

[*Translation*]

SHRI BHAGWAN SHANKAR RAWAT (Agra) : Sir, I would like that the following matter be included in the Business of next week :

The Centre has made a heavy cut in coal supply to Thermal Power Stations in Uttar Pradesh. Because of non-availability and poor quality of coal there is an apprehension of break down of these Thermal Power Stations and as a result the entire State is likely to be plunged into darkness.

Secondly, the Centre should take effective steps to curb the ever increasing terrorist activities in Uttar Pradesh. Not only this, the ban on issue of arms licence should be lifted so that the citizens feel secured.

SHRI MOHANLAL JHIKRAM (Mandla) : Mr. Speaker, Sir, the following matter be included in next week's Business of the House :

The activities of Naxalites are increasing day by day in Mandla, Balaghat and Bastar districts of Madhya Pradesh. In the absence of sophisticated weapons and fast vehicles with the Police it is difficult to chase and track them down in the ravines and hilly regions where roads, bridges and culverts are also inadequate.

Therefore, my submission is that the Police should be well equipped with sophisticated weapons and fast vehicles. Besides, separate provision should be made for construction of roads, bridges etc. in Mandla and other hill districts of the State so that the activities of the Naxalites could be curbed effectively.

[*English*]

SHRI V. DHANANJAYA KUMAR (Mangalore) : Sir, the following items may kindly be included in the next week's agenda :

1. There is need to take immediate steps to repair the bridge across river Sharavathi on National Highway No. 17 at Honnavar using modern military technology and restore passage of heavy vehicles through the said bridge.
2. There is need to take steps to introduce a day train between Mangalore and Bangalore and vice-versa and also to speed up the running time of the existing train service at night between the said two cities.

12.46 hrs.

[*English*]

Places of Worship (Special Provisions) Bill

MR. SPEAKER : Well we have at item No. 12, a Bill which is to be introduced. I have received notices from Members to oppose it. I am allowing them to make their say on this point.

SHRI JASWANT SINGH (Chittorgarh) : Sir, I am on a point of order. Item No. 12 in the Agenda is about the introduction of a Bill about the places of worship, special provision Bill. My point of order and objection relates to 4-5 aspects. Firstly, it is violative of Direction 19A and 19B. My colleague, Shri Ram Naik, will be dealing with that subsequently. Secondly, it is violative of provisions regarding Money Bill and I would like

to explain why it is violative of provisions regarding Money Bill. In the Constitution there is a definition of Money Bill... (*Interruptions*).

[*Translation*]

SHRI RAM VILAS PASWAN (Rosera) : Mr. Speaker, Sir, I have a Point of Order. I am not opposing him. My point is, that, first the hon. Minister should seek leave of the House to introduce the Bill. Only after that can the Members oppose it. How can they oppose when the hon. Minister has not sought leave of the House to introduce the Bill.

(*English*)

MR. SPEAKER: You are right. That should have been the procedure. But, I have allowed it. (*Interruptions*).

SHRI BUTA SINGH (Jalore) : Kindly let us follow the procedure.

SHRI SHARAD DIGHE (Bombay-North Central) : Something should be before the House and then the point of order should be raised. (*Interruptions*).

MR. SPEAKER: I did say that the matter relating to the introduction of the Bill is before the House. I have received a notice before that... (*Interruptions*).

[*Translation*]

SHRI JASWANT SINGH: Mr. Speaker, Sir, you allow the hon. Minister to introduce the Bill. I will speak later.

(*English*)

MR. SPEAKER: Well, I do appreciate what Shri Paswanji and Shri Sharad Digheji have said. That is

the correct position. But, there are some other rules involved in it and that is why I was taking care of it. But, it seems that it is the consensus of the House. I will allow the Minister to introduce the Bill.

THE MINISTER OF HOME (SHRI S. B. CHAVAN) : Sir, I beg to move for leave to introduce a Bill to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto.

MR. SPEAKER: Motion moved :

“That leave be granted to introduce a Bill to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947 and for matters connected therewith or incidental thereto.”

SHRI JASWANT SINGH: Sir, I am, at this moment, only on the specific aspect of having objections and points of order to the introduction of the Bill. The merits of the Bill, the contents of the Bill is a matter that comes subsequently. My objections are, firstly, as I said, that it is violative of direction 19(a) and (b)—an aspect which would be dealt with in great detail by my colleague Shri Ram Naik. It is also violative, to my understanding, of provisions regarding Money Bills. It is violative of article 109 regarding Money Bills. If you refer to (c), (d) and (e) of article 110—I do not want to read out all the three provisions... (*Interruptions*).

MR. SPEAKER: Well, you will certainly enlighten me.

SHRI JASWANT SINGH : Provisions of Article 110 in (c), (d) and (e) relate to any Bill which is asking for payment of money or withdrawal of money from the Consolidated Fund, the appropriation of money out of Consolidated Fund, and the declaring of any expenditure to be expenditure charged on the Consolidated Fund. The provisions of this Bill are such that the administering of the provisions of the Bill will require an expenditure out of the Consolidated Fund and, therefore, unless there is a Financial Memorandum... (*Interruptions*).

MR. SPEAKER : Which provision of article 110 are you referring to ?

SHRI JASWANT SINGH : I am referring to (c), (d) and (e) of article 110 and as further explained by Kaul and Shakdhar about Financial Memorandum. I am not on the point that this is (A) category Finance Bill or (B) category Finance Bill, I am on the specific aspect that any Bill requiring withdrawal of funds from the Consolidated Fund of India, any expenditure charged on the Consolidated Fund of India, must be accompanied by a Financial Memorandum, and Kaul and Shakdhar's book on page 477 is quite explicit about it. It says that a Bill involving expenditure from the Consolidated Fund of India is required to be accompanied by a Financial Memorandum. The very administration of the objectives of this particular Bill will require expenditure from the Consolidated Fund of India and, therefore, there will be an expenditure from the Consolidated Fund. Unless, therefore, there is a Financial Memorandum with this Bill, it is to be opposed at the introduction stage

itself. My second point is... (*Interruptions*).

MR. SPEAKER : If any Member is interested in enlightening me on this point, I will certainly be very happy to know from him.

SHRI JASWANT SINGH : My second point is that it is violative of the Constitution, being outside the legislative competence of our House.

MR. SPEAKER : That is a point which is generally considered at the time of introduction, and that is the only point which can be considered at the time of introduction, that is, the competence of the Legislature. How it is so, please let me know.

SHRI JASWANT SINGH : May I, Sir, with all due deference and respect to you, submit that even the absence of necessary financial Memorandum along with the Bill is an aspect that has to be considered at the stage of introduction. It is up to you to judge.

MR. SPEAKER : On that point I am not saying anything. I am saying only from the point of view of legislative competence.

SHRI JASWANT SINGH : On the question of the legislative competence of this House, with great regard and great respect, I draw your attention to List II of the Seventh schedule of the Constitution. Sir, the List-II of the Seventh Schedule to the Constitution of India specifically mentions what items are the direct care of the States of the Union.

MR. SPEAKER : Yes.

SHRI JASWANT SINGH : If by the introduction of a Bill which impinges

on the rights of the States of the Union, we introduce such a Bill even before considering it, then I submit with due regard that it would be outside of the legislative competence of this Assembly. If you concede that point to me, then, of course, there would be a full-fledged discussion on this aspect.

MR. SPEAKER : I do concede that if it is mentioned in List-II then it is exclusively within the jurisdiction of the State Legislature. Let me know under which item it comes.

SHRI JASWANT SINGH : For example, I will take up Item 7, to start with. It is mentioned in item 7 that : "Pilgrimages, other than pilgrimages to places outside India". We are dealing with a Bill which is attempting to do something or undo something or to treat, or bring in the Union of India into pilgrimages or places of pilgrimage.

MR. SPEAKER : Outside India.

SHRI JASWANT SINGH : No, No. Not outside India. I am on this specific point. When people are wishing to go to Kailash or to Mecca then that is outside India and comes under Government of India. But, I submit that a pilgrimage whether it is to Amarnath or whether it is to the Char Dhams, even if the fifth Dham which is in Nepal—even if it is a visit to Nepal—then it would be under Government of India. But pilgrimages within India are the responsibility of the States of the Union. This is in Item 7. If the places of worship are not places of pilgrimage then what else are they? . . . (*Interruptions*)

MR. SPEAKER : Would you distinguish between the places of worship and the pilgrimages?

(*Interruptions*)

SHRI MOHAMMAD YUNUS SALEEM (Katiyar) : If I go to a mosque for my prayer, will you call it a pilgrimage? . . . (*Interruptions*)

MR. SPEAKER : I will allow you. Let Shri Jaswant Singh continue.

SHRI JASWANT SINGH : I do. Because I do believe that my good and esteemed friend, raised a very good point. I do still believe that if I go to the great Dargah or to Gharib Nawaz if I go on a pilgrimage, it is a place of worship. I submit that it is a place of worship.

SHRI MOHAMMAD YUNUS SALEEM : Muslims do not worship Dargah. Muslims only go to mosque and offer prayers. (*Interruptions*). You say your paying homage is not worship. You must differentiate between homage and worship. (*Interruptions*)

MR. SPEAKER : Shri Pathakji, you are disturbing Shri Jaswant Singh also. He is quite competent to argue.

SHRI JASWANT SINGH : It is a point. This is the submission I am making. It is possible that every visit to every mosque is, possibly, not a pilgrimage.

MR. SPEAKER : I would expect the Government also to respond on this. Please note the points.

SHRI JASWANT SINGH : I would, therefore, submit that it is possible and I concede to my senior and good friend and that every time he goes to a mosque [*Translation*] he must offer prayers. [*English*] It is possibly not a pilgrimage. (*Interruptions*)

MR. SPEAKER: Please, order please. You will have your own say.

SHRI JASWANT SINGH: It is because I hold their sentiments in high regard that I only felt it necessary to respond to them. Now I can submit it clearly.

How can you separate pilgrimage from worship? Implicit and inherent in the word 'pilgrimage' is the element of deification of worship. We are bringing in a legislation specifically about the places of worship. That, under item 7 in List-II is specifically an item reserved for the States—other than pilgrimages outside India.

I submit that on this ground alone, the legislative competence of our House does not permit us to take up this particular piece of legislation.

I submit again that under Item 10, a great many places of worship are related to burials and burial grounds and cremation and cremation grounds. I do not want to labour the same point again, that when it comes to worship, when it comes to deification, you are encroaching on aspects of the rights of States and unless you are very careful in considering the rights of States in bringing about the legislation of this nature which is directly violative of the rights of the States, I believe that you would be committing a very grave injustice.

13.00 hrs.

I will just go to two other points amongst the four points that I submit while opposing this Bill, my points of objection to the introduction of this Bill.

Sir, it is for the violation of the Fundamental Right, Right to Religion—Article 26(b), (c) and (d) on page 13 of

the Constitution. It says :—

“Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

× × ×

- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.”

I think we are somewhere impinging on this fundamental Right. It is of course a Constitutional question and you will ask me to explain whether a Constitutional question can be raised, but I consider it prudent to raise this now and here.

Sir, there is one other observation that I have which is that the State of Jammu and Kashmir is totally excluded from the provisions of this particular Bill. Now, the State of Jammu and Kashmir has many places of worship which are worshipped by many faiths and various religious denominations. I believe that with the exclusion of Jammu and Kashmir where it is well enough known in the House that a great many temples have been desecrated, would it not be violative of the basic and fundamental equity and the Constitution? Therefore, on these four grounds, very succinctly I repeat, it has been violative of Direction 19(a) and 19(b), it has been violative because the Financial Memoranda regarding Money Bills is not included, thirdly it is violative of the Constitution on ground of being outside the legislative competence of this Parliament and fourthly .

SHRI SOMNATH CHATTERJEE (Bolpur) : You said, "7"

SHRI JASWANT SINGH : It is 7 and 10— I am not going into all the details. And it is also violative of the Fundamental Rights regarding the Right to Worship— Article 26 — and on ground of exclusion of Jammu and Kashmir, Sir, I submit that this Bill be not introduced in this House. Thank you.

MR. SPEAKER : Your fourth point is that Jammu and Kashmir is excluded, so it is not competent. Is it not?

(Interruptions).

SHRI RAM NAIK (Bombay North) : But the purpose is defeated.

SHRI JASWANT SINGH : The purpose is defeated.

SHRI RAM NAIK : Sir, I wish to oppose the introduction of Bill No. 24 of 1991— Places of worship (Special Provisions) Bill, 1991.

Sir, this Bill proposes to legalise all encroachments upon Hindu temples made during Mughal and British rule. This Bill which wants to pay premium to those who have inflicted religious insults on Hindu places of worship...

MR. SPEAKER : No, no.

(Interruptions).

SHRI RAM NAIK : It is the blackest Bill in the Indian Parliament. Hence I have objected to its introduction. *(Interruptions).*

MR. SPEAKER : You are always very correct, but this time...

(Interruptions)

SHRI RAM NAIK : I will try to be in the same parameters.

This is the blackest Bill. That is why I want to oppose the introduction of this Bill. These are my points of objection. My first point which I would like to stress is that it violates your directions under direction No. 19(A) which says :

"The period of notice of a motion for leave to introduce a Bill under this direction shall be seven days unless the Speaker allows the motion to be made at shorter notice."

We have seen that this Bill is dated 22nd August, 1991. You must receive notice of motion seven days in advance. If the Bill is prepared on 22nd August, 1991, how can you receive the notice seven days in advance? So, you have not received the notice seven days in advance. This Government is trying to bypass your authority and is taking you for granted. So, my first objection is that this direction 19(A) is being violated in this case.

Now, I will come to the direction which has been referred to in the memorandum explaining reasons for non-circulation of the Bill by the Minister. Direction 19(B) says that there should be a prior notice of two days to the Members and this has not been given. It also says :

"Provided further that in other cases, where the Minister desires that the Bill may be introduced earlier than two days after the circulation of copies or even without prior circulation, he shall give full reasons in a memorandum....".

The memorandum says :

"In view of the importance of the Bill, very careful consideration and scrutiny of the draft was necessary. This delayed preparation of the Bill. Immediate introduction of the Bill is considered necessary in view of the vital nature of the issues involved. It is requested that the requirement under direction 19(B) of the Speaker may be relaxed in view of the above."

Sir, this issue is being debated for the last two years in the country. The Government headed by Shri V. P. Singh had also fallen on this issue. The Congress Party, in their election manifesto, had said that if they come to power, they will enact this legislation. After the Congress Party came to power, the President also delivered his Address to Parliament on 11th July, 1991. So, at least from 11th July, 1991, the Government could have started its work of preparing the Bill. But, it took 43 days just to prepare the Bill. If the Government takes 43 days to prepare the Bill, should we not get even two days for studying it. So, it is necessary that the Bill, which is of such a vital importance, is given two days in advance to the Members. This direction is an important direction meant for preserving the rights of the Members and for preserving the rights of the House. We are not ready to mortgage our rights to the Government which is so inefficient that they could not present the Bill within 43 days. This is my second objection.

Sir, my third objection is rather very important. There is a breach of privilege involved in it and you have been directing and advising us in this regard. It has been given in the rules also. Everywhere it has been said that no prior publicity should be given to

any item which is likely to come up on the Agenda of the House.

I will now read from *Kaul and Shakhder* Page 252.

MR. SPEAKER: Please be brief.

SHRI RAM NAIK: It is an important issue.

MR. SPEAKER: It applies to all

THE MINISTER OF PETROLEUM AND NATURAL GAS (SHRI B. SHANKARANAND): It cannot be debated.

MR. SPEAKER: The hon. Member is making very pertinent points.

SHRI B. SHANKARANAND: Let him make but it cannot be debated like that.

MR. SPEAKER: I will allow you the same time.

SHRI RAM NAIK: On Page 252 of *Kaul and Shakhder* under the heading "Premature publication of various other matters connected with the business of the House", it is stated:—

"According to the parliamentary practice, usage and convention, it is improper, although technically not a breach of privilege or contempt of the House, to give for any reason premature publicity in the press to notices of questions, adjournment motions, dissolutions, answers to questions and other similar matters connected with the business of the House."

It has taken place now.

MR. SPEAKER: There is no obligation on that point.

SHRI RAM NAIK: I again quote:—

"if this takes place, the Speaker may

express his displeasure against the person responsible for it.”

I have seen in today's newspaper *Hindustan Times*...

MR. SPEAKER : On that point, I have no obligation.

SHRI RAM NAIK : We must get the information in advance. The Government is not giving information to the Members of the House but it is giving the information outside. When the Government gives the information outside, it also involves our privilege, your privilege, our honour and your honour.

On these three counts, I feel that this Bill cannot be introduced and hence I take objection to the introduction of the Bill.

SHRI SHARAD DIGHE (Bombay-North Central) : Mr. Speaker, Sir, may I make a few submissions? *(Interruptions)*.

[Translation]

SHRI RAM NAGINA MISHRA (Padrauna) : Mr. Speaker, Sir, please give us also an opportunity to express our point of view.

MR. SPEAKER : Not like this.

SHRI RAM NAGINA MISHRA : This is no ordinary issue and I would like to express my views *(Interruptions)*

MR. SPEAKER : No.

SHRI RAM NAGINA MISHRA : I seek your permission. I would definitely like to speak on this issue of national importance.

MR. SPEAKER : You can discuss the whole issue with me in the Chamber.

SHRI RAM NAGINA MISHRA : Mr. Speaker, Sir, today will go down in the annals of history as a black day. Please allow me to speak.

MR. SPEAKER : Not like this.

(Interruptions)

SHRI RAM NAGINA MISHRA : Sir, I would like to say something about the introduction of this Bill.

MR. SPEAKER : Only after notice.

SHRI RAM NAGINA MISHRA : I would definitely like to speak with your permission. Whole country is in the grip of a crisis. So, I want to express my views.

[English]

SHRI SHARAD DIGHE : I would like to make certain observations as far as the points raised by the two hon. Members opposing the introduction of the Bill are concerned.

On the procedural point that is raised by Shri Ram Naik that it has not been circulated according to the directions, Shri Ram Naik himself admitted that the Speaker has a right to relax that rule.

SHRI JASWANT SINGH : The Speaker has the discretion.

SHRI SHARAD DIGHE : That rule has been relaxed by you as it is clear that the matter was placed on the item of the Agenda. It is not to be considered whether that relaxation affects them or not because it is a subjective matter for the Speaker to decide. On what grounds he decides, it is for him. Whether that will affect your convenience or inconvenience, it has been considered by the learned Speaker and ultimately the rule has

been relaxed considering the importance of the Bill and the importance of the subject as well as the explanation given by the Government in writing which has been circulated to us.

Therefore, we cannot go behind the decision of the Speaker saying that relaxation has not been properly done or should not have been done.

Therefore, that question cannot be gone into at this stage.

That is my first submission.

Then, as far as the competency is concerned, that is the only point on which a debate can be allowed at the stage of introduction, in your discretion. You have in your discretion allowed, perhaps, this debate. Or, you may be allowing a full debate on the competency of this Bill. As far as the merit of the point is concerned, he has referred to List-II, Item No. VII and that item says about pilgrimages. Now this Bill has nothing to do with pilgrimages. If we read the Object of the Bill along with all the Clauses, its only aim is to prohibit conversion of places of worship. Conversion of places of worship after such a particular date is prohibited under this Bill. It has no reference to pilgrimages at all . . . (*Interruptions*) Therefore, that item does not come into the picture at all.

Then, the Object of the Bill is merely to prohibit the conversion of places of worship after a particular date. Therefore, that item does not appear at all. Further, my submission is even though the question of competency is raised before this House, we cannot go into the notices of the whole constitutional law. The points can be raised here regarding the competency, *vires* of the Constitution and then con-

sidering all the points, ultimately we may or may not vote on the Bill. But the introduction of the Bill cannot be stopped at this stage only on the ground of non-competency of the House in legislating that Business.

Now, I will refer to the relevant portion from *Practice and Procedure of Parliament* by Kaul and Shakhthar as far as this point is concerned. He has said at page 487 as follows :

“It is the accepted practice in Lok Sabha that the Speaker does not give any ruling on a point of order raised whether a Bill is constitutionally within the legislative competence of the House or not.”

It is an established practice followed everywhere, in all the Assemblies. So, it is not for the Speaker even to give the ruling. Then, what is the effect of this point raised by him ? The House also does not take a decision on the specific question of *vires* of the Bill. The House also cannot take the decision. The Speaker also cannot give ruling. It is only open to Members to express their views in the matter and to address arguments for and against *vires* of the constitution for the consideration of the House. The Members take this aspect into account in voting on the Motion. So, you may submit that you will consider your views while voting on the Motion. But as far as the learned Speaker is concerned, I submit that no ruling should be given. The House also should not decide about the *vires* or *ultra vires* of the constitutional validity of this Bill. This point can be raised by you. We will discuss and we will keep in mind while voting on this Bill. Otherwise, there is no effect as far as your point is concerned. Therefore, the Bill cannot

be stopped at this stage on the ground that it is not within the competency of this House. That point can only be considered by the Members when we are voting on the Bill. Therefore, that point also does not arise and it is not relevant.

SHRI SOMNATH CHATTERJEE (Bolpur): Sir, we would have been happy if the Bill has been passed even today because that would have been in the fitness of things and that is what the country demands today immediately. Many points have been raised by Shri Jaswant Singh for whom I have highest esteem and regard. Though he wanted to refer to Direction 19 and 19(A) he did not venture to make any submission. He left it to Shri Ram Naik. It is a matter of your decision. You have permitted it and it cannot be questioned now. That will be amounting to questioning your decision. It has nothing to do with the legislative competence or the right of a Minister or a Member to introduce a Bill. Once you have permitted that, no question arises, none of us can question your ruling. Therefore, I need not go further on Articles 19 and 19(c).

Two question have been raised. One is, whether it is a Money Bill and because it is a Money Bill then without a Financial Memorandum and without the Presidential Assent, it cannot be put up. Kindly see Article 110. That is why, I asked Shri Jaswant Singh whether it was his best point. Article 109 is the main Article which says :

“A Money Bill shall not be introduced in the Council of States,”

After a Money Bill has been passed it goes to the Council of States. Kindly

see Article 110. It says ;

“For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—”

He has referred to parts (c), (d) and (e) of this Article. Part (c) says :

“the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;”

According to Shri Jaswant Singh any and every Bill in this Country has to be a Money Bill because some money has to be spent. Suppose, somebody is put to jail. Then more food has to be provided by the jailer. Therefore, according to Shri Jaswant Singh, it becomes a Money Bill. *(Interruptions)*

Then for printing this Bill also, money has been spent. Therefore, this has to be another Money Bill as money is spent for the purpose of printing this Bill. Part (d) says :

“the appropriation of moneys out of the Consolidated Fund of India;”

No specific provision is there. It does not contemplate, it does not contain any provision for any expenditure of money. The law is very clear; the Constitution is very clear.

Part (e) says :

“the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;”

This Bill does not even remotely dream of that. Therefore, I think, we need not labour further on this. I

think, he is withdrawing his point. (*Interruptions*). The next point is, after good deal of search and burning the midnight oil, they have come to Entry 7 of List-II about Pilgrimages.

So far as pilgrimage is concerned, there is a concept of locomotion involved in it, that is, going to a place. This Bill does not purport to restrict anybody going to a place of worship. It contemplates going to a place of worship. But do not break it. Go there and pay your obeisance to the deity. But do not change its whole structure. That is the object of this Bill.

Kindly see Entry-7 of the Seventh Schedule, List-II which deals with pilgrimages. Our Constitution-makers have used the word carefully and there is no scope for a liberal construction of an entry in the Seventh Schedule. The courts have tried to find this out. The object of legislation, when the question of competence arises, is what is the pith and substance of the law? What does it seek to achieve? It may give another impression. As has been pointed out by Shri Dighe correctly, it tries to deal with places of worship and it does not prohibit anyone going there. Neither does it encourage nor does it discourage anybody going to a place of worship. This is a well-known dictionary and we can go to dictionaries to find out the meaning of the word. I think, literal meaning is not acceptable to my friend. But the literal meaning is also important.

According to Collins, 'Pilgrimage' is a journey that someone makes to a holy place for a religious reason. Let him go who is stopping him from making his journey? But, this Bill does not deal with the journey. That is what I am saying.

SHRI JASWANT SINGH : Journey to where ?

SHRI SOMNATH CHATTERJEE : Journey to a place of worship.

Therefore, the point is that the Constitution used the word 'Pilgrimage'. Tharakeshwar is a very well known place.

SHRI ANIL BASU (Arambagh) : It is in my constituency.

SHRI SOMNATH CHATTERJEE : It is in Shri Anil Basu's constituency.

I am not happy that young boys are going there with pots to take a dip in the holy water. Let them go ! I am not stopping them. But, if any law has to be enacted, the State has to enact that law, providing for pilgrimages. (*Interruptions*) The literal meaning is this. We all know the conceptual meaning. It deals with the maintenance of the sanctity of the religious places, as they were, on the 15th of August, 1947. It has nothing to do with the pilgrimages, to those shrines. On the other hand, it contemplates that those shrines should be maintained so that those pilgrimages are not disturbed. Therefore, pilgrimage has not sought to be dealt with in this law.

Therefore, my submission for the kind consideration of the hon. Members and you Sir, is that entry 7 is not at all applicable. I have high regards for my friend, Shri Jaswant Singh, who has referred in his research to entry 10(4). Entry 10(4) is very significant. Entry 10(4) says about the burials and burial grounds; cremations and cremation grounds. Our endeavour is to stop this country becoming a burial ground and a

cremation ground. This Bill does not seek to deal with burials and cremation grounds. I do not know, what is the nexus between a burial ground and this Bill. It may be that they have been endeavouring at the back of their minds, to convert so many places into burial grounds. That is a dangerous thing. That is why, we have been insisting on this Government, not to delay it. I say, you keep to your commitment. I am happy that the Government has responded to the resolution, which was brought by Shri Zainul Abedin, of our party. It is better to be late, than never. I am happy that you have acknowledged the contribution of our Member.

SHRI HARIN PATHAK (Ahmedabad): What about Jammu and Kashmir?

[Translation]

Please throw some light about J. & K. also.

[English]

SHRI SOMNATH CHATTERJEE: Inclusion or non-inclusion of Jammu and Kashmir has nothing to do with this.

MR. SPEAKER: I have got one point, Shri Chatterjee. Which entry is applicable to this Bill?

SHRI SOMNATH CHATTERJEE: Entry 97 of List I. (*Interruptions*)

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE (SHRI P. CHIDAMBARAM): Entry 28 of List III. You may read out entry 28.

SHRI SOMNATH CHATTERJEE: Yes, entry 28 also.

SHRI P. CHIDAMBARAM: Please read the whole entry.

SHRI SOMNATH CHATTERJEE: It is a very valuable point. It is also applicable—"Charities and charitable institutions, charitable and religious endowments and religious institutions" The last portion makes it clear. But even if there is any doubt, I think 97 covers it. 97 says, any other matter not enumerated. It is a question of maintenance of status-quo of places. 97 is the provision that gives the Parliament exclusive power.

Sir, I think their argument has been, what we call in law, *in miseri cordium*. In the misery of the situation, in their agony they have thought of this. But they have no application. I again appeal that let all of us unanimously pass this Bill.

SHRI HARIN PATHAK (Ahmedabad): Don't change the structure; but destroy the temples in J&K. Is that your contention? (*Interruptions*)

MR. SPEAKER: Hon. Members, please don't have a cross-talk among yourselves.

[Translation]

SHRI RAM NAGINA MISHRA (Padrauna): Mr. Speaker, Sir, we also have a right to be heard, as we are also people's representatives. It is not such a simple issue.

MR. SPEAKER: You are allowed to speak on this issue.

SHRI RAM NAGINA MISHRA: I am speaking on this very point. ...(*Interruptions*)... Sir, I do not want to repeat the legal issues highlighted by my colleagues and the hon. friends from other side in connection with the

introduction of the Bill by the hon. Minister. There is no point in repeating again and again the whole thing but I would like to put before the House the sentiments connected with the issue. The emotional aspect is that after 40 years of independence what is the need for the Government to introduce such a Bill.(*Interruptions*).... Before independence communal riots flared up, between Muslims and Hindus and these lead to disintegration of the country and today again after 40 years of independence, a black Bill has been introduced with a view to disintegrate the country.(*Interruptions*).... This issue is quite emotional.(*Interruptions*).... It is on record as far as religious places are concerned, that not a single mosque has been damaged. In Kashmir many a temples have been demolished. I appeal to you and the whole House through you, not to give permission for introduction of the Bill just with a view to get the votes, so as to keep the nation united and devoid of communal flare up. (*Interruptions*)

SHRI BHAGWAN SHANKAR RAWAT (Agra) : Mr Speaker, Sir, my submission is that I do not agree with what my friend Shri Chatterjee has submitted. You have a right to give ruling if the Government or a Member of the House brings an unconstitutional provision, there would be nothing illegal in it.

Secondly, I would like to submit that by introducing this Bill a conspiracy is being hatched to spoil the federal structure of the country and the basic concept of the Constitution. Therefore, I would like to suggest that it may kindly be forwarded to Supreme Court of India through the

hon. President to seek their views and to ascertain its constitutional validity or admissibility. If any provocative step is taken before that, it would harm the federal structure and the entire House will be held responsible for going against that Constitution of which we take oath.

Third point is that introduction of this Bill would mean interference in their jurisdiction by transgression of power. This should not happen, rather Constitution should be protected. My friend Shri Chatterjee had emphasised on the same last time and I went through it. I found that he advocated the state autonomy but actually he was advocating interference in their jurisdiction. I do not want to repeat the whole thing. When question of constitutional propriety is raised, it should be referred to the Supreme Court through President of India for its opinion.

I would also like to submit that my friend Shri Jaswant Singh referred to expenditure involved in it whereas Shri Chatterjee asserts that no expenditure is involved in it. My submission is that expenditure of crores of rupees is involved in it.(*Interruptions*)....

MR. SPEAKER : Please discuss the legal point.

SHRI BHAGWAN SHANKAR RAWAT : Mr. Speaker, Sir, I would like to submit that an implication of enactment of this Bill would be that the Somnath Temple, which was built after 1947, should be demolished and the compensation paid to the trust. This will hurt the religious feelings of the people and give rise to an anarchial situation in the country.(*Interruptions*)....

[English]

MR. SPEAKER: This is not allowed. I allowed you because you are a very well known lawyer and I thought that you will enlighten me on legal points. On other points, you can have the discussion when it comes up.
...(Interruptions)...

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: Mr Speaker, Sir, my submission is that visiting a place with religious feelings is called pilgrimage and an excursion is called tourism.

SHRI LAL K. ADVANI (Gandhi Nagar): Mr. Speaker, Sir, Shri Jaswant Singh, Shri Ram Naik and some of my friends have raised objections in regard to the legal or procedural aspects. My submission to you is that you may kindly see whether there is any harm if the Bill is circulated today and introduced in the House on Monday or Tuesday. Therefore, I would like to submit that rules formulated in this regard and the directions of the Speaker should be strictly followed. If Shri Somnath or any other Member goes through Directions 19A, 19B, the intention would be clear to him that Direction 19A gives discretionary power. The Bill can be accepted on the basis of the notice given on the same day instead of seven days' notice. It has been stated in 19B :—

[English]

"No Bill shall be included for introduction in the list of business for a day until after copies thereof have been made available for the use of Members for at least two days before the day on which the Bill is proposed to be introduced."

It is categorically stated, "No Bill shall be included...."

[Translation]

In a way it is mandatory and moreover, there are two provisos, the wording of the one differs from the other. The first states :—

[English]

"Provided that Appropriation Bills, Finance Bills and such Secret Bills as are not put down in the list of Business may be introduced without prior circulation of copies to Members."

But the second proviso imposes a great responsibility on the Chair, on the Presiding Officer to ensure that without very compelling circumstances, Members should not be denied the right of going through the Bill at least two days before they decide on whether the Bill should be introduced or not. I would plead with you that this is an occasion where the memorandum given by the Government is absolutely bald; it gives no explanation of any kind, except to say that in view of the importance of the Bill, a very careful consideration and scrutiny of the draft was necessary.

If today is going to be the last day of the Session, I would say, "Well, there will be delay in going through the Bill" But the Session is continuing. If the Bill were to be introduced on Tuesday or on Wednesday, Heavens are not going to fall.

Therefore, I would plead with you that this particular Direction is intended for a purpose and that purpose is that we should not be abruptly confronted with the Bill. Even the brief debate that has gone on would show that we feel very strongly agitated

about it. I do not want to raise the substantial issues of the Bill itself. After all, the Bill is going to create problems where none exists. Absolutely clear that I am in full agreement with them, that if we have to go through entry 28 of the Concurrent List, it is absolutely clear. But whether the Hon. Chair or the Government should justify on the legality of it is a matter about which Hon. Member, Shri Dighe, has said.

So far as the entry part is concerned, at least I have no doubt that entry 28 of the Concurrent List is absolutely clear that this definitely gives power to the Government to bring about legislation of this nature. The problems that do exist are not going to be solved by this Bill. There are numerous places where after 1947 conversion took place.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMEN- TARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): You are going into the merits.

SHRI LAL K. ADVANI: I am not going into the merits.

Therefore, I believe that this Bill is thoroughly ill-conceived. The Bill is totally unwarranted. At least my party would not like to associate with this Bill. But I plead with you : why should you allow this Government to introduce the Bill today? Why could it not be done two or three days later? At least this particular Memorandum gives me no explanation whatsoever. It is, therefore, that my colleagues, Shri Jaswant Singh as well as Shri Ram Naik, took so much pains to

oppose it.

So far as the legislative competence of the House is concerned, the point that has been made by my colleague, Shri Jaswant Singh in respect of the three Lists, has not been answered either by Shri Somnath Chatterjee or by Shri Sharad Dighe.

MR. SPEAKER: Mr. Advani, in substance, how have you been inconvenienced?

SHRI LAL K. ADVANI: I have been inconvenienced because I had certain ideas till day before yesterday, like what would be the nature of the Bill. Today, I have seen that the Bill is slightly different from that. I saw it just this morning. Someone, who read the newspapers, told me that it has appeared in the newspapers that the Bill is going to be introduced today. So, I have been inconvenienced. Otherwise I would have come absolutely prepared and given all the arguments. The legislative competence business is the most important point, which can be raised at the time of introduction, has been referred to by Shri Jaswant Singh very briefly and eminent lawyers.

SHRI JASWANT SINGH: Would you kindly yield for a minute? I wish to make this point because you said, "How have you been inconvenienced?" I did not burn any mid-night oil. I came to learn about the introduction of this Bill. I had objections about it and the objections relating to legislative competence.

MR. SPEAKER: My hats off to your legal acumen.

SHRI JASWANT SINGH: No, Sir. I am not a lawyer either by profession or training or inclination. Merely as a

student of public affairs, when I was directed by my leader that he was likely to be absent and I have to take care, I am inconvenienced in respect of aspects of legislative competence.

MR. SPEAKER: I got your point.

SHRI LAL K. ADVANI: Therefore, I would even at this late stage plead with you to advise the Government not to introduce it today, come to the House any time next week and then whatever we would have to say, we will say at that time.

THE MINISTER OF HOME (SHRI S. B. CHAVAN): Mr. Speaker, Sir, in fact this Bill has been brought about in furtherance of what is contained in the manifesto of the Congress and also what the President has said in the presidential address. I would not go into the other aspects to which the honourable Members have referred. It is only the legal competence on which the issue was raised. I have great respect for Shri Jaswant Singh. When he said that the Financial Memorandum has not been attached to this Bill, I began looking at the Bill as to whether there is any expenditure involved.

Article 110 clearly says that if there is any provision for expenditure, it has to be accompanied by a Financial Memorandum. It does not contemplate any expenditure whatsoever. That is why I do not know how this article 110 is being attracted. We have tried our level best to understand this point of view. I am at a loss to understand on what grounds article 110 can be attracted.

So far as the legal competence of this Hon. House is concerned, both the Hon. Members, Shri Sharad

Dighe and also Shri Somnath Chatterjee, have made the point. And if there is an iota of doubt, then Entry 97 of the Union List is also provided for. So, on both grounds, I do not think that there should be any doubt about the competence of this House to pass this Bill. That is all I wish to say.

MR. SPEAKER: One point is not clear. We owe to this House an explanation as to why was it not given two days back.

SHRI S. B. CHAVAN: I have made a special request to you in this letter which I have addressed to you. It was a matter which, in fact, did receive the attention of the Government and we were carefully considering that this is a momentous Bill which is going to undo certain things which some people might be having in their views. And that is why, all aspects of the question had to be considered in greater details and that is why, ...*(Interruptions)*

SEVERAL HON. MEMBERS: No.

(Interruptions)

SHRI S. B. CHAVAN: But at the same time, Sir, I must say that I had given notice almost ten days before. A notice was given to the hon. Speaker.

MR. SPEAKER: The point is why the Bill itself was not circulated before two days of introduction.

(Interruptions)

SHRI S. B. CHAVAN: On that aspect, I can merely say that this Bill has to be passed both in this House and the other House and that is why, we requested the hon. Speaker to kindly waive the provision of Entry 92. This is the only explanation which I

have got.

SHRI LAL K. ADVANI: If the notice was given only about ten days before, then it is all the more objectionable. (*Interruptions*)

[*Translation*]

SHRI MADAN LAL KHURANA: When was the Bill brought?

SHRI SOMNATH CHATTERJEE: Sir, you have given your consent. Otherwise, the Bill could not have been brought today for introduction. How can it be revised now? Consent cannot be withdrawn retrospectively. (*Interruptions*)

MR. SPEAKER: Let me decide in my own fashion. First of all, I would like to say that the Bill should have been given two days before for circulation. I would request all the Members and the Ministers to take into account the provisions of the rule also.

Secondly, in my opinion about this Bill, a mention was made in the President's Address. I had received a notice on 13-8-91 saying that the Government was intending to introduce a Bill. But I had not received the Bill. I had received only a notice. Probably, the Government thought that the time for consideration of the Bill should be kept in mind while taking decision on the business which has to be transacted in the House and thus, the notice was given and the Bill was not given to me. Then, again an application was given that my discretion should be used and the Bill should be allowed to be introduced. I did consider that request and I thought that if the Bill is introduced, then there will be no inconvenience to the Members and they will be able to consider the Bill in detail at the stage

of consideration and at the stage of clause-by-clause reading and at the stage of passing also. So, I used my discretion. At the same time, though I had used my discretion, I am requesting all concerned to take precautionary steps in such matters in future.

As far as the competence of this Legislature is concerned, very rightly Mr. Dighe has pointed out, that we can discuss as to whether this Legislature has the competence to consider and pass the Bill or not. But the decision is not to be given either by the Presiding Officer or by the House. The decision has to be given only by the Supreme Court because the necessary time, the necessary patience and probably, the necessary legal and constitutional acumen is also required for deciding whether a particular Bill falls within the jurisdiction of a particular Legislature or not. The *intra vires* of a Bill also cannot be considered by this House. The question is why then the debate is allowed in the House when the decision is not to be given. And this question has been decided by the previous Presiding Officer by saying that when such matters are debated in the House, the members are enlightened and they can vote in a particular manner and a decision shall be so arrived at. This position is supported by decisions given here. I am reading a decision given in 1957. It was on a point raised by Shri Fernandes himself.

“The Speaker does not take the responsibility of disallowing a Bill”

It is very specific.

“The Speaker does not take the responsibility of disallowing a Bill on the ground that it does not comply

with any particular provisions of the Constitution. Again, the Speaker does not decide whether a Bill is constitutionally within the legislative competence of the House or not. The House does not take a decision on the specific question of *vires* of a Bill."

Though we are allowing the introduction, I must say that I am really happy that the point has been very ably put forth by the hon. members here and my compliments to them. But in view of what has actually happened and in view of what I have said now, I am allowing the introduction of the Bill.

SHRI LAL K. ADVANI: We cannot associate ourselves with this Bill. We are opposing its introduction and in protest, we walk out. (*Interruptions*)

(*Shri Lal K. Advani and some other hon. members then left the House*)

MR. SPEAKER: The question is: "That leave be granted to introduce a Bill to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI S. B. CHAVAN: I introduce the Bill.

MR. SPEAKER: We go to the next item—Discussion and voting on Demands for Grants...

SHRI NIRMAL KANTI CHATTERJEE (Dum Dum): Sir, today is Friday. Is there no lunch break?

MR. SPEAKER: Well, we do as advised by the hon. members. We now adjourn the House to meet again at 3 o' clock.

13.53 hrs.

The Lok Sabha then adjourned for Lunch till Fifteen of the clock.

The Lok Sabha re-assembled after Lunch at Three minutes past Fifteen of the Clock.

[RAO RAM SINGH *in the Chair*]

Announcement Regarding Postponement of Half-an-Hour Discussion

[*English*]

MR. CHAIRMAN: I have an announcement to make regarding the Half-an-hour discussion regarding Tehri Dam project. As the hon. Member, Shri Khanduri has no objection to the postponing of the Half-an-hour Discussion, as requested by the Minister of Environment, the same is postponed till the next week. Date and time for the discussion shall be announced later.

In view of the above the Private Members' Business will be taken up at 3.30 p. m.

15.04 hrs.

Demands for Grants (General). 1991-92

Ministry of Industry

[*English*]

MR. CHAIRMAN: The House shall now take up further discussion on the Demands for Grants of the Ministry of Industry. Shri Ram Kapse was on his legs. Shri Ram Kapse.