

[7 May, 2003]

RAJYA SABHA

और उपसभापति महोदया ने स्वयं इस मामले में रुचि ली है। इसके लिए मैं सबका आभार व्यक्त करता हूँ और यह निवेदन करता हूँ कि इस विधेयक को आप सर्वसम्मति से पारित करें।

**THE DEPUTY CHAIRMAN :** The question is :

“That the Bill to amend the infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, as passed by Lok Sabha, be taken into consideration.”

*The motion was adopted*

**THE DEPUTY CHAIRMAN :** Now, we shall take up clause-by-clause consideration of the Bill.

*Clauses 2 to 10 were added to the Bill*

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

**DR. MURLI MANOHAR JOSHI :** Madam, I move :

That the Bill be passed.

*The question was put and the motion was adopted*

**श्री विजय जे. दडाँ ( महाराष्ट्र ) :** महोदया, अभी आपने कहा कि किसी घोड़ी का दूध पीते हैं ?

**उपसभापति :** मंगोलिया में घोड़ी का दूध पिलाते हैं, लोग पीते हैं। ..... ( व्यवधान ) In different countries, they have different kinds of milk. Where there are camels, the children must be drinking camel's milk. Okay; now, we shall take up the Foreigners (Amendment) Bill, 1998.

**The Foreigners (Amendment) Bill, 1998**

**THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND MINISER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI HARIN PATHAK) :** Madam Chairperson, I move :

That the Bill further to amend the Foreigners Act, 1946, be taken into consideration.

The Foreigners (Amendment) Bill, 1998 was initially introduced in June 1998 for amendment of Section 14 to enhance the punishment of imprisonment

for a maximum period from 5 years to 8 years. The Bill was referred to the Department-related Parliamentary Standing Committee of Ministry of Home Affairs for examination and report. The Committee deliberated and submitted its Report in March 2000. The Committee had favoured the holistic approach in dealing with the issue relating to illegal migration, especially with a view to undertake the comprehensive legislation to effectively deal with the problems of infiltration. Subsequently, the Ministry of Home Affairs referred the matter to the Law Commission of India for study and recommendations. Madam, the Law Commission of India presented its 175th Report on Foreigners (Amendment) Bill, 2000 to the Government in September 2000. The recommendations of the Law Commission were examined and the Government decided to pursue the Foreigners (Amendment) Bill, 1988 already introduced in the Rajya Sabha for enhancing existing maximum punishment from 5 years to 8 years which has also been recommended by the Law Commission. Contravention of the provision of the Foreigners Act, 1946 or of any order made thereunder or of any direction given in pursuance of that Act or such order is punishable with imprisonment, which may extend to five years and fine. The offences under the Foreigners Act are cognizable, non-bailable and triable by the First-Class Magistrate. Madam, however, these accused persons arrested under the said Act very often managed to obtain bail under Section 437 of the Code of Criminal Procedure. Further, the Act also does not clarify the violation of the various provisions of the Act or such order and only provides for punishment which may extend to five years and fine. The quantum of punishment for various offences is left to the discretion of the court. It is proposed to classify offences under the Foreigners Act and to provide for punishment depending on the gravity of offence committed. It is also proposed that the maximum punishment under the Foreigners Act may be up to 8 years and fine be raised from Rs. 10,000 to Rs. 50,000. The enhancement of the punishment will have the following effects. Firstly, serious offences will become triable by the Court of Session. Formerly, it was triable by the First-Class Magistrate. It was mentioned that, Madam, under Section 437 of the Code of Criminal Procedure accused persons manage to get the bail. Secondly, the Court will require giving notice to the State Government thereby affording it an opportunity to oppose the bail application under the provision of sub-section (1) of Section 439 of the Code of Criminal Procedure, 1973. These are the two amendments. With these amendments, we have brought forward this Bill. In view of this, I commend this august House that the Bill may be taken up for consideration.

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*The question was proposed*

4.00 P. M.

THE DEPUTY CHAIRMAN : It is only for strengthening the legislation. The Bill is already there. We have given one hour for it.

SHRI EDUARDO FALEIRO (Goa) : Madam Deputy Chairman, the Minister was very candid in disclosing what was in the mind of the Government when this legislation was being prepared this important question of illegal migration. Now the question that one would ask is, how is this particular amendment going to check infiltration ? The House will get confused by reading today's newspaper where it has been reported that on this very question of illegal migration the Union Cabinet last night approved the scrapping of Illegal Migrants Detection Tribunal Act. We are opposing this scrapping for the reason that in 1983, this legislation was brought mainly because, in Assam, under the pretext of illegal migrants, linguistic as well as religious minorities were being harassed. Madam, nobody is supporting illegal migrants. But, what we are supporting is, the principle that, every citizen of this country, rich or poor, having any language, of whatever religion, caste, creed or sex, should not be harassed. This is what we are supporting. And therefore, in 1983, the then Prime Minister, Smt. Indira Gandhi, had brought this legislation, which now it is reported, is going to be scrapped. What was the purpose? The purpose was this that many mischievous elements at that point of time, as well as now, were pointing out at people, basically religious as well as linguistic minorities saying that they were Bangladeshis. Most of these people were in a miserable condition, the poorest of the poor and illiterate. That is why they were there, and these people had no documents; they have no way to get documents; they do not know from where to get these documents; they have no money to pay for the lawyers; and therefore, a provision was made, which was correct, and according to the natural justice, that anybody, who alleges that a particular person is an illegal migrant or a foreigner, the onus will be on him to show how he becomes a foreigner. Now, this is a good legislation. I will point out again that there is no question of supporting the illegal migrants. But the question is of supporting absolutely, without any change, without any compromise, our own people, our own citizens who should not be harassed on linguistic or religious grounds. Now, the question is: You are repealing the Act. Why ? I would point out here that in May 2001, on the eve of the Assembly Elections in Assam, the Prime Minister, Shri Atal Bihari Vajpayee, at the public meeting had said that all Bangladeshis—we are now

talking about Bangladeshis may be given work permits. Now, what has happened to that assurance? The Prime Minister says one thing; the Minister of State for Home Affairs and the Deputy Prime Minister say another thing. I know that it happens quite often. But then, at least, we must understand as to what has happened to the suggestion made by the Prime Minister at that point of time. I will just mention that your push back policy cannot work, and I think, you have appreciated this. I have been to Bangladesh myself last month, and I have seen how migrants from Myanmar, known as Rangers, are coming to Bangladesh. People from Myanmar come to Bangladesh; people from Bangladesh come to India; people from India, Bangladesh, Pakistan and Myanmar go to other countries, and this is due to the economic reasons. Therefore, the short point is "What are you going to do on this particular matter in a manner which is constitutional and legal?" Now, again, Madam, on a matter on which you have taken a lot of interest, and this concerns foreigners who are their refugees. How are you dealing with this question? This is what I would like to know. At this moment, there are about one lakh Tibetans in India and another one lakh Sri Lankans refugees. All these people are provided for. There are about 20,000 refugees in Delhi itself, out of which about 15,000 are Afghans, and the rest are Burmese, Sudanese, Somalis, Iranians and some others. Now, Madam, everybody knows that an eminent Persons Group, including former Chief Justice of India, Justice P.N. Bhagwati, had submitted more than two years ago to the Government of India a Draft Refugees and Asylum Seekers Protection Act, 2000 to regularise this whole thing. Now, what has happened to that? At the lower bureaucratic level, a lot of misuse of the vague provisions is being made for a profit, from what I understand, and therefore, they have also been demanding a Manual of Practice and Procedure on Refugees Matter for the use of the administration dealing with the subject, to be immediately prepared and finalised. Finally, on this question, the UNHCR they do not have any status. You see, they are part of the UNDP or some such organisation. This is not what is expected. Now, what is their status? What are you going to do about this? What are you going to do about the draft submitted by justice Bhagwati? And for a change, let me say one thing, because, I always congratulate the Government when you are doing a good thing. You have been solving, some problem. You are giving residential permits to those people who have come from Afghanistan. You are working on the issue of citizenship of those people who have come from Afghanistan, who are basically Sikhs and Hindus. But I would like to know when this question of citizenship of these people, who have come from Afghanistan, who are in a difficult situation, will be solved. The last issue I want to raise in this context is a circular issued by your

Ministry, Mr. Minister, on 31st January, 2003, which requires permission from the Ministry of Human Resource Development for all forms of collaboration and other international academic exchange activities taking place in the country—seminars, conferences and workshops. It has been said in the circular that for these conferences, the sponsors must give not only the names of the persons who are coming, but also, the contents of those conferences. This amounts to academic control is against academic autonomy, and the worst part is—just the opposite to what SAARC said, that these exchanges must be increased—the circular of the Home Minister which I mentioned, particularly targets people, and academicians, from China, Pakistan, Bangladesh, Sri Lanka, Afghanistan, and puts them on the red channel. It is only the Ministry of Home Affairs, which can give permission, for even short visits like seminars. I strongly object to this, just like the whole academic community objects. This is against the concept of university. University, by definition, is universal in terms of ideas, and universal in terms of exchange among people. This is a serious attack on university freedom, academic freedom. I would urge upon you to revoke this circular with immediate effect. Would you kindly, Mr. Minister, reply to these three points? Thank you.

**श्री सुरेन्द्र लाठ (उड़ीसा) :** धन्यवाद उपसभापति महोदया, आज सरकार फोरेंस एक्ट, 1946 में संशोधन के लिए प्रस्ताव लाई है। इस संशोधन के माध्यम से देश में इल्लिगल माइग्रेशन को रोकने में सहायता मिलेगी। इस संशोधन में दिशा- कानूनों का उल्लंघन करने वालों के प्रति और अधिक कड़े प्रावधान किए गए हैं। इस संशोधन को करने के बाद दिशा-कानूनों का जो उल्लंघन करेगा उसे पहले से अधिक कड़े कानूनों का सामना करना पड़ेगा। इसके अलावा फोरेंस एक्ट के किसी प्रावधान को तोड़ने पर कड़ी सजा की भी व्यवस्था की गई है। महोदया, इस संशोधन के पास होने के बाद संबंधित सारे केस हायर कोर्ट से ट्रायल करने का प्रावधान तथा जमानत के प्रावधान को और अधिक कठिन किया जाएगा। इस प्रकार कुछ सामान्य संशोधन इस बिल के माध्यम से लाए गए हैं किंतु ये सामान्य संशोधन एक व्यापक उद्देश्य के लिए किए गए हैं। महोदया, आज इल्लिगल माइग्रेशन हमारे देश के लिए एक गंभीर समस्या बन गई है। आज विदेशों से घुसपैठ हो रही है, विशेषकर सीमावर्ती क्षेत्र हमारी रिलीजियस डेमोग्राफी को प्रभावित कर रहे हैं। इसके साथ-साथ हमारी सुरक्षा व्यवस्था को भी प्रभावित कर रहे हैं। सीमावर्ती क्षेत्रों में इसका प्रभाव अधिक है किंतु देश के अंदर भी इल्लिगल माइग्रेशन की संख्या धीरे-धीरे बढ़ती जा रही है तथा यह सीधे तौर पर हमारी सामाजिक तथा आर्थिक व्यवस्था को भी प्रभावित कर रही है। मैं इस विषय में सुप्रीम कोर्ट का उद्धरण देना चाहता हूँ। सुप्रीम कोर्ट ने पी०आई० एल० की हियरिंग में अपना मतव्य दिया है : “The unchecked immigration of Bangladesh citizens to India is a threat both to our economy and security of the country. They are

only eating into the economy of the country, and to a large extent, become a security threat to India.....

**SHRI EDUARDO FALEIRO:** Madam, on a point of order, I would like to raise a point. He cannot make vague allegations here. Who has been a security threat? How many Bangladeshis are involved? You punish them and tell us. Simply you cannot say everybody is a security threat.

**SHRI SURENDRA LATH (Orissa) :** This is what the Supreme Court has said....(Interruptions)....

**SHRI EDUARDO FALEIRO:** You give the names and take action.

**THE DEPUTY CHAIRMAN:** Now, you have made your point. He is making his point. Ultimately, it is for the Minister to answer this.

**श्री सुरेन्द्र लाठ:** महोदया, इसी प्रकार लॉ कमीशन ऑफ इण्डिया, हेडड बाई जस्टिस बी०पी० जीवन रेड्डी ने भी फोरेनर एक्ट, 1946 में अमेंडमेंट कर इमिग्रेशन मेजरस लेने की सिफारिश की है। कमीशन ने अपनी 175 वीं रिपोर्ट में कहा है कि The Government needed to take exemplary steps like deporting some of the illegal migrants. Till such steps were taken, there would be no stop to the kind of migration." it added. इल्लिगल माइग्रेशन की समस्या है। यह इल्लिगल माइग्रेशन बंगलादेश से विशेषकर हो रहा है। उसे देश को गंभीरता से लेने की आवश्यकता है और इसके लिए एक कारगर व्यवस्था के निर्माण की आवश्यकता है, जिससे इल्लिगल माइग्रेंट्स को सीमित किया जा सके तथा इस पर रोक लगाई जा सके। महोदया, आज हमारे देश में कुछ ऐसे लोग हैं जो इस समस्या को मानवीय आधार पर सहानुभूतिपूर्वक विचार करने की बात कर रहे हैं और कुछ लोग इसे ह्यूमन राइट्स के संदर्भ में देख रहे हैं। किन्तु वे लोग इस बात को कहते समय यह भूल जाते हैं कि देश हित में क्या है। इस समय हमारा देश हित सर्वोपरि है। इसलिए आवश्यकता है कि इस विषय को हम देश हित में ही देखें। महोदया, इस संबंध में मैं यूएन चार्टर के बारे में कहना चाहता हूं:

"The United Nations Charter is founded on the principles of sovereign equality—Art. 2(1)—and domestic jurisdiction—Art. 2(7)—and it also enshrines the principle of non-discrimination which seeks to promote respect for human rights and fundamental freedoms for all. However, the UN Charter as well as the Universal Declaration of Human Rights (adopted by the UN General Assembly on December 10, 1984) are silent on the issue of the treatment of aliens resident in foreign countries.

The International Covenant on Civil and Political Rights (March 23, 1976) which is ratified by India, in its turn, recognises the need for national classification

between citizens and aliens. Thus, even though all persons are entitled to equal protection of the laws, (which is guaranteed by art. 14 of the Indian Constitution) certain rights are reserved, in the nature of things, for citizens alone. Article 25 of the above Covenant recognises this when it provides that every citizen shall have a right, *inter-alia*, to take part in the conduct of public affairs, to vote and to be elected and to have access to public service in this country.

The Draft Declaration of the Human Rights of Individual who are not citizens of the country in which they live (U.N. Document F/CN. 4/1333, dated December 5, 1978) defines the term "Non-Citizens" to mean any individual who lawfully resides in a State of which he is not a national."

Now I would like to quote an order of the Supreme Court.

"The Indian Supreme Court (R.Monterio Vs. State of Goa AIR 1970 Sr. 330) has stated the position thus:

It cannot be doubted that the reception and residence of an alien is a matter of discretion and every State has by reason of its own territorial supremacy, not only the legal right but also the competence to exclude aliens from the whole or any part of its territories. Again a State exercises territorial supremacy over persons in its territories, whether its own subjects or aliens and can make laws for the entry, residence and eviction regulating aliens."

महोदया, अब मैं सिटिजनशिप एक्ट और फॉरेन एक्ट की कुछ खामियों की ओर सरकार का ध्यान आकर्षित करना चाहता हूँ। महोदया, इन दोनों, इन दोनों कानूनों में ऐसी कोई व्यवस्था नहीं है जिससे यह मालूम किया जा सके कि कोई व्यक्ति, वह इस देश का नागरिक है या विदेशी नागरिक है। सिटिजनशिप एक्ट नागरिकता की धारणा को स्पष्ट करता है तथा फॉरेनर्ज एक्ट किसी विदेशी नागरिक के आने-जाने या इस देश में ठहरने की व्यवस्था के बारे में कहता है। अगर किसी नागरिक के बारे में शंका उत्पन्न हो कि वह इस देश का नागरिक है या नहीं, वह इस देश का नागरिक होने का दावा करता है, उस बारे में समाधान करने की कोई सुदृढ़ व्यवस्था नहीं है।

In fact, there is no machinery provided under the present enactment by which the question whether a person is citizen of India or whether he is a foreigner can be determined.

महोदया, 1983 में आई.एम.डी.टी. का प्रावधान किया गया था जिसका मुख्य लक्ष्य आसाम के इल्लीगल माईग्रेंट्स को चिह्नित करना था। लेकिन 1983 के बाद जिस प्रकार की स्थिति बनी, उसमें आज तक केवल 1600 नागरिकों की पहचान हो पाई है जब कि लाखों की संख्या में

बांग्लादेशी नागरिक आसाम में आ रहे हैं। आज के संदर्भ में वहां आई.एम.डी.टी. का एक्ट प्रभावी नहीं हो रहा है। मैं सरकार को धन्यवाद देना चाहता हूँ कि उन्होंने कल कैबिनेट में आई.एम.डी.टी. एक्ट को रिपील करने का निर्णय लिया है। इससे आसाम में आ रही इस समस्या का समाधान करने में निश्चित रूप से सहायता मिलेगी। महोदया, इसके लिए सभी राजनीतिक दलों के सहयोग और आवश्यकता पड़े तो दोनों सदनों का संयुक्त सत्र भी बुलाया जाना चाहिए।

Madam, I request the Government that a comprehensive provision must be made and a machinery must be provided for determination of the cases where citizenship of a person is in doubt. The machinery can form a part of either the Foreigners Act, 1946 or Citizenship Act, 1955 or with a complete new enactment for the determination of the status of a person who is a foreigner and yet claims to be a citizen of India. Madam, there is an urgent need for making provision for National Register of Citizenship. Such Register should be properly maintained along with the Register of Birth and Death, which can provide effective foundation for the protection of citizenship and the rights of the citizens of this country.

मैडम, इन्हीं शब्दों के साथ मैं आशा करता हूँ कि यह संशोधन इल्लिगल माईग्रेंट्स की समस्या को संपूर्ण रूप में नहीं, लेकिन कुछ हद तक निश्चित रूप से समाधान करने में सहायक होगा। धन्यवाद।

SHRI MATILAL SARKAR (Tripura) : Madam, the Amendment proposed is appreciable. The amendments are aimed at preventing unauthorised persons coming from the neighbouring countries. The amendment is aimed at preventing them from staying and settling beyond the legal period, whenever they come with permission. There is also a provision for preventing the persons from staying within our country who have illegally intruded into our country. Penalties have also been provided for those illegal immigrants. But the rule alone is not enough for banning infiltration and immigration. There may be various kinds of intruders into the country. Some people come here to take out their livelihood when there is economic crisis in any of our neighbouring countries. Poor labourers come into our country and this is treated or may be called the 'illegal import of manpower'. They come; they work here; they get wages, and thereby the wages of our own labourers are being lowered down. This is also one problem. They may not be coming for doing harm to our country, but even then, indirectly, harm is done. There are other types of persons coming through illegal means. They are miscreants, dacoits and other anti-social elements, who



manage to enter into our territory through the porous border and pose a danger to the lives and property of our civilians.

Madam, one of the biggest problems of illegal infiltration is cross-border terrorism which we are tired of discussing and listening here, and which has become a part of every day life in some States. I would rather mention the name of Tripura, Assam and, of course, Kashmir, which is always there in our agenda; these States suffer from cross-border terrorism. It is shocking to note how they manage to come here. They come with arms. They bring these arms to create disturbance in our territory. People of other types also manage to enter into our country and stay here. They are on the mission of spying and acting as agents of ISI, CIA and other dangerous anti-national organisations. Madam, we do have various agreements. There is the Indira-Mujib Pact whereby no one, who comes here after 1971, would be allowed to stay here. But, even then, infiltration is going on. Now, the question is: How to put an end to it? Can these rules prevent it hundred per cent? I do believe, cent per cent sealing of border may not be possible by rules alone.

Madam, when we talk of our Forces, as you know, the BSF battalions are posted in the borders. In my State, I see, for every 10-20 kms., there is one unit of the BSF. Is it possible for them to protect the border perfectly? It is not possible even to a limited extent. Madam, fencing along the border is one of the important items on the agenda. However, the progress is not satisfactory. And, while fencing is being done, there is another problem. Beyond fencing, there is agricultural land. We see, there are lands owned by our people, and the question arises as to whether they can go and cultivate their lands. But, if we keep the borders open, then, there will be infiltrators coming into our country. So, these are the things which need to be looked into. Rules alone cannot help. Illegal entry is easy; illegal citizenship is also easy. But, when a legal entry is required through a proper passport, we see that there is a lot of red-tapism and bureaucracy which come in the way. One cannot easily get a legal entry. And, we find that illegal entry into our country is increasing. Now, we will also note that some of the citizens of our neighbouring countries in the border have dual citizenship, in the sense, they also have the Indian citizenship certificate, but they live in other countries. These things are going on. They may be small in number, but things are happening. So, earnestness is required to implement the rules, to execute the orders. What machinery do we have to check this? This is the main question. How far is the Central Government prepared to execute, to implement these rules so that illegal entry does not take place? So that

infiltrators cannot come, so that militants cannot come and go after doing mischievous things. They are at ease to come and go. There is none to check, because BSF is insufficient, inadequate. So, while passing the Bill and strengthening the Act, the main point I would like to put here is that there should be a similar efficient machinery to guard against all these illegal things. And, machinery means BSF, and other administrative designs. The Central Government would sincerely try to help, to protect the border, to protect the civilians, to protect their lives and property, and to stop cross-border terrorism. Thank you.

SHRI S.P.M. SYED KHAN (Tamil Nadu) : Madam, Deputy Chairperson, I rise to speak on the Foreigners (Amendment) Bill, 1998 on behalf of the AIADMK party. This Bill seeks to increase the maximum punishment to persons charged under this Bill from five years to eight years, and the maximum penalty from Rs. 10,000 to Rs. 50,000. It has been stated that those accused under the Foreigners Act of 1946 manage to obtain bail under section 437 of Code of Criminal Procedure. So, it is being provided that serious offences under this Act shall be tried by the Court of Sessions. I would like to know from the hon. Minister what will happen when offences are tried by the Sessions Court instead of Magistrate Courts. May I know from the Minister whether any irregularities by trial courts of First Class Magistrate level have come to the notice of the Government? I hope the hon. Minister will share such information with the House.

There is one specific point in this Bill that deserves appreciation. When this Bill becomes an Act, courts will be required to give notice to the State Government, giving it an opportunity to oppose the bail application under section 439 of Code of Criminal Procedure. This provision will check the enlargement of persons on bail. In the present situation, enlargement of some persons on bail, that too without ascertaining the views of the State Government, will endanger national security and might create law and order problem in the State. The nation is aware of the steps taken by the hon. Chief Minister of Tamil Nadu, Dr. Puratchi Thalaivi to put an end to terrorism by foreign nationals in collusion with others. I have to refer to this, because we are discussing this Bill only to see that no foreigner is allowed to commit offences on our land. When we are talking about punishment to persons of foreign origin, who commit offences in our country, we have to think in terms of eliminating the chances of such persons entering our soil.

There are certain categories of offences, which can be tried exclusively by Sessions Court. This will involve additional financial burden on the State

Government, which have to incur the expenditure for creation of more courts, appointment of judges, public prosecutors, staff, etc. Thus, the Centre may consider granting additional funds to meet that expenditure. I also wish to mention that the State Government of Tamil Nadu has already floating police station, which needs to be expanded in a great way with the administrative and financial support of the Centre.

Tamil Nadu has about 1000 KMs long coast. Since coastal lines are more vulnerable than land borders, Tamil Nadu Government has to spend huge sums for policing the coastal lines, because preventing infiltration of foreigners is very vital for safeguarding our sovereignty and integrity. That is why a demand was made for the treatment of Tamil Nadu as a border State, and for the provision of financial and other assistance on the lines it is done for other border states. The Government of Tamil Nadu has been demanding more Central assistance for the modernisation of its Police force only to deal with such a situation. The Central assistance for the modernisation of the police is based on a formula in which 35 per cent weightage is given to population. Here, I must say that Tamil Nadu is being punished with less allocation, because it has been implementing population stabilisation schemes effectively. Already burdened with the financial crunch, handed down by the previous Government of Tamil Nadu has to provide Rs. 1391.14 crores in the 2003-04 Budget for the Police force. So, I appeal to the hon. Minister to allocate more funds to Tamil Nadu for the modernisation of the Police, etc., as it is provided to other border States. I want to make a specific point. When we talk of foreigners committing offences in India and attempting to escape the arms of law, the local connections have also to be taken into consideration. I would request the hon. Minister to think in terms of taking stringent action against those who support foreigners, who commit offences and try to use the loopholes to free themselves from the clutches of the law. There are cases of nexus between politicians and the banned organisations, against whom our leader, Dr. Puratchi Thalaivi, has taken action under the law. I appeal to the hon. Minister not to entertain requests for sparing such persons for any reason, whatsoever.

I wish to state that, while implementing the Bill, the Government should ensure that certain basic rights of refugees are protected and that they are not harassed.

With these words, I conclude.

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu) : Madam, on the one hand, we want Foreign Direct Investment and, on the other, we do not want

foreigners to stay in our country. This will send, may be, a wrong signal; it is against globalisation. We want the foreign investment to come, but we do not want foreigners to stay here. That is the message we are giving, may be, it is a wrong message that we are giving. *(Interruptions)*.

THE DEPUTY CHAIRMAN: We want Foreign Direct Investment, not 'direct foreigners'. *(Interruptions)*.

SHRI HARIN PATHAK : We don't want foreigners illegally.

SHRI EDUARDO FALEIRO : Madam, Bangladesh, India and Pakistan, at the WTO, had said that there should not only be a free movement of capital, but there should also be a free movement of people, which had been objected to by the developed countries. So, India, Bangladesh and Pakistan have a common position. *(Interruptions)*.

SHRI R. SHUNMUGASUNDARAM : Madam, I am emboldened to say this because this Bill gives that message, may be, a wrong message, May be, the Minister can clarify this aspect. The amendment provides, in Clause 2, "Whoever (a) contravenes such provisions of this Act...", and then in part (b), it says, "Or, remains in India or in any area therein with or without valid passport....". It does not say 'illegally', as the hon. Minister has said. It does not say that a person intentionally or knowingly remains illegally. This gives room for interpretation, may be, a wrong interpretation by any State Government. Now, we say that most of the State Governments are misusing legislations like the POTA. *(Interruptions)*

SHRI N. JOTHI (Tamil Nadu) : Madam, the earlier Government in Tamil Nadu misused the Prevention of Corruption Act. *(Interruptions)*

SHRIMATI S.G. INDIRA (Tamil Nadu) : Madam, why should he bring in POTA here? *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : Madam, I do not know why my friends rise when I talk about the misuse of POTA. This is something which is pricking in their heart. *(Interruptions)*

SHRIMATI S.G. INDIRA : It is contrary to what is contained in the Bill, *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : As my friends in the BJP told that they are even misusing the Arms Act. That Act is being misused. *(Interruptions)* It is being misused against a journalist.

SHRI N. JOTHI : If a journalist commits criminal act, then, should he be garlanded? *(Interruptions)*

THE DEPUTY CHAIRMAN : Mr. Shunmugasundaram, this Bill is not dealing with POTA. So don't go beyond the scope of the Bill.

SHRI R. SHUNMUGASUNDARAM : Madam, I am just explaining that this bill has the scope to be misused, like the POTA is being misused in some States. I don't accuse my friends in the AIADMK. But, they admit that it is being misused in Tamil Nadu. I never said that it is being misused in Tamil Nadu.

SHRI N. JOTHI : We never misused the Prevention of Corruption Act, as you misused.

THE DEPUTY CHAIRMAN : If you object, it will amount that you are being hurt. So you just don't object to it. Let him make his point. *(Interruptions)*

DR. V. MAITREYAN : If one person tells a lie thousand times, then it is liable to become the truth. That is why they want to oppose everything which is said from this side. *(Interruptions)*

SHRI N. JOTHI : They are very close friends of Goebbel. That is why they are intervening. *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : Madam, my understanding of the Bill is that this Bill is liable to be misused by some States, and that is why I caution the hon. Minister. Let the hon. Minister clarify, not my friends in the AIADMK.

Madam, the hon. Minister has said that the object of bringing forward this Bill is that some people manage to get bail. Madam, that is very, very strong word, when the hon. Minister says, 'some people manage to get bail'. Madam, nobody manages to get bail. 'Managing to get bail', we should not use such expression; I don't expect him to use it here about courts. Madam, of course, somebody, some people, some accused are released on bail and that can be opposed. If bail is granted in some cases, that can be challenged in the appellate forum. But, that may not be a ground, that may not be a reason for bringing forward a stringent provision. Once again, I caution the Government against introducing stringent provisions. We have seen our experience of how the provisions of the Acts are being misused. We have seen how the TADA was misused; we are seeing how POTA is being misused. That is why I caution.

Therefore, the intention...

SHRI N. JOTHI : The Prevention of Corruption Act was misused; Special Courts were misused.

SHRI R. SHUNMUGASUNDARAM : May be misused; but there are cases leading to convictions under the Prevention of Corruption Act. Let us not discuss about it here. Madam, that is why... *(Interruptions)* Madam, if my friend, Shri Jothi wants to discuss about certain cases, I am here open to discuss them. *(Interruptions)*

SHRI N. JOTHI : Exclusive courts for Jayalalitha? *(Interruptions)*

SHRIMATI S. G. INDIRA : This is not the place to discuss all these things.

SHRI N. JOTHI : They have created Special Courts exclusively for her. There were day-today proceedings. She won all the cases. He is a public prosecutor, I am a defence lawyer. *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : These Special Courts were challenged in the Supreme Court, and they were upheld. I don't know why my friend... *(Interruptions)* If he wants to satisfy somebody, then let him do so.

SHRI N. JOTHI : We have won five cases at a stretch. *(Interruptions)*

THE DEPUTY CHAIRMAN : At least, these kind of arguments keep the House alive and awake. *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : Madam, my suggestion would be, instead of making these provisions stringent, the hon. Minister may consider having a provision for deportation of foreigners who are illegally staying because my caution is that these provisions are liable to be misused. With these words, I welcome the Bill.

THE DEPUTY CHAIRMAN : Shri Sanjay Nirupam. *(Interruptions)*

SHRIMATI S. G. INDIRA : They had allowed the LTTE to enter into Tamil Nadu. They have done all these things. *(Interruptions)*

SHRI R. SHUNMUGASUNDARAM : The hon. Chief Minister of Tamil Nadu... *(Interruptions)*

SHRIMATI S. G. INDIRA : He could have expressed his views on this Bill, and not on the POTA and the TADA.

[7 May, 2003]

RAJYA SABHA

SHRI N. JOTHI : Not the killing of Rajiv Gandhi. *(Interruptions)*

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu) : Madam, in the interest of the nation, we are not revealing so many things... *(Interruptions)*.... I wanted to keep them as they are... *(Interruptions)*... I do not want to reveal anything... *(Interruptions)*.. Madam, let them not provoke us to reveal all the things. Once we reveal it, ultimately, it affects the national interest... *(Interruptions)*... You may not know what had happened in 1983 .... *(Interruptions)* ....

SHRI N. JOTHI : We know everything... *(Interruptions)*...

SHRI S. VIDUTHALAI VIRUMBI : My learned friend and my dear sister may not know what had happened in 1983... *(Interruptions)*... If I reveal everything, it will affect our national interest.

SHRI. B. P. SINGHAL (Uttar Pradesh) : Don't encroach upon his time... *(Interruptions)*...

श्री संजय निरुपम ( महाराष्ट्र ) : धन्यवाद सिंहल साहब। उपसभापति महोदया। ... ( व्यवधान )...

THE DEPUTY CHAIRMAN : Mr. Nirupam will get his time when he starts speaking... *(Interruptions)*...

श्री संजय निरुपम : उपसभापति महोदया। ... ( व्यवधान )...

THE DEPUTY CHAIRMAN : I can ask Mr. Singhal to come and sit in the Chair. That would be a good thing.. *(Interruptions)*...

SHRI N. JOTHI : Madam, I want to point out a small mistake. The hon. Minister may understand this. Under Section 437, an offence is bailable. I do not know why the Government is using the word 'manage.' Once you file an application under Section 437, you will get bail automatically, because they are all bailable offences. There is something wrong in this Bill. This can be corrected. Madam, especially, from the Ministry of Home Affairs, we cannot expect such a glaring mistake.

THE DEPUTY CHAIRMAN : The Minister will explain.

SHRI N. JOTHI : This is the basic thing... *(Interruptions)*...

श्री संजय निरुपम : उप सभापति महोदया, फारेनर्स ( अमेडमेंट ) बिल, 1998 के समर्थन में बोलने के लिए मैं खड़ा हुआ हूँ। यह उन विदेशियों के संदर्भ में विधेयक है जो वैलिड वीजा

लेकर हमारे देश में आते हैं और उसके बाद किसी न किसी अपराध में वे पकड़े जाते हैं। उनके लिए जो सजा का प्रावधान है उस प्रावधान को और भी कठोर बनाया जाना चाहिए। निश्चित तौर पर उनके लिए जो प्रावधान है उसको और कठोर बनाया जाना चाहिए। मैनेज टू टेक बेल, इन सारे विवादों में हम नहीं पड़ना चाहते हैं, उनको बेल मिल जाता है, छोटे कोर्ट में रहेंगे तो बेल मिल जाता है। उसको सेशन कोर्ट के लेवल की अदालतों में ले जाना चाहिए। लेकिन उससे नीचे की अदालत में वे बेल एप्लाई नहीं कर सकते हैं, बेल एप्लीकेशन मूव नहीं कर सकते हैं। यह जो संशोधन आया है। इसके समर्थन में मैं खड़ा हूँ। पांच साल को आठ साल का किया जा रहा है इसका मैं समर्थन करता हूँ। 1946 का जो फारेनर्स एक्ट है, यह उसका संशोधन है, उसकी एक धारा का संशोधन है। 1946 के फारेनर्स एक्ट के हिसाब से इस देश में विदेशी आते हैं, उनके रहन-सहन के प्रावधान की पूरी व्यवस्था है। वह बिल बहुत पुराना हो गया है। इस पूरे बिल में अमेंडमेंट की जरूरत है। अगर इस बिल में अमेंडमेंट की जरूरत नहीं होती, अगर इस कानून को अच्छे ढंग से लागू किया जाये तो इस देश में अवैध तरीके से या वैध तरीके से रहने वाले जो फारेनर्स हैं, उनसे जो समस्याएं पैदा हो रही हैं, उन समस्याओं को टाला जा सकता है। मसलन जो वैलिड वीजा लेकर आ रहे हैं, वे पकड़े जाते हैं, उन्हें तो सजा देने का प्रावधान है। लेकिन जिनका वीजा लैप्स हो गया है, जिनका वीजा खत्म हो गया है, वे लोग जो इस देश में रह रहे हैं, उनको पकड़ो, उनको डिपोर्ट करो, इस तरह का प्रावधान है। लेकिन फारेनर्स एक्ट, 1946 के प्रावधानों का सही ढंग से उपयोग नहीं हो रहा है, उसका सही ढंग से कार्यान्वयन नहीं हो रहा है। हमने सदन में जो सवाल पूछा था उस सवाल के हिसाब से सत्तावन हजार पाँच सौ, छह सौ के आसपास ऐसे विदेशी लोग हैं जो हमारे देश में ओवर स्टे कर रहे हैं, जिनका वीजा लैप्स हो गया है। इसमें पाकिस्तानी हैं, बंगलादेशी हैं, अमेरिकन हैं, यूरॉपियन हैं, सूडान के हैं, सोमालिया के हैं, अफगानिस्तान के लोग हैं। मैं सबसे पहले यह जानना चाहता हूँ कि उन लोगों को गिरफ्तार करने, उनको पकड़ने, उनको डिपोर्ट करने के लिए जो हमारे पास उपलब्ध कानून है उस कानून का सही ढंग से कार्यान्वयन क्यों नहीं हो रहा है? अगर उस कानून का सही ढंग से पालन होगा तो निश्चित तौर पर सरकार जिम्मेदारीपूर्वक कह सकती है कि एक महीने में, दो महीने में, तीन महीने में, सालभर में ये सारे के सारे लोग जो ओवर स्टे कर रहे हैं, उनके खिलाफ कार्यवाही करेंगे, उनको डिपोर्ट करेंगे। मैं मंत्री महोदय से यह जानना चाहूँगा कि सत्तावन हजार पाँच सौ, सात सौ जो भी लोग हैं, उनमें से आपने कितने लोगों को डिटेक्ट किया, कितने लोगों को गिरफ्तार किया है? अगर इस बारे में जानकारी दे सकें तो बड़ी मेहरबानी होगी।

जो लोग वीजा लेकर आते हैं, उनके लिए कानून है, हमारे पास पूरी व्यवस्था है और उस हिसाब से उनके खिलाफ कार्यवाही भी होती है। लेकिन एक बहुत बड़ा वर्ग है जिसकी चर्चा फेलेरियो साहब से लेकर उस तरफ तक हुई। एक बहुत बड़ा जो फारेनर्स का वर्ग है हमारे देश में



जो कोई बीजा लेकर नहीं आता है, बगैर बीजा के आ रहा है, जिसको इल्लेगल माइग्रेट कहते हैं, उसमें बहुत बड़ा वर्ग बंगलादेश से आया हुआ है। जो विदेशी लोग आते हैं, उनमें से ज्यादातर लोग रोजगार की तलाश में आते हैं। जो बीजा लेकर आते हैं, वे पढ़ने के लिए आते हैं, नौकरी के लिए आते हैं या फिर स्टडी टूर पर आते हैं। लेकिन जो अवैध तरीके से आ रहे हैं वे सारे रोजगार के लिए आ रहे हैं। सार्क कंट्री, पड़ोसी देश, बंगलादेशी, अपने भाई, ये सब बातें सुनने में अच्छी लगती हैं, इनको रोजगार मिलना चाहिए। लेकिन हमने बार-बार सदन में यह सवाल उठाया कि ठीक है, उनको रोजगार मिलना चाहिए लेकिन हमारे लेबर का क्या होगा ? हमारे देश के पहले से जो बेकार मजदूर हैं, बेरोजगार मजदूर हैं, उनकी मजदूरी के सामने एक प्रतिस्पर्धा तैयार हो रही है। हम अपने मजदूरों को पूरा रोजगार तो दे नहीं पा रहे हैं ऐसे में बंगलादेशी जो हमारे देश में अवैध तरीके से रह रहे हैं, उनको रोजगार देने का जो मानवता के आधार पर, सहानुभूति के आधार पर प्रस्ताव आता है, सुझाव आता है, उस सुझाव के ऊपर बहुत ज्यादा इस समय, आज की तारीख में, देश में बहस करने की अब जरूरत नहीं है क्योंकि यह न सिर्फ रोजगार का सवाल है, ये जो बंगलादेशी हमारे देश में आते हैं, ये सचमुच सुरक्षा को लेकर खतरा हैं। उन्होंने सुप्रीम कोर्ट का एक वरडिक्ट था, उसको कोर्ट किया, आपको बड़ा ऐतराज था। मैं आपको मुम्बई के आस-पास का एक किस्सा सुनाता हूँ। अभी एक महीना पहले यह हुआ। पड़गा करके एक गांव है। उस पड़गा गांव में

( उपसभाध्यक्ष ( श्री सुरेश पचौरी ) पीठासीन हुए )

मुम्बई पुलिस को पता चला कि अवैध तरीके से लश्करे-तयैबा के कुछ ऐक्टीविस्ट हैं, टैरिस्ट हैं जो रह रहे हैं। उस गांव के ऊपर छापा मारा गया, पुलिस के लोग रेड डालने गए, उनको गिरफ्तार करने गए। उस गांव में बड़े पैमाने पर अवैध तरीके से बंगलादेशी मुसलमान, पाकिस्तानी मुसलमान रहते हैं। वे कैसे आ गए, रह गए, बस गए, यह एक दूसरी बात है। कहीं न कहीं कानून हैं और उनका सही ढंग से अनुपालन नहीं हो रहा है तभी वे लोग बस रहे हैं। उस पड़गा गांव के ऊपर जब रेड डाली गयी और लश्करे-तयैबा के आतंकवादियों को गिरफ्तार करने के लिए मुम्बई पुलिस के जवान गए तो उनके ऊपर उस गांव के लोगों ने, उस गांव में अवैध तरीके से रह रहे मुस्लिम लोगों ने, बंगलादेशी लोगों ने, पाकिस्तानी लोगों ने हमला किया और पुलिस को वहां से भागना पड़ा। यह अभी एक महीने पहले की बात है। इसी प्रकार दो साल पूर्व पूर्वी दिल्ली में बिल्कुल यही केस हुआ था। जब दिल्ली पुलिस को पता चला कि आईएसआई का एक एजेंट दिल्ली की झोपड़-पट्टी में रहता है और दिल्ली पुलिस उसको गिरफ्तार करने गयी तो यहां के बंगलादेशियों ने दिल्ली पुलिस के ऊपर हमला किया, दिल्ली पुलिस को वापिस भागना पड़ा। उस आईएसआई एजेंट को वे गिरफ्तार नहीं कर पाए। इसलिए अगर उस तरफ से चिंता की जा रही है और हम जब चिंता व्यक्त करते हैं कि बंगलादेश से जो अवैध तरीके से आकर रहने वाले मुसलमान हैं, यह सिर्फ रोजगार का प्रश्न नहीं है, सिर्फ आसान मजदूरी मिल रही है, वह प्रश्न नहीं है, यह प्रश्न सीधे सीधे इस देश की

सुरक्षा से जुड़ा हुआ प्रश्न है। चूंकि यह प्रश्न सीधे देश की सुरक्षा से जुड़ा हुआ प्रश्न है इसलिए इस देश के हित में, बंगलादेशी अवैध तरीके से रहें, बंगलादेशियों के समर्थन में, उनके हित में बोलने की जो प्रथा है, परम्परा है, उस परम्परा को बंद कर दिया जाए। उसको वोट की पॉलिटिक्स से नहीं जोड़ा जाए, उसको सहानुभूति से नहीं जोड़ा जाए और उसको मानवीयता के आधार पर नहीं देखा जाए। सबसे पहले देश है, देश की सुरक्षा है, देश का हित है, उसके बाद ही कोई भी चीज हो सकती है। उसके बाद कुछ भी होगा, हम उसे स्वीकार करेंगे लेकिन देश का हित सर्वोपरि होता है। हम जब बंगलादेशियों के खिलाफ बोलते हैं तो कहा जाता है कि ये साम्प्रदायिक लोग हैं, इनको कोई भी विषय चाहिए, मुसलमानों के खिलाफ बोलने के लिए। सवाल मुसलमानों के खिलाफ बोलने का नहीं है। इस देश के जो मुसलमान हैं, उन मुसलमानों के खिलाफ कोई नहीं बोल रहा है। इस देश में जो लोग पहले से रह रहे हैं, उनके बीच अगर अवैध तरीके से आकर लोग रह रहे हैं और वे न सिर्फ नौकरी पा रहे हैं, रोजगार कर रहे हैं बल्कि इस देश की सामाजिक संरचना को, आर्थिक संरचना को, सद्भाव को अगर नष्ट कर रहे हैं, बिगाड़ रहे हैं तो उसके खिलाफ खड़ा होना चाहिए और उसके खिलाफ खड़ा होने के लिए मैं इस सदन के जो बंगलादेशी समर्थक लोग हैं, उनको अपनी तरफ से निवेदन करूंगा। आज मुम्बई में, मुम्बई के आस-पास के ठाणे जैसे शहरों में बंगलादेशी लोग अपने बच्चों का स्कूलों में ऐडमिशन कराने लगे हैं। इसको बाकायदा चैक किया जा रहा है फिर भी पता नहीं कैसे वे ऐडमिशन करा रहे हैं। ऐडमिशन कराने के दो-तीन साल बाद वहां से स्कूल लीविंग सर्टीफिकेट ले लेते हैं। स्कूल लीविंग सर्टीफिकेट लेने के बाद आप नैचुरली इस देश में राशन कार्ड और नागरिकता पाने के हकदार हो जाते हैं। वह स्कूल लीविंग सर्टीफिकेट अगर एक बार मिल गया तो उसके बाद आप हाई स्कूल में, कॉलेज में जा सकते हैं और वह बंगलादेशी यहां का नागरिक बन जाता है। फॉरेनर्स ऐक्ट हमारे देश में होने के बावजूद इस तरीके से, अवैध तरीके से लोग हिन्दुस्तान के आस-पास के देशों से आकर बस रहे हैं और बसने के साथ साथ वे हिन्दुस्तान के सुरक्षात्मक वातावरण को बिगाड़ने का प्रयास कर रहे हैं। इसको रोकने के लिए फॉरेनर्स ऐक्ट को और ज्यादा मजबूत करने की जरूरत है। उसके जो और भी प्रावधान हैं, उन प्रावधानों में अगर तत्काल संभव हो सके तो कुछ और संशोधन लाकर इस नयी समस्या को रोकने का प्रयास किया जाना चाहिए। इसके अलावा फॉरेनर्स ऐक्ट में है कि कोई भी विदेशी अगर अवैध तरीके से रहता हुआ पाया गया, उसका वीजा लैप्स हो गया और वह यहां पाया गया तो उसके खिलाफ कानूनन कार्यवाही की जानी चाहिए। कश्मीर की समस्या को हम देखते हैं, बहुत सारे विदेशी हैं जो बगैर वीजा के आए। वीजा लैप्स हो गया तो भी यहां रह रहे हैं। उसके बाद वे टेरिस्टिक् ऐक्टिविटीज में शामिल हो जाते हैं। एक दम घोषित तौर पर जब आईसी 814 हाईजैक हुआ और उसके बाद जिन लोगों को ले जाकर कंधार में पहुंचाया गया, जिसका हम लोगों ने बहुत विरोध किया था।

ऐसी परिस्थितियां पैदा न हों, अगर हम इस बात का ख्याल रखें तो कश्मीर जैसे आतंकवाद से प्रभावित क्षेत्र में जो विदेशी अवैध तरीके से आकर रह रहे हैं, जो देश विरोधी गतिविधियों में शामिल हैं, उन्हें गिरफ्तार न किया जाए, उनके साथ मानवीय अधिकारों की चिंता न की जाए, उनके ऊपर देश का कानून लगाने की जरूरत नहीं है बल्कि इसमें सीधे शूट ऐट साइट का प्रावधान होना चाहिए। ऐसा होगा तब कहीं जाकर इस देश की सुरक्षा अक्षुण्ण रह पाएगी और इस देश में जो आतंकवादी और देश विरोधी गतिविधियां चल रही हैं, उन्हें रोका जा सकेगा। धन्यवाद।

**SHRI FALI S. NARIMAN (NOMINATED):** Sir, I have no quarrel with the Bill. But, listening to the large number of hon. Members here, I think we all have some problem with how it is titled. I thought that we should have scrapped a British India Act, 1946, and introduced a comprehensive legislation with regard to people of foreign origin, that is, people who are not nationals of India. Particularly, in the context of the dual nationality, which is now proposed to be introduced in this country, there should be a more comprehensive legislation. I have no problem with dealing with criminals. But as one of my hon. colleagues said, and I think he is right, when you say you are amending the Foreigners' Act, in British India, everyone except the Britisher was a 'foreigner' - that is a pejorative term. And I would rather call this a Foreigners' Offences Act, so that you are dealing with offences, you are not dealing with foreigners. There are very fine foreigners who stay in India and who commit no offence. The most eminent foreigner was Mother Teresa, there was nothing wrong with her, she was one of our great gems. So, let us not give that impression, and this is what exactly we should not convey, that we are making life more difficult, more harassing for people who are of different nationalities, who live in India, who carry on work in India, and as my friend said, who invest capital in India, and against whom there is no offence or charge, and who are particularly welcome in India. In fact, in our Constitution, article 14, article 21 and article 25, they all guarantee fundamental rights to persons; not only to citizens. The right to equality, the right to be treated fairly, decently, that life and liberty should be protected, is not a guarantee to citizens only, but to all persons. Therefore, let us not forget the constitutional aspect on which we are here today, and the global image that we are projecting. And, therefore, I would recommend very strongly to the Minister that if he is making certain criminal provisions, penal provisions more stringent, introducing a larger punishment, I am all for it. But, let us not give the impression that this is foreigners. This is for foreigners' illegal acts; illegalities of foreigners. It has nothing to do with people who are decent and who are really welcome in this country. Therefore, Sir, I would also

request the hon. Minister, at some point of time, to have a new legislation with regard to nationals of other countries. It sounds much better, it sounds less pejorative; 'nationals of other countries'. What do we Indians do? We go in hordes to the United States, to Britain, to Europe every now and then. Probably, there is going to be a mass exodus in April and May, as always. We don't like to be regarded as pejorative foreigners in those countries. Today, we are living in almost one world; one world in the sense that though we quarrel constantly, we have very fine, friendly, countries. We picked up eight friendly countries in respect of whose citizens we are willing to give a dual citizenship. That is what we are projecting to do. Now, if we are going to do all this, then, why send a wrong signal that we are trying to fasten the screws on foreigners who are living in this country?

No, we are not. All that we are doing is to provide that this is a Foreigner Offences Act, and it is purely restricted to offences. In fact, we should not have, in my respectful submission, after all this cogitation, amended an Act which was of 1946, but we should have reenacted an entirely new Act, called the Foreigners Offences Act, and, that, perhaps, would have taken care of the situation. At the same time, explaining that we should welcome the foreigners, just as we welcome foreign capital; just as we welcome foreign investment, in fact, we learn a great deal from foreigners, and I would support what Mr. Faleiro, my friend, said that, in the academic sphere, for instance, we should not have these restrictions on seminars. We should not say that seminars will be attended only by Indians, only by citizens of certain countries and not of others. you remember what Mahatma Gandhi said. He said, "I want my windows to be open, all the air to be brought, in, but I don't want to be blown off my feet. That is all." Why don't we follow what Mahatma Gandhi said? Why don't we follow this? Why look inwards, why not try to look outwards. And, one last thing, Sir, and I have done. We also need a reaffirmation that India is one. There is no domicile in our Constitution, please remember that. Every Citizen is entitled to travel to any other part of the country and all citizens are citizens in every part of the country. It is a very important affirmation that we must make; otherwise, we keep on getting inward looking; we keep on thinking that Delhi is only for Delihites, and things of that nature. I, therefore, respectfully submit that we should have atleast an all-India image before we have an all-world image. To cultivate that all-India image, we need to regard ourselves, all of us as citizens of India irrespective of where our domicile is, and let us not mix up foreigners who are illegally here and foreigners who are legitimately here, who are entitled

to be here and who are welcome to be here, and who are protected by certain fundamental rights. Thank you.

**SHRI SHANKAR ROY CHOWDHURY (WEST BENGAL) :** Mr. Vice Chairman, Sir, I raise to support the Bill, but I would also like to utilise this occasion to raise some issue. Firstly, I support hon. Fali S. Nariman that it is very anachronistic in this age to amend Foreigners Act, 1946. I also draw the hon. Minister's attention to another Act mentioned here, that is, Passport Entry into India Act, 1920. I think, it is time that these Acts were amended. After 50 years as an independent nation, I think, we should amend these acts. The second thing before I raise any other issue is, I would request the hon. Minister to please take particular note of a community of Pakistani Hindus called "the Sodha Rajputs". They are living in Barmer. They are living under very difficult conditions. They are nobody's citizens, neither of India, nor, certainly, of Pakistan. As a matter of fact, they crossed over after 1971 from the Kutch area. Atleast, do something to alleviate the circumstances under which they are living.

(THE DEPUTY CHAIRMAN IN THE CHAIR)

Having said that, I would also like to say that the biggest anomaly today, the biggest contradiction today, in our system of detection of illegal migrants is the fact that the Foreigners Act, such as it is, is applicable to all parts of India except one State which is Assam. This is an anomaly which we must get rid of. I take the point that the IMDT Act was passed in Assam on the apprehension that it would be misused to act against the so-called illegal migrants from Bangladesh. That fear is justified, but the answer to that is not to scrap the Foreigners Act and to replace it with an Act which places the burden of proof on the country that he is an illegal immigrant. That is not logical. Therefore, I do feel that the Foreigners Act, as amended, as the Minister may feel, must apply to all States in the country with a sufficiently powerful tribunal to which these cases must be referred. We have recently been talking about POTA and its misuse. As a result of that, a decision has been taken by the Government of India, that there should be a Tribunal to whom all these cases would be referred to. Similarly, at the State levels. It should be done, because it is at the State level that most of the misuse takes place. There must be a Tribunal to which these cases of illegal migrants must be referred to. I also wish to criticise very strongly the entire system we have in this country of detection, internment and consideration of those people who come to us either to seek asylum, or, as economic migrants,

or, as terrorits. Every other country in the world, including in our neighbourhood, has a very well-established system that after a migrant is picked up, he, or, they, or, she is put in a detention camp. Their applications for an asylum, or, whatever other defence they may put up, are then processed. At the end of that processing, that illegal migrant is either deported back, or is absorbed, given asylum, given citizenship, and allowed to remain in this country. This procedure does not obtain in our country at all. I think, our rather abortive and clumsy attempts, attempting to push back illegal migrants, non legal migrants back into bangladesh, are being stymied every time by the Banladesh Rifles. it is coming again and again. Madam, whenever we talk of Foreigners Bill, it is Bangladesh-oriented. it is a fact. It is almost a free flow of traffic. Anyone of us who has been to that border knows Mr. Faleiro has been to Bangladesh himself—that it is a free flow. People come across, in Agratala, in Akhaura Check Post, they just come across, they work and they go back. You give them a permit, if you are allowing them. Why do you allow them to come and go? Why I am saying this is because if 100 people come, 10 might stay back. We have to really improve our system of checking illegal migrants. If we allow it, economic migration has to be controlled. I must reiterate, what hon. Mr. Matilal Sarkar was just now saying, about the condition of the eastern border with Bangladesh. The central surveillance on that border must be tightend up. We require on the western border—it is not that I am gruding—great surveillance, great vigilance on our borders. One BSF battalion is supposed to look after 25-30 kilometres. On the border with Bangladesh, as the Minister would know, a BSF battalion, whether it is an West Bengal, or Assam, or, Tripura, or Meghalaya, is looking after 80-90 kilometers. It is a farce, absolute farce in the thick forst. In the area. Of course, this issue has been raise time and again. The Ministry has said, the Government has said that they are raising additional forces: it take time. But this is a live and an increasing issue, and unless we take steps, the entire border will be swamped, in any case, demographically. The demographiĉ border of bangladesh generally is between 30-50 kilometres inside India, as far as population is concerned. That is one reason why, at least, in the State to which I come from, the BSF personnel are having almost daily clashes with inhabitants of neighbouring villages. One reason is, they try and stop various things; second reason is, the BSF themselves are to blame at times; but the third reason which we must accept, is they know that they are living in the middle of a generally alien population. That is one reason why these clashed are going on. so, I do wish the Government would expedite its action to control illegal migration into our country.... (time-bell)

Lastly, Madam, we must develop our system of documentation of migrants. We have been hearing about the National Register of citizens. We hear so much of ration cards. I think, we must be the only country in the world where ration card is a proof of identity. It is about time especially, when identity cards must come in, and they must come in quickly. There is no time.

With these words, Madam, I compliment the Government for bringing forward this Bill, and I support it.

**श्री हरिन पाठक :** माननीया उपसभापति जी, मैं उन सभी माननीय सदस्यों का आभार व्यक्त करता हूँ, जिन्होंने फॉर्नर अमेंडमेंट बिल, 1998 की धारा 14 पर जो मैंने संशोधन लाया है उस पर अपने बहुमूल्य विचार प्रदर्शित किए हैं। मैं उन सभी सदस्यों का अंतःकरण-पूर्वक आभारी हूँ, जिन्होंने अपने विचारों के साथ अपने बहुमूल्य सुझाव भी दिए हैं।

उपसभापति जी, मेरा तो सिर्फ इतना नम्र निवेदन है, जो मैंने अपने वक्तव्य के शुरुआत में ही कहा था कि यह जो हमारा फॉर्नर एक्ट, 1946 का है, उसका जो सेक्शन 14 है उसमें हम संशोधन करना चाहते हैं। यह एक बहुत ही लिमिटेड संशोधन हमारा इसमें है। जैसा कि आदरणीय नारोमन जी ने और माननीय शंकर राय चौधरी जी ने कहा है, यह बिल उनसे संबंधित है जो हमारे देश में बीसा लेकर आते हैं और आने के बाद कहीं न कहीं कोई न कोई ऑफिन्स करते हैं। हम उन सभी विदेशी नागरिकों के लिए यह संशोधन लाने जा रहे हैं, ऐसा नहीं है बल्कि हम उन सभी लोगों का स्वागत करते हैं, जो बेलिड बीसा पर इस देश में आएँ, उसी समय-सीमा तक रहें जो उन्हें बीसा में दी गई है, उन्ही विस्तारों में रहें जहां पर उन्हें इजाजत दी गई है। ऐसे सभी नागरिकों का हम सम्मान करते हैं। उनके प्रति हमारा यह रवैया नहीं है कि हमारे देश में कोई न आए। मैं तो यह कहता हूँ कि हमारी तो संस्कृति रही है कि अतिथि देवो भवः सब आएँ, यहां रहें, मगर जब ऐसे विदेशी नागरिकों का प्रश्न आता है कि वे हमारे देश में आकर कानून का उल्लंघन करते हैं, जिन नियमों के अंतर्गत उन्हें रहना चाहिए उनका वे पालन नहीं करते हैं तो ऐसे विदेशी नागरिकों के लिए यह संशोधन लाया गया है।

उपसभापति जी, जो विदेशी नागरिक कानून का उल्लंघन करते हैं उनके लिए जो हमारा पुराना प्रावधान था सेक्शन 14, उस प्रावधान के अंतर्गत यह था कि सजा 5 साल तक की दी जाती थी। अगर वे कोई आफेन्स करते थे तो वे आफेन्स भी क्लासिफाइड नहीं हुए थे माइनर और मेजर के बारे में। फिर पांच साल की सजा होने के कारण यह मामला, यह मुकदमे फर्स्ट क्लास मजिस्ट्रेट के अंतर्गत आते थे।... (व्यवधान)... जैसा उन्होंने कहा मैंने मैंने ज शब्द का यूज किया, मेरा कहने का मतलब यह है कि जो सेक्शन 437 है, उसका फायदा उठाकर गैर-कानूनी तरीके से अपने देश में रहना, हमारे देश के कानूनों का उल्लंघन करना, वे गलत फायदा उठाते थे और

इसलिए हमने सोचा, सरकार ने सोचा कि इस कानून को इसी समय, जो हमारे पास संविधान है....  
(व्यवधान)

SHRI N. JOTHI : The hon. Minister is speaking on the legal issue. there is no offence in law that is called major or minor offence. Only minerals are called, major minerals or minor minerals. In law, it is called bailable offence or non-bailable offence, warrant cases or summon cases... (Interruption)... Let the Minister clarify on this fundamental issue in law ....(Interruption)..... He cannot say, minor offence or major offence. ....(Interruption).....

THE DEPUTY CHAIRMAN : He is speaking in non-legal terms because he is not the Law Minister ....(Interruption).....

SHRI HARIN PATHAK : I am not a lawyer, you are a lawyer ....(Interruption) ....Let me clarify ....(Interruption).....

SHRI N. JOTHI : No excuse at all in this matter ....(Interruption).....

SHRI HARIN PATHAK : You just listen to me, please, for a couple of minutes. What I am stressing is, if the conviction is up to five years, the cases will be dealt by the First Class Magistrate Court where the person who has committed the offence has got an opportunity under Section 437 to get the bail. What we want is to strengthen this.

हम इसको और मजबूत बनाना चाहते हैं ताकि जो गुनाह करने वाला व्यक्ति है, जो विदेश से हमारे देश में आकर और यहां रहकर कानून तोड़ने वाला व्यक्ति है, उसको ज्यादा से ज्यादा सजा हो जाए। इसलिए हमने दो सुझाव रखे कि यह जो बेलेबल का प्रावधान है, जैसा आपने कहा कि इसमें सरकार की तरफ से जो बेल मांगी गई उसमें ओब्जेक्शन करने का राज्य सरकार को अधिकार नहीं है। अगर उनको सेशन कोर्ट तक हम ले जाएं यानी उनकी सजा बढ़ाई जाए, यानी जो छोटे-मोटे लूपहोल्स हैं उनका वे फायदा न उठा सकें, इसलिए हमने यह सोचा और सरकार यह चाहती है कि इसको स्ट्रेंथन किया जाए। इसलिए सजा 2 साल से 8 साल कर दी। यह 2 साल से 8 साल की सजा उन्हीं के लिए है, मैं यह दोबारा कहना चाहूंगा कि यह उन्हीं के लिए है जो गुनाह करते हैं, जो कानून का उल्लंघन करते हैं, फोरजरी करते हैं बीजा के डाकुमेंट्स में और यहां आकर उस एरिया में चले जाते हैं जहां उनको नहीं जाना चाहिए, Where they are not permitted to go. उनके लिए हम यह कानून बना रहे हैं। तो 2 साल से 8 साल की सजा करने के कारण The cases will now be dealt with by the Sessions' Court. स्टेट गवर्नमेंट को हक मिलेगा कि वह बेल ऐप्लिकेशन को रिजेक्ट करने के लिए अपना पक्ष रख सकेगी। तो जो मुख्य सुधार हैं वे इस बात को लेकर हैं।



बाकी इस विषय के संदर्भ में बहुत सारी बातें की गई हैं कि बंगलादेशी घुसपैठिए आते हैं, यहां इल्लीगली रहते हैं और इस बारे में संजय जी ने, फेलेरियो जी ने बताया। हमारी सरकार की तरफ से कोई ऐसा सरकुलर नहीं है कि जिसमें किसी को आने के लिए रोका जाए। हां, कुछ ऐसे देश हैं, जैसे पाकिस्तान है, बंगलादेश है, जिसके लिए Prior permission is required. तो वर्तमान समय में हमारे जो प्रावधान हैं, यह कानून उनको स्ट्रेंथन करने के लिए है। मैं माननीय श्री शंकर राय चौधरी और श्री नारीमन के सुझाव पर जरूर आभार व्यक्त करना चाहूंगा। Because it is an old Act of 1946. You have rightly mentioned that the Passport Entry Act is of 1920. So, we require a comprehensive legislation. तो इन सारे पहलुओं को देखते हुए एक कम्प्रीहेंसिव लेजिस्लेशन के बारे में भी सरकार सोच सकती है जिसमें इन सभी पहलुओं का हम विचार कर सकेंगे ताकि हमारे देश में आकर कोई गैर कानूनी तरीके से लम्बे समय तक न रहे, देश के कानून का उल्लंघन न करे और यदि वह ऐसा करता है तो कानून की मर्यादाओं के कारण वह बच जाए, ऐसी स्थिति का निर्माण न हो। आज जो स्थिति देश में बनी है, उस स्थिति को देखते हुए पिछले 16-17 सालों में हमारे देश में जिस तरह से आतंकवादी गतिविधियां बढ़ी हैं, गैर कानूनी तरीके से लोगों का आना-जाना हुआ है और हमारी जो सीमाएं हैं, सीमाओं की भी अपनी मर्यादाएं होती हैं, इस बारे में सरकार कदम उठाती रहती है। संसद में, तारांकित प्रश्न में, कई बार डिबेट भी हुई, चर्चा भी हुई कि कैसे इसको रोका जाए। हमारी जो सीमाएं हैं, सीमा-मिलिट्री को कैसे स्ट्रेंथन किया जाए, ऐसी कोई बटालियन क्रिएट की जाए, बार्डर पोस्ट के बीच जो गैप है, उसको कम किया जाए, हमारी सेना को सार्जन इक्विपमेंट्स दिये जाएं, इस बारे में सारे कदम हम उठाते हैं। जो गैर कानूनी ढंग से, अवैध रूप से घुसपैठिए हैं उनके लिए फॉरेनर्स एक्ट 1946 के सैक्शन 3 (ii) C के अंतर्गत राज्य सरकारों को हमने अधिकार दिया है कि वे इसके अंतर्गत उन्हें दूढ़कर बाहर निकालें।

मैं सभी महानुभावों का धन्यवाद करते हुए कहूंगा कि फॉरेन एक्ट का जो सैक्शन 14 है, उसमें गैर कानूनी अधिकार देने के लिए मैं यह लिमिटेड बिल लाया हूं। मैं प्रार्थना करूंगा कि आप इसे संसद में संसमति से पारित करें। धन्यवाद

THE DEPUTY CHAIRMAN : The question is :

That the Bill further to amend the Foreigners Act, 1946, be taken into consideration.

*The motion was adopted.*

THE DEPUTY CHAIRMAN : We shall now take up clause-by-clause consideration of the Bill. Clause 2. There are three amendments. Shri Harin Pathak.

**CLAUSE-2 (SUBSTITUTION OF NEW SECTIONS FOR SECTION 14)**

**SHRI HARIN PATHAK :** Madam, I move :—

3. That at page 2, *for* lines 3 to 19, the following be *substituted*, namely:—

“14. Whoever—

- (a) remains in any area in India for a period exceeding the period for which the visa was issued to him.

does not act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder.

contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act.”

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond of pursuance of clause (f) of Sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

*Explanation :*— For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920.” **34 of 1920**

4. That at page 2, *after* line 35, the following be *inserted*, namely :—

“14-B. whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.”

5. That at page 2 *for* line 36, the following be *substituted*, namely :—

“14C. whoever abets any offence punishable under Section 14 or Section 14A or Section 14B”.

[7 May, 2003]

RAJYA SABHA

*The question was put and the motion was adopted  
Clause 2, as amended, was added to the Bill.*

THE DEPUTY CHAIRMAN : Clause-1, There is one amendment.

**CLAUSE-1 (SHORT TITLE)**

SHRI HARIN PATHAK : Madam, I move :—

That at page 1, line 3, for the figure “1998” the figure “2003” be substituted.

*The question was put and the motion was adopted.  
Clause-1, as amended, was added to the Bill.*

THE DEPUTY CHAIRMAN : Now, there is one amendment by Shri Harin Pathak.

***Enacting Formula***

SHRI HARIN PATHAK : Madam, I move :

That at page 1, line 1, for the word “Forty-ninth” the word “Fifty -fourth” be substituted.

*The Enacting Formula, as amended, was added to the Bill.  
The Title was added to the Bill.*

SHRI HARIN PATHAK : Madam, I move :

That the Bill be passed.

*The question was put and the motion was adopted.*

SHRI EDUARDO FALEIRO : Madam, I would just like to raise the point that several points have been raised here by the hon. Members. The hon. Minister has not replied to any of them. Please, send the replies to those questions to the Members in writing. Thank you.

THE DEPUTY CHAIRMAN : If the points that have been raised by the Members concern your Ministry, please, send them the reply.

SHRI HARIN PATHAK : Sure, Madam. I shall send the replies. The Central Vigilance Commission Bill 2003.