

large number of refugees from pak-occupied Areas of J&K State, who migrated during the year 1947 and also during 1965 and 1971 Wars have settled in Jammu, Kathua and Udhampur Districts. There are other refugees also, who migrated during the year 1947 from West Pakistan & settled in Border villages of Jammu & Kathua District. But neither the claims of the refugees from occupied areas of J&K State have been finally settled so far, nor the refugees from West Pakistan have been given the citizenship rights in the State. I would like to request the Government to provide adequate funds to settle the claims of the refugees from occupied areas of the State and also that the Government should persuade the State Government to give citizenship rights to the refugees from West Pakistan.

[*Translation*]

(viii) **Demand for providing houses to the weaker sections under the Indira Awas Yojna in Jahanabad areas of Bihar.**

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): India is a land of farmers and labourers yet the landless labourers do not have their own houses to live in even after 40 years of Independence. They have also not been granted ownership rights of the houses so far, in which they are living at present. Besides this, there are hundreds of harijans, backward communities and weaker sections in Jahanabad. But drinking water and primary education facilities has not been made available there. Government has been constantly making pronouncements that arrangements for providing drinking water, primary education and housing facilities will be made there. There was a scheme for the constructions of houses at Mukhdumpur block for harijans under Indira Awas Yojna but it remained on paper only and never materialised.

Therefore, I want to request the Government to construct houses under Indira Awas Yojna in Jahanabad and provide facili-

ties of drinking water and primary education in order to raise the living standars of the people of that area and also keep a check on the misuse of funds in the implementation of R.L.E.G.P.

STATUTORY RESOLUTION RE: DISAPPROVAL OF NATIONAL SECURITY (AMENDMENT) ORDINANCE, 1987 AND NATIONAL SECURITY (AMENDMENT) BILL — CONTD.

[*English*]

MR. CHAIRMAN: Now, the House will resume the discussion on Items No. 11 and 12. Shri Nagina Mishra to continue his speech.

[*Translation*]

SHRI RAM NAGINA MISHRA (Salem-pur): Mr. Chairman, Sir, I had expressed my views on the Bill moved by the hon. Minister of Home Affairs for amending the National Security Bill a few days ago but the discussion was postponed. Resuming the same discussion today I want to submit that laws have been enacted from time to time in our country curb terrorism and today also some amendments have been brought for the same purpose. I think that all the hon. Members unanimously want that terrorism should be wiped out and that stringent action should be taken to curb it. Government is also vigilant in this regard and has taken several measures but I regret to say that though we are forming more and more laws to combat terrorism yet we are not able to contain it and in fact, it has spread its tentacles. It can be seen that mere enactment of laws will not suffice. we have to resort to two or three measures. One of them is psychological pressure. The terrorists are not killing the Hindus only but they are killing the Sikhs also. Their intention is to incite communal riots in the country.

Sir, as regards Hindus and Sikhs, our culture does not treat them as separate communities. Sikhs are part and parcel of Hinduism. In the past, when the Hindus

[Sh. Ram Nagina Mishra]

were subject to torture and their culture was being destroyed then Sikhism emerged to protect the Hindu culture. We may recall the test which Guru Gobind Singh conducted. He set up a huge tent at Anandpur Sahib and people went there in thousands. Here he made an announcement that those who were willing to sacrifice their lives to save the Indian culture should come forward. One person volunteered and he was taken inside the tent. A goat was slaughtered and a sword was soaked in its blood and was shown to the crowd waiting outside. Thereafter five persons volunteered themselves. Even though they knew that Guru is killing but they said that they would sacrifice their lives to protect the Indian culture. Perhaps those very people were called 'Panch Piaras'. We also remember that Maharaja Ranjit Singh donated 1 or 1.25 maund of gold for golden covering of canopy of Kashi Vishwanath temple. Hindus and Sikhs are one community. They are not separate communities.

A conspiracy has been hatched in the country and some youths are being misled in order to lay obstacles in the way of progress of the country. The foreign powers do not want that India should make progress.

I had given suggestion earlier also that the heads of the Sikh religion and the Guru Shankaracharya of Hindus should both ordain that if a terrorist kills a Hindu, he does not belong to any caste. Similarly, the Grant his should ex-communicate such persons from Sikh religion who indulge in such acts. They should issue sermons that a person who indulges in such acts is not a Sikh. Such system should be there.

Sir, in so far as the question of providing arms to terrorists is concerned, the Government is going to enact law. Whenever search for arms is conducted, they are found to be made in Pakistan and China. After all from where these arms come and reach the hands of terrorists. There was a discussion in the House and a resolution was passed that the border should be sealed then why it

has not been sealed? This has not been implemented so far as a result of which the problem is spreading its tentacles speedily and now it is not in Punjab only but it is spreading in to Delhi, Uttar Pradesh and other nearby States also.

Sir, in this country of 70 crore population where earlier even a needle was not manufactured, now tanks, missiles are being manufactured and man is undertaking space journey also. In this way the country is making great progress which some super powers do want like to see. They do not want that India should make such spectacular progress. This is the reason that these powers are misleading the innocent youth to resort to sabotage and terrorist activities. In view of this there should be a foolproof system so that arms could not be smuggled into this country.

Sir, if a part of the body gets poisoned and if it endangers the whole body then that part has to be amputated against one's wishes. If this is not done, there is danger to the whole body. Therefore, that part of the body, whether it is a finger or a leg has to be amputated. If there are enemies of the country who want to destroy the country and endanger the freedom of the country, deterrent action should be taken against them.

I hope that the whole House will agree that whatever bill the hon. Minister wants to introduce in the House, will have the support of the whole House, provided terrorism is eliminated forever from the country.

Certain foreign powers are hatching conspiracy and are exerting psychological pressures in the country. I had said earlier also that when Indiraji took over, a propaganda was launched in the name of astrologers that the stars were not in favour of Indira and she would rule the country for not more than six months. This type of psychological campaign was launched. Some hon. Members used to say under the influence of foreign powers that Indiraji had earned and amassed lot of wealth. Not only this, it was also alleged that she had indulged in unlaw-

ful activities.

Unfortunately or by coincidence, the rule of Congress ended and the Janata Party came into power. We may recall that day when the residence of Indiraji was dug up in the hope that treasures of Indiraji would be found out but not a single paisa was there. At that time the Government demonetized on thousand rupee note in the hope that Indiraji would have one thousand rupee notes in her possession but this was belied. (*interruptions*) Please keep silence. Listen me patiently, A Commission set up. (*Interruptions*)

I think my points are proving effective because they are feeling their pinch.

AN HON. MEMBER: How can it be that Panditji's views are not given due weight?

SHRI RAM NAGINA MISHRA: Mr. Chairman, Sir, magic manifests itself, they are themselves admitting it.

At present, the same conspiracy is going on at the behest of foreign countries and by the opposition parties as well. We have even heard in the House that there is no judge in India who may deliver impartial judgement on various issues in the country. There are people in Sweden and America who can examine the issues judiciously. This is your approach.

[*English*]

SHRI M. RAGHUMA REDDY (Nalgonda): Is he speaking on the Bill or on the Statutory Resolution?

MR. CHAIRMAN: No sidetalk please. Please address the chair.

[*Translation*]

SHRI RAM NAGINA MISHRA: Mr. Chairman, Sir, I am not saying anything unparliamentary and some background has to be made for making certain point.

[*English*]

MR. CHAIRMAN: Please address the Chair.

[*Translation*]

SHRI RAM NAGINA MISHRA: If one hears something, reaction is bound to be there.

I was saying that it is the duty of the opposition also to fight terrorism. But they have only one point programme that is to vilify the Prime Minister as well as the Government of the country. Do they think that we commit mistake and they are infallible. This is nothing but a slogan.

AN HON. MEMBER : You are going to become a Minister.

SHRI RAM NAGINA MISHRA: I am more than Minister. Every Member makes a Minister, so I make Minister whose position is higher than Minister.

[*English*]

MR. CHAIRMAN: My request to the hon. Member is to address the Chair.

[*Translation*]

SHRI RAM NAGINA MISHRA: If I say something to my colleague, he will feel otherwise. He has made it a practice to make every effort and to speak a lie for becoming a Minister. He only wants to occupy treasury benches and he does not think any thing else.

I would like to say -

"Karmanye wadhikaraste ma phaleshu kadachana".

[*English*]

MR. CHAIRMAN: Please speak on the subject and not to hear what others have to say.

[Translation]

SHRI RAM NAGINA MISHRA: If he says something, I will have to reply. Coming to the point, I was saying that terrorism does not mean to kill someone with bullet only. Terrorism covers misleading the people, giving wrong advice and launching false propaganda. (Interruptions) I was saying that you should enact legislation to prevent inflow of arms in the country, as also the inflow of billions of rupees that are coming into the country to be given to the terrorists and the agencies which are indulging in false propaganda. I would like to know from the hon. Minister whether there is any rules under which inflow of money, which is being used to vilify the Government and to destroy the country could be checked? If the inflow of arms and money could be stopped, I think terrorism will be eliminated for ever. We have seen that if some journalist writes about any congress leader that his money is deposited in the banks of Switzerland, the opposition makes a great fuss but we have seen ** that it has been published in the newspaper ** that they have crores and billions of rupees and a commission was appointed for this purpose that they (Interruptions)

(English)

MR. CHAIRMAN: Please conclude.

(Interruptions)

SHRI M. RAGHUMA REDDY: Let him prove that ** is having money there, (Interruptions) Why should he tell like that?

(Interruptions)

MR. CHAIRMAN: The name should not go on record. Please conclude.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF

HOME AFFAIRS (SHRI P. CHIDAMBARAM): Telugu Desam is very vigilant.

SHRI RAM NAGINA MISHRA: " Ham aah bhi Karate hain, to ho jate hein badnam Woh Katal bhi Karate hein to Charcha nahin hota."

If there is a report against us, they make hue and cry but if there are thousands of reports against them, shall we not refer to them? That is why I have to refer to it.

I would like to say to the hon. Minister that we have implicit faith in him and he will have full support of the House to whatever amendment he would like to bring in order to stop the inflow of arms and money into the country so that terrorism could be eliminated.

With these words I support the Bill.

SHRI CHARANJIT SINGH ATHWAL (Ropar): Mr. Chairman, Sir, I rise to oppose the Bill in this House. I have gone through the Bill not once but many times, I have gone through the statements as well as the objects and reasons given in the Bill. The other day I listened to the views of the Members belonging to the dissident congress Members of the ruling party. It has been proposed in the Bill that maximum powers should be given to the Punjab Police. Earlier they could keep a person in their custody for ten days without any grounds and now this period has been extended upto 15 days. Similarly there are other sections which will empower the police to use maximum force.

Before I proceed further, I would like to quote some lines of the great Parliamentarian of the world Mr. Burk. He had said:

[English]

"That the use of force alone is but temporary. It may subdue for a moment. But it does not remove the necessity of subduing again, and the

nation is not governed which is perpetual to be concurred."

"The terror is not always the effect of force and armament is not a victory. If you do not succeed, you are with a resource for, conciliation failing force remains. But force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness. They can never be begged by aim, by impoverished and defeated violence."

"A further objection to force is that you impair the object by your very endeavour to preserve it. The thing you fought for is not the thing which you recover, but depreciated, sunk, wasted and consumed in the contest."

[Translation]

What I mean to say is that Police would not be able to solve the Punjab problem. We formed the Congress Government under Sardar Darbara Singh to solve the problem. We even used the maximum force to solve the problem. We appointed not only one, two or three Governors, but many Governors. Thereafter we even played a fraud with Sikhs by signing on accord and as a result, we even formed an Akali Government just for the name's sake. This Government used excessive force. Mr., Chairman, Sir, you will be surprised to know that in one single day, nine or ten innocent youths used to be killed in the name of terrorists. While speaking on Punjab issue last time I had said in this very House that innocent people are being killed in Punjab in the name of terrorists. At that time, we were admonished in very strong terms. We and leaders of our party were called traitors. But I would like to submit two or three points before you.

You tried to maintain the Akali Government there and extended all sorts of help to it and then you dismissed it. It was done, because that was a corrupt Government. The decisions of that Government were wrong. Our leaders like Sardar Prakash

Singh Badal, Shri G.S. Tohra, Shri Simaranjit Singh Mann and some other leaders were arrested and detained under National Security Act. When their other decisions were wrong, I want that their political decisions should have also been reviewed. I must say here that our leaders like Shri Gurdas Singh, a former Member and brother of Sardar Prakash Singh Badal have been detained in jails. When Bhai Shaminder Singhji went there to see him, he found that there were no fans, not even utensils to drink water. When the wife of Mr. Tohra went there to see him, she found that there were not even earthen pots to drink water. Our leaders who have been imprisoned are being meted out a behaviour which is even worse than animals. The Government which was supported by the Congress Party had imprisoned these persons under National Security Act. We think that this law meant for Punjab will be enforced on us.

I would like to submit one more thing. Howsoever big a person might be, but if he weakens the border state, he is not faithful to the country and actually, we should call him a traitor. I would like to submit two or three points. Punjab is a sensitive state. The people in Punjab have certain grievances against the central leaders, Central Government and their Hindu brethren. They have this grievance also that attack on Darbar Saheb in 1984 was a wrong step. They have this grievance that the incidents occurred in Delhi, Kanpur and Bokaro in the later half of 1984 were totally unjustified. The killers and the instigators of killings, who have done wrong acts are roaming about unchecked. They are also grieved that their elders were bunt alive after putting tyres round their necks and their elders, sisters and daughters were insulted and humiliated. They are also grieved that injustice is being done with the people of Punjab by enacting such laws. I am saying this, because our leaders and youths have been detained in jails for four years without any crime and without starting any legal proceedings against them. Under this very National Security Act they have been detained in jails such as Jodhpur. What is their fault? If they are guilty, legal proceed-

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ings should be started against them, but instead, they have been lodged in jails. What is their crime? This is one of the grievances of Sikhs.

I would, therefore, like to submit that a legislation which touches the sentiments of the people in Punjab and especially Sikhs is not good. The persons who are indulging in such acts are not working in the interest of Punjab and the country. Whosoever is doing this work is weakening the border state. Our colleagues are sitting here and I would like to remind them of earlier incidents. Everybody knows that during our wars with Pakistan in 1965 and 1971, our sisters and daughters supplied milk and butter to their brothers and elders and not only this, when personnel of our armed forces were passing through our area to go to Pakistan border, they served them even on the roads. Our drivers in Punjab, were are generally Sikhs, supplied the goods to the military even in mountainous terrains. When our armed forces entered the Pakistan territory, our Sikh drivers transported the goods even there. I would like to submit that no army can win a war unless the sympathy of general public is with it. Without the support of local people war cannot be won.

I would like to submit to you that the Bills which you have brought forward, touches the sentiments of the people of Punjab and especially those of Sikhs. I do not want to say anything more, but I must say that God forbid, if a war breaks out today between Pakistan and India, what would the people of Punjab do? What are your expectations from them? You should think that Punjab is a border State and whosoever is weakening he is not loyal to the country. The hon. Members of this House would have to give a thought to it.

I would like to say one thing more. We have signed an accord with Sri Lanka. It was very bad that Tamilians and innocent people were being killed in the name of terrorists. The Government of India provided all sorts of help to them. Food, clothes and even our

armed forces were sent there. As innocent people were being killed in the name of terrorists, our hon. Prime Minister signed an agreement on humanitarian grounds and helped them. I would like to submit that Rajivji is very much concerned about our bretheren in Sri Lanka, but he is not at all concerned about the innocent Sikh youths who are being killed in Punjab in the name of terrorists. I would like to add one more point. Hon. Members may kindly excuse me, but as it is a fact, I must, therefore, say it. There is no such thing, but if any country of the world takes the plea that as India has helped the Tamils in Sri Lanka, it would also provide help to Sikhs in Punjab or Muslims (*Interruptions*) If any country says that it would provide help to Sikhs who do not have any country of their own or their Government, what would be the stand of the Government then?

[*English*]

SHRI SHANTARAM NAIK (Panaji): Sir, he cannot compare those two issues. (*Interruptions*) on a point of order...

MR. CHAIRMAN: No point of order. You please sit down. He will reply to it.

[*Translation*]

SHRI CHARAN SINGH ATHWAL: If any Muslim country says that it wants to provide help to Muslims who are being killed at Meerut or at other places, as the Government of India has provided help in Sri Lanka, then what would be the Stand of our Government?

Secondly, as a result of this Bill there would more unrest in Punjab. Great injustice has been done to the people in Punjab. Some of my colleagues may not agree with me, but I would like to submit one or two points to them also. There are certain people who are creating unrest since 1982 and at certain places they raise the slogan of Khalistan and other slogans as some persons have been maltreated after 1982. The police personnel maltreated the people in

Ferozpur, Taran Taran, Amritsar and Gurdaspur under that very Act under which you propose to provide more powers to the Police. Police have killed boys in 10 or 12 in fake encounters in a single day. Some people have been killed and some of their colleagues are under arrest in Punjab. Some have gone to other countries. Some persons have been killed and atrocities have been committed on those persons or their relatives.

There is one section of the people which is called intelligentsia. They think that there is discrimination with Sikhs in the armed forces and justice is not being done to them. Before independence, the percentage of Sikhs in the military was 30 per cent, but their strength has now gone down to 2 per cent. They think that some of our Congress brethren and Hindus of majority community have not fulfilled the assurances which they had given in pre-partition days. They think that they have been betrayed and deceived. As a result there is unrest among them and they say that they want their own homeland. In my view this situation has been created due to wrong policies of the Congress Party.

Some such agents are sitting there also. Perhaps you do not know, but I would like to remind the hon. Members that the person who had unfurled the Khalistani flag first of all in D.C. Court, Amritsar was the Vice President of the Party, the Government of which was supported by the Centre. So far as passing of Sikh Homeland Resolution is concerned, the persons who had been making speeches in its favour are now Ministers at the Centre. The person who raised the slogan of Khalistan and showed gross disrespect to the national flag is now General Secretary of Congress Party. Not one or two, but I can give many examples. The policy of the Government has been to weaken the Akali party and creating division among the Sikhs. The policy of the Government has been to create two categories among Sikhs - Moderate Sikhs and militant Sikhs.

15.00 hrs.

I would like to submit one more point here. I would like to remind my brothers as to what sort of betrayal has been done to them. Congress Session was held in Lahore in 1929, in which resolution for complete independence was passed. I would like you to recall the banks of Ravi river. The Sikhs had boycotted that session. Later on procession of Sikhs was taken out. Congress took out a separate procession. The procession of Sikhs was a very large and unprecedented one, because they wanted some assurance from the Congress. As a result an agreement was concluded between Pt. Moti Lal Nehru, Pt. Jawahar Lal Nehru, Mahatma Gandhi and Baba Kharak Singh in which it was said that we would not agree to any such constitution which is not acceptable to Sikhs. Similarly, when the meeting of the Constituent Assembly was being held, then Sardar Ujjal Singh has spoken like this:

[English]

Sardar Ujjal Singh reminded the Congress leaders of their assurance to the Congress in the following words:

"No Solution thereof (that is, communal problems) in any further Constitution of India will be acceptable to the Congress which does not give full satisfaction to the Muslims, Sikhs and other minorities."

[Translation]

Mr. Chairman, Sir, I would like to say one more thing which Mahatma Gandhi had said in Gurudwara Sisganj. I think that perhaps except Prof. Ranga, nobody else is aware of it. I would like to tell you about an assurance which Mahatma Gandhi had given in Gurudwara Sisganj. Because even at that time it was being felt that after partition of the country, the people belonging to minorities would become powerless and Hindu brethren belonging to the majority section of the society would have all the power. At that time whatever Mahatma Gandhi had

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said had been published in Young India of 1931.

[English]

Mahatma Gandhi gave assurance in the following words in Delhi Sisganj Gurdwara which was quoted in the 'Young India' on the 19th March, 1931:-

"I venture to suggest that non-violence creed of the Congress is the surest guarantee of good faith and our Sikh friends have no reason to fear that it would betray them. For the moment it did so, the Congress would not only thereby seal its own doom but that of the country too. Moreover, the Sikhs are brave people. They will know how to safeguard their rights by the exercise of arms if it should ever come to that if the Congress should play false afterwards, you can well settle scores with it, for you hold the sword

I ask you to accept my word and resolution of the Congress that it will not betray a single individual much less a community. If it ever thinks of doing so, it will only hasten its own doom.

What more shall I say? What more can I say this that let God be witness of the bond that binds me and the Congress with you"

[Translation]

Mr. Chairman, Sir, this was the assurance given by him. I would like to tell the fate of these assurances also. Pt. Nehru had said that residuary powers will remain with the States. He had also said that there will be autonomous units. He had even said that States will be redistributed on the basis of language but in spite of all these things, Punjabi Suba was not formed. It was however formed on the basis of 1961 census. The Sikhs have been rejecting 1961 census in which village was not made the unit, rather tehsil was made the unit. For this

Pt. Nehru had said that

[English]

"Now the circumstances are changed."

[Translation]

On this, I will speak on it on some other occasion.

Mr. Chairman, Sir, this Bill is not required now. As I have said earlier, with this Bill the Government will give wide powers to the police and the Punjab Problem is not going to be solved by providing more powers to the police. You have seen this by posting the cruelest D.G.P. in Punjab. Law and order is not the only problem in Punjab; it has certain other problems too. You have seen that even by posting the Governor who controlled Naxalite movement, the Punjab problem has not been sorted out. Therefore, this problem is not going to be solved by using force. What is required is to understand the 'psyche' of the Sikhs. I would like to conclude by reciting few lines of Prof. Puran Singh. People who know Punjabi will understand it fully:

"ae-be parwah Punjab de, maut nu
makholan karan,
Maran taur nahin darde, pyar naal pae
karan gulami,
Par tain na manan kisedi, khalo jaan
modhe te danga ularde."

If you go through the history you will find that 121 persons were hanged during our free struggle. Out of them 93 were Sikhs. Then 2646 people were deported to Andamans, out of which 2147 persons were Sikhs. People who died during the Kamagatamaru incidents were all Sikhs. What I want to impress upon is that we have sacrificed a lot for the freedom of the country. Therefore, you should try to understand the psyche, culture and problems of Punjab. The Governor of the State has also said that it is not the law and order problem alone that exists in Punjab. It has political, economical and religious problems also. There is need to

understand all these problems. Unless the psyche of the Sikhs is understood, this problem is not going to be solved. By bringing such a Bill, you are neither serving the country nor you are solving the problem of Punjab. such acts will not have any healing effect on their injuries you will rather be sprinkling salt on them. I, therefore, not only oppose this Bill, stage a walk out also from the House for the day because this Bill is against the feelings of the Sikhs .

Shri Charanjit Singh Athwal then left the House

[English]

SHRI SHANTARAMNAIK (Panaji): Sir, at the outset I support this Bill i.e. The National Security (Amendment) Bill, 1987. In fact, the extension of periods of certain provisions of this Act is the main purpose of this Amendment Bill. If my learned colleague who is waling-out now in protest is protesting against extension of certain periods, I don't think the Government is very much interested in having all sorts of such Preventive Detention laws. It is only because of the fact that the major substantive law of this country cannot put an end to what has been happening in the State like Punjab and also other places, the Government is compelled to bring legislation of Preventive nature and by experience further to make it more stringent day-by-day. Nobody derives any pleasure out of this. If my learned colleague can assure that nothing can happen, I think the Government will not even insist on such a legislation of preventive nature. Sometimes, I feel that we make some sort of a mistake in understanding our Sikh bretheren because while speaking, the learned member was speaking in a very low and sobre tone. But as he went on, he started comparing Sri Lanka with Punjab. That is the problem. If a man is basically a patriot, if he feels that Punjab problem can be solved in the manner other than by means of a preventive legislation, he can place before this House his suggestions.

15.08 hrs.

[SHRI SHARAD DIGHE *in the Chair*]

But he goes on suggesting things like: what would happen if people in the international world start saying or comparing Sri Lanka with Punjab? This is a sort of argument this hon. Member of this House is trying to make. But he does not know or perhaps he knows it and hides it that Sri Lanka is a sovereign nation. It has sought the help of Government of India and the Militants who are a party to it also wanted that the Government of India should assist Sri Lanka. This is the basic destination between a State which is part of our country and a sovereign Sri Lanka. Therefore, as Mr. Mishra has suggested, even these people who spread rumours, who misguide people, who spread wrong theories are no less than the terrorists. Terrorists are known only by action. But even such a propagation of idea is also another sort of terrorism, I would submit.

Secondly, I would say that, as far as preventive detention laws are concerned, we are having them like the National Security Act and COFEPOSA for other purposes. But we have to see that our preventive detention laws are foolproof. I am saying that because several detenus, by taking advantage of some loopholes in these detention laws, have been able to secure the orders of the court to have them set free. Some officials keep the files of such detenus for a period longer than what is contemplated within the scope and ambit of the Act, which also gives scope for the courts of law to release the detenus for non-observance of certain provisions. So wherever by orders of the court detenus are released, the Government should look into the matter as to who was responsible for preparing the wrong case or for not applying proper facts or law in a particular case. In case there is any negligence on the part of any officials, those officials, I would humbly say, should be held responsible and proceeded against. This is as far as preventive law is concerned.

[Sh. Shantaram Naik]

Ultimately we have to pass on from the stage of preventive detention to the stage of trial and substantive law. At present, on account of lack of evidence and other factors which I am going to state, I have a doubt whether the trial of these persons who are detained under the National Security Act will be effective. Basically, as it is, there will be lack of evidence in many cases. Even if there are eye-witnesses, the witnesses will not be willing to come. even in those cases where the witnesses are willing to come, we shall have to secure their lives. It will be a hell of a problem for any trial to take place of the detenus detained under the National Security Act. Therefore, what I am saying is this. We have made our law in respect of the National Security Act stringent. But have we made our substantive law, our procedural law, our Evidence Act, stringent? When the trial begins, are we going to start the trial with the same Criminal Procedure Code as we have today, with the same Evidence Act as we have today, with the same substantive law as we have today? That is the question. If that is so, then I am afraid that even in five per cent of the cases - I may be wrong; but this is my feeling - we may not be able to get convictions.

Therefore, I feel that the entire prosecution machinery at every stage must be strengthened. We should have responsible Prosecutors - Prosecutors dealing with only the minimum number of files so that they can concentrate on their work. Here we should not advance financial excuses. We have to appoint as many Prosecutors, as many Additional Prosecutors, as possible so that our prosecution machinery, specially in these cases, is strengthened. As far as evidence is concerned, we have to take note of certain things. We have to include presumption, etc. There are today, in the developed world, some scientific methods of evidence which in our courts are not sometimes accepted. If that is so, we have to see what the developed countries have done in respect of improvement of the scientific techniques of evidence.

Another aspect is this. This is not directly related to this Bill, but I would say this with reference to the Punjab situation. Today it is directly administered by the Central Government because it is under the President's rule. We are keen to see that as early as possible we rejuvenate the popularly elected Government because we would like to see that. But one thing I would say that if we feel that in the near future this is not going to happen or not likely to happen, I would make a humble suggestion and people of Punjab would have to sacrifice for that. I would say that at least for 10 years Punjab should be a Union Territory without a legislature. There will be no other alternative because if we reactivate the assembly, it has been found that for two years nothing has been done. Therefore, at this stage, Central Government should have a direct control over the Punjab as a Union Territory but without legislature. There is a provision in the Constitution.. (*Interruptions*) we hope an assembly, and I would personally not like any Union Territory without a legislature. It will be against democracy not to have that. But in certain circumstances, we have to have it. There are some Union Territories - Delhi does not have assembly, Lakshadweep and Andaman & Nicobar does not have assemblies - which are without legislature. In the circumstances, I would say that for a period of 10 years Punjab should be declared as Union Territory without legislature. That is all.

SHRI THAMPAN THOMAS (Mavelikara): Sir, I oppose this. This law has its genesis in fascism and dictatorship. The Constitution which provides freedom and human dignity cannot have a law of this nature. Sir, Nelson Mandella is in prison under the Apartheid Pretoria Regime for the last 25 years under a similar law. The Shah of Iran, Idi Ameen and Marcos of Phillipines all such rulers have always depended on such law to control a country. But the democratic fibre of this country does not require a law of this nature as it poses a danger.

Sir, as early as in 1950, when the Preventive Detention law was promulgated, in

the then revered Parliamentarian Shri A.K. Gopalan Vs State of Kerala case, it was discussed how much freedom an individual freedom has to be given to the citizen of India under the constitutional provision relating to that. This amendment provides to keep a person as a detenué without giving an opportunity for him for months together, without even allowing the matter to go before an advisory board, without giving an opportunity to explain why he is detained and if the Government continues there for a number of months what would happen?

I don't think Mr. Chidambaram has such experience in his life nor the Prime Minister had such an occasion in his life. But I have. Therefore, I know, what the freedom is. The freedom was restricted to us in the year 1975 when we were snatched away from our houses in the dawn at 2.00 A.M. on the 25th June, 1975 we knew for 18 months what the freedom is. Only a person who had undergone such experiences can understand the meaning of the word freedom. Therefore, people who have not got such experience will bring.. (*Interruptions*)

SHRI A. CHARLES (Trivandrum) But how are you here?

SHRI THAMPAN THOMAS: That is because of democracy. I am proud of it.

Sir, people who have not got that experience will not know what is freedom. To know the meaning of freedom they should see the situation where there is no freedom. Therefore, any law of this nature is unconstitutional under the Fundamental Rights as guaranteed by the Constitution of India. I said there are restrictions, reasonable restrictions which are provided under the law. Sir, when the reasonable restriction goes to this extent to put anybody on account of political feeling, on account of something like that, to brand him, to put him in the prison. That is why, this Government wants this law to be passed and use it against certain sections of the people. That is why I oppose it. On account of faith if you put anybody in prison, that is a violation of human rights,

and fundamental rights. A fundamental right and a human right is being violated by putting a person in prison. That is what this Government is going to do after passing this law. We people have been put in prison only because of our faith and belonging to a particular political ideology, not because of any other reason. Therefore, I am opposing it.

I have seen Mr. Chidambaram arguing cases in the Madras High Court under habeas corpus to bring a person's body before the court. I have heard him very vociferously arguing various cases in the court. May I ask him that if a law of this nature is passed by this House and tomorrow a person is arrested and put in jail under the provisions of this Act, what can he plead before the Supreme Court or a high court and argue that freedom is fundamental to him? Therefore, my submission is that Article 14, 19 and 22 and the freedom which is guaranteed will be taken away by this.

Coming to the present position, I fear when I come from South Avenue to this place or when I go round the city. I wonder whether I am living in a town or in a country where there is a civil war going on. There are tankers on the sides of the roads, there are guns also. The citizens are watching people on the roadside holding guns at them. What a situation is this! Why has it come? Can a Government exist on this basis, if the Government has no faith in its people? A situation has come where you want to create an impression among the people that a civil war is going on in this country to bring such laws and abridge and abrogate the rights of the citizens of this country. Therefore, you have to think twice before bringing this law.

Coming to its application to Punjab, it is intended for that purpose. Will the problem in Punjab be solved by this Government by passing this law? We, the Members of Parliament agreed to pass a law to contain terrorism- the Prevention of Terrorist Activities Act. But here is a Government which forgot to bring a rule for 14 months to implement this! What is the purpose of passing

[Sh. Thampan Thomas]

this law? They want preventive detention, they want all sorts of curtailment of human rights; that is what they are intending. A natural law by which somebody can be brought to book where he is given an opportunity to explain his case, where he is questioned whether he has done any wrong, where he can argue before the court and where a judicial scrutiny is conducted on that and a decision is taken, is prevented in this way. So, this is an authoratarian law.

If you look at the problem, it can be very well seen that these laws are used against whom till date. Could Mr. Chidambaram explain to us that after getting the earlier law passed in its principal form, how many times it has been used against the people who are not agreeing with the Government, or against somebody who is agitating for the workers for their bonus or who says that there should be a wage increase for the workers or who fights against exploitation? Always this Government has used these laws against such workers, workers who go on strike or agitate for higher wages or such other things.

Is there a single instance where an economic offender who destabilises the country, who amasses wealth at the cost of the common people has been arrested under this Act? Instead of that, always this Act has been used against public workers and political persons. Therefore, I say that there will be misuse of this law if this is given to this Government at this juncture.

I have an occasion to see how this law is mis-used. I submitted that I had an occasion to undergo imprisonment for 18 months under a law similar to this, the Maintenance of Internal Security Act. I don't know as to why I was arrested till date. I was a practising lawyer. I was arrested from my house and put in prison for 18 months. After that I came out. But I don't know till date the reasons. Probably the only one sentence could be, keeping me out was dangerous to the implementation of emergency and therefore I was put in. Therefore, I was put in the Jail. At

that time I saw many people had come in the jail. One of them I still remember his name happened to be name of another person whom the Government was searching but he was put in prison instead. This is the intelligence of these officers who implement this law. Supposing there is one Chidambaram to be arrested under this law another Chidambaram will be arrested and put in jail. This law does not provide for any scrutiny by any judicial forum. You have given the powers to the executive to misuse it and act in that manner. This is quite possible and to prevent this such laws should not be passed and the normal law should be utilised for this purpose.

[*Translation*]

SHRI VIRDHI CHANDER JAIN (Barmer) Mr. Chairman, Sir, I support the National Security Amendment Bill, 1987 presented in the House. These provisions will be applicable to Punjab and Chandigarh. Just now my colleague was mentioning that the provision of the Preventive Detention Act was made under Article 22 (7) and this provision has been continuously in existence. The provision was formulated by the Congress Government and has been in existence continuously for the last 30 years. When the Janata Government came into power, they too did not abolish this law although they had the support of several parties. This means that the Janata Government also felt the need of this provision. It is called the National Security Act and this is necessary to maintain the security of the country, to maintain law and order and to check the spread of communalism. Therefore, the provisions made, specially extension of detention period from 3 months to 6 months without consulting the advisory committee, are quite proper provisions. Provision of increasing time from 10 days to 15 days is also proper. We, therefore, support these provisions.

Now the question arises as to how to solve Punjab problem. Just now one of our young colleague Shri Shantaram Naik was expressing his views to solve this problem.

He was suggesting that we should form a Union Territory which should have President Rule instead of having a State Government. We have not seen such system anywhere. It has never happened anywhere. We are living in a democratic era. Our efforts should be that people of Punjab should have an elected Government. As soon as our Government will feel that time is ripe when a popular Government can be installed in the State, the President's Rule will be withdrawn immediately. Our Government realises that it is necessary to have people's rule there. Therefore, when opportune time comes, President's Rule will not be there for a single minute. We also do not want that there should be President's Rule in the State but the situation in the country, and particularly in Punjab is such that I think leaders of all the parties should sit together and find out some solution of the problem. They should take a decision and solve it.

When complicated problem of Sri Lanka can be solved through dialogue, we have full faith that this problem also can be solved by dialogue, specially when our Government also is of the view that every problem can be solved through negotiations. Now the question arises that with whom the dialogue should be held? Should we talk to the terrorists? No problem can be solved by talking to them. They are hell bent upon dismembering the country but we will not allow the country to be disintegrated at any cost. No dialogue can be held with the terrorists. Now the question arises as to whether the talks should be held with Shri Darshan Singh and his supporters? But they too want to have a separate territory and administration, which will have autonomy. The proposal they have put up is of this type and we do not agree with them. We are not willing to allow that type of administrative set up.

The next question is as to what should be our attitude towards Pakistan? It should be very strict. Hon'ble Prime Minister has repeatedly said, and he said this yesterday also that Pakistan is openly helping the ter-

rorists and is imparting training to them. I want to say that in this connection we should raise our voice on international forum and at the same time we should create an environment against Pakistan in our own country also. We should tell the people that Pakistan is interfering in our internal affairs which is very wrong. We should endeavour to ensure that such activities are stopped by that country. There is great need to create moral force among the nations in this regard. You should take concrete action in this direction. Our Government should take stringent measures to ensure that terrorists are not able to enter the Indian border from Pakistan side. Strict action should be taken in this regard. Our borders should be strongly protected. There can be different measures like sealing the borders or setting up a security belt or put some territory under the military control. Whatever steps are taken, it should be ensured that the terrorists do not enter India from Pakistan side. They should be stopped with all might and if need be, they should be shot dead. This action is utmost necessary.

Just now one hon. Member was saying that instead of terrorists, innocent people are being killed in fake encounters. We do not approve the system of fake encounters. If this system of fake encounters is practised in Punjab today, it can spread to other states also in future. Therefore, it is not good to kill people in fake encounters. The people who oppose these things should also oppose vehemently the killings of innocent people, passengers and family members. Why don't they oppose such dastardly acts.

They should oppose this sort of activity. It is not proper and this activity should be stopped. There should be far more stringent provisions than the provisions already made and these terrorists must be overpowered. We may also restore popular Government in Punjab after getting people's mandate as early as possible and peace should be established there.

With these words I conclude.

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Mr. Chairman, Sir, a discussion is being held on National, Security (Amendment) Bill in the House. Through you, I would like to say that whatever may be brought forward by the Government, there is no difficulty in getting it passed due to their majority in the House. Punjab problem has become national problem today and the whole country is worried about it. If the Government feel that they will be able to solve the problem after getting this Bill passed then it should also be considered as to how far it has been possible to solve the Punjab problem through the power which Government has been wielding so far in our democratic set up and how far the terrorists have been weakened. It is altogether different that we may talk of the party in power and the opposition parties. It is a national issue and there is no question of vote in it. Terrorism is increasing and they have not been able to contain terrorism by the power which has been vested in them.

My second submission is that at the time of announcing President's rule in Punjab amidst clapping of hands, all political parties except the Bharatiya Janata Party had opposed it. They were of the view that it was a wrong thing that the Barnala Government has been ousted. It will not serve any purpose rather it will cause more harm. The popular Government had been receiving support from the entire country. You displeased them and moreover it was not a wise step. Since you are in majority, you can do whatever you like. The fact is that when you enforced President's Rule, you should have apprised the public of how many incidents of murder took place prior to take over and how many thereafter. The public understands this thing. Please do not have the notion that the public does not understand it.

My third submission is that our party is fighting a battle there and making sacrifices. Even after that this is the view of our party that a political solution to this problem should be sorted out. It is not possible to solve the problem of law and order by using force. It should be solved at political level.

Besides, I would like to say as to how this problem was created. What are the reasons behind it. We should go into them. When the internal situation in the country becomes bad, it is said that the country is in danger. In fact we should look into the causes of such danger. Earlier also a discussion on this subject was held that the country is given second preference and party advantages are given first preference. As long as position seems to be advantageous one feels all right and if any harm is caused, one feels that it was wrong. I would like to say that it is a very big problem and if you want to solve it through legal steps, you cannot achieve success. You had enforced MISA. It was well known law and I was also arrested under MISA. I was accused of conspiring to blow up the railway lines. In this way you went on putting the people behind the bars under MISA. There is no harm if you enforce the law in respect of real culprits. But what happens is that more often it is applied against innocent people. Innocent people are becoming victim of barbaric terrorism. Your entire force is engaged to eliminate terrorism but Government has not been able to apprehend the terrorists red-handed. Sometimes it is said that they fled under the cover of darkness and sometimes they fled from behind the bushes.

Had you apprehended them red-handed, it could have been understood that you are doing something concrete in the real sense. When some conductor was beaten by the C. R. P. C. you applied Security Act on him also. The Security Act which you propose to amend will not serve any purpose. If you apply this Security Act on innocent people, masses will be displeased with you. Therefore, you should enforce the act after considering its pros and cons.

Another thing on which our hon. Member Shri Shantaram Naik has laid emphasis was that Punjab should be put under Central rule for 10 years. Why do these people forget? How long did they put Mizoram under President's Rule and thereafter signed an Accord with it. Who fought the battle there, how many people were killed there? Shri

Buta Singh told here that there was not development in that region and therefore, the natives took to arms. When the Government knows it that if there will be no development of any section of the society, there will be discontentment among the people. Now who is responsible for this State of affairs. You are in power for the last 40 years. It is your responsibility. You accorded statehood to Mizoram in this House. You made the very person, Shri Lal Denga the Chief Minister who used to be the General of the 'Gurillas' there. Nobody know how many army personnel were killed at his instance. Finally, you had to solve it on political basis. It is very good thing.

Now you solved the ethnic problem of Sri Lanka. A war like situation had been created there. Bombs were being thrown on villages. A political crisis had been created there. You signed a political accord in this regard also which has been commended by people in every walk of life and this House has also commended that you take a right step. You stopped the racial riots after this accord which were taking place in Sri Lanka earlier. It provided strength to our country.

You will have to look into all these things. More power will not solve the problem of Punjab. This power will be misused. Therefore, I am of the opinion that you should utilise the power already vested in you. There is no need to acquire more power.

With these words I conclude.

[English]

SHRI A. CHARLES (Trivandrum): I support the National Security (Amendment) Bill, 1987. Sir, the Bill seeks to make certain minor changes in respect of the period of detention and in respect of the grounds for communicating the reasons of the detention to the individual and to the Advisory Committee. These are only minor changes and I will come to them later. But, Sir, the larger issue is that whether the National Security Act should continue any further? Whether the

present circumstances call for the continuation of this Act?

Sir, the National Security Act was passed by the House in 1980 to meet the disturbed situation prevalent at that time. Thereafter, when terrorism was let loose in Punjab and the indiscriminate killing of innocent people continued, further provisions were added to the parent Bill to meet the situation in the disturbed areas especially in the State of Punjab and the Union Territory of Chandigarh. The present Bill seeks to extend the period in respect of these disturbed areas alone and not to make any changes in the parent Act.

Sir, I have heard with keen attention the very emotional speech made by hon. friend Shri Thampan Thomas. He is the representative of Janata Party. Sir, it will be interesting to know what transpired during the short spell of Janta Party Rule, it transpired. They wanted to incorporate the provision of MISA in the Criminal Procedure Code and wanted to make it a permanent law. We are now trying to attend the period only but they wanted to make the provisions of MISA in the Criminal Procedure Code. Quite surprisingly, the Janta Party defended it saying that no Government could function without the power for preventive detention. But ultimately in view of the stiff opposition, the proposed legislation was then withdrawn. My friend has totally forgotten that period because as we all know, he was making the speech only with political motive. Immediately after the withdrawal of the said Bill, there was a Conference of Chief Ministers. While addressing them, the then Prime Minister, Shri Morarji Desai advanced very powerful defence in support of the preventive detention of individuals.

PROF. MADHU DANDAVATE (Rajapur): Which year?

SHRI A. CHARLES: 1977 or 1978.

SHRI P. CHIDAMBARAM: He said 'Prime Minister Morarji Desai' You did not catch that. He was Prime Minister only once. You seem to have forgotten.'

SHRI A. CHARLES: Sir, here I would like to quote from Shri Desai. He said:

"Strong action has to be taken in some cases because there would always be anti-social elements, people who commit violence, like Naxalites who believe in violence and want to change the Government by violent means, and they make no secret of it. Serious crimes also require preventive detention. Moreover, whenever there is apprehension of communal problems and danger of violence, it was common knowledge that bad elements were rounded up so that the situation could be immediately brought under control. Theoretically, it was quite right that no person should be detained without trial, but in practice it has become difficult to control these elements by other means."

So, my friend Shri Thampan Thomas has been speaking theoretically and we in the Congress (I) are now speaking practically. We want to find a practical solution because we want to save the lives of innocent people. I would also like to quote from the speech of another friend from Janata, Shri Ravindra Varma. I quote:

"No case was made out to convince this House that there was imminent danger to the security of this country. There was no imminent danger of external aggression, and no imminent danger of internal subversion."

Sir, this was his statement and this was what had happened at that time.

But what is the present situation? Can anybody deny the fact that the internal security of the country is in danger? Can anybody dispute the fact that there is challenge to the unity and integrity of this country? Is there not sufficient proof that destabilising forces are overtly and covertly engaged in subver-

sive activities to ruin the future of this country? Are not communal riots posing a new threat to the solidarity of this country? What is happening in the Punjab for the last four years has not parallel in the history of the civilized world. Innocent persons travelling in buses and trains are being killed. What had happened even to our beloved comrade Lalit Maken? A young man's life was cut short in the prime of his youth. But you have no tears for him. Nothing is known about the culprits. Today, we have to face very abnormal situations. Even in the barbaric times, there were certain norms and certain code of conduct. Even the tribal chieftans had certain code of conduct. Women and children were never killed even in those days. But even these good old norms are being thrown to the wind.

Sir, I support this Bill. But I have an apprehension that even this Bill may not be able to root out terrorism in this country. Since I have no time, I do not want to go into the details of it. But I would plead that the root cause of the problem has to be found out. Our Sikh brothers are in deep agony. The whole community of Sikhs is viewed with suspicion, by 99 per cent of the community is in the mainstream. They love the country and they are true patriots. But there are some misguided youths and certain terrorists. We have to identify those youths. We have to identify the situation also. We have to take strong action to root out terrorism and save the future of this country.

With these few words, I once again support this Act.

SHRI G. M. BANATWALLA (Ponnani):
Mr. Chairman, Sir, the Bill has very laudable objectives, as declared. The objective is to take strong action to prevent the activities of the terrorists which are prejudicial to the security and integrity of the country and prejudicial to the maintenance of law and order. There can be no quarrel with respect to this laudable objective. Every support has to be given to the Government to see that terrorism is rooted out and that the stringent

possible measures are taken for the purpose. The question now is whether the provisions of the Bill are in furtherance of this objective? If the provisions of the Bill are really in furtherance of this objective, then even the provisions should receive the unanimous support of this House. Otherwise, the matter needs to be relooked and seriously reconsidered.

We are told that the provisions of the Bill will enable the Government to take preventive action. But Sir, the provisions of the Bill come into force after the action has already been taken. So, the question that the provisions of the Bill will enable preventive action does not arise because the provisions of the Bill as I have submitted come into operation only after the detaining authority has applied its mind and has been satisfied that sufficient ground exists for the detention of the person concerned and detains him. Afterwards, what is the procedure? The procedure is that within ten days, the grounds of detention have to be communicated. But the Bill says that instead of ten days, the grounds of detention may be communicated, say within a period of fifteen days.

The provision therefore comes into operation only after the detention is made. My point is when the detaining authority has applied its mind to the causes for the detention and is satisfied that reasonable ground exists, then why should there be any delay in communicating these grounds to the detenu? This is a callous attitude to personal liberty. If you have already applied your mind and if you are satisfied that grounds exist, then the communication of the grounds to the detenu must be done without any further delay.

Another point is regarding the period. Now you are only increasing the period from 15 days to 20 days - i.e. his detention in the prison without the approval of the State Government. Upto what period the orders of detention should remain in force without the approval of the State Government.

I therefore submit that instead of fur-

thering the laudable objective, as mentioned in the statement of aims and objects, the provisions of the Bill is a mere premium administrative in efficiency. Administrative inefficiency of the officers concerned, in communicating the grounds to the detenu, the administrative inefficiency of the officers concerned in taking the approval of the State Government - I have, therefore, to say that there is a very callous attitude being taken in the matter of the concept of personal liberty.

I would submit that these provisions will only lead to further abuse of powers; and these provisions will make the abuse of powers further easy. As it is, we are always coming up with complaints that powers under NSA are being misused. We approach the Government, and the hon. Minister also. We give them complaints in writing. But we get the reply in one sentence:

"I have received your letter.

Sd. P. Chidambaram."

Nothing happens. We explain that political motives were there; and for political motives, the provisions under NSA were being misused. But then, instead of doing something to see that there is no abuse of powers, such provisions are brought which make the abuse further easy. I must say that if you detain a person and after some time you leave him, it reflects a callous attitude. If it has been found that the detention has been a wrongful detention, then I must say that strong action should be taken against such authorities.

I have, therefore, to ask the House, ask the treasury benches to consider this particular point: the provisions of the Bill are only giving a premium, putting a premium on administrative incompetence; they will lead to laxity in administrative competence and not to strong action, as has been contemplated. To strong action being taken for rooting out terrorism, we have no objection. But here, the provisions are giving a long rope to administrative inefficiency on a matter of vital importance.

SHRI RAM SINGH YADAV (Alwar): I rise to support the National Security (Amendment) Bill, which has been presented to the House by the hon. Minister. The provisions of NSA relating to Sections 3, 5, 8, 9 and 11 have been the subject of legal interpretation in the High Court and the Supreme Court.

There are two legal aspects to the present amendment. The hon. Minister is quite aware that there was a similar provision existing in the Act i. e. No. 3 of 1985, and there was also Section 14A; and that Section 14A was struck down by the Division Bench of the Punjab High Court. Against that judgement, the Punjab Government went to appeal before the Supreme Court. That appeal is still pending with the Supreme Court.

15.59 hrs.

[MR DEPUTY SPEAKER *in the Chair*]

The question now is that although the learned Minister of the State of Home Affairs has got a profound knowledge of law and constitutional wisdom, I have got certain doubts in my mind: If the appeal of the Punjab Government is accepted in the Supreme Court, will Section 14A be continued as part of the Act, as part of NSA?

When the matter is sub-judice, then it cannot be said that those provisions have been removed or struck down permanently by the court; it is only a temporary provision and because a stay order has been issued by the Supreme Court, the position has become quite precarious in law. Suppose that appeal of the Punjab Government is accepted, what will happen to your present amendment; whether this amendment will be taken again by moving an amendment or there will be inconsistency between the two provision, that is the present provisions which you want to induct in the existing law; and when that provision which is already in section 14 existing, then why another section 14A would be inducted in the existing provisions of the Act? So, these things may be made clear to the House so that this

ambiguity which appears obvious may be clarified by that.

All the legal interpretations which have been taken by the court from time to time to time need the consideration of the Law Minister and the Home Ministry. The first point is about Section 8 of the National Security Act. Section 8 speaks that the order substance of the ground of detention shall be communicated to the detenu and that communication must be in the language which can be followed by the detenu. There have been various judgements of the Supreme Court. Now the hon. Minister should make the relevant amendment so that these interpretations of law may not take place again and again and the orders which are against the detenu or the orders which are given with respect to certain detenu are nullified or they are set aside by the Supreme Court or the High Court only on the ground that because a detenu was only knowing a particular language and because the order was served in another language, it was served in English when the person, detenu was not knowing English; it was served in Hindi when the detenu was not knowing Hindi. So, this lacuna in the Act is a permanent one and that should be clarified, that should be, as a matter of fact, amended moving an appropriate amendment. Now another reason is the latest judgment of the Supreme Court dated 10th August 1987; in that judgement, the Supreme Court has laid down.....; it is a case of the Uttar Pradesh Government in which Faiyez Ghosi and his associates have been released by the Supreme Court on the ground that pertinent material was not communicated by the District Magistrate or by the detaining authorities, and because that pertinent material was not available on the record, therefore, the detenu was released. So, this fact also needs consideration by the court. In the Act, material of the substance shall be communicated to the detenu but what should be the form. Although it has been made clear from time to time by the High Court and the Supreme Court that it must be the subjective satisfaction of the District Magistrate or the detaining authorities, but that subjective satisfaction

again has been interpreted by the court. Therefore, there should be an appropriate amendment to that extent also, so that whatever action has been taken under the National Security Act that can be valid one, and no other interpretation can be possible in the law court. That aspect has also not been touched by the present amendment.

The present Section 8 of the National Security Act is corresponding of the provisions of Article 22, sub-Article 5 of the Constitution of India. Article 22(1) reads as follows:

"No personal who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such persons the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

Now I think again this is a very relevant term that "shall afford him the earliest opportunity of making a representation against the order". You are taking them to five days, or you are extending that period of 15 days given to the detaining authority to explain the reasons or grounds; the extension of the period by five days, that is not material because for the remand period also the police has been authorised to take the remand of the accused in the case for 15 days. That may be in consonance with the prevailing practice of the common law of land, the Criminal Procedure Code. But even then the question arises that the communication of the grounds that are very material which are to be given to the detenu and those grounds would be the grounds, and I have already stated that the latest judgement of the Su-

preme Court of the 10th August 1987 is very relevant in this present case. After going through the judgment I was expecting that the hon. Minister would look out for any pertinent material and what is subjective satisfaction. For all these things there need not be any inconsistency in Section 8 and 9 and other relevant provisions of the Act.

Now, this Advisory Board also, because in this particular amendment the Advisory Board has been dispensed with, a particular period, I think the formation of the Advisory Board that is also very relevant and it goes to the satisfaction of the detenu. Therefore, at any stage it may be a unique period, that the Advisory Board is associated so that he can have the satisfaction, he can have the approach, that may be much more beneficial and I feel that the provision which has been made by the hon. Minister is all right. The earlier speaker was under the apprehension that this provision, Section 14A shall be applicable to the remaining part of the country also. But that is not so. Because it is a specific provision that is applicable only to Punjab and Chandigarh, the provisions shall apply not to the whole country not the whole of the nation. Because I think for the present at the moment because there is a requirement before the nation to deal with the terrorist activity. the Ordinance was passed and this Bill is going to replace that. And I hope next time when the hon. Minister comes before the House he may come with an amendment to the National Security Act.

[Translation]

SHRI BALWANT SINGH RAMOO-WALIA (Sangrur): Mr. Deputy Speaker, Sir, after listening to detailed views with regard to this Bill, I rise to oppose this Bill. At the same time I would like to tell this House that our level of thinking has touched very low. This Bill is not so significant. It is immaterial whether detention is increased by 5-10 days more or not but the basic thing is that we want to eliminate terrorism. Therefore, I would like to know from my hon'ble Colleagues of both sides that why should we give so much importance to this Bill. Did the

[Sh. Balwant Singh Ramoowalia]
people of this country confer us with less powers? Why can we not utilise these powers? Instead of making proper use of the powers already conferred by the people, another Bill seeking more powers has been introduced. Therefore, I say that we have come far away from the right path. Therefore, it is essential that we may enact such laws, take such steps, make such efforts so that people should understand our point of view. Terrorists can be isolated. If our action, our laws, our views are such which take us away from the people then whatever laws you may frame, terrorism will not be eliminated. So we should think in this direction. Punjab problem is a problem of the whole nation. This disease is spreading its tentacles in Haryana also. people are being murdered in buses in Haryana also. All the roads in Delhi give a desolate look in the evening after 7.00 p.m. Therefore, we will have to solve this problem by treating it as the national problem. I am one of those persons who is very close to the flames of this fire and I can feel the intensity of this problem better and therefore I feel more concerned also. Mr. Chidambaram, I would like to say that the laws, which have already been made, are being misused. In Punjab the police has come to such a position that the S. H. O. takes away 10 persons daily and demands Rs 2000 from each of them and threatens them that if they do not pay the amount, they will be behind the bars under the National Security Act. It is being done in 95% cases. Powers are already being misused. Therefore, Shri Ribeiro dismissed 14 S. H. Os within a week with the remark that they were corrupt. 5 S. H. Os have been dismissed in Ludhiana only. What I mean to say is that how may police officials will be dismissed. What will be the position after 2 to 4 months.

[English]

SHRI P. CHIDAMBARAM: I think this is not fair. You must also tell the House that the Station House Officer cannot pass an order of detention under this Act. We are talking about the Preventive Detention Act. If you

are talking about corruption on the part of a Station House Officer under any other law while accusing a person of any offence, that is a different matter. You are giving an impression that the Station House Officer is invoking this law and is corrupt.

[Translation]

SHRI BALWANT SINGH RAMOOWALIA: What I wanted to say is that how all these things start. I shall visit my native place tomorrow or the day after tomorrow and enquire about it. I would like to inform the hon. Minister that I know it. I myself was put behind the bars under this act. I know that order to this effect is passed by the District Magistrate and delivered by a D. S. P. I was delivered thrice and I have been jail. the D. S. P. himself comes. I was going to say that Government should take our help in this connection. At present people are going away from us. What is happening in Punjab to-day is that those people who are fighting terrorism unitedly are being dismissed for service. Therefore, I would like to request you that whether you may or may not frame laws, it makes no difference but at least, Members of Parliament from Punjab should have been consulted privately before introducing this Bill. Even now you go on making as many laws as you can, but the issue will be solved only when points made by the terrorists so often are considered and some convincing reply is given to those points. We have always been extending our co-operation and even now we are ready to cooperate for the sake of the country. We cannot control terrorism through this legislation also.

"Marz badhta gaya, jyun jhun dava ki"

we have taken several steps and seen the result. Even to-day we shall assemble at Longowal. Earlier also, we participated in simultaneous 'Bhog' ceremony of Ramayana and Gurugranth Sahib. We shall go to the people. Excepting one or two parties, all parties are coming, people are coming. Since you are in the Government, I would like to request you to take these things

seriously so that people may not believe the terrorists and isolate them.

With these words, I oppose this Bill and also appeal that we should take new look towards the Punjab problem and solve it with an open mind so that we may get rid of the terrorists. The people of the whole country are very much perturbed on account of misdeeds of the terrorists. We are far more distressed because for the wrong act of some individuals the blame comes to whole group of people. Recently hon'ble Governor gave a statement that out of the number of murders being committed 74 per cent are Sikhs. I do not say that Hindu and Sikh bloods differ from each other. They have same blood. I would like to say that the Government should take some concrete steps to solve this problem. If this Bill proves to be of no use, you are likely to bring more stringent Bill in the next session. This will not serve any purpose. You will have to think some other way out to solve this problem.

With these words I thank you.

[English]

DR. DATTA SAMANT (Bombay South Central): I rise to oppose this Bill tooth and nail. The intention of the Minister may be good, but at the implementation stage it is used indiscriminately. I may tell you that in my life time, I went to jail four times under the National Security Act. So I can talk on it with proper authority. I went to jail five times under section 302. I was a Member of the Assembly and an MBBS doctor having prosperous practice. But in order to suppress the labour movement, hutment dwellers movement and to break the textile workers strike, this Government indiscriminately used the National Security Act against me. But I am not having any grudge against that. 7 crore people are unemployed in this country. The inflation is rising. Economic problems are there which the Government has failed to tackle. Therefore, they are coming with such Acts to detain persons without any trial for six months. When I was in jail, within five days the detaining authority had to give detention

charges. Now in the name of Punjab you are making it 15 days. Earlier the inquiry should be made within three months. Now, you are doing it in six months. This is the failure of the Government. The frustration among the people is rising. In order to suppress that frustration, this Government is using this law. In order to break the textile workers' strike, this Government detained 40 activists of mine under this Act.

When the National Security Act was passed in 1980, hon. Shri Zail Singh, who was the Home Minister at that time, said -this can be verified the record-that this Act would not be used to detain the labour leaders or against the workers movement. But I am sure that in Bombay and Maharashtra-I do not know of other parts of the country-this law was used to detain labour leaders in order to help the multi-nationals in this country.

AN HON. MEMBER: This is for Punjab.

DR. DATTA SAMANT: You are amending the same Act. You are giving the police machinery such type of weapons for detaining labour leaders. I understand who is going to do it. The Commissioner signs the order. But it is always prepared by the lower constable. When Mr. Ribeiro was the Commissioner of Bombay, he had signed my detention orders twice. Detention order containing 1000 pages was shown to me. In one of the factories where I had my union, two canteen boys quarrelled and this was one of the reasons for detaining me. He is having twenty lakh workers. What is Dr. Datta Samant to do if one of his workers says: 'employer *murdabad*'? When Antulay became the Minister in Maharashtra - I am giving you the names also — for eight days I was detained. My rally was assaulted to please somebody at Delhi. To please somebody at Delhi, Dr. Datta Samant was detained under the National Security Act. The High Court has passed such a bad stricture. After remaining under detention under the orders of the Thane Commissioner, when I was released after twenty days' arguments and after the Government had appointed all

[Dr. Datta Samant]

the public prosecutors, thousands of people were kept away. I was not allowed to come out. The policemen told me to go in again. When I asked, why, they said, "Earlier the Thana Commissioner had detained you, now the Bombay Commissioner is detaining you". I said, "I have unions in 30-40 districts, so, now you go on detaining me because you want to support the employers in the big houses who have swallowed crores of rupees." Who is going to implement this Act? Is your police in Punjab in a mood to consider who is really bad and who is really good? Your Governor will say detain somebody. After fifteen days only you will issue his detention order which means you are detaining that man without having any *prima facie* evidence. You are giving this weapon to them. DSP will sign the order but the Havaladar or down below others in the police department are not in a mood nowadays to gather the evidence. Then you prepare your detention order and for that you want fifteen days. Originally under the National Security Act you had to serve the detention order within five days, at least you had to give some reason for the detention, but gradually you made it ten days and now you are making it fifteen days. So, they can very well detain whomsoever they want. Now no government is there in Punjab, Ramoowalia has rightly said that. You put somebody in jail and then prepare some grounds for that. These grounds are vague. Nobody bothers for that. And then it is referred to the Board. My experience is that most of the persons on the Boards are pro-party people. Whomsoever the Governor likes, he appoints him on the Board. But anyway they are the Boards for the purpose of judicial requirement. Now you are giving a few days more to the Boards. Previously the enquiry or hearing was to be done within three months; now you are detaining a person for six months. You can detain anybody in Punjab. If the police does not like somebody, they can detain him for a maximum period of six months. One or two days before that, you will take up his case to the Board. But 90 per cent decisions of the Boards are in favour of the Government. This is very bad. What is the moral of

the police in Punjab? Yesterday there was a broad discussion here. Though I have not gone to Meerut, but I have read a lot of what happened there. In the Meerut riots, I do not know on which side did the police act but it depends on their personal character, their personal favour to a particular community, their personal interest. Everywhere it is like that. The previous scores are settled. And in Punjab, where there is no Government, you are giving such types of weapons to the Police Commissioner or to the Governor; who are not going to use them in the interest of the Punjab. You are going to increase the dissatisfaction among the masses of Punjab. After the Governor's rule in Punjab, there are more murders. In six months, 1002 killings have been there. This is the figure given by the hon. Minister. It is more than the killings when Barnala Government was there. Are you going to bring peace in Punjab with such type of detention Acts? Not at all. And if you make indiscriminate arrests, I am sure there will be more dissatisfaction, there will be more frustration, more people will take violence in their hands. This is what is happening in this country and this Government is failing to maintain law and order. There may be many reasons for this but I am not going into all that. Therefore, instead of going in for this Act, I say you scrap this National Security Act. Your intentions may be honest but these stringent provisions are going to bring more dissatisfaction among the youth in the country. In between that in Madhya Pradesh some case has come - Jain or somebody has run away with somebody. You have simply this satisfaction that you are detaining somebody under Preventive Detention Act.

[*Translation*]

Whatever is desired by the Police, is done in the name of National Security. Now you are making provisions for the detention of six months.

[*English*]

I think apart from all such things, you again go to Punjab. This is to find out some solu-

tion. You have negotiation with somebody—may be keeping your view that the country is one. But for God's sake do not bring such a type of laws. It is my experience such laws are misused. 50% they take care of the Government rules. They actually want to suppress somebody, suppress this movement, want to do this thing or that. 50% is used by the police as they want. You take COFEPOSA. In Bombay police are collecting lakhs of rupees from smugglers.

[Translation]

We have received orders about you, come in the evening.

[English]

They arrest one but they collect money from another ten. This is happening. In fact I can give you so many names.

We are discussing in air conditioned rooms. But what is actually happening—such type of laws, detention or COFEPOSA—these are not under your control. By this you may not be in a position to run this democratic Government. You will have to find our some measure. I appeal this Government to withdraw it. It is not going to help or to run the Government or to bring peace in Punjab.

SHRI D. B. PATIL (Kolaba): I rise to oppose this Bill. The Government wants to empower itself. Government wants to have more power in regard to detention without trial. Detention without trial is against the principle of natural justice.

Many of the Members have said—it is essential to amend the Act because of technical flaws. When a person is detained without trial is the question of personal liberty is involved to be cautious in these matters so that no technical flaw should be there. The point is, there is no justification for this type of argument.

The intention of the Bill is very good. There is danger to the integrity of our nation. For that purpose you want to check terror-

ism. President Rule was imposed for that purpose in Punjab. In spite of that there have been terrorist activities. For this Government wants more power, as if Government has not power to handle this. There are so many special Acts to deal with the terrorists. But still their activities have been increasing. You should try to find out the reasons why terrorist activities are increasing. The main reason is the present policy of the Government so far as Punjab is concerned. The present policy of the Government is that the problem is of law and order only. Till the Government does not come to the conclusion that it is also a political problem and find a solution for it the terrorists activities are not going to stop. The terrorist activities are not going to be eliminated by providing simply this type of laws.

Under the Constitution it has been provided that there should be some sort of enactment to detain persons without trial. But these powers are being extended. That is very bad so far as personal liberty is concerned. But this Government wants to extend detention without trial from one year to two years: so far as Advisory Board is concerned from one month to six months and to give reasons for detention from ten to fifteen days. It is all against the interest of the people.

The main intention of the Government is to check terrorism. But as I said there are two types of terrorism. I would like to submit to the hon. Minister—there is terrorism of fanatical extremists and there is State terrorism. According to me it is some sort of State terrorism in Punjab. Some people are thinking that in Punjab State terrorism is boosting in such a way that they are not in a position to live safely. So far as their complaints are concerned there are State encounters. I do not say that allegations are true. But in Punjab it is openly alleged and the Governor is being requested to inquire into the fake encounters. I can give a concrete example, that by complaints in writing have been made to the Governor that such and such thing has happened and the Government should hold an enquiry and if the Govern-

[Sh. D.B. Patil]

ment does not hold an enquiry, the impression is that the State terrorism is there. It is not going to help solve the problem. So far as this issue in Punjab is concerned, it is a very serious and delicate problem. It is not only a law and order problem, it is a political problem. For the present the Government is thinking that it is only a law and order problem, not a political problem. Sir, a few days before, it was being said that Mr. Darshan Singh, who is the acting Akali Takht Chief, was trying to find a solution for the problem on behalf of the Central Government. But he has complained against the Central Government. I will quote an extract from *'The Indian Post'*, dated August 18, 1987—

"Mr. Singh regretted that the Centre had not been sincere. When the Jain monk, Mr. Sushil Muni came to Amritsar, he made it clear that he was speaking on behalf of the Prime Minister. Every time he met us the paramilitary forces were withdrawn from the vicinity of the Golden Temple complex. He assured us that the demands like the release of detainees, reinstatement of Army men and withdrawal of cases against the Sikh youth shall be accepted. The Sikh boys had declared total support for the talks and reposed confidence in the Akal Takht. He blamed certain leaders without naming them for sabotaging the talks."

Sir, it is a very important thing. It seems that the Government is not trying to find a political solution. It is not being done wholeheartedly. According to Mr. Darshan Singh, to whom the Central Government had entrusted this job, the Government did not help him. The assurances given to Mr. Darshan Singh were not being fulfilled. So, I would like to submit on this point that so far as this question is concerned, simply taking more powers through this Bill is not going to solve the problem of terrorism. This problem will not be solved until and unless the Government find a political solution to the problem.

THE MINISTER OF STATE IN THE
MINISTRY OF PERSONNEL, PUBLIC

GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Mr. Deputy-Speaker, Sir, nobody is happy when he has to pilot a law relating to preventive detention and certainly nobody can be happy when he pilots an amending Bill which makes certain provisions more strict for preventive detention. Preventive Detention is an exception to the principle of freedom and personal liberty which has been enshrined in the Constitution. In fact, speaking for myself, speaking for this Government, I believe that there will be a day when there would be full play to personal liberty and freedom without having recourse to a law of preventive detention. But, Sir, the founding fathers felt that under our Constitutional system it might be necessary, at some time or other, to make a law of preventive detention. That is why after they wrote Article 14, after they wrote in Article 15, after wrote in Article 19 and after they wrote in Article 21, they did write also in Article 22 of the Constitution. And even the Janata Government, in its new-found enthusiasm to reverse all that the earlier Government had done when it brought about a spate of Constitutional Amendments, brought them in one Bill, did not think it necessary to repeal Article 22 of the Constitution. In fact, if you look into the 44th Amendment to the Constitution, you will find that the Janata Government preserved the power of preventive detention, but tried to provide some safeguards.

One is not against safeguards against preventive detention. But one should ask oneself, are we living in times where we can do away with the law of preventive detention. When something happens in Meerut, the very first demand that is made by leaders of all communities is, "why don't you detain some of these trouble-mongers?" It is not a demand made by one community and opposed by another community. In the cloistered atmosphere of Parliament it is very easy to stand up and say, "Don't invoke the prevention detention law". But out there in Meerut, out there in Ahmedabad, out there in Punjab not only the common people but people who are leaders of communities,

leaders of societies, leaders in various walks of life come and tell us, 'Why don't you detain these people for a few days?' I know of people who are here but who have told me outside that sometimes it is necessary to put away some people for a couple of weeks or a couple of months so that passions will die down. So, let us not take a very lofty attitude and speak against preventive detention. Let us try to understand why we are compelled to make a law on preventive detention and why sometimes we are compelled to invoke law on preventive detention.

Today we are not making a new law of preventive detention. The law is already there, the National Security Act made in 1980 by Parliament. Those who speak against preventive detention should also remember that they ask us to take action against smugglers, ask us to take action against those who violate economic laws. COFEPOSA is also a law of preventive detention. If you speak against preventive detention in the National Security Act, logically you should also say COFEPOSA should not be there on the law books. But you would not say that. COFEPOSA is as much as NSA, as much as the earlier MISA, is a law of preventive detention, all laws made by virtue of the powers under Entry 3 of the Concurrent List of the Constitution. Therefore, let us not, I beg to submit, speak in the air against preventive detention. It makes good copy and it can paint you as a liberal but it does not really amount to much in the times in which we live in. As I said, we are not making a new law. We are merely re-introducing section 14A which had earlier been introduced in April, 1984. It was for a period of one year, for an area declared as a disturbed area. A disturbed area has been defined as an area so notified under section 3 of the Punjab Disturbed Areas Act or under section 3 of the Chandigarh Disturbed Areas Act. So, the first proposition is, this new section 14A applies only to the disturbed areas of Punjab and Chandigarh and it does not apply to Maharashtra and therefore Dr. Datta Samant need not worry.

DR. DATTA SAMANT: I know it. But

then, how is it applied against the union leaders? You are giving weapon in the hands of police to detain for six months. Is it honest?

SHRI P. CHIDAMBARAM: You have said it already. I am answering that.

DR. DATTA SAMANT: Even when the earlier law was passed it was mentioned that it would not be used against labour leaders. But you used it to detain labour leaders in hundred. I know, you are amending the Act. But why do you want "six months"?

SHRI P. CHIDAMBARAM: Sir, my reference to Dr. Datta Samant may be expunged!

SHRI NARAYAN CHOUBEY (Midnapore): You don't detain him.

SHRI P. CHIDAMBARAM: Okay.

Therefore, it applies only to disturbed areas so declared in Punjab and Chandigarh.

Secondly, it is not a new section. The section was first made in April, 1984 for a period of one year. When it was about to expire in April, 1985, it was extended by another year, upto April, 1986. This section was struck down by a Division Bench of the Punjab High Court. Against that, an appeal has been filed and a stay has been granted by the Supreme Court by an order dated 20th December, 1985.

SHRI C. MADHAV REDDI (Adilabad): Would you kindly explain the reason why it was struck down?

SHRI P. CHIDAMBARAM: I am going to say that. Without saying that, I cannot get away with section 14A.

DR. DATTA SAMANT: Why you want six months to go before the court?

SHRI P. CHIDAMBARAM: Both will kindly bear with me. Let me complete what I

[Sh. P. Chidambaram]
want to say.

On 9th December, 1985 the provision was struck down. On the 20th December, 1985 there was a stay granted by the Supreme Court. But the section itself expired, in the sense that the time ran out in April, 1986. What is now pending before the Supreme Court would, therefore, be the validity of a section which was in operation from April, 1984 to April, 1986 and the validity of detentions made under the section during the period April, 1984 to April, 1986. Between April, 1986 and the 9th June, 1987 we did not have section 14A. This will explain Mr. Yadav's point. We did not have section 14A and, therefore, the special provision for Punjab was not in existence between April, 1986 and the 9th of June, 1987.

On the 9th June, 1987 the Ordinance was promulgated by the President making another section which was similar in language to Section 14A.

What we are now trying to do is, replace that Ordinance by an Act.

The question, which Mr. Madhav Reddi raised is, why was it struck down. It was struck down because a Division Bench of the Punjab High Court, with great respect to the learned judges, held that the section did not satisfy Article 22 (7) (a) of the Constitution. Article 22 (7) (a) of the Constitution, according to the learned judges, requires two conditions to be satisfied. One, the law must specify the circumstances and two, the law must specify the class or classes of cases for which you can have a special provision. According to the learned judges, while section 14A specified the circumstances under section 22 (7) (a), it did not specify the class or class of cases. We have been advised differently. The learned Attorney-General has given us different advice. The Attorney-General has appeared before the Supreme Court. The Supreme Court has, *prima facie*, accepted his argument and has granted a stay. Anyway, with great difference to what hon. Member Shri Madhav Reddi and some

other hon. Members pointed out I have brought my official amendment.

My official amendment will take care of what the Punjab High Court has pointed out. We have now taken care, not only to specify the circumstances—according to us, we have already specified the circumstances and class and class of cases—but by way of abundant caution, I have now brought before this House an official amendment which restricts the scope of section 14A to an even narrower class, namely a class of persons which interfere with the efforts of Government to cope with terrorist and disruptive activities.

When the official amendment is moved, I think, Mr. Madhav Reddi and others will be satisfied.

I have reflected on this. After the debate last time when I reflected, I said "Yes. I think there is a point." Although we have been advised to the contrary, although there is an appeal pending in the Supreme Court, I think it is only proper to give due weight to the Punjab High Court judgment and we have brought an official amendment.

Therefore, the constitutionality is no longer in doubt. The need for such a law is no longer in doubt. I have to answer Mr. Banatwalla who said all this is post-detention. I really could not understand that argument. A detention order is made on material which is available before the detaining authority. He makes an order of detention. After he makes an order of detention, he has to comply with a large number of procedural requirements. He has to reduce the grounds to writing, serve the grounds of detention upon the detenu, send a report to the State Government, the state Government has to send a further report to the Central Government and finally the case is to go before the Advisory Board.

DR. DATTA SAMANT: While serving the order, you are asking for 60 days' time.

SHRI P. CHIDAMBARAM: That is for

the grounds of detention.

DR. DATTA SAMANT: You are having grounds. There is no need for 60 days' time.

SHRI INDRAJIT GUPTA (Basirhat): Grounds are after that. That has to be thought of later on.

(Interruptions)

SHRI P. CHIDAMBARAM: If you will allow me to complete, I would like to complete it today.

(Interruptions)

MR. DEPUTY SPEAKER: Dr. Datta Samant, let him finish.

(Interruptions)

SHRI P. CHIDAMBARAM: Sir, Dr. Datta Samant is an eminent Doctor, an eminent Trade Unionist and an eminent.....

(Interruptions)

SHRI P. CHIDAMBARAM: I don't want to get into a legal argument. But I think I know what I am talking about. There are five procedural stages after an order of detention and for each one, the National Security Act could prescribe certain time-limit. At the time of introducing this Bill, I said that the Punjab Government is under severe strain, the Administration is under severe pressure. Therefore, we felt.....

(Interruptions)

SHRI P. CHIDAMBARAM: I am giving you the figures. Will you just bear with me? I am surely going to answer all these things. The Punjab Government is under severe strain. The Administration is stretched very thin. The administrative resources are limited and therefore they have to be given a little more time to comply with this procedural requirements. The Constitution does not fix any outer limit. On the contrary, if you will

kindly see, Article 22 (7) (a) says that you need not go to the Advisory Board at all. We have not taken that extreme step. We have said that you will normally go to the Advisory Board within three months. In a case falling under Section 14A, you will go to the Advisory Board within six months?

DR. DATTA SAMANT: Why do you take six months?

SHRI P. CHIDAMBARAM: Sir, I can explain it once; I can explain it twice but I cannot explain it to somebody who is philosophically opposed to Law of Preventive Devention.

(Interruptions)

At every stage, where it is 5 days, we have said 10 days; where it is 10 days, we have said 12 days and for 15 days, we have said 20 days. If you add all these in a case under the original Section 3, which is still on this Act, the normal detention period is three months. In exceptional cases falling under Section 14A, we have provided six months.

DR. DATTA SAMANT: That means, he will detain anybody for six months in Punjab.

(Interruptions)

SHRI P. CHIDAMBARAM: Sir, that is not only a simplistic statement but a plainly erroneous statement in law. Nobody can be detained without anything for six months. The law is very clear.

(Interruptions)

SHRI P. CHIDAMBARAM: I can't be interrupted by Dr. Datta Samant like this. He has no response *(Interruptions)*. His point unfortunately may or may not carry conviction. He has no response *(Interruptions)*. I am referring to your point, your major point. I have understood your point. But you must try to understand what I say—whether you agree or disagree. *(Interruptions)*

[Sh. P. Chidambaram]

Sir, he does not let me complete. What can I do? The point is at every stage, there are legal remedies. There is nothing without any legal remedy.

A point was raised by Shri Thampan Thomas: anything can be done for a period of six months. It is plainly wrong. Hon. Member Shri Madhav Reddi is a lawyer; Shri Ayyapu Reddy is a lawyer; several other people are lawyers. We all know that. At every stage, there are legal remedies. These are the procedural steps which a detaining authority has to go through, until his case goes to the Advisory Board. But the right of *habeas corpus* has not been suspended; Article 21 has not been suspended; Article 32 has not been suspended and Article 226 has not been suspended. ADM Jabalpur, versus Shri Shukla's case is no longer a good law. In a case of mistaken identity, in a case where there is any other factual error in an order of detention, in a case where an incompetent authority has made the order of detention, in a case where the ground of detention are in a language not known to the detenu and a host of other grounds, we know that day in the day out people go to the High Court, People go the Supreme Court and get the orders struck down. It is not correct to say and Dr. Datta Samant should not give the impression to this House or to the people outside—that for a period of six months, there are no legal remedies. It is not only an incorrect statement but also it has no basis on law. There are any number of legal remedies. If the detaining authority passes an incorrect order, he will have to bear the consequences for passing an incorrect order.

Sir, I was surprised that Mr. Ramoowalia, among other hon. Members, should have opposed this law. This NSA has been in force since 1980. The special provision of Section 14A has been there from April 1984 to April 1986. Perhaps, Mr. Ramoowalia has forgotten. His party was in power in Punjab from October 1985 to the 11th May 1987. During this period, it might be of interest to him to know—when they came into power, for the first two months they did not press any

detention order. But they realised that if they must fight terrorism if they must fight the grave situation that has arisen in Punjab, they have to invoke this Act. In the first half of 1986, between January 1986 and June 1986, the Punjab Government passed 31 orders under this Act. Between July 1986 and December 1986, the Punjab Government passed 117 orders under this Act, and in the first five months of 1987—20 days more than the period your Government was in power, Mr. Ramoowalia, - they passed 148 detention orders under this Act. I am, therefore, surprised that you, Mr. Ramoowalia, should stand up and say today that you oppose this Amendment, you oppose section 14A and you oppose the law of preventive detention. You can raise any other argument, but you cannot make the argument that the law is bad. (*Interruptions*) I think you are in wrong company today.

Then the argument was raised: how are you detaining, what is your Advisory Board, what kind of people are there, how is it that all these orders go in favour of the Government. Let me say that the Constitution recognises that the Advisory Board can have persons qualified to be High Court judges. The Janata Government's Amendment, the Forty-fourth Amendment, said that the Chairman should be a serving judge but the other two members may be retired judges. Today in Punjab the Advisory Board consists of a retired judge of the High Court, Justice Sondhi as Chairman, and a serving District Judge, Mr. Rande, and another serving District and Sessions judge, Mr. S. S. Chahal, as members of the Advisory Board. They have many more years to go for retirement. Therefore, I do not think it is fair to attribute motives to serving judges. These are people who are qualified to be High Court judges. Therefore, they are on the Advisory Board today.

SHRI INDRAJIT GUPTA: Can a detenu appear in person before the Advisory Board?

SHRI P. CHIDAMBARAM: A detenu can appear in person before the Advisory Board. That has not been touched.

As far as orders made by the Advisory Board are concerned, an argument has been made that all these orders are made in favour of the Government. Nothing can be farther from the truth. In Punjab in the period ending 31-5-1987, that is, from the date of the Act, 1312 detention orders were made. 703 persons were released *suo motu* by the State Government, that is, after seeing the detention order, the State Government itself released them. 406 people were released by the Advisory Board. Only 45 were released by the courts. Ten are absconding. Eventually the people who were placed under detention were only 148. So, let us not give the impression to the world that the Advisory Board will go by what the State Government says, the High Court will toe the line of the State Government, the State Government itself is mindless, the State Government is bureaucratic. That is not the case. (*Interruptions*) the figures will show that, when a report was made to the State Government, within the period of 12 days, the State Government itself released 703 people. So, let us not give that impression. The point is, this law is a very strict law (*Interruptions*) That is why I am trying to say that the State Government is not a mindless State Government. It is wrong to say that the State Government has always supported the detention order. It is wrong to say that the high officers, it is wrong to say that Ministers, it is wrong to say that the Chief Minister, even Mr. Barnala, will always, mindlessly, put the seal of approval on a detention order. There are people in the higher levels who will apply their minds and if there is an error, they will release the people (*Interruptions*)

AN. HON. MEMBER: One example he is saying.

SHRI P. CHIDAMBARAM: He was opposing it. That is why I say. Even the Barnala Government released people (*Interruptions*)

DR. DATTA SAMANT: How is it that innocent people are kept under detention for five to six months?

MR. DEPUTY-SPEAKER: Please sit down.

SHRI P. CHIDAMBARAM: What can I do, Sir, if somebody keeps on repeating parrot-like what he has been saying without listening to a word of what I am saying?

I would most humbly submit that there is a need for this provision. I have taken note of the arguments of hon. Member Shri Mahav Reddi and some others, and I have come forward with an official amendment. The official amendment should allay whatever fears they have got about the constitutionality of the law. There is a genuine need, and we will ensure that the Punjab Administration impresses upon its officers that these laws should not be invoked indiscriminately. If anybody does invoke it in an erroneous manner, there are high officers, there are high authorities, who will certainly look into the matters. But this is very necessary today, this is a very necessary law, and I would most humbly seek the support of the House of this Amendment.

MR. DEPUTY-SPEAKER: Mr. Amal Datta. He is not present. I shall now put the Resolution moved by Shri Amal Datta to the vote of the House.

The question is:

"That this House disapproves of the National Security (Amendment) Ordinance, 1987 (Ordinance No. 3 of 1987) promulgated by the President on the 9th June, 1987."

The motion was negatived.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill further to amend the National Security Act, 1980, in its application to the State of Punjab and the Union territory of Chandigarh, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: Now the House will take up Clause by Clause consideration.

CLAUSE 2

(Amendment of Act 65 of 1980 is its Application to Punjab and Chandigarh)

SHRI SYED SHAHABUDDIN (Kishanganj): Page 1, line 8 and 9 —

for "the State of Punjab and the Union Territory of Chandigarh"

substitute "a disturbed area" (14)

Mr. Deputy-Speaker, Sir, I shall not go into the theory of preventive detention or its need in a democratic system or its desirability. I shall not like to point out that preventive detention, as it is being practised, as it is being applied throughout the country has given rise to the feeling that inherently there is a gross misuse and abuse of power, not I say, by the Government at the top, not by the elected representatives but surely by the bureaucracy and the officialdom. It has opened wide the gates of corruption and I am surprised that the ambit of this law is sought to be extended, the scope of the law is sought to be widened which will only strengthen the hands of the corrupt bureaucracy and the police force.

The Hon. Minister has spoken about Meerut. I shall not go into details. But I am absolutely certain that at least three quarters of the persons detained under NSA are totally innocent as there are no material facts to connect them with any possibility of disturbance. But that is for the advisory board to decide.

I make a very humble point. Sir the Hon. Minister has sought to extend the periods that were provided in the original Act for a very special class of people, I understand. But we are living at a time when the Government machinery is being progressively

mechanised more and more. Innovations are being brought in. We have instantaneous systems of communication. I would be obliged if the Hon. Minister comes to the House with an amendment to shorten the periods of communication because it is possible for the Government to communicate the information from the districts level to the State capital and from the State capitals to the Central Government within a matter of seconds. Why do you need days and weeks and months for doing that? There is absolutely no reason. If you have already got material facts and the Supreme Court insists then you must have some material facts to indicate that the person is likely to commit tendentious acts. If you have considered these material facts then why do you seek more time for communicating the reasons to either to a detainee or to the advisory board or the State Government or the Central Government. This passes my imagination and certainly this is not for the Government which is taking India into the 21st century. You can have all these instantly communicated. You have not explained anywhere why you want the period to be extended from 'x' to 'y'. What is the rationale for it? Why not 'y' plus one more? Why not 'y' plus two months more? Where is the rationale? On what basis did you choose a particular time period? You have not taken the House into confidence.

Secondly, Sir, I want to say that our objection to preventive detention is not based on principle. We fully realise the importance of it. There is gross misuse on which the Hon. Minister himself has provided evidence. I would request if a person's normal pattern of life is disturbed and he is put behind the bars by the State and the State may have its own reasons but if the State proves to be wrong, then how do you compensate that man for the loss of time, loss of livelihood, suffering agony etc? What do you do then?

17 hrs.

Thirdly, I would suggest that you should have some sort of control on arbitrariness.

But what have you done? You have been telling us of the official amendment is that you are going to put some restrictions. As I read it you have widened the orbit. You, not only, are going to detain terrorists or whom you consider to be terrorist but any person who in your view interference with Government's anti-terrorist operation. If Syed Shahabuddin is speaking outside against your arbitrary action, he may be considered by you as interfering with the Government's action against terrorism and therefore, subjected to detention. I think there is wide meaning in these words. 'preventing a person from interfering with the efforts of the Government is coping with the terrorist and disruptive activities'. Any criticism of the Government can be regarded by you as interfering with your efforts in coping with the terrorist and disruptive activities. We do not accept your judgment. We do not accept your bonafides in this matter. You have been using the power of NSA for political purposes, for striking down your political opponents. Therefore, I am not convinced.

I appeal to the House that unless the Minister explains the rationale of the various time periods, the Bill should not be passed. The Statement of object and purpose is

incomplete and misleading and my amendments be approved.

THE MINISTER OF PARLIAMEN-
TARY AFFAIRS AND MINISTER OF FOOD
AND CIVIL SUPPLIES (SHRI H. K. L.
BHAGAT): Mr. Deputy Speaker, we have a
function at 5.15 and the President of India is
coming there. I move that now we adjourn
the House today and tomorrow the Minister
will reply to the Hon. Member's point. As
tomorrow we have discussion on commu-
nalism and as the business is very slow,
tomorrow we sit till 8 o'clock in the night.

SHRI G. M. BANATWALLA: Tomorrow
you give precedence to this subject. Please
don't put it at the fag end of the agenda.

MR. DEPUTY SPEAKER: In view of the
request of the Minister, the House stands
adjourned to re-assemble tomorrow at 11
a.m.

17.02 hrs.

*The Lok Sabha then adjourned till Eleven
of the Clock on Thursday August 20,
1987/Sravana 29, 1909 (Saka).*