

stitutions and various Governmental authorities responsible for implementing the schemes of assistance, will be essential. The main brunt of the effort has, however, to be borne by our industrial workers and managers who are second to none in their skills and efficiency. The Government earnestly appeals to all these groups to work together in a spirit of dedication to the national cause. It is by our own skills and efforts that we can hope to solve the numerous problems facing the country. 1977 has been a year of historical changes and people's expectations in the political and economic fields are high. It is hoped that the new direction that is being given to the industrial policy of the country will help in the creation of a just and equitable society in which the benefits of industrial development will be shared by all the people.

MR. DEPUTY CHAIRMAN: Now we will take up the Constitution (Amendment) Bill. Shri Triloki Singh.

SHRI KALYAN ROY (West Bengal): Sir, can we ask for clarifications?

MR. DEPUTY CHAIRMAN: No clarifications on that now. I am calling Shri Triloki Singh.

श्री भीष्म नारायण सिंह (बिहार) : मान्यवर, यह इतना महत्वपूर्ण विषय है, नीति मूलक घोषणा माननीय मंत्री जी ने की है, अतः इस पर सदन में विचार होना चाहिए. . .

MR. DEPUTY CHAIRMAN: Please sit down. I am calling Shri Triloki Singh.

श्री भीष्म नारायण सिंह : मान्यवर, मेरा आपके माध्यम से अनुरोध है. (Interruptions) यह नीति मूलक घोषणा है। हम इस पर दो महीने के बाद डिस्कस करें या सदन में दो महीने के बाद इसकी घोषणा होगी . . . (Interruptions).

श्रीमती विद्यावती चतुर्वेदी (मध्य प्रदेश) : श्रीमान्, मैं आपसे यह आग्रह करूंगी कि इस पर हमें अपने विचार रखने का मौका मिलना चाहिए। आप इस पर सदस्यों की राय सुनने के लिए या उन्हें अपनी राय देने के लिए मौका दें।

श्री गुणानन्द ठाकुर (बिहार) : कई माननीय सदस्यों ने सदन के समक्ष अपना वयान दिया है अतः मैं आपके माध्यम से विनती करूंगा कि चूंकि यह एक महत्वपूर्ण विषय है अतः सदन में इस पर जरूर बहस होनी चाहिए। इसके लिए अगर सदन को बढ़ाना भी उचित हो तो यह सदन सोमवार या मंगलवार को विशेष रूप से बैठे।

श्री जार्ज फर्नाण्डोज : यह बातन्तय की जाय। बहस का मैं विरोधी नहीं हूँ मगर समय वगैरह बाद में तय किया जाये।

श्री भीष्म नारायण सिंह : सोमवार को हम लोग बैठ लेंगे।

श्री उपसभापति : इस तरह बहस से तो तय नहीं होगा। आपने अपनी बातें कह दी है।

THE CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL, 1977—contd.

SHRI TRILOKI SINGH (Uttar Pradesh): Mr. Deputy Chairman, I beg to support the motion moved by the honourable Minister of Law and Justice. Because of trouble in one of my knees it is not possible for me physically to rise and support him, and I hope, Sir, I have your permission to make my submissions sitting in my seat.

Sir, this is the forty-fourth amendment to the Indian Constitution. In 27 years we have had so many amendments. It comes to three amendments in two years. I wonder if any Constitution in the world over has been

[Shri Triloki Singh]

amended so many times in such a short time. Now, why is it so? The Bill, as it is, consists of ten clauses and except one Clause which seeks to repeal the provisions of Article 31D, the rest deal with procedural matters relating either to the powers of the Supreme Court or of the High Court or to disposal of certain cases by these courts. Sir, even a ten-clauses amendment to the Constitution is not a small thing. Personally speaking, I thought that the Janata Party, after the massive mandate it has obtained six or seven months earlier and the place they have given to the people and the hopes they have given rise to among the people of this country, would come forward with a comprehensive Bill—not in stages—to undo what they believe to be the wrongs done by this Parliament by adopting the Forty-second (Amendment) Bill.

Leave aside that. There are other things also in this Constitution which I would like to place before the House for consideration and which, I think, require to be looked into and for which there is an equal urgency. As I said earlier, there have been three amendments in two years. What does it mean? It only means that the very base of our Constitution is defective. If I mistake not—I hope the hon. Shri Daphtary, a great legal luminary, who is here in this House and who has had much to do with so many cases involving the interpretation of several articles of our Constitution before the Supreme Court and the High Courts, will agree with me—the base work of our Constitution is the Government of India Act of 1935 and that Act was framed with a view to retain the control of the then British Government over the people of India keeping all the time the concentration of power in their hands and there were so many safeguards and so many cases of individual judgments. That Bill, if I mistake not, was very correctly described by no less a man than Churchill as a 'monument of a sham Bill

by pigmies'. That was how he described the Government of India Bill when it was before the House of Commons. Unfortunately we have, as base work for our Constitution retained that Bill. Personally speaking, I feel—I am not a lawyer, I am a layman, though I have got something to do with the Constitutional law, not as a practising lawyer, but as part of political science—it is so confused, so cumbrous and complex that one provision contradicts the other. It is full of redundancies. I would cite, for the consideration of the House, article 13(2) of the Constitution which says:

The State shall not make any law which takes away or abridges the rights conferred by this Part....

What are the provisions of article 225? All the powers of legislation, whether in the Parliament or State legislatures, are subject to the provisions of the Constitution. The two provisions mean the same thing. One is confined to the Fundamental Rights Chapter and the other refers to the whole Constitution which includes the Chapter on Fundamental Rights. It is this redundancy in article 13(2) which perhaps was responsible for the famous judgment in the Golak Nath case long ago, about ten years ago, and this created so much controversy between the Parliament and the judiciary. I was a Member of this House and if I mistake not, there was then confrontation between the judiciary and the executive. Why? Who is responsible for this confrontation? It was this confusing clause that was responsible for that. So, I expected from a man of Shri Shanti Bhushan's intelligence and background a comprehensive Bill. The present Minister of Law comes from a family of freedom fighters. It is not that he is merely a lawyer of distinction. He has a certain background. I thought that he—a young man that he is—would bring forward a Bill not only removing the anomalies and distortions created by the Forty-second Amendment Bill, but also the anomalies and distortions as they exist

in the Constitution of India. If he does it, I do feel that he will get support not only from the people sitting on this side but also from the people outside this House and it will be something very creditable for any man to do it. Therefore, I would like to submit, as I said earlier, there is nothing to oppose in this Bill. It is more or less a procedural matter. But I doubt very much if the claim made by the hon. Law Minister is justified. He said that by making these changes, he would thereby be expediting the disposal of cases in the Supreme Court and the High Courts. Sir, so far as I know, the first appeals do not take less than 10 to 12 years to be disposed of. I am a party myself and I am an appellant in a case which is pending in the High Court. There are about two dozen parties and some one among them dies every sixth month or every year and the substitution *karwai* has been going on since 1954. I am a party and I am an appellant because I lost it in the lower court. So, I stand to gain by this amendment. So, that is the law. But it is not easy. These amendments, if they are carried out—and I do hope and believe that they would be passed by Parliament—then they are not going to expedite the disposal of the cases pending before the High Courts or the Supreme Court, whether they were 1,700 ten years ago or 14,000 at the moment and this can be looked into separately. Justice delayed is justice denied and, in India, Sir, howsoever poor we might have been and howsoever poor we might be today, the people in this country, at least the people in that part of India from which I come—I come from the Northern part of India—are litigation minded and for everything they resort to litigation. They know that the case is going to fail and they know that they are not going to win, but are going to lose, and yet they file a suit, they file a case, in the court saying, “All right, *Aap isko chalayiye thodi din.*” There are only a few *vakils* in this country, I would like to say with due respect to the honourable lawyers who are Members

of this House and who are present here now, who refuse to accept cases for the simple reason that they are not going to succeed. They are more interested in their own briefs, in their fees, and they say, “All right, I will try.” Even the best among them, very few of them, dare to advise their clients that the case is very weak and that it should not be pursued. But they say, “The case is weak. Anyway, it is worth a trial, it is worth fighting for, and I would do my utmost to win. This much I can assure you.” This is the everyday experience of us all and this is nothing new. In a country like this, with traditions of litigation, litigation for the sake of litigation, it would not be easy just to bring forward a legislation which will expedite the disposal of cases. If that were done, I for, one, Sir, would say that I am for it. But that can only be done not by an amendment of this Constitution, but by bringing about or creating an atmosphere where the people speak the truth. Sir, I do not know whether you have practised law. Who does not know that once a man takes the oath in the name of the Ganga or the Koran, he gets the licence not only to speak the truth, but also to speak untruth? That is the practice. I have myself been a party in a certain case and when I said to my counsel that it was not easy for me to tell a lie, he said: “Then you cannot win the case. Damn yourself and withdraw this case.” I was a party in another case also. It was a contempt case and I got myself acquitted in the contempt case in the Lucknow Court. But my own lawyer, a man of 54 years’ practice at the Lucknow Chief Court and the Judicial Commissioner’s Court, advised me differently. I said: “No. There is a document against me and if the other side counsel argues that the contempt is based on the basis of a letter supposed to have been written by me, what will happen?” He said: “No. no. You have got to say this.” I said that I would not speak a lie. So, this is the practice in the country and this is the thing which has been going on in this country. Sir, will the

[Shri Triloki Singh]

honourable Minister shut his eyes to the environment in which he is living? He must know that mere victory at the polls, mere victory in the elections whether it is massive or ordinary, whether it is a bare majority or something else, does not presuppose the existence of the power, or does not give him the power, to change all that has been obtaining in this country all these thirty or forty or fifty or a hundred years, particularly since the time of the British rule right up to 1947 and all that has continued uninterrupted, rather with greater vigour even after 1947, to undo all that has been going in this country. Therefore, while congratulating him on his ambition to provide ways and means, to bring forward a legislation, to change the law, in such a manner as to expedite the disposal of cases, to bring speedy justice within the reach of the common man, I would also like to tell him that with all this, I have a great doubt whether he can do all these things in this halting manner. I have not been able to understand, though I can very well appreciate, his desire to take the Opposition into confidence. But why this business of taking the Opposition into confidence when they have got the mandate of the people and when they have got the people's support? Let them come forward with their proposal and if it is good for the people and if it is in the interest of the people, they will support it in the interest of the people, and if they oppose it, they will oppose it only at their peril. But what happened? Need I remind the House? The loss of one vote was responsible for defeating a particular Bill. Just for want of one vote, the Privy Purses Bill was lost. This Bill was lost by less than one vote here in this House when it had been passed earlier by the other House and those who are occupying the treasury benches today know what the loss of less than a vote on the Bill which the then Government had brought forward cost

them. They know what the loss of a single vote had cost them. It cost them the seats. Nearly a hundred of them, who would otherwise have been elected to this House or to that House, lost their seats because of one, single mistake. Let us work in the hope and belief that the people in India are alert and the people of India can no longer be befooled. And if this is the assumption then I expect, and I would still expect the Janata Government, to bring forward in a proper manner, irrespective of the fact whether Members on this side will support it or oppose it.

AN HON. MEMBER: That is coming.

SHRI TRILOKI SINGH: Let it come. Why is there a delay? Nine months' period is enough for a child to be born. Is it not enough for this legislation to come?...*(Interruptions)*. Therefore, Sir, at the outset, while I give my all-out support to this Bill, I expect that this Government will come forward with a more comprehensive Bill dealing not only with distortions, alleged distortions, created by the Forty-second Amendment Bill but also distortions which exist in the Indian Constitution which men like myself feel ashamed to see, and ..*(Interruption)*

SHRI SHANTI BHUSHAN: We want a healthy child which takes a little more than nine months...*(Interruptions)*.

SHRI TRILOKI SINGH: I did not count the days. It is now nine months and ten days, according to a doctor. I do not know whether the Minister of Law would like to consult some medical practitioners in his party. Are there none on that side?

Therefore, Sir, my submission is this: In a bold manner, do something which will bring credit to the people of India. Do not take faltering and halting steps to do something

which is believed to be in the interest of the people, and about which they made commitments before the people in general at the time of last General Elections.

Thank you very much, Sir.

SHRI C. K. DAPHTARY (Nominated): Mr. Deputy Chairman, Sir, I have little to add to what has been said at the time of introduction of the Bill by the learned Law Minister, except to say that I am very happy indeed that this Bill is being introduced and I look forward, as my learned friend on the other side does, to a further Bill dealing with other aspects of the Constitution.

I for one, Sir, have regarded the Constitution not as sacred but as something which has stood the trials of time very well. The last Law Minister, Mr. Gokhale, in his introduction to a particular book published said himself that it was a document which has earned the praise of many jurists, of world jurists, and it stood the test of time very well. Nevertheless, he brought forward a Bill, the Forty-Second Amendment Bill, which was a comprehensive one, aiming almost at the fundamental roots of the Constitution. Remember, Sir, that the original Constitution was fashioned by jurists of eminence and by others after months and months of deliberations, and it did work very well for over 25 years. The Forty-Second Amendment Bill was introduced at a time very different from this, when the atmosphere was very different, when the people had been induced or brain-washed, if I may say so, into a belief that there was going to be a confrontation between the Legislatures and the Judiciary, when various other ideas were put forward about the exercise of powers, etc. All these things were working towards that end, I am sorry to say. It took hardly a day. The discussion on the Bill was nil. Only two people, if I remember aright, spoke against any of the provisions of the Bill. One was myself and the other

was Shri Krishan Kant, and it was passed as if it was an ordinary Bill. I protested vigorously, particularly against the first article almost which is sought to be set aside now, that is, article 31-D.

I pointed out the consequences that might follow and the particular purposes for which it was aimed. I am glad that is to be done away with now. But I am more concerned and happier at the solution of the difficulties into which the Supreme Court and the High Courts had been put. Take, for instance, the provision whereby a certain number of judges had to try a constitutional case. The constitutional case might involve a grave issue or it may be that the Constitution is mentioned in some form or the other and some small issue arises. But if it is a constitutional case, seven judges have to sit in the Supreme Court and they have to have a particular majority, the result of that being that, in any case, the minority judgement will prevail unless the sufficient majority, the two-thirds majority, is obtained. Thus, if a bench of seven judges sits and the four judges decide in one way and the three judges in the other way, then the three judges would prevail and not the four judges. If the existing law is maintained, the provision of five judges is a great hardship on the High Courts. Apart from the fact that it is tending to further delay justice by taking away judges from the ordinary work in order to do work which two judges or even one judge would ordinarily do, apart from that, there are cases where it is not possible or it is possible with great difficulty. As for instance, in one High Court there are five judges and three sit in one town and two in another town. It means that for any constitutional case, however trivial it may be, the five have to get together in one place. In a High Court which has a divided bench, sitting partly in one place and partly in another place, justice has to shift from place to place in order

[Shri C. K. Daphlary]

to hear constitutional matters. It is, therefore, not merely a matter of delay in justice and delay in clearing court arrears. It is a very large subject and it is receiving the attention, I believe, of the Government at the moment. It will require a great deal of research work to devise proper means to get over it. This is only a trivial matter in addition to the factors which I have mentioned.

Then, Sir, there are other provisions also with regard to the Constitution made under the 42nd Amendment which require to be amended. Up to now, the Bill is limited to a certain number of provisions. The hon. Member who spoke last wanted a comprehensive Bill to be moved at once regardless of what the result might be. But surely it is only right and it is ordinarily a constitutional practice to consult the opposition and Members of the other parties in Parliament in important matters and to ascertain their wishes. The matters referring to the High Courts and the jurisdiction of the Supreme Court and particularly 31D which is an obnoxious clause in itself are important. Already there being more or less an agreement with all the parties on these amendments, it is only right that they should be brought forward immediately and not wait for other matters where there may be *prima facie* opposition. Later on, I have no doubt, as the hon. Minister has said, there will be a further Bill with further amendments which may be objected to or may not be objected to and they will take their own course and find their own fate. But, Sir, I do wish to commend the speed with which this Bill has been brought forward, particularly with regard to the judicial part of it because the hardship that has been caused by the provisions as to the number of judges sitting in constitutional matters has been very great. And I myself have found in the Delhi High Court where five

tional matters of trifling type, and Judges are short as it is, though more will be appointed no doubt. But even if they are more, why should five judges be taken to do a work which could be done by two? There is a final court of appeal. In the final court, the minimum number is five. In some cases, it is seven and in some cases it is 13. As the hon. Minister pointed out, it is a matter of discretion with the Chief Justice of the Court as to how many will sit in a particular case having regard to the gravity of the issues involved.

Sir, I have no doubt that the 42nd Amendment was passed, if I may say so, if I may use an ordinary phrase, *per incuriam*. I don't think, the Members realised at that time all the implications of the various amendments. And, as I say, at that time there was a pressure built up over certain issues which found the expression in the speech of the Law Minister at that time in the Lok Sabha when actually a threat was issued to the Supreme Court in words which I personally feel, not to have been used. But having regard to that atmosphere, the Bill was passed in a great hurry. I am glad to say that this Bill will pass through without any objection and without any difficulties as the hon. Law Minister has said. And I sit down with a note of approval of the Bill as a whole.

SHRI K. B. ASTHANA (Uttar Pradesh): Mr. Deputy Chairman, Sir, I rise to support this Bill. It is a matter of gratification that the Janata Government has started the process of fulfilling their pledge to undo the mischief perpetrated by what is known as the Constitution (42nd Amendment) Act. Though the pace is slow, our Party has to be patient about it as it was very pleasant to hear from my old friend, Mr. Triloki Singh, on the opposite side when he harangued the Law Minister and persuaded that he should come with speedy steps to undo the evil. But we have to take a careful step. We have taken

steps to undo the evil. But we have to take a careful step. We have taken a small step and, perhaps, the pace will increase for we have to take along with us some of our friends, particularly of the Congress, who themselves had voluntarily or unwittingly put shackles on themselves as far as the constitutional processes are concerned. And naturally now they are also free like us in matters of constitutional amendment and legislation. For the present, they are dragging their feet. But I hope as time passes on and more light is shed after mutual parleys, our pace will increase. So, our speed as far as the constitutional amendments are concerned would be at the same rate as my friends on the opposite side could make it. I am happy that there is a consciousness in our friends on the opposite side that the process must be speeded up. Though this is a very small measure in itself, keeping in view that the Constitution which had been defiled and debased by the Fortysecond Amendment requires larger doses to restore it to health. Though Mr. Shanti Bhushan, the Law Minister, has given it a small dose, what one can call a homoeopathic dose, it is going to touch the most vital part of the constitutional set-up. Every one of us knows that our Constitution is based on one principle and that is the principle of rule of law and it is in that sector that the first dose is being administered. Nobody can deny that the Fortysecond Amendment was designed to curb the independence of the Judiciary and to destroy its efficacy in giving relief to people who are governed by the Constitution in this great Union, particularly in regard to their rights of liberty of life and dignity. I for one and other friends of mine would have been happier if by this Bill article 226 of the Constitution had also been brought by amendment to the same position as it was before the Fortysecond Amendment came into force. But I know there has been some difficulty, which, I have every

hope, men, like my friend Mr. Triloki Singh on the other side, will help in removing and the hurdles, if any, will be overcome. In regard to article 226 there is still some debate going on and the question is being considered whether it should be restored to its original position and the power should be given to High Courts to issue writs for any other purpose. The Fortysecond Amendment, it seems to me, insofar as the judicial powers were concerned and the Judiciary was concerned, by putting the discretion of the High Courts under article 226 of the Constitution into a jacket, reduced its efficacy to such an extent that it had almost become an empty phraseology in our Constitution and it is in that sector that the common man has been most affected. And, I believe, that our Congress friends, as well as other friends in the opposition parties, are agreed with us and will appreciate that by restoring power of the High Courts, the highest Courts in the States, which our founding fathers gave under article 226. In doing so they would not be bringing any confrontation between the judiciary and the Government. Within less than a month this Constitution will be 28 years old. We have run this Constitution for the last 28 years and this is the Fortyfourth Amendment which we are having in the Constitution. That means that on an average more than one amendment a year, say, almost two amendments a year. But, till the 60s we find that the amendments to the Constitution were made to meet particular situations without in any way affecting, what in the legal word has come to be known as, the basic structure of the Constitution. But in the seventies, after some judgments had been delivered by the Supreme Court, starting with Golak Nath case, Kesavananda Bharati case and the Banks' nationalisation case, that a climate was created—almost hysterical—as if the Judiciary was in confrontation with the Parliament and whatever Parliament did, the Judiciary would undo it. I

[Shri K. B. Asthana]

do not know why that climate was created. Perhaps, it might be so, so that a measure like the 42nd amendment may go through. I do not know because I was not here in the House when the 42nd amendment was on the anvil. But, some of the Parliamentarians themselves told me in confidence that many of them were themselves surprised when the Bill was finally introduced in the Parliament. It contained so many clauses which were neither canvassed before the Swaran Singh Committee nor found mention in its report nor in any public debate. As my old friend Mr. Daphtary said and Mr. Triloki Singh also indicated, the Members of Parliament were almost whipped to pass everything without giving thought to the clauses which were introduced. But now that we have started the process, here is the Bill which by its first provision omits and destroys what was created as a blanket power with the Government and with the executive to damn any group of men in this country as unlawful and illegal and take action without any reservation, without any fetters because the language of blanket power was such. To my mind, and many in the opposition have also agreed to it, it was a blanket power. I am very happy that they have appreciated it and have gone to the correct point of view. One who has the power always tries—that is the tendency—howsoever good a person may be, to create an atmosphere and adopt methods which give him more power. Ultimately, the power is concentrated in a few or in a group. That is always the tendency. Our Constitutional charter, as was thought out by our founding fathers, had provided all kinds of preventives so that we developed a true democracy, Parliamentary democracy based on rule of law, any such powerful group of individual should not rise so as to become an autocrat by subverting rule of law. In this particular aspect of the matter we

found that the 42nd amendment brought in a machinery with the powers which were to affect adversely the fate of the common man and such powers were to be confined to a few. It was just a camouflage to show that such powers had been given by the Parliament.

3 P.M.

For once, you take away the power of the judiciary, it should be remembered that the rule of the law will be destroyed and the institution of Parliament, itself may create men who will control the Parliament as a group. We are now slowly learning from all material evidence which have been led before the various commissions of inquiry how even the Parliamentary procedures and processes can be subverted if the judicial process is weakened. This is the way leaders like Mussolini and Hitler arose. After all, they were also elected to their respective legislatures. Hitler was a Member of the Third Reich. Through manipulations, he completely changed the Constitution and he and his party caucus became the absolute power in Germany. Therefore, we should take precautions now. There was subversion no doubt. Now, we should never think in terms of confrontation between the judiciary and Parliament. This great Constitution gives sovereignty to the people. We are a Republic. We are not merely a Parliamentary democracy. This should not be forgotten. It is a Republic. Republic means, the individual is the centre and the focus. His house, his home, is sacred. Nobody can enter his house and take away his freedom and property. His house, his fortress is sacrosanct. This is the idea of a Republic. But we saw how the ideals conceived by our founding fathers were subverted gradually two years ago in this great country which we call a Republic. Nobody was safe in his own house. Any agent of the executive could enter any house. They were all-powerful and they could drag out anybody from his house, including his child, without any due process of law. The poor

citizens suffered and they had nowhere to go to have their grievances settled or to obtain relief. That was the situation. This situation was created under the facade and under the cacophony of confrontation between the judiciary and Parliament. Parliament was being whipped up into a *stupa* and was told 'You are supreme and you are an elected body; who are these courts to declare a law as bad?' Here, we should consider the three limbs of our Constitution, the Judiciary, the Parliament and the Executive, as three different spheres. Constitution is the sovereign document. Nobody is sovereign. Nobody is absolutely powerful under a written Constitution except the Constitutional Charter itself. The three different organs of the Constitution have to work within the framework of this Charter, this written Constitution. Therefore, there is no question of confrontation. One helps the other. Parliament should not be unhappy if any other organ of the Constitution which is duly authorised and which has the jurisdiction says 'You are mistaken'. The Parliament have the power again to remedy that mistake in accordance with Constitutional Charter. We should not approach these questions, and I hope we will never approach these questions, in a manner which will result into the kind of turmoil which we witnessed two years back. The people had shown that ultimately they have the sovereignty, they are the most powerful. Now that is the true nature of democracy.

SHRI N. H. KUMBHARE (Maharashtra): I do not know whether the people are sovereign or the Constitution is sovereign.

SHRI K. B. ASTHANA: The sovereignty rests with the people. People are sovereign because I believe that unless the people were sovereign the Constitution could never be amended. That is why I say, on the doctrinaire approach, ultimately it is the people who have given themselves this Constitution and they can change it. Now that is the very

approach which was brought into use when it was said that the Parliament is supreme because it represents the people. But it was forgotten that Parliament is only one of the organs under the Constitution, it is the people who have made this Parliament. So, sovereignty rests with the people and this has been made clear in the Preamble of the Constitution also. So, what I was saying is that one thing we must always secure in our Constitution, whatever shape you may give it, and that is, the independence of the judiciary must always be preserved and its area of affording relief to the citizen should be made as wide as possible, rather than contracted. We should never approach our Constitution in that manner.

Therefore, I think the Constitutional Amendment Bill which has been introduced by the hon. Law Minister, which, as I have stated in the beginning, has touched the real core, and I believe the next instalment of the Constitutional amendments which will be placed before the House—some of which relate to preserving the independence of judiciary and some others relate to the declaration of emergency and other very important matters relating to the Presidential power and all that which has been distorted or subverted—will find an agreement with my friends in the opposition, and with their true understanding and in step with them we will be able to go forward in making this Constitution again a charter of human dignity, human freedom and human liberty.

With this hope I commend this Bill to the House.

DR. M. R. VYAS (Maharashtra): Mr. Deputy Chairman, Sir, the hon. Law Minister has introduced today the Constitution (Forty-fourth Amendment) Bill, 1977. As far as the right to amend the Constitution (Forty-second Amendment) Act is concerned, no one on this side of the House can have any objection as it formed a part of the manifesto and commitment to the people of India which

[Dr. M. R. Vyas]

gave them the mandate. However, the piecemeal way and the way it is introduced today to amend part of the 42nd Amendment Act, is not quite congruent with the claims of the Government.

Now having been given a lot of time to bring forth this amendment, I wish the Government had paid greater attention to the causes and reasons which led to the amendments which they seek to amend by the present Forty-fourth Amendment Bill. It is quite easy to put the first amendment relating to Art. 31D into the perspective of the emergency and state that it is bad in spirit. But I think, and I would commend to the hon. Law Minister, that he should not look to such amendments in the narrow perspective of the immediate past. I wish he had given a little thought to the reasons which led to the introduction of that particular amendment. Honourable Shri Daphtary, while speaking on this Bill, said that when the Forty-second Amendment Bill was before the House, there was a kind of atmosphere of *in peremptoria*, as he said it. That may be his feeling, but I do not share it. As one of those who spoke on the Forty-second Amendment Bill and who supported it whole-heartedly, even today I think that some of these amendments were not made in haste, as some one would make us believe, but they were the result and consequence of a series of developments in the country since Independence.

Now, one objection may be to the banning of people classified as anti-national. There is nothing wrong in banning or putting restrictions on persons or groups which may be classified as anti-national. It is the ultimate implementation of the law that matters. And as far as implementation of law is concerned, I may cite the case of the famous section 144 of the Criminal Procedure Code, under which certain restrictions can be imposed on the people. We also suffered under those impositions and under the British, it was used; it has

been used since then and it can be used or misused. But that does not make it redundant or wrong. Similarly, the introduction of this particular section was done with the then prevalent atmosphere in the country in view. And even today, I would not say that it is devoid of that atmosphere and, I think, the future will again bring us back to this particular point.

India is a fragile democracy today. Let us not boast that because we have a parliamentary system today, because we have a Constitution today, anti-social forces are not operating in this country and the Government, which wants to preserve the democracy of this country, which wants to preserve the right of the people to forge their destiny by democratic means, must be armed with such provisions in the Constitution as would be capable of dealing with any emergency that may arise in future. We should not think only of yesterday; we should not think only of today. A country like India with such divergent people, with such divergent atmosphere and religions, with an open society in which the foreigners have a very easy access and where people and forces not in consonance with the democratic spirit of the people are operative, or can be operative, it is but proper that the Government should have power to deal with these forces at a given time. It does not mean that because you incorporate a clause or a section like this, you automatically start putting people behind bars. If somebody has done it, it does not mean the law is bad. As I cited the case of section 144, it can be misused. There are many other parts of the Constitution or other laws which can be misused even today. For example, if you talk of emergency and if you call it a misuse, it was not under the Forty-second Amendment Bill. It was based on something which was existing before the Forty-second Amendment Bill. So Forty-second Amendment Bill has nothing to do with what the people generally term as emergency or misuse under emergency. So I would

like the Government to pay a little more attention to these matters and not rush to conclusions because it was done by the previous Government in a particular period. I mean, that should not be the criteria of approaching any amendment of the Constitution. The amendment must be viewed in the right perspective and the spirit in which it was done. So I personally would like that in due course—even though I cannot expect that having got this passed in the Lok Sabha the hon. Law Minister would withdraw this amendment—when you have more time I would recommend to you to review this particular amendment once more.

SHRI BHUPESH GUPTA (West Bengal): At the Prime Minister's meeting with the Opposition leaders, your party was represented by Mr. Chavan and Mr. Kamalapati Tripathi and both of them heartily agreed.

DR. M. R. VYAS: As far as Mr. Bhupesh Gupta's intervention is concerned, Mr. Chavan may have represented something, but I am not opposing the Bill. I am only making my comments about the Bill to which I am certainly entitled. I am sure Mr. Bhupesh Gupta will understand that this is not the Supreme Soviet Council. This is not a part of an Assembly where the Chair decides and others rise and salute to accept it.

SHRI BHUPESH GUPTA: I did not see that spirit during the emergency. If I had seen that spirit, if you had uttered a few words against Indira Gandhi or Sanjay Gandhi, things which had happened would not have perhaps happened.

DR. M. R. VYAS: Mr. Bhupesh Gupta, you may not have seen many things and I do not blame you for it because you have a particular angle to look from and I do not have that angle. So I quite agree with you that you may not have seen my spirit, may not have understood my spirit. I quite agree with you because you look at this point from an angle completely different from mine. I would

not like to have any compliments on that score because I would not consider it a compliment if you say that I looked at it in the right spirit.

SHRI SHANTI BHUSHAN: Mr. Bhupesh Gupta, why don't you lend him your glasses?

SHRI BHUPESH GUPTA: I only said I have great regard for you. You independently speak, I know, and you are speaking now. I appreciate it even though I may not agree with you. But my profound regret at the tragedy of the nation is that none of you, certainly not you, ever uttered a word against either Mrs. Gandhi or even Sanjay Gandhi. So, where is the question of spirit? The proceedings are here. Can you show me one word uttered by you against any one of them? If it is so, I shall lie prostrate in this House and seek the forgiveness of you and others. My dear Congress friend, I have learnt a lesson, you have all learnt a lesson. Take it to heart and speak in that spirit of learning.

SHRI SHANTI BHUSHAN: Please do not prostrate. We do not want to see you in that condition, Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: He cannot see because he cannot produce anything.

DR. M. R. VYAS: I am prepared to learn, but I must say that in many of our attitudes I had the company of Shri Bhupesh Gupta and he had ably supported us whenever we were in difficulties. So I am not at all ashamed for whatever we may have done. At least we belong to the party of which Mrs. Indira Gandhi was a member and Prime Minister of the country and we considered it our duty to our party. In our private conferences we may have or may not have, but it is not for Mr. Bhupesh Gupta to say what we conveyed to Mrs. Gandhi or to Sanjay. That is not for him to say. But as far as he is concerned, I was always amazed that a party which was not a part of the Govern-

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ment, a party which was not confined to us, was always ready to support even those clauses which they are opposing today.

SHRI SHANTI BHUSHAN: He has always been a very generous person.

SHRI BHUPESH GUPTA: Every single clause we opposed and voted here. Here it will be shown. I am not questioning you as a party man. As a colleague in Parliament I am questioning you.

DR. M. R. VYAS: I am not talking of performance in general. You can talk of performance in general and I am sure, since you cannot judge my or anybody's performance in one particular speech I may or may not have made. I am judging you and your party on the basis of performance which is on the records of the House. I am not saying something which is not recorded in this House. And thank you for the intervention because I would have liked to avoid this particular side debate on an aspect of our development of the past to which not only the Congress but many other friends have also been a party.

SHRI SHANTI BHUSHAN: Now he has become conscious of his past mistakes.

DR. M. R. VYAS: Since the hon. Minister says that he would like to learn—and I am sure, we all learn—may be my fear about the future is not justified. But I would again like to emphasise that this particular clause in some form or the other should be retained, if not now, at least in the future. It may be worded in such a way that the misuse may be minimum. There can never be a 100 per cent guarantee of non-misuse of any clause. But, as far as the intentions are concerned, I may assure him that whoever may have framed it may have one intention, but, as it reads and as we understand it, it is a simple intention that if any anti-national activity

takes place, the Government should have enough powers with them to deal with it. Mind you, the Government is on that side, and not on my side. If I am recommending this thing, it is not that the *danda* is in our hands and we can take the *bhains*. It is not like that. When I am recommending it, it is purely on the basis of experience and with a view to doing justice to our growing society and our fragile democracy and with a view to progress.

Now, as far as the other amendments are concerned, there we have delegated powers exclusively to the Supreme Court. The hon. Minister justified the retention of the right of review at the High Court level with the contention that the poor people may have to approach the local courts and not the Supreme Court. I would like to point out to him that generally the challenges to Constitutional matters come from the rich people and these challenges, as we will find from the study of the issue in the past, were against land reforms and matters relating to urban property and similar cases. Very few people at the lower level, at the poor level, have even the capacity to go to a court. Why to a district court? They may not have the capacity to go to the ordinary local court, Magistrate's court. So, if we start thinking in these terms that this is with a view to protect the rights of the poor, I see no relevance of poverty and the aspect of challenge to the Constitution. The aim of this particular amendment was that very important changes in the Constitution or very important laws framed by Parliament were being challenged right from the lowest court so that it took 10 years to reach the Supreme Court. And people challenge them simply with a view to delay matters. Now we see how so many urban development projects, many projects of land reform and the Acts passed by Parliament are being stalled in the courts, not because there is a justification for it but because the people who are hit have money to start from

the lowest possible court and reach the Supreme Court. So one of the very important aims of introducing this restriction was that, if there was any challenge to the Constitutional matter, it should be referred straight-away to the Supreme Court because there would be Judges with sufficient experience from the lower courts to the highest level, so that a very important issue could be decided at a stroke and the time and the total expenditure could be curtailed. After all, generally, in these matters, it is the Government *versus* an individual. And consequently the expenditure even to the Government is much less if it has not to start fighting it at the High Court level and go to the Supreme Court. The poor man is hardly affected. So I do not know how the hon. Law Minister felt that that particular argument was important. I personally think that it is the other way round. The poor people are affected by taking a series of appeals up to the highest level and in consequence the matter is delayed and very important legislations passed by Parliament are held up in courts of law due to procedural matters. So, I would again request him that he should go through this matter very carefully and see these things in the perspective of doing justice to the laws passed by Parliament and not view it from the angle that it was done because we superseded the High Courts. I do not think that was the intention. Namely, of superseding the High Courts. The idea was that when Parliament has passed some law which is good for the whole of India why should a particular High Court sit in judgment over it? And another difficulty that arose—and I am sure he is aware of it, being the Law Minister—was that one High Court takes one view of an Act, another High Court takes another view of the same Act; and then everything has to come to Delhi for settlement of the issue. So, why not restrict it right from the beginning and give the right of settlement of Central laws to the Supreme Court? I do not see how the rights of any

local court are superseded by this fact because after all the Supreme Court consists of judges who come from all parts of the country and have experience of the laws of the country in totality. I see no reason to suspect any particular court and to deprive it of its right to review any legislation passed by Parliament.

He argued on the issue whether a minimum of seven judges should sit on a Bench and whether a case should be decided by two-thirds majority. As far as the number '7' is concerned, I do not find it sacrosanct, but I do find that there is some importance about the number and the reason is that there has been a sense of confrontation between the judiciary and Parliament, and this was done with a view to avoid any feeling in the public mind that there is a kind of confrontation between the judiciary and Parliament. I can tell you that in the Golaknath Case the judgment was given with a majority of one, I think the division of the judges was 4:5. Then the same was reviewed by another Bench. Later on in the Kesavanand Bharati Case we had an opposite judgment. We frame the laws. We certainly do not mind that the Supreme Court sits and judges their validity, the correctness of their implication and give its verdict. There can be no objection to it, but certainly, the country cannot drift from one judgment to another. And that can happen only when we allow a majority of one to pass a particular judgment and then another single man to make another judgment, contradicting the other one. The same thing happened in the case of Mr. Amar-nath Chawla. So many judgments were there in India before, the expenditure incurred by a party was allowed as expenditure. One particular Bench did not agree with it, and the whole case got reversed. A number of cases would have been affected but for an amendment which had to be introduced then because the people who had got elected were having the

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earlier judgment in mind. After having fought the elections, they found another judge giving something different judgment. So, to avoid this sort of making the law upside down in the totality of effectiveness of the law, this particular clause was introduced providing that there should be a large Bench and two-thirds majority so that there is a kind of greater thinking and so that there cannot be the turning of a law upside down thereafter.

He gave the arithmetics of it. I will not go into it arithmetically. If I had the same logic of arithmetics, I would put in the Golaknath Case that five judges are equal to four because that one man's judgment this way or that way would be equal to four. That sort of arithmetics should not be involved in trying to find an amicable way of convincing the people at large that the judgements given by the Supreme Court in matters concerning the country are judicious not only in number of five or two to one, or four to five, but by a sufficiently large number and by a sufficient majority. So, that would not be a question of equating three against four and two against five or giving two judges more weightage than the totality of the Bench. That is not necessary. Nobody will start saying that it is two *versus* five. So, here again I would request that he should review this matter from the point of view of this conception in the public mind.

You may agree or not, but in the country there is a feeling prevalent that there is an attempt to make judiciary by-pass the intention of Parliament, by interpreting the laws in a particular way—rightly or wrongly. Just now I am not arguing whether it is right or wrong, but the feeling has been prevalent, and it can be prevalent once again if very important reform laws of Parliament are stalled by one judge. To avoid that

sort of feeling, it was brought about that there should be a sufficient number of judges so that the public is convinced that there is justice behind the decision and the decision will not be upset easily by a majority of one judge in future. So, with these remarks I would like to thank the Law Minister for having given a lot of thought to the question of amendment to the Constitution (Forty-Second Amendment) Act. But I would request him, if he wants to bring more amendments to this Act, let it not be done on the basis of the Constitution (Forty-Second Amendment) Act only, but let it be done on the basis of the requirements of our Constitution. I think we should not be carried away by any sanctity attached to any amendment, whether it is the First Amendment or the Forty-Second Amendment. Parliament is supreme in the sense that today what this Parliament decides, tomorrow's Parliament has a right to change. And that right we exercise and that right certainly you have got because you have a mandate from the people to change it. But while exercising the mandate I would recommend to the Government that they should do it judiciously because commitment is not wisdom. I would not like them to be guided only by commitment but also wisdom.

SHRI BHUPESH GUPTA: Sir, we are now reversing certain bad things that were done during the nightmarish days of Emergency. And I think we should do it with good grace. The issue is not one between us and the Government. The issue is one which affects democracy and the future of the country, and I entirely agree with Dr. Vyas when he said that we should not suffer from any obsession. We should approach the problem of Constitutional amendment from the point of view of the requirements of our society for its advance. This is a solid reasonable proposition to which, I hope, the Government and all of us will pay due attention.

[The Vice-Chairman (Shri U. K. Lakshmana Gowda) in the Chair]

This measure which has come here is a result of deliberations between the Government party which was represented there at the meetings by the Prime Minister in the front, on the right by Mr. Charan Singh, significantly, on the left by Shri Jagjivan Ram, equally significantly, and in the far end, the Law Minister and after him, the Parliamentary Affairs Minister, and there to the other side of the Prime Minister, on the left, was Mr. Advani—shall I say—the far outside—he was on the left outside there although he belongs to the Janata Party—but this combination and galaxy was indicative of the fact that they came collectively to discuss the matter—and us, the opposition. As if to emphasise the importance of the two-party system which they want to impose on the country, Mr. Chavan was sitting face-to-face with Mr. Morarji Desai, his former colleague, his former senior, now broken friends, speaking a common language and taking common measures...

SHRI SHANTI BHUSHAN: Who is the centre-forward in the Mohan Bagan Foot Ball Match?

SHRI BHUPESH GUPTA: You are the centre-forward. But I do not know who the goal-keeper was. If you make Mr. Vyas the goal-keeper, I think we have no defence at all. We will be defeated in the game because of the speech he has made . . .

DR. M. R. VYAS: Thank you.

SHRI BHUPESH GUPTA: So, it was a good thing. You will remember during the last Session of Parliament I repeatedly suggested that the problem of the Constitution (Forty-Second Amendment) Act should be resolved by mutual consultation between the Government and the Opposition parties if only for the reason that unless they are in accord, no Constitutional Amendment could possibly be passed

by this Parliament as it is constituted today with the Rajya Sabha being what it is. And it must be said to the credit of Shri Shanti Bhushan that he immediately responded to the suggestion and made a speech giving the impression that he would consider this kind of approach. I welcome it and many of us have welcomed it.

I must say that the Congress Party in this House also was responsive to the suggestion, although, when in power, it is this Party which was mainly responsible for the enactment of the Forty-second Amendment Act.

I mention these facts because both are significant for the working of democracy. Firstly, the Government was committed to it because the Janata Party said in their manifesto, before the election: Seek to rescind the Forty-second Amendment Act. Many of their leaders are even now saying that the Act will go lock, stock and barrel. Many of them—some of them at any rate—launched a powerful attack against the Government. The Deputy Leader of the Janata Party in the Lok Sabha—Shri S. N. Mishra—was one among them. He is one of those who would like the Forty-second Amendment Act to go lock, stock and barrel. Therefore, all his guns were trained on Shri Shanti Bhushan and possibly, by proxy, on Shri Morarji Desai also. It is for you to say.

SHRI SHANTI BHUSHAN: He was wanting me to give an opportunity to put the whole thing in proper perspective before the people so that people may not misunderstand that this is all that we are going to do.

SHRI BHUPESH GUPTA: That is rhetoric. We are now on law.

SHRI K. K. MADHAVAN: Do you believe that people will misunderstand? They are much more intelligent.

SHRI SHANTI BHUSHAN: Every-one knows the capacity not only of Shri Bhupesh Gupta, but of many hon. Members on the other side to create any amount of misunderstanding in the country.

SHRI BHUPESH GUPTA: Let me proceed. I mentioned their attitude before the election. Their attitude was to eliminate or do away with that Act lock, stock and barrel. Then, this was a compromise and it is good so far as the compromise goes. Similarly, the Congress Party which was the ruling Party before the election and which was responsible for the enactment of the Forty-second Amendment Act, did not also stand on its false prestige. That is why today we are in a position to pass this Bill. I think they also deserve a word of good cheer and credit in this matter.

So, Sir, we have all co-operated because we have come to the conclusion that after the election, in the changed situation, after going through the hell-fire of emergency excesses, diabolical crimes, violation of norms, prostitution of democratic institutions, degradation of values, tactics of blackmail, attempts to build up political power and personality cult and imposition on the country a personal and authoritarian rule in place of Parliamentary Democracy, co-operation is essential. Having gone through this hell-fire and having faced earlier the "total revolution" and some other things, we have adopted this approach. You know there were attempts to destroy democracy and Shri Charan Singh said before the emergency that the battle would be settled in the streets of Lucknow, if not by ballots, by bullets. Today all of us have come here through the process of democracy, taking counsel with each other and settling some of the crucial problems by mutual consultations and discussions and if possible, by agreement and consensus. This is a welcome style of functioning democracy in this situation, provided the style is used for the well-being of the people,

for strengthening democracy and for taking this great nation forward, leaving out the past which is dismal and sordid and looking to the future with the perspective that will enable us to march forward. That is how we look at it. So, Sir, the result is this, and we start like this. Not that I agree with everything that has been said or with every syllable that has been written in the Bill.

That is not the point and, Sir, a new approach has developed. Two or three meetings have taken place and I will not be divulging any secret if I say this and I do not wish to do so, because they themselves are saying on the radio, on the television and in the Press that a large measure of agreement has been arrived at between the Government and the Opposition. That is possible only when the approach is one of give-and-take. That is not possible when you only cross swords and, Sir, in the matter of the Constitution, the fundamental law of the country, which binds all the parties and the society as a whole, when it becomes a sort of weapon, a weapon for our advance, a dynamic one at that, well accord is necessary; at least, an attempt should be made to arrive at an accord. I welcome the discussions that have taken place and which have been useful. They have disagreed with me and I have disagreed with them. Mr. Chavan has disagreed with me and I have disagreed with him and many have disagreed with each other and that is bound to be there in a discussion of this kind. But the attempt has been to solve the problem of the controversial Forty-second Amendment by discussion and debate so that, on the basis of agreement, we can tell that not only can we come to an agreement, but also that we can get things done in the interest of democracy and this is how we have taken up this matter. I would have appreciated if Dr. Vyas had fully appreciated this, despite his views, to which he is certainly entitled.

Sir, now we are here and this Constitution (Forty-second Amendment) Act would not have been subject to this kind of an opprobrium or public criticism had the Congress Party, the then ruling party, even the then Prime Minister, Shrimati Indira Gandhi, and those who were sitting on the treasury benches, kept to the recommendations of the Swaran Singh Committee. Sir, the Swaran Singh Committee had made small number of recommendations and these recommendations were very good, by and large. One or two might be open to criticism. But, on the whole they were solid and they were inspired by the desire to bring the Constitution in line with the rising temper of the people for socio-economic changes, for meeting the challenges of our time and for taking the nation forward. Naturally, Sir, the recommendations were very limited. But the Swaran Singh Committee was flouted. I do not know how it happened. Some caucus, functioning from somewhere, some officers around it, smuggled so many things into the Swaran Singh Committee recommendations and brought forward the Constitution (Forty-fourth Amendment) Bill which became later the Forty-second Amendment. But the casualty of that amendment was honour, integrity and self-respect of the Swaran Singh Committee, because, Sir, that high-power Committee, appointed by the Congress leadership at that time, whose recommendations were approved by the Congress Working Committee and the AICC, was flouted, insulted, by those people who wanted to have another Constituent Assembly in order to switch over to the Presidential system, and it is these people who disgraced this amendment and brought in the bulky Forty-fourth Amendment Bill. Sir, most of them are not here today and history has taken care of them. Many of them have disappeared in the Lok Sabha including the former Prime Minister herself. Well, you may call it a tragedy, you may call it a comedy, you may call it an irony, I do not know. But the

fact remains that the caucus and those people responsible for it, including the then Prime Minister of the country who was no doubt a powerful person, have been punished by the people in whom the sovereignty of the country rests. This has to be taken note of and we all must bow to that. So, Sir, I would say that we are today correcting ourselves, Parliament is correcting itself and we here are correcting ourselves and that is how we should look at it.

Sir, I am mentioning these facts because I never blame the Congress Party. I would not even blame Dr. Vyas when I say that if he had uttered a word against the Prime Minister, things would have probably been better...

DR. M. R. VYAS: How do you know that we have not done it?

SHRI BHUPESH GUPTA: Privately you might have done it. I do not deny that and I take you at your word. He said that it was not the Supreme Soviet. It was also not Supreme Soviet then. During the emergency the Rajya Sabha was not the Supreme Soviet.

DR. M. R. VYAS: Many people from the treasury benches at that time were criticising the Bill produced by the Government. So there is no Supreme Soviet here. Even in the past it was not there.

SHRI BHUPESH GUPTA: I do not wish to enter into any controversy with my hon. friend, Dr. Vyas but since he made a mild remark, and I being a Communist... (*Time Bell rings*)... Please do not ring the bell. No other speeches will be made by me..

SHRI SHANTI BHUSHAN: The bell can never stop the hon. Member. The hon. Member stops the bell... (*Interruptions*).

SHRI BHUPESH GUPTA: If you had not allowed Communism to come in, I would not have to make a report to you. I am not the man who takes it that way.

DR. M. R. VYAS: I hold you in very high regard, and I have high respect for the Soviet Union. But when you passed a personal remark against me I had to report to you, because you cannot get away by attacking a Member and not getting it back. *(Interruptions)*.

SHRI SHANTI BHUSHAN: Is not your name a feudal name? 'Bhupesh' is a feudal name....*(Interruptions)*.

SHRI BHUPESH GUPTA: If 'bhupesh' is a feudal name, then Charan Singh is a feudal emperor....*(Interruptions)*.

SHRI SHANTI BHUSHAN: 'Bhupesh' is a feudal name; 'Gupta' means secret....*(Interruptions)*.

SHRI BHUPESH GUPTA: When I came here in Parliament, there was one Mr. Jaspat Rai Kapur from Agra. People from U. P. believe in the same vocabulary all the time. He said the same thing about 25 years ago.. *(Interruptions)*.

Now, Sir, it is very important to say that, because, I know many Congress Members also opposed it; they opposed the switch-over to the Presidential system. We, Communist, opposed it here, exposed it, and exposed the document which was circulated. We know that many Congressmen sitting here were also opposed to it. Many of them opposed it. It is with their co-operation—I would not name them, but I know...

AN HON. MEMBER: You may name them.

SHRI BHUPESH GUPTA: But I say that it will be a sad day for me if I go by conceit. If this switch-over

to the Presidential system was prevented in the country, it is largely because many Congressmen who were guided by democratic ideals, along with others prevented such a calamity overtaking the country.. *(Interruptions)*. Somebody should say this, they cannot say this thing. Accuse me as much as you like. But I cannot, just because I differ from them in certain matters, forget the fact how difficult the situation was, and how we saved the country from a switch-over to the Presidential system. We were guided by our national liberation struggle and the freedom struggle and our high traditions. Even in those dark and dismal days we could find common grounds, silently and sometimes in articulate manner, working from different situations and positions, to prevent the misfortune overtaking the country by way of subversion of Parliamentary institutions by the caucus and their henchmen and their replacement by the Presidential system. We should pay a tribute to them. And today, if they have brought good things, we should also welcome them.

Sir, coming to the Parliamentary system, to which a reference has been made, we are for strengthening it for the sake of the people. We do not want the Parliamentary system to be a hand-made of the capitalists, the 'kulaks', the landlords and feudal elements, even if my name may be Bhupesh....*(Interruptions)*. We want the Parliamentary system to become an instrument of social change which while articulating the anguish and sufferings of the people, will be protecting itself in the daily functioning for improving the lot of the masses who are degraded in their life all the time and, subjected to humiliation, insults, oppression, tyranny, exploitation, plunder and disdain. Therefore, the parliamentary system should be such as would strengthen democracy, strengthen the position of the Harijans, strengthen the position of the agricultural labourers, strengthen the

position of the toiling peasantry and strengthen the position of the working class and all sections of the working people. That is how I look at strengthening democracy and you will get support from all sides of the House in that direction. The Constitution should be attuned to this task. The Constitution should be a fighting weapon in the hands of the people and their representatives so that they can come out in an all-out war against the vested interests, against the exploiters against the common enemy of the country and against the dangers to the country, both internal and external. That is our view. That is our approach. Now, Sir, we have our doubts how far this Government will do that because we have got very great personalities there who are threatening everyday the people. As you know, the misfortune of the country is that often we have a Home Minister who runs amuck when he is in power. Well, you know what Mr. Charan Singh is doing. He is threatening everybody. I do not want to go into that. I have not come here to discuss him.

SHRI SHYAMLAL GUPTA (Bihar): Go to India Gate and see his popularity.

SHRI BHUPESH GUPTA: 'Go to India Gate'. In Indira Gandhi's time also, these demonstrations came and we were told from these benches, now sitting here: "Go to India Gate" to see the stage-managed demonstrations of people brought by Uttar Pradesh trucks or by Haryana trucks by spending lakhs and lakhs of rupees. If that is the road to democracy or the road to the future of our country, I do not know. You can send me to India Gate. I can see that people have come to greet Charan Singh on his birthday. But, Mr. Morarji Desai will not do it. He said it yesterday. You can understand. He said: "I will not go there; I do not like it." Settle

amongst yourself as to when the Prime Minister will greet the Home Minister on his birthday and when the Home Minister will greet the Prime Minister on his birthday.

SHRI SHANTI BHUSHAN: I am getting confused on which article he is speaking.

SHRI BHUPESH GUPTA: Please speak through the microphone. I never like an interruption to go unheard and, if possible, unanswered.

SHRI SHANTI BHUSHAN: That is precisely why I made this interruption.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): There are a lot of speakers. Please go ahead.

SHRI BHUPESH GUPTA: There was one other good thing. What prevented them from doing it? They promised that the voting age should be lowered to 18 years from 21 years. Why are they not doing it? You could have done it here in this amendment. You said in your manifesto that the voting age will be lowered from 21 years to 18 years. You said another great thing about deleting the right to property. Delete property from the list of fundamental rights and instead confer the right to work. It would be a very good thing. We shall all support. You are not doing it. So, I say: let the discussion continue with the opposition and other leaders. But one good thing I must tell you. I hope you will bear me out that we have come to an agreement that the proceedings of Parliament will now be given constitutional protection in regard to their publication in the sense that emergency or no emergency, V. C. Shukla or no Shukla, censorship or no censorship, R. K. Dhawan or no R. K. Dhawan or any set of scoundrels or no scoundrels there shall not be any censorship of the proceedings

[Shri Bhupesh Gupta]

of Parliament. This assurance has been given. Will it come? I hope, it will come in the next session. That is to say, the Constitution will provide that except in the case of a secret session of Parliament nobody in any situation will have the right to prevent the publication of the proceedings of Parliament. This is an insult to our people. And certain developments helped the democratic and parliamentary institutions. Sir, many other things have been discussed. Let this thing be discussed. I hope the next Bill will come. I think the Bill should come only with the provisions on which there is an agreement. Let us not waste our time for the propaganda purposes when the Bill will not be passed. We want a measure which comes by agreement and which is sure to be passed by the two Houses of Parliament.

Sir, before I sit down, I would like to say that the 42nd Amendment Act contained some very obnoxious clauses. But it also contained some good things. And I think we have come to an agreement as far as possible. Good things should be retained and no good thing should be taken away easily from it unless the Congress Party here and we agree because the two-thirds majority will not be available for deleting the good thing. Therefore, the Government will be in a position to act in this matter taking into account the reality. But the Constitution (Forty-Second Amendment) Act had some bad things also. They should go. None of us will come in the way of eliminating some of the bad things. Even if some of the things may be marginal cases, if the Government insists, we can discuss and there could be 'give and take'. Sir, it is necessary to have that approach. As you know, Sir, when the anti-national clause was debated, we pleaded here, we pleaded in the Opposition leaders' meeting with the Ministers concerned, and I personally pleaded with the Prime Minister,

"please take away all these clauses". but she did not listen to anyone of us. Those were the days of authoritarian-arrogance and not a comma was changed. When Mr. Bansilal, Mr. Sanjay Gandhi, Mr. Dhawan, Mr. Shukla and many others could add to the Constitution, add to the recommendations of the Swaran Singh Committee to make the Constitution Forty Fourth Amendment Bill look odious, look obnoxious in many ways, we in the Parliament—the Congress Party silently and we ourselves openly were trying—could not get a comma changed. Today, we are simply changing many of the things. This is the red letter day. The anti-national clause conceived in malice and executed in filth is going today. Mr. Vyas should not try to oppose it or ask for its reconsideration. This was meant—for prosecuting the political and other organisations, for suppressing democracy, for holding the nation under threat with tactics of black-mail. This came from the caucus. This did not come from the Swaran Singh Committee. For your information, I can tell you. The recommendations are there. Therefore, a bad thing is going. Similarly, Sir, we opposed many other things. They should go, one after the other. We supported many of the things for, example, the Preamble to the Constitution. It is not going. Some of the other things are not going. Some changes have been made in the Directive Principles. We wanted an enlargement of the Directive Principles. Some changes were made. These will remain. They are not going. Similarly, some other things will also remain. The bad things will go. Let them go. Well, my friend has asked one thing. Well, here are the proceedings. We opposed many of the things and we voted against them. Well, I am not going into the past. Now, let us turn a new leaf in this matter.

Sir, once again I say that the Constitution amendment is a serious mat-

ter. I think, it should be done by dis-predominant place in the constitution Party is a major party now and it may not be the ruling party. There are other parties also. There is no two-party system working in the country. It is a multi-party system working. The CPM is there. We are there. The ADMK is there. The DMK is there. The Mushm League is there. The Workers and the Peasants Party is there. The RSP is there. And many other parties are there. With their mutual consultation, the changes in the Constitution, should be made.

4 P.M. Changes in the Constitution should be made with the perspective, again, I say, of strengthening the position of the masses, strengthening democracy, strengthening the unity of the country and strengthening of the forces that make for social change and weakening the position of the vested interests, of the privileged classes and so on. This is how we should approach the problem. With these words, Sir I rise to support this Bill because there is no controversy. When the Bill is put to vote you will see that nobody will oppose it. Even if some people have some reservations, we have come to the conclusion that it should not be opposed.

Then, about our young Law Minister, who has won in the courts of law, I do not know how he feels about it now, but some of his friends in the Janata Party, do you know, what they say? Be careful. They say, he is a good lawyer, should have been the Attorney-General but not the Minister. Well, I am giving you the warning.

THE VICE CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Please wind up now.

SHRI BHUPESH GUPTA: It is not for me to say what you should or should not have been. You are Mr. Shanti Bhushan, a Member of this House, a colleague of ours and the Law Minister of the country. I take you to be what you are at the moment.

Your approach is good. Let this approach be worked out. Consider how many more fundamental changes are needed. But two things we immediately want and they are, firstly, electoral reform, replacement of the present system of elections by proportional representation....

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): You have already made that point.

SHRI BHUPESH GUPTA:and, secondly, the provision for recall should be in the Constitution, in addition to the lowering of the voting age. Let us discuss this problem also and make the Constitution look much better much healthier, than was envisaged by our founding fathers. We are now in the era of the grandchildren of founding fathers. Some of the founding fathers are still surviving well, for the good or for the bad of the country, only history can say. But the third generation is appearing on the scene. Let us see the writings on the wall. People are crying for a social change. They want to go forward. They want to march forward to their destiny and make their life worthy of the great nation. Help them by the Constitution and by law in achieving the cherished social goals that the nation has set before itself—emancipation of our toiling people—which alone can bring greatness and majesty to the great and glorious nation of ours.

SHRI SANKAR GHOSH (West Bengal): Sir, in dealing with this Constitution Amendment Bill, Parliament is not exercising its ordinary legislative powers. Parliament is exercising its constituent or sovereign powers. To that extent, this Bill is a very important Bill and it is a solemn occasion when Parliament exercises this constituent power.

It is a matter of gratification that this Bill has come after wide-ranging

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discussions between the Government and the opposition parties. I hope that this will set up a healthy national precedent by which matters relating to the Constitution are not treated from a partisan point of view but from a national point of view.

Sir, there are three items which are covered by this Bill, I support the three items because this Bill symbolises and represents a new national development of having a consensus on certain basic questions. It is also a happy augury that the approach is not a negative approach and it is not being said that the Preamble of the Constitution insofar it has been changed by the Forty Second Amendment in respect of its secular or socialist character, shall go. It is not said that the list of Fundamental Duties shall go. It is not said that the Directive Principles which were amended to provide for workers' representation, or for legal aid or for conservation of natural resources will go. That is a healthy development. So far as the Congress Party is concerned, it has approached the question with an open mind. Regarding the Government's proposal with regard to internal emergency, the Congress Party has made it clear, as a result of experience, that it is opposed to internal emergency as such and it is against the retention of a clause as to internal emergency in the event of the armed rebellion. As a result of recent experience, we as the Congress Party, stand by those provisions of the 42nd Amendment, such as the amendment to the Preamble or the Directive Principles and we also say that there should be no power in Parliament to declare an internal emergency.

But I would like the Law Minister to consider this question not merely from the point of view of the 42nd Amendment but from the point of view that the Constitution should become a dynamic instrument of socio-economic change to deal with the basic

questions that are before the nation. Why did we think of the Constitutional amendments? Why did the first Constitutional amendment come? Why did Pandit Jawaharlal Nehru come to Parliament with the first Constitutional amendment? It was because our land legislation, our legislation for the abolition of zamindari was struck down. Why did Pandit Nehru come to Parliament in 1955 with the fourth Constitutional amendment? Again it was because our socio-economic legislations were struck down. Therefore, when we consider a Constitutional amendment, we have to consider the problems that had arisen. Certain property rights which became part of the Fundamental Rights had stood in the way of various socio-economic legislations, like land reforms etc.

We find that in the Golak Nath's case, it was laid down that Parliament had no power to alter the Fundamental Rights which included the right to property. Sir, you would recall, in the Golak Nath's case, Justice Hidayatullah had said that if the aim was to introduce a socialistic pattern of society, then it was a mistake to incorporate property as a Fundamental Right. It is that mistake which was revealed in 1950 when land legislations were struck down. It is that mistake which was revealed in 1953 when in Bela Bannerjee's case, the Supreme Court said that full compensation has to be paid. It is to rectify that mistake that in 1955, Pandit Jawaharlal Nehru introduced the fourth amendment to the Constitution. It is that mistake that resulted in the setting aside by the Supreme Court in February, 1970 of the Banks Nationalisation Act. It is that mistake that resulted in setting aside in December, 1970 of the provision for the abolition of the privy purses.

Today, Sir, when we discuss this question, we have to discuss the basic question of the conflict that arose as a result of Golak Nath's case by which the property right became supreme

and by which the power of Parliament to amend was nullified. With regard to that, we must have a fresh look. The Supreme Court, in the Kesavananda Bharti case, tried to take a second look and overruled the Golak Nath's case and that, there is a concept of the basic structure of the Constitution. What happened in the Goiak Nath's case? Parliament's right to amend the Constitution—the fundamental right—was taken away. In the Kesavananda Bharti case, a doctrine of basic structure was introduced. But the doctrine of basic structure, as now developed by the Supreme Court, is undefined and it is unchannelised.

The question has now come before the Parliament to finally decide on these basic questions. First, we have to decide what is this basic structure? There had been two urges before the Parliament; one is the socialistic urge, to fight against inequality and to introduce socio-economic legislation. The obstacle here has been the Fundamental Right to property. There is another urge of Parliament, that is, the democratic urge to preserve life and liberty. So far as the basic structure by which the property rights are to be preserved is concerned, that is a concept which goes against the socialistic urge of the nation. So far as the basic structure which seeks to preserve life and liberty is concerned, it preserves and strengthens the democratic urge of the nation. Today, Parliament has to decide that of these two basic urges of the nation, whether the democratic urge which requires that our right to life and liberty should be fundamental, basic, beyond change and challenge, except by the people through a referendum, that basic structure, should be incorporated into the Constitution. And the other thing which is in the Constitution,

namely, the property right which stood in the way of Bank nationalisation, which stood in the way of abolition of the Privy purses and which stood in the way of abolition of the Zamindari system, that has to go. In the past, when we talked of Parliament's sovereignty, we talked of that sovereignty in the context of our land reform legislations being struck down and in the context of the bank nationalisation measure being struck down. We talked also in the context of the world history and of the American history where the New Deal legislation for the benefit of the downtrodden was struck down. We talked in the context also of American history, when, after the Missouri compromise, when President Lincoln thought of abolishing property, it was challenged in the court of law and Chief Justice Taney of the Supreme Court said 'You cannot abolish property, because, slaves are property and you cannot abolish property without paying compensation'. We talked in the context of this world history where whenever property rights came forward, there was resistance. The same experience we suffered in this country in regard to land reform legislations and other kinds of legislations. Then the concept of Parliamentary supremacy was developed.

So far as our commitment to socialism is concerned, we must be very clear about the warning that Justice Hidayatullah gave in the Golaknath case that it was a mistake to have incorporated property as a fundamental right. With regard to that, Parliament has to take a decision. But with regard to another matter, our right to life and liberty, we have to take a decision in the context of the Emergency. During the Emergency, we could not protect all these civil rights. Therefore, we have to think that these rights should become entrenched rights. Neither Parliament nor the courts should be able to abridge these rights. for in the case of A.D.M. Jabalpur, where the court said 'Even if the detention is *mala fide*, because

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of the Emergency, it cannot be questioned'. Parliament has to rethink on those questions.

Previously, we had been thinking in the context of our socio-economic legislations being struck down. We thought in the context of the socialistic urge to bring about socio-economic changes. Now, the basic structure that we have to think of is a combination by which we preserve those socialistic urges and delete property from the Chapter on Fundamental Rights and ensure that the civil rights, the right to life and liberty, become basic and fundamental.

I am not seeking to define what the basic structure is. On that, my Party has not yet taken a decision. What I say are my individual views. But I say this for this reason that with regard to the constitutional amendments, the way this measure has come, it has shown that we can rise above party considerations and can think of the nation. It is in this context I hope the Law Minister will bring forward further legislations, because, so far as the Congress Party is concerned, even before the Government's proposals came, we worked into the details with regard to them and we were agreeable to more far reaching changes than have been brought by this legislation. But I would request the Law Minister not to consider this only in the context of the Forty-Second Amendment. This is because the Constitution is our dynamic instrument of socio-economic changes. In the interest of the nation to harmonise our urge for democracy and our desire to bring about socialistic transformation, our Constitution has to be suitably amended. For this reason, I hope the Law Minister will have further discussions and will bring forward a more comprehensive Bill.

SHRI MURASOLI MARAN (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise

to support the 44th Amendment Bill and while doing so, I would like to say that it is really an irony or a coincidence that the Hon. Shri Shanti Bhushan who in one way was responsible for pushing Mrs. Gandhi to declare emergency and other calamities to the nation including the 42nd Amendment Act, because of the historic Allahabad Judgment should be today moving the Bill to rescind some of the harmful provisions of the 42nd Amendment Act

SHRI BHUPESH GUPTA: Would you like to say that the Allahabad is the source of all trouble?

SHRI MURASOLI MARAN: That is the start of the trouble, Sir. The emergency would not have been there, the 42nd Amendment Act would not have been there, and consequentially the 44th Amendment Bill would not have been here, but for the Allahabad judgment for which hon. Shri Shanti Bhushan was in a way responsible.

SHRI IRENGBAM TOMPOK SINGH (Manipur): Had there been no Allahabad judgment, the Janata Government would not have been there, you would not have been there.

SHRI MURASOLI MARAN: I think Sir, dramatic justice has now been rendered. Sir, there are many in this country who demand total abrogation of the entire 42nd Amendment Act in one stroke. It is obnoxious because it was passed by a Lok Sabha which had lost its normal term and it was passed at a time when there was a reign of terror, when the opposition leaders and thousands of others were bolted in prison, when the press was muzzled and the entire nation was made to behave like a mule. Moreover, it ran counter to the notion that the Constitution is for the people—the then prevailing philosophy was that the Constitution was for a party,—nay, for an individual or for a dynasty. This is the rationable behind the demand for

the total abrogation of the 42nd Amendment Act. That has also found a predominant place in the Constitution of the Janata Party. Sir, I want to read from the manifesto:

"To call it an amendment is misnomer. It is a betrayal of the testament of faith that the founding fathers bequeathed to the people and it subverts the basic structure of the 1950 Constitution. It vitiates the federal principle and upsets the nice balance between the people and Parliament, Parliament and the judiciary, the judiciary and the executive, the States and the Centre, the citizen and the Government."

Finally it says that the 42nd Amendment should go back, stock and barrel. Now it seems, Sir, as the hon. Member has stated, by adopting a policy of mutual persuasion they have dropped the idea of abrogating the 42nd Amendment at one stroke. They seem to think that there are certain good things in the 42nd Amendment. We know there are certain good things also, like the legal aid to the poor, participation of workers in the management etc., which had been added under the Directive Principles.

Sir, all the good things under the sun had been added under the Directive Principles, but the law is one thing and the implementation is another. So, the common man has yet to get the results. If there is a feeling that there are certain good things in the 42nd Amendment, I would like to say that because of the immorality because of the way in which it was bulldozed in the Lok Sabha during those days, it would be better that we abrogate the Forty-second Amendment with one stroke and then start discussions about overhauling the Constitution once again. The hon. Minister has said in the other House that he wants to persuade the Opposition and arrive

at a consensus. But there is a fear that in the process of persuasion, there should not be any fortunate compromises. Some hon. Member compared the Forty-second Amendment Bill to a sugar-coated poison, to which the hon. Minister replied that he wanted to separate the lump of sugar from the barrel of poison. But I am sorry that in that process of separating the poison from sugar, some of the poison is also entering into our system. Sir, it is because of this compromise that we have read in the morning papers that the Government wants to retain the power of imposing emergency in the event of an armed rebellion in any part of the country, but the Opposition is of the view that emergency should be imposed only in case of war or external aggression. I think the Congress people have learnt a lesson. So they are taking a different stand. It appears to the outsiders that they now have reversed their stand. That is why I insist on this. Further, we have read in the morning papers that the Home Minister has said that 565 people have been detained under MISA since April. The Janata Party has given a vow to the people, a pledge to the people that MISA will be repealed. But we find that since April, 565 people have been detained under it. That is why I say that in the process of dynamic or mutual persuasion, or in the process of separating poison from the sugar, I think some poison is entering into our system. This is spoiling the image of the Janata Party. That is why I insist that according to the promise given by the Janata Party to the people in its manifesto, the entire Forty-second Amendment should go.

Sir, in the present Bill, the most obnoxious thing is Art. 31D. If we go through the words in which the section is couched and the way anti-national activities and anti-national associations have been defined, we would see that the aim is not very innocuous or innocent. The aim seems to be that anybody can misuse it, abuse it to abolish any Opposition party in

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this country and proclaim one-party dictatorship. While we say that the draconian Section 31D should go, we feel that we have got specific laws in Cr.P.C., I.P.C. and Prevention of Unlawful Activities Act to deal with such types of activities which are now described as anti-national activities. Those provisions in the Forty-second Amendment can be interpreted to mean that any mass movement whose central slogan is "Government should go", even if raised during an election campaign organised by the Opposition parties, can be brought under this definition. That is why at that time threats were issued to all parties. Even the CPI was not spared. So many parties thought that all the regional parties would be banned. Some regional parties in haste even added the appendage of "All India" with their names. In the other House Dr. Seyid Muhammad let out a secret that Art. 31D did not find a place in the Swaran Singh Committee's recommendations. It was a later innovation to create one-party dictatorship.

Sir, I do not want to say more. I support the present amendment and while advocating for the total abrogation of the Forty-second Amendment, I want to say, as a senior hon. Member of the Congress Party has said, that in the last 27 years forty-two amendments have taken place and yet the question even now is being asked, who is supreme? Who is sovereign in the Parliament, the Constitution or the people? That question is often repeated. And I would say that the people are sovereign.

The hon. Minister, Shri Shanti Bhushan, has started a dialogue with the Opposition parties—the Congress Party, the CPI and others. But he has ignored one major party. He has not consulted the biggest party,

and that most important party is "the people of the country, the people of this land." Sir, we have to find some method or process by which, while amending the Constitution as we are consulting the opposition parties today, we can consult the people also. It is somewhat confusing to equate people with Parliament. In many countries people's will is ascertained through a referendum. In Ireland, Denmark, Australia, Switzerland and in each of the 50 American States, we find provision for referendum while making constitutional amendments. In Australia the electorate has approved only five out of 32 Constitution amendments proposed by Parliament, but in our case we have passed 44 amendments and we have created a record by amending our Constitution 44 times in 27 years.

In Belgium they are following a different principle. There, Parliament proposes an amendment. Then Parliament is required to be dissolved and Members of Parliament are compelled to seek re-election. Then they should meet in a new Parliament and then the amendment has to be approved by a two-thirds majority.

So also in Denmark. They have a very strict method of amending the Constitution there. First the amendment should be proposed before Parliament. Then Parliament is dissolved after approving the amendment. After that elections take place and then the new Parliament also should approve the amendment when only it becomes part of the basic law.

Therefore, I would request the hon. Minister who has very ably consulted and persuaded the opposition parties, to consider this suggestion also. The Constitution should not be allowed to become a plaything in the hands of politicians. We should be serious with regard to amendment of the Constitution. I would request the hon. Minister that before throwing out the 42nd Amendment he should also think about creating some

kind of a rigid process for amending the Constitution.

Thank you, Sir.

SHRI RISHI KUMAR MISHRA (Rajasthan): Mr. Vice-Chairman, Sir, I rise to support the Constitution (Forty-fourth Amendment) Bill which seeks to undo some of the obnoxious features of the 42nd Amendment which was introduced during the period of emergency. There is no point, Mr. Vice-Chairman, Sir, in hon. Members speaking from the other side of the House reminding us that many of us who are in the Congress Party were responsible for the enactment of the 42nd Amendment. Nineteen months of emergency has been a watershed in the life of our country and it is time that we look and re-examine and re-valuate many of our experiences and assessments, not in a flippanant manner, not in a manner of polemics between one party and another, but in the interest of the country, in the interest of the people and in the interest of the broad objectives which we have set before ourselves as a legacy of the freedom movement. And it is in this spirit, Sir, that we in the Congress Party are engaged in a serious, honest reappraisal of the mistakes or aberrations that had occurred in the past and I hope that all sections in this House and all political parties will join in this effort. I welcome it that the Prime Minister and the Law Minister have tried to tackle the problem of constitutional amendment through a process of consultation and evolution of consensus.

Mr. Vice-Chairman, Sir, I will not cover the ground which has already been covered by several previous speakers, especially hon. Shri Sankar Ghose and hon. Shri Bhupesh Gupta. I would, however, like to draw the attention of this House to the fact that it would be absolutely superfluous to think that emergency had been enforced in this country simply

because of the dynastic propensities of an individual, simply because of the desire to consolidate personal power or simply because there was an attempt to perpetuate a small coterie of people in power. There were objective reasons obtaining in the country and there were also subjective factors responsible for the creation of a situation which gave rise to a climate which was conducive to the imposition of an authoritarian order for a period of 19 months. Unless this Parliament and all the political parties in this country go into those basic objective factors which created the conditions for the imposition of Emergency and for the rise of authoritarian tendencies, we will be committing a grave error.

Mr. Vice-Chairman, Sir, the failure of the present system of our polity to solve the basic socio-economic problems of the vast masses of poor people living in this country provides the framework in which those who fail to solve the problems of the people tend to resort to authoritarianism in order to suppress the voice of protest of the masses, of the working class people and of the poor people. I would like to draw your attention to the point that I see again in the present situation trends and events which should cause a serious concern to all of us, and because a discussion on the dismantling of the obnoxious features of the 42nd Amendment should also be an occasion for all of us to think that again this country is not pushed into the arms of authoritarianism. For all times to come, the democratic freedoms, the civil liberties, the human rights, the right of the people to organise themselves and to fight for the redressal of their grievances must remain non-negotiable. This is the fundamental and the most important lesson that we have learnt from the antagonism between the urge for socialism and the urge for defence of human rights and civil liberties. In fact, in the conditions obtaining in our country, it is only when the civil liberties are

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defended and upheld that the poor people can advance further. But, what do we find today? We find that the Janata Party is already showing signs which are almost akin to those factors which were prevailing in this country on the eve of the emergence of authoritarian tendencies. Their attitude on the question of imposition of internal emergency is a matter of grave anxiety to all those who want to ensure that never in future will there be a Government which could take advantage of Constitutional provisions; and that is why the Congress Party and other Opposition parties have taken a position on this. The Janata Party is equivocating on the question of preventive detention. As the hon. speaker preceding me said, not only more than 500 people have been arrested under MISA after they came to power, but also they are equivocating and trying to make provisions of MISA a permanent part of our Statute Book by amending the Criminal Procedure Code. There is a growing intolerance towards the working class and the agitations of the working class. The firing in Kanpur and the attack on the working class people in various parts of the country again show the some spirit of intolerance. We also find that there is a chaos in the field of education and there is increasing resort to State violence against the people. There is a general decline in the quality of administration. All these, Mr. Vice-Chairman, Sir, are factors which provided the setting in which Emergency was imposed and authoritarian tendencies came to the fore. All these tendencies which the Janata Government is again showing is a matter of serious concern. Mr. Vice-Chairman, Sir, it is not what is written in the Constitution but it is the first step of acquisition and emergence of a personality cult which ultimately leads to and gives rise to authoritarianism. I am very sorry, Sir, that today, this very day, we find on the Boat Club the repetition

of the same vulgar drama of management of image-building and collecting people by trucks and other things. I wish Mr. Charan Singh, who is having his birth-day celebrated many happy returns of the day. But for the same vulgar drama which was enacted earlier for building a cult of personality, for image-building of an individual is there. You find there, Sir, that the difference between the State and the party and the party and the individual is disappearing. On the Government poles which can be used for putting up festoons only on a national day or when foreign dignitaries visit the country, we are finding the birth-day festoons put up to celebrate the Home Minister's birth-day. Every individual has a right to celebrate birth-day. But, it is only after he became the Home Minister of the country and having the Janata Governments in the neighbouring States, that all these transport facilities are being mobilised to have a big show, a big tamasha. Putting posters, raising of slogans and all these things we have seen in Delhi, in this capital city, weeks after weeks and months after months before that whole climate for authoritarian tendency for personal power and for individual nepotism was there. I would like to warn the democrats both on this side of the House and those sitting on the Janata Benches and any other party to beware of this tendency. If you succumb and acquiesced into emergence of a cult of personality, you will be committing the same grave error which gave rise to the authoritarian tendency.

Mr. Vice-Chairman, Sir, I would also like to draw your attention to the fact that unless there is a national commitment for the defence of civil liberties and to fight against all the anti-democratic fronts whenever they appear, we will see that—may be a Hitler may not be born—a Hindenberg will be behind them. Therefore, this tendency must be fought

from within and from outside as well.

I congratulate the Hon. Law Minister for the removal of Article 31D. The whole concept of banning of a political party or an organisation is alien to our jurisprudence. In our country it is an individual who can be held guilty for committing a crime or an offence. If you ban a political party, you are banning an idea, and it is my personal view that political ideas, including those which say that use of violence may be necessary for a social change, as long as they are in the realm of ideas, nobody has a right to suppress those ideas. Who knows what history will prove? Of course, the State which, in the final analysis is an instrument in the hands of a class which would like to use suppression and coercion, cannot be expected to gloss over if actual acts of violence are committed. But, Sir, this Article 31D gave to the executive very vicious and very wide-ranging power, and, therefore, Sir, I welcome that this is now being given the go-bye.

I also welcome the other clauses of this Constitution Amendment Bill regarding the High Courts and the restoration of some of the powers of the High Courts to go into the Central laws.

Sir, the Constitution should essentially be an instrument of social and economic change. It should be an instrument for the fulfilment of the aspirations of the people. Unfortunately, the Janata Party has not so far done anything to show that it can build. Of course, they are engaged in cleaning the debris which is good as far as it goes, and they are engaged in dismantling which is good as far as it goes. For example, in their election manifesto, they made a commitment to the right to work, and they are talking of having a big employment strategy. I demand, Sir, that when the Law Minister brings

the next instalment of the Constitutional amendment Bills, it should include constitutional guarantee for employment, the right to work. Constitutional guarantee for employment is the first condition for the existence of a civilised democratic society. With two crores of Indian people being totalling unemployed and many more underemployed for a greater part of the year, we cannot expect to have, what to talk of a socialistic society, even a decent civilised society. Unemployment is a curse. Therefore, on this question, I am quite sure, there will be total agreement and unanimity amongst all sections of the people. Therefore, when the next Constitution (Amendment) Bill comes I hope a constitutional guarantee for employment, the right to work, will be included. I also hope that the Government would agree on the question of Emergency, they would not like to keep with themselves the power to declare Emergency on the ground of armed rebellion, internal disturbances and all that. Experience has shown that even when it was so, with armed rebellion in Nagaland, Mizoram, etc. it was possible for the Government to deal with it without declaring Emergency. So this is a fictitious argument which the honourable Minister of Home Affairs, is reported to have put forward in his meeting with the Opposition leaders. It is only in case of external aggression or a war that it should be there. I am also quite sure that other amendments which limit the Centre's powers to intervene and interfere unduly in the jurisdiction of the States will also be given a go-bye. Before I sit down I would only urge upon the Janata Party members and other Opposition leaders to consider seriously the question of education. I am personally of the view that education should continue to be in the Concurrent List. There are a variety of reasons why I am advancing this. The teachers' movement all over the country for which several thousand teachers in UP themselves have gone to jail, is of the view that their inte-

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rests will be safeguarded. And also the whole attempt to build a national educational system does not mean that the diversity of our culture and of languages should not be there; it is not just to bring it into the Central List, but in the interests of national unity and integrity, in the interests of building a healthy educational system and in the interests of teachers and students. I urge the Government to agree to keep education in the Concurrent List.

With these words I support this Bill and I hope that not only by amending the Constitution and removing the obnoxious features of the Forty-Second Amendment but also in actual practice the Government will discourage the emergence of a cult of personality, misuse of State power for promotion of individuals; and that alone will guarantee that authoritarianism will not raise its head again.

SHRI VISWANATHA MENON (Kerala): Sir, I welcome the Bill. But I would have been happy if the honourable Law Minister had brought before this honourable House a Bill to repeal the Forty-Second Amendment Act. Anyhow he has brought a small portion of it and he is promising to bring other provisions also. The Forty-Second Amendment was an act of political despotism although Mr. Bhupesh Gupta tried to paint a picture saying that there were some good things, that some people were having a good opinion about it but that their opinion was overruled. My humble submission is we see the Forty-Second Amendment as an Act by the despots of this country. (*Interruption*)

AN HON. MEMBER: No.

SHRI VISWANATHA MENON: Emergency came to this country not because of any political situation but because certain people wanted to have power in their own hands.

After the Allahabad High Court judgement, when the power was going out of the hands of Shrimati Indira Gandhi, she created a situation, organised processions, organised rallies and brought this emergency...

SHRI KALP NATH RAI (Uttar Pradesh): What about Constitution?

SHRI VISWANATHA MENON: I am coming to the Constitution. Without speaking about the background...

SHRI KALP NATH RAI: You are speaking politics.

SHRI VISHWANATHA MENON: Yes, it was all politics. The Constitution also became politics and the Forty-Second Amendment Bill was a political weapon...

SHRI KALP NATH RAI: That gave priority to the fundamental principles...

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): No interruptions, please.

SHRI VISWANATHA MENON: You will get a chance to reply to me. You used the Forty-second Amendment Bill as a political weapon to finish the opposition. You used the emergency as a cover to do all the things you wanted to do. Because you had a brute majority in the Lok Sabha and you had a brute majority in the Rajya Sabha and therefore you passed it saying that Parliament was sovereign. This is the kind of sovereignty of the Parliament... (*Interruptions*). Do not try to scuttle me. In those day of Emergency I was alone fighting here because my other comrades were either underground or in jail. At that time also I spoke against the Bill. Therefore, do not try to scuttle me. I have got my own views and do not think that by shouting or with your majority you can make me sit down. I will say what I want to say. Then only I will sit down. I have been sent here to

speaking. You can answer me later on. I heard the Congress members speaking and I heard Shri Bhupesh Gupta's speech. I have also got a right to speak.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Please proceed.

SHRI VISWANATHA MENON: Coming to my point, emergency was a political weapon; the Forty-second Amendment was a political weapon and the entire atmosphere was politicalised. The Indian National Congress under the leadership of Shrimati Indira Gandhi wanted to bring fascism in this country through Constitutional method. In order to bring fascism in this country, the Forty-second Amendment Bill was passed. Many of the Congress speakers, including the speaker who preceded me, tried to be very apologetic and said that the situation has changed. Of course, the situation has changed. Even now, because you have got a brute majority in this House, you are trying to dictate terms to the Government as to what measures they should bring before the House. Is it not a fact? On the question of this Bill also you wanted to dictate terms and Shri Shanti Bhushan and Shri Morarji Desai succumbed to your pressure. Is it not a fact? But, do not forget history. You had a brute majority earlier also. What is the position now? You had a brute majority in the Lok Sabha. What has happened to you there now, after the election?

SHRI KALP NATH RAI: We will get it again.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): No running commentary.

SHRI VISWANATHA MENON: One fact remains that the people cannot be fooled so easily. We are

all elected indirectly whereas the Lok Sabha has been elected by the people directly. The people are sovereign. The so-called sovereignty of the Parliament is a myth. What is the sovereignty of the Parliament? We have seen the sovereignty of the Parliament where you had the majority. The sovereignty of the Parliament is the sovereignty of the ruling party. Is it not? The Congress had majority in the Parliament and therefore they passed the Bill without any difficulty. Here also they got it passed without any difficulty. Do you think it has got the sanction of the sovereign people of this country? If that is so, if the people had given their sanction for the Forty-second Amendment which you brought forward, you would have got yourself elected. But you did not get elected, so, the clear fact is that in this kind of democracy, party rule, party majority and party domination are there and it is there in this House also and so, you got it passed. Therefore, do not talk about the sovereignty of the Parliament or the supremacy of Parliament and all that. (Interruptions). Now, Sir, if the Parliament want to change the basic structure, they have to go to the people, they must get the sanction of the people, and without that, without doing that, if they say that they are supreme and that they can get passed everything and so on, the people will reject it. That is what the Constitution (Forty-second Amendment) Act has proved and proved beyond doubt.

SHRI KALP NATH RAI: We shall come back to power again.

SHRI VISWANATHA MENON: Sir, I will now come to one particular point about the Janata Government. The Janata Government is looking so much dignified and they have become very much compromising in their attitude and they want to

[Shri Vishwanatha Menon]

take everybody into their own heart and, so, Sir, they are always talking about compromising and all that. But they have forgotten those days when they were put in jail and treated very badly. Now, two things are possible. Either they are going to change to the ways of Shrimati Indira Gandhi or, if they want to act according to the mandate given to them by the people who have voted for their manifesto, they have to have a confrontation with the forces of reaction in this country and in this House also. I know that even in the Congress benches there are various groups which are fighting between themselves and I know that and after the 31st of December, something may emerge also. So, Sir, now the Janata Party should take a stand and decide to act according to the promises they have given to the people through whose votes they have come to power. They must take the stand that they would act only according to the promises they have given to the people. But, if they are going to act according to the whims and fancies of the Congress Party here, that means that they will have to compromise and they also will have to go away just like Mrs. Indira Gandhi. Whether Mr. Charan Singh becomes the dictator or Morarjibhai becomes the dictator does not matter to me and I am not bothered about it. I am not bothered about it at all. But I am bothered about the future of the country, the future of India.

SHRI KALP NATH RAI: Mr. Charan Singh is the Hitler of India.

SHRI VISWANATHA MENON: But our lady Hitler is sitting in some corner now. So, we can manage with the male Hitler also. Don't worry about that. We have managed the lady Hitler and so also we can manage the gentleman Hitler. The lady Hitler has already been finished. Do not worry about these things. Sir, I want to stress on this point. I would like to say that the Janata

Party should have the courage to go before the people and act according to the promises it has made to the people.

Also, Sir, on the question of the MISA, they have brought forward a Bill and I have gone through the draft. There is only one sentence there which is according to their manifesto and it says that the MISA is repealed, and the other clauses are reintroducing the MISA in this country. So, the Janata Party is also going to rule this country like Mrs. Indira Gandhi with the help of the MISA. If that is going to be the idea of the Janata Party, my humble submission is this: "Your idea is also like theirs and your days are also numbered then, because the people will not tolerate that." The people are fed up with this kind of detention without trial, this kind of detention through dictatorial methods and this kind of despotism. If they have been against Mrs. Indira Gandhi, they will be against the despotism of Mr. Charan Singh or Morarjibhai or the despotism of 'X' or 'Y'.

SHRI KALP NATH RAI: Mr. Charan Singh.

SHRI VISWANATHA MENON: Why are you so much anxious about Mr. Charan Singh? I do not see any difference. If Mr. Morarji Desai opposes this MISA will not be there. So, I put both of them together. I do not try to distinguish between them as Mr. Bhupesh Gupta does, when he says that Mrs. Indira Gandhi is progressive, but Mr. Sanjay Gandhi is a CIA man. I do not agree with these things. Whether it is Mr. George Fernandes or whether it is Mr. Charan Singh or whether it is Mr. Morarji Desai, this is the Government and with their consent only this Bill has come before us. We cannot allow such MISA to be re-enacted and such powers to be given to this Government. When they fought the election, they promised that they would

repeal the MISA. My humble submission is that if the Janata Party wants to do justice to the people, it should act according to its preachings during the elections. They must act according to the promises, and not act according to the whims and fancies of Shrimati Indira Gandhi and their stooges.

श्री नत्थी सिंह (राजस्थान) : उपसभाध्यक्ष महोदय, इस बिल का समर्थन करते हुए मुझे इस बात की खुशी है कि मानस बदला हुआ लगता है। मेरा ही नहीं आपका भी। . . .
(Interruptions)

श्री कल्पनाथ राय : आप भी तो थे उस वक्त। . . . (Interruptions)

श्री नत्थी सिंह : मानस इसलिए बदल रहा है कि यहां यह विवाद आज भी है, उससे पहले भी विवाद था कि सौवराइन कौन है? सार्वभौम सत्ता किसमें है? सार्वभौम सत्ता के लिए जो लड़ाई की बात हो रही थी वहां जनता ने तय कर दी और जनता ने तय कर दिया कि सार्वभौम सत्ता किसी में नहीं स्वयं जनता में निहित है। उसका अब नतीजा हमें देखने को मिला और वह नतीजा यह मिला कि वह लोग जिन्होंने हिमायत की थी, जिन्होंने पास किया था इस कानून को वह भी आज कह रहे हैं कि इसके कुछ प्रावधानों को दूर करने में हम सहयोग करेंगे, अपने पुराने पापों को हम धो रहे हैं और नए तरीके से शुद्धीकरण करके इसमें साथ दे रहे हैं। इसलिए आज स्थिति यह है कि इस सदन में यह विधान सर्व-सम्मति से पारित किया जाएगा। मैं कहना चाहता हूं कि यहां पर जो दूसरी बात और कही गई है और बड़े जोर के साथ कही गई कि पूरा का पूरा 42वां संविधान संशोधन विधेयक को मनसूख करने के लिए एक लाइन का बिल लाना चाहिए था। उसको हमारे कानून मंत्री जी नहीं लाए तो उन्होंने बहुत ही ज्यादा कुछ समझौते वाली नीति अपना ली है, ऐसा कहा जा रहा है। मैं समझता हूं कि यह बात सही नहीं है। सही बात जो हो

उसको लाना चाहिए और कोशिश करनी चाहिए कि पूरा का पूरा जो प्रियेंबुल में है, अगर प्रियेंबुल में 'समाजवाद' शब्द जोड़ दिया है तो उसको हटाने से कोई फायदा नहीं, लेकिन उसमें जो दूसरी चीजें हैं उनको दूर करना चाहिए। जैसे अभी धारा 226 है। मैंने उस वक्त भी कहा था कि इधर बैठने वालों को उधर बैठना पड़ सकता है। तब उन्हें महसूस होगा कि ब्यूरोक्रेसी की तानाशाही क्या होती है। राजनीतिक तानाशाही होती है, लेकिन ब्यूरोक्रेसी की तानाशाही का सबसे ज्यादा हृदयंगम करना पड़ता है वह विरोध में बैठने वालों को करना पड़ता है। मुझे विरोध पक्ष में बैठने का और यहां बैठने का बहुत पुराने जमाने से अनुभव है, इसलिए मैं कहना चाहता हूं यह आपको भी कुछ दिनों में अनुभव होगा। . . . (Interruption)

आपके दिमाग में चरणसिंह जी का भूत सताता है और सपना भी चरणसिंह जी का आता है। मैं आपको चरणसिंह जी का बहुत भारी भवत समझता हूं कि उठते हुए, वाक-आउट करते हुए भी अगर कोई आदमी याद आता है तो केवल चरणसिंह याद आता है। भक्ति की कई तरह की परम्पराएँ हैं, यह परम्परा भी एक है कि भक्ति निन्दा से की जाती है। उसमें कल्पनाथ आते हैं। तो जो ब्यूरोक्रेटिक तानाशाही के लिए आपने 'फार ऐनी अदर परपज' इसमें लिखा हुआ था वह बहुत आवश्यक था। उसको आपने संशोधित कर दिया। मैं समझता हूं कि आगे आपको आप लायेंगे और हाई कोर्ट में जाने का जो पीड़ित व्यक्ति को अधिकार था वह उसको वापस मिलना चाहिए।

यह बात उचित कही गई है, और हमारे माननीय सदस्य ने जो कहा उसमें उन्होंने दो बातें एक साथ कही। एक तो उन्होंने कहा कि सारा का सारा यह 42वां संविधान संशोधन विधेयक दूर करना चाहिए था,

[श्री नत्थो मिह]

निरस्त करना चाहिए था, दूसरे कहां कि रेफरेंडम के लिए पब्लिक के पास जाना चाहिए। आपने सारी पार्टियों से बात की है लेकिन पीपुल से नहीं पूछा। पीपुल ने तो मेंडट दिया, अगर न देंगे तो न इस सदन में न उसमें यह विवाद आता। तो रेफरेंडम की बात इस देश में सम्भव नहीं है संवैधानिक तौर पर।

5 p.m. मैं यह मानता हूं कि किसी भी संविधान को रिजिड नहीं होना चाहिए। निश्चित रूप से संविधान को लचीला होना चाहिए। जब हमारा संविधान लचीला होगा तभी हम इस देश में समाजवादी समाज की स्थापना कर सकेंगे और तभी इस देश से शोषण को समाप्त किया जा सकता है। हमें उन देशों का उदाहरण अपने सामने नहीं रखना चाहिए जिन देशों में संविधान रिजिड है। इसलिए मैं यह स्पष्ट तौर पर कहना चाहता हूं कि हमारे संविधान का लचीलापन बहुत अच्छा है।

हमारे कानून मंत्री जी इस वक्त यहां पर नहीं हैं, लेकिन राज्य मंत्री जी बैठे हुए हैं। मैं कानून मंत्री जी से कहना चाहता हूं कि जब भी हमारे देश में संविधान में कोई संशोधन किया गया, चाहे वह बैंक नेशनलाइजेशन का सवाल हो या कोई दूसरा कानून हो, या प्रिवीपर्स का मामला हो तो तत्काल इनको हाईकोर्ट या सुप्रीम कोर्ट में चैलेंज किया गया। जब भी प्रोपर्टी के राइट के बारे में कोई कानून बनाया गया तो उसको सुप्रीम कोर्ट और हाई कोर्ट में चैलेंज किया गया। मैं जनता पार्टी की सरकार का ध्यान उसके चुनाव घोषणा पत्र की ओर दिलाना चाहता हूं। उसमें कहा गया है कि जनता पार्टी की सरकार संविधान में संशोधन करके मूलभूत अधिकारों से प्रोपर्टी के अधिकार को अलग करके रोजगार देने के अधिकार को संविधान में रखेगी। जनता पार्टी के घोषणा-पत्र में यह

बात स्पष्ट तौर पर कही गई है। इसलिए मैं मंत्री महोदय से यह निवेदन करना चाहता हूं कि जब वे संविधान में संशोधन करने का एक सम्पूर्ण बिल लायें या 42वें संविधान संशोधन के लिए एक पूरा बिल लाएं तो उस वक्त इस बात को भी ध्यान में रखें और हमारी पार्टी के घोषणा-पत्र में जो बातें कही गई हैं उसके अनुसार रोजगार के अधिकार को मूलभूत अधिकारों में रखा जाना चाहिए। मैं समझता हूं कि प्रोपर्टी के अधिकार को हटाकर यदि प्रत्येक नागरिक को काम देने का अधिकार संविधान में शामिल कर लिया जाय तो इसमें किसी को कोई आपत्ति नहीं होगी। यह कहना कि ऐसा करना फिजिकल नहीं है, उचित नहीं जान पड़ता है। हमारा कथनी और करनी में अन्तर नहीं होना चाहिए। पिछली सरकार की कथनी और करनी में बहुत अन्तर था। वह अन्तर अब नहीं रहना चाहिए। अभी शंकर घोष जी ने भी कहा कि प्रापर्टी का राइट नहीं रहना चाहिए। अन्य माननीय सदस्यों ने भी इसी प्रकार की बातें कही हैं। इसलिए मैं यह स्पष्ट तौर पर कहना चाहता हूं कि संविधान में संशोधन करके प्रापर्टी के राइट को हटाया जाना चाहिए और उसके स्थान पर प्रत्येक नागरिक को काम देने का अधिकार संविधान में शामिल किया जाना चाहिए।

एक दूसरी बात मैं यह कहना चाहता हूं कि जब हम संविधान में यह संशोधन करने जा रहे हैं तो हमें दूसरे पहलुओं पर भी ध्यान देना चाहिए। संविधान में संशोधन के सम्बन्ध में पश्चिमी बंगाल के मुख्य मंत्री ने एक चिट्ठी भेजी है जिसमें उन्होंने कहा है कि स्टेट सम्बन्धों की फिर से व्याख्या की जानी चाहिए और राज्यों के अधिकारों को संविधान में स्पष्ट किया जाना चाहिए। अभी जब श्री आर० के० मिश्र बोल रहे थे तो उन्होंने आज के बोट क्लब पर हो रहे जलूस का जिक्र किया और कहा कि यह भी परसनेलेटी कल्ट है। मैं समझता हूं कि यह

परसनेलिटि कल्ट नही है। पहले जमाने में बोटक्लब पर जो जलूस निकला करते थे उनकी स्थिति दूसरी थी। हम तो यह चाहते हैं कि हमारे देश के किसान, जो अब तक संगठित होकर अपनी आवाज क्यों नहीं उठा पाए हैं, वे अब एकता के सूत्र में बंधकर अपनी कठिनाइयों को सरकार के सामने रखें और वे भी अपने अधिकारों के लिए लड़ना सीखें। इस देश के अन्दर अब तक किसानों की तरफ बहुत कम ध्यान दिया गया है...

(Interruption)

श्री कल्प नाथ राय : उत्तर प्रदेश और दूसरे राज्यों में चार हजार वम आज दिल्ली के अन्दर लार्ड गई है। उत्तर प्रदेश की सरकार श्री चरणसिंह के जन्म दिन को मनाने पर करोड़ों रुपया खर्च कर रही है...

(Interruption)

श्री नत्थी सिंह : आप बैठ जाइये। हमारी यह मांग है कि किसानों की अब तक जो उपेक्षा होती रही है वह समाप्त होनी चाहिए। गांवों को महत्व देने के लिए संविधान में संशोधन किया जाना चाहिए। संविधान में जहां राज्यों के अधिकार हैं, वहां गांवों के लिए भी विशेष प्रावधान किया जाना चाहिए। गांवों के आर्थिक विकास की बात को, ग्राम स्वराज्य की बात को और आर्थिक विकेंद्रीकरण की बातों को संविधान में सम्मिलित किया जाना चाहिए। इन्हीं बातों को ध्यान में रख कर दल्ली के अन्दर यह किसान सम्मेलन बुलाया गया है। मैं समझता हूं कि अगर हमारे देश में किसानों को महत्व दिया जाता है तो इसके लिए किसी को गिला नहीं होना चाहिए। कल्पनाथ जी को बिल्कुल नहीं होना चाहिए। उन्हें किसान भी कुलक न आते हैं और बड़े नजर आते हैं। इसलिए मैं कहता हूं कि उन्हें रात के सपने दिन में नजर आ रहे हैं और इसलिए चरणसिंह का भूत कल्पनाथ जी को नजर आ रहा है।

यहां पर वोटिंग गइट्स के बारे में बात उठाई गई है। बड़े दिनों से मांग की जा रही है कि मताधिकार की न्यूनतम आयु 21 वर्ष से घटाकर 18 वर्ष कर दी जाय। जनता-पार्टी के चुनाव घोषणा-पत्र में भी इस बात का जिक्र है। इसलिए मेरा कानून मंत्री जी से निवेदन है कि इसमें इस बात को जोड़ा जाए और अगला संविधान संशोधन विधेयक जब आप लायें तो उसमें निश्चित रूप से इसका प्रावधान होना चाहिए। उसमें मददात की आयु 21 के बजाय 18 रखनी होगी ताकि इस देश के ज्यादा से ज्यादा लोगों को अपने इस अधिकार का इस्तेमाल करने का मौका मिले।

मैं कहना चाहता हूं कि आज यह जो कदम उठाया गया है, यह एक सही कदम है, सही किसानों का कदम है। जैसा कि हमारी कम्युनिस्ट पार्टी के नेता श्री भूपेश गुप्त जी ने कहा कि इस बारे में अधिक से अधिक लोगों के साथ विचार-विमर्श करके, विभिन्न दलों के नेताओं से बातचीत करके, जितनी भी आम सहमति हो सकी है, उसमें यह विल लाया गया है और इससे भी ज्यादा आम सहमति से और बातचीत के द्वारा इस दूसरे विधेयक को लाया जाय। यदि इस पर आम सहमति न भी हो तब भी जितनी व्यवस्था हम कर सकते हैं, जितनी भी धाराओं को संशोधित करने की जरूरत है, उनको निश्चित रूप से संशोधन हेतु लाया जाय और उसके बाद अगर विरोध करते हैं, तो जिसमें प्रभुसत्ता निहित है, वह जनता इसे देखेगी और वह फैसला करेगी, कि उसकी प्रभुसत्ता को कौन चुनौती दे रहा है। इन शब्दों के साथ मैं इस विधेयक का जोरदार समर्थन करता हूं।

*SHRI E. R. KRISHNAN (Tamil Nadu): Mr. Vice-Chairman, Sir, on behalf of All India Anna Dravida Munnetra Kazhagam, I rise to say a few

*English translation. Original speech in Tamil.

[Shri E. R. Krishnan]

words on the Constitution (Forty-Fourth) Amendment Bill.

During the Lok Sabha Elections, i.e. the Sixth General Elections, and during the Elections to the Assemblies of North-Indian States, the Janata Party solemnly assured the people that the 42nd Amendment of the Constitution would be repealed lock, stock and barrel. The President in his Address to both the Houses of Parliament promised that his Government would in the course of the year bring forward a Constitution Amendment Bill which would repeal the 42nd Amendment in its entirety. It is easy to give assurances galore when the Party is not in power. It becomes extremely difficult to implement them after the Party assumes Office. The Union Home Minister who stated that MISA would be repealed is now feeling the necessity for Preventive Detention Act. It is perhaps on account of this Act. It Amendment Bill does not contain any provision for repealing MISA.

The gap between political expediency and conceptual conviction on the part of Janata Government is widening and this Bill is illustrative of that. While 59 Articles of the Constitution were affected by the 42nd Amendment, this Bill concerns itself with only 9 Articles. Is there anything wrong in saying that this Bill is unfortunately the consequence of political convenience.

I would now refer to certain important features of this Bill. It has been stated in the Statement of Objects and Reasons that there have been thousands of constitutional cases affecting the political rights of our citizens pending before our Courts. With a view to ensuring judicial independence and freedom of action for our Judges this Bill has been introduced. In this context, I would like to know why Article 226 of the Constitution has not been brought back to its pristine purity. The Law Minister circulated a statement also in this regard. What has happened to that statement? The

Deputy Leader of Janata Party in the Lok Sabha, Shri Shyamnandan Misra, has taken strong exception to this lapse on the part of the Law Minister. Though our Law Minister is not present here, his colleague the Minister of State should convey the feelings of the House in this regard and get the clarifications in this issue.

It is strange that some Congress Members have spoken in favour of Article 31(D). The former Congress Government introduced this article 31(D) on the apprehension that when the States demand more powers for the purpose of solving the people's problems it might create secessionist tendencies in the country. It must be appreciated that the States are the immediate organisation to look after the needs of the people. Naturally the State Governments must have certain minimum powers. In a democracy there must be freedom for political ideas to thrive through organisations so long as they do not undermine the unity of the nation. It is also the duty of such political parties to awaken the people so that they are able to demand and exercise their inherent and inalienable rights. I extend my wholehearted support to this Bill which repeals Article 31(D) much dreaded by democratic-minded masses of our country.

I am not a lawyer, but I would like to refer to certain apprehensions of my Advocate friends. I demand clarifications from the Law Minister on Section 4 of this Bill, which repeals Article 131(A). Besides, some new provisions have also been incorporated. I am afraid that the ordinary citizen's right to have justice will be circumscribed. There is the common saying that Justice delayed is Justice denied and Justice hurried is Justice buried. The Section 4 needs clarifications from the Law Minister.

I would give a classic instance of how justice is delayed. When Tamil Nadu was under President's rule in 1976 a Special Court under Justice

Samikkannu was constituted to investigate the alleged defamation and misappropriation of Rs. 1.5 crores in wheat scandal by the former D.M.K. Ministers. While the investigation was proceeding, the former Chief Minister Thiru Karunanidhi took the case to Madras High Court on the ground that the Special Court had no jurisdiction to investigate the case, as a Commission under Thiru Venkadhri had been constituted specifically for such purposes. When the Madras High Court dismissed his plea, Thiru Karunanidhi appealed to the Supreme Court against the decision of the High Court. The Supreme Court issued a Stay Order in this case. In the session of the Tamil Nadu Assembly convened some four months back the Venkadhri Commission was dissolved on the expiry of its three-year term through legislation. But, the Supreme Court has not yet vacated its Stay Order. Through this Bill the Supreme Court has been restored to its former glory and I am sure the Supreme Court by exercising its power will vacate the Stay Order immediately enabling the common man to enjoy his right of justice and the criminals to get due punishment.

Sir, it is now nine months that the Janata Party has become the ruling party at the Centre. It is four months that in almost all the Northern States the Janata Governments have been constituted. Yet there is no indication that the Janata Government is going to keep up its plighted word to the people that the 42nd Amendment would be wholly repealed if the Janata Party was returned to power.

Having brought forward this Amending Bill repealing 9 Articles of the Constitution as modified under 42nd Amendment, I am sure that the Janata Government at the Central would bring forward a comprehensive Constitution Amendment Bill in the ensuing Budget Session of Parliament.

Extending my support to the Constitution Amendment Bill on behalf of

my party the All India Anna D.M.K., I conclude my speech.

श्री भोला पासवान शास्त्री (बिहार) :

उपसभाध्यक्ष जी, आज तक संसद् में जितने भी संशोधन हुए हैं उनमें 42वें संशोधन की बड़ी चर्चा देश में रही है। चर्चा ही नहीं बनी हुई है बल्कि इस संशोधन ने देश के जन मानस को उद्वेलित किया था, उद्वेलित ही नहीं कर दिया बल्कि 42 वें संशोधन को एक अपशब्द बना दिया गया था, अपशब्द ही नहीं बना दिया बल्कि एक घृणा का प्रचार किया गया था। लेकिन मैं ऐसा नहीं मानता हूँ। मैं जानता हूँ कि उसमें कई ऐसे अनुच्छेद भी हैं जो कि समाज के काफी हित में हैं। उनको उड़ाया नहीं जा सकता। इसलिए आज जनता सरकार जो इस पर विचार कर रही है जिसने चुनाव के टाईम में या ऐसे अन्य किसी वक्त पर कहा था कि अगर हम ऐसी स्थिति में आये तो 42 वें संशोधन को उड़ा देंगे, यह कोई मामूली बात नहीं है कि इसको उड़ा दिया जाये। आपको हजार बार सोचना पड़ेगा कि इसको उड़ाया जाये या नहीं। 42वें संशोधन में 59 आर्टिकल है और 59 में से आप केवल 10-11 लाये हैं। इसमें भी ऐसे आर्टिकल हैं जिनको उड़ाने के लिए आपकी सरकार को काफी सोचना पड़ेगा। उदाहरण के लिए आर्टिकल 368 में जिसमें कि कांस्टीट्यूशन को अमेंड करने का प्रावधान है उसको अगर आपकी सरकार संशोधित करना चाहेगी तो यह एक सीधी बात नहीं है यह बड़ी टेढ़ी बात है, इस पर काफी सोचना पड़ेगा। जो जनता पार्टी के एम० पी० है इन्होंने कहा था कि इसको मंसूख कर दिया जाये। परन्तु सरकार के सामने एक कठिनाई है क्योंकि सरकार समझती है कि इसमें ऐसे ऐसे आर्टिकल हैं जो वाकई में जनहित में हैं। अगर इनको आप उड़ाये तो आपका स्वागत नहीं होगा क्योंकि जो देश और समाज के परिवर्तन का काम आप चाहते हैं वह इसके बाद नहीं कर सकते और कभी नहीं कर

[श्री भोला पासवान शास्त्री]

सकते। क्यों नहीं कर सकते? क्योंकि हमने जो सुना है कि सुप्रीम कोर्ट में, हाईकोर्ट में या लोअर कोर्ट में जो जज होते हैं वे केवल कानून के इन्टरप्रेटेशन का काम करते हैं, उसके बाद खत्म। और उस इन्टरप्रेटेशन में आप समाज का परिवर्तन नहीं कर सकते। परन्तु 42वें संशोधन की धारा 368 में काफी गुंजाइश है और आप इसके जरिये समाज का परिवर्तन कर सकते हैं। हाईकोर्ट और सुप्रीम कोर्ट के जरिये कभी भी समाज का परिवर्तन नहीं कर सकते हैं। आज तक ऐसा नहीं देखा गया कि वे परिवर्तन कर सकते हैं। जनता की प्रतिनिधि संसद के जरिये भी यह काम कठिन है। आपने इलेक्शन अब जीत लिया है और इस प्रकार आपका काम हो गया है तो यह ठीक नहीं है। मैं आपकी तारीफ करता हूँ कि आपने उन आर्टिकल्स को नोड दिया जो आपके मन के लायक थे। मैं, इसके अलावा, आपकी यह भी तारीफ किये बिना नहीं रहूँगा कि आपने इनका इतना प्रचार किया कि उस समय के रेडियो और अखबार भी पीछे रह गये और जनमानस तक आप पहुंच गये। इसका आपको राजनीतिक लाभ हुआ और पिछले चुनाव के समय जैसा कि हमारे एक मित्र ने कहा कि 42वें संशोधन के चलते इंदिरा जी को हारना पड़ा और लोकसभा में कांग्रेस का बहुमत नष्ट हो गया, सब कुछ हो गया। मैं 42वें संशोधन के बारे में इतना ही जानता हूँ कि उसका जो नैतिक बल था, नैतिक आधार था वह ऐसे कुछ अंगों को निकालने से कमजोर हो गया। इतना मैं मान सकता हूँ। लेकिन सारे के सारे क्लाइ, सारे के सारे आर्टिकल्स खराब हैं, ऐसा कभी नहीं मान सकता हूँ। वह वक्त आएगा—कोई भी सरकार रहे—अगर डेमोक्रेटिक ढंग से प्रजातांत्रिक पद्धति से समाज में परिवर्तन करना है, वह जब सवाल आएगा आर्टिकल 368 का, तब हम सब लोग बहस करेंगे; तब देखेंगे कि

आप क्या करते हैं, कैसे समाज का परिवर्तन करते हैं, जो वादे करके आए हैं कैसे उनको पूरा कर सकते हैं? वह भी सब डेमोक्रेटिक ढंग से। भूपेश बाबू या सी० पी० एम० का रास्ता दूसरा है। उसको मैं समझता हूँ, लेकिन डेमोक्रेटिक ढंग से हिन्दुस्तान के समाज का परिवर्तन आप कीजिए। आर्टिकल 368 को जैसा है तैसा रख कर। सुप्रीम कोर्ट के जज को पावर देकर और हाई कोर्ट को और डिस्ट्रिक्ट कोर्ट को पावर दे कर क्या आप समाज का परिवर्तन कर सकते हैं? नहीं कर सकते हैं। इसलिए मैं इस वक्त इसको छोड़ देता हूँ। मैं इसको टच कर देता हूँ, छू देता हूँ, स्पर्श करता हूँ। इस को आप सोचियेगा।

इसमें कोई शक नहीं बड़े धड़ल्ले से हिन्दुस्तान के संविधान में परिवर्तन होते रहे हैं, संशोधन होते रहे हैं। यह जो संविधान है यह देश का सर्वोच्च कानून है, और देश की आत्मा संविधान में बसती है। इसका इतनी जल्दी जल्दी परिवर्तन, जैसा कि आर्डिनरी ऐक्ट में होता है उसके अमेंड-मेंट होते रहते हैं, वह होना नहीं चाहिये। हम लोग न तो कानून के विशेषज्ञ हैं न संविधान के विशेषज्ञ हैं, छोटे मोटे कार्यकर्ता हैं। जो व्यावहारिक जीवन में हमको कठिनाई होती है हम उसको समझते हैं, उसकी बात को हम कह रहे हैं। उनकी बारीकी में जा नहीं सकते जो कानून में होती है, मैं जानता भी नहीं। लेकिन आज मैं समझता हूँ जो मैं जानता हूँ वह आपके सामने कह रहा हूँ।

यह अभी मौजूदा बिल आया है, संविधान में संशोधन चाहा गया है—10 या 11 अनुच्छेद हैं, इसमें दो हिस्से कर दीजिए। एक तो सबसे जरूरी है जिसका मैं स्वागत करता हूँ—31(घ)—उसका मैं तहे-दिल से स्वागत करता हूँ क्योंकि जिस

वक्त 42वां संशोधन जो था उस पर बहस हो रही थी मैं उसके बारे में अपनी पुरानी स्पीच पढ़ रहा था। उस वक्त मैंने क्या कहा था ? उस में दिया हुआ है मैंने किस तरह उसका खुल कर विरोध किया था, घोर विरोध किया था, कांग्रेस पार्टी में रहते हुए भी, और वह रिफांडेंड है प्रोसीडिंग में, और आज मुझे विशेष खुशी है क्योंकि मैं नैतिक बल अपना ऊंचा महसूस कर रहा हूं कि हमारी पार्टी के वे ही लोग जो उस वक्त में थोड़ी सी कड़वी निगाह से देखने लगे थे, आज सब के सब ने तय कर लिया है कि इस विधेयक को पाम किया जाए। उसमें दो राय नहीं है। उसका मैं स्वागत करता हूं और तहे-दिल से करता हूं। बाकी जो हिस्सा है, उसमें सुप्रीम कोर्ट के पावर और हाईकोर्ट के पावर जिस वक्त ले लिए गए थे वे पावर आप लौटा रहे हैं सुप्रीम कोर्ट के जजेज को, हाईकोर्ट के जजेज को। वे सब पावर उनको मिल जाएंगी। तो वह पहले जैसा काम हो रहा है। अब वह पुरानी स्थिति में चले जाएंगे, 1976 के पहले की स्थिति में चले जाएंगे। इतना ही संशोधन आया है, तो हाईकोर्ट वाले आपकी जरूर तारीफ करेंगे क्योंकि यह भी कहा जा रहा है कि यह सरकार हाईकोर्ट की सरकार है, जजेज की सरकार है, वकील और मुख्तियार की सरकार है। यह लोग कहते हैं, हम नहीं कहते हैं। जो लोक चर्चा है यह भी है कि सरकार जो है यह जनता की सरकार नहीं है, हाईकोर्ट के जजेज, मुख्तियार और बैरिस्टर्स की सरकार है। तो इसलिए आपने जो उनके अख्तियार लिए थे उनके वे अख्तियार आप लौटा रहे हैं, इससे बढ़कर उनके लिए खुशी की बात क्या हो सकती है ? मुकदमें कितनी जल्दी जल्दी फैसले होंगे ? जैसा आपके ला मिनिस्टर ने कहा—वह भगवान जानता है और हम जानते हैं कितने दिनों में जज साद्वब करेंगे? वह तो अपने सिलसिले में चलेंगे। पावर तो पहले आ जाए फिर उसको हम जैसा चाहें अपने मन के मुताबिक इस्तेमाल करेंगे—जैसा हर पावर वालों

का हाल होता है। पब्लिक चिल्ला रही है, उसका जो हाल है वह है ही। पहले सुप्रीम कोर्ट के, हाईकोर्ट के पावर आप लौटा दें इसका हम विरोध नहीं करते हैं लेकिन इस के आगे आप क्या करते हैं यह देखना है। कोई नयी बात नहीं कर रहे हैं। आपको वाहवाही मिल जाएगी न्यायपालिका से। जिस वक्त यह कानून बना रहा था—आपसे कहना चाहता हूं, सदन को भी मालूम होगा—42वें संशोधन पर अगर किसी की तरफ से ज्यादा एटेक हुआ था तो वह न्यायपालिका, वकील मुख्तियार और जजेज की तरफ से हुआ था। वह वोकल क्लास है, वाफी बोलना जानते हैं, बड़ा-चढ़ा कर करना जानते हैं। क्योंकि उनका अधिकार चला गया था, काफी ले लिये गये थे, यह मेरिट की बात नहीं है कि वह कदम ठीक था या नहीं था और मैं उम में जाना भी नहीं चाहता, लेकिन आज जो आप संशोधन लाये हैं, मैं उम्मीद करता था और आप के ला मिनिस्टर ने कहा था आज के संदर्भ में कि गरीबों को हाई कोर्ट में, सुप्रीम कोर्ट में और लोअर कोर्ट्स में जल्दी इंसाफ मिल जायेगा क्योंकि जब वह दिन भर कमाते हैं तो शाम को खाना खा पाते हैं। ऐसा आदमी कोर्ट में कैसे जा पायेगा। आप तो उस कोर्ट्स के प्रोसीजर्स को सुधारिये। अगर हमारे यहां कोई किसी की हत्या करदे तो हम यह मान लेते हैं कि इस को तो यूं ही मरना था। हम उस मामले को लेकर कचहरी नहीं जायेंगे क्योंकि उतना पैसा हमारे पास नहीं होता। कौन हमारी तरफ से कचहरी में गवाही देगा, कौन वकील को पैसा देगा। हम मान लेंगे कि जीवन का अंत इसी तरह होना था। कचहरी में काबलियत तो है लेकिन वहां इंसाफ बिकता है और उस को खरीदने के लिये हम लोगों के पास पैसा नहीं है और समाज के ज्यादा लोग ऐसी ही हालत में हैं। आज आप यहां पर ला मिनिस्टर हैं, कल शायद नहीं रहेंगे। इसलिये इस बात पर भी आप दिमाग लगाइये कि यह समस्या कैसे हल हो। वहां भी जात-पात कैसे दूर हो। वहां की की तूतू—मैंने

[श्री भोला पासवान शास्त्री]

कैसे दूर हो। वहां भी यह है कि फलानी जात का आदमी चीफ जस्टिस नहीं हो सकता, या वह वहां जज नहीं बन सकता, यह बुराई कैसे दूर हो। हम जानते हैं कि यह बात है और वहां भी लोग इससे बरी नहीं हैं। वैसिक स्ट्रक्चर जो देश का है उसमें भले ही न्यायपालिका हो या कार्यपालिका हो या पार्लियामेंट हो, आज सब कही प्रगति की बात होती है, लेकिन जातिवाद से ऊपर उठकर कोई नहीं सोचता। कुछ न कुछ अश सबमें ही इसका होता है। किसी में सोलह आना है, किसी में बारह आना और किसी में आठ आना। पार्लियामेंट भी जात-पात से बाज नहीं आते हैं। अगर न्यायपालिका में उनकी जाति के लोग हैं और उनको प्रमोशन दिया जा सकता है, वह प्रमोशन पा सकते हैं तो वह उनको दिया जाता है। सोचते हैं कि यही सन्तोष है कि दूसरी जाति का आदमी तो नहीं हुआ। हमारी जाति का ही हुआ इससे बढ़कर खराब बात और क्या हो सकती है। मैं जानता हूं एक मजिस्ट्रेट को जो लोअर कोर्ट से गया, पता नहीं कि वह हाई कोर्ट का जज हुआ या नहीं हुआ, लेकिन हाई कोर्ट ने कहा कि नहीं करेंगे। कहा कि देखूं कैसे होता है उसका प्रमोशन। जब हम ही नहीं चाहते। जब न्यायपालिका का यह दृष्टिकोण हो तो कैसे चलेगा। आप उनका दृष्टिकोण बदलिए और उसके पहले आप अपना दृष्टिकोण बदलिए। जब आप अपना दृष्टिकोण बदलेंगे तभी आप दूसरों का दृष्टिकोण बदल सकते हैं। किसी स्टेट का कोई आदमी आ गया तो उसकी कुछ सिफारिश होगी। जनता सरकार में अब हम जरा जरा इस बात को सुनने लगे हैं। पहले की सरकार में तो कुछ हुआ या नहीं हुआ, पता नहीं, लेकिन प्रोपेगेंडा काफी हो गया, लेकिन जनता सरकार में भी अब कुछ फुसफुसाहट होने लगी है।

श्री भोजन नारायण सिंह (बिहार) :
अभी तो साल भर भी नहीं हुआ।

श्री भोला पासवान शास्त्री : अब आगे कौन हवाल होगा इसे ही देखना है। इसीलिए मैं खास कर बोलना चाहता था पिछले संशोधन के समय मैं बोला था। अपनी पार्टी के विरोध में जाकर बोला था और उसे लोगों ने कुछ पसंद नहीं किया था, लेकिन मेरी अपनी धारणा थी कि यही बात ठीक है। आज वह बात सही साबित हुई। आज हमारी पार्टी के लोग क्या करेंगे। हम को पास करेंगे। नय तो यही हुआ है। जो पार्टी का स्टैंड होगा वही होगा और यह तो खुदकुशी वाली बात है। सेल्फ इंपोज्ड हेंगिंग है। पार्टी का निर्णय है तो वोट देना ही पड़ेगा। आपके ला मिनिस्टर साहब ने कहा कि हमको उम्मीद है कि इस सभा में बिना किसी विरोध के कांस्टीट्यूशन अमेंडमेंट बिल पास होगा। लोक सभा में तो एक विरोधी वोट था, लेकिन यहां वह भी नहीं होगा, नहीं होना चाहिये। खैर, वह हो जाएगा, पार्टी का निर्णय है, नेता का निर्णय है, हम लोग करेंगे, इसके लिए आप इतमिनान रखिये। हम इसमें आपको मदद करेंगे लेकिन अगर कांग्रेस पार्टी का राज हो जाता तो यह कभी नहीं होता। यह बात ठीक है। और हमारी गवर्नमेंट रहती तो यह अमेंडमेंट कहां से आता। आता तो यूज्वल कोर्स में आता। आज की तो राजनीतिक भूमिका बदल गई है। आपने उसको कडम कर दिया 42वें अमेंडमेंट को। लेकिन उसका प्रचार आपने किया क्योंकि आप के पास बल था। सिर्फ 42वें संशोधन से कांग्रेस पार्टी नहीं हारी है। और भी कारण थे। हमने कहा कि इसका जो नैतिक आधार था वह कमजोर साबित हुआ। मैं व्यक्तिगत किसी बात को नहीं कहता। इसलिए मैं आपसे कहता हूं कि आपसे बड़ी आशा है हम लोगों को जो सत्ता में नहीं है। हम आपसे लड़ेंगे

फिर देखा जाएगा । हम यह सोच रहे हैं । लेकिन जब तक आप हैं तब तक कुछ करना जाइये । यह बिल न्यायपालिका पर आपका बेस है । मारा बिल मौजूदा संशोधन के ऊपर टिप्पणी करता है 31ख जिसका हम स्वागत करते हैं और तारीफ करते हैं । लेकिन मैं कहना चाहता हूँ कि हाई कोर्ट का बार और जज, जूरिस्ट आप पर हावी हैं । तो वह आपको शैडो कर रहा है । इससे भी बचने की आप कोशिश कीजिए । इससे भी आप बचिएगा । यहां भी सैक्रिटेरिएट में, स्टेट्स की सैक्रिटेरिएट में और पालियामेंट के सैक्रिटेरिएट में गरीबों की पूछ नहीं है तो हाई कोर्ट और सुप्रीम कोर्ट में कानून अदर करता है । यहां भी मैं मान सकता हूँ कि बराबर सतही बात होती है । समाज का जो स्ट्राक है, जहां से हम और आप आते हैं, उसी परिवार का आदमी जज होता है, उसी का आदमी अंग्रेजी पढ़ेगा, उसी का आदमी सैक्रिटेरिएट में जाता है, पालियामेंट सैक्रिटेरिएट में जाता है । उसी से मिनिस्टर, चीफ मिनिस्टर बनते हैं । वही कोर्ट में भी हावी है । पढ़े लिखे लोग रहेंगे तो शासन चलायेंगे । शासन चलाना है, सेवा की बात को उड़ा दी है । सेवा तो मजदूर का शब्द है । आज की दुनिया में सेवा मजदूर है । सेवक जो है वह पागल है, बुद्धू है, मूर्ख है । जो कमा नहीं सका, वह थर्ड क्लास रह गया । लेकिन जो होशियार है, जो कमा सकता है उसकी गाड़ी चलती है, मकान है, उसके बच्चे अंग्रेजी स्कूलों में पढ़ते हैं और अंग्रेजी शिक्षा हिन्दुस्तान से अंग्रेज चले गये, लेकिन अंग्रेजियत तो है ।

(Time bell rings)

कुछ समय हो तो दीजिए । यह चीज है जो कि आपको करनी है । पावर में आप आ गये । जब तक आप मेजरिटी कमांड करते हैं आपको कोई हटाएगा नहीं । आपको मौका मिला है तो 5 वर्ष सेवा

कीजिए यह हमने आपसे कहा । हालांकि हम आपोजिशन में है, कल परसें हम आपको हटाकर बैठ जायें होना तो यह चाहिये, लेकिन उस पोजीशन में नहीं हैं हम । नहीं तो अभी इसी वक्त आपको हटाकर चढ़ कर वहां बैठ जायें । लेकिन उस पोजीशन में नहीं है । लेकिन हम आपसे कहना चाहते हैं कि वह पोजीशन जनता ने आपको दी है । आप अपने बल से नहीं बैठे हैं । तो उस काम को कीजिए तो आपोजिशन का सहयोग मिलेगा । कोई चीज ऐसी नहीं है कि आपका खाली विरोध करे । आपने कहा कि 42वें संविधान संशोधन को साफ उड़ा देंगे लेकिन बहुत सी पार्टियों ने जो आपकी पार्टी को सपोर्ट करते हैं वाक-आउट तक नहीं किया । सी० पी० एम० के माननीय सदस्य श्री विश्वनाथ मेनन कह रहे थे कि वाक-आउट करेंगे । क्या करेंगे यह तो देखना है । लेकिन पांसिंग रेफरेंस के लिए आपको कह देता हूँ ।

इसलिए जो सबसे बड़ी चीज कानून मंत्री के पास है, कानून मंत्री खुद कानून-दां है, रहे हैं, उनसे हम यह उम्मीद करते हैं कि कानून की जगह सुप्रीम कोर्ट, और हाई कोर्ट में भी गरीबों को स्थान मिले, आदर मिले । उनको सम्मान मिले । गरीबों आप हटा नहीं सकते हैं, वह तो दूर की बात है । लेकिन इतना कम से कम करें कि मनुष्य को अच्छी तरह से देखिए, वानावरण शुद्ध बना सकिए तो बड़ा अच्छा है ।

इतना कहकर मैं संविधान संशोधन विधेयक का हृदय में स्वागत करता हूँ ।

SHRI B. V. ABDULLA KOYA (Kerala): Mr. Vice-Chairman, Sir, it is with so much consolation and gratitude that I, on behalf of my party,

[Shri B. V. Abdulla Koya]

the Muslim League, and on my own behalf, rise before you to support the Constitution (Forty-fourth Amendment) Bill.

Sir, I had moved some amendments during the time of the passage of the 42nd Amendment. But unfortunately all those amendments were ignored and negated, using the brute majority of the party in power at that time. My satisfaction could have been better if the present Law Minister had brought in a comprehensive Bill wiping away all those unfortunate clauses in the Bill under controversy. But I look forward for the fulfilment of the cherished desires of the people of India especially those of the minorities.

Sir, the erstwhile Government, while including all sweet and nice words like "secular", "democratic" and "socialist" in the Preamble to the Constitution, had cut at the very roots of these high-sounding words by introducing restrictions on the working of the judiciary of the country both at the High Court and Supreme Court level. I am glad to note that at least some of these impediments have now been removed in the present Amendment.

The main shelter the weaker sections and the minorities had in our Constitution had been taken away by making Fundamental Rights non-justiciable. This was indeed a big blow given against the safeguards and assurances that the minorities had. So also trade union activities had been banned and the religious minorities could not sit together and deliberate on their problems. I am glad to find that these shortcomings have also now been amended by deleting Article 31D which had cut at the protective articles of Fundamental Rights, namely, 14, 19 and 31.

Therefore, I support the amendments wholeheartedly, with a request to the Law Minister to bring a com-

prehensive Bill as promised by him during, at least, the next session itself for undoing all such evils.

Thank you, Sir.

SHRI K. S. MALLE GOWDA (Karnataka): Sir, I rise to welcome most heartily this Bill. This Constitution (Forty-fourth Amendment) Bill is sought to undo part of the mischief and harm done to democracy by the 42nd Amendment.

Sir, I opposed the harmful and undemocratic provisions of the 42nd Amendment Bill when it was introduced in this House last year. Speaking on that occasion I said that the then Law Minister was ill-serving the docile people of this country, ill-serving the former Prime Minister with his Bill. And within about 200 days after that, a great revolution—a bloodless revolution—through the ballot box swept this country. His Bill, in a way, agitated the minds of the thinking people of India and contributed to that revolution. He fell, his leader fell and his party fell from power.

These events of the last 400 days in India have proved to humanity that truth only lasts, that justice must be the bedrock of rulership and that the democratic spirit in man is indestructible.

The then Law Minister called the 42nd Amendment a historic Bill. Yes, it proved historic in the sense that it paved the way for the return of democracy in India, and the democratic spirit of the Indian voter had also its impact on the voter in Ceylon in the last election there.

Sir, lure of power can become the curse of man. Lure of power can reduce virtues to evils in man and reduce giants of men to dwarfs. Those of us who heard that soft-spoken, persuasive Mr. Swaran Singh, cannot understand why he accepted the chairmanship of the Committee on the 42nd Amendment Bill and persuaded

himself to cheat the docile people of India of their happiness and peace founded on justice, *dharma* and human rights.

I feel that this nation cannot wholly blame the former Prime Minister for the 42nd Amendment Bill or the emergency. The people of India can see that senior Congress leaders who did not follow the dictates of their conscience and had not the courage to advise the former Prime Minister against adopting those sinister measures are also to blame in a big way.

Sir, nine months, or even one year, is too short a time to judge the performance of a new Government with many an inexperienced Minister in the Central and State Ministries. But the new Janata Government has restored the fundamental human freedoms. This fulfilment of a solemn promise in itself is a very great contribution to the chapter of human rights in world history.

Sir, the Constitution 44th Amendment is not complete in itself to undo all the harm that could have been done by the 42nd Amendment to our people. We fondly hope that a comprehensive Amendment Bill will be introduced in the next session.

Studying the human nature, the evil lure of power which makes man to hold on to power at all costs, I would urge on the Prime Minister and the Janata Party to restrict the number of terms a person can hold, the offices of President, Prime Minister and Chief Minister, to two, so that a Prime Minister or a Chief Minister concentrates on governing well instead of indulging in manoeuvring, stage-managing and corrupt practices to hold on to power, causing incalculable harm to peaceful living of the people in the country. We have been seeing such manoeuvres for long enough to girdle ourselves to give less scope for such selfish activities in the best interests of ensuring good Government of the people, by the

people and for the people, not only in name but also in reality.

Thank you, Sir.

SHRI SHYAM LAL YADAV (Uttar Pradesh): Sir, with your permission, I would move for closure because the House has already discussed the matter at great length and all parties have given their views; and also it is getting very late and the voting process will also take a long time. So, if you agree, I would move for Closure.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): I put it to the House.

SOME HON. MEMBERS: Yes.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Now it has been agreed that we close the discussion on this and start fresh consideration of the Bill. I call the Minister.

SHRI SHANTI BHUSHAN: Mr. Vice-Chairman, Sir, it is my very pleasant duty to thank each and every hon. Member of this House for his whole-hearted support to this Bill. Now, Sir, I can see, quite apart from the speeches which have been made by my hon. friends, their great anxiety to pass this Bill, to get rid of those provisions which were not in the interest of the people, as soon as possible, and they are impatient even for the few minutes which I am likely to take. I quite appreciate it because I myself do not want to take time except for profusely thanking each and every Member. But I am told that I must take a few minutes for something else... (Interruptions). I am not blaming anybody. I think I have not expressed myself.

श्री कल्पनाथ राय : उप सभाध्यक्ष महोदय, हमारे कोअपरेशन का उल्टा अर्थ लगाया जा रहा है :

SHRI D. P. SINGH (Bihar): We will walk out and won't vote... (Interruptions).

SHRI SHANTI BHUSHAN: You have misunderstood me, Mr. D. P. Singh... (Interruptions).

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Please sit down, Mr. Kalp Nath Rai.

SHRI D. P. SINGH: This is unwarranted. This is unfair.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): He will explain. Please sit down.

SHRI SHANTI BHUSHAN: Would you please let me know what I have said? I will make ample amends if you just allow me to say what I have said. Please do not misunderstand me.

SHRI D. P. SINGH: Why did you condemn us?

SHRI SHANTI BHUSHAN: Where have I condemned anybody? In fact, I am trying to thank profusely each and every Hon. Member for the support they have given to the Bill.

SHRI V. P. DUTT (Nominated): Let us have some sense of humour. Let all of us on both the sides calm down.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): You please continue. Let us not have this controversy. Let us pass the Bill.

SHRI SHANTI BHUSHAN: I wanted to thank all the Hon. Members very profusely for the support they have given to the provisions of this Bill. I wanted to deal only with a few points which have been made by one Hon. Member Shri Vyas. (Interruptions).

SHRI SRIMAN PRAFULLA GOSWAMI (Assam): We have heard you at the introductory stage. Now let us put it to vote.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): He did not mean anything. He is

thanking for your co-operation. I request the Hon. Members to sit down. Let him finish his reply.

SHRI SHANTI BHUSHAN: I do not know what was the word which I used which even remotely would have been treated as disrespectful to any Hon. Member. I wanted somebody to tell me.

श्री रामानन्द यादव (बिहार) :
आपने कहा कि... (Interruptions)...यह
आपको मालेम होना चाहिए।

SHRI SHANTI BHUSHAN: I said that all the Hon. Members are anxious, but since the voting could not take place immediately, I had to speak.

SHRIMATI HAMIDA HABIBULLAH (Uttar Pradesh): You want us to co-operate, and you are using such expressions.

श्री कल्पनाथ राय : वोटिंग कराइये, वहाँ
पर बहस मत कीजिए।

SHRI SHANTI BHUSHAN: I am very sorry. I have already said, I am extremely sorry if my words have been misunderstood by anybody. But, I have not been able to understand. I am still not conscious of a single word I have uttered since I stood only to profusely thank the hon. Members.

SHRI BHUPESH GUPTA: When the Hon. Members are agitated, there is some reason for it. It would be better for you to express regret.

SHRI SHANTI BHUSHAN: I have already expressed regrets even without knowing what I have said. I do not want to have any sort of reservation about it.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Honourable Members, he says that he has expressed his regrets and he has thanked you for all the co-operation. Let us get on and finish the Bill.

SHRI K. K. MADHAVAN (Kerala):
I am not a party to the sin.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Mr. Minister, please pursue.

SHRI SHANTI BHUSHAN: The Hon. Member, Dr. Vyas expressed some reservation about deletion of Article 31D. I can very well appreciate his anxiety. So far as the banning of anti-national activities are concerned, it is a very desirable objective. I fully accept his sentiments, the feelings, with which he made his observations. But, may I say that even without Article 31D, the Constitution gives ample powers to prevent any anti-national activity or any anti-people activity from any quarter. So far as the Constitution is concerned, a provision like Article 31D was not at all needed for the purpose of preventing any anti-national activity of any kind or any anti-people activity of any kind from any quarters. So far as Article 31D is concerned, it contains powers of imposing reasonable restrictions on a person's freedom in the interest of various things, which is a desirable objective. If a blanket power is given to any authority, howsoever high it may be, it can impose unreasonable restrictions, it can have an unequal law and it can enact a discriminatory law contravening Article 14, namely, a law which cannot be capable of being tested on the touchstone of Article 14 and Article 19 etc. Would it not be possible for a party having a majority in the legislature to say, all right, the law will ban such and such parties and so on? Now it cannot be tested on the basis of Article 14, and it may be discriminatory. It may ban such political parties which may not suit the ruling political party and so on, and the law may be found to be very unreasonable, with the result that it will come in the way of the exercise of the reasonable political rights of the people, and so on. Then, the anxiety is that if Article 31D remains, it can be used for stifling political dissent. In a free atmosphere, in a democratic country, it is not desirable to stifle political dissent. The

powers which the original Constitution gave are quite sufficient to deal with any kind of anti-people or anti-national activities. With these words I would like to appreciate the sentiment behind the speech of the honourable Shri Vyas when he said that this was the spirit with which he thought Article 31D had been enacted. He also said that so far as the provision giving exclusive power to the Supreme Court so far as questioning the validity of any Central law was concerned, he felt that after all, ultimately it is the Supreme Court which has to decide and therefore, why it was necessary to give the power to the High Court; it leads to multiplicity. First a person has to go to the High Court, engage a counsel there, and from there he has to come to the Supreme Court, and so on.

[Mr. Deputy Chairman in the Chair]

May I say that so far writ petitions are concerned, in the case of a writ petition which challenges the validity of a law and yet does not complain of infringement of any fundamental right, a person cannot go directly to the Supreme Court. Even today, even after the Forty-Second Amendment the man had to go to the High Court first with his writ petition under Article 226 and if under that Article 226 any Central law which, as I said earlier, was not confined merely to a legislation which included rules also, which included the various notifications also, was challenged, then after the matter was there in the High Court, the High Court could not decide the matter, the High Court had to make a reference to the Supreme Court. So, after first going to the High Court, the man had to come to the Supreme Court. After getting a decision on those points the case had again to come back to the High Court and the man had to engage a pleader again to plead the rest of the points in the High Court itself, with the result that it did put a very heavy strain on the litigant and virtually it prevented him from challenging the various notifications, the various

[Shri Shanti Bhushan]

rules, etc. without incurring a lot of expense. Then, the honourable Member also said that as it is, all these provisions of challenging various notifications, rules, orders, etc. are really provisions which are only for the benefit of the rich people because, as it is, a poor man, even if he does not have to go to the Supreme Court, cannot get justice in the High Court even, and it is very expensive. I entirely appreciate the sentiment behind this kind of observation. But I would like to tell him with the utmost humility that my experience has been that while the Supreme Court is extremely expensive for everybody, in the High Court it is possible. I know that the rich people can afford to engage counsel and can afford to have litigation and they manage to spend huge amounts in engaging advocates, etc. in the High Court also. But it is possible for a poor man, even without the expenditure of a large amount of money, in many cases, to secure justice from the High Court. I know from personal experience when poor people have successfully challenged very important pieces of legislation in the High Court by confining their total expenses even well below Rs. 100/-. I have been a party to many such cases. I fought on behalf of many poor people whose total expenditure in the case in the High Court was just about Rs. 60 or Rs. 70 or Rs. 80. Poor people have been able to get successfully challenged not only rules and notifications but even legislations and the High Courts have struck down various pieces of legislation at the instance of the poor people. There are many lawyers in the High Courts. Every able lawyer, every competent lawyer, is not expensive. There may be some, but I am very happy to say that in the legal profession there are many public spirited people who are prepared to offer their services entirely free of fee. There are some who are otherwise, but I am happy and I hope that the tribe of those public spirited lawyers will keep on increasing as

the people of India become more and more conscious of their rights, as respect in the society is established, as new values are established, as the old Indian values are re-established in the society. I hope respect will be given to a person not on the basis of the wealth he has or on account of the affluence he can show off, but on account of the moral and intellectual qualities or the qualities of service he has. In this, I am sure even the legal profession will not be found wanting or lacking. A new atmosphere will be generated in which more and more senior lawyers will be forthcoming to give assistance to the justified causes of the poor people. Quite apart from that, I am very happy that there are several junior lawyers who are second to none so far as ability is concerned. There are juniors who though with a few years' experience, are very bright and able and they also come forward to help the poor people so that on many occasions even the poor people are able to get justice from the High Courts.

Something was also said to justify the two-thirds majority. I need not elaborate the arguments which I have already advanced. These days I have been trying

[Mr. Chairman in the Chair]

to say that lawyers should be very brief. Therefore, I should not merely preach it for others, but should act on it myself. With these words, may I once again express my most unreserved and very grateful thanks to each and every Member of this House for the unreserved support which they have given to this Bill, and commend the Bill for the consideration of the House?

MR. CHAIRMAN: The question is:

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

The House divided.

MR. CHAIRMAN: Ayes—134; Noes—Nil.

AYES—134

Abid, Shri Kasim Ali
 Advani, Shri Lal K.
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anandam, Shri M.
 Asthana, Shri K. B.
 Baleshwar Dayal, Shri
 Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharial
 Barman, Shri Prasenjit
 Bhagwan Din, Shri
 Bhagawati, Shri B. C.
 Bhandari, Shri Sunder Singh
 Bhardwaj, Shri Jagan Nath
 Bhola Prasad, Shri
 Bhupinder Singh, Shri
 Bisi, Shri Pramatha Nath
 Bose, Shrimati Pratima
 Buragohain, Shri Nabin Chandra
 Chaurasia, Shri Shivdayal Singh
 Choudhury, Shri Nripati Ranjan
 Chowdhri, Shri A. S.
 Chundawat, Shrimati Lakshmi Kumari
 Daphtary, Shri C. K.
 Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhabe, Shri S. W.
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Ghose, Shri Sankar
 Goswami, Shri Sriman Prafulla
 Gowda, Shri K. S. Malle
 Gowda, Shri U. K. Lakshmana

Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Shyamlal
 Habibullah, Shrimati Hamida
 Hansda, Shri Phanindra Nath
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Kadershah, Shri M.
 Kamalanathan, Shri M.
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shrimati Ushi
 Kripalani, Shri Krishna
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Krishnaswamy, Shri K. A.
 Kumbhare, Shri N. H.
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahapatro, Shri Lakshmana
 Majhi, Shri C. P.
 Malaviya, Shri Harsh Deo
 Maran, Shri Murasoli
 Mehrotra, Shri Prakash
 Mehta, Shri Om
 Menon, Shri Viswanatha
 Mhaisekar, Shri Govindrao Ram-
 chandra
 Mirdha, Shri Ram Niwas
 Misra, Shri Lokanath
 Mishra, Shri Mahendra Mohan
 Mishra, Shri Rishi Kumar
 Mukhopadhyay, Shrimati Purabi
 Munda, Shri Bhaiya Ram
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri

Natarajan, Shri C. D.
 Nathi Singh, Shri
 Panda, Shri Brahmananda
 Papireddi, Shri Bezawada
 Parashar, Shri Vinaykumar Ramlal
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Pathak, Shri Ananda
 Patil, Shri Veerendra
 Pawar, Shri D. Y.
 Pradhan, Shri Patitpaban
 Pradhan, Shrimati Saraswati
 Prem Manohar, Shri
 Punnaiah, Shri Kota
 Raha, Shri Sanat Kumar
 Rai, Shri Kalp Nath
 Rajan, Shri Pattiam
 Ranbir Singh, Shri
 Ranga, Shri N. G.
 Rao, Shrimati Rathnabai Sreenivasa
 Ratan Kumari, Shrimati
 Razack, Shrimati Noorjehan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Roshan Lal, Shri
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
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 Saring, Shri Leonard Soloman
 Sethi, Shri P. C.
 Shah, Shri Viren J.
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Kishan Lal
 Shyamkumari Devi, Shrimati
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shri Irengbam Tompok
 Singh, Shrimati Jahanara Jaipal
 Singh, Shri Mahendra Bahadur
 Sinha, Dr. Ramkripal
 Sisodia, Shri Sawaisingh

Soni, Shrimati Ambika
 Tanvir, Shri Habib
 Thakur, Shri Gunanand
 Tiwari, Shri Shankarlal
 Tripathi, Shri Kamalapati
 Trivedi, Shri H. M.
 Vaishampayan, Shri S. K.
 Varma, Shri Mahadeo Prasad
 Verma, Shri Shrikant
 Vyas, Dr. M. R.
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lal
 NOES—Nil.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

MR. CHAIRMAN: We shall now take up the clause-by clause consideration of the Bill.

There are no amendments to any of the clauses of the Bill. If there is no objection and if the House agrees, I will take up clauses 2 to 11 and put them together to the vote of the House. Thereafter, I will put clause 1, the Enacting Formula and the Title to vote. Agreed?

HON. MEMBERS: Yes.

MR. CHAIRMAN: The question is:

"That clauses 2 to 11 stand part of the Bill."

The House divided.

MR. CHAIRMAN: Ayes—133; Noes—Nil.

AYES—133

Abid, Shri Kasim Ali
 Advani, Shri Lal K.
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anandam, Shri M.
 Asthana, Shri K. B.

Baleshwar Dayal, Shri
 Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharlal
 Barman, Shri Prasenjit
 Bhagwan Din, Shri
 Bhagawati, Shri B. C.
 Bhandari, Shri Sunder Singh
 Bhardwaj, Shri Jagan Nath
 Bhola Prasad, Shri
 Bisi, Shri Pramatha Nath
 Bose, Shrimati Pratima
 Buragohain, Shri Nabin Chandra
 Chaurasia, Shri Shivdayal Singh
 Choudhury, Shri Nripati Ranjan
 Chowdhri, Shri A. S.
 Chundawat, Shrimati Lakshmi Kumari
 Daphtary, Shri C. K.
 Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhabe, Shri S. W.
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Ghose, Shri Sankar
 Goswami, Shri Sriman Prafulla
 Gowda, Shri K. S. Malle
 Gowda, Shri U. K. Lakshmana
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Shyamlal
 Habibullah, Shrimati Hamida
 Hansda, Shri Phanindra Nath
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Kadershah, Shri M.
 Kamalanathan, Shri M.

Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shrimati Ushi
 Kripalani, Shri Krishna
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Krishnaswamy, Shri K. A.
 Kumbhare, Shri N. H.
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahapatro, Shri Lakshmana
 Majhi, Shri C. P.
 Malaviya, Shri Harsh Deo
 Maran, Shri Murasoli
 Mehrotra, Shri Prakash
 Mehta, Shri Om
 Menon, Shri Viswanatha
 Mhaisekar, Shri Govindrao Ram-
 chandra
 Mirdha, Shri Ram Niwas
 Misra, Shri Lokanath
 Mishra, Shri Mahendra Mohan
 Mishra, Shri Rishi Kumar
 Mukhopadhyay, Shrimati Purabi
 Munda, Shri Bhaiya Ram
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Natarajan, Shri C. D.
 Nathi Singh, Shri
 Panda, Shri Brahmananda
 Papireddi, Shri Bezawada
 Parashar, Shri Vinaykumar Ramlal
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Pathak, Shri Ananda
 Patil, Shri Veerendra
 Pawar, Shri D. Y.
 Pradhan, Shri Patitpaban

Pradhan, Shrimati Saraswati
 Prem Manohar, Shri
 Punnaiah, Shri Kota
 Raha, Shri Sanat Kumar
 Rai, Shri Kalp Nath
 Rajan, Shri Pattiam
 Ranbir Singh, Shri
 Ranga, Shri N. G.
 Rao, Shrimati Rathnabai Sreenivasa
 Ratan Kumari, Shrimati
 Razack, Shrimati Noorjehan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Roshan Lal, Shri
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
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 Sethi, Shri P. C.
 Shah, Shri Viren J.
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Kishan Lal
 Shyamkumari Devi, Shrimati
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shri Irengbam Tompok
 Singh, Shrimati Jahanara Jaipal
 Singh, Shri Mahendra Bahadur
 Sinha, Dr. Ramkripal
 Sisodia, Shri Sawaisingh
 Soni, Shrimati Ambika
 Tanvir, Shri Habib
 Thakur, Shri Gunanand
 Tiwari, Shri Shankarlal
 Tripathi, Shri Kamlapati
 Trivedi, Shri H. M.
 Vaishampayan, Shri S. K.
 Varma, Shri Mahadeo Prasad
 Verma, Shri Shrikant
 Vyas, Dr. M. R.
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lal

NOES—Nil.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clauses 2 to 11 were added to the Bill. . .

MR. CHAIRMAN: The question is:

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The House divided .

MR. CHAIRMAN: Ayes—134; Noes—Nil.

AYES—134

Abid, Shri Kasim Ali
 Advani, Shri Lal K.
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anandam, Shri M.
 Asthana, Shri K. B.
 Baleshwar Dayal, Shri
 Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharlal
 Barman, Shri Prasenjit
 Bhagwan Din, Shri
 Bhagawati, Shri B. C.
 Bhandari, Shri Sunder Singh
 Bhardwaj, Shri Jagan Nath
 Bhola Prasad, Shri
 Bhupinder Singh, Shri
 Bisi, Shri Pramatha Nath
 Bose, Shrimati Pratima
 Buragohain, Shri Nabin Chandra
 Chaurasia, Shri Shivdayal Singh
 Choudhury, Shri Nripati Ranjan
 Chowdhri, Shri A. S.
 Chundawat, Shrimati Lakshmi Kumari
 Daphtary, Shri C. K.

Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhabe, Shri S. W.
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Ghose, Shri Sankar
 Goswami, Shri Sriman Prafulka
 Gowda, Shri K. S. Malle
 Gowda, Shri U. K. Lakshmana
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Shyamlal
 Habibullah, Shrimati Hamida
 Hansda, Shri Phanindra Nath
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Kadershah, Shri M.
 Kamalanathan, Shri M.
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shrimati Ushi
 Kripalani, Shri Krishna
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Krishnaswamy, Shri K. A.
 Kumbhare, Shri N. H.
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahapatro, Shri Lakshmana
 Majhi, Shri C. P.
 Malaviya, Shri Harsh Deo
 Maran, Shri Mursoli
 Mehrotra, Shri Prakash
 Mehta, Shri Om

Menon, Shri Viswanatha
 Mhaisekar, Shri Govindrao Ram-
 chandra
 Mirdha, Shri Ram Niwas
 Misra, Shri Lokanath
 Mishra, Shri Mahendra Mohan
 Mishra, Shri Rishi Kumar
 Mukhopadhyay, Shrimati Purabi
 Munda, Shri Bhaiya Ram
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Natarajan, Shri C. D.
 Nathi Singh, Shri
 Panda, Shri Brahmananda
 Papireddi, Shri Bezawada
 Parashar, Shri Vinaykumar Ramlal
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Pathak, Shri Ananda
 Patil, Shri Veerendra
 Pawar, Shri D. Y.
 Pradhan, Shri Patitpaban
 Pradhan, Shrimati Saraswati
 Prem Manohar, Shri
 Punnaiah, Shri Kota
 Raha, Shri Sanat Kumar
 Rai, Shri Kalp Nath
 Rajan, Shri Pattiam
 Ranbir Singh, Shri
 Ranga, Shri N. G.
 Rao, Shrimati Rathnabai Sreenivasa
 Ratan Kumari, Shrimati
 Razack, Shrimati Noorjehan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Roshan Lal, Shri
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
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 Saring, Shri Leonard Solomon
 Sethi, Shri P. C.

Shah, Shri Viren J.
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Kishan Lal
 Shyamkumari Devi, Shrimati
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shri Irengbam Tompok
 Singh, Shrimati Jahanara Jaipal
 Singh, Shri Mahendra Bahadur
 Sinha, Dr. Ramkripal
 Sisodia Shri Sawaisingh
 Soni, Shrimati Ambika
 Tanvir, Shri Habib
 Thakur, Shri Gunanand
 Tiwari, Shri Shankarlal
 Tripathi, Shri Kamalapati
 Trivedi, Shri H. M.
 Vaishampayan, Shri S. K.
 Varma, Shri Mahadeo Prasad
 Verma, Shri Shrikant
 Vyas, Dr. M. R.
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lal

NOES—Nil.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SHANTI BHUSHAN: Sir, I beg to move;

The question was proposed.

SHRI B. N. BANERJEE (Nominated): Sir, at the Third Reading stage also, you may allow Members...
(Interruptions)

MR. CHAIRMAN: Now, I am putting the question.

The question is:

"That the Bill be passed."

The House divided.

Mr CHAIRMAN: Ayes—134; Noes—Nil.

AYES—134

Abid, Shri Kasim Ali
 Advani, Shri Lal K.
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anandam, Shri M.
 Asthana, Shri K. B.
 Baleshwar Dayal, Shri
 Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharlal
 Barman, Shri Prasenjit
 Bhagwan Din, Shri
 Bhagawati, Shri B. C.
 Bhandari, Shri Sunder Singh
 Bhardwaj, Shri Jagan Nath
 Bhola Prasad, Shri
 Bhupinder Singh, Shri
 Bisi, Shri Pramatha Nath
 Bose, Shrimati Pratima
 Buragohain, Shri Nabin Chandra
 Chaurasia, Shri Shivdayal Singh
 Choudhury, Shri Nripati Ranjan
 Chowdhri, Shri A. S.
 Chundawat, Shrimati Lakshmi Kumari
 Daphtary, Shri C. K.
 Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhabe, Shri S. W.
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Ghose, Shri Sankar
 Goswami, Shri Sriman Prafulla

Gowda, Shri K. S. Malle
 Gowda, Shri U. K. Lakshmana
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Shyamlal
 Habibullah, Shrimati Hamida
 Hansda, Shri Phanindra Nath
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Kadershah, Shri M
 Kamalanathan, Shri M.
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shrimati Ushi
 Kripalani, Shri Krishna
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Krishnaswamy, Shri K. A.
 Kumbhare, Shri N. H.
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahapatro, Shri Lakshmana
 Majhi, Shri C. P.
 Malaviya, Shri Harsh Deo
 Maran, Shri Murasoli
 Mehrotra, Shri Prakash
 Mehta, Shri Om
 Menon, Shri Viswanatha
 Mhaisekar, Shri Govindrao Ram-
 chandra
 Mirdha, Shri Ram Niwas
 Misra, Shri Lokanath
 Mishra, Shri Mahendra Mohan
 Mishra, Shri Rishi Kumar
 Mukhopadhyay, Shrimati Purabi
 Munda, Shri Bhैया Ram
 Naik, Shri L. R.

Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Natarajan, Shri C. D.
 Nathi Singh, Shri
 Panda, Shri Brahmananda
 Papireddi, Shri Bezawada
 Parashar, Shri Vinaykumar Ramlal
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Pathak, Shri Ananda
 Patil, Shri Veerendra
 Pawar, Shri D. Y.
 Pradhan, Shri Patitpaban
 Pradhan, Shrimati Saraswati
 Prem Manohar, Shri
 Punnaiah, Shri Kota
 Raha, Shri Sanat Kumar
 Rai, Shri Kaip Nath
 Rajan, Shri Pattiam
 Ranbir Singh, Shri
 Ranga, Shri N. G.
 Rao, Shrimati Rathnabai Sreenivasa
 Ratan Kumari, Shrimati
 Razack, Shrimati Noorjehan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Roshan Lal, Shri
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
 husian A.
 Saring, Shri Leonard Solomon
 Sethi, Shri P. C.
 Shah, Shri Viren J.
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Kishan Lal
 Shyamkumari Devi, Shrimati
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shrimati Jahanara Jaipal

Singh, Shri Mahendra Bahadur
 Sinha, Dr. Ramkripal
 Sisodia, Shri Sawaisingh
 Soni, Shrimati Ambika
 Singh, Shri Irengbam Tompok
 Tanvir, Shri Habib
 Thakur, Shri Gunanand
 Tiwari, Shri Shankarlal
 Tripathi, Shri Kamalapati
 Trivedi, Shri H. M.
 Vaishampayan, Shri S. K.
 Varma, Shri Mahadeo Prasad
 Verma, Shri Shrikant
 Vyas, Dr. M. R.
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lal

NOES—Nil.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

MR. CHAIRMAN: The Bill is passed by the requisite majority.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at fifteen minutes past six of the clock till eleven of the clock on Saturday, the 24th December, 1977.