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Tuesday, October 26, 1976
Kartika 4, 1898 (Saka)

LOK SABHA DEBATES

(Eighteenth Session)

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LOK SABHA SECRETARIAT
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LOK SABHA

Tuesday, October 26, 1976/Kartika 4, 1898 (Saka)

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

PAPERS LAID ON THE TABLE

STATEMVT RE. CHANGE IN THE FINANCIAL ARRANGEMENTS FOR CONSTRUCTION OF JAKHAPURA-BANASPANI RAILWAY LINE

THE MINISTER OF RAILWAYS (SHRI KAMLAPATI TRIPATHI): I beg to lay on the Table a statement (Hindi and English versions) regarding change in the financial arrangements for construction of Jakhapura-Banaspani railway line. [*Placed in Library. See* No. LT-11393/76].

STATEMENT RE. ACCIDENT TO THE INDIAN AIRLINES CARAVELLE AIRCRAFT AT BOMBAY AIRPORT

THE MINISTER OF TOURISM AND CIVIL AVIATION (SHRI RAJ BAHADUR): I beg to lay on the Table a statement (Hindi and English versions) on the accident to the Indian Airlines Caravelle Aircraft at Bombay Airport on the 12th October, 1976. [*Placed in Library. See* No. LT-11394/76].

ADMINISTRATION REPORT OF TAMIL NADU WATER SUPPLY & DRAINAGE BOARD FOR 1974-75, A STATEMENT AND NOTIFICATIONS UNDER TAMIL NADU TOWN AND COUNTRY PLANNING ACT, 1971

THE MINISTER OF STATE IN THE MINISTRY OF WORKS AND HOUSING (SHRI H. K. L. BHAGAT): I beg to lay on the Table:

(1) (i) A copy of the Administration Report of the Tamil Nadu Water Supply and Drainage Board for the year 1974-75, under sub-section (1) of section 44 of the Tamil Nadu Water Supply and Drainage Board Act, 1970 read with clause (c) (iv) of the Proclamation dated the 31st January, 1976 issued by the President in relation to the State of Tamil Nadu.

(ii) A statement (Hindi and English versions) explaining the reasons for not laying the Hindi version of the above Report.

[*Placed in Library. See* No. LT-11395/76].

(2) A copy each of the following Notifications under sub-section (2) of section 123 of the Tamil Nadu Town and Country Planning Act, 1971 read with clause (c) (iv) of the Proclamation dated the 31st January, 1976 issued by the President in relation to the State of Tamil Nadu:—

(i) G.O.Ms 1413 published in Tamil Nadu Government Gazette dated the 10th September, 1975.

(ii) G.O.Ms 1803 published in Tamil Nadu Government Gazette dated the 19th November, 1975.

(iii) G.O.Ms. 1973 published in Tamil Nadu Government Gazette dated the 26th November, 1975.

(iv) G.O.Ms 1885 published in Tamil Nadu Government Gazette dated the 3rd December, 1975.

(v) G.O.Ms 1895 published in Tamil Nadu Government Gazette dated the 3rd December, 1975.

(vi) The Tamil Nadu Town and Country Planning Board (Preparation and Submission of Annual Report) Rules, published in Notification No. G.O.Ms 231 in Tamil Nadu Government Gazette dated the 3rd March, 1976.

(vii) G.O.Ms 1166 published in Tamil Nadu Government Gazette dated the 30th June, 1976.

(3) A statement (Hindi and English versions)—

(i) explaining reasons for not laying the Hindi versions of the above Notifications; and

(ii) showing reasons for delay in laying the above Notifications.

[*Placed in Library. See* No. LT-11396/76].

NOTIFICATION UNDER ALL INDIA SERVICES ACT, 1951

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA): I beg to lay on the Table a copy of Notification No. G.S.R. 1108 (Hindi version) published in Gazette of India dated the 31st July, 1976 containing corrigedum to the Hindi version of Notification No. G.S.R. 2691 dated the 22nd November, 1975, under sub-section (2) of section 3 of the All India Services Act, 1951. [*Placed in Library. See* No. LT-11397/76].

RAILWAYS RED TARIFF (7TH AMDT.) RULES, 1976

THE MINISTER OF STATE IN THE MINISTRY OF RAILWAYS (SHRI MOHD. SHAFI QURESHI): I beg to lay on the Table a copy of Railways Red Tariff (Seventh Amendment) Rules, 1976 (Hindi and English versions), published in Notification No. G.S.R. 1384 in Gazette of India dated the 25th September, 1976, issued under section 47 of the Indian Railways Act, 1890. [*Placed in Library. See* No. LT-11398/76].

NOTIFICATIONS UNDER OILFIELDS (REGULATION AND DEVELOPMENT) ACT, 1948

THE DEPUTY MINISTER IN THE MINISTRY OF PETROLEUM (SHRI ZIAUR RAHMAN ANSARI): I beg to lay on the Table a copy each of the following Notifications (Hindi and English versions) under section 10 of the Oilfields (Regulation and Development) Act, 1948:—

(i) S.O. 600(E) published in Gazette of India dated the 8th September, 1976.

(ii) The Petroleum and Natural Gas (Second Amendment) Rules, 1976, published in Notification No. G.S.R. 792(E) in Gazette of India dated the 8th September, 1976.

[*Placed in Library. See* No. LT-11399/76].

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES (2ND AMDT.) RULES, 1976.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI BEDABRATA BARUA): I beg to lay on the Table a copy of the Monopolies and Restrictive Trade Practices (Second Amendment) Rules, 1976 (Hindi and English versions) published in Notification No. G.S.R. 1392 in Gazette of India dated the 25th September, 1976, under sub-section (3) of section 67 of the Monopolies and Restrictive Trade Practices Act, 1969. [*Placed in Library. See* No. LT-11400/76].

NOTIFICATIONS UNDER TAMIL NADU PROHIBITION ACT, 1937 AND STATEMENTS FOR DELAY AND NOT LAYING IN HINDI

THE DEPUTY MINISTER IN THE MINISTRY OF EDUCATION AND SOCIAL WELFARE AND IN THE

DEPARTMENT OF CULTURE (SHRI ARVIND NETAM): I beg to lay on the Table—

(1) A copy each of the following Notifications under sub-section (3) of section 54 of the Tamil Nadu Prohibition Act, 1937 read with clause (c) (iv) of the Proclamation dated the 31st January, 1976 issued by the President in relation to the State of Tamil Nadu —

(i) G O Ms 366 published in Tamil Nadu Government Gazette dated the 17th December, 1975 making certain amendments to the Madras Liquor (Licence and Permit) Rules, 1960

(ii) G O Ms 370 published in Tamil Nadu Government Gazette dated the 7th January, 1976 making certain amendments to the Madras Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules 1959

(iii) G O Ms 371 published in Tamil Nadu Government Gazette dated the 7th January 1976 making certain amendment to the Madras Liquor (Licence and Permit) Rules 1960

(iv) G O Ms 372 published in Tamil Nadu Government Gazette dated the 7th January 1976 making certain amendments to the Madras Liquor (Licence and Permit) Rules, 1960

(v) G O Ms 375 published in Tamil Nadu Government Gazette dated the 7th January 1976 making certain amendment to the Madras Liquor (Licence and Permit) Rules 1960

(vi) G O Ms 388 published in Tamil Nadu Government Gazette dated the 7th January 1976 making certain amendment to the Madras Liquor (Licence and Permit) Rules, 1960.

(vii) G O Ms 24 published in Tamil Nadu Government Gazette dated the 18th February, 1976 making certain amendments to the Madras Liquor (Licence and Permit) Rules, 1960

(viii) G O Ms 50 published in Tamil Nadu Government Gazette dated the 3rd March, 1976 making certain amendment to the Madras Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules, 1959

(ix) G O Ms 86 published in Tamil Nadu Government Gazette dated the 24th March 1976 making certain amendment to the Madras Liquor (Licence and Permit) Rules, 1960

(x) G O Ms 104 published in Tamil Nadu Government Gazette dated the 25th March, 1976 making certain amendments to the Madras Liquor (Licence and Permit) Rules, 1960

(xi) G O Ms 163 published in Tamil Nadu Government Gazette dated the 26th May, 1976 making certain amendment to the Madras Denatured Spirit Methyl Alcohol and Varnish (French Polish) Rules, 1959

(xii) G O Ms 193 published in Tamil Nadu Government Gazette dated the 30th June 1976 making certain amendment to the Madras Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules 1959

(xiii) G O Ms 199 published in Tamil Nadu Government Gazette dated the 30th June, 1976 making certain amendment to the Madras Rectified Spirit Rules, 1959

(xiv) G O Ms 244 published in Tamil Nadu Government Gazette dated the 18th August, 1976 making certain amendments to the Madras Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules 1959

(xv) G O Ms 277 published in Tamil Nadu Government Gazette

dated the 29th September, 1976 making certain amendment to the Madras Denatured Spirit, Methyl Alcohol and Varnish (French Polish) Rules, 1959.

(2) A statement (Hindi and English versions) showing reasons for delay in laying the Notifications mentioned at (i) to (xiii) above.

(3) A statement (Hindi and English versions) explaining reasons for not laying the Hindi versions of the above Notifications.

[*Placed in Library. See* No. LT-11401/76].

11.01 hrs.

CONSTITUTION (THIRTY-SECOND AMENDMENT) BILL

(i) Appointment of Member to Joint Committee

DR HENRY AUSTIN (Ernakulam) I beg to move·

"That this House do appoint Shri Shanker Rao Savant to the Joint Committee on the Bill further to amend the Constitution of India in the vacancy caused by the resignation of Shri Arjun Shripat Kasture from Lok Sabha."

MR SPEAKER: The question is:

"That this House do appoint Shri Shanker Rao Savant to the Joint Committee on the Bill further to amend the Constitution of India in the vacancy caused by the resignation of Shri Arjun Shripat Kasture from Lok Sabha"

The motion was adopted.

(ii) Extension of Time for Presentation of Report of Joint Committee

DR HENRY AUSTIN· I beg to move·

"That this House do further extend upto the last day of the next session, the time for the presentation of the Report of the Joint Committee on the Bill further to amend the Constitution of India."

DR. RANEN SEN (Barasat): How many times the postponement has taken place? What is the reason? Why are they taking so much time?

श्री रामावतार शास्त्री (पटना) : हम लोग आज कल संविधान संशोधन पर चर्चा कर रहे हैं—क्या यह इस में कवर नहीं हो सकता ?

DR. HENRY AUSTIN: As hon. Members know, in the Committee some Members raised objection on the ground that they could not participate in the discussion earlier. This will be perheps the last request for extension of time, because we will be proceeding with the clause by clause discussion. It was the intention of the Committee to finalise the report earlier. But due to circumstances beyond our control, because of the strong views expressed by some new Members that they want to participate in the deliberations, the proceedings had to be continued.

MR. SPEAKER: The question is:

"That this House do further extend upto the last day of the next session, the time for the presentation of the Report of the Joint Committee on the Bill further to amend the Constitution of India."

The motion was adopted

11.05 hrs.

CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL—*contd.*

MR SPEAKER· The House will now take up further consideration of the Constitution (Forty-fourth Amendment) Bill Shri Chapalendra Bhattacharyyia will continue his speech.

SHRI CHAPALENDU BHATTACHARYYIA (Giridih): As I was saying yesterday, the noted political commentator Harold Laski, had expressed his doubt whether the transition from capitalist democracy to socialist democracy could be smooth and within the limits of the Constitution. We are, in fact, doing that, and the Forty-fourth Amendment of the Constitution will be a guarantee that this transition shall be taking place smoothly, lawfully and constitutionally.

I quote from Laski's *Parliamentary Government in Britain*, page 360:

> "Acts of Parliament are not self-operative. They have to be applied by men, and application involves interpretation by a Court of Law. The Legislative intention has to be settled by a Court of Law, to avoid dangers of unfettered executive discretion in administration."

> "The intention of Parliament is to be discovered by a body of independent persons free from any direct interest in the result and trained by long years of practice to standards of judgment by which the intention may be tested. This is the famous Rule of Law on which Dicey set so much store."

> "It is not indeed intended to make the Judges the masters of Parliament—Judicial review in the American sense was unkown to the British Constitution—which since 1688 had an unmatched record of independence and incorruptibility."

After pointing out that in America, Justice Oliver Wendell Holmes noted that the Judges have what he called "inarticulate major premises" not less fully than other man, he adds:

> "Just as a good deal of American Constitutional Law is inexplicable except upon the basis that the Supreme Court did not like Legislation upon which it had to pass judgment and substantiated its own view of the Constitution for that of a Congress or State Legislature."

This is what has been happening in America, and there has been some opposition to this Constitutional Amendment deriving inspiration from the practice prevalent in America and from the pronouncement of the Supreme Court there which tried to slow down the process of social changes in that country. Can we afford to do it?

India is a country with a much larger population, and the process of population explosion is on. There are the rising expectations of the people. We have to meet their economic necessities and there are what are called limits to growth. So, it is in this context that we have to evaluate these constitutional changes.

Fifty years ago in America the Supreme Court could summarily dismiss a petition by the Feminists for greater protection because of their constitutional handicaps, with a one line judgment that the Constitution of America could not enquire into the constitution of women. Much water has flowed down the Mississipi since then, and the Feminists in America have moved over to the Women's Lib Movement, and the authorities have to accept now what was rejected 50 years ago.

I need not dilate upon the bias of the Judges against trade unions, as, with my background of trade unionism, I have had many occasions to come up against it.

And the decisions have been given not on the merit of the case but on different grounds altogether.

In India, we had a sad experience of an ex-High Court Judge who later became the Chairman of Industrial Tribunal in the coalfields in early fifties in Dhanbad. He said, "My domestic servant is getting food plus Rs. 25 and there is no reason why

the coalminers should get effectively more." This is trying to project his personal experience, his personal prejudices into the larger question of wages of such an important segment of industrial labour as the coalminers.

Independent India pinned such hopes in the judicial review and judicial impartiality that even elections of Members of Parliament were left to High Court and Supreme Court Judges in the Representation of People Act. You can take the case of Shri A. N. Chawla whose election was set aside because, according to the judge, he spent Rs. 25,600 and he must have paid for the hire of the microphone at Rs. 100 per day. although we all know that you can hire a microphone for Rs. 30/- a day anywhere in India and more so in Delhi.

Judge J. M. Sinha, in his discretion, held that Prime Minister was a candidate not from the day her nomination was given by A.I.C.C. nor from the day her nomination was filed but from the day she was alleged to have told a newspaper that she would contest from Rae Barelli.

Whether these judgments are related to the inarticulate major premise or not they related to the efforts at destabilisation process, I leave it to the House to judge.

A comprehensive amendment of the Constitution to safeguard, watch over and protect the integrity of the country, and socio-ecoonmic change is an over-riding necessity.

As regards the powers of the Parliament, I would not repeat what has been said by other colleagues except that a democratic Government is a representative Government and representative Government is party Government. That is the sum and substance of the matter. I welcome the efforts of Government to evolve and establish a consensus with Opposition Parties on the constitutional amendment. This Parliament is not as representative than the Constituent Assembly elected by the State Assemblies, which gave us this Constitution 25 or 26 years ago.

I would request the Law Minister to include in the Directive Principles the necessity of population control and a clause on Fundamental Rights to women. This population explosion will negate all our efforts unless we make it a central principle embodied in the Constitution itself. In India, Manu the ancient law giver upheld their right to motherhood. In the context of population explosion, I think, a second look has become necessary. I, therefore, suggest that women should be given another Fundamental Right after the birth of three children to deny their husbands their marital right for further children.

We are now in a phase of transition from rule of law and conventions of the Constitution and English Jurisprudence to the *droit administrati,* and ethos of French Jurisprudence. We have to take urgent steps to develop our services to the degree of integrity and expertise of the French Civil Service displayed during successive crises over the last three decades. That alone can make our transition meaningful. If we do that for India, it shall be another day. With these words. I support the Constitution Amendment Bill.

SHRI FRANK ANTHONY (Nominated---Anglo-Indians): Mr. Speaker, Sir, I have quite frankly been unable to understand the scare that has been raised specially by constituents of the ruling Congress suggesting that there should be some kind of a hotch-potch Constituent Assembly in order to pursue these amendments. As a practising lawyer, I have not been able to follow either the sense or the logic if there was any, in this scare. Anybody who reads the Constitution and, particularly, article 368, will find that it is clear beyond peradventure a simple language that the only body that has the power to amend the

Constitution is Parliament under the conditions set out in article 368.

When I met on 8th August the Law Minister, Sardar Swaran Singh and two other Ministers, I dealt with certain major issues. I welcome the fact that "Education" has been placed in the Concurrent List This was long overdue. As a member of the Constituent Assembly, I had pleaded passionately at that time, but had not succeeded, that "Education" should be put in the Concurrent List.

I had also asked that "Population Control" should be placed in the Concurrent List and I expressed my view that "Population Control" was a more appropriate term because it projected a national imperative, more appropriate than "Family Planning" which has a certain personal connotation. I feel very strongly on this. I have written a very strongly-worded article recently on this—Population control or perish There is a need to place "Population Control" on a war footing because, I think, we are racing against time. I think, it is perhaps the most strident challenge which the nation faces today. I do not have the time to give you the figures. I have put them into my article showing that India was, in fact, leading the world in this population explosion.

Uptill now, the educative processes have been completely inadequate to resolve this problem. For 20 years, we have started family planning and, I think, from 1952 to 1971 we spent Rs. 1,319 millions. It did not make a slightest dent on this problem. That is why we find what has happened is that this tremendous population explosion has overtaken all the progress that we made In many fields, we have achieved considerable progress Not only India's progress has been neutralised but the progress has been put into the reverse gear. I think, we added to our population 250 millions in 20 years, population of Russia, six times our land area. The result has been that in those 20 years, we have more than doubled our food production and we are still spending huge amounts of foreign exchange on importing food when we should be exporting.

The same thing is in regard to employment. The Government creates employment; the private sector creates employment and the public sector creates employment. Yet, the net result is that every year, we add so many more to our unemployed. That is why I have felt that today every section of the people must be brought within the purview of this war. I think, quite frankly, that today for a middle-class or a lower middle-class or any class of people, to produce large families is not only a sin but it is a crime. I do not think any religion, either Islam or Christianity purports even remotely to sanction the production of children who are then consigned to sub-human existence. We see today three-fifths of the country sub-human. We see today huge families living in rabbit-warrens. India cannot continue to be a country with three-fifths of its population sub-standard as today.

I am entering a plea: it is a test of the *bona fides* of the Government. I have given an amendment to Art. 102 that politicians must not be an exempted class My Amendment says that every person in the re-productive age (I don't know where you will set the age limit), before he is selected to stand for a seat, must produce, if he is at the re-productive stage and if he has three children, a certificate of sterilization (I am going to press it to vote) and if a person has been elected and his family adds more to the three children, he shall be disqualified.

SHRI M. RAM GOPAL REDDY (Nizamabad): Is it with retrospective effect?

SHRI FRANK ANTHONY: No, it won't be with retrospective effect.

[Shri Frank Anthony]

What is happening now is that you get a lot of special pleading There is a good deal of cynicism. We know people with increasingly bloated families—Ministers and politicians—pontificating about the 20 point programme and family planning while they have families with ten children and eleven children—and if the gestation period were shorter, they would have many more! So, I have given notice of this Amendment

Mr Speaker I have sent a note to the Swaran Singh Committee and I have sent it to the Prime Minister also I am now dealing with minority rights and one or two matters about which I am deeply anxious My anxiety has not been allayed I referred to his rigid formula requiring seven Judges to adjudicate on matters relating to Central Acts, Regulations and Notifications having the effect of statutory law vis-a-vis all Fundamental Rights The formula is that there must be seven Judges (a Bench consisting of seven Judges) and before it can be struck down it must have the majority approval of five out of seven I have said that so far it has been axiomatic and I think that is the position in any democratic country that the majority speaks for the Bench—and today we are inverting that fundamental maxim After all I practise predominently on the criminal side and I don't lose fortunately many of the death cases that emerge I have had cases where, out of three Judges two have unheld the death sentence and the man has been hanged You have not got any special provision that a man cannot be hanged unless five out of seven Judges say that he should be hanged, and yet in respect of Fundamental Rights you say it should be five out of seven I have said that hard cases make bad law You are thinking of Kesavnand Bharati's case and the Bank nationalisation case where one Judge makes all the difference Personally I would like to have seen the old principle, the basic maxim, continue But, at least, I have pleaded and Mr Gokhale seemed so ultra-understanding when I met him I said that I thought it will go through and I have said all right, you have said that so far as minorities are concerned, you don't intend to erode their righs even by an iota I am deeply grateful for that, but it is denuding the minority fundamental rights of a great deal of their content' I would say that I have appeared in every Minority Education case and though I am not pointing a finger at any of the Judges inevitably the majority of the judges are for the majority community Some Judges, not with any oblique motives but because of certain conditioning, don t have the understanding of the minority difficulties that other Judges do and inevitably, some of them (I don't say all of them because then we cannot have any majority judgment) tend to ride down the content of the Minority Fundamental Rights

When I was arguing the Kerala Christian College case my friend Shri Kumaramangalam who was one of our brilliant colleagues here was opposing it Then the Nair community came and they had the brilliant Setalvad arguing for them Though 85 he had a razor-edge brain and he said when the minorities have got this why should not the majority also have this education fundamental right?' They also want to have their own ethos in education they also want to have their own teachers drawn from a particular majority community And I argued it One of the judges said 'Yes I think there is a great deal in what you say why should not a majority community in terms of article 14 have the same fundamental rights?' I was asked to argue on this preliminary objection Fortunately the then Chief Justice Justice Hindayatullah said, 'I do not have to argue it' Rightly or wrongly—I think rightly—the framers of the Constitution among whom I had the privilege to be counted, in this mosaic of minorities felt that minorities should be given this linguistic right—

I am talking about education, article 30—, the minorities should be given this special fundamental right That is the intelligible differentia Article 14 cannot be attracted because you have given a special differential right to the minorities That is the intelligible differentia On a party of reasioning I am pleading here at least so far as this formula is concerned have this proviso that so far as the minority fundamental rights are concerned is at present the majority decision will be sufficient Otherwise what will happen? Somebody will say, What about the other fundamental rights? But you have struck a differential note you have put into the Constitution this differentia with regard to minorities And what I am asking for is merely a corollary of that Because the other fundamental rights will be no innovation on the part of any judge they will affect all communities whether majority or minority But when Fundamental Rights come in some judges do have this innovation why should the minorities get this fundamental right? A judge of a minority asked me the other day Do you think that in this day and age the minorities should have fundamental rights? I said Yes certainly because we are always in a minority legislatively and therefore this fundamental right has been given to us! And if you have this rigid formula we will get fobbed In the latest Gujarat case I was one of the interveners My juniors were counting because of the mental predilections of the judges I asked them 'How do you think we will fare?' and they said 'This gentleman is an Arya Samajist he will go against us this gentleman will say something else he will go against" Thus we counted that we would get five just a bare majority And we were right One judge felt that he would go along with the majority So we got six We in the Supreme Court test the approach according to the mental predilections or the mental conditioning of the judges We have to deal with them I am only pleading with you put a proviso it is only a corollary to the fundamental rights that you have already been pleased to give us

On the 27th July I have written to the Prime Minister I have made an earnest plea for the inclusion of English in the Eighth Schedule I met Mr Gokhale and Sardar Swaran Singh and repeated my plea and I pointed out that I had not a little to do with this on the position of English in the larger language pattern I mentioned that I had to prepare and argue the first case the Bombay Education Society case the Morarji Desai Government tried to outlaw it and said that English could only be taught to the Anglo-Indians whose mother-tongue is English I prepared and argued and got a judgment historic judgment by the Supreme Court They have said that here is a recognised minority their mother tongue is English English is entitled constitutionally and legally to as much protection as any other language spoken by any other Indian community It is as much an Indian language as the language of any other Indian community and *de jacto* today I do not want to enter into any controversies— English is the only all-India language It is much more an Indian language than all the languages in the Eighth Schedule It is the only language of authoritative legislation Mr Gokhale will admit that It is the only language of authoritative legislation It is the only language of the Supreme Court For many many years it has remained as the only language of the Supreme Court and so I say you have it It is the only link language Let us be frank about it I know I was at the heart of this controversy and I was yelled down and shouted down here by the Hindi protagonists but Jawaharlal Nehru came to my rescue fortunately and I will tell you about that in a second

Today administratively, judicially, educationally and emotionally, when we meet in a conclave leaders of Indian thought and action what language is spoken? Why fly in the teeth of facts? On my Private Members

[Shri Frank Anthony]

Resolution, what did Jawaharlal Nehru do? On 7th August, 1959, he announced the Nehru formula that English would remain an associate language as long as the non-Hindi speaking people so desired. Earlier Jawaharlal Nehru announced on 21st February, 1959 and said that Sahitya Akademy had recognised English and Hindi as being major languages in addition to the languages in the 8th Schedule. The Senate of Calcutta University on 8th July, 1958 had asked that English should be put in the 8th Schedule. Then, you have three regions now where English is the official language. In September, 1967 Nagaland adopted English as its official language. Meghalaya has done so and Arunachal Pradesh has also done so. Some languages in the 8th Schedule are not regional languages of a single region; you have these facts. An authoritative survey was done four years ago and it had shown that from the nursery to the University stage, twenty-five million people are at any one time studying through the medium of English Today, the English-medium schools—and I have the privilege of presiding over six hundreds of them—are the only all-India schools, which transcend the limitations of regionalism and regional language; they are the only schools to which tens of thousands of Indian parents can and do look for the continuity of the education of their children. When I say this, I am not pointing a finger at any other language. Now, foreignness is a relative term. About Urdu, some people have said that it was a language which was originally brought by people who came as conquerors to this country. What has Urdu done? Beauty, richness, and refinement have been the greatest leavening influences of Urdu on Indian thought and culture. Sanskrit was brought thousands of years ago by people from outside. I say, even English relatively has fallen to the British. English has descended from the dialects of the Anglo-Saxons and Jesuits who went as conquerors to Britain. The British dialects were tilted. If you go far back, even English is foreign to the British. Today, it is a part of warp and woof of Indian thought and a language of the culture of many nations.

What is the meaning of the 8th Schedule. The exact expression in Article 351 of the Constitution is:

> "It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule."

What did the Language Commission say and what did the Parliamentary Language Committee, of which I was a member, say? They said that Hindi must draw liberally on English specially in respect of scientific and technical terms. The position is long overdue Jawaharlal Nehru said that Sindhi should be there and it was put in the Eighth Schedule in 1967. Today, English is still there and I am pleading for this.

There is one other important matter and I would have done I want a clarification from the Law Minister. I am a little worried and I would have given an amendment myself. Mr. Speaker, Sir, I do not know, whether you will be pleased to relax the rule I have given an amendment about the Eighth Schedule, but apparently that amendment has not been included in the list because working to rule, only amendments to amendments moved by the Government will be permitted. So, I am asking the Law Minister to give me a clarification. What is the meaning of Article 31B? As I see it, now the Home Minister gave me an assurance that he would not touch, an express assurance in terms that he would not touch You have amended Article 31C to extend to include all

the Directive Principle, that is, if a legislation is declared to effectuate some Directive Principles, no challenge can be made *vis-a-vis* Articles 14, 19 and 31 Deliberately you have excluded minority fundamental rights. So that declaration cannot impinge on the minority fundamental rights I am deeply grateful for that. Now when you are taking this comprehensive look at the Constitution, what about Article 31B? As I read Article 31B, it is that an Act or Regulation cannot be challenged *vis-a-vis* the Fundamental Rights if it is put in the Ninth Schedule I want the Law Minister to tell me what his reading is I do not want to give any interpretation against myself But as I see it, it means just this You may say that this is an old provision Look at the effect of the old provision It goes against all your declarations It will negate and stultify every minority right when you say that merely by putting it in the Ninth Schedule, there can be no challenge *vis-a-vis* any right in Chapter III so that if some government, some State Governments—let me be quite frank I would not name them—have tried over and over again to garrotte the minority educational institutions and if they could they would garrotte their religious rights also and all that they have to do—I do not believe that the Congress will do it, they have never done it but you do not know what will happen, I am not talking of ten years or twenty years but thirty years from now you do not know how many non-Congress governments hostile to the minority rights will be there—is to adopt this device and put it in the Ninth Schedule You destroy our schools you destroy our religious rights and all our cultural freedom So what I am pleading for is put in an amendment that Article 31B will not apply to the minority rights What I am asking for is merely a corollary of all that you have said and all that you are doing I am pleading with the Home Minister and the Law Minister I would have done it myself but it would share the same fate as that of my amendment to clause 8. I do not know whether you would be good enough. I think you can suspend that rule This is a comprehensive amendment of the Constitution Why cannot we give amendments which cannot be related to the amendments given by the Government? My amendment to the Eighth Schedule and this amendment with regard to Article 31B should be allowed

SHRI SWARAN SINGH (Jullundur) I have been speaking on this subject too much and so extensively that it is not easy for me now to make up my mind as to what precisely should I say this morning But I do feel that it is my duty to mention to the House some of the salient features of the Constitution Amendment Bill and also a little background of the process of evolution and discussion that culminated in these proposals

First of all I would give very briefly the framework of the new proposals And in doing so, I would divide it into two parts There is the political content of these amendments and there is the socio-economic content of these amendments With regard to the political content, there are two new words that are proposed to be added to the Preamble One is 'secular' and the other is 'integrity' of the country

I think both these words appear to be just two words but the meaning behind them is very vital for our country to grow from strength to strength and to remain united and a strong nation So far as secularism is concerned, I would at the very outset clarify that our secularism is not synonymous with the dictionary meaning of this word 'secular' and that word flows from the historical background that was faced by several European countries when the Church enjoyed a great deal of temporal power, the power of the State: the general meanings that would be found in many dictionaries are not very complementary But 'secular' now is a word which I think has become part of our Indian languages You may go to the Punjab, to Guja-

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rat, even to the South; when they make speeches in their own languages they always use the word 'secular' because it has assumed a definite meaning and that meaning is that there will be equality before the eye of the law in our Constitution with regard to people professing different religions. Not only that but more than that there is no connotational element of any anti-religious feeling but it is really respect for all religions It is this concept which is broadly accepted by our country as a whole and, therefore, we thought it necessary that it should find a place of pride in our preamble and we are adding that by this amendment. As for concept of integrity, as you know Mr. Speaker, the word 'unity' already exists in our preamble But a stage has come when we should have this word 'integrity' added to the preamble in order to highlight the importance of having an approach to our problems, having an approach to our country as one integrated country It is a happy thought that in moments of crisis the country has shown remarkable unity and a feeling of a sense of integrity The attitude that is there at the time of crisis or difficulty should be a normal way of life because our crisis of development and growth is a continuing crisis and, therefore, we should adopt integrity of our country, integrity of our nation as an integral part of our political thought. It is for this reason that we have added the word 'integrity' to the preamble

Having accepted these two concepts, certain consequential provisions had to be made and there will be found, Mr. Speaker, in some of the other provisions of the Constitution Amendment Bill references to ensure that the concept of integrity is strengthened and the concept of secularism also is not eroded It will be found that in the clause where the concept of duty is spelt out, there are elements of both these concepts of secularism and of integrity in the list of duties apart from other things. Then again in the new clause that is proposed to be added where anti-national activities are defined both these concepts have been mentioned and the intention is to see that the concept of secularism is strengthened and the country remains united.

So far as the other changes are concerned, in the socio-economic sphere, certain consequences should be accepted if we add the word 'socialist' to the preamble It is not just adding a word but it is acceptance of a way of life, a way of life which has been adopted by the country broadly. It is no doubt correct that the word 'socialism' has been defined differently by different political parties But it is difficult for me to recall if any of the parties who are represented here have in a frontal way said that they do not believe in the concept of socialism

What is our socialism? Obviously, it is to ensure that when we progress in the economic field, when we make progress in the socio-economic sphere, then, the fruits of this development and growth should not remain confined to fewer hands but that they should be equitably distributed amongst vast segments of our society particularly those who are underprivileged and poor So, this is the basis of that. Of course, there are certain other things which flow from this concept of socialism, there will have to be an ever-expanding public sector, there will have to be arrangements made in order to ensure that the major means of production are under social control, under public control, so that the advantages enure not to the individuals but to the society as a whole. These have been spelt out in successive five-year plans and this is not the stage to do that, but it does mean that if this is accepted as a desirable objectives—and there is no doubt that it is a desirable objective -then other things will flow from it

That is why, to give content to this, that provision now is being made that

the directive principles should have predominance and that they should have preference over individual rights.

These are not just words. We have to look as to what is the substance of this proposal. I would like to recall that the directive principles have somehow or other been put into the background because the courts took the view and it was also the scheme of our Act, when it was said that whereas the fundamental rights are justiciable the directive principles are not enforceable in the courts of law. This was, if I may say so, the description of these two baskets of these principles. From this another corollary flowed as if it was that one was more important than the other. I think this is the whole misconception and it is time that this honorable House appreciate the difference between these two principles, that is, the Directive Principles and the Fundamental Rights.

The Fundamental Rights, if I may say so, are individual rights; they are rights of individuals with regard to simple things which are spelt out in those terms and they have to be enforced because individual rights can be encroached upon by executive action. And therefore there must be some procedure by which those individual rights could be enforced.

But, at the same time, it is conveniently forgotten that even the framers of the constitution had placed the directive principles at a much higher pedestal It is mentioned in one of the articles of the constitution that these are fundamental for the governance of the country. It is further said that in framing laws, the Government and the Legislatures (whether they are the State Legislatures or the Central Legislature) will be guided by the principles contained in the Directive Principles. Now, who can say that anything that is fundamental to the governance of the country, anything which will guide the legislatures of the Centre and the States in framing legislation, can be put at a lower pedestal, lower than individual rights? Who can argue that way? Therefore, I would like to say that from the very beginning the scheme was that the directive principles are a bundle of rights which are in the interest of the society. They are in the interests of the community. They are the rights of a vast number of people and therefore the direction cannot go to the courts to enforce them. Because, how can Court enforce a Directive Principle?

But, this is a direction to all the elected representatives in all the State and Central Legislatures that they have to concentrate their attention and have to formulate laws and large programmes to implement the concepts which are contained in the Directive Principles.

So, we are trying to re-establish the proper place for the Directive Principles. We have reminded ourselves that we owe a duty to the Constitution and to the people of this country that those rights which are social rights, which are rights of the society, which are rights of the community and which are the rights of the vast numbers have to be given concrete shape by undertaking legislation. And it is quite obvious if there are two scales, in one scale is the individual rights and in the other is the society's right, then it does not require much of an arithmetic to conclude that the scale in which the society's right is placed is heavier. This is what precisely we are proposing to do. What we are saying here is that if a legislative programme is to be undertaken by Parliament or by the State Legislature, in pursuance of the Directive Principles, they are doing what is fundamental to the governance of this country. If we are translating into action what they are enjoined to do under the Constitution, that is, to be guided by the principles contained in the Directive

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Principles, when they discharge that duty which is enjoined upon them by the Constitution, then the thing that flows out of the discharge of their duty, namely, the legislation that comes out, should not be capable of being challenged by individual rights which, obviously, must give way to the social rights. This is the concept of the Directive Principles.

So, I say that this is the whole approach so far as the social content is concerned. One or two new ideas have been added to this concept of Directive Principles—workers, participation in industry, a new Directive Principle,—is proposed to be added. Free legal aid to those who are deserving and who are poorer people, environment and preservation of wild life which cuts across the State boundaries are some of the new Directive Principles that have been added.

Let us recognise the fact that if we have some programmes, we can add them to the Directive Principles. We should never hesitate to add to the Directive Princioles if a particular stage of evolution and development warrants it. When we launch a programme in the interest of the people, it is good mechanism to have that concept added as a Directive Principle and to undertake legislation which cannot be challenged by invoking any of the individual rights.

Having said that, if I may say so, this is the fundamental philosophy behind all these changes. The rest that flows from it is more or less consequential and that has to be viewed in that perspective Not unnaturally, the natural debate had been generally dominated by people connected with the legal profession and, therefore, they had laid greater stress on the few comparatively marginal changes that had been made about the functioning of the courts. But, this socio-economic content is the fundamental principle and the rest is done only to make sure that the likely obstacles in the way of implementation of this approach are removed or we are not prevented from following the pursuit of the policies designed to achieve this objective. If we look at the proposals with regard to the courts, they are not highly technical, the people might have used rather a complicated language and advanced long arguments but it is very simple.

So far as the courts are concerned, if I may say so, there are three main things with regard to the courts that we have done:

(1) We have said that any amendment of the Constitution if it is made in accordance with the provisions contained in the Constitution, namely, two-third majority and the majority of the total membership and if it is a matter in which States are concerned majority of the State legislatures then that should be final and that should not be capable of being challenged.

(2) With regard to the constitutional validity of acts of Parliament or of State legislatures we should start with the initial presumption that when Parliament acts or an independent State legislature acts there should be a very strong presumption that they have acted in accordance with the Constitution and if this strong presumption is to be refuted then there should be decisive majority of the judges to declare that it is invalid.

(3) We have clarified the writ jurisdiction of the courts and we have tried to help the courts in not continuing to interpret 'any other purpose' clauses in any manner they like but we have actually given the precise scope under which the writ jurisdiction should be invoked.

Sir, these by any standards would be comparatively moderate amendments so far as the functioning of the courts are concerned.

Sir, with regard to the first I would like to say a few words. If I may

day with all the earnestness at my command I have been seized of this matter—along with my colleagues—for the last eight months. We have studied the Constitutions of other countries. I would like to say that in the framework of Constitution it was never contemplated that the High Courts or the Supreme Court will have the authority to go into the constitutional validity of a constitutional amendment. I make this statement with all the earnestness at my command and this is something which is fundamental to the framework of the Constitution. There is no Article in our Constitution which enables the courts to examine the constitutional validity of a constitutional amendment. The two-third majority and majority of total membership plus majority of States, etc. are matters which courts are not concerned with. What happens inside the Chamber the Presiding Officer gives the certificate that there is two-third majority. That is final.

If I may say, the Indian Parliament has set a standard with regard to rectitude in this respect and I would only recall to your mind, Mr. Speaker, our case with regard to the abolition of Privy Purses where you would recollect we lost the requisite two-third majority by a simple fraction of a vote in the Rajya Sabha. In our Parliament if the Presiding Officer found that there was only small fraction of a vote less than the requisite majority, he declared so and we abandoned that. What I mean to say is that in this matter it is the domain of Parliament—the House of People and the Rajya Sabha—about the requisite majority and when the States legislate, then their Presiding Officers will give such certificates.

12.00 hrs.

Sir, there is no provision whatsoever in our Constitution which enables the Supreme Court to examine the constitutional validity of a constitutional amendment. If I say, there are comments in which it has been said that it was a question of checks and balances—the leader of the DMK said so—and that we are trying to upset that. If I may say so in all humility, I do not accept the expression 'checks and balances' because it is a connotation of maintenance of *status quo*. No Parliament can accept this concept of status quo because we have to progress, we have to develop, we have to move forward. Therefore, *status quo-ism* which is woven with this expression 'checks and balances' is something which is totally unacceptable to the Parliament of any country, more so to the Parliament of a developing country in which we have to undertake all manner of programmes in order to increase the strength of the country in every way.

But I would like to use a more neutral expression that in the Constitution, the functions of various organs were defined. There was the legislative function, there was the judicial function and there was the executive function. These were actually supposed to be adhered to by these three wings. If I may say, unfortunately the courts transgressed the limits prescribed for them. They did not have the authority to examine the constitutional validity of Acts amending the Constitution, and they arrogated to themselves the jurisdiction and the authority to go into the constitutional validity of constitutional amendments. It is that imbalance which had been created, that excess of jurisdiction that became evident at various stages that we are now trying to rectify and trying to restore the original division as was contemplated by the framers of the Constitution. So if there was any disturbance of that line of demarcation which defined the functions, which laid down the contours within which the three wings were to function, the transgression, if anything, took place on the side of

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the courts. They started examining and they thought they could go into this question. In the initial stages—I must be fair—they came to the conclusion that Parliament has got the authority to amend the fundamental rights also, and it appeared that things were stabilising. Later on, they went back upon the original thing and they said that fundamental rights cannot even be touched. What is most disquieting is that they thought of this concept of 'basic structure'.

SHRI S. A. SHAMIM (Srinagar): They are paying the price now.

SHRI SWARAN SINGH: I do not know whether they are paying the price. I do not think that that is a correct expression. They took up an attitude and now we are trying to help them to get out of that attitude. This is what it comes to.

Now, what is the basic structure? If I may say so, if we accept this concept of basic structure, what do we find? The word 'basic' and the word 'structure' do not occur in the Constitution. The words 'basic structure' do not occur in the Constitution. So what the courts were doing when they brought in this concept of basic structure was that in a sense they were taking upon themselves the right to amend the Constitution and they brought in these words 'basic structure' which did not exist in the Constitution. First they amended the Constitution to say that there is some such thing as basic structure. Then they tried with a microscope to discover what that structure, what that basic structure, is. That is why the Law Minister rightly mentioned that in one of the very recent judgments, one of the distinguished Judges of the Supreme Court—it is not necessary to take names—analysed what the different Judges thought of this concept of basic structure.

I will not go into details, although it is very fascinating. But the basic point, the important point, is that where the expression 'basic structure' did not occur in the Constitution, the Judges themselves imported this concept of basic structure into the Constitution, for which there was no justification.

Parliament has got the right to amend, meaning thereby, we can add words or subtract words. We are adding only three words to the Preamble and there is so much noise. They say: you cannot add to the Preamble; it will alter the rhythm of the Preamble. This expression is something very interesting. First the basic structure, now the rhythm. Is it that we are sitting here as poets in order to look to the rhythm? I have said that if the rhythm is somehow affected in the English language, then we can make it in Kannada or Tamil; probably the rhythm will be much better. We are not concerned with rhythm. I say in all seriousness that these are syptomatic of assumption of jurisdiction. It is a crude sort of invasion, if I may say so, into the domain of Parliament by using expressions for which there is no warrant whatsoever in our Constitution. All that we are doing is to tell them: leave us to amend the Constitution; leave us to add new words to the Constitution; you confine your activity only to interpret what is in the Constitution and do not bring in other concepts which are ethereal. In a sense we are trying to help them by defining their domain so that they may not be in unchartered seas and do not lead the country to some imponderables.

So far as the supremacy of Parliament is concerned, I think it is axiomatic; it is the will of the people in all spheres which will prevail; there is no doubt about it. Parliament is the only authority which can amend the Constitution and we are saying that if they amend it, it is in the

exercise of that authority which is the right of the people which is exercised by their chosen representatives and that is final. This therefore is the concept of the non-challengeability of the constitutional amendments.

So far as the next part is concerned that is comparatively simple. In our federal structure or semi-federal structure—you can use any expression—there is a central list, there is a state list and there is a concurrent list. Some authority has to decide whether the centre has got any authority in any particular given instance to legislate and it is good that the courts are there to decide if it has that jurisdiction. Again there are provisions in the Constitution which prevail, unless they are amended. In future what we legislate in pursuance of the directive principles will prevail in the intrest of the poor and courts will be entitled to interpret the directive principles. A Law has been made that they cannot be challenged There will be cases where the challenge will be from other quarters, not the type of vested interests who had normally challenged these before It is for this reason that we are providing in the directive principles provision with regard to free legal aid because they will not otherwise be able to engage those outstanding lawyers with fabulous fees and the state will have to safeguard their rights and their interests. All that we are saying in this respect is—it is a strong presumption—that when Parliament acts it acts within the Constitution; it should not be lightly displaced.

The existing position today is that you may pass by unanimity a Central Act, the Parliament adopts it unanimously and all the parties combined say: "Well, this is the law". But a single judge sitting in a remote part of the country, by a simple writ petition has got the authority to declare that this act of Parliament is *ultra vires*. Now you will readily appreciate that it is chaotic and something unacceptable to Parliament. It is against the concept of any democratic set up. First there will be one judge, then there will be letters patent appeal to two judges, then there will be a full bench. One Court decides one thing and another Court decides another thing. Ultimately that case comes to the Supreme Court for final adjudication and probably 5 or 6 years have already passed and much of the good work that should have flowed from the implementation of that Act remains in cold storage. We want to rectify that. We want to save the courts from the redicule and cynisism to which they have been exposed by exercise of their jurisdiction in a manner which certainly did not redound to their credit. Therefore, we have proposed that if an enactment is passed by a Legislature, then in order that it should be declared as unconstitutional there must be an authoritative pronouncement that it is really unconstitutional. Therefore, there must be a minimum number of wise persons to sit, if it is High Court, 5 judges and if it is Supreme Court, 7 judges.

My dear friend, Shri Jagannatha Rao was very much upset by the arithmetic of it. He said "supposing there are 7 judges and 4 judges say that it is unconstitutional and 3 say that it is constitutional, why should then the minority view prevail". Now that is not the approach. The approach is that there is a very very strong presumption that the Parliament has acted in accordance with the Constitution. Anybody who says that they have not acted in accordance with the Constitution, must produce weighty reasons and also weighty majority. All that we are saying is that in the interpretation of law, this will also be conducive to the reduction of litigation which is very desirable. Already I am told that there are about 5 lakhs or 7

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lakhs of cases pending I do not know whether they are writs alone I will not be surprised if several lakhs are writs alone and there may be several lakhs of other cases pending If we do our work in Parliament more conscientiously and look into the various provisions carefully, then I am sure that these cases of challenges to the constitutionality will be very very few in future The things will stabilise and there will be greater respect for the courts, etc So, it is not a question of arithmetic but it is a question of principle and we should not hesitate to adopt this I have already mentioned this but for the sake of record, I will say it again on the floor of the House, although 2/3 majority appears to be rather high but in actual arithmetic what does it come to? Out of 5 judges of the High Court, 3 must be on one side by the rule of simple majority to declare it as unconstitutional We are saying that let there be one more wise man to say that it is really unconstitutional So I am asking for one judge more to agree that it is really unconstitutional Take for instance 7 judges Mere Majority is 4 to 3 Today the position is 4 can say that it is unconstitutional All we say is, it is a very serious matter you are going to declare that Parliament has acted unconstitutionally and so there must be one more man So, 4 becomes 5 This is the arithmetic of 'two-thirds' This is not something unreasonable or preposterous It is a good arrangement Suppose there is a House of 100 members 66 vote for it Only some remain neutral or everybody else votes against it It does not become a valid amendment of the Constitution and the will of the majority does not prevail although 66 voted for it. Let Courts for a change learn to understand that certain fundamental things cannot be altered by a razor-sharp majority. That is what we are trying to enunciate by this principle

We are maintaining everything else. They can examine the constitutional validity of Acts. We want it to be done in a more orderly manner. About writs, we are retaining everything except that we are saving them the botheration of interpreting 'any other purpose' 'Any other purpose' is something, if I may say so, which is absolutely purposeless This has been interpreted in a variety of ways Writs have been filed to stop the transfer of a school teacher from one village to another I am sorry to take up the time of the House, but I cannot resist the temptation of mentioning one case, which came to my notice There was an executive engineer in the MES who had been compulsorily retired. The minister who was my predecessor had seen it A high-powered body had examined the case and it was presided over by an Additional Secretary They said he should be retired at 55 He quietly went to the court and got a stay order The case come to my notice 2½ years later It was never decided till he completed 58 and then he quietly retired! These are the type of cases which any other purpose' had been interpreted to include It is not in the normal training of judges to interpret vague expressions This I think is the main trouble They can interpret precise formulations but once you introduce any other purpose' or etc' they are completely at sea and they feel it is a jurisdiction like the old *Nausherwan* type of jurisdiction where somebody pulls a rope a bell rings somebody comes out and says "You get this sentence or that sentence"! Unless the laws are precisely defined the courts are not accustomed to interpret them That is the main weakness of that formulation contained in article 226 We are making it precise and clarifying it We have said, instead of 'any other purpose', still the court has got the right to issue a writ, but the court has to come to the conclusion that there has been a violation of a law or of a statutory rule resulting in substantial failure of justice and there is no other remedy

except a writ. It is very interesting. During the last several months, I had occasion to meet a cross-section of our people including Supreme Court judges, High Court judges, university professors, lawyers, etc Some judges told me, "What you are now trying to define is precisely what we have been doing before ' I said, well and good, you should be happy that we are now trying to give you a formulation upon which you have been acting so far I also said, unfortunately there are several other courts which are not doing the same and we are trying to bring them also in line with you who have been acting in a proper manner

So If I may say now to describe this as something by which the judiciary is being destroyed or we are trying to play with the Fundamental Rights I think this is a very extreme expression which has been thrown about without understanding the import of what they are saying and without trying to meet our arguments This is all we are doing with regard to the judicial system

On this question of tribunal I would say a couple of sentences We came to the conclusion that several matters particularly service matters come to the High Court in a very technicalo manner They generally go to the High Court for writ jurisdiction under Article 226 and the Courts generally look at it whether there is a second notice or not or whether any particular procedure has been complied with or not Sometimes even the judge becomes doubtful whether it could be admitted There are several matters like service matters revenue matters tax matters distribution of foodgrains, procurement etc These are matters in which if people feel aggrieved, they should not only be left to go to the High Court on a very limited jurisdiction and try to plead or try to bring in any other purpose or things of that nature but that there should be a regular ful-fledged tribunal to deal with these matters. And the scheme of these tribunals is that they will be manned by people with requisite expertise, people who are independent and who inspire confidence because the whole object is to do justice to them, not to close the doors of justice and not to close all avenues where the grievances may be redressed. This is the whole approach with regard to these tribunals and by and large these have been welcomed by the people who are likely to be affected by this new institution This is all that I want to say with regard to the judicial system

There is another aspect which I would like to mention This is about the main structure of Government and division of responsibility and authority between the Centre and the States If I may say we have left it intact. There is not a single entry which we have transported from the exclusive jurisdiction of the Centre to the State or *vice versa* We have not transported any entry from the State jurisdiction to Centre nor have we done anything to the contrary So, these lists remain But the founding fathers had this concept of Concurrent List and when we examined carefully the Concurrent List we came to the conclusion that the general approach is that there are certain matters which are exclusively the concern of the people in the states There are some in which the Central Govtrnment has got the exclusive responsibility like the defence communications and things of that nature There was this Concurrent List and this Concurrent List was such in which there was the concept of all-India policy and all-India approach and also which vitally interests and concerns the people in the various States So all that we have done is that with regard to some matters where it was thought that the subjects are such in which the States are concerned and there is such a thing regarding such subjects as an all-India policy also some of those subjects we are proposing to transfer from the State List to the Concurrent List. Now, what are those? A great deal has been said by several people

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both inside the House as well as outside and by people who unnecessarily criticise us that we are upsetting the balance. Even reading of these five things will convince anybody that they are obviously such which should have been in the Concurrent List from the very bringing. Now based on our experience, they are not something which are, if I may say, any symbols of authority of the State Governments but they are something in which there is an all-India and inter-State problem. Take for example, education. The administration of education will remain obviously with the States but what is intended to be achieved is that the all-India aspect of education will have to be looked at from an all-India angle, and in prescribing the syllabus and in maintaining the standards—not that one State should remain behind another, and to rectify that type of things it is necessary that it should be an all-India item

The rest relates to Forest and protection of Wild Life. I do not know whose authority will be affected by this Wild life in the sanctuary does not accept anybody's writ One animal from the Tamil Nadu part of the sanctuary can easily spill over into the Karnataka area It does not require a permit to go out If forest and wild life have to be preserved, there has to be an all-India and inter-State approach to that problem

Then comes the question of control of population and family planning Obviously, the Centre is doing a great deal and has put some new dynamism for achieving certain targets; and the Centre spends most of the money Apart from that, it is something with which all of us are vitally interested If we fail on this front whatever economic development we may make, would fail to make impact in the rising crescendo of population which would engulf us.

In regard to weights and measures, whose authority are we taking away by making them a concurrent subject—the kilogram means a kilo, whether it is Himalayas, Kanya Kumari, Rajasthan or Assam. Obviously, lengths, weights and measures have got to be looked at from an all-India angle.

Then comes the administration of justice.

These are the five things that are sought to be brought to the Concurrent List Can anybody, in a dispassionate manner, really contend that we are taking away something so vital from the States as to reduce their essential authority or to reduce their responsibility? Not at all.

So far, the Constitution had been amended from time to time to meet a specific situation; or we had to rectify it when a certain thing was pointed out by the courts. We undertook this present exercise to examine various provisions in their proper perspective We have tried to locate the road-blocks that are likely to arise if we move forward towards rapid socio-economic changes We have tried to rectify them—about some of which we had precise knowledge; and about others we have come to Parliament to ask them to enable us to ensure that such road-blocks, as and when they arise can be quickly handled by adopting the procedure and by adhering to the principles that will become operative after these amendments are there.

Before I end, I would like to touch upon 2 or 3 points which are generally aired by the critics of this process of amendment First, it is generally asked. "Why should the Constitution be amended?" This has been very amply dealt with inside the House and outside the House. The Constitution is a living document and it has to meet the aspirations of the people; Constitution itself has got provisions by which the changes should be made. And I want you to be convinced (*Interruptions*).

SHRI K. MANOHARAN (Madras North): About it we are convinced.

SHRI SWARAN SINGH: .... because sometimes your cynicism is disquieting. The Constitution undergoing an orderly change, is the greatest protection of the country and protection of the rights of the people who can stop the vast socio-economic changes to help the poorer sections taking concrete shape? They must come. If the Constitution stands in the way or anybody stands in the way that person would be wiped out, that institution would be wiped out, but the things must change So, if we facilitate the change and make the change orderly and constitutional, it is in the best interests of the society and we should not at all be apologetic about changing the Constitution

The second argument which I think is no longer valid but which at one time was very hotly argued, is that the fundamental rights cannot be altered That matter has been set at rest and I will not dwell upon it any more.

The third argument is that the basic structure cannot be altered I have dealt with it enough, and I will not add to it

Lastly, it is said that the Congress has not got the mandate, that this Parliament has not got the mandate. I want this matter to be fully understood and appreciated in the context in which it is said It has been mentioned again and again that our Prime Minister went to the polls about a year ahead of the normal times and the Parliament was dissolved 15 months ahead of the normal tenure

In the election manifesto it was clearly mentioned that problems have been thrown up by the bank nationalisation case, by the abolition of the privy purses and that these are the lines in which the amendment of the Constitution will have to be undertaken It was also spelt out that we wanted to make structural changes in the socio-economic set up and for that also obviously changes will have to be made So, if I may say so in all humility, not only the Parliament has got the authority, but I think we in the Congress Party at any rate have got a duty to discharge, because we went to the electorate on that precise election manifesto that we want these changes to be made. We cannot shirk that responsibility, and anybody who asks us not to discharge our responsibility .

SHRI S A SHAMIM: After five years?

SHRI SWARAN SINGH: I am glad he has come out in his true colours and asked "after five years?". The question raised is whether the Parliament or the Congress has the mandate to amend the Constitution after five years It is very interesting to note that if we analyse the approach of these parties who get together to oppose this measure, it is purely negative, it is purely political They argue that the amendments should not be undertaken because of the emergency, because of the atmosphere which has been generated by the emergency, it should not be undertaken because a year has passed after the term of five years But none of them, either individually or collectively, at any rate not collectively, has pointed out as to which part of this Constituiton Amendment Bill is something which they do not like I do not make this type of extreme statement, but I have no hesitation in saying that I am convinced that some of them are extremely careful to avoid making comments upon the merits, because they know, at any rate those who are in the Lok Sabha know, that when they go to the electorate, the people will ask them, in the same way as they asked them at the time of the abolition of the privy purse, whether they voted for the abolition of the privy purse or not, whether they voted for socialism being brought in the preamble or they voted against it and whether they voted for the

[Shri Swaran Singh]

supremacy of the Directive Principles over the Fundamental Rights. If their answer at that time is negative, they know they will lose their votes. That is why they are not commenting in a clear manner about the content of the amendment. They are trying to shroud it in some sort of political jargon by saying that the mandate, has expired or a year has expired.

Why is there no mandate? I have handled this question in the various meetings that I have addressed People asked me whether we have got the mandate after five years. I said the answer is simple. There are two answers. One is the constitutional answer that if the life of Parliament is extended, then Parliament continues to have all the rights. More than that, there is the political answer If a thing is good to be done help us to do it, rather than find excuses why it cannot or should not be done If we are convinced what we are doing is in the best interests of the rapid socio-economic changes, we need not be apologetic about it at all The objectives are quite clear, and they are that we want to take our country towards this goal of far-reaching socio-economic changes.

Any amount of obstacles that might by created by those who talk of *status quoism*, who talk of checks and balances will not deter us To talk of precedents, to talk of how and why we should not act are things which are totally foreign to us. We should reject them, and we should adhere to our cherished objective of going for ward in a determined manner to realise the goal of far-reaching social changes.

SHRI K MANOHARAN (Madras North): At the outset, let me be frank in saying that my party is prepared to accept certain clauses in the Forty-fourth Amendment, and certain clauses we are not in a position to accept at all.

I have heard Sardar Swaran S ngh who was the Chairman of the Committee which was constituted to reshape the Constitution. He has proposed certain amendments. I received a letter from the Minister of Parliamentary Affairs, Shri Raghu Ramaiah, some months back that we must come and have a discussion with the Committee. We readily responded to that invitation and we met Mr. Gokhale and Mr. Swaran Singh along with the Minister of Parliamentary Affairs and Mr. Om Mehta. We had a throrough discussion Without any sense of reservation, we explained to them what we had in mind. Certain things we accepted, we demanded modification of certain things and the deletion of certain other things.

When I met Mr. Swaran Singh then, I had a document before me, namely "The Proposed Amendments of the Swaran Singh Committee", but after the introduction of the Forty-fourth Amendment my present feeling is that we are discussing a miniature new Constitution altogether. With great difficulty, with a magnifying glass, I tried to find out and locate Mr Swaran Singh in the Forty-fourth Amendment. Unfortunately, I could not locate him except his silver shining beard Now, Mr Swaran Singh has spoken very eloquently touching certain vital things and ignoring certain clauses in the Amendment to my surprise

Before going into the subject, I may state that I and my party too are one with the Prime Minister that this Parliament has got competence enough to amend the Constitution Though some people may say that this is an extended Parliament, we are perfectly convicted that it has got the competence and capacity to amend the Constitution. We have no reservation in that, we are one with the Government of India.

The second thing which I cannot understand is this While we came to Delhi, we were told that Parliament was going to be converted into a Constituent Assembly. It was re-

volting and nauseating. Till then the Prime Minister did not come out openly with a statement whether this Parliament was going to be converted into a Constituent Assembly or not, but luckily day before yesterday and yesterday she came out with an open statement, saying that this Parliament cannot be converted into a Constituent Assembly that this Parliament has competence enough to amend the Constitution We wanted that In spite of that, there is a lobby going on saying that this Parliament must be converted into a Constituent Assembly

I am happy to note that the suggestion has been thrown out lock, stock *and barrel by the Prime Minister* herself I am sorry to say that—excuse my saying so—there was some talk by the Congress Members that this Bill must be referred to a Select Committee

I feel the intention of the lobbyists that this must be referred to a Select Committee is to postpone the election If that is so on behalf of my party let me tell you that we are going to betray the people, betray the spirit of the democracy and betray the Parliament as well We also reject the concept of referring to a Select Committee

Mr Gokhale has explained what is the Constitution He has said that the Constitution is a living document, it is a document which reflects the will of the people, the aspirations of the people and the rising expectations of the country The Constitution should mirror the spirit and the tempo of time It is not at all static, it is dynamic We have no objection to accepting certain changes

On the Floor of this House, I have been telling that no vigorous nation can tolerate a lifeless Constitution Our nation has become somewhat strong, our nation has got a vibration, our nation is moving towards progress from the stalemate and everything goes on well, though the jolting is there, the determination is fixed So far as we are concerned, we are for the constitutional changes and the Constitution is amendable The Constitution can be altered and the Constitution must be altered according to the time If the people think that the Constitution stands in the way of realising their goals—that means the greatest happiness of the greatest number—then it must deserve to be scrapped and thrown into the Arabian Sea and the Bay of Bengal

I am not for constitutional supremacy My Party stands for Parliamentary supremacy Parliament is the place where the will of the people is expressed and the heart throbbing is recorded In that spirit, we approach this Parliament and the Constitution The Constitution is essential for the people of the country and not the people for the Constitution We have no objection if it is changed and it is now getting changed That is a very good sign To that extent, I welcome the Prime Minister for having done it Some months ago, I had a discussion with the Prime Minister and she had indicated that she was not for converting this Parliament into a Constituent Assembly Now this has been amply indicated here We are happy to note that we are going to meet the people very soon

Sardar Swaran Singh has said, "Well if we go to the people, the people will ask us, whether we have voted for this voted for socialism, voted for secularism and if our reply is in the negative, then our candidate may be thrown out by the people" I am happy I again want to stress upon Mr Swaran Singh that if the same people will ask us whether we have voted for it whether we have voted for a particular section or a particular clause which is antagonising—that question may be asked, if that question is asked, and if we say "unfortunately yes, we have voted for that also," then we will be

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thrown out. So, this thing, Mr. Swaran Singh, should understand. Then you may ask what our objection is. I want to explain this to Mr. Swaran Singh Yesterday, Mr Gokhale also spoke about the Preamble of the the Constitution.

I would like to quote here Mr. B. C. Rout:

> "A Preamble is an integral part of the Constitution which states the aims and objectives of the Constitution in nutshell It is said to be the most precious part of the Constitution, 'the soul of the Constitution', 'a key to the Constitution' and it is a 'proper yardstick with which one can measure the worth of the Constitution' The Preamble to a Statute, says. Maxwell, 'has been said to be a good means of finding out its meaning and, as it were, a key to the understanding of it' The Preamble indicates the source from which the Constitution derives its authority and also expresses the objectives which the Constitution seeks to promote."

This is exactly what Mr Rout says, quoting Maxwell too.

On the basis of it, while we had a discussion with Shri Swaran Singh regarding the Preamble part of the Constitution, we had suggested some ideas. Now, Shri Swaran Singh has said, according to the amendment in the Preamble of the Constitution—let me quote—for the words "Sovereign Democrtic Republic", the words "Sovereign Socialist Secular Democratic Republic" shall be substituted. So far as this amendment is concerned, to the insertion of these two words, we had no objection whatsoever. We welcome it

It is very clearly stated here what is our economic goal Though we have been declaring from Avadi session, Bhubaneshwar session and all that, to the country and the world at large that our country is wedded to socialistic philosophy. The people know about it. But still they have got a feeling that it must find a place in the Constitution. The Preamble of the Constitution is part and parcel of the Constitution. So, the fathers of these amendments thought it fit that a particular word about our economic goal must find a place in it. So, it is inserted here. I am happy about it.

Regarding the minority rights, regarding the religious sections, there is no discrimination whatsoever. Our concept towards that particular direction is secularism. The people knew it very well right from the beginning, after the liberation of the country, after the Independence of the country, that we are for a secular State, not a theocratic State. The people knew about it. The people know about it But still the fathers of the constitutional amendments, including Shri Swaran Singh, thought it fit that a particular word must find a place in it I am happy about it.

What about our political direction? Our political direction is that we are wedded to democracy. We are a sovereign republic Democracy is not only a philosophy, democracy is not only an administrative apparatus, but democracy is a way of life So, we had inserted previously the words "Sovereign Democratic Republic". We have now substituted the words by "Sovereign Socialist Secular Democratic Republic". The whole thing is clear

What I had requested Shri Swaran Singh to understand me and concede a particular point was this I again request him and I am also requesting the Prime Minister in whom we have got the fullest possible confidence I do not know whether the Prime Minister's attention was drawn to this particular request from my side. What I suggested was, economic goal is right, political direction is right and the secular aspect is right but the people who want to have a glance at the Constitution or the students of

constitutional law of our country and the countries of the world who want to understand the Constitution, when they read the Preamble of the Constitution, should know what sort of this Constitution is

You have inserted two words Mr Swaran Singh in addition to the three words which our founding fathers have already incorporated in the Preamble You have inserted socialist and 'secular' I would ask you to add after 'secular' the words 'democratic and federal republic'

Yesterday our Law Minister was very eloquent while replying to some lawyers who had convened a seminar He was saying something about the federal elements of the Constitution being eroded and corroded I would request the Prime Minister of the country and the Chairman of the Committee to please help us in defending the 44th Amendment by saying that this Constitution is federal in nature This Constitution is not at all unitary in nature it is federal Yesterday Mr Gokhale was very clear that this Constitution is federal If you are convinced that this Constitution is federal what prevents you from inserting a particular word—after all one acceptable convincing word, through which you can convince the entire country and the foreign press that our Constitution is federal? I have made this request on behalf of my Party and it will help in the long run, you should not forget it

We have been enjoying in the past Mr Speaker a particular philosophy the philosophy which had been nourished and cherished by our late lamented revered leader Jawaharlal Nehru This country is enjoying unity in the midst of diversity, this country is multi-lingual this country is multi-racial this country is multi-religious, the culture of the country is composite and the society of the country is plural So we should not ignore all these facts while drafting Constitution Amendments Yesterday my friend Shri Indrajit Gupta rightly said that we should take into account all these facts We enjoy unity in the midst of diversity and this unity must be maintained at all costs For Heaven's sake don't leave any loopholes for fissaparous tendencies Already, frustrated elements are there in the country who are trying to divide the country they are preaching secession and partition So, in this context, don't you think, Mr Swaran Singh that it is your duty and responsibility to add or insert the particular expression federal' in the Preamble of the Constitution? But for this the Preamble is totally acceptable to the All India Anna DMK Party

Now I come to the next point My friend Shri Swaran Singh had said something about that also but I don't know why he has studiously avoided a particular issue As my time is limited I am going to finish soon, but I would like to say something about this anti-national activity' Yesterday Mr Indrajit Gupta quoted an Article which he said vitally affects the workers Now I want to quote another This Article says that anti-national activity in relation to an individual or Association means any action taken by such individual or Association which is intended to threaten or disrupt the harmony between different religious, racial, language or regional groups or castes or communities Seemingly, Mr Swaran Singh (I can appreciate your ingenious brain that has operated wonderfully) it is very innocuous I am prepared to accept this amendment provided I get a positive assurance from the Prime Minister of this country that it is so But when you talk of disrupting the harmony between different religious racial, language or regional groups and when the question of language' comes in, I would like to draw the attention of Mr Swaran Singh to the fact that we must discuss it in context of the particular issue

[Shri K Manoharan]

Without the knowledge of the Prime Minister—I am sure about it—certain items are being foisted on the unwilling people of the non-Hindi-speaking areas If that attempt is made without even the knowledge of the Prime Minister—I am sure, with her knowledge, it will never come—, if some enthusiasts or if I may be permitted to say that, stalwarts try to feist Hindi on the unwilling people of non-Hindi-speaking areas, have we got any protection at all? If they do it, then we will be compelled to revolt against that domination While we speak that, this Clause operates Oh' You are against Hindi, you are creating some language trouble, you are creating linguistic disturbances, so you must be arrested under 'MISA' My humble submission is this It is a sort of compromise I am not a lawyer like our Law Minister, but I know some elements of law Mr Swaran Singh is a lawyer So I ask Mr Swaran Singh and Mr Gokhale to find a way out to protect the interests of the non-Hindi speaking people My suggestion is this Late Pandit Jawaharlal Nehru has given us an assurance which has been referred to by Mr Frank Anthony That assurance is a solemn laudable noble assurance unless and until the non-Hindi-speaking people decide to learn Hindi there shoud be no imposition till then the English language

SHRI SWARAN SINGH Our Prime Minister has reiterated that

SHRI K MANOHARAN You are right Our Prime Minister has reiterated it several times What I want to impress upon you is this We want a constitutional sanction for that for that assurance given by the late lamented, revered Pandit Jawaharlal Nehru (*Interruptions*) I do not know whether Mr Swaran Singh has wantonly avoided it I think he has dropped that particular matter

Regarding transfer of subjects from the States to the Centre and from the Centre to the States, he has said that there has been no transportation either from the State List to the Central List or from the Central List to the State List. I want to draw his attention to this. The Forty-fourth Amendment Bill is very much before me That has been transferred to the Concurrent List You know what is Concurrent List If there is any tussle between the State and the Centre, ultimately the Centre's voice will prevail You are a lawyer. You know it With my limited knowledge, this is what I have understood What I say is that Education is being taken out from the State List to the Concurrent List, according to me, it is a deliberate invasion on the State rights I request the Prime Minister and you all to see that, for Heaven's sake, the present set-up is not allowed to be disturbed

I now come to deployment of police forces I cannot understand why Mr Swaran Singh did not say anything about it I had discussed this with Mr Swaran Singh and Mr Gokhale also I do not understand why the existing system should be disturbed Shall I explain here what we had talked in that discussion? Am I permitted?

SHRI SWARAN SINGH Yes

SHRI K MANOHARAN He said that the intention was innocuous, the intention was not poisonous. In so many words he said that I asked him as to what prompted him to disturb the present arrangement, the coordination between the Centre and the States is very much there, if, according to the Prime Minister or the President, a particular State becomes recalcitrant and refuses to accept the directive given by the Central Government, the Central Government or Parliament has got every right to see that that particular State Government is dismissed.

12.00 hrs.

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

I asked him why he wanted to deploy unnecessarily the central police force in the States when that force would be controlled by the remote control here, that is, Delhi. I said: why should you have this particular clause? At any time when the State Government feels that there is a situation which they cannot control, they cannot suppress or deal with it with the existing force, the normal practice is that the State would ask the Central Government to deploy police or armed forces. For the past twenty-seven years, I want to ask this question to this House, and specially the Chairman of the Committee, if any example can be cited, where a particular State Government defied the directive of the Centre in this connection; and if any example can be cited where a contingency has arisen that because of the non-deployment of forces, the Central Government was very much agitated, and that is why we have learnt from experience that the Centre must deploy its forces. Can you cite one example? Absolutely, there has been perfect coordination between the State Governments and the Central Government.

By the introduction of this clause, I am awfully afraid, Mr. Deputy-Speaker Sir, that we are going to create a parallel force in each and every State. When we had a discussion with Shri Swaran Singh, he said that in this case, a sort of uniformity was there For Heaven's sake, forget that word, uniformity; let us have unity in full.

Our Prime Minister has recently visited Kerala. She had so many engagements there. I have learnt this from some Congress friends; Shri Stephen is here, he can enlighten us. The Prime Minister was asked to inaugurate a broadgauge railway line at Quilon. Before the Prime Minister landed, there was a tussle between the Railway Protection Force and the State Police force, as to who is to give protection to the Prime Minister. This tussle went on for some time before it was sorted out. The Railway Protection Force wanted to assert themselves that as the Prime Minister was coming for the inauguration of the railway line, it was their responsibility to show hospitality through giving proper protection etc. If that is the situation now, before the present amending Bill is going to be passed, what will happen afterwards, when the deployment of central force and the control is retained by you? The central direction is a must for the central police force and they will act in accordance with the wishes of the Central Government. That police force will operate only after receiving a green signal from the Home Minister or the Prime Minister. What will happen in that case?

Law and order situation is basically a State subject, and it is being covertly taken over by the Central Government. I do not know, what the motive is, but this is quite an unnecessary clause. I wish, it must be deleted and the State Government must be given that right. Already, you might be knowing that so many people have been talking and agitating that the States are reduced to municipalities, enlarged municipalities, as certain subjects had been taken away from the State pool. Again the States were reduced to Panchayats. Let us not create an impression in the minds of the people that the Central Government is trying to have a unitary sort of Constitution and is trying to bulldoze all the States.

Let us completely remove that misunderstanding from the minds of the people. And one thing more I want to say. Through this amendment the executive is being terribly loaded with enormous powers. Let me quote that Article. This is amendment to Article 74.

"There shall be a Council of Ministers with the Prime Minister at

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the head to aid and advise the President who shall, in the exercise of his functions,

This is the previous Article 74 Now to this is added

" act in accordance with such advice "

Here, the executive has become extraordinarily powerful and the President has no other choice but to accept its advice

SHRI C M STEPHEN (Muvattupuzha) When was it otherwise?

SHRI K MANOHARAN Another one which, I do not know if it is a contradiction or not— Mr Gokhale must explain That is clause 59 This clause 59 has been already discussed by so many jurists of this country They said that the President according to clause 59 has become a superman and the President is clothed with all powers possible at least for two years' time The clause reads like this

"If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of the President's assent to this Act to the provisions of the Constitution as amended by this Act) the President may, by order, make such provisions including any adaptation or modification of any provision of the Constitution as appear to him to be necessary or expedient for the purpose of removing the difficult

Here I have seen a super-President and there I have seen a super-executive .

SHRI SWARAN SINGH Here also he will act in accordance with the advice of the executive

SHRI K. MANOHARAN: It is right, but it is not clear here Of course, for these two years, the President has got the fullest powers possible to do it If you think that here also the President will act in accordance with the advice of the executive, then I question its enormous powers should not be conferred on the executive That is too much Then, of course, they may say something about the object and how the object is a socio-economic revolution So many speakers spoke about it and we are for it It is a must The country has already chosen it and now our economy is being fortified and the proverbial sickness of the Indian rupee has almost disappeared and our rupee is fortified and the image of the country has gone up and the image of the Prime Minister is high-high and in order to consolidate that image and reputation of the Prime Minister I request that the 20-point programme should be implemented in good faith in each and every State But I am belonging to a particular State So I think it is my bounden duty to draw the attention of the Prime Minister to say something regarding the implementation side of the 20-point programme as well as the 5 point programme of the young energetic and a dashing Mr Sanjay Gandhi

What is going on in my State? The 20 point programme has nothing to do with the people at present Certain people are going here and there in the name of *Padayatra* and receiving some notes and memoranda Actually these are all put into the waste-paper basket and nothing is being done The 20 point programme vibration is not visible The people's involvement is not at all there Not only that the Prime Minister should not mistake my intention when I say this So far as my Party is concerned we have got brilliant speakers in our State and if we are permitted to propagate the 20-point programme in the open platform by this time Tamil Nadu could have enjoyed the fruits of the 20-point programme and all

praise would have been showered on the head of the Prime Minister But what is going on there is that we are not allowed to speak and public functions are banned Why—I cannot understand We are speaking about the 20-point programme and when our people ask the Police for permission the Police refuse to give permission

Not only that, pre-conditions are attached—what are you going to speak? We say, we are going to discus about the 20-point programme Some police officers say, what have you to do with the 20-point programme? These police officers and other officers are those who were the beneficiaries of the ex-Chief Minster They are destroying completely the activities of our people, people like us and the people of other political parties who propagate 20-point programme I request the Prime Minister and the Home Minister to see to it I am not asking for full relaxation but a bit of relaxation Now we are asked to go into a particular hall which has space to accommodate only 200 or 300 people If I am permitted to speak in the open do not mistake me I am not tom-tomming myself there may be a gathering of 100 000 If M G R speak there may be a gathering of 5 lakhs or so That would not be an arranged crowd On the contrary it will be a spontaneous crowd If you are afraid of propagating the 20-point programme and the family planning programme how things would be? How will the things shape?

My friend Shri Frank Anthony has very rightly spoken about family planning Of course, we are all fully enlightened about the problem of population growth After 20 years this country will have 100 crores as its population Then, what wil happen? There will be nothing to eat except that they will eat each other It is a very dangerous thing which is developing Unless this population explosion is stopped and curbed a very difficult situation would arise, and then the 20-point programme and all the other activities of the Government will definitely be frustrated by these events M G R and we said that whenever marriage is celebrated among our party people or whenever we go to attend a marriage function we must ask the couple to give a pledge in the sense that this marriage is being fixed on such and such date at such and such a place in the presence of such and such men These are the pseople who have given blessing and all that and that "we the couple do hereby solemnly assure that after this marriage we would not produced more than 2 children or at the most 3 children "

I appreciate the suggestion made by my friend Shri Frank Anthony that we must have a radical thinking and we must have a radical functioning

SHRI S A SHAMIM Thank God, I was married earlier

SHRI K MANOHARAN I am talking about the future generation

We have to understand the magnitude of the problem and the gravity of the situation I am happy that family planning programe has a place here

'So far as duties are concerned, I am perfectly accepting it

If it is possible the following may be included in the fundamental duties of the citizens—

'He or she whenever attains the voting age must exercise his/her franchise in the larger interest of the country'

Lastly Mr Deputy Speaker excuse me I am taking much of your time, I would say one thing regarding Shri Sevid Muhammed our legal luminary, who is sitting her and going around the country and saying so many things He has been saying that the Forty-fourth amendment is a vital part of the constitution And he says that a refereundum is ruled out and so on I don't know who gave him

[Shri K. Manoharan]

the permision to talk all these things before Parliament takes a decision on this issue. While he was inaugurating the lawyers' conference at Hyderabad two or three days ago he is reported to have said something. It is a brilliant suggestion; it is a brilliant analysis indeed. He took maximum pains to quote all the constitutions to justify Clause 59 in the Forty-fourth Amendment Bill. I don't know how many days he has burnt midnight oil on this issue! He quoted various constitutions. One constituiton which he quoted was that of Pakistan You know what type of Government Pakistan people had and how they suffered under the military rule. The second constitution which he quoted was Burmese Constitution The third constitution which he quoted was the Nepalese corstitution The fourth constitution which he quoted was—I don't know which country it is—the Gabon constitution I think political gimmicks should have a ceiling He could have produced some constitutions which are worthy to be quoted I don't want to prolong my speech on this point.

Mr. Deputy Speaker Sir, the present type of arransement between the Centre and the States is an excellent one. It is very cardial It should not be disturbed by mears of transferring or transporting power either from the States to the Centre or from the Centre to the States. That is one thing which I would submit

Secondly, I wish to say this. Please see the Statement of Objects and Reasons and read the first sentence See how beautifully it is worded See how beautifully things have been enunciated. It is indeed a novel discovery on the part of the framers of the Bill. Here it says: 'A constitution to be living must be growing'. Well, if it must be growing, the constitution must be living What a beautiful phraseology it is I don't know how it has escaped the ttention of Mr. Gokhale.

I wish to say with all the seriousness at my command about one thing. I request the Prime Minister to see, if possible, that Nehru's assurance finds constitutional sanction.

Lastly I agree with Mr. Frank Anthony when he suggested the inclusion of English in the Eighth Schedule. My friend Mr. Maurya was gesticulating from that side without saying something from which I could understand that perhaps he was saying that the population is after all too small compared to the total population of the country. Shall I tell one thing now? I was talking to the respected leader in regard to the constitution amendment, Mr. Swaran Singh and I told him that if Sanskrit could find a place in the Eighth Schedule, English could very well find a place in the Eighth Schedule of the Constitution He asked, 'sanskrit?' I said 'Yes, Sanskrit' He said, 'It is a dead language' Then I said this: 'On the basis of the study of Mr Sunit Chatterjee, it has been established that the total number of people who speak Sanskrit is to the tune of five hundred' If that language might be considered to be the language of the nation, then why can't that language find a place here? If you accept the Anglo-Indian community as one group of Indian nationals *(Interruptions)* if you dispute that figure of 500 which I gave and if you say that it is only 150, I have no hesitation in accepting it I say that only 500 people know this language That language is the language of the Anglo-Indian community which is considered to be or accepted or acknowledged as one group of the Indian nationals and if the English language is the mother-tongue of one group of Indian nationals, that is, the Anglo-Indian community, why should we hesitate to include the English language in the Eighth Schedule? These are some of the suggestions that I want to make.

Regarding the judicial points of view or the legal aspect of it, for want of time, I am not touching them But, I am sure that time will be given to my party and Shri Bala Pajnor will explain the whole thing

SHRI C M STEPHEN (Muvathupuzha) Mr Deputy-Speaker, Sir, we are now at the last stage of the national debate on this particular bunch of amendments to the Constitution

I have a feeling that this, by no means, is the last of such national debate I am sure the debate will certainly have to go on and it will go on It may not necessarily be for mere amendment to our Constitution It is possible to cover a wider field than an amendment of the Constitution and may be for a Constitution which will fully reflect the needs and the aspirations and the strategy of the people in the matter of attaining the goal which they have set to themselves

Now we had a very wide ranging discussion—a national debate if I may claim so The question of the amendment to our Constitution with respect to the constituent power of Parliament has been engaging the attention of the Congress Party for quite a long time The Congress Parliamentary Party had set up a Committee to consider this matter And that Committee was considering it But, then it was felt that it was not enough that the Party's Committee should alone consider it among themselves but that the doors must be thrown open to all and that the entire nation must be enabled to participate in this debate and that all phases and aspects of things must be taken into account before Parliament is requested to consider the amendments to our Constitution And so on the 26th of February, the Congress President set up that Committee with Sardar Swaran Singh as its Chairman.

I had the privilege of serving on that Committee From 26th February, a debate in depth, wideranging and completely national in width had been going on If I may inform the House, this Swaran Singh Committee has, in the course of its deliberations, received 4,000 memoranda from different sections of people who are vitally interested in this

The Members of the Committee have travelled far and wide, conferences were being held, questions were put and they were answered As a result, the original ideas which this Committee started had underwent changes because of the discussions that the Committee had The Bar Council representatives appeared before this Committee, the Federation of Advocates appeared before that Committee Jurist also appeared before them The Committee had got the benefit of the opinion from the judges—sitting and the retired—and all sections of the people in fact appeared before that Committee As a result of these deliberations, a draft was drawn up and it was accepted by the AICC after a detailed discussion on the 19th of May, 1976

Again it was considered and discussions took place What I am trying to make out is that the Report of the Swaran Singh Committee which has been accepted by and large by Government and has been given a statutory form by this Fortyfourth Amendment, is not the casual product of any brain just on an ad hoc basis It is the product of a real national debate

Sir I am really sorry at this serious stage—when we are at the last stage of the debate—certain parties and Members of Parliament have chosen to boycott the deliberations I would only say that they have shirked the national responsibility

As far as the Communist Party (Marxists) is concerned, it is not as

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if they were not participating in this national debate In my own State their leaders have been going round and addressing meetings and expressing opinion They are doing it outside while they refuse to come to the House I do not know why this attitude is taken

Sir, Mr Gokhale did well in pinpointing on a very fundamental fact that this Bill, though it consists of 59 clauses, can in fact, for material purposes, be enumerated in six or seven What is it all that has happened here? If you look up to the 43 amendments which have preceded this, you will find, much more far-reaching changes have taken place during the last 25 years This is not much at all I may be permitted to point-out what has happened The only material thing that has happened is with respect to the judiciary It is not if the power of the judiciary has been curtailed If I may say so the power of the Supreme Court has been enhanced and not curtailed With respect to State law it is not as if they are debarred from everything The decisions with respect to State law will come to them No subject has been taken away from the Supreme Court Earlier the Supreme Court did not have the jurisdiction to withdraw cases from different High Courts Supposing a case is pending before the Supreme Court and a similar case is also pending before the High Court, earlier the Supreme Court had no jurisdiction to withdraw the same from the High Court We felt that it was wrong As such the Supreme Court has been given the additional jurisdiction to withdraw cases in appropriate circumstances

Further Sir cases can be referred to Supreme Court now Earlier this could not be done Even when a case is pending in a subordinate court the Supreme Court can consider that case and send it back This I am submitting by way of enhancement of the power of the Supreme Court. Tribunals have been set-up and the power of the Supreme Court to look into these decisions of the tribunals in exercise of its appellate jurisdiction has been retained No judicial decision or no statutory decision is taken away from the jurisdiction of the Supreme Court Therefore, it is a travesty of facts to say that the powers of the Supreme Court have been curtailed. Rather, it is the other way round.

Now, Sir, with respect to High Courts certain things have been done. Before this Constitution came what was the position? Our high courts did not have writ jurisdiction—excepting three high courts of Calcutta, Bombay and Madras—and their jurisdiction was limited territorially They had jurisdiction only in the cities where they operated They had no right to issue writs outside There was a section in the Government of India Act similar to Article 227 They had right to superintendance on the courts subject to their appellate jurisdiction Our Constitution gave the high courts two additional powers namely, to issue writs to any person within the whole area of their territorial jurisdiction if a cause of action arises there

They were also given the power to issue writs for purposes other than those mentioned in Part III May I point out one thing here? The Supreme Court today does not have jurisdiction to issue writs otherwise than for the purposes covered by Chapter III—fundamental rights If it is to have that power Parliament must pass a law to that effect conferring that power on the Supreme Court On the other hand, today the High Courts have got power to issue writs not only with respect to fundamental rights but also for other purposes This is one thing that has been dealt with now The jurisdiction of superintendence over tribunals was added to the High Court We

were groping in the dark. This was a phase of experiment. But in the past 25 years we have got the record of the doings of the High Courts. How were these powers used in the last 25 years? Would anybody say that the powers were used responsibly? I am absolutely sure the answer would be no. This is how the High Courts have been using this power. The Supreme Court has been insisting and the law is very clear that the words 'other purpose' do not mean any purpose; 'other purpose' must be *sui generis* with the purpose that is already spelt out. But they have been using it in a different manner altogether. The Supreme Court had very clearly said that although the words 'other purpose' are mentioned, unless there is substantial failure of justice that jurisdiction should not be invoked. But the High Courts have never been conforming to that direction. Under article 227, administrative superintendence was given. But it was resorted to for the purpose of striking down decisions where other articles of the Constitution were not available to them. Using the power of superintendence, which was only administrative under the Government of India Act, which was meant like that in the present Constitution also, they were striking down decisions by subordinate tribunals. This is the totality of the situation obtaining. Interim orders were issued, stay orders were being issued. I am told, about 80,000 writ petitions are pending concerning statutes and orders affecting millions of people. Everywhere there is stay operation.

Taking all this into account, the High Courts' jurisdiction has now been trimmed. How? Everything has not been taken away from them. They are still left with the authority to declare a State law *ultra vires* if there is the requisite majority in the Bench going into the question. It is not taken away. The only thing taken away is the jurisdiction under 'other purpose'. Not that in regard to matters other than fundamental rights, they have no jurisdiction. If any part of the Constitution is violated, if any law is violated, and if they are satisfied that there is substantial failure of justice, they can interfere with respect to that. That is not taken away. This condition is put on that. Would anybody say that this condition is unreasonable? Would anybody plead that the High Court must have a sweep on everything that is happening? Nothing more has been done with respect to this.

Regarding tribunals decisions, appellate decision has been reserved for the Supreme Court. Here the High Court need not come in. The citizen is needing a third forum where he can put forth his grievances. As the Swaran Singh Committee has pointed out, tomorrow the citizen will have this right. Today the writ jurisdiction is a discretionary jurisdiction. Now tribunals will be set up and it will not be discretionary for the tribunals to grant or not to grant relief as is the case today under writ jurisdiction. The citizen is going to be invested with the statutory right so that he can go to a tribunal and demand that his grievance be heard. Therefore, there is that forum where the grievance can be heard.

SHRI P. K. DEO (Kalahandi): What about Lokpal and Lokayukt?

SHRI C M. STEPHEN: After his grievance has been heard, if he has got a further grievance and in case there is substantial failure of justice, he can go to the Supreme Court. This is putting the law into a better perspective. Demarcation has been effected, the supremacy of the Supreme Court is maintained, administrative authority has been extended, more power has been given to withdraw cases and to dispose of them; cases can be referred to the Supreme Court

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they can decide such cases. There is appellate jurisdiction. So nothing has been touched. With regard to the High Courts, they have been told to deal with State laws. They have been told: 'You interfere with your jurisdiction only if you are satisfied that there is substantial failure of justice, not as a matter of course'. This is the position in England.

That is the position everywhere. Then there is the third matter, the institution of the all India judicial service. There is already a provision in respect of the Supreme Court and the High Courts. Now the district courts will also come in. For the purpose of appointment of district court judges we are proposing that there be an all India judicial service and appointments be made to posts of judges in the district courts from persons who are qualified and who come in that judicial service. For the integrity of the country, for the unity of this country and for the sake of uniformity of justice, is it not necessary that there should be an all India judicial service? Recruitment must be made to that service and appointments made from that service. Can anybody object to this? Another clause is with respect to article 352, emergency powers. Two amendments are made. Today if the President is satisfied that there is some danger in some part of the country, he can promulgate emergency but with national coverage, even though something might have happened in some distant corner of our vast country. He is not empowered to promulgate an emergency with respect to that area only. Areas which are peaceful have also to be brought in. This position is sought to be changed and the President is given powers to declare a national emergency with respect to the whole or any part of India or State or any part of a State. Is it not necessary? Again, when a national emergency had been proclaimed and if things had improved in most parts of our country except in some small area, he has no power to lift that emergency in those areas where things have improved. Therefore, power is now given to him to do these things. In a huge country like India, is the whole country to be kept under the blanket of emergency if something happens somewhere? That is why there has been the proposal to have this amendment.

Activities dangerous to the country, injurious to the sovereignty of the country may take place somewhere. *The executive power of the Union can* be passed on to other areas also; that is the position today. The only difference is that emergency will be kept in a particular area and if emergency is kept in that area, for the reason of accomplishing the purpose for which emergency has been declared, an executive order can be issued as if emergency exists in other areas. Nobody is prejudiced by that; *status quo* with respect to the power to issue executive order is retained.

The fourth material amendment is with respect to electoral disqualifications. Today there is a provision; what is the provision? Nobody knows for certain what an office of profit is. I may contest an election and win. An election petition will be filed after that. I might have had some contract sometime back though the contract might have terminated when I contested the election. An election petition may be filed and the election might be struck down on the ground that the elected person was holding an office of profit. Another thing is this; everything is an office of profit unless Parliament by law says that this will not amount to disqualification. The circle of office of profit is going to be widened with mischievous purpose. The mischievous purpose is limiting the number of permissible public offices to the minimum which will not disqualify a Member of Parliament so that

public corporations are today the haven of bureaucrats only; people's representatives have no place in that area. Therefore it is now proposed that Parliament will enumerate the offices of profit which will disqualify a person. If Parliament does not enumerate a particular office as an office of profit, disqualificatory for election for Parliament, then it will not be an office of profit which will disqualify that person. There is nothing strange about it. Today this is the position in the United Kingdom. There the position was as it is here today. They set up a Commission. They went into this whole matter and they recommended that the position must be changed. The Parliament must say which are the disqualificatory offices. That principle has been accepted which, I am sure, is a salutary principle. Public Corporations are expanding in our country. Public Sector is developing in this country. Public sector will have no meaning if the people, the representatives of the people, have no place in the public sector. Today an elected man can have no place in any public sector at all which means by a residual process, it becomes the monopoly and haven of the bureaucrats and the representatives of the people are vetoed out of that area. This thing has got to be changed. That is why this amendment is proposed. I ask the Members on the Opposition side—CPM Members, Swatantra Members—whether they are opposed to this proposal

Another thing is about an election dispute going to the President. Today, the President has got to act in accordance with the recommendation of the Election Commission. Now, there is a proposal that it need not be considered by them but they be consulted. But that is a minor part of it.

Now, I come to armed force, about which Shri Manoharan spoke a lot. What is wrong if the armed force of the Government of India is sent to a State for assistance to the civil power? If it goes to a State for assistance to civil power, then the question is: who must control that armed force? If it went to Tamil Nadu, the position was that the Centre would have to take orders from Mr. Karunanidhi—if it went there during his regime.

AN HON. MEMBER: Not armed force, but C.R.P.

SHRI C. M. STEPHEN: So, if the force is sent to a State, they have to take orders from the local authority. That is the position today. This is a very unwholesome position. If you want the assistance of the Centre or if the Centre feels that the law and order breaks down somewhere and the civil authorities are not able to control the law and order situation there, then the armed forces will have to go there and if the forces go there, they go there to establish the law and order. The local authorities cannot put the law and order situation under control and therefore the armed forces go there. They go there with a mission and if the mission is completed, they have to come back after carrying out the Centre's order. Now, the simple question is: who must control the armed force which is sent for the assistance of the civil power? The position has so far been, the claim has so far been, that the local authorities will control the force statutorily and constitutionally.

Now, the other thing remaining is amendment to Article 368. Any amendment which has been brought about under Article 368 is beyond the scrutiny by the court. This has been specially mentioned here and this is the position. There is no secret about it. This is our endeavour, whether we succeed or not is a different question. This has been the endeavour so far and if the endeavour is reasserted in the light of what has happened in the

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Keshavanand Bharti case and the Election case, etc., who in this House can object to it? If you analyse the whole thing, I do not know why peop'e say that the constitution is shaken up Even the Supreme Court will not be able to point out that any part of it is affecting the basic structure of the Constitution.

Sardar Swaran Singh has mentioned about 2/3 majority. Here I may point out that in 1971, after I got elected to the Lok Sabha, I had moved a non-official Constitution Amendment Bill That was to counter-act the ruling in the Golaknath case. There, I suggested that a larger bench be constituted. My proposal was that 2 3 majority must be there.

I had two other proposals also One was that article 141 must be amended so that the law enunciated by the Supreme Court is binding on all courts including the Supreme Court I had also proposed that if a law enunciated by the Supreme Court is wrong, the President must have the authority to refer the matter back to the Supreme Court so that it may consider it and lay down the correct law At that time my proposal for two-thirds majority was rejected because the government opposed it It is a matter of gratification to me that that proposal has now been incorporated in this official bill If I remember aright, the DMK member, Shri Murasoli Maran moved a Constitution Amendment Bill saying that for purposes of delimitation of constituencies, the population must be frozen at the previous census figure and no further delimitation should take place as a result of ex pansion in the population This Bill also was rejected at that time but that proposal has now been incorporated in this Bill So, this Bill reflects the sentiments and opinions of wide sections of our people. It incorporates the non-official opinions reflected in a number of Constitution Amendment Bills which were from time to time moved before the House but were being rejected.

The absention of the hon. members belonging to certain parties has nothing to do with the Constitution. It is purely a political gimmick They are fleeing away from their responsibility to the nation to participate in this momentous debate which is at the climax stage. They do not have the guts and the moral courage to stand up and perform their duty to the nation by contributing whatever they can, come what may to their proposals. It is unfortunate that this absention has taken place

I say that it is a momentous Bill in another sense After 25 years of experience and experimentation, we have reached the take-off stage and the Constitution will have to reflect the pulsation of the nation It has to set a course for the nation to follow. It has to renew its oath as to what it is meant for It is with that purpose that the preamble is being amended Some pundits are saying, preamble is a historic fact, how can you amend it? It says "We, the people of India, do hereby give upto ourselves this Constitution on 26th November, 1949". How can you amend it? This is what they ask They forget thhe fact that it is inherent in the Constitution itself which the people gave upto themselves that the Constitution can be amended Amendment of the Constitution does not make it a different Constitution altogether There is no aberration of the historical fact that the Constitution was given by the people to themselves on 26th November 1949 Our position is that the Constitution is remaining and the amendment does not make it a different Constitution. Two concepts have been put into it: Secularism and socialism At the time when the Constitution was framed, the words were not used, but these elements were there in the Constitution If you want to bring about a society which has got justice, social, economic and political, equality, liberty and fraternity, it is a socialist society. That socialist society

was written into the entire preamble: Today, as a result of the leadership given by the Indian National Congress during the last 25 years, thoughts have expanded and crystallised. We know what we are for. We have come to a stage where we are for socialism. That socialism is not a text-book matter. That socialism is now engrained into it. There are people who are speaking about the communal authority, and about the theocratical authority. Jan Sangh is going about with a sectarian point of view and a divisive philosophy. Therefore, it is necessary that the Preamble reminds the nation that the nation has been committed to secularism and there can be no going away from secularism. This is the sentiment of the nation; this is the will of the nation; this is the faith of the nation and the Constitution reflects the new found faith and the belief, commitment and promises which they are giving to themselves It is not as if history has changed. The Constitution is the same which was given to the people in 1949. Only a few amendments have been incorporated. It is our position that those amendments have not changed the Constitution. This is our position that this Constitution can be changed but still the Constitution will remain the Constitution. This is that assertion of that position which is meant by the incorporation of two words in this Preamble i.e. secular and socialist. It is not as if it is a socialist democracy; it is not as if it is a secular democracy. It is a secular republic; it is a socialist republic; it is a democratic republic. What we have given to ourselves is the republic. What we gave to ourselves is the Constitution. The time for framing the Constitution was 1949. Amendments are taking place but those will not change the Constitution. But an assertive statement is necessary that it is secular and socialist in the face of certain antiforces working in the country. Therefore, this Parliament in its wisdom must take an oath for the people and let the people commit themselves to this article of faith which is ingrained in the Preamble. That is all I have got to say in reply to those criticisms which have been made.

Having said that, I would like to come to another aspects. There are certain provisions in the Bill which need to be looked into very seriously. Take, for example clause 55. I gave a large number of amendments and I reserve my right to move those amendments and speak on those amendment, and try to convince the Government to accept these amendments| Clause 55. amendment clause. My submission is that here a clause has been incorporated which is most dangerous and which is tantamount to the surrender of the sovereignty which we have been seeking. Clause 55 says that nothing shall be called in question in any court except on the ground that it has not been made in accordance with the procedure laid down by this Article. Here is an inroad on the sovereign authority of the Parliament. You are now inviting the court to sit in judgment whether the procedure has been violated or not. Well, there is Article 122 which says that the procedural matters are entirely for the House and no proceedings shall be challenged on the basis of irregularity of the procedure. Now, the Act is not a proceeding. The Act is a result of the proceedings. The result of the proceedings, you say, can be challenged on the basis that the procedures you are stipulating, have not been conformed to. The Supreme Court has been encroaching on every field but they are kind enough and judicious enough to avoid encroachment on the field of Speaker so far. A decision by the Speaker was accepted as final. A decision by the Chairman was accepted as final. The four walls within which we are operating is an area where nobody has been coming in so far. Now you are inviting the Supreme Court to sit judgement by saying that you shall not touch this Act but you can go into the question as to whether the procedure has been conformed to. What is the procedure? The procedure need not be limited to the two-third majority. The procedure need not be limited to the prior sanc-

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tion. If it is the procedure, the procedure can extend even to the question of the composition of the House. The person elected, how he was elected and whether notice was given—all these can be extended to come under 'procedure'; and as a logical corollary to it, if the Constitution Amendment Act can be attacked on the basis of procedure, then the poor ordinary laws can certainly be attacked on the basis of procedure. Is the procedure in the House a matter amenable to question in the court? We say that we are a sovereign authority Which court can look into this? Let us not throw open the flood-gates of law courts to enter into this. They had shuddered to do it so far. You are inviting them to have a peep into an area which was so far the preserve of the person presiding over have, of the Speaker. This is a most dangerous proposition.

There is another clause dealing with parliamentary procedure. I mean Clause 21. It says that the proceedings of the Parliament will be evolved by Parliament I do not call it dangerous, but I say that we are in a state of complete vacuum. So far, the position has been that Parliament may, by law, lay down the rules; and until so defined, the rules governing the House of Commons will be the rules governing the House. Now they have said in Clause 21:

> "(3) 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 evolved by such House of Parliament."

What will be the position? Your power to enact a law is taken away Your procedure can only be by an evolutionary process, not by the process of enacting the law. It is taken away deliberately. The interpretation will be that you no longer have the power to enact a law with respect to your procedure. Whether it is desirable is a different question. The House of Commons has not done it, and we have not done it so far. It is a different question, but the question is whether the jurisdiction must be taken away from the House.

MR. DEPUTY-SPEAKER: Does evolution exclude legislation?

SHRI C. M. STEPHEN: Evolution will not amount to that But why leave it in doubt?

SHRI BHAGWAT JHA AZAD (Bhagalpur): You are saying that evolution can exclude legislation.

SHRI C. M. STEPHEN: I do not know. Unless it is evolved, you don't have any law at all. Evolution has got to take place Evolution means that it is a process of timing, it is not a process of enactment .Enactment is different from evolution. This interpretation is irresistible, because in the present Article, there is a phrase which says that Parliament will enact this by law. We have deliberately taken it away. I can understand the argument that after 25 years, we must not state in the Constitution that what is happening in the House of Commons is law for us; but I must say that until it is done, the procedure which is in existence to-day should be the procedure; and that it will be evolved subsequently

There is another very important matter Anti-national activities have been mentioned here I do not find the need for it. That is a different matter I have put my amendment. According to me Article 19, sub-clause (2) onwards take care of all these things. Anyway, if by way of abundant caution it has to be done, it must be done. If prohibition must be there, it must be there. But to say that to do something which will create internal disturbance is an anti-national activity, is either to degrade the concept of anti-national activity, or to upgrade the status of internal disturbance.

14.00 hrs.

In this country there are 600 million people. So, disturbances may be taking place in one part or another. Trade unions there are, and they are fighting for their rights. So, fights there will have to be. The avowed purpose of every trade union activity is to create internal disturbance in the area where they are fighting. Do you want to ban it? If you want to ban it, come out openly and say that there shall not be any trade union.

That is why I say that inject into it only such things as may be absolutely necessary. This definition of "antinational activity" you will have to look into, "anti-national association" you have taken care of. I will not go into the details at this stage. I would rather reserve it for the clause by clause consideration.

Finally, I am raising a very vital point which all of you will have to consider. In 1971, immediately after we were elected, in November 1971 we enacted the 24th Amendment. What was the purpose? The purpose was to counteract the Golaknath case, where this power of Parliament has been questioned. It was raised in the Sankari Prasad case in 1950 and again in Sajjan Singh's case in 1954. Each time the power of Parliament was upheld. Then came the Golaknath case in 1967 where they said that we have no power to amend the fundamental right. The nation felt that it was held up and the march was stolen from it. Therefore, the first thing that Parliament did after it came out successful in the elections was to meet the challenge, the restriction which it felt was a stone hanging on its neck. We tried to amend the relevant provision of the Constitution and we said that it is in exercise of our constituent powers that we are doing it. We tried to answer there every objection that was raised in the Golaknath case.

Then came the Kesavanand Bharati case. People say that the Kesavanand Bharati case is a victory for Parliament. I beg to differ from this view, because it was not a victory for Parliament. What did the court say in Kesavanand Bharati case? The court said: "We do not agree that all fundamental rights are basic and that fundamental rights per se shall not be amended. But we say that the amending power of the Parliament is not unrestricted. It is subject to the framework and the basic structure of the Constitution." They said it very emphatically. What is the result? In the Golaknath case they stopped with saying: if you amend the fundamental rights, it is *ultra vires*. But in the Kesavananda Bharati case they said: "if you amend the fundamental right, if the right which you amend is a basic right, a basic feature, then it is *ultra vires*. But we are not limiting that restriction to Chapter III. If you amend any other clause, and if that clause happens to be affecting the basic structure, it is *ultra vires*." Therefore, by saying "we over-rule the judgement in the Golaknath case" they went further and put larger restrictions and dangerous limitations on us, which they demonstrated also. How did they demonstrate it? We passed the Constitution (Twenty-fifth) Amendment Act. We said that we are sovereign, we are supreme and in article 31C we said that if we enact any law and if the Parliament or the Legislature declares that it is in pursuance of the Directive Priciples, then it shall not be set aside on the ground that it is not in pursuance of the Directive Principles. But the Supreme Court said that Parliament has no business to say that and struck down that clause in Kesavananda Bharati case. I do not find any provision in this amending Bill which is taking care of that, even though that part of the Constitution (Twenty-fifth Amendment) Bill stands struck down. In the Kesavanand Bharati case, on one side they said "your powers are not limited" and, on the other hand, they said "we demonstrate hereby that your powers are unlimited" by striking down a part of article 31C, which

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we enacted in the exercise of our so-called supreme power

The Supreme Court said that the constituent power has got two concepts, the constituent power to frame the Constitution is one thing and the constituent power to amend the Constitution is a different thing The constituent power to frame the Constitution is a plenary power while the power to amend the Constitution is a derivative power The derivative power is limited, being derived from the patent law which you are amending but the primary power is unlimited, there you can do anything Therefore they held that the case of Parliament that its constituent power was an amalgum of judicial executive and legislative powers was absolutely wrong It was rejected

Then another dangerous thing also took place in the Prime Minister's election case In the case of the Thirty-ninth Amendment Act introducing the new articles of 329A and 329A they made a declaration that it was a legislative judgment and therefore they were striking it down

Therefore, after we passed in 1971 the Constitution (Amendment) Bill declaring that we had the constituent power and that we were exercising it they sat in judgement on two occasions—on one occasion it was a Bench of 13 Judges and on another it was an ordinary Constitution Bench—and on both occasions they did the job of striking down the two Acts amending the Constitution Therefore they have again stuck to the position that our constituent power is a limited one

The question is what is the solution? My humble submission is that the amendment of article 386 which we are now proposing is no solution at all. That is only begging the question You can go on asserting that you have got the power they can go on denying it There must be some stage where it is resolved

There is another aspect According to article 141, the law laid down by the Supreme Court shall be mandatory on every court. What is the law today? The law as it stands today has been laid down in the Keshavanand Bharati case, and in that case, an overwhelming majority, Mr. K. K Mathew included, struck down article 31C, the declaratory part of it Even Mr Mathew joined it I mention his name because his democratic credentials are generally accepted

Therefore it is no use continuing this exercise It has been made since 1967 Nine years have passed and we are now passing into the tenth year. The Sword of Damocles is still hanging on our head, there is no solution yet You start asserting, they start denying Denial and assertion are going on The more you go on, the worse it becomes, the more ridiculous it becomes We are now providing for two-thirds majority to strike down a law but the law remains what they laid down as the law in Keshavanand Bharati's case Therefore, when an opportunity comes to them they can go into the basic structure question They will say that that law is binding on us that according to the law of the land the basic structure has been violated They will say that although in essence it is unconstitutional, because Parliament has provided for a two-thirds majority to strike down a law, they are not striking it down but the law will stand declared as unconstitutional being violative of what, under Article 141 is the law binding on all courts of India

So unless we resolve this confrontation the nation cannot march and the method of resolving the confrontation is not assertion and rebuttal Assertion and rebuttal can go on ad infinitum it started in 1967 and it is going on The solution that I propose may appear to be shocking, but the hon Members and the Chair will kindly bear with me That law will bind us only if the endeavour is to amend the Constitution Why say that the solution is only amending the

Constitution? The re-drawing of the Constitution is also possible, and there the power is unlimited We have got our constituent power The question is which constituent power? The Supreme Court has said that our constituent power is only derivative when amending the Constitution But you have the primary constituent power if you want to re-draw the Constitution It is not as if we have no power for that

I am only saying that let us not make a vain attempt to pursue an illusion a mirage We are pursuing a self-defeating exercise of reasserting and getting deeper and deeper into the morass Do we not have the problems of the nation on our hand? Are we to remain engaged only in an academic exercise? Are we not to exercise our constituent power, I may say, the primary constituent power the plenary constituent power and frame our own Constitution? What exactly is the method is a different question We are not helpless about it

Golak Nath case spelt out the method about it

Shri Subba Rao speaking for the majority says —

> 'Nor are we impressed by the argument that if the power of amendment is not all comprehensive there will be no way to change the structure of our Constitution or abridge the fundamental rights even if the whole country demands for such a change Firstly, this visualizes an extremely unforeseeable and extravagant demand, but even if such a contingency arises, the residuary power of the Parliament may be relied upon to call for a Constituent Assembly for making a new Constitution or radically changing it. The recent Act providing for a poll in Goa, Daman and Diu is an instance of analogous exercise of such residuary power by the Parliament"

This is the majority judgment of the Supreme Court in the Golak Nath case

Shri Hidayatullah says

> "The State must reproduce the power which it has chosen to put under a restraint Just as the French or the Japanese etc cannot change the article of their Constitution which are made free from the power of amendment and must call a convention or a constituent body, so also we in India cannot abridge or take away the Fundamental Rights by the ordinary amending process Parliament must amend Art 368 to convoke another Constituent Assembly, pass a law under item 97 of the First List of Schedule VII to call a Constituent Assembly and then that assembly may be able to abridge or take away the Fundamental Rights if desired"

I am not making any plea for the convocation of a Constituent Assembly This is the last phase of the national debate on this bunch of amendments I have no doubt in my mind that this is the beginning of another national debate a national debate for a Constitution which will be free from the trammels of some Benches I am not attributing motive to the judges of the Benches They are great men They have got their conscience They are acting according to their conscience They say 'You do according to this and for heaven's sake please free us from the trammels of the conscience under which we are suffering Should we not think in those terms? In these 20 years conditions have changed A new pattern has emerged We framed this Constitution when the property right was considered sacred, we framed this Constitution when socialism was an anathema, we framed this Constitution when the princely rights were considered sacrosanct,, we framed this Constitution when the path was not clear Today, the path is clear, the vision is clear, the goal is clear, the leadership is clear and we know where we want to go. We want to be armed under the Constitution

[Shri C. M. Stephen]

where we will not be put under trammels and under fetters. A Constitution is necessary which will reflect the aspirations of the people and will give us freedom to operate in a particular manner.

I am not saying that the Constituent Assembly must be convened. Somebody said, it is a dangerous proposition. Nothing dangerous at all. This Parliament in its constituent power has got the power to convert itself into a primary constituent authority and assume that authority and say, what should be done and what should not be done. This is all I would say.

The point I am trying to emphasize is this. The problem that we are trying to solve is no longer nearer solution. The problem is not that we have not the conviction. We have the conviction. We know we have the authority; we know we must have the authority; we know we are the supreme body. But there is an impediment which under article 141 is binding on all the courts in this country. The law declared by the Supreme Court is a law binding on all the courts in the country. That impediment is there. During our deliberations, rather than making a special majority as a condition precedent to striking down a law, I suggested that retrospectively this principle must be operated. If you operate this principle retrospectively, any judgment which has ever struck down any law with a majority of less than two-thirds must be deemed and treated as null and void. Then, the Keshwanand Bharati case will go, the Golaknath case will go; the election case will go. We go back to the Shankari Prasad case, with full authority exercised, and say that the law laid down by the Supreme Court is binding on everybody, including the Supreme Court

Now, the funny thing is that the law is binding on every court, not on the Supreme Court. They are free. What a wonderful thing. We may get a ruling in our favour tomorrow. What is the guarantee that day after tomorrow some other blooming Bench will not sit and strike it down? Are we to function in this eternal, perennial, never-ending and continuing threat of a super chamber sitting in judgment on us? Pandit Jawaharlal Nehru while moving the Bill for the first amendment of the Constitution said that the supremacy of Parliament has got to be established. There can be no super chamber over us. Now, 25 years have gone by. But the second chamber or the third chamber is remaining firm as a rock. Even after the enactment of the Twenty-fourth amendment, they had the temerity to strike down a clause in the Twenty-fifth amendment and, again, in the election case, they had the temerity to strike down article 329A. They had demonstrated that they are the masters of the situation We have no answer to that except to assert that we are the masters of the situation. With that purpose in view, let a national debate begin.

With respect to this Bill, I do support it completely with one submission. Let us remember that we are amending the Constitution of India. We are not amending an ordinary document. We are amending the Constitution of India, a document which was drafted by the eminent people, great luminaries and patriots in this country. It has its own polish; it has its own rhythm, it has its own poise When we amend it, it must be done in tune with the entire thing. That has got to be done. I feel, there are certain improvements which have amendment. I would request the law Minister to consider that amendment in all seriousness. I have got personal assurance that consideration will be given to that. I appeal to him that it must be considered. That is all I have to say.

According to me, we are at the stage of a very momentous occasion in the sense that we have by our

Preamble sought to reflect the will the wish, the vision and the aspirations of the people and we are by inserting specific words chalking out a path and we are proceeding towards that. The only thing to be decided is the methodology about it, how to remove obstacles and how to remove obstacles is a matter on which a national debate is necessary. Let this be a starting inspiration for the national debate.

With these words, I do support the Constitution (Forty-fourth Amendment) Bill.

MR. DEPUTY-SPEAKER: Before I call the next speaker, I would like to draw the attention of the House to one particular matter. Yesterday, Mr. Daga, while moving an amendment to refer the Bill to a Joint Committee said that he had obtained the consent of the Members whom he wanted to include in the Joint Committee. After that, two Members have written to the Speaker and they are Shri Bhogendra Jha and Shri Priya Ranjan Das Munsi. (*Interruptions*) I am referring only to the Members who bad written to the Speaker. Now, the convention and practice in this House is that the consent of the Members should be expressly obtained and if that is not done, the motion cannot even be put to the House. Now, Shri Bhogendra Jha and Shri Priya Ranjan Das Munsi wanted to make personal explanations in this matter and I think that in all fairness to them I should allow them to do so.

SHRI BHOGENDRA JHA (Jainagar): The necessity for my speaking now has arisen because Yesterday Shri Daga said that he had secured the consent of the persons whose names he has included in the proposed amendment. But he has neither sought nor got my consent either verbally or in writing formally or informally or in any other manner. So, in this context, I would like to say that he has made a factually wrong statement to the House. Apart from that, here is a hand-book which says that when a Member proposes an Amendment that a Bill should be referred to a Select Committee, he should also state whether the Members proposed to be appointed to the Committee have given their consent to serve on the Committee or not. So, not only has he not got their consent but he has also made a factually wrong statement.

Here, I want to say that this session of the House is a special session and some Members have rightly said that it is a very momentous session and we are going to assert the supremacy of Parliament and its right to amend the Constitution and to steer our path clear for the future. But there are forces at work outside this House as well as inside, who want to deny this right to the House. By implication that is what this Amendment amounts to; so it is very relevant. This is an open attack on the right of Parliament. Some Members are boycotting the House while some are saying that the Parliament has no right to assert its supremacy. At least by implication they are denying this right to Parliament. And there is a third proposal that this Bill, which was moved in the last session and for which a special session has been called, should again be referred to a Select Committee. I think this is a conspiracy. It is part of the very conspiracy to deny this right to Parliament and to somehow dilly-dally. In such a situation it is very serious and dangerous that names are included without consent. We have heard many more Members saying that their consent has also not been taken. In this situation, I think that, firstly, Shri Daga should be properly reprimanded and, secondly, that this Amendment of his should be declared invalid and out of order. That is my submission.

SHRI PRIYA RANJAN DAS MUNSI (Calcutta-South): I have already written to the Speaker, as I have stated. I won't say that Shri Daga is a conspirator: he is a friend of ours and he is an Hon'ble Member of the

[Shri Priya Ranjan Das Munsi]

House. According to his usual practice, he might have moved something Yesterday that it may be referred to a Select Committee and might have obtained the permission of some Members. My name was also there, but I am unaware of this thing and I am not involved in it; and I don't approve of the proposal.

MR. DEPUTY-SPEAKER: Mr. Sreekantan Nair.

SHRI JAMBUWANT DHOTE (Nagpur): I want to know what is the conspiracy.

SHRI M. C. DAGA (Pali): If a Member does not want to serve on the Committee, I will not compel him.

MR. DEPUTY-SPEAKER: Mr. Sreekantan Nair.

SHRI N. SREEKANTAN NAIR (Quilon): Everybody agrees that this is a momentous piece of legislation. It is quite natural that some senior Members of this House feel that it must be sent to a Joint Committee. In fact, I myself was of that opinion. But I could not approach so many members and get their consent. So, I did not give notice of that. I would suggest to the hon. Minister and the Government that, if they take on themselves that move, then they can get it done and the danger that was posed by Mr. Manoharan will not be there. They can put a ceiling on the time limit and say that it should be done before 1st December . . .

MR. DEPUTY-SPEAKER: There appears to be no ceiling. That makes the position of the Chair comfortable.

SHRI N. SREEKANTAN NAIR: I was only making a suggestion; if Government can agree, I will be happy. I do not see eye to eye with some of my friends here. As an elected Member of this House, I feel that I should speak out openly and say clearly with what I agree and with what I do not agree. If I can convince the Government, they may accept. (*Interruptions*) I am only placing my views on this very important Bill.

MR. DEPUTY-SPEAKER: I have explained the position that the practice in the House is that, when it is established that the consent of the Members has not been expressly obtained, that motion is irregular. It cannot even be put to the House. I think, that is enough.

AN HON. MEMBER: That means, the motion goes off.

SHRI N. SREEKANTAN NAIR: I congratulate the Government for having brought forward this Bill. In the Statement of Objects and Reasons, it has been pointed out that the Bill is intended to achieve the objective of socio-economic revolution which would end poverty and ignorance and disease and inequality of opportunity, etc.

To attain this objective, the Directive Principles have been made more comprehensive and given precedence over Fundamental Rights, which were till today being utilised against the rights of the common people. I am afraid that Article 19(f) of the Constitution, the right to property, is not in consonance with the concept of socialism. When you insert in the Preamble the word 'socialism', you have to take away Article 19(f), the right to property. Therefore, Article 19(f) must be taken out from the Fundamental Rights and included in the common law. That is my suggestion; I cannot put it as an amendment as has been pointed out by Shri Frank Anthony in the morning.

Most of the fears of the opposition in the country might have emanated from the fact that this right to property may be taken away. There is a provision which enables the President to make any provision to remove any

difficulties within two years. That may be the root of their anxiety. Abolition of right to property is a basic and fundamental aspect which should not be carried on to the shoulders of the President during the intervening two years. If this House is sincere about the declaration of the socialist objectives of the Constitution, we must be bold enough to take away Article 19(f), that is, the right to property, from the Constitution and we should do this in this House openly and courageously.

There is a very fundamental lacuna in our Constitution. The right to work is a fundamental right; it was not inserted earlier because of the difficulty not only to achieve socialism, but even to conceive of socialism. Right to work is a fundamental right, which must go with every socialist Constitution. We did not have it in the past and you do not bring it now. If I do not have the right to work, how can I live a peaceful life in old age? How do you burden fundamental duties on me without the right to work? Therefore, right to work must be there.

Some of the clauses in the amending Bill are really bold and helpful, clauses 7 to 10, regarding right of children, workers and poor people, improvement in environments, safeguarding the forests, wild life etc. All these clauses are laudable; so is the clause 13, which brings in the basic concept of the Cabinet controlling the President and making the President a constitutional head only. This is very correct.

The most controversial clause in the Bill is clause 6, as also clauses 23, 24, 25, 30, 40, 58 etc. which control the authority of High Court and Supreme Court. I am one with the Government in supporting that approach. As a trade union worker, I have suffered most at the hands of the judges of the High Courts and Supreme Court. Even two years ago, after a heart attack, I was forced to go to picket the High Court of Kerala when there was a case in the Kerala High Court, because the judges in an irresponsible and illegal manner just allowed the discharge of 1200 workers from the Idikki project. There was no other way to protest. In order to give vent to my anger, I had to get arrested before the High Court of Kerala. Even today, I am moving the Kerala High Court. Another judge simply issued the suspension of payment of provident fund by an employer. I cannot dream of such a thing, but he did it. So, the quality of the judges of the High Courts and even the Supreme Court has gone very low. Even the Law Commission has accepted that and has said that something must be done about it.

So, I would request the Government to consider whether it is not feasible and whether it is possible for us to have these higher luminaries in the hierarchy of the Judiciary elected as it is done in Switzerland or Soviet Union. Thereby we will have a certain control and they will have a certain perspective. Of course, it will be the perspective of the people and the perspective of the majority. So, the system of appointing Judges will have to be somehow altered or else, what Mr. Stephen predicted would once again happen. They may once again say that we have no right even for this Constitution Amendment Bill. Therefore, the question of getting Judges elected by the nation as a whole, at least the Supreme Court and High Court Judges, has got to be seriously considered. Till that time, if the Supreme Court once again stands in the way of effectively enforcing this Constitutional Amendment Bill, I suggest that under the provision of the President having the right to decide whether a person is of a high judicial calibre and appoint him, we will be able to appoint as many Judges as would be required to

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get this two-thirds majority in our favour. But if this principle is applied from the sectarian point of view, the power given to the President to decide whether a man an eminent Jurist will certainly be misused and our Judiciary will become a symbol of mockery.

Clause 43—Art. 57A cuts at the root of what remains of the conception of a federal constitution. In exceptional cases, the Centre can intervene. It has happened in 1959 in Kerala. The Central Government has a right even under the present provisions of the Constitution to suspend a government as they did the Communist Ministry in Kerala and impose President's rule. Then why should the Government come and seek other powers including the right to deploy armed forces without the consent of the government there? What naturally would happen has been to a certain extent pointed out by my friend, Mr. Manoharan. It is bringing in armed clashes between the State and Central forces. It is bringing in internal warfare. Why do you want to do it? As has been pointed out by my friend, Mr. Stephen, there has been no incident anywhere where the State Government thwarted the Central Government directive. Anyhow sending the Armed forces, if you insist upon the right, must be completely vested in this Parliament and not in the executive or the Ministry. For this I would suggest that even a higher restraint than given in the amendment of the Constitution should be placed and at least a three-fourths majority of the House and a majority of the overall membership of the House and three-fourths of the Members present and voting must support it, if it is to become law. Otherwise, any government with a simple majority can certainly send the Armed forces into any part of the State and virtually destroy the government of that State, the people of that State and their aspirations

Clause 57 amending the Seventh Schedule is something about which Mr. Manoharan voiced the sentiments of the people in the South, not only the people of the South but of other parts of India as well where Hindi is not the predominent language. The non-Hindi-speaking areas are very much perturbed about this taking over of education and making it a concurrent subject. This is something which ultimately can be used to put down other languages.

If any State wants to deprive the people of other areas from getting employment or if they want to ban the use of other languages in the province or in Centre-State relationship, they can do it. Therefore, bringing education in the concurrent list is highly objectionable and is something which needs to be thought over again.

SHRI PRIYA RANJAN DAS MUNSI: In the beginning RSP also made this demand.

SHRI N. SREEKANTAN NAIR: I had broken the doors of this Parliament to see that Hindi was not imposed on any part of the country.

Through the right of secession has been completely taken away, let me hope that the Government will definitely assure us that the linguistic rights are not disturbed.

Then there is a fear relating to the Election Commission that there is too much concentration of power in the President. The recommendations in this Bill have gone beyond the suggestions of the Swaran Singh Committee especially with regard to penalties and disqualifications. The authority rests with the President and the President means, of course, the Prime Minister and the Cabinet. Therefore, it can also be used as a political weapon.

For me and for every democrat in this country the most dangerous

amendment is Clause 5 bringing in Article 31 D.

31D reads as under:

"31D. (1) Notwithstanding anything contained in article 13, no law providing for—

(a) the prevention or prohibition of anti-national activities; or

(b) the prevention of formation of, or the prohibition of, anti-national associations.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 4, article 19 or article 31 . . .".

The definition of 'anti-national activities' has been disputed by a great Congress leader like my friend Shri Stephen. It does not prevent this enactment from being interpreted as a negation of the fundamental right for individual liberty. It can also be used to deny completely the freedom of Association and Expression and it is unfortunate that no opportunity is given to any court or Tribunal including the Supreme Court to go into the question of seeing whether the enactment conforms to the provisions regarding the anti-national activity. This is more dangerous. The definition given in this Bill is too elastic. It confers powers on any ruling party with simple majority to ban any Association including all the Opposition parties. Any party other than the ruling party can be banned and the Members of the Opposition party can be put in jail for any length of time. This is a very drastic attack on the rights of the political workers, trade union workers and social workers. It can effect anybody and everybody. Under the benign democratic dictatorship of Shrimati Indira Gandhi it may not happen but this decision which is being taken is for all time to come. If somebody who is power hungry, who wants to bring in fascism in this country happens to use it some time later, then he can use this amendment as a weapon to convert the government into a fascist regime and abolish all the opposition parties. The Government with a simple majority can do it. Today Mrs. Indira Gandhi is in power and she may not do it but suppose some other person comes and steps into the shoes of Mrs. Indira Gandhi, he may resort to all these atrocities and at that time there is no meaning in your making the excuse that you did not anticipate these things. You will be blamed by history; history will denounce you. That is all that I have to say.

SHRI VASANT SATHE (Akola): Mr. Deputy-Speaker, Sir, I take this opportunity to congratulate the Government and the hon. Law Minister for bringing this historical document which will change the course of democracy and will convert it into an economic democracy for the people.

Twenty-five years of experience shows us that although the principles which were enshrined in our constitution in the directive principles themselves were pointing a clear finger for the emancipation of our people from poverty, yet, all the ships that were launched for economic betterment unfortunately got dashed on the rock of right to property. We have learnt from that. We have been talking of socialism right from independence and even before independence. The elementary principle of democratic socialism is this. If one does not like the word socialism I would use the word economic democracy. The basic principle here is that it must lead to a society free from exploitation, that the few in the society should not have the right to exploit the many. That is to say, the result of the labour of the society which is the surplus in the form of capital must not get accumulated in the hands of a few, for the betterment of the few. These are the elementary principles of socialism whatever it

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may be, whether it be the Indian variety or any other variety. If we want to establish a socialist society then we have to make it clear in the preamble itself, the object being, to make the goal towards a society free from exploitation so that the whole nation can rise together, so that the 60 crores of people can rise as one man and be free from the clutches of poverty.

With this objective, Sir, we wanted to make our goal irreversible and therefore we have put the word socialism in the preamble.

These things as I said have been there under Article 39 but these could not be implemented because even a small step taken like bank nationalisation or abolition of the privy purses has been struck down.

I therefore would be happy if the Law Minister could consider the suggestion which has been made by many hon. Members saying that the right to property, if it cannot be removed altogether, at least could be defined or could be qualified to mean what property is? Even the dictionary meaning of the word 'property' is that property is a personal thing. We know that. But, how can property ever mean having control over the capital or productive resources of the country? I can understand if you can define it to mean that property which is acquired and held for the personal use of a citizen or his family. This does not take away automatically the right of control over the property under the common law. All that will happen thereby is that nobody will be able to claim protection of the fundamental rights. That is all.

That has been the main stumbling block in our progress. Then, how can we say in the 'Preamble' that we keep the word 'socialism' but say the opposite in the operative article? The Preamble by itself is not an operative article. But, in the operative portion of the Act, we keep the fundamental right and then tell the people that this is the fundamental right of a citizen. In the next Chapter, thereafter, you say that the laws made in pursuance of this shall not be governed by it. I should tell the hon. Law Minister that this is not a happy way of drafting or legislating. What you give directly, you take it away indirectly. Then why not do that in the Operative portion itself? You must state in the operative section that this is what you want to give. That would have been a better method. I hope you will consider this suggestion of mine. I am now restricting myself to some concrete suggestions.

I have given them. Whether you find them acceptable or not, I want to give my suggestions with regard to this Bill. But, before I proceed with it, I would like directly to meet one criticism made by the Opposition. That was that we do not have the mandate. I was amazed as to why they said that we did not have the mandate? Was it because this is the extended life of Parliament? Who has brought about this extension of life? In the normal course, we were willing and we would have gone to the people. Our party and our leaders had never been afraid of going to the people. Don't you know that in the mid-term election we had gone to the people? In another election of the Assembly, don't you know that we had been to the people? Even when the worst time came—it was not the right time to go to the people—when there was drought, because of the pressure, we went to the people.

They say that we are scared of going to the people. You who were so impatient could not wait till February. You perhaps thought that you could utilise the Supreme Court's decision in the Prime Minister's case to bully and rouse the people to the socalled total revolution. And, you thought that you could ask the police

or the army to rebel and ask the people to *gherao* the All-India Radio and T.V. You thought that if you were arrested, there would be another 1942 flare-up in the country. You had no patience for elections. Now, you are saying that Government did not go to the people. Does it lie in your mouth to say this? Who invited the emergency? If this measure was not taken, the country would have been plunged into anarchy. We know what happened all around. Could we have taken that chance?

There are people in the country, gangsters, who still maintain that they would pursue the path of blowing up of trains with dynamite. An hon Minister was made a victim. Others were also made targets Even our Chief Justice was threatened. That was the state of affairs. Can anybody worth a grain of salt have taken such a risk of plunging the country into anarchy and disintegration? Who was responsible for this? It was the so-called total revolutionaries themselves who were responsible What happened in the Ram Lila Ground? They asked Mr. Brahananda Reddy if you have got the guts to arrest me, do it? Was that not the challenge given to you. Sir, When you arrested them, not a blade of grass moved in this country. Nothing happened. People on the contrary heaved a sigh of relief. You know, Sir, one of the greatest sages of modren time of this nation has blessed it by calling it 'An era of discipline'. This country came into an era of discipline and we know the results There is progress on the economic front. There are no strikes. The production in the industrial as well as the agricultural fields grew and we are the only nation in the world which could contain inflation and bring it to zero. We have gone all over the world and seen how even in the socialist countries they have not been able to contain inflation. But this country could do. Why. Because of this era of discipline.

You are telling us that we are afraid of going to the people and that is why we did not have the mandate. Sir, I am not on the technical but rather on the basic moral point. Now, you want to run away like cowards from the field because you cannot face this Constitution which says here that we are for the people and for opening the doors for economic prosperity and for removal of all hurdles from the way of our march towards progress. We invited them to come and join us.

Eight months ago the Swaran Singh Committee invited everybody to tell them as to what they have to say and point out the mistakes. The Opposition first raised a cloud by so-called document that we wanted a Presidential form of Government and dictatorship The very first document which was circulated by Swaran Singh Committee when it explained that they had no such thing even in their imagination and the structure of parliamentary democracy will be completely retained Then they thought that we were going to erode the powers of the courts. Was that done? On the contrary if you see in this Bill the powers. I am afraid of the Supreme Court and the High Courts are so much enlarged that you may have to increase the number of judges in the Supreme Court because for all Central laws you say people will have to go to the Supreme Court States also make orders and notifications under Central laws. If those orders and notifications have to be challenged then the person has to come to Supreme Court. My fear is that the Supreme Court will be flooded with all these things. Mr. Gokhale may give thought to this.

15.00 hrs.

At this point I am reminded of Article 226 where we talk of 'any other remedy'. Take the proposed clause (3) of 226:

"No petition for the redress of any injury referred to in sub-clause

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(b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force".

This may completely stop the relief. Mere provision of an appeal is enough! We know it from experience. Appeal is provided but that is no remedy. It may take six years. The appeal is never heard Is that expeditious relief? Where will he go? Suppose some serious damage is caused to that man? Therefore, up till now the feeling has been that the remedy should be effective. It is not only enough that the alternate remedy should be there: it should also be effective. Therefore, I would beg of you to consider whether we should not add the words 'till the same is exhausted ..' At the last meeting of the Swaran Singh Committee held to consider the Bill, we had arrived at a consensus. Unfortunately, the Law Minister was not there. That consensus has been forwarded to him. This is one of the points made therein I am sure he will take it into consideration. So let us add the words 'till the same is exhausted and where for reasons to be recorded while admitting the matter the High Court feels that the remedy is not effective or efficacious.' Why do I say this? Because you do not want to shut out peop e. Here the poor man will suffer more. The rich man can always go to the courts. In reality, law is available only to the rich. You know it Here the poor man will have no remedy, in spite of what we are going to do for legal aid etc. So let them have an opportunity, let the doors be kept open. That is one suggestion while I am on this point.

Coming back to our friends who were critical of the provisions, what are we trying to do in this Bill? The whole Bill can be divided into three categories of clauses. One deals with the achievement of socio-economic objectives, clauses 2, 4, 7—10 and 11; the second category of clauses is aimed at resolving the imbalance and contusion created regarding the powers of the judiciary vis-a-vis Parliament—clauses 23, 24, 25, 38, 39, 42, 45, 46, 55 and 58. Under the third category, come amendments meant to preserve and consolidate the unity and integrity of the nation and ensure democratic and orderly functioning of the government elected by the people.

I would beg of my colleagues and others to consider this. I have heard hon members on the other side. Some members have been suggesting: let it go to a Select Committee. Why? When you make out a case for a Select Committee, you have to point out that there are some clauses which are of such a nature that cannot be decided by the whole House but must be decided by a smaller Committee. But we are having such a full opportunity here itself for all the members When we come to the clause by clause consideration stage, let us sit from 2 P.M. to 7 P.M so that we could meet before 2 when our Party members could consider this from 10.30 onwards and discuss in detail, in depth, every clause so that we do not have to spend so much time in the House, thus letting the Opposition have the maximum of opportunity. When the House sits from 2-30 onwards, let us have a business-like approach; and do it now, and adopt the Provisions to remove the hurdles that we had faced All this grandiose talk of having a constituent assembly—even my friend Mr. Stephen was pleading for it in a lefthanded way... (An Hon. Member: He is right handed). Stephen must be righthanded. Kindly read this article 368 once again. It in terms says: notwithstanding anything in this constitution, Parliament in exercise of its constituent power....is there any word 'primary constituent' power or subsidiary constituent power or derivatory constituent power? Why do you read those words into it? Becau-

the Supreme Court throws the ball in your court, you fall into that trap? They said in Golaknath case that you could do it; it was residuary. Suppose you do so; even that could be struck down. They will ask: under what article have you formed a constituent assembly? What answer have you got? you will make a laughing stock of yourself by giving up the position which we have taken consistently right from the beginning, that we are sovereign, we have the constituent power, in terms we have that and we do not want anybody to tell us this or that. We will reiterate it once again now. It wil be opening the flood gates if you say that there should be a constituent assembly. Who will form it? Can the entire parliament be converted? If it is to be converted, will states' representatives be brought in? If so how many? Will it be a 1000 member constituent assembly? What are we doing? If it is to be a selected body who is to selected? Why exclude others who are also elected representatives? Then everything will come out, when you start it: religious, parochial considerations, linguistic considerations and pulls. Pandora's box will be opened. I plead with my colleagues and friends: for heaven's sake do not open the Pandora's box. I am not in favour of it. After passing this Bill, if the Supreme Court again comes against us we shall see; we are still the Parliament. Let us see if they give a judgement in anticipation and advise us and tell us how a constituent assembly can be formed. Let us see how in their wisdom they behave. Do not anticipate and do something yourself, wrongly. Therefore, I want neither a constituent assembly nor a select committee. For heaven's sake let us not fall into the other trap. If someone were to say that we are thinking of having altogether a new system, I do not give it much importance or sacrosance, as it were, democracy being not only parliamentary.

Democracy can be of different types and equally democratic and equally effective. But it has its concomitants; there are prerequisites of that system. One of them is that in such a system the police force, bureaucracy and the army are with the party. Then you have the other democracy. Show me a single country in the world where you have this diarchy, where you have a party, so called Parliamentary system, not going to Polls, wanting to sit, while the Constituent Assembly merrily goes on doing its work, and yet the Police Authority, the bureaucracy, not getting an upper hand and then trying to overthrow the political forces. Have we not witnessed that all over Asia? In Indonesia, Philipines, Thailand, Bangladesh, Pakistan and everywhere this has happened Are we wanting to play with fire? In a country like ours, what is the difference between us and the bureaucracy? Probably, man to man, a man in the Police force or a man in the military or Defence force or a man in the civil service may in some cases even be superior to us. But why does he yield to us and agree to be subordinate? It is for only one reason, that is, that we have the sanction of the people behind us, sanction of the people periodically, repeatedly reiterated, ascertained and reaffirmed. Already the bureaucracy is trying to queer the pitch for us, trying to spoil our name, trying to spoil our name by covert and overt act, commissions and ommissions. Those people who advocate that the Constituent Assembly should be convened or that it should be made over to the Select Committee are asking us to take steps in the direction, which will be suicidal. Therefore, I must be honest myself and make this clear to my colleagues that—if you want democracy—they should not fall into their hands. Options must be kept

[Shri Vasant Sathe]

conditions are there, then the options to go to the people must be kept open and we should not feel diffident. Why? Here is a country with a great people, and a great party, a party which gained freedom, a party of people which went through all travails—this party is not afraid, this nation is not afraid—which has a heritage, a continuing heritage and continuous civilisation of 5000 years. The civilisation of other nations has gone But our nation has got certain basic values Those basic values we are trying to enshrine in the Constitution also, in one of the most beautiful Chapters, that is the 'Chapter on duties' These duties are most beautifully drafted and are different from those sent by the Swaran Singh Committee Whosoever drafted it, whatever the hand which has written this, I want to compliment and congratulate him These are the finest duties which are to be implemented These are the guidelines These are the Code of Conduct which right from childhood every citizen will have to keep in mind This may also become a guideline or indicator while deciding other matters Therefore, one of the finest duties is "to strive towards excellence in all spheres of individual and collective activities so that the nation constantly raises to the higher levels of endeavour and achievement" Somebody said yesterday that we were getting into metaphysical, Philosophical, thoughts. Why do you feel shy of it? This nation has that value This nation is great because of its philosophy, because of its Shankara, because of its great sages, because of Gita, because of Gandhiji, because of Buddha I can tell you unless we have the spiritual power which is one of the greatest boons that this nation, our party and the country has, which the leadership has got, that spark of that spirit without which we cannot progress. Otherwise, one cannot get this energy and inspiration. Therefore, my friends, do not feel diffident. If any cold feet are being developed anywhere, I will only quote a verse from the Gita. I may tell my friend Manoharan that All Indian languages are based on Sanskrit and unless you know basic Sanskrit, Indian languages do not have any meaning. Therefore, don't try to deride Sanskrit for a moment. To those who are losing confidence and developing cold feet, I quote this sloka from the Gita.

क्लैब्यं मा स्मगम पार्थं नैतत्वय्युपपद्यते ।
क्षुद्रं हृदयदौर्बल्यं त्यक्त्वोतिष्ठ परतप ।।

Let us rise to the occasion, pass this amendment, which is a historic document and give it to the people at the earliest we can'

SHRI H N MUKHERJEE (Calcutta—North-east): Mr Deputy-Speaker, I have listened with much interested and some admiration to the ardent speech just concluded by my friend, Shri Sathe I am happy he has helped me to some extent because a little while ago, when I happened to be listening to a part of the eloquence of my friend, Mr Stephen, I was rather befogged and I was not quite sure if there weren't influences at work inside the Congress Party which wanted to do some damage to the intention of Government as promulgated by the Law Minister yesterday when he put forward this proposition of the Constitution Amendment I do not wish to dilate on it at any length, but I am sure this House would not even touch with a pair of tongs the idea of having a Constituent Assembly, convoked howsoever, you can try to comprise it, by perhaps including all of ourselves and a lot of other people from everywhere and then to leave to the Kalends the destiny of the Constitutional Amendments which this country's government had promised to the people quite some years ago and which they are now seeking

to perform. Mr. Stephen was apprehensive that the judiciary would take a very stern stand and since according to the majority version of the judiciary's opinion there is a basic structure of the Constitution which my friend, Mr Gokhale yesterday very rightly dismissed as a figment of the imagination howsoever sophisticated, Mr Stephen was afraid that the judges might turn round and confront Parliament and say, "Constitutional Amendments? Our foot! we do not accept this because you have touched again the basic structure of the Constitution You go back!", just as they did at the point of time when bank nationalisation and abolition of privy purses was stalled by our very learned judiciary I do not wish to reflect on them I have no intensions of doing so, but the result has been dismal I am glad that almost in the manner that we speak in this House, Mr Gokhale even said that the country had to pay through its nose on account of the judicial wisdom then displayed It seems Mr Stephen was afraid that judges would again have a revolt and we would have something unprecedented in the history of the world that judges, learned in the law and interpreting whatever there is of legislation and other things, would challenge the country's Parliament I do not envisage such a possibility I do not attribute such folly to our judiciary I have great respect for their intellectual acumen and for their understanding of social processes which if some of them do not like, they have to lump and therefore, I do not have any apprehensions in that regard I do not think the House need have any apprehension But I was disturbed to learn that here was a tendency to denigrate the role of Parliament which, as the spokesman of the Government, the Law Minister put forward yesterday, and it is rather unnerving that inside the Congress Party there is such an ardent fear in regard to Parliament not having the right, which the Law Minister has said, it has, and the Law Minister was entirely correct Therefore, this bogey and this ghost of a Constituent Assembly of whatever sort, and this effort to delay the legislation which has been delayed long enough already, must go and this ghost must be exercised and there must not be the remotest idea of giving any credence to the notion which is being tom-tommed all over by certain people that this Parliament has lost its sanction and, therefore, this Parliament has not got the authority to amend the Constitution They are good enough to concede that Parliament has the power to amend the Constitution even, perhaps, in regard to basic matters but that this Parliament has lost its sanction I do not think we can agree to that proposition at all Parliament functions and we are functioning at a critical point of time and if we mean business, if the Emergency is really and truly to produce results that the country's people expect of us, if the 20-Point Programme is really and truly going to give a better deal than they used to get for generations this Parliament here and now has an immediate duty and responsibility of proceeding as expeditiously and as efficiently as it ever is possible with those programmes of socio-economic re-construction to which we are all committed Therefore, under the cover of some footling little quasi-legal excuse they cannot tell us that this Parliament has lost its sanction The Law Minister has told them that this Parliament has not lost its sanction On a purely literal interpretation of the law the life of Lok Sabha has been extended fairly and squarely—all the world knows about it—after full discussion with many people dissenting We have this sanction according to the law in letter and in spirit and above everything *salus populi suprema lex*, the welfare of the people is the supreme law and it is to that alone that this Parliament can yield and from that angle, we say that this is the proposition put forward by Mr Stephen with such gusto Sometimes, the eloquence becomes a little too jarring but I was astonished that

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so much of ardour was behind this feeling which runs counter to what the Law Minister was telling us yesterday in regard to this somewhat voluminous Constitution (Amendment) Bill

Our position has been stated clearly and I hope, cogently to most of you yesterday And after yesterday's session, when I went back I discovered in my mail, by a very significant accident, two documents, one with a Washington post-mark, sent to me by an organisation calling itself 'Indians for Democracy' and a person calling himself J Kumar writes and signs on behalf of this organisation 'Indians for Democracy'! These chaps who run away from the country, who cause brain drain, these mercenaries of whatever type, have the gumption to write to us calling us 'Dear Members of Parliament, you represent a million of voters and so on and so forth and you should beware of what they call, extra constitutional destruction of our Constitution' and it adds 'The Prime Minister would have the power to change the Constitution at her own will—which means that she has decided to institutionalize her dictatorship In law, this is an act which amounts to a coup' I do not have the time, nor is it useful to read this miserable document in this House It is a sort of accusation not only against the Government of India, particularly against the Prime Minister even perrsonally, but against the honour and self-respect of the entire Indian nation I don't think it is a representative body, but wherever they are—perhaps backed by certain interests—they even take the initiative in criticizing from a juristic point of view, provisions in our Constitution Amendment Bill. Americans have written articles suggesting that such-and-such things should be done, and such-and-such others should not be done by the Parliament of India. They have the gumption to do that sort of thing Maybe they are all behind this sort of effort, but I got this in my dak only last night. I think most of you might have got it.

I also got another fairly long document, 1½ pages of typescipt, signed by a large number of people, not only the wrong sort of people, wrong-headed sort of people according to me; but also signed by a large number of people—some very good journalist friends of ours, intellectuals, college lecturers, professors, readers etc in JNU including even Jawaharlal Nehru's latest and almost officially sponsored biographer who has now gone to Paris representing our country in the Unesco or somewhere They have all signed a statement which again refers not only to considerations of procedure which should make, according to them, Parliament halt, but also to "the enormity of the substantive changes" contemplated by Mr Gokhale This I consider a little more dangerous than the thing which comes from America which I put in the waste paper basket But there are many peope in our country, many of them very well-intentioned and I don't think congenitally opposed to what the country wants to do They are supporting it That is why there is some misunderstanding in the country, for some good reasons, about what the Government truly intends through this particular constitutional amendment And this is why, as far as I understand, it was pointed out clearly from our party, that this bill is rather too loose and large a package. It is not quite like a curate's egg which is good in parts and therefore uneatable We are not throwing it away. We have, on the contrary, accorded it our welcome, but there are superfluities which have to be discarded, there are things which have to be purged, there are inadequacies which have to be corrected and there are positive mischief making provisions which, Parliament should say, should not pass muster And, therefore, as we accord our support to the bill we wish to point out to government that there are features in it which should be discarded; there are many provisions which should be amended and then we can go ahead the way in which my friend Shri Sathe suggested a little while ago.

It is a good thing that at long last the principle of Parliament's control over the constitutional process is being asserted with real strength and assurance and confidence by the Government of this country Government hesitated earlier, even in the third Parliament when the late Shri Nath Pai's Bill was in the picture, there were many hesitant voices, and that is on account of the fact which Shri Gokhale also referred to, that usually people with a purely professional legal background discuss these matters They always think in terms of what happens in the court It *so happens that* in the case of many of our political sufferes particularly after independence, because of our having a Constitution Fundamental Rights and all that there are friends of ours, who can be named, there are umpteen names people who have gone to court and got relief against the Government There are many such cases Most of us have oeen in detention or something like that even after independence We tried to approach the courts and get some relief there is, therefore, a residue of a certain respect for the judiciary as an upholder of individual freedom, which could perhaps conceivably be trusted a great deal more than the politicians in power whoever they may be On account of the juxtaposition of these two factors the legal people disccuss ng these matters in their own professional technical way and everybody getting more and more befogged, and some political sufferers also coming forward and giving certificates of excellence to the judiciary as the safeguarding process in our civil rights, these two things combined to produce in the public mind an idea that the judiciary could be trusted a great deal more than the Parliament could be for the sake of some liberty or the other.

It is strange how Shri Frank Anthony, for example, a long-standing Member of the House, a very eloquent person, a highly intelligent one also—he has got a bee in his bonnet, the minority rights—fears that whichever Government comes into power, the minorities would be at their mercy and that the judges can save them Where did he get this idea? What kind of paradise does he exist in? How did he imagine that life is ordered that way? Does he not knew that the world is a tempestuous place, disturbed by hundreds of phenomena, and out of this life is emerging into higher levels, and the judges sitting in their ivory towers can never be expected to be the protectors of the liberties of the minorities, including particularly his own little Anglo Indian community a community which in the days before independence, for various reasons which were justifiable, found themselves usually on the side of the foreign ruler? But in spite of it, after independence the democratic sentiment of India gave them a status, and Shri Anthony and his friends they are still in Parliament and they have got representation far beyond the numerical proportion of their people because this country *after all in spite of whateer* might be said against our inadequacies has a basic decency and that is why our country's leadership was a free country's leadership and protection was given Does he expect that protection to be kept up by the judiciary? If the country's climate goes against X community or Y community, how can they be protected except by the wider public opinion of the country which the Government represents? And there is no better way of getting to know what the public opinion is, except by going to the hustings and having the elections and finding it out. Therefore, the reliance must be on the people themselves and whoever they happen to choose They might make errors, they might choose the wrong people; some of us might be there, managing things badly But, that apart, you must rely on the people whoever they are when they are the representatives of the people Judges can never save them The judges, by definition, are people who are to interpret the status quo; they cannot go beyond that. But the law has to be expanded. Life is an ever-changing process. You never bathe in the same river twice. Things

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are altering every moment of our existence. We have to organise that life in a political texture. That is the job of Government, because it is the Government which is answerable to the people through the mandate, renewable by timely elections. We have to depend, therefore, on the political aspect of the State rather than on the judicial aspect for the safeguard of any of the rights and liberties which we cherish.

The power in the state therefore, always resides in the people. Abraham Lincoln, who had given the definition of democracy as government of the people by the people for the people, possibly the best and the most singnificant definition of democracy, had also said in another context that the people, when they are not satisfied with their Constitution, have the constitutional right of amending the Constitution, and also the revolutionary right of overthrowing the Constitution. The people have that right. If the combination of forces leads to a revolution where change happens in a very different fashion, then you have to yield to it because these are impersonal forces, much larger and more powerful than what any individual can muster and, therfore, Abraham Lincoln, of all people, spoke of the right of the people even to overthrow the Constitution.

This reminds me of some thing which was written in the seventeenth century by sir John Harrington, which many of you might know: "Treason doth never prosper, what is the reason? For, if it prosper, none dare call it treason". You do not call it treason then, if it prospers. It is the law, and your Judges with their wigs and everything will have to interpret that law. It is, therefore, the people's own safeguard, the *raksha kavach*, which they might wear. They are interested in their own struggle for a better life, and it is the people who can help, no other, and Mr. Anthony's or any other person's dependence on the judiciary is absolutely misplaced. Life is not a matter of Judges quibbling over the citation of precedents culled from Blackstone, Middleton and Fortescue and heaven knows what other jurists. Life is very much more. America has a written Constitution which the Judges of the Supreme Court of the United States have so often to interpret. America has produced Judges like Oliver Wendell Holmes who said that the life of the law is not in logic, but in experience, and experience can be interpreted not by the secluded, cloistered virtues of the judiciary, experience can be interpreted creatively and constructively by the people who are in public life.

I am also glad that my friend Mr Gokhale had referred in passing to the long United States history of judicial stolidity in their resistance to genuine reforms, and he had also referred to the fact of the Judges' majority in some cases being so peculiar a phenomenon I remember that in the great Moghul case which put the seal, so to speak, on the right of the working class to form trade unions and that sort of thing, ultimately the decision was by four to three The Appeal Court of the United Kingdom made a four to three decision And we cannot leave to the mercies of that kind of decision tthe destinies of the entire people.

This is why we find among our Judges also an idea that there should be and there could be what one of them called "plastic surgery of the Indian Constitution', and I think Mr Gokhale has attempted some sort of plastic surgery of the Indian Constitution They also conceive of "jural architecture", which is another expression which I culled down from the speech of one of our peripatetic Supreme Court Judges. How the jural architecture of Mr. Gokhale ultimately turns out is, of course, for the future to see. But, in any case, constitutional change is a job for the

people and Parliament, as their organ voice, is the seat, the repository of power in this regard, and there should not be any further deviation from this stand. And this is why I have been driven to this long diversion, so to speak, by Mr. Stephen's idea that Parliament possibly should hold its hand in fear of what the judiciary might do. I just cannot conceive of that sort of judicial revolt taking place in this country

It might perhaps be said that the debate that has taken place over this Constitution Amendment legislation has not been adequate. Perhaps it has not been adequate, but delay would be disastrous.

Let us not delay it any longer. Besides, Mr Swaran Singh and his Committee have done a fairly good job of it. They have wandered all over the country and asked for memoranda If they did not come from certain people, it is not their fault, and to the extent that was possible, they have done it There might have been some mistakes on their part, some failures to meet some repersentatives, but that apart, on the whole, they have done a good job and we should not attach any importance to those who say that there has not been adequate debate in the country; this kind of thing is often said More often than not, it is said by people who are mischievously motivated I do not want to expand on them. Yesterday, my friend, Mr Indrajit Gupta had referred to this because we find some strange Companions huddled together and poised in a manner which seems to be utterly senseless, because it is utterly perspectiveless, utterly obvious of what is possible in this country to achieve in the near future; and it is in the near future that we are interested, in the long run, we shall all be dead. We want some improvement, some tangible improvement in the living conditions of our country. The sooner the better. As it was said yesterday and today also, that has been the running note of all our speeches. Since 1969, we have been entrusted by our people to take up this responsibility of giving a new qualitative slant to our Constitution.

I now come down to some specific matters. In the preamble we find inclusion of the words 'socialist' and 'secular'. We have welcomed it. As everybody would expect, we would welcome it, but let us make sure that we perpetrate not a pious fraud on the people. Socialism is still an aspiration, not an achievement. Socialism is definable in a variety of ways, but to us it seems, for the time being, anyway, not an affluent society, but a non-exploitative society. That is the society we want to have as quickly as we can and we go ahead towards it. If that is remembered, it will be a very good thing, because we have put this matter in our Constitution I do not know however why Government have fought shy of tackling the idea of taking out the fundamental right to property as it is now formulated in our Constitution. Now, let nobody get an impression that Marxists are a lot of terrible people who have declared war on property. Actually, it was Proudhon, a French Socialist of the 19th Century who coined the phrase "Property Is Theft"; and against Proudhon, Marx had to conduct polemics of the bitterest sort. In Marx's "Das Kapital" in the historical chapter on capital which is readable—anybody can read them with great profit to himself—he refers to the expropriation of capital and uses deliberately the words "capitalist private property". He says that the capitalist integument bursts asunder and the Expropriators are to be expropriated. When he uses the words "capitalist private property", this distinction has to be kept in mind. I am sorry, if I sound slightly professorial, but this distinction is important. If you go to the Soviet Union or other socialist countries, for that matter, including China, you will find that individual property has always been respected. I am referring also to what was said in the Constituent Assembly days by such

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people as Professor K. T. Shah and even by Dr. Ambedkar in regard to this matter.

Prof. K. T. Shah had proposed that in place of the present Article 39(b), namely, that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good", the following should be substituted:

> "that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters...shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State."

This he had said on November 22, 1948.

He had also proposed that article 39(c) should read like this:

> "that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities."

He had put in these proposals.

Then, Dr. B. R. Ambedkar's draft of the Constitution (March 24, 1947), included provisions such as the following:—

> "That key industries shall be owned and run by the State;
>
> That agriculture shall be a State industry;
>
> The farm shall be cultivated as a collective farm;
>
> It shall be the obligation of the State to finance the cultivation of the collective farms by the supply of water, draft animals, implements, manure, seeds, etc."

These are the words of Dr. Ambedkar himself. He said, "I want something like State socialism. Let us not quarrel over words; let us try to understand the substance." He said:

> "Critics of State socialism, even its friends, are bound to ask: why make it a part of the constitutional law of the land? Why not leave it to the legislature to bring it into being by the ordinary process of law? The reason why it cannot be left to the ordinary law is not difficult to understand. One essential condition for the success of a planned economy is that it must not be liable to suspension or abandonment. It must be permanent ....Those who want the economic structure of society to be modelled on State Socialism must realise that they cannot leave the fulfilment of so fundamental a purpose to the exigencies of ordinary law..."

Prof. K. T. Shah also made an impassioned speech in the Constituent Assembly. I am quoting his words. He said:

> "The civilised cannibal of our time, the blood sucker, is the exploiter who is highly honoured, who is often titled, who is very fully represented in this House also and is, therefore, also to dictate to you and inspire you in innumerable ways, as to how you shall provide for his safety in the Constitution itself, so that he could get a new lease of life."

This he said on 22nd November, 1948.

Don't blame us when we use such words. "Blood sucker" is the word that he used. Mahatma Gandhi had said in 1922, how the town dwellers in India enjoy some comforts, "miserable little comforts"—these are his own words—which represent "the brokerage that they get for the work they do for the foreign exploiter; the profits and the brokerage are sucked from the masses." These are not my

words I have quoted these words before also in this House. These are the words of Mahatma Gandhi uttered in the court in Ahmedabad on 18th March, 1922 when he was sentenced to six years imprisonment.

These exploiter are here, there and everywhere. Like the frogs of Egypt, they dip in our dish, they sup in our cup, they are with us everywhere and they give us no end of trouble. That is why today this country gives a whopping bonus for the Tatas and Birlas. You read the profit reports of the companies, the dividend rates and the way in which, without spending a single penny, Hindustan Lever and others of their ilk build up enormous enterprises.

Today, in our country the conditions are so bad that in the name of some compensation from Pakistan after the 1965 war, the enemy property was supposed to have been exchanged and compensation money was paid to landlords from East Bengal. I have a list here. This is a paper which has reported this whole list and, I think, in the Rajya Sabha, the figures were produced to show how some miserable Bengal landlords have got money between Rs 10 lakhs to Rs. 25 lakhs.

15.50 hrs.

[SHRI G. VISWANATHEN *in the Chair*]

Only about 69 individuals and Companies like DCM, Mohini Cotton Mills and so many others I cannot name have got compensation to the extent of Rs. 9 crores and 38 lakhs and odd while 1284 people have got less than one lakh. Millions remained un-compensated and the money which came out of them goes to peowho are here, there and everywhere. ple of property. These are the people They suck the life-blood of the economy. It is sucked away by these people whose rights you are now going to safeguard. Why don't you say 'let there be individual property up to a certain quantum'? You can define it in your own fashion There is no quarrel about your putting a curb; let there not be un-mitigated right to property because, in that case, the courts would naturally interpret it in the way the law is explained to them by the fabulously paid lawyers. (I am quoting again Mr. Gokhle). Perhaps Shri Swaran Singh used the words 'fabulous fees' paid to the lawyers who argue for the people. This right to property has got to be there. Otherwise, how are you going to satisfy the people? The people would be afraid and naturally so because everyone has expectations of having some property—'a pie in the sky when we die'. We are hoping that everybody will come to have property some time or the other. Therefore, let us not take away the right to property. Tell the people that their right to property is not to be taken away but, on the contrary, the right to individual property will be safeguarded perhaps in a more generous way than in the socialist countries. But unmitigated right to property, absolute right to property must go; it cannot co-exist with our social pattern. The Prime Minister must apply her mind to the matter because she has to say the word before the Government can move. Let us consider this aspect of it. 'Garibi Hatao' was a slogan which has remained yet unfulfilled. And when 'Garibi' is 'hataoed' what happens? Do the property owners remain where they are? Are they entitled to behave the way they do? Are the monopoly houses and individuals fattening on their resources to continue in this manner? I don't know how many of these people have got between Rs. 5 lakhs and Rs. 10 lakhs. A sum of even Rs. 1 crore 11 lakhs was given to the Patrapola Tea Company Ltd., Calcutta for whatever they left in East Bengal. I don't know whether monies are being collected from these people through income-tax, wealth tax, capital gains tax and other revenue which

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you have a right to impose. These people are having the run of the land; they are today on top of the world. Some of these miserable smugglers and others are, on the whole not unhappy; we know that. We see at the same time, the money-bags generally prospering. I know that workers in industries and even cinema workers were locked out by the owners when they don't get anything like human pay, let alone bonus and other things, while the unfettered right of these money-bags goes on. The right to property has got to be controlled. If you cannot control the right to property and if you cannot regulate this matter, all this talk about socialism is bunkum. As I said earlier, let us not perpetrate a pious fraud on the people.

I am not bringing up any allegations against the Government because it might be that I would have to find some sort of a place outside. I still have some faith in the *bona fides* of Government and I do not know that, deep, down in your hearts most of you want the reconstruction of the country nearer to the hearts' desire of the common people. Who does not want to eliminate exploitation?

Jawaharlal Nehru's birthday is coming. He once quoted Tawney and said that you cannot leap over an abyss in two jumps; you have to make one jump to cross an abyss. He quoted another man who had said that onions could be eaten leaf by leaf but you cannot kill a tiger paw by paw because he will do his killing first. You cannot skin a live tiger paw by paw. As you can eat an onion by breaking it leaf by leaf, you cannot do it. You have to take some special steps. I do not say: go ahead and cause a lot of damage to the country, intimidate everybody and that sort of thing. Bernard Shaw once said: "I am impatient for revolution; I shall be jolly happy if the revolution happens tomorrow. But being an average coward, I want you to make the revolution in as gentlemanly a manner as possible." Go ahead. Make the revolution in as gentlemanly a manner as possible but make the revolution. If you do not make the revolution—it need not be with a big 'R'—do not shout too loudly about it. I know that world history is much too complicated. Many things are involved in this matter. But do something, and if you have to do that, move in this matter in regard to the right to property; you have to make a move which, I am sure, I have indicated by a long enough string of words. I do hope that something would be done in this regard.

I do not wish to take very much more time. But I do not like this idea of 'anti-national activities' which Government have incorporated in their Bill. Under anti-national activities, there is no doubt, the sufferers —if our experience is any guide and there is no other guide—would be the poorer people. Anti-national activities are indulged in, mostly, by moneyed interests. But they cannot be touched beyond a certain limit. The poorer people are touched all the time. Now, if there is a movement of some sort, it becomes anti-national. How can it become anti-national? You keep curbs.

Have not people responded to the Prime Minister's appeal for discipline? Or, is it a coerced discipline? It is a voluntary acceptance by the people after considerable thought. Even those of us ho got a jolt, who in the beginning could not accept what the Prime Minister did when she clamped down the Emergency, accepted it later. I, for one personally, did take some time to reconcile myself to it. But when we understood the realities of the situation, did not we voluntarily and entirely accept the idea of national self discipline? Did not our people respond magnificantly when they could have acted, if they had wanted to, in an irresponsible and mischievous fashion? After all, they are accustom-

ed to many things which are easy to manipulate—the hope of those who are trying to do damage to this country in a basic fashion. We have the wherewithal for creating trouble. If only we put the match to the cinder, there would be a flame. But our people responded. What has Government done in order to reciprocate this response of the people? And this is where I would say: trust your people. Surely, you do trust your people, and if you trust your people, do not put upon them the kind of clog which you have put in this sort of way.

This reminds me of the six-year term for Lok Sabha that you have suggested. At one time the British House of Commons had a six-year term. Under the Parliament Act of 1911, they got a five-year term, but very generally they have had earlier dissolutions because of their own special political reasons. A period of five years was thought to be a good enough period and the saving provision was also there that, in case of Emergencies, the life could be extended. But why suddenly extend it to six years and invite the gratuitous criticism of your fear of going to the hustings? If you are not afraid—and you should not be afraid—why have you put in this Clause here? Why not keep the term as it is—five years? If, for any special reason, anything very emergent has to be done that is a different matter altogether. About that, one cannot make a prognostication. I do not know why you have put this. This suggests some fear of the people which you need not have and which you should not have. You have the ear of the country. Whether the country likes it or not, today, they have to give you the ear. That reminds me of this: why not revive the Feroze Gandhi Act, so that the parliamentary reporting can be freer than it has been? That apart, you have the ear of the country. You can tell them. Tell them with genuine sincerity, and the Prime Minister can.

16.00 hrs.

With all our differences, I am sure, we have to admit this. When she speaks, she tries to uphold the honour and the self-respect of this country particularly when facing cantankerous foreign audiences, who though they have an outward appearance of gentility have never forgiving freedom for India. We know all that. Can't' she go and do something about it and appeal to the people and tell them that the curbs on their truly democratic rights are not going to be adopted by the Government in the way that we fear, the Constitution would authorise a functioning bureaucracy, which is a slimy and completely disgusting apparatus altogether. You think of the kind of things which are done for years and years, how bottlenecks in the administration cannot be cleared even by the political leadership. Even though there are exceptions genuine people, real good people are working in our administrative and other services, but generally speaking, we have a bureaucracy, which is so rooted in past practices and has certain degradations. Unless you can supplement what the bureaucracy does by the voluntary work of political minded young people nothing good would happen. Therefore, in these conditions, surely you have to keep out all those curbs on democratic rights to which a reference has been made yesterday in Shri Indrajit Gupta's speech and also very desultorily and cursorily by myself today.

I quite realise that I am taking too much time of the House, but there is only one other matter and that is in regard to clause 59, about which Shri Gokhale said yesterday that this is the Henry the VIII clause which is there in the Statute for 400 years. Please do not revive Henry the VIII memory, particularly in these days. I would like the Law Minister to correct, if I am wrong, but I have an idea that it is only in regard to ordinary statutes where this sort of a thing is put to overcome certain

[Shri H. N. Mukherjee]

difficulties in the execution etc. This might happen in the case of almost every Statute, but this is a super Statute; this is the law of laws. One trouble with our Constitution is that it is too long and it is based on the Government of India Act of 1935. It includes everything. You look for a hare or a mouse, you can find it there. This is a big document I am not going to cast any aspersions on the document. After all, it is the Constitution of our country. It is long and rambling and miscellaneous and sometimes a confusing document. But still, it is a basic document, it is law of laws In the law of laws do not put anything which appears to give the President a special power, which he might exercise in a special fashion. Why put it there at all? The only instance which he could give of difficulty arising was, whether the Chief Justice should ask the President to read out something or the President should ask the Chief Justice to read out something Therefore, I feel that in our Constitution, there should not be anything which even remotely smacks of any potentially authoritarian device. There is no reason for it. If a revolution has to be conducted, it is the most authoritarian thing in the world, and it should certainly be practised, but otherwise there should be no suggestion of this. On the basis of the voluntarism, on the basis of the support which the Government can expect to command all over the country, we can go ahead with this legislation and after you have amended it, in certain ways, it would be acceptable to the likes of us who are ready to help you, but who also require to be helped by Government in order that your legislation conforms to the desires and wishes of the people.

श्री भागवत झा आजाद (भागलपुर) : सभापति महोदय, आज देश के हर व्यक्ति की जबान पर यह प्रश्न है कि संविधान में संशोधन में देरी क्यों? प्रश्न यह है कि संविधान में संशोधन क्यों न हो? और दूसरी तरफ कुछ ऐसे व्यक्ति हैं जो यह कहते हैं कि संविधान में संशोधन क्यों? यह कुछ ऐसे व्यक्ति हैं जो ग्रुप हैं, गिने चुने हैं। लेकिन देश के जन साधारण सभी आकुलता के साथ देख रहे हैं कि संविधान में परिवर्तन जल्दी किया जाये, शीघ्र किया जाये, उन की भलाई के लिये किया जाये। संसार के सब से बड़े गणतन्त्र भारत की प्रधान मंत्री ने इस प्रश्न का उत्तर हर जगह दिया है, अपनी मीटिंगों में, पार्टियों में, लोक सभा में, हर जगह, और उन्होंने कहा है कि संविधान में समय-समय पर संशोधन उसी जनता के लिये है जिस के लिये संविधान बनाया गया। तभी से प्रेस में, प्लेटफार्म में, फोरम में, हर जगह इस प्रश्न पर गहरा विचार हुआ है। कांग्रेस ने कम्यूनिष्ट पार्टी, ने पालकीवाला ने लोहिया-वाला ने ढोलकवाला ने, तमाम व्यक्तियों ने इस प्रश्न पर व्यक्तिगत रूप में या सामूहिक रूप मे विचार किया है। यहां तक कि मार्क्सवादी पार्टी ने भी विचार किया है और कहा है कि संविधान में परिवर्तन हो, लेकिन अपने नुक्तेनजर से। अगर संविधान में उनके मन के अनुसार परिवर्तन हो तो वह सहमत होंगे, वरना सदन के बाहर चले जायगें। लेकिन संविधान मे परिवर्तन वे भी चाहते हैं। लेकिन इन सब बातो से दूर, सबसे अधिक जोर, संविधान में परिवर्तन के लिये, देश की जनता ने दिया है, जिसने फार्म्स से, फैक्टरियों से और खेतो व खलिहानों से आवाज लगाई है और प्रधान मंत्री से कहा है कि 1971 के चुनाव में जो वायदा किया है, गरीबी हटाने का, जिसके अन्तर्गत 26 सूत्री कार्यक्रम आप दे रही है, जिसके अन्तर्गत बैंक लिये हैं, जिसके अन्तर्गत प्रिवीपर्स लिये हैं, इन तमाम बातों के बावजूद भी हिन्दुस्तान की कोटि-कोटि जनता की आज भी जीवन की 5 आवश्यकताएं रोटी, कपड़ा, मकान, स्वास्थ्य और शिक्षा नहीं मिल रही है। क्यों? आखिर ऐसा क्यों हो रहा है? अगर आपका संविधान

रास्ते में आता है, तो आप परिवर्तन क्यों नहीं करती हैं ? इसीलिये इन तमाम लोगों, पालकीवाला, ढोलक वाला, और इन बुद्धिजीवियों के परे हिन्दुस्तान की जनता ने कांग्रेस पार्टी को मजबूर कर दिया है और कहा है कि तुम्हें संविधान में परिवर्तन करना चाहिये। वह आवाज चुनाव घोषणा की याद दिलाती है और कहती है कि हमको खाने को नहीं मिलता है। एक तरफ लोग खा-खाकर मर रहे हैं दूसरी तरफ वह आवाज कहती है —

हमारी झोपडी बिलखती है, और दूसरी
तरफ महल में महल हसता है । क्यों आखिर
ऐसा क्यो होता है । वह आवाज कहती है—

नही मानेगे यह कानून,
जो मुझ से गरीबी का पट्टा लिखाता है,
मिटा कर झोपडी मेरी,
जो महलों को रिझाता है
खा-खाकर मरें वे, मौलिक अधिकार उनका
है,
बिना खाये मरें हम, यह अधिकार
मेरा है।

वह कहते है कि हम इस कानून को नही मानते हैं, इस कानून मे परिवर्तन होना चाहिये। इसलिये सभापति महोदय, आज जनता की आवाज ही इस संविधान मे संशोधन का मुख्य कारण हैं।

मुख्य कारण हम नहीं, यह पार्टी नहीं, पार्टी वाले नही, पालकीवाला या ढोलकवाला नहीं जो बारबार इसका विरोध करते हैं, बल्कि इस देश की जनता है जो बार-बार पूछती है कि संविधान किस के लिये हैं।

सभापति महोदय, संविधान हमारे लिये है, देश की कोटि-कोटि जनता के लिये है या यह कलकत्ता की महानगरी में बोबगंज सेठ के लिये हैं या बम्बई वालों के लिये है या उस महान एडवोकेटों के लिये है या जे० एन० यू० और दिल्ली विश्वविद्यालय के प्रोफेसरों के लिये है जो कुतुब मीनार नुमा टावर पर बैठकर दिनरात संविधान के नाम पर स्टेटमेंट इश्यू करते हैं। ये जे० एन० यू० वाले जो स्टेटमैंट में कहते हैं वे सभी शिक्षा मंत्रालय के सफेद घोडे हैं। जो बराबर जे० एन० यू० मे रहता है, मोटा-तगडा है और सप्ताह मे सिर्फ 3 क्लास लगाता है और उसके बाद एयरकंडीशन में रहता है। सम्पूर्ण हिन्दुस्तान के विश्वविद्यालयों को भूखा रख कर, हमारे भागलपुर विश्वविद्यालय को भूखा रख कर जो जे० एन० यू० और दिल्ली विश्वविद्यालय को पैसा दिया जा रहा है, वहा के प्रोफेसर ही ये स्टेटमैंट इश्यू करते हैं।

स्टेटमैंट मे वे कहते हैं —

"The ruling Party has neither asked for nor was given any special mandate for making the changes proposed"

ये ज्ञान के अन्धे कहते है कि कभी इस पार्टी ने मैनडेट लिया ही नही है। यह 1971 का इलैक्शन मेनीफैस्टो हैं। इसमें कांग्रेस पार्टी ने कहा है कि—

"However, as a result of certain recent judicial pronouncements it has become impossible to effectively implement some of the Directive Principles of our Constitution...."

15 वें पैराग्राफ में इलैक्शन मैनीफैस्टो कहता है —

"The nation's progress cannot be halted. The spirit of democracy demands that the Constitution should enable the fulfilment of the needs and urges of the people. Our Constitution has, however, been amended in the interests of the economic development earlier."

"It will be our endeavour to seek such further constitutional remedies and amendment as are necessary to overcome the impediments in the path of social justice"

[श्री भागवत झा आजाद]

इस इलैक्शन मेनिफैस्टो को ले कर हम 1971 में जनता के सामने गये थे। उस में हम ने यह वादा किया था कि हम गरीबी को हटायेंगे, और संविधान के कारण उस में जो कठिनाइयां आयेंगी, उन को दूर करने के लिए हम संविधान में परिवर्तन करेंगे।

क्या जे० एन० यू० और दिल्ली विश्वविद्यालय के विद्वान प्रोफेसर इन बातों को समझ नहीं सकते हैं? वे तो पोलीटिकल साइंस पढ़ाते हैं। मैं समझता हूं कि वे हिन्दुस्तान के बच्चों को बिगाड़ते हैं। वे सम्पूर्ण देश के विश्वविद्यालयों का पैसा लूट कर खा जाते हैं। इन सफेद हाथियों को निकाल देना चाहिये। ये विद्वान प्रोफेसर ए० आई० सी० सी० के आफिस से हमारे इलैक्शन मैनिफैस्टो की प्रति ले आयें, और देखें कि क्या कांग्रेस पार्टी ने संविधान में संशोधन करने का वादा किया था या नहीं। हिन्दुस्तान की जनता ने कांग्रेस पार्टी और उस की नेता, प्रधान मंत्री श्रीमती इन्दिरा गांधी, को लोक सभा में दो-तिहाई बहुमत दिया। इस लिए संविधान में संशोधन करने का हमें अधिकार है, वह अधिकार स्पष्ट है और हम संविधान में ये संशोधन कर सकते हैं।

ये लोग कहते हैं कि तुम ने लोक सभा की जिन्दगी बढ़ा ली है। क्या हम ने किसी लाठी के बल पर ऐसा किया है? यह इसी संविधान के अन्तर्गत किया गया है, क्योंकि संविधान में यह व्यवस्था है कि अगर देश में इमर्जेन्सी हो, तो लोक सभा की जिन्दगी बढ़ाई जा सकती है। केवल इन संशोधनों का विरोध करने के लिए ऐसी खोखली और थोथी दलीलें दी जा रही हैं। वे कहते हैं कि हम मालिक और स्वीपिंग चेंजिज के भी खिलाफ़ नहीं हैं, मगर फिर भी वे इन संशोधनों का विरोध कर रहे हैं।

वास्तव में ये लोग बुद्धिजीवी या बुद्धिसेवी नहीं हैं, बल्कि "येस, नो" कह कर अपनी रोटी कमाते हैं और देश की जनता को गुमराह करते हैं। इस वक्तव्य पर जिन लोगों ने हस्ताक्षर किये हैं, उन में से कुछ जे० एन० यू० वाले हैं, कुछ जज हैं और कुछ एक्स-आई० सी० एस० हैं।

और इन्हें पहचानो,
सूट-बूट में, नये वेश में,
आई० ए० एस० हैं, आई० पी० एस० हैं,
कहते अपने को विधाचडाग हैं प्रजातंत्र के।
महा-देश की कोटी-कोटी जनता के
भाग्य-विधायक है ये,
पूछो इन से तेरी किस्मत को,
कहां, पिंजर, किन फाइलों में,
लाल लाल फीतों में कैद किया है,
रख छोड़ा है।

क्या हम इन की बात मान लें? जनता ने हमें मेंडेट दिया है। उस के बल पर आज हम संविधान में संशोधन कर रहे हैं। जिन जनता के लिए यह संविधान है, उस के जीवन की पांच आवश्यकताओं को पूरा करने के लिए और उस के जीवन में प्रकाश लाने के लिए इस संविधान में परिवर्तन किया जा रहा है।

इ मेंडेट मिलने के बाद कांग्रेस पार्टी और उस के नेतृत्व ने जो कुछ किया है, वह सब के सामने स्पष्ट है। इस विषय पर लगातार बहस हो रही है। कांग्रेस पार्टी का विभाजन क्यों हुआ? श्री मोरारजी देसाई और अन्य नेताओं को कांग्रेस से क्यों निकाला गया? प्रश्न साफ था। देश की जनता के सामने हम ने जो प्रतिज्ञा की थी, हम उस को पूरा करने की दिशा में आगे बढ़ाना चाहते थे। मगर ये लोग कहते थे कि बैंकों का राष्ट्रीयकरण न किया जाये। हिन्दुस्तान के तत्कालीन वित्त मंत्री ने कहा कि वे को

का राष्ट्रीयकरण न किया जाये। तब प्रधान मंत्री ने कहा कि आप बिल मंत्रालय छोड़िये। हम बैंकों का राष्ट्रीयकरण करेंगे। इस प्रकार के कई प्रश्नों पर हमारी पार्टी में मतभेद था। हम ने पार्टी को तोड़ा, उन लोगों को अलग किया, बैंकों का राष्ट्रीयकरण किया और प्रिवी पर्स को समाप्त किया। तब से ले कर आज तक हर समय, हर प्लेटफार्म पर इस विषय पर बड़े जोर शोर से बहस हो रही है।

फिर ये महानुभाव कहते हैं कि संविधान में संशोधन के लिए यह ठीक समय नहीं है, यह आपरचून टाइम नहीं है। मगर जे० एन० यू० के ये प्रोफ़ेसर, प्रोफ़ेसर हीरेन मुखर्जी की जात के ये लोग—यह इन लोगों से भिन्न है—प्रापर्टी राइट और अन्य एमेंडमेंट्स के बारे में अपने विचारों को स्पष्ट नहीं करते है। प्रोफ़ेसर मुकर्जी ने ठीक ही कहा है कि प्रापर्टी राइट एक सीमा तक होना चाहिये।

ये लोग कहते है कि फ्री एंड फ़ेयर इलैक्शन होना चाहिए। इस का अर्थ यह है कि अगर कांग्रेस पार्टी हार जाये, तब तो देश में फ्री एंड फ़ेयर इलैक्शन हुआ, और जब तक हम जीतते है, तब तक देश में फ्री एंड फ़ेयर इलैक्शन नही होता है। इन सिर-फिरे लोगों को कहां तक समझाया जाये?

ये लोग कभी नहीं जीत पायेंगे। "कहीं की ईंट, कहीं का रोड़ा, भानुमती ने कुंबा जोडा।" कभी वे सोचते है कि वे नैशनल गवर्नमेंट बनायेंगे और कभी सोचते है कि पार्टी गवर्नमेंट बनायेंगे। यह सम्भव नहीं है।

इसलिए आज प्रश्न यह है कि यह संविधान जनता के लिए है या जनता संविधान के लिए है? इस अहम प्रश्न का उत्तर इतिहास देता है। इतिहास साक्षी है कि जिस संविधान ने बहुत से लोगों के साथ जनता की आकांक्षाओं को, उस की भावनाओं को मूर्त रूप नहीं दिया वह जनमत के प्रवाह से टकराकर चकनाचूर हो गया। भारतीय संविधान कोई निरोधक अस्त्र नहीं है। यह जनता की चिरस्थायी मान्यताओं, उस की आकांक्षाओं और भावनाओं को मूर्त रूप देने वाला गतिशील संविधान है। इस में संवेदनशीलता है, इसमें लचीलापन है। तभी तो इस के अंदर अनेकों संशोधन अभी तक हो चुके हैं और जो संशोधन हमारे सामने है वह चौबालीसवां है। इस के पहले और संशोधन हो चुके हैं क्योंकि जनता की भावनाओं के अनुसार हम संविधान को बदल रहे हैं और वह हम ने नहीं किया। संविधान के बनाने वालों ने, इस के निर्माताओं ने, स्वर्गीय पंडित जवाहर लाल नेहरू ने, प्रोफेसर के. टी. शाह ने और उन तमाम लोगों ने यह प्रावधान दिया है क्योंकि वे जानते थे कि ज्यों ज्यो देश में आर्थिक और सामाजिक क्रांति होगी त्यों त्यों इस की आवश्यकता होगी। जिस दिन हिन्दुस्तान से गरीबी, अज्ञानता, भूख और असमानता मिटेगी उस दिन इन को विदा देनी होगी, और यह विदा किस पर देनी होगी? गरीबी को, अज्ञानता को, भूख को विदा देनी होगी जीवन्त संविधान की डोली पर चढ़ा कर। आज हम उसी डोली को सजा रहे हैं ताकि इस देश से गरीबी और भुखमरी को हम विदा दें। इसलिए हमारा संविधान बड़ा स्पष्ट है।

यह लोक सभा धन्य है और धन्य हैं हम कांग्रेस पार्टी के सदस्य जिन को अवसर मिला है। सरदार स्वर्णसिंह ने कहा कि हमारे लिए यह स्वर्णाक्षरों में लिखा जाने वाला दिन है। यह लोक सभा धन्य है, हम धन्य हैं, और हमारी यह महान् नेता धन्य जिन के नेतृत्व; हम संविधान में यह परिवर्तन कर रहे है, आमूल परिवर्तन कर रहे हैं, बड़ा परिवर्तन कर रहे हैं। आवश्यकता

[श्री भागवत झा आजाद]

होगी तो और परिवर्तन करेंगे ताकि संविधान के अंतर्गत जो निदेशक तत्व हैं जिन की हम ने प्रतिज्ञा की है उन को हम आगे ला सकें।

अगर आज तक संविधान ने 43 संशोधन स्वीकार किया है तो चौवालीसवें में क्या आपत्ति है ? कौन आपत्ति कर रहा है ? कहते हैं--

In the name of masses the intellectuals are opposing.

प्रधान मंत्री ने अभी 23 तारीख को हमारे दल की मीटिंग में कहा कि हम संविधान को जनता के लिए परिवर्त्तित कर रहे हैं। कुछ लोग कहते हैं कि वह भी जनता है जो इस का विरोध कर रही है तो

What are people for them?

प्रधान मंत्री ने कहा--

For us people are the broad masses, For them people are the groups.

और इस से स्पष्ट हो गया कि विरोध करने वाले कौन हैं ।

अस्तु, इन प्रावधानों की व्याख्या से आज यह आवश्यक हो गया है कि संविधान आगे बढे । हम क्यों परिवर्तन चाहते हैं ? ठीक है, न्यायपालिका है, कार्यपालिका है, सब काम कर रहे थे। मगर इधर हाल साल में न्यायपालिका ने संविधान के प्रावधानों की जो व्याख्या की है उस से संविधान बिलकुल विकृत हो रहा है । इस तरह से यह संविधान संविधान नहीं रहेगा । इस संविधान की क्या व्याख्या की है ? कौन नहीं जानता गोलकनाथ का केस । खैर, वह केस समाप्त हो गया है । लेकिन केशवानन्द भारती के केस की तलवार लटक रही है । क्या कहता है वह केस ? कहता है कि हम संविधान के मूल ढांचे में परिवर्तन नहीं कर सकते । अच्छा, है न्यायाधीश महोदय, यह मूल ढांचा क्या है ? जरा आप के मुखारविंद से सुनें ? उन का खारविंद इस मामले में चुप है । संविधान में कहीं नहीं कहा कि यह मूल ढांचा है, इस में परिवर्तन करो, इस में न करो । लेकिन ये महानुभाव कहते हैं कि संविधान के मूल ढांचे में परिवर्तन न हो। और ये जनता के चुने हुए प्रतिनिधि 500 यहां और 250 वहां ये गलत हैं, लेकिन वहां बैठे हुए 13 जज उसमें से भी 6 एक तरफ, 6 एक तरफ, सिर्फ एक के उंगली उठाने से वह सही हैं । अगर यह संविधान का मतलब है तो यह संविधान नहीं है । इस संविधान में संशोधन आवश्यक है । केशवानंद भारती के केस को बदल दिया जायगा । संविधान का अर्थ यह है कि जो जनता की भावनाओं के अनुकूल अपने को परिवर्तित, परिवर्द्धित, और निरसित करता रहे, यह संविधान में स्पष्ट कहा है । इसलिए आज यह बात स्पष्ट है कि यद्यपि गोलकनाथ केस का कुख्यात फैसला बदल गया है लेकिन केशवानन्द भारतीय के केस की तलवार आज भी लटक रही है । इस को हमें मिटा देना है, समाप्त कर देना है । इसलिए आवश्यकता हो गई है कि इस में परिवर्तन किया जाय । जिसे संविधान के बुनियादी ढांचे का मामला वह कहते हैं ऐसी कोई चीज नहीं है । एक संविधान है हमारे पास, उस संविधान को बदलने के लिए प्रावधान उस में है । वह प्रावधान है कि इस सदन में बहुमत सदस्य उपस्थित रहें और दो तिहाई से उस को पास करें । अगर हम दो तिहाई से पास कर रहे हैं तो सुप्रीम कोर्ट वाले क्यों विरोध करते हैं कि क्यों दो तिहाई से पास न किया जाय । जब हम दो तिहाई से पास करते हैं तो आप को क्यों आपत्ति है ? क्यों कि आप के मन में कुछ काला है । क्योंकि आप समझते हैं कि एक आदमी सम्पूर्ण हिन्दुस्तान की 60 करोड़ जनता की किस्मत

को अपने वोट से बदल दे लेकिन यह सम्भव नहीं है। अगर आप संविधान को सत्य रूप में समझते तो आज परिवर्तन की कोई आवश्यकता नहीं होती। लेकिन आपने नहीं समझा इसलिए आपको जनता के प्रतिनिधि समझा रहे हैं कि आप संविधान को समझिये। इस सम्बन्ध में जो शंका, हमने, स्टीफेन ने और दूसरों ने की है, ठीक है, उन्होंने अब तक यह किया है लेकिन वे भी होशियार लोग हैं, एम० ए०; बी० ए० पढ़े-लिखे, प्रैक्टिस किये हुए और काफी मुद्रा कमाये हुए हैं, अच्छे काबिल लोग हैं और वे समझते हैं कि समय का प्रवाह क्या है। अगर इसके बाद भी वे नहीं समझेंगे तो संविधान में 45वां संशोधन आयेगा, 46वां संशोधन आयेगा। इसमें घबड़ाने की क्या बात है? क्यों हम कास्टीट्यूएन्ट असेम्बली की बात कहें? अधिकार इस लोक सभा और संसद् को है। हमको अधिकार है। क्यों हमारे डागा साहब बिना पूछे ज्वाइंट सेलेक्ट कमेटी की बात कह रहे हैं? क्या सरकार स्वर्ण सिंह ने, दिनेश गोस्वामी ने और हमारे दूसरे मित्रों ने इसमें काफी परिश्रम नहीं किया है? क्या पिछले पाच वर्षों से देश में इस पर बहस नहीं हो रही है? क्या पालकीवाला ने, शांति भूषण ने इलाहाबाद हाइकोर्ट में और सुप्रीम कोर्ट में काफी बहस नहीं की है? कहा पर बहस नहीं हुई है? किस नेशनल डिबेट की बात यह कहते हैं? कौन सी नेशनल डिबेट? कौन सी बात नहीं हुई है? इसलिए प्रश्न यह है कि आज इनके केस से कठिनाइयां आ गई हैं। स्वयं इनको नहीं मालूम है, संसद् को नहीं मालूम है कि हमारे विधायी अधिकार, कानून बनाने के अधिकार कहा बाधित होते हैं, मौलिक ढाचा कहा पर है, किधर है? संविधान का पन्ना पन्ना, हर्फ़ हर्फ़ खोज लिया वहां वह नहीं मिला और महानुभाव जज के मुखारविन्दु से नहीं मिला। वह हमें महानुभाव पोलिटिकल साइंस के प्रोफेसर से नहीं मिला, पालकीवाला और डोलकवाला से नहीं मिला फिर हम किस से पूछें कि जनता के चुने हुए प्रतिनिधियों के अधिकार कहां सीमित हैं? हमारी क्या लिमिटेशन्स हैं? इसीलिए आवश्यकता पड़ी कि अनुच्छेद 368 को स्पष्ट कर दिया जाये। अनुच्छेद 368 को स्पष्ट कर दिया जा रहा है कि संसद् को पूर्ण अधिकार, है, वह संविधान में कोई भी परिवर्तन किसी भाग में कभी भी कर सकती है। महानुभाव न्यायाधीश इसको समझ जायेंगे, ऐसा मेरा विश्वास है। अगर नहीं समझेंगे तो कोई और उपाय किया जावेगा। सर्वोपरि अधिकार हमारे आपके हाथ में है। जनता ने हमें यहां पर भेजा है। इस संसद् ने प्रधान मंत्री को चुना है, इस संसद् ने राष्ट्रपति को चुना है। उसी राष्ट्रपति ने उन लोगों को चुना है। तो उनको अधिकार है लेकिन जिसने सभी को चुना है उसको अधिकार नहीं है — यह क्या बात है? क्या अक्ल की बात है? लगता है जब खुदा के यहां अक्ल बंट रही थी तो जज लोग आगे थे और सभी लोग पीछे रह गये थे। इसलिए मैं कहूं कि आज यह आवश्यक है कि हम इसको करें और साफ साफ कहें कि आखिर हम संविधान में परिवर्तन किसके लिए कर रहे हैं। हम संविधान में परिवर्तन कर रहे हैं उस जनता के लिए जो वाणीहीन है, जो सम्पत्तिहीन है और जो शक्तिहीन है। वह जनता आज अपनी प्रधान मंत्री से शक्ति मांगती है, वाणी मांगती है।

निदेशक तत्व, डायरेक्टिव प्रिंसिपुल्स जिनके अन्दर जनता के अधिकार हैं उनका परिपालन नहीं हो सकता है लेकिन जो फंडामैंटल राइट्स हैं, मौलिक अधिकार है वह सर्वोपरि हैं—क्या कमाल है? आप मुझे क्षमा करें। आप कहेंगे भागवत झा डींग मारता है लेकिन क्या हम लोग बेवकूफ हैं कुछ लोग इस हाउस में जो सालों से कह रहे है कि संविधान में परिवर्तन हो? आज भी हम यह कहते हैं। स्वर्ण सिंह जी से हमने कहा था और उन्होंने कहा था कुछ करेंगे— हमने दो प्रमुख बातें कहीं थीं। एक

[श्री [illegible]]

तो यह कि सम्पत्ति के अधिकार में परिवर्तन होना चाहिए और दूसरे अनुच्छेद 311 को ड्राप कर देना चाहिए। सम्पत्ति में कितनी सम्पत्ति? 50 लाख या एक करोड़? क्या देश के और लोगों को सम्पत्ति नहीं चाहिए? वे लोग तो लाल पीले नीले और चौकोर विटामिन की गोलियां खायें, मलीदा और खोवा खायें और हम लोग भूखे मर जायें। उनको तो सम्पत्ति का अधिकार और हमारा अधिकार है कि भूखे मर जायें। सम्पत्ति का अधिकार कहीं तो सीमित हो। एक तो भरपेट खाये, उसके बेटे इग्लैंड में पढ़े, कान्वेन्ट में पढ़ें और टरिलोन पहनें लेकिन हमारे बेटे को कारपोरेशन में बेसिक शिक्षा मिलनी चाहिए। हम यही मांगते है। इस लिए इस संविधान में और परिवर्तन करना होना, प्रापर्टी राइट को हटाना होगा। हटाने का अर्थ यह नहीं हैं कि उन की जमीन छीन ली जाए, जमीन दीजिये, 20 एकड़ दीजिये, एक मकान दीजिये, चाहे पाच लाख का हो, मैं तो पांच हजार में भी रह सकता हूं। लेकिन जो अनलिमिटेड राइट्स है, असीमित अधिकार है वे नहीं रहेंगे।

भाइए—गोयनका जी, आप पचास लाख का स्टील में वारा-न्यारा करते है, क्यों? आप कनाट-प्लेस में कोई पान की दुकान कर लीजिए, उस को नहीं छीनेंगे, लेकिन आपका लाखो-करोड़ों का प्रैस फोर्थ-स्टेट के नाम पर हमारे खिलाफ एडिटोरियल लिखे, यह नहीं चलेगा। यह कानून नहीं है कि गोयनका—एक्सप्रैस, बिड़ला टाइम्ज, डालमिया टाइम्ज दिन-रात जनता के खिलाफ लिखता रहे, क्योंकि इन के पास इण्डस्ट्रीज है, इन के उपास उद्योग है, इन के पास मोनोपोली है, इन के पास लूट का सामान है—ये सब हम को अपने-अपने एडिटोरियल में भाषण दें कि जनता की यह भावना है, वह भावना है,। एक पाच-हजार किराये पर रखे गये एडिटर-महोदय हमारे खिलाफ लेख लिखें स्टेट्समैन में लिखा जाये—बाप-रे-बाप कितना बड़ा अधिकार इन पैसे-वालों को मिला हुआ हैं।

इस लिए सरदार स्वर्ण सिंह जी आप ने एक बात में कमी की है। श्रीमान जा-मंत्री जी, मुझे यह कहते हुए दुःख होता हैं कि अभी भी आप के मन में से सम्पत्ति का मोह नहीं टूटा हैं, अभी भी आप बम्बई के फ्लेटवालों के साथ हैं, वहां के महलवालों के साथ है। याद रखिए, गोखले साहब, आज देश की हजारों कुटियां रोती हैं —

कुटिया रोती है जहां, वहीं पर महल खड़ा हंसता है;
राष्ट्र नियन्त्रित उद्योगो को पूंजीवाद डसता है,
पर न भूलना दूर क्षितिज पर चमक रहा तारा जो,
भूमि और सम्पत्ति पर सीमा—गूंज रहा नारा जो,
इसे सफल करना है, यही गीता गाना है।

इस भूमि को, इस सम्पत्ति को बाटना पड़ेगा, इसे सफल करना हैं, यही गीत गाना हैं। संविधान तभी पूर्ण होगा, जब सम्पत्ति के इस अधिकार पर सीमा लगाई जायगी। सविधान तब पूर्ण होगा— जब अनुच्छेद 311 को छोड दिया जायेगा। इस के अन्दर आई० ए० एस० और आई० पी० एस० वालों को जो असीमित अधिकार दिये गये है, उन को खत्म किया जायेगा। सरदार स्वर्ण सिंह जी, आप ने ससार भर के सविधानों को पढा हैं, क्या कही भी इस तरह के असीमित अधिकार दिये गये है, इस तरह की ब्लाकेट-पावर एडमिनिस्ट्रेशन को दी गई है? क्या इंग्लैंड में 311 की तरह के अधिकार दिये गये है?

मेरे भागलपुर शहर में अभी एक आई० पी० एस० अफसर और उस के गुर्गे ने एक मुसलमान नौजवान को लोक-अप में रोजे के दिनों में मारते-मारते मार दिया और हम कुछ नही कर सके। हमारी प्रधान मंत्री जी, जिन पर इस देश को एकमात्र विश्वास है, मैंने उन से आकर शिकायत की, उन्होंने कहा—ठीक है, मैं इस की एन्कवारी कराऊंगी। उन्होंने

उस की विधवा को कुछ रुपये भिजवाये। लेकिन हर बात के लिये मैं प्रधान मंत्री जी के पास कैसे जाऊं, शर्म लगती हैं। उन के पास सम्पूर्ण देश के शासन की बागडोर हैं, भागलपुर शहर या टूण्डला या मुजफ्फरनगर का ही शासन नही हैं। इस लिये आज आवश्यकता इस बात की हैं कि इस आर्टीकल 311 को बिलकुल ड्राप कर दिया जाय।

आप ने कहा हैं कि 311 (2) में हम ने यह निर्णय किया हैं कि दूसरे परिक्रम में, दूसरे राउण्ड मे उन को शो-कौज नोटिस नहीं देंगे—हम इस से बिलकुल सन्तुष्ट नही हैं। मैंने इस सम्बन्ध मे अलग से संशोधन नहीं दिया हैं, लेकिन मेरा आप से अनुरोध हैं कि यह संविधान तब पूरा होगा जब आर्टिकल 31 और आर्टिकल 311 समाप्त किये जायेंगे। तभी इस देश की जनता को सतोष होगा।

आज हम क्या चाहते है ? मौलिक अधिकार यानी व्यक्तियों के जो अधिकार हैं, उन का परिपालन सुप्रीम कोर्ट कर सकता हैं, लेकिन निदेशक तत्व यानी डाइरेक्टिव प्रिन्सिपल्ज को इस के अन्दर कोई अधिकार नहीं हैं। अब आप ने सविधान में परिवर्तन किया हैं, यह अच्छी बात हैं। अब इस के अन्दर जो कानून बनेगा, उस को आर्टिकल 14, 19, 31 में चुनौती नही दी जा सकेगी। यह बहुत सुन्दर काम हुआ हैं, महान काम हुआ हैं—यह प्रधान मत्री जी का, इस सदन का, एक क्रान्तिकारी कदम है—यह स्वर्णाक्षरों में लिखा जायगा। आप के सभापतित्व में, हमारी प्रधान मंत्री जी के नेतृत्व में इस लोक सभा ने इस बात को स्वीकारा है कि निदेशक तत्व, जिस के अन्दर इस देश की गरीब जनता की भावनाये लिपटी हुई है उन को मूर्तरूप दिया जायगा और उनको मौलिक अधिकारों से ऊपर रखा जायगा। यह बड़ी प्रसन्नता की बात हैं।

अभी हमारे फ्रैंक एन्टनी साहब ने भाषण दिया—माइनोरिटीज के नाम पर। मुखर्जी साहब ने भी अभी कहा कि वे सोचते है—अगर देश में कोई ऐसी सरकार आ जाय जैसे जनसघ की या आर० एस० एस० की सरकार हो—तब क्या होगा। सब से पहली बात तो यह हैं कि ऐसा कभी सम्भव नहीं होगा। हिन्दुस्तान की जनता बेवकूफ नहीं हैं बहुत समझदार हैं लेकिन उस के बावजूद भी अगर ऐसा हो जाय तो वह जुल्म करेगी तब फिर ये सुप्रीम कोर्ट में बैठे हुए जज साहबान क्या करेंगे? चारों तरफ जुल्म का पानी भरा हो और बीच में एक दीप पर बैठे हुए ये पांच जज आप की क्या मदद करेंगे? चार-पाच दिन पहले इन की एसोसियेशन की मीटिंग मे हमारी प्रधान मंत्री जी गई थीं। वहा उन्होंने कहा था कि हिन्दुस्तान एक टेपेस्टरी के समान है। प्रधान मंत्री जी ने अपने भाषण में, मुझे याद है, कहा था कि उस टेपेस्टरी में हिन्दू और मुसलमान सिक्ख और ईसाई विभिन्न प्रकार के सुन्दर काढ़े गए चित्र हैं। यह मैल्टिंग पोट नहीं है, जहां पर हर चीज अपना आकार बदल लेती हैं। मैंने समझा था कि इस भाषण से श्री फ्रैंक एन्थनी को कुछ समझ आ जाएगी और वे अपने में कुछ परिवर्तन लाएंगे, लेकिन कुत्ते की पूछ टेढ़ी की टेढ़ी के समान उन्होंने इस बात को समझा नहीं। संविधान के अन्दर माइनोरिटीज के अधिकार पूरे अक्षुण हैं लेकिन फिर भी अधिकारों की दुहाई दी जाती है और कर्तव्य की जब बात आती है, तो उस को वे मानते नहीं हैं। मेरा यह अधिकार है, वह अधिकार है, हमेशा यही बात कही जाती है लेकिन उन का कर्तव्य कोई नहीं ! इसलिए पहली अच्छी बात जो इस संविधान (संशोधन) विधेयक में की गई है, वह यह है कि अधिकार के साथ साथ कर्त्तव्यों का भी विश्लेषण है। यह एक बड़ी सुन्दर बात है और इन कर्त्तव्यों को बड़े स्पष्ट रूप से बताया गया है। देश की

[श्री भागवत झा आजाद]

एकता के लिए, देश के मजदूरों के लिए, देश के गरीबों के लिए जो कर्तव्य स्पष्ट रूप से बताए गए हैं, वे स्तुत्य हैं और सराहनीय हैं।

सभापति महोदय, मैं एक बात और कहना चाहता हूं और वह यह है कि बार बार यह कहा जा रहा है कि न्यायपालिका की स्वतन्त्रता छीनी जा रही है और उस के अधिकारों को कम किया जा रहा है और यह बड़ा जुल्म हो रहा है। यह भी कहा जाता है कि न्यायपालिका के अधिकार अपने हाथ में लिए जा रहे हैं। कौन से अधिकार छीने जा रहे हैं। कहां पर सीमा बांधी जा रही है? यह कहा जाता है कि आर्टिकिल 226 में रिट का अधिकार कम किया जा रहा है। कौन सी रिट का अधिकार कम किया जा रहा है। सभापति महोदय, विभिन्न कोर्टों में 4 लाख रिट पेंडिंग पड़े हुए हैं। मुझे कोई बहुत ज्यादा जजों से मिलने का मौका नहीं मिला है जैसा स्वर्ण सिंह जी को मिला है, लेकिन मैं सुबह को जब हलने जाता था तो सुप्रीम कोर्ट के दो एक जज साहब से मुलाकात हो जाती थी। एक जज साहब से बात हुई। अब व रिटायर ो गये हैं। उन्होंने कहा कि सरकार के कितने रिट हैं जो पड़े हैं? हिन्दुस्तान की हाई कोर्टों में **एनी अदर परपज** के अन्दर रिट पड़ ए है। यह उन्होंने आज से 10 महीने पहले कहा था। उन्होंने का था कि **इस एनी अदर परपज** को हटाओ।

श्री एस० ए० शलीम इसी पर रिटायर ो गए।

श्री भागवत झा आजाद इस पर रिटायर नहीं हुए। वे 8 महीने बाद रिटायर हुए वे। आप उल्टा-पुल्टा बोलते हैं। इसलिए प्रश्न यह है कि यह रिट क्या है जिस को कम किया जा रहा है। **एनी अदर परपज** का रिट सुप्रीम कोर्ट का नहीं है। यह सिर्फ हाई कोर्ट का है। कौन सा रिट इस में होता है? अगर एस० पी० ने दरोगा को बदल दिया, तो रिट हो गया। अगर एक ग्राम सेवक ने एक आदमी से पैसा ले लिया और उस की रिसीट नहीं दी, उस को बी० डी० ओ० ने बदल दिया, तो उस का रिट मुन्सिफ के यहां कर दिया।

श्री पी०के० देव (कालाहांडी) : मुन्सिफ के यहां रिट नहीं होता है।

श्री भागवत झा आजाद ठीक है, वहां पर रिट नहीं होता है। आप समझदार आदमी हैं और यह काबिले-तारीफ है कि आप हमारी बात सुन रहे हैं। आप ने संशोधन करवा दिया, यह अच्छा किया।

मैं यह कह रहा था कि अगर एक टैक्स एवेडर को सरकार ने पकड़ लिया, तो फौरन रिट हो गया। इस का मतलब यह हुआ कि वह टैक्स न दे। अगर एक इन्कम अफसर को पकड़ लिया और उस के पास से रुपया निकला, तो फौरन रिट हो गया। यानी हर बात पर रिट हो जाने है और जब तक वह अफसर रिटायर नहीं हो जाता है या स्वर्गलोक नहीं चला जाता है तब तक कोई फैसला सुप्रीमकोर्ट का नहीं होता है। मतलब यह आ कि सरकार को कोई अधिकार नहीं है और एकदम रिट रिट, रिट की ही आवाज लगाई जाती है। अब जो संशोधन किया है, , उस में इतना ही है कि "एनी अदर परपज" नहीं रहेगा। आज से बहुत दिन पहले 1954 में 22 मई को प्रधान मंत्री और हमारे स्व० नेता पं० जवाहरलाल नेहरू ने कहा था कि "एनी अदर परपज" को हटा दो। सन् 1954 में उन्होंने यह बात कही थी। और देर आयद दुरस्त आयद। इतनी देर बाद हम ने उनकी बात को सुना और आज "एनी अदर परपज" को हटा रहे हैं। इस का असर क्या होगा? इस से हिन्दुस्तान के न्यायालयों

में जो तरह तरह के केसेज होते हैं वे बन्द हो जाएंगे और इस के साथ साथ हम और क्या परिवर्तन कर रहे हैं ? परिवर्तन नहीं परन्तु अधिकार का विस्तार कर रहे हैं और वह यह कि आज कोई भी कानून संसद् में पास हो या स्टेट में, हिन्दुस्तान की सुप्रीम कोर्ट में और तमाम हाई कोर्टों में वे साथ साथ चैलेंज होत हैं और वहां पर केस चला करते हैं लेकिन अब यह किया जा रहा है कि केन्द्रीय कानून सुप्रीम कोर्ट में चैलेंज हों और विधान मंडलों द्वारा पारित कानून वहां के उच्च न्यायालयों में चैलेंज हों । यह इस संशोधन विधेयक में किया गया है और जैसा कि गोखले साहब ने कहा है कि अधिकारों का वर्गीकरण किया है । आज लैंड सीलिंग के लिए; फूडग्रेन्स के डिस्ट्रीब्यूशन के लिए समय पर कुछ नहीं कर पाते हैं और लाखों लाख केस पड़े हुए हैं । उन का कुछ नहीं हो पाता है । अब यह किया है कि प्राधिकरण की व्यवस्था होगी और न्यायाधीकरण को अलग कर देंगे । वही जज होंगे । अब कौन सा अधिकार छीना गया है यह आप बताएं । अगर नहीं छीना गया है तो क्यों यह झूठा प्रचार किया जा रहा है ? कौन लोग हैं जो इस प्रकार का झूठा प्रचार कर रहे हैं यह माननीय सदस्यों को समझ लेना चाहिये । जो पूंजीपति हैं, जो वैस्टिड इंटरेस्ट्स हैं वही लोग कर रहे हैं, वे वकील लोग कर रहे हैं जिन में स्याह को सफेद और सफेद को स्याह करने की ताकत होती है और करते हैं । प्रापर्टी राइट के नाम पर यह षडयंत्र वे लोग है जो कर रहे हैं । वे लोग कर रहे हैं जो सी आई ए के हाथों में खेल रहे हैं, जो बाहर के ऐजटों के हाथ में खेल रहे हैं, हिन्दुस्तान से बाहर की ताकतों के हाथ में खेल रहे है । वे कर रहे हैं जो जून में हुए फैसले के नाम पर यह नहीं चाहते हैं कि प्रधान मंत्री बनी रहें, जो चाहते रहे हैं कि देश का शासन टूट जाए । हम लोग ऐसे लोगों के फंदें में फंसने वाले नहीं हैं, उनकी यह जो खिलवाड़ है यह चलने वाली नहीं है, इस षडयंत्र में वे सफल होने वाले नहीं हैं । इसलिए मैं समझता हूं कि आज जो न्यायपालिका के अधिकारों में परिवर्तन तो नहीं लेकिन वर्गीकरण किया जा रहा है वह सही है, दुरुस्त है । अब स्पष्ट कर दिया गया है कि कौन से केसिस उच्चतम न्यायालय में जाएंगे और कौन से उच्च न्यायालय में जाएंगे । नई धारा को जोड़ कर इसको साफ कर दिया गया है । अगर रिट हो भी तो वहां पर होगी जहां पर भारी मात्रा में न्याय का हनन हुआ हो, वास्तविक क्षति पहुंचाई गई हो । इसके अलावा और क्या किया है ? यह किया है कि इसको करने से पहले उस कोर्ट को दूसरी पार्टी को नोटिस दे कर उसकी पूरी बात सुन लेनी पड़ेगी; तब रिट होगी । अब इस में क्या गलत काम किया है ?

एक और महत्वपूर्ण बात आपात स्थिति की है । आपात स्थिति जब लागू की गई थी तब इन लोगों ने चिलाना शुरु कर दिया था कि बड़ा जुल्म हुआ है, अन्याय हो गया है, संविधान को सस्पेंड कर दिया गया है । आपात स्थिति कब और किन परिस्थितियों में आई, इसको आप देखें । यह तब आई जब लोक सभा को दो बरस तक इन विरोधी दल वालों ने चलने नहीं दिया । हर क्वैश्चन आवर के बाद पांच दस व्यक्ति खड़े हो जाते थे और हाउस को चलने नहीं देते थे । हर दिन, हर सप्ताह, महीने महीने भर बरस बरस तक बराबर इसको चलने नहीं दिया । प्रधान मंत्री का चरित्र हनन करने की कोशिश की गई, कांग्रेस पार्टी को गालियां दी गईं । यह तमाम तो चला ही लेकिन सभापति महोदय आपकी कुर्सी को वहां जा कर छीनने की कोशिश भी की गई और उस पर बैठने की कोशिश की गई । ये सब वे कारण जिन की वजह से आपात स्थिति लागू करनी पड़ी । श्री मधु लिमये और

[श्री यादवन्द्र झा आजाद]

श्री ज्योतिर्मय बसु आदि आज क्यों बन्द हैं? इस लिए बन्द हैं कि बैंजामिन ने कहा था :

"If the liberties are exchanged for small safety, they have no right either for liberty or for safety"

इन्होंने यही किया है। लोक सभा में तो उन्होंने यह किया लेकिन बाहर क्या क्या किया इसकी एक मिसाल मैं आपको देना चाहता हूं। भागलपुर में इन्होंने सड़कों पर जलूस निकाला जो दो हजार व्यक्तियों का था। उस जलूस में वकील लोग सब से आगे निकले प्लेकार्ड्स लिए हुए और उन पर यह लिखा हुआ था कि देश में बड़ा अन्याय हो रहा है। ये वही वकील थे जो स्याह को सफेद और सफेद को स्याह करते हैं। उनके बाद दो सौ डाक्टर निकले जो असहाय मरीज के शरीर में सुई झोंक कर उससे पैसे लेते हैं। उन के बाद प्रोफेसर निकले जो क्वेश्चन पैपर आउट करते हैं, जो अपने पुत्रों आदि के नम्बर बढ़ाते हैं, उनको फर्स्ट डिविजन देते हैं, 98 परसेंट मार्क्स देते हैं और वही लड़के मैडीकल में जब जाते हैं तो पहले ही साल फेल हो जाते हैं। उसके बाद अन्त में भागलपुर के सेठों का नम्बर आया वे जलूस में थे और उनमें सब से आगे थे सेठ राम चन्द। यह वही सेठ थे जिन के गोदाम से पिछली रात को तीस लाख का माल पकड़ा गया था। ये सभी जलूस में थे। ये सब ईमानदार थे। भोले भाले थे। बेईमान कौन थे? कांग्रेस पार्टी के लोग और हिन्दुस्तान की जनता जिस ने जलूस नहीं निकाला।

हिन्दुस्तान की प्रधान मंत्री को मोह हो गया था। महाभारत में अर्जुन को दो घंटे का मोह हुआ था। हमारी प्रधान मंत्री को दो बरस तक मोह रहा। दो बरस तक प्रधान मंत्री जी श्री ज्योतिर्मय बसु, श्री मधु लिमये, मधु दंडवते और एस एस वाले थे तमाम [illegible] के जो लोग हैं और उनको भी कुछ वोट मिले थे, उन से यही आशा करती थीं कि वे हमारी मदद करेंगे लेकिन ऐसा कुछ नहीं हुआ। जब उन्होंने देखा कि उन से इस प्रकार की आशा करना निरर्थक है तब उनका मोह टूटा, भगवान की कृपा से टूटा तो और उसके बाद उन्होंने आपात स्थिति की घोषणा की। ये लोग चाहते थे कि हिन्दुस्तान का संविधान टूट जाए, शासन व्यवस्था ठप्प हो जाए। अगर यह बात नहीं थी तो एक ही बात पर ये लोग जोर क्यों दे रहे थे? ये कह रहे थे कि और कोई रहे या न रहे लेकिन श्रीमती इंदिरा गांधी को नहीं रहना चाहिये, उनको रहने नहीं दिया जाएगा? यह सी आई ए का षडयंत्र था जिस ने देश में विरोध करवाया, जिस ने वियतनाम में जुल्म किया था, लेकिन असफलता का ही सामना उसको करना पड़ा। तरह तरह के षडयंत्र इसने दुनिया के देशों में करवाए हैं। परिणाम यह हुआ कि आपात स्थिति आई। आपात स्थिति आने के बाद आज कीमतें कम हुई हैं जिस को सब मानते हैं। उत्पादन बढ़ा है। वितरण ठीक हो रहा है। मैं यह नहीं कहता हूं कि सब चीजें ठीक हो गई हैं। लेकिन प्रगति हुई है। अगर तमाम प्रगति हुई है तो इससे बढ़िया अवसर और कौन सा मिलेगा कि आपात स्थिति सम्बन्धी जो क्लाज है उस क्लाज में परिवर्तन कर दिया जाए। परिवर्तन यह किया जाय कि राष्ट्रपति को अधिकार हो कि अगर सम्पूर्ण देश में आपात स्थिति की घोषणा हो गई है तो उस को वह किसी भी भाग से उठा ले। ये अगर किसी भाग में ही लागू करनी हो तो वहीं लागू की जाय। इस में कौन से अधिकार का हनन हो रहा है? इसलिये प्रश्न यह है कि आज जिन जिन बातों को हम कर रहे हैं वह तमाम अनुभव के आधार पर है।

सभापति महोदय, अब मैं कुछ आप के प्रान्त के बारे में कह दूं। 26 वर्ष देश में केन्द्र और राज्य का सुन्दर सम्बन्ध रहा है। लेकिन दुर्भाग्य से कुछ राज्यों में किसी हीरो

लोग नेता हो गये। राज नेता और फिल्मी नेता में बड़ा फर्क होता है। राज नेता त्याग कर के गद्दी पर आता है, अपना सर्वस्व देश को दे कर आता है और फिल्म का नेता कुछ कमा कर आता है और यहां आ कर फिल्मी कहानी के अनुसार काम करता है। वहां फिल्म में कार्ड बोर्ड का मकान बनाता है, लेकिन यहां असली सोने का मकान बनाता है। इसलिये जो आप के शहर में फिल्मी नेता हैं उन्होंने जो कुछ करना चाहा वह किया। उन्होंने राजनीति में आ कर सोने का महल बनाना शुरू कर दिया। इस ने साबित कर दिया कि हिन्दुस्तान में ऐसा फिल्म का हीरो अगर आ गया तो हिन्दुस्तान का प्रधान मंत्री जौनी वाकर को बनाना चाहिये। इसलिये आवश्यकता इस बात की है कि इस कानून में परिवर्तन किया जाये। अगर किसी राज्य में किसी फिल्मी हीरो के कारण विधि, कानून और व्यवस्था में गड़बड़ हो जाय तो केन्द्र को यह अधिकार रहे कि वहां पर केन्द्रीय सशस्त्र दल भेज सकता है। माननीय श्रीकान्तन नायर कह रहे थे कि यह अधिकार केवल लोक सभा को रहना चाहिये, और उन्होंने बड़ी मर्सीपूर्वक कहा कि उस को तीन चौथाई बहुमत से पास करना चाहिये। आप यही क्यों नहीं कह देते कि सम्पूर्ण लोक सभा जब एक मत से पास करे तभी केन्द्रीय सशस्त्र दल भेजा जाय। मतलब यह हुआ कि वह चाहते हैं कि राज्य बिगड़ जाय। अभी भी इन की आंखें नहीं खुली हैं। इसलिये यह जो संशोधन आर्टिकल 257 में किया जा रहा है यह भी मेरी राय से ठीक है।

अन्त में सभापति महोदय, मैं आप के राज्य के बारे में कह दूं। अब शिक्षा को कानकरेंट लिस्ट में लाया जा रहा है। एक जमाने में मैं भी, मंत्री रहा हूं और शिक्षा मंत्री भी था। उस समय मैंने बड़ी कोशिश की थी कि शिक्षा को समवर्ती सूची में लाया जाय। लेकिन बड़ा विरोध किया लोगों ने, और खास कर आप के राज्य ने। आज क्या स्थिति है? कहां है शिक्षा? आज 10 प्लस 2 प्लस 3 सारे देश में लागू हो रहा है। यह हम ने उस समय कहा था मगर राज्यों ने नहीं माना। प्रसन्नता की बात है कि सरकार साहब की समिति ने इस बारे में सिफारिश की और आज ऐसा हो रहा है। श्रीकान्तन नायर जी ने कहा कि अन्य भाषाओं को डर है। किस बात का डर है, मेरी समझ में नहीं आया। आज देश में हर भाषा को विकास का समान अवसर है। हिन्दुस्तान एक ऐसी फुलवाड़ी है जहां तरह तरह के गुलाब हैं, रंग अलग अलग हैं, मगर खुशबू सब की एक ही है।

सभापति महोदय, सब से प्रमुख और अंतिम परिवर्तन हमारे आमुख में है। अब तक हमारे प्रीएम्बिल पर, आमुख पर धर्मनिरपेक्षता समाजवाद और राष्ट्रीय अखंडता की त्रिवेणी अप्रत्यक्ष रूप से बहती थी। लेकिन प्रसन्नता की बात है कि आज हमारे संविधान के आमुख पर धर्मनिरपेक्षता, समाजवाद और राष्ट्रीय अखंडता की त्रिवेणी प्रकट हो रही है। हमारे देश का संविधान इस के गौरव से मंडित हो जायगा और हम सब इस को स्पष्ट रूप में देखेंगे।

सभापति महोदय, अन्त में मैं कहूंगा कि आज प्रश्न यह है कि देश में परिवर्तन जनता की आकांक्षाओं के अनुरूप शान्तिपूर्ण रूप से हो, या क्रान्ति के साथ हो? यही दो विकल्प हमारे सामने हैं।

प्रधान मंत्री ने इसी सदन में संविधान में परिवर्तन पर बोलते हुए कहा था—परिवर्तन में कठिनाइयां तो होती ही हैं, और उसके लिए कुछ समायोजन की भी आवश्यकता पड़ती है, किन्तु परिवर्तन को टाला नहीं जा सकता। इतिहास का रुख उल्टा नहीं जा सकता, विकल्प स्पष्ट है, या तो हम शांतिपूर्ण ढंग से और सहमति से परिवर्तन

[श्री भागवत झा आजाद]

आये, अन्यथा परिवर्तन जिस ढंग से आयेगा, उसे मुझे विश्वास है, न तो यह संसद् ही और न ही यह देश पसन्द करेगा।"

उन्होंने स्पष्ट रूप में नहीं कहा कि वह परिवर्तन खूनी क्रांति से आयेगा। लेकिन अब हिन्दुस्तान की जनता अपने घर में भूख और पीड़ा से नहीं मरेगी बल्कि वह बाहर सड़कों पर निकलेगी।

हम नहीं कहते कि इस देश में महल गिरा दिये जायें। लेकिन यह बात निश्चित है कि इन महलों पर और मंजिलें तब तक जुड़ने नहीं देंगे जब तक कि बगल की झोपड़ी इसके बराबर नहीं आ जायेगी। हमारा समाजवाद, हमारा परिवर्तन और हमारा संविधान यही कहता है और इसी भावना के साथ आज हम अपने संविधान में परिवर्तन का समर्थन करते है। हम इसमें शांतिपूर्ण ढंग से परिवर्तन करना चाहते हैं। परिवर्तन यह है कि इस देश की कोटि-कोटि जनता जो भूखी है और इस समाज में नीचे रहती है, उसको जीवन की 5 आवश्कतायें, रोटी, कपड़ा मकान, स्वास्थ्य और शिक्षा देने के लिए हम यह परिवर्तन कर रहे हैं। हम निर्देशक तत्वों को सर्वोपरि समझते हैं। मौलिक अधिकार उसका भी है जो इस देश में बिना खाये मरता है। हम चाहते हैं इस देश में वह समाजवाद आये, जिस समाजवाद के अन्तर्गत उनको भी जीने का उतना ही अधिकार हो जितना अधिक खाने वालों को है। उनको भी मकान, शिक्षा, स्वास्थ्य, कपड़ा प्राप्त करने का पूरा अधिकार हो। लोग आज संविधान के नाम पर चिल्लाते तो हैं, लेकिन संविधान की हत्या करते हैं। पं० जवाहरलाल नेहरू ने एक जगह कहा था कि जब किसी को मारना होता है तो पहले उसके खिलाफ़ जोरशोर से प्रचार किया जाता है। उसका चरित्र हनन करो, उस संस्था और व्यक्ति के खिलाफ़ बोलो और अन्त में उसे मार दिया जाता है। यही आज ये सारे लोग संविधान के नाम पर कह रहे हैं। ये यह संविधान नहीं चाहते हैं। ये चाहते हैं कि यह संविधान अन्त में डूब जाये जिससे यहां पूंजीवाद आये। संसार का अनुभव यह कहता है अब पूंजीवाद नहीं आ पायेगा, वह अब इंटरनल कांइसेस में है। इसीलिए समाजवाद की आवश्यकता है। अच्छा हुआ कि हिन्दुस्तान के संविधान में पहले और आज परिवर्तन कर के इस सत्य को स्वीकारा है कि यहां अब फ्यूडलिज्म और कैपिटलिज्म और पूंजीवाद नहीं आ सकता है। हिन्दुस्तान में ब्रिटेन की तरह 200 बरस का राज्य नहीं है। यहां ब्रिटेन की तरह महल खड़े नहीं हो सकते हैं। इसलिए यह आवश्यक है कि हिन्दुस्तान दौड़े, गिर जाये तो भी दौड़े, पैर टूट जाये तो भी दौड़े और तरक्की करे। यहां दौड़ना अवश्यम्भावी है। हिन्दुस्तान की जनता और अधिक बर्दाश्त नहीं करेगी। इस ऐतिहासिक पृष्ठभूमि में, इस ऐतिहासिक घड़ी में इस ऐतिहासिक संविधान के संशोधन का हम स्वागत करते हैं, देश की जनता इसका स्वागत करती है और आशा करती है कि इससे देश में एक नई क्रांति आयेगी और नया रूप मिलेगा। यह गांधी की धरती है। इस संबंध में मैं यह कहना चाहता हूं—

बन्धु आज निर्माण काल है, नई कल्पना नया राज्य है,

गांधी की धरती पर देखो, शांति क्रांति का नया साज है।

अपने इन हाथों को देखो, बल कितना इनमें है देखो,

मिट्टी तेरी राह देखती जिस को तुम पर बड़ा गर्व है।

आइये हम उस मिट्टी को पुकारें, उसके नाम पर संविधान बनायें जो हमें फ़सल दे और राख के बदले सोना दे।

MR. CHAIRMAN: There is a long list of 50 names. I would request hon. members to confine their remarks to 10 or 15 minutes so that a few more members can be accommodated. Shri Sulaiman Sait.

SHRI EBRAHIM SULAIMAN SAIT (Kozhikode): Sir, so far all the speakers were given 50 minutes, 1 hour or 1½ hours. When I am to speak, you have made this remark. I must get proper time so that I am able to put forward my points of view in the proper perspective.

Mr. Chairman, Sir, undoubtedly, this is a momentous session and a historic occasion in the annals of our country when we have taken up the great gigantic task of making substantive, sweeping and significant changes in our Constitution, which will have far reaching consequences. I stand here, in this august House, not to question the authority of the Parliament, to bring about such a change in our Constitution as we have carried out many an amendment for the last quarter of a century nor do I desire at this juncture to discuss and demand convening of a Constituent Assembly for the purpose before us at present because it is irrelevant at this stage. But, however, I do feel that these substantive and significant changes in our Constitution, need be studied in depth and a national consensus achieved in whatever manner possible. I concede that while there is a pressing need for a re-look at the Constitution, at the present crucial stage in our country, the present state of emergency, with suspension of civil liberties is in consistent with the gigantic task before us, a better democratic atmosphere, free from any lurking fear and apprehension, would have had greater advantage of free and frank discussion on all comprehensive and national basis. However, our party from the time the process of amendment of the Constitution started took a very positive and constructive attitude as we welcomed the move to make the Constitution more responsive to the emergent dictates of times, in the interest of expeditious economic regeneration of society. With this object in view, we came forward to put forth our views in the interest of our country and the community on the question of amendment of the Constitution. We honestly endeavoured to discharge our responsibility and therefore, cooperated in this process at every step whenever opportunity was offered to us.

There is no doubt in my mind that Constitution has to be a dynamic and living document. It has to keep pace with the changed situations and needs of a developing society. While doing so, care has to be taken that in the name of socio-economic reforms, executive should not be unduly strengthened so as to become despots and democratic set up of our country should not go so weak as to make it illusory. Unfortunately, of late, some strains and stresses developed in the functioning of the Constitution with courts gradually trying to enlarge the ambit of their authority from judicial review to constitutional supremacy and Parliament in its part asserting by trying oust the jurisdiction of courts, with regard to the laws made and amendments sought in the Constitution. I do not wish to go into details as many of my colleagues have dealt in detail with this aspect of the problem. In this regard, I would only say that a well considered healthy and effective balance has to be struck and established between the judiciary and the Parliament because the three pillars of our parliamentary democracy—the legislature, the executive and the judiciary—have to function harmoniously and without any confrontation to achieve the desired objective of securing to all citizens, justice—socio-economic and political. I would like to emphasise here that it has to be borne in mind that without reasonable curbs and necessary control, the executive particularly the bureaucrats will turn themselves into despots and the confidence of the common man, in rule of law will be badly shaken. In this

[Shri Ebrahim Sulaiman Sait]

delicate process, what concerns us most is that the vital changes envisaged in the 44th Amendment Bill should not affect the position, status and rights of the minorities. Under any revision or amendment of the Constitution, I strongly hold that the minorities should have their fundamental rights not weakened or deleted but more solidly established, giving no scope for any apprehension whatsoever. This should be more so when we today, are taking steps to declare our Constitution to be secular and socialist

It will be in the fitness of things that the minorities are re-assured about the protection to their identity, non-interference in their faith and about their rightful participation in the administrative set-up of our country

Sir, the Statement of Objects and Reasons says that the desire is to make the Directive Principles more comprehensive and give them precedence over the Fundamental Rights This is what Mr. Swaran Singh, the chairman of the committee, has pointed out this morining, in his speech here He said that this was an attempt to re-establish the supremacy of the Directive Principles. It is here that the minorities have grave apprehensions I would like to make it clear again that we do not give much importance to the fundamental right to property under Article 19(f) We are not very much concerned with individual's right to property but with the right of a very large section of society I do consider that the provison for civil liberties and the rights guaranteed to the minorities are all sacro sanct and should be treated as inviolable As far as Directive Principles are concerned, they are changed according to the demands of the situation and according to the developments that take place: Therefore you can go on changing the Directive Principles But as far as the Fundamental Rights are concerned, they should be permanent because the minorities are permanent and these rights have been guaranteed to them in to-day's secular Constitution. These minorities have got a distinct faith, culture, language, history and tradition. What we have to achieve is unity in this diversity, as was pointed out by Mr Indrajit Gupta yesterday and a solidarity on all national issues. Therefore, making the Fundamental Rights subservient to Directive Principles will create doubts in minorities and it will not be helpful in establishing a society which will be more harmonious in a developing nation

Mr. Chairman, Sir, coming now to the provisions of the 44th Amendment Bill, I welcome the proposals to amend the Preamble to declare the State not only to be sovereign and democratic, but also secular and socialist I hope the implications and importance of such a declaration will clearly be understood by those who are at the helm of affairs With this addition in the Preamble, the whole nation to-day stands committed to the principle of secularism Therefore, while declaring our country to be a secular and socialist state, care should be taken to see that this character of secularism completely emerges from the provisions of the Constitution and that the rights of the minorities are not only strengthened but also attempts are made very frankly, honestly and sincerely to see that the rights of the minorities are fully implemented Our Prime Minister, I am glad, has explained the concept of secularism Here many people might ask "What is the concept of secularism, why should it not be defined?" We have got the idea of secularism already in our minds I quote what our Prime Minister had said, from the "Times of India" dated 14-9-1976:

> "We are fighting for an Indian version of socialism and an Indian version of secularism"

She further added—and I quote

> "The Indian version of secularism was based on respect to all religions and not opposition to any religion."

That is a clear and precise definition given by the Prime Minister.

17.00 hrs.

Again, Shri Swaran Singh, the Chairman of the Swaran Singh Committee, has also given a definition, which is reported in the Times of India of 29-8-76. He says:

> "When we talk of secularism, we have our own concept of equal respect to all religions, and this we have been practising for the last 20 years."

I welcome this declaration by no less a person than the Chairman of the Committee which drafted the proposals for amendment of the Constitution.

Similarly, I hope with the declaration that our State is socialist, every endeavour will be made to uplift the down-trodden, to bridge the gulf between the 'haves' and 'have-nots' to provide equal opportunities to all without discrimination with the object of achieving socio-economic justice and establishing a welfare society.

Today the Muslims are a minority community They are backward both educationally and economically. Unfortunately, because of the discrimination in this country, equal opportunities are not afforded to them. When we declare our country to be secular and socialist, it becomes essentially obligatory on the part of Parliament to see that equal opportunities are afforded to the minorities, so that they may develop equally and thus enable us to establish a welfare society in this country

There are some more welcome features in the Bill, such as the inclusion of fundamental duties, constitution of administrative tribunals, provision of free legal aid and participation of workers in management of industries. All these are praiseworthy features of the Amending Bill.

Before I deal with the other articles of the Amending Bill, I would like to speak a few words about article 11, dealing with the Fundamental Duties. The duty of abiding by the Constitution and upholding the sovereignty of the nation so as to sustain the unity and integrity and defend the country, all these are sacred obligations which every citizen has to discharge. There cannot be two opinions about the inclusion of "protecting the sovereignty and integrity of the country" in the Fundamental Duties, and we should welcome it.

Coming to the other Fundamental Duties, I would recall with gratitude the withdrawal of some of the very objectionable provisions that were made in Part IVA by the Swaran Singh Committee, after we had fruitful discussions with Shri Swaran Singh, Shri Gokhale, the Law Minister, Shri Raghu Ramaiah, the Minister of Parliamentary Affairs, and Shri Om Mehta, the Minister of State for Home Affairs. I am happy that they understood our genuine apprehension and acted accordingly I refer particularly to the provisions in the Chapter on Fundamental Duties, on page 4 of the proposals, which refer to "abjure communalism of all variety" and "render assistance and co-operation in the implementation of the Directive Principles." I am happy that after our discussions the doubts have been removed and the penal provisions given up Family planning has also been given up from Directive Principles. This is something very good and I can consider this to be an achievement on our part.

Coming to article 4, by which the present article 31C is sought to be amended, I must say that it is, however a serious inroad into the democratic and secular nature of our Republic and is totally destructive of our Fundamental Rights.

17.05 hrs.

[SHRI P. PARTHASARATHY *in the Chair*]

Here, precedence is sought to be given to the directive principles over-

[Shri Ebrahim Sulaiman Sait]

the fundamental rights. This is really a retrograde step. I very much regret that the guarantee contained in the Swaran Singh Committee proposal, relating to any law purporting to give special safeguards or fundamental rights conferred on the minorities, scheduled castes, tribes or backward classes, is conspicuous by its absence. It is imperative to incorporate this vital provision if article 31C is at all to be amended.

Regarding article 31A, I have got my own apprehensions because I feel this article is destructive of fundamental rights to constitutional remedies in case of State laws. The High Court of a State has powers under article 226 to pronounce upon the validity of State laws, but abrogation of fundamental rights of a citizen to a constitutional remedy guaranteed in article 32 may reduce the various fundamental rights in Part III of the Constitution to mere paper guarantee in case of State law. Further, the proposal that the court declaring the law to be invalid or deciding about the infringement of the fundamental rights must have the support of not less than two thirds of the Judges constituting the Bench has, according to me, very serious implications. Much has been said here this morning by Sardar Swaran Singh and just now by Mr. Bhagwat Jha Azad on this matter, but I am not convinced, and I feel that even if a majority holds a legislation to be valid or declares any measure as infringement of fundamental rights, the minority view will prevail and validate an invalid measure. Such a situation has to be avoided.

Coming to Clause 5 of the amending Bill, dealing with anti-national activities, I would very strongly point out that it is not only unnecessary, but also detrimental. We know that the Unlawful Activities (Prevention) Act already exists, and that it can deal with these things. So, putting this sort of provision in the Constitution again will also only confuse matters and will also go against the right of the minorities to form their own associations. This will actually give the power of deciding whether an organisation is anti-national or not to the local authorities. An ordinary magistrate or police official will be able to decide the matter and the right of the citizens to form their own associations would be jeopardised in such a move. Therefore, such provision should not be made in this Bill. Moreover, there is no evidence to show that the Unlawful Activities (Prevention) Act which is already there has failed to prove sufficient in such cases.

With regard to Clause 38 which seeks to substitute the present article 226 of the Constitution, deleting the words "any other purpose" will create difficulties. In this matter also, our colleague has spoken here, and I feel that it will become difficult for the people to approach the High Court even in matters of grave injustice and where contravention of any provision of statutory law has resulted in failure of justice. Therefore, I would suggest that if the words "any other purpose" are to be deleted, then a new sub-clause should be added which would redress the injury caused by reason of arbitrary executive action.

As far as writs are concerned, I know that they have created great difficulty. People have run to the High Courts for very ordinary or petty reasons and got stay orders. But if you take away the right completely to go to courts for writs, that also will create difficulties.

The proposed addition of a new clause to article 226 again prohibiting issue of interim stay or injunction or any other order unless prior notice of the proposal to move the court in this behalf, is served on Government would be unjust to the citizens unless a further provision is made prohibiting the executive from taking any further steps after receiving the notice.

Now I come to a very important clause clause 55. About this, I hope the Law Minister will understand our position and try to remove our apprehension in this regard. I would vehemently appeal that this article will go against the rights of the minority. I would appeal that the fundamental rights of the minority should not be eroded and curtailed directly or indirectly by any provisions of the Constitution.

Now, there is a question of protection of the Muslim Personal Law. I want to say a few words about it. This thing is not there in the Bill. I have got two suggestions to make about it. The question of the protection of Muslim Personal Law has always been a very emotional and touching problem Right from the time when article 44 was included in the draft Constitution presented to the Constituent Assembly, until this day, Muslims have been voicing and expressing their grave concern As far as the Directive Principles are concerned, this article 44 goes on to say that the State will try for a common civil code When the question of the civil code comes, this will be completely in contradiction with the Muslim Personal Law

I would recall that the President, the Prime Minister and the Law Minister, times out of number have given the assurance in public speeches and statements that Muslim Personal Law will not be interfered with. As far as Muslim Personal Laws are concerned, one thing is there. So far as this article remains in the Constitution, there might be a time when somebody may try to take advantage of this clause in the Constitution, in the Directive Principles and thus try to change the Muslim Law. I would therefore feel that the time has come when we are drastically amending our Constitution and making substantive changes in the Constitution to remove article 44 from Part IV of the Directive Principles. This will remove all fears and apprehensions of the Muslim minority and create in them a new confidence. It will create a better atmosphere of unity and solidarity in this country. Late Mr. Mohammad Ismail had vehemently opposed inclusion of this article in the Constitution during discussion in the Constituent Assembly.

I would submit what the Prime Minister said the other day while speaking here in this regard (*Interruptions*) I was just talking about the Muslim Personal Law and the Fundamental Rights.

I quote:

> "Our first concern should be to have our Fundamental Rights guaranteed in a manner which will not permit their withdrawal under any circumstances."

SHRI K. NARAYANA RAO (Bobbili): On a point of clarification. I fully appreciate the sentiments, the fears and apprehensions expressed by the hon. Member The complete deletion of this article is not called for in the sense that even today there are some liberal Muslims in India who are for the codification of personal law. Even in some foreign Muslim countries, they have changed the personal law In future, probably, the consent of the majority of Muslims may be forthcoming In such a case the complete deletion of this article will fore-close that possibility

SHRI EBRAHIM SULAIMAN SAIT: I want to make it clear that as far as this is concerned, the Muslims unanimously do not want a change in the personal law. That has been made clear during the Muslim Personal Law Board Convention As regards the foreign countries, we are not guided by the foreign countries We are guided by our Holy Book Koran and Suna. Therefore, that question does not arise at all.

The other day, the Prime Minister was speaking at the Centenary Annual

[Shri Ebrahim Sulaiman Sait]

General Meeting of the All-India Anglo-Indian Association in New Delhi. There, the Prime Minister said:

"The minorities needed special attention."

She further said:

"India was a tapestry where many colours existed side by side to make a beautiful pattern. It is not a melting pot where the ingredients are compelled to lose their identities.

In our tradition, each has been able to retain its distinctive personality and make a contribution to the national life."

There is one more very important point in regard to clause 57 dealing with the Union List, the Concurrent List and the State List As far as family planning is concerned, it has been placed in that Concurrent List I would like to make one thing clear that, as far as our Party is concerned, we have made it clear that we are not against family planning. We also realise and understand the dangers of population explosion. But we have to make one thing clear that we are against compulsory sterilisation. When the compulsion is there, we are against it. In various States, what is happening is that there is compulsion. The Prime Minister herself has proclaimed that there should not be any compulsion. Speaking the other day at the Congress Parliamentary Party meeting, she very clearly said that there should not be any compulsion The Minister of Health and Family Planning, Dr Karan Singh, also said that there should not be any coercion But, actually, the coercion is taking place Thus we are creating a very serious situation Particularly in U P, in Muzzafarnagar, Amroha, Sultanpur, and in Haryana, Bihar and in other places, the coercion is taking place. I would very much like that this matter is placed in the Union List so that there is a better atmosphere created and this could be regulated in a better way.

One more thing is there and that is that equal opportunity should be given to Muslim minority and, therefore, some provision should be made to see that they get a better share in the services, in the industry and in other Government establishments.

I fervently hope that the points raised by me will receive careful and sympathetic consideration by the Government and this House. This is essential in democratic and secular spirit and also in the national interest because we want to make India a better place for all of us.

हयात को साथ ले कर चलो कायनात को साथ ले कर चलो

चलो तो सारे जमाने को साथ ले कर चलो।

श्री राम सहाय पांडे (राजनंदगांव) : सभापति जी, 25, 26, 27 वर्ष के अनुभव के बाद हम इस निष्कर्ष पर पहुंचे कि हमारा जनता के साथ इस संसद् के माध्यम से जो एक कमिटमेंट है, जो वायदे और आश्वासन है उन में करीब करीब शिथिलता सी रही हैं। जब जब भी हम ने जो संकल्प यहां के पारित किये हमारी कल्पना यह थी कि हम समाजवाद के माध्यम से समाज के उस अन्तिम व्यक्ति तक पहुचने का प्रयास करेंगे जो आज भी भूखा हैं, निर्धन, हैं, अकिंचन हैं, भूमिहीन हैं, बीमार हैं। विकास की गंगा हम चाहते थे कि तमाम तटों की स्पर्श करती हुई समाज के अन्तिम व्यक्ति तक पहुंचे। लेकिन यह काम हमारा पूरा न हो सका इसलिए कि कुछ तो विरोधी दलों और अदालतों के ऊपर जो दायित्व था वह उस को नहीं निभा सके और दोनों में मिल कर हमारा काम जो आसान होना चाहिए था वह नहीं हो सका।

43 संविधान संशोधन हुए और 44वें संविधान संशोधन की ओर हमें आना पड़ा जिस के लिए सरकार स्वयं जिम्मेदार है और माननीय गोखले जी बधाई के पात्र है कि उन्होंने देश भर में जो प्रबुद्ध-समाज है, वकील, प्रोफेसर्स आदि जहां जहां भी विचारों का संगम इन को प्राप्त हुआ वहां वहां गये और विचारों के मन्थन से कुछ निष्कर्ष इन्होंने निकाले और विधान के प्रारूप में संशोधन का प्रारूपण आप के सामने उपस्थित किया ।

श्रीमन्, दो शब्दों की रचना यह राष्ट्र के विधान के अलावा है । बन्धन की डोर बिन्धी और जोड़ी गई । एक तो प्रीएम्बिल में धर्म-निरपेक्षता का शब्द रखा गया है जो सभी धर्मों का सम्मान सबोधित करता है । दूसरे समाजवाद को एक बार फिर आमुख में जोड़ कर फिर दोहराया है कि हम समाज के अन्तिम व्यक्ति तक विकास की गंगा को ले कर जायेंगे । तीसरी बात अखंडता की हम ने कही है । क्योंकि हमारे देश में अखंडता की दृष्टि से एक बड़े भारी सिद्धात स्वरूप आचरण की हमें बड़ी आवश्यकता है । देश में जब तक खण्ड को माला की तरह एकता नहीं होगी तब तक काम बनने वाला नहीं है । समान रूप से एकता हो, एकता और समता के भाव को सामने रख कर हम ने कल्पना की कि हम समाजवाद के लक्ष्य की ओर कभी नहीं बढ़ सकेंगे अगर हमारे देश में एकता नहीं होगी ।

इसी प्रारूप के हम ने राष्ट्र विरोधी तत्वों के सम्बन्ध में भी कहा है । जब तक राष्ट्र से ऐसे तत्व रहेंगे जो हमारी एकता को खंडित करना चाहते है, जो समाज और भाषा के नाम पर, प्रदेश के नाम पर देश की सार्वभौमिकता के नाम पर तरह तरह के विचार पैदा कर के क्लेश और द्वन्द पैदा करना चाहते है, हमारी सम्पूर्ण स्वतन्त्र प्रतिमा को खंडित करना चाहते है उन की भी हम ने इस में खबर ली है । क्योंकि ऐसे तत्वों को, चाहे व्यक्तिगत हों या सामूहिक हों, ऐसे तत्वों के काम करने की प्रणाली पर हमें नजर रखनी होगी । क्योंकि यही वह लोग है जिन्होंने हमारे रास्ते में रोड़े अटकाये हैं । और यही कारण है कि बड़ी जागरूकता के साथ माननीय गोखले जी ने इस बात पर जोर दिया कि इन तत्वों से भी हमें खबरदार रहना चाहिए जिन का कि प्रवर्तन हो चुका है । इन तत्वों ने हमारी अखंडता को बहुत नुकसान पहुंचाने का प्रयास किया है ।

माननीय प्रधान मंत्री जी ने परसों के ही भाषण में कहा कि इस समय यह स्पष्ट बताया है कि आने वाले चुनावों में विदेशी राष्ट्र हमारे देश में बहुत पैसा बहाने का प्रयास करेंगे क्योंकि सी० आई० ए० के सम्बन्ध में कौन नहीं जानता । दुनिया के षड़यंत्रों में हत्याओं के संबंध में उनकी किताबों लैक्चरों और व्यानों में भी सी० आई० ए० के कार्यक्रम बताये जाते हैं,। उससे हमको सावधान रहना चाहिए । सावधान रहने के लिए हमको पूरी कोशिश करनी चाहिए ताकि ऐसा न हो कि हमारे गणतंत्र पर जो कि एक सच्चा हुआ, लोकप्रिय समाजवादी और धर्मनिरपेक्ष गणतंत्र है, उसके संकल्प में, उसकी प्रतिज्ञा में किसी प्रकार की आंच आये ।

हमने इस संविधान परिवर्तन के संशोधनों के सम्बन्ध में कुछ कर्तव्यों की बात भी की है । राष्ट्र को एक नया आह्वान दिया है और वह यह है कि देश के लोग, नागरिक जब तक हमारे साथ हमारे कंधे से कंधा मिलाकर अपने कर्तव्यों की पूर्ति नहीं करेंगे, तब तक हम लक्ष्य सिद्धि की ओर नहीं बढ़ सकेंगे ।

जहां तक संशोधन का प्रश्न है, सदन में भी मतभेद है । सबसे पहले सज्जनसिंह के केस में उन्होंने हमको अधिकार दिया कि हम मौलिक अधिकार में संशोधन कर सकते हैं ।

[श्री राम सहाय पांडये]

गोलकनाथ केस में दूसरा जजमेंट आया और भारती के समय तीसरा संशोधन आया। न्यायालय में बैठे हुए इन न्यायाधीशों की कुर्सी को चाहे आप और ऊंचा कर दें लेकिन उनसे यह जरूर कहें कि वह नीचे की ओर भी देखें, जहां जनता में विपन्नता है, सुधार की जरूरत है, जहां गरीबी है, उनको भी उन्हें देखना चाहिये। क्योंकि मौलिक अधिकार की रक्षा कौन करता है और किस के लिये करता है और उससे कौन प्रभावित होता है, कौन लाभान्वित होता है। आप भूखे आदमी से, किसान से पूछिये कि तुम्हारा मौलिक अधिकार क्या है। क्योंकि उसके पास भूमि नहीं है, वह भूखा है। उसका मौलिक अधिकार क्या है? जिसके पास धरती नहीं है, लंगोटी नहीं है, उसका मौलिक अधिकार क्या है? क्या उनका मौलिक अधिकार उसके पास लगोटी न होना है? क्या उसका मौलिक अधिकार नंगे रहना है? जिसके पास झोपड़ी न हो, क्या उसका मौलिक अधिकार झोपड़ी न होना भी है? क्या यह भी मौलिक अधिकार है कि रोटी न मिले तो भूखे मरें? जैसा हमारे आजाद भाई ने कहा कि बहुत से लोगों के पास प्रचुर मात्रा में सम्पत्ति और साधन हैं जिसका वे प्रचुर मात्रा में उपयोग करते हैं। जब आप जनता से मौलिक अधिकार के सम्बन्ध में पूछते हैं तो वह कहता है कि उसका मौलिक अधिकार रोटी है। जिसके पास कपड़ा नहीं है, वह कपड़ा चाहता है, जिसके पास भूमि नहीं है, वह भूमि चाहता है ताकि उससे वह अपनी उदरपूर्ति का प्रयास कर सके। जो बीमार है, उसको औषधि चाहिये।

न्यायालय में बैठे हुए न्यायाधीश अपनी शब्दों की जगलरी के तरह तरह की व्याख्या पर ट्रेडीशनल परम्परा के आधार अपना निर्णय करते हैं जो हमारे संसद् के व्यक्तित्व पर एक प्रहार सा होता है।

यह कहा गया है कि विधान में परिवर्तन करने की कोई गुंजाइश नहीं है। विधान सैक्रोसैंक्ट है, विधान एक गीता की पुस्तक है; उसमें कोई परिवर्तन नहीं किया जा सकता। बड़े-बड़े विधि मंडल के विधान, विधि शास्त्री इस प्रकार के उदाहरण देते हैं। मैं जानना चाहता हूं कि जो जल बद्धा हुआ है, जिसमें प्रवाह नहीं है, वह चाहे मानसरोवर का ही जल क्यों न हो, क्या वह गंगा के प्रवाह के जल के समान पवित्र हो सकता है, जिसमें गति है और शक्ति है। गंगा का जल धारा प्रवाह होते हुए विभिन्न घाटों को छूता हुआ अपने गन्तव्य स्थान पर जाता है। तो यह विधान गंगा की धारा के समान है जिसमें शक्ति है और गति है। अगर इसको गंगोत्री के मुख से से जहां से गंगा निकलती है, उससे बांध दें तो जैसे गंगा का पानी पवित्र नहीं रह सकता है, वैसे ही इस की स्थिति होगी। अगर इस विधान को बांध दें तो यह बढ़ नहीं सकता है, इसके बांधने की संभावना नहीं हो सकती है।

पंडित जी ने कार्स्टीटुएंट असेम्बली में कहा है। यह मौलिक अधिकार है जहां व्याख्या में उन्होंने कहा है

"The first task of this Assembly is to free India through a new Constitution, to feed the starving people and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity."

इस देश के सूत्रधार, नेहरूजी ने कार्स्टीटुएंट असेम्बली में कहा था कि हमने संविधान की रचना उन करोड़ों नरनारियों के लिए करनी है, जो भूखे और नंगे हैं, जो गृहहीन और धरती हीन हैं, जिनके पास कोई साधन नहीं हैं—केवल शरीर और आत्मा है। इसी सूत्र के अनुसार, इसी लक्ष्य को सामने रखकर, हमने अपने संविधान की रचना की और प्रिवी पर्स तथा

देश नैशनलाइजेशन के संबंध में न्यायालय के निर्णय पर जब मतभेद पैदा हुआ, तो जनता के हित को दृष्टि में रख कर हमने इस संविधान में संशोधन किया।

आखिर सुप्रीम कोर्ट की सुप्रीमेसी का स्रोत कौन है? यह सदन है। हमने राज्यों के उच्च न्यायालयों को हाई कोर्ट कह कर उन्हें पैडेस्टल पर बिठाया। इसी तरह राष्ट्र के प्रमुख न्यायालय को हमने सुप्रीम कोर्ट कहा। शिष्टाचार कहता है कि सुप्रीम कोर्ट की सुप्रीमेसी का जो स्रोत है, जहां से उसको गरिमा प्राप्त हुई है, उस पार्लियामेंट को वह सुप्रीम कहती। अगर वह ऐसा करती, तो हमारे और उसके बीच में इस प्रकार का मतभेद पैदा न होता।

हमारा यह सदन एक सर्वसत्तासम्पन्न संस्था है। उसको देश की भौगोलिक सीमाओं की रक्षा करनी है और इस देश के लोगों को विकास का पूरा अवसर उपलब्ध करना है। इन्हीं विचारों से प्रेरित होकर यह संविधान बनाया गया और हमको कार्यान्वित किया गया और उसी भावना से अब इसमें ये संशोधन किये जा रहे हैं।

जहां तक प्रापर्टी राइट का संबंध है, श्री भागवत झा आजाद ने ठीक कहा है कि प्रापर्टी राइट को समाप्त किया जाना चाहिए। और आगे-पीछे वह समाप्त होगा। प्रापर्टी का फंडामेंटल राइट हो सकता है, लेकिन वह एक सीमा तक ही हो सकता है।

यह देश किसका है?—जनता का है। सुप्रीमेसी जनता की है। इस सदन को हम सुप्रीम इस लिए कहते हैं कि जनता सुप्रीम है, और उसकी अभिव्यक्ति हम करते हैं, उसका समर्थन हमें प्राप्त है।

कुछ लोगों के दिमाग में यह जो एप्रिहेंशन है कि इन संशोधनों को आगे चल कर रेवेज किया जा सकता है, उसका कोई आधार नहीं है। मैं समझता कि कास्टीट्यूएंट असेम्बली और जाइंट कमेटी की कोई आवश्यकता नहीं है। हमें संविधान में संशोधन करने का सम्पूर्ण अधिकार प्राप्त है। जो निर्माण कर सकता है, वह संशोधन, परिवर्तन और परिवर्द्धन भी कर सकता है।

इन शब्दों के साथ मैं इस विधेयक का स्वागत करता हूं।

SHRI S N. MISRA (Kannauj). Mr Chairman Sir, I stand to support the large number of the clauses in the Constitution (Amendment) Bill, but there are certain things which must be brought to the notice of the House, Unfortunately, I have heard that the debate that has gone on there has not touched the real points Without any disrespect to anybody, I wish to say that our Prime Minister, late Pandit Jawaharlal Nehru stated in the Constituent Assembly that the duty is cast upon us, and that is to bear the absentees in mind, to remember always that we are here not to function for one party or one group, but always to think of India as a whole, and always to think of the welfare of 4 00 million people that comprise India

I am aware of the fact that on one side, there is a vast majority and on the other side there is a thin minority in the House The Fundamental Rights that have been given in the Constitution are enshrined in Chapters 3 and 4 of the Constitution The entire Government of India Act, 1935 and 1915 have been repeated in the Constitution of India We have to have the safeguards that have been provided in the Constitution I am not challenging other provisions, but the fundamental right of life and person has to be protected and I wish to say that a provision is necessary for the protection of life and liberty of a citizen

I am aware of the fact, from the personal experience I have, that the

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MISA provisions have been misutilised. I may bring it to the notice of both the hon. Home Minister and the Law Minister .. . (*Interruptions*) Please listen—as to how they have functioned because the courts cannot question why a person has been detained.

17.36 hrs.

[MR. SPEAKER *in the Chair*]

Now, Sir, under the Excise Act, excise cannot be auctioned. But the State Government of UP has decided to auction the rights of the excise duty. And as it was considered to be illegal, about two dozen persons filed a writ petition in the High Court Overnight a search was made in respect of everyone of them and whether old or young, they were dragged from their houses or shops and detained under the MISA. I may also give the information that after the detention coercion was exercised that they shall not be released and I may give it as an information to everyone here that it was only after they withdrew their writ petitions, that they were allowed to be released

There is a Manager in my Constituency who is running educational institutions and he had by now got about 50,000—70,000 students educated. There was a Lady Principal who had resigned and after the District Magistrate of that place came she forged a resolution that she had been reinstated. The District Magistrate ordered a large number of Police people and with that Lady Principal he goes there, instals that Principal and after that the Manager filed a writ petition and an order of stay was obtained from the High Court. I was surprised to find that the Manager was detained under the MISA.

There are several instances which are not part and parcel of the history of the Allahabad High Court which I know. Therefore, I would only beg of the Government to accept the protection against it. Therefore, I have given a clause as an amendment, as a proviso to Article 31D which reads as:

> "Provided that no law shall be made excluding in any manner the jurisdiction of the High Courts and the Supreme Court from examining the basis and the grounds by which the personal liberty of any citizen is taken away and no citizen shall be ever deprived in any manner of approaching the High Court and the Supreme Court and the examination by such courts of validity, propriety or justification of any order and granting appropriate relief to the citizens"

This is necessary because if the executive considers that they have rightfully detained a person, the executive should not fight shy of having it examined by a court of law. It is only when the executive considers that their actions are unjustified, that a bar is placed that no question of the detention under the MISA will be examined by any court of law .

SHRI S A SHAMIM: That is right.

SHRI S N MISRA: I may say that if the protection is not there, to-day we are in power, tomorrow we may not be in power and they would meet out a worse treatment to us. Why should the weapon be given in their hands or anybody's hands? Therefore protection and guarantee against deprivation of liberty and life of a person which is not there in the Constitution should be there. Therefore, I think it is necessary that this provision should be brought in

I have heard so many complaints against the decisions of High Courts. May I invite my learned friends who have spoken so highly and ask them—

is the executive infallible? Is the Tribunal that you may be forming infallible? Man is not infallible . . .

SHRI S. A. SHAMIM: But ladies are.

SHRI S. N. MISRA: My friend has not got the experience of his wife, otherwise he would not have said so.

I consider her infallible.

Now the question, therefore, is when are the tribunals to be formed, to-day these have not been formed, a special law has to be made for that purpose. When the tribunals are formed, the supervisory jurisdiction of those tribunals must rest with the High Court There are three reasons for it. Firstly, if a tribunal is formed in the State of Andhra Pradesh, then the person will have to travel all the distance from Andhra Pradesh to Delhi. The poor litigant who has to get the case decided will have to get tonnes of money.

Even in murder cases it takes two years in the Supreme Court to get a decision.

If all the tribunals are formed in all the States, it will take 50 years to get the cases decided with the present strength of judges.

You have no place to house the judges of the Supreme Court. It will take four or five years to construct Supreme Courts and the houses for the judges.

My suggestion is that the entire matter of the tribunals should be within the supervisory jurisdiction of the High Court. It will be in the interest of the general public unless you want that the decision of the tribunal should be final and the decision the tribunal should not be questioned. I do not know what is the intention that you may have as far as the formation of the tribunals is concerned. If the tribunals come from the same Department, can you expect that anybody will have confidence in such tribunals? Can you expect that they will not have consideration for their own fraternity? Can you expect that they will ever go against the orders passed by their brothers in the Department? Therefore, it is but necessary that all these matters should be subject to the supervisory jurisdiction of the High Court.

One more thing is very necessary and it is that under the present amendment sought, all matters relating to which the tribunals can be formed shall be deemed to have abated. I had a talk with the Hon. Law Minister and I was told that until the tribunals are formed, the matter will have to be decided by the High Court. I think the reasonable thing would be that all pending cases in the High Courts should continue to be decided by the High Court and the future matters may go to the tribunals when the tribunlas are formed. The reason is obvious. The litigant who had approached the High Court had paid court fee and had spent in many other directions. He has waited for the judgment of the High Court. If all of a sudden you say that the case can be heard by the tribunal, the poor litigant will have to go before the tribunal. The justification, therefore, is that these matters should go on with the High Court.

MR. SPEAKER: You can take a couple of minutes.

SHRI S. N. MISRA: I will take a couple of minutes and finish. There is one more provision that has been brought in for the first time in the Constitution and it is of 'fundamental duties'. I find these are nothing but wishful thinking. I personally believe that for the peace and prosperity of the country six fundamental principles are necessary which should have been incorporated as fundamental duties. All letters for the prosperity of the country start with 'P'. The first is 'prayer'. I am emphasising that there should be

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a secular prayer not only in the educational institutions but in all public places. Just for example I may say it will be a secular prayer for everybody when you can say:

> "Oh, you the creator, in whom I have faith. Give me the strength to do the right and throw out the wrong and serve the country and the people".

This will be a secular prayer which should be able to inculcate *anushasan*.

SHRI S A SHAMIM: How does it affect the non-believers?

SHRI S. N MISRA: I have not come across even a single individual who has not recognised the existence of God. You take it from me that everybody has recognised the existence of God before death

SHRI S. A SHAMIM: I do not believe in God.

SHRI S. N. MISRA. You are not dying yet.

SHRI S A SHAMIM: After your speech I will

SHRI S. N. MISRA: The second thing is that there must be purity There are instances where purity is necessary and I have, in fact, been castrated for asking for purity

The first principle is that everybody in public life, everybody public services, everybody in politics, should come out with what his assets are. They should declare their assets. Our friends have talked in terms of putting limitation on the property. I said it should be declared to show that it is not possessed illegally If such declarations of the assets are made then you will know what property is possessed by which person I have made a public declaration of my assets; I have notified it in the newspapers.

Then the next thing is parity, whether in Government undertakings or in any other walks of life.

If a Bengalee gentleman comes in one department he ushers in other Bengalees. Merit does not count. Therefore parity should be imposed as a fundamental duty so that there will be no nepotism on the basis of caste, creed, sect or regionalism.

The fourth thing is absolute peace. There must be a provision that it should be necessary that any danger of any breach of peace must be reported immediately. Such a fundamental principle should be incorporated as a fundamental duty of every citizen of the country so that there may be no possibility of breach of peace. In the Criminal Procedure Code there is a provision but it is more observed in breach than in compliance

Then the fifth thing is production. Unfortunately, production had not been cared for. It was only after the emergency that we have seen that production has been going up. But still my experience is that at every stage all hurdles are created in respect of those who are going to produce Whether it is a question of issue of licences, or whether it is a question of issue of permits or quotas and so or, various hurdles are put in the way of production. Therefore it is necessary that emphasis must be laid that everyone who is engaged in production must be helped in every way and his efforts should not be obstructed.

Lastly, there should be planned family This is the need of the day. That is also a must. Much has been said about family planning and therefore I would not like to repeat it. The reason why for fundamental duties I am saying so is this We have been hearing almost everyday in the newspapers or otherwise of the sort of corruption which is going on of those in power, those who have been in the executive field have built properties

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for themselves I have got one instance where one of the executive officers of the government has built a building getting a rent of Rs. 8,000 per month which is more than the pension of the President of India (*Interruptions*) I am just concluding in two minutes

I have only talked sense—relevant to the point—and not like others who only made public speeches. I shall reserve my right to speak at the time of the amendments that are sought to be made

I hope that as far as fundamental duties are concerned, all the six points would be incorporated therein

I wish all prosperity for the country and I support the Bill on other major points

श्री हरि सिंह (खुर्जा) माननीय अध्यक्ष जी आज इस सदन में 44 वें संविधान (संशोधन) विधेयक पर चर्चा चल रही है।

MR SPEAKER We have 77 Members from the Congress side who are in the list This is the first name of the list I have called This is apart from the opposition Members So, I would like to fix some timelimit I feel that the Members should confine themselves to ten minutes each They should confine their remarks within this timelimit.

श्री शंकर दयाल सिंह (चतरा) अध्यक्ष जी पहले तो समय का नियंत्रण हुआ नहीं और किसी माननीय सदस्य ने एक घंटा बोला और किसी ने उस से कुछ कम। अब पांच और दस मिनट का समय दी जाने की बात है। समय की बात शुरू में ही होनी चाहिए थी।

MR SPEAKER If you want more time and if I have to allow that, then you have to sit longer If you are prepared to sit for a couple of hours more to-day or tomorrow, it is well and good Otherwise, you will all have to stick to ten minutes

श्री परिपूर्णानन्द पैन्यूली (टिहरी-गढ़वाल) : खाने की भी छुट्टी नहीं मिली है। इसलिए आज आप समय न बढ़ाइए।

श्री कृष्ण चन्द्र पांडे (नीलांबाद) : एक दिन और बढ़ा दीजिए।

MR SPEAKER I have no option except to request the hon Members to confine their remarks to ten minutes

श्री हरि सिंह : आज सदन में 44 वें संशोधन विधेयक पर विचार विमर्श चल रहा है और बड़े जोरों से चर्चा चल रही है। यह संशोधन विधेयक भारत के कानूनी जगत में और संविधान संशोधनों के इतिहास में बहुत ही अनोखा और अनुपम है। इन संशोधनों का जीवन में जो महत्व है, उस का अन्दाजा इस बात से लगाया जा सकता है कि संविधान संशोधन विधेयक का जो लक्ष्य है, मकसद है और उद्देश्य है, वह यह है कि हिन्दुस्तान के करोड़ों लोगों में जो गरीबी है, बेरोजगारी है, मुफलसी है, वह हट जाए। इस संशोधन विधेयक का लक्ष्य यह भी है कि आज जो सोने चांदी, रुपये और पैसे के ढेर पर बैठे हुए हैं और वे लोग जो गरीबी, बेकारी और मुफलसी की जिन्दगी बिता रहे हैं, उन दोनों को समान कर दिया जाए। मिसाल के तौर पर मैं कह देना चाहता हूं कि आज तक जो बड़े बड़े कारखानों के मालिक हुआ करते थे, उन के जो कारखाने थे, उन को चलाने के शासन प्रबन्ध में मजदूरों का कोई हाथ नहीं होता था लेकिन प्रसन्नता की बात है कि इन संशोधनों के जरिये जो साधारण मजदूर हैं जोकि मशीनों पर काम करते हैं और दूसरी जगह काम करते हैं, उन का भी मैनेजमेंट में हिस्सा होगा, उन का भी पार्टीसिपेशन होगा। तो मैं पूछना चाहता हूं कि यह कदम किस ओर जा रहा है? यह कदम समाजवाद की ओर जा रहा है, समानता की ओर जा रहा है।

जैसा कि मैं पहले कह रहा था कि यह संशोधन कानूनी जगत में बहुत अनुपम है, वह इसलिए कि अब तक जो कानून का लक्ष्य

[श्री हरि विष्णु]

होता था, वह यह हुआ करता था कि जनता की जेब से पैसा निकल कर बड़े बड़े वकीलों की जेब में चला जाता था लेकिन उन को इन्साफ नहीं मिलता था। उन को अदालतों में चक्कर लगाने के बाद भी इन्साफ नहीं मिलता था क्योंकि कानूनी उलझनों में वे फंस जाते थे। अगर आप संशोधनों को गौर से पढ़ें तो उन में साफ लिखा है कि गरीब और असहाय लोगों को, जिन के पास कानूनी जानकारी नहीं है और जिन के पास वकीलों को अच्छे पैसे देने के लिए नहीं है गवर्नमेंट की तरफ से कानूनी सलाह मुफ्त मिल सकेगी।

यह जो संशोधन विधेयक है, यह इतिहास में अमर इस माने में और भी है कि आज देश में जो प्रगति हो रही है, उसको और आगे बढ़ाने में यह सहायक होगा आज देश में जो समानता का वातावरण हम पैदा करना चाहते हैं उस में जो दिक्कतें और रुकावटें आ रही हैं उनको दूर करने के लिए बड़े साहसपूर्ण कदम और सुझाव इस में हैं।

इन संशोधनों पर डेढ़ महीने से देश में बड़ी गर्म चर्चाएं चल रही हैं। डाक्टर, वकील, प्रोफेसर्स, एम० एल० एज० एम पीज सामाजिक और दूसरे तत्व, सभी ने इस पर अपने विचार व्यक्त किए हैं। सुनने में आया है कि यह कहा गया है कि संविधान का जो बेसिक स्ट्रक्चर है उस में सुधार करने का संशोधन करने का हम को हक नहीं है। मैं पूछना चाहता हूं कि संविधान का कौन सा पार्ट है जो बेसिक है और कौन सा ऐसा है जो बेसिक नहीं है? मैंने भी पोलिटिकल साइंस में एम० ए० किया है और दुनिया के संविधानों को पढ़ा है। किसी भी संविधान में यह नहीं है कि उस में यह बेसिक पार्ट है और यह बेसिक पार्ट नहीं है, यह मूल पार्ट है और यह मूल नहीं है। कुछ भी उन में सुपरइम्पोज नहीं मैंने पाया है। गोखले साहब कानून के महारथी हैं। इसके बारे में वह ज्यादा रोशनी डाल सकते हैं। जो यह कहते हैं कि बेसिक स्ट्रक्चर में चेंजिज करने का पार्लियामेंट को हक नहीं है वे यह भूल जाते हैं कि 1971 में देश की जनता ने किस संकट में कांग्रेस पार्टी को भारी बहुमत में चुन कर भेजा था। हमारी पार्टी की हालत विरोधियों ने झंझट में डाल रखी थी। मालूम पड़ता था कि देश में विरोधी अपनी सरकार बना लेंगे। देश की करोड़ों की जनता यह जानती है कि भारत का भविष्य किन नेताओं के हाथ में सुरक्षित रह सकता है, कौन नेता हैं जो देश को आगे ले जा सकते हैं, देश को तरक्की की राह पर अग्रसर कर सकते हैं। जनता ने विरोधी दलों की सारी चाल बाजियों पर पानी फेर दिया। उनकी चलने नहीं दी है। उस संकट में, उस उतार चढ़ाव में जिस में न मालूम कितनी विदेशी ताकतों का रुपया 1971 में यहां आ रहा था, विदेशी लोग यहां पर किस रूप में अखबार वालों के जरिये, प्रोफेसरों के जरिये, वकीलों के जरिये देश में एक अजीब प्रकार का वातावरण पैदा कर रहे थे, उस जमाने में मालूम पड़ता था कि कांग्रेस पार्टी की सरकार हिलने वाली है लेकिन हमारी जनता ने परिपक्वता का परिचय दिया और बहुमत में ही नहीं बल्कि भारी बहुमत में हम लोगों को चुन कर भेजा और श्रीमती इंदिरा गांधी पर अपना पूर्ण विश्वास प्रकट किया। अब जनता चाहती है कि कि उसकी किस्मत का फैसला किया जाए, उसकी किस्मत को ठीक करने के लिए कानून बनाए जाएं तो मैं पूछना चाहता हूं कि ऐसे परिवर्तन करने का हक इस संसद् को नहीं है तो किस को है, डायरेक्टली इलेक्टिड लोगों को नहीं है तो किस को है। जहां तक मैंडेट का सवाल है आपको याद होगा कि 1971 में हमने अपने इलैक्शन मैनिफेस्टो में साफ किया था कि हम संविधान में संशोधन करेंगे जो यारे लगाते हैं कि संसद् को संविधान में संशोधन करने का हक नहीं है उन से मैं पूछना चाहता

हूं कि क्या यह हक उनको हैं जो सी० आई० ए० के एजेंट बन कर यहां आना चाहते है, उनको हैं जो पूंजीपति और सेठ साहूकार है, जो घोषणा करने वाले है, जो पैसे के ही बल पर जीत कर यहां आकर बैठे हुए हैं ? क्या यह हक उनको हैं जो देश के साथ खिलवाड करना चाहते है, जो देश को तोडना चाहते है जिन को देश के साथ मुहब्बत नहीं हैं, जो बगावत करना चाहते है, जो सैडीशन करना चाहते है ? विरोधी पार्टी वालों ने सैडीशन का नारा *लगा कर बगावत करने की कोशिश की हैं ।* आप जानते है सेडीशन की सजा क्या हैं ? डैथ होती हैं । हमारी सरकार ने कितनी मुरव्वत बरती है कि जिन को उसने जेल में बन्द किया हैं, उनको एयर कंडिशंड कमरों में रखा हैं, अस्सी रुपये रोज उनको दिया जा रहा हैं, उनकी आखों वगैरह को ठीक करवाया हैं, उनका इलाज किया हैं । ये लोग कहते है कि हकूमत करने का हक कांग्रेस पार्टी को नही हैं । जो लोग ऐसा कहते है मैं समझता हूं कि उनकी भावनाएं मुल्क के साथ फिट नहीं बैठती है । यह भी कहा जाता हैं कि इसमें हर्ज क्या हैं ? देश में एटमसफीयर ठीक नहीं हैं । लेकिन मैं समझता हूं कि देश में अमन हैं, शान्ति हैं शासन कार्य ठीक चल रहा है । यही लोग है जो कहते है कि एटमसफीयर ठीक नहीं हैं जो नहीं चाहते है कि देश में तरक्की हो । मैं कहना चाहता हू कि हम जनता से वादा कर के आए है कि हम उनको रोटी, मकान, दवा दारू, शिक्षा आदि की व्यवस्था करेंगे । हम जनता से कहना चाहते है कि हम उस के साथ खिलवाड़ नहीं करना चाहते । जो वायदे हम ने जनता से किये है उनको पूरा करने की हमें जल्दी हैं । जो लोग कहते है कि काला धंधा करना हैं, ब्लैक मनी कमाना हैं उनको संशोधन देने की की कोई इजाजत नही होनी चाहिए ।

उपसभापति महोदय अब 6 बज रहे है आप अपना भाषण खत्म कीजिए ।

श्री हरी सिंह मान्यवर, मुझे तो अभी समय और चाहिये ।

मेरा निवेदन हैं कि संविधान में जो संशोधन किये गये है वह बहुत ही समय के अनुकूल हैं क्योंकि राष्ट्र को आज हमें दूसरी तरफ ले जाना हैं । कुछ लोग कहते है सुधार करने की जरूरत नही हैं, संशोधन का अधिकार हमें नही हैं । मैं मान्यवर, पंडित जवाहर लाल नेहरू ने कास्टीटूएंट असेम्बली में जो कहा था उस का कुछ उद्धरण आपके सामने पेश करना चाहता हू ।

"A Constitution, it it is..

MR. SPEAKER: He will continue tomorrow.

The House stands adjourned to meet again at 11 A. M. tomorrow.

18.00 hrs.

The Lok Sabha then adjourned till eleven of the Clock on Wednesday, October 27, 1976|Kartika 5, 1898 (Saka).