

[Shri Tridib Chaudhuri]

debate can a member focus the attention of the House and through it of the country, to matters of public importance. That is why constitutional authorities have held that the right to put questions and the question hour are among the most vital rights of an ordinary member. If all these were to be abandoned unceremoniously, we would really be acquiescing in something that cuts at the very root of the role of Parliament in its time-honoured functions. Nevertheless it was felt that perhaps the proceedings in this session of Parliament will be conducted in a normal manner and that speeches made on the floor of the House will be allowed to be reported freely and faithfully in spite of press censorship.

To our dismay, we find that the reporting on the AIR of yesterday's proceedings in the House is such that it can only mislead. It mentioned only the names of the participants whereas Shri Jagjivan Ram's speech was reported fairly fully and highlighted.

SHRI S. A. SHAMIM (Srinagar):
As a paid advertisement.

SHRI TRIDIB CHAUDHURI: This morning's newspapers' reporting of the proceedings is also on the same lines. We cannot but protest most emphatically against such unfair reporting of the proceedings which tells the country the Government's point of view in regard to the emergency without indicating what the Opposition has to say on the floor of the House on this very vital subject.

It is clear that this has been done in accordance with the instructions issued to the Press and the AIR by the Chief Censor on the 20th of July under the heading "Guidance for covering of Parliamentary proceedings." It is not indicated in these instructions that the speeches of members of Parliament participating in the debate shall not be published in any manner or form though their names and party affilia-

tions may be mentioned, were issued with or without the approval of the Speaker.

We have, therefore, been compelled to ask ourselves the question whether continued participation in the further business before Parliament on these terms would serve any useful purpose. The decision to amend the Constitution to make the proclamation of emergency non-justiciable makes the consideration of the question more urgent and immediate. It is evident that Government, having already denied the entire people of the country the basic fundamental rights, is now determined to ride roughshod over the rights of the Members of Parliament.

Taking all relevant facts into consideration and bearing in mind in particular the fact that leading members of Parliament have been incarcerated, we are satisfied now that no useful purpose will be served by our taking part in the further proceedings of this session of Parliament, for it is clearly in no position to discharge the function of a free and democratic Parliament.

MR. SPEAKER: So far as our House debates are concerned, they are fully reported in our own records.

11.55 hrs.

Shri Tridib Chaudhuri and some other hon. members then left the House.

11.55 hrs.

CONSTITUTION (THIRTY-NINTH AMENDMENT) BILL

MR. SPEAKER: We shall now take up item No. 17, motion on the Constitution (Amendment) Bill to be moved by the hon. Law Minister. You know the procedures for that. It has to be passed by two-thirds majority and also by more than half of the total Members present and voting. Should we fix sometime for voting on it?

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RACHU RAMAIAH): Three O'clock.

MR. SPEAKER: Voting will begin at 3 O'clock. You all know that not only the main motion but on every clause also the voting has to be two-thirds. Of course, you are quite wise by this time in many ways.

12:00 hrs.

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

"That the Bill further to amend the Constitution of India be taken into consideration."

The hon. members are already aware of the circumstances leading to the proclamation of emergency by the President on 25th June 1975, in exercise of the powers conferred by clause (1) of Article 352 of the Constitution. A Government which does not meet such an emergent situation by taking emergent action would be held guilty by posterity for not defending the constitutional order. The Prime Minister on an earlier occasion and my senior colleague, Shri Jagjivan Ram this morning have already adverted to these circumstances necessitating the taking of emergency action for the very survival of democracy and the Constitution itself.

The provisions of the Constitution relating to the powers of the President to issue Proclamations of Emergency are quite clear. Similarly, the power of the President to promulgate Ordinances during recess of Parliament and the power of the Governor and the Administrator of a Union Territory to promulgate such Ordinances during recess of the Legislature are also clearly laid down in the Constitution. Unfortunately, certain doubts and controversies have been raised and the Government propose to set at rest those doubts and controversies by the proposed Constitutional Amendment before the House.

I may first refer to the amendments proposed to the provisions of articles 123, 213, 239B, 352, 356 and 360 so as to provide that the "satisfaction" mentioned in these articles is subjective and outside the scope of judicial review and hence cannot be canvassed or questioned before a court of law. As a matter of fact, the amendment proposed is merely of a clarificatory nature. On a plain reading of the provisions of these articles, there can be no doubt that the satisfaction of the President for the purpose of promulgating an Ordinance under article 123 and for the purpose of issuing Proclamations of Emergency under articles 352, 356 and 360 is purely subjective. So is the case with the power of the Governor and Administrator of a Union Territory to issue an Ordinance under articles 213 and 239B respectively.

There are decisions of the Privy Council, the Federal Court and the High Courts reiterating the principle that the Governor-General and the Governor-General alone should decide whether an emergency existed and whether an Ordinance should be promulgated. These decisions were on the interpretation of corresponding provisions of the Government of India Act.

The Privy Council in one of the judgments has observed:

"A State of emergency is something that does not permit of any exact definition: It connotes a state of matters calling for drastic action, which is to be judged as such by some one. It is more than obvious that that some one must be the Governor-General, and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action, and that action is prescribed to be taken by the Governor-General. It is he alone who can promulgate the Ordinance."

After more than a decade, the Privy Council reiterated the same principle in the leading case.

[Shri H. R. Gokhale]

Coming to the decisions of the Federal Court, I may refer to a leading case where a similar question had arisen. The Court observed that the issue was non-justiciable. The Court observed:

"But the 'Emergency' was the apprehended danger to peace and public safety, likely to arise from the release of thousands of detenus in obedience to the decision of this Court. It is not within the province of the Court to examine the justification for the apprehension or assess the extent of the possible danger."

There are also decisions of the High Courts placing the same construction on section 72 of the Government of India Act.

As recently as 1974, a Division Bench of the Orissa High Court held that the emergency provisions under Articles 352, 356 and 360 in Chapter XVIII of the Constitution are not justiciable.

The Supreme Court had occasion recently to consider the scope of the Ordinance making power of the Governor under Article 213. The Court observed:

"It is however well-settled that the necessity of immediate action and of promulgating an Ordinance is a matter purely for the subjective satisfaction of the Governor. He is the sole judge as to the existence of the circumstances necessitating the making of an Ordinance. His satisfaction is not a justiciable matter. It cannot be questioned on ground of error of judgment or otherwise in court."

In the case of *Bhut Nath Mate vs. State of West Bengal* arising under the Maintenance of Internal Security Act, 1971 (AIR 1974 S. G. p. 806), where it was contended that there was no real emergency and yet the Proclamation remained unretracted

with consequential peril to fundamental rights, Justice Krishna Iyer in his judgment observed:

"We have to reject summarily the last submission as falling outside the orbit of judicial control and wandering into the para-political sector. In our view, this is a political, not justiciable issue and the appeal should be to the polls and not to the courts'

Hon'ble Members will see therefore, that the legal position is clear and does not admit of any doubt. Nevertheless the issue is being agitated in courts again and again. To place the matter beyond a shadow of doubt, it is proposed to amend the Constitution.

The second important aspect covered by the Bill is, again, clarificatory in nature. The language of Article 352 clearly permits issue of a proclamation, or more than one, if the President is so satisfied, as envisaged in that Article. Despite the plain meaning employed in this Article, contentions have been raised in certain writ petitions that while the original proclamation of Emergency was in operation, no further proclamation could be made under Article 352. The Bill seeks to bring out the intention clearly and to remove any doubt in this regard by providing that the President may issue different proclamations on different grounds whether or not a proclamation is already in existence and in operation.

The third aspect of the Bill is to expressly bring out the intention underlying Article 359. Under Article 358, when a Proclamation is in operation, Article 19 is rendered inoperative and, at the same time, nothing in that Article shall restrict the power of the State to make any law or to take any executive action. The intention underlying Article 359 is also the same. Therefore, the Bill seeks to provide that while an order made under clause (1) of Article 359 regarding any of the rights conferred by Part III in operation, nothing in that Part conferring those rights shall restrict the power of the State to make any law or to take any executive action.

I have briefly outlined the salient features of the Bill. I now respectfully commend the Bill for the consideration of the House.

श्री सरजू पांडे (गाजीपुर) अध्यक्ष महोदय, हमारे संविधान में यह 39 वा संशोधन आज मदन के सामने आया है। हमारे संविधान निर्माताओं के सामने यह बात आई थी और तब कहा गया था कि जो संविधान हम बना रहे है इसमें कम से कम मौकों पर संशोधन किया जायगा। लेकिन जब से इसका लागू किया गया है तब से कई बार बड़ी ही दुर्भाग्य पूर्ण स्थिति देश के सामने उत्पन्न हुई है। कई बार अदालतों ने ऐसे ऐसे फैसले दिये हैं जिनको लेकर संविधान का संशोधन करना पड़ा है इसका सभी लोग अच्छी तरह से जानते हैं कि जो पूजावाद समाज होता है, जो वर्गीय समाज होता है और जिसमें एक तरफ तो परोपकारि लोग होते हैं और दूसरी तरफ गरीब जनता होती है उस समाज में गरीबों का न्याय का लाभ आम तौर पर मिलना नहीं है। सभी जानते हैं कि हमारे देश के न्यायालय गरीब लोगों के लिये बन्द हैं क्योंकि जिनके पास पैसा नहीं है वे अदालतों में जा नहीं सकते हैं जिनके पास पैसे करने के लिये बड़े बड़े वकीलों को बड़ी बड़ी फीस देने के लिये पैसा नहीं है वे अदालतों में जा नहीं सकते हैं और इसका नतीजा यह होता है कि वे न्याय से वंचित हो जाते हैं। जमींदारों का विनाश किया गया, जमींदारी प्रथा को समाप्त किया गया और जब इसके बारे में कानून बनाया गया तो उनको चुनौती दी गई और अदालतों ने जमींदारों के पक्ष में फैसला दिया और उमकों लेकर संविधान में संशोधन करना पड़ा था। पिछली लोक सभा में बैंको का राष्ट्रीयकरण किया गया था जिसको अदालतों में चुनौती दी गई और जिन को हम न्यायमूर्ति कहते हैं, जिन को हम कहते हैं कि निष्पक्ष हैं उन्होंने बैंक मामलों के पक्ष में फैसला दिया। राजाओं और महाराजाओं की स्थिति जब छीनी गई तब भी उन्हीं के पक्ष में फैसला दिया

गया। कहने का मतलब यह है कि जो लोग यह समझते हैं कि अदालतों में न्यायमूर्ति हैं वे निष्पक्षता से काम करते हैं, अतः निष्पक्ष निर्णय देती है वह गलत है।

अध्यक्ष महोदय, हम लोग भी जेलों में रहे हैं, हमारे साथी भी जेलों में रहे हैं और हमें मालूम है कि किस तरह का हमारे साथ व्यवहार किया जाता था और किस तरह का आज जो जेलों में है, उनके साथ किया जा रहा है। किस तरह से हमको रखा जाता था और किस तरह से आज इनको रखा जा रहा है। एयर कंडिशन कमरों में उनको रखा जाता है और हर प्रकार की सुविधाएँ उनको उपलब्ध करवाई गई हैं। हम लोग जब इसी राज में पकड़े गये थे तब जिस तरह से बकरी को रस्सी से बांध कर पकड़ कर ले जाते हैं और उसको रखते हैं उसी तरह से हमें रखा गया था। पांच दस साल तक हम लोग भी जेल में रहे हैं। आज इनका तो मैडिकल चेक अप भी होता है, उनके लिये भी इनको ले जाते हैं लेकिन हम अगर डाक्टर के पास जाते हैं तो हम लोगों की बात भी नहीं सुनी जाती थी। ये तमाम लोग जो देश में ऊँच-मचाना चाहते थे, जो देश की तमाम परम्पराओं को समाप्त करना चाहते थे, जो सैक्युलरिज्म में विश्वास नहीं करते थे, जो समाजवाद में यकीन नहीं करते थे, जो देश में गुंडागर्दी मचाना चाहते थे आज वे जेल खानों में हैं। बड़े बड़े स्मगलर जैसे कुली मस्तान और बखिया जब उनको पकड़ा गया तो अदालतों ने उनको रिहा कर दिया। इस दुखद स्थिति में संविधान में संशोधन करने वाला बिल सरकार को यहाँ लाना पड़ा है। आम तौर पर हम लोग यह नहीं चाहते हैं कि अदालतों के प्रयत्नवाला तय किया जाये। लेकिन एक अजीब स्थिति पैदा हो गई थी जिस का मुकाबला करने के लिये यह जरूरी हो गया था कि संविधान में संशोधन किया जाय। जब भी मौका आया अदालतों ने

[श्री सरजू पांडे]

उल्टा फँसला दिया। कहीं इस केस में भी ऐसा ही न हो इस वास्ते इस बिल को लाना पड़ा है।

हम लोगों पर भी मुकदमें चले हैं। हमारे विरोधी भई भी जानते हैं कि किस तरह से कानून को तोड़ा मरोड़ा जाता है। आप को मैं खुद भी जाती तजुर्बा बताना चाहता हूँ। एक बार मैं गाजीपुर की डिस्ट्रिक्ट जेल में था। अब जेल मनुअल में लिखा हुआ है कि कट्टी मेड शूज कँदियों का प्रोवाइड किये जायें। जेलखानों के जो जेलर थे वह आये और और कहने लगे कि कट्टी मेड वे शूज जो कि गाँवों में बनते हैं छः महीने चल जायेंगे। हमने कहा कि बाटा के जूते भी हो सकते हैं लेकिन उन्होंने कहा कि नहीं यही इसका अर्थ है। यही तुम्हारे लिये है। अब आम देखिये किस तरह से अर्थ का अनर्थ किया जाता है। मैं कहूँगा कि अर्थ का अनर्थ नहीं किया जाना चाहिये। आप समझ लीजिये कि जब तक पूँजीवादी अर्थव्यवस्था होगी न्याय स्वतंत्र नहीं हो सकता है। फिर कौन लोग हैं जो न्याय प्राप्ति के लिये अदालतों के दरवाजे खटखटा सकते हैं, हाई कोर्ट और सुप्रीम कोर्ट में जा सकते हैं? कितने गरीब लोग हैं जो हाई कोर्ट में जा सकते हैं? मेरे ख्याल में हिन्दुस्तान के दो तीन परसेंट लोग भी नहीं जा सकते हैं। अदालतें उन्हीं के लिये हैं जिनके पास पैसा है, जो ज्यादा से ज्यादा अप्टाचार करते हैं। यह जो संशोधन यहां पेश हुआ है यह किन्हीं विशेष परिस्थितियों को लेकर जो कि पैदा हो गई थी पेश किया गया है। इसलिये हम इसका समर्थन कर रहे हैं। यह हम जरूर चाहते हैं कि यह जो असाधारण व्यवस्था की जा रही है इसको जल्दी से जल्दी समाप्त करने की कोशिश की जाय। ऐसी व्यवस्था हमेशा बनाये रखना ठीक नहीं होगा। इसमें लिखा हुआ है कि अगर राष्ट्रपति जी संतुष्ट हो

जायें तो देश में आपात स्थिति को समाप्त कर सकते हैं। इसमें आपने यह भी लिखा है कि इसको किसी भी अदालत में किसी भी ग्राउंड पर चैलेंज नहीं किया जा सकता है। एक आदमी के सेंटिफिकेशन की बात नहीं है। एक असाधारण स्थिति पैदा हो गई थी कि आपको आपात स्थिति की घोषणा करनी पड़ी और अब संविधान को बदलना पड़ रहा है। लेकिन यह अवस्था अगर बराबर कायम रहेगी, यही हालत कायम रही तो गरीब कहां जायगा? आज देश में ले आफ हो रहा है, मजदूरों की छंटनी हो रही है, लोगों को, मजदूरों को मिलों में से निकाला जा रहा है? उनकी सुनवाई कैसे होगी। जहां तक एक आदमी के सेंटिफिकेशन की बात है मुझे एक किस्ता याद है कि हमारे जिले के डिस्ट्रिक्ट मजिस्ट्रेट सेंटिफिकेट हो गये और अंग्रेजों के जमाने में उन्होंने एक आदमी को डिटेन कर लिया और इस आधार पर उसका डिटेनशन हुआ कि उसने अपनी तकीर में बम मढ़ देव कहा था जबकि सी आई डी वालों ने इसको यह लिख दिया था कि बम मार दो। इस आधार पर उसका जेल में बन्द कर दिया गया था। ऐसी स्थिति अब पैदा नहीं होनी चाहिये। मुझे याद है एक बार कम्युनिस्ट पार्टी के दफ्तर की तलाशी ली गई। उस दफ्तर में मोलोतोव की तस्वीर लटकी हुई थी। कहने लगे कि मोलोतोव भी हिन्दुस्तान का कोई बड़ा भारी कम्युनिस्ट नेता होगा और उसकी गिरफ्तारी का वारेट निकाल दिया गया। उनको यह मालूम नहीं था कि वह हिन्दुस्तान का नहीं रूस का नेता है। अगर आपने अदालतों के द्वार बन्द कर दिये हैं लोगों के लिये तो कम से कम इस बात की जरूर व्यवस्था कीजिये कि किसी के साथ ज्यादाती न होने पायें, लोगों को ऐसे अबसर न दिये जायें, पूँजीपतियों को ऐसे अबसर न दिये जायें कि वे गरीबों का खून चूस सकें, उनका हनन कर सकें? देश की भी परिस्थिति है उसको आप कहां तक

सुधार पायगे यह देखने बाल बात है। आपने जो प्रोग्राम बनाया है उसको आप लागू कर्हा तक करते हैं यह देखने वाली बात है। एमरजेंसी लागू होने के बाद मुझे मालूम नहीं भाव कहा तक कम हुये है लेकिन एक बात जरूर मैं कह सकता हूँ कि ला एंड आर्डर की स्थिति अच्छी हुई है, उसमें सुधार हुआ है और इसमें कोई शक नहीं है कि सुधार हुआ है आपने जो आपात स्थिति की घोषणा की है इससे गरीबों का भी नुकसान हो सकता है। संविधान में जो आप संशोधन कर रहे है उसका तो हम समर्थन करते है लेकिन यह भी हम चाहते है कि देश में गरीबों की रक्षा की व्यवस्था की जाय। गरीब महोदय को अपने उत्तर में यह आश्वासन अवश्य देना चाहिये कि जो अधिनियम लिये गये है उनका उपयोग उनके विनाश नहीं किया जायगा जो जन हित में लडते है।

बद नाज्जब की बात है कि पूरे देश में सभा प्राति करने की इजाजत नहीं है। हम बोल नहीं सकते है। अब आप बताइये कि हम जनता में जा कर क्या कहे। हमारी समझ में तो यह बात आती नहीं है। बोलने का ही हम पेशा करते है और वही आपने बन्द कर दिया है। देश में क्या हो रहा है इसको देश की जनता जानना चाहती है। एमरजेंसी क्यों लागू हुई है, इसको वह जानना चाहती है। गांधी की करोड़ों करोड़ जनता के अन्दर तरह तरह के भ्रम फैले हुये है। कौन उनको जा कर समझायेगा समझ में नहीं आता है। आपके अफसर कहते हैं कि आपको बोलने की इजाजत दे दी जाय तो फिर दूसरी पार्टियों को क्यों न दी जाय। हम कहते है कि और पार्टियों के लोगों को तुमने पकड कर बन्द किया है तो हमें क्यों बन्द नहीं करते तो कहते है आपका अलग मामला है, इसको सरकार जानती है। मैं कहूंगा कि कम से कम उन लोगों को जो गरीबों के हित में काम करते है, जो सत्यलक्ष्म में विश्वास करते है, समाजवादी अर्थ व्यवस्था में यकीन करते है उनको तो प्रचार करने का इन सिद्धान्तों

का मौका दिया जाय। आपात स्थिति से लाभ उठा कर प्रनाडित और गरीब जनता की स्थिति सुधारने के लिये कदम उठाये जाने चाहिये। आप नागरिकों के सभी अधिकार ले रहे हैं। वे अदालतों में जा नहीं सकते हैं, न्यायमूर्ति जो हैं वे आसमान से नहीं टपके वे भी गरीबों के बहुत पक्ष में नहीं है, जो जा भी हिन्दुस्तान में प्राप्रैसिव कदम उठाये गये है उनका इन्होंने हमेशा विरोध किया है। आप जो संविधान में संशोधन कर रहे हैं यह तो आप ठीक कर रहे है। लेकिन मैं इतना आप से जरूर आशासन चाहता हूँ कि इसका मिश्रण नहीं होना चाहिये। एमरजेंसी का ज्यादा से ज्यादा लाभ उठाकर हमारे कार्य-कनाओं को बन्द कर दिया जाता है, हमारे कई लोग जेलखाने में बन्द हो जाते हैं। पूछने पर कहा जाता है कि आपको ह थोड़े हों बन्द किया गया है, कांग्रेसी भी बन्द हो गये है। उनका नाम हो गया है जो बन्द हो गये है।

इसलिये मैं चाहता हूँ कि इस एमरजेंसी का लाभ हिन्दुस्तान के करोड़पतियों और अरबपतियों को नहीं होना चाहिये, जिन्होंने देश का बहुत सारा खून पिया है। इन्होंने समाज को भ्रष्ट किया है, इन्होंने अदालतों को भ्रष्ट किया है, लजिस्लेचर को भ्रष्ट किया है, इन्होंने मंत्रियों को बरबाद किया है। तो कम से कम इस एमरजेंसी का फायदा उठाकर इनको बन्द करना चाहिये।

इसलिये यह जो संविधान का संशोधन लाये है, इसका मैं समर्थन करता हूँ।

SHRI H. K. L. BHAGAT (East Delhi): I believe this Constitution Amendment Bill does not require much debate because the purpose of this Bill is very evident and it is, as the Law Minister very rightly said, of a clarificatory nature. Obviously emergency is declared, whether it is on account of external aggression or because of the internal situation, in a difficult situation, in a grave situation

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where not argument but action is required, and that is why in all the Constitutions of the world a provision is made that emergency is declared when the head of the State is satisfied and this provision was thus incorporated in our Constitution.

Yesterday it was very curious for me to hear Shri P. G. Mavalankar saying that this cuts at the jurisdiction of the courts. Actually, as the Law Minister very rightly said, in a number of judicial pronouncements various courts have said that this is something which is not within their province or jurisdiction and therefore a clarification through this Constitution Amendment Bill does not take away the legitimate jurisdiction of the courts as contended by him. On the other hand, it would reduce unnecessary burden and pressure on the courts. As a practising lawyer I can say that when we go in for petitions to the High Court or the Supreme Court, we take so many grounds and one of the grounds taken is this that the proclamation or the emergency declared is challengeable or something like that. It is just keepings an argument. The courts sometimes have to listen to it and go into these questions and that means unnecessary burden on the courts. Therefore, it was necessary particularly at this time that this matter should be clarified.

My friend was reminding us of the founding fathers of the Constitution. I am not living in that age of the founding fathers of the Constitution. I am living in the age of today, in a new India which has new problems and new aspirations, in an India which has advanced and whose problems are also advanced for beyond my age. This is not an India of my age, but probably of my children, and we have to look at the problems of today's India, and therefore, this concept is absolutely out-moded. I honestly

believe that quite a number of things which today are within the scope and jurisdiction of our judicial system do not serve any useful purpose. It is a question of basic approach. It is a very fundamental question. The basic approach is whether our emphasis is going to be on individual liberty as we thought of it when this Constitution was framed or our emphasis or concern is going to be the collective good of the people. A smuggler can very well say that he should not be detained without trial because it affects his individual liberty. Therefore, I honestly think that it is very necessary at this stage that we should go into this question of our whole judicial system and see what should remain within the province of judicial jurisdiction and what should not remain.

I feel that a lot of things are entrusted to the court which could be settled more easily outside. Perhaps in certain case, misuse of the executive is there; perhaps it may not be completely ruled out. If you look at it collectively, the justice that we get in certain matters—I am not elaborating those matters, there are various matters of administrative nature which are subject to the jurisdiction of the court takes a lot of time and energy, which to my mind, is unnecessary.

My friend was very rightly pointing out that justice has become justice more for the rich people and less for the poor people, because the poor people cannot afford to file a writ petition. It is very difficult for the poor to file a writ petition which normally the rich can do easily, because he can afford to pay heavy fee for it. And then the justice is often delayed. Therefore, if you see the courts from all levels, whether it is lower level or middle level or top level, you will find that the courts are burdened with a number of cases. If you go into the issues of individuals—may be of importance in as much as they affect their right—you will find, if I may say

so, that in most of the cases the issues are of not much substantial consequence. Therefore, I would demand that the Government should go into this question as to how we can make our judicial system more effective; and this judicial system can take up those matters which are absolutely necessary where justice can be cheaper and justice is not delayed. This is a matter which we should look into. This argument that we shall cut the jurisdiction of the court and by doing so, we are undoing democracy and we are doing anything wrong, to my mind is very wrong and an untenable argument. In a number of cases, I am surprised, the courts themselves had said that these are draconian laws. These need to be changed. In a number of cases, I know that the courts have said that such matters should not come to us; why do such matters come to us. They said that these matters should be dealt with by the administration or by the executives themselves or some other way should be found out. The courts have said and yet I believe that this is a matter which needs to be looked into.

Today, we are not living in a society where we began with our beginning of our Constitution. Today, we do not really need so much of legal debate or intellectual satisfaction or the elites standing in a court or in a club arguing things and deriving satisfaction. What we really need today is action which is good for the people and the collective welfare of the society.

Mr. Indrajit Gupta has said that we have an opportunity now by this proclamation of emergency to achieve results in furtherance of our economic programmes and policies. Now, the people have once again developed hopes and a certain amount of energy has been unleashed. To my mind, it looks a real miracle. As long as this proclamation of emergency is there, we find in this country a new thinking, a new spirit.

Sir, I am just telling you for information. The other day, I went to the District Court in the Criminal Wing. I had not been there for a long time.

I thought I should go there, meet my friends and see their reaction. I expected them to be critical, because, normally, lawyers are critical. I was surprised to learn—I am stating the facts, not fiction—that almost all of them present, to the last man, welcomed this emergency and praised it very much. They told me, “You are in Parliament you tell your leaders one thing, that is, think of the poor lawyers.” I said, “What”? They said, “Crimes were not there and they must look up for some alternative employment.” I am stating the facts. The number of crimes has gone down suddenly and it has to be kept down. Suddenly, a sense of realisation has dawned on them.

Conditions in the buses were so bad. I got my daughter admitted in some college and my wife asked me how she could travel in the buses. I told her let her go in the buses, and the girl reported that the conduct of students in the buses was very good; their behaviour is better now.

Therefore, this emergency has unleashed a new atmosphere, a new sense of responsibility which must be harnessed for the good of the nation, harnessed with a full resolute determination. We have worked in a manner with those old outmoded conceptions. See, freedom is one thing, liberty is one thing, licence is another thing. When you go on appeasing lawlessness of all kinds in the name of liberty, you are destroying liberty itself.

By thinking that we are tolerating things with a view to protect freedom, we put our freedom in peril. The attacks on borders are dangerous. But the attacks on fundamentals are no less dangerous. The attack was made on our fundamentals. The attack has been repulsed by the people. The people of India are very sensible people. They understand what they should do. May be, they are not much educated, much literate. But they have a very sound practical commonsense. In all situations, they have reacted very wisely and in a practical way. They have reacted so well to the situation.

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I think, during this period, it is necessary that in this Emergency we should be able to tackle the social evils, the economic evils and other things. We should be able to make it felt by all such people who weaken our economy, who destroy our economy who obstruct our growth and who perpetrate or commit injustices against weaker sections of the society. We should be able to create a new social order.

It is not curbing the jurisdiction of courts. Even if it were to curb the jurisdiction of courts, I do not see anything wrong in that in the interest of the nation and in the interest of the people. That is where we should not shirk at all. I would, therefore, say that this Constitution Amendment Bill which is really a Bill of a clarificatory nature is a welcome measure and it is bound to be welcomed by the people.

It is unfortunate that the Opposition today has chosen to walk out. It seems to me that they have not learnt the lesson from what has been happening. One good of this Emergency, I believe, is that they have at least chosen to walk out. It is a very legitimate constitutional method of walking out and not participating in the proceedings. Perhaps, I do not know, but for Emergency whether they would have done this or they would have said, "We will not let it proceed; we will have a *satyagrah* or a *dharna* in the House." Even in the matter of proceedings of Parliament, I believe, this Emergency has done some good. If we really had followed this in the name of parliamentary democracy, that would have helped it. The Opposition was denigrating it. I can say with a sense of satisfaction that with all the limitations this Parliament today is functioning with a greater sense of responsibility in the sense that the rules are being obeyed, the Chair is being obeyed and the Parliament is functioning in accordance with the rules framed by it. That is a matter of consequence,

that is a matter of substance, which we have got to see.

Sir, yesterday, my hon. friend, Mr. H. M. Patel—I agree he is a very sensible and a sober man—said, "I am a sensible and a sober man" and yet a very sensible and a sober man carried into this House what he himself called a rumour. He himself said, there is a rumour that some Russian officers are here to guide and so on. He called it a rumour. What a sense of responsibility that a Member of Parliament should carry a rumour into this House and more so a rumour of that kind.

The censorship is there. He was bemoaning and criticising the censorship. If the censorship had not been there, this kind of a rumour brought by an hon. Member of this House would have been carried to the whole nation. What a damage it would have done to the country. What I am saying is that in this House we have seen that absolutely baseless allegations without even a *prima facie* evidence, without even a shred of evidence, have been made and such things have been carried into the press, carried to the nation, carried to the people in the name of liberty, in the name of the freedom of the press as if everyone thought that it was his right to say anything he liked. The freedom of liberty in this House is circumscribed by the freedom of other Members and it is circumscribed by the freedom of the whole nation.

With these words, so far as the Constitution Amendment Bill is concerned, I welcome it and, I think, it is self-evident that this is very necessary and I support it.

SHRI S. M. BANERJEE (Kanpur): My Hon'ble friend Shri Pande has already supported the Bill. Sir, in supporting this Bill I should say that we are aware that certain rights of the people will be taken away when the Bill becomes an Act. But whose right is being taken away? Let me

say that a few months back some top smugglers were arrested; but taking advantage of the various provisions of the Constitution, they went to the High Court and the Supreme Court and they were released. Do you think they were good people who were wrongly arrested? They were holding the country to ransom; they were doing all sorts of things which were nefarious; they were really doing something which may be called anti-social and anti-democratic. But still, they were released. So if this Bill has been moved now to restrict the movements of such people so that they will not be able to approach a court of law, what is wrong with it?

I fully appreciate the sentiments expressed by Shri Bhagat. After the 26th June when the emergency was proclaimed, any motive might be imputed by the Morcha, but it is true that people have become active, people have become more vigilant and, I can say, there are other benefits. The prices of essential commodities started coming down. Government has been trying since long for this and though the wholesale prices had gone down by two rupees or one rupee or fifty paise, it was not visible. Today the prices of some essential commodities like mustard oil, dalda etc. have come down beyond expectations. So, this emergency has done some good to the people and I am sure that if Government is honest enough and if they are sincere enough in continuing their efforts for bringing down the prices, then within six months the people will welcome this Bill and will say 'why did you not arrest them six months before?' Of course, four of my Hon'ble friends are not present in this House. I miss my friend Shri Shyamnandan Mishra; I miss the wit and humour of Shri Pilon Mody and I also miss the eloquence of my friends Shri Vajpayee and Jyotirmoy Bosu. But, Sir, let us face facts. Since a long time we did not discuss anything in this House except Mr. Tulmohan Ram, the late

Shri L. N. Misra or Shri Jayaprakash Narayan's activities.

Sir, Shri Jayaprakash Narayan is one of the tallest persons in this country; he has sacrificed more than my age. But such a sacrifice to this country cannot become a fixed deposit which people can encash with interest every time.

I have heard with rapt attention the speech given by Shri Mohan Dharia yesterday. He was giving a call to the nation from Parliament. He had neither the courage nor the conviction to issue a leaflet and distribute it in thousands when they were arrested. In 1949 when we were chased by the police, we still had the red flag in our hands and we implemented our policies. We did not merely sit in the Central Hall and indulge in whispering campaigns or come to the Parliament House only to give a call to the nation. I am sorry that yesterday it was not only the Prime Minister but he brought under attack the Chairman of the Communist Party, Shri Dange, who is the father of the trade union movement in the country. Mr. Dharia had said, 'All this has been done; democracy is finished; you cannot talk here; you cannot protest here; let there be a stone with the inscription that this has been done by Shrimati Indira Gandhi. Shri D. K. Borooah and Shri S A Dange' He said that yesterday. I did not want to protest at that time. I wanted him to be here today. Let him realise that Mr. Dange is not a born defector like him; he was not in PSP or SP; he has been holding the Red Flag right from the beginning and we are his followers. I would like to tell Mr. Dharia that, when he wanted to become a Minister, he consulted Mr. Asoka Metha, his great intellectual guide, and both of them decided to put on *bandh kala* coat and become Ministers. What did he do then? He defected from PSP and joined the Congress. And when he thought that there were indications that the Grand

[Shri S. M. Banerjee]

Alliance might succeed in unseating Mrs. Indira Gandhi, he immediately changed his view and wanted to have another defection. But thank God, it was stopped. Whatever respect I had for him, I have even today. But I want to tell him that anti-communism ultimately leads to suicide, and that is going to happen to those who want to witch-hunt the Communist Party and its members.

We support the Government today and even this action of taking away certain rights of the individual only because of certain measures they have promised, and we shall go on supporting this Government and Shrimati Indira Gandhi with all our might so long as she takes progressive decisions, including certain basic decisions of nationalising certain industries. We shall support her and her Government. There is nothing wrong in that. What is the alternative today? Let me ask my CPM friends, Mr. Mohan Dharia or anybody else: should we select Mr. Piloo Mody or Mr. Morarji Desai. I am surprised, anti-Communism and anti-Indiraism have made them blind. The whole thing started the day when there was the Agreement between the Soviet Union and India. *(Interruptions)*

All of us have regard for the Supreme Court. We are not against the Supreme Court or High Court. I have all respect for the Supreme Court, but sometimes what sort of decisions have they given! We know what sort of decisions have been given by their favourite judges like Justice Hegde, Justice Subba Rao and others. Whether it was on abolition of Privy Purses or bank nationalisation or anything else, they have given their decisions against the verdict of this House. Whether it is the Supreme Court or this House, both are the creatures of our Constitution. We should have respect for them, court or no court.

When we talked of summary trial in this House of the hoarders, smugglers and others, all the leaders, specially those who pretend to belong to the left, lent their support for summary trial and said: let them be flogged, let them be shot dead. They wanted the smugglers, hoarders and others to be flogged and shot dead. Now, if they are not allowed to go to the court, what is wrong in that?

While supporting this measure, I would only request the Law Minister and through him the Home Minister to see that this power is not misused. After the proclamation of Emergency, I have seen that even the small shopkeepers, who have supported the measures of the Government and have tagged price on every item, are being harassed by their inspectors. Let this Emergency not be a boon for the police officials, those police officials who are corrupt—it is not that all of them are corrupt. Some people who were earning Rs 5 a day started earning Rs. 50 a day.

There should be some check on that. The shopkeepers are harassed unnecessarily. All the shops in Sadar Bazar and Khari Baoli were closed for three days. I would request you, when you take these powers, use them judiciously. When the President is satisfied, or the Government is satisfied or the Administrator is satisfied, such action will be taken. I do not know, what happened to the Lt. Governor, Delhi; why he has been left out; he has done good job in Delhi. It might be a mistake which should be rectified.

While supporting this Bill, I would request the hon. Minister to give an assurance in this House that this is not misused. It is a temporary measure and such measures are needed sometimes. I want to make it clear that we are supporting this only because we anticipate some progressive measures to be taken by this Government. When we support this, we hope that whatever promises have been made by the hon. Prime Minister and her colleagues, will be translated into

action and there would be no complacency, otherwise this will result in frustration among the people and the other right reactionary forces may take advantage of that. With these words I support this Bill.

SHRI K. HANUMANTHAIYA (Bangalore) Sir, this constitutional amendment, it looks to me, is almost non-controversial. It is more in the nature of clarificatory amendment than an amendment in substance. It is not even taking away the jurisdiction, rights or discretion of the courts. The Law Minister, in his very brief but very lucid speech, has made it clear that what is being done through this amendment, is to give shape, concrete shape, to the judicial pronouncements themselves. Therefore, Sir, if one has to speak relevantly, as the rules of debates say, there is hardly anything perhaps to add to the lucid speech that has been made by the Law Minister. But, Sir, I would give a little theoretic basis also to this amendment. We generally accept in a democratic system division of powers or functions between the three estates, as they say, the judiciary, the executive and the legislature. From that point of view, one should not interfere with the other and the responsibility entrusted to each must be discharged without any impediment, obstruction or delay. So far as maintenance of peace is concerned, maintenance of discipline is concerned, working for the economic progress of the country is concerned, safeguarding the country from external aggression and maintenance of law and order is concerned, these come within the purview of the executive. If there is disturbance and there is failure of law and order, it is the people who suffer, and the responsibility lies with the Minister and the whole Ministry. That is why, in this House, we in season and out of season take the Government to task and the concerned Ministry to task if there is any failure of duty and if there is any failure of implementation in a particular branch of administration.

Here emergency is used in the context of external and internal protection of the people or the nation. This cannot be the province of the Judiciary. This can never be undertaken by an organization like the Judiciary. The Police have to be used. Maybe sometimes Army has to be used. These are the functions that are given under the Constitution to the executive. Therefore, when the nation has to be protected from internal and external aggression or danger, naturally, it is the sole responsibility of the executive. The President is not only a symbol but also a functionary of the executive. It is not that the President personally does any of these things. He is advised by the Cabinet or he is advised by the concerned Minister. It is on that advice he takes that decision. Therefore, we cannot say that this is a power which is being exercised by one man or that whimsically he can exercise it. Nothing of that kind can happen. It is done in a democratic manner and the Minister or the Ministry that advises takes the risk of incurring the displeasure of the Parliament or the legislature as the case may be. They cannot do whatever they like to safeguard their position. So, everything is interlinked. That is the real democratic machinery that is operating in India. So, the courts have very wisely taken the view that they cannot question the term 'satisfaction' pertaining to the proclamation or declaration under the relevant provisions. Therefore the amendment of the Constitution that we are likely to approve is not only in consonance with the theories of democratic government but also with the practice and, as I said, this is really a clarificatory amendment.

If I may be permitted, as some of my friends have done, to place certain views before the Law Minister and the Government, I will take only two minutes and I have done. The Law Minister says that he wants to give a concrete and indisputable shape to the judicial opinion in the form of an amendment. I would recall to his mind that conferences of Judges and

[Shri K. Hanumanthaiya]

Chief Justices have themselves asked for judicial reform many time. Every forum in this country whether of lawyers or Judges or political parties has asked for judicial reform. The Government is also of that view. I myself took great interest when I was in charge of this portfolio. But it is such difficult thing to do! The difficulty comes in the way and not the intention to reform. As a lawyer, and I have seen many clients personally, I can say that the judicial system is costly, cumbersome. It may end in justice being done or it may not. There are several instances which, for want of time, I cannot quote here. I would only say that in our Kannada language a proverb has been evolved seeing the costliness and the cumbersome of the judicial system. A client who wins the case is as good as defeated as he has lost so much. And the client who loses, is as good as dead. That is the proverb

"Geddonu Sothange, Sothonu Sattange"

That is the proverb that has been evolved. This emergency has provided an opportunity for those who are in Government to do many things new, to do many things daring, to do many things which could not be done in normal times. In fact it is not so much the people that are happy or unhappy with the emergency, my own view is—I am happy—that the whole structure of the Government right from the Prime Minister down to the lowest cadre, have become more conscious, more serious of their duty to help the nation, to grow economically and socially to such an extent that what we call a new society may emerge. If you have a new society, you cannot have the new society with the old judicial system with its procedure with its cumbersome with its uncertainties and delay. So, I would appeal to the Law Minister to take interest in the matter of judicial reform keeping in mind the creation of a new order a new society.

SHRI S. A. SHAMIM (Srinagar): Normally I should not have spoken on this Constitution Amendment Bill but in the context of the situation prevailing and in the light of the speeches made here supporting the Constitutional amendment, I am compelled to say a few words. Sir, whether this issue of subjective satisfaction of the President should have been justiciable or not, this question cropped up long before emergency was imposed. But the Law Minister thought it fit to bring this amendment now so that he is able to make use of the atmosphere of emergency which has been generated artificially in this country and in this Parliament as well, so that he can get away with whatever measures he thinks fit. Leaving the Law Minister to his fate, I was amazed by the speech made by Shri Bhagat here who thought about bringing a fundamental change in the outlook—whether we must take more subjects out of the purview of the court or not—as the courts have been interfering with the progressive measures from time to time. You will recall that in this House I, as an independent member, have throughout supported all the progressive measures which this Government has brought. You cannot even recall one measure when I did not extend my support and if this august House feels and Government feels that the court acts as an impediment or obstacle in the way of progressive legislation, I would request Government to bring a piece of legislation abolishing the courts altogether. Let this House debate whether the courts are at all needed in our present day system or not. But this backdoor entry keeping the institution of courts and judiciary away and getting all praise from the rest of the world that India has an independent judiciary is not very honest.

Shri Bhagat was talking of the peaceful atmosphere in the House of the peace in the country. If the peace of the graveyard is the peace which is in the mind of Shri Bhagat and

his friends, I think there is much to be done to achieve that peace yet.

13.00 hrs.

There are some individuals, some persons and some groups, who still feel that something more need to be done and if Mr. Bhagat's advice is to be taken seriously,—I hope it will be taken seriously—then, whatever is left so far in democracy will not be left. Democracy is a very inconvenient system for you. People talk against you, people oppose you but democracy has a fundamental value in that ultimately the majority will prevail. But it seems that the present-day majority has taken this upon itself, not to have the inconvenience of minority. This House is a witness to many dramas of the opposition. But the House has it on record that in spite of what the opposition did, ultimately, that piece of legislation only was passed which had the approval of the majority. How is it that this has become inconvenient to you now? An illogical argument is being made that because of the emergency the efficiency has improved, the Government employees attend office at 10 A.M., the efficiency in the Railways has improved, and all that. By implication it means that this Parliamentary system which has been there with us for the last 27 years has been wasting our time; by implication it means that this is a sort of 'useless organ'; by implication it means that the day you proclaimed emergency, things have terribly improved. What is the logic of this argument? You say, let us not have this facade of a parliamentary democracy, it impedes the progress of the nation.

And then let us go to the freedom of the press. You have brought press censorship. The stalwarts who have fought for the freedom of the press and freedom of the country today are trying to give justification for censorship by saying that if a certain rumour was allowed to be spread, the

country would have collapsed. Madam Gandhi yesterday in her speech said that she was told that the sword recovered from the RSS office was a wooden sword and then she said: "Either you have a sword or you don't have a sword." That is true also of the freedom of the Press. You either have a free press or you don't have a free press. It is not that you have only a press which publishes only what you want them to publish. The essence of democracy is that both the viewpoints must be put before the people and the people in their wisdom must be allowed to judge what is right and what is wrong. You know what newspapers wrote in 1971 and yet people voted for you, they did not go by what the newspapers wrote. "The Myth and the Reality" did not change the situation. How is it that today the mere suspicion of a rumour from the opposition shakes the entire Government? The hon. Member Mr. Bhagat said that if the rumour is allowed to spread the country will collapse. From 12th March onwards you have become mortally afraid of people. Before that you knew people were with you and I had thought on 11th March that people were with you. On 15th March also I thought that people were with you, but you have made me wiser by saying, 'You are sadly mistaken'. If this particular piece of legislation, this amendment, was brought in in good faith, I would have supported it. But this is brought in in bad faith. You have declared war on the people of this country. You have brought this in just to denigrate the judiciary and the courts and the whole world knows the reasons for this. You have no faith in the courts: you have no faith in the judiciary. Here what you say is this:

"However as the validity of the Proclamation issued under Article 352 has been challenged in several proceedings and as litigation of this nature involves waste of public time and money it is proposed to amend these three Articles."

[SHRI S. A. SHAMIM]

In all those litigation proceedings when people fight for their rights, you have started taking care of yourself. You suddenly got worried that the people should not waste their money. You suddenly become conscious that the people should not waste their time. Therefore you were not allowing the court to decide. Most probably, the court would have decided in favour of the proclamation not being justiciable.

All irrelevant issues are brought about in justification of the emergency. In this particular piece of amendment, somehow the issues needed some clarifications. I say that if it was really needed, why everytime a measure like the MISA is brought forward? Is it to cover up or defend the smugglers? The smugglers should have been arrested long long ago; the smugglers were paying money for the establishment; they are paying money to the Congress Party and other parties so that they can contest the elections. Why then they were not arrested? To-day, strangely enough these very smugglers and political leaders have been arrested. I have all the differences with Mr. Morarji Desai; I do not like one word of what he says in this House. The House has witnessed in this House that on the day when he became the spokesman of the entire Opposition, I stood up and said he cannot speak on my behalf. I have said that whatever respect I had for Shri Jayaprakash Narayan, when he presided over the Jan Sangh Session and when I did not see eye to eye with him, I lost the respect I had for him. I never supported him the moment he attended the Jan Sangh session and after his demand for the dissolution of the Bihar Assembly. But I must tell you that I will never accept that he is a smuggler. Then why he has been arrested. In the case of Mr. Morarji Desai it seems he became security risk; he was a smuggler. That is why he has been arrested.

When he went on fast, is it or is it not a fact that Mrs. Gandhi sent to the House and pleaded with him to give up the fast? Mrs. Gandhi did not discuss with him about the smugglers. She requested him to give up his fast and in fact she conceded to his demands. She wanted to have a dialogue with Shri Jayaprakash Narayan. But on that day when it became inconvenient—unfortunately when Justice Sinha gave that judgment—everything has changed and Shri Jayaprakash Narayan became a suspect and he became security risk. And Mr. Desai became a security risk. We are made to believe or we are ordered to believe that Shri Desai became a security risk. It is made clear that it has not happened in a democracy. You say that Parliament has become convenient or orderly or it may become more orderly. I have said in the first instance that my hon. friends from the Opposition did not realise the gravity of the situation and still they are asking for the question hour and the right to move or not to move an amendment.

MR. CHAIRMAN: Mr. Shamim, your time is up.

SHRI S. A. SHAMIM: Sir, I am speaking on behalf of the entire Opposition!

MR. CHAIRMAN: I have given you the time that you needed.

डा० कलश (दक्षिणपूर्वम्बई) :
स्मदलर्स से तो देश की प्रगति के कुछ ही पहलू का नुकसान होता था, लेकिन ये पोलिटीसियन्स तो सारे देश का ही सत्यानाश कर रहे थे।

श्री शमीम अहमद शमीम : यह दर्लल जो आन दे रहे हैं यह कमजोर आत्मियों की दर्लल है। आप में ताकत थी, आपने मोरारजी देसाई के खिलाफ इलैक्शन लड़ा अब फिर एक और इलैक्शन लड़ कर सारे दिनुया को दिखा देते कि मोरारजी के साथ

कई नहीं है। मैं भाइयों धोखे में था और अब भाइयों धोखे से हूँ कि मीरसरजी के साथ मुद्रा का जनता नहीं है।

वनजी साहब ने कहा।

We support Shrimati Indira Gandhi's Policy.

I have also supported her 21 point programme.

यह कह कर मैं न आय पर अहसान कर रहा हूँ और न इन्दिरा गांधी पर अहसान कर रहा हूँ।

I expect Shrimati Gandhi to rise to the occasion. She was an ideal of Indian womanhood, ideal of Indian intellectual calibre. But, for me, from 25th of June she is ceased to be so. I wanted her to give me a right but she did not. I held her ideal so long and this is my personal belief. On 25th June she took recourse to emergency and she now talks the language of a dictator and she shows to the world that she has tolerated more than she could. I said 'Yes, Madam, your toleration has made India the greatest democracy in the world; we were proud of being Indians; we were proud of being citizens of this country and, Mahatma Gandhi could stand all that, but the day you ceased to tolerate we are reduced in size and stature. As a proud Indian I have a right to say you are not what you were on 24th June. As a Kashmiri one potential and very relevant argument which we used to give to all those pro-Pakistanis who wanted Kashmir's accession to Pakistan was that we will not go to Pakistan as it is a dictatorship. That is closed society. We will be proud to remain as part of democratic India where everybody is free to say what he wants to say. Today I have lost that argument. I can be told that there is one country which has supported India today by implication and that is Pakistan. Pakistan Radio and Press has practically hailed this step because it supports Mr. Bhutto.

I am opposing this constitutional amendment because I think such an instrument cannot be given into the hands of those who cannot be trusted with power. Even Mr. Banerji said that this is being misused. People who can misuse it once will misuse it two hundred times. We have no faith in you and so we oppose it.

SHRI JAGANNATH RAO (Chattrapur): Mr. Chairman, Sir, I welcome this measure. I had thought, since the proclamation has been approved by both the Houses of Parliament a reference to the circumstances that led to the proclamation of emergency would not be necessary. But I was slightly provoked when Mr. Shamim spoke about the emergency and the circumstances which led to proclamation of emergency. I would have appreciated if he had stated all these things yesterday in his speech while speaking on the proclamation of emergency. The measure before the House is simple. It seeks amendment to certain Articles of the Constitution. But Mr. Shamim having spoken irrelevant, I am a little provoked—without being irrelevant—to say a few things. Were not the Government justified to proclaim emergency when the Opposition parties openly declared in a meeting at Ramlila grounds that they would paralyse the functioning of the Government and they will launch civil disobedience movement! Could the Government be a salient spectator to all these threats? If the Government had not taken the required steps these very persons would have accused the Government of not being able to control the situation and would have demanded that it should quit. Government is in a peculiar situation. I want to say if you take into consideration the interests of the country as a whole, you will appreciate by the President on the 25th June, by the President on the 25th of June,

Sir, as the Law Minister explained, there a long array judicial decisions. The question whether the emergency should have been proclaim-

[Shri Jagjivan Ram]

ed or about the duration of emergency is beyond judicial purview. This has been the law. But the necessity that has arisen now is there are some citizens who are detained under some provisions of the Act who would go to the Supreme Court to take a chance to see if the previous decisions of the Supreme Court could be reviewed. The Supreme Court itself has said so in one case, that is, though the decisions of the Supreme Court are unanimous still some persons will come to the court to take a chance whether the previous decisions of the Supreme Court could not be reviewed. I understand some petitions are already pending and posted for 5th and a learned lawyer, who is also a Member of this House, is dealing with them. They raise all sorts of questions about the continuance of emergency, that emergency does not really exist, that there is no need to continue it and that certain provisions under the emergency powers are not valid and enforceable. To set at rest what you call the supposed rights or the doubts of some people, this amendment has been brought forward. This satisfaction of the President under Article 352 or the Constitution is based on the advice of the Council of Ministers and this is the basis of the strength of the proclamation. It is not the discretion of the President. Here, the President does not issue a proclamation in his discretion. If you go through the Government of India Act, it was the discretion of the Governor General and he could issue a proclamation for a period of six months. Here, the satisfaction of the President is based on the advice of the Council of Ministers. This is relevant.

Further, Sir, when the executive, the Head of the State issues a proclamation, that is not all. Now, the Legislature comes in as a check. This proclamation would last for only two months unless it is approved by both the Houses of Parliament. It is for both the Houses of Parliament to look into the matter, whether circumstances

do really exist and whether there is necessity for emergency. Therefore, the Legislature acts as a check so that no excess powers are taken by the President.

But, the Courts, in this matter, cannot act as a third chamber. It is not for the Courts to advise the Government or the Parliament and tell them that they should do this or they should do that. As a matter of fact, when we found that the Courts have interfered or meddled with the laws passed by Parliament, Parliament had come forward and had set them right. Take, for instance the Golaknath case. After the judgment, we passed the Constitution Amendment Bill. The same is the case with nationalisation of banks and abolition of privy purses. We came forward and set right the situation created by the Supreme Court. Therefore, Sir, the powers of the Courts in the matter of judicial review are also limited. The Supreme Court, which is the highest Court of the land, cannot function as a third chamber, and advise the Legislature or the Government. Therefore, whenever there is an emergency, it is the sole responsibility of the Head of the State and the executive to decide whether emergency should at all be there and if so, how long it should continue. It is not for the Courts. Therefore, Sir, this amendment has been brought forward only by way of clarification and abundant caution. No rights are being taken away. The Courts had no right. Therefore, we are not taking away the right of the Courts. My friend Mr. Shamim said that the rights of the Courts are being taken away. He is entirely wrong. There is no right for the Courts. The Courts themselves have said that they have no jurisdiction to go into this matter, whether the proclamation of emergency should at all be issued and how long it should continue. As a matter of fact, I think, in the Lakkampal case, in 1962, they went into this question and they said that they had no jurisdiction. But, still, some people go to the Courts. As I

said if I can use the language of the Supreme Court—they want to take a chance whether the Supreme Court will review its earlier decision.

If you take this Ordinance making power also, the powers of the President or the Governor or the Administrator as the case may be, are also governed by the advice of the Council of Ministers. There also, the Legislature has to approve. Unless the Bill replacing the Ordinance is brought within six weeks, the Ordinance would lapse. Therefore, the power is limited there also. If you go into this question, you will find that it is the Legislature that functions though initially, the President or the Governor as the case may be takes the necessary decision. Therefore, Sir, there is no point in saying that this is a draconian measure or that the powers of the Courts are being curtailed or that the rights of the citizens are being taken away. During emergency, only the remedy is suspended. The rights are not being taken away. For free citizens, their fundamental rights are not being taken away. Only in regard to those persons who have been detained under these provisions, their remedy to approach the Courts is suspended. That is all.

Therefore, we should not introduce any controversy into this Bill which is otherwise non-controversial. This is a wholesome measure and we should all support it wholeheartedly.

SHRIMATI MAYA RAY (Raiganj):
Mr. Chairman, Sir, I am sorry to see that Mr. Shamim has given up his independence. Being an Independent Member, he said that he was voicing the opinion of all the Opposition. The Opposition parties are very inconsistent among themselves, inconsistent in the speeches that they deliver and inconsistent in the actions that they perform.

Before I came into this Chamber, I had occasion to talk to Mr. Shamim

and I, by chance, asked him 'Are you a lawyers, Mr. Shamim?' because he has been holding forth on this subject ever since the Session began and even from before when we met in the Table Office and so on. So his line of thinking was quite apparent even from that time; he said 'Yes' and I asked, "Are you a journalist too"; he said 'Yes' in an even louder voice.

That, of course, has been self-evident today, because if he were a lawyer, he would not have made such irrelevant statements as he did. I will presently show you why. The hon'ble Law Minister has already very briefly outlined the basis of the cases upon which the Government is acting, and in so acting the Government is not doing anything new. It is only restating the law as it already stands or exists in the law reports which I hope, Sir, you will give me the indulgence to cite because Shri Shamim must be better educated as a lawyer too. He is obsessed with one judgment as a lawyer, and that is Justice Sinha's judgment. He has not the patience to even wait for the next series. With that one judgment alone he is most concerned. But as a journalist, he is terribly upset about the freedom of the press. I am sure many people realise that this a very draconian measure. But I am one of those persons who believe that the press are entirely capable of looking after themselves. In the last two or three years, I have had the privilege of being a member of this august House and have seen how the press works in the Central Hall. It has been most elucidating. I have not the slightest doubt that there are good people in the press and there are bad people in the press; there are good legislators and there are bad legislators; there are good politicians and there are bad politicians. This House should not be used as a forum only for villifying and hurling abuses against each other across the floor of the House and merely bringing in and saying things under the garb of the privilege that this House allows to

[Shrimati Maya Ray]

members to say that which we would not dare say outside because of the danger of a defamation suit being instituted against us. Such is the mettle of the members of the Opposition in *absentia*.

Today we are discussing a very serious matter. They choose to walk out. That again is exactly what I meant as to what the Opposition consists of. However, we need not labour on Shri Shamim too much either because, as I said, I am going to restrict myself today to the legal aspects of the matter.

I am one of those persons who hold the judiciary in the highest esteem and respect. It is one of the pillars of democracy. It is essential to a democracy. Merely because I lose a case before a judge I do not go outside the court and say that that judge is a stupid fellow, he does not know the law and, therefore, he should be taken to task. I am not one of those persons. I have lost many cases I have won many cases I have disagreed with judges in their judgments and have gone in appeal I have lost appeals I have won appeals. But I still say that the judiciary is an essential part of our democracy for it is the greatest check on the executive.

Therefore, coming back to the legal aspect, may I say that the Government in bringing forward these amendments making the promulgation of Ordinances non-justiciable is not doing anything new, but is merely restating the law? Now, we are expressly providing in the Constitution what the courts of law have already pronounced from as far back as 1931.

If I may crave your indulgence Mr Speaker—I am sorry the Speaker is not well enough to take the Chair nowadays; it is nice to have you, Sir, however, as the Chairman—I will cite a few cases. It is a pity Shri Shamim is not here.

SHRI S. A. SHAMIM: I am very much here, attracted by your sweet voice (*Interruptions*).

SHRIMATI MAYA RAY: I will ignore those unnecessary irrelevancies. When Shri Shamim said that the Law Minister was taking advantage of the present situation in bringing in these amendments, he had not taken care to look into the law. This was laid down by the courts of law as far back as in 1931. In AIR 1931 Privy Council I shall cite AIR 1931, Privy Council, page 111. Particularly since Mr. Mavalankar as well is a person who appreciates the British judiciary from where we have accepted the principles of our judiciary, may I tell Mr. Mavalankar *in absentia*, though he is not present here now, that that Bench consisted of Viscount Dunedin, Lord Thonkerton, Lord Rissell of Killowen, Sir George Lowndes and Sir Dinshah Mulla. He cannot hope to find a more eminent Bench. They were dealing with section 72 of the Government of India Act and its scope. The judgement was delivered by Viscount Dunedin I shall read out the relevant part of it.

“Now the only case that is made here is that Section 72 of Government of India Act did not authorize the Governor-General to make the order he did constituting a special tribunal for the trial of the offenders, who, having been convicted, are now petitioners here. Section 72 is as follows:

“The Governor-General may in cases of emergency make and promulgate ordinances for the peace and good government of British India or any part thereof and any ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinance under this section is subject to the like restrictions, as the power of the Indian legis-

lature to make laws and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature and may be controlled or superceded by any such Act.'

The petitioners ask this Board to find that a state of emergency did not exist. That raises directly the question who is to be the judge of whether a state of emergency exists. A state of emergency is something that does not permit of any exact definition. It connotes a state of matters calling for drastic action which is to be judged as such by someone. It is more than obvious that someone must be the Governor-General and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action, and that action is prescribed to be taken by the Governor-General. It is he alone who can promulgate the ordinance."

It goes on further to say:

"Their Lordships must add that although the Governor-General thought fit to expound the reasons which induced him to promulgate this ordinance, this was not in their Lordship's opinion in any way incumbent on him as a matter of law."

That petition, Mr. Shamim, was dismissed....(Interruptions). I also happen to be a barrister in my own right. My husband is not at present in Delhi to brief me; I come here in my own right as a Member of Parliament and a barrister. I was not a briefless barrister before I came into the House, either.

Now, may I come with utmost respect and humility to my own judiciary in this country of mine of which I am justly very proud. I am referring to 1969 A.I.R. Supreme Court. 903, at 913. I shall give a small synopsis of the case....(Interruptions). I am sorry, Mr. Shamim, you must learn to have some patience as a legislator. Mere shouting is not go-

ing to achieve anything. The case was like this. The Punjab Assembly had been adjourned for about two months by the Speaker. In the meantime, the financial year was ending on March 31st, and so no money could be drawn from the Consolidated Fund. Under these circumstances, two courses were open under the law. The Ministry could ask the Speaker to recall the assembly. Or the Assembly could be prorogued, to get rid of the adjournment and then it could be re-summoned.

Now, I would like to quote "AIR 1969 Supreme Court 903" and I would like to read out the relevant part at page 913. The case was between the State of Punjab and Satya Pal Dang and others. The bench consisted of erstwhile judges. They have been eminent judges whether we agreed or may not have agreed with them on certain issues. This bench consisted of the Chief Justice M. Hidayatullah as he then was, Justices J. C. Shah, Justice V. Ramaswami, Justice G. K. Mitter and Justice A. N. Grover as they then were. Now, I will read out the relevant portion:

"18. After the prorogation there was no further curb on the legislative power of the Governor. The power of legislation by Ordinance is as wide as the power of Legislature of the State. Article 2(13)(2) (6) provides that an ordinance promulgated under that Article has the same force and effect as an Act of the Legislature of the State assented to by the Governor except that it must be laid before the Legislative Assembly of the State and the Legislative Council (where there is one) and expires after the expiration of 6 weeks or earlier if it is withdrawn by the Governor or disapproved by the Legislature of the State. Counsel argued that the power of the Governor is only to pass a law under the second and third of the Legislative Lists and not under Article 209(7)".

MR. CHAIRMAN: Let us have the operative part of it.

SHRIMATI MAYA RAY: Then the judgment goes on to say—

"19. Article 209(7) is intended to speed financial business in the legislatures so that attempts to filibuster, adjourn or otherwise delay such business may be avoided. If ever there was an occasion for the regulation of procedure in the legislature of the State in relation to the financial business by a law under Article 209, it was this. The Legislature could not be allowed to hibernate for 2 months while the financial business languished and the constitutional machinery and democracy itself were wrecked. To suggest that the President's rule should have been imposed instead, is to suggest a line of action which a party not in majority would have obviously preferred but it would have cut at the root of parliamentary government to which our country is fortunately committed. If by adopting the present course parliamentary Government could be restored, there was neither an error of judgment nor a mala fide exercise of power. There was nothing colourable about it. It was intended to achieve a definite purpose by using the constitutional power of the Governor. We are, therefore, quite clear that the action of prorogation cannot be questioned on any of the grounds suggested by the respondents"

Then the second point is that these amendments seek to make the Declaration of Emergency under Article 352 non-justiciable. Here, again, the law is being restated and the Constitution is being amended in accordance with the judicial pronouncements already made. (*Interruptions*). The Supreme Court has the final say, Mr. Shamim. The Allahabad High Court is not the only Court in the country. There are other High Courts in other parts of this country. For instance, the Calcutta High Court

exists and is the one which has a considerable heritage. The Bombay High Court is also there with an equally long heritage.

There is a very interesting paragraph in the judgment AIR 1967 Supreme Court 1335—para 11. That was specifically over-ruled in AIR 1968 Supreme Court 765, which is very important. There are two later cases in 1974, Supreme Court as well which I shall not quote because any lawyer can look them up, and the Hon'ble Law Minister has already cited excerpts from AIR 1974 Supreme Court page 806, paras 16 to 18. I am citing para 11 of AIR 1967 S.C. 1335 at 1338:

"It was suggested that the declaration of Emergency under Art. 352 of the Constitution in the year 1962 and the continuation of the emergency for 4 long years after the cessation of hostilities with China is mala fide and is an abuse of powers conferred on the President under Part XVIII of the Constitution. The question raised involves two points: (1) whether the declaration of emergency or the continuation of it is vitiated by mala fides or abuse of power, and (2) whether such a question is justiciable in a court of law. Our Constitution seeks to usher in a Welfare State where there is prosperity, equality, liberty and social justice. It accepts 3 concepts for bringing about such a State: 1. Federalism; 2. Democracy; 3. Rule of Law, in which fundamental rights and social justice are inextricably integrated. Under Part XVIII when the emergency is declared both the Legislative and the Executive powers of the Union are conceded to States. The Federal Government is practically transformed into unitary form of Government. The fundamental rights of the people under Art. 19 are abrogated and the Executive is empowered to suspend the rights to move the court for the enforcement of any other

fundamental right. The Executive is also empowered to direct that all or any other provisions relating to distribution of revenue be suspended during that period. Part XVIII appears to bring down the grand edifice of our Constitution at one stroke, but a little reflection discloses that the temporary suspension of the scheme of the Constitution is really intended to preserve its substance. This extraordinary power is unique to our Constitution. It reflects the apprehensions of the makers of the Constitution and their implicit confidence in the parties that may come into power from time to time. Two expressions indicate the extraordinary situation whereunder this Part was intended to come into force. The expression 'grave emergency' in Art. 352(1) and the expression 'imminent danger' in Art. 352(3) show that the existence of grave emergency or imminent danger is a pre-condition for the declaration of emergency. Doubtless, the question whether there is grave emergency or whether there is imminent danger as mentioned in the Article is left to the satisfaction of the Executive for it is obviously in the best position to judge the situation. But there is the correlative danger of the abuse of such extraordinary power leading to totalitarianism. Indeed, the perversions of the ideal democratic Constitution, i.e., Weimar Constitution of Germany, brought about the autocratic rule of Hitler and the consequent disastrous World War. What is the safeguard against such an abuse? The obvious safeguard is the good sense of the Executive but the more effective one is public opinion. A question is raised whether this Court can ascertain whether the action of the Executive in declaring the emergency or continuing it is actuated by mala fides and is an abuse of power. We do not propose to express our opinion on this question as no material has

been placed before us in that regard. It requires a careful research into the circumstances obtaining in our country and the motives operating on the minds of the persons in power in continuing the emergency. As the material facts are not placed before us, we shall not in this case express our opinion one way or other on this all important question which is at present agitating the public mind."

This Bench consisted of Chief Justice K. Subba Rao, Justice M. Hidayatullah, Justice S. M. Sikri, Justice R. S. Bachawat and Justice J. M. Shelat, as they then were. Now, this is an interesting observation. The Supreme Court judgment which came in 1968 is very important. I am taking the legal aspects of it.

This is again AIR 1968 Supreme Court 765. The Bench consisted of Chief Justice K. N. Wanchoo, Shri M. Hidayatullah, Shri J. C. Shah, Shri R. S. Bachawat, Shri V. Ramaswami, Shri G. K. Mitter and Shri K. S. Hegde as they then were. I will read out the most important portion.

"(B) Constitution of India, Arts. 359, 13(2) and Part 3—Order under Art. 359 cannot be law within meaning of Art. 13(2) and cannot be affected by it—Order passed under Art. 359 cannot be tested under the very fundamental right the enforcement of which it suspends. AIR 1967 SC 1335 overruled

An order passed under Art. 359 (1) cannot be tested with the aid of Art. 13(2) under that very fundamental right the enforcement of which it suspends. AIR 1967, 1335 overruled.

Article 13(2) and Article 359 being parts of the same Constitution stand on an equal footing and the two provisions have to be read harmoniously in order that the intention behind Article 359 is carried out and it is not destroyed altogether by Article 13(2). Though

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an order under Article 359 may be assumed to be law in its widest sense, it cannot be law within the meaning of Art. 13(2), for if that were so, Art. 359 would be made nugatory. If the order is a law within the meaning of Art 13(2), the result would be that though the order says that the enforcement of a particular fundamental right is suspended during the period of Emergency the order can still be tested with the aid of Art 13(2) on the anvil of the same fundamental right, the enforcement of which it suspends, and then a declaration made thereunder would have no meaning whatsoever."

Lastly, I want to draw the attention of the House to the Supreme Court case AIR 1974 p. 806, paras 16 to 18 by Justice Krishna Iyer, to which the hon. Minister has also made a reference in his speech and to which I have referred earlier in this context

Finally I may say that I am deeply grateful to the Chair and the Minister for Parliamentary Affairs for giving me this opportunity by extending the time allotted

श्री रुद्र प्रताप सिंह (बाराबंका) :
सभापति महोदय, मैं आपका हृदय से आभारी हूँ जो आपने सभे सविधान (संशोधन) विधेयक, 1975 पर अपने विचार प्रकट करने का अवसर दिया है। मैं उसका समर्थन करने के लिये खड़ा हूँ।

माननीय सदन स्वयं उस बात का साक्षी है कि जब भी विश्व की महानतम तथा मंचार की सर्वश्रेष्ठ प्रधान मंत्री श्रीमती इन्दिरा गांधी के नेतृत्व वाली कांग्रेस पार्टी जिसकी सरकार है, वह हम महान सदन में कोई संविधान का संशोधन प्रस्तुत करना चाहती है, तभी इस महान सदन के जो भी दक्षिण-पंथी, पतिक्रियावादी, सम्प्रदायवादी और यथास्थितिवादी दल है, उन्होंने उसका सदैव

विरोध किया है। संविधान में भी संशोधन प्रस्तुत किया गया है, तभी उन्होंने कहा कि लोकतंत्र की हत्या हो रही है, संविधान का गला घोंटा जा रहा है। सभवतः उनकी दृष्टि में भारत का संविधान ईश्वर का वाक्य है जिसमें कभी किसी प्रकार से परिवर्तन नहीं होना चाहिए। आपके माध्यम से मैं उनको बताना चाहता हूँ कि भारत का संविधान भारत का जनता के लिए है और भारत की जनता के कल्याण और हित में जब भी आवश्यकता होगी, जब कभी अपेक्षा होगी, उसमें निश्चित रूप में परिवर्तन किया जायेगा।

संविधान जन कल्याण का एक साधन है, स्वयं एक साधन नहीं है। भारत की जनता संविधान और लोकतंत्र में भी बढ कर है। संविधान में भारत की महान जनता के कल्याण हेतु जो विधान तैयार किया गया है, उसके कार्यान्वयन के मार्ग में जब कभी न्यायपालिका यातायात सेवा की ओर से बाधा उपस्थित होती है तब भी हम देखते हैं, उस बाधा को दूर करने में हमने देखा है कि जनता या न्यायपालिका के द्वारा उसमें बाधा उपस्थित हुई और कार्यपालिका के द्वारा भी जिस प्रकार उसका कार्यान्वयन होना चाहिए, वह नहीं होता है तो जब भी ऐसी परिस्थिति आयेगी, हमें निश्चित रूप से संविधान का संशोधन करना पड़ेगा।

प्रधान मंत्री श्रीमती इन्दिरा गांधी के नेतृत्व वाली सरकार उस बात के लिए बचनबद्ध है कि देश में जो अनसूचित जाति, अनसूचित जन जाति, सर्वहारा शोषित वर्ग और अल्पसंख्यक है, उनके हितों की रक्षा की जायेगी। जब कभी हम प्रश्न की परिस्थिति पैदा होती है कि उनके कल्याण करने के लिए किसी प्रकार से अगर बाधा आती है तो उसके लिए हमें संविधान का संशोधन करना होगा।

प्रधान मंत्री श्रीमती इन्दिरा गांधी ने देश में सामाजिक और आर्थिक विषमताओं को समाप्त करने के लिए जो संकल्प ले रखा है, उस दिशा में जो उन्होंने बड़े कदम उठाया है, जैसा कि माननीय सदस्य को ज्ञात है कि बैंकों का राष्ट्रीयकरण करना, बड़े राजा-महाराजाओं के विशेषाधिकारों को समाप्त करना और साथ ही साथ उसी दिशा में इस महान सदन ने भारत के संविधान का 24वां संशोधन पारित किया है। हम आशा करते हैं कि उसी प्रकार म यदि आवश्यकता पड़ी तो देश के जो बड़े बड़े आर्टि० सी० एम० आफिसर हैं, उनके विशेषाधिकारों को भारत की जनता के कल्याण हेतु समाप्त करना आवश्यक होगा, तो उन्हें भी समाप्त किया जायेगा।

प्रधान मंत्री श्रीमती इन्दिरा गांधी के द्वारा आपात्कालीन स्थिति में जो आर्थिक 20 सूत्री कार्यक्रम घोषित किये गये हैं, उनको हमें यद्दुस्तर पर कार्यान्वित करना होगा और उनके कार्यान्वित में जो भी बाधा उत्पन्न की जायेगी, चाहे विधान के नाम पर चाहे नियम के नाम पर हमें उसका सामना करना पड़ेगा। माननीय सदस्य इस बात में सहमत होगा यदि उनमें भी किसी प्रकार की कठिनाई आती है तो हमें संविधान का संशोधन करने में किसी प्रकार का संकोच नहीं होना चाहिए। समय में तीव्रता के साथ परिवर्तन हो रहा है और इस परिवर्तन का प्रभाव देश और विश्व के समस्त देशों में होना स्वाभाविक है। हम उस परिवर्तन में आंखें नहीं मूंद सकते हैं। यह सौभाग्य की बात है कि श्रीमती इन्दिरा गांधी के नेतृत्व में भारत में उस समाजवाद के रथ का पहिया अब सड़क पर आ गया है। हमें आशा है कि वह तीव्र गति के साथ आगे बढ़ेगा। भारत की महान जनता को इस बात का विश्वास है कि देश में जो सामाजिक और आर्थिक विषमताएं हैं, वह दूर होंगी और जो सामाजिक व आर्थिक न्याय होना चाहिए वह आवश्यक होगा।

ऐसी परिस्थिति में जब कि देश के अन्दर तमाम ऐसी शक्तियां, तमाम यथास्थितिवादी शक्तियां और ऐसी शक्तियां जो देश में हिंसा का, अराजकता का, अस्थिरता का वातावरण पैदा करना चाहती हैं, जैसे कि देश में राष्ट्रीय स्वयं सेवक संघ है, जमाते इस्लामी है, आन्दोलन मार्ग है, ऐसे तमाम संगठनों और दलों को जिनको अब बैन किया गया है, यह प्रसन्नता की बात है। इस प्रकार के कार्यों को करने के लिए, उनकी गतिविधियों पर अंकुश लगाने के लिए यदि संविधान में संशोधन की आवश्यकता होगी तो आवश्यक किया जायेगा। मैं विश्वास करता हूं कि विरोधी दलों के नेताओं को इसमें कोई आपत्ति नहीं होनी चाहिए कि जन कल्याण को दृष्टि में रखते हुए, जब भी संविधान में संशोधन करना आवश्यक होगा वह आवश्यक किया जायेगा।

सभापति महोदय : माननीय सदस्य भाषण समाप्त करें। यदि समय की पावन्दी नहीं करेंगे तो मैं 2.45 तक इतने सेम्बरों को समय नहीं दे पाऊंगा। माननीय सदस्य या तो 5 मिनट में अपना भाषण समाप्त कर दें या मैं नीचे के 4, 5 सदस्यों को बोलने के लिए नहीं बुला सकूंगा।

श्री मूलचन्द डाना (पानी) : टाइम शुरू में रेगुलेट होना चाहिए। पहले बोलने वाले सदस्य एक-एक घंटे तक बोल जाते हैं और वह इर्रेलेवेन्ट बात भी कहते हैं।

सभापति महोदय : आप यह बात अपने चीफ क्लर्क महोदय को कहिए।

श्री परिपूर्णचन्द पैन्यूलो (टिहरी गढ़वाल) : सभापति महोदय, अगर केवल 4, 5 मिनट का टाइम ही दिया गया तो इससे तो न बोलना अच्छा है।

सभापति महोदय : आपका नाम लिस्ट 2 में है।

माननीय सदस्य श्री हर प्रताप सिंह अब
अपना भाषण समाप्त करें।

श्री हर प्रताप सिंह : मैं केवल आधा
मिनट लेना चाहता हूँ। मैं विरोधी दलों
को केवल यह बात कह कर अपनी बात
समाप्त करना हूँ कि —

हवाएँ तो दीं तुमने लाख अपने दामन से,

मगर चरागे तमन्ना की लौ वृज्जा न सकी।

इन शब्दों के साथ मैं इस महत्वपूर्ण
विधेयक का हृदय से समर्थन करता हूँ
और आपकी आज्ञा का पालन करता
हूँ।

SHRI B. R. SHUKLA (Bahraich):
This Bill seeks to enact nothing new
but simply reiterates the legal posi-
tion already recognised by the highest
courts in the country. A common
feature of the Clauses of this Bill is
that the satisfaction of the Governor
or the President or the Administrator
in exercising certain functions under
the Constitution is not to be made
debatable or justiciable in a court of
law. This position was already there.
It is contained in the Constitution and
Privy Council and also its successor
the Federal Court and the Supreme
Court have come to the same conclu-
sion that the satisfaction of the
Governor, the Administrator and the
President of India are not matters
which can be said to be justiciable.
Therefore, there is not much point in
Members digressing from the point
involved in this Bill.

Mr. Shamim, who is otherwise a
very good and able speaker, I can say,
has not either read the Bill at all or,
if he has read the Bill, has not under-
stood its scope. He was still labour-
ing under the delusion that the debate
on the proclamation of emergency
had not concluded though it has been
concluded today. The point is, as the
Hon. Minister has made it very clear
in his opening speech, that in spite
of clear settled judicial opinion in

this country, there are still advocates
and lawyers and also unformed mem-
bers of the public who think that the
satisfaction of the President, the
Governor and the Administrator in
proclamation an emergency or in
assuming ordinances can be debated
in a court of law. It was suggested
or alleged by Mr. Shamim that be-
cause a bad faith was involved in
bringing this Bill, he was opposing
it. But we have to oppose or sup-
port a Bill and its provisions on its
own intrinsic merits and the motives
are wholly irrelevant. I know he is
also a lawyer, but I think he has been
more of a poet and a platform speaker
than an astute expert of constitutional
law.

There are occasions when the Presi-
dent acts on his own subjective satis-
faction. Firstly he does so in pro-
claiming an emergency when the
security of India is threatened by ex-
ternal aggression or by internal dis-
turbance and secondly when there is
financial instability threatening the
country. Why was this Bill neces-
sary? Already there was a state of
emergency coming from December,
1971, when India was threatened with
foreign aggression in the shape of
Pakistani war. Then emergency was
declared. Now internal disturbance
was also threatening the security of
India, therefore, a fresh proclamation
of emergency was made. Therefore,
there may arise a doubt whether any
legislation or action taken in
pursuance of the second procla-
mation of emergency would be
legal. In order to set at rest such
doubts and controversies, this Bill
has been brought before the House.
I extend my whole hearted support to
this Bill. The Minister is perfectly
right in bringing forward this Bill at
this time so as to end all controversies
in future.

SHRI SHANKERRAO SAVANT
(Kolaba): I rise to support the present
amendment to the Constitution. It is
purely a clarificatory amendment.
Under the law as it stands today, a
Governor, the President or an

Administrator has to be satisfied that conditions have arisen which make the use of extraordinary powers justifiable. The main purpose of the present amendment is to make this satisfaction of the President, the Governor or the Administrator before issuing a proclamation of emergency or an ordinance, non-justiciable. As a matter of fact, the wording of all these articles will show that the satisfaction of the President or the Governor or the Administrator is based on political considerations. It may even be based on secret reports of the movements of some internal or external enemy and so, on the face of it, it cannot be justiciable. Never before was the satisfaction considered to be justiciable but judicial opinions are so flickering and you can never be sure about them. Our Supreme Court has never accepted the principle of *stare decisis*. Every year it reverses its own judgments. In Golaknath's case it reversed two of its earlier Full Bench rulings. Whenever Parliament has tried to forge ahead with schemes of social amelioration, the judiciary has created stumbling blocks in its path and has for that purpose even reversed its own earlier judgments. That is the history we have to face.

Let us take the latest example. Everybody was saying that the smugglers must be sternly dealt with as they had created a parallel economy in the country. But when the Government took action under MISA against well-known smugglers, the courts ran to their help. The Delhi High Court became the haven of such notorious smugglers. Smugglers from all parts of the country came to Delhi and they were released by the Delhi High Court one after the other on some ground or other. Semantic quibbling and forensic acrobatics are limitless. They change not only an "or" into "and" but even a notorious smuggler into a respectable citizen. And strangely enough there are political parties in our country which run to the help of these smugglers when the Government tries to

plug the loopholes in the MISA Act by opposing this plugging.

Under the circumstances it is necessary that the law should be both fool-proof and knave-proof. It is to make it both fool-proof and knave-proof that the present amendment is necessary. They say that writ petitions are costly and therefore it is not easy to resort to them. This is true so far as the common man is concerned, but for smugglers and for persons and parties which receive subsidies from abroad, nothing is costly. They can file any number of writ petitions. Hence, the need for this amendment and I support it with all the emphasis at my command

SHRI B. K. DASCHOWDHURY (Cooch-Bihar): I shall try to be brief and finish within five minutes, but if I exceed it by one minute I hope you will not mind.

MR. CHAIRMAN: Take four minutes and exceed by one.

SHRI B. K. DASCHOWDHURY: This Bill, the Constitution (Thirty-Ninth Amendment) Bill, it should be the thirty-eighth Amendment, seems to have the largest number of amendments to the Constitution in a single Bill, but the subject matter is not so large. I would like to divide it into three parts.

14.00 hrs.

I would like to classify all these seven articles, which are mentioned in the Bill, such as Articles 123, 213, 239B, 352, 356, 359 and 360, into three parts. Firstly, there is one thing in common between Articles 123, 213, 239B, 352, 356 and 360, that is, in the explanation of the subjective satisfaction of the authority concerned, either in the case of President or the Governor or the Lt. Governor or the Chief Commissioner, as the case may be. Secondly, in Article 352, apart from this clause of subjective satisfaction, there is something more added.

[Shri B. K. Daschowdhury]

The President seems to have been given more power even to issue more orders during the time of emergency. Thirdly, the amendment to Article 359 seems to me a really very new one and it is desired to cover the lacuna left in its existing form.

Sir, let me deal with the Article 359 first which is really something new. It says:

MR. CHAIRMAN: Please do not quote it.

SHRI B. K. DASCHOWDHURY: It says:

"Where a Proclamation of Emergency is in operation the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order."

As far as Article 359 is concerned, as it is in the Constitution, that does not mean infringement of any rights provided in the Constitution, even though the emergency is there. It simply means that the citizens or the litigants have been debarred from moving the court for enforcement of their fundamental rights and nothing more than that. As far as Article 358 is concerned, it is very clear particularly with reference to Article 19. The moment an emergency is proclaimed by the President of India, the provisions of Article 19 stand suspended. But about other parts of the fundamental rights in Part III of the Constitution, probably, at the time of the formation of the Constitution, the distinguished lawyers or the distinguished members of the Constituent Assembly, thought that as we were following the British pattern in the House of Commons, we

must have certain clauses of indemnity under this Article as is in the case of U.K. and that this Act of Indemnity would be passed by Parliament in course of time. But, Sir, till now, no such act of indemnity has been passed. Therefore, it was very much necessary and essential at least to have this clause for any act done or deemed to be done which is supposed to be or may be incompetent in relation to the various provisions of the Constitution, more particularly with reference to Part III of the Constitution. Without this if somebody sues the Government or any executive of India for taking any such action, after the Emergency there will be no remedy. So, it was very much necessary and essential at least to cover this clause. By this amendment, this particular lacuna in the Constitution which was missing has been completely covered, what can be termed otherwise as an indemnity clause.

Coming to the second part, the main important part of this one is the question of subjective satisfaction. I do not like to deal with matters which have been referred to in detail. I would simply like to refer one more point to the hon. Law Minister. As you know, the President, though he is the highest symbol of the country, the nation, and everything goes in his name, the powers of the President are just limited within the framework of the Constitution as the powers of the three distinct branches, legislative, executive and judiciary, are also limited. In all such cases, the President is to work under article 74(1) only on the aid and advice given by the Council of Ministers headed by the Prime Minister. As a matter of fact, the President, in that regard, has got very little discretion to act. To be true, he cannot act otherwise, except in some limited cases where discretion may be applied.

At the same time, what we find in article 74(2) is that any advice given by the Council of Ministers to the President cannot be asked or seriously

challenged in any court of law. I would rather say that it has always been intended to be that the article 352 is to be regarded as a subjective satisfaction of the authorities concerned. That has also been covered by article 74(1) and (2). We have similar provisions in articles 163 and 164 relating to Governors. I do not like to deal with them separately.

It has been made quite clear and the hon. Law Minister, while moving the Bill has also said that no court has ever said that this satisfaction of the President of India or of the Governor, as the case may be, should be limited to the justiciability. It is very clear as some hon. Members have said it. If you go through the articles, you will find that nowhere it has been mentioned that whenever a proclamation is to be issued, when Emergency is to be declared, the President and the authorities concerned must give out a list of reasons. It is known to any lawyer that unless the objective criteria are given, nobody can say that this objective test must be there. From that point of view also, it is clear that it is never intended to be justiciable. It is not justiciable. As a matter of fact, it should be done according to the satisfaction of the President or the Governor, as the case may be.

My last submission is this. Some hon. Members of the Opposition read out a letter in this House. They are not here. They are opposed to this Bill also. If the President or the Governor, as the case may be, is to work on the aid and advice given by the Council of Ministers, headed by the Prime Minister or the Chief Minister, as the case may be, what does it mean? It means that the authorities are to work not according to their discretion but according to the advice of the Council of Ministers. Even if a proclamation is to be issued, an Emergency

is to be declared, that has also to be declared on the aid and advice given by the Council of Ministers headed by the Prime Minister or the Chief Minister, as the case may be. Now, the Prime Minister or the Chief Minister heading the Council of Ministers is the person or the group of persons who are having the confidence of the people as it has been expressed in Parliament or in the State Legislatures or even outside. If the majority of the people in the country feel that it should be there, where lies the question of objection?

With these remarks, I fully endorse the views of the hon. Law Minister and I support the Bill. I would simply say that this Bill is of a clarificatory nature, which ought to have been brought forward much earlier than now. Anyhow, better late than never

श्री परिपूर्णानन्द वैन्डूली (टिहरी-गढ़वाल) : सभापति जी, मैं इस संशोधन विधेयक का समर्थन करता हूँ और इसका समर्थन करते हुए एक बात कहना चाहता हूँ कि यह विधेयक मुख्य रूप से उन तत्वों पर लागू होता है, उन तत्वों को इस से डरने की ज़रूरत है जो या तो स्मगलर्स हैं, टैक्स इवेंट्स हैं या जिनकी राजनीतिक गति-विधियाँ ऐसी हैं कि जो देश को कमजोर करना चाहते हैं, देश को टुकड़ों में बांटना चाहते हैं और फिर दोबारा देश को गुलाम बनाना चाहते हैं। इन में, मैं प्रायः से निवेदन कर रहा चाहता हूँ, कि स्मगलर्स की बात से लीजिए। छोटे मोटे तकलीकी व्यापार पर पिछले 30 अप्रैल को दिल्ली के हाई कोर्ट ने सुकर नारायण बखिया और पाँच अन्य तस्करों को रिहा कर दिया। इस प्रकार फ. डोमेटले राइट्स की सुहाई दे कर न केवल वे तस्कर, टैक्स-इवेंट्स बल्कि दूसरे प्रस्तामोजिक तत्व लाभ उठाते रहे हैं। उन पर जब तक इस प्रकार की प्रतिबन्ध नहीं लगाया जाता है, तब तक उन की

[श्री परिपूर्णानन्द तैन्पूलः]

गतिविधियों पर कोई रुकावट नहीं हो सकती ।

जहां तक गैर-जिम्मेदार राजनीतिक नेताओं का सवाल है, मैं स्पष्ट कहना चाहता हूँ कि इमर्जेन्सी लागू होने के बाद जो हालात पैदा हुए और जगह जगह तालाशियों में जिस प्रकार का साहित्य पकड़ा गया, जिस प्रकार के हथियार बरामद हुए, उस से साबित होता है कि इस के पीछे एक बहुत बड़ी साजिश थी, जिस में न केवल इस देश के गैर-जिम्मेदार, देश-द्रोही तत्वों का हाथ था, बल्कि दूसरे मुल्कों का भी हाथ था । मुझे खेद होता है, जब मैं श्री जय प्रकाश नारायण का उल्लेख करता हूँ । जिस व्यक्ति का पिछला जीवन इतना ऊंचा, आदर्शमय जीवन, रहा हो, वह आखिर में आ कर कहां पहुंच गया ? उन्होंने एक तरफ पुलिस को आज्ञा का पालन न करने के लिए भड़काया, तो दूसरी तरफ फौज को भड़काया । उनमें उन्होंने यह कह कर भ्रम पैदा करने की कोशिश की कि काफ़ी बड़ी संख्या में पुलिस और फौज के आदमी ऐसे हैं जिन की हमारे साथ सहानुभूति है । इस में कोई संदेह नहीं है कि श्री जय प्रकाश नारायण एक फ्रस्ट्रेटेड पालीटिशियन हैं । पहले वे पार्टीलेस डेमोक्रेसी की बात करते थे और अब टोटल रेवोलूशन की बात करने लगे हैं । पार्टीलेस डेमोक्रेसी और टोटल रेवोलूशन को मिला कर आप देखें, तो जिस व्यक्ति के दिल में इस प्रकार की भावनाएं हों, वह अच्छा खासा डिकटेटर-शिप मनोवृत्ति वाला आदमी ही होगा । एक तरफ तो वे लोकतान्त्रिक और समग्र क्रान्ति की बात करते रहे किन्तु दूसरी तरफ उन के वही लांछन हमारे ऊपर लगते रहे । कांग्रेस के ऊपर और श्रीमती इन्दिरा गांधी के ऊपर वे आरोप लगाते रहे कि वह डिकटेटर और फासिस्ट हैं । मुझे खेद होता है यह कहते हुए कि हमारे देश के जितने अराजकता-

पसन्द तत्व थे, जितने भी हिंसक तत्व थे, जितने भी देशद्रोही तत्व थे, वे सब उनकी छत्रछाया में आ गये । प्रश्न यह नहीं है कि एक एक कर के अथवा संगठित रूप से सारे हिंसक तत्व वहां मौजूद थे, प्रश्न यह है कि हिंसा पैदा करने का वातावरण बनाने वाले तत्व कौन थे ? इसमें कोई संदेह नहीं है कि श्री जय प्रकाश नारायण तथा इस प्रकार के हमारे गैर-जिम्मेदार विरोधी तत्व इस के लिए मुख्य रूप से जिम्मेदार थे । जय प्रकाश नारायण जी ने फासिस्ट तत्वों को सम्मानित किया । आप को याद होगा कि आर० एस० एस० की रैली में जय प्रकाश नारायण जी ने यह कहा था कि अगर आर० एस० एस० फासिस्ट है, तो मुझे स्वीकार है, मैं भी फासिस्ट हूँ । आप को याद होगा कि गोवा में जब हम ने कार्यवाही की थी, गोवा को विदेशी शासन से मुक्त किया था, उस समय इन का क्या रोल था । उस समय उन्होंने हमारे देश के नेताओं के कार्यों की आलोचना की थी । आप को याद होगा कि पिछले सत्र में जब कि सिक्किम को सह-राज्य का दर्जा देने की बात हुई तो ये विरोधी तत्व कहने लगे कि इस के अन्तर्राष्ट्रीय परिणाम होंगे । जो तत्व इस प्रकार की बात सोचते हैं यदि उन का विदेशी तत्वों के साथ गठबन्धन नहीं होगा तो क्या होगा ? मिसाल के तौर पर आप की इजाजत से एक बात मैं पेश करना चाहता हूँ और उसे गृह मंत्री जी के पास भेजना भी चाहूंगा । लन्दन से छपा हुआ एक लिफाफा मेरे पास आया । शायद और भी संसद् सदस्यों के पास आया होगा । इसमें स्वराज नाम का तथाकथित पत्र है । इस नाम का समाचार पत्र मैंने न तो कभी देखा न सुना, यद्यपि जीवन भर पत्रकारिता की है । इंग्लैण्ड के जितने अखबार हैं, उन्होंने इमर्जेन्सी के बाद हिन्दुस्तान के खिलाफ एक अनर्गल प्रचार किया । उस के री-प्रिन्ट्स इन्होंने छपे हैं । लन्दन की जो मलिका हैं, उनकी

डाक मुहर पर वहां से डिस्पेच किया है । किस ने संगठित रूप से इस की एडिटिंग का काम किया ? कौन तत्व यहां पकड़े गये, इन्दिरा गांधी फासिस्टवादी तानाशाह हो गई, देश में भयंकर स्थिति पैदा हो गई, इन बातों को लन्दन से छाप कर यहां भेजने के काम में अगर विदेशों का हाथ नहीं है तो और क्या होगा । पहले तो मैं यह कहना चाहता हूं कि इंग्लैंड का हमारी आन्तरिक नीति में यह हस्तक्षेप है । बी०बी०सी० सदा ही हमारे देश के सम्बन्ध में गलत रिपोर्टें देता रहा है । मैं आनकोवताना चाहता हूं कि हैदराबाद में निग्राम के वक्त में जब पुलिस एक्शन हुआ था, तो बी० बी० सी० रेडियो ने ब्राडकास्ट किया था कि हिन्दुस्तान की फौजों ने हैदराबाद पर हमला कर दिया है । जिस देश का इस प्रकार से हमारे देश के विरुद्ध काम हो, तो वह मित्र देश कदापि नहीं हो सकता है । ए० आई० सी० सी० की मीटिंग में वर्षों पहले एक बार मैंने निवेदन किया था कि हमें राष्ट्र मंडल में अपना कोई स्थान नहीं रखना चाहिए । आज फिर मैं कहता हूं कि राष्ट्र मंडल में रहने की हमें कोई जरूरत नहीं है, जिस में इंग्लैंड जैसा देश हमारे देश के हितों के विरुद्ध काम करता हो । गृह मंत्रालय ने जो "हवाई इमर्जेंसी" नामक पुस्तिका निकाली है, उस में ऐसे तथ्य हैं जो साबित करते हैं कि ऐसे तत्वों ने विदेशों के साथ गठबन्धन कर के उन से पैसा ले कर देश को बेचने की कोशिश की थी । इस किताब के पृष्ठ 56 पर जो जय प्रकाश नारायण की रामलीला मंदाप की आखरी तकरीर है, उसका एक सेंटेंस यहां सुनाना चाहता हूं :

"Nanaji Deshmukh has given a call on behalf of my Party. It has my support and I am also a party to it."

जिस का व्यक्तित्व इतना नीचे गिर गया हो, फासिस्ट तत्वों के साथ मिल कर

उन के साथ गठबन्धन कर के जो देश को अराजकता के गढ़े में डालना चाहता हो, उससे हम क्या आशा कर सकते हैं ।

अन्त में मैं एक निवेदन करना चाहता हूं । शुरू में हमारे विरोध पक्ष के कुछ भाई यहां से निकल कर चले गये । श्री त्रिविद चौधरी ने फ्रीडम आफ दि प्रेंस की दुहाई दी । हमारे देश में फ्रीडम आफ दि प्रेंस के नाम पर जिस प्रकार का अन्तर्गल प्रचार किया गया, विध्वंसक तत्वों को जिस प्रकार से प्रोत्साहित किया गया, महंगाई को जिस प्रकार से प्रोत्साहन दिया गया, अगर उसी तरह की फ्रीडम आफ दि प्रेंस वह चाहते हैं, तो मेरा निवेदन है कि उस की कोई आवश्यकता नहीं है ।

विरोधी दल के एक नेता मुझे बाहर मिले । मैंने उन से पूछा कि वे लोग वाक-आउट क्यों कर गये । वह कहने लगे कि हमारी स्पीच अखबारों में नहीं छपती हैं, रेडियो में प्रसारित नहीं होती है, तो इस हालत में हमें बोल कर क्या करना है । जो लोग इस दृष्टि से इस सदन की कार्यवाही में भाग लेते हैं कि उन की वाह-वाही हो जाये, उन के लिए क्या कहा जाये ?

अन्त में एक बात कह कर मैं समाप्त करूंगा । इस प्रकार के 26 फासिस्ट दलों पर, जिन की हिंसा में आस्था है, केवल प्रतिबन्ध लगाना ही पर्याप्त नहीं है । उन को समर्थन देने वाले राजनतिक दलों पर भी प्रतिबन्ध लगाने की आवश्यकता है । महेश योगी की संस्था आदि जो सी० आई० ए० के अट्टे बने हुए हैं, जिन के माध्यम से विदेशी पैसा खर्च कर के देश की सुरक्षा को खतरे में डालने का काम होता है, उस प्रकार के तत्वों पर भी प्रतिबन्ध लगाने की आवश्यकता है ।

जहां हम इस बहुत अच्छे कदम का समर्थन करते हैं, वहां इस बात का भी

[श्री परिपूर्णानन्द पैयूतो]

आवश्यकता है कि हम अपने नौजवानों को इस प्रकार की शिक्षा दें कि वे विकास के कामों में अधिक से अधिक दिलचस्पी ले सकें, उन कामों में उन का योगदान हो सके, ताकि बेरोजगारी के कारण असंतोष की भावना हमेशा के लिए समाप्त हो जाये।

इन शब्दों के साथ मैं इस विधेयक का हार्दिक समर्थन करता हूँ।

SHRI AMARNATH VIDYALANKAR (Chandigarh): Mr. Chairman, Sir I think that this is one of the most non-controversial Bills that had ever been brought. I am not a lawyer, but exercising my common-sense, I would say that the Bill does not say anything which would be controversial. It only seeks to say that the "satisfaction" of the President mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any court on any ground. "Satisfaction" is really a psychological state of mind; it is not for anybody else to determine that; it is subjective. If a person says that he is 'satisfied', can anybody else say, 'No; you are not satisfied'? No one can dictate as to when one should be 'satisfied' and when one should not be 'satisfied'. It is not a question of anybody else's judgment to declare when the 'President' was satisfied, or at what point of time he should have been satisfied or not satisfied. This is a subjective thing. And in this matter the President has been given the discretion that when he is satisfied that certain conditions existed, he can take a certain course of action. Therefore, this is only a clarifying Bill. Really it does not take away any power from the judiciary. Rather, if the judiciary sought to take away the power of the President to define his "satisfaction", this Bill prevents the judiciary from taking that discretion from the President.

That is how I see and that is why I say that a little exercise of our common sense will show this is a most non-controversial Bill. I am surprised,

opposition has taken so much exception. Only it is for purposes of clarification, because many persons might go to court, to waste the time of the court and unnecessarily try to divert the attention of the people from more important things.

My friend, Shri Shamim, was saying that there was no logic in the arguments, what was the state of affairs and why emergency was so much necessary. If we want to progress, a certain climate is needed. We want to create proper climate but certain elements in the Opposition constantly attempted to spoil that atmosphere. They wanted to create a situation in which people should lose confidence in their Government, lose confidence in their own selves and lose confidence in the progress of the country. They wanted to perpetuate that kind of climate, and, therefore, it was absolutely necessary that if we wanted progress, we should try to improve the climate. There should be a climate, where the people should feel inspired, where the people should feel self-confidence and where the people should have sufficient amount of confidence in the Government that has been elected by the people. If the Government had not been elected by the people, and if there is any Government which has imposed itself on the people, everybody has right to destroy the confidence in that Government. But here is a Government which has been elected through democratic means by the people. To destroy the confidence in that Government and to create a climate where people should begin to feel that this Government was not going to achieve anything, that certainly is not desirable. According to the Constitution, there cannot be a minority Government. If this Government is not good, are the Opposition or any party in a position to form the Government? They cannot form the Government. Then should there be chaos? What was being attempted was to create a situation of chaos and in that chaos they thought, they could capture power in the country. This was the situation and this was the climate in which it was absolutely right for the

President to judge the situation and take action. It is for the President or the executive, and this was the prerogative of the executive, to judge the situation and decide when such action should be taken. This was the spirit and letter of the Constitution.

It has been said that the freedom has been curtailed. Whose freedom has been curtailed? Has the common man got the opportunity to voice his feelings in the press? He has not got this as the press is run by the barons of the press. I know certain instances, Mr. Chairman, where the workers wanted to get certain things printed in the press, legitimate things, their demands etc. and the press absolutely blacked them out. I know of instances, where even the late Prime Minister, Shri Jawahar Lal Nehru's speeches were blacked out by the press, because certain things that he said were not according to the taste and according to the wishes of our press.

So, the Press here, the way it is working, is not a free press. Therefore, the freedom of which our opposition members are talking was the freedom of a few and in order to protect the freedom of the people and in order to protect the freedom of the common man, it is absolutely necessary that the freedom of those few should be curtailed where they tried to impinge on the freedom of the people.

There is a lot of talk about corruption etc. I am surprised that the very same people who had been occupying administrative chairs, and at that time were being accused of corruption and many other things, are now coming out, accusing the present government of those very charges. Shri Morarji Desai—when he was a Minister, the same opposition was accusing him of corruption and personal attacks were being hurled at him. I do not want to go into the details. Biju Patnaik and many others were being at that time accused of corruption. Having spoilt the atmosphere for so many years when they were in the administration—

they were practically controlling the Congress Party—for that very situation that they had created themselves they are now accusing the present government. Being in the minority, they feel very much frustrated and in that frustration they would now like to create a situation of chaos and they thought that this is the only way to capture power.

I think it was a right thing that the Government has taken certain action and I support this amendment which I have said is most non-controversial and we should all support and pass it.

श्री मूल चन्द डागा (पाली) :
सभापति महोदय, यह बिल एक इन्फोर्मेन्ट और नान-कॉन्ट्रोवर्शियल बिल है। इस विषय पर श्रीमती माया रे ने हाई कोर्ट और सुप्रीम कोर्ट के नारे लुलिंग कोट कर दिये हैं। एक बात बड़ी साफ़ है—जब इस लोक तन्त्र में हम लोग सारे हिन्दुस्तान से चुन कर आते हैं और हमारे द्वारा राष्ट्रपति चुना जाता है, तो उसके प्रोक्लैमेशन का, उस की घोषणा का एक जज बैठ कर चैलेंज कर दे, उस के लिए खिलाफ़ निर्णय दे—यह कहां तक शोभाजनक है। आखिर हम जनता के चुने हुए प्रतिनिधि हैं, हमारे से ने कॅबिनेट बनती है, वह कॅबिनेट राय देती है और उस के आधार पर राष्ट्रपति द्वारा आर्डिनेन्स जारी होता है, उस आर्डिनेन्स का एक जज चैलेंज कर दे तो यह कहां तक ठीक है। हम यहां पर जनभावनाओं को रखते हुए आते हैं, यहां आ कर अपनी बात कहते हैं, उस के बाद कॅबिनेट डिस्मिशन लेनी है और फिर राष्ट्रपति, गवर्नर या प्रशासक कोई आर्डिनेन्स निकलता है, उस को कोर्ट में जा कर चैलेंज करना ठीक प्रथा नहीं थी। इस लिये आप अब जो कानून लायें हैं, यह बहुत ही जरूरी था, इस का सब-हाई कोर्ट्स ने माना है। किममल प्रासीजर कोड की दफ़ा 107 और 144 में भी एस० एच० प्रो० एमर कोई एक्सन लेता है तो उस पर भी मैजिस्ट्रेट एक्शन लेता है, वही जहां जन-

[श्री मूल शब्द आगे]

प्रतिनिधि होते हैं, लोकतान्त्रिक सरकार होती है और सरकार कोई कानून बनाती है, संकटकालीन स्थिति या आपातकालीन स्थिति की कोई घोषणा करती है तो उस को कोर्ट में चैलेन्ज कर दिया जाय, यह मुनासिब नहीं था, इस तरह के केसेज पहले बहुत हुए हैं। इस लिए यह कानून पहले ही माना चाहिए था। आप अब इस बिल को लाये हैं, ठीक है, इस में कोई झगड़ा नहीं है।

कुछ लोग समझते हैं कि इस में कोई नई बात आ गई है, लेकिन इस में नई बात कुछ नहीं है। सारी हाई कोर्ट्स ने इस को माना है। लेकिन इस में एक बात साफ़ रखी गई है—अब भी इस किस्म का कोई आर्डिनेन्स आता है तो उस पर पार्लियामेंट विचार करती है। पार्लियामेंट अगर समझती है कि वह आर्डिनेन्स ठीक नहीं है, तो उस को एप्रूव नहीं करती है, उस का अनुमोदन नहीं करती है। पार्लियामेंट के बाद भ. संविधान में लिखा है कि यदि वह कानून बन जाय तो भ. —

“If and so far as an Ordinance under this Article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.”

यानी अगर वह कानून बन जाता है तो उस को भी कोर्ट में चैलेन्ज किया जा सकता है। लेकिन जो आर्टिकलज यहां कोट किये गये हैं उन से साफ़ बाहिर है कि जन प्रतिनिधियों की बात को माना जाये अब कोई ऐसा जज है जो जनसंघ के दिमाग का है, साम्प्रदायिक छ्यालात का है तो वह सारे आर्डिनेन्स को खत्म कर सकता है। हम की एमरजेंसी में काम करना है, उधर जज उस को रोक दे तो उस से तो सारा मामला ही ठप्प हो जायगा। इस लिए इस तरह का मेकअप लेना बहुत जरूरी था।

आप जानते हैं हमारा संविधान 1950 में बना था—तब से हमने बहुत सी बातें सीखीं और अनुभव ही ऐसी चीजों को सिखाता है। हम को मालूम हुआ कि कुछ जज ऐसे होते हैं जो जैसा चाहें उजमेन्ट दे देते हैं। जज भी शोशल ह्यूमन बींग होते हैं उन के भी कुछ वेस्टेड इन्टरेस्ट हो सकते हैं, लेकिन हमें उन की बात को मानना पड़ता है। हम लोग जो जनता का प्रतिनिधित्व करते हैं, हम में से कैबिनेट बनती है, कोई प्राइम मिनिस्टर बनता है, कोई चीफ़ मिनिस्टर बनता है, कैबिनेट डिसेप्शन लेती है, उस के निर्णय को अब तक चैलेन्ज किया जा सकता था, लेकिन अब नहीं किया जा सकता। यह हमारा अधिकार है, क्योंकि हम जनता का प्रतिनिधित्व करते हैं और जनता की बात को मानने रख कर काम करते हैं। इस लिए यह बिल बिलकुल ठीक है। मेरा ता यह भी कहना है कि संविधान में अभी भी कई चैन्जेज की जरूरत है, हम पीपुल-मील प्रमेण्डमेन्ट्स लाने हैं, सेक्शन 75 को देखिए, इस में काफ़ी चैन्जेज की जरूरत है, इस लिये तमाम चीजों पर गौर कर के हमें काफ़ी चैन्जेज करने चाहिए।

श्री बरबारा मिह (होशियारपुर) :
चेयरमैन सहाय, ला मिनिस्टर ने जो तरमोस रखी है मैं उस के पार्लिटिकल आस्पेक्ट के बारे में कहना चाहता हूं। वह एक निहायत अहम तरमिस है। मैं अदालतों के बारे में कुछ नहीं कहना चाहता। हमें उन पर पूरा कानफ़ीडेंस है। यह एक मिसअन्डरस्टैंडिंग हो गई है कि हम अदालतों की पावर्स को करटेल करने जा रहे हैं। यह धारणा गलत है। हम उन की पावर्स को करटेल नहीं कर रहे हैं, बल्कि हम ने कहा है कि नये हालात को हमें देखना चाहिए। 27 साल में हिन्दुस्तान में बड़े परिवर्तन आये हैं, इस बीच में बहुत सी नई चीज आयी हैं। ऐजुकेशनल इंस्टीट्यूशन्स के सोचने और काम करने के ढंग में, बच्चों के सोचने और काम करने के ढंग से तबकीली आयी है। आज

अधीनों का वक्त तो है नहीं जब कि वह स्टेटसको में यकीन करते थे और कोई चेंज किसी तरफ किसी भी तरह का नहीं करना चाहते थे। आज हम प्रीवेंसिव तौर पर आगे बढ़ना चाहते हैं जिस के लिए चेंज लाना निहायत जरूरी है। जो हालात पहले थे वह आज नहीं रहे। हम बदलते हुए हालात के पेशेनजर आगे बढ़ना चाहते हैं।

मुझे याद है जब डा० गजेन्द्रगडकर, जो हमारे चीफ जस्टिस थे, उन्होंने एर्जीक्यूटिव और जुडिशियरी के सेपरेशन के बारे में कहा था कि दोनों को अलग अलग करना चाहिए। उस वक्त मैं पंजाब में होम मिनिस्टर था। उन्होंने कहा था कि हमारे जजेज को ध्यान रखना चाहिए अब हालात वह नहीं है जो पहले थे। आज जो सोशियो इकोनामिक चेंजेज आ रहे हैं वह पहले नहीं थे और उस के मुताबिक आने दिमाग को ढालना चाहिए। जो लोग मुश्किलफत करते हैं उन को पता चल जाएगा कि उन्होंने किस ढस से कहा कि इस ढांचे को तबदील करना चाहिए। जो फैसले होते हैं, उन पर कोई ऐस्पेशन में कास्ट नहीं करना चाहता, मान लीजिये मेरा पोलिंग एजेन्ट कल को जज बन जाये तो उस का जो अंदाज है वह वही होगा जो पहले था। इसलिए उन को नोमिनेट करते वक्त ला मिनिस्टर साहब देखें कि आया वह प्रीवेंसिव विचारों के हैं कि नहीं, बदलते हुए हालात के मुताबिक वह चलना चाहते हैं कि नहीं। पांच मैम्बरों की फ्रैमिली की डेफ्रीनीशन क्या है इस के मुताबिक एक केस कोर्ट में पड़ा हुआ है, वह लागू नहीं हो सकती डेफ्रीनीशन क्योंकि जजेज का कहना है कि डेफ्रीनीशन सरकार नहीं मेशन करेगी, बल्कि हम करेंगे। मैं इस बात को कहने में कतई नहीं झिझकता कि वहां भी बेस्टेड इंटररेस्टस हैं जो हमारे खिलाफ मुकदमे करते हैं।

एल०आई०सी० के मामले में जब जनरल इन्वियरेंस को हम नैशनेलाइज करना चाहते थे तो आप ने देखा कि वकीलों द्वारा क्या क्या आर्गुमेंट्स दिये गये। उन के पीछे क्या ताकतें थीं

यह भी हमें मालूम है। यह एक बहन है जिस पर सारी बातों को तोला जाता है। वह पुराना बहन आज के माहिल के मुताबिक नहीं है। इसलिए यह जो संशोधन आया माकूल आया है। हम चाहते हैं कि सोशियो इकोनामिक रिबोल्यूशन आये, जो 21 पोइंट प्रोग्राम प्रधान मंत्री ने कहा है उस को असली शकल दी जाये। अगर किसी जगह कोई खराबी है तो उस को जरूर दूर किया जाए? लेकिन इस के साथ ही हमें यह भी देखना है कि जो पीसफुल नागरिक हैं उन पर कोई हाथ न डाला जाए, इस बात का पूरा इंतजाम होना चाहिए। जो अनेडि-जायरेबिल ऐनीमेंट है, जो ब्लैक मार्फि टियर्स हैं स्मगलर्स हैं उन को सखती से डील किया जाय। आज उन के लिए खुली छूट थी, यह जानते हुए भी कि स्मगलर हैं वह हाई कोर्ट और सुप्रीम कोर्ट से छूट जाते थे और हिन्दुस्तान की इकोनामी को शटर कर रहे थे। यह सी-सा का गैम बन्द होना चाहिए। अगर विरोधी दल के लोग सोशियो इकोनामिक चेंज लाना चाहते हैं तो जनता के सामने अपना प्रोग्राम रखें, जनता उस का फैसला करेगी। लेकिन बिना जनता का मंडेट लिये प्रीवेंसिव मैजर्ज को स्टाल करने की जो कार्यवाही यहां विरोधी दलों द्वारा की जा रही थी, वह डेमोक्रेसी के खिलाफ जाता था। इसलिए हम डेमोक्रेसी को मजबूत करने के लिए यह तरकीब लाये हैं। जो बुराइयां समाज में हैं, और बुरे इस्तीसमाज में हैं, उन को दूर विया जाये। इसलिए मैं इस तरकीब का समर्थन करता हूं।

श्री चन्द्र भालमनी तिवारी (बलरामपुर): सभापति महोदय, विधि मंत्री ने 39 वां संशोधन विधेयक पेश कर के कोई नई चीज हमारे सामने नहीं रखी है। हमारे संविधान में कई जगहों पर और कई टाइमों में कुछ चेंजेज हुए हैं। कई प्रकार के चेंजेज हुए हैं उस की पुनारावृत्ति न हा इस के लिए हम को संशोधन करना पड़ा। संशोधन करना हमारा अधिकार है। सुप्रीम कोर्ट का अधिकार नहीं है। यह संशोधन इसलिए किया गया कि देश में जो

[श्री चन्द्रमालमन, तिवारा]

कुल श्राजकता, अनियमिततायें फ्रीज रखी थीं उन पर पाबन्दी लगाना आवश्यक था। विरोधी दल के लोग जो हम से सहमत नहीं हैं उन्होंने ने इस को अच्छा नहीं माना और उन्होंने पार्लियामेंट का बाधकाट किया। इस बात पर उन को शर्म आनी चाहिए कि डेमोक्रेटिक पैटन को बहू चैलेंज करना चाहते हैं, बहुमत के निर्णय को स्वीकार नहीं करना चाहते। यह उन का दोष है। हम किसी का अधिकार नहीं ले रहे हैं, सुप्रीम कोर्ट का अधिकार नहीं ले रहे हैं, न जनता का अधिकार ले रहे हैं। बल्कि हम तो अधिकार दे रहे हैं। चेयरमैन साहब आप एक दफा प्रीमाइड कर रहे थे, आप को याद होगा कि श्री मधु लिमये ने क्या हरकत नहीं की। क्या वह शोभा देता है। अगर उस का हम दोहराते तो अच्छा नहीं था। इसलिए यह संशोधन लाया गया है।

25 तारीख को जो विरोधी दलों की मीटिंग थी, उस के बाद 29 तारीख से देश व्यापी सम्पूर्ण क्रांति का नारा लगाने के बाद बड़े कुछ करना चाहते थे। उन्होंने सेना और पुलिस को उकसाया। यह लोकतंत्र ढांचे के विपरीत था। लेकिन वह इस को नहीं मानते क्यों कि उन का स्वार्थ निम्न नष्ट हो रहा था। लेकिन प्रधान मंत्री इस को कब तक देखनीं रहीं। विरोधी दलों की कार्यवाही जब चरम-सीमा पर पहुंच गई तब प्रधान मंत्री को उस पर अक्रुश लगाना पड़ा। इस अक्रुश से फायदा हुआ है। बाजार में मारी चोजे उपलब्ध हैं, श्राजक तन्व ठंडे पड़ गये हैं, और जो अप्रोजीशन के लीडर्स थे, जिन्होंने ने इस स्थिति को पैदा किया था, वह भी आज ठंडे पड़ गये हैं। बुरे दिन कब आते हैं? जब कोई बुरा काम करता है। लिहाजा जब इन्होंने ने बुरा काम किया तो उन को यह सजा मिली। यह उन के लिए आवश्यक था।

मैं निवेदन करना चाहता हूँ कि आज की स्थिति में बहू एमेंडमेंट बहुत आवश्यक था और इसीलिए यह लाया गया है। इस बारे

में मैं एक और चीज निवेदन करना चाहता हूँ और वह यह है कि एमेंडमेंट, जैसा कि मैं ने पहले कहा, आवश्यकता पड़ने पर लाया जाता है और यह जो विरोधी दलों का कहना है कि एमेंडमेंट मुनासिब वक्त पर नहीं लाया गया और यह पहले होना चाहिए था, तो इस सम्बन्ध में मैं यह कहूँगा कि देश का जो लीडर होता है, जो न्याय पक्ष होता है, उस को भी समय चाहिए और समय के अनुसार जब उन्होंने यह देखा कि इस बिल का लाना आवश्यक हो गया है, तो उस समय उन्होंने इस मंशोधन विधेयक को पार्लियामेंट में रखा है।

इन शब्दों के साथ मैं इस संशोधन बिल का समर्थन करता हूँ।

SHRI SHYAM SUNDER MOHAPATRA: Mr. Chairman, Sir, the entire country was probably waiting for a situation like this that India will pass through an emergency. I hope it will be a continuous emergency to strike at the very root of vested interests so that we can have a social transformation from a feudalistic economy to a socialistic economy.

In 1971, when the emergency was promulgated, I think we should have taken note of the fact that the power of the vested interests probably is much more than the power of the democratic forces and, some such situation should have been anticipated that time and the amendments should have been brought at that time so that to-day, we would not have taken Shri Jayaprakash Narayan and his hordes to the jail. They could have been curbed by the popular forces, by the popular resurgence in 1971 itself-better late than never.

It is always the satisfaction of the President, as head of the executive, whether the situation has arisen due to external forces or internal forces, that it warrants the state of emergency. Satisfaction is most important and that is why the amendment is:

"That the satisfaction shall be final and conclusive and shall not

be questioned in any court on any ground."

MR. CHAIRMAN, Sir, we cannot deny that there is a danger from external forces. After the Simla Accord, Pakistan's attitude has not changed. We have seen it; we have seen the activities of the C.I.A. in foreign countries as also their involvement in our own country. We have seen the weapons still going to Pakistan. The Chinese attitude has not changed at all. We know how the vested interests tried to create a situation in Sikkim. So, we cannot say that there is no danger from external forces and we all know how the internal vested interests in our country, were trying to subvert our liberty, our independence, our forces of progress. Shri Jayaprakash Narayan was only a symbol. I do not attach any importance to him. He is known for his negative attitude throughout his life. He has emerged only as a symbol of the vested interests in our country. The R.S.S., the Anand Margis, the C.P.M. or the communal forces here and there find in him the last resort of the scoundrels. Mr. Chairman, Sir, Shri Jayaprakash Narayan has gone to jail. But, the boys of Shri Jayaprakash Narayan are still outside to create a situation to subvert our liberty. So, it is absolutely correct that we are passing through a state of emergency now.

The people go to courts thinking that every type of robbery is available there; thieves go to the court; dacoits go to the court; the daylight robbers go to the court and miscreants and smugglers go to the court thinking that the judiciary is above everything. One will realise that the responsibility lies with us, the politicians, of all political parties; the responsibility lies with those revolutionaries who want to create a new strata, new social revolution. Judiciary is only an offshoot of this revolution; it is only an offshoot of this legislative

process and it cannot arrogate to itself the supreme powers to decide anything on this earth. That is why when the smugglers were released and when our young and dynamic Minister, Shri Pranabkumar Mukherjee was helpless, I was thinking whether there was any redress by which the smugglers would be debarred from going to court. And here is the amendment. These smugglers will not have now any refuge under the umbrella of judiciary.

Mr. Chairman, we are passing through a grave time. No country in the world which has commended socialism has passed through a stage of absolute democracy. It should be a restricted democracy. It should be a limited democracy. You cannot arrogate to yourself every kind of fundamental right that if you want to write anything you can write or if you want to speak anything you can speak or if you want to move anywhere with any kind of weapon you can move and there will be no restriction. Fundamental rights are not sacrosanct. It can also be challenged by the "general will". What is paramount is this legislature and the entire nation which is now being symbolised in the personality of Smt. Indira Gandhi is not closing its eyes to the realities.

MR. CHAIRMAN, I think that this amendment will go a long way to solve many problems hitherto unsolved. Socialism can be established by a type of regimentation; may be a limited regimentation. We have been thinking of bringing in ceiling on urban property and redress to the poor students but nothing could be done so far. The economic programme and the social transformation objective, all these are symbolised today in this amendment. I have every reason to believe, if need be, if we want to bring an egalitarian society or a change in the society, some what

[Mr. Chairman]

may, this emergency may take a long time. We may have a continued process of emergency so that vested interests will not be allowed to raise their heads.

SHRI K. NARAYANA RAO (Bobilli): Mr. Chairman, Sir, I am not going to elaborate on the question of subjective satisfaction as it has been ably and elaborately explained by the hon'ble Law Minister and Mrs. Maya Ray. I will only confine myself to what Mr. Daschowdhury has also referred to, namely, the proposed amendment to Article 359. This is an important amendment which is long overdue. This should have been brought soon after the Supreme Court decided the Makkan Lal case. As the Constitution stands today there is a slight distinction between Article 19 and other fundamental rights. During the emergency so far as Article 19 is concerned it cannot stand against any executive action. It ceases to be a restriction on the legislative and executive power. But that is not so in the case of other fundamental rights, namely, liberty and other religious rights. There, the distinction is these rights will remain but the remedies will be suspended. The Supreme Court had been confronted with this delicate situation in the Makkan Lal case and they said during the emergency the right of a citizen to move the court has been taken away but his substantive right remained so that when the emergency is over it is open to an ordinary citizen to go to a court of law and seek redress. If that is allowed it will be extremely difficult for the exchequer to cope up with the situation. In England there used to be Indemnity Act but this is not possible in India because here the rights involved are fundamental rights and they cannot be affected by an ordinary legislation by Parliament. Therefore, I humbly submit that this step should have been taken much earlier but nonetheless it is a very

welcome step and it should be supported by all the Members.

My last submission is, I just wonder, whether time has not come when we have to sit up and think of bringing about a comprehensive review of the functioning of the Constitution which is overdue because each time some difficulty arises we have to come to Parliament for amendment. So, I suggest that it is time for us to have an overall look and review the entire functioning of the Constitution.

Therefore, for that purpose, I humbly submit that a committee may be appointed, not necessarily a parliamentary committee, but an expert committee, where Members of Parliament may also be there, apart from some jurists and judges, to see whether there are any changes required in the Constitution.

With these remarks, I welcome this Bill.

प्रो० नारायण चन्द्र पराशर (हमीरपुर):
मभापति महोदय, विधि मंत्री द्वारा प्रस्तुत संविधान संशोधन बिल का मैं स्वागत एवं समर्थन करने के लिए खड़ा हुआ हूँ।

जैसा कि आपको मालूम है किसी भी देश की जनता अपने आप में सर्वश्रेष्ठ शक्ति रखती है और उसकी विचारधारा और उसकी इच्छा शक्ति प्रजातंत्र का मूल स्त्रोत है और उसी के अनुसार देश की शासन प्रणाली और संविधान की प्रक्रिया चलनी चाहिए। अतः राष्ट्रपति जी की संतुष्टि होने पर उनको यह अधिकार है कि वह संविधान की धारा 123 के अनुसार देश में आपातकालीन स्थिति की घोषणा कर सकें और उसको किसी भी न्यायालय में चुनौती न दी जा सके इसको ले कर जो संशोधन लाया गया है वह देश की जनता की भावनाओं का प्रतीक है। वास्तव में कोई बात अस्पष्टता की नहीं की लेकिन फिर भी जो अस्पष्टता की

उसका कोई भी व्यक्ति दुरुपयोग कर सकता था और उसका सहारा ले कर इस मामले को न्यायालय में ले जा कर एक ऐसी स्थिति पैदा कर सकता था जो कि खतरनाक हो सकती थी और इसलिए यह जरूरी समझा गया कि संविधान की धारा 123 का संशोधन किया जाए। यह सारे देश पर लागू होती है। उसी प्रकार प्रांतों के लिए धारा 213 और केन्द्रीय शासित प्रदेशों के लिए धारा 239 (बी) जो है इनका भी संशोधन इसी के अनुसार किया जा रहा है। मैं इन संशोधनों का स्वागत करता हूँ।

साथ ही जो मेरे एक माननीय मित्र ने सुझाव दिया है उसका भी मैं समर्थन करता हूँ। उन्होंने कहा है कि समय आ गया है कि हम सारे संविधान पर पुनर्विचार करें और एक एक धारा या दो दो धाराओं का संशोधन करते रहने के बजाय या 39वें एमे मेंट में जिस में सान धाराओं का संशोधन किया जा रहा है, पर विचार करने के बजाय इस पर विचार करें कि पूरे संविधान में किन किन संशोधनों की आवश्यकता है, उसमें कौन कौन सी त्रुटियाँ हैं और जो अनुभव हमें आज तक प्राप्त हुए हैं उनको देखें हुए और कौन-कौन से संशोधन करने की आवश्यकता है, उन सब को एक साथ लाया जाए और उनको करवाया जाए। उन्होंने इसके लिए एक विशेषज्ञ समिति बनाने का सुझाव दिया है जिसका मैं स्वागत करता हूँ। वह समिति उन अनुभवों को देखें जो पिछले पच्चीस सालों में हमारे सामने आए हैं, इसको देखें कि हमारा प्रजातंत्र किन चरणों में से हो कर गुजरा है, कौन कौन सी बाधाएँ उसके सामने उपस्थित हुई हैं और आगे क्या हो सकती हैं, क्या क्या हमारी उपलब्धियाँ रही हैं और उन सब उपलब्धियों, उन सब इच्छाओं, उन सब अनुभवों को एक नये ढंग से देखा जाय और युग की आत्मा के अनुकूल, जनता की इच्छाओं के अनुकूल और आज की आवश्यकताओं के अनुकूल जो भी संशोधन आवश्यक हैं उनको वह सुझाए।

इन शब्दों के साथ सात धाराओं का जो संशोधन किया जा रहा है इसका मैं समर्थन करता हूँ और इस हेतु जो बिल रखा गया है उसका स्वागत करता हूँ।

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS. (SHRI H. R. GOKHALE): Mr. Chairman Sir, my task is very considerably lightened because of the speeches made by hon. Members on both the sides. Many of the points which would have been necessary to be elaborated are perhaps not so necessary to be done now.

14.54 hrs.

[SHRI VASANT SATHE in the Chair]

In my opening speech, I had pointed out and that has been repeated by several Members when they participated in the debate, that what we are really seeking to do by the present Bill by which several provisions of the Constitution are sought to be amended, is not anything which is intended or meant to be derogatory to the jurisdiction of the Supreme Court or any other Court in India.

In fact, with reference to articles which are the subject matter of the present Bill, they stand in a way on a different footing altogether. Articles 123, 213, 352, 360, 239B and last, though not the least, 359 all stand in a category by themselves. That is why even before the present Constitution came into force in respect of provisions ranging back to the Government of India Act 1915, the Government of India Act 1919 and ultimately the Government of India Act 1935 which preceded the Constitution, similar provisions had been construed by the then existing highest courts, namely the Federal Court and the Privy Council, to mean that matters which are essentially political in substance should not be matters of judicial scrutiny and, therefore, should be non-justiciable. There were provisions in those Acts also as to

[Shri H. R. Gokhale]

declaration of emergency and promulgation of ordinances in such emergencies. Questions were raised and were taken to the highest courts and the courts have consistently held that whether or not an emergency exists depends on the assessment or consideration of several factors which cannot possibly fall within the jurisdiction of the courts.

Now, take for example, the declaration of an emergency on the ground of threat of external aggression. It is only the Government which knows what is the real impending threat in respect of the integrity and security of the country. Could it ever be contemplated by any reasonable person that all such material which the Government has in respect of possible actions by foreign powers threatening the security of the country should be laid bare and kept open in public for the scrutiny of the courts? Because if that were done, it was the surest way of strengthening the hands of the enemy. In the very nature of things, these are matters which ought not to be in the public gaze. As you know, courts in our country rightly work in the public gaze; they do not work *in camera*. Courts do not have the power to have material which only they can look into and which will not be available to the contending parties before the courts. When once a matter is taken before the court for its decision as to whether a certain emergency declared is rightly or wrongly declared. Therefore, in the very nature of things these are matters which are not matters for judicial scrutiny but which are matters which have to be left, which are inherently of such a nature that they have to be left, to the discretion and decision of the executive in a democratic country which is elected by the support of the electorate in duly held elections.

The same is the case in respect of an emergency declared relating to threatened internal disturbance either

in the whole of India or in any part thereof. The best safeguard which is provided in respect of declaration of emergency is already there; it has not been taken away by any of these amendments. It is that such a declaration of emergency must have parliamentary support. It must come before Parliament within the period specified, namely, two months, not more than two months. What more safeguard in respect of such political declarations of emergency can be there than the support of the people who have been duly elected by the electorate in this country?

Now there are many things the Prime Minister has spoken of and Shri Jagjivan Ram has spoken of. I am quite sure that matters to the extent it was proper to lay before the public to justify the emergency have been laid before them. But there could be matters which in the interest of the very security which is intended to be protected may not be possible to be so laid. Now if this is taken to the courts, it is just difficult to imagine what would be the consequences as to the intention of protecting the security of India either on the ground of external aggression or on the ground of safeguarding internal security. That is why the courts themselves as a matter of restraint which they have imposed on themselves in the exercise of their jurisdiction have consistently taken the view that these are matters which are not for judicial scrutiny.

15.00 hrs.

Courts accordingly, I imagine, would rightly realise that if they were put to this task of scrutinising the material which, if disclosed, would defeat the very purpose for which the emergency was declared, namely matters which ought not to be disclosed to the enemy and which, if disclosed, would strengthen the hands of the enemy. This is not the end which they would at any rate attempt to subserve by claiming jurisdiction

where it did not exist. That explains the consistency of the view taken by the courts in respect of the justiciability of proclamations under article 352. So many other articles are there in the amendment but substantially they are all of the same nature. In respect of proclamation of ordinances when Parliament is in recess, there are restrictions in that article. When the President or the Governor is satisfied that emergent or urgent action is necessary and it is not possible to wait until Parliament is summoned, the power to issue ordinances is given, subject to the restraint that it will have to be substituted within a specific period by a law passed by Parliament. The very nature of things in this article is such that they are on a field which is certainly not the judicial field.

Hon. Members who supported me said earlier, rightly that this amendment did not do anything new but it merely clarified, if any clarification was necessary, the existing legal position as to the powers of the court. One hon. Member said that till this amendment was brought, they had respect for the Government and for the Prime Minister and now that respect was lost. If the hon. Member had taken care, he would have seen that this was not the first time that certain matters were made non-justiciable in the Indian Constitution. Certain matters have been taken out of the purview of the court from the very inception, from the day the Constitution came into force. If I were to refer to all those matters, it will take a considerable time. But I can tell you that there are at least 18 articles of the Constitution in that category. By the very nature of the subject matter dealt with in those articles, they were not subject matters before judicial scrutiny. Even in respect of economic matters, what is the position? Soon after Independence, in 1951 and 1952, we had new articles like 31A. Why? Because it was found that on account of justiciability, major economic reforms like abolition of zamindari and so on were

set at naught, not deliberately by the courts but because of the fact that the articles that were there gave rise to the interpretation that they were justiciable. Nobody ever complained that the amendments which were made were not properly made because they encroached on the powers of the court. Therefore, I want to refute the allegation made by one or rather only one hon. Member that it is an attempt to encroach on the jurisdiction of the court or to take away the rights of the judiciary. One important and relevant point was made by my senior colleague who was a distinguished predecessor, former law Minister, Mr. Manumanthaiya. It is a recognised principle in jurisprudence in a Constitution like ours where we have separation of powers, namely, judiciary, executive and the legislature, all proceed on the basis that the three must function in their respective fields. One should not encroach on the other or *vice versa*.

Now to the extent to which the powers were not meant for judicial scrutiny and if they are not left for judicial scrutiny, I think it is absolutely wrong to say that this is an attempt to take away the judicial power of the free structure of federal Constitution of India. Sir, many other things have been said and I do not think any clarification is necessary because they virtually supported the basic concept which I have mentioned in my opening speech. I entirely agree with my hon. friend, Shri S. M. Banerjee, who spoke that ultimately power is vested; it is a power which is not vested for abuse, it is not vested for misuse and no one can ever say that abuse of power is tolerated and that is why Babuji, when he spoke this morning and even earlier also, had categorically stated that in a vast country like India when power is exercised at different levels—I do not mean to say that the abuse of power on a fractional basis here and there can be altogether ruled out—all that the Government has to take care about is that this does not happen and adequate precautions are taken to see that the

[Shri H. R. Gokhale]

powers which are given in an emergency situation are not abused and that adequate checks and counter checks, balance and counter balance are placed on these powers so that it does not lead to misuse. It was also said that the Government has taken advantage of the Proclamation of the Emergency for bringing this Constitutional Amendment. It is a simple thing to know that for bringing this amendment, declaration of emergency was not necessary at all. It is not like passing, for example D.I.R., M.I.S.A. or such other measure which could only be legislations that could be approved in an emergency situation, resulting out of the declaration of emergency. Power to amend the Constitution is plenary as I have repeatedly stated, and therefore to say that because we have declared emergency we are now moving this amendment is, to say the least, a clear misconception of the power to amend the Constitution. I do not think that any further elaboration is necessary. I am grateful to all the hon. Members for the support that they have extended to this amending Bill and I move that the Bill be taken into consideration.

MR. CHAIRMAN: Now, before I put the question for consideration of the House—this being the Constitution Amendment Bill—I would say that voting will take place by division. Now let the lobbies be cleared.

The lobbies have been cleared.

The question is:

“That the Bill further to amend the Constitution of India be taken into consideration.”

The Lok Sabha divided.

[15.15 hrs.]

Division No. 5]

AYES

Achal Singh, Shri
Aga, Shri Syed Ahmed
Agrawal Shri Shrikrishna

Ahirwar, Shri Nathu Ram
Alagesan, Shri O. V.
Ambesh, Shri
Anand Singh, Shri
Ankineedu, Shri Maganti
Ansari, Shri Ziaur Rahman
Appalanaidu, Shri
Arvind Netam, Shri
Austin, Dr. Henry
Awdhesh Chandra Singh, Shri
Azad, Shri Bhagwat Jha
Aziz Imam, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Balakrishniah, Shri T.
Banamali Babu, Shri
Banerjee, Shri S. M.
Banerji, Shrimati Mukul
Barman, Shri R. N.
Barua, Shri Bedabrata
Barupal, Shri Panna Lal
Basappa, Shri K.
Basumatari, Shri D.
Besra, Shri S. C.
Bhagat, Shri B. R.
Bhagat, Shri H.K.L.
Bhargava, Shri Basheshwar Nath
Bhatia, Shri Raghunandan Lal
Bhattacharyya, Shri Chapalendu
Bheeshmadev, Shri M.
Bhuvarahan, Shri G.
Bist, Shri Narendra Singh
Brahmanandji, Shri Swami
Brij Raj Singh-Kotah, Shri
Buta Singh, Shri
Chakleshwar Singh, Shri
Chandra Gowda, Shri D. B.
Chandrakar, Shri Chandulal
Chandrashekharappa Veerabasappa,
Shri T. V.
Chandrika Prasad, Shri
Chaturvedi, Shri Rohan Lal
Chaudhari, Shri Amarsinh

Chaudhary, Shri Nitiraj Singh
 Chavan, Shrimati Premalabai
 Chavan, Shri Yeshwantrao
 Chellachami, Shri A. M.
 Chhotey Lal, Shri
 Chhotey Lal, Shri
 Chikkalingaiah, Shri K.
 Choudhury, Shri Moinul Haque
 Daga, Shri M. C.
 Dalbir Singh, Shri
 Dalip Singh, Shri
 Damani, Shri S. R.
 Darbara Singh, Shri
 Das, Shri Anadi Charan
 Das, Shri Dharnidhar
 Dasappa, Shri Tulsidas
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Desai, Shri D. D.
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharamgaj Singh, Shri
 Dhusia, Shri Anant Prasad
 Dinesh Singh, Shri
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Doda, Shri Hiralal
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Dwivedi, Shri Nageshwar
 Engti, Shri Biren
 Gaekwad, Shri Fatesinghrao
 Ganesh, Shri K. R.
 Ganga Devi, Shrimati
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gavit, Shri T. H.
 Ghosh, Shri P. K.
 Gill, Shri Mohinder Singh
 Giri, Shri S. B.
 Giri, Shri V. Shanker
 Godara, Shri Mani Ram
 Gogoi, Shri Tarun

Gokhale, Shri H. R.
 Gomango, Shri Giridhar
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaheb
 Gowda, Shri Pampan
 Gupta, Shri Indrajit
 Hansda, Shri Subodh
 Hanumanthaiya, Shri K.
 Hari Kishore Singh, Shri
 Hari Singh, Shri
 Hashim, Shri M. M.
 Ishaque, Shri A. K. M.
 Ismail Hossain Khan, Shri
 Jadeja, Shri D. P.
 Jaffer Sharief, Shri C. K.
 Jagjivan Ram, Shri
 Jamilurrahman, Shri M.
 Jeyalakshmi, Shrimati V.
 Jha, Shri Chiranjib
 Jharkhande Rai, Shri
 Jitendra Prasad, Shri
 Joshi, Shri Popatlal M.
 Joshi, Shrimati Subhadra
 Kadam, Shri Dattajirao
 Kadam, Shri J. G.
 Kadannappalli, Shri Ramachandran
 Kader, Shri S. A.
 Kahandole, Shri Z. M.
 Kailas, Dr.
 Kakodkar, Shri Purushottam
 Kakoti, Shri Robin
 Kale, Shri
 Kamakshaiah, Shri D.
 Kamala Prasad, Shri
 Kamble, Shri N. S.
 Kamble, Shri T. D.
 Kamla Kumari, Kumari
 Kapur, Shri Sat Pal
 Karan Singh, Dr.
 Kasture, Shri A. S.
 Kathamuthu, Shri M.
 Kaul, Shrimati Sheila

Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Khadilkar, Shri R. K.
 Kinder Lal, Shri
 Kisku, Shri A. K.
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Koya, Shri C. H. Mohamed
 Krishnan, Shri G. Y.
 Krishnan, Shrimati Parvathi
 Krishnappa, Shri M. B.
 Kulkarni, Shri Raja
 Kureel, Shri B. N.
 Kushok Bakula, Shri
 Lakkappa, Shri K.
 Lakshminarayanan, Shri M. R.
 Lambodar Baliyar, Shri
 Laskar, Shri Nihar
 Lutfal Haque, Shri
 'Madhukar' Shri K. M.
 Mahajan, Shri Vikram
 Mahajan, Shri Y. S.
 Maharaj Singh, Shri
 Majhi, Shri Gajadhar
 Majhi, Shri Kumar
 Malaviya, Shri K. D.
 Malhotra, Shri Inder J.
 Mallanna, Shri K.
 Mallikarjun, Shri
 Mandal, Shri Jagdish Narain
 Mandal, Shri Yamuna Prasad
 Manhar, Shri Bhagatram
 Manjhi, Shri Bhola
 Maurya, Shri B. P.
 Mehta, Dr. Jivraj
 Mehta Dr. Mahipatray
 Melkote, Dr. G. S.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G. S.
 Modi, Shri Shrikishan
 Mohammad Tahir, Shri
 Mohammad Yusuf, Shri
 Mohan Swarup, Shri

Mohsin, Shri F. H.
 Muhammed Khuda Bukhsh, Shri
 Munsif, Shri Priya Ranjan Das
 Murmu, Shri Yogesh Chandra
 Muruganantham, Shri S. A.
 Nahata, Shri Amrit
 Naik, Shri B. V.
 Nanda, Shri G. L.
 Negi, Shri Pratap Singh
 Nimbalkar, Shri
 Oraon, Shri Kartik
 Oraon, Shri Tuna
 Pahadia, Shri Jagannath
 Painuli, Shri Paripoornanand
 Palodkar, Shri Manikrao
 Pandey, Shri Damodar
 Pandey, Shri Krishna Chandra
 Pandey, Shri Narsingh Narain
 Pandey, Shri R. S.
 Pandey, Shri Sarjoo
 Pandey, Shri Sudhakar
 Pandey, Shri Tarkeshwar
 Pandit, Shri S. T.
 Panigrahi, Shri Chintamani
 Pant, Shri K. C.
 Paokai Haekip, Shri
 Parashar, Prof. Narain Chand
 Parikh, Shri Rasiklal
 Parthasarathy, Shri P.
 Paswan, Shri Ram Bhagat
 Patel, Shri Arvind M.
 Patel, Shri Natwarial
 Patel, Shri Prabhudas
 Patel, Shri R. R.
 Patil, Shri Anantrao
 Patil, Shri C. A.
 Patil, Shri E. V. Vikhe
 Patil, Shri Krishnarao
 Patil, Shri S. B.
 Patil, Shri T. A.
 Patnaik Shri Banamali
 Patnaik Shri J. B.
 Peje, Shri S. L.

Pradhan, Shri Dhan Shah
 Pradhani, Shri K.
 Purty, Shri M. S.
 Qureshi, Shri Mohd. Shaif
 Raghu Ramaiah, Shri K.
 Rai, Shrimati Sahodrabai
 Raj Bahadur, Shri
 Rajdeo Singh, Shri
 Ram, Shri Tulmohan
 Ram Dayal, Shri
 Ram Prakash, Shri
 Ram Sewak, Ch.
 Ram Singh Bhat, Shri
 Ram Surjit Prasad, Shri
 Ram Swarup, Shri
 Ramji Ram, Shri
 Ramshekar Prasad Singh, Shri
 Rao, Shrimati B. Radhabai A.
 Rao, Shri J. Rameshwar
 Rao, Shri Jagannath
 Rao, Dr. K. L.
 Rao, Shri K. Narayana
 Rao, Shri M. S. Sanjeevi
 Rao, Shri M. Satyanarayan
 Rao, Shri Nageswara
 Rao, Shri P. Ankineedu Prasad
 Rao, Shri Pattabhi Rama
 Rao, Shri Rajagopala
 Rao, Dr. V. K. R. Varadaraja
 Raut, Shri Bhola
 Ravi, Shri Vayalar
 Ray, Shrimati Maya
 Reddi, Shri P. Antony
 Reddy, Shri K. Ramakrishna
 Reddy, Shri M. Ram Gopal
 Reddy, Shri P. Bayapa
 Reddy, Shri P. Ganga
 Reddy, Shri P. Narasimha
 Reddy, Shri P. V.
 Reddy, Shri Sidram
 Reddy, Shri Y. Eswara
 Richhariya, Dr. Govind Das
 Rohatgi, Shrimati Sushila

Roy, Shri Bishwanath
 Rudra Pratap Singh, Shri
 Sadhu Ram, Shri
 Saini, Shri Mu'ki Raj
 Samanta, Shri S. C.
 Sambhali, Shri Ishaque
 Sanghi, Shri N. K.
 Sangliana, Shri
 Sankata Prasad, Dr.
 Sant Bux Singh, Shri
 Sarkar, Shri Sakti Kumar
 Satish Chandra, Shri
 Satpathy, Shri Devendra
 Satyanarayana, Shri B.
 Savant, Shri Shankarrao
 Savitri Shyam, Shrimati
 Sayeed, Shri P. M.
 Sen, Dr. Ranen
 Sethi, Shri Arjun
 Shafee, Shri A.
 Shafquat Jung, Shri
 Shahnawaz Khan, Shri
 Shailani, Shri Chandra
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankar Dev, Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P.
 Sharma Dr. H. P.
 Sharma, Shri Madhoram
 Sharma, Shri Nawal Kishore
 Sharma, Shri R. N.
 Sharma, Dr. Shanker Dayal
 Shashi Bhushan, Shri
 Shastri, Shri Biswanarayan
 Shastri, Shri Raja Ram
 Shistri, Shri Ramavatar
 Shetty, Shri K. K.
 Shinde, Shri Annasaheb P.
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Shukla, Shri Vidya Charan
 Siddayya, Shri S. M.

Siddheshwar Prasad, Prof.
Singh, Shri Vishwanath Pratap
Sinha, Shri Dharam Bir
Sinha, Shri R. K.
Sohan Lal, Shri T.
Sokhi, Sardar Swaran Singh
Stephen, Shri C. M.
Subramaniam, Shri C.
Sundarsanam, Shri M.
Sunder Lal, Shri
Suryanarayana, Shri K.
Swaminathan, Shri R. V.
Swamy, Shri Sidrameshwar
Swaran Singh, Shri
Tarodekar, Shri V. B.
Tayyab Hussain, Shri
Tewari, Shri Shankar
Thakre, Shri S. B.
Thakur, Shri Krishnarao
Tiwari, Shri Chandra Bhal Mani
Tiwari, Shri R. G.
Tiwary, Shri D. N.
Tombi Singh, Shri N.
Tulsiram, Shri V.
Uikey, Shri M. G.
Unnikrishnan, Shri K. P.
Vekaria, Shri
Verma, Shri Balgovind
Vidyalankar, Shri Amarnath
Vijay Pal Singh, Shri
Vikal, Shri Ram Chandra
Virbhadra Singh, Shri
Yadav, Shri Chandrajit
Yadav, Shri D. P.
Yadav, Shri Karan Singh

Yadav, Shri R. P.
Zulfiqar Ali Khan, Shri

NOES

Shamim, Shri S. A.

MR. CHAIRMAN: The result* of the division is Ayes: 340; Noes: 1

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted

MR CHAIRMAN: We shall now take up clause-by-clause consideration. Since there are no amendments, I shall put clauses 2 to 8 together. The question is:

"That clauses 2 to 8 stand part of the Bill"

The doors are closed Do you want the lobbies to be cleared?

HON MEMBERS: No.

MR CHAIRMAN: Division.

The Lok Sabha Divided:

Division No. 6] [15.18 hrs.

AYES

Achal Singh, Shri
Aga, Shri Syed Ahmed
Agrawal, Shri Shrikrishna
Ahirwar, Shri Nathu Ram
A'agesan, Shri O. V.
Ambesh, Shri
Anand Singh, Shri

*The following Members also recorded their votes for AYES:

Sarvashri Umed Singh Rathia, Prabodh Chandra, N. Shivappa and Genda Singh.

Ankineedu, Shri Maganti
 Ansari, Shri Ziaur Rahman
 Appalanaidu, Shri
 Arvind Netam, Shri
 Austin, Dr. Henry
 Awdhesh Chandra Singh, Shri
 Azad, Shri Bhagwat Jha
 Aziz Imam, Shri
 Babunath Singh, Shri
 Bajpai, Shri Vidya Dhar
 Balakrishniah, Shri T.
 Banamali Babu, Shri
 Banerjee, Shri S. M.
 Banerji, Shrimati Mukul
 Barman, Shri R. N.
 Barua, Shri Bedabrata
 Barupal, Shri Panna Lal
 Basappa, Shri K.
 Basumatari, Shri D.
 Besra, Shri S. C.
 Bhagat, Shri B. R.
 Bhagat, Shri H. K. L.
 Bhargava, Shri Basheshwar Nath
 Bhatia, Shri Raghunandan Lal
 Bhattacharyya, Shri Chapalendu
 Bheeshmadev, Shri M.
 Bhuvarahan, Shri G.
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Brij Raj Singh-Kotah, Shri
 Buta Singh, Shri
 Chakleshwar Singh, Shri
 Chandra Gowda, Shri D. B.
 Chandrakar, Shri Chandulal
 Chandrashekharappa Veerabasappa,
 Shri T. V.
 Chandrika Prasad, Shri
 Chaturvedi, Shri Rohan Lal
 Chaudhari, Shri Amarsingh
 Chaudhary, Shri Nitiraj Singh
 Chavan, Shrimati Premalabai
 Chavan, Shri Yeshwantrao
 Chellachami, Shri A. M.

Chhotey Lal, Shri
 Chhuttan Lal, Shri
 Chikkalingaiah, Shri K.
 Chaudhury, Shri Moimuuq Haque
 Daga, Shri M. C.
 Dalbir Singh, Shri
 Dalip Singh, Shri
 Damani, Shri S. R.
 Darbara Singh, Shri
 Das, Shri Anadi Charan
 Das, Shri Dharnidhar
 Dasappa, Shri Tulsidas
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Desai, Shri D. D.
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharamgaj Singh, Shri
 Dhusia, Shri Anant Prasad
 Dinesh Singh, Shri
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Doda, Shri Hiralal
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Dwivedi, Shri Nageshwar
 Engti, Shri Bireu
 Gaekwad, Shri Fatesingh Rao
 Ganesh, Shri K. R.
 Ganga Devi, Shrimati
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gavit, Shri T. H.
 Ghosh, Shri P. K.
 Gill, Shri Mohirdev Singh
 Giri, Shri S. B.
 Giri, Shri V. Shanker
 Godara, Shri Mani Ram
 Gogoi, Shri Tarun
 Gokhale, Shri H. R.
 Gomango, Shri Giridhar
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra

Gotkhinde, Shri Annasaheb
 Gowda, Shri Pampan
 Gupta, Shri Indrajit
 Hansda, Shri Subodh
 Hanumanthaiya, Shri K.
 Hari Kishore Singh, Shri
 Hari Singh, Shri
 Hashim, Shri M. M.
 Ishaque, Shri A. K. M.
 Ismail Hossain Khan, Shri
 Jadeja, Shri D. P.
 Jaffer Sharief, Shri C. K.
 Jagjivan Ram, Shri
 Jamilurrahman, Shri Md.
 Jeyalakshmi, Shrimati V.
 Jha, Shri Chiranjib
 Jharkhande Rai, Shri
 Jitendra Prasad, Shri
 Joshi, Shri Popatlal M
 Joshi, Shrimati Subhadra
 Kadam, Shri Dattajirao
 Kadam Shri J. G
 Kadannappalli, Shri Ramachandran
 Kader, Shri S. A.
 Kahandole, Shri Z. M.
 Kailas, Dr.
 Kakodkar, Shri Purushottam
 Kakoti, Shri Robin
 Kale, Shri
 Kamakshaiah, Shri D.
 Kamala Prasad, Shri
 Kamble, Shri N. S.
 Kamble, Shri T. D.
 Kamla Kumari, Kumari
 Kapur, Shri Sat Pal
 Karan Singh, Dr.
 Kasture, Shri A. S.
 Kathamuthu, Shri M.
 Kaul, Shrimati Sheila
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Khadilkar, Shri R. K.
 Kinder Lal, Shri

Kisku, Shri A. K
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Krishnan, Shri G. Y.
 Krishnan, Shrimati Parvathi
 Krishnappa, Shri M. V.
 Kulkarni, Shri Raja
 Kureel, Shri B. N
 Kushok Bakula, Shri
 Lakkappa, Shri K
 Lakshminarayanan, Shri M. R
 Lambodar Baliyar, Shri
 Laskar, Shri Nihar
 Lutfal Haque, Shri
 'Madhukar', Shri K. M.
 Mahajan, Shri Vikram
 Mahajan, Shri Y. S.
 Maharaj Singh, Shri
 Majhi, Shri Gajadhar
 Majhi, Shri Kumar
 Malaviya, Shri K. D.
 Malhotra, Shri Inder J
 Mallanna, Shri K.
 Mallikarjun, Shri
 Mandal, Shri Jagdish Narain
 Mandal, Shri Yamuna Prasad
 Manhar, Shri Bhagatram
 Manjhi, Shri Bho'la
 Maurya, Shri B. P.
 Mehta, Dr. Jivraj
 Mehta, Dr. Mahipatray
 Melkote, Dr. G. S.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G. S.
 Modi, Shri Shrikishan
 Mohammad Tahir, Shri
 Mohammad Yusuf, Shri
 Mohan Swarup, Shri
 Mohsin, Shri F. H.
 Muhammed Khuda Bukhsh, Shri
 Munsif, Shri Priya Ranjan Das
 Murmu, Shri Yogesh Chandra
 Muruganatham, Shri S. A.

Nahata, Shri Amrit	Raghu Ramaiah, Shri K.
Naik, Shri B. V.	Rai, Shrimati Sahodrabai
Nanda, Shri G. L.	Raj Bahadur, Shri
Negi, Shri Pratap Singh	Rajdeo Singh, Shri
Nimbalkar, Shri	Ram, Shri Tulmohan
Oraon, Shri Kartik	Ram Dayal, Shri
Oraon, Shri Tuna	Ram Prakash, Shri
Pahadia, Shri Jagannath	Ram Sewak, Ch.
Painuli, Shri Paripoornanand	Ram Singh Bhai, Shri
Palodkar, Shri Manikrao	Ram Surat Prasad, Shri
Pandey, Shri Damodar	Ram Swarup, Shri
Pandey, Shri Krishna Chandra	Ramji Ram, Shri
Pandey, Shri Narsingh Narain	Ramshekhar Prasad Singh, Shri
Pandey, Shri R. S.	Rao, Shrimati B Radhabai A.
Pandey, Shri Sarjoo	Rao, Shri J. Rameshwar
Pandey, Shri Sudhakar	Rao, Shri Jagannath
Pandey, Shri Tarkeshwar	Rao, Dr. K. L.
Pandit, Shri S. T.	Rao, Shri K. Narayana
Panigrahi, Shri Chintamani	Rao, Shri M. S. Sanjeevi
Pant, Shri K. C.	Rao, Shri M. Satyanarayan
Paokar Haokip, Shri	Rao, Shri Nageswara
Parashar, Prof. Narain Chand	Rao, Shri P. Ankineedu Prasada
Parikh, Shri Rasiklal	Rao, Shri Pattabhi Rama
Parthasarathy, Shri P	Rao, Shri Rajagopala
Paswan Shri Ram Bhagat	Rao, Dr. V. K. R Varadaraja
Patel Shri Arvind M.	Rathia, Shri Umed Singh
Patel, Shri Natwarlal	Raut, Shri Bhola
Patel, Shri Prabhudas	Ravi, Shri Vayalar
Patel, Shri R. R	Ray, Shrimati Maya
Patil, Shri Anantrao	Reddi, Shri P. Antony
Patil, Shri C. A	Reddy, Shri K. Ramakrishna
Patil, Shri E. V. Vikhe	Reddy, Shri M. Ram Gopal
Patil, Shri Krishnarao	Reddy, Shri P. Bayapa
Patil, Shri S. B.	Reddy, Shri P. Ganga
Patil, Shri T. A	Reddy, Shri P. Narasimha
Patnaik, Shri Banamali	Reddy, Shri P. V.
Patnaik, Shri J. B.	Reddy, Shri Sidram
Peje, Shri S. L.	Reddy, Shri Y. Eswara
Prabodh Chandra, Shri	Richhariva, Dr Govind Das
Pradhan, Shri Dhan Shah	Rohatgi, Shrimati Sushila
Pradhani, Shri K	Roy, Shri Bishwanath
Purty, Shri M. S.	Rudra Pratap Singh Shri
Qureshi, Shri Mohd. Shafi	Sadhu Ram, Shri

Saini, Shri Mulki Raj
 Samanta, Shri S. C
 Sambhali, Shri Ishaque
 Sanghi, Shri N. K.
 Sangliana, Shri
 Sankata Prasad, Dr.
 Sant Bux Singh, Shri
 Sarkar, Shri Sakti Kumar
 Satish Chandra, Shri
 Satpathy, Shri Devendra
 Satyanarayana, Shri B.
 Savant, Shri Shankerrao
 Savitri Shyam, Shrimati
 Sayeed, Shri P. M.
 Sen, Dr. Ranen
 Sethi, Shri Arjun
 Shafee, Shri A.
 Shafquat Jung, Shri
 Shanawaz Khan, Shri
 Shailani, Shri Chandra
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankar Dev, Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P
 Sharma, Dr. H. P.
 Sharma, Shri Nawal Kishore
 Sharma, Shri R. N.
 Sharma, Dr. Shankar Dayal
 Sashi Bhushan, Shri
 Shastri, Shri Biswanarayan
 Shastri, Shri Raja Ram
 Shastri, Shri Ramavatar
 Shetty, Shri K. K.
 Shinde, Shri Annasaheb P.
 Shivappa, Shri N.
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Shukla, Shri Vidya Charan
 Sidayya, Shri S. M.

Siddheshwar Prasad, Prof.
 Singh, Shri Vishwanath Pratap
 Sinha, Shri Dharam Bir
 Sinha, Shri R. K.
 Sohan Lal, Shri T.
 Sokhi, Sardar Swaran Singh
 Stephen, Shri C. M.
 Subramaniam, Shri C.
 Sudarasanam, Shri M.
 Sunder Lal, Shri
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.
 Swamy, Shri Sidrameshwar
 Swaran Singh Shri
 Tarodekar, Shri V. B.
 Tayyab Hussain, Shri
 Tewari, Shri Shankar
 Thakre, Shri S. B.
 Thakur, Shri Krishnarao
 Tiwari, Shri Chandra Bhal Mani
 Tiwari, Shri R. G.
 Tiwary, Shri D. N.
 Tobmi Singh, Shri N.
 Tombi Singh, Shri N.
 Ukey, Shri M. G.
 Unnikrishnan, Shri K. P.
 Vekaria, Shri
 Verma, Shri Balgovind
 Vidyalkar, Shri Amarnath
 Vijay Pal Singh, Shri
 Vikal, Shri Ram Chandra
 Virbhadra Singh, Shri
 Yadav, Shri Chandrajit
 Yadav, Shri D. P.
 Yadav, Shri Karan Singh
 Yadav, Shri R. P.
 Zulfiquar Ali Khan, Shri
 NOES
 Shamim, Shri S. A.

MR. CHAIRMAN: The result* of
 the division is Ayes : 341; Noes: 1

*Shri Madho Ram Sharma also recorded his vote for AYES.
 The result of this division is applicable to each of the clause 2 to
 8 separately.

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted.

Clauses 2 to 8 were added to the Bill.

Clause 1 (Short title).

SHRI H. R. GOKHALE I beg to move:

'Page 1, line 3,—

for "(Thirty-ninth Amendment)"
substitute "(Thirty-eighth
Amendment)" (1).

MR. CHAIRMAN: The question is:

'Page 1, line 3,—

for "(Thirty-ninth Amendment)"
substitute "(Thirty-eighth
Amendment)" (1).

MR. CHAIRMAN: The question is:

'Page 1, line 3,—

for "(Thirty-ninth Amendment)"
substitute "(Thirty-eight Amend-
ment)" (1)

The Lok Sabha divided.

Division No. 7]

[15.20 hrs.

AYES

Achal Singh, Shri
Aga, Shri Syed Ahmed
Agrawal, Shri Shrikrishna
Alagesan, Shri O. V.
Ambesh, Shri
Anand Singh, Shri
Ankineedu, Shri Maganti
Ansari, Shri Ziaur Rahman
Appalanaidu, Shri
Arvind Netam, Shri
Austin, Dr. Henry
Awdhesh Chandra Singh, Shri
Aziz Imam, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Balakrishnaiah, Shri T.
Banamali Babu, Shri

Banerjee, Shri S. M.
Banerji, Shrimati; Mukul
Barman, Shri R. N.
Barua, Shri Bedabrata
Barupal, Shri Panna Lal
Basappa, Shri K.
Basumatari, Shri D.
Besra, Shri S. C.
Bhagat, Shri B. R.
Bhagat, Shri H. K. L.
Bhargava, Shri Basheshwar Nath
Bhatia, Shri Raghunandan Lal
Bhattacharyya, Shri Chapalendu
Bheshmadev, Shri M.
Bhuvarahan, Shri G.
Bist, Shri Narendra Singh
Brahmanandji, Shri Swami
Brij Raj Singh-Kotah, Shri
Buta Singh, Shri
Chakleshwar Singh, Shri
Chandra Gowda, Shri D. B.
Chandrakar, Shri Chandulal
Chandrashekharappa Veerabasappa,
Shri T. V.
Chandrika Prasad, Shri
Chaturvedi, Shri Rohan Lal
Chaudhari, Shri Amarsinh
Chaudhary, Shri Nitiraj Singh
Chavan, Shrimati Premalabai
Chavan, Shri Yeshwantrao
Chellachami, Shri A. M.
Chhotey Lal, Shri
Chhatten Lal, Shri
Chikkalingalah, Shri K.
Choudhury, Shri Moinul Haque
Dalbir Singh, Shri
Dalip Singh, Shri
Damani, Shri S. R.
Darbara Singh, Shri
Das, Shri Anadi Charan
Dasappa, Shri Tulsidas
Daschowdhury, Shri B. K.
Deo, Shri S. N. Singh

Desai, Shri D. D.
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharamgaj Singh, Shri
 Dhusia, Shri Anant Prasad
 Dinesh Singh, Shri
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Doda, Shri Hirala!
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Dwivedi, Shri Nageshwar
 Engti, Shri Biren
 Gaekwad, Shri Fatesingh Rao
 Ganesh, Shri K. R.
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gavit, Shri T. H.
 Ghosh, Shri P. K.
 Gill, Shri Mohinder Singh
 Giri, Shri S. B.
 Giri, Shri V. Shanker
 Godara, Shri Mani Ram
 Gogoi, Shri Tarur
 Gokhale, Shri H. R.
 Gomango, Shri Giridhar
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaheb
 Gowda, Shri Panpan
 Hansda, Shri Subodh
 Hanumanthaiya, Shri K.
 Hari Singh, Shri
 Hashim, Shri M. M.
 Ishaque, Shri A. K. M.
 Ismail Hossain Khan, Shri
 Jaffer Sharief, Shri C. K.
 Jagjivan Ram, Shri
 Jamilurrahman, Shri Md.
 Jeyalakshmi Shrimati V.
 Jha, Shri Chiranjib
 Jitendra Prasad, Shri

Joshi, Shri Popatlal M.
 Joshi, Shrimati Subhadra
 Kadam, Shri Dattajirao
 Kadam, Shri J. G.
 Kader, Shri S. A.
 Kahandole, Shri Z. M.
 Kailas, Dr.
 Kakodkar, Shri Purushottam
 Kakoti, Shri Robin
 Kale, Shri
 Kamala Prasad, Shri
 Kamble, Shri N. S.
 Kamla Kumari, Kumari
 Kapur, Shri Sat Pal
 Karan Singh, Dr.
 Kasture, Shri A. S.
 Kathamuthu, Shri M.
 Kaul, Shrimati Sheila
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Khadikar, Shri R. K.
 Kinder Lal, Shri
 Kisku, Shri A. K.
 Kotoki, Shri Lnanbur
 Kotrashetti, Shri A. K.
 Krishnan, Shri G. Y.
 Krishnan, Shrimati Parvathi
 Kushok Baku'a, Shri
 Lakheppa, Shri K.
 Lambolal Baliyar, Shri
 Laskar, Shri Nihar
 Lutfal Haque, Shri
 'Madhukar', Shri K. M.
 Mahajan, Shri Vikram
 Mahajan, Shri Y. S.
 Maharaj Singh, Shri
 Majhi, Shri Gajadhar
 Majhi, Shri Kumar
 Malaviya, Shri K. D.
 Malhotra, Shri Inder J.
 Mal'anna, Shri K.
 Mallikarjun, Shri

Mandal, Shri Jagdish Narain
Mandal, Shri Yamuna Prasad
Manhar, Shri Bhagatram
Manjhi, Shri Bhela
Maurya, Shri B P
Mehta, Dr. Jivraj
Mehta, Dr. Mahapatra
Melkote, Dr. G. S
Mirdha, Shri Nathu Ram
Mishra, Shri G S
Modi, Shri Shrikishan
Mohammad Tahir, Shri
Mohammad Yusuf, Shri
Mohapatra, Shri Shyam Sunder
Mohsin, Shri F. H
Muhammed Khuda Bukhsh, Shri
Munsi, Shri Priya Ranjan Das
Murmu, Shri Yogesh Chandra
Muruganantham, Shri S. A.
Nahata, Shri Anant
Naik, Shri B V
Nanda, Shri G L
Negi, Shri Pratap Singh
Nimbalkar, Shri
Oraon, Shri Kartik
Oraon, Shri Tuna
Pahadia, Shri Jagannath
Painuli, Shri Paripoornanand
Palodkar, Shri Manikrao
Pandey, Shri Damodar
Pandey, Shri Krishna Chandra
Pandey, Shri Narsingh Narain
Pandey, Shri R. S
Pandey, Shri Sarjoo
Pandey, Shri Sudhakar
Pandey, Shri Tarkeshwar
Pandit, Shri S. T.
Panigrahi, Shri Chintamani
Pant, Shri K. C
Paokai Naokip, Shri
Parashar, Prof. Narain Chand
Parikh, Shri Rasiklal
Parthasarathy, Shri P.

Paswan, Shri Ram Bhagat
Patel, Shri Arvind M.
Patel, Shri Natwarlal
Patel, Shri Prabhudas
Patel, Shri R. R
Patil, Shri Anantrao
Patil, Shri C. A.
Patil, Shri E. V. Vikhe
Patil, Shri Krishnarao
Patil, Shri S. B
Patil, Shri T. A
Patnaik, Shri Banamali
Patnaik, Shri J B
Peje, Shri S. L.
Prabodh Chandra, Shri
Pradhan, Shri Dhan Shah
Pradhani, Shri K
Purty, Shri M S
Qureshi, Shri Mohd. Shafi
Raghu Ramaiah, Shri K
Raj Bahadur, Shri
Rajdeo Singh, Shri
Ram, Shri Tulmohan
Ram Doyal, Shri
Ram Prakash, Shri
Ram Sewak, Ch.
Ram Singh, Bhai, Shri
Ram Surat Prasad, Shri
Ram Swarup, Shri
Ramji Ram, Shri
Ramshekhar Prasad Singh, Shri
Rao, Shrimati B Radhabai A
Rao, Shri J. Rameshwar
Rao, Shri Jagannath
Rao, Dr. K. L.
Rao, Shri K. Narayana
Rao, Shri M. S. Sanjeevi
Rao, Shri Nageswara
Rao, Shri P. Ankineedu Prasada
Rao, Shri Pattaabhi Rama
Rao, Shri Rajagopala
Rao, Dr. V. K. R. Varadaraja
Rathia, Shri Umed Singh

Raut, Shri Bawa
 Ravi, Shri Vayalar
 Ray, Shrimati Maya
 Reddi, Shri P. Antony
 Reddy, Shri K. Ramakrishna
 Reddy, Shri P. Bayapa
 Reddy, Shri P. Ganga
 Reddy, Shri P. Narasimha
 Reddy, Shri P. V.
 Reddy, Shri Sidram
 Reddy, Shri Y. Eswara
 Richhariya, Dr. Govind Das
 Rohatgi, Shrimati Sushila
 Roy, Shri Bishwanath
 Rudra Pratap Singh, Shri
 Sadhu Ram, Shri
 Saini, Shri Mulk Raj
 Sambhali, Shri Ishaque
 Sanghi, Shri N. K.
 Sangliana, Shri
 Sant Bux Singh, Shri
 Sarkar, Shri Sakti Kumar
 Satish Chandra,, Shri
 Satpathy, Shri Devendra
 Satyanarayana, Shri B.
 Sayeed, Shri P. M.
 Sen, Dr. Ranen
 Sethi, Shri Arjun
 Shafee, Shri A.
 Shafquat Jung, Shri
 Shahnawaz Khan, Shri
 Shailani, Shri Chandra
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankar Dev, Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P.
 Sharma, Dr. H. P.
 Sharma, Shri Madhoram
 Sharma, Shri Nawal Kishore
 Sharma, Shri R. N.
 Sharma, Dr. Shanker Dayal
 Snashi Brahman, Shri

Shastri, Shri Biswanarayan
 Shastri, Shri Raja Ram
 Shastri, Shri Ramavatar
 Shetty, Shri K. K.
 Shinde, Shri Annasaheb P.
 Shivappa, Shri N.
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Shukla, Shri Vidya Charan
 Siddayya, Shri S. M.
 Siddheshwar Prasad, Prof.
 Singh, Shri Vishwanath Pratap
 Sinha, Shri Dharam Bir
 Sinha, Shri R. K.
 Sohan Lal, Shri T.
 Sokhi, Sardar Swaran Singh
 Stephen, Shri C. M.
 Subramaniam, Shri C.
 Sudarsanam, Shri M.
 Sunder Lal, Shri
 Suryanarayana, Shri K.
 Swaran Singh, Shri
 Tarodekar, Shri V. B.
 Tayyab Hussain, Shri
 Tewari, Shri Shankar
 Thakre, Shri S. B.
 Thakur, Shri Krishnarao
 Tiwari, Shri Chandra Bhal Mant
 Tiwari, Shri R. G.
 Tiwary, Shri D. N.
 Tulsiram, Shri V.
 Uikty, Shri M. G.
 Vekaria, Shri
 Verma, Shri Balgovind
 Vidyalkar, Shri Amarnath
 Vijay Pal Singh, Shri
 Vikal, Shri Ram Chandra
 Virbhadra Singh, Shri
 Yadav, Shri Chandrajit
 Yadav, Shri D. P.
 Yadav, Shri Karan Singh
 Yadav, Shri R. P.
 Zulfiquar Ali Khan, Shri

NOES

*Lakshminarayanan, Shri M. R.
Shamim, Shri S. A.

MR. CHAIRMAN: The result ** of
the division is:

Ayes: 315; Noes: 2.

The motion was adopted

MR. CHAIRMAN: The question is:

"That Clause 1, as amended, stand
part of the Bill."

The motion was adopted.

*Clause 1, was amended, was added
to the Bill.*

MR. CHAIRMAN: The question is:

"That the Enacting Formula and
the Title stand part of the Bill."

The motion was adopted.

*The Enacting Formula and the Title
were added to the Bill.*

SHRI H. R. GOKHALE: I beg to
move:

"That the Bill as amended, be
passed."

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be
passed."

The Lok Sabha divided:

Division No. 8)

[15.24 hrs.

AYES

Achal Singh, Shri

Aga, Shri Syed Ahmed

Agrawal, Shri Shrikrishna
Ahirwar, Shri Nathu Ram
Alagesan, Shri O. V.
Ambesh, Shri
Anand Singh, Shri
Ankineedu, Shri Magantu
Ansari, Shri Ziaur Rahman
Appalanaidu, Shri
Arvind Netam, Shri
Austin, Dr. Henry
Awdhesh Chandra Singh, Shri
Azad, Shri Bhagwat Jha
Aziz Imam, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Balakrishnaiah, Shri T.
Banamali Babu, Shri
Banerjee, Shri S. M.
Banerji, Shrimati Mukul
Barman, Shri R. N.
Barua, Shri Bedabrata
Barupal, Shri Panna Lal
Basappa, Shri K.
Basumatari, Shri D.
Besra, Shri S. C.
Bhagat, Shri B. R.
Bhagat, Shri H. K. L.
Bhargava, Shri Basheswar Nath
Bhatia, Shri Raghunandan Lal
Bhattacharyya, Shri Chapalendu
Bheeshmadev, Shri M.
Bhugarahan, Shri G.
Bist, Shri Narendra Singh
Brahmanandji, Shri Swami
Brij Raj Singh-Kotah, Shri
Buta Singh, Shri
Chakleshwar Singh, Shri

*Wrongly votes for NOES.

**The following Members also recorded their votes for AYES:

Sarvashri M. Ram Gopal Reddy, K. P. Unnikrishnan, M. V. Krishnappa,
Dr. Sankata Prasad, Shankerrao Savant, Ramachandran Kadannappalli,
N. Tombi Singh, D. Kamakshiah, Jhar khande Rai, M. R. Lakshminarayanan
and Shrimati Sahodravai Rai.

Chandra Gowda, Shri D. B.
 Chandrakar, Shri Chandulal
 Chandrashekarappa Veerabasappa,
 Shri T. V.
 Chandrika Prasad, Shri
 Chaturvedi, Shri Rohan Lal
 Chaudhari, Shri Amarsingh
 Chaudhary, Shri Nitiraj Singh
 Chavan, Shrimati Premalabai
 Chavan, Shri Yeshwantrao
 Chellachami, Shri A. M.
 Chhotey Lal, Shri
 Chhatten Lal, Shri
 Chikkalingaiah, Shri K.
 Choudhury, Shri Moinul Haque
 Daga, Shri M. C.
 Dalbir Singh, Shri
 Dalip Singh, Shri
 Damani, Shri S. R.
 Darbara Singh, Shri
 Das, Shri Anand Charan
 Das, Shri Dharnidhar
 Dasappa, Shri Tulsidas
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Desai, Shri D. D.
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharamgaj Singh, Shri
 Dhusia, Shri Anant Prasad
 Dinesh Singh, Shri
 Dixit, Shri G. C.
 Dixit, Shri Jagdish Chandra
 Doda, Shri Hiralal
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Dwivedi, Shri Nageshwar
 Engti, Shri Biren
 Gaekwad, Shri Fatesingh Rao
 Ganesh, Shri K. R.
 Ganga Devi, Shrimati
 Gangadeb, Shri P.
 Gautam, Shri C. D.
 Gavit, Shri T. H.

Ghosh, Shri P. K.
 Gill, Shri Mohinder Singh
 Giri, Shri S. B.
 Giri, Shri V. Shanker
 Godara, Shri Mani Ram
 Gogoi, Shri Tarun
 Gokhale Shri H. R.
 Gomango, Shri Gridhar
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra
 Gotkhinde, Shri Annasaheb
 Gowda, Shri Pampan
 Gupta, Shri Indrajit
 Hansda, Shri Subodh
 Hanumanthaiya, Shri K.
 Hari K shore Singh Shri
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Ismail Hossain Khan, Shri
 Jadeja, Shri D. P.
 Jaffer Sharief Shri C. I.
 Jagjivan Ram, Shri
 Jamilurrahman, Shri Mu
 Jeyalakshmi, Shrimati V
 Jne, Shri Chiranjib
 Jharkhande Rai, Shri
 Jitendra Prasad, Shri
 Joshi, Shri Popatlal M.
 Joshi, Shrimati Subhadra
 Kadam, Shri Dattatraya
 Kadam, Shri J. G.
 Kadannappalli, Shri Ramachandran
 Kader, Shri S. A.
 Kahandole, Shri Z. M.
 Kailas, Dr
 Kakodkar, Shri Purushottam
 Kakoti, Shri Robin
 Kale, Shri
 Kamakshaiah, Shri D.
 Kamala Prasad, Shri
 Kamble, Shri N. S.
 Kamble, Shri T. D.

Xapur, Shri Sat Pal
 Karan Singh, Dr.
 Kasture, Shri A. S.
 Kathamuthu, Shri M.
 Kaul, Shrimati Sheila
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Khadilkar, Shri R. K.
 Kinder Lal, Shri
 Kisku, Shri A. K.
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Koya, Shri C. H. Mohamed
 Krishnan, Shri G. Y.
 Krishnan, Shrimati Parvathi
 Krishnappa, Shri M. V.
 Kulkarni, Shri Raja
 Kureel, Shri B. N.
 Kushok Bakula, Shri
 Lakkappa, Shri K.
 Lakshminarayanan, Shri M. R.
 Lambodar Baliyar, Shri
 Laskar, Shri Nihar
 Lutfal Haque, Shri
 'Madhukar', Shri K. M.
 Mahajan, Shri Vikram
 Mahajan, Shri Y. S.
 Maharaj Singh, Shri
 Majhi, Shri Gajadhar
 Majhi, Shri Kumar
 Malaviya, Shri K. D.
 Malhotra, Shri Inder J
 Mallama, Shri K.
 Mallikarjun, Shri
 Mandal, Shri Jagdish Narain
 Mandal, Shri Yashwantrao Prasad
 Manhar, Shri Bhagatram
 Manjhi, Shri Bhola
 Maurya, Shri B. P.
 Mehta, Dr. Jivraj
 Mehta, Dr. Mahipatray
 Melkote, Dr. G. S.
 Mirda, Shri Nathu Ram

Mishra, Shri G. S.
 Modi, Shri Shrikrishan
 Mohammad Tahir, Shri
 Mohammad Yusuf, Shri
 Mohan Swarup, Shri
 Mohapatra, Shri Shyam Sunder
 Mohsin, Shri F. H.
 Muhammed Khuda Bukhsb, Shri
 Munsif, Shri Priya Ranjan Das
 Murmu, Shri Yogesh Chandra
 Muruganatham, Shri S. A.
 Nahata, Shri Amrit
 Naik, Shri B. V.
 Nanda, Shri G. L.
 Negi, Shri Pratap Singh
 Nimbalkar, Shri
 Oraon, Shri Kartik
 Oraon, Shri Tuna
 Pahadia, Shri Jagannath
 Painuli, Shri Paripoornanand
 Palodkar, Shri Manikrao
 Pandey, Shri Damodar
 Pandey, Shri Krishna Chandra
 Pandey, Shri Narsingh Narain
 Pandey, Shri R. S.
 Pandey, Shri Sarfoo
 Pandey, Shri Sudhakar
 Pandey, Shri Tarkeshwar
 Pandit, Shri S. T.
 Panigrahi, Shri Chintamani
 Pant, Shri K. C.
 Paokai Haokip, Shri
 Parashar, Prof. Narain Chand
 Parikh, Shri Rasiklal
 Parthasarathy, Shri P.
 Paswan, Shri Ram Bhagat
 Patel, Shri Arvind M.
 Patel, Shri Natwarlal
 Patel, Shri Prabhudas
 Patel, Shri R. R.
 Patil, Shri Anantrao
 Patil, Shri C. A.
 Patil, Shri E. V. Vikhe

Patil, Shri Krishnargo
 Patil, Shri S. B.
 Patil, Shri T. A.
 Patnaik, Shri Banamali
 Patnaik, Shri J. B.
 Peje, Shri S. L.
 Pradhan, Shri Dhan Shah
 Pradhani, Shri K.
 Purty, Shri M. S.
 Qureshi, Shri Mohd. Shafi
 Raghu Ramalah, Shri K.
 Rai, Shrimati Sahodrabai
 Raj Bahadur, Shri
 Rajdeo Singh, Shri
 Ram, Shri Tulmohan
 Ram Dayal, Shri
 Ram Prakash, Shri
 Ram Sewak, Ch.
 Ram Singh Bhai, Shri
 Ram Surat Prasad, Shri
 Ram Swarup, Shri
 Ramji Ram, Shri
 Ramshekhar Prasad Singh, Shri
 Rao, Shrimati B. Radhabai A.
 Rao, Shri J. Rameshwar
 Rao, Shri Jagannath
 Rao, Dr. K. L.
 Rao, Shri K. Narayana
 Rao, Shri M. S. Sanjeevi
 Rao, Shri M. Satyanarayana
 Rao, Shri Nageswara
 Rao, Shri P. Ankmeedu Prasada
 Rao, Shri Pattabhi Rama
 Rao, Shri Rajagopala
 Rao, Dr. V. K. R. Varadaraja
 Rathia, Shri Umed Singh
 Raut, Shri Bhola
 Ravi, Shri Vayalar
 Ray, Shrimati Maya
 Reddi, Shri P. Antony
 Reddy, Shri K. Ramakrishna
 Reddy, Shri M. Ram Gopal
 Reddy, Shri P. Bayapa

Reddi, Shri P. Ganua
 Reddy, Shri P. Narasimha
 Reddy, Shri P. V.
 Reddy, Shri Sidram
 Reddy, Shri Y. Eswara
 Richhariya, Dr. Govind Das
 Rohatgi, Shrimati Sushila
 Roy, Shri Bishwanath
 Rudra Pratap Singh, Shri
 Sadhu Ram, Shri
 Saini, Shri Mulki Raj
 Samanta, Shri S. C.
 Sambhal, Shri Ishaque
 Sanghi, Shri N. K.
 Sanghana, Shri
 Sankata Prasad Dr.
 Sant Bux Singh, Shri
 Sarkar, Shri Sakti Kumar
 Satish Chandra, Shri
 Satpathy, Shri Devendra
 Satyanarayana, Shri B.
 Savant, Shri Shankerra
 Savitri Shyam, Shrimati
 Sayeed, Shri P. M.
 Sen, Dr. Ranen
 Sethi, Shri Arjun
 Shafee, Shri A.
 Shafquat Jung, Shri
 Shahnawaz Khan, Shri
 Shailani, Shri Chandra
 Shambhu Nath, Shri
 Shankar Dayal Singh, Shri
 Shankar, Dev Shri
 Shankaranand, Shri B.
 Sharma, Shri A. P.
 Sharma, Dr. H. P.
 Sharma, Shri Madhoram
 Sharma, Shri Nawal Kishore
 Sharma, Shri R. N.
 Sharma, Dr. Shanker Dayal
 Shashi Bhushan, Shri
 Shastri, Shri Biswanarayan
 Shastri, Shri Raja Ram

Shastri, Shri Ramavatar
 Shetty, Shri K. K.
 Shinde, Shri Annasaheb P.
 Shivappa, Shri N.
 Shivnath Singh, Shri
 Shukla, Shri B. R.
 Shukla, Shri Vidya Charan
 Siddayya, Shri S. M.
 Siddheshwar Parasad, Prof.
 Singh, Shri Vishwanath Prataap
 Sinha, Shri Dharam B'ir
 Sinha, Shri R. K.
 Sohan Lal, Shri T.
 Sokhi, Sardar Swaran Singh
 Stephen, Shri C. M.
 Subramaniam, Shri. C.
 Sudarsanam, Shri M.
 Sunder Lal, Shri
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.
 Swamy, Shri Sidrameshwar
 Swaran Singh, Shri
 Tarodekar, Shri V. B.
 Tayyab Hussain Shri
 Tewari, Shri Shankar
 Thakre, Shri S. B.
 Thakur, Shri Krishnarao
 Tiwari, Shri Chandra Bha! Mani
 Tiwari, Shri R. G.
 Tiwary, Shri D. N.
 Tombi Singh, Shri N.
 Tulsiram, Shri V.
 Uikey, Shri M. G.
 Unnikrishnan, Shri K. P.
 Vekaria, Shri
 Verma, Shri Balgovind
 Vidyalankar, Shri Amarnath
 Vijay Pal Singh, Shri
 Vikal, Shri Ram Chandra
 Virbhadra Singh, Shri
 Yadav, Shri Chandrajit

Yadav, Shri D. P.
 Yadav, Shri Karan Singh
 Yadav, Shri R. P.
 Zulfiquar Ali Khan, Shri

NOES

Shamim, Shri S. A.

MR. CHAIRMAN: The result* of the division is:

Ayes: 342;

Noes: 1.

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted.

15.21 hrs

DEMANDS FOR GRANTS (PONDICHERRY),* 1975-76.

MR. CHAIRMAN: We shall now take up the next item, namely, discussion and voting on the Demand's for Grants in respect of the Budget for the Union territory of Pondicherry for the year 1975-76.

DEMAND NO 1.—LEGISLATIVE ASSEMBLY

MR CHAIRMAN: Motion moved:

"That a sum not exceeding Rs. 2,88,000 on Revenue Account be granted to the President out of the Consolidated Fund of the Union Territory of Pondicherry to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1976 in respect of 'Legislative Assembly'."

Shri Genda Singh, also recorded his vote for AYES.

*Introduced with the recommendation of the President.