

**STATUTORY RESOLUTION**

**Seeking Disapproval of the Prevention of Terrorism (Amendment)  
Ordinance, 2003 (No. 4 of 2003)**

**and**

**The Prevention of Terrorism (Amendment) Bill, 2003**

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): श्री सुरेश पचौरी - अनुपस्थित। श्री राम जेठमलानी - अनुपस्थित। श्री एन.आर. दसारी - अनुपस्थित। श्री वी.वी. राघवन - अनुपस्थित। श्री गया सिंह - अनुपस्थित। डा. टी. सुब्बारामी रेड्डी - अनुपस्थित। श्री नीलोत्पल बसु - अनुपस्थित। श्री कपिल सिब्बल।

SHRI KAPIL SIBAL (Bihar): Sir, I move:

“That this House disapproves the Prevention of Terrorism (Amendment) Ordinance, 2003 (No. 4 of 2003) promulgated by the President on the 27th October, 2003.”

“Thank you Mr. Vice-Chairman, Sir. I rise to oppose the Ordinance issued by the Government in respect of amendment to Prevention of Terrorism Act. This is an issue which we have brought, time and again, before this House that important amendments of this nature must be discussed thoroughly, especially when there is no real urgency for bringing these amendments. We have seen, in the recent past, this Government resorting to the Ordinance, route, time and again, in respect of important matters of legislation. If you look at the Constituent Assembly debates and if you look at the decisions of courts, from time to time, courts have opined and it is also clear from the Constituent Assembly debates, that the route to the Ordinance making power, under Article 123 of the Constitution, should only be adopted in emergency situations, mostly when the House is not in Session and when the matter needs urgent attention of the Government, when it cannot await the constitution of the House or it cannot await the commencement of the new Session. Only in that situation, should the Ordinance route be adopted. We find that, time and again, this Government is resorting to Ordinance route, especially in matters affecting the fundamental rights of the citizens. In any case, as far as this particular Bill is concerned, we have our grave suspicions and we believe, since we are opposing the Act

[18 December, 2003] RAJYA SABHA

itself, such an amendment, at least, should not have been moved though the Ordinance route. The matter could have been sent to the Standing Committee or consultations could have taken place because this matter did not arise only yesterday. It has been the subject matter of public debate for a long period of time. I remember the hon. Deputy Prime Minister was in this House when I had put a question as to why review committees were not being set up. Then, the hon. Deputy Prime Minister had got up and said, "Yes, this is a suggestion for action." I remember those words. Thereafter, the Government contemplated on setting up these review committees. They were set up. So, it is not something that has happened overnight. This happened more than one year ago. So, if, ultimately, powers were going to be given to the review committees, this is something that ought to have been discussed, not only with other political parties, but it could have been sent to the Standing Committee because the kind of laws that I see in this legislation, which are so clear, it is unthinkable that such an amendment should be passed, and it has been in the Lok Sabha, in this House. Both, from the point of view of principle and from the procedural standpoint such an amendment does not bear the scrutiny, will not bear the scrutiny of courts. And, such an amendment cannot override the authority of courts to decide matters relating to offences committed under the POTA because the manner in which this amendment is sought to be interpreted is that the review committees have been vested with some judicial powers. If it is the intent of the Government to give the judicial powers to the review committees, then, this is a serious issue that affects not just human rights, but the whole process of the democratic functioning of the State. So, I would have thought that in the circumstances, instead of going through the route of an Ordinance, under article 123, discussions could have taken place and procedures could have been adopted to ensure that the remedy that is sought to be provided for in this amendment is not worse than the disease. That's what has happened. So, Sir, I strongly urge that this House disapproves this Ordinance, promulgated by the President of India on 27th October, 2003.

उप प्रधानमंत्री, गृह मंत्रालय तथा कार्मिक, लोक शिकायत और पेंशन मंत्रालय के प्रभारी ( श्री लाल कृष्ण आडवाणी): उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि:—

“आतंकवाद निवारण (संशोधन) अध्यादेश, 2003 में संशोधन करने वाले विधेयक पर, लोकसभा द्वारा पारित रूप में, विचार किया जाए।”

उपसभाध्यक्ष महोदय, सिब्बल जी ने जो डिसएप्रूवल का प्रस्ताव किया है, उसमें स्पष्ट है कि उनका डिसएप्रूवल मुख्य रूप से पोटा के बारे में है। इसमें उन्होंने यह बात भी लाई है कि अध्यादेश के माध्यम से इस संशोधन को लाने के बजाय अगर सामान्य तौर पर लाते तो स्टैंडिंग कमेटी के पास जाऊँ और और इस पर विचार करके फिर निर्णय होता। सिद्धांततः मैं उनकी बात से सहमत हूँ कि अध्यादेश का उपयोग कम से कम होना चाहिए और तुलना भी नहीं करना चाहता हूँ कि पहले कैसे होता था अब कैसे होता है, पिछले पाँच सालों में कितने अध्यादेश हुए हैं या नहीं हुए हैं। लेकिन, उनकी बात के वजन को स्वीकार करते हुए भी मैं यह समझता हूँ कि विगत दिनों में पोटा के बारे में चर्चा के संदर्भ में यह कहा गया कि जब हम कहते थे कि पोटा का कहीं दुरुपयोग हुआ है तो उसके लिए रिव्यू कमेटी है, जो उस दुरुपयोग को ठीक कर सकती है, उसके बारे में कोई राय दे सकती है। तो आशंका प्रकट की जाती थी कि अगर रिव्यू कमेटी यह कहेगी भी तो क्या उनकी राय बाईंडिंग होगी? तीन ऐसे प्रावधान हैं एक्ट के, जिसमें स्पेसिफिकली रिव्यू कमेटी का उल्लेख है, लेकिन यह जो रिव्यू कमेटी है सेक्सन 60 के अधीन, उसमें ऐसा कोई जिक्र नहीं है और इसलिए लगता था कि अच्छा होगा कि इस बात पर डिस्प्यूट कोई ऐगिज़क्यूटिव करे। ऐगिज़क्यूटिव का मतलब है कि सैंटर की हो चाहे स्टेट की हो, यह ऐडवाइज़री है, यह हमारे ऊपर बाईंडिंग नहीं है। इस बात का निराकरण करने के लिए, इसके ऊपर कोई संदेह न रह जाए, इस दृष्टि से अगर ऐसा प्रावधान कर दिया जाए कि जिसमें उसको बाईंडिंग किया जाए, फिर इस आशंका को भी ध्यान में रखा गया कि अगर सैंट्रल रिव्यू कमेटी और स्टेट रिव्यू कमेटी के दृष्टिकोण में अंतर है तो सैंट्रल रिव्यू कमेटी का दृष्टिकोण बाईंडिंग होगा, इसके आधार पर यह निर्णय किया गया है। इसमें रिव्यू कमेटी को कोई ज्यूडिशियल अथारिटी देने का प्रावधान नहीं है, ज्यूडिशियरी का अपना रोल है और जो दूसरा संशोधन भी लोक सभा ने पारित किया है, उसमें अगर कोई निर्णय होता है तो यह निर्णय इस प्रकार से लागू होगा कि जैसे ऐगिज़क्यूटिव ने इस प्रकार का आरोप लगाया ही नहीं और मूलतः विद्वान माना जाएगा, ऐसा उसमें प्रावधान है। उसमें ज्यूडिशियरी का जो अधिकार है, उसमें किसी भी प्रकार की कमी नहीं हुई है।

आज मैं अपेक्षा करता हूँ, माननीय सदस्यों से जो यहां उपस्थित हैं कि हमने पोटा की उपयुक्तता-अनुपयुक्तता पर एक लंबी बहस की है और दो बार, एक बार दोनों सदनों में अलग-अलग की है, एक बार संयुक्त अधिवेशन में की है, तो आज हम जब चर्चा करें इस संशोधन विधेयक पर, जिस संशोधन विधेयक में जो लोग मूल पोटा के कानून से सहमत न भी हों, वे भी मानेंगे कि इस संशोधन विधेयक के द्वारा पोटा के दुरुपयोग की संभावना पर अंकुश लगा है, उसमें कमी करने की कोशिश की गई है और इसीलिए जो लोग पोटा के विरुद्ध भी थे, वे लोग भी इसका स्वागत करेंगे, समर्थन करेंगे। यह अपेक्षा करते हुए मैं चाहूँगा कि इस संशोधन विधेयक पर ही चर्चा सोमित हो तो अच्छा हो।

इन शब्दों के साथ मैं सदन से अनुरोध करता हूँ कि इस संशोधन विधेयक को वह सर्वसम्मति से स्वीकार करे।

प्रस्ताव प्रस्तुत हुए।

SHRI KAPIL SIBAL: Mr. Vice Chairman, Sir, through you, I would like to remind the Government that, initially, when this particular law was mooted, the Congress Party was totally opposed to it. The Congress Party was totally opposed to it on the ground that the nation had witnessed experiences under TADA; of how in many States in India, TADA was misused. And, especially, in the States where TADA was not required, it was used, occasionally, for partisan ends, or, for personal ends. And the Congress Party felt that the purpose for which this particular law had been passed was not being served. It was with that in mind that the Congress Party opposed POTA. We believe that the remedy for dealing with terrorism was not necessarily to thwart the rights of individuals by curbing their rights in the existing Criminal Justice System, and disallowing them the basic procedural safeguards, which are inherent in the Criminal Procedure Code. We had been under TADA the misuse of confessions. We had seen under TADA that because the investigating agencies could not properly investigate cases, they only used the confession, and tried to obtain conviction against the accused. We, therefore, decided that when POTA was sought to be pushed through, in the fashion that it was, we would oppose it, and that opposition continues till date. Indeed, the fact that the hon. Deputy Prime Minister moved this amendment is proof of the fact that the law is not working well. Otherwise, there was no need for an amendment. Indeed, the hon. Deputy Prime Minister has just now said that there have been allegations of misuse of POTA. And because there have been allegations of misuse of POTA, it was necessary to set up these Review Committee, so that the Review Committees might be able to soften the blow to take care of some of the excesses that had taken place in the misuse of POTA. So, in a way, what we had said, in our initial opposition to the law, has proved to be correct, and your moving this amendment --- the Deputy Prime Minister's moving this amendment---is proof of the fact that the position that the Congress Party took against POTA was correct.

Having said that, Mr. Vice-Chairman, I would tell you the reasons as to why I said that. If you look at a small State like Jharkhand, you will

find that the maximum number of POTA accused is in Jharkhand State, and, just recently, -- and I am not talking about too long ago -- in 2003 itself, 83 of those accused were released. And, the Director General of Police of Jharkhand said that they were being released because the evidence against them was very thin. Now, you can imagine the plight of the accused; 83 of them incarcerated without remedy, incarcerated for a long period of time, and, in the end of it, the Director-General of Police says 'we release them today because the evidence against them was thin.' How does the State compensate them? How does the State deal with that kind of injustice? And, this is not just limited to Jharkhand alone. This is applicable in various States where terrorism is a threat. Of course, now, throughout India terrorism is a threat, and it has to be dealt with. But in many situations, we have seen that this particular law is used for certain personal ends, and that is the exact allegation that has been made pursuant to which this amendment has been brought. We know why this amendment has been brought. It is to keep an ally of this Government together, to, in fact, show that 'look we are doing something for you', And, I will presently show that even that, is a misnomer, even that is not provided in the present amendment. Now, under the original Act before this amendment came, under section 60 of the original of those Review Committees? And, what was the purpose of those Review Committees? The purpose of those Review Committees under the original Act before the amendment was to oversee the legality of certain administrative decisions. Therefore, under Section 60, the Review Committee could review certain decisions which were vested in administrative authorities under this Act. I will give you an example. For example, under Section 18 of POTA, you can proscribe an organisation enlisted saying that 'this is terrorist organisation'. Now, when you do that, that organisation can file an application to the competent authority saying that 'We have been included in the list of proscribed organisations. This inclusion is wrong'. Now, that is done by the Central Government. That is a purely administrative act. Now, when that application is made to the competent authority, the competent authority may well, or, the Central Government, may well say, "No; the inclusion is right." If that authority says that the inclusion is right, the matter goes to the Review Committee, and the Review Committee, can, on application, decide that inclusion of that organisation in the list of proscribed organisations is wrong, and under Section 19 of POTA, if that decision is given by the reviewing

authority or the Review Committee, that decision is binding on the Central Government and that particular organisation will be removed from the list of proscribed organisations. So, what was the purpose of the Review Committee? The Review Committee's purpose was to review the decision of administrative authorities. And, I have given you one example. There is another example. And, this is under Section 36 of the Act, the chapter relating to interception, electronic interception or interception to hear conversations of people who might be involved in terrorist activities. Now, under the present law, there is a specific Chapter for it under POTA. You can intercept anybody's conversation and communication to find out whether that person is indulging in terrorist activities or not. that interception is not as a matter of course. A police officer, not below the rank of Superintendent of Police, has to file an application. He has to file an application before the competent authority. The competent authority, as far as the Central Government is concerned, is an officer not below the rank of Joint Secreary. The competent authority, as far as the State Government is concerned, is an officer not below the rank of Secretary. So, when such an application is made, that competent authority allows interception. And when that competent authority allows interception --and the interception takes place under Section 39 -- then, all decisions of the competent authority allowing the interception are again subject to the review of the Review Committee. Now, what is that? That is review of administrative action. So, under Section 60 of the original Act, the reviewing authority has the right to review all administrative decisions where prescribed, where the role of the authority is prescribed, to review them. And when those decisions are reviewed, they would be binding on the Government.

Now, what does this amendment do? The Deputy Prime Minister rightly said, 'let us focus on this amendment'. So, what does this amendment do? Let us look at it clause by clause. The first clause is that it adds a clause to Section 60, because Section 60 is the Section that vests power in the Review Committee. It says, "Without prejudice to the other provisions of the Act, any Review Committee constituted under sub-section 1, shall, on the application of any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act, and issue directions accordingly."

Now, Let us test this. Supposing, there is information that somebody has committed a crime under POTA. The matter is investigated; it is being investigated. Now, we have a certain period of time under this Act for that investigation to be completed. Now, naturally, a Review Committee, before the completion of investigation, Won't be able to exercise any powers, because the investigating authority will say that they have not completed the investigation yet. But after the investigation is complete, under Section 173(2) of the Code of Criminal Procedure, a report has to be filed with the Magistrate, and on that report the Magistrate takes cognisance. So, while the investigation is on, the Review Committee cannot interfere because the investigation authority will say that the investigation is not complete. And the moment it is complete, the investigating authority, under the law, is bound to file that report in the court, and the court will take cognisance. But once the court takes cognisance, the Review Committee cannot again come into the picture, because the Review Committee cannot interfere with the cognisance of court. So, will this Review Committee ever interfere? I would like to know that from the hon. Deputy Prime Minister. It cannot interfere with the course of investigation. It cannot interfere, as the hon. Deputy Prime Minister rightly said, as it is not vested with any judicial authority. The Review Committee is only a Review Committee. As the Deputy Prime Minister is quite aware of, many many people were incarcerated under preventive detention law during bad times. And which were the Boards that would review these matters? They are the advisory boards under Article 22 of the Constitution of India. These advisory boards have no judicial powers. Why? Because the matter never went to court, it was preventive detention. It was not for the accusation of an offence. It did not relate to the accused. It related to activities, which might result in the commission of offences. In that situation, the advisory boards would sit down, headed by a Chairman who would be a retired Judge or a sitting Judge. And then, they would decide matters, and they would direct the release of persons under the prevention of detention law. Therefore again, it was 'review of administrative action'.

Therefore, the only limited role that any Review Committee could have under an Act of this sort—this Act only prosecutes people, this is not an Act relating to preventive detention—the only authority that that a Review Committee can have, is before the matter goes to court, before

cognisance is taken. But before the matter goes to court, the matter is under investigation. So, how would a review committee ever say, 'please, release the man because there is no *prima facie* case!' This is the first amendment, namely that he can make an application for review whether there is a *prima facie* case for proceeding against the accused. That *prima facie* case can only be concluded upon the conclusion of the investigation. And under law, once there is an investigation, there is an obligation. I give you another example, Sir. This is very important. Take the case where the Review Committee says that there is no *prima facie* case. Now, a police officer, in charge of a police station, who is investigating an offence under POTA, is not bound by the Review Committee; he is bound by the Code of Criminal Procedure. He will say, "I have to file a report; my investigation is not complete and as and when investigation is complete under Section 173(2), I have to file a report with the Magistrate." You cannot intercede in that statutory process and if you cannot intercede in that statutory process, why is the Government bringing this Amendment in order to tell somebody, 'we are with you', when they know that they cannot do anything for him? Why is this necessary? It is the most ill-conceived piece of legislation. (*Time bell*) I will finish in a while. Then Sir, look at another clause—a direction under sub-section (4). Under sub-section (4), he can say that there is no *prima facie* case. Now, what does the other clause say? "Any direction issued under sub-section (4) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the police officer investigating the offence." So, the police officer investigating the offence will have to say, "I cannot be bound by the Code of Criminal Procedure; I will be bound by the action of the Review Committee." How can that be? Secondly, the direction of the Review Committee constituted by the State Government shall be binding on the State Government. This is not relevant. I will go to the next point.

Then, a more dangerous amendment has been passed, which is now part of the Amendment. This is Clause (7). It says, "Where any Review Committee constituted under sub-section (1) is of opinion that there is no *prima facie* case for proceeding against the accused and issues directions under sub-section (4), then the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction." How can that be 'that they will be deemed to have been withdrawn'? In



other words, the Review Committee is not a court and the investigation is not complete. So, how will the decision of the Review Committee be binding? The more serious issue, in any case, is that this does not apply to judicial proceedings once a Judge has taken cognisance. In the case of the gentleman they want to help, the matter is already in Court and the Judge has already taken cognisance. Then, in that case, in any case, it will not apply because a direction of the Review Committee, which is not vested with judicial power, cannot possibly impact on and be binding on a court. So, obviously this whole Amendment is entirely misconceived and the people for whom this Amendment has been passed are not going to be helped through the process of this Amendment. This is a very serious situation that has arisen. The Attorney General of this country in arguing the matter before the Supreme Court has interpreted Section 21 to mean that if a person makes a public speech giving moral support to a terrorist organisation-and that is now the ruling of the Court-that by itself does not amount to an offence under Section 21 of the Act. I just, with your permission, Sir, want to read a few sentences from that judgement. They say "if Parliament stipulates that the terrorist act itself has to be committed with criminal intention, can it be said that the person who professes, or invites support, or arranges manages or assists in arranging or managing a meetings or addressing a meeting has committed the offence if he does not have an intention or design to further the activities of a terrorist organisation?" Then are we going to have speeches in Tamil Nadu, in Kashmir, in the North-East and other parts of this country giving moral support to terrorist organisations? Are we going to say then that, no they can keep on giving those speeches and they are not liable under POTA? Is that the intent of the Government? Is this not supporting terrorism rather than doing away with it?... *(Interruptions)*... The actual impact of it is that people will make speeches, say, that there is a Supreme Court decision. We would like the Government to move the Supreme Court for a review of this. There is Supreme Court's decision saying that to moral support the terrorist organisations is not a terrorist act.

THE MINSTER OF STATE OF THE MINISTRY OF AGRO AND RURAL INDUSTRIES (SHRI SANGH PRIYA GAUTAM): This is not like this... *(Interruptions)*...

SHRI KAPIL SIBAL: This is what it is ...*(Interruptions)*...

SHRI L.K. ADVANI: I have read the whole judgement. The issue is *mens ria*, if there no intent. If there is not intent, then.... (*Interruptions*)...

SHRI KAPIL SIBAL: I agree.

SHRI L.K. ADVANI: Therefore, if there is no intent, I would think that what the Supreme Court has said, has been the greatest strength for these Review Committees.

SHRI KAPIL SIBAL: Sir, the Deputy Prime Minister is right. In other words, when you morally support a terrorist organisation, you can well argue that I have no intent to support it. I have no *mens ria*. I was morally supporting it.

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): अब आप समाप्त करिए।

SHRI KAPIL SIBAL: I was only morally supporting it. I have no *mens ria*.

उपसभाध्यक्ष (श्री रमाशंकर कौशिक): कृपया अब समाप्त करें।

श्री कपिल सिब्बल: मैं जवाब नहीं दे रहा हूँ। उन्होंने इंटरवीन किया इसलिए मैं सिर्फ बात को स्पष्ट कर रहा हूँ। मैं जवाब नहीं दे रहा। सही बात है कि मैन्स रिया जरूरी है। लेकिन मैन्स रिया साबित कैसे करोगे? अगर आप खुले आम, पब्लिकली किसी टैरिस्ट ऑरगनाइजेशन के बारे में बोलते हो, उसके पक्ष में बातें कहते हो तो क्या कोई कह सकता है कि आपका कोई इन्टेंट नहीं है? इसलिए इन्टेंट आप कैसे... (व्यवधान) :-.. No, no, I am not challenging anything. I am only interpreting it. I am only saying that this is a very dangerous trends and, in any event it is not concerned with this amendment, I am only inviting the attention of the Deputy Prime Minister that the Attorney General... (*Interruptions*)...

SHRI L.K. ADVANI: In substance, Kapilji says that the Supreme Court's judgement of the 16th is dangerous, not this particular amendment.

SHRI KAPIL SIBAL: No, no. That the interpretation given by the Attorney General ....(*Interruptions*)...

SHRI L.K. ADVANI: No, no. You have read out not from the Attorney General's speech. You have read out from the Supreme Court's judgement.

SHRI KAPIL SIBAL: No, Sir. I have said that the principle laid down as argued by the Attorney General to give moral support to the terrorist organisations without *mens rea* is okay. Fine. There is nothing more that I have to say beyond this.

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): माननीय श्री भारतेन्दु प्रकाश सिंहल।

SHRI KAPIL SIBAL: Sir, I was just concluding. I will take only one minute. Therefore, Sir, both from the point of view of the original enactment and the amendment, which does not seek to serve any purpose, and, if at all, this amendment, will create confusion. We in the Congress Party strongly oppose this amendment. We believe there is no necessity for this amendment, and, we lock, stock and barrel think that this law should be abolished and a more appropriate piece of legislation be enacted. Thank you.

SHRI B.P. SINGHAL (Uttar Pradesh): Thank you, Mr. Vice Chairman, Sir, I think I should first deal with the problem that Mr. Kapil Sibal has raised that when an investigation officer takes over a case, then, he has to complete the investigation, and, the Review Committee cannot interfere grating that—I think, he has read the original Act where it says, “That the State sanction will be necessary before a reprosecution can be launched. Now, in between the case being started, there is a room for sanction by the State Government, the aggrieved person can safely approach the Review Committee and the Review Committee can give its opinion. So, the infirmity that he was trying to point out is more imaginary than real.

It has been said that the law of the land is enough. Now, Sir, on this question, there is a wide difference between the normal crime and the crime that is being committed by the terrorists. Every terrorist action is seen as escalation of the terror. There is a programme for heightening the terror. There is no such programme in the normal crime. It is a very special kind of crime. Then, their handbooks, which have been recovered, reveal that their aims are widely different than those of the normal criminals. Normal criminals commit crime for personal gains. Here, they have political ramifications, and, more importantly, they want to attract international attention. Then, they indulge in one time destruction, and, on the other hand, even if a dacoit shoots, it is incidental; the destruction is incidental to the crime. Here, they commit crime for the sake of destruction, whether

it is life or it is property. Then, the normal criminal uses conventional weapons, whereas terrorists have got highly-sophisticated weapons and communication systems. It is a very different kind of enemy that we have to deal with here. We have to remember that 35,000 people and more than 5,000 security men have been killed by these actions. Now, the most important thing is that there is no inter-connection of one criminal act, in the normal crime, with another criminal act. In this case, the insurgent groups are inter connecting and provide moral help, physical help and even help with funds and weapons. And, the biggest point that I hold against comparing it with normal crime is that in normal crime, you are never short of witnesses. They are there; they appear before the court and justice is done. In this case, no witness dares to come up. There is complete scarcity of witnesses in the matter of terrorist acts. So, to compare that these people could be treated under the normal law, is extremely fallacious. Then, they say that this will lead to misuse. Yes, it was conceded right in the Act itself that it could lead to misuse and the concept of putting up the Review Committee was precisely to meet that threat. So far as the misuse of law is concerned, the misuse of law takes place in so many cases. For instance, the Customs Act, if a person is caught with some important hard disks, it is presumed that he will have to prove that these disks are not smuggled. The burden shifts on the accused. Likewise, there is the Prevention of Corruption Act. If somebody is having disproportionate wealth, it is presumed that he is guilty of corruption. The onus shifts on him to prove his innocence. There is the Foreigners Act. If a person says that he is not a foreigner, the onus of proving himself a citizen lies on the accused. Then, there is Income Tax Act and the Prevention of Sati Act. Then, even the Evidence Act makes certain presumptions. In section 113 (a), it makes presumptions that abetment of suicide should be presumed in the case of a married woman dying within seven years of her marriage. Then, there are various other presumptions. So, the onus is shifted on the accused. It is not unique to this particular Act, to this particular law. It is contained there in several Acts where it has to be done for the sake of arriving at justice, specially where there is a dearth of witnesses. I do not see any logic behind a law that is going to assuage and correct most oft-repeated allegation of misuse. They say that they oppose it. They have opposed it; they have been opposing it now. But, the Government of the same party has sent up persons under POTA in Mumbai. Now, there is double speech here. It is

all right if they have arrested persons under MOCCA. But, it is wrong if they have arrested persons under POTA. It is not for the first time that there is double speech. It is all right if a Prime Minister bribes some persons to break them up and prove majority on the Floor of Parliament. But, it is wrong for someone ...(*Interruptions*) I am coming to that ...(*Interruptions*)

SHRI DIPANKAR MUKHERJEE (West Bengal): Sir, he is ...(*Interruptions*). Sir, Amendment should be discussed ...(*Interruptions*)

SHRI B.P. SINGHAL: Someone or rather a CM would have done the same kind of trick, he is unworthy of even being talked to. Sir, the Bill is very simple. It just caters to the four things about the Review Committee. One, if a person feels that he has been wrongly implicated, he can approach the Review Committee and the Review Committee will conduct whatever inquiry is necessary and come to a finding about the *prima facie* correctness or wrongness about the implication of that man. The second aspect of the Review Committee comes where it relates to whole party being prescribed under the schedule. Now, if a party feels that it is wrongly prescribed, it can apply to the Government and if the Government refuses this, then, under section 19, the Review Committee can examine it, and if it finds the prescription is wrong, the Government will have to remove that name from that list. The third case is regarding interceptions. For interceptions to be done, prior permission of competent authority is necessary. If interceptions are done without taking prior permission of competent authority, of course, it is illegal. But if the competent authority grants the interception and it comes to the Review Committee, then the Committee can look into it. And if the interceptions in respect of this person are justified by this Committee, then alone those interceptions will be admissible as evidence. If, however, the Review Committee discovers that he was not the right person whose communications should have been intercepted, then in that case those interceptions, however taken, will never be admissible in the court of law. So it provides ground for the innocent to be protected altogether. This then is the finding as to the question that Mr. Sibal has raised that it is encroaching upon the role of the court. I was quite baffled to listen to that. If we were to think that this Committee's decision whether a case *prima facie* is right or wrong is encroaching upon the courts, well then, the Investigating Officer or even Police will be considered as encroaching upon the jurisdiction of the court.

Because they decide whether a *prima facie* case is made out or not. It is not encroaching upon the jurisdiction of the court. The courts, of course, are there to decide, but so far as this Amendment is concerned, it provides a method for the really innocent to approach the Review Committee. And if it makes out that there is *prima facie* no case against them, then its ruling will be binding on the Government. And it is at that stage that the Government will have to withdraw that case. With these words, I commend that this amendment may kindly be passed unanimously.

SHRI A. VIJAYARAGHAVAN (Kerala): Hon. Mr. Vice-Chairman, Sir, at the outset, I would seek an apology from the side of the Government for coming to this House with this amendment, because Rajya Sabha did not accept this piece of legislation earlier. We opposed it; we defeated it. You used your good majority in the Parliament to bulldoze this POTA on the people of this country. Now, after two years you are coming with a piece of amendments. It shows that whatever apprehensions we have raised about this legislation are proved right. In a way, you are also forced to agree that this piece of extraordinary legislation is bad in motivation, vindictive in nature and a weapon of political vendetta. Experience proves how some States used it. And that is a testimony to the misuse of POTO. Now, Sir, what the Government is claiming is this—"We are saving this country from whatever limitations are there." Could that be done by this small piece of a four-page amendment? Is it correct? It is a hydra-headed monster and after touching its tail, they are telling its teeth are removed. Is it the truth? It is not reality. Have you plugged every loophole of this enactment through this amendment? Is it possible? It is not at all possible. This amendment Bill will not serve the purpose. You have to repeal POTO and POTA in toto. That is the only way out to save the poor people of this country. Now, Sir, what are you doing? The Government is amending section 60 of the Act and is empowering the Central and the State Review Committees constituted under sub-section (1) of the Act to take appropriate action in the matter. Sir, what is the real intention behind this amendment? Now that the General Elections are coming, and since one of the leaders of the allies of the NDA Government has been in custody under POTA—he has been in jail for the last so many months—they want to release him from jail, and for this purpose, they want a way out. Otherwise also, some message has to be given. Not only that, some of the colleagues of the hon. Home Minister were under the threat of arrest. You were supposed to send the Attorney-General to give this explanation before the Supreme

Court, a reference to which has been made here. Why was he forced to give this explanation? He was forced to give this explanation to save the face of a Minister. Otherwise, he would have been behind the bars. That is the main reason behind this amendment.

So far as the Central Review Committee is concerned, what they are saying is, it is a safety valve. They have appointed this Committee only after one year of the enactment of POTA, that too, when a lot of hue and cry was raised in this House by us. We had raised the issue of misuse of power under POTA. Then only the Government decided to appoint the Review Committee. Sir, we are all aware as to what the powers of this Committee are, and how this Committee is going to behave. I am not sure about the powers of this Committee, because, this Committee would be appointed by the Government; it may be loyal to the Government also. The experience shows that some such Committees have worked according to the whims and fancies of the Government. That is what we have experienced about such Committees. I am not sure what the fate of this Committee would be. Has it got the power of a judicial Committee? Nobody knows about it.

Then, Sir, through this amendment, we are getting a chance to approach the Central Review Committee. Is it possible for the poor people to approach this Committee in Delhi? Those who are from the very poor families, is it possible for them to approach the Central Review Committee in respect of their individual grievances and complaints? It is very difficult for them to do so. The Review Committee would not be helpful to the poor people in the villages or in the States. Secondly, actually, the problem is related to section 21 of this Act. Is there any amendment to section 21 which power they are going to misuse? Why was the Attorney-General forced to give this explanation? It was on section 21. So, here, this amendment is not touching any bad aspects of section 21. So, Sir, this is not going to help the situation. Then, again, there is no time-limit in respect of resolving the issue.

[18 December, 2003] RAJYA SABHA

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): मगर आपके भाषण में टाइम लिमिट है।

SHRI A. VIJAYARAGHAVAN: But this is a very serious issue.

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): हां सीरियस है।

4.00 P.M.

SHRI A. VIJAYARAGHAVAN: Sir, I will take one or two minutes. The problem is, here also, no time limit has been prescribed. Meanwhile, the court may take a decision. The hon. Member, Shri Kapil Sibal, has referred to that matter. That is the situation. Again, Sir, there has been a misuse of this Act against the minorities. That is a serious issue. It was misused against the minorities, and nearly about 246 Muslims were arrested in Gujarat. This has been the experience. Is there any safeguard in this Bill, in this amendment, for prevention of its misuse? Does it mean that all the 17 State terrorists are moving here and there? Are they free? Seventeen States did not use it. Where did they use it? In Jharkhand! Is there any cross border terrorism in Jharkhand? That itself is misusing, Jharkhand! Against whom? School children! Is it not misusing? Jharkhand! Against whom? 81 years old man! Is it not misusing, Gujarat? Against minorities! Is it not misusing, Tamil Nadu? Everybody knows! Is it not misusing? Is it sufficient? ...(*Interruptions*)... Is it sufficient?

SHRI P.G. NARAYANAN (Tamil Nadu): There is no misuse in Tamil Nadu. ...(*Interruptions*)...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): आप बैठिए। ...(*Interruptions*)...

SHRI A. VIJAYARAGHAVAN: You will get a chance. ...(*Interruptions*)...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): आप अपनी बात कहिए।



SHRI A. VIJAYARAGHAVAN: You will get a chance. ...*(Interruptions)*...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): आप अपनी बात कहिए।

SHRI A. VIJAYARAGHAVAN: Is it sufficient? That is my question. Here, what are you doing? What are you telling us? "If somebody speaks against it, he is an anti-national! Arrest him under POTA!"—this is what the BJP spokesperson is telling us! "If you oppose POTA, you are anti-national!" Our nationalism, are you going to judge it according to this thing? This is what happened. ...*(Interruptions)*...

SHRI SANGH PRIYA GAUTAM: Sir, on a point of order, we are not discussing POTA. POTA has been passed by the Parliament: it has been confirmed by the Supreme Court and it has become the law of the land. ...*(Interruptions)*... We are discussing the amendment. He should confine himself to the amendment, not to speak of POTA. ...*(Interruptions)*... POTA has been passed by the Parliament. ...*(Interruptions)*...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): जुड़ा हुआ है।

SHRI DIPANKAR MUKHERJEE: Mantriji cannot intervene, Sir. ...*(Interruptions)*...

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): है, बैठिए। आप ने अपनी बात कह दी, लेकिन यह इस परिधि में आता है। ..*(व्यवधान)*... अब आप समाप्त करें।

SHRI A. VIJAYARAGHAVAN: Sir, I am just concluding it.

उपसभाध्यक्ष (श्री रमा शंकर कौशिक): यह बात सही है और यह बात भी सही है कि "पोटा" शब्द या "पोटा" एकट इस की परिधि में आता है। अब आप कृपया समाप्त करें। आप की पाटी के 5 मिनट हैं।

SHRI A. VIJAYARAGHAVAN: With only one sentence, I will complete it. Sir, why am I telling this to you? This was the version of the BJP spokesperson immediately after the voting took place in Lok Sabha! That is why I am telling this to you. I am not mentioning anything about the Act or the Amendment. This is what had happened immediately after the Bill was passed! We had an experience! What was it? There was POTO, and POTA; everything. This cross border terrorism happened in Jammu and Kashmir; then, Akshardham thing happened; attack on the Parliament took place; attacks on the Jammu and Kashmir Assembly took place! What does it prove? This is not sufficient to safeguard the country! This is not sufficient. You need some other thing. POTA is not sufficient. In such a situation. ...*(Interruptions)*...

(THE DEPUTY CHAIRMAN in the Chair.)

Madam, I would conclude by saying that this piece of amendment is only an eyewash; this piece of amendment is only to give an impression or some kind of patting to their allies, to those who are in jail. This piece of amendment will never help in preventing misuse of POTA. Therefore, you have to repeal it, and, at the earliest, it should be abrogated from the Statute Book. Thank you, Madam.

उपसभापति: श्री शाहिद सिद्दिकी। कायदे से आप के तीन मिनट हैं, आप तीन मिनट और ले लीजिए।

شری شاہد صدیقی ”اثر پر دیش“ : میڈم ڈپٹی چیئرمین، آنکھ واو کے مسئلے کو میں سیاست سے اوپر اٹھ کر اور پارٹی سیاست سے اوپر اٹھ کر دیکھنا چاہوں گا کیونکہ اس آنکھ واو سے ہمارا صرف سانج نہیں، ہماری راج مٹی نہیں بلکہ ہماری اترھ ویو سٹھا اور سبھی معاملوں کے لئے یہ ایک بڑا خطرہ بنا

ہوا ہے۔ میڈم، یہ سوال کسی ایک دھرم، ایک علاقے کا نہیں ہے، ہر دھرم کا آدمی اس سے جو جھ رہا ہے۔ لیکن آپ مجھے کہنے دیجئے کہ جس طرح سے ”پوٹا“ آیا اور جس طرح سے ”پوٹا“ پاس کیا گیا، اس وقت بھی ہمیں بہت صاف تھا، واضح تھا کہ یہ آنکھ داد سے لڑنے کا ہتھیار نہیں ہے اور یہ آنکھ داد سے لڑنے میں کامیاب بھی نہیں ہوا۔ میڈم، یہی وجہ ہے کہ ہم آج یہاں بیٹھ کر اس امینڈمنٹ پر بات کر رہے ہیں۔ اس کا استعمال راج نیٹی کے لئے الگ الگ راجیوں میں ہوا ہے، لیکن سب سے زیادہ اس کا استعمال کمزوروں کو دبانے کے لئے ہوا ہے۔ مظلوموں کو دبانے کے لئے ہوا، مائٹار نیٹز کو دبانے کے لئے ہوا، وہ لوگ جن کی آواز نہیں ہے ان کو دبانے کے لئے ہوا۔ ہم جھارکھنڈ میں دیکھیں تو وہاں پر غریب، مظلوم، ۱۲ سال کے بچے، ۱۳ سال کے بچے کو پوٹا میں بند کیا گیا۔ میں نے ابھی اتر پردیش میں ایک واقعہ پڑھا کہ ایک ۷ سال کے بچے کو، جس کے بڑے بھائی کو کوئی ماری گئی، جس کا دوسرا بھائی گھر چھوڑ کر بھاگنے پر مجبور ہو گیا، جس کے باپ کو ہارٹ ایٹک ہو گیا، اس کو پوٹا میں بند کر کے رکھا گیا۔ یہ کس ذیلی نیشن کے تحت ہوا؟ اس سے کیا خطرہ تھا؟ یہی حال گجرات میں ہم نے دیکھا مائٹار نیٹز کے ساتھ جو ہوا اور جیسا بہت سے ماننے سدیوں نے بھی یہاں پر بتایا۔ ان لوگوں کو کیا کوئی ریلیف اس آج کے آئے امینڈمنٹ سے ملنے والی ہے؟ میں ہوم منسٹر صاحب سے بہت صاف طور پر کہنا چاہوں گا کہ ان کو اس سے کوئی راحت ملنے والی نہیں ہے۔ کیوں کہ وہ جو ۷ سال کا بچہ ہے کیسے وہ ریویو کمیٹی کے پاس جائے گا، کس طرح سے وہ ریویو کمیٹی کو اپر دج کرے گا؟ جن کو گلسٹاٹ کہہ کر بند کیا گیا ہے، جو غریب ہیں، جو مزدور ہیں، جو مائٹار نیٹی کے لوگ ہیں ان کے پاس ریویو کمیٹی کے پاس جانے کے، اسے اپر دج کرنے کے، اپنی بات کہنے کے راستے نہیں ہیں، جب تک ایسے لوگ ریویو کمیٹی کے پاس نہیں پہنچتے، ان کے ساتھ کیسے انصاف ہوگا؟

میڈم، یہ بہت اچھا ہے، جو آپ نے امینڈمنٹ کیا۔ اسے میں پہلا قدم مانتا ہوں، آخری قدم نہیں مانتا۔ یہ جو صورتحال ہے اس کو ٹھیک کرنے کے لئے یہ پہلا قدم ہے، ویکم قدم ہے، لیکن اس

سے کچھ ہونے والا نہیں ہے۔ اس لئے کہ آپ نے اس میں کوئی ٹائم لمیٹ نہیں رکھا ہے۔ ہمارا تجربہ ہے کہ ریویو کمیٹی کے ساتھ اسٹیٹ گورنمنٹ اسے کوآپرٹ نہیں کرتی ہے۔ جو پیرس ریویو کمیٹی ڈیمانڈ کرتی ہے، وہ ان کے پاس وقت پر نہیں پہنچتے ہیں، جس میں ۶ مہینے، ۸ مہینے، سال بھر نکل جاتا ہے اور جیل میں سزا رہا ہے وہ سزا رہتا ہے۔ ریویو کمیٹی کے پاس پاور نہیں ہے کہ وہ اس میں کچھ فائل کرے۔ اس لئے میں آپ سے یہ ریکویسٹ کروں گا کہ اس میں کوئی ٹائم لمیٹ رکھئے کہ ۳ مہینے کے اندر اگر سارے ڈاکیومنٹس ریویو کمیٹی جیل کے پاس نہیں پہنچتے ہیں تو اس معاملے میں وہ اپنا فیصلہ لے سکتی ہے۔ ریویو کمیٹی اس بات سے بندھی نہیں ہونی چاہئے کہ اس کے پاس اگر ڈاکیومنٹس نہیں آئیں تو جو انویسٹی گیشن چل رہا ہے اس انویسٹی گیشن کے نام پر اس کو لٹکا یا جاتا رہے۔ یہ چیز ختم ہونی چاہئے۔

میدم، دوسری چیز یہ کہ جس کیس میں آپ کو یہ لگتا ہے، ریویو کمیٹی دیکھتی ہے کہ اس آدمی کے ساتھ انیائے ہوا ہے یا اس کے اوپر پوٹا نہیں لگنا چاہئے تھا تو اس کیس میں اس آدمی کے ساتھ کیا ہوگا؟ کیا اس کو کوئی کمپنیشن ملے گا؟ آپ نے تو اس کی زندگی برباد کر دی کیونکہ ہمارے سماج میں

جب کسی کے اوپر پوٹا لگتا ہے یا ڈاؤن لگتا ہے تو صرف وہی آدمی نہیں بلکہ اس کے خاندان کے لوگ، اس کے رشتہ دار، سب لوگ دیکٹی مائیز ہوتے ہیں۔ سب لوگوں کا کار بار برباد ہو جاتا ہے، ان کی زندگیاں برباد ہو جاتی ہیں۔ اس حالت میں آپ کو کمپنیشن کا پورا دھان رکھنا چاہئے تھا۔ اگر آپ کمپنیشن

نہیں دیتے ہیں تو میں سمجھتا ہوں کہ جسٹس نہیں ہوتا اور لوگوں کا تو یہ ماننا ہے کہ اگر جسٹس نہیں ہوتا تو آنکھ وا دہن پیتا ہے اور یہ نا انصافی کے گندے پانی میں پلتا ہے۔ آنکھ وا دے کے اس کیڑے کے لئے چاہے باہر کے لوگ ذمہ دار ہوں یا دوسری وجوہات ہوں، وجوہات کچھ بھی ہوں، مگر آنکھ وا دہل نہیں سکی گا اگر ہمارے یہاں انصاف ہوگا۔ اگر نا انصافی ہوگی تو ہم کھٹی کوشش کر لیں کتنے قانون بنالیں،

آنکھ داد سے ہم لڑ نہیں پائیں گے۔ مداخلت..... اس لئے اگر ہمیں آنکھ داد سے لڑنا ہے تو پہلے ہمیں نا انصافی سے لڑنا ہے، نا انصافی کو ہمیں ختم کرنا ہے۔..... مداخلت.....

میڈم، مجھے اپنے ساتھیوں سے یہ کہنا ہے کہ ہمارا پورا سودھان، ہمارا پورا سماج، ہمارا لوک تنزاسی کے اوپر ہے۔ مجھے فخر ہے اپنے ہندوستانی ہونے پر اور یہ فخر اس لئے ہے کہ ہندوستان کے اندر انصاف ہے، ہندوستان کے اندر لوک تنز ہے، ہندوستان کے اندر رول آف لاء ہے۔ ہم جب دیش سے باہر جاتے ہیں تو سرائٹا کر بات کرتے ہیں کہ ہمارے یہاں رول آف لاء ہے۔ اگر ہم یہاں انصاف نہیں دے سکتے یا جسٹس لوگوں کو وقت پر نہیں ملتا ہے، انجسٹس ہوتا ہے لوگوں کے ساتھ، تو پھر یہاں پر ہم بیچ بور ہے ہیں، ہم موقع دے رہے ہیں، ہم ماحول بنا رہے ہیں، اس لئے ہمیں آنکھ داد سے قانون بنا کر ہی نہیں بلکہ ہر فرنٹ پر لڑنا ہوگا۔ اس پر راج نیچی سے اوپر اٹھ کر چلنا ہوگا۔ اگر راج ٹیک طور سے ہم لڑنا چاہیں گے تو آنکھ داد سے ہم نہیں لڑ پائیں گے۔ شاید ہم آنکھ داد کو اور زیادہ طاقت پہنچائیں گے، اگر ہم راجسیتی کا اس میں استعمال کرتے رہیں گے۔

میڈم، اگلی بات میں یہ کہنا چاہوں گا کہ سیکشن ۲۱ کی یہاں پر بات کی گئی کی سیکشن ۲۱ کو ہمیں ڈفائن کرنا پڑے گا کیوں کہ اس کی جو انٹرپریٹیشن ہے وہ ایسی ہے، جس کو انٹیٹ گورنمنٹ لوز انٹرپریٹ کرتی آئی ہیں۔ جیسے ہم نے ٹائل ناڈو میں دیکھا اور اتر پردیش کے اندر بھی ہم نے دیکھا کہ ایک لجنس لچر کے کیس میں، اس کے چٹا کے کیس میں جو کہ ۸۰ سال کا بوڑھا ہے، ان کو بھی اس انٹرپریٹیشن کے تحت پوٹا میں بند کیا گیا۔ ایک بات، جو ہم نے نہیں کہی، ہمارے بھاجپا کے بہت ہی سینئر لیڈر نے اتر پردیش میں یہ بات کہی کہ شری ملان سنگھ جی اور ہمارے ایک ماننے سد سے امر سنگھ جی پر پوٹا لگانے کی بات ہو رہی تھی، تو ڈمرڈر انٹرپریٹ کر کے سیکشن ۲۱ کے تحت پوٹا لگانے کی بات ہو رہی تھی۔ اگر ایسا ہوتا تو بڑا اتر تھا ہوتا۔ اور اس کے جو نتائج ہوتے، کتنے خطرناک ہوتے۔ تو اس

کے لئے آپ کتنے ہی امینڈمنٹ کر لیجئے، اگر آپ سیکشن-۲۱ کو لمیٹ نہیں کریں گے، اس کو صاف طور پر ڈفائن نہیں کریں گے کہ ان حالات میں، اسپیکر پھویشن میں کوئی ایک آدمی یا کوئی

آرگنائزیشن میرسٹ ایکٹیوٹیز میں ملوث پائی جائے، میررزم کو سسٹمیٹک طریقے سے سپورٹ کرتی ہوئی..... وقت کی تھنٹی..... انٹرپرائزیشن کے طور پر نہیں بلکہ ایک سسٹمیٹک اگر کوئی میررزم کو یا میرسٹ آرگنائزیشن کو یا انڈوجول میرسٹ کو سپورٹ کرتا ہے، تبھی پونا اس پر لاگو ہو اس اس کے لئے سیکشن-۲۱ کو بہت کلیئر ڈفائن کرنا ہوگا اور جب تک ایسا نہیں ہوگا، ریلیف نہیں مل سکے گی۔

میں اپنی بات ختم کر دوں گی۔ آخری بات کہہ کر۔ یہاں پر کنسٹوٹین کنفیشن کے بارے میں بات کی گئی۔ ہم سب کو تجربہ ہے کہ ہمارے تھانے کس طرح سے کام کرتے ہیں، پولس کس طرح سے کام کرتی ہے اور کس طرح سے غریب آدمی کے ساتھ، کمزور آدمی کے ساتھ، مظلوم آدمی سے کنفیشنس لئے جاتے ہیں اور وہ کنفیشنس جب مار مار کر لئے جاتے ہیں اور دوسرے بہت سے طریقے سے کنفیشنس لئے جاتے ہیں اور اس کو جب پیش کر دیا جاتا ہے تو آپ کے ان کنفیشنس کو کورٹ کے اندر مانیتا ملتی ہے ان کو ایویڈنس مانا جاتا ہے تو پھر وہ آدمی بچا رہ اپنے کو ڈفینس کرنے کی پوزیشن میں نہیں رہ جاتا۔ یہ ہم نے بار بار دیکھا ہے، میں بہت مثالیں دے سکتا ہوں کہ کتنے کیسز میں ایسا ہوا ہے لیکن وقت نہیں ہے ہمارے پاس۔ تو یہ جو کنسٹوٹین کنفیشن کا معاملہ ہے، اس کو بھی ہمیں دیکھنا ہوگا اور بدلنا ہوگا۔

میں یہ کہنا چاہوں گا کہ پونا کو ریل کرنے کی ضرورت ہے اور اس کی جگہ ایک نیا قانون بنانے کی ضرورت ہے جو صحیح معنوں میں آئٹک واد سے نکلے سکے، آئٹک واد سے لڑ سکے، جو ایک راج نیٹک ہتھیار نہ رہے بلکہ واقعی آئٹک واد سے لڑنے کا ہتھیار بنے۔ یہ پونا آئٹک واد سے لڑنے کا ہتھیار نہیں ہے، یہ راج نیٹک ہتھیار ہے، اس کو راج نیٹک طور پر استعمال کیا گیا ہے اور مجھے دشوار ہے کہ آگے بھی اس کو راج نیٹک کے لئے استعمال کیا جائے گا۔ بہت بہت دھمکیہ واد۔

”فتم شد“

† श्री शाहिद सिद्दिकी (उत्तर प्रदेश): मैडम डिप्टी चेयरमैन, आतंकवाद के मसले को मैं सियासत से ऊपर उठकर और पार्टी सियासत से ऊपर उठकर देखना चाहूंगा क्योंकि इस आतंकवाद से हमारा सिर्फ समाज नहीं, हमारी राजनीति नहीं बल्कि हमारी अर्थव्यवस्था और सभी मामलों के लिए यह एक बड़ा खतरा बना हुआ है। मैडम, यह सवाल किसी एक धर्म, एक इलाके का नहीं है, हर धर्म का आदमी इस से जूझ रहा है। लेकिन आप मुझे कहने दीजिए कि जिस तरह से "पोटा" आया और जिस तरह से "पोटा" पास किया गया, उस वक्त भी हमें बहुत साफ था, वाजे था कि यह आतंकवाद से लड़ने का हथियार नहीं है और यह आतंकवाद से लड़ने में कामयाब भी नहीं हुआ। मैडम, यही वजह है कि हम आज यहां बैठकर इस अमेंडमेंट पर बात कर रहे हैं। इस का इस्तेमाल राजनीति के लिए अलग-अलग राज्यों में हुआ है, लेकिन सब से ज्यादा इस का इस्तेमाल कमजोरों को दबाने के लिए हुआ है। मजलूमों को दबाने के लिए हुआ, माइनोरिटीज को दबाने के लिए हुआ, वे लोग जिनकी आवाज नहीं है उनको दबाने के लिए हुआ। हम झारखंड में देखें तो वहां पर गरीब, मजलूम, 12 साल के बच्चे, 14 साल के बच्चे को पोटा में बंद किया गया। मैंने अभी उत्तर प्रदेश में एक वाकया पढ़ा कि एक 7 साल के बच्चे को, जिसके बड़े भाई को गोली मार दी गई, जिसका दूसरा भाई घर छोड़कर भागने पर मजबूर हो गया, जिसके बाप को हार्ट-अटैक हो गया, उसको पोटा में बंद करके रखा गया। यह किस डेफिनेशन के तहत हुआ? उससे क्या खतरा था? यही हाल गुजरात में हमने देखा माइनोरिटीज के साथ जो हुआ और जैसा बहुत से माननीय सदस्यों ने भी यहां पर बताया। इन लोगों को क्या कोई रिलीफ इस आज के आए अमेंडमेंट से मिलने वाली है? मैं होम मिनिस्टर साहब से बहुत साफ तौर पर कहना चाहूंगा कि उनको इससे कोई राहत मिलने वाली नहीं है। क्योंकि वह जो 7 साल का बच्चा है कैसे वह रिव्यू कमेटी के पास जाएगा, किस तरह से वह रिव्यू कमेटी को एप्रोच करेगा? जिनको नक्सलाइट कहकर बंद किया गया है, जो गरीब हैं, जो मजदूर हैं, जो माइनोरिटी के लोग हैं उनके पास रिव्यू कमेटी के पास जाने के, उसे एप्रोच करने के, अपनी बात कहने के रास्ते नहीं हैं। जब तक ऐसे लोग रिव्यू कमेटी के पास नहीं पहुंचते, उनके साथ कैसे इंसाफ होगा?

मैडम, यह बहुत अच्छा है, जो आपने अमेंडमेंट किया। इसे मैं पहला कदम मानता हूं, आखिरी कदम नहीं मानता। यह जो सूरतेहाल है इसको ठीक करने के लिए यह पहला कदम है, वेलकम कदम है, लेकिन इससे कुछ होने वाला नहीं है। इसलिए कि आपने इसमें कोई टाइम-लिमिट नहीं रखा है। हमारा एक्सपीरिएंस है रिव्यू कमेटी के साथ कि स्टेट गवर्नमेंट उसे कोआपरेट नहीं करती है। जो पेपर्स रिव्यू कमेटी डिमांड करती है, वे उनके पास वक्त पर नहीं पहुंचते हैं, जिसमें 6 महीने, 8 महीने, साल भर निकल जाता है और जो जेल में सड़ रहा है वह सड़ता रहता है। रिव्यू कमेटी के पास पावर नहीं है कि वह इसमें कुछ फाइनल करे। इसलिए मैं आपसे यह रिक्वेस्ट करूंगा कि इसमें कोई टाइम लिमिट रखिए कि 3 महीने के अंदर अगर सारे डॉक्यूमेंट्स रिव्यू कमेटी पैनल के पास

नहीं पहुंचते हैं तो उस मामले में वह अपना फैसला ले सकती है। रिव्यू कमेटी इस बात से बंधी नहीं होनी चाहिए कि उसके पास अगर डॉक्यूमेंट्स नहीं आए तो जो इन्वेस्टीगेशन चल रहा है उस इन्वेस्टीगेशन के नाम पर उसको लटकाया जाता रहे। यह चीज खत्म होनी चाहिए।

मैडम, दूसरी चीज यह कि जिस केस में आपको यह लगता है, रिव्यू कमेटी देखती है कि इस आदमी के साथ अन्याय हुआ है या इसके ऊपर पोटा नहीं लगना चाहिए था तो उस केस में उस आदमी के साथ क्या होगा? क्या उसको कोई कम्पनसेशन मिलेगा? आपने तो उसकी जिंदगी बर्बाद कर दी क्योंकि हमारे समाज में जब किसी के ऊपर पोटा लगता है या टाडा लगता है तो सिर्फ वही आदमी नहीं बल्कि उसके खानदान के लोग, उसके रिश्तेदार, सब लोग विक्टीमाइज होते हैं। सब लोगों का कारोबार बर्बाद हो जाता है, उनकी जिंदगियां बर्बाद हो जाती हैं। इस हालत में आपको कम्पनसेशन का प्रावधान रखना चाहिए था। अगर आप कम्पनसेशन नहीं देते हैं तो मैं समझता हूं कि जस्टिस नहीं होता और लोगों का तो यह मानना है कि अगर जस्टिस नहीं होता तो आतंकवाद पनपता है और यह नाइंसाफी के गंदे पानी में पलता है आतंकवाद के इस कीड़े के लिए चाहे बाहर के लोग जिम्मेदार हों या दूसरे कारण हों, कारण कुछ भी हों, मगर आतंकवाद पल नहीं सकेगा अगर हमारे यहां इंसफ होगा। अगर नाइंसाफी होगी तो हम कितनी कोशिश कर लें, कितने कानून बना लें, आतंकवाद से हम लड़ नहीं पाएंगे। ... (व्यवधान) ... इसलिए अगर हमें आतंकवाद से लड़ना है तो पहले हमें नाइंसाफी से लड़ना है, नाइंसाफी को हमें खत्म करना है। ... (व्यवधान)

मैडम, मुझे अपने साथियों से यह कहना है कि हमारा पूरा संविधान, हमारा पूरा समाज, हमारा लोकतंत्र इसी के ऊपर है। मुझे फख है अपने हिंदुस्तानी होने पर और यह फख इसलिए है कि हिंदुस्तान के अंदर इंसफ है, हिंदुस्तान के अंदर लोकतंत्र है, हिंदुस्तान के अंदर रूल ऑफ ला है। हम जब देश से बाहर जाते हैं तो सिर उठाकर बात करते हैं कि हमारे यहां रूल ऑफ ला है। अब अगर हम यहां इंसफ नहीं दे सकते या जस्टिस लोगों को वक्त पर नहीं मिलता है, इनजस्टिस होता है लोगों के साथ, तो फिर यहां पर हम बीज बो रहे हैं, हम मौका दे रहे हैं, हम माहौल बना रहे हैं, इसलिए हमें आतंकवाद से कानून बनाकर ही नहीं बल्कि हर फ्रंट पर लड़ना होगा। इस पर राजनीति से ऊपर उठकर चलना होगा। अगर राजनैतिक तौर से हम लड़ना चाहेंगे तो आतंकवाद से हम नहीं लड़ पाएंगे। शायद हम आतंकवाद को और ज्यादा ताकत पहुंचाएंगे, अगर हम राजनीति का इसमें इस्तेमाल करते रहेंगे।

मैडम, अगली बात मैं यह कहना चाहूंगा कि सैक्शन 21 की यहां पर बात की गई कि सैक्शन 21 को हमें डिफाइन करना पड़ेगा क्योंकि इसकी जो इंटरप्रिटेशन है वह ऐसी है, जिसको स्टेट गवर्नमेंट लूज इंटरप्रेट करती आई है। जैसे हमने तमिलनाडु में देखा। इधर उत्तर प्रदेश के अंदर भी हमने देखा कि एक लेजिस्लेचर के केस में, उसके पिता के केस में, 80 साल का बूढ़ा, उनको भी



इस इंटरप्रिटेशन के तहत पोटा में बंद किया गया। एक बात, जो हमने नहीं कही, हमारे भाजपा के बहुत ही वरिष्ठ नेता ने उत्तर प्रदेश में यह बात कही कि श्री मुलायम सिंह जी और हमारे एक माननीय सदस्य अमर सिंह जी पर पोटा लगाने की बात हो रही थी, तोड़-मरोड़ कर इंटरप्रेट करके सैक्शन 21 के तहत पोटा लगाने की बात हो रही थी। अगर ऐसा होता तो बड़ा अनर्थ होता और उसके जो नतायज होते, कितने खतरनाक होते। तो इसके लिए आप कितने ही अमेंडमेंट कर लीजिए, अगर आप सैक्शन 21 को लिमिट नहीं करेंगे, उसको क्लीअरली डिफाइन नहीं करेंगे कि इन हालात में, स्पेसिफिक सिचुएशन में कोई एक आदमी या कोई ऑरगेनाइजेशन टेरोरिस्ट ऐक्टिविटीज में मुलव्विज पाई जाए, टेरोरिज्म को सिस्टेमेटिक तरीके से सपोर्ट करती हुई, ... (समय की घंटी)... इंटरप्रिटेशन के तौर पर नहीं बल्कि एक सिस्टेमेटिकली अगर कोई टेरोरिज्म को या टेरोरिस्ट आरगेनाइजेशन को या इंडिविजुअल टेरोरिस्ट को सपोर्ट करता है, तभी पोटा उस पर लागू हो और इसके लिए सैक्शन 21 को बहुत क्लीअरली डिफाइन करना होगा और जब तक ऐसा नहीं होगा, रिलीफ नहीं मिल सकेगा।

मैं अपनी बात खत्म करूंगा, आखिरी बात कहकर। यहां पर कस्टोडियन कन्फैशन के बारे में बात की गई। हम सबको तजुर्बा है कि हमारे थाने किस तरह से काम करते हैं, पुलिस किस तरह से काम करती है और किस तरह से गरीब आदमी के साथ, कमजोर आदमी के साथ, मज़लूम आदमी से कन्फैशंस लिए जाते हैं और वे कन्फैशंस जब मार-मार कर लिए जाते हैं और दूसरे बहुत से तरीके से कन्फैशंस लिए जाते हैं और उसको जब पेश कर दिया जाता है, तो आपके उन कन्फैशंस को कोर्ट के अंदर मान्यता मिलती है, उनको ऐविडेंस माना जाता है तो फिर वह आदमी बेचारा अपने को डिफेंड करने की पोजीशन में नहीं रह जाता। यह हमने बार-बार देखा है, मैं बहुत एग्जाम्पल दे सकता हूँ कि कितने केसिस में ऐसा हुआ है लेकिन समय नहीं है हमारे पास। तो यह जो कस्टोडियन कन्फैशन का मामला है, उसको भी हमें देखना होगा और बदलना होगा।

मैं यह कहना चाहूंगा कि पोटा को रिपील करने की जरूरत है और उसकी जगह एक नया कानून बनाने की जरूरत है जो सही मायनों में आतंकवाद से टक्कर ले सके, आतंकवाद से लड़ सके, जो एक राजनैतिक हथियार न रहे बल्कि वाकई आतंकवाद से लड़ने का हथियार बने। यह पोटा आतंकवाद से लड़ने का हथियार नहीं है, यह राजनीतिक हथियार है, इसको राजनैतिक तौर पर इस्तेमाल किया गया है और मुझे विश्वास है कि आगे भी इसको राजनीति के लिए इस्तेमाल किया जाएगा। बहुत-बहुत धन्यवाद।

DR. V. MAITREYAN (Tamil Nadu): Madam Deputy Chairperson, on behalf of the AIADMK Party, I rise to oppose the Prevention of Terrorism (Amendment) Bill, 2003. My friends from the Congress Party and the Communist Party have also opposed it. But there are two fundamental

differences in the opposition. While my friends have opposed both the original POTA as well as the present amendment Bill, we from the AIADMK, had given our whole hearted support to the original Prevention of Terrorism Bill and today we are forced to oppose this Bill. The second difference is that while they have been approaching this issue with a legal eye, we essentially see this Bill as a political Bill with a legal coat. That is why we oppose this Bill. We strongly oppose this Bill because if this Bill is passed, it will make a mockery of the original Act itself. The proposed amendment Bill confers statutory powers on the Central and the State Review Committees to intervene and interfere with the functioning of the Special Courts constituted by the State Governments under POTA and to call for records of the ongoing trials. This, we feel, will lead to a situation where the judicial process itself will be questioned by the Executive.

उपसभापति महोदया, सालों पहले मैं जब भारतीय जनता पार्टी में था, तो वहां पर अभ्यास शिविर की पद्धति हुआ करती थी—ट्रेनिंग कैम्प। ऐसा ही एक ट्रेनिंग कैम्प 1997 में सभी राज्यों के पदाधिकारियों के लिए झिंझोली में हुआ था। हर ट्रेनिंग कैम्प के लिए एक कैम्प सांग होता था। उस गीत की कुछ लाइन्स मुझे अब याद आ रही हैं:-

“संगठन करे चलो, सुपथ पर बढ़े चलो  
भला हो जिसमें देश का, वह काम सब किए चलो  
देश का ही भाग्य अपना भाग्य है यह सोच लो,  
भला हो जिसमें देश का, वह काम सब किए चलो।”

लेकिन आज माननीय उप प्रधानमंत्री जी जो यह अमेंडमेंट बिल लाए हैं, उसमें न ही देश की भलाई है और न ही देश का भाग्य है।

Nine months ago, when the Prevention of Terrorism Bill was brought here by the Deputy Prime Minister, we gave our whole hearted support to the Bill.

प्रो० राम देव भंडारी (बिहार): बहुत अच्छी हिन्दी बोल रहे थे।

उपसभापति: जी, बहुत अच्छी हिन्दी बोल रहे थे।

DR. V. MAITREYAN: I am all the more pained today because this amendment Bill has also been brought by the hon. Deputy Prime Minister

for whom we have got great respect and regard. मैं सरकार को चार्ज करना चाहता हूँ कि गठबंधन के दबाव में आकर आप कानून में यह संशोधन लाए हैं। नौ महीने के अंदर आप इस प्रकार दो बार दबाव में आ चुके हैं। मार्च में ऐफिडेविट का मामला था, अब अमेंडमेंट का मामला है। The founder of my party, Puratchi Thalaivar, MGR, was a legendary figure in the Tamil cine world. His films and film songs always used to have a specific message and a special significance. In one of his all-time hit film songs, MGR said, "If one commits a mistake and does it intentionally and knowingly, I will not spare him albeit he is a God." We follow this dictum and that is why we oppose this Bill. And, as far as the AIADMK is concerned, आतंकवाद के विरोध में यह जो युद्ध लड़ा जाता है, प्रधानमंत्री श्री अटल जी की कविता में मैं बताता हूँ—

“इसमें दांव पर सब कुछ लगा है,  
रुक नहीं सकते।  
टूट सकते हैं,  
मगर हम झुक नहीं सकते।”

A lot of allegations are being made in this House as well as elsewhere that POTA is being misused in Tamil Nadu; that a Member of Parliament has been booked under POTA—even some Members raised the issue here—and that we have essentially used this act out of political vindictiveness. I wish to make one point very clear to this House and reiterate that the hon. Member of Parliament, whose party could not win and cannot at any point of time even a single Assembly seat anywhere in Tamil Nadu, can never ever even be a remote match or shadow of a match to our hon. Chief Minister of Tamil Nadu, Madam Jayalalithaji. So, to attribute motives for this act of ours that it is out of political vindictiveness is something which is very hard to digest for anybody. If at all we wanted to be politically vindictive and use this POTA against our political opponents, that Member of Parliament would not have been our target. On the contrary, there are very many giants in our State against whom we could have used it out of political vindictiveness. The very fact that we have used it only against a person on whom *prima facie* cases have been found shows that this act has been applied correctly and applied justifiably. The Designated Courts have confirmed *prime facie* evidence against various people who have been booked under POTA in Tamil Nadu, and even the Supreme Court has rejected the bail applications

of some of them. Now, is it the intention of the Central Government that the Central Review Committee should interfere in such cases and nullify the orders of the Supreme Court? There is no justification for conferring statutory powers to the Central Review Committee to sit in judgement over the functioning of the Special Courts constituted by the State Government under the POTA. This would amount to interfering with the due process of law and the proceedings of the Special Courts which have been constituted.

Another allegation made against us is that the hon. Member of Parliament who has been booked under POTA is a very senior Parliamentarian with more than 20 years of Parliamentary experience. The same issue was raised in the other House also as to how such a Parliamentarian could be a terrorist, how he could support terrorism. I would like to mention that just because a person happens to be a Member of Parliament, the Government of the day cannot keep its eyes closed when he openly supports a banned terrorist organisation and flouts the law of the land. I would like to bring to the notice of this House that it is the very same Parliamentarian who was, a decade ago, thrown out of the DMK by the DMK chief. On what charges? It was on the charges of allegedly plotting to kill the DMK Chief in connivance with the LTTE. And it was this very same Parliamentarian who, 15 years ago, went to Sri Lanka...*(Interruptions)* I am not mentioning anybody's name. I am only justifying and substantiating my argument. He went to Sri Lanka illegally in a clandestine manner in a boat without the knowledge of then Government of Tamil Nadu and the then Government of India. Now, I only draw the attention of the House that just because a person happens to be a Member of Parliament, it does not give immunity to him to do anything and to do whatever he wants. I would like to point out to the hon. Home Minister what might happen after today's Bill is passed—a similar situation that arose in the case of TADA. I refer to the Supreme Court judgment in the Writ Petition of 1995 in the R. M. Tiwari Vs. the State of Delhi and Others case. In the background of that, in the Kartar Singh Vs. the State of Punjab case, the Constitution bench of the Supreme Court in 1994, while upholding the constitutional validity of TADA, 1987, except Section 22, had suggested the formation of the Review Committees to prevent the possible misuse of TADA. Accordingly, the Review Committees were constituted by the Government in various States, including Delhi. The

Delhi Review Committee reviewed all the prosecutions under TADA and recommended to the Delhi Government and, in turn, the Special Additional Public Prosecutor in the designated court filed for the withdrawal of the charges under TADA in all the cases pending before the court. The reason attributed for the withdrawal of these charges under TADA by the Public Prosecutor was the recommendations of the High-Powered Committee. The designated court dismissed those applications taking the view that administrative decisions could not interfere with the working of the judicial system, that a mere administrative decision taken on the basis of a recommendation of the Review Committee was not sufficient to permit the withdrawal of criminal prosecution pending in a court of law. SLP was filed in the Supreme Court; PIL was filed in the Supreme Court praying for the direction to the designated court to permit withdrawal of all prosecutions recommended by the Review Committee. In its verdict, the Supreme Court said that the designated court was right in taking the view that withdrawal from prosecution was not be permitted mechanically by the court on an application for that purpose made by the Public Prosecutor; it is equally clear that the Public Prosecutor also has not be act mechanically in the discharge of his statutory functions under Section 321 of Cr. P. C. on such a recommendation being made by the Review Committee and that it is his duty to satisfy himself that it is a fit case for withdrawal before he seeks the consent of the court for that purpose.

Does the Government want such a piquant situation to arise in the near future? I am afraid that the Government has either not taken notice of article 50 of the Constitution of India or ever accepted the principle of separation of the Executive and Judiciary.

अन्त में मैं इतना ही कहना चाहूँगा कि—वे सलीबों के करीब आए थे तो हमको कायदे-कानून समझाने लगे। आडवाणी जी, अब तो एन्डोर्फ के तालाब का पानी बदल दो, यह कमल के फूल कुम्हलाने लगे। धैंक्यू।

THE DEPUTY CHAIRMAN: I think if he could speak in Hindi, we should start learning Tamil.

श्री संजय निरुपम (महाराष्ट्र): तमिलनाडु में हिन्दी को स्वीकार किया जाने लगा है।... (अवधान) यह बहुत ही हर्ष की बात है।

DR. V. MAITREYAN: I know Hindi. I spoke in Hindi. But when it

comes to the question of an ordinary citizen from Tamil Nadu who does not know Hindi, I will be the first person to raise his voice also here.

THE DEPUTY CHAIRMAN: We should learn Tamil. I did not ask you to learn Hindi; you already know that. I only know 'Vanakkam'. Beyond that, I don't know anything. Dr. Chandan Mitra. Is it your maiden speech?

AN HON. MEMBER: No.

THE DEPUTY CHAIRMAN: Then, he does not have any protection of the Chair to go on speaking.

DR. CHANDAN MITRA (Nominated): It is my maiden speech, Madam Deputy Chairperson.

माननीय उपसभापति महोदया, हां, यह सही है कि इस सदन में मैं पहली बार खड़ा हूँ भाषण के लिए। अभी जो संशोधन विधेयक लाया गया है पोटा के मामले में, मैं उसका समर्थन करने के लिए खड़ा हुआ हूँ। इस बारे में बहुत सारी बातें कही जा चुकी हैं और मैं अपनी बात बहुत संक्षेप में कहूँगा क्योंकि मेरा जो मकसद है और जो मैं कहना चाहता हूँ वह एक छोटी सी बात है और मैं समझता हूँ कि यह जो प्रावधान अभी लाया गया है पोटा का जो दुरुपयोग हुआ है या उसके बारे में दुरुपयोग के जो इल्जाम लग रहे हैं उसको समाप्त करने की दिशा में यह एक बहुत अच्छा कदम है। लेकिन आतंकवाद के जो पहलू जिस तरीके से बढ़ रहे हैं और भारत तो इसके साथ 20 साल से जूझ रहा है। लेकिन अब पूरी दुनिया को यह मालूम हो चला है और पूरी दुनिया इसके बारे में जागरूक है कि किस तरह से पूरी दुनिया में आतंकवाद फैल रहा है और आतंकवाद से जूझने के लिए पहले जो कानून बने थे वे कमजोर पड़ गये हैं और नये कानून बनाने की जरूरत है। इस जरूरत को अमेरिका ने महसूस किया है, ब्रिटेन ने महसूस किया है और बाकी के देश भी महसूस कर रहे हैं।

मैं समझता हूँ कि भारत ने पहले भी इसको महसूस किया है जिसके लिए पहले टाडा कानून पारित हुआ था और अब पोटा लाया गया है। अब टाडा के अनुभव को ही हम देखें तो उसमें ज्यादातर दुरुपयोग के ही आरोप लगते रहे हैं। लेकिन यह भी सही है कि पंजाब में जब आतंकवाद फैला हुआ था और दहशत का माहौल था उस समय टाडा के कनविक्शन के रेट बहुत कम थे। मेरा कहने का मतलब यह है कि ज्यादातर राज्यों में खासकर ऐसे कानून का मिसयूज ही ज्यादा हुआ है और इसका जो सही उपयोग होना चाहिए था शायद उतना नहीं हो पाया है जिस मकसद से ऐसे कानून लाये गये। इसीलिए उपसभापति महोदया, मैं सरकार से, उप प्रधानमंत्री, गृह मंत्री जी से यह कहना चाहूँगा, यह निवेदन करना चाहूँगा कि जो संशोधन आप इसमें ला रहे हैं, यह बहुत अच्छी बात है। लेकिन इसके आगे भी सोचना चाहिए कि आतंकवाद को खत्म करने के लिए और इसके सारे पहलुओं के साथ डील करने के लिए और क्या-क्या जरूरत है। मैं समझता हूँ कि इसके लिए

फेडरल क्राइम जैसी एक कैटेगरी हमारी कानून-व्यवस्था में लानी चाहिए। संघीय अपराध जो इस तरीके से हो कि कुछ अपराधों को क्लासिफाई कर दिया जाए कि ये संघीय अपराध हैं, फेडरल क्राइम्स हैं और जिनके ऊपर स्टेट्स को एकदम निरंकुश अधिकार नहीं हो उसको लागू करने का।

आतंकवाद एक फेडरल क्राइम है। आतंकवाद किसी एक प्रांत, प्रदेश तक सीमित नहीं है। अभी-अभी किसी सदस्य ने क्रास बार्डर टेरिज्म की बात कही। क्रास बार्डर टेरिज्म न सिर्फ भारत और पाकिस्तान के बार्डर तक सीमित है बल्कि हम देख रहे हैं कि ऐसा कई राज्यों में हो रहा है। आंध्र प्रदेश से लेकर छत्तीसगढ़, छत्तीसगढ़ से लेकर झारखंड, झारखंड से बिहार और बिहार से चलकर अंतर्राष्ट्रीय सीमा पार कर के नेपाल तक यह फैल रहा है। ऐसी सिचुएशन को डील करने के लिए जरूरी है कि टेरिज्म को एक फेडरल क्राइम का दर्जा दिया जाये और फेडरल एजेंसीज के माध्यम से ही इसके साथ जूझा जाये। अमेरिका में फेडरल क्राइम की कैटेगरी है और कुछ साल पहले टेरिज्म को इस फेडरल क्राइम के दायरे में लाया गया है। मैं समझता हूँ कि यही एक तरीका है जिससे हम दो चीज हासिल कर सकते हैं। एक तो कई राज्यों में बार-बार यह कहा जाता है कि इसका मिसयूज हो रहा है और राजनीतिक कारणों से, राजनीतिक उद्देश्यों से और राजनीतिक विरोधियों को सबक सिखाने के लिए इस्तेमाल हो रहा है, गलत इस्तेमाल हो रहा है। ऐसी स्थिति आगे नहीं आयेगी। एक बार फेडरल क्राइम के तहत इसको अगर नोटिफाई कर दिया जाये और फेडरल एजेंसीज को इसको डील करने की इजाजत दी जाये तो मैं समझता हूँ कि इस पूरे आतंकवाद की समस्या से जूझने में हमें और आसानी होगी।

उपसभापति महोदया, मैं इससे अधिक नहीं कहना चाहता हूँ। मैं सिर्फ यही कहना चाहता हूँ कि यह संशोधन विधेयक बहुत जरूरी है। रिव्यू करने का जो प्रावधान रखा गया है और इसमें भी यह कहा गया है कि सेंट्रल रिव्यू कमेटी का जो निर्णय होगा वही स्टेट रिव्यू कमेटी के निर्णय पर हावी होगा, इसलिए मैं समझता हूँ कि जो बात मैं कहना चाह रहा हूँ वह बात बहुत मजबूत होती है कि इस पूरे मामले को, आतंकवाद से जूझने की जो बात है इसको एक केन्द्रीय तरीके से और सेंट्रलाइज और फेडरल व्यु पाइंट से, दृष्टिकोण से हमें देखना है मैं यही अनुरोध आपके माध्यम से सरकार से कराना चाहूंगा कि वह इसके बारे में सोचे और आगे शायद संशोधन की कभी जरूरत हो तो फेडरल क्राइम और टेरिज्म को एक राष्ट्रीय समस्या मानकर इसको एक राष्ट्रीय स्तर पर इसके साथ जूझने के प्रबंध करे। धन्यवाद।

प्रो० राम देव भंडारी: धन्यवाद महोदया, हमारी पार्टी राष्ट्रीय जनता दल और हमारे नेता श्री लालू प्रसाद जी का प्रारम्भ से ही इस पोटा कानून से विरोध रहा है। मेरा मानना है, हमारी पार्टी का मानना है कि पहले ही इस देश में कई ऐसे कानून हैं जिनके द्वारा बड़े-बड़े अपराधों से निपटा जा सकता है। इस देश का कानून बड़े-बड़े अपराधियों और बड़े-बड़े अपराधों से निपटने के लिए सक्षम है। दूसरी बात यह है कि इस कानून को हम भारतीय संविधान की मान्यताओं के विपरीत

मानते हैं और जो लोक-भावनाएं हैं, उनके भी प्रतिकूल मानते हैं। हम मानते हैं कि इससे जो नागरिकों के मौलिक अधिकार हैं, उनका हनन होता है हम शुरू से ही इस बात को कह रहे हैं कि पोटा कानून का भारी दुरुपयोग होगा इसलिए जब भी हमें अवसर मिला, हमने लोक सभा में, राज्य सभा में और जो ज्वाइंट सेशन हुआ था, उसमें इस कानून का विरोध किया था। महोदया, गृह मंत्री जी ने - जब यह पोटा कानून पास हो रहा था और कई दलों को यह आशंका थी कि इस कानून का भारी दुरुपयोग होगा - आश्वासन दिया था कि इस कानून का दुरुपयोग नहीं होगा और इस कानून का जब भी उपयोग किया जाएगा, वह टैरिज्म के खिलाफ, टैरिस्ट्स के खिलाफ किया जाएगा। मगर महोदय, जैसाकि दूसरे माननीय सदस्यों ने भी कहा है कि इस कानून का भारी दुरुपयोग हो रहा है। मैं माननीय गृह मंत्री जी से जानना चाहता हूँ कि उनके ही घटक दल के एक नेता पोटा कानून के तहत जेल में बंद है। क्या वे टैरिस्ट हैं कि उन्हें पोटा कानून के अंदर जेल में बंद किया गया है? गुजरात में ढाई सौ के आस-पास जो माइनारिटीज के नागरिक थे, उन्हें जेल में पोटा के अंतर्गत बंद किया गया। क्या वे टैरिस्ट्स थे? वही दूसरी ओर बजरंग दल के, विश्व हिन्दू परिषद् के, आरएसएस के लोगों पर कोई पोटा की कार्यवाही नहीं हुई। हम पोटा के खिलाफ हैं। एक तरफ उन्होंने माइनारिटीज के खिलाफ पोटा लगाया है, दूसरी ओर अगर न्याय होता तो इन लोगों के खिलाफ भी - विश्व हिन्दू परिषद्, बजरंग इल और आरएसएस के लोगों के खिलाफ - जिन्होंने साम्प्रदायिकता का नंगा नाच किया, उनके खिलाफ भी पोटा लगना चाहिए था। महोदया, झारखंड में 12 बरस का बच्चा, 80 बरस का बूढ़ा - क्या वे टैरिस्ट हैं? उनके खिलाफ आप पोटा कानून लगा रहे हैं। महोदया, मेरी फिंगर गलत हो सकती है, देश में अभी भी 800 से अधिक लोग पोटा में बंद हैं। क्या वे सभी टैरिस्ट हैं? मैं यह कहना चाहता हूँ कि इस कानून का भारी दुरुपयोग हो रहा है। अगर इस कानून का कारगर उपयोग करना है तो बहुत सारे लोग हैं\* साहब हैं,\* साहब हैं जो पूरे देश में धार्मिक और साम्प्रदायिक उन्माद फैला रहे हैं...(व्यवधान)... ये साहब नहीं। ये तो हमारे भाई हैं, हमारे सदन के सदस्य हैं।

श्री संजय निरूपम : वे उनके भाई हैं।

प्रो० राम देव भंडारी : वे लोग देश में घूम-घूमकर जो साम्प्रदायिक सद्भावना है, जो देश की एकता और अखंडता है, उसे तोड़ रहे हैं...

श्री एस०एस० अहलुवालिया (झारखंड) : क्या ऐसे लोगों का नाम ले सकते हैं जो इस सदन में आकर अपना वक्तव्य न दे सकें।...(व्यवधान)...

प्रो० राम देव भंडारी : वे कहां से आएंगे इस सदन में? आप ले आइए ना, आप तो ला रहे हैं ऐसे लोगों को...(व्यवधान)... ले आइए। आप ले आईं उनको। कौन रोक रहा है आपको लाने से?...(व्यवधान)...

\*Not recorder.



श्री एस् एस् अहलुवालिया: मैडम, क्या ऐसे लोगों का नाम लिया जा सकता है? अगर आप परमिट कर दें...(व्यवधान)...

प्रो० राम देव भंडारी : एक न एक दिन तो आप लाएंगे ही उनको ...(व्यवधान)...

श्री एस् एस् अहलुवालिया: भंडारी जी।

प्रो० राम देव भंडारी: हां जी।

श्री एस् एस् अहलुवालिया: अगर मैं नाम लेना शुरू करूँ तो मैं सहस्रनाम पढ़ना शुरू कर दूँ यहां। ...(व्यवधान)...

प्रो० राम देव भंडारी: आप तो कभी इधर का नाम लेते हैं, कभी उधर का नाम लेते हैं। आपका क्या ठिकाना है? ...(व्यवधान).... अभी यहां बैठे हैं, कल वहां जाकर बैठ जाएंगे। कल यहां बैठे थे, आज वहां बैठे हैं। आपका कोई ठीक नहीं है। ऐंटी डिफेंक्शन ला तो आप पर लगना चाहिए था, क्यों नहीं लगा पता नहीं। ...(व्यवधान)...

श्री एस् एस् अहलुवालिया: मैडम, मैंने पार्टी का सदस्य रहते हुए दल नहीं बदला था। ... (व्यवधान)...

प्रो० राम देव भंडारी: आप आज यहां हैं, कल फिर यहां आ सकते हैं। कोई ठिकाना नहीं है इनका।

उपसभापति: राम देव जी...

प्रो० राम देव भंडारी: मैं खत्म कर रहा हूँ महोदय... मैं खत्म कर रहा हूँ। ...(व्यवधान)...

श्री एस् एस् अहलुवालिया: नहीं, नहीं अगर परंपरा डालनी है महोदया तो परंपरा डाल दीजिए। महोदया, आप सदन में आदेश दे दीजिए कि नाम लिया जाएगा तो मैं कल से ... (व्यवधान)...

प्रो० राम देव भंडारी: महोदया, इस सदन में कई बार ऐसे महानुभावों का नाम लिया जा चुका है। ... (व्यवधान)...

श्री एस् एस् अहलुवालिया: महोदया, मैं इस पर रूलिंग चाहता हूँ।

उपसभापति: वे चुप करें तो मैं अपनी रूलिंग दूँ। भंडारी जी....डिस्कशन हो रहा पोटा के अमेंडमेंट पर। आप उस विषय में डायरेक्ट किसी का नाम न लेकर जो इंसान अपने को यहां डिफेंड नहीं कर सकता ... (व्यवधान)...

प्रो० राम देव भंडारी: मैं तो उन्हें यहां महानुभाव कह रहा हूं।

उपसभापति: आप महानुभाव कहकर ही रुक जाइए।

श्री संजय निरूपम: महानुभाव कहते हैं और ऊपर से पोटा लगाने को कहते हैं।

उपसभापति: ऐसा नहीं है। Let us not.... (व्यवधान)...

प्रो० राम देव भंडारी: मैं बड़े सम्मान के साथ उनका नाम ले रहा हूं, उनको महानुभाव कह रहा हूं।

उपसभापति: मैं इसलिए कह रही हूं कि कोई ऐसी परंपरा हम हाऊस में न डालें कि जो लोग इस हाऊस के मैम्बर नहीं हैं, उनके नाम यहां लिए जाएं।...(व्यवधान)...

प्रो० राम देव भंडारी: महोदया, पहले भी उनके नाम लिए गए हैं।

उपसभापति: बात सुनिए ... बात तो सुन लीजिए। मेरा काम केवल आपको सही रास्ते पर रखना है क्योंकि आज आपने कोई नाम लिया, कल को कोई किसी और का नाम ले जिस पर आपको शिकायत हो सकती है तो इसलिए सबके लिए बेहतर यह होता है कि वही रास्ता इस्तेमाल करें जो सबके लिए बराबर हो।

प्रो० राम देव भंडारी: महोदया, मैं तो हमेशा आपका आदेश मानता हूं।

उपसभापति: ठीक है, मेरा आदेश आज भी मान लीजिए।...(व्यवधान)...

श्री एस० एस० अहलुवालिया: महोदया, एक गंगाजली पिक्चर आई थी उसमें एक आदमी का नाम लिया गया था...(व्यवधान)...

प्रो० राम देव भंडारी: उसमें भी आपका हाथ था। आप दोनों तरफ लगाते रहते हैं, आप इधर भी लगाते हैं, उधर भी लगाते हैं।...(व्यवधान)...

उपसभापति: हमारे हाऊस की और दूसरे हाऊस की भी परंपरा रही है...(व्यवधान)...

प्रो० राम देव भंडारी: महोदया, अगर इसकी परंपरा नहीं होगी, अगर इस हाऊस में उनका नाम पहले नहीं आया होगा... मेरा कहना है कि पहले भी इनका नाम आया है। अगर नहीं आया होगा तो मुझे कोई ऐतराज नहीं है महोदया।

उपसभापति: बहुत सी बातें माकूल होती हैं मगर हाऊस की जो एक परंपरा होती है, उसमें अगर वे माकूल न लगती हों, कानून, परंपरा और रिवायत के लिहाज से...(व्यवधान).... मैं उनकी

बात का भी जवाब दे रही हूँ क्योंकि वे आपसे कह रहे हैं इसलिए आपसे बोल रही हूँ कि अगर हाऊस की परंपरा के मुताबिक न हो तो कोई भी इंसान चाहे बड़ा हो, चाहे छोटा हो, अच्छा हो या बुरा हो, उसकी किसी भी हरकत को नजरअंदाज करते हुए या नजर में रखते हुए हम परंपरा न तोड़ें बस यही कह रही हूँ।

प्रो० राम देव भंडारी: महोदया, मैं खत्म कर रहा हूँ।

उपसभापति: बस खत्म कीजिए, आपका टाइम तो कब का खत्म हो गया है।

प्रो० राम देव भंडारी: मैं गृह मंत्री जी से इतना ही कहना चाहता हूँ कि इसका बड़े पैमाने पर दुरुपयोग हो रहा है और यह राष्ट्रहित में नहीं है। इसलिए मैं अपनी पार्टी की ओर से पुनः सरकार से और गृह मंत्री जी से कहना चाहता हूँ कि जिस तरह टाडा कानून का दुरुपयोग हुआ, उसे वापस लिया गया, उसी तरह इस कानून को भी वापस लें, धन्यवाद।

PROF. SAIF-UD-DIN SOZ (Jammu and Kashmir): Madam Deputy Chairperson, as far as terrorism and cross-border insurgency are concerned, we are one with the Government. We are one with the hon. Deputy Prime Minister and Home Minister. But, I want to say that POTA has promoted terrorism in the country. It has not solved any problem of the Government. This amendment is unnecessary because it is now common knowledge in both the Houses of Parliament and also in the press that it is being done for\*.

THE DEPUTY CHAIRMAN: He is not a Member of this House. I will not permit you to mention his name.

PROF. SAIF-UD-DIN SOZ: Madam, \* name will have to be referred to because he is an important figure in the whole discussion.

THE DEPUTY CHAIRMAN: No. You may say, 'A Member of the other House', but not the name.

PROF. SAIF-UD-DIN SOZ: That is a different thing. Then, that becomes an allegation.

THE DEPUTY CHAIRMAN: I am absolutely clear on this. I did not allow Bhandariji. And the same rule applies to you as well.

PROF. SAIF-UD-DIN SOZ: The Government is under compulsion to do this balancing act. The DMK has been told, 'Here is an amendment.' Whereas, AIADMK has been told here, 'It is a very minor amendment.'

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\*Not recorded.

But, the law, as a whole, will apply.' But, here, the hon. Member of Parliament was sent to jail. I must say, with a limited sense, it was misuse of this Act. It is also an organised effort now, to provide him relief. This is my guess. I hope we shall be living, God willing for the day when you will see that \* who is in jail will get relief. It is, primarily, brought before the House for this purpose. Madam, POTA, I must say, has not solved any problem of the Government. Even when the Parliament was attacked, the Ordinance on POTA was in force. Therefore, Madam, our apprehensions, at the time, with regard to enactment of this legislation that it would be misused have been proved correct. I feel this is the consensus of the country. I want the hon. Home Minister to respond to the consensus in the society. I would say that it is a draconian law, which is meant for jungles, not for the civilized society of India. Our apprehensions that this would be misused the way the MISA had been misused have been proved correct. He was against the MISA, at that time, and in the same way it had been misused as the TADA was misused.

THE DEPUTY CHAIRMAN: A former Member of this House, Mr. Kalpanath Rai, whose name I can mention because he was a Member of this House, was put behind the bars under the TADA.

PROF.SAIF-UD-DIN SOZ: You know what had happened to him?

THE DEPUTY CHAIRMAN: He died.

PROF. SAIF-UD-DIN SOZ: And, now, what is happening to the innocent families all over the country?

Here was a netaji. I respect him. He was saying, "I have a point of order." He was not prepared to listen. Now he can raise privately, a question before the hon. Home Minister that for seven months a journalist was incarcerated under the Official Secrets Act, which is also a draconian law enacted in 1923, with no amendment, and that was changed for the British society and he was sent to Tihar jail and after seven months -- I think, the hon. Home Minister must have been one of the important figures in the Government who responded to that situation—that fellow was released because there was no case against him. Netaji, who raised an objection said that he had a point of order, must raise a question with his conscience that a journalist, an Indian national, was incarcerated in Tihar jail. Of course, finally, he was released because there was no case against him. May be, the hon. Home Minister played some role in that.

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\*Not recorded.

There was a lady judge in Delhi, whose geography is so poor that she did not even know whether Gilghit happens to be in India or in Pakistan. She had no time to interpret e-mail. With the result, a promising young journalist had to spend seven months in Tihar jail. When you want to have a law, it has to be a foolproof so that no innocent person will be touched.

Madam, Mr. Raghavan was requesting the hon. Home Minister to come before the House with an amendment to Section 21. Yes; when he comes here, I will say he has responded to the society's requirement.

But here is an amendment †जब आग घर के नजदीक पहुंच गई कि एक पार्लियामेंटेरियन जवान को सपोर्ट करता है।

ب آگ گھر کے نزدیک پہنچ گئی کہ ایک پارلیمنٹری جرنل کو سپورٹ کرتا ہے۔

He was very vociferous on the POTA and had supported it. † ऐसा कहते हैं, "जो किसी के लिए कुआं खोदता है, वह उसमें खूद गिर जाता है।"

ایسا کہتے ہیں "جو کسی کے لئے کنواں کھودتا ہے، وہ اس میں خود گر جاتا ہے۔"

He was very vociferous on the POTA that this was the best law to combat terrorism. But when he was arraigned and sent to jail, this Government could not do anything for months. Finally, they came to Parliament with an Amendment Bill. I would like to tell the hon. Deputy Prime Minister that this law is being misused. This was openly misused against the minority community in Gujarat. It was misused in Jharkhand. It was misused in many States. The hon. Minister knows it. There are umpteen examples of misuse of this law. I have so many examples to cite as to how this law has been misused. But I don't want to take much time of the House. I want the hon. Minister to kindly respond and take this House into confidence and cite one concrete example where the POTA has succeeded in arresting any terrorist action and prevented it. Could the Home Minister give one such example throughout the country. You go on arresting people, and the most overwhelming majority of them are innocent people and they are sent to jail till the Judge takes cognizance and some relief is given. It is a draconian law because any innocent person can be taken to jail at any point of time. He has himself to prove that he is innocent. This is such a draconian law. Then, what are the Central Government and the State Government meant for? This is the

†Transliteration of Urdu speech.

[18 December, 2003]

RAJYA SABHA

question of human rights. Human rights are being trampled because anybody who is arrested shall have to prove himself or herself that he or she is innocent. This is the draconian element in this law. The hon. Home Minister should take notice of it. When the National Conference was his alliance partner, it was supporting the POTA. Mr. Raghavan has correctly said that the Rajya Sabha had rejected this draconian law. Then, there was a joint session. I had convinced myself that there was no need for that. For a time you apply the POTA, but there will be a day in this House, in the other House when the POTA will be rejected by us as the representatives of the people. The National Conference had supported that law at that time. Only yesterday, one of the National Conference Members rose in the Lok Sabha and said, "This is a draconian law. We were off the right point when we supported it. We had apprehensions, but we controlled our apprehensions. We just believed in the Government. But this law has been misused." This was a Member from the National Conference, which had earlier supported this law. Here is AIADMK, they were supporting it at that time. Now, through this amendment, they say that their powers are being taken away. And, rightly so! I think, the parliamentarian, some day, very soon will be released through the relief provided by this amendment. Madam, there is a consensus outside the house and also inside the House that this law must be substituted by a law which is genuine, which gives full protection to an innocent person. Since I have said that I will not quote many examples, I would only bring to the notice of the hon. Home Minister and this august House that last year three students had been arrested at Shamli. They were pursuing B.Sc. (Agriculture) course there. Since, then, the Chief Minister of the State and, perhaps, all of us have been wanting to argue with the Government—that Government and this Government—that they are innocent people. The one proof of their innocence is that when the policemen went to the college Principal and college teachers—they are not Muslims—they told them about those boys. I can quote their names because they are, at this time, in jail under the POTA. I want to tell the House that they are innocent people. (*Time-bell*) Where is the time for Mr. Sibal so that we argue their case in the POTA court? But I would like to say, Madam, that the police tried to make witnesses, to create witnesses. Now, the people who have conscience are not going to support untruths. They failed. There were 23 witnesses produced against these boys, and all of them were policemen. It is a shame that these 23

policement should say that these boys have to be arraigned under POTA, and they should be in jail. One Police officer reportedly told the father of one boy †ہم کیا کر سکتے ہیں۔ ایسی باتیں کرنا ہمارے لئے نہیں ہے۔ یہ کرنا ہی پڑتا ہے۔

They were arrested under POTA. Let me tell you how the human rights are being trampled upon. On 8th March, 2003, they were arrested and for four days they were kept hidden somewhere, they were beaten and tortured to confess that some terrorist who was killed in Delhi was their friend. These boys wept bitterly. They said, "We never knew that fellow. We have nothing to do with Atankwad. We are studying here. You can enquire from our Principal or our teachers." But the policemen tried to †کسی کو پھنساؤ گے ان میں

Sir, you know how draconian this law is. No civilian; either Hindu, or, Muslim, or, Sikh, came forward and said that these boys never ever indulged in Atankwad, or, terrorism, or, they had not done anything in the college so as to link them with terrorism, and they continue to be in jail †میں یہ اس لئے کہتا ہوں کہ آپ کے ۲۳ ممبر ہیں اور سب پولیس مین ہیں۔ آپ ہائی کورٹ میں جج صاحبہ کو بھیجیں گے

There was an illiterate judge in the Chair. †اُسی کے بعد ہم یہ ریڈولوشن لایا۔

There is corruption and incompetence in the Judiciary. I am speaking from my heart to tell you this. Kindly study the case. After the Official Secrets Act, 1923, of the English rulers, there has been no amendment in that law. You can arrest anybody, and there journalists were in the Tihar Jail. I raised this question of three innocent students with full sense of responsibility. We are against terrorism. We are against cross border insurgency. †میں یاد آ رہا ہے، میں آڈواणी صاحب کو یاد دلانا چاہتا ہوں۔

You are the people who released the Jaish-e-Mohammad Chief and he is promoting terrorism in Pakistan. The Americans are very much indulging in our affairs now. We were having a dinner with them a week

ago. They were trying to tell us that there has to be a dialogue. I said, "Yes, we should have a dialogue". I told them what the Jaish-e-Mohammad Chief had said in Pakistan. I told the Ambassadors from America what he had said only the day before. He had said, "*Jehad* means killings, killings and killings." It is un-Islamic. But he says that if you go against my version, that would be unislamic. His boys are active in Kashmir. Dialogue has to have some purpose. So, there is no need for me to give proof to the hon. Deputy Prime Minister or to this august House that I am against terrorism. We are fighting cross border insurgency promoted by Pakistan. But, I must stand here to protect the innocent people.

†मैडम, मैं यह सवाल नहीं कहना चाहता हूँ आखिर आडवाणी साहब रात को कैसे सोते हैं जब बेकसूर और निर्दोष लोग जेल में सड़ रहे हैं। अगर निर्दोष लोग जेल में हैं तो उस से टेरिज्म और प्रमोट होगा।

मैडम, میں یہ سوال نہیں کہنا چاہتا ہوں آخر آڈوانی صاحب رات کو کیسے سوتے ہیں، جب بے قصور اور برادرش لوگ سڑ رہے ہیں۔ اگر برادرش لوگ جیل میں ہے تو اس سے ٹیررزم اور پرومٹ ہوگا۔

After raising this question, I want to say that this is a draconian law, and the Government of India must show wisdom to remove this draconian law from the Statute Book and bring to the House a law in which the first condition should be to give protection to Indian's sons and daughters who are innocent.

THE DEPUTY CHAIRMAN: Shri R. Shunmugasundaram. You have three minutes.

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Madam, this Act was introduced out of a fear that the terrorism, which is prevailing here, would greatly affect our country. Now, this Bill is being introduced, we welcome it on behalf of the DMK Party because it is being introduced out of a fear and out of an experience that it is being greatly misused by some of the States. We believed the hon. Deputy Prime Minister when he introduced the Bill and said that the POTA would curb terrorism. Now, we still believe him. Yes, after certain months of experience, we see that the misuse has travelled upon to certain areas to affect and greatly injure the democracy in his country. What we see is, leading political figures, representatives of the people, journalists, etc., are being booked under this Act in the garb of they being terrorists. There are several States, and the figure is given as 17 States. Nearly about 60 per cent of the States are not using the POTA. The rest of the States are mostly misusing it. When this is the experience, we want to know from the hon. Deputy Prime Minister whether we should tolerate the misuse, and we want a message from this Government ... (Interruptions)...



5.00 P.M.

SHRI DIPANKAR MUKHERJEE: It is your Government.

SHRI R. SHUNMUGASUNDARAM: Yes, we are a part of the Government, and we are proud of being in this Government. My question is, are we going to tolerate the misuse and misrule? Is it not a breakdown of the constitutional machinery? The misuse of such strict laws is not new to this country. We have seen that the MISA, the TADA and other strict laws were misused earlier, and it was the incident of misuse of TADA that created a furore sometime back, and we had bitter experience when one of our former Ministers, a lady Minister, was booked under TADA and she served prison for more than eight months. Ultimately, the court cleared her. Ultimately, when the Supreme Court dealt with the misuse of TADA in the case of Shri Kartar Singh, it recommended that there should be a review of such cases where the Act was misused. Thereby, the Review Committees were recommended by the Supreme Court. That is why we now have the Review Committees. These Review Committees are projected as if they are powerless, and it is also commented upon that whatever amendment is being brought now cannot help the Review Committees. It is not true, Sir. What Mr. Kapil Sibal mentioned in this House that once the investigation has commenced, no Review Committee can interfere with investigation and set the record right. That is not correct. It can be corrected. There are provisions. We have seen that cases are being withdrawn even at the stage just prior to the judgement. And, that is the case. When it is permissible for the Executive to review its own sanction orders, it is equally permissible....(*Interruptions*)...

SHRI KAPIL SIBAL: I wish it could be.

SHRI R. SHUNMUGASUNDARAM: You, do not wish here. That is the position of the law. We do not want your good wishes. That is the position of the law....(*Interruptions*)... While quoting Mr. Tiwari's case, an hon. Members of his House mentioned that there was a withdrawal of prosecution which was turned down because there was mechanical application of mind by the prosecutor. That was one incident where after the recommendations of the Reviewing Committee, after a detailed recommendation, just one line withdrawal petition was filed and that was commented upon by the Supreme Court. I just want to set the record straight that that is not the law. The law is, whatever the

recommendations of the Review Committee, which is administratively superior in hierarchy, they are to be given weightage. And, whenever it recommends, it has to be given weightage. The recommendations have to be given weightage, and that is the law. I wish to make some more suggestions apart from these amendments (*time bell*), some more suggestions which are very, very essential for preventing the misuse of this stringent law. I suggest, and I also request the hon. Deputy Prime Minister to agree to it, that the sanction of the Central Government must be made mandatory. And unless the sanction is obtained from the Central Government, which should be cleared by this Review Committee, no prosecution should take place, and no court should be allowed to take cognisance. That should definitely prevent misuse by\* State Governments, who don't obey the law.

DR. V. MAITREYAN: Madam,\* is unparliamentary....(*Interruptions*)...

THE DEPUTY CHAIRMAN: What did he say?

Shrimati S. G. INDIRA (Tamil Nadu): Madam, he said \* It is an unparliamentary word. Who is a \*? It is an unparliamentary word and he cannot use such a word in the House....(*Interruptions*)...

THE DEPUTY CHAIRMAN: \*Is not allowed.

SHRI A. VIJAYARAGHAVAN: Madam, \* is unparliamentary.

SHRI R. SHUNMUGASUNDARAM: \* is not unparliamentary. \* only means uncontrolled, Madam....(*Interruptions*)...

THE DEPUTY CHAIRMAN: Did you say \* or 'row'?

SHRI R. SHUNMUGASUNDARAM: I said \*, Madam.

THE DEPUTY CHAIRMAN: \* is not allowed. If you say, 'the row between two people', I shall accept it....(*Interruptions*)...

SHRI A. VIJAYARAGHAVAN: How can he say like that?....(*Interruptions*)...

THE DEPUTY CHAIRMAN: It is unparliamentary.

SHRI A. VIJAYARAGHAVAN: POTO originates from US and UK and then it is coming to India. How can he....(*Interruptions*)...

THE DEPUTY CHAIRMAN: We are not totally following UK and USA. We are following our own terminologies, and \* is unparliamentary. If you say 'the row between the two countries', I can accept it. If he says it is the

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\*Expunged as ordered by the Chair.

Hindi word, I shall allow it. But if it is the English word, I am not allowing ...*(Interruptions)*...

**SHRI R. SHUNMUGASUNDARAM:** Madam, the State Government which is not following the rule of law and which is abusing the powers given by this Parliament, by this House, should not be allowed to continue. If this misuse is allowed to continue, there would be a danger to democracy. With these words, I welcome the Bill. Thank you, Madam.

**उपसभापति:** श्री संजय निरुपम। संजय जी, आप भी समय का ध्यान रखिएगा, हम लोगों को वोटिंग करनी है।

**श्री संजय निरुपम:** आदरणीया उपसभापति महोदया, किसी भी देश में, किसी भी समाज में व्यवस्था चलाने के लिए और बुराइयों को रोकने के लिए कानून की आवश्यकता पड़ती है, कानून बनाए जाते हैं और जहां-जहां, जब-जब कानून बना है, उस कानून का दुरुपयोग भी हुआ है। हिन्दुस्तान में कोई ऐसा कानून नहीं है, जिसका दुरुपयोग नहीं हो रहा हो। ऐसी स्थिति में सरकार की जिम्मेदारी बनती है कि उस कानून के दुरुपयोग को रोकने के लिए वह व्यवस्था करे। मैं आज माननीय उप प्रधानमंत्री और गृह मंत्री जी का स्वागत करता हूं कि वे एक संशोधन विधेयक लेकर आए हैं। निश्चित तौर पर "पोटा" का दुरुपयोग हो रहा है। संयुक्त सत्र में जब "पोटा" का विधेयक लाया गया था, तब आशंका व्यक्त की गई थी और जो "पोटा" के विरोधी थे उन्होंने सबसे ज्यादा इस बात की आशंका रखी थी कि इसका दुरुपयोग हो सकता है और आशंका व्यक्त करने वालों का नेतृत्व हमारे कांग्रेस के साथी कर रहे थे, उन्होंने सबसे ज्यादा शक जाहिर किया था कि इसका दुरुपयोग होगा। लेकिन कांग्रेस शामिल राज्य में जिस प्रकार "पोटा" का उपयोग हुआ, उसके लिए मैं उनका स्वागत करता हूं। मैं यह बताना चाहता हूं कि वहां एक परसैंट भी दुरुपयोग नहीं हुआ और मुझे लगता है कि कांग्रेस के जिन लोगों ने दुरुपयोग की आशंका व्यक्त की थी, उन लोगों को अपनी आशंका वापिस ले लेनी चाहिए। महाराष्ट्र में बड़े पैमाने पर आतंकवादी गतिविधियां चलीं, खूब बम-विस्फोट हुए और उसके बाद इनकी सरकार ने, कांग्रेस की सरकार ने, कई आतंकवादी गतिविधियों में शामिल आतंकवादियों को...*(व्यवधान)*...

**श्री सतीश प्रधान (महाराष्ट्र):** "मीका" लगा है।

**श्री संजय निरुपम:** "मीका" भी लगा है, "पोटा" भी लगा है। टिप्पण्य बात यह है कि कांग्रेस ने जहां इस सदन में कहा, पार्लियामेंट में कहा कि हम "पोटा" का विरोध करते हैं और कांग्रेस शासित राज्यों में "पोटा" लागू नहीं किया जाएगा, वहां महाराष्ट्र में, जो कि एक कांग्रेस शासित प्रदेश है, "पोटा" लागू किया गया और बहुत अच्छे ढंग से लागू किया गया और इसके लिए मैं कांग्रेस के सारे माधियों का कांग्रेस की सरकार का स्वागत करता हूं।...*(व्यवधान)*... सबसे

ज्यादा "पोटा" का उपयोग और "पोटा" को लागू करने के जो केसिस हुए हैं, वे महाराष्ट्र में हुए हैं और निश्चित रूप से इसके लिए कांग्रेस एक स्वागत करने योग्य पार्टी है, कांग्रेस का मैं इसके लिए स्वागत करता हूँ। तब आपने कहा था कि दुरुपयोग हो सकता है और उस दुरुपयोग को रोकने के लिए आज इस सदन में एक संशोधन विधेयक लाया गया है। अगर तब आपकी आशंका वाजिब थी, जायज थी तो निश्चित तौर पर इस संशोधन विधेयक का कांग्रेस की तरफ से स्वागत होना चाहिए, ऐसा मैं निवेदन करता हूँ। मैं इस "पोटा" के संशोधन विधेयक के समर्थन में बोलने के लिए यहां पर खड़ा हुआ हूँ।

महोदया, हमारे दूसरे साथी जो दक्षिण भारत से आते हैं, उन्होंने "पोटा" के दुरुपयोग को रोकने के लिए जो संशोधन विधेयक लाया गया है, उस पर सीधे ऐसी भूमिका ले ली कि हम इसको सपोर्ट नहीं करेंगे क्योंकि यह हमारे खिलाफ है। इसका मतलब यह है कि कहीं न कहीं उनको अंदर ही अंदर यह भय लग रहा है कि उन्होंने "पोटा" का दुरुपयोग किया है। अगर उनके अंदर यह भय है तो उस भय को निकाल दें। यह बिल उनके खिलाफ नहीं है और किसी भी राज्य सरकार के खिलाफ नहीं है। निश्चित तौर पर इस देश में हर मनुष्य के, हर नागरिक के अधिकारों का संरक्षण होना चाहिए। अगर "पोटा" के माध्यम से मानवाधिकारों का हनन हो रहा है तो उस हनन को रोकने का इंतजाम होना चाहिए। उसे रोकने के लिए ही माननीय गृह मंत्री जी और उप-प्रधान मंत्री जी यहां पर इस संशोधन विधेयक को लाए हैं। इसके लिए मैं इस बार फिर से उनका स्वागत करता हूँ।

महोदया, दो-तीन प्रश्न मेरे मन में हैं। जो रिव्यू कमेटीज़ बनाई जा रही हैं, इसमें जो रिव्यू कमेटीज़ बनाने का प्रावधान है - राज्यों के स्तर पर अलग-अलग रिव्यू कमेटीज़ होंगी, केन्द्र के स्तर पर एक रिव्यू कमेटी होगी - अब रिव्यू कमेटी कैसे बनाई जाएगी, यह मुझे समझ में नहीं आ रहा है। इसके सदस्य कौन लोग होंगे? मुझे नहीं मालूम कि ये रिव्यू कमेटीज़ बन गई हैं या नहीं बनी हैं "पोटा" के जानकार आप लोग हैं, आप बेहतर जानते हैं। यह अपने आप में एक जटिल प्रश्न है। एक व्यवस्था है कि राज्यों की रिव्यू कमेटी ने एक फैसला दिया और मान लीजिए कि यह फैसला, वहां की जो aggrieved party है, जिस व्यक्ति ने अपील की थी राज्य की रिव्यू कमेटी में, उसके खिलाफ फैसला गया और मान लीजिए कि वह व्यक्ति सेंट्रल गवर्नमेंट की रिव्यू कमेटी में अपील करता है और सेंट्रल रिव्यू कमेटी का फैसला अगर राज्य की रिव्यू कमेटी के फैसला के खिलाफ हो तो निश्चित तौर पर आने वाले दिनों में टकराव की स्थिति पैदा हो सकती है।

SHRI L.K. ADVANI: The Central Review Committee's view will prevail.

श्री संजय निरुपम: मतलब यह कि एक बार सेंट्रल रिव्यू कमेटी का जो डिसीजन होगा, वह राज्यों के ऊपर बाइन्डिंग है, उनको मानना ही पड़ेगा। ऐसी स्थिति में मुझे लगता है कि आतंकवाद एक राष्ट्रीय प्रश्न है, जैसा कि चन्दन मित्र जी ने भी कहा कि यह एक बहुत बड़ा प्रश्न है तो हम इसको कम से कम राजनीति के दृष्टिकोण से न देखें और जिस प्रकार "पोटा" के कारण इस देश

में आतंकवाद को भी राजनीति के दृष्टिकोण से देखा गया, मुझे पूरी आशंका है कि आने वाले दिनों में इससे टकराव पैदा हो सकता है। मैं इस सदन के माध्यम से अपने सारे साथियों से निवेदन करूंगा, सारे राजनीतिक दलों से निवेदन करूंगा कि कम से कम इस विषय पर भविष्य में कभी टकराव की स्थिति पैदा न हो। “पोटा” का दुरुपयोग हुआ है, इससे इंकार नहीं किया जा सकता। यह आपकी एक आशंका थी।

महोदया, दूसरी बात यह है कि इस संशोधन विधेयक में अपील करने का जो पीरियड है, वह समझ में नहीं आ रहा है। कपिल साहब कानून के बहुत बड़े जानकार हैं, उन्होंने बताया कि एक बार “पोटा” लागू किया गया, इन्वेस्टीगेशन शुरू की गई, उसके बाद कोर्ट में केस दायर किया जाएगा। जिस व्यक्ति के ऊपर “पोटा” लगाया गया है, उसको एक time frame देना चाहिए कि इस अवधि के अंदर आप अपील कर सकते हैं। अगर वह उस अवधि के अंदर अपील नहीं करता है तो शायद उसकी कोई वैल्यू नहीं होगी, उसका कोई उपयोग नहीं होगा, उसका कोई अर्थ नहीं होगा। मैं समझता हूँ कि ऐसा कोई प्रोविजन स्पष्ट रूप से होना चाहिए। अगर आडवाणी जी इसको अपने जबाब में स्पष्ट करें तो ज्यादा अच्छा रहेगा। अब रही बात राजनीतिक भाषण और आतंकवाद की, तो मैं कहना चाहता हूँ कि कोई एक पोलिटिशियन जिसका अपना एक 20-25 साल का ट्रैक रिकार्ड है, जो पार्लियामेंट का सदस्य रहा हो, एक राजनीतिक कार्यकर्ता रहा हो, उसके किसी भाषण में अगर इस प्रकार का रेफरेंस आ गया जिसमें किसी आतंकवादी संगठन को समर्थन या ऐसी भावना व्यक्त करने की बात हो तो उसके खिलाफ इस आधार पर “पोटा” लगा देना उचित नहीं है। मुझे लगता है कि आज एक व्यक्ति पर लगा है, कल को सब पर लग सकता है। इसलिए इसको जनरलाईज न किया जाए। हमारे इस तरफ के साथी न कहा, हमारे दक्षिण भारत के साथियों ने कहा कि अगर कोई 20 साल से एम.पी. है तो इसका मतलब यह नहीं है कि वह आतंकवादी नहीं हो सकता। आतंकवादी हरकतें और आतंकवादी संगठनों या आतंकवादी विचारों के पक्ष में भाषण देना, ये सब अलग-अलग बातें हैं। जिस व्यक्ति ने किसी आतंकवादी संगठन के पक्ष में किसी प्रकार का भाषण दिया है, उसका रेफरेंस भी देखना चाहिए, उसका इंटेंशन देखना चाहिए। यह बात चर्चा में भी निकलकर आई है कि अगर उसका इंटेंशन ऐसा नहीं है और उस व्यक्ति का ट्रैक रिकार्ड आतंकवादी होने का नहीं है, तो मुझे लगता है कि उस पर “पोटा” लगाना, राजनीतिक तौर पर “पोटा” का दुरुपयोग होगा। इस दुरुपयोग का मैं निषेध करता हूँ और भविष्य में इस प्रकार का दुरुपयोग न हो, इसके लिए जो व्यवस्था की गई है, उसका मैं समर्थन करता हूँ।

SHRI BIMAL JALAN (Nominated): Thank you, Madam, Deputy Chairperson. It is also my first intervention. As you know, I have no special expertise on this subject, nor the legal expertise that Mr. Sibal has exhibited so eloquently. The reason why I wanted to speak was as a non-political person on a matter, which has excited some amount of controversy in the past. Madam,

as we can see there are some very valid points made on both sides for POTA's amendment as well as for the misuse that has been made. So, as the hour is getting past, and, we don't have much time, let me just make two brief points. One is that I think it is absolutely true that POTA is being misused, but it is equally true that I cannot see any political advantage that the present Government is deriving from the misuse of POTA. In the sense, that if a 12 years' old child goes to jail, a 80 years' old person is being put somewhere, or, 267 persons have been put in jail, there is no political advantage to the party. So, it seems to me, as a non-political person, if there is no political advantage to put the blame for misuse at the door of the political party in power at the Centre, is probably not justified.

But, at the same time, the fact remains, and, all of us know, that the way the Act or the Bill has been used, there has been misuse. As somebody from outside, I can say that, *prima facie*, it seems it has been misused, and, I want to use my professional experience to state the reason why many of the Bills, many of the Acts which are very well intended otherwise are misused. I am sure, there was an administrative need felt. Terrorism is important after all. Who can be against prevention of terrorism as an Indian citizen, or, as a patriotic citizen, whether on this side or that side?

So, the administrative need was felt, and, therefore, the Act was passed, and, I take the Government's word for it that it was important. At the same time, we know it was misused, and, the reason — I had asked for sometime and it does seem to me—was that the framing of our laws is such that it gives a broad compass to the investigating authorities, to the police authorities and the legal authorities to take advantage of a lot of loopholes which remain there. This is a suggestion that I would like to make for the Deputy Prime Minister and the hon. Home Minister, and, which has nothing to do with the present amendment which we are considering, but, which may be of some use and consideration later on.

For example, if you look at the definition of the 'Terrorist Act' under Section 3(1) of the original Act — I am not a lawyer, so I may not be quoting it correctly — but under Section 3(1)(a) and Section (1)(b), it sounds very good. But, if you look at the "Explanation", you suddenly

find a sentence which says, "A terrorist act shall include the act of raising funds intended for the purpose of terrorism." Now, anybody who is raising funds for any purpose can be alleged to have been raising funds with terrorist intention, I mean, if you want to misuse the Act, which has happened. Or, if you look at Section 3(3) under the same explanation it is stated, "whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the act preparatory to a terrorist act...can be apprehended".

Madam, Deputy Chairperson, what I wanted to suggest for the consideration of the Government is that, in the next round perhaps, Acts, such as these which can cause certain amount of harm to the general citizens, which can be misused, as we have known — and this does not apply only to this Act, but also to certain other acts, which are already in news — we must look at the definitional aspect, the implementation aspect. It does not simply help to say that the Superintendent of Police, or, somebody else can do this. But, if you have a definition which allows for this amount of discretion, intentions, not only the act but the intent to act, not only the fund being provided for terrorism but the intention to provide a fund raised for possible terrorist activity, not only to abet or to do but also to advice or to speak, then, obviously in certain States, in certain opportunities, quite contrary to the intentions of the Government, these particular Acts can be misused, particularly if you are given powers which are extraordinary. So, Madam, these are my suggestions. So far as the present amendment is concerned, with due humility and respect for the legal expertise of some of our friends here, I would say that the present amendment cannot make things worse. As far as, as a layman, I can read that it cannot make things any worse than that they are. And, if possible, probably, it would make enforcement better. I would therefore, like to support this particular amendment. At the same time, I would like to urge the Government to take a look at this particular Act because it has aroused so much emotions and so much excitement all across, and which is beyond party politics also, because some of the States, which have been mentioned, are not at this side or that side. They are on some other side. I would suggest that the definition of Terrorist Act is perhaps one thing on which we need a certain amount of close attention to define it very precisely and in a very definitive way. We should allow as little discretion as possible and not go into

intentions, because the intentions are always very difficult to prove or disprove, but go into the actual acts of terrorism. This is my suggestion. But, so far as this amendment is concerned, I am happy to say that the Government which nominated me will have my support on this particular item. Thank you.

THE DEPUTY CHAIRMAN: You mean the implementing authority has to be clear about what the person is implementing.

श्री हरेन्द्र सिंह मलिक (हरियाणा): उपसभापति महोदया, मैं माननीय उप प्रधानमंत्री जी द्वारा प्रस्तुत किये गये संशोधन का समर्थन करने के लिए खड़ा हुआ हूँ। इस सम्मानित सदन के विद्वान सदस्य इस बात से असहमत नहीं हो सकते कि आज हिन्दुस्तान के सामने कोई सबसे बड़ी चुनौती है तो वह आतंकवाद की चुनौती है। आतंकवाद न केवल हमारी जान का दुश्मन बना है, वह न केवल नौजवानों को गुमराह कर रहा है बल्कि हमारी अर्थव्यवस्था को खोखला कर रहा है। आतंकवाद से लड़ने के लिए इस मुल्क में पहले भी कानून थे और यह भी कटु सत्य है कि हमारी संवैधानिक व्यवस्था ऐसी है कि कानून और व्यवस्था स्टेट अफेयर्स हो जाती है, सीधे-सीधे केन्द्र सरकार उसमें हस्तक्षेप नहीं कर सकती है। टाडा बना, टाडा का मिसयूज हुआ। मीसा का मिसयूज हुआ। उत्तर प्रदेश में मौर्वी विधान सभा 1982 में बनी, कांग्रेस पार्टी का राज था। गैंगस्टर का कानून वहां पर बनाया गया था और गैंगस्टर के कानून का वहां दुरुपयोग किया गया। उसमें अपील का ऐसा प्रावीजन था, लेकिन उस प्रावीजन के बाद भी यह देखने को मिला कि जो अपील होती थी, प्रदेश सरकार द्वारा जो कमेटी गठित होती थी, वह वही करती थी जो डी.एम. ओर एस.पी. की रिपोर्ट चली जाती थी, केवल मुल्जिम को वहां आने-जाने का एक मौका मिलता था। पोटा कानून के लागू होने के बाद उम्मीद थी कि आतंकवाद को रोकने का काम होगा, परन्तु हम उसमें उतने सफल नहीं हो पाये। हमारी पार्लियामेंट तक पर आतंकवादी हमला हुआ। मैं तो इस बात का पक्षधर हूँ कि पोटा निष्पक्ष रूप से लागू हो और माननीय उप प्रधान मंत्री जी इस बात के लिए बधाई के पात्र हैं कि जो शंका थी पोटा के दुरुपयोग की जो स्टेट गवर्नमेंट्स ने की थी। पोटा लगाने की शक्ति स्टेट गवर्नमेंट को है और कई स्टेट्स में इसका दुरुपयोग हुआ है। यह बड़े शर्म की बात है कि आठ साल के बच्चे पर, बारह साल के बच्चे पर और 80 साल के बूढ़े पर भी पोटा इस मुल्क में लगाया गया है। उन घटनाओं की जानकारी लेकर के ही शायद माननीय उप प्रधान मंत्री जी ने सोचा होगा कि पुनरावृत्ति इन घटनाओं की न हो और उनको अपील करने का हक रिव्यु कमेटी के रूप में, रिव्यु कमेटी के सामने जाने का अधिकार पीड़ित व्यक्ति को, पीड़ित पक्ष को दिया गया है।

माननीय उपसभापति महोदया, एक सवाल खड़ा होता है। सवाल यह है कि रिव्यु कमेटी भी स्टेट गवर्नमेंट द्वारा गठित होगी और जब तक मामला केन्द्र सरकार द्वारा गठित समिति के समक्ष आयेगा और अगर कहीं परिस्थिति ऐसी हुई कि केन्द्र और उस प्रदेश में एक ही पार्टी की सरकार हुई



तो शायद उस व्यक्ति को न्याय नहीं मिल पायेगा। मेरा माननीय उप प्रधानमंत्री जी से अनुरोध है कि इसमें साफ-साफ कंटेगराइजेशन किया जाये कि उस व्यक्ति का अपराधिक इतिहास क्या है, उसका अपराध क्या है जिस पर पोटा लगाया जा रहा है? धर्म के नाम पर, जाति के नाम पर, लिंग के नाम पर पोटा कानून का दुरुपयोग नहीं हो इसकी आपको व्यवस्था करनी चाहिए। मैं मानता हूँ कि "भय बिन प्रीति न होय गौसाई।" बिना भय के न प्रीति होती है और न राज चलता है। यह भी सच्चाई है कि जहाँ पर पोटा के दुरुपयोग की बात है तो उसमें केन्द्र सरकार का दोष भी नहीं है। हमारा स्टेट हरियाणा है। वहाँ कानून का राज है। प्रदेश के मुख्य सेवक की दृढ़ इच्छा है कि प्रदेश में कानून व्यवस्था लागू रहे तो पोटा लगाने की जरूरत नहीं पड़ती। उत्तर प्रदेश और दक्षिण भारत का जिक्र हुआ। वहाँ दुरुपयोग हुआ, इसको कोई नकार नहीं सकता। मैं अपने राजनैतिक साथियों से इतना जरूर कहूँगा, उनसे मेरा अनुरोध है कि हम आतंकवाद से लड़ने के नाम पर, राजनैतिक प्रतिबद्धता पर रहते हुए भी राजनैतिक दलों से ऊपर उठकर सरकार को सहयोग देने का काम करें और आतंकवादियों के खिलाफ और कठोर नियम बनाएं, और कठोर कानून बनाएं ताकि यह मुल्क तरक्की कर सके। यहाँ के नौजवान के हाथ में एके-47 देने का काम कोई पड़ोसी राष्ट्र न कर सके, यहाँ के नौजवान को गुमराह न कर सके, इसके लिए हमें सरकार को प्रोत्साहित करना चाहिए। श्यामली जैसी घटना घटी - अभी हमारे जम्मू-कश्मीर का माननीय सदस्य ने कहा, उन्होंने मेरे जिले का नाम लिया - वास्तव में घटना सही थी। निर्दोष लोगों को जेल भेजा गया। उनको रोकने के लिए भी केन्द्र सरकार को राज्य सरकारों के ऊपर शिकंजा कसना होगा, यह मेरा अनुरोध है। अंत में जो संशोधन माननीय उप प्रधानमंत्री जी लाए हैं, इसके लिए उन्हें बधाई देते हुए इसका समर्थन करता हूँ। धन्यवाद।

SHRI H.K. JAVARE GOWDA (Karnataka): Madam, this is for the third time that I am participating in this discussion. First time on the original Bill in this House; second, in the Joint Session; and now on this Amendment Bill. The reason behind bringing this Amendment Bill is that a few State Governments have misused the POTA for political ends. This is one of the reasons for which this Amendment Bill has brought in. The Amendment of Section 60 says, "Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (f) shall, on an application by any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act and issue directions accordingly." The point, which I am going to raise, is this. If court says *prima facie* case of POTA is there and the Review Committee says there is no *prima facie* case, then I would like to know whether the findings of the court would stand or the Review Committee's. I want the Home Minister to make it clear. If the court holds the view that there

is a *prima facie* case, even if the Review Committee holds the view that there is no *prima facie* case, it is the court's decision which will prevail and not that of the Review Committee.

The second point, which I am going to raise, is this. This Act was brought in to curtail terrorism, but some States have misused it. Now, the common people of this country are looking at us whether this is the only law which is being misused by various political parties who are in power in different States. Why I am drawing the attention of the Home Minister towards this is because almost all the political parties who are in power in different States are misusing the Scheduled Castes and Scheduled Tribes Act. Fifty per cent of the cases have been filed against innocent people and there is no provision for anticipatory bail. This matter has been brought before the Union Home Minister and State Home Ministers, but nobody has come forward to bring in any legislation. I doubt the intention of this Government. This is only to give relief to an M.P. who is behind bars. Even after passing of this Amendment, I do not think he would be released. Because the judicial decision will stand there. Because in this case, *prima facie* charge has been framed.

I would urge the Home Minister to make an Act repealing the POTA in totality. Otherwise, it would be only a matter of offering sugar to the DMK party and not to the AIADMK leader. I may be wrong, but I would submit with due respect that this Amendment would not help in containing the misuse of power by various parties who are in power in different States. For that reason, I draw the attention of the hon. Home Minister to one thing. Please, look at the common people who are suffering; the Scheduled Castes and the Scheduled Tribes Act is being misused by all political parties who are in power, whether it is the Janata Party, whether it is the Congress Party, whether it is the BJP, whether it is the Bahujan Samaj Party, the ultimate sufferer are the common people. I will explain why I am using this opportunity...

THE DEPUTY CHAIRMAN: Mr. Javare Gowda, you can use some other opportunity, not this opportunity, to highlight those points, because we have a specific discussion on a specific subject. If you want to raise the issue relating to the misuse of the Scheduled Castes and the Scheduled Tribes Act or on any other issue, I assure you that the House will take care of the points raised by you. But don't mix up the whole thing. (*Interruptions*)

SHRI H.K. JAVARE GOWDA: Madam, I am not mixing up any thing. I am highlighting the point that the Government is not interested in addressing the grievances of the common people in the country. It is only interested to safeguard the interest of their allies. That is the only point I am going to highlight. I am not going to say any other thing. Under these circumstances, I submit, with respect, to the hon. Home Minister that the present amendment to the Act will not solve the problem. I request him to bring in a Bill repealing POTA in totality. With these words, I conclude my speech. Thank you.

SHRI M.P. ABDUSSAMAD SAMADANI (Kerala): Madam Deputy Chairman, as the time is too short, I am only enumerating points, which I have noted down here. Madam, I would like to make one request to the hon. Home Minister. Anyway, one thing is clear that there has been a gross misuse of POTA. That point need not be debated. The hon. Members from both sides of the House agree on that point. I request the hon. Home Minister and the Government to make a thorough enquiry in this regard, and to evolve some mechanism to find out what kind of misuse has been there, and how that problem can be solved. Madam, if it is really and sincerely done, it will be very clear that instead of giving this kind of treatment by bringing in amendments, this law will have to be repealed. A draconian law cannot be saved. It is the history of every anti-democratic law. In the history of mankind, it has a boomerang effect. In the annals of history, there are many stories to tell about this kind of laws. What happened to them? I expect that one fine morning, everybody will become united against this kind of law, especially, when there is a new awareness being created throughout the world for the cause of human rights, and when the need for humaneness is being felt more and more. Madam, not only minorities, but also weaker sections of society, common people, political activists, media persons, everybody was harassed throughout the country by this draconian law. That is clear. Some times, influential political persons can save themselves. But, again, the poor people, they cannot find any way out to come out of such a situation. So, my request is, this amendment will not solve the problem. The problem would be solved by repealing this law in totality. There is no difference of opinion on our fight against terrorism. It is to be fought with vigour, care, and we are with the Government in this regard. Those

people, who are playing with the lives of the innocent people, should be tackled and handled ruthlessly. We are not disagreeing on that point. But our intelligence agencies, the enforcement agencies have to be strengthened for this purpose, and instead of harassing and persecuting the innocent people, they should come to their rescue. We have to see what the views of various Commissions and Committees, which stand for human rights, on this issue are. What are their views? I think, the hon. Home Minister is very much aware of that. The National Human Rights Commission is not a silly organization. They had the same standards against TADA, and in the case of TADA, Madam, only 1 per cent of the total persons, who were arrested, were convicted. So, that speaks volumes and volumes about the gross misuse of this Act that is being done. We have discussed the *mens rea* and other things. Whatever is the mental intention, the hon. Home Minister himself reacted to that point when Mr. Kapil Sibal was speaking. But who has to prove all this? Who has to establish all these things? Some police people! Everything is given to the police. The police is to establish all these things, and workers, leaders, trade unionists, human right activists, those who oppose police-raj even now. Madam, if we go through the history of the films that have been made in the last decade in India, in every language, including the national language, we will find that there was a big tendency of criticising the police! That shows the sentiments of the people. They are not merely the films produced by certain people who are making films. They show the mentality of the people. Everywhere, there is awareness among the people about the police, and, day by day, all of our Governments are trying to misuse the police, instead of reforming the police. Even after half-a-century of independence, the same colonial police is there in the country. We are now giving all these things in the hands of the police! Madam, one party is in power today, and another party will be in power tomorrow. Rising above that kind of political standards and differences is a more important thing. *(Time bell)* Madam, I will take two minutes more. Madam, there is a problem concerning the refusal of bail. It arises when no court grants bail to a person against whom the charges are made, and if terrorism is included in the charges while presenting the suspect before the court, the responsibility of proving the innocence is, again, placed on the person himself. There are so many problems like that, and about which our Amendment is silent.

I request the hon. Home Minister to look into this kind of factors. If the Government really wants to bring a relief, then it should look into the matter seriously and order an investigation into how far they have been misused. I request the hon. Home Minister to give a categorical reply to the House. If the Government and the Home Ministry are very serious about it, will you, please, Sir, give an assurance to this House that a thorough inquiry will be conducted by the Government of India into the matter, to what extent this misuse has been done? That will throw some light on that issue. We will come to know what is being done. In that case, if such an inquiry is conducted, it will become very clear that this law has to be repealed. Madam, it is an assault on our democracy, it is an assault on civil liberties and it is an assault on the human rights. If such a law continues, Madam, everybody will interpret the word "terrorism" according to his whims and fancies. Even those poor children who ask for bread on the streets of Iraq are dubbed as terrorists by certain people! Those people who just want to live with liberty and pride in their own country... (*Time bell*) That is the condition of the people throughout the world. So, Madam, I oppose not only this Amendment but also the Act itself, the law itself. I would request the Government to repeal it at the earliest.

SHRI SHANKAR ROY CHOWDHURY (West Bengal): Madam Deputy Chairperson, the Prevention of Terrorism Act was passed in a Joint Session of Parliament after an intense debate in which may of us had participated. I spoke in favour of POTA because I think we do need POTA. But today's discussion concerns the Amendment to POTA that the Government has placed before the House for discussion, and it is here that my misgivings, which I had expressed during the debate itself, are, again, reinforced. The major misgiving, that most of us spoke about, during that debate, was the fear of its misuse because this is a common experience with us that every law in the country is misused by the agency which has to enforce it. The credibility to the proposal of POTA was, in part, due to the hon. Deputy Prime Minister and Home Minister's personal experiences with TADA. And he mentioned this when the discussion took place. TADA was continuously misused, and this is part of the reason for the grave misgivings that people have had about POTA. The safety wall, if you like, proposed in the Prevention of Terrorism Act, the main Act itself, was the Review

Committee. But therein lies the shortcoming. The Review Committee itself is composed of people, *i.e.* a retired High Court Judge, Secretaries to the State Governments, who really are under the influence of the authorities who are applying TADA! And this was the misgiving expressed by some of us. The remedy to this is not to do away with POTA. Certainly that is not the remedy. I think it is fallacious to argue that even after bringing POTA, terrorism exists. Though one is not a lawyer, one can say that even after the provision of IPC 302, murder exists. So, it is a tool to fight terrorism. None is opposed to that. But the basic infirmity of this amendment is the composition of the Review Committee itself. In this connection, through you, Madam Deputy Chairman, I would like to suggest to the Government to have a composition which was preferred in the Dharmavira Commission pertaining to police reforms, where it was proposed that the control of the police, and a parallel can be drawn with regard to the control of the review of POTA, should be at the legislative level, at the political level, and not at the administrative level. That Committee was headed by the Home Minister of the State. It included the Leader of the Opposition of the State Assembly and other eminent people. Maybe, this could be the composition of the Review Committee.

I will wind up, Madam Deputy Chairperson, by bringing a few issues to the notice of the hon. Deputy Prime Minister. Firstly, I think, we cannot apply a law like POTA without concurrently carrying out equally urgent police reforms. That is not being done. A very stringent law is being applied by an organisation whose culture over the years has been decayed by successive political parties. Secondly, terrorism is not the only threat which generates terror. A bigger terror, I feel, an equal amount of terror, is now being generated by organised crime. The existing laws do not seem to be able to cope with the threat of organised crime. Suggestions have been made for federal crimes. But I do believe that either POTA be extended or renamed or some mechanism devised whereby the equal threat of organised crime to the lives of our common citizens is also dealt with equally stringent laws.

As far as the time-limit is concerned, for review cases, there should be no need for an appeal. Every case must be automatically reviewed, at the State level and at the Central level. Majority of the use of POTA is not by the Centre. It is by the States and the majority of the misuse

cases are occurring in the States. Therefore, I do believe the constitution or composition of the Review Committee itself needs a change because we are not talking of technicalities or legalities here. We are talking of the intentions, and the intentions, unfortunately, in the culture that has developed over the period, after independence, is degenerated and unless this Review Committee itself is suitably restructured, the misuse will continue. I urge up on the Government to look into this.

Madam, I oppose this Bill. I oppose this amendment not because I oppose POTA, but because I do believe the Review Committee is not being properly structured. Thank you.

**SHRI MANOJ BHATTACHARYA (West Bengal):** Respected Madam, I am certain, you will kindly recall that, when the POTO (Prevention of Terrorism Ordinance) was debated, the Government lost in this House and then it was bulldozed by calling a Joint Session. I am certain, you will kindly recall that many of us opposed this Ordinance, not because of our apprehension of its misuse. We opposed the Ordinance because we were doubtful about the use of it. We knew it and today it has been vindicated that our stand was altogether correct that it was the use of POTA that would create furore in the country. Today, I am in a paradox. It is paradoxical on my part to understand that the Government is trying to make some cosmetic changes in the demon and trying to term it as an angel. It cannot be. A demon cannot be termed as an angel by effecting some cosmetic changes. The original Act is a draconian Act. The original Act is a coercive Act. It has been proved beyond any shadow of doubt that it has no intention of combating terrorism in an effective manner. But to thwart the voices of the people an amendment is being brought. It is being said that it is a benign, amendment, it is an innocuous amendment, so why don't you accept it. It is an attempt to make a demon look like an angel. Madam, with all humility, I would like to tell the hon. Home Minister and Deputy Prime Minister that this attempt of his is absolutely misconceived, altogether misconceived. I reiterate that terrorism cannot be contained. As I know Shri L.K. Advani, he would certainly appreciate this as an individual. As the Deputy Prime Minister he may not accept it or as Home Minister he may not accept it. But as a person, as I know him, he will certainly accept it in private, at least, that terrorism cannot be contained only legally or by using arms. Terrorism has to be combated,

as we have said time and again, socially. Progressive changes have to be effected in the socio-economic policies so that half of the terrorism can really be crushed. When we discussed POTA, we had said time and again that you have no intention of combating terrorism and terrorism could not be combated the way you were devising the Act. Terrorism can be combated only by combating unemployment, only by combating social ills. That is in the offing or that has accentuated because you are pursuing ill-conceived and misconceived economic, social and political policies so harridly. I know and I am convinced that in any class divided society the State is a machinery of coercion. The State coerces the majority. The minority coerces, through the State sometimes with a veil of democracy. This Government is also out to coerce the people, out to perpetuate atrocities on the people, out to frighten the people so that they do not raise their basic demands for education, for food, for shelter and for drinking water etc. That is why they use these sorts of measures to frighten the people. Some people have said that there is no logic behind it. It is not a question of political misuse by arresting an eight year old or a 14 year boy or 81 year old person. The political use of this is to frighten the people, to frighten the entire community. In Jharkhand, it has happened. In Delhi, it has happened. It has happened at many other places. It is only to frighten the people, the gullible people, the poor people, a majority of the people. They are to be frightened so that they do not rise against the State, they do not rise against the State polices. How to frighten the people? To frighten the people, use such draconian laws indiscriminately against the people. I would like to ask the hon. Home Minister, "What has happened in Gujarat? How many of the people who have perpetuated atrocities on a majority of the people, have been booked under POTA and how many of them are languishing in jails?" It is the ordinary and innocent people who have been arrested. Who are being arrested? It is the gullible people who are being arrested. Madam, we have opposed POTA. We have asked the Government to repeal it lock, stock and barrel. Today, I feel that these cosmetic changes will not effect any change in the main situation. Therefore, I appeal to the hon. Home Minister to repeal it. It would have been better had he brought a Bill to repeal POTA. Instead of bringing such a Bill. He is trying to effect some cosmetic changes which will be of no use. I once again say that it is a misconceived and ill-conceived attempt. I am sorry to



point out that in Punjab when terrorist and insurgent activities and social unrest were contained, they were not contained by the super cop alone. It was not the super cop who could take care of the Punjab situation. Some adjuvant things were there, that is social relief and economic sops. Along with that, the rule of law prevailed. That is how the situation could be contained. Some hon. Members said that we have to follow the Americans, that we have to follow the U.K. system, because they have enacted this, and we have also to do it. Madam, what is the situation in the United States today? Only recently, the U.S. Labour Department reported an unexpected 93,000 layoffs in August, contrary to the Wall Street forecasts calling for a rise in employment. The country's unemployment rate dipped in August. The ongoing layoffs are denting beneficial effects on President's economic plan, which has been largely constructed around tax cuts...(*Interruptions*)

SHRI EKANATH K. THAKUR (Maharashtra): How have you handled the naxalites in West Bengal?

SHRI MANOJ BHATTACHARYA: Madam, I would like to tell my friend that we have not used POTA against anybody. We are tackling...

THE DEPUTY CHAIRMAN: Okay; let us wind up the discussion, please.

SHRI MANOJ BHATTACHARYA: We have tackled the GNLF; we have tackled the KLO; we have tackled other insurgent problems, not by using POTA. We have tried to bring about social changes. Wherever we are failing, we are not able to control...

THE DEPUTY CHAIRMAN: Please wind up.

SHRI MANOJ BHATTACHARYA: So, unless all-round economic development takes place, unless all-round social development takes place, unless the workers are given their due wages, terrorism cannot be combated. What I wanted to say is that the United States and the U.K. also follow the same economic pattern as we are trying to follow today, and, that is, not to give work to our masses. The point of mine has also been vindicated by no less than...

THE DEPUTY CHAIRMAN: We are discussing a very specific issue...

SHRI MANOJ BHATTACHARYA: Madam, I am concluding.

Secretary Gen. of the UN, Shri Kofi Annan also said, "Terrorism has to be combated by means of social decisions, by means of economic decisions." Madam, I am sure that without effecting any cosmetic changes to the draconian law, Shri Advaniji should better withdraw this Bill.

THE DEPUTY CHAIRMAN: I am sorry; cross-border terrorism cannot be stopped just by economic development.

Yes, Mr. Minister.

SHRI L.K. ADVANI: Madam Deputy Chairman, I am grateful to all the hon. Members who spoke on this subject. There were two categories of Members who oppose the Bill. The first category felt that this Bill is cosmetic, that this Bill is not going to change the basic situation, that the abuse of the draconian law will continue despite this Bill, and, therefore, that the real solution to the situation is that the POTA should be scrapped. The second category was that this Bill undermines the POTA itself. They felt, "We supported POTA last time because we believed that this law was necessary to fight against terrorism. But by bringing in this Bill, you are undermining the original law." Of course, that viewpoint was expressed by the speaker of one party. There was, of course, in between observations that this Bill is intended for a person or for an alliance partner, etc., etc. I would like to say that this Bill was not intended for any person because some Members have also said that despite this Bill, that person is not going to be released. That was also said. My own view is that when this POTA itself is a law belonging to a very rare category of legislation. So much so that I would say that there are only two laws belonging to this category—a law that occasions the invocation of article 108 by the President to summon a Joint Session to resolve a difference between the Lok Sabha and the Rajya Sabha. Perhaps, it was in the dowry case that that particular Session was convened, or, then, in the case of POTA that a Joint Session had to be convened to resolve the difference because the Lok Sabha had passed it and the Rajya Sabha had not passed it and, therefore, that Joint Session was convened. Now, since then, and since today when we are discussing this particular amendment to the law, there has been a landmark judgement of the Supreme Court. Some of us may have read it; some of us may not have read it. But I

do believe that this has far-reaching implications for the law and also for its possible misuse. Therefore, I regard it as important. I said in-between, when Sibalji was speaking, that what you are saying is, in a way, condemning the Supreme Court, or, asking the Government to go in for a review of that judgement. What the Attorney General said, I am not going into that. You were quoting what the Supreme Court had said and, therefore, I said if you were critical of this, then, obviously, you were advising the Government that this was not a sound judgement and, therefore, you should go in for review of this particular judgement which we did not propose to do. I feel that this judgement has not only substantiated what we said in the Joint Session, but this judgement has also made provisions against its possible misuse by anyone.

Also, I would like to emphasise that, whether it was in the other House or in this House, instances were quoted how POTA has been abused. I feel gratified, and I feel satisfied, that there is not one, single incident where any accusation has been made against the Central Government that we have abused POTA. And this is something totally different from the case of TADA; This is something totally different from the case of MISA. As Sanjay Nirupam rightly said, you can find so many laws which were being misused by the executive authorities—so many laws; there is not one and as someone else also said that I am trying to raise the issue of how the law in respect of the Scheduled Castes has been abused and, yet, the Government is not doing anything. Well, I can say that laws can be abused; even ordinary laws of IPC are abused. And, therefore, it gives me satisfaction that no one has accused the Central Government, which was really responsible for POTA; it was no State Government; the POTA was passed by the Parliament, and so, we are responsible for it. And when I said that it would be our endeavour to see that this law is not abused, it means that we will not abuse it and we shall try to see to it that no one else abuses it. It is in pursuance of that assurance that this particular amendment has been brought forward. If someone said that a 12-year-old boy had been arrested, immediately we rang up the Chief Minister, if he happened to belong to our party. Then, firstly, it was found that he was of 17 years, and not of 12 years and then he was released. Similarly, it was in the case of some 80-year-old person who had been arrested. In all these cases, the Central Government has

been following up all cases in order to ensure that the assurance which we gave to Parliament, and which was that it would be our endeavour to see that this law—this is a draconian law; no doubt—not be abused. This we are able to fulfil to the extent the Constitution and the system permits us to do so: and we have done it. And before coming for this particular debate, I asked the Home Ministry to find out from the State Governments as to how many people were in prison or behind bars under POTA today. Various numbers have been mentioned here. But, I find that as on 12th December this year, the total number of persons behind the bars is 440. Shri Kapil Sibalji and Shri Sanjay Nirupam rightly pointed out that the largest number in any one single State is in Maharashtra, where it was said, "We will not use it, come what may". The largest number is 93, which is in Maharashtra. I am not saying that it has been wrongly used. No. Perhaps, as Shri Sanjay Nirupam would be knowing better and directly. He said that there is not a single case of abuse. In all these cases, law has been used against terrorists.

Madam, here I have this judgement of the Supreme Court which very eloquently sums up the kind of problem this country is facing. It says, "Our country has been the victim of an undeclared war by the epicentres of terrorism with the aid of well-knit and resourceful terrorist organisations engaged in terrorist activities in different States, such as, Jammu and Kashmir, North-East States, Delhi, West Bengal, Maharashtra, Gujarat, Tamil Nadu, Andhra Pradesh". Then, it goes on to recount all the major terrorist assaults that have taken place, outrages that have taken place. The attack on the Indian Parliament, the attack on the Jammu and Kashmir Assembly, the attack on the Akshardham Temple, the attack on the U.S. Information Centre at Kolkata, the Sri Nagar CRPF Camp attack, the attack on the Raghunath Mandir, the bomb blast at Ghatkopar in Mumbai, the attack on villagers in Nadimarg in Pulwama District—all these have been recounted. After recounting them, the Supreme Court sums up what the objective of the terrorism is. "Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity, to raise the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected Government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development

6.00 P.M.

and so on". When they said all this, it is not merely a choice of words, but it has an objective which it indicates later and says, "That this cannot be equated with the usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour; rather it is defence of our nation and its citizens. It is a challenge to the whole nation and the invisible force of Indianness that binds this great nation together". Therefore, when it says that it is inter-State, international and cross-border, then, I felt that what Shri Chandan Mitra was saying that there is a need today in this country to identify certain crimes and certain problems as being federal crimes. There is a need for it. Therefore, some other hon. Member also said, Shri Sanjay Nirupam also said something of that kind.

Now, I am referring to this because just now an hon. Member said...

SHRI KAPIL SIBAL: Please tell us one thing. When all these acts took place, was POTA enforced at that time?

SHRI L.K. ADVANI: I will deal with that. It was never our contention that POTA is going to solve the problem of terrorism. But, it is, certainly, our contention that POTA gives us an instrument which was not available earlier. After all, this country, in Mumbai, in 1993, faced serial bomb blasts. Till today, those who are responsible for it are still at large and not convicted. That matter is going on. It takes its own time. I am not ....(Interruptions)... It is only in the case of the attack on the Indian Parliament that within one year we have two of those leaders of the conspiracy sentenced to death. One of them has been acquitted because our law is that until a person's guilt is proved beyond the shadow of doubt, beyond reasonable doubt, he will not be guilty, he will not be convicted. Therefore, if the Supreme Court decided that so and so has been sentenced to death, this death sentence has to be put aside, it was put aside. That is the strength of our judicial system. But the fact is that they were arrested under POTA, they were tried under POTA. It is that which has ensured that within one year they were convicted for that. In fact, the Supreme Court itself has said this. Several Members referred to the fact that if an amendment was to be made, it should have been made in Section 20 which gives

maximum scope for abuse. In fact, those who have gone to the Supreme Court in this case, their basic contention was that this law, some of its provisions are *ultra vires*, they are unconstitutional. The three particular Sections, which have been impugned, were Section 20, 21 and 22. The petitioners assailed Sections 20, 21 and 22 mainly on the ground that no requirement of *mens rea* for offences is provided in these sections and the same is liable to misuse, therefore, it has to be declared unconstitutional. And then the Supreme Court says, it has to be noted that Sections 20, 21 and 22 of POTA are similar to Sections 11, 12 and 15 of the Terrorism Act, 2000 of the United Kingdom. Such provisions are found to be quite necessary all over the world in anti-terrorist efforts. Of course, the argument that you had advanced, I have already commented on that because I feel what the Supreme Court has said in this judgement gives scope to all the Reviewing Committees and makes it possible for all the State Governments also to know that the Supreme Court's view is that simply because a person has professed or given support or arranged or managed meeting, he has not on that account committed an offence, if he does not have an intention or the design to further the activities of any terrorist organisation or the commission of terrorist acts. We are clear that this is not. Therefore, it is obvious that the offence under Section 20 or 21 or 22 needs positive inference that a person has acted with the intent of furthering or encouraging terrorist activity or facilitating its commission. These Sections are limited only to those activities that have the intent or encouraging or furthering or promoting or facilitating the commission of terrorist acts. Now, this is from the highest judiciary of the country. Therefore, I feel that what the Parliament did in its Joint Session has been vindicated now by the highest judiciary of the country. POTA is constitutional, and not only constitutional but POTA recognises the grave threat that this country is facing at the hands of these terrorists. And that viewpoint is not only the viewpoint of the Government of India, of The Executive and of the Parliament but also the viewpoint of the highest judiciary in the country. This is the situation. And, with this situation, we still feel, Madam Deputy Chairman, and I know that thousands of cases were registered under the TADA. I belong to Gujarat. I know how farmers' agitation was going on there and thousands of farmers were put behind bars under the TADA. Why did it happen? It did not happen for political

purpose. Very often it is said that abuse takes place only for political purpose. Very often abuse takes place because a certain law provides that in this case bail will not be granted. Therefore, it becomes easy for the police to handle agitation. The police want to handle agitation in a manner to see that no more people to come to participate in the agitation. Therefore, they are put behind bars under some particular Section that provides for this. I wish we were able to distinguish between the two laws. Madam, the MISA was a different case altogether. Therefore, I did not refer to the MISA because the MISA was because of Article 352. Articles 352 and 356 are two important Articles of the Constitution. The Constituent Assembly regarded them necessary. I still regard them necessary, even though I have been a victim of Article 352. My Governments have been the victims of Article 356. Yet, I do not plead for repealing of these Articles only because these have been abused by the Executive and only because we have suffered. At the most, we will suggest some amendments that how can they be changed in order to see that abuse does not take place. We did something in respect of Article 352 as well as Article 356 in 1977. Basically, I plead with all of you that the POTA is a law, which today is necessary for India. Every democratic country of the world has deemed that similar laws are necessary. They have enacted them. Similarly, we think, if the POTA had not been there, the attackers on Parliament would not have been punished the way they ought to have been. Similarly, the State of Jammu and Kashmir is using it. The Government of Maharashtra is using it. I am not blaming them for that. We should not abuse any law, not only this but any law; and, particularly, if it is a draconian law, we should not abuse it. It is, therefore, when we provided the Review Committee, we said let the Review Committee judgement and opinion be of a nature that cannot be brushed aside lightly by saying that it is only advisory. It is binding. Not only it is binding, but if there is a difference between the Central Review Committee's view and the view of the State Review Committee, then, the Central Review Committee's view will prevail. That is the law. I am happy that most of the hon. Members, directly or indirectly, said that this by itself may not be opposed but this will not go far. This will be cosmetic. I think it is much more than cosmetic. So much so, it provoked Mr. Sibal to say that you are trying to override the judiciary, which I pointed out, that we are not. There is no intention of bypassing the judiciary. But, it is

certainly directing the Executive to correct any fault it has committed. Therefore, there is a provision for withdrawal of the charges.

Madam, with these words, I commend this Bill to the House and hope that even those who had opposed the POTA would support this amendment Bill. Thank you.

SHRI P.G. NARAYANAN: Madam, I wish to raise a point.

THE DEPUTY CHAIRMAN: The Bill was opposed. There was a Resolution opposing it. The precedent is that the mover of the Resolution should speak first only then others can speak.

THE LEADER OF THE OPPOSITION (DR. MANMOHAN SINGH): Madam, I have listened very carefully to what the hon. Deputy Prime Minister has had to say. Nobody will disagree with him that terrorism, today, constitutes a major national problem and that we, as a nation, need to adopt concerted strategies to deal with terrorism, including that element of it which is sponsored from across our borders. Having said that, it has been our consistent view that the POTA is a wholly, inadequate response to deal with the problems of terrorism. It does not take into account the problems that we face in a developing society, where standards of policing, standards of administration, even standards of justice do not happen to be what they are in other countries, like the United Kingdom, which the hon. Deputy Prime Minister has quoted. We all know, for example that some incidents took place in the United States after the events of September 11, 2001, One person of Indian origin was killed. The US law saw to it that the guilty were brought to book. But we know, for example, in our country what happened in Gujarat. Thousands of people had been affected by riots. Yet, our system is impervious to the tragedy that takes place. *(Interruptions)* Therefore, while it may be correct on paper it may be correct that similar laws exist in other countries, in my view. Madam, it is necessary for us not to forget the different objective conditions that prevail in our country. We honestly believe that the POTA is not an adequate response to deal with the problems of terrorism. We are not persuaded that this amendment is going to make matters greatly different from what the situation on the ground, thus far has been. It is in our view, nothing but a cosmetic remedy. And, as Mr. Sibal pointed out, we have also doubts about whether its principles and procedures will stand the



scrutiny of courts. But that is a different matter. Therefore, Madam, we are not going to support this amendment and our opposition to the POTA also stands. The right response should have been for us to scrap the POTA and come with a more holistic strategy, which all of us could support to deal with this menace of terrorism. As a mark of our protest against POTA and even this amendment, we will walk out.

*(At this stage, some hon. Members left the Chamber.)*

SHRI NILOTPAL BASU (West Bengal): Madam, I would like to make just one point. We are no less interested than the hon. Home Minister in fighting terrorism. We are showing it in two States that we are leading, in West Bengal and Tripura, and, I think it has also been covered by the Supreme Court order. We find that we have no difficulty in dealing with terrorism with equal sincerity and patriotism as the Central Government itself, without using the POTA. Therefore, we cannot accept the logic, and we think that more constructive strategy to unitedly fight terrorism could have been found. Since that approach is not there with the Government, we are walking out in protest. *(Interruptions)*

*(At this stage some hon. Members left the Chamber.)*

श्री संजय निरुपम: मैडम, अगर पोटा के दुरुपयोग को रोकने के लिए कोई संशोधन आ रहा है और उस पर अगर बहिष्कार हो रहा है, ये लोग वॉक आउट कर रहे हैं तो इसका मतलब यह है कि कांग्रेस चाहती है कि पोटा का दुरुपयोग होता रहे।

THE DEPUTY CHAIRMAN: Mr. Narayanan, when time comes, I will call you. You have told me that you want a division. I will bring it at the time of division.

SHRI P.G. NARAYANAN: Madam, I want one clarification from the hon. Minister.

THE DEPUTY CHAIRMAN: Okay.

SHRI P.G. NARAYANAN: Madam, in certain cases court has already taken cognizance. After finding that there is a *prima facie* case charges have been framed. In those cases, what is the role of the review committees? I would like to know whether the decision of the review committees is binding or not. I would like to have a clarification on this point.

[18 December, 2003]

RAJYA SABHA

SHRI L. K. ADVANI: Madam, if a case is before a court of law, then, it is not for me to comment on what would happen. If a Review Committee give certain recommendations, it would be for the court to decide.

THE DEPUTY CHAIRMAN: I shall first put the Resolution moved by Shri Kapil Sibal to vote. The question is:

"That this House disapproves the Prevention of Terrorism (Amendment) Ordinance, 2003 (No. 4 of 2003) promulgated by the President on the 27th October, 2003."

*The motion was negatived.*

THE DEPUTY CHAIRMAN: I shall now put the motion moved by Shri L. K. Advani to vote. The question is:

"That the Bill to amend the Prevention of Terrorism Act, 2002, as passed by Lok Sabha, be taken into consideration."

*The motion was adopted.*

THE DEPUTY CHAIRMAN: Mr. P.G. Narayanan, when do you want the voting?

SHRI P.G. NARAYANAN: Madam, I want it at the end.

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

*Clauses 2 and 3 were added to the Bill.*

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

SHRI L.K. ADVANI: Madam, I move:

"That the Bill be passed".

SHRI P.G. NARAYANAN: Madam, I want a division.

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

*The House divided.*

THE DEPUTY CHAIRMAN: Let me explain it. The Bill, on principle, is passed by a majority vote in the House, which I count. But because the Members

of the AIADMK want to register their opposition, they are voting against the passing of the Bill while the rest of you might do as you like. ...(*Interruptions*)... You should know why you are voting, that is why, I am explaining it. Now, we are in the final stage of passing this legislation. In principle, it is being passed. But the AIADMK Members have requested the Chair that they want to vote against the Bill, so, they want a division. They wanted to be known that they have voted against the passing of the Bill. The rest of you might vote as you like.

Ayes : 78

Noes : 08

Ayes : 78

Agarwalla, Shri Parmeshwar Kumar

Agniraj, Shri S.

Ahluwalia, Shri S.S.

Alexander, Dr. P.C.

Apte, Shri B.P.

Apte, Shri Devdas

Barot, Shri Jayantilal

Basha, Shri S.M. Lal Jan

Bhardwaj, Shri Suresh

Bohidar, Ms. Pramila

Bora, Shri Indramoni

Brahma, Shri Urkhao Gwra

Dhindsa, Shri Sukh Dev Singh

Durga, Shrimati N.P.

Gautam, Shri Sangh Priya

Goyal, Shri Vedprakash P.

Gyamtsso, Shri Palden Tsering

Hema Malini, Shrimati

Jaitley, Shri Arun

Jalan, Shri Bimal

Judev, Shri Dilip Singh

Kadar, Shri M.A.  
Kasturirangan, Dr. K.  
Kaur, Shrimati Gurcharan  
Kaushal, Shri Swaraj  
Kharshiing, Shri Robert  
Kovind, Shri Ram Nath  
Lath, Shri Surendra  
Libra, Shri Sukhdev Singh  
Mahajan, Shri Pramod  
Mahajan, Shrimati Sumitra  
Malik, Shri Harendra Singh  
Manaklao, Dr. Narayan Singh  
Meghe, Shri Datta  
Mehta, Shri Lalitbhai  
Mishra, Shri Dina Nath  
Mitra, Dr. Chandan  
Mullana, Shri Faqir Chand  
Murthy, Shri Rajasekara  
Naidu, Shri M. Venkaiah  
Nandy, Shri Pritish  
Naqvi, Shri Mukhtar Abbas  
Nirupam, Shri Sanjay  
Parmar, Shri Kripal  
Patel, Dr. A.K.  
Patel, Shri Keshubhai S.  
Pradhan, Shri Satish  
Prasad, Shri Abhay Kant  
Prasad, Shri Ravi Shankar  
Punj, Shri Balbir K.  
Rai, Shri Lajpat  
Rajagopal, Shri O.  
Ramachandraiah, Shri C.  
Rao, Shri K. Kalavenkata

Reddy, Shri Ravula Chandra Sekar  
 Samal, Shri Man Mohan  
 Sankaralingam, Prof. M.  
 Sharda, Shrimati Savita  
 Shourie, Shri Arun  
 Shunmugasundaram, Shri R.  
 Singh, Shri Birabhadra  
 Singh, Shri Dara  
 Singh, Shri Jaswant  
 Singh, Rao Man  
 Singh, Shrimati Maya  
 Singh, Shri Raj Nath  
 Singh 'Lalan', Shri Rajiv Ranjan  
 Singhal, Shri B.P.  
 Singhvi, Dr. L.M.  
 Sinha, Shri Shatrughan  
 Sivasubramanian, Shri S.  
 Suri, Shri Lalit  
 Swaraj, Shrimati Sushma  
 Thakur, Shri Ekanath K.  
 Trivedi, Shri Dinesh  
 Vanga Geetha, Shrimati  
 Varma, Prof. R.B.S.  
 Verma, Shri Vikram

**Noes: 08**

Chandran, Shri S.S.  
 Indira, Shrimati S.G.  
 Kamaraj, Shri R.  
 Khan, Shri S.P.M. Syed  
 Maitreya, Dr. V.  
 Perumal, Shri C.  
 Selvan, Shri Thanga Tamil  
 Narayanan, Shri P.G.

*The motion was adopted.*

[18 December, 2003] RAJYA SABHA

THE DEPUTY CHAIRMAN: Hon. Members, you have done a very good job today. Thank you very much. May I have a little bit of your indulgence? Today, I am so happy, the House is so full. There is a legislation, which is important for our NRIs abroad, those Non-Resident Indians who have done a great service to India, the Citizenship (Amendment) Bill, 2003. If you feel, we can pass this legislation. If there is no objection, as I feel, we can pass it without any discussion.

SOME HON. MEMBERS: Yes, Madam.

THE DEPUTY CHAIRMAN: Okay. Then, Mr. L.K. Advani to move the Bill ...(*Interruptions*)...

SHRI SURESH PACHOURI (Madhya Pradesh): Madam, Dr. Manmohan Singh wants to say something about the Citizenship (Amendment) Bill.

THE DEPUTY CHAIRMAN: Let Advaniji move the motion, then, I will allow him.

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### THE CITIZENSHIP (AMENDMENT) BILL, 2003

THE DEPUTY PRIME MINISTER, IN CHARGE OF THE MINISTRY OF HOME AFFAIRS AND MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI L.K. ADVANI): I move:

"That the Bill, further to amend the Citizenship Act, 1955, be taken into consideration."

Madam, I hold that today the world-over, India and Indians are viewed with respect, and one major factor contributing to this situation is the Indian diaspora settled abroad. Wherever they have gone, they have distinguished themselves; they have achieved heights in various walks of life. They have merged themselves in the local nation also. They have contributed to the development of the nation where they have settled, and they continue to have warm ties with India and India's culture. For a long time, there has been this demand that the provision for dual citizenship which obtains in very many other countries should be available in India also, for Indians settled in certain countries where there is the reciprocal arrangement and where there is a demand for that. A Committee