

LOK SABHA

**THE CONSTITUTION (AMEND-
MENT) BILL, 1967**

BY

SHRI NATH PAI, M.P.

(Report of the Joint Committee)

(Presented on the 22nd July, 1968)



**LOK SABHA SECRETARIAT
NEW DELHI**

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**JOINT/SELECT COMMITTEE REPORTS
PRESENTED TO LOK SABHA
DURING - 1968**

Sl. No.	Name	Presented
1.	Salary, Allowances and other Amenities to Members of Parliament - J.C. Report.	7.8.68
2.	Constitution (Amendment) Bill, 1967 By Shri Nath Pai, M.P. - Report J.C.	22.7.68
3.	- do- Statement	
4.	- do- Evidence	
5.	Banking Laws (Amendment) Bill, 1967 Report of Select Committee.	6.5.68
6.	-do- Evidence	
7.	Gold (Control) Bill, 1968 Report of Joint Committee.	13.8.68
8.	Insurance (Amendment) Bill, 1968 Report of the Joint Committee.	11.11.68
9.	-do- Evidence	
10.	Criminal and Election Laws (Amendment) Bill, 1968 - Report of Joint Committee.	2.12.68
11.	Union Territories (Separation of Judicial and Executive Functions) Bill, 1968 (Report of Joint Committee.	10.12.68

LOK SABHA SECRETARIAT

CORRIGENDA

TO

REPORT OF THE JOINT COMMITTEE ON THE
CONSTITUTION (AMENDMENT) BILL, 1967

BY SHRI NATH PAI, M.P.

Report

1. Page (vi), para 8, line 1, for 'eight' read 'eighth'.
2. Page (vi), para 11, line 2, for 'implication' read 'implecations'.

Minutes of Dissent

3. Page (x), para 7, line 5, for 'finance' read 'finance,'.
4. Page (xi), para 9, line 1, for 'n' read 'in'.
5. Page (xviii), para 5, line 8, for 'effected' read 'affected'.
6. Page (xviii), para 7, line 5, for 'tion' read 'ent'.
7. Page (xx), para 12, line 11, for 'material' read 'martial'.
8. Page (xxi), para 13, line 3, for 'abrogat~~ai~~on' read 'abrogation'.
9. Page (xxii), para 16, (i) line 13, for 'papu-' read 'popu', (ii) line 24, for 'nataions' read 'nations' and (iii) line 27, for 'Educataional' read 'Educational'.
10. Page (xxiii), line 2 from bottom, for 'NEW DELHI' read 'NEW DELHI'.
11. Page (xxiv), line 4, for 'proviso' read 'provision'.

Contd.....2/✓

APPENDICES

12. Page 6, Col. 3 of S.No.3, line 2, for
'evidenc' read 'evidence'
13. Page 6, Col.3 of S.No. 4, line 1, for
'meme-' read 'mem-'.
14. Page 7, Col.2. of S.No.17, line 1, for
'fprmer' read 'former' and in line 2, for
'Anbhra' read 'Andhra'
15. Page 7, Col. 3 of S.No. 26, line 2, for
'evidenc-' read 'evidence'.
16. Page 12, line 14, for 'Chawala' read
'Chawla'.
17. Page 19, line 11 from bottom, S.No. 10,
before 'Mohammad' add 'Shri'.
18. Page 22, S.No. 11, for 'Yunnus' read 'Yunus'
19. Page 26, S.No. 16, for 'Babu' read 'Basu'.

New Delhi;
August 3, 1968.

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**JOINT COMMITTEE ON THE CONSTITUTION (AMENDMENT)
BILL, 1967 BY SHRI NATH PAI, M.P.**

COMPOSITION OF THE COMMITTEE

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri Surendranath Dwivedy
5. Shri Ram Krishan Gupta
6. Shri S. M. Joshi
7. Shri Kameshwar Singh
8. Shri Krishnan Manoharan
9. Shri D. K. Kunte
10. Shri J. Rameshwar Rao
11. Shri V. Viswanatha Menon
12. Shri Mohammad Yusuf
13. Shri Jugal Mondal
14. Shri H. N. Mukerjee
15. Shri Nath Pai
16. Shri P. Parthasarthy
17. Shri Deorao S. Patil
18. Shri Khagapathi Pradhani
- *19. Chaudhari Randhir Singh
20. Shri K. Narayana Rao
21. Shri Mohammad Yunus Saleem
22. Shri Anand Narain Mulla
23. Shri Dwaipayan Sen
24. Shri Prakash Vir Shastri
25. Shri Digvijaya Narain Singh
26. Shri Sant Bux Singh
27. Shri Sunder Lal
28. Shri V. Y. Tamaskar
29. Shri Tenneti Viswanatham
30. Shri P. Govinda Menon

*Appointed on the 22nd December, 1967 *vice* Shri K. Hanumanthaiya resigned.

Rajya Sabha

31. Shri Chitta Basu
32. Shri M. V. Bhadram
33. Shri Kota Punnaiah
34. Shri M. P. Bhargava
35. Shri K. Chandrasekharan
36. Shri A. P. Chatterjée
37. Shri Jairamdas Daulatram
- **38. Shri Ram Niwas Mirdha
39. Shri G. H. Valimohmed Momin
40. Shri G. R. Patil
41. Shrimati Yashoda Reddy
42. Shri Jogendra Singh
43. Shri Rajendra Pratap Sinha
- †44. Shri N. R. Muniswamy
- †45. Shri Banka Behary Das.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri K. K. Sundaram, *Jt. Secretary and Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

**Ceased to be a member of the Joint Committee w.e.f. 2nd April, 1968 on his retirement from Rajya Sabha and was re-appointed by Rajya Sabha on the 10th May, 1968.

†Appointed on the 10th May, 1968 *vice* Sarveshri J. Sivashanmugam Pillai and Triloki Singh who ceased to be members of the Joint Committee w.e.f. 2nd April, 1968 on their retirement from Rajya Sabha.

REPORT OF THE JOINT COMMITTEE

1. the Chairman of the Joint Committee to which the Bill‡ further to amend the Constitution of India was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced by Shri Nath Pai in Lok Sabha on the 7th April, 1967. The motion for reference of the Bill to a Joint Committee was moved in Lok Sabha by Shri P. Govinda Menon, Minister of Law on the 23rd June, 1967. The motion was discussed on the 23rd June, 7th and 21st July and 4th August, 1967 and adopted on the 4th August 1967 (Appendix I).

3. Rajya Sabha discussed and concurred in the said motion on the 18th August, 1967 (Appendix II).

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 21st August, 1967.

5. The Committee held fifteen sittings in all.

6. The first sitting of the Committee was held on the 7th September, 1967 to draw up their programme of work. The Committee felt that in view of the importance of the Bill, they should hear every possible point of view on the subject. The Committee at this sitting, therefore, decided that a Press Communique should be issued advising public bodies, Chambers of Commerce, Organisations, Associations and individuals who were desirous of submitting their suggestions or views or of giving evidence before the Committee in respect of the Bill, to send written memoranda thereon for the purpose. The Committee also decided to invite the views of all the State Governments, Supreme Court, all High Courts, all Bar Councils, representative all-India Trade Union Organisations, the Indian Law Institute, the Institute of Constitutional and Parliamentary Studies, Indian Society of International Law, Incorporated Law Society and International Commission of Jurists, on the provisions of the Bill and to inform them that they could also give oral evidence before the Committee, if they so desired.

7. 35 memoranda/representations were received from different States/High Courts/Bar Councils/associations/individuals (Appendix III).

‡Published in Gazette of India, Extraordinary, Part II, Section 2, dated the 7th April, 1967.

8. At their second to eight sittings held on the 23rd to 27th October, 18th and 25th November, 1967, respectively, the Committee heard the evidence given by ten eminent legal and constitutional jurists and representatives of associations (Appendix IV).

9. The Report of the Committee was to be presented by the first day of the Third Session. As this could not be done, the Committee at their second sitting, held on the 23rd October, 1967 decided to ask for extension of time for presentation of their Report upto the last day of the Third Session. Necessary motion was brought before the House and adopted on the 14th November, 1967. At their eighth and tenth sittings held on the 25th November, 1967 and 29th January, 1968, the Committee decided to ask for further extensions of time upto the first day of Fourth Session and again upto the first day of the Fifth Session which were granted by the House on the 30th November, 1967 and on the 13th February, 1968, respectively.

10. The Committee have decided that the Evidence and the Statement containing a gist of main points made by the witnesses in their evidence given before the Committee should be printed and laid on the Tables of both the Houses.

11. The Committee considered the Bill clause-by-clause and implication of the various proposed amendments at their ninth and tenth sittings held on the 27th and 29th January, 1968.

12. At their eleventh sitting held on the 11th May, 1968, the Committee decided to take up further consideration of the Bill at their sittings to be held at Bangalore, subject to the approval of the Speaker. The Speaker before whom the matter was placed kindly consented to the sittings being held in Bangalore.

The Committee accordingly met in Vidhan Soudha, Bangalore from the 10th to 12th July, 1968 to resume clause-by-clause consideration of the Bill. At their sitting held on the 11th July, 1968, the Committee appointed an 11-member sub-Committee to draw up an agreed draft of the amendments to be made in the Bill in the light of oral evidence, written memoranda and discussions. At their sitting held on the 12th July, 1968, the Committee approved the draft submitted by the sub-Committee and adopted the Bill as amended subject to minute of dissent, if any, that might be given by the members.

13. The following changes are proposed in the Bill:

Clause 1 and Enacting Formula: The amendments made therein are of a consequential nature.

Clause 2: (i) With a view to making the intention clear that article 368 deals with the substantive power of amendment rather than with the procedure of amendment, the marginal heading to article 368 has been suitably amended. The change made in sub-clause (1) of clause 2 of the Bill is only of a drafting nature.

(ii) The Committee feel that, in view of the importance of Fundamental Rights, State Legislatures should also be associated with the amendment of the provisions contained in Part III. They have accordingly brought Part III, within the purview of the proviso to article 368. Henceforth, all constitutional amendments relating to Part III would also have to be ratified by the Legislatures of not less than one-half of the States.

(iii) The Committee have added a new sub-clause (3) providing that nothing contained in article 13 shall apply to any law made by Parliament in pursuance of article 368.

14. The Committee considered and adopted the Report on the 13th July, 1968.

15. The Joint Committee recommend that the Bill as amended be passed.

BANGALORE;

The 13th July, 1968.

Asadha 22, 1890 (Saka).

R. K. KHADILKAR,

*Chairman,
Joint Committee.*

MINUTES OF DISSENT

I

After having had the benefit of the evidence and discussions, I am of opinion that the Bill as introduced in Lok Sabha on 7th April, 1967 by Shri Nath Pai, M.P. does not require any change of a substantial or material nature.

2. The Committee has suggested 4 amendments, and they relate to:—

- (1) the enacting formula,
- (2) the Marginal Note,
- (3) a reference to Article 13 so as to take away law enacted in pursuance of Article 368 from out of the ambit of law under Article 13, and
- (4) a reference to Part III of the Constitution possibly so as to bring any amendment abridging or curtailing fundamental rights within the scope of the proviso which require a law of that nature passed by Parliament to be ratified by the legislatures of not less than half of the States.

3. So far as the amendments proposed to the enacting formula are concerned, they are only consequential to the passage of time since the introduction of the Bill, '18th year' of the Republic becoming '19th Year', and '1967' being changed into '1968'.

4. The marginal note is being changed from 'procedure for amendment of the Constitution' to 'power to amend the Constitution'. That is consequential to clause 2 of the Amendment Bill. Although for the purposes of the power, the content of the Article and not the marginal note is the relevant factor and therefore an amendment of the marginal note may not be absolutely necessary, even then the amendment seems proper and justified.

5. So far as the reference to Article 13 is concerned it really does not help, although here again there may not be any harm on account of the provision now proposed in the report.

6. The majority judgment in Golak Nath's case has held on three points so far as the future is concerned:

- (1) The power of Parliament to amend the Constitution is derived from power to legislate contained in Articles 245, 246 and 248, Article 368 being procedural;
- (2) Amendment is law within the meaning of Article 13, and therefore any amendment taking away or abridging fundamental rights is void; and
- (3) Parliament will have no power from the date of the decision to amend any of the provisions of Part III so as to take away or abridge fundamental rights.

The Bill we considered amply meets point No. 1. But so far as point Nos. 2 and 3 above are concerned, the Supreme Court alone by another judgment can possibly change the position. So even though we may now say that amendment in pursuance of the amended Article 368 is an amendment by Parliament not in pursuance of its legislative powers but in pursuance of its constituent power specifically conferred by Article 368, the Supreme Court may still hold that this Constitutional amendment itself is hit by Article 13 which does not exclude any type of law. Any way the constituent power that is exercised by Parliament in pursuance of the amended provision would undoubtedly give a new force to this argument that a Constitutional amendment in pursuance of constituent power cannot come within Article 13(2) and law as referred to by it. Therefore although this amendment had been by and large proposed in the form of a non-obstantive clause, the provision as contained in the Bill as reported by the Joint Committee is also acceptable to me.

7. However my objection to the 4th amendment proposed referred to in clause (ii) of Clause (2) (c) in the Bill as reported by the Joint Committee is of a fundamental nature. Under the proviso to Article 368 as it stands now, the following are the provisions which if amended are subjected to ratification by at least half of the State legislatures, namely election of President, manner of election of President, extent of executive power of Union, extent of executive power of State, High Courts for Union territories, the Union Judiciary, the High Courts in the States, Legislative relations between the Union and the States, subject of laws made by Parliament and by the Legislatures of States as contained in Union list, State list and concurrent list, the representation of States in Parliament and the provisions of Article 368 itself. The framers of the Constitution has therefore followed a clear scheme in the matter of ratification by the

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States. It is only when Parliament amends any provision of the Constitution touching a matter which concerns the States or both the States and the Centre, that ratification is necessary. In the matter of amendments of Constitutional provisions pertaining to Parliament, or matters relating to finance property, contracts and suits, or elections, or special provisions relating to certain classes including the Scheduled Castes and Scheduled Tribes and Anglo Indians contained in Part XVI, or the official language, or the emergency provisions, Parliament's power to amend is not subjected to ratification by the States. In the proviso to Article 368 as it has stood all these years, there has been no reference to Part III, and no Constitutional amendment previously which took away or abridged fundamental rights was ever thought of as one to be subjected to ratification by the States. By now suggesting that any amendment seeking to make any change in Part III of the Constitution should also be included in the proviso to Article 368 is to make a fundamental deviation from the very scheme of things adopted in the proviso to Article 368.

8. It would also appear that the proposal to bring any amendment relating to Part III within the scheme of the proviso would be really outside the province of this Amendment Bill. It will be seen from the objects and reasons appended to the Bill as introduced in the Lok Sabha and from the evidence that was led before the joint Committee that the simple purpose of this Bill is to restore the position anterior to the decision of the Supreme Court in Golak Nath's case. This Bill does not evidence an attempt to examine the propriety of the various Constitutional provisions including those in Article 368 and the question is whether original contributions should be made at this stage by amendments of a far reaching nature and departing from the very scheme of things adopted in the Constitution. The provisions as they stand now in Article 368 and as they were construed in Shankari Prasad's case and Sajjan Singh's case by the Supreme Court and which was considered by all including Parliament as the position prior to Golak Nath's case are neither too rigid, nor too flexible or easy, in the matter of actual amendment of a Constitutional provision. If the membership of the Lok Sabha is 520, a minimum of 261 should be present and voting for the purposes of carrying a Constitutional amendment. This is so if 261 members alone are present. Suppose there are 500 members present in the Lok Sabha at the time of voting on a Constitutional amendment, in that case a minimum of 333 members should vote in favour of the Constitutional amendment, if the amendment is to be carried. One may ask whether there are not anomalies in this procedure. The answer is that there are anomalies in everything and even in the so-called perfect things. Let us take for example the anomaly in the results

of general elections. In a particular constituency one candidate gets 14,000 votes, the other gets 10,000 votes and a third gets 8,000 votes. The candidate who gets 14,000 votes is declared elected, even though in a total electorate of 32,000, a majority, that is 18,000, have not preferred this winning candidate. This anomaly can be reduced if the election is indirect and by the system of single transferable vote. But in practice it is just not possible to adopt this system for a large electorate. So even with the anomaly that when more members are present in Parliament, more have to vote if the amendment is to be carried, one can clearly see that the result of the anomaly is certainly to secure that constitutional amendment is carried only with a large consensus amongst Parliament members present. The further question is whether the minimum of security necessary for guarding against hasty or over-easy amendments is maintained. That is certainly maintained in that in a House of 520, at least 261 members must be present and voting in favour of the amendment if the amendment is to be declared carried.

9. No doubt, and in a way, fundamental rights are permanent and sacrosanct. But we have got to view even fundamental rights against the background of the requirements of a changing society in a swiftly moving world. In a dynamic society with changing pattern of socio-economic relationship, rights and obligations under review, amendments become necessary from time to time. The majority judgment of the Supreme Court in fact refers to this aspect, and in passing has even referred to the possibility of convening a constituent Assembly for amending fundamental rights. The debates in the Constituent Assembly on the draft Articles 24, 304 and 305 clearly indicate that the entire Constitution including Part III was amendable by Parliament by following the procedure laid down in the Constitution, and there is no ratification by States in case of amendment to Part III provisions. The framers of the Constitution never meant to make any difference in the matter of procedure so far as amendments relating to Part III provisions or any other provision of the Constitution which could be passed by Parliament alone. The very fact that the Constituent Assembly did not deem it fit to include Part III in the proviso to Article 368 indicates that the framers of the Constitution did not intend to make any difference between amendment to provisions in Part III or to other amendments. It was never thought at the time of making the Constitution that a different procedure has got to be adopted while amending the provisions in Part III or while taking away or abridging the rights contained in Part III. Even a distinguished member of the Constituent Assembly who gave evidence before the Joint Committee stated that it was but true that when the Constituent Assembly came to the consideration of

Article 368 it did not think of excluding Part III from the purview of Article 368. This means that amendment to Part III rights by taking away or abridging was not at all treated as anything special.

10. Hon'ble Dr. B. R. Ambedkar on the 25th November, 1948 stated in the Constituent Assembly as follows:—

“The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or in Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution.”

11. The Prime Minister Hon'ble Shri Jawaharlal Nehru said on 11th November, 1948 in the Constituent Assembly as follows:—

“While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be a flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living vital organic people. In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what may be good to-day may not be wholly applicable to-morrow.”

12. I may also refer to the following passage from Thomas Paine's “Rights of Man”:

“There never did, there never will, and there never can, exist a Parliament, or any decription of man, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the 'end of time', or of commanding for ever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts or declarations by which the mak-

ers of them attempt to do what they have neither the right nor the power to do, nor take power to execute, are in themselves null and void. Every age and generation must be as free to act for itself in all cases as the ages and generation which preceded it.

* * * *

Every generation is, and must be, competent to all the purposes which its occasions require. It is the living, and not the dead, that are to be accommodated. When man ceased to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered."

13. I may also refer to the following passage from the minority judgment of Justices K. N. Wanchoo and V. Bhargava and G. K. Mitter in Golak Nath's case:—

"The power of amendment contained in a written federal Constitution is a safety valve which to a large extent provides for stable growth and makes violent revolution more or less unnecessary. It has been said by text book writers that the power of amendment, though it allows for change, also makes a Constitution long-lived and stable and serves the needs of the people from time to time. If this power to amend is made too rigid it loses its value as a safety valve. The more rigid a Constitution the more likely it is that people will outgrow it and throw it over-board violently."

14. It is inconceivable that any part of the Constitution should be considered immutable for all time to come, whatever the circumstances. In the life of a Nation, situations may arise when the interests of individuals might have to be subordinate to the interests of the Society or the Nation as a whole, and to this end, fundamental rights of individuals might have to be curtailed.

15. The Joint Committee has certainly decided that the provisions of Part III are amendable and Parliament can take away or abridge the fundamental rights in Part III. On coming to that conclusion, the Joint Committee has rightly rejected the plea that an amend-

ment taking away or curtailing fundamental rights in Part III should be subjected to ratification by a referendum, or that such an amendment should only be passed in a freshly created Constituent Assembly, or that the passing of such an amendment should be supported by a higher majority than that is provided now in Article 368. The facile procedure for amendment that Dr. B. R. Ambedkar spoke of, the warning that Pandit Nehru gave when he said that even so far as fundamental rights what is good for to-day is not good for to-morrow and what we require is flexibility and not rigidity, the statement of Thomas Paine that every age and generation must be free to act, the statement of the Hon'ble three Judges of the Supreme Court led by the erstwhile Chief Justice of India, at that time Mr. Wanchoo(J), that we have to guard against violent revolutions by providing easy methods of amendment, are forgotten. Particularly in the context of the swiftly changing social, economic and political conditions in this country, and the pace of change is likely to be only accelerated in future, and particularly from the stand point of maintaining and consolidating and strengthening the integrity of this Nation as a whole in all spheres, the country requires a fairly easy method of amending the provisions in Part III of the Constitution also, whether the amendment relates to taking away or abridging rights contained therein. The method of circulation to States would cause unduly harsh restrictions in the amending procedure and would also undoubtedly delay the passing and implementation of the amendments. The Bill that was introduced was just for the purpose of restoring the country to the position that existed prior to Golak Nath's decision. The Joint Committee deliberated for quite a length of time and has now decided that the pre-Golak Nath position has to be restored. A revolutionary change is being proposed for the proviso to Article 368, but actually the clock of revolution is being put back. The Joint Committee wanted to avoid the effect of the decision in Golak Nath's case, but the effect of Golak Nath's decision has registered itself in another form in the report of the Joint Committee. I regret my inability to support the proposal that an amendment relating to a provision in Part III of the Constitution should be brought within the purview of the proviso to Article 368 so as to require ratification by at least half the number of State Legislatures.

K. CHANDRASEKHARAN

ERNAKULAM;

July 15, 1968.

II

It is with poignant regret I respectfully disagree with the majority view of the Members of the Joint/Select Committee.

2. I am totally opposed to the new clause (3) added in the amending Bill. It acts as an escape from restrictions against undue State's actions enacted in the Constitution itself. It postulates a feeling that this power is intended to be used occasionally on an experimental basis. The power of amendment should not be used for purposes of removing express or implied restrictions against the States. This visualizes an avoidance of a remote possibility of prospective or anticipatory overruling of the Supreme Courts of any law made in pursuance of this amendment of the Constitution. This is something unusual in the normal functioning of a supreme legislative body of any democratic country. It gives an impression to the society that the State is more capricious than an individual. Such attempts in violation of self-imposed restrictions are unconstitutional and totally reactionary.

3. This amendment of the Article is primarily meant to exclude the word 'law' from the definition of the word 'law' in Article 13, clause (3) sub-clause (a) of the Constitution. The new sub-clause (3) of the amending Bill places all Constitutional amendments beyond the purview, scope and implication of Article 13 of the Constitution. This is something unheard of in the annals of the legislative field.

4. An amendment of the Constitution is itself a law and therefore to eliminate Article 13 of the amending Bill is beyond the competency of the Parliament and it will indirectly hit at Articles 32 and 226 of the Constitution from achieving an effective constitutional remedy. The Articles 32 and 226 of the Constitution are there to review the legislative enactment, regulations, rules and other orders with a view to protect the rights of the citizens. They are there with unfettered powers for effective judicial remedy. We must make distinction between rights and laws. Rights are unalterable and laws could be altered. The fundamental rights are inviolable and unalterable.

5. The matter is of grave public importance and an authoritative pronouncement by the Supreme Court was already made in I. C.

Golak Nath's case whereby the Parliament which is the creature of the Constitution has no constituent power to alter any of the provisions of Part III of the Constitution. Nowhere has it been said in the Constitution that this Parliament can *ipso facto* convert itself into a constituent body. Therefore this Parliament cannot get round and nullify the effect of some provisions in Part III by adding a new clause as clause (3) to the amending Bill which cuts the very root of the jurisdiction of the Supreme Court and the High Court guaranteed under Articles 32 and 226 of the Constitution.

6. Now the point is that the Supreme Court says that this Parliament has no power to amend Part III but this amending Bill says that it has. Who is to decide this difference? The verdict is against the Parliaments' power. It must be done either by the constituent body or by adopting appropriate steps by the President of India to refer this issue back to the Supreme Court to review its decisions. This tussle cannot be solved by taking a view that the Parliament has the power to amend the Constitution. I am afraid whether this will end at this. This is bound to crop up again in the courts which might take a serious view of this issue since it was being manoeuvred by amending the Article 368 in this inexpedient manner.

7. The other amendments such as modifying the marginal heading and bringing Part III of the Constitution within the purview of the proviso to Article 368 are equally of much importance but my comments supra will cover these aspects also.

NEW DELHI;
July 19, 1968.

N. R. MUNISWAMY.

III

I do not agree with the recommendation of the Committee that the Constitution should be amended as reported by the Select Committee.

2. I hold the view that when the Constitution of India was framed and passed by the Constituent Assembly, it was definitely intended that Parliament should have no power to take away or abridge any of the Rights conferred on India's Citizens by Part III of the Constitution.

3. The conception of unabridgable fundamental rights was the keystone of the national structure planned as a result of the first effort, at the national level to bring together all sections of the people of the Country and join in managing the affairs of a Free India. This was absolutely clear during the protracted discussions of the leaders of all these sections which culminated in the adoption in 1928 of the famous Nehru Report by the All Party Committee presided over by the late Motilal Nehru. This pre-independence framework of the Constitution for a Free India was founded on the basic decision that unabridgable Fundamental Rights agreed upon by all the parties were a vital part of any Constitution for our country if our multi-religious, multi-racial, multi-lingual, multi-cultural and economically differentiated, peoples are to hold together as a nation. The Nehru Report was the outcome of reconciliation of conflicting interests within the nation and the scheme of fundamental rights was the basis of a grand partnership in the Joint Governance of the country.

4. This concept of unabridgable Fundamental Rights which was given a concrete form in the Nehru Report nearly twenty years before the Constitution of India was framed by us in 1946—50, was ever present in the minds of those who in the Constituent Assembly's Committee on Fundamental Rights went deep into the question and thrashed out all the issues involved. Stray references here and there, in the on-the-spot-replies, by some of the Speakers, however eminent, to points of criticism made during the debates in the Constituent Assembly in regard to Fundamental Rights, did not affect the opinion in the Assembly, that while Part III was not "unamendable" by Parliament in the context of changing times, the Fundamental

(xvii)

Rights incorporated in it are not amendable in the direction of abridgement or abrogation.

5. The Constituent Assembly was created as a result of the acceptance by the country of the Cabinet Mission Plan of 1946. That Plan laid down the steps which were to be taken by the Constituent Assembly. The Constituent Assembly adopted those steps. The following step was one of those laid down:

“The Advisory Committee on Rights of Citizens, minorities and tribal and excluded areas should contain full representation of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, the clauses for the protection of minorities and a scheme for the administration of the tribal and excluded areas and to advise whether these rights should be incorporated in the Provincial Group or Union Constitution.”

6. The Concept of this step clearly was not that the Fundamental Rights were some temporary Rights, their life depending on the will, for the moment, of a certain majority in Parliament, but that they were permanent Rights if the object of those Rights, namely to ensure the protection of Citizens against unjust action by the State, the protection of minorities against unjust action by majorities, the protection of tribal and excluded areas and their inhabitants against unjust action by the people of the more advanced areas in the country was at all to be fulfilled. The Fundamental Rights as contemplated by those who framed the Cabinet Mission Plan, i.e. by those who represented the British Government, while handing over all power to the people of India and therefore entrusting the Constituent Assembly, with the responsibility of framing the Constitution of Free India, were to be rights which are basic and permanent and were not amendable prejudicially to the interests of the categories of the people mentioned in the British Government's historic document for the transfer of power to the representatives of India. Viewed in this right there is an obligation on us to treat the Fundamental Rights framed under these circumstances as not abrogatable or abridgeable.

7. My stand that Part III of our Constitution is not amendable in the direction of abridgement or abrogation of the Rights listed in it except as provided under Articles 33 and 34 is however not based not only on what was really our intention at the time of the Constitution Assembly. I hold that in the special circumstances of our country it is essential that the Fundamental Rights under Part III should

be considered sacrosanct and Parliament ought not to have the power to abridge or abrogate any of them except as already provided by Articles 33 and 34. The special circumstances are the same to which I have made reference in para 3 above.

8. None of the Fundamental Rights in Part III of the Constitution is so *fundamental* as that contained in article 32, which confers on a citizen of India the fundamental right to move the highest judiciary in the land for the enforcement of the Rights given by Part III. Dr. Ambedkar who piloted the Constitution through the Constituent Assembly referring to this Article, described it as "the soul" of the Constitution. This Article, is fundamental to the Fundamental Rights under Part III. He could never have meant to convey by any words anywhere in his speeches that any Parliament of the day by any majority vote remove the very "soul" of the Constitution. As obviously, as patently, as indisputably as anything could be, article 32, could not have been intended to be abrogatable. The present bill provides Parliament with power to kill the "soul" of the Constitution.

9. The Fundamental rights under Part III are "the rights of Man in India" and when we give ourselves power to take away or abridge "Right of Man in India" or remove from them the protection of the judiciary, we shall be moving in the direction of an authoritarian system of Government. If a single dominant Parliamentary party, which is also in power in less than a majority of the State Legislatures, allows itself to be governed by the expediency of the moment shaped by a highly emotional people and cuts down any of the Rights of Man, it will be in effect a repudiation of the democratic character of the Constitution. The Rights of Demos, the right of a single citizen, to any of "the rights of man" will be at the will of the political party if in adequate majority in Parliament even though not in the States. The form of action may outwardly appear democratic and so knowing that the majority vote in a Legislative organ is manipulatable, the prudent framers of the Constitution, in dealing with our emotional people, took well considered steps to protect the minorities against such a majority and placed in the highest judiciary between the majority and the minority and gave to the latter the shelter of unbridgeable Fundamental Rights. A Democracy under which the majority fails to function as Trustee for the minorities is not democracy in the true sense of the word. And the recent movement against the existence of a monolithic Party whatever its colour, has no meaning if a monolithic party is to be vested with the power to abrogate or abridge Fundamental Rights which

abrogation or abridgement indirectly affects a political minority's growth into a majority, or a permanent religious, linguistic, or allied minority's right to live its life in these spheres as it likes.

10. I hold that Article 33 is conclusive internal proof that Part III was not amendable by Parliament in the direction of *abrogation or abridgement* of the fundamental rights except under that Article and under the specified circumstances mentioned in that Article.

"33. Power of Parliament to modify the rights conferred by this part in their application to Forces.

Parliament may by law determine to what extent any of the Rights conferred by this Part shall, in their application to the members of the Armed Forces or the forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

11. When the Constituent Assembly added this article in Part III itself, an Article which specifically gives power to Parliament permanently to *abrogate or abridge any fundamental right and that Article restricts the power of abridging or abrogating any fundamental rights* by specifying the citizens in respect of whom alone such power is allowed to Parliament and also by specifying the purpose for which alone such power is exercisable, it is obvious that further power of abrogating or abridging the fundamental rights was not intended to be conferred on Parliament.

12. So also the incorporation of Article 34 has the same significance and implication. This Article is as under.

"34. Restrictions of Rights conferred by this part while martial law is in force in any area.

Notwithstanding anything in the foregoing provisions of this part, Parliament may by law indemnify any persons in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under material law in such area."

Here also the power is given to Parliament to *restrict* certain relevant rights under conditions and for purposes which are specified and strictly delineated.

13. If the authors of the Constitution had intended that Article 368 was the one which gives power to amend any provision of Part III in the *direction of abridgment or abrogation*, there would have been no need to incorporate in anticipation Article 33 and 34 in Part III itself. Article 368 would have been considered sufficient to empower Parliament to legislate in a manner which permitted the abrogation or abridgment or restriction which is found actually provided for in Article 33 and 34. The title of Article 368 "Amendment of the Constitution" has reference to the power of amendment of the provisions of all parts of the Constitution, barring Part III except to the extent already mentioned in Articles 33 and 34. And it is such power under Article 368 the leaders had generally in view when they spoke of the amendability of the Constitution. In view of the existence of these two Articles in Part III it is obvious. The Part III was not intended and should not be held to be amendable in the direction of abrogation or abridgment in any other manner by Parliament. To try to give such power to Parliament defeats the very purpose of Part III and is unwise in the context of the special circumstances of our nation.

14. The various religious, linguistic and social minorities or socially weaker sections of the nation who relied upon the unabridgable and unabrogatable fundamental rights cannot, if the Bill is passed have any longer a due sense of security that their rights are safe in the country and that the Supreme Court is the final protector of them. We may say today that we have no intention to abridge or abrogate such rights though we have taken the power to do so. But the fact that the declaration of such intention may not bind even our immediate successors of tomorrow is proved by the history of this very Bill, which seeks to exercise the power to amend any provision of the Constitution whereas the framers of the Constitution had intended that the Fundamental Rights as laid down in Part III including Article 32 would indisputably be held to be a permanent and basic feature of the Constitution.

15. The creation by the Bill of a sense of insecurity among these whose rights were permanently safeguarded in Part III of the Constitution will have a very undesirable psychological effect specially on the minds of those whose rights are referred to in the sections of Part III relating to Rights to Equality Right to Freedom of Religion. Cultural and Educational Right and Right to Constitutional Remedies.

16. It is politically unwise to make a wholesale, sweeping revolutionary change in the foundational structure of our composite

nations Constitution simply because the Supreme Court in *Golak Nath* case held that that structure cannot be weakened by Parliament. The sole, repeatedly advanced, agreement on which the Select Committee's recommendation is based is that our Constitution should keep pace with socio-economic changes in a dynamic society. The issue at the back of the mind of most members evidently was that the word 'Compensation' in Article 31 had been interpreted by Courts to mean compensation at the current market value of a property acquired by Government and such interpretation had imposed such unbearably heavy burden on the taxpayers that it was in national interest so to amend the Article as to make such an interpretation impossible. As the artificially risen higher market value was the result of social forces in the concerned area-growth of population, developmental programmes, increase in industrial or trade activity and allied causes and not of any special effort of the individual owning the acquired property, there would be justification to see that the individual does not *ultimately* gain exorbitantly from the operation of such social forces, independently of him. But means other than the present Bill have to be discovered to pull back into the public revenues the taxpayers money unreasonably diverted into an individuals pockets. Political ingenuity has not exhausted all its resources. But for the above purpose, there is no justification for making a wholesale sweeping revolutionary change in the foundational structure of our composite nations' Constitution and for Parliament's assuming power to abridge or abrogate even those Fundamental Rights which relates to Rights to Equality and Freedom of Religion Cultural and Educational Rights and the Right to Constitutional Remedies.

17. The provision made in the recommendation of the Select Committee that the abridgment or abrogation of a Fundamental Right must have the approval of both Parliament and a certain proportion of the State Legislatures is illusory. The proviso to Article 368 would only mean that such abridgment or abrogation can, in certain cases, be the decision merely of a majority of *even one vote* of the total membership of each House of Parliament, for if half the States support such decision of Parliament and half oppose it, Parliament's bare one vote majority will enforce that decision. The proviso is so worded that the supporting vote of half the States has value and the opposing vote has none, though they are equal in number. Equal votes have been given unequal value. The 'yes' votes have effect. The 'No' votes have none.

18. The danger to the type of Rights contained in the sections of Part III I have specially referred to above in Para 15 may not thus

be considered as imaginary, for symptoms of a majority not considering itself as trustee for the rights of a minority are on the increase. These are particularly visible in the sphere of language and education in many parts of the country. The decision of the National Integration Council at Srinagar to avoid the consideration of the question of language has its significance. Moreover when the emotion of an emotional people are whipped up. The majority is unable to function as trustee for the minorities.

19. I may in conclusion mention that the Advisory Committee of the Constituent Assembly had appointed a Special Sub-Committee to deal with the question of Fundamental Rights. We were clear, in view of the discussions and the spirit which prevailed in the Advisory Committee at the end of the struggle for national freedom that we were framing a set of Basic Rights which would constitute a kind of the Pact incorporating the understanding arrived at between representatives of all sections of our people as to mutual rights and obligations and conceived as essential for holding the composite nation together. The inviolability of this Pact conceived as above, was patent to our mind. We knew what was our objective and what was the need of the composite nation. Of the twelve members of that Sub-Committee six are now alive: Shri Acharya Kripalani, Dr. K. M. Munshi, Shri M. R. Masani, Shrimati Hansa Mehta, Sardar Harnamsing, and myself. It is not a mere coincidence that all the six of us still hold that the Rights contained in Part III were not to be abridgeable or abrogatable by Parliament, except to the extent and for the purposes specified and provided for in that Part III itself and that the only place where the power to abridge or abrogate any right conferred by that Part is to be found is that Part itself. The attempt to derive such power from Article 368 as it is or as it is proposed to be modified is both wrong and dangerous from the point of view of national solidarity, the basic consideration of any national government.

NEW DELHI

JAIRAMDAS DAULATRAM.

July 7, 1968.

IV

In their judgment dated the 27th February, 1968, on the validity of the Constitution (Seventeenth Amendment) Act, 1964 in the Golak Nath case, the Supreme Court by a majority declared that Parliament will henceforth have no power to amend any proviso of Part III of the Constitution so as to take away or abridge the Fundamental Rights enshrined therein. The Supreme Court were led to this conclusion by the express provision of article 13(2) which laid down that the State shall not make any law which took away or abridged the rights conferred by Part III and that any law made in contravention of this clause shall, to the extent of the contravention, be void. In the opinion of the Supreme Court an amendment to the Constitution was 'law' within the meaning of article 13 of the Constitution and, therefore, if it took away or abridged the rights conferred by Part III, it would be void.

2. In the statement of Objects and Reasons of the Bill, it has been stated that the Bill sought to assert the right of Parliament to modify Fundamental Rights in special circumstances.

3. In their Report, the Joint Committee have made four changes in the Bill as introduced by Shri Nath Pai. Of these, one—i.e., to clause 1—is only of a verbal nature. The second amendment—i.e., to the marginal heading to article 368—seeks to show that article 368 deals with the substantive power of amendment rather than with the procedure of amendment, as held by the majority of the Supreme Court. By their third amendment, the Joint Committee have sought to make all amendments made by Parliament under article 368 immune from the provisions of article 13. By their fourth amendment, the Joint Committee have sought to bring the Fundamental Rights within the purview of the proviso to article 368, thereby requiring the ratification of constitutional amendments relating to Fundamental Rights by the Legislatures of not less than one half of the States.

4. While the last mentioned amendment is intended to serve as a check against hasty erosion of Fundamental Rights, the other changes made by the Joint Committee only seek to further the object of the Bill, viz., to reverse the Supreme Court's judgment in the Golak Nath case.

5. We beg to differ with the majority report of the Joint Committee on the following grounds:—

(i) In the scheme of the Indian Constitution which was adopted, enacted and given to the people by the people themselves, Fundamental Rights occupy a transcendental position. These rights were sacrosanct and could not be taken away or abridged by Parliament by following the procedure laid down in article 368. As observed by one of the learned judges of the Supreme Court in his judgment, "the Constitution gives so many assurances in Part III that it would be difficult to think that they were the play things of a special majority". We are fortified in our views by the evidence of one of the honourable members of the Constituent Assembly, Shri K. Santhanam, given before the Joint Committee. He stated that at the time the Constituent Assembly was framing Part III on Fundamental Rights, it was never in the minds of members that, by a two-thirds majority, Part III could be repealed. It was intended that the Fundamental Rights should be more or less sacrosanct.

(ii) We also agree with the views expressed by one of the learned witnesses, Shri N. A. Palkhivala, that the chapter on Fundamental Rights provides for political stability. In view of the diverse ideologies, faiths and creeds prevailing in the country, it was of prime importance that Fundamental Rights were not tinkered with. Further, the timing of the introduction of the proposed measure was also inopportune. At the present juncture when there was scant respect for the rights and liberties of citizens and the law, nothing should be done which would in any way undermine the authority of the Supreme Court. The proposed legislation, for which there was no pressing urgency, might create a new conflict between the highest legislative and judicial organs in the country (*viz.* Parliament and Supreme Court). A hasty step taken now may become irretraceable later on.

(iii) As observed by another witness, Shri Purshottam Trikamdass, in his evidence before the Joint Committee, Fundamental Rights guaranteed by the Constitution were the basic minimum rights which were necessary for an individual in a democratic-socialist society. The General Assembly of the United Nations had recently adopted two Covenants, *viz.*, Covenant on Civil and Political Rights and Covenant on Social and Cultural Rights. The rights contained in the former Covenant correspond to the rights enumerated in Part III of our Constitution. Now when the trend all over the world was to adopt some basic minimum rights for the individual and to make these rights justiciable, nothing should be done which would have the effect of whittling away the Fundamental Rights enshrined in our Constitution.

(iv) It is true that the Constitution empowers Parliament to make amendment to the Constitution and in that sense Members of Parliament could be said to have a mandate for making these amendments. But when the amendments seek to touch the fundamentals on which our Constitution rests, can it be said that the electoral mandate embraces basic changes also? Can Parliament, for instance, by a two-thirds majority replace the republican form of Government by a monarchical one, or a democratic form by a non-democratic one or transform our secular state into a theocracy. It will be putting too much strain on the Constitution to say that the mandate that Members of Parliament receive from the people includes the right to modify these fundamental principles. Only Members of a Constituent Assembly, elected by the people specifically for framing a new Constitution or altering the old one in a fundamental manner, will have the moral authority to make the changes which the present amendment bill seeks to sanction.

(v) We ourselves hold that during the last 18 years many fundamental questions have been raised and the best method of resolving them is to call a Constituent Assembly as suggested by the majority judgement of the Supreme Court under the residuary powers of Parliament. There is thus the question, raised by Justice Hidayatullah himself, as to whether the right to private property in the means of production should be included in the Fundamental Rights. We share the opinion of Justice Hidayatullah that it was a mistake to include this right in Part III of the Constitution and that it was probably done under the influence of Section 299 of the Government of India Act, 1935. Then there is also the question of the redistribution of powers as between the Centre and States and States and organs of local self-government. There is the further question of suitability of the parliamentary form of Government as against the Presidential. All these questions can only be thrashed out by convening a new Constituent Assembly and not by challenging the majority judgement of the Supreme Court through a Constitutional Amendment Bill.

(vi) It is often said that the object behind this Bill is to facilitate economic reforms and social change the more likely result will be a further abridgement of citizens democratic freedoms and civil liberties. We are, therefore, constrained to oppose this Bill.

(vii) *It is also doubtful whether the Bill, if passed, would result in the achievement of the desired aim, inasmuch as article 368, as proposed to be amended, like the existing article 368, would not be applicable to Part III, in view of the express provisions of article 13 (2). It can be effective only if and when the Supreme Court decides to*

revise its own judgement, in which case the present article 368 will suffice.

In view of what we have stated above, we feel that the Bill should not be proceeded with any further. In case, however, Parliament thinks it absolutely essential to do so, the Bill should be so modified as to provide that all constitutional amendments abridging or taking away Fundamental Rights, after they go through the normal process of amendment, should be subject to ratification by the people through a referendum.

NEW DELHI;
July 20,1968.

S. M. JOSHI
KAMESHWAR SINGH

THE CONSTITUTION (AMENDMENT) BILL, 1967

By

SHRI NATH PAI, M.P.

(AS REPORTED BY THE JOINT COMMITTEE)

[Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions]

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:

1. This Act may be called the Constitution (Amendment) Act, 1968. Short title.

2. In the Constitution,—

(a) in article 368, for the marginal heading, the following Amendment of article 368.
marginal heading shall be substituted, namely:—

“Power to amend the Constitution”;

(b) the said article shall be renumbered as clause (2) thereof, and therefore clause (2) as so renumbered, the following clause shall be inserted, namely:—

“(1) Parliament may by law amend any provision of this Constitution in accordance with the procedure laid down in this article.”;

(c) in clause (2) as so renumbered, in the proviso, in clause (b), before the words and letters “Chapter IV of Part V”, the following shall be inserted, namely:—

“Part III,”; and

(d) after clause (2) as so renumbered, the following clause shall be inserted, namely:—

“(3) Nothing contained in article 13 shall apply to any law made in pursuance of this article”.

APPENDIX I

(Vide Para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to Joint Committee

“That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

1. Shri R. K. Khadilkar
2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri Surendranath Dwivedy
5. Shri Ram Krishan Gupta
6. Shri K. Hanumanthaiya
7. Shri S. M. Joshi
8. Shri Kameshwar Singh
9. Shri Krishnan Manoharan
10. Shri D. K. Kunte
11. Shri J. Rameshwar Rao
12. Shri V. Viswanatha Menon
13. Shri Mohammad Yusuf
14. Shri Jugal Mondal
15. Shri H. N. Mukerjee
16. Shri Nath Pai
17. Shri P. Parthasarathy
18. Shri Deorao S. Patil
19. Shri Khagapathi Pradhani
20. Shri K. Narayana Rao
21. Shri Mohammad Yunus Saleem
22. Shri Anand Narain Mulla
23. Shri Dwaipayan Sen
24. Shri Prakash Vir Shastri
25. Shri Digvijaya Narain Singh
26. Shri Sant Bux Singh
27. Shri Sunder Lal
28. Shri V. Y. Tamaskar
29. Shri Tenneti Viswanatham, and
30. Shri P. Govinda Menon.

and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(Vide Para 3 of the Report)

Motion in Rajya Sabha

“That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Constitution of India (*amendment of article 368*), and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Chitta Basu
2. Shri M. V. Bhadram
3. Shri Kota Punnaiah
4. Shri M. P. Bhargava
5. Shri K. Chandrasekharan
6. Shri A. P. Chatterjee
7. Shri Jairamdas Daulatram
8. Shri Ram Niwas Mirdha
9. Shri G. H. Valimohmed Momin
10. Shri G. R. Patil
11. Shri J. Sivashanmugam Pillai
12. Shrimati Yashoda Reddy
13. Shri Jogendra Singh
14. Shri Triloki Singh
15. Shri Rajendra Pratap Sinha.”

APPENDIX III

(Vide Para 7 of the Report)

Statement of memoranda/representations received by the Joint Committee

S. No.	From whom received	Action taken
1	Bengal National Chamber of Commerce and Industry, Calcutta.	Circulated to members.
2	Bihar State Bar Council, Patna.	Do.
3	Indian Society of International Law, New Delhi.	Circulated to members and evidence taken on 25-10-67
4	Government of Gujarat, Ahmedabad	Circulated to members.
5	Assam Chamber of Commerce, Shillong.	Do.
6	Indian Chamber of Commerce, Calcutta.	Circulated to members and evidence taken on 18-11-67
7	Indian Chamber of Commerce, Coimbatore	Circulated to members.
8	Bar Council of West Bengal, Calcutta.	Do.
9	High Court Bar Association, Allahabad.	Do.
10	Bar Council of State of Andhra Pradesh, Hyderabad.	Do.
11	Bar Council of Punjab and Haryana, Chandigarh.	Do.
12	Bar Council of Uttar Pradesh, Allahabad	Do.
13	Allahabad High Court, Allahabad	Do.
14	Government of Jammu & Kashmir, Srinagar.	Do.
15	Shri S. Mohankumaramanglam, Ex-Advocate General of Madras.	Circulated to members and evidence taken on 18-11-67.
16	Andaman and Nicobar Islands Administration, Port Blair.	Circulated to members.

S. No.	From Whom received	Action taken
17	Shri D. Narasa Raju, former Advocate General of Anbhra Pradesh	Circulated to members.
18	Government of Madhya Pradesh, Bhopal	Do.
19	Government of Tripura, Agartala	Do.
20	Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law.	Circulated to members and evidence taken on 26-10-67.
21	Indian Chamber of Commerce, Guntur	Circulated to members.
22	Mr. Justice Mirza Hamid Ullah Beg, Allaha- bad.	Do.
23	Patna High Court.	Do.
24	Shri H. M. Seervai, Advocate-General of Maharashtra.	Circulated to members and evidence taken on 27-10-67.
25	Dr. K. M. Munshi, Member of Drafting Committee on the Constitution and Constituent Assembly.	Circulated to members.
26	Shri Purshottam Trikamdas, Advocate, New Delhi.	Circulated to members and evidence taken on 25-11-67.
27	Shri G. S. Gupta, Ex-Speaker of Madhya Pradesh and Berar Legislative Assembly and Member, Constituent Assembly.	Do.
28	Shri M. C. Setalvad, M. P. and former Attorney-General of India.	Do.
29	Federation of Indian Chamber of Commerce & Industry, New Delhi.	Circulated to members.
30	Government of Mysore, Bangalore	Do.
31	Shri I. V. Rangacharya, Hyderabad	Do.
32	Sarvashri J. V. Suryanarayana and T.V.S. Dasu, Advocates, Hyderabad.	Do.
33	State Law Commission, West-Bengal, Calcutta.	Do.
34	Advocate General, Bihar, Patna.	Do.
35	Delhi Administration, Delhi.	Do.

APPENDIX IV

(Vide Para 8 of the Report)

List of parties who gave evidence before the Joint Committee

S. No.	Names of parties	Dates on which evidence was taken
1	Shri K. Santhanam, Ex-M.P. and Member of Constituent Assembly.	23-10-1967
2	Shri N. A. Palkhivala, Senior Advocate, Supreme Court of India.	24-10-1967
3	Indian Society of International Law, New Delhi.	25-10-1967
4	Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law, Government of India.	26-10-1967
5	Shri H. M. Seervai, Advocate-General of Maharashtra.	27-10-1967
6	Indian Chamber of Commerce, Calcutta	18-11-1967
7	Shri S. Mohankumaramanglam, Ex-Advocate-General of Madras.	18-11-1967
8	Shri Purshottam Trikamdas, Advocate, New Delhi.	25-11-1967
9	Shri G. S. Gupta, Ex-Speaker, Madhya Pradesh and Berar Legislative Assembly and Member of Constituent Assembly.	25-11-1967
10	Shri M. C. Setalvad, M. P. and former Attorney-General of India.	25-11-1967

APPENDIX V

*Minutes of the sittings of the Joint Committee on the Constitution
(Amendment) Bill, 1967 by Shri Nath Pai, M.P.*

I

First Sitting

The Committee sat on Thursday, the 7th September, 1967 from 15.00 to 16.00 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri Ram Kishan Gupta
5. Shri S. M. Joshi
6. Shri Kameshwar Singh
7. Shri Krishnan Manoharan
8. Shri Mohammad Yusuf
9. Shri Jugal Mondal
10. Shri H. N. Mukerjee
11. Shri Nath Pai
12. Shri Deorao S. Patil
13. Shri Khagapathi Pradhani
14. Shri K. Narayana Rao
15. Shri Dwaipayan Sen
16. Shri Prakash Vir Shastri
17. Shri Digvijaya Narain Singh
18. Shri Sant Bux Singh
19. Shri Sunder Lal
20. Shri Tenneti Viswanatham
21. Shri P. Govinda Menon.

Rajya Sabha

22. Shri Chitta Basu
23. Shri M. V. Bhadram
24. Shri Kota Punnaiah

25. Shri M. P. Bhargava
26. Shri K. Chandrasekharan
27. Shri A. P. Chatterjee
28. Shri Jairamdas Daulatram
29. Shri Ram Niwas Mirdha
30. Shri G. H. Valimohmed Momin
31. Shri G. R. Patil
32. Shri J. Sivashanmugam Pillai
33. Shrimati Yashoda Reddy
34. Shri Jogendra Singh
35. Shri Triloki Singh.

REPRESENTATIVES OF THE MINISTRY OF LAW

Shri K. K. Sundaram—*Joint Secretary and Legislative Counsel, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Chairman informed the Committee about the inability of the following members to attend the sitting:—

- (i) Shri A. N. Mulla.
- (ii) Shri D. K. Kunte
- (iii) Shri J. Rameshwar Rao.

3. The Chairman then welcomed the members and mentioned to them the business for the day.

4. The Committee after some discussion, decided to take oral evidence of some eminent jurists, constitutional/legal experts etc. In this connection the following names were suggested:—

- (i) Shri M. C. Setalvad, M.P. (Former Attorney-General of India).
- (ii) Shri H. M. Seervai, Advocate-General, Maharashtra.
- (iii) Shri Mohan Kumarmangalam, former Advocate-General, Madras.
- (iv) Shri N. A. Palkhivala, Barrister, Bombay.

5. The Committee then approved the draft Press Communique which was decided to be issued asking associations, bodies, Chamber of Commerce, individuals etc., who were desirous of forwarding their suggestions or views or giving evidence before the Committee

in respect of the Bill, to send written memoranda thereon to the Lok Sabha Secretariat by the 10th October, 1967 (Annexure I).

6. The Committee then approved the draft letter proposed to be addressed to the State Governments; Registrars of Supreme Court; High Courts; Secretary, Bar Association of India etc. It was also decided to include the various Chambers of Commerce. Law Institute, recognised All-India Trade Union Organisations viz. INTUC/AITUC/HMS etc. inviting their views etc. on the Bill (Annexure II). On the point of payment of T.A./D.A. to the witnesses, it was decided to delete the following words from para 2 of the draft:

“at their own expense.”

7. The Committee authorised the Chairman to select the parties after receipt of the written memoranda, to be asked to send their representatives to give oral evidence.

8. The Committee also desired that a comprehensive bibliography of the relevant Constituent Assembly Debates, judgments of the Supreme Court/High Courts, publications and other material should be got ready and circulated to them.

It was also desired that copies of the working Paper and other papers contributed at the recent Seminar held by the Indian Institute of Constitutional and Parliamentary Studies on the Fundamental Rights and Supremacy of Parliament should be obtained from the Institute and circulated to them.

9. The Committee then adjourned to meet again from Monday the 23rd October, 1967 onwards.

ANNEXURE I

LOK SABHA SECRETARIAT

Press Communique

The Joint Committee of Parliament on the Constitution (Amendment) Bill, 1967 by Shri Nath Pai, M. P. at their first sitting held under the Chairmanship of Shri R. K. Khadilkar, Deputy Speaker decided that public bodies, Chambers of Commerce organisations, associations, All-India Labour Trade Unions or individuals desirous of submitting memoranda on the Bill for the consideration of the Committee should send 60 copies of each memorandum so as to reach the Secretary, Lok Sabha Secretariat Parliament House, New Delhi on or before the 10th October, 1967.

Those who are desirous of giving oral evidence before the Committee besides sending memorandum, are requested to intimate to this effect to the Lok Sabha Secretariat for consideration of the Committee.

The Constitution (Amendment) Bill, 1967, as introduced in Lok Sabha, was published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 7th April, 1967.

The Committee will sit at New Delhi from the 23rd October, 1967 to hear oral evidence.

NEW DELHI;

Dated the 7th September, 1967.

ANNEXURE II

LOK SABHA SECRETARIAT

PARLIAMENT HOUSE

New Delhi-I, September 7, 1967/Bhadra 16, 1889 (Saka)

No. 16/1/C-II/67

From

Shri M. C. Chawala,
Deputy Secretary.

To

1. The Chief Secretary,
All State Governments.
2. The Registrar,
Supreme Court|All High Courts.
3. The Secretary,
Bar Council of India|Supreme Court Bar Association|All
State Bar Council|All High Court Bar Association.
4. The Secretary,
Federation of Indian Chambers of Commerce and Industry,
New Delhi|Associated Chambers of Commence and Industry
Netaji Subhash Road, Calcutta-1.
5. The Secretary-General,
All India Trade Union Congress, New Delhi|Indian National
Trade Union Congress, New Delhi|Hind Mazdoor Sabha,
Bombay|United Trade Union Congress, Calcutta.
6. The Secretary,
Indian Law Institute, New Delhi|Indian Institute of Public
Administration New Delhi|Institute of constitutional and
Parliamentary Studies, New Delhi|Indian Society of Inter-
national Law, New Delhi|Incorporated Law Society, Calcutta|
International Commission of Jurists, New Delhi|Bar Lib-
rary, High Court Calcutta.

SUBJECT: Joint Committee on the Constitution (Amendment) Bill, 1967, by Shri Nath Pai, M.P.

Sir,

I am directed to state that the Joint Committee of Parliament on the Constitution (Amendment) Bill, 1967, at their sitting held today, decided that all State Governments, the Supreme Court, High Courts and all Bar Councils be addressed to send their comments or suggestions, if they so desire, on the provisions of the Constitution (Amendment) Bill, 1967 for the consideration of the Committee, so as to reach the Secretary, Lok Sabha Secretariat, Parliament House, New Delhi, by the 10th October, 1967 at the latest.

2. The Committee further decided that they could also give oral evidence before the Committee, if so desired.

3. The Committee will sit at New Delhi from the 23rd October, 1967 onwards to hear oral evidence.

4. The Constitution (Amendment) Bill, 1967, as introduced in Lok Sabha, was published in the Gazette of India, Extraordinary, Pt. II, Section 2, dated the 7th April, 1967. A copy of the Bill is, however, sent herewith for ready reference.

5. In case any comments or suggestions are sent, it is requested that 60 copies thereof may be furnished to this Secretariat for circulation to the Members of the Joint Committee.

Encl: 1.

Sd/-

Yours faithfully,

DEPUTY SECRETARY.

II

Second Sitting

The Committee sat on Monday, the 23rd October, 1967 from 10.00 to 13.15 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri Ram Krishan Gupta
5. Shri S. M. Joshi
6. Shri Kameshwar Singh
7. Shri D. K. Kunte
8. Shri V. Viswanatha Menon
9. Shri Mohammad Yusuf
10. Shri Jugal Mondal
11. Shri Nath Pai
12. Shri P. Parthasarthy
13. Shri Deorao S. Patil
14. Shri Khagapathi Pradhani
15. Shri Mohammad Yunus Saleem
16. Shri Anand Narain Mulla
17. Shri Dwaipayan Sen
18. Shri Prakash Vir Shastri
19. Shri Digvijaya Narain Singh
20. Shri Sunder Lal
21. Shri Tenneti Viswanatham
22. Shri P. Govinda Menon

Rajya Sabha

23. Shri M. P. Bhargava
24. Shri K. Chandrasekharan
25. Shri A. P. Chatterjee
26. Shri Jairamdas Daulatram
27. Shri G. H. Valimohmed Momin

28. Shri G. R. Patil
29. Shri J. Sivashanmugam Pillai
30. Shri Jogendra Singh
31. Shri Triloki Singh

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri K. K. Sundaram, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Shri K. Santhanam, *ex-M.P. and Member of the Constituent Assembly.*

2. At the outset the Committee passed the following Resolution condoling the death of Dr. Ram Manohar Lohia, M.P.

“The Joint Committee place on record their profound sense of sorrow on the sad passing away of Dr. Ram Manohar Lohia, a great freedom fighter and patriot, who had dedicated his life for the cause of the nation”.

Thereafter the members stood in silence for a short while.

3. The Chairman apprised the Committee about the intimations received from the following members about their inability to attend the current round of sittings of the Joint Committee:—

- (i) Shri J. Rameshwar Rao.
- (ii) Shri K. Hanumanthaiya.

4. The Committee then discussed the desirability, or otherwise, of asking Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law, Government of India, to explain his views before the Committee as an expert in his personal capacity. The Chairman told the Committee that Shri Gae had already spoken about this matter at some forums and since it was a Private Member's Bill, the Committee might have the benefit of hearing his views in his personal capacity. The Chairman also mentioned to the Committee that Shri Gae would be asked to obtain prior approval of Government in this behalf. At the Indian Chamber of Commerce had expressed their inability to depute their representatives on the 26th October, the Committee decided to hear Shri Gae on that day and

ask the representatives of the Chamber to appear on the 18th November, 1967 at 10.00 hours.

5. The Committee also decided to hear Shri M. C. Setalvad at 16.30 hours on the 26th October, 1967.

6. The Committee, having been apprised of the correspondence exchanged between the Secretariat and Shri S. Mohan Kumaramangalam, Ex-Advocate-General, Madras, agreed to have appearing before them on the 18th November, 1967 at 11.00 hours.

The Committee also considered the letter from Shri Narasa Raju, former Advocate-General of Andhra Pradesh, where in he had left it to the Committee whether they would like to hear his views after going through the Memorandum submitted by him and decided that they should better send for Shri Raju at some convenient date.

7. The Committee then considered the letter from Shri Jairamdas Daulatram, a member of the Committee, wherein he had suggested that it would be desirable to invite some members of Parliament who had taken an active part in the framing of the chapter on fundamental rights when the Constituent Assembly considered and adopted that chapter of the Constitution. The Committee discussed this issue at some length. A view was expressed by some members that as these M.Ps. could explain their views in the House also it was perhaps not necessary to send for them.

Another suggestion was made that the Committee should confine their examination to eminent jurists and constitutional experts only. The Committee agreed to the suggestion made by some members for hearing the views of the following eminent persons at some suitable date preferably on Saturdays during the next session:—

(i) Shri H. V. Kamath, ex-M.P. and Member of Constituent Assembly.

(ii) Shri G. S. Gupta, former Speaker, Madhya Pradesh Vidhan Sabha.

(iii) Shri M. K. Nambyar, Advocate, Madras.

It was also decided to request Shri K. M. Munshi who was closely associated with the Constitution-making to send his views in writing to the Joint Committee.

8. As it was not possible to present the Report of the Joint Committee on the first day of the session as scheduled, the Joint Committee directed that extension of time should be asked for till the

last day of the next session. The Chairman was asked to bring this matter, in the meantime, to the notice of the Speaker as envisaged in Direction 79 (2) and also move a motion to this effect in the House on the 13th November, 1967. In the absence of the Chairman Shri A. N. Mulla was authorised to move this motion in the House.

9. The Joint Committee was then informed that despite a telegraphic reminder having been sent to the Bihar State Bar Council, Patna on the 19th October, 1967, no confirmation regarding their representatives appearing before the Committee on the 23rd October, 1967 had been received. It was, therefore, taken for granted that they were not appearing before the Committee.

10. The Committee then called Shri K. Santhanam, ex-M.P., and Member of Constituent Assembly the next witness for the day. Shri Santhanam was then called in at 10.55 hours. His attention was drawn to Direction 58 by the Chairman before the witness commenced his evidence.

11. A verbatim record of Shri K. Santhanam's evidence was kept.

The witness concluded his evidence at 13.15 hours.

12. The Committee then adjourned to meet again on Tuesday, the 24th October, 1967 at 10.00 hours to hear further evidence.

III

Third Sitting

The Committee sat on Tuesday, the 24th October, 1967 from 10.00 to 13.32 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri Ram Krishan Gupta
4. Shri Kameshwar Singh
5. Shri D. K. Kunte
6. Shri V. Viswanatha Menon
7. Shri Jugal Mondal
8. Shri Nath Pai
9. Shri P. Parthasarthy

10. Shri Deorao S. Patil
11. Shri Khagapathi Pradhani
12. Shri Mohammad Yunus Saleem
13. Shri Anand Narain Mulla
14. Shri Dwaipayan Sen
15. Shri Prakash Vir Shastri
16. Shri Digvijaya Narain Singh
17. Shri Tenneti Viswanatham
18. Shri P. Govinda Menon.

Rajya Sabha

19. Shri M. P. Bhargava
20. Shri K. Chandrasekharan
21. Shri A. P. Chatterjee
22. Shri Jairamdas Daulatram
23. Shri G. H. Valimohmed Momin
24. Shri G. R. Patil
25. Shri J. Sivashanmugam Pillai
26. Shri Jogendra Singh
27. Shri Triloki Singh.

REPRESENTATIVES OF MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri R. S. Gae, *Secy. Department of Legal Affairs.*
3. Shri K. K. Sundram, *Additional Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Shri N. A. Palkhivala, *Bar-at-law, Senior Advocate, Supreme Court of India.*

2. The Committee heard the evidence given by Shri N. A. Palkhivala, Senior Advocate, Supreme Court of India.
3. A verbatim record of the evidence of Shri Palkhivala was kept.
4. The Chairman then apprised the Committee of the following matters:—
 - (i) Telegram received from Shri M. V. Bhadram, M. P. indicating his inability to attend the Joint Committee Sit-tings;

- (ii) Letter dated the 21st October, 1967 from the Bihar State Bar Council, Patna (received on 23-10-1967) stating their inability to have been present at the sitting of the Joint Committee on the 23rd October, 1967 due to the shortness of time and asking for another date. The Committee noted the views expressed in the Memorandum submitted by the Council and decided that hard pressed as they were already, it was not necessary to send for the representatives of the Council.

5. The Committee then adjourned till 11.00 hours on Wednesday, the 25th October, 1967 to hear further evidence.

IV

Fourth Sitting

The Committee sat on Wednesday, the 25th October, 1967 from 11.00 to 13.10 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri Ram Krishan Gupta
4. Shri Kameshwar Singh
5. Shri V. Viswanatha Menon
6. Shri Jugal Mondal
7. Shri Nath Pai
8. Shri P. Parthasarthy
9. Shri Deorao S. Patil
10. Mohammad Yunus Saleem
11. Shri Anand Narain Mulla
12. Shri Dwaipayan Sen
13. Shri Digvijaya Narain Singh
14. Shri Tenneti Viswanatham

Rajya Sabha

15. Shri Kota Punnaiah
16. Shri M. P. Bhargava
17. Shri K. Chandrasekharan
18. Shri A. P. Chatterjee
19. Shri Jairamdas Daulatram

20. Shri G. H. Valimohmed Momin
21. Shri G. R. Patil
22. Shri J. Sivashanmugam Pillai
23. Shri Jogendra Singh
24. Shri Triloki Singh

REPRESENTATIVE OF THE MINISTRY OF LAW

Shri K. K. Sundaram, *Additional Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

The Indian Society of International Law, New Delhi

1. Dr. B. S. N. Murti—*Director.*
2. Shri P. Chandrasekhara Rao.
3. Shri M. Chandrasekharan.

2. The Committee heard the evidence given by the representatives of the Indian Society of International Law, New Delhi.

3. A varbatim record of the evidence was kept.

4. The Committee then adjourned till 11.00 hours on Thursday, the 26th October, 1967 to hear further evidence.

V

Fifth Sitting

The Committee sat on Thursday, the 26th October, 1967 from 11.00 to 13.20 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri S. M. Joshi
5. Shri Kameshwar Singh
6. Shri V. Viswanatha Menon
7. Shri Mohammad Yusuf
8. Shri Jugal Mondal
9. Shri Nath Pai
10. Shri P. Parthasarthy

11. Shri Deorao S. Patil
12. Shri Mohammad Yunus Saleem
13. Shri Anand Narain Mulla
14. Shri Dwaipayan Sen
15. Shri Digvijaya Narain Singh
16. Shri Tenneti Viswanatham

Rajya Sabha

17. Shri Kota Punnaiah
18. Shri M. P. Bhargava
19. Shri K. Chandrasekharan
20. Shri A. P. Chatterjee
21. Shri Jairamdas Daulatram
22. Shri G. H. Valimohmed Momin
23. Shri G. R. Patil
24. Shri J. Sivashanmugam Pillai
25. Shri Jogendra Singh
26. Shri Triloki Singh

REPRESENTATIVES OF THE MINISTRY OF LAW

Shri B. N. Bhatia. *Secretary, Legislative Department.*

Shri K. K. Sundaram. *Additional Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Shri R. S. Gae, *Secretary, Department of Legal Affairs,
Ministry of Law, Government of India, New Delhi.*

2. The Committee heard the evidence given by Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law, Government of India, New Delhi in his personal capacity.

3. At the outset, Shri R. S. Gae stated that he was appearing before the Committee in his personal capacity as a citizen of India and a student of Indian Constitutional Law and that his evidence would not in any manner reflect the views of the Government of India. He added that he had the prior approval of Government for doing so.

4. A verbatim record of the evidence was kept.

5. The Committee then adjourned till 11.00 hours on Friday, the 27th October, 1967 to hear further evidence.

VI

Sixth Sitting

The Committee sat on Friday, the 27th October, 1967 from 11.00 to 14.15 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS*Lok Sabha*

2. Shri N. C. Chatterjee
3. Shri S. M. Joshi
4. Shri Kameshwar Singh
5. Shri V. Viswanatha Menon
6. Shri Mohammad Yusuf
7. Shri Jugal Mondal
8. Shri Nath Pai
9. Shri P. Parthasarthy
10. Shri Deorao S. Patil
11. Shri Mohammad Yunnus Saleem
12. Shri Anand Narain Mulla
13. Shri Dwaipayan Sen
14. Shri Prakash Vir Shastri
15. Shri Digvijaya Narain Singh
16. Shri Sunder Lal
17. Shri Tenneti Viswanatham
- 17A. Shri R. S. Arumugam.

Rajya Sabha

18. Shri Kota Punnaiah
19. Shri M. P. Bhargava
20. Shri K. Chandrasekharan
21. Shri A. P. Chatterjee
22. Shri Jairamdas Daulatram
23. Shri G. H. Valimohmed Momin
24. Shri G. R. Patil
25. Shri J. Sivashanmugam Pillai
26. Shri Jogendra Singh
27. Shri Triloki Singh

REPRESENTATIVE OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri R. S. Gae, *Secretary, Department of Legal Affairs.*
3. Shri K. K. Sundaram, *Joint Secretary and Legislative Counsel.*
4. Shri S. K. Maitra, *Joint Secretary and Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

Shri H. M. Seervai, *Advocate-General of Maharashtra.*

2. The Committee heard the evidence given by Shri H. M. Seervai, *Advocate-General, Maharashtra.*

3. The witness concluded his evidence at 14:10 hours. The Chairman and members thanked the witness for the very learned and lucid exposition of the various articles of the Constitution given by him.

4. A verbatim record of the evidence was kept.

5. The Committee decided that the evidence given before them by the various bodies, constitutional experts, jurists etc. so far and that to be given at their subsequent sitting should be printed and laid on the Tables of both the Houses.

6. The Chairman then apprized the Committee of a telegram received from the Indian Chamber of Commerce, Calcutta regretting their inability to give their evidence before the Joint Committee on the 18th November, 1967, as earlier decided by the Committee, and instead of that asking to be fixed on the 17th November, 1967—that day being a holiday—that Committee had decided to sit on Saturday, the 18th and hear the evidence of the Chamber and some other experts. The Committee, therefore, decided not to accede to the Chamber's suggestion to be called on the 17th November, 1967.

7. The Committee then adjourned to meet again on the 18th November, 1967 as earlier decided by them.

VII

Seventh Sitting

The Committee sat on Saturday, the 18th November, 1967 from 10.00 to 13.05 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam

3. Shri Surendranath Dwivedy

4. Shri Kameshwar Singh
5. Shri D. K. Kunte
6. Shri Jugal Mondal
7. Shri Nath Pai
8. Shri Deorao S. Patil
9. Shri Khagapathi Pradhani
10. Shri K. Narayana Rao
11. Shri Mohammad Yunus Saleem
12. Shri Anand Narain Mulla
13. Shri Dwaipayan Sen
14. Shri Digvijaya Narain Singh
15. Shri Tanneti Viswanatham

Rajya Sabha

16. Shri M. P. Bhargava
17. Shri K. Chandrasekharan
18. Shri A. P. Chatterjee
19. Shri Jairamdas Daulatram
20. Shri G. H. Valimohmed Momin
21. Shri G. R. Patil
22. Shri J. Sivashanmugam Pillai
23. Shri Triloki Singh

REPRESENTATIVE OF THE MINISTRY OF LAW

Shri K. K. Sundaram, *Additional Legislative Counsel.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Indian Chamber of Commerce, Calcutta
Spokesmen:—

1. Shri I. M. Thapar, *President, Indian Chamber of Commerce.*
2. Shri G. K. Bhagat, *Senior Vice-President of the Chamber.*
3. Shri B. Kalyanasundaram, *Deputy Secretary of the Chamber.*

II, Shri S. Mohan Kumaramangalam, *Ex-Advocate-General, Madras.*

2. At the outset, the Chairman informed the Committee that Sarvashri Narasa Raju and M. K. Nambyar had expressed their inability to appear before the Committee on the 18th and 25th

November, 1967 respectively—their names had been suggested by some members of the Joint Committee. In place of Shri Nambyar, the Chairman, added, Shri Purshottam Trikamdas, Advocate, New Delhi, who had in the meanwhile desired to give evidence before the Joint Committee, had been asked to appear before the Joint Committee on Saturday, the 25th November, 1967 at 10.00 hours.

The Chairman further mentioned to the Joint Committee that Shri K. M. Munshi, who was requested at the instance of the Joint Committee to send his written views on the Bill, had stated in his letter dated the 3rd November, 1967 that he would try to send a note on the Bill by the end of November, 1967.

3. The Chairman then read out to the Committee the following extract from the letter dated the 28th October, 1967 received from Shri H. V. Kamath, Member, Administrative Reforms Commission and ex-Member of Constituent Assembly and Lok Sabha, who had been invited by the Committee to appear before them as a witness having been closely associated with the framing of the Constitution, as a member of the Constituent Assembly:—

“With regard to the note on the ‘Points of conduct and etiquette’ which you have enclosed with your letter, I wish to make it abundantly clear that I shall not regard myself as bound to answer every question put by the Chairman or a Member of the Committee or any other person authorised by the Chairman, and if this would constitute a violation of points 4 and 8 of the note, I would prefer to abstain from appearing before the Committee.”

While the Committee felt that they should have very much appreciated if Shri Kamath had not raised these technicalities, nevertheless, they could *not* consider it expedient to relax the existing parliamentary conventions, usages etc. with which Shri Kamath was fully acquainted in view of his long association with Parliament. Apart from this consideration, the Committee felt handicapped to extend the time for taking of further evidence beyond the 25th November, 1967—which they had fixed as the dead-line in this behalf. The Committee, therefore, decided *not* to press Shri Kamath to give evidence.

4. The Committee then heard the evidence given by the representatives of the Indian Chamber of Commerce, Calcutta and Shri S. Mohan Kumaramangalam, Ex-Advocate-General, Madras.

5. A verbatim record of the evidence given was kept.
6. The Committee then adjourned to meet again at 10.00 hours on Saturday, the 25th November, 1967.

VIII

Eighth Sitting

The Committee sat on Saturday, the 25th November, 1967 from 10.00 to 13.00 hours and again from 15.00 to 16.45 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri K. Hanumanthaiya
3. Shri S. M. Joshi
4. Shri Kameshwar Singh
5. Shri D. K. Kunte
6. Shri J. Rameshwar Rao
7. Shri Mohammad Yusuf
8. Shri Nath Pai
9. Shri Deorao S. Patil
10. Shri K. Narayana Rao
11. Shri Mohammad Yunus Saleem
12. Shri Anand Narain Mulla
13. Shri Daipayan Sen
14. Shri Tenneti Viswanatham
15. Shri N. C. Chatterjee.

Rajya Sabha

16. Shri Chitta Babu
17. Shri M. P. Bhargava
18. Shri K. Chandrasekharan
19. Shri A. P. Chatterjee
20. Shri Jairamdas Daulatram
21. Shri J. Sivashanmugam Pillai
22. Shri Triloki Singh
23. Shri Rajendra Pratap Sinha

REPRESENTATIVE OF THE MINISTRY OF LAW

1. Shri R. S. Gae, Secretary, Department of Legal Affairs.
2. Shri V. N. Bhatia, Secretary, Legislative Department.
3. Shri K. K. Sundaram, Additional Legislative Counsel.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

1. Shri Purshottam Trikamdas, *Advocate, New Delhi.*
2. Shri G. S. Gupta, *Ex-Speaker, Madhya Pradesh and Berrar Legislative Assembly and Member of Constituent Assembly.*
3. Shri M. C. Setalvad, *M. P. and former Attorney-General of India.*

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence was kept.

4. The Committee then considered their future programme of work. As the members wanted some more time to study and digest the evidence taken by the Committee, it was decided to ask for a further extension of time for presentation of their Report to the House to the first day of the next session of the House.

The Committee then authorised the Chairman to bring this matter to the notice of the Speaker as envisaged in Direction 79(2) and also move a motion for extension of time in the House at some convenient date. In the absence of the Chairman, Shri S. M. Joshi was authorised to move this motion in the House.

5. The Committee decided to sit again from Saturday the 27th January, 1968 for two to three days to deliberate further in the matter.

6. The Committee also fixed 15th January, 1968 as the date for giving notice of amendments, if any, to the Bill by the members.

The Committee then adjourned.

IX

Ninth Sitting

The Committee sat on Saturday, the 27th January, 1968 from 11.00 to 13.15 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee

4. Shri Ram Krishan Gupta
5. Shri S. M. Joshi
6. Shri Kameshwar Singh
7. Shri D. K. Kunte
8. Shri J. Rameshwar Rao
9. Shri V. Viswanatha Menon
10. Shri Mohammad Yusuf
11. Shri Jugal Mondal
12. Shri H. N. Mukerjee
13. Shri Nath Pai
14. Shri P. Parthasarthy
15. Shri Deorao S. Patil
16. Chaudhari Randhir Singh
17. Shri Mohammad Yunus Saleem
18. Shri Anand Narain Mulla
19. Shri Dwaipayan Sen
20. Shri Prakash Vir Shastri
21. Shri Sant Bux Singh
22. Shri Sunder Lal
23. Shri Tenneti Viswanatham
24. Shri P. Govinda Menon

Rajya Sabha

25. Shri Chitta Basu
26. Shri M. V. Bhadram
27. Shri Kota Punnaiah
28. Shri M. P. Bhargava
29. Shri K. Chandrasekharan
30. Shri A. P. Chatterjee
31. Shri Jairamdas Daulatram
32. Shri Ram Niwas Mirdha
33. Shri G. H. Valimohmed Momin
34. Shri J. Sivashanmugam Pillai
35. Shrimati Yashoda Reddy
36. Shri Jogendra Singh
37. Shri Triloki Singh
38. Shri Rajendra Pratap Sinha.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri R. S. Gae, Secretary, Department of Legal Affairs.
2. Shri V. N. Bhatia, Secretary, Legislative Department.
3. Shri K. K. Sundaram, Joint Secretary and Legislative Counsel.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Chairman referred the Joint Committee to the Statement containing a gist of main points made by the various witnesses in their evidence before the Joint Committee which had been circulated to them by the Secretariat.

3. The Committee then decided to take up the amendments in two parts, *viz.*, (i) those touching upon the right of Parliament to amend the provisions of Part III of the Constitution relating to Fundamental Rights and (ii) those relating to the proposed amendments in the Bill.

The Committee also decided to take up consideration of Shri Nath Pai's motion seeking to request Parliament to request the President to obtain the opinion of the Supreme Court on the Bill under article 143 of the Constitution, after consideration of the Bill clause-by-clause.

The Law Minister undertook to furnish a note dealing with other articles in the Constitution which should not be capable of amendment.

4. Shri G. H. Valimohmed Momin then moved the following amendment:—

“For article 368, the following article shall be substituted, namely:—

‘Amendment of the Constitution.

368. (1) Notwithstanding any judgment, decree or order of any court, Parliament may by law and in accordance with the provisions of clause (2) amend any provision of this Constitution, including any provision of Part III.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) any provision of Part III, or

- (b) article 54, article 55, article 73, article 162 or article 241,
or
- (c) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (d) any of the Lists in the Seventh Schedule, or
- (e) the representation of States in Parliament, or
- (f) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- (3) Any law made in pursuance of this article shall not be deemed to be a law within the meaning of article 13'."

5. Amendment Nos. 6, 9 and 13 of the Consolidated List were then moved. Amendment No. 8 was not moved by any member. Hence it was dropped.

The Committee then discussed at some length the implications of amendment Nos. 6 and 9. Discussion on amendment No. 13 was held over with the consent of the mover.

After the member-in-charge of the Bill, Shri Nath Pai, had replied to the discussion on amendment Nos. 6 and 9, No. 6 was put to vote and lost. No. 9 was withdrawn with the leave of the Joint Committee.

6. The Joint Committee then adjourned till 10.30 A.M. on Monday the 29th January, 1968.

X

Tenth Sitting

The Committee sat on Monday, the 29th January, 1968 from 10.30 to 13.10 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee

4. Shri Ram Krishan Gupta
5. Shri S. M. Joshi
6. Shri Kameshwar Singh
7. Shri D. K. Kunte
8. Shri J. Rameshwar Rao
9. Shri V. Viswanatha Menon
10. Shri Mohammad Yusuf
11. Shri Jugal Mondal
12. Shri H. N. Mukerjee
13. Shri Nath Pai
14. Shri P. Parthasarthy
15. Shri Deorao S. Patil
16. Chaudhari Randhir Singh
17. Shri K. Narayana Rao
18. Shri Anand Narain Mulla
19. Shri Dwaipayan Sen
20. Shri Prakash Vir Shastri
21. Shri Sant Bux Singh
22. Shri Sunder Lal
23. Shri Tenneti Viswanatham
24. Shri P. Govinda Menon.

Rajya Sabha

25. Shri Chitta Basu
26. Shri M. V. Bhadram
27. Shri Kota Punnaiah
28. Shri M. P. Bhargava
29. Shri K. Chandrasekharan
30. Shri A. P. Chatterjee
31. Shri Jairamdas Daulatram
32. Shri G. H. Valimohamed Momin
33. Shri J. Sivashanmugam Pillai
34. Shrimati Yashoda Reddy
35. Shri Jogendra Singh
36. Shri Triloki Singh
37. Shri Rajendra Pratap Sinha.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri R. S. Gae, Secretary, Department of Legal Affairs.
2. Shri V. N. Bhatia, Secretary, Legislative Department.
3. Shri K. K. Sundaram, Joint Secretary and Legislative Counsel.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Law Minister informed the Committee that on re-consideration, he had decided *not* to make available the note, which he had promised at the last sitting, regarding certain provisions of the Constitution which should be made unamendable.

3. The Committee then took up consideration of Amendment Nos. 7, 12, 13 and 14 and discussed their implications at considerable length with special reference to the majority required for amendment of the Constitution in each House of Parliament and the number of States whose ratification should be necessary.

The Committee could not conclude consideration of these amendments by the time they adjourned.

4. The Committee also decided to ask for further extension of time for the presentation of their Report till the first day of the Monsoon Session.

5. Earlier, the Chairman apprized the Committee of the notice of the following amendment given by Shri S. M. Joshi:

Page 2, after line 5, *add*—

Clause 2

“(d) At the end of the existing proviso the following shall be added, namely:—

‘Provided further that if such amendment seeks to make any change in Part III, the amendment shall require to be ratified by the people through a referendum to be held in such manner as may from time to time be regulated by Parliament by law before the Bill making such amendment is presented to the President for assent.’”

6. The Committee then adjourned to meet sometime during the next Session—the date to be fixed by the Chairman—to take up further clause-by-clause consideration of the Bill.

XI

Eleventh Sitting .

The Committee sat on Saturday, the 11th May, 1968 from 10.15 to 10.45 hours.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam

3. Shri Ram Krishan Gupta

4. Shri S. M. Joshi
5. Shri D. K. Kunte
6. Shri Nath Pai
7. Shri Deorao S. Patil
8. Shri Khagapathi Pradhani
9. Shri K. Narayana Rao
10. Shri Anand Narain Mulla
11. Shri Prakash Vir Shastri
12. Shri Tenneti Viswanatham

RAJYA SABHA

13. Shri Kota Punnaiah
14. Shri M. P. Bhargava
15. Shri K. Chandrasekharan
16. Shri Jairamdas Daulatram
17. Shri G. H. Valimohmed Momin
18. Shri G. R. Patil
19. Shri Banka Behary Das.

REPRESENTATIVES OF THE MINISTRY OF LAW

Shri K. K. Sundaram, Jt. Secy. and Legislative Counsel.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset the Chairman welcomed the appointment of two new Members Sarvashri N. R. Muniswamy and Banka Behary Das on the retirement of Sarvashri J. Sivashangmugam Pillai and Triloki Singh from Rajya Sabha with effect from 2nd April, 1968 and the reappointment of Shri Ram Niwas Mirdha to the Joint Committee.

3. The Committee decided that the synopsis of the Evidence given before them, as earlier circulated to them, should also be printed and laid on the Tables of both the Houses along with the Evidence.

4. The Committee then discussed at some length their future programme of work and decided to sit from Wednesday, the 10th July, 1968 onwards to take up further consideration of the Bill, either at Bangalore, if Speaker agreed or otherwise at Delhi.

XII

Twelfth Sitting

The Committee sat on Wednesday, the 10th July, 1968 from 17.00 to 17.30 hours in the Conference Hall of the Mysore Vidhan Soudha, Bangalore.

PRESENT

Shri Tenneti Viswanatham—*in the Chair.*

MEMBERS

Lok Sabha

2. Shri Surendranath Dwivedy
3. Shri Ram Krishan Gupta
4. Shri Kameshwar Singh
5. Shri J. Rameshwar Rao
6. Shri Mohammad Yusuf
7. Shri Nath Pai
8. Shri P. Parthasarthy
9. Shri Mohammad Yunus Saleem
10. Shri Anand Narain Mulla
11. Shri Sundar Lal
12. Shri V. Y. Tamaskar

RAJYA SABHA

13. Shri Chitta Basu
14. Shri M. P. Bhargava
15. Shri K. Chandrasekharan
16. Shri Jairamdas Daulatram
17. Shri Ram Niwas Mirdha
18. Shri G. H. Valimohmed Momin
19. Shri G. R. Patil
20. Shrimati Yashoda Reddy
21. Shri Rajendra Pratap Singh
22. Shri N. R. Muniswamy.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri G. A. Shah, *Jt. Secretary, Ministry of Law.*

SECRETARIAT

Shri H. S. Kohli—*Committee Assistant.*

2. In the absence of the Chairman, Shri Tenneti Viswanatham was elected to act as Chairman for the sitting under Rule 258(3).

3. The Committee had a brief discussion regarding the programme of work and decided to resume clause-by-clause consideration of the Bill at their subsequent sittings to be held from Thursday, the 11th July, 1968 onwards.

4. The Committee then adjourned to meet again at 10.00 hours on Thursday, the 11th July, 1968.

XIII

Thirteenth Sitting

The Committee sat on Thursday, the 11th July, 1968 from 10.00 to 13.05 hours and again from 15.30 to 18.00 hours in the Conference Hall of the Mysore Vidhan Soudha, Bangalore.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri Surendranath Dwivedy
4. Shri Ram Krishan Gupta
5. Shri Kameshwar Singh
6. Shri D. K. Kunte
7. Shri J. Rameshwar Rao
8. Shri Mohammad Yusuf
9. Shri Jugal Mondal
10. Shri H. N. Mukerjee
11. Shri Nath Pai
12. Shri P. Parthasarthy
13. Shri Deorao S. Patil
14. Shri Mohammad Yunus Saleem
15. Shri Anand Narain Mulla
16. Shri Dwaipayan Sen
17. Shri Prakash Vir Shastri
18. Shri Sunder Lal
19. Shri V. Y. Tamaskar
20. Shri Tenneti Viswanatham

Rajya Sabha

21. Shri Chitta Basu
22. Shri Kota Punnaiah

23. Shri M. P. Bhargava
24. Shri K. Chandrasekharan
25. Shri Jairamdas Daulatram
26. Shri Ram Niwas Mirdha
27. Shri G. H. Valimohmed Momin
28. Shri G. R. Patil
29. Shrimati Yashoda Reddy
30. Shri Rajendra Pratap Sinha
31. Shri N. R. Muniswamy

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri G. A. Shah, *Joint Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Committee condoled the death of Shri B. V. Baliga, former Speaker of the Mysore Vidhan Sabha and thereafter the Members stood in silence as a mark of respect to his memory.

3. The Chairman then mentioned to the Committee that they should conclude consideration of the Bill during the current Session. He suggested that as the Committee had already discussed at some length the various implications of the amendment sought to be made to the Constitution through the Bill, they might first dispose of the various amendments before them.

4. Shri N. R. Muniswamy who had given notice of Amendment Nos. 18 and 19, which had a negative effect on the provisions of the Bill, withdrew them by the leave of the Committee.

5. Shri Kameshwar Singh moved Amendment at S. No. 12 of the Revised Consolidated List of Amendments given notice of Shri S. M. Joshi which sought the amendment to make any change in Part III of the Constitution to be ratified by the people through a referendum and commended its consideration to the Committee. After some discussion, this amendment was negatived.

6. The Committee then resumed further consideration of the following partly discussed amendments:—

- (i) No. 16—was withdrawn by the mover, Shri Jairamdas Daulatram.
- (ii) No. 7—Discussion on this was raised by Shri D. K. Kunte on behalf of Shri N. C. Chatterjee.

(iii) No. 8—Shri T. Viswanatham raised discussion on this amendment. He also included Articles 79 and 168 in the first part of his amendment.

(iv) No. 11—by Shri A. P. Chatterjee—not taken up as the member was absent.

7. The Committee adjourned for lunch at 13.05 hours.

8. The Committee re-assembled after lunch at 15.30 hours.

9. Part (1) of Amendment No. 8 was put to vote and negatived.

10. The Committee then took up amendment at S. N. 2 of the Revised Consolidated List of Amendments given notice of by Shri G. H. Valimohmed Momin.

Shri Deorao S. Patil moved the following amendment to Shri Momin's Amendment:

"For the words 'two-thirds', substitute 'three-fourths'."

11. The Committee also took up Amendment Nos. 4 and 13 along with the Amendment of Shri Momin.

12. Shri M. P. Bhargava moved the following amendment to Shri Momin's Amendment:

"Substitute clause (1) of Shri Momin's Amendment by Amendment No. 4 by Shri N. C. Chatterjee."

13. The following further verbal amendment to Amendment No. 4 by Shri N. C. Chatterjee was suggested:

"For 'article 13(2)', read 'clause (2) of article 13'."

14. The Committee then discussed at some length the procedure for amendment of the Constitution as laid down in article 368 of the Constitution in the context of sub-clause (2) of the Amendment by Shri Momin.

15. The Committee authorised the following members to prepare a substitute draft of Shri Momin's Amendment for consideration at the sitting to be held tomorrow (12th July, 1968) in the light of the discussions today (11th July, 1968):

1. Shri D. K. Kunte
2. Shri Anand Narain Mulla
3. Shri Nath Pai
4. Shri M. P. Bhargava
5. Shri Mohammad Yunus Saleem
6. Shri K. Chandrasekharan

7. Shri P. Parthasarthy
8. Shri Dwaipayan Sen
9. Shri Tenneti Viswanatham
10. Shri Rajendra Pratap Sinha
11. Shri G. H. Valimohmed Momin

The Committee then adjourned.

XIV

Fourteenth Sitting

The Committee sat on Friday, the 12th July, 1968 from 11.00 to 12.05 hours in the Conference Hall of the Mysore Vidhana Soudha, Bangalore.

PRESENT

Shri R. K. Khadilkar—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri Surendranath Dwivedy
4. Shri Ram Krishan Gupta
5. Shri Kameshwar Singh
6. Shri D. K. Kunte
7. Shri Mohammad Yusuf
8. Shri Jugal Mondal
9. Shri H. N. Mukerjee
10. Shri Nath Pai
11. Shri P. Parthasarthy
12. Shri Deorao S. Patil
13. Shri Mohammad Yunus Saleem
14. Shri Anand Narain Mulla
15. Shri Dwaipayan Sen
16. Shri Prakash Vir Shastri
17. Shri Sunder Lal
18. Shri V. Y. Tamaskar
19. Shri Tenneti Viswanatham

Rajya Sabha

20. Shri Chitta Basu
21. Shri Kota Punnaiah
22. Shri M. P. Bhargava
23. Shri K. Chandrasekharan
24. Shri Jairamdas Daulatram

25. Shri Ram Niwas Mirdha
26. Shri G. H. Valimohmed Momin
27. Shri G. R. Patil
28. Shrimati Yashoda Reddy
29. Shri Rajendra Pratap Sinha
30. Shri N. R. Muniswamy

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri G. A. Shah, *Joint Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Chairman expressed his appreciation of the labour put in by members of the Drafting Sub-Committee today morning in producing an acceptable draft amendment to clause (2) of the Bill under consideration, reproduced below:

“Pages 1 and 2,

for lines 5-9 and 1-5 respectively, substitute—In this Constitution,—

(a) in article 368, for the marginal heading, the following marginal heading shall be substituted, namely:

‘Power to amend the Constitution’;

(b) the said article shall be renumbered as clause (2) thereof, and before clause (2) as so renumbered, the following clause shall be inserted, namely:—

‘(1) Parliament may by law amend any provision of this Constitution in accordance with the procedure laid down in this article.’;

(c) in clause (2) as so renumbered, in the proviso, in clause (b), before the words and letters ‘Chapter IV of Part V’, the following shall be inserted, namely:—

‘Part III.’; and

(d) after clause (2) as so renumbered, the following clause shall be inserted, namely;

‘(3) Nothing contained in article 13 shall apply to any law made in pursuance of this article.’;

3. This amendment was moved by Shri Tenneti Viswanatham.

The amendment was put to vote and adopted. All other amendments were not pressed.

Clause 2, as substituted, was adopted.

4. Clause 1: The following amendment was accepted:

Page 1, line 7, for "1967" substitute "1968".

The clause, as amended, was adopted.

5. Enacting formula: The following amendment was accepted:—

Page 1, line 1, for "Eighteenth" substitute 'Nineteenth'.

The enacting formula as amended was adopted.

6. The title was adopted without amendment.

7. The Bill as amended was adopted, subject to any minutes of dissent being given.

8. The Chairman then drew the attention of the Committee to the provision of Direction 87 of the Directions by the Speaker under the Rules of Procedure regarding minutes of dissent.

9. The Committee also decided that copies of memoranda/representations etc. received by the Committee from the various jurists/legal experts/organisations etc. should be placed in the Parliamentary Library for reference.

10. The Committee then adjourned till 11.00 hours on Saturday, the 13th July, 1968 to consider their draft Report.

XV

Fifteenth Sitting

The Committee sat on Saturday, the 13th July, 1968 from 11.00 to 12.30 hours in the Conference Hall of Mysore Vidhana Soudha, Bangalore.

PRESENT

Shri R. K. Khadilkar—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri Surendranath Dwivedy
4. Shri Ram Krishan Gupta
5. Shri Kameshwar Singh

6. Shri D. K. Kunte
7. Shri Mohammad Yusuf
8. Shri Jugal Mondal
9. Shri H. N. Mukerjee
10. Shri Nath Pai
11. Shri Parthasarthy
12. Shri Deorao S. Patil
13. Shri Mohammad Yunus Sleem
14. Shri Dwaipayan Sen
15. Shri Prakash Vir Shastri
16. Shri Sunder Lal
17. Shri V. Y. Tamaskar
18. Shri Tenneti Viswanatham

Rajya Sabha

19. Shri Chitta Basu
20. Shri Kota Punnaiah
21. Shri M. P. Bhargava
22. Shri K. Chandrasekharan
23. Shri Jairamdas Daulatram
24. Shri G. H. Valimohmed Momin
25. Shri Ram Niwas Mirdha
26. Shri G. R. Patil
27. Shrimati Yashoda Reddy
28. Shri Jogendra Singh
29. Shri Rajendra Pratap Sinha
30. Shri N. R. Muniswamy.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Secretary, Legislative Department.*
2. Shri G. A. Shah, *Joint Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee took up consideration of their draft Report and adopted it subject to the following:—

- (i) Paras 14-25 omitted;
- (ii) Para 26 renumbered as para '13'.
- (iii) Para 13 renumbered as para 14.

- (iv) Para 13 as renumbered—sub-para (iii)—adopted as amended after omitting the following words:

“As the Supreme Court’s . . . would be void,”

- (v) Para 27 renumbered as para 15.

3. The Chairman announced that the minutes of dissent, if any, should be sent by members to the Lok Sabha Secretariat by 10.00 hours on Saturday, the 20th July, 1968 and to give four copies of their respective minutes, if possible.

4. The Committee authorised the Chairman and, in his absence, Shri Tenneti Viswanatham to present the Report and to lay the Evidence and Synopsis of Evidence on the Table of the House on the 22nd July, 1968.

5. The Committee also authorised Shri G. H. Valimohmed Momin, and in his absence, Shri M. P. Bhargava to lay the Report, Evidence and Synopsis of Evidence on the Table of Rajya Sabha on the 22nd July, 1968.

6. The Committee then adjourned.

LOK SABHA
JOINT COMMITTEE
ON THE
CONSTITUTION (AMENDMENT) BILL, 1967
By Shri Nath Pai, M. P.
STATEMENT
Containing a Gist of Main Points Made by Witnesses
in their Evidence Before the Joint Committee



LOK SABHA SECRETARIAT
NEW DELHI

May, 1968
Vaisakha, 1890 (Saka)
Price : 40 Paise

P R E F A C E

The Statement included in this volume contains a gist of main points made by the various witnesses in their evidence before the Joint Committee on the Constitution (Amendment) Bill, 1967 by Shri Nath Pai, M. P., at their sittings held on the 23rd to 27th October, and the 18th and 25th November, 1967. The Statement was prepared with a view to enabling the Members of the Committee to see at a glance the main considerations urged by the witnesses in their evidence before the Joint Committee. The Statement contains only some of the important points made by the witnesses for and against the provisions of the Bill. Anyone wishing to make use of material contained in the statement should rely on and refer to the verbatim record of Evidence given before the Committee which has been printed in a separate volume and laid on the Table of the House.

2. This Statement has been printed and laid on the Tables of both the Houses of Parliament, along with the verbatim record of Evidence, in pursuance of the decision taken by the Joint Committee at their sitting held on the 11th May, 1968.

NEW DELHI;
The 11th May, 1968.

R. K. KHADILKAR,
*Chairman,
Joint Committee.*

**JOINT COMMITTEE ON THE CONSTITUTION (AMEND-
MENT) BILL, 1967 BY SHRI NATH PAI, M.P.**

COMPOSITION OF THE COMMITTEE

Shri R. K. Khadilkar—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. S. Arumugam
3. Shri N. C. Chatterjee
4. Shri Surendranath Dwivedy
5. Shri Ram Krishan Gupta
6. Shri S. M. Joshi
7. Shri Kameshwar Singh
8. Shri Krishnan Manoharan
9. Shri D. K. Kunte
10. Shri J. Rameshwar Rao
11. Shri V. Viswanatha Menon
12. Shri Mohammad Yusuf
13. Shri Jugal Mondal
14. Shri H. N. Mukerjee
15. Shri Nath Pai
16. Shri P. Parthasarthy
17. Shri Deorao S. Patil
18. Shri Khagapathi Pradhani
19. Chaudhari Randhir Singh
20. Shri K. Narayana Rao
21. Shri Mohammad Yunus Saleem
22. Shri Anand Narain Mulla
23. Shri Dwaipayan Sen
24. Shri Prakash Vir Shastri
25. Shri Digvijaya Narain Singh

*Appointed on the 22nd December, 1967 *vice* Shri K. Hanumanthaiya resigned.

26. Shri Sant Bux Singh
27. Shri Sunder Lal
28. Shri V. Y. Tamaskar
29. Shri Tenneti Viswanatham
30. Shri P. Govinda Menon.

Rajya Sabha

31. Shri Chitta Basu
32. Shri M. V. Bhadram
33. Shri Kota Punnaiah
34. Shri M. P. Bhargava
35. Shri K. Chandrasekharan
36. Shri A. P. Chatterjee
37. Shri Jairamdas Daulatram
- **38. Shri Ram Niwas Mirdha
39. Shri G. H. Valimohmed Momin.
40. Shri G. R. Patil
41. Shrimati Yashoda Reddy
42. Shri Jogendra Singh
43. Shri Rajendra Pratap Sinha
- †44. Shri N. R. Muniswamy
- †45. Shri Banka Behary Das.

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri R. S. Gae, Secretary, Department of Legal Affairs.
2. Shri V. N. Bhatia, Secretary, Legislative Department.
3. Shri K. K. Sundaram, Additional Legislative Counsel.
4. Shri S. K. Maitra, Additional Legislative Counsel.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

**Ceased to be member of the Joint Committee w.e.f. 2nd April, 1968 on his retirement from Rajya Sabha and was re-appointed by Rajya Sabha on the 10th May, 1968.

†Appointed on the 10th May, 1968 *vice* Sarvaswari J. Sivashanmugam Pillai and Triloki Singh who ceased to be members of the Joint Committee w.e.f. 2nd April, 1968 on their retirement from Rajya Sabha.

Witnesses Examined

Sl. No.	Name of witness	Dates of hearing	Page
1	Shri K. Santhanam, Ex-M.P. and Member of the Constituent Assembly	23-10-1967	1
2	Shri N. A. Palkhivala, Senior Advocate, Supreme Court of India. . . .	24-10-1967	3
3	The Indian Society of International Law, New Delhi.	25-10-1967	5
<i>Spokesmen:</i>			
	1. Shri B.S.N. Murti, Director		
	2. Shri P. Chandrasekhara Rao		
	3. Shri M. Chandrasekharan.		
4	Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law, Government of India	26-10-1967	7
5	Shri H. M. Seervai, Advocate-General of Maharashtra.	27-10-1967	11
6	Indian Chamber of Commerce, Calcutta. .	18-11-1967	14
<i>Spokesmen:</i>			
	1. Shri I. M. Thapar, President		
	2. Shri G. K. Bhagat, Senior Vice-President		
	3. Shri B. Kalyanasundaram, Secretary.█		
7	Shri S. Mohan Kumaramangalam, Ex-Advocate-General of Madras. . . . █	18-11-1967	15
8	Shri Purshottam Trikamdas, Advocate, New Delhi.	25-11-1967	17
9	Shri G. S. Gupta, Ex-Speaker, Madhya Pradesh and Berar Legislative Assembly and Member of Constituent Assembly. . . .	25-11-1967	18
10	Shri M. C. Setalvad, M. P. and former Attorney-General of India.	25-11-1967	18

JOINT COMMITTEE ON THE CONSTITUTION (AMENDMENT) BILL, 1967

BY

SHRI NATH PAI, M. P.

STATEMENT

Containing a gist of main points made by witnesses in their evidence before the Joint Committee.

Serial No.	Name of witness	Date of Evidence	Gist of views
1	Shri K. Santhanam, ex-M. P. and Member, Constituent Assembly.	23-10-1967	<p>I. General views</p> <p>Necessary provisions are embodied in the Constitution itself to resolve any conflict which may arise between the interests of the individual and the community at large. The only power which, under the existing provisions of the Constitution, Parliament do not have is to shut out the judicial review, and, in the national interest, it is imperative that power of courts to examine the reasonableness of a legislative measure should not be curtailed. The <i>status quo</i> should, therefore, continue.</p> <p>II. Intention of Constitution-makers</p> <p>At the time the Constituent Assembly was framing Part III on Fundamental Rights, it was never in the minds of members that,</p>

by a two-thirds majority Part III could be repealed. It was intended that the Fundamental Rights should be more or less sacrosanct. However, it was also true that when the Constituent Assembly came to the consideration of article 368, they did not think of excluding Part III from the purview of article 368.

III. *Meaning of the term 'law' in article 13(2)*

The word 'law' cannot possibly be applied to an ordinary law as it was not possible by an ordinary law to infringe Fundamental Rights. This could only be done by a constituent law.

IV. *Validity of the proposed measure*

It is doubtful whether the Bill, if passed, would result in the achievement of the desired aim, inasmuch as article 368, as proposed to be amended, like the existing article 368, would not be applicable to Part III, in view of the express provisions of article 13(2). It can be effective only when the Supreme Court revises its own judgment, in which case the present article 368 will suffice.

V. *Convening of a Constituent Assembly for amendment of Part III*

Constituent Assembly will not be a suitable instrument for protecting the Fundamental Rights of citizens. A Constituent Assembly, if convened, will be a body elected on the basis of adult suffrage. Lok Sabha is already a body elected on such basis. But whereas Lok Sabha has to pass a constituent law by a two-thirds majority,

the Constituent Assembly can decide the issue by a simple majority. As such, the process of amending Part III through a Constituent Assembly is not even as sound as the one envisaged in article 368.

VI. Suggestion for holding a Referendum for amending Part III:

A law providing for an amendment of the Fundamental Rights through a referendum may be passed by the Union Parliament under article 248(1). As this law would only be a procedural law, not abridging Fundamental Rights, it would not come within the ambit of article 13(2).

VII. Drafting suggestion :

In case it was decided to proceed with the Bill, the following words should be added to article 368, with a view to making the intonation of the Bill more clear :

“Notwithstanding anything in article 13 or any other article,”.

I. General views :

2. Shri N. A. Palkhivala, Bar-at-law, 24-10-1967.

Senior Advocate, Supreme Court of India.

(a) The Chapter on Fundamental Rights provides for political stability. In view of the diverse ideologies, faiths and creeds prevailing in the country, it was of prime importance that Fundamental Rights were not tinkered with. The proposed legislation would open flood-gates of pressures and counter-pressures. Also, in the efforts of the political parties to translate their ideology into action, a process of erosion of Fundamental Rights might ensue. All this was fraught with the risk of jeopardising the unity of the country.

(b) Fundamental Rights relating to property have already been abridged, and within the framework of the existing provisions of

the Constitution, any agrarian reform can be effected. The need today is not for more reform legislation but more effective implementation of the existing legislation.

(c) The timing of the introduction of the proposed measure was also inopportune. At the present juncture when there was scant respect for law and order, nothing should be done which would in any way undermine the authority of the Supreme Court. The proposed legislation, for which there was no pressing urgency, might create a new conflict between the highest legislative and judicial organs in the country. (*viz.* Parliament and Supreme Court). A hasty step taken now may become irtraceable later on. 4

(d) The validity of the present Bill, if passed, was also not free from doubt. It might be declared *ultra vires* by the Supreme Court and then the position would remain where it was.

The Bill should, therefore, be deferred till a future date when the whole issue can be considered dispassionately in a calm atmosphere.

II. Meaning of the term 'law' used in article 13(2):

The term 'law' used in article 13(2) includes a constituent law.

III. Convening of a Constituent Assembly :

While the best course in the existing circumstances would be to wait and consider, in case it was decided to take immediate action in

the matter, it should rather be done through a Constituent Assembly.

IV. *Referendum* :

While the views of the people on the issue can be better ascertained through a referendum, at the present time when the country was faced with so many pressing problems, the resources of the country should not be frittered away on holding a referendum.

25-10-1967

3. Indian Society of International
Law, New Delhi:—

Spokesmen :

1. Dr. B. S. N. Muri
2. Shri P. Chandrasekhara Rao
3. Shri M. Chandrasekharan

I. *General views* :

Parliament, as a chosen instrument of the people, should alone have the power to amend any part of the Constitution including Part III. Even though a large number of amendments to the Constitution had been made by Parliament during the preceding 17 years, sanctity of the Constitution had not been vitiated.

II. *Convening of a fresh Constituent Assembly* :

Convening of a fresh Constituent Assembly for the purpose of amending Part III of the Constitution was not feasible. What Parliament itself could not do, could not be done by a body created by it.

III. *Holding of a Referendum* :

Although there was nothing wrong in principle with the idea of holding a referendum for amending Part III, it would be a very expensive and time consuming process. It was also not certain whether a Constitutional amendment, approved by the people by means of a referendum, would be considered by the Supreme Court as legal and in conformity with the Constitution. As such, it was not a satisfactory process.

IV. *Further alternative suggestions :*

- (a) In view of the sacred character of Fundamental Rights, their amendability should be made subject to a more stringent procedure. Part III should, therefore, be brought within the purview of ~~proviso~~ to article 368.
- (b) Article 13 may also be amended so as to make it clear that the term 'law' used therein does not include Constitutional amendments. This could be done by adding the words 'but shall not include Constitutional amendments' in clause (3)(a) of article 13.
- (c) The marginal note to article 368 should also be suitably amended, for, otherwise, article 368 might continue to be treated as a procedural article rather than a substantive one.

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V. *Suggestion regarding Constitutional Review Committee :*

A standing Constitutional Review Committee should be set up which should periodically review judgments of the Supreme Court and High Courts and suggest necessary amendments to the Constitution. The idea of this Committee was taken from article 109 of the Charter of the United Nations which provided for a periodic review of the Charter by the General Conference. This could either be done by Parliament converting itself into a Committee or Parliament appointing a Joint Committee of the two Houses. The chief merit of such a Committee would be that it would allay the apprehensions of the people that the Constitution

was being tinkered with by the politicians to circumvent the inconvenient decisions of the Supreme Court.

I. *General Views* :

26-10-1967

4. Shri R. S. Gae, Secretary, Department of Legal Affairs, Ministry of Law, Government of India, New Delhi.

(a) Parliament's power to amend the Constitution was derived from article 368 and not from article 248 read with entry 97 of List I. It was inconceivable that after having enumerated all possible subjects in the three Lists, the Constituent Assembly should have left Parliament's power to amend the Constitution to be found in residuary powers.

(b) The Constitution—framers have made a clear distinction between laws to be made by Parliament in exercise of its legislative powers and Constitutional amendments to be made by it in exercise of its constituent powers. While the former have been dealt with in Chapter II of Part V, the latter have been dealt with in Part XX. Thus, the term 'law' used in article 13(2) should not be construed as including Constitutional amendments made by Parliament in exercise of its constituent powers.

(c) In view of the Supreme Court's judgment in the Golak Nath's case, it would be difficult for Parliament to give effect to the Directive Principles of State Policy contained in Part IV whenever these principles came into conflict with the Fundamental Rights guaranteed by Part III of the Constitution. For the socio-economic development of the country, it was, therefore, essential that the right of amending the Constitution should be restored to Parliament.

II. *Different courses to meet the situation arising from Supreme Court judgment in Golak Nath's case :*

The following five courses could be considered in this regard :

- (1) The Supreme Court might be moved to reconsider its decision in the Golak Nath's case by raising a similar issue before it in an appropriate case.
- (2) The advisory jurisdiction of the Supreme Court should be invoked under article 143 (1) of the Constitution by making a Presidential reference.
- (3) Parliament should enact a law under article 248 and Entry 97 of the Union List for convening another Constituent Assembly for amending provisions contained in Part III of the Constitution.
- (4) A law should be enacted to provide for holding a referendum for amending Part III of the Constitution.
- (5) Article 368 should be amended to provide expressly that Parliament has substantive power to amend any article of the Constitution.

The first course would not serve the end in view. The Supreme Court having given its decision so recently and no new circumstances having arisen since, the Supreme Court was not likely to reverse its decision in the Golak Nath's case. The second* course was also not advisable, firstly, because giving of opinion under article 143 was discretionary with the Supreme Court, and secondly because the advisory opinion thus given would not be binding on the Supreme Court. The third course, *viz.*, convening of a Constituent Assembly was also not feasible. If Parliament has no power to amend Part III of the Constitution, it cannot create a body to exercise that power because a delegate cannot enjoy more power than the delegation authority. Also, as the Constituent Assembly, if convened, would be able to adopt Constitutional amendments by a simple majority the exercise of constituent power by that body would be without the safeguards envisaged in article 368. Further, the Constitutional amendments adopted by the Constituent Assembly might also be construed as 'law' within the meaning of article 13(2). The fourth course, *viz.*, the holding of a referendum for amending Part III was also not advisable, considering the cost and labour involved. Also, it was difficult for laymen to comprehend the complicated issues involved in amending the Constitution. The fifth course, *viz.*, the amendment of the Constitution to the given end was thus the only appropriate course left to be adopted.

*A similar consideration was also urged by the representatives of the Indian Society of International Law, New Delhi in their evidence before the Committee on the 25th October, 1967.

III. *Further/alternative suggestions for the amendment of the Constitution :*

Article 368 of the Constitution may be amended on the following lines :

- (a) The article must specifically provide that Parliament shall have the exclusive power to amend any provision of the Constitution.
- (b) Provisions of Part III of the Constitution may be included in the proviso to that article. A further safeguard may be provided by requiring the ratification of amendments to Part III by not less than two-thirds of the State Legislatures, instead of not less than one-half of the State Legislatures.
- (c) Provision regarding the assent of the President on Bills seeking to amend the Constitution may be omitted.
- (d) The article may be further amended providing that an amendment of the Constitution under this article shall not be deemed to be a 'law' within the meaning of article 13 (a) of the Constitution.
- (e) The marginal note to the article 'Procedure for amendment of the Constitution' may be suitably amended.

5. Shri H. M. Seervai, Advocate-
General of Maharashtra.

27-10-1967

I. *Power of Parliament to amend the Constitution (including Part (III)) :*

(a) *Intention of Constitution makers :*

The debates in the Constituent Assembly on the draft articles 24, 304 and 305 clearly indicated that the entire Constitution including Part III was amendable by Parliament by following the procedure laid down in the Constitution.

(b) *History of judicial interpretation :*

The history of judicial interpretation preceding the Golak Nath's case also established that the Constitution was not immutable even in respect of Fundamental Rights. In the *Sankari Prasad* and *Sajjan Singh* cases, the Supreme Court had itself interpreted that 'law' used in article 13(2) refers to only ordinary law and not constituent law. An interpretation by Privy Council of similar provisions in the Constitution of Ceylon also lent support to this view.

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(c) *Need of vesting the amending power in Parliament :*

The amending power was vested in the sovereign Parliament not only to effectuate the intention behind the Constitution but also to correct what is called 'judicial errors' very often admitted by the courts publicly in their judgements. If judicial errors were not subsequently rectified by the courts themselves, there was no alternative but to correct such errors by amending the Constitution itself. For the smooth working of the Constitution, it was therefore

essential that the power of amending the Constitution must reside in the sovereign Parliament and not in judiciary whose function was wholly to interpret law.

(d) *Basis of amending power :*

The Supreme Court's argument that article 368 does not give substantive power of amendment to Parliament and that such a power has to be sought from article 248 and entry 97 of the Union List was not correct. Residuary power is an exclusive legislative power of Parliament; but power to amend the Constitution was not exclusively vested in Parliament because, under the proviso to article 368, the State Legislatures had also a share in the amending power. Further, the history of residuary power did not support this view. It could not be contemplated that, after the Constitution-makers had incorporated all the conceivable subjects in the three Lists—Union, State and Concurrent, they should have left such a vital power as the power of amending the Constitution to be found in residuary powers.

II. *Convening of a Constituent Assembly for amending Part III.*

It is not clear by what legal process could a fresh Constituent Assembly be brought into being. Then, under the provisions of article 368, a Constitutional amendment was required to be adopted by Parliament by a majority of total membership of the two Houses and by a two-thirds ma-

majority of the members present and voting. Further, in case of articles included in the proviso to article 368, Constitutional amendments were required to be ratified by not less than half of the State Legislatures. In case a fresh Constituent Assembly could be set up, it could be empowered to adopt Constitutional amendments by a bare majority, *i.e.*, without the safeguards envisaged in article 368. It also appeared to be odd that Parliament, which itself could not amend Part III by the requisite majority, could create a body possessing that power. Thus, the suggestion for convening a fresh Constituent Assembly was either legally impossible or wholly unnecessary.

III. *Holding of a referendum for amending Part III :*

Because of immense cost, delay and difficulties involved, holding of a referendum for amending Part III was not feasible. Further, as elections to Parliament and State Legislatures were held on the basis of adult suffrage, no special purpose would be served by holding a referendum.

IV. *Reference to Supreme Court for Advisory opinion under article 143 :*

It would be better to have the views of Supreme Court in advance, by referring the Bill to the Court for its advisory opinion under article 143 of the Constitution. This was the easiest, simplest and shortest way and would save the time of Parliament in adopting the Bill and of the State Legislatures in ratifying it. True, it was in the discretion of the Supreme Court to give advisory opinion under

article 143, but, on the basis of precedents, it could be reasonably hoped that the Supreme Court would not withhold its opinion on the question.

V. *Further/alternative suggestions :*

Article 368 should be so amended as to expressly provide that 'not-withstanding anything in the Constitution', the Parliament shall have the power to amend any provision of the Constitution by following the procedure laid down in the article.

6. Indian Chamber of Commerce,
Calcutta.

18-11-1967 I. *General Views :*

Spokesmen :

1. Shri I. M. Thapar
2. Shri G.K. Bhagat
3. Shri B. Kalyansundaram

The Constitution was adopted and given to the people by the people themselves. The Fundamental Rights, as enshrined in the Constitution, were sacrosanct and could not be taken away or abridged by Parliament. Once adopted by the people in the Constitution, these rights could not be taken away even by the people themselves.

II. *Interpretation of article 368 :*

Although the word 'this' used in article 368 would, apparently, include all the provisions of the Constitution (including those relating to Fundamental Rights), there seemed to be an illogicality involved in this interpretation; for, whereas Constitutional amendments relating to State matters were also required to be ratified by not less than

half of the State Legislatures, amendments relating to Fundamental Rights—which were more basic for the people—could be adopted without the concurrence of the State Legislatures.

7. Shri S. Mohan Kumaramangalam,
Ex-Advocate-General
of Madras.

18-11-1967 I. *General Views :*

Parliament, as a representative body of the people, was supreme and, as such, should have the power to amend any provision of the Constitution. It was, therefore, necessary that, in its efforts to implement the Directive Principles of State Policy enshrined in Part IV, it should not be hindered in any way by the provisions of Part III relating to Fundamental Rights. The process of Constitution-amending should not be cumbersome. Article 368, as it existed before the Golak Nath's case, met this requirement. The Bill under consideration sought to restore article 368 to its original position and was, therefore, in the right direction.

II. *Effect of the proposed measure :*

Mere enactment of the Bill under consideration would not enable the Supreme Court to question its validity. The question would arise only when some law infringing Fundamental Rights enacted by Parliament in pursuance of the amended article 368 was taken to the Supreme Court for a judicial pronouncement. The enactment of the proposed Bill would, therefore, not raise any immediate Constitutional crisis.

III. *Reference to Supreme Court for Advisory Opinion under article 143 :*

Albeit, not in consonance with the prestige of Parliament, the suggestion was quite a reasonable one in the circumstances. Such a course would help obviate a conflict between the two organs of the State and might, therefore, be adopted, in the interest of the harmonious working of the systems as a whole.

IV. *Alternative methods for amending Part III : Convening of Constituent Assembly/holding of a referendum :*

By transforming Parliament into a Constituent Assembly, Constitutional amendments could be adopted by a simple majority whereas, under the existing provisions of article 368, Constitutional amendments were required to be adopted by Parliament by a two-thirds majority of the members present and voting. Thus the safeguards, so carefully built up by the Constitution framers in the matter of Constitutional amendments, would just be thrown away. Further, such a provision was likely to be challenged in courts on the ground that there was no provision in the Constitution providing for the convening of fresh Constituent Assembly. Nor was the process of amending Part III through a referendum a suitable one. Not only was this process a more cumbersome one, but it was also difficult to get a carefully considered opinion from millions of people.

8. Shri Purshottam Trikamdas,
Advocate, New Delhi

25-11-1967 I. *General Views :*

Fundamental Rights guaranteed by the Constitution were the basic minimum rights which were necessary for an individual in a democratic—socialist society. The General Assembly of the United Nations had recently adopted two Covenants, *viz.*, Covenant on Civil and Political Rights and Covenant on Social and Cultural Rights. The rights contained in the former Covenant correspond to the rights enumerated in Part III of our Constitution. Now when the trend all over the world was to adopt some basic minimum rights for the individual and to make these rights justiciable, nothing should be done which would have the effect of whittling away the Fundamental Rights enshrined in our Constitution.

II. *Parliament's Power to amend Part III of the Constitution :*

Parliament has no power to take away or abridge Fundamental Rights by following the procedure laid down in article 368 of the Constitution. Even the enactment of the Bill under consideration would not empower Parliament to do so, in view of article 13(2) which expressly lays down that any law which takes away or abridges the rights conferred by Part III would, to the extent of contravention, be void. It was futile to make a distinction between a constituent law and an ordinary law because any Bill passed by Parliament, by whatever procedure it might be, would undoubtedly be a law. The inalienability of Fundamental Rights under article 13(2) was necessary, for, if it were left to the sweet-will of fleeting majorities of political parties in Legislatures to tinker with the Consti-

tution, there would be an end to individual freedom and democracy.

III. *Implementation of Directive Principles of State Policy :*

Fundamental Rights enshrined in the Constitution, in themselves, contain adequate restrictions which would enable Parliament to give effect to the Directive Principles of State Policy laid down in Part IV. For instance, under article 31A and the latter part of article 19, any land reforms could be effected. Thus, property rights enumerated in articles 19(1) (f) and 31 could not be considered a fetter on socio-economic reforms.

9. Shri G. S. Gupta, Ex-Speaker,
Madhya Pradesh and
Berar Legislative Assembly
and Member, Constituent
Assembly.

25-11-1967

I. The conditions prevailing in the country now were different from those prevailing at the time the Constitution was adopted. In order, therefore, to check hasty amendments to Part III, a more difficult procedure should be provided for. Accordingly, amendments to Part III should require a two-thirds majority of the total membership of each House and a majority of not less than five-sixths of the members present and voting.

10. Shri M. C. Setalvad, M.P.
and former Attorney-General
of India.

25-11-1967

Parliament's power to amend the Constitution :

Article 368 confers power on Parliament to amend any part of the Constitution. The conclusion arrived at by the majority

of the Supreme Court Judges in the Golak Nath's case was not correct.

II. Background of the Supreme Court majority decision in Golak Nath's case:—

The majority decision of the Supreme Court in the Golak Nath's case seemed to have been provoked by the cavalier manner in which Parliament had dealt with the articles embodying Fundamental Rights. The majority of the Court felt that the power to amend had clearly been abused. It was the apprehension of future action by Parliament of the same nature that had driven the majority of the Court to the conclusions they reached. True, the Constitutional amendments adopted by Parliament in the past had, by and large, affected Fundamental Rights relating to property, not touching other rights in the main, but this led to an apprehension that like property rights in the past, other Fundamental Rights might also be eroded. This feeling was also shared by a vast majority of the citizens who took the view that Parliament had repeatedly attended the Constitution and eroded Fundamental Rights.

It might well be that the majority decision of the Supreme Court was legally unsound and they came to this conclusion by 'strained' reasoning. But having regard to the above background, it was necessary that the power to amend articles embodying Fundamental Rights should be subject to a more rigid procedure.

III. Further/alternative suggestions for the achievement of the object of the Bill:

In case of enactment of the Bill under consideration, the amended article 368 would have to face a challenge before the Supreme

Court. In order to do so successfully, the Bill before the Committee should be so altered as not only to meet the points raised by the majority judgement, but also give an assurance to the ordinary citizen that his precious rights in Part III would not be taken away lightly. Further, keeping in view the importance of Fundamental Rights to the citizens, an amendment of the Constitution relating to Fundamental Rights should also be subject to ratification by the State Legislatures.

The Bill under consideration might, therefore, be amended on the following lines :

- (1) The marginal note to the article may be altered so as to make it clear that the article deals not merely with procedure but with the substantive subject of the amendment of the Constitution.
- (2) It may be specifically provided in the article that when exercising its power of amendment under article 368 Parliament is not acting in exercise of its ordinary legislative power but exercising its constituent or sovereign power.
- (3) It may also be provided that the amendment of the Constitution under article 368 shall not be deemed to be 'law' within the meaning of article 13(2) of the Constitution.

(4) The provision for presenting the Bill to President for his assent may be omitted.

(5) A further proviso may be added to article 368 enacting that an amendment taking away or abridging the Fundamental Rights contained in Part III of the Constitution shall be passed by each House of Parliament by a majority of three-fourths of the total membership of that House. The proviso shall also require such an amendment to be ratified by the Legislatures of not less than three-fourths of the States by resolution to that effect passed by these Legislatures.

(6) The witness also agreed that with a view to making the proposed measure fool-proof, the following words may be added to article 368:—

“Notwithstanding any provisions contained in article 13”,

The witness was, however, not in favour of doing away with article 13(2).

IV. *Holding of a Referendum/Convening of a Constituent Assembly:*—

A referendum would not be a successful process for amending Part III. Such a process would not only be an expensive one but also it was difficult for a layman to comprehend complicated issues involved in proposals for amendment of Fundamental Rights. Nor was the witness in favour of convening of a fresh Constituent Assembly for amending Part III.

V. *Reference to Supreme Court for advisory opinion under article 143.*

A reference to the Supreme Court for advisory opinion was also not feasible firstly because the Supreme Court had repeatedly held that it was not bound to render advice under article 143, and secondly because, even if such an advice were rendered, it would be only advisory. Parliament may, therefore, proceed with the proposed measure, subject to the suggestions made in III above.