

MR DEPUTY-SPEAKER: Understand my difficulty. I have to run the House according to certain rules and procedure.

SHRI S. M BANERJEE: Let him ask the Finance Minister to make a statement Twentyeight lakhs of government employees are cheated.

MR DEPUTY-SPEAKER: He has responded as far as he could I cannot go further Let us get along with the business.

SHRI S M BANERJEE: It should be conveyed to the Finance Minister. He should make a statement tomorrow Otherwise, I can assure you—all my friends here will support me—we are going to stall the other Bill

MR DEPUTY-SPEAKER: I understand item 5 has not been disposed of

SHRI THA KIRUTTINAN (Sivaganja): On behalf of Shri Murthy, may I lay it

MR DEPUTY-SPEAKER: Are you member of the Committee?

SHRI THA KIRUTTINAN: Yes.

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**RAILWAY CONVENTION
COMMITTEE
SIXTH REPORT**

SHRI THA KIRUTTINAN (Sivaganja): I present the Sixth Report of the Railway Convention Committee, 1973, on "Rate of Dividend for 1975-76 and other Ancillary Matters".

SHRI JYOTIRMOY BOSU (Diamond Harbour): We should observe the funeral of the Railways.

MR. DEPUTY-SPEAKER: Order, order.

14.13 hrs.

STATUTORY RESOLUTION RE. DISAPPROVAL OF REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE AND REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL—contd.

MR DEPUTY-SPEAKER: We take up further consideration of the following Resolution moved by Shri Shyamnandan Mishra on the 12th December, 1974, namely:—

"This House disapproves of the Representation of the People (Amendment) Ordinance 1974 (Ordinance No. 13 of 1974) promulgated by the President on the 19th October, 1974"

and the following motion moved by Shri H. R. Gokhale on the 12th December, 1974, namely:

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration".

Before we resume discussion, I think I should acquaint members with the lay of the land because last time there was some amount of confusion....

SHRI ATAL BIHARI VAJPAYEE (Gwalior): Lay of the land or law of the land?

MR. DEPUTY-SPEAKER: Lay of the land.

There was some confusion last time When some points were raised, even the Law Minister thought that perhaps those points were to obstruct the motion for consideration. It was not so. That was why I allowed him to move the motion for consideration. He did so and he made a speech. Then because there were a few minutes before 6 P.M. before we adjourned, I also called on the first

[Mr. Deputy-Speaker.]

speaker from the Opposition, Shri Jyotirmoy Bosu, to speak. I had also said that with regard to the points of order raised by Mr. Mishra and other Members regarding the scope of the discussion, whether Members can make reference to the different election petitions pending before different courts, that was the point of order, I had said that I would reserve my ruling. Now before Mr. Jyotirmoy Bosu continues his speech I think that we must settle this matter. I would not have permitted Mr. Jyotirmoy Bosu to begin his speech last time were it not for the fact that we had only two or three minutes to adjourn at 6 O'clock; I did some calculation and I decided in my mind that within those few minutes, long-winded and stout lunged as he is, weighty as he is, he would not reach even the banks of the Rubicon, not to speak of crossing it. And therefore, I allowed him and at 6 O'clock we adjourned.

I know what is worrying Mr. Sathe. I know that this is a very slippery and trecherous ground and I have to proceed very carefully. I should first dispose of one particular item so that there may not be any misunderstanding. Last Thursday Shri Salve of the Ruling party drew my attention to a precedent in this House. He read out from page 901 of the book, *Practice and Procedure of Parliament* and on the strength of that precedent he wanted me to rule that reference to the cases before the court should not be permitted. I said then that I would have to study this particular case. If there had been a precedent like that, of course it would make my job much easier.

I think I should acquaint the House with what that precedent was. It related to a particular Bill which the Home Minister at that time—I think it was the late Govind Ballabh Pant—referred to in his memory—brought before the House in 1955. The Bill was called the Prize Competitions Bill of

1955. The Bill related to Entry 34, List II, State list and it sought to prohibit promotion and conduct of prize competitions which exceeded certain level; I think they mentioned a level of Rs. 1,000. The Bill was brought before the House under article 252 of the Constitution after a number of States, namely, Bombay at that time, Andhra, Patiala and East Punjab States Union had passed resolutions delegating their powers of law making to Parliament. The Bill if passed would be made applicable to the States in Part C and Union Territories; and other States in Part A and B as might pass resolutions to adopt the Act. After the Home Minister had moved the motion for consideration of the Bill, an hon Member Dr. Krishnaswami raised a point of order. He said, certain laws relating to the subject were already passed by the State Legislature of Bombay but those laws were challenged in the Bombay High Court and the Bombay High Court struck them down. The Bombay Government, went to the Supreme Court on appeal and so the case was pending before the Supreme Court. On the strength of the fact that the case was pending before the Supreme Court, Dr. Krishnaswami sought to say that this was *sub judice* and discussion on the Bill should not be proceeded with and the Bill could be considered only after the Supreme Court had given its judgment. The Speaker ruled out the point of order and allowed the discussion to proceed on the ground that the House had the power to make laws, whatever might be the case. But, he also appealed to the members not to refer to the facts. He said:

“They will not refer to the facts, not of a law, but of the particular case under appeal.”

Hon. members will see that that Bill and this Bill are not on all fours. The Prize Competitions Bill was brought to this House in response to certain social needs at that time. No

reference was made in that Bill, whether in the Bill itself or in the statement of objects and reasons, to any case pending before the Supreme Court. But in this particular Bill before the House, the very genesis, the very basis of the Bill itself, as the Minister himself had said so many times both in this House and outside, is the 180 cases or so pending adjudication before the various courts in the country. I had said even last time, although I did not have the time to study, that this was a very unusual situation and I expressed my difficulty in these words:

"I must say that this is the most difficult situation in which I have ever found myself."

I have been presiding officer now for 4 years or more. We had faced many difficult situations, but I had never faced a more ticklish situation than this. My good friend, Shri Indrajit Gupta—unfortunately he is not here—who we all know is a brilliant parliamentarian also said that we were standing on extremely slippery and treacherous ground. He cautioned me by saying, "Be very cautious". I replied, "I am very cautious; I know." Then he said, "Don't rush in". I replied, "I don't rush in. I am not a fool to rush in where angles fear to tread."

Regarding the different points of order that were raised, I sought the assistance of the Law Minister. He did intervene once or twice and on Thursday last, he said:

"I have said that reference to facts to the merits of a particular case, is undesirable, because it is definitely prejudicing the trial which is going on.

"If you say that so many cases are pending without reference to the name of the party, without reference to what is the dispute pending, what are the allegations and counter-allegations in that particular case, that is entirely a

different matter....I would submit that this has been unprecedented: it has never been allowed. I hope, you will accept that."

That is what he said.

Before I proceed further in the matter, I would feel very much more comfortable and it would help me and the House—I wish I could accept the submission of the Law Minister straightway—if even at this stage he could point out to me a precedent in the past when a similar Bill of this nature making the cases pending before the courts the very basis, the very genesis, the *raison detre*, of the Bill had come before the House. If he can point me out this and point out that a certain ruling had been given by the Chair saying that it could not be done, I think, it would help me very much.

I do not want to proceed further in a hurry. Of course, I thought about it the whole day yesterday. I struggled with it. My duty is to maintain the balance and to give the House an opportunity of a full and frank discussion. After that, the House can do anything it likes. I have not been able to make up my mind, although I have some idea, and a ruling has to be given—otherwise, we cannot proceed further; I shall give a ruling, but even at this stage, if he can help me by pointing out to a precedent of a similar Bill of this kind in which a certain ruling of the Chair had been given, it would help me.

SOME HON. MEMBERS rose—

SHRI VASANT SATHE (Akola)
Sir, would you allow us to make a submission before the Minister says something?

MR. DEPUTY-SPEAKER. Yes.

SHRI JAGANNATH RAO (Chatrapur): Sir, you want a similar precedent so that you could give a ruling on those lines.

[Shri Jagannath Rao]

May I refer to you the case of the Essential Services Ordinance which was passed on December 11, 1968? A point of order was raised by Shri S. M. Banerjee saying that it could not be discussed as the Ordinance was pending adjudication before many courts. The Deputy-Speaker ruled:

"According to the precedent in this House, the Speaker has held the discussion of a Bill the subject-matter of which is *sub judice* by virtue of an appeal pending in the Supreme Court as in order provided the Members refrain from referring to the facts of a particular case in appeal as, thereby, the debate in the House would not pre-*judice* the hearing of the appeal by the Supreme Court."

Therefore, the Members are not allowed to refer to the facts of each case pending before the High Court or the Supreme Court. They can mention the names. The legislative power of Parliament cannot be subject to the principle of *sub judice*. Otherwise, Parliament will be helpless. We have got the powers to make laws. It is a sovereign body. Are we to be precluded simply because some case is pending in a court and the Parliament cannot legislate?

Here, in this particular case, the Government wants to remove the confusion that has been created by the Supreme Court which is contrary to the decision of the very court delivered earlier....

MR. DEPUTY-SPEAKER: It would help me if you give me the basis of the Essential Services Ordinance, whether any particular case was the basis for the Bill itself. That is the crucial question.

SHRI JAGANNATH RAO: I take an extreme case. Supposing there was no precedent, are you going to

decide that Parliament has no power to legislate simply because some case is pending before a court?

MR. DEPUTY-SPEAKER: You were not here on the last day. We are not discussing about the power of this House to legislate. It can legislate. But that is not the point ..

SHRI JAGANNATH RAO: You say that the principle of *sub judice* will come in the way....

MR DEPUTY-SPEAKER: I never said that. You did not understand me then.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Sir, you have said on page 12118 of the debate:

"But if anybody, at this stage, makes a reference I cannot stop him."

MR. DEPUTY-SPEAKER: That was before my ruling. I said it in this context: at that time it was submitted to me 'Let us go on with the discussion; you can reserve your ruling'. Then I said: 'Before I give my ruling, at that stage, I cannot stop anybody'. But now we have not reached that stage, I have yet to give a ruling.

SHRI VASANT SATHE (Akola): I entirely agree with you, Mr. Deputy-Speaker, that we are facing a very ticklish situation and your problem has become more difficult because there is no direct precedent. If there was a direct precedent on all fours, as you said, the problem would not have arisen and you had only to follow the precedent. I have tried to do some research and I have not been able—I do not know whether the Law Minister has found any—to find out a direct case on all fours.

Now, Sir, the principle of *sub judice* is well understood. And it is no one's case or contention that this House or the Parliament is estopped

because certain matters or cases are pending in a court of law. This is a rule of self-restraint. This is a rule of prudence because we do not want to prejudice the cases in courts created by this very sovereign body. We do not want to refer to those matters lest it should prejudice them. That is why, in the book by Kaul and Shakhder it has been mentioned on page 301:

"The rule of *sub judice* cannot stand in the way of legislation. If the rule of *sub judice* were to be made applicable to legislation, it would not only make Legislatures subordinate to the courts in that matter but would make enactments impossible because numerous cases concerning a large number of statutes await at all times adjudication in one court or the other"

On this, I do not think, there is any dispute. The difficulty has arisen not because of the rule of *sub judice* but because it was contended, as you rightly pointed out, that this Bill in terms is trying to cure a defect that has arisen out of the recent judgment in *Kanwarlal Gupta vs. Chawla*. Because of the recent judgment given, a certain contingency has arisen because of an interpretation given in that decision on section 77 read with section 123 of the Representation of People Act. The interpretation that has fallen from the learned judges of the Supreme Court has created a difficulty; that interpretation was that the 'authorised expenditure' would mean contrary to the earlier rulings, 'deemed to be authorised'...

MR. DEPUTY-SPEAKER: Impliedly.

SHRI VASANT SATHE: Yes, impliedly authorised.

Therefore, this Bill is being brought to make clear what was till then the decision as understood of the Supreme Court and High Courts as was decided in the last case of *Rajagopala Rao vs. N. G. Ranga* which quoted

earlier decisions from *Meghrai Patodia vs. R. K. Birla and others*. I am giving the background so that we may understand the import of what we are trying to prevent. This is what the Supreme Court had to say:

"This Court as well as the High Courts have taken the view that the expenses incurred by a political party to advance the prospects of their candidates put by it without more do not fall within Section 77"

Now, the Supreme Court said and underlined the words "without more". They said the words "without more" are important. They have interpreted the words "without more" as to mean 'not as authorised knowingly or expressly but even by implication'. Now, this is the extent to which the Supreme Court has gone and this is what has created a problem.

Now, what is it that is sought to be done? The effort of this Bill is that where a reference has been made to the pending cases—reference to the pending cases is only *qua* this particular aspect—that means where 'anything more' can be interpreted as to mean implied authorisation. Only that much. Therefore, in the pending cases which are 180 or so, whatever it may be, there may or may not be facts which would show an expenditure by a political party and whether such an expenditure would be deemed to be authorised impliedly or not, would be a matter which, when each case comes up for consideration, is for the Judges to consider and determine. But if this judgment stands, then every such expenditure incurred by a political party would be deemed impliedly incurred by the candidate.

Ram Dayal vs Brij Lal & Others where the contention was that the expenditure incurred by the Maharaja of Gwalior should be deemed to be impliedly an expenditure incurred by Brij Lal but the Supreme Court said, 'No' and did not accept the principle of implied consent. But today if it is accepted, then, even that case could

[Shri Vasant Sathe]

be struck down. That is the possibility. All these candidates pending cases of various political parties stand to be affected if it is established that even friends, or groups of friends or supporters had spent for them for pamphlets, propaganda, arranging meetings or anything even though they had spent that money on the understanding of the law as it stood till the decision in Kanwar Lal Gupta's case. In that understanding, if a party has spent some money or some groups of friends have spent some money and if it is to be impliedly included, then a large number of cases, for no fault of theirs, but only because they understood the law as it stood till then, would be declared void. This is a simple problem. I am sure Mr. Gokale will appreciate my point. I am quoting the law; I am only saying the law as laid down by the Supreme facts of the case. And even if we agree to the principle of *sub-judice* which I do agree, is not to apply and the legislation could go on, we could not make any reference because that is not essential. That is my basic point. Simply say, this is the law on that, you need not go on arguing any further. One should not refer to facts of each case because once you start doing that there will be no end to it. What would be argued by the other side? They would say, yes, such and such expenses must be deemed to be authorised and then they will start giving instances and so on. That is all that they can say. They can quote X or Y or Z. They want only to strengthen their reasoning that this Bill should not be passed and that the Supreme Court ruling would hold the field. This is what they want to say. For that one need not have to refer to facts of the pending cases. And as I see it, the demarcating line would be this. There cannot be blanket shutting out. It cannot be said that nobody can refer to any name of a case or any such thing. That would not be correct. The dividing line

should be the rule of self-restraint. Do not say anything on the merits of facts which have been controverted. What you said in your affidavit could have been controverted by the other side. It is for the court to decide. You need not advance your arguments all over here. You may in your wisdom rule that while Members may without prejudice to *sub-judice* law refer to cases in general, they should not refer to facts averred which are for decision. And the moment they come to that, this Book itself says what the presiding officer should do.

Sir, the presiding officer has a duty; at the point where finds that someone is referring to facts which are likely to prejudice, he can stop. I hope that the hon. Members here can exercise that much restraint unless they want to utilise this Bill, as they have done in the recent past, to do mud-slinging and go on saying things hoping that that will go on record. I do not think that that is their intention. Therefore, they will exercise the restraint and if the ruling comes laying down this guideline. I believe, it would serve the purpose.

MR. DEPUTY-SPEAKER: I had sought the Law Minister's assistance only on one particular point, that is, to help me in pointing to a precedent of a Bill of a similar nature where the cases pending before the courts are the very basis of the formulation of that Bill and the presiding officer decided that even when a Bill is of that nature no reference could be made to those cases before the court.

SHRI SOMNATH CHATTERJEE (Burdwan): The point that we are considering here and also trying to assist on is as to what will be the scope of discussion of this Bill, and whether in the course of discussion of the Bill we can refer to any particular pending case or not? We ought to remember that we cannot discuss a legislation as an abstraction. A legislation cannot be in abstract form. It has to meet certain social needs or important changes which are sought to be brought about in the political

or social fabric of the country. So far as the present Bill is concerned, it is an admitted case that it is for the purpose of providing a protective umbrella to certain pending cases. That is the main objective of this Bill. The object of the Bill is not only to have a law for the future guidance of the people but to seek a protection to pending cases which are about 180 or so.

This Bill has been brought to replace an Ordinance.

This Ordinance that is sought to be replaced now was brought in when Parliament was not sitting. What immediate urgency was there? Clearly the urgency could not be for the future applications. The urgency was to give protection to the respondents to the pending petitions. Whether it was necessary or not or urgent or not, the only consideration is giving protection to the pending petitions and not the future law of this land.

If the intention of this Government was to provide certain changes in an electoral law as such, we have also other pending bills such as the Representation of the People (Amendment) Bill. The hon. Minister could have brought in an amendment to this Bill if he wanted it only for future guidance. The protection is sought to be given to such and such petitions pending in the court. This umbrella is going to be given to those petitions so that the decision of the Supreme Court may not have any effect or it may nullify the Supreme Court's decision in relation to that particular case. Shall we not discuss here the particulars of the cases that are pending? Whether the cases require protection or not, can we not look into it? Can we not look into the question because of the rule *sub judice*? We may not make comments only on the facts of the case. And mere narration of the facts of the case is no comment on the issues involved.

MR. DEPUTY-SPEAKER: I say I am terribly afraid of the tomes that are being brought to the House.

SHRI SOMNATH CHATTERJEE: The principle of *sub judice* is very clear. You should not try to pre-judge the issue. There should be no comments on the merits of pending cases so that the adjudicating authority is not influenced by it. But, if I say that certain cases do not require protection, then this law is not necessary. We must also know what are the facts of the pending cases. If we pass judgments in pending cases, then you can pull us up. But you cannot do that, so far we do not try to give our own opinion as to the rightness or wrongness of the contention made in the election petitions or the contentions made by the respondents in the election petition. We are not discussing the law as such in abstract. On reading the statement of objects and reasons, I find that this Bill is brought forward with reference to the candidates against whom election petitions are pending. It says:

"In view of the effect which such interpretation might have particularly with reference to the candidates against whom election petitions are pending, it became urgently necessary to clarify the intention underlying the provisions...."

When we come to the objectives of the Bill, when we discuss the merits of the Bill as also refer to the pending cases. Otherwise, it will be only a mockery of the Parliamentary Procedure.

SHRI S. M. BANERJEE (Kanpur): Sir, I want one minute only..

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I think the hon Member spoke the other day.

SHRI S. M. BANERJEE: I spoke in regard to the case of Shri Chagla.

MR. DEPUTY-SPEAKER: Kindly listen to me. Were you here when I began...?

SHRI S. M. BANERJEE: I was here.

MR. DEPUTY-SPEAKER: You were not here. I allowed certain things before I proceeded to give my ruling. I had sought the assistance of the Law Minister in one particular respect to point out aprecedent of a Bill of a similar nature in the past, where the presiding officer ruled that reference could not be made to cases pending. This is the limited thing. It is after that that I shall proceed.

SHRI S. M. BANERJEE: That is what I wanted to say.

SHRI MADHU LIMAYE: (Banka): You have not answered Shri N. K. P. Salve's question.

MR DEPUTY-SPEAKER: I have already answered that. You were not here. I have already dealt with that. I had already answered. This is the difficulty with the Members. They do not follow from the beginning.

SHRI S. M. BANERJEE: There is no lunch hour for every one of us. Kindly hear me a minute. Mr. Jagannath Rao...

MR. DEPUTY-SPEAKER: Don't refer to Mr. Jagannath Rao. I have ruled it out that the Bill to which he has referred has no similarity with this one.

SHRI S. M. BANERJEE: I am happy. Secondly, the hon. Minister has said that we should not make any reference to the pending cases in the various courts. There is another case pending, not only pending, but, Mr. A. N. Chawla himself has filed a revision petition.

MR. DEPUTY-SPEAKER: That is a different matter.

SHRI S. M. BANERJEE: My party colleague has been given a copy of that. He is bound to speak on that.

MR. DEPUTY-SPEAKER: This has nothing to do with this particular question. Let us hear the Law Minister.

SHRI S. M. BANERJEE: This is arising out of A. N. Chawla's case.

SHRI H. R. GOKHALE: Mr. Deputy-Speaker Sir, the question is what should be...

SHRI MADHU LIMAYE: Sir, may I make a submission...?

MR. DEPUTY-SPEAKER: After the Law Minister speaks, then again, if you speak, there is no end to it. I have asked a very specific and limited question. Let us do one thing. If you want, you make your submission now. After the Law Minister makes his submission on this limited point, then allow me to proceed. We should not have further discussion. I will give my ruling. I am seeking his help at this stage.

SHRI VASANT SATHE: By way of abundant caution, you may hear Mr. Madhu Limaye also.

MR. DEPUTY-SPEAKER: That is what I say. If you say that you will speak after him, there is no end to it. You rather speak now. Mr. Madhu Limaye, if you want to speak, you rather make your brief submission now.

SHRI MADHU LIMAYE: What is the specific question addressed to the Law Minister?

MR. DEPUTY-SPEAKER: Let me again repeat the specific question. Are you hearing, Mr. Madhu Limaye? The specific question to him is, to point out to me a precedent where a similar Bill of this nature, where cases pending before the court constitute the genesis and the basis of the Bill,

had come before this House where the presiding officer had ruled that reference could not be made to those cases. This is the limited question. I had asked him because I want to be satisfied on that.

SHRI MADHU LIMAYE: I have a right to reply to him.

MR. DEPUTY-SPEAKER: It is not the right to reply. You are not going to reply.

SHRI MADHU LIMAYE: I am going to help you.

MR. DEPUTY-SPEAKER: I am laying down this. If you want to make submissions—I have allowed other Members to make it—you can make it. Why are you all getting excited? After the Law Minister makes his submission, I will proceed. I won't hear anybody else.

श्री मधु लिमये : उपाध्यक्ष महोदय, मेरी प्रार्थना है कि अगर आप कानून मंत्री के बाद मुझ को सुनेंगे, तो आप का ज्यादा फायदा होगा ।

15 hrs.

MR. DEPUTY-SPEAKER: No.

श्री मधु लिमये : ठीक है । मैं पहले बोलता हूँ । आप मेज़ पार्लियामेंटरी प्रैक्टिस, 15थ एडिशन, पेज 380, देखिये । आप उस को मंगवाइये ।

MR. DEPUTY-SPEAKER: It is not that we do not have a copy of *May's Parliamentary Practice* here. But we have the most modern edition. You are referring to the 15th edition. If you refer to the most up-to-date edition and the page number, it would not take time.

SHRI MADHU LIMAYE: This is the 15th edition, page 380.

SHRI H. R. GOKHALE: After that, there are two.

SHRI MADHU LIMAYE: The principle is the same. You prove that subsequently the Speaker has changed his ruling. This should stand unless you have got information that this ruling has been modified subsequently. This is about 'matters pending judicial decisions'.

"A matter whilst under adjudication by a court of law should not be brought before the House on a motion or otherwise. This rule does not apply to Bills".

आप मंत्री महोदय से प्रिसिडेंट पूछ रहे हैं । मैं चाहता था कि मैं आप की खिदमत में एक प्रिसिडेंट पेश करूँ । इस लिए मैं कुछ समय चाहता था । लेकिन चूँकि आप जल्दबाजी में हैं, इस लिए मैं पेज नम्बर नहीं दे पाऊँगा । मेरे पास किताब है । मुख्य निश्चित रूप से यह है कि कांस्टीट्यूट एसेम्बली कंसटस आफिशियल होने के बाद जो प्रोविजनल पार्लियामेंट आई, उस में कांस्टीट्यूशन (फस्ट एमेंडमेंट) बिल स्वयं जवाहरलाल नेहरू ने पेश किया था । मैं उन का पूरा भाषण पढ़ कर सुनाऊँगा ।

उस समय पटना हाई कोर्ट का एक केस था लेड रिफार्मज बिल के बारे में, और वह अपील सुप्रीम कोर्ट में पेंडिंग थी । लेकिन फिर भी जवाहरलाल जी ने यह बिल पेश किया, और अपने बिल के समर्थन में, हाई कोर्ट का रूलिंग कैसे गलत है, उस के तथ्य क्या हैं, इस की खर्चा मोटे तौर पर जवाहरलाल जी को करनी पड़ी । मैं आप को एक कन्फ्रीड इन्स्टंस दे रहा हूँ । जो इस से मिलता-जुलता है । अगर मंत्री महोदय ज्यादा अड़ंगा डालेंगे, तो मैं जवाहरलाल जी का पूरा भाषण पढ़ कर सुनाऊँगा ।

किसी हाई कोर्ट ने मंडर के बारे में भी कुछ कहा था । पंडित जी ने उस का भी उल्लेख करते हुए कहा कि अगर फंडामेंटल राइट्स के क्वैटर को संशोधित नहीं किया

[Shri Madhu Limaye]

जायेगा, तो मर्डर का प्रचार करने का फडा-मेंटल राइट भी प्राप्त हो जायेगा। क्या यहाँ कोई 1951 वाले सदस्य है ?

श्री क्यामनन्ध मिश्र (बेगुसराय) : मैं 1950 सं था।

श्री मधु लिमये तो माननीय सदस्य को मालूम ही होगा। यह तो मेरी याद है। माननीय सदस्य तो खुद वहाँ मौजूद थे। क्या उन्होंने यह भी नहीं कहा था कि अगर फडामेंटल राइट्स के चार्टर को संशोधित नहीं किया जायेगा, तो शायद हम मर्डर के बारे में भी कुछ नहीं कर पायेंगे, और क्या किसी जजमेंट और उम के तथ्यों का हवाला उन्होंने नहीं दिया ?

कांग्रेस पार्टी के लोग दिन-रात सदन की सर्वोच्चता, पार्लियामेन्टरी सुप्रीमेसी के बारे में चिल्लाते हैं, लेकिन किसी फुटलिंग अदालत में कोई फालतु, फुटलिंग केम चल रहा है, उम को ले कर वे पार्लियामेन्टरी सुप्रीमेसी को, और हमारे राइट्स को, जो आर्टिकल 105 के द्वारा हमें प्राप्त हुए हैं, खत्म करना चाहते हैं।

हम ने शुरुआत को कहा था कि एक साधारण, जेनेरल रूल है और एक विशेष, स्पेशल रूल है। श्री सोमनाथ चटर्जी बड़े लाइयर हैं, मैं तो कुछ नहीं हूँ। लेकिन वह भी इस बात को मानेंगे कि जब बिलों के बारे में अलग नियम है, और उस में सबजूडिम का कहीं उल्लेख नहीं है, और कास्टीट्यूशन में हमें फ्रीडम आफ स्पीच का अधिकार दिया गया है, तो इस बिल पर बोलते हुए हम अदालत में चल रहे अन्य चुनाव याचिका के मामलों के बारे में बोल सकते हैं।

हमारी फ्रीडम आफ स्पीच सबजेक्ट टु दि रूलज आफ प्रोसीजर है, और रूलज आफ प्रोसीजर के बारे में आर्टिकल 118 है; जिसमें कहा गया है कि "सबजेक्ट टु दि प्राविजनज

आफ दिस कास्टीट्यूशन" रूलज बनने चाहिए। घुमा-फिरा कर आप आर्टिकल 105 पर आ जाते हैं। इस लिए अपने मुहों के समर्थन में 180 पेडिंग पेटीशनज के सभी तथ्यों को नहीं, लेकिन जो रेलिबेट है—रेलिबेट टु दि सबजेक्ट मैटर आफ दि बिल, उन को उद्धृत करने का हम को कास्टीट्यूशनल राइट साविधानिक अधिकार है। हम श्री गोखले और श्री रघुरामैया की दया पर निर्भर नहीं हैं। उम हक को छीनने का किसी को भी नैतिक या साविधानिक अधिकार नहीं है। चूंकि श्री उपाध्यक्ष महोदय हमारे अधिकारों की रक्षा करने के लिए यहाँ बैठे हुए हैं, इस लिए मुझे पूरा विश्वास है कि वह श्री गोखले और श्री रघुरामैया की ताना-शाही को यहाँ पर नहीं चलने देंगे।

जब सुप्रीम कोर्ट के एक जजमेंट के इफेक्ट को ही खत्म करने वाला यह बिल है—आप ने खुद यह कहा था कि इस बिल का उद्देश्य टु नल्लीफाई दि इफेक्ट आफ दि जजमेंट आफ दि सुप्रीम कोर्ट है, तो 180 इलेक्शन पेटीशनज के आधार पर, और उन लोगों को बचाने के नाम पर, यह जो सारा नाटक किया जा रहा है, इस का खंडन करने के लिए हम लोग 180 पेटीशनज के प्राउडज की चर्चा करेंगे, और यह साबित करेंगे कि यह सारा दिखावटा काम है, और असल में श्री गोखले की नियुक्ति जिस व्यक्ति ने कैबिनेट में की है—प्रधान मंत्री, उनको बचाने के लिये श्री गोखले यह काम कर रहे हैं।

MR. DEPUTY-SPEAKER: At this stage do not go into those things; we are now dealing with the point of order.

श्री मधु लिमये : कानून मंत्री इस देश के और सदन के सदस्य हैं, किसी व्यक्ति के नहीं, यह बात मैं बड़ी ताकत के साथ कहना चाहता हूँ, और इस लिए मैं कहता हूँ कि वह इन आक्षेपों को वापिस ले ले और बहस को सुचारु ढंग से चलने दें।

श्री एच० राम गोपाल रेड्डी (निजामा
 बाद) : यहाँ पर जितने मेम्बर हैं, व सब
 देश के सेवक हैं। मगनीय सदस्य उन में से
 श्री गोखले को क्यों बाहर कर रहे हैं ?

श्री मधु लिनये : जमे हम इस सदन के
 सेवक हैं, वैसे ही श्री गोखले भी हैं, वह किसी
 व्यक्ति के नहीं हैं।

SHRI SHYAMNANDAN MISHRA—
 It is admitted by everybody that the
 rule of sub-judice does not apply to
 any legislation. What does it mean,
 I should like to understand from the
 Chair. The rule of sub-judice does
 not apply to any legislation in the
 House. Any legislation which is being
 discussed in the House—in my
 humble opinion that means that there
 could be uninhibited discussion on that
 piece of legislation. This rule is un-
 trammled by any qualification. Has
 anybody produced any qualification
 to this rule that the rule of sub-
 judice would not apply to any legis-
 lation? It is without any reservation.
 So I should submit that this has to
 be applied in this case also.

You were pleased to say that the
 case that has been cited in this con-
 nection was not identical, on all fours
 with the matter before us just now.
 (Interruptions) Here is a definite
 attempt by the Government to in-
 fluence the judgement in the court.
 That is the express objective of this
 measure. What is the objective of
 this measure?—That the cases which
 are pending before the court should
 not be affected adversely. That means
 that the Government is making an
 attempt to influence the judgements
 in the court. Who is doing it? The
 cap does not fit us. It is the Gov-
 ernment which by bringing up this
 measure is trying to influence the
 judgments in the courts. It may be
 a good act or bad act on the part of
 the Government; I am not going into
 the merits. But the desired effect of
 this act is that the judgments in the
 court should not be adverse, against

the election petitions pending in the
 court on this very subject. If that is
 clear that the object is to influence
 the judgments in the courts, the duty
 of the House is to see that the proce-
 edings in the court are not affected
 by anything you do, if we go by their
 own argument and then we will have
 to cite our own facts to show that
 probably it was not required and there-
 fore, Government is not in order in
 bringing up a measure of this kind.
 You will kindly recall that when the
 Minister first spoke to the press, he
 mentioned about these 180 cases. The
 explanatory memorandum refers to
 the same. The statement of objects
 and reasons says that particularly
 because of these cases pending in the
 courts that this measure is being
 brought I underlined this on the
 previous day when we were discuss-
 ing it that this was the particular
 object mentioned in the statement of
 objects and reasons.

After all that storm that raged in
 the House when the Law Minister in-
 troduced that Bill in the House, at
 that time, his whole speech was full
 of references to the cases pending be-
 fore the courts. The entire speech of
 the Law Minister was based on those
 pending cases. That being so, I think
 this House has a clear duty to go into
 the facts of those cases, which are
 pending before the courts and which,
 as you have been pleased to point out,
 form the very basis of this measure.
 We cannot just refrain from making
 references to the facts that are there.

SOME HON MEMBERS ROSE—

MR. DEPUTY-SPEAKER: I have
 a very difficult task even in running
 the business. On the one hand, there
 is pressure from the Minister of Par-
 liamentary Affairs that we must hurry
 because there is a time-limit that we
 have fixed. Moreover, the Business
 Advisory Committee has made certain
 recommendations, which the House
 has adopted. On the other hand, the
 pressure on me is to ensure that this
 House has the right of a reasonable

[Mr. Deputy-Speaker]

debate, that we do not do anything hurriedly in an irresponsible manner. I have to resist pressures from both the sides. The Law Minister in this case is the spokesman of the Government, of the ruling party. You all belong to that party. The members of the opposition have their submissions to make. It would save the time if you voluntarily forgo the right to make your submissions and leave the matter to the Law Minister.

SHRI S. M. BANERJEE: Sir, what I am going to impress upon you is that in this particular case, there are two points. Firstly, what is the genesis of the case? It arose out of the judgment delivered by the Supreme Court in the case of Shri Kanwarlal Gupta vs. Shri A. N. Chawla. Mr. A. N. Chawla was a sitting Member of the House. When the judgment was given, the Government in their wisdom came out immediately with an Ordinance protecting the cases of those against whom election petitions are pending. If you will kindly read the Statement of Objects and Reasons...

MR. DEPUTY SPEAKER: We have read it many times.

SHRI S. M. BANERJEE: You have read it and you are also convinced that the object of this Bill is quite clear. What is the object of the Bill? The object of the Bill is to protect those 180 and odd cases pending before the various courts in the form of election petitions.

Now, there are two aspects of the case. Firstly, if we are allowed to discuss these cases, if you kindly allow us to refer to those cases, then we will be doing injustice to those against whom election petitions are pending and we will be expressing our opinion in this House which would be the opinion of the legislators. That might go against the interest of those against whom election petitions are pending. Secondly, if you do not allow us to refer to those cases, what should we discuss then?

MR. DEPUTY-SPEAKER: That is exactly my difficulty.

SHRI S. M. BANERJEE: Your difficulty is the difficulty of us all.

My hon. friend, Shri Sathe, was saying, let us discuss the general aspect of the Bill. If we are to discuss it only in abstract terms, let them withdraw the Bill and bring a motion under rule 184 or 193. We can discuss it. In that case, it will not be a Bill. It will be a motion. I have no objection. But if you are interested in passing the Bill...

MR. DEPUTY-SPEAKER: Let us not have too many motions

SHRI S. M. BANERJEE: Sir, I want that you should take a decision....

MR. DEPUTY-SPEAKER: I will take a decision. You allow me to take a decision.

SHRI S. M. BANERJEE: My submission is that if you allow us to refer to those cases, that will prejudice the cases of those against whom election petitions are pending in various courts. If you do not allow us to refer to those cases, what are we to discuss then? I feel, this Bill should be withdrawn. Let us then have a motion and discuss it.

SHRI B. V. NAIK rose—

MR. DEPUTY-SPEAKER: Mr. Naik, I had made an appeal...

SHRI B. V. NAIK (Kanara): I think, even the hon. Minister will yield for a minute to me.

What I am saying is, if you kindly bear with me that in this Statement of Objects and Reasons, without involving myself in legal hair-splitting, since I am not a lawyer but a commoner, the case that has been cited is that of Mr. Kanwarlal Gupta vs. Mr. A. N. Chawla....

MR. DEPUTY-SPEAKER: Please do not go into all that. You were not here last Thursday. You are beginning the whole thing right from the start.

SHRI B. V. NAIK: You bear with me for a minute. The subject-matter of 180 cases has not been referred to at all in the Statement of Objects and Reasons. The case under reference is *post judice*, not *sub judice*.

MR. DEPUTY-SPEAKER: You have not read the Bill; you have not followed the discussion.

A little while ago, I welcomed you after a long time you were seen in the House. I think, I will have to revise my opinion if you go on in this manner.

Shri H. N. Mukerjee.

SHRI H N MUKERJEE (Calcutta—North-East): Mr. Deputy-Speaker, Sir, I would be very short. I think, the basic point is in regard to the position of the Legislature and of the judiciary, and we should not do anything which would prejudicially affect the balance which ought to be there. As far as we are concerned, the rule of *sub-judice* does not apply in so far as our power to legislate is concerned. And there may be good reasons or bad reasons for Government and Parliament to collaborate in order to bring forward legislations which would affect the country in a particular way and it does not matter what is pending in courts or not. It is, therefore, the point of Government and Parliament making up their mind about what legislation is desirable. But if Government approaches Parliament with change in legislation necessitated on account of a certain trend in so far as judicial pronouncements are concerned, a trend which was of one sort once upon a time and appears to be of a different sort at the present moment, then, surely, it is necessary for Parliament to know exactly what these, in many cases, are about. If reference continued to be made by Government—

I am told so; I was not here; I apologize I was not here a bit earlier—, if Government continues to rely upon the nature of certain cases pending before one court or the other and if that is the reason why legislation of another sort is supposed to be desirable—and Government went so far as having an Ordinance promulgated when Parliament was about to begin its Session—then, the Parliament must satisfy itself. Therefore, I feel that, since we have, as against the judiciary, the sovereign right of not having to bother about the *sub-judice* rule when we legislate by means of a Bill, we should also, at the same time pay a compliment to the judiciary and to the citizens of our country who have gone to the courts for relief and we should know what exactly is happening, which requires this change. Therefore, I feel, quite apart from the subject-matter of this legislation, if Government has relied upon the pendency of a large number of selection cases, they must keep the Parliament informed in regard to the contents of those cases, the kind of problems that cropped up in those cases and the kind of solutions to those problems which this country, through the Parliament, should evolve.

SHRI SHYAMNANDAN MISHRA: Only this much I wish to remind this hon. House that we are discussing not only this Bill but also the Ordinance. Both the discussions are taking place together. I have made a submission to you earlier, Sir, that, while one cannot urge that the Bill is dishonest, one can urge, so far as the Ordinance is concerned, that it is dishonest and *mala fide*.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Deputy-Speaker, I would like, in a short time, to deal with the points raised by the hon. members today. The question is what is the scope or what should be the scope of the present discussion. To me it appears to be plain that the scope of the discussion is discussion on the Bill which is before the House....

SHRI SHYAMNANDAN MISHRA: Not on the Ordinance?

SHRI H. R. GOKHALE: I did not interrupt you. I expect you to allow me also to carry on without interruptions.

We are considering the motion for consideration of the Bill and his motion for disapproval of the Ordinance....

SHRI SHYAMNANDAN MISHRA: Both are together.

SHRI H. R. GOKHALE: I know what are going together. You need not remind me of that.

The Ordinance and the Bill, in terms, are the same. So far as the legislative provisions are concerned, the Ordinance and the Bill are, in terms, the same excepting for the fact that one is a Bill converting the Ordinance into law and the other one is an Ordinance. But, in terms, between the provisions of the Bill and the provisions of the Ordinance, there is no difference. Therefore, the scope of the discussion is the scope that will apply to the discussion of the Bill or, let us say, the Ordinance also.

Now I would submit, with respect, that the Bill or the Ordinance will not show this—a reading of the provisions of the Bill or of the Ordinance; I will come to the Statement of Objects and Reasons later because a reference has been made to that also—; the Bill, in terms, seeks to rectify the position which arose on account of a judgment of the Supreme Court, although, in terms, no reference is made to that case in the Bill or the Ordinance. Naturally it could not be made. It only seeks to correct the legal position, it seeks to amend section 77 of the Representation of the People Act, because what was thought that the section really ought to mean one thing but the interpretation of the Supreme Court says that it means another. There have been innumerable instances in which,

Sir, a law has been undertaken to set right decision of the Supreme Court in order to make the intentions of the Parliament clear. There is no difficulty about that. Therefore, there is no question that the Parliament has the power to make a law because it thought that a certain law or legal decisions taken by the court in a particular case were quite different and not the correct decisions and that they required rectification by a proper legislation. Therefore, I think and I submit with respect that it is not correct to say that the legislation is in respect of any particular pending case. In fact, the case in which this proposition was laid down has been excluded from the operation of the ordinance and also from the operation of the Bill because the provisions will show that it does not apply to decisions which have become final in the High Courts or and in the Supreme Court....

SHRI JYOTIRMOY BOSU: Why this urgent ordinance?

SHRI H. R. GOKHALE: Let me deal with it. I have not forgotten the Objects and Reasons reference also. To that I will come step by step. I will deal with all the points.

SHRI ATAL BIHARI VAJPAYEE: Why this discrimination? Why not allow Shri Amar Nath Chawla to sit in the House?

SHRI H. R. GOKHALE: When this question has been raised before the courts as to why this discrimination of excluding a particular case, the courts have laid down, and I have got one judgment here right now where they have said,—that there is no discrimination at all if Parliament were not to touch that very case in which a particular proposition of law has been given, and the reasons given by the Bombay High Court are that when litigants go to the court....

SHRI SHYAMNANDAN MISHRA: We will study that.

SHRI H. R. GOKHALE. You may study or may not study. But a point has been raised and I am answering that.... (Interruptions) It has been said that when a client goes to the court and gets a favourable judgment, he spends a lot of money, time and energy for obtaining a particular judgment and, therefore, it is not right to deprive him and in this case, Mr. Gupta, of the benefit of that favourable judgment. That has been the view taken by courts and, therefore, there is no discrimination in this. This question was considered and decided by the courts.

Now, apart from the question, because I was taken a little aside because of the interruptions, the submission which I wish to make is that when you think of precedents, it is well-known that you do not think of facts, for precedents I am making this respectful submission. What we think of is the ratio even in respect of the legal propositions which have been followed from time to time in different cases in the past. It is unfortunate that you have already said something about the ruling which was cited before you. But I would respectfully submit that the ratio, the basic principle underlying that decision holds even to-day in respect of any other case where legislation is undertaken for the purposes of rectifying a legal position taken in a decision by a court. This question we will have to decide not on whether A or B or C or D or E or F or such other facts which obtain in the earlier cases obtain in this case. Even in the earlier case there was a matter pending in the court and it was argued that without reference to the facts of the case, we cannot proceed with the consideration of the Bill. The Speaker, with respect rightly pointed out that you cannot prevent consideration of the Bill and you can do that but without reference to the facts of that case because the facts of that case have nothing to do with the consideration of the Bill. To-day, a reference to Mr. Chawla's case will come on only in respect of the question of law because that is the

position which is sought to be rectified. My hon. friend, Mr. Mishra may not agree with me. That is a different matter. On his side he has already made his submissions why the position of law taken in the Supreme Court is correct. That is a different matter. With regard to that, I will deal with it later on when I deal with the merits. Therefore, we look to the precedents, not for the facts the previous cases. We look to the precedents, a ratio, some basic principles, some first principles which have been the guiding principles of our deliberations here and in the matter of rule of *sub-judice*, when you apply it outside the House also I would request you to consider this.

Again, I submit with great humility and respect that here, what is the basic principle? If you discuss legislation, you discuss the merits of the legislation by all means. You can say that this legislation is not justified. You may as well say that this is motivated, that the Government has *ulterior* ends and purposes for bringing this legislation. It is your right to say all these things in opposing this legislation and it is my right to defend and privilege to defend the Government which I will do. Therefore, that no case exactly on the point and a case of similar facts were not available is not necessary. The basic principle, the first principle is that when you discuss anything in this house and if you discuss any legislation, you can discuss the merits and demerits of the legislation. On first principle you will not allow anything to happen which will prejudice the fair conduct of a trial in a civil court, may be in a criminal court or as in England where they have referred to even Courts Martial and such other forums before whom judicial adjudication takes place, there are references in May's Parliamentary Practice. References were made just now saying, this principle applies to Motions, this principle applies to questions etc. I can briefly refer to this. This is from page 228 and the heading is, sub-

[Shri H. R. Gokhale]

judice matters. This is from para 11. This is the 18th Edition. It says:

"By a Resolution of the House matters awaiting or under adjudication in a criminal court or a court martial and matters set down for trial brought before civil court may not be referred to in any debate or question."

Now, what is the principle underlying this? It is not the case of A. N. Chawla. The judgment is there already before everybody. It is no longer open for discussion and I am not going to discuss the facts of Chawla's case. The Supreme Court is the final arbiter and on facts the Supreme Court has decided that thing. But now can we refer to other cases and say that in that particular case a certain allegation is made etc.? That is the question; and we can certainly refer to in general terms, in regard to pendency of the case, where a question as regards excess expenditure arises, where similar question of law arises or is pending consideration. If one were to go further and say that we will discuss the merits of those cases, that would be, I very respectfully submit, an irregular thing and by this you would be only setting down a precedent for the future which would be undesirable. This is my submission.

As regards the other point raised, it is a well-known and well-recognised principle of all interpretations that you for understanding the meaning of a legislation, we do not wimply look at its Objects and Reasons. That is a well-known principle that you cannot look at them unless there is any doubt or some such thing in understanding the provision itself. It is only for the purpose of clarification of that thing that you can refer to the Statement of Objects and Reasons. But that statement itself cannot govern the interpretation of a section which is otherwise clear. That is to say, the interpretation of the section will be

on the section itself and on nothing else. But apart from this, what does the Statement of Objects and Reasons state here? One thing is this. What is the position in law which this Bill seeks to remedy? The position in law is stated in the Statement of Objects and Reasons. Certain provision (namely, Section 77) has been understood in a particular way in previous decisions of the courts and by all concerned who are connected with elections. And it is therefore now thought necessary to clarify the intention so that the doubt created by the Supreme Court might be met by clear-cut and unequivocal legislation. That is the sum and substance of the objects of this legislation. Then it proceeds to say the second thing. What we proposed is this. Because, if the intention of Parliament is this—I am assuming that Parliament will eventually pass this Bill,—that such an intention of the legislation should be clarified by amendment in the Bill, it is also mentioned that in order that that intention should be clarified, this Bill must be passed. The purpose is two-fold. First of all, to lay down the law, what Parliament thinks is the law for the present and for future and the second purpose is, if that is going to be law, giving the benefit of that to all those cases where the same question of law arises. It has no reference to any facts of any pending cases. I would again repeat that it will be very unfortunate if a precedent of this type is taken. Thank you.

SHRI H. K. L. BHAGAT (East Delhi): Sir, I may be allowed just half-a-minute. I want to read from the debate of 26th September, 1955. Or you may refer to page No. 15253 of debate date 26th September, 1955 on Prize Competitions Bill. What the Law Minister just now stated about the Objects and Reasons is precisely mentioned in the observations made by the then hon. Speaker whereas he has clearly said that intentions are to be seen from the enactment itself. There he has even gone to the

extent of saying, in my mind, it is irrelevant. Along with this you may also read pages 15251, 15251 and 15252. If you read these pages you will find what the Law Minister has said is absolutely correct and borne out.

SHRI MADHU LIMAYE (Banka): I have got Eighteenth edition of May's Parliamentary Practice. I quote:

"A matter, awaiting or under adjudication by a court of law, should not be brought before the House by a motion or otherwise. This rule applies to motions for leave to bring in bills, but not to other proceedings on bills."

AN HON. MEMBER. What about the foot-note?

दृष्ट नोट का क्या करना है ।

तो आप भी चैंबर में बुलाकर रुलिंग दें कि ये, पकड़ बड़ा पड़ता है ।

MR. DEPUTY-SPEAKER: Please read it again.

SHRI MADHU LIMAYE: I quote: "A matter, awaiting or under adjudication by a court of law, should not be brought before the House by a motion or otherwise. This rule applies to motions for leave to bring in bills, but not to other proceedings on bills."

अब इंट्रोडक्शन स्टेज पर नहीं है, अनुमति नहीं मांग रहे हैं, लीव नहीं सीधे कर रहे हैं । कंसिडरेशन: स्टेज पर है । यह एक भी बात को नहीं काट रहे हैं । जब जवाहर लाल जी को मुझे पेश करने दीजिये, उन्होंने रेप्रेजेंटेटिव इंटरसेज रेकर विषय हैं

श्री बंसल साठे : अब आप भी जवाहर लाल जी को कोट करेंगे ?

श्री मधु लिमये : अगर मेरे पक्ष में कोई बात जानी है तो मैं जरूर कहूंगा । एक ही मुद्दा इस वक्त है कि कंसिडरेशन स्टेज पर

किन किन मामलों की चर्चा हो सकती है ? जवाहरलाल जी ने फस्ट कांस्टीट्यूशन एमेंडमेंट बिल रखा तो उस में हाई कोर्ट की एक जजमेंट का उल्लेख किया था और उसका जो फंक्ट या ग्रांड या वह भी बताया था । दैट बाइ इन अपील बीफोर दी सुप्रीम कोर्ट ।

श्री अटल बिहारी वाजपेयी : बहुत पुराना हो गया है ।

श्री मधु लिमये : पुराना हुआ तो क्या हुआ ।

श्री अटल बिहारी वाजपेयी : ये नए लोग नहीं मानेंगे ।

श्री मधु लिमये : ये न पुराना जानते हैं न आज का जानते हैं और न ही भविष्य का जानते हैं ।

श्री एच० आर० गोखले : सब आप जानते हैं ।

श्री मधु लिमये : मैं नहीं जानता । मैं सीखता हूँ । सीखने का जो निष्कर्ष है वह आपकी खिदमत में पेश करता हूँ ।

जवाहर लाल जी कहते हैं : On page 8828, Vol. XII-XIII, Part II dated 16-5-1951 this is what he said:

"It is clear that the original clause, as interpreted by the superior courts in this country, has put this Government or put any government into a very difficult position. The House knows—and it is mentioned in the Statement of objects and Reasons—that one of the high courts held that even murder or the like offences can be preached. Now it is an extraordinary state of affairs when that can be done. It may, and I am quite sure, it would be in the long run, as in other countries, that judicial interpretation would gradually bring things more in line with—which I would beg to say is—the spirit of the Constitution."

[श्री मधु लिमये]

श्रीर भी लीड रिफार्म्स एक्ट से कई मैटर्ज हाई कोर्ट में विचाराधीन थे। उनका शैड्यूल में उल्लेख किया गया और सारे फैक्ट्स के ऊपर चर्चा हुई। मैं इस तपसील में जाना नहीं चाहता हूँ।

SHRI VASANT SATHE: He was referring to the case law which was sought to be remedied. So, what does it matter? He is referring to the facts of the case.

श्री मधु लिमये : हाई कोर्ट में एक केस था। उसके फैक्ट्स क्या था ?

SHRI H. R. GOKHALE: We have had discussions on Thursday and today. Now we will abide by your ruling.

श्री अटल बिहारी वाजपेयी : मैं केवल एक स्पष्टीकरण चाहता हूँ। यह कहा गया है कि फैक्ट्स का हवाला नहीं दिया जा सकता है। फैक्ट्स का अर्थ है तथ्य। यह तथ्य है कि प्रधान मंत्री श्रीमती इंदिरा गांधी राय बरेली से लोक सभा का चुनाव लड़ीं..... आप जल्द बाजी न करिये।

MR. DEPUTY-SPEAKER: Why bring in other cases?

SHRI MADHU LIMAYE: Why bring in the murder case? When the matter was pending before the Supreme Court, if Shri Nehru could do it, we can also do it.

MR. DEPUTY-SPEAKER: We are referring to the discussion on principles without going into any other case or any special thing.

श्री अटल बिहारी वाजपेयी : यह कहा जा रहा है कि फैक्ट्स का उल्लेख नहीं हो सकता है। लेकिन हर उम्मीदवार चुनाव जीतने या हारने के बाद भी अपने खर्च का एकाउंट देता है। वह एक पब्लिक डायुमेंट होता है। अब यह बात अलग है कि उस चुनाव को कोर्ट में चुनौती दी गई है....

MR. DEPUTY-SPEAKER: That point was made by Mr. Mishra.

श्री अटल बिहारी वाजपेयी : क्या उस पब्लिक डायुमेंट का हवाला नहीं दिया जा सकता है? अदालत में जो भी एफीडेविट दिया गया है और जो सब जानते हैं जो जनता की सम्पत्ति है, जिस की सर्टिफाइड कापी प्राप्त की जा सकती है, क्या उसको उद्धृत करना फैक्ट को उद्धृत करना माना जाएगा? इसके बारे में आप अपना विभाग तय करिये।

MR. DEPUTY-SPEAKER: That submission has already been made. Now you will kindly cooperate with me. Let us not forget how this discussion started again. I had proceeded with the formulations of certain thoughts in my mind. Before I proceeded....

SHRI MADHU LIMAYE: Are you also giving private ruling?

MR. DEPUTY-SPEAKER: No private. No question of private. I have nothing private, nothing to hide, my life is an open book. Now, at a certain stage, while I was formulating my approach to the whole question, and then expressing my difficulties, I sought the Law Minister's assistance on one specific issue, to give me a precedent when a Bill of this nature had ever been brought before this House. That is all. Now, it is obvious from his intervention that he had not been able to oblige me on this particular question. I have not got anything to catch hold of I cannot catch hold of anything.

SHRI MADHU LIMAYE: I have given you something to catch hold of.

MR. DEPUTY-SPEAKER: I will have to hire somebody to carry all those things.

SHRI MADHU LIMAYE: I have not quoted from every book.

MR. DEPUTY-SPEAKER: On the other hand, he pointed out certain what he calls, well-established principles. I am not a lawyer. Again, I express this ignorance.

SHRI S. A. SHAMIM (Srinagar):
That makes you more objective.

MR. DEPUTY-SPEAKER: May be. He mentioned the expression, first principles and he also mentioned the ratio of rulings. I think that is what he meant. From what I understand from him, the first principle is that we do not refer to cases, to facts or merits of cases, as he would like to say, that are pending adjudication. That was what he wanted to enunciate as the first principle here. Also, by ratio of ruling he meant that in the past, many rulings have been given prohibiting a reference of this nature. I think that is what he wanted to submit. Now, . . .

SHRI S. M. BANERJEE: All the cases, or some cases. . .

MR. DEPUTY-SPEAKER: Ratio of ruling is over-whelming in that. In all that has happened in the past. . .

SHRI S. M. BANERJEE: Ratio means 10 per cent or 20 per cent?

MR. DEPUTY-SPEAKER: I will agree with him that in this respect, the ruling were overwhelmingly that we cannot refer. Coming to the question of, first principle, I must say that it is a question of interpretation. Now, we are discussing this Bill and the judgement of the Supreme Court is the cause for this Bill. In the past, the Supreme Court had given a judgement in a certain manner. This time, in its wisdom, it had given a judgement in another manner. It is a question of interpretation. As far as the rules of this House are concerned. . .

SHRI SHYAMNANDAN MISHRA: Supreme Court does not say that. Supreme Court says that the judgement is in keeping with the past. Even the Chair will have to say what the Supreme Court has said. Chair will not say what the Law Minister says.

SHRI H. R. GOKHALE: I am only saying that you are entitled to say that.

MR. DEPUTY-SPEAKER: What Mr. Mishra has said has gone on record. I am just saying, we must be very very accurate in what we say.

But as far as our rules of procedure are concerned, it is also a question of interpretation by us here. Now, what should be the first principle in this particular case, this particular Bill? That is the main thing.

SHRI MADHU LIMAYE: Eighteenth edition. That conclusively settles the question posed by you. There is no room for debate.

MR. DEPUTY-SPEAKER: Order please.

As far as our rules are concerned. I think they have many times, everywhere mentioned this. I will just mention some: 41, (2) (xvii)-(xxii), 58, 59, 173(5), 175, 186(viii), 188, 210(viii) and (xii) and 352(i). These are those rules of ours which have again and again said that reference should not be made by question, motion or anything to cases pending before, or awaiting, adjudication. Our rules have said that so many times. But also our rules say that wherever anything is not specifically provided by these rules, then the Chair, the Speaker, will regulate, obviously anticipating that there might arise situations. . .

SHRI S. M. BANERJEE: Speaker includes Deputy-Speaker.

MR. DEPUTY-SPEAKER: When I sit here, I am the Speaker.

Now obviously this provision is in our rules to take care of certain unforeseen situations and circumstances, when these rules do not quite provide the answer. As I stated at the beginning, this is a very unusual case, a very unusual situation, a very unusual Bill. Therefore, I have to decide in this particular case where not a precedent could be cited in a special way. I agree with the Law Minister that I should not set a precedent by this. This is only for this particular case.

SHRI JYOTIRMOY BOSU: Let him sit up now.

SHRI SHYAMNANDAN MISHRA: He is very happy.

SHRI B. V. NAIK: Can you stop your successors from taking the precedent from you?

MR. DEPUTY-SPEAKER: I hope a Bill like this will never come before this House (*Applause*). Do not misunderstand me. You are taking it in a wrong way in the sense that Government has brought a wrong Bill and therefore, when I say this, it is a kind of censure on them. I do not say that (*Applause*). I am only saying that this Bill is creating for me and for the Chair very great difficulties. I would not like to face this kind of difficulties again, in future. That is the limited sense of what I said. Please do not misunderstand me.

In this particular case, what should be the first principle?

SHRI S. M. BANERJEE: Why don't you convene a meeting?

MR. DEPUTY-SPEAKER: I have made up my mind here. Now here, both the Law Minister and Shri Madhu Limaye have helped me by pointing out certain decisions or certain rulings or guidance given in this book, May's Parliamentary Practice, which we are following.

SHRI S. M. BANERJEE: I cannot keep the book because I do not bring it.

MR. DEPUTY-SPEAKER: Does not matter.

Now the Law Minister has read out from p. 328 of this book, the latest edition, the 18th edition.

I will read that again—

"Matters sub judice—By a Resolution of the House (House of Commons) matters awaiting or under

adjudication in a criminal court or a court martial, and matters set down for trial or otherwise brought before a civil court may not be referred to in any debate or question. If the subject matter of the question is found to be, or becomes, sub judice after notice of the question has been given, the Member is asked to withdraw it, or the Speaker may direct it to be removed from the notice paper or refuse to allow it to be asked if it is on the Order paper".

Obviously this relates to question.

Mr. Madhu Limaye drew my attention to another provision in this book which is on page 362—

"Matters pending judicial decisions.—A matter, awaiting or under adjudication by a court of law, should not be brought before the House by a motion or otherwise. This rule applies to motions for leave to bring in bills, but not to other proceedings on bills.

This is within "Debate".

That this provision in May's Parliamentary Practice has met the situation in this particular instance up to this stage is clear.

We have proceeded with the consideration of Bill. There is no question about that. The question is whether matters pending judicial decision can be brought in at a later stage after the motion to consider the Bill has been moved—that is the point I think this provision of May is very clear. That it should not be brought, does not apply to this. At least that is the interpretation.

SHRI MADHU LIMAYE: You have made it absolutely clear.

MR. DEPUTY-SPEAKER: Not so clear. It is clear up to this and because it suits your purpose, you want me to stop here. I think there is another first principle in this House and I request you hon. Members also

to think about it. The first principle, if you ask me, is laid down in our Constitution, Article 105, freedom of speech and freedom of expression. To me I should say this is the first principle. I think our rules also follow this principle. If you read the rules there is a provision for closure, that whenever a debate has become too protracted somebody can move a motion that the question be now put. In that rule it says clearly that the Speaker has to decide whether he should accept this motion or not, having regard to the fact whether it infringes the right of reasonable debate.

SHRI MADHU LIMAYE. That is enough.

16 hrs.

MR. DEPUTY-SPEAKER. It is not enough, I will proceed and in proceeding I should first like to share with the Members my approach to this question, my approach to the House, to all questions that are before the House. I have always viewed that we are all co-partners in this House. The Speaker cannot run this House alone. I cannot run the House just with the Government. I cannot run the House just with the opposition. We are all co-partners. We have a common interest and we have to get along. Matters as far as possible should not be decided by a mere majority or by just directives from the Chair in the shape of *obiter dicta* or pontification. That is not for the Chair to do. As far as possible by consensus we must try to proceed. That is what parliamentary democracy is. Of course, we have different duties to do. The Government has the duty to bring forward policies and decisions and to defend them and the opposition have their duty to pick holes in the Government and say this and that and I have the duty to hold the balance and make decisions sometimes pleasant, sometimes unpleasant.

I will first deal with some peripheral questions which were raised even on the last occasion. I think this morn-

ing there was an uproar in the House and many members were saying, this point was not answered or that point was not answered. I do not want to fall into the same trap. I will first turn my attention to Mr Madhu Limaye. He raised two questions— Can an Act be amended by just adding an explanation? Should an Amendment to an Act be just of a negative nature and seek to nullify the effect of the original Act? He pointed out rule 344 in which it is said that an amendment should not be of just a negative nature. If an amendment is just of a negative nature, it is not admitted. That is what he submitted. Now, an amending Bill can take any form. Here this Bill says very clearly that because the meaning of this particular provision—section 77 of the Representation of the People Act—is not very clear, because we have not brought it very clearly, we have run into this difficulty arising from the Supreme Court judgment and therefore, we want to make the meaning of this particular provision very clear and we do it in the form of an explanation. Therefore, on that score that the amendment is sought to be made by an explanation—I do not think that objection can be maintained and I do not accept it. About the amendment being negative, this would apply to motions and amendments to clauses, under the rules. For instance, the Law Minister has moved the motion that the Bill be taken into consideration. If there is an amendment saying that the Bill should not be taken into consideration, that is merely a negative amendment and it would not be acceptable.

Mr. Mavalankar raised another ticklish issue, which Mr. Eanerjee has now repeated. He said that there is no bar to discuss the case of Mr. A. N. Chawla because that has been mentioned again and again. He said that Mr. A. N. Chawla had filed a review petition before the Supreme Court. On that day, I sought an authoritative information from the Law Minister about it. He said, yes, he had filed a review petition before the Supreme

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Court but he did not know whether that petition had been admitted or not. I take it that the petition has not yet been admitted and, therefore, to that extent, it is not *sub judice*.

SHRI SOMNATH CHATTERJEE.
The review petition has been filed.

MR. DEPUTY-SPEAKER But not admitted.

I was saying that the Law Minister had said that it had been filed but he had no information whether it had been admitted or not. Therefore, as long as it has not been admitted by the Supreme Court, the Supreme Court is not seized of it. To that extent, it is not *sub judice*.

Then, Mr. H. K. L. Bhagat and Mr. Stephen made the point last time that it was wrong to construe that this Bill was only to give protection to those 180 cases pending before various courts. They said that this law will be of a permanent nature to take care of a future situation, and, therefore, we can discuss this law on its merit without reference to all those cases. I think, Mr. Bhagat had made it very clearly that any reference to these pending cases was only incidental. This was the word he used.

Now, I am afraid, this contention of Mr. Bhagat and Mr. Stephen was not supported by the Law Minister in his speech on that very day. I quote from what the Law Minister himself said on that day:

"A Bill to amend comprehensively the Representation of the People Act, 1950 and 1951 has already been introduced in Parliament and is pending in the Lok Sabha. There will be enough opportunity for the Members to make suggestions in the light of decision of the Supreme Court during the consideration of the Bill in the House."

Therefore, that Bill is coming. From what the Law Minister had said here, it is apparent, very clear, that this Bill is purely of a temporary character. This is what I understand ...

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): What I said was that the Bill to amend the Representation of the People Act, 1950 and 1951 is coming and has been introduced in the House. Therefore, at that time, it will not preclude Parliament from changing this Bill also if it wants so. As soon as this Bill is passed, it becomes law and becomes part of the Representation of the People Act.

MR. DEPUTY-SPEAKER: Now, that comprehensive Bill is coming and, therefore, I feel that this Bill is to meet a particular contingency. As the Law Minister himself has said in his speech many times, in the reasons for the Ordinance, in the Statement of Objects and Reasons, and also outside in the press, on the television and even in his speech on Thursday, that contingency is the 180 cases or so pending before various courts. Now, let me come to the core of the question. These are all peripheral questions....

AN HON. MEMBER: Hard core.

MR. DEPUTY-SPEAKER This is the core. Nothing more. This is the core. While coming to the core I think, my first duty is to delineate the ground, I must delineate the ground. And I must also identify the boundaries. If I make mistakes about these boundaries, members can correct me. If I leave out only landmark, please remind me about it because I want to go along with you, I do not want to say something out of my own mind.

Now, these are the boundaries of the ground. We do not, normally, discuss the facts and merits of a case before a court of law in this House on the healthy principle that there should be no interference with the functioning of our courts. This

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is one. We do not discuss the conduct of the Supreme Court or of a High Court or of judges thereof—the general boundaries—except upon a motion for presenting an address to the President. It is very clear. On the other hand, a case pending before a court of law does not stand in the way of legislation by this House, and Mr. Madhu Limaye has just read out that *sub-judice* does not apply to Bills. It does not, many times. Whatever be the case, we can make our law and after we have made the law, the court will interpret the law as we have made. There is freedom of speech here and the right of reasonable debate. These are the boundaries.

The balance between these different provisions of our Constitution and of the Rules of Procedure of this House has been a long-standing question before the Legislatures of the country, including our House, and constitutes the essence of Parliamentary democracy.

In their report of September, 1968, the Committee of the Presiding Officers—it did a very useful duty.

SHRI MADHU LIMAYE Did you attend that meeting?

MR DEPUTY-SPEAKER, Always; until the one held in my home-State or home-town; until that time when it looked as if the Speakers' Conference was a forum for running down one presiding officer or the other. Until that time, they did a very useful duty.

In their report of September, 1968, the Committee of the Presiding Officers had this to say on this question—they went into this question:

"The Committee feel that, while applying the restrictions regarding the rule of *sub-judice*, care should be taken to see that the primary right of freedom of speech is not impaired to the prejudice of the Legislature. Every attempt should

be made to strike a balance in this regard."

Coming to this Bill, the main question that has been asked is: should any discussion take place on the conduct of the Supreme Court and should references be made to the 180 cases or so pending before the different courts. This is the question.

SOME HON. MEMBERS Yes, yes.

MR. DEPUTY-SPEAKER: Theoretically, the answer is simple, but, with reference to this particular Bill before the House, it is difficult to give a straight forward answer.

While participating in the discussion last Thursday, Shri Salve said that the purpose of the Bill was to supersede the Supreme Court judgment. That was on record what Mr. Salve said.

I do not wish now to repeat what has been quoted at some length last Thursday from the Statement explaining the circumstances which necessitated the promulgation of the ordinance. We read it last time, and from the Statement of Objects and Reasons appended to the Bill, these were referred to to-day also. But the Law Minister himself has elaborated on all those things and on the Bill's *raison detre* while moving for its consideration when he said:

"However, the Supreme Court in the recent case of *Kanwar Lal Gupta vs. Amarnath Chawla and others*, civil appeal 1549 of 72, has by its observation imported an element of doubt into a hitherto well-accepted and well-understood principle underlying Section 77 of the 1951 Act."

I would like the hon. Members to record and register this in their minds.

"...that the Supreme Court has imported an element of doubt into hitherto well-accepted and well-understood principle underlying Section 77 of the 1951 Act."

"This judgment..."

I am continuing:

"...by giving a wide meaning to the expression 'incurred or authorised' has created a serious problem, particularly, with reference to the candidates..."

Here the candidates—

"...against whom election petitions have been filed and are still pending decision. For no fault of theirs, their election might set aside..."

SHRI MADHU LIMAYE: That has to be seen. That is a controversial subject.

MR. DEPUTY-SPEAKER. I am quoting:

"...Their election might be set aside because they had participated in the election having regard to the then prevalent position in law which had also received judicial approval."

SHRI MADHU LIMAYE: Question.

SHRI SHYAMNANDAN MISHRA: What a great solicitude!

MR. DEPUTY-SPEAKER:

"...To meet this situation created for the candidates, it has become necessary to make clear the intention underlying Sec. 77 of the Representation of Peoples Act 1951, namely, that in computing the maximum amount under Sec. 77 any expenditure incurred or authorised by any other person or body of persons or political parties would not be taken into account. The President promulgated the Representation of People (Amendment) Ordinance 1974 to avoid a situation wherein it would have been necessary to follow the wider interpretation given by the "Supreme Court in pending election petitions..."

So, it is avoid that contingency.

"In the circumstances, I am sure, all sections of the House will appreciate that the President, in promulgating the Ordinance on the 19th October, 1974 and the Government, in bringing the Bill for replacing that Ordinance only wanted to ensure that candidates who have contested elections and whose petitions are pending in various High Courts and the Supreme Court on the understanding of the provisions of the law as hitherto interpreted by the Court should not be made to suffer undue hardship consequent upon a sudden departure in the judicial interpretation of the provision."

This speech of the Law Minister created for me more difficulties...

श्री मधु लिमये · 180 कैडीडेट की बात आ सक्ती है यह इन का कहना है ।

SHRI SHYAMNANDAN MISHRA: In any by-election there may be a case; but that would not be covered according to the Law Minister; this is strictly confined to these cases only!

MR. DEPUTY-SPEAKER: I read his speech and his statement the whole day yesterday; I went on revolving this question in my mind.

SHRI MADHU LIMAYE: It is settled now; no ruling is called for.

MR. DEPUTY-SPEAKER: This has created more difficulties. I would like the Law Minister and the House to help me in resolving my difficulty here. I want to put this question to all of you to give me an answer. In these observations of the Law Minister, the expressions 'import an element of doubt in the hitherto well-accepted and well-understood principles' and 'sudden departure'—the word 'sudden'—would be very significant,—"sudden departure in the judicial interpretation of the provision of law and of courts," whether by these observa-

tions we have not entered into a discussion of the conduct of the Supreme Court. Well, I put this question. Whether we have not entered into a discussion.

SHRI JAGANNATH RAO (Chhatrapur): In the Constitution Amendment Bill we have discussed about Judges; I think we referred to that in the Golaknath case.

MR. DEPUTY-SPEAKER: I have not said anything. I have only posed a question.

Now I come to the corpus of the provision of the Bill.

PROF. MADHU DANDAVATE: (Rajapur) From 'core' you are going to the 'nucleus'.

श्री मधु लिमये : आप साधु निर्णय दीजिये । 'मिज' का रुनिष को आप मानते हैं कि नहीं ?

उवाच्यक्ष महोदय . खत्म करो भाई ।

The Law Minister and some hon. Members have made this point that the Statement of Objects and Reasons is not part of the Bill, and therefore we need not discuss about that. I now come to the corpus of the Bill. The Member Shri Salve, said that the provision of the Bill itself is to supersede the Supreme Court judgment. Now, what does the Bill say? I quote.

"Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section."

Therefore, the provisions of the Bill itself refer to this particular judgment. The Supreme Court in its judgment had formulated a principle on which it based its conclusion. I quote:

"When the political party sponsoring a candidate incurs expenditure in connection with his election, as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantages of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the pool prospects of the candidate. The same proposition must also hold good in case of the expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is in fact what the law in England has achieved. There every person on pain of criminal penalty is required to obtain authority from the candidate before incurring any political expenditure on his behalf."

The Law Minister obviously strongly disagreed with this formulation of the Supreme Court and he wants the House to agree with him. It is quite legitimate for him to do so but would it not be fair to this House for him to be more forthcoming in giving grounds for his disagreement with the Supreme Court before the House can discuss the matter? For example, is it true that in England whose form of democracy we are following even a party has to obtain authority from the candidate concerned in respect of expenditure in

[Prof. Madhu Dandavate]

his constituency. A mere and bald statement that the Supreme Court has suddenly departed from a well-accepted judicial interpretation leaves us gaping.

The intention of the Law Minister is also amply clear. He wants, in his own words, "to ensure that candidates who had contested elections and whose petitions might be pending in the various High Courts and the Supreme Court should not be made to suffer any undue hardship consequent upon a sudden departure in the judicial interpretation of the provisions."

This is the clause. It has been submitted that reference to these petitions in the House would prejudice the trials in the sense that it may influence the outcome of one or the other.

SHRI SHYAMNANDAN MISHRA:
That is my submission.

MR. DEPUTY-SPEAKER: I shall repeat

It has been submitted that reference to these petitions in the House would prejudice the trials in the sense that it may influence the outcome of one or the other. Is not the Bill itself which is before us meant to influence the judgment in a particular way? This is the question.

The Supreme Court had given a certain judgment, it had laid down the law and now it has been told that that was a wrong interpretation and the interpretation should be in a particular way. This is what we are trying to do. It is granted that the House has the power to do so. We have the power to do so. But in passing this Bill, are we not collectively going to lay down a particular direction to the Supreme Court?

We can do that. We have that power. We can do that. But, should not the House have fuller information on the matter in order to facilitate a fuller and more perspective discussion

so that we may have the feeling that we have done the best that we can and we are now being railroaded into a particular decision. The Law Minister himself realised the importance of this when he said last Thursday at another stage. I quote him:

"The question is that there are pending cases. The cases are not only, quite only, one but, as I said, they are more than one. There are quite a number of cases which I will substantiate when I am replying to the debate."

This is one positive statement made by the Law Minister but I feel that it will be more helpful and fruitful if such substantiation is made at the beginning so that the House can fully discuss it and come to a decision rather than at the end when fresh questions will come up and the whole thing begins all over again.

Shri Indrajit Gupta has demanded that "somebody has to satisfy us. Simply this bald statement made in the statement of objects and reasons will not suffice. . . . But this should have come first of all." Shri Mavalankar made a similar demand and wanted a synopsis of the cases to be made available. Shri S. N. Mishra stated that the facts as alleged by different parties to the petitions in affidavits and submissions are public knowledge and that copies of them can be obtained by application and by paying certain fees.

Therefore, as I said, this is a very unusual Bill and this is a very unusual situation in which we find ourselves. The quandary was highlighted last Thursday by Shri Salve when at one stage he got up and told me:

"I may submit that you may rule that they may refer to it."

But we don't have to rush. Even at this stage, if the Law Minister has anything to say to help me out of the difficulties which I have tried to

delineate, I shall welcome his help. If he has nothing more to say, the best thing I can do is to rule that it is difficult for me in the circumstances to prevent Members from making reference to these cases. In doing so, however, I would earnestly request them not to cross the limits and upset the delicate balance between Parliament and judiciary. Whatever submissions they might make in this regard should be within the limited purpose of whether a measure of this kind is called for, whether it is justified and whether we should go in for it. They should not try to pronounce on the merits of the various allegations and submissions. Nothing on merits. They should not even try to say that these are facts because the facts are to be determined by the courts. We are not to determine the facts. It is the courts . . .

AN HON MEMBER: What about the affidavit?

MR. DEPUTY-SPEAKER: Affidavit is your submission.

SHRI MADHU LIMAYE: What about admitted facts, admitted by the respondents?

MR. DEPUTY-SPEAKER: When they are out from the courts. But, it is the courts that determine the facts and not we. They should not even try to say that these are the facts because the facts are to be determined by the courts and not by us and the merits of each petition are to be determined by them, by the courts and not by us. We should not pronounce on that. Of course, after we pass this Bill, and it has become an Act courts will have to interpret the facts as they find in the light of this Act.

PROF. MADHU DANDAVATE: After listening to you, it has become very clear why the Speaker and the Deputy Speaker are called the Speaker and the Deputy-Speaker.

SHRI SHYAMNANDAN MISHRA: I want to make a small submission. Although on 12th December, 1974, the

statutory resolution was moved, in 'Today in Parliament', there was no mention of the fact that a statutory resolution was moved. This is a very serious thing. When the statutory resolution has been moved, the organ of the Government did not think fit to refer to this in 'Today in Parliament'.

SHRI JYOTIRMOY BOSU (Diamond Harbour): No, Sir, I must at the very outset say a word in appreciation of the useful judgment that the Supreme Court Judge Mr. Bhagwati has delivered. Now, to counter-act that, this undemocratic Government had brought this amendment and the object of the amendment is to supersede and make ineffective the recent Supreme Court judgment in which the Court held that expenditure incurred by political parties. You know fully about that.

16.39 hrs.

{SHRI VASANT SATHE in the Chair}

It is a very interesting case. Mr. Chairman, Sir, this is the judgment I am reading. In the application filed by Shrimati Indira Gandhi, in the case against Mr. Raj Narain—I mean, Mr. Raj Narain is the petitioner—it has been stated that:

"This has been made an occasion by the leaders of opposition parties and opposition press and papers to freely comment on the pending election petition against respondent No. 1. They are widely prejudicing the public by distorted, incorrect and imaginary facts in their statements".

This is when the Ordinance was brought out—

"that the applicant is attaching a true copy of an article appearing in *Panchajanya*. In that it is stated that it is obvious that even on the law as laid down by the Supreme Court in Kanwarlal's case, the respondent is not at all affected, that whatever advantages the parties in election petitions may get out of the Ordinance promulgated by the President, Shrimati Indira Nehra Gandhi,

[Shri Jyotirmoy Bosu.]

respondent No. 1, does not get any advantage out of it as her case is irrefutable even on the law as laid down by the hon. Supreme Court in Kanwarlal Gupta's case".

This is the copy I obtained from the Allahabad High Court.

Then the Order was:

"The relief asked for is not at all understandable"—Mrs. Indira Gandhi's petition and the High Court's judgment—

"If the respondent No. 1 believes that anything said about the Ordinance can have a bearing on the issues involved in the case and can amount to contempt, it is for her to decide whether she should or should not say that and obviously the court cannot allow any party to do an act which is wrongful. Application rejected".

On the one hand, they promulgate an ordinance; on the other, they go to the court to shut out our mouths, that the Opposition should not be allowed to criticise this atrocious, draconian piece of ordinance and law, and the court has very rightly rejected the petition, to my mind, with the contempt it deserves.

Then what did they say in the ordinance? I do not want to go into details because it has been discussed at length.

"There was every likelihood of such wide interpretation being followed in other election petitions"—

will come to the election petitions; have got a copy—

"which were pending and on which the issue related to the question of incurring or authorising of expenditure at an election. In that event, candidates who had fought elections on the basis of the provisions of the law in this behalf, as

they were well-understood and according to the provided decisions of the courts, would have been exposed to the risk of their election being set aside.—

We have said time and again as to whose election is really in danger, whose election is causing concern in the minds of many of my friends—

"which situation would undoubtedly have been unfair to such candidates...."

I do not want to go into details of the Representation of the People Act..

MR. CHAIRMAN: His time is up. The Business Advisory Committee had allotted six hours. Your party has six minutes. You had already started last time. Even excluding that today you have taken six minutes.

SHRI JAGANNATHRAO JOSHI (Shajapur): The debate will go on for six hours. How can it be only six minutes for him? Then we will get three minutes only. We are entitled to 18.

MR. CHAIRMAN: The breakup has already been given here; it is not prepared by me.

SHRI JYOTIRMOY BOSU: That is not correct. I am entitled to at least 24 minutes. You can calculate on the basis of six hours and 26 members.

MR. CHAIRMAN: For the Jan Sangh it is 8 minutes. For the CFI it is 6 minutes and for the CPI(M) it is 11 minutes.

SHRI JYOTIRMOY BOSU: The judgment clearly states:

"Can the Limit on expenditure be evaded by a candidate by not spending money on his own but leaving it to the political party or his friends and supporters to spend an amount far in excess of the limit?"

That is the question. The object of the provision of limiting the expenditure is twofold.

Then it says:

"Douglas points out in his book called *Ethics in Government* at page 72, 'If one party ever attains overwhelming superiority in money, newspaper support and (government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated. This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth.'

Since the time is short I would much rather leave it to somebody else to deal with the subject. Of course there is the question of tours conducted and the money spent. I know of one tour for visiting Orissa during the last election. That tour of some V.I.P. belonging to the ruling party had cost 16 lakhs. Here is a paper cutting which says The Bihar Ex-Chief Minister details P.M.'s poll tour expenses; it is given here as Rs. 35 lakhs.

Now I should like you Mr. Chairman to give me your undivided attention because I am going to lay this paper on the Table of the House. This is an extract from the blue book, in which it is stated....

SHRI JAGANNATH RAO: It is not relevant.

SHRI JYOTIRMOY BOSU: I have already written.

MR. CHAIRMAN: You have written to me. Under the rules if you want to lay anything on the Table you will have to give it to me and it will be for the Speaker to decide whether it should be admitted or not. In the meantime do not quote it.

SHRI JYOTIRMOY BOSU: This is something new. I can read out.

श्री सतपाल कपूर (पटियाला) : मेरा पायट आफ आर्डर है । अगर कोई डाकुमेंट स्पीकर साहब की मजूरी के बिना टेबल पर नहीं रखा जा सकता है, तो उसको राइ आउट करने का क्या मतलब है ?

SHRI JYOTIRMOY BOSU: I am entitled to quote from the papers. I request you to accept it for laying on the Table. You can decide whether it should be accepted or not. But it should be accepted because there are two specific rules.

MR. CHAIRMAN: What are the rules? You must assist me. Direction 117 says that a private Member may lay a paper on the Table of the House when he is authorised to do so by the Speaker. Direction 118 says: if a private Member desires to lay a paper or document on the table of the House he shall submit a copy thereof to the Speaker in advance so as to enable him to decide whether permission should be given to lay the paper or document on the Table.

SHRI JYOTIRMOY BOSU: I shall read this out.

SHRI SAT PAL KAPUR: You cannot read that.

MR. CHAIRMAN: What is the rule?

SHRI JYOTIRMOY BOSU: Rule 368.

MR. CHAIRMAN: That rule says if a Minister quotes in the House of despatch or other state paper which has not been presented to the House he shall lay the relevant paper..... This rule relates to the Minister. Which rule are you quoting? Rule 369 says,

"A paper or document to be laid on the Table shall be duly authenticated..." etc,

[Mr. Chairman.]

The actual laying of the paper on the Table is governed by the Directions.

SHRI JYOTIRMOY BOSU Rule is supreme. All right, Sir; I would not lay it on the Table

MR. CHAIRMAN. Therefore, don't quote from it.

SHRI JYOTIRMOY BOSU Sir, you are a lawyer Taking the Speaker into confidence and showing it to him etc. is only for laying on the Table, but I can quote from it and incorporate it in my speech.

MR CHAIRMAN. I will not allow it.

SHRI SOMNATH CHATTERJEE On a point of order, Sir Rule 352 prescribes the rules which are to be observed while speaking. These are the only restrictions. Subject to that, article 105 of the Constitution applies I can quote from any journal or any document I want Only if I want to make it a public document by laying it on the Table that I have to get the prior sanction of the Speaker Please don't make a mockery of the rules. A member can quote from any document that he possesses Subject to Rule 352 and article 105 my right to speak in Parliament is supreme. I cannot be dictated as to what document I shall read here and what document I shall not

MR CHAIRMAN. I shall hear how members on this point of order

SHRI JAGANNATH RAO This matter about the Blue Book is pending decision in the Supreme Court. The petitioner having lost in the Allahabad High Court has gone to the Supreme Court. Secondly, this matter is not relevant at all and not germane to the Bill before us. On these two grounds, he should be debarred from reading from it

SHRI JYOTIRMOY BOSU: Sir, firstly, under article 105 of the Constitution, I am entitled to speak and quote any document that I may choose to

SHRI SAT PAL KAPUR: No; he is wrong.

SHRI JYOTIRMOY BOSU: Secondly, Mr. Jagannath Rao has given a wrong picture of the story. This is already before the court of law. The court of law is wanting the whole Blue Book. I am only reading out from an extract—a change that has been brought in during the present regime as compared to what it was in existence. This is not a matter which is sub judice Therefore, I should be allowed to quote it because this is very relevant here

MR CHAIRMAN: The first thing that I would like to know is: Is this a public document that you want to quote?

SHRI JYOTIRMOY BOSU It is a Government publication.

MR CHAIRMAN: Every Government publication is not a public document Is it available to any citizen on payment of fee?

SHRI JYOTIRMOY BOSU: It does not concern the security of the State

MR. CHAIRMAN. This is not a public document. It is a privileged document. Unless the court asks for it, gets it and makes it public, till then, it will not be treated as a public document. Therefore, if it is a privileged document and yet you want to quote it and produce it, the right thing for you is to take the Speaker into confidence under Direction 117. Otherwise, it will be a very unhealthy thing.

Why I say this? Mr Chatterjee was pointing out that this will curtail the fundamental right of speech. For example, tomorrow, suppose any privileged document, say, a secret document of Army—I am only giving an analogy

—or some secret document on Defence comes in your hand and, while speaking here, without taking any permission of the Speaker, you quote it. The analogy is the same. You say, "I have got the fundamental right of speech. I will quote it; I will produce it." Now, if you quote it, before you take the consent of the Speaker to produce it, it goes on record and it becomes the public property. It will be quoted in the newspapers also. You understand the implication of it. That is why there is the healthy practice here that you must take the Speaker into confidence. If he allows it, I have no objection. You give an advance copy of that to the Speaker. Till then, this cannot be produced and it cannot be quoted. Nothing quoted from it will go on record. I have given my ruling. (*Interruptions*). I heard you patiently and fully. I have given my ruling.

SHRI SOMNATH CHATTERJEE: The scope has been enlarged by your ruling. Is it your ruling that every document read in the House must be presented to the Speaker first?

MR CHAIRMAN: If it is already a public document, it is not necessary to do so. That is why I asked: Is this a public document? The newspaper is a public thing. Why do you give the analogy of a newspaper. I ask: Is this a public document? Is it available to every citizen? Then, why do you say that it is a public document? It is not a public document. It is a privileged document. It cannot be produced. I have given my ruling... (*Interruptions*).

17.00 hrs.

SHRI KRISHNA CHANDRA HALDER (Ausgram): Last Thursday, Mr. Jyotirmoy Bosu quoted from the CBI report and Mr. Speaker was in the Chair.

MR. CHAIRMAN: I am absolutely not concerned with that. I will go by the rules. I have heard you all. Under

the rules—this is my ruling—you cannot produce that document unless the Speaker gives his consent. If the Speaker has given his consent, then I cannot help. (*Interruptions*).

SHRI JYOTIRMOY BOSU: Where is the rule? Show me the rule.

MR. CHAIRMAN: I will show you the rule.

SHRI SAMAR MUKHERJEE (Howrah): That is in relation to laying only. You cannot prevent him from quoting. How can you prevent him from quoting?

MR. CHAIRMAN: After all, what is the idea of quoting? Let us try to understand. Mr. Samar Mukherjee, I am willing to listen to you. Do you want to make a submission?

SHRI SAMAR MUKHERJEE, Yes.

MR. CHAIRMAN: I am willing to listen to you. But, ultimately, you must allow me to decide the matter. I will decide as I think fit under the rules.

SHRI SAMAR MUKHERJEE: Mr Jyotirmoy Bosu wanted to lay on the Table the papers from which he also wanted to quote. But the relevant rule you have referred to is about laying on the Table—where the consent of the Speaker is necessary.

SHRI JYOTIRMOY BOSU: You said, 'Handover to me'. I am prepared to hand it over to you.

SHRI SAMAR MUKHERJEE: He said that he was not laying it on the Table just now; he was only quoting from that. As regards quoting from it, you have not referred to any rule. Simply because some friends there objected, you immediately stood up and said that you were not going to allow him to quote. This is not a ruling according to rules. So many things we have quoted in order to place our

[Shri Samar Mukherjee]

point of view; we want to substantiate how our points of view are justified and for that purpose, we are always entitled to quote from the relevant documents. If this is prevented, it means that you are preventing free expression of opinion here, free discussion here. This amounts to gagging the voice of the Opposition. We cannot allow this to take place. Because this thing is unpalatable to some friends there, you cannot gag us in this way. You must allow this to be quoted if it is relevant. You can only make your comments whether it is relevant or not. Beyond that, you cannot gag him from quoting.

श्री जनेश्वर मिश्र (इलाहाबाद)

ऐसा है, सभापति जी, पिछली तारीख को जब हम लोग यहाँ मिले थे, ज्योतिर्मय बसु जी ने सी० बी० आई० रिपोर्ट कहु कर यहाँ पर कुछ पढा था। आप जिन कल्ल की चर्चा कर रहे है, उन के साथ साथ आप यह भी ध्यान में रखेंगे कि: इसी कुर्सी पर अध्यक्ष महोदय बैठे थे। श्री बसु जी ने कहा कि मैं सी० बी० आई० की रिपोर्ट को टेबिल पर रखना चाहता हूँ। विरोध पक्ष के लोगो ने कहा कि रख दीजिये। हम ने अध्यक्ष महोदय से कहा कि: आप ने सी० बी० आई० की रिपोर्ट देखी है, आप उस से सम्प्रेषण कर लीजिये, कि: सही है या नहीं है। उन्होंने कहा—आप यकीन मानिये, हम ने अब तक नहीं देखा है। उस समय बसु जी उस को लगातार पढने चले गये और वह रिकार्ड पर आ गया। लेकिन, अध्यक्ष महोदय की रुक्ति के मुताबिक वह सी० बी० आई० की रिपोर्ट नहीं मानी गई। इस लिये यहाँ कल्ल के नाम पर अगर वही प्वाइन्ट आऊ

आर्डर जो आप और सत.रूड इल के अर माननीय सदस्य लोग—पहले आप भी यहाँ पर उठाते थे—अगर वही लाइन आप इस स्थान पर बैठकर लें तो हम लोगो के लिये थोड़ी मुश्किल हो जायगी। हम लिये मैं इतना ही निवेदन करूँगा, कि: आप एडजस्ट कीजिये।

श्री सतपाल कपूर धमकी दे रहे हैं।

श्री जनेश्वर मिश्र हम लोगो के लिये मुश्किल पड जायगी—यह हम अने को धमकी दे रहे है, आप को क्या धमकी दे रहे है, हम तो आप से निवेदन कर रहे है

सभापति महोदय यहाँ मुझ स्पीकर सम्मन कर एडजस्ट कीजिये।

श्री जनेश्वर मिश्र आप को हम उतना ही सम्मान देना चाहते है हम यह नहीं चाहते है—जैस आप यहाँ बैठ रहते है ता आप के साथ जैसी बर्तन करन है, उतनी ही वहाँ भी करनी पडे। इस लिये विनम्र निवेदन है कि: आप कुछ एडजस्ट कीजिये, जिस तरह से स्पीकर माहब वहाँ बैठ कर एडजस्ट करते है। श्री ज्योतिर्मय बसु जैसे सी० बी० आई० की रिपोर्ट को पढने लगे और वह रिकार्ड पर आ गया, उसी तरह से जो यह पढना चाहते है, उस को पढने दीजिये। आप अपनी तरफ से यह कैसे कह सको है—चूकि यह पब्लिक डोक्यूमेन्ट नहीं है, इन लिये जो पड रहे है उन को हम नहीं मानते है कि यह पब्लिक डोक्यूमेन्ट है या उन को कोई रेलेवेन्सी है, उन को रिकार्ड से कैसे हटा देंगे।

SHRI S. M. BANERJEE (Kanpur): I was sitting in the back seat when Shri Jyotirmoy Bosu wanted to quote something from a paper. I do not know whether it is a newspaper report or any paper. He was not allowed to quote that. May I invite your kind attention that under the Rules, whether it be the Directions of the Speaker or the Rules of the House, a Member can quote and when he quotes, other Members can demand laying the document on the Table of the House. But, in this particular case, without knowing what he is quoting and without knowing what he is reading, how can any Member object to it?

When the hon. Deputy Speaker was giving a ruling, I pointed out the danger of it. When this entire Bill came up for discussion, I had pointed out the danger of it because this will involve disclosure of many things which we do not want and which we do not want the Members to do. I would request for your kind indulgence and invite your kind attention that if something objectionable was said or something derogatory was said by the hon. Member, that portion you can possibly expunge it and you can say that it is expunged...

SHRI JYOTIRMOY BOSU Under the rules.

SHRI S. M. BANERJEE: But when it is not derogatory or unparliamentary it cannot be expunged. Then, when an hon. Member wants, authenticity, he can authenticate the document. In this case, I fear they will be falling into their own trap. If they want authenticity, will Mr. Jyotirmoy Bosu authenticate it and will they accept it? Any Member in this House, when he quotes from a particular document, he knows what he is disclosing and he may be asked to establish it and if somebody challenges, let us assume that all members of this House are as responsible as Shri Jagannatha Rao or any body else, he will establish it. The ruling party members and the ruling

party should not be so much touchy about the whole thing. I do not know why they are so much touchy. Out of 180 election petitions 70 are of the ruling party and the leftists are only three or four just as Jan Sangh, Cong. (O) and other parties. I have got the break-up. When you sit in the Chair, you are the custodian of the powers and privileges of the House. I request you to use your discretion. I will accept your ruling unreservedly, if it is according to the rules. I have been a Member of the Rules Committee and I know that these rules were framed by our elders who were in this House and they really wanted that these rules should be flexible. You are the custodian of the liberties of the House. I appeal to your sense of impartiality to consider these points and give your decision in the matter. Thank you

SHRI B. R. SHUKLA (Babraich): I would like to refer to the observations made in Practice and Procedure in Parliament by Kaul and Shakhder at page 829

"Normally a Member is not expected to spring a surprise on the Speaker, the House and the Government by quoting from a document which is not public. In fairness to all, and in accordance with the Parliamentary conventions, he is expected to inform the Speaker and the Government in advance so that they are in a position to deal with the matter on the floor of the House when it is raised. If this requirement is not complied with, the Speaker may stop the Member from quoting such a document, and ask him to make available to the Chair a copy before he can be allowed to proceed with any quotation therefrom.

While the Government cannot be compelled to admit or deny the correctness of any alleged copy of a document which is certified as secret or confidential it is necessary for the Member who quotes from

[Shri B. R. Shukla]

such a document to certify that he has verified from his personal knowledge that the document is a true copy of the original."

You will see the rationale of not allowing a Member to quote from a document for which prior consent of the Speaker has not been obtained. The Government should know these and they should be enabled to give effective reply. The other members should be enabled to give effective rebuttal to the charges levelled therein. Therefore an advance copy must be sent to Speaker. But in this case this has not been done at all. If he is allowed to quote that will create a wrong impression, as if he is quoting from some source which is authentic and so on. Therefore my submission is this. He cannot therefore spring a surprise on the House. Therefore he cannot be allowed to quote from that now. This is my respectful submission, Sir.

SHRI S M BANERJEE: I would like to remind the House that Shri D. K. Barooah, the then Minister for Petroleum and Chemicals, brought a surprise for the House when he brought the Secret Bill.

SHRI SAMAR GUHA (Contn): Sir, now it has become almost a practice to very frequently quote either from May's Parliamentary Practice or from Mr. Shakti's book. I think they are only by way of clarification and we should be guided by the book on rules and procedures. The objection that has been raised is untenable even from what we know from this House. There is no necessity of going back or to citing any example or precedent. Just two to three days back Member after Member in course of the privilege motion against Mr. Goenka were quoting from certain secret and even CBI reports and the Speaker did not object to that. Reports of several Ministries were quoted and the words were used within quotes. There was not a

single occasion when the Speaker objected as to whether the report is authenticated or not or the report should have been placed or that it has not come in the Press. Therefore, if you take the convention and precedent this House permitted quoting and citing reports after reports almost verbatim in the form of quotations

I want to give you one classical example. When Mr H. V. Kamath was the Member of the House he brought a CBI report on the basis of which Mr Malviya was sacked and has now again been rehabilitated. A challenge was made to Mr Kamath whether it was a real CBI report or not and the Speaker who was in the Chair accepted the authentication of the report. It was neither placed on the Table of the House nor published. He simply quoted. If any Member quotes any document and on the basis of that if any allegation or anything derogatory to the hon Member or right or privilege of the Member of the House is affected then the Member is allowed to move privilege motion

I should say that if he makes genuine remarks out of his own imagination, this blue book again provides for the rules under which that Member can be brought before the House and if he makes a wrong statement then he may be taken to task. Therefore I want to make my submission that there cannot be any restriction or any obstruction in quoting from any document or whatever it may be. But if those documents were found wrong later or if anybody finds it wrong you can take legitimate action against him according to the Rules of Procedure of this House. Otherwise you cannot object to the quotation being fed from any document whatsoever by any Member of this House.

SHRI SEZHIYAN (Kumbakonam): As I understand the position, Shri Bosu wanted to quote from a document which has not been allowed on

the ground that he has not given the document beforehand to the Speaker

I think the hon. Member quoted from the book on which I am also relying. If you go through it very carefully. It states:

"A member can ordinarily quote from a document that is treated by Government as secret or confidential, and which the Government have not disclosed in public interest"

Afterwards it says:

"Normally, a member is not expected to spring a surprise on the Speaker, the House and the Government by quoting from a document which is not public. In fairness to all and in accordance with the parliamentary conventions, he is expected to inform the Speaker and the Government in advance so that they are in a position to deal with the matter on the floor of the House when it is raised. If this requirement is not complied with, the Speaker may stop the member from quoting such a document and ask him to make available to the Chair a copy before he can be allowed to proceed with any quotation therefrom".

Here he has already informed the Speaker. I further quote:

"While the Government cannot be compelled to admit or deny the correctness of any alleged copy of a document which is classified as secret or confidential, it is necessary for the member who quotes from such a document to certify that he has verified from his personal knowledge that the document is a true copy of the original with the Government and will do so on his own responsibility, and the Speaker accordingly would permit him to proceed. In case the members not prepared to give a certificate in these terms and insists on quoting from such a document, the Speaker may

find out from the Government before the Chair will be final in determining whether that document is genuine or not. Where the Government decline to admit or deny the correctness of the alleged copy, the Speaker allows the member to proceed and it is for the Government to give such answer as they deem fit."

In case the Member is not prepared to give such a document, then it is the discretion of the Speaker whether or not to accept that as a genuine document to be laid on the Table of the House. I have quoted from Page 829. But, under Art 121 of the Constitution, I quote:

"No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided".

Therefore, Art. 121 of the Constitution is the only provision restricting the scope of a discussion. Nowhere else under the Constitution, there is a bar. The Rules of Procedure make it clear. That is, if a Member begins quoting from a document, in all fairness to the House and to the Speaker, the Hon Member should inform the Speaker about it that he is going to quote from that document. If he does not inform the Speaker earlier, then the Speaker has got the right to ask him not to proceed with quoting from that document because he has not given the information to him earlier. The second thing is that if he refuses to certify the document, there is a course of action that the Speaker may take. He may or may not allow him to lay it on the Table of the House. If the hon Member has certified that document, whether it is genuine or not, it is for the Government to deny or accept. Here, it has been stated very clearly. Even if the Member is not prepared

[Shri Sezhiyan]

to certify the document, it cannot be rejected. This is what is stated here:

"In case the member is not prepared to give a certificate in these terms and insists on quoting from such a document, the Speaker may find out from the Government about the authenticity of that document and the facts placed by the Government before the Chair will be final in determining whether that document is genuine or not. Where the Government decline to admit or deny the correctness of the alleged copy, the Speaker allows the Member to proceed and it is for the Government to give such answer as they deem fit."

Therefore, even if the Government is not prepared to accept or deny, it, ever then, even if the Member does not give a certificate, the Chair cannot prevent the Member from quoting or placing it. It is for the Government to give such answer as they deem fit. In this case, I understand the hon. Member has informed the Chair. Therefore, he is within his right as a Member of this House to quote from a document and give his certificate. Then, once the certificate is there, it is for the Government to deny it or accept it.

श्री मधु लिमये : (बांका) यह जो दस्तावेज उदत्त करने का मामला है और टेबल पर रखने का मामला है उसके सम्बन्ध में मेरा जो तुच्छ अनुभव है वह मैं आपकी सेवा में पेश करना चाहता हूँ—

श्री श्यामनन्दन मिश्र : और वह कुछ कम नहीं है।

श्री मधु लिमये : मैं तुच्छ ही कहूँगा।

1966 में जब सचिन चौधरी साहब वित्त मंत्री थे तब मैंने आर्डिगनम सालिसिटर फर्म का मामला उठाया था और मैंने डायरेक्टोरेट आफ एनफोर्समेंट के एक गुप्त दस्तावेज

से कुछ जुमले उदत्त किए थे। जब सदन ने मुझसे मांग की कि उसको सभा की मेज पर रखना चाहिए। तो मुझे अच्छी तरह से याद है कि मुझे थोड़ी हिचक ही रही थी लेकिन सभापति महोदय ने कहा कि जब आपने एक दस्तावेज उदत्त किया है तो अगर उसकी नकल आपके पास है। और उस में से आप अगर पढ़ रहे हैं तो आपको वह रखना चाहिए। अब सारे इतिहास का मैं आपके सामने नहीं रखूँगा। पांच सितम्बर, की बात लीजिए। इसी साल की है। उस व्यापार मंत्रालय के द्वारा जो चार गुप्त दस्तावेज तैयार किए गए थे उन में से मैं उदत्त कर रहा था कुछ मिवों ने पूछा था कि वहाँ कहां से उदत्त कर रहे हो तो मैं ने बताया था कि इन में से उदत्त कर रहा हूँ। उन्होंने कहा कि आप का मेज पर रखना चाहिए। मैं तैयार हो गया। उस समय विधि मंत्री ने कहा कि ये क्या कर रहे हैं, इनको टेबल पर रखने की अनुमति नहीं देनी चाहिए। इस पर जो सभापति महोदय उस समय विराजमान थे उन्होंने कहा कि इस तरह से आप नहीं रख सकते हैं, आप अभी मेरे पास दे दीजिए और इनको आर्थेटिकेट कर दीजिए और मैं इनको देखूँगा। आप जानते हैं कि देखने के बाद चारों दस्तावेजों को यहाँ रखने की इजाजत दी गई और बुलेटिन नम्बर 2 में वे प्रकाशित हुए। अभी अभी मोदी रबड़ के डाकुमेंट में कोट कर रहा था, कंठिनैटल जर्मन कंपनी के साथ जो उन्होंने गुप्त करार किया था। वे मेरे पास थे—(इंटरऑब्) मेरे पास फोटो कापी भी है। बहुत सारा साहित्य रहता है। सब का इस्तेमाल मैं जल्दी नहीं करता हूँ। उस समय भी मैंने वह मेज पर रखना चाहा था, मैंने उदत्त किया था लेकिन किसी ने आप्पेप नहीं उठाया। लेकिन मेज पर रखने के पहले सभापति महोदय ने कहा था कि वे कागज यहाँ आने चाहियें। जैसा कि माननीय सदस्यों ने कहा है, वह भी स्वीकार किया गया, मेज पर रखा गया और बुलेटिन नम्बर 2 में प्रकाशित हुआ।

जहां तक दस्तावेजों को क्वोट करने का सवाल है, उस पर किसी तरह की रोक नहीं है। लेकिन अगर कोई उस को मेज पर रखने की मांग करे, या सदस्य स्वयं उस को मेज पर रखना चाहे, तो सभापति कहते हैं कि पहले मैं देखूंगा और देखने के बाद इजाजत दूंगा। क्वोटेशन के लिए किसी तरह की पाबन्दी नहीं है। जब पूरी दस्तावेज रखने की बात आती है, तो पहले आप उस को चक करते हैं।

अगर माननीय सदस्य, श्री ज्योतिर्मय बसु, ब्लू बुक में यह उद्धृत करते हैं कि प्रधान मंत्री के चुनाव-ब्यौरे के लिए क्या इन्तजाम करना चाहिए, उस का खर्चा किस को करना चाहिए, राज्य सरकार उस में से कितना अंश दे और पार्टी कितना दे, आदि, तो किसी तरह की आपत्ति नहीं होनी चाहिए। अगर हम लोग यह मांग करते हैं कि माननीय सदस्य जिस दस्तावेज से उद्धृत कर रहे हैं, अगर वह उन के पाम है, और वह उसी से पढ़ रहे हैं, तो वह उस को मेज पर रखे, तब सभापति कहते हैं कि पहले वह उस को देखे और वह बाद में मेज पर रखा जायेगा।

इस लिए हम वक्त यह जो आपत्ति उठाई गई है कि माननीय सदस्य क्वोट नहीं कर सकते, वह बहुत ही हास्यास्पद है, एकदम रिडीकुलम है। किसी भी देश की लोक सभा में ऐसी नहीं होता है। मैं माननीय सदस्य को यह कागज वापिस दे रहा हूँ और इस बारे में आप का यह निर्णय चाहता हूँ कि जो आक्षेप उठाया गया है, उस को रद्द कर दीजिए, आस्वीकार कीजिए, और बाकी भी जो वह क्वोट करना चाहें, उस के लिए उन को पूरी छूट दीजिए। आप को सिर्फ इतना ही देखना है कि वह रिलेवेंट है—वह रिलेवेंसी के रूल के मुताबिक है। मैं ने माननीय सदस्य का भाषण नहीं सुना है, लेकिन मेरा अनुमान है कि वह यह साबित करना चाहते थे कि प्रधान मंत्री के बारे पर, और खासकर उन के क्षेत्र में, उन का एथाराइज्ड एक्सपेंडिचर क्या

था। क्या माननीय सदस्य यही न साबित करना चाहते हैं कि प्राइम मिनिस्टर, का एथाराइज्ड खर्चा क्या है ?

श्री ज्योतिर्मय बसु. सही बात है।

श्री मधु लिमये : इस लिए मेरी राय में यह बिल्कुल रिलेवेंट है, नियमों के अन्दर आता है। एक और श्री रघुरामैया कहते हैं कि हम लोग बिल को जन्दी पाम नहीं कर रहे हैं, और दूसरी और सत्कार्द दल की तरफ में यह अइगेबाजी चल रही है, क्लिग पार्टी इस तरह के आवस्ट्रक्शनिस्ट टैक्टिक्स से काम ले रही है। जिनने भी पायट्स आफ आर्डर उठ रहे हैं, वे सत्कार्द दल द्वारा उठाये जा रहे हैं पहले पायट आफ आर्डर पर पाच घंटे बर्बाद हो गए। हम लोग पैडिंग पैटीशन्ज की बातों को उठाना चाहते हैं। कांफ्रेंस के सदस्यों ने इस का विरोध किया। इस लिए झगडा हुआ। अब श्री ज्योतिर्मय बसु क्वोट कर रहे थे। मैंने उन पर आबजेक्ट नहीं किया, कांफ्रेंसियों ने एतर्गज किया।

आप का अधिक समय न लेने हुए मैं आप से प्रार्थना करता हूँ कि आप श्री ज्योतिर्मय बसु को आगे बढने दीजिए और उन में प्रेम-पूर्वक आग्रह कीजिए कि जितने डाकुमेंट्स हैं, वे सब पढ़ें।

SHRI JAGANNATH RAO: I submitted earlier that this matter about the production of the Blue book is pending a decision in the Supreme Court.

SHRI MADHU LIMAYE: No.

SHRI JAGANNATH RAO: Secondly, Government is claiming privilege. Thirdly, it is not relevant for the purpose of this discussion.

SHRI MADHU LIMAYE: Jyotirmoy Bosu is not claiming privilege.

SHRI JAGANNATH RAO: Government is claiming privilege.

SHRI MADHU LIMAYE: Let it. He is quoting.

SHRI JAGANNATH RAO: If Government is claiming privilege in respect of a document from which extracts are quoted, the member could not have got it by legitimate means, but by illegitimate means. This is unbecoming on the part of an hon. member. We are talking of misdemeanour of members. Is it misdemeanour or is it decent behaviour?

SHRI H. K. L. BHAGAT (East Delhi): I do not know whether what he wants to quote is part of the Blue book or not. But the question is not that simple as Shri Madhu Limaye has tried to make out. It is not a question of placing this so-called document on the Table. The parallels which he has mentioned are not parallels indeed. This is a matter itself the subject of judicial determination. From whatever we have read in the press, Government is claiming privilege about this documents in the High Court. The matter has gone even to the Supreme Court. Whether this document should be made public or not is a matter pending before the Supreme Court itself. How by placing this government document on Table or quoting from it would be making this so-called document—I do not know whether it is the real document—public and commenting on it. I would further submit this. If you kindly peruse the ruling given by the hon. Deputy-Speaker today, he has also made it clear. Some friends opposite had asked 'Suppose we quote from some admitted document...'. He said, 'No, no'. He asked them to read the rules. Things become facts only when courts determine on them. This is a matter which is pending before the High Court on which a judicial decision has to be given. It is a privileged document. We cannot comment on that. Can Parliament make it public? This obviously will create a very difficult situation and we should be able to meet the situation according to our rules. The Deputy-Speaker has given

a ruling that they can refer to the case but not to the facts which have not been established by the courts as such. Here it is not a question of even the court accepting it or admitting it. That has not arisen. The case is in a very preliminary stage. To permit him to place the document on the Table of the House would be making this issue open for discussion in this House on which a judicial decision on a fact is pending. Therefore he is not entitled to do it under the rules and also in terms of the ruling given by the Deputy Speaker.

SHRI H. R. GOKHALE: Shri Shyam Babu and some other hon. Members were not here when you gave the ruling. You want to hear some persons now. Shyam Babu is here. After Shyam Babu you can give your ruling.

MR. CHAIRMAN: I know I had given the ruling. But senior Members like Shri Mukherjee wanted to make some submissions and by way of accommodating them I shall listen. I am open to correction if they can satisfy me.

SHRI SHYAMNANDAN MISHRA (Begusarai): My submission is that there are only two conditions and no more which restrict a Member in this matter. One condition is that the Member will not spring a surprise. He should submit to the Speaker the information that he is going to quote from the document. And the other condition is that the act of the Member should not be inconsistent with national interest or security of the country; except these two there are no other conditions.

MR. CHAIRMAN: Is he not to give a copy?

SHRI SHYAMNANDAN MISHRA: No.

MR. CHAIRMAN: Is it your contention that all that he is required to do is only to say: there is some secret document with him from which I can

going to quote. The Speaker may not have a copy of that?

SHRI SHYAMNANDAN MISHRA:
I am going to submit to you how it is. Government can quote from any document and we can swallow it. Do not we? The Speaker also swallows it. The Speaker does not require the full document to be placed before him.

MR. CHAIRMAN: I do not agree.

SHRI SHYAMNANDAN MISHRA:
The assumption behind this is, it is bound to be in any case, that one has to go by the truth and nothing else. If the hon Members think that he has to place the things in the interest of truth he will do it. Even the Chair cannot prevent him.

MR CHAIRMAN: Should he not take the Chair into confidence? He has not given me a copy.

SHRI SHYAMNANDAN MISHRA:
Only in not springing a surprise.

SHRI JYOTIRMOY BOSU: I have given notice to the Speaker. The other day I had profusely quoted from a CBI report which I had in my possession. When I wanted to lay it on the Table of the House hon. Speaker said you cannot lay it on the Table of the House because you have not given me notice. I am sending for the debate and will convince you what I am saying is correct. The Speaker had no objection for my reading from the document. He said that I cannot lay it on the Table of the House because I had not given his notice. Only Notice is necessary.

SHRI SHYAMNANDAN MISHRA:
He has to give only information to the Speaker so that no surprise is sprung not only on the Speaker but on the House and on the Government. It says, "Normally a member is not expected to spring a surprise on the Speaker, the House and the Government." If

springing surprise relates to the Speaker, to the House and to the Government, the document will not be made available to the Speaker, to the House and to the Government. In all these cases, the same rule will prevail that he will give information to the Speaker and through the Speaker to the House and to the Government and not spring a surprise. That is the real intention. This is for not only the Speaker but for the House and for the Government as well. The second condition is, it should not be inconsistent with the security of the country or national interest. The hon. member is not compelled even to give a certificate. If he does not give a certificate, the Speaker cannot prevent him from quoting from the document. The Speaker allows him to quote but the Government will have the right to reply to it and say whether what the hon. member has quoted is a correct thing or not. These are the only two conditions. The condition regarding national security does not apply and one condition he has already fulfilled. May I remind you, only a few days ago, when I quoted from a file of the Government in respect of the privilege motion against the hon. Minister of Railways, Shri L. N. Mishra, I was allowed to quote and it is on the record. I have quoted the minutes recorded by the Minister on the 23rd August, 1972. When I was asked by the hon. member, Shri Limaye, wherefrom I was quoting, I said, I am quoting from the relevant file of the Government. An hon. member asked, where are those files? I said, those files had been submitted to the CBI. I was not compelled to quote the entire file or to produce it. So, it is the right of the hon. Member to quote, subject only to those two conditions which I have mentioned.

SHRI BHOGENDRA JHA (Jainagar): In the last two months, inside this House and outside, there have been voices against the very existence of parliamentary democracy and perhaps that has also made the treasury

[Shri Bhogendra Jha]

benches very panicky. They have become so panicky that even things which should be part of normal democratic discussion and debate are sought to be prevented. Otherwise, the very utility of the system of all of us being here will disappear. We are discussing a matter regarding which scores of cases are pending in courts. The Deputy-Speaker has categorically stated that members should keep restraint and try to be on the other side of the dividing line so that it should not influence the judgment one way or the other in any of the pending cases. The point is, what is being discussed is not such a secret document for the safety and security of the Prime Minister. There is nothing so much sacrosanct or secret about it. The Treasury Benches have nothing to hide from the House or from the public. A certain expenditure has to be met by the party concerned for whose campaign the Prime Minister goes on tour.

I would request you, as you have been very reasonable to say that you have given your opinion but you are still with an open mind, to revise your ruling. This will in no way jeopardise any particular case unless any Member refers to any particular case pending before the court. If it is discussed in an abstract manner, there is no harm in it. Let the public know it.

In such a situation, I would again request you to revise your ruling. The Treasury Benches should cooperate so that the people outside should have more confidence in the discussion inside the House and the forces and elements which are casting aspersion and doubt on the very futility of parliamentary democracy should also be compelled to do re-thinking or to change their views or they should be compelled to change their views.

In conclusion, my submission is that it will be good if you revise your ruling and you allow Shri Jyotirmoy Bose to quote from the document which will in no way influence any

particular case pending before the court.

श्री सतपाल कपूर (पटियाला) : सभा-पति महोदय यह डाकूमेंट वह डाकूमेंट है जिस इश्यू पर सुप्रीम कोर्ट में श्री हाई कोर्ट में गवर्नमेंट ने अपना प्रिविलेज क्लेम किया है और सुप्रीम कोर्ट ने इस इश्यू का अभी फैसला नहीं किया है।

दूसरा प्वाइंट जो मैं आप की सेवा में रखना चाहता हूँ यह यह है कि कौन से डाकूमेंट को आप यहाँ पर रख सकते हैं कौन से डाकूमेंट को नहीं रख सकते हैं। अगर कोई प्रिन्टिड मॉटर है, किसी अखबार में कोई चीज छपी हुई है किसी कोर्ट का फैसला है जो प्रिन्ट हुआ है, पब्लिक डाकूमेंट है उसको हर एक आदमी जा कर ले सकता है, उसकी नकल ले सकता है, वह डाकूमेंट आप यहाँ पर रख सकते हैं उस पर किसी को कोई एतराज नहीं हो सकता। लेकिन कोई डाकूमेंट जो अभी कोर्ट में पेश नहीं हुआ, जिसके बारे में इश्यू का ही फैसला नहीं हुआ, उसका सीस नहीं मालूम कि ज्यूरिस्टिक ब्रुजो जो डीटेल यहाँ पर रखना चाहते हैं उसका सीस आफ इन्फार्मेशन क्या है, और यह प्रिविलेज्ड डाकूमेंट है, यह तब रखा जा सकता है जब स्पीकर से यह इजाजत ले कि मैं यह डाकूमेंट रखना चाहता हूँ मुझे इसकी इजाजत दी जाय, तब यह रखा जा सकता है। तब तक उसको कोर्ट भी नहीं किया जा सकता। इसलिए आप की जो रूनिंग है वह बिलकुल ठीक है। भोगेंद्र झा जी का यह कहना कि आप को अपरेट कर दें या मधु लिमये जी का यह समझ देना कि मैंने फंला साल में यह किया था, फंला साल में वह किया था, आप ने वह सब कुछ किया था लेकिन यह प्रिविलेज्ड डाकूमेंट आप इस टबल पर बिना स्पीकर की मंजूरी के नहीं रख सकते और उसको नहीं कोर्ट कर सकते हैं। यही मेरा इसके ऊपर कहना है।

MR. CHAIRMAN: Now, Shri Jyotirmoy Bosu had sent a letter on 12th Decemebr, 1974 saying:

"During the debate on the Representation of the People (Amendment) Bill, I would like to lay an authenticated extract on Government expenditure, P.M.'s tour."

This is the letter which he has written. My difficulty is this. I have heard all the hon. Members. I will again refer to this portion which was cited to me by Shri Sezhiyan and others—page 829 of the book by Kaul and Shakdher.

"Normally, a member is not expected to spring a surprise on the Speaker, the House and the Government by quoting from a document which is not public. In fairness to all and in accordance with the parliamentary conventions, he is expected to inform the Speaker and the Government in advance so that they are in a position to deal with the matter on the floor of the House when it is raised. If this requirement is not complied with, the Speaker may stop the member from quoting such a document and ask him to make available to the Chair a copy before he can be allowed to proceed with any quotation therefrom."

My objection was not to his right of quoting. My only objection has been that I do not have the opportunity or advantage of knowing what the document is...

SHRI JYOTIRMOY BOSU: I will give it to you right now.

MR. CHAIRMAN: It is not fair. The right thing would be that a document, unless it is a public document—let us distinguish this, unless it is a public document, no question arises.

SHRI JYOTIRMOY BOSU: On a point of order.

MR. CHAIRMAN: While I am giving the ruling, there cannot be any point of order.

SHRI SHYAMNANDAN MISHRA: If the first requirement, that is, giving information to the Chair, is not fulfilled....

MR. CHAIRMAN: I am trying to interpret. All that I understand in the spirit of all these ruling and rules is this. I have read out direction 118. If you read all these together, you will see the spirit of it.

Direction 117 says:

"A private member may lay a paper on the Table of the House when he is authorised to do so by the Speaker."

Direction 118 says:

"If a private member desires to lay a paper or document on the Table of the House, he shall supply a copy thereof to the Speaker in advance so as to enable him to decide whether permission should be given to lay the paper or document on the Table."

Here, the permission that has been sought is:

"I would like to lay an authenticated extract."

So, when 'laying' is to be done and not 'quoting', then this rule says that an advance copy has to be given. So, we are on the point of this request. I have to give a ruling on this request. This request is for 'laying'. I am giving my ruling on that. If you want only to quote and not to lay, that would be a different matter. That is not what you have been saying. All the time you have been arguing that you want to lay it. The next moment you will say, 'I have now quoted, I want to lay this'.

This, I will not allow. Therefore, if you want to quote, you can do so, but, whatever worth the document may be, we will not take cognizance of it.

SHRI JYOTIRMOY BOSU: Right, Sir.

MR. CHAIRMAN: But it cannot be laid.

SHRI JYOTIRMOY BOSU: This is an extract from the Blue Book—Rules and Instructions for the protection of the Prime Minister while on tour or on travel. The provisions that were there before 19th November 1969 during the regimes when her father was the Prime Minister as also when Lal Bahadur Shastri was Prime Minister, were considered adequate and fair. What did they read:

“It has been noticed that the rostrum arrangement is not properly made because the hosts sometimes are unable to bear the cost. As the Prime Minister's safety is the concern of the State, all arrangements for putting up the strum and the barriers at the meeting place will be undertaken by the State whatever may be”

The amended paragraph issued on 19th November, 1969 says:

“71.6 It has been noticed that the rostrum arrangements are not always properly made because the hosts are sometimes unable to bear the cost. As the security of the Prime Minister is the concern of the State, all arrangements for putting up the rostrum, bearriers, etc. at the meeting place including that of the election meetings...

which was not there earlier.

“...will have to be made by the State Governments.”

Now, prior to 19th November, 1969, for those two brilliant Prime Ministers, Pandit Jawaharlal Nehru who had the eminence of the whole world, and Shri Lal Bahadur Shastri, it was considered enough for their security, but from 19th November 1969, this new one line paragraph has made all the difference to others who will be opposing her and all her party candidates in the elections.

Then it says:

“The expenditure on all these items made in the first instance is to be borne by the State Government and then recovered from the political party concerned. In regard to the rostrum only 25 per cent of the cost of the rostrum or Rs. 2500/- whichever is less...

SOME HON. MEMBER: Wah wah.

SHRI JYOTIRMOY BOSU: This is the *Garibi Hatao*.

This I do not know what you would call. A fraud on the exchequer. I have never seen such a big fraud on the exchequer. What was thought to be good and fair by the two successive Prime Ministers till 1969 from 1947 for 22 years was undone by her in one stroke of her pen in order to defraud the exchequer.

Now, I am reverting to what I was saying. The election petition of Raj Narain vs. Smt. Indira Gandhi, etc. I would make no comments. These have been mentioned in the petitions. I will neither say ‘Yes’ or ‘No’, ‘good’ or ‘bad’. Nothing at all. What does it say? It says:

“Shri Yash Pal Kapoor, the Election Agent to Shrimati Indira Nehru Gandhi...

(Interruptions.)

SHRI JAGANATH RAO: How is it relevant?

SOME HON. MEMBERS: He has said that he will make no comments.

SHRI JYOTIRMOY BOSU: “... offered to pay a sum of Rs. 50,000/- to respondent No. 2, Swami Achutanand as a gift with the object of directly inducing him to be a candidate at the said election, and the payment of Rs. 50,000 was made by Shri Yashpal Kapoor to Shri Achutanand on 26th January, 1971 in the town of Rao Bareilly. A corrupt practice of bribery

under Section 123(1)(A) was thus committed by Shri Yashpal Kapoor, the Election Agent."

श्री शशि भवण दक्षिण दिल्ली
सभापति जी, श्री यशपाल कपूर राज्य
सभा कम्बर ह, उन को यहाँ कैसे
कौट कर सकते ह ।

SHRI SHYAMNANDAN MISHRA:
Who knows? He may be a different person

SHRI JYOTIRMOY BOSU. " . A the said election liquor was also distributed freely...."

MR. CHAIRMAN. What are you quoting?

SHRI JYOTIRMOY BOSU I am quoting from the election petition of Shri Raj Narain against Shrimati Indira Gandhi, a case which is so much within the 180 cases.

MR. CHAIRMAN You are quoting from the petition?

SHRI JYOTIRMOY BOSU. It is said that at the said election liquor was distributed freely among the voters by a number of agents.

SOME HON. MEMBER. It is most unfortunate.

(Interruptions)

MR. CHAIRMAN. What is the purpose of this quotation? What are you driving at?

SHRI JYOTIRMOY BOSU: Expenditure incurred, corrupt practices. It is one of the 180 cases.

MR. CHAIRMAN: These are the allegations. That you are referring to. The Deputy Speaker had categorically stated that you shall not aver to the facts which are yet to be decided on. He has categorically stated that you

shall not mention facts. Until the court gives a decision, these are mere allocations. Are they admitted facts?

SHRI JYOTIRMOY BOSU. I am not saying that these are facts I am only reading the petition

18 hrs

MR. CHAIRMAN. The are only allegations and not facts. All these allegations which are read out will not form part of the record (Interruptions) I have given a ruling. Please sit down.

SHRI JYOTIRMOY BOSU: *

MR CHAIRMAN. Nothing that he quotes without my permission will go on record.

SHRI JYOTIRMOY BOSU How can you shut me like that?

MR. CHAIRMAN I will be within the limits of the Deputy Speaker's ruling because it was a very fair ruling.

SHRI JAGANNATHRAO JOSHI. All sorts of allegations were made against Mr Goenka and Jayaprakash Narayan and you never stopped them and all that went on record

MR CHAIRMAN. You need not talk about irrelevant matters On this very point I am within the Deputy Speaker's ruling We have all heard it. That is what I understand Under his ruling and he has said it very clearly, that he facts on which a decision is to be given, if they are mere allegations, they cannot be quoted. How can I allow you to quote? I cannot do that (Interruptions)

Otherwise, if you read it the whole petition, will the ruling have any meaning? Then... (Interruptions). Then, what is the meaning of the Deputy Speaker's ruling? If the entire

[Mr. Chairman]
 petition is to be read out in every one of the 180 cases, we will never finish. Is that the idea and the understanding of the Deputy Speaker's ruling? That is not my understanding of the Deputy Speaker's ruling?

SHRI SHYAMNANDAN MISHRA:
 May I seek your guidance?

SHRI PRIYA RANJAN DAS MUNSI
 (Calcutta-South): No argument after your ruling.

SHRI SHYAMNANDAN MISHRA.
 Is it your pleasure to say that if the complainant is the CBI, then all this, facts mentioned in the complaint .

MR CHAIRMAN. No, no I am not going beyond the Deputy Speaker's ruling. I will neither comment on nor improve upon the Deputy Speaker's ruling

SHRI SHYAMNANDAN MISHRA:
 Please read out the ruling.

SHRI JYOTIRMOY BOSU. If you kindly read it the ruling—I have very carefully listened to it and I got it recorded in my head—it is that I shall not be entitled to pass any comments on what is stated in the petition (*Interruptions*) I beg of you to listen. I say it on my own responsibility. What is the remedy. Sir, when you are proved wrong tomorrow?

MR. CHAIRMAN: As I understand the Deputy Speaker's ruling, I will not allow you say something which will prejudice the case. If the Speaker or the Deputy Speaker allows you tomorrow you vote the whole thing. The court may hold that all these allegations are false. Now, should I allow you to say something as if you are reproducing an allegation on which the House is expected to form its mind? I cannot allow. How can I be a party to that.

I do not have here the copy of the Deputy Speaker's ruling. We will solve it this way. At present, you do not quote. You say on other points and tomorrow when the Speaker or Deputy Speaker..

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): This has to be passed today. That is a decision of the House ..

(*Interruptions*)

SHRI H. R. GOKHALE: You are seized of the matter. You said something on the basis of recollection. That is my recollection also

(*Interruptions*)

But what I am submitting is, it is not necessary for you to postpone this, You can decide this matter.

SHRI BHOGENDRA JHA: Mr. Deputy Speaker gave a ruling on this point. If you read that sentence everything will be clear .

MR CHAIRMAN. I do not have that with me

SHRI SHYAMNANDAN MISHRA:
 We have already gone beyond six now. What is your pleasure Are we to go on till midnight? What is this?

श्री श्यामनन्दन मिश्र : दो घंटे तीन घंटे कितने घंटे बढ़ेगा ?

एक मालगीय सदस्य : देश का काम है

श्री जनेश्वर मिश्र : देश के लिए होता तो हम लोग कर देते । लेकिन यह तो इंचिर गांधी के लिए है ?

MR. CHAIRMAN: Order, order.

SHRI K. RAGHU RAMAIAH: The Business Advisory Committee decided and the House has also endorsed this decision. If necessary, by sitting late, this shall be finished today. There are other matters which have to be passed tomorrow, there are specific Demands for Grants and other matters. We have other work on the next day. This has to be passed today and this has to go to Rajya Sabha. This is my submission.

SHRI SHYAMNANDAN MISHRA: If it is one hour or one-and-a-half hours more one can understand. You have allotted 6 hours for this. Now itself it is 6 already. Are we to go upto 12 O'clock? Is it humanly possible? If it is 8 O'clock we are prepared to sit. It is very undesirable to except us to sit upto 12 O'clock.

SHRI K. RAGHU RAMAIAH: I make a sportig offer that no one on our side will speak except the Minister. To that extent we will cooperate. Let us pass the Bill. I request all sections to cooperate please.

श्री जनेश्वर बिश्व : हम नहीं मानेंगे ।
 कांग्रेस में श्री मिनिस्टर्स के अलावा कुछ
 काबिल लोग हैं ।

SHRI P. G. MAVALANKAR: Sir, may I make my submission? As far as I understand, it was the decision of the Business Advisory Committee which was endorsed by this House that this particular measure would be passed to-day by sitting late which means it may be by 10 'O' clock or midnight or 2 A.M. We cannot help it. That is my understanding. By sitting late, may be by midnight or 2 A.M., we have to pass this Bill because tomorrow the other business comes up. For the whole of last week we had certain time bound discussions. We must now end it. Another thing is that the other issue may come day after tomorrow.

So I would suggest that we are duty-bound, legally and morally, to

complete the discussion today. That is Number One. Secondly, the Minister of Parliamentary Affairs has now come with a sporting offer. (Interruptions.)

SHRI SHYAMNANDAN MISHRA: It was a reasonable assumption of being late.

SHRI P. G. MAVALANKAR: You may differ from me; I can also differ from you. That is why we are here. He may not like it; I am not bound to please him; I am bound to please my conscience. We are legally and morally bound to conclude this.

SHRI SHYAMNANDAN MISHRA: Please do not rush up.

SHRI P. G. MAVALANKAR: The point is this. On this particular measure the Members on the Opposition Benches have to speak. The Minister for Parliamentary Affairs has already made a sporting offer that none from the Congress Benches will speak. That means the hon. Members from the Congress Benches would be adequately covered by the Law Minister himself. Therefore, let the Chair now go in the order of the speakers from the Opposition. From others there will be no speech.

Lastly, about quoting by Mr. Bosu, recollection. I am not depending on I suggest that you may depend on the recollection. He may not depend on recollection. I would request you to kindly go through the ruling yourself and verify it. Till then, Shri Bosu may continue with his speech without referring to the document.

After they complete their submissions, if you give your ruling, we have to accept your ruling as final.

MR. CHAIRMAN: I am reading that ruling.

SHRI SAMAR GUHA: I am not challenging your ruling. Would you kindly give me a minute?

MR. CHAIRMAN: I heard you last time. You do not remember that. You will please sit down. I am now reading out the Speaker's ruling.

SHRI SAMAR GUHA: Just a minute please.

MR. CHAIRMAN: You do not cooperate at all.

SHRI SAMAR GUHA: Mr. Bosu was reading a quotation from a certain document that has been produced before the court. I want to draw your attention that these documents which have been persued by the courts are available there to anyone. They are available to the newspapers also. He simply quotes from there without making comments. How can you say that he cannot? If he wants to make any comments, I can understand that. He is simply quoting from the document without making any comments. I think that is permissible, to quote from that documents without any comments whatsoever.

MR. CHAIRMAN: This is what the Deputy-Speaker had said:

"Therefore, as I said, this is a very unusual Bill and this is a very unusual situation in which we find ourselves... At this stage, if the Law Minister has anything to say to help us out of the difficulties which I have tried to delineate, I shall welcome his help, but if he has nothing more to say, the best I can do is to rule that it is difficult in the circumstances to prevent the Members from making reference to these cases. In doing so, however, I would earnestly request them not to cross the limits and upset the delicate balance between Parliament and judiciary."

This is important. You must not do anything here which is pending adjudication there on which they have to decide and reproduce it to cast an

aspersion. The Deputy-Speaker, had further said:

"Whatever submissions they might make in this regard should be within the limited purpose of whether a measure of this kind is called for, whether it is justified and whether we should go in for it. They should not try to pronounce on the merits of the various allegations and submissions. They should not even try to say that these are facts because the facts are to be determined by the courts and not by us and the merits of each petition are to be determined by them."

This is the quotation. Mr. Bosu. Now, you quoted from the petition. What was the objective of your quoting? You said that this is the allegation as if it is a fact which you are trying to establish here. Now, this is the only purpose that can be served by this. Otherwise, you will read out the whole petition. You can read out the entire petition, within inverted commas, that this is the petition and you read it out. That becomes irrelevant completely. My understanding of this ruling is this. Allegations should not be reproduced for the purpose of your statement of facts.

SHRI JYOTIRMOY BOSU: I want to cooperate with you. Let me make it clear. What I am reading out are from the petition, allegations. They may or may not be facts. I am not making any comments on the same. I am not saying whether there is merit or no merit. That is left to the court. I am only quoting from the election petition, what has been alleged in that, for the purpose of this Bill only. Sir, it has been stated:

"Hiring charges of vehicles Rs. 1,28,700/- The cost of petrol and diesel used—Rs. 48,230/- Payments made to the drivers—Rs. 9,900/- Repairing and servicing charges—Rs. 5,000/- Payments made to the workers engaged for the purpose of

election propaganda amounting to Rs. 6,66,000.

"Expenses of the election of respondent No. 1's polling camps—Rs. 10,000/-

Expenses of the election of rostrums for the public meetings (from certain date to certain date)—Rs. 1,32,000/-

Expenses of loud speaker etc Rs. 7,200/-

Expenses on respondent No. 1's transport—Rs. 1,68,000/-"

I would like to be corrected, if I am wrong I am only saying that it has been claimed. If I am right, that the total expenses come to Rs 15,86,030/-

"Agent, State Bank, Rae Bareilly, along with the registers of payments made to Shri Yashpal Kapur from 1st January 1971 to 30th June 1971 and on the basis of coded messages received from New Delhi and full details of the accounts from which and the persons on whose instructions these payments were made as also the full details of all the payments made to him on the basis thereof"

"Agent, State Bank, Rae Bareilly along with the complete account or full extract thereof..."

MR. CHAIRMAN: This is from what?

SHRI JYOTIRMOY BOSU: Some—allegations.

"...including register of payment for the cheques..."

All these total up to Rs. 3,95,000, according to this. I do not know whether it is correct or not, whether it is a fact or not. (Interruptions)

SHRI BHAGWAT JHA AZAD: Only he can quote? I would like to know whether it is true or not.

MR CHAIRMAN: He said I do not know'.

SHRI JYOTIRMOY BOSU: I do not know.

Now there is a question of facts. In the petition, there is a list of allegations Allegation is:

"Shrimati Indira Gandhi procured jeeps (32) on hire and incurred expenditure on them".

To that, the reply is:

"Para 17(a) (b): Out of the jeeps, none was procured by Mrs. Gandhi or her election agent 17(b). Out of these, 32 jeeps (number of 22 jeeps admitted)..."

I do not know whether it is 22 or 2; it is not clear—

"were procured by the District Congress Committee of Rae Bareilly for 3 parliamentary constituencies".

Then it is said here:

"Mrs. Gandhi did not specify any amount of expenditure. However a modest amount of Rs. 6,000 per jeep for the election period is hereby assessed on account of hire and petrol expenditure..."

This also comes to a big total of money.

There are so many other things. I do not want to go into them. These things will speak for themselves. The court will sit in judgment. Let the country know what the allegations against the Prime Minister are and why the election petition has remained pending from 1971 to 1974.

Then we have an institution called the Election Commission. Its conduct has been scandalous and disgraceful. It has been so criticised

[Shri Jyotirmoy Bosu.]

throughout by all the opposition parties that it does not justify its existence. It has been headed by servile, superannuated, job-seekers. .

MR. CHAIRMAN: How is it relevant here?

SHRI JYOTIRMOY BOSU: It is an election matter.

MR. CHAIRMAN: This is against the Election Commission.

Is it relevant under this?

SHRI JYOTIRMOY BOSU: Of course.

MR. CHAIRMAN: How? It is irrelevant.

SHRI JYOTIRMOY BOSU: I will show you.

MR. CHAIRMAN: This is under the Representation of the People Act. It is not about the Election Commission. Why are you side-tracking?

SHRI JYOTIRMOY BOSU: The minimum time for a bye-election is 1 month 13 days, maximum time 11 months 17 days. For the Legislative Assembly, minimum time is one month... (Interruptions); maximum time 3 years 1 month and 22 days. But if it is for the ruling party, one bye-election can be held on 1 month 12 days.

MR. CHAIRMAN: You are not on the Bill.

SHRI JYOTIRMOY BOSU: I am.

I am drawing your kind attention to what the Joint Committee on amendments to election law, of which you were an able member, has said. They said:

"It is too great a burden for a single person to exercise supervision, direction and control over

elections effectively. As a result, he is likely to be exposed and vulnerable to charges of arbitrariness and partiality. The Committee therefore recommend that the Election Commission should be a multi-member body as envisaged in art. 324(2) of the Constitution".

Now it had a Congress Chairman. Most of the members were Congressmen. But what has happened? They do not want to touch it. But they are doing this in order to protect their Prime Minister, by bringing in a draconian law in a most shameful manner.

I want to conclude. I want to say that my party has said that there should be restrictions not only on the expenses incurred by the candidate and his party but also on the number of posters issued, vehicles used and other propaganda material distributed, etc.

MR. CHAIRMAN: I have called Mr. Jagannath Rao.

SHRI JYOTIRMOY BOSU: We have said that the All India Radio and television should for the duration of the election campaign be under the supervision of an all parties committee.

In the issue of People's Democracy dated 1st December, we have listed a six point formula and I would urge the House to consider that to prevent rigging and distortion of people's will.

SHRI JAGANNATH RAO: We do not want to speak.

MR. CHAIRMAN: From 4.30 to 6.30 Shri Jyotirmoy Bosu alone has spoken... (Interruptions).

SHRI JYOTIRMOY BOSU: In this debate I took somewhat less time because physically I am a little run down... (Interruptions).

SHRI BHOGENDRA JHA (Jainagar): This Bill has been introduced to replace the ordinance which was promulgated after the Session of the Lok Sabha was prorogued. The necessity for this arose after the Supreme Court gave a certain interpretation to the expenses incurred in the case of Shri Amar Nath Chawla. Some new interpretation has been given to the expenditure that can be incurred by a candidate or a party, accounts to be maintained, etc.

I should like the House to take into consideration the relevant part of the judgement; on page 14 it says:

“When the political party sponsoring a candidate incur expenditure in connection with his election as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that the political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money.”

On page 15 it says:

“But we do not think so. In the first place, a political party is free to incur any expenditure it likes on its general party propaganda though, of course, in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action.”

We all know the contradictions and stresses through which our parliamentary democracy is passing through. The contradiction is, we have a system of adult franchise where every adult has got one vote, and the right to get elected or to elect, irrespective of status, wealth, caste, religion, etc. On the other side, there is the huge amassing of wealth, mostly unearned, looted, exploited wealth, concentrated in a few hands. These few people who are hated by the society are influencing the elections, influencing the Government, the ministers and the Members of Parliament, as we have seen. So, big money is having its influence on our system. Under this contradiction, the stage has been reached now when our democratic interest and democratic advancement must be strong enough to curb the power of big money and big business. I am raising this point because those who have huge money, struggled or defalcated money, and who have been influencing the Government, the administration and the political parties, feel strong enough now to openly challenge the very system of parliamentary democracy. A few years ago we were reading in the papers about the sanctity of the parliamentary democratic system. Whenever we on this side—the communists and other democrats—wanted some improvement in the system, we were told that we were following the pattern of the Mother of Parliaments—the British Parliament—and there should be no change. Now the monopoly press is directly attacking the parliamentary system and directly helping the forces

[Shri Bhogendra Jha]

who through violence and other methods are attacking the very system of parliamentary democracy. When people who are big-moneyed like Mr. Naval Tata or Mr. K. K. Birla find that even their security deposit is forfeited, they think, "To hell with this democracy and election system. After spending millions of rupees, one gets his security deposit forfeited." So, the attack is now being made on the system itself. Slogans like partyless democracy are openly supported by the press owned by monopoly houses. In such a situation, there is greater need to curb the power of big money and enhance the democratic content in the Constitution and in our electoral law. Many of us feel it is an unequal election campaign. Almost 80 to 90 per cent of the people are on one side, but minus money, when the final count comes, if you secure a majority, it is a fortunate thing. Even then, on one side you see 10 or 15 thousand persons marching on their legs from village to village. On the other side, there are hundreds of jeeps and cars. Booths are captured by usurious landlords in the rural areas. In such a situation, the country expects that there should be some change in our election methods and election law, like proportionate representation, curbing the power of money etc. Shri Uma Shankar Dikshit, when he was Home Minister made a statement which was publicised in the press that Government should meet the expenses of the candidates. And that there should be a ceiling on that.

We had thought that that was a serious proposal. But, I think, that could not materialise.

Now, through the present Bill, what is being attempted to be done is to give full freedom to big business, full freedom to black money and full freedom to corrupt men openly. They will openly come to capture the whole electoral system on the basis of money power. I am very much apprehensive of that. If we adopt this Bill as it is,

then they will come openly to do what they have been doing stealthily and surreptitiously. Uptill now, they have been telling a lie and they have been filing wrong returns. Now, they will not be required to tell a lie. They can be required to tell a lie. They can come openly now and say that their friends, individuals, associations, chambers of commerce, have spent millions of rupces for their elections. There is no need of hiding it. If we adopt this Bill as it is, this is what will happen. This is a very serious indication. I do not know if the whole Cabinet or the ruling party has seriously thought over it.

This is the provision of the Bill:

"Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised or authorised by the candidate or by his election agent . "

So, if anybody, any individual or any association spends millions of rupees for me, that will not be taken to be incurred for my election.

This is strange. When there is a direct attack on the parliamentary democracy from one side, there is another counter attack on the parliamentary democracy from the Treasury Benches, the ruling party. The result will be the same. I think, the money bags, the smugglers, the black marketers, the people with black money will have a free play. They will become honourable men. They will not do it stealthily as they have been doing in the past. They will openly do it now. So, there is a very serious danger to our parliamentary democracy. I am giving this warning....

SHRI B. V. NAIK: Do you believe that the electorate can be bought?

SHRI BHOGENDRA JHA: Had it been so, I would not have been here.

MR. CHAIRMAN: Neither the electorate nor the elected, nobody is being bought.

SHRI BHOGENDRA JHA: I am talking of the electorate.

We have dealt with one case. Now, we are dealing with another case. I do not have the courage to say that in such a situation, what is being provided in this Bill will give a death-blow to at least the apparent curb on money power which our election law has provided uptill now. This House should take into account the serious implications of this as to what will happen once this freedom is given. We should not think that those who are in the Treasury Benches today will remain there for ever. Therefore, they should not fail to understand the seriousness of the situation, that the money bags are very powerful not only on their own but also in league with foreign imperialist powers, they are influencing and are attempting to influence our national political situation which may affect our democratic system. The ruling Party is playing with fire by providing for this thing. Millionaires will come openly for this and that candidate publicly and none can say that they are being stealthily. In such a situation, what I am afraid is, they are more than Americanising our election system. So, Sir, I have given notice of an amendment. In the condition when the Supreme Court has given a new interpretation, I understand and appreciate the difficulty that there should not be any curb on a political party. Its Central organ or the State organ gives names or lists of candidates and asks people to vote for them. Naturally it will be very difficult for a candidate or for any election authority to find out the exact sphere of the particular candidate or a particular constituency, what his election expenses will be on the particular issue of a newspaper or hand-

bill and so on. Both with regard to individuals or associations or groups of persons, the position is different. I submit, the Treasury Benches should think over it. They are in a great hurry to pass the Bill today. I think the Business Advisory Committee is also committed to it. At least, they should delete the following words, namely, "or by any other association or body of persons or by any individual (other than the candidate or his election agent)". This portion must not remain. Otherwise, our democracy, which has been advancing very slowly, but nonetheless advancing, will be given a very powerful blow from the Treasury Benches, at the time when it is receiving and facing a blow from outside from certain forces in the name of partyless democracy or dissolution of Assembly....

PROF MADHU DANDAVATE:
Spare Mr Jayaprakash Narayan here

SHRI BHOGENDRA JHA: I have not named him. I think, you also belong to a party. When the partyless thing comes, as long as you do not dissolve your party, you will be with me ..

AN HON. MEMBER: Classless class

SHRI BHOGENDRA JHA: We all know what happens when a classless society is there .. (Interruptions)

MR. CHAIRMAN: Please conclude

SHRI BHOGENDRA JHA: As I was saying, the Bill, in its present form, is not only harmful for one side or the other—it may serve some purpose, some particular election this way or that way—but it will be disastrous for our electoral system and very harmful for the healthy process of democratic life. In such a condition, I urge on the House to accept my amendment which seeks to delete that aspect—that particular portion which I have mentioned. It will at least put some curb on the power of money bags, smuggled money, hoarders' money and so on.

[Shri Bhogendra Jha]

Otherwise Sir, the House should muster courage, if this amendment is not accepted, to reject this Bill That is my submission, Sir

श्री जगन्नाथ राव जोशी : (शाजापुर) । सभापति महोदय, सदन में जिस विधेयक पर चर्चा चली है उसका विरोध करने के लिए मैं खड़ा हुआ हूँ। इस के दो पहलू हैं—एक नतिक और दूसरा राजनीतिक सर्वोच्च न्यायालय ने जो निर्णय दिया इस की ओर दूसरा जो पहलू है 'राजनीतिक' उस दृष्टि से केवल देख कर उस खामी को दूर करने की कोशिश की है। किन्तु यह निर्णय क्यों आया, इतने दिनों के बाद क्यों आया, इसकी कोई पृष्ठभूमि है कि नहीं? इस का सारा विस्तृत वर्णन उन्होंने अपने निर्णय में किया है। वास्तव में जिस गति से हम देश को आगे ले जाना चाहते हैं क्या उस के साथ यह अध्यादेश या विधेयक सुसंगत है? हम जरा सोचें तो सही। राजनीतिक विचार यह है कि कुछ व्यक्तियों को बचाने के लिए हम देश को एक बड़ा भारी धक्का दे रहे हैं, इसकी ओर शायद हमारा ध्यान नहीं गया, ऐसा मुझे लगता है। क्योंकि इस के पहले जब सर्वोच्च न्यायालय का कोई निर्णय आया उस की वजह से कई लोगों को कुछ न कुछ धक्का जहर उठाना पड़ा। जब हम ने भूमि की मर्यादा तय की तो कुछ लोगों को भूमि छोड़नी पड़ी। जब प्रिवी पर्स को समाप्त किया तो राजा महाराजाओं को क्या प्रिवी पर्स नहीं छोड़ना पड़ा? तो बैसे ही सर्वोच्च न्यायालय के निर्णय को स्वीकार करते तो कुछ लोगों को पार्लियामेंट या विधान सभाओं से स्थान छोड़ना पड़ता।

भाबिर हम चाहते क्या हैं? पिछले कई सालों से लगातार क्या यह चर्चा नहीं है कि पैसे का अभाव उच्चोच्च चुनाव में हो रहा है? इस की ओर सब ने चिन्ता

प्रकट की है। स्वयं प्रधान मंत्री ने भी इस के ऊपर चिन्ता प्रकट की है क्योंकि केवल चुनाव का खर्चा ही नहीं, चुनाव के घसाला भी जो खर्चा होता है, वो सरकार करती है, राहत कार्य के रूप में कोई कारखाना खड़ा करने के रूप में जिस की दृष्टि से व्यक्त को किसी न किसी रूप में कुछ न कुछ पैसे इसको भी न्यायालय ने ठीक नहीं समझा। उन्होंने यह कहा है कि यह कोई इत्लीगल प्रैक्टिस नहीं है, किन्तु यह इविल प्रैक्टिस है। यह क्यों कहना पड़ा? गुजरात में जैसे चुनाव आ रहे हैं तो वहाँ फटिलाइजर कम-प्लेक्स लग रहा है बडोवा में कागज के नोट छापने का कारखाना लग रहा है। तो यह सब इविल 'प्रैक्टिस है। फ्री और फेयर चुनाव होना चाहिए। एक सामान्य व्यक्ति को जनता का प्रतिनिधि बनने का अधिकार है उस का पूरी तरह से उपयोग करे, यदि यह मशा है तो उस के विरोध में यह अध्यादेश और विधेयक जाता है। क्योंकि जब चुनाव का सारा मामला तय हुआ उसी समय की मर्यादा क्यों तय की गई कि खर्चा कितना हो, लोक सभा और विधान सभाओं के चुनाव में कितना खर्चा हो? यह इसीलिये तय की गई थी कि सही रूप में जनप्रतिनिधि यहाँ आ सके, और कोई साधारण व्यक्ति पैसे के अभाव की वजह से वंचित न हो जाय। जब पता चला कि उम्मीदवार खुद खर्चा न करे बल्कि उस का कोई दोस्त खर्चा करे तो जो वास्तव में मर्यादा रखी गई थी, उस का उल्लंघन किसी न किसी रूप में होता रहा। तो न्यायालय का कुछ उत्तरदायित्व है कि नहीं। वास्तव में इस दायित्व को आप को निभाना चाहिए था। जो कि आप ने नहीं निभया। जब आप इंग्लिटेरियन सोसायटी की बात करते हैं, समाजवादी समाज की बात करते हैं बंसी हानत में, यदि सारी रोक निकाल देंगे तो क्या बेरे जैसा प्राइमी चुन कर पूरा इच्छता है? कभी नहीं कर सकता। एक तरह पैसे का अभाव खर्च

[श्री जयप्रकाश दास जोशी]

करने की प्रवृत्ति पैदा हुई ती उस पर रोक लगानी चाहिए या नहीं ? हम आखिर क्या करवा चाहते हैं ? लैंड सीलिंग के बाद आप धर्मन सीलिंग का विधेयक लाने वाले हैं ज्यदा पैसे बाबों पर टैक्स लगाना चाहते हैं, स्मॉलिंग को रोकना चाहते हैं, चाहते हैं, कि कोई गलत तरीके से पैसा कमा कर बड़ा न बने आखिर यह सब किस लिए ? सामाजिक दृष्टि से चाहते हैं कि शादी बिवाह के अवसर पर पैसे का बल्सर डिस्पेंस नहीं होना चाहिए । यह दृष्टिकोण हमारा इसीलिए है कि हम समाजवादी समाज की स्थापना चाहते हैं । मैं बिल्कुल विरोध नहीं करता यदि आप अमरीकन रिपब्लिकन पार्टी की तरह से रहते बगिग बरैरह सब करते । किन्तु जो हमारी मान्यतायैहै यह विधेयक उन के विरोध में जाता है इसलिए हम इसके विरोधी है । यदि आप शुरू से ही कहते कि हम करेंगे तो हम मान लेते । इसलिए मेरा कहना है कि कथनी और करनी में अन्तर नहीं रहना चाहिए अन्यथा धर्मचक्र प्रवर्तनाय नहीं होगा अपितु धर्मचक्र प्रवर्तनाय खुले रूप से होगा । धर्म का मतलब है कर्तव्य । और चुनाव में जब कोई खडा होता है तो उस की क्या विचाराधारा है, देश और समाज का कल्याण कैसे होगा, इस को समझा कर मैं जनता का प्रतिनिधि बनूँ । इस में पैसे का स्थान है ही नहीं । किन्तु बाबों में धूल झोक कर जो बात कर रहे ह । जो पहले मर्यादा लगायी थी उस का उल्लंघन जब होने लगे तो क्या उस को नहीं रोकना चाहिए ?

सर्वोच्च न्यायालय ने यह नहीं कहा कि पार्टी अपने दल के लिए खर्च नहीं कर सकती । उस पर कोई रोक सुप्रीम कोर्ट ने नहीं लगायी लेकिन जब किसी व्यक्ति के लिए पार्टी खर्च करती है तो उस को क्यों न मिला जाय । इस में कौन सी श्रंखला डाल है ? क्रिस पैसे की बचत से समाज की धारणा बिगड़ रही

है उस को रोकना ही चहियेगा । क्योंकि जयप सर्ववश : सर्वगुणा : कांवन पाखयन्ति । पुरातन काल से यह चालू है । इसलिए उस पर कैसे रोकलगायी जाय इसी दृष्टि से सोचना पडता है । संविधान ने एक मर्यादा दी, सब को समान अधिकार दिया । तो क्या यह समान अधिकार वा उल्लंघन नहीं है कि एवः सामन्य व्यक्ति खड, ही चुनाव से वह तो 7,000 रु० खर्च करे और दल वा कोई आदमी हो तो सात लाख खर्च करे । इस का मतलब क्या है । यदि हम, समानता चाहते है तो उनकी और क्या यह बिल ले जा रहा है ?

विधि मंत्री ने कहा कि 180 लोगों की पेटिशनस पेडिंग है । प्रश्न यह नहीं कि कितनी पेटिशनस पेडिंग है । प्रश्न यह है कि हम कहा जा रहे है ? क्या हम कहा जा रहे है जहां पैस और अधिकार का दुरुपयोग हो या जहां इन चीजों का दुरुपयोग न हो और प्रत्येक व्यक्ति को खुले रूप से अपने विचार व्यक्त करने का अवसर मिले, ऐसी व्यवस्था हम लाना चाहते है जो कि संविधान में निहित है । एक बार पार्लियामेंट के अधिकार को जब मर्यादित करने का विचार आया तो हम ने उस का विरोध, किया । विधान से जो डायरेक्टिव प्रिन्सिपल्स है उस दृष्टि में समाज को भाग ले जाना चाहते है । उन डायरेक्टिव प्रिन्सिपल्स की यदि व्यवहा में लाने की दृष्टि से कोई कानून है, सर्वोच्च न्यायालय का कोई निर्णय है तो उस को हम को स्वीकार करना चाहिए । मुझे ऐसा लगता है कि जो शासन खुद नहीं कर सका यदि वह सर्वोच्च न्यायालय ने किया तो उसका स्वागत करना चाहिए था । 180 लोगों की बात नहीं है ।

19 hours.

सदा देश में लोकतांत्रिक ढांचा बनना रहे और इस लोकतांत्रिक ढांचे में विचार प्रकट करने का अवकाश रहे, ऐसा यदि हमें नहीं लगता है तो 180 लोगों की बचत के लिए इस तरह

[श्री जयन्तनाथ राव जोशी]

का विधेयक लाना उचित नहीं हो सकता है। यह एक पीछे की ओर से जाने वाला विधेयक है। इस तरह की बात आप क्यों कर रहे हैं यह समझ में नहीं आ रहा है। आप तो आगे से जाने की बात किया करते हैं। अब उसको छोड़ कर जैसे मेरे मित्र ने अभी कहा है कि यह तो फ्लड गेट्स खोल देगा, पहले कम से कम चोरी से करते थे और अब तो खुले में खर्चें करेंगे। पैसे का प्रयोग बिल्कुल भी न हो, कोशिश तो यह होनी चाहिए। सरकार सारा खर्चा वहन करे, कोशिश यह होनी चाहिए। वह खर्चा कोई ज्यादा नहीं बैठता है। हमारे अध्यक्ष महोदय श्री प्रडवानी ने हिमाब लगा कर बताया है कि सरकार का कितना खर्च होगा। उन्होंने एक एक निर्वाचन क्षेत्र का हिसाब लगा कर बताया है कि वे प्रत्याशी जिनकी जमानत बची है ऐसे लोगों का हिसाब करके उन्होंने बताया है कि 78 लोग थे जिन की जमानत बची है और लोगन सीलिंग जो एक्सपेंडीचर पर है वह 35,000 है। सारा हिसाब लगा कर उन्होंने बताया है कि लोक सभा का खर्चा आया 3 करोड़ 6,6 लाख 13 हजार यदि सरकार इस खर्च को वहन करे। विधान सभाओं के लिए उन्होंने बताया है कि 8 करोड़ 28 लाख 4 हजार खर्चा आपको वहन करना पड़ेगा। इस तरह से कुल मिला कर सरकार का खर्च आया ग्यारह या साठे ग्यारह करोड़ रुपए। प्रो० के० टी० शाह ने कन्स्टिट्यूट प्रैसिडबली में यह बात निराली थी। उस समय यह बताया गया था कि सरकार के पास पैसे नहीं हैं। यह फीजिबल है या नहीं यह नहीं बताया गया। विधान सभाओं और लोक सभा का साथ साथ अगर चुनाव होता है तो खर्चा चौबह पन्द्रह करोड़ आता है। लेकिन आज आप लोगों ने इसको डी लिंक कर दिया है, एक बार इधर आप पन्द्रह करोड़ करते हैं

और दूसरी बार उधर आप पंद्रह करीब करते हैं। इसके बजाय दोनों साथ संक करके आप पैसे की बचत कर सकते हैं और सरकार यह खर्च वहन कर सकती है। दलों की ओर से जो खर्च होता है या बाहर का जो खर्च होता है उस पर रोक लग सकती है और आप चाहे तो दलों को भी आप रिटन फाइल करने के लिए बाधित कर सकते हैं खर्चा कम हो और कोई मामला प्रश्नो से न हो इसकी आपको व्यवस्था करनी चाहिए।

आज भी मैं आप से प्रार्थना करता हूँ कि इसके पीछे जो नैतिकता है उसकी ओर आप ज्यादा ध्यान दें। राजनीतिकता में फस कर सदा अधिकार में आप रह सके, इस विचार को अगर आपने सामने रखा तो आप देश को गड़बड़े में ले जायेंगे। प्रजातंत्र को बिल्कुल भाग लगाने की बात आप कर रहे हैं। मैं समझता हूँ कि इस लेट स्ट्रेज पर भी आप इस पर जरा गम्भीरता से सोच विचार करके इसको वापिस ले ले तो ज्यादा अच्छा होगा। वरना हमको इसका विरोध करना पड़ेगा।

*SHRI E R KRISHNAN (Salem):
Mr Chairman, Sir, on the Statutory Resolution moved by my hon friend Shri S N Mishra and others disapproving the Ordinance promulgated by the President and also on the Representation of the People (Amendment) Bill I rise to say a few words on behalf of my party, the Dravida Munnetra kazhagam

On 19-10-1974 the President promulgated the Ordinance stating that the expenditure incurred by a political party on its candidates, will not form part of the election expenses of the candidates on which there is a ceiling. In order to give statutory shape to this Ordinance, this Bill has been introduced by the Government.

*The original speech was delivered in Tamil,

The Supreme Court in its judgment unseated the ruling party Member, Shri Chawla on the ground that the money spent by the Congress Party on him formed part of the election expenses of the candidate, which exceeded the ceiling. The Central Government argue that this Ordinance is necessary in order to give protection to 180 election petitions pending before the Courts of our country. Within two days of the Supreme Court's judgment, this presidential ordinance was promulgated. I would like to know whether this amending Bill has been introduced just to spite the Supreme Court for having unseated a ruling party member or whether this has become an imperative necessity for giving statutory protection to the Prime Minister against whom an election petition is pending in a Court. I also wonder at the sudden solicitude of the ruling Congress Party for the Opposition Parties, when the Law Minister says that this Bill will give protection to Opposition Party Members also against whom election petitions are pending before the Courts. Is it not a surprise that the ruling Congress Party has extended its support to the Opposition Parties at the cost of the Supreme Court?

19.13 hrs.

[SHRI JAGANATH RAO JOSHI in the Chair]

Here, I would like to refer to the behaviour of the Central Government at the time when the Supreme Court gave its judgment against the Abolition of Privy Purses Act and against the Nationalisation of Banks Act. The Central Government superseded three senior judges of the Supreme Court and appointed a junior judge as the Chief Justice, who was in the good books of the Government. The three senior judges later on resigned in protest. But now, the favoured Chief Justice has given this judgment against the ruling Congress Party. I have no hesitation in saying that the Government have insulted the Supreme Court by promulgating the Ordinance and

introducing this Amendment bill. Not only the Supreme Court but also all other Courts in the country have been insulted by the Government.

The Prime Minister as also the Law Minister have been repeatedly saying that there is need for reforming the election law. The Chief Election Commissioner, in his Report after every General Election, has been emphasising the need for reforming the Election Law, particularly in regard to election expenses. I would like to quote from page 181 of the Report of the Chief Election Commissioner, which the Chief Election Commissioner, which he presented after the Fifth General Election:

"The Joint has not accepted the proposals of the Election Commission about the filing of return of election expenses by the political parties. I should once again strongly urge that the recommendations of the Election Commission should be accepted in toto, if some improvement in the position relating to the incurring of expenditure at elections is to be expected and achieved."

This recommendation has not been accepted by the Ruling Congress Party. There is no meaning, in this situation, in decrying the Opposition Parties. Unless this recommendation is incorporated in the Election Law, we cannot expect free and fair elections in our country.

From 1952 to 1971, during the past five General Elections 253 petitions against Lok Sabha Elections and 1680 petitions against Legislative Assembly Elections have been filed in the courts. Most of these petitions are against the Congress Party candidates on the ground of excessive expenditure in the elections. Sir, a sum of Rs. 35,000 has been fixed for Lok Sabha election. At the present rate of inflation and the declining value of rupee, this amount of Rs. 35,000 should be statutorily enhanced to a suitable sum. Then only unfair means can be avoided in the elections. I would like to know what steps the Government propose to

[Shri E. R. Krishnan]

take in this direction. Similarly, the ruling Congress Party should become the beacon light for all other political parties in the country by submitting its annual statement of revenue and expenditure in the form of duly audited Balance-sheet to the Chief Election Commissioner.

Sir, there is widespread belief among the people of the country that the delimitation of constituencies before the General Election is being done in such a way that the ruling Congress Party is enabled to get majority in the constituencies. The Law Minister should find out legislative means for removing this impression among the people of the country. None in the country can refute that the ruling Congress Party unhesitatingly uses the official machinery for election purposes. The illuminating illustration in this respect can be the All India Radio. Another example is the laying of innumerable foundation-stones of big projects by the Prime Minister in the Uttar Pradesh just before the recent Elections. Six months before the Elections in U.P., Shri Kamalapati Tripathi was removed from the political scene of U.P. and Shri Bahaguna from here was installed as the Chief Minister of U.P. in order to ensure success for the Congress Party in the polls. As an election sop, Shri Bahaguna confirmed all the Government servants who were not confirmed for the past 20 years. Even the Government servant with one year of service was confirmed. Are all these things not meant for the success of the Congress Party in the elections?

Sir, the last public function of late Shrimati Sucheta Kripala was giving evidence before a Committee under the chairmanship of Shri Tharkande on 24th November 1974—a week before her death—in the India International Centre. This is what she said before this Committee:

“When I was the Chief Minister of U.P., there was a conflict between

the Congress High Command and myself. The main reason for this conflict was because I refused to collect money for the Election Fund of the Congress, as dictated by the High Command. The High Command was greatly displeased with me. Though in the 1967 Elections I wanted to stand for the U.P. Assembly, the High Command said no and asked me to stand for the Lok Sabha. They wanted to drive me away from U.P. political arena. There was also another conflict. The High Command wanted me to use the official machinery during the Elections and I stoutly refused to do so. Consequently, the Congress Party got defeated in the U.P. In other States, the Congress Party had resounding victory because it could use the official machinery for elections.”

Sir, none in this House can suspect the patriotism of late Shrimati Sucheta Kripalam. She was the leading woman-patriot of the country, who sacrificed her entire life for the good of the nation—this is what our President, Shri Fakhruddin Ali Ahmad, has said about her.

I have referred to this because there is urgent need for comprehensively amending the Election Law to root out all corrupt means during the Elections. As if to substantiate the contention of Shrimati Sucheta Kripalani, the Central Government have recently lifted the ban on the donations of Companies to the political parties. Can anyone in this House deny that this has been done in the interest and welfare of the ruling Congress Party?

Before I conclude, I would say that the Government have shown unseemly haste in promulgating this Ordinance. While there is urgent need for comprehensively amending the Election Law, the Central Government have come forward with this half-hearted measure. As is being stated by the Prime Minister as also the Law Minister both inside and outside this House, the Election Law should be amended

in such a way that free and fair elections become possible of achievement.

In conclusion, I demand that the election expenses of the candidates should be borne by the Government. Then only it will become possible to avert the violent display of differences of opinion among the political parties. This will also pave the way for free and fair elections, eradicating once and for all the corrupt practices and unfair means in the elections. This will also eliminate the habit of filing election petitions. Secondly, within 24 hours after the announcement of the dates of General Election by the Chief Election Commissioner, the Ministry at the Centre and the Ministries at the States should resign. This will avoid for ever the allegation of the use of official machinery for election purposes. The people will also be free from the pressures and pulls of the governmental machinery in exercising their franchise. This arrangement should form part of the Election Law. In the end, I would urge upon the Government of India to find out ways and means for expeditious disposal of election petitions, which are now pending before the Courts for four years and more. The election petitions must be disposed of within six months. Adequate legislative and executive steps should be taken by the Government in this matter.

सभापति महोदय : श्री जनेश्वर मिश्र । एक प्रार्थना है कि यह विषय विवादग्रस्त है, इस लिए जो भी विचार व्यक्त करने हैं, वे संक्षेपपूर्ण शब्दों में और रेलिवेंट करते हुए करें।

श्री परिपूर्णानन्द वैज (मधुवा) : मंत्री महोदय ने भीष्म पितामह की तरह यह घोषणा कर दी है कि हम पर चाहे जितने बाण छोड़े जायें, हम खड़े रहेंगे, और हम उत्तर नहीं देंगे ।

श्री जनेश्वर मिश्र (इलाहाबाद) : सभापति महोदय, मुझे ऐसा लग रहा है कि

इस सदन में कांग्रेस पार्टी तानाशाही के रास्ते पर जा रही है । अभी श्री रघुरामैया ने इन लोगों के नाम एक हुक्म जारी कर दिया कि हमारी पार्टी का कोई सदस्य नहीं बोलेगा, और इन लोगों की जुबान बन्द हो गई । यही तानाशाही कहलाती है । मंत्री महोदय इन लोगों की जुबान पर ताला लगा दें, और ये अपने आप को भीष्म पितामह समझें, यह कितनी हास्यास्पद बात है ।

हम ने उस समय भी यह निबंदन किया था कि कांग्रेस पार्टी में बहुत से काबिल लोग भी हैं और उन लोगों की राय से इस सदन को भ्रमगत कराना जनतंत्र के हक में है । यहां पर केवल हम लोगों के भाषण का कोई मतलब नहीं है । यह विचारों का आदान-प्रदान है । ये लोग अपनी बात हम को समझाते और हम अपनी बात उन को समझाते । लेकिन उन्होंने जिस तरह से यह फ्रैसला कर लिया कि हम नहीं बोलेंगे, उस से उन्होंने इस बिल पर बहस का रस ही समाप्त कर दिया है । यही तानाशाही के रास्ते पर जाने का षड्यंत्र कहलाया है । खर, इसको छोड़ियें । मुझे इस से मतलब नहीं था ।

बहुत दिनों से जनतंत्र और धनतंत्र का विवाद इस देश की राजनीति में चल रहा था एक तरफ़ इस तेश का जनतंत्र था और दूसरी तरफ़ धनतंत्र था । यह बहुत पुराना विवाद है—यह आज से नहीं पिठले दी दशकों से चल रहा था ।

श्री बी० आर० शुक्ल (बहराइच) : जनतंत्र से जनेश्वर आयें ।

श्री जनेश्वर मिश्र : और धनतंत्र से आप आयें ।

अक्सर ये शिकायते मिलती थी कि जनता के चुने हुए प्रतिनिधि भ्रष्ट हो जाते हैं, और अगर मैं विषय से थोड़ा सा हट कर कह दूं, तो मुझे ठीक से मालूम है कि अगर खर का कुर्ता धोती, पायजामा और टोपी पहन कर

[श्री जनेश्वर मिश्र]

भाषणी सड़क पर चला जाय, तो काम आइयो, चाहे वह रिक्शा वाला हो, खोन्हे वाला या टैक्सी वाला हो, या बुकानदार या स्टूडेंट हो, एक ही टिप्पणी करता है कि वह जरूर कोई चार-सौ-बीसिया राजनेता है। इस का एक ही कारण है कि पिछले 27 साल के दौरान हिन्दुस्तान के जनतंत्र पर जनतंत्र हावी हो गया है। 1947 से पहले जब यही कुर्ता, धोती और टोती पहन कर लोग सड़क पर निकलते थे, तो भ्रमजो के डर के बारे भले ही कोई न बोले, लेकिन मन ही मन सम्मान से सिर झुक जाते थे। लेकिन पिछले 27 साल के दौरान इन लोगों ने पूरे देश की राजनीति को जनतंत्र के कारण इतना भ्रष्टा बना दिया है कि आज आम आदमी राजनेताओं से नफरत करने लगा है। इसी जनतंत्र से भक्ति पाने के लिए विरोध-पक्ष के लोग लगातार 27 साल स सत्तासद दल स लडते रहे। सत्तासद दल भी यह कहता रहा कि हम चुनाव के तरीकों में कोई संशोधन करेग लेकिन वह नहीं कर पाया।

सत्तासद दल जिस काम से फल कर गया, सर्वोच्च न्यायालय ने अपनी कसम की नोक से उस काम को कर दिया। एक-एक गरीब आदमियों के बंटों को लगने लगा कि हम भी हिन्दुस्तान की राजनीति में हिस्सा ले सकते हैं जो लोग इफरात से वज्रा खूब कर के देश की राजनीति को भोगवस्ति के रास्ते पर ले जा रहे हैं उन से इस दश की राजनीति को मुक्ति मिल सकती है, यह उम्मीद की धुनहरी किरण दिखाई दी। लेकिन मुझे अफसोस के साथ कना पडता है कि वह उम्मीद की किरण केवल बिजली की तरह कौंधी, लेकिन राष्ट्रपति के अघ्यादेश के काले बादल ने उस को डक दिया। और आज फिर एक बार वह शक होने लगा है कि इस हिन्दुस्तान में गरीब भाषणी का बड़ा जनतंत्र में हिस्सा ल सकता है या नहीं। क्या करते हैं आप पैसे के बल पर या क्या करते हैं बोट लेने वाले लोग। आप से भेष बदलक

सत्तासद दल के लोगों से ही नहीं है, कहीं कहीं विरोधी दल के लोग भी, कहीं कहीं निर्दलीय लोग भी क्या करते हैं पैसे के बल पर? मर्राब पर, कम्बल बांट कर, रेडियों बांट कर और उत्तर प्रदेश के चुनाव के बारे में तो अभी इविड मुनेस कडगम के साथी ने अर्षा की, आप की प्रधान मंत्री का दौरा हुआ और दौरे में हर जगह पर कारखानों का शिलान्यास होने लगा, प्रधान मंत्री जी, के हाथ से सगमरमर के पत्थर गाडे जाने लगे। हमारे इलाहाबाद में फूलपुर में भी एक खाद क कारखाने का पत्थर गाडा गया था। उस के तीन महीनों बाद जब मैं फूलपुर गया, वहा के एक मुसलमान ने मुझे चाय पर बुलाया था, तो दखता हू कि वह सगमरमर का पत्थर उन के दरवाजे पर रखा है। मैं ने पूछा कि महा क्यों रखा है तो वह कहते हैं कि मजा आता है नहाने में, बडा चिकना है। 60 से भी ऊपर पत्थर इस तरह के गाडे गए थे। अरर इसी तरह प्रधान मंत्री उत्तर प्रदेश के अरर एक दो हप्ते नहीं, दो चार महीने छुपा कर देती तो पूरे का पूरा उत्तर प्रदेश सगमरमर के पत्थरों का कब्रिस्तान बन जाता। इस के धावाला और कुछ नहीं होता। यह प्रलोभन या जतना का बोट लेने के लिए और इतना ही नहीं, राजा साहब दिनेश सिंह यहा इस समय नहीं है। पिछले पार्लियामेंट के चुनाव के समय उन के इलाके से मैं चला जा रहा था तो मैं ने क्या देखा कि एक ट्रैक्टर के कारखाने का बड़ा सा साइबोर्ड लगा हुआ है। उस समय राजा साहब मंत्री थे। मैं ने वहा के लोगों से पूछा कि यह क्यों लगा हुआ है तो लोगों ने बताया कि यह कारखाना खुलने वाला है। किस तरह लोगो को, आम जनता को खरीदा जाता है ताकत के बल पर, पैसे के बल पर, केवल यह बता रहा हू। रेखींसी को शेषेच मत कीजिएगा। एक की दफा फिर न बहा गया था तो देखा हू कि उस साइबोर्ड का टिन आधा टूट चुका है और कारखाना भी वहां लगने वाला नहीं है। इस तरह से सत्तासद दल अपनी ताकत का इस्तेमाल कर के जनतंत्र को भोगवाद के रास्ते पर ले जा रहा है।

अब सर्वोच्च न्यायालय ने एक निर्णय दिया। उस निर्णय पर हम समझते थे कि आप लोगों को इच्छत के साथ अपना सिर झुकाना चाहिए था। आप ने यही तर्क दिया है कि सर्वोच्च न्यायालय के इस निर्णय के पहले के जितने न्याय चुनाव लड़े थे, जिन लोगों के खिलाफ कानूनिकाएँ चल रही हैं, वे लोग मासूम हैं, वे लोग जिस कानून के तहत चुनाव लड़े थे उस कानून के तहत निर्दोष होते हुए अगर यह निर्णय सर्वोच्च न्यायालय का रहता तो उन लोगों का गला कट जाता। तो क्या बिगड़ जाता? 180 मुकदमे ही थे न। आप यह भी कहते हैं कि केवल हमारे ही लोग नहीं, विरोधियों के लोग भी हैं। कट जाने देते सब के गले। क्या बिगड़ जाता? मान लीजिए 180 लोग हादसे में आ कर मोटर से लड़ जायें और मर जायें तो आप क्या करेंगे? आप कहेंगे कि पांच साल के लिए चुने गए थे इतने दिनों तक भत्ता देंगे? यशवंत में यह सब तर्क नहीं चला करता है और वह हादसा नहीं, सुप्रीम कोर्ट का निर्णय था, विवेक का निर्णय था। मैं हादसे की बात अब कर रहा हूँ। मैं जो चुना गया हूँ या साल दो साल चार साल पांच साल जब तक यह सदन है, मान लीजिए कोई आप चुने गए, उस के दो महीने बाद आप कहीं मर गए मोटर ऐक्सीडेंट में या रेल ऐक्सीडेंट में या मैं मर गया तो आप क्या करेंगे? क्या पांच साल तक लगातार सीलरी देंगे कि जनता ने तो इन को बोट दिया था वे चुने गए थे। इसी तरह सर्वोच्च न्यायालय का फैसला हिन्दुस्तान की भ्रष्ट राजनीति पर, भ्रष्ट डेमोक्रेसी पर एक हादसा था और उस हादसे का सम्मान होना चाहिए था। यह तर्क दे कर के कि पुराने कानून थे, उसी में लोग चुनाव लड़े थे, निर्दोष थे, मासूम थे, यह कह कर आप सुप्रीम कोर्ट के फैसले का अपमान करते हैं। और वह सुप्रीम कोर्ट कौन छद्म था। छद्मी साल भर पढ़े ही सर्वोच्च न्यायालय के अजेज की नियुक्ति करते समय, उस के सब से बड़े जब की नियुक्ति करते संसद में आप ने यही कहा था कि देश की जो

वर्तमान मान्यताएँ और आवश्यकताएँ हैं उस के मुताबिक इस जूडिशियरी के ढांचे में परिवर्तन करना है। वह आप की प्रगतिशील जूडिशियरी के सुप्रीम कोर्ट का निर्णय था, पहले वाली जूडिशियरी नहीं जिस के तीन अजेज इस्तीफा दे कर चले गए थे बल्कि आप के मुताबिक प्रगतिशील जूडिशियरी थी, उस का निर्णय था। आप ने उस के बाद भी समझा कि यह निर्णय गन्दा हो गया। आप को जरूरत पड़ गई कि राष्ट्रपति जी को मजबूर करते हैं अपनी कलम चलाने के लिए और अध्यादेश जारी करने के लिए।

तो इन 180 केसेज में मैं निश्चित राय का हूँ कि केवल एक मुकदमे की हिफाजत के लिए आप यह बिल लाए हैं। प्रिय रजन दास मंत्री यहाँ नहीं हैं। जब हम लोगों ने कहा कि कितने बर्बे तक आप इस सदन को बैठाने वाले हैं तो उन्होंने बड़े तपाक से कहा था कि देश की जनता का काम करने के लिए हम 6 बजे सुबह तक बैठेंगे। 180 मुकदमे और उन 180 मुकदमों में भी सब से सरगना मुकदमा प्रधान मंत्री का उन की हिफाजत के लिए उन की सुरक्षा के लिए 6 बजे सुबह तक बैठेंगे और दावा करेंगे देश की जनता का। अब मैं प्रधान मंत्री जी के बारे में बताना चाहता हूँ। प्रधान मंत्री जी ने अपने चुनाव का खर्चा पेश किया केवल 12 हजार 892 रुपये 97 पैसे। इस से भी बड़ा मजाक कुछ हो सकता है? यशपाल कपूर उन के एलेक्शन एजेंट थे, उन के दस्तखत से यह श्रीमती इंदिरा गांधी का चुनाव खर्चा पेश किया गया है। किस मद में क्या हुआ वह मैं नहीं कहना चाहता हूँ। यह इन्होंने रायबरेली के निर्वाचन अधिकारी को अपना खर्चा दिया है। 12 हजार का खर्चा प्रधान मंत्री जी ने दिया है। मैं समझ नहीं पा रहा हूँ कि प्रधान मंत्री जी रासनामी झूठ कर गई थीं या कोई फकीरी करने गई थीं। उसी के साथ साथ अगर सर्वोच्च न्यायालय का यह फैसला आप देखेंगे और सर्वोच्च न्यायालय का फैसला

[श्री जनेश्वर मिश्र]

नहीं बल्कि वहाँ के स्टेट बैंक के एजेंट तिवारी का बयान देखेंगे तो मालूम होगा कि श्रीमती इंदिरा गांधी के चुनाव कार्यालय में जो रुपये दूना किए गए चेक से वह एक लाख से ऊपर हैं। यह रसीदी टिकट के साथ कागज है, कहिए तो मैं इस को रख सकता हूँ। यह स्टेटमेंट एफिडेविट पर है स्टेट बैंक के एजेंट तिवारी का। कहिए तो मैं इस को टेबल पर रख दूँ। यह एक लाख से ऊपर का है। इस से भी ज्यादा सबूत चाहिए क्या? यह प्रधान मंत्री जी के चुनाव में दलबहादुर सिंह जी वहाँ के कांग्रेस पार्टी के अध्यक्ष थे उन्होंने और यशपाल कपूर ने जो पैसे चेक में लिए हैं वह एक लाख से ऊपर की राशि आती है। . . . (व्यवधान) . . . खर्च नहीं किया गया, उस को रखा होगा, यह इन का कहना है। यह जो चाहे कह सकते हैं। 12 हजार खर्च दिखा सकते हैं, और एक लाख दो लाख रूपया ले सकते हैं, 60 लाख भी इन लोगों के नाम से ले लिया जाता है और वृ. खर्च तो होता नहीं, कौन सा वह नागरवाला केस हुआ था, तो ये तो कुछ भी बोल देते हैं। रघु रमैयाजी ने इन लोगों को बोलने के लिए इसीलिए रोका है कि इस बिल पर जब वोट होने लगेगा तो बटन तो ये लोग दबा ही देंगे हम लोग चाहें जितना चिल्लाए इसलिए इन को रोका है। इन लोगों ने हम लोगों को बार बार रोका है कि किसी केस का आप लोग जिक्र मत कीजिएगा और आप ने भी कहा है कि किकट बात हम न बोले। मैं प्रधान मंत्री जी के वकील ने जो एफिडेविट में कहा है वह पढ़ता हूँ।

"That an Ordinance was promulgated by the President of India on such and such date, being Ordinance No . . . of 1974 in respect of election expenses incurred by political parties, in respect of their candidates in election . . ."

उसी के बारे में वह गई थीं सफाई देने।
मैं पूरा का पूरा पढ़ कर सुनाना चाहता हूँ :

"That" this Ordinance restores the law as interpreted by the Supreme Court before its judgment in the case of Kanwarlal Gupta vs. Amarnath Chawla;

That this has been made an occasion by the leaders of Opposition parties and Opposition newspapers to freely comment on the pending election petition against the Respondent No. 1.

सभापति महोदय : यह ज्योतिर्मय बसु जी ने बता दिया था। रिपीटिशन मत कीजिए।

श्री जनेश्वर मिश्र : इस में इन्होंने आखिर में जाते जाते कहा है :

"That all the evidence of the petitioner, Shri Raj Narain is practically over and is before the court;

That it is obvious that even on the law as laid down by the Supreme Court in Kanwarlal Gupta case the Respondent No. 1 is not at all affected."

श्री मधु लिये : मेरा प्वाइंट आफ ऑर्डर है। इन्होंने जो पढ़ कर सुनाया उस में श्रीमती इंदिरा गांधी स्पष्ट कह रही है कि चावला गुप्ता केस में जो सुप्रीम कोर्ट का फैसला हुआ है उस का मेरे केस पर कोई असर नहीं होगा . . . (व्यवधान) . . . इसलिए मैं केवल यह कह रहा हूँ कि जब उन को सुप्रीम कोर्ट के निर्णय से कोई मतबल ही नहीं है तो बेकार गोखले साहब इतनी मेहनत क्यों कर रहे हैं और हम को जगा रहे हैं? साढ़े सात बज चुके हैं। अब हम कब घर जाएंगे कब खाना खाएंगे, कब सोएंगे? क्यों मेहनत कर रहे हैं? इन्दिराजी को इस की जरूरत ही नहीं है।

श्री जनेश्वर मिश्र : इस पर इन्होंने जो प्रश्न किया है—वह इस तरह से है—

It is, therefore, prayed that respondents may be permitted to correct

the distorted facts being propagated by Opposition leaders and opposition press by issuing public statements."

हम समझते थे कि प्रधान मंत्री जी को इस बात का गुमान रहा होगा कि इलाहाबाद हाई कोर्ट का जज उन से डर जायगा। लेकिन उस ने इन के भावदन पर जो आर्डर दिया है—वह इस तरह से है—

"The relief asked for is not at all understandable to me. If the Respondent No. 1 believes that anything said about the Ordinance can have a bearing on the issues involved in the case and can amount to contempt, it is for her to decide whether she should or should not say that. Obviously the court cannot allow any party to do an act which is wrongful. The application is rejected."

इन की एप्लीकेशन रिजेक्ट हो गई। इन्होंने उस में यह कहने की कोशिश की थी। इन के बारे में लगातार प्रचार हो रहा है, विरोधी दल के लोग प्रचार कर रहे थे। देखिये—इन्होंने जानबूझ कर इस केस में हम लोगों को फसाने की कोशिश की थी। अगर आर्डिनेंस के आधार पर वहा की जूडिशियरी ने यह रूलिंग दे दिया होता कि ठीक है, इन की जो एप्लीकेशन है, इस को हम एलाउ कर रहे हैं, एडमिट कर रहे हैं, उस के बाद ये कहते कि अब इस पर आप बहस नहीं कर सकते हैं, क्योंकि हाई कोर्ट ने रूलिंग दे दिया है, लेकिन उस ने रद्द कर दिया। प्रधान मंत्री जी वहा यह कहने के लिये गई थी कि हमारे खिलाफ प्रोपेगण्डा हो रहा है, लोक सभा में आज भी प्रधान मंत्री जी को बैठने की हिम्मत नहीं है। रघु-रमैया साहब बैठेंगे या गोखले साहब बैठेंगे—प्रधान मंत्री जी ने यह हिम्मत नहीं है कि इस लोक सभा में बैठ कर कह सकें—उन को लोक सभा में कहने की हिम्मत नहीं है कि मेरे खिलाफ भी चुनाव याचिका चल रही है और जो बिल पेश हुआ है, जिस पर विचार हो

रहा है, यह बिल या राष्ट्रपति का अध्यादेश मेरे खिलाफ चलनेवाली चुनाव याचिका पर कोई असर नहीं करेगा। यह प्रधान मंत्री जी को इस सदन में कहने की हिम्मत नहीं है। वह हाई कोर्ट में कहने के लिये चली जायगी, अपने वकील के जरिये कहलायेगी।

हम समझते हैं एक तरफ तो सर्वोच्च न्यायालय के खिलाफ जबरदस्ती यह बिल लाकर हिन्दुस्तान की न्यायापालिका का अपमान कराती है और दूसरी तरफ जब यहा कोई बिल विचाराय पेश होता है तो उस समय उच्च न्यायालय में भर्जी देती है कि उन के खिलाफ प्रचार हो रहा है। इस तरह से वे दोनों का अपमान करती है।

इस लिये मैं भर्ज कसगा—यहा पर गोखले साहब बैठे हुए हैं, वे कानून के माहिर आदमी हैं। सुबह भी बहुत बात छोड़ी गई थी—आप किसी एक व्यक्ति के कर्मचारी नहीं हैं, बल्कि देश के सेवक हैं, सदन के सेवक हैं, हम समझते हैं कि वे इस बिल को वापस लेंगे। प्रधान मंत्री जी को हिफाजत के लिये ऐसा काला कानून यहापर नहीं लाया जाना चाहिये।

ये लोभ भ्रमसर कह दिया करते हैं कि हम को चुनाव कानून में अभी विशद परिवर्तन करना है—लेकिन कौन मानेगा आप की बात को। सर्वोच्च न्यायालय ने एक मामूली सा परिवर्तन खर्च के कानून के बारे में किया, उस पर लग रहा था एक सत्तासङ्घ इस और उस की सरकार की नानी मर रही है और आप कह रहे हैं कि विशद परिवर्तन करेये। अगर विशद परिवर्तन करने की हिम्मत है तो आ रहा है—नोक सभा का चुनाव। जिस दिन नोटिफिकेशन हो चुनाव का—उस के एक महीने पहले कुर्सी छोड़ देना, राष्ट्रपति चला लेंगे और आप चुनाव लड़ लेना। हिम्मत हो तो यह परिवर्तन कर देना—क्योंकि जब चुनाव होगा—उस के एक महीने, दो महीने या 15 दिन पहले कुर्सी कर चुनाव के मैदान में

[श्री जयेश्वर मिश्र]

आयें, तो फिर बीबारा कुर्सी पर नहीं बैठ सकते- इसलिसे इन में इतनी हिम्मत नहीं है। वे लोग इलैकशन कमीशन अपनी मर्जी का रखेंगे, जब वह हट जायगा तो कहीं गवर्नर बनना जायगा, कहीं जज बनाया जायगा या किसी आयोग का चैयरमैन बना दिया जायगा। अगर यही तय करें कि कमीशन एक आदमी का नहीं, तीन-चार या पांच आदमी का बने और उस को री-एम्प्लायमेंट किसी कीमत पर नहीं मिलेगी, फिर इलैकशन कमीशन आप की मर्जी के खिलाफ जाने से नहीं कतरायेगा- लेकिन यह सरकार ऐसा नहीं करेगी। ये नहीं चाहते हैं कि चुनाव विपक्ष हों।

सर्वोच्च न्यायालय ने जो व्यवस्था दी है-उस का सम्मान करने के लिए अभी भी मैं गोखले साहब से आग्रह करूंगा। हालांकि इतनी सद्बुद्धि इन में नहीं है, जिस किसी दिन कोई आदमी कांग्रेस पार्टी की मेम्बररी कबूल कर लेता है, उस की सद्बुद्धि मारी जाती है इतनी सद्बुद्धि इन में नहीं आ सकती है, क्योंकि इन में इतनी हिम्मत नहीं है। इस लिये मैं यह अर्ज करूंगा-बहुत ही विनम्रता के साथ-कोई तेज हमला न करते हुए, आप अपने इन विषय को वापस लीजिए, राष्ट्रपति जी से कहिये कि वे अपने प्राइविलेज को ले जाय, उस को खत्म कर दिया जाय, बिना पास कराये हुए। हम समझते हैं सर्वोच्च न्यायालय जिसको आप ने अपनी मर्जी से नियुक्त किया है-हालांकि तीन-चार जजेज आप की मर्जी को भी ठोकर मार कर चले गये-उस सर्वोच्च न्यायालय की बोड़ी सी मान्यतायें हैं, उस के निर्णय का आप सम्मान करेंगे-इतनी सद्बुद्धि आप में ध्रायेगी।

parliamentary democracy in our country. I do not know whether such a nakedly dishonest and treacherous Bill was ever brought before this august House. To what extent a totalitarian mentality the ruling Party is developing! The Parliamentary Affairs Minister has immediately made, I use the word, an ugly exhibition of that.

The ruling Party, so much confident about the brute majority that regardless of the merits of the issue, without having any consequences, without having any consideration whatsoever about the logic, the argument, the principles that may be put forward against this Bill by the Opposition Parties and opposition Members, this Government, this ruling Party has developed such a fascist mentality—I use the word 'fascist' mentality—that they do not consider it desirable in any way to enter into a dialogue, to enter into a controversy, to enter into an exchange of logic and to enter into an exchange of argument but that they, with their numerical superiority can rule over all kinds of arguments, logic or wisdom. This is the naked exhibition of the totalitarian mentality, as I have already said, while initiating my speech. I again repeat what I have said. My apprehension is this. This Bill, if enacted, perhaps again I use the word, the Law Minister who claims himself to be socialist, what to speak of bringing in socialism, is almost going to issue the death warrant on parliamentary democracy in our country in favour of an oligarchy a chosen few. will be chosen from the community of all kinds of vested interests. I repeat, Sir, again that this is the worst, dishonest and treacherous Bill ever brought before this House. It is dishonest in its concept, it is dishonest in its contemplating the procedure of its implementation. It is dishonest in its ultimate objective. The Minister criticised the judgment of the Supreme Court. He did not have the humility in him because he charged the judge of the Supreme Court and he said, this is not a judgment, it is a new law and all that. I have never heard of such

SHRI SAMAR GUHA (Contal): If this Bill is enacted into law, I fear the Law Minister will be remembered in future as the author of the script of the Swan Song of the institution of

a thing. When a judgment is made by any court of law, can one belonging to the legislative wing of the country and being a Law Minister, denigrate or even use derogatory or bantering remarks by calling the judgment a new law? What is the function of these wings in a democracy? The legislative body enacts the laws, the executive implements the laws and judiciary interprets them, and finds out whether the executive has correctly applied the law. The Minister wants to usurp the function of both the judiciary as well as legislative competence, when he said, this is a new law. Those are hantering remarks. If he had any democratic sense, any honour for the judiciary, any appreciation for judicial wisdom, he would have said, we are thankful to the Supreme Court that at least they have found lapses in the condification of this section 77. They have pointed out in their judgment as follows.

I quote:

The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country.

How seriously they have gone into the matter! They have gone to the extent of saying that if a freeplay of money power is allowed, that will destroy the basis of democracy itself. This is the danger when Indian democracy is to be controlled by money power. Then the judgment said:

'If a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring' him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing a ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated.'

What strong words have they used,— whole democratic process would be wholly emasculated! And again the judgment said:

"The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country".

Then they said, and mark the words—

"The great democratic ideal of social, economic and political justice and equality of status and opportunity enshrined in the preamble of our Constitution would remain merely a distant dream eluding our grasp."

They have expressed their opinion very clearly. So, I am really astonished at the way the Law Minister spoke saying that they are setting up a new law. I am not at all using a bombastic word when I say that he has sung the swan song of the institution of democracy in India. The supreme court judges had expressed their concern, their anxiety in these matters. They said, if such things are allowed, the basis of democracy will be undone. So the judiciary has been very much concerned with this Bill.

I could understand if the words 'notwithstanding any judgment, order or decision of any court to the contrary' had been omitted in Section 2, Explanation 1 as well as in sub-section (a). What they have done is not only a frown to the judiciary, but an affront to it. It is a challenge and no such remark has been made in any of our enactments so far. You may say anything and decide things by your brute majority. But you cannot avoid the common man coming to the conclusion that you have brought this Bill only to save your Prime Minister. This is an irresistible conclusion. You want to save her from the possible verdict of the courts of law. Now, may I tell you what is the discrimination in the law here? The law is meant for everybody. That has to be equally applied. The benefit of law must be

[Shri Samar Guha]

equal for everybody. But what has happened? You are making this law. But you are saying that Mr. Chawla will not get any benefit of that. I do not know why one set of people should be discriminated against those who get the benefit of the same law. If some persons commit the same wrong or the same offence, they will be coming under the same law.

Then again I said that this is a discrimination in the law. This is political hypocrisy. You are codifying this into law. You are not courageous enough to say that either for Parliament or Assembly, we do away with the expenditure. Why don't you take courage to say that you are trying to ban donations by the companies? You are doing away with this. Why don't you have the courage to say so? What kind of hypocrisy it is? You say that only Rs. 35,000 will be spent by the Lok Sabha candidate and about Rs. 10,000 by an Assembly candidate. At the same time you are saying that if it is spent by the party or if it is spent by any organisation it will not be included in the expenditure of the candidate. For this you have not even brought in a clause. There is no conscience of the country. That is the reason why I have said that this political hypocrisy is codified into a law which has never happened in any of the laws passed by Parliament. What are the qualifications of a Member? If he indulges in violence or if he indulges in communal propaganda or anything else, I believe he can spend any amount; he can spend lakhs and lakhs of rupees. He can indulge in communal propaganda; communal riots or anything or he can do anything. When it comes to the election of a candidate the law gives him a long handle of freedom. He can indulge in casteism, communalism, violence or rigging or do any kind of political or criminal offence. You will not touch him because it is not done by him but it is done by somebody else. He

may be concerned or many not be concerned with his conscience. It can be said that he can commit all these offences and he will be free from this. Do not take shelter under the codification of political hypocrisy. This ceiling law either for the Lok Sabha candidate or for the Assembly candidate is not practical and it cannot be implemented. Therefore, it is better to say that this ceiling law cannot be utilised by controlling the election expenditure. This I can understand.

MR. CHAIRMAN: Mr. Guha, please conclude. You have taken much time.

SHRI SAMAR GUHA: I am finishing. This is the apprehension of all the Members. Is it honesty? Will the hon. Minister kindly tell us clearly and categorically whether he is going to have a snap poll or not? I do not know. Art. 82 of the Constitution envisages revision of voters' lists as also the revision or delimitation of the constituencies. This can be obviated only by an Act of Parliament or by an Ordinance and then only the Election Commission can issue a notification for the snap poll. About this I want your categorical explanation.

Lastly I want to conclude by saying that this Bill, as I have said, it not only to bury the future but it will also open the floodgate by controlling the so called democracy of our country by the money bag, by radio, and by the process of rigging with the help of hard hoodlums and also by manipulating administrative power. Sir, as I started, I conclude by saying that this Bill is not only dishonest, but is treacherous because this Bill when it will unfold in its applicability will just pave the path of replacing our people's democracy by the oligarchy of a vested interest and that is the fear, that is the apprehension impregnated in this Bill.

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Chairman, Sir, I must say at the outset that I very emphatically

endorse my esteemed friend, Shri Shyamnandan Mishra's observations when he moved his statutory resolution on this very vital subject and I agree with him that this has been a very dishonest and a very treacherous Bill. Shri Samar Guha has said the same thing. I am sorry that on this particular Bill, only Members from this side of the House are participating in the debate and that many good friends from the Congress benches have, due to the Parliamentary Affairs Minister's intervention and offer, denied themselves the privilege of participating and replying to the various points.

PROF. MADHU DANDAVATE: It is a privilege issue.

SHRI P. G. MAVALANKAR: I wish there was more time at the disposal of all of us so that Congress Members could have also effectively intervened at the end of each Member from this side and there would have been a more balanced debate. All the same, I hope that the Minister of Law, Justice and Company Affairs will in his reply refer to the various points which are being referred to in the discussion, especially from the Members on this side.

Now, Sir, let me say at the outset again that I would have thought that the progressive Government, as they often call themselves to be, would have welcomed the historic judgement of the Supreme Court in the Chawla Vs. Kanwar Lal Gupta's case. I say this because the Supreme Court which has given this judgement has viewed all *pros and cons* very carefully. Indeed rather than being ignored, the earlier judgements have been considered, referred to and discussed by the Bhagavati judgement. It is true, Sir, that a view has been taken which has not been taken before... But, it is not contrary to what was already decided. The Bhagavati judgement represents if I may put it that way, a progressive view consistent with the socialistic pattern of society which we are trying to evolve and it carries out the object

of imposing a ceiling on election expenses. Sir, it strikes at the money power in elections. So, this is a progressive judgement, a refreshing and welcome exposition of the law, and an admirable attempt at spelling out the law where it was perhaps silent. It is really, therefore, what we expect from the judiciary of a democratic Republic that the judiciary will, in their judgements, reflect the several wholesome sentiments of the people. Therefore, Sir, I should have thought that for these reasons, Government and particularly the Law Minister deeply immersed as he is in legal and judicial traditions would have welcome this historic judgement. But, on purely and solely political grounds and in fact, on personal and party grounds, my charge is that the Law Minister and his Government have come forward with an Ordinance followed by a Bill to make nonsense of what we call purity of elections and free and fair elections. Sir, the Law Minister says that this is not with regard to this or that individual case. It is not for me to refer to this or that case I am not interested in accusing this or that individual. Some people have already referred to the case pending before the High Court where the Prime Minister is involved. I do not want to go into that aspect. The Law Minister says that this is not merely one individual case or this or that party, but that 180 petitions are pending before the various High Courts and the Supreme Court and the petitions involve various MPs, MLAs of various parties, and therefore, this Bill has come.

20.00 hrs.

I would request him to tell us how many petitions pending before the High Courts and the Supreme Court specifically deal with the question of excess expenditure, authorised or molied. If the Report on the Fifth General Election is perused, it says in 1952— I am talking of the Lok Sabha and not of the Assemblies—there were 39 election petitions, in 1957 there were 59 petitions, in 1962, there were 46, in 1967 there were 51 and in 1971.

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there were 58 petitions. How many of the election petitions in the past and among the pending election petitions deal specifically or in a major way with the matter of excess of expenditure by a candidate in a particular election?

Therefore, it boils down to this that under a general umbrella of 182 election petitions, Government are eager to save the skin of this or that individual. This is my charge and this is the difficulty, to which the Minister will, I hope, if he is honest, try to give us a square answer.

As regards the Chawla case, the Deputy Speaker has ruled that he has gone to the Supreme Court. But the Law Minister has told us that his review petition has not yet been admitted by the Supreme Court. I would ask whether it is on the basis of the original Act, the Act of 1951, or on the basis of this Bill—which I am sorry to say will in a short time become law because there is a tremendous majority for Government in this House—the Supreme Court will reject or admit his review petition. That also is a moot question.

The Law Minister has brought this Bill after the Ordinance. I agree with Shri Shyamnandan Mishra in asking where was the urgency for the ordinance. It has been done in vulgar haste because they wanted to save some of the high-ups in the establishment. Therefore, I charge that this Bill is clearly designed to destroy the effect of the historic Bhagavati judgment.

The Minister has appended to the Bill various objects and reasons. If I had more time, I would deal in detail with these. I know that ultimately these objects and reasons do not form part of the Act itself. But after all, they are a kind of preface, rationale by which the Minister wants to tell the House, and through the House, the country as to why this has been bro-

ught. But the last two paragraphs are, if I may say so, both incorrect and misleading. Section 77 of the 1951 Act is quite specific. It does not say that the expenditure incurred by a political party on behalf of a party candidate is all ruled out. After all, a political party has a right to canvass its view, to propagate its ideology and make it known to the general public. But when a particular party spends money for a particular candidate in a particular constituency with the knowledge of that particular candidate, that expense is specifically and only for him or her, whoever that may be. Then the Bhagavati judgment says...

SHRI H K L. BHAGAT: May I seek a clarification?

May I know if he has understood the judgment means this that if Shri Jayaprakash Narayan goes to his constituency at the time of the election, addresses a meeting and he has participated in that meeting, the expense will be accounted to him? I am sure he has not understood it.

SHRI P. G. MAVALANKAR I have understood it to the best of my knowledge. I am talking of political parties, not independents. I am an Independent and stood as such. But if Shri Bhagat wants my answer, it is simple: if Shri Jayaprakash Narayan were to address the meeting which was organised either by him or by me with my concurrence and I attend and participate in it then surely that expenditure is part of my election expenditure also. I cannot go beyond that. In he cannot understand this, I cannot help.

The main question is: can party's or some one else's expenditure for a particular candidate in an election be considered to be valid? The Bhagavati judgment says that it cannot be considered that way. The court's judgment is not new.

The main and moot question is this. Can the party's or some one else's uncontrolled expenditure for a particular

[Shri P. G. Mavalankar]

This Government, instead of welcoming this judgment, are doing something which really marks through this Bill a great advancement towards everything that is dishonest, unfair and unjust in elections, which really speaking are to be free and fair. I ask the members of the ruling party, after this Bill is passed, will the people of India have any faith in the legitimacy of the members elected as a result of the law which is about to be passed by this House? This Bill is nothing but a charter of corruption in election practices in this country. It is a black Bill and it deserves to be condemned by all those who love democracy and morality.

श्री मधु लिमये (बांका) : अध्यक्ष महोदय, इस अध्यादेश और विधेयक के बारे में अपना दिमाग बनाते समय कुछ मौलिक सिद्धांतों के ऊपर मंत्री महोदय को गौर करना चाहिए था। लेकिन मुझे अफसोस है कि विगत साल सुप्रीम कोर्ट के मुख्य न्यायाधीश की नियुक्ति के समय कानून मंत्री ने और उन के सहयोगी श्री कुमार मंगलम साहव ने जो भावण किया और जिन सिद्धांतों का निरूपण किया, मंत्री महोदय उन सारी बातों को भूल गए हैं। उस समय हम को यह कहा गया कि सुप्रीम कोर्ट के तीन वरिष्ठ न्यायाधियों को तक पर रूख कर श्री ए० एन० राय की नियुक्ति इसलिए करनी पड़ी क्योंकि कि इन तीन जजों ने जो भी संबैधानिक केस के बारे में अपने फैसले दिये उस से सफाई और स्पष्टता की जगह पर उन्होंने संदिग्धता को कायम रखने का प्रयास किया। यह कहा गया हम लोगों को और पूर्णतः इस बात पर जोर दिया गया कि संविधान का जो सामाजिक दर्शन है जो सोशल फिलासफी है उस के प्रति जजों का कमिटमेंट होना चाहिए और कमिटमेंट के बारे में जो यहां पर कहा गया उस को अच्छे ढर्र में ले रहा हूं। जैसे तो हम कहते हैं कि व लोग चाहते हैं कि सरकार के प्रति जजों का कमिटमेंट हो या प्रधान मंत्री के प्रति हो, लेकिन इस की चर्चा में नहीं कर

रहा हूं। इन के भावणों से मैं उद्धृत कर रहा हूं कि गोखले साहब चाहते थे कि जज ऐसे हों कि जो संविधान का सामाजिक दर्शन कबूल करें, उस के प्रति अपना कमिटमेंट रखें। लेकिन इसी कमिटमेंट के अनुसार जब उन्होंने कंबर लाल गुप्ता बनाम चावला केस का फैसला किया और दूसरे भी कई फैसले किए तब कानून मंत्री क्या करते हैं? वे अध्यादेश जारी करते हैं, और विधेयक ले कर आते हैं जिस से सुप्रीम कोर्ट का यह जो प्रगतिशील निर्णय है, जो संविधान के सभी मौलिक सिद्धांतों के अनुरूप है उस को बे खत्म कर रहे हैं।

अध्यक्ष महोदय, मैं आप का ध्यान केवल संविधान की दो धाराओं की ओर ले जाना चाहता हूं। एक संविधान की धारा 14 है जिस में कहा है कि सभी नागरिकों के बीच कानून के सामने समानता होनी चाहिए। इस में मौलिक सिद्धांत बनाम निर्देशक सिद्धांतों का भ्रगड़ा सरकार की ओर से खड़ा किया जाता है। डायरेक्टव प्रिंसिपल्स के अंदर धारा 39 है। उस में दो बातें कही गई हैं कि श्रौतिक साधन और मिल्कियत का नियंत्रण और उस का वितरण, डिस्ट्रिब्यूशन इस तरह होना चाहिए कि इने गिने लोगों के हाथ में यह मिल्कियत केन्द्रीय न हो या नियंत्रण केन्द्रीय न हो और उसी 39 धारा में कहा गया है कि सम्पत्ति और उत्पादन के साधनों का भी केन्द्रीकरण नहीं होना चाहिए यह संविधान की सामाजिक दृष्टि है। अब जज भगवती ने क्या इसी दृष्टि के अनुरूप अपना निर्णय नहीं दिया है। मैं उनका कुल हिस्सा पढ़ कर सुनाना चाहता हूं।

"Now, if a candidate were to be subject to the limitation of the ceiling, but the political parties sponsoring him or his friends and supporters were to be free to spend as much as they like in accordance with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the inter-

candidate's election be considered valid? The Bhagwati Judgment has said that it could not be considered that way. This judgment, let us note, has not in a way said anything new. It does not make any new law. It says that all expenses which are incurred by a party with the consent of a candidate for his particular benefit and advantage cannot be taken as expenses incurred by that party. It has not held as a matter of law that the expenses incurred by a political party or other persons are included within the expression 'incurred or authorized' by a candidate. I have no time to read extensively from the Bhagwati judgement. It has taken a common-sense point of view. The court has not decided any question of law. It was in conformity with the morality, as you yourself, Mr. Chairman, said rightly earlier on in the debate. I therefore, ask what was the necessity to clarify the intention underlying section 77? The Bill now makes an absolute provision that any party, any other body of persons can spend any amount for a particular candidate. Is this honest? The Government even after spending so much with the evil of black money power is not able to face the electorate honestly, squarely and therefore they cannot afford fighting elections honestly. Therefore they have taken this blanket power. You are talking about smaller parties. What about the still smaller individuals who have every right to stand as a candidate to the Lok Sabha or the Assembly. This Bill of the Law Minister opens the flood gates for a torrent of money power to overwhelm the elective process. It gives licence to moneyed candidates who will be running amuck in spending in elections. The role of money power has been condemned by all of us, by the ruling party itself. Are they honest? I ask them in all fairness they go on spending any amount; yet it will be considered democratic, fair, free and just elections. I am quoting one para from the judgement of Justice Bhagwati:

"It is elementary that each and every citizen has an inalienable right

to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice—equal opportunity of participation in the electoral process—would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, whosoever lowly or humbly he may be, should be able to participate on a footing of equality with others."

I shall conclude by quoting one more extract from the same historic judgement:

"if there is continuous community involvement in political administration punctuated by activated phases of well-discussed choice of candidates by popular participation in the process of nomination much of unnecessary expenditure which is incurred today could be avoided. Considerable distances may not have to be travelled by candidates and supporters nor hidden skeletons in political cupboards factually uncovered, propagandist marijuana skillfully administered, temptations of office strategically held out nor violent demonstrations disruptively attempted. The dawn-to-dawn multiple speeches and monster rallies, the flood of posters and leaflets and the organising of transport and other arrangements for large numbers would become otiose. Large campaign funds would not be able to influence the decision of electors if the selection and election of candidates become people's decision by discussion and not a Honson's choice offered by political parties".

est of purity and genuineness of democratic processes would be wholly emasculated ... The great deal of social, economic and political justice and equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream, eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political parties sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate...."

यह हम निर्णय का केन्द्र बिन्दु है और अभी जिन धाराओं का मैंने हवाला दिया इन धाराओं में और जजों ने जो कहा है उत में कितना मेल है इस का निर्णय आप स्वयं कर सकते हैं।

भगवती के बारे में गोखले साहब की क्या राय है मुझे पता नहीं और इन के और मेरे बीच में जो बातें होनी हैं, प्राइवेट कन्वेंशन, उसको यहां पर कहना उचित नहीं है इसलिए मैं नहीं कहता। लेकिन कृष्णा अय्यर के बारे में तो मंत्री जी मुझसे सहमत होंगे कि ये प्रगतिशील जज हैं, यानी इन की प्रगतिशीलता के बारे में भारतीय कम्युनिस्ट पार्टी के सदस्य भी सन्देह प्रकट नहीं करेंगे। कृष्णा अय्यर के बारे में मेरी यह राय है, और मैं यह भी नहीं मानता हूँ कि अगर कोई कम्युनिस्ट है तो उसको सुप्रीम कोर्ट में नहीं बैठना चाहिए, अगर हेगडे साहब बैठ सकते हैं तो कृष्णा अय्यर साहब भी बैठ सकते हैं और इसलिए कृष्णा अय्यर के बारे में मैं केवल आप की जानकारी के लिए कहना चाहता हूँ कि 1957 में जब केरल में कम्युनिस्ट पार्टी की सरकार बनी तो कृष्णा अय्यर उस में एजुकेशन मिनिस्टर थे... (व्यवधान)...

मैं सब जानता हूँ। ये एजुकेशन मिनिस्टर थे और लेजिस्लेचर कम्युनिस्ट पार्टी के सदस्य थे।

श्री को० पी० उन्नीकृष्णन (बड़ागरा) : इंडिपेण्डेंट थे और एसोसिएट मेम्बर थे।

श्री मधु लिमये : जैसे सी डी देशमुख आप के सदस्य थे ऐसे ही कृष्णा अय्यर भी विधायक दल के सदस्य थे।

तो ये कृष्णा अय्यर शिक्षा मंत्री थे और वह जो शिक्षा विधेयक लाए थे उसी को ले कर उनके खिलाफ एक अभियान शुरू किया गया था। और उस अभियान का नेतृत्व अन्त मे न० 1 ने किया था जो इस वकन सदन में, हम लोगों के बीच में नहीं है। श्रीमती इन्दिरा गांधी उस समय कांग्रेस की अध्यक्ष थी और उन्होंने राष्ट्रपति जी के सामने जा कर यह कहा था कि केरल की सरकार को बरखास्त करना चाहिए। यह मैं जरा उन्नीकृष्णनन और अन्य मित्रों की जानकारी के लिए, इतिहास की याद को ताजा करने के लिए कह रहा हूँ।

सभापति महोदय, श्री कृष्णा अय्यर के बारे में इस सदन में अधिकांश लोगों की सहमति होगी कि वे प्रगतिशील विचारों के व्यक्ति हैं। उन्होंने भी, सभापति महोदय, एक जजमेन्ट दिया है। आप तो कर्णाटक के हैं—चाटाक नागराज को आप जानते होंगे—उन के केस में तीन जजों का जजमेन्ट है—यह फैसला कृष्णा अय्यर ने लिखा है और यूनेनिमस है। भगवती का भी यूनेनिमस है—वे दो जज की ओर से बोल रहे थे और ये तीन जज हैं—इस तरह से पांच जज हो गये। जरा कानून मंत्री जी इस जजमेन्ट के मुख्य हिस्से की ओर अपना ध्यान दें। सभापति महोदय, मुझे एक लम्बा उद्धरण देना पड़ेगा क्योंकि ये प्रगतिशील जज हैं—श्री कृष्णा अय्यर कहते हैं—

"To give all candidates a fair chance, an operationally fairer

[श्री मधु लिमये]

perhaps even radical plan to finance our elections, particularly the campaigning process, may have to be devised. Money power casts a sinister shadow on our elections and the political pay-off of undue expenditure in the various constituencies is too alluring for parties to resist temptation. Moreover, there is a built-in iniquity in the scheme because an independent candidate who exceeds the ceiling prescribed under the law legally commits a corrupt practice."

मावलकर जी, जरा सुनिये, मैं इण्डीपेण्डेन्ट के बारे में बोल रहा हूँ—

"His rival set up by political parties with considerable potential for fund raising and using, may lay out a hundred times more in each constituency on their candidates and yet hope to escape the penalty under section 77. The convenient—not necessarily correct—plea would be that the candidate spent for his election but the party for its campaign. This likely evasion of the law by using big money through political parties is a source of pollution of the Indian political process."

गोखले साहब, यह कृष्णा अय्यर कह रहे हैं—

"To channel funds into the campaign for specific candidates getting around the requirements of the law by establishing party committees is all too familiar in this and some other countries. In this context, it may be apt to draw attention to a recent ruling of this court in Kanwarlal Gupta vs. Amar Nath Chawla on election expenses. It may be proper to infuse into the election law the cleansing spirit which was emphasized way back in 1920 by the Select Committee on the Indian Election Offence and Enquiries Act (XXXIV of 1920).

सभापति महोदय, भगवती के फंसले की न केवल इन्होंने ताईव की है, बल्कि कहा है कि यह जो इन्टरप्रटेसन है, वह अण्डा है जिससे यह जो पोल्यूशन आफ इण्डियन पोलिटिकल प्रोसेस है, राजनीति दूषित हो रही है, यह पोल्यूशन इस से कुछ कम होगा ।

सभापति महोदय, आगे ये कहते हैं—

"Courts come in only when specific cases are filed and cannot arrest this cultural contamination. We can only suppress the wish, with a sense of social awareness, that campaign finance reform, imposing realistic limitations on spending on behalf of candidates directly or vicariously seems necessary if inequality of influence is not to operate upon the electoral process and later upon government decisions."

श्रीर अज वे कोर्ट की रूलिंग पर आ रहे हैं—

"To a limited extent, courts can respond to be fulfilment of this constitutional aspiration by a benignant interpretation of the legal limits on election expenditure which section 77 clamps down."

सभापति महोदय, अब कृष्णा अय्यर भी कहते हैं कि वर्तमान कानून के तहत—टु ए लिमिटेड एक्सटेन्ट—सीमित अर्थ में अवास्त भी इस प्रवृत्ति पर रोक लगाने का काम कर सकती है और वही भगवती साहब ने किया । अगर भगवती एक कन्वेंटिव जज हैं या न्यूट्रल जज हैं—सोशल क्लॉसकी के बारे में, तो कृष्ण अय्यर की भी वही राय है । भगवती से मिलती है ।

ऐसी हालत में मैं मानता हूँ कि नली महोदय जो विधेयक लाये हैं यह विधेयक संविधान की शोषण फिवास्की के अनुसार नहीं है ।

सभापति महोदय, आप सुर्जों कीड़ा समर्थ और दीजिए—क्योंकि मैं न दूसरे वाक्य कर बोलने वाला हूँ और न तीसरे वाक्य कर

वाला हूँ। यह बिल किस लिये माया है—
 कभी मेरे मित्र जनेश्वर मिश्र ने इन्दिरा जी की एक एप्लीकेशन पढ़ कर सुनाई। वह कहती हैं कि सुप्रीम कोर्ट के निर्णय का मेरे ऊपर कोई असर नहीं पड़ने वाला है। सभापति महोदय, अगर इन्दिरा जी एप्लीकेशन को आप ले लेंगे— मैं उस पर कमेंट नहीं करूंगा क्योंकि आप का निर्णय है, लेकिन अदालत ने ईशूज फॉर्म किये हैं—इन में संकितने ईशूज पैसे से सम्बन्धित है—कुल मिला कर 12 ईशूज है जो इलाहाबाद हाई कोर्ट ने फ्रेम किये हैं, इनमें से पैसे से सम्बन्धित यानी इस बिल से सम्बन्धित कितने ईशूज हैं—जरा गिनते जाइये—

(4) Use of Air Force planes and helicopter and payment therefor

(5) Rostrums, barricades, loud-speakers' use.

और उन का खर्चा।

(6) Distributing quilts, blankets, dhotis and liquor

मदिरा का उपयोग।

SHRI SHYAMNANDAN MISHRA:
 Most modern campaign!

श्री मधु लिखये

(9) Voters conveyed to the polling stations on vehicles hired and procured for the purpose by Shrimati Indira Gandhi's election agent, Shri Yashpal Kapoor.

श्री जनेश्वर मिश्र : सब कुछ 12 हजार में हो गया।

श्री मधु लिखये : अब इन्दिरा जी के हलफनामे से उद्धृत कर रहा हूँ।

On 1st January 1971 the respondent came down to Lucknow from Delhi in an Air Force plane for Congress election work including the filing of her nomination.

2971 LS.—16.

यह इन्दिरा जी के एप्लीकेशन से पढ़ रहा हूँ—

Loudspeaker was arranged at all these places by the District Congress Committee of Rae Bareilly who organized the meeting at their own expences

ये सारे ईशूज हैं—उन से आप का पता चलेगा कि श्रीमती इन्दिरा गांधी का जो पंटीशन है और उन्होंने जो ब्यान स्वयं रूप से हलफनामे में दिया है—मैं उन पर कमेंट नहीं करना चाहता हूँ—मैं सिर्फ इतना ही कहना चाहता हूँ कि इस विधेयक और अध्यादेश का जो विषय है उस में सीधा सम्बन्धित है, उस को जोड़ता है। इस लिये इन्होंने जो प्रधान मंत्री का एप्लीकेशन पढ़ा है, उस में उन्होंने बहुत ब्रवेडी किया है कि सुप्रीम कोर्ट के निर्णय का मेरे ऊपर कोई असर नहीं पड़ने वाला है—अगर इसमें कोई दम नहीं है।

मैं जानना चाहता हूँ—180 विधायकों की सरक्षण देने के लिये यह जो विधेयक ला रहे हैं, उन में से 14 का हाल तो हम ने बतलाया लेकिन बाकी 179 का क्या स्थिति है, उन के लिये हम को रॉटिफाई कीजिये, उन में जो आधार, ग्राउण्डस लिये गये हैं, वह बतलाइये मैंने तो कहा था कि आप इन को आदेश बीजिये कि हम को उन के बारे में समरी देदे—लेकिन वह आप ने नहीं किया। इस लिये मैं इस सभ्य इसी निष्कर्ष पर पहुंच रहा हूँ कि यह जो विधेयक है यह सविधान का जो सामाजिक दर्शन है उस के बर खिलाफ है और कृष्ण अय्यर और भगवत का जजमेंट सामाजिक दर्शन, सौशल फिलास्फी के अनुकूल है। संश्ल फिलास्फी इस वक्त सुप्रीम कोर्ट के साथ है, आप का यह काम सौशल फिलास्फी के मूल पर बुद्धरावात करनेवाला काम है। कानून मंत्री और सदन के सभी सदस्यों से आज मेरी अपील है, किसे-

[श्री मधु निमये]

कर कांग्रेसी सदस्यों से ग्रहीत है—बहुत रात हो चुकी है, आज आप अपने दलील विह्वल के आधार पर, दलील आदेश के आधार पर विचार न करते हुए, आपने शपथ ली है कि इस संविधान के प्रति वफादार रहेंगे, आप को सीधा चुनना है—एक और इन्दिरा गांधी का कानून है और दूसरी ओर यह संविधान है—आप का क्या निर्णय है, आप किस को चुनने जा रहे हैं ? जहां तक हम लोगों का सवाल है हम संविधान के पक्ष में वोट देंगे, इस लिये आप से भी अपील है आप भी आज हमारे साथ वोट दीजिये और इनके अत्यादेश और विधेयक को गिराने का काम कीजिये ।

THE MINISTER OF LAW JUSTICE AND COMPANY AFFAIRS (SHRI H R GOKHALE) Mr Chairman, Sir, the speeches have been long. Although I did not have the advantage of supporting arguments from speakers of this side yet in view of the short time available to the House I took upon myself the responsibility of putting the point of view which really rests behind the proposal of the present Bill before this House

So many things have been said. They are not all relevant. Some, of course, are relevant. Some according to me do not relate to the subject-matter of this Bill at all. So, I am going to confine myself to those issues which are relevant for the consideration of the Bill. The issue is in a very narrow compass. As the House knows by this proposed amendment—as also by the Ordinance—Section 77(1) has been proposed to be amended. Section 77 has been in the statute book for a long length of time, and as I have said earlier, the amendment has been necessitated by the interpretation recently given by the Supreme Court in the case of Kanwar Lal Gupta versus Chawla.

I have been very carefully reading the judgment of the Supreme Court and I would first dispel the argument made by many members opposite that legislation of this type is a disrespect to the Supreme Court. I must categorically state that when Parliament passes law to set right a certain view taken by the highest court of the land it does not mean any disrespect to the Supreme Court. All that it means is the Supreme Court has done its job—I would concede honestly—in interpreting what they thought was the correct provisions under the existing law and when Parliament wants to re-consider that interpretation Parliament also is equally honestly providing for legislation which will put before the country what was the real intention of the Parliament. Therefore I would categorically reject the argument that any such legislation is a disrespect to the highest court of the country. I want you to consider that we have the fullest respect for the courts. They have done their duty and it is undoubtedly for us to do our duty.

It was argued since the law of land was laid by the Supreme Court under Article 141 the Parliament has no power to legislate so as to set-aside that law. It has also been said that Parliament as the supreme authority has the power ultimately to express what were the intentions behind a particular legislation or what should be the intentions behind a particular legislation. It is in that spirit that the present legislation is brought before Parliament.

I may divide the Supreme Court judgment in two parts. The first part is more or less a theoretical discussion about the electoral process. I would again respectfully submit that when the court interprets a provision it has to take into account the language of the provision which it is interpreting and not to be guided by as to what is considered to be right philosophy.

Unfortunately, I got the impression after reading the judgment very

carefully, first they dealt with that part which gives political theory. At one stage they even say in this light we must interpret the sections which arise for interpretation. I never wanted the Supreme Court to do that. That is where the distortion comes in. What had happened earlier was that they imported their philosophy the other-way around. I never wanted any importing of philosophy for interpretation of statute. The importation of a philosophy for interpretation has never been an accepted canon of construction. While I agree there are various interpretations possible and the other one has not been possible it has not been considered by the court at all. The court may stretch a section here or stretch a section there and give interpretation according to what it considers to be the right interpretation. Here I still maintain that the view taken by the Supreme Court is inconsistent. After hearing my hon. friend, Shri S. N. Mishra, very carefully in his opening speech I still maintain that the interpretation given by the Supreme Court is inconsistent with the view that the Supreme Court itself had taken for a long period of time beginning with 1955, maybe earlier, but that is the earliest decision of which I am aware. The Supreme Court has referred to four cases and I have looked at these cases very carefully and I have looked at the comments of the Supreme Court in respect of these few cases. For the purpose of understanding the submission which I am making, it might not be out of place, very briefly, to refer to these few cases which to my mind clearly establish that a view taken by the Supreme Court was that expenditure incurred by a candidate or his election agent was the only expenditure or authorised by him was the only expenditure which was to be taken into account for purposes of Section 77(1).

I would first refer to the very first cases to which the Supreme Court

referred, namely, Rananjaya Singh Vs. Baijnath Singh and Others. It is very interesting to see what were the facts of this case. The successful candidate Rananjaya Singh was the heir apparent of a estate which belonged to his father and in fact the fact found was that although the Estate belonged to the father Rananjaya Singh was managing the estate because the father was infirm and disabled. A large number of servants were employed technically by the father on the estate because the father was the owner of the estate. Admittedly and also according to the finding of the court a large number of servants employed by the father were working and had worked for the furtherance of the election of Rananjaya Singh. At that time apart from the limit on the expenditure there was also a limit on the number of employees which could be employed by a candidate and the two-fold argument was firstly because the payment made to these employees should be included in the expenditure incurred by the candidate because they are admittedly at any rate according to the finding of the court had worked for the successful candidate; and secondly if all these employees are taken into calculation the number of employees allowed far exceeded and, therefore, it was a corrupt practice under Section 123 of the Representation of Peoples Act. After having found all this what does the Supreme Court say? The Supreme Court says that this expenditure admittedly incurred on account of the employment of the servants of the father cannot be taken into account because this is an expenditure not incurred by the candidate or his election agent. Where was the theory of implied authorisation at that time? What better case and stronger case to infer by implication authorisation could have been there more than this when it was not anybody third person but the father's employees working for the son and money admitted to have been paid and Supreme Court finds that this would not be regarded as expendi-

[Shri H. R. Gokhale]

ture. The total number of employees would not be taken into account because they may however have helped the election, in fact the finding was that they did work in election, but this expenditure not having been incurred by the candidate or his election agent, the father was not the election agent.

Therefore, this could not be taken into account for the purpose of Section 77 of the Representation of the People Act. I am justifying on the ground that that was the law as per the Supreme Court from 1955 right till the recent judgment was delivered.

If you want to change the law, the way is not this. I shall come to the cases. The proper time for me and for all of us is that we may sit together and consider whether any change in the Election Law is necessary. We are not averse to it. We are today on the narrow question as to whether there is occasion to restore the *status quo ante*. In view of this clear and unequivocal judgment of the Supreme Court where the argument is similar to the one that was advanced in *Rananjaya Singh vs. Baijnath Singh*, it looked as if the spirit of the legislation and the spirit of the legislature will be defeated, if you do not take this expenditure into account. That was argued in *Rananjaya Singh's* case. The observation made by the Supreme Court in regard to this particular argument is very relevant. It is interesting to know what the Supreme Court says. I quote:

"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that

construed according to the ordinary grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

Therefore, while conceding—I concede now—that we must restore a certain amount of equality in the fight which takes place in the election between various candidates—whether they are party candidates or not, whether they are independent candidates or not, well, Sir, the way out is not to interpret a section in such a way that the appeal is not to the court as the Supreme Court itself has said but the appeal should be to Parliament. Therefore, it is for Parliament which is the forum to consider whether any change in this law which has been there from 1955 till the judgment in *Chawla's* case came is necessary or whether that will be given effect to or not. It is not as if it is an isolated judgment because I would point out that later on, after this judgment was delivered by the Supreme Court, a reference is made to this judgment and relying on the judgment, they have come to the conclusion that that expenditure shall not be taken into consideration. This is a bench of five judges. I do not go into the technicality of the present law. After all both were the Supreme Court Benches. We can refer to five judges bench. I shall give more importance to the fact that the Bench have gone into it and made an observation. The cases which are referred to by the Supreme Court are those in which they had placed reliance for reiterating their view that the expenditure that was incurred by a person who is not a candidate or an election agent shall not be taken into account. The other case which was considered—it was also referred to earlier—was the case of *Ram Dayal Vs. Brijraj Singh and Others*. That was also referred to in the Supreme Court judgment, in *Chawla's* case.

Here Brijraj Singh was the elected candidate. His election was challenged *inter alia* on the ground that he had exceeded the limit of expenditure. It was contended that the Maharaja of Gwalior and Rajmata had incurred expenditure to support his candidature. They had gone by a helicopter and had incurred considerable amounts of money on the election of this particular candidate.

Now, what is most important to note is this that the Supreme Court did not find that the Maharaja and the Rajmata had not participated in that election campaign. But, the Supreme Court said that there was nothing to show that the Maharaja and Rajmata incurred the expenditure on behalf of the successful candidate, namely, Brijraj Singh. Secondly, the relevant portion of the judgment is this. The Supreme Court observed as follows:—

“Unless it is established that the expenditure was incurred in connection with the election by the candidate or by his election agent or was authorised by him...” (*Interruptions*).

Why does my hon. friend get upset. Just listen to me.

SHRI SHYAMNANDAN MISHRA:
It affects you.

SHRI H. R. GOKHALE: It does not affect me. My friend will realise that ‘authorised’ is the word which the Supreme Court has not used but it is the word in the Section. Therefore, there is no need to run away from it. I am not at all doing that. What I am saying is that this is not said by the Supreme Court. This is in the Section itself. The question is what interpretation you give to it, whether on the facts which the Supreme Court considered in earlier cases, it was not implied authorisation, because it was admitted.

SHRI MADHU LIMAYE: Here, it is a question of fact.

SHRI H. R. GOKHALE: It was not a question of fact. It was a question of law. They have laid it down as law. Subsequently, this has been depended upon and relied upon in all these cases for the proposition of the law and they have come to the same conclusion in the subsequent cases. Here, I was just reading this when unfortunately the word ‘authorised’ rattled my hon. friends on the other side for which there was no reason.

“Unless it is established that the expenditure was incurred in connection with the election by the candidate or by his election agent or authorised by him, it is not liable to be included under Section 77 of the Representation of the People Act. We agree with the High Court that under Section 77(1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without anything more...”

I agree with this. I know my friend will again harp on this ‘without anything more’.

“... need not be included in the account or return, as such incurring of expenditure would be purely voluntary.”

But, the next is important.

“Assuming that the expenditure was incurred...”

even on the assumption that the Maharaja and the Rajmata had incurred that expenditure for the purpose of canvassing votes against Raja Pancham Singh, who was the defeated candidate.

“in the absence of evidence that the Maharaja and the Rajmata of Gwalior acted as election agents of Brijraj Singh, or the expenditure was authorised by Brijraj Singh, it was not liable to be included in:

[Shri H. R. Gokhale]

the account of the election expenses."

Therefore, Sir, let us look at the facts. First of all, it was found that the Maharaja and the Rajmata did incur expenditure, that they travelled by helicopter and otherwise in support of the election campaign of Brijraj Singh. Then, Sir, since that itself was in dispute in the Court, the Court proceeded on the assumption also that they had worked for the election of this candidate and came to the conclusion that even under that assumption, they were not the election agents of Brijraj Singh and that the expenditure need not be included. With reference to the phrase, 'without anything more', because much is made...

SHRI MADHU LIMAYE: Authorisation could not be proved. That is what the Supreme Court has said.

SHRI H. R. GOKHALE: Not at all. If this is not authorisation, when the Maharaja has admitted participation in the election, then what is it? A father spending money for the son was not implied authorisation what other implied authorisation can be found? Nothing special had happened in that case, which had not happened in Chawla's case, and yet, the view was taken that this is not expenditure to be included for the purpose of Section 77 of the Representation of the People Act. Then, Sir, the third case is again very interesting. That was the case of Patodia Vs. R. K. Birla. This is also referred to in the judgment of the Supreme Court. Here, Sir, the successful candidate was R. K. Birla. His election was challenged. It was pointed out that large amounts of money were spent in support of his election. Now, it was said that this expenditure incurred by the political party sponsoring his claim and also the employment of a large number of employees of the Birla Group of companies—I will later on read and

point out that although there was some dispute about it, it was ultimately found that he was a candidate of the Swatantra Party—at that time it was very much there.... Therefore, the question is, a large number of employees belonging to various Birla Group of companies had worked. That was the finding. That was the admission on the basis of which the Supreme Court proceeded and the Supreme Court also found that that the position is established and it is not denied that the Respondent No. 1 was a Swatantra Party candidate. I do not want to take the time of the House. The earlier case of 1955 has also been referred to.

Coming to corrupt practices of incurring expenditure beyond the prescribed limit, in several decisions this Court has ruled that it is not sufficient for the petitioner to prove merely that the expenditure more than the prescribed limit had been incurred in connection with the election.

"He must go further and prove that the excess expenditure was incurred with the consent or under the authority of the returned candidate or his election agent."

Therefore, the incurring of the expenditure in this case was not disputed; it was not disputed that he was a party candidate; it was well established that the expenditure incurred was much more than the limit which had been set for the purpose, and yet they said that this expenditure not having been incurred by the candidate or his election agent, therefore, could not be taken into account.

In this case, it is interesting to note that the Supreme Court also relied on a judgment of the Allahabad High Court where the election of the late Shri Lal Bahadur Shastri was challenged—that is, Mubarak Mansoor vs. Lal Bahadur Shastri. In that case, it was held that expenditure voluntarily incurred by the friends and suppor-

ters of the returned candidate does not come within section 123, even though the returned candidate was aware of the fact at the time of the election itself that his friends and sympathisers were incurring expenditure in connection with his election. This was cited with approval in the Supreme Court judgment. What was held was that even though it was done with the knowledge of the candidate and the expenditure might have been incurred by his friends and admirers, still it was not expenditure incurred by the candidate and therefore it could not be taken into account.

The last one is very important because of the phrase on which my hon. friends have been relying—what is more. Even that is missing in that judgment. I have been trying to understand 'what is more'. Although the Supreme Court never explained what is that something more anywhere, in every case the position was perhaps worse than in the case of the judgment in Chawla's case, but even that something more was not found to exist. It was said that the something more does not come here because expenditure was not incurred by the candidate or his election agent.

The last one which was referred to by the Supreme Court in the judgment is the case in which the election of N. G. Ranga was challenged, that is Rajagopal Rao vs. N. G. Ranga. It was also on the ground of expenditure amongst other grounds. In the Court's observations, what is something more is not there. This is incidentally the last in this series which says: "Expenditure, if any, incurred by the party which sponsored the candidature of a candidate cannot be taken into account for the purpose of determining whether the corrupt practices within the meaning of S. 123(6) were committed by the candidate". That 'something more' is not there. Not only that, but in terms, it says that if sponsored by a party, the expenditure incurred by the political party cannot be taken into account.

20.50 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Again in this last judgment—last in the sense of last but one judgment before the Chawla judgment—even in this reliance was placed on Rananjay Singh's case. In Ramdayal vs. Braj Raj Singh, again they have come to the conclusion that the law is that you cannot take the other expenditure into account. Reliance was placed on these cases because the Supreme Court itself read all these cases to mean that you have to take into account the expenditure incurred by the candidate or his election agent or authorised by him, but the expenditure incurred by others, friends and admirers in one case, a political party in another, father in the third case and in the fourth case by companies which had spent large amounts of money, and also by the Maharaja and Rajmata of Gwalior—all this was not sufficient for implied authorisation. Then the court came to the conclusion that you cannot take that into account.

That is why I repeat this with the utmost respect to the Supreme Court, because as a lawyer, as a parliamentarian and as a citizen, I do insist that we must have the utmost respect for the Supreme Court. But that is not to say that it is not recognised everywhere that the Court's judgment is always open to fair comment. What I am doing is not doing any disrespect to the Supreme Court but what I regard as a fair comment on the judgment of the Supreme Court. This absolutely makes it clear, in my submission, without any shadow of doubt that the law was not the same till the Chawla judgment was delivered. I have read the theory part in the Chawla judgment. I do not wish to say that I disagree with all the observations they have made. I agree that some of these observations do require mature and serious consideration and it might be that when all of us sit

(Shri H. R. Gokhale)

together—election is not a matter where I can sit alone and decide or you can sit alone and decide—it might be that all of us will have to think of this when the substantive law for amendment of the Representation of that People Act is considered. Before that, we can go through this process.

I submit with all the emphasis at my command. I honestly believe, that the judgment is not correct because of the fact that the earlier view, taken was categorically different.

I do not wish to take the time of the House by reading the pages but even here there is some ambiguity left. This portion was read by one hon. friend:

“When the political party sponsoring a candidate incurs expenditure in connection with his election as distinguished from expenditure on general party propaganda, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer.”

I do not understand the next phrase—

“...save in special circumstances....”

Again with this pronouncement the whole thing has been thrown in doubt. What are the circumstances in which party expenditure will be taken into account and what are the circumstances in which party party expenditure will not be taken into account. Even here in categorically saving so the Supreme Court itself proceeded on the basis that there are special circumstances.

PROF. MADHU DANDAVATE:
Special means 180 cases.

SHRI H. R. GOKHALE: I do not know. If they refer to 180 cases my Bill is fully justified. I am sure they do not. My submission before the House is that even here the ambiguity is not altogether done away with. The ambiguity is there. That is not the reason for the present Bill. The reason for the present Bill is, what I believe to be true, namely the law has been consistently the same.

Repeatedly it has been said that there was only one petition in which the question of election expenditure was raised. All lawyers and all politicians also know that in most of the election petitions the question of excess expenditure is raised; in fact that is the most important allegation in most of the petitions; it may not be in all petitions but it is there in most. Only in the Supreme Court there are thirteen appeals pending, where the question of election expenditure has risen; there are many more appeals but in these thirteen the question of election expenditure has come. Two appeals of candidates belonging to the Bharatiya Jan Sangh; five independents, two appeals in which the respondents are Cong (O) candidates and three in which the persons are the Indian National Congress; the Nagaland Nationalist Organisation has one. So, out of thirteen only three are Congress candidates in so far as appeals concerning election expenses are concerned.

I had mentioned the figure of 180 in my Press Conference. That was sometime in October. At that time I had gone on the basis of figures of pending cases available by the end of September. In the meanwhile courts do not wait for that, we do; they decide cases and it appears that twenty cases have in the meantime been disposed of. My latest information is that on 1st November there were 160 petitions pending in various High Courts. It is unthinkable that none of these petitions refer to the question of excess election expenditure I understood quite a few amongst them.

would contain the question of election expenditure.

31.00 hrs.

Reference was made to the Constitution. Shri Madhu Limaye referred to article 14. I have not been able to understand, with great respect to him, how article 14 can come into this article 15 talks of equality before law. I fully agree that if a law violated article 14, it is *ultra vires* of the Constitution. But what has been held by the courts all along in respect of this article is that when you make a reasonable classification and when you do not apply the law by picking and choosing one or two individuals for special and favourable treatment, merely because you make a classification, article 14 is not violated. Here there is a clear-cut classification. It talks of all candidates who will be benefited, irrespective of political parties, colour or their independence against whom election petitions are pending in the High Courts or Supreme Court. (*Interruption*). From what you read yourself, the Supreme Court has referred to friends and admirers. You know better than I that independent candidates have friends and admirers. Gokhale might have a Gokhale Mitra Mandal to support him if he is a no party candidate. Even in one of the judgments I read, there is reference not only to political parties but friends and admirers and associations formed for the purpose. This is not unknown to him. He is far more experienced than me and he has fought many more elections. I cannot believe that he does not know how election funds are collected and how money is spent.

It is perfectly legitimate for the opposition to say that this law is motivated by this and that and so on and so forth, but I sternly cautioned at that time that our discussion should not lead us into a discussion on the facts of the existing cases. That was indirectly sought to be done. Unfortunately, Sir, you were not in the Chair. I am not going to repeat all

those allegations. I know that for all those allegations, there is also a reply in the Court. Therefore, those allegations are not the final facts which are found by the courts. Ultimately the courts may or may not find those facts. The same thing was referred to with reference to the rostrum of the Prime Minister.

SHRI MADHU LIMAYE I read out from the affidavit.

SHRI H. R. GOKHALE: You read out and Mr. Bosu also read out that statement in 1969. This had come up for consideration in the courts and this challenge was thrown out from the courts. This will arise for consideration in the Allahabad High Court in the petition against the Prime Minister and I am sure the High Court is competent to deal with it. But I did not understand one argument. If we are to go on the assumption that the Prime Minister's security is a matter which is of vital interest to the whole nation irrespective of party affiliations, that security is no less important in an election meeting than anywhere else. Therefore, the emphasis as to how much money is paid by the party etc. is completely irrelevant for this discussion. I am not going to deal with it. These questions have been answered several times.

It was said, "you are legitimising corruption". It has been said, "you are not giving effect to the recommendations of the Joint Committee". After all, when the Joint Committee functions, I know there can be differences of opinion. How do we proceed? We proceed on the basis of a recommendation which is of the majority. In this case it is not. In some of the cases, it is not majority recommendation, but it is a recommendation which is almost unanimous. The question as to whether parties should be called upon to furnish their return of election expenses or for that matter whether there should be any limit on party expenditure has as it were not engaged the attention of the Joint Committee.

[Shri H. R. Gokhale]

I am not saying, what they said is the final word. In view of the importance of the matter, whatever the Joint Committee may have decided, it is open for us to discuss it and see whether in consultation with all of us it is possible to do anything in this direction. I cannot say what is possible, but I do not close the issue. It is a matter of great importance, which I do agree should receive attention. Therefore, the other argument that we have changed the character of Section 77 does not hold good.

That the Government should take over certain expenditure was the one point made by Shri Jagannathrao Joshi. I am not averse to considering this aspect. In fact, we are examining that question. It is a matter as to what extent we will be able to do that. In view of the vastness and the size of the country as well as the electorate, whether we will be able to do to the fullest extent is a different matter. Whether certain items of expenditure can be taken over is a suggestion worth considering. I am not rejecting it outright. It is a matter which we will consider carefully and probably discuss it with you also and find out as to what should be done in this matter.

Then, a reference was made to the review petition, I believe, by my hon. friend, Mr. Mavalankar, filed by Mr. Chawla. The House knows that matters which have been finally disposed of by the Supreme Court or by the High Court have been excluded by the operation of this Ordinance. He asked: What will now the Supreme Court decide? That is the only question I cannot answer. But, I am sure, Mr. Chawla's right to get the judgment reviewed under Article 137 stands unimpaired irrespective of this Ordinance. The right to review has been there and the right to review has been exercised. If the Supreme Court is pleased to take cognizance of the review petition and issue notice to the otherside, the Supreme Court will go into the review petition on merits.

Sir, I would submit that most of the doubts which have been expressed have no foundation. I do hope that this Bill will receive the support of the House.

SHRI SHYAMNANDAN MISHRA (Begusarai): Mr. Deputy-Speaker, Sir, I regret to have to say that the reply of the hon. Law Minister is the most perfect model of an evasive reply. The hon. Law Minister, Mr. Gokhale, has proved to be the proverbial duck on which whatever quantity of water we might pour, not a single drop will stick.

The basic point of law is that if the word "authorised" does exist in Section 77, then would it be allowed to exist in the real sense of the term or not or whether authorisation would be required to be interpreted according to the sweet wishes of the executive or of the ruling party. If the word "authorisation" does exist, my question which I put squarely to him earlier was: Would the law Minister prevent any court from going into the question of implied authorisation? I think, it is beyond the capacity of any executive to go into question of implied authorisation. They are really in a quandary. Whatever changes they might bring in Section 77, they would not be able to tell the court, "Please do not go into the question of implied authorisation." It is only the Law Minister who would appropriate to himself the right of saying, what does authorisation exactly mean.

In all cases which the Law Minister has cited, the word "authorised" does exist. I will go into all these cases. This is bound to exist because that is in the law itself, in section 77 itself. So, it is bound to exist. Whatever the effort on the part of the Law Minister, he has not been able to erase that word from the substantive Section of the law. It is only by a backdoor method, by an indirect method, that he wants that the word 'authorisation' should be a non-word, should be almost non-existent. That is what he desires. But my humble submission

is that, so long as it remains in the substantive clause, the court will always interpret it and in all cases the Law Minister has been pleased to cite, this word does exist

Now, let me come to the cases into which he has gone just now and to which I had made a reference earlier in my speech while moving the Resolution.

The hon. Law Minister has referred to the case of Rananjaya Singh vs. Baijnath Singh. What does the Supreme Court say about this? I will repeat what I have said earlier, so that the House may be in a position to judge whether the interpretation of the hon. Law Minister is correct or the interpretation put by the Supreme Court is correct. There, the Supreme Court says:

"This Court had no occasion to consider whether the elected candidate could be said to have authorised any expenditure by knowingly taking advantage of the services of these persons because no such argument was advanced before the Court. In fact, such an argument could not plausibly be advanced because salaries paid by the father to these persons were not for the purpose of working in connection with the election"

After one or two lines, the Supreme Court has said

"This decision does not, therefore run contrary to what we have said."

No plea of this kind had been taken in that case, in the Rananjaya Singh vs. Baijnath Singh case, and the Supreme Court has held that no such plea could have been plausibly taken in that case. So, that is the position. And the Supreme Court has asserted that it does not go against the judgment that they had delivered.

Coming to Ram Dayal vs. Brijraj Singh and others, the question arose whether a certain expenditure incur-

red by the Maharaja of Gwalior and the Rajmata could be said to be an expenditure in connection with the election of the candidate. The Court had pointed out

"In the absence of any connection I would like to lay stress on this."

"In the absence of any connection carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred by Brijraj Singh which was liable to be included in the election expenses of the first respondent"

Further the Court had said:

"We agree with the High Court that under section 77(1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without anything more need not be included in the account or return . . ." and so on.

My humble submission is that, if there could be any connection established between the canvassing activities carried on by the Maharaja and the Rajmata, then the Court would have held that that was an expenditure which should be included in the account of the candidate. These are the words of the judgment which I am quoting:

"But in the absence of any such connection between the expenditure incurred between the canvassing activities carried out by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred by Brijraj Singh."

Now, would not the hon. Law Minister agree with me that if the Supreme Court found that there was a nexus between the two, then, it would have been proper for the Supreme Court to

[Shri Shyamnandan Mishra]

hold in that case also that the expenditure should be put down to the account of the candidate? These are the points of the Supreme Court's judgment (*Interruptions*) What? Now, you are a lawyer in disuse

So, Sir, here what has been happening is that the hon Law Minister has been conveniently ignoring all these important observations of the Supreme Court and he has been only going in the direction in which his Party has asked him to go because of the reasons which have been mentioned by many of my hon friends

Now, he had laid a great store by the judgment in the case of *V. Rajagopal Rao vs N. G. Ranga*, May I point out in that very connection what the Court has to say? Here, the first question related to a publication brought out in connection with the candidature of a particular person. There, the Supreme Court says:

"If it is a publication by a person other than the candidate or his election agent, the consent of the candidate or his election agent must be established before the charge is held proved. Proof of express consent is not necessary."

Now, this is the point on which I would like to lay stress. The Court says:

"Proof of express consent is not necessary. Inference of such a consent may be raised from the circumstances."

Here is also a case of implied inference, implied authorisation. When that could arise in the case of a publication, it should stand to reason that it could arise in the case of an expenditure also. If the whole question... (*Interruptions*) Mr. Rao, don't behave like persons who have completely mortgaged their legal knowledge to their parties.

Now, if that could be in the matter of a publication, why should it not? The authorisation can be implied in the case of a publication. The authorisation cannot be implied in the case of an expenditure of other kind? Is that the submission of my hon. friend? Then the question arose in that very case *Rajagopal Rao vs N. G. Ranga* and the Court observed:

"Towards the boarding and lodging expenses of workers, it appears Simha Jagannatham, President of the District Swatantra Party paid Rs 5000 and Rs 1200 after the election. It was proved by evidence that the Party office was in the house of Simha Jagannatham. The workers were lodged and boarded in a place called Sri Venkateswara Boarding and Lodging at Srikakulam."

Now, if it could be proved again in this case that the boarding and lodging did take place in the house of the District Swatantra Party Chief, my submission is that the whole amount could have been credited into the account of the election of the candidate. That being the position in the case of *Rajagopal Rao vs. N. G. Ranga*—in the other case I have pointed out that in the case of a publication they accept that there can be implied authorisation, not necessarily express—where the court has held that there was no evidence to show that this expenditure of the boarding and lodging was incurred in the house of the District Swatantra Party President and, therefore, it could not be put down to the account of the candidate. But, if it could be proved, then, of course, my submission is that it could have been included in the election account of the candidate. So, whichever case the hon. Law Minister has cited, he has not done justice to the observations made by the hon. Court and I think that thereby he has tried to completely distort the meaning of the judgments on which the Supreme Court has relied. The Law Minister said that the Court has to go by the language of the statute. All the time what

been telling to the country is that the court has to interpret the laws in terms of the ethos and the spirit of society and so on. That is what they have been telling the country all the time. But in this case they want their own philosophy. It is not the supreme court which has imported a philosophy into this thing. It is the philosophy of corruption which the ruling party wants to import into this thing. It is a philosophy of, I again say, corruption. What else can I say? There could not be any other correct philosophy except that of the supreme court, which philosophy it relied upon, to interpret the law in this connection.

Having said this, I would like the hon. Minister to consider whether now the candidate as such does not disappear in a sense altogether in the matter of expenditure. If a candidate shows only zero expenditure and all the expenditure is shown to be incurred by the party, the hon. Law Minister would say it is according to law. Is that the spirit of the law which you want us to appreciate?

SHRI B. V. NAIK: That is a mathematical absurdity.

SHRI SHYAMNANDAN MISHRA: Now the party takes the place of the candidate in the matter of expenditure. And what would the party mean? The party would mean, in effect, an agency of moneybags and capitalists. It can't be anything else. You are placing the party in that position where it can spend amounts, limitless amounts. I should say, on a candidate. The Minister has said this yesterday. He said that election petitions involve members of the opposition as well. Did any opposition party approach the Minister to come forward with this amendment? No. But yet he said, election petitions are not only concerning the ruling party but that members of the opposition as well are involved in it. I would say that this sympathy of the Law Minister so far as the members of the opposition are concerned, is misplaced and this is totally uncalled for.

Sir, let me make it clear on behalf of the entire opposition that no opposition party seeks this amendment at all. If it did involve, then again, he has not answered the question which I had raised earlier on. Why did you not consult the opposition parties before the promulgation of this ordinance? Did you think it fit to consult the members of the opposition when you wanted to promulgate an ordinance on smuggling? But when it comes to protecting the political smuggling you do this, because you want to protect this very thing. Otherwise what is the reason for this at all? In a vital matter of election with which the Parliament of India ought to be concerned more than anybody else there you did not think fit to consult the Opposition. Why? The Opposition could have been persuaded by your point of view or it could not have been persuaded as it was in the case of smugglers.

It is abundantly clear that they seem to be determined to make the ballot-box equivalent of the chest box of the ruling party. That is their plain intention. Earlier a candidate's dishonesty could make a nonsense of the ceiling law on expenditure now the party is being asked to supplement the dishonesty of an individual candidate, that is the plain meaning of this amendment. The Law Minister asks us to believe that the Government is keen to bring about reforms in the election system. If that is the proof of their keenness, I must say, we will have absolutely nothing to do with the reforms they have in their mind.

The decision of the ruling party to do away with the ban on company donations is indeed an indication that the ruling party wants to amass as much money as it is possible for them. They will produce only a certificate of Rs. 2 lakhs from these businessmen whereas they would have got from them under the counter Rs. 2 crores.

[Shri Shyamnandan Mishra]

If the hon. Law Minister and his party are really serious about the election reform then may I ask him why did not his party support the suggestion for putting a ceiling on the expenditure to be incurred by the party. We had all suggested that the party also should be obliged to file election returns. If you were serious why did not your party support that suggestion in the Joint Select Committee itself.

Finally, I would say that the hon. Law Minister has also not answered the point about discrimination that is implied in this law. Why didn't you protect the election of Shri Chawla? Can any law be based on discrimination? That is what you are doing.

This is all only augmenting the heat waves of their words. So far as ideological postures are concerned they do not mean anything serious. It is also a clear violation of the law of ceiling on election expenditure. This makes a complete nonsense of this. I would say if the Election Commission and the Government of India really want to exercise a check on corrupt practices then why should not the Election Commission organise intensive and effective checks in about hundred constituencies in which the high-ups and the affluent persons are involved.

If that is done, I think that we exercise an effective check on the corrupt practices in election. But, this Election Commission consists of persons who have been bred up in that tradition of bureaucracy. That cannot be expected to go against them. We have absolutely no faith in such an Election Commission. Why has the Government not been coming forward with a measure which will expand the Election Commission? That is the question to which the hon. Law Minister has not answered. What stands in your way in expanding the Election Commission? We simply have faith in one man Election

Commission. But, that one Member-Election Commission is always under your patronage. So, I would submit that we cannot support this measure which we consider to be the greatest on-slaught on our democracy and we oppose it with all the strength operate in the other stages of this Bill because they go by the strength of the majority. So, let it be made clear that we, from the Opposition, would not cooperate in other stages of this Bill because it is clear that they want to go by the steamroller majority on the strength—on the physical number—in this House—which we would not support.

MR. DEPUTY-SPEAKER: I shall now put this Resolution moved by Shri Mishra first to the House.

The question is:

“This House disapproves of the Representation of the People (Amendment) Ordinance, 1974 (Ordinance No. 13 of 1974) promulgated by the President on the 19th October, 1974.”

The motion was negatived

MR. DEPUTY-SPEAKER: Now, I shall put the motion moved by Shri H. R. Gokhale to the House

MR. DEPUTY-SPEAKER: The question is:

“That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration.”

The motion was adopted.

Clause 2—(Amendment of Act 43 of 1951)

MR. DEPUTY-SPEAKER: Now we take up clause by clause consideration. There are a number of amendments tabled by various Members.

SHRI SAMAR GUHA: May I move?

MR. DEPUTY-SPEAKER: I shall go step by step. Several hon. Members are not moving their amendments. Mr. Guha, are you moving?

SHRI SAMAR GUHA: I move:

"Page 1.—

after line 17, insert—

"Provided that a political party or any other association or body of persons or any individual with prior consent of the candidate declared the amount of election expenditure apportioned for the said candidate within tenth day after his nomination paper is accepted as valid by the appropriate authority and that such expenditure remained with fifteen per cent in excess of the permissible limit of election expenditure of a candidate in accordance with relevant provisions of the Representation of the People Act, 1951." (14)

Page 1, line 18.—

after "Provided" must further" (15)

SHRI SURENDRA MOHANTY (Kendrapara): Sir, I beg to move:

Page 2—

after line 10, insert—

"Provided further than nothing contained in this *Explanation* shall apply to the cases pending in any court or tribunal on the commencement of the Representation of the People (Amendment) Act, 1974" (26)

SHRI KRISHNA CHANDRA HALDER: Sir, I beg to move:

Page 1—

after line 17, insert—

"Provided that the total amount of expenditure incurred or autho-

rised by the candidate or by his election agent and the expenses incurred or authorised in connection with the election of the said candidate, by a political party, or by any other association or body of persons or by any individual, shall not in any event exceed Rs. 35,000/- and Rs. 10,000/- for a Parliamentary constituency and a State Legislative Assembly constituency respectively within any of the States and Rs. 15,000/- for a Parliamentary constituency within any Union Territory. Such amount in all the cases shall be inclusive of any expenses incurred towards posters and all other publicity materials distributed and transport of any kind viz., road, air or water." (28)

Page 1, line 18. —

after "Provided" insert "further" (29)

SHRI BHOGENDRA JHA: Sir, I beg to move:

"Page 1, lines 13 and 14,—

Omit "or by any other association or body of persons or by any individual (other than the candidate or his election agent)" (30)

*SHRI KRISHNA CHANDRA HALDER: Mr. Deputy Speaker, Sir, I have moved amendment to Clause 2. I have suggested that at Page 1 after line 17 the following may be inserted:—

"Provided that the total amount of expenditure incurred or authorised by the candidate or by his election agent and the expenses incurred or authorised in connection with the election of the said candidate by a political party or by any other association or body of persons or by any individual, shall not in any event exceed Rs. 35,000/- and Rs. 10,000/- a Parliamentary constituency and a State Legislative Assembly constituency respectively within any of

[Shri Krishna Chandra Halder]

the States and Rs. 15,000/- for a Parliamentary constituency within any Union Territory. Such amount in all the cases shall be inclusive of any expenses incurred towards posters and all other publicity materials distributed and transport of any kind viz., road air/or water."

I have also suggested that after line 13, after the word "provided" the word "further" be inserted.

Sir, the leaders of the Opposition Parties have already put forward their irrefutable arguments to prove how the passage of this Bill will encourage the moneyed people and they alone will have a smooth entry into this House while the poorer people will have practically no chance to come to this House and as such I will not reiterate that argument once again. I would, however, stress that after this Bill is passed the entire election system will be dominated by money power. This money power will have an unfettered freedom to wield its unethical influence and elections would be a mockery. My friend Shri Joshi has rightly pointed out that the very foundation of democracy will be shaken because hereafter, the candidate with enormous financial resources will always have an edge over those who lack them. The "Lok Sabha" can never be a House of true representatives of the People, but it would be a House of the representatives of the moneyed people. Sir, Democracy is described as a "Government" of the people, for the people and by the people" but after this Bill is passed it would wholly change the concept of democracy in our country. It would then be a Government of the moneyed people, by the moneyed and for the moneyed people".

The representative of the agricultural labourers, cultivators and the working class can hardly find a place in this House. Sir, I could support the Minister if he had introduced an amending legislation which sought to

lower the voting age to 18, if it sought to introduce proportional representation in our electoral system, if it provided the right to recall to the electorate, if it provided that use of vehicles would be banned within a certain distance from the polling booth on the polling rate, or if it provided that on complaints from the candidates and opposition parties that some rigging had taken place, the Government would automatically order a repolling in that constituency but far from all the Government have brought forward a Bill which will only encourage the play of money and black money into politics. Today the concept of "one leader" "one party" is being propagated by the ruling party. The country is being pushed towards dictatorship. For all these reasons I have suggested some statutory limit through my amendments and I would urge the House to accept them.

SHRI SHYAMNANDAN MISHRA:

We do not give our co-operation to this. We are walking out.

Shri Shyamnandan Mishra and some other hon. members then left the House

SHRI BHOGENDRA JHA: I have moved amendment No. 30. I hope at this stage the hon. Minister will accept it. I have not moved the other two amendments in my name. I have omitted the last one because I think it creates a controversy.

As the Minister has said, the Supreme Court has given some interpretation to the Representation of the People Act, section 77 and because of that a situation has arisen and by this Bill he is trying to restore the *status quo ante*. By this amendment, I seek to omit "or by any other association or body of persons or by any individual (other than the candidate or his election agent)". Otherwise, this will simply open the floodgates and openly legalise corruption, expenditure of black money etc. This should be the concern not only of us but of the entire House, of all those who have been elected by the people. We are concerned with defending and protecting democracy; but we are not

strong enough to do it alone. That is why I say this is the concern of all those interested on this or that side. I appeal to the hon. Member that he should accept my amendment. This should also be his concern. I am not doing it for to sake of propaganda. I mean it very seriously. He should also do likewise.

SHRI H. R. GOKHALE: I am not able to accept his amendment. I appreciate his argument. But I would say that when the election law is amended, we shall keep this in mind and see if anything can be done.

SHRI KRISHNA CHANDRA HALDAR: I am also working out.

Shri Krishna Chandra Haldar left the House.

SHRI BOGENDRA JHA: Is it an assurance?

SHRI H. R. GOKHALE: It is not an assurance.

MR. DEPUTY-SPEAKER: It is an assurance to consider.

SHRI H. R. GOKHALE: I said that we could consider it at that time.

MR. DEPUTY-SPEAKER: I shall put all the amendments to clause 2 together.

Amendments Nos. 14, 15, 26, 28, 29, and 30 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clauses 2 was added to the Bill.

Clauses 3 and 1, the Enacting Formula and the Title were added to the Bill.

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

"That the Bill be passed".

SHRI P. G. MAVALANKAR: The hon. Law Minister in so many words said during the second reading stage that even if this House had to do certain things and the appeal sent to Court, Parliament itself can do many things for making elections more fair and more free. I hope he will try and bring together all the Opposition Leaders and a few Independents with a view to have some meaningful discussion for making elections freer and fairer and less expensive. Let him arrange a meeting as early as possible. I want to make this appeal to him.

SHRI H. R. GOKHALE: This was an appeal.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, December 17, 1974 Agrahayana 26, 1896 (Saka).