

THE CONSTITUTION (AMENDMENT) BILL, 1981 (TO AMEND ARTICLE 366)

SHRI SYED SHAHABUDDIN (Bihar): Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

SHRI SYED SHAHABUDDIN: Sir, I introduce the Bill.

THE DECLARATION AND PUBLIC SCRUTINY OF ASSETS OF MINISTERS AND MEMBERS OF PARLIAMENT BILL, 1979—Contd.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Shri Kalpnath Rai—Not there. Shri Surendra Mohan.

SHRI SURENDRA MOHAN (Uttar Pradesh): Mr. Vice-Chairman, Sir, this is a very important Bill and I think the matter relates to the entire political system of this country. There is so much talk in the air regarding corruption—corruption in high places—but no way has been found out to really estimate the extent of corruption, let alone root it out. The result is that the common people have lost all faith. They have lost faith in the credibility of our present political system and, therefore, something radical needs to be done. The question is that there are any number of ways in which politicians, including people like us, make money in collusion with the bureaucrats, more so in collusion with the big traders, industrialists and also the multi-nationals. After having made all this money, this money is used in the elections and, therefore, the electoral process also gets vitiated; and that is why every time a discussion relating to the electoral process is raised, the need for radical reforms in the electoral system is also emphasised and everybody wants that the incidence of that money on the elections, or the influence of the extra money, huge amounts of money, on the elections must somehow be

reduced, if not totally eliminated. Not only that. One finds that, while collecting or raising money from dubious sources, politicians, particularly those who are in power, use the machinery of the State, the machinery of the Government to give any number of concessions to multi-nationals, to big industrialists, traders and others. And these concessions mean a lot in terms of defrauding the Exchequer; they mean a lot in terms of hurting the vital interests of the common people. If prices rise in a big way, it may be that there has been corruption. If a certain bridge falls down or if a certain building cannot really stand the test of time, there also the possibility of some corruption is there. And, in the end, a picture is created in the minds of all thinking people that under this system corruption in high places cannot be eliminated, in fact cannot be controlled.

In fact, corruption in high places has been increasing every day. In fact, corruption has been institutionalised. And the result is that people say that if the system is going to be such a totally corrupt system, if under this system there can be no justice, if under this system prices are going to rise higher and higher, then the system cannot command the loyalty of the common citizen. This is the paradox, and this paradox will have to be resolved somehow. That is why some people have been saying that it must be made essential that all politicians, particularly those who are in high positions, should declare their assets; whether they are members of the Assembly or members of the Council or members of the Rajya Sabha or Lok Sabha or Ministers, they should declare their assets. Now the point is, when are these assets going to be declared? One suggestion was that at the time when a person gets elected to the Assembly or Parliament or when a person is nominated as a Minister, he or she should declare his or her assets. This may be one way. Another way can be that the assets should be declared at the

time of the elections; that is, when a person files his nomination papers, he should also attach with the nomination papers a declaration of the assets that he or she holds. Now that will not mean that the Election Commission will scrutinise whatever statement has been given. The Election Commission will only forward the statement of assets to a particular commission or committee—it may be the Lokayukt or there may be any other agency—to verify the statement regarding the assets. But it is necessary that the Election Commission should be made the recipient of such a statement. The reason is that at that time the statement will be published in the newspapers also and the local people can certainly verify, can certainly scrutinise and find out how much truth is there in the statement that has been made. In any case, if a person offers himself for election for a second term, the people will know how much he has amassed in terms of assets in the last five years or in the last two or three years, as the case may be. So the Election Commission can be one agency before which a statement of assets will have to be made. It will certainly be scrutinised, not by the Election Commission but by the people who are the voters. Secondly, a separate agency will also look into it and find out how much veracity, how much truth there is in such a statement. Now, Sir, it is for the voters at that time to find out the truth and if a statement is entirely incorrect or partially incorrect then they will certainly decide not to vote for that person. This will be one way of treating the corrupt people at the people's level. The people will then say, "Such people who are corrupt cannot be our representatives." In most cases, the common people do not know the exact amount of corruption indulged in by a particular representative, by a particular individual, and it will serve the cause of public interest in a big way if a statement even if produced by a person who has amassed wealth is published before them for their

scrutiny. Now, Sir, this can be one proposal. There can be other proposals also as to how a statement of assets will be scrutinised and what punishment will be awarded. I think that the best punishment is the punishment that voters in a particular constituency will award to a person who has misused his office. This question is so important that if nothing is done in this behalf, then things might go worse. All of us know how various questions have been discussed in Parliament as well as in the Assemblies. There was the Antulay case which has been discussed in the Lok Sabha, which has also been discussed in the Rajya Sabha, but no way has been found to see that such cases are not repeated. There is no provision somehow which can really discipline those who are corrupt. There is of course the Commission of enquiry Act. But not much resort is being taken to that law. That is why it is necessary that we make it essential for all public men, particularly those in high places, particularly those who are elected to legislatures and particularly who are Ministers to declare their assets.

I am not referring to Antulay or any particular Minister alone. I will give you another instance of what has happened in a particular district in Bihar. In Bihar a particular Member of the Assembly who was also a Minister sometimes holds large amounts of land. Some people say that these are held by him in the name of a particular Math or Mahant. Some people estimate it to be 20,000 acres and some others say that it is about 25,000 acres. After enquiry it was found out by the Government that there are 9,000 acres surplus with that particular individual. But the Government have failed to publish that report or to initiate any action on the basis of that report. The district administration there, corrupted by influence of money of that particular individual has indulged in lawless activities and at least three or four times the Police

[Shri Surendra Mohan]

had to resort to firing. This is also a case of corruption. Wherever there is corruption there is bound to be lawlessness. In this case when people demand that the surplus land should be distributed on egalitarian basis there is trouble and the person who is corrupt and who holds high position or office goes scot free. And those who are clamouring against corruption and for egalitarian principles are punished.

Nowadays there is lot of unrest among tribals in different areas, whether it is in Adilabad or Walia taluq of Gujarat or Shahabad in Maharashtra or in other places. There is so much of tribal unrest that there have been 12 firings in the course of last two years. This tribal unrest is also related to corruption indulged in by people in high places. Forests are being tapped in a big way. Even the Acts passed by this august House and the other House are being violated. Trees are indiscriminately felled with the result the tribals are deprived of whatever means of livelihood they have. After felling the trees in forests, the land is given to a particular industrialists. The forest resources are sought to be exploited by that industrialist. He takes away whatever avenues of employment the tribals had in that forest. The tribal people not only feel degraded because they do not have any opportunity to earn their livelihood, but they also feel helpless. Therefore, there is tribal unrest. This also is leading to a situation in which, as I said whether it is Adilabad, Walia, Gua, near Ranchi or Shahabad or in a number of other places, firing is resorted to by the Police. My estimate is that during the last two years more than 200 tribal people have been killed or seriously injured. In Gaya a land agitation is going on and in Shahabad, poor people work hard. Wherever it is, one finds that corruption is eating into the vitals of our national character and national society. It is a very serious and grave matter. Unless

something is radically done we will be giving a go-by to the concepts of socialism, fairplay, justice and law and order.

3 P.M.

It is very necessary, if our democratic polity is to be run smoothly, for law and order to be maintained, for equity and justice to be established and to be promoted, that corruption in high places is reduced and eliminated in a big way. It is for this purpose that this Bill has been brought forward and it is for this purpose that I am supporting this Bill. I am also supporting this Bill because, in a poor country like India, where the resources are very scarce, where unemployment is growing, where the number of people who are living below the poverty line is increasing at a fast rate, it is extremely essential to see that the resources are husbanded in a planned manner for the service of the common people. But if these resources are to be squandered by those who are corrupt, if these resources are to be massed by those who are in power and if these resources are to be given away liberally to those who have been looting the people, then these scarce resources will become even more scarce and the disparities in income and wealth of the people, disparities between the rich and the poor, will continue to grow and grow steeply and the result will be that the common people will think that this is not a system in which they can have confidence and in which they can breathe a free air. That is why I say that if we want a homogenous society, it is extremely essential to see that corruption in all forms, at all stages, at all points, is reduced and eliminated and it is for this purpose of eliminating corruption that I support this Bill. Thank you very much, Sir.

SHRI RAJENDRA SINGH ISHWAR SINGH (Madhya Pradesh): Sir, there is no disputing the fact that corruption, wherever it is found has got to be rooted out. Corruption, unfortunately, today has become an in-

international phenomenon. It is only the other day that we read that large sums of money had been paid by prestigious corporations like the Lockheed Electra Corporation and the Chryzlers to the Ministers in Japan, in the United States, in France and in some other countries in the world. Therefore, Sir, corruption is nothing very special to our national economy or to our political system at the moment. And, Sir, as I said earlier, there could be no two opinions on this that all efforts must be made to combat corruption wherever it is found. The question, therefore, is: Will the Bill which is being introduced now solve the problem? The Bill which wants the declaration of assets and public scrutiny of the assets of the Ministers and Members of Parliament does not at all fulfil the requirement that seems to have been suggested by the mover of the Bill. As I was listening to the Honourable Member who just spoke a short while ago, supporting the Bill, I found that he did not point out a single clause in the Bill which could in any way serve the purpose that he was wanting to place before the House. Whether there has been large-scale felling of forests which has resulted in denuding our forests and which, in turn, has embarrassed the tribals, these things have nothing to do with the provisions of the Bill. They will still continue, whether the Bill is there or whether the Bill is not there. They will continue if the Government of the particular State does not take any precautions to face contingencies of that type.

Sir, the honourable Member spoke about the assets to be declared even before fighting the elections. Now, this is not one of the provisions of the Bill at all. And he went even to the extent of making an argument that if the electorate was to feel that a particular candidate has not honestly declared his assets, then he is to be thrown out. I would dispute even that proposition, Sir. We all know the expenditure, the extent of

expenditure, which the present law permits during elections. The electorate in every segment knows that it is not possible to fight an election within those limits and those parameters, and yet electorates have not rejected or discarded the candidates merely on that account. Therefore, all the reasons that have been placed before this august House by the hon. Member, not one of them really went to support the various provisions which are sought to be introduced by the Bill. I would, therefore, seek your leave to look at the Bill clause by clause and see whether it fulfils the purpose in any way, averting the possibility of corruption at high places like the Ministers or Members of Parliament.

You would recall, Sir, that soon after the Santhanam Committee Report, voluntarily certain codes had been adopted and for some period of time it had been the practice to submit the assets. As a matter of fact, in the Bill itself, if you kindly have a look at the Statement of Objects and Reasons, it has been mentioned that a number of States have adopted this code. Now, till today, has there been any follow-up action on the submission of the returns of assets by persons who became Ministers. It is just not possible. It is a very impracticable suggestion that is sought to be made by the mover of the Bill.

Sir, you will realise the great possibility of misuse of harassment which is inherent. . .

THE MINISTER OF STATE IN
THE MINISTRY OF HOME AFFAIRS
(SHRI YOGENDRA MAKWANA): I
will be back just after five minu-
tes.

..SHRI RAJENDRA SINGH ISHWAR SINGH: Yes. You would straightway see the inherent possibilities of great misuse of these provisions of the Bill the moment one finds here that the declaration to be made by a Member

[Shri Rajendra Singh Ishwar Singh]

would be or could be scrutinised by any member of the public. Now, that would let loose the flood gate of possibility, specially more so in today's political situation, where we see that every endeavour is made to humiliate and harass persons of opposite political parties.

The hon. Member made a reference to Mr. Antulay's affairs. I wish he had not done it. It does not seem that the hon. Member knows anything of the facts of that case, otherwise he would not have mentioned in the same breath, as the provisions of this particular Bill.

Now, Sir, as I was submitting to you, if you examine the provisions of the Bill, you would immediately find out how thoroughly impracticable and unrealistic the whole concept of this Bill is. To begin with, it deals with the assets and it seeks to include the assets that are held by a Member in a benami manner. Now, how one is going to find out and how is it possible in the return of the assets for any person, whether a member of the public or otherwise, to discover that a particular property is held benami which has not been disclosed? If a Minister or Member is an honest person, then the provisions of the Bill are thoroughly unnecessary. If a Minister or a Member of Parliament is a dishonest person, the provisions of the Bill do not contain anything indeed by which he can be restored to the path of honesty. After all, it is a question of submitting one's return, and if the man is not honest enough, if he is being dishonest, surely he can so apportion and he can so invest his property, that it would really not be possible for any one to find out that it does not belong to him. That being so, the possibility of finding out that the assets have not been properly disclosed becomes so remote indeed that the Bill would not be able to serve the purpose for which it is contemplated. If you further see, Sir, the return which

is sought to be made is to contain an inventory of the assets possessed by a Member and his dependents, it is confined to a Member and his dependents. Now, the dependents would be the wife of the Member, unmarried daughters and unemployed sons. If a man is dishonest, then it is most unlikely indeed that he will keep any assets in his name or in favour of the dependents. There are a thousand and one ways in which a dishonest person can keep his assets without attracting the provision of the returns which merely confined itself to what is in the name or in possession as such of the Member and his dependents. Now, it requires that after a person has been elected as a Member of the House of Parliament or he becomes a Minister, within three months he is to send the return. Those Members of Parliament or those Ministers who have an income which is taxable are already sending the returns to the proper authorities and they are investigated into by the Income-tax authorities whether they be income-tax or wealth-tax returns. Those whose incomes do not fall in the tax brackets would, perhaps, be possessing such small quantity or small value of property that asking for those returns would not in any way add to the purpose of this particular Bill.

Now, Sir, it is suggested thereafter that once a return is made, then this return should be exhibited in the library of the Parliament and any citizen can on payment of a fee of Rs. 100, which is not a very large amount these days can take a copy of the return. Now, please imagine what is likely to happen. Sir, you assume that Mr. X, whether a Member of Parliament or a Minister has made a return and the return is filed in the Library. Whether that Member of Parliament is an important Member or a Minister who always is an important person, the persons in the Opposition would see to it that immediately an objection is filed by one Mr. Somebody who is picked up from the streets to come and challenge that these

returns are not correct. As soon as that challenge is made, the Movers of the Bill contemplate that an enquiry would be set afoot either by the Speaker of the House, or if he happens to be the Speaker then by the President. Instead of attending to his parliamentary duty or instead of attending to the executive functions which the Minister is required to perform, we shall have this spectacle of the Minister or the Member facing an enquiry at the hands of almost anybody without there being any restriction to a complaint of that particular nature being lodged before the President or before the Speaker, and thus being almost paralysed from performing the normal duties that are expected of him. Nowhere would you find a legislation of this type. In no country would you find that there is such a legislation that gives power to almost any member of the public to pull before a public enquiry a person of the eminence of a Minister or a Member of Parliament and ask him to explain his financial position, his assets, wherefrom he got the money, how he has been using it in the course of the last 12 months or even earlier. Even when there are charges of corruption, you would kindly see that no such inquiry is permitted in a public court unless there has been already an investigation by a very specialised machine of the investigating department of the police and then the matter itself is scrutinised by the persons in whose department that particular individual is said to be working. It is only after he clears the scrutiny in the form of getting a sanction that the matter may be placed for public scrutiny in a court of law that the matter proceeds. Now, Sir, giving such wide powers, as this particular Bill seeks to give, I respectfully submit, would be exposing all the Members of Parliament and Ministers to almost unimaginable harassment at the hands of persons who will be set up by political busy bodies.

Then, therefore, we have the other clause that if for any reason a Minis-

ter or a Member of Parliament has not been able to submit the return within a period of three months, his name gets notified by the Speaker or by the President, and he automatically ceases to be a Member. A new disqualification is created over and above what is contained in section 8, and 8A of the People's Representation Act. Again, you would see that this gives a very strong handle in case somebody is politically motivated to, by a back-door method, set aside the election of an important, powerful or inconvenient opponent. One can understand that when a person gets convicted for having filed a false return, because this does contain another provision that if the return filed is not found to be correct, or it has been found to be false, then it will be treated on par with an offence of perjury and would be made punishable under section 193 of the IPC as the Bill contains. One could have understood that in case of conviction and if the conviction resulted in imprisonment of two years or more, as is already contained in the People's Representation Act, then a disqualification could attach. But this attaches a disqualification merely on the finding of not a court of law where the matter has been gone into, but on a finding of this purpose given by the Chairman or the Speaker or the President, who has come to the conclusion, after holding an inquiry in his own manner, that the return is not true. Again, I submit this goes beyond the scope. Already a provision is there. A very laudable and a healthy provision is already engrafted in our own enactments which are dealing with electoral laws and it is thoroughly unnecessary to bring this thing because, as I submitted, this could be a handle to push out an inconvenient adversary or whom the minority party would not like to see in Parliament.

(Interruptions)

Appeal to whom? Then why should not the whole matter be in the court right from the beginning.

(Interruptions)

[Shri Rajendra Singh Ishwar Singh]

Good enough. No, no, we will get into that. Sir, the whole purpose is, it is being said that a false return is being filed. Now, when a false return is being filed, according to the provisions of this Bill any member of the public can scrutinise that. Having scrutinised it is being said that the matter goes to a court of law where a complaint is filed or where cognizance is taken by a court of law, that there has been an offence of perjury committed in the sense that documents on oath have been filed which are required to be filed under law and which are not correct. I am not taking any particular section. Hon. Member is pinning me down to a section. At the moment, I am examining the whole Bill clause by clause before this hon. House and I say that each part of the Bill, Please examine it from any position, is not merely impracticable but is also one which is fraught with dangers because it could be misused in a very gross manner. And who can say these days that such misuse would not be made?

Then, the last para deals with Joint Committee, that would sit down and make out rules for the enforcement of the various clauses. That is merely a procedural clause and does not come into the merit of the Bill at all.

[The Vice-Chairman (Shri Dinesh Goswami) in the Chair]

Having thus examined the Bill, one fails to see as to what useful purpose the provisions of this Bill would ever serve. If the intention of the mover of the Bill is that by making this Bill into statute it would be possible to deter people who are bent on the way of corruption, then I submit such a solution could not be evolved. All that is required is that a person should so arrange his property, should so display his assets, movable and immovable, that they do not fall, or they are not accepted as either belonging to him or to his dependents, and that person is totally outside the realm

of this particular Bill. All that is required is to show assets he is holding either in his own name or in the name of his dependents. Now, if a person is bent upon being dishonest, if a person is in the ways of acquiring money by means which are not legitimate, then it would be commonsense that he would also take precautions to see that money are not so placed or the property is not so kept that it could be traced to him. That is the first precaution of any such person to take. Consequently, by bringing in this Bill, a dishonest man could never be exposed. A dishonest man would always take precautions to see that it is not possible to trace any property to him. It is like every other return. We find the same kind of phenomenon under the Income Tax Act. A clever assessee would so organise his business that it is very difficult to catch him. It is the innocent, the simple man who is likely to fall into the problem and it will be an honest man who is showing his assets, that is likely to get into trouble by unscrupulous political opposition who could set up anybody to challenge the accuracy and honesty of the statements that he has filed and thus expose him to harassment and lot of other problems. that can arise in the circumstances to which I have been making reference.

Consequently, I make the submission that this Bill serves no useful purpose. I am not for condoning corruption. On the other hand, all of us are anxious that corruption wherever it is, in whatever form it is, should be eradicated. But this is not the method to eradicate it. This would not in any way help in eradicating corruption. What is required really is to educate public opinion. Today corruption is being accepted in the country as a way of life.

AN HON. MEMBER: That is a world phenomenon.

SHRI RAJENDRA SINGH ISHWAR SINGH: That is world phenomenon. We find it amongst so highly placed people. I give the examples

of two international companies, Lockheeds, Boeings and so on where, it is said, millions of dollars—you cannot imagine—have been exchanging hands at the levels of ministers, leave aside smaller levels. I was, in fact, looking through a debate that took place in 1946 in the Legislative Assembly when Prevention of Corruption Act was being introduced and Sardar Vallabhbhai Patel was then the Home Minister. I was amazed to find almost the same kind of thing or the allegations that are mentioned. It says corruption is so rampant that we are face to face with it in every section in the whole of India, starting from booking at the railway station to the passing of a bill in a Government office or to the grant of a licence. Therefore, this is something which has been there in the last forty years or so, at any rate so far as the Assembly debates are concerned.

What I say is, we cannot really check this phenomenon of corruption by this particular type of legislation. What is required is, the public should set its face against this type of corruption. If I go to the railway station and I do not have a seat then, I should be able to say 'all right, if I do not have a seat, I would not travel; but I am not going to give Rs. 15/- to the ticket collector, to give me a seat, or, when a contractor goes to a Government office for getting his bill passed, he should be able to say that he is not going to make any payment to the financial authorities that are there and that will pass the bill. He should be able to say 'I will wait for another week, because, the bill, is sooner or later, going to be passed'. But this does not happen. As a matter of fact, I dare say, in the common man's mind, the idea is so closely associated and so deep-rooted that he would be most surprised indeed if he would not be required to make some payment somewhere in some form or the other, to get something early or quick, which he wants to get done. (Time-bell rings)

Therefore, Sir, while summing up, I would like to mention to you that whereas corruption has to be rooted out, we are very much against corruption and corruption is something which is eating into the vitals of the economy of the country we know black money and all that kind of things; all these things have been discussed in various forms here in this House—certainly, this Bill is not the proper one to deal with this problem. On the other hand, this particular Bill is fraught with risk. Instead of curbing corruption this may well lead to a lot of corruption in many other ways. If the Members are required to submit to the scrutiny of a common man, their assets, a dishonest man would always be able to do it in a manner in which he would never be caught, but it will be only a honest man who will get into trouble. Accordingly, Sir, I oppose this Bill.

SHRI HAREKRUSHNA MALLICK (Orissa): Sir, I rise to support this Bill. (Interruptions) Sir, hon. members from the ruling party are hiding from the House as if they have been asked to declare their assets today itself. Sir, as I see, except the Leader of the House, no other hon. Member...

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Mr. Mallick, we have received information in regard to tragedy which has taken place today in Qutub Minar. The Minister of State in the Ministry of Home Affairs is going to make a statement on this tragedy. I am told the Lok Sabha has already adjourned. The hon. Minister will now make the statement. You may kindly continue your speech after he makes the statement, or, as the House decides.

STATEMENT BY MINISTER **Tragedy at Qutub Minar, Delhi**

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI YOGENDRA MAKWANA) Sir, with a very heavy heart and deep sense of sorrow, I have to bri