

from the Jail on the 10th November, 1974.

SHRI D. N. SINGH: I am prepared to accept that the condition in Patna on the 4th was unsettled, and in view of this admission by the Bihar Government, I would like to request the Home Minister to tender a friendly advice to the Government of Bihar not to go about proclaiming that the movement of the 4th was a total failure. That is my only submission. I hope he will definitely give this friendly advice to the Government of Bihar. I have nothing else to say.

SHRI NOORUL HUDA (Cachar): It is a shameful on the part of Government to arrest MPs under DIR.

14.43 hrs.

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

MR. DEPUTY-SPEAKER: We take up the Statutory Resolution seeking disapproval of the Representation of the People (Amendment) Ordinance, 1974, and the Bill of Shri Gokhale to replace this Ordinance. I see the name of Shri Janeswar Mishra here to raise an objection. I do not know what he wants to say. But these objections should come...

श्री जनेश्वर मिश्र (इम/हावाद) : अब मंत्री बहुतेक क्षपना बिल पेश करेंगे, नब मैं क्षापित उठाउंगा ।

SHRI SHAMNANDAN MISHRA (Begusarai): When he moves the Bill,

I beg to move:

"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".

SHRI INDRAJIT GUPTA (Allipore): How much time have you allotted for the general discussion?

MR DEPUTY-SPEAKER: We have allotted six hours for both, I think five hours for the general discussion and one hour for the rest of the stages, because this is a short Bill.

SHRI MADHU LIMAYE (Banka): Five plus one.

MR. DEPUTY-SPEAKER: I do not know. I am just telling what the Business Advisory Committee had recommended and the House had decided—altogether six hours including the passing of the Bill.

SHRI P G MAVALANKAR (Ahmedabad). Six hours is a very short time.

MR. DEPUTY-SPEAKER: You have decided that yourselves.

SHRI MADHU LIMAYE: It is all right.

SHRI SHYAMNANDAN MISHRA: I have no manner of doubt that the 19th October 1974 would be considered to be a sad day in the history of our democracy. Many improper and wrong ordinances had been promulgated in the past, but I must say that this is the blackest and the most reprehensible of them all. If I can characterise it, I would like to say that it has been a historic catastrophe and, to use a Neptunian phrase, all Neptune's ocean is not going to wash the stain on the Government. For, what they are doing is nothing else than legitimising the corruption in the elective process itself. But I am not

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surprised because it is part of the counter revolution against democracy that this regime has been systematically carrying out. As the crisis deepens, the ordinance making powers of the Government seem to be coming into greater and greater play. It seems it has become almost a matter of political survival for this Government to take recourse to Ordinances. Just now I do not have an exact recollection but probably about 22 to 23 per cent of all legislation passed by this Hon. House is contributed by the Ordinances themselves.

No law could be considered to be dishonest. But it is in order to say that an ordinance is mala fide; it is dishonest. No court would say that a particular legislation has been dishonest but any court can say that an ordinance has been dishonest and it could be struck down for mala fide. That being so it would be proper and in order to examine whether this Ordinance was done in good faith, with good intentions.

It was rightly pointed out in one of the letters to the editor, which I cannot help repeating here, that no sane man can help suspecting the motives of the Government in this matter. However there is one interesting aspect of this Ordinance. It exposes the reality behind the massive mandate so proudly flaunted by this Government. This means that the full shadow of black money collected by selling files, orders quotas and permits will continue to however over our ballot boxes and the ballot box would be exactly equivalent to the chest box of the ruling party. That is precisely the intention behind it is Ordinance and I am glad that the Government has come out in its true colour. It also means that money power will continue to distort the will of the people and equality of opportunity will continue to elude the poorer candidates. At one stroke this Ordinance sweeps off the two objectives of the provision limiting

expenditure and what are these two objectives? One is that there should be equal effective voice and equal opportunity in the election processes and secondly, the influence of big money in the electoral process should be eliminated as far as possible.

The Supreme Court has said:

"If a candidate were to be subject to the limitations 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 the 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. 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. 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 including our grasp."

This is what the Supreme Court held and I should like to know whether any hon. Member in this House disagrees with this view.

The question before the House is whether we want to control the evil influence of money on elections or not? Do you want money to control elections or elections to control the evil influence to the extent possible? That is the crucial question which must be answered before taking to any measure in this respect. The heart of the matter is whether elections should remain or go on becoming prohibitively expensive or they should become financially more

manageable, so that the ordinary people can take part in elections. But the true face of the ordinance is—it says so in very clear terms—that the poor people have no place in the elective process that we have in this country. It is not surprising, therefore, that the elected representatives of the people become much more beholden to the benefactors during the elections than to the people themselves who have elected them. They are, therefore, bound to seek assistance against promise of future favour. I would not say that the opposition parties are Simon Pure or they are not guilty of any of these evil practices. But there is nothing in the gift of the opposition which can make people contribute to their election funds.

The ruling party's recent decision to lift the ban on company donation is also a pointer in the same direction. What the ruling party proposes to do is, they would get a certificate of Rs. 2 lakhs on the basis of donations made by the companies openly, although they would have collected under the counter Rs. 2 crores. That is the facade that they want to build up now. Therefore, they have taken this view that the ban on company donations must be lifted.

**SHRI HARI KISHORE SINGH** (Pupri): Are you against lifting the ban?

**SHRI SHYAMNANDAN MISHRA:** Can I have been a party to the ban on company donation. You are a new comer to this House. We did this in the united Congress.

The other day we were told by the Minister while piloting the Bill that the alleged smugglers could not be brought on trial because their monetary resources could buy them freedom, security and immunity from the elective process, because they could buy off the witnesses and bully and subvert the processes of the

court. If money is that powerful in the hands of an individual, it is my respectful submission that where there is a confluence of this money power and the State apparatus, there would be indeed a very great tyranny perpetrated on the people.

There is a public clamour for reforming the electoral system. Is this the reform they want to inaugurate? Is it the preface that they are writing to the electoral reforms for, which the country has been agitating all this time? Not even the most gullible would, therefore, believe in their protestations about electoral reforms. But the Minister of Law said the other day that this ordinance does not prevent us from taking steps in future about electoral reforms. But when you had not implemented the unanimous recommendations of the Joint Select Committee on electoral reforms, can anybody have any faith that you would be really sincere about it? There had been many recommendations unanimously made by the Joint Select Committee. Even with regard to the ceiling to be imposed on the political parties and the political parties to be made to file election returns, there had been a recommendation from the opposition parties, but if you with all your majority are going to turn it down, where is the sense in your saying that you are going to do the same in future?

Now the Government claims that this measure is born out of solicitude for 180 candidates against whom election petitions are pending in various High Courts of the country. But may I ask whether any opposition party had asked for protection of this kind? It is also the claim of the Government that many of these election petitions, in fact the majority of the election petitions, relate to the members of the opposition parties. If that is so, would it not be in order to ask the Government whether any political party had approached the

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Government for a protection of this kind? So, your solicitude for the candidates, for the persons who have been involved in this, is rather suspicious.

SHRI N. K. P. SALVE (Betul): Did you in your return of expenses include expenses which your party had incurred on your behalf, which could have been identified as attributable to your elections?

SHRI SHYAMNANDAN MISHRA: My party is very poor. Even so, if my party was found to be spending in connection with my election, the court should take that into account in computing my election expenditure. I would have absolutely no objection to it.

May I ask my hon. friend to answer my point? Suppose my hon. friend, Shri Salve shows zero in his personal expenditure and shows all the expenditure as incurred by his political party, would be the court entertain that kind of return from the hon. Member, Salve? Would it not be a fantastic nonsense? Would it not be a great insult to intelligence? If this argument is granted, then every candidate would show only zero as his election expenditure and all the election expenditure should be debited to the accounts of the political party. Then you can have hundreds of jeeps in your elections and show all the hundreds of jeeps as provided by your District Congress Committee or the PCC or AICC. Similarly, thousands of bottles of liquor that are being distributed by some candidates, you claim all that is done by the party. An impression has gained ground that it has been done to save the election of the hon. Prime Minister. Therefore, I thought the Government should have been extra careful in coming out with a measure of this kind. I am not going into the case because a case is pending before the court. I would not do that. But if it was

considered to be a disaster that the Prime Minister's election would be affected, then probably the more honest course was to come to the House with a constitutional amendment that the Prime Minister should not be subject to an election petition, the Prime Minister must be immune from an election petition. I do realise that party is now in a peculiar predicament because, if the Prime Minister goes, there is nobody on that side who can be placed as Prime Minister. So, probably, the party would go to pieces. We would have commiserated to the party to some extent if they had been in that predicament.... (interruptions). But first have the courage to come before the House with a proposal of that kind. If they come forward with their predicament that if the Prime Minister goes, their party will go to pieces, then we would certainly show some sympathy. My hon. friend, Mr. Limaye, may consider some persons to be better than the Prime Minister. But I do not consider any person like that. They have been just falling in line with her. They do not have the courage to come out. I rather think the Prime Minister to be a braver person than the pusillanimous and the cowardly lot which does not speak of its mind clearly.

15 hrs.

Now, I come to the purely legal aspects of the Ordinance. The first thing to note is that the Ordinance has not only a legal aspect but it has a politico-moral aspect also. It is the most immoral Ordinance. The first duty of the Parliament is to get into the politico-moral aspect of it. I can be a match for any person so far as the legal aspects are concerned.

Let me deal with the legal aspects adequately. So far as the part, validating the Act in the light of the observations made by the Supreme Court regarding defects in legislation

is concerned it is a unique Ordinance which is introducing defects and legitimising them in the present piece of legislation. The Supreme Court has not laid down any new law. What the Supreme Court did in the recent case of Mr. Amar Nath Chawla and Mr. Kanwar Lal Gupta was a restatement of the case of the law as it exists. This is, in fact, the Ordinance which is altering the law. This is the basic legal proposition which I am trying to establish.

There are two things before us which give the intention of the Government so far as the promulgation of this Ordinance is concerned. One is the statement of the hon. Law Minister which he made to the press in an informal chat and the other is the explanatory memorandum issued by the Government on the subject. So, I will deal with them now. The hon. Minister of Law had given the reasons for the promulgation of the Ordinance. One of the reasons given was that the Ordinance was necessary to make the intention underlying Section 77 clear. That was the one thing which he thought was necessary to do. Secondly, he gave the reason that the Ordinance merely restored the *status quo ante*.

The latest judgment not only ran counter in his opinion to the earlier judgments of the Supreme Court which said that the expenditure of parties should not be taken into account but it also gave a wider interpretation to certain expressions, like, expenditure incurred or authorised by the candidate. These were the two propositions which the hon. Law Minister made when he was trying to explain this black Ordinance.

Then, he referred to the two cases which had also been referred to by the Supreme Court in this regard. He referred to two cases, namely,

- (1) Shri B. Rajagopala Rao Vs. Shri N. G. Ranga and

- (2) Shri Rananjaya Singh Vs. Shri Bajjnath Singh.

These are the two cases. A layman would feel completely at sea as to how the same two cases could yield two different conclusions. But that is what the hon. Law Minister has tried to do. He has tried to perform a feat that the same cases could have yielded different kinds of conclusions. In both these cases it was the Law Minister's contention that the court had adjudged that the expenditure incurred by persons other than the candidates for election purposes would not be taken into account in determining whether a corrupt practice was committed by the candidate. Now, the Statement of objects and Reasons has said the same thing in some other words. It is said in the statement of Objects and Reasons: "The impression incurred or authorised had not been construed so as to bring within its purview the expenditure incurred by a political party in its campaign." Here is a very crucial word or expression which must be borne in mind by the hon. House. The Supreme Court has not said that what is expended during the course of a campaign for general party purposes should be debited to the account of a particular candidate. The Supreme Court has made a distinction between the expenditure incurred for general purposes of the party and the expenditure incurred in connection with the election of a particular candidate. Yet, the statement of Objects and Reasons says:

"...the expenditure incurred by a political party in its campaign or by any person other than the candidate unless incurred by such third person as the candidate's agent. In other words, the provisions of section 77 and clause (6) of section 123 have been intended and understood to be restraints on the candidate's election expenditure and not on the expenditure of a political party."

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By this interpretation, the Statement of Objects and Reasons has tried to convey that the sky is the only limit so far as the expenditure of a particular political party even in a constituency is concerned, that there is no limit absolutely. How atrocious it is! This is the interpretation which they ask us to believe! If that were so, a ceiling on election expenses was meaningless. Then why don't you come forward in a straightforward manner and honestly tell the House that a ceiling on expenditure by a particular candidate is meaningless and it must be done away with? That is a course which could have been better understood by us.

Now it is clear that the Supreme Court does not adjudge that expenditure on general party propaganda should be taken into account in computing the candidate's election expenses. It does make a concession for the expenditure incurred on party propaganda or on ideological propaganda. It does make a concession in that respect. Please do not think that the Supreme Court has been unreasonable in this matter. The Supreme Court does make a concession in that regard. It is only 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 that programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, that 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 had not incurred the expenditure but his political party had done so. That is the clear exposition of the Supreme Court's stand. And could anybody in his senses disagree with this view? You have not disavowed. If I find not only the resources of the Ganga

flowing or even the resources of the Brahmaputra but the whole ocean inundating the Party, would I not take objection to this?

SHRI N. K. P. SALVE: Have you quoted from the judgment?

SHRI SHYAMNANDAN MISHRA: I have quoted from the judgment itself.

SHRI N. K. P. SALVE: Which page?

SHRI SHYAMNANDAN MISHRA: I can give you the page later.

These are the words of the Supreme Court . . . (Interruptions)

SHRI MADHU LIMAYE: Shrimati Mayaji has something to say.

SHRI DARBARA SINGH (Hoshiarpur): She does not need your recommendation.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Does she want to talk about Gaighata?

SHRI SHYAMNANDAN MISHRA: The Supreme Court has also said:

"This view we are taking does not run counter to any earlier decisions of this court."

These are again within quotes. It bids us, therefore, how the Law Minister could take the stand that the recent judgment was a departure from the judgments delivered in the past...

SHRI N. K. P. SALVE: That he will cite.

SHRI SHYAMNANDAN MISHRA: When the Supreme Court has said in explicit terms that its judgment does not run counter to the earlier judgments, the hon. Law Minister has told us that it does go against. Now, whose interpretation this House will believe more? The interpretation of the Law Minister or the interpretation of the Supreme Court? He had also been a Judge of the High Court. I am quoting the Supreme Court...

SHRI N. K. P. SALVE: I will also quote the Supreme Court.

SHRI SHYAMNANDAN MISHRA: I am coming to all that. The Supreme Court has referred not only to the cases which the hon. Law Minister mentioned, but, in addition, it has referred to *Madras Patodia vs. R. K. Birla and others* also. . . .

SHRI JYOTIRMOY BOSU: *Chalees Lakhwala*?

SHRI SHYAMNANDAN MISHRA: The consistent stand of the Supreme Court has been that whatever goes into and affects the election of a candidate, should be added to the election expenses on the basis of equality of opportunity. That is the basis of the limit imposed.

You are now destroying natural civilised law of equality of opportunity. . . (Interruptions) and it would now wipe out whatever remains of the limit on ceiling.

Now, I challenge the Law Minister to quote a single judgment to the contrary. My hon. friend, Shri Salve, seems to think that there are some judgments which run counter. . .

AN HON. MEMBER: Yes.

SHRI SHYAMNANDAN MISHRA: . . . to the Supreme Court's judgment. If this was the law, then, may I ask my hon. friend, Shri Salve: why was Shri Amarnath Chawla made to suffer? You are protecting the prospective 180 cases, but why did you not protect Shri Amarnath Chawla's election if this is the law? . . . (Interruptions) Why not you give equal protection of law? You should have granted equal protection of law. You have done retrospective validation but protected the judgment at all. Last must be based on non-discrimination and equal application. . . (Interruptions) But the also you have not done. You cannot ride two horses at the same time. Would it convince anybody that your

proposition that the law was that such an expenditure should not be debited to the account of a candidate was the correct law? Then, that should have been applied by the Government to the case of Shri Amar Nath Chawla's case also.

But you are doing something completely different. . .

AN HON. MEMBER: Would you agree to it now?

SHRI SHYAMNANDAN MISHRA: I am only stating the proposition before you. Again you ask me to sit in judgment. I will not do that.

The plain fact Mr. Deputy Speaker, is that by this judgment, they are altering the law. It is remarkable that they want the Supreme Court to interpret laws according to the social ethos and environments in one breath, but when the Supreme Court does the same, they turn against it. Would you want it to be a completely conforming Supreme Court? You do not want the Supreme Court to be keeping with the spirit of the times? They have brought out that because your expenditure is so becoming so fantastic and so gigantic that the Supreme Court is bound to take it into account.

But, now, the basic approach of the Supreme Court is contained in the following sentence:

"Before we proceed to discuss the evidence. . ."  
 I am again quoting the lines of the Supreme Court Judgment.

"Now, before we proceed to discuss the evidence bearing on this question, we must clear the ground by pointing out that not only is the incurring of excessive expenditure a corrupt practice, but also the authorising of such expenditure and authorising may be implied as well as express."

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That is the key sentence in the judgement of the Supreme Court.

"Where the authorising is express, there is no difficulty in bringing home the charge of corrupt practice against the candidate. But a somewhat difficult question on facts may arise where the charge is sought to be proved against the candidate on the basis that he impliedly authorised excessive expenditure. Whether a particular expenditure was impliedly authorised by the candidate must depend on the facts and circumstances of each case as appearing from the evidence adduced before the court.

This question would arise in a challenging form where the expenditure in connection with the election is incurred not by the candidate but by the political party which has sponsored him or his friends and supporters."

Then the Supreme Court proceeds to ask:

"Can the limit on the expenditure be evaded by the candidate by not spending any moneys of 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 what Supreme Court has said. The Supreme Court has laid stress on authorisation and the authorisation in the opinion of the Supreme Court can both be express and implied. Would any person having the least knowledge of law disagree with the view that the authorisation can be of two kinds? Are they going to bind the Supreme Court by saying that you cannot go into the question of implied authorisation. They are living in a peculiar world of their own if they think by this Ordinance they can bind any court to saying that they would not go into the question of implied authorisation.

That is the primary duty of the court to go into the question of implied authorisation and on this basis they have established the case of Amar Nath Chawla that there was excessive expenditure incurred.

Now, I come to some of the cases mentioned. In Ram Dayal versus Brijraj Singh and others, the question arose whether certain expenditure incurred by the Maharaja of Gwalior and the Rajmata in connection with the election of Brijraj Singh was liable to be included in his election expenses.

The court had pointed out that in the absence of any connection between the canvassing activities 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 proceeded to add:

"We agree with the High Court that under 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, as such incurring of expenditure would be purely voluntary."

In the latest judgement the Supreme Court has said:

"These observations would show that mere incurring of expenditure by any other person in connection with the election of a candidate, without something more, would not make it an expenditure authorised by the candidate."

But if there is something more which can reasonably lend itself to the in-



ference of implied authorisation particularly having regard to the object of this provision which is to bring about, as far as possible, equality in availability of resources and eliminate the corrupting influence of big money then it would certainly be included in the election account of a candidate.

It is significant to note that in this connection the court proceeded to examine whether the evidence was sufficient to establish that Brijraj Singh travelled with the Maharaja in his helicopted and visited several villages for his election campaign and held that the evidence in this connection was not reliable. This inquiry would have been wholly unnecessary unless the court was of the view that if Brijraj Singh could be shown to have travelled with the Maharaja in his helicopter and visited several villages in connection with his election campaign that would be sufficient to invest the expenditure incurred by the Maharaja with the character of expenditure impliedly authorised by Brijraj Singh. This decision, therefore, far from contradicting the view taken by us, actually supports it.

So, my submission is in this case *Ram Dayal versus Brijraj Singh* the court was of the opinion that if any connection could be established between the visit of the Maharaja to several villages in connection with his election campaign then the expenditure incurred on that account would have been included in the computation of the election expenditure of the particular candidate but since no connection could be established in this case, therefore, the court ruled that it could not be taken into account. The position is quite clear. It is only wrong interpretation of the which would lead to another view. Therefore, the Supreme Court is absolutely right in holding that their judgement does not counter to any judgement before and particularly this case becomes very very important in this connection.

Then I come to *Rananjaya Singh versus Baijnath Singh* where 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 this Court. In fact, such an argument could not plausibly be advanced because the 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 asserts:

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

The Supreme Court has found that their view is further supported by the decisions earlier in *Magraj Patodia versus R. K. Birla* and other and in *B. Rajgopala Rao versus N. G. Ranga*. Then finally the Supreme Court says:

"The question, therefore, in cases of this kind always is whether there is something more which may legitimately give rise to an inference of implied authorisation by a candidate. What could be something more is indicated by us in the propriety formulated above, though we must confess that by its very nature. It is not possible to lay down the exhaustive enumeration of the circumstances in which that something more may be inferred."

Now, Sir, I am referring to another case which had not been referred to either by the Supreme Court or by the honourable Law Minister. That is the case of *Shri D. P. Mishra versus K. N. Sharma*. My submission

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there is that the Supreme Court had held that the Party could also spend in a Constituency, and not only the candidate. That proposition had been held by the Supreme Court. In that case, Shri Mishra had deposited Rs. 700/- with the Madhya Pradesh Congress Committee as an applicant for the Congress ticket. Out of this amount, Rs. 200/- were meant as application fee and the remaining Rs. 500/- were to be used in the Constituency. That is, this expenditure was to be canalised through the P.C.C.

Now, the Supreme Court said:

"In our judgment, the High Court was right in holding the amount of Rs. 500/- paid by Shri Mishra as expenditure incurred on April 1, 1963, and was liable to be included in the statement of expenditure incurred for the purpose of election."

If this proposition is established, even the Congress Committee can spend in a particular Constituency, and not only the candidate himself. This is the view of the Supreme Court and it is also supported by this Government in the case of Shri D. P. Mishra *versus* K. N. Sharma.

But, this Ordinance notwithstanding, I have a feeling, the court will not change its basic position, and swallow any amount that a Party may spend in connection with the election of a candidate I hope I have been able to establish on the basis of the case to which the Law Minister referred and the Supreme Court had also gone into with great care. I am trying to formulate my own view in this matter for the consideration of the House.

I have a feeling that the court will not change its basic position and it would not swallow that the Party may spend any amount in connection with the election of a candidate that would

not swallow any kind of a fantastic amount that may be incurred by any political party.

Do you think that the Court will not take into account many of these things which are very obvious? In fact, the Court said in a recent case that the statement of expenditure by Shri Amarnath Chawla was an insult to intelligence because much more hundred times more, than that has been incurred by the political party which had sponsored the candidate. No doubt the court would take the same view in future also. Do you think that by adding two Explanations, they can alter the substantive provision? What does Section 77(1) say? It did not have any explanation appended to it earlier. Now, what they are trying to do is to completely change the character of the substantive provision of Section 77 by adding two Explanations.

My humble submission is that by adding the explanation you cannot change the basic character of the substantive provision that would make a non-sense of the whole Section itself. You are trying to add that in a circumlocutory manner—in a round about manner which would not be accepted by the court. That would simply reduce to nullity the section itself. So, it is clear that both on politico-moral and legal grounds, this measure is most objectionable. It is an attempt to pervert the present law. It is an affront to the Supreme Court. It exposes, as I have submitted earlier, the true colour of the Ruling Party. May I say that earlier it was the same view by a galaxy of the topmost intellectuals of this country. They had come out with a statement. Are some eminent professors including Dr. K. N. Raj, Prof. M. N. Srinivas and Prof. V. M. Dandekar not the top intellectuals of the country? I ask you. They have got international reputation. They have pointed out that the Ordinance legitimises in effect the control that powerful financial and propertied interests have acquired

over electoral processes. They further says.

"It cannot but lead to further loss of faith in the possibility of reforming the state of affairs in the country without recourse to extra-parliamentary methods"

Now, Sir, they are driving the country to extra-parliamentary methods and if they wanted to come forth with this Ordinance and if indeed a majority of the candidates involved in the election petitions belonged to the Opposition then, they should have held consultations with the Opposition before coming up with a measure of this kind. When they came with an Ordinance in respect of the smugglers they did consult or at least gave a show of consultation with the Opposition. But in a matter which concerns the elective process which concerns the majority of the candidates they did not have the decency to consult the opposition Parties. So, my charge is that this has been done in a hole and corner way. This is done only for the interest of the ruling party and in doing so this party is destroying democracy in this country. We, therefore, oppose this will all the force at our command.

MR DEPUTY-SPEAKER The Resolution is before the House

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

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

श्री जनेश्वर मिश्र मेरा पायट ग्राफ आर्डर है। मैं ने पहले से लिख कर दिया है।

SHRI H R GOKHALE I will reply to the various points raised later on

MR DEPUTY-SPEAKER He had written that he wanted to raise some objections.

SHRI H R GOKHALE May I submit this? This is a Consideration

Motion and if he wants to make some points, he can do so in the course of the discussion

MR DEPUTY-SPEAKER I had said so. He had written that he wanted to object to even the introduction of the Bill

SHRI H R GOKHALE As far as I know, I think there is no rule

MR DEPUTY-SPEAKER I know that I find here in the Order Paper that his name has been entered. I find that the name of Mr. Janeshwar Misra is written here that he wanted to raise certain objection. I suppose he has done it with the knowledge of the Speaker. I do not know.

SHRI H R GOKHALE If you think that it should be done, it is a different matter. But it will be setting up a new precedent if at the consideration stage this is done.

श्री जनेश्वर मिश्र (इलाहाबाद)

उपाध्यक्ष महादय अभी बल तक यहां जा लाइसेंस स्पेडल का दवाल रहा उस में सरकार की तरफ से यह दलील दी जाती रही कि यह मामला अदालत में जा चका है—अगर वह भी तीस हजागी की कार्ट में—इस लिए अगर इस मदन में हम लोग इस पर उहम करेंगे तो उस अशुभता का अपमान हो जायेगा। मरा आपत्ति यह है कि मंत्री महादय जो विधायक पण करने जा रहे हैं जिस पर विचार होना जा रहा है वह सर्वोच्च न्यायालय का अपमान है उस के जजिज के निर्णयों का अपमान है। मंत्री महादय जिन मुद्दों का ले कर यह विधायक पण करने जा रहे हैं उसी के आधार पर अदालत में कुछ याचिकाये चल रही हैं।

MR DEPUTY-SPEAKER Why not make these points in your speech?

श्री जनेश्वर मिश्र हम इस विधायक के पेश करने पर ही आपत्ति करना चाहते हैं।

[श्री जनेश्वर मिश्र]

उन याचिकाओं में बहुत सी पार्टीज ऐसी होंगी, जो गलत तरीके से अपने चुनाव में भाई होंगी, और उन के खिलाफ हम को बोलना होगा। तब सप्ताह दल की तरफ से यह हल्ला मचेगा कि यह मामला सबजुडिस है, इस की चर्चा न की जाये। मैं आप से स्पष्ट व्यवस्था चाहता हूँ कि क्या बहस के दौरान हम लोग उन मुकदमों के बारे में भी बहस करेंगे, जो इस समय विचाराधीन हैं, और जिन में से कुछ पार्टीज की हिकाजत के लिए यह विधेयक पेश किया जा रहा है, या इस विधेयक पर विचार करते समय हम केवल हवा से उड़ते रहेंगे। मैं इस पर आप की स्पष्ट रूनिंग चाहता हूँ।

MR. DEPUTY-SPEAKER: I think the Constitution and the rules are very clear, that when there is any case before the Court, we cannot refer to that case.

श्री जनेश्वर मिश्र : लेकिन यह विधेयक तो उन्ही केसिज के लिए है। हम क्या करेंगे, यही हम जानना चाहते हैं।

MR. DEPUTY-SPEAKER: We can not refer to any individual.... I am telling you that we cannot refer to any case.

SHRI MADHU LIMAYE: Why not?

MR. DEPUTY-SPEAKER: I am pointing out the rule. We cannot do it as *sub judice*.

श्री जनेश्वर मिश्र : तब यह बिल नहीं जाना चाहिए। आप इस बिल को रोकिये और मंत्री महोदय से यह बिल पेश न करने के लिए कहिये।

SHRI JYOTIRMOY BOSU (Diamond Harbour): How can the Bill come here?

SHRI MADHU LIMAYE: On a point of order.

MR. DEPUTY-SPEAKER: Do not get excited.

SHRI JYOTIRMOY BOSU: I would like to raise a point of order.

MR. DEPUTY-SPEAKER: Later on He has asked whether we can refer to cases pending before the various courts. I say we cannot because that is *sub judice*.

SHRI JANESHWAR MISHRA: The whole Bill is only for that.

MR. DEPUTY-SPEAKER: I do not know about that Shri Mishra made his speech without that; he referred to various judgments already given by the courts. That is a different thing. You can refer to judgments given by the courts.

SHRI N. K. P. SALVE: In terms he said 'I will not refer to any case which is pending'.

SHRI JYOTIRMOY BOSU: On a point of order. This Ordinance has been promulgated precisely to prevent certain action being taken on the basis of the judgment that the court may deliver in future applying their mind to those cases after hearing them, it is, therefore, impossible for speaker's in this House to dwell within that particular rule that when there is a case pending, you cannot discuss anything about that, because the very Bill has been brought before this House...

MR. DEPUTY-SPEAKER: I got the point.

SHRI JYOTIRMOY BOSU: .... to counteract the normal and natural movement or advancement of cases pending before courts of law.

Mr. Deputy-Speaker, you understand things. You also apply your mind fully to this and let the House get a free opportunity to discuss the whole thing inside out and upside down without sparing anybody.

MR. DEPUTY-SPEAKER: Within the rules and the Constitution.

SHRI JYOTIRMOY BOSU: If the rule itself is being flouted by the Minister by introducing this Bill, I am helpless. I beg your pardon at the very beginning that it would be very difficult for us to dwell within that

SHRI H. K. L. BHAGAT (East Delhi): The logic just now advanced by Shri Jyotirmoy Bosu is really fantastic (Interruption). I have purposely not used another expression, but have called it fantastic. That way every new piece of legislation which is brought here reflects a certain situation in the country. There are pending cases and causes. According to us, according to the Government which has brought this Bill, a certain view of law was existing and now the Supreme Court has taken a different view. They say the law means this and this. We will speak on merit, later on. But then to say that this is brought in only to.

SHRI JYOTIRMOY BOSU: Nullify

SHRI H. K. L. BHAGAT: I was not interrupting you. Let us at least observe this between ourselves.

This Bill lays down a certain understanding, a certain position of law. If it is argued that this Bill may have effect on certain other petitions or pending cases, that way every legislation will have some amount of effect on other pending cases in courts or cases which arise in future. Therefore to say that we cannot discuss the Bill without referring to those cases is not....

MR. DEPUTY-SPEAKER: I will hear you again. I do not want this to go on. You have made your submission. I will hear everybody. After you have made your submission, when somebody says something and you get up and interrupt and refute it, it becomes endless.

SHRI JYOTIRMOY BOSU: He has mentioned my name.

SHRI H. K. L. BHAGAT: Because this Bill may have effect on pending cases are all the rules washed off? Is the Constitution washed off? They cannot comment on every case that is pending. It will be absolutely the negation of the rules, constitution and law. Therefore I entirely agree with you that they cannot comment on cases which are pending before a court... (Interruptions)

SHRI JYOTIRMOY BOSU: I am only trying to highlight the fact that the Government has brought forward this Bill to prevent the law taking its normal course in the cases pending before the Courts.

SHRI SAMAR GUHA (Contai): Sir. You observed just now that no speaker who speaks on the Bill or the Ordinance should refer to cases pending in any court. (Interruptions) I want to bring to your notice that on October 19, 1974 after the judgement of the Supreme Court the hon. Minister himself said in a Press Conference and I am quoting from a Press report; "The Supreme Court interpretation has laid down a new law. The Ordinance, the Minister said, has become necessary because 180 election petitions were pending in courts in respect of Lok Sabha and Assembly elections." So, it is clear that the hon. Minister himself referred to 180 pending cases before courts which related to M.Ps. and M.LAs. are Maya. They are a reality. The M.L.A. is reality, the M.P. is reality, the pending cases are a reality and the courts are reality. They are not Maya. (Interruptions). You have allowed Maya to go out. If the hon. Minister can refer to pending cases why should we not? Otherwise a discussion here is without any substance or meaning or objective and it will be without any realistic background unless the cases that are now in the courts are mentioned. In the same Statement it says: "The intention of the law makers was that the expenditure incurred by a political party should not be taken into account to decide whether or not the limit on election expenditure has been exceeded. He also explained

[Shri Semar Guha]

that the ordinance would have retrospective effect in respect of pending election petitions, it was not, in accordance with past practice, being applied to the very case in which the new law has laid down by the Supreme Court." The Law Minister who is going to pilot this Bill has himself categorically stated outside Parliament that in some case it would have led to speculation in respect of pending election petitions. How can you really entertain any idea of a discussion without discussing the issue for which this Bill has been introduced. It is exactly to protect the 180 cases and the hon. Minister has categorically stated so. If you do not refer to them what would be the discussion on the Bill. What will be our arguments. We are not following Maya. I do not want to know whether it is Maya or reality. We cannot raise discussion on Maya or the disembodied spirit. It will have no reality. It will be hypothetical. We want to have a realistic discussion.... (Interruptions).

**SHRI S. M. BANERJEE (Kanpur):** Sir, the ordinance is the direct result of the decision in an election petition by the Supreme Court, in which one of the members of this House, Shri Amar Nath Chawla was unseated. Let us forget for a moment the other cases which are pending, including the Prime Minister's case. We are not discussing them. But I want to bring to your notice that Shri Amar Nath Chawla has preferred an appeal in the Supreme Court for revision. I have with me a copy of his revision petition, which has been filed in accordance with the Constitution. Naturally, when I am discussing this ordinance and the Bill, am I not entitled to discuss what will happen to this revision petition filed by Shri Amar Nath Chawla in the Supreme Court? I have moved an amendment also. I want your ruling. The other cases might not be discussed which are sub judice according to you, but am I not entitled to discuss Shri Chawla's revision petition? A feel-

ing has rightly or wrongly been created in the country that this has been brought simply to protect certain interests—may be the Prime Minister, or any minister or any MLA or MP. There are 180 persons, including ladies and gents. I would like to know whether I am not entitled to refer to Mr. Chawla's revision petition in the Supreme Court.

**SHRI P. G. MAVALANKAR (Ahmedabad):** Sir, ordinarily what you have said is right, but there has been an extraordinary measure brought by the Government. They have brought this Bill precisely because there are certain cases in various courts. The Prime Minister's case is prominent, but there are 179 other cases. Because of these cases, the minister has brought the Bill. If the bringing of the Bill is in order and does not violate the rules you have invited attention to, I do not see how we cannot discuss it. The statement of objects and reasons says:

"However, in the recent case of Shri Kanwar Lal Gupta versus Shri Amar Nath Chawla and others, the Supreme Court has interpreted the aforementioned expression 'incurred or authorised' as including within its scope expenses incurred by the political party..." etc.

Then see the next sentence:

"In view of the effect which such interpretation"—that is, the interpretation of Mr. Justice Bhagwati—

"might have, particularly with reference to candidates against whom election petitions are pending, it became urgently necessary to clarify the intention underlining the provisions contained in section 77....."

So, the Government themselves have come with an explanation that the whole purpose of this Bill is to give a reply in advance to the 180 cases already pending before the court. If a Bill comes on that basis, how are we prevented from referring to those

cases in individual as well as general terms? You cannot expect us merely to go into an academic or theoretical discussion whether there should be more money spent or less money spent. We will have to bring up a number of issues and implications involved precisely because the Minister has in his statement mentioned that he is anticipating some technical difficulties in those 180 cases, including that of the Prime Minister. So, we will have to refer to all the individual cases in detail and point out the implications and important issues involved.

श्री मधु लिम्बे (वाका) : उपाध्यक्ष महोदय, मेरी राय में इस में जो 352(2) नियम धाप के सामने रखा गया है वह बिल-कुल इर्रैलेबैंट है, इनएक्सीकेबिल है, यह लागू नहीं होता है। जब कोई साधारण नियम होता है और दूसरा एक विशेष नियम होता है तो साधारण नियम हट जाता है और विशेष नियम धा जाता है। जैसे धाज कल तीन-चार रोज से हम लोग प्रिवलेज नोटिस पर बहस कर रहे हैं, उस में मारे ऐसे तथ्यों की चर्चा हो रही है जो इस वक्त तिस-हवारी अदालत में विचाराधीन हैं। तो हम लोग क्यों चर्चा कर रहे हैं, क्योंकि प्रिवलेज का मामला धायेगा तो यह जैनरल कल लागू नहीं होगा। इस लिये जरा हम लोग बीच-समझ कर क्लज माइट करें।

उपाध्यक्ष महोदय, प्रधान मंत्री जी ने इस लोचों को कह दिया है कि किसी न किसी तरह से क्लज को पढो। ये लोग क्लज रट कर धाते हैं और जब बहस होने लगती है तो क्लज को कौट करने लगते हैं। धब दूसरी धारणा यह है . . .

MR. DEPUTY-SPEAKER: Please repeat your first submission. I was just looking into a book.

श्री मधु लिम्बे : मैंने यह कहा है कि प्रधान मंत्री जी ने इन लोचों को यह कहा

है कि जब हम लोग बोलें तो एक-के-बाद-एक क्लज साइट करते जायें, उस के रिलेवंस और एम्प्लीकेबिलिटी के लिये कुछ मत लोचों।

The point that I made was this that when there is a general rule and there is a special rule. . .

MR. DEPUTY-SPEAKER: What is the special rule here?

श्री मधु लिम्बे : जैसा मैंने कहा कि प्रिवलेज पर धाज हम लागू क.छ दिना में चर्चा कर रहे हैं। हम ऐसे तथ्यों पर, फीक्ट्स पर, चर्चा कर रहे हैं जो तुलमांहन गम के केस में तीम हजागी अदालत में विचाराधीन है।

SHRI SHYAMNANDAN MISHRA: The hon Minister of Railways has referred in his statement to the letter and stated that it was a forged letter. It was nobody's business to say at that stage that the letter, namely, the representation that had been made by the MPs, that was a forged representation. But he thought it proper to say that it is a forged document even in the privilege matter.

श्री मधु लिम्बे : इसी तरह विधेयकों के बारे में भी क्लज हैं, इन पर कोई सबजुडिस का नियम नहीं धाता है। इस लिये नहीं धाता है—क्योंकि यह विधेयक ही अदालत के जजमेंट को खत्म करने के लिये लाया गया है। जैसे धाप ने फीक्ट्स को कौट किया—कबरलास गुप्ता बनाम धमरनाथ पावला, उसी तरह से धाप ने डी० पी० मिश्र के केस को कौट किया। इस लिये फीक्ट्स पर चर्चा हो सकती है, क्योंकि सुप्रीम कोर्ट के निर्णय को बदलने के लिये, खत्म करने के लिये ही धाप यह विधेयक लाये हैं। जब इस विधेयक पर चर्चा होती तो इस वक्त जो 180 पेंटीकलज हैं उनके तथ्यों की चर्चा भी यहाँ धायेगी। फिर लिये ? इसलिए कि धपने मुझों के समर्थन के लिये। धाप सबजुडिस के नियम के धाधार

[बी अशु लिखये]

पर इतनी बड़ी बहस को सीमित या रैस्ट्रिक्ट नहीं कर सकते।

अब मैं जानना चाहता हूँ—क्या गोखले साहब का इस विधेयक के ऊपर विचार करने के लिये प्रस्ताव रखने की इजाजत दी जा सकती है? मेरी राय में इन को इजाजत नहीं दी जा सकती। श्याम बाबू को तो तो इस लिये दी गई कि उन्होंने विरोध किया है। अब इस बिल के बारे में आप इन के आब्जर्वेट्स एण्ड रीजन्स को देखिये

The whole statement is dishonest from A to Z.

मैं जान कर ऐसा कह रहा हूँ—मैं मंत्री को नहीं कह रहा हूँ, मैं स्टेटमेंट को कह रहा हूँ .

श्री राम सहाय बाबू: (राजनन्द गांव) स्टेटमेंट तो निजी है।

श्री अशु लिखये इसी लिये कह रहा हूँ कि यह डिस-ओनेस्ट है। अब मैं आप का ध्यान पैरा 2 की तरफ खीचना चाहता हूँ। इसमें ये कहते हैं—

"The expression "incurred or authorised" had not been construed so as to bring within its purview the expenditure incurred by a political party in its campaign or by any person other than the candidate unless incurred by such third person as the candidate's agent."

इस तरह से तो श्रीबोराइज्ड एक्सपेंडिचर हवा में उड़ गया। उपाध्यक्ष महोदय, कौन सा भय किया है? इन्कंड एक्सपेंडिचर का भाष्य किया, लेकिन श्रीबोराइज्ड एक्सपेंडिचर का क्या हुआ—इस की चर्चा ये नहीं कर रहे हैं। उसी तरह से पैरा 3 में भी यही कोट करते हैं, श्रीबोराइज्ड एक्सपेंडिचर की चर्चा नहीं करते हैं।

अब मेरा मुख्य मुद्दा है—यह विधेयक क्या है? यह एक्सपेंडिचर के अलावा और कुछ

नहीं है। एक्सपेंडिचर के बारे में मेरा आप से यह सवाल है—आप डिफरन्सी लीजिये, लीजिये डिफरन्सी लीजिये—क्या यह कहना है कि होता क्या है?

On the facts of each case and the evidence adduced in a court of law, the Supreme Court decides whether the expenditure is authorised.

यह होता है। अब मैं आप से यह जानना चाहता हूँ—क्या स्पष्टीकरण (एक्सप्लेनशन) जो बिल दफा है, मूल संकलन है, क्या उस को निगेट कर सकता है?

श्री श्यामलाल मिश्र यही हम ने उठाया है।

श्री अशु लिखये इसी लिये मैं प्वाइन्ट ऑफ ऑर्डर उठा रहा हूँ—यह पूरा डिस-ओनेस्ट है, अन-ऑथॉराइज्ड है, असंबंधित है, असदभावपूर्ण है, बेमानी से भरा हुआ है, मालाकाहूड है, मोटिवेटेड है। इस लिये इन को अगल ईमानदारी में काम करना है तो आप इन से कहिये—यह बिल वापस लेने...

श्री जनेश्वर मिश्र. री-इंफट कर के लए।

श्री अशु लिखये री-इंफट किस तरह से हो—आप संकलन को बदलिये, दूसरे संकलन से इस को सबस्टीचूट कीजिये। यह टिकरी क्या है? यह लो प्रोर मीन टिकरी है। इस तरह से सब्दों का कोई अर्थ ही नहीं रहना मान लीजिये—कॉस्टीकेशन में लिखा है—Equality before law and equal protection of law.

क्या आप एक्सप्लेनशन में यह लिखेंगे कि इन के यह मायने होंगे कि सरकार कर्नालिस सभी लोगों को डिमाई करेगी। एक्सप्लेनशन में जो चीज संदिग्ध है उस को आप साफ कर सकते हैं, जो एम्बालुअंस है उस को स्पष्ट कर सकते हैं, लेकिन स्पष्टीकरण के द्वारा क्या है आप बिल द्वारा को साफ



सकते हैं निवेदिष कर सकते हैं—मैं इस के बारे में आप का स्पष्ट क्लियर चाहता हूँ ।

मैं इस के समानान्तर एक बात और कहना चाहता हूँ—जब हम लोग प्रेजिडेंट्स वेंते हैं तो आप निवेदिष प्रेजिडेंट्स नहीं मानते थे। आप कहते हैं—नहीं, आप खिलाफ बोल सकते हैं, खिलाफ बोट दे सकते हैं। तो इन को कहना चाहिये था—डिलीट विस या उन की प्रोग्राम कोई क्लोज़ कराना चाहते थे तो जायें, लेकिन स्पेसिफिकेशन के जरिये मूल धारा ११ जो प्राथम है उस को आप बदल नहीं सकते ।

धर्मी मंत्रिम पर मैं नहीं जाऊंगा, जब जब भाषण दूंगा तब बोलूंगा। उस वकन मैं कह रहा हूँ कि यह एक फोइलेंट और डिम-ग्रान्सेट बिल है। और इनकी प्रोग्राम हिम्मत है तो पूरा मेकेशन ७७ (१) बदले और उस पर नया विधेयक लाये। यह बाई तरीका नहीं है। क्या गवर्नमेन्शन ने क्लियर मूल धारा को निगादिष किया जा सकता है? जिस तरह गवर्नमेन्शन के जरिये मूल धारा का निवेदिष नहीं किया जा सकता है उसी तरह प्रेजिडेंट्स के जरिये मूल धारा को निवेदिष नहीं किया जा सकता। मैं इस पर आप का क्लियर चाहता हूँ ।

16 hrs.

श्री एच० के० एल० भगत क्या क्लोज़ का नहीं बदल सकते यह आप का कहना है?

श्री जयू लियये मैं ये नहीं कहा कि क्लोज़ को नहीं बदला सकते। आप प्रेजिडेंट बिल लाइये इस को पूरी तरह बदलिये ।

SHRI SHYAMNANDAN MISHRA  
 Mr. Deputy-Speaker, there are two points for your consideration. One is that, since this Bill seeks to protect the persons involved in 180 cases which are pending now before courts of law, whether it would not be in order for any Member to refer to what is contained in 180 cases which this Bill seeks to protect. After all,

these 180 cases form the basis for a measure of this kind. Therefore, you should consider whether it would not be in order,—although I have not referred to pending cases, this is a point which occurs to me .

श्री जयू लियये यह जो 180 केस हैं क्या आप को यह जानकारी है कि सब-इंक्लूजन एक्सपोजेज के है? मेरी जानकारी के आधार पर मैं कह सकता हूँ कि प्रधन मंत्री के बेटे के क्लोज़ कराने की है। He should give the details. He cannot mislead the House

SHRI SHYAMNANDAN MISHRA  
 My respectful submission is that one will have to go

MR DEPUTY-SPEAKER Attendance of convenience.

श्री जयू लियये मैं तो किसी भा भाषणी के मामले की लीड करना हूँ चाह स्टीफन साहब हो या माननीय प० ग्रा० दाम मन्त्री ।

MR DEPUTY-SPEAKER The points are getting more interesting now

SHRI SHYAMNANDAN MISHRA  
 If the solicitude that lies at the basis of this measure relates to the 180 cases, then one will have to go into the contents of those 180 cases. Or, the Government may be well advised not to bring up a measure of this kind if it does not want those cases to be referred to. If the contention of the hon Law Minister is that the basis for this measure is those 180 cases which might be affected if no such Ordinance were passed or if no such measure were passed, then the hon Members would be quite in order to refer to those cases. That is one thing for you to consider whether you would allow this measure to be discussed and if so whether you would not permit members to go into the basis of this measure, in other words to go into the contents of those 180 cases.

[Shri Shyamandan Mishra]

Secondly, it seeks to amend section 77 of the Representation of the People Act. There you have to consider whether an Amendment in the form of an explanation negating the substantive provision could be permitted to be moved. If the substantive provision is allowed to remain, can you take away the content of the substantive provision by bringing in explanations which run counter to it? That is another thing which the Chair will have to consider. My humble submission is that, since the original section did not contain any explanation, it is none of the business of this Government to add explanations to it and reduce the original section 77 to a nullity. Therefore, this Amendment is not in order

SHRI H. R. GOKHALE: I may make a brief submission only with regard to these points.

The first thing to remember is that there is a distinction between the doctrine of *sub judice* not applying to legislation and of the doctrine applying to merits of individual cases which are pending decision in a court of law. It is well established and I hope my hon. friend Shri Madhu Limaye will also concede—if it is necessary to substantiate it, I will do so—that the theory that legislation cannot be undertaken because there are certain cases pending, has been negated repeatedly and Parliaments were to legislate. . .

SHRI SHYAMNANDAN MISHRA: Nobody has contested that.

SHRI H. R. GOKHALE: Mr. Mishra, I am making my point. Therefore, the ground that as there are petitions pending or appeals pending in course, any legislation will have the effect of being *sub judice*, has no substance. That is one point. . . (Interruptions).

I thought hon. Mr. Mishra took a very reasonable attitude in his main

speech and he rightly did not refer to any pending cases. In fact, he said that he would not refer to any pending cases and that he would refer to the general propositions arising out of the main points with which the Bill is concerned. That is what he said. . . (Interruptions). I am saying that he has had a choice and he made that choice when he spoke in the beginning. Therefore, what I was referring to was. . .

SHRI SHYAMNANDAN MISHRA: What did you say about me?

SHRI H. R. GOKHALE: If you kindly hear me, then, I will be able to tell you . . .

PROF. MADHU DANAVATE (Rajapur): He did not say anything derogatory.

SHRI H. R. GOKHALE: At that time, he did not say anything with regard to the merits of any case. You referred to what you thought were the merits and the demerits of this ordinance and as to why, according to you, this ordinance should not be approved. I fully appreciate and understand that and I submit that was the correct attitude to take.

Now, if legislation is not *sub judice*, as it is said that it is nobody's case, then, the question arises, whether in respect of a discussion with regard to legislation it is likely to affect cases which are pending in courts, as it is said that it might affect a number of petitions and appeals which are pending in the courts. . .

SHRI MADHU LIMAYE: Who said it?

SHRI H. R. GOKHALE: I have said it and I will substantiate it.

SHRI MADHU LIMAYE: So many cases are pending.

**SHRI H. R. GOKHALE:** It is wrong to say that there is only one case in which this question has arisen. . .

**SHRI MADHU LIMAYE:** How many cases are pending?

**SHRI H. R. GOKHALE:** I am not replying to the main debate. At the moment, I may tell the hon. Member that I will give him figures to show as to how many cases in which the question of election expenses is involved are pending in the Supreme Court. I can tell that at the moment.

**SHRI SHYAMNANDAN MISHRA:** None of them has moved for protection.

**SHRI H. R. GOKHALE:** I am dealing with one point and you are referring to something else.

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

A reference was made to what I was supposed to have said in the Press discussion. I did not refer to the merits of any single case. I only mentioned the fact as to how many petitions were pending. Nobody can prevent anybody from saying. . . (Interrupted). It is a statement of fact that petitions are pending. To say that is one thing and it is another thing to say that I will pick out a particular petition—I am not referring to any particular petition—any petition, for that matter, and then discuss the merits of that petition. . .

**AN HON. MEMBER:** Here it is.

**SHRI H. R. GOKHALE:** . . . so that the discussion of the merits of that petition will affect the fair trial of that case. That is a very different matter. They can certainly say that so many cases are pending. If they

want to contradict me, they can do so and say that so many are not pending. That is a different matter. But the fact is that in view of the judgment of the Supreme Court, it was thought necessary that cases which are pending and in which this question has arisen, ought to be covered by an ordinance to bring the true effect to what we thought was the intention of the legislature.

This is not the first time that this has been done. Legislation has been passed by this Parliament, by other legislatures many times on occasions when, as a result of the judgments of the judiciary, it has become necessary. . .

**SHRI SHYAMNANDAN MISHRA:** There is no dispute about it.

**SHRI H. R. GOKHALE:** It has become necessary to set at right or at rest any doubt which might have arisen with regard to the true intention of the Parliament or of the legislature. Now, if this Parliament approved this Bill, then it will mean that the Parliament approves of the fact that the intention of the legislature was this. Therefore, my submission is that there is no question of any discussion with regard to the merits or demerits, the facts etc. or questions arising in any particular case.

The last point which was raised by Shri Madhu Limaye was with regard to the Explanation. First of all, I do not understand how this can be a matter of preliminary objection at all because I am astounded to hear that this goes to the root of Parliament's competence to discuss a Bill like that. In the course of discussion the Members will be entitled to say this cannot be done—although I do not admit that this cannot be done—but you will be entitled to say that this cannot be done.

Finally, I would say the whole argument proceeded on the assumption

[Shri H. R. Gokhale]

that there is contradiction between the Explanation and the main Section, it is as it were to negative the main Section that the Explanation has been given. This, I submit, is not correct. The purpose of the Explanation *inter alia* is to clarify what is the intent of the main provisions. That is the purpose for which Explanation has been given. There is nothing contradictory so far as the Explanation in the proposed Bill and the original Section is concerned. I submit these questions cannot arise at any rate at this stage. There is no rule. There is rule in respect of introduction of the Bill but there is no rule in respect of motion for consideration. I am putting it on the ground that these objections have been raised and, I believe, the consideration of the Bill should go on.

श्री मधु लिमाये : एकमन्वेेशन के बारे में उन्होंने जो कहा उस पर मैं नहीं बोलूंगा लेकिन स्कोप आफ डिस्कशन सब जुडिम के बारे में एक बात में कहना चाहता हूँ— (इंटरप्रांज) आप कलिंग द ग्रेट हैं इसलिए मैं कह रहा हूँ। उन्होंने एक पॉइंट और एक प्राउंड मैगन किया है इन रिलेशन टू पेंडिंग केसिस— (इंटरप्रांज) मैं गौर में सुनना चाहता था इसलिए मैंने इनको मना कर दिया था कि टोकें नहीं। एक प्राउंड आप बिल के समर्थन में देंगे

There are several petitions which have taken the ground of excessive expenditure.

तो हम लोगों को भी अपने बत्तीलों के पक्ष में सब अदर रेकॉर्ड एंड आर रेलेबेंट देने का अधिकार है। आप डिस्क्रिमिनेट नहीं कर सकते हैं वे अपने मतलब के लिए एक पॉइंट क्लेई और हम अपने मतलब के लिए दूसरे पॉइंट्स नहीं कहेंगे विच आर रेलेबेंट ? मैं इसके भाष्य का स्वागत करता हूँ। उन्होंने एक लम्ब और एक प्राउंड का इस्तेमाल किया है अपने विधेयक के समर्थन में तो हम लोगों को ऐसे लम्बों और प्राउंडों

को सामने लाने की छूट निश्चयी बाँधने जिससे हमारी बात साबित हो जाए पॉसिबिलिटी। इस में डिस्क्रिमिनेशन नहीं होना चाहिये। बोध आर पॉइंट्स।

SHRI H. K. L. BHAGAT: Reference to a general situation in the context in which certain legislation is brought is one thing and commenting on the individual cases is another thing. Every legislation has a certain background. The Law Minister has mentioned its background. The Law Minister has mentioned the general situation that various cases are pending and this will apply to all cases which are pending. This is a reference to a general situation which is quite different from commenting on individual cases.

SHRI MADHU LIMAYE: I do not want him to restrict the scope of the discussion

MR DEPUTY-SPEAKER: I would not give my ruling so easily. I would like first to understand what are the issues.

Now, I would like to understand very clearly about the issues involved. We are discussing certain points of order. I completely agree with the Minister that there cannot be any objection to a Bill at the stage of consideration. But, since the name of the hon Member, Shri Janeshwar Mishra is mentioned here, I thought he wanted to raise a point. This is already on the order paper. I thought that some sort of decision has been arrived at. It is none of my duty to comment on what has been agreed to. That is why I have allowed him to raise his point. Now I see from the submissions made by different Members that there are two issues on which perhaps the Chair is expected to give a ruling—one is whether a discussion on this Bill should preclude reference to the pending cases in various courts. That is one submission that is made. This is regarding the cases that are before

the court. That is the question posed. I do not know who made this another point. I think it was Mr. Banerjee who made this point whether we can even make a reference to the case of Shri Chawla because a review petition is pending. These are the two questions which were posed. Let the Law Minister give some authoritative information about that.

**SHRI H. R. GOKHALE:** Mr. Chawla's review petition had been filed in the court. I do not know whether it has yet been admitted.

**MR. DEPUTY-SPEAKER:** These are the only two questions as far I am concerned. Mr. Limaye has also made another point. I did not refer to it because I do not think this is the point of order. I thought that this is regarding the merit of the Bill. It is for this House to decide. It has nothing to do with the points of order.

Now, even if we sit for two weeks, we cannot go into all the 180 cases. The third point is regarding the merit of the Bill. That is why I did not pay attention to it. The point here is that if, suppose, the Chair rules that this Bill does not bar reference to the different cases or the facts of the different cases in different courts, then, of course, the discussion takes a different turn with different complications. I am saying that it is very vital. But the case of Shri Chawla is peripheral and we need not go into it.

Let me first state what are the accepted practices. One of the accepted practices is that we do not discuss the merits or the facts of any case that is pending before the court. This is one of the accepted practices.

**SHRI MADHU LIMAYE:** That is in relation to the Bill.

**MR. DEPUTY-SPEAKER:** I am coming to that. I will come to this Bill and that is why I am giving

great importance to the points you are making. This is one of the accepted practices. We do not, because it is *sub judice*. Another is that the law making power of this House is un-fettered. Whatever be the case, the merits of the case, Parliament can make any law.

**SHRI N. K. P. SALVE:** Subject to Constitutional provisions.

**MR. DEPUTY-SPEAKER:** Naturally. You can even make an unconstitutional law. It is for the Supreme Court to decide, whether it is constitutional or unconstitutional. Your right is un-fettered. But, we are expected to take all these into consideration. Even hypothetically, if you make such a law and you will be taken care of by the Supreme Court or the High Courts. That is a different matter. Therefore, the question of *sub judice* does not stand in the way of law making here. These are the two things. But, here, I think we are dealing with a situation that is rather unusual. I would like. . .

**SHRI INDRAJIT GUPTA:** Be very cautious.

**MR. DEPUTY-SPEAKER:** I am very cautious. I know.

**SHRI INDRAJIT GUPTA:** Don't rush in.

**MR. DEPUTY-SPEAKER:** I do not rush in. I am not a fool to rush in where angels fear to tread. But, here is a very ticklish issue, because as the Members had said and I think I have also once heard and saw—I do not know whether I should say the word 'beautiful'—the attractive face of our Law Minister on the Television. . .

**SHRI MADHU LIMAYE:** Why do you hear the radio and see the television?

**MR. DEPUTY-SPEAKER:** I saw the television. When the Ordinance

[Mr. Deputy-Speaker]

was promulgated, soon after that, he went on television and Members also had referred to it. When he was of my age, he would have been a very good looking young man. Now, the Members had also mentioned that the whole purpose of this Ordinance and the Bill now is to give protection to various Members of Parliament and Members of the Assemblies against whom there are election petitions.

**SHRI MADHU LIMAYE:** Protection from the judgement of the Court?

**MR. DEPUTY-SPEAKER:** Whatever it is, against whom there are election petitions in various Courts. This is the basic thing. This is what the Members are saying.

**SHRI SAMAR GUHA:** Protection from Parliament.

**MR. DEPUTY-SPEAKER:** I fully agree with the Minister. Once this House in the exercise of its legislative power makes a law or brings out clearly the intention of that law, Courts are expected to interpret or to act according to that law. Once we pass this, they will have to go by that. Here, it is said that these various cases are pending and that is why to give protection to that, we have.

**SHRI MADHU LIMAYE:** Protection from what?

**MR. DEPUTY-SPEAKER:** From the effect of the judgement. That is the purpose. I think the Minister also agrees there. He said that this has always been the intention that a case like this should not be considered as an excessive expenditure.

**SHRI MADHU LIMAYE:** That is his opinion.

**MR. DEPUTY-SPEAKER:** He comes before this House to make that very clear and to lay down the law so that there is no confusion in future. It is quite proper. When it is so, the

question that arises is whether there are various cases to which the Minister has referred need this kind of protection and if they need this protection. . .

**SHRI N. K. P. SALVE:** What protection?

**MR. DEPUTY-SPEAKER:** Protection of this Bill and of the Ordinance, the Ordinance and now the Bill. The whole purpose is for that.

**SHRI N. K. P. SALVE:** The purpose is to supersede the Supreme Court judgement?

**MR. DEPUTY-SPEAKER:** I did not say that the purpose is to supersede the Supreme Court. The point is to make the intention of the law very clear so that the Supreme Court may not have any doubt about it. I think that is the point.

Now if it is to protect these various members, he will help me in deciding whether we can stop there without asking the question whether they really need this or they do not really need this. This is my difficulty. I find it very difficult to give my ruling. As I said, it is rather a difficult point which has to be considered very very carefully and I cannot give my ruling offhand in this matter unless the Minister can help me further.

**SHRI MADHU LIMAYE:** Unless you hear our speeches.

**SHRI INDRAJIT GUPTA:** I am just trying to understand what you are saying. Can this question which you have formulated at the end of your observation whether the persons involved in these cases actually need this protection or not be answered without going into the facts of the cases?

**SHRI SHYAMNANDAN MISHRA:** That is the point.

**SHRI INDRAJIT GUPTA:** That question has been raised. We have

decided it. You have not held anything about it as to whether in the course of this debate members should or should not be permitted to go into the facts of these cases. But the point is that unless these cases are gone into, the question you have formulated just now cannot be answered.

AN HON. MEMBER: Yes.

SHRI INDRAJIT GUPTA: What are we to do?

MR. DEPUTY-SPEAKER: I do not know.

SHRI INDRAJIT GUPTA: You have to make up your mind on this.

SHRI MADHU LIMAYE: After hearing our speeches, you have to decide whether it is relevant or not. Only the rule of relevance should prevail.

SHRI C. M. STEPHEN (Muvattapuzha): To say that this Bill has a limited purpose with respect to the cases now pending is not factually or legally correct. This is a law sought to be put on the statute book. It will have two effects. One is the effect on the cases now pending, the other on cases which may be coming hereafter—it is a general law being formulated.

There are two types of cases. One aimed at the particular issue formulated by you may be relevant. But here is an amendment of the ejection law which will have effect not only today but tomorrow, for all time to come. It will have certain statutory effects, the statutory effect will certainly be on those cases which are now pending also. That is all. But this is not the only or main purpose—that is a side effect. For future cases also, it has an effect.

My submission, therefore, is that it is the principle we are grappling with. If the purpose of the Bill, apart from the principle, is only to protect the cases now pending against the effect of the Supreme Court judgment, then

the question you postulated may be relevant; not conceding that it is irrelevant, it may become relevant. But when a law is enacted, it has some effect. What it says is that certain cases will not have this protection but certain cases will certainly have protection. Therefore, in discussing that, the question as to whether these need protection need not be gone into at all.

SHRI MADHU LIMAYE: Why not?

SHRI C. M. STEPHEN: Because the purpose is not to protect. If the effect of the law is such as will give protection, those cases will be protected.

SHRI MADHU LIMAYE: Read the statement of objects and reasons.

SHRI C. M. STEPHEN: If the effect of the law is that they will not get protection, they will not get protection.

SHRI SAMAR GUHA: The statement of objects and reasons is categorical.

SHRI C. M. STEPHEN: That is why I said two types of law are possible. If specifically it is mentioned in the law that such and such judgment will be annulled or such and such cases pending will get such and such protection or such and such law which has been invalidated will be put in the schedule of the Constitution, if these things are done, then the facts with respect to these cases will have to be considered. The Minister might have made a statement that these cases are also pending. But my submission is that the law is an amendment to the election law completely. Therefore, let us forget the fact of some cases pending, what facts are there. Even if they are not getting protection, still the law will have to come into effect all the same. Therefore the facts of the cases are absolutely irrelevant and cannot be gone into. They are not before the House. Rule 75 says what should be discussed at this stage: "On a motion referred to in rule 74 being made the principle of the Bill and its provision

[Shri C. M. Stephen]

may be discussed generally but the details of the Bill shall not be discussed further than is necessary to explain its principle." What we are now concerned with is only the principle of the Bill, not its application with respect to cases pending or which may be coming up. What we are now competent to discuss is only the principle of the Bill, nothing more than that.... (Interruptions.) The question is whether for the purpose of discussing the principles of the Bill certain facts with respect to cases pending should be adverted to or not, whether advertng to the facts of cases pending is absolutely necessary or relevant. My submission is that the principle of the Bill can be completely and exhaustively discussed without referring to the facts pending judicial decision. My two arguments are: What you are entitled to discuss at this stage is only the principle, and secondly for the purpose of discussing the principle of a Bill the facts of the cases which may be pending are unnecessary and irrelevant, therefore they need not be adverted to.

**SHRI MADHU LIMAYE:** If the discussion of the general principle requires certain facts to be adduced in support?

**SHRI C M STEPHEN:** Mr. Limaye is going into relevancy and permissibility. Relevancy is circumscribed by certain rules of procedure. Something may be relevant. But there are certain rules of procedure which say: thus far and no further, even if relevant. Rule 352(1) says that a Member while speaking shall not refer to any matter of fact on which a judicial decision is pending. There is a distinction to be drawn between cases pending and facts pending judicial decision. You may generally refer to cases but you cannot refer to facts pending judicial decision. The rule of relevancy is a mandatory provision. I have already submitted that it is not relevant. But even if it is relevant it cannot over-rule the mandatory prohibition in rule 352(1).

My friend Mr. Limaye says: what about the privileges. The Constitution contemplates two types of things; one is the rules of procedure. The other is the rights and privileges of Members of Parliament. Article 118 covers the Rules of procedure. Rules of Procedure have been framed and they have been codified and they are binding on us, and therefore we do not look up to the British Parliament in this matter. With respect to the privileges there is article 105(3) in our Constitution and that applies to our privileges

"In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of the House of Commons of the Parliament of United Kingdom, and of its members and committees, at the commencement of this Constitution"

So, the rules of procedure are framed here and the House of Commons does not come in. But about privileges, we have advisedly refused to frame the law and we are being governed by the precedents of the House of Commons, according to which where the jurisdiction of the House comes, the magistrate's court does not come in and the sub judice rule does not apply. Therefore, privilege matters are not subject to sub judice. This is not a privilege motion. This is procedural. Under rule 352(1), the principle alone can be discussed without reference to the facts of any case. When you discuss the principle, you are governed by the rules of relevancy one of which, i.e. rule 352(1) says that you shall not refer to any fact which is pending judicial decision. You should not permit any irrelevant or unnecessary reference to be made.

**SHRI N. K. P. SALVE (Betul):** Sir, the objection compendiously is that a meaningful debate on the Bill is not possible unless facts of sub judice



matters are referred to. I shall show you precedents on this point and the ruling given by the Chair where a similar situation arose and a member raised an objection that a particular motion could not be debated without referring to certain matters which were pending in High Courts and the Supreme Court. The Speaker ruled that the motion nonetheless would be debated excepting that the facts shall not be referred to. Actually, no facts involved in any case are at all germane to the consideration of this Bill at all. What is the object of this Bill? The object of this Bill is to restore the law to its position *status quo ante* *Kanwar Lal Gupta vs. Amar Nath Chawla's* case, the postulates of section 77 as it was intended and understood before this judgment was rendered by the Supreme Court was sought to be restored, no more and no less. The facts of each case would remain what they are; they would continue, they are unaltered, so far as this law is concerned, whether this law is made or not made. All that we are seeking to do is, on a principle, to take a decision, should it commend itself to this House to pass this Bill, that section 77 will not include party expenses. That was the clear view of the Supreme Court also in *Boddepalli Rajagopala Rao vs. N. G. Ranga AIR. 1971-7SC267*, where in terms it has been stated—and this case has not been considered in *Amar Nath Chawla's* case—

"Expenditure, if any, incurred by the party which sponsored the candidature of the candidate cannot be taken into account for the purposes of determining whether the corrupt practice within the meaning of section 123(g) was committed by the candidate."

Therefore, the entire endeavour is to restore the law to the position at which it stood before this decision of the Supreme Court was rendered. Therefore, the basic premise on which the entire objection is founded, that this sort of reference to particular facts and cases is utterly indispensable,

is, I submit, utterly untenable, an argument, if I may call it, of despair, and possibly—I do not like to state that since Shri Madhu Limaye has gone away, at his back—I think it is very highly politically motivated. They want to bring in irrelevant matters, utterly matters unrelated to the principles involved in this. For this purpose, permission is being sought, and if that is so, such permission shall not be granted by the Chair. (Interruptions).

SHRI SAMAR GUHA: This Bill from A to Z is political.

SHRI N. K. P. SALVE: I am referring to the decision of the Speaker on an identical point He was in the same predicament as you are in today. And this is the precedent, at page 801 of Kaul and Shakhder, which reads thus:

"On September 26, 1955, after the Minister of Home Affairs had moved the motion for consideration of the Prize Competitions Bill, a member, on a point of order submitted that the subject-matter of the legislation being *sub judice*, the discussion on the motion should not be proceeded with."

The facts were on all fours on that point of order, as they are today.

"He argued that the subject-matter of the proposed legislation fell within entry 34 . . . of the State List and the validity of certain laws dealing with the same subject had been challenged in the High Court of Bombay. The High Court had upheld the contention of the petitioners against which the Bombay Government had gone up in appeal to the Supreme Court and the question whether the subject-matter fell within the State field was pending adjudication by the Supreme Court. While the matter was pending, the member contended, it would be difficult to have a real debate without reference to the matters which were *sub judice*."

[Shri N. K. P. Salve]

That is what is stated today.

"The Speaker ruled out the point of order and observed that the debate in the House could not prejudice the hearing of the appeal by the Supreme Court. The Speaker allowed the debate on the motion to proceed, with the only limitation that members should not refer to the facts of the particular case under appeal."

This is a precedent, an extremely healthy precedent. In view of the fact that under similar circumstances a decision of the Chair exists, I submit that there is absolutely no warrant at this juncture for both the points of order to allow or to grant permission to any Member to refer to any facts whatsoever of any particular case which is sub judice.

**SHRI SHYAMNANDAN MISHRA:**  
At the moment we are on the subject of what should be the scope of the discussion, within what ambit the discussion has to remain confined. May I draw your attention to the Statement of Objects and Reasons, particularly the sentence:

"In view of the effect which such interpretation might have particularly with reference to the candidates."

I want you to underline the word "particularly" here—

"against whom election petitions are pending, it became urgently necessary to clarify the intention underlying the provisions contained in section 77 of the Representation of the People Act, 1951, namely, that in computing the maximum amount under that section any expenditure incurred or authorised by any other person or body of persons or political parties should not be taken into account."

This is the real pivot of this Bill, particularly when it is given out as the

concrete intention. It is not mentioned in a vague way, it is the real concrete intention behind this measure. If this is the very basis, the foundation of this measure, would you not permit hon. Members to go into this very foundation?

Then, it has been urged by some hon. friends on the other side that we are at the consideration stage and, therefore, we have to remain confined to principles and we cannot go into the facts. May I submit to you that there are certain facts before the court which are public facts? I can get a copy of the affidavit, as that is public document. I can get the submissions made before the court. Those facts are really public things. There is nothing secret about them. Whether they will influence the judgment or not, that is another matter. If these facts are available to us and if we seek to present those facts before you so that you might consider whether this Bill is in order or this ought to have been presented or not, I think, that is perfectly a legitimate thing for us to do.

Only by using the word "facts", please be clear in your mind that you are now trying to impose a blanket ban which cannot be accepted because many facts are really available to us. Those facts can be obtained from court on fee, on an application and so on. Those facts cannot be barred from us. Do you really suggest that those facts can be barred from us? It cannot be. If I want the facts from the courts, they will be made available to us. How can you take objections to those facts being presented to the House? If those facts are really available to us by the courts, you cannot come in the way of presenting those facts before the House.

**SHRI NAWAL KISHORE SINHA**  
(Muzaffarpur): They are mere allegations, not facts.

**SHRI SHYAMNANDAN MISHRA:**  
Then, the facts would emerge after

the judgment. Why do you take objection to those things being mentioned? Wherefrom would we produce the facts? Would we produce the facts from our hats?

**SHRI JYOTIRMOY BOSU:** Let the Government circulate all the plaints in respect of 180 cases so that we are able to apply our mind and come prepared to discuss this Bill in a useful way.

**SHRI SHYAMNANDAN MISHRA:** So, my humble submission is that if this measure seeks to insulate, and that is the primary intention of this measure to insulate 180 cases from the effect of the recent Supreme Court Judgement, then this House will have to go into many aspects of 180 cases. It is the Government which has made the basis of this measure. It is not this House which has made the basis of this measure.

Sir, the hon. Minister, the Government, can accept the veiled woman as a bride. But this House cannot accept the veiled woman as a bride. If you say that we only touch the profile but not those cases, that we accept the injunction of the hon. Minister in this matter, upto what point to go, from what point to come back and all that, that cannot be accepted.

**MR. DEPUTY-SPEAKER:** Very colourful language that the Bill is a veiled women.

**SHRI SHYAMNANDAN MISHRA:** Once you permit yourself to use these very cases as the basis of this measure, you cannot prevent us from using the same cases as the basis for our argument.

**MR. DEPUTY-SPEAKER:** I am in a jam!

**SHRI N. K. P. SALVE:** The precedent is clear before you, Sir.

**MR. DEPUTY-SPEAKER:** If you have quoted that precedent, I must

have to go into the entire case and satisfy myself that it is on all fours with this.

**SHRI H. K. L. BHAGAT:** Sir, I would request you to kindly read the last paragraph, as a whole, of the Statement of Objects and Reasons with me.

I quote:

"However, in the recent case of Kanwar Lal Gupta vs. A. N. Chawla and others (Civil Appeal No. 1549 of 1972 decided on 3rd October, 1974), the Supreme Court has interpreted the aforementioned expression "incurred or authorised" as including within its scope expenses incurred by a political party or other person referred to above."

"In view of the effect which such interpretation might have..."

I lay emphasis on the expression 'might have'.

"In view of the effect which such interpretation might have particularly."

Again, I am emphasizing the word 'particularly'.

... "particularly with reference to the candidates against whom election petitions are pending..."

Now this is the operative part of the Statement of Objects and Reasons:

"...it became urgently necessary to clarify the intention underlying the provisions contained in section 77 of the Representation of the People Act, 1951, namely..."

This is the dominant intention of the Bill:

"...that in computing the maximum amount under that section, any expenditure incurred or authorised by any other person or body of persons or political parties should not be taken into account. As Parliament was not in session, the

[Shri H. K. L. Bhagat]

President promulgated on 19th October, 1974, the Representation of the People (Amendment) Ordinance, 1974."

If you read the whole paragraph, you will find that there is no scope for interpreting it differently. The main purpose of this Bill is to clarify the position of the law, principally and predominantly. Reference to the cases comes. But incidentally as I submitted, the expression here is 'might have'. It might have the effect or might not have the effect. Therefore, to say that this Bill is being brought predominantly or principally or primarily to protect any particular cases is totally wrong interpretation of the Objects and Reasons of this Bill. The main purpose is to enunciate the principle, to clarify the position of law. That is why the paragraph says:

...In view of the effect which such interpretation might have particularly with reference to the candidates...."

This is also for application to all future cases which might occur. Therefore, to put an interpretation that the Government has considered all those cases, has gone into the facts of the cases, is wrong. How can Government do that? The facts have to be established by courts. The facts will be found out by courts. Therefore, the predominant intention of this Bill is to clarify the position in principle, in law. It might have repercussions on the pending cases or it might not have. Every legislation that is brought forth into this House will have one repercussion or another on any other case irrespective of the fact whether in the statement of Objects and Reasons a general or incidental reference to it is made or not.

My hon. friend, Shri Shyamnandan Mishra, was giving a very interesting interpretation about facts. He says that they know the facts from the Press. The facts on which the court has to judicially determine are not yet

facts in the real sense of the term. Rules specifically say that the facts on which judicial verdict are pending are not actually facts. They may be allegations, they may be absolutely false allegations. You may treat them as facts, but the court may ultimately say that they are not facts.

Even with regard to privilege matters, though academically it can be said that, irrespective of the power of the court, where certain facts have to be ascertained which are common to a privilege motion and to a judicial determination, on which conclusions can be drawn by the Parliament or by the court, academically, theoretically, it could be said that the Parliament has the power. Yet, in fact, in practice, even in the Privileges Committee—I had been a member of the Privileges Committee—where the same facts have to be determined by the court of law and the same facts have to be determined by the Privileges Committee, the practice in the Privileges Committee has been not to start a parallel inquiry but to wait for the determination of the facts by court. Cases have been kept pending in the Privileges Committee, waiting for the court verdict. Therefore, my respectful submission is that where the object of the Bill is to protect the pending cases, the law is had. The object of the Bill is to lay down the law for future time which may affect pending cases or which may not affect pending cases and a reference to this comes only as a matter of incidence, as an incidental matter and which is rightly referred to as only an incidental reference. That is the major intention to clarify the principle as laid.

Now all these things they are bringing in obviously with political motives and to draw certain conclusions and for certain purposes. Therefore, my submission is to read that this Bill primarily intended to protect the pending cases would be wrong in the light of the submissions I have made.

**SHRI INDRAJIT GUPTA (Aizpore):**  
Unlike many hon. Members who have

been speaking, I am like you not a lawyer...

MR. DEPUTY-SPEAKER: We are in the same boat.

SHRI INDRAJIT GUPTA: I am referring to the question once again, with your permission. The question you have posed before the House at the end of your observations a little while ago, according to you, is: whether or not these pending petitions actually require the protection of this ordinance and Bill. Now, to that, I wish to add a supplementary question. How are we to be satisfied on this point? Who is to satisfy us on that? Somebody has to satisfy us. Simply this bald statement made in the Statement of Objects and Reasons will not suffice. Somebody has to satisfy us. We cannot just take, at the face value, an assertion made by the Government through the Law Minister. Therefore, it is obvious that when replying to this question, some information, some data have to be supplied by the Government. It has not been supplied so far. He says, 'When I reply at the end of the whole discussion. I will give certain facts'. But that should have come here first of all in the body of the Statement of Objects and Reasons.

Now, Sir, in that my difficulty is this, that, if out of these 180 cases, there are some, whether they are a few or many or if it is only one case, I do not know, in which the allegation...

SHRI JAGANNATH RAO JOSHI (Shajapur): One at least I know.

SHRI INDRAJIT GUPTA: ... is concerning excessive election expenditure, expenditure in excess of the prescribed ceiling, even if it is only one case, I suppose, Mr. Gokhale can come and say that since all these cases involve hon. Members, either of this House or of other Houses ...

SHRI SHYAMNANDAN MISHRA: Assemblies.

SHRI INDRAJIT GUPTA: As also the Houses in the States, he may argue that even if there is only one such case and if the other 179 cases rest on other pleas, not on the plea of excessive expenses, even then, since the rights of all members are equal, I am duty bound, in order to protect the rights of that one member, out of 180, to bring an ordinance like this. I am giving an extreme example because he has already stated that he could not give the exact figure, that there are a good number of cases pending, which deal with excessive expenses.

The point of principle involved seems to be that even if there is one case involving excessive expenditure, whether the Government has a right or not—I am not going into the merits, merits we will discuss later—to come forward with this type of legislation on the ground of protecting the right of that member. My difficulty is... (Interruptions) I would have understood if this ordinance was in terms of what is stated in the Statement of Objects and Reasons, and the Government had taken this step—because nobody likes ordinances in any case—and if the application of this ordinance had been specifically restricted to only pending petitions and the Government had said that as for the future, let us all sit down and have a discussion, we want to consult the Opposition what to do but for the time being, because these cases are pending and we want to protect them, we are having this ordinance which specifically states that its applicability extends only to the pending petitions, as for cases in the future we are not doing anything just now and we will sit with the Opposition as expeditiously as possible and have a discussion and take their views into consideration.

17 hrs.

SHRI SHYAMNANDAN MISHRA: That is in fact what the hon. Law Minister said to the Press that for future we are prepared to discuss this matter. We do not stand permanently for this view that this expenditure should not be included in the account

[Shri Shyamnandan Mishra]  
of expenditure of a particular candidate. For the future our mind is open on the subject. This is precisely what he had said to the Press.

(Interruptions)

**SHRI MADHU LIMAYE:** Would Mr. Mishra be satisfied if Mr. Gakhale says that on compassionate grounds the judgement should not apply to the Prime Minister?

**SHRI INDRAJIT GUPTA:** I would humbly submit the Chair will have to now squarely face this question. There is no way of avoiding it.

**MR. DEPUTY-SPEAKER:** You have put me in a square. I am a round peg in a square hole.

**SHRI INDRAJIT GUPTA:** As to whether it is possible to proceed with the consideration of this Bill in its present form until and unless the House is given satisfaction that really these pending petitions required protection—I do not mean by that as some friends seem to be suggesting here, I do not agree with them, that all the facts relating to all those petitions are to be discussed. (Interruptions).

**SHRI SHYAMNANDAN MISHRA:** My hon. friend must address himself to this question if the Government tries to influence the judgement of the court in the vital aspect; is it not the intention of the Government to influence the judgment of the court in 180 cases or say even 25 per cent of those cases in one vital aspect by this measure? Is it their intention to influence the court. That is the object.

**SHRI INDRAJIT GUPTA:** Anyway as far as those documents are concerned pertaining to those cases which are accessible documents and not secret documents, if any hon Member thinks that he can cull out something out of those vital documents which is relevant for the discussion, this is for the Chair to judge whether it is rele-

vant or not relevant. For the time being I am saying—I am finishing by posing this question—whether the consideration of this Bill can proceed without the Government giving some satisfaction to this House on the question whether these 180 cases really required protection or did not require protection. Nothing has been put before us except a bald statement or assertions contained in the Statement of Objects and Reasons.

**SHRI H. R. GOKHALE:** Sir, the question whether the House is satisfied or not is a question which the House will decide when the motion for consideration is put to the vote. It is not a question of some Members saying that they are not satisfied. It is not a legal point on which discussion of the consideration motion can be stopped. Even at the end of the discussion if the House comes to the conclusion on the material which is put before the House, if the House comes to the conclusion that on these facts it cannot be taken into consideration the House will vote it out.

At this stage, it cannot be stopped from being considered.

**SHRI SHYAMNANDAN MISHRA:** We are only seeking guidance with regard to the scope of the discussion; we are not trying to prevent the discussion. We are only seeking guidance from the Chair so far as the scope of the discussion is concerned; we are not preventing the discussion.

**SHRI H. R. GOKHALE:** You did not say that. But, it was said here that before some discussion, consideration cannot proceed. To that I was replying.

**SHRI S. M. BANERJEE (Kanpur):** Mr. Deputy-Speaker, Sir, it has been very ably argued by my hon. friend, Shri Indrajit Gupta just now and I would request you in this particular case not to rely on the legal wisdom of the hon. Law Minister because he is a party to it and he cannot be objective but he will always be subjective.

**MR. DEPUTY-SPEAKER:** I rely on him just as I rely on you. But, I make my own decision.

**SHRI S. M. BANERJEE:** I am not a legal luminary.

**MR. DEPUTY-SPEAKER:** Nor am I. I go by commonsense.

**SHRI S. M. BANERJEE:** What I say is that in this particular case, since the Law Minister is directly involved, I would request you to direct him—the Government—to call the Attorney General before the House. I am prepared to move an oral or even a written motion.....

**MR. DEPUTY-SPEAKER:** I shall come to that.

**SHRI S. M. BANERJEE:** Sir, I request you to direct the Government to summon the Attorney-General to come here. In this particular case—Shri Kanwarlal Gupta vs. Shri Amar Nath Chawla—Shri Chawla has already filed an injunction petition in the Supreme Court. And naturally, every election petition is likely to be discussed. I am going to quote that argument in the election petitions. I request you therefore to call the Attorney General to come and address the House. I shall move the motion.

**SHRI H. R. GOKHALE:** The narrow question is as to what should be the scope of the discussion. The question is not whether the consideration motion should be moved or not. Am I right in understanding this?

We may start the discussion on the consideration motion and, if, in the meanwhile, there are questions which are of such nature which require your ruling, you can give your ruling.

**SEVERAL HON. MEMBERS:** No, no.

**MR. DEPUTY-SPEAKER:** I am not giving my ruling. I am just trying to put it to you. Now the question is: whether, in course of discussion, Members can refer to the facts of any of

those 180 cases pending before the court. This is the question before me. Now, if we start the discussion—I have said it—there is nothing to stop it. The only point is about the scope, whether they can refer to the debts. This is a limited question. If I go by what the Minister says, we start the discussion. At this stage, I can neither stop nor permit members to make references to those cases.

At this stage, I can only say that either you proceed or leave the decision to the wisdom of the House. But, if anybody, at this stage, makes a reference, I cannot stop him and if I cannot stop him, I cannot stop others later on. That will be discriminatory.

**SHRI N. K. P. SALVE:** There are Members who are willing to speak, as Shri Shyamnandan Mishra spoke, with out reference to the cases. Those who can speak without reference to the cases may be called now. If it is not unnecessary filibustering, then, there are Members who can speak and who can effectively participate in the discussion of this Bill. Shri Shyamnandan Mishra made a very eloquent and fervent plea to the House objecting to the Ordinance. But, not a word, not a sentence was there in his speech which referred to the facts of any of the cases which are pending. My submission, Sir, is that until your ruling, you may be pleased to direct that the discussion should commence excepting that the Members should not refer to any of the facts until your ruling comes forth on this point.

**MR. DEPUTY-SPEAKER:** I think I was a little irresponsible even to say that the discussion will go on and leave it to the House, to the wisdom of the House. I think that is somewhat irresponsible for me. In a moment of weakness, I was trying to run away from my responsibility. Now, I think, I have to do my duty as long as I sit here. Let us be very clear. I am in a jam, not long jump. Let me put it to you, I am in a long jam. The scope of this Bill is to replace the Ordinance, and therefore,

[Mr. Deputy Speaker]

we have also to refer to the Ordinance. What is an Ordinance? An Ordinance is an extra-ordinary law made by the President when Parliament is not in Session because the circumstances are so urgent that this particular type of law is called for. I think that is clear. Now, in the Statement of reasons for this Ordinance, Government have said—I am referring to the reasons for this Ordinance—

“The Supreme Court in the recent case of Kanwar Lal Gupta vs. A. N. Chawla and others, had, however, given a wider interpretation to the expression ‘incurred or authorised’ so as to include within its scope expenses incurred not only by the candidate or his election agent, but also by a political party. There was every likelihood of such wide interpretation being followed in other election petition which were pending and in which the issue related to the question of incurring or authorising of expenditure at an election.”

They also further say:

“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 previous decisions of the courts, would have been exposed to the risk of their elections being set aside, which situation would undoubtedly have been unfair to such candidates. It became therefore, necessary to clarify the intention underlying the provisions contained in section 77 of the Representation of the People Act, 1951, namely, that in computing the maximum amount under that section any expenditure incurred or authorised by any other person or body of persons or political parties should not be taken into account.”

So I think it is very clear that the whole purpose of the Ordinance and the Bill is to protect the members of

this House or of the other Houses in this country from the effect of the Supreme Court judgement. We cannot get away from that.

Therefore, this question is very important whether—and this is the basis of this entire Ordinance and the Bill—members can be debarred from referring to these various cases and the facts thereto. Shri Salve has pointed out to me a certain case. I say I cannot give my opinion on that unless I study whether that particular Bill is the same like this. This is a very unusual Bill.

SHRI S. M. BANERJEE: The Law Minister wants us to discuss this without referring to those cases. It is just like the bikini suit where we can see everything but not what we want to see.

MR. DEPUTY-SPEAKER: People are tired of bikinis now.

SHRI N. K. P. SALVE: I may submit that you may rule that they refer to it.

SHRI MADHU LIMAYE: You cannot dictate. Once you say they cannot refer; now you say they can refer.

उपाध्यक्ष महोदय यह क्या तरीका चल रहा है कि हम लोग कांग्रेस पार्टी के सदस्यों की मेहरबानी पर रहें। आज मन्त्रों श्री स्टीफन पायंट और आर्चर पर खड़े हो गये। मैं ने कहा कि उनको भी पायंट और आर्चर उठाने दिया जाये, और हमें भी उठाने दिया जाये। तब कांग्रेस पार्टी के सदस्यों ने उनको बिठा दिया। इस पर कलिंग हो गया कि कोई पायंट और आर्चर नहीं उठेगा। अब तक कांग्रेस पार्टी के सदस्य धारण कर रहे थे कि सबजिस के हल के मुताबिक पेंडिंग केस का रिकॉर्ड नहीं होगा, केसज के रिकॉर्ड का रिकॉर्ड नहीं होगा। लेकिन अब वे कहते हैं कि उनको रिकॉर्ड कर सकते हैं। हम उनको मेहरबानी पर क्यों नहीं ले, और न ही रहना चाहते हैं।



मेरे दो मुझाव है, जिन पर आप और करबाएँ ।

एक तो यह है कि आप श्री बाबले को सविज्ञ बोझिए कि

"A summary of the grounds taken in the pending 180 cases be prepared by the Law Minister for cur edification and enlightenment".

SHRI C. M. STEPHEN (Muvathi-puzha): That is not before you.

SHRI MADHU LIMAYE: I am addressing the Chair.

उपाध्यक्ष महोदय, क्या आप न इस को नोट कराना है? क्या आप मुझे सुन रहे हैं? मेरा दूसरा मुद्दा यह है कि

"The Bill relates to a matter which involves nullifying a judgment of the Supreme Court".

SHRI C. M. STEPHEN: No.

SHRI MADHU LIMAYE: So I suggest that you leave it to the discussion of the Members. They will exercise restraint and they will mention only such facts as are relevant to their arguments.

SHRI DARBARA SINGH (Hoshiarpur): Absolutely wrong.

SHRI NAWAL KISHORE SHARMA (Dausa): You cannot do it. This is not possible.

श्री मधु लिमये : तब यह डीक्लेट प्रोसीड नहीं होगी I refuse to be dictated to by Congress members.

SHRI NAWAL KISHORE SHARMA: This is not to be done at your whims, at the whims of the Opposition or of the ruling party.

SHRI C. M. STEPHEN: You may start referring; we will object under the rules.

श्री मधु लिमये : मैं आप से कहना चाहता हूँ कि इस पर झगड़ा होगा। हम इस बात को मिट्ट करने के लिए कि यह बिल 180 लोगों के लिए नहीं, बल्कि केवल एक व्यक्ति के लिए, और प्रधान मंत्री के लिए, लाया गया है, हम 180 लोगों के प्राइमरी को बर्कोट करने में।

अगर मेरे इन मुझावों और इन कम्प्ले-मन्टों को आप और ये लोग मानेंगे तब तो ठीक है वरना मैं हल 109 के अन्तर्गत नोटिस दे चुका हूँ।

SHRI JYOTIRMOY BOSU: The question which has to be replied to through this Bill's debate is whether the 180 cases which have been afforded protection by the promulgation of the Ordinance deserve protection on their merits. Without that it is almost impossible to say a word in favour or against this Bill. The Law Minister should be directed immediately to produce the plaints together with affidavits, statements because the Rae Bareilly case is the most brilliant; I have got the affidavit and statements also; 32 jeeps ...

MR DEPUTY-SPEAKER: Do not go into all that.

SHRI JYOTIRMOY BOSU: I have not mentioned the case; there is no case before the Supreme Court or the High Court named as the Rae Bareilly case. The plaints, affidavits and statements have to be circulated to the Members and adequate time has to be given so that we are able to apply our mind.

SHRI DARBARA SINGH: You put in a motion to the House.

SHRI JYOTIRMOY BOSU: All right; I will put in a motion, under the same rule under which Shri Raghunath Ramiah does, that the House hereby decides

[Shri Jyotirmoy Bosu]

that the complaints, together with affidavits, and statements be circulated to the House and sufficient times be given to the Members of the House for making a thorough study so that they are able to come to their own judgement whether the ordinance has nullified the Supreme Court judgement and gone out of the way to afford protection to the persons who have been accused... (Interruptions). All right, defendants or respondents. I am not a lawyer. Only then could the moot question be decided whether the 180 cases deserve protection on their merit or not. That is the moot question. So it should be circulated; the time should be given and then only we can discuss; then only the Bill could come before the House for discussion.

SHRI P. G. MAVALANKAR (Ahmedabad): I must say, Mr. Deputy-Speaker, that it is rather extra-ordinary for Mr. Stephen to get up and suggest to the House that they had consulted among themselves and also they consulted the Minister.

SHRI C. M. STEPHEN: I did not say that at all.

SHRI P. G. MAVALANKAR: I beg your pardon; some senior Member from the Congress Party got up and suggested after some apparent consultations with the Minister and among themselves and asked you to give a certain ruling.

MR. DEPUTY-SPEAKER: They can always make suggestion.

SHRI C. M. STEPHEN: I must straightaway say that he had made two allegations: consultation and submission. I do want to say here and now that there were no consultations. There was no submission to the Chair. We said: let anybody make a reference and we will object under the rules.

MR. DEPUTY-SPEAKER: Let us have things clear. At one stage Mr. Salve did get up and say: you may rule that reference may be allowed; he said that. I hope that has gone on record. I have taken note of that too.

SHRI P. G. MAVALANKAR: I also saw some movement going on. Let not the Government depend on the opposition's mercy and vice versa. Let us go by rules and conventions: Mr. Salve quoted the Speaker's ruling in 1955. We do not know at this stage what was the precise nature of that Bill and what were the implications of that Bill. Without studying them, how can we compare the two? I have some compromise formula for your consideration. If you say merely, "Let the debate continue. If somebody says something irrelevant, the Chair will stop him" that will be very difficult because many things would have gone on record by then. Before you ask a member to sit down, there will be a lot of noise from either side. Instead of that, if the Law Minister were to provide a digest of the broad aspects of the 180 cases which are pending, for which he has come with this Bill, then we can study it and refer at least to those aspects without going into details. The Chair may kindly allow the members who participate in the discussion to refer to such of the cases—one or more—by way of illustration to strengthen some of the general and fundamental points which we may be making on this Bill. If this via media is accepted, we will be able to refer to the important aspects involved.

The hon. minister has said that Mr Amar Nath Chawla has filed a review petition in the Supreme Court. The Supreme Court has already given its judgment. If this Bill is passed, will the Supreme Court have to give a fresh judgment on that revision petition on the basis of this new Bill? I want to know how you react to this.

MR. DEPUTY-SPEAKER: How can I react?

SHRI DINESH CHANDRA GOSWAMI (Gauhati): Sir, the opposition members have contended that this Bill has been brought forth to save the election petitions of 180 persons against whom election petitions are pending, and, therefore, these things should be referred to in this House. But if we look to the Statement of Objects and Reasons, it is clear that the purpose of this Bill is not really to protect the election cases of the 180 petitions, but the purpose of this Bill is to restore the position of section 77, as Shri Salve put it, *status quo ante* Kanwarlal Gupta case. The purpose of this Bill is to properly convey the intentions of the legislature, so far as section 77 is concerned. So far section 77 was interpreted to mean that while the election expenses incurred expressly by an individual candidate would be counted, the expenses incurred by the political party would not be counted for the purpose of computing and deciding whether it exceeds the limit or not. That was the decision of many judgments of the Supreme Court. In the latest case of Shri Kaumar Lal Gupta the Supreme Court gave a judgment which, to a certain extent, is contradictory to its earlier judgment. Therefore, it was thought just and proper that the intention of the legislature, so far as section 77 is concerned, should be made clear and unambiguous.

If you please look at the Statement of Objects and Reasons, it says:

"The expression 'incurred or authorized' had not been construed so as to bring within its purview the expenditure incurred by a political party in its campaign or by any person other than the candidate unless incurred by such third person as the candidate's agent. In other words, the provisions of section 77 and clause (6) of section 123 have been intended and understood to be a restraint on the candidate's

election expenditure and not on the expenditure of a political party."

That was the main intention of section 77 as it was framed and it stood the scrutiny of judiciary till now. The main object of this Bill is to make that intention clear. Whether it ultimately, and if so how, reflects on the 180 election petitions is an incidental question and it is also a moot question.

In fact, while my hon. friends are referring to the question of the pending election petitions, they have not really placed before you the sentence in the Statement of Objects and Reasons, in its proper perspective. 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 contained in section 77 of the Representation of the People Act...."

It is not as if this Bill has been brought in to protect the interests of the persons against whom election petitions are pending. This Bill has been brought in only to clarify the intention. If the House agrees with the intention for which the Government has brought this Bill, if the House agrees that the intention of section 77 should be as it is explained in the explanation in this Bill, then whether it affects the elections petitions or not is a matter with which we are not at all concerned, because it may depend on the election petition and the way in which the Supreme Court interprets it in the different election petitions.

What we are concerned with is that the latest judgment of the Supreme Court on section 77 did not really reflect the intentions of the legislature and, therefore, there is the risk that the legislature's intention not being very clearly reflected in the judgment, it may adversely affect

[Shri Dinesh Chandra Goswami]

some of the pending election petitions. Therefore, we wanted to express in clear and categorical terms how we feel section 77 should be understood. When this actually becomes law, how it will affect the election petitions is a matter with which this House is not directly concerned with, though incidentally it may come in.

Therefore, for the purpose of a discussion of this Bill the reference to the election petitions is absolutely an irrelevant matter. Therefore, my respectful submission is that, following the conventions and the rules that sub-judice matters are not referred to in this House, you should not permit a reference to the election petitions because that will open the floodgate and will also prejudice those cases.

**SHRI KRISHNA CHANDRA HALDER (Ausgram):** As to what Mr. Goswami has mentioned, his arguments are contradictory.

Here in the Sstatement of Objects and Reasons, it is mentioned:

"However, in the recent case of Kanwar Lal Gupta vs. A. N. Chawla and others (Civil Appeal No. 1549 of 1972 decided on 3rd October, 1974), the Supreme Court has interpreted the aforementioned expression "incurred or authorized" as including within its scope expenses incurred by a political party or other person referred to above. 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 contained in section 77 of the Representation of the People Act, 1951...."

It has been clearly mentioned here that it became urgently necessary to clarify the intentions underlying the provisions contained in section 77 of the Representation of the People Act, 1951 with reference to the

candidates against whom election petitions are pending.

I want to know from the hon. Minister, not only 180 cases, how many cases are concerned with excess election expenses. We are going to amend section 77 of the Representation of the People Act, 1951. From 1952, there have been so many General Elections. I want to know how many election petitions were filed against elected Members where elections were set aside for incurring more expenses than prescribed in section 77 of the Representation of the People Act, 1951. If it is the only check after passing this Bill, that is a different matter.

Before Mr. A. N. Chawla's case, naturally, there were many elections which were set aside for incurring excess expenses. So, I want to know what necessitated the Government to promulgate this Ordinance and to come before the House to pass this type of anti-people Bill. I want to know this from the Government.

**श्री जनेश्वर मिश्र (इनाहाबाद) :**  
उपाध्यक्ष महोदय, शुरू में जब हम ने अपनी प्रापति रखी थी तब से रोज़ाना प्रत्येक सप्ताह दल ने जो तर्क दिये हैं उनको मैंने बड़े ध्यान से सुना है और हम को ऐसा लगा कि एक तरफ़ तो वे लोग सबजूडिस का नाम लेकर जो बार्चिकादे हैं वा जो मुकदमे चल रहे हैं चूँकि वे पेटिटर हैं इन लिये कहते हैं कि उन क फंड्स की चर्चा नहीं होनी चाहिये लेकिन दूसरी तरफ़ इन लोगों ने खुद ही जिस मुकदमे से इस को रखा है उस मुकदमे को बारबार दोहराया है हालाँकि उस से भी भागने और कतराने की कोशिश की है, एक तरह से सुप्रीम कोर्ट का जो निर्णय था उसको ही मारने के लिये इन्होंने इस को रखा है। मैं उस को पढ़कर सुनाना चाहता हूँ—

"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 contained in section 77 of the Representation of the People Act, 1951...."

अब सवाल यह होता है कि एक तरफ़ तो आप अपने आप कह रहे हैं कि किसी अदालत में कोई मुकदमा चल रहा हो, उस के फैक्ट्स की चर्चा नहीं की जायगी—अब हम लोग कोई जानवर तो हैं नहीं, आदमी हैं, अदालत की लगाम के नाम पर हम लोगों की ज़बान को रोकने की कोशिश की गई है। दूसरी तरफ़ अभी हम ने देखा—गोखले साहब के पास स्टीफन साहब सान्चे साहब और महाजन साहब, तीनों लोग इकट्ठे हो गये। सुनने के अलावा यह कार्यवाही हुई। और एकाएक मात्रे साहब ने कह दिया कि बोलिये आप को जो कुछ बोलना है आप को छूट है। मतलब यह है कि इन को बहुमत का घमंड है। और दूसरी तरफ़ जब माननीय ज्योतिर्भय बन्धु ने कहा कि हम मोशन रख रहे हैं तो इन को जल्दी ही उस मोशन को वोट डाउन कर दिया जाय। यों लोकतन्त्र में बहुमत का ही निर्णय हुआ करता है। लेकिन जब पूरे मुल्क के बारे में, सर्वोच्च न्यायालय के निर्णय को ले कर आप कोई विधेयक पास करने जा रहे हैं, और वैसे के नाम पर भोगवादा जनतंत्र में घुसा ही तब बहुमत के नंगे नाच को रोकना भी इस संसद का फर्ज है और सरकार को तानाशाह होने से बचाना हमारा कर्तव्य है। इसलिये जिस तरह बहुमत के नाम पर थोड़े से बेस्ट इटरेस्ट के लोगों की हिफाजत करना चाहते हैं और सुप्रीम कोर्ट के निर्णय को हत्या करना चाहते हैं, हम चाहते हैं कि ऐसा न हो और मंत्री जी अपने बिल को वापस ले जायें तथा उस पर पुनः विचार कर के फिर इस को लायें तब हम उस पर विचार करें।

**MR. DEPUTY-SPEAKER:** What has the Minister got to say?

**SHRI H. R. GOKHALE:** I have made my submissions. There is no opposition to the motion for consideration. The short point is whether, in the course of the discussion, the members will be allowed to refer to materials or facts in pending cases. That is the narrow question and I have made my submission earlier. 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. Now it is for you to decide....

**AN HON. MEMBER:** Statements and affidavits.

**SHRI H. R. GOKHALE:** I have said, facts and materials. 'Materials' would include affidavits.

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

**SHRI MADHU LIMAYE:** Shall I move my motion for adjournment of the debate under rule 109?

उपस्थित महोदय, अगर मतदान का ही सवाल है तो अब मुझे इजाजत दीजिये कि अपना मोशन मूव करूँ और संक्षिप्त स्पीच दूँ।

I want to move it and then make a brief speech.

**MR. DEPUTY-SPEAKER:** I must say this is the most difficult situation in which I find myself. I thought my good friend, Mr. Salve was coming to save me . . .

**SHRI MADHU LIMAYE:** I am moving my motion for adjournment of the debate.

**MR. DEPUTY-SPEAKER:** That is only postponing.

**SHRI MADHU LIMAYE:** Mean-while, I would give you more points.

**MR. DEPUTY-SPEAKER:** Mr. Salve did go on record at a particular stage that I might rule that reference to these cases might be made. I thought that if that was the consensus, that would make my task very easy.

**SHRI N. K. P. SALVE:** Reference within the rules.

**MR. DEPUTY-SPEAKER:** Now, that view of Mr. Salve has not been countenanced by the Law Minister. So, the ball comes back to my court. I do not know. I find it very difficult, because if we go just by technicalities, then, of course, no reference can be made to the facts of any case that is pending adjudication. But here it is the very basis of the Ordinance, and the Bill itself refers to those pending cases. That is the difficulty . . .

**SHRI C. M. STEPHEN:** What about the ruling that Mr. Salve gave?

**MR. DEPUTY-SPEAKER:** I have to study what exactly was the Bill at that time. I have not been able.

**SHRI C. M. STEPHEN:** That was specifically for that purpose. This is a general Bill.

**MR. DEPUTY-SPEAKER:** You cannot expect me, as a super man, to read that Bill, to read this Bill and also attend to the business of the House. Yes. That has been said on that occasion. I am not disputing that. But what is the background, under what circumstances, I have not been able to go into that. Sometimes even when I call the officers of the table just to check up with them something, I am distracted, and some members are distracted when they speak. There are certain facts which I want to check and I call them. I would not be able to read all what and, therefore, if you want me to base my ruling on that... (Interruptions). He has referred to some cases.

श्री मधु लिमये : कौन सा केस है ?

**SHRI N. K. P. SALVE:** It is a public property.

**SHRI MADHU LIMAYE:** You must mention the case.

**SHRI N. K. P. SALVE:** I wish you were here when I spoke. It is not a private property... (Interruptions).

**MR. DEPUTY-SPEAKER:** Why lose your tempers over this? Mr. Salve had drawn my attention to a precedent and he had read out from page 901 of this Book on Practice and Procedure of Parliament. But, as I said,—although I am not disputing it, in what context and what was the Bill . . .

**SHRI N. K. P. SALVE:** That I have already said. I wish to again respectfully submit that the specific issue raised in that case was the jurisdiction matter and the subject was the same. The subject matter of the Bill was to have a direct impact on the issues involved in the court. On that, the ruling was . . .

श्री मधु लिमये : यह बिल बिल्कुल दूसरा है ।

**SHRI N. K. P. SALVE:** I am making my submission. Let them make their submissions. If it be correct ultimately that the Bill had a direct effect or a direct nexus with the issues involved in the case and, therefore, the Speaker ruled that that did not matter excepting that the facts of any case would not be referred to, what I submit is that the facts of that case and the facts of this case are entirely on all fours.

श्री मधु लिमये : कल में देख लूंगा, जल्दी क्या है ?

श्री नरेन्द्र कुमार साहू : तीन, साठे तीन घंटे हो गये ।

**MR. DEPUTY-SPEAKER:** This brings a new element and a new dimension to the discussion and it has a

relevance to my ruling, if it is necessary at all. I shall feel very much relieved if I could rely on this, but, at least, you will give me the benefit of going through this Bill and this case and the precedent because I cannot be caught. This is a very important matter and what I say is going to have very very far-reaching effect, I know that. Therefore, it will not be fair to me and fair to the House to be rail-roaded into a ruling or into a decision. I would like to benefit from that and, if the Members on this side would like to contend that this is not on all fours with this . . .

श्री मधु त्रिबे . मैं घ्राप की मदद  
रूगा । मे घ्राप का सबक हू ।

MR. DEPUTY-SPEAKER: This ruling will be pending in that case, but the Minister had only got up to move for the consideration of the Bill when objections were taken and all these points of order arose and on which we have had a long and beneficial discussion. I think we can continue with the Minister moving the Bill and then the scope . . .

AN HON. MEMBER: We are to adjourn at 6 O'clock.

MR. DEPUTY-SPEAKER: He will continue tomorrow.

SHRI H. R. GOKHALE: I will reply to the speech of my hon. friend, Shri Shyamnandan Mishra, when I get the opportunity of replying to the whole debate.

I beg to move:

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

For the purpose of consideration of the present Bill, it is enough to refer to the provisions of Section 77 of the Representation of the People Act, 1951, which provides that the total of the expenditure in connection with an

election, incurred or authorised by the candidate or his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof shall not exceed such amount as may be prescribed. Clause (6) of Section 123 of the said Act has specifically included the incurring or authorising of expenditure in contravention of Section 77 as a corrupt practice.

In the Indian election law, the emphasis has always been on imposing a curb on the candidate or his election agent incurring expenditure in connection with the election of the candidate in excess of the prescribed limit. This specific intention, underlying the provisions of section 77, has generally found support in the judicial pronouncements on the point during the last two decades. In other words, the expression "incurred or authorised" had not been construed so as to bring within its purview the expenditure incurred by a political party in its campaign.

However, the Supreme Court in the recent case of Kanwar Lal Gupta v. Amar Nath Chawla and others (Civil Appeal No. 1549 of 1972) has, by its observations, imported an element of doubt into the hitherto well-accepted and well-understood principle underlying section 77 of the 1951 Act. This judgment by giving a wide meaning to the expression "incurred or authorised" has created a serious problem, particularly with reference to candidates against whom election petitions have been filed and are still pending decision. For no fault of theirs their election might be set aside because they had participated in the elections, having regard to the then prevalent position in law, which had also received judicial approval. To meet this situation created for the candidates, it has become necessary to make clear the intention underlying section 77 of the Representation of the People Act, 1951, namely, that in computing the maximum amount

[Shri H. R. Gokhale]

under that section 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 the People (Amendment) Ordinance, 1974, to avoid a situation wherein it would have become necessary to follow the wider interpretation given by the Supreme Court in pending election petitions. It has, however, been made clear in the Ordinance that the amendment will not affect the decisions of Courts made before the coming into force of the Ordinance, which have become final. The present Bill seeks to replace that Ordinance.

Government have not been unaware of the seriousness of the problem relating to election expenses and have, in fact, endeavoured to place before the Joint Committee of Parliament constituted by the Speaker for the purpose the recommendations made by the Election Commission in regard to the legal provisions relating to election expenses, and the Committee, which included representatives of most of the major parties, after giving serious thought to the problem, came to the conclusion that due to various practical difficulties it is not possible to require political parties to account for the expenses incurred by them for the election campaign of their candidates. The Committee, however, favoured the continuance of the existing legal provisions providing for restrictions on election expenses since in almost all countries of the world where representative form of Government prevails, provisions as to election expenses have been made.

A Bill to amend comprehensively the Representation of the People Acts, 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 the deci-

sions of the Supreme Court during the consideration of the Bill in the House.

In the circumstances, I am sure all the sections of the House would 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 had contested elections and whose petitions might be pending in the various High Courts and the Supreme Court on the understanding of the provisions of the law as hitherto interpreted by the Courts should not be made to suffer any undue hardship consequent upon a sudden departure in the judicial interpretation of the provision.

With these words, Sir, I commend the Bill for the consideration and acceptance by the House.

MR. DEPUTY-SPEAKER: Motion moved:

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

There are two amendments to this motion tabled by Shri Atal Bihari Vajpayee and Shri Samar Guha. Both the Members are not present. So, the question of moving the amendments does not arise. Now, I do not know what we should do. The next speaker is Mr. Jyotirmoy Bosu. But, he is a hot potato.

SHRI JYOTIRMOY BOSU: Mr. Deputy-Speaker, Sir, I commence my speech now. I take it that you are going to adjourn the House. I can continue with my speech tomorrow.

MR. DEPUTY-SPEAKER: You please continue until I adjourn. I shall adjourn the House exactly at 6 O'clock.

SHRI JYOTIRMOY BOSU: Mr. Speaker, Sir, I disapprove this Bill lock, stock and barrel. The question



is: this Bill, as I can see, has been brought forward on the floor of the House in order to benefit and protect a particular person who has great influence over the State machinery and the Government in the country—I say to benefit not only the people of the country as such but also the administrative machinery of the country. We have been in Parliament for a long time and I would like him to kindly tell us one single instance where the Government has, with quick steps, what is called, 'double marching in the army', proceeded to bring in the Ordinance. They could not even wait till the commencement of the session. They brought in this Ordinance only two weeks before the Parliament was due to sit. I am posing this question. You will kindly enlighten us as that will make the debate more lively.

MR. DEPUTY-SPEAKER: Is it my duty to enlighten the Members?

SHRI JYOTIRMOY BOSU: I am making a submission. You can reject it. You have been a Professor and, as far as I know, you have not ceased to be a professor. Therefore, I request you to impart education. That will be quite in keeping with...

MR. DEPUTY-SPEAKER: I think this tribe of professor should not increase.

SHRI JYOTIRMOY BOSU: The question—the adjournment will take place immediately—that is before the House is this. This Ordinance has been enforced with great speed. Has there been any instance where an Ordinance has been enforced with great speed as this one?

MR. DEPUTY-SPEAKER: It is six. Now, what do we do? Shall we adjourn now?

17.57½ hrs.

BUSINESS ADVISORY COMMITTEE  
FIFTIETH REPORT

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, with your permission, I beg to present the Fiftieth Report of the Business Advisory Committee.

MR. DEPUTY-SPEAKER: Now the House stands adjourned to meet again at 11 A.M. tomorrow.

17.58 hrs.

The House then adjourned till Eleven of the Clock on Friday, December 13, 1974/Agrahayana 22, 1896 (Saka).