

## THE CONSTITUTION (AMENDMENT) BILL, 1973

(To amend Articles 124 and 217)

श्री ओउम् प्रकाश त्यागी : (उत्तर प्रदेश) : मैं प्रस्ताव करता हूँ कि भारत के विधान का और संशोधन करने वाले विधेयक को पुरस्थापित करने की अनुमति दी जाये।

*The question was put and the motion was adopted.*

श्री ओउम् प्रकाश त्यागी : मैं विधेयक को पुरस्थापित करता हूँ।

## THE INDUSTRIAL DISPUTES (AMENDMENT) BILL, 1970

(To amend Section 2)

SHRI DWIJENDRALAL SEN GUPTA (West Bengal): Madam, I beg to move:

"That the Bill further to amend the Industrial Disputes Act, 1947, be taken into consideration."

Madam Vice-Chairman, mine is a very simple Bill to protect the interests of workmen who may die in the course of proceedings of a dispute and justice should not be denied on the ground that the workman died. There might be a valid case in favour of a workman but as the present decision of the Supreme Court stands, his case cannot be proceeded with for technical reasons. There the workman is not entitled to any relief and his heirs or successors are not allowed any relief on the ground that no case can be proceeded with in favour of a workman against the employer after the death of the workman concerned. My point is this. Where a cause of action has arisen before the death of a workman, suddenly his entitlement disappears after his death. In the civil courts, such things happen in the name of substitution of the party but there is no such provision in the Industrial Disputes Act. Therefore, to protect the interests of the workman and his heirs or successors after his death, I have introduced this Bill. If Section 2(s) of the Industrial Disputes Act is amended, as suggested in this Bill, then in that way we may overtake the judicial pronouncement that holds the field now in the absence of any such provision.

Madam, the provision that I want to make is not something foreign to the Industrial Disputes Act. Very recently section 33 (1) of the Industrial Disputes Act has been amended to cover the case of a person who might die for the purpose of realisation of a due that is otherwise payable un-

der Chapter 5A of the Industrial Disputes Act or under any award.

THE MINISTER OF LABOUR (SHRI K. V. RAGHUNATHA REDDY): Madam after Shri Bhupesh Gupta's Bill at item No. 3, there are two Bills from Shri Dwijendralal Sen Gupta at items Nos. 4 and 6. May I know which Bill he is referring to?

SHRI DWIJENDRALAL SEN GUPTA: I am reading the Bill which is for today, i.e., Bill No. 34 of 1970. Item No. 4.

Madam Vice-Chairman, section 33(C 11) says that where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter 5A, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of a dead workman, his heirs or assignee, may without prejudice to any other mode of recovery make an application to the Government for the purpose of recovery of money that has been determined either by a settlement or an award of is under Chapter 5A. But, this provision does not apply for a pending dispute, where the dispute is pending because of dismissal, wrongful dismissal, and this provision does not also apply where some benefits like wage increases or increase in dearness allowance is given retrospectively if the man has in the meanwhile died. So, I want to amend section 2(s) of the Industrial Disputes Act, 1947, which is the relevant section, by adding "or in the case of the death of the workman his assignee or heirs" before the proviso. If my Bill is accepted, then the definition of 'workman' in section 2(s) will be like this:

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person . . ."

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Mr. Sen Gupta, will you please clarify one thing? In your name stand two Bills. Both are for the purpose of amending the Industrial Disputes Act, 1947, and both pertain to the amendment of section 2 of the Act. Hence the confusion. So, you withdraw one of these Bills. Which one are you withdrawing?

SHRI DWIJENDRALAL SEN GUPTA: Madam Vice-Chairman, both the Bills pertain to the amendment of section 2(s) of the Industrial Disputes Act but both of them are not for the same purpose. They are for different purposes.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): That means you are now speaking for today's list of Business, item No. 4.

SHRI DWIJENDRALAL SEN GUPTA: That was my impression but I am told by Shri Sriramiji just now that actually that is No. 6.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Please go by today's agenda paper because that is generally our procedure to go by the daily agenda paper. The Minister will please take note of this because this is at No. 4 and he is having both.

SHRI SARDAR AMJAD ALI: I had also the contemplation of this Bill.

SHRI DWIJENDRALAL SEN GUPTA: Madam, this is the Bill, the Objects and Reasons of which say:

"The Supreme Court has held recently in the Indian Hume Pipe case that stoppage of work in a factory or a branch thereof shall also be considered as "closure". On account of this decision, the question whether such closure is *bonafide* or *malafide* cannot now be gone into by an Industrial Tribunal constituted under the Industrial Disputes Act, 1947. But there had been an earlier decision where the Supreme Court had held that "closure" means the stoppage of entire business and any interference with the decision of the management would amount to interference with its fundamental right to start or close down a business. The Supreme Court had also held in another case that *malafide* "closure" is no "closure" in the eyes of law. These decisions of the Supreme Court have thus given rise to a serious anomaly. With a view to remove this anomaly and also keeping in view the interests of labour the term "closure" requires to be precisely defined."

Now, Madam Vice-Chairman, the term "closure" has not been defined. I can refer to the earlier decision of the Supreme Court. There is the Barsi Light Railway's case. The Supreme Court held that the "closure" means total closure, total closure of the business. In the Indian Hume Pipes case the Supreme Court have said: No, even if a branch or a Section is closed, it is a "closure". On the other hand, in the Barsi Light Railway case the Supreme Court said that the management had the fundamental right to open a business and close down a business, it is their choice but when the business continues partially even then fundamental right has no application. Precisely, in case where the business is run,

where the company runs, one cannot proceed in a capricious manner. That was the ratio of that judgment. In the Banaras Ice Factory case, soon thereafter, the Supreme Court said any *malafide* closure is no closure. *Malafide* closure amounts to lock out and the tribunal had inherent jurisdiction to go into the question whether there has been any extraneous consideration in declaring this closure. This was also the position so far as the Banaras Ice Factory case is concerned. This was decided, I have already said, after the Barsi Light Railway case. But the position has since been changed in favour of the employers and very much against the labour in the two cases, the Indian Hume Pipe case and the Kalinga Tubes; as they occur to me. In both these cases the Supreme Court has said that the tribunal cannot go into the question of *bonafide* or *malafide* of 'closure'. The Tribunal will only see whether it is real or not and the employer can even declare closure of a section or a branch. Madam, Vice-Chairman, you know, there is a definition of "lockout" in the Industrial Disputes Act but there is no definition of "closure" in the Industrial Disputes Act.

Very often where an employer intends to declare a 'lock-out' he does not do so; he says I have closed it, it is a case of closure. Under that garb they get the protection of the law that the tribunal cannot go into the question of *bonafide* of 'closure' while the tribunal can go into the question of the propriety, justifiability and the *bona fide* of a lock-out. So, where the employer declares a 'lock-out' he uses the camouflaged language of closure to defeat the purpose. Now, Madam Vice-Chairman, I have only asked for a definition of 'closure' and for that purpose I have said here in the Bill that 'closure' means total and *bonafide* stoppage of an entire industry, including all its branches and subsidiaries by the employer. Otherwise I only go back to the position in the Barsi Light Railway case and the Banaras Ice Factory case. They are also Supreme Court decisions but the subsequent decisions of the Supreme Court are wrong. When the Supreme Court decides something that becomes a law as much as a law passed by Parliament. So the subsequent decisions are illegal. In this connection I would draw the attention of the House that so far as 'closure' is concerned there is a law that without giving two months' notice no employer can declare a 'closure'. But there are sudden closures by employers when they say, we are declaring a 'lock-out' and that is without giving two months' notice. When it suits the employers they say it is a lock-out; when it does not suit them they say it is a closure. For the purpose of putting the law in its

correct perspective here should be a definition of closure. And that is the purpose of this Bill.

The question was proposed.

4 p.m.

SHRI NIREN GHOSH (West Bengal): Madam, Vice-Chairman, in fact I wanted to speak on the preceding Bill. However, I am also interested in this. Madam Vice-Chairman, I support this measure for obvious reasons. It is not only a question of anomaly, it embraces wider questions and the Bill covers only a small part. You are aware that during 1969-70 there were hundreds of cases of lock-outs by the employers. A West Bengal Labour Survey has brought out the fact that the number of mandays lost due to labour trouble works out to some percentage but the number of mandays lost due to lock-out and closure is very high. There is a provision in the Industrial Dispute Act that a State Government even or the Central Government can declare a lock-out illegal and can direct the employer to open the factory. When the employer found that the State Government would not allow sabotage of production by the employer and when it began issuing orders declaring these lock-outs illegal, the employers resorted to this method of closures which are not closures but which are in fact lock-outs.

Now, we have such a funny Constitution and the Treasury Benches and the Congress Party are a party to it. It says Business is my business. Either I can run it or I can wind it up. I can throw the machines into the Ganges or the Jamuna or do whatever I like. This is my sacred Fundamental Right. This is to penalise the workers. There was no question of insolvency overtaking the factories concerned. A recent example. I will point out to the Minister. For six months the Jay Engineering Works closed down. It was a lock-out. The State Government could direct and it wanted to declare it illegal. Everybody knows it is a viable concern and each year it earns Rs 2 or Rs 3 crores.

SHRI DWIJENDRAIAI SEN GUPTA: Madam Vice-Chairman, there is no quorum in the House.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Today is private Members' day.

SHRI NIREN GHOSH: It is true, but since he has called it you should see that quorum is there.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Ring the bell for quorum (*Quorum Bell Rings*). Now, there is quorum.

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SHRI NIREN GHOSH: Mr Chandra Shekhar and Mr Om Mehta should listen. It is an important Bill and you should help to pass it. When they found that the State Government would not allow large-scale sabotage of production by the employers and they could declare the lock-outs illegal under the Industrial Disputes Act, the employers resorted to the practice of declaring closures. As I was saying, the Jay Engineering Works declared closure for six months. There was no question of declaring closure in Jay Engineering Works owned by Shri Shree Ram, one-time President of the Federation of Indian Chambers of Commerce and Industry and one of the influential business tycoons. So, when we pointed out to the Government that it was not a closure but a lock-out under the sign-board of closure only to penalise the workers and urged upon the Government to take it over, this Government had neither the courage to take over the management of the factory, nor could they declare the closure illegal under any provision. They say it is a Fundamental Right. Whether a lock-out under the guise of closure can be justiciable or not, whether the Tribunal or the Labour Court can go into it or not, it is an absolutely urgent question for the workers. This the Congress Party should realise because now there are closures galore and I say that whenever the management declares a closure that factory should be taken over.

And not only that. The closure should be banned. No management should be allowed to declare a closure. Under great pressure from the trade union movement, there was a general strike on this question in my State at least. I do not know about the other States. Ultimately, the Government was forced to come to this stage, to give a little bit of concession only—that they must give two months' notice before they declare a closure. But why should they be allowed the right to close down a factory which is a completely viable undertaking? Either you register your case and go to the court or you liquidate the company altogether and sell out the assets. All viable concerns like Jay Engineering Works, Annapurna Cotton Mill, Sen Raleigh, big concerns like these in my State, they resorted to this tactics because the Congress Party's whole approach and the Constitution framed by them are biased towards the employers. They have that fundamental sacred right but the workers have not. So, under the guise of closure they are resorting to indefinite lock-out prolonging for six months, one year and two years even. And they are being allowed to sabotage the production. They allow it and when we come before the House, they always say,

[Shri Niren Ghosh]

"Oh! the workers have become unruly, undisciplined", this and that. They have not a word of condemnation for the employers. I have not heard it. Whether Mr. Raghunatha Reddy will utter a word of condemnation or not, let me watch and see. But I have been in this House for many years and I have never heard a Central Minister of Labour daring to condemn the acts of sabotage by the employer by declaring a closure.

**SHRI K. V. RAGHUNATHA REDDY:** Which employer?

**SHRI NIREN GHOSH:** So many employers. Annapurna Cotton Mill, Sen Raleigh and then this Jay Engineering Works. What more instance do you want? Do you want more?

**SHRI K. V. RAGHUNATHA REDDY:** No, no. Enough.

**SHRI NIREN GHOSH:** There is National Rubber, Incheck. What more do you want? So, it is a terrific misuse, and the Constitution is guaranteeing this right to the employer to declare a closure. What I plead for is that the closure should be banned. Either they liquidate the concern altogether or let the Government take it over. The closure should be banned. And if you cannot now ban it—because you have not the courage—I will see whether Mr. Raghunatha Reddy can bring forward an amendment to the Constitution banning closure of a concern by an employer. And in the event of closure or notice of closure, the management should immediately be taken over. The Central Congress Government, collectively, can do it because it is the function of the Cabinet. I do not want to point my finger against individuals. Collectively they can do it. I would like to see it. But I know, they will never dare. But at least some way must be found because it is a bourgeois, landlord Constitution, their rights are guaranteed. But the workers' rights are not guaranteed. Under any pretext, however small there may be a defect on their part, it is done. When year after year they go on praying and praying and ultimately when they find no remedy and when at the point of desperation they resort to action, they come and say all sorts of things against the workers. And there are people, such reactionary MPs in the Congress Benches who go on thumping the benches at that time.

That is why I say, if you cannot do it, then there must be a provision at least to determine whether the closure is *mala fide* or not justifiable or not, whether you cannot run the business economically and as a viable unit. And there are two things—either he liquidates it or there should be

the ID Act enforced. The Government must be empowered to go into the case whether it is *mala fide* or not.

And in case of closure being *mala fide* the employer must be subjected to highest punishment of compensation to the workers, compensation for loss of production, sabotage of production and some term of imprisonment in jail. This should be provided. Sir, I know they will never dare take away the right of closure from the employer because their Constitution is in favour of the propertied classes. Therefore, they will never do it. They can talk of taking away the right of the workers to strike. The worker is an unequal partner. The court is their own. Their law is their own. They have the brute majority in Parliament and by hook or by crook they can manipulate things to their advantage. The State Legislatures and the police are completely biased against the down-trodden. I know of cases where on telephone call every police man would come to kneels before the employer and his people. The employer pays Rs. 10,000 or Rs. 15,000 or Rs. 20,000 to the officer in-charge and just on a telephone call they will send their force to rain lathi blows or bullets, if necessary. That is the position. We have experience of innumerable lathi charges during the last 30—35 years. So that is not the point. This is because the worker is an unequal partner. Even if you want to hold the balance, the scales can never be even between the employer and the employee. The entire Government machinery is against the people and in favour of the vested interest. This weapon of closure is being used on a massive scale. They may not be cases of closure, they are lock outs which are liable to be declared illegal but you cannot touch them. The employer by the stroke of his pen will declare closure by just saying "I, so and so, close down my firm on such and such date for an indefinite period". And that is the end of the matter. So the courts must be armed to go into the entire thing and compensation must be paid to the workers. Closure by the employer should be banned if you want to have the minimum peace in the industry, if you want production to go on. If you want to sabotage production then you may reject the Bill, although it falls short of my suggestions. So this provision is absolutely necessary.

Madam, this is a simple Bill. We have cited Supreme Court judgments. In one case it is said that it can be *mala fide* whereas in others it is said that it cannot be gone into. The courts and the Tribunals should have the right to go into every case of closure whether it is *mala fide* or *bona fide*.

And it should award its judgment, punishing the employer and compensating the worker. That is all. That is the absolute minimum that you can do now. Even if you do this in law, I know for certain that in 99 per cent of the cases, the workers would not be able to take advantage of it because they have no power, they have no resources. They cannot fight up to the Supreme Court. How can they? It requires Rs 50,000 or Rs 60,000 or Rs 70,000 from the lower court onwards. I know cases have been hanging before the courts for seven years. I know of one case, the case of Prabhatkar. Now he is the General Secretary of the All India Bank Employees Federation, a recognised body. He was employed in the Lloyd's Bank. He was dismissed for ten years the case went on before the court. Ultimately he got a judgment in his favour after 10 years. It was palpably wrong. But by that time, much water had flown down the Ganges. He gave up the job and took to trade unionism. That is how.

**SHRI DWIJENDRALAL SEN GUPTA**  
He was also a Member of the Lok Sabha

**SHRI NIREN GHOSH** Yes, he was a Member. Now he is not a Member. I cited one specific instance. Even if you allow this, in 99 per cent of the cases, the workers or the union will not be able to take advantage of this absolute minimum which Mr Sen Gupta has proposed. I would have been glad if he had widened the Bill a bit further. He knows all these cases which I have cited. He has enough experience on this score. Any way I see absolutely no reason why this Bill should not be passed or why it should be rejected. If it is passed, you can say that at least where the workers are strong and have some funds, they can agitate before the court and try to get justice. Generally they cannot do it. They should at least have some chance. That is all I want to say.

[The Vice-Chairman (Shri V. B. Raju) in the Chair]

**श्री ओम प्रकाश त्यागी** (उत्तर प्रदेश) उप-सभाध्यक्ष महोदय, यह जो बिल उपस्थित हुआ है यह देश के लिये बहुत ही महत्वपूर्ण है और इसकी भावना का मैं आदर करता हूँ। इसका कारण यह है कि देश की जो प्रगति है वह उत्पादों पर निर्भर करती है और यदि उत्पादन किसी भी दृष्टि से बन्द हो जाय तो फिर देश की आर्थिक राजनितिक और सामाजिक सभी चीजें लड़खड़ा जाती हैं। तो मैं यह कहना चाहता हूँ कि जिस भावना से यह बिल उपस्थित किया गया है, उससे मैं सहमत हूँ। परन्तु साथ ही मैं इसमें एक बात यह देखता हूँ कि चाहे क्लोजर हो या लोक-आउट हो किसी भी तरह से बन्द होना या लोक-आउट होना ये किसी कारणों से होते हैं, अच्छे नहीं हैं। मैं यह मानता हूँ कि अधिकांश व्यापारी एक फैक्ट्री का मालिक इसकी यह चेष्टा रहती है कि वह मजदूरों

से अधिक से अधिक काम ले, उनको कम से कम वेतन दिया जाय और इस तरह से उसकी यह चेष्टा रहती है कि उसको कम पारिश्रमिक दिया जाय। परन्तु एक धारा और भी है जो इस समय देश में चल रही है और जो समस्याएँ उत्पन्न करती हैं। मैं इस सम्बन्ध में अपने बन्धु से जानना चाहूँगा कि एक धारा और भी है और वह यह है कि किसी विशेष लक्ष्य को प्राप्त करने के लिये हम हर जगह पर असतोष उत्पन्न करें, कहीं सतोष न रहे। यानी ये जो दो चीजें हैं वे परस्पर विरोधी हैं कि कहीं किसी भी फैक्ट्री में या किसी भी संस्थान में शान्ति न रहने पाये, क्योंकि विशेष लक्ष्य प्राप्त करना है। मेरा इशारा अपने साम्यवादी बन्धुओं से है, क्योंकि उनमें विशेषता यह है कि अगर किसी देश में कम्युनिस्ट गवर्नमेंट बनानी हो, साम्यवाद का झन्डा फहराना हो तो वहाँ पर असतोष उत्पन्न करो। अगर किसी गाँव में शान्ति है तो वहाँ पंचायत का मेम्बर बन कर वहाँ पर शान्ति भगवें, असतोष उत्पन्न करा ताकि उस देश में कम्युनिस्ट गवर्नमेंट बनाई जा सके तथा उस देश में कम्युनिज्म के आधार पर समाज आर्थिक व्यवस्था को बनाया जा सके। हम एक खूनी क्रान्ति के लिये एक ऐसा एटमास्फियर क्रेट कर सकते हैं कि वहाँ के लोग उस वातावरण में चल सकें। इस तरह का उद्देश्य हमारे कम्युनिस्ट भाइयों का सब जगह रहता है।

मैं उदाहरण के तौर पर एक बात बतलाना चाहता हूँ कि अगर किसी फैक्ट्री में मजदूर अपने कार्य में लगे रहते हैं और जब मजदूरों की आर से अनुचित मांगें रखी जाती हैं काम में रुकावट डाली जाती है तो फिर किस तरह से देश में उत्पादन बढ सकता है और औद्योगिक शान्ति रह सकती है। मैं यह नहीं कहता कि उन्हें अपनी मांग रखने का अधिकार नहीं है। लेकिन आज देश में अधिक से अधिक वेतन और बोनस मांगने का वातावरण बनता जा रहा है। तो मैं यह कहना चाहता हूँ कि अगर फैक्ट्री के मालिक देन की स्थिति में नहीं हैं, फैक्ट्री को चलाने के स्थिति में नहीं है तो ऐसी अवस्था में क्या किया जाय? पिछले दिनों दो उदाहरण हमारे सामने आये। कलकत्ते में जब कम्युनिस्ट गवर्नमेंट थी, तब वहाँ बंगाल में अधिकांश फैक्ट्रियों में ताला लग गया था और उनका काम बन्द रहा।

लाम्बा मजदूर वहाँ पर बेकार हो गए, मजदूरों की भी लाभ नहीं हुआ और राष्ट्रीय उत्पादन को भी बड़ा आघात पहुँचा। मैं नहीं जानता जिन लोगों ने अपने कारखानों को बन्द किया ये मिल-मालिक बड़े ईमानदार और अच्छे थे, लेकिन यह बात भी सत्य है कि मजदूरों की ओर से भी इस प्रकार की मांगें प्रस्तुत हुईं जिनका पालन करना उन मिल मालिकों के लिए असम्भव सा था। उस अवस्था में वे क्या कर सकते थे, जहाँ यह नारा चल जाय कि हमें असन्तोष रखना है। मैं मानता हूँ कि एक श्राद्धमी का इतना तो अधिकार है कि वह किसी काम को शुरू करे या बन्द करे। यह उसका फंडामेंटल राइट है। मैं किसान हूँ, अपने खेत में काम करता हूँ अपनी फसल उगाना हूँ, मैं कारखाना खोलता हूँ, ठीक है, लेकिन उससे दूरे मजदूर भी है, अगर मेरा कारखाना फायदे में नहीं चलता तो मुझे बन्द करने का भी अधिकार हो। लेकिन ऐसे भी उदाहरण हैं जहाँ ठीक काम चल रहा है, लेकिन मजदूरों को जायज मांगें भी पुरी न करने की इच्छा

### श्रम प्रकाश त्यागी

से मिल मालिक बन्द कर देने हैं ताकि मजदूर मजबूर होकर अपने काम पर आए और थोड़ी मजदूरी पर काम करे। मैं एक छोटा सा उदाहरण सेनगुप्त जी के सामने रखूंगा। इंडिया एयर लाइन्स में गवर्नमेंट का आर में लाक-आउट हुआ है। गवर्नमेंट की आर से बार-बार समाचारपत्रों में आता है कि हम कर्मचारियों के हितों के विरुद्ध नहीं हैं परन्तु कर्मचारियों को भी अपने आचरण से नाजायज तरीके से गवर्नमेंट के कन्सर्न को फेल नहीं करना चाहिए, उसमें वेस्टेज आफ टाइम एंड मनी नष्ट होना चाहिए। वेस्टेज आफ टाइम एंड मनी का रोकने के लिए किसी स्थान चाहें गवर्नमेंट या मिल मालिक—जो भी हो—किसी पालिसी को अपनाते हैं और मजदूर स्ट्राइक करते हैं तो ऐसी अवस्था में क्लोजर और लाक-आउट नहीं होगा ता क्या होगा आज हमसे ज्यादा बड़ा उदाहरण हमारे सामने नहीं हो सकता जो इंडियन एयर लाइन्स का चल रहा है। सभी ममझदार आदमी इस बात को समझते हैं कि आवरटाइम और दूसरे कारणों से अधिक रुपया खर्च हो ता अन्त में साधारण जनता पर ही बर्झ आता है। अगर किसी स्थान में जानि होती है तो वह उसको कैसे रोकेंगे? तो मैं ममझता हूँ कि दोनों समस्याएँ वहाँ हैं, अगर मजदूर इस प्रकार की नीति अपनाते हैं कि फैक्ट्री में, मिल में या किसी कारखाने में लाभ हो या न हो हमका अपनी तनखा बढ़ानी है, बोनस बढ़ाना है, ओवर-टाइम लेना है, ऐसी अवस्था में ही क्लोजर होगा ही नहीं, लाक-आउट कोई करेगा नहीं, ठीक है, मैं इस बात को तो मानता हूँ कि किसी फैक्ट्री में मजदूर और मिल मालिक ईमानदारी से काम कर रहे हैं या बेइमानी से काम कर रहे हैं इस बात की जांच करने का अधिकार ट्रिब्यूनल को रहना चाहिए कि यह जो बन्द किया गया है कारखाना यह मजदूरों के साथ अन्याय है या मिल के मजदूर लोग अन्याय करना चाहते हैं। इन दोनों का निर्णय करने का अधिकार ट्रिब्यूनल को रहना ही चाहिए। अभी एक अपील आई है। अब तो समाजवाद के नाम पर गवर्नमेंट कन्सर्न ही आते चले जा रहे हैं। पूँजीपति और मिल मालिक का नाग भी नहीं है। आज तो गवर्नमेंट कन्सर्न है, गवर्नमेंट मिल मालिक है और गवर्नमेंट का नाग भी समाजवाद का नाग है।

उस समाजवादी ढाँचे में भी गोज तीसरे दिन लाक-आउट्स होते हैं, लोकामोटिव्स में हड़ताल होती है रेलें बन्द हो गई, हवाई जहाज बन्द हो गये, फलानी फैक्टरी बन्द हो रही है, गवर्नमेंट कन्सर्न बन्द होते हैं। एक पूँजीपति बेइमानी करना है, मिल मालिक बेइमानी करता है तो समझ में आता है। तो आज क्या गवर्नमेंट भी बेइमानी है जो जनता द्वारा वन कर खड़ी हुई है? मैं नहीं कहना कि गवर्नमेंट के सब एक्शन ठीक होते हैं, परन्तु जब जनता के द्वारा गवर्नमेंट बनी है और गवर्नमेंट के द्वारा फैक्ट्रियों का शासन अपने हाथ में आ गया है, आज प्राइवेट सैक्टर में कोई मिल मालिक बेइमानी करे तो वहाँ के ट्रिब्यूनल से मैं समझता हूँ कि आपने इस प्रकार का विल प्रस्तुत किया है। परन्तु गवर्नमेंट फैक्टरीज में भी इस प्रकार की स्थिति आ रही है और वह हम देख रहे हैं। तो मैं समझता हूँ कि यह समाधान नहीं है। आपकी भावना को ध्यान में रखते हुए मैं यह समझता हूँ कि यह किसी भी ट्रिब्यूनल से समाधान नहीं है।

अभी हमारे देश के राष्ट्रपति महोदय और माननीय प्रधान मंत्री महोदय ने भी अपील की है कि देश की आर्थिक अवस्था को दृष्टि में रखते हुए स्ट्राइक्स बन्द करनी चाहिए।

मैं इस मुद्दाव का समाधान चाहता हूँ और समाधान होना ही चाहिए और वह यह किसी प्रकार से कोई रास्ता इस प्रकार का निकाला जाए जिसमें कम से कम स्ट्राइक्स नहीं हो।, चाहे मिल मालिकों की ओर से, चाहे गवर्नमेंट की ओर से या मजदूरों के कारण से हो, कोई भी फैक्टरी हो जो इस देश में उत्पादन केन्द्र है वह बन्द नहीं रहनी चाहिए। रेड्डी साहब से मैं शर्तना करूँगा कि वह इस प्रकार का ममझौता ट्रेड युनियन के साथ मिल कर, दो वर्ष के लिए, चार वर्ष के लिए, पंचवर्षीय योजना के लिए करें, जिससे कि देश अपने पैरों पर खड़ा हो सके और हमारे और आपके मध्य या मिल मालिक मजदूर के बीच या गवर्नमेंट और मजदूरों के बीच जो भी झगडा हो, चाहे पब्लिक सैक्टर में या प्राइवेट सैक्टर में, जहाँ भी कोई झगडा हो वह ट्रिब्यूनल को जाएगा और ट्रिब्यूनल का निर्णय मिल मालिक और मजदूरों को चाहे प्राइवेट सैक्टर हो या पब्लिक सैक्टर हो, दोनों पर बाइंडिंग होगा, दोनों को मान्य होगा। स्ट्राइक्स की गुंजायश नहीं होगी, वह दोनों के लिए मान्य होगा। मजदूरों को भी इस बात का एग्रीमेंट करना चाहिए। जब चाइना और अमरीका, रशिया और अमरीका और भारत इन देशों के साथ इस प्रकार के समझौते हो सकते हैं, इस प्रकार के सह-अस्तित्व की भावना से इनमें समझौता हो सकता है, जब दोनों लोग इस बात को मानते हैं तो ऐसा ही यहाँ भी होना चाहिए। मजदूरों का भी भला नहीं हो सकता, अगर देश के उत्पादन केन्द्र बन्द होने हैं, फैक्ट्रियाँ बन्द होती हैं, उत्पादन नहीं होगा तो महगाई बढ़ेगी और मजदूर मारा जाएगा। मजदूर गरीब है, महगाई उसको असर करती है। मालदार लोगों को असर नहीं करेगी, असर करेगी ता गरीब लोगों को करेगी। इस महगाई का मुख्य कारण यह है कि उत्पादन गिरता है कम होता है। तब उत्पादन कम होता है जब मजदूर स्ट्राइक करता है और जब मजदूर स्ट्राइक करता है तो लाक-आउट और क्लोजर्स होते हैं। मैं समझता हूँ कि बीमारी की जड़ को बन्द करने की बात आप क्यों नहीं करते? क्लोजर होगा ता इसका अधिकार ट्रिब्यूनल को हो, इस झमेले में न जाकर मैं समझता हूँ कि इस प्रकार का समझौता होना चाहिए ताकि स्ट्राइक्स हानी ही बन्द हो जाये। मजदूरों की बात सुनने वाला भी ट्रिब्यूनल हो। यह नहीं कि मजदूरों पर अत्याचार होने रहे और उनकी बात सुनने वाला कोई न हो। ट्रिब्यूनल मिल मालिकों और मजदूरों के बीच में गवर्नमेंट और मजदूरों के बीच में होने वाले डिस्प्यूट्स और झगडा को तय करने वाला हो और उसका निर्णय दोनों को मान्य हो, एक मेरा यह मुद्दा है।

दूसरी और अन्तिम बात जो कहना चाहूँगा वह यह कि मैं समझता हूँ कि स्ट्राइक्स को बन्द करने और क्लोजर और लाक-आउट को बन्द करने का एकमात्र तरीका यह नहीं है। गवर्नमेंट जिस रास्ते पर जा रही है उसमें लाक-आउट्स और स्ट्राक्स तो रहेगी ही। आप राष्ट्रीयकरण करने के पक्ष में हैं। मैं समझता हूँ कि यह क्लोजर और लाक-आउट को बन्द करने का रास्ता नहीं है।

एक ही रास्ता है और वह समाजीकरण करने का है राष्ट्रीयकरण की जगह आप समाजीकरण की नीति अपना कर चले। कोई भी कर्नल प्राइवेट या पब्लिक सैक्टर में हो उसमें आप पूँजी एक ही मानिये। आप तीन प्रकार की पूँजी मान कर चलिये। एक सोने चांदी की है, एक ज्ञान या नालेज की है और एक श्रम की पूँजी है। तीनों पूँजियों का मान कर कोई भी

कसर्न चलनी चाहिये। जो काम करता हो उसको आप भागीदार बना सकते हैं। उसमें मैनजमेंट में काम करने वाले मजदूर भी हो, चाहें गवर्नमेंट हो या मिल मालिक हो, वे भी मालिक हो और मजदूर भी मालिक हो और उसमें शासन करने वाले मनेजीरियल स्टाफ वाले भी मालिक हो, फैक्ट्री या कसर्न में काम करने वाले जो भी हो उन पर लाभ हानि दोनों का प्रभाव पड़े। अगर लाभ नहीं होता है तो मजदूरों को बोनस नहीं मिले और न के वेतन में कटौती हो जाय। यदि लाभ हो तो उसका पैसा उनमें डिस्ट्रिब्यूट हो जाय जिससे मजदूर यह कह सकें कि फैक्ट्री हमारी है।

अतिम जो बात मैं कहना चाहता हू वह यह है कि जिस कसर्न के साथ या फैक्ट्री के साथ हमारा शब्द जुड़ जायगा कि यह फैक्ट्री हमारी है, मैं सवा मालिक हू, उसमें क्लोजर या लाक-आउट की आवश्यकता ही नहीं पड़ेगी। केवल "क्लोजर" शब्द की परिभाषा कर देने से इस बिल का उद्देश्य पूरा नहीं होगा मैं समझता हू कि एक ही नारा हो कि समाजीकरण किया जाय और जितने भी काम करने वाले मजदूर हैं उनका मैनजमेंट और लाभ हानि में भागीदार बनाया जाय और इस प्रकार का बिल आये, तब जो वर्तमान बिल का उद्देश्य है उसका पूर्ति हो जायगी।

अतः मैं इस विधेयक का भावना का समर्थन करता हू परन्तु इससे आप अपने उद्देश्य का पूरा नहीं कर सकेंगे, ऐसा मेरा विश्वास है।

DR M R VYAS (Maharashtra): Mr Vice Chairman, Sir, the Bill introduced by the honourable Member seeks to make a very limited change in the Industrial Disputes Act, 1947. No doubt, the confusion that he has cited in his Statement of Objects and Reasons always arises in some cases which are before the courts and there is always the likelihood of different interpretations by the Courts. However, Sir, that does not affect the effectiveness of the original legislation. I am afraid that if we allow such piecemeal changes in the original Act, far from helping the workers, they might lead to distortion of the objectives of the original Industrial Disputes Act. The particular case cited by the honourable Member is a peculiar case and I see no reason why, because of the peculiarity of that particular case, the judgments of the Supreme Court should be turned into a kind of a permanent clause in the way he has desired. What is needed more today in the labour legislation is a complete survey of the labour laws in the light of the developments in the modern society and the requirements of the industries as they are today. As you know, Sir, we have a large number of public enterprises which have come up since 1947 when this Industrial Disputes Act was passed. So, in this period of 26 years, we have gone a long way in establishing many laws to protect the rights of the workers. But I find that there is some sort of haphazardness in all the laws that have been enacted since and, there-

fore, there is a necessity to codify in a compact manner the legislation on the issues of labour. As the honourable Member mentioned just now, the question is that we should integrate the workers and make them understand this concept that any enterprise is a joint enterprise and is to the benefit of all which includes the worker himself.

That includes the worker himself. However easy it may sound, it is not easy to implement it. Anyway, that is so desirable in the country today. We will ultimately have to bring in a concession where the labour has not only the right of participation in the management but also draw consequences of having such a participation by having responsibility in running the enterprise. This is a line that we have to think of in any future revision of the Industrial Disputes Act.

The question that has arisen, particularly through this Bill, is the question of partial or full closure of a factory and whether it is a *bona fide* or *mala fide*. I personally feel that it would be very difficult to put in a hard line of distinction between *bona fide* and *mala fide*. It can be *bona fide* from the side of the management, it may be *mala fide* from the side of the labour also, and it can be vice versa. Consequently, any hard and fast rule to be introduced in the Act would be against the prevalent nature of the Act and it would also work, in my opinion, in the long run against the totality of labour laws.

So my request on this occasion, while opposing the Bill, is that the Labour Ministry should apply its mind to find ways and means of bringing about a homogeneity in the labour laws which exist in this country.

Sir, often we find that a part of the dispute comes under one Act and another comes under another Act. Sometime the Labour Commissioner is authorised, sometimes another Department is authorised. I think we should have a kind of uniformity of thinking on these labour laws.

So with these words, I would like to say that the present amendment moved by the hon. Member does not serve any good purpose. On the contrary, it will lead to greater confusion. And, therefore, if at all, my request would be that the entire arena of labour laws should be surveyed and an appropriate Bill should be introduced at a later stage by the Government.

Thank you.

SHRI SANAT KUMAR RAHA (West Bengal): Mr Vice Chairman, Sir, in supporting this Bill I would like to make a few observations.

[Shri Sanat Kumar Raha]

Generally, we find, Sir, that workers are not responsible for these sorts of closures. Some time back, a survey by the Government stated that only 29 per cent closures are due to workers' strike. But, on the other hand, it has been proved and established that owners are mainly responsible for closures, *mala fide* closures and under-capacity production and creating artificial market of shortage and enhancing black money for their own individual enterprises for super profit.

Sir, our Government is committed to socialism. But, though living in a democracy, we cannot have justice from courts. Courts are not meant for the common people or the poor people. If any person goes to a court, he has to incur some expenditure which is beyond the capacity of a common man and which is beyond the capacity of any trade union which is poor. Some bank employees, commercial trade unions and other well-to-do trade unions, who have got sufficient money, can go to the court, and ultimately they can have justice from the court. But sometimes justice is delayed, and when justice is delayed it does not go in favour of the workers, poor workers and the common people. Sometimes justice delayed becomes justice in favour of the employer, not for the workers. Such is the condition in our country where we live today. So I would urge upon the Government to think that time has come when workers should get participation in the management. Workers should come up as leaders of the society, workers should come up as leaders of production, and production should be for the people and for the nation at large.

Now the time has come when the Industrial Disputes Act and other labour laws should be comprehensively drafted. All these Bills should be brought before this House in order that we are able to create an image for the working class.

I would also like to emphasise that sometimes the workers think themselves as inferior to the employers because they are living in a society where the employer is superior in status and they are considered inferior to them as a class. Our democracy is committed to socialism and the poor man's leadership. *Garibi Hatao* is our slogan. We should, therefore, remove this psychology of inferiority. The employees suffer from an inferiority complex. It is the employers at whose wishes they continue to work. Sometimes, the employers close the mills, declare lock-outs, order retrenchments or indulge in under-capacity production. This type of behaviour of the employers is going on. I would request the Labour Minister to think of these matters.

The object of the Bill is a laudable one. I would request that the Minister should consider all the aspects. If he promises a comprehensive Bill in which all these things will be incorporated, I would rather welcome that. I would support this Bill. I would again request the Labour Minister to consider all these aspects from the point of view of workers' welfare.

**SHRI K. V. RAGHUNATHA REDDY:** I am sorry that Shri Sen Gupta is not here. But I must say that Shri Sen Gupta has applied his mind to the various judgments of the Supreme Court. It is rather thoughtful of him to have thought of reconciling the various judgments of the Supreme Court and proposing a kind of amendment which, in his opinion, would be necessary for the purpose of dealing with some of the interpretations given by the Supreme Court to rectify certain economic situations arising in the various trades and industries. Shri Niren Ghosh was pleased to mention about various strikes and lock-outs in West Bengal. In the case of West Bengal, the strikes and lock-outs position is as follows. In 1971, 36.76 per cent of the man-days were lost due to strikes and 63.24 per cent due to lock-outs. In 1972, 26.12 per cent of the man-days were lost because of strikes and 73.88 per cent were lost due to lock-outs. In 1973—I am giving provisional figures upto August—37.54 per cent of the man-days were lost due to strikes and 62.46 per cent due to lock-outs. Contrary to the normal situation that exists in other places, the peculiar situation in West Bengal is that the major part of the man-days lost is due to lock-outs and not due to strikes. Based on these figures, perhaps Shri Niren Ghosh wants to come forward with a theory that the proposed amendments must be properly supported.

**SHRI SANAT KUMAR RAHA:** What are the all-India figures for the strikes and lock-outs?

**SHRI K. V. RAGHUNATHA REDDY:** I do not have up-to-date figures for all-India. I will give him tomorrow if he wants.

With respect to the public sector, the situation also will have to be appreciated. About 13 lakhs of man-days were lost in the public sector from January to August, 1973. The corresponding picture in the . . .

**SHRI BHUPESH GUPTA (West Bengal):** Sir, take a little less time. Give me two minutes time so that I can introduce my Bill.

**THE VICE-CHAIRMAN (SHRI V. B. RAJU):** Shri Sen Gupta is not here to reply.



SHRI BHUPESH GUPTA: You may give me two minutes.

THE VICE-CHAIRMAN (SHRI V. B. RAJU): There cannot be an arrangement between a Member and the Minister.

SHRI BHUPESH GUPTA: We co-operate with each other always.

SHRI K. V. RAGHUNATHA REDDY: Sir, what should be appreciated by comrades like Mr. Bhupesh Gupta is that in the public sector, man-days lost are about 13 lakhs from January to August, 1973. Correspondingly, in the private sector, man-days lost are about 98 lakhs. This will have to be appreciated in the context of the employment potential in the public sector and the private sector. Sir, in 1972, the public sector provided employment for 11.2 million whereas the private sector provided for 6.8 million. Therefore, the magnitude of employment in the public sector is of a very high order compared to that in the private sector. Still, the man-days lost are a merely 1:7 ratio. So, closures and all these chronic aspects are more prevalent in the private sector than in the public sector. Therefore, credit must be given to the public sector, the trade union leaders, the working class and the management for dealing with these matters, and coming to bipartite agreements and settling the matters without allowing any loss of production, with imagination, understanding and co-operation. And the Labour Ministry has played a very important role in settling the problems in the private sector. I hope in course of time man-days lost in the public sector would be brought to almost the minimum.

Sir, with respect to the private sector, there have been a number of difficulties. As Mr. Niren Ghosh pointed out, West Bengal particularly has had a number of chronic rather alarming situations, which led to strikes and lock-outs. And it was rather difficult to deal with some of these cases.

Sir, with respect to the actual amendment that has been moved by Shri Sen Gupta, he seeks to define the concept of closure. Sir, Mr. Sen Gupta has to realise this that though this expression 'closure' has not been defined in the Industrial Disputes Act, this expression occurs in several enactments, notably the Industries Development & Regulation Act. Under certain conditions of closure, an industry or an undertaking can be taken over by the Government on the ground of closure itself. Sir, you may kindly observe the definition as suggested by Mr. Sen Gupta. "Closure" means total and *bonafide* stoppage of an entire industry, including all its branches and subsidiaries, by the employer." Suppose, the company has got

multi-unit undertakings. According to this definition, if it is closed at a particular place, it need not be construed as closure because closure means total and *bonafide* stoppage of an entire industry, including all its branches.

Sir, that means that unless all the branches are closed, you will not be able to bring any undertaking, even one undertaking, within the definition of closure as defined by him. Therefore, what I would like to submit is that while the hon. Member's intention is very sound and very appropriate—perhaps he wants to help a situation and try to avert chronic situations that arise in case of closures—this definition will not be sufficient enough in the way in which it has been drafted. While I appreciate his effort, I would only request him, Sir, to give me a chance to go through the whole problem and apply my mind to it and see in what manner his views can be accommodated.

SHRI NIREN GHOSH: Are you going to do it in the Industrial Relations Bill.

SHRI K. V. RAGHUNATHA REDDY: Yes, in the Industrial Relations Bill, which has one day to be introduced and which I hope would be done as early as possible. I will see in what manner this concept of closure can be included.

SHRI NIREN GHOSH: On that Bill we will be on loggerheads on many points.

SHRI K. V. RAGHUNATHA REDDY: Sir, when I introduce that Bill in this House, I have no doubt comrade Niren Ghosh will not have many points on which he will have occasion to differ with us. I have also no doubt that he will extend his support fully. Therefore, I need not now anticipate that he is likely to oppose some of its provisions and, therefore, move another Bill rather than what is contemplated. Sir, I can only say at this stage that this aspect would be taken into consideration and I will see in what manner this definition also can be accommodated, if it is possible.

Sir, with these words I appreciate the effort of Shri Sen Gupta to reconcile the various judgments. I would request him to withdraw the Bill instead of pressing it. I will certainly take his views into account.

SHRI BHUPESH GUPTA: He wanted to withdraw it. But, he is not here now.

THE VICE-CHAIRMAN (SHRI V. B. RAJU): Perhaps, he did not know that the speakers will limit their speeches to 5 minutes.

**SHRI K V RAGHUNATHA REDDY:** Sir, I will give utmost respectful consideration to the views expressed by the hon Member I hope he would withdraw the Bill.

**THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS AND IN THE MINISTRY OF WORKS AND HOUSING (SHRI OM MEHTA)** Sir, he is not here to withdraw the Bill

**THE VICE CHAIRMAN (SHRI V B. RAJU):** There is no question of withdrawal. Now, I am putting the Motion to vote. The question is.

"That the Bill further to amend the Industrial Disputes Act, 1947, be taken into consideration"

The Motion was negatived.

**SHRI BHUPESH GUPTA (West Bengal):** Sir, I am very grateful to the hon Minister for Parliamentary Affairs and others who have made it possible for me at least to vote for the Bill. (Interruptions) If Shri Sen Gupta were here, he might have himself withdrawn the Bill. But, he has, I am told, to catch some train. I do not know.

#### THE MEMBERS OF PARLIAMENT AND STATE LEGISLATURES (IMMUNITY FROM DETENTION) BILL, 1970.

**SHRI BHUPESH GUPTA (West Bengal)**  
The question is

"That the Bill to provide for immunity to Members of Parliament and State Legislatures from detention without trial, be taken into consideration"

Sir, as you know in our country, we have put on the statute book the law of preventive detention, now called the Maintenance of Internal Security Act, as a permanent law.

**SHRI NIREN GHOSH (West Bengal):** I have been detained for three years

**SHRI BHUPESH GUPTA** I have also been detained. Now, here in our country we have got the Preventive Detention Act, now renamed as the Maintenance of Internal Security Act, as a law, what Shri Vallabhbhai Patel brought to the Provisional Parliament in 1950 and got passed

**SHRI BHUPESH GUPTA** As you know, we had the Preventive Detention law amended in the first Parliament Lok Sabha and also in this House. Now some of the good

features are gone and it is now, what is more important, a permanent law in the Statute Book. When the Congress Party did not have the majority in the other House and this House, we saw to it that the Preventive Detention Act was not renewed. Therefore, for the whole year, 1970 and up to the time of the elections, and a few months thereafter, there was no Preventive Detention law in our country. We saw to it and the Opposition jointly saw to it that this was not renewed. The moment they got the majority, they have brought it, again renewed it with vengeance and made it a permanent law.

Now, Sir, the Preventive Detention law is a disgraceful legislation. That, Sir, was made to arrest people under the P.D. Act. Trade unionists, workers belonging to other political parties, even Congress Party now, are arrested under Preventive Detention Act. Even now we see the threat being used against the loco men and others that measures would be taken against them. Might be so far as this Bill is concerned, it seeks to provide for immunity to Members of Parliament and of State Legislatures. In our country, M.P.s and Legislators in the States who have a corresponding status at the State level, do not enjoy any immunity even from the detention without trial and many other people are shocked when they hear such a thing. For example, anybody can be arrested under the Preventive Detention Act; any member can be arrested without making it a party issue at all. As you know in West Bengal, the Communist men are complaining to the party Government—which is one-party Government there—that for the Congress men who are being taken into custody in order to put other factions in difficulty or at the instance of certain other factions, it is being used. Now, Mr Vice Chairman, you will agree that in our country we have got nearly 750 members in the two Houses of Parliament, plus about 3,500 or 3,600 M.L.As and M.L.Cs in the country, may be a little more now. Now why cannot we extend the immunity to them? For what they do, they are accountable to Parliament also in a way, their conduct can be questioned in Parliament. Anyhow, they are the representatives of the people. It is absolutely wrong on the part of the Government to detain anybody without trial. It is all the more atrocious whenever the law is applied against the chosen representatives of parties and people in Parliament or in the State Assemblies. I want to prevent situation of this kind continuing. Now as you know, in other countries, when a Member of Parliament is arrested, there is a row; there is a big noise in the Assembly, in the press, in the public life. Here it has become a routine