

[Shri Jagannath Rao]

I now come to the powers of the High Court and Supreme Court. I opposed this provision in the Congress Party meeting. You will be surprised that in the original recommendation even the High Court could not go into the validity of a State law. I asked then: what is the need for a High Court, abolish it. Then this was put in. Then I objected to the provision that the State High Courts cannot go into the validity of a central law or notification. This also is absurd because if a citizen has a case against the Central Government he has to come to Delhi. It should be that the Central Government or an officer within the jurisdiction of a High Court could be questioned by that High Court. Even that right was taken away. It is absurd. 95 per cent of the cases pending in High Courts and Supreme Court is between the citizen and the State. How can a citizen from Kanya Kumari come to Delhi to file a writ? I am happy that the distortions are being removed.

I strongly objected to the two-thirds majority principle. If in a Bench consisting of five judges, three judges hold a particular law not valid and two hold it valid, the minority view would prevail. The fiction of two-thirds majority was introduced and the case would be decided according to that decision. I said that it was absurd. I was told in reply that the Constitution requires two-thirds majority and even in the Security Council unless a resolution was adopted with two-thirds majority, it could not be deemed to have been passed. Some hon. Members may not be knowing, sometimes Constitution amendment failed in this House for want of requisite majority. As I pointed out, I told at that time that it was absurd and it resulted in absurdities. If a constitutional bench consisting of 14 judges is constituted and a case drags on for a week, what will happen to the other cases and other clients who would be waiting in the corridors? I am glad that this

distortion is being removed and we are restoring the constitutional provisions in the original form. Though the Constitution is or living document which has to meet the aspirations and hopes of the people, it does not mean that such amendments should be brought forward. Without these amendments, the aspirations could be met otherwise by other provisions. Therefore, this Bill has emerged as a product of consensus arrived at by the ruling party and other opposition parties in the House. It is a good precedent that has been established and I am happy about it, viz., as far as the Constitution is concerned, the Parliament functions under its constituent power and therefore, all sections of the House should come to a general agreement about the provisions to be inserted either as amendments or as new provisions. This Bill gives effect to the conclusions arrived at in the meeting with opposition leaders. It is non-controversial and it is so salutary that these amendments will come into effect before this year is out. With these words, I support the Bill.

SHRI C. K. CHANDRAPPAN (Cannanore): Sir, while supporting this Constitution 44th Amendment Bill, I would like to draw attention to some of the promises made by the Janata Party to the people, to which the Deputy Leader of the Janata Party also drew attention. When they fought the elections, the Janata Party in their manifesto promised two or three important things. One of them important points which they put before the people was the manner in which the 42nd Amendment was passed and also various other legislations were enacted by Parliament during emergency. They said, these legislations were enacted under duress. They promised the repeal of the 42nd Amendment. Now there are second thoughts about it. The Minister himself pointed out that they do not consider all the provisions of the 42nd Amendment as bad. The Janata Party also promised the repeal of MISA. Last week when we raised it

in the House, the Government promised that they are going to bring a Bill to repeal MISA, but at the same time it should be remembered that the government today think that it is necessary for it to have some kind of legislation which might give them certain arbitrary powers. It may not be MISA but something else. That was told by the Home Minister in both Houses. Mr. Charan Singh told this House that under emergency, the government of Mrs. Gandhi had a plan to kill the leaders of the opposition and that statement was challenged. He pointed out the observations made by the Attorney General in the Supreme Court. Just now, Mr. Somnath Chatterjee was mentioning another occasion on which the Attorney General had referred to something in the Supreme Court. Mr. Chatterjee did it only two days back. It was in relation to the case of the 40,000 LIC employees who are asking for their bonus. During Emergency, an enactment was made in this House, by which the bilateral agreement arrived at between the LIC and the employees had been repealed. There was a legislation to that effect. My point is that they should not take an attitude of convenience towards such important matters. If they have made promises to the people that they will repeal those legislations which went against the people and their interests, they should honour them. I am sorry to find that the Attorney General is now arguing that the right to bonus of the LIC workers should be treated as something closed, because there is a legislation enacted by this Parliament. I would like to know the attitude of the Government in this matter. Even about Emergency, I think there are second thoughts in the mind of the Janata Party. A note has been circulated. You promised the electorate in this country when you faced them that you will create conditions under which no government will in future be able to impose it. I do not think that Mr. Shanti Bhushan is in a position to reassert that promise made to the people, because the Janata Party has again

second thoughts about Emergency. They do not perhaps propose to have Emergency in the same way as Mrs. Indira Gandhi did in 1975, but to have it in the event of armed insurrection etc.; they think that on similar occasions, emergency can be proclaimed. Why I point out these things is that Janata Party is also developing cold feet on the various promises made to the people.

Now about the supremacy of Parliament. I do not agree with the contention made by various speakers in this House that because somebody had misused the powers vested in Parliament, Parliament should have limited powers to amend the Constitution. I do not agree with that view. I think we have to take another lesson, in regard to the classical approach to the question of the power of Parliament to amend the Constitution. It was debated in the past, as to the extent to which Parliament can go. When it was done, I think *London Times*—if I remember correctly—wrote an editorial comment on it. It asked whether the British Parliament had a right to enact a legislation by which all the people i.e. all the boys and girls born in Britain can be drowned in the river Thames. *London Times* answered "Yes; the British Parliament can bring forward and enact such a legislation." But then it observed: "After doing that, will the people tolerate that Parliament?" That is the question. Here, I think, the situation is the same. Emergency was enforced; it was misused. So many obnoxious legislations were brought in this House and passed. We should learn something better. (Interruptions) All the abuses and everything had been done with the power of Parliament, but the people of this country did not allow that Government to continue. That is why they are now sitting in the opposition. The people of this country are great, there is no doubt about it. They may be ignorant, illiterate, but they have the sense to understand who is right and who is wrong, and they have given a

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clean verdict, under strange circumstances, a verdict which was democratic. How can you today say that the people may not be good in their judgment? I do not agree with you. The final say should be with Parliament. There cannot be any other body which can overrule the decisions of Parliament. If Parliament does something which is beyond the Constitution, the Supreme Court can point it out, but there cannot be any basic structure which will be beyond this Parliament. If Parliament considers tomorrow that the present structure on which the Constitution is based is no more good, well, it is no more good, but they will have to go to the people and the people will say whether Parliament was right in its judgement or not.

Lastly, I would like to remind all in this House that it is not always a Constitutional Amendment which decides the future of a country. After all, Hitler did not bring forward any Constitutional Amendment to kill the Weimar Republic. It was the Black Shirts who decided with their might what the future of Germany should be. No dictator ever bothers to amend the Constitution and then to establish a dictatorship. So, I do not bother about a dictator who will misuse the powers entrusted to Parliament. I would like the Janata Party to have faith in the people, complete, implicit faith in the people, and the people will give ultimately the correct judgement as to who is correct and who is not, and they will put them in their proper place.

With these words, I support this amendment which is very limited, and do it wholeheartedly.

SHRI YASHWANT BOROLE (Jalgaon): There is no controversy in this House on the point that the Forty-second Amendment which was put on the statute-book was really brought in a cavalier manner, when Members not only of the opposition

but even of the ruling party who wanted to oppose it, were behind bars. Not only that. The proceedings were not allowed to be reported in the papers. There was no nationwide deliberation through symposia etc. on the Amendment. So, all of us are practically agreed on this point and on the bad effects of the Forty-second Amendment. It has curtailed liberty and freedom, there is no doubt about it. It has also gagged the press, it has also affected our judiciary adversely, its independence has also been affected. All these bad effects of the Constitution, Forty-second Amendment are quite alive to the minds of the Members of Parliament. I do not think we are at all considering the aspect of the matter that all those 59 clauses which have adversely affected our administration, our liberty, independence of our judiciary and so on should be retained at all in the Constitution. However, the question arises whether the Forty-second Amendment of the Constitution should be repealed in toto or not, whether it is expedient and necessary, whether it is interest of the people at large, whether it will be beneficial that a fundamental document, a basic document, like the Constitution of the country should be put in order. Suppose a man is feeding another person under a threat. Are we going to condemn him for feeding a person? Certainly not.

There are in the Forty-second Amendment of the Constitution certain provisions which are also good. Many of the hon. Members have referred to these provisions. For example, there is a provision for forest and wild life development, there is a provision for children's development and a number of other such provisions. There are a number of provisions which have not come into play and which have not come into existence also. These are merely technical provisions. For example, with an increase in the population of a constituency, there should be a delimitation of the constituency or a re-adjustment thereof. There are