SHRI SATISH AGARWAL: I have no objection in accommodating the Minister if he is busy in the other House.

14.59 hrs.

DISTURBED AREAS (SPECIAL COURTS) BILL—*Contd.*

MR. DEPUTY-SPEAKER: Now the House will take up further consideration of the following motion moved by *Giani Zail Singh* on the *21st April*, 1981, namely:—

"That leave be granted to introduce a Bill to amend the Disturbed Areas (Special Courts) Act, 1976."

SHRI JYOTIRMOY BOSU (Diamond Harbour): Sir, I rise to oppose the introduction of this Bill on grounds of legislative incompetence and other areas which obstruct its introduction. Under Article 246 List I Union List setting up of a special court is not provided for. Therefore, it has furnished a very serious legislative incompetence at the first instance. Under Artile 246. List II (State List), the following is stated:

"Public order but not including . . ."

15 hrs.

This came during the 1976 emergency . . .

"Public order but not including the use of any naval, military or Air Force or any other armed force of the Union or of any other force, subject to the control of the Union or of any contingent of unit thereof. . . ."

Sir, this came when authoritarianism was ruling high over the country during the time of emergency,—

" . . . in the aid of the civil power."

Now, Sir, certain amendments were made in the 42nd Amendment of the Constitution in 1976 during emergency which I have already indicated before.

Under Article 246, List III is the Concurrent list. And there is stated as follows:—

"Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air force or any other armed forces of the Union in aid of the civil power."

1501 hrs.

[SHRI GULSHER AHMED *in the Chair*]

In the same Seventh Schedule, List III, in para 11-A this provision has been inserted by the Constitution Amendment Act during emergency, with effect from 3-1-1977. I quote:

"Administration of justice, constitution and organisation of all Courts, except the Supreme Court and the High Courts.

MR. CHAIRMAN: You are a lawyer, and you understand these matters.

SHRI JYOTIRMOY BOSU: The word 'courts' clearly mean 'Courts as established under the ordinary law of the land.' There is no mention about the Special Court at all.

It is therefore, my submission, Mr. Chairman, that this Bill suffers from serious legislative incompetence. This is being brought forward before the House in an attempt to bring Law and Order in the Concurrent list. This is the attempt which they are making Sir.

Sir, it is known to everybody that normal administration of judiciary is a State subject. The disabling points in respect of legislative incompetence have already been elaborated by me.

The Union Government has miserably failed to control the serious law and order situation in its own area, in the Union territories, especially the Union Territory of Delhi, which is the seat of power.

Even a Minister's gunman was shot dead the other day. Sir, so far even the culprits have not been traced.

Sir, it is more than a year now since Nirankari Baba was murdered brutally. Still no one has been arrested so far.

Sir, the Government is only trying to muzzle the Judiciary. Now what has happened? The Bombay High Court has restrained the unlawful Law Minister in the matter of transfer of judges outside the State.

Sir, even the Chief Justice of India has got serious differences of opinion in this matter. This is a serious conspiracy to make the judiciary subservient to the Executive and to enable the Union Government to use its stick to beat the States which are run by other parties.

Even in the matter of appointments relating to the Judicial Reforms Commission,—I am very sorry to point this out,—a Judge has been nominated by the Central Government without the approval of the Chief Justice of India. (*Interruptions*) Sir, their ultimate object is to prevent people from getting proper justice in a democratic manner. Facts will reveal the present state of affairs. Sir, we know that 80 vacancies are being kept pending in various High Courts since Shrimati Indira Gandhi has come to power. They are desparately searching for Judges who will take orders from the Executive. I want to know whether the Chief Justice of India was consulted with regard to this Bill. I request Giani ji to take the House into confidence and tell us about the correct position in this regard. Sir, may I know whether the Chief Justice of India was consulted in the matter of this particular Bill which is now being sought to be introduced? In Shrimati Indira Gandhi's own party Governments in the States where the Governments carry out her wishes, her mandate and directions, the law and order situation has assumed serious proportions. It could not deteriorate any further. Mr. Chairman, the hon. Home Minister is not hearing me. Kindly tell him to listen to me.

MR. CHAIRMAN: He is listening to you.

SHRI JYOTIRMOY BOSU: I am thankful to you, Sir. Sir, there were riots in Moradabad and other places. There were mass murders by dacoits and repression and killing of Scheduled Castes and Scheduled Tribes has become a daily feature nowadays. The whole House is so upset today to know about the killing of tribals in Andhra Pradesh. These are all within the Centre's reponsibility and they have miserably failed. Now, they want to increase the area of jurisdiction furthering their political missions and aspirations.

Sir, the riots in Moradabad had taken place in August, 1980 and the hon. Home Minister on the floor of this House had promised to appoint a Commission of Inquiry headed by a High Court Judge. Eight months have passed as on 1st April. They have confirmed that nothing has been done so far. No Commission of Inquiry has been constituted. It has not been constituted because Mrs. Gandhi does not want it. It will inconvenience her because it will expose the involvement of her own party men. That is why this Commission of Inquiry has not been constituted so far.

Now, the Bill talks about caste conflict. What is the present situation in Gujarat? American money is flowing in like water there. Amul is the post office and I hear the Amul Headman who is on American stooge has recently been indicated by the Union Minister for Law.

MR. CHAIRMAN: You are travelling too far.

SHRI JYOTIRMOY BOSU: Sir, the vacancies in the High Courts have added up about 27 in a year. The pending cases against the Companies and other officers were 10,875 in 1979. In 1980, it had gone up to 13,632. From April to September 1980, out

of 16,950 cases, only 3,165 cases had been decided. The present Prime Minister wants the judiciary under control because she had to pay very heavily in the hands of independent judges like Justice J. M. L. Sinha who is the glory of Indian Judiciary, whom she tried to purchase through inducement, but Shrimati Gandhi failed But now it has come in the press that a Central Minister, may be the Home Minister himself, had met the leaders of the Khalisthan Movement (an independent Sikh home land) at a place near about Delhi. We would like him to deny it categorically.

Sir, the Union Government has miserably failed to fulfil the conditions enshrined under article 246, in List III, Concurrent List—Items Economic and Social Planning, Social security and social insurance, employment and unemployment. But they are clamouring for more powers. This Bill is the result of that. The overall responsibility to maintain law and order is strictly a State subject and nowhere the authors of the Constitution have contemplated the same to be changed. Naturally the Special Courts of the Central Government are manned by the Judges who are to be appointed by the Central Government. We would like to know how they propose to appoint those Judges and under whose control those judges would work. This, in brief, is the sum and substance of the situation and you, Sir, being in the legal profession would appreciate that. I am sure, you also feel alarmed at the attempts that have been made and which are completely going to subvert the judiciary and make it subservient to the executive. Today, I must congratulate the Supreme Court which has struck down the objections against the L.I.C. employees and passed orders that within twenty-four hours, the bonus should be paid to them.

With these few words, I oppose the introduction of this Bill lock, stock and barrel.

SHRI CHITTA BASU (Barasat): Mr. Chairman, Sir, I rise to oppose the introduction of the Disturbed Areas (Special Courts) Amendment Bill both on the grounds of constitutional competence and other grounds. Sir, permit me to deal with the constitutional grounds first on which I oppose the introduction of the Bill.

I think, the Home Minister is well aware that in our Constitution, there are three Lists in the Seventh Schedule, demarcating the jurisdiction of the State Government, the Central Government and indicating certain subjects which are to be dealt with concurrently both by the States and the Centre. List II, which is the State List, gives entry 1, public order and entry 2, police. This is exclusively within the jurisdiction of the States. The Concurrent List, List III of the Seventh Schedule, entry 1 is criminal law, entry 2 is criminal procedure and entry 3 is preventive detention etc. Now, these, apart from some others, are the subjects which are regarded as concurrent subjects on which both the Centre and the States can legislate. My first argument is, that the parent Act realised this constitutional demarcation, understood this demarcation and, therefore, the authority to declare an area as a disturbed area was delegated to the State Government, because that comes within the purview of entry 1 and entry 2, of the State List, namely public order and police.

In the Statement of Objects and Reasons of this Bill, it is stated:

> "....it is thought desirable that the power to declare an area as disturbed is available also to the Central Government in addition to the State Government.
>
> This Bill, therefore, seeks to amend the Disturbed Areas (Special Courts) Act, 1976 to confer concurrent powers on the Central Government . . ."

You would agree with me that the power to declare an area as disturbed area is vested with the State Gov-

ernment. Now, the Central Government wants that the power to declare an area as disturbed area should also vest in the Central Government. The Central Government cannot make that claim, having regard to the fact that the Concurrent List only includes three items; one is criminal law, the other is criminal procedure and the third is preventive detention. These are the three specified areas where the Government of India has got the concurrent power. Police and public order are the exclusive jurisdiction of the State. By introducing this Bill, the intention is to usurp the right of the State Government and encroach upon the right of the State Government. It is not permitted by the Constitution. If you want to have that concurrent right, you will have to amend the 7th Schedule of the Constitution.

MR. CHAIRMAN: Are you not discussing a legal point in this House?

SHRI CHITTA BASU: Am I saying something illegal?

MR. CHAIRMAN: Do you want a decision here on the legal and constitutional points?

SHRI CHITTA BASU: On what am I speaking? I don't know what you are saying. What I am saying is that the Government has no legal and constitutional competence

SHRI K. P. UNNIKRISHNAN (Badagara): Sir, I am on a point of order. You are a very distinguished Parliamentarian with a long record May I point out to you that in 1958 and in 1963 there have been several precedents. While normally the Speaker does not talk about the matter, the House is competent to discuss it. There is always a full-scale discussion on legislative competence. I also distinctly recall several occasions in 1958 and 1963 when there have been decisions by the Speaker. So, let us not go to that point.

MR. CHAIRMAN: The decision by the Speaker on legal points?

SHRI K. P. UNNIKRISHNAN: The Speaker has given decision, if he wanted to. Normally not. So let us not go into this point.

SHRI CHITTA BASU: What is your objection? Sir, I have not understood the objection.

MR. CHAIRMAN: My objection is this. The Bill which is before the House, may be Constitutional or not, but you want to say that it is not legal, that it is not according to the law. Then you want a ruling from the Chair that it is not according to the law.

SHRI CHITTA BASU: Sir, I do not ask for your ruling. Sir, you are mistaken.

MR. CHAIRMAN: You are making an illegal objection in this House

SHRI CHITTA BASU: I am not standing here on a point of order. I am standing here for a ruling. I am here to oppose the introduction of the Bill. The Central Government has got no jurisdiction to bring in a Bill of this nature.

SHRI BAPUSAHEB PARULEKAR (Ratnagiri): Mr. Chairman, Sir, may I invite your attention to the proviso to Rule 72(2), which mentions:

> "Provided that when a Motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House."

Sir, it will be necessary for us to convince this August House that this Bill which is sought to be introduced, is outside the legislative competence.

SHRI CHITTA BASU: And in that connection, Sir, I have to make the submission. This is what I want to say.

MR. CHAIRMAN: All right.

SHRI CHITTA BASU: Sir, my contention is that this House has not got the legislative competence to consider this Bill, because the Central Government has got no right to legislate on a subject which is completely within the jurisdiction of the State,

List No. II and Entry 1 and Entry 2 of the State List exclusively determine the scope of the State Government. Therefore, Sir, I do not want to repeat what I have already said.

My second point is in regard to the Concurrent power. Actually the Bill claims to have the Concurrent power. On that ground also I oppose, because it is not within the Concurrent List. You are a senior Parliamentarian. The Concurrent List is also there. Let us examine for the time being the entries in the Concurrent List which enable the Central Government to bring in a Bill of this nature. The Concurrent List Entry 1, Entry 2, entry 3 mention Criminal Law, Criminal Procedure and Preventive Detention. Sir, now the objective of the Bill is not covered by either of the three Entries. Therefore, it is not within the competence of the Central Government to bring in a legislation of that nature. It is not within the Concurrent List. Therefore, this House has got no legislative competence to consider it.

Thirdly, a point has been mentioned in the Statement of Objects and Reasons of this Bill that the Central Government has got the overall responsibility for law and order all over the country . . .

AN HON. MEMBER: Not for legislature.

SHRI CHITTA BASU: ...and that the Central Government does not possess that power to legislate for the entire country at present. They might have the responsibility and in order to cover that responsibility, there is Entry 2A of the Union List, *i.e.* List No. 1 of the Seventh Schedule. Kindly look into it, if you like. If you want, I can read 2A. The Central Government's overall responsibility for law and order in the entire country is alone taken care of by Entry 2A of List I, *i.e.* the Union List. That also is not for that purpose. Entry 2A of List I is not covered by this Bill. It is not within the jurisdiction of 2A. Therefore, this is a Bill which this House has got no competence to consider. Therefore, I oppose the Bill. This is my ground on the basis of the Constitution.

There are political grounds also. (*Interruptions*). There are other grounds also. Now I enter into other grounds. (*Interruptions*) This has got a big and significant political repercussion. Our Constitution has delineated the powers of the States and the Centre after mature thought and deliberation, having regard to the historical and socio-economic conditions prevailing in our country. And a balanced relation between the Centre and the States has been created by the founding fathers of the Constitution. There is a balanced relation as per the existing provisions of the Constitution, and this is very delicate.

My objection on this ground. that the Bill will disturb the delicate balance as visualized by the Constitution of the country. It is not only going to disturb it, but I am sure that if the Central Government moves in this direction, it will damage the very delicate Centre-State relation which has been built up by the Constitution *i.e.* after mature thought by the founding fathers of the Constitution of this great country.

MR. CHAIRMAN: May I ask a question: Are the courts in this country established under the Cr. P. C.?

AN HON. MEMBER: They are.

MR. CHAIRMAN: Then I draw your attention to the Concurrent List No. 2. (*Interruptions*).

SHRI G. M. BANATWALLA (Ponnani): Don't damage his speech. What are you doing Sir?

MR. CHAIRMAN: You are raising a legal point. I am a law-knowing person. I want to discuss law.

SHRI CHITTA BASU: What is your point, Sir?

MR. CHAIRMAN: It says here: "Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of the Constitution. .

SHRI CHITTA BASU: I am sorry, Sir. You are a lawyer, but you have not gone through the Bill. The object of the Bill is not only to set up the court but also to declare some areas as disturbed areas. (*Interruptions*). You may be a very important legal man. You can have a special court where a disturbed area has already been declared. You cannot put the cart before the horse. The first phase is to declare an area as a disturbed area. Once an area is declared as a disturbed area, then the question of constituting a special court may come. Therefore, the first question is: who has got the authority to declare an area as a disturbed area. The parent Act was very specific. The State Governments are authorised to declare an area as a disturbed area and the State Governments can also constitute special courts in that area I am sorry I have to disturb you

MR. CHAIRMAN: That is a law point.

SHRI CHITTA BASU: This is not a legal point here.

MR. CHAIRMAN: You have your opinion. I have my opinion

SHRI CHITTA BASU: I am sorry I have disturbed you. Therefore, this point has to be noted that the authority to declare an area as a disturbed area is vested in the State Governments. Now the Central Government wants to have that power. To declare an area as a disturbed area comes within the purview of entry of public order, police which is in the State List. As you are aware having regarding to all these things, the Constitution has delineated the powers between the States, Centre and the Concurrent List. This very move would not only, distort, as I said earlier, but ultimately damage this very delicately built up Centre-State relation by the Constitution makers of our country. This is a dangerous trend and, therefore, I oppose it.

The object of the Government is malafide. You may say, no. But I say that the object of the Government is malafide. (*Interruptions*). The Government wants to have the powers of the States and make them politically subservient, rather vassal entities, they want to make all the States politically subservient to the Central Government. They want to give no right to the State Governments. They want to give no autonomy to the State Governments, not even in those areas which have already been demarcated by the Constitution, under the jurisdiction of the States. Already the area of jurisdiction of the State Governments is very limited and it has to be expanded. I declare that the area of jurisdiction of the States should be further expanded. On the contrary, it is being reduced. Therefore, it is a very dangerous political trend which has to be opposed and that trend is reflected in this Bill

I apprehend a grave political mischief. What is that? Earlier under Article 352 of the Constitution of our country the Central Government was empowered to declare internal emergency on the ground of internal disturbances The 44th Amendment Act substituted the words 'internal disturbances' by the words 'armed rebellion'. Therefore, the Government has got no power today as they had in 1975 to declare an emergency on the ground of internal disturbances. That instrument is no longer with you but you want to retain that power. You want to have the right to declare an internal emergency on the ground of internal disturbances. As I told you earlier, the intention of the Government is malafide. They want to circumvent the Forty-fourth Amendment Act and declare an Emergency. How is it possible? The Central Government, by this law, is competent to declare a part of a State—or a number of States—to disturbed areas. All the nineteen States can be declared as disturbed

areas simultaneously. And the Central Government's authority would be there to have these courts and other powers, and virtually an internal emergency would be declared. This is the political mischief. This is the intention, which is not *bona fide*, but which is a *mala fide* intention. Therefore, this is a grave danger to democracy in our country.

Lastly, I conclude by saying that this Bill is a pernicious Bill. It is an evil portent of the danger that is ahead. It is the beginning of the end of the rights of the States to maintain law and order in the States which the Constitution has authorised them. It is a bid of the Centre to encroach upon the rights of the States and to do away with the federal principle enshrined in the Constitution of our country. It is a bid to set up a unitary form of Government. It is a *mala fide* intention to declare an emergency under the cover of this black Bill. Therefore, on constitutional grounds, on political grounds, having regard to the future of democracy in our country, in order to preserve the very federal structure of our country which has built up the unity and integrity of the country. I oppose this Bill tooth and nail and I urge upon the House to oppose this Bill.

MR. CHAIRMAN: Shri Bapusaheb Parulekar.

SHRI BAPUSAHEB PARULEKAR (Ratnagir): Mr. Chairman, I rise to oppose the introduction of this Bill on grounds of impropriety and on the other ground, namely that it is outside the legislative competence of this House. In doing so, I fully endorse the submissions made by my esteemed colleague, Shri Chitta Basu. I will not repeat them. But I would like to add a few points and I would request the hon. Home Minister, through you, to consider that if this Bill is passed, it may be that he will be indulging in doing some unconstitutional things. Therefore, my hon. friends', should be convinced *prima facie* that my opposition to the introduction of this Bill which is going to be passed into an Act is against the proviso to Rule 72, as he may be committing an unconstitutional act. I would like to make an important statement about this Bill to which my hon. friend Shri Basu had referred. The original Bill was introduced, I may say, on the recommendation of the National Integration Council and the recommendation was that the Special Courts should be constituted to deal with offences connected with communal disturbances. This was the actual cause for which the courts were directed to be established by this particular Council. However, in the year 1976 during the Emergency after about eight or nine years of this recommendation, this Act came to be introduced and the scope was enlarged. We find that this Act of 1976 came to be enacted with reference to the religious, racial, language, regional groups, castes and communities. That would show that the Government at that time wanted to enlarge the scope of the recommendations to have a broader legislation. An effort is being made now by this particular Bill to enlarge the scope, which is very dangerous. Three things emerge if you kindly read this Bill. It is not only for the establishment of courts so as to attract Entry 1, of he Concurrent List of the seventh schedule. The first thing is that the Bill defines "appropriate Government" to mean the State Governments and the Central Government. That is one amendment which is sought to be made. The second amendment to which reference was made by Shri Chitta Basu was that the Central Government get a right to declare a particular area as a disturbed area, which right under the 1976 Act was solely given to the State Government. The third and more mischievous provision is that if the Central Government makes a notification, the State Government has no right to make any change. Kindly refer to clause 3 (a) (ii):

"The following proviso shall be inserted at the end, namely:—

'Provided that—

(a) where a notification has been issued under this sub-section by the Central Government in relation to any period specified therein with respect to any area in a State, the State Government shall not issue any notification in relation to the whole or any part. "

Let us take a concrete case of the State Government of Jammu and Kashmir or West Bengal or Kerala: The Central Government can declare the entire area of the State as a disturbed area and to that extent the power which was given to the State Government under the 1976 Act has been usurped or could be usurped if this particular Bill is passed. What will be the position? The relations between the Centre and the States will be affected to a considerable extent. Day in and day out, since this Government came to power, they have expressed their allergy towards special courts. But instead of scrapping this particular Act, they are introducing this Bill. On this ground and on the grounds submitted by Shri Chitta Basu, on the ground of propriety, I oppose this introduction.

My second ground of opposition is the unconstitutionality of it. I am very happy that you, Sir, a member of the Bar and a person with legal acumen, are in the Chair when we are debating this issue. The Act to which the amendments are sought to be made is not in existence today which feel has been lost sight of, provided you agree with me that this is a State subject, a subject in the State list. A reference is made in the State list to public order. The question of declaring an area as disturbed area and to issue a notification and all other things, except establishment of courts, is governed by the words 'public order' 'public order' has not been defined in our Constitution, but our Supreme Court had occasion to define what is public order, as defined in serial number 1, in the State List and that has been reported in AIR 1950 Supreme Court at page 124. It says:

"The expression 'public order' in this entry has not been defined in any statute or the Constitution. It is an expression of wider connotation and signifies the state of tranquility prevailing among the members of society as a result of internal regulation enforced by the Government which they have instituted."

I am saying this because if you [illegible] the Bill, all the provisions relate [illegible] this particular interpretation given the highest tribunal, except as you rightly observed, the establishment of the courts. This is the position, whether the Centre has a right to legislate for the State subject. In this connection, it would be necessary to refer to articles 246 to 250. Article 245 speaks of 'Extent of laws made by Parliament and by the Legislatures of States'. That means, Parliament can legislate with reference to List I and State Legislatures with reference to List II in Seventh Schedule. Article 246 is very important. Sub-clause (1) of that article says:

"(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule...."

Then I come to sub-clause (2):

"(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule . . .

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters

enumerated in List II in the Seventh Schedule . . . "

Article 247 is of no use, but one has to refer to article 248, which says:

"Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List."

The most important articles with which we are concerned are articles 249 and 250. Parliament has a right to enact with reference to the subjects mentioned in the State List only if it is in the national interest and the Rajya Sabha passes a resolution with two-thirds majority, so that the Lok Sabha can pass a law with reference to the items mentioned in the State List. That is a condition precedent. So, unless and until the Rajya Sabha passes a resolution that the Lok Sabha should passes law with reference to the subjects mentioned in the State List, the Lok Sabha has no right to say in legal terminology has no jurisdiction, to pass any law with reference to any State subject. With this background, I would request you to kindly read article 249:

"(1) Notwithstanding anything in the foregoing provisions of this Chapter,"

—that is, with reference to article 248—

"If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force."

We do not find anywhere that such a resolution has been passed by the Rajya Sabha. You asked a pertinent question to Shri Chitta Basu on this point. Unless law and order is made a Concurrent subject, the Home Minister here will have no jurisdiction. Therefore, as far as this legislation is concerned, it is within the exclusive jurisdiction of the State Governments.

Therefore, I say that this is an act of a legislative incompetence, because the condition precent that is necessary to be fulfilled, what is, the passing of the Resolution by the Rajya Sabha, has not been done. So, Parliament has no jurisdiction. Otherwise, you will ask me how is it that in the year 1976, without such a resolution, this Act came to be enacted. The exemption is given in article 250. When there is an Emergency, even without such a resolution legislation with respect to State subjects can be enacted. Article 250 says:

"(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List."

So, exercising the powers given in 250(1), the Government was competent to pass that legislation, even though the conditions laid down in article 249 were not fulfilled. Therefore, there is legislative incompetence, so far as this is concerned.

As I said at the beginning, the Act to which we are making this particular amendment is no existing law because sub-clause (2) of article 250 says:

"A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months . . ."

The Emergency was lifted on the 27th January 1977. So, now this Act is

not in force. Therefore to an Act which is not in force, this Government, the Government and this august House, are going to amend.

In my respectful submission, these are the important points. There is a constitutional infringment, a breach of some of these articles. Therefore, *prima facie*, this is a case where the provisions of Rule 372 are attracted. I may be right, I may not be right but, *prima facie*, I am convinced that this is the position. Therefore, I oppose the introduction on the ground of impropriety, and on the ground of legislative in competence. I would request all hon. Members that in order to see that we did not indulge in doing an unconstitutional thing in the sovereign body of this particular country, let us have a debate and, till then, the hon. Home Minister should not introduce this particular Bill, so that we may not do anything unconstitutional.

SHRI HARIKESH BAHADUR (Gorakhpur): Mr. Chairman, Sir, I oppose the introduction of the Disturbed Areas (Special Court) Amendment Bill. I oppose its introduction on the ground that this Bill is unconstitutional. Several hon. Members have pleaded that this Bill is unconstitutional, and just now the hon. Member, Shri Parulekar said that since no resolution has been passed by the other House, this Bill cannot be discussed here. Therefore, it is beyond the legislative competence of this Bill. Such an unconstitutional Bill, has been brought before the House. It is very difficult to understand what the intention of he Government is. In my opinion this Bill is an interference with the autonomy of the States because law and order is exclusively a State subject. This has been said in so many words in the Constitution of India, but this Government, which does not have any respect for the Constitution is doing like that. Every State Government has got the right to declare any area as disturbed area and they can constitute a Special Court also for the purpose. But the Central Government wants to interfere in this matter because wherever there is a Government of the Opposition Party they want to create problems for that. As some Members have already pointed out, I would like to know whether those States of U.P., Karnataka and Andhra where there are several cases in which many people have been murdered or killed will be declared as Disturbed Areas if this Bill is adopted. No, that will not be done. But wherever there are governments by Opposition Parties, those State Governments will be put to some trouble and difficulty. With this intention this Bill has been brought before this House. This Bill, in my opinion, is another step towards erosion of democratic values and also to establish authoritarianism in this country. The Government is already talking of changing this parliamentary system and bringing in the presidential system. Sometimes the Prime Minister says that there are some things which must be replaced in our parliamentary system. All such types of things are coming from the Government side. It means, it is a step in that direction to fulfil the ambition of authoritarianism.

Sir, the Central Government wants to control and pressurise the State Governments through this legislation That is why I can say that the intention of the Government is *mala fide* and this Bill must be opposed and I oppose this Bill with all the emphasis at my command and I want that it should be rejected look, stock and barrel.

SHRI KRISHNA CHANDRA HALDER (Durgapur): Mr. Chairman, I oppose the introduction of the Disturbed Areas (Special Courts) Amendment Bill.

Sir, Mr. Jyotirmoy Bosu, Mr. Chitta Basu and Mr. Parulekar have put forward constitutional and legal constraints and discussed in detail. I do not want to take much of the time of the House. You know that the law

and order is a State subject. Under the provisions of the Disturbed Areas (Special Courts) Bill, 1976, only the State Governments are empowered to declare an area as Disturbed Area when Special Courts can be constituted. So, under this, the State Governments are empowered to declare one of the areas as Disturbed Area and constitute the Special Courts. Now, in bringing this Bill, the Central Government . . .

(Interruptions)

MR. CHAIRMAN: Mr. Chitta Basu you are disturbing your colleagues.

SHRI KRISHNA CHANDRA HALDER: I can say that the Central Government has no confidence or has lost confidence in the State Governments. They have lost confidence in their ability to run the States properly. So, I think, this is an attack on the State Governments. It is nothing but an attack on the very root of the federal structure of our Constitution. The powers of the Centre and the State Governments have been properly defined in our Constitution. There must be co-operation and co-ordination between the Centre and the States. There must not be any confrontation between the Centre and the States.

I am opposing the introduction of this Bill. In many States Congress (I) Governments are there. In Kashmir, there is National Conference. In Tamilnadu it is ADMK. You know about West Bengal and Tripura. In West Bengal and Tripura, Left front Governments are there. In Kerala there is Left Front Democratic Government. So, you can use this in a politically motivated way at places *where there is no Congress (I) Gov*ernment. Actually you want to pressurise the State Governments to toe your line in those States.

You have passed the National Security Act. You passed an Act for rationalisation of the wages of LIC employees. The Supreme Court has upheld the rights of the LIC employees. Without declaring emergency, you have created an atmosphere of emergency. So, you have brought undemocratic, unconstitutional and illegal Bill. If this Bill is passed you can use it in a politically motivated way against those State Governments which are not run by the Congress (I). To run the Government in a proper way in this country, you should not take such a measure which is undemocratic. You have to have the confidence in the people. You should have confidence in the State Governments. It may be that the other parties may form the Government and they are running the Government in some States. Intellectual and sober people say that the West Bengal Government is the best administered Government at this time. If you pass this Bill you will declare, as Shri Parulekar has said, the whole of the State of West Bengal as a disturbed area and the power of the State will be taken away. Similarly, you will take away the powers of the States of Kerala and Kashmir If you run the Government in this way, then I say this Government headed by Shrimati Indira Gandhi is running the Government in an autocratic way. Authoritarianism is now on the increase. So I want to oppose it. I appeal to all the democratic people of our country to rise, to form a national front, irrespective of party affiliations, and to oppose authoritarianism and this type of undemocratic and unconstitutional Bills.

With these words, I oppose this Bill strongly, as far as I can.

MR. CHAIRMAN: Hon. Members, the Deputy-Speaker had made an announcement that the Calling Attention motion will be taken up at 4 O' Clock. It is now nearly 4 O' Clock. I want to know the sense of the House, whether this motion should continue or the Calling Attention motion should be taken up.

SHRI K. P. UNNIKRISHNAN: Let this be finished and then you may take up the Calling Attention motion.

MR. CHAIRMAN: Is it the sense of the House?

HON. MEMBERS: Yes.

AN HON. MEMBER: What about 377?

MR. CHAIRMAN: I do not know about that. Shri Unnikrishnan.

SHRI K. P. UNNIKRISHNAN: Mr. Chairman, Sir, it would have been better if the Law Minister had been here to clear many of the objections that have been raised. Not that I have any disrespect; I hold my distinguished Home Minister in great respect and I have also considerable affection for him as also for the charming naivete with which he expresses himself in the House while discussing the serious questions of the day.

The point is that yesterday, in a sentence or two, he tried to make out, after all, this was a very innocent exercise, a very simple Bill amending the 1976 Act, and that there was not much to be said. But that is exactly why I say, it would have been better if the Law Minister had been here. Possibly, he has been led to live by the people—I am not questioning his competence—that it is a very simple operation.

I just want to invite your attention to the Statement of Objects and Reasons of this amending Bill. It says:

> "While the law and order is a State subject, the overall responsibility—mark the words "overall responsibility"—continues to be with the Centre."

And again I quote:

> "In the event of a serious law and order situation developing in a State, timely action is necessary."

That is a very unexceptionable objective; I have no quarrel with the objective as such. But the whole question is, whether, what you are trying to do in this House today is constitutional. Is it within the legislative competence and jurisdiction of this House? That is why I wanted to invite your attention to the Statement of Objects and Reasons.

The concept of "overall responsibility", I submit, has to be constitutional. We have a written Constitution. This Parliament is not sovereign like the Parliament of the United Kingdom. All the limbs of the State are subject to and shall be subjected to the provisions of Constitution as well as their respective jurisdiction. That is why I say, this overall responsibility that he claims in the Statement of Objects and Reasons has to be a constitutional responsibility. Then he talks about a serious law and order situation developing in a State. What is he contemplating?

16 hrs.

In our Constitution, due to historic reasons—this can be explained by Kamalapatiji, Shri Brahmananda Reddy and Shri Venkataraman because they were associated with the Constituent Assembly and I know only through records—it has been declared that we shall have a Union of States. This concept of Union of States, I would contend, has a very important meaning. It has a crucial significance. It is because of this feature that we can clearly delineate the federal features of our Constitution.

We have a clear three-fold division of legislative powers which are also basically competing legislative powers. A harmonious construction has to be built into it so that the Constitution can remain supreme. We decided not to go in for a process of over-centralisation nor can uniformity work in this great land of diversity. That is why we want an amicable union.

It is at the roots of this constitutional safeguards and concept that today this Bill is committing an open assault. In 1972, when this Bill was brought up on the recommendation of the then National Integration Council when we had communal disturbances in the States and it was for speedy disposal of criminal cases arising from these disturbances, this Bill was placed during the Fifth Lok Sabha in this House. This power was

[Shri K. P. Unnikrishnan]

given by the very same House to the State Government and, rightly so, as law and order is essentially a State subject.

But now this very Act, the original purpose of which was asserted and approved by this House, is sought to be amended, to run counter to the original purpose of this legislation and in open and unambiguous infringement of the rights of the States.

No Minister mention in the aims and objects activities of anti-social elements that he is seeing all around and, under the guise wants to have a right under the Act to declare what are known as 'disturbed areas'. Essentially what is being sought from this House is the right to declare 'disturbed areas'. So, he will have his own enclaves of 'disturbed areas' in the States or wherever he chooses to have. That is why I say that if the Law Minister had been here—I am not questioning the competence of the Home Minister as Minister in-charge of the Bill—it would have been better.

This is a clear case of what is known as colourable legislation that is to say under the guise or pretence or in the form of exercise of its own powers, to carry out an object which is beyond its powers and—trespass on the true powers of legislation which belong to some other body or bodies. That is what is happening in this case and that is why I am questioning the legislative competence of Lok Sabha to enact this legislation which subverts the Constitution, infringes the Constitution and as an amending Bill, perverts and subverts the original Bill itself.

Lok Sabha cannot clothe itself with legislative authority inconsistent with the Constitution which gave it its birth and sanction.

Under the Constitution, the legislative powers are specifically distributed. It is impossible for you to do so. Therefore, I demand that you as a guardian of the Constitution can also give a ruling as it has happened—as I mentioned earlier—in 1958 and 1963, to say that the proposed amendment is unconstitutional. But, ordinarily Hon. Speakers may not go into the question of vires. What I am trying to point out is, to help and aid the House, the Chairman is competent to give his own view.

Using legislative powers, ordinary legislative powers—as distinct from constitutent powers with which we are endowed for subverting the processes—is another crime that is being committed. If he really wanted to take over these powers, as has been pointed out by my friends, Shri Chitta Basu and Shri Bapusaheb Parulekar, he should have gone to the Rajya Sabha under article 249 and got a Resolution adopted or he should have come forward with a straightforward Constitutional Amendment and sought a change in the Schedule itself; then I could have understood it, if the situation so warranted. But, as I said, it is a colourable legislation; under the guise and pretence of something else, he comes before the House, which has no legislative competence to enact this Bill, and tries to subvert the Constitution.

That is where I would suggest to you and through you to this House that we would like to hear the Attorney-General on this question because important questions of Constitution have been raised; we would like to hear the Law Minister and we would like the Attorney-General to address this House, so that we can be satisfied that what we are attempting to do does not infringe on the rights of the States. He may feebly rest himself on the crutches of item 11A of the Concurrent List. But there is a long list of cases—which probably Mr Venkataraman will recall—both in Canada and Australia which have been followed by our Supreme Court. In the Supreme Court itself there have been the case of State of Bihar *vs.* Kameswar and Gajapati *vs.* State of Orissa where it has been held that

the substance and content of the Act, if it runs counter to legislative competence, shall be void. That is why, in all humility, I would request the hon. Minister to withdraw this Bill and to come forward with a Constitutional Amendment or go to the Rajya Sabha seeking a Resolution under article 249 and bring forward a Bill in a proper form, so that people would know what he really wants to do, and not try to arm himself by infringing on the legislative competence of the States by pursuing with this legislation. Sir, on what is a forbidden subject, something you cannot enact; if you do so it shall be a fraud on the Constitution; I hope that will not be perpetrated. If he still insists on introducing this Bill, I stand here to oppose the introduction of the Bill.

SHRI MUKUNDA MANDAL (Mathurapur): Mr. Chairman, Sir, I rise to oppose the introduction of this black Bill, the Disturbed Areas (Special Courts) Amendment Bill. As my colleagues have rightly said earlier, it is an attack on the federal structure of our country. I would say that it is a Constitutional law that the Government is going to enact. In the federal structure, we have certain features. One important feature is that we have a Constitution which is written and which is rigid. Another important feature is the Division of Powers. That 'division of powers' has been enumerated in our Constitution in the Seventh Schedule where List-I is the Union List, on which the Union Government has got the powers; List-II is the State List, on which the States have got the powers. In List III, the concurrent powers have been enumerated. But there is no provision—my colleagues have already said that—there is no expressed provision in the Constitution that the Central Government has got the authority or that the Parliament has got the authority to encroach upon the State subjects and State powers. It is absolutely written and given in List II that law and order is the State subject and our hon. Home Minister has rightly said that while law and order is a State subject, the overall responsibility continues to be that of the Centre.

Here I rember a story—the story of a school boy who only committed to memory an essay about the cremation ground. But in the examination hall, he got the question to write an essay on a cow. So he begins by writing that cow is an animal, ultimately it has to die and after its death, it is brought to the cremation ground. And, thereafter, he reproduces what all he has committed to memory about the cremation ground In the same way, the Minister began by saying that law and order is a State subject and then he says—but the overall authority is of the Central Government and 'so we are going to enact this law.' etc.. etc. So, I oppose the introduction of this black Bill.

This Bill is aimed at abolishing the democratic set up of the country and the Centre-State relationship. The State Governments are demanding that it should be improved. The State Governments are seeking more powers

At that stage, our Home Minister has brought this type of Bill.

If this Bill is enacted, what would be the effect? The effect would be that it would act like an incubator machine which will produce some gansters and some goondas who will create a law and order problem in non-Congress (I) ruled States, and, thereafter, the Central Government and our Home Minister will say that the law and order situation has gone down and 'so that State should be treated as a disturbed State and Special Courts should be set up.'....

MR. CHAIRMAN: The Home Minister has not imputed any motive to you or to your Party: but you are imputing all sorts of motives.

SHRI MUKUNDA MANDAL: My submission is that...

MR. CHAIRMAN: Submission cannot be proof.

SHRI MUKUNDA MANDAL: My doubt is...

SHRI SAMAR MUKHERJEE: (Howrah): That is our experience.

MR. CHAIRMAN: Anyway you go on speaking in your own way.

SHRI MUKUNDA MANDAL: Our doubt is that Molotov cocktails will be produced by this Bill. This law will produce Molotov cocktail throwers and they will create a law and order situation in the non-Congress (I) ruled States. That is my doubt.

MR. CHAIRMAN: What is this Molotov Cocktail?

SHRI MUKUNDA MANDAL: That is the petrol bomb.

SHRI G. M. BANATWALLA (Ponnani): That you will no understand. They only understand.

SHRI MUKUNDA MANDAL: So, Sir, this is an anti-people Bill. This is an anti-working people Bill. I think this Bill is intended to perpetuate the hegemony of a draconian administration. So, this Bill is unconstitutional, immoral and is meant for the punishment of peace-loving people. So I oppose the introduction of this Bill.

श्री राम विलास पासवान (हाजीपुर) : सभापति महोदय, मैं अपनी बात हिन्दी में समझा रहा हूं ।

सभापति महोदय : आप चाहें जिस भाषा में बोलिये, मैं समझ रहा हूं ।

श्री राम विलास पासवान : सभापति महोदय, पहले तो मैं विक्षुब्ध क्षेत्र (विशेष न्यायालय) संशोधन विधेयक, 1981 में प्रयुक्त टर्म विक्षुब्ध के बारे में कहना चाहता हूं । आप हिन्दी के बहुत जानकार हैं । "डिसटर्ब्ड" का अनुवाद "विक्षुब्ध" कैसे हो गया, यह बात हम लोगों के दिमाग में नहीं आती है । अंग्रेजी में कहते हैं "डिसटर्ब्ड" और हिन्दी में कहते हैं "विक्षुब्ध" । विक्षुब्ध ठीक अनुवाद नहीं है ।

श्री रामावतार शास्त्री (पटना) : यह ट्रांसलेशन गलत है ।

श्री राम विलास पासवान : विक्षुब्ध तो "नाराज" या "नाखुश" होता है ।

सभापति महोदय : आप खुश हैं या नाखुश ?

श्री राम विलास पासवान : हम तो इस विधेयक से बिल्कुल नाखुश हैं । जब 1976 में यह कानून बनाया गया था, तो हम लोग यहां नहीं थे, जेल में थे, उस समय भी हम इसके खिलाफ थे ।

सभापति महोदय : आपस में भी नाखुश रहते हैं ?

श्री रामावतार शास्त्री : यह "अशान्त क्षेत्र" होना चाहिए ।

श्री राम विलास पासवान : "अशान्त क्षेत्र" तो ठीक हो सकता है । लेकिन "विक्षुब्ध" हमारे दिमाग में नहीं आता है ।

इस बिल के उद्देश्यों में कहा गया है :—

"यद्यपि विधि और व्यवस्था राज्य का विषय है तथापि केन्द्र का सर्वोपरि उत्तरदायित्व बना रहता है, और उस विस्तार तक केन्द्रीय सरकार को राज्य सरकार के उत्तरदायित्वों में हाथ बटाना पड़ता है ।"

उसके बाद कहा गया है :—

"राज्य में गम्भीर विधि और व्यवस्था की स्थिति उत्पन्न होने पर समय के भीतर कार्रवाई करना आवश्यक है ।"

सभापति महोदय, जब हम बच्चे थे, तो हम एक कहानी पढ़ा करते थे ।

सभापति महोदय : शमशान वाली कहानी तो नहीं है ?

श्री राम विलास पासवान : वह नहीं है।

एक छोटा बच्चा रोज स्कूल जा कर पेशाब कर दिया करता था। उसके मास्टर ने सोचा कि उसके बाप से जा कर शिकायत करते हैं। लेकिन मास्टर ने बच्चे के घर जा कर देखा कि उसका बाप छप्पर पर से पेशाब कर रहा है।

इस विधेयक के उद्देश्यों में कहा गया है कि अगर किसी राज्य में गड़बड़ी होगी, तो केन्द्रीय सरकार वहां हस्तक्षेप करेगी। और अगर केन्द्रीय सरकार के यहां गड़बड़ी होगी, तो क्या वहां यू एन ओ को लाया जायेगा ? मैं आपके माध्यम से कहना चाहता हूं कि केन्द्रीय सरकार पहले अपने मामलों को तो ठीक कर ले, और देखे कि जहां उसका राज्य है—यूनियन टैरीटरीज में, वहां केन्द्रीय सरकार का काम किस तरह से चलता है।

माननीय सदस्य, श्री चित्त बसु, श्री पल्लेकर और कई अन्य सदस्यों ने कांस्टीट्यूशनल मुद्दों के अलावा पोलीटिकल पहलू भी उठाया है और कहा है कि इसमें पोलीटिकल मोटिव भी संलग्न है। इस बात को नकारा नहीं जा सकता है कि यह विधेयक राजनैतिक उद्देश्य की पूर्ति के लिए लाया गया है।

इस विधेयक के उद्देश्यों में आगे कहा गया है :—

> "विक्षुब्ध क्षेत्र (विशेष न्यायालय) अधिनियम, 1976 के उपबन्धों के अधीन केवल राज्य सरकार ही किसी क्षेत्र को "विक्षुब्ध क्षेत्र" घोषित करने के लिए सक्षम है जब उस क्षेत्र के लिए विशेष न्यायालय गठित किया जा सकता है।"

1976 में जब यह कानून बनाया गया था, उस समय पूरे देश में इमर्जेन्सी लगी हुई थी, किसी को बोलने का अधिकार नहीं था, हम लोग जेल में बंद थे, और, जैसा कि माननीय सदस्य, श्री पल्लेकर, ने कहा है, उस समय उस बिल को राज्यसभा में भी पास करवाने की जरूरत नहीं पड़ी, सीधे लोक सभा ने उसको पास कर दिया था। 1976 में खूब सोच-समझ कर सरकार ने कानून बनाया था, लेकिन उस कानून से भी सरकार की संतुष्टि नहीं हो रही है। हमारे जैसे लोग तो 1976 के कानून के भी बुनियादी तौर पर विरोधी थे। वह कानून सही नहीं था।

उद्देश्यों के अन्त में कहा गया है :—

> "अतः, यह विधेयक, किसी क्षेत्र को अधिनियम के अधीन "विक्षुब्ध क्षेत्र" घोषित करने के लिए और "विक्षुब्ध क्षेत्र" में किए गए कतिपय विनिर्दिष्ट वर्गों के अपराधों के शीघ्र विचारण का उपबन्ध करने के प्रयोजन के लिए विशेष न्यायालयों का गठन करने के लिए, केन्द्रीय सहकार को समवर्ती शक्तियां प्रदान करने के लिए विक्षुब्ध क्षेत्र (विशेष न्यायालय) अधिनियम, 1976 का संशोधन करता है।"

जिन बातों के लिए विशेष न्यायालयों की व्यवस्था की जा रही है, वे सब बातें भारतीय दण्ड संहिता की धारा 153क में दी गई हैं।

उपधारा (1) में कहा गया है :—
"जो कोई—

(क) बोले गए या लिखे गए शब्दों द्वारा या संकेतों द्वारा या दृश्य रूपणों द्वारा या अन्यथा विभिन्न धार्मिक, मूल-वंशीय या भाषाई समूहों या जातियों या समुदायों के बीच शत्रुता या घृणा की भावनाएं धर्म, मूलवंश,

भाषा, जाति या समुदाय के आधारों पर या अन्य किसी आधार पर संप्रवर्तित करेगा या संप्रवर्तित करने का प्रयत्न करेगा, अथवा

(ख) कोई ऐसा कार्य करेगा, जो विभिन्न धार्मिक, मूलवंशीय या

"समूहों या जातियों या समुदायों के बीच सौहार्द बने रहने पर प्रतिकूल प्रभाव डालने वाला है और जो लोक प्रशान्ति में विघ्न डालता है या जिससे उसमें विघ्न पड़ना सम्भाव्य हो, अथवा"

फिर (ग) में बहुत दिया है जिसके अंत में कहा है—

"वह कारावास से जिसकी अवधि तीन वर्ष तक की हो सकेगी, या जुर्माने से, या दोनों से, दण्डित किया जाएगा।"

यह पूरा का पूरा इलाका राज्य सरकार का इंडियन पीनल कोड के तहत मिला हुआ है। फिर 113(ख) भी पढ़िए, वह भी वही है। तो मैं यह कह रहा था कि वह पूरा का पूरा इंडियन पीनल कोड के मुताबिक अधिकार दे दिया गया है। डिस्टर्बड एरिया घोषित कौन होगा ? अधिकांश जगहों में आपकी ही राज्य सरकार है एक दो राज्यों को छोड़ कर। तो सारा तो उपद्रव आप के ही यहां हो रहा है। आज हम लोग जो आन्ध्र का मामला कह रहे वहां आन्ध्र प्रदेश में किस का राज है ? बिहार से सभापति महोदय, आप आए हैं, बिहार में किस का राज है ? यू पी में किसका राज्य है ? जब केन्द्र में आपकी सरकार है, स्टेट में आप की सरकार है, आप तो सारी पावर हैं और उसके बावजूद भी आप समस्या का हल कर नहीं पा रहे है तो आप क्या समझते है कि यह कानून की मोटी-मोटी किताब बना देने से और रोज-रोज संविधान में संशोधन करने से आप समस्या पर काबू पा लेंगे ? आप नही पा सकते। इसलिए मैं हमेशा कहता हूं कि सरकार का कुछ करने का मन है नही। सरकार हमेशा देखती रहती है अपने चश्मे से और और देखती रहती है कि कौन उसके विरोधी हैं ? किसी दिन पार्लियामेंट को डिस्टर्बड एरिया घोषित कर दिया जायेगा और हम लोगों को सबको एक ही दिन जेल में कर दिया जायेगा। कह दिया जायेगा कि यहां डिस्टर्बड एरिया हो गया। जहा आपके खिलाफ कोई बोलेगा वह डिस्टर्बड एरिया हो जाएगा।

तो सारा का सारा अपना-अपना क्षेत्र बना हुआ है, राज्य सरकार की सूची में कौन है, केन्द्र सरकार की सूची में कौन है, यूनियन टेरिटरी में कौन है...

सभापति महोदय : ऐसा तो बिना अध्यक्ष की स्वीकृति के कोई नहीं कर सकता।

श्री राम विलास पासवान : किसी दिन वह भी कानून बना दिया जायेगा... (**व्यवधान**)...आप अध्यक्ष रहेंगे, तो हमें कान्फिडेंस है कि पास नहीं होगा लेकिन किसी दिन वह भी दिन दूर नहीं कि यहां से हम लोग जाएंगे और... (**व्यवधान**)... हां,**... (**व्यवधान**)...

SHRI G. M. BANATWALLA: That sentence, that reference must be struck off the record. We have tolerated enough of it. During the speech also, he makes mention of it. It is too much.

MR. CHAIRMAN: I have understood the implication; you are quite correct.

आप कृपा कर के वह वापस कर लीजिए।

श्री राम विलास पासवान : तो कर दीजिए न। आप ने चूंकि छेड़ दिया चेयर पर से तो हमने कह दिया ..(**व्यवधान**)..

SHRI C. T. DHANDAPANI (Pollachi): Sir, I would like to say that when some of these Members are present in the House, then it becomes a disturbed House.

SHRI G. M. BANATWALLA: Why do you want to cast aspersions?

MR. CHAIRMAN:

किसी व्यक्ति के सम्बन्ध में आप यह नहीं कह सकते।

That portion may be expunged.

श्री राम विलास पासवान : आप ने कह दिया, मैंने विदड्रा कर लिया। लेकिन माननीय सदस्य यहां से बाहर निकलें और उनकी गिरफ्तारी हो जाये डिस्टर्बड एरिया के नाम पर तो क्या यह अनपार्लियामेंटरी है? (**व्यवधान**).. तो जरा सा लोग हिन्दी भी तो समझा करें। एक ही भाषा को समझने से तो काम नहीं चलेगा।

सभापति महोदय : जिस भाषा में कोई समझे उसी में समझाइए।

श्री राम विलास पासवान : मैं कह रहा था कि सरकार कान्स्टीच्यूशन अमेंड किए बिना ही अपनी पावर अख्त्यार कर रही है और कान्स्टीच्यूशन को सबवर्ट कर रही है। यह सरकार बिना एमर्जेन्सी के ही एमर्जेन्सी लाना चाहती है। इसीलिए जो यह सरकार का कदम है वह बिलकुल ही असंवैधानिक है। जो संविधान में राज्य को पावर दी गई है, स्टेट और केन्द्र का जो रिलेशन है इसको तोड़ने वाला है और यह असंवैधानिक ही नहीं बल्कि सरकार की नीयत भी इसमें साफ नहीं है, इसलिए मैं इसका विरोध करता हूं।

SHRI NARAYAN CHOUBEY (Midnapore): Sir, I oppose the very introduction of this Bill. We have a Constitution and the law and order is a State subject all throughout. Sir, the federal structure of our Constitution enjoins upon the States and States alone to look to the question of law and order. During the year 1976, during the time of emergency, the parent Bill was passed which has enjoined upon the States the authority to declare an area as a 'disturbed area'. It is the States alone which are competent to do it. But now, Sir, in a very innocent manner, they have brought forward this Bill to amend that parent Bill. Sir, it is not so inno-

**Expunged as ordered by the Chair.

cent as it looks on the surface if I may say so. In our opinion, it is an infringement of the rights of the States. You take away these rights from the States which the States have been discharging all along. The Constitution of India has given these powers to the States. I feel that the introduction of the Bill is entirely motivated. Government should withdraw the Bill. What are the reasons for the Government to bring forward such a Bill, Sir? What is the present socio-economic atmosphere in the country? Is the Government apprehensive that any large scale disturbance in any State will take place for which they have to be armed with legislative powers and so they have come forward with this Bill? Sir, this is not the case. Already they have got enough power to combat such activities. Therefore, I do not know what is the real objective of the Government. I disagree with the arguments put forward by the Government. They say, we are heading towards a big crisis and so on. All this shows that the Government has bad intentions. This Government has been in power for about a year and 4 months and still it has not solved any of the burning problems of the people.

MR. CHAIRMAN: Mr. Choubey, the crisis, almost enveloping crisis, appears to be there. Even Mr. Charan Singh has said external aggression cannot be ruled out.

SHRI NARAYAN CHOUBEY: I am stating the position, Sir. There are reasons for what I say. I do not know why all of a sudden the Government has become a supporter of the argument of Charan Singh.

MR. CHAIRMAN: But who so ever speaks out the truth, based on facts,—to him we have to listen and lend our support. Do you agree or not?

SHRI NARAYAN CHOUBEY: I do agree with you, Sir, and what Charan Singh said on external aggression has got validity. External aggression threat is there in view of the US arms aid to Pakistan. But, Sir, is that the reason why this Bill has been brought forward?

MR. CHAIRMAN: I am not here to answer that.

SHRI NARAYAN CHOUBEY: That does not concern this Bill. My feeling is that the Government itself is feeling 'disturbed'. The Government is not able to come to any conclusion what they should do or what they should not do. On the LIC matter, the Supreme Court gave a verdict. Government did not abide by it. They forced the employees to go on a strike. Government promised the Supreme Court that they will pay these amounts to LIC employees. But they did not abide by that assurance also. So the present situation has been brought forward when the President has to resort to make reference to the Supreme Court! So, this is the attitude of the Government. I feel that the Government has become completely nervous to face the people. A date was fixed, namely, 17th of May, for holding elections to certain State Assembly seats and Parliamentary constituencies. But suddenly no notification was issued; elections were postponed. All this shows that the Government is apprehensive of the people. They can't solve any of the people's demands or meet their aspirations. That is why they are bringing in such types of Bills, to attack such Governments which do not abide by their anti-people policies of the Centre. Sir, I oppose the introduction of the Bill and I appeal to the Government to withdraw the Bill. Thank you.

MR. CHAIRMAN: Shri Krishna Kumar Goyal.

SHRI JAGANNATH RAO (Berhampur): Sir, all points which have been mentioned earlier are being repeated by the hon. Members. Therefore, I would request you to consider for calling upon the hon. Minister to reply.

MR. CHAIRMAN: The names have already been sent up and the Members have indicated that they would like to have their say. Well, at this stage, I cannot refuse permission. As I came, I did not know what other hon. Members had already spoken and repetition, to some extent, has generally become permissible.

श्री कृष्ण कुमार गोयल (कोटा): सभापति महोदय, मैं इस विधेयक का ...(व्यवधान).. यदि आप डिस्टर्ब नहीं करेंगे तो मैं जल्दी खत्म कर दूंगा।

सभापति महोदय: मैं डिस्टर्ब नहीं कर रहा हूं, मैं आपसे इतना ही निवेदन कर रहा हूं जो बातें कही गई हों, उनको आप न दोहरायें, नए प्वाइंट्स पर बोलिए।

श्री कृष्ण कुमार गोयल: सभापति महोदय, मैं इस विधेयक के इन्ट्रोडक्शन का विरोध करने के लिए खड़ा हुआ हूं। जैसा कि मेरे से पूर्व वक्ताओं ने कहा कि इस संशोधन विधेयक को लाने का केन्द्रीय सरकार को कोई अधिकार नहीं है और न इस संबंध में कोई कानून बनाने का अधिकार संसद में ही निहित है। इस प्रश्न पर कई संवैधानिक प्रश्न खड़े किए गए हैं और संविधान के कई आर्टिकल्स के उद्धरण किए गए हैं। यह बात सच है कि अधिकांशतः इस प्रश्न पर चर्चा पुनरावृत्ति ही होगी। मैं प्रयास यह करूंगा कि उन शब्दों को, उन कानूनों को न दोहराऊं, लेकिन इतना मैं जरूर कहना चाहूंगा कि जब इस मूल कानून को सन 1976 के अन्दर नेशनल इन्टीग्रेटड काउन्सिल की सिफारिश के आधार पर, जो कि सन् 1968 में हुई थी, सन् 1976 में लाया गया तो देश के अन्दर इमरजेंसी लागू थी। सभापति जी, आपने देखा होगा कि जिस समय इसपर चर्चा हुई तो लोकसभा के अन्दर केवल चार सदस्यों ने इसमें भाग लिया और राज्य सभा के अन्दर केवल एक सदस्य ने इसके अन्दर भाग लिया और इसके विरोध में विचार आए। लेकिन इसके संवैधानिक पहलू पर कि गोया संसद को इस पर कानून बनाने का अधिकार है या नहीं, कोई विचार विस्तृत रुप से सदन के सामने नहीं आए। इसीलिए मैं गृह मंत्री जी से कहना चाहूंगा कि अभी तक यह स्थिति नहीं आई है जैसा कि आपने भी कहा है कि किसी भी क्षेत्र को अभी तक विक्षुब्ध घोषित किया गया हो, उस संबंध में कोई कोर्टस बनाई गई हों और उनको चेलेंज करके सुप्रीम कोर्ट या हाई कोर्ट में ले जाया गया हो, वह स्थिति अभी तक नहीं आई है। लेकिन मैं बहुत अदब के साथ सभापति जी, आपके माध्यम से गृह मंत्री जी को कहना चाहता हूं कि जिस कानून को हम बनाने जा रहे हैं उस कानून को बनाने का हमें कई अधिकार नहीं है। संविधान ने यह अधिकार केवल राज्यों को दिए हैं। राज्यों के अन्दर अधिकार बटे हुए हैं। 7 वें शेड्यूल्ड के अन्दर सेन्टर लिस्ट है। स्टेट लिस्ट है और कान्करेंट लिस्ट है। यह विषय कि किसी राज्य के किसी भाग को डिस्टर्ब घोषित करेंगे, उसका अधिकार केवल राज्यों को है और किसी को नहीं मिल सकता है। इस संबंध में जो भी संविधान की कई धाराओं का और आर्टिकल्स का उल्लेख किया गया है मैं उनको न पढ़कर के केवल गृह मंत्री जी का ध्यान आकर्षित करना चाहूंगा कि 249 आर्टिकल की ओर उनका ध्यान आकर्षित किया, इसमें कानून हम तभी बना सकते हैं, जबकि राज्य सभा में दो तिहाई बहुमत से यह कानून बनाने का अधिकार हो। अगर यह आर्टिकल 249 के तहत नहीं आता तो स्टेट लिस्ट के मामलों में आर्टिकल 250 (1) के तहत कानून बनाने का अधिकार है लेकिन वह भी उस समय जब

[श्री कृष्ण कुमार गोयल]

एमर्जेन्सी लगी हो। मैं यह मान कर चलता हूं कि 1976 में जबकि देश के अन्दर एमर्जेन्सी लगी हुई थी इस कानून को बनाया गया। आर्टीकल 249 का उपयोग न करके, आर्टीकल 250 (1) के अन्दर इस कानून को बनाया गया।

अब, सभापति जी, एमर्जेन्सी खत्म होने के 6 महीने बाद यह कानून अपने आप समाप्त हो चुका है, अपने आप लेप्स हो चुका है, ऐसी स्थिति में उस कानून के अन्दर संशोधन करके केन्द्र कैसे इस अधिकार को ले सकता है? मेरी मान्यता यह है कि आप बिलकुल अनकास्टीचूशनल काम कर रहे हैं, बिना किसी अथारिटी के कर रहे हैं, इस प्रकार का कानून बनाने का हमें कोई अधिकार नहीं है। जो बिल आप यहां पर लाये हैं उस के उद्देश्यों से बिलकुल स्पष्ट हो गया है, जैसाकि आपने स्वयं उद्देश्यों में कहा है कि कई राज्य अभी तक इस कानून का प्रयोग करने में असफल रहे है, इसलिये यह जरूरी हो गया है कि केन्द्रीय सरकार स्वयं इस अधिकार को अपने हाथ में ले। इसीलिये नई परिभाषा लाई गई है उसमें एप्रोप्रियेट गवर्नमेन्ट" के साथ सेन्ट्रल गवर्नमेन्ट को भी शामिल कर लिया है। इससे सेन्ट्रल गवर्नमेन्ट को किसी भी क्षेत्र को डिस्टर्ब्ड एरिया घोषित करने का तथा वहां पर अदालत बनाने का अधिकार मिल जायेगा। इस से बिलकुल स्पष्ट हो जाता है कि आप स्टेट्स की लेजिस्लेचर्स के अधिकार पर एन्क्रोचमेन्ट कर रहे हैं। यह हर प्रकार से संविधान की धाराओं के प्रतिकूल है। आप जिद में आकर इस कानून को पास करा लीजिये लेकिन यह किसी भी अदालत के सामने जा कर नहीं टिक पायेगा अल्ट्रावायरस आफ दि कांस्टीचूशन घोषित कर दिया जायगा।

इस बिल के लाने में आप की मंशा क्या है? आप की मंशा यह है कि हमारे देश में जो संघात्मक शासन है उस को किसी प्रकार से तोड़ा जाय राजनीतिक हस्तक्षेप कर के, राज्यों के अन्दर जहां चाहें मनमाने ढंग से हस्तक्षेप करें, उस को डिस्टर्ब्ड एरिया घोषित करें। आज क्या स्थिति है? सारे देश के अन्दर जितने राज्य हैं, उन में अधिकांश आप के पास हैं केवल दो-तीन राज्यों में आपकी पार्टी की सरकार नहीं है। अब शिकायत क्या है—शिकायत यह है कि सन 1976 में डिस्टर्ब्ड एरिया घोषित करने का जो अधिकार राज्यों को दिया गया था, इन राज्यों ने उस कानून का उपयोग नहीं किया। क्या आप को उत्तर प्रदेश, बिहार या असम से कोई शिकायत है? मैं समझता हूं इनसे आप को कोई शिकायत नहीं है। तब फिर वे कौन से राज्य हैं यह बिलकुल स्पष्ट है। एक बात और—अगर आप को यह लगता है कि कोई राज्य प्रशासन करने योग्य नहीं है तो आप को आज भी यह अधिकार है कि उस सरकार को भंग कर दें और वर्षों से आप उस अधिकार का प्रयोग भी करते आये हैं। आप ने अनेक राज्यों की विधान सभाओं को भंग किया है। जब यह व्यवस्था है तो फिर आप किस आधार पर इस नये अधिकार को लेना चाहते हैं।

मैं बड़ी नम्रता के साथ आप से यह निवेदन करना चाहता हूं—इस संवैधानिक पेचीदगी को देखते हुए आप इस कानून को लाने की जिद न करें। नियम 72 के तेहत यह संवैधानिक मामला है, हमें इस प्रकार कानून बनाने का अधिकार नहीं है, इस सारे विषय पर

नियम 72 के अधीन खुल कर चर्चा होनी चाहिये।

श्री जगपाल सिंह (हरिद्वार) : सभापति जी, मैं शुरु में ही इस विधेयक का विरोध करता हूं। संवैधानिक दृष्टि से तो अनेक माननीय सदस्यों ने इस का विरोध किया है, लेकिन मैं हिन्दुस्तान की जम्हूरियत की दृष्टि से इस का विरोध करता हूं। शुरु से ही हिन्दुस्तान के अन्दर राजनीतिक लोगों में, बुद्धिजीवी लोगों में, यह बहस चली आ रही है कि हिन्दुस्तान में पावर (सत्ता) का विकेन्द्रीकरण होना चाहिये। केन्द्र के हाथ में इतनी ज्यादा सत्ता (पावर) नहीं होनी चाहिये कि राज्य खुल कर अपने शासन को न चला सकें। 1976 में भी जब केन्द्रीय सरकार पार्लियामेन्ट में इस विधेयक को लाई थी, उस वक्त भी उस की इस विधेयक को लाने की नीयत सही नहीं थी। क्योंकि पूरे हिन्दुस्तान में एमर्जेन्सी थी और एकछत्र राज्य कांग्रेस पार्टी का और कांग्रेस पार्टी में भी श्रीमती इन्दिरा गांधी का उस वक्त था। उस वक्त भी नीयत सही नहीं थी और आज भी नहीं है जबकि कांग्रेस पार्टी और उस की प्रधान मंत्री श्रीमती इन्दिरा गांधी का राज्य पूरे देश के अन्दर है, दो-चार प्रदेशों को छोड़ कर एकछत्र राज्य सारे देश में इनका है। तो मेरी समझ में नहीं आता है कि इन को किन प्रदेशों से डर है कि वे केन्द्रीय सरकार का कानून नहीं मानेंगे या उस का आदेश नहीं मानेंगे। इसलिए शुरु में ही मैं इस का विरोध इसलिये कर रहा हूं कि डेमोक्रेसी के लिए यह अच्छा था कि राज्यों को ज्यादा से ज्यादा सत्ता दी जाए, न केवल इस मामले में बल्कि वित्तीय मामले में राज्यों को ज्यादा सत्ता मिलनी चाहिए ताकि वे अपने प्रदेशों में स्वतंत्रता से शासन कर सकें। लेकिन यह कानून जो लाया जा रहा है यह राज्यों से सत्ता छीन कर केन्द्र को देने की बात हो रही है। राज्यों की जो पावर्स हैं, वे केन्द्र को देने की बात हो रही है। जूडिशियरी से पावर्स छीन कर एक्जीक्यूटिव को देने की आदत रूलिंग पार्टी की बन गई है और वह अपनी आदत से मजबूर है कि जूडिशियरी से पावर्स छीन कर ज्यादा से ज्यादा पावर्स एक्जीक्यूटिव को दी जाए। मैं यह भी कहना चाहता हूं कि सेक्शन 3 के एमेंडमन्ट में आप ने यह कहा है : There will be a Central Government or the State Government.

और सेक्शन 4 में आप कह रहे हैं कि जब यह मामला होगा, तो एप्रोप्रियेट गवर्नमेंट इस को डेक्लेयर करेगी। तो दोनों में कांट्राडिक्शन है। जब आप ऊपर डिफाइन कर चुके हैं सेन्ट्रल गवर्नमेंट और स्टेट गवर्नमेंन्ट के बारे में, तो नीचे 'एप्रोप्रियेट' एक शब्द आप ले आए हैं। तो मैं गृह मंत्री जी से यह पूछना चाहता हूं कि कल अगर कोई राज्य सरकार किसी क्षेत्र को डिस्टर्ब्ड एरिया या अशान्त एरिया दिबलेयर करने के लिए तैयार नहीं है अपनी राज्य सूची के अनुसार, तो उस क्षेत्र को क्या आप जबर्दस्ती डिस्टर्ब्ड एरिया डिक्लेयर करेंगे। पुलिस और फौज को वहां भेज कर डिस्टर्ब्ड एरिया डिक्लेयर करेंगे। तो सीधा मतलब यह है कि हमारे संविधान में जो स्टेट एफेयर्स हैं, जो सेन्टर के एफेयर्स है या जो समवर्ती सूची के अफेयर हैं, उन में आप क्लेश खड़ा कर रहे हैं। इसलिए मैं यह कहना चाहता हूं कि अच्छा यह होगा कि जो राज्य की सूची है, उस को आप डिस्टर्ब्ड न करें, डिस्टर्ब्ड एरिया पैदा करने के लिए स्टेट की सूची को डिस्टर्ब न करें। यह मेरी आपसे अपील है।

[श्री जगपाल सिंह]

एक बात और मैं खास तौर पर कहना चाहूंगा कि इस बिल का जो परपज है, जो एम्स एण्ड आबजेक्ट्स हैं कि कम्युनल रायट्स होंगे या कास्ट बेसिस पर झगड़े होंगे, उन से निपटा जाएगा तो मैं आप से पूछना चाहता हूं कि इस हाऊस में आप ने मुरादाबाद में कम्युनल रायट्स के बारे में कहा था कि हम जुडिशियल इंक्वायरी करायेंगे लेकिन आज तक वह इंक्वायरी नहीं हुई । जहां आप की पुलिस ने हजारों लोगों को मार दिया और हरिजनों को बहुत सारी जगहों पर मारा गया है, वहां पर अभी तक आप ने कहीं पर भी जूडिशियल इंक्वायरी नहीं कराई और न स्पेशल कोर्टस ही बनाई है। चाहे स्टेट की गवर्नमेंट हो, चाहे यूनियन टेरीटरी हो, आप ने आज तक कहीं पर भी स्पेशल कोर्ट्स नहीं बनाई हैं । इस का सीधा मतलब यह है कि आप की पार्टी और यह सरकार हिन्दुस्तान में तानाशाही के रास्ते पर बढ़ रही है और मैं यह कहना चाहूंगा कि प्रेजीडेंशियल फार्म आफ गवनमेंन्ट की जो वकालत आप के कई मुख्य मंत्री कर रहे है यह कानून इस दिशा में एक कदम है। इस लिए मैं इस का विरोध करता हूं और उम्मीद करता हूं कि आप इसे वापस लेंगे वरना हिन्दुस्तान की डेमोक्रेसी, हिन्दुस्तान की जुडिशियरी, ज्ञानी जी, खतरे में पड़ने वाली है और यह काम भी आप के हाथों हो रहा है । इसलिए मैं आप से अनुरोध करता हूं और ऐसी उम्मीद करता हूं कि हिन्दुस्तान की जम्हूरियत को बरकरार रखने के लिए आप इस कानून को वापस लेंगे।

SHRI CHANDRAJIT YADAV (Azamgarh): Mr. Chairman, Sir, I think that this Bill, which is being brought here, is unwarranted and is against the spirit of the Constitution and also against the very established principles of a Federal Government. The Government, if it accepts the principles of Federalism, then it must express it in its behaviour also. Not that, the Government should go on saying we are a federal government, but in its action the Government is totally a unitary type of Government. Sir, the first Article of our Constitution really says that: 'India i.e. Bharat will be the Union of States.' The very first Article of the Constitution says this. It means that we start from this very well accepted principle that the Government of India will function as a Union of States, and that the real powers in matters directly connected with the day-to-day activities of the people will rest with the State Governments. (*Interruption*) I am saying that if you read the very first Article of the Constitution, you will find that it says: "India, that is Bharat, shall be a Union of States." Therefore, it is not a unitary type of Government. You may hold a different opinion. We may differ on this. It is a federal structure, and Government must be very realistic. As the Indian democracy becomes more and more mature, people will choose the Governments of their choice. They will choose the colour of the Government—which they like; and the Government will have to live with that, and that is the strength of democracy. If the Central Government wants to muzzle it, it will be a mistaken notion. Wherever the Government has tried to do that, it has not worked. In this kind of tactics, Government has failed.

The first power that the Government of India gets is with regard to the defence of the country. The first, second and third powers which State Governments get are with regard to public order, police and courts. These are the first three most important powers resting with the States. Now, the introduction of this Bill is an attack on one of the most important powers of State Governments. If you

want to bring it on the Concurrent List, you may recall that even during the Emergency an attempt was made to bring Education on the Concurrent List. There was a lot of opposition from the State Governments. And the Government of India, very rightly, later agreed to the wishes of the State Governments. And that subject was left with the State Governments.

May I know from the Home Minister whether he has taken the trouble of ascertaining the views of the State Chief Ministers before bringing this Bill, or whether he has sought the advice of the Chief Justice of the Supreme Court?

Only last night, the President has made a reference to the Supreme Court in a case where there was no justification to do it—where the Supreme Court has given a verdict. a judgement. Even if the Supreme Court gives its opinion, that will not be binding. It will not take the place of law, while the judgements given by the Supreme Court Judges have already become the law of the land. It is binding. In that case, Government is acting against the interests of the working class; against the Class III and Class IV employees of LIC they have sought the opinion of the Supreme Court.

Here, in the present Bill where the entire country is directly involved, the State Governments are involved and the principle of federalism is involved, I would like to know from the Home Minister whether he has taken the trouble of inviting the opinion of, or whether he has called a meeting of, the Chief Ministers *i.e.* on this very vital issue. I am sure he has not. I think this is not a correct approach in a federal structure.

Now they say there may be communal riots, there may be caste conflicts and there may be certain tensions; and then the Central Government will have the right to intervene. I am asking a question: Shri Kamalapati Tripathi was the Chief Minister of U.P. He is one of the very senior leaders of our country. There was a PAC revolt; and the Prime Minister and the Government here saw to it that Shri Kamalapati Tripathi was removed from Chief Ministership. He was removed. The Moradabad incidents have occurred. Is the Government very serious where hundreds of people belonging to the minority community have been killed? Is Mr. Vishwanath Pratap Singh a more powerful Chief Minister than Shri Kamalapati Tripathi was? Has Mr. Vishwanath Pratap Singh not listened to the Home Minister? Can they say that he has refused to set up a special court and, therefore, the Home Minister, the Prime Minister and the Government of India are compelled to do this? If there had been any reason, I can understand this. Can the Home Minister cite a single example? Can he cite an example who are the Chief Ministers? Before the Bill be allowed to be introduced, let the Home Minister take the House into confidence and place the entire list of those occurrences, communal riots, caste conflicts, other types of riots where the Central Government thought it proper to establish special courts but the Chief Ministers redused to do so. Can he produce the list of that? If there is an element of honesty, then the Home Minister must take the House into confidence before bringing forward an important Bill. He is making a clear encroachment on the powers of the State Governments.

Now I am coming to a specific issue. As far as the Tripura Government is concerned, when disturbances took place there, the Tripura Government was the first Government to approach the Central Government for an immediate help. At that time, the Central Government failed to provide an immediate help. They cannot blame the Tripura Government. It was the responsibility of the Central Government also to help them. Did the Prime Minister or the Home Minister or the Central Government suggest to the Tripura Government that they should do such and such thing and the Tripura Government failed to do that? Did they suggest anything to Mr. Jyoti

Basu that there were communal riots or caste riots and they should do such and such thing and he failed to do that? Did they suggest anything to the Kerala Government about it? That is why I want to understand all this.

Today, they are in a very fortunate position that the Congress I Party is ruling at the Centre and in almost all the States except 3-4 States in the country. It means that the authority of the Congress I leadership at the Centre is being eroded. The Chief Ministers are refusing to listen to their leaders at the Centre. Will anybody believe it? Will anybody believe that the Prime Minister has lost her political authority and the Chief Ministers are trying to defy the Prime Minister? All the Congress I Chief Ministers are the creation of the Prime Minister. They are not the creation of the Legislature Party in the State. (*Interruptions*) They are not elected even by their own parties in their own legislatures. Will they dare to say anything and for what?

If the suspicion comes to the mind of some hon. members that there is some doubt that the Central Government has got some ulterior motive to intervene unnecessarily into the internal affairs of the State Governments particularly where non-Congress I Governments are functioning, then they will be fully justified. Therefore, I am charging the Home Minister. The Home Minister is a very gentle person. I have a great regard for him. I know that he is a very simple and gentle person. He should not be misguided by his officers and by the bureaucracy which has always a tendency to take the entire power into their hands. They want centralisation of the entire power. They want to rule from Delhi. Now those days are gone. If anybody thinks that he can rule from Delhi, it is not correct. What is the real tragedy of the Indian Parliamentary democracy today? The real tragedy is that there is centralisation of power. Even the political power, the administrative power, the entire powers are concentrated today in the hands of a few individuals and it will be impossible to rule such a big country. I am saying about anybody. He may be a very great person; he may be a very genius person; he may be a very able and competent person, but for a single person to rule such a big country is impossible, and that is the real trouble that the people who can help, the people who can share the responsibility and power are not even taken into confidence.

16.54 hrs

[MR. DEPUTY-SPEAKER *in the Chair*].

The Home Minister can say, it is all right, the Seventh Scheduled is there and the Sixth Schedule is also there. Therefore, an amendment can be brought by this Parliament. It is not unconstitutional. I know the arguments which you are going to put forward. I am fully aware of your arguments. But it is not only the arguments. It is the spirit. It is the decision, it is the objective, it is the total perspective in which the Constitution was really framed in this country and under which the Governments are functioning in this country. Therefore, I will request the Home Minister to please reconsider and not to rush and I will also warn that unnecessarily he should not take all the responsibility on his head. Why are you going to take all the responsibilities? If there is a riot and if the State Governments are not able to control the riots, if they are not able to create communal harmony and if they fail to perform their duties you can exercise the other powers which the Constitution gives you. Why are you coming in a way which is slightly and gradually making an encroachment? It is like a very clever person who makes trespasses from one place to another in a very clever manner, he does not jump at, but a very clever manner, goes on making encroachment and after some time this tendency will go and then one day the Home Minister will say that the entire responsibility of law and order and keeping the Police and judiciary should come on the Central List. Today it is being taken on the Concurrent List. Tomorrow you will say

that it should be on the Central List. It is a dictatorial measure. This will not strengthen democracy and therefore I am saying that it is a question that we are passing through a very critical period. Now, India being a very great country and a big country as Pandit Jawaharlal Nehru used to say, is a great country with great many problems. We have so many problems. We know that we are at a very early stage of our democracy though our people time and again have shown maturity—political maturity. It is the people who have given all the strength and support to democracy in this country but it is the leaders who are failing. Therefore, at this stage, the traditions, precedents, certain respect to values, certain respect to the structure, they are also very important factors and therefore all the time—whether it was the DMK Government in Tamil Nadu or the ADMK Government no in Tamil Nadu—they have also been all the time saying that the States should be given more powers. There should be no unnecessary encroachment on the States' powers. They have been demanding more and more powers. In this House so many important debates took place, where I must say that the consensus of the House was always that the State Governments should be given as much power as possible and the Central Government should have as minimum powers as may be necessary. This Bill is against the whole spirit. Therefore, I oppose the introduction of this Bill and I request the Home Minister to give serious thought and to reconsider. If a situation arises when any State Government defies, then he can come before the House as the Constitution makes provision for it. You have all those rights here. Therefore, the Home Minister should do so.

MR. DEPUTY-SPEAKER: Now, before I call upon Prof. Ajit Kumar Mehta, Mr. R. Venkataraman, the Minister of Finance will make a statement.

THE MINISTER OF FINANCE (SHRI R. VENKATARAMAN): It is not yet ready. It will take a few minutes more. Two minutes or so.

MR. DEPUTY-SPEAKER: All right. Prof. Ajit Kumar Mehta.

प्रो० अजित कुमार मेहता (समस्तीपुर) : इस विधेयक की संवैधानिकता के बारे में पूर्व वक्ताओं ने जो कुछ कहा है उसको दोहराने की मेरी कोई इच्छा नहीं है। लेकिन मुझे लगता है कि जल्दी में होम मिनिस्टर साहब भूल गए हैं कि संविधान में धारा 250 भी कोई है। इस धारा के अनुसार इस तरह का विधेयक लाना असंवैधानिक ही लगता है। कहीं न कहीं दिमाग में यह बात घूम रही है कि जैसे आपातकाल सा ही काल देश में है।

श्रीमन्, केन्द्र और राज्य सरकारें एक दूसरे की पूरक हैं। हमें ऐसा कोई काम नहीं करना चाहिए, जिससे वे दोनों एक दूसरे के प्रतिस्पर्द्धी हो जायें। यह जो विधेयक लाया गया है, उससे ऐसा प्रतीत होता है कि जैसे हमारे देश में दैध शासन फिर लागू होने जा रहा है और केन्द्र तथा राज्यों का एक ही अधिकार-क्षेत्र रहेगा। हमें इससे बचना चाहिए।

17 hrs.

इस विधेयक के उद्देश्यों और कारणों को पढ़ने से यह स्पष्ट हो जाता है कि यह विधेयक राज्य सरकारों पर अविश्वास के कारण ही लाया गया है। मैं निवेदन करना चाहता हूं कि राज्य सरकार भी जन-प्रतिनिधियों के द्वारा सांविधानिक रूप से बनाया गया शासन होता है। इस लिए अगर हम उस पर अविश्वास करते हैं, तो वह अविश्वास राज्य सरकार पर ही नहीं, उस जनता पर भी है, जिसने उन जन-प्रतिनिधियों को चुना है। हमारी समझ में नहीं आता है कि यह बिग ब्रदरली एटीच्यूड या होलियर देन दाऊ एटीच्यूड क्यों अपनाया जा रहा है।

ऐसा लगता है कि देश में केन्द्रीयकरण की प्रवृत्ति बढ़ रही है। इस विधेयक से इस बात

की जरूर पुष्टि होती है कि इसका उद्देश्य सारे अधिकारों को केन्द्र में ले आना है। हम देखते हैं कि यह विधेयक न केवल संविधान की भावनाओं के प्रतिकूल ही है, वरन् राज्यों को दिये गये अधिकारों के हनन का प्रथम चरण भी है—और शायद आपातकाल का भी प्रथम चरण है। इन्हीं कारणों से मैं इस विधेयक का अपनी पूरी ताकत से विरोध करता हूं।

SHRI SATISH AGARWAL (Jaipur): Today seems to be a very unusual day, right from the beginning. The calling attention has been broken up...

MR. DEPUTY-SPEAKER: Every one of us is responsibe for it.

श्री जयपाल सिंह कश्यप (आंवला): उपाध्यक्ष महोदय, इस विधेयक से इस सरकार का यह इरादा साफ तौर पर जाहिर होता है कि राज्यों के अधिकार-क्षेत्र पर अपना प्रभाव डाला जाये। इस लिए मैं इसके इन्ट्रोडक्शन का विरोध करने के लिए खड़ा हुआ हूं।

इस विधेयक का उद्देश्य यह बताया गया है कि सांप्रदायिक, जातीय या वर्ण के भेद-भावों के कारण जहां भी संघर्ष हो, उस क्षेत्र को डिसटर्ब्ड एरिया घोषित कर के वहां विशेष न्यायालकय की स्थापना की जाए और ऐसी घोषणा करने का अधिकार केन्द्रीय सरकार को दिया जाए। जहां तक इस विधेयक के उद्देश्य का सवाल है, वह पूरा नहीं हो सकता है। इस सरकार ने पेड़ के पत्तों को तोड़ कर पेड़ को सुखाने की कोशिश की है। इस सरकार ने न तो अभी तक कोई कोशिश की है, और न ही इस बिल में कोई व्यवस्था है, कि इस देश में साम्प्रदायिकता, जातीयता और वर्ण-व्यवस्था का जो जहर है, उसको नष्ट किया जाए और विभिन्न वर्गों के बीच की खाई को खत्म किया जाए। यह सरकार तो केवल इस बात की कोशिश कर रही है कि सारी शक्ति उसके हाथों में आ जाए।

बुनियादी प्रश्न तो यह है कि साम्प्रदायिकता, जातीयता और वर्ण के भेद-भाव को कैसे मिटाया जाए, कैसे इस देश की विभिन्न समस्याओं का समाधान हो। लेकिन सरकार ने इस दिशा में कुछ न कर के केवल यह सोचा है कि अगर कहीं दंगे हो जाएं, तो उस क्षेत्र में कैसे विशेष अदालतें कायम की जाएं। आप की जो प्राजीक्यूशन एथारिटी रही है, इन दगों के स्थान पर पुलिस और पी ए सी का जो कर्त्तव्य रहा है उस में साफ जाहिर हुआ है कि हमेशा ऐसे लोगों को चाहे वह अकलियत के लोग हों, मुसलमान रहेहों, चाहेवह हरिजन और आदिवासी रहे हों, चाहे वह पिछड़े वर्ग के लोग रहे हो, चाहे किसान मजदूर रहे हों, सब को आप की पुलिस ने मारा है, पीटा है और उन्हीं के हाथ में अगर यह देंगे, स्पेशल कोर्टस में प्राजीक्यूटिंग एथारिटी वही बनेंगे तो अंजाम वही होगा कि बेचारे वही छोटे वर्ग के लोग और दलित वर्ग के लोग सताये जाएंगे और वे शिकार बनेंगे। उसके लिए आप ने कोई व्यवस्था नहीं की है। मुरादाबाद का दंगा, अलीगढ,ईलाहाबा और आगरा में शैडयूल्ड कास्टस के साथ हुई घटना, जहां पर भी जो कुछ भी आप ने किया है सब में आप की प्राजीक्यूटिंग एथारिटी इन गरीबों से मजाक करती रही है। मैं इस पर अब ज्यादा नहीं कहना चाहता हूं।

अन्त में एक ही बात कहना चाहता हू कि जो तरीका आप का रहा है उस में आज भी आप की पुलिस गरीबों की और छोटे वर्ग की रक्षा नहीं कर पाती। बदायूं जिले के उसहत थाने में वहां के एक कुम्हार को पुलिस लाती है, एस पी बचाता है। पुलिस तमंचे से उस को फंसाना चाहती है। तीन-तीन दिन तक उस मुल्लू कुम्हार को थाने में बन्द रखती है। सवर्णों के पैर न छूने पर एटा जिले के सिद्धनगर में स्त्रियों को नंगा नचाया गया। पुलिस आप की जाति और धर्मसे बंधी हुई है। उस का आप ने कोई सुधार नहीं किया है।

मुझे सब से ज्यादा जिस चीज पर खेद है वह यह है कि अभी पिछले दिनों आश्वासन

दिया था कि जो भी यहां पर संसद में कागजात पेश किए जाएंगे उन का मूल हिन्दी में होगा और ट्रांसलेशन अंग्रेजी या दूसरी भाषा में होगा। लेकिन आज उलटा हो रहा है। आप देख लीजिए मूल तो अंग्रेजी में दिया है और अनुवाद आप हिन्दी में दे रहे हैं। इस से ज्यादा शर्म की बात नहीं हो सकती कि आप हमें आश्वासन दें हिन्दी में देने का और बिल हिन्दी में अनुवाद कर के पेश करें। इस की भी मैं निंदा करता हूं।

श्री मनीराम बागड़ी : ज्ञानी जी बागपत भी याद रखें।

SHRI NIREN GHOSH (Dum Dum): Sir, I oppose the introduction of this Bill on the constitutional, political and other grounds. This Bill, as far as I can see, is one of the most dangerous Bills, as far as the future of India is concerned. It may spell disaster for our country in the future. The constitutional arguments given by Shri Chitta Basu and Shri Bapusaheb are generally valid. But I think even if the Rajya Sabha passes a resolution to this effect, the Government has no constitutional authority to introduce such a Bill, because it is beyond the purview of the Rajya Sabha to allow such a resolution, which can pave the way for the introduction of such a Bill.

As correctly pointed out by Shri Chandrajit Yadav India is a Union of States. This basic concept or feature of the Constitution cannot be lequidated by this Bill.

Now an Emergency cannot be declared unless there is internal armed rebellion. Since they cannot declare an internal Emergency, this is a ruse to introduce internal emergency in parts thereof and ultimately throughout the country. It is a dengerous thing, which was undone during the Janata regime. Now through the backdoor they want to have Emergency, without a formal declaration of Emergency which is a most dangerous thing they are trying at.

Sir, in the Statement of Objects and Reasons it has been said that States have not generally taken advantage of the power given to them to declare certain areas as Disturbed Area. Since it is stated like that in the Statement of Objects and Reasons, the Home Minister owes it to the country and to the House to declare which States have not taken advantage of it and why, which areas in which States should have been declared as Disturbed Areas and at what time or when they have not taken advantage of the powers given to the States to declare any area as Disturbed Area and to set up Special Courts. He should say about that.

Then, Sir, I should say that the most fundamental feature of the Constitution is as regards the Centre-State relations. The most fundamental and the basic feature, according to me, is the power given to the States to maintain public order, police and courts in the respective States. This is the most fundamental feature of the Constitution as regards the Centre-States distribution of powers. Once this is taken away, once it is put on the Concurrent List, then you do away with one of the most basic features of the Constitution, which the Parliament is not competent to do because the Supreme Court as already said that whatever law the Parliament can pass, they cannot tamper with or tinker with the basic features of the Constitution. It is one of the most basic features as far as the Centre-State relations are concerned. Once the law and order is put on the Concurrent List as it seeks to do, then States go away. The States become so many districts of India. There are no States. There will be so many districts, you can say that India is composed of thousand districts. But India is said to be composed of the States of Indian Union. So, by introducing this feature you demolish the States altogether. The most basic function, the serious function that has been given to them in this Constitution, will be taken away. This is the second point that I would like to make. The result will be that it spells disaster for India in future because in a vast

[Shri Niren Ghosh]

country like ours composed for the States which are of different linguistic varieties, not like America where there is one linguistic variety, whatever powers the States have within the federal structure which constitute the basic and fundamental feature, if you take them away, then you suppress all the linguistic groups in this country. The result may be an explosion in future and that would be disruptive of the unity and stability of India. It runs counter to the policy of national integration. This is a Bill taken towards national disintegration. That is what I want to say, to put it most humbly and seriously before this House as far as the future is concerned. By and by many States will come to feel that their rights have been taken away. They have been suppressed. They have been denied a place in India. What is happening in North Eastern States, Jammu and Kashmir, here and there? Do you want that situation throughout India? You want to break India. I charge, by introduction, if you pass this Bill, you will be held responsible in future for the breaking up of the unity of India and national integration of India. You do not know what a dangerous step you are taking! It will run counter to the fundamental policy. You say casually that certain caste riots, communal riots are the reason for that. But actually you are responsible for that. You have ruled for thirty three years. If you have not been able to eradicate those things, put that question to yourself instead of putting a blame on others. We make bold to say, if democratic forces or socialist forces could have been in the control of the country, within five years these evils can be liquidated throughout India. You should put that question to yourself as to why the problems could not be solved. So, I would request the Home Minister to withdraw it. I am astound that such a measure has been approved by the Cabinet and the Prime Minister! I would request the Home Minister and the Prime Minister let it not be written down in history that Prime Minister Shrimati Indira Gandhi was responsible for disintegration of India. You should think on it hundred times. I would request you to withdraw this measure.

If there are communal riots, etc., generally it has got to be tackled in a democratic manner on a political understanding. This socio-economic set up has been going on. Even if we have reservation for fifty years more, unless socio-economic fundamental reforms are brought about, this caste conflict will go on. A section of Muslims feel that they are in a Hindu country. They have to look to them for protection. That is what they think. That is the culture that you have brought about in India. You have to bring about fundamental re-orientation of the policy and cultural outlook in India. If this Bill is passed it will tentamount to wiping out the States of India. India will be composed of thousands of districts. States will go. Dark days will be in for us in future. I request the Home Minister and also the Prime Minister, on this vital issue they should think hundred times. Even at this last moment, they should withdraw it and not to bring this measure.

17.18 hrs.

STATEMENT *RE* GOVERNMENT'S DECISION ON L.I.C. BONUS ISSUE

THE MINISTER OF FINANCE (SHRI R. VENKATARAMAN): I wish to make a statement regarding the LIC bonus.

The hon. Members are aware that there has been a long and chequered litigation with regard to the liability of the LIC to pay bonus to its employees. Recently, Parliament enacted the LIC (Amendment) Act, 1981 empowering the Central Government to frame rules with regard to the service conditions of the employees and agents of the Corporation. In pursuance of these powers Government framed, on 2.2.1981, the Life Insurance Corporation of ndia Class III and IV Employees (Bonus & D.A. Rules) 1981 placing a ceiling on the payment of bonus in the interest of policy holders and more economical administration of the Corporation.