

[श्री बनेश्वर मिश्र]

आप नहीं चेतेंगे। लड़के एक ही माग कर रहे हैं कि शिक्षा व्यवस्था में ग्रामूल परिवर्तन किया जाय। तो क्या जब तक पूरे देश में लड़के सड़क पर निकल कर आग नहीं लगा देंगे तब तक शिक्षा मंत्री इस की गम्भीरता को स्वीकार करने के लिये तैयार नहीं है? इसलिये मैं समझता हूँ कि इस पर कार्य मंत्री से कहना चाहता हूँ कि इस पर शिक्षा मंत्री से अगले सप्ताह में वक्तव्य दिलाये।

कल भी मैंने मान्यवर, कहा था, श्री कल के समाचार-पत्रों में छपा है कि कानपुर की कोई डालडा कम्पनी है जिस से मुद्दागिन डालडा निकलता है। वह कम्पनी कर चोरी और डालडा में नाजायज मिलावट के अपराध में कई बार सजा पा जाती है। लेकिन उस कम्पनी के मालिक की बेटा की शादी माननीय उमाशंकर दीक्षित के पोते से हुई है इसलिये वह तबबार उनको दबा दिया करते हैं। क्या समझ कार्य मंत्री जो उद्योग मंत्री से इस तरह की कर चोरी करने वालों को जो मन्त्रालय बचाया करता है कोई सफाई का वक्तव्य अगले सप्ताह में दिलायेगे?

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): I have heard all the suggestions made with rapt attention. Mr. Mavalankar put a question, 'What is the use of making suggestions week after week unless Ministers come forward with statements?' Now originally we were not using Rule 377 so much but now we are using it often. Originally when the Minister of Parliamentary Affairs announced Business of the coming week there was no opportunity of making suggestions but now Members are allowed to make suggestions. I can understand suggestions being made by hon. Members because I am also a Member and I can appreciate. They have a two-fold function, one is to show to our constituency how we

feel for our constituency, how we are alive to their needs and demands and the other purpose is to make the Minister take cognisance of these things. By this at least the first purpose is served. The point is the other propose namely that after every discussion I always carry and inform the Ministers of the various requests made. I do that. Now, it is for the Minister to consider whether a statement is called for. I faithfully carry out my work and I will do so now also.

16 05 hrs.

CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES BILL—Contd.

MR. DEPUTY-SPEAKER: I take it that the House agree that we may resume discussion on this Bill. We are at the stage of third reading. There are many Members who have given their names. There are two to three names from one party but we will follow the procedure of one name from one party.

SHRI SOMNATH CHATTERJEE (Burdwan): I am thankful to you for giving me this opportunity. Yesterday the Bill could have been passed if some accommodation had been shown by the ruling party. However so far as this Bill is concerned there can be no two opinions that more stringent measure should be taken to stop smuggling in this country and against smugglers. It is a joke of the last 27 years to say that the ruling party is only concerned to stop smuggling in this country. When we speak on this Bill and do not give them whole hearted support. when

they are trying to allocate more and more power to themselves; their allegation that we are helping smugglers is not a fair allegation. What we are trying to impress upon the ruling party and the House is that in this country there has been ample legislative powers as well as executive power in the hands of the Government by the exercise of which you could have taken very drastic step against smugglers and the smuggling activity

Now what has happened during all these years. Smuggling has increased by leaps and bounds. I am not going into the controversial question of who is the beneficiary of smuggling but it cannot be denied that this Government has failed miserably during all these years to stop smuggling.

Sir, yesterday when we were discussing about the question of possible confiscation of property, Mr. Bhogendra Jha's amendment was negatived by the ruling party which showed that they do not want confiscation of the property of the smugglers. But at least smuggled goods can be confiscated under the foreign exchange regulation Act and customs act. Why have they not been confiscated?

THE MINISTER OF FINANCE (SHRI C. SUBRAMANIAM): We have confiscated smuggled goods.

SHRI SOMNATH CHATERJEE: Please show us in how many cases during all these years you have done so. We would like to know the value of the confiscated goods and the amount of personal penalty levied on the smugglers. How many prosecutions have been launched against the smugglers? Why do not you use the ordinary laws of the land? Why you want more and more drastic and draconic power? We are apprehensive of this because we know how the present preventive detention law, namely MISA is being misused. Only day before yesterday in answer to a question tabled by me, it was said, that as on 31st October, 1974 the

total number of person detained under MISA is 5198 and they are admitting that persons with political affiliations have been detained under MISA.

16.10 hrs.

(Shri Ishaque Sambhali in the Chair)

Under Sec. 134 Cr.P.C., forty ruling Congress Members have been kept under detention. What we are opposed to is the misuse of such drastic and absolute powers that this Government wants to propagate to itself. What we are opposed to is the way they have conducted themselves and used the MISA in spite of the categorical assurance given on the floor of the House by the hon. Minister while piloting the Bill that it will not be used against the political prisoners or political opponents. The Finance Minister himself admitted yesterday on the floor of the House that it is being used against political detention. Therefore, what is the good of saying that you give us the power and we shall not misuse them.' We do not believe them because they have committed a breach in spite of their assurances made in this House about the use of such drastic laws. Only the other day, yesterday, a report came out of the Supreme Court's judgment of a MISA case—this has nothing to do with the smuggling case—and I am reading from the report that has come out in the Statesman. I am quoting:

"It is a typical cases' The Supreme Court says:

"For no apparent reason, a person, who could be easily prosecuted under the punitive law, is being preventively detained".

I have got experience of appearing in MISA cases when the party Members had been detained under the maintenance of public order. The courts are not too anxious to release them. I can assure Mr. Subramaniam—he may not have any experience—that the courts are not keen to release these

[Shri Somnath Chatterjee].

persons. We find that the power is being misused in the name of preventive detention and you are abusing the power and, only in such rare cases, the courts are releasing the detenus. Hundreds of them are not released and hundreds of *habeas corpus* applications have been dismissed. I myself know this as a practising lawyer. Now what is going to happen is this. The Supreme Court is giving this stricture. I would like to know in such cases whether the Government has ever taken any action against those officers who issued such illegal detention orders. You have not done that. In many cases strictures have been made. You do not take action against those officers. Did you compensate those persons whom you have detained illegally? You detained them. *Hebeas corpus* applications had been made for the release of detenus. They are not successful at all. In such a case where the high court dismissed the application of *habeas corpus*, that man had to go to the Supreme Court. And, after waiting for months together to get this applications heard in both the courts, he gets himself released with a stricture from the Supreme Court. What is the Government going to do in such a case? In the name of smuggling you want more and more powers. That is what we are objecting to. We are not supporting the smugglers. Don't give that impression to the country. You cannot sell that impression to the people of this country. Therefore, our objection is on principle. We are challenging the *bona fides* of this Government in having such preventive detention laws. They should not be given more and more drastic powers of this nature. They are talking of taking more stringent steps against the smugglers and the foreign exchange racketeers.

I would like to impress upon the House and the hon. Members that instead of taking more stringent steps—this law is going to be passed in a moment—and more stringent powers

against the smugglers and the foreign exchange racketeers and their taking a softer attitude towards them, what I want to ask the hon. Minister to do is this. Yesterday I asked a question but he did not answer that directly. I shall show him cases where a soft or lenient attitude had been taken towards smugglers and foreign exchange racketeers and who were arrested under the law so far as period of detention is concerned. I know that there are so many cases in West Bengal. I know personally that persons belonging to political parties are being detained. They still remain in preventive detention without trial and without any opportunity to show that they are not guilty and without even being brought to the court. They will remain in detention until the emergency is called off and six months thereafter. Nobody knows when the emergency will be called off. Only this session I put a question and the answer was, "We cannot say". Therefore, a person detained in 1972 may remain in detention till 1980. But a person detained under this law will be released after 1 year; in certain category of cases like vulnerable areas, they will be detained for 2 years. Kindly see the concern of the Government for the smugglers! That is why we say, this is an eye-wash. The Supreme Court has said in so many cases—not smuggling but other cases of detention—that the cases should be reviewed from time to time. But no review takes place. Once he is detained he remains in detention for ever. He is condemned unheard, not even having the assistance of a lawyer to make his representation before the advisory committee. But in this case, a specific amendment was introduced by the minister that cases of detentions for smuggling and foreign exchange racketeering will be statutorily reviewed every six months. This is the stricter attitude you are taking against smugglers and foreign exchange racketeers and you want us to believe that you are serious! You want more powers in the name of these gimmicks.

Another distinction between the existing preventive detention law and the new law is, under the MISA even a District Magistrate or Commissioner of Police or Additional Magistrate can order detention. In every district of West Bengal, there are cyclostyled signed MISA orders with the names blank, in the pockets of sub-inspectors and inspectors of police. The names are filled in by them, the orders are served and they are detained. But in this case the Joint Secretary must be satisfied, trying to show how much serious attention is being paid to the smuggler detenu. These precautions are not available to political detenus. MISA has been used against teachers, students, doctors, nurses, railway employees, Government employees and political dissenters. Tomorrow a hawker owing allegiance to a particular political party can be detained easily under this law in the name of checking smuggling. That is why we do not want these absolute powers to go into the hands of the government. Not that we are supporting smuggling; don't try to create that incorrect impression.

How long will you allow the emergency to continue? In the name of emergency, you are stopping people from going to court. You have taken away the people's cherished fundamental rights. An emergency declared for external aggression only has been openly used for meeting the so-called economic emergency in the country. The Home Minister has openly admitted on the floor of this House that they want the D.I. Act and D.I. Rules to remain in force to meet the economic situation in the country. When the Constitution specially provides for declaration of a financial emergency under article 360, you have not the courage to do it because that will be an admission of your economic policies being bankrupt. Therefore you have now brought a new Act for the smugglers and foreign exchange racketeers. I wish you well. In spite of the powers you are taking, we know you will never

exercise them. But I appeal to you: Withdraw MISA; withdraw the emergency and then the people will rally round you in your endeavour to check smuggling and you will get more popular support, because people are now apprehensive of your real intentions.

SHRI ERASMO DE SEQUEIRA (Marmagao): Sir, it amazes me that this Government has the audacity to come before the House and say, we want these powers because we want to stop smuggling. From the recent arrests of the so-called kingpins of the racket it is obvious to anybody that Government possessed very intimate knowledge of smuggling, a knowledge which was not acquired in an hour or a day but which Government had for months and years. Then why is it that the Government did not (a) physically stop the smuggling and (b) prosecute the kingpins about whom it knew so much earlier? Which Minister or which bureaucrat stopped the process of law? It is this government which has protected the smugglers for all these years, not the opposition as they say, because we oppose these powers being given to them. My complaint is not merely that the powers are being asked, but they are being used against only one side of the racket. We all know that without an intimate combination of the smugglers and corrupt officials and corrupt members of the ruling political class, smuggling on the scale that existed, which Government now admits existed, could never possibly have taken place. Only when you apply this to all sides of the racket that we will believe that you are serious. Until that, we shall look for other reasons.

You talk of foreign exchange violation. A couple of months ago, the Commerce Ministry said to the Goan iron ore exporters, "In future we shall negotiate the prices and give you better prices." But the exporters said "Don't do that you will upset the trade." What does it mean? It means, we are presently not getting

[Shri Erasmo De Sequeira]

the price in foreign exchange due to us for the iron ore. It also means, there is complete under invoicing in iron ore exports from Goa. Yet, when MMTC has taken over the export of iron ore from this entire country, the Commerce Ministry is not willing to bring Goa under the national policy. The only reason I can think of is that somebody somewhere in this Government has a personal interest in seeing that the under invoicing continues. There is no reason whatsoever why the iron ore export from Goa should not be taken over by the MMTC because every exporter in Goa is in a position to give F.O.B. deliveries and it is not necessary for the MMTC to create any new facilities to take over this trade, in keeping with the national policy throughout the country. With such attitudes of the Government, it is not possible for us to believe that they are serious in what they say is their intent in wanting these powers. The technique that is being used by them today is not new. It is a known one. It has got something like this, that you pick a group which is unpopular, like, smugglers and, in the name of stopping this unpopular, anti-national group, you apply emergency powers to them. Everybody claps. You take away the rights of the courts. Everybody claps. You strip them of freedom, you strip them of the right to move a court. Everybody applauds. But what is being done today against smugglers will tomorrow be done against hoarders, against political opponents of the Government and, in the final instance, against the political opponents of the ruling clique in the ruling party.

In this respect it would be wise to remember that Hitler's party in Germany was called the National Socialist Workers' Party, a beautiful name, a beautiful programme, and, it ended in a Nazi regime. This is what worries us. My Party, the B.L.D. is worried at the increasing fascist ten-

dency shown in the legislation being brought before the House because, if we believe in the rule of law, then everybody, from smugglers to corrupt officials, to corrupt Ministers, has a right to a free, fair and open trial. Let them bring the corrupt persons before the court to clean themselves of corruption. Then only they can talk about being serious for stopping nefarious activity. Until then, we don't believe them.

SHRI SAMAR GUHA (Contd.): Mr. Chairman, Sir, with a very pious face, not only the hon. Minister but the whole gang of the Congress debaters—I use the word 'gang' because this is about smugglers—were trying to create an impression in the House and the country outside that the Congress Party was so serious and eager to stop smuggling, to prevent smuggling, and the Opposition parties and the Opposition Members are not only not serious but are not eager to prevent smuggling. This was the whole burden of the logic that was put forth by the Congress Members in the course of the debate on this Bill.

Just on the contrary, I want to accuse the Congress party that just by bringing forward this Bill, just by devising a means to prevent smuggling, they have devised only one means of detention. I say, the object of this Bill is not to prevent smuggling but to prevent the ugly disclosure of the smugglers' under-links with the ruling party. We are not afraid. Why don't they have the investigations completed in 15 days' time? If you have the courage, you bring out the list of names of those political leaders, the Ministers, the political parties, who served as an under-link of Haji & Co. and others. Why don't you have the courage to do so? You bring out the list. You give it to Parliament. Let the whole country know who are the under-links, who are the associates and who are the share-holders of these smugglers. But they have not the courage to do it.

Now, if they feel that the present Foreign Exchange Control Act is not sufficient to arrest them, to prosecute them, and if they feel that the present Customs Act and so many other Acts that are there are inadequate to arrest them and to prosecute them, to punish them, what stands in their way to bring a Bill in this House within a week? You did it earlier. You did that in the case of bank nationalisation and in the case of Constitution (Amendment) Bill. And we cooperated with you. Here also you may bring a Bill and within a day we will pass. Why are you apprehensive about the objective of the Bill? As I have said, you want to prevent smuggling for a year only. You do not want to punish the smugglers, you do not want to eradicate this smuggling this ugly thing, this parallel economy that has been going on in this country for the last 27th years. You do not want to eradicate this vice of smuggling lock, stock and barrel. You only want to keep them in a box. It is a Pandora's Box. If you open that, all the persons, from Mr. Kanungo upwards and downwards and sideways inside the Congress Party, will be exposed. That is the reason why you want to keep them inside a 'detention box.' We know what they are doing—those 555 persons in the jail. They are being given a royal treatment in the jail; they are having everything they want—from drinks to everything

I do not know whether the attention of the hon. Minister has been drawn to this. A news had appeared in the West Bengal press that a smuggler who is supposed to have been arrested and who is supposed to be inside the jail, was found in Darjeeling to have a conference with his links on how to expand the ramification of smuggling to Nepal.

It is also perhaps known to you that one Mr. Mundra who was supposed to have been arrested and jailed, was found in a Calcutta maidan at mid-night. A sergeant had brou-

ght him from inside the jail. That sergeant was arrested in Calcutta maidan and he lost his job. So, the royal guests of yours inside the jail, with the links that they have established with the jailers, with the police, in the dead of the night or even during day time, in the broad day light, come out of the jail. Not only are they the royal guests inside the jail; they are treated so outside also. Therefore, as my hon friend had said, this Bill is only an eye-wash: it is not only an eye-wash, this Bill is not only inadequate, but you are a hypocrite when you say that you want to punish the smugglers, the Government is hypocrisy galore when they say that they want to punish the smugglers. The Government do not want to punish the smugglers; they only want to keep them inside jails (Interruptions). The Government knows what these persons have been doing for the last 27 years. They have established almost a parallel economy, they have established parallel banks, they have established a parallel transport system, they have established a parallel licence-insurance system, they have established their own intelligence system; they have spread their tentacles not only to the Customs and Police departments but also to the political lords ruling the country; they have their dens inside them also. Fantastic figures have been given how this parallel economy is run. If you were really serious, why did you not accept the suggestion that I made? I could not move my amendment because I was called for a meeting by the Speaker. My suggestion was that a high-powered inquiry should have been instituted to go into all the aspects, to find out as to who are their links with the bureaucrats, their links with the customs authorities, their links with the bank officials, their links with the LIC, their links with the intelligence department and their links with the different political parties. Also you should have found out what are the links that they have with the Swiss Bank, in Hong Kong

[Shri Samar Guha]

and in other countries. You should have found out those links. Such a Commission would have thoroughly investigated and then devised advised ways and means how to completely eradicate this vice of smuggling. That you have not done. There is no attempt on your part. You have not even come out with such a Bill when the present Bill is inadequate whether you will bring up a Bill so that you can lay your hands on those underlings and not only prevent them but punish them adequately and properly? You have no answer.

I want to give you one example. I can give you hundreds. Only one I will cite. A very high Calcutta Police official came to see me. He was dealing with this kind of Customs offences and smuggling. What did he say? 'There is a link between the Customs and the Police officials and for every case caught, there are nine cases which go without detection. Just to show that they are very serious, the smugglers themselves get them a case.' Then they seize the goods and sell them. So, whatever is done it is done in collusion with the Police, Customs officials and these smugglers.

I am just giving one example. In 1960 it was found that the Reserve Bank of India relaxed rules in the case of foreign exchange required by the medical students studying outside India. Two Pakistani nationals and one Indian managed to get foreign exchange permits worth Rs. 25 lakhs in the name of fictitious medical students, reading in U.K. The National & Grindlays Bank released 120 drafts in the name of such students on their London Branch. Then some suspicion arose and an Investigating Officer was sent to London. It was thought that these drafts and cheques could have been cashed in London banks but that was not so and it was found that they were smuggled to Hong Kong and cashed there. Two of the persons involved were Pakis-

tani nationals. Not only that, but in the course of investigation, another thing came out. One B. M. Elias & Co. of Calcutta transferred clandestinely Rs. 1.5 crores of foreign exchange. The investigation regarding B. M. Elias and Co. was entrusted to the Director of Calcutta Enforcement Directorate. When the investigation was going on, what happened? When the Investigating Officer was again sent to Hong Kong and Thailand, and suddenly, that Director of Enforcement Directorate resigned and the whole case was hushed up. Meantime B. M. Elias & Co. having assets worth several crores of rupees was sold to an Indian industrialist at a price of only Rs. 45 lakhs. Now, in 1966, when 25 persons involved in this racket were accused, the Advocate-General Mr. Sen Bose asked the Police to proceed against them, the case started. But what happened afterwards will be interesting to know. That man who resigned and hushed up the case was appointed as Government Prosecutor in the case. When this was brought to notice of the Government, he was removed. Then, another set of lawyers were engaged. Here, in this case a nephew of the former Finance Minister, Shri Sachin Choudhary was also involved. He was also removed. The whole matter was sent to the CBI and the involved Customs officer brought a lady and ugly things happened thereafter. Now, this case went from the legal forum to the CBI forum. The Additional Customs Officer was involved and the Director of Enforcement was also involved and CBI officer was involved. Some very important lawyers are also involved. A few Ministers were also involved in this but I do not want to mention the names.

SHRI P. K. DEO (Kalahandi): That is important.

SHRI SAMAR GUHA: That is how the link works. In 1964 a question was raised in the Parliament. Today we are in 1974. The case is

still with the CBI. In 1966, the Finance Ministry and the Central Government instructed that these people should be prosecuted. But so far nothing has been done. We are in 1974. Still CBI is going on and nothing has come out. Do you know about these links, about the collusions of Police, magistrates, politicians, smugglers and so on? I have the whole papers with me. I have got the photostat copies of these things. What I wish to say is, the Government want to prevent, smuggling, but they don't want to punish smugglers. They want to detain the smugglers but they do not want to prosecute them. They do not want to eradicate the problem of corruption and smuggling in this country. Yesterday when I used the word 'Police Raj' my friend, the Finance Minister from the South got up. Usually we coastal people are very emotional always but I am glad he also belongs to that fraternity because he immediately got up and said, "yes, police raj against the smugglers." Well, you have converted the country into a big police raj. Your promises have not even the value of a fig in this House. What did the Home Minister, your colleague, who is no longer here, say? He said, not a single politician, not a single trade union leader, not a single trade union worker not a single peasant worker, not a single social worker, would be arrested under the MISA. But what happened? I am giving your own figures. Those are not our figures. Thousands of political workers have been arrested under MISA. Where is Mr. Vajpayee? He is not here now. For singing a song, he was arrested under MISA. Thousands of political workers have been arrested under MISA. That is why I say your promises have not even the value of a fig. What is the value of such kinds of assurances when we see thousands of political workers, social workers, labour and trade union men are arrested under MISA? Yesterday you said, you had the courage to use police raj against the smugglers.

You are only protecting the corrupt people and the smugglers, people who indulge in political corruption and vitiate politics and in consequence we the politicians are being now despised by the people, hated by them.

नक़रत अरर जनता के दिल में किसी व्यक्ति के लिये है तो वह हम राजनीतिक लोग हैं।

You have made that condition. You are responsible for that. You are the fountain-head of corruption and smuggling; you are protecting corrupt people and smugglers. If you have the courage, haul up these people. Try to root out this evil lock, stock and barrel. If you do it we are with you. You should not merely prevent, but you should eradicate this evil of smuggling, lock, stock and barrel. After getting the hit from Jayaprakash Narayan you are suddenly roused like a Rip Van Winkle to deal with the smugglers. What steps have you taken? Let it be made quite clear. You have taken only a step but your step should not be a hop to stop, but a hop-step to jump. It should be a big jump for rooting out this evil of smuggling completely.

श्री श्रीकार लाल बेरवा : (कोटा)

यह जो बिल पाम किया जा रहा है इसको राजनीतिज्ञों के खिलाफ इम्प्लेमेंट किया जाएगा यही इसका आगे चल कर उद्देश्य होगा। क्या कारण है कि आप की आज तक छाँखें नहीं खुली हैं। 27 साल तक आप क्यों सोते रहे हैं। क्यों अब छाँखें खुली हैं और आपने तस्करों को गिरफ्तार करना शुरू कर दिया है। पहले आप कहाँ चले गए थे? 27 साल से क्यों आपने इनको नहीं पकड़ा। यही आपके इंसपेक्टर एक्साइज के तब थे, यही अधिवारी आपके तब थे, यही कस्टम वाले अधिवारी तब थे और यही अब भी हैं। 27 साल पहले तब आपने कोई कदम क्यों नहीं उठाया या इन 27 सालों के बीच में पहले कभी आपने

[श्री श्रीकार लाल बैरवा]

यह कदम क्यों नहीं उठाया ? तब भी कांग्रेस की ही सरकारें तो थी जैसे अभी है। अभी ऐसा क्यों हुआ ? कारण कोई इसका नजर नहीं आता है और आता है तो यही एक कारण है कि किसी दुधारू गाय को पकड़ गए बाघ लिया जाए और उससे जब चाहा दूध लिया। आप इन लोगों को नजरबन्द करना चाहते हैं लेकिन आपका उद्देश्य यही है कि इनको नजरबन्द करके इन में चुनाव के लिए पैसा न मिले जाय, मिनिस्टर्स के लड़कों, लड़कियों की शादियां हो तो तब पैसा इन से निम्नलश लिया जाए। यही हमका ध्येय मालूम होता है। इन रमणलज से आप चुनाव के लिए खर्चा बसूना चाहते हैं। क्यों आप नजरबन्दी का कानून रखना चाहते हैं, क्यों नहीं आप इनकी सजा दिलवाते हैं ? सफ मतलब यह है कि नजरबन्द इनका खर्च जाएगा तो आप जब चाहें इनको छोड़ देंगे और अपना उल्लू सीधा कर लेंगे। अगर कोई चार चारों तरफ रहा है या चला हुआ पकड़ जाता है तो आप उनको क्यों नजरबन्द करना चाहते हैं, क्या नहीं उसको सजा दिलवाते हैं ? 1965 में राजस्थान में 150 स्मगलर पकड़े गए थे और इटर्नल रिप्लायरीटी एक्ट के तहत पकड़े गए थे। उन सबको वापस राजस्थान बना बना करके छोड़ दिया गया। उस समय मथुरा दास माथुर जी गृह मंत्री वहां थे और हमारे नहाटा जी ने बंगाल लड़या। इन सब लोगों से कांग्रेस के फर्म भरेवा लिए गए थे और इनको इन्वैशन् के वास्ते प्रचार के काम में लगा दिया गया था। इस तरह मऊन सबको छोड़ दिया गया। जैसलमेर और बाड़मेर के एरिया में जिसकी सीमाये पाकिस्तान से लगी हुई है, मोना, चादी, बण्डा, चाय धातु सभी स्मगल हो कर पाकिस्तान जाता है ऊठों के जरिये। यही मनी वहां बैठे हुए हैं और यही यहां बैठे हुए हैं। आप राम निवास मिर्छा जी से पूछो कि राजस्थान के बांडेर पर क्या हो रहा

है। ऊठों में रात के समय में यह चीनें रातिस्तान में स्मगल होती हैं। क्यों आप कानून को मजबूत नहीं बनाते हैं ताकि इस तरह की चीजों पर अंकुश लगाया जा सके। चोरी एक आदमी नहीं करता है। पुलिस इस्पेक्टर, डैड हास्टेबल, मिनाही तथा दूसरे लोग मिले रहते हैं तभी चोरी वह कर सता है। मिनिस्टर भी जहां तक स्मगलिंग का ताल्लुक है हम दोषी नहीं हैं। इनके घरों की आप तलाशी ले लें और आपको पता चली वहां क्या क्या मिलेगा, रिवाल्वर, टी बा, ट्रांजिस्टर जो सब फारे है आपको तलाशी ले कर मिल जायेंगे। ये 'हा मे' आ.ए. सि.का आ.आ. के तार इतना लाए, क्या पार्लियमेंट की आज इन्होंने ली ? जितने कस्टम के अधि गरा है उतने मालानों की आप तलाशी ले तो आपका पता चलेगा कि उतने पास भी बहुत ज़रूरी पैसा है। तब तो यह आपका उनके पास ? सब मिले हुए है। मिनिस्टर, वस्टम अधि गरा पुलिस आदि सब मिले हुए है। हाजा मरगा से नान रोड स्पया जब चन्दे क रूम में ले लिया तो इन्होंने इस बान का पता क्या किया कि तब तब वह रोड पति कैसे बन गया है। मैं नम्रता हूँ कि चन्द क घघ को बढ न के लिए आप यह नजरबन्दी कानून ला रहे हैं। क्या आपकी इस 56 कराड के मुल में केवल 550 या कुछ कम या अधि की स्मगलर मिले हैं ? इतने ही तस्कारों पर आपकी निगाह जा सकी है ? क्या और स्मगलर देश में चली हैं ? शायद इन लोगों ने आपको गुजरात के बुनाव के लिए चन्दा न दिया हा और आपने उताहा नजरबन्दी कानून में बन्द कर दिया हा और इस कानून को आप आगे बढ़ाना चाहते हा। अगर ऐसी बात नहीं है तो आप इनकी नजरबन्द क्यों करते हैं, क्यों नहीं इनकी सजा देते हैं। अगर हांका जेल में बन्द कर दिया जाए और सजा दे दा जाए यहा से बांडेर नहीं आप कर सकेंगे उन से आप मिल नहीं सकेंगे लेकिन अगर वे नजरबन्द रहते हैं तो उन से मिल जा सका है, नमसे चन्द लिए जा सकते हैं। जो गिरफ्तार

हुए हैं उनमें से आधे से ज्यादा लोगों से आप लोग मिले हुए हैं क्योंकि आपके पास पावर है, आप उनको लाइसेंस दे सकते हैं। मैं समझता हूँ कि अधिकांश मिनिस्टर इस काम में फंसे हुए हैं। इनकी खुली जांच करवाई जानी चाहिये और पब्लिक में तस्करों के खिलाफ मुकदमे चलने चाहिये। किस मिनिस्टर में कौन तस्कर फटा हुआ है, मिला हुआ है, इसका पता लगाया जाना चाहिये और ऐसे मिनिस्टरों की हजामत बनाई जानी चाहिये। इस सबकी खुली जांच होनी चाहिये। इन लोगों के पास कोठाना कहाँ में आई है, पैसा कहाँ से आया है सब का पता लगाया जाना चाहिये। तलाशियाँ सब की होनी चाहिये। नष्टम अधिवारियों की भी ली जानी चाहिये। पाकिस्तान के गृह मंत्री वा जो हानि हुआ है वही उनका भी होगा। पाकिस्तानियों में चन्दे देने के वास्ते कम्पनियों को चन्दे देने की छुट दे रही है। यह उस वास्ते कि चाहे जितना रूढ़िगण में खर्च किया जा सके। खर्च का कोई हिमाय बिनाब ही न दिखाना पड़े। अभी आपने देख ही लिया है कि श्री अमर नाथ चावला के केस में क्या निर्णय दिया गया है। उस पर टाटिग्राजी को डर लगा कि मेरे खिलाफ भी वही यही चीज न साबित हो जाए और मुझ को भी गद्दी को सलाम न करना पड़े जाए, इसलिए अपनी गद्दी को बचाने के लिए उन्होंने अध्यादेश जारी कर दिया।

इस नजरबन्दा वाकून से काम नहीं चलेगा बड़ी सजा इन लोगों को दी जानी चाहिये। चोरी की जांच होनी चाहिये। जब तक यह सब नहीं होता है यह काम नहीं लगेगा, यह चलता रहेगा, 27 साल से चलता आ रहा है आगे भी चलता रहेगा। पहले आपकी आँखें नहीं खुली और अब भी पूरी तरह से नहीं खुली हैं। पहले खुली होती तो आपको अरबों खरबों का माल मिल जाता। लेकिन आप तो चन्दे का बचा बना रहे हैं और इसको नए सिरे से चलाना चाहते हैं।

SHRI BHOGENDRA JHA (Jai-nagar): Mr. Chairman, Sir, we have

been discussing this Bill for the last two days. I think that by now we are at the fag end of discussing this Bill and the Ordinance which has been promulgated. On the basis of this end, through the emergency, they have acquired the power which, ought to have been revoked long ago. We all know that in the last year or three years ago, the Government had made up its mind to revoke the emergency in the rest of the country excepting in some border areas. Naturally, we on our side wanted that the emergency should be revoked in the whole of the country. That way, the emergency remains. And, naturally, because of that, there has been misuse of MISA on a wide scale in violation of the assurance given in this House. So, there is a very legitimate apprehension that the formal assurances given in this House have no value when the question of actual implementation comes.

That way, the credibility of the Government in this House has gone down. In such a situation it is quite appropriate that in place of the maintenance of internal security ordinance the present bill has been brought by changing the nomenclature to "Conservation of Foreign Exchange and Prevention of Smuggling Activities Bill". So, this is not meant for the maintenance of internal security. But, this is particularly meant for the Conservation of Foreign Exchange and Prevention of Smuggling Activities. Even then there are grounds to apprehend that this Bill will be utilised against the smaller fries and against some individuals and hoarders of yards of cloth or something else. And bigger fries may be allowed to remain at large because of the machinery. Under the capitalist system the Government is defending, protecting and advancing the cause of these people. So, these people have amassed huge wealth with which they can purchase everything in society, because everything is available for sale. Even education is for sale. Even though edu-

[Shri Bhogendra Jha]

cation is a fundamental right, because of the high fees one cannot have higher education except for a price. Even justice is for sale for those who can afford it. Some of the barristers, including some Members of this House and ex-Ministers, can be engaged by smugglers and dacoits by spending millions of rupees. By spending billions of rupees these billionaires can save themselves. In this society where everything is for sale, whether education or justice, in such a society the smugglers, specially the bigger fries among them, cannot be expected not to utilize their money power, easily-earned money, not hard-earned money for which they have to care so much, to save themselves. All the same, there is the assurance given by the Finance Minister that the Government is going to come forward with a Bill in this session itself to deal with some other aspects of smuggling.

SHRI C. SUBRAMANIAM: I doubt whether it can come in this session.

SHRI BHOGENDRA JHA: Government say that because of the non-cooperation of the opposition they could not bring many necessary measures. I am sure that if the Government bring forward a Bill for the confiscation of property acquired through smuggling and foreign exchange violation, this House would be prepared to pass it, if necessary even by sitting one day extra. But, at the same time, I would say that the assurance given yesterday should not be watered down just now.

There should be confiscation of property acquired by smuggling and violation of foreign exchange rules. In the case of the smugglers who have been detained, if there is circumstantial evidence, criminal prosecution should be launched and they should be punished for a longer period.

Of course, we know the difficulties facing the Government. The smug-

glers will go to courts and naturally in courts money do count. For instance, under the MISA when political prisoners, trade unionists and peasants are detained, they have very little access to the higher courts because of lack of money. But these smugglers have no dearth of money. So, the Government should devise ways and means to counteract their activities.

17 hrs.

People will have some confidence in the *bona fides* of the Government so far as preventive detention is concerned only if they come forward with the other promised measures. One measure is for simultaneous prosecution in courts and the other for confiscation of property so that the money power of these smugglers, which corrupts and poisons the political life and administration of our country can be crippled. It is only a combination of these two powers that can be effective. If the Government expect people to give some credibility to this legislation then they should come forward with those two other measures providing for prosecution of smugglers and confiscation of their property.

The apprehension of our colleagues here about this measure is understandable and justifiable. It is true that some of them have not welcomed the arrest of these smugglers. At the same time, I cannot help saying that the steps of the Government have been halting, hesitating and half-hearted. So, if they take the two measures which I have just now suggested it would be in tune with the popular feelings in the country. It will give hope to the people that Government are determined in their efforts to deal with smuggling in a ruthless way.

Here I cannot help expressing my apprehension about the real motives of the Government because by accepting amendment Nos. 20 and 35 they have shown a very soft corner for the detenus who have been detained.

These facilities are not available for political detenus. Only a Joint Secretary can pass these orders. I support that. If this power is given to the smaller officers there is a likelihood of the misuse of the Act. So, in that way it is good.

But I would like to ask one question. If the Government are not in a position to revoke the emergency just now, in the case of political prisoners, trade unionists and peasants who have been arrested under the MISA also, why could they not say that the order should be issued by an officer of the rank of Joint Secretary and review should take place after six months? In the case, the people will have the satisfaction that the Government are giving them at least the same treatment which they are giving to smugglers.

After this Bill is passed, the whole country would be watching how the Government are implementing it. Government have so far arrested only 500 people. But there are more than 2,000 smugglers in this country. They should be detained and their property confiscated. (interruptions) Of course, the smugglers are not only on one side of the fence; they are on both sides of the fence. They are not putting their feet only on one side of the fence.

In such a situation, I think though it is in a correct direction, it is a half-hearted measure. It should be strictly implemented and two other legislations for trial and confiscation of property must also be brought before the House.

Lastly, I would like to mention that the Law Commission has recommended that there should be summary trial through special courts for those who indulge in smuggling and racketeering in foreign exchange. That recommendation of the Law Commission should also be implemented by bringing a legislation before the House.

SHRI P. K. DEO (Kalahandi): Mr. Chairman. Sir, after listening to the speech of the hon. Finance Minister on the second reading of the Bill, I came to understand that so far as such cases where persons are being detained under MISA for various offences or for various alleged offences not concerning the Finance Ministry are concerned, those will be looked after by the Ministry of Home Affairs. He gave an impression that he is primarily concerned with the cases of such detenus under MISA who have violated the foreign exchange regulations or who have resorted to smuggling etc.

Sir, an apprehension has been expressed in this House how MISA is being misused to curb the genuine aspirations of the people and to nullify their just demands. On flimsy grounds the people have been arrested under MISA. It has mentioned that even Mr. Vajpayee was arrested under MISA. I do not expect that the Finance Minister could give a satisfactory reply to all the apprehensions expressed.

The real concern is how to cure the financial malady from which this country has been suffering today. A concern has been expressed regarding parallel economy and parallel currency. All these are the various rackets going on in this country. For that purpose, to invoke article 359 of the Constitution under emergency powers or to pass a Presidential Order just two days prior to the judgement about to come or to slam the door of the court for the aggrieved person, is not the answer. For that purpose, the Finance Minister should resort to such measures under article 360 of the Constitution. Article 360 of the Constitution is very clear. It says:

"If the President is satisfied that a situation has arisen whereby the financial stability or credit of India... is threatened..."

[Shri P. K. Deo]

We have come to a stage where the ereditability of the currency of this country has been threatened. We have come to a stage of economic crisis. All these are accepted facts. So, taking into consideration all these facts, I request the hon. Finance Minister to reconsider it. Why does he not come forward in a straight forward manner? Why does he come in a clandestine fashion through a back-door under article 359 which is primarily concerned with the maintenance of internal security so far as law and order of this country is concerned, and try to cure all the financial maladies of this country.

I request the Finance Minister that instead of coming in a clandestine manner, he should come in straight forward manner. He will get full support from the House if he suggests any measures to be taken to cure the financial maladies of this country.

We would like to give him full powers, we would like to armour him with all the armouries under article 360 of the Constitution, under Financial Emergency. This is my suggestion to him, and I hope I will get satisfactory answers to my queries.

SHRI SHYAMNANDAN MISHRA (Begusarai): I had made it absolutely clear in the beginning, although I found that there was some misrepresentation in the press—may be, in the din and bustle that was created on that occasion, they could not get it—, that we stand for the sternest measures and the swiftest action against the smugglers. But we have our doubts whether Government has the same intention as we have because the Government did not use the measures that were available to it in the past, with the result that the smuggling activity has been on the increase. Even after the arrests of the smugglers came, there is no knowing that there has

been any decline in this activity. It appears that it is mostly in the nature of a gimmick, it is mostly in the nature of a political dramatic performance.

Mr. Chairman, to be very plain, we can be satisfied or convinced about the genuineness of the Government's intention only when the Government releases all the political prisoners who have been arrested under the MISA. It might sound somewhat a very tall demand, but that is in keeping with the assurance that the Government had given to this House and to the country that the MISA would not be used against the political opponents and against people's movements. We do not find any disposition on the part of the Government not to use it against the political persons, the political workers, and, therefore, our mind is full of misgivings that even this measure is not really intended against the smugglers but is intended against the political workers.

Now, what has happened? Out of 500 smugglers or so, 19 smugglers were ordered to be released and six out of them were re-arrested. We really do not know what prevented the Government from re-arresting all the 19? I have made my submission earlier that the political prisoners had been arrested, re-arrested, re-arrested and so on, with the result that they have been in prison for more than three years or so. If that could happen and we have had absolutely no satisfactory answer from the Government—why could the same treatment not be meted out to the smugglers and why was this Presidential Order necessary? May I make myself completely clear on this that I am confining my attack to the Presidential Order; I am not directing my attack so much to the MISA Ordinance. But that is the confusion which was created in the Members sometime back and I have my own views, that even this the existing Act has not been used properly. But if it was required that it should be strengthened, then we should have

gone in for it and in fact, I am on record as having said that the Government should have adopted the suggestion of the Law Commission that a constitutional amendment was necessary and I do not know why the Government do not come forward with a constitutional amendment. I have no idea whether the Government will reply on this point.

SHRI C. SUBRAMANIAM: I did reply.

SHRI SHYAMNANDAN MISHRA: Why have you not adopted? You are prepared for that.

SHRI C. SUBRAMANIAM: I have replied yesterday on it.

SHRI SHYAMNANDAN MISHRA: You seemed to be prepared for a constitutional amendment on that?

SHRI C. SUBRAMANIAM: You see my reply

SHRI SHYAMNANDAN MISHRA: This is a suspension of fundamental rights. There is a fundamental right to go to the court which is there in every civilised country. I do not say that you should not be very disturbed against the smugglers. But you could have been stern against the smugglers, as I suggested earlier, even under the present measures. But that you did not do.

Now, it appears to me that this suspension of fundamental rights is the thin end of the wedge and we might surely see in a not too distant future that the Government is unmasking itself in full authoritarian role. That appears to me to be the trend and I would like to warn the hon friends on the other side that like a Roman Senator they may themselves become victims to these measures, in not a very distant future.

SHRI PILOO MODY: (Godhra): The time is coming.

SHRI SHYAMNANDAN MISHRA: Now it had been suggested by one of the respected editors of the country, Mr. Chalapati Rau that there should be an Advisory Committee which could review the cases of those affected by the Presidential Order. I do not know why the Government do not think it necessary even to adopt such a mild suggestion of an Advisory Board at the national level of which the Chairman would be one of the working Judges of the Supreme Court or may be of a High Court. But I do not find that the Government is prepared to provide any safeguard against honest citizens who may be made a victim of their designs. Therefore, I think that the Government might use it and the Ruling Party might use it as an instrument of blackmail and I have no manner of doubt that it had not used it so far against political persons even under the present legislation that is MISA.

Now I was almost aghast to read in a newspaper that one of the Ministers in the Government said that even a person found with any smuggled goods worth Rs. 5 may be arrested under MISA and my hon. friend, Shri Bhogendra Jha just now pointed out that any person even with a pen about which one might not know when it was bought, whether he bought it abroad or some friend gave it to him, might be arrested if you would ask your officers to play all kinds of havoc on the lives of the citizens. What are the safeguards? I really do not know whether the Government is going to provide any safeguards after this measure is adopted.

Finally, the main point is that under-invoicing of exports and over-invoicing of imports is also a crime which should not be considered to be less serious than smuggling. Does the Government propose to provide any deterrent punishment for them of the same kind and the same kind of summary trial as these persons charged with smuggling?

[Shri Shyamnandan Mishra]
—Contd.)

After all, the smuggling activity is being helped by those who are being engaged in this business of under-invoicing of exports and over-invoicing of imports. But Government does not want to make the punishment against these persons as deterrent as we want to make against the smugglers. For this the necessary measure should be taken, not the kind of Presidential Order which we have just seen. We must make a provision for deterrent punishment even against those people who have been engaged in this nefarious trade.

With these words I again appeal to the Government to see that we may not have any opportunity of coming to the House and complaining that this is going to be used against political prisoners, political workers, and if the Government uses it in any other way, then we are going to take drastic action against the DIR emergency, and the use of MISA, and the whole package of such draconian measures. Thank you very much.

SHRI P. G. MAVALANKAR (Ahmedabad). While I commend some of the aim and objects of the Government in this matter of trying to curb activities of smuggling, I would say I am opposed to this Bill because the way it has been brought forward, it does involve certain fundamental issues of personal liberties. I was listening to the Finance Minister with great attention yesterday at the Second-reading stage. He put it in so many words and assured us that he will see to it that not one single political opponent or political dissenter will be arrested, tried or detained under this particular measure. But, my difficulty is this. The past experience which we have does not give us any hope that he will be able to implement that kind of an assurance.

That is the point I make and I hope he will deal with this point when he replies to the debate.

If the question was only of dealing with smuggling, of dealing with them effectively in a very timely way, in a very drastic way, I do not think anybody in his senses would ever be against that. We are all for it. In fact we have been wondering why Government are not doing anything in this regard, why they did not do it by having open trials, against those found guilty. But having got advantages of monetary character financial and other benefits from smuggling and so many other activities, later on having found that is has now become beyond their control, when the country at large is being disturbed, when public opinion is so much agitated, now they have reached the saturation point and now because they think they will be completely exposed they have come with this particular measure. The Minister tells and charges us that we are looking at it in a political way. It is the Government which has brought this measure from a political angle. And even after all these years they have brought it now in such a way that they only want to give an impression round the country that they are doing something without doing anything at all concrete and effective in this matter by way of time by action. This is the charge. My first objection is with regard to the form in which this Bill has come, that is by using emergency powers. Will the Minister tell us whether there is any kind of emergency today, as indicated in the Constitutional provisions of our constitution? There is no emergency. There is neither war nor external aggression nor internal disturbances. If there is no emergency then the more honest course open for Government would have been to lift the emergency and then come to Parliament for even having strictest possible legislation. But without doing it they want to take the blanket power

which I consider to be an executive excess, and the objection is again that it is an executive excess against which there is no appeal. The Minister says: You can make an appeal to me. But the higher authority is also an executive authority. If an executive authority arrests someone at the state level and the executive authority at the federal level has to decide, do you mean to say the higher authority at the federal level will say that what the higher authority at the state level has done is wrong? This is the fundamental objection. If Government want the emergency to be continued, and normalcy is considered as emergency then we are bound to oppose this Bill tooth and nail.

My next point is that the political overtures of this particular measure need to be seriously looked into. Shri Shyamnandanji was right in saying that MISA has been used against political opponents, workers and journalists. It is happening not only in Bihar but it also happened in Gujarat. When the agitation was going on in my State, namely Navnirman Samiti agitation, earlier this year, the Finance Minister would please recollect that any number of Journalists, Students, Party workers belonging to CPM Jansangh, Cong (O) and even Independents were arrested under MISA. So, there is no guarantee that you will not do the same thing under this new legislative measure. Therefore it is no use the Minister telling us that they will not arrest political dissenters.

Then, I want to suggest that the issue of personal liberty is so sacrosanct and fundamental that no Government even under the genuine cause of dealing with anti-social elements have the power to arrest or harass people whose only fault is that they do not see eye to eye with the Government of the day. Therefore I wish to suggest that this whole principle of personal liberty and individual freedom is so important that it

can never be compromised even one per cent or even less than that. /

I am now concluding since you, Mr. Chairman, Sir, are rightly impatient. My friend, Mr. Bhogendra Jha moved a lot of amendments one of which we all supported yesterday. It was with regard to the confiscation of all properties, estates and other belongings of the smugglers. Now, if Government are really sincere in dealing with these smugglers effectively and their anti-national activities, I ask: why do they not take such a step? certainly, I ask further—there are other amendments—why are the Government not having an open trial of these people? Are they afraid? If the smugglers are taken to the court of law, are Government afraid of so many things? They may be afraid or they may be nervous that the evidence in a court of law is not adequate. I can understand that nervousness that evidence may not be adequate to prove it in a court of law. That I can appreciate. But, are they also nervous because of other grounds that these smugglers, in an open trial will go on telling a number of things which will go against this Government and all those different individuals who are highly placed, in the Congress Party, in the establishment, in the Government, in the administration and in the bureaucracy all of whom will be exposed?

Therefore, in order to shield them, they are afraid of the open trial. If we are in an open democracy or in an open society, why are they afraid of this kind of open trial? Therefore, I wish to conclude by saying that we are opposed to this measure because in the name of emergency, it gives blanket powers for the executive. In normal times in the name of emergency, if Government wants to use all the existing powers, that is objectionable. This is contrary to the fundamental rights put in and enshrined in our Constitution. It involves the rights of every individual and per-

[Shri P. G. Mavalankar]

sonal liberty and privacy. One final word and I have done. About the smugglers and the smuggled goods, I want the Minister to tell us as to what Government are doing? Are these confiscated goods being smuggled into somewhere? Are they being sold? Or are they being made available to the public through the black-market, or profiteers? Then we are in for a vicious circle. We do not want to be in a vicious circle. Therefore, Mr. Chairman. I want this Minister to come out straightaway, and open out before the House the ideas and facts about this matter. In the name of curbing the smuggling activities, let him not harass those people who are either innocent individuals or individuals who are holding views different from the Government of the day. Government want to curb almost all the inconvenient, awkward but legitimate activities in the interests of fundamental rights. In our democracy, Government wants to curb political activity by using these extra-ordinary powers to detain such people behind the prison indefinitely. This is neither democracy nor decency. Certainly that is not the way to deal with the smugglers. I conclude by saying, if the Minister and the Government want to deal effectively against the smugglers and smuggling activities let them not pretend, to say and do that what they are doing is what should be done sincerely; and seriously, it is this pretension and artificiality to which we want to object very severely and sincerely.

MR. CHAIRMAN: One question by Mr. Mody and one question by Mr. S. M. Banerjee will be allowed.

SHRI PILOO MODY (Godhra): Mr. Chairman, Sir, my difficulty is that you ask me to ask one question. But the Minister of Parliamentary Affairs says 'I make a speech'. What should I do? I shall take only a few minutes. I shall compromise.

MR. CHAIRMAN: Mr. Piloo Mody, I am now in the Chair.

SHRI SHYAMNANDAN MISHRA:
You are not required to reply.

SHRI PILOO MODY: I am, first of all, grateful to my colleagues who did not listen to me for these five or seven years when I kept on telling them that the Bills to amend the Fundamental Rights would give Parliament that power which was going to be the end of the wedge which was going to blow up this country and the fundamental rights to the Heavens. I am glad many of us are now talking about fundamental rights and the need to preserve them even though they voted in favour of the Twenty-fourth Amendment Bill. The emergency has become a normal way of life for this country. The first emergency was kept for 6 years. Now this emergency is going on and nobody knows when it will come to an end. It is like the story of the person who kept crying 'wolf' or 'tiger'. It is now no longer a weapon left in the hands of the government. It is only arbitrary law, arbitrary rule and arbitrary whims of the people in power who use these Draconian measures for their own ends. The main reason why I am against it is because it gives government tremendous discriminatory powers. It can hit one Mastan and leave out another Bakhia. When they use this power discriminating between one criminal and another, they are all the more tempted to use it indiscriminately against those who are criminals and those who are innocent. It is the discriminatory character that I am objecting to. They can invade the house of one blackmarketeer but conveniently forget his neighbour who is also a blackmarketeer. They can act against one tax evader but forget his neighbour who is also a tax evader. They can act against one political opponent and leave another out. It is the discriminatory character of instruments like this which Government must be deprived of. The minister himself admitted that if there is circumstantial evidence, anybody can be detained. You know it is very easy to fabricate circumstantial evidence. They will

put tomorrow Mr. Shyamnandan Mishra in jail under MISA. All they have to do is to make a blatant statement, "We found so and so things in your house". Whether it was declared or undeclared, legitimately acquired or not, never comes into question. Nobody can find out for 2 years. He does not have the right to make a statement to defend himself. No paper will publish what he says. We read a certain report that the houses of two businessmen in Kanpur were raided and Rs. 50,000 worth of gold jewellery were found. You know at today's price, two or three little rings would cost Rs. 50,000. Then it says, 3 gold guineas were found. This was supposed to be the great crime for which MISA had been used. If they had only gone to his neighbour's house—probably a Congressman's—they would have found ten times that much. This is the discriminatory character of this legislation.

What happens to the goods that are confiscated? I have tabled a question and I am yet to receive an answer. I would like to know month by month for the last three years what goods have been confiscated and sold, if sold, to what account of the Government and for what purpose this money is credited. If the minister will give me replies to these three simple propositions I have put to him, I would be most grateful.

SHRI S. M. BANERJEE (Kanpur): Mr. Chairman, I heard with rapt attention the speech of my hon. friend. Here let me hope that the Government will not use these unlimited powers, naked powers, except for the purposes mentioned in the Act. I would take this opportunity to congratulate and compliment my hon. friend, Shri K. R. Ganesh for having the courage of conviction to declare that if Government does not take any action then he would start a satyagraha campaign. That acted very well.

SHRI SHYAMNANDAN MISHRA: So, the credit does not go to the Prime Minister.

SHRI S. M. BANERJEE: She does not speak. Shri Ganesh spoke about it. Today he is not in that Ministry. I do not mind it because nobody can say who is going to remain in the Ministry tomorrow. That is the tragedy of this country.

There are many loopholes in this measure. My hon. friend, Shri Bhogendra Jha, wanted to move an amendment to the effect that the property of the smugglers, benami or otherwise, would be confiscated. Unfortunately, that amendment has not been accepted by the hon. Minister for reasons better known to him. Naturally, we have to rely on his wisdom. But what will be the effect? We know in Bombay and other places, property worth crores are in the names of smugglers. At least in one case we know that property worth Rs. 50 lakhs to 60 lakhs is in the name of one of the smugglers or benami. The real property belongs to the man who has been arrested, but the Government cannot touch the property because they have no legal rights to do so.

Shri Piloo Mody was talking about fundamental rights. There is no basic fundamental right for smuggling. The smugglers are anti-social elements and, naturally, we have to take action against them. This Government have brought in this Ordinance for that purpose, and I am happy about it. But it is half-hearted. So, I cannot give my full-throated support to it. My support is conditional. That is why I say that the hon. Minister should assure this House that in future, preferably in this session itself, legislation will be introduced, one to confiscate their property and another to seize the moveable property in the safe deposit vaults. When the income-tax authorities searched these vaults they found liquid money, ornaments, jewellery, gold and silver ware. They

[Shri S. M. Banerjee]

should also be covered by the proposed legislation. Finally, I would request the hon. Minister to allay the fears in our minds that it will be misused against people who are not concerned with it. With these words, I support the Bill.

THE MINISTER OF FINANCE (SHRI C. SUBRAMANIAM): Mr Chairman, Sir, we had a series of surmons from the Opposition pulpit to the sinners on this side. It is almost amusing to see the self-righteous attitude which the Opposition assumes when they address the Treasury Benches or the Congress Members. If the *bona fides* of the elected Government are to be tested every time or suspected every time, certainly, no Government can function. Therefore, I would plead with the hon. Members that the interest of the country is not only with them but also with the representatives on this side, perhaps, who had the largest majority backing of the people.

There is another section in the Opposition which thinks that unless they act as a vigilance cell, the Congress party is likely to go astray. I want to give you the assurance that as far as possible, we shall try to see that the smuggling activity is put down with a firm hand by the use of the measures which this House is just now placing at our disposal.

The questions were asked as to how many persons were being arrested in the past and whether the goods were being confiscated. I have got some figures, starting from 1966, 763 in 1966, 1184 in 1967, 1135 in 1968, 3399 in 1971, 2373 in 1973 and 1862 up to July, 1974. But unfortunately, in these cases, particularly in smuggling cases, we were finding it very difficult to get convictions in courts mainly because these people do not indulge in these activities with witnesses around. They arrange it in such a way that

it is very difficult to get witnesses. Sometimes, we have to get approvers but even approvers also get threatened and they go back on their statements. That is why, we find, in spite of thousands of persons being arrested, ultimately, only in respect of hundreds, 300 and odd in one year, 500 and odd in another year, we were able to get convictions in courts. So, this activity will to be tackled in a particular way. That is why we have come forward with this Bill, no doubt a very stringent measure, no doubt with very wide powers—I do agree—but the only safeguard could be the integrity of the Government that this would not be used for political purposes but only for dealing with economic offences.

Then, the charges were made that the general MISA was being used against political opponents. What is the real state of affairs? I tried to find out where this has been used and why a large number of persons have been put in prison. As on 31st October, 1974, there were 4,608 persons in detention and, out that number, 3,808 were in West Bengal alone. Therefore, it is the state of affairs in West Bengal which is the reason for a large number of detenus. I am sure, those who have had the experience of life a few years back in West Bengal would agree perhaps that this is inevitable in a situation existing in West Bengal. Therefore, if we are interested in putting all our political opponents under detention, it should have happened on a large scale in the various parts of the country. But it is not so. So, I respectfully submit that we have to take into account the conditions existing in particular areas and see why a particular action had to be taken even for detention of political workers.

The point that was generally made was that discriminatory treatment might be given in this with reference to various persons. Take any general law for search or even for arrest. It can be misused by Government.

Therefore, ultimately, the safety is in a Parliament like this or in Assemblies or in open democratic elections, so that anybody misusing the powers could be properly dealt with in a democracy. Therefore, there is no scope that the powers which are being taken are likely to be used only against a certain category of persons and not against certain other categories of persons; there is absolutely no scope for that and we shall try to see that this is not used with any discrimination against any particular sections of the community alone. It will be used only for the prevention of this economic offence.

Shri P. K. Deo has made the plea that there is article 360. If he had gone through the entire article, I am sure he would have found that the actions which could be taken under the emergency powers of article 360 are very limited—to issuing of directions to State Governments as to the management of their affairs and certain other financial powers. Certainly, this power cannot be assumed under article 360 even if a Financial Emergency is declared. Therefore, it could be only under the other article that this could be done.

Again Mr. Bhogendra Jha has made the point—which was reinforced by Mr. Banerjee—about dealing with the property. Not only here, in the other House also, even long before this matter was raised here, I had made this declaration. Any acquisition of property or wealth through the smuggling activities stands on a completely different footing altogether and, therefore, they will have to be dealt with in a different manner for the purpose of confiscation. And I can assure the hon. members that the matter is under investigation; we are trying to find out what sort of law we should have so that it may stand the test of the judicial scrutiny also. Unfortunately, in our country, whenever properties are involved, perhaps they look into the Fundamental Rights a little more strictly than even the personal liberties. Therefore, we have

to see that proper safeguards are built into the legislation itself so that, when such a confiscation takes place, we may be able to stand the test of writs in the High Court or in Supreme Court...

SHRI BHOGENDRA JHA: Will you bring it in this Session?

SHRI C. SUBRAMANIAM: I cannot say that because it depends on how soon they are able to formulate the proposals. I cannot bring forward a half-digested thing and then find ourselves in great difficulties later on. But as far as investigation is concerned, I have already assured the House that we have enough powers even now to trace any property in the hands of anybody to find out whether it is benami for somebody else or is genuinely held by anybody. And even if it is genuinely held by somebody else, we are entitled to find out from what source that property has been acquired. Therefore, all those powers of investigation are already with us. Once we identify the property as having been acquired by smugglers by the wealth accumulated by smuggling, the existing Wealth Tax Act or the Income Tax Act we cannot confiscate the property. Therefore, a special law will have to be there for the purpose of investigation. This is what is under examination. But hon. Members are aware that under the Customs Act and under the Excise Act, whatever is smuggled could be taken over and seized. For that also somebody asked for figures and also a question was put how these properties are being disposed of. In 1970—Rs. 22 crores worth of property were seized. In 1971 it was Rs. 20 crores, 1972—Rs. 28 crores, 1973—Rs. 35 crores and in 1974, upto August, it is Rs. 40.5 crores. This shows how before we took action under this MISA for the purpose of arresting these persons, this smuggling activity was increasing. After all only a percentage of the smuggled goods would have been seized but even then, the seizure was increasing year by year showing that the smuggling acti-

[Shri C. Subramaniam]
vity was increasing. But I am sure now you will find after these measures, the seizures would have gone down. That does not mean that the Customs officials are no longer alert. It is mainly that these activities have been crippled to a certain extent now and that is why the smuggling activities, not eliminated altogether, but considerably decreased.

Then, a question was put how these properties are disposed of. As hon. Members are aware, the main articles which are imported are (1) watches, I am told, are of the largest value. (2) Synthetic textiles. Then we have electronic goods. Then foreign liquors. Then some basic drugs and also concentrates so that they could be used here for the purpose of manufacturing more drugs. Therefore, one idea was given by somebody—why not destroy all these things? Of course, that is one way. But we thought these were valuable articles and could be disposed of. That is why these are being disposed of through the co-operatives and more go to the Armed Forces, as they require so many things they are sold to them. We see that the trade does not get hold of this but that it goes directly to the consumer. But in fact, this is also a shield for many people even to deal in smuggled goods and say, 'This was purchased in a co-operative store where this was being sold'. Therefore, we are considering what should be done with regard to these goods, whether this may be confined to the tax-free shops in the airports where only the foreigners can buy and take them, or whether they could be re-exported. These are all under consideration of the Government. So, under the existing circumstances, if the articles could just be destroyed, I do not know whether this is a proper way of doing disposing of them.

Therefore, these are the various steps which we have got to take for this purpose and as I have already stated, the passing of this Act and

even the detention of the persons concerned is the not the end of the process but only a beginning of the process for the purpose of eradicating this evil of smuggling and foreign exchange racket.

18 hrs.

And, I want to assure the House that we are trying to identify what are the follow-up actions which are necessary for this purpose. If any further legislation is necessary for this purpose, I would not hesitate to come before this House. But I want to give you this assurance that we are undertaking these various measures in all earnestness and in all sincerity. I want to assure the hon. Member, Shri Jha, that no pressuring from him is at all necessary to make us take these various measures in a full-hearted manner. He spoke as if we are all half-hearted and that he alone can provide us the necessary momentum to go forward and undertake this measure.

So, with these words, I would like to conclude.

SHRI SHYAMNANDAN MISHRA: Is the Government undertaking any steps to ensure that the property is not transferred pending confiscation? (Interruptions). I want to know whether any step is being taken to ensure that the properties are not transferred.

SHRI C. SUBRAMANIAM: The existing law is adequate enough to safeguard them.

SHRI SHYAMNANDAN MISHRA: There were two points which were raised. They have not been answered. It was asked whether the Government think that property is more sacred or person's life is more sacred. When the Government thought of putting a person behind the bars, why did not the Government think of confiscating the property earlier before putting the person behind the prison bars? That was the question asked. Now the

Government says that that aspect of the matter is under examination. Why should this action take a second place? That point has not been answered.

And then, Sir, it is really a very dangerous theory that the hon. Minister had propounded that action against the smuggling could be taken only under Art. 352 and not under Art. 360. Because, Article 352 is related to the security of India or any part thereof. Now, are we being asked to interpret the action against the smuggling to be related to the safety and security of India or of any part thereof? I really do not know why the hon. Minister has propounded this dangerous theory that this action could be taken only under proclamation of emergency under Article 352, because, that relates to war or disturbance and that does not relate to anything of the kind like the economic offences.

SHRI C. SUBRAMANIAM: As far as the first part is concerned, the person can easily disappear. As far as property is concerned, they cannot take away the properties.

Regarding the second point which the hon. Member raised, I am sure, the hon. Member is aware that armed invasion alone is not the manner in which the security of the country is threatened. Chile is an example where even without an invasion, we find, the security of the State can be threatened.

With these words I move.

MR. CHAIRMAN: Now the question is:

"That the Bill, as amended, be passed."

The motion was adopted.

18.04 hrs.

RESOLUTION RE GROWTH OF FASCISM IN THE COUNTRY—contd.

MR. CHAIRMAN: We will now take up Non-official Business.

SHRI SHYAMNANDAN MISHRA (Begusarai): It is already 6 o'clock. It is past six now.....

श्रीमती सुभद्रा जोशी (चांदनी चौक) : सभापति महोदय, मेरी तजवीज है कि यह जो प्रस्ताव माननीय श्यामनन्दन मिश्र का है बहुत आवश्यक प्रस्ताव है। मेरा ऐसा सवाल है कि इस का समय बहुत कम है। इसलिये आधे घंटे इस का समय और बढ़ा दिया जाए।

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU-RAMIAH): Extend it by half an hour.

श्री मुहम्मद जमीलुर्रहमान भंडा साहब : मैं एक घंटे की तजवीज रखता हूँ।

श्री रामावतार शास्त्री (पटना) : सभापति जी, मेरा भा सवाल है, मुझे भी बोलने का मौका दिया जाए।

SHRI H. N. MUKERJEE (Calcutta-North-East): My resolution immediately follows the resolution of Shri Shyamnandan Mishra. Would I have a direction from the House that my Resolution would be protected to be taken up the next day?

SHRI SHYAMNANDAN MISHRA: Yes, yes.

सभापति महोदय : : तो मैं यह समझूँ कि हाउस की राय यह है कि आधा घंटा