

Fourteenth Loksabha

Session : 8

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Participants : [Pal Shri Rupchand](#), [Singh Shri Manvendra](#), [Bhardwaj Shri H.R.](#), [Ananth Kumar Shri](#), [Singh Shri Ganesh Prasad](#), [Yerrannaidu Shri Kinjarapu](#), [Dhindsa Shri Sukhdev Singh](#), [Singh Shri Prabhunath](#), [Dasgupta Shri Gurudas](#), [Owaisi Shri Asaduddin](#), [Bhardwaj Shri H.R.](#), [Acharya Shri Prasanna](#), [Bhavani Rajenthiran Smt. M.S.K.](#), [Fernandes Shri George](#), [Ramadass Prof. M.](#), [Singh Shri Uday](#), [Atwal Shri Charnjit Singh](#), [Geete Shri Anant Gangaram](#), [Sibal Shri Kapil](#), [Singh Shri Mohan](#), [Verma Shri Rajesh](#), [Banerjee Kumari Mamata](#)

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Title : Discussion on the motion for consideration of the Parliament (Prevention of Disqualification) Amendment Bill, 2006 as passed again by Rajya Sabha (Motion Adopted and Bill Passed).

MR. DEPUTY-SPEAKER: Now, we will take up Item No. 11.

Hon. Members, before the House takes up the next item, that is, reconsideration of the Parliament (Prevention of Disqualification) Amendment Bill, 2006, I have a small observation to make.

As the hon. Members are aware, hon. President, while returning this Bill, has desired the Parliament to reconsider the Bill:

- (a) in the context of the settled interpretation of the expression 'Office of Profit in Article 102 of the Constitution, and
- (b) the underlying Constitutional principles therein.

Hon. President has also desired that while reconsidering, among other things, the following may be specifically addressed:-

- (i) the evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied across all the States and the Union Territories in a clear and transparent manner,
- (ii) the implication of including for exemption of the names of offices the holding of which is alleged to disqualify a Member and in relation to which petitions for disqualification are already under process by the competent authority, and
- (iii) soundness and propriety of law in making the applicability of the amendment retrospectively.

I would, therefore, urge upon the hon. Members to focus on the issues referred to in the President's message and avoid raising extraneous matters while participating in the debate.

The time that has been allotted by the Business Advisory Committee is four hours.

The hon. Minister may now move the Motion.

... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I have already given a notice in this behalf...
(*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down.

Hon. Members, Shri Varkala Radhakrishnan has raised three objections - that under Rules 144 and 145, the Bill as passed again by Rajya Sabha together with the President's message has not been laid on the Table by any Minister; as per article 111 of the Constitution, reconsideration includes a detailed discussion on the Bill; and under Rule 112, the Bill shall be removed from the Register of Bills.

The Bill, as passed again by Rajya Sabha together with the President's message has been laid on the Table of Lok Sabha on 28th July, 2006 by the Secretary-General. The Rules do not require the Bill and the President's message to be laid by the Minister-in-Charge of the Bill. Secondly, the Bill is to be discussed in detail in the light of the President's message and all the procedures in the Rules are being followed in reconsideration and passing of the Bill.

As regards Rule 112 regarding removal of the Bill from the Register of Bills, the present Rule does not apply in the instant case.

Now, the hon. Minister may move the Motion.

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY (PURI): Sir, they have not acceded to the request of the hon. President.
... (*Interruptions*)

MR. DEPUTY-SPEAKER: You cannot challenge the Chair. I have given the ruling.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Sir, I beg to move:

“That the Bill further to amend the Parliament (Prevention of Disqualification) Act, 1959, as passed again by Rajya Sabha, be taken into consideration.”

Mr. Deputy-Speaker, Sir, the Parliament (Prevention of Disqualification) Amendment Bill, 2006 was again passed in the Rajya Sabha on 27th July, 2006. ... (*Interruptions*) Hon. President has raised general points for consideration of Parliament, namely, firstly, to evolve a generic and comprehensive criteria which are just, fair and reasonable and can be applied across all States and the Union Territories in a clear and transparent manner... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Sir, I have given a notice. I have a right to speak.... (*Interruptions*)

MR. DEPUTY-SPEAKER: I have given my ruling. Now, please sit down.

... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : What happened to my notice? I cannot yield.... (*Interruptions*[\[R16\]](#))

MR. DEPUTY-SPEAKER: Nothing should be recorded.

(*Interruptions*) ... *

MR. DEPUTY-SPEAKER: Please sit down.

... (*Interruptions*)

श्री प्रभुनाथ सिंह (महाराजगंज, बिहार) : महोदय, हमारी बात तो सुन लीजिए।... (व्यवधान)

उपाध्यक्ष महोदय : मैंने आपको समय नहीं दिया है, मैंने मिनिस्टर साहब को समय दिया है, इसलिए आप बैठ जाइए।

... (व्यवधान)

उपाध्यक्ष महोदय : आप नोटिस दीजिए, मैं आपको बोलने के लिए समय दूंगा।

... (व्यवधान)

Not Recorded.

MR. DEPUTY-SPEAKER: Nothing will go on record now except the speech of the hon. Minister?

(*Interruptions*) ... *

SHRI VARKALA RADHAKRISHNAN : Sir, the Bill has not been circulated. How can we discuss the Bill if we do not have a copy with us? ... (*Interruptions*)

श्री प्रभुनाथ सिंह : महोदय, हमारी बात सुन लीजिए। ये सभी बातें गड़बड़ कह रहे हैं।... (व्यवधान)

मेजर जनरल (सेवानिवृत्त) भुवन चन्द्र खंडूड़ी (गढ़वाल) : महोदय, मिनिस्टर साहब केवल पढ़ने के लिए पढ़ रहे हैं, हमें उनकी एक भी बात सुनाई नहीं दे रही है। कुछ भी स्पष्ट नहीं हो रहा है।... (व्यवधान)

उपाध्यक्ष महोदय : अगर आप बैठकर शान्ति बनाएं रखेंगे, तभी उनकी बात को सुन सकेंगे।

... (व्यवधान)

MAJ. GEN. (RETD.) B. C. KHANDURI : Mr. Deputy-Speaker, Sir, the House is not in order. How can we listen to the Minister? ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Varkala Radhakrishnan, you are a very senior Member. Please sit down now.

... (*Interruptions*)

श्री रघुनाथ झा (बेतिया) : महोदय, इस सदन को अंधकार में रखने का क्या मतलब है ?...(व्यवधान)

उपाध्यक्ष महोदय : मैंने अपनी रूलिंग दे दी है, अब आप लोग बैठ जाएं।

...(व्यवधान)

श्री प्रभुनाथ सिंह : महोदय, अब आप हमारी बात नहीं सुनेंगे तो कैसे चलेगा। जो बात राज्यों के अधिकार में है, उसे यहां से कैसे किया जाएगा?...(व्यवधान)

SHRI VARKALA RADHAKRISHNAN : Sir, we do not have a copy of the Bill. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: I am again requesting you, please sit down now.

... (*Interruptions*[\[k17\]](#))

* Not Recorded

MR. DEPUTY-SPEAKER: Now, I call upon Shri Anant Kumar to speak.

... (*Interruptions*)

MAJ. GEN. (RETD.) B. C. KHANDURI : Sir, what are we to consider in this? We have not heard anything... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please take your seats.

... (*Interruptions*)

मेजर जनरल (सेवानिवृत्त) भुवन चन्द्र खंडूड़ी : कैसे काम चलेगा यह ठीक नहीं है। हम क्या कंसिडर करेंगे, क्योंकि हमने कुछ सुना ही नहीं है।...(व्यवधान)

SHRI MADHUSUDAN MISTRY (SABARKANTHA): You have called the name of Shri Anant Kumar, only he should speak... (*Interruptions*) Why are they creating problem?... (*Interruptions*)

SHRI KHARABELA SWAIN (BALASORE): This does not mean that we do not have any right to speak... (Interruptions) Sir, their own supporters are creating problem, we are not creating any problem... (Interruptions) We do not want to create a problem... (Interruptions) We have not heard it clearly. We are asking the hon. Minister to read it clearly and loudly please... (Interruptions) We do not know what the hon. Minister has stated... (Interruptions)

MR. DEPUTY-SPEAKER: Please sit down.

... (Interruptions)

उपाध्यक्ष महोदय : मंत्री जी, अगर आप दोबारा पढ़ना चाहें, तो पढ़ दें।

श्री हंस राज भारद्वाज : आप इनसे कहें कि शांति से सुनें। इतनी सभ्य सभा में हालत यह है कि ये सुनना नहीं चाहते, तो मैं क्या कर सकता हूँ। ... (व्यवधान) It is not my job to discipline them. It is the job of the Chair... (Interruptions)

उपाध्यक्ष महोदय : आप चाहें तो दोबारा पढ़ सकते हैं।

श्री हंस राज भारद्वाज : अगर ये सुनना चाहें तो मैं कई बार पढ़ सकता हूँ। आप इनसे कहें ... (व्यवधान) Sir, I have no difficulty in reading it again. But let them listen to me patiently... (Interruptions) Sir, since you have asked me to read it again, I am reading it again with your permission.

Sir, the Parliament (Prevention of Disqualification) Amendment Bill, 2006 was again passed in the Rajya Sabha on 27th July, 2006. Hon. President has raised general points for consideration of Parliament, namely, firstly, to evolve a generic and comprehensive criteria which are just, fair and reasonable and can be applied across all States and Union Territories in a clear and transparent manner. Secondly, the implications of including for exemption the names of office the holding of which is alleged to disqualify a Member and in relation to which petitions for disqualification are already under process by the competent authority. Thirdly, soundness and propriety of law in making applicability of the amendment retrospectively. These noble points were discuss in the Rajya Sabha while considering the aforesaid Bill.

May I draw attention of hon. Members that article 102(1)(a) of the Constitution enables and empowers Parliament to declare an office of profit, the holder of which will not be disqualified under article 102(1)(a) of the Constitution. In terms of the constitutional provisions the Parliament (Prevention of Disqualification) Act, 1959 specified certain offices, such as, Office of Leader of Opposition, Office of Deputy Chairman, Planning Commission, Office of Chairperson, National Commission of Scheduled Castes and Scheduled Tribes, the Office of Chairperson of the National Commission for Minorities and the Office of Chairperson, National Commission for Women [Rs18].

In 1998, Office of Leader of Recognised Party and Recognized Group was declared an office not to disqualify its holder. In the year 2000, the Deputy Leader of the Recognised Party and Recognised Group in either House of Parliament was added.

Sir, now I come to the issue as to how to define the expression: “holds any office of profit under the Government of India or the Government of any State”. Hon. Members may be aware that the expression “office of profit” occurs in the various provisions of the Constitution, namely, in article 18 (4), article 58 (2), article 59 (2), article 66 (4), article 102 (1), article 158 (2) and article 191 (1). The expression “office of profit” has nowhere been defined precisely. Its scope has to be gathered from the pronouncements made from time to time by the Supreme Court and of the High Courts as to what constitutes the “office of profit” and “under the Government”. The Courts are of the view that a practical view, not pedantic baskets of tests must guide the Courts to arrive at an appropriate conclusion whether the concerned office is an office of profit.

As there are no clear guidelines available for finding beforehand whether holding any office will lead to disqualification, an attempt was made by the Constitution (Forty-second Amendment) Act, 1976 to reverse the basis of disqualification by providing that only those offices which are specified by law made by Parliament will disqualify the holder. The provision sought to be made by the Constitution (Forty-second Amendment) Act, 1976 through a negative list had the advantage of clarity and certainty because it is possible to know beforehand what offices will disqualify the holder. However, since the amendments proposed by the Constitution (Forty-second Amendment) Act, 1976 were omitted by the Constitution (Forty-fourth Amendment) Act, 1978 the *status quo* as to what constitutes the office of profit under the Government continues. Now comes the proposal to evolve a generic and comprehensive criteria which are just, fair and reasonable and can be applied across all States and Union Territories in a clear and transparent manner. The task is challenging and daunting. It requires fine balance between the relationship of Centre and States in case a generic and comprehensive criteria is to be evolved across the States. The views of all political parties would definitely facilitate a lasting solution to the issue of as to what constitutes an office of profit under the Government.

Hon. Members of the Rajya Sabha have carefully considered the message of the hon. President and the provisions of the Bill, and passed the Bill again. I commend the Bill for the consideration of this august House

SHRI BRAJA KISHORE TRIPATHY : They have not come out with any amendment.... (*Interruptions*)

MR. DEPUTY-SPEAKER: Motion moved:

“That the Bill further to amend the Parliament (Prevention of Disqualification) Act, 1959, as passed by Rajya Sabha, be taken into consideration. ”

SHRI ANANTH KUMAR (BANGALORE SOUTH): Mr. Deputy-Speaker, Sir, I thank you for giving me this opportunity. At the outset, I rise to oppose the Bill that has been commended by the hon. Law Minister. It is because all of us know the hon. Rashtrapati*ji* has sent a message on May 31 for the reconsideration of the Bill on the principle of justice, equity and transparency. Last time, while giving a reply to the hon. Leader of the Opposition, when Advaniji made some points, hon. Bhardwaji said:

“I have heard some statements from the Leader of the Opposition. I hold him in very high esteem. We thought that let us not tinker with the Constitutional spirit. He himself, perhaps, wanted it that we should not tinker with it.”

Here, it is a classic case that the Government of India lead by UPA is not only tinkering with the Constitutional spirit of article 102 (1) (a), and article 191 (1) (a), it is also passing the Bill in undue haste. [\[r19\]](#)

On 31st May, Rashtrapati ji has sent a message, and today is the 31st July. With UPA's majority here, the Government wants to bulldoze and pass this Bill showing scant respect to the advice given by Rashtrapati ji.

I am a member of the Joint Committee on Office of Profit. The hon. Law Minister in the other House, while replying to the debate, has said:

“After this Bill is passed, the Government will be ready to constitute a Committee of both the Houses to go threadbare into the problem and come out with a solution ”

Why is he putting the cart before the horse? In 1954, under the chairmanship of Pandit Thakurdas Bhargava, there was a Joint Committee of the Parliament, which had recommended for a comprehensive Bill on the Office of Profit, which came into effect in 1959. One of the recommendations of that Committee was to set up a Standing Committee of both the Houses to undertake a continuous scrutiny of offices of profit. Accordingly, a Joint Committee on Office of Profit was set up for the first time in August 1959. Later, Sir, after each Lok Sabha is constituted subsequent to the General Election, a request is made to the Ministry of Law and Justice to initiate action to move a motion in the Lok Sabha for the constitution of the Joint Committee on Office of Profit. There is already a Joint Committee on Office of Profit with 10 Members of Lok Sabha and five Members of Rajya Sabha on it. My direct questions to the hon. Law Ministers are these. When there is already a Committee, why were these 55 various Offices of Profit not referred to it? Why did you not refer Shrimati Jaya Bachchan's case to it? Why did you not refer Shrimati Sonia Gandhi's case to it? Why are you taking Parliament and the Joint Committee on Office of Profit for a ride? Why is this hurry?

You are not having any respect or any consideration to the Constitution and to the advice given by the hon. President. I was talking to the Chairman of the Joint Committee on Office of Profit. I spoke to the Secretary. They said that right from 1959, every Bill or every recommendation came to the Joint Committee on Office of Profit except this Bill. Therefore, Mr. Law Minister, on the question of probity, you have already bungled, and on the question of maintaining the constitutional spirit, you have already given a go-by to the Constitutional spirit.

I was going through your reply. I think, it is a classic case of double talk – glib talk. For your consideration, I will read this. It says:

“We are the Ministers acting on the allocation of business of the hon. President. So, there should be no apprehensions in anybody's mind that there is any desire to do anything contrary to the wishes of the President. ”

Then, what is this Bill? What is the consideration shown to the hon. President's advice [lh20]?

The President has very clearly said:

“We should come out with evolution of generic and comprehensive criteria. We also need to apply this criterion, which is just fair and reasonable across all States and Union Territories in a clear and transparent manner. The implication of including, for exemption, the names of offices, the holding of which is alleged to disqualify a Member, and in relation to which petitions for disqualification are already under process by the Competent Authority... ”

Then, Mr. Law Minister, how can you say that you are not acting to the contrary of the wishes of the President of India? Mr. Minister, you have continued in your speech, and said:

“I am very keen that we should discuss debate and find out the solution because the hon. President has been pleased, perhaps, to raise several issues. Basically, they relate to three or four points. The first issue is probity in public life, and what I have been able to locate from the point of emphasis is probity in public life of old ethical values, avoidance of conflict of interest. ”

About the very inclusion of 55 offices, from Shanti Niketan, Shri Niketan, to India Gandhi National Centre of Art, to National Advisory Council, to Haldia Development Authority, to West Bengal Industrial Development Corporation, is it not conflict of interest? What was the reason the Constituent Assembly, the founding fathers of our Constitution came out with article 102(1)(a)? The basic reason, not only in India, even in the Constitutional Law of UK, in USA, in Canada, is separation of powers. We have got a Judiciary; we have got a Legislature; we have got an Executive. And, those who adorn places in the Legislature, should not be at the mercy of the Executive, they should not be influenced by the Executive; and they should not be under the cloud of the influence of the Executive. Therefore, we should not be accepting any office of profit.

But throwing all these things into winds, you are going ahead with this Amendment Bill. You have said in your answer, hon. Mr. Law Minister, and I quote:

“The President has not suggested any amendment to this Bill. ”

But the very fact that the hon. Rashtrapati-ji had sent back the Bill with specific points, is to amend, is to reconsider. Sometime, I feel... (*Interruptions*)

SHRI HANSRAJ BHARDWAJ: I am sorry, you should be, at least, aware that amendment and reconsideration in the House are two different issues.... (*Interruptions*)...You must understand if he suggested amendment.... (*Interruptions*) I am answering... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : We were expecting a copy of the Draft Bill... *(Interruptions)*

MR. DEPUTY-SPEAKER: Nothing should be recorded except the speech of Shri Ananth Kumar.

*(Interruptions) ... **

SHRI HANSRAJ BHARDWAJ: Sir, you have read just now before the House, what the hon. President wants. I would request my hon. friends on the other side to apply their mind to your observations.... *(Interruptions)*

SHRI ANANTH KUMAR : Sir, whenever the hon. Rashtrapati-ji sends the Bill for reconsideration, which he has done only two times... *(Interruptions)*

MR. DEPUTY-SPEAKER: No running commentary, please.

SHRI L.K. ADVANI (GANDHINAGAR): This is the first time that the President has invoked article 111. That was under article 74.

SHRI ANANTH KUMAR : Sir, I stand corrected. Whenever the President has sent it back, that is for reconsideration. And, have we reconsidered? Have we given any consideration to his viewpoints? One month has lapsed... *(Interruptions)* Have you applied your mind?

SHRI BRAJA KISHORE TRIPATHY : They do not have mind... *(Interruptions)*

SHRI ANANTH KUMAR : Sometimes, I feel that the UPA Government suffers from Constitutional illiteracy[[KD21](#)].

* Not Recorded

It is a glib talk. Mr. Law Minister, you went on to say that the President is the father figure in the Constitution and we are always very keen to have guidance from him. We always like to give the highest consideration to the suggestion made by him, by his high office. These are the three things you have said. You have said, he is the father figure. Secondly, you have said that you are very keen to have guidance from him. We always like to give the highest consideration to the suggestion made by his high office. These are the suggestions made by his high office. What is the highest consideration you have given? The highest consideration you have given is bringing the Bill as it was passed two months back. Is this the highest consideration?

Therefore, my earnest request, through you, Mr. Deputy-Speaker, Sir, is that the Law Minister of the country should not mislead the country. He should not mislead both the Houses of Parliament. He should be true to his speech. He should not indulge in glib talk. I am really surprised by his talk.

Then we raised the question of National Advisory Council's post held by Shrimati Sonia Gandhi. I filed a petition before the Rashtrapathiji for disqualification of her membership. Regarding that, what have you said? You said: "Let us have respect for each other. If a leader of a very big Party is appointed to a position which is to advise some NGOs, what is wrong in it?" Do you think that the Government of India is an NGO? Mr. Bhardwaj, this is your speech. "Which is to advise some NGOs, what is wrong in it?" I do not think the Government of India is an NGO. ... (*Interruptions*) "There are 15 eminent NGOs working under the National Advisory Council giving a lot of inputs to the Legislation." This practice was not in vogue till this NAC was appointed. "Times have changed. NGOs have a greater role." I do not think this is an NGO. The Government of India is not an NGO. ... (*Interruptions*)

I will definitely come to that point.

On 23rd March, 2006, as the General Secretary of the Party, I, on behalf of the Bharatiya Janata Party, filed a petition before the Rashtrapathiji for disqualifying Shrimati Sonia Gandhi. But suddenly, events happened. She resigned. She wanted to become an icon of pseudo sacrifice. ... (*Interruptions*) Then she contested the election.

SHRIMATI TEJASWINI SEERAMESH (KANAKAPURA): I strongly protest against the use of this word... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down.

... (*Interruptions*)

SHRI ANANTH KUMAR : I am continuing. Please listen to me. Then she resigned. She got elected to the House of Lok Sabha. But my basic question is this. Why did the UPA Government and the hon. Law Minister include NAC in the exemption list from disqualification? It is because, still I remember that when I filed the petition, that day the Congress Party gave a statement that NAC is not an office of profit. You yourself said that NAC is not an office of profit. It was all over the media. Why are you dilly-dallying? Why are you adding it again into the exemption list? Is it to save whom? Or is it to appoint whom? What happened to the pseudo sacrifice of Shrimati Sonia Gandhi?

SHRI H.R. BHARDWAJ : I want to point out one thing. They are totally obsessed by Shrimati Sonia Gandhi. There is so much of obsession. You are so much obsessed. Please come to the point.

SHRI ANANTH KUMAR : No, I am not yielding.

MR. DEPUTY-SPEAKER: She is the hon. Member of the House.

SHRI H.R. BHARDWAJ: The whole Party is obsessed with her.

SHRI ANANTH KUMAR : I read out the order.... (*Interruptions*[m22])

Sir, we are not obsessed with anybody. We are obsessed with only the Constitution of India, the principles of the Constitution of India, and not with the unprincipled, unconstitutional opportunistic politics of the Congress Party. ... (*Interruptions*)

MR. DEPUTY-SPEAKER : Nothing will go on record except the speech of Shri Ananth Kumar.

(*Interruptions*) ...*

SHRI ANANTH KUMAR : Sir, on May 31, 2004 when the UPA came to power, they came out with an order regarding the constitution of the National Advisory Council to monitor the implementation of the National Common Minimum Programme of the Government. ... (*Interruptions*) I will read both together so that we will understand better.

Bhardwajji, this says : “Let us have respect for each other. If the leader of a very big Party is appointed to a position which is to advise some NGOs, what is wrong in it?” I will read the order now. It says : “The National Advisory Council would be headed by a chairperson”. You did not say ‘a chairman or a chairperson’ because you had already decided who should be the chairperson. It says : “The NAC would be headed by a chairperson with the rank and status of a Union Cabinet Minister and shall consist of such number of members not exceeding 20 as may be nominated by the Prime Minister in consultation with the chairperson”.

Do you allow such facility and such scope for other Committees and Boards? I do not think so because you are allowing this special facility for the ‘super Prime Minister’. ... (*Interruptions*)

श्रीमती तेजस्विनी शीरमेश : महोदय, सुपर प्राइम मिनिस्टर का मतलब क्या है ? What is meant by ‘super Prime Minister?’ It is not correct. ... (*Interruptions*)

MR. DEPUTY-SPEAKER : Nothing will go on record except the speech of Shri Ananth Kumar.

(*Interruptions*) ...*

SHRI ANANTH KUMAR : The functions of the National Advisory Council would be as follows :

“To monitor the progress of the implementation of the Common Minimum Programme, to provide inputs for the formulation of the policy by the Government and to provide support to the Government in its legislative business.”

SHRI MADHUSUDAN MISTRY (SABARKANTHA): Sir, I am on a point of order.

MR. DEPUTY-SPEAKER : Under which rule?

SHRI MADHUSUDAN MISTRY : Sir, it is under Rule 132. The rule says :

“The debate on such a motion shall be confined to consideration of matters referred to in the message of the President or to any suggestion relevant to the subject matter of the amendments recommended by the President.”

The hon. Member is going outside the purview of this. ... (*Interruptions*)

MR. DEPUTY-SPEAKER : It does not apply here.

SHRI MADHUSUDAN MISTRY : His statements should be barred and stopped. The debate has to be confined to the matters referred by the President to this House. ... (*Interruptions*)

MR. DEPUTY-SPEAKER : This rule does not apply to them.

SHRI ANANTH KUMAR : Sir, I want to repeat.

“The functions of the National Advisory Council would be as follows :

“To monitor the progress of the implementation of the Common Minimum Programme.”

* Not Recorded

If Shrimati Sonia Gandhi is monitoring the implementation of the Common Minimum Programme, I do not understand what Manmohan Singhji will be doing. ... (*Interruptions*) Obviously, he does not have any time for that. ... (*Interruptions*) It further says :

“to provide inputs for the formulation of the policy by the Government and to provide support to the Government in its legislative business.”

It also says :

“The Council would be provided adequate and appropriate office space by the Central Government. All expenditure incurred in connection with the functioning of the Council would be met by the Central Government and provided through the PMO. The expenditure incurred for the functioning of the Council would be met by the Central Government.”

Then, is it an NGO or an office of profit? ... (*Interruptions*) I also want to refer, as a lay person, to various judicial decisions. ... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Please allow me for a minute.

SHRI ANANTH KUMAR : Sir, I am not yielding. ... (*Interruptions*) In 2001 the Supreme Court upheld ...

SHRI VARKALA RADHAKRISHNAN : The hon. Member was a member of the Joint Select Committee which examined the Bill.... (*Interruptions*)

MR. DEPUTY-SPEAKER : Shri Radhakrishnan, please sit down.

... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Will you please tell me what exactly is the office of profit? Did you go through that question applicable throughout India? Nowhere it is mentioned.

MR. DEPUTY-SPEAKER : It is not allowed. Please sit down.

SHRI ANANTH KUMAR : Sir, I will try to answer that question.

SHRI VARKALA RADHAKRISHNAN : Nowhere it is mentioned about the office of profit. Government need not go into the question. ... (*Interruptions*)

MR. DEPUTY-SPEAKER : Shri Radhakrishnan, you have to first get permission from the Chair to speak.

... (*Interruptions*[\[krr23\]](#))

SHRI ANANTH KUMAR : Mr. Deputy-Speaker, Sir, for the benefit of hon. Law Minister of India, I would like to tell that in 2001, the Supreme Court upheld disqualification of JMM leader Shibu Soren for holding office of profit as Chairman of the Interim Jharkhand Autonomous Council. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down.

... (*Interruptions*)

उपाध्यक्ष महोदय : राधाकृष्णन जी, बैठ जाइए। आपकी पार्टी को जब टाइम मिलेगा, तब आप जो चाहे कह लीजिए।

SHRI ANANTH KUMAR : In 1980, there was a case of Tamil Nadu MP Shri R. Moharanarangam. ... (*Interruptions*) The first instance which came before the Supreme Court was in 1954 in Ravanna Subanna Vs. G.S. Kaggerrappa AIR 1954 SC 653 and the Supreme Court reiterated the settled law of the Supreme Court through the sixties till date in Umrao Singh Vs. Darbar Singh and A.K. Subbaiah vs. Ramakrishna Hegde. There is a settled law of the Supreme Court and there four criteria to decide whether one is an office of profit or not.

- 1) Whether Government exercises control over the appointment and removal from the office and over the performance and functions of the office;
- 2) Whether the holder draws any remuneration other than the compensatory allowance that even includes conveyance bills, telephone calls, travel expenses.

Through you, I would request the Government, the hon. Law Minister to provide this august House the details of expenditure incurred by the National Advisory Council and the Chairperson of the National Advisory Council in the last so many months after this Government came to power. They have spent lakhs and lakhs of rupees.

- 3) Whether the body in which office is held exercises executive, legislative or judicial power or confers powers of disbursement of funds, allotment of land, issue of licences etc. or gives powers of appointment, grant of scholarship.
- 4) Whether the job enables the holder to wield influence or power by way of patronage.

These are the criteria as settled by the hon. Supreme Court in various case laws. That being the case, we do not understand ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down.

SHRI ANANTH KUMAR : We do not understand how 55 various offices of profit have been brought before the House for exemption because ultimately I think, it is a conflict between duty and self-interest. No law should be guided by self-interest. Every law should have a rationale and principle, and it should be driven by public interest, but here is a Government, the UPA Government – UPA means unprincipled alliance – which has brought a Bill in support of self-interest, self-interest of the national Chairperson of the UPA, self-interest of all the 55 or 56 MPs who want to save their heads. I do not understand this.

On one issue, I have to congratulate the Law Minister that he has not minced words in writing the Statement of Objects and Reasons while moving this Bill. I think, this is one of the brash admissions in the last 59 years of independent India's history of throwing all principles. I am reading the Statement of Objects and Reasons as provided by the hon. Law Minister :

“Recently, it has become necessary to revisit the issue of disqualification of Members of Parliament on the basis of holding an office of profit. This has been necessitated due to recent developments where approximately 40 or more Members from both Houses of Parliament, who are holding office of chairperson or members of various statutory and non-statutory bodies, are facing disqualification proceedings on the ground that they are holding an office of profit. If this

state of affairs is allowed to continue, then there is bound to be a large-scale litigation and the likely vacation of seats in both the Houses of Parliament”

These seats would be mostly of UPA and Communist friends. It further reads :

“If this state of affairs is allowed to continue, then there is bound to be a large-scale litigation and the likely vacation of seats in both the Houses of Parliament which will necessitate the holding of bye-elections to fill up the resultant vacancies. This will be a wasteful expenditure and will enforce unnecessary financial burden upon the nation[S24].”

There is a historical parallel to this. In the same vein and with the same thought, late Shrimati Indira Gandhi had extended the total period of the Lok Sabha between 1971 to 1976 by one more year, and these people were party to it. They do not have any respect for the democratic norms.

I am surprised with the Left Parties. The Left Parties, led by Shri Basu Deb Acharia and others, are always on high moral grounds, day in and day out, they give sermons on probity in public life. What is the situation now? ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please maintain silence in the House.

... (*Interruptions*)

SHRI ANANTH KUMAR : A day before the Left Co-ordination Committee Meeting, the senior CPI leaders on Wednesday said that : “The Office of Profit Bill should be returned to the hon. President after removing the clause of giving it retrospective effect.” It was also mentioned that the senior CPM leaders could not be contacted for comments. Nowadays, you are not available for comments despite repeated efforts. ... (*Interruptions*)

SHRI BASU DEB ACHARIA (BANKURA): Please tell us the name of the newspaper from which you are reading this. ... (*Interruptions*)

SHRI ANANTH KUMAR : I am reading from *The Pioneer*. The CPI General Secretary, Shri A. B. Bardhan, told *The Pioneer* that :

“...Since some of the offices mentioned in the Bill were created very recently, the clause of giving it retrospective effect reflects lack of homework ... ”

SHRI BASU DEB ACHARIA : Sir, this is an editorial written by Shri Chandan Mitra. ... (*Interruptions*)

SHRI ANANTH KUMAR : No, this is not an editorial. It is a statement given by Shri A. B. Bardhan. ...
(Interruptions)

MR. DEPUTY-SPEAKER: No, nothing should be recorded.

(Interruptions) ...*

MR. DEPUTY-SPEAKER: Hon. Members, please maintain silence in the House.

... (Interruptions)

SHRI ANANTH KUMAR : Now, I am going to read the *National Herald*. It writes : “Left in a dilemma on Office of Profit.” ... (Interruptions)

DR. RAM CHANDRA DOME (BIRBHUM): Nobody subscribes to that newspaper except some people like you. ... (Interruptions)

MR. DEPUTY-SPEAKER: Please maintain silence in the House.

... (Interruptions)

SHRI ANANTH KUMAR : It states that :

“While CPI categorically says that no MP or MLA should be allowed to hold any position other than those created by the House, the CPM called for a two-track approach.”

It is not a two-track approach. It is double speak approach, and it is what is known as opportunism. ...
(Interruptions)

SHRI BASU DEB ACHARIA : What is your stand on Jharkhand?

* Not Recorded

SHRI ANANTH KUMAR : Our stand is very clear on Jharkhand. We are asking the advise of the hon. President of India, and we are welcoming and supporting it. We feel that there has to be a law, which is applicable to the entire country including the Union Territories. ... (Interruptions)

MR. DEPUTY-SPEAKER: Nothing should go on record.

(Interruptions) ...*

MR. DEPUTY-SPEAKER: Mr. Acharia, please address the Chair.

... (Interruptions)

SHRI ANANTH KUMAR : Sir, I want to ask a basic question at this point of time. ... (Interruptions)

उपाध्यक्ष महोदय : आचार्य जी, आपकी पार्टी को टाइम मिलेगा, उस समय आप बोल लेना।

... (व्यवधान)

SHRI ANANTH KUMAR : Sir, I am raising a very pertinent question. They have included offices like The Sriniketan Santiniketan Development Authority, the Haldia Development Authority, the Indira Gandhi National Centre for the Arts, etc. There are hundreds of development authorities in our country. There is the Bangalore Development Authority, the Delhi Development Authority, the Ahmedabad Development Authority, etc. Every urban area has a development authority. How come they are having a pick and choose policy in the Office of Profit Bill for giving exemption to certain offices, and that too when they are facing proceedings for disqualification?

If you want to follow your supreme leader Shrimati Sonia Gandhi, then you should resign, and contest again. ... (Interruptions) The Government should resign and contest again. They should not indulge in opportunistic politics. ... (Interruptions) They cannot have one yardstick for themselves and another yardstick for others. I am saying this because they always go with a precept, and

* Not Recorded.

that precept is idealism for others to preach, and opportunism to follow and practise. ... (Interruptions[ak25])

15.00 hrs.

SHRI BASU DEB ACHARIA : What are you following in Jharkhand and Madhya Pradesh? Where is Prof. Malhotra? Why has he left? ... (Interruptions)

MR. DEPUTY-SPEAKER: Nothing should be recorded.

(Interruptions) ... *

SHRI ANANTH KUMAR : At the outset, I am on a basic question. Both the Congress Party and the Communist Party should come out clean on this issue. This matter is being debated right from the days of the Constituent Assembly. It had been debated in the Joint Committee on Office of Profit. ... (Interruptions)

MR. DEPUTY-SPEAKER: Hon. Member, your Party will be getting sufficient time.

SHRI ANANTH KUMAR : Many times, on several occasions, the Joint Committee on Office of Profit recommended to various Governments, to not only this Government but also to the previous Government, to come out with the definition of "Office of Profit". Let the definition of "Office of Profit" be comprehensive, let it be generic, and let it not be a subjective option.

The hon. President has given one month's time, and the UPA Government got one month's time to ponder, deliberate and to discuss with other political parties. They had discussions with the Bhartiya Janata Party and our leadership also. ... (*Interruptions*)

SHRI H.R. BHARDWAJ : Whom should I talk to? They themselves are bewildered. Where is the leadership? ... (*Interruptions*)

SHRI ANANTH KUMAR : We have a very clear view on this which is what Shri Advani has propounded, and which was supported by Shri Bhardwaj. He said that there should not be any tinkering of the constitutional spirit. What is the

* Not Recorded.

constitutional spirit? Constitutional spirit talks about "separation of powers". Constitutional spirit talks about duty, which is different from the "Office of Profit". Whereas both the Communist Party and the Congress Party are not following this constitutional spirit. They are not heeding to the advice of the President of India. They are trying to bulldoze it. ... (*Interruptions*)

उपाध्यक्ष महोदय : देखिए, हर पार्टी को टाइम मिलेगा। जब आपको बोलने का समय मिले, तब आप बोलें। इसलिए मैं नहीं चाहता कि जब किसी पार्टी का कोई सदस्य बोलना शुरू करे, तो दोनों तरफ से इंटरप्शनस शुरू हो जाएं। That does not look nice.

... (व्यवधान)

श्री बसुदेव आचार्य : थोड़ा-थोड़ा तो होता है। ... (व्यवधान)

उपाध्यक्ष महोदय : रीजनेबल तो ठीक है, लेकिन ऐसा न हो कि मैम्बर को सुना ही न जाए। आपकी अपनी पार्टी की भी बारी आएगी, तब आप बोलिए। सुनने के लिए थोड़ा दिल चाहिए।

... (व्यवधान)

श्री बसुदेव आचार्य : हम सुन रहे हैं। ... (व्यवधान)

श्री अनंत कुमार : क्या सुन रहे हैं? ... (व्यवधान)

Mr. Deputy-Speaker, Sir, I do not know whether the Congress Party is in a position to give the assurance to the entire country that the UPA Chairperson will not again become the Chairperson of the National Advisory Council. On day 1, she said that it was not an "Office of Profit"; on day 2, she resigned; on day 3, she contested, and on day 4, her Law Minister brought an amendment exempting the office of the Chairperson of the National Advisory Council from "Offices of Profit". This is most unfair.

With these words, I oppose this Parliament (Prevention of Disqualification) Amendment Bill. We oppose it. I also warn the Government that the entire country is opposing this; the entire media is opposing this, nobody

is with you and you are alone. Do not commit the same folly that you committed in 1975 by amending the People's Representation Act to save Shrimati Indira Gandhi[R26].

Last time, the Government subverted the Session itself by adjourning it *sine die* because the Government wanted to protect Shrimati Sonia Gandhi. Now they want to protect a hoard of defaulters, fifty-six of them, and to save the Government at any cost. That is the reason why the Government has brought this amendment. We oppose this Bill. We did oppose this in the other House; we oppose it here; and we will oppose it outside this House also.

THE MINISTER OF SCIENCE AND TECHNOLOGY AND MINISTER OF OCEAN DEVELOPMENT (SHRI KAPIL SIBAL): Sir, I rise to intervene in this debate on a very serious issue pursuant to the message sent by the President under article 111 of the Constitution of India. Since we are accused of being Constitutionally illiterate, let me start by generating some literacy in the process of this debate.

Article 102 of the Constitution of India, I will try and recapitulate the words of the article, says

“A person shall be disqualified from being chosen as and from being a Member of Parliament if he holds an office of profit under the Government other than through a law by Parliament which declares that such office of profit will not disqualify the incumbent of the post.”

This is article 102 of the Constitution of India. What does this mean? It has two parts to it. Number one, a person shall be disqualified if three things are satisfied: (1) he holds an office, (2) it is an office of profit, and (3) it is under the Government. All three criteria have to be satisfied. It is only then that that person shall either be disqualified from Parliament or shall at the time of filing his nomination papers, if it is opposed shall not be allowed to be a candidate in an election.

If all three criteria are satisfied, he is liable to be disqualified. Then the exemption part, that is the second part, comes in. If you are holding an office which is an office, it is for profit, it is under the Government of India, then Parliament can by law declare that you shall not be so disqualified. So, when you look at the 1959 Act, all the offices mentioned under the 1959 Act shall be deemed to be offices of profit under the Government because the whole purpose of the Constitutional provision is to assume that these are offices of profit under the Government and then exempt them.

Now, let us take the example of a person in this House who is the Leader of the Opposition. The office of Leader of the Opposition is exempted. So, he is holding an office of profit. You are against exempting persons holding an office of profit. Please ask him to resign. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down

... (*Interruptions*)

MR. DEPUTY-SPEAKER: That is his argument. Please sit down.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing is going on record.

(*Interruptions*) ...*

MR. DEPUTY-SPEAKER: Please sit down and listen to him now.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing is going on record.

(*Interruptions*) ...*

MR. DEPUTY-SPEAKER: This is his argument. Please listen to him.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down. This is his argument. Nothing is going to be recorded now.

(*Interruptions*) ...*

MR. DEPUTY-SPEAKER: This is unfair. Please sit down.

... (*Interruptions*)

उपाध्यक्ष महोदय : आपकी बात रिकार्ड पर नहीं जा रही है।

(*Interruptions*) ...*

श्री कपिल सिब्बल : आप उनको बैठाएंगे नहीं तो कैसे काम चलेगा।...(ब्यवधान)

MR. DEPUTY-SPEAKER: This is not the time to speak.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: No, please sit down.

... (*Interruptions*)

* Not Recorded.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): They are not allowing Shri Sibal to speak. ...
(Interruptions)

MR. DEPUTY-SPEAKER: Nothing is going on record.

(Interruptions) ...*

श्री प्रियरंजन दासमुंशी : तभी तो आपके बोलने में कोई तथ्य नहीं है।... (व्यवधान)

MR. DEPUTY-SPEAKER: Shri Dasgupta, your turn would come and you can speak then.

... (Interruptions)

उपाध्यक्ष महोदय : दासगुप्ता जी, आपको टाइम मिलेगा।

SHRI KAPIL SIBAL: If you cannot discipline them, I cannot proceed, Sir. That is your responsibility, not mine. I did not intervene when Shri Ananth Kumar was speaking. I did not utter a word. We listened with rapt attention. ... (Interruptions)

MR. DEPUTY-SPEAKER: I agree with you.

... (Interruptions)

MR. DEPUTY-SPEAKER: This is not fair. Please listen to him.

... (Interruptions)

SHRI PRIYA RANJAN DASMUNSI: This is not unfortunate. While leaders of the Opposition speak, we did not intervene at all. Why should not they allow Shri Sibal to respond? This is not the way. ... (Interruptions)

MR. DEPUTY-SPEAKER: Please sit down. Keep silence and listen to him.

... (Interruptions)

MR. DEPUTY-SPEAKER: Shri Acharia, please listen to him[s27].

... (Interruptions)

* Not Recorded.

उपाध्यक्ष महोदय : देखिये, मैंने पहले भी कहा था कि एक पार्टी का जब कोई सदस्य बोल रहा है तो दूसरी पार्टी को बड़े पेशेंस और विशाल हृदय से उसकी बात सुननी चाहिए।

...(व्यवधान[s28])

उपाध्यक्ष महोदय : आचार्य जी, जब अनंत कुमार जी बोल रहे थे, मैंने पूरी कोशिश की कि इधर शांति रहे।

...(व्यवधान)

उपाध्यक्ष महोदय : अब मैं चाहता हूं कि आप इनके आर्ग्यूमेंट को सुनने की हिम्मत रखें।

...(व्यवधान)

SHRI KAPIL SIBAL: Mr. Deputy-Speaker, Sir, the point that I was wanting to make is this. I gave an example to suggest that in fact all those people who are included in the Schedule are all people who are assumed to hold an Office of Profit under the Government and that is why, the Constitution has provided the exemption. ... (*Interruptions*) I am not having a dialogue with you. Why are you interfering now? Please listen. If you disagree, you have a right to speak.

उपाध्यक्ष महोदय : गीते जी, आपकी बारी आएगी।

SHRI KAPIL SIBAL: The point that I was making is this. I will come to the issue and that is why, the President has sent a message. I have to answer the question of 'retrospectivity'. I will answer that. But I am just pointing out that there are many instances in the history of this country, since Independence, that many people and very important personalities, were holding such posts. For example, Shri Atal Bihari Vajpayee was the Foreign Minister when the Janata Government was in power. He was also the Chairperson of Indian Council of Cultural Relations at that point in time. That was also an Office of Profit. But he was not disqualified. We did not ask for his disqualification.

Another hon. Member of the Rajya Sabha was heading the Indira Gandhi Centre for Arts. He was a Member of the Rajya Sabha and heading the Indira Gandhi Centre for Arts. That was also an Office of Profit. We did not ask for his resignation.

Their problem seems to be that they do not want Shrimati Sonia Gandhi to be the Chairperson of the National Advisory Council. That is your only point and that is your only problem. ... (*Interruptions*) Their entire debate is Sonia-centric and they have nothing to do with principles.

In fact, Shri Ananth Kumar, my friend accused us of proceeding with undue haste. He said that the President received the Amendment Bill on 25th May and on 31st May, he sent it back and that we are bringing it with such undue haste in July. But see what happened in his own State. In Karnataka what happened? Much before July, on the 6th of June, what did they do in the Assembly? They passed the Karnataka Legislature

(Prevention of Disqualification) (Amendment) Bill, 2006 with voice vote. There was no discussion. ... (Interruptions) There was no discussion. What did they do? They exempted the Offices of what? They exempted the Offices of Chairman, Speaker, Deputy-Chairman, Deputy-Speaker, Minister of State, Deputy-Minister of State, Parliamentary Secretary, Leader of the Opposition, Government Chief Whip. They were not exempted, but they have exempted them through a law. What happened to your constitutional literacy then? ... (Interruptions) What happened to principled politics? ... (Interruptions) Otherwise, the entire Karnataka Government would have gone.

Let me give another example. ... (Interruptions) Let me give an example nearer home. What happened in Jharkhand? They passed, on March 24th, 2006, the Jharkhand Legislature (Prevention of Disqualification) Bill, 2006. The Bill included 22 posts which were exempted from the Office of Profit, that included the Chief Minister's post, Shri Arjun Munda, who holds the post of Chairman of Tenugarh Vidyut Nigam Limited, Shri Karia Munda, Executive Chairman, 20-point Programme Implementation Committee and Saryu Rai, Vice-Chairman, State Planning Board, were exempted. Then, what they did was something extraordinary. That was something which has never been done in this country before. Sections 2 and 3 of the Bill seek to prevent disqualification of every MLA who holds an Office of Profit with retrospective effect. We have never heard of this. ... (Interruptions[V29])

MR. DEPUTY-SPEAKER: Nothing will go on record.

(Interruptions) ... *

श्री कपिल सिब्बल : वह तो पास हो गया। ... (व्यवधान) तब आपकी कांशंस क्या कह रही थी ? तब आपकी नैतिकता क्या कह रही थी ?... (व्यवधान) आप जिन प्रिंसिपल्स की बात करते हैं, तब वे कहाँ

थे ? ... (व्यवधान)

MR. DEPUTY-SPEAKER: I request you to address the Chair.

SHRI KAPIL SIBAL: I am addressing you only, Sir. I always address everybody through you only. मैं आपको ही एड्रेस कर रहा हूँ।... (व्यवधान)

उपाध्यक्ष महोदय : मेरी भी आपसे यही रिक्वेस्ट है।

... (व्यवधान)

SHRI KAPIL SIBAL: If you do not mind, whatever you are saying is not going on record. I am not going to yield.

MR. DEPUTY-SPEAKER: Nothing is going on record.

(Interruptions) ... *

SHRI KAPIL SIBAL: When I am not yielding, what is the point in your speaking like this?... (Interruptions)

MR. DEPUTY-SPEAKER: Nothing, except the speech of Shri Sibal, will go on record.

*(Interruptions) ...**

SHRI KAPIL SIBAL: I wanted to give this example. Otherwise I would have only stuck to the points of the President that he raised in his message. Only because Shri Ananth Kumar, an hon. Member of this House, raised this issue of double speak, double-talk and *netikta* in politics, I was forced to give back to him the examples that stare him in the face of which his Party is in the forefront. ...

* Not Recorded.

(Interruptions)

उपाध्यक्ष महोदय : आपकी पार्टी को भी बोलने का टाइम मिलेगा।

...*(व्यवधान)*

SHRI ANANTH KUMAR : Will you yield for a minute?

SHRI KAPIL SIBAL: No, I am not yielding.... *(Interruptions)*

SHRI ANANTH KUMAR : Sir, he has referred to me.... *(Interruptions)*

उपाध्यक्ष महोदय : आपको जो भी कहना है, आप इनके बोलने के बाद कहिये।

...*(व्यवधान)*

SHRI KAPIL SIBAL: The fact of the matter is that the Bharatiya Janata Party are the trapeze artists of modern day politics. They have a conscience which is supple, which stretches like plasticine and like trapeze artists, they take any position they want to take depending on which side of the House they sit. This is their history. I am reminded of a wonderful book that I am reading nowadays called, 'A Call to Honour'. Sir, the journey of the author of this book is the journey of the BJP in Indian politics. From 'A Call to Honour' to 'My fall to dishonour', 'My fall from honour'. So, this is their journey; from call to honour to their fall from honour. That is what has happened and that is why, at the hustings, when they take these positions, the people of India teach them a lesson.

Let us go back to what the President said and let us start talking about 'constitutional literacy' because that I think is the heart of the matter. The President has very significantly raised three points and I think we need to answer them. Point number one is, please evolve a generic and comprehensive criteria, which is just, fair and reasonable and can be applied across all States and Union Territories in a clear and transparent manner. In order to evolve a generic and comprehensive criteria, two things are to be satisfied if you want to apply it across India. My good friend gave an example of saying, we have one Council, Delhi Development Authority, in one State, why not exempt all Councils in all States. The answer to that is very simple. Not all Councils in all States are headed by Members of Parliament. The purpose of exemption clause is to exempt the person who

holds that post from disqualification. It has nothing to do with the post. It has something to do with the person. So, if a Member of Parliament holds a post in DDA, you cannot exempt Gujarat Development Authority because there is no Member of Parliament holding that post. It is because there is no Member of Parliament holding that post. This suggestion has come from the President. But it is very difficult to apply such a law across all posts in India because across all posts in India, it is not necessary that Members of Parliament or Members of the Legislature are holding those posts. So, you will have to make that legislation specific to such posts which are held by Members of Parliament or Members of the State Legislature which are offices of profit in the Government whether it is the Central Government or the State Government. That answers one part of the President's query ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing would go on record. Please sit down.

*(Interruptions) ... **

MR. DEPUTY-SPEAKER: Please listen. Nothing is going on record.

... (Interruptions)

SHRI KAPIL SIBAL: Sir, the second point that has been raised and which must also be answered and it is a part of the message of the hon. President... (*Interruptions*).

उपाध्यक्ष महोदय : कोई भी बात रिकॉर्ड में नहीं जा रही है।

... (व्यवधान)

SHRI KAPIL SIBAL: Sir, how can you allow them to interrupt me like this?

MR. DEPUTY-SPEAKER: That is not being recorded.

... (Interruptions)

MR. DEPUTY-SPEAKER: Nothing would go on record.

*(Interruptions) ... **

* Not Recorded.

MR. DEPUTY-SPEAKER: Please sit down.

... (Interruptions)

उपाध्यक्ष महोदय : उनकी कोई भी बात रिकॉर्ड में नहीं गयी है।

...(व्यवधान[r30])

उपाध्यक्ष महोदय : सिब्ल साहब की स्पीच के अलावा और कुछ भी रिकार्ड में नहीं जाएगा।

...(व्यवधान)..... *

SHRI KAPIL SIBAL: Mr. Deputy-Speaker, Sir, the second part of the issue that I wanted to respond to was the query by the hon. President whether it is possible to embark on an exercise by which we can evolve a generic criteria which is fair and reasonable and can apply across the country and is it possible, then to have a definition of Office of Profit which can apply across the board to everybody?

Sir, first of all, this is an exercise that has been tried not just in India, but in the oldest and the largest of democracies in the world and nobody has been able to evolve such a definition. There is a reason for that. There are words which are incapable of definition. For example, 'negligence'. Can you define 'negligence'? You cannot. If somebody is driving a car at 50 kilometers in a road where there are no people present, then that is not negligence. But if the same car is driven at 50 kilometers on a road where there are hundreds of people, then that is negligence. It all depends on the facts and circumstances of the case. You cannot define what is 'just'. You cannot define 'reasonable'. You can never define 'equality'. So, there are many words in the field of constitutional law which are incapable of definition. Unfortunately, Office of Profit is one such expression. For example, under the Income Tax Act, when you make a profit and when do not make a profit is to be decided by the Income Tax officer depending on what you have disclosed. It is very difficult to define what profit is? What is a profit to one person is a loss to another. What is profit for us is a loss to them... (*Interruptions*)

* Not Recorded.

Having said that, it is very difficult for the Government to evolve a generic criteria which will apply to posts across the country which is fair, just and reasonable.

Sir, my good friend talked about many countries of the world where there is separation of powers and people are not allowed to hold an Office of Profit because there is a conflict of interest. He is absolutely right. There also, there are a lot of complications. If you look at, for example, American democracy, you will find that in American democracy there is complete separation of powers. In other words, a member of the Cabinet in America is not a member of the Legislature. That is not the case in India. That is not the case in England. There is complete separation of powers there. In other words, a member of the Senate, for example, belonging to the Republican Party can vote against the President in respect of a Bill on Stem Cell Research, an issue relating to embryonic stem cells. It has happens and it happened everyday. There, the question of profit is important. Why? It is because the President should not give posts to a member of the Legislature who can vote against the President. Therefore, if he gives him a post, then it is buying influence. That is a classic example of separation of powers. In America, the whole process of law has taken a different course. It does not apply to India, so also to Canada and Australia.

Sir, if you look at the history of England, then it is an entirely different issue. As far as the history of England is concerned, there were three periods in their history and I just want to point that out. The first period was the privilege period. You know very well that in England it was the Crown who controlled everything. The Crown ordered what the Legislators were to do. So, when the Legislature was created in England, then the Members thought that they must protect their privileges. That was the phase which we call the Privileges Phase prior to 1640. It was the Privileges Phase where the Members of Parliament themselves said that they would not accept anything from the Crown and rather protect their privileges. They believed that none of their Members should accept any post from the Crown. Then came the Restoration Period, that is the period 1660 onwards: when the Crown used to offer posts to Members of Parliament to influence from the House. Now, that period went along till 1707 when the real Ministerial responsibility period started which ultimately led to a law in England from 1707 – the first consolidated law in England came about in 1951^[snb31]. And what ^[bru32] is it called? That is a very important thing. That law is called as the House of Commons Disqualification Act ultimately consolidated in 1975. It is not the Prevention of Disqualification but the Disqualification Act. There is a reason for that. Members of Parliament, from 300 years of practice, realised that it is impossible to prevent a disqualification because parties like the BJP will go to the court for political reasons at the drop of a hat. They knew that this can happen in any jurisdiction: initiated by members of the Labour Party or the Conservative Party. So, they did it in the opposite way. You name the offices in the statute the holding of which will result in disqualification. So, if you are not holding that office, then you are outside the Act. So, there is far greater precision in the law in England despite the fact that the statute does not define an Office of Profit. And that is exactly what the 42nd amendment in India had tried to do which Shri Bhardwaj, my colleague, had mentioned. In the 42nd amendment, we tried to, in fact, draft the legislation in this way.

“In article 102 of the Constitution, for sub-clause (a) of clause 1, the following sub-clause shall be substituted:

(a) If he holds any such office under the Government of India or the Government of the State as is declared by Parliament by law to disqualify its holder.. ”

So, what we tried to do by the 42nd amendment in 1976 is to bring a law consistent with 300 years of experience of English parliamentary democracy to actually set out in the statute offices which would disqualify a person. But that was unfortunately rejected by the 44th amendment by you, by the then party in power, the Janata Party. So, when we tried to bring about constitutional literacy, you were in favour of illiteracy. When we tried to bring about some certainty in the law, you were in favour of uncertainty. The double speak is in your party.

SHRI KHARABELA SWAIN (BALASORE): Why don't you bring it now? ... (*Interruptions*)

SHRI KAPIL SIBAL: Why don't you listen to me? It is because he talked about constitutional literacy, I am mentioning this. I am trying to at least educate myself if I cannot educate others. Sir, I should be allowed to educate myself. So, this is what the state of the law is. When the President says to evolve a generic definition, my answer is, it is very difficult. Look at the constitutional history of many countries. Maybe, we can bring a more precise criteria into the law if we were to follow the English course by bringing a statute which sets out

offices which disqualify people rather than sets out offices which prevents disqualification. That is the road. This is my answer to the first query.

The second query which the President has raised in his message is about the implication of including for exemption the names of offices the holding of which is alleged to disqualify a member and in relation to which petitions for disqualification are already under process by the competent authority. What the President is asking is this. You are bringing a legislation and some enthusiastic people in this country have filed petitions before the Election Commission which seek to disqualify some people. The President is asking as to what will happen to those people. That is the second query which he has raised. The answer is found in the legislation itself. It is there in the last clause of the legislation.

“For the removal of doubts, it is hereby clarified that any petition or reference pending before any court or other authority on the date of commencement of this Act, shall be disposed of in accordance with the provisions of the principal Act, as amended by this Act.”

So, that concern of the President has been addressed to by the law itself, namely, that all the petitions pending before the Election Commission shall be decided in accordance with the provisions of this amended Act.

This third query raised by the President is the soundness and the propriety of the law in making the applicability of the amendment retrospective. The President is asking as to why is this law to be made retrospective? The answer is very simple. It is not just the question of 55 persons or posts. It affects the BJP; it affects Orissa, Madhya Pradesh and [\[bru33\]](#)all others.... (*Interruptions*)

The ingenuity of lawyers in this country is so enormous that it can affect any post anywhere in this country. So, let us not be too confident about this. But that is not the issue. It impacted on 200 Members of Parliament and legislators across the country. There are 200 petitions pending. So, we thought, as a responsible Government, that it would be appropriate for the benefit of all parties concerned to pass a law like this. ... (*Interruptions*) I am saying so. There is no need to laugh about it. It is for the benefit of all the parties concerned. You passed a similar Act in Jharkhand and we did not oppose it; you did it in Karnataka and we did not oppose it. Similarly, everybody thought that it is not the fault of the individual who is holding the office. Therefore, it is better to pass a law because that is a law which is passed under article 102 of the Constitution itself. That is the power given by the Constitution. This is not a power that we have acquired outside the Constitution. That is part of article 102 itself. So, we are exercising that power and you know that the legislature is entitled to exercise the power both prospectively and retrospectively. Forget the legislature. Many a time Members of Parliament and constituents ask that such and such benefit should be given to us from such and such date. For example, salaries, house rent allowance, etc. Many a time the Government says, "Yes, we will give it to you from the date we set up the Pay Commission, We won't give it to you prospectively. We will give it to you retrospectively". Many benefits under special dispensation, under tax laws, are given retrospectively. They tell us, "All right, you will get this credit retrospectively from such and such date". So, retrospectivity is not something that is unheard in law. It is part of the legislative process. So, nobody can have any objection to retrospectivity. So, that then is the answer to the third issue raised by the President of India.

Now, I come to a very important issue. Hon. Members said in this House, "Look, how is it that you brought this legislation without considering all these things? You are, in fact, being arrogant and you are disrespecting the President". Again, let me go back to 'constitutional literacy'. Article 111 of the Constitution, if my memory serves me right, says that the President, when he receives a Bill, is entitled to either assent to the Bill or withhold assent to the Bill. The two expressions used are "either that he assents to the Bill or that he withholds assent". If the President withholds assent, then what happens? In the second paragraph it uses the expression "as soon as possible". He received it on May 25th and sent it back on May 31.

What can he do when he sends it back? Number one, he can say, "Re-consider the entire amendment", which he has done. Number two, he can say, "I am proposing the following amendments. I propose these amendments, please consider these amendments". The President has not asked us to do that. Number three, he can say, "I want you to look at this specific provision of this Act and I want Parliament to re-consider this specific provision". The President has not done that. He has not given us his amendment and he has not asked us to look at any specific provision. He said, "Re-consider the Bill". Article 111 itself says that once Parliament gets the message from the President, it can either pass the amendments that he has proposed or it can pass the original Bill without any amendments. That is the power given under article 111. There is no disrespect. The Constitution itself provides for that. We can say to the President that we will pass the Bill as it is. It is part of article 111 of the Constitution. We exercise our constitutional authority as Members of a sovereign House. The President is part of the legislature. As you know, under article 79, the legislature consists of three entities, the President, the Lok Sabha and the Council of States. So, when the President sends the Bill back to us, we, in our sovereign capacity under article 111, are entitled, as a matter of law, to pass the Bill in the same fashion. Once we pass the Bill in the same fashion and once it goes back to the President, the Constitution says that he shall not withhold assent[r34].

In other words, there is a constitutional imprimatur that once it goes back to him in the same form, he cannot withhold consent. ... (*Interruptions*) Nobody knows. It is because a very prominent Member of the BJP, the other day, said that the hon. President must refer the matter under article 143 to the Supreme Court of India. If they had read article 111, they would not have said so and many of their very prominent leaders would not have said so. In fact, this was part of a debate in the other House ... (*Interruptions*) Now, therefore, they are, in fact, asking the hon. President to violate both the letter and the spirit of the Constitution. My dear friend, Shri Ananth Kumar, does not believe me because he is looking very intriguingly at article 111. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing will go on record except the speech of Shri Kapil Sibal.

(*Interruptions*) ...*

SHRI KAPIL SIBAL: I will read 111 (2) proviso. It says:

“... and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.”

So much 'for constitutional illiteracy'. We do not have any proprietorship on constitutional literacy. That is for you. ... (*Interruptions*)

We do not have proprietorship in constitutional literacy, but we also believe that there is no proprietorship in constitutional illiteracy. ... (*Interruptions*)

Therefore, the question that is now posed before this House is this. We have debated on the points that the hon. President referred to us in his message.

* Not Recorded.

We have looked upon those points and we will then take a considered view at the time of voting whether we want to pass this Bill in its entirety as it was or we want to reconsider it. The hon. Minister of Law and Justice has commended the Bill to the House as it is and, I think that it should be passed in that fashion.

I would like to raise my last point, just to go back to Indian history for a minute. If you look at the debates in March, 1950, if I remember correctly, a debate in Parliament took place in which Dr. B.R. Ambedkar, Dr. Kunzroo and Shri Kamath participated. The debate was a very interesting debate on the Office of Profit. These are little vignettes of constitutional history which we should be aware of. In that debate, the issue was that when the 1935 Act was applied, it was applied after Independence before the Constitution came into force, namely, 15th August, 1947 to 26th January, 1950. Now, there was a hiatus because the Constitution had not come into force before that. Under the 1935 Act, you had an Executive Council. The Executive Council was like the Cabinet. In the meantime, some Deputy Ministers were appointed, some Parliamentary Secretaries were appointed and State Ministers were appointed. This happened between 1947 and 1950.

So, the question arose whether these are Offices of Profit or not because there was no protection as far as Deputy Ministers and State Ministers were concerned. So, the debate that took place was that we must protect them. They had already been appointed, just like here where people already have been appointed. But we must be protected. So, an Ordinance was passed immediately coming into force of the Constitution. The Ordinance was passed in 1950. The Ordinance at that time was not for a period of six months; it was for six weeks, if I remember correctly. The Ordinance could be passed only for six weeks and that Ordinance was promulgated for six weeks to protect them. But here you took great umbrage at the Ordinance procedure that people said that we were wanting to invoke in this House. We never did it. But in 1950 an Ordinance was promulgated to protect people who were Deputy Ministers and Ministers of State for six weeks and thereafter a Bill was passed saying that these people are protected. So, these are little vignettes of history which we must know. Then, came the Committee which my learned colleague talked about, the 1954 Committee where a whole debate took place as to what should happen. In the 1954 Committee, there is a beautiful analysis on what are Offices of Profit and what are not Offices of Profit. But, by and large, the essence of the debate says that advisory councils of a non-statutory nature are not Offices of Profit [\[R35\]](#).

If you really look at some of the Annexures here, you will find that most of these offices can never be Offices of Profit. Shanti Niketan can never be an Office of Profit.... (Interruptions)

KUMARI MAMATA BANERJEE (CALCUTTA SOUTH): Who said it?... (Interruptions)

MR. DEPUTY-SPEAKER: Madam, no interruption is allowed.

(Interruptions) ...*

SHRI KAPIL SIBAL: I say so. That is my opinion.... (Interruptions) Mr. Deputy-Speaker, Sir, that is my opinion.

MR. DEPUTY-SPEAKER: You have already taken 45 minutes. Please conclude.

... (Interruptions)

SHRI KAPIL SIBAL: I am entitled to an opinion. I am closing now. Coming to my point, I may tell you that many of these offices even under this Act, and even under the previous Act, are not Offices of Profit. But, my friends, what you have done – and that is why we had to bring forward this legislation – is that you have tried to make this offices of profit issue an opportunity to file litigation for profit. It is to thwart that attempt so that you cannot reap the fruits of litigation, the

* Not Recorded.

purpose of which is only to profit you politically, that we have brought forward this legislation. And, that is why, I commend this legislation to this House to be passed as amended.

With these words, I conclude.

श्री मोहन सिंह (देवरिया) : उपाध्यक्ष जी, मैं इस विधेयक के समर्थन में अपनी बात रखने के लिए खड़ा हुआ हूँ। यह संसद समय-समय पर संविधान की धारा 102 और 103 के तहत विचार करती रही है। लेकिन इस बार कुछ नई परिस्थिति पैदा हुई है, जब से हम अपनी संवैधानिक व्यवस्था को देख रहे हैं, संसदीय व्यवस्था को देख रहे हैं। पहली बार किसी विधेयक को, जिसे संसद के दोनों सदनों ने पारित किया हो, भारत के राष्ट्रपति जी ने अपने कुछ सुझावों पर विचार करने के लिए और उसे फिर से पारित करने के लिए दोनों सदनों के सामने भेजा है। इसमें उनकी मुख्य चिंता, जो स्वाभाविक चिंता है, व्यक्त हुई है कि हर बार कुछ पदों को हम ऑफिस ऑफ प्रोफिट घोषित करके इस सदन में चर्चा करते रहें, इससे बेहतर होगा कि ऑफिस ऑफ प्रोफिट क्या होता है, इसकी एक मुकम्मिक परिभाषा तय की जाए। राष्ट्रपति जी की यह चिंता पहली बार प्रकट नहीं हुई है। भारत के सर्वोच्च न्यायालय ने अपने दो-तीन फैसलों में इस चिंता को व्यक्त किया और भारत की संसद ने संसद शुरू होने के साथ ही 1952 और 1953 के बाद जब इस तरह के विवाद खड़े हुए तो संविधान सभा के एक सदस्य पंडित ठाकुर दास भार्गव की अध्यक्षता में 1954 में एक कमेटी बनाई थी और उस कमेटी ने कुछ परिभाषाओं के साथ संशोधन के लिए 1956 में सुझाव दिये थे, जिनके अनुसार 1959 का कानून इस संसद ने पारित किया था। लेकिन 1969 में बैंकों का राष्ट्रीयकरण हुआ, बहुत सारी संस्थाओं का राष्ट्रीयकरण हुआ, इंडियन ऑयल कारपोरेशन का गठन हुआ, जितनी कोयले की कंपनियां थीं, उनका राष्ट्रीयकरण हुआ तो उनमें संसद के बहुत सारे सदस्यों का उनकी गर्वनिंग

बॉडी में, उनकी एक्जिक्यूटिव बॉडी में संसद ने नामांकन किया। रिजर्व बैंक ऑफ इंडिया में भी श्री एस.एन.जोशी साहब को उसका मैम्बर बनाकर भेजा गया। यह विवाद फिर पैदा हुआ कि यह ऑफिस ऑफ प्रॉफिट है और इसमें संसद सदस्य नहीं रह सकते। इसलिए 1975 में संसद ने फिर एक कमेटी बनाई और एक व्यापक संशोधन, संवैधानिक संशोधन की शकल में सदन के सामने आया था और इस संसद ने उसे पारित भी कर दिया था। लेकिन 1978 में चूँकि इमरजेन्सी के दौरान पारित सारे कानूनों को, इमरजेन्सी के बाद बनी हुई संसद ने अनडन किये [R36]।

उसी में कुछ अच्छे कानून भी अनडन हो गये क्योंकि यह कहा गया कि इमर्जेन्सी में बहुत सारी बातें जनतंत्र विरोधी थीं। इमर्जेन्सी का कानून भी जनतंत्र विरोधी था। उन सारी धाराओं को अनडन कर दिया गया क्योंकि 1977 की जो पार्लियामेंट चुनी गई, वह 6 साल के लिए चुनी गई थी, संविधान में संशोधन हो गया था। उन सारी चीजों को अनडन करते हुए उस पार्लियामेंट ने इसे भी अनडन कर दिया और यह विवाद बहुत दिनों के लिए शांत हो गया। यदि जया बच्चन जी का मामला नहीं आया होता, राजनैतिक कारणों से उनकी सदस्यता का समापन नहीं हुआ होता, जिन लोगों ने उनके घर में आग लगाई, उन लोगों को यह पता नहीं था इस ज्वाला की लपट इतनी जबर्दस्त उठेगी कि उस ज्वाला में उनको भी झुलसना पड़ेगा तो उस ज्वाला से अपना झुलसना बचाने के लिए सबको एक चिंता सवार हुई और बहुत सारे पदों को आनन-फानन में कि ये भी ऑफिस ऑफ प्रॉफिट हैं, यह विधेयक हमारे सामने आ गया। इसलिए हम सुझाव देना चाहते हैं कि भारत सरकार को चाहिए कि हम इस कानून को एज इट इज पास करने के आज पक्ष में है। लेकिन इसे एज इट इज पास करने के बाद राष्ट्रपति जी के जो सुझाव हैं और सुप्रीम कोर्ट ने भी बार-बार अलग-अलग कुछ मामलों में कहा कि यह ऑफिस ऑफ प्रॉफिट नहीं है, कुछ मामलों में सुप्रीम कोर्ट ने खुद ही कहा कि यदि आपको कार, बंगला, हाउस रेन्ट, टी.ए., डी.ए. तथा वेतन मिलता है तो यह ऑफिस ऑफ प्रॉफिट है और बाद में अभी कह दिया कि यदि इस तरह के सभी प्रावधान हैं और उन प्रावधानों के रहते उनका आप उपभोग करते हैं, या नहीं करते हैं लेकिन फिर भी वे सब पद ऑफिस ऑफ प्रॉफिट में आएंगे। यह जो सुप्रीम कोर्ट की नयी रूलिंग है, वह इस तरह की आई है। इसलिए 1959 का कानून, 1956 की ठाकुरदास भार्गव की कमेटी, 1976 का कानून- संवैधानिक संशोधन और सुप्रीम कोर्ट के निर्णयों के आलोक में भारत की संसद की एक सर्वदलीय कमेटी बननी चाहिए जो एकमुश्त राष्ट्रपति जी की भावना के अनुसार लाभ के पद की परिभाषा करे और लाभ के पद की परिभाषा के बाद 102 धारा में संशोधन करके इस बात का अधिकार दिया जाना चाहिए कि बार-बार संसद में हमें न आना पड़े। जो संसद की ओर से काम करने वाली कमेटी है, उस कमेटी को ही यह अधिकार हो कि वह किसी भी पद को ऑफिस ऑफ प्रॉफिट से बाहर कर सके, इसका अधिकार उस संसदीय कमेटी के पास होना चाहिए। बार-बार हमें संसद के सामने आने की आवश्यकता न रहे।

दूसरी बात, हम कहना चाहते हैं कि यह ऑफिस ऑफ प्रॉफिट बिल है, बहुत सारे सदस्यों के पास जब ऑफिस ऑफ प्रॉफिट है तो एकाध ऑफिस ऑफ प्रॉफिट हो तो समझ में आता है लेकिन जब दर्जनों ऑफिस ऑफ प्रॉफिट हों, यह बात कुछ अच्छी नहीं लगती। इसलिए हम कहना चाहते हैं कि कुछ लोग जिन्होंने त्याग किया, जिन्होंने बलिदान किया, अब उनके मन में यह स्वाभाविक प्रवृत्ति होगी कि जल्दी से जल्दी उन पदों को हम ऑक्युपाइ करें। इसलिए हम एक निवेदन करना चाहते हैं कि इस कानून को पास करने के बाद शिटाचार और राजनैतिक नैतिकता की मांग है कि इस धारा के चलते जिन लोगों ने जिन पदों से त्यागपत्र दिया है, यह कानून पास होने के बाद शिटाचार मांग करता है कि उन पदों को वे फिर से ऑक्युपाइ न करें। इस निवेदन के साथ मैं इस विधेयक और उस कानून का उसी रूप में पारित करने के लिए मैं पुरजोर समर्थन करता हूँ।

SHRI RUPCHAND PAL (HOOGHLY): Mr. Deputy-Speaker, Sir, I rise to support the Bill.

15.59 hrs.

(Shri Mohan Singh in the Chair)

Sir, had the founding fathers of the Constitution ever visualised that in future there could be such a party, a communal party like the BJP and irresponsible parties as some of the BJP's allies are, they would have drafted article 102 (1) (a) of the Constitution in a different manner. I am saying this because the BJP and its allies made

the charge that the hon. Speaker is holding an office of profit. The most unfortunate part is, the high office, the office of the Speaker was tried to be unjustifiably tarnished[k37].

16.00 hrs.

And very rightly, the hon. Speaker has decided not to sit in the Chair during the time the debate is taking place.

I am just coming to how responsible the Opposition is! There are about 200 petitions pending. The hon. President has asked, what will happen to these petitions.

I am just reading out one of the complaints made by one Trinamool leader. What does it say? It says: "The following are the Members of Parliament and the Offices of Profit held by them, thereby disqualify them from being MPs.: ..." Shri Somnath Chatterjee is the Speaker of Lok Sabha. Is the Office of the Speaker of Lok Sabha an office of profit? Nowhere it is mentioned. Then, it says that he is the Chairman of Santiniketan Sriniketan Development Authority. My previous speaker, Shri Kapil Sibal has explained that it has never been an office of profit. By no stretch of imagination, it can be called as an office of profit. Since some Trinamool leader has said that it is an office of profit, will it be construed as an office of profit?. Further it says that he is the President of the Asiatic Society, Kolkata. I challenge the complainant. He is misleading the hon. President as the BJP is. Shri Somnath Chatterjee has not been holding the post of President of the Asiatic Society. How is this pending till now, for months together in the website? What is the purpose?

Then, it said about Shri Hannan Mollah. As an elected Member of Parliament, he is put on the Wakf Board. The Wakf Board Act clearly mentions it. Earlier, the chairmanship was held by officers but after the amendment in the Wakf Act in 1995, as the public representative he is holding that Office, and it is as per the amendment in the Wakf Act in 1995. You have not reconciled. There may be some differences between one Act and the other, and both are the Acts of Parliament. They are charging that Shri Hannan Mollah is holding an office of profit. Sir, no one has till today defined what is the office of profit. The debate has been continuing.

In the Constituent Assembly, after long deliberation, article 102 (1A) had been made. It is left to Parliament, and Parliament, by law, can define what can be an office of profit, what is an office of profit and what is not an office of profit.

You cannot visualize. Santiniketan and Sriniketan Development Authority or the Wakf Board, as per the amended Act, and all others are listed in the Schedule. All could not be visualized. Some of them came only very recently, in the last decade or a decade before that. You cannot visualize that. Therefore, with great anguish, I would like to say that BJP is trying to use this issue to create destabilization in the country. Through this issue of office of profit, they are dragging the name of the President, the high office. They are so eloquent and said that the President has said this and the President has said that. A former President had said: "Genocide is taking place in Gujarat." What was your reaction to that? Where was your respect to the Office of the President at that time? ... (*Interruptions*) I am not responding to you. ... (*Interruptions*)

The office of profit, as has already been explained, is there the world over. In the US, Canada and Australia, one set of arrangements has been made. In the UK, they have 300 years of experience[[lh38](#)].

Now, they have prepared a list of what is Office of Profit. Beyond that, nothing is an Office of Profit positively. We want that. What has happened is not a simple case of protection. Of course, protection is one element, but there have also been wild charges on the basis of which the Election Commission is putting on the web site their names. How discriminatory this is, I am just mentioning you the case of Nilotpal Basu. He was a Member of the Rajya Sabha and the complainant said he was holding an office, as a Chairman of an NGO. Both Mr. Balbir Punj and Mr. Nilotpal Basu retired on the same day. From the web site, the name of Mr. Balbir Punj was removed because he has already retired whereas the name of Mr. Nilotpal Basu, who was a Chairman of an NGO only, is still there. To vilify, to malign, to tarnish his image, his name continued for months together. It is also happening in the case of hon. Speaker. What is the purpose?

One-by-one, the names of all the Left MPs have been mentioned in the web site. They are not taking any remuneration and there was no question of profit, there was no question of receivable. But as a representative of the people an MP has also a duty to serve the people through developmental bodies, through advisory bodies, etc. Who will determine it? Would it be one particular individual who is making false complaints even against the high office of the Speaker? Till, now, he has not withdrawn them. Strangely enough, a Constitutional body like the Election Commission is saying that it is not the duty of the complainant to prove what he has said is true or not. The Election Commission itself is seeking the information! A quasi judicial body is helping the complainant to collect the information. Is it in the interest of the Constitution? Is it in the interest of democracy?

The BJP has all along been trying to divide and destabilise the country on communal lines. They are talking about the double speak! What they are doing in Jharkhand cannot be done here! What they are doing in Karnataka cannot be done here! They are speaking about probity. It is the BJP whose President was openly seen to take bribe. The whole nation knows and the whole world knows it... * They are speaking about honesty, probity!... (*Interruptions*)

KUMARI MAMATA BANERJEE : What a way of defending!... (*Interruptions*)

SHRI KHARABELA SWAIN : What a way!... (*Interruptions*)

SHRI RUPCHAND PAL : I am coming to the point.

Now, about the steps that have been proposed, it is not dishonour to the President. It is as per the Constitutional requirement that this House, the Parliament in its wisdom, has passed a Bill. There have been deliberations, there have been views, and after that the Bill was put into an Act and sent for the Assent of the President so that the nation may know how the Parliament is responding to a particular situation. Our objection is that the BJP, in its enthusiasm, to create destabilisation, to make political profit out of that destabilisation, is trying to involve the high office of the President. This should not be done. Whatever is being proposed, whatever is being done in this Parliament by the Government and this august House is according to the Constitution. Can they show anything in the Bill, which is violative of any provision of the Constitution? No.

The Bill was sent. The President has every right and authority to send it for reconsideration with or without amendment. If it is sent with amendment, the Government can consider it but there is no amendment proposed. It is only for reconsideration. The House is reconsidering that. Yes, we reiterate whatever has been stated in the several provisions of the Bill. It is the duty of the President to accept it.

They are speaking something dangerous. The President cannot act independently, independent of the Council of Ministers. If he is making a

* Not Recorded.

reference to the Supreme Court without the aid and advice of the Council of Ministers, what does it mean? It means that they are suggesting something new, and that will be disastrous for the country and disastrous for the Constitution. De-linking the President from the Council of Ministers, from their aid and advice is disastrous. Of course, as rightly stated by my esteemed colleague, the President is also a part of this House. He is also a part of this House. How can we ignore that high office of the President? Also, how can the views of this House be ignored? It cannot be done. So, such a position that is being taken by the BJP is disastrous. Enough is enough.

What are you doing in Jharkhand? Yes, in a given situation, you adjourn *sine die*. What is happening in Karnataka? What will happen in Madhya Pradesh? Out of 200 such cases, how many of them belong to the BJP? How many of them belong to other parties? It is only because Prof. Vijay Kumar Malhotra was spared--although he is holding the high office of the Sports Authority--only because technically some name has not come, some other names have come though these names should not have come, though by any stretch of imagination these names cannot come as in the case of the office of the Speaker, the hon. Somnath Chatterjee *ji* and as in the case of my esteemed colleagues here.

We agree with whatever suggestion that has been made by the hon. President for a generic and comprehensive definition. That can be done by the Joint Committee of Parliament. That should be the solution, an abiding solution. As early as possible, that should be done. But so long as that cannot be done, this unjustified sort of move to tarnish the high office of the hon. Speaker, to tarnish the innocent Members of Parliament, who have nothing to do with any receivables, is not proper. They are not taking any salary or any financial benefit. The observations of the Supreme Court or the High Court are not enough. Some political parties, which are frustrated and rejected by the people, are making irresponsible accusations; there is no clear definition of office of profit.

That is why, I am sorry to mention again that an important Constitutional body is using it and putting it in a very discriminatory manner on the Website. On similar ground, certain names have been rejected and deleted. This should not be allowed. We, the Members of Parliament, are on equal footing. We should have same honour and same prestige. It cannot be done. One section of the House, one section of the political establishment makes wild accusations. Some irresponsible political parties make wild accusations.

Now about the suggestion that has come that this Bill as it is, should go to the President, I would say that in the same fashion it would go without any change. That is also a part of our authority[m39]. Sir, we are not trespassing into any other's authority. We are not ignoring the provisions of the Constitution. Rather, as per the requirement of the Constitution, we are fulfilling our duties and responsibilities. In this situation I am just reminding you two more things and then I will conclude.

The list that is prepared in this Bill consists of 45 names. In future it may be that many more such cases may come. You cannot foresee. So, as early as possible, a permanent solution should be there.

The last point that I would like to make is this. Whatever damage has been done, it cannot be salvaged. An irreparable loss has been made. Our image as important Members of Parliament, this important office has been tarnished. They should apologise to the nation. They should apologise to the hon. Speaker saying – 'Whatever we have done, we apologise for that'. It is because false allegation was made that Shri Somnath Chatterjee was holding a particular office. It was misleading the hon. President that this office of Chairman of Shantiniketan Sriniketan Development Authority is an office of profit. ... (*Interruptions*) Who has defined it? ... (*Interruptions*) The same is happening in the case of many other MPs. ... (*Interruptions*) Sir, I am not yielding.

सभापति महोदय : आप अपनी बात समाप्त कीजिए।

... (व्यवधान)

SHRI RUPCHAND PAL : Sir, I just request that they should come back to their senses and they should behave in a more responsible manner. Otherwise the nation will not brook that irresponsible practice that they are practising today.

Thank you very much.

SHRI KHARABELA SWAIN (BALASORE): Sir, it seems they are the only good Party in the country and everybody should appreciate it. ... (*Interruptions*)

श्री रघुनाथ झा (बेतिया) : महोदय, मुझे भाण नहीं करना है। मुझे केवल इतना ही आग्रह करना है कि हम बड़े-बड़े लोगों को बचाने के लिए इस बिल को स्पोर्ट कर रहे हैं, लेकिन हमारे वे गरीब 11 साथी, जिन्हें सुने बिना ही हाउस से निकाल दिया गया। इसलिए हम लोग जब एक पाप कर ही रहे हैं तो उन लोगों को भी बचाने का काम हम लोगों को करना ही चाहिए।

सभापति महोदय : आपकी बात सदन ने सुन ली है।

श्री गणेश प्रसाद सिंह।

श्री गणेश प्रसाद सिंह (जहानाबाद) : सभापति महोदय, मैं आपका आभारी हूँ कि आपने मुझे संसद (निरर्हता निवारण) संशोधन विधेयक, 2006 पर अपने विचार प्रकट करने का अवसर प्रदान किया। हम ऐसे विधेयक पर चर्चा कर रहे हैं, जिसको मैं समझता हूँ कि जब से संविधान का गठन हुआ है और उसके बाद संविधान की धारा 102 में यह सन्हित नहीं किया गया कि कौन सा पद लाभ का होगा और कौन सा नहीं। इसके बाद इस सदन में 1959 में एक एक्ट पास हुआ। सदन की एक गरिमा है और सदन ने हमेशा संविधान का सम्मान किया है और आज भी मैं समझता हूँ कि माननीय सदस्यगण संविधान का सम्मान करेंगे, कानून का सम्मान करेंगे।

महोदय, राष्ट्रपति जी के पास जो बिल भेजा गया, वह दोनों सदनों से पारित होकर गया था। महामहिम राष्ट्रपति जी ने उस पर विचार किया, लेकिन राष्ट्रपति जी ने कोई ऐसे संशोधन का प्रस्ताव नहीं दिया कि इन-इन धाराओं में संशोधन होना चाहिए। उन्होंने दो-तीन बातों की जानकारी मांगी है और उन्होंने कहा है कि सदन को इस पर गम्भीरतापूर्वक विचार करना चाहिए। आपसे पहले चेयर पर उपाध्यक्ष जी बैठे हुए थे, जिन्होंने राष्ट्रपति जी के संदेश को पढ़कर सदन में सुनाया। आज हम सभी उस पर विचार कर रहे हैं। संविधान की धारा 102 में कहीं कोई उल्लेखित नहीं है। यदि आप मूल विधेयक 1959 को भी देखेंगे तो उसमें भी कोई फेरबदल नहीं किया गया [cè\[c40\]](#)। बल्कि 1959 की धारा-3 में कुछ खण्डों में संशोधन किया गया है और उसी के माध्यम से एक तालिका बनाई गई है, उस तालिका में विभिन्न पदों का नाम लिया गया है। अगर आप गौर से देखेंगे कि जो बिल मई में पारित हुआ था, उसमें 45 पद निहित थे, लेकिन इस बिल में इसके स्कोप को और बढ़ाया गया है और 55 पदों को इसमें सन्निहित किया गया है।

बी.जे.पी. के माननीय सदस्य मल्होत्रा जी इस विधेयक पर उस समय बहुत हल्ला कर रहे थे। पता नहीं आज क्यों अनुपस्थित हैं ? मल्होत्रा जी को आज उपस्थित रहना चाहिए था। उसका कारण मुझसे ज्यादा आप जानते होंगे और वे बी.जे.पी. के माननीय सदस्यगण जानते होंगे। एक तरफ से बात होती है, वह व्यक्ति विशेष पर हमला हो जाता है कि व्यक्ति विशेष को बचाने के लिए ऐसा किया जा रहा है। कोई एक व्यक्ति, सभी जो 55 पद हैं, उस पर पदस्थापित नहीं है और उस पर कार्य नहीं कर रहा है, इसलिए मैं आपके माध्यम से कहना चाहूँगा कि आज जो बिल लाया गया है, वह बिल्कुल संविधान के अनुरूप है। इस पर हम विचार करें, इस पर सदन को अधिकार है। संविधान से ही यह सदन चल रहा है, संविधान से न्यायालय चल रहा है, दूसरी कार्यपालिका वगैरह संविधान के तहत चल रहे हैं। न्यायालय को कानून की समीक्षा करने का अधिकार है, लेकिन इस सदन को कानून बनाने का पूरा-पूरा अधिकार है। माननीय श्री कपिल सिब्बल जी ने इस सदन को काफी विस्तारपूर्वक बताया है, एक मंत्री, संसद सदस्य से ज्यादा एक विधिवेत्ता के रूप में इन्होंने सारे मामलों को, सारी धाराओं को लोगों के सामने रखा है। मैं समझता हूँ कि उससे अब कहीं कुछ ज्यादा नहीं है। अभी मैं एन.डी.ए. के लोगों से कहना चाहता हूँ। एक तरफ आप माननीय सोनिया गांधी जी पर हमला बोलना चाहते हैं, लेकिन दूसरी तरफ ये कहना चाहते हैं कि कुछ लोगों को बचाने के लिए यह किया गया। लेकिन झारखण्ड में, जहाँ आपकी सरकार थी। आपने कानून बनाया या नहीं बनाया और दूसरे प्रदेशों में, चाहे कर्नाटक हो, मध्य प्रदेश हो, गुजरात हो, उन सब जगहों पर यह कानून बनाया या नहीं बनाया? यह कानून पूरा विधि सम्मत है और मैं इस कानून का, इस विधेयक का समर्थन करता हूँ।

इन्हीं बातों के साथ मैं अपनी बात समाप्त करता हूँ।

श्री राजेश वर्मा (सीतापुर) : माननीय सभापति जी, आज इस सदन में ऑफिस ऑफ प्रोफिट के ऊपर जो बिल लाया गया है, उस पर चर्चा हो रही है। पक्ष-विपक्ष में तमाम प्रकार के तर्क और तमाम प्रकार की बातें रखी गई हैं। मैं इस बिल के समर्थन में बोलने के लिए खड़ा हुआ हूँ।

अभी इसमें प्रतिपक्ष की तरफ से श्री अनन्त कुमार जी ने तमाम तर्क रखे और राष्ट्रपति जी द्वारा वापस करने का जो सदन में पुनः चर्चा करने के लिए उन्होंने बात रखी, उनकी बात से ऐसा एहसास होता था कि राष्ट्रपति जी ने कोई ऑब्जेक्शन क्रिएट किया है। राष्ट्रपति जी ने इस बिल को केवल पुनर्विचार के लिए सदन में भेजा है। राज्य सभा में चर्चा हुई, सदन में चर्चा हुई, सदन में खुली चर्चा हो रही है और सारे लोगों ने

अपने विचार रखे। हमारे जो विद्वान विधिवेत्ता माननीय मंत्री जी हैं, उन्होंने तार्किक तरीके से एक-एक बात को इस सदन में रखा, जिसका कोई जवाब विरोध करने वालों के पास नहीं है। मैं बताना चाहता हूँ कि इस बिल को लाने की आवश्यकता आज पड़ी है, आज ऐसी परिस्थितियाँ क्रिएट हुईं और यह मामला, यह पद कोई आज क्रिएट नहीं हुए हैं। पचासों वर्षों में इन पदों का सृजन हुआ, उन पर लोगों ने लाभ उठाया, जो लोग उन पदों पर बैठे, लेकिन आज परिस्थिति ऐसी बनी कि इसके लिए विधेयक [\[m41\]](#) आज इधर सदन में जो लोग बैठे हुए हैं, कल जब वे सत्ता में थे, तब उन्होंने भी इन पदों का लाभ उठाया था। जो सत्ता में आएगा, वह उन पदों का लाभ उठाने का काम करेगा।

श्रीमती मेनका गांधी (पीलीभीत) : क्या आप यह मानते हैं कि ये लाभ के पद हैं?

श्री राजेश वर्मा : बिल्कुल, मैं मानता हूँ और मैं इसकी चर्चा कर रहा हूँ। आज ऐसी परिस्थितियाँ हैं और कुछ पद ऐसे हैं, जिनको चलाने के लिए इस सदन के अंदर चर्चा करनी जरूरी है और आज इसमें परिवर्तन करने की आवश्यकता पड़ी। आज ऐसी परिस्थितियाँ थी, जिनकी वजह से परिवर्तन करना पड़ा। अभी झारखंड और कर्नाटक की बात आयी, वहाँ जब संविधान में संशोधन की बात थी, तो वहाँ कर लिया जाता है, लेकिन तब कोई चर्चा नहीं होती और आज अभी सदन में चर्चा हो रही है, तो विपक्ष की तरफ से बहुत सी बातें कही जाती हैं। झारखंड की बात जब माननीय कपिल सिब्बल जी ने रखी, तो कोई इंटरप्शन नहीं हुआ और जब कोई तार्किक बात आती है, तो उस पर इंटरप्शन होता है। माननीय सभापति जी, यूपीए सरकार की तरफ से जो संशोधन आया है, मैं इसका समर्थन करता हूँ और मुझे विश्वास है कि इसके आने के बाद आने वाले समय में तमाम प्रकार के कांफ्लिकेशंस खत्म होंगे और जो भी सरकारें आएंगी, वे सुचारु रूप से चलती रहेंगी।

इन्हीं शब्दों के साथ मैं अपनी बात को समाप्त करते हुए बिल का समर्थन करता हूँ।

श्री अनंत गंगाराम गीते (रत्नागिरि) : सभापति जी, लाभ के पद के कानून में संशोधन करने वाला विधेयक जब पहली बार सदन में आया, तब भी हमने उस विधेयक का विरोध किया था और आज भी हम उसका विरोध करने के लिए खड़े हुए हैं। उस समय हमने सदन को यह चेतावनी दी थी, दुर्भाग्यवश आज देश में और आम जनता में सरकारों के बारे में जो सोच है, उसके बारे में मैं यहाँ कहना चाहता हूँ। इस देश की जनता के मन में आज सरकारों पर विश्वास नहीं रहा है। सरकारों की विश्वसनीयता धीरे-धीरे कम होती जा रही है। यदि हम इस विधेयक को पारित करें, तो शायद इस संसद की विश्वसनीयता भी खत्म हो जाएगी। मुझे लगता है जो आशंका हमने इस सदन में उस विधेयक पर चर्चा के समय जतायी, महामहिम राष्ट्रपति जी के मन में भी यही विचार आया होगा। दोनों सदनों के द्वारा पारित किए हुए विधेयक को जब महामहिम के पास भेजा गया, तो उन्होंने इस विधेयक को संसद के सामने पुनर्विचार के लिए वापस भेज दिया। मैं समझता हूँ कि जब महामहिम राष्ट्रपति जी किसी विधेयक को पुनर्विचार के लिए भेजा, तो इसका अर्थ यह निकलता है कि महामहिम राष्ट्रपति जी उससे सहमत नहीं हैं। जो तर्क यहाँ कपिल सिब्बल जी ने दिए थे, एक बात यहाँ रघुनाथ जी जो इस समय यहाँ सदन में नहीं हैं, इंटरप्शन करते हुए उन्होंने यह बात कही थी, अब वे सदन में आ गए हैं, मैं उनका जिक्र यहाँ पर कर रहा हूँ। उन्होंने एक बात कही और उस बात में काफी दम था। उन्होंने कहा कि बड़ों को बचाने के लिए हम पाप तो कर ही रहे हैं। यदि हम यह पाप कर रहे हैं, तो थोड़ा और पाप करें कि जो 11 लोगों को हमने बिना अवसर दिए फांसी दी है, उन 11 सांसदों पर पुनः पुनर्विचार करें। कपिल सिब्बल जी को मुझे इतना ही एहसास दिलाना है कि जो तर्क आपने यहाँ सदन में दिए थे, हम तो आप के तर्क से सहमत नहीं हैं, लेकिन आप के सहयोगी भी आपसे और आपके दिए हुए तर्क से सहमत नहीं [\[c42\]](#)। वरना यह नहीं कहते कि हम बड़ों के लिए पाप कर रहे हैं।

सभापति महोदय, जब यह विधेयक पहली बार सदन में आया तब मैंने आसन से मांग की थी कि जिन संस्थाओं को इस लाभ के पद के कानून के दायरे से बाहर किया जा रहा है, उनमें कौन से सांसद लाभ के पदों पर हैं चाहे वे लोक सभा के हों या राज्य सभा के हों? जो सांसद लाभ के पद पर आसीन हैं, यदि उस लाभ के पद को कानून के दायरे से बाहर नहीं किया जाता है, तो वे सांसद कानून की पकड़ में आयेंगे। यदि कोई सांसद न्यायालय में जायेगा, तो न्यायालय निश्चित रूप से उनके खिलाफ जायेगा। कपिल सिब्बल जी, आप हंसिये मत। आप अपना विधेयक निकालिए और ओरिजनल विधेयक के जो कारण और उद्देश्य दिये हैं, उनको पढ़िये। उस विधेयक में सरकार ने लिखा है कि यदि

हम यह नहीं करते, तो लगभग 45 सांसद ऐसे हैं, जहां पर पुनर्चुनाव करने पड़ेंगे। इसका अर्थ क्या होता है ? यह कानूनी मामला होगा। ये मामले न्यायालय में जायेंगे और उन जगहों पर हमें बाय इलैक्शन करने होंगे जो देश की आर्थिक स्थिति के लिए सही नहीं हैं। यह सरकार ने अपने विधेयक में कहा है। अभी उस विधेयक की कापी मेरे पास नहीं है, नहीं तो मैं उसे आपको पढ़कर सुना देता। ...(व्यवधान) आपने विधेयक के कारण और उद्देश्यों में कहा है कि वहां पर बाय इलैक्शन करने पड़ेंगे इसलिए हम और यह सदन जानना चाहता है। सदन के साथ जिस जनता के हम नुमाइंदे हैं, जिस जनता ने हमें अपना प्रतिनिधित्व करने के लिए यहां भेजा है, वह जान जाये कि वे कौन से सांसद हैं जिनके लिए हमारे पास केवल बहुमत है और बहुमत के बल पर सत्ता का दुरुपयोग करके हम इस प्रकार का विधेयक लाकर बड़ों को बचाने का पाप इस सदन में कर रहे हैं। कम से कम वह सूची तो सदन के सामने रखी जाये। लेकिन वह सूची भी सदन के सामने नहीं रखी गयी।

सभापति महोदय, जब कपिल सिब्बल जी यहां बोल रहे थे तब मैं उसे सुनकर थोड़ा हैरान हो रहा था। उन्होंने कई तर्क दिये। मैं उनको जवाब या सफाई देने के लिए यहां नहीं खड़ा हुआ हूं। लेकिन मुझे इस बात का आश्चर्य हुआ कि हमारे देश में संसदीय लोकतंत्र है। हमारी संसदीय कार्य प्रणाली है और सारा देश इस संसद का अनुकरण करता है। मैंने पहली बार यहां सुना, हमारे मंत्री जी कानून के विद्वान हैं, वे हमें यहां से संदेश दे रहे थे कि अब हमें कर्नाटक और झारखंड का अनुकरण करना चाहिए। ...(व्यवधान)

आपने जो कहा, वह मैं समझ गया। ...(व्यवधान)

सभापति महोदय : आप अपनी बात कहिये।

...(व्यवधान)

श्री अनंत गंगाराम गीते : वही बात मैं कह रहा हूं।...(व्यवधान)

श्री कपिल सिब्बल : बात कहने और समझने में बड़ा अंतर होता है। ...(व्यवधान)

श्री अनंत गंगाराम गीते : यह बिल्कुल सही है।

श्री कपिल सिब्बल : मैंने कुछ कहा और आपने कुछ और समझा। ...(व्यवधान)

श्री अनंत गंगाराम गीते : संसद का अनुकरण राज्यों की विधान सभाओं को करना चाहिए। लेकिन यहां पर यह शिक्षा दी गयी कि हमें अब उनका अनुकरण करना चाहिए। अगर वे सही हैं तो हम भी सही हैं और यदि वे गलत हैं, यदि आप यह कहना चाहते थे कि उन्होंने जो किया, वह गलत है। यह भी नहीं कहना चाहते थे। ...(व्यवधान)

सभापति महोदय : आप लोग शांत रहिये। पहले उनकी बात समाप्त होने दीजिए।

...(व्यवधान)

श्री अनंत गंगाराम गीते : सभापति महोदय, मैं आपके माध्यम से कपिल सिब्बल जी को प्रार्थना करूंगा कि आपने आज सदन में जो भी कहा, आप रात को अपने इस वक्तव्य को पढ़ें। आप इसे पढ़कर अपने आप पर हंसेंगे। ...(व्यवधान)

श्री कपिल सिब्बल : मैं भी आपसे प्रार्थना करना चाहता हूं कि आप भी इसे घर जाकर पढ़िये। शायद आपको सुबह तक समझ आ जायेगी कि मैंने क्या कहा। ...(व्यवधान)

श्री अनंत गंगाराम गीते : मैं तुरंत समझ गया इसलिए इस बात को यहां पर कह रहा हूं। ...(व्यवधान)

सभापति महोदय, यह मुद्दा हमारे विवाद का नहीं है। कपिल सिब्बल और अनंत गीते के विवाद का यह मुद्दा नहीं है। लेकिन हम किसका अनुकरण करना चाहते हैं ? यदि झारखंड ने किया, वह गलत है और कर्नाटक में जो हुआ, वह गलत है, तो हम सदन में क्या करने जा रहे हैं ? हम उसी गलती को दोहरा रहे हैं [p43]। वे ही तो ऐसा कह रहे थे। यदि वह बात गलत है तो अब हम वही यहां पर करने जा रहे हैं।... (व्यवधान)

सभापति महोदय : कृपया शान्त रहिए।

श्री अनंत गंगाराम गीते : महोदय, यहां संविधान के अनुच्छेद 102 और अनुच्छेद 103 का जिक्र किया गया है। संविधान ने हमें यह अधिकार दिया है, आप सदन को कोई नयी बात नहीं बता रहे थे। आपको उस कानून में संशोधन का पूरा अधिकार है लेकिन उसे संशोधित करने का आपका तरीका गलत है। जिन सदस्यों या संस्थाओं को हम अब उसके दायरे से बाहर कर रहे हैं, वे संस्थाएं कब से हैं, लाभ के पद का कानून कब से अस्तित्व में है? आज इसमें दोनों सदनों के 45 सदस्य शामिल हैं, लेकिन जब उन सदस्यों की नियुक्ति की गयी तब उनको जानकारी नहीं थी कि हमारे देश में लाभ के पद का कानून भी है और हम उसका उल्लंघन कर रहे हैं। पन्द्रह-पन्द्रह, बीस-बीस सालों से हम उस कानून का उल्लंघन कर रहे हैं और हम उसका लगातार उल्लंघन करते आए हैं। श्रीमती जया बच्चन का केस चर्चा में नहीं आया होता तो मुझे नहीं लगता है कि इस विषय पर चर्चा करने का समय हमें मिल पाता। श्रीमती जया बच्चन जी को एक कानून लागू कर, उनके पद को लाभ का पद घोषित करते हुए उनको पद से हटाया गया जबकि पिछले पन्द्रह-पन्द्रह, बीस-बीस सालों से हम इस कानून का लगातार उल्लंघन करते आ रहे हैं। एक तरह से हम जो गलती कर रहे हैं, उसको कबूल किए बगैर हम उसे इस सदन में सही ठहरा रहे हैं कि हम गलती नहीं कर रहे हैं, वह गलती नहीं थी। कम से कम हमें अपनी गलती का एहसास तो होना चाहिए, लेकिन हम उसे इस सदन में सही साबित करने का प्रयास कर रहे हैं। यह देश का सार्वभौम सदन है, जिसका पूरे देश और विधानसभाओं द्वारा अनुकरण किया जाता है। इसलिए हमने तब भी इस विधेयक का विरोध किया था और आज भी इसका विरोध कर रहे हैं। यह केवल कुछ प्रमुख सदस्यों और बड़े नेताओं को बचाने के लिए हम अपनी शक्ति का दुरुपयोग कर रहे हैं, हम अपने अधिकारों का दुरुपयोग कर रहे हैं, हम बहुमत का दुरुपयोग कर रहे हैं, हम सत्ता का दुरुपयोग कर रहे हैं। जिस प्रकार से चाहे केन्द्र सरकार हो या राज्य सरकारें, उनकी विश्वसनीयता इस देश में खत्म हो चुकी है, उसी तरह आज आप लोगों पर यह बात कायम करने जा रहे हैं कि भविष्य में हमारी संसद की विश्वसनीयता भी खत्म होगी। यह चेतावनी मैंने उस समय भी दी थी और आज भी दे रहा हूँ। इसीलिए हमने इस विधेयक का उस समय भी विरोध किया था और आज भी इसका विरोध करते हैं।

SHRI PRASANNA ACHARYA (SAMBALPUR): Mr. Chairman, Sir, I was listening with rapt attention to the very powerful speech delivered by Mr. Sibal. Based on the whole argument he put before the House, I came to two conclusions. What I understood from his arguments is that there are two motives behind bringing this Bill. One is to save 45 Members of Parliament and a few Members of different State Legislatures. He said that there is a political motive for this Bill.

Hon. President of India is a part of this Parliament according to the provisions of our Constitution. Shri Ananth Kumar referred to the reply given by hon. Law Minister in Rajya Sabha in which the Minister stated that the President is a father figure of this country and that the Parliament always seeks guidance from the President. However, unfortunately, when the President wants to guide Parliament, when the President wants to guide this country, the Government refuses it.

This Bill is being given retrospective effect. Hon. President has returned this Bill for reconsideration[\[KMR44\]](#).

What the President wants is a uniform criterion to determine as to whether a particular position is an Office of Profit or not. What the President wants is, there should be a uniform criterion. If you go through the list of the posts that are to be exempted from Offices of Profit, one can find that there are 55 posts belonging to different States. Take for example Wakfs Board of West Bengal. Why not all the Wakfs Boards of the country? Another example is – Film Development Corporation of Uttar Pradesh or West Bengal. Why not all the Film Development Corporations belonging to all the States? There could have been a uniformity in this.

If you see the list, out of 55 Members of Parliament that has been mentioned, most of them belonging to only two States – West Bengal and Uttar Pradesh. Out of 45 MPs, who are affected by this Bill or benefited by this Bill, more than one-third belong to my Left friends. When any Bill was brought by any Government to increase the salaries or allowances of hon. Members of Parliament, hue and cry was raised from that side. They talk of 'idealism'. They say: "We follow idealism; we are a party which believes in 'idealism' and which believes in 'value-based' politics." Where is that 'value'? I would like to compliment hon. Speaker, who has chosen not to preside over this sitting when this Bill is taken up for discussion. Would you follow suit? Would our Congress friends or those Members of Parliament, sorry to say, who are going to be benefited out of this Bill, would follow the hon. Speaker and following the example of the hon. Speaker at least abstain from this discussion? I do not know as to whether Division would be called or not. When Division is called, we would see as to whether they would be participating or as to whether their party allow them to participate in the Division or not. There is double standards in the interpretation of 'idealism' or 'values'. That is most unfortunate. A wrong thing has been done in the past, let us try not to do the same wrong thing in future. Let not the Government use this Parliament – this Parliament is not the Holy Ganges - for washing away all the defaults, irregularities and frauds. This Government is misusing this forum of Parliament.

I would like to take the attention of every hon. Member of this House to what had happened between 1975 and 1977. Bills after Bills were passed in this House. Many Members of this House were put inside the prison. All the important leaders of this House were sent to jail and put behind bars and Bills were passed. Within two hours, our Constitution was amended. Brute majority was used for misuse of this pious House. What happened to them? The people of India had punished those people. History is there for everyone to see.

My submission to the Government is, let us not try to degrade the values of this august House by passing such Bills. Shri Sibal was arguing as to why should we apply uniformly and that it cannot be uniformly applicable. There are MPs who are occupying the Offices of Profit and they should be excluded from the list, from the Bill and not others. What message are we trying to send to the people of this country? That is my point.

I think, it will not be out of context to mention the case of Shrimati Jaya Bachchan. It was decided within a few days. People are asking about this. Many cases were referred by the President to the Election Commission. What the Election Commission is doing[\[s45\]](#)? I do not want to question the autonomy of the Election Commission. I do not want to question the style of functioning of the Election Commission. But this

question is hitting the mind of every lay man in this country. A number of cases had been referred by the hon. President to the Election Commission. ... *

SHRI H.R. BHARDWAJ: Sir, this is objectionable. This portion of the speech of the hon. Member is an insinuation of the functioning of the Election Commission, in a quasi-judicial function. The Election Commission is deciding the matter. ... *

SHRI PRASANNA ACHARYA : Sir, I am not questioning the quasi-judicial functions of the Election Commission. I am stating the plain truth. I made it categorically clear that I am not questioning the quasi-judicial functions of the Election Commission. I am not questioning the autonomy of the Election Commission. But this is the bare fact.

... * This is the question that is striking not only my mind, but it is the one which is striking every individual in this country. That is the point. ... (*Interruptions*)

This Bill is not an impartial Bill. I would like to draw your attention to clause 4 (ii) of this Bill. This clause has been incorporated in this Bill because of an apprehension. Shrimati Jaya Bachhan went to the court; if she wins, then also she will be deprived of becoming again a Member of the House. Keeping that in view, clause 4 (ii) of this Bill has been inserted in this Bill. Shri Sibal was correct when he said that there is political motive in this. There is political motive; this is not free from politics. And we are misusing the floor of this august House by bringing forward such a Bill.

* Not Recorded.

16.47 hrs.

(Mr. Speaker *in the Chair*)

MR. SPEAKER: Can I interrupt you for a minute?

SHRI PRASANNA ACHARYA: Sir, yes.

purpose, which has already been discussed in the House. We have the Cabinet form of Government. We do not have the Presidential system of governance. In the Cabinet system of Government, there has to be a Cabinet. Members of Parliament will form a place in the Cabinet. What is happening in Presidential system of Government in America? The American President can choose any of the bureaucrats as his Secretary, his Minister. That system is not prevalent here. Therefore, the makers of the Constitution incorporated Article 102 for a specific purpose. Those Members of Parliament who will be occupying the ministerial posts, will be exempted from the Office of Profit. That was the specific purpose for inserting that Article but we are diluting that purpose. We are misusing Article 102 of the Constitution.

There is no limit now. Today, Parliament has exempted one set of Members from the Office of Profit. Tomorrow, it can exempt another set of Members. Day after tomorrow it can exempt a third set of Members. So, where is the limit? Therefore, my contention is that Article 102 is not being properly interpreted or used by this Government and there is no end to it. Today, 45 Members of Parliament are included in the list. Tomorrow, if another set of Members occupy the Office of Profit, they will be exempted. So, there is no limit to it.

My suggestion is this. Why not dispense with this provision of the Constitution? Instead of dispensing with this provision of the Constitution, the Government is making mockery of it. Let us not try to distort the Constitution. Let us not mis-utilise or misinterpret Article 102 of the Constitution. The Government is interested in this Article either to keep its alliance intact or to keep the Government intact.

What is the Government doing, particularly after passing the latest amendment to the Constitution, that is 15 per cent of the total strength of the House can also be taken as Members? It is trying to gain support of other Members, by exempting them from the Office of Profit, whom it is not able to adjust in the Cabinet. For this purpose, the Government is bringing this Bill. This is a sheer insult to the makers of the Constitution. So, it will be better if we dispense with this provision of the Constitution altogether.

By passing this Bill again, after being returned by the President, the Government is diminishing its own stature and is trying to diminish the stature of Indian Parliament before the nation. Since the Government has a majority in this House, technically it may be right to pass this Bill. It can successfully pass this Bill today, as it did during Emergency. This House represents the wishes, the desires, the sentiments and the feelings of the whole nation. What moral impact will it have on our next generation? Are we not aware of it? If we pass this Bill today, in spite of it being returned by the President, Sir, it will not be a great day for us. It will be one of the blackest days for the Indian democracy.

I am not only talking about the people sitting on that side or sitting in the middle. I am talking about all. Let us not have double standards. One may speak against the Bill here but in his or her own State one may rush through the Bill[R46].

I cannot support this. It has happened in some of the States. We are opposing it here but we are rushing through a Bill of the same nature in our Assemblies. This is double standard. I am sorry to say this.

My State of Orissa is a small State with only 147 MLAs. I would invite everybody to come to Orissa and see what is happening there. Not a single MLA or MP has been appointed as the Member or the Chairman of any office which is an office of profit in my State of Orissa. Do you think there is no pressure? There is a tremendous pressure on our Chief Minister and our Government. Every MLA wants to be a Chairman of any trust or board or committee of the Government but not a single MLA or MP has been appointed to such an office nor the Government of Orissa is contemplating to come out with any Ordinance or a Bill in this regard. I would

like to say that Orissa has set an example in India. Therefore, I am opposing this Bill. If some conscience is left within us, let us not denigrate the stature of this Parliament and let us not insult the President of India. We have inflicted enough insult on the President of India.

Therefore, I would urge upon the Government to please withdraw this Bill. You come out with some other amendment as has been directly or indirectly suggested by the President of India. Let this Session be over. You come up with this Bill in the next Session. The sky is not going to fall. If a few Members of this House face consequences, let them face. The sin committed by this Government cannot be rectified by this Parliament. As I said, this Parliament is not the holy Ganges where errors and falls will be washed off. Let us not use the floor of this Parliament for this *mala fide* purpose.

SHRI GURUDAS DASGUPTA (PANSKURA): Sir, with a sense of commitment undiluted, for the politics based on principles and with a sense of our commitment to the Constitution and to the people of this country, I rise to support this Bill.

The question is that the Constitution has given the right to the Parliament. Why I say so? The Constitution has given this right to the Parliament to prevent disqualification. It is enshrined in the Constitution and the Constitution has been passed by the Constituent Assembly. It is in accordance with the provisions of the Constitution which gives us right to prevent disqualification. We are making use of this provision. Therefore, my conscience is clear. We are only making use of a constitutional provision. If the Constitution has not given us the right then it would have been difficult for us to prevent the disqualification. Therefore, I do not lose my heart, neither I lose my conscience nor do I consider that I am departing from value based politics. It is very clear.

The question is, opposition is being raised to the Bill because the President has advised. The point is that I do not take the opposition to the Bill to be so innocent. I do not accept that the opposition to the Bill is so innocent^[r47].

17.00 hrs.

The reason for this is very simple. It is being suggested that the Bill should be modified to make it technically equipped so that it can stand judicial scrutiny. That is the suggestion being made by my friends. An attempt is being made to read the mind of the Judiciary. An attempt is being made to know what the judicial pronouncement will be. A judgement is being pronounced before the judgement has been delivered. I do not think there is need for alarm. I do not think any warning bell has to be sounded. If the Judiciary takes a different view, then Parliament is within its right, conferred by the Constitution, to do its job. We shall do our job if the Judiciary takes a different view. Therefore, there is no need to ring the bell of warning.

Sir, on the question of relationship between the Office of President and Parliament, I would submit that the relationship is well established. Since the Constitution has been enacted, on a number of occasions this issue has been raised. The relationship between the Office of the President and the Parliament has been well established. We respect the advice of the hon. President. We also respect the sovereignty of the Indian Parliament. I believe, Parliament is supreme. Therefore, I believe that the sovereign Parliament has a right to decide according to its wisdom. There is no question of showing disrespect to the hon. President. The hon. President has done his job. He has given his advice and we have done our job to act independently on the basis of our wisdom. That is where the Constitution stands. If any attempt is made to dilute the supremacy of the Parliament, then we shall oppose that. The Parliament is supreme because, we represent the people of this country on the basis of the provisions as contained in the Constitution.

Sir, I am a little surprised that a suggestion is being made that there is no hurry in according assent to the Bill. This is being said openly. This Bill can be kept pending as it was done by the late President Zail Singh for three years in respect of a particular Bill. This is being said openly. What does it mean? It only means that something is being suggested not only to dilute the sovereignty of the Parliament but something is also being done to stand in the way of expression of the collective will of the Parliament. Therefore, I feel, opposition to the Bill is linked with the struggle for power in the country... (*Interruptions*)

Sir, I have been very zealously listening to the running commentary being given by Madam Maneka Gandhi. It is nice to learn that she has imbibed the quality of giving a running commentary. She must be frequenting to the cricket grounds!

Sir, if the in the name of further scrutiny, the Parliament does not adopt the Bill; if in the name of showing respect to the hon. President we decide not to adopt the Bill; if assent to the Bill is kept pending, then what is going to happen? I am very frank about it. If the Bill is not passed, then the Election Commission will be within its right to take a view on the issue. If a number of Members of this House lose their membership, which they may lose, may not lose, what will happen[snb48]?

The gamble for power shall begin. The politicians who are hungry for power, being out of power, may begin it..
... (*Interruptions*)

सभापति महोदय : आप उनकी बात सुन लें।

... (*Interruptions*)

सभापति महोदय : जब आपको अपनी बात कहने का मौका मिलेगा, तब अपनी बात कहिएगा।

... (व्यवधान)

SHRI GURUDAS DASGUPTA : I repeat it and I have no hesitation in saying it. If the Bill is not enacted, the Election Commission will be free to take a view on the matter and if 48 or 58 or 38 members lose their membership, then there may be a feeling that it is the time to initiate instability in equation of forces and therefore, begin the gamble for power..... (*Interruptions*) I am very clean so far as my conscience says. I openly

say that this Bill is being enacted to prevent disqualification because we have the right. The Bill is being enacted to protect the political stability of the present equation of forces. The Bill is being enacted and we shall be in power. The only course left to you is to move a No-Confidence Motion or to go to the street and create a situation where the law and order comes to a halt. You take this course. I openly say this. I am openly saying that if you have in mind to send these people out of power, then move a No-Confidence Motion. Why do you take the guise of opposing this Bill? Why do you play hide and seek? You openly move a No-Confidence Motion or create a law and order problem which will make this Government unstable. Do it. We are ready to face it. I am openly saying that we are ready to face that situation. We are ready to face the situation if the court strikes down the Bill. We are ready to face the situation if assent is delayed. We are ready to face the situation if you move a No-Confidence Motion. We are ready to face the situation if you destabilise the Government. There is no hide and seek game in it. We are ready for it. In order to prevent that, we want to bring this Bill. I call a spade a spade. In order to prevent destabilisation, in order to prevent the gamble for power unconstitutionally, illegally, well beyond the norms of parliamentary democracy, we are bringing this Bill. Face it. ... (*Interruptions*)

सभापति महोदय : आप सुनने की आदत डालिए।

... (*Interruptions*)

सभापति महोदय : दासगुप्त जी, आपका समय अब समाप्त हो गया है।

... (*Interruptions*)

SHRI GURUDAS DASGUPTA : Let us not speak of the consequences. The election result of the last election has shown the mandate of the people. Let us not speak of the consequences. We are here in our own right with the largest number. The Left is here with the largest strength[bru49]. You are reduced to a minority. You have been thrown out of power. When you speak of consequences, please look at the mirror. Just look at the mirror. We are for immediate enactment of the Bill. We are for preventing the disqualification. We are only using our constitutional prerogative. We have not gone beyond the *lakshman rekha*. We are within the Constitution. Therefore, any clamour against the Bill is nothing but an attempt to destabilise the Government and a gamble for power. Indian people are not going to accept that.

I have a suggestion to the Government. It may be assumed that there are some shortcomings in the Bill. I do not rule out that assumption. After the enactment of the Bill, it will be the responsibility of the Government to monitor the implementation of the law and to create a mechanism by which the question of a parliamentary definition of "Office of Profit" can be done. There has to be a mechanism. There has to be an assurance from the Government that the Government, in the future date, will bring about changes in the law if it is found to be inadequate. That is my suggestion to the Government.

With these words, on behalf of Communist Party of India, I support the Bill and I oppose any gamble for power that is being done.

SHRIMATI M.S.K. BHAVANI RAJENTHIRAN (RAMANATHAPURAM): Sir, on behalf of my party, the DMK, I rise to support the Parliament (Prevention of Disqualifications) Amendment Bill, popularly known as the Office of profit Bill, as passed again by the Upper House, Rajya Sabha. His Excellency, the President of India, in his wisdom has returned the Bill to Parliament for reconsideration. We respect and regard the advice given by the President because he is a fatherly figure. He is a titular head in the constitutional set-up. I think the Government has already agreed for setting up a Parliamentary Committee to go into the whole issue.

I do not know why this time this Bill has evoked so much controversy because this is not for the first time that exemptions are being given to some offices of profit held by Members of Parliament. As representatives of the people, Members of Parliament have to perform a lot of duties and functions and when they hold certain offices which are purely of honorary or service-oriented, they should not be disqualified. Similar amendments in the past had enabled the leaders of the Opposition and the Chief Whips of parliamentary parties to get perks from the Government.

I would appeal to the Opposition, especially the BJP not to make unnecessary controversy over this issue because even the BJP-ruled States and their Chief Ministers have passed such Bills in their State Assemblies, exempting certain offices held by their MLAs from the provisions of office of profit.

With these words, I support the Bill, as passed second time by Rajya Sabha.

KUMARI MAMTA BANERJEE (CALCUTTA SOUTH): Sir, thank you very much for allowing me to speak. I rise to oppose the Bill brought by our hon. Law Minister, Shri H.R. Bhardwaj. ...(व्यवधान) आपका होने से सपोर्ट करती लेकिन सीपीएम का है इसलिए अपोज़ करती हूं। ...(व्यवधान) गुरुदास दासगुप्ता जी ने एक बात सच कही कि यदि यह बिल नहीं लाते तो जो 55 संसद सदस्य ऑफिस ऑफ प्राफिट में आ रहे थे, वे सब डिस्क्वालिफाइ हो जाते और सदन में यह सरकार नहीं रहती। उन्होंने कहा है कि गवर्नमेंट पोलिटिकली गैम्बल करती है और आपकी गवर्नमेंट नहीं [\[r50\]](#)।

To save your Government, you hurriedly brought this Bill. हमारा कहना यह है कि कोई झारखंड या बंगाल की बात नहीं है। हम कभी बंगाल, बिहार और पार्लियामेंट में भी करते हैं। बात यह है कि पहले जो हुआ है, वह तब तक की स्थिति के अनुसार हुआ है, लेकिन अब आप लोगों ने यह शुरुआत क्यों की है? हमें भी पता नहीं था, यह बात सच है। जब जया बच्चन जी का मेम्बरशिप गया तो हम लोगों ने समझा कि इसके पीछे नतीजा और कारण क्या है। हमने जब देखा कि एक मेम्बर चला गया, उस बेचारे की क्या गलती थी। उसी तरह के हमारे स्टेट में इतने मेम्बर्स हैं और वे सेम पोजिशन एनज्वॉय कर रहे हैं, उसका कहीं कुछ नहीं हुआ, इसलिए हमें दुख हुआ। इसलिए दुख हुआ, you cannot differentiate one from the another. लॉ सब के लिए एक है, लेकिन हम देखते हैं कि लॉ दो तरह का होता है - एक कॉमन आदमी के लिए लॉ होता है और एक प्रिविलेज्ड क्लास के लिए होता है। प्रिविलेज्ड क्लास कौन होता है, जिसकी गवर्नमेंट होती है और जिसके पास कानून बनाने की क्षमता होती है।...(व्यवधान) मैं भी कांग्रेस से ही आई हूं। You ask the Bengal Congress people what are their sentiments and you ask your State people about this Bill what are their sentiments. हमें कहने की कोई

जरूरत नहीं है। मैं यह इसलिए कह रही हूँ, क्योंकि क्लॉज़-4 में यह कहा है कि अगर यह बिल पास होगा तो इन्हें डिसक्वालीफाई नहीं किया जाएगा, ईवन कोर्ट में भी। एक बात और कही गई कि यह बिल पास होने के बाद जब लॉ बन जाएगा तो इलैक्शन कमीशन भी इसमें कुछ नहीं कर सकता है। इसीलिए इसे जल्दी से जल्दी आपने लाया है। इलैक्शन कमीशन ने वेस्ट बंगाल गवर्नमेंट को, चीफ सैक्रेट्री को लेटर दिया। It is reported in the Press that you please give your reply within 31st of July. ... (Interruptions) इसीलिए आज के दिन आपको बिल पास कराना जरूरी हो गया। जब पहले वेस्ट बंगाल गवर्नमेंट, चीफ सैक्रेट्री को नोटिस दिया था और उन्होंने इलैक्शन कमीशन को रिप्लाई नहीं दिया, लेकिन एडवोकेट जनरल एक लेटर लिख कर बोला, we do not need to reply. ... (Interruptions)

एक माननीय सदस्य : वह सही बोला।... (व्यवधान)

कुमारी ममता बैनर्जी : वह सही बोला या गलत बोला, लेकिन मैं सही बोल रही हूँ। उसके बाद इलैक्शन कमीशन ने फिर लिखा - You are bound to reply to the Election Commission. ... (Interruptions) पहले सब्जेक्ट पर बोलने दो। You are the Chairman of the Minority Development Corporation. Why are you sitting here? ... (Interruptions) All the 54 MPs are holding the posts. ... (Interruptions) Why are they sitting here? ... (Interruptions)

मोहम्मद सलीम : असेम्बली इलैक्शन में इलैक्शन कमिश्नर कुछ नहीं कर पाए।... (व्यवधान)

सभापति महोदय : आप शांत होकर इनकी बात सुनिए।

... (व्यवधान)

कुमारी ममता बैनर्जी : पुलिस ने बयान निकाल दिया और बिल भी निकाल दिया। अगर थोड़ी भी इज्जत की बात होती तो जो भी इस केस में फंसा है, वह चुप बैठ कर बात नहीं सुनता।... (व्यवधान) They are not our enemy. ... (Interruptions) I consider him as my friend. ... (Interruptions) हम इस बारे में कहना नहीं चाहते। मैं कहना चाहती हूँ कि जब आपको पता चल गया तो आप स्टेट असेम्बली में इसे कर सकते थे। You have your State law. Only two are exceptional cases - आपने क्यों नहीं किया? झारखंड में अगर किया तो अब आपने क्यों नहीं किया? आपने दिल्ली का दरवाजा क्यों खटखटाया?... (व्यवधान)

एक माननीय सदस्य : वहां एमपीज़ के लिए नहीं है।... (व्यवधान)

कुमारी ममता बैनर्जी : एमपीज़ के लिए भी स्टेट में है, ऐसा मत कहिए। I appeal through you, Sir, to the Congress Leader, Shrimati Sonia Gandhi[R51].

She has taken a stand.... (Interruptions)

MD. SALIM : You may go back to the Congress.... (Interruptions)

KUMARI MAMATA BANERJEE : What I do, I will not have to take the advice from you. सर, मुझे आपको टाइम देना पड़ेगा। अगर मुझे टाइम नहीं मिलेगा, तो मैं अपनी बात कैसे कहूंगी। ... (व्यवधान)

सभापति महोदय : आप अपनी बात कहिए।

... (व्यवधान)

सभापति महोदय : कृपया शान्त रहिए।

... (व्यवधान)

KUMARI MAMATA BANERJEE : Why am I congratulating her? It is because that after the Jaya Bachchan's case, she resigned her seat in Parliament. Then, she contested again and won the election. जब मुम्बई ब्लास्ट्स पर यहां चर्चा हुई, तब मैंने सोनिया जी को यहां बैठे देखा था, लेकिन आज नहीं हैं। आज आई थीं, लेकिन चली गईं, क्यों ? क्योंकि उन्हें दिक्कत होती है। आपका सपोर्ट लेने के लिए उन्हें सपोर्ट देना पड़ता है। यह इज्जत का सवाल नहीं है, यह सदन का सवाल है। जो रास्ता उन्होंने आपको दिखाया था, वह आपने क्यों नहीं देखा, क्या आपके पास इसका कोई जवाब है ? ... (व्यवधान) Two-thirds of the posts belong to the Leftists. They speak about ideology. ... (Interruptions) This is not the West Bengal Assembly. This is Parliament. ... (Interruptions) My friend, you are also the Chairman of the Asansol Development Corporation. ... (Interruptions) Sir, he is being summoned.... (Interruptions)

SHRI BANSAGOPAL CHOUDHURY (ASANSOL): I am saying this that as leader of the Trinamul Congress Party, she is getting salary from the Board of a Company as a Director.... (Interruptions)

कुमारी ममता बैनर्जी : असैम्बली में क्यों नहीं दिया ? ... (व्यवधान) Why do you not lodge a complaint with the Election Commission? अगर उनके खिलाफ कोई बात कहनी है, तो आप इलैक्शन कमीशन में जाइए। ... (व्यवधान) You are fit to write.... (Interruptions) You are fit to write to the hon. President. We do not have any objection. He mentioned his name. ... (Interruptions) He is not present here. He is the Chairman of the National Institute of Personnel Management. This is not a Government organisation. All the 15 people are enjoying the privileges of the Government, enjoying the powers and privileges.... (Interruptions) प्रेसीडेंट ने जो मैसेज दिया है ... (व्यवधान)

Sir, I am sorry to say one thing...*

हम लोगों को क्या यह नहीं सोचना चाहिए ? ... (व्यवधान)

SHRI BANSAGOPAL CHOUDHURY : ... *

KUMARI MAMATA BANERJEE : ...* This is the most unfortunate part of it.

सर, मुझे दो-तीन बातों पर बहुत ऐतराज है। मैं अपनी बात कैसे कहूं ... (व्यवधान)

सभापति महोदय : प्रेसीडेंट का जो रैफरेंस आया है, वह रिकॉर्ड पर नहीं जाएगा।

कुमारी ममता बैनर्जी : ये लोग इतना चिल्लाते हैं, मैं कैसे अपनी बात कहूं। मैं कैसे बोलूं। ... (व्यवधान)

सभापति महोदय : वे चिल्ला कर आपका टाइम बढ़ा रहे हैं।

... (व्यवधान)

कुमारी ममता बैनर्जी : सर, आज का दिन ब्लैक डे के रूप में जाना जाएगा। पार्लियामेंट के लिए आज का दिन बहुत ट्रैजिक है। ऐसा काला कानून देश के लिए नहीं होना चाहिए। प्रेसीडेंट ने अंडर आर्टिकल 102 क्या मैसेज दिया था, उसे आप ठीक से देखिए। उन्होंने तीन पाइंट्स का जिक्र किया था जिन्हें श्री कपिल सिब्बल और श्री अनन्त कुमार आदि कई सदस्यों ने बताया है। ... (व्यवधान) I am not going into the details of it. The Parliament (Prevention of Disqualification) Amendment Bill, 2006 was sent to the hon. President for assent on 25th May of 2006. The hon. President returned the same on 30th May, 2006 with a message to both the Houses of Parliament for reconsideration of the Bill under the provision of Article 111 of the Constitution [R52].

* Not Recorded.

उसमें यही बोला -

“Evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied across all States and Union Territories in a clear and transparent manner.”

इसमें क्या दिक्कत है?

Sir, I am opposing this Bill because the Government is not exempting offices, but they are exempting some Members of Parliament. Why are they exempting some individuals only? It is because without them the Government cannot run. I do not blame the Government because sometimes in coalition politics there are such compulsions.

MD. SALIM : Shri Vajpayee knows about it.

KUMARI MAMATA BANERJEE : Shri Vajpayee was far better than you people. You have to respect Shri Atal Bihari Vajpayee. Don't compare yourself with Shri Vajpayee.

Sir, the Congress Party's stature is very high. It is the oldest party in the country, but I am surprised to see जब देखते हैं कि लेफ्ट पार्टीज़ इनके लिए किडनी, लीवर और हर्ट हो गया है। The Left Parties have become your kidney, liver, heart and brain. You are losing your credibility because of them. Why are you losing your credibility for them? They are going to destroy the country and they are going to destroy the parliamentary system. ... (Interruptions)

SHRI BANSAGOPAL CHOUDHURY : Sir, she is reading from the papers. ... (Interruptions)

KUMARI MAMATA BANERJEE : I am not reading from the papers. I have got all the details with me.

Sir, I have great respect for the Speaker's Chair. I do not want to mention anything about him. I respect the Chair. But I will mention the name of the individual. ... *

सभापति महोदय : यह सही नहीं है।

...(व्यवधान)

KUMARI MAMATA BANERJEE : It is all right, Sir, if you tell me not to take the name.

सभापति महोदय : आप जिनका नाम ले रही हैं, वे स्पीकर हैं और उन पर यहां चर्चा नहीं हो सकती है।

...(व्यवधान)

कुमारी ममता बैनर्जी : मैंने स्पीकर साहब की बात नहीं की है। ... *

सभापति महोदय : उनके बारे में चर्चा करने के नियमों में दूसरे तरीके बताए गए हैं।

...(व्यवधान)

KUMARI MAMATA BANERJEE : Sir, I will abide by your ruling. ... *

सभापति महोदय : आप पहले सुनिए, बाद में अपनी बात कहिएगा।

...(व्यवधान)

SHRI BANSAGOPAL CHOUDHURY : Sir, the Leader of Opposition in West Bengal Assembly is taking salary from a company. ... (*Interruptions*)

KUMARI MAMATA BANERJEE : Sir, he is holding a position in the Aasonsol Development Corporation. ... (*Interruptions*)

सभापति महोदय : आप लोग सुनने की आदत डालिए।

...(व्यवधान)

* Not Recorded.

KUMARI MAMATA BANERJEE : Sir, what is mentioned in the Bill? इस बिल में 55 का नाम दिया गया है। आप स्वयं देख लीजिए कि इस बिल में यह एक्ट है कि नहीं है। इस बिल में लिखा है कि this is office of profit, West Bengal Town and Country Planning and Development Act, 1979 is there. ... (*Interruptions*)

SHRI RUPCHAND PAL : You remove your confusion.

KUMARI MAMATA BANERJEE : Sir, why am I mentioning this? I am saying this because there are three or four offices mentioned such as the Srinikentan-Shantiniketan Development Authority. If you see Sl. No. 8 on page 2 of the Bill, you will see that it has been written very categorically about the law that I mentioned [k53]. Not [Rs54] only that but it is also for Haldia Development Corporation. Our friend is there from that area. Even the Asanasol Development Corporation is there. The Member is also present here. I am not mentioning the names. There are about 15 such names from West Bengal. They say that there is no document. If there is no document, why do we complain then? If anything is wrong, they can plead their case.

सभापति महोदय : अब आपका समय समाप्त हुआ।

कुमारी ममता बैनर्जी : नहीं सर, कैसे समाप्त हो गया? ये लोग बोलने ही नहीं देते हैं, कैसे समय समाप्त हो गया? यह बहुत बढ़िया बात है।... (व्यवधान) Sir, this is a notification showing how they became the members of these committees and if you want to read this, I can supply all these documents to you. We have handed over all the documents to the Election Commission.

DR. RAM CHANDRA DOME (BIRBHUM): It is all garbage... (*Interruptions*)

KUMARI MAMATA BANERJEE : It may be garbage for them, but it is not garbage for the country. Sir, they have the majority and they can pass this Bill, but it is not the people's will यह जनता की विल नहीं है, जनता इसके बारे में आप लोगों को सपोर्ट नहीं देगी, जनता इसके खिलाफ है। When the matter is pending before the Election Commission, I do not think, it is right time to pass this Bill hurriedly. They are doing it so that the Election Commission cannot take action against them.

Sir, I want to inform the House that if you pass this Bill, it will be a bad practice. It is unethical and it will subvert the Constitution. It is violation of all sorts of constitutional rights and the fundamental rights. Sir, when there was a case of ten MPs involved in the MPLAD case आप लोगों ने उनकी नौकरी खा ली। मैं करप्शन के फेवर में नहीं हूँ। अगर उन्होंने गलती की है तो वह गलती है, लेकिन You have not allowed to listen to them. डिफेंड करने की बात भी आपने नहीं की। जब आपकी बात आई तो आपके खिलाफ केस है और आप यहां बैठकर झगड़ा करते हैं। This is the difference. We do not think that this House should run like this. इसके लिए मैं यह बात भी कहना चाहूंगी कि प्रेसीडेंट अकेले नहीं हैं।

सभापति महोदय : अब आपकी बात हो गई।

कुमारी ममता बैनर्जी : प्रेसीडेंट जो हाउस ऑफ पार्लियामेंट हैं, जो हमारे लोक सभा, राज्य सभा हाउस हैं, President is an integral part of this Government and President is the highest person of our country and the House. So, the President can advise. The President can give the guidelines and he is able to see the interests of the people. He can do it. But we are sorry that 55 पोस्ट होल्डर्स के लिए आजादी के बाद 2-3 औकेंज़न हुए, जब ऐसा काला बिल हम लोगों को पास करना पड़ा है। This is most unfortunate. I will again request the Government that when the President sends a message, we should accept his message and try to see what he wants to say.

सभापति महोदय : अब आपका भाषण समाप्त हुआ।

कुमारी ममता बैनर्जी : आप नहीं सुनना चाहते हैं। हमको देखना चाहिए कि आर्टिकल 74 में यह प्रोवीजन है कि प्रेसीडेंट गवर्नमेंट को एडवाइस दे सकते हैं और एडवाइस ले सकते हैं। लेकिन ये ज्यूडीशियरी को बार करना चाहते हैं, इलैक्शन कमीशन को बार करना चाहते हैं।... (व्यवधान)

सभापति महोदय : अब बात समाप्त हो गई, समाप्त करिये।

कुमारी ममता बैनर्जी : पोलिटिक्स के लिए एक बात तो गुरुदास दासगुप्ता जी ने साफ-साफ बताई कि अगर हम यह नहीं करेंगे तो गवर्नमेंट चली जायेगी। यह ठीक बात है, लेकिन एक वोट के लिए जब अटल जी की गवर्नमेंट चली गई थी, तब यह बात आप लोगों के दिल में क्यों नहीं आई थी? Only for one vote. Not only that, the Government of Devegowda and many other Governments have gone. They can adjust with everything, but they cannot adjust morality with everything. They can adjust everything, but they cannot adjust their ideologies. They can adjust with everything, but they cannot adjust with corruption.

Sir, I would like to inform this House that this Bill will give them a befitting reply and that reply will be of the people. People are watching them and looking at them. They would not allow them to do it.

With these words, I thank you, Mr. Chairman, Sir, for giving me this opportunity.

SHRI KINJARAPU YERRANNAIDU (SRIKAKULAM): Mr. Chairman, Sir, after the Constitution came into force, this is the second time when hon. Rashtrapati*ji* has returned the Bill for reconsideration. I am very happy to discuss on that advice. Today, hon. Law Minister piloted the Bill for further reconsideration.

Hon. President of India, who is a part of Parliament under article 79 of the Constitution of India, has given advice on three important issues. One is on the evaluation of generic and comprehensive criteria which are just, fair, reasonable and can be applied across all the States and Union Territories in a clear and transparent manner. We have included 54 corporations or other authorities – offices of profit – for exemption. What are we doing here? We are not exempting the office; we are exempting the persons who are holding the office of profit. This is not at all correct. The framers of the Constitution have incorporated that due to some eventuality if an office comes under office of profit, we can exempt the office and not the person. We are giving benefit to the persons under this present law. Suppose, some urban development authority comes under an office of profit.

Suppose, we provide in the Act that throughout the country any urban development authority in any State is exempt from the office of profit, then tomorrow any MP occupying that post will be exempted. I do not accept the arguments put forward by Shri Kapil Sibal. That is not the intention of the President. There should be uniformity. Suppose in Andhra Pradesh or Karnataka that comes under the office of profit, tomorrow if any Member of Parliament is appointed to that authority, he can come back to Parliament as that office is exempt. That is a lacuna. So, there should be uniformity. I do agree with the hon. Rashtrapati ji.

My second point – and it is most important point – is this. At the time of discussion also, my Party had opposed this retrospective thing. The same view has been taken by hon. Rashtrapati ji about the soundness and propriety of law in making the applicability of the amendment retrospectively. What have they done? The retrospective effect is being given since 4th July, 1959 after a gap of 46 years. Some corporations, some authorities were not even born in the year 1959. Some corporations were born in the year 2000; some corporations were born in the year 2003. What is the need to give retrospective effect from 1959? I also observe it at the time of discussion on the floor of the House. The same view has been also taken by hon. Rashtrapati ji. That is why my Party has moved amendments.

My Party has moved two amendments to delete the law; it should be prospective and not retrospective. Since 1959, till today, we have made amendments so many times on the floor of the House but we done them in a prospective manner and not in a retrospective manner. This is the first time that we are doing it in a retrospective manner. One Congress person lodged a complaint before Rashtrapati ji against Ms. Jaya Bachchan. If the Government had been so sincere, it would have brought the legislation earlier not to disqualify her for holding an office of profit as Chairperson of the Uttar Pradesh Film Development Council. For so many days, it was in the court, and they did not bring the legislation. After her disqualification – my Party is part of that – we also lodged complaint before Rashtrapati ji against four persons. If the Government accepts our amendments, then only we will support this Bill. That should be in a prospective manner and not in a retrospective manner. The people are watching; even the media has also written so many editorials. We are making our legislation not for public interest but for our personal interest. To save some persons, we are bringing in this legislation. Everybody is talking in this country. You have to keep in view Rashtrapati ji's advice; you have to keep in view the editorials written by so many newspapers. [\[r55\]](#)

Now, you kindly take the public opinion also. There is no hurry. Based on that, we have to apply our mind very coolly. My Party's suggestion is that this Bill has to be referred to either the Joint Parliamentary Committee or to the Standing Committee for a thorough scrutiny.

There is no definition about the office of profit till today. We have to give comprehensive definition about the office of profit and also opinion on other matters referred to by the Rashtrapati ji. We have to discuss it in a cool manner and the Government can bring a comprehensive Bill again. After that, we can unanimously pass this Bill.

Sir, this is not a correct thing. We have to respect Rashtrapati ji's advice. We have to take the public opinion and also the opinion of other legal luminaries. Yes, we have our supremacy. If we send it for the second time, there is no option for the President except to accept it and he cannot withhold it under article 111. Basing on the supremacy of Parliament, we cannot ignore the advice of Rashtrapati ji.

That is why, I request the hon. Minister to take all the viewpoints and also respect the advice given by the Rashtrapati ji.

श्री सुखदेव सिंह ढींडसा (संगरूर) : सभापति महोदय, मैं अपनी पार्टी की तरफ से इस बिल को अपोज़ करने के लिए खड़ा हुआ हूँ। जब पहले यह बिल लाया गया था, उस वक्त भी हमने इसे अपोज़ किया था। मैंने उस वक्त भी कहा था कि इससे गलत मैसेज जाएगा, लोग कहेंगे कि अपनी कुर्सी बचाने के लिए या अपनी सरकार बचाने के लिए यह बिल लाया जा रहा है और ऐसा ही हुआ।

अभी श्री सिब्लल यहां नहीं हैं। वह हमारे दोस्त हैं और बहुत बड़े वकील भी हैं। मैं बड़ी इज्जत के साथ कहना चाहता हूँ कि जब कोई वकील किसी क्लाइंट का केस लड़ते हैं तो अगर वह गलत भी होता है तो उसे ठीक करने की कोशिश करते हैं, लेकिन आज ऐसा नहीं कर सके। आज उनकी बातों में दम नहीं था। वह कह रहे थे कि राष्ट्रपति जी की कैसे डिसरिस्पैक्ट हुई। डिसरिस्पैक्ट क्यों नहीं हुई। अगर किसी वक्त उनकी कोई पोलिटिकल लीनिंग होती तो हम सोच सकते थे कि उन्होंने अपनी पोलिटिकल लीनिंग की वजह से ऐसा किया। वे दुनिया के माने हुए साइंटिस्ट हैं जिनकी इज्जत हिन्दुस्तान का हर व्यक्ति करता है और उनका बहुत बड़ा स्टेचर है। हमने उन्हें सर्वसम्मति से राष्ट्रपति चुना था।...(व्यवधान)

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ) : Sir, I think, you will agree with me that we cannot debate Rashtrapati ji. This is the fundamental principle. ... *(Interruptions)* We cannot influence the debate by taking the name of the Rashtrapati ji. ... *(Interruptions)*

श्री सुखदेव सिंह ढींडसा : वे माने हुए साइंटिस्ट हैं।...(व्यवधान)

सभापति महोदय : आप इससे आगे की बात कहें।

...(व्यवधान)

श्री सुखदेव सिंह ढींडसा : सभापति जी, आपने बोलते समय सुझाव दिया था, हमारे कई और दोस्तों ने भी दिया कि इतनी जल्दी क्यों है कि इसे आज ही पास करना है। इसके लिए ज्वाइंट पार्लियामेंट्री कमेटी बना दें और उसमें डिस्कस करें। अगर उसमें कुछ कमियां हैं, तो उन्हें देखकर इसे लाएं।

जब दासगुप्ता जी बोल रहे थे, मुझे उस वक्त मालूम हुआ कि लेफ्टिस्ट्स आज इसे सपोर्ट कर रहे हैं। मैं कहना चाहता हूँ कि पावर के लिए कौन नहीं लड़ता। आप पावर के लिए गलियों और बाजारों में सरकार को अपोज़ करते हैं, लेकिन जब पार्लियामेंट में होते हैं तब क्यों नहीं करते, तब क्यों सपोर्ट करते हैं। पावर सबको चाहिए, आप भी पावर के लिए लड़ रहे हैं, अगर आप आज सपोर्ट कर रहे हैं तो पावर का मजा ले रहे हैं।...(व्यवधान)

SHRI GURUDAS DASGUPTA : We are supporting this Government to prevent BJP from coming to power. ...
(Interruptions)

श्री सुखदेव सिंह ढींडसा : यह कोई सिद्धान्त नहीं है।...(व्यवधान) इनका सिद्धान्त आम जनता के लिए लड़ना होना चाहिए, बीजेपी के साथ लड़ने का नहीं। लेकिन अगर सरकार की एंटी पॉलिसी है तो उसे आप सड़कों पर अपोज करते [cé\[R56\]](#)। जब उनको बचाने की जरूरत होती है तब आप उन्हें बचा लेते हैं। ...(व्यवधान)

श्री बसुदेव आचार्य : हम बाहर और अंदर दोनों जगह एक जैसा ही बोलते हैं। ...(व्यवधान)

श्री सुखदेव सिंह ढींडसा : मेरी पार्टी का यह मानना है कि आप आज एक ज्वाइंट पार्लियामेंट्री कमेटी बनाकर इस बिल को उसके सुपुर्द कर दीजिए और उसे टाइम दे दीजिए कि इतने समय तक आप अपनी रिपोर्ट दे दें। उसके बाद सारा हाउस यदि यूनेनीमस किसी बात पर सहमत हो जाये, तो उसे हम राष्ट्रपति जी को भेज सकते हैं। लेकिन आज जिस तरीके से इस विधेयक को उसी शकल में पास किया जा रहा है, उसको मैं अपोज करता हूं।

श्री जार्ज फ़र्नान्डीज़ (मुज़फ़्फ़रपुर) : सभापति महोदय, सबसे पहले मैं कहना चाहता हूं कि राष्ट्रपति जी के साथ जिस प्रकार का व्यवहार हुआ है, जिन लोगों ने ऐसा किया है, उन्हें और कुछ न करके कम से कम उनसे क्षमा याचना करनी चाहिए। राष्ट्रपति जी ने जो बातें अपनी तरफ से सरकार के सामने रखी थीं, उन पर अगर उनका कोई मतभेद है, तो उसको कहना जरूरी था। केवल यही कहना कि जैसा आपने भेजा था, वैसा ही हम वापस भेज रहे हैं, यह मैं राष्ट्रपति जी का अपमान मानता हूं। इसलिए मैंने यह कहा कि उन्हें कम से कम क्षमा याचना करनी चाहिए। ...
(व्यवधान) जहां तक ऑफिस ऑफ प्रॉफिट की बात है, तो यहां उस पर बहुत चर्चा वकीलों और सांसदों के बीच में हो चुकी है। यह माना जाता है कि ऑफिस ऑफ प्रॉफिट बनाये रखना जरूरी है।

17.49 hrs.

(Mr. Deputy Speaker in the Chair)

संसद का इस पर पहले जो विचार है, उसके दो वाक्य मैं यहां बताना चाहता हूं क्योंकि जो चर्चा हुई, उसमें ऐसी बातें सामने आईं कि केवल हमें कानून तक ही सीमित रखना है और संविधान की जो भी भावना है, वह जैसी की तैसी ही इस्तेमाल में आनी चाहिए। ऑफिस ऑफ प्रॉफिट पर संसद का पहले जो विचार था, वह यह था कि --

“The underlying object of this Constitutional provision is to secure independence of the Members of Parliament or a State Legislature, and to ensure that Parliament or the State Legislature does not contain persons who have received favours or benefits from the Executive -- the Government -- and who, subsequently, being under obligation to the Executive, might be amenable to influence[[KD57](#)].

Obviously, the provision had been made in order to eliminate or reduce the risk of conflict between duty--which is the duty of the Member of Parliament--and self-interest among the legislators.”

महोदय, यह बहुत महत्व की बात है और इस पर मैंने देखा कि सारी बहस में कुछ भी यहां निकल कर सामने नहीं आया। यहां केवल कानून के शब्दों पर ही चर्चा करना सभी का लक्ष्य रहा और कानून का जो असली अर्थ है, उसके बारे में किसी ने कोई बात नहीं कही है। हम चाहते हैं कि जब यहां पर यह चर्चा चल रही है कि इसको राष्ट्रपति के पास फिर एक बार भेजा जाए या ऐसा कुछ किया जाए जिससे कि कोई एक रास्ता निकल आए तो यह जो बात है उसे हमें अपनी आंखों के सामने रखना होगा। इसके बाहर कानून जैसा है, वैसा ही उसे अगर सामने रखकर आगे बढ़ेंगे तो वह ठीक नहीं होगा। मैं यह भी कहना चाहता हूँ कि अभी जो अनुभव है, वह यह दिखाता है कि इस ऑफिस ऑफ प्रॉफिट के तहत कितनी लूटपाट हो चुकी है। उसी को आगे भी बनाए रखने की जरूरत हो तो वह बात अलग है, लेकिन मैं यह बात ऐसे ही नहीं कह रहा हूँ, इसके पीछे सबूत हैं कि मामूली नहीं बल्कि करोड़ों रूपए कि लूट कैसे हो चुकी है, कैसे हो रही है और आगे भी इसको जारी रखने का काम ये लोग करेंगे।

इसलिए हमारा बहुत आग्रह से यह कहना है कि इस कानून को स्वीकार करना बिल्कुल संभव नहीं है। हम लोगों को इसे स्वीकार नहीं करना चाहिए। यहां पर जो सारी चर्चा हो गयी, उसमें कहीं भी आम आदमी नहीं दिखायी दिया। आम आदमी केवल बोलने तक ही है और बाकी सब काम अपने लिए ही होता है। यह आम आदमी मात्र आया ही नहीं, बल्कि इस सभा से लोगों में एक संदेश भी आज जा रहा है कि सांसद, जिनको लोगों ने चुनकर भेजा है, वे सबसे पहले अपने लिए ही बने रहते हैं और उसके बाद ही लोगों की अगर कोई समस्या वगैरह है, तो उस पर उनकी नजर जाती है[R58]।

यहां सुबह से क्या हो रहा है, आज सुबह से जो यह चर्चा हो रही है, उससे हमें देखना चाहिए कि हम इसमें कहां हैं। कुछ सांसदों ने जरूर गम्भीर चर्चा की है और मैं यह नहीं कहता कि बाकी ने नहीं की। लेकिन सदन में हो रही इस चर्चा से जो संदेश बाहर जा रहा है, उसका मतलब यह है कि हम सिर्फ अपने लिए ही यहां चर्चा कर रहे हैं और अपने को उठाने के लिए ही बात करते हैं, देखते हैं।... (व्यवधान) मैं यह नहीं कह रहा हूँ कि कोई सांसद यह कह रहा है, लेकिन यहां से जो संदेश इस चर्चा से जा रहा है, वह यही जा रहा है कि हमारा आम जनता की समस्याओं से कोई लेना-देना नहीं है, उस पर हम चर्चा न करके सिर्फ अपने हितों के लिए चर्चा कर रहे हैं।... (व्यवधान) इसका अर्थ यह है कि इस ऑफिस ऑफ प्रॉफिट के बिल से उस आम आदमी को कुछ मिलने वाला नहीं है, जो बाहर बैठा हमारी यह कार्यवाही देख रहा है।... (व्यवधान)

MR. DEPUTY-SPEAKER : Nothing will go on record except the speech of Shri George Fernandes.

*(Interruptions) ...**

श्री जॉर्ज फर्नान्डीज : हमारे देश में करोड़ों नौजवान बेरोजगार हैं। उन्हें हम क्या संदेश दे रहे हैं, यह हमें देखना होगा। हमारे देश में नक्सली आंदोलन बढ़ रहा है। उसके चलते कई लोग मारे जा रहे हैं। कई पढ़े-लिखे नौजवान रोजगार नहीं मिलने की वजह से नक्सली आंदोलन में शामिल होकर दूसरों को मारने का काम कर रहे हैं। उन्हें हम क्या संदेश भेज रहे हैं, इस पर हमें विचार करना चाहिए। अगर इस प्रकार का हम लोगों की तरफ से संदेश जाएगा तो देश को कितना नुकसान हो सकता, इस पर अगर हम चर्चा करें तो हमें मालूम होगा।

* Not Recorded.

मुझे ऐसा लग रहा है कि हम लोग यहां आम आदमी के लिए कोई चर्चा नहीं कर रहे हैं। अभी तक जितनी भी चर्चा इस बिल पर हुई है, उसमें कई लोगों ने इस बिल का विरोध किया है, जिनमें मैं भी हूँ। इसके अलावा कई सांसदों ने अपने-अपने विचार सदन में रखे हैं। मैं

मानता हूँ कि हमारे उन विचारों से गलत संदेश देने का काम हमारे द्वारा हो रहा है, जबकि हमें देश को बचाने का काम करना चाहिए।

इतना कहकर मैं अपनी बात समाप्त करता हूँ।

PROF. M. RAMADASS (PONDICHERY): Sir, on behalf of the Pattali Makkal Katchi I rise to support the Bill presented by the hon. Minister of Law and Justice. This is for two reasons. I have listened to the various debates here in the Parliament. There was more of heat than of light on this issue. Unfortunately, the Bill has been discussed in a subjective manner and not in an objective manner. Therefore, I would like to place my views from two counts.

Firstly, we support this Bill because this is within the ambit of one or two of the constitutional provisions and also the Act of 1959. Secondly, we support this because it is well within the legislative competence of this House of parliament.

The Constitution has clearly said that it can give exemption to the Office of Profit and this Bill precisely gives this exemption. Although Article 102 says that the holders of Office of Profit are to be disqualified, but there is a rider to this and it says that the Constitution or the Parliament can give certain exemptions and these exemptions are given precisely in this Act. Those who have read this Constitution (Amendment) Bill will know that four general categories of people are exempted from the Disqualification Act [\[krr59\]](#).

18.00 hrs.

One is office of Chairman, National Advisory Council. Second is office of Chairman of any statutory body. Third one is office of Chairperson of a body, whether it is public or private. Fourth is office of Chairman, President, Vice-President etc. which is not included in the Table. Therefore, it will have to be seen whether these offices deserve to be exempted or not from the purview of the office of profit or not. In my view, the offices which are exempted are not strictly the institutions of profit. You take the example of Dr. Ambedkar Foundation. What is there to make profit in that institution? You take Maulana Azad Education Foundation. Is it a profit-oriented institution? A number of statutory and non-statutory boards are included in this and all these boards are functioning for the benefit of the common man. Therefore, the question of profit does not come as far as these institutions are concerned. You take Chairman of any statutory body. These statutory bodies are not supposed to make profits or are to work for the welfare of the people. Therefore, they are not the institutions of profit and the holders of the office of Chairmen or members of these institutions - whether they are Members of Parliament or someone else - are not holders of office of profit. When the institution itself is not a profitable institution, where is the question of a person, who is holding the office, becomes a holder of office of profit?

उपाध्यक्ष महोदय : एक मिनट प्लीज। क्योंकि 6 बज चुके हैं, इसलिए अगर हाउस के मैम्बर्स एग्री करें तो जितनी देर तक यह बिल खत्म नहीं होता, इसका समय बढ़ा लें।

संसदीय कार्य मंत्री तथा सूचना और प्रसारण मंत्री (श्री प्रियरंजन दासमुंशी) : ठीक है, सर।

PROF. M. RAMADASS : Therefore, the various boards, corporations and institutions, which are exempted here, are not institutions of profit, but they are public in character in the sense that they are contributing to the development of the people. Therefore, the question of office of profit does not arise in the case of those who are going to occupy these positions. That is the interpretation that one will have to give to these developments.

The second question is whether the Members of Parliament are fit to hold these offices. Are we not fit to hold these offices? Supposing we are not fit to be officers of these institutions, you are going to appoint an IAS officer or a Joint-Secretary or somebody else who would become the Chairman. Do you mean to say by implication that a Member of Parliament is not competent, a Member of Parliament, who is a representative of the people, is not competent to look after Dr. Ambedkar Foundation? Then, somebody else, the IAS officer will occupy that position. Will he not hold an office of profit there? That means this assumption has to be stretched down to a number of persons who are going to occupy this position. Therefore, in our view, the offices of all these institutions, which have been exempted, are not offices of profit. Therefore, we accept this Bill.

Then, the President has returned this Bill to seek further wisdom from the Parliament and it is within Parliament's wisdom in recommending it again to the President. This is not the first time that the President has returned this kind of a Bill. A number of occasions have come where the Bill had been referred to Parliament and the Parliament again recommended it back to the hon. President. Therefore, it is well within the competence of this Parliament to pass this Bill.

There is no conflict of interest between the holder of office and Member's self-interest. A Member of Parliament does not come in conflict with this and therefore, from all these angles – legislative angle and constitutional angle – I support this Bill.

SHRI UDAY SINGH (PURNEA): Hon. Deputy-Speaker, Sir, notwithstanding the very enthusiastic and spirited intervention of Shri Kapil Sibal, I can only say that at the end of today, there will be ample demonstration for the second time in a few months that this Parliament can and will be used as a tool to serve the immoral interest of those in power.

रेल मंत्री (श्री लालू प्रसाद) : जनता अंग्रेजी नहीं समझती, हिंदी में बोलिये।

श्री उदय सिंह : हिंदी में भी बोलूंगा। ... (*Interruptions*) *Mahamahim Rashtrapatiji's* astute advice and constitutional propriety can take a walk. - so much for our collective wisdom, so much for this being considered the temple of democracy[S60].

Mr. Deputy-Speaker, Sir, I un-hesitatingly accept the fact that when it comes to an unabashed display of arrogance of power, the UPA Government -- which is usually referred to as the *Ulta Pulta Alliance* -- is fast setting standards that others will find impossible to emulate. It is a matter of debate whether this misplaced gumption is of their own or lent to them by these self-proclaimed rectors of probity and ethics in public life, that

is, the Left Bloc. But it must be put on record that it is the Left Bloc -- and more so persons from a particular State -- who are desperate for this Bill to become a law.

Even though my disenchantment is with this Government -- if it can be called a Government that is ready to capitulate on just about anything, yet my anger is reserved for the Left Parties. They are using their newfound power to bring down this groveling Government with an astounding lack of sensitivity and respectability. What happened to their desire to keep the legislative and judicial functions separate? God alone knows. However, I do hope that after this black deed is done, the theatrics that the Left Parties indulge in -- from the high table of public morality -- comes down a few notches.

मैं एक दोस्ताना चेतावनी कांग्रेस बंधुओं को देना चाहता हूँ। आपके साथ बहुत दिनों तक मैं आपकी पार्टी में था, इसलिए यह दोस्ताना चेतावनी है कि जो हाल लालू जी ने आपका बिहार में किया है, मिट्टी में मिला दिया है, नेस्तनाबूत कर दिया है, वही हालत ये वामपंथी लोग आपकी पूरे देश में करने वाले हैं। इससे हमें खुशी नहीं होगी, क्योंकि हम भी चाहते हैं कि हमसे मुकाबला करने वाला भी कोई हो। आज की यह नई कांग्रेस अपनी पुत्री की बात नहीं सुनती, इसी मुद्दे पर उन्होंने गुस्से से इस्तीफा दिया और इतने मतों से जीत कर आई, उनका अनुसरण कीजिए। इस्तीफा दीजिए और लोगों के पास जाइए। आप क्यों डरते हैं? श्री गुरुदास दासगुप्त को मैं बधाई देना चाहता हूँ कि कम से कम उन्होंने सच कहा कि हम इसलिए बिल पास कराना चाहते हैं ताकि हम लोग पावर में न आ जाएं। आप हमें कब तक पावर में आने से रोकोगे, वर्रा 2009 में हम पावर में अपने आप आ जाएंगे। अगर नैतिकता है, तो नैतिकता को दिखाओ और लोगों के पास जाओ।

MR. DEPUTY-SPEAKER: Please maintain silence in the House.

... (Interruptions)

SHRI UDAY SINGH : Mr. Deputy-Speaker, Sir, my Party today finds itself in a very weird situation. We had correctly opposed the Bill the first time around, and our stand is now fully vindicated. But we can hardly reflect satisfaction. We are Members of the same Parliament, and we will helplessly watch while our Constitution is subjected to rape because reason and reasonableness has yielded now to "might is right".

जब से इस सरकार पर लालू यादव जी का प्रभाव बढ़ा है, तब से विचार-विमर्श के आदान-प्रदान से ज्यादा "जिसकी लाठी उसकी की भेंस" की नीति चल रही है। यह बात गलत है। लोकतंत्र में बातचीत से बात होनी चाहिए। मैं लालू जी को याद दिलाना चाहता हूँ कि बिहार में इन्होंने एक रैली की थी। लेकिन "रैली" शब्द स्त्री लिंग है, इसलिए इसका नाम उन्हें पसंद नहीं आया और इसका नाम बदल कर "रैला" रख दिया। पूरे राज्य से लोगों को बड़ी-बड़ी लाठियों के साथ बुलाया गया। अपने अंदाज में लालू जी ने उस "रैला" में कहा था कि "तेल पिलावन, लाठी घुमावन"। लेकिन न तेल काम आया न लाठी, क्योंकि लोकतंत्र में अगर आप तर्क पर बात नहीं करेंगे, जब तक आप अपने विचारों पर नहीं रहेंगे, तो सत्ता से आप चले जाएंगे।... (व्यवधान) मेरी बात सुन लीजिए, मैं कुछ नहीं कह रहा हूँ। ... (व्यवधान) मैं सिर्फ आग्रह कर रहा हूँ, मेरी बात सुन लीजिए।

उपाध्यक्ष महोदय : शांत रहिए।

... (व्यवधान)

MR. DEPUTY-SPEAKER: Please maintain silence in the House.

... (Interruptions)

उपाध्यक्ष महोदय : आप अपनी बात समाप्त कीजिए।

SHRI UDAY SINGH : Sir, please give me two more minutes to speak. I am asking more time because I was disturbed while I was speaking. Kindly give me a couple of minutes more to speak. ... (*Interruptions*) Sir, please look at this behaviour from that side of the House. ... (*Interruptions*[ak61])

Look at this. *Mahamahim* has sent back the Bill. He has not only sent back the Bill, he has sent it back with his observations. Without taking much time, since it is your direction that I must wind up, I will quote only one sentence. He has said: "Evolution of generic comprehensive criteria which are just fair and reasonable." What does it mean? Does it not mean that the President is saying to us that the Bill sent to him is unjust, unfair and unreasonable? Can there be a more damning thing for the Government and the Government decides that it will just send the Bill back.

Now, your game is out. The game is that the President is constitutionally bound to sign the Bill the second time around. But ask yourselves: "Was this provision instituted in the Constitution for this reason - to be so blatantly misused?" The *Mahamahim* sent you the Bill back and you then say that you will take umbrage under the same Constitution that you are deciding to ...* that you will invoke article 111, and the President will be left with no option but to sign. Let us say your prayers are answered; let us say that the President gives his assent to this Bill. But what about the judicial review? Will it pass that? Have you asked yourselves that? Who then will be responsible for the constitutional crisis that is waiting to happen?

* Expunged as ordered by the Chair.

You are being guided, as Kumari Mamata Banerjee correctly said, by the Left, but their hollowness has begun to reverberate and reverberate loudly. Therefore, it would be in your interest as the Government of India to use your common sense. But what can I say when your haughtiness has locked in your common sense completely? All that I can say, *Upadhyaksh ji*, is "*Satyameva Jayate*".

उपाध्यक्ष महोदय: मिनिस्टर साहब ने बोलना है। आप बैठ जाएं।

...(व्यवधान)

SHRI PRIYA RANJAN DASMUNSI : Sir, the unparliamentary words should be removed from the record. I will bring it to your notice properly, and you may kindly check it up.

उपाध्यक्ष महोदय: अगर कुछ अनपार्लियामेंटरी होगा तो उसे देख कर निकाल दिया जाएगा।

...(व्यवधान)

श्री प्रभुनाथ सिंह (महाराजगंज, बिहार) : उपाध्यक्ष महोदय, अभी लाभ के पद से संबंधित बिल पर चर्चा चल रही है। हालांकि इस पर पहली बार सदन में चर्चा नहीं हो रही है। इसके पहले लगभग दो माह पहले सदन में चर्चा हुई थी। वह इस सदन में पास हुआ था और राज्य सभा से भी पास हुआ था। जब महामहिम राष्ट्रपति जी के पास गया तो उन्होंने इस बिल की समीक्षा करते हुए पुनर्विचार के लिए भेज दिया था। पुनर्विचार के लिए भेजने का मतलब होता है तो सदन से विचार होकर गया था तो राष्ट्रपति जी की उस पर सहमति नहीं थी। उन्होंने देखा कि इस बिल में कहीं न कहीं पारदर्शिता नहीं है, यह बिल न्यायसंगत नहीं है, बिल में समानता नहीं है जिस के कारण उन्होंने पुनः विचार के लिए भेजा। सरकार ने पुनर्विचार किया। सरकार को लगा कि हमने जो भेजा था, वही सही था। यह फिर सदन में लाए हैं जिस पर चर्चा चल रही है। इस चर्चा में सभी दलों के लोगों ने भाग लिया। हम कानून मंत्री जी से जानना चाहते हैं कि क्या उन्होंने पारदर्शिता रखी है? उन्होंने 54-55 संस्थाओं को इसमें जोड़ा है जिस में एक तिहाई, यानी 18 बंगाल के लोगों ने छक्का मारा है। जब यह बड़ी नीति और सिद्धांत की बात करते हैं तो लगता है कि भगवान राम के बाद इन्हीं का अवतार हुआ है। हम लोग जब सदन में नहीं थे तो सुनते थे कि मार्क्सवादी सदन से मिले पैसों को दल में देते हैं और किसी तरह कांख में झोला टांग कर काम चला लेते हैं लेकिन हमें सदन में दोहरा चरित्र देखने को मिला। इनका भाग और कुछ और काम और कुछ आंख के सामने देखने को मिले। 54 में से 18 पद, यानी एक तिहाई पश्चिम बंगाल और 6-7 उत्तरप्रदेश ने भी मारे हैं।

श्री मोहन सिंह : उत्तर प्रदेश बहुत बड़ा प्रदेश है।

श्री प्रभुनाथ सिंह : उत्तर प्रदेश बहुत बड़ा प्रदेश है लेकिन क्रियात्मक दृष्टिकोण से बहुत कम [cè\[R62\]](#)।

बिहार की भी दो हैं। एक अनुग्रह नारायण सिंह सेवा संस्थान की है। हम जानना चाहते हैं उसमें केन्द्र सरकार का क्या है? वह राज्य सरकार की संस्था है, वहां के कानून राज्य सरकार के बनाये हुए कानून हैं, वहां की व्यवस्था राज्य सरकार के जिम्मे है, उस पर राज्य सरकार की नियंत्रण है। लेकिन आप इसमें क्यों लाये हैं, आप इसलिए लाये हैं, क्योंकि कांग्रेस के सांसद अभी उसके चेयरमैन हैं। बड़ा अजीब लगता है श्री कपिल सिब्बल जी बोलते थे...(व्यवधान) झारखंड की राज्य सरकार इस बिल को लाई थी। एन.डी.ए. सरकार इसे लाई थी तो उस समय आप लोगों ने इसका विरोध किया था, कहा था, बिल गलत है, आज आप ला रहे हैं...(व्यवधान) हम आपके जैसे ... *

* Not Recorded.

उपाध्यक्ष महोदय : यह एक्सपंज कर दीजिए।

श्री प्रभुनाथ सिंह : उस दिन ये लोग विरोध कर रहे थे, आज हम विरोध कर रहे हैं। इसमें जनता का सवाल कहीं नहीं है।

उपाध्यक्ष महोदय : मैंने एक्सपंज कर दिया है।

श्री प्रभुनाथ सिंह ... * मैं बोलूंगा तो इनको छींटे लगेंगे, क्योंकि सच बात बड़ी कड़वी होती है।...(व्यवधान)

श्री सन्दीप दीक्षित (पूर्वी दिल्ली) : उपाध्यक्ष जी, प्रधान मंत्री जी पूरी सदन के नेता है और उनके बारे में यह ऐसी बात बोल रहे हैं...(व्यवधान)

उपाध्यक्ष महोदय : जो भी अनपार्लियामेन्ट्री होगा, वह निकाल देंगे। आप बैठ जाइये।

...(व्यवधान)

उपाध्यक्ष महोदय : जो भी अनपार्लियामैन्ट्री होगा, वह निकाल दिया जायेगा।

श्री प्रभुनाथ सिंह : उपाध्यक्ष जी, हमने अपने को भी कहा है, इसमें हम भी शामिल हैं, फिर इन्हें गुस्सा क्यों आता है। हम अपने को छोड़कर नहीं कह रहे हैं। लेकिन मैं कहना चाहता हूँ कि सदन में आज त्यागमूर्ति श्रीमती सोनिया गांधी को इस बहस में भाग लेना चाहिए था। इसका कारण यह है कि इसी सवाल पर श्रीमती सोनिया गांधी जी ने इस्तीफा दिया था और देश के लोगों ने उन्हें त्यागमूर्ति भी कहा था...(व्यवधान)
वह वहां से भारी बहुमत से जीत कर आई और फिर उसी कुर्सी पर बैठने के लिए गलत तरीके से बिल लाकर आज कानून बनाया जा रहा है...
(व्यवधान)

श्री सुरेन्द्र प्रकाश गोयल (हापुड़) : उपाध्यक्ष जी, यह क्या अनपार्लियामैन्ट्री बोल रहे हैं?

MR. DEPUTY-SPEAKER: Please sit down. This is not unparliamentary. आप बैठ जाइये।

श्री प्रभुनाथ सिंह : उपाध्यक्ष जी, हम अपनी बात समाप्त करते हैं। मैं ज्यादा बोलना नहीं चाहता, लेकिन हमें लगता है कि ... * इसके साथ ही मैं अपनी बात समाप्त करता हूँ।

* Not Recorded.

... (Interruptions)

SHRI ASADUDDIN OWAISI (HYDERABAD): Mr. Deputy-Speaker, Sir, in our democratic polity, parliamentarians and legislators decide various roles as elected representatives. ... (Interruptions)

उपाध्यक्ष महोदय : ओवेसी जी, बैठ जाइए। जरा लालू जी की बात को सुन लिया जाए।

श्री लालू प्रसाद : उपाध्यक्ष महोदय, मेरा निवेदन है और हम भी प्रभुनाथ सिंह जी से अपील करते हैं कि उन्होंने सदन की गरिमा के प्रति अपना भाग बोलते हुए पूरे सदन को कह दिया कि हम लोग ... *

उपाध्यक्ष महोदय : वह मैंने कह दिया कि मैं प्रोसीडिंग देख लूंगा।

...(व्यवधान)

उपाध्यक्ष महोदय : आप दोनों ही ऐसी बोली बोलते हैं कि हम क्या करें ?

...(व्यवधान)

श्री लालू प्रसाद : कौन बोलते हैं ? हम नहीं बोलते हैं।...(व्यवधान)

उपाध्यक्ष महोदय : जो अनपार्लियामेंट्री होगा, वह प्रोसीडिंग में से हम निकाल देंगे।

...(व्यवधान)

श्री प्रियरंजन दासमुंशी : उपाध्यक्ष महोदय, मैं हाउस में यह कहता हूँ कि लालू जी ने भारत सरकार में मंत्री रहते हुए ऐसा लफ्ज कभी भी नहीं कहा।...(व्यवधान)

उपाध्यक्ष महोदय : जो अनपार्लियामेंट्री होगा, वह हम निकाल देंगे।

श्री देवेन्द्र प्रसाद यादव (झंझारपुर) : उपाध्यक्ष महोदय, जो असंसदीय और असंगत है, वह प्रोसीडिंग में से निकाल दिया जाए।...(व्यवधान)

श्री प्रियरंजन दासमुंशी : प्रभुनाथ सिंह जी ने और जो हमारे आदरणीय सदस्य हैं, पार्टी में टोकाटोकी हो, कोई बात नहीं है लेकिन पूरे सदन में बैठे हुए हम सब लोग ... * यह कहना ठीक नहीं है।...(व्यवधान) इसे प्रोसीडिंग में से निकाल दिया जाए।...(व्यवधान)

* Not Recorded

उपाध्यक्ष महोदय : वह मैंने कह दिया कि मैं प्रोसीडिंग देख लूंगा और जो अनपार्लियामेंट्री होगा, उसे निकाल दूंगा।

...(व्यवधान)

कृषि मंत्रालय में राज्य मंत्री तथा उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय में राज्य मंत्री (श्री कांतिलाल भूरिया) : उपाध्यक्ष महोदय, प्रभुनाथ सिंह जी को पूरे सदन से माफी मांगनी चाहिए।...(व्यवधान) इनको पूरे सदन से माफी मांगनी चाहिए।...(व्यवधान)

उपाध्यक्ष महोदय : मैंने कह दिया कि मैं एक्सपंज कर दूंगा। माफी मांगने या न मांगने वाली कोई बात नहीं है।

...(व्यवधान)

उपाध्यक्ष महोदय : जो लोग बगैर मेरी परमिशन के बोलते हैं, उनकी बातें रिकार्ड में नहीं जाएंगी।

(Interruptions) ... *

MR. DEPUTY-SPEAKER: Nothing is going on record.

(Interruptions) ... *

उपाध्यक्ष महोदय : मल्होत्रा जी, आप अपने सदस्यों को बैठाइए।

...(व्यवधान)

उपाध्यक्ष महोदय : मुंशी जी भी अपने सदस्यों से रिक्वेस्ट कर रहे हैं।

...(व्यवधान)

* Not Recorded

SHRI ASADUDDIN OWAISI (HYDERABAD): Sir, the Parliamentarians and Legislators are expected to aid and advise the public institutions and trusts so as to help the institutions function effectively for the welfare and well being of the people in the country at large. ... (*Interruptions*)

Sir, I have been listening to the debates from this side. Many times, words like constitutional, unconstitutional, constitutional propriety, morality, etc. had been used. Some Members have also asked why is it that you do not have the same law for all the States. ... (*Interruptions*) Sometimes you can educate some one. But when some one does not want to be educated, you can help to increase his ignorance.

Under articles 102 and 191 of the Constitution, the legislation is being brought because Members of Parliament are Members of a Committee of a State. If any MLA wants to become a Member of the Committee of the Central Government, then exemption comes under the State Government. The Centre cannot act on behalf of the States in that case.

The second point is this. They talk that we do not have respect for the President. The Supreme Court has very clearly said in the Shamsher Singh case of 1974, the Supreme Court's four Judge case, that the President can act on his own only in two circumstances – that is, when the Government loses its majority and when there is a case of dissolution. Apart from these two circumstances, the President has to act on the advice of the

Cabinet. So, I am really surprised to hear things like President preferring to go to the Supreme Court, etc., from such learned people on this side.

About retrospective effect, the Supreme Court is very clear in Kantha Kathuria case. In this case, the Supreme Court has clearly said that in Office of Profit, exemption can be given retrospectively.

The next point is this. They talk about probity and not respecting the President, etc. When the NDA Government was in power, when Gujarat was burning, the then President, Shri K.R. Narayanan's advice was completely ignored by this side. ... (*Interruptions*) The then President's advice was completely ignored. ... (*Interruptions*) I am really surprised. Where was their morality? Where was their constitutional propriety? ... (*Interruptions*)

Lastly, if an institution like Shanti Niketan has to run efficiently and in an effective way, then you require a person of a stature of Shri Somnath Chatterjee and you do not require a person from BJP. If you want to do something for the welfare of the Muslims in West Bengal, you require Md. Salim there and you do not require any other person from that side.

I would like to conclude by saying this. बेशक हिन्दुस्तान में ...*

उपाध्यक्ष महोदय : उसको एक्सपंज कर दिया जाए।

... (ब्यवधान)

उपाध्यक्ष महोदय : मैंने उसे एक्सपंज कर दिया है।

... (ब्यवधान)

श्री अनंत गंगाराम गीते : उपाध्यक्ष महोदय, इन्हें माफी मांगनी चाहिए। ... (ब्यवधान) ये पहले माफी मांगे। ... (ब्यवधान)

MD. SALIM : Sir, this cannot be allowed.... (*Interruptions*)

उपाध्यक्ष महोदय : मैंने उसे एक्सपंज कर दिया है।

... (ब्यवधान)

18.32 hrs.

(At this stage Shrimati Kiran Maheshwari and some other Hon'ble Members came and stood on the floor near the Table)

* Expunged as ordered by the Chair

उपाध्यक्ष महोदय : मैंने उसे एक्सपंज कर दिया है[R64]।

... (व्यवधान)

MR. DEPUTY-SPEAKER: The House stands adjourned to meet again at 6.45 p.m.

18.35 hrs.

*The Lok Sabha then adjourned till forty-five minutes
past Eighteen of the Clock.*

18.45 hrs.

The Lok Sabha re-assembled at forty five minutes past Eighteen of the Clock.

(Mr. Deputy-Speaker in the Chair)

(interruptions)

MR. DEPUTY-SPEAKER: The House stands adjourned to meet again at 7.15 P.M.

19.48 hrs.

The Lok Sabha then adjourned till fifteen minutes

19.15 hrs.

The Lok Sabha re-assembled at Fifteen minutes past nineteen of the clock

(Mr. Deputy Speaker in the Chair)

THE PARLIAMENT (PREVENTION OF DISQUALIFICATION)

AMENDMENT BILL,2006 – Contd.

उपाध्यक्ष महोदय : मेरी आप सबसे एक रिक्वैस्ट है कि हमारी जो प्रोसीडिंग्स चल रही हैं, इन्हें इस वक्त सिर्फ हमारा देश ही वाच नहीं कर रहा है, देख रहा है, बल्कि सारी दुनिया इसको देख रही है। मैं यह चाहता हूँ कि हम सब जिम्मेदार लोग हैं, ऑनरेबिल मैम्बर्स हैं, सीनियर मैम्बर्स हैं, कुछ नये मैम्बर भी हैं, हमें चाहिए कि हम सब एक दूसरे का मान-सत्कार करें और एक दूसरे को सुनने की अपने में ईहम्मत पैदा करें।

जहां तक आज का सवाल है, यहां जो कुछ भी हुआ, मैं समझता हूँ, बुरा हुआ और जो कुछ भी ओवेसी जी ने कहा, ओवेसी जी ने नरेन्द्र मोदी जी के बारे में कहा, वह उनकी गलती थी, उसे मैंने एक्सपंज कर दिया है और जो अपोजीशन की तरफ से नारे लगे, उनको भी मैंने खैम कर दिया है। मैं समझता हूँ कि इन फ्यूचर ऐसा नहीं होगा।

प्रो. विजय कुमार मल्होत्रा (दक्षिण दिल्ली) : आपने, जो कुछ उन्होंने कहा, उसकी निन्दा की है, यह तो रिकार्ड में डालियो।...(व्यवधान)

उपाध्यक्ष महोदय : हां जी, की है।

श्री मानवेन्द्र सिंह जी, सिर्फ दो मिनट आपको बोलना है।

श्री मानवेन्द्र सिंह (बाड़मेर) : उपाध्यक्ष महोदय, मैं इस विधेयक के विरोध में बोलने के लिए यहां खड़ा हूँ। तीन महीने पहले इसी सदन में एन.डी.ए. ने इस विधेयक का विरोध किया था और आज भी हम इस विधेयक का विरोध कर रहे हैं। जब यह विधेयक महामहिम राष्ट्रपति जी के द्वारा हमारे पास वापस आया है और महामहिम ने उसमें कुछ सुझाव लिखे हैं, उसको मैं नहीं दोहराऊंगा। मेरे से पूर्व सभी वक्ताओं ने प्रत्येक पाइंट पर बड़े विस्तार से चर्चा की है। मैं केवल इतना ही आपके समक्ष रखना चाहता हूँ कि भारत के संविधान में, भारत में राष्ट्रपति जी का जो पद है, वह सर्वोच्च पद है और जो महामहिम द्वारा सुझाव रखे गए हैं, उन सुझावों और पाइंट्स पर सरकार ने इस विधेयक में न तो चर्चा की है, न उस पर हमें ऐसा कोई मार्गदर्शन दिया है कि उन पाइंट्स को, उन सुझावों को कुछ सोच-समझकर कि यह विधेयक थोड़ा सुधरे और जो राजनेताओं के प्रति जैता में आम धारणा है, वह धारणा थोड़ी बदले। आज इस सदन में कई ऐसे सदस्य हैं, जिनमें से किसी पर तो कोई...*

उपाध्यक्ष महोदय : असंसदीय शब्दों को एक्सपंज किया जाये।

श्री मानवेन्द्र सिंह : इसके साथ-साथ हम ऐसा विधेयक पारित करना चाहते हैं, केवल चुने गए सांसदों के लाभ के लिए, यह लालच की जो सीमा है, उसके द्वारा हम आम जैता को क्या संदेश दे रहे हैं? आम के पद के लिए जो लालच है, उसको हम स्वीकार करते हैं। ...(व्यवधान)
एक वामपंथी सदस्य ने कहा कि BJP is misleading the President.

महोदय, मैं महामहिम राष्ट्रपति जी को सन् 1992 से जानता हूँ। जब वे रक्षा मंत्रालय में रक्षा मंत्री के वैज्ञानिक सलाहकार के पद पर थे। उस समय मैं पत्रकार था, तब से मैं महामहिम को व्यक्तिगत रूप से जानता हूँ और मैं आपको इतना आश्वस्त करना चाहता हूँ कि महामहिम राष्ट्रपति जी को कोई मिस लीड नहीं कर सकता। ...(व्यवधान)

MR. DEPUTY-SPEAKER: Please conclude.

श्री मानवेन्द्र सिंह : राष्ट्रपति जी ने जो सुझाव भेजे हैं, अपने विवेक से, देश की चिंता के लिए, अपनी देश भक्ति की भावना से भेजे हैं। उन सुझावों को हमने ठुकराया है। मैं समझता हूँ कि यह इस सदन की गरिमा को पड़ेवर नहीं करता। पिछले सप्ताह और आज सवेरे भी कई सदस्यों द्वारा भारत में जो किसानों के बीच और सेना में अनेक अँत्महत्याओं की घटनाएं हो रही हैं, उस पर चर्चा हुयी थी।

MR. DEPUTY-SPEAKER: This is not related to this subject.

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- Expunged as ordered by the Chair

श्री मानवेन्द्र सिंह : महोदय, मैं कहना चाहता हूँ कि अँत्महत्या की चर्चा में भारत में कभी किसी ने राजनेता को अँत्महत्या करते नहीं सुना। राजनेता अँत्महत्या क्यों नहीं करते, क्योंकि हम उनको लाभ का पद दे रहे हैं। वे जैत भी करते हैं, तो भी हम उनको लाभ का पद देते हैं। राजनेताओं में अँत्महत्या क्यों नहीं होती? अँत्महत्या सेना में हो रही है, किसानों के बीच हो रही है, राजनेता क्यों नहीं अँत्महत्या करते? ...(व्यवधान) क्योंकि हम सब उन्हें लाभ का पद देने के लिए यहां एकत्रित हुए हैं। आज यह देश की हालत है। ...(व्यवधान)

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Mr. Deputy-Speaker, Sir, I am very grateful to you particularly for bringing calm in the House. I am also grateful to the Leader of Opposition as he was kind enough to persuade his hon. Members to transact business.

We have a very great responsibility as this Parliament has a great responsibility. The hon. Leader of Opposition will ractic that while the President sent us this message, under article 111, it is our very humble duty and very important duty to give due consideration to this message. We are thoroughly disappointed that while talking so vehemently about the President and his good qualities, none of the Members from the Opposition had said anything with regard to these points. I would have loved if somebody had pointed out that Parliament has this power to amend this law. On this, no point has been mentioned. My friend, Shri Kapil Sibal, spoke about article 102. The same article which prohibits the Members from holding an office of profit also permits both the Houses of Parliament to exempt them. I would, without taking much time of this House, point out as to when exemptions were given. The first one was done in 1950. By an Act of 1950, certain offices were exempted. The second one was done in 1951 [r65].

Several offices were exempted prospectively as well as retrospectively by an Act of Parliament in 1951. This Act was to declare certain Offices of Profit and not to disqualify the holders of these Offices. You will see what were the kind of Chairman and Members of Fiscal Commission, Chairman and Members of Film Enquiry Committee, Chairman and Officers of Railway Local Advisory Committee, Chairman of Committee appointed by the Government of India and in the State, Assistant Government pleader prospectively. Even in the case of small offices where there was a doubt, these were exempted in 1951. Then, there was a much bigger law that was passed in 1954. It was also to exempt several Members of this nature, which are enumerated in this Bill. So, this fallacy in the minds of hon. Members that the House is doing something wrong must be removed once for all. This is a House representing the will of the people and whatever the Constitution permits, there should be no hesitation in doing so because you will be abdicating from your responsibility as a Member of Parliament, if what right has been conferred on you. You say that we should not exercise that right. It is a different thing that politically you differ. It is because I have heard there are two limbs of your argument. One limb is that 45 Members will be benefited and you, being sitting in the Opposition, do not like it. I know it very well that it is to your dislike. But that does not mean that you bring any other thing besides your own political considerations.

So, I am only trying to convince you that these laws are competent and the Parliament has powers to enact. I will simply remind you of the decisions because you say of the interpretation of the Constitution.

This was done in a famous case of Rajstahan, Shrimati Kanta Kathuria's case and the citation is AIR 1970 Supreme Court 694. I will not read much from these judgements. I will read two things which should remove all apprehensions from your mind. It was the case which was argued by a very eminent counsel, Shri M.C. Chagla who later on became a Minister. He raised all these points that it cannot be done retrospectively and five judges, out of which one was Justice Hidayatullah, Justice Sikri, Justice A.N. Ray and three others later

become Chief Justices of India. One of them later became the Vice-President of India. What was stressed? I am reading paragraph 39.

“Great stress was laid on the word ‘declared’ in Article 191(1) (a), but we are unable to imply – mark my words now, I emphasise – to imply any limitation on the powers of the Legislature from this word. Declaration can be made effective as from an earlier date.”

Then, they continue and I read:

“The apprehension that it may not be a healthy practice.”

The logic of your argument is that it is not a very healthy practice that you exempt so many people at a time. Again it said:-

“The apprehension that it may not be a healthy practice and this power might be abused in a particular case are again no grounds for limiting the powers of the State Legislatures.”

The five judges of the Supreme Court has interpreted and none of your Members who spoke from that side said that this can be distinguished or there is another ruling of the Supreme Court better than this. I wish some of the learned Members should have raised this point and enlightened me on this.

Some jokes were cut about us. We do not mind these languages which were used. These are part of parliamentary life. We are matured enough to understand that in anguish and anger we always speak wrong. Therefore, I am not at all particular of what Shri Prabhu Nath Singh has said. I could say so many things about his own character, but I do not want to say anything. He is my friend and I have full record about his character. Some of the hon. Members who have bad records come to me for help. I do not mind it because we are all colleagues. But then, again, I am saying the Supreme Court has given this interpretation of the Constitution in Article 102 and Article 191 which relates to State Legislatures. This is a *quasi*-Federal structure in which the Parliament as well as the State Legislatures have been given powers to decide about the offices which are held by MPs and MLAs.

Rightly, all those legislatures which have exempted their MLAs and have done the right thing. That is the right way because the Constitution gives them power. If they have done it any other way, it would have been illegal. So, when the hon. President apprehends - and once we reply – the implication of exemption of office retrospectively, in my humble way, I say that this is the answer. We have brought on record that this is the power of Parliament without any limitations. Retrospective legislation is always permitted in many matters. It is not something unusual. So, after this ruling of the Supreme Court, there should be no apprehension in anybody’s mind that we are persuading you to do a wrong thing. What are we doing?

Let me again emphasise on two or three points, if you just bear with me for five minutes. Several Members of Parliament have grievances that they were not being heard when they were expelled from Parliament. Is it not a fact? Regarding expulsion, disqualification, probity in public life, I think it is our duty – and duty of all the Members of Parliament on this side or that side – that we should discuss it dispassionately.

But the difficulty is political beings as we are, we get divided. None of these issues has been addressed. We level personal charges. I do not like this. This should not be there. ... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY (PURI): The hon. Minister has already enlightened this House. We must concentrate on Article 111. But you are discussing about the merits. You are not discussing about the merits and demerits.... (*Interruptions*)

SHRI H.R. BHARDWAJ: Mr. Deputy-Speaker, Sir, I have started with merits. I never controverted to this that retrospective legislation is permitted by the Supreme Court. I am giving very short replies. I do not want to waste the time of the House.

About the generic description, I submit it that this is a quasi-federal structure. We cannot encroach upon the power of the State Legislatures. They create some offices. They are given to the Members of the Legislative Assemblies. In case they want to exempt them, the power vests in the State Legislatures, not in Parliament. But when an hon. Member of Parliament occupies any such office, the power has to be exercised by this House, by the Parliament. This is the scheme of the Constitution. There is no other way to do it.

Shri Anant Kumar said one thing. He is my dear friend. He is always a smiling person. But, sometimes, he misses it. He was the petitioner against Shrimati Sonia Gandhi. Shri Anant Kumar, it was not proper on your part to have argued the case against her in this House because this is the real conflict of interest. When you take up somebody's cause outside the House, you cannot canvass it here. So, this was improper. You had been a Minister. So, you should not have done this. So, I again remind you two or three things.

SHRI ANANTH KUMAR (BANGALORE SOUTH): If you kindly yield, I will make my point clear. I filed a petition against Shrimati Sonia Gandhi in my capacity as the General Secretary of the Bharatiya Janata Party. Today, I just mentioned to show how the office of profit and the exemption to office of profit is being misused by the ruling party. Therefore, I am well within my right to raise that in this august House.

SHRI H.R. HARDWAJ: According to my little knowledge of Parliamentary law, anybody who raises an issue either in a court of law or anywhere, he cannot do it, more particularly, you are a party to it as a petitioner. It is always better not to do it, not to influence the debate because it is your own cause. You may not agree. It is up to you. But whatever little I know, it is not done.

There are only two methods to solve this.... (*Interruptions*) To solve this, there are only two methods. One is what is being practiced in England. The other one is what we are exercising. At least, I have the advantage of Shri Advani, the Leader of Opposition being here. You will remember that in 42nd amendment, the British pattern was invoked in India saying that you must prepare a comprehensive list of the offices of profit so that Members of Parliament could know that these offices are prohibited offices and they should not occupy them. But, later on, in the 44th amendment, that procedure was done away with [\[R66\]](#).

This present article 102 of the Constitution was provided by the 44th Amendment. Under this amendment you can exempt people rather than giving a comprehensive list. There is no third method in the Constitution.

Sir, some persons have said that we should amend this and that. But any definition which will have to be provided for office of profit will not be in this Parliament (Prevention of Disqualification) Act. It is an Act passed by Parliament. It will have to be essentially within the ambit of article 102 of the Constitution.

I was a Minister when defection was defined. I discussed thoroughly whether we can provide it in the Representation of People Act, but the legal advice throughout was that 'no, this is a constitutional disqualification and you will have to amend article 102 itself' and, therefore, we put 10th Schedule in article 102.

Now also some suggestions have been made. But they must consider that we would have to amend the Constitution if we want to have any definition or any other method of exempting hon. Members of Parliament. But I would like to humbly submit to both sides that we should not lose this power. There are very valuable Members of Parliament on both sides of the House. There was one Member of Parliament from the Opposition side who was dealing with linking of rivers. He was a very enlightened Member of Parliament. I forgot his name now. ... (*Interruptions*) Yes, he is Shri Suresh Prabhu. He is a Chartered Account. He has got a fantastic knowledge of that subject and if he is made Chairman of board or authority, do you think he will earn profit out of it? Many Members of Parliament have knowledge and many MPs can spare time in their constituencies after attending Parliament Session for six months. We should not put fetters on our own feet. Let us keep it open for this august House and as and when we feel anything about it, there should be a debate. Who says that there should be no debate? This is the purpose of the message of the hon. President.

Sir, I would like to say one more thing to our friends in the Opposition, with your kind permission. As Members of this House you should not attribute motives to any messages sent by the President. Just like the British Queen is sending messages to Parliament, our hon. President also deals with the Houses of Parliament by sending messages. In the matter of executive actions, he can always refer back the decisions of the Cabinet for reconsideration. Those of you who have been Ministers in the Government will vouchsafe that the President has been sending various Cabinet decisions for reconsideration. When we say, 'we reiterate the Cabinet decision', do you think that we do not show respect to the President? When your Government was in power, I am aware of several decisions that you had reiterated. So, when we reiterate the decision of the Cabinet, the President is duty-bound to accept that. Do you think that the Prime Minister then does not show respect to the President? This is the constitutional scheme. In the legislative process, the scheme under article 111 of the Constitution. If the Bill is passed and then the President applies his mind as an elder by statesman, father figure and Head of the State, he certainly has the right to say, 'I am withholding my assent and I am sending my message' and we have received that message in both Houses which says, 'you reconsider it'. If the Government decides to pass the Bill again, the Law Minister has the duty to apply the law. ... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Mr. Deputy-Speaker, Sir, I am on a point of order.

SHRI H.R. BHARDWAJ: Sir, I am not yielding.

SHRI BRAJA KISHORE TRIPATHY : I am on a point of order. It does not matter whether you yield or not. This is a point of order.

MR. DEPUTY-SPEAKER: Under what rule are you raising a point of order?

SHRI BRAJA KISHORE TRIPATHY : I am raising this point of order under rule 376 and I am drawing your attention to the provision under article 111 of the Constitution. ... (*Interruptions*)

SHRI H.R. BHARDWAJ: I am not yielding.

SHRI BRAJA KISHORE TRIPATHY : Please listen to me.

MR. DEPUTY-SPEAKER: Under what rule are you raising your point of order?

SHRI BRAJA KISHORE TRIPATHY : I am raising my point of order under rule 376. I am drawing your attention to the provision under article 111 of the Constitution. This is a violation of the provision under article 111 of the Constitution. This is an obligatory provision[\[k67\]](#).

The constitutional requirement is categorical and the use of 'shall' made it deliberately obligatory for the House to reconsider the Bill. The use of 'shall' in the provisions of article 111 is obligatory. What are we doing? We are rejecting the advice of the President... (*Interruptions*)

MR. DEPUTY-SPEAKER: There is no point of order. Please take your seat.

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : I am reading it for the benefit of the House... (*Interruptions*) Sir, the provision is obligatory... (*Interruptions*)

MR. DEPUTY-SPEAKER: There is no point of order.

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Sir, this is violation of the provisions of article 111... (*Interruptions*)

MR. DEPUTY-SPEAKER: I am sorry. There is no point of order.

... (*Interruptions*)

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): Sir, this is the first kind of misinterpretation of article 111 and to destroy D.Basu's constitutional law book... (*Interruptions*) He should not do so... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Sir, what is the meaning of 'shall'? The hon. Minister should convince us... (*Interruptions*) It is obligatory... (*Interruptions*)

उपाध्यक्ष महोदय : अब आप मंत्री जी को जवाब देने दें।

... (*Interruptions*)

MR. DEPUTY-SPEAKER: There is no point of order, please.

... (*Interruptions*)

SHRI PRIYA RANJAN DASMUNSI: The use of 'shall' is that he shall not repeat a wrong interpretation of article 111... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Sir, I am drawing your attention... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down now.

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Sir, 'shall' is obligatory. You must consider the advice of the hon. President. It cannot be rejected... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down now.

SHRI BRAJA KISHORE TRIPATHY : Sir, I am reading the provisions of article 111... (*Interruptions*) "The House shall reconsider..."... (*Interruptions*)

उपाध्यक्ष महोदय : रीकंसिडर ही कर रहे हैं।

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : What does it mean?... (*Interruptions*)

SHRI GURUDAS DASGUPTA : Sir, this is a misinterpretation. The Parliament is not obliged to accept the advice of the Rashtrapatiji... (*Interruptions*)

MR. DEPUTY-SPEAKER: Shri Dasgupta, please sit down.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Shri Tripathy, I have read it and there is no point of order in that.

... (*Interruptions*)

SHRI H.R. BHARDWAJ: Sir, I am very sorry, firstly, there was a lot of emphasis of showing respect to the hon. President and I am very much aggrieved the way they are taking so unseriously the views of the President... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : Sir, they may not be serious, but we are very serious... (*Interruptions*)

SHRI H.R. BHARDWAJ: Sir, I caution the hon. Member and I personally feel that we should have patience. The mover should have his right to speak. After hearing for six hours all the hon. Members, at least, give me this courtesy to reply 5-10 points. Therefore, I will say that the very concept of legislative proposal being processed, the primacy vests in this House. Can you deny the Parliament its power to pass its verdict? What I have done is that there was a message received by the hon. Speaker, there was a message received in the Office of the Chairman, Rajya Sabha, and in obedience to the message, the message was laid on the Table of the House. The President wanted both Houses to reconsider. Reconsideration means, Deputy Speaker was kind enough to what points we have to debate as he just now gave us the guidance, these are the points we have to highlight and explain.

Our conduct should have been that we should have harped on those points and not on acrimony. It will lead you to nowhere. Therefore, we should focus on that and understand what is the aim and intention of the hon. President of India. We should say or show by our statements that we are well within our rights. This Parliament is well within its rights to say: "Yes, Mr. President, we have gone into your points; we have shown due consideration, due deliberation; but we feel that Parliament has this power and we exempt these offices of profit under power vested in us." That is where the Government has come now. That is where I have come before this House to take a verdict from you. The verdict would be on the debate which has taken place, and the performance of the Opposition is very poor there. Therefore, that is where... *(Interruptions)*

You can shout at me. I am a very fragile person; you can shout at me.

MR. DEPUTY-SPEAKER: Silence, please.

... *(Interruptions)*

SHRI H.R. BHARDWAJ: Today, so much time and energy is being applied because the President wants us to reconsider it. While reconsidering, we must reconsider the three points. We have tried to explain to you that, firstly, we are well within our powers under article 102 to exempt offices; this Parliament has power. By Kanta Kathuria's case I have enumerated that we are well within our powers to pass them retrospectively and give them this benefit. I do not want to go in politics; we will have enough of it outside. I submit, Sir, that this House is well within its power to consider it and pass it again. Thank you, sir... *(Interruptions)*

MR. DEPUTY-SPEAKER: Please sit down.

... *(Interruptions)*

MR. DEPUTY-SPEAKER: Nothing is going on record.

(Interruptions) ... (Not recorded)

SHRI GURUDAS DASGUPTA : I seek your clarification. Please listen to us.

MR. DEPUTY-SPEAKER: Dasguptaji, nothing is going on record. Please sit down.

*(Interruptions) ...**

SHRI H.R. BHARDWAJ: Sir, with your permission, I would like to speak for one minute more.

Some Members wanted to know whether the Government will go afresh into this. I assure this hon. House that we have noted all the points, and the Government will be very much ready to appoint a Committee of both Houses to go again and see whether a proper definition or amendment to the present dispensation can be made. We will be very happy to do so. It is because, as I said, this relates to disqualification of hon. Members, we will apply our mind and we will seek cooperation from your side to resolve the issue.... *(Interruptions)*



*Not Recorded.

MR. DEPUTY-SPEAKER: The question is:

“That the Bill further to amend the Parliament (Prevention of Disqualification) Act, 1959, as passed again by Rajya Sabha, be taken into consideration.”

The motion was adopted.

MR. DEPUTY-SPEAKER: The House will now take up clause-by-clause consideration of the Bill. Shrimati Maneka Gandhi to move amendment no. 4.

New Clause 1A

SHRIMATI MANEKA GANDHI (PILIBHIT): I beg to move:

Page 1, *after* line 4, *insert*,-

‘1A. In section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as the Principal Act) after clause (a), the following clause shall be inserted, namely:-

(aa) “Office of Profit” means any office under the Central Government or the State Government the holder of which may, by virtue of the office, have the occasion of exercising executive, financial and ancillary powers, notwithstanding the fact that the holder of such an office is either drawing no allowance or an allowance which does not exceed the daily allowance admissible to a Member of Parliament or a Member of the State Legislatures;’. (4)

I have moved this amendment and I would like to explain why. The Law Minister has given a very strong argument that we as Parliamentarians are entitled to proceed, no matter what the President's advice is. That may be so but that does not make it morally right. You have actually said that this has happened before in 1951, in 1950; these offices of profit have been exempted. That is true.[r68]

But they were offices of profit that were exempted. They had uniformity. They were fair. They were reasonable. I would like to know whether there is any comparison between what happened then and what is happening today. Today, is it the offices that are being exempted or is it the people who occupy the offices are being exempted? What has the President said? He has not said: "Do not exempt." He has said that if you are going to make one State Fisheries Corporation exempt ... (*Interruptions*)

SHRI TARIT BARAN TOPDAR (BARRACKPORE): How can she make a long speech? ... (*Interruptions*)

MR. DEPUTY SPEAKER: She can move her amendment and speak. Please sit down.

... (*Interruptions*)

SHRIMATI MANEKA GANDHI : Sir, what has the President said? The President has said that instead of making just one Fisheries Corporation exempt, why not make them all exempt? After all, all the film boards were made exempt. If one Howrah Bridge Corporation has to be exempt, make all the Bridge Corporations exempt. That is what the President has said. ... (*Interruptions*) No, there is a Howrah Bridge Corporation also. What he has said is this. When the Hooghly Development Board or the UP Development Board has exempt, why not make them all exempt? ... (*Interruptions*) If this was the spirit of the exemption, we would be happy to support you whether retrospectively or prospectively. ... (*Interruptions*)

MR. DEPUTY SPEAKER: What is your amendment now?

SHRIMATI MANEKA GANDHI : There is malice in this. ... (*Interruptions*)

MR. DEPUTY SPEAKER: Please sit down.

SHRIMATI MANEKA GANDHI : Every Member of Parliament has spoken about whether it is proper to do it or not. Has one Member of Parliament from this side said: "Yes, we need these exemptions for only one reason that a Member of Parliament is much better equipped and much better at handling a Corporation or an office of profit"? Nobody has said that. ... (*Interruptions*) Is there no Fisheries Department in West Bengal to manage Fisheries Development? Why should a Member of Parliament sit on a Fisheries Board or on a Development Board or something that a State can handle with greater facility? Has any Member of Parliament said: "No, a Member of Parliament is a much cleverer, much better and much more experienced to handle an office, what is now an office of profit"? Not one person has said it. Therefore, it is not based on ability. ... (*Interruptions*)

The last thing that I want to say is this. I agree with the hon. Law Minister who I have known for many years. Yes, we are in power to pass it. Of course, we are. But tomorrow, if we pass a Bill – which is what Shri Manvendra Singh was trying to say – exempting for instance murder or robbery, would that make it morally right? ... (*Interruptions*) It is not morally right just because we exempt it. Therefore, I have asked for several amendments, which, of course, everybody must have read. But I just want to finish by reading out a portion of my amendment. ... (*Interruptions*)

MR. DEPUTY SPEAKER : You speak only on your amendment no. 4.

... (*Interruptions*)

SHRI TARIT BARAN TOPDAR : Sir, I am on a point of order under Rule 86. ... (*Interruptions*)

MR. DEPUTY SPEAKER: What is your point of order?

... (*Interruptions*)

SHRIMATI MANEKA GANDHI : These petitions are pending in the court. What the exemptions that the NDA have asked for ... (*Interruptions*) You are from fisheries. I am so sorry. I did not know that. ... (*Interruptions*)

MR. DEPUTY SPEAKER: Madam, wait a minute. Let me hear what his point of order is.

... (*Interruptions*[\[lh69\]](#))

SHRI TARIT BARAN TOPDAR : It is clearly provided that for moving an amendment, she should have given a prior notice. Only one single question can be allowed by you. But you have allowed much more time to her... (*Interruptions*)

MR. DEPUTY-SPEAKER: She can speak on her amendment.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Topdar, please sit down. She can speak on her amendment.

... (*Interruptions*)

SHRI TARIT BARAN TOPDAR : You can give her special permission for this.... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Topdar, please sit down.

... (*Interruptions*)

SHRIMATI MANEKA GANDHI : I am so sorry if I have touched a wrong nerve in discussing fisheries. I just took it as an illustration... (*Interruptions*) Those fifty-five categories are equally unfair and unreasonable... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please move your amendment No. 4.

SHRIMATI MANEKA GANDHI : Sir, I move my amendment, which specifically in all its four clauses, is asking for basically that let the petitions be heard in the court, and if you are not scared and if you believe what you have done is morally right, I am sure, the court will uphold them... (*Interruptions*)

SHRI TARIT BARAN TOPDAR : Sir, you have to hear me... (*Interruptions*)

MR. DEPUTY-SPEAKER: Mr. Topdar, please sit down.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing should be recorded.

(*Interruptions*) ... *

* Not Recorded.

MR. DEPUTY-SPEAKER: Mr. Topdar, please take your seat.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: She can speak while moving her amendment.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: I shall now put amendment No. 4, moved by Shrimati Maneka Gandhi to the vote of the House.

The amendment was put and negatived.

Clause 2 Amendment of Section 3

MR. DEPUTY-SPEAKER: Mr. Bachi Singh Rawat, are you moving your Amendment?

श्री बची सिंह रावत 'बचदा' (अल्मोड़ा) : उपाध्यक्ष महोदय, मेरे द्वारा संशोधन 1 से 3 तक प्रस्तावित है, जो क्लॉज दो, तीन और चार के संबंध में है। मैं इतना ही सबमिट कर रहा हूँ कि क्लॉज चार बिल के भीतर कहीं डिफाई नहीं है। मूल अधिनियम में पांच धाराएं हैं। जो चौथी क्लॉज है, उसे पास करने के बाद कहां मूल अधिनियम में इनस्टॉल करेंगे? बिल की स्कीम डिफ़ैक्टिव है। आपको पुनः एक अमेंडमेंट लेकर आना पड़ेगा।

इसी के साथ मैं निवेदन करना चाहता हूँ कि मेनका गांधी जी ने संतो गंगवार की ओर से जो क्रमांक पांच से सात संशोधन मूव किए हैं, वे आइडेंटिकल हैं, मिलते-जुलते हैं। मौजूदा विधेयक के क्रमांक एक से तीन रिट्रॉस्पैक्टिव इफैक्ट को समाप्त करने से संबंधित हैं जिसे मैं मूव नहीं कर रहा हूँ। कृपया उन्हें निरस्त कर दें।

MR. DEPUTY-SPEAKER: Now, Shrimati Maneka Gandhi to move amendment No. 5

SHRIMATI MANEKA GANDHI : Sir, I beg to move:

Page 2, lines 2 and 3,-

omit “and shall be deemed to have been inserted with
effect from the 4th day of April, 1959”. (5)

MR. DEPUTY-SPEAKER: I put amendment No. 5 moved by Shrimati Maneka Gandhi to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: Kumari Mamata Banerjee, are you moving your amendment No.8?

KUMARI MAMATA BANERJEE : Yes, Sir. I am moving my amendment No. 8 because to the message of the hon. President, the Government has not shown any respect. The Government has *in toto* rejected it. That is why I am moving this amendment.

Sir, I beg to move:

Page 2, *omit* lines 4 to 6. (8)

MR. DEPUTY-SPEAKER: I shall now put amendment No. 8 moved by Kumari Mamata Banerjee to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 2 stand part of the Bill. ”

The motion was adopted.

Clause 2 was added to the Bill.

20.00 hrs.

Clause 3 – Insertion of new Table

MR. DEPUTY-SPEAKER: Shri Bachi Singh Rawat to move amendment No.2.

श्री बची सिंह रावत 'बचदा- : उपाध्यक्ष महोदय, अमैन्डमैन्ट नम्बर दो में मूव नहीं कर रहा हूं।

MR. DEPUTY-SPEAKER: Shrimati Maneka Gandhi to move amendment No.6.

SHRIMATI MANEKA GANDHI : I beg to move:

Page 2, *omit* line 15. (6)

SHRI SANTOSH GANGWAR : Sir, I want to say only one sentence.

MR. DEPUTY-SPEAKER: No, only the mover has the right.

SHRI SANTOSH GANGWAR : My name is there. I am moving (*Interruptions*)

DR. M. JAGANNATH (NAGAR KURNOOL): Mr. Deputy-Speaker, Sir, my name is there.

MR. DEPUTY-SPEAKER: No, please sit down. You have no right.

DR. M. JAGANNATH : Since I am not allowed to move my amendment, I am walking out. ... (*Interruptions*)

20.01 hrs.

(At this stage, Dr. M. Jagannath left the House.)

श्री संतो गंगवार : उपाध्यक्ष महोदय, मैं भी इसमें हूं। मैं केवल इतना कहना चाहता हूं... (*व्यवधान*) मैं इतना कहना चाहता हूं कि महामहिम राष्ट्रपति जी ने जिस भावना के तहत इस बिल को वापस भेजा था और लगता भी है कि सदन में हमने उसके ऊपर चर्चा भी नहीं की। हमने इसमें जो बात लिखी है, वैसे माननीय कानून मंत्री जी ने कहा है, इसमें मेरा आग्रह यह है कि “The Central Government shall within one year from the commencement of this Act, enact a comprehensive legislation based on criteria which are just, fair and reasonable that can be applied.” मेरा कहना है कि इसके ऊपर कायम रहें और महामहिम राष्ट्रपति जी के प्रति अपना आभार व्यक्त करें और उनसे क्षमायाचना करें।

MR. DEPUTY-SPEAKER: I shall put amendment No.6 moved by Shrimati Maneka Gandhi to clause 3 to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: Kumari Mamata Banerjee to move amendment No.9.

KUMARI MAMATA BANERJEE : I beg to move:

Page 2, for line 15, substitute,-

“and shall be deemed to have been inserted with effect from the date the Bill receives the assent of the President.” (9)

पोलिटिक्स के लिए राष्ट्रपति जी ने जो मैसेज दिया है, उसे टोटली रिजैक्ट किया जा रहा है। I think it is a historic blunder. That is why I am moving this amendment. There should not be any retrospective effect.

MR. DEPUTY-SPEAKER: I shall put amendment No.9 moved by Kumari Mamata Banerjee to clause 3 to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 3 stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 – Special provisions as to validation and other matters

MR. DEPUTY-SPEAKER: Shri Bachi Singh Rawat to move amendment No.3

श्री बची सिंह रावत ‘बचदा- : मेरा अमैन्डमेंट 3 क्लॉज 4 के संबंध में है। मेरा सबमिशन इतना ही था कि आपको इसका दोबारा अमैन्डमेंट लेकर आना पड़ेगा, क्योंकि आप जो स्कीम लेकर आये हैं, उसमें कहीं नहीं है कि आफ्टर सैक्शन-5 जायेगा या सैक्शन 4 में अमैन्डमेंट करेंगे। यह डिफैक्टिव है।

उपाध्यक्ष महोदय : आप इसे मूव क्यों नहीं करते?

श्री संतो गंगवार : मैं इसे मूव नहीं कर रहा हूं।

MR. DEPUTY-SPEAKER: Shrimati Maneka Gandhi, are you interested in moving amendment No.7?

SHRIMATI MANEKA GANDHI : Yes, Sir. I beg to move:

Page 4, for lines 14 to 26, substitute,-

“4(1) Notwithstanding anything contained in any other law, if at the time of commencement of this Act, any petition or reference is pending before any court or other authority in respect of any of the office mentioned in section 3, that office shall not be deemed to have been exempted from disqualification under this Act till such time the petition or the reference is disposed of in its favour:

Provided that every petition or reference pending before any court or other authority for any office under section 3 shall be disposed of within sixty days of its filing.

(2) The Central Government shall within one year from the commencement of this Act, enact a comprehensive legislation based on criteria which are just, fair and reasonable that can be applied across all States and Union Territories in a clear and transparent manner.” (7)

MR. DEPUTY-SPEAKER: I shall put amendment No.7 moved by Shrimati Maneka Gandhi to clause 4 to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 4 stand part of the Bill.”

The motion was adopted.

Clause 4 was added to the Bill.

Clause 1, the Enacting Formula and the long Title were added to the Bill[\[m70\]](#).

SHRI L.K. ADVANI : Mr. Deputy-Speaker, Sir, I am extremely grateful to you for permitting me to say a few words. ... (*Interruptions*)

उपाध्यक्ष महोदय : आडवाणी जी, अगर पहले इसे मूव करा लें तो ठीक होगा।

SHRI H.R. BHARDWAJ: Sir, I beg to move :

“That the Bill be passed.”

MR. DEPUTY-SPEAKER : Motion moved :

“That the Bill be passed.”

श्री लाल कृष्ण आडवाणी : उपाध्यक्ष महोदय, मैं आपका आभारी हूँ कि थर्ड रीडिंग में आपने मुझे कुछ कहने का अवसर दिया। यह बहुत ही अच्छा संयोग है कि इन्हीं दिनों में जब संसद इस विषय पर विचार कर रही है, संसद के प्रमुख अधिकारी सैक्रेटरी जनरल आचारी जी ने इस विषय को लेकर एक ग्रन्थ लिखा है और ऑफिस ऑफ प्रॉफिट पर ही लिखा है तथा इसकी प्रस्तावना स्वयं लोक सभा अध्यक्ष ने लिखी है और मैंने जितने भाषण सुने, उन भाषणों में इस बात पर बल दिया गया कि संविधान में ही यह अधिकार संसद को दिया गया है कि किस पद को ऑफिस ऑफ प्रॉफिट की परिधि में से बाहर रखें। इसमें कोई संदेह नहीं है कि यह अधिकार दिया गया है। आखिरकार आर्टिकल 102 (1ए) जिसके अधीन यह ऑफिस ऑफ प्रॉफिट का मामला आता है, उसके दो हिस्से हैं।

“A person shall be disqualified for being chosen as and for being a Member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder.”

Firstly, that he holds an office of profit under the Government of India or under any State, he will be disqualified; but other than an office declared by Parliament by law not to disqualify its holder. So, it is the office which is declared not the person holding the office. This was a point that was made by Shrimati Maneka Gandhi earlier. I am not referring to that.

I would like to go into the fact that while courts which interpret the Constitution have given so many judgements as to what exactly is an office of profit and even our Joint Committee on Office of Profit has gone into those judgements, made its own interpretations etc. But no one, not even the Law Minister, not even Shri Kapil Sibal referred to the fact that the Supreme Court has emphasised that the power of Parliament to exempt any particular office is not unlimited.

I concede that Parliament has the power to declare certain offices of profit that they will not disqualify their holders. It goes on to say, I quote Mr. Achary :

“However, the question which arises here is whether this power is unlimited and Parliament and the Legislatures can declare any and every office not to disqualify its holder. It seems that this power is not unlimited.”

आप चाहते थे और खासकर आपने जब अपना बाकी व्याख्यान दिया, इसमें यह कहा कि किसी ने यह बताया नहीं। आप मानकर यह चले थे कि सब अधिकार पूरे हैं और आपने डा. कथूरिया का जो जजमेंट है, उसे कोट किया।

I would like to quote the Supreme Court in Bhagwan Das versus State of Haryana in which the Court has said that a situation where the court has to intervene to strike down a law passed by the Legislature in this regard if the court feels that the exempting power under Article 102 or Article 191 is not exercised reasonably and with due restraint^[krr71].

So, the court can strike it down. मैं आपको कहना चाहता हूँ, मुझे जो आशंका है और इस सदन के नेता जब हमको मिले थे, हमारे कई नेता साथी थे, तब भी हमने कहा कि हमको आशंका है कि जिस प्रकार से हम इसको पास करने जा रहे हैं, और जब मैं आज सुनता रहा, और जब मैंने इसका स्टेटमेंट ऑफ ऑब्जेक्ट्स एंड रीज़न्स देखा कि क्यों हम यह बिल पास कर रहे हैं The Statement of Objects and Reasons say :

“... because of the likely vacation of seats in both the Houses of Parliament which will necessitate the holding of bye-elections to fill up the resultant vacancies. This will be a wasteful expenditure and will enforce unnecessary financial burden upon the nation.”

It is because of Constitution, because of Article 102. And if there is an expenditure because of that, is that going to compel the court to say that it is justified? On top of that, we had so many hon. Members also, not many but at least we had Shri Gurudas Dasgupta very eloquently propounding that this is necessary in order to protect the stability of the Government. If for that purpose, we are going to pass a law of this kind, the court will certainly examine whether it is a reasonable situation in which the Parliament has adopted this law. Therefore, we felt apprehensive and we said this to the Leader of the House that one can say that the President has ...
(Interruptions)

SHRI GURUDAS DASGUPTA : I have said another words also. Along with stability, I said 'to stop the gamble for power to be done by the people who are hungry for power'.

SHRI L.K. ADVANI : Even the Government today can recommend to the President that the House be dissolved. Let us have fresh elections. Is it a gamble for power? It is a question of a situation. In this situation, you feel that unless these 45, 35 or 30 Members are not protected, there will not be stability. Only because of that, it is a gamble for power. In fact, when we discussed the matter with him, we said that we are keen to see that nothing is destabilised. We would like to see that a situation can be brought about where we frame a law in a manner in which we should have to face the minimum bye-elections, but at the same time, see that for all time to come, this does not become an arbitrary exercise, which as many of my colleagues say, reduce our stature also in the minds of the people. This is happening today. यह हो रहा है कि अपने को बचाने के लिए ये कुछ भी पास कर सकते हैं, मेजॉरिटी है तो कुछ भी पास कर लो। I do not agree with that. Therefore, I am not revealing any secret that my colleague, who was Shri Bhardwaj's predecessor and Law Minister in our Government, suggested to the Government that you give us only 48 hours and we will prepare a draft before you which will ensure that your objectives are served and at the same time, we are not subjected to a situation where I for one feel it is an embarrassment.

It is for the first time in 58 years that the President is invoking Article 111. It is an embarrassment to Parliament. It is not like return of something by the President to the Cabinet. That is under Article 74 and it is under Article 111. Under Article 74, when we make any recommendation like we say that President's Rule be imposed on such and such State, he sends it back saying that you reconsider it. The Government gives him an Ordinance and he sends it back saying please reconsider. It means whether it should be done by an Ordinance or you go before the Parliament. That is a different matter.

Here, for the first time in the history of Parliament – I have been in Parliament for more than 30 years – Lok Sabha is having to consider a Bill that it had passed earlier, the second time. If tomorrow, God forbid, the court makes some pronouncement, the court takes cognizance of the fact that it is not an office which has been exempted; it is a person who has been protected, it is an MP who has been protected and on that ground alone, strikes down the Act, we will have to consider it once again[S72].

It was an embarrassment for us to get it from the President, and for the President to tell us that : "I want it to be just and fair." He used all these words. Would it make us happy if tomorrow we again get it from the

Supreme Court or any judiciary?

Therefore, I would appeal to the Government, even at this late stage, to reconsider this matter. After all, in the last two years, five major judgements of the Supreme Court or judicial admonitions were administered to this Government. It has had a very un-enviable record in so far as court pronouncements are concerned. It started with the reservation made in Andhra; going on to the reservations in the AMU; going on to the issue of President's rule in Bihar; going on to the IMDT Act; and only lately regarding the Chairmanship of the AIIMS. This is the record of the Government. Why are you inviting yet another to be administered by the judiciary? Please do not do it. I plead with you not to do it. Take some more time to consider it.

Let us reconsider it by sitting together to see how we can minimise the kind of apprehension that you have in your mind. On the one hand, we can take cognizance of the views expressed by the President, and at the same time see that the law that we frame is fully within the ambit of the Constitution. There is no difficulty in doing this. I think that this should be possible, and feasible. We had made our own suggestions, and at that point of time I had a feeling that the Government was inclined to get it passed. Otherwise, there was ample time to think over this issue. In fact, this particular advise of the President came two months back. In these two months, all these things could have been done, and this Bill could have been properly passed by 31 July itself. It is unfortunate that this has not happened. Therefore, I have served this kind of warning to you.

SHRI KAPIL SIBAL: Sir, I should be given a chance to speak after the hon. Law Minister because he named me also. ... (*Interruptions*)

SHRI H.R. BHARDWAJ: Sir, I have listened to the Leader of the Opposition very carefully. He has not said anything new except express his anxiety that we should not pass this Bill. This is the common voice. ... (*Interruptions*) Now, the Members who spoke from the other side ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please maintain silence in the House.

... (*Interruptions*)

SHRI H.R. BHARDWAJ: Sir, I would like to tell him a few things because I am very well prepared on the legal position of this issue. I had given the ruling about retrospective legislation. What is the interpretation with regard to the question whether a person holds an office of profit? It is really the Shibu Soren's case at page 2,596 paragraph 35. It states that :

“The question whether a person holds an office of profit is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions.

While 'strict and narrow construction' may not be adopted which may have the effect of 'shutting off many prominent and other eligible persons to contest, the elections' but at the same time 'in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points'.

The whole issue is that we have a tradition in Britain as to who are not exempted in it. I cannot exempt any defence personnel, and I cannot exempt ... (*Interruptions*)

SHRI L.K. ADVANI : Apart from the judgement that I have cited, I wanted to quote the comment made by our Secretary-General in the last paragraph of this particular book. It says :

“The judgement of the Supreme Court in the Bhagwan Das case introduces a certain check on the exercise of power by the legislatures under article 102 and article 191 of the Constitution[\[ak73\]](#) ...”

“It seems that there is a carefully maintained balance in the scheme of articles 102 (1) (a) as well as 191 (1) (a) where under holding an office of profit entails disqualification, but when the Legislature steps in and declares that certain offices do not disqualify the holders. With the judiciary hinting at its intervention on the ground of unreasonable exercise of the above power by the Legislature, the stage is set for judicial scrutiny of the law, amendment passed by the Legislature under articles 102 and 191 of the Constitution.”

I plead with you, I plead with the Government not to disturb this balance and not to land the Parliament as a whole in a situation in which we have to have some admonition from the Supreme Court.

SHRI H.R. BHARDWAJ: I am very sorry that a very matured leader like him is talking about the Supreme Court. The Supreme Court will come into the picture after this is passed, and the President assents to it. We are discussing the President's Message. My duty is to assist you, and that we are not doing anything illegal, or which is unconstitutional. I do not think this is a proper atmosphere -- interruptions, threat of the President being annoyed with us, and now, the third threat is that judiciary will strike it down. All laws are subject to judicial reviews. Even Constitutional Amendments are subject to judicial review.

What has been cited by the hon. Leader of the Opposition is that we cannot exempt every office lock, stock and barrel. For example, the British Parliament gives a cue. They have said: “You cannot exempt officers of Defence Forces, officers of the Police, and Justice Department.” There are broad guidelines as to which offices have not to be exempted, and that is the tradition. In India also, we do not exempt those offices, like the Defence Personnel, Department of Police, Government officers, and Secretaries to the Government. They cannot become Members of Parliament.

Who says that these are unbridled powers? We have to see if those institutions in which the Members are holding offices are unrealistic, and that is where the courts do judge. Who denies it? That is where I started. There are various pronouncements of the court that really decide whether an office of profit has been exempted properly or whether a Member stands disqualified without an exemption. All these issues are matters of judicial scrutiny.

When laws passed by the Parliament, they are subject to the power of judicial review. Does it mean, under this illusion, that something will happen and something will be struck down, Parliament should become defunct. I do not subscribe to this kind of philosophy of a matured leader like him? Parliament should do its duty. I reject this submission of the hon. Leader of the Opposition.

THE MINISTER OF SCIENCE AND TECHNOLOGY AND MINISTER OF OCEAN DEVELOPMENT (SHRI KAPIL SIBAL): Mr. Deputy-Speaker, Sir, since I was named by the Leader of the Opposition, I may be permitted to clarify. I will not take much time of the House. The hon. Leader of the Opposition named me. ...
(Interruptions)

SHRI HARIN PATHAK (AHMEDABAD): Sir, when the Third Reading is over, how can he speak? ...
(Interruptions)

MR. DEPUTY-SPEAKER: The question is:

“That the Bill be passed.”

Those in favour will please say ‘Aye’.

SEVERAL HON. MEMBERS: ‘Aye’

MR. DEPUTY-SPEAKER: Those against will please say ‘No’.

SOME HON. MEMBERS: ‘No’

MR. DEPUTY-SPEAKER: I think, the ‘Ayes’ have it. The ‘Ayes’ have it.

SOME HON. MEMBERS: The ‘Noes’ have it. We want a division.

KUMARI MAMATA BANERJEE : Sir, we want a division.

MR. DEPUTY-SPEAKER: Let the lobbies be cleared[R74].

... (Interruptions)

MR. DEPUTY-SPEAKER: I will put the motion to vote.

... (Interruptions)

SHRI BRAJA KISHORE TRIPATHY: I am on a point of order. ... (Interruptions) I am drawing the attention to Rule 371 of the Rules of Procedure. ... (Interruptions) This is objectionable..... (Interruptions) on the ground of pecuniary or direct interest in the matter of voting of some of Members in the division of the House is challenged on the ground of personal, pecuniary or direct interest... ... (Interruptions)

उपाध्यक्ष महोदय : त्रिपाठी जी, मैं आपको वोटिंग के बाद सुनूंगा।

... (व्यवधान)

MR. DEPUTY-SPEAKER: Shri Tripathy, this is not the proper time to challenge. The vote of a certain Member can be challenged immediately after the division is over and after the result is announced by the Speaker.

... (Interruptions)

उपाध्यक्ष महोदय : मैं वोटिंग के बाद और एनाउंसमेंट के पहले आपकी बात सुनूंगा। पहले आप बैठ तो जायें। आप पहले मेरी बात सुन लें।

...(व्यवधान)

SHRI BRAJA KISHORE TRIPATHY : How can they participate? ... (Interruptions)

उपाध्यक्ष महोदय : प्रोसीजर यह है कि वोटिंग के बाद और एनाउंसमेंट के पहले आपकी बात सुनूंगा, उसके पहले नहीं।

...(व्यवधान)

श्री बृज किशोर त्रिपाठी : उसमें क्या होगा?... (व्यवधान)

उपाध्यक्ष महोदय : आप जरा सुन लें।

...(व्यवधान)

MR. DEPUTY-SPEAKER: Now, the Lobbies have been cleared.

... (Interruptions)

MR. DEPUTY-SPEAKER: The question is:

“That the Bill further to amend the Parliament (Prevention of Disqualification) Act, 1959, as passed again by Rajya Sabha, be passed.”

The Lok Sabha divided:

Ayes

Time 20.55 hrs.

Aaron Rashid, Shri J.M.

Acharia, Shri Basu Deb

Agarwal, Dr. Dharendra

Ahamed, Shri E.

Ahmad, Dr. Shakeel

Aiyar, Shri Mani Shankar
Ajaya Kumar, Shri S.

Ansari, Shri Furkan

* Antulay, Shri A.R.

* Appadurai, Shri M.

* Athithan Dhanuskodi, Shri R.

‘Baba’, Shri K.C. Singh

Bansal, Shri Pawan Kumar

Barad, Shri Jashubhai Dhanabhai

Barku, Shri Shingada Damodar

Barman, Prof. Basudeb

Barq, Dr. Shafiqur Rahman

Basu, Shri Anil

Bauri, Shrimati Susmta

Baxla, Shri Joachim

Bellarminb, Shri A.V.

Voted through slip.

Bhadana, Shri Avtar Singh

Bhakta, Shri Manoranjan

Bhuria, Shri Kanti Lal

* Bishnoi, Shri Kuldeep

Bose, Shri Subrata

Budholia, Shri Rajnarayan

Chakraborty, Dr. Sujan

Chakraborty, Shri Ajoy

Chakraborty, Shri Swadesh

Chaliha, Shri Kirip

Chander Kumar, Prof.

Chandrappan, Shri C.K.

Chatterjee, Shri Santasri
Chaudhary, Dr. Tushar A.
Chaure, Shri Bapu Hari
Chavda, Shri Harisinh
Chidambaram, Shri P.
Chinta Mohan, Dr.
Chitthan, Shri N.S.V.
Choudhury, Shri Bansagopal

Chowdhury, Shri Adhir

Chowdhary, Shrimati Renuka

* Churchill, Shri Alemao

Das, Dr. Alakesh

* Voted through slip

Das, Shri Khagen

Dasgupta, Shri Gurudas

Dasmunsi, Shri Priya Ranjan

Delkar, Shri Mohan S.

Deo, Shri V. Kishore Chandra S.

Deora, Shri Milind

Dev, Shri Sontosh Mohan

Dikshit, Shri Sandeep

Dome, Dr. Ram Chandra

Dubey, Shri Chandra Shekhar

* Dutt, Shrimati Priya

Elangovan, Shri E.V.K.S.

Engti, Shri Biren Singh

Fanthome, Shri Francis

Fatmi, Shri M A.A.

* Gadakh, Shri Tukaram Gangadhar

Gaikwad, Shri Eknath Mahadeo

Gamang, Shri Giridhar

Gandhi, Shri Rahul

Ganesan, Shri L.

Gavit, Shri Manikrao Hodlya
Gill, Shri Atma Singh
Gogoi, Shri Dip
Goyal, Shri Surendra Prakash
Harsha Kumar, Shri G.V.

* Voted through slip
* Hooda, Shri Deepender Singh

Hossain, Shri Abdul Mannan
Hussain, Shri Anwar

Jagadeesan, Shrimati Subbulakshmi
Jai Prakash, Shri
Jha, Shri Raghunath
Jogaiah, Shri Hari Rama
Kader Mohideen, Prof. K.M.
Kalmadi, Shri Suresh
Kamal Nath, Shri
Kamat, Shri Gurudas
Karunakaran, Shri P.
Kaur, Shrimati Preneet
Kerketta, Shrimati Sushila
Khan, Shri Sunil
Kharventhan, Shri S.K.

Konyak, Shri W. Wangyuh

Krishna, Shri Vijoy
Krishnadas, Shri N.N.
Krishnan, Dr. C.
Krishnaswamy, Shri A.
Kumar, Shrimati Meira
Kumari Selja
Kuppusami, Shri C.
* Voted through slip

Kurup, Adv. Suresh

* Kyndiah, Shri P.R.

Lahiri, Shri Samik

Lalu Prasad, Shri

Madam, Shri Vikrambhai Arjanbhai

* Mahato, Shri Sunil Kumar

Mahabir Prasad, Shri

Maken, Shri Ajay

Mandal, Shri Sanat Kumar

Mandlik, Shri S.D.

Mane, Shrimati Nivedita

* * Manjhi, Shri Rajesh Kumar

Manoj, Dr. K.S.

McLeod, Ms. Ingrid

Mediyam, Dr. Babu Rao

Meena, Shri Namo Narain

Mehta, Shri Alok Kumar

Meinya, Dr. Thokchom

Mishra, Dr. Rajesh

Mistry, Shri Madhusudan

Mohan, Shri P.

Mollah, Shri Hannan

Mufti, Ms. Mehbooba

Voted through slip

** Corrected from Noes to Ayes through slip

Muniyappa, Shri K.H.

Murmu, Shri Hemlal

Murmu, Shri Rupchand

Muttemwar, Shri Vilas

Nambadan, Shri Lonappan

Nandy, Shri Amitava

Narbula, Shri D.

Nikhil Kumar, Shri

Nizamuddin, Shri G.

Ola, Shri Sis Ram

Oraon, Dr. Rameshwar

Owaisi, Shri Asaduddin

Pal, Shri Rupchand

Pallani Shamy, Shri K.C.

Panabaka Lakshmi, Shrimati

Panda, Shri Prabodh

Paswan, Shri Ram Vilas

Paswan, Shri Virchandra

Patel, Shri Dahyabhai Vallabhbhai

Patel, Shri Dinsha

Patel, Shri Jivabhai A.

Patel, Shri Kishanbhai V.

Pathak, Shri Brajesh

Patil, Shri Balasaheb Vikhe

Patil, Shri Laxmanrao

* Patil, Shri Pratik P.

Patil, Shri Shriniwas Dadasaheb

Patil, Shrimati Suryakanta

Pawar, Shri Sharad

Pilot, Shri Sachin

* Pingle, Shri Devidas

Ponnuswamy, Shri E.

Prabhu, Shri R.

Pradhan, Shri Prasanta

Prasad, Shri Harikewal

Purandeswari, Shrimati D.

Radhakrishnan, Shri Varkala

Raja, Shri A.
Rajagopal, Shri L.
Rajendran, Shri P.
Rajenthiran, Shrimati M.S.K. Bhavani
Raju, Shri M.M. Pallam
* Ramadass, Prof. M.
Ramakrishna, Shri Badiga
* Rana, Shri Gurjeet Singh
Rana, Shri Rabinder Kumar
Rao, Shri D. Vittal
Rao, Shri K.S.
Rao, Shri Rayapati Sambasiva
Rathwa, Shri Naranbhai

* Voted through slip

* Ravindran, Shri Pannian
Reddy, Shri Anantha Venkatarami

Reddy, Shri M. Raja Mohan

Reddy, Shri Madhusudan
Reddy, Shri N. Janardhana
Reddy, Shri S. Jaipal
Reddy, Shri S.P.Y.
Regupathy, Shri S.
Riyan, Shri Bajju Ban
Sahay, Shri Subodh Kant
Sahu, Shri Chandra Sekhar
Sai Prathap, Shri A.
Sajjan Kumar, Shri
Salim, Md.

* Sangma, Shri P.A.
Sar, Shri Nikhilananda
Saradgi, Shri Iqbal Ahmed
Saroj, Shri Tufani
Scindia, Shri Jyotiraditya M.
Seal, Shri Sudhangshu
Seeramesh, Shrimati Tejaswini

Selvi, Shrimati V. Radhika
Sen, Shrimati Minati
Senthil, Dr. R.

* Voted through slip

Seth, Shri Lakshman
Shailendra Kumar, Shri
Shakya, Shri Raghuraj Singh
Shandil, Dr. Col. (Retd.) Dhani Ram
Sharma, Dr. Arvind

Sharma, Shri Madan Lal
Sibal, Shri Kapil
Sikdar, Shrimati Jyotirmoyee
Singh, Chaudhary Bijendra
Singh, Chaudhary Lal
Singh, Dr. Akhilesh Prasad
Singh, Dr. Raghuvansh Prasad
Singh, Kunwar Manvendra
Singh, Rao Inderjit
Singh, Shri Ganesh Prasad
Singh, Shri Kirti Vardhan
Singh, Shri Mohan
Singh, Shri Sita Ram

* Singh, Shri Suraj
Singh, Shrimati Kanti
Singh, Shrimati Pratibha
Sippiparai, Shri Ravichandran
Soren, Shri Shibu
Subba, Shri M.K.
Subbarayan , Shri K.
Sugavanam, Shri E.G.
Sujatha, Shrimati C.S.

Voted through slip

Suklabaidya, Shri Lalit Mohan
Sumbrui, Shri Bagun
Surendran, Shri Chengara

Suryawanshi, Shri Narsingrao H.
Thangkabalu, Shri K.V.
Thummar, Shri V. K.
Tirath, Shrimati Krishna
Topdar, Shri Tarit Baran
Tytler, Shri Jagdish
Vaghela, Shri Shankar Sinh
Velu, Shri R
Venkatapathy, Shri K.
Venkatswamy, Shri G.
Venugopal, Shri D.
Verma, Shri Rajesh
Verma, Shri Ravi Prakash
Verma, Shrimati Usha
Vijayan Shri A.K.S.
Vundavalli, Shri Aruna Kumar
Yadav, Dr. Karan Singh
Yadav, Prof. Ram Gopal
Yadav, Shri Anirudh Prasad alias Sadhu

Yadav, Shri Chandra Pal Singh

Yadav, Shri Devendra Prasad
Yadav, Shri Giridhari
Yadav, Shri Jay Prakash Narayan
Yadav, Shri M .Anjan Kumar

Yadav, Shri Mitrasen

Yadav, Shri Paras Nath

Noes

Time : 20.56

Acharya, Shri Prasanna
Advani, Shri L.K.
Ahir, Shri Hansraj G.
Ananth Kumar, Shri
Argal, Shri Ashok

'Bachda', Shri Bachi Singh Rawat
Bais, Shri Ramesh
Banerjee, Kumari Mamata
Bhargava, Shri Girdhari Lal
* Borkataky, Shri Narayan Chandra
Choubey, Shri Lal Muni
Chowdhary, Shri Pankaj

Deo, Shri Bikram Keshari
* Deshmukh, Shri Subhash Sureshchandra
Dhotre, Shri Sanjay
Fernandes, Shri George
Gadhavi, Shri P.S.
Gandhi, Shrimati Maneka
Gangwar, Shri Santosh
Gao, Shri Tapir
Gawali, Shrimati Bhavana Pundlikrao
Geete, Shri Anant Gangaram
Gehlot, Shri Thawar Chand
Gohain, Shri Rajen
Gudhe, Shri Anant

* Voted through slip

Joshi, Shri Kailash
Joshi, Shri Pralhad
Kanodia, Shri Mahesh
* Kathiria, Dr. Vallabhbhai
Khanduri, Maj. Gen. (Retd.) B. C.
Khanna, Shri Vinod
Koshal, Shri Raghuveer Singh
Kriplani, Shri Srichand
Kulaste, Shri Faggan Singh
* Kunnur, Shri Manjunath
Laxman, Shrimati Susheela Bangaru
Mahajan, Shrimati Sumitra
Maheshwari, Shrimati Kiran

Mahtab, Shri B

Majhi, Shri Parsuram

Malhotra, Prof. Vijay Kumar

* * Manjhi, Shri Rajesh Kumar

Meghwal, Shri Kailash

Mohale, Shri Punnu Lal

Mohite, Shri Subodh

Naik, Shri Shripad Yesso

Nayak, Shri Ananta

Nayak, Shrimati Archana

Oram, Shri Jua

* Voted through slip

** Corrected from Noes to Ayes through slip

Panda, Shri Brahmananda

Patasani, Dr. Prasanna Kumar

Pateriya, Shrimati Neeta

Pathak, Shri Harin

Patil, Shrimati Rupatai D.

Potai, Shri Sohan

Prabhu, Shri Suresh Prabhakar

Rana, Shri Kashiram

Rana, Shri Raju

Reddy, Shri G. Karunakara

Renge Patil, Shri Tukaram Ganpat Rao

Rijju, Shri Kiren

Sangwan, Shri Kishan Singh

* Sethi, Shri Arjun

Shivajirao, Shri Adhalrao Patil

Shukla, Shrimati Karuna

Singh Deo, Shrimati Sangeeta Kumari

Singh, Kunwar Manvendra

Singh, Shri Dushyant

* Singh, Shri Lakshman

* Singh, Shri Sugrib

Singh, Shri Uday

Singh, Shri Vijayendra Pal
Solanki, Shri Bhupendrasinh
Swain, Shri Kharabela

* Voted through slip

Thakkar, Smt. Jayaben B. (Vadodara)
* Tripathy, Shri Braja Kishore (Puri)
Varma, Shri Ratilal Kalidas (Dhandhuka)
Vasava, Shri Mansukhbhai D. (Bharuch)
Verma, Shri Bhanu Pratap Singh (Jalaun)
Virendra Kumar, Shri (Sagar)

* Voted through slip

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : They cannot participate. There is a Rule of law. ... (*Interruptions*) We will let you out. ... (*Interruptions*) We will not walk out. ... (*Interruptions*) See what is happening. ... (*Interruptions*) This is the rule. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: मैं इनको सुन रहा हूँ। Please listen to him.

... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : I am challenging the voting of some of the Members who have participated and voted. ... (*Interruptions*) They have pecuniary interest in this Bill. ... (*Interruptions*) They should not participate. This is the provision of law in the Rules of Procedure. They have voted in favour of the Bill. Hence, I am challenging their voting. They cannot participate. ... (*Interruptions*)

उपाध्यक्ष महोदय : मैंने आपको सुन लिया, अब इनको सुन लूँ।[m75]

... (*Interruptions*)

उपाध्यक्ष महोदय : आप इनकी बात को सुन लीजिए।

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PAWAN KUMAR BANSAL): Sir, this is a fallacious interpretation. There are very many matters for which the Members of Parliament are called upon to vote. For instance, it is the Parliament which gives the right to pass the law regarding their own salaries and allowances. The Members pass that law here. This provision is intended for an entirely different purpose. ... (*Interruptions*)

SHRI BRAJA KISHORE TRIPATHY : But it has not been challenged. ... (*Interruptions*)

SHRI PAWAN KUMAR BANSAL: The Parliament takes up some matters in which some individual Members may be concerned. Therefore, this provision is barring that, and not a general law of that nature. Article 102 does not place any such embargo there. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Please listen to me now. Shri Tripathy, your notice is general in nature. You have not specified the name of any person or any individual Member. पहली बात मैंने यह कहा कि यह जनरल है, यह स्पेसिफिक नहीं है।

Secondly, it is for the individual Member, as a matter of propriety, to decide whether by casting their votes on a particular question, their judgement is likely to be influenced or deflected from straight line of a public policy by any personal pecuniary benefit, they may derive.

Therefore, it is their will to cast their votes. It is their own will.

... (*Interruptions*)

MR. DEPUTY-SPEAKER: Subject to correction* , the result of the Division is:

Ayes : 230

Noes: 71

The motion was adopted.

*Ayes : 230 + S/Shri P.R. Kyndiah, Kuldeep Bishnoi, Gurjeet Singh Rana, A.R. Antulay, Alemao Churchill, Tukaram Gangadhar Gadakh, Devidas Pingle, Prof.. M. Ramadass, S/Shri Sunil Kumar Mahato, Suraj Singh, Rajesh Kumar Manjhi, M. Appadurai, Pannian Ravindran, Deepender Singh Hooda, Shrimati Priya Dutt, S/Shri P.A. Sangma and Pratik P. Patil = 247.

*Noes : S/Shri Arjun Sethi, Braja Kishore Tripathy, Brahmananda Panda, Sugrib Singh, Lakshman Singh, Dr. Vallabhbbhai Kathiria, S/Shri Subhash Sureshchandra Deshmukh, Narayan Chandra Borkataky, Manjunath Kunnar = 80 – Division No. 268 Shri Rajesh Kumar Manjhi corrected from Noes to Ayes = 79

MR. DEPUTY-SPEAKER: The House stands adjourned to meet again tomorrow, the 1st August 2006 at 11 a.m.