

an>

Title: Combined discussion on Statutory Resolution regarding Disapproval Of Enemy Property (Amendment And Validation) Ordinance, 2016 And Enemy Property (Amendment And Validation) Bill, 2016

HON. SPEAKER: Now, Item Nos. 19 and 20 will be taken up together. Shri N.K. Premachandran.

SHRI N.K. PREMACHANDRAN (KOLLAM): I beg to move:

"That this House disapproves of the Enemy Property (Amendment and Validation) Ordinance, 2016 (No. 1 of 2016) promulgated by the President on 7 January, 2016."

THE MINISTER OF HOME AFFAIRS (SHRI RAJNATH SINGH): I beg to move:

"That the Bill further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, be taken into consideration."

HON. SPEAKER: Mr. Minister, if you want to say something, you can. We have already taken it up for consideration. The Bill is there. You have already introduced the Bill. Now, if you want to say something, you can.

SHRI RAJNATH SINGH: Madam, after the speeches of the Members, I would like to speak.

HON. SPEAKER: After the discussion, you will say something. So, Mr. N.K. Premachandran.

SHRI N.K. PREMACHANDRAN: Thank you, Madam Speaker. Madam, it is a well-established Constitutional position that the Ordinance legislation under article 123 can be promulgated only in extraordinary circumstances. It is absolutely an independent legislation being brought out by the Executive under article 123. Further, I would also like to point out that by virtue of article 123, that provision does not speak about the replacement of an Ordinance. But, by precedence and conventions of the House, so many Ordinances have been replaced by the Bills. I do also accept that fact. The Ordinance route of legislation is not good for a healthy democracy. NDA Government has come to power on the slogan of growth, development and good governance. Continuous promulgation of Ordinances is not a sign for good governance.

15.15 hours (Shri Arjun Charan Sethi *in the Chair*)

I would like to quote His Excellency, the President of India. The President of India, in his Address to the nation through the Joint Session of the Parliament, has said that the Parliament is the supreme will of the people and democracy demands debate and discussion, not disruption or obstruction. These are the words spoken by His Excellency, the President of India. If that be the case, then, why is the Government, unilaterally, making a law and promulgating it as an Ordinance without having any valid discussion or without having any debate on this issue? That is not in consonance with the Address given by His Excellency, the President of India.

Also the President of India has reminded the Government several times that Ordinance shall be promulgated only in extraordinary and compelling circumstances. I do accept that in order to meet some extraordinary, urgent, emergent situations, we have to opt for the Ordinance route of legislation. But I would like to know whether any exigency or contingency is existing in this Bill. No, exigency or emergency is there. This Bill seeks to amend Enemy Property Act of 1968 and also another Act, Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Government of India has designated some properties belonging to the nationals of China and Pakistan. In the years 1962, 1965 and 1975, it was designated as enemy properties. At that time enemies were also designated. The 1961 Act was enacted by this Parliament to have the continued vesting of enemy property in the custodian of enemy property for India, that is, under the Defence Rules of 1962. Due to various judgments of various courts in India, one finds it difficult to sustain the enemy property by the custodian. In order to remove this, this amendment is being brought before the House for our consideration.

In the year 2010, at the time of UPA led Government, also an Ordinance was promulgated. Subsequently, since the Ordinance was not replaced by an Act of Parliament, that Ordinance lapsed. Subsequently, on 22nd July, 2010, in Lok Sabha, a similar Bill was introduced. That Bill was withdrawn and again a new Bill is introduced. While going through the course of action from 2010 onwards, first time an Ordinance was promulgated in 2010, the Government, which was not interested in replacing that Ordinance by legislation, had introduced a Bill. That Bill was withdrawn. The then Government directed to have the modifications and subsequently a Bill with modifications was brought to the House.

Unfortunately, the UPA Government could make that legislation due to so many reasons. I do not know the reasons. You may kindly see that that Bill has been referred to the Standing Committee also. The Standing Committee has scrutinised the Bill. To my knowledge, a Standing Committee's Report is also there. It is subject to correction. Let the hon. Minister clarify it. That was in the 15th Lok Sabha. Now, a new Bill is before this House so as to replace an already promulgated Ordinance. There are a lot of drastic and fundamental changes in these two Bills, the 2010 Bill and the 2016 Bill. So many changes have been made through legislation in UPA and in NDA regimes in respect of Enemy Property Act. According to this Bill, the enemy property would continue to vest in the custodian irrespective of the death or extinction of the enemy. I fully support the Bill. But

there are so many things which are creating confusion. I have no hesitation in supporting the Bill but the point is that even if the enemy dies or enemy's firm disappears, enemy property will be there.

My second point is regarding the definition. 'enemy' and 'enemy subject' shall include legal heirs and successors of an enemy whether he is a citizen of our country or not. Whenever a property has been declared as an enemy property, that will be an enemy property for ever. There is an impact and consequence of this error. It is a very crucial Amendment because "enemy" and "enemy subject" shall include the legal heir and successor of an enemy whether he is a citizen of India or other country.

Suppose, he is a foreign citizen and his citizenship has changed into an Indian citizenship, even then he is not entitled to claim any right over this "enemy property." So, the law of succession is not applicable to an "enemy property". So, anybody who is succeeding or the legal heir, is not entitled to claim this property. That is my third point.

Now, I come to my fourth point. No "enemy" or "enemy firm" has the right to transfer an "enemy property". I have also gone through the Bill of 2010. There was a provision in that Bill about certain items that you cannot have the right for transfer of property if it is an "enemy property". But here, in this Bill of 2016, by this Government, all other such transactions have been totally restricted and are being banned by making this new Amendment. It is also giving more powers to the custodian. The Custodian of Enemy Property for India can deal with the property. With the permission of the Government of India, he can do what he likes even for the transfer of property by doing some changes in the property.

So, the point which I would like to highlight is that Ordinance and the Bill of 2010 are entirely different from that of the new Bill.

As regards the Bill of 2010, there is no change in the definition of "enemy" and "enemy property". This much power is not given to the Custodian of Enemy Property for India. Also, about the Transfer of Property Right, a limited right was given there. So, if we see the Bill of 2010 and the Bill of 2016, there are drastic fundamental changes in respect of "enemy property".

My humble suggestion to the Government is that this Bill may kindly be referred to the Standing Committee to have a close scrutiny of this Bill especially the provisions relating to "enemy" and "enemy property". The law of succession is also required to be seen minutely. Even if he is a citizen of India, that succession is not applicable.

So, Sir, these are crucial Amendments, which are being brought to the House. Therefore, my humble submission and suggestion are that let this Bill be referred to the Standing Committee so that we can have a close scrutiny over it.

Sir, regarding the retrospective effect also, both the Bill of 2010 and the Bill of 2016 are having retrospective effect from 1968 onwards. My humble point, which I would like to make is that the Government is a continuous process, be it NDA or UPA or whatever. Why is there this much of lapse on the part of the Government? Now, they want to have retrospective effect from 1968 onwards. The Bill was under the consideration of the Government in the year 2010. They have issued an Ordinance. A Bill was introduced and that Bill was withdrawn. Subsequently, a fresh Bill with amended provisions was introduced in the House, and referred to the Standing Committee. They could not make the legislation.

Sir, this Government has come to power two years ago. But no fresh Bill was introduced in the House. After the last Session, an Ordinance has been issued. So, my point is, what is the urgency or exigency? If there is any urgency or exigency or situation necessitating the promulgation of an Ordinance, the Government has to explain and clarify it.

The hon. Minister has given a statement stating reasons for issuance of the Ordinance. That is because of judgments by the courts. When did such judgments come? The judgments by the courts came very early. So, from 2010 to 2016, all these six years, the Government was sleeping over these issues and, now, on a fine day morning, they are coming with an ordinance/legislation, which means they are taking away the right of the Parliament to have a fresh look into the legislation.

First, it has to come to the Parliament. We are opposing the Ordinance route of legislation. His Excellency, the President of India last time also had stated the same thing that 'Parliament should be respected and Parliament is the sanctum sanctorum of democracy.' That was the observation made by His Excellency, the hon. President during his Address last year. This year also, he has stated that 'it is the supreme will of the people. So, the Parliament should be respected.'

So, my point is that there is no urgency and there is no exigency so as to attract article 123 of the Constitution. So, I move the Statutory Resolution to disapprove the Ordinance and I support the Bill in its content form. But for the fairness more closer scrutiny of the Bill is required I am having a little doubt about the legality of the Bill also.

Regarding citizenship and law of succession, let it have a close scrutiny by the Standing Committee so that more expert wisdom will come out and we can have a harmless and fruitful Bill which we can pass and enact in this House.

With these words, I support the Bill but I oppose the Ordinance route of bringing this legislation.

With these words, I conclude. Thank you very much.

HON. CHAIRPERSON : Motions moved:

"That this House disapproves of the Enemy Property (Amendment and Validation) Ordinance, 2016 (No. 1 of 2016) promulgated by the President on 7 January, 2016".

"That the Bill further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, be taken into consideration."

योगी आदित्यनाथ (गोरखपुर) : माननीय सभापति जी, माननीय गृह मंत्री जी के द्वारा लाये गये द एनीमी प्रोपर्ट (अमेंडमेंट एंड वैलीडेशन) बिल, 2016 का समर्थन करने के लिए मैं खड़ा हुआ हूँ।

महोदय, यह विधेयक एक अध्यादेश के माध्यम से इस सदन में प्रस्तुत हुआ है। हम सब जानते हैं कि शत्रु सम्पत्ति अधिनियम 1968 में संशोधन करने के लिए 7 जनवरी 2016 को शत्रु सम्पत्ति संशोधन विधि मान्यकरण अध्यादेश 2016 जारी हुआ था। चूंकि संसद उस समय वास्तुस्थिति में नहीं थी, इसलिए अध्यादेश की आवश्यकता पड़ी है। एक बहुत महत्वपूर्ण विधेयक है जो इस राष्ट्र की सुरक्षा, इस राष्ट्र की संप्रभुता की दृष्टि से एक बड़ी दूरदर्शी और व्यावहारिक सोच को प्रदर्शित करता है। वर्ष 2010 में भी यह कानून पास हो सकता था और ऐसा नहीं है कि तत्कालीन सरकार उस समय अध्यादेश न लायी हो। मैं उस समय भी सदन का सदस्य था। मुझे याद है कि 2005 में जब राजा मोहम्मदाबाद से संबंधित एक फैसला सुप्रीम कोर्ट से हुआ था, तब से निरन्तर कई बार अध्यादेश आए थे और शत्रु सम्पत्ति से संबंधित इस महत्वपूर्ण अधिनियम को संसद से यथावत संशोधन करने के बाद पारित किया जाए। यह मांग पूरे देश के अंदर हो रही थी। उसी क्रम में इसी सदन में एक अध्यादेश के बाद एक अधिनियम आया था। लेकिन आश्चर्यजनक ढंग से 2010 में उस अधिनियम को वापस लेकर पुनः स्थायी समिति को भेज दिया गया था। उसके बाद पन्द्रहवीं लोक सभा का कार्यकाल समाप्त हो जाने के बाद जब नयी सरकार आई है तो सरकार ने जब उचित समझा है तो इसके लिए अध्यादेश जारी किया है और आज उससे संबंधित अधिनियम पर यहां पर चर्चा करने के लिए हम सब एकत्रित हैं।

महोदय, मुझे आश्चर्य होता है कि कोई राष्ट्र और उसके नागरिक या कोई राजनीतिक दल अपनी स्वयं की सत्ता या स्वयं के चंद वोट बैंक के लिए राष्ट्र की एकता और राष्ट्र की संप्रभुता के साथ ही खिलवाड़ करने लग जाए। यद्यपि अनेक ऐसे एपिसोड हम सबके सम्मुख आते हैं जैसे इराक जहाँ के केस में देखने को मिला है। यह शत्रु सम्पत्ति अधिनियम वर्ष 1962, 1965 के युद्ध के बाद चीन और पाकिस्तान भाने लोगों से संबंधित हैं, उनकी सम्पत्ति देश में शत्रु सम्पत्ति घोषित हुई थी। ऐसा नहीं है कि भारत ने एकतरफा किया है। ऐसा चीन ने भी किया है और पाकिस्तान के यहां भी इस तरह के कानून हैं। दुनिया के अंदर सभी देशों में शत्रु सम्पत्ति संबंधी कानून हैं। इन कानूनों के मामले में अचानक वर्ष 2010 के बाद जिस प्रकार की स्थिति पैदा हुई कि एक कर्म विशेष के सांसदों को राजनीतिक दल ने अपने वोट बैंक को मानते हुए उस समय जिस तरह की रणनीति बनाई थी, वह अत्यंत दुर्भाग्यपूर्ण थी और उस दुर्भाग्यपूर्ण स्थिति के कारण हम कह सकते हैं कि कुछ लोगों ने स्वयं की राजनीति को इस राष्ट्र की संप्रभुता से ज्यादा महत्वपूर्ण माना और इसलिए इस अधिनियम में आवश्यक संशोधन नहीं होने दिए थे। इसी का परिणाम रहा कि 15वीं लोकसभा में यह विधेयक पारित नहीं हो पाया था। शत्रु सम्पत्ति में उत्तराधिकार का कानून लागू नहीं होता है। शत्रु अथवा शत्रु विषयक अथवा शत्रु फर्म द्वारा किसी भी सम्पत्ति का हस्तांतरण भी नहीं हो सकता है इसीलिए इस अधिनियम की आवश्यकता यहां पड़ी है।

इस विधेयक का सबसे महत्वपूर्ण पहलू यह है कि अगर आप देखें देश में एक बहुत बड़ी संख्या है जो शत्रु सम्पत्ति के रूप में चिह्नित है। अगर हम उन सभी सम्पत्तियों को देखें तो देश में 2168 शत्रु सम्पत्तियां हैं। इनमें उत्तर प्रदेश में 1468, पश्चिमी बंगाल में 351, दिल्ली में 66, बिहार में 40, गोवा में 35, महाराष्ट्र में 25, केरल और अन्य स्थानों में 24 ऐसी सम्पत्तियां हैं जो शत्रु सम्पत्तियां हैं। इस बात को ध्यान में रखते हुए देश में नया विवाद खड़ा करने का प्रयास हो रहा है। यह प्रयास वर्ष 2010 में किया गया। यह स्थिति तब पैदा हुई जब मोहम्मद आमीर खान, जिनके पिता मोहम्मदाबाद उत्तर प्रदेश के सीतापुर मद्रमुदाबाद की स्टेट के राजा हुआ करते थे। वे जिन्ना के मुस्लिम लीग के कोषाध्यक्ष थे। पाकिस्तान का मसौदा जब पहली बार आया था तब उन्होंने उस अभियान में बढ़-चढ़कर भाग लिया था। बाद में वे पाकिस्तान चले गए थे। चूंकि वे भारत से गए थे, जिन लोगों ने पाकिस्तान बनाने में बढ़-चढ़कर भाग लिया था और पाकिस्तान में जब अपनी दुर्गति देखी तो वही स्थिति मोहम्मद आमीर खान की भी हुई थी। पाकिस्तान में मिले अपमान और उसके बाद जो स्थिति उनके सामने आई थी, उसके बाद यहां से कई देशों से होते हुए अंत में वर्ष 1973 में मौत हुई थी। उनका एक पुत्र, जो कि पाकिस्तान के नागरिक भी रह चुके हैं, बाद में इस सम्पत्ति पर अपना दावा करते हैं। इस सम्पत्ति पर दावा करने वाले के बाद अदालत में यह मामला जाता है। उन्होंने पिता की जब्त सम्पत्ति पर कानूनी लड़ाई लड़ी और 32 साल की कानूनी लड़ाई के बाद सर्वोच्च न्यायालय से इन्होंने अपने पक्ष में फैसला लिया। देश की सर्वोच्च न्यायालय ने शत्रु सम्पत्ति के वारिसों के संबंध में उचित कानूनी प्रावधानों के अभाव में वर्ष 2005 में अपने एक ऐतिहासिक फैसले में अमीर मोहम्मद के शत्रु सम्पत्ति को लौटाने का आदेश दिया और शत्रु सम्पत्ति, 1968 के अधिनियम के तहत घोषित शत्रु सम्पत्ति का जो कानूनन वारिस था, वह उसको वापस करने की स्थिति पैदा हुई।

यदि सचमुच कोई सरकार इस आदेश को माने तो इस देश के आधे शहर उजड़ जाएं, एक बड़ी आबादी तबाह हो जाएगी। देश के अंदर एक नये कर्म-संघर्ष की स्थिति पैदा हो जाएगी और इसकी आड़ में तमाम पाकिस्तान के नागरिकों ने भारत के अंदर उन चंद वोट बैंक के सौदागरों के साथ मिलकर अपने राशन कार्ड बैंक डेट से बनाने प्रारंभ कर दिए और यह कहना प्रारंभ कर दिया कि हम तो वर्ष 1947 से ही भारत में रह रहे हैं। उसकी आड़ में उन लोगों को भारत के अंदर किसी मार्ग से ताने का प्रयास हो रहा है। इसलिए यह कानून देश के हित में है, जिसे माननीय गृह मंत्री जी यहाँ पर लेकर आए हैं, यद्यपि यह प्रयास सूपीए ने भी किया था, लेकिन मुझे आश्चर्य होता है कि वह उसको इसलिए करने में सफल नहीं हुए क्योंकि उसे बाद में वोट बैंक दिखायी देने लगा, उनको वोट बैंक नजर आया। राष्ट्र की कीमत पर उनके लिए राजनीति महत्वपूर्ण थी। इस कानून ने, सूपीए ने उस वक्त इसे साबित किया और इसीलिए वर्ष 2010 में यह विधेयक पारित नहीं हो पाया... (व्यवधान) इसीलिए आज इस अवसर पर माननीय गृह मंत्री जी को इस बात के लिए आभार व्यक्त करना चाहता हूँ। जो कार्य वर्ष 2010 में होना चाहे था, वह कार्य वर्ष 2010 में न होकर वर्ष 2016 में आपके हाथों सम्पन्न हो रहा है। सचमुच यह राष्ट्र के हित में लिया गया एक महत्वपूर्ण कदम है। सर्वोच्च न्यायालय के फैसले वर्ष 2005 में आए थे, उसके बाद से ही भारत में शत्रु सम्पत्ति के मुद्दे ने एक नया विवाद खड़ा किया है। देश में लाखों करोड़ रुपये की शत्रु सम्पत्ति है और वर्ष 2005 के फैसले के बाद विभिन्न न्यायालयों में ..(व्यवधान)

HON. CHAIRPERSON : Hon'ble Member, please you address the chair.

योगी आदित्यनाथ : मैं इसलिए इस बारे में कहना चाहता हूँ क्योंकि वर्ष 2005 के बाद इस प्रकार के सैकड़ों मामले इलाहाबाद हाई कोर्ट में, मुम्बई हाई कोर्ट में और देश के तमाम उच्च न्यायालयों में इस प्रकार के मामले आने प्रारंभ हुए हैं और उन सम्पत्तियों पर तीन सौ-चार सौ साल पहले की उन सम्पत्तियों को किसी न किसी प्रकार से उनका वारिस अपने आप को बताकर उन पर अपना दावा करने का प्रयास हो रहा है। वादे वह जौनपुर का मामला हो, आगरा का मामला हो, सीतापुर का मामला हो। यदि आप राजा मोहम्मदाबाद से जुड़ी हुई सम्पत्ति को ही देखें तो तखनऊ का एक बहुत बड़ा भाग, जिसमें सरकारी कार्यालय हैं, जहाँ तमाम सरकारी अधिकारी निवास कर रहे हैं, जहाँ पर एक बड़ी आबादी निवास कर रही है, मार्केट बन चुका है, उन सभी सम्पत्तियों पर उनका दावा होगा और एक बड़ी आबादी के उजड़ने की स्थिति पैदा हो सकती है। इसलिए इस मामले में जो वर्ष 2005 में सुप्रीम कोर्ट का फैसला आया था, उसके बाद से ही भारत में शत्रु सम्पत्ति के मुद्दे ने एक नया विवाद खड़ा किया था। इस तरह की हजारों-लाखों करोड़ रुपये की शत्रु सम्पत्ति देश में है। इस फैसले के बाद हजारों मुकदमों देश के तमाम न्यायालयों में लंबित पड़े हैं।

महोदय, यहां पर यह कहना आवश्यक होगा कि न्यायालय के फैसले को यू.पी.ए. सरकार ने भी उस समय असंगत माना था। इसलिए 2010 में तत्कालीन सरकार पहला शत्रु सम्पत्ति संशोधन विधेयक लेकर आई थी। तब यह विधेयक 1968 में लागू शत्रु सम्पत्ति अधिनियम की मूल भावनाओं के प्रतिकूल था। लेकिन इस संशोधन विधेयक में 1968 के मूल कानून को और मजबूती मिलेगी और इससे राजा मोहम्मदाबाद की हजारों करोड़ रूपयों की सम्पत्ति को किसी एक कस्टोडियन के अंतर्गत ही रखा जाए। लेकिन उस समय की जो सरकार थी, एक कर्म विशेष से जुड़े हुए लोगों के दबाव में आकर झुक गई थी। उसके उपरान्त उस समय की सरकार ने जिस प्रकार से यू टर्न लिया था, उसका परिणाम था कि वह सरकार उस जिन्ना के, उस समर्थक के समर्थन में ही खड़ी होती दिखाई दी थी, जो इस देश के विभाजन का जिम्मेदार था। जिसके कारण लाखों लोगों का कत्लेआम हुआ था। देश के विभाजन की त्रासदी को इस देश ने झेला था। जिसने हजारों वर्षों से चले आ रहे भारत को दो टुकड़ों में बांट दिया था। उसकी भावनाओं का सम्मान करते हुए 2010 में तत्कालीन यू.पी.ए. सरकार दिखाई दे रही थी।

महोदय, आज 47 साल के बाद पुराने शत्रु सम्पत्ति कानून में संशोधन अधिनियम को मंजूरी देने के बाद यह विधेयक इस सदन में आया है। इस संशोधन के तहत ऐसी सम्पत्तियों के संरक्षक यानी जो उसका कस्टोडियन होगा, उसका उस सम्पत्ति पर पूरा अधिकार होगा। किसी शत्रु सम्पत्ति के किसी वारिस को नहीं, उससे जुड़ी हुई किसी फर्म को उसका अधिकार नहीं मिलेगा। यह इस विधेयक का मूल भाव है। इसीलिए इस विधेयक का देशहित में पारित होना अत्यंत आवश्यक है। क्योंकि अगर इस प्रकार का विधेयक पारित नहीं होगा तो जैसा मैंने पहले भी कहा कि इस देश के अंदर ऐसी हजारों सम्पत्तियां हैं, जिनका शत्रु सम्पत्ति के रूप में चिह्नित की गई हैं।

सन् 1962 और 1965 के युद्ध के बाद देश ने पाकिस्तान और चीन को शत्रु देश घोषित किया था। शत्रु देश घोषित होने के उपरान्त इस देश के जो नागरिक वहां चले गए थे, उनकी सम्पत्ति शत्रु सम्पत्ति घोषित हो चुकी थी। जो लोग वहां गए थे, पहले ही जब वे मुआवजा ले चुके हैं, तो उन्हें कोई अधिकार नहीं है इन सम्पत्तियों पर पुनः अधिकार करने का। अगर इस प्रकार का विधेयक नहीं आता, तो न केवल 2005 के सुप्रीम कोर्ट के उस आदेश को लागू करने की बाधता हो सकती थी, साथ-साथ यह केवल राजा मोहम्मदाबाद का ही मामला नहीं है, मुम्बई के जिन्ना हाउस का प्रकरण भी है, जो जिन्ना इस देश के विभाजन का कारण था। उस जिन्ना हाउस पर जिस तरीके से उनके परिवार के लोग दावा कर रहे हैं, यह और इससे जुड़े हुए ऐसे हजारों मामले हैं, जिन्हें लेकर यह संशोधन विधेयक आना अत्यंत आवश्यक था।

सरकार ने देश के व्यापक हित में, राष्ट्र की एकता और अखंडता को ध्यान में रखकर, इस राष्ट्र की संप्रभुता को ध्यान में रखकर उस शत्रु सम्पत्ति जो आज भारत सरकार की सम्पत्ति है, जिस पर

कस्टोडियन अलग-अलग स्थानों पर नियुक्त हैं। उनके संरक्षण में तब तक उस सम्पत्ति पर एक बड़ी आबादी निवास कर रही है। उस आबादी के हित में यह संशोधन विधेयक लाया जाना आवश्यक था। इस दृष्टि से माननीय गृह मंत्री जी ने यह शत्रु सम्पत्ति संशोधन और विधिमान्यकरण विधेयक, 2016 पेश हुआ है, उसका मैं समर्थन करने के लिए खड़ा हुआ हूँ। हमें विश्वास है कि माननीय गृह मंत्री जी द्वारा पेश किए गए इस विधेयक का पूरा सदन समर्थन करेगा और देश के व्यापक हित में यहां पर अपनी व्यक्तिगत राजनीति और पार्टी की राजनीति से ऊपर उठकर कार्य करेगा।

KUMARI SUSHMITA DEV (SILCHAR): Thank you, Chairman, Sir, for the opportunity.

Today, I rise to speak on a very important Bill. The reason I call it important is because this Bill does not just have some Parliamentary and legislative history, but it is deeply connected to our political history. When, last night, I was preparing my speech and going through the legislation that preceded this Ordinance and the Bill that we are debating today, I realized that there were several opinions.

My learned senior colleague, Yogi Adityanath ji, said in the House today that there were different views within our Party and within the Bharatiya Janata Party and many other Parties that were in the Parliament in the past. In this circumstance, I fail to understand what could be the urgency in passing an Ordinance in the month of January 2016 when the Parliament was not in Session. I fail to understand that when the history of this Bill clearly says that there are various views / interpretations and there is a Supreme Court judgement of 2005, which is actually the bone of contention or which is actually the main reason why the previous legislations were passed in 2010 and today. Why did we circumvent an important instrument of democracy, which we all take pride in because we all have a voice; we all debate in it; and then that voice reaches the House inside the Parliament by way of a Standing Committee deliberation.

All that Yogi Adityanath ji said today as a Member of the Treasury Bench, all of those reasons are the reasons I should cite today as a Member of the Indian National Congress and as a Member of the Opposition as to why it should have gone to the Standing Committee. However, the Government, in its wisdom, has decided to introduce it in this House. Therefore, without taking much time and without repeating the things that have already been stated by my colleagues before me, I would briefly like to state that the Enemy Property (Amendment and Validation) Bill, 2016 is a Bill that was introduced in 2010 as a consequence of a Supreme Court judgement. What is it that propelled this Bill into the Parliament? It was the manner in which the Supreme Court of India had interpreted the 1968 Act, in particular, three Sections, namely, Section 6, Section 8 and Section 18.

What was the purpose of this Bill? It is where 'A' property in India belonged to someone who was in the enemy State. What is the enemy State? It is as per the definition in the Defence of India Act of 1962 and after two conflicts with Pakistan and one conflict with China, of course, my learned colleague from BJP did not mention China even once. He went on and on about *ek varg*, *ek shrenee*, *ek religion* that I do not want to get into it as to why, but the question is that the way these three Sections of the 1968 Act were interpreted did not give the custodian of the property an absolute right to continue in custody of that property.

The Act itself had provisions where the custodian could vest the property back in the owner. The Act itself had provisions, which said that the legal heirs of an enemy could inherit this property provided he was a citizen of India. So, the primary ratio of that Supreme Court Judgment was that the provisions of the 1968 Act would not apply to a citizen of India. जो योगी आदित्यनाथ जी अपने भाषण में राजा महुमूद आमिर के बारे में बोल रहे थे। He was exercising his right as a citizen of India. He was not exercising his right as a Muslim citizen of India. May I please point it out? He relied on the Act of 1968 which gave him that right. जब 2010 में वह बिल आया, किसलिए आया। That Bill was brought into Parliament to change that interpretation to say that it will not apply to a citizen of India. There were two amendments, if I am right. तब मैं सदन में नहीं थी, आप लोग थे। Subsequently, it was brought back to say that legal heir scam. Let me tell you the reason for it. वह किसी के मजहब के लिए नहीं कहा गया था। आप एक साथ बोलते हैं कि आप इस देश के नागरिक हैं और जब 1968 का एक्ट आता है, आप उसी को दुश्मन का नाम दे देते हैं, Hon. Minister is in the Parliament. I request you अगर आपने इसमें इतने अमैन्डमेंट्स किये हैं, इसमें से अगर एनिमी शब्द हटा देते तो शायद पोलिटिकली ज्यादा कंवेवट रहता, एलिगिबलिटिड कह देते तो ज्यादा बेहतर लगता। The tone and tenor of my speech, the tone and tenor of Yogi Adityanath ji's speech would have been different. आज आप लोग घुसपैठियों की इतनी बात करते हैं कि पाकिस्तान से यहां आए हैं, वहां आए हैं। आज आसाम में आप क्यों घबरा रहे हैं? दो नोटिफिकेशन देकर आप लोग क्यों रुक गये? चूंकि आपको समझ में नहीं आ रहा कि आप कौन से वोट बैंक के पास रहेंगे। अगर आसाम के पास रहेंगे या बराक वैली के बंगाली हिन्दू के पास रहेंगे। अगर आपमें हिम्मत है, अगर आप लोग वोट बैंक पोलिटिक्स नहीं करते हैं तो बिल क्यों नहीं लाये? क्योंकि आपको डर है कि आसामीज को खुश कर दिया तो बंगाली वोट नहीं देंगे और बंगाली को खुश कर दिया तो आसामीज वोट नहीं देंगे। इसलिए वोट बैंक पोलिटिक्स की बात भारतीय जनता पार्टी के मुंह से शोभा नहीं देती है।

I would like to say that the speech that I had written, unfortunately, I had to change it after hearing the Treasury Bench. But I come back to it that the hon. Home Minister has brought this Bill ... (Interruptions) Yogi Adityanath ji has said many things. He made many political statements. I do not think I interrupted him because I have the courage to stand on my two feet and defend my Party. I do not need outsiders to interrupt it. They should have faith in their own senior parliamentarians. Having said that, all I would like to request the hon. Home Minister is that I would once again plead with him. Even if he feels that it should not go to the Standing Committee, there should be some sort of a Committee to look into this matter so that it should not give rise to any anxiety amongst any community. It is our Constitution, which does not look at the religion of any person before declaring that person as a citizen of India.

Secondly, this legislation has been brought which will give retrospective effect to this Act, which I feel points at what my learned friend Shri N.K. Premachandranji has said. I have serious doubt that if this Bill is passed in this House of Parliament whether it will stand the scrutiny of the Supreme Court judicial review and whether it will be struck down as unconstitutional. So, it is my humble request and I would urge this Government to think on these two issues. Today, you are excluding a citizen of India from the purview of this Bill. Is it proper, at the same time, to accept a person as a citizen of India and in the next breath designate him as the enemy of India when it comes to his property?

Today when the enemy ceases to exist, when the enemy firm ceases to exist, why should their successors and legal heirs who you have given citizenship to should not have the right to inherit? Further more, the definition of enemy was initially done in the light of our political history. But at the rate at which the hon. Prime Minister of India is embracing Pakistan with his 56 inch chest, soon Pakistan may not be in the list of enemies. So, please rethink your policy.

With this, I thank you once again Mr. Chairman for giving me this opportunity.

PROF. SAUGATA ROY (DUM DUM): Sir, I rise to speak on the Enemy Property (Amendment and Validation) Bill 2016.

I am in a strange quandary today. I heard Mr. Premachandran's intervention with interest. He said a strange thing. He said that he opposes the Ordinance but supports the Bill. He also acknowledged that there is nothing wrong in the Bill. As far as the Bill is concerned, I would be rather in agreement with Yogi Adityanath with whom I differ on most matters, to whose intolerant statements I always take exception. But on this Bill he was absolutely sober, correct, to the point and factual. I do not even agree with Sushmita in what has been raised. It seems to me that Premachandran was not aware of the situation in which the Bill was brought. Sir, I will tell you the short story.

The story is that after 1962 war with China and 1965 war with Pakistan, Defence of India Rules were in operation. All the properties of Chinese nationals, there are many in Kolkata, and the properties of Pakistani nationals were taken over. And slowly a body was formed called the Custodian of Enemy Properties. For this purpose, a Bill was brought in 1968. What happened then? Then the Government announced this Custodian of Enemy Properties and said that all those who had properties in erstwhile Pakistan, Bangladesh had not come into being then, could appeal to the Custodian of Enemy Properties and out of the proceeds obtained from disposal of the enemy properties they would be paid compensation.

This process was happening maximum between 1971 and 1976-77. Many people of West Bengal who I knew got compensation in this route. The only thing was that full compensation was not given. You produced your proof, then 25 per cent of the valuation was paid as compensation to erstwhile refugees from Pakistan.

I do not want to dwell on the Partition issue. Whenever I think of Partition, I feel upset because we are victims of Pakistan. Our family came over from erstwhile East Pakistan. When I read what happened in 1946 and 1947, I shudder to think that this was the price we paid for freedom. One million people were killed on both sides of Punjab border. This was one of the biggest human massacres and human movements that have been seen in history. Millions of people left their home and hearth and came. Particularly this happened in the Punjab sector. Bittoo is here. People suffered, lost everything. This is the price we Bengalis and Punjabis paid for freedom. On Bengal side, because Mahatma Gandhi was there the killing was not so much in 1947. It occurred later in 1950.

So, after Bangladesh was created, Custodian of Enemy Properties was created, some people who had land and who had documents in East Pakistan, from my city of Kolkata, got compensation as I mentioned.

16.00 hours

Slowly, the Custodian of enemy properties was running out of money. Now why is this Bill necessitated? One must learn the legal history of this Bill. It concerns Rajnathji directly because he is from Lucknow. As Yogi Adityanathji mentioned correctly, there was a man called Raja of Mahmudabad. He was one of the close associates of Jinnah. I also sometimes lament that Gandhiji, Nehruji and others went to jail for nine or ten years during freedom struggle. Jinnah, without going to jail for a single day during freedom struggle, became a leader of the independent State. But that is another story. ...(*Interruptions*) What I said is that this Raja of Mahmudabad owned maximum properties in Lucknow and outside. You would be surprised to know that Sitapur Collectorate near Lucknow is on his land, the Sitapur Sugar Mill is on his land, about 400 hectares of land in Sitapur belongs to him, the Butler Palace in Lucknow is his, Hazratganj which is Lucknow's main shopping arcade belonged to him. Then he had property in Dehradun and Nainital. Today, one top lawyer was telling me that the assessment of the value of his property was Rs two lakh crore. What happened is that Raja of Mahmudabad died. He had a son who came to India and lodged a case in the High Court. After losing in High Court, he went to Supreme Court. The Supreme Court, for some reason or the other, gave the judgement that all his property should be given back to him. Just imagine what mayhem would ensue because all the people who are occupying these properties, staying in shops, the Government offices – everything would be uprooted. So, any Government would have to take steps to restore the *status quo ante viz-À -viz* this land. Rajnathji has taken more interest and brought the ordinance because last time he was elected from Ghaziabad and this time he has been elected from Lucknow. Hundreds of people must have met him साहब, हमारा क्या होगा? सब कुछ चला जाएगा। आप कुछ करिए। आप देश के गृह मंत्री हैं। राजनाथ सिंह जी ने इंस्ट्रूट लेकर इसे किया है। मैं समझता हूँ कि यह सही काम किया है। सब लोगों को अपनी कॉन्स्टीट्यूएन्सी देखनी चाहिए और देश को भी देखना चाहिए। यह मेन सीक्वेंट है। ...(*व्यवधान*) इसमें और कुछ नहीं है, बाकी और कोई एजिमी प्रॉपर्टी बाकी नहीं है।

16.03 hours (SHRI K.H. Muniyappa *in the Chair*)

This is only the case of Raja of Mahmudabad. This huge property is still there. I had discussed it with Shri Kalikesh Narayan in the morning. Now, the new thing is that this Bill seeks to eliminate this letter of succession as far as enemies are concerned. It says that definition of enemy and enemy subjection includes the legal heir and successor of an enemy, whether a citizen of India or citizen of a country which is not an enemy. So, even if the son or the successor of an erstwhile holder of an enemy property becomes an Indian citizen as happened in the case of Mahmudabad, still the property will remain an enemy property. This also applies to a firm. A firm was an enemy firm and then just because the firm has been owned up, it would not cease to be an enemy firm. So, this is a very important thing. Earlier, because this matter of successor was left, the Supreme Court could give such a judgement which should hamper everything so much.

The other thing is that the enemy property shall continue to vest in the Custodian even if the enemy subject or enemy firm ceases to be enemy due to death, extinction, winding up business or change of nationality. This is the important part. Now, the custodian will have permanent control over the property of the firm and the property will continue to vest in the custodian with all rights and titles and the custodian shall preserve the same till it is disposed of by the custodian. So, the job of the custodian of enemy properties, wherever it is still there, will be to dispose of. Normally, they adopt a transparent process through auction. लोग खरीदते हैं। थोड़ा बहुत गैरिपुलेशन भी होता है, कस्टोडियन के ऑफिस में कि रिज़र्व प्राइस पहले से बता दो तो मैं ले दूँगा। Much of this enemy property has changed hands.

In Kolkata Sohrabuddin's own house was there. It became enemy property and it has now been sold. Many of the big leaders who later became leaders in Pakistan like Suhrawardy, Fazlul Huq, all of them had big houses in Kolkata which were later seized and which have been disposed of long back. So, the law of succession or any custom or usage governing succession shall not apply in relation to enemy property. This is the new twist given to this law. Once it is declared an enemy property, it vests in the custodian and will continue to remain so whoever be the successor, whoever claims the right to this property. So, this law was passed to free the constituents of Rajnath Singh ji of all the anxieties that they will not be evicted from this.

But what has also happened, Sir, which is why they have put in a special amendment that a lot of this enemy property has been encroached upon and illegal occupants are there. लखनऊ में तो बहुत ज्यादा है। प्रॉपर्टी कस्टोडियन और एनिमी प्रॉपर्टी का है। Somebody has encroached and occupied it and he is selling it to other people. हर तरह का इलीगल काम हो रहा है। Therefore, they have now amended the Public Premises (Eviction of Unauthorised Occupants) Act 1971 so as to declare the custodians, deputy custodian and assistant custodian of enemy property as estate officer so that they can take action to evict the unauthorised occupant.

So, as I said, I had a talk with some top legal officers. They say that this Bill is carefully drafted so that all the points that were mentioned in 2005 by the Supreme Court are taken care of. That is why I also studied it very carefully. I did not find that any amendment is necessary which is why I did not give

amendment. I did not even give a Statutory Resolution because I thought that this is a harmless thing in the interest of the country. We should see that the property which is in our country should not fall in the hands of somebody else and so many people should not be evicted or put to difficulty. With that, Sir, I support the Bill. Thank you.

SHRI P.R. SENTHILNATHAN (SIVAGANGA): Thank you, Chairman, Sir. The Enemy Property (Amendment and Validation) Bill, 2016 aims to amend the provisions of the Act enacted earlier in 1968, declaring that all enemy property vested in the custodian of enemy property in India would continue to vest in the custodian irrespective of the death or extinction of the enemy.

After the Indo-Pak War of 1965, the Enemy Property Act was promulgated in 1968. The NDA Government, following the footsteps of the previous UPA Government, has been keen to amend the Act. While UPA Government had promulgated the Enemy Property (Amendment and Validation) Ordinance, the Bill introduced in Parliament could not be passed due to various issues, including reported differences within the Government itself.

In the wake of the Indo-Pak wars of 1965 and 1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under Defence of India Act, the Government of India took over the properties and companies of such persons who had taken Pakistani nationality. These enemy properties were vested by the Central Government in the Custodian of Enemy Property for India.

After the 1965 war, India and Pakistan signed the Tashkent Declaration on January 10, 1966. The Tashkent Declaration *inter alia* included a clause, which said the two countries would discuss the return of the property and assets taken over by either side in connection with the conflict. However, the Government of Pakistan disposed of all such properties in their country in 1971 itself. The custodians of "enemy property" continued to hold these assets of persons who took Pakistani nationality after 1965 and 1971 wars and will not be able to transfer them. Amendments through the Ordinance which was approved by the President, Shri Pranab Mukherjee "include that once an enemy property is vested in the Custodian, it shall continue to be vested in him as enemy property irrespective of whether the enemy, enemy subject or enemy firm has ceased to be an enemy due to reasons such as death etc.,"

In the wake of the Indo-Pak wars of 1965 and 1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under the Defence of India Act, the Government took over the properties and companies of such persons who had taken Pakistani nationality.

The Enemy Property Act was enacted in the year 1968 by the Government, which provided for the continuous vesting of enemy property in the custodian. The law of succession does not apply to enemy property. There cannot be transfer of any property vested in the custodian by an enemy or enemy subject or enemy firm and that the Custodian shall preserve the enemy property till it is disposed of in accordance with the provisions of the Act.

"The amendments to the Enemy Property Act, 1968 will plug the loopholes in the Act to ensure that the enemy properties that have been vested in the Custodian remain so and they do not revert back to the enemy subject or enemy firm."

The Central Government through the Custodian of Enemy Property for India is in possession of enemy properties spread across many States in the country. In addition, there are also movable properties categorized as enemy properties.

In the above circumstances, it has become necessary to amend the Enemy Property Act, 1968, *inter alia*, to clarify the legislative intention with retrospective effect. I wish to record in this august House the steps taken by Hon'ble Chief Minister Puratchi Thalaivi Amma since 1991 for retrieving Katchatheevu back. On several occasions, Amma had urged the Union Government and Prime Ministers, directly and through letters, to get back Katchatheevu. In September 2004, Amma personally presented a memorandum to then Prime Minister, Mr. Manmohan Singh, calling upon the Centre to retrieve this island through "lease in perpetuity" and restore the rights of fishermen. "However, the Union Government did not take any step to provide lasting solution to the problem of fishermen of Tamil Nadu."

In June 2011 the Tamil Nadu Government led by Hon'ble Chief Minister Puratchi Thalaivi Amma filed a petition in the Supreme Court seeking the declaration of the 1974 and 1976 agreements between India and Sri Lanka on ceding of Katchatheevu to Sri Lanka as unconstitutional after the Tamil Nadu State Assembly had adopted and passed a resolution seeking the retrieval of the Katchatheevu back.

The court ruled in the Berubari case that the cession of Indian territory to another country had to be ratified by Parliament through amendment of the Constitution. Katchatheevu was ceded to Sri Lanka in violation of the court under the 1974 and 1976 agreements without the approval of two Houses of Parliament. *â€* best known to him has resulted in ceding of Katchatheevu island to Sri Lanka and is the root cause for all the harassments and problems faced by the Indian fishermen from the atrocious Sri Lankan Navy.

Though the DMK party was sharing power in the last three successive Union Governments [1999-2013], Mr. Karunanidhi led DMK made no efforts to retrieve Katchatheevu or protect the State's fishermen from the attacks of the Sri Lankan Navy. Consequent to the ceding of the Katchatheevu to Sri Lanka, hundreds of the fishermen were killed in the shootings of the Sri Lankan Navy. The Katchatheevu Island was historically part of the Ramnad Raja's Zamindari, and later it became part of the Madras Presidency. The island was always of strategic importance and special significance for fishing operations in the area.

This recognition of an island is gross injustice to fishermen of Tamil Nadu since the Katchatheevu Island is socio-economically and culturally important to the native people of Tamil Nadu from time immemorial. Katchatheevu is strategically important for fishing grounds used by fishermen from both countries. The Indo-Sri Lankan agreement allows Indian fishermen to fish around Katchatheevu and to dry their nets on the island. But while Indian fishermen do fishing near Katchatheevu they are threatened and fired by the Sri Lankan authorities. Indian fishermen most often get arrested by the Sri Lankan authorities and their boats and fishing equipments were seized.

Therefore I urge the Union Government to take efforts to retrieve Katchatheevu Island back.

Thank you.

SHRI PINAKI MISRA (PURI): Mr. Chairperson, Sir, thank you very much for giving me this opportunity to participate in this debate. I rise to present my party BJD's view point on the Enemy Property (Amendment and Validation) Bill, 2016.

Mr. Chairperson, Sir, I speak on this Bill with some degree of concern. Speaking for myself and on behalf of my party, the Biju Janata Dal, I think, the House knows that whenever I have to share a point of view expressed earlier by the Congress Party, I do so with some degree of anguish. It is not a very happy situation when I have to agree with something that has come from the Congress benches. But unfortunately this is one Bill and since they have spoken before me we have taken a common position that this Bill should go to the Standing Committee, I am in agreement that this is a Bill which must go to a Standing Committee. There are several reasons for it.

We, in this House as well as in the Rajya Sabha, have very often lamented that the courts are exceeding their jurisdiction, that the courts intervene too much in matters which are in the province of the Legislature and the Executive. But can we blame the courts? If we bring these kinds of legislation to the House, can we blame the courts for intervening? I say this with the greatest respect that whoever has drafted this Bill has sent out a standing invitation to the courts to interfere in this matter and to stay the operation of this Act.

The Standing Committee of the 15th Lok Sabha, which was headed by none other than Shri Venkaiah Naidu, our hon. Minister for Parliamentary Affairs, which had many luminaries in it including Shri Advani and others, said, when they were considering the 2010 Bill, that "the Members also felt constrained to note that the Home Secretary could not explain the reasons as to why the second Bill was brought before Parliament replacing the earlier Bill." This was the state of affairs in the UPA Government. The Home Secretary could not even tell the Standing Committee as to why this Bill was brought. The Bill was apparently brought without the knowledge of the Home Secretary. They also said that "the Members of the Committee unanimously felt that there is need on the part of the Government to bring forward a fresh Bill in Parliament in place of the 2010 Bill." Now, there is no doubt that the Enemy Property Act of 1968 has many defects. The Standing Committee has noted them principle being that the Custodian's hands have been tied over the last 50 years and those hands need to be unshackled. The Custodian needs to be given more powers, more wherewithal, more staff, more money to deal with many of these enemy properties.

But that is not what this Bill does. Prof. Saugata Roy said two things, one of which I am in agreement with, that perhaps Shri Rajnath Singh was under some constraint of parliamentary pressure of his constituency as I know that a number of his constituents have suffered because of both the 2005 judgement and the 2010 enactment. They feared that their properties will be taken away from them and be restored to the Raja of Mahmoodabad. But Prof. Saugata Roy is saying that he has consulted some legal luminaries whose claim is that this Bill is an absolute piece of art. I cannot understand whom he has consulted and who could have told him this thing.

Principally, let me tell you why I feel that this will never stand the scrutiny of courts. Firstly, you have taken away the jurisdiction of all civil courts. Section 18B says that no civil court or other authority shall entertain any suit or other proceeding in respect of any property.

Normally, this Parliament has in some cases taken away the jurisdiction of civil courts but only to give alternate jurisdiction to some tribunal or some other body. You cannot take away the jurisdiction of civil courts entirely. In 50 years, hundreds of transactions have taken place. You want to nullify and void all these transactions and you give them no recourse in law. Can this Parliament ever enact this kind of a nonsensical law? I am sorry to say this. This is the only thing I can say about this law.

This is an invitation for a writ petition to be filed immediately under article 226 of the Constitution and it is going to be stayed on day one. There is no question about it in my mind because you cannot take away rights which have accrued over 50 years and in one stroke of the pen retrospectively do away with all the rights. It is not possible. Second party sales have taken place, third party sales have taken place and fourth party sales have taken place. These are unsuspecting bonafide purchasers. How can you take away their rights by a piece of legislation like this?

So, I urge upon you to kindly send this to the Standing Committee. This should be looked into again because Section 22A (c) also says that no suit or other proceeding shall without prejudice to the generality of the foregoing provisions be maintained or continued in any court or tribunal or authority. There are matter today pending in the Supreme Court. Can this Parliament take away the jurisdiction of pending petitions in the Supreme Court? Is that possible? Is this the interpretation that we are going to give? Any court means the Supreme Court as well.

I urge upon the Government to tread cautiously. The Government in the National Judicial Appointments Commission Act has seen what a bloody nose Parliament has got from the courts. An Act which was passed unanimously by both the Houses of Parliament... (Interruptions)

SHRI ARVIND SAWANT (MUMBAI SOUTH): Sir, with due respect, are all these words like 'bloody nose' parliamentary?... (Interruptions)

SHRI PINAKI MISRA: Please understand that 'bloody nose' has a particular connotation, if you do not mind. If it is unparliamentary, the Chairman will expunge it. Yes, 'bloody nose' is parliamentary. Kindly look into the book on parliamentary expressions.

What I insist is, in the NJAC case, the Supreme Court repeatedly gave the Government an opportunity to find a face saving. The court repeatedly said, "Look, do not take an inflexible position. Do not say that it is my way or the highway. Let there be a little bit of tinkering and this will withstand the scrutiny of courts." The Government did not relent. The Government went hammer and tongs at the court and please look at the result today. Parliament had unanimously passed that piece of legislation except one Member in the Rajya Sabha who did not support that Bill. Otherwise, the entire Parliament had unanimously passed that and that has been struck down.

Today, we are looking at a situation where Parliament must be very cautious in passing laws. I am not saying that such a law is not needed because over 50 years, many problems have arisen. There are many creases which need to be ironed out. But if you try to iron them out in this ham-handed fashion, with this sort of an iron fist, I am sorry to say that it is not going to work. It is bound to be challenged in a court of law on day one, if at all it gets passed in the Rajya Sabha. Most likely, it is not going to pass Rajya Sabha in any case but even if it is passed by Rajya Sabha, on day one, this is going to be challenged by way of a writ jurisdiction because that is the only recourse people are left with. You have barred all suits and all other civil proceedings. So, a writ petition is bound to be invoked, it is going to be stayed and again, this entire exercise will come to a nought.

So, I request the Government to kindly send it to a Standing Committee and let the Standing Committee look into all these aspects. Let the Bill be brought back to this House in a form which will pass judicial scrutiny.

SHRI KONDA VISHWESHWAR REDDY (CHEVELLA): Mr. Chairman, Sir, thank you. We fully agree with the intention behind the Bill. Although I am not a legal luminary like my friend here, Shri Pinaki Mishra, I also see a lot of flaws in this Bill. The intention is good. But as a layman I see a lot of flaws.

Firstly, I have a problem with the definition of 'enemy'. It uses the word 'any'. As per the Defence of India Act 1962, it means 'any person' belonging to a country committing such an aggression. Who defines that 'any person'? Secondly, I think, just to overcome certain problems of the previous Bill and especially stung by the Supreme Court judgement, the Government has brought this Ordinance in a hurried manner. The amendments they suggest encompass even the legal heirs as enemies. I used to see a lot of Hindi movies and I was a great fan of Amitabh Bachchan. There was a movie known as *Deewar* in which the father of the child had betrayed the union and the union members catch him and then they write on his hands *mera baap chor hai*. So, if the father was a *chor*, how can we call the son also a *chor*? Why did they do this? I do not think the intention of the treasury benches is to call the enemies' son also an enemy. The reason they did it is to simplify it. Our intention is to prevent him from inheriting the property just as he should not inherit the social stigma of being called the enemy's son.

By passing the law as it is, we the Parliament will unwittingly be writing on the hands of the enemies' children *mera baap desh ka dushman hai*. So, definitely the law has to be changed, at least the drafting. It is not our intention. It was done by somebody in the legal fraternity by mistake. We merely want their properties. That is one thing.

Then, I do not want to enter into the dangerous territory which is the concept of 'sedition'. The concept of 'sedition' is not there in our country. I am afraid this law is not only for the past but also for the future. So, I wish the word 'enemy' is removed. Kumari Sushmita Dev has suggested that the word 'enemy' be removed and let some other terminology be used. They have also defined enemy countries in respect of China and Pakistan. Actually, in our State Telangana we are trying to invite the Chinese and giving them land to set up factories. So, I think some of these antiquated ideologies and concepts have to be removed in the wordings. So, we need to redraft this.

There is one more very important point. This again, I think, may not stand the legal scrutiny. In relation to 'enemy property', if I did an act of treason or worked with an enemy country and if I had gained property or money, that can be seized by the State. But if I have an ancestral property – my father was a freedom fighter, my grand father was a freedom fighter but I alone have committed this treason – the nature of ancestral property is different from self-gained property. The nature of ancestral property is different from self-gained property. In ancestral property, no single generation owns the property. The property is owned by the lineage. Every generation has a right on the property. So, my great grand father or grand father had contributed to the nation, and they were freedom fighters and I alone worked against the interest of the country. I alone was the aggressor. My children should not suffer not only being called `desh drohi's children but also the entire property of ancestral. So, we need to distinguish between self-gain property and ancestral property. To overcome this, the Government introduced some clauses, which I don't think would stand legal scrutiny. Nothing contained in clause 5(b); nothing contained in any law for the time being in force relating to succession or any customs or usage governing succession of property shall apply in relation to the Enemy Property Act. It should only be limited to the property gained by that particular person who had committed the act of treason and not the ancestral property; not the entire lineage – my past and future should not be condemned.

There are various other legal issues here. On behalf of the Party, though we agree with the intent, to plug the loopholes, but it is exactly doing the opposite and it is going to embed land mines by introducing words like `enemy' into this. I think, it is time we look at it in a progressive manner and refer it to the Standing Committee.

SHRI MUTHAMSETTI SRINIVASA RAO (AVANTHI) (ANAKAPALLI): Thank you, Sir, for giving me this opportunity. I support the Enemy Property (Amendment and Validation) Bill, 2016. This Bill is introduced not only by the present Government, it was also introduced by the earlier UPA Government. It has clearly indicated its resolve to amend the Enemy Property Act, 1968.

While the UPA Government had promulgated the Enemy Property (Amendment and Validation) Ordinance, the Bill introduced in Parliament

could not be passed due to various issues, including the differences within the UPA Government. Some hon. Members have raised a question. Who is our enemy and who is our friend? A colleague has stated that we are inviting China for investment in India. I sincerely appeal to the hon. Members that friendship is different; business is different; and the country's safety is different. Definitely we should always be careful and more precautionous with our neighbouring countries – be it China or Pakistan. We should not compromise with our own security and safety.

In that aspect, I would like to state here that we had several wars with Pakistan and a war with China. Now also, nearly 40 per cent of our Budget is spent on Defence from the safety point of view. That is why, I would say that there is nothing wrong in the Enemy Property (Amendment and Validation) Bill, 2016. To ensure enemy property and to wrest it from the custodian, appropriate amendments were brought in the Enemy Property Act, 1968 by way of Ordinance Bill, 2016 by the Government in 2010. Some hon. Members were asking as to why the Government had promulgated the Ordinance. Bringing the Ordinance is not for the first time. Earlier, the UPA Government also brought many Ordinances in the interest of the safety and security of the country. This Ordinance had lapsed on 16th September, 2010, and a Bill was introduced in Lok Sabha on 22nd July, 2010. However, this Bill was withdrawn; another Bill was modified; provisions were introduced in Lok Sabha on 15th November, 2010. This Bill, thereafter, referred to the Standing Committee. However, the Bill could not be passed during the 15th Lok Sabha, and was lapsed.

In the wake of Indo-Pak War of 1965-1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under the Defence of India Act, the Government of India took over the properties and companies of such persons who have taken Pakistan nationality. So, the enemy properties were wrested by the Central Government.

After the 1965 War, India and Pakistan signed a Tashkent Declaration on 1st January, 1966, which *inter alia* includes a clause which said that two countries would discuss the return of the property and assets taken over by either side in connection with the conflict. However the Government of Pakistan disposed off all such properties in their country in 1971 itself.

Even after 47 years, we are thinking whether this property is enemy property or not and whether this should be disposed of or not and that is why we are lagging behind by many years. There are 2,186 properties worth crores of rupees are spread across the country. These properties are neither useful for the public nor for the Government. So, this is a right move initiated by the Government. We should think about our country first and then only our party. So, they have brought this Bill in the interest of the country.

These properties are national properties and they are not of any individuals and they are not being used by anybody for the last 47 years. But we should distinguish between the legal heir and the original migrant. It is a sensitive issue. Then, another thing is, the Judiciary is an important part of our democracy and because of the Judiciary, we do not have any fear of losing our nation's assets. So, we have to pass this Bill. At the same time, we have to take some steps. Then only, the dispute will be settled. Otherwise, the dispute will continue for years together if there is nobody to take this step. So, somebody should dare to take the step.

In many parts of our country, not only in Lucknow or Hyderabad or Mumbai or Kolkata, lakhs of our people fought against Pakistan and they lost their valuable life. Now we are saying that Pakistan is not our enemy. But we should respect our soldiers because they have sacrificed their life for the country. Still they are serving in the border to secure our country. So, I would like to say that politics and security of the country are two different things.

With these words, I support this Bill. If we pass this Bill, definitely we can save many properties of our nation worth crores of rupees. So, I sincerely appeal to all our learned friends to support and pass this Bill in the interest of the nation, not in the interest of any individuals. Thank you.

ADV. JOICE GEORGE (IDUKKI): Mr. Chairman, Sir, I thank you for giving me this opportunity to speak on the Enemy Property (Amendment and Validation) Bill, 2016.

I support the intent behind this Bill. At the same time, I would like to raise certain apprehensions on the legality of certain provisions of this Bill. In Clause 2 of the Bill, it is provided that the words "an enemy subject" the words "an enemy subject" includes his legal heir and successor whether or not a citizen of India. As our senior colleagues pointed out the history behind the enactment of this law, this particular Act was enacted in the year 1968, due to the aftermath of the war and the persons who had left the nation and embraced the nationality of our enemy nation. But, why should the persons who have opted to be here in India and continue as Indian nationals be stamped as 'enemies' by the insertion of this new definition? I think this will even take away the larger concept of our national thinking and nationality. So, it is not proper for us to give a stamp of an enemy to a person who still continues to be an Indian national for the purpose of this enactment.

There is another issue and that is regarding the bar of the jurisdiction of the court, as my senior learned friend Shri Pinaki Mishra has pointed out. In Clause 8 (b) of this Bill, the jurisdiction of the civil court has been barred. This will attract the judicial scrutiny and for this reason alone, this particular piece of enactment will be declared as void by the Supreme Court. It is because, without providing an alternative way of litigation and an alternative way of redressing the grievances, how can we bar the jurisdiction of the civil court by a single stroke, by introducing a single provision in this enactment? This will not survive the legal scrutiny. Thereby, this Act will be declared void because of that sole reason.

Yet another issue is regarding the management of the properties vested with the Custodian of the enemy properties. We have no quarrel on that point. It has to be preserved; it has to be protected also. As per the statistics available in 2010, 2,186 properties are vested with the Custodian of enemy properties. These properties are not being properly maintained as per the reports of the Standing Committee on Home Affairs. The Government has provided sufficient mechanism to protect the properties. Though a Custodian is appointed, he has not been provided with the amenities to protect the properties. Large-scale encroachments were there. These properties are not being properly maintained also. So the Government should ensure that the properties are maintained properly. The Government should provide some mechanism to avoid encroachments of the properties.

Regarding the other issues, the intention behind this enactment is good because the heir will get what his forefathers had. There is no doubt at all.

If a person who has embraced the nationality of the enemy country during the war and he ceases to be the owner of the property by operation of this piece of enactment, nobody can claim over the rights of the property. That is true; we agree on that legal proposition. But, for the purpose of enforcing that legal proposition, the poor persons, those who are living here, the heirs of the persons who have embraced the nationality of other nations during the war, they will be stamped as enemies. That is not proper for us. I would say, that will be a shame on our nationality sense also.

With these words, I urge upon the Government to send the Bill to the Standing Committee for further scrutiny so that we can have a reasonable drafting with reasonable words so that we can protect the interest of both the nation and the persons also.

Thank you, Sir. With these words, I conclude.

SHRI MEKAPATI RAJA MOHAN REDDY (NELLORE): Thank you, Mr. Chairman, Sir for giving me an opportunity to speak on the Enemy Property (Amendment and Validation) Bill, 2016.

I support the proposed legislation that allows the custodian, that is the Government of India, to continue the control of property whose original owner is believed to have migrated to Pakistan and the said property has been taken over by the custodian, that is the Government of India.

Presently 2,186 properties are at stake, worth crores of rupees, spread across the country, which have been declared as enemy property as their original owners are supposed to have migrated to Pakistan

It is a welcome step to sell the enemy property whose owners have either migrated to Pakistan or do not exist and the income generated by selling such property be deposited to the Consolidated Fund of India.

Enemy subjects were dubbed those who had left India for Pakistan after 1947 and during the Indo-Pak wars of 1965 and 1971. However, if the legal heirs of the enemy property are still living in India and are Indian Citizens, then can't they inherit such property.

The proposed legislation emphasises that the heirs living in India will not have any right on ancestral property that has been marked as enemy property. In addition, the Government custodian has right to sell such an enemy property without compensation to the legal heirs.

There is also need to restructure the office of the Custodian of enemy property that is facing severe staff crunch. Practically there are very few officers manning the office which affects the timely process of verification etc. of enemy properties. This is one of the reasons that it has taken such a long time to complete the verification process while the Pakistan had completed this process immediately after the 1971 war and seized the properties of Indians and disposed them off in breach of mutual agreement. The successive Governments should bear the blame as they have given least priority to the office of custodian and working system, which is abysmally low. The Government has to address the issue and correct the system.

The Government should draw a plan so that the entire process of identification of enemy properties and disposal may be completed within the stipulated time.

With this, I conclude and support the Bill.

SHRI P.P. CHAUDHARY (PALI): Thank you Chairman, Sir, for affording me an opportunity to speak on this important Bill. The hon. Home Minister has placed before this House the Enemy Property (Amendment and Validation) Bill, 2016 and further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

I would like to make it clear that, in fact, the field was unoccupied and on account of the wars of 1962 and 1965, it was felt necessary to deal with the enemy property. After the 1965 war, the Tashkent Declaration provided that both the countries will discuss the return of the property. But Pakistan had disposed off the properties which were lying within its jurisdiction. Then the Parliament came with legislation, that is, the 1968 Act analogues with the 1971 Act. It deals with immovable as well as movable property. Earlier the field was not occupied by any legislation. Therefore, it was very necessary to do so.

By the passage of time, we felt that, in fact, the definition given of the 'enemy subject' and 'enemy firm' was not enough. It is because various interpretations were given by the courts and we had also not included the words 'the legal heir' and 'successor', etc., at that time. Looking to these drawbacks in the Act of 1968 and the various judgments of various courts including the Supreme Court on the question that even the 'legal heir' since was not included, therefore, to pluck loopholes and keeping in view the interpretation of the Supreme Court, the Government has rightly decided to bring a legislation with retrospective effect. No doubt, earlier in the year 2010, the Bill was introduced during the regime of the UPA Government but subsequently it was withdrawn. This matter was also referred to the Standing Committee and the Standing Committee made certain recommendations with respect to its infrastructural improvement.

Since the retrospective changes in this Bill are very necessary, we cannot have one provision with retrospective effect and other provision with prospective effect, so all the amendments are required to be effective with effect from 1968. Earlier, the legal heir, successor, citizen and 'on account of the change of nationality', these persons were not included in the Definition Clause but now this has been included in the Definition Clause. No one will cease to be enemy on account of the death, extinction, winding up of the company or change of the nationality because this provision has also been made. This is very necessary in view of the interpretation and the judgments given by various courts. Even in that eventually on account of the death, extinction, winding up of business or change of nationality, the property continues to vest in the custodian. It is provided in the Act that the property shall vest in the custodian free from all encumbrances and all rights and title. For that purpose, a sufficient safeguard has been provided in the Bill with respect to declaration of the vesting of property in the custodian. Now, for that purpose, the custodian is required to make certain inquiry and after inquiry if he satisfies that the property is the property of the enemy, then the property will be vested in the custodian

free from all encumbrances. The issuance of certificate to this effect is also provided under the Bill.

Now, on the question of transfer, with regard to transfers made prior to 2016 and transfers made after 2016, sufficient safeguards have been provided. Now, question comes with respect to the property of the "enemy". Can we say that all the transfers made prior to 2016 should be treated as valid? Therefore, a provision has been made in the Bill that all the transfers made even prior to 2016—may be either on account of the court order, judgment or decree or otherwise -- are to be treated as *void ab initio*, and the property will vest free from all encumbrances in the custodian. This is very well required because we cannot allow the property of the "enemy" to be transferred in a manner like this.

Sir, there was a need of the Ordinance. It has been stated by some hon. Members that the Ordinance was not required. But if the Ordinance was not there, then the property would have changed so many hands and it would have created multiplicity of the proceedings and caused so many inconvenience to the citizens also. Therefore, it was necessary to bring the Ordinance at that time.

Sir, sufficient safeguards have also been provided in the Bill. In case the judgment of the custodian is erroneous with respect to issuing a certificate and declaration of that property is the property under this Act, an opportunity has been envisaged to the aggrieved person in the Bill. He can ventilate his grievances and make his representation before the Government. The Government, after giving him reasonable opportunity of hearing, can pass the Order. If the Government is satisfied that the property, which has been vested and declared as an "enemy property" is not the "enemy property", then that property can be transferred to the person, who has filed the representation.

Now, the 1968 Act and this Bill provide only the vesting of the property, which is only the *de jure*. But in case the unauthorised occupant is there, then how to resolve the *de facto* situation? For speedy and effective eviction, the Act of 1971 has also been amended at the same time by defining the expression "Estate Officer."

Sir, it has also been stated by some hon. Members that on account of the bar of jurisdiction of civil courts so many complications can be created and this Act will not withstand the tide of the judicial scrutiny. To my mind -- it may not be in this Bill -- in so many Acts, we have provided the legislative competence of the Parliament to oust the jurisdiction of the civil court. But the jurisdiction of the High Courts and the Supreme Court under Articles 32 and 226 cannot be ousted. In case, any person is aggrieved that the property in question has wrongly been vested by the custodian and if the decision of the Government with respect to the vesting of the property is erroneous, then he can very well approach before the High Court by way of petition under Article 226; and that remedy is still available to him. Therefore, it is wrong to say that the Bill will not withstand the tide of the judicial scrutiny.

Sir, to my mind, even a person who has been convicted of sedition charges, should also be treated as an "enemy" and his property should also be dealt with under the provisions of this Bill, 2016 and the suitable amendments should be made...(*Interruptions*)

I would request the hon. Home Minister that the necessary amendments should be carried for treating the property of that person as the property of the "enemy"...(*Interruptions*) That property is to be dealt with in accordance with this Bill 2016.

Thank you very much, Sir, for affording me an opportunity.

DR. SHASHI THAROOR (THIRUVANANTHAPURAM): Thank you, Mr. Chairman. I think, we are, perhaps in the debate, overlooking that the Chair has actually combined both the Items 19 and 20.

So, first on Item 19, I should mention my strong support for the Resolution of disapproval moved by my friend, Mr. N.K. Premachandran with the support of the Trinamool Congress, who appears to be absent from here despite their somewhat more unusual statement here...(*Interruptions*)

Mr. Sultan Ahmad has gone along with it...(*Interruptions*) That seems to be a slight inconsistency to which I will come in a minute but the fact is that on this issue, the worry is that the Ordinance clearly amounted to *mala fide* and really it is a disgraceful attempt to use the President's legislative powers for the purposes of declaring essentially the judgments of Supreme Court and High Courts as retrospectively ceasing to apply and taking away the jurisdiction of any court to actually adjudicate in the matter. As Shri Premachandran pointed out, it is far from dear that the urgency *â€* (*Interruptions*) I withdraw *mala fide* but it certainly is a matter of deep concern. ...(*Interruptions*)

Let me not waste the limited time available to me, Mr. Chairperson, on words. The concern is very important. The urgency that is required to warrant the exercise of emergency powers under Article 123 of our Constitution is simply not demonstrated to be present in this case and the pre-conditions for the exercise of powers under this article seems to be lacking and for this reason, I do support the Resolution disapproving the Ordinance.

But coming now to Item No. 20, we have heard a lot of debate already and I do not want to repeat the argument that have already been made. But I want to express to you, Hon. Chairperson and through you, to my very respected friend, the Home Minister. My concern is a concern of principle. I believe that laws in our country should not be made for convenience or to deal with specific cases. A law has widespread application, application throughout the country, and the law by definition has implications that go beyond the specific case the Government might intend to deal with. It is an extremely alarming situation in our Parliament today that we are contemplating passing a Bill by which some citizens and residents of India are being called an enemy. The Bill, which, of course, replaces the Ordinance, will, it seems to me, adversely affect the rights of lakhs of Indian citizens and principally, let us call a spade a spade, of the Muslim community. After all there are not too many Chinese properties at stake. It is essentially properties of those who went to Pakistan and that tends to be from only one community and this is, to my mind, not only borderline Unconstitutional-- the court should determine that-- but also against the basic principles of natural justice.

In Bhopal, I have read that 10,000 families have been affected by the Ordinance. In other parts of the country, lakhs are affected. In 2013, 2,011 enemy properties were listed. In 2014, 12,090 properties were listed and in 2015, 14, 759 were listed. So, a large number of people are

affected by what appears to me to be a rather hastily undertaken action by the Government.

The worry for me is that this law will explicitly create two kinds of Indian citizens. This is why, my colleagues, who have spoken here, including my friend Mr. Pinaki Mishra, have suggested that the amendments cannot stand up to the scrutiny of judicial review because they seek to usurp the rights that have been vested in Indian citizens by the 42nd and 44th Amendments of the Constitution and, of course, they expropriate properties from Indian citizens.

If you look at the judgment of the Supreme Court of 2005, it very clearly affirms the rights of legal heirs who are Indian citizens, to acquire the property that belonged to their ancestors, to their families. And now we are trying to deprive Indian citizens of their right to inherit properties and to seek justice through the judicial process. We are removing the recourse of Indians to courts of law. We are usurping in effect the powers of the judiciary by saying they cannot rule on this.

We are bifurcating the very idea of Indian citizenship because we are saying that those who are born in India, live in India and have Indian passports, but are legal heirs of people who have gone to another country, they should suddenly cease to be treated with all the rights of Indians. To my mind, that is a very dangerous and slippery slope for us to tread. Who knows how it not might be used in future against others? To deprive legal heirs and Indian citizens from inheriting their properties is to deprive them of their legal and Constitutional rights as Indians and these are, let us face it, minority citizens. There is, perhaps, an additional sense of vulnerability involved in that and on top of that, you are going retrospective. This is the Government that has denounced the retrospective taxation law and now it wants to pass a law that retrospectively nullifies all transfers and sales made between 1968 and 2015, even irrespective of the fact the laws that prevailed at that time.

17.00 hours

And, on top of that, of course, we should remember, as one of the speakers has already pointed out, the famous biblical injunction, not to visit upon the sons the sins of their fathers. Here we are saying that if your father made a mistake, you, an Indian citizen, have no right to disown that mistake.

Now, I have looked at a comparison of the Enemy Property Act of 1971 and the Enemy Property Bill that is being brought by this Government, and I must say what is worrying is, it is including legal heirs as enemies even if they are citizens of India (or of another country which is not an enemy but that is academic). Frankly, that will become an issue, if China is to be mentioned....(*Interruptions*) I yield to him. Yes, you go ahead.

SHRI M. VEERAPPA MOILY (CHIKKABALLAPUR): Of course, you have mentioned about the Bill.

I am telling you one thing. Does choosing the citizenship of a country amount to sin? I do not think so. Then again the point is classifying any country. Today you can classify one country as an enemy country. Tomorrow it may not be. Yesterday, it would not have been. How do you classify this? This is a very dangerous situation. ...(*Interruptions*)

DR. SHASHI THAROOR : Well, let me come to the point Shri Veerappa Moily has just made because I also want to stress that, in fact, international conventions do not provide for any country to be designated an enemy in peacetime and regulations pertaining to enemy property in all jurisdictions only pertain to property in times of war. So, this is already a slippery issue. It has been mentioned by someone that Pakistan disposed of the property held there by Indian citizens. It is true. But is that the standard by which we should judge India? Do we want ourselves to maintain the highest international standards? Or, would it not be ironic for a BJP Government to reduce India to the level of Pakistan? I do not think this is a good argument at all.

Now the UPA Government has also been mentioned. Yes, we tabled an Enemy Property (Amendment) Bill in 2010. It did not actually go as far as this Bill does. It permits Indian born legal heirs to claim such properties on condition that they establish their status to the satisfaction of the Government, whereas the NDA's Bill bars all laws and customs governing succession to property from being applicable to so called enemy property, and, of course, it even removes something our Bill had, the duty of the custodian to maintain the enemy or his family in India if he wished to remain in India.

Now in the UPA version, the courts have the power to adjudicate on the question of whether a property is an enemy property or not. Now what has happened is, the BJP, the NDA version says, no, the Executive will decide if a property is an enemy property. The Judiciary will have no say in the matter. The Government in effect is promoting arbitrariness and interfering with the function of the Judiciary. So, my very grave concern about all of this boils down to the legal principle that we are doing great damage to the legal structure of our country. We are raising serious questions about the value of our citizenship. If somehow there are two categories of Indian citizen and one category does not have the rights of other category, that is a very dangerous practice. And, politically, let us face it. It is also dangerous for our country if that second category does not have the same rights. Essentially, 99.9 per cent of these belong to one religious faith. They are basically our Muslim brothers and sisters and their alienation will be deepened if this Bill is passed in the present form. Let us be honest. We have to face the reality of what this is all about.

So, to conclude, Mr. Chairman, I just want to stress that the provisions of the Bill seeks to discriminate against some Indian citizens. I believe they will be found by the courts to be *ultra vires* articles 14 and 21 because they are expropriating and confiscating properties of Indian citizens and because they are doing so, they will indeed create problems for the Government and for India. I beg the respected Home Minister, let us not, as a Government, take unlawful punitive action against a section of our own citizens. Let us not trample on the rights of our own people. Let us now refer this Bill to the Standing Committee in order to ensure that it is not, if we pass it today in this form, challenged inevitably in the courts of law. Thank you Mr. Chairman.

प्रो. चिंतामणि मातवीय (उज्जैन) : माननीय सभापति जी, आपने मुझे महत्वपूर्ण बिल पर बोलने का अवसर दिया, इसके लिए मैं आपका धन्यवाद करता हूँ। मैं एनेमी प्रॉपर्टी (अमेंडमेंट एंड वेतिडेशन) बिल, 2016 के समर्थन में बोलने के लिए खड़ा हुआ हूँ। इस बिल की पृष्ठभूमि भारत के विभाजन से बनती है। 3 जून, 1947 को माउंटबेटन प्लान आया जिसमें भारत-पाक विभाजन को अंतिम रूप दिया गया था। महात्मा गांधी उस समय मौन वृत्त पर चले गए थे। इस विभाजन में 1 करोड़ 40 लाख हिंदू, सिख और मुसलमानों को विस्थापित होना पड़ा। वर्ष 1951 में दोनों देशों की जनगणना के अनुसार 72,26,600 मुस्लिम भारत छोड़कर पाकिस्तान गए और 72,95,870 हिंदू, सिख पाकिस्तान छोड़कर भारत आए। पाकिस्तान जाने वालों में 80 प्रतिशत यानी 57,83,100 लोग पंजाब और राजस्थान से गए थे। यूपी और दिल्ली से मात्र 4,64,200 यानी मात्र दो प्रतिशत गए थे। गुजरात और मुंबई से भी दो प्रतिशत गए थे। हैदराबाद और भोपाल से 75,200 अर्थात् 1.2 प्रतिशत

तोग गए थे। मैं यह आंकड़े इसलिए दे रहा हूँ कि अगर इस तरह का कानून पास नहीं किया गया तो इस देश में संपत्ति को लेकर और पाकिस्तान में गए लोगों के रिश्तेदार बताकर न्यायलयों अराजकता आएगी। मैं अपने मित्रों से भी कहना चाहता हूँ जो कह रहे थे कि न्यायालय के अधिकारों को कम किया गया है, उनको सुनने की संभावना नहीं छोड़ी है। मैं कहना चाहता हूँ कि हमारी सारी अदालतों और कई शहर केवल इसी तरह के विवादों में पड़ जाएंगे। पाकिस्तान से कई लोग जो फिर आए हैं, संपत्तियों पर कब्जा करेंगे।

महोदय, सन् 1946 में इंडियन प्रोविंशियल इलेक्शन हुए जिसमें मैं इस बात को भी प्वाइंट-आउट करना चाहता हूँ क्योंकि हम इतिहास से आंख नहीं चुरा सकते और इस चुनाव में मुस्लिम लीग को 26 प्रतिशत वोट मिले थे। वे 26 प्रतिशत वोट बलूचिस्तान से नहीं मिले थे। वर्तमान पाकिस्तान से नहीं मिले थे। यह 26 प्रतिशत वोट बंगाल से मिला था, असम से मिला था, उस समय के संयुक्त प्रान्त से और मुम्बई से मिला था। जिन्होंने पाकिस्तान के लिए वोट किया था, वे पाकिस्तान नहीं गये। यह एक त्रासदी है।

शत्रु संपत्ति अधिनियम बिल पहली बार इस सदन में नहीं आया है। इसके पहले भी वर्ष 1962 में इस तरह का बिल आया था जिसमें 80 संपत्ति चीन युद्ध के समय जो चीनी नागरिक थे, उनकी जल्द की गई थी। लेकिन यह बिल चौथी बार इस सदन में रखा गया है। दो बार अर्यादेश के रूप में इस सदन में आया है। वर्ष 1968 में कानून बना था लेकिन इसमें कुछ कमियाँ थीं।

यह जो संपत्ति अभिरक्षण में बनी रहे तो सन् 1910 में इस बार फिर इस तरह का कानून लाया गया था क्योंकि 1981 में राजा महमूदाबाद ने एक प्रतिवाद लगाया था और प्रतिवाद में वह लोअर कोर्ट में हारे और फिर वह हाइकोर्ट गये और हाइकोर्ट में उस प्रकरण में वह हारे और उसे लेकर सुप्रीम कोर्ट गये और सुप्रीम कोर्ट में जो निर्णय हुआ। उसके बाद इस देश में एक तरह की एक परम्परा चल पड़ी। हर कोई अपने आपको पाकिस्तान गये लोगों का एनर्सेंटर बताकर उनका रक्त संबंध बताकर न्यायालय में जाने लगा। कुछ लोगों ने आधे आगरा पर अपना दावा किया। कुछ लोगों ने ताजमहल पर अपना दावा किया। चूंकि इस देश की मितीजुली संस्कृति है। 800 साल तक यहां शासन रहा है, जब इस तरह का होने लगा तो कई सारे केसेज आएंगे और हर संपत्ति पर अपना दावा जताने लगाने लगेंगे और देश में अराजकता की स्थिति पैदा होगी।

यह विधेयक इसीलिए बहुत दबाव में कांग्रेसी सरकार 2010 में आई लेकिन वर्ष 2010 में जब यह आया तो इसमें कुछ अमेंडमेंट किया गया और अमेंडमेंट किन परिस्थितियों में किया गया, किन सांसदों के दबाव में किया गया? किस तरह का सांप्रदायिक स्वरूप इस बिल को दिया गया है, वह वास्तव में किसी भी लोकतांत्रिक देश के लिए बहुत शर्म की बात है।

15 नवम्बर 2010 को फिर से लोक सभा में रखा गया और जब यह 2010 में लोक सभा में रखा गया लेकिन पारित नहीं किया गया और उसके बाद भी जो अमेंडमेंट किये तो उनमें यह कहा गया कि यह जो संशोधन था, शत्रु संपत्ति अधिनियम के बारे में 2 जुलाई 2010 के पूर्व अदालतों ने जो फैसले दिये हैं, उन पर यह कानून लागू नहीं होगा। इससे साफ होता है कि यह संशोधन सिर्फ राजा महमूदाबाद को लाभ पहुंचाने के लिए किया गया था। अश्वि शरू जी की व्यथा मैं समझता हूँ कि वयों उन्होंने इतना समर्थन किया। राजा महमूदाबाद कांग्रेस के बहुत अधिक थे और उन्होंने दो बार विधान सभा का चुनाव भी लड़ा था। वे इंदिरा गांधी के भी निकट थे। एक बार केंद्रीय मंत्रिमंडल ने उन्हें पेशकश की थी कि 25 प्रतिशत संपत्ति वे रख लें और 75 प्रतिशत संपत्ति शासन रख ले। इससे यह सिद्ध होता है कि उस समय जब यह बिल पास नहीं हो सका, सिर्फ कुछ लोगों को लाभ पहुंचाने के लिए वर्ष 2010 में यह बिल पास नहीं हो सका।... (व्यवधान) राजा साहब के वकील की अगर बात कही है तो एक उस समय के कानून मंत्री थे और एक उस समय के गृह मंत्री थे। सिंघवी जी भी उनके वकील थे और कांग्रेस के एक पूर्वता भी उनके वकील थे। मुझे लगता है कि कई सारे घोटालों में एक घोटाला यह भी था क्योंकि यह संपत्ति दो लाख करोड़ रूपयों की है। वयों केवल कांग्रेस की रुचि इसमें है कि यह बिल छोड़ दिया जाए। मुझे लगता है कि यह बहुत बड़े षडयंत्र का हिस्सा है।... (व्यवधान)

हमारी बहन सुष्मिता जी कह रही हैं कि हम देश के किसी नागरिक को शत्रु नहीं कह सकते हैं, यह कोई आश्चर्य की बात नहीं है क्योंकि कांग्रेस को कभी पाकिस्तान के लोग शत्रु नहीं लगते। वे शत्रु इसलिए भी नहीं लगेंगे वयोंकि राजा महमूदाबाद के पिताजी मुस्लिम लीग के बहुत बड़े नेता थे। उन्होंने तीन बार मुस्लिम लीग के अधिवेशनों की अध्यक्षता की है। वे मुस्लिम लीग के कोषाध्यक्ष भी थे इसलिए उनके प्रति कांग्रेस का प्रेम बहुत स्वाभाविक है।... (व्यवधान) पाकिस्तान बनाने में भी कांग्रेस का बहुत बड़ा सहयोग रहा है। मैं कहना चाहता हूँ कि हमारे एक मित्र बता रहे थे कि अगर पिता चोर हो तो बेटे के हाथ पर लिखा जाता है कि मेरा बाप चोर है तो इससे बेटे का दोष नहीं होता। मैं इनके इतिहास पर फिर जाना चाहूंगा कि ये राजा स्वतंत्रता संग्राम में हजरत महल के साथ लड़े लेकिन जब युद्ध समाप्त हुआ तो अंग्रेजों ने इन्हें जार्जियाँ दीं। जार्जियाँ उन्हें दी जा सकती हैं जो अंग्रेजों के साथ थे और जिन्होंने देश तोड़ने का काम किया। ऐसे लोगों के लिए पूरी संसद को एक उपकरण बना देना और अधिनियमों तथा कानून के साथ खिलवाड़ करना वास्तव में कांग्रेस के लिए बहुत लज्जा की बात है।

इसी तरह का एक और केस भी है जिसे उस समय के गृह मंत्री ने लड़ा था वयोंकि फर्जीपन से उनका पुराना नाता है। एक केस इन्हीं राजा साहब के चाचा ने भी सुप्रीम कोर्ट में डाला था। उन्होंने कहा कि हम भी इसमें भागीदार हैं और फिर वह केस वापिस लिया। वह केस इसलिए वापिस लिया वयोंकि दस्तावेज फर्जी थे। वह केस उस समय के गृह मंत्री पी. चिदम्बरम ने लड़ा था। फर्जी दस्तावेजों की पूरी शृंखला इसमें चली है। यह बिल राष्ट्र हित में है और किसी भी दल की तुष्टिकरण की राजनीति का हिस्सा नहीं बनना चाहिए। यह बिल किसी संसदीय क्षेत्र की मांग या नेता की विवशता का शरयती रूप इस बिल को नहीं देना चाहिए। यह शुद्ध रूप से पालिसी मैटर है और धर्मनिरपेक्ष टस्टिकोग से ऐतिहासिक संदर्भ में लेना चाहिए। मैं तो यहां तक कहूंगा कि इसका विस्तार करके दाऊद जैसे देशद्रोही लोगों की संपत्ति को इसी बिल के तहत जल्द किया जाना चाहिए।

SHRI ASADUDDIN OWAISI (HYDERABAD): Thank you, Sir. I stand to oppose the Bill and by opposing the Bill if it makes me an enemy because I am speaking on behalf of the so-called enemy, then so be it.

The second point on which I am really perplexed over here is that the person concerned who has been mentioned over here many times and who is unfortunately not in this august House, Mr. Raja, how is it, Mr. Home Minister that Mr. Raja was allowed to be an MLA two times and now you are calling him an enemy? How is it that a person is allowed to contest the election and he won from your State Uttar Pradesh?

What is the spirit of this Bill? It is to undermine and subvert the very foundations of democracy and Constitution as rightly pointed out by hon. MPs, Mr. Pinaki Misra and Mr. Tharoor, is that it explicitly creates two kinds of Indian citizens and implicitly includes Indian citizens under the definition of enemy. How is it? A person went to Pakistan, but his mother was an Indian, he was an Indian. I blame the Congress Party because they slept over the 2005 Supreme Court judgement for five years and immediately arose to this need of so-called Enemy Property Act.

May I remind, through you, to the hon. Home Minister that in 1998-1999, it was your Government and it was your then Home Minister who met the late Mr. Banatwala and other MPs and said to please go through the records. What did the National Commission of Minority say? It said that the 1968 Act is outdated and it deserves to be repealed. Why do I oppose this proposed Bill? It is because it violates Articles 14 and 21. It further violates the fundamental rights of a person to property under Articles 19 (1) (f) and 31 (1), which were in force prior to the 44th Amendment on 20/6/1979. This compulsory acquisition is against the statutory regime provided by the Land Acquisition Act. This provision is expropriatory and confiscatory and is clearly violative of Article 300A of the Constitution.

Why, any legislation that is brought in, has always been done to target the minority community? I can list out so many laws passed in this august House. Where is that magnanimity? In this case, you have to uphold the rule of law as rightly pointed by the hon. MP who is a senior lawyer in the Supreme Court that this will not stand the test of law. When the NGIC Bill was passed, I stood up and opposed it and I was laughed upon and you

see the result.

Let me reiterate what the MP has said. He said : "Yes, you have no ground whatsoever. This will be struck down. ". But at what cost? It is at the cost of alienation and the message that you are sending across to all the legal heirs who are proud Indians. It gives powers to sell the properties in the custodian at the earliest possible thereby denying the legal heirs.

Another important point, which I want to bring to your notice is that this particular Bill changes the nature of vesting in custodian from temporary to permanent and that too with effect from 1968. Not only does it change the nature of vesting, but also retrospectively renders all transfers, which have already been made, in accordance with law prevalent at that point of time, null and void.

Please read the 2005 judgement. Who is stopping you from reading it? As rightly pointed out, who has drafted this amazing piece of legislation that you throw away the judgement given in 2005 by the Supreme Court. I mean, you are opening yourself to be attacked. I hope and I pray, and I am sure that this will definitely be struck down if not stayed by the hon. Courts of law.

Lastly, what is the intention? It is to grab and sell properties at the earliest to permanently deprive legal heirs, who are Indian citizens, of their rights, title and interest. Not only that, many *bona fide* purchasers of property are there in Mumbai and throughout the country. What will happen to them? I am asking this because you are closing down all the doors of hearing and recourse to the courts of law. Please refer to the newly added Sections 6 and 8A. This is totally unconstitutional. This Government, with its brute majority, wants to show that they can trample upon the laws of Indian citizens.

You are creating two kinds of Indian citizens. This piece of legislation clearly says that anyone who belongs to the minority community will not have recourse to law. This is the message that you are sending if this august House passes this law, whereas the Constitution guarantees me right to equality before law. Your legislation is anti-minority. Let me say this very clearly. Apart from all the points that have been listed over here by the hon. Members, my request, through you, to the Government is that withdraw this Bill. Where is your sense of *Sabka Saath Sabka Vikas* and India First? Where is this? I mean, all your so-called intentions have been thrown to wind.

Who is this 'enemy'? He was an Indian. There are many Indian citizens who want their rights to be given. What about these huge properties? You can discuss about it, you can talk about them, but what about the corruption that has been done by the custodian? Are you going to penalise that custodian for the corruption that has taken place?

I can give you numerous examples, Sir. Before I conclude, may I once again request the Government to withdraw this piece of legislation? Otherwise, what has happened in the case of NJAC? It was a bloody nose; it was a great set back. Now, the Government cannot even talk about NJAC because the judgment itself has clearly exposed the majoritarian ideas of the Government. This is the same mindset by which they want to bring this legislation. Thank you.

श्री हुकुम सिंह (केरना) : सभापति जी, गृह मंत्री जी द्वारा सदन में जो विधेयक पेश किया गया है, वह स्वागतयोग्य है; मैं यह उम्मीद करता था कि पूरा सदन इसका सर्वसम्मति से समर्थन करेगा। अभी यहां पर दो-तीन बातें कही गई हैं, मैं अपनी बात वहीं तक सीमित रखना चाहूंगा। यहां पर इस विधेयक को स्टैंडिंग कमेटी में रफर करने की बात कही गई। एक कारण हमारे विद्वान सदस्य ने दिया कि इसमें न्यायालयों का अधिकार क्षेत्र समाप्त कर दिया गया है इसलिए इसे स्टैंडिंग कमेटी को रफर किया जाना चाहिए।

माननीय सदस्य जिस कोर्ट की बात कर रहे थे, उस कोर्ट को तो संविधान में एक असामान्य अधिकार प्राप्त है। उस अधिकार को कोई छीन नहीं सकता, कोई टच नहीं कर सकता। बार-बार सुप्रीम कोर्ट ने उस अधिकार को लेने का हमारे सामने सबूत भी दिया है। लेकिन समस्या को समझें। कोई जिला ऐसा नहीं है, जहां पर कुछ लोग ऐसे न पैदा हुए हों, जो पुरानी-पुरानी, 1946 की, 1947 की फर्जी वसीयतें बनाकर और दिखाकर जमीन को हड़पने का काम कर रहे हैं। मैं अपने जिले का उदाहरण देना चाहता हूँ। पाकिस्तान के सबसे पहले प्रधान मंत्री नवाब लियाकत अली खान, वह हमारे पड़ोस के रहने वाले थे। आज कम से कम एक दर्जन उनके उत्तराधिकारी वसीयत बनाकर कोर्ट में घूम रहे हैं। वे किस सम्पत्ति को लेना चाहते हैं, जिला अधिकारी के बंगले को, पुलिस अधीक्षक के बंगले को यानी जितनी प्राइम लोकेशन पर भवन या सम्पत्तियां हैं, सबके उत्तराधिकारी वहां पैदा हो गए। जिला स्तर की अदालतों को, मुन्सिफ कोर्ट्स को, अधीनस्थ न्यायालयों को अगर आप यह अधिकार दे देंगे, अधिकार नहीं लेंगे, निश्चित रूप से इस बिल का उद्देश्य समाप्त हो जाएगा और आप कुछ नहीं कर पाएंगे।

यहां पर एक और बात कही गई जो दो बार विधायक रह चुके हैं। जो उनके उत्तराधिकारी हैं, उन्हें किस प्रकार हम शत्रु कह सकते हैं। श्रीमान, हम उन्हें शत्रु नहीं कह रहे हैं। शत्रु उनके पिताश्री को कह रहे हैं, उनके वालिद साहब को शत्रु कह रहे हैं। उनके वालिद साहब वह थे, जिन्होंने इस भारत माता के टुकड़े करने में सक्रिय भूमिका अदा की थी। आप समझिए तो सही, मद्रास के राजा साहब की वया भूमिका थी। किस राज्य में जाकर उन्होंने इस भारत भूमि के बारे में जहर नहीं उगला और इसे तोड़ने का कुचक्र नहीं चलाया। उसके बाद वह भारत में रहे कहां, पार्टीशन के तुरंत बाद वह पाकिस्तान चले गए थे। इंग्लैंड में जाकर उनकी मृत्यु हुई। अगर वह भी एनीमी नहीं हैं, तो फिर एनीमी कौन होगा, वया मैं और आप होंगे?

मान्यवर, मैं आपसे आग्रह करना चाहता हूँ और अपने मन के उद्गार आपके सामने रख रहा हूँ। इसलिए उन्हें समझिए। सन् 1965 में लड़ाई हुई, 1968 में यह कानून बना। सन् 1965 की लड़ाई में एक युवा सैनिक के रूप में मुझे भी इस देश की रक्षा के लिए उस लड़ाई में भाग लेने का सौभाग्य प्राप्त हुआ। किस प्रकार के कष्ट हमने सहे हैं और वया-वया वादे राजनीतिक लोगों ने किए थे, इसे भी आप जानिए। जिस जमीन पर कब्जा कर लिया, संघर्ष करने के बाद और कुर्बानी देने के बाद उस जमीन को वया कभी खाली नहीं करया जाएगा? उन लोगों पर वया गुजरी होगी जिनके परिवार के नौजवान वहां पर शहीद हुए, उन लोगों पर वया गुजरी होगी जिन्होंने एक-एक हफ्ता भूखे रहकर वहां पर लड़ाई लड़ी और पाकिस्तान की बमबारी को हमने सहन किया। उसके बाद आप सारी जमीन तौटा दें, हमें निराशा होगी या नहीं होगी। आज आपको इस बात की याद आ रही है कि शत्रु की परिभाषा वया हो? शत्रु की परिभाषा आप उनसे समझिए, जिन्होंने शत्रु का मुकाबला किया है। आज हम पार्लियामेंट में बैठकर शायद यह भी भूल गए हैं कि शत्रु की परिभाषा वया होती है? वर्ष 1962 में किस प्रकार की लड़ाई हुई? कितने लोगों ने शहादत दी? यह कानून आज नहीं बना है, यह कानून वर्ष 1968 में बना था। उस समय किसकी सरकार थी? वया उस सरकार को पता नहीं था कि शत्रु वया होती है? आज उसी पार्टी के माननीय सांसद यह कहें कि सब को शत्रु न कइो। सबको शत्रु कहां कह रहे हैं, शत्रु को शत्रु कह रहे हैं और शत्रु को हम मित्र कैसे कह देंगे, जिन्होंने हमारे ऊपर इतने अत्याचार किए हैं।

मान्यवर, मैं एक दो सुझाव यहां देना चाहता हूँ। पहला, कस्टोडियन का प्रश्न है। आखिर कब तक कस्टोडियन के संरक्षण में संपत्ति को रखा जाएगा? इसका फाइनल डिसपोजल होना चाहिए। यह देश की संपत्ति हो चुकी है। यह भारतवर्ष की संपत्ति है और भारतवर्ष को आज इस बात की चिंता होगी चाहिए कि अगर हमेशा के लिए यह संपत्ति कस्टोडियन के संरक्षण में रहेगी तो संपत्ति बर्बाद भी होगी और नये-नये प्रकार के लोग पैदा होते रहेंगे, जो इस पर अधिकार की चेष्टा करेंगे, इसलिए एक बार जो शत्रु संपत्ति घोषित हो चुकी है, उस शत्रु संपत्ति को राष्ट्रीय संपत्ति घोषित कर दिया जाए। भारत सरकार को इस बात का अधिकार हो कि जो भी उसका डिसपोजल करना चाहे, सरकार उसका डिसपोजल करे ताकि वह संपत्ति बर्बाद न हो, वरना यही होगा, जैसा कि हो रहा है कि अपने वोट बैंक को सिद्ध करने के लिए कार्रवाई होती रहेगी। अगर आप लोगों ने भारतवर्ष की चिंता की होती, आपने भारतवर्ष की चिंता तब तो की है जब संघर्ष हो रहा था, चिंता तब तो की है, जब आपके ऊपर बमबार्डमेंट हो रहा था, चिंता तब तो की है जब हमारे बच्चे सीमा पर शहादत दे रहे थे, उसके बाद आप शहादत को भूल गए और नये-नये तीगल पेंच लगाए जा रहे हैं ताकि उस संपत्ति को बचाओ और उन्हीं को सौंप दो। उनके फर्जी उत्तराधिकारियों को ही वह सौंप दो ताकि हम लोगों को पता लगे कि हम लोगों की हिसियत इतनी भी नहीं है कि हम कानून बनाने के बाद उस कानून का पालन भी कर सकें। इन्हीं शब्दों के साथ मैं गृह मंत्री जी का आभार व्यक्त करता हूँ जिन्होंने एक कदम उठाया और संशोधन विधेयक लेकर आए। मैं यह उम्मीद करता हूँ कि जो देशप्रेमी हैं, जिनके मन में

राष्ट्र प्रेम है, सर्वसम्मति से आज इस कानून को पारित करेंगे। धन्यवाद।

SHRI ASADUDDIN OWAISI: Let me seek a clarification. The hon. Member has said that if you support the Bill, then you are a nationalist. If I am opposing the Bill, what does it mean? ...*(Interruptions)*

HON. CHAIRPERSON: No, please sit down.

...*(Interruptions)*

HON. CHAIRPERSON: Shri Udit Raj.

श्री उदित राज (उत्तर-पश्चिम दिल्ली) : सभापति महोदय, यह बिल बहुत छोटा है, इस पर बहुत ज्यादा चर्चा करने के लिए नहीं बचा है। लेकिन हमारे विपक्ष के माननीय सदस्यों को सुना है, वह इसको धर्म के आधार पर बांटकर देख रहे हैं। इसको इस तरह से नहीं देखा जाना चाहिए। यह प्रार्षित ज्यादातर राजा-महाराजाओं की है और इस देश के राजा-महाराजा चाहे जिस जाति या धर्म के रहे हों, पूर्व में उनकी सम्पतियों को अधिग्रहित किया गया है और उनको राष्ट्रीय सम्पति घोषित किया गया है। इस सबके पीछे एक बात यह भी है कि उन्होंने इसको कोई खून-पसीने से नहीं कमाया है। उस समय सामंतवादी व्यवस्था थी और उन्होंने जनता की खून-पसीने के कमाई को हड़पा था और उससे उन्होंने अपनी रियासतें बनायी थीं। अगर इन प्रार्षितों को, जैसा कि हमारे विद्वान दोस्त हनुमंत सिंह जी कह रहे थे कि इनका डिस्पोजल हो जाना चाहिए। इसको कस्टोडियन के तहत न रखकर वेस्ट हो जाना चाहिए और संस्थाएं बनानी चाहिए जहां-जहां भी संभव हो सकता है।

दूसरा, यहां अभी सुप्रीम कोर्ट के जजमेंट का हवाला दिया गया। सुप्रीम कोर्ट से बड़ी हमारी यह संसद है। यह सवा सौ करोड़ की इच्छा का कोर्ट है और वह पांच लोगों का कोर्ट है। केवल पांच जज बैठक एनएसजीसी के ऊपर फैसला इस संसद के खिलाफ दिया है तो यह संसद फिर उस पर कानून बना सकती है। संवैधानिक स्थिति यह है कि न्यायालय को इस देश में कानून को इंटरप्रेट करने का अधिकार है, कानून बनाने का नहीं है। As per the Constitution of India, they are to interpret the law and not to make the law. This Parliament makes the law. कानून बनाने का काम हमारा है, उसकी चिंता नहीं होनी चाहिए।

दूसरी बात यह है कि law is always dynamic. Yesterday's judgment of the Supreme Court can be changed also with the time and space. ऐसी बात नहीं है कि जो 2005 में है, उसके बाद में हम आगे नहीं जा सकते। जो कानून कभी ह्रास में बनाया हुआ है, वह हो सकता है कि आगे चलकर हम ही रोज करें। चूंकि Law is always dynamic. ये स्टैटिक चीजें नहीं हैं, डाइनेमिक हैं। इसलिए इस बिल का हम समर्थन करते हैं।

इसके अलावा मैं एक अनुसूची और करना चाहता हूँ कि अन्य लोग जो इस तरह की गतिविधियों में इनवोल्व हैं तथा उन्होंने सम्पति खरीदी है और वह बाहर भाग गये हैं, उनके खिलाफ इन्वैस्टिगेशन या जांच चल रही है। उन सम्पतियों को भी इसी वलास में शामिल किया जाना चाहिए, उनकी प्रोपर्टीज को भी अधिकृत किया जाना चाहिए - चाहे वे किसी धर्म के हों, चाहे किसी भी जाति के हों, वह कोई भी हो सकता है तो इसको इस तरह से बांटकर नहीं देखा जाना चाहिए।

जहां तक टर्मिनोलोजी एनिमी की बात है, this term has not been coined by us. It has been coined by Congress itself. यह एनिमी प्रोपर्टी की जो टर्मिनोलोजी है, इसे भारतीय जनता पार्टी ने कोइन नहीं किया है, आप ही ने कोइन किया है। We are carrying forward the same terminology. So, you should not have any objection over it.

अंत में मैं माननीय गृह मंत्री जी को बहुत धन्यवाद देता हूँ कि उन्होंने इस तरह का स्टैप उठाया है। इससे लिटिगेशन कम होंगे, देश में बहुत सारे लिटिगेशन बढ़ते ही जा रहे हैं तो उनका डिस्पोजल भी होना चाहिए, मैं समझता हूँ कि वह इससे होगा। धन्यवाद।

गृह मंत्री (श्री राजनाथ सिंह) : सभापति महोदय, सबसे पहले मैं उन सभी सम्मानित सदस्यों को धन्यवाद देना चाहता हूँ, जिन्होंने इस बिल पर जो रक्षित चर्चा में अपने बहुमूल्य सुझाव दिये हैं। यह बिल अपने आपमें कितना महत्वपूर्ण है, इससे ही स्पष्ट हो जाता है कि बहुत सारे सदस्यों ने इस पर अपने विचार व्यक्त किये हैं और उन सभी के विचार महत्वपूर्ण हैं। अधिकांश सदस्यों ने इस बिल को फुलप्लेज्ड सपोर्ट किया है। कुछ सम्मानित सदस्यों ने इस बिल को सपोर्ट करते हुए इसमें कुछ आंशिक सुधार करने की बात भी कही है। मैं श्री एन.के.प्रेमचंद्रन जी, योगी आदित्यनाथ, कु.सुधामिता देव, प्रो.सौगत राय, श्री आर.आर. सेंथिल, श्री पिनाकी मिश्र, श्री के.विश्वेश्वर रेड्डी, श्री एम.श्रीनिवास राव, श्री जोइस जार्ज, श्री राज मोहन रेड्डी, श्री पी.पी.चौधरी, श्री शशि थरूर, श्री चिंतामणि मालवीय, श्री ओवैसी, श्री हनुमंत सिंह जी और श्री उदित राज जी को धन्यवाद देना चाहता हूँ। जहां तक इस बिल का प्रश्न है, यह बिल क्यों ताना पड़ा। हम इसके विस्तार में, इसकी हिस्ट्री में नहीं जाना चाहते, लेकिन संक्षेप में मैं इसकी चर्चा कर देना चाहता हूँ और चर्चा करने के पहले मैं यह भी स्पष्ट कर देना चाहता हूँ कि इसे जाति, धर्म अथवा मजहब में बांटकर देखा नहीं जाना चाहिए। जो लोग भारत के विभाजन के बाद पाकिस्तान गये, केवल उनकी का प्रश्न नहीं है, वे अपनी प्रोपर्टी छोड़कर गये। बल्कि 1962 में वाइना के साथ भी युद्ध हुआ था और जो वाइनीज नेशनल भारत छोड़कर वाइना चले गये, उनकी प्रोपर्टी का भी मामला है, जिसका संज्ञान यह बिल लेता है और सदन के सभी सम्मानित सदस्यों को जानकारी है कि जब 1965 में इंडो-पाक वार हुआ था, उस वार के बाद एक ताशकंद वार्ता हुई थी, जिसमें भारत के प्रधान मंत्री थे और पाकिस्तान के राष्ट्रपति थे और 10 जनवरी, 1966 को एक ताशकंद एकोर्ड हुआ था, ताशकंद समझौता हुआ था। उस ताशकंद समझौते में यह बात आई थी कि इस प्रकार की जो प्रोपर्टीज हैं, इन प्रोपर्टीज के संबंध में समय-समय पर भारत-पाकिस्तान के लोग बैठकर इसका समाधान निकालेंगे कि इन प्रोपर्टीज का हमें क्या करना चाहिए। पाकिस्तान भी उस समय सहमत था। लेकिन सन् 1971 में ही पाकिस्तान ने जितनी इस प्रकार की प्रोपर्टीज पाकिस्तान के अंदर थी, केवल कस्टोडियन को ही नहीं दिया, बल्कि उसके पास वह जो प्रोपर्टी थी उसको सीधे डिस्पोज ऑफ भी कर दिया। अब भारत और पाकिस्तान के बीच बातचीत की जो एक उम्मीद थी, वह उम्मीद पूरी तरह से समाप्त हो गई। उस सूत्र में मैं समझता हूँ कि उस समय की कांग्रेस लेड कांग्रेस गवर्नमेंट, कांग्रेस लेड यूपीए गवर्नमेंट जो भी थी, उससे इस प्रकार के बिल कई बार ताने पड़े थे और एनेमी प्रोपर्टी एक्ट सन् 1968 से ताना किया गया, जिसके माध्यम से एनेमी प्रोपर्टीज के निरंतर कस्टोडियन के अधीन इसको रखा जाए, इसका प्रोविजन किया जाए, इसका प्रोविजन किया गया था। केंद्र सरकार ने कस्टोडियन एनिमी प्रोपर्टी के माध्यम से देश के कई राज्यों में फैली जो इस प्रकार की एनिमी प्रोपर्टी थी, उसको अपने अधिकार में ले रखा है। इसके अतिरिक्त कुछ वलासिफाइड मूवेबल प्रोपर्टी थी, एनिमी प्रोपर्टी उसमें शामिल हैं।

मैं यह भी स्पष्ट करना चाहता हूँ कि एनिमी प्रोपर्टीज की वेस्टिंग को कस्टोडियन के अधीन जारी रखने के लिए तत्कालीन सरकार द्वारा अमेंडमेंट के माध्यम से सन् 2010 में एनिमी प्रोपर्टी एक्ट सन् 1968 पर एक ऑर्डिनेंस लाया गया था। प्रेमचंद्रन जी ने कहा था कि ऑर्डिनेंस ताने की वया जरूरत है और उनका यह भी कहना था कि democracy demands debates and deliberations. प्रेमचंद्रन जी, मैं आपकी बात से पूरी तरह सहमत हूँ कि डेबेट्स में debates and deliberations होने चाहिए। लेकिन ऐसा नहीं है कि आज्ञाद भारत के इतिहास में यह कोई पहला ऑर्डिनेंस आया है। इसके पहले सैंकड़ों ऑर्डिनेंस, जब से आजादी हासिल हुई है, इस देश में ऑर्डिनेंस आ चुके हैं। ऑर्डिनेंस किन्हीं परिस्थितियों में यदि जारी भी हुआ है, तो मैं समझता हूँ कि वह बिल के रूप में यहां पर आया है तो वह डिस्कशन और डेलिबेरेशन के लिए ही आया है। आप सबका सुझाव आमंत्रित करने के लिए ही इसे यहां पर लाया गया है।

सभापति महोदय, यह ऑर्डिनेंस 06 सितंबर, 2010 को ही लैस कर गया और 22 जुलाई, 2010 को इस विषय पर लोक सभा में एक बिल भी पेश किया गया था। परिणाम यह हुआ कि इस बिल को बाद में वापस ले लिया गया और मॉडिफाइड प्रोविजंस के साथ, एक अन्य बिल 15 नवंबर, 2010 को लोक सभा में पेश किया गया और उसके पश्चात वह बिल स्टैंडिंग कमेटी को रेफर कर दिया गया। लेकिन 15वीं लोक सभा का कार्यकाल समाप्त हो गया और यह बिल पास नहीं हो पाया, यह लैस कर गया। तब उसके बाद भारत के महामहिम राष्ट्रपति ने 07 जनवरी, 2016 को The Enemy Property (Amendment and Validation) Ordinance 2016 में संशोधन कर एनिमी प्रोपर्टी अमेंडमेंट एण्ड वैलिडेशन ऑर्डिनेंस, 2016 को प्रमलगेट किया है। इस संशोधित ऑर्डिनेंस में यह भी शामिल है कि यदि कोई एनिमी प्रोपर्टी एक बार कस्टोडियन में वेस्टिड हो गई तो यह हमेशा कस्टोडियन में वेस्टिड रहेगी। चाहे किन्हीं कारणवश एनिमी सबजेक्ट अथवा फर्म एनिमी न रह जाए, जैसे मृत्यु आदि कारणों की वजह से, उत्तराधिकार कानून एनिमी प्रोपर्टी पर लागू नहीं होगा। कस्टोडियन में वेस्टिड किसी भी एनिमी प्रोपर्टी, एनिमी सबजेक्ट अथवा फर्म का ट्रांसफर नहीं किया जा सकता है। बिल के प्रोविजंस के अनुरूप इसका डिस्पोजल होने तक यह कस्टोडियन में ही वेस्टिड होगा। इस बिल के legislative intents पहले विलयर नहीं थे, उसको वैलिडिफाई करने के लिए

यह बिल सदन के समक्ष प्रस्तुत किया गया है।

सिववेस टूट सकता है, लेकिन जो कुछ माननीय सदस्यों ने अपने ऑब्जेक्शंस दिए हैं, उस पर मैं यहां पर टिप्पणी करना चाहूंगा। पिनाकी मिश्र जी की स्पीच बहुत ही अच्छी थी। उन्होंने ज्युरिस्टिडवशन ऑफ कोर्ट्स के संबंध में इन्होंने कहा था, उस पर आपत्ति की थी कि आपने सीधे प्रतिबंध लगा दिया, आपने किसी भी ज्युरिडिशल फोरम पर जाने पर प्रतिबंध लगा दिया है कि कहीं अपील नहीं हो सकती है, कुछ नहीं हो सकता है। उस संबंध में मैं यह बताना चाहूंगा कि बहुत से कोर्ट केसेज़ होने के कारण 2010 के ऑर्डिनेंसिज़ और बिल में भी यह प्रॉविजन था। दूसरे जो एक्ट्स हैं, जैसे Debt Recovery Tribunal में भी सिविल कोर्ट्स का ज्युरिस्टिडवशन बैं किया गया है। यह प्रॉविजन भी इसमें है। यह जो बिल तैयार हुआ है, इस पर अटॉर्नी जनरल की भी ओपिनियन ली गई है और साथ ही साथ तॉ मिनिस्ट्री की भी ओपिनियन ली गई है। सुमिता देव यहाँ पर नहीं है, उन्होंने कहा कि बीजेपी इस ऑर्डिनेंस को लाई है।

महोदय, इसके पहले भी और मैं समझता हूँ कि सरकार, सरकार होती है, चाहे कांग्रेस की सरकार हो अथवा बीजेपी की सरकार हो अथवा किसी की भी सरकार हो। इस रूप में नहीं कहा जाना चाहिए कि कांग्रेस की सरकार, बीजेपी की सरकार या इनकी सरकार, पिछली सरकारों के द्वारा भी यह ऑर्डिनेंस लाया गया है। हाँ, यह सच है कि इस बार हम लोग जो ऑर्डिनेंस लाए हैं, उसमें हम लोगों ने कुछ संशोधन किया है, साथ ही उनका यह कहना था कि एनिमी, अब मैं यह नहीं कहना चाहता कि सरकारों के संबंध में चर्चा न करें।

दूसरा प्वाइंट सुमिता देव जी ने यह उठाया था, राजा महमूदाबाद के मजहब की बात, मैं पहले ही कह चुका हूँ कि हर चीज को जाति, पंथ, मजहब अथवा धर्म के साथ जोड़कर नहीं देखा जाना चाहिए। मैंने पहले ही वलैरिफाई किया, पून केवल पाकिस्तान के नेशनलिस का ही नहीं है, चाइनीज के नेशनलिस का भी है। चाइनीज लोग भी जो अपनी प्रॉपर्टी यहाँ पर छोड़ गए हैं, उन पर भी यह कानून बन जाने के बाद, एक्ट बन जाने के बाद उनके ऊपर भी यह लागू होगा। यह एनिमी प्रॉपर्टी का विषय है। मेरा यह कहना है कि वर्ष 1962 में चीन के साथ इंडो-चाइना वार हुई। वर्ष 1965, 1971 में इंडो-पाक वार हुई, यह उससे संबंधित है। यह सबजेक्ट, यह ईशू देश का है, मजहब का नहीं है। इसलिए इसको मजहब के साथ जोड़कर नहीं देखा जाना चाहिए।

सुमिता देव ने यह भी कहा कि एनिमी क्यों कहा जाता है? केवल उन्होंने ही नहीं, बल्कि दो-तीन और माननीय सदस्यों ने इस संबंध में आपत्ति की कि यदि हमारा पड़ोसी देश पाकिस्तान है, उसको कब तक आप एनिमी कहते रहेंगे। चाइना हमारा पड़ोसी देश है, उसे कब तक आप एनिमी कहते रहेंगे। मैं सहमत हूँ कि हम अपने पड़ोसी देशों को अपना दुश्मन नहीं मानते हैं, अपना शत्रु नहीं मानते हैं, बल्कि हम यह चाहते हैं कि पड़ोसियों के साथ हमारे रिश्ते बेहतर होने चाहिए।

आदरणीय अटल बिहारी वाजपेयी जी के उस वाक्य को मैं कभी भूलता नहीं हूँ कि मनुष्य की जिंदगी में दोस्त बदल जाते हैं लेकिन पड़ोसी नहीं बदलता है। इसको हम लोगों ने विल में बैठा रखा है, जो कुछ भी अटल बिहारी वाजपेयी जी ने पहले कहा था। एनिमी क्यों कहा जाता है, मैं इसको वलैरिफाई करना चाहूंगा। जब एक कंट्री का दूसरी कंट्री के साथ युद्ध चल रहा हो, तब उसे एनिमी कंट्री हम कहते हैं। डिफेंस ऑफ इंडिया रूट्स, 1962 में यह वेल डिफाइंड है। अतः जो उस युद्ध के समय उन देशों में चले गए, उनकी सब संपत्तियों को हमने एनिमी प्रॉपर्टी कहा है। यह सिर्फ आज के संदर्भ में नहीं है, यह 1962 के संदर्भ में भी है, 1965 के संदर्भ में भी है और 1971 के संदर्भ में भी है, इसलिए उसी संदर्भ में इसे देखा जाना चाहिए।

एक और किसी सम्मानित सदस्य के द्वारा कोई आपत्ति थी कि देश के पास बहुत सारी मूवेबल और इमूवेबल एनिमी प्रॉपर्टी है। सरकार को प्रॉपर्टी जहाँ लीगल टेनेन्ट्स नहीं हैं, उनको पब्लिक इंटेस्ट में यूज करने पर भी विचार करना चाहिए तो इस संबंध में हम लोग विचार कर रहे हैं। इसका भी प्रॉविजन है। शशि थरु साहब ने कहा था "depriving Indian citizens from their rights". संभवतः उनका मतलब तॉ ऑफ सर्वेसशन से था, तो तॉ ऑफ सर्वेसशन केवल एनिमी प्रॉपर्टी के संदर्भ में यहाँ पर रोका गया है और कोई भी अन्य अधिकार इससे अपेक्टेड नहीं होते हैं।

सौगत राय साहब ने एक आपत्ति व्यक्त की थी, उनका यह कहना था कि अनआथराइज ऑवयूरेन्स के ऊपर भी सरकार की नजर होनी चाहिए। मैं इसमें स्पष्ट करना चाहूंगा कि पब्लिक प्रोमाइसेस इविवेशन ऑफ अनआथराइज आवयूरेन्स एक्ट, 1971 ऑलरेडी यह है, को भी हमारे इस 2016 के ऑर्डिनेंस द्वारा अमेंड किया गया है। कस्टोडियन, डिप्टी कस्टोडियन और असिस्टेंट कस्टोडियन को स्टेट आफिसर्स बनाया गया है। इसके द्वारा इल्लिगल आवयूरेन्स को हटाने में आसानी होगी। जो उनकी आपत्ति थी, मैं समझता हूँ कि उसका समाधान इससे हो जाता है।

तॉ ऑफ सर्वेसशन का जहाँ तक पून है, इसके बारे में मैंने पहले भी वलैरिफाई किया है कि लैजिस्टलेटिव इन्टैन्ट हमेशा यही था कि एनिमी प्रॉपर्टी वारिस को क्यों मिले। हमने उसी इन्टैन्ट को विलियर किया है और ओरिजिनल एक्ट में भी लिखा था कि अगर एनिमी की मृत्यु उस जगह होती है जहाँ एनिमी प्रॉपर्टी एक्ट 1968 लागू होता है, तो वह प्रॉपर्टी एनिमी प्रॉपर्टी ही रहेगी, यह प्रॉविजन है।

पून यह भी खड़ा किया गया कि सीधे बिल लेकर आप आते, ऑर्डिनेन्स लाने की वया ज़रूरत है। उसमें अर्जेन्सी क्यों थी क्योंकि बहुत सारे महत्वपूर्ण लिटिगेशन्स माननीय सर्वोच्च न्यायालय में और दूसरे न्यायालयों में इस समय लंबित पड़े हुए हैं, साथ ही कई ऐसे निर्णय हो भी चुके हैं। इसलिए यह आवश्यकता महसूस की गई कि जल्द से जल्द इस प्रकार का एक बिल लाना चाहिए। अतः ऑर्डिनेन्स के माध्यम से लैजिस्टलेटिव इन्टैन्ट को स्पष्ट करना सरकार ने आवश्यक समझा, इसीलिए सरकार यह बिल लेकर आई है। मैं समझता हूँ कि इसमें यदि विलंब होता तो भारत को लगभग लाख करोड़ रुपये से अधिक की संपत्ति का नुकसान भी हो सकता था। इसलिए इस ऑर्डिनेन्स को लाना यहाँ पर आवश्यक था।

रैट्रोस्पेक्टिव इफैक्ट की बात कही गई। क्योंकि एनिमी प्रॉपर्टी एक्ट 1968, 1965 और 1971 के युद्ध से संबंध रखता है, उस संबंध में एनिमी प्रॉपर्टी एक्ट 1968 पारित किया गया था। उस समय के प्रॉपर्टी मैटर्स के लैजिस्टलेटिव इन्टैन्ट को विलियर करने के लिए रैट्रोस्पेक्टिव इफैक्ट चाहिए था। यह 2010 के ऑर्डिनेन्स और बिल में भी ऑलरेडी इनक्लूडेड था, इसलिए हमने इसको लाने की कोशिश की है।

एक बात यह भी आई कि यदि कोई इंडियन सिटिज़न होता है तो आप उसको एनिमी मानते हैं, यह कैसे होता है? मैंने पहले भी यह वलैरिफाई कर दिया है कि यह केवल एनिमी प्रॉपर्टी के संदर्भ में किया गया है; यह तॉ ऑफ सर्वेसशन और एनिमी प्रॉपर्टी पर लागू होगा। दूसरा कोई भी अन्य अधिकार इससे अपेक्टेड नहीं होगा। केवल एनिमी प्रॉपर्टी ही उत्तराधिकारी को नहीं मिलेगी। यह प्रॉपर्टी के संबंध में है, व्यक्ति के संबंध में नहीं है।

सभापति जी, मैं समझता हूँ कि जो ऑब्जेक्शन्स हमारे माननीय सदस्यों के थे, लगभग उन सभी पर मैंने अपने विचार व्यक्त कर दिये हैं। हो सकता है कि कुछ छूटे हों। लेकिन मैं सभी सम्मानित सदस्यों से निवेदन करूँगा कि कृपया इस बिल को सर्वसम्मति से पारित करने की कृपा करें। साथ ही मैं प्रेमचन्द्रन जी से भी आग्रह करूँगा कि जो उनका स्टेटुटरी रिज़ॉल्यूशन है, उसे भी वह कृपया वापस कर लेने का कष्ट करें।

SHRI N.K. PREMACHANDRAN (KOLLAM): Thank you, Mr. Chairman, Sir. I have moved the Statutory Resolution as a normal course of action to mark my protest against the Ordinance route of legislation. Definitely, it is the right of a Member to move the Resolution to mark the democratic protest in respect of this Ordinance route of legislation. It is entirely different whether I support the Bill or oppose the Bill.

When I moved the Resolution I was also a little bit confused with regard to the contents of the Bill. Sir, I remember now what His Excellency, the President has suggested; democracy demands discussion and debate, not obstruction or any other interruption. I fully agree with that proposition. So, after hearing the entire House, especially after hearing Shri Pinaki Misra and other legal luminaries in the House I strongly feel that this Bill should be sent or referred to the Standing Committee. This is the first point which I would like to make.

It is because I fully agree with the arguments advanced by the hon. Minister, Shri Rajnath Singh Ji. I also appreciate that he is replying to each and every Member. But the point which we would like see is that whether this Bill is legally sustainable in the court of law. That is the point which we would like to make. Almost all the Members have said that this Bill shall never have the fate of NJAC Bill. The National Judicial Accountability Commission Bill failed in the court of law because of some lapses on our part. If the intent of the Bill is *bona fide*, definitely we should have a close scrutiny of each and every provision of the Bill. That is the point which I would like to make.

The first point is regarding the retrospective effect. I do agree with the hon. Minister. But whether it is NDA Government or UPA Government, there was retrospective effect. Yes, I do agree that even in the 2010, there was retrospective effect. In the Ordinance, there was retrospective effect. This time also there is retrospective effect. But what would be the ramifications of retrospective effect? From 1968 to 2016, so many transactions from one person to another person must have took place. What would be the consequences? So many legal proceedings are pending before various courts of law. What would be its impact? Merely making a legislation in Parliament and saying that all other transactions would be null and void and this law will be applicable and whatever transaction you made all these years, that would be awry, how can it be justified?

Another very important point which I would like to make is regarding ban on suits as Mr. Pinaki Misra has rightly pointed out. I would like to read the provision. Hon. Arun Jaitley Ji is also here. Clause 14 says:

"No civil court or other authority shall entertain any suit or other proceeding in respect of any property, subject-matter of this Act as amended by the Enemy Property (Amendment and Validation) Act, 2016, or any action taken by the Central Government or the Custodian in this regard."

So no legal remedy is available as per the provisions of this Act. You cannot approach any other authority also. That means there is no alternative redressal mechanism. Suppose any dispute arises in respect of enemy property, where do we go? This is not the question of nationalism or anti-nationalism. This is not the questing of patriotism and anti-patriotism. This is a question of law. We are making a law and we are saying that an individual who is holding the property, he has no civil right over the property. You have no alternative dispute redressal mechanism. No civil court or no authority or nothing is there means this enemy property is confined to another globe. What does that mean and what does that indicate? That is why, he has suggested that Parliament is for discussion and debate. The Government has to consider the arguments advanced by the Members whether they are from Opposition or the Treasury Benches. So clause 14 or Section 18B of Enemy Property Act, as amended, definitely it is null and void and this is legally not sustainable. So, definitely it will fail in the court of law. So, it has to be taken care of.

My learned friend, Shri P.P. Choudhary has made an argument which is really unfortunate. Now the cat is out of the bag because under Section 124A of the Indian Penal Code, suppose the sedition charges are there. Suppose Kanhaiya Kumar is found to be guilty of sedition, his property whatever he has inherited, the entire property should come within the purview of the Enemy Property Act, what are its implications? His son or his daughter or his descendents have no right over the property. Now where does the country go? In which direction are we moving?

So since there is a lot of ambiguity and confusion regarding the definition, regarding retrospective effect and also regarding ban on suit, my humble submission is that better scrutiny is required. We are not opposing the Bill in its spirit. I would like to request the hon. Minister to send it to the Standing Committee so that we can have a closer scrutiny and have a well drafted legislation by this House.

SHRI PINAKI MISRA (PURI): Sir, I am very glad that Shri Premachandran said that a very learned and a senior advocate Shri Arun Jaitley ji is also here. For 50 years there has been a provision of law 8(ii) (vii) which says that the custodian may be specifically authorized to transfer by way of sale, mortgage, lease or otherwise dispose of any of the properties. This has been the law. Under this manifold transactions have taken place. Today you say that any transfer of such property shall be void and shall always deemed to have been void. Shri Jaitley, Mr. Home Minister, which court of law is going to permit this to stand in the face of this kind of legislation? That is why I said that if we legislate like this courts are bound to strike it down. After all, when there is a law for 50 years, there are valid transactions, third party *bona fide* third party have purchased. Today how can we nullify all those transactions and say all those are void transactions? That is all I ask you.

HON. CHAIRPERSON: Shri Premachandran, are you withdrawing the Resolution?

SHRI N.K. PREMACHANDRAN : Sir, I am pressing for my Resolution.

HON. CHAIRPERSON: I shall now put the Resolution to the vote of the House.

The question is:

"That this House disapproves of the Enemy Property (Amendment and Validation) Ordinance, 2016 (No. 1 of 2016) promulgated by the President on 7 January, 2016."

The motion was negatived.

HON. CHAIRPERSON: The question is:

"That the Bill further to amend the Enemy Property Act,, 1968 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, be taken into consideration."

The motion was adopted.

HON. CHAIRPERSON: The House will now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 22 stand part of the Bill."

The motion was adopted.

Clauses 2 to 22 were added to the Bill.

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

HON. CHAIRPERSON: The hon. Minister may now move that the Bill be passed.

SHRI RAJNATH SINGH: Sir, I beg to move:

"That the Bill be passed."

HON. CHAIRPERSON: The question is:

"That the Bill be passed."

The motion was adopted.

HON. CHAIRPERSON : Hon. Members, what is the opinion of the House regarding the discussion on the General Budget?

SHRI MALLIKARJUN KHARGE (GULBARGA): Tomorrow, we may start the discussion on the General Budget. You may take up other Business also. But today, the reply on the Railway Budget was given, and this Bill was passed. Several important things should not be taken up on the same day.

HON. CHAIRPERSON: The House stands adjourned to meet again at 11 a.m. on the 10th March, 2016.

18.00 hours

The Lok Sabha then adjourned till Eleven of the Clock

on Thursday, March 10, 2016/ Phalguna 20, 1937 (Saka).

