। सरकार जहाँ चाहे और जहाँ कहीं वह देखेगी कि आतंकवाद प्रकट हो रहा है वहाँ इस कानून को लागू करने की कोशिश करेगी। मैं बिहार से आता हूँ। पंजाब में आतंकवाद एक दूसरे किस्म का आतंकवाद है। बिहार में भी नक्सलाइट्स हैं। उन्हें भी आतंकवादी की संज्ञा दी जाती है। वहाँ पर भी

नक्सलाइड्स मामूली से मामूली जो काम करते हैं तो उनको और दूसरे खेत ममदूरों को तरह-तरह के केसों में फंसा देने की कोशिश की जाती है और इस तरह से उनको तंग और तबाह किया जाता है कि जिस का कोई ठिकाना नहीं। मेरी समझ तो यह है कि अगर यह कानून पारित हो गया तो बिहार के अंदर, त्रिपुरा और मणिपुर के अंदर और आसाम के कुछ हिस्सों में भी यह कानून लागू किया जायेगा और वहाँ पर जो किसानों और मजदूरों के जायज आंदोलन चलते हैं उनको दबाने की कोशिश की जायेगी। मैं सरकार से जानना चाहता हूँ कि सरकार ने जो शेड्यूल आफेंस की बात कही है उसके दायरे में कुछ ऐसी धाराओं का जिक्र किया है जिनका ठीक से अध्ययन किया जाय तो ऐसा लगता है कि इस कानून के रहते कोई भी ट्रेड यूनियन आंदोलन, कोई भी किसानों और मजदूरों का आंदोलन चलाना मुश्किल हो जायेगा। धारा 332 भी शेड्यूल आफेंस के अंदर लायी गयी है और 332 धारा क्या है। 332 धारा में सरकारी अधिकारी को कोई कानून अनुपालन करने में कोई बाधा डालेगा तो वह भी इस कानून की धारा में आ जायेगा जहाँ कि यह कानून लागू होता है। 332 धारा के अंदर जो प्रावधान है यदि पंजाब में यह कानून लागू हो गया है तो पंजाब में ही नहीं अन्य राज्यों में भी जहाँ सरकार के अधिकारी किसानों को बैल कुर्क कर लेते हैं, उनके मवेशी जब्त कर लेते हैं, ये तमाम बातें करते हैं, जो कि गैर-कानूनी हैं, अगर इनको भी किसान रोके तो वह 332 धारा में आ जाएगा। मैं साँकार से इसकी सफाई चाहता हूँ।

इसमें धारा 342 भी है जिसको घेराव कहा जाता है आम भाषा में। किसान और मजदूर आज बी० डी० ओ० और सरकारी अधिकारियों का घेराव

करते हैं। डिमांस्ट्रेशन करते हैं। कोई भी डिमांस्ट्रेशन हो उसको घेराव की संज्ञा दी जा सकती है। इसलिए मैं कहना चाहूंगा कि इस कानून की बाँह इतनी लंबी फैला दी गई है कि कोई भी मामूली से मामूली काम भी जो किया जाएगा उसको सरकार इस टैरॉरिस्ट कानून में ले जाएगी। इसलिए कोई भी किसान का आंदोलन हो, खेत मजदूर का आंदोलन हो, ट्रेड यूनियन आंदोलन हो, उनको चलना मुश्किल हो जाएगा।

दूसरी बात मैं इस सम्बन्ध में सरकार से कहना चाहूंगा कि इस कानून के अंदर समरी ट्रायल की व्यवस्था की गई है जिसका अर्थ यह हुआ कि किसी भी अपराधी को यह सुविधा हासिल नहीं रहेगी कि वह अपना डिफेंस सही ढंग से कर सके क्योंकि संगीन से संगीन जुर्म इस धारा के दायरे में आते हैं। ऐसी अवस्था में समरी ट्रायल की व्यवस्था करके सरकार ने, जो एक्ज्यूज्ड को बचाव की सुविधा रहती है, उससे उसे वंचित कर दिया है।

मैं बहुत सी बातें नहीं कहना चाहता जिनका जिक्र माननीय सदस्यों ने कर दिया है, लेकिन एक बात मैं सरकार के ध्यान में अवश्य लाना चाहता हूँ कि अभी तक यह परंपरा थी कि एक्ज्यूज्ड को यह माना जाता था कि वह बेगुनाह है और कानून के अंदर कोर्ट में सरकार को यह साबित करना पड़ता था कि वह गुनाहगार है। लेकिन आज के कानून में यह व्यवस्था की जा रही है कि एक्ज्यूज्ड को स्वयं यह साबित करना पड़ेगा कि वह पाक-साफ है। ऐसी व्यवस्था जूरिसप्रूडेंस आफ लॉ में नहीं होती।

अंत में मैं सरकार से कहना चाहता हूँ कि यह कानून आंतकवादियों से लड़ने

[श्री दरबारा सिंह]

के लिए बनाया गया है। लेकिन आतंकवाद की लड़ाई कानून के जरिए नहीं हो सकती। सरकार ने कहा कि उसकी नीयत बिलकुल पाक-साफ है, इसका दुरुपयोग नहीं होगा। लेकिन सरकार के जितने भी कानून पास हुए हैं उन तमाम कानूनों का दुरुपयोग हुआ है और इस कानून का भी दुरुपयोग होगा। इसलिए मैं सरकार की नीयत पर नहीं जाता, उसके व्यवहार पर जाता हूँ।

अन्त में मैं कहना चाहता हूँ कि आतंकवाद की लड़ाई इस कानून के जरिए नहीं लड़ी जा सकती। आतंकवाद से सरकार को फाइट करना है तो हिन्दुस्तान के किसानों और मजदूरों के हितों का संपादन करना होगा जिनके बल पर इस आतंकवाद का मुकाबला किया जा सकता है। लेकिन इसको बढ़ावा कहाँ से मिल रहा है? मैं सरकार से कहना चाहता हूँ कि त्रिपुरा में उपजाति समिति है, चुनाव में कांग्रेस आई का समझौता हुआ और इस सरकार ने उस जमात को जो आतंकवाद जमात थी, उसको इज्जत और प्रतिष्ठा दी। उसी तरह से जो मिजोरम का नेशनल फ्रंट है, जिसके नेता लाल डेंगा हैं, कांग्रेस पार्टी के द्वारा उसको बुलाकर आज तक मधुर-मधुर बातें हुई हैं, कांग्रेस पार्टी और उसकी सरकार के द्वारा की जा रही है। इसलिए इस तरह का कानून पारित हो जाने से ही अगर सरकार यह समझती है कि आतंकवाद का मुकाबला कर लेगी तो वह धोके में है, कभी भी इसका सामना नहीं किया जा सकता। इसलिए सरकार अगर चाहती है कि आतंकवाद से फाइट करेंगे तो उसके लिए जरूरत इस बात की है कि सरकार देश के अन्दर जो सामाजिक व्यवस्था है उसमें बुनियादी रूप में परिवर्तन करे। ताकि देश के

अन्दर में आतंकवाद का मुकाबला किया जा सके। हमारे यहाँ जो वामपंथी आतंकवादी उभरे हैं इसके लिए कौन जिम्मेदार हैं। इसके लिए सरकार जिम्मेदार हैं। जो सोशल लाज बनाते हैं, जैसे लैंड रिफार्म लॉ या दूसरे लाज हैं, इस तरह के जितने भी कानून हैं उन कानून का सही ढंग से पालन नहीं होता। इसलिए वामपंथी आतंकवादी भी देश के अन्दर जोर पकड़ रहे हैं। मैं सरकार से कहना चाहता हूँ कि आतंकवाद का मुकाबला महज कानून पारित करने से नहीं होगा। पंजाब के अन्दर जो टैरोरिस्ट्स टन हुए हैं इसके मुख्य कारण यह है कि भिड़वाला पैदा हुए, इसके मुख्य कारण यह है कि वहाँ की कृषि की पैदावार में ठहराव आया, सरकार ने वहाँ पर जानबूझ कर बड़े उद्योगों का विकास नहीं किया। यह भी कारण रहे जिसकी वजह से वहाँ टैरोरिज्म पैदा हुआ। मैं सरकार से कहना चाहता हूँ कि अगर सरकार चाहती है कि आतंकवाद का मुकाबला करे तो उसे सही ढंग से देश के अन्दर सामाजिक और आर्थिक जो बुनियादी बातें हैं उसको लागू करे और आवश्यक कदम उठाये।

✓ श्री जसवंत सिंह: जनाब सदर साहब, आप सही फर्मा रहे हैं। सरदार दरबारा सिंह जो सरकारी पक्ष के हैं, ने एक-दो बात कहीं हैं। एक-दो बातें जो उन्होंने कहीं हैं, मैं जरूर समझता हूँ कि उसका छोटा-सा जवाब दूँ। मैं उनकी बात का इतिफाक करता हूँ कि उन्होंने गांव में, कोर्ट में हम वगैरह का जो यहाँ बयान किया वह हमले से किसी से छिपा हुआ नहीं है। सरदार दरबारा सिंह ने जो यह फर्माया कि मैं उस बात से वाकिफ नहीं। मुझे समझ नहीं आया वह कैसे यह बात कह गये। एक बात मैं छोटे में अर्ज करना चाहूँगा

सरकारी पक्ष को कि उनका यह सोचना कि फौज का इस्तेमाल करके सरकार ने अपनी ताकत का कोई सबूत दिया है, यह एक बड़ी गलतफहमी होगी। (व्यवधान)

कुछ माननीय सदस्य : किसने कहा ?

श्री जसवंत सिंह : सरदार दरबारा सिंह ने यह बात कही है ।

श्री कल्याण राय : किसी ने यह बात नहीं कही है ।

श्री जसवंत सिंह : सरदार दरबारा सिंह ने यहां कही है जिसके बारे में चर्चा कर रहा हूँ । इसका सिलसिला टैरोरिज्म, टैरोरिस्ट्स इन सब के साथ जुड़ा हुआ है, क्योंकि यह टैरोरिज्म ही अतिवादी है और इन अतिवादियों को कंट्रोल में रखने के लिए ही यह कानून बनाना जरूरी हो गया था । जनाब सदर साहब, मेरी यह गुजारिश है कि यह जो आतंकवाद चल रहा है यह कोई आज का सिलसिला नहीं है यह सन् 1981, 1982 और 1983 में चल रहा है । मरहूम जर्नेल सिंह भिंडरवाला, यह कोई आज का सिलसिला नहीं है । आज हमें अगस्त महीने में, सन् 1984 में ऐसा लगता है कि आग लग गई और बुझाने के लिए फौज को बुलाया गया आजाद हिन्दुस्तान में पहली बार अहमद शाह अब्दाली के बाद तवारीख इमका गवाह है, कि पहली बार फौज गई है । यह अपने आप में हम सोचते हैं कि हिन्दुस्तान के लिए बहुत बड़ी चर्चा की बात है । जब आग लग गई तब उसके बाद 14 जुलाई, 1984 को फौज बुलाई गई और आग बुझाई गई, बुझाने की कोशिश शुरू हो गई । उसके बाद 14 जुलाई, 1984 को जब यह सारा सिलसिला एक रूप से खत्म हो गया, एक चैप्टर बंद हो गया

तो नया सिलसिला शुरू हुआ । सरदार साहब फर्माते हैं कि टैरोरिज्म को कंट्रोल करने के लिए हम को 14 जुलाई को यह आर्डिनेंस लाना जरूरी हो गया । एक सवाल का जवाब फिर भी बाकी रह जाता है । सन् 1981 में यह कानून क्यों नहीं लाया गया, सन् 1982 में यह कानून क्यों नहीं लाया गया । सन् 1983 में यह क्यों नहीं लाया गया, 1984 के शुरू में यह कानून क्यों नहीं लाया गया । जब आग बुझ चुकी थी उसके बाद यह लाने की जरूरत क्यों पड़ी ?

Sir, I go on to some of the points which were made by the hon. Minister of state for Home Affairs, and I shall be very brief because the debate is tending to become repetitious. I am aware of the mood of the House. People want to get away.

Sir, I raise just four very small points and three very small propositions which will not take me more than a minute and a half to put across.

SHRI DARBARA SINGH: Sir, in my absence my friend has said that I said something about the appreciation done by Congressmen of the army action. I want to see the record straight. I said that all parties except one appreciated the army action, but later on, slowly, just in a very indirect manner, they started opposing it. That is what I said.

SHRI JASWANT SINGH: The real debate can take place as to who did what when the Punjab budget is taken up. I shall not involve myself any more on that particular point.

I shall put across, as on an earlier occasion, in the context of the Terrorist Affected Areas (Special Courts) Bill, three or four questions which arise. What is the philosophy, the ethos, the style of governance of the present Government? Are we to identify the image of your Government by such enactments? Is that the philosophy underlying your Government? What is the ethos? What prompts you to bring these Bills in such ordinance-like fashion

[Shri Jaswant Singh]

that the image of your Government becomes identified with these? And if the image of the Government gets identified with these, then there are consequential effects of it, to which please pay heed.

Sir, what is the shape, structure of the Indian society towards which we collectively wish to aspire?

These are the questions which arise. How are we responding to the challenges of nation-building in the fourth decade of our independence? I am constrained to point out that by the attitude, by the manner in which we are handling our problems to these challenges to nation building, our response is ad-hocist and our response is marked by very deep insensitivity. I need to keep quiet only for half a minute and you will recognise what I mean by insensitivity.

Sir, the final question that I put across is: what is the image and reality of India that we want our children to inherit? Is it to be identified by such enactments?

I put across very briefly four propositions, having a direct nexus to the present Bill. A law, or any law, which tries *in camera* basing prosecution on the assumption of guilt and requires innocence to be proved is an uncivilised law and will not enable us to preserve society or achieve homogeneity. I put it to you, because contextually Punjab was repeatedly brought up, that if Punjab is a sad story of ruination that can be brought about resulting from a nexus between religion and politics, then the reverse assertion of the same nexus deriving its strength and impetus from official patronage is equally damaging. If one nexus of religion and politics was wrong, then the reverse nexus with official patronage is also wrong.

Sir, I put it to you that history teaches. It will take me half a minute. I am quite saddened because we may contentiously argue against one another's party points. Parties may fight, as if assuming a constancy of what we are attempting to serve. But if in the process of doing what we are doing, we destroy or contribute to the destruction of the nation, then there will

be no parties left either. My objection on the grounds of disapproval of the present Bill, therefore, would remain reiterate and I reiterate my opposition and conclude.

SHRI P. VENKATASUBBAIAH: Mr Deputy Chairman, Sir, Shri Jaswant Singh can speak in a very beautiful language and he can coin words so as to create an impression as if we are doing something wrong and anti-national. He also asked what the reality of India is? What the image of India is? I can only say without any fear of contradiction that the image of our country under the leadership of Shrimati Indira Gandhi is very high in the world. Even her worst critics have realised that here is a leader who can save this country from disintegration. And my honourable friends here are adopting an ostrich-like policy. They refuse to see the reality. They do not understand how by their hostile attitude they have been alienating themselves from the people. They should realise that the country under the leadership of the Prime Minister has at no point of time after independence, been faced with a situation like the one we are facing today. When my friends speak about terrorists, perhaps they do not realise that the terrorists we are dealing with in Punjab are quite different. They are the terrorists who want this country to be vivisected, terrorists who want to create anarchy in this country, terrorists who are mercilessly murdering innocent people, terrorists who are looting property. May I ask, my friends, in all humility—are these legitimate activities? This is an extraordinary situation. We are ourselves not happy to bring forward this Bill for the approval of the House. But we have to deal with an extraordinary situation. Naturally, therefore, extraordinary remedies required. It is only in that context that this Bill has been brought forward. Even then I have said in my opening remarks that the judicial process has not been circumvented. We have only tried and we have been trying to reduce the avoidable delay in trying these cases. Special courts are established not arbitrarily. The judge of the Special Court is appointed with the concurrence of the Chief Justice. Special courts will be established only in places

which have been declared as terrorist-affected areas. By passing this Bill, *sonu motu* the entire area is not declared as a terrorist-affected area. A definition has been given as to which are the terrorist-affected areas. It has been clearly stated in this Bill that these are the areas which can be declared as terrorist-affected areas. And terrorists also have been defined clearly. It is not as though we are trying to take any political vendetta against any person. As a matter of fact, Government will not come in the way of any legitimate activity, trade union activity or political activity. It has been clearly defined in the Bill. If the honourable Members would like to listen, I can read it out. Sir, an area is declared as terrorist affected automatically on the passing of the Bill. A conscious decision will have to be taken in such cases. We have defined the term 'terrorist' also.

Sir, they have taken objection with regard to inclusion of sections 153A and 153B of the Indian Penal Code. They say it is aimed at trade union and labour activities. It is not correct. Section 153A is promoting enmity between religious, racial and linguistic groups. Similarly Section 153 B is also connected with groups of religious, racial and linguistic character. These sections cannot be used to curb trade union and labour activities. That apprehension is misplaced.

We have provided for *in camera* trial because witnesses have to be protected. Shri Darbara Singh has really lightened my burden by explaining how witnesses are being harassed and new Judges are threatened. How can a fair trial be ever held in such circumstances? Even there we have made certain provisions to the effect that if the witness wants or if the prosecution or the Judge wants that the trial should be open, open trial can be allowed.

With regard to appellate authority, we have taken out only the High Court. The appeal lies to the Supreme Court.

About presumption, the Evidence Act has been amended in this case. This is for general application not only operative in terrorist affected area, in other disturbed areas as well. But there are ade-

quate inbuilt safeguards. Presumption can be raised only in a very limited number of cases concerning waging war against the State Sections 121, 121A, 122 and 123, conspiracy in respect of offences in sections 122 and 123. Secondly, the area must be disturbed. Either the area has been declared a disturbed area under some law or there has been extensive disturbance of public peace for over a period of one month. In normal times this presumption cannot be raised. Thirdly, presumptions can be raised only when the person was present at the place from where firearms etc. were used. This has to be proved by these prosecutions. One cannot say that since the person was present, he will be liable for action. The person should be at a place from where firearms explosives were used against armed forces when they were engaged in the discharge of their duties. Thus, the section has limited scope. If firearms are used against civilians, no such presumption can be raised. Keeping in view the general human conduct, it cannot be reasonably argued that in disturbed times when firearms are used from a place at armed forces, someone will be just watching it. How can it be possible? If someone was present at that time it would be reasonable to assume that he was associated with what was going on. Therefore, it cannot be said that raising of presumption in such a situation is unreasonable. The person who is so implicated has got the right of rebuttal.

One of my friends has mentioned about summary trials. The provision in the Bill is that the offences punishable up to three years can be tried summarily by the special courts... (Interruption) Here the court is higher and punishment provided is also lesser than what is provided in several cases under summary trial in Cr. P.C. When a case is tried summarily, the maximum punishment is three months under the Cr.P.C. In the Bill maximum sentence prescribed is two years. They have also increased the maximum punishment. It does not mean that in every case three years' imprisonment will be given. It will be seen that the provision with regard to summary trial is not a new thing. Under the Essential Commodities

[Shri P. Venkatasubbaiah]

Act, cases can be tried by special courts of Judicial Magistrates in a summary way, and the maximum punishment can be two years.

Sir, these are some of the salient features of this Bill. As a matter of fact, we have to deal with an extraordinary situation when the integrity of the country is threatened. So I would only urge the hon. Members that they give their whole-hearted support instead of making criticism that is either not relevant or valid in the present circumstances. *(Interruptions).*

MR. DEPUTY CHAIRMAN: Now, I shall first put the Statutory Resolution of Shri Jaswant Singh to vote. The question is:

"That this House disapproves of the Terrorist Affected Areas (Special Courts) Ordinance, 1984 (No. 9 of 1984) promulgated by the President on the 14th July, 1984."

9.00 P.M.

The House divided.

Aye	.	.	.	19
Noes	.	.	.	99

Ayes—19

Advani, Shri Lal K.
Barman, Shri Debendra Nath
Bhattacharjee, Shri Nepaldev
Bhattacharya, Shrimati Ila
Chakraborty, Shri Amarprosad
Chatterjee, Shri Nirmal
Dhabe, Shri S. W.
Ghosh, Shri Dipen
Goswami, Shri Biswa
Jaswant Singh, Shri
Kushawaha, Shri Ram Naresh
Mazumder, Shri Ramkrishna
Mohanani, Shri K.
Mukherjee, Shrimati Kanak
Patel, Dr. Shanti G.
Pradhan, Shri Badri Narayan

Quasem, Shri Mostafa Bin
Sen, Shri Sukomal
Suraj Prasad, Shri

Noes—99

Ali, Shri Syed Rahmat
Amarjit Kaur, Shrimati
Arif, Shri Mohammed Usman
Arun Singh, Shri
Bansal, Shri Pawan Kumar
Basheer, Shri T.
Basumatari, Shri Dharanidhar
Bhardwaj, Shri Hansraj
Bhatt, Shri Nand Kishore
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Chandrasekhar, Shrimati Maragatham
Chatterjee, Prof. (Mrs.) Asima
Chaturvedi, Shri Bhuvnesh
Chavan, Shrimati Premilabai Dajisaheb
Chowdhury, Ram Sewak
Dalwai, Shri Husen
Darbara Singh, Shri
Das, Shrimati Monika
Desai, Shri Jagesh
Dharmavin, Shri
Ganeshwar Kusum, Shri
Ghan Shyam Singh, Shri
Govind Das, Shri
Gupta, Shri Vishwa Bandhu
Handique, Shri Bijoy Krishna
Hanumanthappa, Shri H.
Haridas, Shri C.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jacob, Shri M. M.
Jadhav, Shri Vithalrao Madhavrao
Jain, Shri J. K.
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kalita, Shri Bhubneswar
Kamble, Prof. N. M.
Kaul, Shrimati Krishna

Kaushik, Shri M. P.
 Khan, Shri F. M.
 Khaparde, Miss Saroj
 Kidwai, Dr. Mohd. Hashim
 Kollur, Shri M. L.
 Kureel, Shri Piare Lal Urf Piare Lal
 Talib Unnavi
 Lokesh Chandra, Dr.
 Mahto, Shri Bhandhu
 Makwana, Shri Yogendra
 Malaviya, Shri Radhakishan
 Malhotra, Shrimati Usha
 Malik, Shri Satya Pal
 Manhar, Shri Bhagatram
 Meena, Shri Dhuleshwar
 Mehta, Shri Chimanbhai
 Mirza Irhadbaig Aiyubbaig, Shri
 Mishra, Shri Mahendra Mohan
 Mittal, Shri Sat Paul
 Mohapatra, Shri Shyam Sunder
 Mukherjee, Shri Pranab
 Pachouri, Shri Suresh
 Pahadia, Shrimati Shanti
 Pandey, Shrimati Manorama
 Pandey, Shri Sudhakar
 Panicker, Shri K. Vasudeva
 Paswan, Shri Ram Bhagat
 Patel, Shri Ram Pujan
 Patil, Shri Dinkarrao Govindrao
 Prajapati, Shri Pravin Kumar
 Rafique Alam, Shri
 Rai, Shri Kalpnath
 Rajagopal, Shri M.
 Ramachandran, Shri M. S.
 Ramakrishnan, Shri R.
 Ramamurthy, Shri K. Thindivanam
 Ratan Kumari, Shrimati
 Rathvakoli, Shri Ramsinghbhai
 Pataliyabhai
 Razi, Shri Syed Sibtey
 Reddy, Shri T. Chandrasekhar
 Roshan Lal, Shri
 Sahu, Shri Rajni Ranjan
 Sahu, Shri Santosh Kumar
 Sankata Prasad, Dr.
 Saring, Shri Leonard Solomon
 Sharma, Shri Anand
 Sharma, Shri A. P.

Shukla, Shri Keshavprasad
 Singh, Shrimati Pratibha
 Singh, Shri R. K. Jaichandra
 Singh, Dr. Rudra Pratap
 Singh, Shri Vishvajit Prithvijit
 Sukul, Shri P. N.
 Sultan, Shrimati Maimoona
 Sultan Singh, Shri
 Swu, Shri Scato
 Thakur Jagatpal Singh
 Thakur, Shri Rameshwar
 Thangabalu, Shri T.
 Tripathi, Shri Chandrika Prasad
 Valiullah, Shri Raoof
 Yadav, Shri Ramanand
 The Motion was Negatived.
 DEPUTY CHAIRMAN: Now, the

question is:

"That the Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration."

The House divided:

Ayes 99

Noes 19

Ayes—99

Ali, Shri Syed Rahmat
 Amarjit Kaur, Shrimati
 Arif, Shri Mo'ammed Usman
 Arun, Singh, Shri
 Bansal, Shri Pawan Kumar
 Basheer, Shri T.
 Basumatari, Shri Dharanidhar
 Bharadwaj, Shri Ramchandra
 Bhardwaj, Shri Hansraj
 Bhatt, Shri Nand Kishore
 Bhattacharjee, Shri Kamalendu
 Bhim Raj, Shri
 Chandrasekhar, Shrimati Maragatham
 Chatterjee, Prof. (Mrs.) Asima
 Chavan, Shrimati Premilabai Dajisaheb
 Chowdhury, Ram Sewak
 Dalwai, Shri Husen
 Darbara Singh, Shri
 Das, Shrimati Monika
 Desai, Shri Jagesh
 Dharmavir, Shri

[Mr. Deputy Chairman]

Ganeshwar Kusum, Shri
 Ghan Shyam Singh, Shri
 Govind Das, Shri
 Gupta, Shri Vishwa Bandha
 Handique, Shri Bijoy Krishna
 Hanumanthappa, Shri H.
 Haridas, Shri C.
 Heptulla, Dr. (Shrimati) Najma
 Islam, Shri Baharul
 Jacob, Shri M. M.
 Jadhav, Shri Vithalrao Madhavarao
 Jain, Shri J. K.
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Sudha Vijay
 Kalita, Shri Bhubaneswar
 Kamble, Prof. N. M.
 Kaul, Shrimati Krishna
 Kaushik, Shri M. P.
 Khan, Shri F. M.
 Khaparde, Miss Saroj
 Kidwai, Dr. Mohd. Hashim
 Kollur, Shri M. L.
 Kureel, Shri Piare Lal Urf Piare Lal
 Talib Unnavi
 Lokesh, Chandra Dr.
 Mahto, Shri Bandhu
 Makwana, Shri Yogendra
 Malaviya, Shri Radhakishan
 Malhotra, Shrimati Usha
 Malik, Shri Satya Pal
 Manhar, Shri Bhagatram
 Meena, Shri Dhuleshwar
 Mehta, Shri Chimanbhai
 Mirza Irshadbeg Aiyubbaig, Shri
 Mishra, Shri Mahendra Mohan
 Mittal, Shri Sat Paul
 Mohapatra, Shri Shyam Sunder
 Mukherjee, Shri Pranab
 Pachouri, Shri Suresh
 Pahadia, Shrimati Shantj
 Pandey, Shrimati Manorama
 Pandey, Shri Sudhakar
 Panicker, Shri K. Vasudeva

Paswan, Shri Ram Bhagat
 Patel, Shri Ram Pujan
 Patil, Shri Dinkarrao Govindrao
 Prajapati, Shri Pravin Kumar
 Rafique Alam, Shri
 Rai, Shri Kalpnath
 Rajagopal, Shri M.
 Ramachandran, Shri M. S.
 Ramakrishnan, Shri R.
 Ramamurthy, Shri K. Thindivanam
 Ratan Kumari, Shrimati
 Rathvakoli, Shri Ramsingbhai Pataliya-
 bhai
 Razi, Shri Syed Sibtey
 Reddy, Shri T. Chandrasekhar
 Roshan Lal, Shri
 Sahu, Shri Rajni Ranjan
 Sahu, Shri Santosh Kumar
 Sankata Prasad, Dr.
 Saring, Shri Leonard Solomon
 Sharma, Shri Anand
 Sharma, Shri A. P.
 Shukla, Shri Keshavprasad
 Singh, Shrimati Pratibha
 Singh, Shri R. K. Jaichandra
 Singh, Dr. Rudra Pratap
 Singh, Shri Vishvajit Prithvijit
 Sukul, Shri P. N.
 Sultan, Shrimati Maimoona
 Sultan Singh, Shri
 Swai, Shri Scato
 Thakur Jagatpal Singh
 Thakur, Shri Rameshwar
 Thangabalu, Shri T.
 Tripathi, Shri Chandrika Prasad
 Valiullah, Shri Raoof
 Yadav, Shri Ramtanand
 Noes—19
 Advani, Lal K.
 Barman, Shri Debendra Nath
 Bhattacharjee, Shri Nepaldev
 Bhattacharya, Shrimati Ila
 Chakraborty, Shri Amarprosad
 Chatterjee, Shri Nirmal

Dhabe, Shri S. W.
 Ghosh, Shri Dipen
 Goswami, Shri Biswa
 Kushawaha, Shri Ram Naresh
 Mazumdar, Shri Ramkrishna
 Mohanan, Shri K.
 Mukherjee, Shrimati Kanak
 Patel, Dr. Shanti G.
 Pradhan, Shri Badri Narayan
 Quasem, Shri Mustafa Bin
 Scindia, Shrimati Vijaya Raje
 Sen, Shri Sukomal
 Suraj Prasad, Shri

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 8 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, we will take up clause 9. There is one amendment by Shri Dipen Ghosh. Yes, Mr. Ghosh.

Clause 9—Public Prosecutors

SHRI DIPEN GHOSH: Sir, I move:

(1) "That at page 5, line 40, after the words 'he has been', the words 'a bonafide permanent resident of the State or the Union Territory concerned and' be inserted."

The question was proposed.

SHRI DIPEN GHOSH: Sir, while moving this amendment I want to put the record straight because when I heard Darbaraji and we heard also the Minister of State for Home Affairs they referred to the terrorist activities which are prevalent in the State of Punjab.

AN HON. MEMBER: What is your amendment, Mr. Ghosh?

SHRI DIPEN GHOSH: I know. You need not teach me. *(Interruptions)* You have come only the other day. Don't try to teach me. Had the Minister brought this Bill only to declare terrorist affected areas in Punjab, then the speeches which the hon. Minister and hon. Darabaraji has given would have been appropriate.

But this Bill is meant for arming the Government with the right of declaring any part of our country as a terrorist affected area. So, I want to put a simple question to the hon. Minister. Does the Government visualise that India has reached a stage where the Central Government considers that any area of this country is required to be declared a terrorist affected area in the near future? The second thing, Sir, and this is a serious thing is that, because the Minister has said it, does the Minister propose to the countrymen that a situation has been obtaining in our country today where the Central Government requires a legislation which should enable it to declare any part of the country as a terrorist affected area and to prosecute the person or persons found indulging in terrorist activities as stated in this thing? So, Sir another thing is that, —

MR. DEPUTY CHAIRMAN: Mr. Ghosh, at this stage you cannot make a speech.

SHRI DIPEN GHOSH: Then I will speak on each occasion.

MR. DEPUTY CHAIRMAN: You can speak on hundred occasions but not in a general way in this fashion.

SHRI DIPEN GHOSH: Then I will speak on each occasion.

MR. DEPUTY CHAIRMAN: You speak but confine your remarks on the amendment. Do not get angry. Mr. Ghosh, you have become the leader of a party.

SHRI DIPEN GHOSH: I wanted to make one simple statement. If you don't allow me, I will speak on each amendment separately.

MR. DEPUTY CHAIRMAN: You can speak hundred times but don't get agitated like this on these matters. I will now put the amendment to vote. Under the rules, I can ask members to rise on their seats and we can have a count..

SHRI DIPEN GHOSH: You cannot circumvent.. *(Interruptions)*.

SHRI R. RAMAKRISHNAN: Please listen to me. I want to speak.

He wanted to make a point and he asked for one minute; you could allow him; unnecessarily tempers are running high... (Interruptions).

MR. DEPUTY CHAIRMAN: You are taking up the role of a teacher, what is the point that he has made.

SHRI R. RAMAKRISHNAN: He only wanted two minutes.

MR. DEPUTY CHAIRMAN: Please here me first. The rule says :

"If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are for "Aye" and these for "No" respectively to rise in their places and, on account being taken, he may declare the determination of the council. In such a case, the names of the voters shall not be recorded."

This is the rule.

SHRI LAL K. ADVANI (Madhya Pradesh): Sir, I am aware of the rule, and I have pointed out to him. I would say that the tradition of this House has been that if a division is demanded, it is by electronic voting. That has been the tradition of this House. Let us not depart from that.

MR. DEPUTY CHAIRMAN: I myself have done it; but that is not the tradition.

SHRI LAL K. ADVANI: I am aware of it. But the Chairman has certain powers under the rules. Generally speaking, traditions are adhered to. Let us not depart from the tradition. But I am requesting Mr. Ghosh also not to press it. Having registered our protest once, let us allow proceedings to go on.

I am requesting him and I am sure he will agree.

MR. DEPUTY CHAIRMAN: In the past also, on so many occasions this has happened. There is no hurry; we can go on slowly.

SHRIMATI KANAK MUKHERJEE
You can request, Madam, as many times as you like; I have no objection. But don't get angry; let us allow the rules. Now, I put the clauses to vote.

Clause 9 was added to the Bill.

Clause 10 was added to the Bill.

Clause 11—Power of Supreme Court to transfer case

MR. DEPUTY CHAIRMAN: Clause 11
There is one amendment.

SHRI DIPEN GHOSH: Sir, I move:

"That at page 6, after line 37, the following be inserted namely:—

"provided that any person committed to trial under this Act may apply direct to the Chief Justice of the Supreme Court for justice."

The question was proposed.

SHRI DIPEN GHOSH: Sir, my amendment is very explicit and obvious and it is as explicit as these people's objection to this amendment will be explicit.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 6, after line 37, the following be inserted, namely:—

"Provided that any person committed to trial under this Act may apply direct to the Chief Justice of the Supreme Court for justice."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clause 12 (Protection of Witnesses

SHRI DIPEN GHOSH: Sir, I move:

3. "That at page 6, line 39, after the words 'in camera' the words 'if the person accused so desires specifically' be inserted."

4. "That at page 6, lines 42 to 45 be deleted."

5. "That at page 7, lines 1 to 12 be deleted."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

Clause 13 (Power to transfer cases to regular Courts

SHRI DIPEN GHOSH: Sir, I move:

6. "That at page 7, lines 14-15, the words 'notwithstanding that it has no jurisdiction to try such offence' be deleted."

7. "That at page 7, after line 18, the following be inserted, namely:

"provided that the person or persons whose case or cases are taken cognizance of shall be paid adequate costs"

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14 (Appeal)

SHRI DIPEN GHOSH: Sir, I move:

8. "That at page 7, lines 20-21, the words 'not being interlocutory order' be deleted."

9. "That at page 7, lines 22 and 23 be deleted."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Clause 15 (Modified application of certain provisions of the Code.)

SHRI DIPEN GHOSH: Sir, I move:

10. "That at page 8 lines 1 to 3 be deleted."

11. "That at page 8, line 4, for the words 'no person' the words 'the person' be substituted."

12. "That at page 8, line 6, for the word 'unless' the word 'if' be substituted."

13. "That at page 8, line 8, the word 'and' be deleted."

14. "That at page 8, lines 9 to 15 be deleted."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

Clause 16 (Overriding effect of Act)

SHRI DIPEN GHOSH: Sir, I move:

15. "That at page 8, for lines 16 to 21, the following be substituted, namely:

"16.(1) The provisions of this Act shall have effect in so far as they are consistent with the provisions in the Code or any other law save as expressly provided in this Act, the provisions of the Code shall apply to the proceedings before a Special Court and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a court of Session'."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Clause 17 (Delegation)

SHRI DIPEN GHOSH: Sir, I move:

16. "That at page 8, line 27, for the words 'The Central Government may', the words 'the Central Government shall' be substituted."

17. "That at page 8, lines 27-28, the words 'subject to such conditions as may be specified' be deleted."

18. "That at page 8, line 28, the words 'or any of' be deleted."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Clause 18 (Power to make rules)

SHRI DIPEN GHOSH: Sir, I move:

19. "That at page 8, line 31, after the words 'if any' the words 'with the concurrence of the High Courts' be inserted."

The question was put and the motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Clauses 19 to 21 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI P. VENKATASUBBAIAH: Sir, I beg to move:

"That the Bill be passed."

The question was proposed.

SHRI DIPEN GHOSH: Sir, the hon. Minister has very often quoted the Bill and the Schedule. Here I would like to quote the definition of "terrorist" as given in clause 2 of the Bill. It says:

"terrorist" means a person who indulges in.....the disruption of services....."

Here services mean the services run by the Governments, both at the Centre and in the States. I know a very good colleague of mine who is present in this House.... This person on the other side happens to be the Chairman of an organisation which has convened a general strike for a day on 4th September whereby the services of all the State Governments will be disrupted. And that territory includes Punjab which has already been declared as a "terrorist affected" area under this Ordinance. And that gentleman has been going to that part of the country for making that strike a success. Will the Minister kindly say whether that gentleman's activities....

SHRI P. N. SUKUL (Uttar Pradesh): Sir, let me correct his impression. I have never gone to Punjab to make this strike successful. I had gone on other mission.

SHRI DIPEN GHOSH: So, he has been caught in his web. But I appreciate his standing up. I appreciate that.

But finally I want to say that this is a draconian measure, this is a piece of legislation by which this Central Government run by the Congress(I) seeks to take a power which is almost an emergent power, that they are going to declare, they are going to convert this country into an emergency situation without declaring an emergency under the Constitution of India. So we cannot associate ourselves with the adoption of this draconian measure and in protest we are all walking out.

(Interruptions)

[At this stage some hon. Members left the Chamber.]

MR. DEPUTY CHAIRMAN: Order please.

SHRI P. VENKATASUBBAIAH: Sir, I want to put the record straight. He has given a misleading interpretation. Sir, "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means

of communications essential to the community or in damaging property with a view to—

(i) putting the public or any section of the public in fear; or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing or overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India.

My hon. friend has conveniently forgotten this.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

अब सदन की कार्यवाही कल 11 बजे तक के लिए स्थगित की जाती है।

The House then adjourned at twenty-four minutes past nine of the clock, till eleven of the clock, on Thursday, the 23rd August, 1984.