Those who fail to get 5 point average of the two semester examinations are deprived of their scholarship till they improve in the next examination. This system has a disastrous effect on the performance of the SCST students. Till the next examination they have to work in an extremely frustrating conditions, their parents not being able to meet their hostel expenses. In the next examination all those who do not reach the 'specific standards' are thrown out of the Institute. This year 12 students, out of whom 10 are SCST have been asked to vacate the Institute and the Hostel I would request the government not to throw out any student from the Institute and provide the weak students special coaching and encouragement to enable them to improve their performance. I would also urge upon the government to order an enquiry into the working of the Institute to find out how as much as fifty per cent of the SCST students have been thrown out of the Institute in the last four years and why no extra-coaching arrangements were made for students belonging to the weaker sections.

(v) REPORTED INSECURILY OF LIFE AND PROPERTY OF NON-TRIBALS IN MEGHALAYA

SHRI SAUGATA ROY (Barrackpore): I want to raise the following matter of urgent public importance in the House;

A very tense situation is prevailing in the state of Meghalaya ever since the new Government has come to power, where the life and property of non-tribals are insecure In the town of Shillong there have been several attacks on non-tribals in the past two months An Editor of a local Newspaper Mr. Kapil Chatterjee was mercilessly beaten up for writing against these attacks. A new organisation called the Meghalaya Tribal Youth Organisation has been set up which in a meeting recently has asked non-tribals to get out of Meghalaya. It also submitted a memorandum to Union Minister of State for Education recently asking the Central Government to take out its office from Meghalaya since their presence caused the influx of non-tribal people into their state. The President has recently assented to a state law which bans any sale of land to non-tribals, leading National dailies including Times of India (June 19, 1978) have written editorials about the prevailing situation.

During my recent visit to Shillong, a large number of people including people's representatives and members of the local bar represented to me asking me to alert the Central Government about the situation where people of Bengali, Nepali, Punjabi and other origins were feeling totally insecure in the state. In this context, it may be mentioned that the hands of foreign missionaries who are very active in the state cannot be ruled out.

14.17 hrs.

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I beg to move:

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

The results of the last Lok Sabha elections reveal if the people gave any mandate to the Government, the mandate was that the rights of the people will be given to them and it shall be ensured that the rights of the people will not be interfered with. Their freedoms, their liberties and their right to decide their own future will be ensured for them and all that was necessary was to ensure that those rights of the people and their democratic rights to establish

*Moved with the recommendation of the President.

[Shri Shanti Bhushan]

their own future would be ensured. That is why this process of making certain amendments, some of them of far reaching importance, had to be taken up in that spirit.

I am happy to say that the procedure which was evolved in order to give shape to the Constitution Amendment Bill was to have a detailed dialogue with all the leaders of all the Opposition parties and groups so that we could arrive at a consensus on various important questions as far as possible. I must admit that in all important matters it is not always possible to achieve an agreement or to attain unanimity. But, particularly in the matter of amending the Constitution there has to be an effort to take the country with oneself. to take all the opposition parties also with oneself and, of course, in-spite of that dialogue if some differences persist, that cannot be helped. But we have ventured to have a detailed dialogue and I am happy to say that I got all response from the Opposition parties and these discussions were carried on in a spirit of friendliness and co-operation.

I am grateful to the leaders of all the opposition parties and opposition groups in that regard.

This Bill was introduced on the 15th May this year. With the result that the hon. members have had an opportunity to study the various provisions of the Bill as it has been drafted and it may not, perhaps, be necessary for me to deal with various clauses of the Bill at length. But I must touch upon some of the important features of the Bill at this stage.

The most important provisions of the Bill, if any provision could be regarded as the most important, are those which deal with the emergency provisions of the Constitution. An effort has been made by the provisions of this Bill firstly to take away the power of the declaration of emergency in the event of mere internal disturbances in the country. That expression has been sought to be substituted by "armed rebellion", because the difference between internal disturbances and armed rebellion is quite clear. If there is something which may fall very short of creating a danger to the security of the country, some people might take it to fall within the expression "internal disturbances" but so far as armed rebellion is concerned, it is a very strong expression, so that unless the security of the country is threatened by what is an armed rebellion, there should be no power to declare an emergency in the country. It is on that philosophy that this provision is sought to be introduced.

Then, the Bill also seeks to introduce a definite requirement of written advice amanating from the Cabinet before the President can proclaim an emergency in the country, so that hereafter there would be an express requirement that the Cabinet will have to tender written advice to the President and only then it will be competent for the President to proclaim an emergency in the country

Apart from that, it is also being provided that even when the Government proclaims an emergency, within one month thereof it must be ratified by the two Houses of parliament if it is to continue. A very important amendment is being introduced. So far, the ratification was only by way of a bare majority of the two Houses, but hereafter, because it is such an important matter, because during the emergency the rights of the people get curtailed to some extent or the other, there should be some kind of a consensus in the country and therefore this requirement is of the same kind which is required for the amendment of the Constitution. Because the proclamation of

an emergency itself has the effect to some extent of amending the Constitution, the same kind of majority is being insisted upon by this provision which is being introduced, namely it will have to be more than half of the total membership of each House and two-third of those present and voting. The same requirement is being introduced for the ratification of a proclamation of an emergency.

A further provision which is being introduced in this connection is this. So far, once an emergency had been proclaimed, it could continue indefinitely, and the Houses of parliament did not have any say, but a provision is now being introduced that if the Lok Sabha at any time feels that the continuance of the emergency is not proper, it would be open to the Lok Sabha to adopt a resolution to that effect calling for the revocation of the proclamation of emergency, and the President would be bound to act thereon and to revoke the emergency

In that connection, it is also being provided that a certain membership of the House can requisition a special session of the Lok Sabha for that purpose to consider a resolution for the revocation of the emergency.

So, it is my earnest hope that with all these important safeguards being introduced in the emergency provisions, it will not be possible for an emergency to be declared in the country to take away the fundamental rights and the liberties and the freedoms of the people unless there is a really good case for it, and there is an almost total consensus in the country in that regard. These provisions are designed for that purpose.

Another important change which is sought to be made by this Bill is in regard to the provisions of the Constitution dealing with the subject matter of preventive detention. Preventive detention is not a very popular thing, but the Constitution-makers thought that perhaps in some extreme situations preventive detention was necessary. In any case, it is most essential that even when preventive detention has to be resorted to, the safeguards should be such that it is not possible for any Government to abuse the power of preventive detention under any circumstances It is with that object that some very important and salutary safeguards are being sought to be introduced in the constitutional provisions regarding preventive detention.

As the House knows, there is at present a provision by which parliament can authorise the preventive detention of a person even beyond the normal period of three months which was contemplated by the Constitution without any reference to an Advisory Board, but that provision is sought to be deleted.

. so that hereafter it will not be open even to parliament to authorise the preventive detention of any person beyond the normal period prescribed by the Constitution without any reference to the Advisory Board under any circumstances whatsoever, and this period of three months which was stipulated by the original provisions of the Constitution is also being cut down to a period of two months only.

But the more important safeguard which is sought to be introduced in regard to the preventive detention provisions is in regard to the constitution of the Advisory Board It was open to the Government to constitute an Advisory Board. It is known that so far as the judiciary is concerned the reason why the judiciary commands the confidence of the people is that because it is an independent judiciary, the Government does not have any voice in seeing to it that any particular decisions are rendered by the judiciary and, therefore, an Advisory Board which is constituted by the Government could not command the same confidence as

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an Advisory Board which is constituted by the judiciary would have. That is why this important safeguard is being introduced that the Advisory Board will have to be constituted on the recommendation of, not in consultation with, the Chief Justice of the High Court so that it will be for the Chief Justice of the High Court to decide which persons will constitute it, and with regard to its composition it is being further provided that the Chairman of the Advisory Board must be a sitting judge of the High Court, the other two Members could either be sitting Judges or retired Judges, but all the three of them would have to be selected by the Chief Justice of High Court itself.

Now, Sir, if the intervention of such an Advisory Board within two months of detention is available, then I say, and I feel confident and I hope the House would also feel confident, that it would not be possible for any Government to abuse this power of preventive detention. In fact, if I may say so in that connection that when a person is arrested because he is suspected of committing a crime and even before he is adjudicated guilty of that offence and is convicted, the law provides that he can be kept in detention, he can be kept in jail as an under-trail. There has never been any criticism or condemnation of such a power to keep a person in jail or in detention even though he has not yet been adjudicated guilty of an offence with which he is charged. The reason is not far to seek. The reason has been that the ultimate power to decide as to whether there are good grounds for the person to be kept in detention even though he has not yet been adjudicated guilty of a crime rests with the judiciary and not with the executive. Whether a person should be released on bail or there is a good reason that he should remain confined in jail even though he has not yet been found guilty of the commission of a crime was left with the judiciary and not with the executive. Therefore, that was the safeguard and that power to keep a person in detention commanded the confidence of the people and there was never any criticism. It is that kind of principle which is sought to be introduced even in relation to this kind of preventive detention, *viz.* within two months of a person being detained, an organ consisting of Judges constituted by the Chief Justice of the appropriate High Court, it will have the power to go into the material and to decide as to whether there is justification for keeping a person in preventive detention or there is not, and therefore, such a decision will command the same confidence of the people as any decision whether to release a person on bail or not to release a person on bail commands and therefore, Sir, I command it for the consideration of the House that this would be a very important safeguard even in regard to this power of preventive detention.

Then, Sir, there are provisions in this Bill which seek to restore the powers of the judiciary, of the higher judiciary, the High Court and so on There is Article 226 An important change is being introduced so that those powers which had been taken away are sought to be restored to the High Court In that connection, I might point out that provision is sought to be introduced because there was some legitimate criticism that sometimes the High Court, when it chose to pass an interim order by which some restriction could be imposed on the powers of the other parties and so on, could bring things to a standstill, sometimes it had been the experience of the people that such *ex parte* interim orders continued for a long time in spite of efforts made by the other side even when the High Court after hearing both the parties felt that there was no justification for the continuance of those interim

orders. Therefore, a provision is being introduced in article 226 that if a person obtains an *ex parte* interim order, then if the other party who is aggrieved by the interim order makes an application in the High Court for the vacation of that interim order, then within two weeks of the application for the vocation of the order being filed by the other side, that application must be heard and dispoed of because both parties are available to make their submissions to the High Court. If the application is not disposed of within two weeks from the date on which it is received by the High Court, the interim stay shall stand vacated on the expiry of the said period.

Then I come to Chapter XIV-A which has been introduced. Although it has not yet been acted upon. Chapter XIV-A, which contemplated the creation of certain tribunals, which would not be subject to the supervisory jurisdiction of the High Courts, that provision is sought to be deleted Of course, even without such constitutional provisions, if there is a good case and if there is a good justification, it is always open for any Government or any Legislature to create special tribunals to handle some specialised work. But, so long as they are under the overall supervisory jurisdiction of these courts, the High Courts, whose independence is guaranteed by constitutional provision, public confidence in the administration of justice continues. But if a provision is introduced by which some courts or tribunals are created, which will not be amenable to the jurisdiction of these higher courts, whose independence is guaranteed by constitutional provisions, namely, that their conditions of appointment cannot be altered as also the procedure of their appointment, about which there are well laid down traditions, then, in that case, the danger which has been felt is, there are no provisions requiring how a tribunal would be constituted. A tribunal may be constituted, which can be a very good tribunal; another tribunal may be constituted, which may not be a very good tribunal. That tribunal may be so composed that it may fail to command the confidence of the people. And if a court or tribunal is not subject to the overall supervisory control of the High Court, whose independence is guaranteed, the very purpose of seeing to it that there is an independent judiciary to finally adjudicate the rights of the parties on important matters would be frustrated.

It may be suggested in that connection that, so far as the Supreme Court's power under article 166 was concerned, it was still there in respect of the decisions rendered by these tribunals. But, as the House knows, India is a very vast country and it is not possible for a person always to go to the Supreme Court, because the Supreme Court is at one place, and the procedure and proceeding in the Supreme Court is much more expensive than in a High Court. So, while theoretically that remedy of an independent judiciary might have been there on a practical plane, in many cases that remedy was of an illusory nature. Therefore, it was considered important that if the common man, the poor man, the small man, if he had also to be guaranteed that, so far as the administration of justice is concerned, the adjudication of his rights and liabilities are concerned, he would have recourse to an independent court, a court whose independent is guaranteed, the ultimate remedy he would have in a reasonably near place in his own State where he would not have to incur very heavy expenses, then only he would feel re-assured that his rights and liabilities would be within the care of an independent court like a High Court.

Then there are provisions dealing with President's Rule, article 356, because it was felt that sometimes President's Rule was imposed and it continued for a long time, affecting the rights of the people of that State to

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govern themselves. Now it has been felt that President's Rule should be a matter of last resort only, and also only for a limited purpose; that is to say, if the constitutional machinery in the State has broken down, then the imposition of President's Rule should be only for the purpose of getting a popular Government installed in accordance with the provisions of the Constitution. Therefore, an outside limit has been imposed about the period for which President's Rule can be continued under article 356, and that period has been conceived as one year, except in cases of emergency. Because, may be during the emergency it is not possible to hold elections because the conditions are such. So except during the period of the emergency, the maximum period during which President's Rule can be continued is one year, and that one year has been conceived for the very reason that, even if you desire to hold the elections as quickly as possible, there may be certain areas where, on account of weather conditions, climatic factors, it may not be possible to hold the elections within one year. But in one year, however, all seasons would come and go. Therefore, it is not necessary to have a period of more than one year.

Then, a very important provision of the Bill is in regard to a provision which has been introduced, giving power to the Union to deploy armed forces of the Union in a State even without the consent of the State. There was a considerable criticism, justified criticism because in fact in the federal set up, as we have under our Constitution, we have to proceed on the basis of trust. The people of every State have to be trusted and such a power *viz*, the Union deploying the armed forces in the State even without the consent of the State was not in accordance with the scheme of things which have been laid down in the Constituiton. If a Constitutional machinery has broken down in a State, then Article 356 is there. But if the Constituitonal machinery has not broken down in a State, there is no reason as to why the Union should have the power to deploy the armed forces in the State even without the consent of the State.

Then there is a provision which is being introduced for the first time in regard to the publication of Parliamentary proceedings. Earlier, this privilege, *viz*., to publish the Parliamentary proceedings freely was a right which was secured by an Act of Parliament. That Act of Parliament had gone. But it has been felt that the freedom to publish the proceedings of the two august Houses of Parliament is so sacrosanct, so important for the functioning of democracy and for the successful working of democracy, that this right must be guaranteed by the Constitution itself because it is so important for the successful working of Parliamentary Institutions. Therefore, this provision is being introduced in a new Article *viz*., Article 361A. It is, of course, with the stipulation that if there is a secret session—there may be a case for a secret session when the public interest may require that the proceedings cannot be published. But otherwise, there will be a Constitutional right to publish the Parliamentary proceedings freely, which will ensure the successful working of Parliamentary institutions.

Then another important provision aims at restoring the same term to the Members of the Lok Sabha, Members of the Legislatures, etc., which was conceived by the original provisions of the Constitution *viz*, five years. The period of five years had been increased to six years, but it is felt that there was no reason as to why this five years should be increased to six years. I hope all sections will appreciate the spirit in which this provision is being introduced. Normally, the majority party could

have enjoyed the benefit of this term of six years. Well, perhaps, one could expect the majority party to fall a victim to the temptation of enjoying that period of six years. But after all, parliamentary democracy requires....

SHRI K. GOPAL (Karur): Will your party remain for six years?

SHRI SHANTI BHUSHAN: I hope that this gesture would be appreciated, that after all, ultimately, every party, every functionary, even hon. Member of this House has to think of the public interest of the people and so on and therefore, these personal considerations, six years or five years, have to be subordinated to public good. Therefore, this period of five years has been treated as the proper period in which a party should be called upon to renew its mandate from the people and then only it can continue.

Then there are other provisions which deal with the election petitions against the President or the Prime Minister or if I may say so, the Speaker also. The original provisions of the Constitution contemplated that so far as the President was concerned, the Supreme Court shall be the body because the President is the highest functionary in the land. It was in the fitness of things that the Supreme Court, which is the highest court and not any other organ of the judiciary, should try the election petitions. But those provisions had been changed. But it is felt that there is no reason as to why it should not be for the Supreme Court to try any disputes in regard to the election of the President. Therefore, these provisions are sought to be restored.

In the case of persons holding the office of the Prime Minister or the Speaker, again, there had been a departure but it is felt, because after all whether a person holds a high Office or does not hold that high office, he is the same in the eyes of law, and this is particularly so in a country which swears by equality and which does not recognise the distinction between high and low, that there is no reason as to why the election to Parliament of one person should go to one forum and the election of another person to Parliament to another forum. Therefore, these provisions are also sought to be restored so that the election petitions against any Member of Parliament, whether he is a Minister or the Prime Minister or the Speaker, or not, will go before the same fourm *viz.*, the High court, as before.

There are some provisions—I would not say they are so important—dealing with Supreme Court appeals, article 132, 133 and 134 The procedure was that after the High Court decided a case, there had to be a written application to the High Court, issue of notice, hearing, then a decision and, thereafter, we could go, under article 136, to the Supreme Court. Now, it is being increasingly realised that all this time-frame has to be cut down so that the common man can feel that he has got justice because if a person is able to get justice after an inordinate delay, he does not feel that he has got justice. The very basis of rule of law is, not merely a person has a legal right to go to a court of law but he must be assured of a final decision within a reasonable time-frame. Of course, many other steps are being taken in this connection. But it was felt that one important step which could be taken was that as soon as the judgment is delivered by the High Court and since both the parties know what the points are, what have been the arguments, if there are any quesions which would justify the case going to the Supreme Court, as soon as the judgment is pronounced, an oral prayer can be made by either party and, on that the High Court has to consider whether it is a fit case to be sent to the Supreme Court, either grant or refuse the certificate of fitness then and there. It would cut down a lot of delay between the decision of the High Court and the Supreme Court.

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Then, I come to another important provision feature of this Bill which also proceeds to redeem another election pledge of the Janata Party, that is, the deletion of the right to property from the Fundamental Rights Chapter. This is a very important provision. It is being sought to be substituted by a constitutional right, namely, nobody can be deprived of his right to property except in accordance with the procedure established by law, except by legal procedures. Arbitrarily, nobody must be able to take away somebody's property.

It was felt that in regard to the right to property which was conceived as a fundamental right by the original Constitution, in a country like ours, in the context of India which consist of vast majority of poor people where there are only a few people who really can claim to possess extensive properties, to equate the right to property to the more important righs in which the people of this country are interested, namely, the right to freedom of speech, the right to liberty, the right to move freely, the right to form associations and so on, all these fundamental freedom and other democratic rights, to equate them and put them on the same footing had produced this result that both important rights and not so important rights, namely, the right to property, being in the same category of fundamental rights, that if at some time there was some justification to introduce a provision for putting a curb on the right to property because it came in the way of some scheme which was conceived as being good for the people, the other fundamental rights also get curbed to that extent, in the same way. It is with this realisation that it was considered that, after all, in this country where it is the vast sections of people, the humanity, whose interest has to be supreme—they are the supreme people they are the sovereign people—this distinction must be made. While recognising the right to property; while there will be sanctity attached to the right to property, while there will have to be a law to justify deprivation of property, etc., at the same time it will not have the status of a fundamental right so that a case for imposing any restriction for curbing other more important fundamental rights in which the Indian humanity is interested may not arise. That is the reason for removing article 19(1)(f) and article 31 from the Chapter on Fundamental Rights and introducing a new article which would be a constitutional right, which would be a legal right, but not having the status of a fundamental right.

Lastly, I come to an equally important provision of the Constitution, namely, the power to amend the Constitution, article 368. In regard to article 368, it was felt, after a very deep consideration, after discussions with several Opposition parties, and taking some inspiration from important leaders of the Opposition also, that, yes, the people should be involved in certain amendments of the Constitution of a far-reaching nature Namely, while of cource the paliament has a special position of its own, at the same time, Hon. Members of Parliament represent the people. They come here to this august House as representing the people. The people are the real masters, the people are the real sovereign. Therefore, while not denigrating the position of the House, I do not think that anybody will dispute the ultimate supremecy of the people of this country. It is the people whose voice is supreme, it is the people who must ultimately decide what is good for them and what is not good for them. I hope nobody would cast an aspersion on the people that they are not fit to take decisions for themselves and so on

Therefore, it is in that spirit that it has been said that it should not be possible for any amendments to the Constitution unless it was definitely

assured of ratification and consent of the people. Therefore, in the case of those amendments which might tend to deprive the people of their rights—either democratic rights, for instance, democracy, socialism, free and fair elections, independent Judiciary or the fundamental rights of the people, in which the people are vitally interested—it was felt that, while having the utmost confidence in the two Houses of Parliament and the institution of Parliament, the people have a right that, if there is any proposal for amending the Constitution which might have the effect of depriving them of these rights—their fundamental right of freedom of speech or right of association or their right of free and fair elections based on adult franchise, or democracy itself, then of course the people are entitled to do whatever they want to do, but they must be involved. Nobody should be able to do that behind their back in their absence. Therefore, if any Constitutional amendment has that tendency, then undoubtedly, we must go to the people, seek their ratification, seek their consent and explain to them: all the political parties would be there and they would explain the case to the people and tell them how they are going to be effected by the Constitutional amendment. If the people endorse it, by all means, make it, but if the people say 'We do not want any restriction on our rights' and so on...

PROF. P. G. MAVALANKAR (Gandhinagar): How many people?

SHRI SHANTI BHUSHAN: There will be plenty of occasions for discussing that.

So, that is why this concept of referendum is sought to be introduced in the proposed Constitutional amendment. Of course, the other safeguards which are there, will remain: namely, two-thirds majority of the Members presenting and voting in both the House of Parliament will have to be there and, apart from that, if ratification by more than half of the State Legislatures was required, that requirement will also continue. In addition, if any proposed Constitutional amendment has the tendency to affect democracy or secularism or the concept of free and fair elections by adult franchise or the independent Judiciary or the Fundamental Rights, then, in that case, the consent of the people must be taken. It should not be possible to do it behind their back—perhaps at their expense and against them. That is why this provision for a referendum is sought to be introduced in Art. 368 and I express the hope that this very important provision about a referendum, in which the supremacy of the people is being asserted and a safeguard is being proposed for their benefit, will get approbation from all sections of the House.

There is one other matter to which I must refer. Recently, Hon. Members must have found that the Financial Memorandum has been circulated, indicating the likely expenditure with reference to the referendum. This was not circulated to start with, but clause (2) of Rule 69 of the Rules of the House provides that Clauses or provisions in Bills involving expenditure from the Consolidated Fund of India should be printed in thick type or italics. The said clause 45 which introduces the said referendum and which will entail expenditure, is not printed in thick type or italics: I am bringing this to the notice of the House as is required by the Rules. With these words, I move my Motions for the acceptance of the House.

MR. SPEAKER: Motion moved:

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

There are two amendments given notice of, one by Mr. A. K. Roy and the other by Mr. Hukmdeo Narain Yadav, for circulation of the Bill. Mr. Roy is not here. Is Mr Hukmdeo Narain Yadav moving his amendment?

SHRI HUKMDEO NARAIN YADAV (Madhubani): Yes, Sir. I beg to move:

That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th September, 1978 (95).

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): Mr. Speaker, before the House starts the discussion on the motion that my distinguished colleague, the hon. Minister of Law, has moved, I would like to seek your guidance and that of the House on the time schedule for the discussions and the votes to be taken.

The House and you will recall that the Business Advisory Committee had proposed ten hours for 'General Discussion', eight hours for 'Clause-by-clause Consideration' and one hour for Third Reading', and these suggestions of the Business Advisory Committee have already been approved by this House. Since the debate has started around 2.15 p.m., this would mean that the first stage of General Discussion will be over around 2 O'Clock on the 9th, and the motion for consideration may be put to the House at about 2 O'Clock on the 9th. If this schedule is followed, the vote on that may be taken around 2'O' Clock on the 9th. As the rules provide that you might, in your discretion and with the concurrence of the House put all the Clauses together to the vote... *(Interruptions)* This matter was raised in the Business Advisory Committee, and the Business Advisory Committee, which consists of representatives of almost all shades of opinion agreed with the request that was made in accordance with the previous practice. Hon Members would recall that, on many occasions, the Clauses have been put together. This is not the first occasion when such a request has been made. Hon. Members will know that, if on every occasion after every Clause there has to be voting, then there are so many Clauses in the Bill and the whole House would like to be sitting throughout the day. It is a matter of inconvenience to all the hon. Members. Therefore, the practice in the past has been that the Clauses are put together. I would crave the indulgence of the House and request the House through you to agree to the same procedure this time too. All the Clauses that are discussed till the evening of the 9th may be put together between 6.30 and 7.00 p.m. on the 9th, and the rest of the Clauses may be put on the 10th at the same time in the evening, and the Third Reading also may be taken up in the evening on the 10th. I will propose this procedure, with your permission, to the House. *(Interruptions)*

SHRI C. M. STEPHEN (Idukki): All I wanted to say was this Is it to be said that we will start at such and such time this, at such and such time that, and all that? There cannot be any such rule. We have allotted time for consideration, ten hours for the First Reading, eight hours for the Second Reading, and one hour for the Third Reading. The criterion is whether that much of time is taken, and not that you will say at 2 O'Clock at 3 O'Clock at 4 O'Clock, and so on.

MR. SPEAKER: Before I put it to the House, I will clear one misconception. Even when the Chair puts all the Clauses together, if any Member asks that a particular Clause be put to vote separately, it is allowed .

AN HON. MEMBER: Everybody will demand.

MR. SPEAKER: Let them demand, and they will be allowed. The only thing is that, instead of having it that after every Clause vote will be taken, what is suggested is—and it has been done in the past also—that the Clauses may be put together. Suppose any Member says that a particular Clause must be put separately, that will be allowed and that Clause will be put separately.

Now I put it to the House....

SHRI HARI VISHNU KAMATH (Hoshangabad) I have a submission. I hope everybody would agree with this

This is the most important Bill to come up in this session, and I am sure all my colleagues will agree that it would have been better if we had a special session for this Bill, but we are not having it This is the most important Bill of this session It is almost a rebirth of the Constitution, a resurrection of the Constitution

MR. SPEAKER. Mr Kamath, you may speak about the resurrection later

PROF P G MAVALANKAR He is pleading for more time which I am supporting

SHRI HARI VISHNU KAMATH The time allotted for such an important Bill is very inadequate

MR SPEAKER The House is always the master

SHRI BAPUSAHEB PARULEKAR (Ratnagiri) I would invite your attention to one fact The Bill consists of 49 clauses and there are 147 substantial amendments moved I do not know if the BAC had before them these 147 amendments when they met and more will come I would, therefore, request that the time be extended and it should be extended right now so that the speaker's time may not be curtailed We need not be hustled through this very important Bill I feel and the hon Members would also join in this request of mine that the time should be extended right now and not afterwards Otherwise after 10 minutes we are asked to sit down If the time is extended right now, we will get sufficient time to contribute and make our submissions on this most important Bill 19 hours is too inadequate

* श्री लखनलाल कपूर (पूर्णिया) अध्यक्ष महोदय, मैं समझता हूं कि जो समय निर्धारित किया गया है और इस सम्बन्ध में जो विचार माननीय सदस्यों ने प्रकट किये हैं, उन को दृष्टि में रखते हुए सचमुच मैं यह समय बहुत कम है । बहुत से सदस्यों को, जो अपने विचारों को प्रकट करना चाहते हैं, इस तरह से उन को वंचित किया जायगा । इस लिये इस में अधिक से समय अधिक रखा जाय और लोगों को भाग लेने का मौका दिया जाय ।

MR. SPEAKER You are taking most of the time by this side discussion

SHRI R. VENKATARAMAN (Madras South) With regard to the manner of discussion of the clauses we have one or two amendments which we would like to press. Therefore, we would like to know whether each clause would be taken and the amendments to that clause allowed to be moved and pressed or even the amendments will be taken

MR SPEAKER The amendments will be moved then All of them will be grouped together If any member wants a particular clause to be put separately to vote that will be allowed.

SHRI HARI VISHNU KAMATH: Then it is only by Saturday we will be able to finsh this Bill

SHRI K LAKKAPPA (Tumkur) On Saturday we cannot sit

AN HON MEMBER Let the time be extended

MR SPEAKER If the members are so pleased, we can sit up to 8 p m You cannot have all the conveniences

SHRI H L PATWARY (Mangaldoi): I propose that altogether the time should be 40 hours

PROF P G MAVALANKAR Let us proceed and extend the time as and when we feel necessary

AN HON MEMBER· No, no. Here and now we may do it.

MR. SPEAKER: Is it the pleasure of the House? This is very difficult. Unless we have the guidance of the Business Advisory Committee, one member says 40 hours and another member will say 80 hours....

PROF. P. G. MAVALANKAR: It has already been approved.

MR. SPEAKER: If necessary, at a later stage we may think about it. For the time being, we will have 19 hours. The House will now take up the Constitution (Forty-fifth Amendment) Bill for which 19 hours have been allotted.

AN HON MEMBER: No, no, Sir.

SHRI H. L. PATWARY: My proposal is for 40 hours.

MR. SPEAKER: Mr. Patwary, the House has already accepted it. If necessary, later on we have a right to extend it (*Interruptions*)

SHRI VAYALAR RAVI (Chirayinkil): Let them sit down. Let the Minister speak. What is he doing?

MR. SPEAKER: I am sorry. I request the hon. Members to give their serious thought to it. If you take away time in this way, how to proceed?

The House will now take up the Constitution (Forty-fifth Amendment) Bill, 1978 for which 19 hours have been allotted. 10 hours have been allotted for general discussion, 8 hours for clause-by-clause consideration and 1 hour for the third reading.

15 hrs.

This being a Constitution Amendment Bill, the motion for consideration, the clauses and the motion that the Bill be passed, have to be adopted by special majority by division.

We shall first take up the motion for consideration of the Bill If the House agrees it may be put to vote at the end of the discussion, after general discussion.

Then the procedure in regard to consideration of clauses.

SHRI HARI VISHNU KAMATH: Mr. Speaker, Sir, this may be referred back to the Business Advisory Committee for reconsideration of time allocation.

MR. SPEAKER: That will be decided at a later stage. The procedure in regard to the consideration of clauses will be that when a clause is taken up amendments thereto will be moved and discussion held. After the discussion concludes on a clause the next clause and amendments thereto will be discussed likewise. Where it is feasible, a group of clauses, discussion on which has been completed will be put to vote together with the concurrence of the House, according to the provisions of Rule 155. If, however any Member wants any particular clause or clauses to be put to vote separately, it will be done

After all the clauses have been voted upon, Third Reading of the Bill will be taken up. That is all for the present. I take it that the House agrees. This is the procedure for the time being.

SEVERAL HON. MEMBERS: Yes

MR. SPEAKER. Mr. Stephen

SHRI C. M STEPHEN (Idukki): Mr. Speaker, Sir, to begin with I owe a word of compliment to the Law Minister for the very detached and objective speech with which he introduced this Bill and moved it for the consideration.

A seasoned lawyer that he is, he was able to do it with a certain measure of detachment. Dealing with the Clauses objectively and unlike some of his colleagues, not trying to insinuate or provoke, he has moved for the consideration of the Bill in a very dispassionate manner.

He told us about the first consensus that the Government tried to evoke through certain sessions with the Opposition. Speaking for the Opposition, I hope, he will concede that all of us bring a measure of responsiveness on the proposals that were put forward.

As far as we are concerned, we had looked at it as one of the different Constitution (Amendment) Bills that have been coming in evaluating objectively the proposals on merit. The Janata Party had mandate from the people. Therefore, any proposal they are bringing forward has got to be approached with the utmost measure of responsiveness with an anxious effort to see their view and to accept it to the extent possible. But, there are certain proposals with respect to which, on a fundamental basis, we felt like differing. And we told the Government that we differed on those fundamental proposals.

I make this preliminary remark only to emphasise that this is a proposal which has got to be approached not with passion and emotion, not with a prejudgement and prejudice but with a high sense of responsibility of weighing every one of the clauses with an eye on the implications of that clause, on the total constitutional structure of our country and the repercussions the amendment may have in the socio-economic development of this country.

Now, when he spoke of consensus, there was a certain measure of giving in from the Government side also. I say this with reference to the manifesto of the Janata Party. There are two extreme views possible—one extreme view is that whatever was done in the Forty-Second Amendment was absolutely bad for the simple reason that the Forty-second Amendment was enacted during the period of emergency. It has got to be repjected lock, stock and barrel. Forty-second Amendment is a child by a sin and, therefore, don't touch it but throw it out irrespective of the merits of the different clauses, this one approach have heard repeatedly here. Janata party manifesto also said something like this:

"The Constitution was amended to sanctify and institutionalise a total concentration of power in the hands of one individual, the Prime Minister. The authoritarian trends that had unfolded themselves over the past years were embodied in the Forty-second amendment which was bulldozed through Parliament. To call it an amendment is a misnomer."

This was the position which Janata party originally took. I am happy or I do take note of the fact that the Janata party government has moved out of this position. They have not taken up the position that this was morally bad, legally bad and to call it an amendment is a misnomer.

Therefore, in accordance with their manifesto that the total amendment be rejected, this stand they have given up. The moment they gave up this stand, we approached each of the proposal on merits and this according to me is a correct approach. This is the first point that I would like to emphasise.

Sir, there has been quite a lot spoken about the Forty-second amendment. People said it is rape of the Constitution, demolition of the Democracy—a whole lot of things were spoken. Now, let us analyse the Bill before us. Analysing the Bill you will find that certain clauses seek to annul certain clauses of the Forty-second amendment This is number one. Secondly, certain clauses seek to amend/annul certain clauses of the Thirty-eighth amendment. Thirdly, certain clauses retain certain clauses in either of the amendment and amend certain of those amendments. Fourthly, government have proposed certain far-reaching new amendments of Constitution as such. And in the result quite a number of clauses which were enacted in the Forty second amendment and Thirty-eighth amendment are retained. This is one important fact I have to emphasise.

[Shri C M Stephen]

Sir, as far as I could enumerate I find 23 clauses in the Forty-second amendment are retained They have not been touched They are retained almost—may be they are 21 22 or 23 Twenty-three clauses have been retained out of the Forty second amendment These are not inconsequential amendments The amendment relating to Preamble on which there was a great furore—Mr Palkiwalla came with weighty arguments in public debates—has been retained Then certain amendments were introduced in Directive Principles The entire lot of those amendments are retained There is Article 3 (f) which safeguards the interests of the children there Article 38 which calls upon the Government to encourage legal aid and fair justice to every section of the people there is Article 43 (a) which ensures workers' participation in the management of industries there is Article 48 (a) which speaks about the purity of envioronment wild life etc all these amendments to the Directive Principles have been retained by the Government Then part IV(A) which speaks about fundamental duties a new subject which was brought in the Constitution—has been retained Then there are certain other provisions which are retained For example with respect to the elections the population will be freezed at the present stage notionally and no changes will be affected until the year 2000 AD Until then whatever is the population today on that basis whichsoever state is entitled to get representation in this Parliament and to the Legislative Assemblies that will be freezed there This was with an eye to discourage expansion of the population and to give a sort of incentive for birth control There was a Motion for Constitutional Amendment here brought in by a DMK friend On that basis this was introduced This has got so may repercussions and all those are accepted The constituencies which are demarcated today will remain to be the constituencies No further demarcation will take place This is a new provision in the Forty-second Amendment. That provision is completely retained here

Then, Sir another provision was that the President will be bound by the advice given by the Cabinet The Government have sought to annul certain other provisions but the Government have advisedly sought to retain this provision That is to say, an advice given by the Cabinet is binding on the President Of course, they have put in a new amendment saying that the President has got the right to send it back to the Cabinet for reconsideration which is a new idea which has come in What I am saying is that certain of the provisions are completely retained by them

Then again, Sir Article 311 deals with the Government servants' right There were certain amendments effected in Article 311 Formerly there were three stages One of the stages was given up Again and again a notice has got to be given That was given up Certain provisions to safeguard the interest of the Government servants which were incorporated in Article 311 are also retained in the provision

Then Article 312 provides for the All India Judicial Service This is a new concept which was brought under the Forty Second Amendment That provision is retained

Then in regard to Article 352 there were certain amendments brought in under the Forty Second Amendment Those amendments provided for the declaration of emergency with respect to certain parts of the country, providing for revocation of emergency with respect to certain parts of the country, and providing for alteration of the declaration of emergency These provisions are retained and they are not touched at all Under Article 352 those are retained

Now I come to Article 357 where a President's rule is declared and Parlia-

ment passes a law which is within the jurisdiction of the State Government. Formerly, if the period is over, that used to lapse. But the amendment said that that will continue until the State Assembly annuls that law. Otherwise, the law passed by Parliament (on behalf of the State Assembly) will continue. This is an amendment which was brought under the forty-second Amendment. That provision is retained in the Article.

Now I come to Article 226 which is about the interim order. That concept was incorporated in the Forty Second Amendment. It said, if a party comes to a court and asks for an interim order, no order shall be issued, unless he serves on the respective affected parties all the papers and documents and notice and the court is told that they are given. Unless that is done, no interim order shall be issued. This is the provision, I think My point is, here is a restraint on the jurisdiction of the court in the matter of interim order. That is accepted. The only thing is, the interim order issued will be valid for a maximum period of two months, at the end of which, it will lapse unless in the meanwhile the court says that the interim order will stand extended. Therefore the restraint that was put on the stay order is also retained. I am saying this to emphasise that it is not as though the Forty Second Amendment was *ab initio* void and completely wrong. There were certain very many good things which even the Janata Government felt induced to keep and not change. Therefore, let us not carry on the fulmination that everything was sinful, absolutely bad; there was rape of the Constitution, bull-dozing was done, it was a child of a sinful cohabitation and so on. Such things were said. Let us not do that sort of a thing. That is all that I am emphasising here. Any party when it comes to the Government has to take a total view of the whole situation. We approach matters with a certain sense fo responsibility which storm-troopers outside the Government may not be able to command. So, in the Forty-Second Amendment such were the provisions which were retained.

What are certain provisions that are sought to be annulled? That is the more interesting thing. Now certain fundamental things are sought to be annulled.

(*Interruptions*)

Now, Sir, there are certain fundamental things which are sought to be annulled. Article 31 C under the 42nd Amendment states that when the Directive Principles are in conflict with the Fundamental Rights, Directive Principles being social objectives, Fundamental rights being individual rights,—when there is a conflict between the two—the social objectives must have the priority and social objectives must prevail and a law passed for this purpose for implementing that social objective, even if it is in conflict, not with all fundamental rights but with Articles 14 and 19—if it is in conflict—merely because of that conflict, that law cannot be struck down and it must not be treated invalid. Here, I can understand the Government saying 'No', fundamental right is supreme and the Directive principle is not supreme. That position-taking, I can understand. Article 31-C, as it then was, that a law passed pursuant to two of the Directive Principles even if it is in contravention of Article 14 and Article 19, will prevail. That Clause was amended not only in regard to two provisions but all provisions of the Directive Principles.

Now, the Government want to go back and say only with respect to these provisions—concentration of wealth and fair distribution of wealth or something like that—no other Directive Principle could have a place. This is the amendment sought to bring in. We can speak about that when the Clause-by-Clause discussions come. I am only saying now about the principal objection of this amendment. I can understand your saying that fundamental right is supreme, not Directive Principle. If you say Directive Prin-

[Shri C. M. Stephen]

ciple can be supreme *vis-a-vis* the fundamental right, then unless you establish a case that the particular Directive Principle is more important than the other Directive Principles, there is absolutely no rationale in restricting that particular clause only. Here the concentration of wealth is considered. What about the Directive Principles which say safeguarding the interest of the weaker section? Supposing a law is enacted for that purpose, even then it will be struck down. I can spell out so many things. This is one of the clauses the annulling of which we are not apposed to.

Then there is another minor thing that the rules of business of Cabinet cannot be compelled to produce before the Court. This was the amendment we brought forward. They want to change it. The only thing is that it is not an epoch-making breath-taking and revolutionary sort of an amendment on which the entire thing is going to hinge. Then, of course my learned friend, spoke about the term of Lok Sabha for six years I only want to emphasise that at that time six-year term was accepted, all of us had finished six years. Therefore, it was not for the purpose of ensuring to ourselves six years that this was incorporated. My friends will appreciate this At that time we passed it, we had finished almost sixth year. You can check up.

(*Interruptions*)

SHRI SOMNATH CHATTERJEE (Jadavpur): It was extended.

AN HON. MEMBER: You extended it.

PROF. P. G. MAVALANKAR: We opposed it at that time.

SHRI VAYALAR RAVI: Nobody had resigned. We continued to draw our salaries except Mr. Madhu Limaye.

SHRI C. M. STEPHEN: Sir, I am trying to be as objective as my friends here. I am just trying to dispel a misgiving that may be prevailing. I am just telling the fact. Why exactly we did it? I do not want to go into the reasons. My friends said that being in the ruling party, they could have taken the benefit of it. It can also be, Sir, that the ruling party may not be very sure that it will be able to carry on even for this five-year period. If you cannot complete was a three-year period, the five-year period or the six-year period does not make any difference at all. The way the things are going there, we have to see whether you cannot complete even a three-year itself. Left to myself, as my respected friend, Shri Yeshwantrao Chavan intervened in saying, 'we wish, you do that,' well, we wish you continue and get stewed in your own juice. That is all I have to say; nothing more.

Now, I come to Article 103 about election petition and disqualification. There are two aspects to it. One aspect is that if a dispute arises, whether a person is subject to disqualification, who should decide it. The former provision was, that the President may decide subject to this that the Election Commission's decision can be final. This was an absurd provision. It can either be that the Election Commission decides or it can be that the President decides. To say that the President decides, but he must decide according to this way is the same way as we amended this Constitution saying that the Supreme Court should pass the judgement in the manner we passed. The same absurdity is there. Now, who is the deciding authority? If President is only to be a signatory, if the deciding authority is to be the Election Commission, let us be frank about it and leave it to the Election Commission. We felt that it should be the President in consultation with the Election Commission; this is what we said. In ordinary practice, we do not, when consultation is taken, overrule it, unless there are some basic reasons about it. This is the amendment, they want to rectify it. It is left to them.

On the second part of it, even if on a technical matter, the election expenses are in excess by Re. one, six

years' disqualification is provided in the Representation of the peoples' Act. There are serious corruptions, there are technical things, and there can be a distinction, a difference. Therefore, it should not be a blanket thing, that is, six years' disqualification. Whatever the disqualification, there must be and for how long this disqualification should be, these had got to be decided. The provision was that if a disqualification attaches to a person, then a petition can be moved before the Election Commission. After he has moved the petition before the Election Commission, it can either condone the disqualification, curtail the disqualification, give up the disqualification—this is the round about way. Therefore, an amendment was brought about and they are now seeking to annul it. We have got a very serious objection. We are moving an amendment to the effect that in the Representation of the People's Act itself, the court which is considering this matter, the election petition, the court which found a person to be guilty, that court knowing all the facts of the situation, should decide whether there must be a disqualification, for how long and what period. It must be left to the court; they are the best judge. This is the only amendment that we are bringing about it.

Then, there was a provision that in the High Court, a jurist can be appointed as a judge. This is not an unknown concept. Even in India jurists were appointed as judge some time back. Therefore, we thought that it need not be limited to an advocate, who has practised for ten years or so, but a well known jurist, if available, can be inducted into the bench. This was the amendment, we had brought in and which they are now seeking to annul.

Finally, I come to Article 227, which relates not to writ jurisdiction, but to supervisory jurisdiction. For writ jurisdiction, Article 226 is there. But this Article is being used for the purpose of examining judgements and orders, although no writ will lie under Article 226. Although that judgement is not available to the court as an appellate or revisionary authority, we felt that that examination should not take place under Article 227. That amendment was brought in. They want to annul it.

Then, deployment of forces to the States, which they seek to annul legitimately, I have no objection to that.

There is a parliamentary privileges and that parliamentary privilege provision is now sought to be changed. When we amended Article 105, we said that the privilege will be such as is in existence at the time of passing of that law, and as will be evolved by Parliament from time to time. This is a very material thing and I would appeal to Mr. Shanti Bhushan to consider it. This is the only change that was brought about, i.e. in the place of privilege that was in existance at the time of independence, the privilege as existed at the time of enactment of 42nd—or now the 45th amendment. Then we said, "privileges which can be evolved by Parliament." Now the amendment is, "privilege can be given only by an Act of Parliament"—if this amendment is accepted. Should we be strait-jacketed or should there not be scope for precedent, and should not privileges get established by evolution. We provided scope for that process. You are now seeking to annul that Article.

There is another matter which you are seeking to annul. There is an office of profit. As on to-day, unless an office of profit is not declared by Parliament as not disqualificatory, the Member will get disqualified. The difficulty is, nobody knows what exactly is an office of profit. There are different interpretations as to what is an office of profit. This matter was examined in the United Kingdom. A committee went into it and they passed an Act, which provided that in regard to offices of profit as are declared by Parliament as such, i.e. as disqualificatory, they alone will be disqualified. The question is, what should be

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the position: whether an office of profit which is declared as non-disqualificatory, or an office of profit declared as disqualificatory. We feel that, following the British precedent, it is this which must be brought in-- which my learned friend is seeking to annul.

All I am saying is this: looking through this, which is the epoch-making change brought about? Quite a number of clauses in the 42nd Amendment are being retained. The only clauses to be annulled are these nominal clauses; except, of course for armed forces being deployed and except for 1 or 2 such cases, the other clauses are just nominal clauses.

There are 1 or 2 other matters. Certain new amendments have been brought in, which show that after all this Constitution is not unamendable Even the Government feels, in material particulars. Constitution is to be amended. Amending a Constitution is not a crime. In accordance with the changes taking place in society, the compulsions and needs of a dynamic society, the Constitution has got to be amended. They are now seeking to amend the Constitution in certain material respects. I must certainly welcome the proposal with respect to preventive detention. I do welcome the proposal with regard to the Emergency provision. We have the lesson. What was the lesson? Once a resolution is passed in this House, Parliament is out of the picture. They have no control over the situation at all. Therefore, once it is passed, except by throwing out the Government, we don't get a control on the situation at all. Once you pass, it is finished. The thing goes out of the picture. Therefore, an amendment is sought to be brought in and the President's jurisdiction, under Article 21 is extended. It is good; it is perfectly acceptable.

Then again about absolute majority, i.e. taking into account not the persons present. but the totality of the strength of the House Otherwise you may arrest a certain number of Members; and among those available, you can get 51 per cent. It may be 15 per cent or 20 per cent. That can be managed. Therefore, it is perfectly all right. But there are two things. My friends said that there will be no internal emergency at all. Stand by it. Why then have this armed rebellion business? I don't understand it. I am not seeking an amendment to delete armed rebellion; but I am putting a finger of question at my learned friend. Do you contemplate a situation in this country, where conditions cannot be controlled, except by the declaration of Emergency, without an attack from outside, without any external aggression? There may be certain commotions. May be the workers go out on strike, and take to arms; or maybe Naxalites may attack at some places; or maybe some clandestine fellows may take up arms and do something. An emergency need not be a nation-wide Emergency. Emergency can be limited to a particular place also. That is the present situation. If in a particular area, there is an armed rebellion, do you think that you cannot control it except through emergency? This is what is betrayed by this amendment which you are bringing in. If once that is conceded, that there can be a situation in the country which cannot be controlled except by emergency, then the question as to whether a declaration of emergency is justified is a question of opinion, a question of argument.

(*Interruptions*)

I am only dealing with their amendments.

SHRI GAURI SHANKAR RAI (Ghazipur): What is the previous position?

SHRI C. M. STEPHEN: I am putting the question to them. Do not say you are giving up internal emergency; you are not at all. There is no specific definition about armed rebellion and agent provocateurs can be set up so that an appearance and the armed

rebellion can be made. A few bombs can be thrown here and there. An armed rebellion can be conjured up. Technically you can bring it in. Therefore, the specific question is: whether or not you want internal emergency. To call it armed rebellion is not to avoid internal emergency. Internal emergency you want; and what does it mean? It means that you conceive that a situation in the country can arise where declaration of emergency is a must in the national interest. This is a departation from the stand you have been taking. All right, you take that stand but come out frankly and state what is required rather than put up a great pasture and ali that This is what I have got to say.

Finally, a word about referendum, and then I will resume my seat. The referendum as a great thing my learned friend has brought in. Let me be very clear that my party is totally opposed to the concept of referendum. There are many many dangers in it. There has been the struggle about the power of the Parliament to amend the Constitution. The basic position that we the Congress has taken all along was that Parliament represents people; and you know, in our constitutional law, there is a dictum of delegate or something like that; there is what is called delegated photostat or something like that. *(Interruptions)* That does not apply to India. What is delegated is delegated. People do not reserve power with them. This is the basis on which the Indian Constitution in the country as explained by the Supreme Court has been built up. Whatever that be, this is the position our Party takes that the Parliament is supreme for the period it is elected. If a Parliament cannot pass one amendment, Parliament cannot pass another amendment also. The Supreme Court has now come to a position that basic structure cannot be touched. To that extent, whatever we may try, whatever amendments we may bring in, if it affects the basic structure, then that is struck down. Therefore, in this struggle, the Supreme Court has taken the position that you cannot touch the basic structure. What is the basic structure? The Supreme Court will decide what is the basic structure. They have spelt out certain things. There is no guarantee that is the basic structure. For example, they have said about the fundamental rights. If an amendment to fundamental rights is to be done, it must be with reference to referendum. As of today until we pass the 45th Amendment Bill, property right is a fundamental right. The Supreme Court has said, "This is not a basic structure." Therefore, those things which are spelt out here need not necessarily be the basic structure; those need not also be exhaustive of the basic structure either. On basic structure, they can spell out; over and above that, you are giving them some other provisions whereunder also although they are not basic structure, they can come and say, "You go to a referendum and get it done. Look at the subjects you have enumerated. Any type of amendment can be brought under one of these clauses which means you will hav e to amend the Constitution only under a fear of intervention by the Supreme Court declaring that this amendment comes under this clause and therefore, the amendment must be sanctified only by a referendum; and the result of the referendum is absolutely unpredictable; and going back to the people means making amendment absolutely impossible.

Now, Mr. Shanti Bhushan has brought in this provision for a referendum. After passing this law, if you are bringing this provision, that would be a basic structure thing and that also will have to go to the referendum. That is the position. Don't think it is so innocent. If it is passed today, if the referendum clause was here, this amendment itself may have to go for a referendum. One more question, may I ask you? Suppose in your referendum a particular democratic right can be curtailed. What you are now doing is, for the curtailment you must go to the referendum. Suppose

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people say: fundamental democratic right may be curtailed, how do I restore it? Referendum may say: this right may be curtailed. Suppose Parliament wants to restore that right. How can it restore it, once the people have said we do not have that right. This is the inescapable implication of the concept of curtailing rights by referendum.

Therefore, basically and for practical considerations also we are totally opposed to the referendum, not for the reason Mr. Shanti Bhushan insinuated, namely, we have got some low opinion about our people. Our opinion about people is: they are politically intelligent, politically alert, politically capable of doing their job perfectly well; they have done and they will do it; it is not on that basis. But the entire democratic structure of this country depends upon the sovereignty of this House. We will go back to the people. People voted us in, you come back, you enact; if anything wrong has been done that will be rectified. To the question of referendum, we are totally opposed.

I am closing with one sentence that I have got to say. Firstly, I emphasise the fact that in the 42nd amendment made attacks were made, of course understandably, under the emotionally overcharged atmosphere of that time. They are not to be justified at all. In what we have produced, there were many good things which were absolutely good; you have retained them; you have embraced them, you have kept them in your lap and nourished them so that the country may progress. Those things which you chose to strike down are nominal. You are now bringing in certain amendments which you and we together considered, thinking of the problems of the country, taking a review of what has happened, taking from the experience that we had during the emergency and before the emergency, taking all that into account. Certain amendments you have brought in which we welcome. But you overshot your mark and brought in certain amendments which are wrong, which I would appeal you to consider. We have no other go but to completely oppose some amendments. You should kindly keep your eyes open and evaluate such of the privileges of the House and other things and consider whether you should press for them. I will earnestly appeal to you to consider them with objectivity. The rest of what we have got to say we will be saying when clauses come one by one. Again I do congratulate the hon Law Minister for the objectivity with which he approached this at the negotiations stage and the presentation stage; I do appreciate that. With the strongest reservations which I had explained, I take my seat.

MR. SPEAKER: Shri Ram Jethmalani.

SHRI H. L PATWARY (Mangaldoi): I request you to fix a time limit for speeches.

SHRI RAM JETHMALANI (Bombay North West): Sir...

श्री एच० एल० पटवारी : जो पहले बोल जाते हैं वे तो एक एक घंटा ले लेते हैं और जो पीछे बोलेंगे उन को पांच मिनट ही दिये जाते हैं। इसलिए मेरा कहना है कि आप टाइम लिमिट फिक्स कीजिए।

15.38 hrs.

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

SHRI RAM JETHMALANI: Mr. Deputy-Speaker, I have just heard the speech of the distinguished Leader of the Opposition who complimented my Law Minister, or shall I say, purported to compliment my Law Minister by offering him an overdoze of what is called left handed compliments. You try to compliment him with the right hand and you take

away everything with the left, perhaps you take away more. I thought that having arrived at some consensus he will refrain from making the observations which he made. I regard the whole of his speech as a masterpiece of mischief and intended to deflect the Law Minister and my government from our declared policies .(*Interruptions*) It is my government; we are all comrades and the government belongs to each one of us. I first want to tell the distinguished Leader of the Opposition that he should analyse for himself the sources of the strength and vigour with which he spoke this afternoon. Let him realise that he is speaking to us in this tone because he happens to have a temporary majority in the Upper House. In this House we are able to carry on with the work of Constitutional amendment, but he knows that due to historical reasons that is not the position in the Upper House But let me warn him and let me say for the benefit of all concerned that the role of the Rajya Sabha must be properly understood and the Rajya Sabha must not be used for a purpose for which it was never meant. (*Interruptions*)

We created a bicameral legislature at the Centre and in some of our States because we had thought that lower Houses are elected and the heat, the rough and tumble of the electoral process might cloud their judgment. They may embark upon legislation which may not be wise and be hastily conceived. The role of the Upper House is to improve the quality of the legislation. The role of the Upper House is to contribute its knowledge and superior expertise in the making of our Laws and formulating our policies and more than anything else, it is the limited role of the Upper House to delay legislation which is patently against the national interest and which has been thoughtlessly passed in the lower House. Beyond this it is not the purpose of the Upper House or any party which happens to have a majority in the Upper House to utilise its majority for defeating the clearly expressed will of the people. That is what has happened in England and whenever the House of Lords tries to defeat the will of the Lower House, the House of Lords comes under attack. When the House of Lords tried to defeat the will of the British Electorate, the House of Lords, in 1911, had to be greviously modified and a move is afoot in England even today to modify it, if not to abolish it altogether. Therefore, I would advise the distinguished leader of the Opposition not to rely upon the fact that we are anxious to go through with the process of Constitutional amendment and in that process we are willing to make concession to him. Today you have used this occasion on the floor of the House for purpose of carrying mischievous propaganda. That mischievous propaganda is that our Government and our party have now given up a very great part of our manifesto and have gone back upon the principles which we kept before the people and on that we got their votes and we came here.

Let me tell him that we do not accept any part of the 42nd Amendment. Every law based on political must contain at least three kinds of provisions—those which are ameliorative, those which are innocuous and useless and those which are obnoxious. And those persons who are determined to pass legislation which is basically wicked, basically obnoxious, always make certain that the obnoxious is mixed up with innocuous, obnoxious and innocuous are mixed with some mildly ameliorative measures because their fraud cannot succeed if they put forth only that which is obnoxious.

When we opposed in our manifesto the Forty-second amendment, we opposed the totality of the Forty-second amendment, because we realised that it contains a majority of

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provisions which are obnoxious, contains a lesser number but nevertheless substantial number which are wholly innocuous, and it contains only one or two provisions which in some sense are capable of being considered as mildly ameliorative. And since in this heap of evil there was a little bit of good which had to be discovered with great effort, and of which you made great propaganda at the time when you were rushing and bulldozing the Forty-second amendment through Parliament, we opposed in our manifesto the totality of it, and for the purpose of at least mitigating a part of the evil which you have perpetrated, we are willing to make a compromise, we are willing to allow the innocuous to remain, and we are allowing even those portions which are mildly ameliorative and which are capable of some good use; at least we are going to retain them for some time until we are in a position to do away even with these.

Please do not jump to a conclusion. If you want to withdraw your support in the Rajya Sabha, you are welcome to do so.

SHRI SAUGATA ROY (Barrackpore): Again he is making a reference to the Rajya Sabha.

SHRI RAM JETHMALANI: But having arrived at a consensus, do not deliver the kind of speech which has been delivered by your leader. Repudiate him, but if you want to support him, let me make it clear that the Janata Party will not deviate from its principles, will not abandon any essential part of its manifesto so long as we are in it.

Let me only quote one small illustration. Mrs. Gandhi, through the Forty-second amendment, abolished the requirement of quorum for this Lok Sabha.

SHRI K. GOPAL (Karur): That is why you are asking every time.

SHRI RAM JETHMALANI: The quorum requirement which exists even in the Managing Committee of a Co-operative Society, in the meeting of the Board of Directors, she abolished, but not because she thought that Members should not be punished and made to sit here when the debates are going on, but because she had envisaged a situation, because she realised that Members of Parliament were going to be subjected to preventive detention, she realised that some day she might have to imprison all except herself and her son, and the two will constitute the quorum in this House and keep functioning in the name of Parliament. *(Interruptions)*

Your Leader of the Opposition just delivered to us a homily on the predominance and paramountcy of the directive principles over the fundamental rights. Let me say this, that the Janata Party does not accept that obnoxious thesis of yours. The Janata Party still believes that the fundamental rights in the controlled and qualified form in which they existed in the Constitution will prevail over any political Party's notion of what the public good is. Even as a student of constitutional law, and even as a teacher of constitutional law, I have had occasion to explain to my students—I want you to understand that—that we have Republican Constitution, we are a Republic that the directive principles of the Constitution are mandatory injunctions issued by the founding fathers of the Constitution to governments which succeed one after the other in this country by the inexorable process of the elections that they shall achieve these goals within a reasonable and foreseeable future. These mandatory injunctions, because they were mandatory, because they were goals set to posterity, were certainly important and in a sense, but not in the sense

in which you understand them; they were important and sometimes more important than the fundamental rights, but, in a sense entirely different from the sense in which either Mrs. Gandhi understood them or she was even capable of understanding them.

The negative injunctions were contained in the Fundamental Rights Chapter of the Constitution. You shall achieve the objectives which are fixed by the mandatory injunctions, but in pursuit of these objectives, you shall be subject to some negative injunctions, you shall not follow this method, you shall not follow that method, you shall follow the clean Gandhian method in achieving the objectives The fundamental rights represent the humanitarian philosophy of Mahatma Gandhi which you had forgotten for so long. For example, when the Directive Principles said that you must produce prosperity in the country, prosperity and the production of prosperity is a vital goal, but the Fundamental Rights Chapter said that in producing prosperity you will not plunder anybody, you will not rob anybody, you will produce prosperity by strength, you will produce prosperity by labour, you will produce prosperity by a proper and a wise use of our national resources.

SHRI SAUGATA ROY: By smuggling? (*Interruptions*)

SHRI RAM JETHMALANI: Smuggling flourished because it was a corrupt government which you gave to this country for 30 years, or at least 10 years, you encouraged smugglers and shared their profits. You decided that you cannot follow the limitations of Fundamental Rights, and therefore, you will pretend to produce prosperity by merely robbing the people, and that it is why you tried to denigrate the Fundamental Rights and tried to create an impression as if you are greatly attached to the Directive Principles of the Constitution. The Directive Principles are important, but you shall not in any sense trample upon the rights of individuals which must be preserved. That is the test of a good government, that is the test of an honest government and that is the test of a wise government that without trampling upon the rights of the individuals, it can produce the country's prosperity. If any thief or robber gets into the position of power and robs all people and says: "Look, I have so much money, I have produced prosperity", that is not producing prosperity, that is not compliance with the Fundamental Rights and that is exactly what you were doing. (*Interruptions*).

I had to compliment my Law Minister because he has arrived at a successful consensus with you on some points. (*Interruptions*)

SHRI C. M. STEPHEN: May I ask a question? My hon. friend spoke about Fundamental Rights being supreme and all that. If that is the position, as a logical consequence, should he not seek for the annulment of Article 31 (c) and the entire Ninth Schedule?

SHRI RAM JETHMALANI: That is the next thing you will hear, Mr. Stephen.

Now, Sir, I must compliment the Law Minister because he arrived at a consensus on improving the Constitution with those who wanted to destroy the Constitution at one time. It could not be an easy job. He deserves all the compliments which we can shower upon him. But while it is good to have arrived at an agreement that some of the obnoxious provisions of the Forty-second Amendment must go, I am surprised that the Leader of the Opposition could not even make today a public confession that some of the features of the Forty-Second Amendment are obnoxious. He was only anxious to tell us that we have

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found some good in the Forty-second Amendment. If you want to make that claim, at least make an honest public confession that much of the Forty-second Amendment was rubbish and that is what is being discarded today by the Law Minister's proposals in the Forty-fifth Amendment.

While I compliment the Law Minister on all the points on which he has agreement with the Opposition, let me say that I extend only a qualified support to the provisions of this Constitution (Amendment) Bill. In some measure, let me make it clear that we have not lived up to the principles of our manifesto. We have not lived up to the principles of our manifesto particularly in the field of preventive detention law about which the Law Minister himself spoke and about which, of course, the distinguished Leader of the Opposition has nothing to say because that was their brain child, they used that instrument and that instrument they will again use. We have been told that he is proud of the Emergency and he would always be proud of the Emergency. In the manifesto on which we have sought the votes of the people of this country, we promised not merely to repeal the MISA, we have not merely promised to review all unjust laws, but we made a promise couched in very general terms, much wider terms—than the specific obligation, and that obligation was that we must re-establish the rule of law. Let us read the manifesto and let us get inspiration from the words "re-establishment of rule of law". But the re-establishment of rule of law does not mean that you repeal the MISA today so that tomorrow's dictator, or potential dictator, may overnight enact MISA again by an Ordinance. In that case, we have not fulfilled our promise to the people of India about the re-establishment of rule of law, unless we put the rule of law upon a firm foundation.

SHRI VASANT SATHE (Akola): So that Haji Masthan can be free.

SHRI RAM JETHMALANI: I will deal with Haji Masthan, I will deal with all criminals and will deal with Congressmen; but have patience.

The challenge which Shri Sathe has made is a challenge to my professional ethics. I am a lawyer and I shall act according to the tradition of my great profession.

SHRI VASANT SATHE: I beg your pardon. I am not against your taking the case of smugglers or Haji Masthan.... (*Interruptions*)

श्री धर्मदत्त शर्मा (गुरदासपुर) : इन सब हाजी मस्तानों को आपने ही जन्म दिया है।

SHRI RAM JETHMALANI: In my professional career, I have defended not only smugglers, I have defended worse people and some of them, you know, today adorn your ranks. Ask me the names outside; do not put me in an embarrassing position by asking me to name them here. I have defended quite a few Congressmen, and I have done it with a clean conscience.... (*Interruptions*)

If we are to establish rule of law, we must amend our Constitution in such a manner that either without resort to some extra-constitutional action or without committing a breach of the Constitution, no future dictator in this country can impose the law of preventive detention and arrest the people who criticise the dictator. You might have restored all liberties, for which you need all the compliment you deserve. But, so long as you have not destroyed the constitutional means of introducing preventive detention again, you have not established the rule of law, because any petty dictator will tomorrow, overnight, by enacting MISA by Ordinance, arrest people. Therefore, I appeal to him, through you, and I

hope the whole House will support me, that we must agree to these constitutional amendments on one condition, and one condition alone, namely, that preventive detention in peace time shall cease to be a feature of our Constitution. Our people have given us the necessary orders in March, 1977. England uses preventive detention only in times of mortal war. Americans do not use it even during war. And there is no other democratic country in the world, which has institutionalised preventive detention in its Constitution Are we worse than all other democracies of the world that we must institutionalise this obnoxious institution of preventive detention in our country's Constitution?

Justice Mukherjee and Justice Mahajan said in Gopalan's case in 1950-51 that it is unfortunate that the founding fathers of the Constitution of India have incorporated this in our Constitution Thereafter, judge after judge has said that the institution of preventive detention starts when the rule of law ends. The rule of law and preventive detention are entirely incompatible and cannot possibly be reconciled.

Let me say a word about smugglers, because Shri Sathe pretends that they are bothering him quite a lot. It is true that when the preventive detention goes from the Constitution in peace time, even those who are supposed to be involved in smuggling and foreign exchange offences cannot be detained without trial.

SHRI SAUGATA ROY: Why this jumping?

MR. DEPUTY-SPEAKER: Mr. Saugata Roy, this is not fair. If you do this, then some others can point out some defects in your speaking. This is not the way to interject. It is always open to one to make some interjections. But if you go on making remarks about the mannerisms of a Member, that is not proper.

16 hrs.

SHRI RAM JETHMALANI: Leave him alone. I can take care of my jumping.

When I have advanced a thesis that preventive detention must go, I am mindful of the fact that you cannot use the preventive detention against these two categories of anti-social elements But I have tried to interview as many officers of the law enforcement agencies as possible and those officers have been telling me that if the Criminal Procedure Code is suitably amended—I have moved the necessary amendments by a Criminal Procedure Code (Amendment) Bill, which is before this House, but unfortunately the Private Members' Bills do not receive the priority, which at least some of them ought to, which in substance would give the power to deal with these offenders without interfering with the fabric of the rule of law; these anti-social elements can be effectively dealt with. I have been told that if a police officer arrests a person on suspicion that a man is involved in smuggling offence or foreign exchange offence and when he is taken to a Magistrate, for his first remand, if the Government certifies that his detention in custody for the purpose of investigation is necessary for a period of three months or less, the Magistrate shall be bound to remand that person to custody for three months for the purpose of investigation and if at the end of three months, the Government still requires the detention of that person further in custody for a further period of three months, they have only to satisfy the judicial mind that the accusation is *prima facie* well founded. Nothing more.

Officer after officer has told me that we can have judicial processes for

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dealing with these people and if, for the first three months, they have these persons in custody for the purpose of investigation and for the next three months, on a *reasonable* well founded accusation to the satisfaction of the judicial mind, they do not want. COFEPOSA at all. The trouble is, though Constitutional Amendments are supposed to be matters of great importance, so important that some aspects of the Constitution can only be dealt with by a referendum and of course two-thirds majority and the ratification of the States, this is my grievance and complaint, that there has been very little debate on the 45th Amendment itself. Because adequated party meetings are not called, I can only talk about it here. How many times has our party been given the opportunity to discuss the 45th Amendment? Therefore, I want to tell this to our Law Minister. Since there has been no adequate public debate on preventive detention law, let us at least talk about preventive detention freely and candidly without fear even if it might embarrass the Government or any Ministry.

There are two great jurists on Constitutional law; the one who has received a prize only the other day, Mr. Justice Tarkunde of the Bombay High Court, a man whose concern for human rights is well known and internationally recognised, he has gone on record in issue after issue of his magazine "The Radical" to say that preventive detention except during the time of Emergency should not disfigure our statute book. Mr. Seervai, who has written a book on the "Habeas Corpus judgement and After," has clearly said that preventive detention in peace time is wholly unnecessary. I want to ask, which Officers of the Law Ministry have had the decency, the time, the inclination to go and talk to these two great jurists and to understand their view points. A mere agreement between those who were destroying the Constitution only till the other day and some obscurantists in the Law Ministry does not make and is not a substitute for a national debate which must precede every Constitutional Amendment. I was told...

SHRI KANWAR LAL GUPTA: (Delhi Sadar): Once we have invited the Opposition parties, you must be Charitable. Don't accuse them. It is the Prime Minister who invited them and there is a consensus Don't be uncharitable to them. You may criticise them. That is a different thing. So far as the consensus is concerned, it should not be...

SHRI RAM JETHMALANI: A consensus between the Law Ministry and the Opposition parties is not a substitute for a national debate.

SHRI VASANT SATHE: We do not mind his criticising us. He is criticising the Prime Minister and Mr Shanti Bhushan. He is criticising them that they are the obscurantists *(Interruptions)*

SHRI RAM JETHMALANI: I compliment them when they are free from your evil influence, I do not compliment them when they are under your evil influence

SHRI TRIDIB CHAUDHURI (Berhampore): I would only remind him that there was no consensus with the Opposition so far as the preventive detention is concerned.

SHRI RAM JETHMALANI: I hope then the Opposition will at least strengthen the hands of those who wish to establish and re-establish the rule of law. *(Interruptions)*.

SHRI C. M. STEPHEN: That is the limit.

SHRI RAM JETHMALANI: I have heard today an argument by the Law Minister that even when you hold a man to bail before his trial, it is a

form of preventive detention. I have never agreed with this. When you hold a man in custody because he is accused of a crime, because any day the court has a right to go into the material and decide whether the material is objectively sufficient to detain him, because the man has got a right to go to the High Court and the Supreme Court, because he has got a right to be represented by a lawyer and apply for bail and where the settled rule is that a man shall normally be released on bail, and refusal of bail shall be an exception, how it is possible to equate bail provisions with the law of preventive detention, I have not been able to understand

'Preventive detention' has been defined for us by judge after judge. The Supreme Court has defined it. The preventive detention has acquired a fixed connotation today. Preventive detention means detention when there is no intention to charge a person with a crime, when you have no evidence to charge him with a crime. It is that preventive detention which is obnoxious to a rule of law system. That is what must go.

I have been hearing some argument that even Englishmen accepted preventive detention. They did but only in times of war Even so they accepted it not with a feeling of glee, not with a feeling of joy, but with a feeling of regret. He had to besmirch his hands in that dirty business of preventive detention It is well to remember that a brave Parliament made Preventive Detention bearable. Did it not happen in England that during each of the Wars they changed their Prime Ministers, in the middle of the War? In the First War, they changed Asquith by David Lloyd George and in the Second War, they changed Chambelain by Churchill. That was the freedom which the British Parliament exercised even in times of War. Even against Churchill a Non-Confidence Motion was moved in the British Parliament on the 1st July 1942 and there was no kind of criticism, no kind of vilification, which was not uttered against that great Prime Minister of England during the time of war. Finally when he got up to reply to the debate on the No-Confidence Motion against him, this is what he had to say:

"What a remarkable example it has been of the unbridled freedom of our parliamentary institutions in time of War! Everything that could be thought of or raked up has been used to weaken confidence in the Government, has been used to prove that Ministers are incompetent and to weaken their confidence in themselves, to make the Army distrust the backing it is getting from the Civil Power; to make workmen lose confidence in the weapons they are striving so hard to make; to represent the Government as a set of non-entities over whom the Prime Minister towers and then to undermine him in his own heart and, if possible, before the eyes of the Nation. All this poured out by cable and radio to all parts of the world, to the distress of all our friends and to the delight of all our foes."

Having said this, he proceeded to utter the historic sentence, "I am in favour of all this freedom".

I want to ask all those who talk of parliamentary ratification, who talk of Will of Parliament, to please reflect calmly—I wish to commit no contempt; I wish to tread on nobody's corus—on what was the behaviour and what was the conduct of that Parliament over which Mrs. Indira Gandhi towered during those fateful days. Did you not reduce Parliament to a pathetic rump in those days. How else can you account for Parliament succumbing to so much of tyranny? Our future parliament may well succumb again and that is precisely my objection and that is precisely why I am reasoning with you 'Please

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outlaw this abnoxious Preventive Detention'. We can deal with smugglers and foreign exchange dealers. Smugglers and foreign exchange dealers flourished in this country not because there was no law of Preventive Detention; they flourished in this country because the Government and the law enforcing agencies were parties to their crimes and they failed to enforce the ordinary laws of the country. If the ordinary laws of the country are not enforced with vigour, with honesty, criminals will flourish and criminals were fluorishing in spite of your COFEPOSA and other things, only the kind of corruption was entirely different and the kind of people who were now benefiting were different. Previously it was those who administered the ordinary laws: later it were some others who enforclater the extraordinary laws of the country. This is what will happen. (*Interruptions*).

Coming now to the amendment of the right to property, the Law Minister has said that he is taking away the right to property from Chapter III, i.e., of Fundamental Rights, and he is incorporating it now in some inconspicuous part of the Constitution, in Art. 300 or something. Let us analyse this. Mr. Stephen is right that our manifesto requires us to repeal Art. 31(B) and Art. 31(C) and the Ninth Schedule. Let me, reiterate this that on p. 11 of our Manifesto. this is what we told the people, and the people voted us on this Manifesto. It is not open to the Government, it is not open to an individual Minister, and it is not open to the whole party if you please, to go back on the Manifesto:

"The Government has time and again resorted to the plea that fundamental rights and judicial processes have had to be curtailed in order to protect and further progressive social and economic measures and to prevent vested interests from thwarting them by resort to the courts. This is totally fallacious. Indeed, an official task force set up by the Planning Commission reported in 1974 that land reform measures had not been implemented because of a clear lack of political will.

In order to remove this specious alibi once and for all, the Janata Party will move to delete property from the fundamental rights chapter of the Constitution, leaving it as an ordinary statutory right like any other which may be enforced in a court of law. As a corollary to this, it will also delete the Ninth Schedule to the Constitution, which was originally intended to protect vulnerable land legislation but which has increasingly come to be employed to entrench such repressive and unjust laws as MISA, the Preventive of Publication of Objectionable Matters Act and the recent amendment to the Representation of the People Act."

So, the distinguished Leader of the Opposition is right to this extent that our Party's commitment is to remove Art 31(b) and (c) in so far as they over-step their original purpose; and the original purpose of the Ninth Schedule. The original purpose of the Ninth Schedule was that all laws under which the property of the rich was sought to be taken away—the rich might insist upon market value being paid to them—must be saved from attack on the ground that the right to property was being interfered with. But when those laws were passed, please understand that there were jurists of far-sightedness, of political wisdom, who foresaw the danger. They saw the thin end of the wedge and they argued and they reasoned but in the philosophy of the mob: they were all submerged. They argued and told the nation: 'Today you are tinkering with one Fundamental Right: a time will come when

you will have to tinker with other Fundamental Rights of greater importance. Once the mind gets aclimatized to something which is obnoxious and evil, then you will bear up with evils of greater and greater intensity and in greater and greater quantity. They warned us, but we did not heed them, and the time came when their prophesies proved right. While you were enacting land legislation and were trying to protect it, you did not say 'We will save it from attack on the ground that it conflicts with the Fundamental Right to property'. But you even said that, even if it conflicts with any other right in Part III, the legislation would still be valid. I want to ask the distinguished Leader of the Opposition to give me one example where a right under article 19(1) (a), the right to freedom of speech and expression, had to be curtailed for the purpose of supporting any economic legislation I do not know whether the consequence of this has ever been realised. The consequence of that is that, if a dictator says that this law is for economic benefit of the country, then at the end you can add a provision that, whoever criticises that law shall be subject to punishment even imprisonment and perhaps be subject even to preventive detention. The citizen could be stified because you have taken away all the rights, not merely the right to property. Attack one right and you will be able to attack every other. The Ninth Schedule must go. It must go in respect of future legislations and all legislation other than legislation connected with land reform. It must also go in so far as it protects any existing legislation against attack on the ground of article 14 and all other Fundamental Rights except the right to property. If you are taking away article 31, it is not necessary to have the Ninth Schedule at all. It is necessary to have the Ninth Schedule perhaps to safeguard yourself against the possible argument in the court that even those laws which had originally been protected by putting them in the Ninth Schedule are open to attack. You might says 'beneficient existing legislations' by all means. But if you are true to your manifesto and if Mr. Stephen is not right in saying that you have surrendered your manifesto to their consensus, then I think, it is upto us, it behoves us, and it is our moral and political duty to see that article 31B and 31C, together with the obnoxious Ninth Schedule, are removed—unless, of course, you suitably modify them. Let me say this. It may sound unfashionable in a society which is supposed to be highly proletarian, but no one should shirk saying that which is unfashionable if it happens to be true. To my mind, some right of property, some property legitimately acquired and stored in reasonable limits is the very spinal column of character and is the spinal column of democracy. Some countries, some regimes, some politics, have been able to enforce a complete system of slavery by merely taking away the right of property If the State becomes the sole suplier of your food, how do you expect the man who has to look for his food towards the Government to criticise the government and its agencies? Did this not happen during the Emergency that the government servants who were otherwise honest were not willing to lose their job, were not willing to risk their employment, and they did what the dictator wanted them to do? Therefore, to take away article 19(1) (f) completely from that Chapter, to my mind, is to do a great disservice to the cause of democracy, the cause of freedom and the cause of rule of law. Some property shall remain. But all private property shall be subject to the paramount social good. If the society needs the property of some one, the society shall have the right to take it, but the property shall be taken from a private individual only for public good I am amazed at the Law Minister's proposals. We have not even retained today

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the one provision in article 31(2) that property shall be acquired only for a public purpose. If you retain the law as it is, what will happen? I am not talking of Mr. Shanti Bhushan; I am only giving an extreme example. If Mr. Shanti Bhushan does not like my speech today, tomorrow he may deprive me of my property. Because he wants to deprive me of my property, this should not be allowed. The property shall be acquired only for a public purpose and not for any other purpose at all. That provision will have to be retained.

So far as articles 19 and 14 are concerned, they must have their full play. What happens if, for example, a future dictator is a communal-minded dictator?

He says, 'I shall deprive the Muslims of their property but I shall not deprive the Hindus of their property.' Or 'I shall take away the Christian Church but I shall respect the Muslim mosques and Hindu temples'. Why should Art 14 be allowed to be obliterated by an economic law - I have never understood. Can't you trust the courts? The trouble is that our Ministers and our government, though they talk of judicial review, though they talk of restoring judicial independence, yet they do not have adequate confidence in our Judges. The very Fundamental Rights Chapter says that every fundamental right shall be subject to reasonable restrictions, but the reasonable restrictions shall be those which are judged by our judiciary to be reasonable and not by the politicians of the day who may be wanting to cater to the whims of the mob with an eye not on the eradication of poverty but with an eye on the next election and the ballot box ...

SHRI SAUGATA ROY: They are thinking of demolishing their Party to-day.

SHRI RAM JETHMALANI: Let me say one word about the subject of Parliamentary privileges. So far as parliamentary privileges are concerned, we have had a debate the other day. We had a debate organized, I think, by the Lok Sabha Secretariat. Now, in that debate, the question of privileges came up. There, I heard a very strange argument coming from our Law Minister on that occasion. He has told us that if we sit down and codify the law of privileges, the privileges will be subject to fundamental rights and they will be subject to judicial scrutiny. That is precisely the reason why the Parliament and the legislatures in this country must put their heads together, sit down and codify the law. Sir, when the founding fathers framed our constitution, they said that the privileges of parliament shall be such as are declared by law of the legislature concerned and the hope, the expectation, the wish and the prayer of the founding fathers was that our legislators will one day sit, consider themselves in the role of servants of the people and not as masters of the people and they will sit down and formulate in precise words their exact rights and privileges and when these rights and privileges are defined, they shall be subject to the fundamental rights of our masters. But the previous Parliament and the previous government had arrived at that wonderful conclusion that the people of this country did not deserve any fundamental rights, the people of this country did not know what fundamental rights are, they did not know what the fundamental freedoms are and, therefore, 'we can trample upon them.' Mr. Stephen should know the sinister motivation of his Party in bringing the Forty-second Amendment. It is not that they wanted to remove the expression 'House of Commons' which they thought was an anomaly. They thought of it only after 30 years and they never thought of it before. 'The House of Commons' - that expression which appears in that article, they removed and said something curious that the privileges shall be such as

the Parliament shall evolve from time to time, little rea.ising that in 1965 the legislature in UP had arrogated to itself the right to issue warrants for the arrest of two Judges of the Allahabad High Court because a journalist through a lawyer went to them and filed a petition for Habeas Corpus. But those Judges were ultimately saved by the Supreme Court because the Supreme Court said, 'We are in a position to examine what exactly are the privileges which the House of Commons in England enjoys on the date of the Constitution.' They said that the British House of Commons has never sent its Judges to jail, and the UP Vidhan Sabha has no power to send the Judges to jail. I have no doubt that Mrs. Gandhi brought in this amendment because she wanted to restore to the Parliament, dominated by her and which had been reduced to a rump in which the majority of the members themselves were subjugated by the fear of Preventive Detention, the power to Summon our independent Judges to the Bar of the House and force them to subvert the Rule of Law under the pretence of furthering the Directive Principles.

MR. DEPUTY-SPEAKER: Please wind up

SHRI RAM JETHMALANI: Therefore, Sir, it is high time that our Law Ministry sat calmly coolly and dispassionately and defined and delimited our privileges because we are the servants of the people, we are not the masters They have a right to criticise us and they have a right to tell us that we are arrogating too much to ourselves. Let us subordinate ourselves to our masters and formulate those rights so that the people may sit in judgement over them and the judiciary can say that the restrictions put upon the rights of our masters are reasonable restrictions needed for the purpose of effectively discharging the functions which we are to discharge.

For lack of time, I could not cover many more points which I would very much like to do.

SHRI SAUGATA ROY: He should be made the Minister for Preventive Detention.

DR. V. A. SEYID MUHAMMAD (Calicut): Mr. Deputy-Speaker, Sir, the Leader of the Opposition very ably pointed out and enumerated a large numbed of the provisions of the Forty-Second Amendment which are being retained thereby refuting the propaganda that the whole of the Forty-Second Amendment was a bad piece of legislation and those who were responsible for that amendment should be ashamed of it.

I agree with Mr. Stephen to that extent. He enumerated a large number of provisions which are retained. I will add only one which he had inadvertently left out namely, the introduction of the Fundamental Duties.

SHRI C M STEPHEN: I have mentioned

DR. V A SEYID MUHAMMAD: I am sorry. There are certain things which Mr Stephen did not say. I think it is necessary that I should. I will be failing in my duty if I do not refer to them Before that, Mr Jethmalani spoke using very strong words. But, strong words have never broken the bones; perhaps, loud noise has sometimes broken the ear-drums.

Sir, as I said I will refer to certain aspects to which Mr. Stephen did not refer. While we are happy that about 25 provisions of the Forty-Second Amendment are being retained - we are proud of that - there are certain aspects of the Forty-Second Amendment of which we can say that we are not proud of.

While speaking at the introduction of the Forty-Third Amendment. I

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made certain remarks at the risk of repitition may I say some of the words which I spoke on that occasion? For the Congress Party and the Congress Government, the democratic principles and democratic values have been the normal fundamental principles and policies What happened during the emergency are the aberrations of those normal trends one after the other After the 1977 General Elections our party sincerely and honestly with all sense of responsibility and without the partisan spirit underwent a process of an agonising re-appraisal of the situation And we came to certain conclusions in our own party without any initiative from Government We went through clause by clause the entire Forty-Second Amendment we prepared a note in our Executive in the Parliamentary Party in the Working Committee we discussed it Those suggestions were circulated and subjected to a general debate in this country And we came to certain conclusions

SHRI RAM JETHMALANI You said that that is not necessary for them

SHRI SAUGATA ROY Please you listen to him

DR V A SEYID MUHAMMAD I am talking what happened after the General Elections and not about the Forty Second Amendment In that situation we came to the conclusion—and that was a conclusion taken neither in a partisan manner nor based on a personal prestige

In that way according to our analysis there were four types of amendments in the Forty-second Amendment—the first type belongs to the category of the amendments which should never have been made in the Forty-second Amendment—this I will put in category No 1 Introuction of Art 31 (D) that is relating to anti-national activitie in the second category, the introduction of item 2(a) in the Seventh Schedule, List I—deployment of Armed forces in the States Third one is the extension of the period of the Assemblies and Parliament from five years to six years These, I believe, are the provisions which should never have been introduced by the Forty Second Amendment I need not elaborate about 31 (D) It was one of the most draconian provisions which has ever been conceived in any democratic set-up As soon as they assumed power our party came out openly and clearly what this draconian provision should be repealed and deleted from the Constitution

The second category We thought and we believed that there are certain provisions which were necessary and essential to be included Some of them for illustration Introduction of the expression socialism and secularism in the Preamble Introduction of fundamental duties The amendments which we have made in the Directive Principles The amendments made in Article 368 by introducing Clauses (4) and (5) Retention of education and forests in the Concurrent List Introduction of Part 14 (A) relating to the Tribunals and finally amendments made to Article 74 making it obligatory on the President to act according to the advice of the Council of Ministers These are some of the amendments which we made and which we think necessary and essential

The third category is There are certain amendments and provisions in the Forty-second amendment which we thought were desirable and necessary but they were not so fundemental in nature that we should make an issue of them To this category belongs the amendment we made to Article 31 (c) stating that Articles 14 19 and 31 will be subject to all the provisions in the Directive Principles in Chapter IV Now that Article 31 is deleted—right to property is deleted—we feel that it

is not necessary because the examination of the cases of the Supreme Court and High Court show that 95 per cent of the legislation has been struck down by reason of the violation of Article 31 and not of Articles 14 and 19. So, once Article 31 is removed it is not necessary to insist on principle that Articles 14 and 19 should be subjected to the entire Directive Principles because their importance is very much reduced. We are inclined to accept the proposal to go back to 31(C) which was challenged before the Supreme Court and which was upheld by the Supreme Court excepting the Declaration part.

I give another example of things which may be necessary and desirable but not of such a nature that one has to make an issue out of it In Article 102 an amendment was made by the Forty-second amendment. Formerly, in order to declare a person to be disqualified by reason of holding an office of profit the position was that whatever is not declared to be an office of profit—whatever is not allowed—a member cannot hold. What we provided in the amendment was that whatever is not declared to be an office of profit a person can hold so that he will not be disqualified The advantage we thought was that a person should know what exactly is the position before he accepts any office There are innumerable instances where the courts had to go into the matter and elaborate arguments were advanced and ultimately the court came to what are called marginal cases where the common man will find it difficult to say whether he is holding an office of profit or not, holding any office because taking a great risk. He may be declared to have ceased to be a Member and therefore he must not continue as a Member. In that situation, Sir, we thought at that time, that it is better to say this, because, the principle is that a man must know where he stands; he must know whether it will come within the mischief of the law. That is our whole idea and that is why we introduced the amendment. If the House thinks that it is not necessary, if the majority thinks that it is not a necessary amendment, well, we certainly do not wish to make an issue out of it

SHRI SOMNATH CHATTERJEE: That was not brought into existence at all! What is the effect?

DR. V. A. SEYID MUHAMMAD: With great respect to my hon. friend here, I will just ignore this sort of running commentary

SHRI SOMNATH CHATTERJEE: Why should you ignore? It is a fact. There was no legislation bringing that clause into effect.

SHRI C. M. STEPHEN: But the Act is there.

DR V. A. SEYID MUHAMMAD: Then, Sir, the Fourth category is that which deals with the powers of the Court.

There were various reasons, Sir, which prompted us to introduce those amendments One is regarding Article 226. The main contention was with regard to the expression 'Any other purpose' Sir, our long experience of nearly thirty years showed us that that expression in Article 226 has been expanded. To put it figuratively, suppose originally the courts were given a jurisdiction of one acre only, by giving certain interpretation and expanding the term 'any other purpose', what the courts did was, they trespassed into an area of, say 100 acres.—let us say figuratively speaking Now, what we proposed to do by this amendment was to bring back the courts to their original jurisdiction of one acre and to take away from them the vast area into which they had trespassed But, as I said, if it is felt that one should retain this expression, I am personally of the view that the expression substantial injustice' will take good care of the situation. And a court can if they want to come to the same results by resorting to the expression 'substantial injustice'. Here again, as I said, this is not a matter

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one would like to make an issue out of.

Then, Sir, the other reason which compelled us to make an amendment to Article 226 was the facile way in which the Courts used to give stay orders The moment a writ petition is filed, stay was almost automatically granted The result was that very many essential legislations and essential measures of land acquisitions, essential matters relating to social welfare and public welfare etc. were held up by this facile granting of stay Ultimately, after 3 years or 4 years, when the case was heard, it was found that there was nothing in the writ petition, so that, for a number of years this mechanism of facile stay of proceedings practically held up essential legislations for the welfare of the society and the country That is why we introduced certain restriction regarding the grant of stay With slight alterations. I am glad, that the present Forty Fifth Amendment retains that provision relating to the grant of stay I need not elaborate again this category Again regarding the Supreme Court we supported fully the Forty Third Amendment The amendment which we bring in should not create any practical difficulties Cases have been held up for days and days because of the insistence that certain number of judges should sit for deciding any Constitutional issues and also the insistence that certain percentage must be there, in order to overrule the Constitutional validity of legislations. We did it with all good intentions but in the course of a few months, it was found that the entire judicial process was held up Cases were not progressing for days and days together. I had the experience of lawyers waiting there because the Constitution Bench of 7 judges was sitting and all the other matters could not be proceeded with. So from practical experience, we found that it was necessary that those amendments should be changed. That is why we ourselves supported when the proposal which came in the 43rd Amendment for the deletion of those clauses and those amendments we fully supported. I do not know the views of the individuals. But by and large the view was not to make inroads into the powers of the court or curtail the powers of the court. As I said from the practical experience for nearly 30 years we found certain anomalies, a certain difficulties, certain procedural bottlenecks were developing which were holding up the progress of the nation and that was the only consideration which promoted—whatever may be the allegations against us, making inroads into the independence of the judiciary and curtailing the powers of the judiciary It happened and I do not deny that but by and large the Congress acted the *bona fide* that it is because of these reasons that we had accepted 43rd Amendment and when we accepted those amendments, as I said, we honestly and earnestly and without any reservations, admitted that 'Yes' it must be changed and we had no reservation, on that score I do not propose to elaborate on that because I cited the example of the provisions as to why we introduced them and why we were supporting 43rd Amendment

One aspect I would like to stress before I sit down, is that I must in all honestly and frankness point out certain provisions in the present amendments about which we have serious reservations. I am not saying this in the sense that we are voting down or not voting down at this stage, but at the appropriate stage we will take a view on this but at present I am only stressing the fact that we have certain serious reservations about the following provisions.

One is the introduction of definition of 'Secularism and Socialism'. By amending the definition clause in Article 366(b) it is proposed to define the expressions 'Secular' and 'Socialist' in the Preamble. The expression 'Secular' is defined as follows · "Secular means a republic in which there is equal respect for all religions". While I agree, that as far as it goes, it is well and good. But there are certain aspects which this definition will not

cover. I will presently deal with it. But before that, the very idea of defining the expression in the Preamble is abhorrent to us. We have gone through a number of Constitutions of the various countries of the world. I have yet to come across a Constitution where the expression in the Preamble have been defined or attempted to be defined. As has been well laid down in many cases and by many authorities, the Premable contains the national aspirations, the urges and dreams of the people, the ethos of the people—if you try to define them and put them into strait-jacket what will happen? The aspirations and ethos are an evolving process according to the development of the society, according to the compulsions of the society. according to the necessity of the society, these expressions will have expanded or contracted more often expanded than contracted their connotations So, anybody who attempts to strait 7-jacket and put them absolutely in water-tight compartments without giving a chance to expand according to the social compulsions, will be doing a permanent injustice and harm to the very concept, ethos and emotions and aspirations of the people which are embodied in the Preamble. That fundamental objection is there.

Then, coming to, the specific definition, 'secular' means a republic in which there is equal respect for all religions. The expression 'secularism' as understood in our country is quite different from the expression 'secularism' as understood in western countries A non-secular State in some of the States sometimes is interpreted as anti-religion. It is not in that sense that we use the expression 'secularism' here. The essence of secularism, in short, which has been interpreted and is well understood is not mere equality or equal respect. As we know, provision treating persons equally, when they are not really equal, will itself be a discrimination. In short, treating unequals as equals, may perpertrate a greater discrimination than otherwise. Thus, the concept of mere equality may not be correct. That is what is pecisely contained in Articles 26, 29, 30 etc.

While no minority in this country can claim a special or favoured position, what is contained in the concept of secularism is the thousands of years old tradition of this country, the tradition of tolerance, and the concept that even the slightest sore in your body-politic may, unless cured in time, become a septic focus and vitiate the entire system; therefore, merely leaving it to mend for itself is not ultimately in the interest of the entire nation. Therefore, it is a duty also on the part of the State to see that such inequalities, such inabilities and such sore points do not exist in the body-politic. It is not merely treating equal, it is much more than that, it is creating situations, social situations, whereby their institutions can give them chance for development in their religious cultural and other fields, so that their identity can be maintained not separate from the entire nation, but as to make a contribution to the entire sum total of the nation's wealth of culure and progress They are treated as the streams which swell up a mightly river, not the streams getting dried up by leaving in go their own way These are some of the basic fundamental aspects of the secularism as we have conceived

As I said, this is not a modern concept, but it has been going through ages, thousands and thousands years of tradition of tolerance, humanitarian and cultural values and aspect and the encouragement of minorities. I do not mean minority of a particular religion or caste, I mean the cultural and other contribution that a minority has to make to the sum total contribution of this nation. To contain that huge concept, which is as wide as the ocean, as old as the history of this country, to put that in a small phrase of equal treatment or respect! I do not think, that we would be doing justice to our traditions and our own history by confining ourselves to a narrow definition like this which you have attempted to put here.

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So also about 'Socialist' The definition of 'Socialist as given in this Bill is 'Socialist' means a republic in which there is freedom from all forms of exploitation, social, political and economic Of course, it has been said that there are as many concepts of socialism as there are socialists For, socialism is like a cap which has lost its shape because it has been put on various heads These are good as jokes but there are basic concepts of socialism This narrow definition is not one among them The basic concept of any socialist, however he may differ on details, is that it must have correlation to social control and ownership of the means of production and distribution Unless a definition of socialism has some correlation to this just to say 'free from exploitation" is something astonishing Let alone a scientific socialist, even a liberal will not accept it In the very attempt to define this concept of socialism which has to grow according to the genius and compulsions of this country and society you are trying to put it into a narrow strait-jacket We cannot accept it It is if I may use that word with great respect simply absurd—not less than that

The next thing is that we have reservations about your proposal in regard to Education and Forests, *i e* their removal from the Concurrent List and re-transfer to List No 2, *viz* the State List There are various items which we do not make an issue of but about this we have reservations I anticipate that we will make an issue of it at the time of voting We have reservations After the experience of 30 years *i e* after a considerable period of negotiations and persuasions, the States have agreed It is not because we want to destroy the federal structure or anything like that, but the practical compulsions of 30 years have showed that at least Education should be in the Concurrent List Into the reasons for it I will not go But one reason which led to the amendment was that we were successful in persuading the States to accept Education and Forests in the Concurrent List We cannot straightway respect it, complacent in the euphbria of whatever happened, or in a reaction against whatever happened We have sound reasons to entertain reservations about your proposed amendment We would like to retain them as they are in the 42nd Amendment, i.e in regard to Education and Forests

Now I come to the very controversial and important amendment, *viz.* amendment to Article 368, your introduction of the concept of refe rendum At this stage, I want to repeat that we have strong reservations Ultimately what decision we will take, I would not anticipate We will see it at the appropriate stage It is not as if we are entirely for it, or entirely against it Seriously we have thought it over, we are thinking it over, for and against, with equal sincerity and equal earnestness, keeping an open mind It is not as if because of a certain ideology we are for or against it No To tell you the truth we are still pondering over the question There are a number of points in favour of referendum One point which the Law Minister himself has said, is, "Are you not prepared to put your trust on the electorate, who have elected you?" Are you not placing faith in the people who have elected you to this position? If the people of this country by a majority of 51 per cent of the total electorates want to make a change why do you not leave it to them? There is another point which is said as a corollary, as a logical support for that argument and that is if Bharati Case stands, the position is that you cannot change the basic structure of the Constitution If that is so and the political necessity and the social compulsions require that you have to change the basic structure, what is the mechanism available? You may recall what Justice Subarao said in a different context. If there is no mechanism, the only

alternative will be a change of the Constitution by a violent revolution which may ultimately even destroy the very Constitution. So, it is said, here is a mechanism provided by this referendum process by which the basic structure can be put to the people for their mandate whether they should change it or not. That is a sound argument. There is another sound argument, equally sound. Now the court is the supreme authority. Your objection was that the Parliament being supreme, the Constitution amendments should not be subject to the judicial review and make the court supreme. But by this process, we are taking away that supremacy of the court and putting it in the sovereignty of the people. What objection have you got?

These are some of the very sound arguments put in favour of referendum. I will be failing in my duty if I do not point out some of the equally valid or strong arguments put against the referendum. First of all, it is said by this process, the supremacy of the court is not at all taken away. The court may say, "As long as Bharati Case is the law". This amendment itself is invalid to the extent that you are confering the basic structure in the enumerated categories when there are more categories than what you have enumerated. We are entitled to say: What should be there in the category. "They accepted these categories as the basic structure, and the court may say: We want to add another category which will form the basic structure which you have not enumerated." Therefore you are not hereby taking away the supremacy of the court or the power of the court to sit in judicial review including the process of referendum.

Another point which may be said against it is this. Now, generally, this referendum is resorted to in countries with a limited population. In a country which has got population of 60 crores of people, it is practically impossible; it is expensive and it will not be desirable from another point of view, namely, that the issues which are generally put for referendum are simple issues; which are capable of an answer: yes or no from the people. The things which you have enumerated here, the secularism and various things, whether it is destruction of democracy, whether it is destruction of the judicial independence; these are things on which even the Supreme Court, when such issues were referred to it, had debated for months and months; even the leading legal pandits were arguing for hours and hours, months and months and so on. The Court itself found difficulty in coming to a unanimous decision, the judges differed on the conclusion. If that is the situation, when you are putting these complicated issues before the electorate in the din and dust of the election propaganda and in the turmoil of the situation, where public emotions are worked up by partisan propaganda how do you expect an objective appraisal of the situation and correct judgement of the issues? This is the argument put against it. As I said these are issues which are agitating our minds to which we are giving serious consideration. In that process the only thing I can assure the House is that we shall do so with earnestness, sincerity and honesty of purpose.

17 hrs.

I shall briefly deal with one or two more points, because of the limited time. One is the deletion of Chapter 14A, about tribunals. We introduced that chapter for very good and valid reasons. It was not only opinion of Law Ministers. The entire House is aware that Justice Shah himself recommended giving a large number of sound and cogent reasons for setting up tribunals in the matter of incometax. Similar views have been expressed about labour tribunals and it has been suggested that by reason of the juxtaposition of the High Courts in between the Supreme Court and the tribunals

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lengthy litigations go on for years expensive litigations, making paupers of the litigants. For those reasons, authorities like the Chief Justice, Justice Shah and others have recommended the establishment of the tribunals. It is not as if by a whim or fancy we wanted tribunals and took away the jurisdiction of the High Court. Far from it. The Law Minister will see from the back records that we had sufficient, sound, cogent and compelling reasons. To attempt to say that we wanted to cut away the power of the High Court is to give a bad name to the dog and hang it. That is a good expedience. But that will not be true, you are aware of it. It is for those reasons that we introduced it. Even now it is an ennabling provision. By that provision tribunals can be established with right to appeal to the Supreme Court under article 136. I would have liked to talk about the emergency provisions. In one sentence, we stand completely for the deletion of the provisions of internal emergency. The mechanism which you have adopted now, is instead of "internal disturbance", "armed rebellion". That does not provide cure at all for the situation, that does not give a remedy to the situation. Whether it is internal rebellion, armed rebellion or internal disturbance, it must be such that it will threaten the security of the country the whole or part of the country. So, the emphasis is not whether it is internal disturbance or armed rebellion, it is whether it threatens the security of a part or of the whole of the country. The names you have any, armed insurrection or armed revolt or armed rebellion. My own opinion is that armed rebellion is nothing but a glorified 144 situation, armed unlawful assembly. You are glorifying it and giving it a better name, "armed rebellion". So, if at all you want to have it, you delete the internal emergency altogether. Short of that is a sort of verbal jugglery which would not help at all.

With these words I conclude, and I must thank the House and Mr. Deputy Speaker for giving me this much time.

श्री निर्मल चन्द्र जैन (सिवनी) : मुझे प्रसन्नता है कि जो विषय चल रहा है इस पर बहुत ऊंचे स्तर के भाषण हो रहे हैं, बहुत ऊंचे स्तर पर चल रहा है । यह ठीक है कि विधि मंत्री जी की अपनी कुछ मार्यादायें थी जिन के कारण वह 42वें संशोधन को पूर्णतया रद्द नही कर सकते थे । उस में सब से बुरी बात यह है कि वह इस कद्र और इतनी तेजी से पास किया गया था कि उस में जो प्रावधान थे उन पर बहस हो सके, विवाद हो सके, उस सब को नकार दिया गया था । आज श्री स्टिफन ने कुछ उसकी चर्चा करनी चाही है और कुछ यह बताने की कोशिश की है कि 42वां संशोधन जब हम लाए थे तब बहुत अच्छी स्थिति में लाए थे, बहुत अच्छे परिणामों की आशा करते थे । स्टिफन साहब जा रहे हैं, मैं चाहता हू कि मेरी एक बात वह सुनते जाए । भाषा का विवाद चला था जब तो मुझ को एक बात याद आ गई । हमारे यहां एक लड़का अग्रेजी पढ रहा था । अग्रेजी में वह रट रहा था कम्पैरेटिव डिग्री और सुपरलेटिव डिग्री बैड की अ।र रटते रटते वह कहने लगा बैड, बैटर, बैस्ट यानी बैड की सुपरलेटिव डिग्री बैट उसने बताई । उसको इसके लिए क्षमा किया जा सकता है । आपको भी हम इस बात के लिए क्षमा करने के लिए तैयार है कि 42वा संशोधन आप लाएं । लेकिन आज जब आप यहां बोले तो उसको आपने यहां पर बैस्ट परिभाषित करने की कोशिश की तो वह शायद अक्षम्य बात है । वैसे आपने जितनी बातें मानी है उसके लिए मैं आपको धन्यवाद भी देना चाहता हू ।

42वें संशोधन में जो बहुत सी बातें लाई गई थी उन्हें हमने नकारने की यहां पर कोशिश की है एक सीमित मात्रा में । जब हम लोगों

मे कराने की कोशिश की तब श्री स्टिफन का भाषण यह हुआ, विरोधी पक्ष के नेता का भाषण हुआ यह कि हमने 42वें सशोधन में बहुत सी अच्छी चीजें दी थीं, यदि आप उनको छोड रहे हैं तो हम उसको मानने के लिए तैयार हैं। एक बात उन्होंने और कही। अजीब बात थी और वह यह थी कि सिन का, पाप का यह लडका है, यह आ गया है, ऐसा वह बताना चाहते थे। हमारे विधि मत्री महोदय की परेशानी समझ मे आती है। वह आप का लडका है या जैसे भी वह आया है उन्हें किसी न किसी प्रकार से उसे सुरक्षित रखना पड रहा है कुछ अपनी मर्यादाओ के साथ। लेकिन इन सब के बावजूद भी जब भयकर कलिमा की रात होती है, उस मे तूफान आता है उसके बाद जो जागरण होता है या इद्र धनुष हमे दिखाई देता है सूर्य के प्रकाश मे और उस समय जो सात प्रकार के रग हमे उस इन्द्र धनुष मे दिखाई पडते हैं उसी प्रकार के सात प्रकार के परिवर्तन विधि मत्री जी ने इस सशोधनल मे दिए है। इसके लिए मैं उनको धन्यवाद देना चाहता हू। पहले तो जो मौलिक अधिकार था सम्पत्ति का उसको हमने इस सशोधन के द्वारा हटाने का प्रावधान किया है। हमने अपने चुनाव घोषणा पत्र मे कहा था कि सम्पत्ति का अधिकार मौलिक अधिकार नही होना चाहिये। उसको हमने कानून के द्वारा सुरक्षित रखने की चेष्टा भी की है लेकिन मौलिक अधिकार के नाते नही। हमने कहा कि किसी की सम्पत्ति जबरन नही छीनी जाएगी उस वक्त तक जब तक कि कानून के अधिकार से वह चीज न की जाए। इसलिए धारा 300(ए) नई जोडी जा रही है और धारा 19ए निकाल ली गई है।

उपाध्यक्ष महोदय, इस विषय मे यदि आप धारा 38 को देखे कि जो इस धारा मे संशोधन किया गया इसमे एक बात बहुत अच्छी कही गई है जो शायद सबसे पहली बार आयी है। इसमे कहा गया है

> "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations"

इस शोषण की ओर, जो कि शोषण हमारी जड को खोखला कर रहा था, बहुत हल्ला करने के बाद भी और यह कहने के बाद भी कि हम गरीबी हटाना चाहते है, उसको हटाया नही। हम इस शोषण को हटाना चाहते हैं। हम यह चाहते है कि किसी प्रकार का विभेद उस मामले मे न रहे। यदि एक को अवसर मिलता है तो दूसरो को भी मिलना चाहिये। न केवल व्यक्ति को बल्कि ग्रुप्स को भी जो हमने इसमे जोडा है। आज एक भयकरता की स्थिति है कि इन कुछ सालो मे जब हम आजाद हुए कुछ थोडे से लोग सम्पत्ति की सत्ता पर अपना कब्जा जमाये थे, उन्होने अपनी सम्पत्ति का बहुत विस्तार कर लिया है, उनको अवसर बहुत प्राप्त होते गये। और दूसरी ओर जिस गरीब की झोपडी मे दीया जल रहा है कल उसको दीये के लिये तेल मिलेगा कि नही इसका उसको भरोसा नही रहा। इस तरह यदि सम्पत्ति का अधिकार सुरक्षित कर दिया जाय तो बेईमानी से कमाई हुई सम्पत्ति भी उसका मौलिक अधिकार हो जाता है। इसलिये जनता पार्टी ने निश्चय किया कि मौलिक सम्पत्ति के अधिकार को हटा दिया जाय और प्रावधान कर दिया है कि सिर्फ विधि के अनुसार किसी की सम्पत्ति ली जायगी, अन्यथा नही। इस प्रकार का विचार रख कर एक बहुत बडा परिवर्तन किया है जिसके लिये हमारे विधि मत्री जी बधाई के पात्र है।

दूसरी बात न्यायपालिका की प्रतिष्ठा की है। अभी डा० सैयद महमूद कह रहे

[श्री निर्मल चन्द्र जैन]

ये सर्वोच्च कौन है ? पार्लियामेंट या जुडिशियरी ? मैं कहता हू कि यह अहम आपको क्यो खाये जाता है यदि हमको 7 लाख लोगो ने चुन कर यहा भेज दिया है तो सब सत्ता हममे केन्द्रित हो गई, हम जो विचार करेगे वही सही विचार होगा ? हमने देखा कि 1975 मे इस सही विचार का मखौल बुरी तरह से उडाया गया । हम तीन चीजो से बधे हुए है—हमारा विधान मडल, कार्यपालिका और न्यायपालिका । इसमे सर्वोच्च का सवाल ही नही उठता, हर एक का अपना-अपना काम है । सब यदि अपना काम ठीक से करते है तो मुठभेड की आशका नही होती। मुठभेड वही होती है जहा एक दूसरे से कहता है कि हम तुमसे बडे है । और इसलिए इस अभिमान को काटने के लिए हमने न्यायपालिका की प्रतिष्ठा की स्थापना की ।

71वा आर्टिकल देखे। प्रेसीडेंट, वाइस-प्रेसीडेंट, 123 देखें और चैप्टर 14(ए) जो जोडा गया है । उसमे कुछ लोगो को बहुत ऊचे स्तर पर उठा दिया गया था। न्यायपालिका उनके बारे मे फैसला नही कर सकती थी । एक बडी विसगति थी। कोई ससद् सदस्य बन कर यहा आता है, हम उसमे कहते हैं कि तुम हमारे प्रधान मंत्री हो । तो प्रधान मत्री होने के साथ साथ उसका पद इतना ऊचा कर दिया गया था कि न्यायपालिका उसके मामले मे हस्तक्षेप नही कर सकती चुनाव के मामले मे । यह इसलिए रखा गया था कि इसमे व्यक्तिगत कारण था, व्यक्तिगत स्वार्थ था । यदि स्वार्थ को हमने हटाने की चेष्टा की है और नि:स्वार्थ भावना हमने लाने की चेष्टा की है तो क्या गलत है ?

श्री वसन्त साठे : यह कहा की बात कह रहे हैं ?

श्री निर्मल चन्द्र जैन : समझने की चेष्टा कीजिए ।

इन 5 आर्टिकल्स मे जो संशोधन किए गए हैं, इससे न्यायपालिका की खोई हुई प्रतिष्ठा को हमने पुन: स्थापित करने की चेष्टा की है । वह आर्टिकल्स हैं, 71, 123, 329, 329—ए और एक आर्टिकल तो नही है लेकिन पूरे के पूरे चैप्टर 14-ए के बारे मे हमने जो बाते यहा पर की है, उससे हमने न्यायपालिका की प्रतिष्ठा को ऊचा किया है ।

न्याय सुलभ हो, यह भी बहुत आवश्यक था, इस बारे मे कभी चिन्ता नही की गई । जो वकील थे, वह जानते हैं कि यदि हमे हाई कोर्ट के फैसले के विरुद्ध कुछ करना है तो पहले हमको लीव की दरख्वास्त देनी पडती है, उसका फैसला अलग होता है, उसके 60 दिन रहते है। उसके बाद सब कागजात सुप्रीम कोर्ट मे लाने पडते है कि हमने दरख्वास्त दी थी, जो खारिज हो गई । अधिकाश दरख्वास्ते खारिज होती है ।

134, 226, 227 और 139-ए इन चार आर्टिकल्स के द्वारा हमने न्याय को सुलभ करने की चेष्टा की है । 227 बडा महत्वपूर्ण था । जब तक हाई कोर्ट का निरीक्षण नीचे की अदालतो पर नही होता, तब तक नीचे की अदालते कई मामलों मे बहुत गलत-सलत निर्णय करती हैं, ऐसा प्रतीत होता है, लेकिन निरीक्षण का प्रावधान न होने से परेशानी हो जाती थी । तो न्यायालय की प्रतिष्ठा बढ़ाई और न्याय को सुलभ किया, यह एक बहुत बडी उपलब्धि इस बिल के द्वारा की गई ।

दूसरे बिन्दु, प्वाइन्ट के लिए मैं विधि-मंत्री महोदय को धन्यवाद देता हूं, राष्ट्रपति की प्रतिष्ठा को भी हमने ऊंचा उठाया है, धारा 74 में परिवर्तन करके, संशोधन

करके । धारा 74 का संशोधन हमने यह किया है —

"Provided that the President may require the Council of Ministers to reconsider such advice either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

हमने एक बार मौका दिया है कि वह देखे कि क्या इसकी आवश्यकता है कि यह जो सलाह हमको मंत्रालय ने दी है वह माने अनुभव यह कहता है कि यदि 25 जून 1975 की भयावह रात को श्री फखरुद्दीन अली अहमद साहब को एक मौका और विचार करने का मिल जाता, जो कि पता नहीं किस परिस्थिति मे नहीं मिल पाया शंकास्पद परिस्थिति है तो शायद 26 जून को जो कैबिनेट की मीटिंग होती उसके कारण इमर्जेन्सी लागू न होती अगर पुर्नविचार की स्वतंत्रता उन्हें होती और उन्हें रबड स्टैम्प न बनाया गया होता । हमने उन्हें प्रतिष्ठा दी है कि वह विचार करने के लिए बाध्य कर सकते है । यह एक बहुत बडी उपलब्धि है इसकी ।

एक छोटी सी बात है लेकिन बडी महत्वपूर्ण है 361-ए के द्वारा हमने प्रेस की स्वतंत्रता की भावनाओं को स्वीकार किया है । इस पर जो एमर्जेन्सी काल में प्रतिबन्ध लगा दिया गया था, वह हटाया गया है ।

सबसे बडी बात यह है कि झगडा वहां से चालू होता है जब कि सरकार यह समझती है कि हमारे असीमित अधिकार हैं । जब सरकार यह समझना चालू करती है तो जनता के अधिकार छिन जाते हैं और सरकार के अधिकार बढ़ जाते हैं । इस प्रकार से तानाशाही बढ़ती है, लेकिन इस प्रकार से जनता सरकार ने इस संशोधन के द्वारा करीबन 7,8 जगहों पर अपने अधिकार को और सीमित कर लिया है । 150 22, 74 123, 257-ए, 329, 329-ए और 13-सी इसके प्रमाण है ।

एक बडी विचित्र सी स्थिति पैदा कर दी गई थी, जो शायद उनको तो शोभा दे सकती है, जो चाहते है कि हमारे पास सरकार है और हमारे पास सेना भी, इसलिए क्यों न हम सेना के द्वारा विभिन्न प्रदेशों का रौंद कर वहां पर अपनी सत्ता कायम कर लें । किसी भी बहाने से सेना भेज कर प्रदेशों में अपनी सत्ता कायम करने के प्रयास को हमने निर्मूल करने की चेष्टा इस संशोधन के द्वारा की है ।

मैं आर्टिकल 123 की तरफ भी ध्यान दिलाना चाहता हूं जिसके अनुसार किसी भी मामले मे प्रेजिडेंट के निर्णय को चैलेंज नहीं किया जा सकता है । इस प्रावधान को निरस्त किया गया है । वकालत करने वाले लोग जानते है कि यह सबजेक्टिव सैटिस्फैक्शन वाला मामला हर जगह आड़े आता है । मुझे जिस कलैक्टर ने बन्द किया उसका सबजेक्टिव सैटिस्फैक्शन था । पता नहीं कहा पर यह सैटिस्फैक्शन हो गया । कलेक्टर का नाम ले कर अचानक ये शब्द कह दिये गये कि "सो एंड सो इस सैटिस्फाइड", एंड आई एम इनसाइड । इस सबजैक्टिव सैटिस्फैक्शन के जुडिशियल रीव्यु का प्रावधान न होने की वजह से जो परेशानी होती है उस परेशानी को खत्म करने की चेष्टा की गई है ।

मै आपतस्थिति के बारे में कुछ जरूर कहना चाहता हूं । श्री स्टीफन ने कहा कि हम चाहते है कि आर्टिकल 352 के प्रावधान को हटा दिया जाये, इमटर्नल इमर्जेंसी लागू करने के प्रावधान को हटा दिया जाये । मुझे ऐसा लग रहा था कि, जैसे कुछ लोग कहा करते हैं, सत्तर चूहे खा

[श्री निर्मल चन्द्र जैन]

कर दिल्ली हज को चली । उन्होंने कहा कि इस का पता कैसे लगायेंगे ? श्री साठे बड़े ध्यान से मेरी तरफ देख रहे हैं। वह स्मगलर्ज के बारे में बड़े परेशान होते हैं—यदि इनटर्नल इमर्जेन्सी हट गई, तो स्मगलर्ज का क्या होगा, यह उन की सब से बड़ी परेशानी रहती है । मैं एक उदाहरण देता हूं । जब मैं जेल मे था, तो समाचार-पत्रों मे पढ़ा कि किसी सरकारी कर्मचारी ने कही जा कर किसी के साथ बलात्कार किया । मुख्य मंत्री, श्री श्यामाचरण शुक्ल, ने फौरन आदेश जारी किया कि उस व्यक्ति को मीसा मे बन्द कर दो । मैं ने उन्हे पत्र लिखा कि आप ने हमें मीसा मे बन्द किया, इसका मुझे दुख नही है, परेशानी नही है, लेकिन कम से कम मुझे ऐसे लोगो के साथ ईक्वेट तो न कीजिए कि उन्हें भी मीसा मे बन्द करते है और हमे भी मीसा मे बन्द करते हैं । उस सरकार ने इमर्जेन्सी के नाम पर हम को भी बन्द किया और हाजी मस्तान को भी बन्द किया । उसने हम दोनो को एक ही तराजू से तोला, यह उन लोगो की नजर का फर्क था । उनकी नजर के फर्क को सुधारने के लिए ये संशोधन आवश्यक हो जाते हैं ।

फिर माननीय सदस्य कहते हैं कि इनटर्नल इनसरेक्शन या इनटर्नल डिसटर्बैन्स के नाम पर आप जब चाहे फिर इमर्जेन्सी लगा देंगे । इसका अर्थ यह है कि वह हमारी नीयत पर शक कर रहे हैं । हमारा कहना यह है कि कम से कम उस नीयत पर शक किया होता, जिसके कारण ऐसे हजारो लोग बन्द थे, जो अपने घर से छ सौ मील दूर रखे गये थे, जिनके घरो में खाने के लिए दाना तक नही था, जिनमे से किसी की पत्नी की चिट्ठी आती थी कि मेरे पास दो फटी साड़िया हैं, उन मे से एक चोरी चली गई है, अब मैं क्या करू । माननीय सदस्य ने उस नीयत पर शक करने की चेष्टा नही की । उल्टे वह उनकी तारीफ करते हैं कि उन्होंने बहुत अच्छा काम किया था ।

मैं पुरानी बातों में नही जाना चाहता हूं । मैं निवेदन करना चाहता हूं कि इस बारे में शक करने की आवश्यकता नही है । जिस बात के कारण यहा पर परेशानी उत्पन्न हुई थी, हम उसको हटाना चाहते हैं । अगर सचमुच मे कोई सशस्त्र गड़बड़ी होती है, तो हम उससे लड़ना चाहते है, उससे देश को बचाना चाहते हैं, और उसके लिए कोई न कोई प्रावधान करना जरूरी है । इसी लिए एक मिनिमम ईविल के नाते इस प्रावधान को रखा गया है । मैं आशा करता हू कि माननीय सदस्य इसे स्वीकार करेंगे और अभी तक उन्होने जो भूल की थी, वह उसे भी स्वीकार करेंगे ।

आखीरी बात, जो सातवा बिन्दु है वह मानव मूल्यो की स्थापना और प्रजातंत्र की भावना को अक्षुण्ण करने की बात है । रेफ्रेंडम पर बहुत सी बातें कही गई । सबसे महत्वपूर्ण बात यह कही गई कि सुप्रीम कोर्ट क्या करेगी ? सुप्रीम कोर्ट ऐसे बेसिक स्ट्रक्चर को खत्म करने का फैसला कर देगी । सोचने का विस्तार अब बढ गया है विरोध पक्ष का, यह सोच कर मुझे खुशी होती है । जिस समय बेसिक स्ट्रक्चर को खत्म किया था तब सुप्रीम कोर्ट की चिन्ता नही की थी । आज जब हम कहते है बेसिक स्ट्रक्चर जो हम समझते है वह खत्म नही होंगे और यदि खत्म होंगे तो उसके लिए जनमत-संग्रह करना होगा तो डा० सैयद मुहम्मद ने एक बात कही कि इन बातो पर सुप्रीम कोर्ट मे बड़ी देर लग जाती हैं सोचने मे और वह तय नही कर पाते तो आप जनता को यह क्यों देते हैं ? मैं कहना चाहता हू कि सुप्रीम कोर्ट किसी को न्याय दिलाने मे बड़ी देर कर सकती है लेकिन जनमत उतनी देर नही करता । जनमत तुरन्त फैसला लेता है । आठ दस दिन के अन्दर जनमत ने फैसला ले लिया कि अत्याचारी और

तानाशाही शासन को हम उखाड़ कर फेंकना चाहते हैं। उन्होंने निर्णय ले लिया। इसीलिए मैं यह कह रहा था कि इस में कोई शंका की बात नही है और बेसिक स्ट्रक्चर चाहे डिफाइन न हुआ हो, लेकिन बेसिक स्ट्रक्चर के जो मूल तत्व हैं उन को रख दिया गया और उनको जहां अक्षुण्ण बनाने की बात है वहा कही की दलील और कही का कुतर्क करके उस को कम से कम गर्त में न गिराइए यह मेरी आप से प्रार्थना है।

धर्म निरपेक्ष की जो बात कही गई, मैं उसका स्वागत करता हू। डा० सैयद मुहम्मद से मैं इत्तफाक नही करता हू ? धर्म को यहा पर बहुत दूसरे-दूसरे मानो मे लिया जाता है। जब एक व्यक्ति यह कहता है कि किसी की सेवा करना हमारा धर्म है तो धर्म रेलिजन नही होता, वह उस का कर्तव्य होता है। धर्म-निरपेश को जब तक हम ने ठीक से नही समझा तब तक लोग अपने कर्तव्यों को भूलते रहे। आज मानव मूल्यो का जो ह्रास हुआ है वह इसी कारण हुआ है कि धर्म को ठीक से नही समझ पाए। धर्म निरपेक्ष का यह मतलब नही होता कि जो अच्छी बाते है उन से भी हम दूर रहें। इसलिए यह जो शब्द रखा गया है यह मानव मूल्यो की पुनर्स्थापना के हेतु रखा गया है। यह जैकेट नही है। यह विस्तार है। आप ने जिसको जैकेट पहना दिया था, जो साम्प्रदायिकता की भावना उभारी जा रही थी उसे हटाने के लिए यह रखा गया है।

इन शब्दों के साथ मैं इस बिल का समर्थन करता हू।

17.30 hrs.

PAPERS LAID ON THE TABLE—*contd.*

Prime Minister's letters asking for resignations of Sarvshri Charan Singh and Raj Narain from the Cabinet and their replies and letters of resignations by four Ministers of State.

MR. DEPUTY-SPEAKER: Mr. Ravindra Varma to lay on the Table the correspondence with the Prime Minister which the Prime Minister had promised to lay on the Table this morning.

THE MINISTER OF LABOUR AND PARLIAMENTARY AFFAIRS (SHRI RAVINDRA VARMA): On behalf of the Prime Minister, I beg to lay on the Table a copy each of the following letters:

(1) (i) Prime Minister's letter dated the 29th June, 1978 asking for the resignation of the Minister of Home Affairs, Shri Charan Singh.

(ii) Shri Charan Singh's reply dated the 30th June, 1978.

(2) (i) Prime Minister's letter dated the 29th June 1978 asking for the resignation of Minister of Health and Family Welfare, Shri Raj Narain.

(ii) Shri Raj Narain's reply dated the 30th June 1978.

(3) Letter of resignation dated the 30th June 1978 from the Minister of State in the Ministry of Works and Housing Shri Ram Kinkar addressed to the Prime Minister, *suo-motu*.

(4) Letter of resignation dated the 1st July, 1978 from the Minister of State in the Ministry of Petroleum and Chemicals and Fertilizers, Shri Janeshwar Misra addressed to the Prime Minister, *suo motu*.

(5) Letter of resignation dated the 30th June 1978 from the Minister of State in the Ministry of Information and Broadcasting, Shri Jagbir Singh, *addressed to the Prime Minister sou motu*.

(6) Letter of resignation dated the 30th June 1978 from the Minister of State in the Ministry of Law, Justice and Company Affairs, Shri Narsingh, addressed to the Prime Minister, *suo motu*.

[*Placed in Library*. *See* No. LT-2582/78)