

[Shri K. T. Kosalram]

all the small scale manufacturers of salt having their units in rural villages on the coastline by not allotting them wagons for movement of their salt within the country and, at the same time, impose a ban on export of salt to neighbouring countries?

When during the last year they had allotted 8,300 wagons of Tuticorin, 1800 to Arumuganeri and sizeable number to Vedaranyam in Tamil Nadu, what are the developments that have taken place now not to allot wagons to unlicensed manufacturers of salt when there is a stockpile of nearly 7 lakh tonnes, unless it be the intention of Government to stultify the growth of small scale manufacture of salt in this country? Is it the intention of the Government that the Salt Commissioner whose office was established to nurse the growing industry in salt should be permitted to act as he likes and impose restrictions on movement of salt contrary to Government's pronounced policy?

Or, is it the intention of the present Government to annul the provisions of this sacred pact which brings to our memory the contribution, the everlasting contribution, made by our Father of the Nation and join in the name of bringing into being Gandhian economy and promotion of small scale industries, by taking such discriminatory steps as between licensed and unlicensed salt manufacturers.

I hope, the hon. Minister will reply to this.

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL—Contd.

MR. SPEAKER: Now, we take up further consideration of the Constitution (Forty-Fifth Amendment) Bill.

Mr. Bedabrata Barua.

SHRI BEDABRATA BARUA (Kallabor): Mr. Speaker, Sir, I want to confine myself to just two points since the time at my disposal is very short. I

would like to start by saying that this House should not get frightened by the false dangers on which also we have been deliberating. The real danger is not that the Constitution could be amend, because, every time an Amendment comes, the Constitutional Amendment will be discussed like the way we are discussing today, and to get the consent of the two-third majority in both Houses would never be easy. We have to do something within the limits of probabilities. There is hardly any probability, as far as I can look ahead, of a situation arising again either out of gimmicks or out of false revolutionary slogans. As I said, to get the consent of the two-thirds majority not only in the Lok Sabha but also in the Rajya Sabha is not easy.

SHRI KANWAR LAL GUPTA: I want to know, Sir, when the Minister is going to reply.

MR. SPEAKER: He will be replying after this.

AN HON. MEMBER: The time should be extended. (Interruptions)

MR. SPEAKER: It has been mentioned, and the House has accepted, that there will be no further extension. But such of those as have not been able to get a chance now, will be given a chance when clause-by-clause consideration is taken up.

SHRI BEDABRATA BARUA: The development of the political system in India, unfortunately or fortunately, is towards more regional parties. Therefore, I do not see this type of mobilisation coming in. But the real danger that I see to the country today and to its democracy is from the possibility of first declaration of Emergency by the Cabinet or by the Government. The founding fathers worked on two assumptions. One is that men in power would respect the spirit of the Constitution. They were not wrong. They were not wrong also in believing that the mass public opinion, determined to defend democracy and that type

of thing, will exist. These two assumptions are now in doubt. Many of us know, when Emergency was declared, that the provisions in the Constitution were being stretched or even misused. But we were yet to see the misuse of the powers of Emergency. That unfolded rather slowly to being with. I still believe that the vast distance between the rich and the poor is also a disuse—misuse—of the powers of the Constitution. But I and my Party will never put our weight again in favour of one single leader for the overthrow of the essence of the democratic system in our country.

SHRI DINEN BHATTACHARYA: You have committed a blunder.

SHRI BEDABRATA BARUA: If you want to amend the Constitution—Sir, I would like to draw the attention of the Minister because I am trying to make some suggestions and I think he will make a note, I am also making the suggestions to the House.

What is the use of leaving loopholes when you are amending the Constitution? There is a very big loophole. My Party is opposed to internal emergency. I am speaking as an individual before this House. I agree that there should be an internal emergency. But what is the effect of any external emergency? All its effects are internal. All that we are saying to-day and all that the government is saying to-day is that you must have one emergency and that is external emergency. Now, is it very difficult if somebody wants to do it as experience has shown? You have just to say—move your army to the frontiers, the other country moves its army to the frontier and you have provided that as soon as the threat comes, you can declare. So, the point is: all the obligation is for the Prime Minister to say or for the government to say, 'We declare external emergency.' I do not say this is only a play on words. I say so because I have no doubt that there are risks to the Constitution of the country and if somebody

to-day decides to declare external emergency, it will have all internal consequences. Article 21 will be swept off. He will be very careful. He will not commit the mistakes that were committed last time. The Constitution will be scrapped and elections will never be held and it is well-known and it has been established that public opinion can be managed so far as the mass opinion is concerned.

After once external emergency is declared, as I would like to say that it is an external emergency, if somebody is persuaded to shoot a rifle into a speeding car, four Pakistani spies can be arrested and an external emergency can be declared. Anything can happen and things can be managed. After that, even the President can be threatened—unfortunately, I am sorry to say. Even President can be threatened with impeachment. Members of Parliament can be threatened with imprisonment. Therefore, nothing would be safe. If somebody is bad enough to do it, he can do it. Therefore there must be some institutional arrangements. Government has used the word 'rebellion' which is no arrangement at all. It has been discussed. Sir, I do all. It to take the time of the House.

I think internal emergency is doomed because nobody will have an emergency under Article 21, if he is so inclined to rule personally. But all we have provided is that the President has to take the approval of the Cabinet. Now the government knows. I have read the British constitutional practice and their practice of Cabinet functioning. It is not necessary to have a majority in the Cabinet. The Prime Minister can dismiss some Ministers. The Prime Minister can say, as Lord Asquith used to say in the Cabinet. 'Gentlemen, have you finished? It was a majority decision' or as Churchill used to say, 'Gentlemen, you have had your say; nevertheless, I accept that this is the Cabinet decision.' Therefore, the Cabinet decision is simple and it can be the decision of a strong

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Prime Minister. No President is possibly entitled to ask whether you had a majority in the Cabinet and whether there was a voting. Now with regard to Members of the Cabinet functioning, if a Minister disagrees with the Cabinet, he cannot even divulge it, he has only to resign. Therefore the matter—this is my personal suggestion—should come before the Parliament, that is, this hon. House except when actual operations and shooting have started.

Emergency is not so essential as Manipur has shown. You can do it and if there is a real danger to the country, the courts will co-operate, there will be co-operation from all quarters and the country will co-operate. Preventive Detention law you have got in any case.

Every Member of Parliament must be released. No member will be in jail when it comes to Parliament and by a two-third, majority it should pass it.

Every renewal of external emergency must again be passed by Parliament when the President shall release all Members of Parliament in jail.

Parliament being dissolved—Dr. Ambedkar would like to have it. Possibly in those days it was thought that the Parliament would be dissolved. Did we have the Parliament dissolved at any stage except when the Prime Minister wanted to dissolve it. Is it a very satisfactory position? Is there any instability? Can you quote any instance of instability at the Centre? In fact it tends to have stability. It is in the nature of things of Indian polity to-day that any Prime Minister can be stable. Even a Prime Minister having only one-third majority is supposed to be stable and it has been proved. Moreover, assuming that the Parliament is dissolved, the solution is clearly at hand. If the enemy attacks, obviously, the President should call upon all the Parties to form a national government and even declare emergency. There appears to be no road block to Parliament's being kept out of the pic-

ture and allowing the Prime Minister again to decide it under a different name.

I am only on the second point, that is, Art. 368. We are making it too rigid. In the world I do not think there is such a rigid constitution as the proposal has been made. Rightly we have not accepted it and no party has accepted it. This will lead to scrapping of the Constitution. If the Constitution becomes too rigid, it gets stuck. That is the experience of France and it will be the experience of anywhere else. What is the point? Who is to decide the basic features? Again playing on words. A vast area is left where the courts could say that this is the basic feature.

So, obviously the court has to decide and it must go. If the government does not agree with the court it has to go referendum and if the Government gets defeated in the referendum the government resigns. Therefore, the government has to ask the court. The people will decide on the basis judiciary vs. government or Mr. Charan Singh vs. Mr. Bahuguna. People cannot discuss every amendment. They cannot discuss clause by clause. It is impossible. If we are putting an amendment before the people there could still be judicial interpretation.

Government has proposed anti-defection law. Now, it is clear that this law could be struck down since it violates the basic democratic principles of the Constitution. Indian constitution is based on the principle of representation and not on the principle of delegation. Hence the Member of parliament is not a delegate but a representative. The Indian Constitution does not recognise political parties at all. Therefore, to impose the dictation of political parties over the government is a basic violation of the democratic character of the Constitution. We have taken away the fundamental democratic principle of the Indian Constitution by proposing the amendment. So, the court will certainly hit it down. So,

you can go about being hit everywhere. This is the most dangerous thing that you have to go to the people every week. If my leader of the party tomorrow decides that the President's son and President's son's son will become the president for ever, I resign from the party and lose my membership.

MR. SPEAKER: You are speaking on the anti-defection Bill!

SHRI BEDABRATA BARUA: If the Government wants to throw out the basic features they can do it in a very insidious manner. If tomorrow the government wants to throw out the principles of secularism from the Constitution because of its communal orientation all it has to do is to decide on a referendum. People could be aroused, communal tensions could be created and the vast Hindu majority could even be persuaded to vote for a Hindu Rashtra.

MR. SPEAKER: I am not interfering with you. Probably, you have overlooked—I am not speaking for or against—first of all it is two-thirds majority in both Houses and then only referendum comes.

SHRI BEDABRATA BARUA: Government has to resign after it is defeated in the referendum. That gives too much power to the judiciary. In fact, it becomes the final determinant in the governmental process. We have made a Constitution already very rigid, that is, we are preparing the ground for scrapping it. The Rajya Sabha is the most unsatisfactory upper House in the world. It is based on the same principles and the same politicians get represented. But the Constitution makers provided that to abolish the Rajya Sabha two-thirds majority would be required in the Rajya Sabha. So, you will have to scrap the Constitution if you want to do away with this Rajya Sabha. This is one justification already. Do you need to have more justifications.

MR. SPEAKER: The Law Minister.

SHRI H. L. PATWARY (Mangal-

doi): Sir, our name was there.....
(Interruptions)

MR. SPEAKER: We will give you a chance at the time of clause-by-clause consideration. I am sorry it is not possible now.

SHRI H. L. PATWARY: There are so many Members who want to speak.

MR. SPEAKER: To such of them, as have not been given a chance now, to the extent possible, we will try to give a chance in the clause-by-clause consideration.

SHRI A. K. ROY (Dhanbad): On a point of order, Sir. If some Members remain absent, their time should be utilised by the other Members and not by the Law Minister.

MR. SPEAKER: It would go only to his party and nobody else. This is not a point of order. The Law Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Speaker, Sir, first of all, I would like to express my gratefulness to all sections of this House for having given a very wide support to this Bill generally. I am very grateful to them and I appreciate the views that they have expressed. I am also grateful and express my thanks to the hon. Members for having said many kind words for me.

There was some heat generated and certain things said in the context of the 42nd Constitution Amendment the hon. Leader of the Opposition took pains to stress the fact that some of the provisions of the 42nd Amendment had been retained was according to him, proof positive of the fact that the 42nd Amendment was a very good measure for the people. There were other hon. Members who said that by not rescinding the entire 42nd Amendment irrespective of the differences between one provision or the other provision of that 42nd Amendment, some credibility had

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been given to this kind of a claim that the 42nd Amendment was really a very beneficial measure for the people.

I would like to say, and it has been seen, that the people of India are very clever; they have a very strong common sense and they cannot be doped. Quite apart from the fact that the Government believes that the amendment of the Constitution is too solemn a measure to be made on the basis of publicity or propaganda value and that whether a particular amendment should be made or should not be made, is not to be decided on how it would reflect on the publicity aspect of a question, a Constitution is really concerned with the aspirations of the people, creating a mechanism to meet those aspirations of the people and it is that aspect of the matter which must be borne in mind all the time and no other aspect of the matter should be allowed to come in. But since the Leader of the Opposition has chosen to emphasise this aspect of the matter, I would like to take some time of the House to go into this claim.

SHRI B. K. NAIR (Mavelikara): What Mr. Stephen said actually was that the 42nd Amendment was not as bad as it was made out to be by the Janata Government.

MR. SPEAKER: The Minister knows that.

SHRI SHANTI BHUSHAN: Sir, at the outset I must make it clear as to what has been the approach of the Government in dealing with this matter of 42nd Amendment. If I may say so, very briefly, our attitude has been that even if a person sent to us, or sends to me a poisoned pill in a beautiful wrapper or innocuous wrapper, I would throw away the pill and yet retain the wrapper for whatever it is worth. Why should we throw even the wrapper, if some use can be made of it? In fact, I am reminded of one thing:

I had the distinction of working with a very eminent lawyer of Allahabad, Mr. Pyarelal Banerjee. Whenever he received any journal, he used to retain the wrapper, because he would not like to waste good paper for writing to other people. So, he used to retain those wrappers for the purpose of writing even important letters. People called him miserly, but he said he was saving national wealth. Even if it is a wrapper, an innocuous thing, there is no harm in retaining it, if the poisoned pill had been thrown away. That has been our attitude; and if this attitude gives comfort to the Leader of the Opposition and some other Members of this House, we do not grudge that satisfaction. We are happy that we have made them also happy.

May I now deal with the essence of the 42nd Amendment? What was the 42nd Amendment really designed to do? It would be my endeavour to show to the satisfaction of even the Leader of the Opposition, that the 42nd Amendment was a clear attempt for the establishment of an authoritarian polity in this country. There are so many provisions. Of course, some of those provisions, i.e. of the 42nd Amendment, had been annulled by another Constitution (Amendment) Bill which had been adopted by this House, by the other House and has been enacted into a law, viz the 43rd Amendment Act. The other provisions which had the tendency to bring into existence an authoritarian polity, are sought to be annulled by the Bill which is being considered by the august House today. Has anybody forgotten Article 31D which had been introduced in the Constitution for dealing with the so-called anti-national activities and anti-national associations, under which any political party could be declared as an anti-national organization and could, therefore, be debarred from participating in the political affairs of the country? I am happy that with cooperation of all sections of

the House, that Article, 31D, has been done away with already, by the 43rd Amendment Act.

Then there was an amendment in Article 74; and it has been emphasized that we have retained it. We have retained it, with a modification. But what was the real reason behind that amendment, which was made in Article 74? The reason was that there were apprehensions. It was felt that some such recommendations may be made, that even the president might find it difficult to endorse those recommendations in the first flush; and, therefore, an attempt was made to introduce a change in Article 74 and to enact an express provision that the president would be bound by the Cabinet advice, so that he might not even be able to exercise his prerogative of sending back the matter for consideration by the Cabinet. This only indicated an anxiety, that the president's intervention even to this extent, i.e. even to send back the matter for reconsideration, should not be there. That was the reason for introducing this change in Article 74. We have done away with that part of the amendment, because we are now seeking to expressly provide, by his Bill, that it shall be open to the president if he feels that the recommendation which has been made to him is, according to him, not quite proper, or that it requires reconsideration. It would be open to him; and he will have the constitutional right to send back the matter for reconsideration, to the Council of Ministers.

Then, a change was made in Article 77 which provided that it should not be within the power of the court to require the production of Rules of Business. Why? Clearly, the effort was that—of course the Rules of Business lay down a certain distribution of functions between the council of Ministers

MR. SPEAKER: How long are you likely to take?

SHRI SHANTI BHUSHAN. I am likely to take about an hour.

MR. SPEAKER: I must indicate at what time voting is likely to be there. Therefore, shall we say that the voting will be at 3 o'clock.

SHRI SHANTI BHUSHAN: At 3 o'clock

SHRI C. M. STEPHEN: While this arrangement was for second reading, for clause-by-clause consideration, we take them and discuss

MR. SPEAKER: This is the first reading. Voting on the consideration motion will be around 3 o'clock. The House is now adjourned till 2 p m

13 hrs

The Lok Sabha adjourned for lunch till Fourteen of the Clock.

The Lok Sabha re-assembled after lunch at Fourteen of the Clock.

[MR DEPUTY-SPEAKER in the Chair]

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL—contd.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, I was dealing with the question as to whether the claim of the Leader of the Opposition that the 42nd amendment was a very beneficial measure as it was demonstrated by the fact that we had retained some of its provisions has any validity whatsoever I might say that I am given always to understanding a case rather than overstating it. I was referring to the amendment which was made in article 77. One wonders as to what could have been the object of making that amendment taking away the power of the courts to call for, require the production of the rules of

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business. Is it not clear that the purpose of this change, of this amendment was that even when the rules of business established a certain balance among the Council of Ministers and other functionaries, if for some reason somebody has decided to disregard all that distribution of function and to take all the powers, exercise all the powers by one single individual, the courts should not be able to discover as to what had been done, as to the fact that there had been a violation of that distribution of function among the various functionaries? What other object could this provision have other than safeguarding the action of an authoritarian person who, wished to disregard all the rules which regulated the distribution of functions between the different functionaries, from coming before the watchful eye of any court?

Then, in article 102 also, an amendment was sought to be made and it has been attempted to be said that it was a very innocuous one. We have to see whether that amendment was so innocuous. Earlier the provisions of the Constitution laid down that every holder of an office of profit would be disqualified for being a member of Parliament or a state Legislature unless the office of profit had been declared either by Parliament or by the State Legislature to be one which would not disqualify the holder. A seemingly innocuous change, as it is being claimed was made in that article to say that, instead of saying that every office of profit will disqualify the holder unless it is declared to be an office which would not disqualify, we have only altered the form and said, only the specified offices of profit will disqualify and others would not disqualify. But if the matter is examined carefully and deeply, what could be the purpose? Under the old provision, Parliament had to apply its mind to the question as to whether an office of profit was one the holding of which should not disqualify a person. For

example, the office of a Minister or other offices including the one which we have created recently, namely, the Leader of the Opposition and certain other offices are offices which, on account of the nature of the functions which are allocated to those offices, should not evidently disqualify the holder of that office merely because it happens to be an office of profit. But it was substituted by a provision saying that any office of profit would not disqualify unless it is specified as an office of profit, which meant, that so long as Parliament does not apply its mind to the question of specifying a particular office as an office of profit which would disqualify, any office of profit may be created and any Member of Parliament can be given an office of profit without disqualifying, because time might lapse. It may be a long time later that Parliament may apply its mind to the problem. What could be the intention? How was it considered important? Was it not an attempt in the direction that we shall have a provision by which we may have the Members of Parliament holding offices of profit in the gift of the Government and yet they would not stand disqualified for holding those offices of profit, because Parliament may not consider the matter for a long time and until then they would continue to hold those offices?

Then, in article 103 a very vital amendment was made. Earlier the function of effectively deciding as to whether the holding of a particular office of profit would disqualify a person and what should be the period of disqualification was given to an independent authority, namely, the Election Commission. But what has been done by this great Forty-second Amendment? The effective power was taken away from the Election Commission and for some reason vested in the President. Obviously President here means the Government, Government constituted by a political party, the ruling party. So, it was considered that the Government constituted

by a political party should have the power of finally deciding it. It might consult the Election Commission, but the views of the Election Commission would not be binding on the Government. It would be finally for the Government of the day to determine as to whether a member, whether belonging to the Treasury Benches or to the Opposition Parties, had incurred disqualification in a case or not. It means, it will be decided finally by the ruling party. What should be the period of disqualification would also be for the ruling political party in power to decide! Are these things consistent with principles of democracy? Should one party have the right to decide these very important questions on which the parliamentary functioning depends? Should one party decide as to whether another person becomes disqualified or not? Or, should it be decided by an independent authority? This was another change which was made

In regard to the privileges of the Houses of Parliament again a change was made. Earlier the position was, apart from the privileges which the Members of the Houses of Parliament had immediately after the Constitution had been brought into force, namely, the privileges which were enjoyed by the Members of the House of Commons. New privileges could only be created by an Act of Parliament in which both Houses would participate, and there would be the assent of the President, so that the normal legislative procedure would be completed in the creation of new privileges. But this was also sought to be substituted saying that it would be open to a House to evolve new privileges without enacting legislation. The reason is not far to seek why a qualitative change was being made in the whole polity. It is that if anything was considered expedient or necessary in a given situation, nothing should stand in the way. If censorship of even the publication of the proceedings of Parliament was

considered necessary, there should be some way tacking it and anything that comes in the way of the establishment of an authoritarian politician.

What was done with the judiciary? The judiciary was sought to be crippled by having all kinds of provisions. This amendment indicated clearly the complete distrust of the High Courts of the country. The High Courts' power of questioning a Central law was taken away. Not merely a Central Law made by Parliament but the rules and even specific notifications issued under it, were included in the definition of Central law, so that anything done by the Central Government by way of legislation or rules or even notifications could not be questioned by the High Courts. The High Courts were distrusted

Of course, theoretically you may say that one had the right to go to the Supreme Court. I am reminded of a case in which somebody suggested a law that the right to worship should be taken away except on Mount Everest. You can say we are not taking away the right; if you want, you have to go Mount Everest to worship. Similarly, it could be said that every poor person had the right to claim relief, only he had to go to the Supreme Court. He could not have recourse to the High Courts. They had been effectively denied the power of obtaining writs against the various notifications which might be issued by the Central Government.

Article 150 had been contemplated by the Constitution for a very good reason, that there must be some independent authority to supervise and see how the accounts of the Government are being maintained, so that nothing wrong, nothing suspicious was being done. It required the maintenance of accounts in a particular manner. The question was who should decide in what manner the accounts of the Government should be maintained. The Constitution had

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vested this power in an independent authority, the Comptroller and Auditor-General. He had the effective power to decide in what form the accounts would be kept, so that whatever happened might see the light of day. But again, the Government, composed of a political party, not a specialised authority, an independent constitutional authority, was given the final power to decide in what form the accounts would be kept. One has merely to see through this to see what could have been the reason to introduce this change, why the Comptroller and Auditor-General was not trusted and is left for one to guess.

The States were also not trusted. Article 257A was introduced. In a quasi-federal structure, how can you possibly contemplate that the Union would be entitled to send its armed forces to a State even without the consent of the State? Even this provision was introduced in the Constitution.

Article 368 was amended. Of course, eloquent speeches have been made on the proposal of the referendum, and it was said: how can there be any restriction on the two-third majority of Parliament? No amendment made by Parliament should be questionable even in the Supreme Court. The Supreme Court should not be able to sit in judgement to any extent, even the question whether procedure laid down by the Constitution for the making of an amendment of the Constitution has been followed should not be justiciable before the Supreme Court. Even in the solemn matter of amending the Constitution no check or balance was sought to be contemplated. It was said that even the Supreme Court cannot say whether the procedure, which was contemplated by the people of this country, has been complied with or not in whatever amendment was sought to be made by Parliament. And what was the intention? It is clear. There was the 39th Amendment, which was

struck down by the Supreme Court a curious amendment. It is impossible to believe one's eyes or ears when one hears about an amendment of this kind that a certain election to Parliament of a person shall be deemed to be valid, whatever might have happened, no laws will govern it, it is declared valid whatever the High Court might have said.

Then, close on the heels of the 39th Amendment, which was enacted and passed, of course struck down by the Supreme Court, came the 40th Amendment Bill, introduced in one of the Houses, saying that so far as certain functionaries are concerned, including the Prime Minister, Governors and so on, they will not be liable to be proceeded in any court for any criminal offence of any kind, committed either during the period of office or even before they occupied the office; rather, life long immunity was sought to be conferred on such persons, which looks absolutely unbelievable.

Then, in that wake, article 368 was sought to be amended to say, whatever constitutional amendment is made, nobody will have the power to question it, to go into the reasons etc. Whatever might be the infirmities etc., it shall be regarded as valid. That was the amendment to article 368 which had been made. And yet today it is being asked, why have referendum, or why should the people be permitted to make an amendment, or if there are certain features, which must be regarded as basic, how can even the people be given the power of making or authorising such amendments in the Constitution etc. I shall come to that when I deal with the question of referendum.

Then, section 59 of this beautiful 42nd Amendment Act went further. It contemplated a period of two years during which the President, which means obviously the Government, the Government of the ruling party, was given the power of modifying any

provision of the Constitution for the purpose of removing difficulties. What were the kind of difficulties which were under contemplation? What was the nature of the difficulties? Difficulties for whom? Difficulties in whose functioning? Difficulties in whose continuing in Office? This discretion for a period of two years to make any amendment, modification or change in the Constitution was required, this authority was given to the Government to make such modifications.

Then this 42nd Amendment was not the only amendment of the Constitution which was made during the period of the internal Emergency. There were other amendments, which took away the power of the judiciary even to question on any grounds whatsoever—article 123 about Ordinance issuing power, article 352 about declaration of Emergency, article 356 about imposition of President's Rule and various other provisions—in regard to which the judgment of the President, which means the Government, shall not be questioned before any court on any ground. Of course the courts have always taken the view that when it is the subjective satisfaction of the President, the court cannot sit in appeal over the judgment of the Government and that the only ground on which it can be questioned is *mala fide*. If the reasons were wholly extraneous for any reasonable person to come to such a decision in the exercise of those powers under these provisions then only it can be considered *mala fide*. Under the amended provisions, however, *mala fide* or extraneous considerations may be for the exercise of those powers, no court will be competent to go into that question.

Even for the Supreme Court to question a Central notification etc. it was said that there must be a special majority of two-thirds against one-third, a curious phenomenon, namely, where a Judge is taking a

view in favour of the Government, he will have a higher voice, he will have two votes and anybody who votes against the Government, who decides against the Government, would have a single vote. I am wondering as to whether they had in contemplation the application of a similar system to the elections, namely, that anybody who votes for the ruling party candidate will have two votes and any person voting for the opposition candidate, his vote will be counted as half. So it is not far to seek as to why, what were the directions what were the objectives of those amendments which were being made in the Constitution such an important document during the period of Emergency what they were calculated to achieve.

Now it has been said that many provisions have still been retained and therefore one considers them all right. As I said I have no objection if they have any kind of satisfaction because we do not want to look into the past too much. We are more concerned with the future. We are more concerned with giving the country a Constitution so that the abuse of power would not be possible. All right what was done in the past that is a different story. We do not want to look at that past too much and therefore if it gives them some satisfaction that some provisions have been retained I am happy that they are happy and satisfied.

SHRI VASANT SAIHE (Akola) Including your manifesto

SHRI SHANTI BHUSHAN Quite right I will deal with that. Don't worry about my manifesto unless you are thinking of adopting our manifesto. You are welcome to do so. (Interruptions) These are the provisions of the 42nd Amendment which have been retained. Of course, counting 1, 2, 3, 4 simple arithmetics, you can say 18 or 19 provisions have been retained. These are the same provisions. The same concept has to be

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repeated in various clauses. For example, if you say "The census of 1971 will govern" then there are various clauses, one dealing with the Assemblies, another dealing with the Lok Sabha the third one dealing with the union territories and so on and so forth. The same thing has to be repeated everywhere so that you find the same thing in several clauses, may be four or five clauses sometimes. It has been said that about 20 or so clauses have been left untouched. These are the things which have been left untouched. By the 42nd Amendment they attempted to usher in socialism and secularism in this country adding those words to the Preamble. It is the substantive provisions of the Constitution which determine the quality of a polity which is established.

SHRI RAJ NARAIN (Rae Bareilly): Would you define 'socialism'? You are not able to define that.

SHRI SHANTI BHUSHAN: My denotation is simple. Whatever Raj Narain says is socialism because obviously you are... (Interruptions) They added two more adjectives to the Preamble viz., "socialist" and "secular". . . . Of course the provisions of the Constitution laid down and established a secular Constitution for this country. The Provisions of the Constitution laid down a socialist Constitution for this country. If merely by use of this adjective, they feel very happy, I do not want to deny them that happiness. I am reminded of a small child. There were some neighbouring children also they came to the house of the child and the mother of that child told the children because they were wasting time "do some drawing, why don't you pencil a picture of a railway station?" and all the children tried to do it and the mother's own child, very young, just drew a line and brought the picture to the mother. The mother did not have the heart to say that it was not a good picture. She said, "Yes, it is a very fine picture, it is just the scene of a railway station and so on." If they

got that kind of pleasure by adding these two adjectives, I do not want to grudge them this pleasure. (Interruptions). Then three Directive principles were added to the Constitution.

SHRI VAYALAR RAVI (Chirayinkul): How will your definition of "socialism and secularism" help?

SHRI SHANTI BHUSHAN: I am coming to that. That is another thing because that is not a part of your 42nd Amendment. Then they are very happy that they added three more Directive Principles. We are happy. For anything you have done whether it will be useful or even if it is innocuous, so long as it is not harmful, we do not grudge you. We are not actuated by this consideration that Mr Sathe has done this or Mr. Stephen has done this and therefore, it must be rejected. No, if it has the least beneficial value, even if it is innocuous, we do not want to make you unhappy. Please have it retained, by all means and let us make such use of it as we can. We are not in the spirit that "Oh, Mr Sathe has done this, therefore, we must oppose it." No. (Interruptions).

They have added in the fundamental duties, to abide by the Constitution, respect to the Institutions etc. I do not know for whom it was meant. Obviously there was some conscience which was troubling some person and therefore, somebody wanted to assert that it should be important to respect the democratic institutions in this country. So, even if at this late stage this idea enters into someone's mind, we are happy and we welcome it.

Then, the other thing which was retained was the clarification that the President would be bound by the Cabinet's advice. I have already said that of course, the President is bound by the Cabinet's advice. It need not be said. That has been the view which has been held from the very beginning of the Constitution. When the controversy was raised and the distinguished Attorney-General and Mr.

Alladi Krishnaswami Iyer had determined and the country had accepted, yes, it is a constitutional Government, it is a parliamentary Government and, therefore, the advice of the Council of Ministers is binding, to make it into an express provision, what could be the purpose? The purpose could only be that he should not even have that kind of discretion which the parliamentary democracy contemplates, namely, asking for reconsideration. He is an important functionary and, therefore, if he has certain views, he should be able to appraise the Council of Ministers of his views so that the Council of Ministers may apply their mind to that question and, if necessary, reconsider the matter. But even this amount of discretion they were not prepared to give to him. It was being considered that it might give rise to a dangerous situation. Quite possibly, they might have thought and contemplated all kinds of dangers, and, therefore, they were not prepared to take the risk of what they contemplated as a danger or a potential danger or a possible danger to anybody.

As regards the various articles dealing with the 1971 Census, to determine the distribution of seats to State, etc., if they are very happy that it is a revolutionary change which had been made by the Forty-second Amendment, I again would like to repeat that I would not like to grudge them their happiness because it is the function of this Janata Party Government to try to make the whole country happy, including the Opposition parties, the members of the Opposition parties.

AN HON MEMBER: Including Mr. Raj Narain.

SHRI K. P. UNNIKRISHNAN (Badagara): Why don't you make him happy?

SHRI SHANTI BHUSHAN: Don't you see that he is happy? He is always happy. If he had not always been happy, he would not have been Mr. Raj Narain.

Having dealt with the Forty-second Amendment, of course, I might also refer to a criticism, namely, that the Janata Party election manifesto has not been honoured by not bringing a Bill for the total repeal of the Forty-second Amendment. I have had occasion to deal with this question on earlier occasions. I would only like to remind the hon. Members—the House has many distinguished lawyers also—specially those distinguished lawyers if they would just care to have a look at Section 6A of the General Clauses Act. I recently had the occasion to bring a Bill in the other House a repealing and amending Bill—it is a periodical exercise—because the law provides that once the amendment of an Act has taken effect, even if you repeal the amending Act, the amendments are left untouched because the amendments have already been incorporated in the main Act. Therefore, the mere repeal of an amending Act does not have the effect of removing the amendments. That is the law, that is Section 6A of the General Clauses Act.

SHRI A. BALA PAJANOR (Pondicherry): You could put all the Sections together and repeal it.

SHRI SHANTI BHUSHAN: It was being said that even if there is something which might be even useful to the slightest extent you repeal it and re-enact it. Let it go first and bring it again later on. There would be no purpose in doing that and, therefore, it has not been done.

I have already had an occasion to say in this House that many distinguished members of this House had criticised the Forty-second Amendment and even certain committees had been constituted when the Forty-second Amendment was being considered. Even Shri Jaya Prakash Narayan had constituted a national Constitution Review Committee consisting of Shri Era Sathyan and Krishan Kant who were the convenors and I also had the honour to be a

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member of that Committee. Mr. Tarunde was a member of that Committee. Even at that time, I had adopted an approach that in the Forty-Second Amendment, there might be some proposals which were innocuous and some may be slightly beneficial and, therefore, we should not object. Our purpose should not always be publicity and propaganda but a constructive exercise. Let us apply our mind to this: whatever is bad, let us reject; and whatever is not bad, let us not. (Interruptions) Even such reports were produced during the period of Emergency, even the speeches which had been made, the speeches have criticised various things. So, it is in that spirit.

PROF. R. K. AMIN: May I make a submission?

SHRI SHANTI BHUSHAN: You may make your submission later.

Then I come to the Emergency provisions. Several hon. Members have spoken about the Clauses in this Bill which deal with the Emergency provisions of the Constitution article 352 and the connected provisions. Of course, I must make one thing clear. I do not think any hon. Member of this House will oppose the Clauses contained in the Bill, for the reason that opposition to these Clauses of the Bill would mean that the original Emergency provisions must continue. (Interruptions) It is my duty to make it clear. After all, what is it that we are trying to do? We are not trying to act against liberty. We are proceeding in the direction of liberalising namely creating safeguards making abuse difficult. I would like to claim that abuse of the Emergency powers will be made impossible by these amendments which are being proposed. Well there might be—I do not say that one might not have an honest room for difference of opinion on that score. One may say that one should proceed further. But merely saying that one should proceed further would not be a ground to oppose whatever is being done. Therefore, I appeal to

the hon. Members to support the Clauses which we have introduced in this Bill in regard to Emergency provisions.

SHRI SOMNATH CHATTERJEE (Jadavpur): With my amendment.

SHRI SHANTI BHUSHAN: Now, certain anxieties have been expressed in regard to the Emergency provisions. I am not surprised about this anxiety because the whole country has gone through a traumatic period. Of course, the fears were not exaggerated. But even if hon. Members proceed on exaggerated imaginations, I cannot blame them, I cannot find fault with them. It will only be my duty to try to clarify it for them. I would say that the provisions, the safeguards which are being introduced, are absolutely adequate. It is also important to know that any powers which are given to an executive in an orderly society, in a civilized country, are given for a particular purpose. Of course, one might say or one might contemplate that there may be some possibility of misuse of those powers. One approach may be: if there is a possibility of misuse of powers, why give any power at all, take away all the powers. Then what do we have? If proceeding on this distrust that if any authority is given to anybody by the Constitution there is a possibility of misuse and, therefore, the power may be taken away so that no misuse would be possible, then what happens?

SHRI MALLIKARJUN (Medak): Sir, on a point of clarification, Mr. Law Minister, would you focus your attention on what is meant by 'armed rebellion'? Once the armed forces rebel, where is the point of sending the Proclamation to the President to impose Emergency? What is 'armed rebellion'? This is total ignorance on the part of the Janata Government to put the term 'armed rebellion'. In a civilian country, is there any scope for that? (Interruptions). You are making a conspiracy; you are instigating the armed forces to revolt. That means.

you do not believe in democracy What is meant by 'armed rebellion'? It is a totally unacceptable term, it is intolerable for any democratic citizen

SHRI SHANTI BHUSHAN There we agree This is not armed rebellion

MR DEPUTY SPEAKER Mr Mallikarjun you have explained your point

SHRI MALLIKARJUN Once an armed rebellion is there you cannot take any decision like that to impose President's rule

SHRI SOMNATH CHATTERJEE Rebellion by Mr Mallikarjun also will mean an armed rebellion

SHRI SHANTI BHUSHAN Sir I am quite conscious of the fact that the country does not face any danger so long as we have any Arjun in this House whether it is Mallikarjun or any other Arjun and, when I look at Mr Mallikarjun he is not merely an Arjun but he combines the qualities of an Arjun and a Bhishm also (Interruptions)

SHRI MALLIKARJUN It is not enough that you know some mythology You must be a constitutional expert also but you are not an expert in the eyes of the people Why do you use the words 'armed rebellion'?

SHRI A BALA PAJANOR He has made a point Sir (Interruptions)

SHRI MALLIKARJUN I am not going to revolt in a village, I am going to revolt in the capital city of India

SHRI VASANT SATHE For mythology you should take lessons from Mr Raj Narain

SHRI SHANTI BHUSHAN He has taught me something during the four years we were conducting the case together

SHRI HITENDRA DESAI (Godhra) The hon Member talks about

a stage when you will have no worry from any quarter

SHRI SHANTI BHUSHAN: There is no doubt that the abuse of emergency powers during recent years has naturally created a fear psychosis in this country and I am, therefore, not surprised that the hon Members should give vent to apprehensions of the kind to which they have given expression to. But, let us coolly and dispassionately consider the question as to whether the safeguards which are sought to be provided are quite adequate or not. It is not merely that the safeguards are there in Art 352 because we have also to see and consider, when we consider what kinds of safeguards are necessary and what are the consequences, of a declaration of emergency. If the consequences are of a particular kind, then more safeguards are necessary. If the consequences are not that drastic, then less safeguards will do. We have also tried to see and make an attempt, namely, to water down the consequences which an emergency can have. Now, a most important consequence which played havoc in this country was because the right to life or liberty could be suspended during an emergency and therefore, there was no habeas corpus and there was nobody to question how a person had been detained, however dishonestly detained, and for what reasons he had been detained. But this Bill seeks to annual all this once and for all. It says that so far as the sacred rights to life or liberty is concerned, which is enshrined in Art 21, by an amendment of Art 359 it is being ensured that the right to life or liberty which was construed by the Supreme Court as the sole repository of the right to life and the right to liberty shall not be subject to any suspension even during the period of any external emergency. Now this ensures that a habeas corpus cannot be suspended in this country even during any period of emergency whether

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arising from external aggression or internal aggression so that such a large-scale clamping of people in jail and thus creating this psychosis of fear all around will not be possible hereafter.

Hereafter people cannot be terrorised by telling them, "All right, if you do something, even if it be your right to do it, you will be put in jail and you will have nobody to go to." This will not be the position.

Apart from that, the other weapon which had been used during the period of emergency, was "All right, here is the House, the two Houses of Parliament. They constitute the conscience of the nation, they constitute the voice of the nation. If that is muzzled, then, in that case, democracy cannot thrive and a fear psychosis can be brought about." Sir, if the voice of this House or the other House cannot be muzzled and if the voices of the Houses of different Legislatures cannot be muzzled, then again that kind of emergency can never be perpetrated. That is why we have tried to introduce an Article in this Constitution, that the publication of parliamentary proceedings shall be an absolute and a constitutional right of the people so that this kind of muzzling of parliamentary institutions will not be permissible. It is in this context, namely, the kind of emergency which was declared in this country, the kind of consequences which were created, the kind of the fear psychosis which had been established, the need to ensure that it will not be possible even by the use of the emergency provisions to establish such a situation in the country that the kind of safeguards has to be looked at. But even then we have not said that no safeguards are necessary. So many safeguards have been attempted to be imposed by amending Article 352. First of all, even that provision, Clause 5, which had been introduced taking all powers of judi-

cial review in all circumstances, namely, on any ground whatsoever is sought to be deleted so that at least in an extreme case it may be possible for a citizen to go to, the court and say, alright if there is not the slightest case for declaration of Emergency, if it is so clearly and patently mala fide, if it is purely based on extraneous considerations this absolute bar on exercise of powers by the courts will not be there. That is one safeguard.

The most important safeguards which are sought to be introduced are: Firstly, the Cabinet will have to consider the matter. It will only be on the basis of a Cabinet decision and written advice tendered on the basis of the Cabinet decision that it will be possible for the President to proclaim Emergency. This would mean that it would be the collective wisdom, not in the interest of a single individual, not arbitrary exercise of authority by single individual which may be competent to usher in an era of Emergency in the country.

SHRI VASANT SATHE: What will be the use! It will be collective impotency.

SHRI VAYALAR RAVI: Let him explain the point why does he want to retain the clause of Emergency?

(Interruptions)

SHRI SHANTI BHUSHAN: These questions of impotency I would like to leave them to Mr. Sathe.

Now, Sir, apart from that hereafter a declaration of Emergency would not be possible merely by having a bare majority of the Parliament to vote for it. Two-third majority in both Houses, a two-third majority which is required for an amendment of the Constitution, that kind of majority, namely, more than half of the total membership and two-third majority of those present and voting will

be required for approving a declaration of any Emergency (*Interruptions*)

This would be another safeguard namely, the endorsement of the proclamation of Emergency or its continuance will have to be repeated by the same two-third majority every six months, so that it may not be alright there is some Emergency and therefore it is proclaimed and ratified and thereafter the Parliament is out of picture

14.43 hrs

[MR SPEAKER in the Chair]

Every six months in order to continue this Emergency government will have to come to both Houses of Parliament and unless it secures the consent of two-third voting majority in both Houses of Parliament it would not be possible for the Government to continue the Emergency

Then it would be open to Lok Sabha to ask for the revocation of Emergency at any time. Even during the period of six months at any time when this Lok Sabha feels that it is not necessary to continue the Emergency any longer

(*Interruptions*)

MR SPEAKER Whatever interpretation the Law Minister may give the interpretation will finally be what the court gives as the interpretation. He is explaining the position as he understands it

(*Interruptions*)

SHRI A BALA PAJANOR But the meaning that is given by the Law Minister will be looked into by the court because you know Sir for knowing the meaning they will not refer to Oxford or Chambers. They will see the proceedings and then come to the decision. So his lecture is very important

(*Interruptions*)

2212 LS—9

SHRI SHANTI BHUSHAN I am very happy that even the votaries of internal emergency on the ground of a non-existent internal disturbance are today so solicitous about there being no emergency even in the event of an armed rebellion in the country. I am happy that at least such a thing is being said (*Interruptions*)

SHRI SAUGATA ROY (Barrack-pore) Let the Government state that they have come on the negative verdict of emergency (*Interruptions*).

SHRI VAYALAR RAVI Armed rebellion is a political revolt. How can you suppress the people if it is there (*Interruptions*)

SHRI SAUGATA ROY If Shri Raj Narain calls for a kisan rally, it can be called an armed rebellion for declaring emergency

SHRI SHANTI BHUSHAN A question has been raised apart from the security of the country being in danger from external aggression whether there should be power to declare emergency if the security of the country is threatened by armed rebellion. May I implore the hon. Members of the House to consider (*Interruptions*)

SHRI VASANT SATHE Shri Somnath Chatterjee says that even if the external aggression is from a friendly country like China you should not do that. What do you say to that? (*Interruptions*)

MR SPEAKER Why are you fighting over the dead past? (*Interruptions*)

MR SPEAKER It is well known that converts can be more fanatical than others

SHRI SHANTI BHUSHAN Two points have raised in this connection and I propose to deal with these point very briefly. One point which was raised is that if the security of the country is in danger arising from external aggression then there could

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be a reason to proclaim Emergency in the country, and acquire those special powers, whatever they may be, with all the safeguards. But if the security of the country is threatened by armed rebellion from outside, in that case... (Interruptions)

MR. SPEAKER: Why don't you hear? You have a duty to hear. You may agree, or may not agree.

SHRI SHANTI BHUSHAN: I was wondering why should there not be an equal concern to safeguard the security of the country, even if the threat arises from armed rebellion from inside. Why should it be necessary to show... (Interruptions)

MR. SPEAKER: What is all this? I cannot understand. You cannot stop it by shouting.

(Interruptions)

MR. SPEAKER: Don't record.

(Interruptions)**

SHRI SHANTI BHUSHAN: Will this august House remain unconcerned if the security of the country is threatened by armed rebellion from inside the country?

SOME HON MEMBERS: Inspired by whom?

SHRI SHANTI BHUSHAN: Unless it can be shown that the armed rebellion was inspired from outside and it can be demonstrated so, i.e., that it had inspiration from outside, until then, it will not be regarded as external aggression, even though the consequences will be the same and identical, and Government will not be able to meet the situation. (Interruptions)

I do hope that the House will not countenance such a proposition.

SHRI VASANT SATHE: Are you having George Fernandes in mind? (Interruptions)

MR. SPEAKER: Don't record.

(Interruptions)**

SHRI SHANTI BHUSHAN: I do hope that the House will not permit any danger to the security of India to arise, even from armed rebellion, and will not permit any rebellion to take place, to put the security of the country in danger. (Interruptions) Are you planning for that? Anybody who calls for armed rebellion must be put down. (Interruptions)

MR. SPEAKER: Don't record.

(Interruptions)**

MR. SPEAKER: Mr Chandrappan, this is the tenth time that you are getting up, and speaking

SHRI C. K. CHANDRAPPAN (Cannanore): Yes because he said that. (Interruptions)

MR. SPEAKER: He had a right to say that.

SHRI SHANTI BHUSHAN: In a democratic country, every citizen, every person has a right to oppose the Government by peaceful means and by creating public opinion. That is the way to fight the Government. You are welcome to fight the Government by creating public opinion. (Interruptions) So long as the democratic character of the Constitution is preserved.

So long as people's right to govern themselves is preserved, people are welcome to oppose the government by peaceful means. Let them create public opinion, let them fight the government by peaceful means. But no armed rebellion in the country shall be permitted... (Interruptions).

SHRI VASANT SATHE: This is what Shrimati Indira Gandhi had said.

SHRI SHANTI BHUSHAN: If the hon Member Shri Sathe has now started

**Not recorded.

feeling that whatever Shrimati Indira Gandhi has been saying, I have also been saying, I am happy (*Interruptions*) The other point raised was why should this power arise even when there is apprehension, before the armed rebellion has actually taken place? Now this is a feature recognised by the original article 352 itself, namely if a danger has to be properly met, the danger may not sometimes be properly met unless the required action can be taken well in time. That is why if there is apprehension of the security of India being endangered from external aggression, you can take action before. Similarly if there is danger to the security of India from armed rebellion certainly action must be taken even before but action must be taken honestly, must be taken properly with all the safeguards that are there (*Interruptions*). Since I find there is some allusion in this House among some hon. Members about certain things I shall go to the next aspect of the matter namely provisions dealing with preventive detention, article 22.

As the hon. Members must have seen it is a very important step in the direction of safeguarding the liberties of the people and I hope therefore that each and every single hon. Member of this House would give support to the provisions of the Bill which are formulated to safeguard the liberties of the people (*Interruptions*). I should like to emphasise that a very important change which is sought to be introduced by this Bill is that while the original article 22 gave power to Parliament to provide any period during which a person could be detained without any reference to the advisory board that power is being deleted in clause 7 so that hereafter even Parliament will not have the power of authorising the preventive detention of a person beyond a period of 2 months without any reference to the advisory board.

15 00 hrs

My esteemed friend Shri Ram Jethmalani, had suggested that he had

made some proposal for the amendment of the Criminal Procedure Code by which he wanted to provide that if the government certifies in the case of a person who is accused of having committed a criminal offence that he must be remanded to custody for a period of three months, then it should be obligatory for the magistrate to remand him for a period of three months. He thought that if such a provision was introduced in the Cr. P. C. every criminal every person who was suspected or accused of having committed a crime could be tickled by seeing to it that at the desire of the State Government that person remained in custody for a period of three months. I would appeal to the hon. member to ponder over it and consider how the liberty of the individual would be more safeguarded by a provision of that kind. In that case it shall be for the Government to decide. Of course, a criminal accusation can be laid against anybody. If therefore that itself becomes enough justification for the Government to wield the power and see to it that for three months he remained custody—will that be better or will the kind of provision that we are contemplating in article 22 is better? Here the provision is that within 2 months it shall be referred to an advisory board consisting of three judges, selected by the Chief Justice of the appropriate High Court who would be going into the question and deciding whether there are good grounds for keeping a person in preventive detention or not and if such judgements show that there are no good grounds for keeping a person in detention, he will be entitled to his liberty. In addition the habeas corpus right would also be there. That will be in addition to the reference to the advisory board within a period of two months (*Interruption*). It has been said why have any power of preventive detention?

SHRI DINEN BHATTACHARYYA
(Scrapmore) No preventive detention should be there.

SHRI SHANTI BHUSHAN: There was a police officer who had a revolver to protect the people. When that revolver did not have a safety device and therefore it was found that it was a dangerous weapon, one person suggested, "All right; instal a safety device so that it can be used only for the proper purpose and it may not cause injury to others which may not be necessary." The other person said, "Why not take away that particular pin which made the revolver effective?" If the pin is taken away, what will happen? After all, the Government does require powers to deal with extraordinary situation. This is merely contemplated by the Constitution as a reservoir, so that in extraordinary situations when the interests of the society at large, civilised society, organised society, may require the exercise of special powers, then with all the necessary safeguards, these special powers may be there and may be necessary to the extent they are necessary to protect the interests of the society. (*Interruptions*).

श्री यमुना प्रसाद शास्त्री : (रीवा) : भविष्य में कोई सरकार इसका दुरुपयोग कर सकती है । नहीं करेगी इसका क्या सेफगार्ड है ?

SHRI SHANTI BHUSHAN: I am feeling sorry at this moment that I do not have the jung power of Mr. Sathe and the throat power of Mr. Kachawai!

I come to the important subject of referendum on which there has been some controversy in the House. I do hope that even those who have expressed themselves against a referendum would think again about it.

The Leader of the Opposition invoked the principle that when a principal delegates a power to a delegate, then the principal loses the power and the delegate becomes all supreme. I can contemplate that in the case of sale of a property, after a vendor has transferred his property, parted with it to the vendee, certainly he cannot claim any right to that property, but in the case of delegation, if the principal appoints a manager to look after some interests on behalf of the people in the name of the

people, then if that person says that the people are nobody, we are the persons because the people have already delegated the power to us, they have made us sovereign, they have become subjects, we have become sovereign, so far as I am concerned, I would find it very difficult to accept that proposition.

Hon. Shri Venkataraman referred to certain aspects of impracticality. He thought that a provision for referendum in India would be most unpractical. Of course, I might inform him, he must be aware himself, that in Goa there was a referendum of a kind on the question whether Goa or parts of it should merge with Maharashtra or not.

SHRI MALLIKARJUN: It was a demand by the people. In a democracy, you can have an opinion poll.

SHRI SHANTI BHUSHAN: Shri Venkataraman's difficulty was that after all in a referendum, a Constitution Bill will go for a yes or no vote on the basis of some symbol. How can a Constitution Bill be ratified by the people by yes or no? May I ask the hon. Member to consider this? When a Constitution Amendment requiring ratification by more than half of the State Assemblies is sent to the Assemblies, how do the Assemblies decide upon that amendment? Is it not by a total yes or a total no? They have no power to make any amendments to the Constitutional Amendment. The idea is that a package constitutional amendment or several package constitutional amendments can be put to the people for an affirmative or a negative vote, and the results of that vote can be taken into consideration if 51 per cent of the voters participate and the majority have given an affirmative vote. Here in the Lok Sabha also, when a Bill is put to vote, we say "ayes" and "noes". When we can declare "ayes" and "noes", the people also can declare "ayes" and "noes" (*Interruptions*).

He also had some difficulty about cats and rats. He was contemplating what would be the symbol which would be supplied. Mr. Venkataraman

fought an election on the symbol of the cow and calf if I remember aright In that party with the symbol of cow and calf, he has seen a division I was wondering what made him think of cats and rats how it has struck him I do not know whether he had employed that kind of canvassing He has said that if there is any voting on the basis of such symbol people would go and say that rats will eat away your grains and cats will do something else etc When there was the cow and calf was that the kind of canvassing that was done?

I can understand opposition to the referendum clause on one or two grounds For example some might be wanting unlimited powers for the two Houses of Parliament to make any kind of amendment There was such a section of opinion In fact when the 42nd Amendment was brought and article 368 was amended it was done on the basis that two-thirds majority in two Houses of Parliament must have complete power of making any amendment there should nothing basic etc which is beyond their reach they should be able to make even amendments of the kind contained in the 39th or 40th Amendment, or any other kind of amendment which might be conceived of by human ingenuity That is one school of thought, and I can understand that those who want to say that the referendum clause should not be there because it curtails the powers of the Parliament because it obliges Parliament even when something is accepted by two-thirds majority in Parliament in the two Houses it compels them to get the endorsement of the people

Then my answer to that kind of criticism is that the country has seen and therefore the country wants the country feels the people feel that when their rights come in when their democratic rights come in when their rights for free and fair elections under adult franchise come in when their fundamental right for freedom of speech and expression comes in, in

that case they are not willing to permit even a two-thirds majority in Parliament to interfere with that right even by an amendment of the Constitution They want themselves to be involved because they know what is in their interest and how they can really safeguard their interests So whenever any such thing is sought to be done in the name of improving the lot of the people etc they say come back to us we are the principals you are the delegates only for certain purposes come back to us and tell us what you want to do and when we endorse it then only you would be competent to do that (Interruptions) There is nothing in this amendment which goes against the interests of the people of this country (Interruptions) I will make my further speech very brief because

SHRI VASANT SATHE You have no moral right

MR SPEAKER Leave the moral right alone

SHRI SHANTI BHUSHAN Something was said about the 9th Schedule not being deleted

SHRI BAPUSAHEB PARULEKAR (Ratnagiri) On the point of referendum I want to seek clarification from the hon Minister Are you going to put the entire Bill consisting of so many clauses to the people for referendum? Suppose there are nine clauses and suppose I want to vote for 7 clauses and not for 2 clauses then what should be done? Or will the people be required to vote so many times separately?

SHRI SHANTI BHUSHAN I will immediately deal with this The position would be if the Constitution Amendment is of such a nature that it is a composite whole namely it represents only one theme then in that case, the entire proposal of the Government to amend the Constitution will be put as a whole can be put as a whole saying either you accept the whole idea or reject the whole idea"

[Shri Shanti Bhushan]

It may consist of several clauses, but all those clauses together constitute one central idea and, therefore, it is put to the people as one idea, whether it is acceptable to them or not; because the people do not bother about the manner in which some minor changes are made; they are concerned only with the central idea. But if in a particular constitutional amendment there are several distinct areas, then, in that case, it is possible to put those distinct areas separately for the referendum of the people. Now, so far as this particular aspect is concerned, it can be put separately and other aspects can be put separately

SHRI VAYALAR RAVI: The Supreme Court had ruled in their judgment that this Parliament has no right to change the basic features of the Constitution. Now the Minister proposed an amendment barring the Supreme Court also from looking into the merit of the case if 51 per cent of the people vote for it. (*Interruptions*)

MR. SPEAKER: No, no. It can always be argued. (*Interruptions*) These questions can be dealt with when we take up the amendments. (*Interruptions*) I am going to take up voting. (*Interruptions*)

PROF. P. G. MAVALANKAR (Gandhinagar): If they are so basic, why do you make them amendable? (*Interruptions*)

MR. SPEAKER: Nobody can answer half a dozen persons.

SHRI SHANTI BHUSHAN: I do not think I can complete my task unless I deal with the important points which have been made by hon. Shri Raj Narain.

SHRI T. BALAKRISHNAIAH (Tirupathi): Referendum provision is meaningless (*Interruptions*)

SHRI SHANTI BHUSHAN: As the House knows, Shri Raj Narain is a great democrat... (*Interruptions*)

PROF. P. G. MAVALANKAR: Why not the Minister answer my point?

MR. SPEAKER: No, no. He cannot answer a number of persons.

PROF. P. G. MAVALANKAR: I have raised a specific point. Let him answer that... (*Interruptions*)

SHRI SAUGATA ROY: Referendum is a very vital thing. (*Interruptions*)

MR. SPEAKER: Mr. Minister, I am going to take up voting. An amendment for the circulation of the Bill has been moved by Shri Hukmdoo Narain Yadav. Does the hon. Member want to withdraw the amendment?

श्री हुकूम इंच नारायण यादव (मधुबनी) : मैं अपना प्रपोजमेंट प्रेस नहीं कर रहा हूँ।

MR. SPEAKER: You are not pressing

SHRI HUKMDO NARAIN YADAV: Yes

MR. SPEAKER: Has the hon. Member the leave of the House to withdraw the amendment?

SEVERAL HON. MEMBERS: Yes.

Amendment No. 95 was, by leave, withdrawn.

MR. SPEAKER: Now, before I put the motion for Consideration to the vote of the House, this being a Constitution Amendment Bill, voting has to be by division. Let the lobbies be cleared. The Lobbies have been cleared. Before I call division, may I make one request? The members may please take their allotted seats. Otherwise, there will be difficulty.

The voting on the motion has to be by a division. I may remind the members that when the division is announced, a gong will sound which will signal the member to cast his vote. Each member has to press the pusher

and then operate one of the three push buttons according to his choice. The pusher and the push button may be kept pressed simultaneously until the gong sounds second time

The question is:

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

The Lok Sabha divided:

AYES

Division No. 4]

[15.23 hrs.

Abdul Lateef, Shri
Agrawal, Shri Satish
Ahmed, Shri Halimuddin
Ahmed Hussain, Shri
Ahsan Jafri, Shri
Ahuja, Shri Subhash
Alagesan, Shri O. V.
Alhaj, Shri M. A. Hannan
Alluri, Shri Subhash Chandra Bose
Amat, Shri D.
Amin, Prof. R. K.
Anbalagan, Shri P.
Ankineedu, Shri Maganti
Ankineedu Prasad Rao, Shri
Ansari, Shri Faquir Ali
Arif Beg, Shri
Arunachalam, Shri M.
Arunachalam alias 'Aladi Aruna' Shri
V.
Asaithambi, Shri A. V. P.
Asokaraj, Shri A.
Badri Narayan, Shri A. R.
Bagri, Shri Mani Ram
Bahuguna, Shri H. N.
Bahuguna, Shrimati Kamala
Bal, Shri Pradyumna
Balak Ram, Shri
Balbir Singh, Chowdhry
Baldev Prakash, Dr.
Banatwalla, Shri G. M.
Berkataki, Shrimati Renuka Devi

Barrow, Shri A. E. T.
Basappa, Shri Kondajji
Bateshwar Hemram, Shri
Bhagat Ram, Shri
Bhakta, Shri Manoranjan
Bhanwar, Shri Bhagirath
Bharat Bhushan, Shri
Bhattacharya, Shri Dmen
Bheeshma Dev, Shri M.
Birendra Prasad, Shri
Borole, Shri Yashwant
Borooh, Shri D. K.
Brij Raj Singh, Shri
Burande, Shri Gangadhar Appa
Chakravarty, Prof. Dilip
Chandan Singh, Shri
Chandra Shekhar, Shri
Chandra Shekhar Singh, Shri
Chandra Pal Singh, Shri
Chandrappan, Shri C. K.
Chatterjee, Shri Somnath
Chaturbhuj, Shri
Chaturvedi, Shri Shambhu Nath
Chaudhary, Shri Motibhai R.
Chaudhuri, Shri Tridib
Chauhan, Shri Nawab Singh
Chavan, Shri Yeshwantrao
Chavda, Shri K. S.
Chettri, Shri K. B.
Chhetri, Shri Chhatra Bahadur
Choudhari, Shri K. B.
Choudhury, Shrimati Rashida Haque
Chowhan, Shri Bharat Singh
Chunder, Dr. Pratap Chandra
Dabhi, Shri Ajitsinh
Damor, Shri Somjibhai
Danwe, Shri Pundalik Hari
Das, Shri S. S.
Das, Shri R. P.
Dasappa, Shri Tulsidas
Dasgupta, Shri K. N.
Dave, Shri Anant
Deo, Shri P. K.

Deo, Shri V. Kishore Chandra S.	Kaiho, Shri
Desai, Shri Dajiba	Kailash Prakash, Shri
Desai, Shri Hitendra	Kakade, Shri Sambhajirao
Desai, Shri Morarji	Kulkate, Dr. Babu
Deshmukh Shri Ram Prasad	Kamakshatah, Shri D.
Devarajan, Shri B	Kanath, Shri Hari Vishnu
Bhandayuthapani, Shri V.	Kapoor, Shri L. L.
Dhara, Shri Sushil Kumar	Kar, Shri Sarat
Dharia, Shri Mohan	Kasar, Shri Amrut
Dhurve, Shri Shyamraj	Kaushik, Shri Purushottam
Digvijoy Narain Singh, Shri	Kesharwani, Shri N P.
Durga Chand, Shri	Khalsa, Shri Basant Singh
Dutt, Shri Asoke Krishna	Khan, Shri Ismail Hossain
Faleiro, Shri Eduardo	Khan, Shri Mahmood Hasan
Gomat, Shri Chhitubhai	Khan, Shri Mohd Shamsul Hasan
Ganga Bhakt Singh, Shri	Kishore Lal, Shri
Ganga Singh, Shri	Kisku Shri Jadunath
Gattani, Shri R. D.	Kolayan, Shri P. K.
Gawai, Shri D G	Kolanthavelu, Shri R.
Godara, Ch. Hari Ram Makkasar	Kolur, Shri Rajshekhari
Gogol, Shri Tauun	Kosalram, Shri K. T.
Gomango, Shri Giridhar	Krishan Kant, Shri
Gopal, Shri K.	Krishnan, Shrimati Parvathi
Gore, Shrimati Mrinal	Kureel, Shri Jwala Prasad
Goswami, Shrimati Bibha Ghosh	Kureel, Shri R L.
Gowda, Shri S. Nanjesha	Lahanu Shidava Kom, Shri
Goyal, Shri Krishna Kumar	Lal, Shri S S
Guha, Shri Samar	Laskar, Shri Nihar
Gupta, Shri Kanwar Lal	Limaye, Shri Madhu
Halder, Shri Krishna Chandra	Machhand, Shri Raghubir Singh
Harikesh Bahadur, Shri	Mahala, Shri K. L.
Hukam, Ram, Shri	Mahata, Shri C. R.
Jaffer Sharif, Shri C. K.	Mahil Lal, Shri
Jagannathan, Shri S.	Maiti, Shrimati Abha
Jaggivan Ram, Shri	Malik, Shri Mukhtiar Singh
Jain, Shri Kacharulal Hemraj	Mallick, Shri Rama Chandra
Jain, Shri Kalyan	Mallikarjun, Shri
Jain, Shri Nirmal Chandra	Mandal, Shri B P.
Jasrotia, Shri Baldev Singh	Mandal, Shri Dhanik Lal
Jethmalani, Shri Ram	Mane, Shri Rajaram Shankarrao
Joarder, Shri Dinesh	Mangal Deo, Shri
Joshu, Dr. Murli Manohar	Mankar, Shri Laxman Rao
Kadam, Shri B. P.	Manohar Lal, Shri
	Mathur, Shri Jagdish Prasad
	Mavalankar, Prof. P. G.

Meerza, Shri Syed Kazim Ali
 Mehta Shri Prasannbhai
 Mhalgi Shri R K
 Mirdha, Shri Nathu Ram
 Miri Shri Govind Ram
 Mishra Shri G S
 Mishra Shri Janeshwar
 Mishra Shri Shyamnandan
 Modak Shri Bijoy
 Mohan Lakshman Shri Kalyavali
 Mohinder Singh Shri
 Mohsin Shri F H
 Mondal Dr Bijoy
 Mukherjee Shri Samar
 Multan Singh Chaudhary
 Munda Shri Karla
 Murmu Father Anthony
 Murthy Shri M V Chandashekhara
 Murugayan Shri S G
 Nahata Shri Amrit
 Naik Shri S H
 Nair Shri M N Govindan
 Narendra Singh Shri
 Nathu Singh Shri
 Nathun Ram Shri
 Nayak Shri Laxmi Narain
 Nayar Dr Sushila
 Negi Shri T S
 Pajanor Shri A Bala
 Pandey Shri Ambika Prasad
 Pandeya Dr Laxminarayan
 Pandit Dr Vasant Kumar
 Parmal Lal Shri
 Parmar Shri Natwarlal B
 Parthasarathy Shri P
 Parulekar Shri Bapusahab
 Parvati Devi Shrimati
 Patel Shri Dwarikadas
 Patel Shri H M
 Patel Km Mamiben Vadabhbhai
 Patel Shri Meetha Lal
 Patidar Shri Rameshwar
 Patil, Shri Chandrakant

Patil Shri S D
 Patil Shri Vijaykumar N
 Patnaik Shri Biju
 Patnaik Shri Sivaji
 Patwary Shri H L
 Phalangi Prasad Shri
 Pipil Shri Mohan Lal
 Poojary Shri Jitendhara
 Pradhan Shri Gananath
 Pradhan Shri Pabitra Mohan
 Pradhan Shri K
 Pullarath Shri Darur
 Qureshi Shri Mohi Shafi
 Richuah Sh B
 Raghavendra Subba Shri
 Raghavji Shri
 Raghuramanna Shri K
 Rai Shri Gauri Shankar
 Rai Shri Narmada Prasad
 Rai Shri Shy Ram
 Raj Keshwar Singh Shri
 Raj Narain Shri
 Rajan Shri K A
 Rajda Shri Ratansinh
 Raju Shri P V G
 Rakesh Shri R N
 Ram Dhan Shri
 Ram Gopal Singh Chaudhury
 Ram Kinkar Shri
 Ram Kishan Shri
 Ram Murti Shri
 Ram Sagar Shri
 Ramachandran Shri P
 Ramalingam Shri P S
 Ramamurthy Shri K
 Ranapati Singh Shri
 Ramaswamy Shri S
 Ramdas Singh Shri
 Ramji Singh Dr
 Ramji Singh Shri
 Ranjankar Shrimati Ahilya P
 Ranjit Singh Shri
 Rao Shri Jagannath

	Bill
Rao, Shri Jalagam Kondala	Shrikrishna Singh, Shri
Rao, Shri M. Satyanarayan	Shukla, Shri Chimanbhai H.
Rao, Shri Pattabhi Rama	Sikandar Bakht, Shri
Rao, Shri Raje Vishveshvar	Singh, Dr. B. N.
Rasheed Masood, Shri	Singha, Shri Sachindralal
Rathor, Dr. Bhagwan Dass	Sinha, Shri C. M.
Ravi, Shri Vayalar	Sinha, Shri Purnanarayan
Ravindra Pratap Singh, Shri	Sinha, Shri Satyendra Narayan
Reddy, Shri G. Narsimha	Somani, Shri Roop Lal
Reddy, Shri K. Obul	Somani, Shri S. S.
Reddy, Shri M. Ram Gopal	Somasundaram, Shri S. D.
Rodrigues, Shri Rudolph	Stephen, Shri C. M.
Roy, Dr. Saradish	Sukhendra Singh, Shri
Roy, Shri Saugata	Suman, Shri Ramji Lal
Saeed Murtaza, Shri	Suman, Shri Surendra Jha
Shah, Shri A. K.	Suraj Bhan, Shri
Shah, Shri Gadadhar	Surendra Bikram, Shri
Sahoo, Shri Ainthu	Surya Narain Singh, Shri
Sai, Shri Narhari Prasad Sukhdeo	Swatantra, Shri Jagannath Prasad
Sai, Shri Narhari Prasad	Talwandi, Shri Jagdev Singh
Saini, Shri Manohar Lal	Tan Singh, Shri
Saksena, Prof. Shibban Lal	Tej Pratap Singh, Shri
Sanyal, Shri Sasankasekhar	Thiagarajan, Shri P.
Sarda, Shri S. K.	Thorat, Shri Bhausaheb
Sarkar, Shri S. K.	Tirkey, Shri Pius
Sarsonia, Shri Shiv Narain	Tiwari, Shri Brij Bhushan
Satapathy, Shri Devendra	Tiwary, Shri D. N.
Sathe, Shri Vasant	Tiwary, Shri Madan
Sayan Wala, Shri Mohinder Singh	Tohra, Shri G. S.
Sen, Shri Robin	Tripathi, Shri Ram Prakash
Shah, Shri Surath Bahadur	Tulsiram, Shri V.
Shaiza, Shrimati Rano M.	Tyagi, Shri Om Prakash
Shakya, Dr. Mahadeepak Singh	Ugrasen, Shri
Shankar Dev, Shri	Unnikrishnan, Shri K. P.
Sharma, Shri Jagannath	Vaghela, Shri Shankersinhji
Sharma, Shri Rajendra Kumar	Varma, Shri Ravindra
Sharma, Shri Yagya Datt	Veerabhadrapappa, Shri K. S.
Shastri, Shri Bhanu Kumar	Venkataraman, Shri R.
Shastri, Shri Ram Dhari	Venkatareddy, Shri P.
Shastri, Shri Y. P.	Venkatasubbalah, Shri P.
Shejwalkar, Shri N. K.	Verma, Shri Hargovind
Sheo Narain, Shri	Verma, Shri R. L. P.
Sher Singh, Prof.	Verma, Shri Raghunath Singh
Shiv Sompoti Ram, Shri	

Verma, Shri Sukhdeo Prasad
Visvanathan, Shri C. N.
Yadav, Shri Gyaneshwar Prasad
Yadav, Shri Hukmdeo Narain
Yadav, Shri Jagdambi Prasad
Yadav, Shri Narsingh
Yadav, Shri Ramji Lal
Yadav, Shri Vinayak Prasad
Yadava, Shri Roop Nath Singh
Yadvendra Dutt, Shri
Zulfikarullah, Shri

NOES

Borve, Shri J. C.

@Damani, Shri S. R.

MR. SPEAKER Subject to correction, the result* of the division is:

Ayes—345; Noes—2.

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting

The motion was adopted.

MR. SPEAKER We now take up the clauses .

SHRI C. M. STEPHEN There are clauses to which no amendment has been given but which we propose to oppose. So, on clauses, time must be given to us to explain our point of view. Even if there is no amendment, we may have to spell out our point of

view as to why we oppose it or support it.

MR. SPEAKER: In the matter of speaking on amendments, on clauses we are trying to give preference to those members who had no chance in the main debate and the time limit will be 10 minutes.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): So far as voting on the Clauses is concerned, I would like to know from you....

MR. SPEAKER: All the Clauses will be discussed first. The voting will be done tomorrow. If any hon. Member says that a particular Clause should be put to vote separately, then it will be put separately.

Now we take up Clause 2.

Clause 2 (*Amendment of article 19*)

SHRI H. L. PATWARY (Mangaldoi):
Page 1,—

for Clause 2, substitute—

'2. In article 19 of the Constitution, in clause (1), in sub-clause (f), after the word "property" the words "in such a manner so as to usher in a socialist society" shall be inserted.'(1)

@Wrongly voted for NOES.

*The following Members also recorded their votes for AYES: Sarvashri Fazlur Rahman, Shyam Sunder Gupta, Mahendra Narayan Sardar, Yuvraj, Lalu Prasad, Narendra P. Nathwani, Arjun Singh Bhadoria, Iqbal Singh Dhillon, Daulat Ram Saran, Inder Singh, Chhabiram Argal, Ram Naresh Kushwaha, Dalpat Singh Paraste, Ram Vilas Paswan, Chaudhury Brahm Per-kash, Shri Mahamaya Prasad Singh, Shrimati Chandravati, Sarvashri Ram Kanwar Berwa, Heera Bhai, Rudra Sen Chaudhury, Ram Lal Rahi, B. C. Kamble, Chitta Basu, S. D. Soma, sundaram, Dhirendranath Basu, A. Sunna Sahib, K. S. Narayana, Dr. Henry Austin, Sarvashri Bedabrata Barua, K. Lakkappa, K. Chikkalingiah R. R. Patel, Shrimati V. Jeyalakshmi, Sarvashri D. Satyanarayana, G. S. Reddi, T. Balakrishnaiah, B. K. Nair, L. K. Doley, Mohan Singh Tur, Raj Dawn, Biren Engti, S R. Damani.

SHRI SOMNATH CHATTERJEE
(Jadavpur):

Page 1.—

for lines 9 to 12, substitute

'(a) in clause (1), for sub-clause (f), the following shall be substituted, namely:—

"(f) to work and to an adequate means to livelihood; and"
(12)

SHRI BAPUSAHEB PARULEKAR
(Ratnagiri):

Page 1—

after line 12, insert—

"(iii) after sub-clause (f), the following sub-clause shall be inserted, namely:—

(ff) right to work;" (33)

Page 1.—

after line 15, insert—

'(c) after clause (5), the following proviso shall be inserted, namely:—

"Provided that the State shall not, only on the grounds of religion, race, caste, sex, descent, place of birth, residence, language or any of them, impose any restriction on the rights of the citizens to acquire, hold, possess, retain, enjoy or dispose of any property." (34)

SHRI A. K. ROY (Dhanbad):

Page 1.—

for line 12, substitute—

"(ii) for sub-clause (f), the following sub-clause shall be substituted, namely:—

"(f) to practise any profession, or to carry on any occupation, trade or business with restriction of one at a time under the principle of 'one man one job';"
(52).

Page 1.—

after line 12, insert—

'(iii) sub-clause (g) shall be omitted;" (53)

SHRI CHITTA BASU (Barasat):

Page 1.—

after line 11, insert—

'(ia) after sub-clause (e), the following sub-clause shall be inserted —

"(ce) to work and earn living wage;" and" (96)

SHRI VAYALAR RAVI (Chirayinkil):

Page 1.—

after line 12, insert

'(iii) after sub-clause (f), the following sub-clause shall be inserted, namely:—

(ff) to work and to earn a living;" (104)

SHRI DAJIBA DESAI (Kolhapur):

Page 1.—

after line 12, insert—

"(ii) after sub-clause (f), the following sub-clause shall be inserted, namely —

(ff) to work and adequate means of livelihood;" (113)

Page 1.—

omit lines 13 to 15. (114)

SHRI TRIDIB CHAUDHURI (Bengaluru):

Page 1.—

for lines 9 to 12, substitute—

'(a) in clause (1), for sub-clause (f), the following sub-clause shall be substituted, namely:—

(f) to gainful work and adequate means of livelihood; and"
(127)

SHRI V. M. SUDHEERAN (Alleppey):

Page 1.—

after line 12, insert—

'(iii) after sub-clause (f), the following sub-clause shall be inserted, namely:—

“(ff) to work and to get a sufficient means to livelihood;”
(139)

SHRI P. K. DEO (Kalahandi):

Page 1,—

for clause 2, substitute—

‘2. In article 19 of the Constitution in clause (1) for sub-clause (f), the following sub-clause shall be substituted, namely.—

“(f) to continue to possess and maintain one’s own earned property; and” (161)

SHRI C. K. CHANDRAPPAN
(Cannanore)

Page 1,—

for lines 10 to 12, substitute —

‘(i) for sub-clause (f), the following sub-clause shall be substituted, namely:—

(f) to work and earn a living wage; and

(ii) in sub-clause (g), the words “trade or business” shall be omitted; (186)

PROF. SHIBBAN LAL SAKSENA
(Maharajan):

Page 1 —

for line 12, substitute—

‘(i) for sub-clause (f), the following sub-clause shall be substituted, namely:—

(f) to work and to adequate livelihood.’ (248)

Page 7,—

for line 12, substitute—

‘(ii) for sub-clause (f), the following sub-clause shall be substituted, namely:—

(f) to work; and’ (249)

MR. SPEAKER: Now, we have the discussion on the amendments. Mr. Patwary.

SHRI SHAMBHU NATH CHATURVEDI (Agra): Sir, on a point of clarification. Is the speech made by the Members to be confined only to this particular Clause?

MR. SPEAKER: It need not be restricted. The Members may cover all the grounds.

SHRI SHAMBHU NATH CHATURVEDI: Can we speak on all the amendments that we have given notice of?

MR. SPEAKER: Yes.

(Interruptions)

MR. SPEAKER: No, no. We have allowed him to cover his other amendments also.

SHRI A. K. ROY: You were saying that once a member is given a chance to speak on his amendments to a certain clause, he will not get another chance to speak on his other amendments to other clauses. This is something absurd because on every clause hon Members have given amendments containing certain ideas in concrete terms. So, Sir, on each clause and on each amendment the Member who has given notice of amendment should be given a chance. You may give him one minute or two minutes, but he must get a chance.

MR. SPEAKER: That cannot be done

SHRI A. K. ROY: This is a Constitutional Amendment Bill, a very important Bill. We have not been given chance to speak. But my point is that on each clause Members have got some ideas and have given amendments covering those ideas. So unless and until those ideas are given vent to and clarified, it will not serve the purpose. You may give him one minute or two minutes but time should be given and he must get time.

MR. SPEAKER: As per rules, an hon. Member who gives notice of an

[Mr. Speaker]

amendment, is not necessarily entitled to speak. That is not the rule at all but you can cover all your amendments when you are making the speech. If you so want, I will have all the amendments to all the clauses moved so that you may cover all the points. In the past that has not been done... (Interruptions). But there is nothing wrong as per Rules to do it

SHRI KANWAR LAL GUPTA: Sir, I have moved ten amendments. If you want me to speak on the ten amendments simultaneously, then it will be a general speech. That will not have any purpose. I want on each amendment we should be allowed to speak

SHRI C M STEPHEN (Idukki): The normal procedure is a clause is taken up, amendments to the clause are moved. The members participate, the Minister replies and then you put the amendments to vote. But here we do not. We carry them to the next day. But taking up all the clauses together and putting all the amendments together and having a debate on all of them together defeats the very purpose. And that is not permitted by the Rules also. It will have to be put clause by clause and amendments to the clauses will have to be moved and discussion will have to take place. You will have to announce that the debate on this is over but the voting is taken over to the other day. That the next clause will be taken up, amendments will be moved and discussion takes place and you will have to announce in the end that the voting is taken over to the other day. That process will have to go on. Otherwise, it will not be possible because the rules are compulsory about it.

MR. SPEAKER: I have no objection to it, but I may tell you that the same member will not be again and again called to speak.

AN HON. MEMBER: But this has been the practice in the past.

MR. SPEAKER: Not at all. When members move their amendments, the rule does not require that the mover of the amendment should invariably be called upon to speak. There is no such rule at all... (Interruptions).

Now we take up clause.

SHRI RAM JETHMALANI (Bombay North-West): Everybody who opposes a particular clause shall be heard and heard fully because we are dealing with a Constitution Amendment Bill. We are not dealing with an ordinary Bill.

SHRI HARI VISHNU KAMATH (Hoshangabad): This House is now sitting and exercising not its legislative powers but its constituent powers; that is to say, this House is now a Constituent Assembly, not merely a legislature. In the Constituent Assembly, the President of that Assembly, Dr Rajendra Prasad allowed every Member who had given notice of an amendment to speak on the amendment so that he can convince and carry the House with him. Sir, even if we have got to sit till the 15th or beyond that, we must follow that constituent procedure and not the ordinary law-making procedure. (Interruptions).

SHRI B. P. MANDAL (Madhepura): Every member should get a chance? That will be wastage of time. This cannot be treated as a Constituent Assembly.

MR. SPEAKER: It is not taken as a routine affair. It is taken as a serious affair but if Mr Jethmalani's suggestion is accepted, that is, every member not only speaks but opposes every member, that means in 1978 consideration of this Bill will not get completed.

SHRI KANWAR LAL GUPTA (Delhi Sadar): Sir, may I make a submission. If you adopt this procedure it will not be proper. You discuss one amendment. It is your entire sweet will whether you allow me to speak or not. Normally some discussion taken place. Abruptly you cannot say that you have 100 amendments and

you make a speech on all the 100 amendments. The purpose will not be served. We have already spoken in a general way. I should be allowed to speak on each and every amendment separately.

(Interruptions)

MR. SPEAKER: I have understood it. Each clause will be taken up, discussed and the decision postponed to a later date.

श्री उमरेन (देवरिया) जो जनरल डिस्कशन पर नहीं बोल पाये हैं, उनको मौका इस पर जरूर दीजिये। यह हमारा हक है कि हम उस पर अपनी राय दें। हम इस माननीय सदन के सदस्य हैं। अगर आप इस पर बोलने नहीं देंगे तो सभोधन कैसे हो सकेगा।

(Interruptions)

MR. SPEAKER: The procedure is that each amendment will be taken up. There is nothing like formally moving the clause. The amendment will be discussed and we postpone the decision.

SHRI RAM JETHMALANI: Sir, does it mean that those who want to amend the amendments and those who wish to oppose will be fully heard?

MR. SPEAKER: No.

(Interruptions)

SHRI A. K. ROY: What is the harm if we follow the procedure adopted in the Constituent Assembly as has been suggested by Shri Kamath?

MR. SPEAKER: I am sorry that golden opportunity is not again available.

(Interruptions)

MR. SPEAKER: It is impossible to hear all the five hundred members on all the amendments if they want to speak. Speaker has to consider whether sufficient debate has taken place on the amendment. Nothing more than that is possible. One has to take a practical view of the matter. It was one thing at the time of the draft-

ing of the Constitution. There was a small number of members and a large number of days were taken. In this way unless we take another two years it will not be possible at all

(Interruptions)

SHRI RAM JETHMALANI: No. Speaker can take away our rights... (Interruptions).

SHRI SHYAMNANDAN MISHRA (Begusarai): Sir, this is not the only Bill that we are discussing in this House. In ordinary Bills, normally we are given time to make speeches on separate amendments. That is the practice. So far as the Constitution Amendment Bill is concerned, it should be more necessary.

MR. SPEAKER: Quite right.

SHRI SHYAMNANDAN MISHRA: The point of view of the hon. Members should be heard by the House so that they are able to persuade the House on their amendments. Why are you seeking to make a departure from the ordinary practice?

MR. SPEAKER: I am not doing that at all. Obviously, you were not here when I observed that reasonable opportunity will be given.

SHRI SHYAMNANDAN MISHRA: This has been the practice invariably in this House that while moving an amendment, we make a speech...

MR. SPEAKER: Quite right. We are giving you an opportunity for moving the amendments. (Interruptions).

May I read out the relevant rules 86 and 88 of the Rules of Procedure. Rule 86 says-

"When a motion that a Bill be taken into consideration has been carried, any member may, when called upon, by the Speaker, move an amendment to the Bill of which he has previously given notice."

[Mr Speaker]

That stage you have passed

Now, Rule 88

Notwithstanding anything contained in these rules the Speaker may when a motion that a Bill be taken into consideration has been carried submit the Bill, or any part of the Bill to the House clause by clause. The Speaker may call each clause separately and when the amendments relating to it have been dealt with shall put the question

Rule 89

The Speaker may if he thinks fit postpone the consideration of a clause

SHRI SHYAMNANDAN MISHRA
It is ' have been dealt with '

(Interruptions)

MR SPEAKER You will be given a reasonable opportunity. But if each Member thinks that he alone has to explain all the clauses that will be difficult for the Speaker to accept

(Interruptions)

SHRI KANWAR LAL GUPTA Sir you have not read the proviso to Rule 86 which says

'Provided that in order to save time and repetition of arguments a single discussion may be allowed to cover a series of inter-dependent amendments

You can allow a single discussion for inter dependent amendments otherwise you allow separate discussion on separate amendments

MR SPEAKER All right separate discussion will be allowed Mr Patwary

श्री एच० एल० पटवारी (मध्यवर्ती)
प्रश्न मंत्रालय में मंत्रिमंडल सभापति द्वारा प्रस्तुत भावना व्यक्त करने का मौका नहीं मिला था इसलिए मैं दुःखी हूँ। क्राज बार्ड क्लोज में समय नहीं है। इस सदन में मंत्री धारणा बन गई है कि सदन में कवन बार पांच या छह आवधी

Bill

संविधान में संशोधन करना आगते हैं, बोलना जानते हैं, उनमें भ्रमण है; उन में ज्यादा ईमानदारी है, वह बहुत समझदार है और बाकी लोग कुछ नहीं जानते हैं। मैं दावा करता हूँ कि ऐसी जिन की भावना है वह गलत है। इस सदन में 542 लोग जो आए हैं एक-एक व्यक्ति एक एक व्यक्ति से ज्यादा जानता है, समझदार है और उस की जिम्मेदारी है। इस संविधान संशोधन बिल पर सिर्फ दस बारह व्यक्तियों की भावना से कर डिबेट तीन दिन तक चली, मुझे इस पर और असंतोष है। मैं सारे क्लोजज पर प्रकाश डालना नहीं चाहता हूँ।

15 46 hrs

[SHRIMATI PARVATHI KRISHNAN in the Chair]

भाई शानिभयण जी का भावनाओं की झुंझ करना है। उन की समझदारी के लिए मार्ग समार उन की वरु बनना है मैं भी कह करना है। लेकिन मैं कुछ क्लोजज का पार विचार करता हूँ।

एक तो मैं उसका विरोध करता हूँ कि मिला का समयना सूची में निकाल कर राज्य सूची में रखना जान है। यह बहुत बातक होगी। अगर ऐसा किया जायगा तो मैं स्पष्ट मन्दा में वह दना चाहता हूँ कि राज्य के छोटे छोटे टुकड़े बनन शुरू हो जायगा। इतना ही नहीं देश के भी टुकड़े बनन की स्थिति आ जायगी (श्वघान) मैं प्रमटमेंट पर बाल रहा हूँ। मेरा प्रमटमेंट पत्र 14 पर है

MR CHAIRMAN We are now on Clause 2 Please refer to you^m amendment to Clause 2

SHRI H L PATWARY I may be allowed to speak on all the amendments

MR CHAIRMAN Don't lose your chance to speak on other clauses

श्री एच० एल० पटवारी प्रथमी क्लोज 2 पर मेरा प्रमटमेंट है। अपने उस प्रमटमेंट का समयन करने हुए मैं कहना चाहता हूँ कि आर्टिकल 19 (एफ) में प्रथम संशोधन लागू है उस की सार करने के लिए उन में उस की भावना प्रचष्टी होगा लेकिन उस में एक कम्प्लीमेंटेशन होगा तो देश के सारे गरीब लोग मर जायगे। जैसे कल भाई कामल साहब ने कहा था कि जब इस का कानून बनायगे तो उन कानून का साथ धनी लोग उठायगे, वह गरीबों को धरने करवे उन में वहीँ कि तुम्हारा जमान छीन लो जायगी, तुम्हारा हल पीन लिया जायगा तुम्हारा धर छीन लिया जायगा। जब कानून बनना तो उस कानून का सार कायदा उठाया दशा के धना वर्ग के लोग और गरीब लोग इस कानून के शिकार होंगे। मान लीजिए एक आवधी का एक घर है, 11 हल है, एक जमीन

है, उतना ही उस की जीविका का साधन है। मैंने हालत में मैं ज्ञाति भ्रूषण जी से निवेदन करना कि कम से कम उस की जीविका का साधन तो उस के पास रहने दें। समाजवाद जब हमारे कास्टीट्यूशन का लक्ष्य है तो समाजवाद की सीमा तक सम्पत्ति बनाने का अधिकार देना चाहिए। मेरे प्रमोंडमेंट में है कि 19(एफ) में सम्पत्ति को एम्पायर कर सकते हैं लेकिन उस की सीमा सिर्फ उतनी ही होगी जो समाजवादी समाज-रचना के लिए काफी हो, उस से अधिक सम्पत्ति को इकट्ठा करने से लिए नहीं। सम्पत्ति उतनी होनी चाहिए जितने को उस को अपने परसनल जीवन के लिए आवश्यकता है। उतना बहुरख सके, यह मेरा प्रमोंडमेंट है। मैं ज्ञाति भ्रूषण जी से अपील करता हूँ, उन की भावना सच्ची है, राइट आफ प्रायर्टी रिमूव होना चाहिए, यह हम ने कहा है लेकिन उनी के साथ साथ जनता पार्टी के मैनिफेस्टो में था कि राइट आफ बर्क देंगे। वह राइट आफ बर्क आप नहीं दे सके। मैं उस के लिए आप से अपेक्षा करना। लेकिन आप किननी सम्पत्ति बनाने के लिए अधिकार देने ?

MR CHAIRMAN. Mr Patwary, if you want to speak on other amendments, you can't go on endlessly Please resume your seat.

श्री एच० एल० पटवारी : मेरा मेजर प्वाइट होगा शिक्षा का। इस में अगर आप मुझको नहीं बोलने देंगे तो मैं शिक्षा पर बोलना चाहता हूँ। शिक्षा पर आप हम को बोलने देंगे, यही कह कर मैं अपनी बात समाप्त करता हूँ।

SHRI BAPUSAHEB PARULEKAR (Ratnagiri): The hon. Speaker ruled that persons who had not taken part in the general debate would be given preference... (Interruptions)

MR CHAIRMAN: In the long discussion on amendments it was agreed that those who had given amendments could say a few words on those amendments; because some have spoken in the general discussion I do not think they could be penalised.

SHRI RAM JETHMALANI: Those who are opposed to a particular amendment should also be heard.

MR. CHAIRMAN: Let the amendments be moved first.

SHRI DINEN BHATTACHARYYA: I have moved amendment No. 12 to clause 2 in which we have suggested:

Page 1,—

for lines 9 to 12, substitute—

'(a) in clause (1), for sub-section (f), the following shall be substituted, namely:—

"(f) to work and to an adequate means of livelihood; and".

The Janata Party in its manifesto, in its political charter had mentioned that they would delete the property right from the list of fundamental rights and instead would affirm the right to work. My amendment is just that. You are deleting property right from the list of fundamental rights but in place of that we want to substitute it by the guaranteed work for all, adequate means of livelihood to all. In your economic charter, in your manifesto, it has also been mentioned that the Janata party would try to assure means of livelihood for all the persons, affirmation of the right to work, right to full employment. That is your economic charter. My first point is: why you are not fulfilling your own manifesto, your assurance on which you got the vote from the people. Your commitment was that you would delete property right from the fundamental rights and you would include this: that you should see that everybody was provided with a job. You know the condition of our country. Unemployment problem is taking a serious turn and serious shape not only in a particular state but all over the country. The number of unemployed persons is increasing to an extent which cannot be conceived and as a result of that the persons below the poverty line are also increasing. So, if you want to do justice to the people to whom you gave the pledge and assurance that you will do all these things, kindly accept my amendment, which is a very simple one. You are deleting the right to property from fundamental rights. In

[Shri Dinen Bhattacharyya]

that place, you should substitute the right to work so that you will guarantee employment to everybody. There is no difficulty about it. If you have got the will to do it, you can do it. Crores of rupees are still lying with the big businessmen, monopolists and big zamindars. You can get money from that. You will not be in want of resources if you have the political will. It is not an ordinary thing. The Prime Minister has assured that within 10 years he will solve the unemployment problem and give employment to everybody. How will you do it? We do not find any indication anywhere. Now, you are amending the Constitution, why don't you take this opportunity to make it a fundamental right that a person who is born in this country will have the right to get a job? In that case you will not only do justice but also keep your own assurance to the people who voted you to power. So, I think you must not dilly-dally with this simple matter and you must accept my amendment.

SHRI BAPUSAHEB PARULEKAR:

I have moved two amendments to clause 2. The first is amendment No 33 for inclusion of the right to work in the fundamental rights. The second is amendment No. 34 seeking to add a proviso to sub-section (5) of article 19. Coming to my second amendment, I would like to invite the attention of the Law Minister to the fact that no proper attention has been given, it seems, by the Law Minister to the after-effect that would follow because of the deletion of the fundamental right to property. On the question of the place of property rights in the Constitution, some people are still bogged down with the concept of property being something like zamindari or jagirdari or feudal estates. I should not be misunderstood that I am for retaining this particular provision, but it seems the pros and cons and after-effects have not been properly examined. Rights such as zamindari, jagirdari or any right akin or similar to that cannot have any constitutional protection. There

is no doubt about it. But I would like to suggest to the Minister that when we are deleting the property rights, we are overlooking the fact that even the right to receive bonus by the employees is also property. Once this particular right to property has been deleted and no safeguards are provided, a politically motivated State Government is likely to frame laws which would take away the rights of the poor employees. Therefore, I would suggest that when you are deleting this particular fundamental right, namely the right of property, it is necessary to lay down certain protections as far as such property rights are concerned.

16.00 hrs.

Secondly, what is more, we already have in Jammu and Kashmir a provision as a result of which a citizen of India from outside Jammu & Kashmir is prohibited from acquiring immovable property and that is because in the Constitution of Jammu & Kashmir the right to property as a fundamental right was deleted. Therefore, in Jammu & Kashmir a law was passed that no person who is not residing in Jammu & Kashmir can acquire land.

SHRI P. K. DEO (Kalahandi): It is because of article 370.

SHRI BAPUSAHEB PARULEKAR:

Just consider the position of the deletion of this particular provision. Once property rights are removed from fundamental rights, it will be open to any State Government to make laws imposing restrictions on linguistic grounds in the matter of acquiring and possession of property. Taking into consideration the feelings over the language issue inside and outside the House, I feel that certain States may legislate laws akin to the law enacted by the Jammu & Kashmir Government. Such a course, I submit, would affect the oneness, unity and the solidarity of the country, and should be avoided through constitutional prohibition. The matter, in my respectful submission, should be considered by the hon. Minister, so that,

in the enthusiasm to remove property rights from fundamental rights, we do not have a situation where regional and parochial attitudes have the better of the day, and therefore I have suggested my amendment. I would request all my hon. colleagues to consider this particular amendment which is a safeguard. In fact, this amendment should have been made to article 14 by adding it as sub-clause (2), but as that is not the subject matter of the present Bill, I have suggested:

"after clause (5), the following proviso shall be inserted, namely:

'Provided that the State shall not, only on the grounds of religion, race, caste, sex, descent, place of birth, residence, language or any of them, impose any restriction on the rights of the citizens to acquire, hold, possess, retain, enjoy or dispose of any property.' "

I submit that if this particular proviso is added, there would be adequate safeguards.

MR CHAIRMAN: You better try to be brief because there is a large number of speakers.

SHRI BAPUSAHEB PARULEKAR: On my amendment No. 33 regarding the addition of the right to work, I fully endorse the arguments advocated by so many distinguished colleagues, but I would like to mention one thing, that the impression is being given by the present Government by acts of omission and commission that it is not inclined to include and recognise this right as a fundamental right. The Maharashtra Government has passed a legislation which has been approved by the Legislative Assembly and the Legislative Council. The name of that Act is the Maharashtra Employment Guarantee Act Section 3 of the Act states that every adult person in the rural areas in Maharashtra shall have the right to work, i.e. the right to get guaranteed employment. This Act has been sent to the Government of India, and has been lying there, and no sanction has been granted by the Centre. I request the hon. Minister

to consider this point so that the misgivings can be removed.

SHRI A. K. ROY: Comrade Chairman, property is theft. Perhaps you know the famous saying of the Buddha. So, I congratulate the hon. Minister that he has removed the right to steal, or rather the right of legalised theft, from the fundamental rights.

Secondly, the concept of property is un-Indian. I am not talking, Marx and Engels. Even if you read the volumes of Vivekananda, you will find that he has said very vehemently that the concept of private property is un-Indian. When the Britishers came here and capitalism started showing its feet in India even on the land, then we got the conception of possession, not property. When people used to have land, they used to have possession of land, and not property. So, removing property from the Fundamental Rights is a good thing which he has done.

But this itself is not sufficient. This is a show of progressiveness, no doubt. The Janata Party wants to parade they are very revolutionary and they have brought these fundamental changes. But this change actually means very little. They could have added one item, namely, right to work. Of course, I will deal with it when that particular clause comes, because I have given notice of an amendment on that.

Now if you do not have a right to acquire property, you can have any number of profession, trade, business or occupation. Now in India job is also a property. So, there should be that famous code of Dr. Ram Manohar Lohia, "One man; one job" as a fundamental right. You can have any profession, occupation or trade, but only one at a time. Now in India there are nearly 2½ crores of people who work in the organised sector, in various urban professions. These intelligent people clever people white-collared people, they are having job on one hand, and land on another hand. These people, the so-called in-

[Shri A K Roy]

telligentsia, so called middle class people, they are monopolising both, cultivation as a parasite and another occupation. We want to protect the land from these parasites of the Indian economy. Feudalism cannot be removed by any measure of legislation unless and until we can isolate the parasitic characteristic of land and labour. That can be done by categorising each man according to his job. Now nearly 40 crores acres of land are under cultivation. We made some survey through a research team and we found that 20 crores acres of land in the villages and towns belong to those people who have some job or profession elsewhere. That is to say 50 per cent of the land is owned by those people who are having alternative profession or occupation. Once you declare "one man one job" then those people who enjoy both will have to surrender one of them. If they surrender their jobs, (then the unemployed people can be put in those jobs if on the other hand they surrender their land it can be distributed to the landless peasants. In either case the unemployed people will be benefited. Therefore while welcoming your deletion of the right to property from the Fundamental Rights, I would say that you should put a ceiling on jobs; also one man should have only one job at a time.

SHRI VAYALAR RAVI (Chirayinkil) Madam Chairman I am here moving an amendment which reads "right to work and earn a living". At the same time, I would like to congratulate the hon Minister for his courage to introduce a clause to delete the right to property, which my party could not do, in the thirty years we were in power. On the floor of the House your junior Minister who resigned on some petty quarrel had given some assurance on a resolution of mine that your Government will delete the right to property. Every one of us know that there have been many cases in the High Courts and the Supreme Court on the basis of

this very flimsy clause and always, those writ petitions went against the working class and the poor people and even against the legislation. And in some of the important cases like Goaknath case and Keshavnand Bhalati case, the very basis was the right to property. It can go to the very extent of preventing and retarding the progress of land reforms. Deleting the right to property will encourage the social process in this country. The right to property prevents the regulation and control of the functioning of the State.

So far as the Constitution can fulfil the aspirations of the people, it will remain. The day it fails to fulfil the aspirations of the people, to regulate and control the functioning of the State the people will revolt and even the Constitution may not remain and the people will overthrow the Constitution and everything. So when we are amending the Act we must see that this Constitution fulfils the aspirations of the people. That is why I am moving this amendment. Why we should have the right to work, for this I will give you a latest example. More than 1,50,000 people are engaged in the cashew industry in Kerala. There the private entrepreneurs went on complete strike and the result was that these one lakh and odd people were unemployed. The Kerala Government was wholly helpless in this because they could obtain some stay order in the Supreme Court because the poor the working class do not have the right to work. The Supreme Court gave 28 stay orders. Even the Kerala Government could not take over the industry and give employment to the workers because of the stay order. The right to work and earn a living is denied to these four rupee and six rupee earning workers. Even the Kerala Government could not give them employment by taking over the industry because it has also been stayed by the Supreme Court because there is no provision for right to work. You are taking away the

right to property. It will help us to a certain extent. But at the same time, you will have to put a stop to the exploitation of the working class by the moneyed people. I have seen and I hope Mr. Shanti Bhushan will pardon me when I say that in many cases in the Supreme Court the basis of the writ petitions is the right to property. Article 19 has always become an instrument of exploitation of the people. That is why, very many times on earlier occasions, we have said that it should be deleted. I do not know; to my surprise I find the Marxist Communist Party, who claim to be very progressive, they themselves withdrew the demand in the last Congress. I do not know why? (*Interruptions*). Madam, Chairman, you might have yourself read the statement. A major decision of the Congress was not to press this demand and withdraw this demand.

SHRIMATI AHILYA P. RANGNEKAR (Bombay North-Central): This is wrong. We will prove it. (*Interruptions*).

SHRI DINEN BHATTACHARYA: Where did you find it?

SHRI VAYALAR RAVI: I will produce the document.

MR. CHAIRMAN: I would request you to talk about your amendment. Otherwise, you are wasting your time.

SHRI VAYALAR RAVI: I am only arguing my case. There is a recent ruling by the Supreme Court. The hon. Minister must know the ruling of the Supreme Court in the case of the Life Insurance Corporation employees on the question of bonus. The Supreme Court made some observation. When you are taking away the right to property, naturally, you must give a constitutional guarantee to the workers, the right to work and to earn a living. If it is not there, then the industrialists and the rich class can go to the court and may create more problems for the workers. So, to protect the workers, you must give them

right to work. Even though the Marxist Party has withdrawn their demand, you have done it and I congratulate you for that.

SHRI PABITRA MOHAN PRADHAN (Deogarh): Madam Chairman, I want to give my comments on clause 2 regarding the abolition of the property right. If we read the original Constitution, it is like this:

"19(f) to acquire, hold and dispose of property;"

This is guaranteed for each and every citizen of India. Now, if we take away this right, we only allow persons to come and exist in India without any property. Even our shirts, clothes and watches we wear are not ours. We cannot sue anybody in any court if somebody snatches away all our personal belongings from us. We will be put to difficulty. It creates a situation like that.

The founding fathers of the Constitution—some of them are sitting with us—were wiser than we are today. How can a country allow persons to exist without their belongings? It would have been better if this country declared itself to be a communist country, not a socialist country. The democratic socialism cannot exist and cannot function. It will automatically collapse. If this Constitution were to be fully and wholly amended to be made into a communist Constitution, then this will hold good. Otherwise, it will create many difficulties.

The Law Minister is a legal luminary. I do not know if at any place in the Constitution or in any ordinary law any citizen of India is given the right of possessing property. I think, this is not in existence. If it is existing in some law, I have nothing to say and I withdraw my statement, what I am making here. In this Bill, I think, there is no arrangement for that. You say that your property will be protected by some law. That I

[Shri Pabitra Mohan Pradhan] admit. But where have you given me the right to possess some property? You have not given any right to me. If it is existing in any law to that effect, I have nothing to say. If somebody snatches the property away from me, and I go to the Police Station, the Police Station will not take cognizance of that because I am not supposed to have any property. Article 300A does not say that you can own property. If by your explanation you say that one can own property, then I have nothing to say.

I say that this Constitutional Amendment is patchy, piecemeal, haphazard and happy-go-lucky because if we see the election manifesto, we will find that we have said in that that the right to property will be deleted but provision for right to work will be made. But this provision has not been made. So, I say that this Amendment of the Constitution is not complete; it is patchy, piecemeal, haphazard and happy-go-lucky.

With these words, I would expect that, if the citizens of India are not given the authority by any law, then some law should be made or the Constitution should give a guarantee that one can acquire, possess and own property.

SHRI CHITTA BASU (Barasat): My amendment is to include the right to work and earn a living wage in the Fundamental Rights Chapter. I only want to draw the attention of the hon Minister to the fact that, in removing the right to property from the Fundamental Rights list, the Government have been influenced by a particular objective of its own—as has been mentioned, by the manifesto of the Janata Party. I would welcome this move of removing the right to property from the list of Fundamental Rights, but I am constrained to make this remark that this step, although welcome, is half-hearted and is not enough to realise the objective for which this particular right to property has been re-

moved from the list of Fundamental Rights.

You would also notice that Government also proposes to change the Preamble of the Constitution which, generally speaking, determines the direction in which the Republic of India is pledged to move. I quote from the Constitution:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC SECULAR SOCIALIST REPUBLIC..”

That means, the object of the Government in moving this Bill, particularly in relation to article 19, is to attain the objective of socialism. I do not want to join issue on the definition of socialism at this stage because I differ from all the definitions that have been given by the hon. Minister. But my point in this case is this. This particular amendment for removing the right to property from the Fundamental Rights is a welcome move because it seeks to change this right into an ordinary legal right; it ceases to be a fundamental right. By virtue of the fact that it remained as a fundamental right, the Supreme Court and the judiciary created obstacles in the direction of the Government in bringing about socio-economic changes. This might have been one of the reasons which prompted the Janata Party and the Government to bring this amendment. But, in order to realise that objective—as I have mentioned and I mean the government has got that objective—this step is not adequate. In order to achieve that objective it is necessary to include the right to work and the right to a living wage as a fundamental right. The reason at present I do not want to dilate upon because it is quite well known and well known to the Minister himself. But I also want to take the advantage at this stage when the hon. Minister and the Janata Party have taken the bold step of initiating amendments to Art 19 of the Constitution,

they should have been still bolder enough to initiate many more changes in this particular Chapter also.

Madam Chairman, as you know, the fundamental rights include the right to carry on any occupation or trade or business—Art 19(g). This enables the monopolists, the black-marketeers, the speculators, the hoarders and the like to challenge the measure against them in the name of fundamental rights. My point is that at this stage, Art 19(g) should have also been changed so that this fundamental right given to these black-marketeers, speculators and hoarders under the name of freedom to carry on trade and business is not misused.

Madam Chairman, I am glad to remind you that you have also moved a motion in this House where you have demanded nationalisation of trade in foodgrains. Naturally we cannot have nationalisation of trade in foodgrains unless this article 19(g) is suitably amended. And when we are really interested in ensuring food to the vast masses of our country, that kind of a constitutional amendment is necessary. I would have been happy had the hon. Minister been influenced by this idea and taken sufficient and bold enough steps to remove all these kinds of obstacles in the path of further advancement towards democracy and further advancement towards social equality and justice.

My second point, Madam Chairman you will know, is that Art 19(2) provides for reasonable restrictions on the exercise of the right of freedom of speech and expression although it is a fundamental right. For what purposes restrictions are impossible have also been mentioned. Restrictions are necessary to curb and stop communal propaganda. It is necessary also to curb the monopoly control over newspapers and the mass media. I feel that it should have been taken advantage of by the Minister at this stage while amending Art 19 of the

Constitution, to suitably amend this provision also so that these communal forces, communal propaganda and monopoly control over the Press and news media can be ended. This is one of the shortcomings of the proposed Bill.

Finally, Madam, you are a well-known trade-union leader. Art 19(c) lays down that the right to form a union is a fundamental right, but the right to collective bargaining is not....

MR. CHAIRMAN: You can speak on the amendments when those clauses are taken up, Mr. Basu. Now we are on clause 2.

SHRI CHITTA BASU: It would have been better for the realisation of the objective as has been mentioned in the Preamble if these fundamental rights are also changed in the direction where the right to collective bargaining is also a fundamental right.

Therefore, Madam Chairman, I conclude by saying that the proposal of amending Art 19 of the Constitution, that is, the list of Fundamental Rights, if half-hearted. He is not straightforward enough to realise the objective—supposedly to be the objective—of the Janata party or of the government. Therefore, I would say even at this stage Government should think over this suggestion of mine and make suitable amendment so that Article 19 can be amended.

SHRI DAJIBA DESAI (Kolhapur): Madam Chairman, I do not want to take more time of the House. My amendment to Article 19 substituting right of work for right of property should be considered. This is a special fundamental right which has not been recognised in India but recognised even in capitalist countries. Perhaps, the Minister may say that rich nations can avail of this right because

[Shri Dajiba Desai]

they have resources but in India the problem is different I would like to emphasise that man-power is our real resources and this resources should be utilised for the development of the nation The entire man-power of the country has to be utilised and that is the only way the right of work can be included in the fundamental right so that Central and State Governments will be obliged to undertake schemes to utilise this manpower I want to request the Law Minister to accept my amendment because this is an amendment getting support from all sides of the House I once again request him to accept my amendment

डा० रामजी सिंह (भागलपुर) महापति महोदय, जिस विषय पर बोलने के लिये मुझे प्रादेश दिया गया है उस सम्बन्ध में मैं इतना ही कहना चाहता हूँ कि यह जा सभाघन हमारे सामने है और खास कर कलाज 2 से जिसका सम्बन्ध है उसमें हम लागू का जरा व्यापक दृष्टि से विचार करना चाहिये। सविधान का मसौदा प्रति दिन नहीं हुआ करता है और यह एक ऐतिहासिक प्रयत्न है जब हम उसके सम्बन्ध में व्यापक दृष्टि से विचार करें। यह ठीक बात है कि प्रापण के समय में सविधान के माध्यम बनाया किया गया और उसकी स्वतंत्रता का समल रूप से नष्ट करने का प्रयास किया गया। लेकिन प्रश्न यह है प्राज हम उसमें कौन सा नया अध्याय जनता पार्टी की ओर से जोड़ते हैं। यही इतिहास हम याद करेगा। यह ठीक बात है कि सविधान में जो हमारा मौलिक अधिकार है उसमें बहुत सारी बातें हैं लेकिन सभी अधिकार शून्य हो जाते हैं जब तक हम सचमुच में रोटी और जीविका का अधिकार नहीं मानते हैं। हम चाहे स्वतंत्रता की कितनी ही गौरव गाथा गाएँ ठीक है हमारे विधि मंत्री ने इसी एक बहत ही अद्भुत दलील हमारे सामने पेश की कि उस समय 42वें संशोधन द्वारा जोने के अधिकार को ही समाप्त कर दिया गया। लेकिन वह सारे कि जोने का अधिकार प्रधन रह जाता है यदि हम जीविका का अधिकार प्राप्त नहीं कर पाते। इसलिये अगरे राष्ट्र टू लाइफ छूट जाता है, तो राष्ट्र टू लाइवलीहुड हमका नहीं मिलता। जब हम सविधान के सभाघन के सम्बन्ध में विचार करते हैं तो हममें यह साहस होना चाहिये कि हम इसके सम्बन्ध में भी विचार करें। यह कोई हमारी काल्पनिक चीज नहीं है यह जनता पार्टी का वायदा था वह हम पूरा करेंगे। इसलिये यह आवश्यक है कि हम इसके सम्बन्ध में विचार करें और सविधान के संशोधन में आमकर मौलिक अधिकार के सम्बन्ध में जब हम बचप उठाते हैं तो हमका प्राजीविका का भी अधिकार देना चाहिये।

दिल्लीपरेशन आफ ह्यूमन राइट्स समूह राष्ट्र सच के मानवीय अधिकार का घोषणा-पत्र है, उसमें भी प्राजीविका का अधिकार हमें मिला हुआ है। करीब-करीब 14, 15 राष्ट्रों ने, समाजवादी राष्ट्रों को छोड़कर कुछ ऐसे ही राष्ट्र हैं जहाँ प्राजीविका का अधिकार है। जापान एक पूँजीवादी राष्ट्र होते हुए वहाँ पर भी प्राजीविका का अधिकार है। इसलिये जब समूह राष्ट्र सच के मानवीय अधिकार के घोषणा-पत्र में हमें प्राजीविका का अधिकार मिला हुआ है समाजवादी देशों में हमें प्राजीविका का अधिकार मिला हुआ है, और जब आप भी सविधान में संशोधन कर रहे हैं तो आपका भी इस पर विचार करना चाहिये।

एमरजेन्सी के समय सविधान के प्रीपम्बिल में जो कुछ सुधार किया गया था सोशलिस्ट शब्द लगाया गया था हालांकि वह तो कबल एक बाल भी समाजवाद के नाम पर बिहना और टाटा का विनाम हुआ है लेकिन हम जो समाजवाद शब्द को प्रीपम्बिल में रखना चाहते हैं ता हमारा यह मतलब नहीं है कि हम समाजवाद का इन्दिरा जी के समाजवाद के रूप में, टाटा और बिहला के समाजवाद के रूप में रखेंगे। हमन प्रीपम्बिल में सोशलिस्ट शब्द रखने के लिये जा घोषणा पत्र में वायदा किया है जब प्राज हम इन सन्ध हो रहे हैं ता यह आवश्यक है कि सविधान के संशोधन में हमका प्राजीविका का भी अधिकार देना चाहिये नहीं ता हम भूल नहीं, प्राज हम मानम न है लेकिन जिस जनता न हमें भोजा है वह हमसे पूछेगा कि क्या हुआ।

यह जो राजनीतिक स्वतंत्र्य है यह प्राधिक स्वतंत्र्य के विना अधन रहता है। पार्लिटिकल डेमोक्रेसी विदथाउट इकनार्मिक डेमोक्रेसी इज न फाम। सचमुच में जो बात देन के लिये जाते हैं वह पूरा समझन नहीं है। इसलिये यह आवश्यक है कि अगरे हमें समाजवादी गणतंत्र बनाना चाहते हैं और समाजवाद शब्द का प्रीपम्बिल में रखने की हम में इम्मान है ता हम प्राजीविका का अधिकार, आमकर मौलिक अधिकारों में सूची में शामिल करना चाहिये नहीं तो समाजवाद शब्द का प्रीपम्बिल से हटा देना चाहिये।

हाना तो यह चाहिये कि प्राज हम पहले प्रीपम्बिल पर डिस्कशन करें। जब सविधान निर्मात्री परिषद में बहुत ही भी तो उस समय अगत में प्रीपम्बिल पर चर्चा हुई। उस समय मौलाना हुसैन साहानी ने यह रखा था कि पहले प्रीपम्बिल पर डिस्कशन होना चाहिये। डा० अम्बेडकर ने कहा कि अब तो सब बात हो गई है, अब प्रीपम्बिल पर डिस्कशन कीजिये। इसलिये प्राज द्वारा 368 के द्वारा जो प्रीपम्बिल में संशोधन कर रहे हैं तो पहले इस पर डिस्कशन होना चाहिये। अगरे सविधान का पूरा कंटीट कंफिटलिस्ट हो तो प्रीपम्बिल में सोशलिस्ट शब्द रखना सविधान के साथ खिलनाड करना होगा। क्या हम भी इन्दिरा जी की तरह समाजवाद का केवल नाटक करना चाहते हैं, या सचमुच में जनता पार्टी ने

को जलता है बायदा किया था, उसके अनुसार समाजवाद शब्द को अपने में अपीकार करना चाहते हैं ।

हम चापसे कहना चाहते हैं कि चाहे व्यवस्था का प्रश्न लें या और किसी प्रश्न को लें, लेकिन सब से पहले हमको प्रीएम्बल पर विचार करना चाहिये और तब हम आर्टिकल 19 या और किसी आर्टिकल पर आयें ।

SHRI P. K. DEO (Kalahandi): I would like to confine my observations to Clause 2. In Clause 2, Government has come with a proposal that the words, "to acquire, hold and dispose of property" should be deleted from the Fundamental Rights—to which I have given an amendment saying, "to continue to possess and maintain one's own earned property." In this regard, I would like to point out that I do not hold any brief for all those who have acquired property by illegal means, or who have inherited property, or for those who have their own unearned income. I would like to point out that you should recognize the fruits of labour and the savings of a person's hard work.

I oppose the amendments to Article 19, so far as the property right is concerned. I have already spoken about my amendment. The right to property is often said to be the least defensible right in a socialist society. Property is necessary for the subsistence and well being of the man. No one would become a member of a community in which he could not enjoy the fruits of his honest labour. There could be no rational dispute about this proposition, except as to the quantum and the kind of property a person should be allowed to hold.

There is no democracy in the world, or any democratic constitution, in which you would find that the right to property is not recognized and respected. It appeared in the Magna Carta of 1215, the French Declaration of the Rights of Man of 1789, USA's Bill of Rights of 1791 and even in the later constitutions,

including the Socialist Constitution of the United Arab Republic, of 1964. Even in communist countries, the institution of private property is recognized as a reward for hard labour. It is also inheritable. Article 17 of the Universal Declaration of Human Rights of 1948 to which India is a signatory, also recognizes the right to property.

16.43 hrs.

[DR. SUSHILA NAYAR in the Chair]

The debates of the Constituent Assembly on the corresponding clause is very relevant; and I would like to point out that the Founding Fathers of the Constitution were not fools. On 30th April 1947 Nehru Ji said:

"A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution."

And Dr. Ambedkar said on 4th November 1948:

"In considering the Articles of the Constitution, it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind; while the Constituent Assembly has none."

They knew very well that this right will not be an obstacle to egalitarian progress. In this connection, I would like to point out the solemn pledge which the Janata Party has given, in

[Shri P. K. Deo]

its election manifesto—it is at page 10:

“Delete property from the list of Fundamental Rights and, instead, affirm the right to work.”

In this regard I should like to point out that there cannot be a conditional fulfilment of the pledge that has been given to the people. There should be a simultaneous assurance of the right to work that should have been provided in this case. An Assurance was given in the Constituent Assembly. These are the solemn pledges; these are pledged words; these are promises. They are not piecrust to be broken and eaten at convenience. The right to property is essential for the effective and meaningful exercise of the various fundamental rights. It is essential for the exercise of the other rights. For example the right to freedom of the press under 19(a) would be worthless if the printer is deprived of his printing machine. 19(c), freedom to form trade union will be denuded if the property of the trade union is expropriated. Right to reside and settle in any part of the country under 19(c) will be illusory if the citizens' house and household effects are taken away without compensation. The right to practise any profession or carry on any occupation under article 19(g) would amount to forced labour if the net savings from the fruits of labour is to be confiscated. The right to religion under article 25 and 26 will virtually be stifled if properties of institution, maintained for religious and charitable purposes, are seized without compensation. It will be no exaggeration to say that without the right to property it will be impossible to work the Constitution, as for example the various legislative entries in the 7th schedule in respect of which tax is to be levied, presupposed the right to the property. Property has become a dirty word today; liberty may become a dirty word tomorrow.

I agree that the right to property always must remain subject to the need of achieving the welfare of the masses and the necessity for fair and reasonable distribution of income and wealth. But the abrogation of the right will spell disaster and it will affect the middle class and the minorities will be the worst hit. Even before the 25th amendment of 1972, regarding the right to compensation, the right to property was very much limited, subject to reasonable restriction in the interest of the community; it cannot be invoked against laws relating to zamindari abolition or agrarian reforms or taking over of sick mills for better management. Regarding the adequacy of compensation, it cannot be challenged in any court of law. Even before the 25th amendment it remained in an abridged form and the 25th amendment of the Constitution actually destroyed it. Whatever residue had been left is going to be wiped away now. The hon. Minister will give an assurance that he will be bringing it under 300.(A) But I must respectfully submit that it would be bringing in something in a clandestine manner and it will not have the same protection that it will have if this provision is embodied in fundamental rights.

Judging from another angle, the word property is apt to conjure up visions of the rich whereas the Constitution is not for the privileged ones; it is for the masses. There is no constitutional difficulty of levelling the rich uniformly by fiscal laws. It could be done by taking various fiscal measures. Income-tax itself is expropriation of property; wealth tax and estate duty are even more so. There are means to reduce inequalities. Taxes, however steep they may be whatever may be the gradation, tax laws cannot be disputed; they offend no fundamental right. So, the Government takes recourse to taxation measures to level the accumulation of wealth in the hands of a few.

What does property mean in the context of individual life and in the context of his security? Next to life itself is that which helps to support and sustain life for a man and his family. It is in this context that the right to property is to be seen and not in the context of the rich who can take care of their visible and invisible wealth. I say invisible property because whatever is visible now is only the tip of the iceberg, which had been accumulated in the hands of a very few.

The average man is concerned about his earnings by sweat of labour and maintaining his family. Where there is no social security, where right to provide work is not recognised, where the unemployment figure even according to the Minister is 20 million, which is an under-estimate, which every person will accept is not correct considering the figures in the five registers of the employment exchanges, there is absolutely no justification to take away the right to property. If you say that they are going to redeem their election pledge, have they fulfilled the pledge to provide work? Have they not shot the other day at Bailadila so many people who were out of job, who were retrenched and who wanted job? Is it not that the Prime Minister has stated categorically that we will solve the unemployment problem within a period of 10 years? Under these circumstances, I respectfully submit to you that the poor man's hut, his field or pan shop or bullock cart are his limbs without which he cannot function. But he lacks the rich man's resources for his own defence. So, my amendment is that the fruits of labour should be recognised and earnings out of it should be enshrined among fundamental rights, the preservation of which should be the duty of the State. It should not come in a clandestine way as has been envisaged by the Law Minister in the shape of article 300A.

श्री० किष्कनदास लक्ष्मीनाथः (गुजरातजन्य) :
समापति महोदय, मैं ने चार अमेन्डमेंट्स दे रखे हैं—248, 249, 250 और 256। 248 और 249 एक ही हैं। येरा अमेन्डमेंट न० 248 इस प्रकार है।

Page 1, for line 12, substitute—

“(11) for sub-clause (f) the following sub-clause shall be substituted namely, (f) to work and to adequate livelihood.”

अमेन्डमेंट न० 250 इस प्रकार है।

for clause 3, substitute—

“Article 22 of the Constitution shall be omitted.”

श्री० अमेन्डमेंट न० 256 इस प्रकार से है :

Pages 14,

omit lines 40 to 42

मैं ने एक अमेन्डमेंट और दिया था कि आर्टिकल 15 का क्लॉज (4) निकाल दिया जाये और आर्टिकल 234 निकाल दिया जाये।

हमारे मेनिफेस्टो के एकोनामिक चार्टर में जो पहला आइटम था वह यह है :

Deletion of property as a fundamental right.

आज हम उसको पूरा कर रहे हैं।

दूसरा आइटम जो है, वह यह है :

Affirmation of the right to work and full employment strategy.

मेरी प्रार्थना सैकी महोदय से यह है कि यदि वे इन मेनिफेस्टो को इम्प्लीमेंट करना चाहते हैं, तो वे मेरे इस अमेन्डमेंट को स्वीकार कर लें ताकि हम अपने मेनिफेस्टो को पूरा कर सकें। कहा जाता है कि इस में बड़ा खर्चा होगा। हम में अपने मेनिफेस्टो में प्रोहीबिशन का कोई प्रावजन नहीं किया है और हम उस को लागू कर रहे हैं, जिस के अन्दर 1 हजार करोड़ रुपये का नुकसान और खर्च होगा। मैं चाहता कि उस को हटा कर आप राइट टू वर्क को लागू करें तो कम खर्च में काम हो सकता है। यह पाँच बहुत जरूरी है और हम जो दो करोड़ आबन्दी जो इनप्लेसायड है, उन को बेरोजगारी भत्ता दे सकेंगे। बनिस्वत नशाबन्दी के जो हो नहीं सकती, कभी नहीं हुई है, बेकारों की सहायता कहीं ब्यापार जरूरी है। आप नशाबन्दी करेंगे तो इस्लीमिंट रिस्तीनेशन होगा और उस में खर्चा बहुत पड़ेगा।

[श्री सिम्बन लाल सक्सेना]

इसीलिए जबाहरलाल जी ने महाशयकी लायू नहीं किया और इसीलिए सरकार पटेल साहब ने नहीं किया। प्रोहीविशन हमारे प्राइम मिनिस्टर साहब का एक पैड है और मैं समझता हूँ कि इस क बजाय राइट टू वर्क का इम्प्लीमेंट करना चाहिए।

प्रापटीं धारा हटान के बारे में हमारे बहुत से दोस्ता ने ने भय प्रकट किया है। मैं बनलाना चाहता हूँ कि प्रापटीं का राइट ता रहेगा लेकिन वह फेडरेशनल राइट नहीं होगा। प्रापटीं सब की छिन जाएगी, एसी बात नहीं है। राइट टू प्रापटीं तो रहेगा लेकिन फेडरेशनल राइट नहीं होगा क्योंकि फेडरेशनल राइट हीन में बहुत से साधन एकोनामिक रिफार्म जो है वह हैरत घप हो जात हैं। प्रापटीं तो र भी क्याकि प्रापटीं व बिना समाज नहीं रह सकता लेकिन वह फेडरेशनल राइट नहीं रहेगा। इतना ही पक है जा प्रापटीं के बारे में हमारे मनीफेस्टो में दिया हुआ है।

भग तीमरा सपथन प्रीवटिव डिजेशन क बारे में है। यह जनता पार्टी क प्राग्राम से फिट इन करती है। इस भाजादी बिलान क लिए धारा है और पथन जो टू था उस को हम न ख म कर दिया है। हम न प्रीवटिव प्राफ बि प्रेस दिनाई और मीसा को खत्म कर दिया। इमलिय प्रीवटिव डिजेशन रहे यह ठीक बात नहीं है। बिभी भी मनुष्य की भाजादी प्रीवटिव डिजेशन द्वारा बिधाऊट इत्येस भी जाग यह ठीक बात नहीं है। हमारे पास वानन बहुत बड़ बड़ हैं जिन में भ्रगर कोई भ्रपराघ करता है तो उस भ्रपराघी का पकड़ सकत है लेकिन प्रीवटिव डिजेशन का रखना हमारे ऊपर एक बलन है और यह नहीं होना चाहिए।

भ्ररक्षण क बारे में मैं एक भ्रमरमर दिया था लेकिन उस का इमलिय एक्सप्ट नहीं किया गया कि इस बिच क भ्रदर इस सम्बध में कोई एम्डमट नहीं है। धारा 15(1) में यह लिखा हुआ है

Nothing in this article or in clause (2) or article 2 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

इस के अनुसार भ्रम्बेकर साहब ने 10 साल के लिए यह प्रीवजन दिया था

“Notwithstanding anything in the foregoing provision of this Part the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the

Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States, and

(b) the representation of the Anglo-Indian community in the House of the people and in the Legislative Assemblies of the States by nomination

shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution’

पहले 10 साल था अब 30 मान कर दिया गया है फायद यह है प्राफ बि कमेसमेंट प्राफ बि कांस्टीट्यूशन।

महोदया अब 27 साल बीन गय है और 30 साल भी खत्म होन बान है और मैं देखना हूँ कि फायद इस को 30 क बाद 40 भी कर दिया जाए। यह बहुत जनत बान है। डॉ० भ्रम्बेकर साहब न स्वयं कहा था

It is wrong for the majority to deny the existence of the minorities. It is equally wrong for the minorities to perpetuate themselves. A solution may be found which will serve a double purpose. It must recognise the existing of the minorities to start with. It must also be said that it will enable the majorities and minorities to merge some day into one’ He therefore provided for reservation for ten years only. He never approved of a provision for reservation for ever

भ्रल्पसभ्यको के प्रतिस्त्व को नकारना बहुत सभ्यका की गलती है। उमी समान भ्रल्पसभ्यको द्वारा सदैव के लिये भ्रल्पसभ्यक सुविधायें बनाने रखना भूल है। एक ऐसा हल खोजा जाना चाहिये जो दोनों का हित पूरा करे। भ्रल्पसभ्यको के प्रतिस्त्व को मान्यता मिलनी चाहिये और यह इस प्रकार होना चाहिये कि एक दिन बहुसभ्यक और भ्रल्पसभ्यक एक दूसरे में बिभीन हाकर एक हो सकें। धन उन्होंने केवल 10 वर्ष के लिए इस भ्ररक्षण का प्राविधान किया था। उन्होंने सदैव के लिये इस भ्ररक्षण के प्राविधान का अनुमोदन कदापि नहीं किया था।

17.00 hrs.

तो मैं कहना चाहता हूँ कि भ्रम्बेकर साहब से क्यावा दिमायती उनका कोई नहीं हो सकता है। मेरा यह भी कहना है कि कलकत्ता प्राफ रिजर्वेशन

कोषों को धारण करने नहीं देते। इसलिये 28 साल का काफी समय हो गया है और अभी तो 4 साल और यह समय रहेगा यानी 1983 तक। इसलिये कोई बचह नहीं है कि इस प्राटिकल को डिमोट न किया जाय। इसलिये मेरा समोधन है कि पाँ 4 और प्राटिकल 15 और प्राटिकल 334 को डिमोट कर दिया जाय। आज हमारे देश में रिजर्वेशन और बैकवर्ड क्लासेज की बात चल रही है जिसकी बचह से जनता पार्टी की जड़ें हिल रही हैं। जब सब के लिये रिजर्वेशन हट जायगा तो कोई झगड़ा नहीं रहेगा। अगर आप चाहते हैं कि वह जनरल बीडी से मिल जाये तो रिजर्वेशन को खत्म करना चाहिये। अभी होता यह है कि काबिल धारमी नहीं लिये जाते हैं और बेकार धारमी ले लिये जाते हैं। इस रिजर्वेशन को से कर प्रोमोशन में बड़ा डिस्कॉन्टिनेट है। मैं समझता हूँ कि रिजर्वेशन समाप्त होना चाहिये और हर धारमी मेरिट पर चुना जाय तभी वह योग्य तरफकी कर सकते हैं। विधि मंत्री जी अगर इसमें धर्मैडमेंट ले धार्य तो बहुत अच्छा रहेगा। मैं ज्यादा नहीं बोलना चाहता क्योंकि काफी बोलने वाले सदस्य हैं, बड़े रीटिंग के समय कुछ कहूँगा।

SHRI C. K. CHANDRAPPA
(Cannanore) Madam Chairman, let me begin by offering a bouquet to the hon. Minister for bringing forward this amendment by which he has deleted from the Constitution the right to property as one of the Fundamental Rights. But, at the same time, while some members from both sides were supporting this, some others feel that the right to property should still be enshrined in the Constitution, as it was before, as a Fundamental Right. My colleague, Shri Deo, went to the extent of saying that the right to property is something like a right to life itself. I was surprised to hear that. To anybody who knows the history of human development it is very clear that for millions of years mankind lived without property rights; private property was not something which was born along with man in history. Private property was an invention by man when he started exploiting others. I do not say that by this amendment we will put an end to exploitation. But, all the same it is better that this amendment is accepted because, in the evolution of our Constitution, we have found that this right has been used time and again

by the judiciary to strike at the very roots of legislation by which the society wanted to advance in its struggle against feudalism and monopoly. I need not go into the details. Many of the land reforms legislations were struck down, Bank Nationalisation was struck down and even the privy purse found its protection under the aegis of private property. It is therefore, that I offer a bouquet to the hon. Minister for bringing forward this amendment. I support it. But at the same time I have to offer him some brickbats too because he deserves it and his party also. Here, I have a copy of the Janata party Election manifesto. In the Economic Chapter No 2 it says: "affirmation of the right to work and full employment strategy. This is one of the corner stones of Janata's strategy about which the other day the hon. Minister was explaining. But I am surprised when the Prime Minister time and again and the Ministers very often and the Janata Party workers in every street corner go on haranguing that in ten years, this scourge of unemployment will be wiped out from the base India. But it is growing. Even the statistics presented by the Finance Minister before presenting the Budget shows that there is a 12.5 per cent increase in the number of registered unemployed in the last one year i.e., after the assumption of office by the Janata party. The Minister gave a wonderful argument the other day and said "you wait till the end of tenth year, like a miracle you will find that unemployment problem is solved." I am not going into the economic policies of the Janata party. But I do believe that so long as you continue your present economic policy by which you protect the monopolists, give them more concessions and protect the landlordism, there will not be any solution to the problem of unemployment. But the question is not that. You made a solemn assurance to the people of this country that if you are voted to

[Shri C. K. Chandrappan]

power, you will give them the right to work, it will be treated as a part of the fundamental rights. I do not believe, I am not that glib to believe that if you include that in the fundamental rights, tomorrow somebody can file a writ and get employment. But still it is an advance that you respect the right to work. But you have forgotten about it, like many other things which you have forgotten. As we discuss the Constitution Amendment Bill, you will find more betrayals of the confidence which the people have bestowed upon you. I was surprised why this was not included as a part of the fundamental rights in the Constitution.

There are certain other amendments which we have moved. In our amendments, we say that in Clause (g) the words "trade or business" shall be omitted and along with the right to work a living wage should be assured. About this living wage, being a lawyer, you know that there are well established norms about wages in this country—minimum wage, fair wage and living wage. Now what has the Janata Party offered to the people? I may read again from the election manifesto of the Janata Party.

I quote:

"The party will introduce legislation to assure minimum wages for all categories of workers and such minimum wages should be sufficient for the maintenance of the worker and his family."

This was the assurance you had given in 1977 and got the support of the people. What have you done? What are you doing today? You have introduced a new concept, the Bhoothalingam concept, of freezing the wage even below the poverty line. You have failed to offer the minimum wages to various sections of the workers. Let us forget about the fair wage to which you are nowhere near. Let us also not think of the living wage. That is illusory; that is far away in

the horizon; that is *maya*. But what prevented you to include in the Constitution a concept to which the country is wedded that is the right to work and the right to earn? You are afraid of even including these things in the Constitution. That is the stage in which you are today.

Coming to the last point, we are asking for the deletion of the words "trade or business" from sub-clause (g). My hon. friend, Mr. Chitta Basu, also mentioned that. Under the cover of this protection, so many mal-practices are being perpetuated in our society. Profession is considered as a fundamental right. In the name of practising any profession, it is a well known fact that in this country the public schools are being perpetuated. There are many people on the other side of the House who want to abolish the public schools. But the Minister will say that so long as the Constitution is like this, we cannot do that.

The words "trade or business" where black market perpetually finds a place need not be enshrined in the Constitution as one of the fundamental rights. That could have been eliminated; that could have been removed.

These are some of the things that I wanted to raise. You be true to your manifesto that you have presented before the country; you be true to the promises that you have made to the country and you be true to the people who bestowed confidence in you. Have an open mind. It is better that you accept this amendment and there will not be any brickbat for you when you go outside the House.

श्री उच्चैः (देवरीया) : मया पति महोदय ने मे द्वारा 2 के सम्बन्ध में एक संशोधन दिया है, जिस में कहा गया है कि लोगों को काम करने और प्राथमिकता के लिए मजदूरी प्रदान करने का अधिकार दिया जाने। इसका इसका कि मैं इस द्वारा के सम्बन्ध में कुछ कहूँ, मैं संजी महोदय को बधाई देना चाहता हूँ कि जनता के जो हुक्म पिछली सरकार द्वारा 42वाँ संविधान संशोधन पास कर के छीन लिए गए थे, उन्होंने उन अधिकारों को लौटा दिया है हम चाहते हैं कि उन अधिकारों में जीने,

काम करने और रोबी कमाने का अधिकार भी शामिल किया जाये।

इस सम्बन्ध में मैं मंत्री महोदय को नवभारत टाइम्स के सम्पादकीय की कुछ पत्रिकाएँ पढ़ कर सुनाना चाहता हूँ, जिस का शीर्षक है 'समाधान का अधीन'।

भारत के विधि मंत्री ने 45वाँ संविधान समीक्षण विधेयक लोक सभा के सामने पेश कर दिया है। भारत ही नहीं, मायब ससार के इतिहास में ऐसा कोई दूसरा उदाहरण नहीं मिलता कि कभी संसद ने अपनी पूर्ववर्ती संसद द्वारा किये गये संविधान समीक्षण को इस प्रकार समीक्षित किया हो जिस प्रकार 45वाँ संविधान समीक्षण विधेयक करने का रहा है। इतना ही नहीं 42वें समीक्षण को समीक्षित करने वाले इस विधेयक पर उन विरोधी दलों की भी मोटे तौर पर सहमति है जिन्होंने 42वाँ समीक्षण किया था। यह इस बात का प्रमाण है कि 42वाँ संविधान समीक्षण एक स्वतन्त्र संसद ने नहीं बनूँ, एक बन्धक संसद ने पारित किया था।

माननीय विधि मंत्री जी ने उम बन्दी समूह द्वारा किए गए समीक्षणों को समाप्त करने के लिए जो यह विधेयक प्रस्तुत किया है उस के लिए मैं उन्हें बहुत धन्यवाद और बधाई देता हूँ।

माननीय चमरूपन ने हमारे बोधना पत्र का उल्लेख किया है हमारे बोधना पत्र में पृष्ठ 17 पर लिखा हुआ है—

'जनता पार्टी रोजी रोटी के मौलिक अधिकार पर जोर देती है। इस लक्ष्य की विधि तभी सभव है जब कि हम एक ऐसी धर्म-व्यवस्था की प्रति अग्रसर हों जिस में छ'ब तथा कुटीर और लघु उद्योगों को प्राथमिकता दी जाय और उन्हें बड़े कारखानों तथा महानगरों के लिए बलि न किया जाय।'

यह हमारे अपने बोधना-पत्र में दिया है। धाने भी हम ने बाबा किया है सत्ताहसमें पत्र पर कि इस वर्ष के भीतर हम गरीबी का अन्त करेयें। गरीबी का अन्त कैसे होता? गरीबी का अन्त तभी होगा जब हम लोगों को काम देंगे। पश्चिमी बंगाल और महाराष्ट्र की सरकार ने जो लोग बेकार हैं और जिन के नाम रोजगार वस्तु में पाँच साल से लिखे हुए हैं, उन को पचास रुपय के लगभग धना देने का निर्णय लिया है। अमेरिका में बेकारी का डोल दिया जाता है। इस का मतलब यह नहीं है कि हम बेकारी को बढ़ावा दे रहे हैं। यह तो सरकार पर एक दबाव डाला जा रहा है कि अगर सरकार लोगों को काम नहीं देती है और उस के एजन्ड में धना देती है तो सरकार मजबूर हो जाय कि बेकारी का धना कौन कौन प्यासा देना पड़ेगा इसलिए वह उन को कुछ न कुछ काम दें। हम ने वन वर्ष में इस करोड़ लोगों को काम देने का बन्धन किया है। तो यह कैसा होगा? एक रोज में तो हो नहीं सकता है। इसलिए हमें बेकारों को काम देना चाहिए और यदि हम संविधान में यह अधिकार जनता को दे देते हैं कि अगर कोई सज्जन है, पायल नहीं है, अस्वस्थ नहीं है तो उस का अधिकार है कि रोबी कमाय और वह उधे सरकार का धना हो जाता है कि अगर उस के पास रोबी नहीं है तो उसे रोबी भी, अगर रोबी सरकार

नहीं दे सकती है तो उस का धना दे और सरकार अपने को बलि करे कि वह धारमी बेकार क्यों है? अमेरिका और पश्चिमी गणतन्त्र के जो देश हैं जिन को मैं पूँजीवादी गणतन्त्र के देश मानता हूँ, उन में भी और अमेरिका वगैरह में भी यह धना दिया जाता है। धीरे धीरे उन के धने की रकम कम होती जाती है क्योंकि एम्प्लायमेंट में एवेन्यूज बढ़ते जाते हैं। धनी सोवियत रूस के संविधान में भी इन बात की चेष्टा की गई है और उन का यह उद्देश्य है कि हम हर धारमी को कोई न कोई काम दे।

इस के साथ हम ने यह कहा और हम लोग बार बार बिल्साते हैं समाजवादी सिद्धांत को ले कर कि एक धारमी को एक ही काम देना चाहिए। अगर व्यापार करता है तो व्यापार से काम, अगर नौकरी करता है तो नौकरी से काम। हमारे देश में सब से ज्यादा विकल यह है कि एक ही के घर से व्यापार है, उसी के घर में टाजगीति है और उसी के घर में नौकरी है। जब तक इस पूँजीवादी व्यवस्था को ताँबा नहीं जाएगा जब तक हर धारमी को काम नहीं मिल सकता। इसलिए यह बहुत जरूरी है।

माननीय मंत्री जी से मैं यह कहना चाहता हूँ कि संविधान में धान यह अधिकार दें गेंगे तो ऐसे ही एक कलम से तो धान सब को रोजी दे नहीं देंगे और न ही सब लोग हाई कोर्ट और सुप्रीम कोर्ट में जा कर मुकदमा दाखिल कर देंगे कि धान में तो संविधान में लिखा दिया लेकिन हमें तो नौकरी नहीं मिली। अगर जनता पार्टी की सरकार ने जनता से कुछ धान्यदे किंग है और पिछले तीस वर्षों की सरकार से कुछ धान्य बढ़कर करना चाहती है, उनमें और अपने में अगर कुछ फर्क करना चाहती है, तो मैं कहूँगा कि धानको कुछ कानिगको कदम उठाने पड़ेंगे। अगर धान ऐसा नहीं करेते तो इस देश में बेकारी की बीज बढ़ती जाएगी। आज इस देश में दस करोड़ लोग बेकार हैं—कुछ अर्धबेकार हैं और बाकी पूरी बेकार हैं। हमने मुझसे किया था कि धान बिल्सा लेना बनायें, धान प्रति सेना बनायें, धान सिचाई सेना बनायें। धान देश में बाड़े धाई हुई है और तनाम योजनायें टूट गई हैं। धारमीरबी से हमली तक और मजदूर पर अग्रम में सब तलहटिया टूट गई हैं। धान लागत का वहा पर लगाकर 50 रुपया और खाना बीजिए और उनसे काम बीजिए। अगर धान इस तरह से रोजगार देने की व्यवस्था नहीं करते है तो देश में बेकारी रीलेगी। फिर बेकार बना करेते। वे मुस्क में गडबडी करेते। आज सारे देश में कानून और व्यवस्था का प्रण है। हमारे उत्तर प्रदेश में और बिहार में कानून और व्यवस्था का जो सपना है उसका सबसे बड़ा कारण यह है कि पूर्वांचल, जहा से मैं धाता हूँ, देवघरिया प्राजमग, अस्ती, गोरखपुर लोग पर लोगों के पास कोई काम नहीं है। बाठ से लीप बर्बाद हो गए हैं और बेकार बैठे हुए हैं। बी: ए० एम० ए० पास लोगों को रोडवेज में कबटरी भी नहीं मिलती है 100-50 रुपय की नौकरी भी नहीं मिल रही है। जब हल्का मूल्ना होता है तो लोग तोचने हैं बलो, जेस में चले, कम से कम वहां पर खाना तो मिलेगा। जेस से कम से कम धना तो है कि बिना मिलता है और धाई भी मिलती है। जब हम जेस में थे तब प्रचुरता लोग पूछते हैं कि धान धाई क्यों नहीं पीते। 9 नम्बर को पानी की धाई होती जाती थी और धना पिलाते धाने कहते

[श्री उपसेन]

ये कि 9 नम्बर विधो, मरो बाहो विधो । भोजपुरी के बोलते थे । लेकिन बाहर बापू के बोलो के राज्यमें कोई पूछने वाला नहीं है कि धायने बाया हुआ नहीं । धाय इस देश में अपनी गण तब में तीस साल के राज्य में करीबो बरो में एक बन्दत बूल्हा जलता है । इसलिए मैं माननीय मंत्री जी से कहना चाहता हूँ

“महूा जरा मझधार में चल, एक बार ही चुबता हो जाए,

यो साहिल साहिल चलने का भ्रजाम न जाने क्या होगा ।”

धीरे धीरे चलेंगे तो क्या होगा ? बेकारा की फीज बढ़ेगी धीरे देस में बढ़ावत कैलगी । धाय जानते हैं मरते हुए बाबसाहू को सत्ता भल जायेगी, धुमारै साथी धीर दूसरे नोग हमारी बात नहीं मानवे ।

‘कारवा निकल गया, मझार देखत रहे।’

इसलिए धामन में सुधार लाने के लिए क्षाति धीर ब्यवस्था कामय करने के लिए धीर इनसान को इनसान समझने के लिए जरूरी है कि माननीय मंत्री जी श्री विष्णु बसु डा० रामजी सिंह धीर तमाम इमारे माननीय सबस्यो में आ प्रस्ताव रखा है कि राजगार का अधिकार दिया जाये उसको मान लिया जाए। हमारे साथी चन्द्रप्यन साहब कहते हैं कि लिखित नेज जीने योग्य मजदूरी दी जाए, यही तो हमारी माग है । अब धाय राजगार का अधिकार दें वैसे तब धाय जीने योग्य मजदूरी नहीं देगे तो उसके लिए मजदूर लडाईं धीर सभष करके उसको ले लेंगे । इसलिए मैं मंत्री जी से माग करता हूँ कि इस अधिकार को वे अवर व वे ताकि भारत के गणतन्त्र में, गांधी जयन्तिकाग धीर डा० सोहिया के इन देस में कम से कम ऐसा हा जाये कि यहा पर इनसान रहते हैं । ऐसा नहीं कि पिछले 30 बरों में यहा पर इनमान तो रहते थे लेकिन वे इनसान की जिव्दगी बनर नहीं करते थे । इन सबस्यो में माथ में अपनी बान माननीय मंत्री जी के सामने रखना हूँ ।

SHRI V M SUDHEERAN (Alleppey) I do not want to repeat what my hon friends have expressed

I am moving my amendment

(iu) after sub-clause (f), the following sub-clause shall be inserted, namely —

“(ff) to work and to get a sufficient means to livelihood;”

Madam Chairman, the youth of the country are getting frustrated day by day They are getting disappointed with the existing political system We can analyse the attitude of the youth.

Even since 1967 all their hopes and aspirations have been neglected by the governments concerned In 1967-68 the youth in many parts of the country joined in naxalite movement They were disappointed and wanted to find their own way of solving the problems and they had gone even to the extent of armed revolution. In 1969, 1970 and 1971 they were attracted by the slogans of Mrs Gandhi The youth of the country rallied round here hoping that she will fulfil the aspirations and hopes of the younger elements in the country Two-three years later they also convincingly felt that that government also was not going to do anything for the betterment of the youth, particularly as far as unemployment problem is concerned

That is why younger elements of our country in many parts were attracted by the JP movement The support enjoyed by Janata Party was mainly from the youth of the country because they were attracted by the JP movement and the slogans and manifesto of the Janata Party But I am very sorry to say that this Janata Party is also going the same way as was the case with earlier regimes There is wide gap between the promise and the performance As has already been mentioned by my hon'ble friends, Janata Party is committed that it should provide employment to each person in the country Prime Minister has himself assured on the Floor of the House that unemployment problem will be solved within ten years I would like to know what has been done in that direction Nothing has been done! One year is already over As has been pointed out by my hon'ble friend, Shri Chandrappan, the number of unemployed youth as increased by about 10.75 lakhs. How are you going to solve the problem? It is a very serious and explosive problem That is why we insist that right to work should be included as fundamental right.

Now, this Government is not seriously tackling the problem of youth unemployment in the country. Even the demand for unemployment wages was totally rejected by the Government. I must congratulate the Governments of West Bengal and Kerala for providing unemployment allowance to the unemployed youth, but this Janata Government has rejected the very idea of providing unemployment allowance to the youth of this country.

There is one more point in this regard. There is some age restriction for recruitment to Government jobs. That should be removed except in the case of recruitment to army and police.

If the Government failed to provide employment to the youth of the country I have to warn the Government that they will have to face an explosive situation even an armed rebellion and that may be the reason why this Government has introduced the very clause to declare emergency in case of armed rebellion. This Government will be forced to impose emergency and they would utilise this clause (Interruptions).

In the end, I would once again urge upon the Government to include the right to work as a Fundamental Right.

श्री बापू राम बिर्वा (नागौर) सजापति अछोखब, मैं धारा 2 का विचारण करिषा करुना चाहता हूँ और चाहता हूँ कि इससे सम्बंधित जिसकी धारायें हैं वो बीच कर के कमेन्ट्री के अधिकार को धारिकल 19 (ए) को तिक्कना का राहू है उनको बरत ले लिया जाए । यकी भी ने जो बलीयें दीं बहु दो है । एक तो यह कि जनसा धारों ने अपने मेन्केन्ट्री में कहा है कि हम ऐका कमेंमें, और दूसरी बात तो कही जिसको के कर बहु धारें जोय कनकर कर रहे हैं बहु बहु कही कि क्योकि प्रोपर्टी का कानून मुक्त अधिकार में हमें से रोज इत पर ककके हुये है इसलिए इस कानून को मिटाने के लिए हमको मुट्टी कर देते हैं । यह जो बलीयें उन्होंने दी इस सजीवन

को लाने के लिए । मैं कहना चाहता हूँ जनसा धारों और आपकी सरकार, बैसा आप जाना करते हैं कि मेन्केन्ट्री में तिकासा और लोगो को कहा कि इसकी सब धारों पूरी करें, तो बहु आप कभी नहीं कर सकते । आपने कहा सुनी, सैस टैक्स हटा देंगे, काम करने का अधिकार देंगे धारि धारि, इनको आप कभी नहीं कर सकेंगे, और करेंगे तो यह सरकार और बैस नहीं बन सकेंगे । इन्धिया जी ने जो सविधान में सजीवन किया उसको दोष देते हैं । मैं बताना चाहता हूँ कि जिस समय सविधान का सजीवन होने वाला था उस समय हमने इन्धिया जी से कहा था कि इस प्रोपर्टी के राइट को हटायेंगी तो लोगो के अन्धर देम में बुरी भावना बनेगी । उन्होंने सोच कर के इस काम को नहीं किया । लेकिन उसको आप कर रहे हैं । मैं सोचता हूँ कि यह इस देश के लिए, आप लोगो के लिए कास्टीट्यूशन का रेष कर रहे हैं । आप मेंबे कि 301 लया कर के कि बिना कानून के कोईकिसी की प्रोपर्टी नहीं लेना आप सजीवनिक राइट को भीवन राइट में बरल रहे हैं । जनसा धारों का कहिय ऐसा है जिस तरह से आप करना चाहते हैं मुक्त पला नहीं आप अपने आपको छोडा दे रहे हैं या धारों को छोडा दे रहे हैं । किस को छोडा दें रहे हैं । आप जिन लोगो को रिप्रेजेंट करते हैं उनके लिए यह काम करना, इस विधान से इस राइट को काटना, इस देश के इडिबिजुअल धारयो की सारी परम्पराधो की बातो को काटना है ।

जीने का राइट, बोलने का राइट जिन के बारे में आप बिमित हैं यह कुछ ठीक किया, अच्छा किया । हमने उस समय उन चीजो को बहुत पसन्द नहीं किया था । पर इस राइट को न हटाने की बात को उन्होंने मान लिया, लेकिन आप आप इसको करने जा रहे हैं । इन कम्पुनिस्टो के दरवो को पूरा करने की नीज आप इस देम में रखने जा रहे हैं । इससे इस देम मे कम्पुनिज्म की सुधघात होगी ।

इसलिए कानून नजी भी गहराई से सोचिये धारा 19—एक में लिखा हुआ है—एखायर होख दिव्योय धाक । यह सारी बलीयें प्रोसिस हैं । इस देम में कोई भी इडिबिजुअल किलान या मेजनीन का धारयो सब अपने चीवन में इस तरीके से प्रोपर्टी रखकर जीना चाहते हैं किबी की नाय है, बैस है, नाय है या धोर कुछ है । सब की अपनी प्रोपर्टी है । एक बार भीवन राइट करने के बाद कोई भी धारयो किसी तरह का पावर में जाने पर बाहू जैसे बटवारा करे, उसका भीवन राइट कीडे इव्योनीज कर सकता है ? इसलिए आप इस फर्माईटल राइट को नब उछिये, जो काम इन्धिया जी ने नहीं किया, बहु आप मत कीजिये । आप जो काम कर रहे हैं उसमे धो बाते होगी । उस अर्थिक को कोई फनया नहीं होगा जिसके लिए अगकर कर रहे हैं । जिस कन्म से कोई अक्क नहीं निकसेवा और देम की प्रसवाधो को छोडा देंगे धार एक नया रास्टल कोयेंगे । इसको इसके बारे मे बहुत सोचने की जरूरत है । मैं इस धारा का और इसके साम कोही हुई सब धारयो का विरोध करता हूँ और इसके खिलाफ वोट दूंगा ।

समापति महोदय . अब प्राप समाप्त करे ।

श्री नानू राम निर्या : मैं बहुत कम बोलता हूँ, सोच एक एक घंटे बीतते हैं। मैं प्राचे हिन्दुस्तान के 200 मीम्बरों में से एकका कांसिस का चुनकर आया हूँ। मैं उत्तर भारत के 200 सस्य-सस्यो में कांसिस का एकमात्र प्रतिनिधि हूँ।

समापति महोदय प्राप अपनी बात कहिये ।

श्री नानू राम निर्या प्राप बटी न बजाये तो मैं अपनी बात जल्दी खत्म कर दूंगा ।

यह रेफरेंडम की जो बात प्राप कर रहे हैं, इस बेस में बहुत अनपठ लोग हैं। 30 करोड़ वोट देने वाले लोग हैं जिनमें पढे-लिखे । कराड की नहीं हैं। उन सब 29 करोड़ लोगों से क्या समस्या प्राप बतलायेंगे, कैसे बोट बिसायेंगे, किम की गर्ज होगी बोट के लेने की । 51 परसेंट कब हाजिर होंगे ? क्या प्राप खर्च कर देंगे, पैसा वेस्ट होगा और अनपठ का समझ नहीं आयेगा कि प्राप क्या बूछ रहे हैं।

इस प्रैक्टिकल बात को सांचिय कि कराडो क्या खर्च हो जायेगा, पार्लियामेंट का ऊखा बनाने का एक हवाई नक्शा प्राप बना रहे हैं। दश के पैसे का खर्चा होगा और अनपठ लोग का कोई लाभ नहीं हो सकेगा । इसलिए जो कुछ करना है वह ठीक करे । लोग का इस पचडे में डालने से कभी प्रापका रेफरेंडम कामयाब नहीं होगा यह हमारा निश्चित मत है ।

इसलिए मैं दाना बाजा का विराध करता हूँ बार-बार बोलना नहीं इसलिए अपनी भावनाओं को व्यक्त कर के अपनी बात समाप्त करता हूँ ।

SHRI RAM JETHMALANI (Bombay North-West) Madam Chairman, I am briefly intervening in this discussion for the reason that I want to make a very humble and very respectful appeal—not only to the learned Minister of Law, but also to Hon'ble Members present, particularly my very distinguished friends in the Communist Party of India and the Communist Party (Marxist)

17 39 hrs

[MR DEPUTY-SPEAKER in the Chair]

I am not a formal Communist, but I accept the central thesis of the Communist or Marxist doctrine that all private property must yield to paramount public purpose (Interruptions) We are debating a subject of

great importance, and I want you to concentrate and apply your mind to what I am about to tell you. I do believe that concentration of private property is a source of many ills that all the nation and the community I accept the Gandhian doctrine that private property is subject to public trust Therefore our pledge to delete fundamental right to property from the list of fundamental rights was a good pledge and I am glad that the pledge is being today fulfilled But I have a word of caution to utter that we are doing the wrong thing in removing article 19(1)(f) It is contrary to the very doctrines which my friends opposite hold very dear to their heart It is counter productive I want to explain what might seem paradoxical though it is not To my mind the marxist doctrine the socialist doctrine and the Gandhian doctrine are embodied in article 19 (1) (f) read with clause 5 of article 19 (Interruptions) At least on a serious topic like this try to apply your mind 19(1)(f) read with sub clause 5 of article 19 says that every citizen has a right to acquire hold and dispose of property Sub clause (5) says that this right is subject to the interest of the general public or the interest of the Scheduled Tribes All acquisitiveness of the individual, all acquisitions of the individual even though they are honestly acquired much more so when they are illegitimately acquired are impressed with a public trust by article 19(1)(f) read with sub-clause 5 Where then do the enemies of the poor where do the filthy rich, where do the dishonest industrialist or the rapacious capitalists come in? They come in under article 31(2) 31(2) is the bulwark of these anti social elements because it is there that when property is sought to be taken away for a public purpose, even in the interest of the general public, the rich man could say you will not take my property until and unless you have given me full compensation, market value I want you to understand the historical background of the pledge of the Janata Party In 1950

when for the first time we started our land reform legislation, the matter arose in Bihar and it went to the Patna High Court. The Patna High Court said. this legislation is invalid because we are not really paying compensation in the sense of market value to those whose property is sought to be expropriated. Thereafter started a series of amendments in our Constitution. According to the Janata Party the previous government used the existence of this article 31(2), though in a modified form, it continued to be modified from time to time, as an alibi and justification for their economic failures. Whether they are right or wrong in that, I do not wish to go into that question. But what I wish to impress upon all present in the House is that it is the right to get compensation subsequently modified as the right to get some amount which is the bulwark of the dishonest capitalist whose property was being taken away for the use of the common man for the good of the common man. Therefore 31(2) must go. I want those persons who have some respect for the Constitution to see that the heading of article 31 is right to property but the heading of article 19 is right to freedom. It is the right to freedom which you are now taking away. It is not the right to property which you are taking away. Please do take away the right to property. A man whose property is being acquired for a public good has no right to say I must insist on my pound of flesh. Society will give what it chooses in compensation, so they may not give him anything at all. That is the end of capitalism and that is the recognition of the communist, marxist, socialist doctrine or Gandhian doctrine.

So far as article 19(1)(f) is concerned, it is the character of the freedom to own property of the poorest man in this realm, it is the charter of the poor but of course it is also charter of the rich. The rich will be dealt with by the law of taxation the kind of taxation that we have in this country and he will be dealt with by the right of

society to expropriate his wealth under article 31(1), without paying him anything because article 31(2) is now going, so that he can be overnight turned into a poorman to start life all over again. Society will be under no obligation to give him any compensation. Those of you who are talking of the right to work should remember that right to work to the extent to which it is feasible is part of article 19(1)(f) because this preserves to a farmer, an industrial worker, a clerk or an intellectual the right to strive according to the laws of the land and to get property in compensation for the labour, whether intellectual or physical, which he bestows upon any venture. Do not, therefore, destroy the incentive to property. I want my friends to remember that even in the communist regime in Russia in 1924 when they embarked upon their new economic policy they had to make some concession to the institution of private property. They have not wholly destroyed the institution of private property at all.

श्री राम राम विर्मा जे मलानी जी, यह प्राप उनको समझाएँ, इनका क्या समझा रहे हैं ?

SHRI RAM JETHMALANI: I do not believe that any person is totally immune to reason. That is why I am specially reasoning with them because removal of article 19(1)(f) according to me is counter-productive and is inconsistent with their own thesis which they claim to hold dear. I for one believe that in mild quantities pursuit of property is a spur to industry. It is a spur to inventiveness. It is a spur to creativeness. Please do not destroy this fountain of motivation for public good. But whenever you find there is undue concentration of property anywhere, strike that down; destroy that cesspool of private property either by the law of taxation or by the power of expropriation, which you are getting by article 31(2) going away completely from the Constitution.

I want the hon. Law Minister to recognise a serious contradiction in what

[Shri Ram Jethmalani]

he is doing. How can you remove article 19(f) without totally destroying article 19(e) and 19(g)? You are retaining (e) and (g) and taking away (f) in article 19. Can there be a fundamental right to reside and settle in any part of the territory of India without right to own something. Was this right meant only for wanderers, only for those who do not want a roof over their heads? Was it meant only for the gypsies in this country? The right was meant so that you can acquire with honest industry a cottage or roof over your head and reside in it even as a poor man. If you want to preserve this right please preserve even the right in (f). What is this right to practise any profession, carry on occupation or trade or business? After all, business *ex hypothesi* by definition involves buying and selling of property, whether it is the small trader or big industrialist. A small trader, shop-keeper or pan-shopwala is also included in this. Therefore, according to me, I think it is reducing to complete mockery article 19(e) and 19(g) if you remove article 19(f) from in between.

So far as full employment of which some of my learned friends talked about is concerned, I am for the right to work being recognised. But if right to work means right to guaranteed employment and subsistence, I would make a request to all those who want this to be done. I want it to be done, some day it will have to be done. But those who are for it would please sit down and draw up a scheme under which every citizen in this country should be able to get employment and subsistence. If you want to make it a fundamental right, you must draw it up in such a manner that the court can issue a mandamus to Mr. Shanti Bhushan saying "You must give employment to everybody" and if he cannot provide it, he will have to land up in jail for breach of the order of mandamus. I will now close but I want you all to ponder on whether you want to destroy that which you want to preserve.

MR. DEPUTY-SPEAKER: Shri Shanti Bhushan.

SHRI KANWARLAL GUPTA (Delhi Sadar): Before you call the Minister, I want to say a word.

MR. DEPUTY-SPEAKER: I am very sorry. Somehow we have been very slow in the progress on the clauses. Just because Jethmalani has been called, it does not mean I am going to call everybody in the House. You are going to speak on the next clause.

SHRI KANWARLAL GUPTA: If you give me five minutes, it will be all right.

MR. DEPUTY-SPEAKER: Not on all clauses.

SHRI SHANTI BHUSHAN: I have heard with rapt attention the speeches made by many hon. Members who have moved amendments to Clause 2 and also some other speeches by these hon. Members who have not moved any amendments. Shri Jethmalani perhaps wanted to move an amendment which for some reason he did not. He wanted to have some amendment by which he would be able to send me to jail. If he had moved it, perhaps I would have accepted it.

There are four or five points which have been made to which I would like very briefly to reply. The main point has been in support of a large number of amendments which have been proposed, namely replacing the right to property in article 19 by the right to work. Before I deal with the other aspects of this, I would like hon. Members who have given those amendments to ponder whether the amendments which they have given will subserve the purpose they have in mind, because so far as article 19 is concerned, even if you introduce this clause, namely the right to work in clause (f), it would not achieve the purpose which you have in mind. What perhaps you have in mind is that the Government should be under an obligation to provide work to everybody.

That is what you want. But the amendment that you have moved only says that every person will have the freedom, namely the right to work, just as the right to trade or business. That does not mean that Government is obliged to provide a business or a trade or a profession to everybody. It will merely be a freedom in the sense that article 13 says that a law cannot be enacted which will curtail a person's right to work. It will not be able to say this man will be entitled to work, so that it will not serve any purpose. By merely introducing the right to work in article 19 (1)(f) Government will not be able to enact a law by which it could deny a person's freedom to work. (*Interruptions*).

If the hon. Members would just ponder over their amendments, it would be clear that that would be the only effect. It is only negative Article 13 read with article 19 is only a negative restriction on the power of legislation to prevent a person from working, but that is not your objective, so that some other device will have to be adopted. If you want that there should be an obligation on Government to provide work to everybody, that is a different subject. That we are not discussing today. Perhaps we will have occasion to discuss that some time as I was endeavouring to say a few days ago in an unfinished speech, which I hope to resume a few days later. Obviously, if you want to cast an obligation in the form of a fundamental right on the State to provide gainful employment to every single citizen in this country.... (*Interruptions*).

MR. DEPUTY-SPEAKER: If three Members get up, none of you will go on record. What is the point?

SHRI A. BALA PAJANOR (Pondicherry): The question is whether it is in their manifesto. He came through the Rajya Sabha. As far as Jethmalani is concerned, he has a right, because he contested.

SHRI SHANTI BHUSHAN: I have no hesitation in saying that I agree with it in principle, namely that it should be an obligation under the Constitution for the Government to provide gainful employment to everybody.

SHRIMATI AHILYA P. RANGNEKAR (Bombay North-Central): You have said it in your manifesto.

SHRI KANWARLAL GUPTA: Then you have to bring a separate amendment so that this may be included.

SHRI SHANTI BHUSHAN: Even if it had not been mentioned in the manifesto, I would not have the slightest hesitation in accepting it in principle. I accept it, because that is why the Government is there. In a welfare State, the principal function of the Government is to find gainful employment for every able-bodied citizen of the country. So, it must be the primary function. All that I was endeavouring to say was that merely incorporating it here will not help. But I accept it in principle. That is why this commitment has been made. At the proper time, it will be written down in the Constitution also. But if you think that by its mere inclusion something will happen, it will not serve any purpose... (*Interruptions*) Various things will have to be considered, various preparatory steps have to be taken. It is only after the completion of the preparatory steps that such a right as a fundamental right, as a positive obligation on the State, can be usefully written down. I accept it in principle... (*Interruptions*).

MR. DEPUTY-SPEAKER: If everybody gets up and keeps on haranguing the Minister, how can he proceed? Either you allow the Minister to reply, in which case you can get something out of him, or otherwise, neither you go on record now are you allowing the Minister to reply.

AN HON. MEMBER: We want to get a commitment from the Minister.

MR DEPUTY SPEAKER Not in this way you cannot getherao a Minister in this way and get a commitment

SHRI VAYALAR RAVI According to you, if you include the right to work as a fundamental right, it will not be an obligation on the State

SHRI SHANTI BHUSHAN If you read it carefully, you will also come to the same conclusion So far as article 19 is concerned, when it creates a right, it does not mean that it casts an obligation on the State to provide it Otherwise under article 19(1)(g), the State has to arrange for the occupation, trade or business to everybody But that is not the object of article 19(1)(g) it is a negative article Articles 13 and 19 are negative Fundamental Rights namely, placing restrictions on the powers of the State not to come in the way of persons carrying on their occupation trade or business, except reasonable restrictions It would merely mean that the State would not be entitled to come in the way of persons working That would be the only effect of what has been proposed by this amendment (Interruptions) That would not be achieved by the amendment that is proposed That is all I am pointing out, the amendments which have been proposed will not have that effect

SHRI DINEN BHATTACHARYYA Then you delete all the fundamental rights

SHRI P VENKATASUBBAIAH (Nandyal) You have mentioned that the incorporation of right to work in the Fundamental Rights does not mean that the State has to provide gainful employment If that is so, what prompted you to put it in the election manifesto?

SHRI SHANTI BHUSHAN So far as the statute is concerned, it has to be constituted in a particular manner So far as the election manifesto is concerned, it is drafted in popular language If you say that the right to work is a fundamental right, it only means

that a person will have the right to work if he likes That does not mean (Interruptions) You are free to come to your own conclusion But I am telling you the constitutional position If you are not satisfied with that, you are welcome to think that way.

श्री भारत भूषण (नैनीताल) अगर सरकार अपने को बंधन में नहीं रखना चाहती है तो वह इस को विदेवक सिद्धांतों में रख दे, बिना के बारे में सरकार की मजबूती नहीं है कि वह इस प्रावधानों को पूरा ही करे लेकिन उस गोल को एचीव करने के लिए सरकार को बंधन कर सकती है।

श्री शान्ति भूषण डाइरेक्टिव प्रिंसिपल में ही आएगी है।

DR HENRY AUSTIN (Eranakulam): He says it is a right only in the sense that if he is able and willing he can work In that sense, everybody breathes Everybody drinks water. But no provision is made in the Constitution that everybody can breathe everybody can drink Then why should he specify about work? By providing in the Constitution, it is meant that the State is looking in terms of an obligation you do not guarantee, you at least give him some hope that able and willing persons will be able to get "if you want, you work" (Interruptions)

SHRI SHANTI BHUSHAN That is precisely what I am saying If you just have it incorporated in Article 19 (1)(f), this is precisely what it would mean Otherwise what you have in mind has to be brought in this way viz, every person will have a right to be provided by the State with gainful employment It is in that form that it will have to be provided if you really want to do what you have in mind. (Interruptions)

MR DEPUTY-SPEAKER I am not allowing any more interjections (Interruptions) Mr Mhalgi, this is the seventh time that you have got up. (Interruptions)

SHRI SHANTI BHUSHAN It is clear that the hon Members were conscious of the fact that. . .

SHRI NARENDRA P NATHWANI (Junagarh) Mr Deputy Speaker, Sir.

what the Law Minister says is that the right of work is guaranteed under Article 21, which protects personal liberty.... (Interruptions)

An. Hon. MEMBER: That is a different matter. (Interruptions)

SHRI SHANTI BHUSHAN: What I was saying was that it seems to me that the hon. Members are aware of this and they were also conscious of the fact that at the present stage, unless all the preparatory work to which I was hinting, is not done, until the State is not in a position to really provide gainful employment to everybody . .

SHRI DINEN BHATTACHARYA: Then why did you provide it in your manifesto? (Interruptions)

SHRI VAYALAR RAVI: Why did you support them? (Interruptions)

SHRI SHANTI BHUSHAN: That is why I take it that ... (Interruptions)

MR. DEPUTY SPEAKER: I am not allowing any more interjections. (Interruptions) Nobody will go on record.

(Interruptions)**

SHRI SHANTI BHUSHAN. I am grateful that the hon. Members appreciate the difficulties that are there in immediately creating a fundamental right, which will cast an obligation to be enforceable straightaway, to provide gainful employment to every able bodied citizen. That is the reason why they did not move an amendment of that kind. **Shri Parulekar** has moved an amendment providing for non-discrimination in the matter of property. I can assure him that so far as Articles 14 and 15 are concerned, they already provide for what he has in his mind. Because in any matter nobody can be discriminated against on the ground of sex, caste, creed and so on and so forth with the result that it is quite unnecessary.

Shri Roy wanted that so far as the right to trade or business was concerned, a restriction might be imposed: one man, one job and so on. But as the

entire House knows, all the fundamental rights guaranteed by article 19 are subject to reasonable restrictions. The Parliament is always competent to impose reasonable restrictions so that a person's fundamental right will not be to the prejudice of another person.

Shri Chitta Basu said that the right to trade or business should have also gone simultaneously because what he was apprehending was that, for instance, nationalisation of import trade is not possible so long as the right to trade or business is there. I would like to only remind the hon. Member that there is already clause 6(2) of article 19 which provides that nothing in this article 19 prevents the State from carrying on having a monopoly in any kind of a trade, either wholly or partially, so that his apprehension on that ground is not really justified.

Shri Deo has moved an amendment and he wanted to make a distinction between unearned property and earned property. He was willing to go along so far as unearned property was concerned, that it may not be treated as a fundamental right, but, so far as earned property of a person was concerned, he said that the fundamental right should continue to apply to it. May I pose this question for the hon. Member's consideration as to what is earned property. After all, does a person earn any property all by himself or does the society also help him in earning any property? Is it not the taxation laws, the other laws and other facilities granted by the state and the help given by other sections of the society do contribute to his acquiring some property? In no case, it is possible to say that it is the sole effort of a single individual. While the effort of an individual cannot be deprecated for any property being acquired but for him to claim that it is solely his efforts which have helped him to acquire a particular property will not be correct.

[Shri Shanti Bhushan]

Shri Mirdha has given expression to certain apprehensions. There are some hon. Members who apprehend that a fundamental right of property does not remain as a fundamental right and it is as if the concept of property itself is being destroyed. It is quite clear that the concept of property is not being destroyed. Some hon. Members have expressed an apprehension that the poor man's property will be taken away, that the poor man's clothes and other things will be taken away. If any such apprehension could be a reality, we would be negating the essential principles of democracy. In a democracy based on adult franchise, the very fact that the Government is constituted on the basis of elections, on the basis of adult franchise it is guaranteed that the interest of the poor man who constitutes the vast majority in this country cannot be taken away, cannot be affected by any Government in power.

SHRI KANWAR LAL GUPTA He is misguiding the House. Don't have political lecturing that this is democracy and all that. Is it not a fact that you are taking away the constitutional safeguard so far as the property right is concerned? Tomorrow, Mrs. Indira Gandhi may come back again. (Interruptions) Is it not a fact that the property of thousands and lakhs of people was destroyed and no compensation was paid?

SHRI VASANT SATHE He has some vested interest in property.

SHRI KANWAR LAL GUPTA Suppose you have a library, and that is taken away. What will you do?

श्री वसन्त साठे कवर लाल गुप्ता जी की बात में काला है ।

SHRI SHANTI BHUSHAN Apprehensions have been expressed that a small peasant's land may be taken away if the fundamental right to property is not there. If article 19(1)(f) is not there, the small peasant's property may be taken away. But article 31A is there which protects the small pea-

sant's land. It says that, so far as any agricultural land within the ceiling limit is concerned, including homestead and so on, even if it is necessary to take it for some public purpose, full market value compensation has got to be given.

SHRI KANWAR LAL GUPTA Sir, this is a very important matter so far as Delhi is concerned. You have excluded agricultural land. But what about cities where a person has only a hundred yards and there is the Urban Ceiling law? When there is an Urban Ceiling law that portion should also be excluded. Why this discrimination? I am talking about cities like Madras, Calcutta, Bombay and Delhi. Can you give any argument in that regard?

MR DEPUTY-SPEAKER Mr Kanwar Lal Gupta, you have made your point. Please take your seat.

SHRI SHANTI BHUSHAN The philosophy behind this provision is that, so far as

SHRI PRASANNBHAI MEHTA (Bhavannagar) I have a small point to make. The Urban Ceiling Act that has been passed deprives the small farmers and the middle farmers of their land or property. Because it is put under the Ninth Schedule, they cannot approach the court also. The valuation in their case is also fixed the maximum limit is Rs 2 lakhs. The first Rs 25,000 will be paid in cash and the balance by bonds running for some years. This is a great injustice to the farmers. Therefore some remedy should be provided in the Constitution for that.

SHRI SHANTI BHUSHAN What I have been endeavouring to point out is that article 31A, which is continuing, provides that, so long as a person, a peasant, has land which is within the ceiling limits which are laid down by law, he cannot be deprived of that land unless full market value compensation is paid. It is only when a person has land beyond the ceiling limits that land alone can be taken away from him without the full market value compensation. (Interruptions) So, far

as the small peasants are concerned, I would like to make it very clear that they need not have any apprehension. No propaganda, etc. with regard to this will cut any ice with them.... (Interruptions)

So long as agricultural land is there, agricultural land is covered by Article 31A everywhere, whether it is in Delhi or whether it is in any other urban area or whether it is in the rural area. So, so long as it is an agricultural land, it is entitled to the benefit of that Article.

श्री हुकमदेव नारायण यादव : (प्रश्न नं०) उपरोक्त महोदय, मैं संविधान के अनुच्छेद 14 के तहत एक स्पष्टता का प्रश्न उठाता हूँ। अनुच्छेद 14 में लिखा है कि देश के सभी नागरिकों को समान स्यास दिया जाएगा। इस स्थिति में हड़बंदी कानून के द्वारा किसानों की फार्मल जमीन ले ली जाये, लेकिन दिल्ली और नगरों में जिन लोगों की एक करोड़, दस करोड़ या पचास करोड़ रुपए का सम्पत्ति है, उनको सम्पत्ति पर हड़बंदी नहीं—किसानों की सम्पत्ति पर हड़ बाधी जाये और पूँजीपतियों की सम्पत्ति पर हड़ न बाधी जाये, यह संविधान के अनुच्छेद 14 के प्रतिफल है और उस का उल्लंघन है।

SHRI NARENDRA P. NATHWANI: The Minister has made a point that under Article 31A, land and buildings of agriculturists to a certain extent are protected. But what is his answer as Article 31A is subject to Article 31B and under Article 31B, under the Urban Land Ceiling Act, even lands and buildings of agriculturists are taken away without giving even a semblance of compensation? What about that?

SHRI SHANTI BHUSHAN: Shri Nathwani who is a distinguished jurist and a distinguished lawyer, has, unfortunately, I am sorry to say, slipped here because Article 31B itself starts with the words:

“Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule...

shall be questioned on certain grounds, so that, so far as the guarantee given by Article 31A is concerned, it applies even to those Acts which are included in the Ninth Schedule. ...

SHRI NARENDRA P. NATHWANI: I stand corrected.

SHRI KANWAR LAL GUPTA: What about my question? You have not answered it.

SHRI SHANTI BHUSHAN. If you will let me answer, then only I can answer.

Shri Ram Jethmalani has made an impassioned plea as a believer in the Marxian principles and Marxian philosophy.... (Interruptions) He has made a valiant plea that Marx would be trembling ...

AN HON. MEMBER: ...in his grave.

SHRI SHANTI BHUSHAN: ...if the Charter of the Poor contained in Article 19(1)(f) is taken away. Sir, I am for the first time learning that this Article 19(1)(f) is a charter of the poor. So far I used to believe that this fundamental rights chapter, when there was a clash between the rich and the poor, was a charter of the rich against the encroachments the poor wanted to make into that charter. But, for the first time, I am now realising that by removing this Article 19(1)(f) it will be possible for the rich to make an encroachment into the poor's rights.

So far as the poor in this country are concerned, whatever little property they have got—many of them do not have any property, a very large number of our masses do not have any property, but even the few poor that have a little property, are not in need of Article 19(1)(f) to preserve their property. Their democratic right, their right to vote, their right to elect their government is a full guarantee so far as the property of the poor is concerned.... (Interruptions)

SHRI A. BALA PAJANOR: Well said.

SHRI M. N. GOVINDAN NAIR (Tiruvandrum): Can I ask a clarification? In the continental law or in USA is property right....

SHRI SHANTI BHUSHAN: Are you quoting Mr. Jethmalani?

SHRI M N GOVINDAN NAIR In USA or in any of the continental countries is property right a fundamental right?

SHRI SHANTI BHUSHAN It is there Nobody shall be deprived of his property without due process of law In due process courts have created lots of rights—eminent domain market value position, public purpose everything has been brought in (*Interruptions*)

It is a fundamental right in the sense that even if any legislation is enacted which takes away the right of a person to get full market value compensation to be deprived of his property etc unless these conditions are satisfied that legislation is liable to be struck down So far as USA is concerned, of course the position there is entirely different The poor masses which constitute the bulk of the people in this country that is not the position in USA Here the first concern has to be for the poor masses and therefore it is their interests which have to be protected So I submit 19 (1) (f) is not necessary for the poor masses to protect their interests Nobody can dare to enact a law in this country so long as adult franchise is there which will take away clothes, pen pencil and shoes of the poor people in this country

Lastly Shri Shubban Lal Saksena referred to the controversy about reservation of seats I can only say that that has nothing to do with Clause 2 and therefore, I am not in a position to deal with that

MR DEPUTY SPEAKER Now, we take up Clause 3 Amendments may be moved

Clause 3 (*Amendment of article 22*)

SHRI SOMNATH CHATTERJEE I beg to move

Pages 1 and 2—

for lines 17 to 20 and 1 to 35 respectively substitute—

"(a) in clause (3), sub-clause (b) shall be omitted;

(b) clauses (4), (5), (6) and (7) shall be omitted" (13)

SHRI BARUSAHEB PARULEKAR I beg to move

Pages 1 and 2,—

for clause 3, substitute—

"3 In article 22 of the Constitution clauses (4), (5) (6) and (7) shall be omitted" (35)

SHRI A K ROY I beg to move
Pages 1 and 2,—

for lines 17 to 20 and 1 to 35 respectively substitute—

clause (4) shall be omitted" (54)

SHRI SHAMBHU NATH CHATURVEDI I beg to move

Page 2, line 6,—

for Provided that an" substitute 'and such (81)

Page 2, line 10,—

omit further (82)

SHRI CHITTA BASU I beg to move

Page 1 —

after line 16 insert—

'(a) in clause (3) sub-clause (b) shall be omitted' (89)

Page 1 and 2 —

for lines 17 to 20 and 1 to 28 respectively, substitute—

(a) clause (4) shall be omitted,' (90)

SHRI VAYALAR RAVI I beg to move

Page 2 line 9 —

omit "or retired" (105)

SHRI VINAYAK PRASAD YADAV (Saharsa) I beg to move

Page 1 and 2,—

for lines 19 and 20 and 1 to 35, respectively, substitute—

"(4) There shall be no preventive detention laws except during

emergency declared by the President in actual outbreak of war, aggression or armed rebellion." (231)

SHRI G. M. BANATWALLA (Ponnani): I beg to move:

Pages 1 and 2,—

for lines 17 to 21 and 1 to 35 respectively, substitute—

"clauses 3(b), (4), (5), (6) and (7) shall be omitted." (162)

SHRI R. K. MHALGI (Thana): I beg to move:

Page 2, line 9,—

for "or retired Judges of any" substitute "Judges of the appropriate" (170)

SHRI K. A. RAJAN (Trichur): I beg to move:

Pages 1 and 2,—

for lines 19 and 20 and 1 to 35 respectively, substitute—

"(4) No person who is arrested shall be detained without trial, except under orders of the Court and in accordance with the provisions of the law for more than 24 hours." (208)

SHRI KANWAR LAL GUPTA: I beg to move:

Page 2,—

for lines 10 to 13, substitute—

"Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period of six months;

Provided further that grounds of detention shall be given to each detenué within a period of one week by the detaining authority and the competent court shall have right to see the grounds of detention." (235)

SHRI RAM JETHMALANI: I beg to move:

Page 2,—

after line 35, insert—

"(c) after clause (7), the following clause shall be inserted, namely:—

(8) Notwithstanding anything contained in the Constitution, no law providing for preventive detention shall operate in respect of any citizen of India except during the period when a Proclamation of Emergency is in operation." (257)

SHRI HARI VISHNU KAMATH: I beg to move:

Pages 1 and 2, lines 20 and 1, respectively,—

for "two months" substitute "one month" (278)

SHRIMATI PARVATHI KRISHNAN (Coimbatore): I beg to move

(i) Pages 1 and 2,—

for lines 19 and 20 and 1 to 35 respectively, substitute—

"(4) No person who is arrested shall be detained without trial, except under orders of the Court and in accordance with the provisions of the law, for more than 24 hours"

(ii) Page 2,—

after line 35, insert—

"(b) clauses (5), (6) and (7) shall be omitted." (288)

SHRI A. K. ROY: Sir, I rise on a point of order. My point of order is that the way the debate is being carried out it will not take more time. If we complete it today then there can be voting also at the end of the debate.

MR. DEPUTY SPEAKER: No, it has already been decided. The voting will not be today. Now, let us start with the discussion.

SHRI A K ROY That was the procedure followed earlier

MR DEPUTY-SPEAKER I know that Perhaps you were absent from the House when the decision was taken

SHRI A K ROY I was present

MR DEPUTY-SPEAKER Then why do you want to raise it again?

SHRI A K ROY It was left open in confusion, the Speaker went away

MR DEPUTY-SPEAKER No no, Shri Somnath Chatterjee

SHRI SAUGATA ROY Kindly give preference to those who have not spoken earlier

MR DEPUTY-SPEAKER Shri. Somnath Chatterjee

SHRI SOMNATH CHATTERJEE Shrimati Ahilya P Rangnekar will speak on our behalf

श्रीमती अहिल्या पी० रांगनेकर (बम्बई उत्तर-मध्य) उपाध्यक्ष महोदय मैं यह धर्मनगरेट प्राप के सामने रख रही हूँ। इसमें यह जो मिनिटिव रिटेशन के बारे में मसाला (बी) है वह पहले निकालना चाहिए और बाकी 4, 5, 6 और 7 जो हैं वह सब मसाले निकालने चाहिए। मैं यह पूछना चाहती हूँ धपने ला मिनिस्टर से कि यह मिनिटिव रिटेशन जो है यह किस से मिनिटिव है। अभी तक कभी भी ऐसा समय नहीं था जब कि यह मिनिटिव रिटेशन एक्ट न रहा हो और हमारा धनुषन है कि ये मिनिटिव रिटेशन गैट हमेशा मजबूर बने और जो आन्दोलन करते हैं उन के ही खिलाफ इस्तेमाल किये गये हैं। हमने अभी तक कभी नहीं देखा कि कभी किसी जैक पार्लियर के खिलाफ इस का इस्तेमाल हुआ हो। प्राप आधिर उसमें कर क्या रहे हैं? प्राप केवल यह कर रहे हैं कि तीन महीने जो पूरानी गवर्नमेंट ने रखा था उस को दो महीने का रिटेशन कर रहे हैं। इसमें कोई प्राप मेहरबानी नहीं कर रहे हैं। मैं धपना धनुषन बताती हूँ 1948 से हम हमेशा जेल में रहे हैं। 1948 में रेलवे हड़ताल का काल बिना, इसलिए दो साल तक जेल में रखा। उस दायम भी ऐम्पाइचरी बोर्ड का लेकिन ऐम्पाइचरी बोर्ड जो गवर्नमेंट लिख कर देती थी उसी को मान कर चलते थे और लोगों को जेल में रखते थे। दो साल तक हरतीन महीने से यह यही करते थे कि उन को जेल में रखते थे। स्ट्राइक नहीं हुआ कुछ भी नहीं हुआ, लेकिन दो साल तक हमें जेल में रखा गया। 1958 में जब भाषावार प्राय रचना का समाज भाषा तो हमने यह माना की कि लिगिस्टिक से जिस

पर स्ट्रेट्स होने चाहिए। यह मांग रखने के बाद भी एम्पाइचरी बोर्ड लिखता है कि इन को जेल में रचना करती है और मांग देने के बाद एक साल तक हम जेल में थे।

प्राप ने कहा कि ऐम्पाइचरी बोर्ड में जोधा कर दिया है। लेकिन जो अब होते हैं वे कुछ कभी नहीं सोचते, जो गवर्नमेंट उन को रोकने करती है उस के ऊपर वे निर्भर करते हैं। इसीलिए यह मिनिटिव रिटेशन जो है इस से प्राप आन्दोलन प्रिवेंट करते हैं। आन्दोलन प्रिवेंट करने के लिए यह मिनिटिव रिटेशन है। प्राप जो इस्ट्री बताए कि कभी भी मिनिटिव रिटेशन में किसी स्मलर को रखा है? कोफेपोसा में वे पड़े रहते थे लेकिन हमें मालूम है कि उन्हें वहाँ क्या सत्रियर्ष मिलती थी। बम्बई में जो स्मलर्स वे थे धपताल में रहते थे। हमें कभी बम्बई में नहीं रखा। हमारे घर से दूर रखा। लेकिन कोफेपोसा में जो नो स्मलर्स वे उस में से प्राट रोज धपने बरो को जाते थे। इस का पता सब बला जब उनकी की बीबिया प्रेगेंट हो गई। तो यह मिनिटिव रिटेशन स्मलर्स के लिए नहीं है हम को पोलिटिकल आन्दोलन करते हैं उन के लिए ही यह हमेशा इस्तेमाल का

प्रापन का जार जार से एलबशन के टाइम में बिस्ला बिस्ला कर कहा था कि मिनिटिव रिटेशन नहीं रहेगा। धपार प्राप कीबम प्राफ स्पीच देते हैं कीबम प्राफ धार्म नाइजेसन देते हैं स्ट्राइक का हक देते हैं तो मिनिटिव रिटेशन को निकालना चाहिए क्यों कि हमेशा इस का इस्तेमाल इस के लिए कर रहे हैं। किसी को भी इस देश में मिनिटिव रिटेशन में पकड़ना नहीं चाहिए। प्राप को मालूम है कि यह युवम राइटम के भी खिलाफ है और मैं तो प्राप को किन्ता बताती हूँ मंत्री महोदय जरा सुनने की कृपा करें (ध्वजध्वज)

उपाध्यक्ष महोदय इमरवैसी से भी मिनिटिव रिटेशन में लोप चकई एम। बार हुजार लोग वे पोलिटिकल मिजनर्स जो कि मिनिटिव रिटेशन में पकड़े गए जबकि स्मलर्स वे केवल दस। इमलिए इसको भी देना चाहिए कि मिनिटिव रिटेशन किमके खिलाफ इस्तेमाल किया जा रहा था। यह जो ऐम्पाइचरी बोर्ड की बात प्राप कहते हैं हमने देखा है कि दा लोग जो धरघराउठ में जोकि जेल में नहीं वे लेकिन उनका तीन महीने का कर्फमेंशन धाईर जेल में धात था। मैं प्रापको मान भी देना चाहती हूँ—बी एल० बी० बांगर और भी एल० एम० नाचकर। हर तीन महीने के बाद जेल में कर्फमेंशन धाईर आता था। इतलिए प्राप ऐम्पाइचरी बोर्ड की जो बात कहते हैं, प्राप प्राप सत्ता में हैं लेकिन कल प्रापका क्या होना, प्राप काहू नहीं सकते हैं। प्राप जो ऐम्पाइचर बिल ला रहे हैं उसमें प्राप स्ट्राइक बैन कर रहे हैं। स्ट्राइक करना कमायिल राइट है लेकिन प्राप भी हम देखते हैं कि एलेक्ट्रिसिटी बर्षों की स्ट्राइक हुई तो उनकी मिनिटिव रिटेशन में धाट का था। मैं प्रापको सिखा। राजस्वान में एटानिक एनर्जी संस्थाप में स्ट्राइक हुई तो उनकी मिनिटिव रिटेशन में धरेस्ट कर लिया गया। धपार प्राप स्ट्राइक का कर्फमेंशन राइट देते हैं और बाजू में मिनिटिव रिटेशन रखते हैं तो फिर कीबम प्राफ स्पीच, कीबम प्राफ धार्मनाइजेसन, कीबम प्राफ धुमियंस का कोई मर्च नहीं रह जाता है। प्राप एक हक से कुछ देते

हैं जो हुकूमत के जीवन जैसे हैं। इसलिए आपको विपैटिव विटेशन को निकालना चाहिए। नीसा को हटाने के बाद विपैटिव विटेशन को खोलने का मतलब यह है कि एक बहाने के बाद नीसा का उपयोग करना चाहते हैं। अगर आप नीसा को हटाते हैं तो विपैटिव विटेशन को भी हटाना चाहिए।

SHRI BAPUSAHEB PARULEKAR:
Mr. Deputy Speaker, Sir, I have given amendment No. 35 in which I have asked for the deletion of Clauses 4, 5, 6 and 7 of Article 22. I am all in opposition to this preventive detention. The hon. Law Minister knows that during the period of election, we have not only pledged ourselves against this, but all the leaders of the Janata Party in their speeches said that this preventive detention law should go. When we were in jail, we were saying that this detention should not be there, and that if we came to power, this law would go.

18.32 hrs.

[SHRI N. K. SHEJWALKAR in the Chair]

To quote an instance, I would say that when I was in the Nasik jail, a warrant for the arrest of one Krishna Rao Gorwalkar was issued on 23rd November, 1975 and it was taken to his house. His son came out and told the people concerned that Gorwalkar was dead and gone during the month of May. (Interruptions). When I was in the Yervada jail, I saw the confirmation orders received, in respect of persons who were dead and gone in jail. That is how this preventive detention works. I have my own doubts whether Mr. Shanti Bhushan, in his individual capacity, is for preventive Detention. On this issue, whilst there was every justification for having a provision for it in the Constitution in the year 1950 when we were a newly-born nation, I think it is an insult and affront to the dignity of our nation that even after the lapse of a period of more than one generation, we have not been able to achieve the maturity of maintaining law and order without the draconian provisions of preventive detention. Human nature being what it is—because, as many friends

have said, we will not be here permanently—the misuse of the provisions of preventive detention cannot be totally ruled out, notwithstanding the so-called adequate safeguards. In his speech, the Law Minister has said that they have provided safeguards and that they have reduced the detention from 3 months to 2 months but that as a matter of principle, preventive detention law should be there. I ask the Minister whether he agrees or does not agree, on the necessity for the detention of a person without trial and without charges. Then alone your argument in your speech, wherein you had stated: I have given adequate safeguards, will prevail. Otherwise it would mean that you are also one for having preventive detention. I should say with all the emphasis at my command that this will be misused by the police. (An Hon Member: Not the police, but the ministry). I am saying that the provisions for preventive detention must be totally removed so that the citizens of India can carry on their political and other activities without any fear or apprehension of being made the victims of prevention law. If the government wants to make one exception, I may say that it may be for foreigners only, not for Indian citizens. It should be deleted. I believe the amendments moved by hon. Members are properly worded and the hon. Minister would not take the shield that the wording is not proper.

SHRI A. K. ROY: I have given an amendment for complete deletion of this clause 3. It is in this clause where the cat is out of the bag; we can know and we can see the real character. (Interruptions) Who is to bell the cat—that is the problem. I hope all the Members from this side and that side will not behave like rats and will bell the cat. The cat is sitting on the Treasury Benches. After hearing so many big things and good words and solemn promises about human rights charter, rights of minorities and what not, we have to this-

[Shri A K Roy]

anti-climax, three months had been brought down to two months. If that is your total performance reducing three months to two months, what was the use of telling all those things? You should not have said all those things. (Interruptions) They have written in their manifesto repeal MISA, release all political detenus, review of other unjust laws. I know Mr Shanti Bhushan used to be a very prominent lawyer, of course he was not a Minister then. We used to hear his name from jail because he was arguing those cases. From that position he has now come to this position. What is the definition of unjust laws? He said that we should remove unjust laws. I am not talking of implementation. Police will do this thing or that thing. I say every preventive detention law is an unjust law, every detention without trial detention without giving an opportunity to the person to defend himself is an unjust law. You are committed before the people to remove it. If you do not do it, it will be breach of trust with the people. And I think people will not forget or forgive you. Do not think that you alone are capable of instituting commissions against somebody. A time will come when somebody else also will institute commissions against you. You know what the previous government did. DIR, MISA, Preventive Detention Act. That is not the last word. The last word of history is something else. I can tell Shri Shanti Bhushan that history takes special pleasure in throwing the rulers of today into dustbins of tomorrow. Be prepared for that when you come with this clause. I am glad in one sense that it is proved contentions that no class society, no class government can give total freedom to the people. After all, what is the Janata Party? The Congress Party is bourgeois, landlord party, the Janata Party is kulak-traders party, that is the only difference. Not even bourgeois, they are yet to be bour-

geois. They are a traders' and 'kulaks' party with good fellows like my good friend Shri Ugrasen and some others. (Interruptions) The Law Minister is all right in stating that it is obligatory and the duty of the Government to provide work and gainful employment to the people. But no capitalist society can give it because unemployment is the lever by which they control the wage scale. If there is no unemployment, no capitalist system can run. This is the basic principle of the capitalist system.

Similarly, no class society or class Government can give total freedom to the people. This intrusion of clause 3 is proof of the fact that even Mr Shanti Bhushan, being Law Minister, cannot provide us even *prima facie* or apparent justice. When a person is facing trial even in an ordinary court of law, he does not get justice because various ways, various technicalities are there. Various pulls, pushes and connections are there. The money factor plays a big part there also and they cannot get justice. But even *prima facie* or apparent justice, this system cannot provide. This exposes the very class character of the Government. I can give this advice to the Law Minister. The disparity in income, the political sources and connections with the judiciary are so much that even without resorting to this type of thing, you can behind the scenes exploit and dominate over the poor. No difficulty would be there. So you need not have come with this and exposed yourself. This is my advice to Mr Shanti Bhushan that even by using your own conventional law, you can do it. Even that is sufficient. You need not resort to this kind of thing.

श्री कल्याणजी (द्वार) अध्यक्ष महोदय
पुनाचो के समय जनता पार्टी ने धीरे धम सीसो ने
यह वादा किया था कि हम किसी भी व्यक्ति को
बिना मुकदमा चलाये जेलों के अन्दर बंद नहीं करेंगे।
जनता पार्टी का जन्म जनसत्ता को लेकर हुआ है लेकिन
आज यूसे यह कहते हुए दुःख होता है कि संसदधान
के 45वें संशोधन विधेयक की तीसरी क्लॉज के द्वारा

उस बाबू के साथ बलात्कार किया जा रहा है जो कि हमने चुनाव के समय किया था। हमने जर्मन की बात करते हुए कहा था कि हम किसी भी व्यक्ति को बिना मुकदमा चलाये जेलों के भ्रमर बच नहीं करेंगे। इसका हमने वायदा किया था।

सभापति महोदय, हमेशा यह कहा जाता रहा है कि प्रिवेंटिव डिटेनन एक्ट का प्रयोग गुंडों के खिलाफ किया जाएगा। किन्तु मैं इस राय का हूँ और माननीय सदस्यों से भी कहना चाहता हूँ कि चाहे कोई गुन्धा हो, मजदूर हो, ब्लैक मार्किटियर हो, किसी भी व्यक्ति को बिना मुकदमा चलाये जेलों के भ्रमर बच नहीं किया जाना चाहिए। जब तक यह चीज नहीं होती तब तक आपका शासन सफल नहीं हो सकता है, तब तक आपकी नीकर-बाही मफल नहीं हो सकती है। प्रिवेंटिव डिटेनन एक्ट के भ्रमर मैं डेढ़ महीने जेल में बन्द रहा हूँ जो धारा 144 में मैं बन्द रहा हूँ, बीसा के भ्रमर मैं बन्द रहा हूँ। मेरा एक माह दोष यह था कि मैं जनता की बात करना था। इस कानून की धाड़ में जा किया जा रहा है चाहे उस में कितने भी सेकान्ड क्वेश्चन न रहें आप उनका दुष्प्रयोग होगा और इनको हम सिद्धान्त बिल्कुल पसन्द नहीं करते हैं। किसी भी व्यक्ति का बिना मुकदमा चलाए जेल में बन्द किया जा सकेगा। दो महीने के बाद उनको छोड़ दिया जाएगा और पुन उसको बन्द कर दिया जाएगा। इस प्रावधान का हम प्रकार में इंट्रिटेनन करके इच्छा लागू किया जाएगा इनका मुझ पूरा विश्वास है। सी० प्रार० पी० सी० का जब सन्निधान यहाँ पर पेश कर दिया गया था उस वकत जनता पार्टी के सदस्य सदस्यों के दबाव के कारण हॉम मिनिस्टर को यहाँ पर धार कर घोषणा करनी पड़ी थी कि हम इसको वापिस लेते हैं। जिस चीज को खत्म हाना था जिस चीज को बिल्कुल भी लागू नहीं करना था धार उसी का धार लागू कर रहे हैं। हम तरह से जा धार कर रहे हैं हमको बिल्कुल माना नहीं जा सकता है। जिस प्रकार से एक महिला पार्टी की गर्भवती नहीं हो सकती है उसी प्रकार से स्वतन्त्रता पार्टी की नहीं हो सकती है, अगर धार स्वतन्त्रता के भ्रमर विश्वास रखते हैं तो कितने ही लोग इस तरह की धाराओं के भ्रमर बन्द रहे हैं और कितने ही साधो बन्द रहे हैं इसको धार भच्छी प्रकर से जानते हैं। मैं चेतावनी देना चाहता हूँ कि जनता पार्टी के धारनिक नत्ता सभर्ष में जो कुर्सी पर रहेंगे वे सत्ता का विरोध करने वालों को जेलों में जरूर बन्द करेंगे। सभी जनता पार्टी के सदस्य सदस्यों को मैं चेतावनी देना चाहता हूँ कि उनको भागाह करना चाहता हूँ कि अगर उनको बिना मुकदमा चलाए जेलों में बन्द होना है तो वे इस प्रावधान का समर्थन करे अन्यथा वे विरोध करे।

मुझे खुशी होती अगर पार्लियामेन्टरी पार्टी की भीड़िंग बुलाई जाती, उसको कान्फिडेंस में लिया जाता और उस में इस पर विचार होता। जिस प्रकार से सी० प्रार० पी० सी० में सन्निधान के सवाल को ले कर पार्टी के भ्रमर पार्टी के सदस्यों का

दबाव रहा और सरकार को मजबूर हो कर उसका वापिस लेना पड़ा उसी प्रकार से यहाँ भी हो सकता था।

हमारे कन्वन्सिट निज यहाँ कीबन्द धार एक्सप्रेसन और कीबन्द धार स्पीच की बड़ी बड़ी बातें करते हैं। मैं कहना चाहता हूँ कि जितना यह जरूरी है उतना ही राइट ट बर्क भी जरूरी है। मैं उनको कहना चाहता हूँ कि सासजेनिस्तीन और सजाओव को रूस से देना निकाला दिया गया उसको भी उनको कर्बम करना चाहिए। दो लेखकों को बहा पर लेखन कार्य करने पर नौ साल और तेरह साल की सजा दी गई है, इसको भी हमारे कन्वन्सिट मित्रों को कर्बम करना चाहिए। बोली और रोटी दोनों की जरूरत है। धार जनता पार्टी ने जो राटी देने का वादा किया था वह तो दी नहीं जा रही है उसके साथ साथ बोली भी छीनी जा रही है इनमें। मैं कहना चाहता हूँ कि यह जो तीन बलाव हैं जो कि हमारी स्वतन्त्रता का हनन करने वाली हैं जो हमारी बोली को छीनने वाली हैं, हमें जेल में बन्द कराने वाली हैं, जिस में भ्रमर बिना किसी कारण बताए हमें जेलों के भ्रमर उस दिया जाएगा उसका हमें सख्त विरोध करना चाहिए। मैं धारा करता हूँ कि शान्ति प्रथम जो इस बलाव में जो प्रावधान उन्होंने कर रखा है उसको हटाएंगे पार्टी को कान्फिडेंस में लेंगे। अगर ऐसा नहीं होना है तो बहुत से समय सदस्यों की यह राय है और प्रावधान हो सकता है कि बाध्य हा कर उनको या तो बॉटिंग के समय एबस्टेन करना पड़े या फिर इसके विरुद्ध मत देना पड़े। इस बान्त मैं कहना चाहता हूँ कि पार्टी को धार कान्फिडेंस में लें। मैंने माफ करे धारण पार्टी को कान्फिडेंस में नहीं लिया है और धारण पार्टी का कान्फिडेंस में लेना चाहिए था। तभी इसका कुछ हल निकल सकता था।

SHRI CHITTA BASU I rise to express my strong views against article 22 which, if you permit me, I must say is a blot on the Constitution of our country. Maintaining preventive detention is nothing but the negation of the rule of law. I think you are one of those who want to restore the rule of law in the country.

SHRI C K CHANDRAPAN Only to speak

SHRI CHITTA BASU I am inclined to correct myself and accept Chandrapan's view that you are interested only to speak about the rule of law, and not to implement it, not to translate it into action. The preventive detention law in the past has always been used against democratic movement. I am one of those who have been victims of this preventive detention law—I do not mean myself.

[Shri Chitta Basu]
alone, but many of us; many on this side have been victims of the preventive detention law in our country. In accordance with the electoral promise given by the Janata Party, this preventive detention law should go away. But, unfortunately it is being re-introduced. While it was assured that there would be no preventive detention law, now the only change which has been made is that the period of detention has been reduced from three months to two months.

SHRI RAM JETHMALANI Even that is not right, that period is only for referring it to the Advisory Board.

SHRI CHITTA BASU The Advisory Board will merely examine the report given by the police officer, or the bureaucrats. Naturally, as in the past, the Advisory Board would generally advise the continuation of the detention, without going into the facts or examining the facts. So, the provision about the Advisory Boards does not materially change the situation. These Advisory Boards were there in the past, they will be there in the future, but we do not expect any material change in the decisions of the Advisory Boards. Of course, it is mentioned here that the Advisory Boards will consist of sitting Judges or persons who are qualified to be appointed as Judges, but that does not mean any change.

The question before the Government is whether the ordinary laws of the country are not sufficient and adequate enough to curb the economic offences, or offences likely to be committed by anti-social elements. I am glad to note that many members, particularly Shri Jethmalani, have eloquently established this fact that there are adequate provisions in the ordinary laws of the land by which the anti-social elements and economic offenders can be firmly dealt with.

If that is the position, then the question arises why the preventive detention law is being retained. The only purpose is to apply it against

democratic movements, against the parties of the opposition. This is quite clear. Even under the Janata Government, this kind of preventive detention law was enacted recently in Madhya Pradesh, not to curb the activities of anti-social elements, not to curb economic offences, but to deal with the strikers of the State Electricity Board. I have a chart with me which shows that even today there are six different States in the country, which have got preventive detention laws. They can have preventive detention laws only because of the existence of article 22 in the Constitution of the country. This becomes a derivative source. Because of article 22, the State Legislatures are entitled to have this kind of preventive detention law.

My amendment seeks to remove that particular provision which provides for the preventive detention laws from the Constitution itself. I hope the hon. Minister will remove this blot from the Constitution itself and ensure the rule of law and since you are not permitting me, I am not extending my speech. I think the hon. Minister will do this in implementation of the electoral promises.

MR CHAIRMAN Mr Vayalar Ravi.

SHRI VAYALAR RAVI: Mr Saugata Roy will speak.

MR CHAIRMAN Yes, Mr Saugata Roy.

SHRI SAUGATA ROY Before I start speaking, I would like to say that we expect that in calling the names you will give preference to those who have not been called earlier. I am sorry that that practice has not been followed. It will be better.

SHRI DINEN BHATTACHARYA: Why not serially?

SHRI SAUGATA ROY: One man whose name is not in the amendment list has been called.

MR CHAIRMAN. I may say, not one, there are many who have been

called. There is a list with me already and I am proceeding according to that. (Interruptions).

SHRI VAYALAR RAVI: We have given fifteen amendments. We can speak about hundred times. Don't bother.

MR. CHAIRMAN: Mr. Saugata Roy.

SHRI SAUGATA ROY (Barrack-pore): I would like to speak about clause 3 of the 45th Constitution Amendment Bill and I would like to express my personal views on this matter. This clause seeks to amend Article 22 of the Constitution and give somewhat a new shape to the preventive detention law. I want to say that on this question I feel very strongly, personally, that preventive detention law must go in this country. The Law Minister has made a very good beginning by belatedly repealing the MISA which was a much hated Act and against which the people of this country voted unequivocally. But as long as Article 22 remains in the Constitution, the fundamental rights given in Article 29 will never be fulfilled and that is why, it is my strong view that though we have passed thirty years as independent India, it is surprising that in this country there is a logic, the administrators logic. The Congressmen who fought for the freedom, when they became the rulers, when they framed the Constitution, they brought in this clause of preventive detention in the Constitution. The Opposition people were jailed. The Janata Party people were in jail due to preventive detention laws. But when they become the rulers, they bring in, they keep in some form or other the very same preventiv detention laws. I say the Emergency has been a dramatic experience for this country, a very difficult experience for a country which is only thirty years old as a free country and after thirty years, one chapter has been closed. That chapter has been closed with the end of the Internal Emergency in March 1977 and a new chap-

ter has started. A multi-faceted character is emerging in the whole of the country. It can be now taken for granted that.

AN HON. MEMBER: It is now 7 O'clock. He can continue tomorrow.

MR. CHAIRMAN: Let him finish. He will take two or three minutes more.

SHRI C. K. CHANDRAPPAN: Half an-hour discussion has to be started.

MR. CHAIRMAN: I know that (Interruptions)

SHRIMATI PARVATHI KRISHNAN: The Speaker has said that those do who did not participate in the first reading, can take more time now.

MR. CHAIRMAN: In two minutes he would finish.

SHRI VAYALAR RAVI: The rule is that we must take half-an-hour discussion at seven.

MR. CHAIRMAN: Mr. Saugata Roy, how long will you speak?

SHRI SAUGATA ROY: I will take another seven minutes. I have spoken only for about three minutes.

MR. CHAIRMAN: No, you have taken five minutes.

SHRI C. K. CHANDRAPPAN: On a point of order. Unless the House decides, you cannot change the half-an-hour discussion from the scheduled time. It is stipulated in the order paper that at 7 O'clock we will take up the half-an-hour discussion.

19.00 hrs.

MR. CHAIRMAN: I am not changing; it is a question of one or two minutes.

PROF. P. G. MAVALANKAR (Gandhinagar): Since my hon. friend wants to speak for a little longer time he may be allowed to continue tomorrow.

MR CHAIRMAN That is why I asked him, for how long he was going to speak, if he could finish in one or two minutes

SHRI SAUGATA ROY I want to speak for a few minutes more.

PROF P G MAVALANKAR He cannot be prevented from speaking on the preventive detention

MR CHAIRMAN: He may continue tomorrow

10 02 hrs.

HALF-AN-HOUR DISCUSSION

SUGARCANE IN FIELDS

MR CHAIRMAN We now take up the Half-An-Hour Discussion Shri Ram Dhari Shastri

श्री रामधारी शास्त्री (पवरोला) मभापति महोदय, मैंने 17 जुलाई, 1978 को एक प्रश्न पूछा था, जिस का एक भाग यह है

“(क) क्या लगभग 20 लाख टन गन्ना सूख रहा है, क्योंकि इस की फसल अभी तक खेती में पड़ी है, और

(ग) यदि हाँ, तो क्या सरकार का विचार है इसके लिए किसानों को मुआवजा देने का है और यदि हाँ, तो कितना ?”

इस प्रश्न का उत्तर सरकार की ओर से यह दिया गया

“(क) केन्द्रीय सरकार ने इस प्रकार का कोई सर्वेक्षण नहीं कराया है और इस लिए बिना कटी गन्ने की फसल की कुल मात्रा के बारे में ठीक-ठीक अनुमान उपलब्ध नहीं हैं। तथापि, उत्तर प्रदेश और हरियाणा की राज्य सरकारों से जब सभी कैक्टरियों पिराई का कार्य बन्द कर देती, तब अन्तिम स्थिति बताने के लिए कहा जा रहा है। इन राज्यों में समस्या अपेक्षाकृत गम्भीर बनाई जाती है।

“(ग) केन्द्रीय सरकार अथवा राज्य सरकारों की ऐसी कोई योजना नहीं है कि जिन गन्ना उत्पादकों का गन्ना बिना बिके रह जाता है, उन्हें उसका मुआवजा दिया जाये।”

मैं आप के माध्यम से यह कहना चाहता हूँ कि इस देश में अन्ध कोई सब से बर्बरत्व है, जो वे गाँवों में बसने वाले 80 प्रतिशत किसान हैं, और उन का एक हिस्सा है गन्ना किसान। इस

देश में 288 छोटी बड़ी चीनी मिलें हैं और सात हजार से ज्यादा कारखानों की इकाइयाँ हैं। उत्तर प्रदेश, बिहार, गुजरात, महाराष्ट्र, कर्नाटक, आंध्र, तमिलनाडु, केरल, पंजाब, हरियाणा और मध्य प्रदेश की यह मुख्य नकदी फसल है। उत्तर प्रदेश में 6½ प्रतिशत भूमि में गन्ने की खेती होती है, पश्चिमी उत्तर प्रदेश में 20 प्रतिशत भूमि में गन्ने की खेती होती है और एक जिले, मुजफ्फरगंज, से 50 प्रतिशत जमीन में गन्ने की खेती होती है। यह रिकार्ड है।

इन साल की स्थिति यह है कि केवल उत्तरप्रदेश में 50 लाख टन गन्ना खेता में खड़ा है जब उत्तर प्रदेश के केन कमिश्नर से हमारी बात हुई तो उन्होंने कहा कि 14 अगस्त तक कुछ मिल चलती रहेगी और उसके बाद भी 20 लाख टन गन्ना खेता में बच जायेगा। उत्तर प्रदेश का 50 लाख टन गन्ना खेता के भाव के हिसाब से 6-9 करोड़ रुपये का गन्ना है जा खेता में खड़ा रहे, और उसका कोई पुराना हाल नहीं है। मध्य प्रदेश में भी कुछ जगह गन्ना खड़ा है। कर्नाटक के हमारे मिता ने बताया है कि वहाँ भी गन्ना खड़ा है। इन प्रकार कुल मिला कर एक अरब रुपये में ज्यादा का गन्ना खेता में खड़ा है।

सरकार ने कपड़े चीनी या जूट के नशी कारखानों का बराबर प्रोत्थान दिया है। उनकी आवाज को वह सुनती है। अगर जब गन्ने पर आधारित कराइया किमान नबाह और बर्बाद हो रहे हैं, तो उन को मुआवजा देने के बारे में सरकार का जवाब है कि गिनी बॉर्ड योजना सरकार के विचारधीन नहीं है। मैं कहना चाहता हूँ कि अगर जनता सरकार किसानों की सरकार है, तो उसे यह सोचना पड़ेगा कि इतनी बड़ी तादाद में जिन किसानों को नुकसान हो रहा है, उन के बारे में क्या किया जाए।

यह क्यों हुआ ? इसके लिए अगर कोई जिम्मेदार है, तो भारत सरकार जिम्मेदार है। भाव खेता में 2 जो गन्ना खड़ा है उस का कारण यह है कि सरकार को पहले से जानकारी थी कि इस साल गन्ना पिछले साल की अपेक्षा 15 प्रतिशत से 20 प्रतिशत ज्यादा है। उसका चाहिए यह था कि—जो पत्नी सरकारों ने भी दिया है वह मिल-मालिकों को गन्नाइज द्यूटी में 17½ परसेंट छूट देने की घोषणा अक्टूबर से करती, अगर उसने नवम्बर में की। नवम्बर में घोषणा की तो मिलें विसम्बर में चनी। एक महीना सवा महीना बाघ में चली और दूसर साथी इन के ऊपर इतनी हावी हैं, ये बड़े बड़े मिल मालिकों के प्रभाव में इस तरह है कि उन के बचाव में धा कर इन्होंने चीनी मिलों को तो छूट दे दी लेकिन सड़के साल हजारों जो कारखानों की इकाइयाँ हैं वेग में जो छोटी छोटी इकाइयाँ हैं जो चीनी पैदा करती हैं उन को इन्होंने कोई छूट नहीं दी। यह कहा कि यह ठीक चल रही होनी। जब बहुत प्रकार पड़ा, गन्ना सड़ने लगा,