

tion. The election is on the 18th. Tomorrow the House is not sitting. I want to draw the attention of the Government to an important matter. There is a huge organisation of the Janata Party which is preventing the Harijans from voting. Proper protection should be given to the Harijans. I request you to direct the Government to provide some protection to the Harijans there so that there is a free and fair election.

SHRI JYOTIRMOY BOSU: The Business Advisory Committee must find some time for a discussion on the Kapadia and the Central Bank affair.

MR. SPEAKER: You are one of the members of the Business Advisory Committee.

SHRI JYOTIRMOY BOSU: I most humbly request you to find some time for it.

MR. SPEAKER: I cannot find time.

SHRI JYOTIRMOY BOSU: After reading the front page article in the Blitz if the House does not sit in judgment, if the House does not deliberate on it, we will be failing in our duty.

MR. SPEAKER: You have already mentioned it. Don't monopolise the time of the House.

SHRI JYOTIRMOY BOSU: Let him make a statement.

MR. SPEAKER: It is for him to make a statement or not.

13.4 hrs.

INTEREST BILL*

THE MINISTER OF FINANCE AND REVENUE AND BANKING (SHRI H. M. PATEL): I beg to move for leave to introduce a Bill to conso-

lidate and amend the law relating to the allowance of interest in certain cases.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to consolidate and amend the law relating to the allowance of interest in certain cases".

The motion was adopted.

SHRI H. M. PATEL: I introduce the Bill.

CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL*

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

SHRI KANWAR LAL GUPTA (Delhi Sadar): On a point of order. I do not want to oppose introduction of this Bill. Rather I welcome it. But there is a certain point on which I would request the Chair and also the Law Minister to guide me.

The Forty-Second Amendment in the Constitution was made during the period of Emergency. There were certain vital changes made in the Constitution. In some cases even the basic features of Fundamental Rights were changed, though Parliament was not competent to change them. This was the opinion of leading jurists in the country. But the then Government was of the view that Parliament was competent to change anything in the Constitution and that Parliament was supreme. All of us on this side of the House now did not agree with the view

[Shri Kanwar Lal Gupta]

taken by the then Government, and we are still of this opinion that the basic features cannot be changed by Parliament. I think you also agree with me. Now, we want to repeal, through this Bill some of the amendments made in the Constitution. It is a very welcome move and, as I said, I welcome it and I congratulate the Government and the Minister on this. But now the question is this. How can Parliament, which could not change the basic features of Fundamental rights, make any changes now? That is the question. For instance if you go through the Bill....

SHRI JYOTIRMOY BOSU (Diamond Harbour): Is he opposing the introduction, Sir? If he is raising a question of legislative competence, then he can oppose....

SHRI KANWAR LAL GUPTA: I do not want to oppose. He may oppose.

MR. SPEAKER: What is the point of order that you are raising?

SHRI KANWAR LAL GUPTA: My point of order is this. It is really a very funny situation....

MR. SPEAKER: Are you raising the question of legislative competence?

SHRI JYOTIRMOY BOSU: Is he opposing the introduction?

MR. SPEAKER: Under the rules, you can do only two things: either you can oppose the introduction on grounds of legislative competence or oppose it on other grounds. Are you on either of these two?

SHRI KANWAR LAL GUPTA: I am not opposing it at all.

MR. SPEAKER: Then there is no point of order. You cannot rise on a point of order.

SHRI KANWAR LAL GUPTA: I am on absolutely a different thing. If I wanted to oppose introduction, then I would have written to you earlier. I

am not opposing it. That is why, I did not write to you earlier. My hon. friends who are opposing it must have written to you.

SHRI JYOTIRMOY BOSU: No. We are not opposed to the introduction of this Bill.

SHRI KANWAR LAL GUPTA: I did not say anything about Mr. Jyotirmoy Bosu. I do not know why he is very angry with me.

SHRI SHYAMNANDAN MISHRA (Begusarai): May I rise on a point of order relating to the point of order raised by the hon. Member? It is for the consideration of the Chair that though in the past, points of order had been raised, in fact, with regard to the introduction of a Bill, it was done only after the Bill had been introduced. As it is, there is nothing before the House. Unless there is something before the House, there cannot be any point of order. I would advise the hon. Member to come up with his point of order after the Bill has been introduced.

SHRI KANWAR LAL GUPTA: The Minister introduced the Bill in the House, and I sought your permission to raise a point of order, and you permitted me.

MR. SPEAKER: I have not permitted you. I only wanted to know what was the point of order you were raising. Both on rules as well as on law, I cannot decide the matter because if it is a question of competence of the Legislature that you are raising, then it must be debated. And if the question that you are raising is, there is no such law, the Forty-Second Constitution Amendment is not a law at all, then that is a matter to be decided by courts, not by me; there are definite rulings of this House on this. If anybody raises a question that a particular law is invalid or valid then the matter is not to be decided by the Speaker, it is to be decided by courts. I cease to be a part of the court, I am only a part of the Legislature.

SHRI KANWAR LAL GUPTA: You are very much Speaker of this House, not only a Member. I do not want to take much of your time. It is really a very funny situation.

MR. SPEAKER: Let us not make it more funny by raising it here.

SHRI KANWAR LAL GUPTA: My point is how can Parliament which could not make any amendment in the basic features of the Constitution, change anything which is basic in the Constitution now?

MR. SPEAKER: This is a matter for the courts to decide.

SHRI KANWAR LAL GUPTA: I want to know the reaction of the Minister.

MR. SPEAKER: I must give the decision on a point of order, not the Minister. There is no point of order.

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Speaker, Sir, I rise to oppose this Bill even though it may sound strange and perhaps somewhat paradoxical too. I consider it my duty to oppose this Constitution (Forty-fourth Amendment) Bill, which my friend, the Law Minister, has brought before the House today. I am not, at this stage, on the contents of the Bill; that I will take up next Monday when it comes for discussion hopefully sometime in the afternoon. At this stage, I am opposed because as I said, I consider it my duty to do so.

Normally, introduction of a Bill is a formality and I concede that unless one has very grave points of opposition, one should not speak but because I have grave points in my mind, which agitate me greatly, I am taking this liberty and your permission to speak. I want to register my voice of dissent with friends of the Janata Party. I believe that the way this Bill has come is not correct. They should have really brought a Bill to repeal the entire Constitution (forty-fourth Amendment) Bill, which later on be-

came the Constitution (Forty-second Amendment) Act. My friends sitting on the Government benches, when they were on this side with me, were totally opposed to this Bill, tooth and nail, lock, stock and barrel. Let them not believe that I am opposed to the contents of this Bill, but I am on the modality and manner of bringing this Bill in parts. They should have brought a Bill for the total repeal of the Constitution (Forty-second Amendment) Bill. That is my point.

You will see, Sir, that the unfortunate thing is that I was opposing the Constitution (Forty-fourth Amendment) Bill, as it was then called, October-November last year and it has become my duty now to oppose at the introductory stage the Bill with the same number and nomenclature, the Constitution (Forty-fourth Amendment) Bill. Why? This is because the introduction, consideration and passing of last year's Constitution (Forty-fourth Amendment) Bill which became Constitution (Forty-second Amendment) Act was an obnoxious measure, a notorious measure, a classic and shameless example of the cavalier and curt manner in which the then Government had got that Bill passed. There was no free debate, you will recall, Sir. I do not know where you were there at that time; I was very much in this House.

MR. SPEAKER: Fortunately, I was not here.

PROF. P. G. MAVALANKAR: Sir, there was no free debate in the country on the then Bill which later one became the Act. There was no free comment in the Press and there was no free discussion in the Parliament. I want to say now with all sincerity and seriousness that a good number of Congress Members themselves at that time told me in the Lobbies and later on in the Central Hall, that they agreed almost entirely to what I said but because of the Party whip, etc. they could not say so in the open House. That was the situation.

[Prof. P. G. Mavalankar]

Sir, not only the Parliament was misled but even the majority Party then, the Congress Party could not speak out under the false idea of Party discipline and Party whip and they decided to ignore their voices of dissent and voices of conscience. Therefore, I want to oppose this Bill...

SHRI KANWAR LAL GUPTA: This is a very serious matter...

MR. SPEAKER: It is not serious.

SHRI KANWAR LAL GUPTA: Kindly listen to me.

MR. SPEAKER: How many times have I to do it?

SHRI KANWAR LAL GUPTA: I want to draw your attention to Rule 72...

MR. SPEAKER: Every minute you rise on a point of order.

SHRI KANWAR LAL GUPTA: Rule 72 says:

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, brief statements from the member who opposes the motion and the member who moved the motion, may, without further debate, put the question:

Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon: ..."

So, Sir, the only thing that he could oppose is regarding the legislative competence of the House.

MR. SPEAKER: That is the second part. There are two parts. Please read Rule 72. It says:

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, brief statements from the member who

opposes the motion and the member who moved the motion, may, without further debate, put the question..."

That is the first part.

The second part is a greater debate and that is when he opposes it on the ground that it is outside the legislative competence of the House.

So, the only objection you can take is that it is not a brief statement but it is a long statement.

PROF. P. G. MAVALANKAR: That is all right. Therefore, I was saying that last year in this Parliament when I was slightly to the right of where I am now sitting as an Independent then also ...

SHRI JYOTIRMOY BOSU: Politically?

PROF. P. G. MAVALANKAR: ... then also I oppose it and the Opposition were boycotting and many of my esteemed colleagues were in jail and, therefore, it was given to only ...

MR. SPEAKER: These are matters of history. ...

PROF. P. G. MAVALANKAR: It was given to some of us only to come to the House and oppose it and we did it and the Division was 346 vs. 2 and 366 vs. 4 and I happen to be one of the 2 and one of the 4. Therefore, I opposed it then and therefore, now, I am opposing this business of the Janata Party not bringing in a total repeal.

I want you to kindly bear with me for a few minutes and see what the Janata Party said about this 42nd Amendment in their manifesto. I will not read the whole thing. I will only read out the relevant portion and very briefly. On page 3 of the manifesto this is what the Janata Party said:

"The Constitution was amended to sanctify ...

SHRI KANWAR LAL GUPTA: Is it a brief statement, Sir?

PROF. P. G. MAVALANKAR: "... and institutionalise a total concentration of power in the hands of one individual ...

MR. SPEAKER: You have made a longer statement. Under the guise of point of order, you have made a speech. There is no point of order.

SHRI KANWAR LAL GUPTA: Are you allowing him to discuss the Janata Party on the floor of the House?

PROF. P. G. MAVALANKAR: I am very much within my rights. ...

SHRI JYOTIRMOY BOSU: He is speaking with your permission.

MR. SPEAKER: But you are not.

SHRI JYOTIRMOY BOSU: What is wrong in that?

PROF. P. G. MAVALANKAR: The Janata Party manifesto says:

"The Constitution was amended to sanctify and institutionalise a total concentration of power in the hands of one individual — the Prime Minister....

MR. SPEAKER: Everybody knows these things.

SHRI KANWAR LAL GUPTA: I want to know, Sir ...

PROF. P. G. MAVALANKAR: It is very relevant.

MR. SPEAKER: You cannot make a long speech.

PROF. P. G. MAVALANKAR: I am finishing in a few minutes, if nobody intervenes including you, very kindly.

The Manifesto says further:

"The authoritarian trends that had unfolded themselves over the past few years were embodied in the 42nd Amendment which was bulldozed through Parliament. To all it an amendment is a misnomer. It

is a betrayal of the testament of faith that the founding fathers bequeathed to the people and it subverts the basic structure of the 1950 Constitution. It vitiates the federal principle and upsets the nice balance between the people and Parliament, Parliament and the Judiciary, the judiciary and the executive, the States and the Centre, the citizen and the Government. It is the culmination of a conspiracy to devalue democracy that started with the erosion of the Cabinet system, the deliberate and consummate scuttling of democratic processes in the ruling party, ...

MR. SPEAKER: If senior Members do not co-operate

PROF. P. G. MAVALANKAR: "... and the concentration of all power in the hands of leader who has been sought to be identified with the nation or even to be placed above it."

In the same manifesto, if you see—only one line—on page 9, the Janata Party whose manifesto I broadly endorsed then and I endorse now, says: Under the item 'Political Charter'—point No. 5. they said:

'Seek to rescind the 42nd Amendment.'

If the Janata Government is so serious about this 'rescinding', how can they give legitimacy to the wrong Acts incorporated in the Constitution, which I have described a little earlier? I don't want to elaborate on this point. My point is that we should not give legitimacy to this kind of a thing and my opposition is to the manner in which this Bill has been brought forward. Why cannot the Government bring in a Bill saying, 'The Forty Second Amendment Act is totally repealed'. Are they not doing it because of the fact of the congress party strength in the Rajya Sabha? If that is so, let the country know that the Congress Opposition in the Rajya Sabha is in opposition to this

[Shri P. G. Mavalankar]

measure which the people are wanting, namely, total repeal of the 42nd Amendment Act. Therefore, Sir, I emphatically wish to point out that to bring in this kind of a piecemeal measure is a kind of betrayal of faith with the people and the electorate. That is my point. Government must rescind the entire Forty-Second Amendment Act and come forward with a new Bill. My friend Prof. Madhu Dandavate is sitting here. Two Ministers of the Cabinet, Prof. Madhu Dandavate and Mr. George Fernandes, when they took the oath, said, they are loyal to the Constitution except the 42nd Amendment Act. Therefore, why are they not bringing in this Bill?

THE MINISTER OF RAILWAYS (PROF. MADHU DANDAVATE): It has been pointed out in the Court of Law that the allegation was wrong.

PROF. P. G. MAVALANKAR: This kind of piecemeal approach is not at all what is needed. They must bring forward a new Bill and they must throw out the 42nd Amendment Act lock, stock and barrel. Thank you.

SHRI SHYAMNANDAN MISHRA: I find myself in a great predicament because I cannot find myself in agreement with the spirit in which this Bill is brought in or more properly the perspective or the strategy with which this Bill is presented to the House.

Although there can be no objection to the corpus of the Bill—the Corpus of the Bill is all right but if it goes against the spirit of the pledge, we have given to our people, we have some thing to say to express our grave apprehensions in the matter. I have my serious doubts about the wisdom of presenting this Bill whereby Constitutional Amendments are presented to the House in a piecemeal manner. I have grave apprehension that Government is slowly falling into the trap laid by Mrs. Gandhi's party.

I would be failing in my duty if I do not point this out. We are now witnessing peculiar phase. Mrs. Gandhi's party would be agreeing with something and then alone that can be presented to the House. In the end, they will say 'Nothing doing we are not going to agree with you on other amendments which we consider important then the Government would throw up its hands and say 'We are not going to bring up those amendments'. Are we going to be silent spectators to this kind of thing? Is the hon'ble Law Minister going to assure the House that he will stand by the pledges and promises given to the people? Of course there can be marginal adjustments, nobody can rule out marginal adjustments here and there.

There could be no difficulty about this.

Now, we are being told that if there were a comprehensive Bill, it might be opposed in the other House and ultimately, it would fall through. If there is a comprehensive Bill, it would be open to my hon. friends Opposite to oppose parts of it. Who says that the Bill has to be opposed as a whole? I cannot understand this kind of logic. Let us state clearly and categorically that we stand for this kind of constitutional amendments and, let our friends, too in all fairness tell us clearly that they would not be a party to the amendments of this kind. Thus we can present a full and complete picture to the people from whom we have derived the mandate to come to this House.

It is also a clear violation of the assurances given by the Government that a comprehensive Bill will be brought before the House. It is for you and for the House to consider whether the Government is fulfilling the clear and categorical assurance given to the House in this matter.

I will take you to the record of the proceedings of the House. Our esteemed President, in his gracious Address

to the joint session of both Houses had said:

"During the course of the year, a comprehensive measure will be placed before you to amend the Constitution."

Now, Sir, the hon'ble Law Minister can take a technical view of the matter. But it would be not in consonance with the political view of the matter—I am speaking of the political view, in the purest sense. He may say that we are still to end the financial year. But, then, I will take him to his own words. This is what he had said; here, the hon'ble Law Minister told the House in answer to a question put by Prof. Samar Guha.

"Shri Shanti Bhushan: The Government proposes to bring a comprehensive measure for constitutional amendment which will also cover Forty-Second (Amendment) Bill and the provisions would have to be adopted in order to finalise this decision of the Government."

Then again he said:

"The Government would be taking a decision thereon very shortly".

It was on the 5th of April that the hon. Law Minister had said this. And then recently he told the Reporters in September—this is also very important—that the Janata Government will bring forward in the November session of Parliament a comprehensive Constitutional Amendment Bill to undo some of the changes effected by the previous regime. So, a promise had been made in the House and even outside the House that there would be a comprehensive Constitutional Amendment Bill.

He is now coming only with three or four clauses Bill. This does not fulfill the assurance given to the House. Fortysecond Constitution Amendment Act relates to 59 clauses of the Constitution. This Bill seeks to amend only a few clauses of the Constitution.

So it is a violation of the assurance already given to the House and I want the House to seriously consider this.

Then, Mr. Speaker, as it has been pointed out by my hon. friend, Shri Mavalankar, we had given a pledge to the people. The people might now conclude that we are sliding back or backtracking on the pledge given to them. I am also apprehensive that the people might think that we were not as true as our words and that in fact we want to enjoy some of the powers conferred by that amendment. In other words it may be their fear that the emergency provisions in the Constitution Amendment will give us..

SHRI JYOTIRMOY BOSU: We are surrendering to the black mailers.

SHRI SHYAMNANDAN MISHRA: Therefore, Sir, my submission is this. The point to be considered by you as also by this House is whether by omission, the Government is not endorsing the subversion of the Constitution. The facts that have come to light before the Shah Commission clearly establish that the proclamation of Emergency itself was *ab initio* void. So, a view can be taken that whatever amendments had been undertaken during the period of Emergency are invalid. It may be construed, therefore that the Government by omission is becoming a party to the subversion of the Constitution if the Government does not bring forth those amendments which will seek to undo the subversion of the Constitution. It is a matter of great constitutional importance that the House should not agree to the continuance of the subversion of the Constitution as is implied in this Bill because this Bill does not seek to undo many of the mischiefs done to the important provisions of the Constitution.

Further, Sir, would you kindly also not sympathise with the difficulty of the Members of the House in the matter of partial amendment of Article 226. We are clear that Article 226 has to be

[Shri Shyamnandan Mishra]

restored to its pristine glory and my party—I am speaking on behalf of my party—will not agree to any kind of amendment to Article 226 which does not seek to restore Article 226 in its original form with for any other purpose? It is cardinal for us and we would like to see these things restored again. My difficulty is that if that amendment also has to come—and I may assert with all emphasis that it will have to come—then should the House be made to undergo the dredgery of addressing itself to the same clause two or three times. Why not have a comprehensive amendment? I am only illustrating my point so far as the difficulty the House would experience with regard to these constitutional amendments. With these words as I made it clear earlier I am not opposing the corpus of the Bill; it is too innocuous to be opposed. I object to the perspective in which it is being placed before the House. Unless the hon'ble Law Minister assures us that we will stick to the pledge given to the people and that in this very Session he would be coming with a comprehensive Bill, I am afraid, he would not be fulfilling the commitments made to the people and to the House.

SHRI SOMNATH CHATTERJEE (Jadavpur): Sir, I want to seek a clarification.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, the hon'ble Member cannot seek a clarification at this stage. Either one has to oppose the Bill or support the grant of leave. There is no question of clarification at this stage. Shri Chatterjee is not rising on a point of order.

SHRI SOMNATH CHATTERJEE: Sir, I rise on a point of order.

श्री शरद यादव (जबलपुर) : पीइंट ऑफ ऑर्डर की बात नहीं है, पूरे देश की बात है। टक्कीकल मामला बात

रहे हैं। अब भाषा भाषा ला रहे हैं, टुकड़ों में ला रहे हैं।

SHRI SOMNATH CHATTERJEE: Sir, if any mandate was clearly given during the last elections it was that 42nd Amendment must go log, stock and barrel. This was the commitment of the Janata Government. I would like to know is it the policy of the present Government that because of the composition of the Rajya Sabha decisions have to be taken as to what would be the Constitution of this country. Therefore, unless we have the good wishes of a party which had believed in evil and which tried to impose dictatorship ...

(Interruptions)

MR. SPEAKER: Mr. Chatterjee that is not fair.

SHRI VAYALAR RAVI (Chirayenkil): The hon. Law Minister has made it clear in the House on an earlier occasion that the Constitution (Amendment) Bill would come after discussion with the opposition Leaders.... (Interruptions) There are of course his own party members. This is part of the discussion and I hope that a further Bill may come later. May I know from the hon. Minister whether, when he was having discussions with Members, of the Marxist Communist Party which is functioning anti-constitutional.... (Interruptions) They are issuing notices, they are issuing summons.

MR. SPEAKER: It is not a point of order.... (Interruptions).

SHRI JYOTIRMOY BOSU: I have a point of order.

MR. SPEAKER: On this?

SHRI JYOTIRMOY BOSU: No. On what Shri Shyamnandan Mishra submitted. I treat this with the contempt it deserves.

SHRI VAYALAR RAVI: I also treat what you say with the utmost contempt you deserve ...

MR. SPEAKER: Order, order. Please resume your seats ... if you persist, it will not be recorded. Shri Bosu.

SHRI JYOTIRMOY BOSU: The House has to consider what Shri Shyamnandan Mishra has said, he is the Deputy Leader and he has disapproved in clear language the introduction of the Bill although he has said that he did not oppose it.

MR. SPEAKER: What is the point of order in that?

SHRI JYOTIRMOY BOSU: In the changed circumstances, in the light of the attitude of the Janata Party's Deputy Leader, we know that he is opposing the very spirit of the Bill. You have to give it all the consideration.

MR. SPEAKER: There is no point of order.

THE MINISTER OF LAW JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I am grateful to the hon. Members for the brief statements which they have made on this Bill and I also propose to be brief in my statement. With regard to the objections that they have raised to the introduction of this Bill, I fully respect those feelings and sentiments behind those objections. I take it that those objections arise from a little misconception of the whole situation and I should like to allay those misconceptions and give an assurance to the House that there is no question of the Janata Party or the Government going back on its commitment. There was the 42nd amendment by which the Constitution was amended. Shri Mavalankar whom I greatly respect read out from the manifesto to point out that the Constitution had been amended to sanctify total concentration of power in the hands of an individual and that it constituted a departure from cer-

tain principles and that it vitiated checks and balances and so on. When a statement like this is made, it is a statement which reflects on certain amending Act generally. There are various provisions. You have been an eminent Judge of the Supreme Court and you are aware that there are so many provisions in the 42nd amendment and each provision stands by itself. It is an independent provision. When a statement like this is made in regard to a comprehensive amending Act containing 59 clauses it is not that the statement applies to each individual clause; the statement applies to most of the clauses which are there.

SHRI SHYAMNANDAN MISHRA: May I draw the attention of the hon. Law Minister that—the political charter in the manifesto clearly pledged to rescind the 42nd amendment.

SHRI SHANTI BHUSHAN: I have heard the hon. Members patiently and I am equally entitled to that; if the hon. Members would hold their patience and give me the same courtesy which I give to them when they were speaking, I shall explain the position. There might have been difference of opinion whether it was brief or not. I regard they spoke briefly. I also propose to be brief. The first point raised by Prof. Mavalankar was that a Bill should have been brought for the total repeal of the 42nd amendment Act lock, stock and barrel—a single line Bill stating that the 42nd amendment Act is repealed should be brought and thereafter another Bill should have been brought for incorporating the amendments which we want to have. For instance, article 39A is one of the directive principles which casts a duty on the State to give legal aid to the poor. It cannot be described as an amendment which either sanctifies total concentration of power in the hands of an individual or vitiates the balance of power. So, his suggestion was that one Bill should be brought to repeal the 42nd amendment and then another

[Shri Shanti Bhushan]

Bill should be brought, which is a comprehensive one dealing with each amendment made by the 42nd amendment Act. I will deal with both the positions. It is well known that the purpose of the 42nd amendment Act was to amend the Constitution. Its provisions provided that the Constitution shall stand amended in a particular way. The provisions had to be brought into force on specific dates which had to be laid down by the government. Most of the provisions of the 42nd Act have already been brought into force. May be one or two provisions were yet to be brought into force. Sir, I appeal to your great experience. If just a repealing Bill had been brought, would it serve the purpose of amending the Constitution? After these provisions have already come into force and achieved the purposes for which they had been brought, a repealing Bill would not serve the purpose of restoring the Constitution to its original shape and form. It would have been completely futile. Of course, those provisions which were yet to be brought into force would have been prevented from being given effect to and to that extent a potential threat of further amendment in respect of two or three articles would have been averted.

As I said, some people have said that a single line Bill to repeal the 42nd amendment Act should have been brought. That would not serve the purpose. The other proposal is, there could have been another Bill with 59 clauses saying, "This clause shall stand deleted from the Constitution" and so on. Of course, some saving provision would have had to be made. You cannot bring two. If you to-day bring a measure for the repeal of a particular clause, can you, thereafter, turn round—after this has been adopted—and bring in another measure, viz. to restore it, and put it back, viz. clause 39-A in the same session? Could one measure be brought in order to delete clause 39-A

from the Constitution, and again, as soon as it was deleted, if it required ratification, could we bring another bill?(Interruptions)

SHRI SHYAMNANDAN MISHRA:
Some amendment can come in.

SHRI SHANTI BHUSHAN: Apart from it, if a Government brings a measure saying that clause 39-A shall be deleted; suppose an amendment is moved by another hon. Member that that particular clause of the bill should be deleted, and the question engages the consideration of the House namely to accept it or not; and the scope of the amendment is that there is a duty imposed on the State by Article 39-A viz. to give legal aid to the poor—and the speech made in support of the bill is that there is no reason to delete this particular clause, simply because it was said that the bill had been passed without a proper discussion and debate. That kind of thing has always been said. But there is now no impediment to any discussion and coming to a conclusion. So, before any measure is brought before the House, obviously, there should be an application of mind on the point: do we want this particular clause 39-A or any other matter which might have been brought from the State List to the concurrent List etc. Take for instance Education. Education was in the State List. It was brought to the Concurrent List by the 42nd Amendment Act. Obviously, before such a formal measure as a bill is brought before the House, the people who want to bring that bill have to make up their minds and decide whether they want to keep a particular subject in the State List or the Central List. If it is in the Concurrent List and they want to keep it in the Concurrent List, then—with the limited understanding that I have—it would not be proper at all to bring a bill, to take it from the Concurrent List in which it might be to the State List first, and after it has been taken to the State List, then again to bring it back from the State List to the Concurrent List, and so on.

Constitution is an important matter. The matter of amending the Constitution cannot be treated very lightly. In fact there has been criticism against the measures which had been brought in the past, that such a sacred and solemn matter like the amending of the Constitution, was being treated lightly. (*Interruptions*) If that is so, there must be a proper debate, proper consideration and proper application of mind to each and every clause first.

PROF. P. G. MAVALANKAR: Has there been a debate on this; has there been a debate on what you are doing now? Where is the debate? Nobody knows it. (*Interruptions*)

SHRI SHANTI BHUSHAN: Yes. A debate has been going on throughout the country. After March, the atmosphere of stifling debate has not been there. Even during Emergency—even you, Sir, are a witness to the fact—in spite of the then prevailing stifling atmosphere, many of us had gone round the country and successfully carried on a debate. Prof. Mavalankar will not forget it. We carried on a debate, even during the oppressive period of the Emergency; and that debate has been continued ever since. The Press has also been expressing its views; various Bar associations have been appointing committees; many seminars have taken place; and committees have considered the matter and submitted reports. Many individuals have been sending their views. The matter has been discussed in many forums, even in party forums and so on. That is why it was decided....

SHRI JYOTIRMOY BOSU: Your deputy leader is opposing it on the floor of the House.

SHRI SHANTI BHUSHAN: He is not opposing.

SHRI JYOTIRMOY BOSU: He is. (*Interruptions*)

PROF. P. G. MAVALANKAR: What about a free national debate?

SHRI SHANTI BHUSHAN: The hon. deputy leader has served an important public purpose viz. calling attention to this matter, so that there may be no confusion in the matter.

SHRI JYOTIRMOY BOSU: In an open forum?

SHRI SHANTI BHUSHAN: His intention was to give me an opportunity to clarify these very important matters, so that there may be no confusion in the public mind at any place. I am very grateful to him for that. Otherwise, people who are interested in carrying on propaganda, they might have carried on some propaganda, and some confusion would have arisen. So, I am grateful to the Deputy Leader for having made that statement for the purpose of enabling me to take this opportunity to put the record straight as to what the intention of the Government is, what the Government propose to do about it.

Something was said in regard to piecemeal measures in regard to such a document like the Constitution (Forty-second Amendment) Act. May I remind the hon. Members of this House that this piecemeal approach has been adopted and has become necessary for certain reason? This is not the first time today that this piecemeal approach has been adopted. In fact, may I remind the hon. Members of this House that in the very first session, after this Government took over, this piecemeal approach in regard to the Forty-second Amendment Act has been adopted in this House itself, with the permission of the House. In the very first session the Forty-third Amendment Bill has been introduced with the permission of the House, with the unanimous permission of the House, and one of the matters which is contained in this Bill was also in that Bill, namely, article 31B. So far as that Bill is concerned, it is still there before the House, and it deals with various other articles of the Constitution, like the term of the Lok Sabha as well as the State Legislative Assemblies, which

[Shri Shanti Bhushan]

had been sought to be increased from five years to seven years. That Bill is already before the House. So far as this Bill is concerned, it also deals with the clause of the Constitution. The reason why this Bill had to be brought....

MR. SPEAKER: The reason everybody knows.

SHRI KANWAR LAL GUPTA: Would he give an assurance that all the other undesirable things would be removed later on?

SHRI SHANTI BHUSHAN: Yes. We want a dialogue with the opposition. Not that we are afraid and, therefore, we will not bring a measure only because it is not supported by the opposition parties. After the dialogue and discussion, if something which we feel should be amended is not acceptable to them, we will still bring that measure before the House. It is another matter. The dialogue has been carried on, it is going on, and I am very hopeful that there would be no difficulty at all. But if there are some articles in regard to which we feel that there should be amendment and there is no cooperation forthcoming from the other side, that will not prevent us from bringing those matters also before this House and the other House.

SHRI SHYAMNANDAN MISHRA: The simple question is whether the hon. Minister stands by the commitment to the House namely, to bring up a comprehensive Bill.

MR. SPEAKER: He has said that.

SHRI SHYAMNANDAN MISHRA: The commitment was to bring it during this session.

MR. SPEAKER: He did not say in this session.

SHRI SHYAMNANDAN MISHRA: In the President's Address there was

an assurance that the Government propose to do it this year.

MR. SPEAKER: He has answered your question. What he said was that he will try to persuade the other side to agree with you and then do it. But if you think they are not agreeable on important matters where you consider an amendment is necessary, even then he shall bring the amendments.

SHRI SHYAMNANDAN MISHRA: My humble submission then is that the Government should say that it does not find it possible to honour the commitment given to the House. Secondly, the Government might not succeed in getting what they want from the Opposition while the Opposition would succeed in retaining the soul of Emergency that they have built into the Constitution intact. So, I say that it must be a comprehensive Bill. Whatever amendments the Government propose to bring they should come forward with them. They should not come in a piece-meal manner.

SHRI JYOTIRMOY BOSU: I fully support what my hon. friend, Mr. Shyamnandan Mishra has said.

PROF. P. G. MAVALANKAR: Let us have an assurance as to how soon the Minister will bring it.

MR. SPEAKER: I am not allowing others who have not given prior notice. I put it to the vote of the House.

The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

SHRI SHANTI BHUSHAN: I introduce the Bill.

SHRI KRISHAN KANT (Chandigarh): Sir, before you go to the next item, because I had not given my name earlier, I would like to know from the hon. Minister one thing. This is the President's Address dated 28th March, 1977. They have stated here that during the course of the year, a comprehensive measure will be brought before the House. I want an assurance from the hon. Minister that this Bill must be brought before 28th March, 1978.

SHRI SHANTI BHUSHAN: It may be difficult to bring forward a comprehensive Bill in this session. It will be brought forward in the early stages of the next session.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): There has been a reference to the President's Address. Everybody is very seriously concerned about one other matter. I would also like to know, what about the other commitment for the repeal of MISA which we have been asking for.

MR. SPEAKER: That had already been raised.

13.57 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

MATTERS UNDER RULE 377

- (i) **BOYCOTT OF WAGE BOARDS OF WORKING JOURNALISTS AND NON-JOURNALIST EMPLOYEES BY I.E.N.S. AND INDIAN LANGUAGES NEWSPAPERS ASSOCIATION**

SHRI JYOTIRMOY BOSU (Diamond Harbour): Under rule 377, I wish to raise the following matter on the floor of the House.

The newspaper tycoons of the Indian Eastern Newspapers Society and the Indian Languages Newspapers Association have decided to boycott the wage boards of working journa-

lists and non-journalist employees in the newspaper industry. This has been conveyed to the Prime Minister, as it is reported. The decision to boycott was on the issue of giving adequate interim relief to working journalists and non-journalist employees and the tycoons have opposed the inclusion of a veteran politician and an eminent trade union leader, Shri B. C. Bhagwati and another member. This situation by the newspaper tycoons was created on the pretext that Shri Bhagwati and other non-official member was trying to protect the interests of the working journalists and other non-journalist employees. Shri Dutt, the other member was also a member of the fact-finding committee on daily newspapers and, therefore, his stand was also based on first-hand knowledge of newspaper working.

The Government should now intervene in the matter and ensure that the working journalists and non-journalist employees get adequate interim relief which is justified by the rise in the present cost of living index.

- (ii) **NON-AVAILABILITY OF STREPTOMYCIN MEDICINE**

SHRI KRISHNA CHANDRA HALDER (Durgapur): Mr. Deputy-Speaker, Sir, I would like to draw the attention of the House to an urgent matter of public importance under rule 377.

A news has appeared in newspapers that streptomycin, a very vital medicine, is not available in the market causing difficulty to lakhs of patients. For want of vital medicines, like streptomycin, lakhs of patients may die. It is a very important and serious matter. Therefore, through you, Sir, I draw the attention of the Minister concerned and I would request him to inquire into the causes of short supply of streptomycin, whether it is hoarding or not, and make a statement on the floor of the House and assure the House about the easy supply of streptomycin.