

गृह मंत्री महोदय ने यह कहा था कि हमने पत्र लिखा है। मेरी जानकारी उस दिन की यह है कि उस दिन तक पत्र नहीं गया था। अब मैं पूछना चाहता हूँ गृह मंत्री जी से कि क्या यह सच है कि आपने स्वयं पत्र लिखा है, आपके मंत्रालय ने पत्र लिखा है और जानकारी आयी है या नहीं आयी है? और अगर नहीं आई है तो आपने क्यों नहीं उनको स्मरण कराया और आयी है तो आप सदन के सामने क्यों नहीं कह रहे हैं। मैं चाहता हूँ कि गृह मंत्री जी पूरी बात का स्पष्टीकरण सदन के सामने करें।

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR):
The hon. Home Minister has heard you. He need not respond now.

श्री जगदीश प्रसाद माथुर : इसीलिये मैं पूछ रहा हूँ कि उन्होंने स्वयं पत्र भेजा है या सिक्रेटरी ने लिखा है, क्या लिखा है बोलें तो सही? मेरी जानकारी है कि उस दिन तो पत्र नहीं गया था।

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1991.

II. THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1991

श्री सुरेन्द्रजीत सिंह अहलुवालिया (बिहार) : मैं प्रस्ताव करता हूँ कि :

“यह सभा राष्ट्रपति द्वारा 2 मई, 1991 को प्रख्यापित दण्ड प्रक्रिया संहिता (संशोधन) अध्यादेश, 1991 (1991 का संख्याक 4 का निरन्तरोदन करती है।”

श्री शंकर दयाल सिंह (बिहार) : जरा मूव कीजिये तो विडो नहीं कीजिये, यही निवेदन है।

श्री सुरेन्द्रजीत सिंह अहलुवालिया : आप परेशान मत होइये यह आप ही को समझाने के लिये किया जा रहा है।

उपसभाध्यक्ष महोदय, आश्चर्य की बात है कि जिस वक्त इस मुल्क के 46 करोड़

वोटर्स अपनी नयी सरकार चुने के लिये ब्यस्त थे लोगों के नोमिनेशन पेपर्स फाईल हो चुके थे, हर पॉलिटिकल पार्टीज अपना प्रचार कर रही थी उस वक्त जो केन्द्र में चन्द्रशेखर जी की सरकार थी, उस सरकार ने एक ऐसा आर्डिनैस पास किया जिसका मकसद मेरी समझ में तो नहीं आया। यह एक ऐ आर्डिनैस है जो राज्य के अधिकारों को छीनता है, राज्य के लोगों के अधिकारों को उनके अधिकारों से वंचित करता है और वंचित करता है कि कल को अगर राष्ट्रपति शासन के बाद कभी किसी राज्य में कोई पीपुलर गवर्नमेंट आ जाये तो वह गवर्नमेंट राष्ट्रपति शासनकालीन अगर किसी आफिसर ने अपना काम करते हुए कोई गलत काम किया हो तो उसको इस अध्यादेश के माध्यम से संरक्षण मिलता है। आज तक ऐसा होता आया था कि किसी राज्य में कोई भी आफिसर अगर राष्ट्रपति शासन के बीच में गलत काम करता था तो जब भी कोई पीपुलर गवर्नमेंट आती थी। तो वह उस पर विचार करती थी और पिपुल की जो ग्रीवसेज या कंप्लेंट होती थी उसके रिट्रैसल के लिये उस पर काम होता था। पर इस अध्यादेश के माध्यम से अब आपको उस आफिसर के खिलाफ कार्यवाही करने के पहले केन्द्रीय सरकार से परमिशन लेनी पड़ेगी।

कहने को तो बहुत सारे आरग्यमेंट्स मिलेंगे, बहुत सारे लॉजिक मिलेंगे कि राष्ट्रपति शासन जिन अवस्थाओं में लगता है, उन अवस्थाओं में सुधार लाने के लिए कुछ आफिसरों का कुछ ऐसे कदम उठाने पड़ते हैं जिन कदमों को लोकप्रिय नहीं माना जाता है और वैसे आफिसर जो ऐसे कदम उठाते हैं, वे समाज में और जनता के बीच बड़े ही अलोकप्रिय हो जाते हैं और उनकी खिलाफत जनता के माध्यम से होती है, उनके बचाव के लिए ही ऐसा अध्यादेश लाने की कोशिश की गई है।

उपसभाध्यक्ष महोदय, अभी ईश दत्त जी पीलीभीत की घटना की बात कर रहे थे। आफिसर तो हरेक राज्य में हैं। जिसने गलत काम करने हैं उसको राष्ट्रपति

[श्री सुरेन्द्रजीत सिंह ग्रहलुवालिया]

शासन ढूँढने की जरूरत नहीं और जिसने सही काम करने है उसको ऐसे अध्यादेशों की जरूरत नहीं है। पीलीभीत के एस० पी० ने जो मलयाना कांड से जुड़ा हुआ है, उसने सब कुछ संरक्षण होने के बावजूद जो किया है वह वृणित है। आज वहाँ एक पापुलर गवर्नमेंट होने के बावजूद उस पुलिस अफसर के विरुद्ध कोई कार्यवाही नहीं हुई है और उसको वहाँ की सरकार संरक्षण दे रही है और यहाँ हम ऐसे लोगों को राष्ट्रपति शासन में संरक्षण देने की बात सोच रहे हैं।

यह राज्यसभा, स्टेटस आफ कार्जिसल है और यहाँ राज्यों के अधिकारों की बात भी कही जाती है। हमें इतना विश्वास नहीं रहा, चंद्रशेखर सरकार को इतना विश्वास नहीं रहा और 2 मई को उन्होंने यह आर्दिनेस पास करवाया, इशू करवाया मैं पूछता हूँ क्या कारण था? क्या जरूरत थी? उनको किस चीज का डर था? वे किसको प्रोटेक्ट करना चाहते थे इसके माध्यम से, यह जानने की जरूरत है।

उपसभाध्यक्ष महोदय, आज तक सी. आर. पी.सी. में जितने भी अमेंडमेंट्स हुए हैं या इंडियन पैनल कोड में जितने भी अमेंडमेंट्स हुए हैं, वे सरकारी अफसर जो अच्छा काम करते हैं उनको इसके माध्यम से पहले से ही संरक्षण दिया गया है। गुड फेद में काम करने वाले अफसरों को इंडियन पैनल कोड ने भी अपराधी की श्रेणी में नहीं रखा है तथा नेचुरल जस्टिस के सिद्धांत भी उन्हें अपराधी नहीं ठहराते फिर ऐसे संशोधन की क्या जरूरत है? और तो और हमने पहले ही इन अधिकारियों को इनडैमनिटी प्रदान की हुई है जिसका खामियाजा इस देश को भुगतना पड़ रहा है।

ये आर० डी० त्रिपाठी जैसे एस०पी० किस तरह कंट्रोल से बाहर होकर बस से पैसैजरो को उतार कर उनकी हत्या कर देते हैं और

उसे "एनकाउंटर" शो करते हैं। अभी कुछ दिन पहले सी.बी.आई. के एक डी. आई.जी. दिल्ली शहर में रिश्वत लेते हुए पकड़े गए, अपने घर के अंदर रिश्वत लेते हुए पकड़े गए। जब पुलिस ने उन्हें दंगे हाथों पकड़ा तो उन्होंने 10 लाख रुपए का बंडल अपने कमरे से बाहर फेंक दिया और पुलिस ने उनको दबावा। आश्चर्य की बात यह है कि सीनियर पुलिस अफसर जो पिछले 24 सालों से सी०बी०आई० में है, इतने बड़े-बड़े केस डील किए हैं और वे पंजाब और जम्मू-कश्मीर के इंचार्ज हैं। पंजाब और जम्मू-कश्मीर जहाँ टैरिस्ट एकटीविटीज चल रही हैं, वहाँ क ये इंचार्ज हैं और इन्होंने डा. रुबिया के अपहरण और सैफुद्दीन सोज की बेटों के अपहरण के सिलसिले में होने वाली नैगोशिएशंस में हिस्सा लिया था। जो आदमी, जो अफसर घूस लेते हुए 10 लाख रुपया लेते हुए, उस हवाला कंपनी से घूस लेते हुए जिसके माध्यम से टैरिस्टों को पैसा आता था, उसके घर पर रेड हुई और वह पकड़ा गया तो उसको टाडा में बूक करना चाहिए था लेकिन टाडा में बूक न करके उसको स्माल आफेंस में बूक किया गया। उस कंपनी से 25 लाख रुपया लिया तब उसको छोड़ दिया। 25 लाख की पहली इंस्टालमेंट उसने ले ली और उसके बाद 10 लाख रुपया जब सेकिड कंसाइनमेंट का उसको हैंड ओवर किया जा रहा था तब पुलिस ने उनको जाकर पकड़ा। उपासभाध्यक्ष महोदय, एक तरफ वे पुलिस आफिसर थे जिन्होंने उनको पकड़ा उसके घर जाकर और दूसरी ओर वह पुलिस आफिसर है जो सीनियर आफिसर है, डी०आई०जी० है, जो जम्मू कश्मीर का इंचार्ज रह चुका है, उससे हम कैसे न्याय की उम्मीद कर? जिसने एक ऐसे गिरोह को छोड़ दिया जो हवाला कंपनी के माध्यम से टैरिस्टों को पैसा देता है, आतंकवादियों को लाकर पैसा बांटता था। ऐसे आफिसर को इस अध्यादेश के माध्यम से सबल कर रहे हैं उनको संरक्षण दे रहे हैं, उनके हाथ मजबूत

कर रहे हैं। हमें ऐसा अध्यादेश जारी करने से पहले सोचना चाहिए था कि हम ऐसा अध्यादेश सदन में लायें कि नहीं। हम ऐसी पावर बढ़ाएं कि नहीं।

उपसभाध्यक्ष महोदय, आपको याद होगा कि जब रुबिया कांड हुआ, उसका किड-नैपिंग हुआ तो उस समय के होम मिनिस्टर उसको छुड़ाने के लिए टैरोरिस्टों के साथ नेगोशियेट करने के लिए उस को लेकर गए। पर सारी नेगोशियेशन जो की गई वह एक जज साहब ने की, जस्टिस बट ने क्योंकि उनके टैरोरिस्टों के साथ लिंक थे, उनसे उनकी जान-पहचान थी, उनके गिराहो का उनको पता था। वहां जाकर नेगोशियेशन करके पूर्व में जिनको छोड़ना था उनको छोड़ाकर वह लाए। आज उसी का परिणाम हमें भुगतना पड़ रहा है। बोरेस्वामी अभी भी उनके कब्जे में हैं। गृह मंत्रालय एड़ी चोटी का जोर लगा रहा है पर नहीं छोड़वा पा रहा है। अगर कोई पूछे कि क्या कारण है तो उसके पीछे कारण यही है कि उनकी पावर आपने जरूर बढ़ाई है, उनको जो सैक्युरिटी अग्रेला हम देते हैं उससे टैरोरिस्ट ऐक्टिविटीज को बंद नहीं कर सके, इससे टैरोरिस्टों की संख्या जरूर बढ़ी है। उस पावर को दिखाकर उन्होंने लोगों का हकानामिकली एक्सप्लायटेशन किया है। लोगों को डरा धमकाकर उनसे पैसा लिया है। अगर हम इस अध्यादेश के माध्यम से अधिक ताकत दंगे तो आने वाले दिनों में हम देखेंगे कि कहीं भी राष्ट्रपति शासन के बाद अगर वहां पापुलर गवर्नमेंट आती है तो वह देखती है कि ऐसे अफसर जिन्होंने वहां पर शोषण किया है, लोगों को परेशान किया है, वैसे लोगों पर कार्यवाही होनी चाहिए तो उस कानून को कार्यान्वित करने से पहले वहां की पापुलर स कार अपने को असमर्थ पाएगी और अपनी असमर्थता से मुक्ति पाने के लिए जब वह केन्द्रीय सरकार को सेंक्शन के लिए चिट्ठी भेजेगी तो वह सेंक्शन की फाइल यहां सेक्रेटैरियेट में धूल चाटेगी और कभी सेंक्शन नहीं मिलेगी और तब तक सरकार बदल जाएगी।

उपसभाध्यक्ष महोदय, इस चीज को मद्देनजर रखते हुए मैंने इस अध्यादेश का विरोध किया है। मेरा एक सीधा सा प्रश्न है कि आखिर चन्द्रशेखर गवर्नमेंट को किसको प्रोटेक्शन देने के लिए यह अध्यादेश लाना पड़ा? क्या भ्रष्टाचारी अफसरों को बचाने के लिए या आनेस्ट अफसरों को बचाने के लिए ऐसा अध्यादेश पास किया था जब कि पूरा मुल्क चुनाव के मैदान में उतरा हुआ था? क्या ऐसी बात जरूरी थी? क्या ऐसा आर्डिनंस निकालना जरूरी था? मैं फिर कहता हूँ कि इस अध्यादेश को वापस ले लेना चाहिए और ऐसा बिल नहीं लाना चाहिए जिससे भ्रष्टाचारी अधिकारियों और श्रष्ट्याचारी अधिकारियों को प्रोटेक्शन मिल सके। हम इस सदन में बैठने के साथ-साथ अपने राज्यों के अधिकारों की बात भी करते हैं। अगर हमारे राज्य में राष्ट्रपति शासन लगता है और 6 महीने बाद अगर वहां पर चुनी हुई सरकार आती है तो उसके कहने के लिए कुछ अधिकार होना चाहिए। यह कहते हुए मैं अपना विरोध प्रकट करता हूँ। धन्यवाद।

THE VICE-CHAIRMAN (SHRI
BHASKAR ANNAJI MASODKAR):
The Resolution has been moved.

Now, the Home Minister, Shri S. B. Chavan, to move the Code of Criminal Procedures (Amendment) Bill, 1991.

THE MINISTER OF HOME AFFAIRS (SHRI S. B. CHAVAN): Mr. Vice-Chairman, Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1973, be taken into consideration."

Section 197 of the Code of Criminal Procedure, 1973 provides for the previous sanction of the Central Government or, as the case may be, the State Government before a court took cognizance of an offence alleged to have been committed by any public servant including a Judge, Magistrate and member of the Forces while acting in the discharge of official duty.

[Shri S. B. Chavan]

With a view to providing more adequate safeguards and protection to public servants employed in connection with the affairs of a State against frivolous or vexatious prosecution for acts done in the discharge of official duty during the period when a Proclamation issued under article 356 of the Constitution was in force in that State, it was considered necessary to provide for the previous sanction of the Central Government instead of the sanction of the State Government.

As the House of the People had been dissolved and the Council of States was not in session and it was considered necessary to make the necessary amendments without delay, the Code of Criminal Procedure (Amendment) Ordinance, 1991 was promulgated by the President on the 2nd day of May, 1991.

It is necessary to replace the Ordinance by an Act of Parliament and this Bill has, therefore, been brought before the House.

Sir, the proposed legislation will instil a sense of confidence in the minds of the officers who are engaged in the difficult task of restoring normalcy in the States where the proclamation under article 356 is in force, that there is an assurance of their physical and service protection after the change of the political scene in the State and they will not be subjected to vexatious prosecution for acts done in the course of discharge of their official duties during the President's rule.

I commend the Bill for consideration of this august House.

The questions were proposed.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): The Resolution as well as the Motion for the consideration of the Bill are now open for discussion.

SHRI RAM JETHMALANI (Karnataka): Mr. Vice-Chairman, Sir, the House will not believe its ears when I make a statement that not one word in the speech of Mr. Ahluwalia, I can find fault with. It is strange, but I accept every single argument that he has made and whatever he has

said against this Bill. I would appeal to the hon. Home Minister who is present that he should not treat this as a matter of party prestige.

I am willing to believe that the Bill has been introduced without understanding its implications and without a clear perception of the motivation of the original Ordinance which is sought to be replaced. This measure is wholly unnecessary. It is totally counter-productive. It will produce disastrous consequences in every single State, particularly the sensitive State of Punjab. It will only add to corruption and lawlessness which are already in abundance, and you need no proof of it.

Sir, the first question which the Home Minister should ask himself is this. The section which he is now interfering with by this Amendment, has been in the Criminal procedure Code for at least 150 years. The colonial powers, which ruled us as a subject race, always tried to protect their bureaucracy against prosecutions by the common men. In fact all the provisions which are intended to stifle prosecution at the inception against the public servants are the product of the colonial mentality, which is totally inconsistent really with our constitutional spirit of equality, that everybody is equal before the law. There is no reason intrinsically why a person should not be able to go to a court and say, Sir, this public officer has misbehaved; this is the evidence which I am going to present; satisfy yourself about the genuineness of my case, see the evidence in support which I am presenting and issue process and have this man tried. But the colonial powers always tended to protect their high-handed bureaucracy against the Indian citizens. When we got power, we did not seek to divest ourselves of those powers. Such is the nature of power that anybody who gets power is most unwilling or reluctant to divest himself of that power. We continued it and since independence 45 years have gone by. There was the Government of the great Pandit Jawaharlal Nehru; there was the Government of Lal Bahadur Shastri Ji and there have been successive Governments and nobody

thought of interfering with this section and introduce this amendment, except that the Ordinance came when the Chandra Shekhar Government was in power. I am not an admirer of the Chandra Shekhar Government. So far as that Government is concerned, this is not the occasion, but I have made my views about that Government clear. The Home Minister should have at least thought up why it is that for the first time in the regime of Mr. Chandra Shekhar it became necessary to interfere with the section which has withstood the test of time for more than one and a half centuries. If he had thought this up, he would have realised that he had been led up the garden path, by some corrupt bureaucrats, who are afraid of the advent of democracy, as always corrupt bureaucrats are afraid that when the persecuted come into power they are bound to raise their cry and their voice will ultimately be heard before the judicial tribunals of this country.

This Government has hardly been in saddle. During the Question Hours which we have witnessed, particularly in this House, time and again to every question that has been asked, the answer has come that we are looking into it, we will settle our policies and so on. We understand that after all in the complex Government of India you require time to get into the saddle and to grapple with the problems. But the clever corrupt bureaucracy has realised that this is the time to strike—the Government has not yet understood what is required for the country—let us smuggle in a dangerous innovation of this kind into the Criminal Procedure Code. If anybody looks at this, it looks so innocuous, it looks so harmless. What is it? Only in one section the word 'State Government' is being substituted by the 'Central Government' and in another, Clause 3A, you are referring to 'Forces'. Sir, you are a distinguished lawyer presiding here and another distinguished lawyer is sitting across the aisle here.

SHRI A. G. KULKARNI (Maharashtra): You were a High Court Judge.

SHRI RAM JETHMALANI: I have not much respect for the High Court Judges. I respect him as a lawyer. So, he is here and Sir, you are presiding here. You know it for a fact that today, corruption has spread so much that at the highest level, a DIG of the CBI could accept Rs. 35 lakhs of bribe in a matter connected with the financing of the Kashmir terrorists. People have been allowed to go and innocent people have been picked up from respectable families and because the matter is *sub judice*. I am not going into the details of it. But it is a disgraceful state of affairs. You know how corruption has gone into the highest places today. We are fighting battles in the Supreme Court, we are fighting battles in the High Courts, we are fighting battles all over the country. And today, if past experience teaches us one thing, it is that the power of the corrupt bureaucracy must be curtailed. But there is the Statement of Objects and Reasons. Kindly see the Statement of Objects and Reasons: "with a view to providing more adequate safeguards and protection to public servants." Sir, it is the public which needs protection from the so-called public servants. They are not public servants. They are public persecutors. They are thieves and robbers whom you want to protect. They have been pilfering public property for long. The main purpose of the provision is to deal with the democracy which one day has got to be restored in Punjab. I wish to appeal to the Home Minister, for God's sake, understand the implication. I want to share with this august House my personal experiences about which there can be no contradictions because it is supported by a report in the *Tribune* which I hope the hon. Minister has read it,—on which the *Tribune* has written an editorial this morning in Chandigarh a conference was held presided over by the Chief Secretary of the State where all the Secretaries of the Government of Punjab met and the Chief Secretary told them for the first time in the history of Punjab: "Please speak freely and with candour and tell us what is the truth

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about Punjab?" Sir, each one of the Secretaries has told the Chief Secretary in that conference that the chief cause of what is happening in Punjab is the Punjab police and the police officers of Punjab.

Sir, I have gone to Punjab for the last two successive week-ends. I have gone into the terrorist-infested areas of Punjab. It is a heart-rending tale and if the Government wants to solve the Punjab problem, the first thing that you have to do is to dismantle this corrupt police machinery that has been in existence in Punjab for the last so many years which has acquired a vested interests in continuing anarchy and lawlessness and continuing the present state of affairs. At one police station where I paid a surprise visit, I was told that it is a torture chamber. I went there and at the entrance there are two cells on both sides, each cell is 10' by 10'. Sir, I found a sorry section of humanity each 10' by 10' cell fourteen human beings were huddled up like sardines in a can. They could not breathe freely. They could not even stretch their legs and limbs. One has heard of the disgraceful Black Hole incident. But this is worse than Black Hole. When the DSP came there, I asked him: "Who are these people? Which is this humanity you have put them in these two rooms?" He said: "Sir, they are not officially prisoners. They are rounded up, boys rounded up from respectable families, kept there so that their elders should come and offer bribes and ransom and if the ransom if not forthcoming during ten or twelve days, then, there is a cryptic report that so many terrorists were killed in an encounter, the Pilibhit type of encounter." Sir, so much hullabaloo has been raised, rightly raised about the Pilibhit incident. But I want to tell you that Pilibhit type encounter is being enacted in every town, city and village of Punjab every day. Sir, unless this Government is prepared to put an end to this kind of horror story which

is going on in Punjab, you will not be able to solve the Punjab problem.

Sir, the next measure which is before this House, is the TADA, the extension of TADA. Somebody else is going to speak on that and that matter should be taken up. But they have a common philosophy, the extension of TADA. What is happening about TADA? You go to Maharashtra and see what is happening about it. TADA has become a measure of extortion by the police authorities. Sir, whenever the court finds that there is no case against the person, we have now invoked the TADA. Cases after cases, 500 cases are pending but not one case. Proceeds. (*Time bell rings*). Kindly give me five minutes. I am opening the debate on this side.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): As you know, we have only one hour for all the parties. Your time is already over.

SHRI RAM JETHMALANI: very, well Sir, I will conclude. The law requires that every Bill must have...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Don't speak on TADA.

SHRI RAM JETHMALANI: I will digress into it only for a second. So far as the Statement of Objects and Reasons is concerned, the legislative practice is that you must tell the people of the country, first of all, what are the objects which you wish to achieve. Then you 5.00 P. M.

must give the reasons why this is the particular kind of measure which is necessary to achieve those objects. Sir, the statement of objects and reasons appended to this Bill is a misleading, fraudulent, document. It contains *suppresso veri* which is more dangerous than downright lies. The object is to give more powers to the bureaucracy. But why give more powers to the bureaucracy? Why give more adequate protection? And may I ask how you are giving adequate

protection to public servants? Sir the protection (Interruptions).

SHRI S. B. CHAVAN: Sir, the word 'lies' should be removed.

SHRI RAM JETHMALANI: Sir, it may be removed. I am glad that they have become allergic to "lies" now. (Interruption).

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR):... Let us have it.

SHRI RAM JETHMALANI: Very well. I am very grateful to the hon. Minister. The word "lie" should not be uttered here. I am very very happy that now we are beginning to think of more decent language to be used in this House. I am very happy.

Now, Sir, the statement of objects and reasons does not give one reason why this is the method of giving 'more adequate protection'. The protection of a public servant is an honest judiciary, a judiciary which will not entertain frivolous prosecutions, which will not embark upon the initial issue of process against a public servant unless there is a *prima facie* case made out. There is a power given to the High Courts of India under article 226 of the Constitution and section 482 of the Cr.P.C. to quash frivolous prosecutions and false prosecutions. There is a power given to the Supreme Court. There are all kinds of powers which you know. And there is, in addition, the colonial power that the Central Government or the Government decides whether a case should be instituted or not. Now, Sir, the law which is in existence today, which is being tinkered with, is in consonance with the quasi-federal structure of our country. The present law under section 197 is, if you want to prosecute a public servant for an offence supposed to have been committed in the discharge of his duties, then, if he is employed in connection with the affairs of the State, the State looks into it and gives the sanction, if he is employed in connection with the affairs of the Union, the Union Government gives the sanction. But, Sir, this

law wishes to subvert that federal principle and wishes to say that where President's rule had been in operation and offences were committed at that time, but on the date of the prosecution a lawfully elected democratic Government has come into force, you must deprive that democratic Government of going into the question and deciding whether the prosecution should or should not be filed. In other words, before you have restored democracy to Punjab, before you have restored democracy to any State in which you have imposed President's rule, you want to stifle that democracy in advance so that the democratic apparatus would not be able to function at all.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Mr. Jethmalani, your time is over.

SHRI RAM JETHMALANI: Sir, I assure you, I won't take more than half a minute.

I want to show you further. I hope the word 'fraud' is at least not as bad as the word 'lie'.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): In a lawyer's dictionary, any word is a good word.

SHRI RAM JETHMALANI: Sir, kindly see how section 3A has been printed. What have they done?

"Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order...

The word 'Forces' is put with a capital 'F'. If you read it, it creates an impression as if you are referring to the Armed Forces because only when you deal with the Armed Forces, you put in 'F'. But actually, this is intended to protect the SHO of a police station. And every SHO in Punjab has become a millionaire, subject to some honourable exceptions which are very few. And they have become millionaires by the practice of cor-

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ruption, by the practice of third degrees, by the practice of fake encounters and by the practice of cold-blooded murders. And every constable, every sub-inspector, every SHO, every chokidar, is protected. I want to ask the Home Minister why a simple 'f' could not do, why a capital 'F' was put. It is suggesting that you are dealing with the Armed Forces and the Armed Forces, as everybody knows, are in the employment of the Central Government. When they go anywhere, they are employed in connection with the affairs of the Union. My simple suggestion to this House is that it is not necessary to tinker with a law which has served well the purposes of the powers that be for the last more than 150 years.

No new situation arose which Mr. Chandra Shekhar had to deal with by an Ordinance and not situation has arisen which should compel you to continue that evil Ordinance. Today, if you are thinking of settling the problem of Punjab and bringing normalcy and democracy in Punjab, then please trust the elected representatives who will come into power. They will deal with the recalcitrant officers who have tortured the innocent people, who have converted every police station into a torture chamber. This is not to suggest that there are no genuine acts of terrorism committed in Punjab. They are doubtless. But, Sir, if there are fake encounters in which the policeman is an informer, he is a witness, he is the judge, he is an executioner, this is the death and the murder of rule of law in this country and so long as we don't stop this murder, the problem will not be solved. If you want to stop it, then at least, expose them to the fear of a democratically elected Government. The principle of this Bill is that the Central Government will protect the corrupt officers whereas the State Government cannot protect them. Now if Mr. Chavan wants to take the credit of being the protector of the corrupt public servants all over the country, he is welcome to do it. But I can tell you, please withdraw it. It is not a matter of prestige.

You don't need this law. This law will be used against you by the bureaucrats who think that this is a Government of infants and they are taking you for a ride across the road.

कि साइकिल के नीचे नहीं आ जाए

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Before we proceed further, I would like to inform the hon. Members that there are two Bills before the House and looking to the clock I think, we can take up these two Bills. But Half-an-Hour Discussion will have to be postponed to tomorrow. (*Interruptions*).

SHRI MENTAY PADMANBHAM (Andhra Pradesh): No, Sir. This is a very important issue. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): But how can I do it? We cannot finish it. (*Interruptions*).

SHRI MENTAY PADMANABHAM: Kindly hear me. This is an important issue. You kindly don't reduce its importance. Instead, let us take up the discussions of these two Bills tomorrow. Let us take up Half-an Hour Discussion today. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): We have already proceeded. Some discussion has already taken place.

SHRI MENTAY PADMANABHAM: We will continue the discussion of the present Bill tomorrow. We will also take up the other Bill tomorrow. Let us take up Half-an-Hour Discussion today. (*Interruptions*).

SHRI S. B. CHAVAN: We have to complete this business before the recess and that is why, it becomes all the more important that we finish this Bill within the time allotted, that is within one hour. That is why I will request the hon. Members to kindly cooperate in this and pass it. After this Bill is passed, another difficulty which I should, in fact, bring to your notice is that this Half-an-Hour Discussion was kept on the agenda on the presumption

that the hon. Finance Minister will be able to reply this evening in the Lok Sabha. But somehow the reply is going to be tomorrow and that is why, it won't be possible for the Finance Minister to come here and reply to the debate and that is why I request you... (*Interruptions*).

SHRI MENTAY PADMANABHAM: There are two Ministers of State in the Ministry of Finance. They can sit here and take notes and then the Finance Minister can reply. (*Interruptions*).

SHRI A. G. KULKARNI: Sir, tomorrow there is an important discussion on the Industrial Policy in which the whole House is interested.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): We will do it.

SHRI A. G. KULKARNI: We will do it but then this discussion regarding subsidy on food and fertilizers will go in the evening.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): That is a matter of adjustment. We will take up both the discussions tomorrow. Now we proceed with the Legislative Business. The Legislative Business can be finished if the hon. Members keep to their time.

SHRI MENTAY PADMANABHAM: Sir, it will serve no purpose if you take up this discussion tomorrow. It appeared in the media that the Finance Minister is going to make some policy statement on this fertilizer issue. (*Interruptions*). Before he comes to any decision and makes some statement in the Lok Sabha, let the Finance Minister hear the opinion of this House. That is exactly the reason why I am insisting that the discussion on this matter should be taken up immediately. (*Interruptions*).

SHRI S. B. CHAVAN: Sir, the discussion is going on in Lok Sabha and he has to be present there. I don't think he can come from that House.

SHRI MENTAY PADMANABHAM: There are two Ministers of State in the Ministry of Finance. One of them can come here. (*Interruptions*).

SHRI S. B. CHAVAN: There are some matters where the Union Ministers are required. (*Interruptions*).

SHRI RAM JETHMALANI: This is not a non-controversial measure. We will press for a division at every stage. (*Interruptions*).

SHRI DIPEN GHOSH (West Bengal): According to the programme schedule of the other House, the Finance Minister is expected to reply to the debate that is continuing there on the first phase of the Budget. I do not know whether his reply there will circumvent finally his reply to the Half-an-Hour discussion here if it is taken up tomorrow. We have a right to get his reply.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Yes, that can be. Now we proceed further with the discussion. We don't circumvent. So we proceed further.

SHRI RAMACHANDRAN PILLAI (Kerala): Sir, I stand to oppose this Bill. It encroaches upon the rights of the States. The Bill extends the effect of the proclamation of emergency even beyond the period of emergency. The proclamation of emergency makes available to the Union Government a vast reservoir of legislative and executive powers. The amplitude of that power is such that it will virtually nullify the federal structure of our Constitution during the period of emergency. This Bill, in effect, takes away the authority of the States permanently and nullifies the federal structure of the Constitution. Of course, the Constitution envisages three types of emergency, I don't want to go into those details. In the past, the Central Government had misused the power of emergency. What I would like to submit before you, Sir, is that this state of emergency is a temporary one and that exists only when such a situation warrants it. When a normal situation emerges, emergency is lifted and a duly elected State Government comes into power to exercise its constitutional authority. The present amendment of the Cr. P. C. seeks to take away the authority of the States. This amendment, in effect, is an amendment of

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How can we disbelieve the State? How can we stop the States exercising their constitutional rights? The present amendment, in effect, tries to restrict the State Governments in exercising their constitutional rights. The logic behind this amendment is that only the Central Government acts judiciously and correctly, the State Governments do not act judiciously and correctly. This logic, this understanding, is contrary to the basic structure of our Constitution. Our federal system postulates a distribution of powers between the Centre and the States. One is not subordinate to the other in its field and the authority of one is co-ordinate with that of the other. This amendment actually intends to cut at the root of the federal polity of our Constitution. Hence, I oppose it. I accept that a special situation exists in certain States where divisive forces, disruptive forces, backed by the imperialists are trying to vitiate the atmosphere. Of course, some special measures are necessary to meet their challenge, but this present amendment goes beyond the scope of that particular situation. Hence, I oppose this amendment.

श्री अनन्तराव वेवशांकर इबे (गुजरात) :
वाइस चैयरमैन साहब, सरकार की ओर से जो यह क्रिमिनल प्रोसिजर एमेंडमेंट बिल लाया गया है, उसका मैं संपूर्ण विरोध कर रहा हूँ। टोटल विरोध कर रहा हूँ। महोदय, यह बिल तो छोटा-सा है। जैसाकि श्री रामजेटमलानी जी ने बहुत छोटी बात बतायी कि यदि राष्ट्रपति शासन के दरमियान कोई गुनाह होगा, तो आफिसर्स को और ब्यूरोक्रेट्स को ज्यादा सेफगार्ड देने के लिये हम यह बिल लाये हैं। यह बहुत छोटा एमेंडमेंट है, इसमें कोई ज्यादा बात नहीं है, लेकिन जब बिल के बारे में हम सोचते हैं, तो अहलुवालिया जी ने ठीक कहा कि 2 मई को ऐसी क्या जरूरत हुई, देश में ऐसी कौन सी परिस्थिति पैदा हो गयी कि आपको यह एमेंडमेंट निकालना पड़ा वाइस चैयरमैन साहब, मैं मानता हूँ कि माननीय गृह मंत्री जी जब जवाब देंगे, तब

वह इस परिस्थिति के बारे में बताएंगे। मैं मैं यह भी जानना चाहूंगा कि क्या हायकोर्ट का कोई जजमेंट आ गया या यह रिक्मैंड हुआ क्रिमिनल प्रोसिजर कोड में ऐसा कोई सुधार किया जाए, तो वह भी हमें बताना महोदय, मैं एक बात आपके माध्यम से माननीय गृहमंत्रीजी से कहना चाहता हूँ कि आप स्टेट और सेंटर के निदेशक को ज्यादा तनावपूर्ण बनायेंगे। इससे कोई फायदा होने वाला नहीं है एक तरफ तो हम यह कहते हैं कि स्टेट्स को ज्यादा पावर देनी चाहिये। सेंट्रल गवर्नमेंट के पास जो पावर्स हैं, वह डि-सेंट्रलाइज करने चाहिये और दूसरी ओर, हम इससे स्टेट के पावर में लेंगे। तो मैं आपके माध्यम से जानना चाहूंगा कि स्टेट गवर्नमेंट के पास जो अभी पावर्स हैं, वह हम क्यों लेना चाहते हैं? इसलिए कि यह ब्यूरोक्रेट्स की एक बड़ी समस्या है। जो रोग दुअर्स हैं, उनकी समस्या है। जैसे राष्ट्रपति शासन के दरमियान जिन लोगों ने अच्छे काम नहीं किये हैं, उन लोगों को परमीशन के लिये सेंट्रल गवर्नमेंट के पास जाना पड़ेगा मान लीजिये कि कोई स्टेट गवर्नमेंट चुनकर आती है, वह कहेंगे कि इसको संवर्धन दीजिये या मत दीजिये। तब सेंट्रल गवर्नमेंट और गवर्नमेंट के संबंध बिगड़ेंगे। इसलिए थे वाइस चैयरमैन साहब, आपके माध्यम से होम मिनिस्टर साहब को कहना चाहता हूँ कि ऐसे एमेंडमेंट की कोई जरूरत नहीं है। माननीय जेटमलानी जी ने बहुत ठीक कहा है कि 150 150 साल के बाद पहली बार, यह क्रिमिनल प्रोसिजर में आप सुधार कर रहे हैं और एक छोटी बात बताकर यह बिल यहां लाये हैं। इस बिल से सेंट्रल और स्टेट्स के रिलेशंस और बिगड़ेंगे। वह न बिगड़ेंगे। वह न बिगड़ें इसकी खातिर आपको यह बिल आफिस ले लेना चाहिये।

मैं अपनी पार्टी की ओर से इस बिल का पूरा विरोध करता हूँ।

[उपसभाध्यक्ष (श्री एम० ए० बेबी) पीठासीन हुए]

श्री चतुरानन मिश्र (बिहार) : उपसभाध्यक्ष महोदय, हम लोगों को यह आम धारणा है, एक अनुभव है कि हमारे अफसरों को ज्यादा अधिकार मिले हैं। लेकिन इसके चलते, इस नौकरशाही के चलते अस्थाचार पनप रहा है और अस्थाचार बहुत ज्यादा हो रहा है। मान्यवर, एक बात हम समझते हैं कि इस बारे में इस पक्ष या उन पक्ष के तमाम लोगों की यह एक कामन प्रण्डर-स्टेडिंग है कि जनता को ज्यादा अधिकार मिलने चाहिये, लेकिन यह उल्टी बात हो रही है। हमारी समझ में नहीं आ रहा है कि बच्चाण साहब ऐसा सोच रहे हैं? हम तो इनके बारे में दूसरे ढंग से सोचते हैं, लेकिन अब यही सोच रहे हैं कि अफसरों को ही और ज्यादा अधिकार दे दें। यह बात समझ में नहीं आती है। मान्यवर, अगर यह बात थोड़ी देर के लिये मान भी ली जाय कि पंजाब में या कहीं पर ऐसी बात हो गयी तो तत्कालीन तौर पर आप कुछ कर सकते हैं, लेकिन आप सारे देश के लिये ऐसा कानून बनाकर रख रहे हैं। यह सर्वथा अनुचित है। कुछ माननीय सदस्यों ने कहा है कि पिछले 33 सौ साल से इस देश में कोई तरमीम नहीं हुई। हम को तो तकलीफ इस बात से है कि जो कानून अंग्रेजों ने बनाया था, उससे भी खराब कानून आप बना रहे हैं। उससे भी खराब कानून आप बना रहे हैं। जिस कानून की बदलत वह राज कर सके थे, उतना खराब कानून रहते हुए भी आपको राज चलाने में दिक्कत हो रही है। इसलिए हमको बड़ा दुख लग रहा है इस बात से। दूसरी बात, जो मैं कहना चाहूंगा कि ऐसा अधिकार तो था ही, आपने सिर्फ इतना ही फर्क किया है कि राष्ट्रपति के शासनकाल में अगर ऐसा किया जाए। अब आप मुझे बताइए जब पापुलर गवर्नमेंट रहती है तब तो हम लोग आपके पास आते हैं कि यह आपसीतर गलत कर रहे हैं और आप सुनते भी हैं। जब पापुलर गवर्नमेंट नहीं है तब आप उनकी पावर और भी बढ़ा रहे हैं। यह क्या है? यह तानाशाही की

तरफ से जाने का है। वह तो बहुत शॉर्ट पीरिएड का रहता है, उस वक्त अगर कोई केस हो भी, कोई अगर दायर भी किया जाए तो उनको ज्यादा अधिकार रहता है, हम लोगों को तो पापुलर मिनिस्टर से, गवर्नमेंट से मिलने का मौका ही नहीं होता। आपको जनता की तरफ अपना मुख रखना चाहिए। आप यह आपसीतर की तरफ आपसीतरमुखी जो मुंह रखे हुए हैं, इसको मोड़ लीजिए। आपके लिए भी घटना घटी है, जितनी तादाद में आप आए हैं, हमसे ज्यादा है, लेकिन कैसे है, सो आप भी समझ रहे हैं। सारा देश मांग कर रहा है कि इन सारी चीजों को रोकने की कोशिश की जाए और आप एकदम उल्टी दिशा में जा रहे हैं।

इसलिए मुझे इस पर एक ही एडिशनल पाइंट कहना है कि उस पीरिएड में जबकि पापुलर गवर्नमेंट नहीं रहती है, इस तरह का अधिकार बिल्कुल नहीं दिया जाना चाहिए। यह गलत है कि क्योंकि हमको रेमेडी का कोई भी रास्ता नहीं है। मैं चाहूंगा, बच्चाण जी बहुत तर्जुबकार हैं और जनता से सीधे संपर्क रखने वाले हैं और इनके लोगों ने भी विरोध किया है, इसलिए इसको फिर से सोचकर लाइए। अगर कुछ तरमीम लाना जरूरी हो गया हो तो उस लाइट पर हम लोग विचार करेंगे वरना इसको अभी स्थगित कर लीजिए। यही अच्छा है, नहीं तो यह मैसेज जाएगा आम लोगों के बीच, में कि यह सरकार उल्टी दिशा में और भी ज्यादा प्रक्रिया करना चाहती है। यही मुझे कहना है।

श्री सत्य प्रकाश भालवीय (उत्तर प्रदेश): माननीय उपसभाध्यक्ष जी, अच्छा होता कि संविधान की धारा जो 123 है शायद, उसके अन्तर्गत जो अध्यादेश 2 मई को लागू किया गया था उसको यह सरकार या तो वापस ले लेती या इसको लेप्स होने देती।

श्री एस० बी० जवहाण : यह तो आपने ही निकाला था आर्डिनेंस ।

श्री सत्य प्रकाश मालवीय : मैंने केबिनेट में क्या कहा था, मैं यहाँ नहीं कह सकता क्योंकि आई एम अण्डर ओर आफ सिक्रेसी, लेकिन जो मेरी अपनी राय है, वह सदन में दूंगा । केबिनेट की बात यहाँ बता नहीं सकता, बाद में बता दूंगा ।

श्री चतुरानन मिश्र : लेकिन इतनी बात तो हो गई कि आप दूसरी तरह से सोचते हैं ।

श्री सत्य प्रकाश मालवीय : मैं इस बात को यहाँ इसलिए कह रहा कि दंड प्रक्रिया संहिता या क्रिमिनल प्रोसिचर कोड के अध्याय 14 में इस बात का विवरण है कि किसी भी सरकारी अधिकारी या कर्मचारी के विरुद्ध अपराधिक कार्यवाही करने के पहले क्या-क्या करना चाहिए ? तो सामान्य नियम यह है कि यदि वह अधिकारी राज्य-सरकार का कर्मचारी है तो उसके विरुद्ध न्यायालय में जाने से पहले राज्य सरकार की अनुमति आवश्यक है और यदि वह सरकारी कर्मचारी केन्द्र सरकार का कर्मचारी है तो उसके विरुद्ध न्यायालय में जाने के पहले, अपराधिक मामला दाखिल करने के पहले केन्द्र सरकार की अनुमति आवश्यक है । मेरी राय में यह जो संशोधन अधिनियम है, यह राज्य सरकार के अधिकारों पर अतिक्रमण है क्योंकि इसमें इस बात का प्रावधान किया गया है कि जब किसी राज्य में राष्ट्रपति शासन हो उस समय यदि कोई अधिकारी या कर्मचारी कोई अपराध करता है और उसके विरुद्ध राज्य सरकार यदि फौसला करती है कि अदालत में जाना है तो वहाँ पर जाने के पहले यहाँ अभी तक राज्य-सरकार की अनुमति आवश्यक थी, जब केन्द्र सरकार के पास जाना पड़ेगा । एक स्थिति ऐसी भी हो सकती है कि उस सरकारी अधिकारी या कर्मचारी ने जो अपराध किया हो, वह ऐसे समय में किया हो, जबकि किसी भी राज्य में राष्ट्रपति शासन रहा हो, लेकिन जब न्यायालय में मुकदमा दाखिल करने की बात उत्पन्न होती है, हो सकता है कि वहाँ

पर जनता द्वारा चुनी हुई जनप्रतिनिधियों की लोकप्रिय सरकार बन चुकी हो तो अब देखना यह है कि जनता द्वारा चुनी हुई जो लोकप्रिय सरकार है वह फौसला नहीं दे सकेगी, यदि यह अधिनियम पारित हो जायेगा ।

और उसके लिए जनता द्वारा चुनी हुई सरकार को केन्द्र की सरकार के पास आना पड़ेगा और मैं समझता हूँ कि यह जो प्रावधान है यह न केवल लोकतांत्रिक प्रक्रिया के विरुद्ध है बल्कि जो दण्ड प्रक्रिया संहिता की मूलभूत भावना है, उसके भी विरुद्ध है । कहा भी गया है कि Power corrupts and absolute power corrupts absolutely. जिसका अभी चित्रण किया श्री जेठमलानी ने कि कोई भी सरकारी अधिकारी यदि निरंकुश हो जाता है और वह कानून को अपने हाथ में ले लेता है तो उसके विरुद्ध राज्य सरकार मुकदमा न्यायालय में दाखिल न कर सके और उसके लिए उसको बरखास्त लेकर, याचिका लेकर के केन्द्रीय सरकार के पास आना पड़े, वह उचित नहीं है और इसलिए गृहमंत्री जी से मेरा पुनः नम्र निवेदन है कि वे पुनः विचार करें और यदि वे उचित समझें तो इस मामले को आज वे पोस्टपोन करा दें, कल फिर आए . . . (व्यवधान) . . .

एक माननीय सदस्य : मालवीय जी, यह तो आपकी सरकार ने . . . (व्यवधान) . . .

श्री सत्य प्रकाश मालवीय : मैं बता चुका हूँ कि I am under oath of secrecy नहीं सकता कि केबिनेट में मैंने क्या कहा था, लेकिन मेरी इस अध्यादेश के बारे में जो राय है, मैं उसका यहाँ पर खुलासा कर रहा हूँ ।

श्री एस० बी० जवहाण : इसका मतलब है कि आप क्लेक्टिव रिस्पॉसिबिलिटी को कबूल नहीं करते हैं ।

the Constitution, not an amendment of the Cr. P.C. How can we distrust the States?

SHRI SATYA PRAKASH MALAVIYA: Today I am not a Member of the Cabinet. आपको मालूम है कि कैबिनेट में वोटिंग नहीं होती है ।

इसलिए मेरा निवेदन है कि यदि कोई कानून ऐसा है जिससे कि लोकतांत्रिक प्रक्रिया पर और जनता द्वारा चुनी हुई सरकार पर कुठाराघात होता है, तो उस पर आपको पुनः विचार करना चाहिए और मेरा आशय निवेदन है कि इस पर आप ठंडे दिल से सोचिए और इसको आप वापिस लीजिए । यही मेरा निवेदन है । धन्यवाद ।

SHRI MENTAY PADMANABHAM: Thank you Mr. Vice-Chairman. I totally against that particular office. So, during about this Bill. This Bill is not only malicious but it is also an absolutely useless piece of legislation which has come before the House. I believe, Sir, that there is no point in wasting time on this Bill. Section 197 of the Criminal Procedure Code is an old law and it has been there for the past about 120 years and there is no need to bring in any changes in the law. As far as Section 197 is concerned, I have no objection. But as regards the Ordinance which was promulgated on May 2nd, I do not understand as to what was the reason for the promulgation of this Ordinance. Sir, issuing of Ordinances is an inherent power of the Government, be it a State Government or the Central Government. But issue of an Ordinance just before a month when the new Government is to be formed is anti-democratic and contrary to the tenets of parliamentary system of Government. The elections as per the original schedule were to be concluded by 26th May and the results were to be declared on the 26th or the 27th and we were to have a new Government by the end of May. But, on the 2nd May, the then Government promulgated this Ordinance and I don't understand the necessity for such a promulgation at that

time. What were the reasons? What provoked them to promulgate such an Ordinance? When the then Government was aware that within another 20 to 25 days there would be a new Government, they should not have resorted to this kind of an Ordinance. My second point is that this Bill is an insult to the State Governments. It is a direct attack on the federal fabric of our Constitution. Article 356 clearly says that as soon as President's rule is promulgated, the administration of the State reverts to the Central executive. Then, any permission which is sought by any individual to prosecute any officer for what he has done in the discharge of his bonafide official duties, the Central Government would give it and, in the name of the Central Government, either the Governor or the State administration would give it. So, where is the need for this amendment now?

The Minister has, in his speech, stated that even after lifting the promulgation of the Central Rule, after restoring the democratic process in a particular State, any officer or public servant who had committed any act and who had been subjected to vexatious litigation, had to be protected against this and the permission of the State Government has to be sought according to section 197 of the Cr. P.C. If that State Government gives the commission, it will lead to vexatious litigation against that particular officer. So, during the period of the Central Rule, the Presidential Rule, to give protection should vest with the Central Government. This is a strange argument. The State Government is there after the democratic process is restored and it comes to power and it will decide the case on its own merits and neither the Central Government nor the State Government will forgive any public servant who has done anything maliciously, whose action is malafide: nobody would forgive him. Therefore, this amending Bill, which is under the consideration of the House, is totally uncalled for. It is malicious and it insults the very concept of federal structure under our Constitution. Therefore, we oppose it. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Now, Prof. Sourendra Bhattacharjee.

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Thank you very much, Mr. Vice-Chairman, Sir, for calling me.

Sir, several speakers have opposed this Bill, particularly Mr. Jethmalani, who has opposed it very strongly, in his usual way and sometimes in pungent terms, which is well-deserved. I also rise to oppose this Bill.

Sir, the object of this Bill is repugnant, so to say, repugnant from the point of view of democracy, from the point of view of fairplay and from the point of view of justice. Coming in the current background of the rampant misuse of power by public servants, officials and others all over the country this Bill, which seeks to make more absolute the immunity of the public servant, can really not be acceptable to the people at large. I fail to understand why the present Government could not allow this Ordinance to lapse and we do not know how it would have weakened the position of this Government. Just now we heard a former member of the SJP Government, Mr. S. P. Malaviya, saying in a language which clearly indicates that even at the time of approving this Ordinance, he was opposed to it. Because he was in the Government then, he could not tell that. Now, he is free from the shackles. Why that shackle was put on by the Congress (I) Government, it is very difficult to understand, unless we find a link of this piece of legislation with the authoritarian tradition of the Congress (I). If they think it proper that they should stick to that tradition, then those of us who are opposed to it will have to fight it out both inside and outside Parliament. That is our bounden duty, that is our sacred duty. But I would appeal to the Home Minister that if in consideration of what has been said here regarding the Bill, he would agree to repeal it, not only repeal the Ordinance but also repeal the

Amendment Bill, he would earn the approbation of the entire House and will set up a healthy democratic precedent.

Thank you, Sir.

SHRIMATI BIJOYA CHAKRAVARTY (Assam): Mr. Vice-Chairman, Sir, I take my stand to oppose the Bill. But I support the argument offered by Mr. Jethmalani, one of the greatest lawyers of the country. This Bill has given immense power to the Government which is unheard of in the history of independent India to withhold justice. And this will really harm the people.

SHRI MENTAY PADMANABHAM: Have the Congress Benches withdrawn their speakers?

SHRI DIPEN GHOSH: One Member on the Resolution just got up for disapproval.

AN HON. MEMBER: Yes, that Member is present. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI M. A. BABY): I shall never deprive the Treasury Benches from speaking.

SHRI DIPEN GHOSH: One Member has got up in disapproval of the motion.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Please carry on.

THE LEADER OF THE OPPOSITION (SHRI S. JAIPAL REDDY): Mr. Vice-Chairman, Sir, Mr. Ahluwalia is a man of conviction. He will vote according to his conviction.

SHRIMATI BIJOYA CHAKRAVARTY: I think, he is a one-man army. (*Interruptions*).

SHRI S. S. AHLUWALIA: I don't need any reinforcement. I don't need that.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Please carry on.

SHRIMATI BIJOYA CHAKRAVARTY: So, Sir, I feel that this Bill has given immense power to the Government to deny justice to the people. And this is

unheard of in the history of independent India. Sir, we have seen that the public servants resort to various corrupt practices. In the eyes of the law, they should be treated as any common citizens are treated. But the new Section in the Bill introduced in the House will surely give a handle, a lever to the bureaucrats to resort to more corruption. And one case has been referred to here that a certain DIG took Rs. 10 lakhs. But this is not the sole example. There must be scores of instances of such corrupt practices indulged in by the bureaucrats. If the Government is going to shield these people who will protect the law, who will book these corrupt officers? So, it is a great enigma. I do not know why the Government is going to introduce this Bill. For whose protection? I would appeal to the hon. Minister to withdraw the Bill. It has already been done there. Please withdraw the Bill. I again appeal not to destroy the federal structure of the country and withdraw it so that people will have faith in the rule of law.

Thank you, Sir.

कुमारी चन्द्रिका प्रेमजी केनिया (महाराष्ट्र) : उपसभाध्यक्ष महोदय, बहुत ही सीमित दायरे में यह संशोधन विधेयक माननीय गृह मंत्री जी लेकर आए हैं। यह हकीकत है कि बहुत ही सीमित मुद्दे पर, क्रिमिनल कोड के संशोधन पर हम यहाँ चर्चा कर रहे हैं। मैंने पिछले सालों में खुद कानून की पढ़ाई की है और मेरा यह खुद का तजुर्बा है। गृह मंत्री जी खुद कानून के विचारक हैं। मैं समझती हूँ कि अगर मंत्री जी क्रिमिनल प्रोसीजर कोड की प्रोसीजरल खामियों को दूर करने के लिए एक कांफ्रिडेंसिव लेजिस्लेशन लेकर आते तो ज्यादा अच्छा होता। दूसरी बात मैं कहना चाहती हूँ कि यह जो प्रणाली हम ऐडॉप्ट किए हुए हैं, वह कामन लॉ की प्रणाली है। वहाँ पर ज्यादा प्रोसीजर रहता है। यह प्रथा जिन्होंने बनाई हुई है वह

उसको नेस्तनाबूद किए हुए है। इंग्लैंड में देखिए या जहाँ कामन लॉ है वहाँ देख लीजिए वहाँ पर कानून की प्रणाली नहीं चल रही है। ये तो बहुत पुराने कायदे कानून हैं। इनको परिवर्तित करना चाहिए और ऐसा करने के लिए विधेयक लाया जाए तो मैं समझती हूँ कि उसके लिए सबसे पहली आवश्यकता यह है कि इंडियन पीनल कोड और ऐक्ट्स ऐक्ट में सुधार होना चाहिए। आप अगर ऐक्ट्स ऐक्ट को पढ़ेंगे तो सामान्य जन की समझ के बाहर की भाषा का उसमें इस्तेमाल किया गया है। उसमें भी सुधार और परिवर्तन लाना बहुत आवश्यक है।

जहाँ तक इस संशोधन का सवाल है, कुछ बहुत यहाँ पर उठाई गई है। मैं अपनी तरफ से कहना चाहती हूँ कि यह जो परिवर्तन यहाँ पर सोचा गया है वह स्टेट गवर्नमेंट के बदले केन्द्र सरकार के हाथ में सत्ता दी जाए अगर उन्हें ठीक लगे कि कोई कदम उठाना है तो यह सत्ता उन्होंने केन्द्र सरकार को देने की बात कही है न कि राज्य सरकार को। और भी बातों के लिए केन्द्र सरकार को दी गई है? उसके बारे में थोड़ा सा स्पष्टीकरण मैं गृह मंत्री जी से चाहूंगी। जो शब्द उन्होंने उपयोग किए हैं वह हैं "मैबर आफ दी फोर्स"। इसके बारे में जेठमलानी जी ने अपने ब्यालात रखे तो मैं उनको बड़े ध्यान से सुन रही थी। अगर पुलिस फोर्स को प्रोटेक्शन देंगे तो यह बहुत गलत कदम है। तो यह मैं स्पष्टीकरण चाहूंगी कि 3ए में जो संशोधन आप लाए उसका मतलब पुलिस फोर्स है या ग्राम्डे फोर्स से है? मैंने सेक्शन 173 में पढ़ा है जहाँ पर बताया गया है कि जो सब-इंस्पेक्टर या पुलिस कांस्टेबल है वह पब्लिक सर्वेंट के परव्यू में नहीं आता है। तो मैं गृह मंत्री जी से जानना चाहती हूँ कि "एनी मैबर आफ दि फोर्स" को प्रोटेक्शन देना चाहते हैं कि अगर कोई फ्रिवोलस क्लेज उनके सामने हो तो मैबर आफ दि फोर्स के क्या माने हैं, वह ठीक तरह से समझकर रखेंगे तो

[कुमारी चन्द्रिका प्रेमजी फेनिया]
यह बहुत ही अच्छा होगा।

महोदय, स्टेटमेंट आफ आब्जेक्ट्स एंड रीजन्स में जिक्र किया गया है पहले पैराग्राफ सेक्शन 197 का, उसमें पब्लिक सर्वेंट में जजेज, मजिस्ट्रेट एंड मैबर आफ फोर्स तीन कैटेगरीज का उल्लेख किया गया है। जहां तक जजेज का संबंध है मैं जरूर कहना चाहती हूँ कि बंबई हाई कोर्ट में हाक्ते हुए हैं। जहां कुछ करना आवश्यक होता है लेकिन कार्यवाही के लिए ठीक तरह से मशीनरी उसमें नहीं मिल पाती है। जहां तक कांस्टीट्यूशन का सवाल है, हम देखते हैं कि इंपीचमेंट आफ दि. जजेज के लिए हम कोई कदम उठाना चाहते हैं उनके खिलाफ तो एक ही तरीका है इंपीचमेंट का। मैं गुजरात करना चाहूंगी कि ऐसी मैकेनिज्म कायम करें जिससे हम जजेज के मामले उठा सकें।

श्री मयेंद्र सिंह मान (नाम निर्देशित):
बाइस चैयर्समैन साहब, जो एस० एस० अहलुवालिया जी ने शुरू किया और राम जेठमलानी जी ने उसको बल बक्शा, इस बिल का विरोध करने के संबंध में, मैं उस के बारे में अपनी बात कहना चाहता हूँ... (व्यवधान) इन्होंने पहले तो शुरू किया था इसका विरोध करते रहे लेकिन बाद में उन्होंने असली बात की। आपने जो उसको बल बक्शा, उसी के संबंध में बात करने के लिए मैं खड़ा हुआ हूँ और इस बिल का जो आया है, उसका विरोध करता हूँ। यह जो बिल है जिसमें हम पब्लिक सर्वेंट को बचाने की बात सोच रहे हैं, हम को यह देखना है कि क्या वाकई में ये अपने को पब्लिक सर्वेंट समझते हैं या नहीं। यह तो बाइशाह समझते हैं, राजा समझते हैं जिनको हम पब्लिक सर्वेंट समझ बैठे हैं। मझे तो यह लगता है कि इन्हीं के वक्ताव में आकर इस सरकार को यह बिल लाना पड़ा है। हमें तो ऐसा लगता है यह सरकार इन्हीं के हाथों

में टिकी हुई है। आपको पता है इनके पास कितनी ताकत है? ये गांव-गांव में जाकर लोगों को तंग कर रहे हैं। राम जेठमलानी जी ने बिल्कुल पंजाब के दिल की बात कही है। वहां पुलिस फोर्स जाती है और लोगों को तंग करती है। उनको बिल्कुल कोई डर नहीं है। जिसको मर्जी मार दे, जिसको मर्जी शूट कर दें, घर से निकाल कर गोली मार दें, उनको किसी का डर नहीं है। यह साफ कहते हैं हमारा कुछ नहीं होने वाला है, हम को तो प्रोटेक्शन मिली हुई है। यह मानते हैं कि जो गाली करता है उसका साराब नहीं कर सकते, उसके लिए दूसरे की इजाजत लेनी पड़ेगी। यह तो ऐसा ही है कि जैसे किसी बाहर के व्यक्ति का ट्रायल होना हो तो भारत में उसका ट्रायल हो। भारत में अगर कोई गाली करता है तो उसका ट्रायल बुलंद करा हो। इस चीज को बिल्कुल ध्यान से देखना चाहिए। ऐसी बातें नहीं होनी चाहिए। मैं इस बिल का टोटली विरोध करता हूँ और यही अपनी बात को समाप्त करता हूँ।

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
उपसभाध्यक्ष महोदय, अभी दंड प्रक्रिया संहिता (संशोधन) विधेयक, 1991 पर विचार करते वक्त पूर्व सरकार के एक मंत्री महोदय ने, जिस सरकार के बारे में विश्व विख्यात है कि सबसे छोटी सरकार भारतवर्ष में बनी थी, ऐसा आर्डिनंस पास कराया जिस आर्डिनंस के कारण आज यह विधेयक लाने की बात हो रही है। उन्होंने खुद कहा कि उस कैबिनेट कमेटी में जो कुछ चर्चा हुई है उस चर्चा को मैं बाहर नहीं निकाल सकता या उसको डिस्कलोज नहीं कर सकता क्योंकि मैंने ग्रीय आफ सीक्रेसी ले रखी है। मुझे जहां तक पता है यह बिल सत्य प्रकाश मालवीय जी ने ही ड्राफ्ट कराया था।

श्री बीपेन घोष : मालवीय जी को आप समर्थन देते थे उस वक्त।

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
तब तक समर्थन विद्वड़ा हो चुका था।

दो मई को तमाम लोग चुनाव के मैदान में थे।

क्या इस बिल के माध्यम से हम वाकई इस मुल्क के पब्लिक सर्वेन्ट्स को संरक्षण देने की बात कर रहे हैं? जब इस बिल में हम उनको संरक्षण देते हैं तो हमें तमाम चीजों को मद्देनजर रखना चाहिए। एक तो यह कि क्या हम ऐसे अफिसरों को संरक्षण दे रहे हैं इस बिल के माध्यम से जिनके कारण या जिनके कार्यकलापों से हमारे देश की जनता के अधिकारों का हनन हुआ है? या उनको उनके मानव अधिकारों से वंचित रखा गया है? या जो उनकी दिनचर्या है उसमें बाधा पहुंचाई गई है? इसके बावजूद भी क्या हम ऐसे अधिकारियों को इस बिल के माध्यम से संरक्षण देने जा रहे हैं?

क्योंकि बड़ी कुर्सी पर एक ऐसा अफसर बैठा है जो सारे कानूनों का इंटरप्रेशन अपने तरीके से करता है और उस इंटरप्रेशन के कारण कहीं न्याय अन्याय में बदल जाता है और कहीं अन्याय न्याय में बदल जाता है। हिन्दुस्तान के सी०आर०पी०सी० के बारे में चर्चा करते वक्त हम उसमें बहुत सारे अवगुण निकाल सकते हैं। पर कभी कभी विदेशी प्लेटफार्मों पर खड़े होकर कई भारतीय गर्व से यह भी कहते हैं कि भारतीय न्याय प्रणाली एक ऐसी न्याय प्रणाली है कि यहाँ के चीफ जस्टिस के पास अगर पोस्टकार्ड भी लिख कर भज दिया जाय तो उस पर भी विचार होता है। लेकिन ऐसी सारी चीजें इस बात पर डिपेन्ड करती हैं कि उस कुर्सी पर कैसा अफसर बैठा है और उस कुर्सी पर बैठा वह व्यक्ति, न्याय पुस्तिका जो है, उसका सदुपयोग करता है या दुरुपयोग करता है। उपसभाध्यक्ष महोदय, इस चर्चा के माध्यम से मुझे हर जगह यही प्रश्न उठता हुआ दिखाई देता है कि अखिर क्या जरूरत थी 2 मई को, चन्द्रशेखर जी को इस आर्डिनेंस को लाने की। इस आर्डिनेंस के माध्यम से वह किस अफिसर को संरक्षण देना चाहते थे। हो सकता है कि अष्टाचारियों की संख्या बहुत ज्यादा हो

और न्याय देने वाले अफिसरों की संख्या कम हो। मैं मंत्री महोदय से जानना चाहता हूँ कि कितने ऐसे अच्छे अफिसर हैं, जिनको संरक्षण देने के लिये यह विधेयक लाया गया है? महोदय, मैं आपके माध्यम से सदन को बताना चाहता हूँ कि गौरी शंकर नाम का एक अफिसर जो कस्टम में था, उसने गुजरात के बांडर पर सोना पकड़ा। जब उसने सोना पकड़ा तो तस्करों ने उसको रिश्वत देने की कोशिश की। लेकिन उसने रिश्वत नहीं ली और उनको "कोफेपोसा" में बंद किया। तो जितने मूल्य का सोना पकड़ा गया था, उस हिसाब से उस अफिसर को इनाम मिलना था। जब उसको इनाम दिया गया तो उसने रिफ्यूज कर दिया। उपसभाध्यक्ष महोदय, यह बड़े आश्चर्य की बात है कि ऐसे अफिसर भी भारत में हैं कि जिसको इनाम दिया गया, पुरस्कार दिया गया लेकिन उसने कहा कि मैं पुरस्कार नहीं लूंगा। क्योंकि ईमानदार अफिसर बनने के लिये... (व्यवधान)

श्री शंकर दयाल सिंह : मैं समझता हूँ कि माननीय सदस्य को समय बरबाद करने की जरूरत नहीं है। माननीय सदस्य को यह कहना चाहिये कि उन्होंने जो इस पर यहाँ प्रस्ताव रखा है, वे उसको प्रस्तावित करते हैं या नहीं करते।

श्री सुरेन्द्रजीत सिंह अहलुवालिया : आपको पता नहीं है। आप कृपया शांत होकर सुनें।... (व्यवधान)...

आपको शायद पता नहीं है कि जो स्टेट्यूटरी रेजोल्यूशन देता है उसका राइट आफ रिप्लाय भी होता है। आप राइट रिप्लाय सुन रहे हैं।

SHRI CHIMANBHAI MEHTA (Gujarat): We fixed up one hour for the debate and the whole thing was to be passed within an hour because Chavanji was all the time arguing on that line, and then Mr. Padmanabham has been asking for a particular discussion for half-an-hour.

THE VICE-CHAIRMAN (SHRI M. A. BABY): My request is, as Ahluwa-

[Shri M. A. Baby]

liaji never interrupts anybody's speech, please you also don't interrupt. Please listen to him.

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
उपसभाध्यक्ष महोदय, यह बड़े अफसोस की बात है। मैं एक ईमानदार आफिसर के बारे में बता रहा हूँ तो उधर से जवाब आ रहा है कि सदन का समय बर्बाद हो रहा है।

मैं अगर अध्याचारियों के बारे में चर्चा करूँ तो शायद सदन का दुर्हपयोग होगा... (व्यवधान)...

श्री दीनेन घोष : वह आपको शोभा देता है (व्यवधान)

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
उपसभाध्यक्ष महोदय, उनका नाम दया शंकर था, उनको कितने इनाम मिले लेकिन उन्होंने रिफ्यूज कर दिया।

श्री त्रय प्रकाश मालवीय : अभी तो आप गौरी शंकर कह रहे थे।

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
मैं अपना संशोधन कर रहा हूँ।

डा० रत्नाकर पाण्डेय : बाप का नाम गौरी शंकर था।

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
यह ऐसे अफसर हैं जिनको किसी अध्यादेश के माध्यम से या किसी विधेयक के माध्यम से संरक्षण की जरूरत नहीं है। वह अफसर कहते हैं हमें जो आठ घंटे काम करने के लिए तनख्वाह मिलती है, वह हमें पूरी खरी उतारनी चाहिए और वह हमारी नमक की कमाई है लेकिन सिर से ले कर पैर के नाखून तक ईमानदारी में तसे हुए ऐसे अफसरों को भी कहीं कहीं प्रताड़ित किया जाता है। वह कब प्रताड़ित होते हैं, जब हम कुछ अध्याचार अफसरों को, आततायी अफसरों को ऐसे अधिकारों से अलंकृत कर देते हैं,

ऐसे अधिकार उनके हाथों में दे देते हैं। मैं उम्मीद करता हूँ कि सरकार इस पर गौर करेगी, विचार करेगी कि ऐसे विधेयकों और अध्यादेशों का इस देश में दुर्हपयोग न हो तथा इस दुर्हपयोग के माध्यम से किसी गरीब पर अन्याय न हो, जनता पर अन्याय न हो, किसी ईमानदार अफसर पर अन्याय न हो। ऐसे जो आततायी हैं, अन्यायी हैं, उन पर विचार करने के लिए जब भी कभी ऐसी कोई सचिका किसी राज्य सरकार से केन्द्र, में आए तो उसका निवारण तीस दिनों के अन्दर किया जाए, उस पर धूल न पड़े और वह नार्थ ब्लॉक की अलमारियों के पीछे दबा कर न रखी जाए तथा उस पर विचार किया जाए। ऐसा कोई संशोधन लायें और हमारे गृह मंत्री एग्जोरेंस दें कोई ऐसा वचन दें कि इस विधेयक के माध्यम से किसी पर अत्याचार नहीं होगा, किसी भी अत्याचारी के खिलाफ, किसी भी राज्य की चुनी हुई सरकार अगर किसी अफसर के खिलाफ कोई कार्यवाही करना चाहती हो तो केन्द्र, सरकार उससे पूरी तरह सहमत हो और उसका समर्थन करे। धन्यवाद।

SHRI S. B. CHAVAN: Mr. Vice-Chairman, Sir, I have heard with great attention the arguments put forward by hon. Members, particularly from that side of the House. I appreciate the advocacy of Shri Ram Jethmalani who knows fully well what are the provisions and whether it infringes the rights of the State Governments. He could plead the case in such a manner that almost every hon. Member is made to feel that there is some kind of a truth or correctness in what the hon. Member Shri Ram Jethmalani said here. His argument clearly indicates that he is not only opposed to this amendment, but he is totally opposed to Section 197 itself. If I understood him correctly, the argument put forward by him is not confined to the amendment which has been put forward by the Government, but opposes the very concept of bureaucracy getting a kind of protection which has been given under Section 197 of the Criminal Procedure Code. That seems to be the total tenor

of his argument. I was also surprised when I heard my esteemed friend, Shri Malaviyaji. I have heard that this is a new concept of the democratic set-up. On the one hand, he says that he is bound by the oath of secrecy and on the other, he divulges to the House that this was his individual opinion. This was what he stated at that time.

SHRI SATYA PRAKASH MALAVIYAJI: I have told about my opinion. I have not said about the Cabinet meeting.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Is this your latest opinion or the opinion then?

6.00 P.M.

SHRI S. B. CHAVAN: Anyway, I do not want to put you in an inconvenient position. I well understand your difficulties. You have promulgated the Ordinance and it is our duty now to see that this is converted into a Bill.

SHRI MENTAY PADMANABHAM: Why?

SHRI S. B. CHAVAN: Just wait for a moment. I will explain the whole thing to you. First, of all, the argument put forth is whether it is not an infringement of the rights and responsibilities of the State Government, and whether it fits into the polity, the federal polity, that we are having in this country. The argument is that we are trying to acquire additional powers by this and that we do not trust, we do not put faith in, the State Governments. This was the kind of argument put forth by hon. Members who spoke.

Sir, the position is absolutely clear if you see the provisions of the Constitution. It is absolutely clear. Criminal Procedure Code comes under List III, Concurrent List, of the Seventh Schedule of the Constitution. There is no infringement of any rights of the State Governments. But there are areas wherein we find that Ordinances or orders under article 356 become necessary. Sometimes, the order may be issued against persons who are indulging in certain things and these very persons may come to power in that State. What will happen to these officers who discharged their duties properly on the orders given by their superiors? The question of bribery and other things are totally irrelevant so far as section 197 is concerned.

Section 197 gives protection to officers against frivolous kinds of prosecution and other kinds of harassment by the people against whom these officers had to use the power. Under the circumstances, the order is issued under article 356 by the Central Government. Of course, so far as the State bureaucracy is concerned, the State Governments can give protection to them. But under article 356, even the State Government officers have to act on the institution of the Central Government officers who are posted there in order to see that peace is maintained and that they are not allowed to infringe the provisions of the Constitution or subvert the unity and integrity of India. In relation of the discharge of their duties, if they are ordered that they should arrest a particular person, he is arrested, he is detained. Sometimes, he is lathicharged. Sometimes, he is put in jail. Sometimes, police firing has to be resorted to. Is

[Shri S. B. Chavan]

there anything wrong with this? This is directly connected with the discharge of their responsibilities. Officers taking some bribe are not covered. Here, I would like to refer to the judgement given by the Supreme Court. I will read a small portion. It says: 'It does not matter whether the acts were directly necessary for the discharge of duties. What has to be found out is whether the act and the official duty were so interpreted that one could postulate reasonably that it was done by the accused in the performance of official duties though possibly in excess of the needs and requirements of the situation.'

One, commission or omission must be one committed by the public servant either in his official duty or under colour of his office held by him. It is the quality of the Act that is important and if it falls within the scope of and the range of his official duties, protection of section 197 will be attracted. This is a case of 1979, reported by the Supreme Court.

So, it has to have some kind of connection with the official duty which he has to perform. If it is a bribery or any illegal act, any criminal activity which he is indulging into, I do not think, he will get the kind of protection that is contemplated under section 197. So, section 197 has to be properly interpreted and the power is not with the Government. The interpretation is left to the Judges. Judges are going to decide whether it has any connection with the due discharge of his duties. If he is exceeding that, if he commits a criminal act, then

of course, courts are free to interpret the way like and certainly he will be held responsible for anything, either commission or omission and I am sure, hon. Jethmalani knows that. Not that we were forced to take this kind of an action, I can assure you that we had thoroughly gone into it, we saw the implication of it. When we are responsible for issuing order under article 356, we cannot possibly run away from the fact that all the officers who are discharging their duties for implementing the order under article 356 are given protection. If they are duly discharging the duty, are we going to give them protection or not? That is the main question. What hon. Jethmalani has said, I am sure, he is not opposed to section 197, he said that it has stood the test of time, of almost 150 years. What we are saying is, article 356 fortunately or unfortunately is to be invoked. Assam, we had to do it; Punjab, we had to do it. Might be, in some other areas where such a situation warrants it will be necessary for us to issue orders under article 356. If the orders are issued under article 356 and thereafter in the due discharge of their duties if the officers have to do certain things, are you going to hold them responsible and say that they have committed a criminal act? Certainly, we are not going to protect anything which has no relationship with the due discharge of his duty. That is why I will beg of you, I will request all the hon. Members to kindly understand the spirit. It has nothing to do with taking the powers of the State Government. It will be enforced so long as article 356 is in force. After the article 356 is taken away, once the elected Government comes there...

SHRI S. JAIPAL REDDY: Today the Leader of the House is unusually making a very long eloquent speech.

(Andhra Pradesh): No, Sir. This is a very important issue. (Interruptions).

SHRI S. B. CHAVAN: If the hon. Members are feeling tired, we can even adjourn the House.

SHRI MENTAY PADMANBHAM: My only point is, why do you presume that the State Governments will not give protection to those officers who have carried out the instructions of the Central Government? That is the point.

SHRI S. B. CHAVAN: Consider yourself in the situation in which my friend Siakia is there in Assam. When the President's rule was there, a number of people had to be arrested, a number of people had to be detained. Criminal charges were framed against them. If we are going to hold them responsible saying that you have done this or that and that is why we are going to prosecute you. Certainly we are... (Interruptions)... I have just given you an example. ... (Interruptions)...

SHRI PRAKASH YASHWANT AMBEDKAR (Nominated): This is an accusation which is being made against the State Government.

SHRI S. B. CHAVAN: I have merely given you an example. That does not necessarily mean....

SHRI PRAKASH YASHWANT AMBEDKAR: The implication is that you are accusing the State Government. Which comes through the election if they don't follow the Central Government, they won't get the protection.

SHRI RAM JETHMALANI: Will the honourable Minister please yield for a minute? Sir, only one point of clarification I really want to know. If a person is killed by a police officer during the course of a fake encounter, does it require the sanction of the Central Government or not? Kindly answer this.

SHRI S. B. CHAVAN: Actually, this matter is going to be decided by the courts

as to whether it is in the due discharge of his duties or he has exceeded his limits. I can't possibly answer that question.

SHRI RAM JETHMALANI: People should understand what it is.

SHRI S. B. CHAVAN: You know it very well. I don't think you have any confusion about the whole thing. You are very clear on that. Being an eminent lawyer, you yourself know what are the implications and who is going to take a decision on the point which you have raised.

Sir, I was trying at length to explain only the implications because there seems to be some kind of a misunderstanding as if we are trying to give very great powers to all the bureaucrats. Nothing of that type is going to happen and this is going to be in existence so long as Article 356 is in existence. Once you withdraw that, the duly elected Government comes there and their writ is going to run there. In spite of the elected Government, I don't think so. This can be invoked only for acts which were committed when Article 356 was in existence. Thereafter, certainly the State Government can carry on; the duly elected State Government has full responsibility. We don't want to interfere in their work. So, kindly do not have this kind of a misconception that we are trying to interfere in the working of the duly elected State Government or that we are trying to take the powers of the State Government. That is a total misconception of section 197. I don't think I need explain anything more. I can explain it to people who do not know anything, but honourable Members—Shri Jethmalani and all others—are aware of this. But seeing that very few Congress Members are there... (Interruptions)...

SHRI MENTAY PADMANABHAM: It appears Government also is not serious about it.

SHRI S. B. CHAVAN: I can understand your seriousness. So, please don't misunderstand. We don't have any other intention, and there is nothing of which Mr. Malaviya should feel that they have committed a certain grave mistake which

[Shri S. B. Chawan]

he is trying to disown now. In fact, there is no mistake that you have committed. We stand by it and it was a correct decision that you had taken. We have to protect the officers. Otherwise, no officer will be able to discharge his due duties and will find ourselves in a terrific-difficulty. So, that is the only thing that is being contemplated by the amendment of section 197. I don't think I should say anything more; I have tried to explain what exactly the implication of this amendment is.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Shri Ahluwalia. Do you press your amendment? You may say yes or no.

SHRI S. S. AHLUWALIA: Sir, why do you want a one-line answer? ... (Interruptions) ... That is not the rule.

THE VICE-CHAIRMAN (SHRI M. A. BABY): You have already replied. Now I am putting it to vote. If you are standing by your Statutory Resolution, I have to put it to vote.

SHRI S. S. AHLUWALIA: Sir, why are you snatching away the right of a Member to explain things?

THE VICE-CHAIRMAN (SHRI M. A. BABY): You have already replied. ... (Interruptions) ..

श्री सुरेन्द्रजीत सिंह अहलुवालिया :
 उपसभाध्यक्ष महोदय, मंत्री महोदय ने अपने विस्तारपूर्वक जवाब में सरकार की नीयत को बड़े अच्छे शब्दों में रखा है। और मुझे पूरी उम्मीद है कि सरकार इस विधेयक के माध्यम से किसी भी सरकारी अफसर को इसका दुरुपयोग करने का मौका नहीं देगी।

मैं अपना संकल्प वापिस लेता हूँ।

THE VICE-CHAIRMAN (SHRI M. A. BABY): Has the Member the leave of the House to withdraw the Resolution?

SOME HON. MEMBERS: No, Sir.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Now I will put to vote Shri S. S. Ahluwalia's Resolution. The question is:

“ That this House disapproves of the Code of Criminal Procedure (Amendment) Ordinance, 1991 (No. 4 of 1991), promulgated by the President on the 2nd May, 1991.”

(Interruptions). Now, division.

SHRI S. JAIPAL REDDY: What is the delay for?

THE VICE CHAIRMAN (SHRI M. A. BABY): Please wait for a minute.

SHRI S. JAIPAL REDDY: Mr. Vice-Chairman, we would like to know first what is happening in the House.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Certain procedural matters are being clarified.

I now put the Resolution moved by Shri S. S. Ahluwalia to vote.

SHRI S. S. AHLUWALIA: No, Sir. I want to know whether the House has given the permission. I want to withdraw my Resolution. You cannot take vote on that. You take the permission of the House whether it allows me or not to withdraw my Resolution.

THE VICE-CHAIRMAN (SHRI M. A. BABY): At the introductory stage you should have withdrawn it.

The question is whether the House approves the Statutory Resolution of Shri S. S. Ahluwalia.

SHRI S. S. AHLUWALIA: Ecen when something procedurally wrong.

जब मैंने अपना स्टेन्यूटरी रेजोलूशन वापस लिया, आपने आयज और नोज की बात की और उस पर डिविजन आपने मांग की। डिवीजन न कराकर आप फिर रेजोलूशन को कैसे वोट पर डाल रहे हैं, जबकि मैं विद-डा कर चुका हूँ।

डा० रत्नाकर पाण्डेय (उत्तर प्रदेश)
 जब मूवर नहीं चाहता, विद-डा कर लिया तो आप क्यों वोट करा रहे हैं... (व्यवधान)।

THE VICE-CHAIRMAN (SHRI M. A. BABY): It has been clarified by the Secretariat that the Resolution has to be put to vote.

SHRI S. S. AHLUWALIA: Even when I have withdrawn it? (*Interruptions*).

THE VICE-CHAIRMAN (SHRI M. A. BABY): I am sorry. There is no escape route. This is to be put to vote. Now, Division.

SHRI S. S. AHLUWALIA: You have to give your ruling on that.

THE VICE-CHAIRMAN (SHRI M. A. BABY): I have given my ruling.

SHRI S. S. AHLUWALIA: You asked me specifically if I am pressing for this or I want to withdraw it. If you had not asked me that was a different matter. (*Interruptions*)

SHRI MENTAY PADMANABHAM: Without permission of the House he has no right to withdraw it.

SHRI DIPEN GHOSH: I am quoting the rule.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Mr. Dipen Ghosh, please wait. You will be identified.

PROF. CHANDRESH P. THAKUR (BHAR): Mr. Vice-Chairman, the question is: What is on record? Let us see the record. What was your observation? The question is simple. Did you not ask Mr. Ahluwalia a question—"Are you withdrawing?" Then he said "I am withdrawing." At the next stage, you said "Now, the question is: Does the House allow him the permission to withdraw?" So we are voting on the permission to withdraw rather than the Resolution itself. Let us look at the record. (*Interruptions*)...

SHRI DIPEN GHOSH: I am on a point of order. I quote the rule 229 from the Rules of Procedure and Conduct of Business in the Council of States:

"Withdrawal of motion:—(1) A member who has moved a motion may withdraw the same by leave of the Council. (2) The leave shall be

signified not upon question but by the Chairman taking the pleasure of the Council. The Chairman shall ask: "Is it your pleasure that the motion be withdrawn?" If no one dissents, the Chairman shall say: "The motion is by leave withdrawn."

Up to this you are right. After that "But if any dissentient voice be heard or a member rises to continue the debate the Chairman shall forthwith put the motion:"... (*Interruptions*)...

THE VICE-CHAIRMAN: Will put the motion of Mr. Ahluwalia to vote. (*Interruptions*)...

PROF. CHANDRESH P. THAKUR: Not the original motion, but the motion that it be withdrawn.

SHRI DIPEN GHOSH: The motion has to be put to vote. The Secretary-General is right. (*Interruptions*)...

डा० रत्नाकर पाण्डेय : अगर मूवर नहीं चाहता तो उस पर वोट नहीं हो सकता। ... (*व्यवधान*)...

SHRI H. HANUMANTHAPPA (Karnataka): The appropriate rule is 163—"Withdrawal of resolution:—(1) A Member in whose name a resolution stands on the list of business may, when called on, withdraw the resolution in which case he shall confine himself to a mere statement to that effect."

THE VICE-CHAIRMAN (SHRI M. A. BABY): Mr. Hanumanthappaji, which rule?

SHRI H. HANUMANTHAPPA: Rule 163.

SHRI DIPEN GHOSH: Rule 229 is... (*Interruptions*)...

SHRI H. HANUMANTHAPPA: Rule 229 pertains to the motion. Rule 163 pertains to the resolution.

SHRI DIPEN GHOSH: It is a statutory motion. (*Interruptions*)...

THE VICE-CHAIRMAN (SHRI M. A. BABY): It is a statutory resolution. It does not apply to this ... (*Interruptions*)...

SHRI DIPEN GHOSH: It is a substantive motion.

SHRI H. HANUMANTHAPPA: No, it is a resolution.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Here Rule 229 applies.

SHRI H. HANUMANTHAPPA: No, Rule 163 applies. ... (*Interruptions*)...

DR. RATNAKAR PANDEY: Prof. Thakur is a legal brain.

SHRI S. JAIPAL REDDY: You ask the lobbies to be cleared. You cannot go back on a ruling and allow a new discussion to be raised. ... (*Interruptions*). The ruling of the Chair is not questioned. You are good enough to give the ruling. ... (*Interruptions*)...

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M. M. JACOB): When we are having a procedural wrangle in this House, we cannot keep the lobbies closed for an indefinite period. You must allow the lobbies to be opened because some Members want to go out. ... (*Interruptions*)...

SHRI MENTAY PADMANABHAM: You have already cleared the lobbies. You have already given your ruling. The only thing is that you will have to proceed with the ... (*interruptions*)...

THE VICE-CHAIRMAN (SHRI M. A. BABY): If you continue to discuss, I cannot pursue... (*interruptions*)....

SHRI GURUDAS DAS GUPTA: You have categorically stated that there should be a division. You have called upon the Secretary-General to deal with the pro-

cedure. At this point, there can be no entertaining of any objections. Sir, if it is done, then I shall take it that the Chair is being pressurised to change its ruling. It cannot be. The Chair cannot be pressurised to change the ruling. It is unbecoming. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI M. A. BABY): All of you, please sit down. (*Interruptions*). There had been sufficient discussion and exchange of views regarding the question of division. Now, it has been ascertained by the Secretariat that once there is a difference or a dispute over a resolution, it has to be put to vote and it had been put to vote. Now, a division has been demanded. We have to go ahead with the division. That is the decision. (*Interruptions*). Please sit down. Now, no other argument will go on record. We are proceeding with the division. Pleased sit down.

DR. RATNAKAR PANDEY: *

SHRI SYED SIBTEY RAZI:*

SHRI MURLIDHAR CHANDRAKANT BHANDARE:*

THE VICE-CHAIRMAN (SHRI M. A. BABY): Now, we will put the resolution of Shri S. S. Ahluwalia to vote. (*Interruptions*). Let us start the voting process. (*Interruptions*).

SHRI DIPEN GHOSH:*

SHRI S. JAIPAL REDDY:*

THE VICE-CHAIRMAN (SHRI M. A. BABY): Nothing of these will go on record.

DR. RATNAKAR PANDEY:*

SHRI MENTAY PADMANABHAM:*

SHRI S. S. AHLUWALIA:*

SHRI SHANKAR DAYAL SINGH:*

THE VICE-CHAIRMAN (SHRI M. A. BABY): The division bell has already been rung. There is no question of repeating the procedure. We are going ahead with the division. (*Interruptions*). Please sit down. Pandeyji, please sit down. (*Interruptions*). The procedure of this House should be conducted with its dignity. Please cooperate. This is the House of Elders. That dignity should be maintained. (*Interruption*). Pandeyji, please sit down. Please do not speak without the permission of the Chair. (*Interruptions*). All of you, please sit down.

The House divided.

Ayes 39

Ambekar, Shri Prakash Yashwant

Bakht, Shri Sikander

Basu Ray, Shri Sunil

Bhattacharjee, Prof. Sourendra

Chakravarty, Shrimati Bijoya

Channur, Shri Shivprasad

Das, Shrimati Mira

Das Gupta, Shri Gurudas

Dave, Shri Anantray Devsanker

Ghosh, Shri Dipen

Goswami, Shri Ramnarayan

Jethmalani, Shri Ram

Kar, Shri Narayan

Kenja, Kumari Chandrika Premji

Maheshwari, Shrimati Sarala

Malaviya, Shri Satya Prakash

Mann, Shri Bupinder Sihgn

Mathur, Shri Jagdish Prasad

Md. Salim, Shri

Mehra, Shri Chimanbhai

Mishra, Shri Chaturanan

Mohanty, Shri Sarada

Naik, Shri R. S.

Pichanabham, Shri Mentay

Pillai, Shri Ramachandran

Ranjit Singh, Shri

Reddy, Dr. Narreddy Thulasi

Reddy, Shri S. Jaipal

Sen, Shri Ashis

Sen, Shri Sukomal

Singh, Shri Shankar Dayal

Sinha, Shri Chandra Mohan

Sinha, Shrimati Kamla

Sivaji, Dr. Yelamanchili

Som Pal, Shri

Trivedi, Shri Dineshbhai

Venkatraman, Shri Tindivanam G.

Viduthalai Virumbi, Shri S.

Yadav, Shri Ish Dutt

NOES

Ahluwalia, Shri S. S.

Azad, Shri Ghulam Nabi

Bhandare, Shri Murlidhar Chandrakant

Chaturvedi, Shri Bhuvnesh

Chavan, Shri S. B.

Chowdhry Hari Singh

Dronamraju, Shri Satyanarayana

Faguni Ram, Dr.

Fernandes, Shri John F.

Hanspal, Shri Harvendra Singh

Hanumanthoppa, Shri H.

Jacob, Shri M. M.

Jadhav, Shri Vithairao Madhavrao

Jogi, Shri Ajit P. K.

Khatun, Kumari Sayeedh

Kulkarni, Shri A. G.

Lotha, Shri Khyomo

Malaviya, Shri Radhakrishan

Masodkar, Shri Bhaskar Annaji

Mathur, Shri Manmohan

Naik, Shri G. Swamy

Palaniyandi, Shri M.
Pandey, Dr. Ratnakar
Panwar, Shri B. L.
Patel, Shri Chhotubhai
Patil, Shrimati Suryakanta
Pillai Shri Thennala Balakrishna
Puglia, Shri Naresh
Rafique Alam, Shri
Razi, Shri Syed Sibtey
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Sanadi, Prof. I. G.
Sharma, Shri Chandan
Singh, Shri K. N.
Singh, Shri Vishvijit P.
Solanki, Shri Madhavsinh
Thakur, Prof. Chandresh P.
Yadav, Shri Ram Naresh

THE VICE-CHAIRMAN (SHRI M. A. BABY): Honourable Members, the presently available result calls for a head-count to be accurate and precise.

SOME HONOURABLE MEMBERS:
Why?

THE VICE-CHAIRMAN (SHRI M. A. BABY): Because no clear result is emerging. ... (Interruptions). ... Please listen. As per the present result, it is 39:39. ... (Interruptions)... Please wait.

THE LEADER OF THE OPPOSITION (SHRI S. JAIPAL REDDY) We agree for a head-count.

THE VICE-CHAIRMAN (SHRI M. A. BABY) We would like to go in for a head-count

SHRI S. JAIPAL REDDY: We agree for a head count. ... (Interruptions).

SHRI A. G. KULKARNI: Mr Chairman, unless you clear the lobbies, don't take a head-count, I beg of you.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Since we have gone for a di-

vision, we have to declare the result:

SHRI CHATURANAN MISHRA: I want to know whether the Government is still pressing this after this voting.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Now we are taking a head-count.

(After taking a head count)

Ayes	39
Noes	39

THE VICE-CHAIRMAN (SHRI M. A. BABY: Please sit down.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Mr. Vice-Chairman, you vote for constitutionality. You hold the highest traditions of this House. You vote against the Resolution.

... (Interruptions) ...

SHRI A. G. KULKARNI: For the last 22 years such an occasion has never occurred.

SHRI S. JAIPAL REDDY: Your casting vote, Sir.

SHRI GURUDAS DAS GUPTA (West Bengal): What is the position Sir?

THE VICE-CHAIRMAN (SHRI M. A. BABY): Please have some patience.

SHRI SURESH KALMADI (Maharashtra): Sir, the doors were closed when the bell ringing (Interruptions)

SHRI SHANKAR DAYAL SINGH: First finish this. Then you allow anybody to speak. First finish with your judgment. Sir.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI MATI MARGRET ALVA): Sir I want to bring to your notice one thing. The Secretary-General must know that he ordered the doors to be closed when the bell was still ringing. Repeatedly we were asking them that the bell was going on. They said the Secretary-General had asked them to close the door.

श्री शंकर दयाल सिंह: एक घंटे तक दरवाजा खुला रहा मेडम, एक घंटे तक आप नहीं आई ... (व्यवधान) एक घंटे तक दरवाजा खुला रहा ... (व्यवधान) आप तो आई नहीं और अब बरस रही हैं। बताइये।

THE VICE-CHAIRMAN (SHRI M. A. BABY): Honourable Members, article 100 of the Constitution of India states regarding the division in both Houses of Parliament:

"...The Chairman or Speaker, or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."

As per the article of 100 of the Indian Constitution, I being the Presiding Officer, vote in favour of the Resolution mover by Shri S. S. Ahluwalia. (Interruptions)

SHRI SHANKAR DAYAL SINGH: Now, I demand the resignation of the Government. ... (Interruptions)

THE VICE-CHAIRMAN (SHRI M. A. BABY): Please sit down... (Interruptions)... I am on my legs. Please sit down. You can speak later on. Therefore, the Resolution is carried.

The Resolution was adopted.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M. M. JACOB): You cannot do that. Take another voting for the second time and, then, your casting vote comes. The article is very clear.

SHRI SHANKAR DAYAL SINGH: The Leader of the House should comment because he is also the Home Minister. He was piloting the Bill here. Therefore, I want his reaction and the Government's reaction.

SHRI DIPEN GHOSH: We want the reaction of the Government. What we have done is that we have supported the statutory resolution moved by a Member belonging to the ruling party ... (Interruptions)... You adjourn the House. ... (Interruptions)...

SHRI GURUDAS DAS GUPTA: They have allowed it to come to this situation. It is they who are responsible for it. Not only today but from the beginning of this session, a number of Members belonging to the ruling party have been deliberately ... (Interruptions)... Therefore, the resolution which was carried, the Government should be held responsible for it.

AN HON. MEMBER. The Government is defeated.

THE VICE-CHAIRMAN (SHRI M. A. BABY) Mr. Gupta, please sit down.

SHRI GURUDAS DAS GUPTA: It is the Prime Minister ... (interruptions)... the Congress party which has brought the debate today.

THE VICE-CHAIRMAN (SHRI M. A. BABY): Now the House stands adjourned till 11 o'clock tomorrow.

The House then adjourned at fifty-eight minutes past six of the clock till eleven of the clock on Tuesday, the 6th August, 1991.