

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No. Please take your seat. I had allowed her. But you are speaking without my permission and you are adding unnecessary things which were not there. If you go on speaking, the entire thing will go off the record. *...(Interruptions)...* We will now take up the Statutory Resolution.

श्री बालकवि बैरागी : प्रस्ताव पास होना चाहिए *...(व्यवधान)...*

उपसभाध्यक्ष (श्री अधिक शिरोडकर) : कौन सा प्रस्ताव *...(व्यवधान)...* There is no question of that. *...(Interruptions)...* Please. *...(Interruptions)...* No. We will now take up the legislative business. If anybody disturbs it, I will see to it that it goes off the record.

DR. RAMENDRA KUMAR YADAV RAVI: Sir, you have honoured this House with a great decision.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Sir, you are reminding me of the first Chief Justice of India, Chaglaji. One lawyer had told him, "Sir, you have given one good judgment", and he remarked, "In my life, only one good judgment?"; the lawyer said, "No, no; this judgement suits me". So, it suits you.

We will now take up the Statutory Resolution. Mr. Kapil Sibal.

STATUTORY RESOLUTION

SEEKING DISAPPROVALS OF THE PREVENTION OF TERRORISM (SECOND) ORDINANCE, 2001 AND THE PREVENTION OF TERRORISM BILL, 2002.

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

"That this House disapproves the Prevention of Terrorism (Second) Ordinance, 2001 (No.12 of 2001) promulgated by the President on the 30th December, 2001".

Mr. Vice-Chairman, this House is aware of the fact that as far back as October 15, 2001, the first Ordinance in respect of prevention of terrorism was promulgated. This House is also aware of the fact that this was promulgated immediately after the events of September 11, 2001, when everybody knew that the House was to assemble on the 19th of November, 2001. The Government was aware of the fact that the House was to meet; and, on a sensitive matter like this, I would have thought that the

Government would take the Opposition into confidence, hold consultations, and, during the course of the Session, move an appropriate piece of legislation so that it would be acceptable to all. I say this not only on behalf of my party; I believe, I am expressing the sentiments of this House; nobody in this House or outside does not wish that terrorism should be fought in the strongest possible terms. I think this nation is committed to fighting terrorism, and nobody should have two opinions on that. We are only concerned at the mode and the manner in which such a draconian piece of legislation is being pushed by this Government, without regard to the sentiments of large sections of society which have expressed serious concerns about the efficacy of this law. Yet, today, this is a defining moment in history when the people of this country have to take a position; political parties in this country have to take a position. We tried very hard, Sir, to enter into a dialogue with the Government. Indeed, today itself, I moved an amendment to the Bill; under rule 125, I sought the reference of this Bill to a Select Committee of this House. What was the purpose of this move? The purpose of this move was, let us sit together; let us look at some of the provisions; let us have a dialogue; let us explain to you which provisions we think might not be efficacious; let us also add certain provisions so that all those who perpetrate terrorism, whether it is State-perpetrated terrorism or otherwise, are brought within the ambit of this Bill. But, I am sorry to say, Sir, -- this was an escape route that we gave to the Government -- there was no move by the Government, in fact, to meet us even half way. This proposal was rejected outright. Unfortunately, this particular amendment was moved today, which, under the rules, ought to have been moved before 24 hours, and we sought the permission of the Chair to waive the period of notice. Unfortunately, the Government has not cooperated. So, it cannot be said that from our side, from our point of view, we have not tried to meet with you, tried to discuss the law with you, so that we give a humane face to this draconian piece of legislation. Having said that, Sir, I go back to what I had said earlier, we are standing, today, at the turning point of the history of this country, when people and political parties have to make choices. In fact, I am reminded of the words of the second President of the United States, John Adams, when, on 23rd March, 1776, he wrote to Horatio Gates, and said, "I agree with you that in politics, the middle way is none at all." Yes, there are moments when middle ways are none at all. You have heard President Bush's State of the Union Address, in which he said, "either you are with us or you are against us." So, either we are for this Bill or we are against this Bill. You have chosen

your way, and we, I believe, have chosen ours. You seek to sacrifice civil liberties, in the national interest; we seek to protect civil liberties, in the national interest; you seek to combat terrorism through law; we seek to combat a law that perpetuates State terrorism; you seek to divide an already fractious polity; we seek to unite a fractious nation; you seek to unlearn from the past; we seek to learn from the past. You have chosen your way, and we have chosen ours.

Sir, one of the issues that we have been raising in the public, time and again, is that, if you have this law in place, in the hands of an enforcement authority, which has no regard for human rights and which acts at the instance and under the direction of State authority, then the ordinary, innocent, people of this country will be victims of this law. Sir, I am sorry to say that just as we have spoken, these words came true, because the proof of the pudding is ultimately in the eating. If you remember, Sir, it was in November, 2001 when, for the first time, POTO was put into force in Jammu and Kashmir. In other words, the first arrest in Jammu and Kashmir took place under POTO was in November. And what happened? A family, which had nothing to do with terrorism, its entire property was attached. There was a public outcry. The Government, the Law Minister of the State of Jammu and Kashmir had to make a statement publicly. "This is a gross misuse of the law." This was the first instance of the use of POTO in Jammu and Kashmir itself.

But, Sir, let us come nearer home and to recent events. I only invite the attention of this Government to what happened in Gujarat; and I invite the attention of the Government to a report published in the *Indian Express* just the other day, when we were told that 62 persons of a particular community were arrested by the Gujarat Government for the Godhra carnage, and that all 62 of them were booked under POTO. Well, Sir, if they are responsible for these crimes, we have no objection. Indeed, the law must take its course and anybody, who is responsible for the carnage at Godhra, must be dealt with in the strongest possible terms. We have no two opinions on that. But, Sir, look at what happened to those who perpetrated the violence in Ahmedabad and other towns in Gujarat thereafter.

We had the very unfortunate Kargil episode, in which those from across the border came into our territory and we lost very precious lives, we lost over 500 lives in Kargil. But this country must also know that the lives lost in Gujarat were more than 500, more than the total number of lives lost

in the Kargil conflict. Look at the way in which the Government of Gujarat is using POTO on a selective basis. I invite the attention of the hon. Home Minister to a newspaper report. It is stated that in Ahmedabad city alone, according to the official police figures, besides 300 deaths, 1679 houses were set on fire, 76 religious places were burnt or damaged, 1965 shops were burnt, 200 shops were looted and 90 vehicles were torched. Sir, this is in Ahmedabad alone.

In a FIR lodged by the Sub-Inspector, Shri B.K. Solanki, of the Naroda Police Station, named five VHP and Bajarang Dal leaders of the Naroda-Patia massacre. Among them is the Bajarang Dal activist, Babu Bajrangi, who has a long criminal record. Three persons have so far been arrested but those named in the FIR are still at large.

Forget about POTO. They are not even sought to be arrested and this FIR is not lodged by an ordinary person on the street, but it was lodged by the Sub-Inspector of the Naroda Police Station. The Assistant Commissioner of Police, Mr. Bharot, who is given the charge of the investigation, questions the action of the local police. In other words, the ACP is questioning the action of the Sub-Inspector of Police, who has lodged the FIR. And what is he saying? He is saying that before any arrest of Bajrangi and others named in the FIR takes place, we have to be sure of their involvement. Similar is the fate of the Gulbarga Society. Here 13 persons were arrested since the FIR was lodged by Inspector Kirit Singh of Megani Nagar Police Station on February 28. Again an FIR was lodged by a police officer. But the 11 persons who were named in the FIR, including a BJP leader, Deepak *alias* Pradeep Patel, are still at large. In this case too, the ACP Bharuch says and I quote: "If necessary, these people will be arrested." Now, Sir, as I said, the proof of the pudding is in the eating. This is the actual working of the POTO at the ground level. The State machinery has collaborated to protect those who *ex facie* are terrorists. Further I ask you: What is terrorism? You have defined it in the POTO. What does it say? It says that if any section of society is terrorised by acts of others and in that process, injuries are caused either to the person or property, then he falls within the definition of a terrorist act. Nobody can say that after the loss of more than 500 lives nobody was terrorised in the State of Gujarat. Can anybody say that? Can anybody say that these were not acts of terror when people were burnt alive, just as the carnage of Godhara was an act of terror where people were burnt alive? So, these were acts of terror. Yet despite the fact that these were acts of terror, far

be it that they are dealt with under the POTO, they are not even arrested under the ordinary law. So, how can we, as a political party have confidence in the machinery of the State Government that this law will be implemented against individuals who have in the last few months terrorised this nation? Will this law also move against those who are collaborators in this terrorism? Will this law deal with State terrorism in the same fashion as it dealt with terrorism from across the border. I beg to say that the conduct of the Government in Gujarat clearly suggests that the POTO is a weapon which will be used selectively for jingoism in this country. Sir, of course, times have changed. We have moved forward as a nation. Opinions change. Those who are sitting now in the Treasury Benches were the votaries of civil liberties in this country. I remember when the TADA was sought to be renewed from time to time, what fiery speeches some of the hon. Members, who now belong to the Treasury Benches, made. How civil liberties stirred your hearts. How you fought for civil liberties during the Emergency, Mr. Jaitley will tell us. How your Ministers called the then piece of legislation as worse than the Rowlatt Act. I may have the permission, Sir, to quote some of those fiery speeches that were made by the hon. Members who now belong to the Treasury Benches on May 11, 1989. This is what Yashwant Sinha said, and this is in respect of the TADA when it was sought to be renewed.

I quote, "I would like to go on record for posterity that if ever there was an Act, which was a blot on the fair name of democracy, it is this..." -- has Mr. Sinha changed his heart so quickly? Does his heart not bleed for civil liberties now as it did then? Or, is it just political expediency? Sir, I quote further -- "...It is the Terrorist and Disruptive Activities Prevention Act of 1987. By this Act, we have destroyed, completely, perhaps, for all times to come, what is known as a rule of law and the tragedy of the situation is that we have destroyed the rule of law by an Act of Parliament. If the Rowlatt Act was not fit for human beings, I wonder how the TADA is fit for human beings? What could be a greater shame than that? What could be a greater blot in the name of democracy? I did not compare the Rowlatt Act with this TADA, I said, it was much worse than the Rowlatt Act." What has happened over the last five years, except that you are in power, and we are not? Is this the reason why you have changed your tune? Is this the reason why you now play with the sentiments of the people and decided to support this law because of political opportunism? Let the people of this country know.

Sir, I now quote what Jaswant Singhji -- I am sorry; he is not in the House; but, he would have liked to hear what I say -- said on 11th May, 1989, "I am totally opposing this legislation, which my esteemed colleague, Shri Yashwant Sinha has now repeated. This enactment, in its origin and how *ab initio*, it was unacceptable to me as an issue of principle..." -- I would have liked to ask him what has happened to that principle, Sir? -- "...I find that this piece of legislation runs counter to every concept of civilized values..." -- what has happened to those civilized values now? You certainly still remain a civilized human being, at least, that is what your appearance suggests -- "...I do not think that the answer, therefore, lies in the continued extension of this piece of legislation. If, in the past two years, we have not even managed to restrain it and it runs unabated, I am not convinced it will now serve the purpose. I oppose wholly the Terrorist and Disruptive Activities Prevention (Amendment) Bill, 1989." What has changed? I would like to ask and the Government must explain. Suddenly, how is POTO an effective weapon for all ills in this country? How is suddenly POTO a panacea to deal with terrorism in this country? How is suddenly POTO consistent with human rights and civil liberties in this country?

Now, I go on to quote Mr. George Fernandes. I have great admiration for him, especially how quickly, like quick silver, he changes his tune. It was on August 12, 1991, two years later, and this is what Mr. Fernandes said and I quote, "It has now been proved that such a law cannot abolish any kind of violence or terrorism. It is essential to learn lessons from it..." - this is what I said in my opening statement, you unlearn from the past; we learn from the past - "...There should be no State-terrorism..." - he should have said that in Gujarat - "...violence is not the way to solve any problem and now, we must choose another way. This law is not going to serve any purpose. You are using the law not to abolish terrorism, but to give a blow to democracy in this nation. This is not the appropriate way to keep the country integrated and remove terrorism, therefore, we are not at all in favour of enforcing this law." Now, you want to integrate this country through POTO?

Mr. Ram Naik, yet, another example. What did he say on 12th August, 1991? This is what he said, "It seems that police officers favour imposition of TADA because the police find it easy to apprehend the person under TADA..." - that is exactly what happened in Gujarat; people cannot raise their voice against the police - "...If the TADA is misused, we cannot extend our support to it." Why are they extending support to it now? Last of all, Shri Ram Vilas Paswan, what did he say? I do not want to quote him

but he also opposed that. This is what he said at the end, "You can destroy mosquitoes by spreading DDT, but it is also necessary to clean the dirty gutter first." And, Advaniji, you are sitting here. I am a great admirer of you too. At least, you have attempted to stick to some principles in your life. What did you do on August 12, 1991? You voted against the TADA (Amendment) Bill. Your vote is on record. You, Mr. Khanduri, Mr. Madan Lal Khurana, Mr. Ram Naik, and Mr. Ram Vilas Paswan, all voted against that. But, as I said, times have changed. You are now in power. And, perhaps, you thought that this kind of jingoism would bring you some votes in Uttar Pradesh. But the people of Uttar Pradesh have taught you a lesson. And, I dare say the people of Gujarat would do likewise soon. Having said that, Sir, let me go to some of that substantial aspects that I have to raise on this Bill itself. First of all, on the issue of terrorism, there is a problem of definition. If you look at the definition of 'terrorism' in this Bill, you will find, it says, "Whoever with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by...-- I don't read the rest -- and injuries to any person or persons or loss of, or damage to, or destruction to or destruction of property or disruption of any supplies....in connection with any purposes of the Government of India, any State Government, commits an act of terror." But, Sir, what is interesting is that, in the TADA, there was an addition which you left out, and that I will just show to you. You said in the original TADA, "Use or threat of action, where the use of threat is designed to influence the Government or to intimidate the public or a section of public, and the use of threat is made for the purpose of advancing a political or religious or ideological thought." Conveniently, the whole part of the definition, relating to a section of the public terrorising another section of the public for the purposes of public sentiments, that whole part of the definition, has been taken out by you. The reason is simple. In this process, you are seeking to protect your supporters and your votaries who are the perpetrators of terrorism in many parts of the country. So, we do expect, and we did expect, the Government to have an all-comprehensive definition of terrorism; and, time and again, we have publicly said, "We have a definition of terrorism in the UK Act itself, and that definition of terrorism should be taken by us." That definition of terrorism includes, threat is made for the purpose of advancing a political, religious or ideological cause. If any section of the community uses terror to perpetuate or advance a religious cause, under the UK Act, that is an act of terrorism. Why should you not use that? Of course, this is

addressed to the allies of this Government, who are very much concerned with secularism. We know where the BJP stands, we know where the Bajrang Dal stands, we also know where the VHP stands, but we never expected the allies of this Government to give a go-by to their ideology, and support this Government, without seeking an all-comprehensive definition of terrorism.

These are the issues, which could have been resolved. These issues could have been resolved through a dialogue. We could have had an all-comprehensive terrorism law to deal with the enemies of this country, both within and without. You want to deal with the enemies without, but you don't want to deal with the enemies within, because those enemies support you. Those enemies support the political ideology that you stand for. They are the enemies of the nation.

Mr. Vice-Chairman, Sir, we have another substantive objection. Sir, as you are aware, under this law, a person who is a member of a terrorist organisation is, automatically, a terrorist. I would like to know from the Government: Do the terrorist organisations have registers of membership? Will the police officer go to the terrorist organisation, find out the register to know as to who is a member and then put him under POTO? Let us look at the reality of the situation. Sir, law is not divorced from reality. What will happen is, an ordinary police officer will arrest somebody under POTO, have a statement recorded that he is a member of a terrorist organisation. So, , he, straightway, goes under POTO. Once he goes under POTO, he won't get bail. He will have to prove that he is not a member of that organisation. How will he prove that? Because then the prosecution will ask him "Please show how you are not a member". We can show, how you are a member". Because some statement will be recorded by some person that he is a member of that organisation. So, is it not a genuine concern? Forget about politics, forget about jingoism. Is it not a genuine concern for the ordinary people of this country who might be subjected to this kind of terrorism at the hands of the State? Is this not a reasonable objection?

श्री रमा शंकर कौशिक (उत्तर प्रदेश) : आर.एस.एस. वालों के पास भी रजिस्टर नहीं है।

श्री कपिल सिब्बल : नहीं, नहीं। आपको याद होगा जब वधवा कमीशन बैठा था और उड़ीसा में स्टेन की हत्या हुई थी तो उस वक्त वधवा कमीशन ने क्या कहा। वधवा कमीशन ने यह कहा कि हम यह नहीं कह सकते हैं कि वह आदमी जिसने स्टेन की हत्या की थी वह बजरंग दल का मेम्बर है, क्योंकि उसका कोई रजिस्टर ही नहीं है। ऐसा वधवा कमीशन ने कहा था।

क्योंकि उसका रजिस्टर नहीं है, इसलिए वह मेम्बर नहीं है, क्योंकि वह मेम्बर नहीं है इसलिए हम नहीं कह सकते हैं कि वह बजरंग दल को बिलौंग करता है। यह पोटो उसका उल्टा है। POTO is just the other way round, namely, you say he is a member of a terrorist organisation. Then, he will have to disprove that he is not a member of that organisation. Isn't this a reasonable objection on our part? That is the question. These questions will have to be answered. Of course, ultimately, they will be answered in the court of law, but in the meantime, thousands and thousands of people will be languishing in jails, and we don't want that. That is my second substantive objection.

My third objection, in any case, under this law, what is the procedure to determine whether an organisation is a terrorist organisation or not? You may have some members in an organisation who adopt violent means. It can happen.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal, your Party has got 58 minutes.

श्री कपिल सिब्बल : सर, मैं खत्म कर रहा हूँ।

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please listen to me. We are bound by certain rules and regulations. Your Party has been allotted 58 minutes. There are five speakers. You have already consumed 31 minutes. Please keep that in mind.

SHRI KAPIL SIBAL: Sir, please, don't worry about that.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I am not worried, I have to go by rules...(Interruptions)...

SHRI NILOTPAL BASU (West Bengal) : Mr. Vice-Chairman, Sir, I want to seek one clarification. Normally, when a Member moves a Resolution disapproving an Ordinance, doesn't speak on behalf of the Party, but speaks as a Mover of the Resolution. That is the precedent.

SHRI KAPIL SIBAL: That is right.

SHRI NILOTPAL BASU: And, allocation of time is made thereafter.

SHRI KAPIL SIBAL: Yes.

SHRI NILOTPAL BASU: Mr. Vice-Chairman, Sir, it has been the practice. Please, go through the records...(Interruptions)...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please show me that record.

SHRI NILOTPAL BASU: Sir, everytime, it has happened.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I don't know. Please, don't interrupt.

SHRI NILOTPAL BASU: Sir, it has happened in the past.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Show me that record. I will amend my ruling ...*(Interruptions)*... Do it please?

SHRI NILOTPAL BASU: Mr. Vice-Chairman, Sir, I will have to bring a big bunch of records.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Sibal, please remember that you have to abide by that.

SHRI KAPIL SIBAL: Sir, don't worry about it. I remember my responsibility that as a Member what I have to do.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The total time allotted for this discussion, inclusive of the Resolution, is four hours. Please remember that your Party has four more speakers. So, I will have some time constraints. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE (West Bengal): If needed, you can extend the time. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): That you can do. ...*(Interruptions)*... I do not mind, if you do that. ...*(Interruptions)*... Please continue. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: This is an important piece of legislation. So, at the end of the four hours, if it is needed, with the consent of the House, you can extend the time. ...*(Interruptions)*... Please do not disturb him. What is wrong in it?

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Then, do it beforehand. Please continue. ...*(Interruptions)*... I can't change it. Please continue.

श्री कपिल सिब्बल : सर, वैसे भी मैं ज्यादा वक्त नहीं लेता, You know very well. मैं अपनी बात कहकर खत्म करूंगा। मैं ज्यादा वक्त नहीं लूंगा। If I am disturbed, then the flow of thoughts is destroyed. In the past, when you were in the Chair,

you have had the opportunity to tell me also to finish as quickly as possible. You seem to be in the reminding mood now-a-days. Doesn't matter. Please let me ...*(Interruptions)*...

AN HON. MEMBER: That is also 'selectively'. ...*(Interruptions)*...

SHRI KAPIL SIBAL : Doesn't matter. I have great regards for the Chair.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): That word 'selectively' is unwarranted. You are casting aspersions. ...*(Interruptions)*...

SHRI KAPIL SIBAL: We do not cast any aspersions.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I am very particular about it. Please continue. Don't do it. Please continue.

SHRI KAPIL SIBAL: So, the third substantive point that I was making was, there are organisations, in this country, where you may find an individual, a member to be indulging in certain activities which are violent in nature, and I think you must deal with them. But, what is the procedural manner in which you treat an entire organisation as a terrorist organisation? I had some experience, Sir, in dealing with international organisations which are termed as terrorist organisations, and the thumb rule for those organisations is, "if an organisation in its objects says that it will indulge or use violent activities to achieve its purposes, be they political or ideological, then that organisation is deemed to be a terrorist organisation." That is the thumb rule across the world. Now, it is very surprising, Sir, and the Home Minister knows about it. When this Ordinance was promulgated for the first time on 15th October, neither the MCC nor the PWG were deemed to be terrorist organisation under the Schedule. Why is it so? But, the SIMMI was termed as a terrorist organisation immediately -- whether it is a terrorist organisation or not, I am not on that issue on merits, if the Government has taken a decision, it has taken a decision. If it is, you must deal with it. But why did you not include the MCC and the PWG? And why the NSCN(IM) is not included, even today? These are organisations which profess that they will use means that are violent to achieve their ends. So, even here, there is selectivity. For example, under the Unlawfully Activity Prevention Act, 1967, if you want a particular organisation to be declared as an unlawful organisation under the Act, there is a whole procedure prescribed. In other words, a notice is given to that organisation and that organisation will come forward, and then that issue will be decided by a court of law, in fact, by a Judge of the High Court. And, then ultimately that organisation will be declared an unlawful organisation, but not at the instance of the

Government. Now, suddenly, in this Bill, you change that position. You have no enquiry; you were going into the U.P. elections, you knew that the elections were going to be there in March, and you wanted to create a kind of atmosphere in U.P. at that point of time. So, you did not look to MCC; you did not look to PWG, but you immediately banned SIMMI. Does the ordinary man not feel, Sir, that you are not really very unbiased? This is a bit partisan; at least, I got that feeling. Of course, when there was a public outcry and we pointed out publicly as to why the MCC and the PWG have not been included, you ultimately had to do it, in December. But it shows your state of mind; it shows your mindset; it shows which direction you are moving towards; it shows what you want to do to this country; it shows that you want to divide the polity of this country, and you are already well ahead in doing so. And, I beseech you, on behalf of the House, don't play politics of hatred in this country; bring people together; don't send people from the PMO to accept 'shila dhan'. That does not send the right signal. ...*(Interruptions)*... Don't do that. Don't make public statements ...*(Interruptions)*... That is my third substantive objection.

My forth substantive objection to this law is about the procedural aspects of this law, Sir. Confessions to police officers are substantive evidence. I know that the Supreme Court has upheld this already under the TADA and that will be given by my learned friend, my good erudite friend, as an answer, saying "These provisions have been already upheld by the Supreme Court". But, the Supreme Court had also decided ADM, Jabalpur. That very Supreme Court had upheld the suspension of the fundamental rights during the Emergency. Supreme Court judgments can also be wrong. After all, the Supreme Court held that the bail provisions, the harsh bail provisions, in the TADA were constitutional; and yet, you have done some work on it and reduced it to a period of one year; despite the Supreme Court upholding it. Why? This is what the Human Rights Commission had to say. Well, I do not have it handy. But the Human Rights Commission says that this provision which is in section 27 of the Act is grossly misused by police officers. They torture people to get a confession; and that is the only piece of evidence on the basis of which people are convicted! You know that torture at the hands of police officers in this country is legendary! You would remember the Bihar blinding case, how people were blinded at the hands of the police. It is the ordinary way of life for the policeman. I do not say this to castigate the police force. But, that is terrorism at the ground level for you and that is the reality of the day. Now, if you give these powers to such officers and all that they do is to beat up a person

3.00 p.m.

and get a confession, and that will be the only substantive piece of evidence, then, you can actually put anybody under the POTO.

Then, there is another unique provision in this law. That provision relates to protection of witnesses. It is very interesting, I may tell the hon. Members of this House. If the police and the investigating authorities feel that during the course of investigation they have recorded the statements of certain witnesses against the accused and those witnesses need protection from the accused, even though the accused is in custody under the POTO, then, the names of those witnesses will not be revealed to the accused. Not only the names of the witnesses will not be revealed to the accused, but, in fact, substantive portions of their testimony which might indicate to the accused the identity of the persons, even those substantive portions of the testimony will not be revealed to the accused. I may tell you, because I have had some experience in this branch of law, that under similar laws, large parts of the testimony of a witness, that is the section 161 statement given to the police officer, are not given to the accused. So, the accused does not even know what, in the court of law, he has to meet. Now, how will the accused defend himself? You have a Witness Protection Programme in the United States also under the anti-terrorism law there. You have no such provision there. You have no such provision in the American law that because of this possibility, the testimony of the witness is not to be given to the accused. These are certain very harsh, dangerous, provisions if you are living in a civilised society.

We cannot just stand aside and allow you to pass a law of this nature, without recording our protest, which will be judged by history, ultimately, whether it was right or not. Now, I can go on and on in respect of each such provision of the law, but time is short, and I want to finish, because others also must have a right to speak. But I have to tell you--and I say this to the Home Minister--that if you were to go back, read the law carefully, which you must have done, and think back as to how it can be abused at the hands of an ordinary police officer, you will never come to this House to propose this piece of legislation. I might tell you another thing. Under this law, you can keep a person incarcerated for 180 days, while investigation is going on, and you talk about the US law and the UK law. Do you know, Sir, under the UK law, there is a seven day period of incarceration during investigation, and by an order of the Home Minister, that period was extended for a period of five days, and the UK courts held

that this extension of five days is contrary to the European Convention on Human Rights, and struck down that law. That is UK for you, and here you have a man for 180 days, and no questions are asked.

Well, Sir, Mr. Sinha had talked about the Rowlatt Act. I will end by quoting a letter written by Mahatma Gandhi when he opposed the Rowlatt Act.

You know that the Rowlatt Act had very many harsh provisions. POTO's provisions are much harsher than the Rowlatt Act. But see what Mahatma Gandhi said and see the vision of that man. This letter is of 1st March, 1919. I quote:"

I enclose herewith the Satyagraha pledge regarding the Rowlatt Bills. The step taken is probably the most momentous in the history of India. I give my assurance that it has not been hastily taken. Personally I have passed many a sleepless night over it, I have endeavoured duly to appreciate the government's position, but I have been unable to find any justification for the extraordinary Bills. I have read the Rowlatt Committee report. I have gone through its narrative with admiration. Its reading has driven me to a conclusion just opposite of the Committee's. I should conclude from the reports that secret violence is confined"--and I repeat this because it applies to India--"I should conclude from the reports that secret violence is confined to isolated and very small parts of India and to a microscopic body of the people. The existence of such men is truly a danger to the society. But, the passing of the Bills designed to affect the whole of India and its people and arming the government with power out of all proportion to the situation sought to be dealt with, is a great danger. The Committee utterly ignores the historical fact that the millions of Indians are by nature the gentlest on the earth."

By this law, Sir, please do not make those gentle people vicious. History will tell us whether that will happen or not; history will tell us whether you were right or we were right. But, at least, history will never be able to efface this black mark against this Government for having brought up a Bill, which is contrary to all values of civilised society. Thank you very much.

THE MINISTER OF HOME AFFAIRS (SHRI L.K. ADVANI): Mr. Vice-Chairman, Sir, I beg to move:

"That the Bill to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration."

At this point of time, I do not propose to make any long speech. I would listen to the views of all the Members very carefully. This is a debate that has been going on in the country, not merely after the POTO was promulgated, but, in fact, ever since the TADA was allowed to lapse. We were dealing with the problems of internal security; we were battling against terrorism, and we have experienced it for nearly two decades now. The rest of the world has become aware of it only in the past few months. But India has had a very bitter experience of how dangerous, how grave a menace terrorism is for nearly two decades, and, certainly, after 1983-84. It was in 1985 that TADA was enacted. At that point of time there was not much debate, but there was a discussion. The quotation that has been given is of a subsequent time, and rightly so. You are perfectly justified in quoting Mr. Yashwant Sinha and Mr. Jaswant Singh or any of the Members who are now sitting on this side. I would be right or many of my colleagues would be right, if we quote what was said by those who are sitting on that side today. It would be justified. But hearing Mr. Kapil Sibal, I am inclined to emphasise, Please, don't question the bona fides. We can differ on the question whether this particular law is necessary to deal with terrorism or not, whether the present legal regime that we have is sufficient. But let us not attribute motives.

SHRI KAPIL SIBAL: I did so because of Gujarat. Gujarat is an example.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please, don't get up every time.

SHRI L.K. ADVANI: I can say that even in Gujarat there has been an abuse of this law or there has been a discriminatory use of this law. That is wrong. I am willing to admit that. Let me point out, because you referred to me personally, in my entire public life, the worst abuse that I have seen is that of article 352. When it was contemplated by our Constitution-makers they thought that there could be situations in our country when an emergency could be promulgated and during that emergency all fundamental rights, right to expression, right to liberty, right to equality, all of them, could be suspended. They were not wrong. They did

conceive that the nation could face such a situation and, of course, what they did was that they included in that provision, article 352, not merely a reference to external aggression but also incorporated internal disturbance. None of them had ever conceived that this conception of internal disturbance could be misused and abused in a manner virtually to smash the democracy totally and put lakhs of opposition activists behind bars, without reason, that they were a danger to the national security. But it did happen and we were behind bars at that time. I am referring to this, because immediately after we came out - and it happened that the people voted us to power and we became part of the Government - a serious discussion went on in the Government as to whether a provision of this kind should be there or not. The proposal was that article 352 should not be there at all. This was the mood at that time. I know that almost all the amendments that we suggested were accepted by the Congress Party, which was in the Opposition at that time. If we had incorporated a provision to scrap article 352, it might have been accepted. But we did not do that. We did make a change that instead of internal disturbance, we brought in "armed rebellion". Similarly, it was the abuse of the TADA which created a climate in the country, to which some of my colleagues reacted very sharply. Subsequently, there was a judgement of the Supreme Court in the *Kartar Singh* case in which they said, "We are upholding it, but, at the same time, these safeguards should be there". I feel happy that this Government has incorporated all those safeguards in the POTO before bringing it for consideration. Sir, this matter started way back in the year 2000. This Government referred the matter to the Law Commission to know as to what could be done after the lapse of the TADA. The Law Commission referred the Bill to us; and the Bill went through so many processes. When people say that the POTO has been brought because of the Uttar Pradesh elections, I say, "It is amazing". In the year 2000, we did not know that there would be elections in Uttar Pradesh. It is amazing. In the year 2000 there was no question of election in UP. It has come in 2002.

As I said, at this point of time, this Government feels that terrorism is a serious menace. It is a grave menace to national security. Normally, democracy does not have extraordinary laws of this nature as part of its normal legal regime. But, on the basis of experience, we believe that the normal regime is inadequate to control this menace. Therefore, we have brought this Bill before the House.

I would like to add one more thing at this stage. I made a very wrong assessment of how the Congress Party would respond to it. I knew how the Left parties would respond to this particular Ordinance. After going through the laws that are in existence in Maharashtra, after going through the laws that are in existence in Karnataka, I felt that if the Congress Party could frame such draconian laws in order to meet organised crime, they would not hesitate to support an Ordinance of this kind against terrorism. I admit that it was a mistaken assessment. It was a mistake on my part. Therefore, I plead with the hon. Members, as we have been pleading all these months, if you have any suggestions to offer, please do offer. But, please do not attribute any motives and do not question the *bona fides*. With these words, I commend this Bill to the House. Thank you.

The questions were proposed.

SHRI ARJUN SINGH (Madhya Pradesh): Mr. Vice-Chairman, Sir, thank you for giving me this opportunity to speak on this Bill. The air of innocence, which the hon. Minister has built around himself, needs to be scrutinised very carefully. It appears he wants us to believe that he stumbled upon this Act suddenly and, therefore, he thought, we would believe this. He has told us not to suspect the *bona fides*. I know *bona fides* of any person should not be suspected, normally. But in this case, we find certain extraordinary elements. This law was brought into existence on 15th October, through an Ordinance, and we registered our protest then and there. What happened after that? I would like to remind the House and the hon. Home Minister himself, if he has forgotten it, -- I am not attributing motives against anybody's *bona fides*, but the facts must also speak for themselves -- just before this Ordinance was promulgated, there was an intense debate going on inside the BJP circles as to what the issue could be on which they should go before the people and get their support in the forthcoming elections. And it was a matter of record that according to the decision taken at this high-level consultation within the BJP, it was decided that the old issues of Ram Janmabhoomi and other things would no longer hold good; the security of India was a very sensitive matter and, therefore, this should be the focus of all the efforts of the BJP, politically, to influence the people, and this POTO was born out of that strategy. And that strategy did not help them. I don't have to tell you the reason, the reason why the people of India, especially, of those areas of this country, who catapulted you to power, on the basis of the Ram Janmabhoomi issue, left you cold and dry when you brought up this issue, because you were not sincere

about it, because you had demonstrated by your own conduct that your capacity to utilise the laws of the land, to carry out the intention of the Government to deal with subversive activities, did not work. When I say this, I am not imputing any motive against anybody or against his or her *bona fides*, but the fact is this. Can I ask you, Mr. Home Minister: What happened to many of the terrorist acts which occurred, after this law was enforced? You say, this is a preventive Act ...*(Interruptions)*... The Title of the Bill itself reads, "Prevention of Terrorism (Second) Ordinance, 2001." When you say, 'prevention', it presupposes that you have, in your mind, certain laws which would empower the State to prevent these things from happening. You took the power, no doubt, and you gave very lofty reasons. Some of your colleagues inside and outside Parliament even taunted us whether we were patriotic enough; this is also on record. Sir, I again say, I don't want to impute any motives against the hon. Home Minister because, as I have already said in the beginning, he has built an air of innocence around him. I don't want to pierce it; it will fall away on its own because of what is going to happen now. The point is: What did you do to prevent these acts from happening? Just a week before the attack on Parliament, the hon. Home Minister and the hon. Prime Minister, on public platforms, were saying that an attack on Parliament might happen. It may happen. I have not seen in any country of the world the Head of the Executive admitting that such and such thing can happen; and it has happened; and we have still not heard what they did to prevent it! If you had done something, kindly let us know, for this was the purpose for which you wanted this law to be enacted. But I know this was not the purpose. The purpose, again, was a change of strategy in the inner council of the BJP, to use this as a political instrument to influence the people of India. Perhaps, you took the people of India for granted. I may only remind you, hon. Home Minister, that the great people of this country are capable of seeing through the subterfuge of any person, of any Government or any group of persons who think that they are doing something behind their back and, therefore, they did not know the purpose of what they are doing. They saw through it, and, that is why, in every State where you contested -- from Uttar Pradesh to Punjab, and Manipur to Uttaranchal -- the BJP was marginalized. POTO was there. They had been told that POTO was the instrument. They saw your clenched fists being raised in every TV interview and in every speech and heard your statements that you would deal with terrorism, under any circumstances. They heard those speeches. They were impressed by those speeches, at that moment. But they knew that

you were not capable of doing it; and you had no intention to do anything. That is why they did not support you. In a way, Sir, I will not be wrong if I were to say that this Bill or this law has, in fact, gone through that process, which few laws in this country have gone through; that even before it became a law on the Statute Book, it was tom-tommed from every roof; the people had an opportunity to look at it, and the people, in fact, in this democratic set-up, have given their judgment on it. That is why we say, "Don't feel self-righteous just by your own words". The people of this country, specially the people of those areas who had voted for you previously, saw through this game and did not vote for you. I think, a referendum had been held on this; and the POTO now lies shattered and abandoned by the people, although you will not abandon it, because, behind this process that you have now initiated, there are darker intentions.

As Mr. Sibal has said, there is a defining moment, and I am quite convinced that this is a defining moment. But this defining moment, Sir, has to be understood in the background of what the real intentions of this set up that governs this country, today, are.

We have witnessed the most tragic happenings in Gujarat. We have witnessed, Sir, the land of Gandhi being defiled. We have, Sir, witnessed, the principles and objectives for which that great man, the tall Indian - perhaps, the tallest Indian of our times - lived and died for, being defiled. And, how did he die? The motivation and the inspiration that led to his death is a study, a classical study, of the socio-political development of this country. There are groups and people in this country, Sir, who would stop at nothing to achieve their objective; and that too, political objective. I would have understood if they went for objectives which were in the national interest of the country. So, Gandhi was murdered. He was murdered for doing something which they labelled as anti-national. Now, today, Sir, the spirit of that great man is being violated, time and again, in his own homeland. The tolerance, the simplicity, the piety and the concern for human suffering have no meaning today in the State which is represented by the hon. Home Minister. If we cannot ask questions about your *bona fides*, it is all right, because we have an interaction with you every day, but let me tell you, Mr. Home Minister, the common man in Gujarat is raising doubts about your *bona fides*. I am only echoing his words and feelings. I personally don't doubt your *bona fides*. But, that doubt, if it lingers among the people of the State from where you have become the Member of Parliament, it is not a small thing. Then, in the process, what happened?

Sir, I don't want to repeat the arguments already made here, as it will take the time of the House; however, I cannot but point out the fact that those who were responsible, in whose hands was the responsibility to protect the people of Gujarat, in a most sensitive stage, in a most, I would say, critical stage, turned their backs to them. Not only that, there are whispers going on, Sir, that perhaps, the elections in Gujarat will be advanced, to take advantage of the carnage that took place in the State. I just cannot imagine, Sir, that this country would come to this. I know, I could not have taken part in the freedom movement because of my age, but, Sir, this generation saw, my generation saw, what happened during the freedom movement. I was a witness in the Central Hall to the deliberations of the Constituent Assembly at midnight on 14th of August, 1947, when in a tremulous voice, Pandit Jawaharlal Nehru guided mother India to its tryst with destiny. Today, I feel as if the whole generation has been cheated when all kinds of arguments, all kinds of things, are referred to as if they are of no consequence. Excuse me, it is not because of any doubt about your *bona fides*. But I must tell you very clearly and candidly that no amount of laws, rules or regulations, can help you or the country, if the intentions behind those laws and regulations are not transparent and genuine. In this Bill, as I said in the very beginning, the effort was to create an issue to polarise votes in an election. That it failed to do so, did not mean that it lacked anything in its attempt. That was one attempt; and the second attempt is to justify, when it has failed. And, for that, you want to make us believe that everything is going well. All you have to do is to point out some events of the past and say that 'you all were also responsible'. Sir, every generation, every person, has to pass through life. Life doesn't stand still. I know, he is mocked by the failures of his hopes. Our individual personality being mocked by failures of our own lives is one thing, but when the whole country is mocked by what has happened, then alibis alone can't help it. You have to have something more to do today. This I feel, Sir, this Government is incapable of doing and has no intention of doing. If this law is passed and reaches the Statute Book, it will be open to the same kind of exploitation, the same kind of misuse, that this Government has been making of every other factor in this country in the recent past.

I see, Sir, a very dark cloud enveloping the body politic of our country. This is a time when every citizen, worth his salt, has to stand up and protest; if necessary, fight; because we are not fighting for our own selves, we are not fighting for something which we possess, but we have to fight for something which the country possesses, after the long struggle for

Independence and after the long struggle of the people of this country. At this moment, Sir, I recollect the words of a revolutionary poet, Dyalan Thomas: When the light seems to be dying, when the night seems to be approaching, it is this you have to do--don't go gently into that night. "Rage, rage against the dying of the light." I appeal to this House, the House of Elders, the House of wisdom, that this moment calls for such a rage against the dying light, which the hon. Home Minister is trying to extinguish by a sleight of hand. Therefore, reject this Bill and see that he also sees reason.

SHRI B.P. APTE (Maharashtra): Mr. Vice-Chairman, Sir, thank you for this opportunity. Even though I was a little disappointed on two occasions, now, I think, I will be able to speak. Sir, I heard with rapt attention the oration of my two very senior colleagues here, thinking that from an able and senior lawyer, I would hear some Constitutional niceties of challenge to this Bill, or, some basic legislative lacunae that may have come into the Bill while drafting, and they would give an opportunity for the Government to correct them. Unfortunately, the speeches did nothing of the kind. Instead, they said something which makes me appeal to them: "Don't play politics with the integrity and security of the country, and don't communalise everything, in the name of communal harmony."

The Bill, which is before the House, and in support of which I have risen, deals with prevention of terrorism. Sir, the provisions of this Bill, the prospects of the Bill and the perspective of this Bill are all equally important. Sir, we have seen the ugly face of terrorism for quite some time. History tells us that it all started about 30 years ago, when certain fanatics, in the name of jihad, assassinated certain Israeli sportsmen. Since then growth of this kind of terrorism is ...*(Interruptions)*...

SHRI ARJUN SINGH: Sir, I want to remind him.....*(Interruptions)*.....

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please do not disturb him. ...*(Interruptions)*... I would not have allowed anybody to disturb you. ...*(Interruptions)*... Please. ...*(Interruptions)*... Allow him to speak.

SHRI ARJUN SINGH: Sir, this is part of parliamentary give and take. I think, the first act of terrorism in India was the assassination of Gandhi. Do you think that was not act of terrorism? ...*(Interruptions)*...

SHRI B.P. APTE: Sir, this is globalisation of the *Jehadi* way. ...*(Interruptions)*... Sir, a CNN correspondent, Peter Bergen has written a

wonderful book, 'Holy War Incorporated'. He makes a tantalising comparison between the global *Jehadi* networks, and what he terms as a new class of world citizens, the cosmocrats. These cosmocrats, the management consultants, move about in the world and are very comfortable in every environment they find themselves in. The *Jehadis* have also developed this cosmopolitan global outlook in a very different, but, unfortunately, disastrous way. Bin Laden's network, which like these cosmocrats also values the technological proficiency, is as cosmopolitan as the cosmocrats. They are all over the world - Sudan, Egypt, Saudi Arabia, Yemen, Somalia, Afghanistan, Bosnia, Croatia, Albania, Algeria, Tunisia, Lebanon, Philippines, Kenya, Tanzania, Pakistan, Chechnya in Russia and Kashmir in India, as also in the US and the UK. For us, the hijacking that ended in Kandhar, exposed, if such an exposure was needed, the link between the Al Qaeda and Taliban, Pakistan and terrorism in Jammu and Kashmir. This is a global network around the world. This heady-mix of Kalishnikov and Quran has been a scourge of the world for the last several years. In the words of Peter Bergen, again I repeat, it is holy war incorporated. Sir, today wherever there is a conflict, search for the reason and you will find the *Jehadis*. Maybe, it is Chechnya, maybe, it is Kashmir, maybe it is Bosnia, maybe, it is Indonesia. These very elements are very active in this country. Sir, on 12th March, 1993, there were 12 simultaneous bomb blasts, which were the handiwork of terrorists of the criminal kind. The figures are given, how many people died, what property was destroyed, and how many people were injured. All these are in hundreds. This was followed by a series of such blasts in Chennai, Delhi and in several other places. This country is facing terrorism for all these years. The other day I had an occasion to go to Kupwara where quite a few thousand citizens there had gathered and they wanted to fight against terrorism. I had the occasion to go there with our hon. Minister of State for Home Affairs, Shri I.D. Swamy. He appreciated their effort to fight the cross-border terrorism. But, then, he told them that for terrorism in this country, there are 100 frontiers where we are fighting. People on the border are facing the brunt of it. But, people in the rest of the country are also facing the same kind of terrorism in their own places - from Delhi to Chennai.

Sir, the world has woken to this menace; unfortunately, very late, but, in any case, because of September 11. A writer in *The Times* said, "America came out of its slumber and confronted its own frankenstein..." - the equivalent of our own Bhasmasura - "...and now a war has begun in the world." How do we fight this war within our sovereign territory because we

are governed by the basic Constitutional concept of the rule of law? An arbitrary State action is forbidden. The State action must have a support of a valid legislation. Therefore, this statue. We had a law in the form of TADA, which was allowed to lapse. I would not go into the history - maybe, it was misused, or, maybe, it was misjudged. But, today, there is a vacuum. A criminal law regime, which is inadequate to deal with this globalised terrorism, which we are facing and a solution has to be found. The entire world has felt this need. Sir, Israel had such a law since 1948. Now, the U.K. has its own Terrorism Act that was enacted in 2000. Canada has its Anti-Terrorism Act passed in October, 2001. France has its Anti-Terrorism law within a larger security till. The USA has its own law ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): No. Don't disturb him.

SHRI B.P. APTE: ...which will also cover the financial terrorism. And the Financial Anti-terrorism Act was passed. Sir, Japan has its anti-terrorism special measures and, for record's sake, even Pakistan has an anti-terrorism Ordinance passed in 1999. The UN Security Council passed Resolutions, particularly, Resolution No. 1373, on 20th September, 2001, for comprehensive measures to deal with terrorism which include Suppression of Financing of Terrorism. International conventions are drafted and ratified, particularly with regard to the financial aspects of terrorism. Suppression of Terrorist Financing Convention, Suppression of Terrorist Bombing Convention and our Regional Forum - SAARC - has also a Convention, a Regional Convention on the Suppression of Terrorism. The recent affirmation of this resolve of the world, we find in the meetings of the Summit of the CHOGAM as well as the SAARC Summit. As I said, we are facing this menace for several years now. We faced it in Punjab. We are facing it in Jammu and Kashmir. We are facing it in the North-East, Andhra Pradesh, Mumbai, Delhi, Chennai Coimbatore and scores of other sensitive parts in the country. In the North-East, the administration, at many places, is under the thumb of terrorists. People live under their shadow, paying protection money and ransoms. Four sincere selfless social workers from the cadres of the RSS were mercilessly assassinated. Our human rights activists were silent, were in different. The terrorist *jehadis*, mercenaries, in J&K did not spare the J&K Assembly, and dared to reach the doorsteps of this august House on December 13th. Sir, during the last 15 years, we have lost 61,000 and odd lives of our citizens, 8,000 and odd lives of our security

personnel. We are required to spend Rs. 45,000 crores on anti-insurgency measures. The explosives that had been used have not been accounted for. But that had been confiscated; amounted to 48,000 kgs.

Sir, this is the perspective in which this legislation has to be seen. The provisions are within the four corners of the Constitution. Much is talked about the human rights that are enshrined in our Constitution. A more stringent TADA stood the test and touchstone of the Constitution, both on grounds of legislative competence on the grounds of Fundamental Rights. In the case of Kartar Singh Vs. the State of Punjab, which was reported in 1994, the Constitution Bench of the Supreme Court held that the legislation, like the present one, was related to defence of India, falling under Entry 1 as well as entries 2 and 2(A) of List I, read with Entries 1 and 2 of list III of the relevant Schedule. Sir, it is within this constitutional framework that this enactment has been proposed. Clause 3 of the Bill defines terrorism and talks about punishment for terrorist acts. Without commenting on this definition, the definition TADA was quoted here. I would like to read this definition, without any further comments, because the definition is self-explanatory. Sir, clause 3 provides for the punishment of terrorist acts. Sub-section 1 says, "Whoever, - (a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons of poisonous or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any other agencies, or detains any person or threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any Act; (b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or

grievous injury to any person or causes significant damage to any property, commits a terrorist act. I would also read out the explanation that is given here. "For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism." As I said, I will read this definition without making a comment on it, to point out the comprehensiveness and, at the same time, the pointedness of this definition. In fact, the TADA definition was a narrow definition which requires that the terrorist act should also be such act which creates disaffection among communities. It was found that because of this reason, the Supreme Court could not find the act of assassination of our former Prime Minister, to be a terrorist act, governed by the TADA, as there was no communal disaffection. To overcome that difficulty, the definition is reframed as it is now, because anybody who indulges in this kind of violence for creating disaffection amongst communities, automatically commits as an act, covered by this definition. But adding that as a pre-condition would narrow down the definition, and, therefore, the present definition. Sir, significantly, now, raising funds intended for the purpose of terrorism is also treated as a terrorist act which invites the same kind of punishment. The Bill also deals with gangs, with harbouring, withholding terrorist property, etc. All these are for obvious reasons, made punishable.

Sir, in the earlier Ordinance that was promulgated in October, there was a salutary provision which placed an obligation on everybody to supply the information which he has about terrorists and terrorist activities. There was some opposition to this provision. There was an intention to bring about a consensus. With that intention, this provision now stands omitted from the present Ordinance and, therefore, the present Bill. But, unfortunately, that consensus did not come about. Sir, adequate provisions are made for effective and efficient investigation, for forfeiture of terrorist property, speedy trial by special courts. Sir, a separate chapter deals with terrorist organisations, keeping in view the constitutional rights of the people to come together, adequate safeguards have been made, in so far as banning of terrorist organisations is concerned. Though the salutary provision regarding the admissibility of a confession made before a police officer which, we know, was instrumental to the punishment of those who perpetrated the heinous crime of assassinating our Prime Minister is retained here, but it must be appreciated that, now, under section 32, a further safeguard is there "that such a confirmation has to be recorded again before a judicial magistrate within 48 hours." Sir, this additional safeguard of going before the judicial magistrate answers the point raised by Mr. Sibal,

who, probably, has overlooked this safeguard. In the earlier legislation, namely, the TADA, such a confessional statement could have been used even against the co-accused. Then also, there was opposition to this point, but now, it is not so. As per this, such a confessional statement cannot be used against the co-accused. It can be used in criminal trials only, and, in so far as it is relevant to section 30 of the Evidence Act, for whatever it is worth. The most significant Chapter which needs your support, Sir, is chapter V, which deals with interception of electronic communications. Sir, as I have stated earlier, globalised terrorism has its own technological proficiency. To meet that proficiency, to meet that menace, this kind of a provision for interception is absolutely necessary. In view of this, Sir, I would say that the opposition to this measure is purely political. Sir, it was widely reported, when the measure was on the anvil that in the Parliamentary Consultative Committee, hon. Members cutting across party lines, had supported the measure. They said that 'we need an anti-terrorism law.' The Members belonging to most of the Opposition political parties had supported this. I understand that Shri Shivraj Patil, Shri Ghulam Nabi Azad and Shri Somnath Chatterjee had supported this at that time. And now, the opposition comes. Sir, I would like to submit that the opposition to this measure, and for the reasons which are made out, is perverse. I am using the word 'advisedly'. It is because of the reasons, which are extraneous to the purpose of this legislation to use judicial term. But, what is the Opposition doing? They are standing the entire concept of human rights on its head. The terrorists have human rights, but the victims don't! That is the logic of human rights activists in this country. For example, -- and it is a very patent example -- two lakh Hindus who are refugees in their own homeland have no human rights, but those who engaged in their genocide must be protected! This approach smacks of intellectual dishonesty, the same dishonesty which lauds Arundhati Roy, but condemns the VHP and seeks to equate the Orissa incident with the incident of December 13. Sir, I would appeal, there is a global consensus on terrorism. Let us strengthen it. Hon. Members, belonging, particularly, to that side, would appreciate that such a measure namely, the Maharashtra Control of Organised Crime Act is their legislation; such a measure in Karnataka is their legislation. The West Bengal Government had almost passed it, until it realised that it will not be politically beneficial. ...(*Time Bell*)...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please conclude.

4.00 p.m.

SHRI B.P. APTE: Therefore, Sir, I urge upon everybody to support this measure which is the need of the hour, and adopt it unanimously. Thank you, Sir, for giving me this opportunity.

SHRI RAM JETHMALANI (Maharashtra): Thank you, Mr. Vice-Chairman, Sir, for giving me an opportunity. While I get up to support this Bill, I cannot but be unmindful of that day when I was sitting somewhere on that side of the House, and when I had mounted a most vitriolic and a passionate attack against the continuance of TADA. Of course, Sir, even then, I was a little older than my friend, Shri Kapil Sibal. So, I cannot possibly summon the passion, the velocity and the momentum which he brings into his speeches, but I remember, Sir, I had not done very badly on that day. Sir, in fact, because of my vitriolic and persistent opposition to the continuance of TADA I believe that the TADA was actually not continued, it had its impact. And since then, everybody has assumed that I will also be as vigorous an opponent of the POTO as I was of the TADA. Sir, it is not without reason that I have been constantly questioned in public why I have publicly supported the POTO. First of all, let me clear up a few ambiguities. It is true that the TADA was misused and extensively misused. And the victims of that misuse were the minorities and, particularly, my friends, the Muslim community. But, Sir, all laws are capable of being misused. When you file a false prosecution for cheating, murder or any other offence, you are misusing that law. So, every innocent law is capable of being misused and merely because a law is capable of being misused, it is no reason why the law should not exist on the statute book. What amuses me is what, in logic, we learned, called the 'transferred epithet'. Those who abused the TADA, now transfer their character to the new Government and say that this Government will also abuse this law. This is somewhat unfair because every Government must be given the benefit of doubt. Every Government, just as we have been talking about a fair trial being given by the TADA provisions, is also entitled to a fair trial. Let the Government, at least, misbehave in using this POTO and then, some criticism can be raised about it. Well, you may then argue that nobody, no Government in this country, can be trusted with the POTO. Sir, I think this argument must go.

Sir, another reason which is bothering me is this. As Mr. Home Minister pointed out, in various States, which are being run by the Congress Party, there are laws which are much more draconian in their objectives,

their provisions. The MOCA of Maharashtra is a conspicuous illustration. My friend, Mr. Kapil, talked about section 30 of the present Act in which the names and addresses of the prosecution witnesses can be blurred out. We had just been fighting a litigation in the Bombay High Court and we have persuaded the Bombay High Court to hold that despite the provisions in the MOCA, the accused will be entitled to the names and addresses and particulars of the prosecution witnesses. No sensible, fair, trial can ever take place without that. A fair trial is the guarantee of article 21. No law, whether made by Parliament or whether made by a State Legislature, can take away the right of that fair trial. So, Sir, I think, Mr. Kapil should at least see to it that some laws which are prevalent in some of those States go. They are worse, they are more dangerous. This particular law ...*(interruption)*...

SHRI V.V. RAGHAVAN (Kerala) : Sir,...

SHRI RAM JETHMALANI: Do you want me to yield? I do.

SHRI V.V. RAGHAVAN: You are a co-drafter of the Resolution asking the House to disapprove it, with Mr. Kapil.

SHRI RAM JETHMALANI: Yes. I will tell you. It is not correct that I have all changed my mind. I have some bone to pick with the Government. I will present it before you.

Sir, my friend has put a very important question. I express my disapproval of the Ordinance because I have a bone to pick with the Government, particularly, my friend, the Home Minister. When the Ordinance was passed somewhere on the 24th October, 2001, a Bill was sought to be introduced in Parliament to substitute the Ordinance. Sir, I still believe that laws should be drafted in the Queen's English and they should be drafted with some kind of accuracy. I have found that there were a lot of flaws in that Ordinance, and I had therefore moved a series of amendments, of which I gave notice. But the bone which I wish to pick with the Law Ministry or the Home Ministry, whoever is responsible for the drafting of this Bill is that, at least, in fairness, out of a sheer respect for us, who spend their time and energy upon looking into the draftsmanship of your statutes, you should at least call us and ask us as to why we have moved these amendments so that those defects can be removed. I believe that some of the provisions in this Ordinance suffer from such terrible verbal ambiguities that it almost reminds me of that famous joke that I draft the country's laws, but of half the litigation, I am the cause. Some provisions have already

been interpreted by the Supreme Court, and the ambiguities which existed in the original TADA, have been removed. But the language of those provisions does not conform to what the Supreme Court has explained, and unnecessary controversies are likely to arise on this interpretation, and some of the provisions, certainly, need some kind of amendments, which would have made a lot of criticism, which is being heard in this House from my friends on the other side. But, on the whole, I feel that this Bill is an absolute necessity today, and it needs the support of every intelligent section of this House. But I wish to make a sharp distinction between my friends in the Congress Party, and the minorities, which have suffered as a result of the misuse of TADA. I cannot blame the minorities for a reasonable feeling that the POTO is another shape of the TADA, and that perhaps, it is a worse disaster than TADA, and this worse disaster is about to descend upon them, and will put them in the same position in which TADA put them. Now, this is a feeling which I respect; this is an apprehension which I respect, and I believe, it is the duty of every Member of this House, and this House collectively, and of all citizens of this country, and political and social workers in the country to remove this feeling from the minds of the minority. Ultimately, we want national integration in this country, and you cannot think of national integration unless the minorities in this country--I mean all kinds of minorities, particularly the religious minority, have a complete feeling of security, a complete feeling of equality and a complete feeling of dignity and safety, and unless that feeling is produced, there can be no national integration in this country.

Sir, I believe that everybody has a contribution to make, to remove this feeling from the minds of the Muslims. Everybody has his own individual contribution to make, and I promise two contributions. The first contribution is that though this law makes provision for review committees, without defining their purposes and their functions, there should be an unofficial review committee, consisting of myself as a convener, and of all members who are persons who claim that they have the good of the minorities at heart, who have the safety of the minorities at heart. So, there shall be an unofficial, but more prestigious review committee than the one which this Bill purports to create. It shall be the function of this Committee to listen to every reported case of misuse of POTO, and believe me, if we decide that there is a case of misuse of POTO, we shall make the life of the Government miserable. This is the kind of work which people have to do in the society to remove the apprehensions of the minorities, not merely to score debating points, and ultimately use the debate for the same purpose.

You accuse the Home Minister of having invented POTO for the electoral purposes in Uttar Pradesh and elsewhere. But I can also say that this whole debate is being conducted on party lines, for precisely the same purpose, to keep some kind of a vote bank intact. But, a vote bank, which has already been lost, which does not belong to anybody. Sir, secondly, I propose to create a panel of lawyers, who will work free, who will be located in every district and important towns of India, whose duty shall be to knock at the doors of the judiciary free, if there is a case reported of the misuse of POTO. Be sure, that we shall be the advocates for the minorities and we shall see to it that the POTO is not misused against the minorities and that it is administered and enforced with an equal hand against all miscreants in this country. This is the contribution, which I expect the Members of this House to make and, I hope, everybody will make it. Now, let me, Sir, deal with the speech of my very great friend, Shri Arjun Singh. He said that you have passed a law which purports to be for the prevention of terrorism. He forgot that all penal laws are meant to be prevention laws. There is the Prevention of Corruption Act; there is the Prevent of Prostitution Act; there is the Prevention of Atrocities on the Scheduled Castes Act. It is assumed. The theory may be wrong. But the criminological theory under these laws is that the prospect of punishment and the prospect of a trial, somehow produces on the subconscious mind a law abidingness. Unfortunately, no statistics are available as to how many people have been affected and put into the channels of law abidingness and made to deviate from the path of wrongfulness or crime. There are no statistics. But we still proceed on the theory that a law meant for the punishment of crime is the law for the prevention of crime. Mr. Arjun Singh said that you have prevented no crimes because crimes are still continuing to take place. The Godhra incident took place; the attack on Parliament took place. Therefore, the QED, according to the geometrical theorem, is that you must have done it for some electoral purpose. I am sorry, Mr. Arjun Singh has gone away. But he reminds me of the proverbial 13th strike of the clock. When the clock strikes 13, you know that not only that the stroke discredits itself, because the clock never strokes 13, but also there is something wrong with the mechanism of the clock, which requires to be corrected. What was forgotten is that after 11th September the Security Council met. The Security Council passed a unanimous Resolution, Resolution 73 of 2001. It called upon all the Member-States of the Organisation to enact suitable legislation for the purpose of combating the evils of terrorism and, particularly, for the purpose of drying up the financial and economic

resources of organisations which are indulging in this kind of activities. We are a responsible Member of the United Nations. After the 21st September meeting, I am sorry to say that the Ordinance was not issued for full one month and three days. It took the Home Ministry 33 days. They issued the Ordinance ultimately. But when it was issued it was in compliance with our obligations under international law and in compliance with our obligations as a Member of the Security Council. The British Government did not enact a new law because for them terrorism is a very old phenomenon, considering the North Ireland problem that they have. They had passed a law in 2000 and, therefore, they did not find it necessary to enact a new law in 2001, after the Security Council Resolution. But it is a matter of significance that both Mr. Arjun Singh and Mr. Kapil Sibal, have forgotten that one of the chapters in the POTO is an exact copy of the legislation of 2000, which prevails in the United Kingdom, and the Americans gave to themselves a new law called the Patriot Act of 2001. Our definition of terrorism, though we had known it earlier in the TADA, is a copy of the American definition of terrorism. There cannot be a better term. To define terrorism is a very difficult problem. There is no doubt about it and the best has been done. I have suggested one amendment and I seek an assurance from the Home Minister on the floor of the House. Though we are not going to press, at least, I am not going to press the amendments which I moved Then against the 24th October Resolution, we would not support the Bill, as it is. We would not support the Bill as it is. But, even after the Bill is passed into a law, he would sit with us and seek avenues for improvement of this law and its working. Once, we have this assurance, at least, I would fully support, as I have always been doing, the provisions of this Bill. The most important thing is forgotten by Shri Arjun Singh is that on 28th September we became subject to an international obligation -- the Patriot Act, 2001 which the Americans passed - to produce such a legislation. What is happening today? Kindly understand it. All along, we have been telling our American friends that these are the organisations which are indulging in crimes in Kashmir; why don't you do something about them. The Americans would tell us, "Why don't you have a law yourself. You want us to bail you out, but you are not prepared to take action yourself". Therefore, this Bill has got to be passed. We do not want to make ourselves internationally ridiculous by refusing to pass this Bill. What has happened to the TADA? When I was attacking the TADA - not merely I, but I had a band of young lawyers; I was leading the team; and we attacked the TADA in the Supreme Court -- I do not know what Shri Kapil Sibal was doing at that

time. There were three main points. Ultimately, what does this Bill do? This Bill first creates special courts so that the trials could be very speedy. Nobody can object to speedy trials. Nobody can object to the fact that these crimes are of such a nature that if you keep delaying their result and nobody is punished for 20-25 years, the Act loses all its deterrent purpose and you might as well scrap such a law. A badly executed law is worse than no law. That is why, I said that the first provision is about the speedy trial. The Criminal Procedure Code applies to it. Substantially, there are two things which make the POTO different from normal trials. One is, confessions to the police are admissible. Confessions to the police are admissible in the United States. Confessions to the police are admissible in the United Kingdom. There has been a lot of controversy in our country as to whether we should make them admissible here. We challenged this provision in the Supreme Court. The Supreme Court by a majority of three to two came to the conclusion that the police in this country has now evolved, to some extent, and with safeguards they can be trusted with the power of recording confessions. They suggested six improvements to be made and all the six improvements have been bodily lifted from the Supreme Court judgement and have been incorporated into the POTO. Had they not been incorporated into the POTO, I would have remained an enemy of the POTO in spite of the fact that the situation today is not the same with which the TADA was dealing. Who thought that the terrorists of today operating at the global level would be able to acquire this degree of mind boggling sophistication which was shown by Bin Laden in the 11th September attack on the WTC in America. Once you have got this tremendous amount of sophistication, once you know that these international terrorists are being supported by a State power and some States are behind them and they have access to unlimited funds, surely, we need a legislation which is somewhat more draconian than the ordinary Criminal Procedure Code. As I said earlier, these amendments have been incorporated. Then comes the question of bail. The question of bail is very simple. The Supreme Court has already explained what the bail provisions of the TADA mean. Unfortunately, the language of the old statute has been retained. I have no doubt that if we sit together, we will be able to work out a few verbal amendments after the Bill is passed. The basic problem is of character. You have got public prosecutors. The public prosecutors must be sensitised to human liberties. The public prosecutors must know how to approach the courts. The public prosecutors must know in which cases the bail has to be opposed and in which cases the consent to bail

has to be granted. Sir, I am mindful and aware of those who will hold their palm to the best public prosecutors in the world. I am aware of those public prosecutors. But, by and large, the public prosecutors that operate in this country are quite at disgrace. They need to be educated and sensitised to the needs of human liberties; and particularly, to the minorities in this country; and to the needs of national integration. I have no doubt that this will be done.

Sir, I said that I had a bone to pick, and from the nod of the Home Minister, I am convinced that he is going to sit with us and discuss matters with us even after it becomes law. Therefore, I no longer remain in the company of Shri Kapil Sibal and oppose the Ordinance. I heartily recommend to the House that this Bill must be passed.....(Interruptions)...

SHRI S. PETER ALPHONSE (Tamil Nadu) : Sir, I am on a point of order. When I speak, I should also be given the same time like others. Mr. Jethmalani did not take the time of the BJP, but he took the time of 'Others'. So, I should be given the same time.

SHRI NILOTPAL BASU: Sir, we have created a wrong precedent in not calling a hon. Member from the CPI (M), which is the third largest party in this House, to speak third on this debate. We have been creating very wrong precedents since this morning, and I want to put this on record.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): You have put it on record. Please sit down. Mr. Jethmalani, you continue.

SHRI RAM JETHMALANI: This is a matter which those, who sit in that august Chair, will sort out with the Members. I never sit there; so, I have no such problem. But, at least, I hope, I am not being accused of setting a bad precedent.

Sir, I said that we would stand exposed before the comity of Nations, if we reject this law. We shall be guilty of breach of our international obligations, and people will come to the conclusion that India wants others to solve their problems, and they are not willing to solve their problems themselves. This is not the kind of attack, which a self-respecting citizen, would want to tolerate from the international community. Therefore, I conclude by saying that this whole House should support this Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Jethmalani, you have referred to prosecutors and have passed certain adverse observations. You were formerly a Law Minister; the present Law Minister is

there. You are aware that a prosecutor is subject to adverse remark by the Commissioner. If he supports it, then, it goes against him. Will you kindly look into this?

SHRI RAM JETHMALANI: Sir, the first duty of public prosecutors, as is laid down, is that he shall not seek conviction of the innocent, that it is his duty to assist the court in arriving at the truth. How many public prosecutors are doing their duty? But, here, I would add that the public prosecutors should receive the same salary and emoluments as that of the Advocate-General of the State.

SHRI S. RAMACHANDRAN PILLAI (Kerala): Mr. Vice-Chairman, Sir, I stand to oppose this Bill. I consider that the present legislation is unnecessary. The proposed legislation is against the principles of democracy and against the principles of promotion of human rights. I consider that the legislation would be a dangerous weapon in the hands of the present Government. This will provide opportunities to attack the democratic rights of the trade unions, the political parties in the Opposition, the minorities and the ethnic groups. I consider that the proposed legislation will be an instrument of State terrorism in the hands of the present Government.

Before going into the specific provisions, I would like to make certain general remarks. One of the arguments made was that many other countries have passed such laws and so we should also pass such laws. I don't consider that this is a logical argument. It may be a fact that some of the countries might have passed such legislation. But we do not need such legislation. We have a set of legislations in this country to take care of any such situation. The Indian Penal Code is there. The Arms Act of 1959 is there. The Explosive Substances Act has been amended. The Armed Forces Act and so many other Acts are there to take care of any such situation. The other countries may not be having such laws. So, my contention is that there is no need for such legislation. If some amendments are required here and there, in any of these laws, we can make those amendments. The other arguments given are that, this will secure conviction, and that, in view of the inordinate delay in the disposal of cases, this will also help in expediting their disposal. Sir, that would be a very dangerous argument. In the criminal justice system, we have provided certain safeguards to protect the interests of innocents. Certain procedures have been provided. Certain types of evidence have been made inadmissible; and also, certain provisions have been made to ensure the

independence of the judiciary. Sir, all these safeguards are sought to be taken away by the provisions of the proposed legislation.

Sir, the Bill proposes certain drastic procedures, and it makes confessions before Police Officers admissible in courts. It also provides for presumption of certain circumstances and proposes to create a judicial system that will be dependent on the Executive. Sir, this would create a very dangerous situation in this country, because two types of trials of crimes are proposed to be introduced through POTO. One is the normal criminal justice system; the other is the system under the POTO. There, the procedures are very drastic. Inadmissible evidence is proposed to be taken as admissible evidence, and the court is also, in a way, being made dependent on the Government. So, this will create a situation where the Government may allow the normal courts to proceed in cases pertaining to persons who are charged and who are nearer and dearer to the Government. Those who are in the list of disliked persons, as we see in Gujarat, the Government will exercise its choice to say that the present legislation will be applicable in such cases. So, this will sabotage the entire criminal justice system in this country. Two types of procedures, two types of evidence, two types of courts, two approaches to different persons, different citizens in this country! This will sabotage the entire criminal justice system in our country. In order to avoid delays, in order to secure convictions, there are other methods to strengthen the criminal justice system in our country. The Government can take certain steps. The other day, the former Law Minister, had explained to us the condition of the criminal courts in our country. We can open more criminal courts; qualified magistrates and judges can be appointed; qualified public prosecutors can be appointed, and we can also take steps to ensure the independence of the investigating agency. All such measures, Sir, will expedite the process; all these measures will also ensure conviction. So, instead of taking such steps, the Government is providing a parallel system to try a certain set of cases. So, this will endanger the democratic polity and the criminal justice system.

Sir, I would like to point out certain specific objections to certain provisions of this proposed Bill. One is that, the proposed legislation provides unlimited powers to the Government to declare an organisation as a terrorist organisation. Clause 18 provides unlimited powers to the Government. Shri Kapil Sibal has already referred to the Unlawful Activities (Prevention) Act of 1957. Certain conditions are there. Here, in this particular

provision, there is no such condition. The will of the Government is made as law. Not only that, if an organisation is declared as a terrorist organisation, the onus to prove lies on the accused organisation to say that it is not a terrorist organisation.

Not only that, Sir; there is another provision in this Bill. The Government may argue that there is a Review Committee to entertain complaints about the declaration of a particular organisation as a terrorist organisation. As per clause 60 of the proposed legislation, who is to be in this Review Committee? A judge is there, but who are the other two members? They are appointed by the Government. So, the decision of the Review Committee will always be with the Government. There is no independent nature of this Review Committee, which is provided in this Bill. It is an instrument of the Government; it is an arm of the Government. On the one hand, the Government makes a declaration about an organisation that it is a terrorist organisation, and it will get approval from the Review Committee. So, this is a dangerous situation. The Bill provides unlimited powers to the Government.

Sir, my second objection is that the Government can declare any organisation in this country as a terrorist organisation. If we look at the wording of clause 18, sub-clause (4), even an organisation not involved in terrorism can also be declared as a terrorist organisation. What all conditions are attached to the Unlawful Activities (Prevention) Act of 1957 are not at all relevant here, are not at all provided here. So, after we pass this legislation, we will be in a period of undeclared emergency.

Sir, my third objection is, anybody can be implicated as a member of a terrorist organisation. If we look at the formulation of clause 3, sub-clause (v) -- Shri Kapil Sibal has already referred to that -- as to who is a member of a terrorist gang or a terrorist organisation. The membership is not defined. Anybody can be implicated. It is not only under clause 3 sub-clause (5). Look at clause 20, sub-clause (1), "A person commits an offence, if he belongs or professes to belong to a terrorist organisation." These are all very, very wide formulations. Anybody can be implicated.

श्री संघ प्रिय गौतम (उत्तरांचल) : बोलने दीजिए।... (व्यवधान)...

श्री नीलोत्पल बसु : शर्म करो थोड़ा। एक तो 20 मिनट बोल सकता है और थर्ड पार्टी बोलेगा नहीं।... (व्यवधान)...

श्री संघ प्रिय गौतम : मैं तो यह कह रहा हूँ कि बोलने दो। सही सुना नहीं आपने।... (व्यवधान)...

SHRI S. RAMACHANDRAN PILLAI: Mr. Gautam, you also can be implicated if a particular Government is an unfavourable Government to you.

So, Sir, anybody can be implicated, if the Executive wishes. Then, the burden of proving his innocence lies on the accused. He has to prove it and say, "I am innocent."

Sir, there is another dangerous provision. This is my fourth objection in regard to the provisions of this legislation. Anybody who opposes the action of the Government, can be implicated. Already, members of the treasury benches have made such references. Some of the Opposition parties too are opposing this Bill. Yet, they are supporting the Bill.

Sir, many such dangerous provisions are included in this. Clause 21 says, "A person commits an offence if he invites support for a terrorist organisation, to support such terrorist organisation." Many such words are used in clause 21 of the proposed legislation. Anybody who opposes the action of the Government, can be implicated, as per the provisions of clause 21. And, there is a mention about 'meeting.' "A person commits an offence if he addresses a meeting for the purpose of encouraging support." 'Meeting' is defined. For the purposes of this section, the expression 'meeting' means, a meeting of three or more persons whether or not the public are admitted. This is the provision, Sir. If three persons together talk something, all the three can be implicated, as per the provisions of this Bill. It is a very, very dangerous law. The democratic rights of the people would be under attack by the provisions of this Bill.

My fifth objection is about Chapter V. This proposed legislation gives unlimited powers for intercepting communications. Some arguments have been made here under "The need for intercepting communication." But, here, this particular Chapter doesn't provide any safeguard against the misuse of the powers to intercept communications. Of course, clause 37 provides for a Competent Authority. Who is this Competent Authority? A Competent Authority is appointed by the Government. The left hand is asking the right hand, and the right is asking the left. No independent powers are given to the Competent Authority. It is appointed by the Government. It can act only as per the wishes of the Government. Not only that, there is an issue of Review Committee. I have already mentioned about the Review Committee. The Review Committee is also a creation of the Government. Sir, the Government may argue...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please give me one minute. ...*(Interruptions)*... Mr. Basu, please come here and have a look at the paper and see for what time the Members have spoken. Then I hope you will be gracious enough to withdraw your remarks towards the chair. ...*(Interruptions)*... Please continue. ...*(Interruptions)*... Have a look. ...*(Interruptions)*... Mr. Pillai, you please continue. I am worried about these interruptions. ...*(Interruptions)*...

SHRI S. RAMACHANDRAN PILLAI: Sir, there is a provision for submission of annual reports both before the State Legislatures and also before the Parliament. The Central Government or the State Government, as the case may be, shall cause an annual report to be prepared, giving full account of the number of applications, etc., etc. for interception and also what they have done, etc., etc. But there are two provisos attached to sub-clauses 2 and 3, which say, provided that if the State Government is of the opinion that the inclusion of any matter in the annual report would prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matters. The same is also provided in the case of the Central Government. On the one hand, it provides that we will do this and, on the other hand, what is provided is taken away. It is just to hoodwink the people. There is no safeguard to the privacy of the citizens in this country. Everything will be at the mercy of the police officials and the Executive. This is a terrorising law. Not only this, Sir, already a mention has been made about the bail application. What would be combined effect of clause 32 and clause 49 sub-clause (2)? Clause 32 mentions about the confession before a police officer. Clause 49, sub-clause (2) deals with the police officer's right to ask for custody. The combined effect will be a threat of torture. A threat of torture will be there. It is a very dangerous provision. Sir, I am not going into the details of the presumption clauses. The burden of proof is not on the prosecution. The burden of proof is on the people who are charged against. They should prove it. Sir, there is another interesting provision. Clause 57 gives complete immunity from legal proceedings to the Government and the Government officials. Sir, what is this Special Court? There is a very interesting provision. If you look at clause 23, you will find that it deals with the Special Court. Sir, I am reading sub-clause (7) of clause 23 of the proposed Bill. I quote: "For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of a Special Court of the age of superannuation under the

rules applicable to him in the service to which he belongs shall not affect his continuance as a judge or additional judge." So, there is a separate procedure for these judges and there is a separate time frame for their superannuation. Why? It is because such cases will negate the independent nature of the court. There is also a dangerous provision in this particular clause 23 sub-clause (3). It is not the High Court or the Supreme Court that would take a decision on any dispute arising within its jurisdiction, but it is the Central Government which will take the decision. It is not at all an independent judiciary that would take decision on such matters. What is the combined effect of all such provisions? The combined effect of all such provisions makes this law the most draconian law in this country, and that will be used against the political opponents. The major political party of the present Government believes in the philosophy of vindictiveness. This law is there in their hands and it will become a very dangerous weapon against the democratic rights of the people, against the democratic rights of the minorities and against the democratic rights of the ethnic minorities in this country. We oppose all the provisions of this Bill. All the provisions are dangerous. There is no need for this legislation at all. If we pass this legislation, it will be a scar on the democratic polity of our country. With all the force at our command, we oppose the proposed legislation. Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The House was given four hours for this Bill, and we were to sit up to 6 o' clock and the voting was to take place at 6 o' clock or immediately thereafter. Now, we have decided that the voting would take place at 7 o' clock. But, kindly keep in mind the time limit allotted to the parties, as per the rules. Mr. Nilotpal, you made a reference to others being given more time. Your speaker started at 6.24 pm and finished at 6.47 pm, when the time allotted was only 14 minutes. Please remember that. Your speaker has taken much more than the time that was allotted to your party. I have to manage the time. I do not mind sitting as long as you want. But casting aspersions on the Chair that the Chair is favouring somebody is not good. Please do not do that ...*(Interruptions)*... Please, I am not asking for anything ...*(Interruptions)*... Mr. Bhardwaj, please continue ...*(Interruptions)*...

SHRI NILOTPAL BASU: Sir, since you have referred to me, I have every right to defend myself. My point was, there are 7-8 speakers in the 'others' list and the total time allotted for 'others' is 48 minutes. So, if you are allowing 20 minutes for a Member from 'others', then proportionately, each Member, whose name is there in the list, is also entitled for

20 minutes. And, even if you allot 'extra time', that has been given now, proportionately, you should have given him more time.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Bhardwaj, can you give me one more minute?

DR. ALLADI P. RAJKUMAR (Andhra Pradesh): Sir, ours is the fourth largest party in the House. After the Communist Party, the turn of Telugu Desam comes. I want to know whether the Congress Party has exhausted its time.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The Congress Party has almost exhausted the time allotted to it.

DR. ALLADI P. RAJKUMAR: Then, how are you allowing the Congress Party again? When we are entitled for our turn, you give us the opportunity.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): When I mentioned it, Mr. Arjun Singh, in a very angry tone, told me, 'we will manage our own time.' Why did you not come to my rescue at that time? Please remember that.

DR. ALLADI P. RAJKUMAR: I was not here at that time.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): We allot time as per the strength of each party in the House.

DR. ALLADI P. RAJKUMAR: Then you please call us. Please give us the opportunity, since the Congress Party has exhausted its allotted time. Please give opportunities to others, when there is no time at the disposal of the Congress party.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I entirely agree with you.

RECOMMENDATIONS OF THE BUSINESS ADVISORY COMMITTEE

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I have to inform the Members that the Business Advisory Committee, at its meeting held