

[Shri A. Bala Pajanor]

ions). I welcome it. But on the contrary is it a fact that in many States, the State governments say that they are shadowing say about 16 persons, may be for violent activities, but that very often they are tapping conversations only between political parties and conversations of people who cannot toe the line of the State Ministers or of the Cabinet concerned? We don't have the machinery to find it out. Will the Prime Minister—and of course the Home Minister who is not available here now—look into all the factors to ensure that the freedom which this Government has granted after the March elections is really made available?

**SHRI MORARJI DESAI:** If any tapping is being done by any people, it is not done to restrict freedom; it is done to ensure the freedom of all peace-loving people, law-abiding people. That is why it is being done.

**SHRI MOHD. SHAFI QURESHI (Anantnag):** Sir, on a point of order. You have stated that you have sent the privilege motion to the Home Minister to know the views of the Government. Now the hon. Prime Minister has said that this information is wrong, instead of waiting for the reply of the Home Minister, you can give your decision on the adjournment motion.

**MR. SPEAKER:** It is not a point of order.

12.05 hrs.

# CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL—Contd.

**MR. SPEAKER:** I have to inform the House that in view of discussion and voting on the Constitution (Forty-fourth Amendment) Bill, 1977, I have directed certain changes in the order in which various items are to be taken up in the House today. Members are already aware that the Calling Attention will be taken up at the end of the day before Half-an-

Hour Discussion. I have decided to permit a few Members to raise matters under rule 377. These matters will be taken up at 5 P.M. Thereafter the Calling Attention will be taken up and at the end the Half an Hour Discussion will be taken up. In case Members raising matters under rule 377 and those asking clarificatory questions on Calling Attention statement are brief, I hope that it will be possible for the House to complete the business by 6 P.M. as scheduled.

**SHRI DINEN BHATTACHARYYA (Serampore):** How will we know as to who are all permitted to raise matters under rule 377?

**MR. SPEAKER:** The Secretariat will inform the Members. He need not have any worry on that score.

**THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA):** So far as voting on the Constitution Amendment Bill is concerned, it was suggested by some members that they would like to have their lunch at 2 O'clock and so the voting may be done at 4 O'clock, even though the debate may be concluded earlier. There are precedents in the past when voting has been taken at another hour. Since some of the members would not be present here at the lunch time, it has been suggested that the voting may take place at 4.30 p.m.

**MR. SPEAKER:** That is what I suggested to you yesterday. We will have voting at 4 O'clock. This debate will go on till 1.30 p.m.

**SHRI VAYALAR RAVI (Chirayinkil):** Sir, on a point of order. I am not questioning your ruling or decision; your directions are very clear. You have made a major change not only for the Constitution Amendment Bill, but also for two other legislative business, which have also been given priority, though those Bills are not necessary to that extent as the Constitution Amendment Bill. Therefore,

while appreciating and supporting your decision to give precedence to the discussion of the Constitution Amendment Bill, we would suggest that after that discussion is over, the Calling Attention should be taken up and then only the other Bills.

MR. SPEAKER: We will consider that.

SHRI VASANT SATHE (Akola): Sir, yesterday you saw that the automatic vote recording machine is not functioning properly. Many of the hon. Members, particularly of the Janata Party, do not know how to press the buttons. Not only that, even the Prime Minister failed to vote properly....

AN. HON. MEMBER: The machine failed.

SHRI VASANT SATHE: Therefore, I would suggest that today's division should be by lobbies and not by machines. What is the use of having a machine which is not working?

MR. SPEAKER: We will see that later.

चौधरी बलशोर सिंह (श्रीशारपुर) :  
अध्यक्ष महोदय, कांग्रेस वाले जो कल बोलते रहे उसके बारे में एक शायर ने कहा है :

“की उसने मेरे कत्ल के बाद जफ़र से तोबा,  
हाथ इस जूद पशेमां का पशेमा होना ।

इन्होंने लगातार जिस ढंग से काम किया और हमारे कुछ जनता पार्टी के जो मेम्बर हैं उन्होंने भी कुछ बात कही है कि इसमें कुछ अच्छी बात है। मेरा इसमें एक बुनियादी इख़्तलाफ़ है जब यह बिल पास किया गया तो वह एक्स्टेंडेड टर्म में पास किया गया जो कि एक नाजायज़ टर्म था। इसलिए यह जितना कुछ भी उस समय पास किया गया है अगर वह किसी कोर्ट आफ़ ला में जाता है,

उस कानून को पास करने में कोई अगर बुनियादी गलती हुई है तो वहां वह सारे का सारा कानून रद्द हो जाता है।

इन्होंने इसके नाम में सोशलिस्ट सैकुलर शामिल कर दिया है। अब आप ही बताइए कि अगर बिरला साहब का नाम गरीबदास रख दिया जाये या किसी गरीब का नाम किरोड़ी मल रख दिया जाये तो इस तरह से नाम रखने से क्या विधान की शक्ल ठीक हो जायेगी? दुनिया में ऐसे मुल्क हैं जिन्होंने अपने नाम के साथ डेमोक्रेटिक रिपब्लिक लगा रखा है और उन देशों से भी लोग भाग कर दूसरी तरफ़ जाना चाहते हैं। वह देश अपने को जम्हूरियत का अलम्बरदार कहते हैं। तो इसे तरह से विधान का नाम बदल देने से कोई लाभ नहीं हो सकता है।

हमारे विधान में दर्ज है कि शिक्षा अनिवार्य होगी लेकिन 30 साल में एक नई नस्ल पैदा हो कर आ गई है लेकिन इस देश में अनपढ़ लोगों की तादाद आगे बढ़ी है। हमारे विधान में दर्ज है कि नशाबन्दी होगी लेकिन नशा करने वालों की तादाद बढ़ी है। हमारे संविधान में यह भी है कि गैर-रक्षा होगी, गैर का स्लाटर बन्द हो जायेगा, लेकिन आज 30 साल के बाद भी वह चल रहा है। तो सिर्फ़ विधान में नाम बदल देने से कोई बात होने वाली नहीं है।

मेरा कहना यह है कि वह जा इलक्शन पीछे हुए हैं, यह कोई आडिनरी इलक्शन नहीं थे। लाखों आदमी जेलों में गये थे। इन्दिरा गांधी ने नारा दिया था कि हिन्दुस्तान के लोगों को वोट की ज़रूरत नहीं है, इन्हें तो रोटी की ज़रूरत है। जनता पार्टी का यह कहना कि लोगों को वोट और

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आजादी दोनों चाहिए। लोगों को आजादी की भी जरूरत है। अगर अब हम वह कहें कि आजादी दे दी गई है, अब हमारा काम खत्म हो गया है तो यह बात नहीं है। जनता को बोट को, आजादी की और रोटी की सभी चीजों की जरूरत है। विधान में रोटी का सवाल आना चाहिए। अगर विधान को ठीक ढंग से चलाना है, तो उस विधान में जब तक हम आदमी के काम करने का अधिकार दर्ज नहीं करते तब तक रोटी का सवाल हल होने वाला नहीं है। मैं एक शेर कहना चाहता हूँ—

ऐं जाने जहां पाजेब तेरी,

बे रक्त से नष्टमे गाती है।

गर रंग रहा यही मर्हफल का,

अंजाम न जाने क्या होगा ?

चिछले 20 साल की बात छोड़िए, यह जो 20 महीने एमर्जेंसी के रहे, आज हमारे साठे साहब यहां जमहूरियत की बातें करते हैं, लेकिन उस समय यह बिल्कुल चुप रहे, उस समय ये बे-जमीर हो चुके थे। टी० ए० पाई साहब ने कहा है कि उस समय लोगों के जमीर मर चुके थे।

श्री वसन्त साठे : पाई साहब ने कहा होगा, हमने नहीं कहा।

चौधरी बलबीर सिंह : यह बड़ी खुशी की बात है कि अभी साठे साहब का जमीर जिन्दा है। लेकिन उस 20 महीने के दौरान जितना कुछ हुआ है, उसके खिलाफ उन्होंने इस पार्लियामेंट में कभी कुछ नहीं कहा।

श्री वसन्त साठे : यह आप कह रहे हैं।

चौधरी बलबीर सिंह : आपके कैबिनेट मिनिस्टर कह रहे हैं, आप तो किस खेत की

मूली हैं। मुझे पता नहीं है कि इन लोगों को शर्म आती है या नहीं, मगर जब वे लोग बोलते हैं, तो मुझे शर्म आती है कि इन लोगों की जमीर उस वक्त कहाँ थी, जब हजारों बेकसूर लोगों को जेलों में ठंस दिया गया था।

पंजाब और हरियाणा हाई कोर्ट की बार एसोसियेशन के प्रेजिडेंट, श्री लखनपाल, की लाश को जब उस की बीबी ले कर घर, गई, तो उस लाश ने पूछा था कि बताइये मेरा क्या कुसूर था, मैंने क्या जुर्म किया था। और उस लाश को कोई जवाब नहीं मिला था।

इस देश में इतने बेगुनाह लोगों को कल किया गया, उस की कहानी अलग है। मकान गिराये गये, समाधियां मस्मार की गई और मन्दिर तोड़े गये—सिर्फ इस लिए कि उस वक्त के डिफेंस मिनिस्टर के बेटे और बेटियों को मकान-जायदाद बनाने के लिए जगह मिल सके।

जब किसानों की जमीन की हद मुकर्रर की गई—किसी जगह 17 1/2 एकड़ और किसी जगह 15 एकड़—, तो उस वक्त संविधान का सुप्रीम कोर्ट कोई रुकावट नहीं थी। किस ने इन लोगों को सरमायादारों की शहरी जायदाद की हदबंदी करने से रोका था? इस के लिए कानून बनाना चाहिए था। इन्होंने संविधान में तरमिम कर के कुछ गाइडलाइन्ज मुकर्रर कर दीं। (ब.ब.ब.ब.) सरमायादारों की जो अरबों रुपयों की जायदादें हैं, उनके लिए हद मुकर्रर करने से किस ने इन्हें रोका था।

मैं अर्ज करना चाहत हूँ कि 1977 का इलेक्शन कोई आम इलेक्शन नहीं था। वह एक रिफ्रेंडम था, जिस में सारे मुक्त ने, सारी जनता ने, यह फ़ैसला दिया कि श्रीमती इन्दिरा गांधी ने संविधान में एमेंडमेंट कर के

उसके साथ जो बलात्कार किया था, हम उसके खिलाफ हैं, और इसलिए उस सारे के सारे हिस्से को निकाल दिया जाना चाहिए।

MR. SPEAKER: You have exceeded your time very much. You cannot go on like that. Please wind up.

चौधरी बलबीर सिंह : हमने यह इलैक्शन इसी बात पर लड़ा था, और हमने हर एक जल्से में यह कहा था कि हम देश को आज़ादी देंगे, और जिस संविधान को एमेंडमेंट के जरिए डिस्टार्ट किया गया है, हम उसको ठीक करेंगे। श्रीमती इन्दिरा गांधी और उसकी पार्टी के आदमियों ने भी इसी सवाल पर इलैक्शन लड़ा था और जल्सों में अपनी बात कही थी। देश की जनता ने दो-तिहाई मत से हमारे हक में फ़ैसला दिया है, और पंजाब, हरियाणा, हिमाचल प्रदेश, यू० पी०, राजस्थान, बिहार और मध्य प्रदेश में इन लोगों का सफ़ाया हो गया है। जनता ने इन लोगों की पालिसी को ठुकरा दिया है। ये लोग सेकुलरिज़्म का ढिंढोरा पीटते थे, लेकिन जनता इनके झांसे में नहीं आई और उसने इन लोगों को आउटरराइट रिजेक्ट कर दिया।

MR. SPEAKER: Please don't record now.

चौधरी बलबीर सिंह : \*\*

SHRI O. V. ALAGESAN (Arkonam): Mr. Speaker, Sir, in the Third Reading stage, a Member can speak here in support of the Bill or rejection of the Bill. I propose to speak, in support of the Bill.

It has been the fundamental right of this House that a Member of the Opposition is called upon to open the debate after the Government spokesman has placed his point of view before

the House. Yesterday it was given a go-bye. It was a very bad thing that had happened. I hope, it will not become a precedent and hereafter you will make it a point to see that only a Member from the Opposition is called upon to speak first.

AN HON. MEMBER: Some of the Opposition Members had left the House.

SHRI O. V. ALAGESAN: That is a different matter.

There has been criticism that this measure has been placed in a piecemeal manner before the House, and the criticism has come, strangely enough, from the Members on the other side, from the ruling Party itself. I do not see any objection or anything wrong in placing this very important measure in one or two instalments. The hon. Minister has promised that he will come with a comprehensive measure covering all the other aspects of the Forty-Second Amendment, later, and we are agreeable to that course. To say that everything should be brought in one instalment is taking too simplistic a view of the whole thing. The Prime Minister has already gone on record saying that there is nothing wrong in placing this before the House in one or two instalments.

Yesterday the House witnessed a very significant phenomenon. The House witnessed a cent per cent co-operation from the Opposition in approving the objects of this Bill. Now what do we get for this cooperation, for this consent to a government measure? Insults are heaped on us; we are called names. One hon. Member went to the extent of saying that we did not have genuine regard for principles, while voting for it, and that we were doing it purely out of expediency. Is this the way that a responsible Opposition is to be treated by the ruling Party? We had pondered much over this measure and

\*\*Not recorded.

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we had arrived at a decision to support this measure. It has been said even by the hon. Mover—I am sorry, he was a bit unfair to us in saying that—, rather he made it imply, that he had to bring it in instalments because he had to carry on consultation with the Opposition. Perhaps he was too much pressed by arguments from his own side and, therefore, he had to say this. But in the process, he seemed to imply that it was our fault. I would like to take the House into confidence and say that, on our own, we started examining the Forty-Second Amendment because we realised that a sea-change had occurred in public opinion in this country as a result of the General Elections. As our Leader has said: "We bow to the verdict of the people". We know that it means and hence, we took an examination of the various provisions of the Forty-Second Amendment Act on our own. In fact, we completed the examination even before the Government proposals were placed in our hands. Afterwards only, the Government proposals came to our hands. Out of 43 proposals which were considered, three have been left over for further discussion; on 14 proposals, we were not able to agree, but even among those 14, we will be agreeing partly with two. And, to the balance of 28 proposals, we are going to agree. We said: We shall agree. Of these, two will be partly not agreed to and two will be conditionally agreed to. This is the exercise that has been done by the Congress Party. But the way in which the ruling party treated us yesterday, I am sorry to say is a very sad experience and I take it that it is due to their inexperience that they did like that. I hope, they will behave better in the future.

Even on the question of Emergency, it has been reported in the press that the hon. mover said that when he brings the Bill next time, he will see to it that the emergency provision is entirely removed.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I did not say that. What I said was that the country may not have to witness the kind of emergency which we witnessed during the two years.

SHRI O. V. ALAGESAN: That means, he will have a sort of qualified emergency, I do not think that I shall be letting out a secret when I say that our leader said: What do these people know about the emergency? They were very happily settled in the Jails; it is we, who suffered in the emergency. I am telling for the information of the Government that we have taken the view that we will not have any sort of internal emergency. The Government proposal is that if there is an armed rebellion in any part of India, they will bring internal emergency. That is the tentative proposal. I do not say, they have finalised the proposal. Even there, we are not agreeing to it. We feel that the provision because of which it was possible for the previous Government to bring emergency and which has produced so many undesirable results should not be on the Statute Book. This is the extent to which we are going and this is as a result of being responsive to public opinion.

Now, what have you done? Let us examine the situation. The Janata Party is bound by its pledge to the electorate to see that the Forty-second Amendment is removed from the Statute Book. They are doing their duty. What is our position? perspective? We promised even in the very beginning that we will be responsible opposition, that we will offer constructive cooperation to Government and you saw a demonstration of it, a wonderful demonstration of it yesterday when we voted solidly for this amendment. For this we deserve praise as a constructive opposition. On the other hand, abuses were heaped on us.

The Prime Minister has started a practice and the practice is to consult

the main opposition and other parties on crucial matters like the constitutional amendment. It may be said, and it was said actually, that the Prime Minister has started this consultation process because the Congress Party enjoys a majority in the Rajya Sabha. That means, your own people have told you that you are making a virtue of necessity. In my view, I do not think, it is the Prime Minister's policy or the policy of the Janata Government that they are consulting us out of expediency as we were accused of it. I would not like to believe that they are consulting us out of making a virtue of necessity. I take it that they want to lay down healthy traditions and healthy conventions of running democracy in this country.

In fact, it is not the written Constitution that is important, but the way in which it is worked. I seek the indulgence of the House to quote what Dr. Ambedkar said in this connection:

"However bad a Constitution may be, it may turn out to be good, if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution."

If those who work the Constitution is a bad lot, then it can produce bad results. That is what he said. I would like to tell you that we have been responsible for the governance of this country for the past quarter of a century and we have worked this constitution. I do not claim that we are a good lot nor anybody can say that we are a bad lot; the utmost that can be said is that we are a mixed lot. I appeal to you and to the government that at least you be a mixed lot and not turn out to be a bad lot... (*interruptions*).

The question of emergency was discussed yesterday and many things were gone into which need not have been gone into, in my opinion. Now, I would like to tell you the genesis of

emergency. What was the reason behind the whole process that culminated in this Forty-second Amendment Act. Again, I would like to quote Dr. Ambedkar. I would like to say that it was the habit of *Bhakti* and introducing the quality of *Bhakti* in the politics that led to the emergency that culminated in the Forty-second Amendment Act. Hear what he says:

"For in India, *Bhakti* or what may be called the path of devotion or hero worship, plays in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. *Bhakti* in religion may be a road to the salvation of the soul. But in politics, *Bhakti* or hero worship is a sure road to degradation and eventual dictatorship."

These were almost prophetic words and it was due to that and because we followed *Bhakti* in politics that we witnessed the culmination of emergency in this country...

SHRI A. BALA PAJANOR (Pondicherry): India is Indira and Indira is India. That was the slogan.

SHRI O. V. ALAGESAN: Now, I would like to take up the provision which deals with the Supreme Court.

MR. SPEAKER: We are in the Third Reading.

SHRI O. V. ALAGESAN: I am not going into the details. Yesterday, it was said that the previous government denigrated the judiciary and that the independence of the judiciary was vitiated by the previous government.

AN HON. MEMBER: No doubt about it.

SHRI O. V. ALAGESAN: I shall tell you that it is not somebody else which makes the reputation of the judiciary. It is the judiciary itself that should build the reputation of the judiciary. You know the Madras High Court, what high standards it enjoyed

[Shri O. V. Alagesan]  
and what worldwide reputation it enjoyed. It was a model High Court in the country. Now, what has happened?...

MR. SPEAKER: That is a pending case. Please do not go into it.

SHRI O. V. ALAGESAN: No, Sir, I was only going to refer to a reply given in this House. If you do not want me to refer to it, I will not refer to it.

I am saying only this to point out that the reputation of the judiciary and the independence of the judiciary is more in its own hands...

MR. SPEAKER: That is true of everybody including Parliament as also the Judiciary.

SHRI O. V. ALAGESAN: It is for the Members of the Judiciary and especially the members of the higher judiciary to see that they maintain high professional standards, that they maintain their reputation unsullied and no Parliament, howsoever powerful it may be, can spoil the reputation of such a judiciary.

Again, Art. 31D has been held up as the villain of the piece. I would like to tell you the background as to why some of us think that 31D or what it implied is necessary, because even now, 30 years after our freedom, there are secessionist tendencies working in this country and we know, as a matter of fact, in Tamil Nadu such a secessionist movement has been nurtured and it has grown and only because of the expediency of getting into power some ten years ago, the party gave up the slogan. The Party gave up that ideal. So, we have to be ever vigilant. I am told that the Prevention of Unlawful Activities Act will be a sufficient instrument to deal with these activities. I wish it is so. Why some of us are insistent on this is because we see demands for State autonomy and State autonomy, I want to warn you, can easily deteriorate into secession.

Now, we have got a long pamphlet placed in our hands by the West Bengal Government which seeks to make drastic changes in the Constitution. It seeks to alter...

MR. SPEAKER: You may please confine yourself to the amendment before the House. Why do you think of future amendments?

SHRI O. V. ALAGESAN: IT seeks to alter the Centre-States relations very drastically and very basically. What I say is this. This House should be armed with some sufficiently sharp instrument to see that secessionist activities do not flourish in the country. That is the background and the rationale behind Art. 31D. If the hon. Law Minister gives an assurance that the Prevention of Unlawful Activities Act would be sufficient to deal with secessionist activities, I shall be satisfied.

With these words I support the Bill.

श्री दुर्गा चन्द (कांगड़ा) : अध्यक्ष जी, इमर्जेंसी के दिनों में जो हमारी डेमोक्रेसी के सेट-अप पर प्रहार हुआ था... (उपवाचन) ..

SHRI JYOTIRMOY BOSU (Diamond Harbour): That is how the Lok Sabha lives.

MR. SPEAKER: I can understand in the gallery, but not in the House.

श्री दुर्गा चंद : अध्यक्ष जी, मैं यह कह रहा था कि इमर्जेंसी के दिनों में जो हमारी डेमोक्रेसी पर प्रहार हुआ था और उस समय जो 42वां एमेंडमेंट बिल इस सदन में लाया गया था, उस वक्त हमारी भूतपूर्व प्रधान मंत्री श्रीमती इन्दिरा गांधी ने यह कहा था कि इस देश में जो डेमोक्रेसी है, लोकतंत्र है, वह डीरेल हो गया है, वह पटरी से उतर गया है और उसको पटरी पर लाने के लिए

यह इमजेंसी लार्ड गई है और यह जो संविधान में 42 वीं तरमीम लार्ड गई है, यह उस की पुष्टि करने के लिए आई है। यह दलील उस समय दी गई थी।

अध्यक्ष महोदय, इस में कोई शक नहीं है कि वाकई लोकतंत्र उस समय पटरी से उतर गया था और उस को पटरी पर लाने के लिए बाद में जो चुनाव हुए और उनमें जनता पार्टी को लोगों का जो मेनडेट मिला, जनता पार्टी को और जनत पार्टी की गवर्नमेंट को वाकई में यह साबित करना पड़ा है कि किस तरह से जो लोकतंत्र डीरेल हो गया था, उस को लाइन पर ला रहे हैं, डेमोक्रेसी को लाइन पर ला रहे हैं। तो अध्यक्ष जी, मैं यह कहना चाहता हूँ कि 42वीं तरमीम जो संविधान में की गई थी, उस में ऐसे प्रोविजन्स हैं जिन की वजह से लोकतंत्र को आघात पहुंचा है और इस के लिए जनता पार्टी को 42वीं संविधान की तरमीम के प्रोविजन्स को ही खत्म नहीं करना पड़ेगा बल्कि ऐसे कदम उठाने पड़ेंगे, जिससे लोकतंत्र हमेशा के लिए इस देश में जीवित रहे।

इस में कोई शक नहीं है कि गोलकनाथ का जो फैसला हुआ था, उस में सुप्रीम कोर्ट ने यह फैसला दिया था कि फण्डामेंटल राइट्स जो लोगों को दिये हुए हैं, उन को तरमीम करने का पार्लियामेंट को हक नहीं है। मैं समझता हूँ कि प्रापर्टी राइट को उसमें बहाल कर दिया जाए।

जहां तक फण्डामेंटल राइट्स को तरमीम करने की बात है, केशवानन्द भारती केस में यह बात फिर सुप्रीम कोर्ट के सामने आई थी और सुप्रीम कोर्ट के जजिज ने यह फैसला किया था कि फण्डामेंटल राइट्स की तरमीम हो सकती है लेकिन संविधान के बेसिक स्ट्रक्चर को तरमीम नहीं किया जा सकता है। अब बेसिक स्ट्रक्चर

का इस्य उठाया गया, यह पहले भी उठाया गया था। मैं समझता हूँ कि कांस्टीट्यूशन के बेसिक स्ट्रक्चर में फण्डामेंटल राइट्स भी आते हैं। फण्डामेंटल राइट्स हमारे कांस्टीट्यूशन का जो बेसिक स्ट्रक्चर है उसका हिस्सा हैं। इसलिए मैं चाहता हूँ कि इन्हें फिर से बहाल किया जाना चाहिए और इस अमेण्डमेंट के द्वारा हम इसे नहीं कर रहे हैं। आगे जो भी अमेण्डमेंट्स हम लायें उनमें ये बहाल किये जावे चाहिए। क्योंकि हमारे संविधान के आर्टिकल 368 में यह था कि हम दो-तिहाई मेजोरिटी से इन फण्डामेंटल राइट्स को तरमीम नहीं कर सकते हैं। उसके बाद गोलकनाथ केस में सुप्रीम कोर्ट ने यह फैसला किया कि फण्डामेंटल राइट्स को अमेण्ड नहीं किया जा सकता है। इसलिए मैं चाहता हूँ कि हमारे फण्डामेंटल राइट्स को फिर से बहाल किया जाए। जब तक एक्जीक्यूटिव के हाथ में आज जैसी पावर्स रहेंगी तब तक हमारे लोकतंत्र को खतरा बना रहेगा।

अध्यक्ष महोदय, यह जो अमेण्डमेंट बिल हमारे ला मिनिस्टर साहब जावे हैं, इसमें दो चीजें हैं। एक तो यह है कि पिछले अमेण्डमेंट में जो एण्टी नेशनल एक्टीविटीज के बारे में संविधान में जो प्रोविजन किया गया था वह इस अमेण्डमेंट के द्वारा खत्म किया जा रहा है। इसके लिए हमारे कांस्टीट्यूशन में एक नई क्लाज 31 डी जोड़ी गई थी जो कि इस अमेण्डमेंट के द्वारा हटायी जा रही है। जहां तक क्लाज 31 ए, बी, सी का सम्बन्ध है वह तो प्रापर्टी से सम्बन्धित है। यह एक महत्वपूर्ण आर्टिकल है। उसमें यह क्लाज एण्टी नेशनल एक्टीविटीज के सम्बन्ध में जोड़ दी गई। अब हम इसे खत्म कर रहे हैं। यह एक स्वागत योग्य कदम है।

इस अमेण्डमेंट के द्वारा हम दूसरी बात यह करने जा रहे हैं कि हार्ड कोर्ट और सुप्रीम



[श्री दुर्गा चंद]

कोर्ट की जुरिसडिक्शन को पिछले अमेण्डमेंट ने जो कटौत कर दिया था, जुडीशरी की इण्डीपेंडेंस को जो खत्म कर दिया गया था उसे हम फिर से बहाल करने जा रहे हैं। यह एक अच्छा प्रोविजन है। मैं समझता हूँ कि हमारी जुडीशरी की इंडीपेंडेंस के बारे में एक काम्प्रीहेंसिव बिल आता तो अच्छा होता। लेकिन हमारी सरकार ने इसके बारे में या ला मिनिस्टर में इसके सम्बन्ध में जो फैसला किया है वह ठीक ही प्रतीत होता है कि पहले जो खराब प्रोविजन कांस्टीट्यूशन में कर दिये गये हैं उनको खत्म कर दिया जाए, उसके बाद कोई और प्रोविजन किया जाए। मैं समझता हूँ कि यह एक सही कदम है। पहले हमें उन प्रोविजंस को निकालना चाहिए जिन्होंने इस देश में लोकतंत्र को खत्म किया है।

मैं अपने मंत्री महोदय से कहूंगा कि अगली दफ़ा जो वे अमेण्डमेंट बिल लायें वह एक काम्प्रीहेंसिव बिल लायें। मुझे इसमें कोई एतराज नहीं है कि उसके बारे में पहले अपोजिशन से बात कर ली जाए। क्योंकि हम अपोजिशन को पूरी इज्जत देना चाहते हैं। आपने इस बिल के बारे में जो अपोजिशन से विचार-विमर्श किया, यह एक अच्छा कदम है और आजादी के बाद से पिछले तीस सालों में पहली बार अपोजिशन को ऐसी इज्जत बख्शी गई है। अगर हमें डेमोक्रेसी को जिन्दा रखना है तो अपोजिशन को हमें इज्जत देनी होगी और उसकी कद्र करनी होगी क्योंकि वह भी डेमोक्रेसी का एक हिस्सा है। लेकिन मैं अपोजिशन से भी अपील करूंगा कि वह बेकार की नुक्ताचीनी करना छोड़ दें। हमारे साठे साहब हर बात पर नुक्ताचीनी करने के लिए खड़े हो जाते हैं। ऐसा नहीं होना चाहिए। बल्कि सरकार को अपोजिशन को मज़बूत करने के लिए सुझाव देना चाहिए। उसका हम स्वागत करते हैं। हमारे प्रधान मंत्री

जब सदन में बोलने के लिए खड़े होते हैं तो मालूम होता है कि कोई प्रधान मंत्री इन्सान की शक्ल में नहीं बल्कि फरिश्ते की शक्ल में बोल रहे हैं। हमेशा सच बोलते हैं और अपोजिशन की हमेशा कद्र करते हैं। इससे ज्यादा अपोजिशन की कद्र और कोई पार्टी इस देश में नहीं कर सकेगी। फण्डामेंटल राइट्स का जो चेप्टर है उसमें आर्टिकल 13, 14, 15, 16, 19, 21, 22, 25 और 32 जिनमें हमारी आजादी और डेमोक्रेसी का मँटर छुपा हुआ है इन आर्टिकल्स को 368 से इम्प्यून कर देना चाहिए ताकि उसमें कोई अमेण्डमेंट न की जा सके।

इन शब्दों के साथ मैं इस बिल का स्वागत करता हूँ और अपोजिशन के लोगों से कहूंगा कि आगे भी इस बारे में प्रोविजन आने वाले हैं, कांस्टीट्यूशनल अमेण्डमेंट आयेगा, आपसे मश्विरा किया जायगा और हम आशा रखते हैं कि आप इसी तरह कोआपरेट करेंगे ताकि इस देश में लोकतंत्र फले फूले। पाटियां आयेंगी और जायेंगी, लेकिन यह देश हमेशा रहेगा और लोकतंत्र इस देश में हमेशा जिन्दा रहना चाहिए।

**श्री निर्मल चन्द्र जैन (सिवनी) :**  
अध्यक्ष महोदय, मैं विधि मंत्री महोदय को एक छोटा सा संशोधन लाने के लिए सिर्फ़ छोटी सी बधाई देना चाहता हूँ, पूरी बधाई नहीं देना चाहता। लेकिन जो कांग्रेस के संसद सदस्य हैं यहां पर मैं उन्हें पूरी बधाई देना चाहता हूँ। उनकी जो भर्त्सना की गई यहां पर किन्हीं किन्हीं सदस्यों के द्वारा, जो क्रिटिसाइज़ किया गया उन्हें, मैं उससे अपने आपको असम्बद्ध करता हूँ। बात इतनी स्पष्ट है इस समय कि उनसे बिना पूछताछ किये हुए भी जब यह बिल लाया गया तो उन्होंने वह स्वीकार किया, विशेषतः डा० सैयद मोहम्मद और माननीय पाई ने कि पिछले बार उन्होंने गलती की

थी और इस बार गलती का परिमार्जन वह करना चाहते हैं। उन्होंने स्वीकार किया कि वह भय के वातावरण में रह रहे थे। अध्यक्ष महोदय, भय और खासतौर से ऐसे प्रतिनिधि का भय जो 7 लाख व्यक्तियों का प्रतिनिधित्व यहां पर करता हो इस देश को रसातल में ले जा सकता है। यदि उन्होंने आज यह स्वीकार कर लिया तो हम उनकी सराहना करते हैं। लेकिन एक बात जनता पार्टी के घोषणापत्र से पढ़ कर सुनाना चाहता हूं। उसमें यह कल्पना निश्चित की गई थी दोनों सदनों में दो तिहाई बहुमत न होने से हम 42 वां संशोधन पूरी तरह से रद्द न कर सकें, और यह कहा गया हम प्रयत्न करेंगे कि हम यह रद्द करें।

"As a party wedded to the ideals of freedom and democracy it believes that fearlessness is of the essence. It will, therefore, take immediately steps to free the people from the bondage of fear and restore them the fundamental freedom and to the judiciary its rightful role.

"To generate fearlessness and to revive democracy the Janata Government will seek to rescind the 42nd amendment."

मेरा भी यह निवेदन है कि जब हम यह कहते हैं कि हम जनता के प्रतिनिधि हैं, तो हम ने जो यह आश्वासन दिया था कि हम यह प्रयत्न करेंगे कि 42वें संशोधन को हम पूरी तरह रद्द करें, तो हमें इसे पूरी तरह से रद्द करने वाला बिल यहां पर लाना चाहिये था। जैसे 3, 4 बातों में कांग्रेस वालों ने समर्थन किया, मुझे विश्वास है कि उस समय भी वह करते। अगर समर्थन नहीं करते तो वह जो क्लोजेज शायद हटाई जा सकती थीं, वह हट सकती थीं इस कारण कि वह रद्द हो गई। हम कहते कि हमने प्रयत्न किया, लेकिन सफल नहीं हो पाये।

अगर हम 31-डी को छोड़ दें, तो अभी हमारे विधि-मंत्री ने सिर्फ एक ही काम किया है कि जो केसेज अभी बन्द हो गये थे हाईकोर्ट में 5 न्यायाधिपतियों के न मिलने के कारण, जो सुप्रीम कोर्ट में स्थगन हो गया, केसेज रुक गये थे, उन्होंने सिर्फ ब्रेक हटाने की चेष्टा की है। शायद इससे कुछ गति आ जायगी, लेकिन जब गति आती है तो हमारी गाड़ी गलत दिशा में न चल जाये, यह भी प्रयत्न करना पड़ता है।

अध्यक्ष महोदय, जरा कल्पना कीजिये, धारा 226 अभी है, यदि निर्णय होने चालू हो जायेंगे तो वर्तमान धारा 226 के आधार पर ही होंगे, उस में से ये तीन शब्द निकाल दिये गये हैं "फार एनी परपज" इन शब्दों के निकाल देने से तो रिस्ट्रिक्टेड अधिकार हो गया है। खासतौर पर हाईकोर्ट को 226 में

"It can exercise jurisdiction in cases where there is contravention of statutory provision causing substantial injury to the petitioner and (b) cases where there is illegality resulting in substantial failure of justice. In every case the petitioner has to satisfy the court that he has no other remedy."

इस तरह से 226 को संकुचित कर दिया गया है, सिकोड़ दिया गया है। अब इस सिकुड़न की अवस्था में उन के फैसले हो रहे हैं। जो पैटीशनर है, याचिकाकर्ता है, उस पर बोझ लाद दिया गया है कि क्या-क्या साबित करना है—

"For no other purpose the High Court will not interfere.

यह लिमिटेशन्स हटनी चाहिये थीं। कांग्रेस के लोग भी शायद इसके लिये तैयार रहते

[श्री निर्मल चन्द्र जैन]

और यह हमारा आश्वासन जनता को था। सिर्फ कैबिनेट के द्वारा एक लिमिटेड-बे में कुछ थोड़ा सा संशोधन लाकर, जनता को दिए हुए आश्वासन की पूर्ति नहीं हो सकती। हम यह भी नहीं कह सकते कि दूसरे पक्ष के लोग बिल्कुल तैयार हो जायें। इसमें हमारा कोई पोलिटिकल मोटिव नहीं है, लेकिन यदि इसमें कोई पोलिटिक्स खेलना चाहता है तो जनता को मालूम होना चाहिये कि किस ने पोलिटिक्स खेलकर यहां पर उस संशोधन को पूरी तरह से अथवा आंशिक रूप में रद्द करवाया है। इसलिये हमें शीघ्रातिशीघ्र पूरा संशोधन करने के लिये जो वचन दिया है, उसे पूरा करना चाहिये।

पहले किसी को अपना व्यक्तित्व बनाना था, वह दूसरों को बीना समझती थीं। उन्होंने अपने व्यक्तित्व को बहुत बढ़ाना चाहा, इतना बढ़ाया कि फुगों के समान फैलाया, इस सदन की पूरी सीमा में वह संकुचित नहीं रह सके। इसीलिये वह निकालकर बाहर कर दी गई। लेकिन इस व्यक्तित्व के कारण आज जो नुकसान हुआ है, उस में एक प्रश्न जरूर उठता है कि 42वें संशोधन के लिये जो प्रक्रिया अपनाई गई थी, हम उस प्रक्रिया की भी भर्त्सना करते हैं। इसलिये हम चाहते हैं कि 42वें संशोधन को पूरी तरह रद्द किया जाये।

Justice should not only be done; it should appear to be done.

अभी हम सिर्फ कहें कि कुछ चीजें बड़ी अच्छी हैं इसलिए रख ली गई, लेकिन कुछ चीजें अच्छी लाने के लिये जो गलत प्रक्रिया अपनाई गई थी, वह तो अपने आप में गलत है। हम सब महात्मा गांधी की समाधि पर शपथ लेने के लिये गये थे, उस समय यह शपथ नहीं ली थी कि हमारी राजनीतिक रोटी जिस पर सिक सकें सिर्फ वही काम करेंगे

और दूसरे काम नहीं करेंगे। हम ने यह भी शपथ नहीं ली थी कि जब सारे लोग स्वीकार करेंगे, हमारी बात तभी आगे बढ़ेगी। महात्मा गांधी जी ने कहा था कि यदि आप को अकेले ही चलना पड़े, तो पवित्र साध्य के लिए पवित्र साधन अपनाते हुए अकेले ही चलिए। जो गलत साधन अपनाये गये हैं, उन की भर्त्सना पूर्ण रूप से हो सके, इसलिए इस बात की जरूरत है कि मंत्री महोदय 42वें संशोधन को पूर्ण रूप से रद्द करने का विधेयक शीघ्रातिशीघ्र लायें।

MR. SPEAKER: Shri Sushil Kumar Dhara

SHRI C. M. STEPHEN (Idukki): Sir, I withdraw my request for speaking. There is an opposition here. 2 hours have been allotted and we are 150 members. The time must be adjusted in such a manner that the opposition gets its due time. You are going to call me during lunch hour when the House will be empty. I do not want to speak. You can carry on with the Government members alone, keeping the opposition completely out.

MR. SPEAKER: Mr. Alagesan has taken 20 minutes. I will call you.

SHRI C. M. STEPHEN: I do not want to speak. The opposition is not going to speak. The entire government can speak.

SHRI A. BALA PAJANOR: We suffered under the Congress and we do not want to suffer under the Janata rule. The Congress may be punished, but not my party. It is a matter of our right to speak.

MR. SPEAKER: You will be given a chance, but you cannot insist on it here and now.

PROF. P. G. MAVALANKAR (Gandhinagar): At the end we will get only one or two minutes.

MR. SPEAKER: Shri Sushil Kumar Dhara.

SHRI SUSHIL KUMAR DHARA (Tamluk): Sir, while I give my support to this Constitution Amendment Bill, I would like to draw your attention to the fact that a Full Bench was constituted in the Supreme Court. It is well known to you that the Bench was dissolved by the then Chief Justice of India, Shri A. N. Ray. The Bench is dissolved. The Constitution Bench would hear the matter; when we do not know, observed the Chief Justice. It happened on 12th November, 1975, when emergency was there. Only in March '77 was lifted. Even during that period, no such Constitution Bench functioned; and I think, there was no doubt in the minds of the then rulers that this Constitution cannot be amended. And so, this Bench was formed only to decide whether Parliament's power to amend the Constitution was limited by the theory of basic structure promulgated by the court in its 1973 judgements in the Keshavananda Bharti case. That is why the Chief Justice ordered the dissolution of the special Bench and the Special Bench did not function. That is why that Constitution amendment was wrong and it could not function. Article 31-D of the Constitution is to be amended. That Article deals with the prevention or prohibition of anti-national activities and of anti-national associations. If people coming in a majority have any other design or objectives, they can declare any person as anti-national. They can declare any association as an anti-national association of persons. So, that Article should be deleted and Article 31-D has no *locus standi* in the Constitution.

13 hrs.

In regard to amending the Constitution, a national seminar was held in this capital, when we were in jail. In that seminar, many eminent persons delivered their speeches. I, particularly remember that Acharya J. B. Kripalani told the seminar that, that

particular amendment was 'neither mending nor amending the Constitution', but it was only ending the Constitution. Really, the Congress regime at that time brought an end to the Constitution by passing the 42nd Constitution Amendment Bill. So, it should go. Our Law Minister has rightly brought this bill and I convey my thanks to him for it. I also convey my thanks to the Members of the Opposition and its leaders for giving their all-out support for this amendment. Thereby, they have set an example and shown their belief that democracy should take roots in this country.

SHRI RAGHALU MOHANARAN-GAM (Changalpattu): Mr. Speaker, I am really very grateful to you for having given me an opportunity to express my views on this Constitution Amendment Bill. Before dealing with the various amendments of this Bill, I would like to point out that we support this Bill.

It is our view point that these amendments are necessary while speaking on these amendments, I am reminded of the debate that took place in the Constituent Assembly on the question whether amendments to the Constitution should be allowed or not. I remember the speech of Shri Jawaharlal Nehru in the Constituent Assembly where he said that what is applicable today may not be applicable tomorrow and so the amendments are necessary.

Here I would like to say that during the parliamentary elections the Janata Party in Tamil Nadu promised the electorate that they would scrap the Fortysecond Amendment Bill if they come to power. Out of the 40 seats from Tamil Nadu, only three have gone to the Janata. Yesterday while the discussion on this

[Shri Raghalu Mohanaragam]

Bill was going on, I did not find even a single Janata member from Tamil Nadu, except one Member who happens to be the Minister. This is the position of the Tami Nadu members of the Janata Party. And yet they talked of scrapping the Fortysecond Amendment Bill during the election time.

While speaking on the necessity for having provision to amend the Constitution, Shri Jawaharlal Nehru said:

"The first task of this Assembly is to free India through a new Constitution, to feed the starving people, to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity."

The Constitution is not only a legal document, but it is a social and political document, which should reflect the wishes and aspirations of the people. It must be an instrument for carrying out the social and economic changes.

We are not the masters of the future generation. We have to adjust ourselves according to the present circumstances. We are not the only people to judge and decide for the future generations.

During the emergency we have faced so many problems. I am not going to the details of the difficulties that we have faced during that time.

Coming to the various clauses of the Bill, I will not go into all the clauses. But I want to point out article 31D, which deals with anti-national activities, has been scrapped. This particular provision was passed during the emergency. Under this provision, action can be taken against individuals even for legitimate trade union or political activities. Even non-violent demonstrations and legitimate demands of trade unions will come within the mischief of this article and in the past members

and leaders of the political parties were arrested even without disclosing the reasons. Further, existing laws are enough to arrest and curb the activities of persons who indulge in anti-national activities. Therefore, this article should be deleted.

Then, under article 32A, the Supreme Court cannot consider the constitutional validity of any State law. When a State violates the fundamental rights of any individual, he cannot go to the Supreme Court. Now that provision has been changed, restoring the power of the Supreme Court to consider the constitutional validity of a law.

Then, article 131A gave exclusive jurisdiction to the Supreme Court in regard to the validity of Central laws. It took away the power of the High Courts to go into the validity of Central laws. This amendment was passed during the emergency. I am glad the Law Minister is doing away with that provision. On behalf of the AIADMK, we support this amendment.

Finally, I would like to say that all the amendments that were passed during the period of the emergency in the name of the Fortysecond Amendment Bill should be deleted at the earliest possible time. As justice delayed is justice denied, all cases pending in the courts should be disposed of expeditiously. There are thousands of cases pending in the Supreme Court. Therefore, more Judges should be appointed to the Supreme Court to dispose of these cases quickly.

श्री गंगा सिंह : (मंडी) अध्यक्ष महोदय, किसी देश का संविधान वहां का सर्वाधिक महत्वपूर्ण दस्तावेज होता है। जब हमारा संविधान बना था, उस में दो साल से अधिक का अर्सा लगाया गया था और यह बात उचित भी है, क्योंकि सारा देश संविधान से गबन होता है, उस को बनाने के लिये पर्याप्त समय देना

चाहिये और अच्छी तरह से उस के ऊपर सोच-विचार होना चाहिये। लेकिन, अध्यक्ष महोदय, जो 42वां संशोधन इस संविधान में किया गया वह ऐसे समय में किया गया, जब कि उस पार्लियामेंट की आयु समाप्त हो चुकी थी। उस लोक सभा का चुनाव पांच साल के लिये किया गया था, लेकिन उस के कार्यकाल को 6 साल तक बढ़ाया गया उस के बाद फिर सात साल तक बढ़ाया गया और उस अवधि में वह संविधान संशोधन पास किया गया।

हमारे यहां कहा जाता है कि जब किसी की आयु समाप्त हो जाती है तो उस के बाद वह प्रेत गति को प्राप्त होता है। यह 42वां संशोधन भी उसी समय किया गया था जिस समय लोक सभा प्रेत गति को प्राप्त हो चुकी थी और प्रेत मनुष्य काम को नहीं करते हैं, वे प्रेतों के कार्य करते हैं, उसी का नतीजा यही है कि यह 42वां संशोधन एक प्रेत-कार्य के रूप में आज हमारे सामने उपस्थित है। उस समय हमारे जितने नेता थे, जो इस पार्लियामेंट में भाग ले सकते थे, सब के सब जेलों में थे, उन्होंने इस संशोधन की बहस में भाग नहीं लिया, हमारे जितने अखबार थे, उन के ऊपर सरकार का पूरा अधिकार था। वे अपने पत्रों में इस प्रकार की कोई बात नहीं लिख सकते थे कि किस प्रकार का संविधान संशोधन होना चाहिये। हमारे देश के लायर्स भी उस समय इस संविधान संशोधन पर अपने विचार प्रकट नहीं कर सकते थे। ऐसी परिस्थिति में यह 42वां संविधान संशोधन पास किया गया।

42वें संशोधन के बाद, अध्यक्ष महोदय, हिन्दुस्तान में लोक सभा के लिये चुनाव हुए, इन चुनावों में सब से पहला ईशू यह रखा गया कि 42 वें संशोधन को हम पूरी

तरह से हटा देंगे और पार्लियामेंट में इस प्रकार का बिल लायेंगे जिस से ये सारे संशोधन समाप्त हो जायें। हमारी जनता पार्टी के घोषणापत्र में इस का स्पष्ट उल्लेख है। उसके बाद राष्ट्रपति महोदय ने जो अभिभाषण इस माननीय सदन के सामने दिया, उस में भी यही कहा गया था, हमारे अन्य नेताओं के वक्तव्यों में भी इसी बात का उल्लेख था।

लेकिन इस काम को करने के लिये एक प्रक्रिया होती है। हमारे देश की पार्लियामेंट हमारे देश का पोलिटिकल-मिरर होनी चाहिये। देश में जो पोलिटिकल भावनायें हैं, विचार है, वे हमारी लोक सभा और राज्य सभा दोनों में प्रतिबिम्बित होने चाहिये। लेकिन, अध्यक्ष महोदय, आज स्थिति क्या है? हमारी लोक सभा तो राष्ट्र की राजनैतिक भावनाओं को प्रतिबिम्बित करती है, लेकिन राज्य सभा जो कि एक कांटीन्यूइंग हाउस है, उस की सदस्यता 6 वर्ष के लिये होती है, हर दो साल के बाद उस के एक-तिहाई मेम्बर रिटायर होते हैं, मैं समझता हूँ कि हमारी राज्य सभा का जिस प्रकार से कांस्टीचूशन होता है, देश की राजनीति को ठीक प्रकार से प्रतिबिम्बित नहीं करता है। मैं इस संबंध में एक सुझाव देना चाहता हूँ— देश की राजनीतिक भावना पर हर पांच साल के बाद लोक सभा में ठीक प्रकार से प्रतिबिम्बित हो जाती है, क्योंकि हर पांच साल के बाद पूरी लोक सभा के चुनाव हो जाते हैं, लेकिन राज्य सभा में स्थिति नहीं बदल पाती, 1971 में जो लहर देश में चल रही थी, वही इंदिरा गांधी की लहर आज भी राज्य सभा में चल रही है। मैं चाहता हूँ कि जिस समय लोक सभा के चुनाव हों, उसी समय राज्य सभा के कम

[श्री गंगा सिंह]

से कम 50 प्रतिशत सदस्य रिटायर हो जाय और इन पचास प्रतिशत राज्य सभा के सदस्यों का चुनाव लोक सभा के चुनाव के तुरन्त बाद होना चाहिये ताकि लोक सभा जो राष्ट्र के राजनीतिक विचारों को प्रतिबिम्बित करती है, उसी प्रकार से राज्य सभा में भी कम से कम पचास प्रतिशत इस प्रकार के लोक आजायें जो उस समय के राष्ट्रीय राजनीतिक विचारों को प्रतिबिम्बित करें।

अध्यक्ष महोदय, यह जो 42वां संशोधन किया गया था, उसमें एक बहुत बड़े महत्व की बात यह थी कि असहमति और राजनीतिक विरोध को राष्ट्र-विरोधी गतिविधि का नाम दे कर, राष्ट्र विरोधी संस्था - का नाम देकर लोगों के अधिकारों को सोमित करने और लोगों को दबाने के लिए यह संविधानिक प्रावधान किया गया था। यह 31 (डो) का अनुच्छेद उस वक्त संविधान में जोड़ा गया था, राष्ट्र विरोधी गतिविधियों का नाम देकर किसी भी संस्था को इसके द्वारा खत्म कर सकते थे और किसी भी आदमी को जेल के अन्दर भेज सकते थे। इसके अन्तर्गत इस प्रकार के कानून सरकार बना सकती थी। मैं अपनी सरकार को बधाई देना चाहता हूँ कि इस अनुच्छेद को समाप्त करने के लिए वह यह विधेयक लाई है।

अध्यक्ष महोदय 42वां संशोधन और इमर्जेन्सी लगाने के बाद जितने भी कानून बनाए गए थे वे सभी तत्कालीन सरकार ने समस्त सत्ता अपने हाथ में सीमित करने के उद्देश्य से बनाए थे। इस सब का संशा यह था कि राज्य की सम्पूर्ण सत्ता प्राइम मिनस्टर के हाथ में आ जायें।

इसके अलावा सरकार जूडिशियल रिव्यू का जो प्रावधान हमारे कांस्टीट्यूशन के अन्दर था, उस जूडिशियल रिव्यू की परिपाटी को भी समाप्त करने का षडयन्त्र इस 42 वे संशोधन द्वारा किया गया था। आर्टिकल 368 का जो संशोधन किया गया था, उसके अनुसार सुप्रीम कोर्ट को संविधान में एमेंडमेंट की वेलिडिटी देखने के अधिकार की भी समाप्त कर दिया है। उस एमेंडमेंट को खत्म करने के लिए इस बिल में कोई प्रावधान नहीं है। मैं यह समझता हूँ कि संविधान संशोधन के जूडिशियल रिव्यू का अधिकार सुप्रीम कोर्ट को पुनः दिया जाए और संविधान में संशोधन किया जाए कि संविधान संशोधन संविधान के बेसिक स्ट्रक्चर के मुताबिक है या नहीं? इस को देखने का अधिकार सुप्रीम कोर्ट को फिर से मिलना चाहिए। मैं समझता हूँ कि हमारी सरकार अगले सेशन में इस बारे में भी संशोधन लाएगी।

MR. SPEAKER: This has been said by other Members also.

श्री गंगा सिंह : 42 वे संशोधन के अनुसार जो सेट्टल एक्ट्स हैं, उन की वेलिडिटी को देखने का अधिकार केवल सुप्रीम कोर्ट को है और हाई कोर्ट को नहीं हैं। इस बारे में बहुत सी बातें कही जा चुकी हैं और मैं अब ज्यादा इसके बारे में नहीं कहना चाहता क्योंकि समय कम है।

इन शब्दों के साथ मैं इस संशोधन बिल का स्वागत करता हूँ और मैं यह समझता हूँ कि सरकार आने वाले सत्र में जो बाकी विधित्तियां 42वें संशोधन बिल में रह गई हैं और जिनको दूर करने का

जनता पार्टी ने बायदा किया है, उसके लिए एक काम्प्रोमिस्स बिल लाएंगे।

SHRI C. M. STEPHEN (Idukki): Mr. Speaker, Sir, I am very sorry to make a few remarks. There has been a long-standing convention in this House, even when there was not a recognised Opposition and there were only Opposition groups, that they would have a certain measure of treatment.

The major convention is that when a debate starts, the Opposition will be called to initiate the debate at every stage, at the consideration stage and at the third reading stage of the Bill. On a very important Bill, like this, it so happened that under your Presidentship, this convention was violated and the ruling party was called to initiate the debate. I thought that the convention will be followed when we come to the third reading stage. At this stage, you over-stepped the claim of the Opposition and you called upon the ruling party to initiate the debate. Then, again, I thought that you would give us an adequate opportunity to spell out our point of view. It is necessary in the interest of this Parliament that the different Parties spell out their viewpoints with respect to a measure which is before the House....

MR. SPEAKER: If I may intervene for a minute, out of the first one hour, your Party has taken 20 minutes. Normally you are not entitled to more than 15 minutes out of that one hour.

SHRI O. V. ALAGESAN: I have seen Mr. Indrajit Gupta speaking for one hour when we were on the other side. We are not being treated properly.... (*Interruptions*).

PROF. P. G. MAVALANKAR: Although you are right, Sir, in saying that 20 minutes were given to Mr. Alagesan....

SHRI O. V. ALAGESAN: It was not 20 minutes.

PROF. P. G. MAVALANKAR: Let us assume that it was 20 minutes. The established practice in this House over a period of 25 years has been that, even if it means disproportionately a larger time being given to the Opposition, that is given because the Chairs have always ruled that, in the Minister's speech, the ruling party Members' point of view is expressed; different points of view must be reflected and, therefore, the ruling party Members may speak less. Therefore, Sir, kindly do not give a ration like 45 minutes for the ruling Party, 50 minutes for the Opposition, and so on. More time, even disproportionately, is given always to the Opposition, because, the Minister speaks on behalf of the entire ruling party. If some of the ruling party Members cannot speak, I am sorry for them, but they have the satisfaction that the Minister has spoken..

MR. SPEAKER: That means, Independents get chance every time.

PROF. P. G. MAVALANKAR: I am not saying that. I had opposed this particular Bill at the time of introduction last week. Now, if you call me at the end....

MR. SPEAKER: Somebody must speak at the end.

PROF. P. G. MAVALANKAR: I am not saying that I should be called immediately. I am only talking about more time being given to the Opposition.

SHRI C. M. STEPHEN: To the main question that I had raised, there has been no reply. You have said, Sir, that my Party has taken more than what is due to it. I do not want to take anything more than what is due to me. I do not want to speak at concession either at your hands or at the hands of the ruling party. The Janata Party can have the whole time and have the discussion. We will come here at 4.00 p.m. and vote for it. I do not want to speak anything more.



**SHRI VAYALAR RAVI** (Chirayinkil): For the first time, in the House, there is a recognised Opposition; and we are sitting here as a recognised Opposition. If you go through the records, you will find that certain precedents and conventions have been followed in this House. You are absolutely within your right when you say that the limit of the time has to be struck to. We are not questioning that at all. But there is a convention which has been followed all these years with mutual understanding, Opposition is given more time. I have witnessed such occasions persons like me could not get an opportunity to speak. Generally, one Member from that side and then one from this side—not necessarily Congress, but from the Opposition side—are called. It is better to follow the convention. Why should you take the blame on you unnecessarily? We only want you to follow the convention and make this House happy, allow Members to put their points of view.

**MR. SPEAKER:** It would be convenient if the Members stick to their time. Even after the bell is rung, the Member goes on for another ten minutes. (*Interruptions*)

**SHRI C. M. STEPHEN:** Now that you have spelled out what our position in this House is, now that you have spelled out how you are going to treat us—we are just one among the many—we will have to consider how far... (*Interruptions*) It is clear we are not getting just and even treatment. Let me go on record with that statement.

**SHRI O. V. ALAGESAN:** I want to make one submission. The hon. Minister for Information and Broadcast-time has been divided equally.... (*Interruptions*)

**MR. SPEAKER:** Mr. Alagesan, you have spoken enough.

**SHRI V. ARUNACHALAM** (Tirunelveli): It has been alleged that the convention has been violated by the Chair. I want your ruling on that.

**MR. SPEAKER:** I do not think, any convention has been broken. To the extent I am aware, it was not the practice that you call members from each of the opposition parties and then the ruling party. In that case, the ruling party will not have any opportunity at all. We have to take into consideration everything.

**SHRI C. K. CHANDRAPPAN** (Cananore): The question is that when there were groups in the opposition, there was a convention in this House that the major debates had always been initiated by the opposition.

**MR. SPEAKER:** That is true; there was a mistake on my part.

**SHRI C. K. CHANDRAPPAN:** Secondly, whatever be the strength of the various parties here, it was always the intention of the Chair and the House to hear various points of view. If you see what happened in the last Parliament, you will find that Shri Madhu Limaye who represented a few members, two or three, got enough opportunity to put their point of view....

**MR. SPEAKER:** Here, everybody wants to speak as an individual, because everybody is supporting the Bill. Therefore, they have as much right to represent their views as anybody else.

**THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA):** Mr. Speaker, Sir, it is rather unfortunate that for one reason, or another, my hon. friend, Shri Stephen, and some others should have got the feeling that the opposition is not getting adequate time to present their point of view. As far as the Government is concerned, they are keen to give the utmost respect and opportunity to the oppo-

sition. We, on our side, will not stand in the way of full opportunities being given to them. Sir, as you pointed out, there are difficulties, when the time at our disposal is not adequate to allow everybody to give full expression to his views. However, we hope that in your wisdom, you will judiciously see that the opposition gets no such feeling.

MR. SPEAKER: That is very difficult. I cannot get into somebody else's feeling. I must give adequate time, I agree.

SHRI RAVINDRA VARMA: A reference was made to the conventions. Sir, I would like to say that we honour all those conventions, and we do not want anything to be done to break those conventions. In fact, we want to strengthen those conventions, and we have recognised the role of the opposition. I hope, these words would allay any apprehension or feeling on the other side, and they would take full part in the debate.

डा० बलदेव प्रकाश : (३.मृतसर)  
अध्यक्ष महोदय, 42 वें संविधान संशोधन के कुछ भाग को समाप्त करने के लिए जो बिल पेश हुआ है उसके लिए मैं सरकार को बधाई देता हूँ। 42वां संशोधन भारत के लोकतंत्र के इतिहास पर एक कलंक का टीका था। और सरकार को इस कलंक के टीके को एक दफा में साफ कर देना चाहिए था। लेकिन सरकार ने अभी थोड़ा सा हिस्सा अभी साफ करने की कोशिश की है। यह 42वां संशोधन क्यों लगाया गया थोड़ा-सा इसके इतिहास में जाना पड़ेगा। व्यक्तिगत स्वतन्त्रता को समाप्त करने के लिए, न्यायपालिका के अधिकारों को समाप्त करने के लिए उनके जूरिस्टिक्शन में से बहुत से महत्वपूर्ण विषयों को बाहर निकालने के लिए और हिन्दुस्तान के अन्दर एक व्यक्ति की राजनीतिक सत्ता कायम

रह सके, उसके लिए दमन चक्र चलाने के लिए यह एक निन्दनीय और घृणित प्रयास 42वें संशोधन के रूप में सरकार यहाँ लायी थी। अध्यक्ष महोदय, हमारी अदालतें अपने न्याय के लिए हिन्दुस्तान के अन्दर प्रसिद्ध हैं। अभी तक का इतिहास हम देखें कि जितने भी संविधान संशोधन हुए विधान के अन्दर जिसमें सामाजिक और आर्थिक दृष्टि से न्यायालयों के पास मसले गए उन सभी में हमारे देश की सुप्रीम कोर्ट और हाई कोर्ट्स ने उन सभी सोशियों ईकोनामिक इशूज पर डाउन ट्राउन की सहायता की। कभी भी हमारे न्यायालयों ने सरकार की गलत नीतियों का समर्थन नहीं किया। 42वां संशोधन लाने का मतलब ही यह था कि जो स्वतन्त्र न्यायालय काम कर रहे हैं उनकी स्वतन्त्रता को समाप्त किया जाए क्योंकि और कोई तरीका ही नहीं था श्रीमती इन्दिरा गांधी को प्रधान मंत्री के रूप में रखने का। सरकार के पास और कोई तरीका नहीं था। सरकार को यह पता था कि अगर यह बात न्यायालय में जायेगी तो हमारे न्यायालय के जो न्यायाधीश हैं, वह इस प्रधान मंत्री को कभी भी कुर्सी पर बैठे रहने की इजाजत नहीं देंगे। इसलिए एक ही तरीका बचता था कि संविधान में संशोधन किया जाए। पहले 39वां संशोधन किया गया था। वह क्या था? आमतौर पर वह भी संविधान में संशोधन था कि साधारण सदस्य की जो इलैक्शन पैटीशन होती है, प्रधान मंत्री और राष्ट्रपति की इलैक्शन पैटीशन उससे अलग होगी, उसका अधिकार केवल पार्लियामेंट को होगा। उनकी इलैक्शन पैटीशन साधारण कानून की

### [डा वलदेव प्रकाश]

तरह से नहीं हो सकती। यह डिस्ट्रिक्मिनेशन क्यों की गई? प्रधान मंत्री को एक आम सदस्य से ऊंचा दर्जा क्यों दिया गया? क्या कानून सब के लिए बराबर नहीं है? क्या देश में कानून में इस तरह से भेदभाव होता चाहिए? केवल एक ही कारण था कि साधारण कानून के मुताबिक प्रधान मंत्री उस समय प्रधान मंत्री नहीं रह सकती थीं। इसलिए यह सोचा गया कि प्रधान मंत्री इन्दिरा गांधी को बनाये रखने के लिए कानून की हत्या की जाए, देश के विधान की हत्या की जाए और वह हत्या की गई।

यह नहीं, यह भी किया गया कि अगर कोई सदस्य निर्वाचन के लिए डिस्क्वालीफाई हो जाए तो उसकी डिस्क्वालीफिकेशन को दूर करने का अधिकार भी इलैक्शन कमीशन से वापिस ले लिया गया, वह अधिकार राष्ट्रपति को दिया गया कि राष्ट्रपति अगर चाहे तो उस सदस्य की डिस्क्वालीफिकेशन को दूर कर दें। यह तरकीबें क्यों की गई हमें सोचना पड़ेगा कि उन तरकीबों के पीछे क्या दृष्टिकोण था? केवल एक ही दृष्टिकोण था कि एक व्यक्ति की सत्ता को किस तरीके से इस देश में कायम रखा जा सकता है।

यहां पर अदालतों के अधिकारों को ही समाप्त नहीं किया गया, बल्कि अदालतों को धमकियां भी दी गई इसी हाउस में। हमारे पहले कानून मंत्री श्री गोखले ने थर्ट्स दी सुप्रीम कोर्ट और हाई कोर्ट्स के जजों को कि जनता के सोचने के मुताबिक और उसकी इच्छाओं के मुताबिक उन्हें अपने फैसले देने पड़ेंगे, नहीं तो सुप्रीम कोर्ट और हाई कोर्ट के जजों को विचार करना

होगा कि उनका स्थान इस देश में है या नहीं है। मुझे आज आश्चर्य होता है कि इस लोक सभा में बैठे हुए लोग उस समय इस प्रकार की श्री गोखले की भाषण को, उस समय के मंत्री की भाषा को किस तरह से बर्दाश्त कर रहे होंगे। मैं समझता हूं कि इन सदस्यों को इस बात के लिए कोई कैंडिट नहीं जाता जो आज इस बिल का समर्थन कर रहे हैं, उन्होंने ही उस समय इस बिल को पास किया था। यदि उस समय श्रीमती इन्दिरा गांधी चाहती कि इस देश में जब तक मेरी आयु है, तब तक मैं प्रधान मंत्री रहूं। और मेरी आयु के बाद श्री संजय गांधी प्रधान मंत्री बनें, अगर यह भी अमैडमेंट उस समय पेश किया गया होता तो इन सदस्यों ने उस अमैडमेंट को भी समर्थन दिया होता। यह हालत उस समय थी। हम लोग उस समय जेल में थे, हम सोचते थे कि क्या हो गया है इस देश की लोक सभा को, किस तरह से यहां के सदस्य कार्य कर रहे हैं।  
(व्यवधान)

लेकिन मैं उन सदस्यों को जिन्होंने उस समय भी लोकतंत्र की आवाज उठाई, जिसमें हमारे श्री मावलंकर भी हैं, मैं उनको बधाई देता हूं कि उन्होंने उस समय भी जनतंत्र की आवाज यहां उठाई थी।

एक बात जो हमें विचार करनी चाहिए वह यह है कि क्या लोकतंत्र के अन्दर सरकार की सत्ता असिमित सत्ता है? लोकतंत्र में संसद और न्यायपालिका के संतुलन की सीमाएं क्या हैं? यह कुछ ऐसी समस्याएँ हैं जिन पर इस हाउस को गंभीरता से विचार करना चाहिए। क्या कोई भी लोक-सभा या कोई भी संसद, हमारा जो बेसिक

स्ट्रक्चर है, उसको डेस्ट्राय कर सकती है ? अगर कर सकती है तो आज या कल इस देश का भविष्य अंधकारमय हो सकता है। इस लिए मेरा कानून मंत्री से निवेदन है कि जब वह अगला बिल लायें तो उसमें इन सब बातों का अच्छी तरह से स्पष्टीकरण और उल्लेख होना चाहिए कि संसद, लोक-सभा कौन सी तरफों में कर सकती है और कौन सी नहीं कर सकती है। क्या इस देश में इस प्रकार से मोनार्की आ सकती है, क्या राजा महाराजाओं का शासन फिर स्थापित हो सकता है ?

जब हम जेल में थे तो यहां किसी मेम्बर ने कहा था कि इलैक्शन की अवधि 6 साल की बजाय 10 साल के लिए पोस्टपोन कर देनी चाहिए। श्री बंसी-लाल ने कहा था कि क्या इलैक्शन करना गीता में लिखा है। गीता बहुत से लोगों के लिए एक पवित्र और धार्मिक पुस्तक हो सकती है, लेकिन देश की राजनीति के लिए अगर कोई सबसे पवित्र चीज है तो वह देश का संविधान है।

मैं यह कहना चाहता हूं कि दमन-चक्र चलाने के लिए वह 39 डी की धारा लाए। मैं जानना चाहता हूं कि क्या देश में कानून नहीं थे, क्या देश में कानूनों की कमी थी किसी को पकड़ने के लिए ? इन्होंने सारे देश को पहले ही जेलों में डाला हुआ था।

इस संशोधन के द्वारा सरकार ने एन्टी-नैशनल एक्टिविटीज के आधार पर किसी के भी विरुद्ध कार्यवाही करने का अधिकार प्राप्त कर लिया। उस वक्त इस प्रावधान की कोई आवश्यकता नहीं थी। लेकिन तत्कालीन सरकार देश के लोगों में दमनचक्र और रिप्रेशन के

जरिए, एक डर, टेरर और आतंक पैदा करना चाहती थी, ताकि उसके कारण उसका राज्य चलता रहे।

मैं मानता हूं कि सत्ता सीमित है—वह सापेक्ष है, निरपेक्ष नहीं है; वह एबसोल्यूट नहीं है, रैलेटिव है। एबसोल्यूट पावर केवल इस देश की जनता को है। बाकी सब सत्ताओं - संसद सरकार और न्यायपालिका - की एबसोल्यूट पावर नहीं है, केवल रैलेटिव पावर है। जनता ने, जिस की एबसोल्यूट पावर है, अपना वडिक्ट दे दिया है कि 42वां संशोधन समाप्त होना चाहिए। इस लिए मैं यह निवेदन करूंगा कि मंत्री महोदय इस सदन के अगले सत्र में जो बिल लायें वह काम्प्रिहेंसिव हो, और उस के द्वारा 42वें संशोधन के क्लंक को देश की राजनीति और संविधान में से निकाल कर फेंक दिया जाए।

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Speaker, Sir, having opposed the introduction of this Bill last Friday, I now stand to support this Bill. I do so because it is a significant though a small step in the right direction.

Sir, I see no contradiction in the stand that I had opposed and I am still opposed to the manner and the modality of bringing this kind of piecemeal legislation. That is my point.

I must thank the hon. Law Minister my esteemed colleague, because I have somewhat succeeded and I am satisfied in getting—I am not using the word extracting but—a firm assurance on two grounds. One is, he said that a comprehensive Bill is coming fairly soon in the early part of the Budget session next year. Secondly he said that the majority of the opposition congress party in the Rajya Sabha will not be the consideration for bring-

[Prof. P. G. Mavalankar]

ing such other measures which, after consultation with the congress party the Janata Government feel ought to be brought, even if the opposition congress party may oppose them or not. It is a good thing.

Sir, the Forty-Second Amendment Act was the clumsiest child of the cavalier emergency style of governing. Not only that. It was a most crucked and highly perverted product of arbitrary rule.

Sir, an eminent jurist, who is now the Ambassador of our country in the United States of America, Mr. N. A. Palkhivala, significantly, even before the emergency began, had written articles which later on were published in a book form. And he had described how deliberately the Government of Mrs. Indira Gandhi went on distorting the Constitution. The title of the Book was:

"Constitution: Defaced and Defiled."

You, Mr. Speaker, must have seen this book. He said.

We could not recognise the Constitution how it was; we could not recognise the face of it, we could not recognise the personality of it,—even before emergency began. Now, after the emergency, the entire spirit of the Constitution was killed. The body remained, but the spirit of the Constitution was killed. The Forty-Second Amendment Act did not just mend the Constitution, but it ended the Constitution. The Indira Government in the Fifth Lok Sabha, put a full-stop to all forms and substances of normal Constitutional Government.

Sir, I do not like individual names to be mentioned, and I did not want any praise from my Janata friends, but I want to keep the record straight by saying that although the Fifth Lok Sabha, during emergency, was more or less a docile and dead body,

some of us who were there, went on opposing every single unjust and unconstitutional measure. I was one of those who went on persuading my colleagues, those who were outside the jail, saying: Let us all resign *en block* on the 18th March, 1976, when the five-year term of the Fifth Lok Sabha was over. But I could not succeed in persuading my esteemed colleagues of the various parties who now form the Janata Party. They were not prepared to resign *en block*. They asked me 'Don't do it alone even if the Lok Sabha is dissolved'. Because they were in Jails, they were free. My difficulty was I was out—I was not in prison. I was prepared to go out of Parliament, out of Fifth Lok Sabha. But, having continued the membership and having come to the Central Hall and drawing Rs. 51 every day, how can I say that I cannot come to the House? I came to the House and I opposed it even though we were four, two on one side and two on other side, one week later, we became four. After one week's debate, I can get only 20 more, that is from 346 to 366 whereas I succeeded in doubling our strength—from two, we became four. And at the third reading, at the Division, we succeeded hundred per cent, we became four from two.

Therefore, I say that it was a ghost Parliament: it had no business to pass this Bill that being a Ghost Parliament. There was no freedom whatsoever. Therefore the Law Minister should take out the whole, massive Forty-Second Constitutional Amendment from the Statute Book. We ask you to see that the whole act must go totally.

I will not take more time by going into the details of it except by reading out what the Committee of hundred had done. This Committee had gone into the question and it had

listed as many as six reasons and said that this Forty-Second Constitutional Amendment Bill must go totally. I will refer to the Election Manifesto of the Janata Party which I have got with me. They are for total rescinding of the Forty-Second Amendment Act. I am glad to find in today's order paper giving a resolution of Prof. Samar Guha who is coming with this before the House day after tomorrow, Friday, saying the same thing which I am just saying that this Act must go lock, stock and barrel. I would ask the hon. Law Minister in all fairness and with humility—let him not misunderstand me for asking this question—as to why, by this Forty-Third Amendment the President is made a puppet and the judiciary a hand maid of Executive and the people subservient to the Parliament. Do you want this to continue in the Constitution? If you do not want this to continue then for Heaven's sake, for God's sake, remove that provision of making the President a puppet and the judiciary, a handmaid of the Executive and the people to be subservient of Parliament. If that is so, then of course, naturally he must take the responsibility of getting rid of this obnoxious thing from the Constitution.

Now I come to this point. The Law Minister and the Janata Party Members are saying 'don't let the good things go' because there is something good in the Constitutional Amendment Act. But, Mrs. Gandhi was clever enough to deliberately put a certain sugarcoat in order to make it very attractive. Why should we have that? If it is a sugarcoat remove it but if it is sugar, go back upon that. That is my point. It is strange to say that let us not let the good things go. All of us, belonging to Janata Party, had taken a solemn pledge at that time at Raj Ghat of Mahatma Gandhi. He asked us to follow one thing. Even if means are bad and ends are good, please do not justify the ends as good. Both means and ends must go hand in glove. Because that Act was passed in an ugly

way, we must immediately do away with that. That is the logic.

In conclusion, I want to say two things quickly. My friend from the Congress Party, particularly, Shri Alagesan mentioned something which seemed to be strange and inexplicable. Their attitude and support to-day seems to be still not frank and open. Yesterday my friends from the Congress Party were going in some details. I was waiting to hear why and how my friends from the Congress Party remained so dumb and helpless witnesses and unwilling supporters to the many devilish, and dirty tricks and clauses brought forth by the 59—clause Constitution Amendment Bill last year. The Law Minister, Shri Shanti Bhushan's stand, the Government's stand, may be legally correct and technically sound. But it is morally untenable and politically very unwise. Therefore, if you look at the present Bill, the statement of objectives and reasons given therein, it makes no mention whatsoever. Why don't you put at least one paragraph to begin with saying that the Forty-Second Amendment Act was wrong for the following reasons and that Government will not come forward with piece-meal laws. His statement is totally silent on this.

Therefore, to conclude, judiciary has its role to play but its status and independence were completely distorted, damaged and finally destroyed. We all know that the role of judiciary is pivotal, if not prominent. And that role was sought to be nullified and made it a non-sense and the emergency regime had succeeded in doing so.

I am happy now that the judiciary's honour and role are restored to normalcy and decency but this too is done piecemeal. I wish Art. 226 is taken care of as early as possible. The provision of majority of judges decision was funny and fantastic. In the eyes of the people, the whole of the administration is unequal. If you

[Prof. P. G. Mavalankar]

have more judges, some of their opinions are made unequal. This is what happens.

Lastly, I want to congratulate the Minister for having got rid of 31(D)—anti-national activities clause. It was totally obnoxious and objectionable. Then, Sir, dissent and dissenters non-conformism and dogged eccentric independent individuals, how they were systematically being haunted and hooted out by the Indira regime. I hope and pray the Janata Government and the new climate will not harp on the same strings. As a matter of fact, let Janata Government proclaim their faith in and implement the tasks and challenges of an open, free, democratic society with all its risks, benefits and fruits involved.

SHRI RAM JETHMALANI (Bombay North-West): Mr. Speaker, Sir, first of all I do wish to record my very respectful protest against both the attitude of my government and that of others. We are debating an amendment of the Indian Constitution and not an amendment of the Cattle Trespass Act or Dogs Act. That on a vital debate like this time should be rationed so badly and that people should be allowed to speak only for five minutes or even less sometimes, I think, is to show lack of reverence for the Indian Constitution. Every part of Indian Constitution is sacrosanct and whether it is a minor amendment or a major amendment, I believe, that everybody must be allowed his full say. It is impossible in a space of four to five minutes to indulge in a constitutional debate. It is going to be a parody of a debate, a mockery of a debate. If I do not speak and if somebody else can speak for ten minutes to make more intelligible I am willing to give up my right but I do not wish to confine myself to four or five minutes. Even the last speaker has been given exactly ten minutes.

Sir, I do wish to record my protest against something else too. That those who disturb the proceedings of this

House, those who get up and submerge its proprieties, those who create disorder in the House seem to get the better of those who refrain from doing all these things. Sir, we, who are steeped in the orderly atmosphere of the courts and do not believe in disturbing the proceedings of the House, always get a rough deal, for some reason that I do not know. I have waited here for two days. When debates arise on subjects on which I do not feel qualified to speak I have the humility to feel that there are better qualified people to speak and for days together I do not participate in the debates of this House because I feel better persons are speaking but when questions like the Constitution come about which I perhaps slightly better understand than others then at least I expect my voice would be heard and, particularly, when I believe in this important matter even the Government is committing unwittingly a breach of its undertaking to the people of India—a breach which has to be justified by cogent reasons.

Sir, I get up in this instance to accord my most reluctant support to the Bill which has been brought before the House. I must confess that I am surrendering my own individual judgment to the superior judgment of my party, my government and particularly my persuasive Law Minister. But I do wish to share with this House—those who are on this side and those who are on the other side—my reasons for my extreme reluctance to support this measure because, I believe, what I have to say is of great relevance to the future.

Sir, I have a feeling—a feeling which dismays me in no small measure—that the Janata Government is now beginning to see some hidden virtues in the Forty-Second amendment which we did not see throughout the election campaign. I am one of those who believe that the 42nd amendment was an un-mixed evil, it has no good element at all. If good means innocuous, if good means redundant, if good means impotent, if good means a plethora of

pious words and platitudes which only lend themselves to propaganda designed to throw dust in the eyes of poor people of this country, then the 42nd amendment has some good elements about it. But if good means good, there is no good in it at all. My complaint against the 42nd amendment is that its effective provisions are uniformly wicked and the seemingly good ones are designed merely as a smoke-screen and camouflage to hide the wicked ones. Take legal aid of which the Congressmen have been very proud and I believe even my Law Minister was impressed by that. Do we or do we not know that for 75 years in this country we have debated the question of legal aid to the poor people. Commission after commission had studied it, plans after plans have been created for giving legal aid to the poor and ultimately in 1961 we thought that the Parliament of this country had finally resolved the problem of legal aid by entrusting the work of legal aid and organisation of legal aid to the bar councils of this country. In 1970 when we started serious work in the bar councils and created plans for legal aid throughout the country, I went to Monte Carlo to address a meeting of the International Bar Association where I was specially invited to read a paper on the Indian legal aid scene. Will you believe that after I had finished reading my paper, my friend parry Mezger of the International Legal Aid Centre walked up to me and said: Ram, do you know that all that you have told us today is being scrapped in India. I asked him: who told you so? He said: Mr. Justice Krishna Ayyar met me and told me that everything was being scrapped. When I asked him how Mr. Justice Krishna Ayyar came to know about it, he said that Mr. Gokhale and Mr. Justice Krishna Ayyar had decided that there should be a new Commission to go into this question of legal aid. Do we or do we not know that throughout the pre-1973 years and during the emergency also legal aid was used as a method by which Judges—some Judges—got free travel expenses throughout the country and the

platform for legal aid was used for the purpose of denigrating lawyers who were opposed to Mrs. Gandhi? The legal aid platform was used only for buttressing the political fortunes of the ruling party. We know all that. Today why are those gentlemen not talking about legal aid? Legal aid seems to have vanished as soon as freedom was restored in this country. Legal aid served their interests no more.

Nobody is misguided by adding a directive principle in the Constitution about legal aid. Thereby you are not going to solve the problem of legal aid for the poor people. The truth is that it was a somokescreen, it was designed to camouflage the real nature of the 42nd amendment. That is why I say that today when we are going to the Congress to gain their support for this limited measures, we are compromising with evil; and compromising with evil is something which Gandhiji taught us not ever to resort to, whatever be the ends which we might seek to achieve.

It appears to be that my government itself does not trust the people of this country. We can go to the people. Let us put the Bill for repeal of the whole of the 42nd amendment before the House. Let the Congressmen defeat it in full or any portions of it. We can still go and explain to the people of this country that we have not been able to fulfil our pledges to them because the Congressmen are still obstructing, because Congressmen are still in power. Every time we negotiate with them we make them look more respectable than they are and we give them encomiums which they do not deserve. I deeply regret that my Law Minister had to publicly thank them and appreciate the kind of attitude which they have adopted in this matter. They had no option because they have to create a show. They have also to go to the people and say that they are trying to give us half-hearted support. Because they



[Shri Ram Jethmalani]

know that the people are going to deal with them soon, all over again. That is a risk which they are not prepared to take. We, in our political naivette, in our political simplicity, are giving them the means of misleading the people of India again.

I do, however, believe that the provisions of this Bill as far as they go are good. They are designed in public interest and they do certainly reduce the problem of arrears in our courts. But what I am protesting against is the high price which we are paying on this occasion for securing the support of our friends on the other side. We are flattering them and publicly complimenting them. It was much better to expose them to the people of this country and leave them to the harsh judgment of history. That is the course which we should have adopted. I can understand even with my limited intelligence that this Bill is a compromise, a compromise between those who are anxious to get along with the job of governing the country and those who would for their partisan ends obstruct the government at every step and blackmail us and extort a price. Yet, I want to ask, why is it that we are submitting to this blackmail? What enables them to practise blackmail on us? That brings me to a very important and vital matter which I hope at least those Congressmen who are anxious now to understand the Constitution will pay heed to. They are able to do this because they have a majority in the Rajya Sabha which we are not able to contend against. Did not the founding fathers of the Constitution envisage a noble role for the Upper House? They thought, the members of the Upper House by reason of their superior experience, superior education, comparative freedom from power politics and pulls and the detached atmosphere in which they function will improve the drafting quality of our laws. More than that, the founding fathers thought that sometimes even the Lok

Sabha will act wrongly in judging the mandate of the people, and when honestly the Upper House is convinced that Low Sabha has misjudged the mandate of the people they can honestly intervene and bring the Lok Sabha back on an even keel by postponing the legislation and not by frustrating it. Are not the Congressmen today destroying the very golden role which the Rajya Sabha was intended to play in our Constitution? By catering to their whim, are we not bribing them into destroying that august institution? The more we make them bold, the more they will destroy the Constitution and more they will denigrate the role of the Upper House? Can anybody doubt, except Mr. Chavan and his Congressmen, that during the last elections we went to the electorate squarely on the issue that the 42nd Amendment will be scrapped? The people have sanctioned it and given us the mandate. The mandate is free from any doubt, it is clear and unequivocal. But the Congressmen do not understand the mandate of the people and are misusing the Upper House, which is designed to play a noble role, by misusing their majority there. Therefore, my appeal to the Law Minister is, in future we do not cater to them any more. We must trust the people who have trusted us and by that alone we shall preserve the constitution and its essence.

SHRI A. BALA PAJANOR: Sir, it has been the practice that we are not supposed to bring in any steel rod or stricks into this House. Pandit Jawaharlal Nehru used to keep his sandalwood outside. Even Mr. Krishna Menon used to leave his walking stick outside. But it has become normal practice for the Health Minister, Shri Raj Narain, to bring in a steel rod as walking stick into this House. I want to bring in a sandalwood to have a grip when I make a speech. It is a serious matter. I want your ruling.

MR. SPEAKER: We will take it up some other time. I will look into the matter.

14 hrs.

**SHRI A. BALA PAJANOR:** I just wanted to know whether you are giving a ruling. If you reserve your ruling, it is all right.

**MR. SPEAKER:** I will look into the matter.

**THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN):** Mr. Speaker, Sir: I am very grateful to the hon. Members from all sections of the House for their whole-hearted support to this Bill, which has been brought before this House. It is my regret that on account of some misunderstanding, we were not able to hear the eloquent Mr. Stephen. I was looking forward to his speech on this bill also, as I have looked forward to his speech on earlier occasions. It would remain my regret.

I have listened to the eloquence of hon. Member Shri Mavalankar, as well as to Shri Jethmalani who made a passionate plea for the repeal of the 42nd Amendment Act, lock, stock and barrel, on the ground that it is an unmixed evil, and that if at all there was something good in it, it was not something good in reality. It is merely sugar-coating and, therefore, even that sugar-coating—because they did not find any way to separate the sugar-coating from the poison which is inside the sugar-coating—should be thrown away, since it was a sugar-coated poisonous pill. In fact, I was thinking of an occasion when somebody had given an example. One newly-born baby was found in very dirty bathwater; and the bathwater was so bad to look at, that the entire bath-water had to be thrown out. Then a controversy arose whether the baby should also be thrown out along with the bath-water. (*Interruption*)...

**SHRI A. BALA PAJANOR:** We don't think so.

**SHRI SHANTI BHUSHAN:** Please listen to me. Somebody said: "But

look at the baby. It is an emasculated baby; it is a very ugly-looking baby. It is not a useful baby." Quite right. Maybe it may be sugar-coated, wherein there is a little packet of sugar with a huge bag of poison. Let us take it to be so. But so long as there is a way to separate even that little lump of sugar from the bag of poison, the whole question is whether this august House will admit to its incapacity in separating even that small lump of sugar from the bagful of poison and so on. It may not be very useful, or it may be very useful. There may be incapacity, even if it is innocuous. But why should—let us take it that it is not something very useful—this unnecessary discussion go out in the country viz. this controversy, and why should we fall into the trap? Why should all kinds of things be said? Let us take it that these Directive Principles—all right, as any Directive Principles—cannot achieve their objective straight-away. Let us start from the assumption as to what were the objectives with which these Directive Principles were brought in. No hon. Member, not a single Member has spoken against any of those Directive Principles which have been added. Let us assume that they are nothing very useful, but at least they are innocuous. If they are innocuous and if it is open to this House to separate the innocuous from the rest—if it had not been open, then the whole thing might have gone—i.e. to separate the innocuous from the dangerous, and if this House proceeds to do that exercise, how can possibly any misunderstanding arise in any quarter, from that point of view? I plead for the consideration of the House that all that is being done; and after I had made it quite clear in my opening speech; all kinds of imaginations have been allowed to run riot, i.e., as if the reason as to why the Opposition is being consulted is that we are afraid of their majority in the Rajya Sabha.

It is not correct to say that we want to bring only those amendments

[Shri Shanti Bhushan]

which would be accepted by the opposition parties in this House, because we are afraid of their majority in the Rajya Sabha. I have made it quite clear that is not the reason. The reason is that so many hon. Members have appreciated the spirit with which this dialogue, this discussion has been going on. We do want to repeal the wrong things which might have been done by the other parties but, at the same time, we want to lay down good traditions. I am very happy that a large number of hon. Members of this House have appreciated the spirit of laying down new traditions which will do honour to the whole country.

It is this Government which, for the first time, gave the Leaders of the Opposition in both the Houses a new status, and gave them the rank and facilities of Cabinet Ministers. This is the spirit in which this Government functions. It is from that point of view that we are having discussions with the opposition parties.

In the past there was a lot of criticism about the manner in which the Constitution was being amended without any discussion, without trying to achieve a consensus. We do not want to continue those wrong methods. This is the reason for this effort to discuss the issues with the leaders of the opposition in both the Houses so that there will be no misunderstanding about it, and the spirit with which these talks have gone on would be appreciated universally and unanimously by every hon. Member of this House.

But, at the same time, I have made it quite clear that, so far as the Janata Party is concerned, it sticks to its principles. If even after persuasion we could not convince the opposition leaders, and the opposition leaders also could not convince us of their claim—after all, we do not

claim to be infallible; we are willing and prepared to be convinced—then we will stick to our principles and commitment and will bring forward a Bill. While bringing forward such a Bill, in view of the fact that these differences of opinion may still persist in respect of some provisions, we would not like other useful measures in the Bill to flounder, on the basis of those differences. That is why we want to bring two Bills. One Bill may contain those provisions on which there is agreement, there is consensus, so that no difficulty may be envisaged in getting it passed. Because, it is not merely a question of redeeming the pledges which is no doubt important, but, at the same time, practically amending the Constitution and doing away with the objectionable provisions is very important.

**SHRI SHYAMNANDAN MISHRA** (Begusarai): Shall I seek a clarification? How does the hon. Minister think that if there is a comprehensive Bill, which contains clauses on which there are differences of opinion, that will not work? It would be open to the opposition to oppose those particular clauses, on which there is no agreement. Why should there be two Bills? It has been made absolutely clear that we are committed now that the next Bill would be a comprehensive Bill, that there would be no two Bills of the kind that the hon. Minister seems to be suggesting.

**SHRI VAYALAR RAVI:** The hon. Law Minister seems to think that we are....

स्वास्थ्य और परिवार कल्याण  
मंत्री (श्री राज नारायण) : अध्यक्ष  
महोदय, हम यह जानना चाहते हैं कि  
यह सदन किस के अधिकार में है ?  
ला-मिनिस्टर अभी बैठे नहीं हैं, यह भी  
खड़े हैं और माननीय सदस्य भी खड़े  
हैं ।

**MR. SPEAKER:** I would request the Law Minister to resume his seat.

**SHRI VAYALAR RAVI:** We want to make it emphatically clear to the hon. Minister and the hon. Members on that side of the House that whatever discussions we had with the Government was not on the basis of our strength in this House or the other House; it is on the basis of the convictions that we have and the policies that we follow. Do not think that we have some majority there and, therefore, we are taking a particular stand. We want to make it very clear.

**MR. SPEAKER:** He did not say that.

**SHRI SHANTI BHUSHAN:** That is precisely what I am saying. The question of majority in one House or the other House does not arise in these matters. That is not the basis on which our discussions are going on. The basis is the democratic spirit that every matter should be discussed and in discussion persuasion plays a very important part.

That is why this process has gone on. Therefore, I would like to refute this imagination that there is something like a blackmail, and this Bill which has been brought is the result of any kind of blackmail. Nothing can be farther from the truth than any such statement.

It was also said by Prof. Mavalankar, whom I hold in very high respect, that the Forty-second Amendment had made the President a puppet and possible there is some hesitation on that account. He is a constitutional expert and he knows what the position of the President was even before the Forty-second Amendment. He knows and the whole House knows that a controversy had arisen in the time of Pandit Nehru when Dr. Rajendra Prasad was the President. This question had been raised at that time also what the position of the President was under the Indian Constitution. Happily we had two very great constitutional experts at that time—the first Attorney-General, Shri

Setalvad, and Shri Alladi Krishnaswamy Aiyar who was a Member of the Constituent Assembly. The matter was referred to both these constitutional experts for their opinions. Both came to the conclusion that the position of the President under the Constitution was not that of the Governor in a State, that there was a difference between the constitutional position of the President and that of a Governor. The President was merely a constitutional head who had to act according to the advice of the Council of Ministers in all matters. Maybe, later on certain doubts were thrown in certain circles on the correctness of this view, but even before the Forty-second Amendment, the matter had gone before a seven-Judge Bench of the Supreme Court which unanimously came to the conclusion that the President of India was merely a constitutional head and that he was bound to act in accordance with the advice of the Council of Ministers. That is not to say that after the Government has lost its majority in the House, then also it is open to that Government to advise the President because in article 75 he has been given the power to appoint the Prime Minister.

**MR. SPEAKER:** Should we go to that question now?

**SHRI SHANTI BHUSHAN:** It is only because that question was raised.

**MR. SPEAKER:** The Supreme Court has merely said that the position is as it obtains in England.

**SHRI SHANTI BHUSHAN:** So the Forty-second Amendment has not altered the constitutional position of the President.

Mr. Alagesan said two things. He felt as if I had blamed the Congress or the opposition parties for the delay in the conclusion of the negotiations. If he understood me like that, I would like to clear that that was not what I meant. We had taken time to discuss it in various forums in our

[Shri Shanti Bhushan]

own party also. Everybody was busy, the opposition leaders were busy, so it took time. Therefore, it was not possible to bring a comprehensive measure in this very session. That is the only thing I said. i

So far as the emergency provisions are concerned, I was rather intrigued to hear Mr. Alagesan saying that the Janata people who were in jail were very happy, it was the Congress leaders who were outside who had really suffered. In that case, I sympathise with them in their suffering.

SHRI O. V. ALAGESAN: I am sorry he has not understood the spirit in which I had said it.

SHRI A. BALA PAJANOR: Similarly, yesterday he misunderstood what I said about the machinery that advises him.

SHRI SHANTI BHUSHAN: So, I once again thank all the Members of the House, all the sections of the House, for the universal support which they have given to the Bill, and I hope that it would be passed.

MR. SPEAKER: The voting will take place at 4 p.m.

14.15 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

#### PAPERS LAID ON THE TABLE

REVIEW AND ANNUAL REPORT OF URANIUM CORPORATION OF INDIA LTD., SINGHBHUM, BIHAR FOR 1976-77

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, on behalf of Shri Morarji Desai, I beg to lay on the Table a copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619A of the Companies Act, 1956:—

(1) Review by the Government on the working of the Uranium Corporation of India Limited, Singhbhum Bihar, for the year 1976-77.

(2) Annual Report of the Uranium Corporation of India Limited, Singhbhum, Bihar, for the year 1976-77 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon. [Placed in Library. See No. LT-1407/77.]

MR. DEPUTY-SPEAKER: Shri H. N. Bahuguna.

THE MINISTER OF ENERGY (SHRI P. RAMACHANDRAN): Sir, on behalf of Shri H. N. Bahuguna....

AN HON. MEMBER: Where is the Minister concerned?

MR. DEPUTY-SPEAKER: Let me confirm if there is any intimation from Shri H. N. Bahuguna. I find Shri Bahuguna has not informed us. So, the Paper will not be laid now.

NOTIFICATIONS UNDER NATIONALISED BANKS (MANAGEMENT AND MISCELLANEOUS PROVISIONS) SCHEME, 1970 AND ANNUAL REPORT OF NEW INDIA ASSURANCE CO. LTD., BOMBAY FOR THE YEAR ENDED 31-12-1976 WITH STATEMENT

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATISH AGRAWAL): I beg to lay on the Table:—

(1) A copy each of the following Notifications (Hindi and English versions) issued under clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, in pursuance of the assurance given by the Minister of Finance on the 5th December, 1977 during discussion on the Banking Service Commission (Repeal) Bill, 1977:—

(i) Notification No. F. 9/33/77-BO-I dated the 6th December, 1977 regarding the appointment of the Directors of the Bank of Maharashtra.