MR. CHAIRMAN: Does the hon. member have leave of the House to withdraw his amendment?

SEVERAL HON. MEMBERS: Yes.

Amendment No. 1 was, by leave withdrawn

SHRI BHOGENDRA JHA: Sir, I seek leave of the use to withdraw my Bill.

MR. CHAIRMAN: The question is:

"That leave be granted to Shri Bhogendra Jha to withdraw the Bill further to amend the Constitution of India."

The motion was adopted.

MR. CHAIRMAN: Leave is granted, Now you may withdraw the Bill.

SHRI BHOGENDRA JHA: I withdaw the Bill.

DEFENCE OF INDIA (AMENDMENT) BILL

Amendment of Section 6

MR. CHAIRMAN: Now we will take up the Defence of India (Amendment) Bill (*Amendment of Section 6*) of Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE (Burdwan). Mr. Chairman, Sir, I beg to move:

"That the Bill to amend the Defence of India Act, 1971, be taken into consideration."

Sir, this Bills seeks to amend three clauses of sub-section (6) of Section 6 of the Defence of India Act, 1971. This was presented for consideration on the 25th of July, 1972. Nearly four years have elapsed. I can say with confidence that it has become more relevant and more timely now because of what we are seeing, namely, the deliberate and rampant abuses of the provisions of the Maintenance of Internal Security Act by this Government.

Sir, I will shortly indicate the nature of the various provisions that were incorporated by Sub-Section 6 to some of the provisions of the Defence of India Act and the Maintenance of Internal Security Act.

With the proclamation of emergency in December, 1971, the Defence of India Act was promulgated and enacted by this Parliament. Some of the sub-clauses like (c), (d) and (e) of which I am asking for deletion, made certain alternations with effect from the date of the Defence of India Act in the Maintenance of Internal Security Act. As per the provisions of subsection (6) of Section 6 of the Defence of India Act, the Maintenance of Internal Security Act shall have effect as if these amendments had been incorporated. That is, so long as the Defence of India Act remains in the statute-book or remains in operation, these amendments in the MISA would be deemed to have been there although temporarily. But, because of the developments which have since taken place in the country it has a sumed more serious proportions so far as the provisions of the MISA and the DIR and DI Acts are concerned That is why I am very much pressing this Bill. It appears that the hon. Members of the House do not seem to have much concern about personal liberty and I say it with a heavy heart. I request hon. Members to treat this Bill or view this Bill from the point of view of civilised system of Government and not from any narrow political point of view. You should leave alone politics for the time being when you deal with momentous measures like these. We feel, and I am sure, you will agree to this, that the minimum basic concept of justice at least of criminal jurisprudence is that nobody should be condemened unheard. There is no second opinion about this. He should not be punished without being told of the charges he is supposed to be guilty of. He should be given

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the opportunity to meet those charges. That is why our system of jurisprudence, as in various other countries, has laid down the principle for the prosecution to establish any charge of criminal nature against any particular person.

Therefore, we feel—we have always said that— that preventive detention is the very negation of all that is treated as a basic concept and cherished idea of personal liberty. I know that it will be said that our very Constitution itself provides for enacting laws of preventive detention. This is a worn-out argument. I am sure that the founding fathers of the Constitution could never dream that Article 22(5), (6) and (7) would be the ordinary laws of this country and not only that but they will also be given constitutional protection by their inclusion in the Ninth Schedule.

Sir, as I said on an earlier occasion, the Constitution of this country has been defiled by including a lawless law and a black law like this in the Ninth Schedule of the Constitution which was intended to be containing those legislations which were for the welfare of the people, which were for the betterment of the general conditions of the masses, toiling masses, and the rural people in the country. Those were laws which were intended to be protected from challenges by the vested interests. But, what has been sought to be protected now by a law like the MISA is now above all challenges under the Constitution Amendment. Is this a temporary law? Sir kindly remember this—Sardar Patel said that with a very heavy heart, he had to move the Preventive Detention will in Parliament in 1950 because those were the days of uncertainties. But, of course, I am not supporting that action. There were checks and balances. The greatest anxiety was shown by the then Home Minister in piloting this Bill when he said that he was doing it with a very heavy heart and he was helpless in presenting this Bill. This temporary measure was renewed no doubt and upto 1968 it continued and then it lapsed. Again it has been brought in 1971. But, Sir, these temporary laws have now become permanent laws—they are not only permanent but they have been given a permanent shield by inclusion in the Ninth Schedule. Therefore, I cannot challenge this. I have no manner of doubt that the present Maintenance of Internal Security Act will not stand the scrutiny of the Constitution but for its inclusion in the Ninth Schedule. Once the emergency is over, it cannot last as a valid piece of Legislation in the country; I have no manner of doubt. Even the juniormost lawyer will get this law declared invalid. That is why you have given protection by including that in the Ninth Schedule. And that is why I say that my Bill has become more important by passage of time. Although the Constitution has provided for or contemplated passing of legislation providing for preventive detention, I am sure, no lover of civil liberty and no lover of personal liberty can possibly accept a law like that to be a permanent law on the statute book. Besides, this is not a law which has been kept in cold storage. Sir, this moring Mr. A. K. Gopalan was complaining that the Beedi Workers Conditions of Service Act has not been made effective for the last nine years.

But you have made this law effective and you are using it for your political purpose I am charging this Government that this MISA is used for political purposes because you know that you are alienated from the hearts of the people. That is why today a citizen of this country does not even enjoy the liberty which the slaves in America used to do when slavery was there? Today I have no right to say that I am entirely free and that my freedom will not be taken away if I am really not guilty of any offence. But, my liberty depends upon the *ipso dixit—ipse dixit* of bureaurracy, *ipse dixit* by the motivated Ruling Party. I have no

time to quote. But all the rights that are in Articles 14, 19, 21 and 22 are taken away. What is my remedy if there is an abuse of power? Does the Government think or does any rational person think that the Government always does act rightly and there is no supercilious attitude on the part of any administration? Can it be said that they are never wrong? If you detain one person wrongly, that shows there is something basically wrong in the application of the law. Therefore, we have been demanding not only the proper use of it, if that law has to remain, but also the repeal of this law altogether.

As I had occasion to say earlier also, it appears that MISA has become the most hated word in this country. The people loathe it. They hate this word from the core of their heart, because the net of MISA has been spread so widely, so frequently and so comprehensively that it has become an engine of oppression. This means that you want to terrorise the people, you want to keep their voice shut. That is why I say that if there is not some check, some restriction, on the exercise of this power, personal liberty in this country will become, as it has become, a matter of grace to be dispensed by the executive and the ruling party.

17.36 hrs.

[SHRI ISHEQUE SAMHALI *in the Chair*]

You are aware—whether some of the members sitting on that side are able to admit it or not, I do not know —that not only at present but in 1971 it has been used against workers, trade unionists, government employees, teachers, students journalists, lawyers and doctors. Nobody has been kept immune from the arm of this law. What is the position? If I am held under this, I am not even allowed to say 'Tell me what I am supposedly guilty of', although I am not have an opportunity of facing the court. Tell me what I am guilty of—even that you are not liable to say.

I was trying to remind myself of what happened in 1971. I was present when Shri Krishna Chandra Pant moved the Maintenance of Internal Security Bill in 1971. I find that this is what he said then. Shri Bhogendra Jha, who moved the earlider Bill, had asked for an assurance from Shri Pant that this Bill would not be used against workers etc. This was the reply that was given by Shri Pant.

> "The first thing is that Shri Bhogendra Jha raised the point that the measure should not be used against workers, farmers and students. I appreciate the sentiment, I appreciate the spirit. I do not know whether I may add to the statement of objects and reasons at this stage. But as I said even earlier, I do not know if it can be done without an amendment and so on, but I can assure him and my friend, Shri Shashi Bhushan, that this Bill is not being put forward to suppress any legitimate movement of workers or farmers ...

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): Legitimate

SHRI SOMNATH CHATTERJEE: " or students"—we shall come to it That is your only right.

> "Shri Bhogendra Jha: You are not saying it seriously. Bring an amendment if you are serious
>
> "Shri K. C. Pant: I am very serious, and I am saying it with all seriousness. It is a matter of record—what I have said. I said it in all seriousness.
>
> "Now my hon. friend, Shri Manoharan, asked me a direct question. He asked 'Will you use it sparingly and not use it for political purposes?'. Again I would like to say, certainly it shall be our endeavour to use this very sparingly and not

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for political purposes. I have made that point earlier also".

Every word of Shri Pant's has been repudiated. They have gone back upon every promise given to this House by the then Home Minister. Their repudiation of their promise and assurance is shameful and complete. I know what they mean when they say that it must be 'legitimate'. Legitimacy is your sole monopoly. Who does decide the question of legitimacy? It will be decided by the police constable, the inspector, a district magistrate or even you, Mr. Minister! You think you are above the law, you are the only arbiter of my fate. Whether I am honest or dishonest, whether I am acting legitimately or not—you are the only arbiter of that! There will be nobody even to question it. Today the law is that I cannot even question it. I would not know whether I am accused of illegitimate activity or not. Do not talk of legitimacy, MISA has today become the most convenient weapon in the hands of the power hungry-executive to terrorise people They do not want to meet politial opponents politically: they have forgotten all that They want to meet political challenges by means of laws like this They deal with them with liberal recourse to this barbaric uncivilized and draconian law.

This is not a Bill for amending MISA as such. I am asking for amendment of some provisions of the Defence of India Act which made considerable changes, temporarily though in the maintenance of Internal Security Act. But under this government that temporary phase will never go and nobody knows when emergency will come to an end. When MISA was first enacted, section 13 provided that the maximum period for which any person might be detained in pursuance of any detention order should be 12 months from the date of detention. When that clause came up for consideration, I find that Mr. Kalyanasundaram had given notice of an amendment reducing that period to six months. While dealing with that amendment Shri Pant had this to say:

> "The period has not been introduced by us as 12 months in this Bill for the first time. In the Preventive Detention Act of 1955 the maximum period of detention was fixed as 12 months.
>
> Shri Kalyanasundaram: Are we still in 1950?
>
> Shri K. C. Pant: We are continuing with that 12 month period; it does not necessarily mean that every detenu must be detained for 12 months; that is not the meaning. The maximum period is 12 months; it is left to the appropriate government to decide on the merits of each case the period upto which a man might be detained, subject to a maximum period of 12 months. That is the purpose. I do hope that there will not be many opportunities for this kind of thing that is being suggested, namely, a man is released and again immediately he is taken back and put in prison. ."

An assurance was given that the maximum period was 12 months and that it did not necessarily mean that the detenue would be kept without trial for 12 months. He may be released earlier also because of the procedure for advisory board review and all that The proclamation of emergency came in 1971, when this was made, in a context which you all know and it was followed by the Defence of India Act, this House unanimously approved the proclamation of emergency in 1971 and you will remember that the hon. Speaker said: I am proud to be the Speaker of this House which has shown such solidarity and support at a time of real distress to the country. When there was real emergency, we all supported it but we are not going to support a spurious, make-believe, bogus emergency.

When that real emergency came, certain changes were made and they said that so long as that proclamation of emergency remained, the Defence of India Act would remain and for six months thereafter. So long as the Defence of India Act is in operation, the detention of a person under MISA, will continue. Therefore, the position is that if the proclamation of emergency continued till 1990 or 2000, a person in detention since 1971 will remain in detention for that period and for six months thereafter. We do not know how long it will continue. It depends on your sweet will. Then a man detained without trial in 1971 will remain in jail for years and years which is nothing but a life imprisonment. I say, Sir, that the Government has utilised that provision in the Defence of India Act which could only be thought of to have been brought into the Statute Book to meet the situation that had arisen in country in 1971 in the wake of Pakistani War Now, that has become the regular feature of the Statute Book in this country The Pakistani War lasted for 13 days The great people of Bangladesh had succeeded, our Jawans had succeeded and there was no emergency then Conditions became normal The basis of proclamation of Emergency in 1971 at least actually came to an end, may not theoretically came to an end because it did not suit your purpose But the law which was brought in the MISA for the purpose of obviously meeting the defence requirements of this country has been continued and is being liberally and that has caused havoc in this country Thereafter, the detention has become indefinite. Nobody knows what will be the period of detention. Sir, some challenge was made of the validity of this law before the Supreme Court. Of course, I am very unhappy, as a lawyer and as a citizen of this country, that the challenge fell. I will read out some of the observations made by one of the learned judges of the Supreme Court. That was Justice Bhagwati's expression made at that time, although he was in minority. The judgment was given in Fagushaw case. It reads like this.

"We must remember that it is a constitution we are expounding—a constitution which gives us a democratic republican form of government and which recognises the right of personal liberty as the most prized possession of an individual. Shall we not then lean in favour of freedom and liberty when we find that it can be done without any done without any violence to the language of the constitutional provision? Shall we not respond freely and fearlessly to the intention of the founding fathers and interpret the constitutional provision in the broad and liberal spirit in which they conceived it, instead of adopting a rather mechanical and literal construction which defeats their intention?

Then he goes on:

"— logically it would mean that 'maximum period' can be fixed with reference to the life of the person detained and if such maximum period is fixed, it would be open to the legislature to authorise detention of a person for the duration of his life. That would be a most startling and devastating result It is impossible to believe that the constitution-makers who had themselves suffered long periods of incarceration at the hands of the British rulers should have become so oblivious of the need to safeguard personal liberty that they should have given carte blanche to the Parliament to permit detention of a person for lie without trial. The power to detain without trial is itself a drastic power justified only in the interest of public security and order. It is tolerated in a free society as a necessary evil. But the

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power to detain a person for life without trial is something unthinkable in a democracy governed by the rule of law It is a draconic power subversive of freedom and liberty and can have no place in our constitutional arrangement. To grant such a power would be to destroy the democratic way of life, to annihilate one of the most cherished values of a free society and to vest in the State authoritarian power which is the anti-thesis of the rule of law. It would rob the fundamental guarantee of personal liberty of all meaning and content and reduce it to a mere husk. It would amount to the Constitution telling all persons resident in the land, in the words of Bose, J:

> "Hhere is the full extent of your liberty so far as the length of detention is concerned. We guarantee that you will not be detained beyond three months unless Parliament otherwise directs either generally or on your particular class of case; but we empower Parliament to smash the guarantee absolutely if it is chooses without let or hindrance without restriction. That is not the point on which I am at the moment. I am saying that these are the views of the Supreme Court judges on a law like this.

Kindly see how liberally MISA was used even before the second emergency. These are the official figures and they do not include those detained for smuggling. Between 1st July 72 and 31st March 73 there were 4445 detenus. From 1st July 73 to 31st March 74 there were 3324 detenus. As on 31st March 74, there were 3864 detenus without trial. At least a thousand of them must have been in detention for more than one year. They could be detained for more than a year only because of the amendment in the MISA by the Defence of India Act, After the second or duplicate emergency, we do not know how many hundreds or thousands are in jail. We are not even allowed to know the number. Our questions are not even admitted about the number of detenus. Previously there was some protection and some safeguard in the Constitution so far as MISA was concerned. Grounds had to be given, Advisory Board had to be constituted. There were provisions for review, for representation and for habeas corpus petitions where the court's jurisdiction was very limited. They could not go into the truth or otherwise of the allegations made in the grounds, but they could find out whether there was a nexus between the objectives of the law and the grounds of detention. Even within this very restricted field some relief could be given by habeas corpus petitions by the High Courts. When MISA was challenged on the ground of violating article 22, it was upheld by the Supreme Court because it provided some safeguards In Haradhan Saha V The State of West Bengal, on the Supreme Court upheld the validity of MISA. On these grounds. The court observed:

> "The constitution of Advisory Board observes the fundamental of fairplay and principles of natural justice It is not the requirements of principles of natural justice that there must be an oral hearing—.. As long as there is an opportunity to make a representation against the order of detention and as long as a representation is to be considered by the Advisory Board there is no unreasonableness in regard to the procedure. The duty to consider the representation does not mean a personal hearing or the disclosure of reasons.. The detaining authority is under a duty to give fair consideration to the representation made by the detenu but it is not under a duty to disclose to the detenu any evidence or information."

The Supreme Court said, at least you have an opportunity, a right to make a representation and to be brought before an advisory board before whom you can put forward your views and they will have to give a fair consideration to this matter and come to a decision. Although this was a very minimal right and opportunity, even that is no longer there. The sole ground on which the Supreme Court upheld the MISA is gone Knowing that it cannot any longer stand scrutiny of the court, they have put it in the ninth schedule. I challenge them to show what is the justification for putting a law like this in the ninth schedule except to make it above the law, knowing that it is not according to the Constitution of this country.

I will now read one more passage from the speech of Mr. K. C Pant during the time when MISA, was enacted:

"Adequate safeguards against arbitrary exercise of power have been built into the provisions of the Bill. I would ask Shri Vajpayee to make a note of this provision. I have already referred to the provision that detention by a subordinate authority will not be ordinarily possible beyond a period of 12 days and only in exceptional circumstances it can be extended to 22 days These 12-22 days are inclusive of the time taken by the State Governments to approve or disapprove the initial detention order. We sincerely hope that it may not be necessary at all to invoke the exceptional provisions. Resort to exceptional provisions should be rare. Every case of detention except those of foreigners found in the aggravating circumstances I have referred to earlier would require to be referred to an advisory board within 30 days from the date of detention. Government is bound to release the detenue forthwith if the advisory board is of the opinion that this is no sufficient cause for the detention of the person concerned."

The minimum safe-guards which Mr. Pant has said that you can be brought before the Advisory Board and the decision of the Advisory Board will be binding on the Government, that Advisory Board is abolished, I read further:

'I have also stated, while moving the Bill, that similar provision in the earlier laws have stood the test of judicial scrutiny. But if anyone has any doubt about any provision of the present Bill, nothing in this Bill would prevent him from again going in the highest court for a writ of Habeas corpus."

Now, the Attorney-General and the Solicitor-General of this Government are arguing before the Supreme Court that there is no right to live in this country, that there is no right of life, that there is no right to liberty You cannot even go to the courts of this country for a writ of Habeas Corpus They are arguing solemnly. Therefore, I submit that what Mr. Pant had assured to this House in justification of the provisions of the Bill that there would be an advisory board and, therefore, the Members should not have the view that it would be used in a manner which would be completely against the right of personal liberty, that is not there now. He said further: —

"The Bill does not take away the right of the High Court to issue writ of habeas corpus. Article 226 is not at all affected, but it is an entirely different matter whether the writ will succeed."

Now, even the minimum right has gone. Now, somebody is detained, no grounds are given. There is no advisory board and no materials are to be given to the court in writ of habeas corpus according to the Government. Therefore, Sir, is this the life not worse

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than a slave? This is all sought to be justified in the name of emergency.

The position to-day is that there is no fixed period of detention, with all the minimal safeguards being taken away There is Mr. Justice Krishna Iyer of the Supreme Court—nobody would accuse him of being a judge who is a believer in vested interests or as one who had belonged to the vested interests.

सभापति महोदय : माननीय सदस्य अब अगले दिन अपना भाषण जारी रखेंगे। अब हम उठते हैं और सदन सोमवार को 11 बजे फिर बैठेगा।

18.01 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, March 20, 1976/Chaitra 9 1898 (Saka).

GMGIPND—L—44 LS—11-5-76—978.