

MR. DEPUTY CHAIRMAN: If there is time . . .

SHRI BHUPESH GUPTA: If there is time? We are prepared to sit longer.

MR. DEPUTY CHAIRMAN: It depends on how long . . .

SHRI BHUPESH GUPTA: We are prepared. Did I not tell you in the beginning that we were prepared to co-operate? Now, Sir, we are entitled to make this demand. You have admitted the motion. I would like an explanation from the Government as to why a motion admitted even by you is not put. After all, I know how difficult it is to get a motion admitted. Why is not the Government taking up any of these things? It is disrespectful towards the House and the Chair.

MR. DEPUTY CHAIRMAN: We will see.

SHRI RAJENDRA PRATAP SINHA (Bihar): Sir, I shall request you to refer all the matters to the Business Advisory Committee. The point that I would like to make is this that we are willing to co-operate with you and with the Government to finish all the business within the allotted time, that is, by the 15th of this month. We agree to that. Now, even we will sit longer hours and take up some more matters which we would like the House to take up. What objection there can be on the side of the Government, I cannot understand. When once you have admitted the motion, it is all a question of finding time. It is the business of the Business Advisory Committee to find the time within the allotted period. So, my request to you is to call an urgent meeting of the Business Advisory Committee, and let this matter be thrashed out. Let the Government representative—the Congress people also—come there. We will discuss it and find time. We will sit longer, we will sit through the lunch hour. And we would like to discuss one or two motions which have been given notice of by the Opposition and have been admitted.

THE CONSTITUTION (AMENDMENT) BILL, 1961 (TO AMEND ARTICLE 72)—continued.

MR. DEPUTY CHAIRMAN: Mr. Mani, you were speaking on this Bill.

SHRI A. D. MANI (Madhya Pradesh): Mr. Deputy Chairman, Sir, when the House adjourned in the last session, I was speaking about the objectional features of this Bill in view of the fact that the Bill sought to put a premium on criminal offences which would lead to conviction in a court of law. There are other aspects of the Bill which should be placed before the House and that is that it seeks to give Members of Parliament a special status above that of ordinary citizens. Already we have a large number of privileges for the efficient discharge of our duties and we should remain content with those privileges and not seek privileges in the field of criminal law to give Members of Parliament a special position. Further, Sir, under clause 2 of the Bill, if Members of Parliament make a representation to the President, the President shall consider the question of extending his prerogative to cases mentioned by them in matters concerning convictions for offences, for criminal offences and we should go by the salutary rule that if there is to be any reprieve, it ought to be done on legal grounds and not on political grounds. A Member of Parliament does not have any special position to advise the Government in the matter of the administration of the criminal law. The judges are there to decide whether the criminal law should be applied in a case, and we can seek the advice of the Attorney-General, for example, in the matter whether a conviction which has been imposed by a court of law should be set aside.

Sir, I have seen the pamphlet which has been circulated by the Communist Party on this question, and I have read through my hon. friend, Shri Bhupesh Gupta's speech very carefully. He has mentioned a large num-

[Shri A. D. Mani.]

ber of cases there, that people have been suffering imprisonment for long terms. But I would like to draw the attention of the House to the memorandum—there are a large number of prisoners belonging to the 1955—year class, and they have been convicted for agrarian disturbances. I do not have all the details of the cases before me but I would ask Shri Bhupesh Gupta whether he envisages a future where all such political agitations which contravene the law would be the normal course and whether he would like all these cases to be periodically examined with a view to releasing the prisoners concerned. Sir, I feel that in independent India we cannot have any unlawful agitations. If the parliamentary form of government is to be sustained in this country, the people must know to respect and abide by the law. There are momentary agitations like regional agitations where people are convicted for short terms of imprisonment and whenever there is conciliation, the Governments concerned have released those prisoners but where criminal offences involving life and property are concerned, I think that we have got to go very slowly in the matter of the scrutiny of cases where persons have been convicted. I have said in the last session that we might accept 1947 as the dividing line and that these prisoners who were convicted before 1947 should be released as part of a general amnesty plan. I am prepared to go further now and say that we can take the date of the establishment of the Indian Republic as the dividing line and give a general amnesty to all other prisoners. But in regard to cases after 1951, I think, Sir, the matter ought to be examined by the State Governments concerned. My hon. friend, Shri Bhupesh Gupta, quotes the Chief Minister of West Bengal, Dr. B. C. Roy, off and on in this House, which means that he is on terms of intimacy and familiar relationship with the Chief Minister of West Bengal. I would certainly advise him to take up the matter with the State Government concerned. And I

feel that where the offence is of a technical character and relates to the period 1952 onwards, the power of clemency can be exercised by the State Government concerned. With regard to prisoners before 1951, I would join him and I would certainly suggest to the Government that in all these cases we give a blanket amnesty and do not go into details of these cases.

My hon. friend, Mr. Bhupesh Gupta, in the last session of Parliament mentioned the case of Mr. Haldar. Mr. Haldar's offences, according to him, related to the period 1947-49 and he has been imprisoned. He has not taken his seat in Parliament.

**SHRI BHUPESH GUPTA** (West Bengal): He took his seat.

**SHRI A. D. MANI**: He had been re-arrested in 1956-58, I believe. He had been absconding for some time. All these cases have got to be examined with reference to each case. I would certainly like Mr. Haldar to contest the elections because he has been out of Parliament for some time.

**SHRI BHUPESH GUPTA**: We have put him up against a Minister there. We want him to be released on parole.

**SHRI A. D. MANI**: Let him conduct the election campaign. I think the West Bengal Government should be generous enough to give him the facilities to contest the elections.

Sir, to put the thing on a ground of principle that all these cases, because they are long-term cases and these people have served many years in jail and asking for clemency on that ground, I think, Sir, the House would be taking a very grave responsibility on itself if it accepts Mr. Bhupesh Gupta's suggestion. So, I would like to say, Sir, that the Bill is objectionable on the ground of principle. What is the principle involved? That it seeks to give Members of Parliament a special position.

DR. W. S. BARLINGAY (Maharashtra): It is against article 14 of the Constitution.

SHRI A. D. MANI: It may be struck down by the Supreme Court under article 14 of the Constitution as *ultra vires*. Secondly, seeks to bring Members of Parliament . . .

DR. W. S. BARLINGAY: It is a Constitutional amendment. There is no question of its being *ultra vires*.

SHRI A. D. MANI: Under clause 72, it is a Constitutional amendment.

SHRI BHUPESH GUPTA: All that I said, Mr. Mani, was that in certain cases power should go to the President, the President's power is sought to be enlarged by this, and that also in very restricted circumstances when, for example, responsible people like Members of Parliament or the Legislatures approach. This is all that I want. We do not want to have any special power.

SHRI A. D. MANI: If my hon. friend, Mr. Bhupesh Gupta, had confined himself only to the amendment of article 72 in so far as it concerns giving the President the power of giving pardon in cases which arise in States, I would have no objection because to maintain the unity of the country the President should have the ultimate federal power of granting pardon even in cases where the State Governments had refused it. It may probably give one more opportunity to the convicted person to go in appeal to the President. But then Mr. Bhupesh Gupta has gone further and has sought to give Members of Parliament a special status. If we are to serve the people of India, we should not ask for a special status of this kind and we should respect the law. Free and independent India cannot tolerate lawless activities after the Republic was established.

Sir, my suggestion will be that the Bill should be opposed and I hope my hon. friend, Mr. Bhupesh Gupta, in

view of the objections advanced against the Bill, would not press it. But I would certainly like the Government consider the question of giving blanket amnesty till the time the Republic was established. That is to say, we do not go too much in detail into what happened before 1952. The Government concerned should sympathetically view all these matters because the offences were of a technical character and perhaps a long-term imprisonment may not be necessary now as these people have suffered already. This suggestion I would like to make.

I would also like to suggest that the Attorney-General may be asked to give his advisory opinion to the States and he should be asked to go into the details of all these cases. But on the ground of principle, Sir, I think the Government should make a statement that in future they would not consider the question of any amnesty on political ground. The law must be obeyed in independent India if the Parliamentary frame of government is to survive.

Thank you.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, Sir, the Bill under consideration seems to me perfectly contrary to the spirit of the Constitution, and in this respect I must say that I can hardly usefully add anything to what my friend, Mr. Mani, has just said on this question.

Sir, so far as the Statement of Objects and Reasons is concerned, it is stated that the object of the Bill is as follows:—

“ . . . In a system which is federal or essentially federal, it is necessary for the President to be invested with wider powers of pardon, reprieve, commutation, etc. of sentence, so that the President is in a position to exercise his discretion in cases where the authorities of the States may take a narrow and rigid view in the matter.”

[Dr. W. S. Barlingay.]

Now, I must say that so far as this particular point is concerned, it is possible to argue that the President should have wider powers than have been given to him under sub-clause (1)(c) of article 72 of the Constitution. I say that it is possible to argue that and there also Mr. Mani has correctly stated that there is something to be said for that point. I entirely concur but the point is this that the main objection to the Bill is that it is absolutely contrary to the spirit of the Constitution, especially article 14.

Sir, it requires only a cursory reading of article 14 to show that this provision which Shri Bhupesh Gupta has in view, discriminates between Members of Parliament, all State Legislatures, and a group of 25 Members of a Legislative Assembly and so on and so forth. Now, I do not see any reason on earth why merely because certain Members of Parliament go to the President and urge him to do something, the President's discretion should be fettered in any way.

Moreover, Sir, this really is a procedural matter. By virtue of this procedure what are you doing. You are really restricting the powers of the President in a certain way. Suppose, somebody commits an offence in which ordinarily the President would have exercised his discretion under article 72. But, for instance, suppose a certain number of Members of Parliament, say, 25 Members, as the case may be, they do not go to the President, then what happens? Is the man to suffer on that account? Therefore, so far as the objects and reasons are concerned, I may have some sort of sympathy, but with all respect to Mr. Bhupesh Gupta, if I may say so, this Bill is not only discriminatory but I should say that it is almost absurd. No lawyer worth the name could ever subscribe to the spirit which underlies this sort of provision.

SHRI BHUPESH GUPTA: Then give general powers.

DR. W. S. BURLINGAY: That is what I say. Suppose the Bill were to say that the powers of the President under article 72(1)(c) should be completely unfettered and there should be no restriction on the President of any kind, then there may be something to be said for the Bill. I could understand that fully.

SHRI BHUPESH GUPTA: I am prepared to accept your advice and suggestion, and I can move an amendment.

DR. W. S. BURLINGAY: That is a different matter. I have only said that there may be something to be said possibly for it. But when you say that the President's powers must be exercised only in certain cases where a certain procedure is followed, where certain Members of Parliament petition the President, I really do not understand what that really means. That means that you are really not extending the powers of the President; you are restricting his powers in a certain way and moreover you are conferring a patronage on Members of Parliament or Members of Legislative Assemblies. But it seems to me that the spirit of the Constitution requires that there should be no distinction whatever between man and man in this country, and whether a person is a Member of a Legislative Assembly or a Member of Parliament, there is no earthly reason why he should be given any special privileges in this country at all. I therefore think, Sir, that this Bill must be thrown out as it is, and I feel that this is completely contrary to the Constitution.

Thank you, Sir.

SHRI JASWANT SINGH (Rajasthan): Sir, I have very little to say in regard to this Bill. As far as the objects are concerned, I totally agree with my friend, Mr. Bhupesh Gupta, but the provisions of the Bill accord a discriminatory treatment to legislators and other citizens in India and this,

as was stated by the speakers preceding me, cannot be allowed. It is contrary to the spirit of the Constitution, and even otherwise this will not be a good thing, but as far as the principle and the objects of the Bill are concerned, personally speaking, I totally agree with my friend, the mover of the Bill. Apart from death sentence, in regard to other sentences also, in a federal form of Constitution such as ours, the President should have wider powers. There are certain cases, I know, where the States concerned have taken a narrow view, and this has stood in the way of some cases being reviewed and getting redress, but in the Centre, with the President having powers in regard to other matters also, he can set right the wrongs, if any, done by the States having taken a narrow view. As far as this position is concerned, I totally agree with my friend, Mr. Gupta but the provisions which he has embodied in his Bill cannot be accepted, and I am sure, Sir, that either he will withdraw this Bill or move amendments to the provisions as they are now, or bring a new Bill where the discriminatory treatment which he has provided for in this Bill will have been removed.

It is indeed very very hard that some of the political prisoners have been in jail for years and years and they had been sentenced for as long as 25 years, 30 years, and so on, and including their under-trial periods they have already spent 11 years or 12 years or more periods in jail, and they are all educated people—most of them—and they committed the offence on a conviction of their views, and in regard to those cases—as was referred to by my friend, Mr. Mani—which occurred before independence and in which the persons concerned had undergone a number of years' imprisonment and are doing still, there is a very strong case for general amnesty. And in regard to those who had been convicted after independence, their cases can be considered on merits. It is a pity that such a large number of political prisoners should

be kept behind prison bars for so many years, and if they are not released, then that means the whole of their lives they will have to spend in jail. Even in the most serious cases, even cases of murder, where there had been a sentence of transportation for life, and so on and so forth, people used to be set free after 14 years or 15 years of imprisonment, but here, in the case of political prisoners, who committed the offence in the larger interests of the country or on some principle, well, they have been sentenced for 20 years, 25 years, for 30 years and so on, and they have already been in jail for a pretty long time, and our purpose will be served and justice will be meted out to them if a general amnesty is given to such prisoners who were sentenced before independence, and the cases that occurred after the attainment of the country's independence can be considered on merits. But then the Bill cannot be accepted in this form and I am sure, reasonable as Mr. Gupta is, he will bring a new Bill or amend the present one in such a manner as will incorporate the suggestions put forward by the Members of the House. We are all agreed as far as the wider powers to be given to the President are concerned, and I think there is a very good case for it, and it will be helpful to the future cases also if the President is given wider powers. In those powers there should be no provision that forty Members of Parliament or twenty-five Members of a Legislative Assembly may petition the President in a case of conviction and sentence, as is the case in the present Bill. It should be left to the discretion of the President, and as in other cases I am sure that good cases will be taken care of by the President and the Government. There is no case for Members of Parliament or Members of Legislative Assemblies to be enabled to sponsor a case. It does not appear to be fair, and is contrary to the spirit of the Constitution, where every citizen in this country has equal rights. Members of Parliament and Members of Legislatures have their special rights

[Shri Jaswant Singh.]

and privileges under the Constitution itself and under the rules, etc. Beyond that, to give them further powers will be an act of discrimination in their favour.

Therefore, as far as the language of the Bill is concerned, we do not agree, but as far as the spirit which prompted Mr. Gupta to bring this Bill before the House is concerned, we agree, and it is only fair that in the case of people who have been sentenced and are in custody for so long a period something should be done.

These are my views; I support the spirit and not the form of the Bill.

**SHRI SANTOSH KUMAR BASU** (West Bengal): Mr Deputy Chairman, Sir, I have listened to my hon'ble friend Mr. Gupta's marathon speech with considerable interest, and I have also perused the provisions of the Bill which he has placed before the House. Having had an occasion to perform a somewhat similar role as a Member of the Opposition in the Bengal Assembly I can fully sympathise with my hon. friend's effort to secure the release of these long-term prisoners.

Sir, the first point to which I would like to draw the attention of the House relates to the impassioned appeal which he has addressed to this House and, through this House, to the Government of India, on humanitarian grounds. There are very few Members—if any at all—who may not respond to that humanitarian appeal and say that it is not possible for us to do anything in the matter.

Now, Sir, he has referred to a number of cases. Two of them are of an outstanding character and also are typical instances which come under the point at issue so far as this particular Bill is concerned. One of them is known as the Jessops case in which a number of workers threw one or more executives or a works manager or someone of that position of Jessop and Company in Calcutta into

a boiling cauldron and they were burnt to death. That was one of the cases to which reference was made by Mr. Gupta. Well, they have suffered imprisonment for quite a number of years. Probably he is aware that some time ago a signature campaign was initiated on their behalf—they were not Communists but belonged to some other leftist organisation. I was approached to put my signature to that appeal. I did not see my way to acceding to the request but I made earnest enquiries in appropriate quarters for the purpose of finding out what the position was and was assured that the case was under constant review by the authorities of the Government of West Bengal and as soon as conditions seemed to be propitious, release would follow as a matter of course. The next case to which reference was made by my hon. friend was the famous Chittagong Armoury Raid Trial. That illustrates in a pre-eminent degree the points which have been raised on the floor of the House. With regard to the Armoury Raid Trial, I happened to be associated with it at different stages and in different capacities. I had the privilege, as Defence Counsel, to address the leading argument before the Tribunal of three Judges presided over by a British Judge. The case involved widespread sabotage of railways, cutting of telegraph wires, dacoity with murder in the sense that armouries were looted and sentries and guards were killed. In the course of my address, which extended for 11 days, I pointed out that the death sentence was not indicated in that case and although there was conviction on a very large scale, some of the accused persons were also acquitted. The Judges accepted the argument and did not pass the death sentence, much to the chagrin of the European press in Calcutta in those days. Thereafter, the matter came up again before the Bengal Legislative Assembly when these prisoners who had been sent to the Andamans had resorted to hunger-strike demanding their release. As a Member of the Congress Party it fell upon me to

take up their cause in the Assembly and press for their release, of course, without any effect. Thereafter, two years later, these prisoners sent up another appeal from the Andamans in which they declared that they had abjured violence and they wanted release on that ground. Now that matter came up before the Government as it then was. I had to deal with that in another capacity. The British District Magistrate of Chittagong strongly supported the appeal of these young men then in the Andamans but unfortunately the Governor of Bengal took the line that he could not take the risk, during war time, of releasing these prisoners and all my efforts were unavailing because this question of law and order was a matter of special responsibility for the Governor under the old Government of India Act. I mention this for this reason that Mr. Gupta has mentioned in the Statement of Objects and Reasons that he wants to vest the President with some discretion in this matter. Unfortunately, he has omitted to notice that in a democratic Constitution the President has got to act, in the discharge of his functions, with the aid and advice of his Council of Ministers. No discretion whatsoever has been vested in the President. There is some discretion vested in the Governors under the appropriate article and in other matters which are not within the purview of their discretion, the Governors have to act with the aid and advice of the Council of Ministers. So far as the President is concerned, there is no discretion whatsoever left to him but he has to act with the advice and aid of the Ministers throughout the whole gamut of his functions as President. The appropriate article in the Constitution regarding the President is article 74 which says:

“There shall be a Council of Ministers with Prime Minister at the head to aid and advise the President in the exercise of his functions.”

Article 163 regarding the Governors says:

“There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

Whether a particular matter comes within the Governor's discretion is to be finally decided by the Governor himself according to article 163(2). In the absence of any such provision with regard to the President in the Constitution, the President has got to act in every matter according to the advice of the Council of Ministers and my friend's laudable desire to remove this question out of the political ambit of the Ministers themselves, will fail so far as the President is concerned unless express provision is made in the Constitution that he is to be vested with discretion in this matter.

My hon. friend has mentioned the question of discretion in the Statement of Objects and Reasons and he says:

“So that the President is in a position to exercise his discretion in cases where the authorities of the States may take a narrow and rigid view in the matter.”

I had pointed out that under the existing provision of the Constitution, the President has got no discretion of his own and if he wanted to vest the President with some discretion in this matter, he should have provided for it in the actual operating clause of this Bill which he has failed to do. Mere mention of the term ‘discretion’ in the Statement of Objects and Reasons will not do, will not stand in any good stead so far as this particular purpose is concerned, unless that is included in the provisions of the Bill which he has not done. Therefore, there is no es-

[Shri Santosh Kumar Rasu.]  
 cape from the proposition that the President is not a free agent in this matter in the democratic Constitution under which we are operating. So far as the British Law is concerned, my friend, Mr. Gupta, is right in pointing out that the sovereign authority in England has got the prerogative of remitting sentences at any stage of any case. Under the Criminal Appeals Act, 1907 any royal prerogative of mercy may be exercised irrespective of any appeal and after the failure of an appeal to the Court of Criminal Appeal. Any punishment for any crime may, except where a Statute otherwise expressly provides, be remitted by the Sovereign at any time. Any crime punishable by law by criminal process in England may be pardoned by him at any time both after and before judgment. So the power is very wide as given by the Statute. Yet it is the Home Secretary whose advice and opinion is the deciding factor in England. But in India there is no such statute and our Constitution, as it stands at present, will stand in the way. Under our Constitution, law and order definitely is a State subject and the Criminal Procedure Code provides that the State has unlimited power in this respect to remit any sentence as it may consider necessary in a particular case. There is no such provision in the Constitution and my learned friend's Bill will not go far enough to achieve that purpose. Therefore, I would submit that my hon. friend's attempt to liberalise the Constitution in this respect will not be achieved if the present Bill is passed into law. We cannot avoid the political approach, as he calls it, even if power is vested in the President, because the Central Ministers will have to be consulted in the matter. My hon. friend says that the Central Ministers are expected to take a wider and more liberal view, untrammelled by the situation that always overwhelms the State Government in such matters. He cited an instance where, he says, he approached the Prime Minis-

ter in the morning for the release of certain people in Calcutta which had been refused already by the Chief Minister of West Bengal, and in the evening, these people were free, evidently implying that on instructions from the Prime Minister, the Chief Minister of West Bengal had acted. Well, that is always open to him and even now, if he can impress upon the Prime Minister that such a step should be taken in a particular case, he can always avail himself of that opportunity, without having recourse to an amendment of the Constitution.

SHRI BHUPESH GUPTA: May I give some information? As the hon. Member knows—I believe I gave a copy of that memorandum to him—we submitted that memorandum to the Prime Minister and Dange, Ajoy Ghose, Sohan Singh Bhakna, Nambodiripad and my humble self met the Prime Minister on the 17th September. I don't want to say what he said, but we felt ourselves that he was quite sympathetic to us. One thing he said was that we must realise that his capacity in this matter was only one of an adviser, and we said we knew that was the position under the Constitution.

SHRI SANTOSH KUMAR BASU: Quite so. Even if the power is vested in the President in the way that my hon. friend visualises, the President will have to refer to the Council of Ministers and the Council of Ministers cannot possibly act as a responsible body of persons, without consulting the Council of Ministers in the State. That is inevitable in a democracy. When the Constitution provides that law and order is a State subject, it will be a very bold Council of Ministers in the Centre which would pass any order over the head of the Council of Ministers of the State. Therefore, the political aspect, as my friend calls it, whether in the Centre or in the State, cannot possibly be avoided in a democratic set-up and either the head of the Central Government or the head of the Government in the State has got to act with the aid and

advice of the Council of Ministers. Therefore, no remedy will be available to my hon. friend for the purpose of bypassing the advice of the Ministers.

I would suggest to my hon. friend that he should abandon this line of approach and approach the State Government with sufficient materials. They have kept their minds open and they are watching the conditions. The elections are no consideration whatsoever. A handful of political prisoners if released cannot possibly turn the scales in the elections in a huge democracy dealing with lakhs and lakhs of voters. Therefore, that is not a question which can stand in the way of my friend approaching the State Government in the right spirit, and if he can show proper materials before them and say that conditions have changed and that the atmosphere is different now and it is time that they made up their mind to release those persons who have been suffering long in prisons. I am sure the State Government which says that it has got this matter constantly in view, will respond.

SHRI BHUPESH GUPTA: You will give your sympathy and assistance.

SHRI SANTOSH KUMAR BASU: And the State Government will certainly respond to his appeal if he can convince them that the time is propitious and appropriate.

Thank you.

SHRI SATYACHARAN (Uttar Pradesh): Mr. Deputy Chairman, I must confess I had no intention of speaking on this Bill. But after my entry into this House I was handed a memorandum signed by the members of the Council of the Communist Party of India to the hon. Prime Minister for the release of long-term political prisoners. Sir, I consider this as a very important Bill in the context of the changed situation of our country. I hurriedly went through the text of this memorandum and that inspired me

to register my observations here, because I felt that some of the sentiments expressed in the memorandum were similar to my own feeling. Therefore, I rise to accord my fullest support to this Bill.

Sir, there are two aspects of the whole question, the constitutional and the factual. As far as the constitutional side is concerned, I must say that I am not a lawyer and it is very difficult for me to interpret the laws as they exist and in a fashion which will be consistent with the legal terminology and its ways of interpretation. But as a devout Congressman since 1921 when I was school boy, I have been subscribing to Congress ideologies and as such I give my fullest support to the present proposal, since I wish that no Congressman should lag behind and besmirch the fair name of the organisation by withholding the opportunity from those rotting in jail, precious souls who have worked for the country, to come out and see the fire of freedom glowing in India now. Therefore, I feel that the time is appropriate and we should consider changing the article under reference in our Constitution, namely, article 72. Comrade Bhupesh Gupta says that the power of the President should be extended so that when he thinks it in his mercy to do so, he may grant amnesty. I think it lies in the discretion of our President to weigh things before he does anything. Therefore, it is not at all improper for Parliament to invest the President with this power of granting pardon in any case where he feels it right to do so. In the Statement of Objects and Reasons attached to the Bill, it is stated:

"Under article 72 of the Constitution, the President does not have the power to grant pardons, etc. or to suspend, remit, or commute sentences in respect of persons convicted of any offence against any Law relating to a matter to which the executive power of the State extends except when the sentence is a death sentence."

[Shri Satyacharan.]

A<sub>3</sub> Comrade Gupta has given it in the Bill, it is very clearly and explicitly mentioned that any such petition to the President has to be signed by "at least forty members of Parliament or twentyfive members of the Legislative Assembly of the State." I think, Sir, this would show that the feelings of Members of Parliament and of the Legislative Assembly have to be considered before granting any such pardon which mirror representative opinion.

12 Noon

Now, Sir, there is another question, the question of the States *versus* the Centre. This probably has been raised. It is said that the State legislatures are competent enough to enact such laws and that it would mean snatching away the power from them if the Centre were to take upon itself the job of amending the Constitution. My submission is that if there is something of a political and of all-India importance, then in that particular contingency it is necessary that the President should be invested with these powers.

Coming to the factual side, I have gone through some of the arguments advanced in this memorandum. It is said that for about twelve to fourteen years these people have been rotting in jail. Almost all the speakers who have had to speak with a certain amount of reservation of mind have accepted that on compassionate and sympathetic grounds these political prisoners should be granted amnesty. As far as the objective is concerned, all of us are agreed and the difference is only with regard to some legal quibbles. As I confessed in the very beginning, not being a lawyer myself, I do not want to indulge in legal quibbles and as a layman with commonsense I do plead that somehow or other by enactment of some law or method, these people must be taken out of the prisons. The second ground is that when these people launched certain offensive campaigns in the

eyes of the Governments, times were quite different. The Constitution of India was then not passed: it was probably in the melting pot.

SHRI BHUPESH GUPTA: And the Communist Party was illegal and I myself was underground.

SHRI SATYACHARAN: They did take certain action. I do not doubt their sentiments of patriotism. It was only the way of violence that they pursued which happened to be at variance with our own ideology. Anyway, this is not the time for me to plead for their actions. I have already said that legally they were wrong but on compassionate grounds, since the time has changed and since there was no violation of the Constitution, I think there is a strong case for us Members of Parliament now to think of granting amnesty to them. It is well known that during the Martial Law Regime in Punjab and during the Lahore Conspiracy Case and the Chittangong Armoury Raid Case people were hauled up before the courts. It is also known that many of the offenders were granted amnesty by the British Government.

The other day a great trial was held in the Red Fort and our own illustrious Minister, Mr. Shah Nawaz Khan and Mr. Sehgal appeared as prisoners. It was our own noble Prime Minister who acted as the legal counsel on their behalf. Had it not been for the compassionate line of thought adopted by the then British court, these precious lives would not have been saved for us and today they would not have been with us. When it is our own Government today and when we think a lot of those people who have yet to play their role in this independent India, awakened by the freshening breeze, I think these people should also be allowed to share this glory and the cheer that this Government have to confer on these citizens. It is also stated in this memorandum that long before, in 1937, when the Congress Ministries were ushered in for the first time, they also, at the direction

of the Congress Working Committee, took certain measures for the release of political prisoners. There was a lot of hue and cry then.

DR. W. S. BARLINGAY: He is speaking on the memorandum, not on the Bill.

MR. DEPUTY CHAIRMAN: Speak on the Bill, not on the memorandum.

SHRI SATYACHARAN: I am speaking on the Bill but I am mentioning the memorandum in support of the Bill. The Congress Working Committee's Resolution in 1937 was to the effect that those rotting in jails and those who were then termed as political prisoners should be granted amnesty and they were granted amnesty to a certain extent though there was a lot of conflict between the British masters then and the Congress Ministers since full independence had not been granted to our country then. Sir, in order to strengthen our parliamentary institution and also to build up healthy conventions, it is essential, I should say it is imperative, that we should allow all those people now rotting in jails their share in working out the different plans that are before us.

[THE VICE-CHAIRMAN (SHRIMATI T. NALLAMUTHU RAMAMURTI) in the Chair.]

Therefore, what I have to submit is this. According to the Bill before us, a larger power is sought by the Parliament to be given to the President to grant amnesty and I agree with it and give my fullest support to it.

SHRI P. N. SAPRU (Uttar Pradesh): Madam Vice-Chairman, I must confess that my sympathies are with the persons who have been in jail for ten, twelve and fourteen years. There are certain constitutional difficulties, however, which I am bound to point out and which are in the way of our accepting the Bill as has been proposed by Mr. Bhupesh Gupta.

AN HON MEMBER: Comrade Gupta.

SHRI P. N. SAPRU: I do not mind using that word. I rather like the word and though it may have a Communist origin it does not follow that the word itself is a bad one.

Our Constitution is a quasi-federal one. Strictly speaking, it is not a federal Constitution and it is what I would describe a quasi-federal one. It has a very strong unitary bias because you do not find in federal constitutions provisions of the character that we have regarding emergency powers. If a state of emergency is declared, the President—and the President, of course, means the Union Ministry—can suspend a State Constitution and take over all the powers and functions of the State and this gives to the Union Ministry powers of intervention in cases of emergency. We exercised that power in the case of Kerala and we exercised it, I think, in the case of Orissa and many occasions have arisen in the past when we have used that power. There are also other provisions which make the Constitution a quasi-federal one with a strong unitary bias. The Privy Council at one time described the Canadian constitution as a constitution which could not be said to be federal because the residuary powers vested in the union Centre and not in the States. That, however, is a view which is no longer held as valid. Necessarily, the powers of the President have had to be of a limited character. The President has the power of granting reprieves only in cases where the death penalty has been imposed. That itself shows that there has been some departure from strictly federal principles. The fact that the President exercises the power of pardon or reprieve in regard to the death sentence is not meant to be taken as the President exercising this power in his discretion. It is a power which he exercises on the advice of the Ministry of the day. I suppose it is the Home Ministry; I think it should be the Law Ministry. At one time I know it used to be the Law Ministry at the Union Centre which used to act

[Shri P. N. Sapru.]

as the President's adviser in regard to these mercy petitions.

SHRI SANTOSH KUMAR BASU: In the States it is the Judicial Minister.

DR. W. S. BURLINGAY: That would be a matter of State policy, not a matter of law so much. Therefore, it should go to the Home Ministry rather than to the Law Ministry.

SHRI P. N. SAPRU: Whether it is the Home Ministry or the Law Ministry, it is of little consequence. The point is that the President does not act in his discretion and I am glad that he does not act in his discretion and that our Constitution does not allow him to act in his discretion. We do not want to set up dictatorships in this country, and I am sure that Mr. Bhupesh Gupta does not want dictatorships to be set up.

SHRI ARJUN ARORA (Uttar Pradesh): He does want dictatorship of the proletariat some time or the other.

SHRI P. N. SAPRU: Well, that is what we think they want and possibly they do want that but they have never avowed that as their goal.

Therefore, I think a revision of the Constitution on this point requires careful consideration. I think, the question whether the mercy powers or the reprieve powers of the President should or should not be more extensive than they are today requires consideration in the light of all that has happened during the last fourteen years. It requires consideration from the point of view of the fundamental principles which underlie our Constitution, but the Bill of Mr. Bhupesh Gupta is unfortunately very defective. Now, you cannot treat Members of Parliament as a privileged class. Our Constitution is against privileges and certainly Members of Parliament should not claim special privileges for themselves nor should Members of State Legislatures

claim special privileges for themselves. I think it would be wrong to treat a petition to the President by these forty Members of Parliament or twenty-five Members of the State Legislative Assemblies on any higher basis than a petition by any forty members of the community or any twenty-five members of the community.

DR. W. S. BURLINGAY: Or any one.

SHRI P. N. SAPRU: Yes, any one member of the community. It is not the function of Parliament and it is not the function of the State Legislatures to advise the President or to advise the State Government in regard to what are strictly judicial matters. Whether a person's sentence should be remitted or not is to be determined by certain legal considerations, by certain judicial considerations. It may be that the executive government in exercising its powers takes into account certain considerations of statesmanship also. Those are considerations which a court of law may not take note of. It may be that in exercising this power of reprieve, the State Government takes note of certain extra judicial considerations, considerations of humanity. Now, the law permits, to a certain extent, judges also to take considerations of humanity into account. Let me give you a concrete case to illustrate my point. A man commits culpable homicide not amounting to murder under grave and sudden provocation. The courts convict him to four years' rigorous imprisonment but there are certain circumstances which extenuate the offence very much. Or, take the case of a young girl who gets into the family way while being unmarried and commits murder. So far as the courts are concerned, the least sentence that they can pass is transportation for life . . .

SHRI SANTOSH KUMAR BASU: That also by giving special reasons.

SHRI P. N. SAPRU: Yes, but I think no court will pass a sentence of

death in such a case but the executive government may take into account the fact that there were some special reasons which extenuated her case and it might, on humanitarian grounds, let her go off with a light sentence. Those are considerations which the executive may take into account but which the courts do not take into account. It is however not open to Members of Parliament to act as the advisory agency for the exercise of that power. I do not think we should amend our law in such a manner as to give our legislatures any voice in determining what the sentence in any particular case should be. This is so far as the merits of the Bill are concerned but Mr. Gupta is not really concerned with the merits of his Bill. His objective is a different one. His object is to invite us to a certain scandal which exists in our society today. That scandal is that there are men who have been in jail or who have been in prison for over twelve or fourteen years. Now, I have no doubt that they were rightly convicted for some offence but there should be a limit to the term of imprisonment which a man undergoes. I do not think that we should, in a civilised society, emphasise too much the retributive aspect of punishment, and I think in these matters a humane view should and has to be taken. I would, therefore, like measures to go forth from this House to our State Governments that they should review the cases of these men with sympathy. At the time when these offences occurred, the Communist Party was not a legal party in this country. The Communist Party is a legal party today. We have differences with the Communist Party but as I have often said, I am not as yet a professional anti-Communist. There are parts of the philosophy of Communism which decent socialists . . .

SHRI SHEEL BHADRA YAJEE (Bihar): And genuine socialists.

SHRI P. N. SAPRU: . . . and genuine socialists accept as part of the socialist philosophy.

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SHRI BHUPESH GUPTA: May I point out that among the prisoners there are members of other parties as well. Forward Bloc and certain other parties?

SHRI P. N. SAPRU: It is not necessary to be a Communist to accept for example the Marxist theory of the materialistic interpretation of history. It has a fascination for many people who do not look upon themselves as Communists. It is not necessary to be a Communist in order to accept the view that our institutions should not be founded on the acquisitive instinct in life and that for private enterprise to the utmost extent possible public enterprise should be substituted. Therefore, we should not be carried away by this consideration that the proposal comes from the leader of the Communist group and it must be opposed at all costs. I am not prepared to take that line. I would say that I have sympathy with the object which underlies this Bill. The object which underlies this Bill is that the State Government should review the cases . . .

SHRI SANTOSH KUMAR BASU: Not the State Governments.

SHRI P. N. SAPRU: I am putting it in the language of the Constitution.

The object of this Bill is that the State Government should review the cases of these prisoners, that they should pay regard to the fact that these prisoners have suffered a great deal for their misdeeds and that they should now release them so that they might become good citizens of this great land. I think I would personally welcome a provision in the Constitution which vests the President—and here I must make it clear that when I use the word 'President' I mean the Union Government—with powers of reprieve in cases of sentences other than death as well. The British Crown . . .

DR. W. S. BURLINGAY: You mean in all cases?

**SHRI P. N. SAPRU:** Well, we will have to pick and choose. I won't go to the extent of saying all cases; one will have to make up one's mind as to which cases should be reprieved but I am in favour of an enlargement of the President's powers in regard to reprieve. That will not be inconsistent with the quasi-federal principles which we have accepted for our Constitution. In principle you cannot distinguish between a death sentence and any other type of sentence. What the courts say is that for a death sentence they will apply the same standard of proof as for any other sentence. They do not demand a higher standard of proof for a death sentence than for other type of sentences.

**SHRI SANTOSH KUMAR BASU:** Except that in cases in which a death sentence is involved the imposition of the death sentence is compulsory on the judge unless he can find some extenuating circumstance which he must specifically mention in his order. Death sentence is the ordinary punishment and transportation for life is an exception.

**SHRI P. N. SAPRU:** That is not the case now. It has been changed.

**SHRI SANTOSH KUMAR BASU:** That was the case when the Constitution was framed.

**SHRI P. N. SAPRU:** That is not the case now. I know that in awarding a lesser sentence we do not generally now give our reasons for doing so. We have in this country no distinction, such as they have now in Britain, between capital murder and murder and I think it is unnecessary for us to have that distinction between capital murder and murder in our country as judges have discretion in the matter of punishment. Therefore, if the President can use his power of reprieve in the case of a death sentence, I see no reason why he should not have the power of reprieve in the case of a sentence of life imprisonment. A man is sentenced to death under 302. Well, because he has been

sentenced to death under 302, he gets the advantage of a review of his case by the President but if he had been sentenced to imprisonment for life he cannot get his case reviewed by the President at all. Therefore, there is no principle involved here. I think from the point of view of principle, the Constitution is somewhat defective in this respect and it requires an amendment. I do not say that we want the amendment immediately and certainly when you have the amendment you will not amend the Constitution on the lines suggested by Mr. Bhupesh Gupta. May I say also that it is undesirable that political parties or political leaders should influence judicial decisions or should influence even the decisions of Home Ministers in these matters? My friend, Mr. Bhupesh Gupta, knows that the first Labour Ministry—the Labour Ministry of Mr. Ramsay MacDonald—was defeated in the House of Commons on the Campbell case issue and the line taken by the Liberals who were supporting the Labour Party was that there should be an enquiry into how the Campbell case had come to be withdrawn by the Attorney-General. Well, therefore, I think it will be an evil day for our country when political parties or political leaders begin to influence law courts or begin to influence the Home Minister or the Law Minister, whoever is in charge of advising the President in regard to these mercy petitions. Having said that, I would also add that I do feel a great deal of sympathy for the men who are undergoing sentence now for ten, twelve or fourteen years. A number of them had rendered good service to this country during the days of our struggle. They are not hardened criminals in the way that dacoits are. We exercised the prerogative of mercy the other day in the case of Tehsildar Singh, perhaps the most notorious dacoit in northern India. Well, they are not worse than Tehsildar Singh and what we could do in the case of Tehsildar Singh we should certainly be able to do in the case of men who were fundamentally patrio-

tic, though their patriotism had taken a highly misguided form.

With these words, I oppose this Bill, while expressing my sympathy with the object underlying it.

**श्री शीलभद्र याजी :** उपसभापति महोदया, कामरेड भूपेश गुप्ता ने अपने कांस्टीट्यूशन (अमेन्डमेंट) बिल द्वारा सेक्शन ७२ में तरमीम लाने की जो व्यवस्था रखी है, उसका मैं समर्थन करता हूँ। मैं समर्थन इसलिये करता हूँ; क्योंकि जैसा कि हमारे पूर्ववक्ता सप्रू जी ने बताया कि जब ऐसे मामले में जहाँ मृत्यु की सजा हो उसमें प्रेजिडेंट के पास इस अधिकार की व्यवस्था है कि उसको आजीवन कारावास की सजा में परिणत कर दिया जाये, तब और भी जितने राजनैतिक कैदी हैं जिनको मजदूरों या किसानों के आंदोलन में भाग लेने के कारण लम्बी लम्बी सजा मिली है उस सजा को प्रेजिडेंट क्यों नहीं हटा सकते हैं? मैं समझता हूँ, जितने देश हैं सभी जगह, कहीं प्रधान मंत्री को और कहीं राष्ट्रपति को इस तरह का अधिकार देन की व्यवस्था है। जैसा कि अभी कम्यूनिस्ट पार्टी की तरफ से कामरेड भूपेश गुप्ता ने एक मेमोरेन्डम रखा, उसमें भी उन्होंने अपनी सेक्टोरियन मनोवृत्ति का परिचय दिया, इस मेमोरेन्डम को तैयार करने में भी उनकी भावना वही थी कि केवल उनके कुछ कम्यूनिस्ट लोग ही जेल में बंद हैं। बहुत से ऐसे लोग भी जो कम्यूनिस्ट पार्टी के नहीं हैं, दूसरी पार्टी के हैं या पहले दूसरी पार्टी को बिलांग करते थे उनको किसान मजदूर आंदोलन में काम करने पर फांसी की सजा हुई, फिर आजीवन कारावास में वह सजा परिणत कर दी गई लेकिन उसका उन्होंने अपने मेमोरेन्डम में जिक्र नहीं किया।

**SHRI BHUPESH GUPTA:** May I say just one word? This includes all, not only members of the Communist Party. Members of trade unions, Forward Bloc and other parties have also been included.

**श्री शीलभद्र याजी :** यह उनके मेमोरेन्डम में एकदम मेन्शन नहीं है। मैंने यू० पी० प्रान्त की लिस्ट देखी जहां एक बड़ी भारी बस्ती में किसान संघर्ष हुआ लेकिन उनके नामों की सूची उसमें नहीं है। इसी प्रकार आई० एन० ए० के कैप्टन और ३० बड़े बड़े आदमी जो इम्फाल और कोहीमा की लड़ाई में अंग्रेजों के साथ लड़े और उनमें कैप्टेन राम मुहम्मद सिंह का नाम कौन नहीं जानता, उनकी तमाम बड़े बड़े जो कांग्रेस के नेता और कार्यकर्ता थे और एम० एल० ए० थे उन्होंने गवाही दी। वे तीस लोग आज भी चौदह वर्ष से जेल में बंद पड़े हैं। तो मैं यह कह रहा था कि कांग्रेस पार्टी को जो लोग बिलांग करते हैं उनकी कभी इस प्रकार की सेक्टोरियन मनोवृत्ति नहीं रही। कम्यूनिस्ट पार्टी की मनोवृत्ति इसी से जाहिर हो जाती है कि उनके लीडर ने जो लिस्ट रखी उसमें यू० पी० गायब है, जहां पर इतने किसान आज बारह, चौदह वर्ष से जेल में बंद हैं। लेकिन आप अपनी आदत से लाचार हैं और आपके वही कामरेड इन आर्म्स जो हैं वे ही लिस्ट तैयार करते हैं। किन्तु हम जो कांग्रेस के लोग हैं हम नैरो माइन्डेड नहीं हैं, सेक्टोरियन नहीं हैं। हम लोग उदार हैं। अभी सप्रू जी ने इसका समर्थन किया और मैं भी समर्थन करने के लिये खड़ा हुआ हूँ। कांस्टीट्यूशन में इस तरह का अमेन्डमेंट लाने की जो व्यवस्था इस विधेयक द्वारा चाही गयी है उसका मैं स्वागत करता हूँ। हम जानते हैं कि ऐसे ऐसे आदमी जो अंग्रेजों से लड़े, बर्मा, इम्फाल और कोहीमा के फ्रंट पर लड़े और अपने देश के ही अंदर जो लोग किसान मजदूरों के आंदोलन में लड़ते थे, वे अभी तक चौदह वर्षों से जेल में बंद हैं, और जब हम उनका नाम लेते हैं तो हम यह कभी नहीं सोचते कि वे कम्यूनिस्ट पार्टी के हैं, या पी० एस० पी० या फारवर्ड ब्लाक या कांग्रेस के हैं या जनसंघ अथवा स्वतंत्र पार्टी के हैं। जो भी किसान मजदूर के संघर्ष में लड़े हम उनका समर्थन करेंगे और यदि दूसरी पार्टी का आदमी भी गलती से मैदान में चला जाये तो हम उसके लिये भी वकालत करेंगे। इसलिये

[श्री शीलभद्र याजी]

जो भी ऐसा सियासी कैदी जेल में बारह, चौदह वर्ष से बंद है उसको मक्त कराने के लिये प्रेज़ीडेंट को अधिकार देने के व्यवस्था की जो मांग की गयी है मैं समझता हूँ हर एक सोशलिस्ट को और हर एक को जिम्मा मानव हृदय है और जिसमें दया है, उसका स्वीकार करना चाहिये ।

अब रही यह बात कि खों लोग कहते हैं कि यह बिल डिफेक्टिव है, तो मैं यह कहना चाहता हूँ कि हम लोग ही तो ला मेकर्स हैं और हम जब इतने कानूनों को अमेन्ड करते रहते हैं तो इस बिल को भी अमेन्ड कर सकते हैं । इसलिये जैसा कि अभी हमारे सप्रू जी ने कहा और शास्त्री जी ने बोलते हुए कहा कि हम लेमैन हैं और इस चीज को कानूनी पंडितों पर छोड़ देना चाहिये, यह दलील ठीक नहीं है । जब हम रोजमर्रा कानून बनाते हैं, कांस्टीट्यूशन को भी अमेन्ड करते रहते हैं तब इस प्रकार का विरोधाभास या मुखालिफत करना सही नहीं है और उस डिफेक्ट को लेमैन के दयाभाव द्वारा दूर करना चाहिये । कम्युनिस्ट पार्टी ने भी अब अपना तोबा किया है, प्रायश्चित्त किया है क्योंकि वे पहले कहा करते थे कि सोशलिज्म जो है बुलेट से ही सकता है, बैलट से नहीं हो सकता । लेकिन जब से मास्को में कम्युनिस्ट पार्टी की कान्फ्रेंस हुई और वहाँ से फतवा आया कि नहीं, अब सोशलिज्म बैलट से भी हो सकता है, बुलेट से ही नहीं हो सकता है तब से रणदिवे पीरियड जिसको हम कहते हैं वह गुजर गया और अमृतसर कांग्रेस में बैठकर हमारे कम्युनिस्ट भाइयों ने वायलेन्स की बात करने से तोबा किया और आपस में सहमत हुए । जब इन्होंने देखा कि हम सोशलिज्म बैलट के जरिये लाना चाहते हैं तो इन्होंने भी अपनी लाइन बदल दी ।

जैसा कि सप्रू साहब ने भी फर्माया, जब हम आजादी की लड़ाई लड़ रहे थे तो हमको गुंडा एक्ट का मानहत्त दफा ३८६ में कैद कर लिया जाता था । बौत्ल फेंकने के अभियोग

में नेवी रायट्स के वक्त मुझको भी गुंडा एक्ट के नीचे हिरामत में ले लिया था । माबरमती जेल में जितने हमारे कांग्रेस के नेता थे और नासिक जेल में भी, वे कोई न कोई गुंडा एक्ट में कैद थे और जब वे छोड़े जाते रहे । यहाँ तक एमनैस्टी हुई तब वे छोड़े जाते रहे । यहाँ तक होता था कि किडनैपिंग का केस दर्ज करके लोगों को पकड़ लेते थे । यदि हमारे चार स्टूडेंट्स जेल चले गये तो खुद हमारे ऊपर किडनैपिंग का केस चलता था । बहुत से ऐसे निर्दोष लोग जिनके बारे में हम जानते हैं किसी संघर्ष में नहीं थे वे भी चौदह वर्ष से कैद में हैं । उपसभापति महोदया जी, एक कहावत है कि गेहूँ के संग जौ भी पिस जाता है, लेकिन गेहूँ के साथ घून भी तो पिस जाता है । यही हाल उन लोगों का हुआ । बहुत से निर्दोष लोग केवल शहादत देने पर जेल में पड़े हुए हैं । यहाँ पर मैं खास तौर पर भूपेश गुप्ता के मेमोरेन्डम की बात नहीं करता लेकिन हिन्दुस्तान में बहुत से ऐसे लोग जो किसानों में काम करते थे, मजदूरों में काम करते थे, जिन्होंने उनके लिये संघर्ष किया और जेलों में वर्षों से बंद हैं, उन्हें भी छोड़ा जाना चाहिये ।

[Mr. DEPUTY CHAIRMAN in the Chair.]

लेकिन कम्युनिस्ट पार्टी ने जो गलती की उसका उतने प्रायश्चित्त किया और अपनी नीति को आगे बदल दिया । ब्रिटिश गर्वन्-मेंट ने भी आइ०एन०ए० के मूवमेंट के लीडरों का ट्रायल किया, उनको सजा हुई, लेकिन बाद में उन लोगों की सजा को कम्यूट कर दिया गया । इस ट्रायल में हमारे शाहनवाज खां साहब थे जिन्हें ब्रिटिश गर्वन्मेंट ने सजा दी और बाद में इनको और इनके दो साथियों की सजा को कम्यूट कर दिया । आज हमारी कम्युनिस्ट पार्टी ने भी अपनी गलत लाइन को जिसे रणदिवे लाइन कहते हैं उसको छोड़ कर सही लाइन पर आ गई है । जहाँ पहले कम्युनिस्ट पार्टी बुलेट से हर काम को सिद्ध करना चाहती थी वहाँ अब वह समझने लगी है कि यह काम बुलेट से नहीं होगा बल्कि बैलट से प्राप्त हो सकता है । वह लाइन

जो कांग्रेस की लाईन है यानी पार्लियामेंटरी डेमोक्रेसी से देश में सोशलिज्म को लाना उसी लाईन पर अब हमारे देश की कम्युनिस्ट पार्टी आना चाहती है। उसने लड़ाई और हथियार से अपनी बात को प्राप्त करने का रास्ता छोड़ दिया है और अब वह हमारे रास्ते पर चलना चाहती है। आज जरूरत इस बात की है कि जो लोग रणदिवे पार्टी के थे और गलत लाइन पर चल कर जेलों में सड़ रहे हैं उन्हें रिहा करके मौका दिया जाना चाहिये कि वे ठीक रास्ते पर आ जायें। लेकिन मैं आपसे यह कहना चाहता हूँ कि सिर्फ कम्युनिस्ट प्रिजनर्स को ही नहीं इस तरह का मौका दिया जाना चाहिये बल्कि जो लोग किसान और मजदूर संघर्षों में या आई० एन० ए० के संघर्षों द्वारा जेलों में सड़ रहे हैं उन्हें भी इस बिल के अधीन लाया जाना चाहिये। जो लोग रणदिवे की गलत पालिसी की वजह से एसिड के बल्ब फेंक कर यह समझते थे कि इससे देश में क्रान्ति हो जायेगी या इस तरह की कार्यवाहियों से हम अपनी मंजिल पर पहुंच जायेंगे, आज इस तरह के जो लोग गलत रास्ते से चल कर जेलों में सड़ रहे हैं उन्हें जेलों से छुड़ाने के लिये प्रेजीडेंट को यह अधिकार देने की बात इस बिल में रखी गई है। यह जो अधिकार प्रेजीडेंट को इस बिल द्वारा दिया जा रहा है वह मानवता के नाम पर, सभ्यता के नाम पर और सभी बातों के नाम पर दिलाया जा रहा है। दूसरे मुल्कों में भी इस तरह के अधिकार वहां के प्रेजीडेंट को प्राप्त हैं और जो लोग इस तरह की कार्यवाहियों में सजा प्राप्त होते हैं उन्हें प्रेजीडेंट कुछ समय सजा काट लेने के बाद माफ कर देता है। इसी तरह से ब्रिटिश गवर्नमेंट के जमाने से हमारे मुल्क में अब भी कुछ इस तरह के सजायाफ्ता आदमी हैं जो अभी तक जेलों में बन्द हैं। ब्रिटिश गवर्नमेंट एक साम्राज्यवादी गवर्नमेंट थी लेकिन अब हमारे देश में अपनी ही सरकार कायम हो गई है। इसलिये यह और भी आवश्यक हो जाता है कि इस तरह जेलों में जो लोग सजा

पा रहे हैं उन्हें छोड़ दिया जाना चाहिये। हमारे प्रेजीडेंट मृत्यु दंड की सजा पाये अपराधी की सजा को माफ कर सकते हैं लेकिन जिनको आजीवन कारावास या कुछ वर्षों तक कारावास की सजा दी जाती है उनकी सजा को माफ करने का अधिकार उन्हें नहीं है। अगर कोई स्टेट गवर्नमेंट या सजा पाये हुए आदमी की वाइफ, लड़का या पार्लियामेंट का मेम्बर प्रेजीडेंट से उस सजा पाये हुए आदमी की सजा माफ करने की अपील करना चाहे तो वह आज जो कानूनी व्यवस्था हमारे देश में है उसके मुताबिक इस तरह की अपील नहीं कर सकता है। अभी हमारे सप्रू साहब इस कानून की व्यवस्था के बारे में व्याख्या दे रहे थे और वे एक तरह से बाल की खाल निकाल रहे थे। वे यह कह रहे थे कि इस चीज को पोलिटिकल लीडरों के इन्फ्लुएन्स से दूर रखना चाहिये। मेरी समझ में यह बात नहीं आई कि जब एक आदमी को गलत कारणों से सजा हो जाती है तो क्या पार्लियामेंट के मेम्बरों या लेजिस्लेचर को यह हक नहीं होना चाहिये कि वे एक बेगुनाह आदमी की बात को होम मिनिस्टर या प्रेजीडेंट तक पहुंचायें? जब हमें मालूम है कि एक आदमी को गलत तरीके से सजा हो गई है जो कि उसे नहीं होनी चाहिये थी, तो इस तरह की बात कहना कि पोलिटिकल लीडरों को इस तरह के इन्फ्लुएन्स में नहीं लाना चाहिये, एक तरह से कानून का दिवाला निकालना है। जब हमने अपने प्रेजीडेंट को तरह तरह के अधिकार दे रखे हैं, फिर एक छोटा सा अधिकार और देने से वह डिक्टेटर नहीं बन जायेगा। जब इतने पावर देने से वह डिक्टेटर नहीं हो सकता है तो यह कैसे मान लिया जाय कि एक और छोटे से पावर देने पर वह डिक्टेटर बन जायेगा। प्रेजीडेंट को संविधान द्वारा बहुत से अधिकार प्राप्त हैं। वह दोनों हाउसों को एक मिनट के अन्दर अपने अधिकार से समाप्त कर सकता है। इस तरह से हमने संविधान द्वारा अपने प्रेजीडेंट को कई अधिकार दे रखे हैं। तो यह कैसे मान लिया

[श्री शीलभद्र यात्री]

कि एक छोटे से अधिकार देने पर कि वह सजायापता आदमी की सजा कम कर सकता है या माफ कर सकता है—डिक्टेटर बन जायेगा। इसलिये मैं नहीं समझता कि इस बारे में कोई कानून के खिलाफ बात की जा रही है। हम तो मानवता के नाम पर, सम्यता के नाम पर और दया के नाम पर उन लोगों को चाहे वे कम्युनिस्ट पार्टी के हों, चाहे प्रजा सोशलिस्ट पार्टी के हों, चाहे फारवर्ड ब्लाक के हों, चाहे जनसंघ के हों या नई स्वतन्त्र पार्टी के हों, अगर किसी को संघर्ष में सजा मिली हो तो प्रेजीडेंट को यह अधिकार होना चाहिये कि वह इस तरह के आदमियों की सजा को माफ कर दे या कम कर दे।

हमारे कामरेड भूपेश गुप्त ने जो बिल रखा है वह इसी आशय का है कि इस तरह के जो लोग सजायापता हैं उन्हें प्रेजीडेंट अपने अधिकार द्वारा जो कि इस बिल में उन्हें दिये जा रहे हैं सजा माफ या कम कर सकते हैं। जब हमने प्राणदण्ड पाये आदमी के माफ करने का अधिकार प्रेजीडेंट को दे रखा है तो इस तरह के अधिकार देने में कोई नुकसान नहीं है। अक्सर यह देखने में आता है कि बहुत से निर्दोष लोगों को दो चार झूठी गवाहियों द्वारा कोर्ट में फंसा दिया जाता है और उन्हें तरह तरह की सजा दे दी जाती है। इसलिए हमारा कहना यह है कि जहां पर हमारा कानून डिफैक्टिव है वहां उस पर अरेस्टमेंट लाया जाना चाहिये। इस बिल में प्रेजीडेंट को जो विशेष अधिकार देने की बात कही गई है उसका सरकार को स्वागत करना चाहिये। जो लोग संघर्षों में काम करते हुए पकड़े गये हैं चाहे वे किसी भी पार्टी के क्यों न हों उन्हें छुड़ाने के लिये, उनकी सजा कम करने के लिये इस बिल में जो अधिकार प्रेजीडेंट को दिया जा रहा है उसका हर एक सदस्य को स्वागत करना चाहिये। बस कि मैंने पहले कहा कि हमारे रणदिवे पार्टी के जो लोग गलत नीति के कारण

अभी तक जेलों में पड़े हैं और उसके साथ साथ किसान और मजदूर संघर्षों में पकड़े गये आदमी तथा आइ०एन०ए० के जो आदमी अभी तक जेलों में सड़ रहे हैं उन्हें रिहा करने के लिये जो बिल कामरेड भूपेश गुप्त आज सदन में लाये हैं उसे हम सब लोगों को सहर्ष स्वीकार करना चाहिये। अब हमारे कम्युनिस्ट भाई यह समझने लगे हैं कि देश में समाजवाद की स्थापना बुलेट द्वारा नहीं हो सकती है बल्कि बैलट द्वारा हो सकती है। उन्होंने अब कांग्रेस की नति पर चलना मान लिया है। इसलिये मैं सब माननीय सदस्यों से यह अपील करता हूँ कि वे जो बिल सदन में लाये हैं उसका समर्थन करें। इन शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

**SHRI K. SANTHANAM (Madras):** Sir, if my friend, Mr. Bhupesh Gupta, had brought forward a resolution that this House was concerned at the continued detention of certain long-term political prisoners or if he had promoted a Bill for special amnesty to such persons, it would have elicited a lot of sympathy. As a matter of fact many of the speeches were in favour of such a resolution or such a Bill for amnesty, but what he has brought forward is a Bill to amend the Constitution, the implications of which he has not fully realised. The first and the most important implication is whether every person convicted in this country, from the Himalayas to the Cape Comorin, should after having appealed to the High Court and Supreme Court and after having put in a mercy petition to the Governor also have the right to put in a mercy petition to the President. Sir, every year thousands and lakhs of cases of imprisonment take place.

**MR. DEPUTY CHAIRMAN:** This is about Members of Parliament and Members of State Legislatures.

**SHRI K. SANTHANAM:** In any ordinary case, it is provided that 25 Members of a State Legislature or 40

Members of Parliament can petition the President to pardon a man for any crime. That is the Bill. The Bill has got two clauses, Sir. When a Member of Parliament or a State Legislature has been convicted, he may himself directly apply to the President for mercy, and if he is any other man, whatever kind of criminal he may be, if he had been convicted, he can through 25 Members of the State Legislature or 40 Members of Parliament apply to the President. I shall come to the Members of Parliament. But he wants to extend the right of a person for pardon by the President to every criminal in this country. Sir, it will make the work of judicial administration as well as the work of the President and the Governor very complicated and difficult. We are to go on the presumption that our judges are honest and impartial, that they do not inflict sentences recklessly or without cause, and therefore even a mercy petition to the Governor will have to be very rare. Otherwise, there is no meaning in our judicial administration. Having vested law and order in the State and having vested the right of pardon in the Governor who will certainly be advised by the State Government, when the appellate court and the High Court have rejected the appeal, when after reviewing it the Governor has rejected the petition, that a further petition in all cases should be available to the President is wholly wrong. And so, I do not accept the idea either of my friend, Dr. Barlingay, or of Mr. Sapru, that there should be a discretionary power vested in the President.

DR. W. S. BURLINGAY: I only said that that might be considered.

SHRI K. SANTHANAM: I think it is not worth considering. Mr. Sapru was very qualified. He said that it might be limited either to transportation or certain limited sentences. Sir, why should we think that the Governors and the State Governments will not be sympathetic in such rare cases? It is not a question

of ordinary justice but only certain cases where a person requires a reprieve. After all, there will be a great deal of local pressure on the local ministry and they are likely to have much more sympathy in such cases than the President who is far away. Therefore, the fundamental point, I think, is mistaken, and it will make the position of the President very difficult, because either he will have to reject almost every case which has been rejected by the Governor or, in the alternative, he will have to reverse the decision of the Governor. In many cases, there will be friction between the State and the Centre which we ought to avoid at all costs.

Now, I come to the other point. I agree with my friends, Dr. Barlingay and Mr. Mani that it is not right—I would even say that it is not honourable—for Members of Parliament or Members of the State Legislatures to seek any right, especially in the field of criminal law and justice which is not available to the meanest and the poorest citizen of the country. And secondly, Sir, Members of the Legislature and Members of Parliament will have to carry these petitions of mercy on behalf of particular criminals. Why should they carry the mercy petition of a particular criminal and not of all criminals? It may become even a paid profession if it is done and it will lead to endless corruption.

DR. W. S. BURLINGAY: Yes, that is right.

SHRI K. SANTHANAM: Therefore, that clause is altogether mischievous and I do not think that my hon. friend fully realises it. He is so anxious about certain long-term prisoners who deserve sympathy from all parts of the House but he is trying to legislate for all people in India for all time. This is the mistake of trying to legislate without knowing the implications of law.

So, Sir, I think that on the general principle of vesting the President with

[Shri K. Santhanam.]

more discretion, of giving special rights to Members of Parliament or to Members of the Legislature and lastly, of making these Members as a kind of lawyers or supporters of particular convicted persons, on all these three counts, this Bill is altogether objectionable, and I hope that my hon. friend will withdraw it.

SHRI ARJUN ARORA: Mr. Deputy Chairman, Sir, the constitutional aspects of this Bill have been so ably examined by hon. Members, Dr. Baringay and Shri Sapru, that I need not say a word about them. There is, however, a human aspect of the Bill to which we must give our earnest consideration. It is correct that no particular privileges which are not available to the meanest member of our society should be conferred on Members of the Legislature. It is also correct that people who act wrongly, particularly in political matters because of certain momentary impulses, should not be subjected to long-term imprisonments and their cases should be periodically reviewed. Shri Bhupesh Gupta has circulated a memorandum which contains a long list of long-term prisoners. Some of them, I find, are workers employed in an engineering firm of Calcutta. They acted in a manner which subjected them to this long-term imprisonment and they have spent eleven years in prison. Those familiar with industrial strifes in the country, those familiar with the tensions which sometimes develop in the industrial field, know full well that workers are sometimes compelled by circumstances to act in a manner which is not very peaceful, to act in a manner in which they will not do if they have had some time to deliberate upon such acts. Such industrial workers being kept in prison for periods of over eleven years is a case which must invite the sympathy of every decent Indian and I do support the move that their cases should be reviewed, and in such cases people should be released. The list

also contains the names of some old revolutionaries like Pannalal Das Gupta whom as a young man I learnt to respect when he was involved in the Machua Bazar bomb case. Now, such a person who in the year 1931 acted with the highest patriotic motive and was sentenced to a long-term imprisonment by the then foreign rulers of the country is again in imprisonment for a long-term. I do feel that just after our independence there were certain conditions, certain complications, which did not enable certain people to see things in a correct political perspective. And I feel that Shri Pannalal Das Gupta was one of them and today things have changed. Our democracy has become stabilised. Many in the country who believed in violence, who even did not believe in our independence, today not only respect our independence and our democracy, they have abjured violence, they have taken to peaceful and constitutional means to achieve socialism of their conception. I am sure that Shri Pannalal Das Gupta will be one of them. Such persons should be brought out of the prison as soon as possible. The courts have very little discretion in such matters. The Government should have it—the Government has it—and it should exercise it generously. I remember that in 1939, an old worker of a Kanpur mill, affectionately called Chacha Jan Mohammad by his fellow-workers delivered a speech. Just as the War broke out and the Congress Ministry resigned, he delivered a speech, a 10-minute speech, and he was hauled up for waging war against the King Emperor. And under section 121, he was sentenced to life imprisonment. The Sessions Judge and subsequently the High Court remarked that under the section under which he was charged they had no option. He was challaned for waging war against the King Emperor. He could either be sentenced to death or to transportation for life. In both these cases the judges felt that the sentence would be atrocious, but then they had

no discretion. Both the Sessions Judge at Kanpur and the High Court at Allahabad recommended to the Government to take a lenient view of it and exercise their discretion, but it is painful to recall that the then foreign rulers did not do anything about it, and the man languished in prison for years for merely making a speech. It was only in 1946 when Pandit Govind Ballabh Pant took over the reins of U.P. that he released him. Such case . . .

MR. DEPUTY CHAIRMAN: Will you take more time?

SHRI ARJUN ARORA: Just a minute.

The spirit which prompted Pandit Govind Ballabh Pant to release Chacha Jan Mohammad in 1946 should be able to persist. It should be adopted by our Government today, and the cases of long-term political prisoners should be sympathetically considered and they should be constantly reviewed.

With these words, Sir, I support the motive behind the Bill. I do agree with my hon. friend, Mr. Sapru, that the Bill is ill-drafted and so I oppose it.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2.30.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock, the VICE-CHAIRMAN (SHRI NAFISUL HASAN) in the Chair.

SHRI DAHYABHAI V. PATEL (Gujarat): Mr. Vice-Chairman, Sir, in the matter of the administration of justice and the sentence administered to criminals the outlook of the world has undergone considerable change in recent years. There was a time, Sir, when the sentence passed on a criminal was considered something like a

revenge to be taken against him for an act that he did against society. Today the outlook has radically changed; opportunity is sought to be given to him to reform himself, to change his ways and, if possible, become a useful citizen of his country. If this is the outlook in respect of criminals who are responsible for murder, for looting, for kidnapping, etc., how much more justified would be a liberal and generous outlook in the case of political prisoners?

Sir, we may not agree with the philosophy or the political objectives of parties. That is why there are the parties, and this fundamental difference is going to remain. But cases as the ones our friend, Shri Yajee, pointed out are pointers to what is happening, if we take a very rigid and legalistic attitude in this matter. If the I.N.A. prisoners who were sentenced to death could be pardoned, is there any justifiable reason why the I.N.A. prisoners who had been sentenced to 10 years, 15 years and 20 years' imprisonment should still rot in jails? If Mr. Bhupesh Gupta has pleaded for only his party friends and has not included the I.N.A. friends, I would suggest that he should include them and make his plea a broad-based one for all people who are still rotting in jails under such circumstances. Besides, political prisoners are not criminals in the ordinary sense of the term. Sir, they are working for an ideal, and if in this country political parties have given up the idea of violence, as they profess, there is certainly justification for a review of these cases. I think a too legalistic or technical view of the matter should not be taken.

I do not say that the Bill in the form presented by our friend, Mr. Bhupesh Gupta, is the ideal or the proper one that should be adopted, but he points out something which needs to be remedied. Sir, the present position is that the State Gov-

[Shri Dahyabhai V. Patel.]

ernments have to recommend. All said and done, without meaning the least disrespect, I would submit that the persons in authority in the State Governments are usually people—there may be very honourable exceptions—whose outlook is a little narrow and limited, and therefore they are inclined to be a little narrow on the subject or hard on the prisoners. Here in the Centre, the Government and the outlook of the people who form that Government is very much broader and therefore, the cases, when they come up for review here, would be subjected to a more liberal treatment, and I am all in favour of that type of treatment. I do not say that, simply because twenty-five members of a State Legislative Assembly or forty Members of Parliament have recommended a case, immediately mercy should be shown and the man concerned should be released. The case should be considered. Today we are left entirely to the mercy of the State Governments, that is, the Chief Ministers of States whether a certain case is to be considered or not, and that also is more or less in the case of a death sentence. There is no provision for mercy or consideration for people who have not been awarded death sentences.

SHRI SANTOSH KUMAR BASU: There is the Criminal Procedure Code for remission of sentences.

SHRI DAHYABHAI V. PATEL: The Criminal Procedure Code? That means it excludes political prisoners.

SHRI SANTOSH KUMAR BASU: No, no; not at all. Offences are the same, political or non-political.

SHRI DAHYABHAI V. PATEL: If there is that provision, then why this long list that my friend, Mr. Bhupesh, points out to, or the cases that my hon. friend, Mr. Yajee, points out? In those cases that is a question that can legitimately be asked. But there is no answer. Therefore, I

say that if such things are happening, the matter needs to be investigated. If political prisoners are treated like this, what is the fate of those who are not political prisoners? And we call ourselves a progressive country; on the one hand we hear of what is being done about jail reform and how criminals in this country are also being given opportunities to rehabilitate themselves by learning some trade, and the experiment of giving them parole is being tried out. On the other hand we see cases of political prisoners, patriots like the I. N. A. prisoners, rotting in jails for 15 years? Is this right? I feel, Sir, that the case that Mr. Bhupesh Gupta has pointed out to this House deserves proper consideration. I am afraid I am not a lawyer; so I would not say that the wording of his Bill is right or is wrong and I would not enter into an argument or a learned discourse like our hon. friend Mr. Sapru, because that is not my line. But I do say that the plea that Mr. Bhupesh Gupta has made has a lot of substance in it and the matter should be reviewed and considered by Government.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Vice-Chairman, Sir, this Bill has been discussed at great length already. Though it seeks to add a small clause, it initiates a new principle of power that is not today there. Although from the humanitarian point of view it may point to certain cases where such powers given to the President would be very necessary, yet in the present context of things we have to look at the difficulties, whether we are ready today, whether twenty-five Members of a Legislative Assembly or forty Members of Parliament are ready today to back certain cases, for such a petition to be made in such cases. Firstly, I do not see what would be Government's objection to take up certain cases if need be on its own. Of course, under the old British regime general amnesty was given and very often cases were taken up, as was pointed out by the sponsor of the Bill

himself in his first speech. Whether these cases were agreed to or not is a different question. Here too, it may be that the President may not agree to do exactly what is sought of him. All that will be his discretion. All **that is sought here to be done is that** the appeal should have some sanction behind it because Members of Parliament or Members of a State Legislature take up the case. The **main point to be considered at present** is, when we have decided that the judiciary should not be subjected to **Parliament influence in any way**, when such a power of going in appeal direct to the President is given to **members of a legislature**, whether it would not take away some freedom of action from the judiciary, and whether in some indirect way it would not influence it, and whether at present it is the right time for another ten or fifteen years, until our people have learnt to respect their constitutional rights in a more general way and until the common people are able to see what use is made of the rights given to members of legislatures, in my opinion it might be premature.

Sir, I must again reiterate that while in principle I do agree that there may be cases of the type that are given here in the memorandum by 25 members and long terms of imprisonment which certain people are undergoing, I feel the humanitarian idea which has motivated the mover of the Bill should be left to the Government to find out if at all they can make a change in the Constitution, and whether it is necessary to give this power to the President through Members of Parliament.

Sir, the second thing with which I do not agree is the question where **Members of Parliament or members of legislatures are involved**. I do not see why there should be any discrimination at all. Of course, while Parliament is sitting, about arrest, of Members etc. there is some sort of discrimination as they enjoy some privilege. That apart, any discrimination, because a person belongs to a **certain body**, should not be there.

Sir, since so much has already been said on this Bill, I do not want to take much time of the House. But the way in which the thing is sought to be at once incorporated in article 72, I do not think that would be desirable and the entire procedure and repercussions of such a remedy on the present administrative system will have to be carefully examined. What other limitations will have to be put, what other clauses, if at all, have to be included, etc. will require closer scrutiny. Therefore, I am not at present in a position to support the Bill, though I agree with the idea which motivated the sponsor of this Bill.

**SHRI BAIRAGI DWIBEDY (Orissa):**  
Mr. Vice-Chairman, Sir, before I go into the details and merits of the Bill, I would like to express my views in a different way. The motive of the Bill has been discussed from constitutional and humanitarian point of view and also in the context of struggle for independence. Before expressing any explicit view on the Bill I should say that I am not going to support the Bill as it is, but I do support the spirit underlying it which envisages the release of political prisoners. I lend my support to that aspect from a humanitarian point of view. But, Sir, I do not like for a moment to suggest that in achieving this aim the Constitution should be amended. I cannot also support the idea that all criminals should be allowed to take shelter under this Bill. But before going into the details of it, I should like to thank Mr. Bhupesh Gupta for taking the trouble of preparing a forum in this House for the release of political prisoners. I also thank the hon. Members opposite for supporting the Bill in the context of its humanitarian point.

Sir, many eminent lawyers have discussed the constitutional aspect of the Bill, still all those hon. Members who have participated in the debate have expressed their view about releasing political prisoners. I am one

[Shri Bairagi Dwibedy.]

with them in this respect. But I am sorry that the hon. Members opposite and the party to which they belong, on so many occasions have cornered Mr. Bhupesh Gupta for his political affiliation to another party. Before expressing their views about releasing political prisoners, it would have been wise on their part to bring forward this thing in the shape of a resolution rather than Mr. Bhupesh Gupta bringing it. It is rather unfortunate that while discussing this thing threadbare, some hon. Members expressed that maintenance of law and order was a State subject. I do agree with them. A Chief Minister, who is not willing to release his political prisoners, may complain that if some of them are released, law and order will not be maintained in his State. In this context I should like to say that in the Bill, which has been brought forward before this House, there is a provision for Members of Parliament and State Legislatures to lend their support in seeking the release of Members of Parliament or State Legislatures before the Rashtrapati. Here I would like to suggest that if there is any constitutional difficulty in getting these prisoners released, let the State Minister concerned be approached by the legislature of the respective State, the former taking the responsibility upon himself and standing surety for the prisoners who may be released from the respective State prison so that the release of the prisoners may not be detrimental to the law and order of the State. I think if this aspect is taken into consideration and as Members here are eager to see that such political prisoners are released from the State prisons, I think the sentiments expressed by the Members in this House will, to some extent, help the State Ministers in releasing the prisoners. If not, when Members of this House have expressed their views in favour of releasing the political prisoners or those who are suffering long-term imprisonment, let the Home Ministry take this matter

up and see that this is done in no time by taking the State Governments into the Home Ministry's confidence, as has been done on many occasions, and seeing that these political prisoners are released in no time.

SHRIMATI YASHODA REDDY (Andhra Pradesh): Mr. Vice-Chairman, this is one of the few occasions when I should like to extend my sympathy and support to Mr. Gupta though I cannot support him in the Bill as it is but may I request him to withdraw the Bill in the present form? I would equally request the Home Minister to take note of the sympathetic expressions given by all Members on this side and also use his influence and I would also request through him the Prime Minister to use his influence with the State Governments and see that these long-term prisoners are released from the prisons.

SHRI P. N. RAJABHOJ (Maharashtra): Are you supporting him?

SHRIMATI YASHODA REDDY: I am saying that I am not supporting the Bill in the present form. I am requesting Mr. Gupta to withdraw the Bill in the present form and at the same time I am requesting the Home Minister to use his good offices, also the Prime Minister through the Home Minister, that our sentiments should not be rejected and that they should take cognisance of the feelings expressed here. It is a good cause and these expressions should be taken note of and they should use their good offices to convince the State Governments to release the political prisoners who have suffered for such a long time in the prisons. I did not want to speak on this this morning but I heard most of our Members opposing it just on the legal and technical point of view. I feel that in every matter that comes up, while Members may be eminent advocates and lawyers, they should not bring in legal technicalities and distinctions in human considerations. I am not an advocate though I do

belong to that profession but I feel in this that the human considerations are more important than the legal and technical points of view. I come from that State called the Andhra Pradesh where, when Mr. Sanjeeva Reddy, the present Congress President, had been the Chief Minister, he released almost all the long-term prisoners excepting one or two, if I am right, and I can tell that nothing has happened to the State. His prestige has increased and it has been welcomed everywhere and by releasing these long-term prisoners only good came out. After all about these prisoners, whatever they might have been their motives at that time, nobody can doubt that they were very sincere on their part and were fighting a political cause which was in their minds necessary from a nationalistic point of view. We should say that they were very patriotic. Moreover, these are cases, most of the cases, which came before the Constitution came in. I do not want to enter into the legal controversies but I do appeal to the Minister here to take cognisance of the feelings here and also to convey them to the State Ministers and I hope the precedent set up by the Andhra Pradesh Government in Mr. Sanjeeva Reddy's regime, will be taken up and followed by the other Governments; otherwise, I request the Prime Minister to look into this. I do not want any change in the Constitution but some method must be evolved and I appeal that these prisoners should be released. Thank you.

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Vice-Chairman, I have great regard and respect for the mover of this Bill. He is a person of wisdom and sagacity though I may not always agree with him in whatever he says but that is another matter. But I find that he has not given his best thoughts while drafting this Bill which is before us now. That is why I find that he readily, this morning, agreed to accept certain suggestions and amendments that were proposed to this Bill.

Now, we have to consider the Bill as it is before us. If he could give us the amendments that he was prepared to accept this morning, then our whole approach may change but so long as the Bill is before us without any positive amendment, it is very difficult for me to give unqualified support to this measure. We have to consider this measure from various angles and broadly speaking, we can consider this from the compassionate and human point of view, from the Constitutional angle and from the procedural and operative point of view. So far as the main objects that my friend has in view in bringing this measure before us, are concerned I have great sympathy for him and for the objects he has in view. We are told in this pamphlet that he has circulated that there are a number of prisoners, political and otherwise, who are in prisons for a very long number of years—10 or 14 years—and they have been languishing in the prisons and there are other also whom he has not listed—it is not his fault—because he has his own friends and people with whom he might have been politically or otherwise associated—but when we are looking at this measure, we have to look at it from the point of view of all those who may be suffering likewise and I can extend my sympathies as many other hon. Members have done, and say that their cases may be reviewed and justice brought to them, not justice from the legalistic and the narrow point of view but I am saying this from a very wider angle. The hon. Home Minister will agree with me that the whole concept of punishment is changing. We are now applying modern methods for winning 3 P.M. over the wrong doers and even those who have been convicted of very heinous crimes. Many of these persons who are concerned here, are persons who were motivated by the highest of feelings and by the spirit to free the motherland from the foreign yoke. And many more have acted, not for any

[Shri Rajendra Pratap Sinha.] personal gains, but for certain larger objectives which they held dear, political, economic or otherwise. Now, we have to treat these persons on a different footing, although as I have said, even the treatment of prisoners as a whole, is undergoing a radical change now, and we do not believe in these days that very much good is done either to the prisoner or to society as a whole by inflicting such heavy punishments on him. I would not go into that larger question which we have been often debating in this House. I would certainly plead that the hon. Home Minister should get these cases examined and if persons have suffered long terms of imprisonment, the State Government and the Central Government may consider the feasibility and the possibility of releasing them.

Coming next to the main provisions of this Bill, I find that there are already provisions in our Constitution in articles 72 and 166, which deal with such situations and which give powers to the President and to the Governors. The Constitution very clearly states that so far as the question of pardon is concerned, if it relates to executive matters which come under the purview of the State List, then that would come under article 161 and the Governor of the State will deal with that. Under article 72, the President will deal with subjects which are under the Union List and also cases where death punishment has been given. Without, of course, in any way interfering with the rights of the Governors even to deal with such cases, the President can, under article 72, deal with such death cases, although they come under the purview of the Governor as well. Here, it is not very clear to me how this provision will operate if we adopt the measure as it is before us and whether the hon. mover has considered article 161 also while drafting this Bill. You will find that there is clause (3) of article 72 which makes it clear how articles 72 and 161 will operate. Article 72(3) makes it clear

that it does not in any way detract or lessen the powers given to the Governor. But that aspect has not been dealt with in this Bill. Are we giving to the President appellate authority or concurrent jurisdiction? This is not very clear to me. So I feel that this measure suffers from that defect. It has also been discussed at great length by the legal luminaries in this House who have dealt with the Constitutional aspect of this question. To these I will not draw your attention now as it will be only repeating those arguments. Although I am not a lawyer, when we sit in this House to make laws, we have to take the counsel and advice rendered by people who can talk about these things with more confidence than we and I feel that the Constitutional points that they have made cannot be easily ignored. And I have now added one more point which has struck me in this connection.

Coming to the merits of this measure, I am entirely in agreement with so many of my hon. friends that we should not give any special right or confer any special privileges on the Members of the Legislatures or of Parliament. This will be highly improper and knowing Mr. Bhupesh Gupta, I fail to understand how this aspect of the question has slipped from his mind, while proposing such a measure. He would not like any special privileges to be conferred upon Members of Parliament or on Members of the Legislatures. Probably he has not looked at this question from that angle. Even if we have to adopt such a measure. I would not like that this right should be only restricted to Members of the Legislature or to Members of Parliament, namely, the right to petition the President. It should be open to anyone, as article 72 provides, to petition the President in the event of a death sentence.

Therefore, I would request the hon. mover that he should calmly consider the various viewpoints expressed in

this House and he should withdraw this measure that is before us now, because the main purpose with which he has brought this measure before the House has been largely met. He has got the sympathy and approval of a large section of this House, that we should compassionately consider such cases we should appeal to the authorities that under the ambit of the present law and the Constitution itself, they could consider the hard cases of such of the political prisoners who are still languishing in jail for a large number of years.

There was another point that was made and I would like to express myself on that also. That related to the enlarging of the powers of the President to deal with such cases as have been referred to in this Bill and in its Statement of Objects and Reasons. A point has been made that since we have a quasi-federal Constitution, it may be right to enlarge the powers of the President. Well, there is nothing wrong in our doing that but there is also another aspect of the question to which I would like to draw your attention. Our whole Constitutional set-up is based upon a division of powers between the States and the Centre. There is a certain division of responsibilities between the two and we in this House have even said that there should not be centralisation of power but that there should be decentralisation of power. We should not only try to make the State apparatus efficient but we should go further down to decentralise power and we should perfect the *panchayat* system of functioning. If I look at it from that angle, I feel it rather difficult to accept a proposition that we in the Centre alone can do justice and can function efficiently. I am one of those who feel that even the *panchayats*, the State apparatus and the Centre should all play their part and we should do our best to perfect it at all levels. Viewed from that angle I feel that although there is nothing wrong in that, it is not very wise to curtail or to inflict

injuries upon, if you would permit my using that word, the powers and responsibilities of the States. We, the Members of the Rajya Sabha, I feel, Sir, should be the custodians of the powers and the privileges of the States and I would not like to be a party to curtailing their powers and privileges and concentrating them in the Centre even though I may have very great sympathy for this Bill from a compassionate point of view. What we want done through the President can easily be done through the State Governments and the Governors.

I would like to make one last point. I would not like in any way to affect the due process of law. I would like our judiciary to function not only efficiently but independently. I would like to pay my tribute on this occasion also in that they have functioned so far very well, independently and efficiently and we should not do anything which will impair their efficiency and their working. It is quite all right to have a provision for appeal to the highest in the land, the President, in hard cases of death sentences. Even though a person has been committed by the due process of law, humane and compassionate considerations may be shown to him and he may not be put to death but, Sir, it is not proper to interfere with the normal functioning of the due process of law in regard to other matters, particularly when we are passing through a very very critical time, critical in the sense that our very existence is threatened, our borders have become alive and aggressions have been committed and when maybe we will have to take very strict measures in order to protect our borders; and it will not be right at such a time to bring in political considerations in regard to the normal functioning of the judicial process. We, the Members of Parliament, we, who are politicians, are not guided strictly by the judicial point of view; we bring in many other considerations while considering a matter, political and otherwise. Therefore, there are instances where we

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must rely upon the better judicial judgment of the judiciary.

I do not want to support this Bill but at the same time I would like to appeal to the Prime Minister and the Home Minister to get all those hard cases examined and to do proper justice to them.

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): Sir, I am full of sympathy for the proposer of this Bill, the hon. Shri Bhupesh Gupta, who, out of compassion, has felt so deeply and sincerely and nobly for the political prisoners who have been in jail, undergoing long sentences of imprisonment. I would like to ask him as to why he has confined his compassion only in regard to the political prisoners along with the Members of this House and as to why he has not extended the same sympathy to other citizens who have been suffering this hardship under the force of law? While I sympathise with him, his Bill, I would like to say, excuse my saying so, is a highly mischievous one in certain aspects. The better course would have been to have made a direct appeal to the Minister of Law and the Ministry of Law and Government to bring about certain ways of considering these cases in addition to the provisions of appeal to the Central and State Governments. The Bill, as it stands, does create a good number of implications which reflect very sadly on any democratic Constitution for the matter of that, not only on ours. In this country there is the rule of law, and all of us are subject to law and are equal before it. There should be no discrimination between one category and another. This is the basis of all democratic constitutions and having accepted the rule of law I do not see how we can make a provision like the one suggested, namely:

"In all other cases where the convicted person is a member of Parliament or of a State Legislature, or where a petition to the President by at least forty members of

Parliament or twenty-five members of the Legislative Assembly of the State in which the conviction and the sentence took place, has been made."

Why should this discrimination be made in favour of Members of Parliament or Members of State Legislatures? This nullifies the whole spirit of the rule of law and all that a democratic Constitution stands for. I would like to know what sanctity exists so far as the Members of Parliament and the Members of State Legislatures are concerned. Why should there be a judiciary, an institution of great status, prestige, experience, knowledge and wisdom, created in our Constitution for interpreting law and conducting cases and delivering judgments, if suddenly 25 Members of the Legislative Assembly or 40 Members of Parliament assume unto themselves the powers of judicial revisions from time to time and appeal for some kind of modification to be brought about in the judgments that are already made by our august judiciary both at the Centre and in the States? Sir, one of the basic principles of democratic constitutions—and of our Constitution I am very happy to say—is the upholding of and cherishing the ideal of independence of the judiciary. Having appointed such a judiciary, no one should have any power of interfering with its judgments from time to time because of ulterior motives or because of political power. The whole idea of a judiciary is in its exercise of pronouncing important judgments, to protect the rights of the citizen, to protect the Constitution and to protect the principles of democracy that we have inculcated in our Constitution and that being so, how can we suggest that there should be such power to revise the judgments of the courts? I feel that it is a reflection on our judiciary and it will be a dangerous principle if allowed to be accepted by this House. And of all people, that we, Members of Parliament—law-makers who are here to pass legislation for the whole of the

country—simply because we are here in that position of vantage that we should give unto ourselves some kind of special treatment in matters of judgments and punishments is, I feel, very derogatory to the dignity of Members of Parliament and of Legislatures.

Having said so much, I would like to draw the attention of the House to another feature in this Bill. In the Statement of Objects and Reasons it is said:

“In a system which is federal or essentially federal, it is necessary for the President to be invested with wider powers of pardon, reprieve, commutation, etc. of sentences so that the President is in a position to exercise his discretion in cases where the authorities of the States may take a narrow and rigid view in the matter. Hence the Bill seeks to enlarge the discretionary powers of the President to cover cases, from the States, in addition to the cases of death sentences.”

It is a reflection that has been cast when he says, “where the authorities of the States may take a narrow and rigid view . . .” I say it is a very sad reflection on the State Governments and Governors and on the judiciary in the States. We have accepted the Constitution and listed the cases where powers of pardon etc. could be extended under the Central authority in article 72 and under the State authority in article 161 and these authorities have been fully made to realise their duties, their functions and the care with which they should exercise their authority in such matters, and now to say that they take a narrow and rigid view is really a damaging statement and I feel that the proposer of this Bill should have thought better before he put it down in the Statement of Objects and Reasons.

Apart from that, there are other implications that are highly mischievous in this Bill which many hon. 667 R.S.—3.

Members have already pointed out and therefore I won't take much longer time but there is one little direction in which I would suggest some kind of consideration from the Law Minister and the Government and that is this. Hon. Members have already made that point clear that in the case of a death sentence the provision for a mercy petition is there and some consideration is shown, some compassionate reconsideration is possible under article 72 of the Constitution but in the case of life sentence that is not there. There seems to be some possibility for considering this question from a favourable angle and for seeing whether in the case of life sentence also there should not be a similar provision. Life sentence is really given in cases where the crime is not so extreme as that which involves death penalty and that being so, why should a person who has not committed such an enormous crime as murder and who for that reason has been given only a life sentence not have the possibility of pardon or reprieve from the President? To that extent the law might be gone into for examination and necessary amplification.

With regard to the other point of showing mercy to the long-term political prisoners, I would suggest that it is necessary not only in the case of political prisoners but in the case of all others also but that does not mean that we can make an inroad on the independence of the judiciary.

[MR. DEPUTY CHAIRMAN in the Chair.]

As such, I would plead with the hon. Member to withdraw the Bill and to appeal to the authorities in regard to certain aspects that he wants to stress—the aspect of showing compassion in deserving cases etc.—without any element of discrimination, whether they are Members of Parliament or Members of Legislatures, whether they are political prisoners or whether they are others. All citizens should have the same rights; that should be uppermost

[Shrimati T. Nallamuthu Ramamurti.] because in a democracy where the rule of law prevails there cannot be any difference between citizen and citizen, however mighty and great Members of Parliament might be. And of all people for Members of Parliament to suggest that they should be placed on a pedestal for exclusive treatment—I won't call it a segregation clause—on a different footing from the other citizens of the country is derogatory to the dignity of this House and I would request the hon. Member to withdraw this Bill.

**SHRI SURENDRA MOHAN GHOSE** (West Bengal): Mr. Deputy Chairman, Sir, I won't take much time. I thank my friend, Mr. Bhupesh Gupta, for bringing this Bill before us but at the same time I request him to consider the suggestion thrown out by hon. Members to withdraw this Bill in its present form. Sir, I sympathise with him, rather with the object which he has in his mind, that is, the early release of long-term political prisoners. I have full sympathy with the proposition that the question of the early release of long-term political prisoners should be most sympathetically considered by our Government as well as by the State Governments.

Sir, certain questions of principles have been raised. I myself would not like to go into them but at the same time I would like to express my views on one point which has been raised in this House by one or two Members that the Bill in its present form casts some reflection on the State Governments. I would like to make myself clear on the point that I dissociate myself from those ideas underlying those parts of the Bill. At the same time I would like to impress upon our Government that the question of securing the early release of long-term political prisoners deserves the most sympathetic consideration and I have every reason to believe that our Government will consider this question sympathetically. One point has to be borne in mind when we discuss

this question of the release of political prisoners. Political offences are committed by different political groups and political workers under certain conditions and when these conditions are no longer there, then it becomes really useless to keep them in detention or behind prison bars, simply because they committed some offence under certain conditions existing at a given time. Sir, I myself know from my own personal experience that many political prisoners, maybe due to some immediate excitement, commit some political offence, but they are in every respect as good a citizen as anybody else in the country. So when those conditions are no longer there, it is expected that their early release will not in any way affect adversely our administration. This aspect of the question should also be borne in mind when we deal with it.

Lastly, although on many occasions I could not agree with what my hon. friend, Shri Bhupesh Gupta, says in this House, at least there is no doubt in our mind now that he has moved this Bill with a genuine and sincere desire and purely on humanitarian grounds—not with any political motive—to secure the early release of these long-term prisoners. I would therefore appeal to him to consider seriously the suggestions made by many hon. Members to withdraw this Bill in its present form and try to secure the release of those prisoners, which he has in his mind, by some other way. Expression of opinion in this House by so many Members will also surely go a long way to give support to the view that the early release of long-term prisoners, which in some cases may be overdue, should be considered most favourably.

Thank you, Sir.

**SHRI MAHESH SARAN** (Bihar): Mr. Deputy Chairman, Sir, the motive behind the Bill is very laudable. There is no doubt about it and I do not know why the President should

not have the power to interfere where he finds that there are genuine cases and where they are not death sentence cases but cases of long-term imprisonment, life imprisonment and things like that. We find that the Governors have the power to interfere in all cases and I see no reason why the President should not have the same power. Therefore, I do feel that Mr. Bhupesh Gupta has done a very good thing in bringing this fact to the notice of the hon. Minister and of the House. But, Sir, I am surprised that a person like Shri Bhupesh Gupta who claims to represent the public, who claims himself to be a great democrat, should bring forward a Bill, though with good intentions, of such a nature which is against all principles of democracy, especially Members of Parliament wanting special rights for themselves is unthinkable. It is rather a disgrace that we should have a Bill in which we should ask for special privileges for us and less privileges for the public. Now, he says in the Bill—

"In article 72, in clause (1), after sub-clause (c), the following sub-clause shall be inserted, namely:—

'(d) in all other cases where the convicted person is a member of Parliament or of a State Legislature . . .'

He wants this to be applied only to Members of Parliament and Assemblies. Why not to the common man? Why should we have special privileges and why should we pass such a law in Parliament in which we are Members and ignore the rights of other people to the benefit of this provision? I am really surprised that Shri Bhupesh Gupta should have brought in a Bill which gives exclusive privileges to Members of Parliament.

Again he says, "where a petition to the President by at least forty members of Parliament or twenty-five members of the Legislative Assembly of the State in which the conviction

and the sentence took place . . ." Here again he wants specially for Members of Parliament and of the Legislature this right to make petition for mercy while the ordinary man or the general public will have no such right. I think such a Bill should not be brought in this House. It will be used against him when he goes out in his constituency. People will say, 'Look here, Mr. Bhupesh Gupta, you talk about democracy; you are the custodian of democracy; you are our representative and you try to bring in a Bill which seeks to give special rights to Members of Parliament to petition to President. You ask that power only for Members of Parliament and Assemblies and you deny that power to the general public.' Sir, I think this is very wrong and Mr. Bhupesh Gupta will do a good thing if he withdraws it and admits his mistake. But I do hope that this matter will receive the attention of the Home Ministry and a Bill will be brought forward making proper amendment because I feel that there should be no distinction between a sentence of death and a sentence of imprisonment for life. Sometimes a death sentence is given and sometimes life imprisonment is given for the same offence. If it is a death sentence, the accused will have the right to make a petition but if it is a sentence of life imprisonment, he will not have the right to make a petition. It is certainly wrong and this distinction should not be there.

Now, the time has come when we should take a humanitarian outlook and we should see that we make the law such that though it is equitable, it is not hard on the people. There are hard cases. There are cases where people in certain circumstances commit a crime and later on they feel sorry about it. It is all done in the heat of the moment. If the case is such that the President should interfere, he should have the right to interfere.

Then, again as I said before, it should not apply only to political

[Shri Mahesh Saran.]

cases. Why it be confined to political cases only? Why should we not make it a general one, whereby anybody convicted of an offence—whether he is a politician or he is an ordinary citizen—should have the right to make an appeal to the President? Therefore, what I feel is this. The motive is very good, but the Bill is most objectionable and it should not get the support of a single individual in the House.

**श्री पा० ना० राजभोज :** उपसभापति महोदय, यह जो बिल हाउस के सामने पेश किया गया है उसका मैं विरोध करता हूँ। श्रीमती श्रीमती यशोदा रेड्डी ने अपने भाषण में कहा था कि भूतपूर्व आंध्रा के चीफ मिनिस्टर श्री संजीवा रेड्डी ने अपने मुख्य मंत्री के समय में सारे राज्य में केवल दो को छोड़ कर सब पोलिटिकल कैदियों को रिहा कर दिया था। श्री भूपेश गुप्त इस समय जो बिल लाये है उसमें प्रेजीडेंट को यह अधिकार देने की बात है कि वे इस तरह के पोलिटिकल प्रिजनर्स को सजा कम या माफ कर सकते हैं। मैं समझता हूँ कि वे इन बिल द्वारा विधान में जो संशोधन करना चाहते हैं वह उचित नहीं है। मेरे ध्यान में तो इस तरह का अधिकार राज्यों के मुख्य नदियों तथा गवर्नर्स के पास ही रखना चाहिये।

इस बिल में यह लिखा हुआ है :

“(d) in all other cases where the convicted person is a Member of Parliament or of a State Legislature, or where a petition to the President by at least forty members of Parliament or twenty-five members of the Legislative Assembly of the State in which the conviction and the sentence took place, has been made.”

मेरे कहने का अभिप्राय यह है कि इस तरह की सुविधा देश के हर नागरिक को मिलनी चाहिये ताकि वह प्रेजीडेंट से अपील कर सके। अगर हम इस चीज को केवल एम० एल० ए०

और एम० पी० पर ही छोड़ देंगे तो इस चीज में पक्षगत होने की बहुत गुंजाइश होगी। इसलिये मैं चाहता हूँ कि इस तरह की अपील करने का अधिकार देश के हर नागरिक को होना चाहिये।

श्री भूपेश गुप्त द्वारा जो बिल सदन में लाया गया है मैं उसको अच्छा नहीं समझता हूँ क्योंकि वे समझते हैं कि जल्दी ही सारे देश में चुनाव होने वाले हैं और सब प्रांतों में कांग्रेस की सरकार पावर में आ जायेगी। उन्हें इस बात का डर है कि जब कांग्रेस की सरकार सब प्रांतों में आ जायेगी तो उनके पार्टी के मेम्बर जब झगड़ा फिदाद करेंगे तो वे प्रेजीडेंट से अपील करके अपने पार्टी के मेम्बरों को छोड़ा सकेंगे। जब हमने संविधान के अधीन इस तरह का अधिकार प्रांतों की सरकार को दे रखा है तो यह उचित नहीं मालूम पड़ता है कि इस तरह का अधिकार उनसे छीन कर प्रेजीडेंट को दे दिया जाये।

उपसभापति महोदय, आप जानते हैं कि हमारे प्रधान मंत्री जी और कांग्रेस की सरकार हर जगह शांति चाहती है। लेकिन हमारे कम्युनिस्ट भाई यह नहीं चाहते हैं कि हमारा देश जो इस समय अपनी तीसरी पंचवर्षीय योजना को पूरा करने में लगा है, आगे बढ़ने की कोशिश कर रहा है, अपने कार्य में कामयाब हो। वे तो देश की जनता का ध्यान किसी बुरी चीज की ओर लगाना चाहते हैं ताकि हमारे देश में उनकी कार्यवाही चलती ही रहे। वे अपनी पालिसी को देश में फैलाना चाहते हैं और इसी वजह से वे आज सदन में इस तरह का बिल लाये हैं। यह एक तरह का षडयंत्र है जो मैं समझता हूँ उचित नहीं है। उनका इस तरह से बिल लाने का ढंग भुक्के अच्छा नहीं मालूम देता है। अगर उनको यह बात मान ली जाती है तो देश में हर समय भिगनेचर का कैम्पेन होने लगेगा ताकि किसी न किसी आदमी को छुड़ाने के लिये राष्ट्रपति से अपील की जा सके। इसलिये उपसभा-

पति महोदय, मेरी यह प्रार्थना है कि राष्ट्र-पति के पास इस समय जो अधिकार है उनमें किसी प्रकार का बदल नहीं होना चाहिये ।

तीसरी बात मैं यह कहना चाहता हूँ कि अगर यह बिल पास हो गया तो हम उन लोगों की ही सजा माफ करने के लिये राष्ट्र-पति से अपील करेंगे जिन्होंने किसी पोलिटिकल आन्दोलन में भाग लिया हो और उसमें उनको सजा मिली हो । हमें दूसरे तरह के प्रिजनर्स का भी ख्याल रखना चाहिये और मैं समझता हूँ कि जिस तरह मानवता का दृष्टिकोण हम अपने सामने रखते हैं उसी तरह का दृष्टिकोण स्टेट की सरकारें भी अपने सामने रखती हैं और उस पर अमल करती रहती हैं । मैं श्री भूपेश गुप्त से अपील करूँगा कि वे अपना बिल वापस ले लें । उनके खाने के दात तो अलग होते हैं और दिखाने के दात अलग होते हैं । मुझे बिल को पढ़ने से ऐसा लगता है कि वे वह पक्षपातपूर्ण हो जायेगा । मैं चाहता हूँ कि हमारे देश में इस तरह की बातें नहीं होनी चाहियें । इस तरह की बातें तो रशिया में होती हैं जहाँ डिकटेटरशिप चलती है । इसलिये उपसभापति महोदय, मैं इस बिल का विरोध करने के लिये खड़ा हुआ हूँ और प्रार्थना करता हूँ कि यह बिल पास नहीं होना चाहिये ।

THE DEPUTY MINISTER OF HOME AFFAIRS (SHRIMATI VIOLET ALVA): Mr. Deputy Chairman, there has been a long debate on Shri Bhupesh Gupta's Bill seeking to amend article 72 of the Constitution. He has roused a great measure of passion and common sense point of view *vis-a-vis* less, his Bill has to be very carefully analysed. This House has given his Bill very serious consideration from many points of view, namely, the technical, legalistic and above all the common sense point of view *vis-a-vis* the Constitution. What I have observed in the House is that while many have sympathised and taken their

approach from the compassionate point of view, they have not seen eye to eye with the hon. mover of the Bill. They are in disagreement with him in the passage of this measure.

Now, article 72 gives the Head of the State certain prerogatives and it is for good reasons that this prerogative is confined to a very definite field which Shri Bhupesh Gupta seeks to widen and enlarge, and that too for a limited section of convicted prisoners. He wants the field to be enlarged where a Member of Parliament or of a State Legislature is convicted. Then, he wants to have a privileged class within the legislators, namely, Members of Parliament or Members of the State Legislature should be in a position and get the right to present a petition to the President. I do not know how anyone of us could even dream of not submitting to the rule of law. We are functioning under a Constitution. We are an independent nation and, therefore, the rule of law is absolutely necessary and it should be absolutely imposed disregarding whether we are Members of a sovereign Parliament or whether we are ordinary citizens. It was, I think, Shri Santhanam, who very clearly pointed out the difficulties that would arise if we accepted this Bill. First of all, there would be discrimination between citizen and citizen, as the previous speaker has also mentioned. Then, there would be interference with the administration. Above all, we are trying to do away with the privileged sections in society, on which the hon. mover is always so vehement. He wants equality of opportunity and he looks forward to a State in which every human being will have equality and there would be no privileged section in society. It is amazing that he now goes back on his old alleged principle of a proletarian State and seeks privileges for himself and for a section of Members of Parliament who would stand by him to present petitions to bring the convicted persons out of prisons. Now, referring to the judiciary. I do not see why we should interfere with the

[Shrimati Violet Alva.]  
 decisions of the judiciary. I think our judiciary—and everybody will agree including the hon. mover—is independent, is impartial, is sound and is not so harsh in its verdict. If this is so, then I do not think that we need any such provision or any amendment of the Constitution as Shri Bhupesh Gupta is seeking this afternoon. Besides, hypothetically, suppose the Bill is accepted. It would introduce unwarranted discrimination amongst the convicted. Again, Shri Santhanam has pointed out that all citizens are equal before the law in which he believes, and yet he seeks here to make the citizens of the State unequal before the law and before the legislature when he demands a section of the legislators to form a committee and take a petition to the President. The judicial system in our country provides for a series of appeals and therefore, I think that every citizen, whatever crime he has committed, has a fair chance of appealing from the lower court to a higher court and ultimately to the Supreme Court, and justice is given. Of course, wherever cases are drawn to the notice of the Ministers or of the Prime Minister or of the Home Minister, it is always looked into and examined and even a reference is made to the State. But the State has the final executive powers and the offenders are primarily the concern of the State Governments and therefore the executive powers of the State are wide enough to deal with them. Again, he has said that the State has taken a very narrow outlook on these issues.

Now, I come to the memorandum which he has presented to me this morning. I have gone through it. If we see through the list of cases, well, we have not got very much information. I have here now some information on some of the cases in this list of long-term political prisoners. They all belong to the post-independence period, that is, from February, 1949. There are two very important

facts missing in this tabular statement. One is the penal provision under which they were tried and convicted. There are two missing things. One is the offence committed and it is a post-independence case. They should all be listed correctly, and therefore now when we speak of the pre-independence cases in which the prisoners are still there under the care of the State, those cases are not cited here. I do wish that he had given us an insight into the number of cases of pre-independence days. These are all post-independence cases, without the penal provisions; the length of imprisonment is given but there is nothing more than that.

Now, Sir, regarding the review of cases, review of cases is always done by the States and very many States have taken steps in the past and have given amnesty to the right type of people who were in their care in the prisons. It does not mean that one must demand a general amnesty. Besides, I would like to draw the attention of the House that this is not the first memorandum presented to the Prime Minister. In the past, the Communist Party had presented a representation in 1956. Whatever that be, the Central Government has power to remit a sentence or order release only where the prisoner is convicted of a sentence falling within the Union List in the Seventh Schedule of the Constitution or is convicted in the Union territories. The prisoners mentioned in the memorandum had committed very serious crimes of violence and had been sentenced to long terms of imprisonment for offences against the laws pertaining to matters within the executive power of the State Government. I do not wish to go into the details of this information that I have collected this afternoon. The Prime Minister has been approached many times. He was approached, as I have just said, in September, 1956. Certain Communist Members of Parliament represented to the P.M. and the H.M. requesting for the grant of general

amnesty on the eve of the formation of the new Andhra Pradesh State in respect of 50 Communist and kisan prisoners who were confined in jail . . .

SHRI BHUPESH GUPTA: That was done.

SHRIMATI VIOLET ALVA: . . . to which the late Home Minister had replied that he had explained the position that out of the 50 Communist and kisan prisoners in Hyderabad jail, seventeen had been involved in Telangana murder cases and had originally been sentenced to death by the courts in Hyderabad State and that their death sentences had subsequently been commuted by us to imprisonment for life in 1951. In what way are we not compassionate? We review every case, and here is a proof indeed in which the sentences on murders' also were commuted and they were not given capital punishment. Under the circumstances, in different States and under similar circumstances, the grant of amnesty to prisoners, that question does not arise at all. And under similar circumstances, cases are examined by the State Governments and whatever commutation or reprieve could be given is given.

Then, Sir, in 1956 and 1957, again Shri Hiren Mukerjee and Shrimati Renu Chakravartty gave a memorandum to the Prime Minister and on that again information was collected and after looking into the information, the comment made was that—

"He saw no reason why serious crimes,—and indeed some crimes which were peculiarly brutal made my hair stand up on end—should be treated lightly or should be considered as political cases."

This was the opinion of the Prime Minister. Of course, the Prime Minister, even about this memorandum that has been presented to him, will certainly give the consideration it deserves and will look into it, as Shri Bhupesh Gupta expects him and the

Home Ministry too will examine the cases laid down in this memorandum. But let us again go back to the Constitutional provision. Sir, according to our individual consideration passion and compassion are good things. Sympathy has been expressed even by those hon. Members in this House who even did not agree with Shri Bhupesh Gupta about the passage of this Bill. They have risen and asked that a sympathetic attitude be shown to those who have been in prison for alleged political purposes. But under the Constitution, under the rule of law, what makes a political prisoner? Every difference has to be Constitutionally adjusted and every difference has to be Constitutionally settled between parties and between the citizens and the political parties. But no one should take the law into one's hand. I will cite here one case, the case of Pannalal Das Gupta. I think that was cited here this morning by one of the hon. Members. During the period 1949 to 1951, Pannalal Das Gupta and his followers were responsible for 23 murders, 23 dacoities, 7 robberies and 29 other offences. And four European officers of the Jessop Factory were killed and three of them were thrown inside a burning furnace. His group was also involved in other cases relating to the Imperial Bank, the Central Bank, to the India Jute Mill dacoity case and so on and so forth. Now, whether such people do become a menace to the society or whether such persons should be released and an amnesty be given to them on political grounds, is a matter that only a court of law should decide, and at the most, after that, it should be only after the intercession or intervention of any individual belonging to this august House or any other august legislature who would bring the details of the case to, as I have said, the notice of the Minister or the Prime Minister, that the case could be examined again. We are 4 P.M. never reluctant to examine any case, even where this executive powers vest in the States. Even so, the States refer to us many times and we enquire from them

[Shrimati Violet Alva.]

about the individual cases that are referred to us, so that we have a clear conscience as to whose case we have examined and how we have decided to handle the case of the person concerned, and so on, Sir.

There is another case of Meenakshinathan on which of course we have sought information but we have not got the information about the offence for which he was convicted.

There is also the Kathalambatti case; most of the cases are mentioned here, but I do not want to take the House into the details of the cases that are mentioned in the memorandum. However, the memorandum that Shri Bhupesh Gupta has presented to us is with the Home Minister. This was also a matter that figured in the Question Hour and it was answered only last week—questions on this memorandum. Now what will happen? If we support Shri Gupta's Bill, it will be a serious encroachment on the executive power of the States, for which there is no adequate justification. A Member of Parliament might claim privileges in the manner of his detention or arrest, and I might have told the hon. House that, in fact, telegraphic intimation is sent to Parliament when its Member is arrested. The basic thing is there. I think this also the hon. mover had mentioned last time, when he was opening the debate on his Bill. Therefore, Sir, he cannot claim, no one can claim any distinction in the matter of seeking clemency and pardon after he has been found guilty by a competent court and convicted of an offence. We must have our minds disabused on the question of our privileges, of trying to make ourselves a privileged section. Who are we? We belong to the country; we are citizens of India. Whether Minister or Member, whether of this party or that party, we are equal in the eyes of the law, and when we are trying to establish the rule

of law under a democratic pattern, it is our bounden duty that we seek no distinctions, that we do not indulge in discrimination. A Member of Parliament, or of a State Legislature, after he is convicted, cannot claim privileges on these grounds, and should be treated on a par with other convicts before the eyes of the law if all citizens have to be equal, and as one of the hon. Members said, the meanest of the mean should have the same privilege as a member who has taken the oath of the Constitution and goes out to break the laws. Law-makers should never think of becoming law-breakers, and therefore, the scope of this Bill is extremely narrow, limited and undesirable.

Then there was a case cited by the hon. mover that there was a release even after—I think the West Bengal Government, after having rejected the release of some so-called political prisoner, acceded to his release after the Prime Minister had looked into it, after he had intervened in that case. That may be so but the States have power, and we—each one of us—have also, if not the power, we have the authority to draw the attention of the law-makers—apart from the others—to intervene and have the cases examined from time to time. In many States the States have not been rigid; in many States as has been said by the Members behind me, and by others also, they did give amnesty to individuals, and on a large scale as well. But then the States were convinced that by releasing a certain class or a group of persons they were not running the risk, but when it comes to running risk, against the security of the State, or when it involves violence or murder or danger to property or to life or to security arrangements, like the railway or the telegraphs, then I think it is a case in which no intervention or intercession is called for; they must accept what justice demands and gives.

Now, Sir, without going into further arguments on this measure I

should like the hon. mover to stand to reason and withdraw his Bill. It will serve no purpose even if he firmly stands by it and opposes our suggestion. But having seen that the hon. Members on this side and that side have analysed it very carefully and have shown the sympathy that political prisoners do normally deserve, and having the cases presented, not of the pre-independence days but of the post-independence days, I think that the hon. mover will stand to reason and withdraw his Bill. In any case, Sir, we cannot accept it; it is not possible to accept this Bill, even with any amendments as suggested by some of the Members either, for consideration. He seeks here for reference to a Select Committee, which is not acceptable to us, nor is circulating the Bill to elicit public opinion acceptable to us. On all three counts I should request him to withdraw the Bill, or else we shall have to oppose it.

Thank you.

SHRIMATI PUSHPALATA DAS (Assam): Mr. Deputy Chairman, Sir, I had no intention to take part in this debate. Just at the last moment, at the request of some of my friends I am taking part. Just a simple question let me ask Mr. Gupta, whether, if this Bill in this form came from this side, from some Member on our side, it would have been acceptable to him. The very clause, the only clause in the whole Bill, is a little confusing, and being a barrister also I cannot understand how he himself says that from the Centre something must be dictated, a thing to which he himself would not agree unless there was a special purpose in his Bill. So I am just asking him a straight question. Let not untruth fall from his truthful lips. I am giving him my compliments. Let him give a true answer to my question.

But one thing I like in this Bill, the human aspect, the consideration he is soliciting for the long-term political prisoners—that has appealed to me.

So on that aspect only I shall say a few things, with my own experience and from my own life.

Sir, when I was fourteen years old, I myself joined a revolutionary party—the Mukti Sangh,—and at that age, at that immature stage it was thrilling for me to sign my name with a drop of blood and to take the pledge to fight for the country. My mother there was, and she was a believer in non-violence—my father died at that time—and she told me: “You are too immature to join in these parties.” Then I was reading one Bengali Patrika, Benu, edited by Shri Bhupendra Kishore Rakhit Roy. Mr. Gupta knows all this very well, because once upon a time I was in the Students’ Federation and I resigned. Why I resigned, that also he knows. So from my own experience I am telling you that in an immature state of mind, in an emotional state, sometimes people behave in a different way. When they realise, then they rectify. So about these old prisoners, about the long-term prisoners, when he appeals, I agree that the cases must be reviewed, because I know of some cases myself. My friend from Assam knows. Many friends from other States do not know how innocent people have been given death sentences in the 1942 movement. The late Kusal Kowar was one; he was a strong Gandhite, but in connection with some conspiracy wrong information was given and he was hanged. And at the time of his hanging he told the Deputy Commissioner of that time—Mr. Humphrey—that “I am glad that I am the first *bali*, the first to be sacrificed for the freedom of the country. But I never did it; I never derailed the train. I do not believe in violence. I am a strong believer in non-violence, but if the person who did it does not have the courage to say the truth, let me make the sacrifice. But truth will prevail one day.” And I think the actual doer opened up his mind after independence. But Kusal Kowar was sacrificed for no fault of his. Sometimes it happens that wrong people are

[Shrimati Pushpalata Das.]

punished. I know of some cases, of those who were sent to the Andamans, some were really in that immature state of mind. Emotional they were and they acted like that. Afterwards they realised it, and Gandhiji also had felt at that time. And Gandhiji also appealed at that time. He said that if they thought that violence was not good, he could plead for their release. At the time when Subhash Chandra Bose, when he was the Congress President, himself had a talk—I am not sure—when he went to the Andamans, he had a talk with many of the prisoners and many of them were released at that time. So as far as long-term political prisoners are concerned, really I feel for them. But this Bill is an encroachment on States' power and we are dictating to them. I think while the hon. Member was drafting the Bill he himself was in an emotional state of mind; otherwise I do not expect from him a Bill to come forward in this way. So I would request him to withdraw this Bill.

At the same time, Sir, I want that the Law Ministry must consider the human aspect of it. Panditji is quite sympathetic, we know. He also intervened and he himself has seen so many cases where they could be released. So I do not want ourselves to be distinguished from the common man and this thing to be just imposed on us which we do not deserve in a democracy. Why should only Members of Parliament or members of legislatures have certain rights over the common man? There I do not agree. I think he also does not agree because while he was moving the Bill his heart was not in the Bill, I am sure. He felt for the common man and he fought for the parliamentarians because as an opposition leader he had to bring forward this Bill and he knows it. So I would be only too glad if he withdraws it.

Recently I was reading a case of an American boy who was given the death sentence. While I was going

through his life history, I do not know why I felt that if a little consideration had been shown to him, perhaps he would have been a saint instead of a villain. Sometimes emotional persons misbehave if their emotion is not sympathetically recognised, is not sympathetically responded to by those for whom they have respect or on whom they bestow their affection. If they do not get that, sometimes they misbehave. Many great authors have written great books on this kind of psychological conflict and all of them say the same thing. Therefore, on that human ground I do not like the life sentence to be given. Let such cases be treated on psychological lines.

Sir, I disagree a little with Mrs. Ramamurti when she wanted other offenders also to be treated on the same lines as political prisoners, because as far as political prisoners are concerned, sometimes they work under emotional moments. In our young days we used to read Russian literature and we used to think that violence was not a sin when it was used against oppressors and the definition of non-violence differs according to age, time and circumstances. People sometimes take wrong things to be right because of the peculiar circumstances they were under at that time and they feel that way. But afterwards they realise the truth. I think such cases must be considered.

Sir, some five years back, I think, once in this House on the Budget debate I was congratulating the Communist Party and there was a little criticism as to why I had congratulated them. I congratulated them because they changed the preamble of the Constitution. Though in the beginning they did not believe in it, afterwards they came and took the oath under the Constitution and thought that this was the rightful method in which they could fight for democratic rights. So I congratulated them. But I do not know whether they even now they deserve that congratulation and I think they deserve

it. That is why all the political parties are going to fight in the elections because they believe in the Constitution, they hold that the grievances of the people can be rectified and their voice can be felt through the legislatures. Now, they have taken the oath under the Constitution and they are fighting for their rights through Constitutional means and they think that this is the only course. Therefore, let us not try to get those powers only to the legislators. Let every common man have it and let everybody appeal to the President. Let the President alone have that power but let it not come in this form. Therefore, let Mr. Bhupesh Gupta withdraw his Bill. Let it come in other forms and let the grievances of all persons be rectified. Even the common man must have a voice in his grievance being rectified. It should not be a prerogative only of Parliamentarians. With these words, Sir, I appeal to him to withdraw this Bill and let the Law Ministry consider, as the Andhra Government has shown some consideration, as the Government of West Bengal as also some other States have shown, let them be considerate enough when they review all the cases, and more consideration must be shown to political prisoners than others. Their case is different. Even for other persons it should be considered in what moments they did those things. Let the executive be properly guided. Law is there. The judiciary is separate from the executive. The hon. Member knows it, being a great barrister himself and a barrister will be replying to these Constitutional things and I leave it for them. But I would like to express my opinion from the humanitarian point of view.

Sir, in 1932 and before that I was myself in the revolutionary movement and after two years when I came out, I underwent a change. I was in charge of the Death Brigade, 'Mrityubahini'. Many of my colleagues asked me as to how this change came about in me. I said, "Today I am a believer

in non-violence not because my mother, who was at that time in her death-bed, told me that as a mother, perhaps, she would shed a drop or two of tears if I was arrested and something happened to me, but I had done it in an immature state of mind for which I now repent and I now realise it when I am mature". In 1942 our slogan for the 'Death Brigade', 'Mrityubahini' was "Face Death non-violently". You will be glad to know that that 13-year old girl, Kanaklata, when she faced bullets, she addressed Rebatl Som who had killed her saying "Dada, you do your duty. Let me do my duty." When I narrated the story to Mr. Bhupesh Gupta, he said, "Oh, you have killed that innocent girl by inspiring her in this wrong way." Well, he may think in that way. I feel now the other way. Today I am a convert to the right path and he is still to be converted and I am sure he will be converted one day.

With these words I oppose the Bill.

PANDIT HRIDAY NATH KUNZRU (Uttar Pradesh): Mr: Deputy Chairman, Sir, I want to say just a word about this Bill. It has been pointed out by almost every speaker how defective this Bill is from the Constitutional point of view. I agree with what has been said on that subject but that does not finish the matter. Though we cannot allow Members of Parliament or State Legislatures to enjoy any special position in respect of the right of pardon that can be exercised by the President, we may well consider the cases of those people who have been in jail for a long time. Every case, as Mr. Mani said, will have to be examined on its merits, and if it is felt that a person has served a long sentence, has been in jail for 12 or 15 years, I think it might well be considered whether he has thus expiated for his offence. I do not think anybody will demand that everybody who has been in jail for a long time should be released merely because of the length of the term served by him, but there will be many cases where the right of pardon can

[Pandit Hriday Nath Kunzru.]  
be wisely exercised by the executive. In certain cases it may be exercised not by the President but by the Governor, and I am sure that if the Central Government uses its good offices in the matter, the State Government or rather the Governors will look into these cases and will be able to release many of those who are in jail now. That is the only aspect of the measure that we are discussing which deserves consideration.

Sir, the Bill itself, I repeat, is highly defective and my hon. friend, Shri Bhupesh Gupta, well knows that it has no chance of being accepted by the House and he will be wise to withdraw it. But if he does not, it will be thrown out. Nevertheless, I hope the executive will give full consideration to the human aspect of the matter that Shri Bhupesh Gupta has brought before us, and I am sure that at this time if some people, who have been serving long terms of imprisonment, are released, the law and order in this country will not be endangered.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Deputy Chairman, Sir, when I first looked at the Bill of Mr. Bhupesh Gupta, I thought that it was a very innocent Bill. I am quite in agreement with the underlying spirit in which the Bill has been brought forward by him but I totally disagree with the methods followed and the language used in the Bill. The language used cannot form part of any Constitution in the world. There cannot be provisions about Members of Parliament or Members of the Legislatures in the Constitution. Now Shri Gupta, as I know him, is always against giving more powers to anybody and therefore it surprised me most when he introduced this Bill. While making the introductory remarks, he himself was not sure what he was doing, as is evident from his own remarks when he said:

"Now, Sir, curious though it may sound, I want to enlarge the power of the President."

That shows the state of mind in which Mr. Gupta was. He was not sure himself what he was doing, whether it was proper for him to introduce the Bill in the fashion in which he has done it. If we read the provisions of the Constitution, articles 72 and 161, I want to bring to his notice that the two articles together will cover almost all the cases which he has referred to. In his entire opening speech, which I have very attentively read, he has touched only on one aspect and that is the humanitarian aspect. He has failed to bring home any case for the justification of the present Bill. What he ought to have done was to plead with the State authorities and tried to see that the long-term prisoners were released. For some reasons he has failed there or his people have failed there. Now instead of following that line of action, he immediately thought: "I must do something else to attract the attention of Parliament". The method he followed was in the shape of the present Bill. That was perfectly all right but in his Statement of Objects and Reasons he has said something which probably he was not sure of himself. He says in the second paragraph as follows:

"This prevents the President from considering, and Members of Parliament or Members of State Legislatures from taking up with the President, certain deserving cases for the exercise of this prerogative. In modern civilisation, the power such as is provided for under article 72, is exercised in the larger public interest and on humane grounds. In a system which is federal or essentially federal, it is necessary for the President to be invested with wider powers of pardon, reprieve, commutation, etc. of sentences so that the President is in a position to exercise his discretion in cases where the authorities of the States may take a narrow and rigid view in the matter."

As my colleague, Shrimati Pushpalata Das, pointed out a little while

ago, if the same Bill had been sponsored from the Congress Benches, Mr. Gupta would have opposed it tooth and nail. He would not have spared anything and he would have come out with all kinds of arguments to oppose the Bill. Now what is the position? It suits his purpose and he comes out with a Bill himself and gives entirely different types of arguments in the same context and, as I said earlier, the arguments do not make out a case for giving these enlarged powers to the President. They are simply arguments on humane grounds and as far as humane grounds are concerned, almost every Member has said that individual cases should be examined on merit and effort should be made to see that the release of long-term prisoners is effected at an early date. Now, having introduced the Bill, what does Mr. Gupta do? He submits a memorandum to the Prime Minister and I happen to have a copy of the same. He was not sure himself what support he would get in this House for the Bill and so he took up the next alternative also side by side and I quite agree with him that he took that attitude. This memorandum was submitted on the 17th September. If Mr. Gupta was sure of his ground that the Bill would be passed and the House would give consent to his Bill, he would not have taken recourse to the second alternative which is the correct alternative, to plead with the Prime Minister for the release of the long-term prisoners. So, he is doing two things—coming before the House with a Bill which he himself knows, is not a correct thing, which he himself thinks is not properly worded, which he thinks will not get the support of the House and at the same time he pleads with the Prime Minister: "You should take up the case with the State Chief Ministers and get release of the long-term prisoners". At the end of his memorandum he has come out with the truth, as he has done in his opening remarks also where he said:

"If a word goes from the Prime Minister to the State Chief Ministers, the prisoners will get their release."

I will quote from his own speech.

"Finally the person to whom I wish to appeal again and again over this matter is the Prime Minister, Shri Jawaharlal Nehru, because I think a word of his will do the job."

That is the real state of affairs about which he feels strongly. Yet he followed other methods like bringing the Bill. Then in the memorandum he has very correctly stated what he wants and that is this:

"In view of these considerations and notably of the fact that most of these long-term prisoners, as already stated, have spent ten to twelve years in jail, we would urge upon the Government to reconsider this entire question of release of long-term political prisoners with understanding, sympathy and political wisdom. It is but natural that the concern for these prisoners should have been growing over the recent period. The demand for their release is receiving increasing support from all sections of public opinion. Here mention may be made of the fact that 74 Members of Parliament issued a public statement appealing to Government for the release of these prisoners. Similar appeals were also issued in the States by prominent public men. But all these appeals have gone unheeded.

The cause is so just and urgent that we turn to you, as the Prime Minister, for redress in this matter."

Having said all this, I have only one appeal to make to Shri Bhupesh Gupta. The purpose for which he has brought forward this Bill has

[Shri M. P. Bhargava.]

been served. He has highlighted the problem that he wanted to highlight. Now I suggest that it would be proper for my hon. friend to withdraw this Bill and not force the House to throw out the Bill. I will be very unhappy if this Bill is thrown out by the House, because the underlying spirit of the Bill is a laudable one and we must all join and see that the long-term prisoners get their release as early as possible. Of course, it will have to be kept in mind that every individual case is considered on its own merit and the cases of hard criminals are not mixed up under the pretext of the release of long-term prisoners.

While I appeal to my hon. friend, Shri Bhupesh Gupta to withdraw his Bill, I would also request the Prime Minister and the Home Minister to consider the representation made by Mr. Gupta and his friends sympathetically and get all the cases examined so as to effect the releases.

AN HON. MEMBER: That is what he wants.

SHRI M. P. BHARGAVA: A beginning has already been made in this direction by the Andhra Pradesh Government and when Mr. Sanjiva Reddy was the Chief Minister there, he ordered the release of almost all the prisoners there. Similarly, other State Governments can examine this question and see how many of their long-term prisoners can be released.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, twenty-two hon. Members, including the hon. Deputy Minister of Home Affairs, have spoken today on this Bill which I introduced last session and the speakers were mostly, I am glad to say, from the Congress Party. I think, more than fourteen or fifteen hon. Members from the Congress Party itself have spoken. And what is more—and it pleases me and gladdens my heart—all of them, all those

speakers have supported the underlying spirit and the cause for the release of the long-term prisoners, long-term political prisoners.

SHRI MAHESH SARAN: Not only political prisoners.

SHRI BHUPESH GUPTA: That is a great triumph for the cause that I have espoused in this House. In my career of nearly ten or twelve years in this Parliament, I don't know of any occasion when any Bill, to be precise, any cause—to the Bill I shall come later—received so universal and unanimous a support as was received today. Moral force has been added to a long-standing demand for the release of these long suffering political prisoners in our country. I felt at times, when hon. Members opposite were speaking, that we were recapturing in those speeches the finest traditions of our national movement, because in those unfading days it were the Congress leaders, particularly Gandhiji, Jawaharlal Nehru and Subhash Chandra Bose and others, who took up the cause of the release of the political prisoners, irrespective of their ideologies and irrespective of the fact whether they were violent or non-violent. Now, here again, as the debate went on, we returned to that great past, so to say, and I felt that we were really being inspired by some of those traditions that still endure. I know that hon. Members opposite have serious differences in certain matters with us and the ideological division also is there. But at the same time, I also know that many of them are motivated in the same way and have springs of sympathy in their hearts. And today we saw the welling up of those springs of sympathy in this House, and all of them supported the cause of the release of the long-term political prisoners. What else can be a greater experience for any public man than this? What else can be more consoling to the families of those long-term prisoners than this? What else can be more reassuring to these men who have been languishing

behind prison bars for years and years on end? And what else can give courage to the Government, especially to the Central Government and to the Prime Minister, to see that these prisoners are released?

Yes, I agree with hon. Members when they say that my purpose has been fulfilled. I think I will go a step further. When I came with the proposal, I never expected that so unanimous a support would be accorded to it. My purpose, therefore, has been more than fulfilled. It is precisely on this hope that I brought this Bill before this House, to highlight one of the grievances in our national public life. When I brought it here I had some confidence. After all, we have grown in the context of a certain national movement which has its own traditions and these we carry forward and they become articulated at certain times. Therefore, I felt here in this House that if I could plead the cause of the long-term prisoners to these people and if I could reach out to the hearts of Members opposite, then those past sentiments would be revived and I would get the support that has been given here. Therefore, right at the very beginning, let me express my deepest gratitude, not only my gratitude, but the gratitude of all my party and the gratitude of all those who have been fighting for the release of these long-term political prisoners, and above all, the gratitude of the members of the families of those prisoners, to hon. Members opposite and on both sides of the House, who have unanimously expressed their sympathy to the cause that I have brought before the bar of this House. I hope that things will begin to change now and before long those prisoners will be released and be back amongst us.

Questions have been raised with regard to the Constitutional aspect of the Bill. I am not a great barrister like Shri Asoke Sen there. In fact, I have never been one, except that I was called to the Bar. Therefore, it is quite possible that from the Cons-

titutional and legal angle I have erred. But then I can tell Shrimati Nallamuthu Ramamurti that there is no mischief in it. It is not a mischievous Bill that way. I may be an erring person, but in erring one need not necessarily be mischievous. That is all I can say.

As I said before, we went to the Prime Minister and told him that we had made representations to the State Governments. It is stated here:

"Our Party and others made representations to the State Governments concerned over this matter, but we regret to say that except in the case of Andhra Pradesh, there was no sympathetic response. Shri Rama Krishna Rao, when Chief Minister of Hyderabad, released a number of long-term political prisoners. Later, when Shri Sanjiva Reddy became the Chief Minister of Andhra Pradesh, he was good enough to release all the remaining long-term political prisoners except two. This gesture on their part was welcome and appreciated by all and it set good political and humane standards. It was expected that similar amnesty to the long-term political prisoners would be granted in other States; but that was not to be."

And that is why we came to the Prime Minister. And that is why I am here before Parliament with this Bill. It is not as if we did not try the State Governments. Reference was made here to the case of Andhra. Shri Sanjiva Reddy is not only a former Chief Minister, today he is the head of the Party, the President of the Party that is in control of all the States in the country, at least in Andhra, West Bengal, Madras, Bihar and Punjab; where the prisoners are there, they form the Government. Shri Sanjiva Reddy in 1956 took courage in both hands and released the prisoners and just before that time we came to the Prime Minister with the memorandum to which reference was made by the hon. Deputy Minister. But she forgot to say that after that memorandum was presented, the Prime

[Shri Bhupesh Gupta.]

Minister took interest in the matter, and what is more, the State Chief Minister also took interest in the matter and the result was that all were released. They were, as has been said, life prisoners, lifers as they are called. Some had become lifers because their death sentences had been commuted to life sentences. A bold step was taken, and the result was there was no breakdown in the law and order position, no unseemly occurrence whatsoever. The result was an enhancement of the prestige of Mr. Sanjiva Reddy and the Andhra Pradesh Government. This is the only upshot of this development apart from the sympathies and gratefulness that were created all round. Could it not be so in other States, in Tamilnad, in West Bengal, Punjab, Bihar and so on? That is the question that we face. It is the same parties or the same set of parties that are involved.

When we talked to the Prime Minister, we knew the Constitutional limitations. Let me tell you that I would not say anything about the conversation. What the Prime Minister said I would not tell you here, because it would not be fair to relate conversations that went on between the leaders of the Communist Party on the one hand and the Prime Minister on the other. But we went there and it was one of the biggest delegations of the Communist Party. Shri Ajoy Ghosh, the General Secretary of the Party was there; Mr. Namboodiripad, a prominent leader of the Party was there; Mr. S. A. Dange, leader of the main opposition was there; my humble self was there; and a veteran political worker, Baba Swaran Singh Bagna, came to place the case before the Prime Minister from Punjab although he is 82 years of age, and he had to be physically lifted there; I know how he had spoken to the Prime Minister. The Prime Minister was good enough to ask us for an advance copy of the memorandum, and he studied it, and we gave him a copy formally when we met. What passed between us I will not tell you.

We came away with the feeling that we approached a sympathetic person. We came away with no feeling of disappointment. We came away with hopes that something would be done although we knew that Constitutionally he was not in a position to act in this matter. But his advice in certain respects in the present set-up is certainly more weighty than any of the provisions of the Constitution, we know that also. So, that impression, that feeling we got. One thing Baba Swaran Singh Bagna, that veteran of many years' freedom fight, aged 82 years, told the Prime Minister that in the Western Europe even the war criminals were being released after the war was over by the people who became victorious, who convicted them and put them in jail. That argument came, and I think the Prime Minister saw the point in what he was saying.

Now, therefore, Sir, when I went there, it was not that I had the feeling that the Bill would not be accepted here and therefore I went there. When I draft a Constitution (Amendment) Bill, I knew the fate of it. That much intelligence I have. Unless the Bill comes here from the Law Ministry, you know the fate of such Bill or other Bills. But what I aimed at at that time was to place it before Members of Parliament. "Yes, the Prime Minister is there, we should go to him",—we had that in mind also. In fact we had announced in the middle of last year that a deputation of this kind would be meeting the Prime Minister wherever it was convenient to both the parties, and it was done. The Prime Minister was good enough to meet us immediately after he had come from abroad. Therefore, please do not say that the feeling that this Bill might be rejected by Parliament led us to the Prime Minister. We went to him and we have come to Parliament as well. Well, the Prime Minister is your leader, the Prime Minister is the head of the Government of the country, but Parliament is also there. The voice as it is expressed in Parliament, as it is expressed here today,

could certainly strengthen the position of the Prime Minister. His sympathies will be buttressed and reinforced as a result of this collective expression of human sympathy and political wisdom that we have witnessed today in this House. There is nothing wrong in it. Besides, the hon. Members opposite should also know that there is something that calls for their sympathetic attention. Why should the matter be settled between us and the Prime Minister only? Why should it not be shared by the hon. Members of this House, and why should we not invite their attention and sympathy and wisdom and consideration? That is why I have brought this Bill here, not to test our strength with the Government party on this matter, more specially on a matter like this.

Now, Mr. Deputy Chairman, that aspect has been well served, as I said, because, let alone opposition, I ask how many measures the Government brought before this House which received one hundred per cent. support for the cause behind it and not the Bill. How many? I cannot always recollect such things. But openly support has been expressed here. Now the question has arisen about the drafting of the Bill. Yes, it may be defective. But some hon. Members seem to be a little uncharitable to me in some ways when they say that I am claiming privileges for Members of Parliament. Mr. Bhargava was quite right when he said that if the Government had brought forward some such thing, I would have opposed it. Not this Bill, but if the Government had come out with a Bill to restrict the power of the State and to enlarge the power of the Centre, for concentration of power in another context, in economic matters or in administrative matters, that way probably I would have questioned it on the ground that it would lead to concentration of power. But is this Bill such a thing? It is not that at all. Here I want to enlarge the power of the President to

extend kindness, to extend mercy, to extend sympathy, should the President think so. The Bill does not make it compulsory or obligatory on the part of the President to release this prisoner or that prisoner in exercise of his power of reprieve or commutation of sentence, and so on. Nothing of the kind. It only empowers the President to exercise in certain situation his discretionary power of mercy or reprieve, and so on. He cannot do so now. For example, the President of India is supposed to be a great national figure. Today we have one. Suppose he wants to exercise his own power naturally for the release of political prisoners. The Constitution comes in the way, the Constitution does not allow him. If it is a death sentence, he can commute it. If it is not a death sentence, he cannot do anything. He can certainly advise, but that is on a non-official political plane, personal plane. Constitutionally he has not got that power. That is the position. Therefore, I wanted to place him in a position of power so that when he felt that there was a case for extending mercy, that there was a case for commuting certain sentences in the States, he can do so. This is only empowering him and nothing beyond that. You cannot accuse me of having any mischievous motive in empowering the President in this manner.

Sir, the question has been raised as to why I must take away the power of the State. I am not saying that I am taking away the power of the State. The States retain their power under the Constitution of reprieve, commutation, and so on. All that I say is that the President should have also concurrent power in such matters taking into account the larger interests of the country. The horizon before him must be cleared that way so that he can act in a certain manner. This is all that I say.

Now judiciary is supposed to be a State subject. The High Court is there. At the same time we have the

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Supreme Court where outside the bounds of a State one can come and seek remedy and redress, and the Supreme Court has the power to alter or modify judgements and so on in many cases, as we see it is being done.

SHRI SANTOSH KUMAR BASU: That is not concurrent in the Supreme Court. That is appellate power. You are proposing concurrent power for the President. That might lead to a conflict of decisions between the Governor's power and the President's power in respect of these matters.

SHRI BHUPESH GUPTA: It is true, it is a legal, technical view. Even in the Supreme Court there are certain powers which are original powers under the Chapter on Fundamental Rights. I can proceed here straightway in the Supreme Court if I give a writ petition to show that such and such fundamental rights have been violated. Now, I can come against the State here to the Supreme Court on appeal. I can come on appeal to the President in such cases. Normally this is what will happen. People would not like to come to Delhi without going to the Governor or to the State Government. After having explored these avenues, they will come. Suppose they do not go there, what is wrong if they come to the President? Fundamental right is a cherished thing. Therefore, we say, yes, if it is a fundamental right, come to the Supreme Court. You need not go to the High Court. Similarly, in such cases, where human considerations of such dimensions are involved, we may throw open the doors of Rashtrapati Bhavan, to those who may like to seek sympathetic consideration there. It is not that the doors of Raj Bhavan are to be barred or blocked. I am not at all saying that. Now, therefore, it is not a question of restricting the powers of the State. Not at all. It is a question of giving the President more powers in regard to matters where only good can follow. The President is not going to enhance the sentence. That would be a restriction of the rights and liberties of

the people. Here, the President, if at all he acts in his discretion, would be in a position only to reduce the sentence, without adversely affecting the rights and liberties of the people, for lessening the rigour of law, the rigour of administration and the rigour of some policy. That will be in the interests of the country, in the human interests of the nation. That is all what I say. Please do not confuse it with other questions of correlation of powers between the States and the Centre. This stands on an entirely different footing.

Now, as far as Members of Parliament are concerned, I agree that we should not seek any privilege. Therefore, we stand for the codification of what is their privilege and what is not. I think Parliament is becoming a little touchy about our privileges. You can see how many privilege motions against people outside we bring forward. Now, even editors sometimes have to apologise to us. Therefore, I do not stand for such privileges at all that way. I agree with hon. Members who said that we should not go in for too many privileges for Members of Parliament. If I gave it, it is not because I was trying to secure for us certain advantages and privileges. Why did I do so? I did so because I felt that if 40 Members of Parliament or 25 Members of a Legislative Assembly would jointly give their signatures to a matter to be considered by the President, well that matter should be deemed to have got some public significance. I did not proceed on the assumption that Members of Parliament would be selling their prerogative for something or would be corrupted in this matter. I took it for granted that Members of Parliament, honourable as they are, would be behaving in the public interest and, therefore, I said that if 40 Members of Parliament feel that a matter would deserve the attention of the President, that should be something which the President should consider and he should be in a position to consider it. This is all that I say. The provision relating to Members of Parliament and the State Legislatures

is meant only to give weight to the proposition that may come before the President. That is to say, it is not done in a frivolous manner, so that everybody does not rush to the President, so that only on considerations of public policy or on very good humane grounds or some such thing, which we think are important in the larger interests of the country, such things would go to the President and not other things. That is why I brought forward that in all good faith. But I fear that I have been misunderstood by some hon. Members in this matter, that I am trying to claim more powers for Members of Parliament. I do not agree with Dr. Barlingay that I am discriminating in favour of Members of Parliament. Dr. Barlingay is very particular about that. I find him very often saying, "here is a discrimination for or against" and he interprets the articles regarding Fundamental Rights of the Constitution in a particular way. Anyway, it is not discrimination. Members of Parliament, that way, do certain things. They are on certain committees. They go somewhere. Here it is only to emphasise that frivolous things should not happen that Members of Parliament when they act in this manner will take the responsibility for what they are doing and they will not, I presume, bring up any odd things before the President, unless they are convinced that in the public interest or from the point of view of the larger national considerations such things should be brought forward. That is why I provided it. Since it has been misunderstood, I am prepared to consider it. But then hon. Members suggested that it should be general. Yes, I am prepared for it. Lest you should not agree to such a general thing, lest you should say that this will enable every convict to petition directly to the President from the State, I included this thing as a safety clause, so that there is some restraint on the rush of petitions from the State to the President. This is how I understood it. But I have been evidently misunderstood over this matter, I am all against any discrimination against

anybody and certainly against assuming more and more prerogatives, privileges and powers. But then we have to act here in the public interest and the President may see a petition from Members of Parliament. When a petition goes to the President from forty Members of Parliament, the President will know that forty representatives of the people have reflected over this matter and they would like me to consider this thing in the public interest. This is only a kind of testimonial towards going in the right direction. That is to say, it is a kind of support that this deserves some consideration by the President. Nothing beyond that. Therefore, please do not misunderstand me on this score. I do not think Members of Parliament would be corrupt that way or that if we have this provision here then we shall be opening shops in our constituencies to invite petitions which we shall sign and collect signatures and take them to the President. Members of Parliament have better and more honourable jobs to do and they will continue to do such things. Therefore, that argument goes.

I am prepared to accept if it is a general power. It should be given. Therefore, these two major arguments, major criticisms, from the Constitutional point of view have been, I believe, partly met. I know there will be controversy over it. There is every room for difference of opinion over it. I am not very happy about it. But at the same time, what else can we do? How can we set about this thing? Now, I leave that. I do not presume to convince our friends here by a speech of this kind that the provisions in my Bill are valid or good. I do not presume to do so. Here I must say one or two things. Dr. Barlingay dealt with the legal point, but I take it that he has full sympathy for the cause. Therefore, I do not misunderstand him. But he has a Constitutional mind. Therefore, he wanted to judge me from the Constitutional point of view. I am

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prepared to admit that what he has said is to some extent valid.

MR. DEPUTY CHAIRMAN: Do you want to take it to the next session?

SHRI BHUPESH GUPTA: Of course, I shall continue . . .

DR. SHRIMATI SEETA PARMANAND: I think the Bill should be withdrawn.

SHRI BHUPESH GUPTA: . . . so that I can come here and say that they have been released. Maybe, by that time they will have been released. I hope so. You will see that I may have to say something else. Therefore, I will continue in any case. Then, Mr. Deputy Chairman, this Bill is timely. You must take into consideration the occasion. Before the third General Elections I want all the prisoners to be released. If they do it voluntarily, it would be a good gesture. It is not as if I am asking them to be released just because they are all suffering, but there is a good occasion also. Here, before the next Republic Day if we can get them released or on the Republic Day, shall we say, they must release all these political prisoners, it would be a good gesture.

MR. DEPUTY CHAIRMAN: You will continue later. There is a message from the other House.

MESSAGE FROM THE LOK SABHA

THE IRON ORE MINES LABOUR WELFARE CESS BILL, 1961

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Iron Ore Mines Labour Welfare Cess Bill, 1961, as passed by Lok Sabha at its sitting held on the 8th December, 1961."

Sir, I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at one minute past five of the clock till eleven of the clock on Monday, the 11th December, 1961.