

STATEMENT OF OBJECTS AND REASONS

The Constitution (Forty-second Amendment) Act, 1976, inserted various articles in the Constitution to curtail, both directly and indirectly, the jurisdiction of the Supreme Court and the High Courts to review the constitutionality of laws. Article 32A barred the Supreme Court from considering the constitutional validity of any State law in proceedings for the enforcement of fundamental rights unless the constitutional validity of any Central law was also in issue in such proceedings. Article 131A gave to the Supreme Court exclusive jurisdiction to decide the constitutional validity of a Central law and thus deprived the High Courts of their jurisdiction in respect of the same. Article 144A provided that the minimum number of Judges of the Supreme Court who shall sit for the purpose of determining the constitutional validity of any Central law or State law shall be seven and required a special majority of two-thirds for the invalidation of such law. Article 226A barred the High Courts from deciding the validity of any Central law and article 228A required that there should be a Bench of at least five Judges for determining the constitutional validity of any State law and prescribed a special majority for a judgment invalidating such a law.

2. It is considered that articles 32A, 131A and 228A cause hardship to persons living in distant parts in India. Further, article 32A would lead to multiplicity of proceedings as cases relating to the validity of a State law which could be disposed of by the Supreme Court itself have to be heard first by the High Court. The minimum number of Judges in every case wherein the constitutional validity of a law is involved, however unsubstantial the challenge might be, results in valuable judicial time being lost in hearing and rejecting submissions that have no substance. The Supreme Court has, in *M/s. Misrlal Jain vs. the State of Orissa and Others* (AIR 1977 SC 1686) expressed the hope that article 144A would engage the prompt attention of Parliament and would be amended so as to leave to the court itself the duty to decide how large a Bench should decide any particular case. In fact, a number of cases have been held up in the Supreme Court and High Courts as a result of the aforementioned articles.

3 It is, therefore, proposed to omit articles 32A, 131A, 144A, 226A and 228A. It is also proposed to make special provisions to enable the Supreme Court and the High Courts to deal with pending cases in the same manner as if the said articles had been omitted with effect from the 1st February, 1977 (*viz.*, the date on which those articles were brought into force). Necessary consequential amendments to articles 145, 228 and 366 are also proposed to be made.

4. Article 31D confers special power on Parliament to enact certain laws in respect of anti-national activities. It is considered that these powers of Parliament to make laws for dealing with anti-national activities and anti-national associations are of a sweeping nature and are capable of abuse. It is, therefore, proposed to omit article 31D.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

SHANTI BHUSHAN.

The 12th December, 1977.

AVTAR SINGH RIKHY,
Secretary.