

It is my earnest appeal to the Government to implement the recommendations of the said Committee at the earliest.

The Indian Penal Code (Amendment) Bill, 2011

SHRI DILIPBHAI PANDYA (Gujarat): Sir, thank you for giving me an opportunity to speak on this Bill. I am an advocate, and I have practised for 45 years on both civil and criminal laws. I have never come across a single case in which a person, using a language against the Government or criticizing the Government, has been tried under this section. I am surprised to hear what my learned friend has said. I do not know whether he is an advocate. But he is certainly a good advocate 'for' and 'against' the Government and, at other times, he may speak 'against' the Government. His arguments are always reasonable. He can convince even a lay man. But as far as this law is concerned, Sir, you have to look at it from the legal angle.

[THE VICE-CHAIRMAN, DR. E.M. SUDARSANA NATCHIAPPAN, in the Chair]

Mr. Vice-Chairman, Sir, my senior colleague stated that there is a contradiction between the Constitution and the Indian Penal Code. I am surprised. How can the Penal Code which has been working satisfactorily for the last more than one hundred years, be against the Indian Constitution? How can Section 124A of the IPC be *ultra vires* of article 19 of the Constitution? I am not convinced with this argument. The hon. Member has referred to one organizations of Chhattisgarh. But there are such individuals and organizations in many States which are attempting to overthrow or destabilize elected Governments or which are not allowing the Governments to work. Sir, Section 124A is a 'red light' against such activists. Let me quote the last paragraph of this Section. It says, "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life..." Sir, this is very important, when it talks about giving punishment for life. Recently, the Supreme Court has interpreted it to say that life imprisonment means imprisonment till the last days of the person. So, can we delete such an important Section without any serious discussion? My senior colleague has made reference to several advocates. The Law Minister is present here. They will certainly consider this aspect, whether the deletion of this Section from the Indian Penal Code would deter individuals and organisations which are attempting to overthrow or destabilise the Governments. So, this argument of my senior colleague is also not very satisfactory.

[Shri Dilipbhai Pandya]

The Statement of Objects and Reasons says something with which nobody would agree. It says, "India was under threat by internal and external forces to destabilise the unity and integrity of the nation." It says that India 'was' under threat. Today also, India is under such a threat. There are certain organisations in many States which are attempting to overthrow or destabilise elected Governments.

The Statement of Objects and Reasons also states, "In several fora and platforms, opinion has been expressed against the continuation of Section 124A lest it shall be misused keeping in view the low tolerance levels that have been visible in recent times to lawful criticism." I do not think there have been many incidents. There may be one or two incidents here and there. But such incidents in which this Section has been misused by the Government are not many.

So, Sir, it is my humble submission that there is no necessity to delete this Section. If this Section remains in the IPC, it will deter such elements which attempt to destabilise the elected Governments and spread hatred and contempt. It is my view that this Section should remain in the Indian Penal Code. It will not harm anybody. So, I oppose this amendment Bill.

SHRI ANANDA BHASKAR RAPOLU (Andhra Pradesh): Mr. Vice-Chairman, Sir, today is a historic day the August Kranti Divas and the Freedom Struggle, the Mandalay Jail, the award of sedition, remind the heroic achievement of the Indian Independence. We have the contradiction between the erstwhile Communists and the Indian National Congress that has enabled the formation of the Communist Party of India. I come from the State of erstwhile Nizam Hyderabad in which the Indian National Congress was a banned organisation. 'Sedition' word and its usage was part of attaining heroism. After six decades of Indian sovereignty and republican rule, the appeal of Mr. Raja for omission of section 124A from the Indian penal Code is a matter of review.

Sir, Knowledge is universal; formula is universal; invention is universal; idea of law is universal. Once a law is enacted and when such a law has become a model to other nations, that is the absorption of the nation's knowledge. With that knowledge only the founding fathers of the Indian Constitution, led by Dr. Babasaheb Ambedkar, guided by Mahatma Gandhiji's vision and overseen by Pandit Jawaharlal Nehru such provisions have come into existence. The freedom loving forefathers of our country were cautiously and consciously decided to include the phraseology that was available from such enactment of 1898. But, over veteran comrade though not veteran by age but veteran by his practice Mr. Raja, has a case to mention about the name of the practising doctor of Chhattisgarh. But he was also

mentioning the legacy he could generate. That doctor became the national hero. No Government of any time can risk the use of such type of medicines. When it is the canerous condition, then only would we use extreme medicines. The availability of extreme medicine does not mean that medicine will be used for each and every necessity of the ailment. With this idea, with this provision of knowledge, we have absorbed each and every word of the provisions that were available across the globe, in several texts and statutes of several nations and we have made our Constitution. The Indian Constitution and its allied provisions were all the result of the knowledge of the Indian legal luminaries. We need not go back to the origin of the colonial societies. We have, with our own understanding, incorporated such provisions. As it is, the usage of section 124A, as mentioned by Pandiyaji, is rarest of the rare. Whenever it was used, the awardee became a hero.

With this point, I would like to mention that if any necessity of real reformation of the nomenclature or phraseology is required, that can be thought of. But, the total omission of 124A from the Indian Penal Code may not be necessary.

With this, I request Mr. Raja to rethink on his thought process and I also differ with his idea of this Bill. Thank you very much, Sir.

SHRI BAISHNAB PARIDA (Odisha): Mr. Vice-Chairman, Sir, I support the proposal for amendment of Indian Penal Code, 1860, which is brought by Shri D. Raja. Sir, when I read the name of Indian Penal Code, 1860, immediately my reaction goes to the pre independent India. This law was enacted in 1960, just after the First War of Independence of India in 1857. During that time, this draconian law was passed by the Britishers to suppress any kind of dissent, opposition and criticism of the colonial rulers. During the freedom struggle, this law was used against the great freedom fighter, Shri Bal Gangadhar Tilak. The charge against him was of sedition. This law was used by the Britishers to put him in the jail. Shri Bal Gangadhar Tilak said, "Swaraj is my birth right." This very pronouncement was used against him. This law was even used against Gandhiji. Any activity against the Britishers was termed as sedition.

Sir, during our freedom struggle, we fought for freedom and we fought against this clause, which was used to suppress the freedom movement. So, after the Independence, we formed our Constitution. We promised to the people of India that India will be a Democratic Republic. It is the fundamental right of the citizens to criticize the Government, the illegal actions of the Government, anti-people laws of the Government, and in order to bring socio-economic change in the society, the citizens have every right to fight and educate the people and organize the people,

[Shri Baishnab Parida]

but it must be done in a democratic way. Gandhiji said that Satyagraha is the most powerful weapon for the humanity to protest against injustice, to protest against illegal actions of the Government, and Satyagraha is not confined to one country or to any particular time. Even in the independent country, Satyagraha, this peaceful fight against injustice, is allowed. The Constitution has allowed it. You see, our learned advocate friend was arguing that during his 40 years of practice of law, he never came across that this law is misused. You see, recently, in case of Dr. Binayak Sen, what happened. He was imprisoned under this law. The hon. Supreme Court said that trying to overthrow a Government through violent means is illegal. It is against the law, against the nation, against the Government, against the State. If it is theoretically proved that this Government is a Government of a particular class and State is an instrument or an institution for coercion and through the State apparatus, through its Army, through its police, through its judiciary even, it tries to suppress any movement, then it should be changed. Theoretically if we argue, if we write, this is not illegal, this is not sedition. Dr. Vinayak Sen and many other intellectuals in our country practise these theories. And even those who say they want a Hindu Rashtra, sometimes we allow them also. Even somebody can say, no, this society is an exploiting society, millions of people are living in wretched poverty, they do not have any means of livelihood, they do not have access to education, they do not have access to any luxury, they do not have bare minimum conditions to live in and for such people how helpful has this democracy been. We are proud of our democracy, proud of our parliamentary system. But if the parliamentary system and democracy do not hear the cry of those millions of people who are living in wretched conditions of poverty and exploitation, how can they accept this democracy? How can they accept the honour, the privileges of the Constitution? They have every right to criticise. To fight, and to organise. Of course, when they try to overthrow the State through violent means, definitely, we will take action. Those who are fighting in jungles or in other places taking arms in their hands, definitely, they are going against our Constitution, against our democratic system. We will oppose them. Those people who are teaching the political science in universities. They are teaching different theories of political system. One theory is that this State is a violent organisation since it is allowing the exploitation of the people, since it is not honouring the human rights of millions of people; the State is working as a coercive machine here. So, theoretically they are teaching, may be Marx's views or anybody else's views. These are views only in theory. It is not a violation of the law of the land. The Supreme Court has released Vinayak Sen and said that he was not involved in violent action. But the State imprisoned him. There are hundreds of people who have been acquitted by the judiciary, by the hon.

courts, the High Courts, the Supreme Court whom we put in prisons for years together. Is it not a draconian law? That must be stopped if you want to develop and maintain this democratic system, We must have this democratic spirit, otherwise, people will not tolerate it. If we become intolerant to the criticism, what is police doing? You see it in every nook and corner of our country, in rural areas, in jungles, everywhere. Are they not violating the rules of the Constitution? Are they not violating the Fundamental Rights of the people? How to stop all this? We have the right, we have the duty to stop these types of violations of human rights in villages, in remote areas, and even in cities. So, what Mr. Raja has said is not out of context. We felt that the Penal Code of 1860 is misused by the State, by the police and even, sometimes, by the Paramilitary Forces. Are they not raping the tribal girls? Are they not, sometimes, killing the innocent tribals? How can you say that it is not against our Constitution? But we are trying to suppress those incidents. We are naming such incidents as confrontations. Tribals are without any arms. How can there be any confrontation? We must be democratic. And, when we are democratic, we must respect our Constitution also. Since we are the vocal advocates of democracy, we must raise this question and also amend the unlawful provisions of this Penal Code and we must make it democratic, humane, which will safeguard the rights of the people. It is my humble suggestion.

Then, Sir, at many places, we see that when journalists report such things, they are penalized. Since we are intolerant, we try to penalize, we are trying to stop, even to humiliate the journalists, the writers. Is it in tune of the spirit of our Constitution? Is it in tune of the spirit of our democracy? So, it is high time that in order to set right the democratic rights, the Fundamental Rights of the citizens of our country and to make the democracy more vibrant and stronger, we must act. Not only we should feel proud of our democracy, but we must be able to say that ours is the greatest democracy in the world. So far as numbers are concerned, we can claim it. But, at the same time, we must ensure that our democracy is the democracy of the people. Is it not anti-national to stash away billions of rupees and keep them in foreign banks? So, what is wrong in it when Baba Ramdev or Anna Hazare say that it is anti-national and that money should be declared as nation's property? Of course, when they sometimes criticize the Members of Parliament, we criticize them. But we can't ignore the questions that are raised by them. They have the right to raise those questions. Similarly, we also have rights, *adivasis*, also have rights, *dalits* also have rights, backwards also have rights, minorities also have rights. Their rights are violated. In a democratic country, how could it be done? So, there, Sir, we must be vigilant and, I think, we must take action to amend the Indian Penal

Code,

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particularly, Section 124A, which is against the spirit of the democratic system of this country.

Sir, I support Mr. Raja's request to amend this Section. If you don't want to delete it, at least, make it more democratic so that the democratic rights of the people are not violated, and the country will be benefited, the people will be benefited. It is the duty of the Parliament, as temple of our country's democracy, and it is our duty to see that the rights of lowest-level people who are living in the farthest forests, in the villages are protected. (Time-bell rings)

Sir, the founding fathers of our Constitution had said, 'The Constitution is full of paradoxes.' We have given the political right to the people, but we have not given them the means to exercise it; we have not provided them the economic means, social guarantee to practise the political right. Only during the voting times, during elections, we remember them. But during other times, we don't remember how their rights are violated, how the democracy is ruined in this country.

So, Sir, my request to my friends is, let us take some action to amend Section 124A of the Indian Penal Code.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Your time was only four minutes. But I have given you more than sixteen minutes. So, try to conclude. Just make the concluding remarks.

SHRI BAISHNAB PARIDA: Sir, I am concluding. I want to just make a request that Section 124A should be amended in the spirit of our Constitution, in the spirit of our democracy, in order to save the Fundamental Rights of the citizens of this country.

श्री तरुण विजय (उत्तराखंड): उपसभाध्यक्ष महोदय, जो यह बिल लाया गया है, इसकी भावना मूलतः यह है कि अंग्रेजों ने यहां पर जो कानून बनाए, वे कानून उन्होंने एक औपनिवेशिक दासता की मानसिकता के अन्तर्गत बनाए। वे भारत को शासित और शोषित प्रजा के रूप में देखते थे। इस कारण भारत में अभी भी बहुत से ऐसे कानून हैं, जो उसी ब्रिटिश साजेंट, ब्रिटिश वायसराय, ब्रिटिश सत्ता के अन्धे शिकंजे को अभिव्यक्त करते हैं। अंग्रेजों ने कभी भारत और भारतीय जन के प्रति आत्मीयता का भाव नहीं रखा। इस कारण मेरा पूरी तरह से यह मत है कि जो कानून अंग्रेजों ने यहां बनाए और जिनको हमने दुर्भाग्य से अक्षरशः वैसा ही अंगीकार कर लिया, वे भारतीय जन और भारतीय मन, दोनों को आहत करते हैं। अजीबोगरीब कानून हैं। अगर आपको अपने शहर में नाटक करना है, तो आपको पुलिस थाने से इजाजत लेनी पड़ती है। अगर आपको अखबार निकालना है, तो आपको प्रिंटिंग प्रेस का सारा पता और हिसाब-किताब पुलिस थाने में जमा करना पड़ता है। ये कानून उन्होंने तब बनाए थे, जब भारत

के स्वतंत्रता सेनानी अंग्रेजों के विरुद्ध लड़ रहे थे और तब वे नाटक, एकांकी, अखबार निकालते थे। उनको दबाने के लिए अंग्रेजों ने इस प्रकार के वहशियाना कानून बनाए थे। ये कानून आज क्यों रहने चाहिए?

इस प्रकार की लोकतांत्रिक अभिव्यक्ति की स्वतंत्रता का जो वातावरण है, वह सम्पूर्ण पृथ्वी पर यदि कहीं सबसे अधिक अक्षुण्ण, सुरक्षित, संरक्षित और संबर्धित रहा है, तो उपसभाध्यक्ष महोदय, वह देश अकेला भारतवर्ष रहा है। यहां कभी किसी को भिन्न मत रखने के कारण सजा नहीं मिली, कभी किसी गैलीलियों को अपना मत रखने के अपराध में काफ़िराना करार देकर फांसी नहीं दी गई। यहां पर वे ऋषि हुए, जिन्होंने वेदों के विरुद्ध लिखा, वैदिक मान्यताओं के विरुद्ध दर्शन प्रस्तुत किया और कहा कि कोई आत्मका नहीं है, "यावत् जीवेत् सुखम् जीवेत्, ऋणम् कृत्वा घृतम् पीवेत्"। जब तक आपका शरीर है, तब तक ही आप जीयेंगे और जब यह शरीर भस्म हो जाएगा, तो उसके बाद कुछ शेष नहीं रहेगा, इसलिए जब तक जीयो, सुख से जीयो, कर्ज लेकर भी घी पीयो, चिन्ता मत करो, क्योंकि ईश्वर नहीं है और मृत्यु के बाद का कोई अस्तित्व नहीं है। उस व्यक्ति को, उस ऋषि को हमारे यहां जाहिल और जेहादी कह कर निकाला नहीं गया, उनको ऋषि पद दिया गया। हमारे षड्-दर्शन में उनको एक महान आचार्यत्व दिया गया - चारवाक ऋषि। उनकी बड़ी श्रेष्ठ मान्यता रही। उनको ऋषि परम्परा से बहिष्कृत नहीं किया गया, उनको समाज से उनके स्थान से च्युत नहीं किया गया।

यह वह स्थान है, जहां जब पूरा पश्चिम और अन्य देश वैचारिक भिन्न मत रखने वालों के विरुद्ध क्रूसेक और जिहाद चला रहे थे, तब सिन्धु नदी के तट पर वरुण, इन्द्र और रुद्र की उपासना करने वाले ऋषियों ने कहा- "वसुधैव कुटुम्बकम्", अर्थात् यह समस्त पृथ्वी हमारा परिवार है। उन्होंने कहा कि प्रत्येक व्यक्ति अपने-अपने मत से ईश्वर को भजे, अपने-अपने मार्ग से वह अपने इच्छित लक्ष्य को प्राप्त होगा, "सर्वदेव नमस्कारम् केशवं प्रतिगच्छति", आप किसी भी देवता को नमन करें, वह सब उसी प्रभु के चरणों को प्राप्त होगा। यहां कभी यह नहीं कहा गया कि हमारा ही मत श्रेष्ठ है और हमारे अलावा बाकी सब मत गलत हैं। यहां अभिव्यक्ति की स्वतंत्रता का चरम उत्कर्ष था, जो भारतवर्ष ने इस पृथ्वी को दिखाया।

उपसभाध्यक्ष महोदय, जिस व्यक्ति का अभी नाम लिया गया, जिस विचारधारा को वह मानते रहे, मैं अत्यंत संक्षेप में दो उदाहरण दूंगा। इस पृथ्वी ने कई ऐसे उदाहरण देखे, जहां अपने से भिन्न मत रखने वालों का करोड़ों की संख्या में नरसंहार किया गया। हमने स्टालिन का समय देखा। जो स्टालिन के मत में नहीं थे, उनका करोड़ों की संख्या में नरसंहार हुआ। माओत्से तुंग की सांस्कृतिक क्रांति हुई और उस सांस्कृतिक क्रांति पर बीबीसी ने एक फिल्म भी बनाई। अब खुद चीन में माओत्से तुंग की पुनः समीक्षा की जा रही है। मैं चीन जाता रहता हूं, भारत-चीन सम्बन्धों का अध्येता हूं, वहां चीन की पाठ्यपुस्तकों में जो 16 पृष्ठ का माओत्से तुंग का जीवन परिचय था, वह सिकोड़ कर अब केवल दो पृष्ठों में ला दिया गया है and they are revisiting and reviewing the cultural revolution.

उपसभाध्यक्ष महोदय, वहां पर चार करोड़ से अधिक लोग केवल इस कारण से मार डाले गये या मरणासन्न स्थिति में पहुंचा दिया गये, क्योंकि वे उनके मत को स्वीकार नहीं करते थे, उनके मत से सहमत नहीं थे। अगर सोवियत संघ में गुलाग आर्कीपिलागो और

साईबेरिया इस बात के लिए कुख्यात रहे कि आपके मत से सहमत न होने वाले वहां चले

[श्री तरुण विजय]

जाएं, तो चीन में उनका कम्प्लीट नरसंहार किया गया और तिब्बत में हमने वह देखा। यही विचारधरा जब हमारे प्रदेशों में आई ...*(व्यवधान)*...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Try to conclude it.

एक माननीय सदस्य: सर, ये बहुत अच्छी बातें बता रहे हैं।

उपसभाध्यक्ष (डा.ई.एम. सुदर्शन नाच्चीयप्पन): हमने दो मिनट की जगह छः मिनट दे दिए।

श्री तरुण विजय: सर, बस एक सैकिंड और दीजिए। तो उन्होंने लेनिन की पाठ्यपुस्तकें रखीं, लेकिन स्वामी विवेकानन्द को बंगाल से भी बहिष्कृत कर दिया। इस प्रकार का लोकतांत्रिक स्वातंत्र्य का जो हनन है, हम उसके विरोधी हैं। हम चाहते हैं कि लोकतांत्रिक अभिव्यक्ति की स्वतंत्रता होनी चाहिए, लेकिन उसकी सीमा है। हमारे यहां तो महाभारत का आदर्श रहा है-

*"न राज्यम् न च राजयासीत्, न दंडो न च दांडिका धर्म
नैव प्रजा सर्वम् रक्षम् तिस्म परस्परम्"*

न कोई राजा था, न ही राजा के दांडिक थे और न दंड का विधान था। प्रजा का प्रत्येक व्यक्ति धर्म, अर्थात् नैतिकता और कर्तव्य, के अनुसार आचरण करता था, तो राजा की आवश्यकता ही नहीं होती थी, दंड देने वाले की आवश्यकता ही नहीं होती थी और दंड संहिता भी बनाने की आवश्यकता नहीं होती थी। परन्तु, जब कोई मर्यादा का हनन करता है, तो दंड की और दंड संहिता बनाने की आवश्यकता पड़ती है, इसलिए राज्य सत्ता हुई, इसलिए राज्य सत्ता को एक कानून के चौखटे में बाँधा गया और इसलिए यह कहा गया कि अगर आप मर्यादा का पालन नहीं करेंगे, तो आपको दंडित किया जाएगा। इस चौखटे या इस संविधान को क्यों रखा गया? इसे इसलिए रखा गया, क्योंकि हम अपेक्षा करते हैं कि भारत वर्ष के लोग संविधान के दायरे में काम करेंगे वरना वे संविधान ही नहीं, लोकतंत्र का हनन करेंगे तथा एक-दूसरे के प्रति हिंसा और वैमनस्य रखेंगे। हिंसा नफरत के कारण पैदा होती है और यह नफरत मत-भिन्नता के कारण पैदा होती है।

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Now, come to the conclusion. You had only two minutes.

श्री तरुण विजय: इसलिए, यह जो संशोधन है, इस संशोधन में जो प्रस्ताव रखा गया है, उसमें मैं अपने मित्र परिडा साहब से सहमत हूँ कि यह भावना ठीक है, लेकिन अब दिल्ली में बड़े साहित्यकार और कश्मीर के लोग आकर भारत की सेना के विरुद्ध विष-वमन करते हैं और वे आकर भारत के संविधान की खिल्ली उड़ाते हैं। कश्मीर में सैनिक सुरक्षा के बिना आप तिरंगा लहरा नहीं सकते और पाठ्यपुस्तकों में 'जन-गण-मन' नहीं होता, तो आप क्या करेंगे? क्या आप यह कहेंगे कि साहब, हम अभिव्यक्ति की स्वतंत्रता देते हैं, तो आप संविधान की धज्जियाँ उड़ा दीजिए, हम कोई कार्रवाई नहीं करेंगे? मैं नहीं समझता कि इस भावना से संविधान की रक्षा हो सकती है। कहीं-न-कहीं कोई एक संहिता ऐसी होनी चाहिए, जिसमें कि जो संविधान, लोकतंत्र और अहिंसा के विरुद्ध काम करे, विद्रोह और हिंसक गतिविधियों को

प्रोत्साहित करे, उसके विरुद्ध निश्चित रूप से दंडात्मक और कठोर कार्रवाई का भी प्रावधान रखा जाए। जैसे, छत्तीसगढ़ में माओवादियों ने उन छोटे-छोटे जनजातीय बच्चों का संहार किया और उनके माँ-बाप को कुल्हाड़ियों से मार दिया, अगर उन्होंने Maoist रंगरूट बनने के लिए उनको भेजने से इन्कार कर दिया। महोदय, ऐसे चार बच्चों को मैं शिक्षा दिला रहा हूँ, जिनके चाचा, ताऊ या माता-पिता ने कहा कि मेरा बेटा अभी 14 साल का है और वह तुम्हारे लिए गुरिल्ला फौज में नहीं जाएगा, तो उन बच्चों के सामने उनको मार दिया गया। अब जो ऐसी विचारधारा का समर्थन करे, हम उसकी रक्षा में कैसे दो शब्द कहें।

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Mr. Tarun Vijay, you are taking too much time.

श्री तरुण विजय: सर, इसलिए मैं समझता हूँ कि इसमें संशोधन किया जाए। हम लोकतांत्रिक भावना का सम्मान करें, वैचारिक अभिव्यक्ति की स्वतंत्रता का सम्मान करें, परन्तु एक मर्यादा रखें कि जो संविधान, लोकतंत्र, कानून और सत्ता के विरुद्ध और हिंसक गतिविधियों को प्रोत्साहित करे, उसके विरुद्ध विद्रोह और हिंसक गतिविधियों को प्रोत्साहित करे, उसके विरुद्ध निश्चित रूप से दंडात्मक और कठोर कार्रवाई का भी प्रावधान रखा जाए।

सर, मैं श्री राजा को बधाई देता हूँ कि उन्होंने इस विषय को लेकर सब के सामने रखा। यह विषय बृहत्तर है कि अंग्रेजों के बनाए काले कानूनों को भारत पूरी तरह अंगीकार न करे, बल्कि उसे भारतीय ढाँचे में ढालकर, भारतीय परिस्थिति के अनुरूप ढालकर उसे स्वीकार करे। धन्यवाद।

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): There is no other speaker. Now, the hon. Minister.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI MULLAPALLY RAMACHANDRAN): Sir, at the outset, I would like to thank my hon. friend, Shri D. Raja, for having moved the Indian Penal Code (Amendment) Bill, 2011. I also express my thanks to Shri Dilipbhai Pandya, Shri Ananda Bhaskar, Shri Baishnab Parida and Shri Tarun Vijay for having participated in the discussion in an active manner, and also for giving their suggestions and observations.

Sir, the hon. Member, Shri D. Raja, through this Bill, seeks to delete section 124A from the Indian Penal Code, 1860, which deals with Sedition. The section has, unfortunately, attracted more ire from human right activists, media persons, political activists, intellectuals and people like Mr. Raja.

Sir, I think, Mr. Raja has been sadly mistaken by the word 'sedition'. The word 'sedition' is only found as a marginal note to section 124A of IPC and is not an operative part of the section, but merely provides a name by which the crime defined in the section will be known. Sir, if you permit, I would like to quote Section 124(A). It says, "whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in

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India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

Sir, the hon. Members stated that the existence of section 124(A) will be an affront to the Fundamental Rights, especially, to the Freedom of Speech under Article 19 of the Constitution of India. Sir, the constitutional validity of section 124(A) of IPC has already been examined by various courts in our country. In the case of *Ram Nandan vs. State of Uttar Pradesh*, hon. Allahabad High Court held that section 124(A) of IPC imposed restriction on the freedom of speech and was not in the interest of general public. Thus, the hon. Allahabad High Court declared section 124(A) of IPC as *ultra vires* of the Constitution. This decision of the hon. Allahabad High Court, however, was overruled by the hon. Supreme Court in the case of *Kedarnath vs. State of Bihar* (AIR 1962 SC). The constitutionality of the section has thus been upheld by the hon. Supreme Court. The Apex Court held section 124(A) of IPC as *intra vires* of the Constitution and commented as follows:

"The provisions of sections, read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or, have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures of comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc., which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order."

Sir, the hon. Supreme Court has held that the provisions of section 124(A) of IPC are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The restrictions imposed by the impugned provisions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that of fundamental rights.

It is well settled that if certain provisions of law constructed in one way would make them consistent with the Constitution, and, another interpretation would

render them unconstitutional, the court would lean in favour of the former construction.

The explanations appended to the main body of section 124(A) make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is also well settled that in interpreting an enactment, the court should have regard not merely to the literal meaning of words used but also take into consideration the antecedents of the legislation, its purpose and the mischief which it seeks to suppress. Viewed in that light, the provisions of the section should be so construed as to limit their applications to acts involving intention or tendency to create disorder or disturbance of law and order, or, incitement of violence.

So, section 124(A) of IPC is consistent with the fundamental right of freedom of speech and expression.

Sir, the Law Commission of India, in its 156th Report, has categorically stated that section 124(A) has to find a place in the Penal Code for every State. Every State has to be armed with power to punish those who, by their conduct, jeopardize the safety and stability of the State, or, disseminate such feelings of disloyalty or have the tendency to lead to disruption of the State or to public order. The definition of 'sedition' in the existing section 124A is limited to exciting disaffection towards the Government established by law. The Law Commission has, however, opined that elements of intention should be brought in section 124A. The Law Commission, in fact, recommended the strengthening of section 124 A by introducing some changes in the said section, but did not recommend deletion of section 124 A altogether. Sir, we all know that this section has been retained in the IPC all along during the last 61 years of Republic of India. Governments after Governments, in their wisdom, did not find it essential to delete this section because this section certainly strengthens the authority of the State. The Indian State has been facing many challenges since independence. Even today, the State faces multiple threats from terrorism, insurgency, communalism, etc. There is large-scale illiteracy, ignorance, backwardness and, therefore, it is easy to arouse the sentiments of the people to create disharmony and disunity. There are, therefore, a large number of people whom the State has to protect from such disruptive forces for which it is essential to have a strong State to safeguard the democratic set up.

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The hon. MPs will agree that only a strong State will be able to face the challenges of terrorism and insurgency. Section 124A is to be seen in this perspective as a tool to strengthen the authority of the Indian State.

I would say that section 124 A of IPC is absolutely compatible with democracy. It is essential for the preservation of the State which itself is essential for ensuring the exercise of democratic rights and freedom. In the absence of a law by which the State can preserve itself, anarchy will prevail. In a state of anarchy, there would be no State to guarantee the democratic rights. In fact, all the similar laws that appear to be harsh are, in fact, to be seen as tools of Government in safeguarding democratic rights and the freedom of the people.

Sir, let us see how many people have been prosecuted under this Act. I have the statistics for the number of cases registered under section 121, 121 A, 122, 123, 124 A of the IPC. In a country of 121 crore population, the total number of cases registered under all the above sections during 2011 is mere 102. This would mean the number of cases in respect of section 124 A could be even less and very negligible. This itself shows that registration of cases under this section is very rare and is resorted to in the rarest of rare cases.

The allegation that section 124 A of IPC is widely misused is unfounded. As I mentioned, considering the fact that a very few cases have been registered against offences under this section itself testifies this. We cannot delete the section 124 A of the IPC on the mere apprehension that there are chances of its misuse. The mere argument that the law is bound to be misused is no ground to discard it. There are instances where people are implicated wrongly in dowry cases, rape cases, cheating and even in murder cases. But we are not repealing these laws. Therefore, the argument that this section is widely misused will not hold any ground.

Sir, having said this, it does not mean that the Government do not have an open mind in this matter. While defending the existence of the section 124 A of IPC, there is no harm in reviewing the provisions of this section to make it more in tune with the present day need of the civil society and freedom of speech and expression enshrined in article 19 of the Constitution of India.

The Department-related Parliamentary Standing Committee on Home Affairs in its 111th and 128th Reports recommended that the Government should attempt to bring forward a comprehensive Bill for revamping the criminal justice system. The

Department- related Parliamentary Standing Committee on Home Affairs, while examining the Code of Criminal Procedure (Amendment) Bill, 2010, has again recommended in its 146th Report that there should be a comprehensive review of the criminal justice system and also recommended that a composite draft legislation for revamping of the criminal justice system in the country should be introduced. Sir, the Government recognises the imperative need to reform the criminal justice system of the country by introducing a comprehensive legislation in Parliament instead of bringing amendment Bills in a piecemeal manner.

Sir, In view of the recommendations of the Department related Parliamentary Standing Committee on Home Affairs, the Ministry of Home Affairs requested the Ministry of Law and Justice on 7.7.2010 to request the Law Commission of India to examine and give a comprehensive report covering all aspects of criminal law so that comprehensive amendments can be made in various laws, namely IPC, Cr.P.C., Evidence Act, etc. It was requested that the Law Commission may also take into account the recommendations made by the Malimath Committee and the Madhava Menon Committee and other Commissions/Committees in this regard. This was followed up by a reminder on 7.3.2012. The Report of the Law Commission of India in this regard is awaited.

Sir, considering all these facts, with all humility at my command, I request my hon. friend, Mr. D. Raja, to kindly withdraw this Bill.

SHRI D. RAJA (Tamil Nadu): Sir, at the outset, I must thank my colleagues who participated in this very important debate. I also thank the Minister for his reply.

I would like to clarify one or two things. The debate has become historic because it has taken place on the anniversary of Quit India Movement.

Sir, I am not an advocate as my colleague from the other side claimed. In fact, he is an advocate. As a layman, as a political activist, how I look at this issue formed the basis of my argument and this Bill. In a country like ours, in a democracy like ours, what is the need for having this section? The Minister says that the word 'sedition' is used only in the margin, not in the body of the section. It is true. The word 'sedition' is used in the margin. My question is: why do you have it in the margin? If you can't have it in the body of the section, why do you have it in the margin? What is the logic behind this? What the Minister said is true. I have a copy of it. It is given in the margin. Why do you have the word 'sedition' in the margin? That is point number one.

6.00 P.M.

[Shri D. Raja]

Sir, I am not assuming that it is misused or it will be misused. It is not based on assumption. It is based on ground realities. The Minister himself has agreed that in 2011, 102 cases were there under sedition. It is not a small number.

SHRI MULLAPPALLY RAMACHANDRAN: Other Section are also there.

SHRI D. RAJA: That is what I said. This section is used along with other sections. I read out the sections. It is known to us. We have no dearth of criminal laws. But this is not related to public order. This is related to Government. Let us be very clear. The Indian Penal Code says, "...excite disaffection towards the Government established by law.." Are we not citizens of this country? Don't we have the right to criticise the Government or oppose the Government? What are we discussing? That is my point. It is about the Government and not the nation. The Minister is right that terrorism is a threat. But we have the Unlawful Activities (Prevention) Act. We have the National Investigation Agency.

The Government is discussing with other State Governments about the formation of National Counter Terrorism Centre. All efforts are there. Where is the dearth of law? That's what I am saying. This is related to citizens' right to question the Government or criticise the Government. If the Government is wrong, people have a right to take the course to even remove that Government. You can call it 'disaffection towards the Government'. Yes, it is disaffection. All the time, people cannot have affection towards the Government. That's what I am saying. People cannot have affection towards the Government. That's what I am saying. My amendment is related to that. I do agree that there is a need to see the link between freedom and necessity. In fact, as a communist who believes in dialectical materialism, I can say that there is a dialectical dialectics between freedom and necessity. I understand that the freedom is not absolute; at the same time, necessity should be defined according to the needs of history and society. You can't assume your necessity and curtail the freedom. Let us understand the dialectics of freedom and necessity. Yes, there were many things which happened in the past. I agree with my friend, Mr. Tarun Vijay. Many mistakes have been committed in other countries and peoples' rights were deprived and crushed. Those countries are learning their lessons. It has become part of history. ...*(Interruptions)*... Now, it has become part of history.

SHRI TARUN VIJAY: I have no words to appreciate your words and I really

support this Bill completely now because I agree in letter and spirit with what you are saying and if we agree to own the past mistakes, our future will be brighter.

SHRI D. RAJA: I am speaking in relation to what you referred to the former Soviet Union and China. They themselves have admitted that some mistakes were committed. They are trying to learn and they are trying to correct. They have corrected to an extent and they are moving forward. It is their problem. Now, I am on the ground of my land and here, I speak about India and India is my concern. Why should we have this draconian provision in our law? That is my question. People even talk about Salwa Judum. The then Home Minister, Mr. Chidambaram, on the floor of the House, admitted that Salwa Judum is a non-State player. The State does not support it. Then, how come it has gone to the Supreme Court? Finally, it is the Supreme Court who has to take a stand on it. Two days back, he was referring to Allahabad High Court Judgement. Two days back, we had Allahabad High Court judgement on two journalists saying that speaking against the Government is not sedition and you cannot dub speaking or writing against the Government as sedition. They were released. Now, what is the answer? It is the same. The High Court has given that judgment. Sir, the problem is our mindset. Now, I am happy to hear the Minister. He said that they have asked the Law Ministry to come forward with a comprehensive review of criminal laws and criminal justice system. My question is: Does this comprehensive review include this? On the one hand, the Minister says that the Government is not of the view to amend this or take this out. That is what he said. He had made it clear. The Government is, in no way, going to delete or omit this. On the other hand, he says that the Government has asked the Law Ministry to come forward with a comprehensive review of the criminal justice system. So, this is what I want to ask from the Minister. He was referring to the recommendations made by the Department-related Parliamentary Standing Committee. I am very happy. ...*(Interruptions)*... That's why I am saying that. I am very happy about it. But now he says he will go by the recommendations of the Standing Committee. But when it comes to actual practice, the Government says these recommendations are recommendations. The Government is not obliged to accept these recommendations. So, the Government must be very clear when it makes a statement on the floor of the House. If you refer to the recommendations of the Standing Committee, the Government should stand by those recommendations. The Government should act on those recommendations. Since he has said that the Law Ministry is supposed to come forward with a comprehensive review, I urge upon the

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Government that review should include this Section also because it involves the entire criminal justice system; and this is a part of that. I agree with him that there is communalism; there is terrorism and every thing. We have all laws in place; we have adequate laws in place. Those laws can be strengthened. Every time we make an attempt to strengthen those laws. But here it is something which I do not know how long we can have this Section after independence. As the Minister says, the Government has an open mind. I trust him.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Are you withdrawing the Bill, or, should I put it to vote?

SHRI D. RAJA: If the Government has an open mind and the Government is expecting the Law Ministry's review of the criminal justice system, I leave the issue as open. I do not insist but I leave this issue as open.

THE VICE-CHAIRMAN (DR E.M. SUDARSANA NATCHIAPPAN): Are you withdrawing the Bill? Otherwise, I will put it to vote.

SHRI D. RAJA: Withdrawing

The Bill was, by leave, withdrawn

THE VICE-CHAIRMAN (DR E.M. SUDARSANA NATCHIAPPAN): The House stands adjourned till 11.00 a.m. on 13th August 2012.

The House then adjourned at eight minutes past six of the clock till eleven of the clock on Monday, the 13th August, 2012.