

PUNJAB DISTURBED AREAS BILL*

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI NIHAR RANJAN LASKAR) : Sir, on behalf of Shri P.C. Sethi, I beg to move for leave to introduce a Bill to make better provision for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Punjab.

MR. DEPUTY-SPEAKER : Motion moved :

"That leave be granted to introduce a Bill to make better provision for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Punjab."

SHRI GEORGE FERNANDES (Muza-farpur) : Sir, I rise to oppose the introduction of this Bill. My submission is that this Bill violates the Constitution and so you should not permit the Minister to introduce the Bill in the House. I refer you to article 13(2) of the Constitution, which reads :

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Here I am on the first Part of article 13(2), "The State shall not make any law". Here Government is introducing a piece of legislation which permits the police to discharge certain functions. If you see section 4 of the Bill, it says :

"Any Magistrate or Police Officer not below the rank of Sub-Inspector or Havildar in the case of the Armed Branch of the Police may, if he is of opinion."

So, Sir, a policeman or a Magistrate or a Havildar in the case of the Armed Branch, in other words the lowest of the police constables may, if he is of the opinion—it is his

personal opinion—that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon, or otherwise use force even to the causing of death'.

We know that police have weapons, police fire, but here is the law which tells the policemen that they could fire and cause death and that is the end of the matter in so far as the citizen is concerned. My submission is that this Bill contravenes Articles 21 and 22 of the Constitution and under Article 32(2) it cannot be introduced in this House.

Article 21 says :

"No person shall be deprived of his life or personal liberty except according to procedure established by law".

Now, we are going to establish a new procedure and the new procedure is that a police constable, if he is of the opinion that a certain person should be denied his life, then he could jolly well shoot him, and that is the end of the matter.

Sir, I heard my hon. friends on the other side saying that this is a new procedure we are adopting. I can see that. The intentions are very clear that the fundamental rights in this country are now going to be decided by a police constable and by using his gun.

SHRI SATYASADHAN CHAKRABORTY : That is Fascism.

SHRI GEORGE FERNANDES : And I therefore submit that this is not the spirit of the Constitution, this is not the letter of the Constitution, when we talk of individual liberty, of security of life, and so on and so forth. Therefore, my submission is that patently this law is *ultra vires* because it is going to take away the life of any citizen—this includes you and this includes me also. A police officer or a police Havildar in the case of the Armed Police will decide whether our lives are to be taken or not.

Then, in so far as Section 6 of this Act is

concerned I submit that this is also *ultra vires*....

MR. DEPUTY-SPEAKER : You should not discuss the law now.

SHRI GEORGE FERNANDES : No, Sir, I am opposing the introduction.

MR. DEPUTY-SPEAKER : Within the competence you can discuss this.

SHRI GEORGE FERNANDES : It is not the competence, but....

MR. DEPUTY-SPEAKER : You are going into the details of the Bill.

SHRI GEORGE FERNANDES : I do not want this House to enact a piece of legislation because of which it will be necessary for a citizen to go to the court after some of them are killed in the streets of the country.

You look at Section 6 of the Act, which says :

"No suit, prosecution or other legal proceedings shall be instituted except with the previous sanction of the State Government against any person in respect of anything done or purported to be done in exercise of the powers conferred by Sections 4 and 5."

Sir, Article 34 of the Constitution talks about restriction on rights conferred by this part ; in other words, what are the areas of fundamental rights that can be restricted and where indemnity to a Government servant acting in such cases is provided under Article 34 ?

Please have a look at Article 34 because this is one of the most vital pieces of legislation that is coming up before this House and we need to be very clear of exactly where they are going. Article 34 says :

"Notwithstanding anything in the foregoing provisions of this part, Parliament may by law indemnify any person in the service of the

Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was enforced or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area."

Are we having martial law in the Punjab ?
Are we having martial law in Chandigarh ?

SHRI CHITTA BASU : Prelude to that.

SHRI GEORGE FERNANDES : The Government must make the position very clear because you want to enact a law which enables a police Havildar to take away a citizen's life. Then you come forward and say 'anything done under this law'—there is no question of a citizen going to a court of law and seeking relief. You are indemnifying that person in the exercise of his so-called rights or authority under this law. Such an indemnity clause is provided for in the Constitution provided there is martial law in the country or in that part where a piece of legislation of this nature is going to become operative. So, therefore, the Government must make its intentions very clear. We know that there are martial law conditions which this Government does try to create. I am aware of the situation prevailing in North Eastern parts of India where a similar piece of legislation was introduced in the year 1956 by Shri Govind Vallabh Pant, if I remember right. It was suggested that this a temporary situation which we will be able to overcome in six months time. And also for the last 27 years Armed Forces Special Powers Act in Assam and in the North Eastern Parts of India is operative a kind of martial law, Government likes to maintain in that part of India.

I am aware of the disturbed situation in the part of Andhra also where similar legislation has been enacted and has been used.

But now I am simply on the question of indemnity. The Constitutional position is very clear that you cannot have it unless

there is martial law. Therefore, I submit that this law violates the essential Articles relating to human liberty, relating to human rights provided in the Constitution. Therefore, this Bill cannot be allowed to be introduced in this House.

SHRI CHITTA BASU (Barasat) : I rise to oppose the introduction of the Bill because this Bill is ill-intentioned. This is quite deceitful. It is undemocratic.

It has taken away the fundamental rights and life of the citizens also. This kind of draconian measure should not be allowed to be adopted in this House, more so, having regard to the Punjab situation at the present moment, this kind of approach is not at all necessary because the Government proposes to unleash reign of terror. What Punjab needs is not terror or violence, but Punjab to-day needs peace and no confrontation. The purpose of this legislation is not going to be fulfilled. The purpose of this Bill is merely to unleash reign of Army and police repression.

Coming from a particular part of the country i.e. West Bengal, we know what is really meant by police operation and army operation and what is meant by terror let loose. Therefore, this kind of measure is not only uncalled for, it is a prelude to something disastrous for the country's integrity.

SHRI XAVIER ARAKAL (Ernakulam) : You asked for such measures. (*Interruptions*)

SHRI CHITTA BASU : We have not practised this kind of law. We have not got this kind of law in West Bengal ; be sure about it.

SHRI XAVIER ARAKAL : You asked for such a strong measure yourself.

SHRI CHITTA BASU : Strong measures are to be taken against the extremists. There is no doubt about it. Stern action can be taken even without this kind of legislation. Just understand, we are not opposed to taking stern action against extremists. But you should also understand that that kind of stern action can be taken with the existing laws and for that this kind

of oppressive laws are not at all necessary. This kind of measure would unnecessarily create conditions of violence and conditions of terror.

I oppose the introduction of this Bill.

श्री हरिकेश बहादुर (गोरखपुर) : माननीय उपाध्यक्ष जी, मैं इस विधेयक के इंट्रोड्यूस किए जाने का विरोध करता हूं। क्योंकि यह विधेयक पूरी तरह से नागरिकों के मौलिक अधिकारों के विपरीत है और इसमें सरकार की नीयत साफ नहीं है। इसमें कहा गया है कि कोई भी पुलिस अधिकारी, हवलदार या सब-इन्स्पेक्टर के रैंक तक का, वह अगर यह उचित समझता है कि यह व्यक्ति संविधान के विरुद्ध या वहां के वातावरण के विरुद्ध आचरण करता है या उनके आदशों का उल्लंघन करता है, तो वह उस पर फायर कर सकता है।

ऐसी हालत में इस प्रकार के अधिकार का दुरुपयोग सरकारी तन्त्र द्वारा किया जा सकता है। इसमें निर्दोष लोगों की हत्या की जा सकती है। पंजाब में पहले से ही निर्दोष लोगों की हत्याओं का सिलसिला इस सरकार ने जारी करवाया है और इस प्रकार का जंगली कानून बनाकर अगर इतने अधिकार सरकारी तन्त्र को दे दिये जाएंगे तो इससे और ज्यादा निर्दोष लोगों की हत्या होने की सम्भावना है।

इसमें यह भी कहा गया है कि जो भी सरकारी कर्मचारी इस प्रकार की कार्यवाही करेगा उसके विरुद्ध कोई भी कार्यवाही नहीं की जायगी—यह और भी ज्यादा खतरनाक बात है और इस देश के नागरिकों को संविधान में जो मौलिक अधिकार दिये गये हैं, यह उसके विपरीत है। इसलिए मैं इस बिल के इंट्रोडक्शन का विरोध करता हूं और चाहता हूं कि माननीय मंत्री जी इसे वापस ले लें।

श्री अटल बिहारी वाजपेयी (नई दिल्ली) : उपाध्यक्ष महोदय, विरोध का मेरा आधार भिन्न है। यह अध्यादेश 7 अक्टूबर को जारी किया गया था, 15 नवम्बर को इस पर चर्चा हो रही है, बीच

में 13 नवम्बर को मुझे अमृतसर जाने का मौका मिला था। पंजाब की जनता दो पाटों में पिस रही है—एक ओर आतंकवादियों ने निदोषों को, निर-पराधियों को अपना निशाना बना रखा है, दूसरी ओर इस तरह की शिकायतें हैं कि पुलिस झूठी-मुठभेड़ के नाम पर नागरिकों की जान ले रही है। मैं पूछना चाहता हूँ—जो एक महीने से ज्यादा का समय बीच में बीता है क्या आपने इस कानून का उपयोग किया है? पंजाब में तस्कर पकड़े जा रहे हैं, आतंकवादी नहीं पकड़े जा रहे हैं। क्या तस्करों को पकड़ने के लिए कानून चाहिये? क्या समाजविरोधी तत्वों को शिकंजे में लाने के लिये पंजाब को उपद्रवग्रस्त घोषित करना जरूरी है? सरकार ने कह दिया कि वह धार्मिक स्थानों में नहीं जायेगी, सरकार ने बातचीत का दरवाजा भी बन्द कर दिया...

कुछ माननीय सदस्य : नहीं।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष जी, यहां गृह मंत्री जी नहीं हैं। उनकी हालत खराब होने वाली है। मैं कन्सल्टेटिव कमेटी में था। गृह मंत्री जी ने कह दिया है कि हम अकालियों से बात करने के लिए तैयार हैं, बिना शर्त बात करने के लिये तैयार हैं, और अकालियों के साथ मिलकर सरकार बनाने को भी तैयार हैं। तब फिर पंजाब को उपद्रवग्रस्त घोषित करने की जरूरत क्या है? मैं भी पूछता हूँ—क्या हवलदार को इस तरह के अधिकार देना जरूरी है? यह मुद्दा मेरे मित्रों ने भी यहां उठाया है—अभी तक कोई केस नहीं बनाया गया। उपाध्यक्ष महोदय, सरकार में इच्छाशक्ति नहीं है, अधिकाधिक अधिकार लेकर क्या करेंगे? उनका दुरुपयोग होगा, यह हमारी आशंका है, इसलिये हम इसका विरोध कर रहे हैं।

SHRI INDRAJIT GUPTA (Basirhat) : Mr. Deputy-Speaker, Sir, according to the Rules of Procedure that we follow in the House these three Bills cannot be introduced simultaneously and, therefore, he is trying to introduce them one by one.

SHRI NIHAR RANJAN LASKAR : That is what I am doing.

SHRI INDRAJIT GUPTA : We have these three Bills in front of us. We can see what is the content of three Bills taken together.

AN HON. MEMBER : What is wrong in that ?

SHRI INDRAJIT GUPTA : The Punjab Disturbed Areas Bill and the Chandigarh Disturbed Areas Bill, these two Bills, are giving sweeping draconian powers to the police and the third Bill which is called the Armed Forces (Punjab and Chandigarh) Special Powers Bill, is giving these same powers to the army, to the military, to the armed forces.

In all the three Bills, it is said that Punjab and Chandigarh is a disturbed area. They are going through this fiction of first producing two Bills which give these sweeping draconian powers to the police, down to the rank of Havildar. My colleagues have already dwelt on that as to what it means. The third Bill also gives the same powers to the armed forces, to the military, that is, any Commissioned Officer, Warrant Officer, Non-Commissioned Officer or any other person of the equivalent rank in the armed forces may carry out those powers.

What I want to say is that the question which my friend Mr. George Fernandes raised, whether there is a martial law or not in Punjab, whether they propose to impose martial law or not, he must make that point clear here because these two Bills relate to the Police. The third Bill relates to the Army. And as Mr. Atal Bihari Vajpayee has pointed out since these Ordinances were promulgated in the beginning of October, has there been any slightest effective action taken against the extremists and terrorists whom you all want to see curbed? Who is there who does not want these extremists and terrorists to be curbed? Incidents are going on every day. This killing and murdering is going on every day. Throwing of bombs, use of army grenades and other army weapons is going on every day. In fact, what is the significance of these Bills, the powers that have been given? Is that not misused by the Police and the Armed forces? They will not be used against the errorists and extremists. They are never

going to be used. It is not meant for that purpose. This will be used or misused against innocent citizens and against those forces which are trying to fight communalism. There are forces in Punjab, I am proud to say, who in their own humble way are trying to fight communalism there, even at the risk of their own lives. But they are not the people sitting on the benches opposite. But these powers will be misused against them.

I read the report yesterday of two people on a motor cycle. That is the apparently favourite method which is used in Punjab. The two people on a motor cycle were halted at a barrier by the police and were asked to show their papers, before they would be allowed to proceed and the motor cyclists said to the policemen "What kind of papers do you want? Do you want papers to go to the next world or what kind of papers do you want?". And the policemen immediately salaamed and let them go. These are the sweeping powers which have been given to the police and the clear purpose of this is not to fight the extremists and terrorists at all. It is, in fact, a kind of a gesture in the opinion of the Government, to the so-called moderate section among the Akalis. They have got rid of their own Ministry. The Akalis were saying that their precondition for joining talks is that Darbara Singh Ministry should be turned out. Only after that, they will consider joining talks. Anyway, Darbara Singh Ministry was turned out but the Assembly is kept suspended. Here the Minister for Home Affairs says in his consultative committee that "we are prepared to cooperate with the Akalis to the point of having a coalition with them".

SHRI NIHAR RANJAN LASKAR : He did not say that.

SHRI INDRAJIT GUPTA : It is quoted in the press. I do not know. I was not present in the meeting. Those who are present can say.

SHRI NIHAR RANJAN LASKAR : I was there.

SHRI INDRAJIT GUPTA : Then why was the Assembly kept suspended? Is it for following these kind of moves to take place?

This is a very dangerous kind of a precedent which has been set up. These Bills are clubbed, two relating to the Police and one relating to the Army, giving them the powers to shoot, to kill, to do anything in their own judgment, to arrest without warrant and so on. If no action has been taken, can he tell us since he is making a statement here since 7th October or whatever it was, 15th day of October or 7th of October, uptil now, what is the action which has been taken under these Ordinances to suppress the extremists and terrorists in Punjab. Nothing has been done and nothing will be done. But many innocent people, under the plea of these encounters, or people who have been trying to demonstrate against the communalists, they will be taken action against and they will be punished indiscriminately. The police can do anything. The army can do anything. Nobody can question them. Nobody can ask for compensation or justice or review or go in appeal or do anything.

Therefore, I strongly oppose the introduction of this Bill and the other two Bills, let me say in advance because they have not been moved yet. But they are a package. There is no use, just because we are following a certain procedure, we are again blind to the fact that this is a package and the package adds up to this that as my colleagues have said this is the most draconian measure which will not meet the needs of the situation. It will be counter-productive. These are the Ordinances which are making these extremists and terrorists more desperate and more determined to carry out their terrorist activities. Have these activities diminished after the promulgation of the Ordinances? If so, you would have some case. But nothing of the kind has happened and they are going on in their reckless way. Therefore, these Bills are taking away the fundamental right of the citizens. They are politically absolutely ill-advised and motivated and I am totally against the introduction of these Bills.

15.00 hrs.

श्री रामावतार शास्त्री (पटना) : उपाध्यक्ष जी, मैं इस कानून का इसलिए विरोध करता हूँ कि यह आम जनता के अधिकारों पर चोट करता है। इसकी कोई आवश्यकता नहीं है और न इसकी कोई वैधानिकता है।

MR. DEPUTY-SPEAKER : Hon. Members, under article 123 (2) (a), an Ordinance promulgated by the President is required to be laid before both Houses of Parliament. Similarly, the statement explaining the reasons for the issue of Ordinance is also required to be laid under rule 71 (1) of the Rules of Procedure and Conduct of Business in Lok Sabha. These are statutory requirements. However, hon. Members have opposed this and the other Bills also. Some names have been given for the other Bills. I find that there is a repetition here—Mr. Chitta Basu, Mr. George Fernandes, Prof. Madhu Dandavate, and so on. There is only one hon. Member, Prof. Ajit Kumar Mehta, who has not spoken. So, I will call him only at that time. The other hon. Members have already spoken...

SHRI GEORGE FERNANDES : I want to speak on 'Armed Forces' one separately.

MR. DEPUTY-SPEAKER : I will call you at that time.

SHRI SATYASADHAN CHAKRABORTY : I have also given my name.

MR. DEPUTY-SPEAKER : You will be called. I said it because those who have already spoken need not speak again.

The Minister will reply now.

SHRI NIHAR RANJAN LASKAR : Mr. Deputy-Speaker, Sir, yourself and the House are fully aware of the fact that at this stage only under two circumstances it can be opposed, that the House has no legislative competence or that the Bill is not according to the Constitutional provisions or that it violates the Constitutional provisions. On both these counts, whatever my friend, Mr. George Fernandes, has said has no force. About the other things, whatever my other friends have said, all this can be said by them when we will be discussing the Bill ; this is not the occasion when they should say all this ; there will be ample opportunity for that when we will be discussing the Bill. Mr. Vajpayee, while he was speaking, was talking in the same breath in favour and also against. He says that the Government will utilise this against the general public or against the Opposition ; this motive, he has

put against us ; he is also saying that, even though they had one month's time, they have not taken any action so far. Exactly this is our intention. We have empowered them, the State Government, to use only when the situation warrants ; only then, we will utilise this power ; otherwise, it will only be in law ; only when necessary, we will exercise ; not otherwise.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill to make better provision for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Punjab."

The motion was adopted.

SHRI NIHAR RANJAN LASKAR : Sir, I introduce the Bill.

SHRI GEORGE FERNANDES : It is not for the Minister to reply. You have to give your ruling. I have raised a point of order.

MR. DEPUTY-SPEAKER : What is your point of order ? Under what rule ?

SHRI GEORGE FERNANDES : I spoke on a point of order under article 13 (2) of the Constitution. You have to give your ruling on that.

MR. DEPUTY-SPEAKER : There is no Constitutional point. It is for the Minister to reply.

SHRI GEORGE FERNANDES : You have to give your ruling.

MR. DEPUTY-SPEAKER : I cannot ask the Minister to reply to you in a manner you want, nor can I give a direction to the Minister to reply in such a way that you want. I cannot give a ruling after the Minister has replied. Now I go to the next item, 'Statement Regarding Ordinance'.