

PROF. MADHU DANDAVATE : COFEPOSA is for economic offenders. You are using it for political offenders.

SHRI P. V. NARASIMHA RAO : That is a different point as to how it has been used. Sir, the opposition members have given me the benefit of doubt, because I have just come into this Ministry, I thank them for this benefit of doubt. I would like to tell them that I am going to find out how this law has been used. The Central Government has not invoked it even in a single case. I shall certainly go into how it has been used ..

AN HON. MEMBER : It is just an excuse.

SHRI P. V. NARASIMHA RAO : It is not an excuse. It is a fact and ..

SHRI INDRAJIT GUPTA : You have fashioned the weapon-you have just described it as a weapon and handed it over to others to misuse it as much as they like.

SHRI P. V. NARASIMHA RAO : It is a weapon which becomes necessary in certain circumstances

AN HON. MEMBER : Instead of Centre doing it you are getting us arrested by the State Government.

SHRI P. V. NARASIMHA RAO : Sir, this amendment is for a limited purpose and, therefore, we need not go into the details of the Bill.

SHRI SOMNATH CHATTERJEE : There is a possibility of its being misused, kindly think of it.

SHRI P. V. NARASIMHA RAO : I am certainly thinking of the possibilities of its use in a manner other than prescribed by law. That is also the case with every law. Every law can be misused and can be properly used. It is the duty of the legislature and the executive to see that every law is properly used. That is a different aspect altogether Sir, since all these points have been

clubbed together in this opposition, it is not possible to club together my own defence. That will have to be done point by point when we go to the consideration of the amending Bill.

*Interruptions)*

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the National Security Act, 1980."

*The motion was adopted.*

PROF. MADHU DANDAVATE : Sir, as a symbolic protest, we walk out.

*Prof. Madhu Dandavate and some other hon. Members then left the House*

SHRI P. V. NARASIMHA RAO : Sir, I introduce the Bill.

13.50 Hrs.

# STATEMENT RE NATIONAL SECURITY (SECOND AMENDMENT) ORDINANCE

The Minister of State in the Ministry of Home Affairs (SHRIMATI RAM DULAKI SINHA) : On behalf of Shri P. Venkatasubbaiah, I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the National Security (Second Amendment) Ordinance, 1984.

## TERRORIST AFFECTED AREAS (SPECIAL COURTS) BILL\*

THE MINISTER OF HOME AFFAIRS (SHRI P. V. NARASIMHA RAO)

\* Published in Gazette of India Extraordinary Part II, section 2, dated 6.8.1984.

(Shri P. V. Narasimha Rao)

I beg to move for leave to introduce a Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

SHRI CHITTA BASU (Barasat) : I want to speak on this.

MR. DEPUTY-SPEAKER : I will not give more than two minutes to each hon. Member and they will touch only the Constitutional propriety and the legal aspect of it. You need not go into the details at this stage.

MOTION MOVED :

"That leave be granted to introduce a Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith "

SHRI CHITTA BASU (Barasat) : Sir, my first point is that I oppose the introduction of the Bill. As you know that the Hon'ble Speaker made certain observations that ordinances should not be promulgated on the eve of the Parliament Session, I think you are not ruling out the observation of the hon. Speaker. Are you? Sir, this particular ordinance was promulgated on the 13th of July and the Lok Sabha was summoned to meet on the 23rd July. There were only 9 days left for Lok Sabha to meet. Therefore, the promulgation of the ordinance violated and shown scanty and cynical disregard to the observations made by the Speaker of this august House. Sir, this is nothing but a back-door legislation and confronting the Lok Sabha with a *fact accompli*.

Sir, this Ordinance covers the entire country except Jammu and Kashmir. May I know from the hon. Minister whether it is the assessment of the Government that the terrorists are everywhere in all parts of the country, even in this House? If certain abnormal situation exist in certain areas, then there might be some doubt on my opposing this bill on some principle. May

I know if the Government takes this position that such a draconian law should be operative in all parts of the country. The assessment is not such. The offences are all-embracing. Offences are such that anybody can be implicated for the offence, and about the definition of a terrorist you would not allow me to discuss that at this stage— even you may be called a terrorist.

Another reason why I oppose this Bill is the trial in camera. The trial in camera certainly negates the individual's rights of self-defence, and it is my genuine apprehension that arbitrary orders can be passed if the trial is held in camera without giving the scope of self-defence. It is in violation of Article 16 of the Constitution, which upholds equality to law. One section of our people are tried in an open court and another section of persons who are alleged to have committed certain offences, are denied that right, the fundamental right of equality before law.

Another pernicious provision in the Bill relates to the fundamental right. This ordinance provides for putting the responsibility on the accused to prove his innocence, which is contrary to the existing provisions of the onus being on the prosecution. You arrest somebody for committing an offence. The ordinance provides that the onus of the burden for proving the fact that the person concerned is innocent will be on the accused which in normal cases in all the Acts rests with the prosecution.

This Bill is, therefore, a draconian bill, it is contrary to the provisions of the Constitution, it is an all-embracing Bill; it is repressive, it is also aimed, as I feel, to silence the voice of dissidence. You can invoke this against anybody on a number of pretexts, and thereby you curtail the personal liberty of the citizens of our country. I feel that these offences can be tried under the existing laws in the country. For that no extraordinary measure of this nature is called for and warranted.

I am, therefore opposed to the Bill with all the emphasis at my command and I feel that the House will join me in opposing this Bill.

SHRI INDRAJIT GUPTA (Basirhat): Mr. Deputy-Speaker, Sir, this is a new Bill. All of us in this House are categorically opposed to terrorism and terrorist activities. That does not mean that we must support any and every legislation which is brought here in the name of suppressing these terrorist activities.

13.59 hrs

[SHRI R. S. SPARROW in the Chair]

Here again there is a question how a particular Bill has been framed so that it can permit indiscriminate action being taken by the authorities against anybody on the slightest suspicion and without any proof. Here I find that in Section 20 of this Bill, actually another amendment of another Act is being introduced. Section 20 seeks to amend the Indian Evidence Act of 1872. when none of us was here, when the House was not here, when the British were ruling here. That Indian Evidence Act is being amended.

THE MINISTER OF HOME AFFAIRS (SHRI P. V. NARASIMHA RAO): Is it your contention that the amendment is time barred or what?

14 hrs.

SHRI INDRAJIT GUPTA: Certainly it is intelligence-barred.

SHRI P. V. NARASIMHA RAO: We have been amending the Acts. We have been amending the Act of 1842 also.

SHRI INDRAJIT GUPTA: Quite right. You can do that. You should do it. You would not have been in trouble in the Kolhan area of Bihar,

where people say that British rules are still in force even after independence. You have not changed the rules. You never woke up about that.

Now, what is the purpose? What is the effect of the amendment to this Indian Evidence Act? As Mr. Chitta Basu has pointed out, it is merely meant for putting the whole responsibility on the arrested or the accused person, of proving his innocence. He is presumed to be guilty. How is it framed Sir? It says "if it is shown that such a person has been at a place in such an area, at a time when fire arms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order, acting in the discharge of their duties, if this person has been at that place, where these terrorist activities have taken place, it shall be presumed, unless the contrary is shown, that such a person has committed such an offence." It is wonderful. A whole area is defined as terrorist disturbed area under the provisions of this Bill. May be the whole State. I think at present the whole State has been defined, that is the State of Punjab has been defined, as terrorist disturbed area. Within that area of course, there are places and at such places terrorist activities, let us assume, have been admittedly carried on, and if it is proved that I happened to be in that area...

SHRI SOMNATH CHATTERJEE (Jadavpur): Just passing through that area.

SHRI INDRAJIT GUPTA: at that time, unless I can prove that I am innocent, it will be presumed that I was also guilty of those terrorist activities. What is this? It will make the bureaucracy and the police run riot. I have sent a case just now to the Hon. Minister. May be he has not read it. He is very busy. In fact, I had written him two letters about a case like this.

One Mr Mohinder Singh used to live near Amritsar in an area called



(Shri Indrajit Gupta)

Kathanian village. His land has been taken away by the Defence Authorities for some purpose of their own. That has nothing to do with the troubles taking place in Punjab. He happened to be one of the persons whose land has been requisitioned. The structure on that land belonging to the people, i. e. cattle sheds, farm houses, etc. have been demolished. Those materials are being pilfered away by some people, Shri Mohinder Singh, who had put in 28 years of service in the army, who was a retired man, had a dispute with another man about this pilferage of his goods. The other man who happens to be a Subedar in the army, shot him dead. And after this incident was over it is stated that Shri Mohinder Singh is a suspected terrorist. As a matter of fact, he had nothing to do with the terrorists or the terrorist movement. Anybody in that village would testify that he was much respected. He was an old and aged man. But to cover up this crime, which has been committed by the Subedar in the army, it is now stated that Mohinder Singh is a suspected terrorist. Just because he happened to be in an area which is described as a terrorist disturbed area, he automatically becomes a terrorist, unless he proves his innocence. I have asked the hon. Minister to have this case properly investigated. I am just giving an example of the kind of gross injustice which can take place. We are afraid of the misuse; we are not afraid of your suppressing terrorist activities.

SHRI P. V. NARASIMHA RAO : That has nothing to do with the amendment.

SHRI INDRAJIT GUPTA : You will say, as usual : We are the people who only pass the law. The implementation of it is left to other people. Who are the other people ? They are the bureaucracy. They are the executives in various States. So, there is always the possibility of serious misuse, as we know. Also, it is applicable to the

whole country. Why are you not specifying the areas? They can be specified. But in this Bill, nothing is specified. You have not said anything.

SHRI P.V. NARASIMHA RAO : No action can be taken unless the area is specified.

SHRI INDRAJIT GUPTA : You have to issue a separate notification for that. I think this is a new type of legislation, which we have never had before, in this country. It is something which is so sweeping. Blanket powers are given. Such blanket type of definitions are given, that anybody can be brought within the mischief of this legislation. First of all, it is being tried out in Punjab.

Sir, you are sitting in the Chair. I am very glad, because I am sure you will give attention to its effect. You will see, now, after this, what happens. I have only quoted one case which was brought to my notice from that area. In many cases, now innocent people will be branded as terrorists. They will be hauled up before the special court. The trial will be held *in camera*; and then they will be sentenced to heavy terms of punishment and so on.

Of course, when it comes to amendments and all that, which we have to propose, we will do it i.e. at the next stage. It cannot be done now. But the whole principle behind this Bill is this were they not able to combat terrorism at all in this country earlier without this Bill? This Bill suddenly become so indispensable, without which they cannot combat terrorism. I do not understand it. They must say something plausible, give some convincing explanation as to why suddenly now this type of a draconian legislation has to be brought in. It is not a new feature in our country—these terrorist activities. Different types of terrorist activities have been going on for many years, and will go on I daresay, in such a big country like ours; and certainly in some very sensitive



regions or areas. But it was never thought necessary before.

And then, what are the offences which can bring you under the mischief of this Act? They have said: all the offences which are defined there, under so many existing provisions of Indian penal Code; Explosives Act; Indian Telegraph Act; Indian Railways Act; Explosive Substances Act; Arms Act; Unlawful Activities (Prevention) Act; Suppression of Unlawful Acts against Safety of civil Aviation Act; Anti-Highlacking Act; Prevention of Damage to Public Property Act, etc. etc. They are all brought in here. If I had the time, I would show by the wording of some of these provisions which already exist, that you can even bring within its mischief, the question of strikes by workers. (Interruptions) Oh, Yes; you can. The question of disruption of services means services essential to the community. This phrase can be taken out of this, and made to apply to workers who are on strike for higher wages or bonus or something. Is it terrorism? No. Then, please be careful with your wording here.

I would end only with this: the definition of the word 'terrorist' given in clause 2 (1) (b) of the Bill says:

"terrorist" means a person who indulges in wanton killing of persons...

All right; nothing wrong with that. 'or in violence...'

It is not 'and' but 'or' Each of these is also separable. They need not all be taken together. It says:

"...wanton killing of persons or in violence or in the disruption of services or means or communications essential to the community..."

With this word 'or' you can bring in any strike also, within its mischief.

SHRI P. V. NARASIMHA RAO: What has a strike got to do with that?

SHRI INDRAJIT GUPTA: Disruption of services—anything can be brought within that supplies, for example. You can say that workers of a textile mill disrupted the supply of cloth.

SHRI P. V. NARASIMHA RAO: They are covered by different laws.

SHRI INDRAJIT GUPTA: It is covered by different laws. But this can also be made to apply to them.

PROF. MADHU DANDAVATE: (Rajapur): You can have repression under various laws.

SHRI INDRAJIT GUPTA: Instead of leaving it open to doubt, Why don't you clarify and change these things? I do not know What you are going to do. But you have not said anything.

SHRI P. V. NARASIMHA RAO: It is going to be done.

SHRI INDRAJIT GUPTA: Blanket powers have been given to the bureaucracy. We know how they behave, and we know their attitude towards the whole people, and the democratic movements in this country. We are opposed to this because we cannot accept this in its present form. It does not mean at all that we are not opposed to terrorism or terrorist activities; we are against that. We have made it clear many times in this House and outside that this kind of weapon should not be put into the hands of the bureaucrats.

श्री राम बिलास पासवान (हाजीपुर): समापति महोदय, यह सरकार कुछ देर पहले एन एस ए की आड़ में और अब घातकवादी एरिया विधेयक की आड़

(श्री रामविलास पासवान)

में क्या-क्या करना चाहती है, उसका पता नहीं? हमारे राव साहब उसको बाबूजी, विद्वत्तापूर्ण, कानून की आड़ में और संविधान की आड़ में उसकी एक जैसी चीज समझते चल रहे हैं। मैं कहता हूँ कि यदि आप इसको लागू करने वाले रहें तो आप पर तो विश्वास किया जा सकता है। लेकिन जब आपको ही मालुम नहीं कि आप कितनी देर रहेंगे, कितने दिन गद्दी पर रहेंगे तो भविष्य की गारंटी लेना न आपके लिए उचित है और न मेरे लिए उचित है। एकट एकट होता है और फैंकट फैंकट होता है। लेकिन जब कोई एकट अफसरों के हाथों में जाता है तो वे उसका अपने तरीके से प्रयोग करते हैं। उसके बाद एकट एकट के स्थान पर रह जाता है और फैंकट फैंकट के स्थान पर आ जाये है।

सभापति जी, मैं आपका बिहार का एक उदाहरण देना चाहता हूँ। राम दुलारी सिंहा जी बिहार से आती हैं, इनको मालुम होगा और हमारे कई साथी, दोनों पक्षों में बैठने वाले, वहाँ से आते हैं, उनको भी जानकारी होगी कि वहाँ की राजधानी पटना को पूरा का पूरा आतंकवादी एरिया घोषित कर दिया गया है। आतंकवादी एरिया घोषित करने के पीछे सिर्फ कारण यही है कि वहाँ कुछ शैड्यूल्ड कास्ट्स के गरीब लोग सरकार से न्यूनतम मजदूरी देने की मांग कर रहे हैं, वहाँ के एग्रीकल्चर लेबरर मिनिमम वेजेज एकट की मांग कर रहे हैं। उनकी मांग पर, किसी को नक्सलाइट के नाम पर मारा जा रहा है तो किसी को किसी दूसरे नाम पर। वहाँ पर बड़े बड़े लोगों, पुलिस और एडमिनिस्ट्रेशन सब की सांठ-गांठ से पूरे एरिये को आतंकवादी एरिया घोषित कर दिया गया है। उसका विस्तार

गया और नालन्दा तक बढ़ता जा रहा है। हमारे डूमर लाल बैठा जी पूर्णिया जिले से आते हैं, वहाँ भी यही हाल है। कोई जिला वहाँ ऐसा नहीं है जिसके किसी न किसी भाग को आतंकवादी क्षेत्र घोषित न किया गया हो। इसीलिए मैं कहना चाहता हूँ कि आप बंदर के हाथ में माला देने का काम मत करिए, उसको आपने पहले से ही काफी हथियार दे रखे हैं। बंदर को आप तोप चलाने का मौका मत दीजिए।

यहाँ हमारे साथियों ने बताया कि ऐसा बिल आना चाहिए और कब लाना चाहिए, लेकिन जब सरकार चाहती है, कोई भी बिल ले आती है। मैं इसीलिए इसका विरोध कर रहा हूँ कि आतंकवाद के नाम पर आतंकवाद को फैलाने का मौका मत दीजिए। मैं आपसे पूछना चाहता हूँ आप ईमानदारी से राव साहब अपनी छाती पर हाथ रखकर कहिए कि जब महाराष्ट्र में जब पुलिस रायट्स हुए, महाराष्ट्र में कम्यूनल रायट्स भी हुए, भोंसले साहब के जमाने में पुलिस रायट्स हुए सेना में भी हुए तो वहाँ आपने आतंकवादी गरिया घोषित किया। लेकिन बिहार में जहाँ मजदूर अधिकारों की लड़ाई लड़ रहा है लैंडलैस लेबरर अपने अधिकारों की मांग कर रहा है उस एरिया को आप आतंकवादी एरिया घोषित कर देते हैं। मेरा कहना सिर्फ यही है कि इस बिल का प्रहार समाज के कमजोर वर्ग के लोगों पर ही होगा और उनके खिलाफ ही इसे इस्तेमाल किया जायेगा। पुलिस एडमिनिस्ट्रेशन और बड़े लोगों की सांठ-गांठ होगी। मैं जानता हूँ कि आप यही जवाब देंगे कि हमारा इंटेंशन पंजाब से है। लेकिन पंजाब में 6 अक्टूबर से राष्ट्रपति शासन लागू हुआ है, जिसको अब एक साल



पूरा होने वाला है, पहले पंजाब में चीफ मिनिस्टर फेल होते थे, अब गवर्नर भी फेल हो गए हैं। जब कि गवर्नर के नौमिनी होते हैं। आपका राष्ट्रपति शासन भी पंजाब में फेल हो चुका है। क्या आप अब वहां पर कोई नई लोकप्रिय सरकार बनाने की बात सोचेंगे या ऐसे ही टैरिस्ट एरिया के नाम पर सेना, फौज और पुलिस को ही वहां का शासन सुपुर्द करते जाएंगे। इस तरह से तो हिन्दुस्तान के लोकतंत्र का लगातार ह्रास होता जा रहा है और जल्दी ही वह समय आ जाएगा कि जब इनको पावर का चस्का लग जाएगा तो आप समझ सकते हैं फिर इस देश का क्या होगा। इसीलिए मैं इसका विरोध करता हूँ और जमकर विरोध करता हूँ क्योंकि फैक्ट्स के बारे में मैं जानता हूँ।

मुझको इसका फैट मालूम है। और एन.एस.ए. में क्या हुआ वह अलग चीज है। लेकिन इस आतंकवाद एरिया की वजह से गरीब लोग मारे जायेंगे। कोलहन में कोई राज्य की मांग हो रही है सैकड़ों साल से वहां के आदिवासी लड़ रहे हैं। पहले वह जंगल से लकड़ी काट सकते थे। लेकिन आज नहीं काट पा रहे हैं। उनकी जवान लड़कियां दातून बेचने पटना आती हैं, सन्थाल परगना से पटना आती हैं, उनके साथ छेड़खानी की जाती है। अब जब उनको किसी प्रकार की लकड़ी नहीं मिलेगी तो वह जब बेचारा भूखा करेगा तो क्या करेगा? जब भी कोई अपने अधिकार के लिये मांग करेगा तो आप पूरे सन्थाल परगना को टैरिस्ट एरिया घोषित करेंगे, समाज के कमजोर वर्ग के लोग, हरिजन, आदिवासी अपना अधिकार मांगेंगे तो आप उसको टैरिस्ट एरिया

डिक्लेयर कर दें, यह वहां तक उचित होगा। मेरा निवेदन है कि ऐसा करना सरकार के लिये भी खतरनाक चीज है, और वह भी ऐसी सरकार के लिये जो अपने को जनप्रतिनिधि सरकार कहती है। आप अपने अधिकार को क्यूरोफेसी के हाथ में न दीजिये वरना किसी दिन यह आपके गले का ही फंदा बन सकता है। इसलिये मैं गृह मंत्री जी से आग्रह करूंगा कि बजाय कानूनी दांव पेंच में जाने के जो व्यावहारिक कठिनाई लोगों को होगी उसको आप समझें और इस बिल को वापस ले लें।

SHRI SATYASADHAN CHAKRABORTY (Calcutta South): Mr. Chairman, it has become almost a practice with this Government to promulgate ordinances before the sitting of Parliament. On the 14th of July this Ordinance was promulgated, I do not understand why the Government did so. Because the House was going to meet on the 23rd of July only and unless they had decided to show disrespect not only to the House but contempt—to this House that we shall promulgate Ordinances, they are bound to show disrespect. It is a disrespect not only to Members sitting on this side of the House, it is a disrespect even to the ruling Party members. As a matter of fact, Ordinances are promulgated because of a situation which is such that it is absolutely necessary. Can the Minister justify that such a situation arose, warranting this Ordinance just before the House was going to sit, except to demonstrate to the people that we do not take that Parliament is important, we are contemplating as a matter of fact, that this is a part of our campaign and method? Otherwise, how can you justify it?

Secondly, I question the honesty of the Government when they have brought this terrorist intested areas



(Shri Satyasadhan Chakraborty.)

Bill, "are you really serious, are you really honest?" I can show an example which will show what you are saying, and what you are not doing.

In Punjab one person was arrested, it has come in the papers, one Nihal Singh Haryana Belawala was arrested with arms, he was arrested because he had arms, he was arrested because he was a terrorist. But later on, he was released and he is now one of the leaders for *Kar Seva* in the Golden Temple. Please verify. Nihal Singh Haryan Belawala. He was arrested, and then he was released because he said that he would take part in *Kar Seva* and you released this terrorist also.

On the earlier occasion we have been seen that by releasing Haji Mastan you have shown your liberalisation of the criminals and how you apply your draconian laws to your political opponents.

The very purpose of the Bill is to have spitting fire. My answer is no. In Punjab you have all the Acts—Preventive Detention, National Security, Disturbed Areas, everything—but why is it that you could not control the situation? In Punjab how many terrorists have you really arrested during the whole period? You will see that in Assam and also in Punjab it was not only the failure of the administration but it was because of the indifference and inability of the administration or active connivance of the administration that such terroristic activities were perpetrated. As a matter of fact, what is happening today is this that either in communal riots or in disturbances in Punjab and Assam, the Police Force yourself is getting involved. What are you going to do about it? Is it possible to curb these activities only with these Acts? I think, it is not possible. If that is not possible, what is the purpose behind it? Why is it that by normal legal procedure you cannot run the

country? Our Home Minister is a scholar. He knows many things. I want to remind him about the days of Magna Carta. Long long ago, people fought against despotic power of the rulers. Since then the history has been the struggle against despotism. I like to warn the Home Minister that power corrupts. It has corrupted you. Absolute power corrupts absolutely. It is going to corrupt you absolutely because you will not have any information about what an ordinary policeman would be doing. Armed with extraordinary laws, the local thana will be a torture chamber. The officer incharge would be the despot. And you are making all the police officers despots because of this. This is sheerly ridiculous. It would appear ridiculous to anyone who has democracy in his heart, to say that onus of proving the guilt remains on the accused. No, it is the duty of the Government; it is the duty of the person who accuses. Elsewhere that is the civilised rule. Under this Government, we are going back to terrorism. If that is so, it will be a great danger. I think that this Government is getting divorced from the people. The more the Government is divorced from the people, the more it would have to depend on administrative and coercive machinery. Coercive machinery, arbitrary and extra-ordinary powers are to be used by a State only in very very extraordinary circumstances. I do not believe that all over India there are extraordinary circumstances. I think they have a fear that with their economic policy, the way they are running the country, they are going to be totally isolated from the people and they are desperately depending on the coercive machinery and administration. This is dangerous. I oppose the introduction of this Bill. I warn the Home Minister because he is carrying the deformed baby, as Mr. Somnath Chatterjee has said, of other persons conceived in sin. I want that he should withdraw it as a gentleman, scholar and a liberal politician. He should withdraw and not allow himself to be termed in history as a good man actually piloting the worst possible Bills. I hope, even at this late hour,

good sense will prevail upon him, reason will dawn upon him and he will withdraw this Bill

PROF. MADHU DANDAVATE : Sir, at the introduction stage we need not go into the details but I would like to record certain observations. I remember, on one occasion Gandhiji, while writing in *Young India* had said that any government or a State that requires to be armed by repressive measures and laws is inherently weak in its democratic structure. That is exactly what we are experiencing as far as the present Government is concerned. Everybody wants terrorism to be checked but whenever terrorism or some other violent activities get associated with certain problems in various States, it is the political solution of the problem that can end the climate of violence, that can end the climate of terrorism, that can end the climate of conflict, and stress has to be given on that. They are pursuing the path at the wrong end and, therefore, they are requiring to arm them selves by such measures.

As far as the terrorism is concerned, they have made the net so wide that I am inclined to agree fully with Mr. Indrajit Gupta that those of us who are in working class movement, trade union movement, involved in various struggles, struggles of the Adivasis, various class struggles, you will find that all of them in one way or the other will be brought into the ambit of this. He says, no doubt there are other laws. They have taken proper precautions to see that every opportunity is taken to have different Acts or laws. There is Essential Services maintenance Act. So, if under the garb of disrupting the communication somebody is to be detained, I agree with him that they have made a special measure for that. But just as there can be various grounds for detention, there can be, various instruments of repression also and, therefore, they have one law in the form of Essential Services Maintenance Act, then there is a law regarding the terrorists. The net has been spread very wide. I do not want

to repeat what Indrajit Gupta has said. If anybody, for instance, launches an agitation for the implementation of Mandal Commission's Report or for creation of linguistic States there was a Sanyukta Maharashtra Movement. Many Congress men were there, they returned back....

(Interruptions)

AN HON. MEMBER : Andhra movement also.

PROF. MADHU DANDAVATE : In Andhra also there was an agitation there was an agitation in Gujarat also. No doubt, violence took place but if anybody were to decide that the Sanyukta Maharashtra agitation or Andhra agitation or agitation in Gujarat could be actually put down by utilising the laws like the terrorism Act, in that case they would have been greatly disillusioned. Political solution had to be found out. And the moment political solution was found out, the entire climate of violence was totally destroyed. Even those who tried to provoke violence, they got isolated, they did not get people's support at all. Therefore, it is the political solution that is more important.

Now, going by the text of this particular Bill, I feel that if Gandhi Ji were to be alive today, I do not know what he would have thought about it. I will give one instance. Even during the freedom struggle Gandhi Ji was pledged to non-violent means. But even when Gandhi Ji started the movement, you know as a student of history that there was a Chauri-Chaura episode. After that he stopped that movement no doubt but all the same that violence did take place. But Gandhi Ji did not take the attitude that those who were involved should be hanged or should be detained. By that the problem was not going to be solved. He tried to find out a political solution. He created a campaign. He insisted that non-violent methods were better. And



(Prof. Madhu Dandavate)

you see that the Chauri-Chaura episode was not repeated on a big scale later on. Here I must clarify. I do not agree with some of my friends who feel that this will only strengthen the bureaucrats. There is neoradicalism in this country—save the Minister and hang the bureaucrats. I was not guilty of that even when I functioned as a Minister. As a Railway Minister I made it clear that if there were failures in the railway administration, I shall share the responsibility and I shall not pass on the burden to the bureaucrats just as if there are good achievements in the Railways I am prepared to share the responsibility. So, this is a new thing that is developing—putting the blame of everything on the bureaucrats. I tell you these bureaucrats dare not harass the people in an indiscriminate manner if they know the mind of the Government and the mind of the Minister. When a particular bureaucrat knows that the Labour Minister wants harsh policies towards labour, then if he gave an order for 500 to be thrown out, the bureaucrat will be prepared to throw away 600. It is always the direction that is given by the political leadership that matters. Therefore, I do not say that this will concentrate powers in the hands of the bureaucrats. Actually, this will give a wrong direction when such measures are available.

Sir, You Probably might be remembering that the father of our Prime Minister, the late Pandit Jawaharlal Nehru, during the freedom struggle had given one slogan "when the freedom is in peril, defend it with all your might". During the Emergency, *The National Herald* had carried this inscription of Pandit Nehru "When freedom is in peril, defend it with all your might". There were instructions that this inscription must be removed, because they were the days of emergency and it was felt that if *The National Herald* carried such a banner "When the freedom is in peril" defend it with all your might", it would

be taken by the people as a call for the second battle of freedom. So, that inscription was removed till the Emergency was over. Now it has come back.

I only want to point out that when you have a certain measure, that is taken advantage of, to suppress all popular movements. Under the garb of terrorism, against those who are carrying on trade union movement, it will be argued that though they were not indulging in such violence, they have uttered a language, which is likely to provoke violence, and therefore, they must be detained. If linguistic agitations are there, they will be told the same thing; if there is agitation for the implementation of the Mandal Commission Report, the same thing will be done. If the Adibasis and the Scheduled Castes, who have become more conscious today, fight against the atrocities, they will also be told that "you are carrying on the fight in such a manner that you are likely to go the terrorist path and therefore, in your own interest and in the interest of the establishment, it is better you are detained", and action would be taken.

I am surprised and shocked by the interpretation given by one of the officials of the Home Ministry regarding this Bill. *The Indian Express* carried it very prominently. The official says that when someone is put behind the bars as a terrorist and he is brought under the ambit of this law, the onus of establishing that he is not a terrorist will be on the person who is alleged to be a terrorist. I would have understood even that. But, then, he went one step ahead and said that this is on par with the law regarding custodial rape on women. If a custodial rape on a woman takes place, in that case, because of the persistent demand of the women's organisations, Government finally accepted that because of the inhibitions in the life of the woman, she is not prepared to speak out certain facts, there are certain built-in difficulties and, therefore, the onus will be, not on the woman but on the man



who rapes the woman. The same argument was brought in. If anybody is brought in and alleged to be a terrorist, in that case, the onus will be on him. This is a strange logic, and it is on such logic that the entire Bill is based

Therefore, in the interests of democratic climate in the country I think this Bill must be withdrawn. So, I would request the hon. Home Minister to see that reason prevails and even at the introduction stage he does not insist on introducing the Bill.

**SHRI HARIKESH BAHADUR** (Gorakhpur) : Sir, this is again a draconian measure. Only a few minutes back, we had opposed one undemocratic Bill. This is yet another undemocratic measure, which is going to be adopted by the Government.

This particular Bill is completely against the spirit of the constitution. It is hundred times more dangerous than the Rowlatt Act, against which Mahatma Gandhi started the satyagraha. Our hon. Home Minister, who is supposed to be a Gandhian, I do not know why he has chosen to bring this Bill forward.

**PROF. MADHU DANDAVATE** : He is a Gandhian, but his Gandhi is different.

**SHRI HARIKESH BAHADUR** : It looks that our present Government has adopted a different style of functioning. That is why they are not going to bother about the Constitution, democracy, liberty, freedom and the fundamental rights of the citizens. They are ignoring them all and bringing one by one several draconian measures before this Parliament.

According to this Bill, the Central Government can declare any area as a terrorist-affected area, without consulting the State Government. So, this measure may be used against the State

Governments, which are inconvenient to the Central Government, in order to achieve their designs. Suppose there is some agitation in a State, even if it is a just struggle, it can be declared as a wrong thing, as a terrorist activity, without finding a political solution for that and, in that way, that particular State Government can be bi-passed. The camera trial which has been mentioned in this Bill is a very dangerous phenomena. Because of this, I can understand, many innocent people may be subjected to suppression.

Now, Sir, the arrested person has to prove himself that he is not a guilty person. This is also a very peculiar type of thing. In some matters as Prof. Madhu Dandavate has already said, we wanted that the Government should do it, but government did not go, now they have decided to do it in this particular case. Now, I am quite confident that this Bill will be used against the weaker sections, the political people who are inconvenient to the Government and also against the struggle of the workers who raise voice for their just demands.

Now, so far as bureaucracy is concerned, if they are getting this arm, it would definitely be misused by them at the instance of the Government itself because if the Government wants that the people who are not favourable to the Government, they should be suppressed, bureaucracy will adopt that type of attitude and they will take revenge according to their own ways also. That is why I oppose this Bill which is totally undemocratic and is against all the norms of democracy. It also goes against the Fundamental Rights of the citizens. That is why I would like to request the Hon. Home Minister to withdraw this Bill instead of introducing it.

**PROF. RUP CHAND PAL** (Hooghly) : Sir, I rise to oppose the Bill even at the stage of its introduction. I am not going into the details, Sir. This piece of legislation, which is being

(Prof. Rup Chand Pal)

proposed is against the spirit of Fundamental rights that have been given to us under the Constitution. Sir, I have no doubt at all that the sole purpose of this Bill is to curb democratic movements, the movements of the trade unions and the workers, the peasants and others.

Sir, the other day I was going through a small book. There is a reference in it on terrorism. It explains how in many countries the ruling class are using terrorism as a weapon to curb the just democratic movements, just movements of the people. Here also Sir, no one just can quarrel that when one is killing some other innocent people, that should be stopped through the normal laws of the land.

Sir, the problem is regarding the definition of terrorism. Who is terrorist? Sir, from our own experience we have seen even here that the one who is continuing the very just trade union activities, he is described as a terrorist. Even we were described as a extremists, because we were demanding some of our just rights from the employers. When we went in procession to press for a particular demand it was said by the employers the we were coersing. The same point is being used here. Any procession, any assembly any group of people coming with a very just demand may be described by the employer, may be described by the interested people as coercion. And in such a measure in the name of terrorism, the bureaucrats will use it against the people, against their very just aspirations and demands.

So, even at the stage of introduction, I would request the Hon. Minister that the Government should not take such an extraordinary, sweeping and arbitrary powers.

It has been said in the Statement that the law and order situation in certain parts of the country has been disturbing. May I know from the Hon.

Minister can he quantify the number of terrorists or quantify terrorism in our country? This I say because when the Punjab problem was continuing, there was a demand why not the Government come out with a White Paper regarding terrorism and the number of terrorists. At one stage it had come that the number of the terrorists in Punjab was 47 or something like that. They did not come out with full details regarding terrorism. So, also Sir, I demand from the Hon. Minister at this stage to bet us know what are the certain parts in our country where law and order situation is such as to justify that the Government should come out with such a police of legislation.

Secondly, can he just quantify terrorism in our country so that he can explain his own statement to the people of the country that the national sovereignty, the territorial integrity are being threatened and so there is an urgency for this piece of legislation. That is my Plea to the Hon. Minister at the stage of introduction. please explain this and because of our serious objections and the serious objections of the people let him consider and withdraw the Bill at least.

SHRI SOMNATH CHATTERJEE (Jadavpur) : Sir, the Prime Minister spoke of the 'healing touch' after the Army action. If the Government has thought this to be one of the instances of providing healing touch, I think they are sadly mistaken.

(Interruptions)

Sir, I remember I was in the House in 1971 when MISA was introduced and was passed with acclamation by the Ruling Party with great gusto, and many of them became the victims of that MISA in the Ruling Party itself. Therefore, don't be under any illusion. Today you may be in the good books of the power that be, but you may not continue to be so. Therefore, I request my friends, specially my young friends



here, to judge these matters on merits. Don't go by whips alone. These are matters which will redound on the life of the ordinary people of this country. Therefore, these are not matters which will go by these standards.

Sir, why are we opposing this? As it has been clearly pointed out, we have throughout opposed terrorism and terrorist activities. We are sure that we, on the part of the opposition, have not done anything to encourage terrorism or terrorist activities. Are we not in favour of Punjab coming back to the mainstream of our country? We have been demanding taking of proper action primarily political coupled with administrative. For years we have been saying, 'do that in Punjab'. That is why we opposed the special Amendment to the National Security Act in April 1984. Mr. Rao, you were not the Home Minister then. We say that by merely having a more rigorous or draconian National Security Act for Punjab it will not solve the problem. Probably you were asked to support, you must have spoken in support of that. But it did not solve the problem in Punjab, it did not solve the problem in Chandigarh. Now, what is being done? In the name of meeting the situation which has to be again primarily dealt with politically as well as in the form of administrative measures, you are creating new ghosts. It is dangerous that such a concept in this country is being brought about. That is why, I say the capacity of the mischief mongering of the Government is unlimited. These are perversities to the core. Now, any part of the country may be called a disturbed zone the entire country may be called a disturbed zone. Sir, it is only on the subjective satisfaction of the Government, it cannot be challenged in the way Section 3 has been constituted, i. e., 'If the Central Government is of the opinion that offences of the nature are being committed by the terrorists on such a scale and in such a manner that it is expedient'—immediately it becomes subjective—'expedient for the purpose of coping with the activities there by such and such notification...' Sir, the

definition of the 'terrorist' has become such that no violence is necessary, no killing will be necessary. If you read the definition of 'terrorism', omitting the other things 'terrorist' means 'a person who indulges in the disruption of services essential to the community and with a view to affecting the harmony between different castes or communities'. This is a terrorist activity. No violence, no killing nothing is necessary. Is this the intention of this Parliament to be a party to a legislation like that which will bring the entire normal functioning in this country to a grinding halt? Then you declare it a judicial zone. Then you bring in special prosecutor. You bring in special judges. You change the law. What is the minimum protection in the Cr. P. C. Section 167: Accused being presented/produced before the Judicial Magistrate is being done away with it. It is now the Executive Magistrate. Prosecutor will be the Magistrate Judge. This is the provision. Section 167 is being amended. Provision of trial in camera. A feeling is being created in the country that whoever lives in that part of the area is primarily a terrorist. Every person in that area is being brushed with black point. Situation is being created so that fear psychosis may be there. Is this the way you win the hearts of the people? You shift the onus on them. A person who even passes through it, a person who just crosses through an area it is shown that such and such person had been at a place, in such an area at a time when fire arms or explosives were used at that place...such and such shall be presumed to be guilty. Supposing along the route be the side of the road, some explosives are thrown and I pass along that road, at that moment, I can be caught saying that you have to prove that you are not guilty. This is the law of jungle. I would request hon. Minister both from administrative point of view, judicial point of view, our minimal Constitutional rights point of view. Unfortunately, our Constitution has given certain fundamental rights but have taken away by their left hand by providing for reasonable restrictions. I consider it a shame of our Constitution. Unfortunately;



(Shri Somnath Chatterjee)

Provision like Preventive Detention is there in our Constitution and that is being taken recourse to since the dawn of independence in this country. Therefore, you may say you have the power. But I am sure and I hope this will be tested. This is a violation of the equality clause in the Constitution. This creates division among the people on the plea of so-called terrorism. It is going to be utilised against political opponent and I do not mind if they become the victims of these laws themselves. But other people cannot be kept at the mercy of this Government to be suppressed by laws like this. Therefore we oppose.

SHRI RAM PYARE PANIKA (Robertsganj): I am on a point of order. Please see Rule 72 :

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, brief statements from the member."

MR. CHAIRMAN: I am aware of the rules.

Shri Sunil Maitra.

SHRI SUNIL MAITRA (Calcutta North East): I oppose the introduction of the Bill.

I could have understood, although I might not have supported, had the Bill been only for Punjab. In the very first clause of the Bill it has been stated that the applicability of the Bill is for the whole of the country except Jammu and Kashmir. Where such terrorist activities at the moment are taking place, the Government has not yet told, nor it is within our knowledge that such so called terrorist activities are taking place outside the State of Punjab.

Even in the State of Punjab, whatever terrorist activities are taking place or something like that, from my own experience, I would like to draw the attention of the Home Minister to certain serious facts. Sir, nobody talks on facts. Everybody talks from his own experience.

I am coming from the State of West Bengal. I have my own experience about the terrorist activities. In the year 1971-72, did this Government consider the activities of Naxalites in the State of West Bengal as terrorist activities? How many innocent persons have been murdered by the terrorists in the State of Punjab, the precise figures, I am not having now. But it may be in the neighbourhood of 300 or 400, if you set aside the question of casualties arising out of the Army operation. But in the State of West Bengal, my party alone had the casualty of 1200 comrades in the year 1971-72. They were knifed, they were shot and in such heinous manner, 1200 of my Party members were butchered. This Government was in power then. They did not think it necessary to bring such a Bill then. From that experience, we also came to know that all these so-called terrorists in the State of West Bengal were not actually Naxalites. The Government of India's Special Intelligence Branch called Research and Analysis Wing got the criminals infiltrated into the ranks of the Naxalities and utilised them in killing us. What is the guarantee that you are not doing the same thing in Punjab? A man once bitten will always feel shy. Therefore, unless and until they come forward with certain concrete proof that their Research and Analysis Wing did not do it in the year 1971-72 in the State of West Bengal, I oppose this Bill tooth and nail, from the experience of West Bengal.

My second point of submission is that I am not a lawyer. I am an ordinary layman. From childhood till today we have been hearing that a man who is arrested should be deemed to be innocent unless he is proved to be guilty. Here is the piece of legisla-

tion intending piece of legislation which says that an arrested person should be deemed to be guilty unless he is proved as innocent. Such a law can only be born and survive in a jungle and that is what the Government is transforming the society of ours. Therefore, on this ground also, I oppose the introduction of the Bill.

SHRI SATISH AGARWAL (Jaipur): Mr. Chairman, with your permission. I would like to say some thing before the hon. Home Minister replies to the points that have been raised while opposing the introduction of this particular Bill. This particular ordinance, was issued on 14th of July, 1984 for the trial of certain offences in the affected areas, particularly in Punjab. Everybody knows that it is related to Punjab. I would like to know what progress has been made from 14th of July to this day, i.e. 6th of August, round-about 23 days' time or three weeks, so that the issuance of the ordinance can be justified. Have you established courts, how many cases have been entrusted to them? One or two things we read in the newspaper. But I would like to know the facts.

I am one with those who are of the opinion that is done in a very unusual manner and that this should not have been issued through ordinance. Normally, when any new piece of legislation is brought before Parliament invariably, not always, it is referred to the Select Committee. Why did they not envisage such a piece of legislation in the last session? I also oppose this particular measure on that ground.

THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARSIMHA RAO): Sir, I would certainly like to inform the Members about the latest position, the progress made in the establishment of these courts when we actually come to discuss the provisions of the Bill.

As has been said earlier, this is no stage for us to go into the merits of

the Bill. But there is no rule that there should be no irrelevant speeches. So, I would have to take some of these speeches in that light. I would only take up two points at this stage which have been brought out clearly and which, I think, I should respond to even now.

It has been pointed out that this Bill does not *ipso facto*, as it is, apply to the whole country. An area will come under the application of this law only when it is declared as "terrorist affected". It is not just "disturbed"—"disturbed" is different; "terrorist affected" is different. We shall go into the details of what is meant by "terrorist affected" when we go to that part of the Bill during the detailed discussion.

The other point that has been raised is about shifting of the burden of proof in certain cases. This is important and it needs to be dealt with. Please imagine this scene—it is known that a particular person had been at a place, not passing by, at a time when fire arms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties. This is the scene. I do not have to clearly name what kind of a scene is envisaged. It is clearly understood; there can be no misunderstanding about it.

Now, from a particular point, the armed forces are being showed with bullets. Let us say, there are 50 or 60 or 100 or 200 persons there in the dead of night; the armed forces have first made an appeal repeatedly that those who would like to come out may come out; again, repeated appeals have been made that arms should be surrendered. After all this has been done, there are some people who have showered bullets from a particular place on the armed forces. Is it the intention of the hon. Members that out of those 200 or 150

(Shri P.V. Narsimha)

people who are there I should prove that 'X', 'Y' or 'A', 'B' or 'C' has been responsible for showering one or two or three bullets each? Is it at all possible to do so in a situation like that? On the other hand, it is possible for a person to say, "I had been there for such and such a purpose" and, if the court feels that he is innocent and, naturally, he only can explain his position, why he was there, and that gets him off. This is the position.

There is no other way of dealing with this situation. This is an extraordinary situation and that is why this limited provision has been brought. There are many number of cases where according to the Evidence Act, the burden of proof shifts. It is not as though the burden of proof is uniform on the prosecution or on the plaintiff. There are many cases in which there are exceptions and this has been brought as one such exception.

15 hrs.

SHRI SUNIL MAITRA : Supposing a volley ball match is taking place and a crowd of spectators collects and by the road a convoy of military personnel is passing and somebody throws bomb at them and further supposing I am there in the crowd as one of the spectators. I am also likely to be hauled up and I will have to prove that I was not one of them who had thrown the bombs.

SHRI P.V. NARASIMHA RAO : There is no question of armed forces there. It is not a volley ball match. Please go through the ingredients. The ingredients are very clear. This cannot be a matter of daily occurrence. There is no other way of dealing with this particular situation.

When we come to the detailed provisions, I shall explain to the House

why trial in camera has been provided for. It is a trial nevertheless. There are no short-cuts. There are no exceptions to the rules of Evidence or to the procedure to be followed there. In camera has been provided for, for certain reasons which I shall explain when the discussion takes place.

SHRI SATISH AGARWAL : Are you not prepared to withdraw the Bill? Otherwise, we will walk out. This happens in democracy.

[Shri Satish Agarwal and some other hon. Members then left the House]

MR CHAIRMAN : The question is :

"That leave be granted to introduce a Bill to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith."

*The motion was adopted*

SHRI P.V. NARASIMHA RAO : Sir, I introduce the Bill.

# STATEMENT RE-TERRORIST AFFECTED AREAS (SPECIAL COURTS) ORDINANCE

THE MINISTER OF HOME AFFAIRS (SHRI P.V. NARASIMHA RAO) : Sir, I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Terrorist Affected Areas (Special Courts) Ordinance, 1984.