

[Shri Manubhai Patel]

the Defence Ministry. But at these other war memorials there are no guides, etc. At least maintenance of these memorials should be taken care of by the Government. I do not know whether the Education Ministry looks after them or the Defence Ministry looks after them. Wherever memorials are created by Defence personnel or Defence Ministry, they are looked after, but certain memorials are not looked after. Recently during my visit to Manipur I had gone to Maurang to pay my homage and respect to the memory of the late Netaji Subhash Bose. Maurang is some 40 kilometres away from Burma border in our area in Manipur State where the first national flag was hoisted (by Azad Hind Fauz under the leadership of Capt. That was the first Indian flag hoisted on Indian soil. When I visited that memorial, I saw that the statue of Netaji Subhas Bose was inaugurated by the late President V. V. Giri in 1965 and a war memorial which was created in Burma, it was afterwards demolished by somebody and was brought here by our Government and the foundation stone was laid by the present Prime Minister Shrimati Indira Gandhi in 1969. The first national flag hoisted by Azad Hind Fauz was on 14th April 1944 at Maurang; and that is a permanent memorial; it is not a memorial of other types. This is a memorial of the type erected in memory of freedom fighters who were not merely soldiers, but who should be respected more than that. Here were freedom fighters who contributed to the achievement of our freedom in a different manner, through a different struggle, and who boosted the morale of the country. Even though the names of two big Government personalities are connected with it,—the late President and the present Prime Minister—still that memorial is incomplete. Barring the statue and a war pillar, the auditorium is incomplete. There is a small wing where a small museum of photographs of the late Subhas Bose are exhibited, but the memorial is incom-

plete. When I asked the local people who came there, they told me, "What to do? Even though 11, 12 years have elapsed since the Prime Minister laid the foundation stone, the memorial is still incomplete." I do not know whether this is being looked after by the Education Ministry or the CPWD or by whom. But I feel we must show due respect to such memorials. If they had not been created, if they had not been inaugurated by the late President, if the Prime Minister had not laid the foundation stone, it was all right, it was a different matter. But once you have it and if we do not care for it, I think it is an insult not only to the war memorial, but to the martyrs who laid down their lives for the country. This is a subject where there is no dispute. There is no question of any region coming in. They are all national memorials; and here is the greatest of them. I would request the Government to kindly see that this is properly maintained and the incomplete portion of it is completed. If it is done with the help of the local committee, well and good. If they are not able to do it, the Government should take it over and complete it.

**I. STATUTORY RESOLUTION
SEEKING DISAPPROVAL OF THE
CODE OF CRIMINAL PROCEDURE
(AMENDMENT) ORDINANCE, 1980 (NO.
12 OF 1980)—Contd.**

**H. THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL,
1980—Contd.**

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The Minister is to reply to the debate.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. VENKATASUBBAIAH): Mr. Vice-Chairman, yesterday the discussion on the Criminal Procedure (Amendment) Bill took place in this House. Some stalwarts from the opposition led by Mr. Sunder Singh Bhandari, have made

Legislation for bringing about the separation should be enacted by Parliament on the model of the Bombay (Separation of Judicial and Executive Functions) Act, 1951. In Bombay as constituted before the reorganisation of States, a similar scheme was brought into effect by the passing of the Separation of Judicial and Executive Functions Act. The main point of distinction between the Madras and the Bombay schemes is this: Whereas in Madras the head of the judicial magistracy in a district is the District Magistrate, in Bombay the head is the Sessions Judge, and whereas in Madras, the powers under 108 to 11 of the Cr.P.C. are exercisable only by the Judicial Magistrates, in Bombay these powers are left to be exercised by the Executive Magistrates. In Bombay, these powers are left to be exercised by the Executive Magistrates. It may be pointed out that in both the States

[Shri P. Venkatasubbaiah]

the Judicial Magistrates are like civil judicial officers under the administrative control of the High Courts."

Tien, Sir, I come to the 37th Report of the Law Commission wherein they have exhaustively dealt with this matter. In this Report, Sir, they have specifically stated that these are executive functions and have to be left to the Executive Magistrates. Of course in their 41st Report, which Mr. Bhandari has mentioned, they have gone into this matter. But, when it came to coming to a conclusion, they did not say anything and they did not say anything as to whether these should be retained with the Executive Magistrates or whether they are to be transferred to the Judicial Magistrates. They have only discussed the matter and nothing has been said on this matter.

SHRI SUNDER SINGH BHANDARI:
Would you please quote that part which I was mentioning?

SHRI P. VENKATASUBBAIAH: I will quote that also. There is another thing. An allegation has been made that we are trying to arm the Executive Magistrates with more powers and want to usurp the judicial functions which were hitherto given to the Judicial Magistrates. I may mention to the honourable Member that it is we who in 1973 took steps to separate the judiciary from the executive and even then, Sir, a provision had been made to the effect that the option was open to the State Governments and that whichever State Governments wanted that these should be retained with the Executive Magistrates, they could do so under certain conditions. This has been made clear and it was made clear even when the Act was passed in 1973.

श्री नगेश्वर प्रसाद शाही (उत्तर प्रदेश): 1973 में गलती हो गयी थी, आज आप उसे ठीक कर रहे हैं।

SHRI V. VENKATASUBBAIAH: I am sorry to say, Sir, that some of the honourable Members are alienated from public opinion. They have got

their own opinions and they do not respond to the public feelings and the socio-economic compulsions. Sir, law is not static and it has to be changed to suit the public response and the socio-economic conditions. If what was passed in 1973 has to be modified, it does not mean that that thing of 1973 is sacrosanct and nothing can be done. As a matter of fact. . . .

SHRI NAGESHWAR PRASAD SHAHI: This is not a modification; this is reversion.

SHRI P. VENKATASUBBAIAH: We have amended our Constitution several times in order to suit the prevailing conditions in the country. (*Interruptions*)

SHRI SUNDER SINGH BHANDARI:
You have to plead your own case.

SHRI P. VENKATASUBBAIAH: Another point which has been made out is that there is a lot of difference between sections 107, 108, 109 and 110. Section 107 is one which deals with matters regarding breach of peace. This is already with Executive Magistrates. Yesterday Shri Shahi read out these sections and said that... (*Interruptions*) I would like to read sections 107, 108 and 109.

SHRI SUNDER SINGH BHANDARI:
Only read the captions.

SHRI P. VENKATASUBBAIAH: Previous section 107...

SHRI SUNDER SINGH BHANDARI:
That is about the convicted people.

SHRI P. VENKATASUBBAIAH: What I am trying to point out is that these preventive measures, not punitive, and section 107, 108, 109 and 110 must be treated on par. That is what I am trying to make out.

SHRI NAGESHWAR PRASAD SHAHI: Section 107 is meant purely for law and order. It can be used against anybody, not only criminals. Section 108, 109 and 110 are meant only for habitual criminals.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You have made your point. Let him reply.

SHRI SUNDER SINGH BHANDARI: They have explicitly said that it should go only to the Judicial Magistrates.

SHRI P. RAMAMURTI (Tamil Nadu): I agree that these are preventive detention measures and not punitive detention measures. There is a difference between punitive detention and preventive detention. Do you know that when, under this section, a person is asked to show cause as to why he should not be bound over for a period of one year to keep the peace to do this and that under section 108 and all that, the entire procedure and the evidence on which he can bind me over is a judicial procedure and not an executive procedure? Witnesses can be there. I can cross-examine them and on the basis of my cross-examination, I can establish that the information on which he wants to act is a false information and, therefore, the entire proceedings are judicial proceedings and not executive proceedings. Therefore, the entire proceedings under that are judicial proceedings and not executive proceedings. And for that, the Evidence Act applies.

THE VH"E-CTTAIRMAN (SHRI DINESH GOSWAMI): I think, the point on this subject was very ably put forth by the Opposition. It is for the Minister to reply. I don't think that this argument and counter-argument will lead us anywhere. Therefore, let the Minister reply.

SHR! SUNDER SINGH BHANDARI:
Your remark is sufficient for us.
(Interruptions)

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You put fourth your argument. Let the argument reply to this argument. This argument and counter-argument will lead us nowhere. Let him reply. Kindly hear him patiently so that he can give his own viewpoints to the Opposition.

SHRI NAGESHWAR PRASAD SHAHI: Mr. Vice-Chairman, Sir, you are a jurist.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI)- I am not a jurist.

SHRI NAGESHWAR PRASAD
SHAH: You know the law. There is no
question of argument.

SHRI P. VENKATASUBBAIAH: Sir, he had his say yesterday and I was listening to him without interrupting him.

SHRI NAGESHWAR PRASAD SHAHI: Sir, the question is not of interpretation and argument. The question is that the Minister is somehow confusing the legal provisions.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Mr. Shahi, I am not the person who can judge whether the Minister is confusing the issue or not. The Minister is entitled to reply in his own way. Let him give his own reply to the points raised by you. Everybody is entitled to give his own reply.

SHRI NAGESHWAR PRASAD SHAHI: Sir, you know sections 109 and 110. . . (*Interruptions*)

SHRI AMARPROSAD CHAKRABORTY (West Bengal): Sir, let him give the reply in his own way. But why is he quoting from a portion where there is no indication regarding the functions of the Judicial and Executive Magistrate; as performed by the different States?

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): That is true. Let the Minister reply. If you interrupt the Minister at every stage, how can he reply ? He should be permitted to reply.

SHRI P. VENKATASUBBAIAH: Sir, he may be an eminent lawyer. **But** this is not a court room where he can cross-examine me. He had his say yesterday.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): In court rooms also, the lawyers are not cross examined The lawyers are permitted to argue their cases.

SHRI P. VENKATASUBBAIAH: Well, he is taking me.. .

SHRI SUNDER SINGH BHANDARI: The arguments are on this side and the votes are on the other side.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Well, it is a matter of opinion. You please continue.

SHRI P. VENKATASUBBAIAH: That is purely a matter of opinion. The people have already given their verdict. There is no point in debating that point here.

SHRI SUNDAR SINGH BHANDARI: Not on this point.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Now, it is safer for me to leave it to you, Dr. Zakaria.

[THE VICE CHAIRMAN (Dr. RAFIQ ZAKARIA in the Chair.)]

SHRI P. VENKATASUBBAIAH: Sir, Mr. Ramamurti has been telling that the same judicial procedure is being adopted in these sections 'lis', and that the evidence is called 'or', and all that. But I may inform the hon. Member that the same procedure is adopted in section 107. Section 107 happens to be with the Executive Magistrate even today . . . (Interruptions) Sir, the option is given to the States. Even though it was transferred to the judiciary, there are some States who have been keeping this still with the Executive Magistrates. Here, Sir, in view of the exigencies of the situation, in order to deal with the prevailing situation in an effective manner and to serve the interests of the people in a better manner, the Government thought that it would be better if these sections are brought under the purview, of the Executive Magistrates.

SHRI P. RAMAMURTI: That answer is complete.

श्री नागेश्वर पद्मशशी : श्रीमन्
 अगर यह जवाब श्री जैल सिंह के मुंह से
 आता तो हम लोगों को बहुत अच्छा लगता

श्री रामानन्द यादव (बिहार) : बीच
 में बोलने का यह तरीका नहीं है। मिनिस्टर

महोदय को आप जवाब देने दीजिये।

SHRI P. VENKATASUBBAIAH: Sir, Mr. Ramamurti has said that this will go against the interests of the people, the people like the Tatas and the Birlas will escape and that they will have a stranglehold on our economy, on our people and that we on our part are Hobnobbing with the Tatas and the Birlas. And, Sir, he made certain remarks. He said that he is the product of the national movement. Sir, in my own humble way, I have also been a product of the national movement. Sir, whether it is the Tatas or the Birlas, they 5 P.M. will not escape if they commit an offence. I would like to make it very clear to Shri P. Ramamurti. About our hobnobbing with the Tatas and the Birlas, even, when Shri Namboodiripad was in power, he invited the Birlas to start industries in Kerala. I am only mentioning what he has said. Here personalities are immaterial. Everybody is equal before the law, whether it is the Tatas or the Birlas or anybody else. If he commits an offence, he cannot escape.

Now, Sir, about clause 5, about the bail provisions that have been made very strict, Mr. Bhandari has said that if a person is convicted for a small period of imprisonment or so, on two occasions, the bail is refused to him. But, Sir, it has been clearly stated that a person who has been convicted under cognizable and non-bailable offence, who is convicted by a judicial officer, to such people the bail will not ordinarily be given. So, here the question of imprisonment for a small period, for a short duration of time, does not arise. Here it is the question of an offence that is cognizable and non-bailable and a judicial officer having convicted the person. Shri Bhandari has agreed that on the question of provisions making strict bail provisions and in respect of sureties he has no quarrel with the Government. His quarrel is only with regard to the transfer of sections from judi-

Then, Sir, Shri Purabi Mukherjee,
our ex-colleague

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Not Shri, but Shri-mati Purabi Mukherjee.

SHRI. P VENKATASUBBAIAH: I am sorry, Sir. Shrimati Purabi Mukherjee also made certain observations. Now she finds everything wrong with the Government. She has been with us for a very long time. She has been our General Secretary. In politics there are no permanent friends or permanent enemies, only Interests are permanent. (*Interruptions.*) She was the General Secretary of our Party.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); Mr. Minister you don't get distracted by Mr. Bhandari. You know, he is very clever.

श्री संपद सिन्धु राजी : आप उनको कहने दीजिये । आप उस पर तबसरा क्यों कर रहे हैं ।

SHRI P. VENKATASUBBAIAH: Sir, these are the points. Mr. Rama-murti says, you just stop your speech. In deference to his wishes..

SHRI P. RAMAMURTI: What we talk in the Telugu is not meant to be translated. Otherwise, I would not have talked. (*Interruptions*).

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): In English he wants to tell you, go on.

AN HON. MEMBER: He knows Telugu also.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA). He just now said it. Just now Mr. Ramamurti said it.

SHRI P. VENKATASUBBAIAH: I would like again to emphasise. Sir, that these measures are preventive in nature. They do not form part of the judicial functions and the Govern-

ment is not violating the Directive Principles of the Constitution. What we are doing is within the Directive Principles of our Constitution. It has been done in order to maintain law and order in this country to prevent the anti-social and anti-national elements from doing damage and trying to do harm to the integrity of our country.

Sir, several hon. Members from our Party have spoken on this matter. They have very ably defended the Bill. I congratulate them and so also the Members from the Opposition who have spoken on this Bill. While appreciating their criticism, I would only say....

SHRI KALYAN ROY (West Bengal) :
That those will be the victims whose
criticism you appreciate.

SHRI P. VENKATASUBBAIAH: I would only say that these provisions are not intended to be used against our colleague, Shri Kalyan Roy. I can say that with all the emphasis at my command; it will not be used against them and not against Shri Shiva Chandra Jha. These are the measures that are intended to preserve law and order, to prevent antisocial and anti-national elements who are trying to disturb the entire social fabric of the country.

With these few words, I request the hon. Members to support and help us in getting the amending Bill passed.

SHRI MANUBHAI PATEL: Mr. Minister, you referred to your ex- colleague who is not with you. Do you consider them as enemies and will these provisions apply to them also?

SHRI P. VENKATASUBBAIAH: You are also my ex-colleague.

SHRI MANUBHAI PATEL; But I am your opponent; I am not your enemy. We are not enemies; we might be in the opposition. But do you consider them to be enemies and will you apply these provisions against them? That was my question.

SHRI MANUBHAI PATEL: That may apply to friends like Dr. Zakaria, and not like us.

6. "That at page 1, line 7, for the Words and figures 'In sections 108, 109 and 110' the word and figure 'In section 110' be *substituted*."

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): This is what Disraeli has said. He only quoted it. He did not intend in the sense you do.

7. "That at page 1, line 9, for the words 'an Executive Magistrate' the word 'a Judicial Magistrate such being appointed where there is none by the 31st July, 1981, and pending such appointment an Executive Magistrate' be substituted."

8. "That at page 1, line 9, for the words 'an Executive Magistrate' the words 'a Munsif Magistrate' be substituted."

The questions were proposed.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष महोदय, ला कमीशन की 14वीं रिपोर्ट का उल्लेख किया गया, 37वीं रिपोर्ट का उल्लेख किया गया। मैं समझता हूँ कि यह दोनों रिपोर्ट्स सामने थीं जब क्रिमिनल प्रोसीजर कोड का 1968 में फारमुलेशन हुआ। दो-दो सेलेक्ट कमेटीज़ में वह गया और उसके बाद 1973 में क्रिमिनल प्रोसीजर कोड का ऐक्ट पास हुआ। अब यह कोई नयी जगह नहीं है, नया मौका नहीं है, दोनों सदनों के सदस्यों ने सेलेक्ट कमेटी में भी और हाउस में भी इन मुद्दों पर विचार किया है, उन्होंने 107 को स्पेसिफिकली कटेगरीाइज़ किया और 108, 109 और 110 को अलग कटेगरीाइज़ किया। मैं यहां पर 108 के सब-क्लाज़ (1) व (2) को पढ़ता हूँ तो इसमें यह कहा है कि उस मजिस्ट्रेट की राय में कार्यवाही करने के लिए पर्याप्त आधार होना चाहिए। श्री राममूर्ति ने कहा, इविडेंस लोडेड होती है और उन इविडेंसेज़ के आधार पर वह कंविन्स हो—अगर 108 के अंतर्गत प्रोसीड करता है—फिर उसको

[श्री सुन्दर सिंह भण्डारी]

श्री शिव चन्द्रशा (बिहार) : उपसभाध्यक्ष महोदय, क्लज 2 में एक्जीक्यूटिव मजिस्ट्रेट को भी वह जूडिशल पावर दिया जाएगा जिसको लेकर सारा विवाद हुआ था, सारी बातें हुई। एक तरह से जो सच्चा देने वाला है उसी को न्याय-मूर्ति बना देते हैं तो सारा न्याय का ढांचा, इन्साफ का ढांचा खत्म हो जाता है इसीलिए मेरा संशोधन यह है कि यह आपका कांसेंट्रेशन आफ पावर हमारी सारी पद्धति को बिगाड़ेगा इसलिए इस सारे क्लज को को हटा देना चाहिए, डिस्कपेंसी थोड़ी-बहुत हो सकती है बाद में जाकर, लेकिन वह माइनर है। यह एक्जीक्यूटिव को जो पावर देने की बात आ जाती है — जूडिशल मजिस्ट्रेट आफ द फर्स्ट क्लास की जगह एग्जीक्यूटिव मजिस्ट्रेट की बात आ जाती है इस सारे क्लज को ही हटा देना चाहिए। सारा विवाद यहीं शुरू होता है इसलिए इसको डिलीट कर देना चाहिए।

SHRI SHRIDHAR WASUEPLO
DHABE: Mr. Vice-Chairman, Sir. the
principle of separation of judiciary
from the executive was accepted not

"I may say, so far as Government is concerned, this Government is in favour of separation of judicial and executive powers. I may further say that the sooner it is brought about, the better."

j and 110. Section 107 is only in regard to security for good behaviour. But section 108 speaks of sedition—this is a very serious matter—and also about newspaper publications and so on. Section 109 is in regard to security for good behaviour by suspected persons. This power can be misused by the Government to a very large extent. In regard to sections 108 and 109, the judicial magistrates are required to make enquiries before any order is passed. There may be some justification in regard to section 110 which speaks about habitual robbers, house-breakers, forgers and so on. Here, the hon. Minister has said that the power should be given to the executive magistrates. If at all this power is required, it is only in regard to section 110 and not in regard to sections 108 and 109 which are very serious matters affecting the rights of citizens, newspapers and other persons. Therefore, I would request the hon. Minister to accept my amendment.

SHRI SHRIDHAR WASUDEO: Sir, I have made this amendment to cover all magistrates. I have said that the date 31st July, 1981 should be fixed by which time the Judicial Magistrate is to be appointed. Till that time the Executive Magistrate may continue. As the previous speakers have said, no ! judicial task should be given to

the Executive Magistrates. The functions of the Executive Magistrate should be completely separated and I want it to be pin-pointed that only judicial functions will be discharged by the Judicial Magistrates.

That is why I have given this amendment.

' SHRI P. VENKATASUBBAIAH: Sir, I have nothing more to state than what I have already stated. A question has been raised whether in the 41st Report it has been stated that this must be given to the judicial Magistrates. The point is that none of these reports has said that it is the essential part of the judicial functions. I want to make this point clear. Whatever the hon. Members have said in respect of their amendments is a stress on the same points. Mr. Bhandari has said about the 41st Report. I would like to say that in their 14th Report and 37th Report, they have exhaustively gone into the matter. None of these Reports, including the 41st Report, says that this is an essential part of the judicial functions. So, there is nothing to accept these amendments.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now I will put Mr. Bhandari's amendment to vote unless Mr. Bhandari withdraws the amendment.

SHRI SUNDER SINGH BHANDARI: My amendment be put to vote.

THE VICE-CHAIRMAN: The question is:

U 1. "That at page 1, line 7, the figure 108 be omitted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I will now put Shri

Shiva Chandra Jha's amendment to vote. The question is:

5. "That at page 1, clause 2 be deleted."

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THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Ayes have it, Ayes have it, the amendment is lost.

DR. LOKESH CHANDRA (Nominated) : Noes have it, Noes have it. We want Division. (Interruptions).

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Just a minute. Let us not get excited. After all, the statement that I made is contradictory. I said one thing and gave the other verdict. Therefore, please allow me to correct myself. (Interruptions). All right, you want Division. Let there be Division. (Interruptions). The Division Bell is on. (Interruptions). The Division Bell is on. Order please. I am again putting Shri Jha's amendment to vote.

The question is:

5. "That at page 1, clause 2 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now I will put amendment No. 6 moved by Shri Dhabe to vote.

The question is:

6. "That at page 1, line 7, for the words and figures 'in sections 108, 109 and 110' the word and figure 'In section 10', be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now I shall put amendment No. 7 moved by Shri Shahedullah to vote.

The question is:

7. "That at page 1, line 9, for the words 'an Executive Magistrate' the words 'a Judicial Magistrate

[Dr. Rafiq Zakaria] fied being appointed where there is none by the 31st July, 1981, and pending such appointment an Executive Magistrate' be substituted."

The motion was negatived.

THE VCE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now I shall put amendment No. 8 moved by Shri Shahedullah to vote.

The question is:

8. "That at page 1, line 9, for the words 'an Executive Magistrate' the words 'a Munsif Magistrate' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That clause 2 stand part of the Bill."

I think the noes have it. I think the ayes have it. (Interruptions) Never mind. Mr. Ladli Mohan Nigam, simply because of a slip, do not take advantage of it. I, said it once after all. Just do not try to take advantage of it simply because of a little bit of a human error. This is rather unfair. (Interruptions) Please sit down. In my conduct if you find that really I was saying it, you can say that but not simply because of this. That much co-operation, I expect. Therefore, I say the ayes have it.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Amendment of section 196

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now we shall take up clause 3. There are five amendments.

SHRI SUNDER SINGH BHANDARI;
Sir, I move:

2. "That at page 2, line 9, the words 'or of the District Magistrate' be omitted."

3. "That at page 2, lines 12 and 13 the words 'and the District Ma-

gistrate may, before according sanction under sub-section (1A)' be omitted."

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SHRI SHRIDHAR WASUDEO
DHABE: Sir, I move:

9. "That at page 1, line 14, the words and figures 'or sub-section* (1) of section 505' be deleted."

SHRI, SYED SHAHEDULLAH:
Sir, I move:

10. "That at page 2, line 9, ^he
words 'or of the District Magis~
trate be deleted."

(The amendment also stood in the name of Shri Shridhar Wasudeo-* Dhube).

11. "That at page 2, lines 12 and 13, the words 'and the District Magistrate may, before according, sanction under sub-section (1A) be deleted."

The questions were proposed.

श्री सुन्दर सिंह भंडारी : श्रीमन्, इस अमेंडमेंट में जहाँ पर पहले सेंट्रल गवर्नमेंट या स्टेट गवर्नमेंट की सिफारिश पर आर्टिकल 153वाँ और आर्टिकल 505 सब-क्लाज 2 और 3 में ऐक्शन लिया जाता था यह बात सच है कि ऐक्शन इनीशियेट होते हैं कई बार डिस्ट्रिक्ट अधीनस्थों के द्वारा लेकिन क्योंकि ये इनसे सीरियस मैटर्स हैं और ये चीजें जो स्टेट गवर्नमेंट से कंसनिंग हैं ये सेंट्रल गवर्नमेंट की सैक्शन के लिए जाती हैं तो उसमें ज्यादा गम्भीरता के साथ विचार हो सकता था। अगर मैजिस्ट्रेट कोई पार्ट प्ले कर रहा है तो उसको हटाया जा सकता है। लोकल इंप्लायमेंट के आधार पर अगर रिपोर्ट की गई है तो सेंट्रल गवर्नमेंट एक आब्सर्वेटिव ब्यू लेकर किसी के खिलाफ प्रोसीड करने की उसमें गुंजाइश रहती थी। अगर हम यह कर देते हैं कि डिस्ट्रिक्ट मैजिस्ट्रेट सुप्रो-मोटो ऐक्शन ले ले, किसी को कंसल्ट करना जरूरी न हो, किसी की इंस्ट्रक्शन प्राप्त करने के बाद सैक्शन 153 बी और 505 में प्रोसीड करना जरूरी

नहीं है तो यह मिस-यूज आफ अचारिटी होगा। इसलिए यह जो ऐडिशन है, जिला मजिस्ट्रेट को भी इसमें इंपावर किया गया है, मैं उनका विरोधी हूँ। इस सिलसिले में, मैंने अपना अमेंडमेंट दिया है और हाऊस में कहना चाहता हूँ कि इस अमेंडमेंट को स्वीकार कर ले।

SHRI SHRIDHAR WASUDEO DHABE: Sir, in addition to what my friend has said, which I support, I want to say that under section 396, the previous sanction of the State Government or the Central Government was required for all these sections including section 505, the 'entire section. Now it has been reduced to this extent that it will be only for sub-section (1) of section 505. Now section 505 is a serious matter and sub-section (2) which has been excluded and where no sanction will be necessary is more serious than sub-section (1). Sub-clause (2) says:

"Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote or which is likely to create or promote on grounds of religion, race, place of birth feelings of enmity, hatred or ill-will..."

In these cases action can be taken, as also in the case of ill-will between different communities. For the prosecution of these cases, sanction was necessary. Now that has been taken away. I do not Understand what is the propriety of merely taking half the section and allowing the other half to remain. Therefore, I appeal to him that the complete section of 505 should remain part of section 196 for taking the previous sanction of the Central Government or the State Government.

SHRI SYED SHAHEDULLAH: Sir.
I endorse what they have said.

SHRI P. VERKATASUBBAIAH. Sir,
this is with regard to giving

concurrent powers to the District Magistrate. Sir, the powers were given in pursuance of certain observations made by the 41st Report of the Law Commission. They said that there has been inordinate delay in these proceedings and so in order to reduce the delay, the authority from the State Government or the Central Government need not be sought. Sir, this has been gone into very thoroughly. The two sections.—I would like to read—which are now sought to be given to the District Magistrate are:

"Whoever, by words either spoken or written or by signs or by visible representations or otherwise makes or publishes any imputation that any class of persons cannot, by reason of their being members of religious"

These are the cases which, are detrimental, which go to incite communal violence and hatred between two groups of communities, as also distributing material prejudicial to communal harmony. So we have only taken these two sub-sections because these are matters which brook no delay. If the State Government or Central Government authority is to be sought, there may be delay. By that time the damage would have been done. So, in order to expedite and see that these situations are controlled, this has been given to the concurrent jurisdiction of the District Magistrate. This is the only explanation I can give. There is nothing sinister about it. It is only to see that prompt action is taken to contain these communal disturbances and hatred between two communities or groups.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now I shall put the amendments to vote....

SHRI P. RAMAMURTI: Now please be careful.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Ramamurti, I

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): There is one amendment, No. 12, in the name of Mr. Dhabe. But Mr. Dhabe, it is a negative amendment. So you cannot move it. If you want, you can speak on it.

SHRI SHRIDHAR WASUDEO DHABE:
If I cannot move it, there is no point in speaking on it.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is—

"That Clause 4 stand part of the Bill."

The motion was adopted. Clause 4 was added to the Bill.

Clause 5—Amendment of Section 437

SHRI SUNDER SINGH BHANDARI:
Sir, I move—

4. "That at page 2, lines 32 to 34 the words 'or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence' be omitted."

SHRI SYED SHAHEDULLAH: Sir, I move—

13. "That at page 2, lines 26 to 28 be deleted."

14. "That at page 2, lines 26 and 27, for the words 'if there appear reasonable grounds for believing' the words 'if he is satisfied' be substitute."

SHRI SHRIDHAR WASUDEO DHABE:
Sir, I, move—

15. "That at page 2, line 28, the words 'or imprisonment for life' be deleted."

16. "That at page 2, lines 32 to 34, the words 'or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence' be deleted."

SHRI SYED SHAHEDULLAH: Sir, I move—

17. "That at page 2, line 34, after the words 'offence' the following be inserted namely:—

'except in cases connected with agrarian or trade union movement in favour of collective demands'."

SHRI SHIVA CHANDRA JHA: Sir, I move—

18. "That at page 2, line 37, for the words 'sixteen years' the words 'eighteen years' be substituted."

19. "That at page 2, line 38, after the word 'infirm' the words 'either physically or mentally' be inserted."

SHRI SYED SHAHEDULLAH: Sir, I move—

20. "That at page 3, after line 6, the following be inserted, namely:—

'Provided that no person detained and kept in prison as under-trial shall be confined in solitary imprisonment of punitive nature during the period unless permitted by the trial Court.'"

The questions were proposed.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष जी, जो हार्डेन्ड क्रिमिनल्स हैं, उनको जमानत न दी जाय, मैं इसका समर्थन करता हूँ। लेकिन जो विधान की भाषा है, उसके दो हिस्से हैं। एक हिस्सा है वे काम्नीजेबल आफेन्सेज का जिनमें मौत की सजा हुई है या आजीवन कारावास की सजा हुई है या उससे अधिक की सजा हुई है। उसके सम्बन्ध में मैं इसका समर्थन करता हूँ। इसमें यह लिखा भी गया है कि किसी भी अजमानती को जिसको संगीन अपराधों के लिए दो या अधिक अवसरों पर दोष सिद्ध किया गया है महज इस वजह से कि काम्नीजेबल नान-बेलेबल आफेन्स है, आप अपराध सिद्ध नहीं कर सकते हैं। आप जानते हैं कि काम्नीजेबल नान-बेलेबल आफेन्सेज में कुछ महीनों की सजा भी होती है। जैसा कि कल उल्लेख किया गया कि एजीटेशन के दौरान भी काम्नीजेबल नान-बेलेबल आफेन्सेज में सजाएं हुई हैं। महज इसलिए कि किसी को किसी तरह की दो बार काम्नीजेबल नान-बेलेबल अपराध में

[श्री सुन्दर सिंह भंडारी]

सजा हो गई है तो वह हाईन्ड क्रिमिनल नहीं हो जाता है। कागनीजेबल नान-बेलेबल आफेन्सेज में छोटी सजाएं प्राप्त करने वाले व्यक्ति पर पुलिस फिर इल्जाम लगा सकती है। इसलिए महज इस वजह से कि उसको दो बार कागनी-जबल नान-बेलेबल आफेन्सेज में सजा हुई है उसको बेल के अधिकार से कानूनन वंचित किया जा रहा है। मैं ऐसा समझता हूं कि यह जुडिशियरी के डिसक्रिशन पर छोड़ना चाहिए जिसकी कि अभी तक छूट है। देखने में यही आता है कि आज भी जजेज स्टिरिओ टाइप बेल हर एक को नहीं देते हैं। किसी आफेन्स के लिए किसी व्यक्ति को एक प्रकार की बेल देते हैं और दूसरे को दूसरे प्रकार की बेल देते हैं। कई बार परसनल बंड पर छोड़ते हैं। कई बार दो हजार की जमानत होती है तो कई बार 20 हजार की जमानत होती है। एक्जुज्ड परसन की हिस्ट्री को देख कर जज बेल दे या न दे, यह आज तक डिसाइड होता रहा है। आज तक जजेज अपने डिक्रिशन को इस्तेमाल करके इसका उपयोग करते रहे हैं। ऐसी हालत में मैं समझता हूं कि जुडिशियरी पर बार करना उचित नहीं है। महज इस बात के लिए कि किसी आदमी को कागनीजेबल नान-बेलेबल आफेन्स में दो बार सजा हुई है, इसलिए उसकी जमानत मंजूर नहीं होनी चाहिए, यह न्याय करने वालों पर और उनके डिसक्रिशन पर अविश्वास करना है। आप जानते हैं कि अनेक बार बहुत से बेकसूर लोग जिन्होंने जुर्म नहीं किया होता है और जिनका जुर्म साबित नहीं हुआ होता है, पकड़े जाते हैं। पिछले दिनों कितने ही ऐसे मुकदमे हुए हैं जिनमें यह देखा गया है कि दो साल, तीन साल तक जमानत न दिये जाने के कारण एक्जुज्ड जेलों में

बन्द रहे और बाद में कोर्ट ने उनको एक्वीट कर दिया। ऐसी हालत में यह कहना कि जिसको दो बार कागनीजेबल नान-बेलेबल आफेन्स में सजा हो गई, उसको जमानत न दी जाय, यह अन्याय है। इस सेक्शन के दो हिस्से हैं। पहले हिस्से के लिए मेरी एमेन्डमेन्ट नहीं है। दूसरे हिस्से के लिए मेरी एमेन्डमेन्ट है जिसमें किसी भी कागनीजेबल नान-बेलेबल आफेन्स में दो बार सजायापता व्यक्ति को भी जमानत न दिये जाने का प्रावधान किया जा रहा है। मैं समझता हूं कि यह न्याय पद्धति पर एक बहुत बड़ी आशंका है, धोखा है, इसलिए मैं इसका विरोध करता हूं और चाहता हूं कि सदन के सभी माननीय सदस्य इस आधार पर इस संशोधन पर विचार करें।

SHRI SYED SHAHEDULLAH: Sir, my amendment is simply this that for the words "if there appear reasonable grounds for believing" the words "if he is satisfied" be substituted. I have moved this amendment because believing is always a subjective thing and anyone can believe anything about anybody. And, Sir, an Executive Magistrate can be made to believe something simply by a telephone call from a Minister of any such person. Therefore, the word "believing" should not be there. My suggestion is that it should be "if he is satisfied". If this is done, at least it can be brought to the court of law to examine if he had proper reasons to be satisfied or not. This is the purpose of my amendment and I hope it will be accepted. I am not saying anything on the other amendment.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Yes, Mr. Dhabe.

SHRI SHRIDHAR WASUDEO DHABE: Sir, up till now, the power to grant bail has been with the judicial authorities and they have been

used in cases normally for offences other than those punishable with death. Now, Sir, a provision has been made and there will be no power for bail. This power should be vested in the Judicial Magistrates and in appropriate cases the affected persons can be released on bail. For political and other purposes a person can be charged with so many offences and, in that case, even the political or trade union workers will not be released if this clause is retained in this stringent form. That is why this amendment. Secondly, Sir, I support the amendment of Bhandariji. This is a very curious provision. If a person has been convicted previously on two or more occasions of a non-bailable and cognizable offence, he will not be granted bail. I do not understand the propriety of this provision because non-bailable and cognizable offences are so wide that probably the majority of the offences dealt with in the IPC will be non-bailable and cognizable. I think these provisions are anti-human rights and other rights of the people of this country and therefore, they should not be retained.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Yes, Mr. Shiva Chandra Jha.

श्री शिव चन्द्र झा : उपसभाध्यक्ष महोदय, मेरा संशोधन बहुत आसान है, बहुत सिम्पल है और मैं आशा करता हूँ कि मंत्री जी इसको प्रेस्टिज इश्यू नहीं बनायेंगे कि चूँकि यह विरोधी दल के सदस्य की ओर से आ रहा है इसलिये इसको इंकार कर देना चाहिए, बल्कि वे ठंडे दिमाग से मेरे संशोधन पर गौर करें ।

मेरा संशोधन है कि जो नान-बेलेबल आफेंस के लिये गिरफ्तार किया जाता है वह बेल पर रिलीज हो सके । यह ठीक है कि जिसने पिछली बार भी इस तरह का अपराध किया है या जिसको लाइफ इम्प्रजन्मेंट मिल चुका

है या जिसके विरुद्ध कांग्रीनेबल आफेंस सिद्ध हो चुका है उन लोगों को बेल पर रिलीज नहीं किया जायेगा । लेकिन क्लोज में यह है कि यदि वह माइनर है, जिसकी उम्र 16 वर्ष तक है, उसकी बेल हो सकती है बावजूद इसके कि उसने उसके पहले भी आफेंस किया हो, कितना भी किया हो और कोई भी सजा हुई हो यदि वह माइनर है, उसकी 16 साल की उम्र है, महिला है या बीमार है तो यह प्रावधान है कि रिलीज हो सकता है । मेरा कहना है कि 16 की जगह पर आप 18 साल कर दें । 18 साल तक का माइनर समझा जाना चाहिए । यह इसलिये भी ठीक है और देश में यह मांग इसलिये भी की जा रही है कि 18 साल के नौजवान को वोट का अधिकार है । 18 साल के नवयुवक को वोट का अधिकार मिला हुआ है और पोलिटिकली हर तरह से उसको मेजर समझते हैं । यह एक आम, जनरल मापदंड देश में फैल रहा है । इसलिये इसमें 18 साल के नीचे का जो होगा और अगर वह कहीं भी आफेंस करता है तो उसकी जमानत हो जानी चाहिए । तो 16 साल की जगह मेरा सुझाव है कि उसको 18 साल कर दिया जाए । 18 साल करना यह कोई बहुत मुश्किल नहीं है । इसलिये आप इसको 16 की जगह 18 कर दें ।

दूसरा जो मेरा संशोधन है उस पर मैं कुछ नहीं कहूँगा । सिर्फ मैं यह कहना चाहता हूँ कि इसमें 16 की जगह 18 कर दिया जाय और आप इसको मान लें ।

SHRI P. VENKATASUBBAIAH: Sir, with regard to the amendment of Shri Sunder Singh Bhandari, even with regard to refusing of bail to persons, we have made it clear and have stated emphatically that persons who

[Shri P. Venkatasubbaiah]

are convicted or cognizable and non-bailable offences twice should not normally or ordinarily get bail. And even in that, Sir, we have said that there is a discretion available to the court to give bail in suitable cases for special reasons to be recorded. So we have given the discretion to the court in some special cases. If it is found reasonable, the court is entitled to grant bail. Sir, in this connection I would like to point out how some anti-social elements have taken advantage of this liberal provision of bail. In the case of Delhi alone, according to the police report, 1080 persons with previous convictions were arrested for committing offences after 1.1.78, and all of them were released on bail, despite bail being opposed. All of them were involved in offences subsequently. All of them were convicted for 7 years or ... (Interruptions) There is ample discretion given to the court in special circumstances.

SHRI SUNDER SINGH BHANDARI; But there are cases with lesser punishment of only months.

SHRI P. VENKATASUBBAIAH : That is why I said, it is not once but two times, and at the same time a discretion has been given to the presiding officer; in special cases they can grant bail.

Again, Sir, the intention of Mr. Dhaba seems to be that imprisonment for life should be deleted from the provision. Since no proposal has been made to change this provision, the amendment is not acceptable.

Shri Shiva Chandra Jha wanted the age to be raised from 16 to 18. Sir, I, do not feel there is need to change the provision which has already been made.

About Shri Shahedullah's amendment, Sir, with regard to the people who have participated in an agrarian movement and all that, whether it is agrarian or not, that will be decided

according to the nature of the offence that has been committed. There are peaceful agitations and there are violent agitations. A crime is crime. You cannot make any discrimination between the nature of agitations. So, Sir, this is not acceptable.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now, I will put the amendments to vote, one by one.

The question is:

4. "That on page 2, lines 32-34, the words 'or he had been, previously convicted on two or more occasions of a non-bailable and cognizable offence' be omitted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

13. "That at page 2, lines 26 to 28 be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

14. "That at page 2, lines 26 and 27 for the words 'if there appear reasonable grounds for believing', the words 'if he is satisfied' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

15. "That at page 2, line 28, the words 'or imprisonment for life' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

16. "That at page 2, lines 32 to 34, the words 'or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now, we take up Clause 6. There are 4 amendments.

SHRI SYED SHAHEDULLAH: Sir, X
move:

21. "That at page 3, clause 6 be
deleted."

22. "That at page 3, lines 12 and 13, *for* the words 'to imprisonment in civil jail for a term which may extend to six months' the words 'or failing, to detention in Court till the rising of the Court on that day' be *substituted*."

SHRI SHRIDHAR WASUDEK DHABE:
Sir, I move:

23. "That at page 3, line 13. *for*
the words 'six months' the words
'three months' be substituted.

SHRI SHIVA CHANDRA JHA: Sir, I have a question. In the first move:

24. "That at page 3, line 13, f
the words 'six months' the wor
'one month' be *substituted*.

The questions were proposed.

SHRI SYED SHAHEDULLAH. £ a
very strict demand has been *ms* on the
surety. Not only will i money be
forfeited, but he has suffer jail for six
months. We kn that it is very difficult for
poor p< pie to get surety. The people 1
going to be arrested on mere allej tion. It
will be more difficult for people to get
sureties because ' surety will have to face
six mon jail. I object to it. I demand 1
insted of six months the impris ment
should be till the rising of court. It is a
simple amendment should be accepted.

SHRI SHRIDHAR WASU DHABE: My amendment is sir The provision for six months' prisonment is very harsh. As friend has correctly said, the people will suffer more by this ; vision. If the recovery cannot

Slause 6 Amendment of section 446

[Shri Shridhar Wasudeo Dhabe]

made, there is a provision for the recovery of penalty imposed in the Court. Therefore, there is actually no reason for having a provision for six months' imprisonment. In order to reduce the rigour of this provision I have suggested that it may be reduced to 3 months.

श्री शिव चन्द्र झा : उपसभाध्यक्ष जी, मेरा भी संशोधन उसी तरह का है जिस तरह से धाबे जी का है। जो कोई जमानत लेता है और मुजरिम यदि नहीं पहुँचता है तो जमानत लेने वाले को सजा की बात इसमें है। जो यह कहती है कि छः महीने तक उसको सजा हो सकती है यदि मुजरिम को नहीं दाखिल करते हैं अब उसको है कि तीन महीना हो सकती है। मेरा है कि यदि ऐसी ही बात होती है तो एक महीना उसको सजा होनी चाहिए। तीन महीना भी बहुत ज्यादा है, छः महीना तो बहुत है ही लेकिन तीन महीना भी है। एक महीना ज्यादा से ज्यादा होनी चाहिए और यह कोई मुश्किल बात नहीं है। आप जवाब दीजिए जैसे कि 16 का 18 का आपन राफ जवाब नह दिया। आपको उसको एक महीना कराने में क्या एतराज होता है, तीन सप्ति उलट जायगी, दुनियां उलट जायगी।

SHRI P. VJENKATASUBBAIAH: r, I have great regard for Shri uva Chandra Jha. Unfortunately, ere are professional surety givers. order to curb them and in order to icourage euch undesirable elements j provision has been made more ;orous. Shri Bhandari has accepted r contention that these people must contained. These professional •ety givers must be punished properly. When there was no such •vision, even the recovery of mo-r from them was very difficult, ire'fore, sir, it is only intended see that such people are not en- raged.

So, Sir, there is nothing against it. If there are no professional surety-givers, it will not be applicable at all.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I will now put the amendments one by one to vote.

The question is:

21. "That at page 3, clause 6 be deleted.

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

22. "That at page 3, lines 12 and 13. for the words 'to imprisonment in civil jail for a term which may extend by six months' the words 'or failing to detention in Court till the rising of the Court on that day' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

23. "That at page 3, line 13, for the words 'six months' the words 'three months' be substituted."

The motion ivas negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

24. "That at page 3, line 13,)cr the words 'six months' the words 'one month' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That Clause 6 stand part of the Bill".

The motion was adopted.

Clause 6 was added to the Bill.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now, we take up Clause 7. There is one amendment by Shri Syed Shahedullah. It is a negative amendment. Mr. Shahedullah, if you want to speak, you can speak.

Clause 1, the Enacting Formu the
Title were added to the Bi\

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Yes, Mr. Minister.

SHRI P. VENKATASUBBAIAH: Sir, I move:

"That the Bill be passed". The question is adopted.

THE VICE-CHAIRMAN (DR. AFIQ ZAKARIA): Yes. Mr. Sunder ingh Bhandari.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष जी, मुझे खेद है सरकार ने उन विषयों पर विचार करने की जरूरत नहीं समझी जो गाय-प्राप्ति में आवश्यक हैं। मैं सरकार इस अधिकार को चुनौती नहीं देता कि लाइसेंस आर्डर मेंटने करने का उन्हें उत्तरदायित्व उन्हें लाइसेंस आर्डर मेंटने करना चाहिए लेकिन यह बिल एक प्रकार से पिछले महीनों से इन्फोर्स था, एक आर्डिनेंस के तहत, और 3 महीनों में भी उस आर्डिनेंस या लाइसेंस होने वाले इस बिल का लाभ उठा कर लाइसेंस आर्डर के मेंटने में किसी प्रकार सुधार नहीं आया। यहां पर कोशिश की है एडजुडीकेशन को कम करने की हालांकि ये इस बिल में पूरा डीविजन नहीं है, डिपार्चर नहीं है। क्योंकि जहां जुडिशल स्ट्रेट की जगह एक्जीक्यूटिव मजिस्ट्रेट्स व्यवस्था की गई है वहीं पर अब स्ट्रेट्स को कां दिया गया है कि वार्ड ऑरिजोल्यूशन एक्जीक्यूटिव मजिस्ट्रेट्स के पावर्स जुडिशल स्ट्रेट दे सकते हैं; इसी प्रकार से बेल देने वाले में मनाही की गई है परंतु डिस्क्रिशन दिया है कि अगर वे चाहें तो बेल दे सकते हैं। यह एक ट्रांजिस्टरी स्टेज है, कंपली-एक्जीक्यूटिव और इन्डिस्ट्रिक्मिनेट जन की तरफ जाने के लिए। आज इस के माध्यम से एक रास्ता बनाया जा रहा है एक्जीक्यूटिव से लिक्स बनाये जा सकें। धीरे-धीरे इसी में से आगे की कोशिश होगी एक्जीक्यूटिव को अधिकार देने की, जमानत न देना और ऐसे लोगों पर भी उपयोग

करने का जो आजकल आन्दोलनों में भी व्यस्त है। हम लोगों का अनुभव है, सार्वजनिक आन्दोलनों की लीडरशिप में हम में से कई बन्धु कागनीजेबिल नान-बेलेबिल आफेन्सेज में गिरफ्तार होते हैं, हम को नाममात्र की सजा मिलती है, लेकिन रिकार्ड में तो आ जाता है। अब सम्भावना इस में से रह जायेगी और जब यह डिस्क्रिशन है केवल रीजन्स लिख कर एक प्रकार से एक्सेप्शन बनाया जायेगा जमानत देने का तो आम तौर पर यह माना जाना चाहिए कि ऐसे लोगों को जमानत पर नहीं छोड़ा जा सकेगा। एक्जीक्यूटिव मजिस्ट्रेट के हाथों में यह सब पावर होने के बाद भी पिछले तीन महीनों में किसी तरह का कोई एफेक्टिव कंट्रोल शुरू नहीं हुआ। आन्दोलन चल रहे हैं। अभी महाराष्ट्र में किसानों का बहुत बड़ा मार्च चल रहा है, रोज बन्द हो रहे हैं। अभी परसों की ही घटना है। वाराणसी में जब पूरा बन्द हो रहा था, लोग मोर्चा निकाल रहे थे तो एक दूकान से खोलता हुआ तेल उछाला गया प्रदर्शनकारियों पर, 16 आदमी जखमी हो गए, 5 आदमी गम्भीरता के साथ जखमी हुए, एक्जीक्यूटिव मजिस्ट्रेट वहां कहीं नहीं दिखायी दिया परिस्थिति को कंट्रोल करने के लिए। मुझे अभी तक भी भरोसा नहीं है कि वह कलप्रिड्स पकड़े गये या नहीं पकड़े गए।

इस बिल से केवल आर्मिंग दि गवर्न-मेंट विद मोर पावर्स है। इस में से कोई रास्ता नहीं निकलता। एडमिनिस्ट्रेशन हम एफोशिएन्ट और कैपेबिल हैंड्स में दें, इस बात की जरूरत है। इन सारे मुद्दों के बावजूद सरकार अपने इस बिल को पास करवाने पर बज्रिय कायम है इस लिए मैं इस स्टेज पर भी इस का विरोध करता हूँ।

[Mr. Deputy Chairman in the Chair].

श्री हुकमदेव नारायण यादव :
उपसभाध्यक्ष जी, अभी सदन में जो यह विधेयक स्वीकृति के लिए प्रस्तुत किया गया है, सत्ताधारी पक्ष बहुमत में है और बहुमत के बल पर वह जो चाहे जिस तरह का विधेयक चाहे पास करा ले सकता है, कानूनी और गैरकानूनी किसी चीज का ख्याल उन को नहीं है। मेरा निवेदन यह है कि जो विधेयक अभी सदन के सामने प्रस्तुत है और उस के अन्दर जो प्रावधान किए गए हैं उस के सम्बन्ध में मुझे यह कहना है कि हम लोग लगातार अंग्रेजी राज्य के समय में भी लड़ाई लड़े और कांग्रेसी राज्य के समय में भी आन्दोलन करते रहे और इस तरह के कानून का इस्तेमाल कार्यपालिका के जरिए हम लोगों के खिलाफ कैसे-कैसे किया गया है हम लोग इस के भुक्तभोगी हैं। अगर तीन साल के जनता शासन के काल में इस तरह के कानून में इन लोगों को बन्द किया गया होता तब इन को पता लगता कि कार्यपालिका किस तरह से अन्याय किया करती है। जब हम लोग जेलों के अन्दर रहे हैं तब हम ने देखा है कि किस तरह से लोगों को जहां 6 महीने, 8 महीने, साल भर की सजा हो सकती है वैसे लोगों को तीन साल, चार साल तक जेलों के अन्दर अन्डर ट्रायल प्रिजनर की हैसियत से बन्द कर के रखा जाता रहा है। इस देश के बड़े बड़े नेताओं के ऊपर भी इस हुकूमत ने दफा 109, 110 और गुन्डा दफा लगाने में कभी शर्म का अनुभव नहीं किया। मैं यहां तक भी कहूंगा कि अंग्रेजी राज्य में भी जिन नेताओं के खिलाफ इस तरह की दफा नहीं लगाई जाती थी कांग्रेसी राज्य में उन नेताओं के खिलाफ भी इस तरह की दफा का इस्तेमाल किया गया और उस तरह की दफा में लोगों को जेल में

बन्द करने का काम किया गया। भारत का संविधान जहां इस देश में हर इन्सान को गारंटी देता है कि बिना अपराध के किसी आदमी को जेल में अन्दर बन्द नहीं किया जायेगा और जब आप बिना अपराध के, बिना जमानत के जेल के अन्दर बन्द करेंगे तो भारत के संविधान के प्रति आप अनास्था प्रगट करते हैं, जो आप न शपथ खा थी उस पर कुठाराघात करते हैं। इस लिए भारत के संविधान को धारा का उल्लंघन आप कर रहे हैं इस विधेयक को स्वीकार करने का प्रस्ताव ला कर। उपाध्यक्ष महोदय, कार्यपालिका के हाथ में यह अधिकार देना कहाँ का इन्साफ है? जो आदमी आदेश दे, उसके आदेश का पालन कोई नहीं करता हो तो उस को देखने के लिए कोई तीसरा संगठन होना चाहिए कि आदेश देने वाले का आदेश गलत था या सही था। जो मजिस्ट्रेट है उस का प्रमोशन, उस की तरक्की, उन की सारी चीजें सरकार के हाथ में रहती हैं और उस मजिस्ट्रेट पर दबाव डाल कर सत्ताधारी दल के जो प्रभावशाली लोग हैं अपने प्रभाव का इस्तेमाल कर के कार्यपालिका की मार्फत विरोधी दल वाले लोगों को, सही आवाज उठाने वाले लोगों को जेलों में बन्द करने का काम करेंगे और उन को दबाने और तंग करने का काम करेंगे। इस लिए यह विधेयक, यह कानून संविधान के प्रतिकूल है, नागरिक अधिकारों के प्रतिकूल है, मानव अधिकारों के प्रतिकूल है। इस लिए इस सदन को ऐसा कानून पास नहीं करना चाहिए और ऐसे काले कानून को इस सदन को अस्वीकार कर देना चाहिए इस स्टेज पर भी।

SHRI ERA SEZHIYAN (Tamil Nadu):
Sir, the hon. Minister has tried to justify these amendments. Sir, is Mr. Venkatasubbaiah gone...

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI YOGENDRA MAKWANA): I am taking note.

SHRI ERA SEZHIYAN: He will come back, I suppose. I hope, he has not staged a walk-out.

SHRI NAGESHWAR PRASAD SHAHI (Uttar Pradesh): Mr. Mak-wana has taken over. (*Interruptions*)

MR. DEPUTY CHAIRMAN: Order please.

SHRI NAGESHWAR PRASAD SHAHI: He is disgusted with his own Bill.

SHRI ERA SEZHIYAN: Sir, in reply to the charges as made here that the Congress Party, which has all along been advocating the separation of judiciary from the executive, which has also been the firm slogan during the days of freedom struggle, has gone back from this principle, Mr. Venkatasubbaiah has said that economic compulsions have forced them to bring forward these amendments. I would like to know whether these amendments would help to root out poverty in this country, to remove the backward status of vast sections of the society who are living below poverty line. No, Sir. You are arming the executive with more and more powers and you are transferring powers, which are hitherto being exercised by the judiciary, to the executive. These things are being done in order to create an omnipotent State, against which no opposition would be tolerated, either in the form of expression or speech or publication of news, through free media and through assembly. All these fundamental freedoms would soon be obliterated. This is not only an obnoxious measure, but it is also a reversal of the very rule of law and a negation of the fundamental freedoms of democratic functioning in this country. The very persons who are now moving these amendments may, at one stage or the other, themselves become a prey to them.

Sir, we are totally opposed to the way in which these amendments have been brought forward and the purposes for which the executive is being armed with more and more powers, for which, no plausible answer has been given. The only thing is that they have got a massive mandate. But Sir, if you take the parties the Opposition both in this House and in the other House, they have polled larger number of votes than the Congress (I) at the polls. This itself shows that they do not have the sanction of the people... (*Interruptions*) Any objection from that quarter?

AN HON. MEMBER: No objection. (*Interruptions*).

SHRI ERA SEZHIYAN: Sir, it is very wrong to say that they have a massive mandate to put these amendments on the statute book. This is an obnoxious and draconian measure and my Party is totally opposed to this and we want to record our very strong condemnation against this measure.

श्री सैयद शाहेदुल्ला : जनाबवाला,
 मैं जरा शेर से शुरू करूंगा :
 अहले दिल के लिए अब ये नज्मे वस्तु वे कुशाद,
 संग वे खिस्त है मुक्य्यद और शद आजाद
 आज हम क्या देखते हैं बिहार में कि

Ail anti-social elements, dacoits and Billas are not being touched. There are these officers who have pierced peoples eyes and put acid into those eyes. There are these officers who are not being touched. (*Interruptions*).

SHRI K. K. MADHAVAN: There is no translation, Sir.

MR. DEPUTY CHAIRMAN: He is speaking in English. (*Interruptions*).

SHRI SYED SHAHEDULLAH: All these people, all these officers, are not being touched, "while stores to drive away dogs are held tight, dogs are set free".

Sir, sections 132 and 197 continue to protect them. Nobody can file any case without the sanction of the Government, State or Centre. The Centre also holds authority in regard to all-India Services. Whenever there is any cry about law and order situation the Centre says it is a State subject and so on, everybody knows that the all India Services are under the control of the Central Government. They behave in any manner they like, that is known to everybody. They feel that the whole society is full of goondas, dacoits and thieves and they are the only innocent people.

I do not want to take your time, but I would just quote here the Supreme Court Judgment in which they themselves were interested only two years ago, in 1978. The Supreme Court Judgment relates to anticipatory bail. The House knows well who were the people interested in anticipatory bail then. The Supreme Court Judgement was delivered by Chief Justice Chandrachud and other leading Judges. It says and I quote:

"In order to meet the challenge of articles 21 of the Constitution, the procedure established by law of depriving a person of his liberty must be fair, just and reasonable. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence. ...

Here in the amendment it is said 'reason to believe', the District Magistrate or the Executive Magistrate has a 'reason to believe' that a person is guilty. But the Supreme Court, Judg-merit is that individual is entitled to the benefit of the presumption of innocence. Then the Judgment says, and I quote;

"Since denial of bail amounts to deprivation of personal liberty, the Court should lean again the imposition of unnecessary restrictions

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on the scope of section 438, especially when not imposed by legislature."

So, the Government have come to the legislature to ask for our sanction to unnecessary imposition of restriction on individual liberty. That is the sum and substance of the Bill and that is why I am opposing it. The whole Opposition has opposed it tooth and nail. Further the Judgment says, and I quote:

"An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions."

I have nothing more to add to the Supreme Court Judgement. This makes them guilty. The Supreme Court judgment condemns it and this Bill should be thrown out, this is what I would like to say.

SHR! M. KALYANASUNDARAM: (Tamil Nadu): Mr. Deputy Chairman, Sir, there is no need for me to repeat about the obnoxious and retrograde provisions of this Bill. Many hon. Members belonging to the ruling party themselves would fsl, would agree with us when we <-riti-cise the Bill, but they cannot but vote f Jr the Bill, and while doing so tb' will be voting only with a guilty conscience.

SOME HON. MEMBERS: No, no.

SHRI MANUBHAI PATEL; Some of you.

SHR' M. KALYANASUNDARAM: It is because in this democratic setup the majority will have its way and the minority will have its say. We have had say in both the Houses. And they are having their way. But the people are going to judge. The people who gave them this majority are watching how this majority is being used^ in whose

[Shri M. Kalayanasundaram]

favour whether in favour of the workers, peasants and toiling people or in favour of the looting people. In a democracy it should be in favour of workers, peasants and the toiling people, but this is dictatorship. So, the first nail has been driven. More nails are coming tomorrow. We are going to have some more Bills like this.

Sir, it is a very sad day for democracy. If this Bill is allowed to pass, those who associate themselves in passing this Bill are going to regret it. They have not learnt any lessons from the past history.

With these words, Sir, I, on behalf of my party, record my strong opposition to this Bill. We will go to the people and tell the people the truth. The people are going to decide ultimately. You pass the Bill, you fill the jails, strengthen the magistracy, the Executive Magistrates and the police. Let us see whether the people are going to win or you are going to win.

SHRI P. RAMAMURTI: This is the most obnoxious provision of the Bill, apart from other things. Earlier you had, even before 1973, the powers given to the First Class Magistrate to take surety, to ask the person to show cause why he should not be bound over. Later on it was given to a First Class Judicial Magistrate. Now you are passing it on to an ordinary Magistrate—not even a First Class Magistrate. A Tehsildar in Tamil Nadu is a Magistrate. A Tehsildar in Madras is a Magistrate. Therefore, what the Government is doing is, they want to place my workers, my working class people, my kisan people, my trade-union workers, the kisan workers, agricultural labourers at the mercy of the Tehsildar, a poor official who is incapable of all that. We know how the Tehsildar is going to act.

Therefore, Sir, this is a Bill which is intended to curb the activities of

the trade unions, kisans, agricultural labourers who are rising in revolt and, therefore, we do not propose to associate ourselves with the passing of this Bill. Let them have the happiness of passing this Bill. Let them do what they like. People will be the ultimate arbiters. Therefore, Sir, we are not associating ourselves with this Bill.

श्री भोला पासवान शास्त्री (बिहार) :

उपसभापति जी सरकार की तरफ से इस अध्यादेश पर सभा की स्वीकृति मांगी गई है। विरोधी दल की राय में यह बिल, यह विधेयक पहला सूत है जो न्याय के पंख को काटने जा रहा है और एकजीक्यूटिव को ज्यादा से ज्यादा ताकतवर बनाने जा रहा है। यह पहला कदम है, पहला कुठाराघात है, यह पहला हथौड़ा है जो हमारे सिविल राइट पर पड़ रहा है। मोनिंग शोइंग दंड है जिसे हम एक ही वाक्य में कह सकते हैं।

एक माननीय सदस्य : इमरजेंसी लगेगी। (Interruptions)

फिर इंकलाब आएगा (Interruptions)

श्री भोला पासवान शास्त्री : किस पर कुलहाड़ी चलेगी कहना मुश्किल है। हम सरकारी दल के सदस्यों से कहना चाहेंगे कि आज आप वहां पर बैठ हुए हैं। यह कानून आपके लिए भी बनेगा हो सकता है कल आप मिनिस्टर न रहें। आपके गले के ऊपर भी यह प्रहार होगा। आप इस को सोच लीजिए। इन तमाम बातों को सोच कर, इन तमाम भाषणों को सुनकर विरोधी दल इस नतीज पर पहुंचा है कि इस विधेयक को कभी भी पास नहीं करना चाहिए और इस विधेयक के विरोध में समूचा विरोधी दल यहां से बाक-आउट करता है।

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

SHRI AMARPROSAD CHAKRABORTY: On behalf of our party, I also oppose the Bill and join in the walk-out.

[At this stage, the hon. Member left the Chamber^

PROF. SOURENDRA BHATTACHARJEE (West Bengal): On behalf of my party, I also join in the walkout.

[At this stage, the hon. Member left the Chamber]

MR. DEPUTY CHAIRMAN: Now, I put the question. The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The Bill is passed.

**RE. THE SALARY, ALLOWANCES
AND PENSION OF MEMBERS OF
PARLIAMENT (AMENDMENT) BILL
1980**

MR. DEPUTY CHAIRMAN: Now we shall take up the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1980.

संसदीय कार्य तथा निर्माण और
आवास मंत्री (श्री भीष्म नारायण सिंह) :
मेरा अग्रह यह है कि इस बिल को
स्टार्ट करके पास कर दिया जाए ।
(Interruptions)

श्री नगेश्वर प्रसाद शाही (उत्तर
प्रदेश) : यह आप क्या कर रहे हैं ।
मिनिस्टर साहब ने यह कहा था कि
दूसरे दिन लिया जाएगा । आप तो मूव
कर रहे हैं ।

श्री भीष्म नारायण सिंह : उपसभा-
पति जी, हम आप सब लोगों की राय
से चलेंगे । हम तो बिल के साथ तैयार
हैं ।

श्री नगेश्वर प्रसाद शाही : जब
कल रात को 10 बजे तक बैठना है तो
आज 10 बजे तक क्यों बैठते हैं ।
(Interruptions)

श्री भीष्म नारायण सिंह : जैसे
सब की राय होगी, सदन की राय होगी
वैसा ही चलेगा ।

SHRI MURASOLI MARAN (Tamil
Nadu): We can have it tomorrow, Sir.

MR. DEPUTY CHAIRMAN: As the
House decides, I shall abide by that.

It was fixed for today and therefore, I
called the Minister.

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS AND
DEPARTMENT OF PARLIAMENTARY
AFFAIRS (SHRI P.
VENKATASUBBAIAH): It is only a small
Bill. Members of Parliament will get the
benefit.

SHRI NAGESHWAR PRASAD SHAHI:
Mr. Deputy Chairman, Sir, this is a very short
Bill. Half an hour. We are going to sit with it
and Opposition parties have said it. It is not
proper. Everybody wants it tomorrow and the
hon. Minister has agreed to it.

SHRI MANUBHAI PATEL (Gujarat) :
There are some important amendments also.

SHRI NAGESHWAR PRASAD SHAHI:
It is an undisputed Bill.

SHRI MANUBHAI PATEL: There should
be sufficient scope for those who move the
amendments. Let it be tomorrow.

SHRI BHISHMA NARAIN SINGH: I
have always respected the sentiments of hon.
Members from the Opposition side. So, I am
not making it