

SHRI P. SHIV SHANKER: Sir, I would like to submit that if the Home Minister were to merely say that there was no requisite majority in the other House, the answer would have been sufficient. But he went ahead to give out the details of a particular party's presence there. That is why it is obligatory on him to say the position of each party's presence and how many Ministers were there of his own party how many people were there? He must explain that. He cannot just run away like this. If he has chosen to give, if he has volunteered to give information, he must go to the logical extent.

श्री अटल बिहारी वाजपेयी (मध्य-प्रदेश): सभापति महोदय, उस सदन में क्या हुआ? मैंने आपसे पूछा कि वह बिल क्यों गिरा?

SHRI V. NARAYANASAMY: Are you speaking on behalf of the Minister?

SHRI MAKHAN LAL FOTEDAR (Uttar Pradesh): Why don't you become Home Minister?

श्री पी० शिव शंकर: दूसरे हाउस में रिक्वोजिट मैजोरिटी नहीं है, यह हमने नहीं पुछा था। उन्होंने खुद भेजना किया कि दूसरे हाउस में मैजोरिटी नहीं थी।

SHRI MUFTI MOHAMMAD SAYEED: There have been instances time. I would like to say that, in fact, the requisite strength was not present. Even fifty Members of the National Front and forty Members of the BJP were not present. Only the CPI(M) and the CPI

श्री राम नरेश यादव (उत्तर प्रदेश): महोदय, यह स्पष्ट बात है कि सरकार कैसे चल रही है।

SHRI MUFTI MOHAMMAD SAYEED: There have been instances when the Constitution (Amendment) Bills were not passed in the Lok Sabha. (Interruptions)

SHRI SURESH KALMADI: How many Ministers were absent, I want to know. He has not answered that. (Interruptions)

SHRI VITHALRAO MADHAVRAO JADHAV: What about the Deputy Prime Minister? (Interruptions)

SHRI SURESH KALMADI: Sir, I want to know only one thing more. How many Ministers were absent?

SHRI JAGESH DESAI (Maharashtra): You give the figures. (Interruptions)

SHRI P. SHIV SHANKER: It is a sorry state of affairs.

MR. CHAIRMAN: The question is:

"That this House do suspend rule 228 of the Rules of Procedure and Conduct of Business in the Rajya Sabha in its application to the motions for consideration and passing of the Constitution (Sixty-fifth Amendment) Bill, 1990."

The Motion was adopted.

(Interruptions).

SHRI V. NARAYANASAMY: Having lost in the Lok Sabha, you are clapping here. Are you not ashamed of it?

THE CONSTITUTION (SIXTY-FIFTH AMENDMENT) BILL, 1990

THE MINISTER OF HOME AFFAIRS (SHRI MUFTI MOHAMMAD SAYEED): Sir, I beg to move:

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha be taken into consideration."

MR. CHAIRMAN: There is one amendment Shri S. S. Ahluwalia for reference of the Constitution (Sixty-fifth Amendment) Bill, 1990 to a Select Committee of the Rajya Sabha. The Member may move the amendment at this stage, without any speech.

SHRI S. S. AHLUWALIA (Bihar): Sir, I move:

"That the Bill further to amend the Constitution of India, be referred to a Select Committee of

the Rajya Sabha consisting of the following members:

1. Shri Ram Jethmalani
2. Sardar Jagjit Singh Aurora
3. Shri Subramanian Swamy
4. Shrimati Amrita Pritam
5. Shri Ram Awadhesh Singh

with instructions to report by the end of the current Session of the Rajya Sabha."

The questions were proposed.

MR. CHAIRMAN: Now the motion for consideration of the Constitution (Sixty-fifth Amendment) Bill, 1990 and the amendment moved are open for discussion.. (Interruptions)....

The voting is at one o'clock, Sri Salve.

[The Vice-Chairman (Shrimati Jayanthi Natarajan) in the Chair]

SHRI N.K.P. SALVE (Maharashtra): Madam, I rise to support the Bill, but I do so in very great anguish, against my better judgment and against my own wise counsel.

We have suspended Rule 228 by exercise of our powers under Rule 267. For purposes of passing this very important Constitutional Amendment Bill, we have had to bend our rules backward so that we exercise the very important and sacrosanct constituent power vested in Parliament by the Constitution.

Madam, I want to submit, it is unfortunate that we are using the power under article 368—which is so sacrosanct—in a manner which appears to be very highly improper for reasons more than one. I personally felt that the cavalier manner in which we have bent the rule backward, the way we have suspended a very cardinal and important rule of this House, is against the very spirit not only of the Constitution but is wholly incompatible with the Rules of Procedure which we have given to the House.

Madam, such a situation had arisen way back in 1962. A Constitution Amendment Bill could not get the requisite majority on the floor of the House, and the entire Business Advisory Committee of the Lok Sabha requested the then Speaker to allow this kind of analagous rule to be suspended. The Speakers those days were Speakers who did not remain too silent. The Speaker declined, and what happened thereafter in the House I do not want to refer to, but I may be permitted to read what Kaul and Shakhder say in this respect. How unfortunate it is for us to have landed ourselves into this kind of a situation will be well borne out by the events of 1962 and what Pandit Jawaharlal Nehru had to say on the matter.

I am referring to page 105. This is extremely important and revealing. It will only show how utterly irresponsible and how utterly unworthy we have proved ourselves to be by exercising this constituent power under Article 368 by bending a rule backward. Shakhder spoke on page 105 and I quote:

"A Bill negated by the House cannot be withdrawn by suspending the relevant rule in order to facilitate the Government to reintroduce it without any change in the session. An exception was made in the case of Constitution (Twenty-second Amendment) Bill, Clause 2, which was not adopted by the House, as on division it did not get the requisite special majority. On the recommendation of the Business Advisory Committee, where leaders of the Opposition parties were also present, and in view of the urgency of the Bill, the Speaker gave his consent to the motion for suspension of the relevant rule and the Bill was introduced. But he made it clear that it was not to be taken as a precedent for the future and the Prime Minister gave an assurance to that effect."

Madam, this is not the only assurance of the late Pandit Jawaharlal Nehru we have observed in its breach.

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But let it as least be clearly understood that while we are supporting this—perhaps it will be flaunted at our face that even during the days of **Mrs. Gandhi** some of the Constitution (Amendment) Bills had to be reintroduced by suspending this—I want to make it unequivocally clear, whoever had done this has violated this very solemn pledge which was given by Pandit Nehru. Therefore I want to submit so far as this point is concerned, the time has come when in view of the importance of our authority under Article 368, and to ensure that we show the requisite responsibility and circumspection and caution, I think our rules need to be amended to provide that for whichever other purpose we may suspend the rule, we are not going to suspend the rule when the matter involved is the exercise of the constituent power of the Parliament under Article 368.

This Bill on which we are exercising our power under Article 368, impels me to consider my responsibility under Article 368. I am personally of the view that Article 368 confers a constituent power on this Parliament, which is of limitless amplitude. You are an advocate, Madam, and you would know when I say that it is of limitless amplitude, perhaps I am formulating a proposition which is in conflict with what the Supreme Court says as to the limits of Article 368. This is not an occasion for me to discuss as to whether my power to amend the Constitution under Article 368 is limitless or is confined to areas outside the basic structure. But one thing is absolutely sure that when we exercise our authority under this, our responsibility is not only onerous, but is also extremely delicate. Please do not keep using your constituent power to amend the Article indiscriminately and too frequently. And when you are amending Article 356, let me tell you in the crucible Article 368, you are trying to melt some of the cardinal restrictions, checks and balances, which are provided in the Parliament. Article 356 happens to be under a

chapter which deals with emergency provisions. That itself contemplates that these provisions have to be invoked, not as a rule, but as a matter of exception, only in case of emergency, very rarely and very reluctantly. Should any Government fall back upon invoking these rules which are contemplated in the chapter on emergency provisions, what we are doing is that we are not only violating all these provisions in season and out of season and continuously so far as Punjab is concerned, for so many days, but we are also getting rid of the checks and balances and are making it more liberal. I want to make it clear, Mr. Home Minister, once and for all that so far as my party is concerned this is the last time that we are trying to indulge in this kind of exercise and no more shall we ever agree to extend the period which we have extended from three years to three and a half years. I must submit,

Madam, as I said earlier it is 12.00 against our wishes. Madam, it Noon is also essential that when we talk of article 356, as I was submitting, coming under the emergency provisions, we must also realise that if we are not holding elections in Punjab, we are denying to the people of Punjab a very important basic right which is the basis. Madam, I submit what is happening in elections these days is most unfortunate. I do not want to pin-point anyone in the elections. But this kind of violence, this kind of intimidation, this kind of coercion, which is going on in elections these days, preventing the people from exercising their vote, freely and fearlessly, is far from democracy, is the worst kind of dictatorship fascism masquerading as democracy. I hope all of us will not cast aspersions on each other but try to take some effective measures. Mr. Home Minister sitting as the Home Minister of a Government, not of a banana republic but of the Republic of India, you should realise your own responsibility and augment your own moral authority and ensure that wherever violence has taken place, the

people responsible for doing this kind of violence are ruthlessly weeded out by the entire system of democracy in the country. Nothing is more dangerous for the welfare and strengthening of democracy than to tolerate such a variety of people who are blatantly guilty and guilt becomes manifold and more so if such people are those who are in power and authority. I, therefore, want to submit, Madam, that holding elections, I do concede is not merely the responsibility of the Government but it is also the responsibility of the people for whom we hold the elections. We provide for non-violence, and selfrule. That is the heart of our Constitution and if that be so, Madam, it is most unfortunate in Punjab events should lead us to a point where we are forced to deny to them selfrule. Madam, what is happening in Punjab is a matter of very grave concern not only to the people of Punjab but to the entire country. Madam, what is happening in Kashmir is also a matter of equally great concern. It has to be understood and appreciated that Punjab problem has reached a dimension where a certain attitude has to be shown by the Government. At one stage Mr. Simranjit Singh Mann made a statement. I read it a month ago and I thought it was a very sensible statement. He said that whatever changes he wanted were within the four corners of the Constitutional provision. A very sensible thing to say, and he deplored the killings of innocent men, women and children. He deplored extortions. He deplored robbery and he deplored dacoity. If this is what is coming from Mr. Mann, what else do we want in Punjab? I talked about his statement to some friend. He said, "Mr. Mann will not be allowed to talk any more sense than what he has talked." Mr. Mufti Mohammad, since then we have not heard this. It is very unfortunate. Anyone who talks sense is likely to be sent the same way as Sant Longowal was sent. Most unfortunate things to happen for a handful of people who are holding the whole nation to ransom, are holding the entire Punjab to

ransom and who are now holding the entire democracy to ransom. Let it be made, Mr. Home Minister, clear to them, whereas we have great respect for this greatest of the great and brave community who played such a noble role while defending the borders of our motherland, community which exists, Madam, to help the helpless, to help the weak and meek it should not indulge in this kind of criminal activity, killings of hundreds and thousands of innocent men, women and children, extortion, dacoity and robbery. They are bringing in a very great blot to the fair name of this community, of this religious minority which has played such a courageous, brave and noble role in the history of this country, in the post-independent period. Madam, the role played by the Sikh community, whenever it is written, will be written in letters of gold. Let it not be soiled the way it is being soiled. It has to be understood that so far as our democracy is concerned, the heart of our democracy is rule by consensus. We consider rule by consensus as the highest form of democracy. Democracy stand for a society which is courageous, which is compassionate, which is solvent, which is dignified and which is human and, therefore, nothing is a greater anathema to democracy than lawlessness and mindless violence.

Madam, I want to submit that I do not know how these people are so wholly misguided that in the name of religion they are profaning religion, they are indulging in the most irreverent acts and I do not know how religious people are indulging in practices which are sometimes inhuman, repugnant to our ethical sense and they have sanctified intolerance and hatred and it is because they are religious only in name. In the name of religion, they are perpetrating the worst form of and the most heinous irreligiousness. I only want to submit that if we do not treat human beings with respect and dignity, and if we indulge in senseless violence and still believe that we are being religious, then we degrade not only ourselves, but we

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degrade religion itself and I hope, Madam, that the Government now realises that the time has come for it to act. So far as the great Sikh community is concerned, we must be ever willing to see that, whatever their demands are, we are willing to consider them and to concede whatever is reasonable. Let the message be sent, Mr. Home Minister, at long last that so far as those people who are indulging in mindless violence are concerned, those people who are indulging in ruthlessly killing the innocent people, innocent men, women and children, that you are not going to compromise in any manner whatsoever and you will unleash on them a very solid thing as a result of which those people would find themselves stifled from indulging in this kind of inhuman activities. Let this message be sent, Mr. Home Minister. Enough is enough. You went there, the Prime Minister went there. Madam, what was said? It was said that he was going there and that he was going to apply the balm on the wounds. Very good. Plenty of good talk, plenty of platitudes, plenty of sanctimonious humbug. But what has happened ultimately? Can he go there now in the same way? No. He cannot go today. It is because one thing is very clear. If you want to get rid of terrorism, please do not sit across the table and think that you can get rid of terrorism across the table. If you want to get rid of terrorism, you have to keep on fighting it till the end. Practise fighting terrorism till the end and they will come down to the table. For 75 years terrorism has been going on. The IRA terrorism has been going on for 75 years and the history of terrorism is a witness to the fact that terrorism cannot be solved across the table. Mr. Home Minister, you better know this, and the terrorists must not think that this is a weak government, that this is a minority Government, which has come into the Centre and which is incapable of treating them the way they deserve to be treated. For god's sake

let a proper message be sent to them: "One thing we want to make clear and that is that, come what may, we will hold elections in Punjab after six months' time and those who are going to stand in the way of holding the elections will be treated as the worst type of criminals against our Constitution, against our democracy." Thank you, Madam.

THE VICE-CHAIRMAN (SHRI-MATI JAYANTHI NATARAJAN): Before I call the next speaker, I have to mention one thing. The Leader of the House was detained in the Lok Sabha and, so, he could not take the oath. If the House agrees, he can take the oath.

SOME HON. MEMBERS: All right.

LEADER OF THE HOUSE (SHRI M. S. GURUPADASWAMY): I apologise to the House that I was not here at 11 o'clock since I was in the other House.

SHRI ATAL BIHARI VAJPAYEE: We accept his apology, Madam.

MEMBER SWORN

36. SHRI M. S. GURUPADASWAMY (Uttar Pradesh).

NOMINATION OF THE LEADER OF THE HOUSE

THE VICE-CHAIRMAN (SHRI-MATI JAYANTHI NATARAJAN): I have to inform the House that the Prime Minister has nominated Shri M. S. Gurupadaswamy as the Leader of the House.

SHRI N.K.P. SALVE (Maharashtra): Madam, I on my own behalf and on behalf of my party extend the heartiest felicitations to the newly elected Leader of the House and we wish him all the best and we expect of him adherence to all the norms and courtesies to which he has been used all these years.