

[Shri Bipinpal Das]

this House has been arrested. One ex-Minister has been injured while they were leading a peaceful procession. Therefore this is a very serious matter. We are protesting against this action of the Janata Government of Uttar Pradesh and therefore staging a walk out. (*Interruptions*).
(At this stage some hon. Members left the Chamber)

MR. DEPUTY CHAIRMAN: We shall now take up the Constitution (Amendment) Bill, 1974. Shri Pranab Mukherjee had not concluded his speech. But he is not here. None of the three other Members who had given their names are here. But now Shri Sankar Ghose is coming.

THE CONSTITUTION (AMENDMENT) BILL, 1974 (to amend article 85)—Contd.

[THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA) in the Chair]

THE VICE-CHAIRMAN: (SHRI U. K. LAKSHMANA GOWDA): Now that the walk-out is over and they have all comeback for participating in the discussion on the Bill. Mr. Sankar Ghose will speak now.

SHRI SANKAR GHOSE (West Bengal): Mr. Vice-Chairman, Sir, the Bill that has been introduced by Shri Nripathi Ranjan Choudhury, raises two important and interesting questions. One is about the power of the President and the other question is about the power of the Prime Minister vis-a-vis the Council of Ministers. Sir, in so far as Article 85 is concerned, it says that the President can dissolve the Lok Sabha. Article 85 does not say whether, in dissolving the Lok Sabha, he will take the advice of the Council of Ministers. But so far as Article 74 is concerned, it says that the President shall be bound by the aid and advice that the Council of Ministers give. Therefore, reading the two articles together, the formal position would seem to be that in exercising his powers, including the power of the dissolution, the President will be bound by the advice of the Council of Ministers.

Now, the Bill that has been introduced, raises the question whether with regard to the dissolution, the same position should be there or there should be some change. You know, a dissolution of the Lok Sabha took place once in India in 1970 and the President had on the advice of the Prime Minister, dissolved the Lok Sabha and a mid term poll took place. Sir, in other countries, dissolution has taken place sometimes at the instance of the Prime Minister but without reference to the Council of Ministers. Sir, you will recall when Ramsey Macdonald asked for dissolution in 1924 of the head of the Labour Ministry, he did it on his own without referring it to the Council of Ministers. In 1935 when Baldwin asked for dissolution, he did it on his own without referring it to the Council of Ministers. And later Churchill asked for dissolution in 1945 without reference to the Council of Ministers. But, Sir, so far as the Indian practice is concerned, in 1970 the dissolution was asked for after a reference to the Council of Ministers.

The House has to decide what is the healthy norm in a parliamentary democracy. There are these precedents in England where three Prime Ministers Macdonald, Baldwin and Churchill asked for dissolution without reference to the Council of Ministers. But there is a provision in the Indian Constitution, particularly Article 74 which says that the President will act on the advice of the Council of Ministers, and, therefore, the Prime Minister here has to give the advice by reference to the Council of Ministers. That, in my view, is the correct position and that should continue.

The question, Sir, relates to the extent of powers of the Prime Minister vis-a-vis the Council of Ministers and the extent of powers of the President vis-a-vis the Prime Minister and the Council of Ministers. Ours is a large country which is of a federal nature. In such a big country like ours, it is necessary to have in-built checks and

built checks and balances and, therefore, it is desirable that in a matter as momentous and vital as dissolution, the view of the Council of Ministers should be taken and article 74 should be fully complied with and not the amendment that Mr. Nripati Ranjan Choudhury has suggested by which only on the advice of the Prime Minister and not the advice of the Council of Ministers will be taken. Sir, so far as a big and large country like India is concerned, we have to formulate precedents and set up healthy norms. Therefore, the precedent that has grown that the President shall accept the advice of the Prime Minister and the Prime Minister shall act through the Council of Ministers, is a healthy precedent which should remain and a change with regard thereto is not called for.

Sir, so far as the President is concerned, if power is given to the President to decide whether he should dissolve on his own, it will give rise to complications. When the Constitution was being framed, this question arose whether the President should act on his own or is bound by the advice of the Council of Ministers. The Constitution, as originally framed, as you know, did not contain any express provision that the President is bound by the advice of the Council of Ministers. Dr. Rajendra Prasad, who was the President of the Constituent Assembly, was of the view that it would be better to have some clarity so far the legal formulation was concerned on the question whether the President is bound by the advice of the Prime Minister and the Council of Ministers. But the constitutional experts, at that time, like Dr. Ambedkar, Sir B. N. Rau and others thought that our Constitution in this respect was following the British precedent, that the President would have the powers of the British Crown and that he should act on the aid and advice of the Council of Ministers. That is why this was not expressly incorporated into the Constitution. But the British

practice was followed. Sir, you will recall that Dr. Rajendra Prasad, after assuming the Presidency, raised the question whether the President had certain other powers and whether his powers were as circumscribed as those of the British Crown. Dr. Rajendra Prasad said that the British Crown held a hereditary office whereas the Indian President held an elective office. Furthermore, Dr. Rajendra Prasad said that so far as the Indian President was concerned, the House of the people, the Council of States and the State Assemblies elect him and that, therefore, the federal character was already epitomised in the electoral process. Further, the Constitution provides that the President must uphold the Constitution and it also provides that the President can be impeached. Dr. Rajendra Prasad argued that if the President is merely a rubber-stamp, having no functions, how can a provision for impeachment be there. In that context, he wanted certain clarifications and he wrote to Pandit Nehru also on that question. Pandit Nehru held the view that the President is the Head of the State rather than the Head of the Executive. His function is more of dignity than of effective power. He took two opinions, one from Dr. Alladi Krishnaswamy Iyer and the other from Mr. Setalvad. Both of them supported the position that the President does not have any effective power.

But, Sir, you know that Dr. Rajendra Prasad, sometime before he laid down his office, in 1960 while he was inaugurating a seminar at the Law Institute, asked the jurists to consider whether the powers of the President were the same as those of the British Crown or whether they were different. As a result of that, a lot of discussion and debate took place in this country. The debate revealed that opinion on this question was divided. As a result of this, a private Member's Bill was also introduced in this House. But that Bill did not make any headway and the Government, at

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that time, though that the matter was more academic than real.

Later, particularly, in 1966-67, when many Governments were formed in the States by political parties different from the party which commanded a majority at the Centre, the question of the role of the President came up. Shri K. M. Munshi, who, you will recall, Sir, was a Member of the Constituent Assembly and who had originally supported the idea that our President was more or less a figure-head or an ornamental head, having dignified functions, rather than effective powers, came out with a theory and a doctrine of an independent President, an active President, having effective powers. The Swatantra Party, you remember, also developed a theory on those lines. You will recall, when Chief Justice Subba Rao resigned his office as Chief Justice of India to contest the Presidency of the Indian Union, one of the issues he put in the elections was that if elected, he will show and demonstrate that the Indian President is not just a figure-head, but had certain powers. You will recall that Shri V. V. Giri after his election, took the view, not the same as that of Chief Justice Subba Rao, but the view that a President though he may not have too much power he was also not a rubber stamp. He said about himself that he would not like to be a rubber stamp even of Almighty God himself. He wanted certain powers.

But as things have developed in this country, we have a President who is more akin, not exactly identical, but akin to the British Crown and not to the American President. In America the President is elected by the people directly. His Cabinet members are really his advisers, but in India the people elect different candidates. The elected representatives elect the leader and that person becomes the Prime Minister. Therefore, there cannot be two centres of power here. The effective power so far as India is concerned

is really in the parliamentary form of Government, where Parliament is powerful, where Cabinet and the Prime Minister are powerful and they are accountable to Parliament. If the Cabinet is accountable to Parliament, the President cannot have another source or centre of authority. It is for this reason that though Article 85 does not mention specifically what are constraints and restraints which will operate while the President is exercising his functions, it would not be desirable to create a sort of dyarchy or to create dual centres of power, one in the President and another in the Prime Minister along with the Council of Ministers accountable to Parliament.

So far as the President's powers are concerned, generally through conventions, through practices, through declarations made by Pandit Nehru, through certain judgments of the Supreme Court, it is now established that the President has no effective power, except perhaps with respect to two matters. i.e. he appoints the Prime Minister which he cannot do in consultation with the Prime Minister and the other power is the power of dissolution. You will recall that Dr. Ambedkar said that the Indian President has no function, but has two prerogatives, one is to appoint the Prime Minister and the other is to dissolve the House. So far as the dissolution is concerned, since Dr. Ambedkar had said that this is a prerogative of the President, but if we are concerned with developing a healthy parliamentary system of Government, we have to consider as to whether it will be right to give the President that kind of power. Sir, in other systems, in the British system, as I have said, the British Crown has always accepted the advice of the Prime Minister even though the Prime Minister did not have the sanction of the Cabinet. In the Commonwealth practice also, generally the Commonwealth Governor-General have accepted the advice of the Prime Minister there. There was an exception in the case of Canada

once Mr. McKenzie King asked for dissolution, but the Governor-General did not agree. McKenzie King resigned and his successor took over the Government. But he could not carry on even for three days. Elections had to be held and McKenzie King came in power. In South Africa, you will recall, when General Hertzog asked for dissolution, the Governor-General did not agree to it and asked General Smuts to form the Government. General Smuts did have the majority and he could carry on the work for several years. These are the examples from other countries, other domains. But the practice followed has not been uniform.

In my submission, so far as India is concerned, we should not create a sort of dyarchy, should not give the President a power of refusing the dissolution if the Prime Minister asked for it. Under Art. 74, the President is bound to act according to the advice of the Council of Ministers. Therefore, the advice will not be of the Prime Minister as such but the advice given by the Prime Minister on the basis of consultation with the Council of Ministers. Therefore, the British practice of Ramsay MacDonald asking for dissolution without consulting his colleagues in 1924, Baldwin asking for dissolution without consulting his colleagues in 1935 and of Churchill asking for dissolution without consulting his colleagues in 1945 will not be a desirable practice so far as India is concerned. What will happen in India? In Britain they do not have yet a coalition government; they have a one-party government. Therefore, the Prime Minister normally, if he has a majority in the House, will have control of the Cabinet. But in India, we have now developed a kind of multi-party government. The present Janata Party Government is a coalition government. So what will happen? If the present Prime Minister moves a resolution in the Cabinet saying, "I want prohibition to be introduced

within the next year" and the Cabinet rejects that and the Prime Minister says, "This is very wrong. Prohibition is in the Directive Principles". And he advises the President saying, "I will go in for elections on the prohibition issue". Then will the President permit dissolution even though the Prime Minister is asking for dissolution without the consent of his colleagues? Take another instance. The Prime Minister says, "I will sign the Nuclear Non-Proliferation Treaty without those safeguards protecting India's interests and that is genuine non-alignment", and some of his Cabinet Ministers say, "No, this is against the prestige of the country; the present NPT is discriminatory and we should not sign it". Yet the Prime Minister asks for dissolution. Will the President accede to that? Take another instance. Either the present Prime Minister, or any successor Prime Minister says, "We do not want any large industry in this country. We do not want any planning in this country. We do not want public sector in this country". The Prime Minister holds that kind of view but is over-ruled in the Cabinet. He says, "No, I want a dissolution. I shall go to the country. I want a vote on this question". Should that be allowed? Therefore, so far as the power of the President with regard to dissolution is concerned, if one goes by some British examples of accepting the advice of the Prime Minister without consultation with the Council of Ministers, the question arises whether in a federal country like ours, in a big country like ours, this may not give rise to complications. Sir, where the Prime Minister enjoys the confidence of the House, has a majority in the House, in the normal course of things, he will not ask for dissolution. Therefore, the question in such a situation becomes academic. It is only when the Prime Minister does not enjoy the confidence of the House that he may ask for dissolution. But if he does not enjoy the confidence of the House, then there are two kinds of

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situations. One situation is where the government is a unitary form of government; it is a one-party government. The other is where it is a federal kind of government, or a coalition kind of government. If it is a coalition government, then, Sir, if you give power to the Prime Minister alone without reference to the Council of Ministers, then complications may arise. Therefore, if we are to develop healthy norms in this country, we should not seek to concentrate power in individual hands and we should not seek to dilute the collective responsibility that is enshrined and epitomised in Art. 74. Article 74 makes it incumbent on the President to act not on the advice of the Prime Minister but on the advice of the Council of Ministers. In the present Bill if it means that it will be the advice of the Prime Minister without reference to the Council of Ministers, that is not a practice which will be desirable in a large and complex country like ours. As I said there is only one instance of dissolution in our country so far as the Lok Sabha is concerned, and that was in 1970. That was after reference to the Cabinet. If in future a situation like that comes up it should also be after reference to the Cabinet.

Sir, so far as this Bill of Mr. N. R. Choudhury is concerned, it raises two important and interesting questions about the role of the President and the role of the Prime Minister. With regard to the role of the President some people say he is just a rubber stamp, others say he is a quiescent volcano and has explosive power. Some Opposition Parties, particularly the Swatantra Party during the period 1966-67, tried to project the role of an active and independent President who will clip the wings of the Prime Minister.

There was also another tendency of having a Presidential form of Government in our country. Sir, to say that the President can act on the advice

of the Prime Minister, without reference to the Council of Ministers, is really to approximate the Presidential form of Government in our country. The sanction to the Presidential form of Government is that the President is elected by the people and his Cabinet is accountable to the President and not to the Senate or the Congress. So far as America is concerned, the President is irremovable, he remains even if there is adverse vote in the Senate or the Congress. In the American system of Government the ultimate authority is given to the President. But in our system of Government we have given the ultimate authority to Parliament, then it is those who are accountable and responsible to Parliament, the Cabinet, of which the Prime Minister is the head, that should have the power.

Sir, as you know, so far as the President is concerned, the powers of the President have varied from time to time. Dr. Rajendra Prasad was appointed President, he was not Pt. Jawaharlal Nehru's nominee though he was not opposed to be one. He was not directly a nominee of Pt. Jawaharlal Nehru. Perhaps, Panditji might have preferred Rajaji to be the President. But there was harmonious working. It is not that they had identical views. Two individuals cannot have identical views. So far as the Hindu Code Bill is concerned, Dr. Rajendra Prasad had views which were not the same as Pt. Jawaharlal Nehru's. So far as the Tibet question or the China question was concerned, Dr. Rajendra Prasad had different views. But Dr. Rajendra Prasad felt that the role of President would be to give advice. Though ultimately, the Cabinet will decide. He gave advice to Pt. Nehru on matters where he differed. Therefore, so far as the Indian President is concerned he is not a rubber stamp. He is the head of the State and is the symbol of India's unity. He is the symbol and head of the Republic. But, as has been said, he is not the head of the

executive; he is not the head of the effective power.

So far as the President is concerned, the relationship between the President and the Prime Minister had varied from time to time and personal equations had come into the situation. Dr. Sarvapalli Radhakrishnan was the nominee of Pt. Jawaharlal Nehru as the President of India. Even then Dr. Radhakrishnan had on certain matters views which were not identical with Pt. Jawaharlal. That is natural in democracy. But they functioned within the framework of the Indian Constitution by which the President did not seek to usurp the power of Parliament or the power of the Prime Minister. The President exercised an advisory role. The President did a lot of mediation in various situations. Therefore, Sir, so far as the Bill is concerned, it raises . . .

THE VICE CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Mr. Sankar Ghose, there are two other speakers after you, Mr. Dhabe, and Mr. Choudhury has to reply.

SHRI SANKAR GHOSE: I have practically finished. I will only say that the system of collective responsibility under article 85 is a healthy system in a federal structure under which the power is really vested in Parliament and the Cabinet is responsible to it. It is a healthy system and should remain.

SHRI S. W. DHABE (Maharashtra): Mr. Vice-Chairman, Sir, this Bill raises an important question about the dissolution of Parliament on the advice of the Prime Minister. The word used in article 85 of the Constitution is "may". It does not literally mean that the President is bound to dissolve Parliament as such even on the advice of the Prime Minister but a convention has been built that the advice should be accepted as final. This question will be more important so far as the

Janata Party is concerned. Reports say that they are out to repeal the 42nd amendment completely.

Sir, article 74 was amended by the 42nd Amendment by which the words added are "on the advice of the council of Ministers and the President is bound by the decision of the Council of Ministers. These were the words added to article 74. Sir, if the Janata Party is going to repeal the 42nd amendment, then this amendment has got more importance and force. Otherwise the provision which is made in article 74 is very salutary and useful in our democratic functioning. I would like only to point out certain provisions in our Constitution to show that the President is not without power. It is wrong to say that the President is merely a titular head and has no functions to do. There are a number of functions. These functions are not merely administrative, political or executive; there are also functions which extend to some other spheres. For example article 103 which deals with disqualification of members, provides that the President can remove the disqualification on the advice of the Election Commission. Nowhere does the Government come into the picture here. It is a direct connection, a direct relationship between the President and the Election Commission. Sir, not only that. There are other powers.

But one of the important questions I would like to raise at this stage is that the dissolution power which has been given to the Government is connected with articles 352 and 356. We have seen, Sir, how elected Governments which had a majority in their own Houses have been dissolved in eight States by the Janata Government on the mere mandate they had in the Lok Sabha. An interpretation was given by the Supreme Court as "or for any other reason." Sir, not only that. Mr. Rajnarain made a statement some days back: "We are in the Centre and no Government at the State level can exist; we have

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the power to dismiss it." Sir, a very important question is raised and I am sure if elections are held today, the Janata Party would not come to power in all those States. It was a shrewd move, a diplomatic move on the part of Mr. Charan Singh, the Home Minister—and I must compliment him—who at that time dissolved the eight State Assemblies and, therefore, could get majority in the Assemblies. Similarly, the provision for the dissolution of Parliament has been used twice—in 1970 and 1977. Though the Government had the majority in 1977 in Parliament, it thought of dissolving it and advice was given accordingly. Sir, this question has been discussed at length and I would make only two references by way of illustrating the genesis. I would quote from Basu from his "Commentary on the Constitution of India" and Berkeley from his "The Power of the Prime Minister", and then finish my submissions. Basu says in page 426 of his book:—

"It would, again, be an *improper* request for dissolution when it is made by a Government—

'not because its majority is slender or unreliable, nor because new issues would seem to require a new mandate from the electorate, but because it considered a given situation as opportune for obtaining a *new lease* of life from the electorate which might not be accorded so readily if the existing Legislature were allowed to run out its normal course.'

The situation would be different if elections are held today.

"A moment of national excitement after external victory or internal commotion may offer a welcome opportunity for drowning memories of administrative blunders and unpopular legislation in a wave of legitimist or revolutionary enthusiasm and securing a lengthy extension of the term of office of the party in power... The very

foundation of the system breaks down if the party in office has the power, by an unscrupulous use of the power of dissolution, to mislead and escape electoral judgement.'"

Sir, a deep study has been made of the powers of the Prime Minister in England and Berkeley, in his very well-known book, "The Power of the Prime Minister" says:—

"The principal need is to remove from the Prime Minister the power to dissolve Parliament, by giving the legislatures a fixed term of life independent of the executive." This is a very important question because the dissolution power is likely to be misused. There is a thinking even in England that there should be a fixed term of Parliament, just like the Rajya Sabha here, so that Parliament can continue for its full term except when the Government is defeated in Parliament itself. In America, the position is quite different. There, the President appoints the Ministers with the approval of the Senate. Here the Prime Minister appoints the Ministers and, under article 75(3) of the Constitution, it has been clearly mentioned that "the Council of Ministers shall be collectively responsible to the House of the People." There is collective responsibility of the Cabinet. Therefore, under the circumstances, when we are thinking of amendment of the Constitution, this untrammelled power of dissolution should also be curtailed. If the Government thinks that the 42nd Amendment of the Constitution is to be repealed, then the Constitution (Amendment) Bill proposed by my hon. friend Mr. Choudhury is very useful. Anyhow, there must be some restraint on the power of dissolution. The best ideal situation would be that it vests in the Cabinet, the Council of Ministers. If the Government decides otherwise, this Bill will be very useful.

With this, I thank you very much for giving me the opportunity to speak.

विधि, न्याय और कम्पनी कार्य मंत्रालय में राज्य मंत्री (श्री नरसिंह) : माननीय उपसभाध्यक्ष जी, माननीय सदस्य ने जो बिल पेश किया है, है तो वह बहुत ही साधारण बिल पर बड़ा ही महत्वपूर्ण है क्योंकि इस बिल से संसदीय शासन प्रणाली की जितनी कड़ियाँ हैं सब एक साथ जुड़ जाती हैं। राष्ट्रपति, प्रधान मंत्री, मन्त्रिमण्डल, लोक सभा और जनता। इसलिए मैं इसको बड़ा महत्वपूर्ण मानता हूँ।

माननीय चौधरी साहब ने जो विधेयक पेश किया है उसमें वह चाहते हैं कि संविधान के अनुच्छेद 85 के भूँड (2) के उपखंड (ख) में लोक सभा शब्द के पहले 'प्रधान मंत्री की सलाह पर' शब्द जोड़ दिये जायें। साथ ही उन्होंने अपने कथन के उद्देश्य और प्रस्ताव में यह कहा है कि यह तन्त्र भी स्पष्ट नहीं है कि राष्ट्रपति अपनी इस शक्ति का उपयोग अपने विवेकानुसार कंग्रा या इस मामले में वह प्रधान मंत्री की सलाह लेगा। संसदीय लोकतंत्र में प्रधान मंत्री यह समझता है कि लोक सभा द्वारा व्यक्त विपरीत मत जनता के विचारों को परिलक्षित नहीं करता। तो उसे इस बात की शक्ति होनी चाहिए कि वह जनता की राय प्राप्त करे। मैं बताना चाहता हूँ और हमारे माननीय सदस्य को भी इस बात की जानकारी है कि संविधान के अनुच्छेद 74 में यह प्रावधान है कि राष्ट्रपति को अपने कार्यों के सम्पादन के लिए सहायता और मंत्रणा के लिए एक मन्त्रिपरिषद् होगी जिसका प्रधान प्रधान मंत्री होगा, राष्ट्रपति उस मंत्रणा के अनुसार कार्य करने के लिए बाध्य होगा।

मान्यवर, हमारे संविधान के अधीन राष्ट्रपति को सौंपे गये भिन्न भिन्न कार्यों के संपादन के लिए जिसमें लोक सभा का विघटन भी शामिल है उसे मन्त्रिपरिषद् की सलाह पर ही कार्य करना होता है। बगैर मन्त्रिपरिषद्

की सलाह लिये वह इसको नहीं कर सकता। अन्य रूप में भी संसदीय शासन प्रणाली की यह स्वस्थ परंपरा रही है कि राज्य के प्रधान को विधान मंडल का विघटन करने की सिफारिश प्रधान मंत्री को मन्त्रिपरिषद् की सलाह के बाद ही करनी होती है और कभी भारतीय संसदीय पद्धति में व्यवहार रूप में कभी ऐसा नहीं हुआ है कि जब किसी प्रधान मंत्री की सलाह न मानी गई हो और राष्ट्रपति ने लोक सभा का विघटन कर दिया हो।

मान्यवर, हमारे देश की शासन प्रणाली प्रजातान्त्रिक और संसदीय शासन प्रणाली है। संसदीय शासन प्रणाली में राष्ट्रपति केवल संबैधानिक प्रधान होता है। वास्तविक प्रधान तो प्रधान मंत्री होता है और मन्त्रिपरिषद् का प्रधान भी प्रधान मंत्री होता है। ऐसी स्थिति में राष्ट्रपति, कौंसिल आफ मिनिस्टर्स के थू प्राइम मिनिस्टर की सलाह पर काम करने के लिये बाध्य होता है। अगर राष्ट्रपति प्रधान मंत्री की सलाह पर काम नहीं करता है तो इसके लिये भी संविधान में व्यवस्था की गई है जिसे माननीय सदस्यगण जानते हैं। माननीय सदस्य ने कहा कि प्रधान मंत्री को जब यह मालूम हो कि लोक सभा के सदस्य जनता के हितों के विपरीत जा रहे हों तो लोक सभा को विघटित करा दिया जाये। मैं समझता हूँ ऐसी स्थिति में अगर यह पावर प्रधान मंत्री को दे दी जाये? लोक सभा को विघटित कर दे तो जनतंत्र का बिगड़ना गला घुट जायेगा, दम घुट जायेगा और साथ ही साथ मन्त्रिपरिषद् का कोई महत्व नहीं रह जायेगा। ऐसी स्थिति में मैं इस बात को ठीक नहीं समझता। पिछले वर्षों में भी हमने देखा कि राष्ट्रपति हमेशा प्रधान मंत्री की सलाह पर ही काम करते रहे हैं। कोई ऐसी स्थिति नहीं आई कि जब कभी उन्होंने आनाकानी की हो। मैं समझता हूँ जब प्राइम मिनिस्टर और लोक सभा के सदस्यों के विचारों में मतभेद हो तो लोक सभा को

[श्री नरसिंह]

विघटन करने की सलाह प्रेसीडेंट को न देकर, ऐसा प्राइम मिनिस्टर जो नैतिकता का तकाजा रखता है, उसे स्वयं इस्तीफा दे देना चाहिये। उसे किसी सलाह देने की जरूरत नहीं उसका विश्वास उसमें नहीं है। ऐसी स्थिति में मैं समझता हूँ माननीय चौधरी माहब के बिल को मान लेने का कोई मतलब नहीं है।

माननीय भूपेश गुप्त जी ने, माननीय सदस्य नन्दा जी ने और भी कई माननीय सदस्यों ने अपने विचार प्रकट किये, लेकिन अधिकांश लोगोंने येही राय व्यक्त की कि संसदीय शासन प्रणाली में प्रेसीडेंट को कौंसिल आफ मिनिस्टर्स की सलाह मानना जरूरी है। एक साथी ने जरूर इस बात के लिये कहा कि नहीं, प्रेजीडेंट को यह पावर होनी चाहिये कि वह हाउस आफ द पिपल को डिजोत्व कर सके। मैं समझता हूँ संसदीय शासन प्रणाली में यह चल नहीं सकता जब तक हमारे यहां प्रेजीडेंशियल टाइप आफ गवर्नमेंट न बने। इस संबंध में एक निर्णय आपके सामने रखना चाहता हूँ।

सुप्रीम कोर्ट के जजों की एक बैच बनी थी जिसमें चीफ जस्टिस ए० एन० रे, डी० जी० पालेकर, के० के० मैथ्यू, वाई० बी० चन्द्रचूड, पी० एन० भगवती, ए० अलिगिरी स्वामी, बी० आर० कृष्णास्वय्यर। इन न्यायाधीशों की बैच थी। शमशेर सिंह और ईश्वर सिंह अग्रवाल की तरफ से पंजाब और हरियाणा से एक अपील आई हुई थी। उस अपील की सुनवाई करते समय माननीय जजों ने जो फैसला दिया मैं आपसे सामने पढ़ देता हूँ। इससे स्पष्ट हो जाता है कि जजेज भी और सारी जनता भी इस बात को महसूस करती है कि आर्टिकल 74 पूरी तरह से आर्टिकल 85 पर लागू होता है।

"It is clear from Article 74(1) that it is the function of the Council of Ministers to advise the President over the whole of the Central

field. Nothing is left to the discretion or excepted from that field by this Article.

Moreover, Article 75(3) makes Council of Ministers responsible to the House of the People. If therefore, the President acted contrary to the advice, the Ministers would either resign, or since the advice tendered reflected the view of the House of the People they would be thrown out of office by the House of the people. Article 74(1) is mandatory. Therefore, the President cannot exercise power without the aid and advice of the Council of Ministers."

SHRI S. W. DHABE: Are you going to amend the article? When are you bringing the Bill to repeal the 42nd Amendment?

श्री नरसिंह : मैं यह बता रहा हूँ कि अनुच्छेद 74 की क्या स्थिति है। इसके अधीन राष्ट्रपति इस बात के लिए बाउन्ड हो जाता है कि प्रधान मंत्री की सलाह माने। हमारे सामने ऐसी कोई मिसाल नहीं है कि प्रेजीडेंट ने कभी प्राइम मिनिस्टर की सलाह न मानी हो।

एक बात श्री महादेव प्रसाद वर्मा जी ने भी उठाई थी। वे अभी यहां पर नहीं हैं। उन्होंने कहा कि कभी ऐसा भी हो सकता है कि कोई प्राइम मिनिस्टर रिजाइन ही न करे और कोई इस प्रकार का सर्कस करता रहे। मैं समझता हूँ कि जिस प्राइम मिनिस्टर को जनता ने त्याग दिया हो उसको इस पद पर बने रहने का कोई अधिकार नहीं है। लेकिन फिर भी अगर वह अपने पद पर बना रहता है तो प्रेजीडेंट को अधिकार है कि वे मेजोरिटी पार्टी के लीडर को बुलाकर उसको प्राइम मिनिस्टर घोषित कर दे और ऐसी घोषणा के बाद तुरन्त उसको डिसमिस कर दे। इसमें मैं माननीय सदस्यों को यह बताना चाहता हूँ कि आर्टिकल 74(1) के संबंध में फिलहाल संशोधन करने का कोई

प्रपोजल नहीं है। इन चन्द शब्दों के साथ मैं माननीय चौधरी जी से निवेदन करूंगा कि वे अपने विधेयक को वापस ले लें। यद्यपि यह विधेयक बहुत ही महत्वपूर्ण है, लेकिन फिर भी ऐसी स्थिति है कि उसको वापस लेना ही ठीक होगा।

माननीय सदस्य श्री कल्पनाथ राय जी ने भी एक बात उठाई थी। ग्रामतौर पर उनकी बातें अप्रासंगिक होती हैं और परस्पर विरोधी भी होती हैं। उन्होंने कहा कि मिनिस्ट्रों के करप्शन के लिए एक कमीशन बनाना चाहिए। मैं उनसे यह निवेदन करना चाहूंगा कि मिनिस्ट्रों तथा मम्बर पार्लियामेन्ट के करप्शन के संबंध में एक लोक पाल बिल सदन में पेश है ज्वॉइंट सन्वैक्ट को सुपुर्द है। इसलिए वे इस बारे में धैर्य रखें और जो उनके पास करप्ट मिनेस्टर की लिस्ट है उसको तैयार रखें और उसके बाद उसमें पेश करें।

SHRI NRIPATI RANJAN CHOU-DHURY (Assam): Sir, the main objection to the Bill, both from the Minister's side and also from the Members who spoke, was that article 74, as amended by the 42nd Amendment, binds the President to act on the advice of the Council of Ministers and that the President has to act according to the advice of the council of Ministers in all matters pertaining to the power and functions of the President. Particularly it was the contention of Mr. Bhupesh Gupta that it covers the object which the present Bill seeks to achieve.

Sir, in this Bill our intention is that in the matter of dissolution of the Lok Sabha, the President should act according to the advice of the Prime Minister and not of the Council of Ministers. Dr. Sankar Ghose has made so many references and he had mainly a coalition Government in his mind. But in this country, at the Centre we have not yet experienced any

coalition Government. Though the Janata Party seems to be a coalition still it is a party

It is one party though it seems to be a coalition Government with divergent elements clubbed together, they formed the Government. Now, let us take the present situation. You know the affairs of the ruling Janata conglomerate. Everyday things are appearing in the press and any moment the thin thread of their unity may be torn and this Government of Shri Morarjibhai Desai may lose majority in that House...

SHRI NARSINGH: Are you talking of it in principle or in practice?

SHRI NRIPATI RANJAN CHOU-DHURY: I am talking of it in principle. Ideas and practice go together. In such a situation I want to give Shri Morarjibhai the power to advise the President for dissolution of the Lok Sabha. Why I want to give Shri Morarjibhai Desai that power is...

श्री नरसिंह : हम लोगों को प्रधान मंत्री को खुश नहीं करना है।

श्री नृपति रंजन चौधरी : हम को भी खुश नहीं करना है।

श्री नरसिंह : यह तो आपके राज में होता था। हम तो जनतंत्र में विश्वास करते हैं।

SHRI NRIPATI RANJAN CHOU-DHURY: I am coming to Mrs. Indira Gandhi also. Do not worry. The reason why I want to give Shri Morarjibhai Desai that power is this. The people have voted the Janata Party to power this time. They have not voted us to power. They have voted the Janata Party. They want that the Janata Party Government should rule the country. Now, if the Janata Party breaks away and it

[Shri Nripati Ranjan Choudhury]

losses majority in that House, then, as leader of the Government, the Prime Minister should have the power to advise the President to dissolve the Lok Sabha, because the people had voted not a particular group, not a particular constituent of the Janata Party—Janata Party is a combination of so many parties—but the people had voted Janata Party as such. Therefore, if this party breaks up, as leader of the Janata Party-led Government, Shri Morarjibhai Desai should have the power to advise the President saying, "Well, give me a chance to go to the people and seek a fresh mandate whether they want this Janata Party to be here or they want any of the groups combined together should rule." In that case, he should have that power. When in December 1970 the Lok Sabha was dissolved, the Congress Party was not in majority. At that time the Congress Government led by Mrs. Indira Gandhi was continuing with support from some other leftist parties in the Lok Sabha. You know, when a Constitution Amendment Bill got struck down in this House—in the Rajya Sabha—at that time Mrs. Gandhi, as leader of the Congress-led Government, advised the President to dissolve the Lok Sabha and the Lok Sabha was dissolved. Now the question comes whether the Prime Minister should have this power of advising the President on dissolution of the Lok Sabha. We have seen such a situation once. And we have also seen another case during the Janata regime. Jammu and Kashmir has got a separate Constitution under which there is a provision that the Governor is to act according to the advice of the Council of Ministers.

Shri Sheikh Abdullah was the Chief Minister and he had a difference with his Council of Ministers. He was heading a Government without any party backing behind him because the Congress Party was in majority there. Shri Sheikh Abdullah was the Chief Minister, though he was not a member

of the Congress Party. Then the Congress Party withdrew support to his Government. If we accept the logic of the hon. Minister, then Shri Sheikh Abdullah had no right or authority to advise the Governor to dissolve the Jammu and Kashmir Assembly. But Shri Sheikh Abdullah did advise the Governor of Jammu and Kashmir to dissolve the Assembly and the Governor obliged Shri Sheikh Abdullah by dissolving the Assembly. At that time also the matter was raised in this House. It is the same Government which defended the action of the Governor at that time by saying that the Governor was right in dissolving the Jammu and Kashmir Assembly according to the advice of the Chief Minister who had no backing of his Council of Ministers. And the election that followed proved that Shri Sheikh Abdullah was right and the Governor also was right.

In 1970 Shrimati Gandhi also followed the same practice. When her Bill was defeated in the Rajya Sabha, she advised the President to dissolve the Lok Sabha. The Lok Sabha was accordingly dissolved and in the election that followed the people voted the Congress and Shrimati Gandhi back to power again. That proved that she was right at that moment of time advising the President to dissolve the Lok Sabha.

During his speech on my Bill, Shri Sankar Ghose, though opposed the Bill, cited a lot of example from the British Parliament's history where the Prime Ministers of that country in so many cases advised the Crown to dissolve the House of Commons and the Crown obliged those Prime Ministers by dissolving the House of Commons. I said, while moving this Bill for consideration, that we in this country are trying to follow the procedures and practices of the House of Commons. We have established our Parliamentary system on the model of the United Kingdom. They follow this practice in that country. I do not know why we should not have this particular provision in our Cons-

titution. That is why I moved for this amendment. In the United Kingdom they do not have a written Constitution. They do not have a Constitution as such because their democracy functions through conventions. In our country we are yet to develop such healthy conventions as they have. In our country we insist every time on written documents. We do not depend on conventions. So, I moved this Bill with a view to impressing upon the Government and also the House the importance of this practice. But I find that neither 5 P.M. the Government is interested nor are the members interested in this because we have experienced such a thing in the past and we do not want to give anybody any power any more. It is because we have an apprehension in our minds that if we give some power to somebody, that power may be misused. All right, Sir. Let us wait for sometime when democracy in this country becomes mature. Let us wait for that day and let us also hope that our democracy will surely attain maturity in the near future when we can develop healthy conventions. I am prepared to wait till that day.

With these words, Sir, I conclude my remarks and I also accept the request made by the Minister and I wish to withdraw the Bill.

श्री नरसिंह : माननीय चौधरी ने जो मुद्दे उठाये हैं उनके विवाद में तो मैं पड़ना नहीं चाहता हूँ। लेकिन इन्होंने हमारी जनता सरकार को कहा कि कोलीशन गवर्नमेंट है तो मैं नहीं समझता कि हमारी जनता सरकार कोलीशन गवर्नमेंट है। लेकिन आर्टिकल 74, चाहे एक पार्टी की सरकार हो चाहे कोलीशन गवर्नमेंट हो काउंसिल आफ मिनिस्टर को एड एण्ड एडवाइज से रोकता नहीं है।

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): The question is:

"That leave be granted to the mover to withdraw the Constitution (Amendment) Bill, 1974 (to amend article 85).

The motion was adopted.

SHRI NRIPATI RANJAN CHOU-
DHURY: Sir, I withdraw the bill.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): The House stands adjourned till 11.00 A.M. on Monday, the 20th March, 1978.

The House then adjourned at three minutes past five of the clock till eleven of the clock on Monday, the 20th March, 1978.