

due consideration I have suggested a pension of Rs. 75 to Rs. 125 per month as a support to a widow.

Some customs still prevail in our country which do not allow widow re-marriage and as a result thereof she has to face many difficulties. She tries her best to get employment but does not succeed. She wants to lead a respectable life in society, but cannot do so. Under the Directive Principles of State Policy the Constitution guarantees right to work. Even then she cannot get employment. I have brought this Bill keeping in view our present social structure. I have prepared this Bill after indepth study and have taken the advice of my friends. We want to have this arrangement for giving social security to them. I would still request you to reconsider it because by doing so we will be able to do justice to the widows.

With these words I conclude.

[English]

SHRI P.V. NARSIMHA RAO : I would like him to withdraw this Bill. Whatever good, useful ideas have come, we will discuss them with him. If there is anything to be brought again which is in line with the policy and still gives certain concessions to women on a preferential basis, I am prepared for that. But the Bill in its present form is just unacceptable.

MR. CHAIRMAN : What do you say about it ?

SHRI VIRDHI CHANDER JAIN : I beg to move for leave to withdraw the Bill to provide for payment of pension to destitute widows.

MR. CHAIRMAN : The question is :

"That leave be granted to withdraw the Bill to provide for payment of pension to destitute widows."

The motion was adopted

SHRI VIRDHI CHANDER JAIN : I withdraw the Bill,

15.50 hrs.

CONSTITUTION (AMENDMENT)
BILL, 1985

(Amendment of Article 311)

[English]

SHRI C. JANGA REDDY (Hanamkonda) : I beg to move :

"That the Bill further to amend the Constitution of India, be taken into consideration."

[Translation]

Mr. Chairman, Sir, this judgement of the Supreme Court has shocked all the employees of the Central and the State Government. Several unions of the Government employees have agitated over it and have submitted memoranda to show their disagreement with the judgement. This issue has also been discussed in the House more than once. We know that all those people who have expressed their opinion on this subject here or outside the House, regardless of the fact whether they belong to the Ruling Party or the Opposition, are against the judgement and have stated that the Constitution has to be amended again on the basis of this judgement.

SHRI MOOL CHAND DAGA (Pali) : What is the date of that judgement ?

SHRI C. JANGA REDDY : Should I tell you? Shri Kumaramangalam and Shri Lalit Maken have made statements. . .

SHRI MOOL CHAND DAGA : Which is the judgement ?

SHRI C. JANGA REDDY : It is regarding Proviso to Article 311 (2) (b). . .

[English]

MR. CHAIRMAN : You will get an opportunity.

[Translation]

SHRI C. JANGA REDDY : Shri Daga wants to test me. If he keeps on interrupting, how can I have my say ?

[English]

SHRI MOOL CHAND DAGA : Who is the appellant, who is the respondent ? What was the judgement ?

[Translation]

SHRI C. JANGA REDDY : I will tell you. Let me speak.

[English]

SHRI MOOL CHAND DAGA : What was the date of the judgement ?

SHRI C. JANGA REDDY : 11th July, 1985.

SHRI MOOL CHAND DAGA : I would like him to specify the date ; when was the judgement given, who was the petitioner ? He has referred to the judgement.

[Translation]

SHRI C. JANGA REDDY : I am telling you, Shri Daga, just listen to me. . . (Interruptions) . . . If you want to know the taste of the food before it has been eaten then how can I tell you that ? The food is being cooked at present and spices are being mixed (Interruptions) This judgement was delivered on 11th July, 1985 by the Supreme Court in the case of Tulsiram Patel who worked as an Auditor in the Department of Defence at Jabalpur. One of his increments was stopped without any prior notice. When he enquired about it from the Regional Officer, the latter not only refused to answer him, but also hit him on his head in anger. Subsequently, the issue was taken to the Court. The judgement was delivered and punishment was awarded to him but later on the Session Court acquitted him, Subsequently,

without serving any prior notice, he was dismissed from service under Article 311 (2) (b). As a result of his dismissal, he filed a Writ Petition under Articles 226-227 in the Madhya Pradesh High Court against his compulsory retirement. The High Court accepted his Writ for reinstatement on the basis of the Supreme Court judgement of 1975 given in Chellappan Case. A Supreme Court Bench comprising five judges, gave a judgement on 11th July that under Article 311 (2) (b), any Government employee can be removed from service merely showing the reasons on record but without informing him of the charges levelled against him. This judgement was given after over-ruling the judgement given by hon. Justice Krishna Iyer and hon. Justice Fazal Ali in the Chellappan case under Article 14. That is why a demand has been made in the Lok Sabha to amend it and these Members of Parliament who are connected with Trade Union movement have supported it. Therefore, before the amendment is made, it has to be considered as to how the President and Governors have been shown as Government servants. We are aware that our Constitution has drawn its features from the British and other constitutions. Before that we were ruled by 'rajahs' who could recruit or dismiss employees from their service at will. The Government employees are not the servants of 'rajahs' ; they are public servants. As it is clearly mentioned in Article 310 :

[English]

“Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the

Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service of a civil service of the Union or a State is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished . . . vacate that post."

[Translation]

In Article 310, it has been provided, that the employees hold any post at the pleasure of the President and the Governor but in order to have a check on this power it has been mentioned clearly in Article 311 that :

[English]

"No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

- (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges . . ."

[Translation]

It has been clearly mentioned in Article 311 (2) that no Government

servant can be dismissed or removed from service, until he has been given a reasonable opportunity of being heard in respect of the charges against him. A study of our constitution before the 42nd amendment was made shows that the framers of our Constitution had thought about such a situation. They might have drawn certain features from the British Constitution, yet it has been clearly mentioned that :

[English]

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such an inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity after making a representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

16.01 hrs.

[SHRI SHARAD DIGHE *in the Chair.*]

[Translation]

Here there is a mention of giving two opportunities. Prior to the 42nd amendment of the Constitution, made during the Emergency period, it was clearly mentioned that during the course of enquiry employee should be informed of the charges against him, and given a reasonable opportunity of being heard in respect of those charges. This provided him an opportunity to clarify his position and in case, the employers were not satisfied with his clarifications, the same was intimated to him and at the time of announcing punishment he was told that such and such punishment was being considered for him but a second opportunity was to be given and a show-cause notice served. This is an ample proof of the fact that our Founding Fathers had

[Shri C. Janga Reddy]

made it clear that Government servants must be given two opportunities before actually being dismissed from service. Again, it is clear that a Government employee needs to be served with a show-cause notice before dismissal, and that opportunities should be given to him to explain his case before awarding him even the smallest punishment. This was their line of thinking. Now, insertion of the word 'pleasure' does not imply that that President or the Governor can take decisions arbitrarily. In Britain, it was felt earlier that '*the King can do no wrong*'. This theory was in vogue earlier, but later on Government servants were provided the opportunities to explain their point of view. And should our country which claims to be a democratic republic enforce such laws? It is not proper to make use of President's name in this manner, when we consider him no less than an Emperor. As we are a democratic nation, every Government employee must be provided such an opportunity before his dismissal. I have read the Constitution as it was before the Emergency period. You may look at the subsequent interpretation of (b). In the case of Chellappan he was dismissed from service in spite of his acquittal in the criminal case under proviso (s) of Article 311. When the case was taken to the Supreme Court he was reinstated into service under Article 14, under the principle of Natural Justice. They must be provided the opportunity. Even during the British rule, such an opportunity was provided. If we study section 96 (b) of the Government of India Act 1935, we shall find that such an opportunity was provided to the Government employees even in those days. But today, in spite of our being a democratic country, Government servants are considered as slaves.

SHRI GIRDHARI LAL VYAS (Bhilwara) : Word 'slave' is unparliamentary ; it should be expunged.

SHRI C. JANGA REDDY : Shri Vyas is a trade Union leader, who considers all the Government employees as slaves of the Government.

MR. CHAIRMAN : I would examine it and give my ruling accordingly.

SHRI C. JANGA REDDY : If it is unparliamentary then the hon. Chairman will look into it.

I want to tell that the judgements delivered by the Supreme Court in very important cases have been repealed and revoked. We must know that there are 12 million Government employees in this country. Even the leaders of the Congress Party are opposed to it. You can have a look at the statement of Shri Lalit Maken :—

[English]

Late Lalit Maken M.P. had said : "The judgement had put 12 million Government employees in jeopardy. Who will determine as to whether the dismissal is in public interest? Employees will have to depend on the mercy of the bureaucrats."

[Translation]

You should make a detailed study of it. All the journalists and the newspapers are against it. You should understand this. I want to assure you that it is against the interests of the employees. Even after the views expressed by so many people, the hon. Minister says that this parameter has been given to us by the Supreme Court. We should know as to how long this parameter is? The (b) part of it should be withdrawn, which says :—

[English]

Article 311 (2)

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided further that this clause shall not apply to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply—”

[*Translation*]

He has told this but it has not been enforced at three places.

[*English*]

“(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge”.

[*Translation*]

Here, I want to tell you that if a Government servant is involved in a criminal case, he can be dismissed, irrespective of the place where he may be serving but this provision that he can plead his case or engage a lawyer in the civil court or criminal court does exist even there. Implicitly, we find that if someone is convicted under Proviso (a), then he can be dismissed from service without any show cause notice. But before awarding punishment to him he is granted a chance to engage a lawyer to plead his innocence and if even after this he gets punishment then this is justified. I want to tell you that here also in a way, they are clearly getting opportunity in (a) and (b) :—

[*English*]

“(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.”

[*Translation*]

I do not understand it. If any person does not behave properly with his officer, he can be dismissed then and there. In the evening, orders are issued and the next morning he is relieved of his duties. What purpose will it serve? Heavens are not going to fall if a period of 15 days is given to him to explain his case? Even if

someone is awarded capital punishment he gets a chance to plead his case but (b) has such provision that an officer can dismiss his employee on such petty grounds as he has smoked before him or has abused him or has occupied a chair in his presence and for that he can record any reason on the file as he has not to intimate it to the employee. That is why we want a change in the procedure of the Confidential Report itself. For that also the employee should be given a show-cause notice but there is no provision for it. He can be dismissed by intimating 2 or 3 imaginary reasons. A person who has been working till yesterday evening can be fired from his service next morning. He would not be intimated about the reason recorded in the file because :—

[*English*]

‘There is no need to show any reason, kindly go’.

[*Translation*]

And if he dares to stay there then the police may be called to throw him out. This should not happen in a democratic country ; it is possible only in autocracy. This is a way to keep the Government employees under thumb to force them to do legal or illegal works. If they do not carry out the biddings of the officers, they can be dismissed on one or the other pretext. There are many such instances ; I would mention one of them to you. A railway employee Shri C. Ramarao who had complained to the Minister about the bunglings of his officers, was suspended on the pretext of being late by 15 minutes but this was not the actual reason. The actual reason was that he had complained against high officers. Can discipline be maintained in this way? This will not only encourage dictatorship but also bureaucracy, and big officers will start exploiting the lower staff. This verdict has proved that bureaucrats can take any action against anybody. If somebody does something wrong and for that if he is given a show cause notice of 15 days then it is not going to harm anyone. You have powers to take disciplinary action under

[Shri C. Janga Reddy]

which you can suspend him, and serve him a show cause notice. If he issues some undesirable orders under his signatures, he can be asked to go. What type of Democracy is it? If the Constitution is not in the interest of the people then it will have to be amended. It has not been gifted to us, we have ourselves framed this Constitution for ourselves. We should amend it as an experiment. This House must amend such laws. This judgement is against the interests of 12 million Government employees. Justice Krishna Iyer has already said that it is a death sentence without warrant. It is an economic death sentence. (*Interruptions*)

SHRI MOOL CHAND DAGA : You have made your point clear.

SHRI C. JANGA REDDY : We patiently listen to your views on all your Bills. Now, I have presented one Bill. Why do you not listen to me? You are a very experienced person.

[*English*]

SHRI Y.S. MAHAJAN (Jalgaon) : How much time is to be given to the mover?

MR. CHAIRMAN : Let me explain. It is an important Bill.

[*Translation*]

SHRI C JANGA REDDY : I want to remind you that if a personnel in the Armed Forces indulges in indiscipline, he is court martialled for that. Even he is given a chance to plead his case, where the security of the country is involved. Here, it is not proper to remove a Government employee from the service merely to satisfy the whims of bureaucracy. I only want this much amendment that (b) should be deleted from (a), (b) and (c) and (a) and (c) should be retained. This is a minor amendment and not a major one. Article 311 (2) (b) should be withdrawn and the Article renumbered. I want that all the hon. Members, sitting here should support it. I would request the Government also to pass this Bill. The resentment among the Government employees cannot be removed by the

executive instructions issued by you as these are bureaucracy oriented instructions. I would request the hon. Minister that the injustice being done to the 12 million Government employees, should be removed and this amendment accepted.

[*English*]

MR. CHAIRMAN : Now, there is notice of amendments to the motion for consideration given by Shri Mool Chand Daga.

SHRI MOOL CHAND DAGA (Pali) : I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 20th February, 1987."

MR. CHAIRMAN : Motion moved?

"That the Bill further to amend the Constitution of India, be taken into Consideration.

DR. G.S. RAJHANS.

[*Translation*]

DR. G.S. RAJHANS (Jhanjharpur) : Mr. Chairman, Sir, the Bill introduced by Shri Janga Reddy is very important in many respects and for the last one year, and especially after the verdict of the Supreme Court, this issue has been under discussion in some way or the other. The problem has two facets. One is, we have to see whether merely by becoming a Government employee, one gets the right to remain in service for ever or whether same law should apply irrespective of the person being employed in a private undertaking or a Government undertaking. Secondly, it is to be seen that no injustice is done to 1.20 crore Government employees. They fear that their officers will have power to dismiss them from service without any reasons. So far as I understand, the rule applies to those officers also. You can go to any Government office and find whether even 50 per cent employees are doing their work honestly? And whether even those who do their work, are performing their duties properly? I am expressing these views out of my personal experience. The

employees in banks and government offices force their managers and officers to grant them over-time as they do not perform their duties well and the over-time has to be granted to get the work done. Their officers are forced to do the work which the employees are supposed to do. It is true that the press and the opposition severely criticised Emergency but if you go to the public even today, it will advocate its justification. It is not my but the public view. Why people express this opinion? Because during Emergency they got reliefs; the hospitals functioned properly, the trains were in time and post offices functioned properly. Just now you heard about Telecommunications. I have nothing to say about it. My brother in Bihar is seriously ill and for the last several days I have been trying to make a lightning call without any success. Why such people should not be dismissed? Should we advocate that the Government should not take any work from its employees and go on paying them salaries for sitting idle. The Government employees of this country forcibly claimed salary for 13 months for working for 12 months. We want that justice should be meted out to them and that they should not be dismissed without any reason . . . But the Government employees should honestly tell if their present behaviour is justified. Therefore, the time has come when a national consensus should be reached in the country. It is right that they should not be sacked without any reason but there should be no hesitation in throwing out a fish infecting the whole pond. On the one hand we want to modernise our country and want to take it to the 21st century and on the other hand, we are being pulled back. The important question before us is that when there is insecurity of job in the private sector, the same should be in the Government undertakings also. I give you a small example. The employees in the Private Sector warns his employees that :

[*English*]

"If you are not able to deliver the goods by tomorrow, you are out ?

[*Translation*]

And due to this approach there is so much efficiency in foreign countries as well

as in our country and the production and work output is immense. But when someone gets confirmed in a Government service or in Public Sector Undertaking, he openly declares that no body can get work from him. Whether he is an I.A.S., I.P.S. or I.F.S. officer or even a petty clerk, they all mock at the politicians and Ministers. In this country though the Constitution is there but the real power does not lie in the hands of the elected representatives of the people. Elected representative in Europe are considered garbage and are dismissed as casual workers. Everywhere in our country, people pamper the I.A.S., I.P.S. officers and other bureaucrats and I have seen Ministers pampering bureaucrats. If anyone has let down this country, it is the bureaucracy. Time has come to change this bureaucracy; otherwise it will eliminate us. The situation has deteriorated so much that the bureaucracy does not want to listen to any elected representative. An I.A.S. officer who becomes a Collector, Additional Collector or S.P.O. and an I.P.S officer who becomes S.P., or Additional S.P. considers himself nothing less than a king. I do not know whether it is permissible but he forcibly keeps upto 25 orderlies and in this illegal manner, hundreds of orderlies are there to serve him. He behaves like a Mughal emperor and people bow before him.

I have already said that our country is divided into two parts? one is India and the other is 'Bharat'. India is that part where people speak English with the twist of their tongue and where people send their children to public schools to make them I.A.S. or I.P.S. officers because these I.A.S. and I.P.S. officers consider themselves 'kings'. The other part is 'Bharat' which consists of the poor and the hapless and for whom even drinking water is not available. Their fate is to suffer at the hands of these bureaucrats and to serve them. If we do not see the writing on the wall and do not become practical, then for how long the public will tolerate us? This is not a question which concerns a single party. We should rise above party considerations and should see why a handful of English speaking bureaucrats are ruling over the whole country and why should we allow all this to happen? If

[Shri G.S. Rajhans]

they also face insecurity of job and know that they can also be sacked for their mistakes like the managers in private sector, then they will mend themselves. I am revealing a secret to you. You go to any State. You will find that every I.A.S. and I.P.S. officer has a bungalow worth about Rs. 50 lakhs in the State capital. Is there any Government which is ready to enquire honestly in this matter and disclose the facts? We the elected representatives, will go on fighting with each other and criticise one another but what are we doing to tackle the ones who are befooling us, sucking our blood and provoking us to fight against one another. The bureaucrats are a very clever and shrewd class and are a closely knit fraternity. Whatever you say about socialism and 20 Point Programme, they do not pay any attention. They will do only what they consider fit. You, all the elected representatives present here tell honestly as to how many bureaucrats let your programmes succeed? Is it not our duty to tell these bureaucrats that they are liable to mislead the public. We shall lead and guide the country as the people have voted us and who are they to guide the people. We shall not allow them to do all this. We shall support their case if there is insecurity of job but we would also like some High Court Judge to enquire into the huge properties amassed by the bureaucrats and guilty ones to be dismissed. No sympathy should be shown to them.

Sir, you will be surprised to know that just 10 days ago, it was published in all the newspapers of the country that an I.P.S. officer had embezzled crores of rupees in some purchase deal. The I.A.S. officers awarded medals for efficiency and honesty have misappropriated crores of rupees. You will be even more surprised to know that a lady I.P.S. officer pleaded her ignorance along the goings on, stating that she being a new comer, the clerk got to her signatures on the papers.

Sir, I would request the hon. Minister that time has come to take some action and not to overlook it any more as the people of the country cannot wait for long. It may be that you are a supporter of bureaucracy but you must take into

account that to what extent this bureaucracy is dominating the country? They befool others and enjoy themselves. They are not accountable to anyone. When it comes to us, we are held accountable to our constituency, our State and the entire country but these I.P.S. officers who have embezzled crores of rupees are still holding high posts in Bihar. Neither the Chief Minister of Bihar nor the Centre dare to take action against them.

Now these I.A.S and I.P.S. officers have formed their associations. You take any action against them and their association takes up their case. Is there any law under which we may debar them from forming associations? If there could be barefoot bureaucrats in China, why the same cannot be in India? How many officers and Sub-Divisional Officers visit a flood or drought hit area in any State? Everyone is having his pound of flesh in the loot. We are in a very crucial phase of history.

[English]

We are on the cross-roads of history.

[Translation]

If we do not control the bureaucracy immediately then it will eliminate us and that will be a sad day for the country.

In brief, I want to say only this much that public servants earning below a certain salary should be granted some job security but true picture of the top level bureaucrats should be projected before the people and in no case they should be granted job security.

[English]

SHRI Y. S. MAHAJAN (Jalgaon) : Mr. Chairman Sir, Our Constitution is the best in the world. It was framed by the Constituent Assembly over a course of years under the leadership of Pundit Nehru, Shri Vallabh Bhai Patel and Dr. Ambedkar. It consists of the best parts of the Constitutions in the world.

They thought that we should have a very efficient bureaucracy. Therefore, they

provided for its security, Section 311 provides for security to the members of the civil service in this country. Today their number is about a few millions. They are the back-bone of our administrative structure and it is they who claim the responsibility of implementing all our plans with regard to socio-economic development.

All these years we have been saying that we have failed at the implementation stage because the administration is not efficient. More than that, the administration is not only not efficient, but also it is corrupt. Instances of corruption have been given by the previous speaker Dr. Raj Hans. Everyday we come across such instances; but we cannot remove them. Even the head of a department cannot remove even a Class-IV servant because he appeals to the district court, then high court and finally to the supreme court. The courts take the side of the under-dog and he is re-instated with full payments of his salary which he was not getting during the period of his suspension.

It is this which has reduced the rate of our social and economic growth for the last so many years. The Bill says that, Article 311 2(b) simply says that where it is not possible or practicable to carry out an inquiry, the authority concerned should give reasons and then dismiss or terminate the service or reduce the status of the lower officer concerned. This is only one thing which should be taken into account. I will suggest that the reasons should be communicated to the officer concerned. That is not provided in the Constitution. If that is provided, I think most of the objections to the judgement of the Supreme Court will vanish. I think we have made security a shibboleth in this country. It is the excessive security enjoyed by the government servants which has come in the way of their efficiency and has encouraged corruption.

Everybody knows that a certain person has made tonnes of money. His salary may be Rs. 2000/- per month; but he owns property worth Rs. 50 lakhs, one crore or two crores. We cannot do anything, we cannot go to court, we cannot

prove it because the law always says that you cannot convict a person unless there is convincing proof. The law relating to corruption is a part of the criminal law. Therefore, it is not possible to prove to the hilt the guilt of a corrupt person and therefore, he escapes. If you try to give absolute security as proposed by Shri Reddy, you will ruin the country. That is my contention. Therefore, the security aspect that we have at the moment is quite sufficient. There is no case for removing the Section as suggested by Mr. Janga Reddy. We can say if there are reasons the same should be put in black and white and communicated to the person concerned.

I am surprised, Sir, that the Opposition parties should have objected to the Supreme Court judgement because at least they more than we should say that the Administration is inefficient and corrupt. Why should they not realise and help in the development of the country by seeing that the Administration becomes honest and efficient. If you give excessive security then you ruin all our plans for socio-economic development. Therefore, I suggest that there is absolutely no case for re-consideration of Article 311 or much less drop 311 (2) (b) as has been suggested by Mr. Janga Reddy,

SHRI AJOY BISWAS (Tripura West) :
Mr. Chairman, Sir, I rise to support the Bill. I thank Mr. Janga Reddy that he has brought a very important Bill before the august House because 1.20 crore Central Government employees are involved in this Bill. We find outside Parliament many State Government employees are demonstrating and demanding that Articles 310 and 311 (2) (a) (b) and (c) should be removed from the Constitution. Articles 310 and 311 are blots on the Indian Constitution. Mr. Janga Reddy, I think, seeks to remove these blots from the Constitution to protect the rights of the State and Central Government employees. Lakhs and lakhs of Government employees think that like a Democles sword it always hangs over their head and they are always under constant fear of being dismissed by this black provision.

[Shri Ajoy Biswas]

The latest Supreme Court judgement has also created more problems for the Government employees. The Supreme Court judgement has revised the earlier decision of the same Supreme Court. In 1974 the Supreme Court gave the verdict in Challapan case that Government employment should get the opportunity to know what is the quantum of punishment.

Sir, in 1973 the loco running employees were on the path of agitation and about eleven to twelve thousand loco running employees were dismissed under Section 14(2) of the Railway law. Ultimately the railway people went to the High Court and Supreme Court. Mr. Challapan went to the Supreme Court and the Supreme Court gave the verdict that as the railway authorities did not comply with the provision that they have to inform the quantum of punishment so all the cases were dismissed and they were re-instated.

Then the Government again went to the Supreme Court. The latest judgement by the Supreme Court—the Bench consisted of five Judges—revised the decision in the Challapan case and they said that there was no need to inform the person concerned about the quantum of punishment and that is the crux of the whole problem.

The latest Supreme Court judgement has taken away the principle of natural justice. The result of the judgement is that the bureaucracy has been given an unbridled power to sack employees without the semblance of any show cause notice and the vindictive executives will now prey upon the employees to settle their scores. It further helps the ruling class to terrorise the employees and thwart the trade union activities of the Government employees as a whole.

The problem is not the judgement. The problem is the intention of the Government. What do the Government want to do? The Supreme Court judgement previously was in favour of the employees. Now it

went against the employees. But I want to ask the Government, what they intend to do. If the Government want to keep this black provision in the Constitution, then that is another issue and if the Government want to remove this provision and want to create an atmosphere of democratic situation in the country, then that is a different issue. One Article, that is Article 311 (2) (B) is sought to be amended by this Bill, but I am against Articles 310 and 311 (2) (A), (B) and (C) also. This is because these Articles are connected with each other. Article 310 cannot be separated from Article 311 (A), (B), and (C). These Articles are based on the doctrine of pleasure.

If you go through the debates of the Constituent Assembly, you will find that these Articles are replica of the Government of India Act, 1935. What was the Act of 1935? It was framed on the basis of the British Constitution and conventions. According to the British Constitution and Conventions, the Government employee is a servant of the King or the Queen. As the King or the Queen can do no wrongs and there cannot any agreement between the King or the Queen and the employee, so, the employment must be at the pleasure of the King or the Queen. That was the doctrine of the British law. It is a prerogative of the ruler and it has been kept in our Constitution. It is a legacy of the colonial rule.

Sir, in particular, I would like to ask the Minister whether the Government is interested in continuing this British legacy in our Constitution, Or whether they are interested in removing this anomaly and creating a democratic atmosphere for government employees. This is the main question. The problem is, according to that Act, the Queen or the King can dismiss any employee and it is just a replica of that Act. The only difference is, here the President or the Governor can dismiss any employee without assigning any reason. But in actual practice it is not the President or the Governor who would be doing that. According to our Constitution, any bureaucrat can dismiss an employee under Article 311 (a),

(b) or (c). He has only to record in the file that it cannot be disclosed anywhere. So the entire state machinery, the entire government depends upon the bureaucrats.

Sir, the contents of the Articles 310 and 311 (2) (a), (b) and (c) have been bodily lifted from the Indian Act, 1935. The only change is that instead of King or Queen, here it is the President in the case of central employees and Governor in the case of State employees. But the same master-servant relationship still persists and this sort of relationship is not in conformity with our democratic set up. Let the Government tell us whether this master-servant relationship is in conformity with our democratic set up. Do they feel that this relationship should continue? It is a colonial legacy and a colonial attitude, which needs to be deleted so as to make our Constitution more democratic. I am not talking about the Supreme Court here. What are you doing? What is your duty? This is the main question. This august body must, once for all, repudiate this feudal, royal, barbaric concept.

I am challenging the Government to show one single case where an employee was retrenched actually because he was acting against the security of the State. Can they prove that what was recorded in the file was true? You will not be able to prove that thing. Not a single case. You can never prove that the employees are retrenched because they are acting against the security of the country. According to Article 311 (2) (c), if the activities of the employee are against the security of the State he is to be dismissed. Here I may tell you that Shri Sukumol Sen who is a Member of the Rajya Sabha was dismissed under Article 311(2) (c) because he was said to be acting against the security of the State. Now people have elected him. He has been elected to the Rajya Sabha and now he is a Member of Parliament. I would like to give another instance. In Tripura one Mr. Vivekanand Bhowmik, who was a teacher, was dismissed under Article 311 (2) (c) because his activities were said to be against the security of the state. He became the Minister. The same Governor who dismissed him, because of his activities against the security of the State took his

oath. So, this is full of contradictions. What you can say is that this provision is needed for the Government to maintain the security of the State. That is not the main thing.

Sir, I am telling you, that in Jammu and Kashmiri Constitution, there is Section 126 (b) which is also a replica of Articles 310 and 311 (2) (a) (b) and (c) During Emergency, about 14 employees were dismissed. During the Shah regime, they dismissed 9 employees under this Act. So, you dismissed these people who were fighting for the integrity of the country.

You supported that Government. So these Articles, 310 and 311 (2) (a), (b) and (c) always used to put down the democratic trade union movement of the Government employees. It never used to eradicate the corruption. It never used to maintain the security of the country. What Mr. Rajhans was telling is not the thing. The Government employees are guided by the Conduct of Service Rules. They have enough powers to remove anybody for corruptlan. They can remove anybody for any sort of offence. Corrupt officials have been promoted.

In 1971, in West Bengal, during the regime of Shri Siddartha Shankar Ray, 14 employees were dismissed. Who are these people? Under Article 311 (2) (c) all were leaders of the State Government Employees movement who were dismissed. During Emergency, in West Bengal, 28 employees were dismissed under Article 311 (2) (c). In Tripura, which is a small State, during emergency, 3 State Government Teachers and employees were dismissed under Article 311 (2) (c) because of their activities against the security of the State and all 31 employees were the leaders. Even your Government was cruel i.e., first of all, they were arrested under MISA and then they were put behind the bars. The dismissal orders were served on them inside the jail. During emergency, the dismissal order were served with the help of police only to curb the trade union movement and to curb the democratic rights of the Government employees in the country. In 1977-78, the Left Front Government came

[Shri Ajoy Biswas]

to power in West Bengal and Tripura. They reinstated all the dismissed employees who were dismissed under Article 311 (2)(c).

17.00 hrs.

Now what do you do? They are not anti-national. Their activities are not now against the security of the country. The same Governor reinstated those employees. So, it is not connected with the security of the State or with the other arguments which you have been advancing. You want these provisions, these black laws, only to arm yourself to curb the trade union and democratic movements in the country.

This is not an isolated thing. Already, in this august House you have passed the National Security Bill. You are trying to bring in a Trade Union Relations Bill which will snatch away all the rights which have been earned by the workers during this period. You want to snatch away all the rights. You are trying to bring in that Bill before this august House.

I had also written to the Minister last year. In his reply to my letter, he said: 'No; we have instructed all the departments to see that before dismissal, he is informed. Otherwise, no dismissal order can be there.' But this will not serve the purpose.

One crore and twenty lakh State and Central Government employees are united. They want that these black laws should be deleted from the Statute. For 1968, and again in 1973 the State Governments' employees have demonstrated in Delhi. Thousands of them came to Delhi. In 1984, throughout the country, the State Governments' employees observed a one-day token strike. The State Governments' Employees Federation—I am also connected with it—has decided that on 24th November 1986 it will collect 40 lakh signatures from the State Governments' employees, against these draconian provisions; and those 40 lakh signatures will be presented to the Prime Minister. This is the extent

of the wrath of the Government employees. You must consider this. Thousands and thousands of State Governments' employees will come to Delhi, and demonstrate at the Boat Club.

I further request Government and the Minister to see reason. Don't bypass anything. You just put forward your arguments reasonably. You must try to create a proper atmosphere among Government employees. I request you to delete these provisions and protect the rights of the State Governments and Central Government employees in this country.

[Translation]

SHRI HARISH RAWAT (Almora): Mr. Chairman, Sir, recently there have been two judgements by the Supreme Court which have created difficulties not only for the concerned parties to the case but for all of us also. One judgement related to Shariat. Whether anything should have been said or not about that is a moot point but it is a fact that much has been said in the House and outside on this.

The second judgement of the Supreme Court related to Article 311. The way Supreme Court has changed its own earlier ruling and has interpreted Article 311(2)(b), we too are involved in it. With this judgement are involved the interests of lakhs of Government employees of the country.

I am of the view that our Constitution is a document which gives protection to the weaker sections against the powerful ones. With this judgement of the Supreme Court, the guarantees given to the Government employees by the Founding Fathers of the Constitution, apprehending that they will not be able to get justice from the powerful, have been taken away. It can be misused in the matter of service conditions. High officers have been given ample powers. The judgement of the Supreme Court delivered in July 1985 I feel, is not only against the interests of the Government employees, but also against the basic principle of natural justice.

17:07 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

It goes counter to the Fundamental Rights also, given under Articles 14, 19 and 21. The hon. Minister is well aware that the employees not only have put up their demand or demonstrations more than once, but have also exhibited their power and if we widen the gulf between the employees on the one hand and the Government and the officers, on the other, it will not be in any way desirable. I would like to request that the Amendment submitted by Shri Janga Reddy to Article 311(2)(b) should be accepted. It is not going to make much difference basically. Whereas the framers of the Constitution have given rights to the Government employees under Article 311(1) they have at the same time made all the conditions clear under provisions (a), (b) and (c) of Article 311(2) under which services of a Government employee can be terminated. I think the Supreme Court has exceeded its powers and this has created a feeling of insecurity in the minds of the Government employees. This is quite understandable. Shri Rajhans and some other hon. Members have stated that the Government employees do not do work and are corrupt. There is no doubt that there can be certain persons of this type but the Government and the senior officers are fully equipped to take action against such employees and the Constitution does not come in the way of such action. The difficulty comes when power is misused. With this judgement, possibility of the officers misusing the powers given to them has increased. This has created a feeling of insecurity among the Government employees. This feeling is not only against the interests of the employees, it is against our own interests and is contrary to the basic conception of the Constitution also. Therefore, I am of the view that the Amendment presented by Shri Janga Reddy should be accepted. The BJP people do not do a good turn but this time they have taken a good step for the first time by bringing this Bill and thereby giving us a chance to express our views. We should not take this judgement in that sense that because the Government employees indulge

in misdeeds, they should be punished. Rather we should consider this decision as violative of the basic spirit of the Constitution. The Government employees are feeling insecure today. The difficulties of the Government employees have been increased by setting up service tribunals as these are to be presided over by the officials. How will one set of the officials change the decisions of other set of officials? I feel that this has resulted in diluting the guarantee of protection given by the founding fathers of the Constitution. Therefore, we should accept this Constitution Amendment Bill. If the wording of the Bill is not acceptable in the present form, that can be changed. Heavens are not going to fall if Article 311(2)(b) is deleted. I hope that our young Minister will accept it.

SHRI P. NAMGYAL (Ladakh): Mr. Deputy Speaker, Sir, I want to say few words on the Constitution Amendment Bill presented by Shri Janga Reddy. From the speech of the hon. Member who spoke before me, it seems that the Government employees are engaged in one or the other act of indiscipline and illegal activity. I do not fully agree with him. I am of the view that there are very few persons who are caught doing such activities.

I am not a legal expert but at the same time I feel that Article 311(2) provides that reasonable opportunity will be given to the employee and only after that if some charge is proved against him, he will be penalised. Moreover, it has been provided in sub-clause (2) that :

[English]

“(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is reasonably practicable to hold such inquiry ;”

[Translation]

This clearly shows that it is a specific criminal charge and after it provisions (b) and (c) follow. Every act cannot be termed as criminal. We daily read in the

[Shri P. Namgyal]

newspapers that there are certain persons in the Punjab Police who are in collusion with the terrorists and provide information to them on wireless. When a bank is looted, at that time also it is said that some bank employees were involved in that. Similarly, you must have read a lot about Jammu and Kashmir also. The Muslim Educational Trust, the Islamic Study circle and some such other organisations are there where quite a large number of Government employees are working who are intellectuals. They mobilise that funds within the country as well as from abroad and also incite people against India.

If in some case, involvement of a Government employee is established, then you say that he should be given a chance. To my mind, provisos (a), (b) (c) have been rightly included in the Constitution. It is said about our Constitution that it is quite flexible and even on a routine matter, Fundamental Rights can be invoked. All the anti-national, anti-social, communal and secessionist elements take undue advantage of such provisions. Every Government servant is not of that nature and I think, they get justice because proper enquiry is conducted as provided under Article 311(2) of the Constitution and they are properly listened to. During enquiry if charges are established against them, they are not given another opportunity. Therefore, the Amendment Bill brought by the hon. Member does not seem to be of much consequence. In this regard I would like to say that such provision must remain in the Constitution, And in view of the prevailing condition in this country such provisions are necessary to deal with the elements who come under the criminal Procedure code. Everyone is not a criminal. If a Government servant does not obey his officer, he cannot be called a criminal. Disciplinary action will definitely be taken against him for non-compliance of order but criminal case cannot be instituted against him. The criminal is one who commits crime such as murder etc. You know that our late Prime Minister Mrs. Indira Gandhi was assassinated in broad day light and the culprits were caught red handed.

They are still under trial. Why such a long trial is there in such cases? In such cases even proofs were not very important because they were caught red handed while shooting. So long as stringent action is not taken in such cases, there cannot be any peace in the country.

I, therefore, cannot support the Amendment Bill brought by Shri Janga Reddy and I oppose it.

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Mr. Chairman, Sir, I support the Constitution Amendment Bill brought by Shri Janga Reddy. First of all I may submit that the Supreme Court has given two such judgements which have created turmoil in the country. One was in favour of women but the Government in panic did away with that judgement in this House. The second judgement is this one under which one crore and twenty lakh people are living under a feeling of instability and insecurity. Who are these persons—these are the persons, who are a part of the Government, who are running this Government. If you take 5 persons dependent on each of these one crore 20 lakh people, that would mean that 6 crore people are going to be affected by this judgement. This you have to keep in mind. It is not an amendment to the Constitution that will pose danger to the country. On the contrary, it will remove the panic in the minds of the employees.

One thing more. Some hon. Members have pleaded that the Opposition benches allege that corruption is increasing and that the administration is corrupt. In such a situation administration does not mean only these one crore and 20 lakh persons. Administration means those people also who are sitting on those benches. This cry against the corruption that is raised both from this side as well as that side is not going to be muffled. When persons who make law do not act upon it, how can others in lower hierarchy be expected to act upon it? If people like us amass such a huge property through corrupt means, how can we prevent others? We are the law makers. We should be more

cautious in this regard. Such evils have entered into us also. Why this panic then? There should be no such panic. I would say that the Government should accept this Amendment Bill because people are agitating against it. The workers have got this right after great sacrifices but now the Government is taking it away. The court had decided two cases out of which one was accepted by the Government but the other was not accepted because the Government apprehended that one judgement would cause isolation of the people of one religion from it. But you should understand that the other is even more dangerous. That is why I say that it would be better if the Government accepts it. It has created a feeling of insecurity among one crore and twenty lakh employees. It is quite wrong to dismiss an employee without serving any show cause notice. Whenever anyone commits any offence, he should be asked to explain the circumstances under which he did so? If his explanation is not found satisfactory, he should immediately be dismissed without showing any favour to him. But the dismissal, without calling any explanation is not right. It is very important. I would, therefore, say that the Government should accept it. At present you may not accept it because you are in majority but sooner or latter, whether you are in the treasury benches or in opposition, it would be passed by this House. It is inevitable and nobody can stop it.

SHRI GIRDHARI LAL VYAS (Bhilwara): Mr. Deputy Speaker, Sir, I neither support nor oppose the Constitutional (Amendments) Bill 1985 introduced by Shri C. Janga Reddy because it is a matter on which our Government should think very seriously.

The first question is that we have given guarantee under our Constitution to the employees they will not be dismissed from their service without any reason and they will be given full opportunity to explain their position. On the other hand, in some cases the officers and the Government are empowered to dismiss an employee without providing him any opportunity to explain his position. These are two types of questions about which we should think seriously.

I want to say one thing in this regard. An hon. Member of the Communist Party and another hon. Member who was just speaking, have said that one crore and twenty lakh employees,—and if their dependants are also included—then six crore people, will be affected by this judgement. But these six crore people are consuming the maximum part of our national income whereas no facility is available to 38 to 40 per cent people who are still living below the poverty line. Unless we make arrangements to provide comforts and facilities to every citizen of our country and unless we make efforts to provide work, food, clothes and houses to all the citizens, education to the children and health facility to every one in our country, spending the maximum part of our national income on these six crore people will not strengthen our system and we will lag behind in fulfilling our other objectives.

What I mean to say is, on the one hand all sorts of security, resources and facilities are being provided to them and on the other hand, crores of people remain deprived of these essential amenities. Therefore, we should make arrangements and establish such a coordination that essential amenities to all citizens of the country are provided.

I would like to suggest one more thing to which you may or may not agree. In various countries of the world, the officers are engaged on contract basis, particularly the officers of higher ranks because it is not possible to engage the lower employees on contract basis. If the higher officers are employed on contract basis, they will always have a sense of fear that if they do not work for the improvement of the country's condition, their contract can be terminated at any time. If the higher officers have this fear in their mind, much improvement can be effected in our present working system.

Just now Shri Rajhans was speaking about the rampant corruption in our country. Big persons are involved in corruption but no action can be taken against them. As such, it is impossible to eliminate corruption. A person earns money by illegal means but no action can be taken against

[Shri Girdhari Lal Vyas]

him because of the non-availability of the evidence. But if the officers are employed on contract basis and they do not work properly, we can definitely take action against them. They will have constant fear of such action in their mind. Our Government should think over it as to what would be the advantages of such a system if adopted and how our administration would run.

Presently, our hon. Members say that entire system of our country is controlled by the bureaucrats. By adopting this system we will get rid of this bureaucratic grip and will get opportunity to take the country towards progress. This system will be very useful for our country.

Shri Reddy has proposed that the provision under Article 311 (2)(b) should be deleted but there are many cases where generally evidence is not available. There can be cases in which though it comes to our knowledge that an employee is conspiring against our country it becomes difficult to take action against him due to lack of evidence. A higher officer may know that a particular employee is involved in a big scandal or conspiracy but he cannot take action against him without evidence. It is the only provision under which action can be taken in such cases. It is a question worth considering that if this provision is deleted, how action will be taken in such cases. Generally, our Government believes in democratic system and does not dismiss any employee. No officer dismisses his employee merely on personal enmity. It is, therefore, worth considering how a decision will have to be taken in such circumstances. If this provision is deleted, there will be no other alternative available to take action in such cases. You know that evidence is not available against the persons involved in corruption cases, conspiracy against the country, secessionist activities or other anti-national activities because they work behind the scene. Under such circumstance, how action is to be taken against them. It is one of the provisions under which action can be taken against them.

I want to give one more suggestion. Ours is a democratic country and Shri Janga Reddy has forcefully advocated it in his speech. Then why should we not give all democratic rights to the people. All employees may be appointed on contract basis so that they may serve at their will and may leave the service as and when they so desire. In addition to their right to vote, they should be allowed to contest elections also, so that they may not have any complaint against the Government. Shri Janga Reddy has alleged that the Government looks down upon its employees. With this system the employees should not have this feeling because we all are equal. All citizens of this country have equal rights. Thus they should also have right to contest elections and make their full contribution to this system. Such an arrangement can be made under our democratic process and certain decisions of this type can be taken. We should think over it in a definite manner. I would also request that these systems should be strengthened. Dr. Rajhans has said it rightly that many of the employees and officers are corrupt. At present what is the condition of our Banks, Financial institutions, civil courts and administrative courts? Their employees consider salary as their right and adopt unfair means to earn extra money. You may see at Delhi. In the morning high officers go to their offices but in the evening they take their dinner in five star hotels alongwith their wives and children. What they spend in a day is equivalent to their full month's salary. Wherefrom they get money? If you look into it, you will come to know how our bureaucrats are working? It is, therefore, very essential to make improvement in our present system. This improvement cannot be made till the provision of Article 311(1) exists. Therefore, what is required is introduction of a provision of contract system in the service. The way, we the politicians are elected for a period of five years, which can be further reduced in certain compelling circumstances, they too should be taken in service on that basis so that they may also feel that the sword of Damocles in our democratic set up remains hanging over their head. This system should definitely be introduced so that the administration may be streamlined and the pace of development may be accelerated. That is why I

said I neither support nor oppose this Bill. It has been stated that the services of a person should not be terminated without assigning any reason. It is very correct that a person should not be dismissed unless the charge is proved against him. This provision is in the interest of our country.

For this reason, I again state that I neither oppose nor support this Bill. In the end, I will say only this much that the hon. Minister should take an appropriate decision after considering my suggestions seriously.

SHRI K.D. SULTANPURI (Simla) : Mr. Deputy Speaker, Sir, I rise to oppose the Amendment Bill introduced by Shri Janga Reddy. The first thing is that I consider that the points contained in the Bill are not correct. We have already got a provision in the constitution which is very good and suitable actions are taken according to that provision. Today all are governed by uniform laws. Everything is, therefore, going on well. These B.J.P. people do not talk of their indiscipline I do not know how such an idea has struck them. We have noticed that only one or two hon. Members of their party remain present in the House. It is beyond our Comprehension how they will work for the welfare of the country.

SHRI C. JANGA REDDY : At least 50 per cent of our Members are present here but from your party not even 50 per cent Members are sitting here.

SHRI K.D. SULTANPURI : I would like to ask Shri Janga Reddy whether their leader, Shri Atal Bihari Bajpai has ever thought about the Government employees. It is surprising that Shri Janga Reddy is concerned about them. Therefore, I feel that the Bill introduced by him is not a good one. You better withdraw it. We should treat all alike. Today every activity in the country is going on smoothly. Whether they are employees of the Government of India or of the State Governments, They are all working with great honesty. We have got the provision to punish the guilty employees. We can take legal

action also against them. So this Bill is not required. I again oppose this Bill vehemently. In my view our other colleagues will also oppose this Bill. It will therefore, be better if Shri Janga Reddy withdraws this Bill.

KUMARI MAMATA BANERJEE (Jadavpur) : Mr. Deputy Speaker, Sir, I congratulate Shri Janga Reddy for presenting this Bill. I thank you also for granting me time to express my views on this Bill. I support the intention behind the Bill but it seems to be politically motivated. I fully agree to what Shri Rajbans and Shri Vyas have said about this Bill. Even now some people of our country are swayed by parochial considerations. That is why Shrimati Indira Gandhi was assassinated and attempts on the lives of Shri Rajiv Gandhi at Raj Ghat and Punjab Police Director General, Shri Ribeiro were made. Many other such anti-national activities are taking place in the country. Some people want to disintegrate this country. Article 311 (a), (b) and (c) are justified and it should be made more strict. It will be better if Shri Janga Reddy withdraws this Bill.

We also believe in trade union movement. We understand the feelings of workers. We have noticed at some places that the management is not having good relations with the workers. The management can misuse this power in such cases. The Government must ponder over this aspect. Otherwise, the judgement of the Supreme Court is all right. 1.20 crore employees of General Government and State Governments feel that this judgement will not go against them. It is understood that 20,000 employees have become surplus in N.T.P.C. Workers will be retrenched. But the management will not suffer for its mismanagement.

[English]

Not only in NTC, but everywhere these is this mismanagement and corruption going on. But only workers are being exploited, as also trade unions. Mismanagement is going on as before.

[Kumari Mamta Banerjee]

[Translation]

Then the Government should take care that no worker is retrenched. If services of any worker are terminated then the management will have to give reasons for the same. The Government and the President have powers to penalise elements indulging in anti-national activities.

No C.P.M. Member is present in the House. But we want to tell those people who proclaim Indian constitution as the legacy of British empire colonialism and racialism that our Constitution is the best in the world. It contains the best provisions. We combat the evil things. Cannot we criticise such issues within the party forum? Article 311 (a), (b) and (c) should not be misused against the workers. The Government should also see to it that this thing does not happen. It should be enforced only against the terrorists and anti-national elements. But if the management misuses this provision to harass the workers and does not give a chance to the workers to plead their innocence, then it will have a harmful effect. But these people label it as a British legacy.

What is the legacy? Those people are not here. Otherwise, I would have told them that a manager of one small industry was beaten up by the C.P.I. (M) workers in broad daylight. This is not the only instance. An organisation of the junior engineers has been on strike for the last four months. The Chief Minister of West Bengal says that some very harsh measures will be taken against the striking employees, they will be sent to jail and their promotion will be stopped. And upon all this they profess to be the champions for the cause of workers. They say that China is no threat at all and that we should follow Pakistan's example in this regard. These CPI (M) people conspire with foreign powers and speak something else in the Parliament merely for the sake of publicity. If you go to West Bengal, Tripura or Assam, you will find how these people indulge in propaganda tactics. The junior doctors who are on

strike have been beaten up. And here they speak like this:

[English]

You will be surprised to know that the Vice Chancellor of Calcutta University is afraid to enter the Calcutta University premises; and he is working from his residential premises. He is not coming to the University. This is going on for two months. There is no working being done. There is no justice. This is happening, because of the CPI (M). In the Congress Party, one can always criticise Government and plead for the welfare of the workers. They say that under the Congress regime, the British legacy is going on. It is absolutely incorrect.

I want Mr. Janga Reddy to withdraw his Bill, but Government must think over this matter, because this is related to workers' interests. The workers' interests must be protected.

[Translation]

SHRI MANOJ PANDEY (Bettiah): Mr. Deputy Speaker Sir, the Bill moved by hon. Shri Janga Reddy is based mainly on Section 311 of the Constitution. This Bill is connected with the Supreme Court verdict on that issue. There are certain better facts and as we all know bitter truth is hard to swallow. Shri Reddy has moved the Bill which is concerned with a verdict which affects 12 million people. But he has never moved any Bill for those 750 million people who are always dominated administratively by 12 million people. Although he is a very good friend of ours and always talks of the agricultural labourers and is very anxious about the state of agriculture, he should have brought a Bill which could benefit 80 per cent of the population of this country. Anyway, it is his concern. One point that I wish to make relates to our 20-Point Programme which is a socio-economic Programme. So far as this programme is concerned, I wish to say that the administration must be sensitive to the feelings of the people. In this connection I would further say that whatever is being done is the

name of the Trade Unions is not proper. It is important to emphasise on this because Trade Unions are in existence in every field. Even the lowest employees, when employed in the Public Sector, try to form a Union and are running it to serve their interest. Our workers are not bad; they discharge their duties with great responsibility, irrespective of whether they are in the Private Sector or in the Public Sector and I do want to say anything against them. They have shown their worth and whenever our country has faced any calamity, they rose to the occasion. If some Trade Unions are not functioning properly, then it is our leaders who are responsible for it. Shri Indrajit Gupta has said a very good thing in this respect. He has asked about the interest of loss the people are suffering by the strikes? They are not understanding this and are throwing the interests of the people to wind to force the Government to listen to the demands of the Trade Unions. We must think who is being put to difficulties by it? This is a social issue. You have allotted very little time to me, and although I wanted to say much more, I would like to take up briefly only two points. First, we are always criticising the doctors and other employees for the prevailing condition of the hospitals. I am also a doctor by profession and a doctor must have certain responsibilities. Besides, the class III and the Class IV employees also have certain duties and responsibilities. If we look at the conditions of the Operation Theatres or of the wards, we will realise the gravity of the situation. If sympathetic trade unions are for then their demands could be accepted. But Trade Unions nowadays are formed for political reasons and to get some economic and political benefits out of them. In such a situation, I may perhaps be not able to support the Bill moved by Shri Janga Reddy.

This is all I had to submit.

[English]

MR. DEPUTY-SPEAKER : Hon. Minister.

THE MINISTER OF STATE IN THE
MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS AND

MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS (SHRI P.
CHIDAMBARAM) : MR. Deputy-Speaker,

Sir, I have listened with great interest (Interruptions)

MR. DEPUTY-SPEAKER : I want to seek the permission of the House. Already two hours' discussion is over. The Minister can intervene now, he is replying. We extend the time by half an hour.

SHRI P. CHIDAMBARAM : I will finish in ten minutes.

Mr. Deputy-Speaker, I have listened with great interest to what Hon. Member Mr. Janga Reddy had to say on his Bill as well as the comments of other hon. Members.

At the outset I wish to emphasise that the Bill is concerned only with Clause (b) of the second Proviso to Article 311 (2). And, therefore, I must thank hon. Member Mr. Janga Reddy for accepting the judgment of the Supreme Court so far as Clause (a) and Clause (c) of the second Proviso are concerned. Although certain other hon. Members did speak on clause (a) and clause (c), I assume that Mr. Janga Reddy certainly does not share the apprehensions of the other hon. Members and their criticism of the judgment of the Supreme Court, and consequently his Bill is confined only to the proposed deletion of clause (b) of the second proviso.

Sir, a point was made about why this Government supports such draconian provisions in the Constitution. I am afraid, Sir, this reflects an inadequate understanding of the history of these provisions. Clauses (a), (b) and (c) of the second proviso were there in the Constitution as originally enacted, except for minor, verbal differences which do not affect the substance of the issue. Clauses (a), (b) and (c) were there even in the original Constitution and since this debate

[Shri P. Chidambaram]

is confined only to clause (b), may I read clause (b) in its original form. It said :

“Provided where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practical to give to that person an opportunity of showing cause.”

It is an identical provision except that the last five words were ‘an opportunity of showing cause’. This was there in 1950. In 1963, when the Constitution was amended to introduce what is called ‘a second opportunity to show cause against the proposed penalty, minor verbal changes were made in clauses (a), (b) and (c), but substantially the provisions were the same. I will read clause (b) as amended in 1963 :—

“Provided that this clause shall not apply—

X X X

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.”

It is the same provision in 1963. In 1976, when the Constitution was once again amended, the amendment took away what is called the second show cause notice against the proposed penalty, but left untouched clauses (a), (b) and (c). Again for the record let me read clause (b) after the 1976 amendment :

“Provided further that this clause shall not apply—

X X X

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to

be recorded by that authority in writing, it is not reasonably practical to hold such inquiry ;”

Therefore, Sir, we have done nothing to clause (b). Clause (b) has been there since 1950 and nobody before the judgment in Tulsiram Patel's case raised the argument that clause (b) was a draconian provision which could be abused to dismiss or remove hundreds and thousands and millions of Government employees. In fact, it did not happen. Before and after the judgment in Tulsiram Patel's case, clause (b) was the same. Between 1950 and 1985, in 35 years, the record of this Government, the record of the Congress Government barring two-and-a-half years of Janata rule, did not provoke any clamour, did not provoke any outcry that hundreds and thousands and millions of Government employees are being arbitrarily dismissed. May I ask, what is your information, what is your data to say that after Tulsiram Patel's case we are abusing clause (b) and dismissing hundreds and thousands and millions of Government employees? This is simply an argument without any factual basis whatsoever. They are arguing in a vacuum. There is no factual basis for this apprehension. It is not as though something has happened and the Government has done something or the Government has introduced a new provision or the Government has made a new interpretation which was not there since 1950. The record shows we have done nothing. Governments have come and gone. Many many eminent men occupied offices in Government. For a period of 2½ years we were not in Government. Yet, nothing has happened to justify the argument that this provision is being abused. More so, nothing has happened after Tulsiram Patel's case which would justify the argument that we are doing something different today than what it was before 1985.

Then, Sir, reference was made to Chellappan's case. Chellappan's case has no impact upon Clause (b) as my hon. friend Shri Janga Reddy will readily concede. Chellappan had to do with Clause (a). In Chellappan's case the Court did not interpret Article 311 (2) proviso

Clause (a), but interpreted a Special rule in Railway Services Rules, Rule 14 had a different language, viz. it had the word "consider". Therefore, reference to Chellappan is not relevant if I may say with great respect, to this debate. The question is if Tulsi Ram Patel case did not introduce any new principle of interpretation regarding Clause (b), is there reason to believe that this Government will abuse it? My humble answer is that this Government will not abuse it; this Government has not abused it in the past; this Government will not abuse it in the future. In fact, the bonafides and earnestness of this Government has been made manifestly clear by two sets of instructions issued after Tulsi Ram Patel's case on the 11th November 1985 and the 4th April 1986. These instructions have been widely distributed and have been communicated to every office, every department, every Ministry. If you will pardon me, Sir I may take some legitimate pride in drafting these instructions. In fact I sat down and I drafted these instructions myself to ensure that no one would take advantage of Clause (b) or for that matter Clauses (a) and (c). So far as Clause (b) is concerned, Clause (b) itself says, and the Supreme Court judgment affirms it and we have made it very clear in the instructions, that two conditions precedent must be satisfied. Firstly, whether it is reasonably practical to hold an enquiry or not, is not a matter of subjective judgment. This conclusion must be reached on objective facts. As every lawyer knows, every court knows the test is that of a reasonable man taking a reasonable view. Would he reach the conclusion that an enquiry cannot be conducted? That is the test. We will hold every appointing authority to that test and let there be no doubt whatsoever about the enforceability of these instructions. The second pre-condition is the authority must record reasons. He must record reasons on the file. It is a contemporaneous record and therefore it is not as if anybody can get away without nothing any reasons. The Supreme Court judgment says that the reasons need not be communicated to the delinquent. In our instructions we say that it is obligatory to record the reasons on the file. And we have gone a step further and said that it would be

advisable to communicate these reasons to the delinquent. Invariably, I would expect all the authorities who take recourse to Clause (b) not only to record the reasons but to communicate these reasons to the delinquent so that he will know why an enquiry has not been held in this case. Although there is an internal flaw in hon. Member Janga Reddy's Bill, because he now proposes deletion of Clause (b) but he does not propose deletion of Article 311 (3). You will kindly appreciate that Article 311 (3) will not stand by itself after clause (b) is deleted.

18.00 hrs.

But then the Supreme Court has categorically said that notwithstanding Article 311 (3) the court is not precluded from sitting in judgement over the conclusion whether an inquiry was practicable or not. The court had the power. Therefore, when a delinquent goes before a court and complains that in his case an inquiry has not been conducted the court has the power to scrutinise the reasons and say whether the inquiry was rightly dispensed with or the inquiry should have been conducted.

There is yet another safeguard. The Supreme Court has said that the right of appeal and the right of revision are not taken away and in the appeal and in the revision the delinquent can contest the correctness of the decision of the original authority to dispense with the inquiry. He can say that now the situation has changed. May be then the practicability of conducting an inquiry was in doubt. Today the situation has changed. Calm and peace has returned. Please hold an inquiry into the charges against me today. The appellate authority and the revisional authority can take note of that argument and decide whether an inquiry should be held or not. The Supreme Court goes a step further. If at the stage of appeal the same disturbed situation prevails the delinquent would be entitled to ask the appellate authority to postpone the hearing of the appeal so that the appeal will be heard after calm and peace has returned. There are so many safeguards.

[Shri P. Chidambaram]

With all these safeguards let me assure you and the House that there is no chance of anybody being dismissed arbitrarily in abuse of power or without any checks or balances and without any judicial review.

We have gone a step further. On the 4th April, 1986, when it was brought to my notice that it was possible that some authorities may take it into their heads that dispensing with the inquiry means dispensing with even the charge memo, I took note of that and issued supplementary instructions and I urge the hon. Member to read those instructions. We have clearly said in those instructions that the possibility of holding an inquiry should actually subsist at the time when the conclusion is arrived at. The authority should not anticipate that, "if I decide to issue a charge-sheet today; if I decide to call for an explanation may be 30 or 50 days hence a situation will be created where an inquiry cannot be held and, therefore, I will not even issue the charge memo." That is ruled out. We have said at every stage of the inquiry—charge memo, explanation, oral inquiry, leading of evidence on the side of the Department, leading of evidence on the side of defence, written arguments and consideration at every stage you must decide whether it is reasonably practicable to hold or continue the inquiry. If at the initial stage there is no difficulty we have

said you must issue the charge memo and may be at a later stage you may come to the conclusion that it is not practicable to hold an inquiry.

Sir, the instructions of 11th November, 1985 and 4th April, 1986 more than adequately safeguard the interests of the government servants. I do not wish to enter into any lengthy debate on the other aspects raised. I assure the hon. Member that the provisions have remained the same since 1950. The Supreme Court has not introduced any new principle of law. Government have not done anything contrary to law or the Constitution. On the contrary Government have come forward with elaborate guidelines and instructions which more than adequately safeguard the interests of the Government servants. I would most humbly request Mr. Janga Reddy not to press his Constitution amendment Bill.

MR. DEPUTY-SPEAKER : Mr. Janga Reddy, you may speak next time. The House stands adjourned to re-assemble on Monday at 11.00 A.M.

18.05 hrs.

The Lok Sabha then adjourned till Eleven of the Clock, on Monday, November 10, 1986/Kartika 19, 1908 (Saka)