

Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

12.08 1/2 hrs.

CONSTITUTION (SIXTY-FIFTH AMENDMENT) BILL*

[English]

THE PRIME MINISTER (SHRI RAJIV GANDHI): Mr. Speaker, Sir, the House would recall that when I introduced the Constitution (Sixty-fourth Amendment) Bill on the 15th of May, I had said that Government intended to bring forward in the Monsoon Session major legislation relating to the urban local bodies. We are now fulfilling that commitment.

Already in common parlance the Bill I introduced in the last Session is called the Panchayati Raj Bill and this, the Nagarpalika Bill. Allow me, Sir, to use these familiar names rather than the somewhat ponderous official titles.

The Nagarpalika Bill supplements the Panchayati Raj Bill, The theme of this Bill is the same as that of the other: Constitutional sanction for maximum democracy and maximum devolution. Even as we see the strengthening of the Panchayati Raj system as the key to eliminating the powerbrokers from the life of rural India, so do we see this Bill as the key instrument for reducing and eventually eliminating the role of the power-brokers in urban India.

We seek through these Bills to vest power in the only place where power rightfully belongs in a democracy in the hands of the people.

In the past few days we have been sad witness to the gravest assault on democracy since the founding of our Republic: the

abandonment of the Lok Sabha by a section of the elected representatives of the people. In the last general elections the people gave the Congress an overwhelming mandate to govern the country for five years. In the same election they returned a few Opposition Members to occupy the Opposition benches for the same five years. The Members of the Opposition were elected to fulfil the vital democratic function of contesting the Government and its policies right here, on the floor of this House, not in the streets or in the columns of newspapers.

We respect those democratic and independent-minded Members of the Opposition who are here with us today, to democratically debate the issues of fundamental national importance which I shall be raising. By the same token we must deplore the behaviour of those other Members of the Opposition who have simply run away from this highest forum of democratic dialogue. They have abused this noble institution to which they were elected. They have violated their mandate. They have betrayed their constituents. They have eroded democracy itself. Why have they tried to destroy democracy in Parliament? I have no doubt that it is primarily because they could not bear to see democracy devolved to the people. Had they stayed, they would have been exposed. They have fled. It has only exposed them sooner. A stern reckoning awaits them. The people will, of course consign to the dustbin of history those who have resigned the seats to which they were elected in 1984. Yet, this only increases the responsibility of those of us who have remained in this House to strengthen the foundations of our democracy.

Democracy in Parliament and in the State Legislatures remains fragile so long as the roots of our democracy do not reach down to the villages and mohallas where the people live. Our Constitution detailed the provisions for democracy in Parliament and in the State Legislatures. Therefore, democracy in these institutions has survived every vicissitude and flourished. However, our

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Constitution did not make democracy in local self-government a Constitutional obligation. And so democracy in the Panchayats and Nagarpalika has withered at the roots.

With these two Bills, we shall ensure that while India lives, democracy at the grass-roots lives. No longer will democracy in local self-government be a passing political pastime. Through these Bills, democracy in local self-government becomes a solemn Constitutional obligation, an obligation that can neither be suborned nor flouted for reasons of expediency or indifference.

Sir, we wanted to come to this House only after consulting all the Chief Ministers. Tragically, but in keeping with their penchant to avoid democratic discussion, all but two of the non-Congress Chief Ministers stayed away from the discussion. Many of them refused to let the elected representatives of their parties participate in the Nagarpalika Sammelans and I believe one of them has dismissed some of those who participated in those discussions. They denied permission to their Municipal Officers to attend the Conference of Municipal Officers called by the Ministry of Urban Development. We have done our best. We have done all we can to involve them in a nation-wide debate. They say there must be consensus before the Constitution is amended, but refuse to come for a discussion. How can a consensus be forged without dialogue? Their non-cooperation notwithstanding, we come to Parliament at the end of the widest and most intensive series of consultations undertaken in the history of independent India. I have personally interacted with upward of 25,000 knowledgeable, experienced, persons, most of whom are elected representatives of the people, before coming to this House with the Panchayati Raj and Nagarpalika Bills.

Times out of number we have stressed that this is not a Centre-State issue. Why should the Constitutional enshrinement of democracy in the Panchayats and Nagarpalikas be a bone of contention between the Centre and the States? Why must regular

elections, the end of arbitrary suspensions and the restitution within six months of the people's will be a matter of dispute between the Centre and the States? Why should reservations for Scheduled Castes and Scheduled Tribes and women be a matter of confrontation between the Centre and the States? There is, in fact, no contention between us, at the Centre, and the Governments in the States. There is contention only between those of us who wish to empower the people and those political forces who wish to see power retained in the hands of feudal oligarchies and the coterie of power-brokers they represent.

Far from encroaching on States' rights, we have displayed the utmost sensitivity to the structure of the Centre-State relationships built through the Constitution. Entry 5 of the State List remains untouched. The sovereignty of State Legislature remains undiminished. We are amending the Constitution, not drafting municipal law on a State subject. What is being taken away is the right to ignore the people. What is being removed is the right to flout the people's will. What is being ended is the reign of the power-brokers. It is not a question of the Centre's rights *versus* the States' rights. It is a question of the people's rights.

In according Constitutional status to the Nagar Palikas, we are but-responding to the joint resolution passed by the Central Council of Local Self-Government and the All India Council of Mayors pleading for the conferment of Constitutional status on urban local bodies. In both these bodies were represented Ministers, Mayors and other elected representatives of the Opposition Parties including political parties represented in this House today and those they have run away. Ranging from the CPI (M) to the BJP and taking in much that lies in between, official spokesmen of all these Parties have again and again asked for Constitutional recognition for the Nagar Palikas. As recently as in their representation to the National Commission on Urbanisation, the Calcutta Corporation headed by a CPI (M) Mayor argued that a country—I quote:

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'wedded to grassroot-level democracy must bless its local institutions with a Constitutional status.'

They went in to say—and I quote again:

"This bold initiative would become much more meaningful if the roles, functions, responsibilities (fiscal and other) and obligations of various levels of government are Constitutionally defined."

And I cannot resist quoting also their categorical conclusion that urban problems cannot be solved without giving:

'local governments their rightful place in the country's Constitutional framework itself.'

What has happened to change their minds? Let me phrase the question in a different way: what has happened to change their principles? Is it that they are getting too used to the company of those with diametrically opposed ideologies and those with no principle or ideology at all?

We have heard the argument that there is no need for a Constitutional amendment to bring democracy to the grassroots and endow power to the people. It has been argued that what is needed is political will. I respectfully submit, Sir, that it takes more political will to amend the Constitution than it does to pass a municipal law. I would also respectfully submit, Sir, that our Constitutional Amendment creates the necessary political will where that will does not exist. There is no place in any of this for a holier-than-thou attitude. No party in India can claim an unblemished record in local self-government. Equally there is no major political party in India which has not something to its credit in regard to local self-government. There are some Congress Governments that have done better than others. Equally there are Opposition-run Governments which have done sometimes better than others, sometimes worse, indeed sometimes better than their

own past record, while sometimes falling short of their past achievement. Our approach to the Panchayati Raj and Nagarpalika Bills has been non-partisan. We have drawn from the experience of all. We are beholden to all. We now bring forward a Bill which makes democratic decentralization to the Nagarpalikas a keystone of the country's Constitutional arch.

Having discovered that there is an irresistible groundswell of popular support for the Panchayati Raj and Nagarpalika Bills, one Opposition party has now come up with an alternative proposal for a Constitutional amendment. The proper forum to table such amendments would be the floor of this House. But since the Party mainly responsible for these alternative proposals has fled its democratic responsibilities, their proposals cannot even be considered. Let us see what happens in the other House where, in glaring contrast to their behaviour here, they cling like limpets to their seats.

Then there are the purists of the Opposition who say that, in no circumstances, will they have any truck with Constitutional provisions for local self-government. This purity is, however, called into question when one discovers that, a recently as at the February 1989 Joint Meeting of the Central Council for Local Government and the All India Council of Mayors, the delegations of the Telugu Desam Government of Andhra Pradesh, the Left Front Government of Kerala and the CPI(M) Mayor of Calcutta, leading a delegation of the Left Front Government of West Bengal, were all party to a resolution which demanded a Constitutional amendment in relation to the Nagarpalikas.

There are yet other constituents of the National Front—or, should I say, the National Front?—who demanded at the 11th Joint Meeting a uniform statute for all Nagarpalikas in the country. How can there be a uniform statute without a Constitutional amendment? And even assuming for a moment that this is achieved by some legal legerdemain, the essential difference between a Constitutional amendment and a

Municipal statue remains. The consequences of a Constitutional amendment are ineluctable. Our proposals would enshrine democracy in the local bodies in the most sacred basis of our modern nationhood. In contrast, any model bill will have no binding significance for State Legislatures and no guarantee of outlasting changes of party or personality. If we really want democracy and devolution in the Nagarpalikas, there is no alternative to the kind of Constitutional amendments that we propose.

The starting point of the Nagarpalika Bill is the recognition that those who live in urban settlements are entitled to the same democratic rights, and the same rights and responsibilities for development, as we seek to confer on rural India through the Panchayati Raj Bill.

Already, a quarter of our population lives in urban India. The proportion will rise to a third by the turn of the century and cross the half-way mark within a few decades thereafter. This major demographic trend needs not only to be recognised but also encouraged. What has gone wrong with our pattern of urbanization is not that there is too fast and furious a flood of people into towns and cities, as that the pattern of urbanization is skewed. It is the larger metropolitan cities that are attracting the bulk of those coming in from the rural areas. This severely strains the resources of the larger cities without conferring any real benefit on the rural areas from where the new entrants have come. What we need is a rational pattern of urbanization. We need to see small and large towns growing in every district, drawing the bulk of their population from the surrounding rural hinterland. That way the talent and enterprise of the people will remain, to a large extent, within the district. Urbanisation will be related to rural requirements. Urban settlements will cease to be isolated compartments.

It is the compartmentalization of India into rigidly segregated rural and urban settlements that has been the worst legacy of the colonial system of local self-government.

When, 107 years ago, the British introduced their system of urban local self-government, the urban settlements of India had a very different role to play to the one we now envisage for them. The colonial government of the time saw the urban settlements of India as enclaves where they could hide themselves away comfortably from the surrounding reality. They assumed that drains and drinking water, street lighting and street cleaning were needed only for themselves and their hangers-on. It was assumed that civic amenities were not for rural India.

Four decades into Independence, the reality has changed but the shell remains much the same. The law makes it obligatory to provide civic amenities for all recognised urban settlements, but the strained resources of the urban local bodies makes it almost impossible for them to meet their legal obligations. On the other hand, the inhabitants of rural India are demanding—rightly—that they too be given civic amenities, and—rightly—they are, increasingly, receiving their due.

We have to get out of the colonial categorization of India into separate rural and urban boxes. We have to replace the compartmentalization of rural and urban India by a rural-urban continuum, which threads the farthest rural hamlet to the largest megapolis in a *rudrakshamala* of democracy and devolution.

Secondly, in the colonial system of Municipal administration there was no place for development planning and no role for development activities. When Panditji introduced Panchayati Raj to fill the rural vacuum left by the colonial legacy, he envisaged the institutions of Panchayati Raj as a crucial instrumentality of development. Although, over the years, the Panchayati Raj institutions have decayed, they have remained, in concept at least, a prime instrument of development. In contrast, the Municipal bodies have withered but assumed no developmental role. The development of India is not possible without planning for development in our urban settlements as much as in our

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rural settlements. Indeed, planning at the crucial interface between the rural hinterland and the urban settlement will be the chief progenitor of accelerated growth.

Accordingly, the first chapter of the Bill we have tabled deals with settlements in transition from rural to urban.

As it is, such settlements constitute the single largest category of settlements beyond the rural village. The present tendency, in most parts of the country, is to classify such settlements as urban and take them entirely out of the purview of rural-urban interface. We propose that, instead of a proliferation of non-viable urban local bodies at this end of the spectrum, local self-government in the Nagar Panchayats partake of the flavour of both rural administration and urban administration. This is emphasised in the very name suggested for these bodies, Nagar Panchayats, that is the simultaneous recognition of the urban character of such a settlement and its continuing link with the rural countryside. More to the point, the powers and responsibilities devolved on Nagar Panchayats draw both from the rural list and the urban list. Planning undertaken by Nagar Panchayats will marry the requirements of the rural hinterland to activity that can best be undertaken in the transitional settlement. The recognition and encouragement of Nagar Panchayats will draw away from the land the populations that the village cannot support while retaining within the locality, for the common benefit of the rural hinterland and the urbanising settlement, the talent and enterprise of those willing to undertake the risk and the adventure of uprooting themselves from their ancestral villages. Instead of being hollow symbols of a false prestige, as the smaller Municipalities regrettably are at present, the Nagar Panchayats will become the focal points of the dynamics of development.

We would hope that in every district, one or some of the Nagar Panchayats will grow into a town worthy of a Nagarpalika. It

is by the even spread of towns around the country that we will take the pressure off the large metropolises as well as off the land. It is in the spread of such settlements that we seek a rationalization of the pattern of urbanisation. It is also these settlements that will, progressively and in phases, serve as the foci for industrial growth centres. Thus, we bring together the recommendations of the National Commission on Urbanization and our scheme of growth centres.

Let us now see how decentralized democracy in the Nagarpalikas compares with decentralised democracy in the Panchayats.

Democracy in village panchayats has two distinctive characteristics. First, the individual voter has a close, personal relationship and ready access to the elected representative because, on an average, each Panch represents between 100 and 500 voters. Second, each Panch has a voice which counts for a great deal in the Panchayat. It is the combination of these two factors—the personal contact between the voter and the elected representative, and the importance of the elected representative in the elected body—which is the first essential step towards eliminating the powerbroker from the polity.

In contrast to the three levels of Panchayati Raj—the village, the block, and the district—we have so far only had single-tier Municipal administration. This works fairly satisfactorily in smaller towns because the wards are small and the Municipal Council compact. However, as the town grows larger, the distance between the voter and his representative increases, and the number of members of the Municipality also tends to increase. By the time towns grow into cities, and cities into metropolises, the median size of the ward expands to 30,000 and more, extending, in the case of one Delhi ward to even two lakhs and above. The membership of the Corporation also expands to nearly one hundred and fifty members.

To bring democracy in urban settle-

ments closer to the people in the mohallas and the neighbourhoods where they live, the Nagarpalika Bill proposes two innovations. The innovations are by no means a radical new departure. They build upon existing informal arrangements and administrative structures.

In all urban settlements, with a population of one lakh or more, we propose the constitution, by direct election, of Wards Committees, to whom the Municipality will devolve local powers and local responsibilities, and such finances as are required to carry out their assigned tasks. We leave it to State Legislatures to determine the territorial area and size of population which will be served by a Wards Committee. We would hope the jurisdiction of a Wards Committee would be sufficiently compact to give citizens a sense of personal involvement in the affairs of their neighbourhood and ready access to the elected representatives to deal with their ward-level problems. The Ward Councillor will be a member of the Wards Committee of his area and will constitute the link between the Ward and the Municipality.

In cities with a population above three lakhs, we propose that the chairpersons of the Ward Committees be constituted into a Zonal Committee. The determination of the territorial area and size of population falling within a Zonal Committee is left to the State Legislature to decide. Powers, responsibilities and finances will devolve to the Zonal Committee from the Municipal Corporation.

A great advantage of the introduction of a two-tier system of municipal administration in the larger Municipal Councils, and a of a three-tier system of municipal administration in Municipal Corporations, is that it will level councilors and corporators free to deal with citywide issues, with matters of policy such as city-wide infrastructure, overall economic and social development, linkages with neighbouring Municipalities and economic interaction with the district as a whole.

Hitherto, the absence of effective, rep-

resentative local-self-government has introduced a glaring distortion in our system. If a drain in a mohalla gets blocked, the Ward Councillor, the President of the Municipality, the MLA, the MP and the local Minister are all together approached to get the drain unblocked. Sometimes the unblocking of the drain even requires the intervention of the Prime Minister!

The removal of such distortions requires a systemic changes so that each level focusses on its level of responsibility.

The establishment of Wards Committee will give the people of the Mohalla or para, the locality or neighbourhood, a sense of personal involvement in their civic affairs. It will afford an opportunity for public-spirited citizens to serve their locality. It will help focus attention on how the people themselves view their problems and the solutions they suggest. It will help mobilise local participation and local resources for local development. It will give voluntary organisations a neighbourhood forum in which to share ideas and explore the scope for citizen action. The city will then truly belong to the people.

The importance of this in the poorer parts of the city cannot be over-emphasised. Today, the unrecognised and unwanted are left uncared for. They huddle together in festering slums. They are unrecognised because they are unauthorised. They wait in dread of the moment when they will be uprooted. Uprooted, they settle themselves elsewhere for settle somewhere they must. That they are unauthorised does not mean that they must. That they are unauthorised does not mean that they do not exist. They do and for their protection they turn to the slum bully, who territories them into submission but, in exchange, offers a measure of protection. The children of the unwanted are then sucked into the underworld. The Wards Committees offer these unfortunates a new hope of a new dawn. The mohalla can begin looking after its own. The elected representatives of the mohalla will look after the interests of the mohalla. The mohalla can cease being at the mercy of others. The slum

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bully will give way to the mohalla panchayat, that is, the Wards Committee.

We have assured the involvement of the Ward Councillor or Corporator in the work of the Wards Committee. This will help him keep in close touch with locality-level problems but, at the same time, free him to consider larger questions of policy.

The country has enthusiastically welcomed the assurance of regular, periodic elections to the Panchayats every five years. Through this Bill, we seek to extend this provision to the Nagarpalikas. The country has also greatly welcomed the proposal to reconstitute dissolved Panchayats within six months by direct election. We extend this provision too, through this Bill to the Nagarpalikas.

Social justice demands representation for the Scheduled Castes and the Scheduled Tribes in proportion to their population. We have assured this in the Panchayats. We assure this too in the Nagarpalikas.

There is no section of our society more oppressed, more exploited and more neglected than women. In every segment, class or community, women suffer all the disabilities inflicted on that group and, in addition, suffer also the consequences of gender discrimination. Yet, their contribution to economic life, social well-being, cultural continuity and ethical standards is far greater than their share of the population. We must make a determined beginning to bring women into the mainstream of local self-government. It is proposed to extend reservations for women to Nagarpalikas on the same pattern as has been envisaged in the Panchayats.

I now turn to the functions of urban local bodies. The traditional civic functions of Municipalities are well-known and well-understood, if not always well-implemented. We would like to see the Nagarpalikas go beyond the mere provision of civic amenities.

They should be empowered to play a crucial role in the preparation of plans for local development and in the implementation of development projects and programmes, including specially conceived programmes for urban poverty alleviation.

That is the only way of involving people in their own development and ending the mai-baap syndrome. Real responsibility will foster realistic expectations, and an understanding at the grassroots level of resource constraints. Nagarpalika members and those who elect them, must learn the necessity of choosing between alternative options, and the need to mobilise additional resources to meet additional demands. At the same time, the people's involvement in the planning process will lead to plans which respond to local needs and local desires. Planning should not be the unravelling of some bureaucratic fantasy about what is good for the people. *Ti si fo* the people to themselves decide what is good for them.

I would like to particularly emphasise that the Nagarpalika Bill stresses, as does the Panchayati Raj Bill, that planning by local bodies should deal not only with economic development but also with social justice. This means that no plan for economic development drawn up by any local body will be valid unless its social justice component has been specifically spelt out in the plan. Thus, social justice is not left as an adjunct to the planning process but made an integral part of it.

Planning without resources is an invitation to irresponsibility. On the other hand, planning based on a clear idea of the magnitude of available resources, and anchored, to the extent possible, in self-generated resources is the *sine qua non* of responsible planning. We propose that a Finance Commission be constituted in every State to review Municipal finances and recommend principles on the basis of which the sound finance of the Nagarpalikas can be assured. As in the case of Panchayats Raj institutions, this would involve the earmarking of certain taxes for assignment to, or appropriation by,

the Nagarpalikas, in addition to grants-in-aid. It is our hope that Finance Commissions would see their way to progressively devolving to the Nagarpalikas fiscal responsibility for the appropriation of the revenues of more and more taxes, duties, tolls and fees, because it is when a nexus is established between revenues raised and revenues spent that local bodies are best able to exercise fiscal responsibilities. We recognise, of course, that no Nagarpalika will be able to survive on its self-generated resources alone. A system of incentive grants is essential to provide an additional stimulus for fiscal responsibility and financial self-reliance.

There is scope for the Nagarpalikas to go much further in looking for resources for local development. They must be encouraged to seek access to the capital market, of course keeping in mind their capacity to service the Municipal Debt. There is need for specialised financial institutions to deal with Municipalities and urban development, in particular housing. There is need also for a refinance body similar to the National Bank for Rural and Agricultural Development (NABARD). We are making a study of these possibilities.

The Panchayati Raj Bill seeks to devolve powers and responsibility for planning to Panchayati Raj institutions. The Nagarpalika Bill does the same for the Nagarpalikas. Any district is, however, a composite of Panchayats and Nagarpalikas. It is, therefore, essential to have a mechanism for consolidating and harmonising the plans prepared by different Panchayats and Nagarpalikas, preparatory to drafting a development plans for the district as a whole.

This brings us back to our running theme of the rural-urban continuum. Colonialism created the artificial rural-urban divide. democracy and devolution must restore the interaction of rural and urban settlements so that the district as a whole prospers, with planning in the towns fostering in the countryside more remunerative cropping patterns, higher agricultural productivity, greater incomes and larger employment and, reciprocally,

urban prosperity being accelerated by linkages with the rural economy and with other urban settlements in the district. We must create an awareness and a recognition of the advantages of the integrated development of the district as a whole.

It is, therefore, proposed that a Joint Committee of the Nagarpalikas and Panchayats be established to undertake these tasks. The Committee will be elected by the members of the Zila Panchayat and the Nagarpalikas from amongst themselves in proportion to the ratio of the rural to the urban population. Reservations for the Scheduled Castes, Scheduled Tribes and women will be assured in the Committee. Thus, the district development plan will not only include the social justice component of the plans prepared by each Panchayat and Nagarpalika. It will be prepared and finalised only with the full participation of the Scheduled Caste and Scheduled Tribe representatives, in proportion to their population, and with women constituting 30% of the membership of the committee.

For metropolitan areas, the Nagarpalika Bill proposes the establishment of a Committee to consolidate and harmonise the development plans of the Panchayats and Nagarpalikas comprised within the metropolitan area, as also to prepare the development plan for the metropolitan area as a whole. We have ensured popular representations in the Committee by providing that at least two-thirds of the members will be elected from and amongst the members of the Nagarpalikas and the chairpersons of the Panchayats falling within the metropolitan area. The remaining one-third could represent authorities with special interest in the metropolitan area as well as government representatives and persons of eminence.

In the course of the nation-wide debate that has followed the introduction of the Panchayati Raj Bill, apprehensions have been expressed about criminals and anti-social elements entering the body politic through the local bodies. Such apprehensions are not without foundation. We have

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had several instances in the past of persons who would be disqualified from standing for Assembly or Parliamentary elections being able to contest local body elections. The Constitution affords protection against the entry of such persons to the Assemblies and to Parliament. Its very silence on the subject of disqualification for membership of the Panchayats and the Nagarpalikas has resulted in State legislation leaving wide open the lacunae and loopholes through which such undesirable elements have wormed their way into the local bodies. We are plugging that gap. The Bill before the House details the disqualifications for the Panchayats and the Nagarpalikas based upon the existing Constitutional provisions in regard to the Assemblies and Parliament, as well as disqualifications prescribed through legislation. The implication is that all the disqualifications we introduced through our amendment last December to the Representation of People's Act will also apply to candidates contesting elections to the Panchayats and the Nagarpalikas. Our Bill also opens the possibility for State Legislatures to introduce other disqualifications which may be necessitated by local conditions.

The Constitutional amendments which I commend for your consideration constitute but the first stage of a process. The process must be carried forward to the second stage of State legislation and the third stage of executive implementation. Many of the details of the new system can be settled only at these subsequent stage. Quite rightly high importance is attached to such matters as the convening of Gram Sabhas to consider issues of importance, transparency in the proceedings of the Panchayats and the dissemination of public information about their decisions, the public notification of electoral rolls, and the public display of information about the implementation of programmes such as the Jawahar Rozgar Yojana, including details of the works undertaken the expenditure made, and the names of beneficiaries. These are matters that cannot be dealt with in a Constitutional amendment but must be dealt with at later stages. State

legislation, the rules made thereunder and the Government Orders issued will, we hope, not merely conform to the letter and spirit of these amendments, but creatively interpret them to fulfil the high expectations our people have reposed in the rejuvenation and revitalization of the Panchayats and Nagarpalikas. It would be the responsibility of State Governments to undertake the required dispositions to bring within the purview of the elected authority, the district bureaucracy and official agencies operating in the district. The recruitment, training and orientation of the Government servants who will service the local bodies is a State responsibility. It would be for the State Governments to ensure the proper staffing and the smooth flow of funds to finance the assigned tasks and devolved functions of the Panchayats and the Nagarpalikas. All these are tasks which call for close cooperation between the Union Government and the State Governments. Our cooperation is pledged. The people will not forgive the State Governments who fail to cooperate. So, our task does not end with the consideration and passage of these Bills. We would hope a vociferous public opinion and vigilant monitoring will ensure that our intentions are fully and faithfully realised.

The Constitution Amendment Bills we bring before this House constitute, by no means, the end of our grassroots revolution. We look forward, in the next Lok Sabha, to thoroughly revamping the cooperative movement which, in many sectors and many parts of the country, has run aground on the shoals of upper-class domination, mismanagement, malfeasance and worse. We are also conscious of our work on the Panchayats being unfinished because we have not yet dealt with the nyaya panchayats. Equally, in urban India, we need to complement responsive administration with the quick delivery of justice. This work will be a major priority for our Government in the Ninth Lok Sabha.

Sir, this is a moment of history. This is a moment of revolution. The decisions we take will decisively determine the destiny of our democracy. We are here in this House by the

will of our people. It is to the people we shall return shortly to seek a renewal of our mandate.

Five years ago, we had promised our people a radical restructuring of government at the grassroot to make it more representative, more responsible and more responsive. We now on the threshold of the most significant systemic change to take place since the adoption of the Constitution 40 years ago.

With these two Bills, we redeem our pledge to our people. Power to the people. The people are with us.

I, now, seek leave of the House to introduce the Constitution (Sixty-fifth Amendment) Bill, 1989.

Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. SPEAKER: Motion moved:

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

Shri Shahabuddin may speak now.

SHRI ABDUL RASHID KABULI (Srinagar): Sir, I would also like to speak. *(Interruptions)*

[Translation]

MR. SPEAKER: I will go by the Rules and not by what you say. He gave it in writing. *(Interruptions)*

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Sir, I oppose the Bill which the hon. Prime Minister has just sought to introduce, not on merits but on constitutional grounds.

It is established constitutionally that the validity of a legislation depends on whether the Legislature has due legislative power or

not. I would like to draw the attention of the House to Article 46, Sub-Section 3 read with Entry 5 of List II of our Constitution and I would like the House to ponder over the constitutional meaning of these provisions in our Constitution. Within the powers assigned to a Legislature under our Constitution, a Legislature has plenary power of legislation—sovereign powers—as the Prime Minister himself pointed out and limited by the distribution of powers under the Seventh Schedule. No Legislature can transgress those limits which are specified in the Constitution because if any encroachment of excess takes place, the constitutional validity of that legislation can be questioned.

The Supreme Court has ruled that the Union Legislature cannot delegate or transport its power of legislation to the State Legislatures or vice-versa. That is to say, even if the State Legislatures were taken into confidence and if they were to request the Parliament to pass the law, which falls squarely within their own powers, that transfer of power shall not be valid. Here, we have no such assertion on the part of the Mover.

The Supreme Court has also held that no Legislature can delegate its essential functions. What are the essential functional of a Legislature? The essential function of a Legislature is the determination of the legislative policy and its formulation into a Code of Conduct for regulating public activity and a Legislature must judge for itself, as to what the law should be and every Legislature is, in the final analysis, accountable to the people for that judgement. Therefore, even if the State Legislatures have been found wanting in performing their appropriate duty under the Constitution, it is not for the Parliament to question, but it is for the people to take account of that weakness.

Under Article 246 (3), a State Legislature has the exclusive jurisdiction. It is pointed out that it has the exclusive jurisdiction subjects in List II...*(Interruptions)*...You are not amending the list II...*(Interruptions)*...you are not seeking to amend Articles 246 (3) of the Constitution. My plea is that if the List stands

[Sh. Syed Shahabuddin]

and if Article 246 (3) stands, then this particular proposed piece of legislation goes beyond the powers which are vested in the Parliament. The State Legislature has the exclusive power under Article 246 (3) and it cannot be dispossessed of this power by an Act of Parliament. Those powers cannot be shared by the Parliament or sought to be shared by the Parliament even if all the State Legislatures agree.

A reference was made to Article 40 when the Prime Minister introduced the Panchayati Raj Bill. Article 40 forms part of the Chapter on Directive Principles of State Policy.

13.00 hrs.

There the work 'State' stands not exclusively for the Central Government, that is not the case; it stands equally for the State Governments and the Union Government within their respective domain of legislation. It is indeed surprising that no other Directive Principle of State Policy has in the course of the last forty years of our independence been taken up for parliamentary legislation as this Article 40.

The Constituent Assembly had deliberated on these aspects of this matter and squarely placed self-Government in the State List keeping in view that conditions and circumstances vary from State to State and uniform legislation is not possible and sometimes not desirable.

I would also like to draw your attention to Article 1, sub-section (1) of the Indian Constitution, the very first Article. The Article defines our country as a Union of States; not as a union of States and Local Bodies; it is not a Union of States and Municipalities and Panchayats. Though I would like the municipal and panchayat system to thrive, India is not a unitary State and all local bodies must essentially be a creation of the States.

This particular piece of legislation seeks

to alter the basic structure of the Constitution, because any constitutional amendment which encroaches upon the Legislative powers of the State does alter the basic structure of the Constitution in a federal or quasi-federal polity. I would suggest that such legislation as, prepared is creative, if I may say so, of a constitutional conundrum, of constitutional mischief. By placing an obligation on a State Government to enact laws in a particular manner, to hold elections in a particular manner, what are you doing? Supposing a State Government does not act in accordance with this direction, then we are led in to a *cul-de-sac*, we are led in to a blind alley, where the only possible solution for the Central Government is to intervene under emergency regulations and dissolve the State Government. Why should that be?

SHRI P KOLANDAIVELU (Gobichettipalayam): On a point of order. Are you allowing him a discussion here?

SHRI SYED SHAHABUDDIN: I am not discussing merits of the Bill.

SHRI P KOLANDAIVELU: What else are you doing? Under what rules is he speaking, Sir?

MR. SPEAKER: I allowed him under the rules. If he does not follow the rules, I would over-rule him.

SHRI SYED SHAHABUDDIN: Sir, I would end by saying that this Parliament has full authority, full competence, in its wisdom, to change the constitutional provisions with regard to the local Governments, to change the Lists that stand, to transfer Entry No. 5 of List II either to List III or even to List I. But without altering that, this particular amendment invites constitutional objection, and, therefore, on that ground I oppose introduction of this Bill.

SHRI ABDUL RASHID KABULI: Mr. Speaker, Sir.....(Interruptions)*

MR. SPEAKER: You have not given any notice. If you had thought it prudent, that

it is important, then you should have given a notice.

*(Interruptions)**

MR. SPEAKER: Not allowed. You should have given a notice to me. Will you take your seat?

*(Interruptions)**

MR. SPEAKER: I have not allowed him. It is unfortunate that you did not think before. You should have thought before; it was coming. The hon. Member had given me a notice and I allowed him. You can ask later on, not now, You should give me a proper notice, not without that. You should have given me notice.

You can participate in the debate.

*(Interruptions)**

MR. SPEAKER: If you do not stop now, I will have to ask you to withdraw. This is not the time. I told you that you will have time when the time comes for discussion.

I will have to ask you to withdraw from the House.

SHRI ABDUL RASHID KABULI: I am not defying the Chair.

MR. SPEAKER: Either you take your seat or I will ask you to withdraw from the House.

(Interruptions)

MR. SPEAKER: You will be given enough time when the debate will come. You now sit down. If you seriously take your work, then you should have been prepared for that. You have been negligent.

THE MINISTER OF LAW AND JUSTICE (SHRI B. SHANKARANAND): Sir, with due respect, may I submit to you that the Prime Minister has formally introduced the Bill to the House in such an elaborate man-

ner that it has left absolutely no doubt in the mind of any Member about its competence. I think that it is not the stage where we are expected to reply to the objections raised by the hon. Members. The hon. Member has talked much about the Constitutional viability of the Bill. At the moment, we are not concerned with the constitutional viability of the Bill. We are concerned with the legislative competence of the Parliament, whether we can legislate such a Bill is the only question and for that purpose may I quote the relevant Article 368 for the benefit of the hon. Member. This is for the information of the hon. Member who has raised the objection. "The power of Parliament to amend the Constitution and Procedure thereof" is the heading. I am speaking only about the legislative competence of the House—the Constitutional viability will be decided by the courts—but the question is whether we are competent to legislate such a Bill I don't think he has raised any objection with regard to the legislative competence of the House.

SHRI SYED SHAHABUDDIN: Well, I talked about amending the basic structure.

SHRI B. SHANKARANAND: The basic structure mainly deals with the Constitutional viability of the Bill. It has nothing to do with the legislative competence of the Parliament. If you cannot make the difference between the two, I cannot help. Article 368 says and I quote:

"Power of Parliament to amend the Constitution and procedure thereof:—Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition" we are adding four chapter "variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article."

SHRI SYED SHAHABUDDIN: Sir, I have myself suggested a suitable amendment. I am not questioning the amending power or the amending competence of the Parliament. But it has its limitations and it cannot go against another part of the Constitution...

(Interruptions)

SHRI B. SHANKARANAND: We have made it abundantly clear that we are not going to change and we are not changing the basic structure of the Constitution in terms of the Supreme Court Judgement. The Hon. Member has no objection with regard to Parliament bringing this piece of legislation.

SHRI SYED SHAHABUDDIN: Not beyond the basic structure.

MR. SPEAKER: If you are not opposing or questioning the competence, then there is nothing.

SHRI SYED SHAHABUDDIN: I am questioning the competence on the ground that it goes beyond the harmonious interpretation of Constitution.

MR. SPEAKER: The question is:

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

The motion was adopted

SHRI RAJIV GANDHI: I introduce the Bill.

MR. SPEAKER: The Constitution (Sixty-fifth Amendment) Bill, 1989 is introduced.

We shall now adjourn for Lunch to meet at

13.10 hrs.

The Lok Sabha then adjourned for Lunch till ten minutes past Fourteen of the Clock.

14.15 hrs.

The Lok Sabha reassembled, after lunch, at Fifteen Minutes past Fourteen of the Clock

[MR. DEPUTY SPEAKER *in the Chair*]

MR. DEPUTY-SPEAKER: We will now take up Matter under Rule 377.

MATTERS UNDER RULE 377

[*English*]

- (i) **Need to issue 'No Objection Certificate' to slum Dwellers settled on Railway Land in Bombay for obtaining civic amenities**

SHRI SHARAD DIGHE (Bombay North Central): In spite of demands made on several occasions and the negotiations between the Railway Ministry and the Maharashtra Government at various levels for the last four years, the Railway authorities are refusing to give 'No Objection Certificate' for providing civic amenities to the hutments on Railway lands in Bombay. This section of hutment dwellers has a feeling of discrimination as the other hutment dwellers are freely getting advantage of the State Government's schemes of upgradation of hutments and provision of civic amenities to slums in Bombay. I urge upon the Ministry of Railways to concede the requests for 'No Objection Certificate' to hutments dwellers of Bombay settled on Railway lands.

- (ii) **Need to include 'right to employment' as a Fundamental Right**

SHRI JAGANNATH PATTHAIK (Kalahandi): Unemployment both in rural and urban areas has become a matter of grave concern. Despite all-round attempt by various schemes of Government of India, the problem still remain. Priority should be given, even at the cost of some other sectors, to meet this challenge. Growth of population is another major factor, adding to this problem. All efforts should be made to see that at least one member from each family should get a job, assured job, for the whole year—to the rural unemployed. To provide jobs should be the Constitutional obligation