

THE UNLAWFUL ACTIVITIES (PREVENTION) BILL, 1967—continued

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

Clause 2—(Definitions)

SHRI P. K. KUMARAN (Andhra Pradesh): Madam, I beg to move:

5. "That at page 1, lines 9-10, after the words 'body of individuals' the words 'but shall not include a trade union registered under the Trade Unions Act, 1926, or a political party' be inserted."

6. "That at page 2, after line 2, the following proviso be inserted, namely:—

'Provided that any *bona fide* proposal or suggestion for adjustment of borders or boundaries with a neighbouring country in pursuance of good neighbourly relations shall not be regarded as an offence within the meaning of this Act'."

7. "That at page 2, after line 4, the following proviso be inserted, namely:—

'Provided that all such rules shall be framed in consultation with and with the approval of the representatives of the parties represented in either House of Parliament'."

8. "That at page 2, after line 7, the following proviso be inserted, namely:—

'Provided that no offence is deemed to have been committed under this clause unless some unlawful overt act has been committed in assertion of such claim'."

9. "That at page 2, lines 12-14, the brackets and words '(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)' be deleted."

10. "That at page 2, lines 12 to 14, the words 'or by words, either spoken or written, or by signs or by visible representation, or otherwise' be deleted."

11. "That at page 2, after line 19, the following proviso be inserted, namely:—

'Provided that no proposal or suggestion made in pursuance of border adjustment or for creation of good neighbourly relations with the neighbouring countries consistent with the dignity and honour of the country shall constitute an offence under this Act'."

12. "That at page 2, after line 21, the following proviso be inserted, namely:—

'Provided that the question of *sovereignty in the context* shall be construed only in terms of surrender of some territory of India not in pursuance of any border adjustment or from promotion of good neighbourly relations with a neighbouring country on the basis of mutual understanding with that country'."

14. "That at page 2, line 23, after the words 'unlawful activity' the words 'backed by any concrete practical deeds' be inserted."

15. "That at page 2, lines 23 to 25, the words 'or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity' be deleted."

SHRI NIREN GHOSH (West Bengal): Madam, I move:

64. "That at page 1, lines 9-10, after the word 'individuals' the words 'but does not include any political party recognised by the Election Commission of India, and any registered trade union' be inserted."

65. "That at page 2, lines 1 and 2 be deleted."

66. "That at page 2, for lines 8-9, the following be substituted, namely:—

'(e) "Tribunal" means a bench of a High Court having jurisdiction over the locality where the principal office, if any, of the association is situated'."

[Shri Niren Ghosh]

67. "That at page 2. lines 15-16, for the words 'which is intended, or supports any claim, to bring about on any ground whatsoever' the words 'which intentionally supports any claim to bring about on any frivolous ground' be substituted."

68. "That at page 2, lines 20-21, the words 'or is intended to disrupt' be deleted."

The questions were proposed.

THE DEPUTY CHAIRMAN: Amendments 103 to 106 stand in the name of Mr. A. P. Chatterjee. He is not here now. So they all go.

SHRI P. K. KUMARAN: Clause 2 sub-section (a) defines "association". It says "association" means any combination or body of individuals. I want to add after this, by my amendment No. 5, "but shall not include a trade union registered under the Trade Unions Act, 1926, or a political party."

Now by this omnibus definition, any cultural association any academic body, any body can be classified as an "association." The main subject matter is "secession", "cession", etc. But under this definition, even an academic discussion by any body becomes illegal. Now about political parties, for example, while discussing the question of the border problem with China, suppose a political party suggests that for coming to a settlement, we can make some adjustments on the border, then that suggestion becomes illegal under this Act. That means there is no freedom for political parties even to discuss political matters and any discussion concerning the integrity of the nation and allied matters becomes illegal. So my idea is that political parties should not be covered by this definition. Now about trade unions, already their freedom is very much restricted by the Defence of India Rules, the Preventive Detention Act and all sorts of other Acts. Even some sections in the I.P.C. come in the way of the trade unions. So "trade unions" and "political parties" should not be included in this definition. That is why I have said in my amendment No. 5 that "but shall

not include a trade union registered under the Trade Unions Act, 1926, or a political party" should be inserted.

Now coming to amendment No. 6, sub-clause (b) of clause 2 says: "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part. Now "admission" is not a concrete act. Perhaps Pakistan's claim may be correct or not. We do not know. China's claim perhaps may be correct or not. We do not know. So even a vague expression will become illegal under this Act. That is why I have suggested this proviso: "Provided that any *bona fide* proposal or suggestion for adjustment of borders or boundaries with a neighbouring country in pursuance of good neighbourly relations shall not be regarded as an offence within the meaning of this Act."

Then with regard to amendment 7, sub-clause (c) of clause 2 says "prescribed" means prescribed by rules made under this Act. This means that the authority which implements this Act will prescribe the rules. So such rules will be based on the thinking of the bureaucracy. Therefore, I have suggested this proviso: "Provided that all such rules shall be framed in consultation with and with the approval of the representatives of the parties represented in either House of Parliament." Now what will happen? Some Secretary will sit in his house and frame the rules and these rules will give vast powers to the district magistrates and the authorities nominated by the Central Government to search the houses, ask for properties, find out how he gets money, what literature he is getting, to whom he is talking and so on. This clause pervades all aspects of an individual's life. So when the rules are framed, they should be framed in consultation with all the parties represented in Parliament.

By amendment No. 8, I want this proviso to be inserted at page 2, after line 7. "Provided that no offence is deemed to have been committed under this clause unless some unlawful overt act has been committed in assertion of such claim." In sub-clause (d) of

clause 2, it is said "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India. It is here that I want to add the proviso. Now secession is considered as a crime. I have got my own opinion on the right of secession. The right of secession was fought for in blood by the Southern States of America when they were suppressed. But that stage is over. Even in India, one person wanted the secession of the Travancore States from India. The Nizam of Hyderabad wanted secession. It was the Communist Party then which fought against such tendencies. The heroes of Punnappa Vayalar and the heroes of Telengana fought against such tendencies. They enabled the Congress Party to come to an understanding with the Nizam and the Maharaja of Travancore. But that stage is over. The right of secession exists in Yugoslavia. The right of secession exists in the U.S.S.R. In all the socialist countries, the right of secession exists. The right of secession claimed by a reactionary party or a feudal element is something different from the right of secession claimed by a progressive party or group. The right of secession which the different groups or different nationalities in Yugoslavia have does not make the State of Yugoslavia fall as under. Because of the right of secession in the U.S.S.R., the 17 or 18 States comprising the U.S.S.R. do not fall as under. I am not sure whether the right of secession exists in China. Even if it exists, whatever may be your opinion about what is going on China now, China will be the last State in the world to get disintegrated at the present juncture. So the right of secession should be there, because when the Central Government goes astray, when they go against the aspirations of certain people in order to bring the Government down the right of secession should be there. That is my considered opinion. The right of secession is not anti-national. It will only strengthen unity and bring about cohesion. Those States which have the right of secession, are not falling as under. That is why I have suggested the proviso: "Provided that no offence

is deemed to have been committed under this clause unless some unlawful overt act has been committed in assertion of such claim."

In Amendment No. 9, I have suggested that "At page 2, lines 12-14, the brackets and words '(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)' should be deleted. This is a very sweeping phrase. According to this you cannot even think freely; you cannot even talk, you cannot even murmur. Such wide powers are necessary only for a fascist Government, not for a Government which claims to be elected democratically. I am afraid, Madam, that such wide powers are sought by this Government because the Congress Government at the Centre is becoming weaker day by day. And a man who becomes weaker will require more and more power. He will require the power of the baton and the power of the lathi because he loses self-confidence more and more. Otherwise, there is no need for such wide powers as are sought under this clause "... committing an act or by words, either spoken or written or by signs or by visible representation or otherwise." This "otherwise" can mean anything in the world. It is such a wide term that anything will be covered by it. So this should be deleted.

I am not pressing amendment No. 10.

In amendment No. 11, I have suggested that at page 2, after line 19, the following proviso be inserted, namely:

"Provided that no proposal or suggestion made in pursuance of border adjustments or for creation of good neighbourly relations with the neighbouring countries consistent with the dignity and honour of the country shall constitute an offence under this Act."

This I have already explained.

Coming to amendment No. 12, I have said that at page 2, after line 21, the following proviso be inserted:

"Provided that the question of sovereignty in the context shall be

[Shri P. K. Kumaran]

construed only in terms of surrender of some territory of India not in pursuance of any border adjustment or from promotion of good neighbourly relations with a neighbouring country on the basis of mutual understanding with that country."

Amendment No. 14 says That at page 2, line 23, after the words "unlawful activity" the words "backed by any concrete practical deeds" be inserted. Otherwise, if the Government is satisfied or if the authorised sub-magistrate or magistrate considers that so and so is indulging in an unlawful activity on the basis of pure subjective satisfaction, then action is likely to be taken. That is why I have said that it should be proved and backed by concrete action. It should be substantiated by concrete action.

Amendment No. 14 says : That at page 2, lines 23 to 25, the words "or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity" be deleted. Here in the Bill "unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity. All these are sweeping powers and such powers are apt to be misused. Already the powers available to the Government are being misused by the Government and as the Government becomes weaker and weaker, such powers will be misused more and more. So I commend all these amendments for the acceptance of the House.

SHRI NIREN GHOSH: I have suggested that at page 1, lines 9-10, after the word 'individuals' the words 'but does not include any political party recognised by the Election Commission of India and any registered trade union' be inserted. Madam, Mr. Shukla very bravely said yesterday that it is not directed against any political party. He made that categorical statement. I want to take him at his word. So if he means any business and if there is any substance in this assurance, then the Gov-

ernment should not hesitate in incorporating it in the Bill itself. Otherwise nobody would believe the Government. They said many things when the emergency was proclaimed and the D.I.Rs. were framed but every one of the assurances given on that occasion was flouted and violated; that has become part of history through the Supreme Court judgments and other things. There is wide apprehension that this is directed against those who are opposed to the Congress, political parties and associations which are opposed to the Congress. If there is any seriousness in the assurance given by him, he should accept my amendment, especially when wide apprehension has been expressed that its only purpose is to suppress the Opposition parties. And that is why they are mum about it.

Then in my second amendment I have suggested that lines 1 and 2 on page 2 be deleted. Clause (b) says:

"cession of a part of the territory of India includes admission of the claim of any foreign country to any such part;"

Now Mr. Kumaran has given the reasons. In this House even many Congress members have pleaded and Government itself has pleaded that let the Kashmir question be solved by having the boundary at the international line dividing Azad Kashmir and the Kashmir that is under our Administration. Having all these things means leaving the initiative completely with the Government. Whatever they like to do in their wisdom they will do or not do, because later on there is a clause also to this effect. The country at large will not be able to do anything. Somewhere they will conduct negotiations and then they will come and say "We have made such and such adjustments." That means the Government has reserved that power to itself. But if there is any dispute the members of any political party should be allowed to have their say. Since there is a dispute, the Government should go into it as such. Even that is barred. So my amendment should be accepted.

Then I have said about the Tribunal that it means a bench of a High Court

having jurisdiction over the locality where the principal office, if any, of the association is situated. This is the minimum guarantee about the impartiality or otherwise of the Tribunal. If only one-man Tribunal is appointed, who will believe in the impartiality and fairness of that Tribunal? Nobody would believe.

SHRI AKBAR ALI KHAN (Andhra Pradesh) Judge

SHRI NIREN GHOSH Even in the case of a Judge the Central Government will appoint such a person who will abide by whatever the Government says. If there is a bench composed of three or five Judges then at least the matter can be gone into properly. Otherwise the Central Government will appoint such a Judge who will abide by the wishes of the Central Government and do things at their bidding. Already the impartiality of the judiciary is suspected because it is heavily weighted in favour of the vested interests with anti-national outlook, with prejudices in favour of the ruling party. They are wedded to that. So nobody would believe in the fairness and impartiality of any Judge being appointed by the Government as a Tribunal. So this is the minimum guarantee that we want. If it is a full bench then at least there will be a discussion and some may agree and some may differ and thus some balance can be maintained. Otherwise this one-person Tribunal would become a fool or instrument in the hands of the Government.

Then I say that the following has been very beautifully put, for example

"the cession of a part of the territory of India from the Union, or which incites any individual or group of "

You can import any meaning into this wording whatever you like. It is like a rubber that can be pulled or stretched to any length. Whatever meaning you want to import you can do that. That is precisely why they have kept it a little vague in order to do whatever they please at their sweet will. That is why I have said that the words "which is intended or supports any

claim, to bring about on any ground whatsoever" should be substituted by the words "which intentionally supports any claim to bring about on any frivolous ground".

PANDIT S S N TANKHA (Uttar Pradesh) Who is to judge?

SHRI NIREN GHOSH Any person with a bit of common sense can do it. It is a long usage and practice. I think Mr Akbar Ali Khan ought to support me. (Interruption) Even he never departs from whatever the ruling party says, he is more loyal than the king himself.

DR B N ANTANI (Gujarat) In your opinion who is a loyal person?

SHRI NIREN GHOSH A loyal person is that person who is a true patriot and loyal to the country. Of course, the Swatantra Party is not loyal to the country.

DR B N ANTANI I now understand it.

SHRI NIREN GHOSH Then I want the deletion of the words "or is intended to disrupt". Who is to judge the intention? How can anybody do it? It is an absurd phraseology that has been used here. Then they will say "That person intended to do this". Things will be said like that. So that thing should be deleted. Now they want to delegate certain powers to the State Governments, they want to order them to do something. I say only with the approval of the State Government it should be done. That is why I suggest that at page 2, line 29 after the words "it may" the words "after receiving the approval of the State Governments concerned" be inserted. Before declaring an association as unlawful, if the office of the association is situated in any State, it should be declared as unlawful only with the approval of the State concerned. That is the purpose of this amendment. Suppose the office is in UP.

THE DEPUTY CHAIRMAN Mr Ghosh, you are outside this clause. We are now on clause 2 only.

SHRI NIREN GHOSH: Yes, I am sorry.

THE DEPUTY CHAIRMAN: You have really finished then.

SHRI NIREN GHOSH: Thank you, Madam.

I also support the amendments put forward by Mr. Kumaran.

SHRI A. P. CHATTERJEE (West Bengal): Madam, I am sorry I was a little late and I was not here when you called me. Will you now allow me to move my amendments?

THE DEPUTY CHAIRMAN: I shall allow you.

SHRI A. P. CHATTERJEE: Madam, I move:

103. "That at page 2,—

(i) in line 11, for the words 'any action' the words 'any overt action' be substituted; and

(ii) in lines 12 to 14, the words and brackets '(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)' be deleted."

104. "That at page 2,—

(i) in line 15, for the words 'is intended, or supports any claim', the words 'is calculated' be substituted; and

(ii) in line 16, the words 'on any ground whatsoever' be deleted."

105. "That at page 2, lines 20-21, for the words 'disclaims, questions, disrupts or is intended to disrupt' the word 'disrupts' be substituted."

106. "That at page 2, lines 24-25, the words 'or of which the members undertake such activity' be deleted."

Madam Deputy Chairman, my amendment so far as clause 2 is concerned is confined to clause 2(f) where unlawful activity is defined. It says that unlawful activity in relation to an individual or association means any action taken by such individual or association. Instead of any action I want to say

any overt action. I am also suggesting the deletion of the bracketed words "(whether by committing an act or by words, either spoken, or written, or by signs or by visible representation or otherwise)". I only want to say one or two words in support of this amendment. I am submitting this amendment for the consideration of the House because this legislation gives very wide powers to the executive and therefore those powers of the executive should be circumscribed by making the legislation specific. A mere suspicion or a mere guess would not do. If an individual or an association, commits an overt action, that is, an expressed action, which is calculated to bring about the cession of a part of the territory or a secession of a part of the territory, then only it should be regarded as an unlawful activity. That is one of my amendments as far as this clause is concerned.

My second amendment as far as clause 2 is concerned is this. I am for omitting the words "which is intended or supports any claim" which are very vague words and I am suggesting a simpler and more concrete and specific word "calculated" so that it will read, "which is calculated to bring about . . ." These words are more specific; they do not leave any scope for doubt, any scope for suspicion or any scope for overstepping the boundary of permissible action on the part of the executive. I am also suggesting the dropping of the words 'on any ground whatsoever'. The grounds should be *bona fide* grounds and therefore 'on any grounds' would be a premium on executive oppressiveness I am also making this more specific by using the words 'overt action' and 'calculated to bring about'.

Then I also submit for the consideration of the House that the words "disclaims, questions, disrupts or is intended to disrupt" be dropped and replaced by one word "disrupts" because the use of the words "disclaims, questions, disrupts or is intended to disrupt" will commit the same mischief for the prevention of which I have already placed the other amendments. That is, only

if it, is an overt action by an individual or an association and if it disrupts then only you can bring him within the mischief of this Bill.

I am also submitting before you that the words in lines 24-25 on page 2 "or of which the members undertake such activity" should be deleted for this reason that the association cannot be made responsible analogically, by way of analogy, for the activities of certain members of which the association may not be aware at all. This offence by analogy is a very drastic way of dealing with an individual or association. This particular method of offence by analogy was known in Fascist countries only, this sort of punishing the association for the activities of its members about which the association may not be knowing anything. Therefore this offence by analogy should not be permitted and therefore I am moving this amendment.

SHRI ABID ALI (Maharashtra): Madam, the hon. Minister will reply to the arguments. I only wanted to put the records straight so far as the observations made by the hon. member Shri Kumaran are concerned. He termed the criminals concerned with the Telangana affairs as heroes. That may be his conception but as far as genuine Indian feelings are concerned all over the country those connected with Naxalbari and Telangana are considered to be first class criminals and traitors.

SHRI YELLA REDDY (Andhra Pradesh): You were the criminals because at that time you were suppressing.

(Interruptions)

SHRI ABID ALI: If, because I say that those who are connected with these atrocities are criminals, I am a criminal, I accept that. If that is how they understand the term 'criminal' it is all right.

Now, Madam, there is another thing. Mr. Niren Ghosh has said that the assurances given by the hon. Minister regarding the emergency were not adhered to. My feeling is that I wish they are not adhered to and I want the concerned persons should have been dealt

with in the appropriate way but unfortunately many people who could have been dealt with were not dealt with at all. Now in Marathwada some workers of the AITUC who were acting to the detriment of the interests of India were arrested and then some workers of the INTUC were also arrested and when we represented to the officers concerned that they are quite loyal and law-abiding, the reply given by the police officers was very interesting and the hon. Minister should take note of it. The police officers said: "We have arrested some communist boys; to get parity we should also arrest some congressmen." This was exactly the reply that was given and this is the standard our good Government is maintaining. I want the Minister to take note of this.

The questions were proposed.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA): Madam, some general observations have been made by Mr. Kumaran while commending his amendments. He alleged that this kind of enactment is being brought before this House because the Government is becoming weaker and weaker. I must emphatically repudiate that. It has nothing to do with any such thing. Actually it is related to the irresponsibility of the Opposition; that is why this kind of a Bill is needed. Otherwise this kind of a Bill would not have been needed; if we had responsible opposition parties in our country we would not have been required to bring forward a Bill of this kind. I am very surprised that Mr. Kumaran could come up in this open House and plead for right of secession in the country. It is a tribute to our democratic instincts that we do not violently react to such things.

SHRI A. P. CHATTERJEE: On a point of order. Can the Minister while replying to the amendments refer to the Opposition as irresponsible?

THE DEPUTY CHAIRMAN: That is all right; there is nothing wrong. You have said worse things. Don't be sensitive.

SHRI VIDYA CHARAN SHUKLA: We know that the majority of the people of India, most people of India, will not be tolerant to any pleas of secession from our motherland.

As far as specific amendments are concerned, amendment No. 7 is regarding the Rules. As the House knows, all the Rules that will be made under this Bill will be laid before Parliament. I do not think this amendment has any validity.

Regarding amendment No. 9, unlawful activity means action taken and that means we have to describe the various types of unlawful activities that could take place. As far as this particular clause is concerned, since I have clarified that unlawful activity means an action taken, it should satisfy the Member.

Now, another point that was raised by the hon. Member was, what will happen if there are political parties which will make pleas for settlement with various foreign countries. As I have clarified it, unlawful activity means in relation to the action taken and if the pleas are such that they do not come within the purview of this Bill and they are simple political pleas for settlement, they will not come within the mischief of this Bill. It is quite plain. But as I said earlier, if the pleas are connected with other circumstances and other actions, which come within the purview of the Bill, then, of course, the provisions of this Bill will come into play. Otherwise, simple pleas by political parties for settlement and general pleas for settlement would not come within the provisions of this enactment.

Mr. Niren Ghosh has pleaded for a High Court Bench of three Judges in his amendment. This point I touched yesterday while replying to the general debate, on the First Reading of the Bill. I said that he is a sitting Judge of a High Court who constitutes the tribunal and it would be a single Judge Bench. Whether it is one Judge or three Judges, it is a question of having confidence. If basically the confidence is absent, whether it is one Judge, three Judges, five Judges or even seven

Judges, it would not convince the hon. Member.

SHRI NIREN GHOSH: All the Judges may not be above board.

SHRI VIDYA CHARAN SHUKLA: We expect all the Judges to be above board. We know the reason why Mr. Niren Ghosh is making a statement like this or bringing an amendment like this. I do not know whether he really seriously believes that three Judges would be better than one, because he does not believe in the . . .

SHRI NIREN GHOSH: What I say I seriously believe in.

SHRI VIDYA CHARAN SHUKLA: . . . utility of the judiciary.

SHRI NIREN GHOSH: We will leave it to you.

THE DEPUTY CHAIRMAN: You have had your speech. Please listen now.

SHRI NIREN GHOSH: I am listening.

(Interruptions)

SHRI B. D. KHOBARAGADE (Maharashtra): Even in the High Courts there are Division Benches and full Benches. Therefore, it is a very important matter dealing with association and it is better to have three Judges.

THE DEPUTY CHAIRMAN: You have had your say.

SHRI VIDYA CHARAN SHUKLA: I find that Mr. Niren Ghosh has gone on record as saying that they do not believe . . .

SHRI P. K. KUMARAN: Three Judges are better than one.

SHRI VIDYA CHARAN SHUKLA: . . . that the judiciary in India is impartial or it is serving the best interests of the country. It is only serving the interests of the capitalist class. So, I do not think he seriously means it.

Amendments Nos. 103 to 106 proposed by Mr. Chatterjee will actually take away all the powers of the Government to take preventive action. If his amendments are accepted, Government will be able to act only after the action has taken place. So, the Government is not accepting any of these amendments.

THE DEPUTY CHAIRMAN: The question is:

5. "That at page 1, lines 9-10, after the words 'body of individuals' the words 'but shall not include a trade union registered under the Trade Unions Act, 1926, or a political party' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

6. "That at page 2, after line 2, the following proviso be inserted, namely:—

'Provided that any bona fide proposal or suggestion for adjustment of borders or boundaries with a neighbouring country in pursuance of good neighbourly relations shall not be regarded as an offence within the meaning of this Act'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

7. "That at page 2, after line 4, the following proviso be inserted, namely:—

'Provided that all such rules shall be framed in consultation with and with the approval of the representatives of the parties represented in either House of Parliament'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

8. "That at page 2, after line 7, the following proviso be inserted, namely:—

'Provided that no offence is deemed to have been committed under

this clause unless some unlawful overt act has been committed in assertion of such claim'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

9. "That at page 2, lines 12-14, the brackets and words '(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)' be deleted."

The motion was negatived.

SHRI P. K. KUMARAN: Madam, I beg leave to withdraw my amendment.

*10. Amendment (No. 10) was, by leave, withdrawn.

THE DEPUTY CHAIRMAN: The question is:

11. "That at page 2, after line 19, the following proviso be inserted, namely:—

'Provided that no proposal or suggestion made in pursuance of border adjustments or for creation of good neighbourly relations with the neighbouring countries consistent with the dignity and honour of the country shall constitute an offence under this Act'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

12. "That at page 2, after line 21, the following proviso be inserted, namely:—

'Provided that the question of sovereignty in the context shall be construed only in terms of surrender of some territory of India not

*For text of amendment vide col. 6103 supra.

[The Deputy Chairman]

in pursuance of any border adjustment or from promotion of good neighbourly relations with a neighbouring country on the basis of mutual understanding with that country'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

14. "That at page 2, line 23 after the words 'unlawful activity' the words 'backed by any concrete practical deeds' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

15. "That at page 2, lines 23 to 25, the words 'or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

64. "That at page 1, lines 9-10, after the word 'individuals' the words 'but does not include any political party recognised by the Election Commission of India and any registered trade union' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

65. "That at page 2, lines 1 and 2 be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

66. "That at page 2, for lines 8-9, the following be substituted, namely:—

'(e) "Tribunal" means a bench of a High Court having jurisdiction over the locality where the principal office, if any, of the association is situated'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

67. "That at page 2, lines 15-16, for the words 'which is intended, or supports any claim to bring about on any ground whatsoever' the words 'which intentionally supports any claim to bring about on any frivolous ground' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

68. "That page 2, lines 10-21, the words 'or is intended to disrupt' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

103. "That at page 2,—

(i) in line 11, for the words 'any action' the words 'any overt action' be substituted; and

(ii) in lines 12 to 14, the words and brackets '(whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

104. "That at page 2,—

(i) in line 15, for the words 'is intended, or support any claim.' the words 'is calculated' be substituted; and

(ii) in line 16, the words 'on any ground whatsoever' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

105. "That at page 2, lines 20-21, for the words 'disclaims, questions, disrupts or is intended to disrupt' the word 'disrupts' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

106. "That at page 2, lines 24-25, the words 'or of which the members undertake such activity' be deleted.

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

SHRI NIREN GHOSH: It is Fascist, anti-Indian and unpatriotic.

THE DEPUTY CHAIRMAN: Please take your seat. (*Interruptions*). Clause 3.

Clause 3—Declaration of an association as unlawful

SHRI P. K. KUMARAN: Madam, I move:

16. "That at page 2, line 28, for the words 'is of opinion' the words 'have reasonable grounds to believe' be substituted."

17. "That at page 2, after line 30, the following provisos be inserted, namely:—

'Provided that no such declaration shall be made without calling upon the organisation to answer the charges which shall be furnished to it:

Provided further that such declaration shall cease to be valid unless both the Houses of Parliament have by a majority of the members and by a majority of the two-thirds of the members present and voting in the House have, within four months of the declaration, approved the same'."

18. "That at page 2, lines 34 to 36 be deleted."

19. "That at page 3, lines 1 to 6 be deleted"

20. "That at page 3, line 12, for the word 'may' the word 'shall' be substituted."

21. "That at page 3,—

(i) in line 15, for the word 'or' the word 'and' be substituted,

(ii) in line 17, for the word 'or' the word 'and' be substituted; and

(iii) in line 20, for the word 'or' the word 'and' be substituted."

SHRI NIREN GHOSH: Madam, I move:

69. "That at page 2, line 29, after the words 'it may' the words 'after receiving the approval of the State Governments concerned' be inserted."

70. "That at page 2, lines 34 to 36 be deleted."

71. "That at page 2, at the end of line 39, after the words 'Official Gazette' the words 'and without securing the approval of Parliament' be inserted."

72. "That at page 3, lines 1 to 6 be deleted."

SHRI A. P. CHATTERJEE: Madam, I move:

107. "That at page 2, line 28, for the words 'is of opinion' the words 'satisfied on evidence' be substituted."

108. "That at page 2, lines 34 to 36 be deleted."

109. "That at page 3, lines 1 to 6 be deleted."

The questions were proposed.

SHRI P. K. KUMARAN: This clause reads:

"If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful."

Here the words are "is of opinion"; "If the Central Government is of opinion", that is the phrase. Who is to decide how do they come to this opinion. My amendment seeks to replace the words

[Shri P. K. Kumaran]

"is of opinion" by the words "have reasonable grounds to believe". That means the Government should have reasonable grounds. It has to tell the organisation concerned or association concerned that you have done such and such thing; we have got information that such and such a thing has happened; you are doing such and such a thing. They should give notice and tell them and they should be given an opportunity to prove that the information which the Government has received is not correct. If they fail prove that, such an association can be declared unlawful. This right of defending oneself is a fundamental right. It is there in the Constitution. Even against an ordinary employee if the employer wants to take action, he has the right of defence. Here no such thing is provided. That is why my amendment No. 17 reads: "Provided that no such declaration shall be made without calling upon the organisation to answer the charges which shall be furnished to it." Now if you have such information that such and such organisation is indulging in unlawful activities as defined in this Bill, then your ground for such a conclusion should be given to them; they should be given a chance to defend themselves. That is not contemplated here. The phrase "is of opinion" is an omnibus phrase. Only the officer who is authorised by the Central Government, even if he is in another State, Kerala, Punjab or Bengal, if he is authorised by the Central Government to take action and if he comes to the conclusion that so and so is doing something unlawful, he is likely to be declared unlawful. That is a very wide power. It goes entirely against the very grain of democratic traditions of India, and it goes against the fundamental rights, and strikes at the very root of the Constitution.

Amendment No. 17 further says:

"Provided further that such declaration shall cease to be valid unless both the Houses of Parliament have by a majority of the members and by a majority of the two-thirds of the members present and voting in the House have, within four months of

the declaration, approved the same." Suppose they declare a political party unlawful or an association unlawful or a strong trade union unlawful, it is for the representatives of the people who are sitting in both Houses of Parliament to discuss it, and they should approve of it within four months of such declaration, otherwise the orders of the Government should have no validity.

Here there is a proviso saying:

"Provided that nothing in this subsection shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose."

Here apart from the fact that no provision is there for the Government to inform the party concerned that we have got suspicion that you are indulging in unlawful activities, it authorises Government not to disclose any information which it has. It is entirely left to the Government. Suppose the Government receives information that such and such an organisation is doing such and such a thing, it will not tell the organisation that this is the charge against you. No. They have got the right to keep it secret and then just to declare it unlawful. These are dictatorial powers. This proviso should go.

Then I come to amendment No. 20. In line 10 of sub-clause (4) it is said: "if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit" etc. Here it is not a question of "may". I want to replace "may" by "shall" so that it is incumbent on the Government, it is obligatory on the part of the Government to disclose the reasons.

Again it says "all or any of the following modes". Amendment No. 21 says all the conditions should be fulfilled by removing the word "or" and putting in "and". So I must point out to the House that here, the elementary right of an organisation or an individual for self-defence is denied in this clause; so I appeal to the House to consider these amendments at least liberally.

SHRI NIREN GHOSH: The wording in the clause is "it may, by notification in the Official Gazette, declare such association to be unlawful". My first amendment is after the words "it may" the words "after receiving the approval of the State Government concerned". Suppose it is situated in a State. If without securing the approval of the State Government or Governments concerned you proceed in this matter, then you make a complete mockery of the State Legislatures and State Governments. They become mere administrative units of the Central Government—federal in name, but unitary in content and essence completely—and that is bound to create frictions between the Central Government and the State Governments concerned. You will go on increasing frictions day by day by this provision. So, in the State where that office is situated, unless and until you secure the approval of the State Government concerned, the Centre should in no case proceed to declare any association unlawful as it would create disunity, it would create disintegration, it would create disharmony and friction and conflict in the body politic of India.

Then, Madam, I have said that at page 2, lines 34 to 36 should be deleted. It is stated in the proviso:

"Provided that nothing in this subsection shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose."

The Central Government may say that they are under no obligation to disclose any grounds whatsoever upon which the political party or organisation is declared illegal. This is a fantastic thing. Of course this can happen in India when the ruling party becomes anti-Indian and unpatriotic. That is why such a clause appears in the Bill. So, I say that it is absurd, it gives *carte blanche* to the Government to concoct anything without any relevance and wreak their vengeance upon any individual, party, group, association, etc. So, these things should go.

Then it is said in sub-clause (3):

"No such notification shall have effect until the tribunal has, by an

order made under Section 4 confirmed the declaration made therein and the order is published in the Official Gazette."

After "Official Gazette" I want to add "and without securing the approval of Parliament". After the process is completed things should come before Parliament because this Bill is chosen to scuttle and do away with whatever fundamental rights, formal or informal, there are in the Constitution. After the Tribunal comes to any conclusion the whole thing should come before Parliament, and after Parliament debates over it and gives approval to it by two-thirds majority, only then should any body or individual can be declared

unlawful. Unless you do
12 NOON that, this wide distrust and mistrust of the Government would continue, it would intensify day by day, and naturally, such processes have never mended things, they have only complicated things and made the situation worse. I want that Parliament should be brought into the picture when a final decision is taken.

Then, at page 3, lines 1 to 6, it is provided that the Central Government even without securing any approval of the Tribunal can forthwith declare an association unlawful. Then, do away with this Bill; I say, scarp this Bill, bring forward a two-sentence Bill that Parliament empowers the Government to do whatever they like in their omnipresence, at whatever time they like, without disclosing any reasons whatsoever, and the matter is finished there. There is no necessary to waste our time over going through the clause-by-clause reading. You bring forward such a two-or-three-sentence Bill and finish the whole thing. That would be far better. Why go through all this paraphernalia? I do not know. That is why I say that the section which empowers the Government to do whatever they like without giving any ground and forthwith, should go in any case.

SHRI A. P. CHATTERJEE: Madam Deputy Chairman, I have got three amendments as far as clause 3 is concerned. The first amendment which I have moved is this that the words 'is of

[Shri A. P. Chatterjee]
 opinion' should be replaced by the words 'satisfied on evidence' I have moved this amendment for this reason that if the words 'is of opinion' are allowed to remain there, then the whole thing of the declaration of an association to be unlawful will completely depend upon the subjective satisfaction of the Government. Now, on the subjective satisfaction of the Government, such important fundamental rights that a citizen has to form an association should not be allowed to be dependent. I know the answer may be like this. After all, unless there is the question of the emergency declaration, under proviso to clause 3(3), the Tribunal will have to make its recommendations and until those recommendations are there, this declaration will not come into effect. But being aware of that, being cognizant of that proviso, I am pressing this amendment for this reason that clause 4 which provides for reference to the Tribunal, as it is formulated, as it is drafted, will not allow the Tribunal to go into the question properly unless the opinion of the Government on which an association is declared illegal, that opinion is based on reasonable evidences. If those reasonable evidences are not before the Tribunal, the Tribunal will not be able to do justice on the question whether an association should be declared unlawful or not. Therefore, the subjective opinion, which is the only thing now, that has been given to the Central Government and not the task of forming an opinion on evidences. Well, that power of declaration of an assembly as unlawful on mere subjective opinion, should go.

I am also cognizant of the amendment given by Mr. Kumaran in this respect. Mr. Kumaran said, "reasonable grounds to believe". But I think that even that amendment would not serve the purpose because, as we know, in *Liversidge vs. Anderson* the House of Lords, in spite of these words 'reasonable grounds to believe' which were in Regulation 18B in the Defence of the Realm Act of England enacted during the Second World War, held that 'reasonable grounds to believe' might not empower the court to go into the facts,

reasons and grounds which led the Home Secretary to declare that a person be detained. Therefore, judicial opinion being as it is and our judicial opinion having, by and large, followed the House of Lords, in *Liversidge vs. Anderson* the words 'reasonable grounds to believe' would not do. The Tribunal or a court, if it is to go into the question whether the Central Government's declaration is proper or not, has to be given the power to do that and if we have to give that power to the Tribunal to go into the question whether the Central Government's declaration is good or bad, then we have to put in these words 'if the Central Government is satisfied on evidence.' Then only would the Tribunal be able to do its function. But if these words 'is of opinion' are allowed to remain, then the Tribunal will be rendered absolutely impotent.

The second amendment to clause 3 which I have moved is that the proviso to clause 3(2) should go. It is for this reason that this proviso again says that "the Central Government may not disclose any fact which it considers to be against the public interest to disclose." I do not understand this proviso at all because according to clause 3(2), the Notification shall specify the grounds. Now, facts definitely in such cases are grounds. You cannot divorce grounds from facts. And therefore, if certain facts are there in order to support the opinion of the Government that an association should be declared unlawful, those facts should be there and should be placed in the Notification. And I am also pressing this amendment in view of the further provision under clause 4 of this Bill, because the Tribunal set up under clause 4 cannot function properly unless all the facts and grounds are before the Tribunal. If you say before the Tribunal that I cannot produce any fact or ground because it is against the public interest to disclose, then the Tribunal will not be able to discharge its functions, and therefore, these facts and these grounds on which you declare an association unlawful, they have to be placed in the Notification, which will be the subject-matter of adjudication by the Tribunal.

The third amendment which I have proposed is this that the proviso to clause 3(3) should go because this is a very dangerous proviso. No doubt, clause 3 says in its main part that a declaration will not become effective unless the declaration has been okayed by the Tribunal. But this proviso to clause 3(3) says that in circumstances of which the Government will be the judge, they may think it necessary to declare an association unlawful with immediate effect; under these circumstances, even without reference to the Tribunal, the association would continue to be unlawful. I know that this has to be placed before the Tribunal; I also know that under clause 4(3), the Tribunal will have to give its decision within six months. But as a lawyer, I know that such words as "as expeditiously as possible and in any case within a period of six months" have consistently and all along been declared by the courts to be directory and not mandatory. Therefore, whatever safeguards you may put in in this form by way of saying 'in any case within a period of six months'. I have no doubt that these words will be declared to be directory by the court. So, the position will be this that if under certain circumstances the Government declares an association to be unlawful because of the emergency under clause 3(3), that may go on for a year or two years even because the Tribunal will not give the decision within the period of six months. And you cannot compel the Tribunal to give it within six months, because, I have no doubt that, as the courts have so far decided such questions, they will also decide in these cases that these words are directory and not mandatory. Therefore, it is very important that this amendment should be accepted by the Home Minister even if the other amendments are not accepted. I think he will give his kind consideration to this at least. This proviso is a very pernicious proviso and I appeal to him not to be guided by political considerations, but proper consideration to this proviso and others also.

THE DEPUTY CHAIRMAN: Mr. Banka Behary Das, you were not here to move your amendment. I would like

Members to be here. You can move it now. I have allowed Mr. Chatterjee also who came late. But I would earnestly request Members who have got amendments in their names to sit through from now on till we finish. Yes.

SHRI BANKA BEHARY DAS (Orissa): Madam, I move:

100. "That at page 3, lines 1 to 6 be deleted."

Madam Deputy Chairman, when I move this amendment I want to request the hon. Minister to drop the words in clause 3:—

"Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette."

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Chatterjee has already spoken on it.

SHRI BANKA BEHARY DAS: He has spoken on one portion. Here I want to refer to the amendment of Mr. Kumaran also because Mr. Kumaran's amendment says about clause 3, sub-clause (1) like this:—

"Where the Government, in their opinion, think that an association is to be declared unlawful, then by a notification in the Official Gazette declares such association to be unlawful and the consequences follow according to clause 4."

When the Tribunal is set up and both the sides are heard before the Tribunal, in that context Mr. Kumaran's amendment is less important if the Government accepts that amendment. According to clause 3(1) there is an opportunity for the organisation which is going to be declared unlawful because though it is declared as unlawful it does not come into being unless the Tribunal gives its final decision. But here in the proviso a dangerous thing has been

[Shri Banka Behary Das]

brought in. If the Government is saddened with a power like this then it will have a fascist character because an organisation if in the opinion of the Government is to be declared unlawful, then through this proviso they cannot only declare it unlawful but the unlawful character of it comes into existence immediately without giving an opportunity to the other party to say whether they should be declared unlawful or whether they are indulging in unlawful activities. So it strikes at the very root of justice that this democratic country has already accepted.

Moreover, you know, Madam, that when an organisation is continuing for a certain period and is carrying on certain unlawful activities, it is not in one day that the Government knows that it is unlawful and is curbed immediately. Then something wrong happens to this country because an organisation must continue for a long time and the Government has to make up its mind by receiving reports from various sources whether that organisation should be allowed to have a free say in this behalf. So in this context, I would think that an organisation does not exist for one day, and then if the Government thinks that it should be declared as unlawful, then only this proviso can operate. That is why I am very much against it and I feel that the Government will always, when they are having this power, be tempted to utilise this proviso than clause 3(1) as a result of which first the organisation will be declared unlawful, they will go out of existence. Then the Government will go to the very Tribunal to get a corroboration or the Tribunal may reject it. That is why it gives too much power in a democratic country which no democratic Government ought to aspire for. That is why I am saying that if this power is given to the Government, it will become a virtually fascist power. That is why I object strongly. If my amendment is accepted, I think there will be no necessity for Mr. Kumaran's amendment to be accepted by the Government.

The question was proposed.

श्री गोडे मुराहरि (उत्तर प्रदेश) : माननीया, मैं श्री कुमारन्, नीरेन घोष, बांक बिहारी और चटर्जी के जो एमेंडमेंट मौजूद हैं उन सबकी तारीफ करता हूँ क्योंकि मैं सिद्धान्तः इस बिल के खिलाफ हूँ। फिर भी जब क्लोज बाई क्लोज बहस हो रही है और इस में एमेंडमेंट की बात होती है तो मैं इन सब एमेंडमेंट्स का समर्थन इसलिये करता हूँ कि एक तो इस बिल के जरूरी सरकार को ऐसी पावर्स दिये जाने की बात हो रही है जिससे मुझको लगता है पार्लियामेंट का रहना भी मुश्किल हो जायगा, पार्लियामेंट भी कोई काम कर सके यह भी मुश्किल हो जायगा क्योंकि आप किसी भी इंडिविजुअल को, किसी भी संस्था को गैरकानूनी करार देने का अधिकार सरकार को देते हैं और उसके ऊपर कोई कारण बताने की जिम्मेदारी भी नहीं रहती, बिना कारण बताए सरकार चाहे तो किसी को भी गैरकानूनी करार दे सकती है। इस तरह की पावर फासिस्ट देशों में होती है और शायद कुछ ऐसे देशों में होती है जहाँ एकाधिपत्य या आटोक्रैटिक रूल होता है। एक तरफ तो, हम जनतंत्र की बात करें और साथ साथ इस तरह की पावर्स सरकार के लिये मांगे यह उचित नहीं लगता। जो यह बिल बना है वह इतनी जल्दबाजी में बनाया गया है कि सरकार को कुछ पता नहीं था कि कहां तबदीली करनी है। यहां पर एक क्लोज रखा गया है —

"If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then the Central Government shall appoint another person in accordance with the provisions . . ."

यानी यह क्लोज तो रहना ही नहीं चाहिये था क्योंकि ट्रिब्यूनल एक आदमीका है। यह शायद पहले जब ड्राफ्ट किया गया और तीन आदमियों का ट्रिब्यूनल रखने की बात होगी तब लिखा गया होगा, लेकिन अभी भी इसमें रखा हुआ है। अगर इस तरह की बेकेन्सी होती है तो जाहिर है कि कोई नया ट्रिब्यूनल एप्वाइन्ट होगा, लेकिन यह क्लोज यहां पर

रखा गया है। इससे जाहिर होता है कि जिस ढंग से यह बनाया गया है वह जल्दबाजी में बनाया गया है, सरकार को खाली अधिकार लेने की आतुरता थी लेकिन ठीक तरह से बिल बनाने की और उसका क्या नतीजा निकलेगा उसके बारे में बिना सोचे समझे हमारे सामने यह बिल लाया गया है। इसलिये मैं चाहूंगा कि जितने भी एमेंडमेंट्स यहां पर मौजूद हैं उन सबको मान लिया जाय नहीं तो ऐसा होगा कि अनलाफुल एक्टिविटीज की जो डेफिनेशन दी हुई है—

“(f) ‘unlawful activity’, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise) . . .”

मैं बिल के ऊपर बोल रहा था इसलिये उसका जिक्र कर रहा था। जिस ढंग से बिल लाया गया है . . .

उपसभापति : यह तो ठीक है लेकिन जो एमेंडमेंट्स सामने हैं उनके ऊपर बोलिये।

श्री गोडे मुराहरि : ठीक है, फिर मैं थर्ड रीडिंग में बोलूंगा।

SHRI VIDYA CHARAN SHUKLA : Madam Deputy Chairman, some points have been made regarding this clause 3 and its proviso. It has been made clear here that normally a declaration made by the Government will have no effect until it is confirmed by the Tribunal. The hon. Member, Shri Banka Behary Das, said that since there is the proviso the Government would be tempted to use that proviso and using the exception provided by this proviso the Government may be tempted to use it more often than the power given in the main clause. May I say that this is not the intention of the Government. This can also be treated as an assurance of the Government which is being given on the floor of this House. (*Interruption by Shri Banka Behary Das*). I have no remedy for suspicion . . .

SHRI P. K. KUMARAN : They said that the emergency was going to be lifted. But today's papers say that it will take two months more to lift the emergency.

SHRI VIDYA CHARAN SHUKLA : The hon. Member goes by newspaper reports. He must use his intelligence and have faith. I am only trying to say here . . .

SHRI BANKA BEHARY DAS : Why do you not declare here that it will be lifted from the 1st January?

SHRI VIDYA CHARAN SHUKLA : I am making a solemn declaration on behalf of the Government that the powers given under this proviso will be used under very exceptional circumstances, and extraordinary circumstances. And I will also pose a question to Mr. Banka Behary Das. If you lift the emergency today, what would happen if a contingency arises as arose when the Mizo National Front declared a rebellion? Would you wait for the Tribunal to be appointed to examine the whole case, give them the opportunity of hearing, declare that organisation illegal and then take action against the rebels? Only for such contingencies when you have to act immediately, this power has been kept in reserve by the Government and I am clarifying on behalf of the Government that we do not intend to use such powers unless there is a real extraordinary situation which merits the use of such extraordinary powers which are being taken under this provision. I have only illustrated this to convince hon. Members, if they are open to any kind of conviction, that this is only for such contingencies as was provided by the rebellion of the Mizos two years back. Then there was another point made by Mr. Chatterjee. He argued his case ably. I may say here that the grounds that may be taken into consideration by the Government for taking action may involve certain facts the disclosure of which may not be in public interest. There is a chance that the disclosure of such grounds which require the Government to take action might benefit the enemies of the country. That is why . . .

SHRI NIREN GHOSH: What is the guarantee that your grounds are not wrong or are completely invalid?

SHRI VIDYA CHARAN SHUKLA: The grounds will be given if their disclosure will not be against national interests. That is why this power is kept here and I am sure hon. Members will see the reason why a power of this kind has been reserved by the Government. Now certain amendments were moved by Mr. Kumaran regarding the right of defence. The right of defence is provided for in clause 4 which will come later. Here I have said that the tribunal will confirm the declaration made by the Government ordinarily. There is no question of Parliament coming into the picture as some hon. Members have said.

As far as this amendment No. 18 regarding "public interest" is concerned, I think it is necessary to keep the provision as it is so that no vital information leaks out, and the Government has the right to act as far as this particular matter is concerned. So I oppose all the amendments and none of the amendments is acceptable to the Government.

THE DEPUTY CHAIRMAN: The question is:

16. "That at page 2, line 28, for the words 'is of opinion' the words 'have reasonable grounds to believe' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

17. "That at page 2, after line 30, the following provisos be inserted, namely:—

'Provided that no such declaration shall be made without calling upon the organisation to answer the charges which shall be furnished to it:

Provided further that such declaration shall cease to be valid unless both the Houses of Parliament have by a majority of the members and by a majority of the two-thirds of the members present and voting in

the House, within four months of the declaration, approved the same'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

18. "That at page 2, lines 34 to 36 be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

19. "That at page 3, lines 1 to 5 be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

20. "That at page 3, line 12, for the word 'may' the word 'shall' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

21. "That at page 3,—

(i) in line 15, for the word 'or' the word 'and' be substituted.

(ii) in line 17, for the word 'or' the word 'and' be substituted.

(iii) in line 20, for the word 'or' the word 'and' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: Now amendments 70 and 72 are barred.

The question is:

69. "That at page 2, line 29, after the words 'it may' the words 'after receiving the approval of the State Government concerned' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

71. "That at page 2, at the end of line 39, after the words 'Official Gazette' the words 'and without securing the approval of Parliament' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: Now amendments 100, 108 and 109 are barred.

SHRI A. P. CHATTERJEE: Why are they barred?

THE DEPUTY CHAIRMAN: They are common with the earlier amendments which have been put to vote.

The question is:

107. "That at page 2, line 28, for the words 'is of opinion' the words 'satisfied on evidence' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4—(Reference to Tribunal)

SHRI P. K. KUMARAN: Madam, I move:

22. "That at page 3, after line 27, the following proviso be inserted, namely:—

'Provided that in such cases the reference to the Tribunal shall be accompanied with the answers to the charges which the Government may have received in the meanwhile'."

23. "That at page 3, after line 27, the following proviso be inserted, namely:—

'Provided that when action is taken under proviso to sub-section (3) of section 3, the Central Government shall within seven days refer the notification to the Tribunal for the said purpose'."

24. "That page 3, after line 31, the following proviso be inserted, namely:—

'Provided that when action is taken under proviso to sub-section (3) of section 3, the Tribunal shall call upon the association within seven days from the date of service of such notice, why the association should not be declared unlawful'."

25. "That at page 3, line 34, for the words 'section 9' the words 'the Commission of Inquiry Act, 1952' be inserted."

26. "That at page 4, after line 3, the following proviso be inserted, namely:—

'Provided that the Tribunal shall decide the matter within two months when action is taken under proviso to sub-section (3) of section 3'."

27. "That at page 4, after line 5, the following proviso be inserted, namely:—

'Provided that the party affected by the order of the Tribunal shall have the right within three months of such order—

(i) to petition either House of Parliament;

(ii) to challenge the order on grounds of defamation in a court of law'."

SHRI NIREN GHOSH: Madam, I move:

73. "That at page 3, line 29, for the words 'association affected' the words 'Central Government' be substituted."

74. "That at page 3, line 31, for the words 'should not' the word 'should' be substituted."

75. "That at pages 3 and 4, for lines 32 to 39 and 1 to 3, respectively, the following be substituted, namely:—

'(3) After considering the cause, if any, shown by the Central Government, the Tribunal shall hold an inquiry according to the Code of Criminal Procedure, 1898, and the Indian Evidence Act, 1872 and shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make such order as it may deem fit'."

SHRI A. P. CHATTERJEE: Madam, I move:

110. "That at page 3, line 27, for the word 'cause' the word 'evidence' be substituted."

[Shri A. P. Chatterjee]

111. "That at page 3, lines 29 to 31, for the words 'by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful' the words 'as well as the Central Government by notice in writing to submit their respective statements of the case in writing within thirty days from the date of service of such notice' be substituted."

112. "That at page 3, lines 32-33, for the words 'the cause, if any, shown by the association or the office-bearers or members thereof' the words 'the statements submitted by the association and the Central Government' be substituted."

113. "That at page 3, line 37, for the word 'cause' the word 'evidence' be substituted."

114. "That at page 3, lines 38-39, for the words 'as expeditiously as possible and in any case within a period of six months' the words 'within three months' be substituted."

115. "That at page 4, after line 3, the following proviso be inserted, namely:—

'Provided that in holding and conducting the adjudication and arriving at its decision, the Tribunal shall be bound by the provisions of the Indian Evidence Act, 1872'."

116. "That at page 4, after line 5, the following be inserted, namely:—

'(5) An appeal shall lie to the Supreme Court from any order of the Tribunal and such appeal must be preferred within three months of the date of the publication of the order of the Tribunal'."

The questions were proposed.

SHRI P. K. KUMARAN: Madam, these amendments deal with the technicalities which arise out of the right of defence given to the affected party. In the original Bill, one month is given. I want to reduce the time-lag. By the last amendment, the party affected shall have the right of appeal to the court or to the Parliament. Now once action is taken, if no other remedy is there,

then one has to go on suffering. Therefore, this right of appeal to the parliament or to a court of law should be there. These rights are normal rights, fundamental rights, enshrined in the Constitution. If the affected persons do not have the right of appeal, how long will they go on suffering? They will have to suffer till the Government again in its wisdom is satisfied that they have not done anything. So the question of taking it out of the purview of the executive power of the Government and providing for a right of appeal to a court of law or at least to the Parliament arise so that the pros and cons can be discussed and the party concerned may get justice. I hope at least this the Government will not grudge.

SHRI NIREN GHOSH: Madam, two things are there in my amendments. The first is that the accused has been asked to substantiate that he is not guilty. Now by this the entire legal process is turned topsy turvy. Generally when a person is prosecuted, it is for the prosecutor to prove it why he should be prosecuted, why he should be punished and what his guilt is. The entire onus has been now thrown on the suspected party. The party which the Government wants to put in the dock has to prove why it should not be put in the dock. Government will not prove what its guilt is. This is a complete reversal of the normal legal process. I do not know whether even in the British period, perhaps excepting the Rawlatt Act, any parallel can be drawn. So I say that it is for the Government in all cases when they declare a person or an association unlawful, to come forward and prove why they should be declared unlawful. So I have suggested that for the words "association affected" the words "Central Government" should be there. It is for the Government to prove before the Tribunal, before the court, before Parliament and before the country, why anybody or any association should be declared unlawful. That is the normal legal process even as conceived by the British. I do not know why the Government has turned the entire process upside down, and why the Government wants people to stand on their heads.

Then they have done away with the Evidence Act. They do not call in the aid of the Evidence Act. They say the Tribunal will proceed according to the Code of Criminal Procedure, 1898—that blessed British Act. This anti-democratic Government naturally finds it convenient to keep intact all these blessed things in the British Acts. Now they do not want to take in the aid of the Evidence Act. Unless you call in the aid of the Evidence Act, you do not require any substantive evidence to put forward. Why they are bypassing the Evidence Act passes my comprehension. It only highlights or underlines the fact that the Government does not care for any shred of evidence, for justification of an act, for legal process or anything of that sort. So I would request the Government at least on this question to allow the normal legal processes to come into operation.

SHRI A. P. CHATTERJEE: Madam, somebody was saying that we were merely crying in the wilderness. Well, perhaps it is so. But even then, Madam Deputy Chairman, we have to do our duty to our electorate and we have to impress upon the Government the reason for our amendments. Madam, in regard to clause 4 I have moved several amendments and I might tell you that the reason for these amendments is this that the judicial process envisaged or contemplated in sub-clause (4) should be a real judicial process. That is why these amendments have been moved. Now for a process to be a real judicial process two or three things are absolutely necessary. The first thing is that whatever is considered by the Tribunal on whom the judicial process is being imposed, that evidence must be in accordance with the Evidence Act. That is the first *sine qua non* of a judicial process. The second *sine qua non* of a judicial process is that if a particular person who is affected by an order comes before a Tribunal, the onus should not be shifted upon the aggrieved or the affected person. It should be shifted upon the authority or the organisation which has affected that particular person. Therefore for the purpose of resolving the question of onus, which is a very important question in respect of judicial

process and without which the judicial process becomes a sham judicial process, I have moved one amendment. The third *sine qua non* of a judicial process is that in order to see that a particular judicial process may be fool-proof and a process which inspires the confidence of the people, there must be an appeal. You cannot really confine the decision to a particular Judge of the High Court. We have faith in the judiciary. The hon. Home Minister made a dig at our Party saying that we had no confidence in the judiciary. That is not the position. We have confidence in the judiciary but that confidence is a little restricted confidence, if I may say so, restricted in this respect that we do not think that a particular judge of a particular High Court has reached the acme of wisdom and that whatever he says will be gospel. Therefore we say that there is every chance that a particular judge will be mistaken, may be mistaken, can be mistaken. Therefore it is another *sine qua non* for a judicial process that a judicial decision or a quasi-judicial decision should be subjected at least once to the scrutiny of a higher Tribunal. That is the reason why in our judicial processes there are provisions for an appeal. Therefore I have moved these amendments. One of my amendments suggests that the word 'cause' in the last line of clause 4(1) should be replaced by the word 'evidence' because 'cause' is a vague term. If the Home Minister says that sufficient cause means sufficient evidence, then I will say that he should have no objection at all to accept my amendment. That will satisfy us and that will also make it clear.

Then, Madam Deputy Chairman, as far as the question of onus is concerned, Mr. Niren Ghosh has said that the onus should be shifted to the Central Government. I no doubt agree with his amendment. But the hon. Minister may consider it to be an extreme version. Therefore I have tried to steer a middle course. I have not said that the onus should be shifted either on the Central Government or on the person or the association aggrieved. I have said that let the Central Government and let the person or the association aggrieved, both of them, place their statements of case

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in writing before the Tribunal. It is not a question of shifting onus from one to the other. I have said let both of them place their statements of case in writing. I have also stated that the Tribunal after considering the respective statements of case by the person or the organisation aggrieved and by the Central Government, let the Tribunal come to a final judgment. Therefore, Madam Deputy Chairman, I have tried to solve the question of onus in that way. I have not tried to shift the onus either to the Central Government or to the person or the association aggrieved. I think it is a *sine qua non* of judicial process that an appeal should be allowed. Therefore I have suggested the addition of a proviso saying that an appeal shall lie to the Supreme Court from any order of the Tribunal and such an appeal must be preferred within three months of the date of the publication of the order of the Tribunal. Why I have said that an appeal shall lie to the Supreme Court is because a Judge of a High Court is adjudicating this thing; he is made a Tribunal. Therefore an appeal must be to the higher court, i.e. the Supreme Court.

SHRI VIDYA CHARAN SHUKLA: Madam, I am constrained to say that while Mr. Chatterjee has understood the provisions of this Bill properly, his leader, Mr. Niren Ghosh, has not followed. Mr. Niren Ghosh, has not followed. Mr. Ghosh has made a point that the burden of proof is on the accused. That is not strictly correct. When a notice is served on an association to show cause, the association puts forward its case before the Tribunal. Then the case comes before the Tribunal. The Government's notice and the reply given by the association in response to the show-cause notice are before the Tribunal. Then the proceedings start in accordance with the Civil Procedure Code. Then the whole thing is done in a normal manner. I do not know how he has found that the process has been reversed, as far as this particular measure is concerned.

Then Amendment No. 75 is regarding the principle of natural justice and actually this is incorrect because as soon

as the notice is issued, the Tribunal cannot confirm the declaration made by the Government without giving the association a reasonable opportunity of being heard. Only after that opportunity has been given the Tribunal can come to a decision and give its verdict. Therefore I do not think the Government can accept any of these amendments.

THE DEPUTY CHAIRMAN: I shall now put the amendments to vote. The question is:

22. "That at page 3, after line 27, the following proviso be inserted, namely:—

'Provided that in such cases the reference to the Tribunal shall be accompanied with the answers to the charges which the Government may have received in the meanwhile'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

23. "That at page 3, after line 27, the following proviso be inserted, namely:—

'Provided that when action is taken under proviso to sub-section (3) of section 3, the Central Government shall within seven days refer the notification to the Tribunal for the said purpose'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

24. "That at page 3, after line 31, the following proviso be inserted, namely:—

'Provided that when action is taken under proviso to sub-section (3) of section 3, the Tribunal shall call upon the association within seven days from the date of service of such notice, why the association should not be declared unlawful'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is :

25. "That at page 3, line 34, for the words 'section 9' the words 'the Commission of Inquiry Act, 1952' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

26. "That at page 4, after line 3, the following proviso be inserted, namely:—

'Provided that the Tribunal shall decide the matter within two months when action is taken under proviso to sub-section (3) of section 3'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

27. "That at page 4, after line 5, the following proviso be inserted, namely:—

'Provided that the party organised by the order of the Tribunal shall have the right within three months of such order—

(i) to petition either House of Parliament;

(ii) to challenge the order on grounds of defamation in a court of law'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

73. "That at page 3, line 29, for the words 'association affected' the words 'Central Government' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

74. "That at page 3, line 31, for the words 'should not' the word 'should' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

75. "That at pages 3 and 4, for lines 32 to 39 and 1 to 3, respectively, the following be substituted, namely:—

'(3) After considering the cause, if any, shown by the Central Government, the Tribunal shall hold an inquiry, according to the Code of Criminal Procedure, 1898, and the Indian Evidence Act, 1872 and shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make such order as it may deem fit'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

110. "That at page 5, line 27, for the word 'cause' the word 'evidence' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

111. "That at page 3, lines 29 to 31, for the words 'by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful' the words 'as well as the Central Government by notice in writing to submit their respective statements of the case in writing within thirty days from the date of service of such notice' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

112. "That at page 3, lines 32-33, for the words 'the cause, if any, shown by the association or the office-bearers or members thereof' the words 'the statements submitted by the association and the Central Government' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

113. "That at page 3, line 37, for the word 'cause' the word 'evidence' be substitute."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

114. "That at page 3, lines 38-39, for the words 'as expeditiously as possible and in any case within a period of six months' the words 'within three months' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

115. "That at page 4, after line 3, the following proviso be inserted, namely:—

'Provided that in holding and conducting the adjudication and arriving at its decision, the Tribunal shall be bound by the provisions of the Indian Evidence Act, 1872'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

116. "That at page 4, after line 5, the following be inserted, namely:—

'(5) An appeal shall lie to the Supreme Court from any order of the Tribunal and such appeal must be preferred within three months of the date of the publication of the order of the Tribunal'."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5—Tribunal

SHRI P. K. KUMARAN: Madam, I move:

28. "That at page 4, line 9, for the words 'one person' the words 'three persons' be substituted."

30. "That at page 4, line 9, for the words 'one person to be appointed by the Central Government' the words 'seven persons, to be appointed by the Central Government on the recommendations of both Houses of Parliament' be substituted."

33. "That at page 4, for lines 10 to 11, the following be substituted, namely:—

'Provided that the Chairman shall be a Judge of the Supreme Court and the remaining two persons shall be Judges of High Courts'."

34. "That at page 4, line 11, after the words 'High Court' the words 'or a senior advocate of the Supreme Court' be inserted."

35. "That at page 4, after line 11, the following further proviso be inserted, namely:—

'Provided further that the Tribunal shall be assisted by not less than twelve assessors to be appointed from a panel of names chosen in this behalf by a resolution of the two Houses of Parliament'."

37. "That at page 5, after line 7, the following proviso be inserted, namely:—

'Provided that no evidence shall be held true unless the organisation, association or individual aggrieved by the order has been given the opportunity to test such evidence by cross-examination or otherwise'."

SHRI NIREN GHOSH: Madam, I move:

76. "That at page 4, line 9, for the words 'one person, to be appointed by the Central Government' the words 'three persons appointed by the Supreme Court' be substituted."

77. "That at page 4, line 10, for the word 'a' the word 'the' be substituted."

78. "That at page 4, line 14, for the words 'Central Government' the words 'Supreme Court' be substituted."

SHRI BANKA BEHARY DAS:
Madam, I move:

101. "That at page 4, line 9, for the words 'one person' the words 'three persons, one of whom shall be the Chairman,' be substituted."

102. "That at page 4, after line 11, the following further proviso be inserted, namely:—

'Provided further that no person shall be appointed as the Chairman unless he is a Judge of the Supreme Court'."

The questions were proposed.

SHRI P. K. KUMARAN: Madam amendment No. 33 says:

"Provided that the Chairman shall be a Judge of the Supreme Court and the remaining two persons shall be Judges of High Courts'."

The tribunal of one person should be replaced with a tribunal of three persons. Tribunal means a body of three and this tribunal consisting of three persons will have one as Chairman who should be a Judge of the Supreme Court and the other two shall be Judges of High Courts. If it is left to one person alone, we are afraid that justice will not be available to the parties affected. And the later amendment says:

"Provided further that the Tribunal shall be assisted by not less than twelve assessors to be appointed from a panel of names chosen in this behalf by a resolution of the two Houses of Parliament."

Apart from the fact that all the material which should be available to the parties concerned, charges, counter-charges etc. should be made available, the Tribunal should also be assisted by a panel of assessors whose opinion should also have a bearing on the conclusion to be arrived at by the tribunal. Another thing is, that the charges levelled by the Government or the evidence brought by the Government against the affected parties should be subject to cross-examination by the parties concerned or by their lawyers appointed to defend them. As it is, no such thing has been provided for. Everything is sought to be done by a blind

method. The thing is when the Government is satisfied they will order the tribunal to declare so and so unlawful and it is bound to declare. This is only for sufficient guarantee for the parties concerned, for the organisation concerned or the individual concerned, to enable him to have sufficient opportunities for defending himself against the charges framed by the Government and I therefore, move that this amendment be accepted by the House.

SHRI NIREN GHOSH: Madam, here again that thing is coming up—a tribunal consisting of one person. I have already had occasion to touch upon this point but I would like to say this. Though the Constitution mainly and primarily guards the vested interests and all sorts of anti-Indian interests still there is something in the Constitution like people's rights, etc. Now, the judiciary is a part of this Constitution and they are expected to guard the interests of the vested interests but as in the case of the bureaucracy all of them may not be like that. There might be liberal-minded and progressive persons also in the judiciary. As far as the judiciary is concerned, sometimes they stand on neutral grounds, sometimes they give a reactionary judgment and very rarely do they give any progressive judgment. That is our experience. Sometimes they stand on neutral grounds but sometimes they also move a bit forward. Taking all these facts into consideration unless the tribunal is composed of three persons at least so that there is some scope for different opinions among the judges also, there cannot be justice. If there are three people they can go through the entire reasoning that has been placed before them, exchange views and collectively come to some conclusion; otherwise there is not even a shred of a guarantee that an independent impartial conclusion would be reached.

The next point is, they should be appointed by the Supreme Court. Why has the Central Government taken upon its own hands to appoint the tribunals? I do not know. Generally the Judges of the High Courts are appointed by the Chief Justice and the Judges of the Supreme Court are appointed by the

[Shri Niren Ghosh]

Chief Justice of India, may be in consultation with the President but he is the authority to do that and that is intended in order to safeguard to some extent the independence of the judiciary. But here you appoint directly the tribunal through whom you want to do all these things. That is widely suspect in the country. For the sake of the independence of the judiciary, for the sake of that principle which you profess, so that they may be an impartial body, so that their judgment is not fettered completely, so that they may not have to completely to your line it is the Supreme Court which should be invested with the power to appoint this tribunal and the judges of this tribunal. So these are my two points that the tribunal should have three members and the Supreme Court should be the appointing authority. If the Government is not impervious, even according to their own standards—if they have any standards at all—of the independence of the judiciary, they should accept my amendments.

SHRI BANKA BEHARY DAS : Madam Deputy Chairman, my amendment is slightly different from the amendment of Mr. Kumaran in a way. Not only have I pleaded for three judges in the tribunal but I have also pleaded for the Chairman to be a Judge of the Supreme Court. Madam, the very purpose of enlarging this tribunal from one to three is obvious because yesterday when the Minister was replying he said that the members may not be satisfied with three; they may want five or somebody may want seven. This is not the way how the Minister should try to convince us. The purpose of enlarging the tribunal from one to three is only to show that when you are taking away two important Fundamental Rights under this law how careful you should be. You know two Fundamental Rights are being touched under this Bill, one is the freedom of speech and the other is the freedom of association. Two important Fundamental Rights are going to be abridged and if that is to be done by a tribunal consisting of one judge you know what dangerous consequences may follow. You know in the High

Courts and the Supreme Court two or three judges sit together and by majority some decision might be given. That is the very purpose for which I want to tell the Minister that if there is any circumstance in which you want to abridge the Fundamental Rights of people like the right of association and freedom of speech, then at least three judges should be there so that they can deliberate over the matter and come to a definite conclusion. Secondly I have brought in this idea of bringing a Judge of the Supreme Court to be the Chairman of the tribunal because the Supreme Court is seized of the matter of Fundamental Rights and they are the proper authority to decide about these things. Only if we associate from the very preliminary stage a judge of the Supreme Court with this tribunal then the matter be judged in its proper perspective. That is why I want the Minister to accept this amendment because by that the association or the person concerned will have at least this much satisfaction that there are three judges, three eminent persons, looking into his matter and one of them the Chairman happens to be a Judge of the Supreme Court. Then only some justice can be expected. The Minister also knows that in every important matters in the High Court one judge sits and decides the matter. There are always three or five persons if a matter is very important and the determination of the legality or illegality of an association is a very important matter. The organisation should not be left at the mercy of one judge. I hope the hon. Minister will accept this so that the tribunal will be enlarged at least to the extent of three members and the Chairman should be a Judge of the Supreme Court.

श्री गोडे मुराहरि : पहले भी मैंने इस संबंध में जिक्र किया था कि यह जो क्लज है उसमें एक जज की बात कही गई है। तो जितने भी संशोधन इस क्लज के संबंध में आये हैं, उनमें यही कहा गया है कि एक जज की जगह तीन या पांच जज हों और इसका मैं समर्थन करता हूँ। साथ ही साथ मैं यह भी दोहराना चाहता हूँ कि जिस ढंग से यह बिल यहां पर हमारे सामने लाया गया है, उससे यह मालूम

होता है कि सरकार ने इस पर गौर नहीं किया है ।

यह बिल किस तरह से ड्राफ्ट किया गया है, उसकी मिसाल मैं यहाँ पर देना चाहता हूँ कि क्लोज पाच, सबक्लाज दो, जो है वह बिल्कुल निरर्थक है और जो सबसेक्शन वहाँ पर रखा है उससे मालूम होता है कि सरकार के दिमाग में पहले तीन जज थे और जब बिल यहाँ पर लाया गया तो उस को तबदील कर दिया गया । इस समय सिर्फ एक जज की बात कही गयी है । मैं आपको एक मिसाल देना चाहता हूँ कि कभी कभी ऐसा हुआ है कि हाईकोर्ट में या दूसरे कोर्टों में जहाँ पर कोई जज अपना सतुलन खो देता है कुछ अपने बायस के कारण या कुछ बूढ़े हो जाने के कारण, तो कुछ ऐसी अवस्था उनमें आ जाती है कि वे ठीक तरह से किसी चीज की देखभाल नहीं कर सकते हैं । एक जज को तो बहुत मुश्किल से हाईकोर्ट से निकाला गया था और यह मिसाल भी हमारे सामने है । तो इस ढंग की जब चीज होती है तो फिर एक आदमी पर सारी चीज को सौंप देना यह मेरे ख्याल में सरासर गलत चीज होगी । खास कर के जब आप किसी आदमी को गद्दार करार देना चाहते हैं या किसी संस्था को ऐंटीनेशनल करार देना चाहते हैं तो ऐसी अवस्था में एक जज पर सारी चीज को सौंप देना बहुत ही गलत होगा क्योंकि वह अनर्थ भी कर सकता है । इस चीज को भी देखना है कि यह कोई जरूरी नहीं है कि जज के दिमाग में किसी के बारे में या किसी संस्था के बारे में कोई अपनी राय न हो । हो सकता है कि किसी जज की राय में कोई पक्षपात हो, वह कम्युनिज्म से घृणा करता हो या वह प्रो-कम्युनिस्ट हो, तो इस तरह की जब चीज हो जाती है तो एक आदमी पर सारी चीज सौंपना ठीक नहीं है । इस से एक जज की जो सनक होगी उसके मुताबिक सारा काम-काज इस बिल के अंतर्गत होगा । इसलिये एक आदमी के ऊपर या एक जज के ऊपर सारी चीज को सौंपना सरासर गलत होगा और मैं चाहूँगा कि सरकार कम से कम ऐसा

अमेंडमेंट मान ले, नहीं तो मेरे ख्याल में यह बहुत ही अनर्थ करने की आप व्यवस्था बना रहे हैं । सरकार यह तो करने वाली नहीं है कि किसी जज के बारे में यह जांच करके उसका अप्वाइन्टमेंट करे कि उसके दिमाग का सतुलन कैसा है, उसके दिमाग में किसी पार्टी के बारे में यह किसी आदमी के बारे में क्या राय है । गवर्नमेंट तो कोई न कोई जज नियुक्त कर देगी और उसकी सनक के मुताबिक सारा कामकाज होगा । इसलिये मैं चाहूँगा कि एक जज की बात को निकाल दिया जाय और सरकार कम से कम इस अमेंडमेंट को मान ले क्योंकि इससे काम ठीक ढंग से नहीं हो पायेगा, यह सरकार भी मानेगी ।

श्री शीलभद्र याजी : एलेक्शन ट्रिब्युनल में भी एक ही जज होना है ।

श्री गोडे मुराहरि : एलेक्शन ट्रिब्युनल अलग चीज है । यह कोई मामूली बात नहीं है ।

SHRI BHUPESH GUPTA (West Bengal): Madam Deputy Chairman, my amendment relates to the structure of the Tribunal. Here I say:

"Provided further that the Tribunal shall be assisted by not less than twelve assessors to be appointed from a panel of names chosen in this behalf by a resolution of the two Houses of Parliament."

I may frankly tell you why I have given it. First of all, if it is accepted, well and good. If it is not accepted, the position of the Government will be exposed that they are not prepared to have the case judged in a proper way. Now, according to them, there will be one Judge. We do not know what type of Judge he will be. Anyhow, one Judge is not good enough for dealing with this matter. Suggestions have been made for more Judges and naturally it is good. My amendment also says that one need not be a High Court Judge to be appointed as the Tribunal, but a senior advocate of the Supreme Court could also be eligible for appointment as the Tribunal. I lay

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stress on the assessors because it is the assessors who will be in a position to tell exactly what the facts are, whether on the basis of the facts before the Judge or the Tribunal, there will be any warrant for the application of this particular measure. Now, this cannot be left to the Judge. I say, without any reflection on the judiciary, when they come to a particular process, the way the Congress Government is behaving in regard to very many matters, it shows that there may be inducement also. After all, we have seen in our country that Judges are appointed as Ministers after their retirement, sent as Ambassadors and even sometimes . . .

SHRI NIREN GHOSH: One point. Since when Mr. Rajnarain has become the Prime Minister. Parliament should be informed of it.

SHRI SHEEL BHADRA YAJEE (Bihar): He has become a patriot.

SHRI BHUPESH GUPTA: Some day he will become perhaps. Now, therefore, I say here is room for suspicion. Anyhow, unless the Judge is a man of absolute integrity and is really objective in his outlook, some kind of wrong things are likely to happen in the court, especially when the temptations are there. Therefore, I say this arrangement is not good. Therefore, a check all the more is necessary. Assessors can do it. The present system should be given up. Here it is not merely a technical or legal point. Certain facts or alleged facts will be placed by the Government before the Tribunal and who is going to judge it. Only one Judge. He may be isolated from life. He may be brought from a High Court, may be a Judge brought from Madras, to head a Tribunal where the so-called case relates to Manipur. I cannot understand how he is going to judge this. Therefore, the assessors should be there. Besides, the assessor will take into account other factors also. Now, there is no protection whatsoever under the scheme of the Bill. Then, I want the assessors to be appointed on a resolution of the House. Now, it may seem strange to some people—but they are doing a number of strange things—that we

should draw up a panel of names out of which assessors could be appointed. We do not leave the matter free for the Government even to choose the assessors. Parliament discusses a number of names and on the basis of that draws up a panel from which assessors are to be appointed. Now, that gives Parliament a *locus standi* in this matter before the Act is applied, before the penalty is invoked, before the people are prosecuted and brought before the Tribunal. I have full faith in Parliament. They should agree. After all, in a matter like this Parliament is likely to be seized of what is threatening the territorial integrity of the country and the sovereignty of the country. Keeping that in view Parliament should be given an opportunity to appoint or to draw up a list of names to be appointed as assessors. I think Parliament should be brought more and more into the picture. That is my idea.

Then, the other point is:—

“Provided that no evidence shall be held true unless the organisation, association or individual aggrieved by the order has been given the opportunity to test such evidence by cross-examination or otherwise”.

Now, why should a person or an organisation be convicted or found guilty, unless he has a chance or opportunity to test his evidence? Testing by cross-examination or otherwise is very important. These people concoct documents, forge documents. The Congress Party, which will be ruling the country at least for some years to come, do these things. It is a postmaster in drawing up fabricated documents, as had been seen in 1965, when they presented the so-called statement of the Left Communists and so on. It is known. We know many such instances when they come with false and absolutely baseless statements. Now, all these statements should be subject to scrutiny. If I am an aggrieved party, if I am sought to be prosecuted, I should be given the chance to cross-examine their witnesses. The Tribunal should not be something which functions somewhat outside the normal limits of justice and the rule of law. As it is it is bad enough.

Therefore, opportunity should be given for cross-examination. Suppose the Government produces some document saying that a particular organisation has issued a particular leaflet. How am I going to establish it, unless I am given a chance to show that the leaflet is a forged one, or it has been done by somebody else? It has got to be examined by the aggrieved party. How am I to believe it? Now, it is very essential. Otherwise, as it is the Government can forge documents and produce leaflets and get certain things done on the basis of it and it can seek the banning of the organisation and prosecution of such organisation. Therefore, it is very essential that the matter should be subjected to the severest scrutiny.

1 P.M. You are really denying or propose to deny the liberty, the fundamental rights of the citizens under this, the right of association, the right of speech, and all the rest of it. I do not think that they are going to accept the amendment, but it is necessary for the country to look into the kind of thing they are doing. I have no illusions about their attitude towards this amendment. But we have given it only to make it known to the country that what they really want is an arbitrary method of dealing, is a witch-hunt, persecution of political parties and organisations whom they do not like. They are not prepared even to respond to the barest requirements of the rule of law, and that is why they are ruling out assessors and cross-examination and they are appointing a tribunal who will be going by a certain thing which would not conform to the barest minimum requirements of the rule of law. Hence I am suggesting these amendments.

SHRI VIDYA CHARAN SHUKLA: Several points have been raised by Members of the opposition parties regarding the amendments. But I would invite their attention to the proceedings before the Joint Select Committee where originally Government had suggested that there should be three members in the tribunal, and members of the opposition parties wanted that there should be a sitting Judge who should

constitute the tribunal. After considering various things ultimately this Bill was finalised and a sitting Judge has been provided. Now, Madam, I do not know how the hon. Members argue that the independence of a sitting Judge of a High Court is undermined by Government appointing the Judge to the Tribunal. As the hon. House knows, the Judge himself is appointed by the President of India on the advice of the Union Government to the High Court or the Supreme Court, and if his independence is not undermined by his appointment to the Bench of the High Court, I do not know how it is going to be undermined by his being appointed to the tribunal. Whenever Government appoints a Judge of any Court to act on a tribunal or elsewhere, it is normally done in consultation with the Chief Justice. It is not as if without consulting the Chief Justice of the Court such Judges are appointed. Here also the Members should remember that the Chief Justice will also come into the picture about this. (*Interruption.*) I am telling the practice and usage.

SHRI BHUPESH GUPTA: We are not concerned with practice. You must give the clear position.

SHRI VIDYA CHARAN SHUKLA: I must explain my position here as far as this particular provision is concerned. I am only indicating what is the procedure we follow in doing so, and we propose to follow the same procedure as far as this particular matter is concerned.

Some amendments have been moved regarding the provision in clause 5(2) regarding appointment of another person in the absence of the persons who has been originally appointed. This has to be provided in case something happens to the Judge who is functioning, and suppose he is incapacitated for one reason or another or he retires or something has happened, we do not want that the entire proceedings before the tribunal should start *de novo*. To meet that contingency that provision has been made in clause 5(2).

Regarding the rest of the amendments the same old arguments have

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been repeated and I do not think Government is in a position to accept any of these amendments.

THE DEPUTY CHAIRMAN: The question is:

28. "That at page 4, line 9, for the words 'one person' the words 'three persons' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

30. "That at page 4, line 9, for the words 'one person to be appointed by the Central Government' the words 'seven persons, to be appointed by the Central Government on the recommendations of both Houses of Parliament' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

33. "That at page 4, for lines 10 to 11, the following be substituted, namely:—

'Provided that the Chairman shall be a Judge of the Supreme Court and the remaining two persons shall be Judges of High Courts.'

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

34. "That at page 4, line 11, after the words 'High Court' the words 'or a senior advocate of the Supreme Court' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

35. "That at page 4, after line 11, the following further proviso be inserted, namely:—

'Provided further that the Tribunal shall be assisted by not less than twelve assessors to be appointed from a panel of names chosen in this behalf by a resolution of the two Houses of Parliament.'

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

37. "That at page 5, after line 7, the following proviso be inserted, namely:—

'Provided that no evidence shall be held true unless the organisation, association or individual aggrieved by the order has been given the opportunity to test such evidence by cross-examination or otherwise.'

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

76. "That at page 4, line 9, for the words 'one person, to be appointed by the Central Government' the words 'three persons appointed by the Supreme Court' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

77. "That at page 4, line 10, for the word 'a' the word 'the' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

78. "That at page 4, line 14, for the words 'Central Government' the words 'Supreme Court' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

101. "That at page 4, line 9, for the words 'one person' the words 'three persons, one of whom shall be the Chairman' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

102. "That at page 4, after line 11, the following further proviso be inserted, namely:—

'Provided further that no person shall be appointed as the Chairman unless he is a Judge of the Supreme Court.'

The motion was negatived.

THE DEPUTY CHAIRMAN: I shall now put clause 5.

SHRI BHUPESH GUPTA: Madam, before you put it to vote, I did not want to disturb you. It is not right attitude on the part of the Minister to say, when certain propositions are made by way of amendments, that Government cannot accept. We are still not dealing with dictators. He should meet arguments by arguments. It is the normal parliamentary practice. He may not accept our points, but certainly he has to meet the arguments. What we are discussing the public also are interested in.

SHRI VIDYA CHARAN SHUKLA: I cannot reply to absurd arguments.

SHRI BHUPESH GUPTA: What does he mean by that? Let him give his argument. It is for you to judge whether it is absurd or not. This kind of arrogant attitude will not do. What does he mean by absurd argument?

THE DEPUTY CHAIRMAN: When you call an argument absurd, it is a matter of opinion.

SHRI BHUPESH GUPTA: Let him think that my argument is absurd. Certainly when Members make a suggestion, concrete suggestion by way of amendment and advance argument, he should answer that. He should not behave in a dictatorial manner. This is the mentality.

THE DEPUTY CHAIRMAN: I think the Minister has answered the arguments.

SHRI BHUPESH GUPTA: Has he answered the point I raised? Why do you say he has answered the point? He has not even uttered a word.

THE DEPUTY CHAIRMAN: Please take your seat. Every time the Minister will not be able to satisfy the Members.

SHRI BHUPESH GUPTA: I am not asking that he should satisfy me. At least he should answer it and say what the Government's case is. Suppose I say assessors should be appointed. He should say why not. Suppose I say evidence should be tested. He should say why not.

THE DEPUTY CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

THE DEPUTY CHAIRMAN: Now we go on . . .

SHRI G. MURAHARI: It is past one o'clock.

THE DEPUTY CHAIRMAN: We are sitting through the lunch hour to finish this Bill.

SHRI BHUPESH GUPTA: Not for this Bill. For this dirty measure we should sit through the Lunch hour? We do not want to sit.

SHRI AKBAR ALI KHAN: Mr. Bhupesh Gupta, you have been out. We are happy you have come, but you must have consideration for those Members who have changed their programme and are waiting here.

SHRI NIREN GHOSH: Why are you here? You could have gone away.

THE LEADER OF THE HOUSE (SHRI JAISUKHLAL HATHI): We have to finish it today.

RE RELEASE OF TWO PERSONS SENTENCED FOR CONTEMPT OF THE HOUSE

THE LEADER OF THE HOUSE (SHRI JAISUKHLAL HATHI): On December 21, 1967 this House sentenced for gross contempt of the House two persons, namely, Sardar Baint Singh and Mahendra Pratap Singh to simple imprisonment until the conclusion of the current session of the Rajya Sabha and ordered their detention in the Tihar Jail, Delhi. The Jail Superintendent has asked the Secretary, Rajya Sabha, for instructions as to the date and time of release of these two persons. We are concluding our current session today.