

12.46 Hrs.

MAINTENANCE OF INTERNAL SECURITY BILL*

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT): I beg to move for leave to introduce a Bill to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected there with."

Three Members have given notice to oppose it, Shri Banerjee, Shri Jagannathrao Joshi and Shri Jyotirmoy Bosu.

SHRI S. M. BANERJEE (Kanpur): I rise to oppose this Bill which, in my opinion, is a carbon copy of the preventive Detention Act with certain more harsh provisions and is therefore worse than that. It is a sad commentary on our parliamentary democracy that even after their massive victory in the elections where the people ungrudgingly voted for the present ruling party under the leadership of Mrs. Gandhi, they have to come with such a black Ordinance.

My objection is on three counts. The first is that the Ordinance was promulgated on 7th May, 1971, when it was known to every one of us, including the Council of Ministers and the Prime Minister, that both Houses of Parliament were meeting on 24th May, 1971. The Statement of Objects and Reasons of the Bill says:

"In view of the prevailing situation in the country and the developments

across the border, there is need for urgent and effective preventive action in the interests of national security."

Sub-clause (2) of Clause 1 of the Bill says:

"It extends to the whole of India except the State of Jammu and Kashmir."

This is discrimination and the Constitution never allows discriminations between man and man, between people of one State and another. It is something extraordinary and passes my comprehension that in the State of Jammu and Kashmir, which is so near Pakistan and where spies enjoy immunity, people cannot be arrested under this Act or Ordinance, because it is not extended to the State of Jammu and Kashmir, but somebody in Kanyakumari can be arrested, as if spies go only to Kanyakumari and they do not go to Kashmir. Secondly, the provisions of the Bill violate article 19 of the Constitution relating to freedom of speech and expression. Clause 3 of the Bill reads:

"(1) The Central Government or the State Government may —

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to —

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued

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"presence in India or with a view to making arrangements for his expulsion from India,

"it is necessary so to do, make an order directing that such person be detained."

The hon. Minister said that an opportunity will be given to the person detained, but Clause 8 says :

"When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government "

There is a further provision made .

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

The grounds will not be disclosed if they think that it is in the public interest to do so. The person concerned will have to rot in the jail for months together before he is introduced before the court

It has been said that foreign spies and agents who enter our country should be punished. Is there no provision in our various Acts to punish such people ? Then again, how are we to do it in Kashmir ? The tragic part of the story is that even after the promulgation of this, there are people who are constantly abusing national policies and there are people working as spies, people who are spreading communal hatred. In Calcutta even today Mr. Mehdi

Mahsud as Deputy High Commissioner of Pakistan is moving from street to street and from village to village, preaching communal hatred but he has not been arrested. This is brought in to take political vengeance against some political parties who are their opponents. In all fairness, in the name of parliamentary democracy, equity and justice, this should be withdrawn. Otherwise the impression will gain in the country that though the Government has massive majority in Parliament, it wants to rule the country with certain black Acts. I oppose this Bill lock, stock and barrel.

श्री जगन्नाथ राव जोशी (शाजापुर) : अध्यक्ष महोदय, मैं इस बिल का प्रारंभिक अवस्था में विरोध करने के लिए खड़ा हुआ हूँ। बहुत सी बातें सम्माननीय सदस्य श्री बनर्जी ने यहाँ पर रखी हैं। व्यक्ति को संविधान ने जो स्वतन्त्रता दी है उसपर यह कुठाराघात है। वास्तव में इसका उपयोग जब शुरू में किया गया था उस समय स्वर्गीय सरदार वल्लभ भाई पटेल (गृह मंत्री) जी ने इस बात को कहा था कि यह सदा के लिए नहीं है, केवल कुछ समय के लिए है किन्तु हमने देखा कि सदा के लिए ही यह चलता जा रहा है। पिछली बार जब इस सरकार का बहुमत चला गया था तो यह बिल पास नहीं हो सका था और लैप्स हो गया। लेकिन अब पिछले 14 महीने में ऐसी कौन सी दिक्कत आ गई है जिसको लेकर सरकार फिर से नया बिल इन्ट्रोड्यूस करना चाहती है। जो कारण सरकार ने दिए हैं वह भी तर्कपूर्ण नहीं हैं। पिछले 14 महीने में सरकार ठीक ढंग से काम चला सकती थी लेकिन अब चूंकि इनका बहुमत आ गया है.....

अध्यक्ष महोदय : इस स्टेज पर आप सिर्फ लेजिस्लेटिव काम्पैटेंस पर ही एतराज कर सकते हैं।... (व्यवधान)...

श्री जयन्ताय राय जोशी : कुछ व्यक्तिगत स्वतन्त्रता और स्वाधीनता भी होती है। ... (व्यवधान) ... श्री जीवाब मे मन्त्री जी ने बताया कि पांच दिन के भन्दर कारण बताया जाता है एडवाइलरी बोर्ड है किन्तु उसमें भी देश हित का नाम लेकर जैसा कि यहाँ भी देश के हित में न होने के कारण बहुत सी चीजे बताई नहीं जाती है ऐसी स्थिति में देश के हित को सामने रखकर किसी आदमी को पकड़ना और बिना कारण बताये इतने दिन तक बन्द रखना, पिछले कई सालों का अनुभव मैं बताना चाहता हूँ कि इसका दुरुपयोग ही ज्यादा हुआ है, कितने ही हमारे कार्यकर्ता पकड़े गये, साल दो साल तक बन्द रहे जबकि उनपर कोई आरोप नहीं था तो केवल विरोधी दलों को कुचलने के लिए ही इसका उपयोग किया जाता है। यदि वास्तव में उनके मन में विश्वास था तो जम्मू कश्मीर में जहाँ पर कि इस प्रकार की एंक्टिविटीज होती रहती है उसको इसमें से क्यों निकाल दिया गया है? यदि पूर्वी बंगाल की स्थिति का तर्क इसके पीछे था तो इसको पूर्वी क्षेत्र में सीमित किया जाता किन्तु समग्र भारतवर्ष के लिए जो इसको रखा उसका मतलब यही है कि इनके हाथ में पूर्ण अधिकार होने की वजह से विरोधी दलों को कुचलने के लिए और प्रजातन्त्र पर कुठाराघात करने के लिए यह विधेयक प्रस्तुत किया जा रहा है और इसका मैं अपनी पूर्ण सामर्थ्य के साथ विरोध करता हूँ।

SHRI JYOTIRMOY BOSU (Diamond Harbour) : I oppose this measure, on legislative incompetence, and I want to oppose the Bill totally. This ordinance was hurriedly brought into existence. I call it a lawless law; just when a knock at the door of Parliament was heard, they tried to pass it in that month when we sat may be for 10

days. After that they could not wait, and they brought in the ordinance, because they had some political mission in their minds to further their own political purpose. They want to create a real dictatorship in this country. So, they are steadily moving towards it.

What about the PDA? It was enacted sometime ago. They have detained no less than 3,000 persons in West Bengal alone and most of them are political workers belonging to the Congress-opposed forces. In one case, I am a member of the Governing body of this cancer hospital, the Cancer Research Institute. They had arrested three persons in Chandannagar. I saw Mr. Mirdha and I showed him the original documents. The chargesheet said that those persons threatened the Director, threatened to stab him and beat him up. As a Member of the Governing Body, I asked for a report from the Director in writing, and the Director gave in writing saying that these persons never came near him, never threatened him and never tried to beat him or stab him or shoot him. The whole thing was absolutely a string of lies. So, this is how they are bringing in these summary laws.

Now, Mr. Nanda's White Paper. It was a mockery, it is still a joke. The White Paper of Mr. Nanda in 1965 did what? With one stroke of the pen, 8,000 persons belonging to the minority community were put behind the bars, and by another stroke of the pen after a few months, the same 8,000 people were released without anything being stated about their guilt or innocence. Then, in 1962, 3,000 people, workers—

MR. SPEAKER : You can make those points in your speech later. Not now.

SHRI JYOTIRMOY BOSU : Syed Badruddin had been detained four times before that. (Interruption) It is just for a political purpose.

MR. SPEAKER : I request you not to go into such details. You will have your time at the appropriate time. You can now raise only the question of legislative competence or otherwise.

SHRI JYOTIRMOY BOSU : I am just finishing. (*Interruption*) I want the Government to withdraw this Bill. You gave Shri Banerjee seven to eight minutes. You give me the same time. (*Interruption*)

MR. SPEAKER : But you must be relevant.

SHRI JYOTIRMOY BOSU : Yes, Sir. Let not my friends opposite get provoked. This is all politically motivated. Mr. Badrudduja told me that he was offered a Governorship and then a Cabinet position by Shri Siddhartha Shankar Ray and Shri Atulya Ghosh who went to him. He declined. This has been the complaint against him. The whole thing is politically motivated. (*Interruption*)

I will show you that there are ample provisions in the existing Act. Sir, you are a lawyer. You understand the law much better than I do. I wish to draw your attention to the Official Secrets Act, 1923. I want to draw the attention of the Ministers also ; if they will kindly read section 3 at page 3 of the Act, they will find that it gives them powers to impose an imprisonment for fourteen years in certain cases. That being the case, why do you want to bring in a law to put the people behind the bars for just one year at the most ? I will read the relevant section—section 3 (1) :

“If any person for any purpose prejudicial to the safety or interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place ; or

(b) makes and sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ; or

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MR. SPEAKER : All this is not relevant at this stage.

SHRI JYOTIRMOY BOSU : Then, shall I continue after lunch, because I will take some time. I want to quote from the Act, the ordinance, the Bill and other law books to establish that there are enough provisions existing at the moment and bringing a Bill of this nature is unnecessary, unless they have some political motive in mind. There is no need to introduce this Bill.

SHRI INDRAJIT GUPTA (Alipore) : Let him say that he is prepared to withdraw the Bill.

MR. SPEAKER : I want to finish this before lunch. How much more time does he want ?

SHRI JYOTIRMOY BOSU : About ten minutes

“(c) obtains, collects, records, or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article, or not or other document or information which is calculated to be or might be or is intended to be directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States;

he shall be punishable with imprisonment for a term which may extend, where the offences committed in relation to any work of defence, arsenal, naval, military or air force establishment

or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years "

Under this ordinance, the punishment is not exceeding one year

"(4) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly, useful to an enemy "

This is a blanket Act. There is no lack of power. If you go to the Indian Penal Code, there are other blanket provisions contained in sections 120A, 120B, and 121. Is it not enough?

Why is it that they are bringing an ordinance? I will read out what the ordinance says. This was issued on 7th May. I look at page 130, para 8 (2). It says

"Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose "

Are we talking about democracy, natural justice, and not giving summary powers to people who are almost fascist in character? At the same time, you are bringing a legislation of this sort so that you can arrest a person without disclosing to him even the reason for which he is being taken to custody. In the Bill also the same provision has been kept.

This is a clear case where the Congress Government, taking advantage of its being in power at the Centre, is misusing the power that it is enjoying in every sphere of life. They are trying to deprive even the common man, the working class people who are opposed to the Congress Party, their elementary rights. They are making use of the official machinery for the purpose of furthering their party cause. They are depriving the people of their minimum human liberties.

Take the case of Dr. Golam Yardani and Shri Badrudduja. A lot of temptations were offered to them. They refused to join and serve the Congress Party. That is why they have been taken into custody. The Deputy Chief Minister repeatedly kept saying for 15 days "we shall prosecute them". Shri Nahar, the former Hindu Mahasabite, said "we shall prosecute them". Yet, they were taken into custody under the Maintenance of Internal Security Ordinance. Why not under the ordinary law of the land? If you have got any evidence in hand you could have done that. Then we would have welcomed that. We challenge you, go to a court of law, produce all the evidence and prove that they have been doing what you say they are doing, otherwise, withdraw all such charges.

Finally, I would appeal to the government through your good offices that this sort of Bill should not be presented before the House. They should withdraw it. I oppose the Bill lock, stock and barrel.

SHRI K. C. PANT This is not the occasion for a full-dress debate. Therefore, I would not like to touch on all the points that have been raised. But the Statement of Objects and Reasons clearly states

SHRI JYOTIRMOY BOSU We will not be a party to this outrage. So, we are

all walking out Shame on you, shame on your hypocrisy (interruptions)

SHRI K C PANT He should have the courtesy to hear me before he goes out I will deal with his point He must wait till I finish to know whether I am withdrawing the measure

SHRI JYOTIRMOY BOSU Are you withdrawing the Bill?

SHRI K C PANT You must listen to me to know that How can you walk out before you have even heard me? You have made the position ridiculous How can I help you? You have not heard me. (Interruptions)

Shri Jyotirmoy Bosu and some other hon Members then left the House

SHRI K C PANT I am surprised at this behaviour They wanted to make speeches in order to persuade me to withdraw the measure Now they are not prepared to hear me to know whether I am withdrawing it or not

As I was saying, the Statement of Objects and Reasons states clearly why such a measure is necessary in view of the prevailing situation in the country

MR SPFAKER Whom are you going to convince?

SHRI K C PANT I am saying it for the purpose of record. The Statement of Objects and Reasons says

"In view of the prevailing situation in the country and the development across the border, there is need for urgent and effective preventive action in the interest of national security It is, therefore, considered essential to have powers of

preventive detention to deal effectively with threats to the defence of India and to the security of India, especially from external sources and espionage activities of foreign agents Since the existing laws available to deal with the situation have not been found to be adequate, the Maintenance of Internal Security Ordinance, 1971, has been promulgated It is now proposed to replace the Ordinance by an Act "

My hon. friend, Shri Jyotirmoy Bosu, cited certain laws I have not got all the laws he has cited but the position briefly is that those laws come into effect after the commission of an offence whereas this is a preventive measure There is a basic difference between the two

My hon friend, Shri Tridib Chaudhuri, has walked out earlier today in the course of the calling attention notice He used some phrases which I jotted down He said that we are living in troubled times, that the question of the security of the country was involved, that any moment aggression could take place, that the Central Government is charged with the security and defence of the country, that we should not be complacent and asked why arrests were not made under the MIS Ordinance That is implication of what he said And now he has walked out along with them I am surprised that, after describing the situation in such alarming terms in order to have a dig at the Government, when this situation faces the country and must take steps, he has chosen to walk out

Another point was made that this Bill does not apply to Jammu and Kashmir when an extraordinary situation—so my hon friend said—exists The simple point is that the Bill does not apply to the State of Jammu and Kashmir because the rele-

vant entries in Lists I and III are not applicable to Jammu and Kashmir. Parliament is not, therefore, competent to legislate on this subject. That State has a separate law on this subject enacted under the Constitution of Jammu and Kashmir. That is position with regard to Jammu and Kashmir.

My hon. friends, Shri S. M. Banerjee and Shri Joshi, in referring to Jammu and Kashmir indirectly admitted that the situation there was grave and that it would have been good if this Bill could have been extended to Jammu and Kashmir. That is the logic of what they said. They said that spies could not be arrested in Jammu and Kashmir without this. That is not a fact. But the fact is that they expressed their anxiety that a situation exists in which this Bill could be justified. I take it as their indirect support for this Bill.

I would not go into the other points because my hon. friends are not here but I was surprised to hear Shri Jagannathrao Joshi ask us whether any trouble; *kya apati a gai hai*? We are every day debating in this House the extraordinary situation.

MR. SPEAKER: I Directed them to raise objections on legislative competence or on certain constitutional provisions. As for the other facts mentioned, they can be replied to in the debate.

SHRI SEZHIYAN (Kumbakonam): They can oppose the introduction of the Bill even without those points. The Rules of Procedure that they can oppose it on other grounds also.

MR. SPEAKER: On certain earlier observations we are basing this. As far as the details are concerned, they could wait for the consideration of Bill.

SHRI K. C. PANT: All right, Sir. I will not reply to the other points but I

will merely say that I do want to state that the insinuation or the charge that it has been brought to crush Opposition parties, is really most extraordinary and is farthest from the truth that any charge can be. It is because of the situation in the country that this has been brought forward. I can say that we shall use this only when it is absolutely necessary to do so.

Finally, Shri Jyotirmoy Bosu is not here. I am glade that he has developed a very deep loyalty for democratic values. He has expressed his sorrow that this will give an opportunity for the Government to deny some of the citizens of this country their liberty. All I say is that we stop at liberty; I am not sure if his party would stop at liberty. They do not seem to respect even the life of citizens who oppose them.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith."

The Motion was Adopted.

SHRI K. C. PANT: I introduce the Bill.

STATEMENT RE - MAINTENANCE OF INTERNAL SECURITY ORDINANCE

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT): I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Maintenance of Internal Security Ordinance, 1971, as