[Shri K. Lakkappa]

orders could have been booked. It is high time that this bureaucratic attitude of Texprocil should be stopped and unless and until the Government frames rules and regulations with the main intention of increasing the exports, India may have to face a serious situation when its textile exports themselves will come to a complete halt. Further, to infuse confidence in the heart of small scale industries, viz., the garment manufacturing units who were a pawn in the chess board of Texprocil, the Government should immediately appoint a Committee to investigate into the acts of Texprocil and take action against those officials, even if they resign, if they are found guilty. This is the only way in which the Export Promotion Councils could be made to play a constructive role. The act of Texprocil has led to the closure of quite a lot of garment manufacturing units, thereby leading to the unemployment problem

The history of Texprocil may be taken as the history of ruining the small-scale industries in India pertaining to the ready-made garments and it is indeed surprising that no action, whatsoever, has been taken by the Government to go into these details and to punish the guilty.

I would request the hon. Minister, Shri Mohan Dharia, who is for taking up socialist programmes and policies should come out with a bold statement to do the needful in this regard.

MR. SPEAKER: The House stands adjourned for lunch to meet again at 2.05 P.M.

13.08 hrs.

The Lok Sabha adjourned for Lunch till Five Minutes past Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at Seven Minutes past Fourteen of the Clock.

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

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL—*contd.*

MR. DEPUTY-SPEAKER: Now, we take up further consideration of the Constitution (Forty-fifth Amendment) Bill. Prof. Mavalankar. You have already taken 13 minutes.

SHRI P. K DEO (Kalahandi): The time should be extended.

MR. DEPUTY-SPEAKER: We had allotted ten hours for the General Discussion.

श्री उपसेन (देवरिया) आप समय नियत कर दीजिए कि प्रति व्यक्ति को इतना समय मिलेगा।

उपाध्यक्ष महोदय आप जरा शान्त हो जाइए, अपनी ही बात कहने में मस्त न हों, मैं बता रहा हूं। इस पर डिस्कशन के लिए 10 घंटे दिए गए थे। 4 घंटे 45 मिनट हो चुके हैं और अभी 5 घंटे 15 मिनट बाकी हैं। मेरा सुझाव यह है कि—चूंकि आज जो शाम को डिस्कशन होना था 6 बजे से 8 बजे तक, वह पोस्टपोन हो रहा है—हम लोग वह टाइम इस कांस्टीट्यूशन (एमेंडमेंट) बिल पर ले लें, तो दो घंटे और मिल जाते हैं। .. (व्यवधान)

श्री यमुना प्रसाद शास्त्री (रीवा) मेरा कहना यह है कि यह जो समय आप बढ़ा रहे हैं, इस समय को और अधिक बढ़ाया जाए क्योंकि यह संविधान (संशोधन) बिल का मामला है और इस पर बहुत से लोग बोलना चाहेंगे और अपनी राय देना चाहेंगे। 10 घंटे का जो समय है, इसको काफी अधिक बढ़ाया जाए।

उपाध्यक्ष महोदय . इसीलिए तो 12 घंटे हो रहे हैं।

SHRI KANWAR LAL GUPTA (Delhi Sadar): So, the total will be twelve hours?

MR. DEPUTY-SPEAKER: It will be just twelve hours because we had allotted ten hours. Now we will be

taking two hours more, i.e., from 6.00 to 8.00 p.m. Taking that into consideration, it will be twelve hours. This is including the time already taken. So, we will be left with 7 hours 15 minutes.

AN HON. MEMBER: Excluding the Minister's time?

MR. DEPUTY-SPEAKER: No; including the Minister's time.

I propose that the Minister start his reply tomorrow and let the Members finish the discussion today. Voting will take place soon after the Minister's reply tomorrow.

Now, we start.

SHRI KANWAR LAL GUPTA: Total 12 hours plus the reply of the Minister.

MR DEPUTY SPEAKER: No, no. It will include the Minister's reply

SHRI PABITRA MOHAN PRADHAN (Deogarh) You please limit the time for a speaker so that more members can be accommodated.

MR. DEPUTY-SPEAKER: We will not give more than 15 minutes to each speaker.

SHRI N. K. SHEJWALKAR (Gwalior): In that case we may have to sit till 9.30.

MR. DEPUTY-SPEAKER: The Minister's reply will be tomorrow.

SHRI N. K. SHEJWALKAR: How long are we going to sit today?

MR. DEPUTY-SPEAKER: Till Eight.

Now, Mr. Mavalankar.

PROF. P. G. MAVALANKAR (Ahmedabad): While congratulating the Law Minister again for piloting this important Bill so as to nurture and strengthen the democratic institutions in the country and also to establish on a sure and secure basis the Rule of Law throughout the land so as to ensure that all citizens high or low and, no matter how highest he or she may be, are equal in the eyes of law, may I say this by way of concluding observations on a few of the remaining aspects of this important Bill?

First, about preventive detention, I welcomed yesterday the new stringent provisions making it very difficult for any government to arrest and detain people for long and without trial. May I say, further, that ideally and really speaking, preventive detention must be abandoned altogether and we all—governments, Members of Parliament, political parties and the citizens in general—must go ahead in that direction quickly, concretely, honestly and fully because preventive detention, in my judgment, both in principle and practice, is a negation of freedom, rights and the civil liberties.

About referendum, my continued opposition to referendum remains. I opposed it at the introduction stage and I oppose it even now. In fact my opposition has been further strengthened after what I read the Law Minister's remarks about it in the course of his speech in the meeting of the Consultative Committee of his Ministry.

The Law Minister says, referendum i.e. a reference to people is a duty. Who denied that? Nobody says that we must not refer to the people. But do we want the people to be referred to all the time? The question is whether referendum is a right means to do it. Referendum is impracticable, difficult and very expensive. His own statement says that it will be Rs. 30 crores at any one time—Rs. 7 crores plus Rs. 23 crores. But apart from being expensive—and if it is valuable. I will even go in for that—the whole point is that referendum is something which is not necessary because, here is the Parliament and it is elected every five years and if the Parliament does something very wrong, people

[Prof. P. G. Mavalankar]

may elect a new Parliament and the new Parliament may undo that wrong thing. How can the people understand complicated and intricate political and constitutional issues? A referendum can be thought of for deciding a political issue But it cannot be made permanent for seeking a constitutional amendment The point is that referendum is only found in Switzerland, Australia and America, and it is compulsory for constitutional amendments in Switzerland and Australia So, by and large, no country in the democratic world excluding Switzerland and Australia has got referendum for the purposes of Constitutional Amendments. That is No 1 Secondly, about referendum, I have an important word to say If something is basic—Sir, I do not want to take the time of the House by repeating—and we have said that four things are basic things in the Constitution, why then do you make these things amendable? Because if 51 per cent of the people may say, 'Fundamental rights may go' and 49 per cent of the people say 'No', will you amend them by this means of referendum? I would say, Sir, even if 99 per cent of the people say, 'Fundamental rights may go', you cannot do it I for one will say that these are basic things and they must be kept unamendable That is my point

The Law Minister was talking about trusting and respecting the people Let him not be clever Let him be correct also We have never said that we do not trust the people All that we say is that referendum is not the right method.

Then, Sir, a word about the right to private property I am glad it is being taken away from the fundamental rights chapter and now it is going to be a legal and constitutional right All the more because of the fact that we want socio-economic legislation to go ahead and the property right not to come in the way of our social and economic progress and in our effort to make the society egalitarian and socialist, we want this right to go completely out of the fundamental rights chapter.

Lastly, provisions regarding President's rule in States have been made more accurate and right. That I welcome

The philosophy of our Constitution, the practice of our Constitution and the purpose of our Constitution have to be respected in such a way that emergency or no emergency, no part of the Constitution can be deformed, defiled and defaced We must all go in the direction of making our Constitution and the Government workable and satisfactory to the people, because the Constitution is after all an instrument, a means, not an end, the end is the welfare of the people If this is done, we will eliminate the exploitation of the people in this country and earn their respect

PROF DILIP CHAKRAVARTY (Calcutta South) Mr Deputy-Speaker, Sir, I congratulate the Law Minister. . .

SHRI SOMNATH CHATTERJEE (Jadavpur): And the people of this country

PROF DILIP CHAKRAVARTY: People have to be congratulated perpetually

I congratulate the Law Minister for bringing for the consideration of this House, though belatedly, this Constitution (Amendment) Bill We expected as a matter of fact, that this Bill would be brought long before. Possibly he was taking time, and rightly so, for having consultations with the friends opposite. I also have a word of appreciation for the major opposition parties and groups for agreeing to the provisions of this amending Bill

The Janata Party by bringing forward this Bill is trying to restore the testament of faith that the founding fathers of our Constitution bequeathed to the people. Insecurity would be no more. We owe it to the people who sent us here to see that there should be no further erosion, no further attempt in future to scuttle the fundamental rights. This Parliament has already restored the judiciary to its former glory There are certain other provisions in this Bill itself whereby the judiciary will be restored to its prestine glory, and the rule of law for all intents and purposes would be restored. But I would like to utter a word of caution. Mere legal provisions for securing equality before the eyes of law are not enough, as long as seventy per cent of our population are permitted to languish below the poverty line and they are denied the opportunity to take advantage of the legal system This also should be borne in mind not merely by the Law Minister, but by the Government as a whole

I also congratulate the Law Minister for redeeming the pledge given in our election manifesto namely to delete the property rights from the Fundamental Rights....

SHRI P. K. DEO: And to substitute this with the right to work

PROF. DILIP CHAKRAVARTY: Yes. ..

MR. DEPUTY-SPEAKER: Do not get deflected by your neighbours, because you have only fifteen minutes time. They would derail you from your arguments.

PROF. DILIP CHAKRAVARTY: Sir, I congratulate the Law Minister for redeeming the pledge given to the people at the time of elections. I also congratulate the Minister for deleting the obnoxious Article 329A, which was being popularly called 'Save Indira clause' in our mutilated Constitution. By Article 329A, benefit was sought to be given retrospectively to Shrimati Indira Gandhi. Let us give a go-by to the things of the past.

Further, by an amendment of Article 74, the status of the President is sought to be impoved. This is the first time that the President of the Indian Republic would be having the right to ask for a reconsideration of a matter by the Council of Ministers, though ultimately if the Council of Ministers reiterated its former position, the President has to accept. That is a welcome provision Possibly, if such provisions had been there, earlier, the late lamented President Fakhruddin Ali Ahmad would have thought for a second time. to pass it on to the Cabinet or to insist on a reconsideration before signing papers declaring emergency Of course, according to the then provisions, he could have insisted. He did not However, I need not dilate on it

Last year, Parliament itself restored the popularly known provisions of the Feroze Gandhi Act. This was one of the first acts undertaken by the present Government. In the present Constitution (Amendment) Bill, Article 361-A is being inserted, whereby protection is sought to be given to those who publish parliamentary proceedings. This is a step in the right direction. If we keep the people of the country continuously involved in the parliamentary proceedings, that is a surer guarantee for preserving democracy in the body politic of the country

In the election manifesto of the Janata Party, we insisted that there should be a very cautious use of the powers for having President's rule in the States, because the States' autonomy was made nugatory, particularly during the period of Emergency. But I have a feeling that even in our election manifesto, it is said that conditions should be clearly laid down with regard to the President's

[Shri Dilip Chakravarty]

rule in the States. It is for the consideration of the hon. Minister of Law. Otherwise there are dangers, there shall always be the danger, of subjective reports being sent by Governors of States, and decisions being arrived at on the basis of those subjective reports. If we have to preserve the quality of the Indian polity, we possibly expect that in future, different parties will be ruling in different States of India, whereas another party will be ruling at the Centre. So, these guarantees are necessary in maintaining the balance in the body politic of the Indian Republic. And even in matters of appointments of Governors, the ruling party in the State should also be involved. Their opinions should also be given due weight. These are the provisions which may form the subject matter of another Constitution Amendment Bill.

This is the first time since 1950 that the Government of India tried to rule the country without any Preventive Detention Act. And this fact should be applauded; but at the same time, one would feel it to be a matter of shame that the enabling provisions in our Constitution continue to remain, which give power to the States and also to Parliament, to enact for preventive detention. If we are really intent on restoring democratic norms in the country we should give for all times to come, a go-by to the provisions which enable the State Governments and the Parliament to enact in future, any preventive detention legislation.

I would also draw the attention of the Law Minister to another provision in our manifesto—page 9 of that manifesto—which declares, "We would guarantee the recall of errant legislators." We should not forget our own commitments. I am aware that our attempts are to translate all our commitments one after the other; but let us not lose sight of many important commitments which remain yet to be fulfilled.

I should also like to draw the attention of the hon. Law Minister to our manifesto, page 9, item 18 which relates to right to work. There should be some provision in our constitution itself for this; I should personally prefer to put the right to work as one of our fundamental rights; we have removed property rights from the chapter on fundamental rights but we should substitute the right to work by incorporating it in the fundamental rights, as also the right to social security.

I was listening with rapt attention to the speech delivered by my friend Prof. Mavalankar who is no longer here in the House. He came forward with some arguments. He is a democrat. Reading the proceedings of Parliament during the emergency would show that in Parliament he was fighting against the amendments to the Constitution, against emergency provisions. How many, I would ask him, got up to support him in his opposition to the emergency provisions? Now he talks eloquently about the sovereignty of Parliament. I do not deny it; I belong to this Parliament But which one should be given precedence—sovereignty of the people or sovereignty of Parliament elected by the people? Like any India scholar depending for his knowledge only on western publications, in his eloquent language he asks; how can the people of this country understand complicated issues? With the same eloquence he cited the instance of Switzerland and many other foreign countries which have cent per cent literacy and suggested—that those were methods which we could not accept. Prof. Mavalankar is a professor and an expert on constitutional law and political philosophy. I am not. But as a person with some little pragmatic sense and as a person who has faith in our people and in the crea-

tive ideas of the Indian people, I would ask him: what happened in the 1977 elections? Could anybody have imagined that with the press and publicity organs stifled, with fundamental rights not restored, with courts being crippled under a mutilated constitution, with many candidates in the elections languishing inside jails with no organisation worth the name, without the necessary financial power to go and reach the people, how did the people react? It does not today lie in anybody's mouth to caution on this by quoting from western experts. It is time we laid emphasis, we put our faith in our people. I am aware as anybody else that 70 per cent of our population are devoid of the three Rs; not only that, more than 60 per cent of our population live below the hunger line. Even then they knew how to react when they were called upon to react against an authoritarian regime. With these words, I would beseech everybody including hon. friends in the Opposition, the Leader of the Opposition Mr. Stephen and others to agree to the provision on referendum. This will be something new; we can show the way to the rest of the world. It is my plea to Prof. Mavalankar along with others who sit on the opposite who are still hesitant to agree to this provision on referendum. That is the surest way of guaranteeing freedom to the people at large to which we are all committed.

MR. DEPUTY-SPEAKER: You kept exactly within the time allotted.

PROF. DILIP CHAKRAVARTY: I will never exceed the limit.

SHRI M. N. GOVINDAN NAIR (Trivandrum): Sir, I welcome this amending Bill. I also congratulate the Minister on holding prior consultations with all the parties. I specially support clause 45 to amend article 368, where he has defined the basic structure of the Constitution and made it clear that without a referendum, this basic structure cannot be changed. I welcome it. We had to learn from bitter experience. In a country where the fate of the State is decided by waves, in one wave you may get a sweeping majority and in another wave, it may be something else. I feel that this provision for a referendum is a must in these circumstances. For another reason also I welcome it. It is helping all of us to re-educate ourselves as to what the basic structure of our Constitution is, especially at a time when the rights which you want to preserve are being trampled under the foot with impunity by certain sections of the people all over the country.

I need not remind you that article 15 under the chapter on fundamental rights clearly states that there shall be no discrimination. But what is happening in the country now? I do not want to go into all those details. It is a very good thing that you remind us through this very provision that these are the basic structures—secularism, democracy, adult franchise and fundamental rights. I am glad that the right to property has been taken away from among the fundamental rights. All the Members of Parliament and State Legislatures including Ministers have to take oath of allegiance to the Constitution. Let us forget the people outside. So far as taking oath in the name of God is concerned, now I have realised that most of us do not believe in God. Otherwise, the fear of God would have helped them to fight against the trend and beliefs working against the democratic rights provided in the Constitution. The political system we are having is embedded in the Constitution. Unfortunately, we have inherited an undemocratic social structure. Unless we are prepared to fight against this undemocratic social structure, we will not be able to have secular and political democracy. Therefore, reminding the

[Shri M N Govindan Nair]

Members of Parliament and the people that without secularism, without democracy, our nation as a nation cannot survive is necessary and this must be brought home to everybody That is why I lay so much stress on supporting this

With all good intentions, you have brought in certain amendments in regard to the emergency I am not questioning your intentions After all, you are a youngster you are lacking political experience Therefore I want you to learn from past experience where the Constitution was circumvented to bring down the Government It started with Kerala in 1959 Even when the Government enjoyed a majority in the name of the masses having gone against the Government all joined together to pull down the Government The only person who had a feeling of agony was the then President Dr Rajendra Prasad who had to sign the dismissal order Everyone else combined to pull down the Ministry What was the result? This became the method of pulling down any Ministry if the Centre did not like it

SHRI P K DEO It has become a routine

SHRI M N GOVINDAN NAIR It has become a routine You can count how many Ministries have been brought down

According to the present amendment emergency can be imposed if there is an armed rebellion If you are going to include this, I am sure there will be infighting inside the various parties and groups and you will be unleashing armed action all over the country I have no doubt about it Therefore, as far as the emergency is concerned, excepting when there is external aggression there should be no provision to impose it

Coming to President's rule, you have made certain changes but that is not enough. Why should there be President's rule for six months or one year? There also, look into the past and see how many times President's rule was introduced, how it was prolonged and prolonged Therefore, within two months re-election should be conducted There shall be no President's rule Therefore, what I would suggest is that you have to make necessary amendments to your Bill to take away this imposition of President's rule How are you managing it here at the Centre? There is no provision for President's rule here You have to call for elections immediately If this country of 600 million people have to take part in an election when there is a breakdown here what is the difficulty in conducting an election if there is a constitutional breakdown in one of the States? Your talking about rains and climate and all that is all wrong Within two months in any State you can conduct elections Therefore I am not questioning the spirit in which you have brought these amendments but I am trying to improve upon it so that this may be a real amendment of the Constitution

In clause 44 you have spoken about "Republic' Secular' and 'Socialist" in bold letters

AN HON MEMBER What else you want? Everything is there?

SHRI M N GOVINDAN NAIR What I want is we should be politically honest If you do not want socialism, do not say that you are for a Socialist State If you really mean that you are for a Socialist State, then there should be necessary amendments in this whereby you lead the country to socialism Otherwise, there is no point in using these words Whom are you fooling? You think you are fooling the people you are only deceiving yourselves. Nobody is going to be fooled by such a statement Suppose you write in a paper "sugar" Will it be sweet? So, if

you do not believe in it, do not put it. But if you mean it, then strengthen it by necessary changes.

There are certain minor amendments which, I think, we will not find it difficult to accept, about which we will give our views at the time of the clause by clause consideration.

श्री कंवर लाल गुप्त : (दिल्ली सदर) उपाध्यक्ष महोदय, श्री गोविन्दन नायर का भाषण सुनने के बाद मैं समझा ...

SHRI M. N. GOVINDAN NAIR: Please speak in English.

SHRI KANWAR LAL GUPTA: After listening to the speech of Shri Govindan Nair, I was pleased to learn that they have become wiser now, of course very late

एक माननीय सदस्य हिन्दी में ।

श्री कंवर लाल गुप्त आप चिन्ता मत करिये ।

Similarly, I heard the speech of a Congress Member, a former Minister He has also achieved realisation after the dark period of 19 months He has become wiser. I heard also Shri Stephen He tried to defend the emergency in a half-hearted way. He has also become wiser. I may say now they have all become wiser. Had they been wise enough before, then this dark period would not have been there in this country and we would not have been in jail for 19 months.

मुझे एक ही बात कहनी है कि माननीय मंत्री महोदय ने जो विधेयक रखा है वह एक हिस्टोरिकल इविष्ट है भारत के इतिहास में और मैं उसके लिए उनको बधाई देना चाहता हूं। मैं कहना चाहता हूं कि 19 महीने की जो काली रात थी वह इस बिल के द्वारा दफना दी गई और एक बार पुनः प्रजातंत्र का उदय हुआ है जिसको अंग्रेजी में री-बर्थ कहते हैं, वह दोबारा हुआ है और जनता पार्टी ने देश के सामने चुनाव में जो वायदा किया था, आज हम कह सकते हैं कि जब यह विधेयक पास हो जावेगा, हम उस वायदे का एक बहुत बड़ा भाग पूरा कर देंगे ।

We made a commitment and I must say we have fulfilled that because our commitment was total.

और उसमें भी हटने की कोई बात नहीं है। यह जो विधेयक है यह एक बात साफ बताता है कि जनता पार्टी जो वायदा करती है उसको वह पूरा करती है। हमने एक हिस्से को पूरा कर दिया है।

जो रोटी की बात है, मैं जनता से कहूंगा कि थोड़ा सा धैर्य रखें, उसको भी हम पूरा करेंगे। इसके लिए हमें थोड़ा समय दीजिए। (व्यवधान) आपको तो यह भी पसन्द नहीं है लेकिन आपकी पसंदगी से या नापसंदगी से कुछ होने वाला नहीं है। हम वायदा करते हैं जनता के सामने कि जब हमने इसको पूरा किया है तो उसको भी पूरा करेंगे लेकिन उसको पूरा करने में हम थोड़ा सा समय लेना चाहते हैं। उसको पूरा करने का समय हम मांगते हैं। हम यही कहेंगे कि थोड़ा धैर्य रखिए और जो झूठा प्रोपगण्डा हमारे खिलाफ किया जा रहा है उस पर विश्वास मत कीजिए।

अध्यक्ष महोदय, हमने इस विधेयक के जरिए से डेमोक्रेटिक वेल्यूज पर्सनल फ्रीडम, इक्वेलिटी विफोर ला, फ्रीडम आफ जुडीशरी, रेम्पवर्ट ट पार्लियामेंट इन सारी बातों को बहाल किया है। हम ने इसमें इसके बीच भेद नहीं किया। चाहे कितना ही बड़ा आदमी हो या कितना ही छोटा आदमी हो, कानून के सामने सब बराबर होंगे। इस विधेयक के जरिए से हम ने सब को एक लाइन में खड़ा किया है। इस के लिए मैं मंत्री महोदय और जनता पार्टी की सरकार को बधाई देना चाहता हूं।

It is an eye-opener to you and to all those who say that the Janata Government has done nothing. I think this is the biggest thing that the Janata Government has done. I can remain hungry, I can remain thirsty, but if I am not allowed to move freely, if I am not allowed to express freely, if I am not allowed to think freely, I am as bad as an animal.

SHRIMATI PARVATHI KRISHNAN (Coimbatore): And to die freely of hunger and starvation.

SHRI KANWAR LAL GUPTA: I am prepared to die of hunger and starvation. But I would like to be a free man and human. I do not like that. That may be your philosophy, but it is not our philosophy. We want both. But you don't undermine

[Shri Kanwar Lal Gupta]

that. It is in your way of thinking that it may be possible but not in the way of thinking of the Janata Party.

उपाध्यक्ष महोदय, हमने इस विधेयक के जरिए से यह कहा है कि संविधान का जो बेसिक स्ट्रक्चर है, वह जनता ही बदलेगी। वह बेसिक स्ट्रक्चर क्या है, उसके बारे में इसमें कुछ कहा गया है।

उपाध्यक्ष महोदय, आपको मालूम है कि सुप्रीम कोर्ट ने इन चीजों के ऊपर अपने अलग अलग निर्णय दिये हैं। कभी वह एक निर्णय लेती रही है, कभी वह दूसरा निर्णय लेती रही है और तीसरा निर्णय लेती रही है। जब वह अपने निर्णय इस तरीके से बदलती रही है तो आगे वह क्या करेगी, यह कहना मुश्किल है। एमर्जेन्सी के दिनों में सुप्रीम कोर्ट का जो एटीच्यूड रहा है, वह एक बदनुमा दाग है, हमारे देश के माथे पर एक धब्बा है। इसलिए हम सुप्रीम कोर्ट के ऊपर विश्वास नहीं कर सकते। बेसिक स्ट्रक्चर क्या है, बेसिक फीचर्स क्या हैं, इनके बारे में हमारे मंत्री महोदय ने मोटी मोटी चीजें ले कर कहा है कि इनको बदलने का अधिकार पार्लियामेंट को नहीं होगा। इसके लिए, या इनको बदलने के लिए इस पार्लियामेंट से ऊपर भी एक पार्लियामेंट होगी और इस से बड़ी वह जनता की पार्लियामेंट होगी।

मुझे आश्चर्य हुआ जब श्री स्टीफन ने यह कहा कि पांच साल के लिए आप कुछ भी कर सकते हैं। पांच सालों में आपने जो कुछ किया वह भी दुनिया को मालूम है। अगर आप फिर भी पांच सालों में वही करना चाहते हैं तो जनता पार्टी वह आपको करने नहीं देगी। वास्तव में जनता पार्टी पावर छोड़ना चाहती है और आप पावर खींचना चाहते हैं। यह है हमारे और आपके बीच का तरीका जो कि हमको और आपको एक दूसरे से अलग करता है। हम नहीं चाहते कि हम पांच सालों तक कुछ भी करें। हमारे जो मौलिक अधिकार हैं, जो कि संविधान का बेसिक स्ट्रक्चर है, उसको बदलने का अधिकार हम अपने पास नहीं रखना चाहते। मानना कि यह पार्लियामेंट सुप्रीम है लेकिन क्या वह जनता से भी सुप्रीम है और पांच साल तक वह जो चाहे वह करे? यह नहीं हो सकता। कांस्टीट्यूशन में अमेंडमेंट करने के तीन तरीके हैं— एक सिम्पल मेजोरिटी, दूसरा टू थर्ड मेजोरिटी, तीसरा रेटिफिकेशन बाई मेजोरिटी आफ स्टेट्स। हमने चौथा तरीका कांस्टीट्यूशन में अमेंडमेंट करने का अपनाया है। संविधान के जो बेसिक फीचर्स हैं, बेसिक स्ट्रक्चर है, वह जनता ही बदल सकती है। इस के बारे में आपने यह कहा कि 51 परसेंट मत इस के लिए पड़ने चाहिएं और उसके बाद ही मेजोरिटी मानी जानी चाहिए। इस सम्बन्ध में मेरा कहना यह है कि 51 परसेंट मत हक में पड़ने चाहिएं। यह नहीं होना चाहिए कि कुल 51 परसेंट मत पड़ें और उसके 51 परसेंट मत हक में पड़ें। यह हमारी मान्यता आज की नहीं है। यह मान्यता देश की परम्पराओं के साथ सम्बन्धित है। यह हमारे देश की संस्कृति का हिस्सा है। यह गलत है या ठीक आप बताएं। एक आदमी के कहने पर भगवान राम ने अपनी प्यारी सीता को छोड़ दिया। लेकिन दूसरी तरफ इंदिरा गांधी को आप देखें। ढाई लाख लोगों को बन्दर करके अपने एक बेटे के लिए वह उन्नीस महीने तक काले कानून को बनाए रखती रहीं और आप सब लोग चुप रहे। यह जो डैमोक्रेसी है यह हमारे देश की जिन्दगी का एक हिस्सा है। मैं बधाई देना चाहता हूं कि जिस तरह से सुप्रीम कोर्ट ने किया और जिस तरह से पिछली सरकार भी करती रही है वह अच्छा नहीं था और इसको हमारी सरकार ठीक कर रही है ताकि आगे कोई ऐसा न कर सके।

संविधान को कभी भी बदला जा सकता है। यह पावर पार्लियामेंट को डैलीगेट हुई है। हमने अपने संविधान में राइट आफ रिकाल नहीं रखा है। पांच साल के लिए जो आ गया उसको रिकाल नहीं किया जा सकता है। मैं इसका समर्थन भी नहीं करता हूं। लेकिन मैं यह जरूर मानता हूं कि जो बेसिक स्ट्रक्चर है इसको बदलने का जनता को ही अधिकार होना चाहिए। आपने ऐसा प्रावधान कर दिया है इसके लिए मैं आपको बधाई देना चाहता हूं। मैं समझता हूं कि इसका विरोध वही लोग करेंगे जो जनता के विरोधी लोग हैं, जिन के मन में डाउट है, शक है और जो चाहते हैं कि उनको किसी तरह से मौका मिल जाए और जैसे ही मौका मिले वे किसी भी तरह से दुबारा चुनाव नहीं होने देंगे, एक बार वे आ जाएं तो फिर दुबारा चुनाव होने नहीं देंगे। एक बार उन्होंने बड़ी भारी गलती कर दी है। ऐसे लोगों को हम एक्सपोज करना चाहते हैं।

हमें इस में एक चीज और एड करनी चाहिए। जो ज्वाइंट रिसपांसिबिलिटी है कैबिनेट की, विद प्राइम मिनिस्टर एज हैड, यह भी एक बेसिक फीचर है। आपको याद होगा कि प्रेजीडेंशल टाइप आफ गवर्नमेंट बनाने की कोशिश श्रीमती इंदिरा गांधी ने की थी। उसका एक ड्राफ्ट भी सर्कुलेट किया गया था। मैं दावे के साथ कह सकता हूं और मैं इसको साबित भी कर सकता हूं कि वर्ल्ड नोन जरिस्ट से उन्होंने बात भी की थी इस सम्बन्ध में और उनकी राय जाननी चाही थी और पूछा था कि दुनिया का इस पर रिएक्शन क्या होगा तो उन्होंने जवाब दिया था कि इसका अच्छा रिएक्शन नहीं होगा। आप रुक जाएं। यह करना ठीक नहीं है। कल को अगर ये पावर में आ जाते हैं तो फिर से उसी तरह का ढांचा बनाने की कोशिश कर सकते हैं —

श्री वसन्त साठे (अकोला) सरासर मन गढ़न्त है । अरिस्ट का नाम बता दो । अभी बता दो हाथ कंगन को आरसी क्या । कौन है वर्स्ट गोन अरिस्ट ?

श्री कंवर लाल गुप्त मैं चैलेंज देता हू और मैं श्री स्टीफन को जज बनाता हू जो आपकी पार्टी के लीडर है और मैं उनको नाम बताऊगा

SHRI VASANT SATHE: I am asking you to say openly the name of that jurist

SHRI KANWAR LAL GUPTA. I challenge him, Sir Let Mr Stephen, belonging to Songress (I), a leader of his own Party, be the judge. I will produce that man with whom she had a talk (*Interruptions*)

SHRI VASANT SATHE: Let the House decide.

SHRI KANWAR LAL GUPTA: Let Mr Stephen decide. I am prepared to accept Mr. Stephen's verdict

मैं समझता हू कि साठे साहब मानेंगे कि इलैक्शन पैटीशन का तरीका आपकी पार्टी के प्रधान मंत्री के लिए अलग रखा गया था और हम गरीबो के लिए अलग । ऐसा क्यो किया गया था ? एक कानून और आने वाला था और वह आया भी कि प्रधान मंत्री के ऊपर कोई मुकदमा चलाया नही जा सकता है । मैं पूछना चाहता हू कि क्या यह ठीक है । मैं उनसे पूछना चाहता हू कि इसान इन्सान में भेद क्यो ? एक मेम्बर आफ पार्लियामेंट और दूसरे मेम्बर आफ पार्लियामेंट मे भेद क्यो ? यह आपिके फकणनिग का जो तरीका है

That shows the tendency of fascism, of dictatorship. And this mentality should be curbed and curbed with all force. This was the way of your functioning, the functioning of the Congress Government. Now, what is our way of functioning? Sir, here is another Prime Minister who says, "I am an ordinary M.P., I do not want any special privilege. Let me also be included in the Lokpal Bill.' Is it not a fact, Sir?

आपने लोक पाल बिल में प्रधान मंत्री को शामिल नही किया । जब कि हमारे प्रधान मंत्री ने स्वय कहा कि प्रधान मंत्री को शामिल करो । हमारे प्रधान मंत्री स्वय कहते है कि प्रधान मंत्री के खिलाफ इलेक्शन पैटीशन का वही तरीका होना चाहिए जो अन्य सदस्यों के खिलाफ अपनाया जाता है । इसलिए कानून की निगाह में छोटा और बड़ा एक है । बडे को ज्यादा सजा मिलनी चाहिए छोटे को तो थोडा माफ भी किया जा सकता है ।

इण्टर्नल इमरजेंसी के बारे मे मुझे कहना है, माननीय गोविन्दन नायर चले गये, उन्होंने कहा कि इ टर्नल इमरजेंसी नही रहनी चाहिए, केवल ऐक्सटर्नल इमरजेंसी रहनी चाहिए । हमारे माननीय जेठमलानी ने कहा कि यह रूल आफ ला के खिलाफ बात है अगर यहा डिटेंशन होता है, प्रिवेंटिव डिटेंशन होता है । अभी हमारे माननीय स्टीफन ने कहा कि कही अगर एक आध फायरिंग कर दी या एक आध गोला छोड दिया गया और इस बहाने से इमरजेंसी लगा दी और पकड कर लोगो को अन्दर कर दिया इस आधार पर इण्टर्नल इमरजेंसी लागू हो सकती है । हा सकता है । लेकिन यह कौन करेगा ? यह भी करने के लिए दिमाग चाहिए । ऐसे नही कि हाईकोर्ट ने फैसला दिया कि राजनारायण जी की इलेक्शन पटीशन पर भूतपूर्व प्रधान मंत्री का चुनाव रद्द तो कहा गया कि देश मे क्रान्ति हो रही है, देश मे गडबड हो रही है और वायलेंस हो रही है इसलिए इमरजेंसी लगा दी । जनता पार्टी के काम करने और सोचने का तरीका अलग है । 19 महीने बाद, यह जानते हुए भी कि देश मे 30 साल में कम से कम हमारी जैनरेशन मे जो वर्स्ट क्रिमिनल है क्या हम उसको अभी तक सजा दे पाये है ? आज भी वह आराम के साथ, शान के साथ घूम रही है, कोई उगली उठाने वाला नही है । जब हम उनको सजा नही दे पाये तो मतलब यह है कि हमारा इरादा इमरजेंसी को मिसयूज करने का नही है । क्या यहा पर ऐसे केसेज नही है, सैबोटियर्स नही है, इनफिल्ट्रेटर्स नही है ? देश इतना बड़ा है, तरह तरह से सोचने वाले लोग है, किसी की पोलिटिकल फिलासफी वायलेंस की है और उसमे बेसिकली विश्वास करते है क्या उनको इण्टर्नल इमरजेंसी के नाम पर बन्द नही किया जा सकता है ? इसलिए इण्टर्नल इमरजेंसी होनी चाहिए, मै इसका समर्थन करता हू ?

दूसरी बात यह है कि इमरजेंसी के ऊपर कर्ब लगना चाहिए, पूरा और मैं उसके लिए विधि मंत्री को बधाई देना चाहता हू कि उन्होंने कर्ब लगाये है जिनको समयाभाव के कारण गिनवाना नही चाहता । मै सोचता हू कि जितने कर्ब्स हमने लगाये है उतने किसी ने नही लगाये होगे । आप पहले मीसा पढ़िए । मै उसमे एक और जोड़ना चाहता हू कि ज्यादा से ज्यादा किसी आदमी को 6 महीने से ज्यादा डिटेन न कीजिए ।

That should be the maximum. And secondly, grounds for detention must be given to the detenue.

[श्री कंवर लाल गुप्त]

यह और उसमें कास्टीट्यूशन का पार्ट होना चाहिए।

15.00 hrs.

इसलिए मैं उन लोगों में से नहीं हूं कि रूल आफ ला का मतलब यह समझें कि आप प्रिवेंटिव डिटेंशन एक्ट बिल्कुल नहीं रखना चाहते। रूल आफ ला का मतलब हरेक देश में अलग अलग है, हरेक जूरिस्ट ने इसका अलग-अलग मतलब लगाया है। सिक्योरिटी आफ दी स्टेट इज सुप्रीम। अगर देश की सिक्योरिटी नहीं है तो उसको ध्यान में रखते हुए, इतना बड़ा देश है, जहां डाइवर्जेंट एलीमेंट है, हम केवल एक फिलासिफिकल तरीके से चीजों को तय नहीं कर सकते हैं। हमें देश में एडमिनिस्ट्रेशन करना है। इसलिए मैं प्रिवेंटिव डिटेंशन एक्ट का भी समर्थन करता हूं।

मुझे एजूकेशन के बारे में भी एक बात कहनी है। आपने इसको ट्रांस्फर्ड सबजैक्ट में डाल दिया है। मैं इसके हक में नहीं हूं। एजूकेशन ही एक ऐसी चीज है जिससे देश में बदलाव आ सकती है। चारक्टर निर्माण हो सकता है। यह कान्करैण्ट लिस्ट में जैसे पहले था, उसी में होना चाहिए। अभी हमारे कई दोस्त सैंटर और स्टेट की बात कहते हैं कि आप हमारे अधिकारों पर आक्रमण करना चाहते हैं। क्या इसके जरिये साठे साहब, आपने यह नहीं कह दिया कि सैंटर की फोर्स बग़ैर स्टेट की मर्जी के वहां पर नहीं जायेगी जब तक कि वह नहीं बुलायेंगे ? क्या आपने यह नहीं किया था 42वें अमैंडमेंट में। वह गलत था कि नहीं था ?

हम बग़ैर स्टेट की मर्जी के कोई सेंटर फोर्स वहां पर भेजने वाले नहीं हैं। इसका मतलब यह है कि हमारी नियत साफ है कि जहां तक सैंटर और स्टेट का सम्बन्ध है, कोई पार्टी वहां राज्य करे, उनके साथ हम अच्छे सम्बन्ध रखना चाहते हैं और जो चीज आप डिक्टेट करना चाहते थे और उसके जरिये से सारे स्टेट्स पर अपना रोब दबदबा जमाना चाहते थे, उसको जनता पार्टी ने खत्म कर दिया।

मुझे प्रापर्टी के बार में भी एक बात कहनी है। जहां तक सौशल-इकनामिक गोल का सवाल है, उसके लिए किसी हद तक प्रापर्टी के फंडामेंटल राइट को कम करना व जरूरी है, क्योंकि जब तक आप पूरा कम्पेन्सेशन देंगे, शायद कोई काम जनता के हित में नहीं हो सकता। जहां तक आर्टिकल 31 का सवाल है, मैं आपके साथ सहमत हूं वह जाना चाहिए लेकिन 19 (1) एफ में 7 फ्रीडम दी हुई है, अगर आपने उसमें से 6 कर दी तो क्या एक दूसरे पर निर्भर नहीं हैं।

श्री शान्ति भूषण जी लायर रहे हैं, फ्रीडम आफ थाटह, फ्रीडम आफ स्पीच है, अगर आपकी लायब्रेरी छीन ली जाये तो क्या आप फ्रीडम आफ थाट करेंगे। अगर पैसा ही नहीं है, फ्रीडम आफ मुट्टमैंट है तो कुछ भी नहीं है। अगर आप के कपड़े उतार लिये जायें, तो आप कहां जायेंगे ? यहां से बाहर भी शर्म के मारे नहीं जा सकेंगे।

मैं चाहूंगा कि धारा 31 को हटाईये जो पब्लिक इण्ट्रेस्ट में है, उसको हटा दीजिए लेकिन 19 (1) एफ के बारे में सोचिए उसको आप वाइड बेस बना दीजिए। पब्लिक इण्ट्रेस्ट में जो कम्पैन्सेशन देने की धारा है, उसके सम्बन्ध में सरकार यदि कुछ करे तो ठीक है, परन्तु 19 (1) एफ को समाप्त करने से एक ऐसा आघात होगा जिसकी पूर्ति करना कठिन होगा। इसके अन्तर्गत कापी राइट भी जायेगा और हर तरह के राइट भी जायेंगे। आप अपनी गवर्नमेंट के बारे में ही मत सोचिए, आज आप हैं, कल को और दूसरी टेढ़ी-मेढ़ी गवर्नमेंट भी आ सकती है और अगर वह सड़कों पर खड़ा कर देंगे तो वह तो मारने से भी ज्यादा खतरनाक होगा।

आखिर में मैं इतना ही कह कर खत्म करना चाहूंगा कि यह बहुत सुन्दर प्रयास है, उसके लिए तो बधाई देता हूं लेकिन आज आपने यह विधान बनाया है, कल को दूसरे भी आकर बदल सकते हैं। सबसे ज्यादा जरूरी है कि पब्लिक ओपीनियन को मोबिलाइज करना चाहिए, एलर्ट होना चाहिये जब तक एलर्ट और पब्लिक कान्सैंस नहीं रहेगी तब तक यह नहीं हो सकेगा। इसके साथ मैं पूरे दिल से इसका समर्थन करता हूं और मंत्री महोदय को बधाई देता हूं।

SHRI R. VENKATARAMAN (Madras South): Mr. Deputy Speaker, Sir: It is a trite saying that the politician looks to the next election, and the statesmen looks to the next generation. Therefore, we should, on this occasion, cease to be politicians and try to be statesmen and hammer out a solution for our problems that will endure, not only to the next genration, but to posterity.

It is a very happy augury that the Government had consultations with the Opposition parties in respect of

the Constitution (Amendment) Bill, and tried to arrive at a consensus. In fact, the speeches made on this side have shown that there is a large measure of agreement with regard to the Bill before the House. It seems to have upset some people who wanted some kind of a confrontation and did not find it. I shall deal with the subject in the descending order of priority, so that if I lose time, I will lose only the smaller points.

The first submission that I will make to the House is regarding Clause 45, dealing with amendment to the Constitution. The legislative history of amendment to the Constitution has been something like a pendulum, swinging from one side to the other. From Shankari Prasad case to Golak Nath case, it has swung from one end to the other. The Supreme Court held that Parliament had absolute right to amend in 1950; and in 1967, it held that it had no power to amend the fundamental rights. Fortunately, I think the pendulum has achieved perpendicularity in the Keshavanand-Bharati case. It has set down the limits of the powers of Parliament to amend the Constitution. It has said that in all matters which are not of a basic structure, Parliament has the power to amend the Constitution. What are these basic structures, or essential features of the Constitution, has not been spelt out. But some indications have been given, scattered throughout the voluminous judgement. Federalism is one, secularism is one, the separation of powers and independence of judiciary is one, and so on.

As a result of the Bill which is now before us, we will be in a strange position. One: under the Keshavanand-Bharati case, certain Articles of the Constitution are unamendable. Two: certain Articles of the Constitution can be amended in accordance with the procedure laid down in the Constitution. And three: certain items mentioned in Clause 45, i.e. those seeking to impair the secular or democratic character, etc., taking away the right of citizens or abridging them, impeding free and fair elections, compromising the independence of judiciary, etc. Those items, if they are passed by Parliament in accordance with article 368(1) and approved in a referendum by the people, will become valid. I want to ask the Law Minister this question. If according to the Supreme Court, independence of judiciary and the separation of powers are not amendable at all, it is one of the basic structure of the Constitution, how is your law saying that anything which compromises the independence of the judiciary can be amended if it is approved by a referendum? It looks as if this Bill takes away what the Supreme Court has given as fundamental and basic rights which under no circumstances can be taken away from the people. I do not know if any of those items mentioned, namely, impairing secular and democratic character of the Constitution, abridging or taking away the right of citizens under part III, prejudicing or impeding free and fair elections to the House of the People or compromising the independence of the judiciary, if any law is passed in respect of that, according to the existing decision in the Keshavanand-Bharati case, it is my submission that it will be unamendable and should not be allowed to be amended at all. On the other hand, you say that any law affecting these things can become valid if it is approved by a referendum. Far from protecting the rights of the citizens you appear to be giving away the rights of the citizens already secured in the Keshavanand-Bharati case. I want the hon. Law Minister to very carefully consider this aspect because of the new element of providing for amendment to the Constitution in respect of matters which according to me are not amendable, which according to the judgement in Keshavanand-Bharati case are not amendable, they could be amended by virtue of the fact that there will be a referendum

[Shri R Venkataraman]

and approval by referendum I am only saying that this is the effect of this, we are not accepting this amendment

My second point is this The concept of referendum is new It is not in the Constitution It may be that the very concept of referendum itself will be an alteration in the basic structure of the Constitution of India The amendment which the Law Minister has brought before the House stands in danger of being thrown out by the Supreme Court in accordance with the decisions now given because this concept of referendum itself is not one of the concepts in the Constitution of India and being something which is in the nature of a fundamental principle it is new

The court can come to a conclusion that this itself is not valid amendment I say this because political theories and political scientists have not accepted the principle of referendum in all case In fact there are two theories in respect of representation One is direct democracy and the other is representative democracy through elected members Certain Constitutions have accepted the principle of direct democracy The Swiss Constitution for instance has accepted it But the British democracy has not accepted the principle of direct democracy It has accepted what is called representative democracy Therefore if you want to change the very basis of our Constitution from a representative democracy to a direct democracy then you will be running counter to the original concept of the founding fathers and framers of the Constitution Therefore, it is quite possible to argue and it will be argued that this is a fundamental change which is not contemplated and will not, therefore come within the powers of article 368

I come to the practical aspect If you look at the countries of the world, you will find very few which have direct democracy In fact, it is only in small countries like Switzerland or countries with a small population that this referendum can work In a country like India, which has more than 300 million people who will vote, it would be almost impossible to have a referendum The practical aspect of it should not be ignored

Referendum is usually in the form of an yes or no How can you put forward a Constitution amendment in the form of yes or no? Generally what is referred in other countries is a specific question The latest referendum in Switzerland was whether a women should be allowed to vote or not That is a simple question If you say that a Constitution amendment containing so many complicated issues could be put forward in the form of yes or no, it will create so many problems and so many difficulties. It will not be possible to get a clear verdict from the people in respect of this Even today people are voting by symbols—either the hand or the bull or something When you put forward a Constitutional amendment to a referendum what is the symbol you will give? If you give the party symbol it means that it is a party election If you give different symbols say cats and rats the argument that will go on in the country will be cats drink away the children's milk so don't vote for cats The other argument will be 'Rodents eat away our grains so don't vote for rats' The other argument will be Rodents eat away our grains, so don't vote for rats'

Under the provisions of this clause, 51 per cent of the people must vote before any amendment can be said to have been accepted In a general election where candidates contest, it is in their self-interest to get as many of their supporters as possible to go to the polls I may carry 30 per cent of the voters to the polls and my rival maybe able to carry 40 per cent. The result is that 70 per cent of the

people vote. But in the case of a referendum who will be interested in mobilising all voters and taking them to the polling booths? I am afraid in most of the cases, this 51 per cent will never vote

Again, even if 51 per cent of the people go and vote, can 26 per cent of the people decide the fate of the country, because majority of 51 per cent is 26 per cent? Can 26 per cent of the people say that the independence of the judiciary can be done away with or the electoral laws can be changed prejudicially or that the fundamental rights can be taken away? Therefore, it appears to me that the whole scheme is ill-conceived and it requires very deep consideration In fact, there must have been a public debate on this issue before we came forward with such a major change in our Constitution It should have been put to the people, it should have been debated in various places the views of the State Assemblies should have been taken, bodies like the Bar Associations should have been asked to give their opinion Instead we have not even referred this Bill to a Select Committee, we are in such a great hurry that we want to get it through I now come to the last point

MR DEPUTY-SPEAKER Kindly conclude

SHRI R VENKATARAMAN. Will it be possible for me to take some time from my other colleague?

MR DEPUTY-SPEAKER That is possible

SHRI VASANT SATHE How much is the total time of our party?

MR. DEPUTY-SPEAKER Twenty seven minutes, out of which he has already taken 22

SHRI VASANT SATHE How can it be? Our party got one hour and 46 minutes.

MR. DEPUTY-SPEAKER: Mr Stephen has taken.

SHRI VASANT SATHE Thirty minutes, that is all You see the record

SHRI R VENKATARAMAN This debate can continue afterwards

SHRI VASANT SATHE. Now that you are extending it by two hours, proportionate time should be given to us

MR DEPUTY-SPEAKER It is not extended for that purpose, but to accommodate more Members.

SHRI VASANT SATHE Anyway, let him have five minutes

SHRI R VENKATARAMAN Thank you Mr Sathe for giving me five minutes

The next point I would like to mention is that the cost of such an election will be prohibitive In the Financial Memorandum which the Minister circulated the other day he has assumed that the referendum will take place along with a general election If it takes place withl another general election then the cost would be less, but you cannot wait for a referendum to be put to the people till the next general election If that is so, the purpose would be defeated. Therefore, I submit that the whole question must be gone into more deeply than has been done

I would sum up the position so far as this is concerned We have reached a fair measure of stability regarding the interpretation of article 368 and the limits of the amending power of Parliament in the Keshavanand-Bharati case as well as the election case

Now clause 45, as it is put forward, will only create further confusion and uncertainty in this regard Sir, I have done

SHRI DAJIBA DESAI (Kolhapur): Mr Deputy-Speaker, Sir, I rise to make my observations before the

[Shri Dajiba Desai]

House. First of all, I would like to welcome certain measures which the Law Minister has brought forward in the Constitution Amendment Bill.

I will start with the right to property. The Janata Government have deleted the right to property from the Constitution. In that way they have fulfilled their proclamation in the election manifesto, that the right to property will go. But, along with that, they have made a promise of right to work. The right to property is going but the right to work for an adequate livelihood has not come.

We do not amend the Constitution very often. In fact, we should not. It is after full deliberation of one year that the Janata Party and the Janata Government have brought forward this Bill. So, we were expecting something comprehensive, something which will enable the Government to undertake socio-economic reforms in the country. But there is not even a single proposal here which will enable the Government to undertake any socio-economic reform. Only the right to property is going. At the same time, they are amending article 31-C, which the previous Government had inserted, giving precedence to Directive Principles of State Policy. The present Government is curtailing that provision also. Article 31-C was brought forward by the previous regime to create an illusion in the minds of the people that the Emergency will be helpful to the people, it will help the socio-economic development of the country. But what actually happened during the period of the Emergency? Even under the 20-Point Economic Programme they have not brought forward any socio-economic measure, even though the Janata Party assured the people at the election time that they will undertake socio-economic measures to have Samaj Parivarthan. Actually, there is no scope in the present Constitution Amendment Bill for any socio-economic measures and whatever scope was there in Article 31-C has been either withdrawn or narrowed down.

Another aspect of this Bill which I welcome is the removal of restraints and restrictions on democratic rights. There were a number of restraints—I do not want to dwell on them,—on the independence of the judiciary, the implementation of fundamental rights and so on and they have now been removed. It is welcome. But democracy will not survive only on freedom of speech or fundamental rights. Democracy will survive when the socio-economic reforms are taken into consideration or brought forward. We want democracy. But we want bread and democracy together and not democracy alone.

Another thing that I want to welcome in this Bill is the restoration of the independence of the Judiciary. At the same time, they have abolished the Tribunals and other things. It is also a welcome step. So, when you want to protect democracy, you have to protect the people. In a class society, democracy will not survive and if democracy is to survive, it must be helpful to the classes which are down-trodden, oppressed and exploited. We must take social, economic and political measures which would help the down-trodden. There is a complete lack of that measure in the Bill.

Then coming to referedum, it is, of course, a new phenomenon; a new principle is being put forward. There are difficulties in that, but we are prepared to give a trial for that. At the same time a new trend is coming into Indian polity and that is to do away with the federal principles of the Constitution. There are trends that the Union Government should be unitary form of Government, the Centre should be powerful, but the Centre will not be powerful at the cost of the States and, therefore, I propose that the federal structure should be made a basic feature of the Constitution.

Then there are again some changes in the State List. Education is being taken into the Concurrent List. I want to oppose that. Even some of the Chief Ministers who assmbled some time back, have advocated that Education should be in the State List These are the points on which I wanted to express my opinion. I have given certain amendments and I would like to speak on them when they are taken up With these words I conclude

श्री यमुना प्रसाद शास्त्री (रीवा) उपाध्यक्ष महोदय, म ी के इस 45वें संशोधन विधेयक को मैं एक ऐ हासिक विधेयक मानता हूं । श्रीमन्, जिस समय संविधान सभा यहां बैठी और स्वतन्त्र भारत के संविधान का निर्माण होने लगा उस समय जब मौलिक अधिकार में सम्पत्ति का अधिकार लिखा गया वह दिन लोकतन्त्र के लिए एक घातक दिन था, और उस संविधान सभा में जो थोड़े से लोग दूरदर्शी थे, जो सचमुच लोकतन्त्र को निस्सार नहीं बनाना चाहते थे, बल्कि सार्थक बनाना चाहते थे उन्होंने अपनी आवाज यहां बुलन्द की थी । आज मैं उन लोगों में से स्वर्गीय दामोदर स्वरूप सेठ का नाम लेना चाहता हूं । संविधान सभा में उन्होंने कहा था कि यह सम्पत्ति का अधिकार जो आप दे रहे हैं मौलिक अधिकार के रूप में It will be a Magna Carta in the hands of the Indian Capitalists यह भारतीय पूंजीपतियों के हाथ में "मैगनाकार्टा" होगा । इस देश के शोषण का अधिकार पूंजीपतियों को प्रदान करेगा । उन्होंने कहा था इस अधिकार को मौलिक अधिकारों में कभी सम्मिलित नहीं किया जाना चाहिए । मैं कहना चाहता हूं कि सम्पत्ति का अधिकार कभी भी जन्मजात अधिकार नहीं हो सकता, जन्मसिद्ध अधिकार नहीं हो सकता किसी भी देश में मनुष्य का । सम्पत्ति व्यक्ति की नहीं होती । सम्पत्ति समाज की होती है । सम्पत्ति पर अधिकार पूरे समाज का है । यह केवल व्यक्ति का विचार नहीं है । भारतवर्ष में अनादिकाल से यहां के मनीषियों ने सम्पत्ति को समाज के अधिकार में माना था, व्यक्ति के अधिकार में नहीं माना था । "सम्पत्ति सबहि रघुपति की" इतना ही नहीं श्रीमद् भागवत में कहा है । श्रीमद् भागवत में एक श्लोक है :—

यावद् भ्रियेत उदरम्, तावत स्वत्वम् हि देहिनां। जितने से आदमी का पेट भरता है, केवल उतने पर ही उसका अधिकार है । सम्पत्ति के संग्रह का अधिकार किसी को नहीं है । आज संविधान के 45वें संशोधन में इस सम्पत्ति के मौलिक अधिकार को निकाल कर आपने सचमुच लोकतन्त्र को प्राण प्रदान किया है, भारतीय लोकतंत्र को जीवन प्रदान किया है । इस पर मैं जनता पार्टी की सरकार को बधाई देना चाहता हूं ।

सिर्फ इतना ही नहीं, सम्पत्ति के मौलिक अधिकार को तो आपने समाप्त किया, लेकिन उसमें दुःख इस बात का है कि इसको संविधान के आर्डिनेंस के रूप में रखा है ।

कुछ माननीय सदस्य यही दुखद है ।

श्री यमुना प्रसाद शास्त्री मौलिक अधिकार से आपने इसे निकाला, इसके लिये आप बधाई के पात्र हैं, जितने भी प्रगतिशील कानून बनाये गये, उन सब को सम्पत्ति के मौलिक अधिकार के आधार पर ही चुनौती दी गई, इसी आधार पर बैंक राष्ट्रीयकरण, भूमि सीमा के कानून और प्रीविपर्स के कानून को चुनौती दी गई ।

सम्पत्ति का अधिकार मौलिक अधिकार से निकाला गया, अब इस देश में एक सामाजिक क्रांति का मार्ग प्रशस्त हो गया, इसमें कोई सन्देह नहीं है । इसके अन्दर सामाजिक और आर्थिक क्रांति का मार्ग प्रशस्त हुआ है, उसके मार्ग की बाधा समाप्त होती है लेकिन संविधान के अधिकार के रूप में भी सम्पत्ति के अधिकार को नहीं होना चाहिये, उसे भी आपको समाप्त करना चाहिये ।

जहां तक कानूनी अधिकार की बात है, सम्पत्ति के लिये तो बहुत कानूनी अधिकार हैं इस देश में, उत्तराधिकार का कानून है, लैंड रेवेन्यू कोड है । इस देश के बड़े पूंजीपतियों ने, उद्योगपतियों ने और बड़े उद्योगपतियों ने अपने प्रतिनिधियों द्वारा अनेक कानून सम्पत्ति की रक्षा के लिए बना रखे हैं । संविधान में उसको रखने की कोई आवश्यकता नहीं है । इसलिए मौलिकाधिकार के रूप में जो इसे रखा गया है, मैं उसका विरोध करता हूं ।

दूसरी बात मैं यह कहना चाहता हूं कि सम्पत्ति का अधिकार प्रदान करने के साथ साथ काम का अधिकार अवश्य ही प्रदान करना चाहिये । जनता पार्टी ने अपने घोषणा-पत्र में स्पष्ट रूप से लिखा है कि जनता पार्टी will take away the right to property and replace it by the right to work साफ-साफ एक ही वाक्य में यह लिखा है । मैं अपनी स्मरण-शक्ति से कह रहा हूं, वह यहां मेरे पास नहीं है लेकिन साफ साफ कहा गया था कि सम्पत्ति के अधिकार को हम निकालेंगे और उसे राइट टू वर्क से रिप्लेस करेंगे ।

राइट टू वर्क आपने नहीं रखा, इसलिए सम्पत्ति के अधिकार का निकालना उतना महत्व नहीं रख पाया जितना महत्व इसे मिलना चाहिये था ।

[श्री यमुना प्रसाद शास्त्री]

अगर आपने इसमे राइट टू वर्क भी लिख दिया होता, उसका भी प्रावधान कर दिया गया होता तो आज हिन्दुस्तान की यह पार्लियामेंट हमेशा हमेशा के लिए अमर हो गई होती । आज का दिन हिन्दुस्तान के इतिहास मे स्वर्णाक्षरो मे लिखा गया होता । आगे आने वाली पीढिया आज के संसद्-सदस्यो को सदैव अपने हृदय मे स्थान देती कि ऐसी भी एक संसद् थी जिसने सम्पत्ति के मौलिक अधिकार को हटाकर हमको काम का अधिकार प्रदान किया है ।

श्री राम विलास पासवान ला-मिनिस्टर को ज्यादा याद करते ।

श्री यमुना प्रसाद शास्त्री . सारी संसद् का याद करते । लोकतंत्र मे एक व्यक्ति का कोई बहुत बड़ा स्थान नही होता है ।

श्री राम विलास पासवान वही ना बिरला हैं ।

श्री यमुना प्रसाद शास्त्री : एक दूसरी बात पर मुझे बहुत बड़ी आपत्ति है और वह है निरोधक नजरबन्दी के प्रावधान पर । इसमे आर्टिकल 22 मे अभी भी लिखा गया है कि 2 महीने तक किसी भी व्यक्ति को नजरबन्द किया जा सकता है । 2 महीने मे एक बोर्ड बैठेगा हाई कोर्ट के जजो का जो कि निर्णय करेगा कि आधार पर्याप्त हैं या नही । लेकिन 2 महीने तक तो बिना मुकदमा चलाये उसको जेल मे बन्द किया जा सकता है । पहले के प्रावधान मे 3 महीने था, अब आपने उसे 2 महीने कर दिया यह कौनसी बड़ी बात है। यह बिल्कुल गलत बात है । जहा तक मेरे जैसे आदमी का सवाल है, मुझे इसमे बहुत बड़ी आपत्ति है और इतना ही नहीं, मै इसके पक्ष मे मतदान कर सकूगा, इसमे भी मुझे सन्देह है । इसलिए इसको पूर्णतया निकालना चाहिये । 2 महीने नहीं, 2 पखवाडे नहीं, 2 सप्ताह नही, बिना मुकदमा चलाये, बिना किसी जुर्म के किसी व्यक्ति को एक मिनट भी जेल मे नही रखा जाना चाहिये । यह अक्षम्य अपराध है लोकतंत्र की हत्या है, लोकतांत्रिक अधिकारो का यह मजाक है और बिना मकदमा चलाये किसी को एक दिन भी नहीं रखे ।

इमर्जेन्सी की घोषणा के सम्बन्ध में भी मुझे कुछ कहना है । सरकार ने ऐसा प्रावधान कर के एक बहुत अच्छा काम किया है कि अब आन्तरिक इमर्जेंसी सहसा उस तरह से लागू नही की जा सकेगी, जिस तरह श्रीमती इन्दिरा गांधी ने लागू की थी । सरकार ने इमर्जेंसी की घोषणा के लिए 'इनटर्नल डिसटर्बेंस" की जगह "आर्म्ड रेबेलियन" को आधार के रूप मे स्वीकार किया है—आन्तरिक उपद्रव के स्थान पर सशस्त्र विद्रोह को रखा है । लेकिन इस देश मे जनता पार्टी की ही सरकार हमेशा नही रहेगी । अभी माननीय सदस्य, श्री कमर लाल गुप्त, ने कहा कि जनता पार्टी इस का दुरुपयोग नही करेगी, जनता पार्टी के काम करने का तरीका दूसरा है । लेकिन मैं माननीय श्री गुप्त से कहूगा कि संविधान केवल जनता पार्टी की सरकार के लिए नहीं है , जब जनता पार्टी की सरकार नही रहेगी, यह संविधान तो तब भी रहेगा ।

एक माननीय सदस्य जनता पार्टी की सरकार सदा रहेगी ।

श्री यमुना प्रसाद शास्त्री सदा रहगी ' ऐसा तो हम खुद भी नही चाहते । लोकतंत्र तभी जीवित रहता है, जब एक पार्टी हमेशा हमेशा के लिए शासन मे न रहे । बीच बीच मे तब्दीली होनी ही चाहिए ।

अगर कभी कोई इस तरह की पार्टी शासन मे आ गई, जिस ने इस का दुरुपयोग किया, तब क्या स्थिति होगी ? क्या हम इस बात को भूल सकते है कि श्रीमती इन्दिरा गांधी ने इमर्जेन्सी की घोषणा करते हुए यही कहा था कि इस देश मे आर्म्ड रेबेलियन होने वाला था, श्री जयप्रकाश नारायण आर्मी को विद्रोह करने के लिए कह रहे थ । आज मैं एक रहस्य का उद्घाटन करना चाहता हूं । आई० सी० एफ० टी० यू०—इन्टरनेशनल कानफेडरेशन आफ थ्री फ्रेड यूनियन्ज—के जनरल सेक्रेटरी, जर्मनी निवासी श्री निस्टन, यहा आये थ । उन के साथ बातचीत के दौरान श्रीमती इन्दिरा गांधी ने एक झूठी बात कह दी थी कि श्री जय प्रकाश नारायण का आर्मी के कुछ जेनेरल्ज के साथ सम्पर्क कायम हो चुका था और वे उन का साथ देने के लिए तैयार थे । इस तरह की झूठी बात कह कर उन्होने देश में इमर्जेंसी लागू की थी ।

मै समझता हू कि अगर "आर्म्ड रेबेलियन" का शब्द भी रखा जायेगा, तो उसका भी दुरुपयोग किया जा सकता है । अगर कही आर्म्ड रेबेलियन होता है, तो उस का सामना करने के लिए सामान्य कानून काफी है । नागालैंड में आर्म्ड रेबेलियन हुआ, तो क्या वहा आन्तरिक इमर्जेंसी की घोषणा करनी पडी थी ? मिजोरम म आर्म्ड रेबेलियन हुआ था, तो क्या वहां आन्तरिक इमर्जेंसी लागू करने की आवश्यकता पडी थी ? वैसे तो इस देश मे सशस्त्र विद्रोह होत. नही है, लेकिन अगर हो भी, तो उस का सामना बिना इमर्जेंसी लागू किए हुए, बिना लोगों के मौलिक अधिकारो का हनन किए हुए किया जा सकता है । इसलिए आन्तरिक इमर्जेंसी के इस प्रावधान को हमेशा के लिए समाप्त किया जाना चाहिए ।

कल यहां पर भाषण देते हुए पुराने ला मिनिस्टर, डा० सैयद मोहम्मद ने कहा कि इस संविधान-संशोधन में एक बड़ा गलत काम कर दिया गया है—इस में धर्मनिरपेक्षता और समाजवाद की परिभाषा कर दी गई है । इस में क्या बुरा हुआ ? कौन सी परिभाषा वह चाहते हैं ?

हम समझते हैं कि यह बहुत अच्छा काम किया गया है । श्रीमती इन्दिरा गांधी ने केवल एक विगुण रूप में प्रीएम्बल में समाजवाद और धर्मनिरपेक्षता के शब्दों को शामिल कर दिया था । लेकिन हम ने उसको मूर्त रूप दिया है । हम ने धर्मनिरपेक्षता की यह परिभाषा की है कि सब धर्मों के प्रति समान आदर रखा जायेगा और धर्म, मजहब , के आधार पर किसी व्यक्ति के साथ किसी तरह का भेदभाव नहीं होगा । इससे बढ कर और अच्छी बात क्या हो सकती है? । समाजवाद की भी परिभाषा हम ने कर दी है कि व्यक्ति का शोषण व्यक्ति के द्वारा नहीं किया जायेगा । हम ने समाजवाद को केवल निर्गुण रूप में नहीं रखा है, पंडित जवाहरलाल नेहरू और श्रीमती इन्दिरा गांधी की तरह हम ने केवल समाजवाद की बात ही नहीं की है । हम ने समाजवाद को मूर्त रूप देने की कोशिश की है और केवल समाजवाद की परिभाषा ही नहीं की है, बल्कि यह कहा कि कोई व्यक्ति किसी व्यक्ति का सामाजिक आर्थिक और राजनीतिक शोषण नहीं कर सकेगा । कोई किसी का शोषण न कर पाय हम को और सगुण रूप प्रदान करने के लिए हम ने सम्पत्ति के अधिकार को मौलिक अधिकारों से निकाल दिया है । इससे अधिक और क्या, चाहिए ? इससे अधिक जो होना चाहिए था और जो नहीं किया गया है उस का उल्लेख मैंने कर दिया है । इस में राइट टु वर्क भी शामिल किया जाना चाहिए था । समाजवाद, आर्थिक स्वतन्त्रता और सामाजिक स्वतंत्रता को सार्थक बनाने के लिए कुछ और भी कदम उठाने चाहिए थे ।

यहां पर बार बार यह कहा गया है कि कान्करेंट लिस्ट से शिक्षा को स्टेट लिस्ट में लाया जा रहा है, यह गलत है । मैं मानता हूं कि यह गलत है । कान्करेंट लिस्ट में शिक्षा को होना चाहिए । लेकिन शिक्षा के साथ साथ कृषि का भी कान्करेंट लिस्ट में होना चाहिए । अभी तक किसी ने यह बात नहीं कही । कृषि को कान्करेंट लिस्ट में नहीं रखेंगे तो इस देश में भूमि सुधार कभी होंगे ही नहीं । इस देश में अलग अलग प्रांतों की सरकारों को अगर आप यह अधिकार देंगे कि वह अपने मन का भूमि सीमा का कानून अपने यहां बनाए तो कभी भी इस देश के 7 करोड़ भूमिहीनों को जमीन नहीं मिलने वाली है । यह बैलछी कांड और कंझेवाला कांड, इस तरह के कांड रोज इस देश में होंगे । प्रति दिन हमें यह देखने और सुनने में आता है कि भूमिहीनों की हत्या की जा रही है, उन को जमीन नहीं मिल रही है और जहां कहीं मिल भी जाती है वह उन से छीन ली जाती है । एक तरफ कुछ लोगों के पास हजार हजार एकड़ जमीन और और दूसरी तरफ 7 करोड़ लोगों के पास कोई जमीन नहीं । इस का कानून तब तक नहीं बन सकेगा और सारे देश में एक-रूपता तब तक नहीं आएगी जब तक कृषि को समवर्ती सूची में नहीं रखेंगे । इसी तरह सिंचाई का भी समवर्ती सूची में सम्मिलित किया जाना चाहिए अन्यथा इसी तरह के विवाद रोज खड़े होते रहेंगे, कभी कावेरी का विवाद, कभी नर्मदा का विवाद, कभी डोन का कभी कृष्णा का विवाद खड़ा रहेगा, इन विवादों का कभी अन्त नहीं होगा और इस देश की धरती एक एक बूंद पानी के लिए तरसती रहेगी । राज्य सरकारें आपस में झगड़ती रहेंगी और केंद्रीय सरकार एक मूक दर्शक की तरह देखती रहेगी । वह चाहेगी कि देश में सिंचाई होना चाहिए लेकिन सिंचाई की व्यवस्था हो नहीं सकेगी । इसलिए कृषि और सिंचाई को भी कान्करेंट लिस्ट में रखना चाहिए । कोई कहे कि इस से हमारा फेडरल स्ट्रक्चर खत्म होता है तो यह बात गलत है । फेडरल स्ट्रक्चर को रखने के लिए हम ने तो इतनी दूर तक कर दिया है कि बिना राज्य सरकार की राय के हम केंद्रीय पुलिस नहीं भेजेंगे बिना उन की राय के हम केंद्रीय मशस्त्र पुलिस नहीं भेजेंगे इतना बड़ा काम हम ने किया है । हम इस फेडरल स्ट्रक्चर को कायम रखना चाहते हैं लेकिन देश के अन्दर जमीन के मामले में, आर्थिक समता के मामले में और शिक्षा प्रणाली के मामले में एकरूपता भी तो होनी चाहिए और देश के सब नागरिकों को समान अवसर की समान सुविधा प्रदान करनी चाहिए । इसलिए यह आवश्यक है कि शिक्षा कृषि और सिंचाई इन को समवर्ती सूची में रखा जाये ।

एक बात और कहना चाहता हूं, वह थोड़ी सी हलकी बात तो जरूर होगी लेकिन कह देना चाहता हूं । कल माननीय स्टीफेन साहब ने इस बात पर बड़ा संतोष प्रकट किया कि बयालीसवें संशोधन की 23 धाराओं को आप ने ज्यों कि त्यों रखा है इस से बड़ा संतोष उन को मिल गया और उन्होंने माना कि उन्होंने बहुत बड़ा काम किया था जो 23 संशोधन उन के रह गए, 59 में से 23 धाराएं इस संविधान में भी रह गईं । श्रीमन् एक मर्तबा अकबर ने बीरबल से पूछा कि जिस शब्द के अन्त में वर लग जाता है वह बहुत अच्छा शब्द माना जाता है संस्कृत में तो बताओ ऐसे शब्द जिन के अन्त में वर लगा हो । बीरबल ने कहा ऐसे तो बहुत से शब्द हैं गुरुवर, सुरवर देववर, तो उस ने कहा और अकबर ? तो बीरबल ने कहा ऐसे तो गोबर भी है । तो माननीय स्टीफेन साहब को इस बात का संतोष है कि वर तो लग गया, चाहे गोबर ही क्यों न हो, इन की 23 धाराएं इस में रह गईं । उन 23 धाराओं का कोई अर्थ नहीं है । जितनी जल्दी वह निकल जायें उतना ही अच्छा है । फंडामेंटल ड्यूटीज पर हमें कोई गर्व नहीं है, उन का कोई अर्थ नहीं है, बल्कि वह हमारे फंडामेंटल राइट्स को सीमित करती हैं । इसी तरह डायरेक्टिव प्रिंसिपल में रख दिया गया है कि वाइल्ड लाइफ की रक्षा हम करना चाहिए, वह कोई कांस्टीट्यूशन की बात तो है नहीं । जंगल लगाना चाहिए, पेड़ लगाना चाहिए, यह कांस्टीट्यूशन की बात तो है नहीं । लेबर का पार्टिसिपेशन मैनेजमेंट में होना चाहिए, यह डायरेक्टिव प्रिंसिपल में नहीं फंडामेंटल राइट्स में आना

[श्री यमुना प्रसाद शास्त्री]

चाहिए । जिन बातों को उन्होंने कहा कि हमारी अच्छी बातों को आप ने रख लिया वह अच्छी बातें नहीं हैं । वह तो एक लाचारी थी जिस की वजह से ऐसा करना पड़ा और हम चाहते हैं कि वह जितनी जल्दी से जल्दी समाप्त हो उतना ही अच्छा है । हम गोबर से किसी तरह अपने संविधान को मुक्त कर सकें, हम तो यह चाहते हैं ।

इन शब्दों के साथ मैं अंत में पुनः तीन बातों का घोर विरोध करता हूं । एक तो जो नजरबन्दी का प्रावधान है कि 2 महीने तक नजरबन्द किया जा सकता है उसका मैं विरोध करता हूं । दूसरे 352 में जो आर्म्ड रिबेलियन के आधार पर इंटर्नल एमर्जेंसी कायम करने का प्रावधान है उस का मैं विरोध करता हूं और सम्पत्ति को आपने कान्स्टीट्यूशनल राइट के रूप में अभी भी जो रखा है —इन तीनों बातों का मैं विरोध करता हूं । मैं चाहूंगा कि माननीय विधि मंत्री इस पर गम्भीरतापूर्वक विचार करें । रेजिंडम का मैं सहेदिल से समर्थन करता हूं । सुप्रीम कोर्ट इस देश के संविधान को नहीं बनायेगी । Supreme court should try to adjudicate, should not try to legislate and Parliament should not try to adjudicate.

सुप्रीमकोर्ट का काम केवल निर्णय देना है, सुप्रीम कोर्ट का काम केवल न्याय्या करना है । सुप्रीम कोर्ट केशवानन्द भारती केस के द्वारा हमारे अधिकारों को, हमारे देश की जनता के अधिकारों को सीमित नहीं कर सकती है । हम संविधान के बेसिक स्ट्रक्चर को बदल न सकें, यह भी जरूरी है । बेसिक स्ट्रक्चर को बदलने का अधिकार इस पार्लियामेन्ट को नहीं, इस देश की जनता को होना चाहिए । न तो यह पार्लियामेन्ट सार्वभौम है, न सुप्रीम कोर्ट सार्वभौम है, सार्वभौम सत्ता तो जनता की है । इस देश की 65 करोड़ जनता सार्वभौम अधिकार रखती है । केवल उसी जनता को अधिकार होना चाहिए कि संविधान के बुनियादी ढांचे में जो भी चाहे परिवर्तन करे ।

इन शब्दों के साथ मैं माननीय विधि मंत्री जी को बधाई देता हूं कि उन्होंने सम्पत्ति के अधिकार को मौलिक अधिकारों की सूची से निकाल कर सामाजिक एवं आर्थिक क्रान्ति का मार्ग प्रशस्त किया है तथा इस देश की जनता के लोकतांत्रिक अधिकारों को पुनः वापस लौटाया है ।

SHRI TRIDIB CHAUDHURI (Berhampore): Mr. Deputy-Speaker, Sir, the Constitution (Forty-Fifth Amendment) Bill, 1978 does not satisfy me or those with my way of thinking to the fullest extent, yet there is hardly any doubt about the fact that it is a momentous legislation and when enacted, it will go down in our constitutional history as a landmark in the evolution of the Constitution of independent India. We would have been really satisfied if the Constitution (Forty-Second Amendment) Act were repealed altogether and opportunity was taken to review the experience of the working of the Constitution of all these thirty years and we had *gone in for a really revolutionary* measure to re-modelling and restructuring of the socio-economic base of our system.

By and large, the constitutional system which we adopted, is a replica of the western type of bourgeois democracy which in spite of the embelishments sought to be given to it has remained as a capitalist structure.

You know and the whole House knows, that since 1953, in this very *Parliament*, we *declared* the building up of a socialist pattern of society to be the goal of our planning and our economic reconstruction efforts. But after the lapse of these 30 years, we know what that socialism has meant. Everybody now says—and I am glad, in some sense, that many Members of the ruling party are vocal about it—that the country remains in the grip of capitalism, in the grip of monopoly capitalists and in the grip of foreign multi-nationals, and that there has been no effort up till now, to end that position. For that, a basic, revolutionary re-structuring was necessary which unfortunately, is not the object of the present Bill.

15.57 hrs.

[Shri M. Satyanarayan Rao *in the Chair*].

The present Bill, although I have said that it is a momentous Bill, has a limited purpose, viz. of safeguarding the fundamental rights and liberties

guarantee to the people under the Constitution as it was originally adopted. In the light of the traumatic experience of the 20 months of Emergency, and also in the light of the distortions that were brought about by the Constitution (42nd Amendment) Bill, it has been well said that that bill sought to institutionalize the Emergency powers and invest the Executive Government, and particularly the Head of the Government, with over-riding powers over the legislature, over the citizens and so on. The present Bill seeks to restore the fundamental rights—excepting the right of property which has been taken away, and rightly so from the list of fundamental rights—and the democratic rights viz. the rights of personal rights rights of life, rights of freedom of speech and the most valued democratic rights, and to secure them for the citizens for all times to come

16.00 hrs.

For this reason the emergency provisions of the Constitution are sought to be amended. To that extent we welcome the Bill I only want to point out that it does not go to the whole extent that it should have gone. Many Members from both sides—of course I am not speaking on their behalf—to the two major opposition groups, the Congress groups and others have pointed out the shortcomings of the Bill. One of the shortcomings has been that, while the right to property has been taken away from the list of fundamental rights, the right to work and adequate livelihood should in some form or other find a place—in the list of fundamental rights. I need not dilate on that point elaborately. Everybody knows its importance in this country where nearly half or more than fifty per cent of the people live below the poverty line, have no property and have no work and do not find work for the major part of the year. That is the importance of the right to work and adequate livelihood. Comrade Samar Mukherjee referred yesterday to this and said that in all the socialist constitutions of the world, the right to work is one of the basic and fundamental rights. Ours is not yet a socialist constitution; ours is not yet a socialist country. We aspire to be one. So no wonder this right does not find a place in the list of fundamental rights. Now that we have made a beginning by removing property right from the list of fundamental rights, we are seriously thinking whether we cannot introduce the right to work and adequate livelihood in the list in some form or other.

The speaker who preceded me, hon Member Shastri spoke forcefully, and yesterday also hon. Member Shri Ram Jethmalani spoke with his usual eloquence with regard to preventive detention. The change is sought to be made by clause 3 of the present Bill in article 22 of the Constitution which is an enabling provision for the enactment of preventive detention laws. I think this article should have been dropped altogether. I need not go into the detailed reasons that have been discussed time and again in this House during the last 26 years Again today and yesterday forceful arguments have been made in favour of dropping this power of preventive detention. It is a blot on our Constitution and I have no manner of doubt that every right-thinking person should support the dropping of this provision

There is article 356 which enables the Central Government to impose President's rule in the States It has just been pointed out by one of the speakers that at the Centre there is no provision for President's rule. If the Central Government cannot be carried on according to the provisions of the Constitution and Parliament is dissolved, then the Government of the day carries on as a care taker Government and arrangements are immediately made for holding of elections. Why should not a similar thing be provided for the States also without trenching on their autonomy and perhaps their own elected Government? We have seen in the Congress

[Shri Tridib Chaudhuri]

days how the provisions of this article 356 were misused to topple elected Governments from Kerala onwards till the other day So, this article of the Constitution should also go It is against the spirit of our federal Constitution and the idea of State autonomy

With regard to the other safeguards which have been provided in the various clauses for the rights and liberties of the pole although they do not go to the extent that we have wanted them to go yet in brief I would say that I support them I welcome them I congratulate the Law Minister and also the Janata Government that at least to that extent they have fulfilled the election pledges that they had given

SHRI JAGANNATH SHARMA (Garhwal) I rise to support this Bill

Till the end of 1976 the Constitution was amended 42 times Fifteen amendments relate to reorganisation of States re adjustment of States readjustment of boundaries and creation of new States and inclusion of a new State of Sikkim into India ten affected fundamental rights nine were procedural three relate to the Schedules and five affected the powers of judiciary

Amendment Nos 38 and 42 were adopted by this Parliament at a time when there was a national emergency promulgated in June 1975 By Amendment No 39 two strange articles were added to the Constitution—articles 71 and 329A and the Ninth Schedule was amended to incorporate even certain major Acts including the Representation of the People (Amendment) Act of 1974 The purpose of these amendments was only one, and that was to save the election of the then Prime Minister which had been declared void by the Allahabad High Court This was a slur on this country, and a disgrace to its democratic functioning

The Forty second amendment is very wide very extensive, very detailed amongst all the amendments, but it created concern in the whole of the nation because it disturbed the original balance of the Constitution, it crippled the role of judiciary, it destroyed the basic features of the Constitution, and paved the way for repression and terror

The historic March elections brought out the spontaneous hatred of the people against the regime which had trampled upon their dignity and privacy The Janata Government the first non Congress Government is committed to bring a new political, social and economic order and in that direction this is the first major step or we can say this is a very important step that the Government and the Law Minister have taken I congratulate the Law Minister that he has brought this Bill not only as an amending Bill, but taken the opportunity to review the whole Constitution and has put before the House provisions of the Constitution which need complete or partial abrogation those which need to be retained and the amendments which should be added to the Constitution This is what he has done Once this Bill becomes an Act democracy and the rule of law shall be restored and I am sure the misuse and abuse of articles 352 and 356 shall never be there Equality before law and equal protection of the laws shall be restored

While speaking on the Forty-fourth Amendment Bill the then Law Minister said specifically that the basic features of the Constitution included democracy secularism Republicanism and judicial review and conceded that while exercising the amending power Parliament should not exercise the power to repeal the Constitution And I find that by that very Government all basic features of the Constitution were destroyed and the greatest heritage of democracy to mankind namely personal liberty, was taken away without trial Innocent people were thrown into sterilisation camps and had to face several types of indignities. Even gruesome atrocities were perpetrated against citizens and patriots even students, and fiendish

methods were used for interrogation while they were in police custody. Well, there was freedom to destroy freedom. It was to prevent this that the Government has come forward with amendments of articles 358 and 359 of the Constitution.

I am happy that the provisions of article 19 shall be suspended only when there is external aggression or war and under article 359, under no circumstances the individual liberty shall be transgressed or taken away no matter there is internal or external emergency.

There is another alarming feature of the Forty-second Amendment Bill, and that related to judicial review of ordinary laws. Well, since the hon. Minister has dilated in detail the amendment with regard to judiciary and since most of the hon. Members have spoken about it, I would only say that, in spite of the abundant caution by the founding fathers of the Constitution by introducing articles 13 and 254(1) of the Constitution, the powers of the High Courts and the Supreme Court were taken away and they were deprived of their jurisdiction over tribunals.

Well, I do not want to deal with article 257-A, (deployment of armed forces) which has been rightly deleted. I congratulate the Government that they have maintained—some hon'ble members may or may not agree—in the Directive Principles some of the provisions like articles 37(f), 39-A, 43-A and 48-A of the Constitution.

They have also added a new Chapter, that is, on Fundamental Duties. Fundamental Duties are not new to this country. Mahatma Gandhi always emphasized that a man should do his duty. Before independence, a Constitution was framed, called "A Gandhian Constitution for Free India." There was a specific chapter which dealt with Fundamental Duties and Fundamental Rights, with an impressive foreward written by Mahatmaji himself. This is how this amendment has come.

I would now like to say something about article 368, amendment of the Constitution. In this connection, I would like to quote one of the eminent jurists of this country, Shri Tarkunde. He says:

> "Article 368 should first define what are the basic features of the Constitution, and then provide that Parliament in the exercise of its amending powers cannot alter these basic features, except by the sanction of the majority vote in a general referendum of the entire adult population. This would incidentally establish the principle that sovereignty under the Constitution vests in the people and not in Parliament, which is liable to be controlled by the Central Cabinet."

I am happy that Government has utilized this opportunity, and the hon. Minister has chosen this best and safest course for this purpose. Because, sometimes Legislature behaves in a most irresponsible manner.

Here I would like to quote a Bihar case, *Ram Prasad* Vs. *State of Bihar*, where two appellants were allowed 200 bighas of land. Some neighbours reported the matter to the Congress Working Committee, and the Working Committee passed a Resolution and stated that the lease should be cancelled. The Bihar Legislature passed an Act by the name of Bihar Sathi Lands (Restoration) Act, 1950. That was declared *ultra vires* of the Constitution. While declaring the Act as *ultra vires* of the Constitution, Their Lordships of the Supreme Court stated:

> "Such legislation as we have before us is bound to drain out the vitality from rule of law that our Constitution so unmistakably proclaims, and we hope that the democratic process in this country shall not function in those lines."

This is how Parliament and Legislatures can behave like tyrants.

Similarly, sometimes the Supreme Court acts like a Third Chamber. Take

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the case of fundamnetal right to property. It has been taken out from the basic feature by a majority of one. Again it can be put in the basic feature by a majority of one. What will happen in that case, if property right now a legal right is again put as a basic feature? Then Parliament is bound by it and Parliament cannot say by a majority, even by a two-thirds majority, that it should not be a basic feature. What is then the option? The option is that the issue should go to the people and if the people then decide by a majority of two-third or whatever the majority that is settled by the Parliament, then in that case that law would prevail inspite of the ruling propounded by the Supreme Court to the contrary. So, the provision of referendum under such circumstances is good and should be adopted.

There has been controversies regarding the preventive detention. I am sorry, I disagree with most of my friends including Mr. Jethmalani and some other learned speakers that this is absolutely out-dated. I feel that it is very necessary in this country. The dignity of the individual, the safety and welfare of the people, the regulation of internationnl and national trade, smuggling, foreign espionage, subversion of law and order by anti-social elements, these are the pressing necessities, the felt necessities of the modern vigilant State and every modern vigilant State of today has been trying to curb these activities in one way or the other. Even Britain which has its entire edifice in the rule of law and convention passed Prevention of Crimes Act in 1971 and through you I would like to inform this august House that the concept in Britain that was there in the 19th Century had been reversed in the 20th Century. In the 19th Century, there was a famous leading case *"Beatty* Vs. *Gillbanks"* in which it was said "mere knowledge that opponents are likely to cause disorder does not turn an otherwise lawful assembly into an unlawful assembly." This proposition was completely changed in 1936 in the case of *Mrs. Duncan* Vs. *Jones Mrs. Duncon* was a woman speaker, who was just delivering a speech before a Centre for the Unemployed and violence erupted. The very next year, she said "I will speak at this very spot." The Police Officer Mr. Jones went there and said "No, you should not speak "here". Mrs. Duncon was peaceful, her opponents were peaceful, her supporters were peaceful, but inspite of that, Mr. Jones arrested her. The court observed that the police Officer was justified in arresting her.

Now there is a very important case *"Liversidge* Vs. *Anderson"*, which advocated that the preventive detention may be an anathema to all those who loved personal liberty. I would like to quote the observation of Lord Atkin. He says: "In this country, amid the clash af arms the laws are not silent. They may be changed, but they speak the same language in war as well as in peace.. .."

During the First and Second World War, the British Parliament empowered the Government to pass orders for preventive detention and the power was upheld by the same Court on ground of necessity. It was desirable and necessary even in a country like England. In this country, so far as we are concerned, I cannot give a better expression saying that how Mr. Justice Patanjali Shastri described this preventive detention. He said:

> "This sinister looking feature so strangely out of place in a democratic Constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with promises of its preamble, is doubtless designed to prevent an abuse of freedom bv antisocial and subversive elements which might imperil the national welfare this infant republic."

AN HON. MEMBER: This was in which year?

SHRI JAGANNATH SHARMA: It may be any year. But they are more true today. Even those Britishers who believed in the rule of law, passed:

East India Company Act of 1780, East Company Act of 1784, Bengal regulation Act of 1812 and ultimately the Defence of India Acts of 1915 and 1939, all these gave a complete concept of preventive detention. That is why, the Constitution of India has incorporated Article 22(3) of the Constitution.

Now I would like to say something with regard to the Right to Property. New article 300A reads "No person shall be deprived of his property save by authority of law." As I have already said, the Government have eliminated this right from the fundamental right. It is a right step in the right direction. But we should not forget what probably Lincoln said· "Human beings being what they are their desire to accumulate power and property ceases only with death." The right to property has been recognised under Article 10 of the Constitution of USSR, under Article 17 of Universal Declaration of Human rights, Magna Carta, the Bill of Rights the petition of rights and Lords Blackstone and Lock said that it is an inherent right

The hon. Minister has said, according to the authority of law The authority of law is exercised in two ways, either by "due process of law" or by "procedure established by law." "Due Process of Law" has been taken from the American Constitution; "procedure established by law" is provided in the Indian Constitution. Although the hon. Minister has said in his opening speech that procedure establishe l by law would mean the authority of law, still we have to be very careful about it and mention it clearly in the Statute Book.

Even today we cannot forget that the Parliament has the right to enact a law for seizure and confiscation of property· the Parliament has the right of acquisitioning and requisitioning of property either with the consent or without the consent of the owner the Parliament has the right to enact a law to empower the State for acquisitioning and requisitioning of property; the Parliament has the right to tax the property for revenue purposes. Therefore, the sovereignty of Parliament should see that the police power, the power of eminent domain or the taxing power for revenue purposes is not misused. The specific safeguards must be incorporated in the rules or in the statute book itself so that the citizens may not be put to trouble.

Regarding "Education", this is the only provision with which I do not agree with the Government. It should remain in the Concurrent List. For the last 30 years, the Government has not been able to come out with a uniform, viable and sound educational policy. Sometimes, we haves done 10+2+3; sometimes, it is 10+2+2; sometimes, 8+2+3 and sometimes, 8+2+2 Even today, there is no national unanimity or clarity with regard to the policy on education.

After the Chinese War and the Pakistan War, the Parliament passed the All-India Services (Amendment) Act which provided for the creation of the all-India services for the Indian Health Service, the Indian Agricultural Service, the Indian Forest Service and the Indian Education Service only for the sake of homogenuity and for the sake of efficiency and good performance. That was passed by the Rajya Sabha. But nothing further has been done

In the end, I would like to say a word about the Preamble I do not know how far my hon friends will agree with me I do not like the word "socialism" to be qualified by any word, like, "secularism" or "democratic" I say this because socialism unqualified is pure socialism; socialism, when it is qualified, is something less than socialism Socialism, when qualified by "national" became "fascism" and socialism, when qualified by "democratic" became "capitalism." Socialism in its very nature is secular. If you add secularism to it, it may sometimes become "Islamic socialism" or it may sometimes become "Christian socialism."

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Carl Marx has defined socialism as distribution of surplus; Sydney and Web have defined socialism; Prof. Harold Laski has defined socialism; Swami Vivekananda has defined socialism; Guru Nanak has defined socialism; Mahatma Gandhi has defined socialism. And our concept of socialism is something quite different. We do not mean socialism as distribution of surplus. We only mean that if a guest comes, we would like to entertain him even if we have to remain hungry—*Atithi*—that means a man who comes without date.

Lastly, so far as the word "Republic" is concerned, Republic is always "sovereign" and "democratic" Democracy and sovereignty are inherent in "Republic" We should simply say, the "Republic of India." As the property right has been removed from the Chapter on Fundamental rights and has been put as an ordinary right, we can call India as "The Socialist Republic of India."

SHRI HITENDRA DESAI (Godhra): Mr. Chairman, Sir, at the outset I join with the other leaders of the Opposition parties in congratulating the Law Minister for bringing in this Bill. I also congratulate the Prime Minister and the Law Minister, not so much for bringing in this Bill as the manner in which they handled the Bill, the manner in which they consulted the Opposition parties and groups and they tried to evolve a consensus. I believe, it is the first step in that direction. In spite of all the criticisms which we have been levelling against the Janata Party, this is one good act which they have done in the last 16 months.

Now, I will deal with the various provisions in a nutshell. On the whole, our Party supports the general principles contained in the Bill subject to certain reservations and subject to certain comments which I shall presently make.

I will first take the question of Emergency. It has been rightly pointed out that there was subversion of the Constitution and there were excesses in Emergency, and that the Congress Party suffered defeat in the elections mainly on account of the excesses of Emergency. It must also be noted at the same time that, when the Constituent Assembly met before 1950, soon after independence, it was only under the Indian National Congress that this Constitution was mainly framed, and the founding fathers of the Constitution were mainly inspired by Mahatma Gandhi and Pandit Jawaharlal Nehru. I will go to a period even earlier than that.

All of us who were struggling or taking part in the struggle for freedom did not at that time merely fight for the independence of the country and against the British but even during those days we envisaged 'India after independence', and we envisaged a social order free from exploitation, at the same time guaranteeing Fundamental Rights in the Constitution I will not take much time of the House; I will only refer to a Resolution passed by the Indian National Congress at its Karachi Session as early as 1931, under the Presidentship of Sardar Patel, where I had the good fortune to be present. I will not read the whole Resolution, but will read only a few lines. The heading is 'FUNDAMENTAL RIGHTS AND ECONOMIC PROGRAMME. This was passed in the year 1931 when the Karachi Congress Session took place; Gandhiji was also present; the President was Sardar Vallabbhai Patel:

> "This Congress is of the opinion that, to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declared that any Constitution which

may be agreed to on its behalf should provide or enable the Swaraj Government to provide for the following...."

A number of things are there. I will read only one or two:

'Fundamental rights of the people, including freedom of association and combination; freedom of speech and of the press; freedom of conscience... "

and so many other things which we have already embodied in the Constitution.

Therefore, even before we got independence, as early as the year 1931, the Indian National Congress, under the the leadership of Mahatma Gandhi, was very clear in its concept of 'India after Independence'. Barring the 19 months of Emergency when there was subversion of the Constitution which we admitted the Congress has always nurtured all these Fundamental Rights and the freedom of the press also. I also want to bring to the notice of the House that, soon after the election results were announced in March 1977, the Congress Party —at that time the split had not taken place—at its AICC Session in May tried to evaluate the reasons for its defeat, what wrongs were committed during the Emergency, and easily came to the conclusion that the emergency excesses were the main cause and they felt sorry for it and they were convinced that there must be some provision in the Constitution by which these excesses could be prevented. It is in this light that I am speaking today, even against the provision of emergency for internal purposes and even armed rebellion. Even the inclusion of armed rebellion for internal emergency does not alter the situation very much. I do not want to repeat the many arguments that have been found out so far but the House should be aware that there is an explanation here which is even much more derogatory than the substantial provision. The explanation says:

"A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.";

But I do not think any difference could be made. Even if a provision for armed rebellion is there, it is quite likely that the powers may be misused. I appreciate the various constraints which are contained in the section, namely, that it is considered almost to be an amendment of the Constitution and, therefore, it has to be approved by a resolution by each of the Houses with a two-thirds majority of the Members present and voting and a majority of the members voting for it. These are good provisions. But, at the same time, our Party is opposed to emergency on the ground of internal disturbances including the provision for armed rebellion.

In this connection we have the experience of many other countries also. It is not only in India that we had this experience but in other countries of the world also emergency has always been misused. I will only give one instance of Nigeria. There, in the year 1962, in Western Nigeria on account of squabbles in the ruling party —I am emphasizing this point for the purpose of this ruling party also— that merely for the purpose of squabbles in the ruling party, the Regional Governor of Nigeria dismissed its Premier, Chief Akintola. But the Premier went to a court of law for a prayer that the order was invalid. In the meantime, the Assembly met and at its meeting there was violence in the Chamber of the House and the Assembly could not go on. Immediately, the Federal Government thought that there was a case for clamping emergency and emergency was clamped on Wes-

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tern Nigeria even though there was not a single violent incident outside the House in any part of Western Nigeria.

Therefore, Sir, not only in this country but in the experience of several other countries also the provisions of emergency have been misused and it is for that reason that we are not against having emergency for external aggression and war but not for internal disturbances or even for armed rebellion or for the danger of armed rebellion, and that is one point on which our Party is very clear.

Secondly, so far as the question of the amendment of the Constitution is concerned, my Party is also opposed to the idea of referendum. A very scholarly argument was put by my hon. friend, Shri Venkataraman and, for want of time, I don't want to repeat them and add to many things which he had said. One thing which strikes me about the referendum clause is that unless there is a general election and even general election not only of Parliament or Lok Sabha but unless there is a simultaneous general election to the State legislatures and to the Lok Sabha, it will be very difficult to get 51 per cent of voters even for this purpose of referendum. That is exactly our experience these days and, therefore, the whole idea of referendum seems to me to be thoroughly impracticable.

At the same time, I feel that by enumerating the basic features in the Constitution itself, we would open flood-gates of litigation and the courts may take a view that this is an amendment against the basic features and, therefore, the court may strike even an innocent provision which may not necessarily come under the basic features of the Constitution. My third argument, over and above the arguments which have been propounded here for the Law Minister to consider is whether the clause itself is valid or it also requires to go for referendum to the people. Therefore, on these grounds and mainly on the ground that after all in a vast country like India, this is not practicable, we are opposed to the amendment of the Constitution by referendum. We certainly hold the people of India supreme; it is after all the demos, the people of India who are enthroned in the seat of Parliament. There is no dispute about that, but if Parliament can also be captive, Parliament can also be misled, there is every reason, looking to elections in our neighbouring countries, that people can also be misled. Therefore, there is no additional point in providing referendum for the amendment of the Constitution.

A point was made about the preamble to the Constitution. The speaker, who spoke before me on behalf of our Party, has amply made it clear that there should be no definition of secularism or socialism. After all, secularism has something more of wider import than what is contained in the mere definition as defined in the Bill itself. This is more so in the case of socialism. By defining socialism in the manner in which it has been done, I feel that we have much narrowed down the scope of socialism. After all, it is very difficult to define socialism, but we have certain ideas about it.

श्री एच० एल० पटवारी (मंगलदाई) : सभापति महोदय, मेरा व्यवस्था का प्रश्न है ।

सभापति महोदय : बैठिये, इसमें क्या व्यवस्था का प्रश्न है । आपका नाम है ।

श्री एच० एल० पटवारी : बहुत अच्छी बात है । हमारे सदन में बहुत से गांवों के लोग आते हैं सदन देखने के लिये जिनको हम लोग इजाजत देते हैं । लेकिन वह लोग अंग्रेजी नहीं समझते हैं । इसलिये एक हिन्दी और एक अंग्रेजी की स्पीच होनी चाहिये इससे वैलेंस रहेगा और उनको समझने में सुविधा होगी ।

MR. CHAIRMAN: It is only a point of disorder.

SHRI HITENDRA DESAI: The ideas of socialism have grown with the time in this country right from the year 1930 onwards to the present. Pandit Jawaharlal Nehru tried to define it but ultimately he gave up that idea and he said, we cannot define socialism. Therefore, I am glad, that among the many provisions of Constitution (Forty-Second Amendment) which have been retained, the preamble embodying that this is going now to be a secular, socialist, democratic republic is also retained and I must congratulate the Government mainly for that purpose. It is only because some section in that party does not like socialism or secularism, therefore, an attempt is made to narrow it down and, therefore, we are opposed to the definition.

Lastly, on the point of education, I remember when the State of Bombay was organised as a bilingual Bombay, I as the Education Minister noticed that there were six systems in several regions of the State, there were different systems of education in areas which comprised Marathwada, Vidarbha, Maharashtra of the old Bombay, Gujarat of the old Bombay State, and various other places and the area which comprised of Saurashtra—20 small States before.

Therefore, in a country like India if we really want integration and if we really want our country to grow, I feel there must be some guidelines laid down for Education, in many of the fields. I am not, for a moment, suggesting that the Centre should interfere in the implementation of the Education policy of the States Ultimately, the States will have the main function of organizing Education and implementing various policies. But we should think of areas like language policy. For instance when we are fighting for language or for the 3-language formula, if the States do not implement it, we can certainly evolve some other consensus by which a proper language formula can be evolved. It is possible only if Education is in the concurrent list. Therefore, we oppose the idea contained in the Bill, that Education and Forests should be in the State List.

To conclude, excepting on the various points which I have pointed out, we support the Bill in its main principles. But evolving a consensus on the Constitutional amendments is only one step. The other step is wanting. Merely enacting fundamental rights in the Constitution will not guarantee fundamental rights. Merely by providing constraints against Emergency in the Constitution, it will not be possible to prevent authoritarian forces from subverting the Constitution. What is required at the present moment is a national consensus on many of the vital problems that confront us, and a national will to act. I am afraid the way the Janata Government is going ahead, law and order is completely out of joint, economic crisis in facing us, official language question is threatening to divide the country, casteism is rampant, and events which happened in Bihar and those which have recently happened in Marathwada are but dark shadows of more ghastly events to come. This is the state of the country to-day. Merely by providing certain things in the Constitution, we will not be able to guard parliamentary democracy.

If a democratically-elected Government fails to solve the problems of the the people, it will be responsible for it if authoritarian tendencies grow in this country. And they are exactly those which are growing. Therefore, I personally feel that the time has come in this country for all wise men of this country to come together—not only those who are in power but even those outside—and evolve a consensus on many vital problems that confront us, and decide accordingly. People are not going to spare anybody. After all, the Janata Party thought, when they took oath at Rajghat that they will be there for 3 long decades more at least. Now,

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even they are not sure how long they will be in power. We have to learn from history. But, as the great historian Hegal pointed out, it is only from history that Mankind learns that it learns nothing from history. It that is going to be our fate, I do not think mere constitutional amendments can be a safeguard for parliamentary democracy in this country.

PROF. R. K. AMIN (Surendranagar): Sir, at the outset let me say that I congratulate the Law Minister for the introduction of the 45th amendment to our Constitution. But my congratulations are qualified, because as far as his amendments go they are good enough but they do not go as far as I wish them to go. By these amendments we are making changes in so many fundamental features of our Constitution; emergency provisions, fundamental rights, preamble, preventive detention, power to amend the Constitution and so on. To understand this I should like you to go back to the days of the Constituent Assembly. During those three years, 1947 to 1950 they wrangled and quarrelled with the main aspects of the Constitution and arrived at certain decisions. Two criticisms are made against that and the hon Law Minister—should keep that in view while making the present amendments. One was that the Constituent Assembly was not representative enough. This criticism referred to was as a result of the Cabinet proposals. Adult franchise was not given. From the States nominations of representatives were made. Probably it used to represent 28-30 per cent of the electorate, not more; many of them were appointed from the princes of various States. The second criticism was that the framing of the Constitution was in some special circumstances, when there was the threat from Pakistan, or Telangana was there as an internal disturbance, the food situation was critical and the refugee problem was serious, it was in those circumstances that our Constitution was framed. That is why a sort of conflict between two groups of thought was going on from the beginning till even today. Some people wanted directive principles to be first and fundamental rights next, some others wanted priority for fundamental rights over directive principles. Some said that the word 'socialism' should be included in the preamble and some did not want it. Because of such conflicts in the course of 25 years we had about 45 amendments to our Constitution. From that point of view, I should like you to judge the present provisions made by the hon. Law Minister.

Let us take the provision regarding emergency. Does this provision really solve the problem of emergency which we faced one and half years ago? Do we have the possibility of subversion of the Constitution which was supposed to be the most well designed Constitution to protect the freedom of the people? In the course of the next two years could it be subverted by the same machinery of the Constitution? When we are making changes we should see whether the same machinery could be utilised in such a way as it was done in 1975? You take the case of the Prime Minister. Do we allow him the right to go and advise the President for the dissolution of Parliament? He can by giving that threat keep all the members of the Party with him—have we made any provisions that such a power is not being utilised, cannot be utilised in an undemocratic manner? Have we made any provision that such a power is not utilised by a dictator who may happen to be the Prime Minister and who wants to convert his office into a dictatorship, just as we saw only a few years ago? It is possible that some of us also can behave in that manner. Are we making provision for that? I do not find any provision of that nature in this Bill.

Take the emergency provisions. It says about armed rebellion. Is it rebellion by the army? If it is rebellion by the army you are not going to control it. Is it rebellion by the people with arms? You have not allowed any arms to be kept with the people. We have no right to keep arms. If a significant number of people keep arms, there is something wrong with the administration. If there is internal subversion, with the present technology available with the army are we not in a position to control it in one month's time? If it is not controlled in a month, it can never be controlled. So, if at all a provision is necessary to be introduced for armed rebellion from significant number of people with arms your emergency should not be for more than 15 days or one month. It cannot continue for six months after the lapse of the emergency and you cannot keep control over the freedoms of the people for such a long time. So, that sort of thing is not required. If there is a possibility of armed rebellion, your emergency should not be for more than one month. That sort of provision has not been made. I wish that sort of provision is made.

Coming to fundamental rights, several fundamental rights were not included from 1947 to 1951, although they were included in the Nehru Report and in the various reports prepared by the Congress, which was our national party then, right from 1895 to 1945. Conveniently those fundamental rights were removed during 1947 to 1951. I will name two or three: right to bear arms, secrecy of correspondence, due process of law to be adopted, preaching of class or caste hatred security of person and dwelling from unreasonable searches etc. These fundamental rights were included in the Nehru Report and various resolutions of the Congress. But conveniently they were removed during 1947 to 1951 because somebody might have pointed out that we have to deal with Pakistan or Telangana or with the communists. So, these rights cannot be given. But we have seen that because of the loss of of these rights, we were put to any amount of difficulties in 1975 to 1977. The greatest curse was the searches and MISA, the sword hanging over our heads during 1975 to 1977. Otherwise, when so many big leaders were being arrested on 26th morning, not a sparrow could even chuckle in the country. There were no disturbances in the whole country. Nobody was in a position to speak. Even when the Cabinet was not consulted and the Cabinet was informed about it only at 6 or 7 O clock in the next morning, not a single minister asked why they were not consulted, because if the lion is outside the House and if we are asked whether we want the lion inside the House, we might say, no. But if the lion is brought and put here on the Table and then if we are asked whether we want the lion to be in the House, everybody will say, "Yes, we want the lion in the House"! You are bringing an amendment to see that the situation which arose in 1975 does not arise again But for that such fundamental rights which ought to have been included in this have not been included. I request the Law Minister to please think it over. If you are really concerned with the problem that the emergency which came in 1975 should not come again in future in the manner in which it came in 1975, such fundamtenal rights should be included in this Bill

17.00 hrs.

If you remember, when these fundamental rights were included in our Constitution in 1950, one of the Members of the Constituent Assembly criticised it saying that they were framed from the point of a police constable This criticism must be borne in mind if the same rights are to be kept. We have seen during the emergency the way in which the right of *habeas corpus* was taken away from us even by the judiciary. It should not happen again. Have we made provision for that? Can you put your hand on your heart and say that it will not be repeated again after this amendment? I doubt. It might be repeated,

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): That has been done by amending article 359.

PROF. R. K. AMIN: Take the right of property. What have we done? We have thrown away the baby with the bath water. Long back, when the right of property was discussed, big business, big capitalists, very rich people luxurious living and other things were pointed out, inequalities of income between the richest and the poorest was pointed out, and that is why the right of property was to be taken away, but when you take away the fundamental right of property, you must realise that it includes a house, for instance I may be driven out of my house, my right to that property maybe taken away by executive authority. I may have one or two acres of land, that can be taken away without compensation. That right is not protected And you have never taken away the property of the big people. Even when this right was excluded from the fundamental rights, even when the fundamental rights were suspended, nobody utilised article 31B and 31C to take away the property of anybody else.

If I do not have the right of property, I am subjected to slavery. If I want to speak to the highest in the country.

When I go home nobody should be in a position to harass me, to take away my employment and living. That guarantee has to be given to me. Otherwise, you are subjecting me to slavery and my freedom is in jeopardy. If you like, you can put a restriction, you can say that nobody has the right to acquire property more than Rs. 1 lakh or Rs. 50,000 but I should have full freedom, and should not be subjected to the pleasure of somebody who is in the Government. Think of a situation when all employment is controlled by Government. What is the fun in giving freedom of speech then? An empty belly and a free tongue will not go together.

I agree with my friend Shri Jethmalani that as far as possible MISA should not have been kept, preventive detention should not have been kept. Even in 1948 when it was kept in our Constitution, so many people objected to it. It was only the threat of Pakistan or Telengana which allowed them to put it in the Constitution.

The Committee Report did not put MISA inside. But, later on, somehow by the backdoor it entered in our Constitution. If you read the history of Constitution making you will see how it entered through the backdoor. Now we have had a very bad experience. Therefore, I would only plead that body should be kept inside prison without giving any reasons for more than 15 days. It should not be more than 15 days at the most. There it should end in any case. Within this period Government must file a case find out the reasons, whatever reasons there are, and if there are no reasons, nobody should be subjected to MISA. If that sort of provision is made, I would be very glad.

17.07 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

My hon. friend, Shri Stephen, suggested that there is a conflict between the Directive Principles and the Fundamental Rights. There is no conflict between the two. One is "Do's" and the other is "don'ts"; one is positive and the other is negative. One says to the State: do not tamper with the individual freedom, allow people to have their free tongue. The other says positive things like: give him employment, give him good living, give him healthy conditions, give him nutritious food. One is positive and the other is negative; there is no conflict. One refers to freedom from the State and freedom from the other individuals while the other refers to socio-economic policies. This has arisen because of the compromise. Some peo-

ple wanted the word "Socialism" to be embodied in the Constitution, but that word was not put in the preamble. That is why the Directive Principles were incorporated in the Constitution.

Here also I would have welcomed my Law Minister, if he had tampered the Directive Principles with Gandhian influence. At the time of the Constitution-making, only Nehru influence prevailed; Gandhian influence did not prevail. So many people at that time suggested the inclusion in the Directive Principles of subjects like the protection of cottage industry, prevention of cow slaughter, development of small and cottage industries. But all such Gandhian influences were excluded except prohibition. All other Gandhian teachings were taken away and in order to make a compromise with socialism some social security measures were put in the Directive Prmples. It could have been corrected, taking this opportunity, because the Janata Party Members have taken a pledge before the Gandhi Samadhi that they will include Gandhian teachings. So, he should have taken this opportunity to include the Gandhian teaching in the Constitution.

Coming to the provision about article 368, I am equally doubtful about the referendum. Why? What are you going to refer to the masses, most of whom are illiterate, who only look to the symbol and not the party, who only look to the leader and not even to the candidate who is contesting there? So, with this provision, you should also have evolved a new election system in order to meet the requirements. Otherwise, a referendum will not meet your requirements. Are you going to ask the people: do you want more powers to the States or more powers to the Centre? For Centre-State relationship, should we have a referendum, because it is a basic feature of the Constitution? What sort of result will you get from such a referendum? Nothing. On issues like whether you should have prohibition or not, dowry or not you may get some positive result. Then also, if it is at the time of the election and if it is one of the items in the election manifesto it does not serve any purpose. If it is separately put, but the election is taking place simultaneously, then also it will not serve any purpose. That is why I suggest that there should be a provision in our Constitution that every 20 or 25 years there should be a Constituent Assembly, specially convened in order to look into the basic features.

One thing I would like to say. We are wedded to democracy. The two essential features of democracy are one, freedom and two, not to govern anybody save his consent. We must see that we guard these two essentials —no one is governed save his consent and freedom is granted to every individual, like freedom of speech etc.

Now on these two things, there cannot be any referendum. There should not be. They are so basic that even a referendum or any other Constituent assembly should not take them up Probably a referendum is not suitable to our electorate. Thank you.

SHRI ASOKE KRISHNA DUTT (Dum Dum): Mr. Deputy Speaker, Sir, at the outset, I congratulate the Law Minister for having redeemed a pledge that our Janata Party had made to the nation before the elections last year. Before the Parliamentary elections that were held last year, our country passed through 19 months of the darkest period in its history. The fundamental rights of the people were usurped, democracy was crippled and the democratic system of Government was completely paralysed. The whole country was brought under the spell of an arbitrary dictatorship. When the Parliamentary Elections came, the people of our country who elected this 6th Lok Sabha, gave a definite mandate that those provisions which had violated our Constitution, which had ravished our Constitution had to be changed. Several hon. Members

[Shri Asoke Krishna Dutt]

here have given the details of earlier Constitutional Amendments. Through the amendments that were made during Emergency viz., 39th, 40th, 41st and particularly the 42nd Amendment, they had taken away the rights of the people to an extent which was undreamt of. The framers of the Constitution had made certain provisions for amending the Constitution. Every Constitution in every country has provisions for amendments. It is because it becomes necessary as time goes on and as we go through new experience, it becomes necessary to amend the Constitution. But the framers of the Consttution, I believe, never had dreamt that the provision for amending the Constitution would be exploited, and abused in the manner in which the 42nd Amendment was passed. The entire Constitution was ravished The people of this country gave a definite mandate, to see that those provisions are repealed and as I said the Law Minister had redeemed that pledge and has introduced this Bill to repeal most of the repugnant provisions of the 42nd Amendment. Of course, he has his limitations because the Government and the Law Minister have to sit with several hon Members of this House having different shades of opinions and this Bill is, to some extent, a product of compromise and compromise sometimes does not have that force which a original Bill has. Naturally, we would have liked this Bill to be much more forceful. But as I said, because it came after dialogue with several hon. Members on the opposite side, much of the provisions had to be diluted. But inspite of that....

SHRI HITENDRA DESAI: Let us know the forceful points at least.

SHRI ASOKE KRISHNA DUTT: Inspite of that, a very able job has been done. They way in which during Emergency the provisions of the old Constitution were exploited by the former Government taught us a lesson.

In the name of internal disturbance, a particular person abused the provisions of the old Constitution and imposed Emergency on this country. It has become apparent and it has been thoroughly exposed by the Shah Commission as to the manner in which the former Prime Minister, without consulting the Cabinet, had imposed Emergency on this country and had sent the recommendation to the President for the imposition of Emergency. It has now become clear that the then Home Minister was completely in the dark and that the Cabinet was not even consulted and only after the Emergency was proclaimed, next morning the Cabinet new about the proclamation of Emergency.

In the new provision that has been made, not only the words "internal disturbance" have been replaced by "armed rebellion" but certain other provisions, very necessary provisions, have been created. By hon. friend, Shri R K Amin, was just now saying that if there is an armed rebellion, certain provision should be there to see that such an Emergency ends within one month. I find that the Law Minister has made that sort of a provision in the Bill. He has clearly stated that if such an Emergency is proclaimed, still that provision has got to be scrutinised by Parliament within one month and, if the Parliament does not ratify that, the Emergency ceases So, that provision has been made.

There is another very fine provision that has been made in this Constitution Amendment Bill. As a victim of the MISA of Mrs Indira Gandhi, I am very much happy to see that the provisions of the MISA have been repealed But I find that the preventive detention still remains over there. Of course, it has to be admitted that in a country like ours where there are various sorts of problems, the problems of economic offenders, the problems of espionage, etc., certain types of preventive detention may be necessary. But I would urge upon the hon. Minister to be very cautious and, if necessary, to make even further

provisions to see that these provisions of the preventive detention are not abused

Our experience shows that during the Emergency, it was not only that the political executives of the country abused the provisions of MISA and preventive detention but often it also happens that these provisions of preventive detention are abused and misused by bureaucrats at every stage We feel the necessity that economic offenders must be brought to book But we have seen that petty bureaucrats petty police officials, often concoct false charges and victimise innocent citizens in various ways Certain provisions must be kept over here to see that the average citizen the ordinary citizen who sometimes does not have the means to take recourse to legal help is not penalised and is not oppressed by these provisions of preventive detention

I am also very happy to find that the new article 361A has been introduced We have seen during Emergency particularly how the proceedings of this august body the proceedings of various States legislatures and in what manner those proceedings have been completely blacked ou The very important speeches that were delivered on the floor of the House were completely blacked out and censured and they were not published at all This new provision of article 361A will give a guarantee to the people that in future, no tyrant can come and abuse the powers in such a way that the very important speeches that are delivered in this most important representative body of the country are censored in the manner that we had seen during the Emergency

Another provision that we saw during the Emergency was the manner in which the election laws were trampled on by the then Prime Minister To save her own skin, after the famous Allahabad judgment, she had the Constitution amended to see that the provisions of the Represenation of People Act could not be used against her, there was to be a separate type of legislation to see the eletion cases of the Prime Minister, Speaker and certain others This provision is being repealed and I congratulate the Law Minister for that

The right to property has been very rightly deleted Our Janata Party took a pledge during the elections that this was to be done, and that pledge is being redeemed Some of my friends on both sides of the House had expressed certain doubts about keeping the legal right to property I feel that it has been very properly kept there Otherwise, an unscrupulous executive could discriminate against people Any property that has to be taken must be taken under due process of law, and that provision has been very amply kept there

In this connection I would like to say that I would have been more happy if the Law Minister had provided for the right to work This pledge was given by the Janata Party during the election where we said that the fundamental right to property would be abolished but at the same time the right to work would be accepted I would have been very happy if that had been included I would even now request the Law Minister to incorporate it here before the final acceptance of this Bill

There is a provision about referendum Some of my friends on both sides have expressed their doubts about it But I feel thatthe provision of referendum has been very rightly kept there Hon Member Shri Venkataraman was saying that referendum might be misused or might not be properly utilised, and he gave certain instances of cats and rats Some of my other friends were also saying that 51 per cent of the people might not be brought to the poll I do not think so The experience of March 1977 elections shows that the people of this country are politically conscious May be that 70 per cent of them live below the poverty line or may be that 70 per cent of them are illiterate, but they have shown that

[Shri Asoke Krishna Dutt]

political consciousness cannot be directly linked either with poverty or with illiteracy. It has been shown by the people of this country that they have a tremendous political consciousness. And I feel that, if a referendum like this becomes necessary, the so-called less literate people of the villages will not be found lacking. If a referendum becomes necessary, the overwhelming majority of the people will duly take part in such a referendum. But I feel that this provision of referendum should be slightly altered. Here it has been said, 'majority of the people who vote in the referendum provided 51 per cent of the people vote'. That means, a situation might come where 26 per cent of the people can change these provisions. And these provisions are of special sanctity like secular and democratic character of the Constitution, like the Fundamental Rights of the citizens, like anything impeding free and fair elections, like something compromising the independence of the judiciary. All these four are of special character. The provision has been properly made that these things should not be trampled with easily. In that context, I would say, mere 26 per cent of the people should not be allowed to change this. The provision should have been that at least 51 per cent of the total number of voters should support such a move before it is changed.

I will conclude by saying that I have one reservation which I want to particularly emphasized about the removal of education from the Concurrent List. This will definitely be a retrograde step. We have seen in the last 30 years that education has been kept in the Consurrent List and that has worked very well. Ours is a country where we have all sorts of interests. There are linguistic minorities, there are religious minorities in different States and if we do not have more or less a uniform system of education throughout the country which, remaining in the Concurrent List, can be regulated by the Centre, there may be all sorts of disturbances and we shall be adding new problems, new language problems and new religious problems. In that context I feel that education should be kept in the Concurrent List as has always been done.

With these minor reservations I generally support the Bill and I congratulate the Law Minister.

SHRI G. M. BANATWALLA (Poonani): The long awaited Constitution (Forty-fifth Amendment) Bill is at last before the House. The Bill goes a long way, though not all the way, towards restoring the Constitution to its pristine glory. That it goes a long way is commendable but that it does not go all the way to restoring the Constitution to its pristine glory is most regrettable.

Desite all claims made and despite the various provisions in the present Amendment Bill, the Constitution is left with provisions sufficient to enable subversion of democracy or to pave the way for authoritarianism.

Clause 38 of the Bill amends Art. 352 of the Constitution. This is with respect to emergency and the Bill provides that apart from war or external aggression, proclamation of emergency can be made if there is a threat to the security of the State by concept of armed rebellion is such that it is pregnant with potentialities for the sub-version of democracy. Armed rebellion is a concept that will armed rebellion. I submit that this Armed rebellion is a concept that will come very handy to a government to clamp emergency so as to meet their own exigencies of the situation. To illustrate my point I would quote from the book of Maulana Abul Kalam Azad, *'India Wins Freedom'*. Immediately after Independence there was a charge by Sardar Vallabh Bhai Patel that Muslims had risen in arms against the their non-Mulsim brethren and this is what Maulan Azad says at page 215 of this book:

"The police did recover some arms from Karolbagh and Subzi Mandi. By Sardar Patel's orders, these were brought to the Government House

and kept for our inspection in the ante-chamber of the Cabinet Room. When we assembled for our daily meeting, Sardar Patel said that we should first go to the ante-chamber and inspect the captured arms. On our arrival we found on the table dozens of kitchen knives that were rusted, pocket-knives and pen-knives, with or without handles and iron spikes which had been recovered from the fences of old houses and some cast-iron water popes.".

Maulana Azad goes on further say:

"Lord Mountbatten took up one or two of the knives and said with a smile that those who had collected this material seemed to have a wonderful idea of military tactics if they thought that the city of Delhi could be captured with them".

The only point that I am making before the House is that this very concept of armed rebellion can be twisted by the Government in power to suit the exigencies of its own requirements rather than any situation of emergency.

Not only, this but, there is salt added to the injury. Clause 38 to which I am referring has as explanation and the explanation is to the effect that the proclamation of emergency may be made even before the actual occurrence of rebellion if the president is satisfied that there is an imminent danger thereof

I need not dilate further to show how this explanation itself is pregnant with potentialties to pave the way for a totalitarian or an authoritarian rule.

Take the case of Fundamental Rights It has been claimed that the present Bill safely and securely entrenches the Fundamental Rights in our Constitution. I wish, if were so, because no one can deny the importance of Fundamental Rights. The preamble to the Constitution speaks of the dignity of the individual and it was Jacques Maritain who said:

"The dignity of the human persons?—The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, as the subject of rights, possesses rights. These are things which are owed to man because of the very fact that he is man."

Such is the significance of Fundamental Rights

Let me also quote from the preamble to the Universal Declaration of Human Rights:

"The recognition of the inherent dignity and of the equal inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Why go so far? We had the Pandit Motilal Nehru Committee Report in 1928. This Committee Report in 1928 had asserted:

"Our first concern should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances."

This is about the parmount importance of the Fundamental Rights.

Now, let us look at the position as it emerges from this Bill with respect to the amendability of the Fundamental Rights. Not only the amendability of the Fundamental Rights, eve nsuspension of Fundamental Rights is a serious thing. In the United States of America, in an early case of Exparte Milligan, it was observed.

"No doctrine involving more pernicious consequencies was ever invented by the writ of man, than that any of its (Bill of Rights) pro-

[Shri G. M. Banatwalla]

visions can be suspended during any of the great exigencies of the Government."

Not to talk of suspension, I submit this Bill has taken the question of Fundamental Rights in a very light manner.

Clause 45 amends Article 368; it introduces the concept of referendum. Let us study this concept. We are told that a proposal will be deemed to be approved if at least fifty-one percent of the total electorate go to the poll and a majority of those who vote favour the proposal. If that comes about, it will come to hardly 26 per cent of the total electorate, and if the electorate is 50 per cent of our total population, it means that the fundamental rights are left to the whims and fancies of just 13 per cent of the total population

The Statement of Objects given in the Bill says that the Bill wants to secure fundamental rights and wants to place them beyond the reach of a transient majority. I submit that apart from this, the fundamental rights are placed under the whims and fancies of just a small and insignificant minority, as compared to the total population.

There are lots and lots of further scope for parliamentary invasion of fundamental rights. For example, in spite of much that has been said about fundamental rights, Government does not deem it fit to remove Article 31B, an obnoxious provision in the Constitution and an anachronism in the list of fundamental rights because any Act which is placed in the 9th Schedule is thus beyond the reach of any of the fundamental rights enshrined in the Constitution. A simple majority of Parliament places an Act in the 9th Schedule, and the fundamental rights are all barred. Such is the position.

Then, Clause 8 of the Bill amends Article 31C. While amending Article 31C, Article 14 and Article 19, (important fundamental rights) have been freed from the supremacy of all Directive Principles Yet they have been made subordinate to Article 39B-and-C. The main point is that there is a lot of scope for even parliamentary innovations of these rights. It is sometimes said that there is a conflict between Directive principles and Fundamental Rights. There is no conflict. Every advance, every socilist advance that must come, must come within the framework of the fundamental freedoms granted in the Constitution; and that should be clearly understood.

In order to secure the immutability and inviolability of the fundamental rights I have given an amendment, saying that certain Articles with respect to civil liberties and minority rights shall always remain inviolate, while others may be changed by a majority of two-thirds of the total electorate at referendum I will dilate upon this when, insha Allah, I come to that particular aspect

The preventive Detention provision continues. I must say with respect to these preventive detention clauses that they reveal a total lack of honesty. There is a transparent lack of honesty on the part of the Treasury Benches, as far as the rule of law is concerned. It is not the question of safeguards. It is the vital question of detention with, or without trail; and as far as this particular rule of law is concerned, there can be no compromise whatsoever. Preventive detention or detention without trail smacks of a feudal concept.

There is a claim made with respect to freedom of the press and the publication of the proceedings of this House, parliament and the legislature without previous restraints, without censorship. Government must be congratulated for this. Still I say that the committal to freedom of the

press is partial Why should not the government accept my amendment when moved, that there shall never be any previous restraint upon any publication in any newspaper? That is the basic concept of the freedom of press. There cannot be any compromise with respect to that

There are a few more points but in deference to your bell that has been rung, I conclude by saying that while this Bill does go a long way in restoration of the pristine glory of the constitution, it does not go all the way and that is the saddest part of it

श्री हरिकेश बहादुर (गोरखपुर) मान्यवर, संविधान के इस संशोधन विधेयक का समर्थन करने के लिए मैं खड़ा हुआ हू । हमारे देश का महान संविधान इस देश में लोकतांत्रिक व्यवस्था को कायम करने मानव की आजादी और मानव मूल्यो की रक्षा करने के लिए बनाया गया था । किन्तु 42वें संविधान संशोधन विधेयक के बाद इस संविधान के समस्त नैतिक मूल्यो का हत्या कर दी गयी, लोकतांत्रिक मूल्यो की हत्या कर दी गयी और पूरी की पूरी संवैधानिक व्यवस्था को इस रूप में बदल दिया गया कि उसमे किसी व्यक्ति विशेष के हितो की रक्षा हो सके ।

मान्यवर पूरा देश जानता है कि 12 जन, 1975 को जब इलाहाबाद हाई कोर्ट ने अपना फैसला दिया तो उस फैसले से एक व्यक्ति को बचाने के लिए चुनाव नियमो में संशोधन किया गया । मान्यवर संविधान को इस तरह से संशोधित किया गया जिससे कि भारत का जो प्रधान मंत्री होगा, वह किसी भी प्रकार का अगर अपराध करता है तब भी वह न्यायपालिका के समक्ष नही लाया जा सकेगा । इस तरह से देश में लोकतांत्रिक मूल्यो की हत्या की गयी । उस समय देश के अन्दर निराशा और कुंठा के वातावरण ने जन्म लिया और लोगो ने अनुभव किया कि लाखो लोगों ने जिस भारत के लिए कुर्बानिया की थीं, हमारे महान नेताओ ने जिस आजादी के लिए संघर्ष किया था अपने जीवन को पूरी तरह से देश के लिए न्यौछावर कर दिया था, क्या वह सब कुछ बेकार हो रहा है ? देश का पूरा जनमानस निराश हो रहा था ।

ऐसे ही वातावरण में जनता पार्टी का जन्म हुआ और जनता ने मार्च, 1977 के चुनावो में उसे विजयी बना कर, जनता पार्टी की सरकार बनायी । जनता ने इस सरकार को स्पष्ट रूप से यह आदेश दिया कि देश के संविधान में संशोधन करना होगा जिस से कि उन सभी लोकतांत्रिक मूल्यों और नैतिक मान्यताओ की पुनर्स्थापना हो सके जिनको कि 42वें संविधान संशोधन विधेयक ने नष्ट कर दिया था । इस संविधान संशोधन विधेयक के द्वारा देश के अन्दर फिर से लोकतांत्रिक मूल्य कायम किये जा रहे हैं । इसलिए मैं माननीय विधि मंत्री के द्वारा पूरी सरकार का बधाई देना चाहता हू ।

मान्यवर, कुछ बातें इस में जरूर कहनी हैं । जैसे कि राईट टू प्रापर्टी या सपत्ति के अधिकार का जो सवाल है, यह सवाल एक ग़मीर सवाल है । इस राईट को फण्डामेंटल राइटस की सीमा से बाहर कर देने से ही हम लोगो की तमाम कठिनाइयो को दूर नही कर सकेंगे जिन्हे कि दूर करने की बहुत आवश्यकता है । आज राईट टू प्रापर्टी की जगह राईट टू लिमिटेड प्रापर्टी का प्रयोग करना भी आवश्यक हो गया है । क्योंकि जब तक हम सम्पत्ति की सीमा निर्धारित नही करते तब तक कुछ व्यक्तियो के पास में कुछ मुट्ठी-भर लोगो के पास अत्यधिक सम्पत्ति इकट्ठी हो सकती है जो कि शोषण का कारण बन सकती है और उन लोगो के जीवन को जिनका कि जीवन पहले ही कठिनाई में व्यतीत हो रहा है और भी संकटग्रस्त बना सकती है । ऐसी हालत मे हमारे लिए इस चीज का देखना जरूरी हो गया है कि जो इस समय पूंजीवादी व्यवस्था है जब तक हम इसको समाप्त नही करेंगे तब तक सही ढग से हम लोगो के हितो का सरक्षण नही कर सकेंगे । यह स्पष्ट है कि पूंजी आज कुछ लोगो के हाथ में इकट्ठी हो गयी है और वे उस पंजी के द्वारा सम्पूर्ण देश की प्रशासनिक व्यवस्था को सम्पूर्ण देश के शासन को प्रभावित कर रहे हैं । उन्होने देश की पत्रकारिता को प्रभावित करने लोगो के मानसिक चिंतन को प्रभावित करने की भी प्रक्रिया अपनायी है । जाहिर बात है कि इस पूरी प्रक्रिया का अन्त तब तक नही किया जा सकता है जब तक कि पूंजी की सीमा निर्धारित नहीं की जाती है । देश के शोषण को समाप्त करने के लिए यह अत्यावश्यक है कि पूंजीवाद का अन्त हो । इस बात की कमी मैं इस संविधान संशोधन विधेयक में देख रहा हू । मैं चाहता हू कि मंत्री महोदय इस ओर ध्यान दें और देश मे पंजी की एक निश्चित सीमा निर्धारित करने का प्रावधान संविधान में करें ।

आज देश में शोषण बेरोजगारी फैली हुई है । नौजवान लोग शिक्षा हासिल करने के बाद बेकार इधर उधर घूमते हैं । ऐसे लोगो को रोजगार देने की व्यवस्था करने का प्रश्न भी हमारी सरकार के सामने आता रहता है । हमने अपने मैनिफेस्टो में भी कहा था कि राइट टू वर्क को हम फंडेमेंटल राइट बनाएंगे और प्रत्येक व्यक्ति को काम देने का अधिकार देने की व्यवस्था संविधान में करेंगे । लेकिन यह व्यवस्था नही हो पाई है । शास्त्री जी का बिल भी इस सम्बन्ध में जब सदन में आया था तो उस पर जो बहस हुई थी तब सभी दलों के सदस्यों ने उसका समर्थन किया था । इसकी

[श्री हरिकेश बहादुर]

कमी इस संशोधन में हमें दिखाई पड़ रही है। मैं समझता हूं कि इसको सुधारने की आवश्यकता है।

देश में अपराध तेजी के साथ बढ़ते जा रहे हैं। मैं किसी भी हालत में मीसा जैसे काले कानून का समर्थन नहीं कर सकता हूं। लेकिन इतना मैं अवश्य कहना चाहता हूं कि जो कुछ भी आज संविधान के अन्दर व्यवस्था है इससे स्पष्ट हो चुका है आजादी के बाद से ले कर आज तक स्पष्ट हो चुका है कि जो भी कानून हमने पास किए हैं उन में अपराधों पर शक्तिशाली और सक्षम नियंत्रण हम स्थापित नहीं कर पाए हैं। उस नियंत्रण की स्थापना के लिए आज कानून में संशोधन करने की आवश्यकता है ताकि अपराधों पर कड़ा नियंत्रण स्थापित किया जा सके। आज तरह तरह के अपराधी जो हत्यायें करते हैं, डकैतियां डालते हैं नमाम लोगों की जानकारी में रहने के बाद भी जब वे अदालतों के दायरे में जाते हैं तो वहां से छूट जाते हैं। ऐसी अवस्था में उनका इस तरह के कार्य करने का उत्साह मिलता है उनका उत्साह और बढ़ जाता है और उसका कुप्रभाव उनके व्यक्तिगत मस्तिष्क पर ही नहीं पड़ता बल्कि पूरे समाज पर पड़ता है और समाज में अपराध की प्रवृत्ति विकसित होती है। तीस बरस तक जिन कानूनों का प्रयोग हम करते आ रहे हैं उन से देश में अपराधों को कम करने की दिशा में कोई शक्तिशाली कदम हम नहीं उठा पाए हैं। इसलिए आज आवश्यकता इस बात की है कि जो भी कानून हमारे पास हैं जिन से हम अपराधों को नियंत्रित करने की व्यवस्था करते हैं उनको और भी प्रभावशाली बनाएं और आवश्यक हो तो उन में संशोधन भी करें।

जहां तक पब्लिक स्कूलों का ताल्लुक है इनको खत्म करने के लिए जब भी सवाल यहां आया है तब बराबर कहा गया है कि हम इनको हटा नहीं सकते हैं क्योंकि संविधान में कुछ ऐसे प्रावधान हैं जिन के तहत जिन लोगों ने इनको चला रखा है या विशेष वर्गों के लोगों, सम्प्रदायों के लोगों ने इनको चला रखा है उन पर हम इन प्रावधानों के रहते नियंत्रण स्थापित नहीं कर सकते हैं, उनको हम समाप्त नहीं कर सकते हैं। यह दुर्भाग्यपूर्ण स्थिति है। अगर संविधान में ऐसी कोई व्यवस्था है जिस के तहत हम उन पर रोक नहीं लगा सकते हैं तो उस व्यवस्था को समाप्त करने के लिए संविधान में संशोधन किया जाना चाहिए ताकि जिस विशेष वर्ग को विशेष प्रकार की सुविधा आज उपलब्ध है उसको खत्म करके सभी लोगों को बराबर और समान सुविधा मिल सके, सभी के लिए समान अवसर हम पैदा कर सकें। इसके लिए भी संविधान में संशोधन करना अत्यन्त आवश्यक है।

पब्लिक स्कूलों के बारे में मैं कह सकता हूं कि ये स्कूल केवल सामन्तवादी, कुलीनतंत्रीय और नौकरशाही प्रवृत्ति वाले व्यक्तियों का निर्माण करते हैं जो देश में अपने को एक विशेष वर्ग का व्यक्ति समझ कर देश की शासन व्यवस्था में अपने आपको समझते हैं और देश में शोषण की प्रक्रिया को तेज करने में पूरी शक्ति और बुद्धि का प्रयोग करते हैं। इस वास्ते पब्लिक स्कूलों को समाप्त करने की व्यवस्था करना भी निहायत आवश्यक है।

शिक्षा को समवर्ती सूची में लाने का कार्य करना अत्यन्त उचित कार्य है। इस दिशा में सरकार को तत्काल ध्यान देना चाहिये और कार्रवाई करनी चाहिये।

न्यायपालिका को यह अधिकार नहीं होना चाहिये कि वह संसद द्वारा बनाए गए कानूनों को अवैध घोषित करे। राष्ट्रीय हित के दृष्टिकोण से कानून बनाने के संसद के अधिकार पर किसी भी प्रकार का हस्तक्षेप अनुचित एवं जन विरोधी है। संसद देश की जनता की भावनाओं को परिलक्षित करती है देश की जनता का प्रतिनिधित्व करती है उसके अधिकार पर किसी भी प्रकार दूसरा बाहा का कोई भी नियंत्रण नहीं होना चाहिये उसका कोई भी प्रभाव नहीं होना चाहिये।

फन्डामेंटल राइट्स और डायरेक्टिव प्रिन्सिपल्स आफ स्टेट पालिसी के बीच में जो संघर्ष बराबर चलता है उस सम्बन्ध में मैं केवल इतना कहना चाहता हूं कि डायरेक्टिव प्रिन्सिपल्स आफ स्टेट पालिसी को आज की स्थिति में हमारे देश में सर्वाधिक महत्व देने की आवश्यकता है। यदि कोई भी फन्डामेंटल राइट इसके क्रियान्वयन में किसी भी प्रकार की बाधा पहुंचाता है तो उस फन्डामेंटल राइट को सुधारने के लिए जो भी आज प्राविजन किए गए हैं उनके आधार पर कार्य होना चाहिये। और डायरेक्टिव प्रिन्सिपल्स आफ स्टेट पौलिसी की सुप्रीमेसी फन्डामेंटल राइट्स पर जरूर स्थापित करनी चाहिये।

इन शब्दों के साथ मैं अपनी बात समाप्त करता हूं और इस विधेयक का समर्थन करता हूं।

श्री गौरी शंकर राय (गाजीपुर) माननीय, हमारे विधि मंत्री जी भाग्यशाली हैं यह उनको एक ऐसा अवसर मिला है कि इस छठी लोक सभा में जनता ने इस संविधान को बदलने का काम इनको सौंपा ताकि इस देश के माथे पर जो कलंक था, या इस देश के इतिहास पर जो यह काला निशान था उसको हटाने की जिम्मेदारी इनको हाथों पूरी हो रही है। ऐसा ऐतिहासिक काम करने का इनको अवसर मिला है इसलिये यह भाग्यशाली हैं। हम भी भाग्यशाली हैं कि हमको एक ऐसा अवसर मिला है कि इस देश के कलंक को धोने में हमारा भी योगदान है। ऐसी हास्यास्पद स्थिति

कल 42वें संविधान संशोधन विधेयक की थी, अभी हमारे माननीय हितेन्द्र देसाई बोल रहे थे उन्होंने इसके प्रीएंबल के बारें में बताया और जवाहर लाल नेहरू का नाम लिया। हास्यास्पद स्थिति यह है कि सेक्यूलरिज्म और सोशलिज्म का नाम इसमें जोड़ा गया और सेक्यूलरिज्म की जो दूर दराज की सम्भावनायें थीं उसके कन्टेंट को नष्ट कर दिया। जो फंडामेंटल राइट्स ले लिये गये उसमें किसी भी माइनारिटी के लिए या किसी भी तरह के सेक्यूलरिज्म, जिसकी की बात करते हैं, उसकी कोई सम्भावनायें दूर दराज की की नहीं रह गई थी और हम शरमिन्दा थे कि संविधान को नष्ट कर दिया गया था और संविधान का जो शरीर था उसमें से उसकी आत्मा निकाल ली गई थी लेकिन लेबिल रख दिया गया सोशलिज्म का। यह स्थिति थी। और उन्होंने जिक्र किया जवाहर लाल नेहरू का। इसलिए मैं कहता हू हमारे विधि मंत्री ने, हमारे मित्रों को कन्टेंट से ज्यादा लेबिल से ज्यादा दिलचस्पी थी, इसलिए उन्होंने कमप्रोमाइज किया। कि अगर सेक्यूलरिज्म और सोशलिज्म के खिलाफ बोलेंगे तो बदनामी होगी। मैं जवाहर लाल जी को कोट करना चाहता हू जब कान्स्टीट्यूशन के आब्जेक्टिव प्रिंसिपल्स पर बोल रहे थे ममानी साहब ने सोशलिज्म का इन्ट्रोड्यूस करने के लिए, रिपब्लिक को इन्ट्रोड्यूस करने के लिए, संशोधन दिया था, उसके बाद जवाहर लाल जी ने कहा कन्टेंट सोशलिज्म का है लेबिल की हमको जरूरत नहीं है। इसके लिए ममानी साहब ने अपना संशोधन वापस लिया और ममानी साहब की स्पीच यह है

"I approach this part of the Resolution, Sir, as a Democratic Socialist, a Socialist who feels that democracy needs to be extended from the political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all. I welcome this Resolution in spite of the fact that neither the word 'Democracy' nor the word 'Socialist' finds a place in its Preamble. It is perhaps just as well that those words have been avoided because, as one of us here put it in his Presidential Address at the Meerut Congress, terms like Socialism or Democracy can be made to cover a multitude of sins. This fog of words often covers realities. We know that the French Revolution was made in the name of infraternity but, towards the end of that Revolution, a cynic remarks--

> 'When I saw what men did in the name of fraternity, I resolved if I had a brother to call him cousin!'

That, I fear is true of other revolutions as well.

> As a Socialist, Sir, I welcome this aspect of the Resolution because, as the Mover has rightly pointed out, the content of economic democracy is there, although the label is not there."

तो मैं कहना चाहता हू कि 42वें संशोधन से लोग समाजवाद और सेक्यूलरिज्म के लेबिल के लिए बेताब थे। उसके कन्टेंट को नष्ट कर दिया और उसके ऊपर लेबिल रख दिया।

सैकेन्ड वर्ल्ड वार के बाद प्रजातन्त्र की मर्यादा बढ़ी। जिन मित्रों ने डेमोक्रेसी को रिडिक्यूल किया था उन्होंने भी अपने को चिल्ला कर लास्टिंग डेमोक्रेसी के नाम पर ले लिया। सारे लोग प्रजातंत्रवादी हो गए, उसी प्रकार के लेबिल से संविधान निश्चित नहीं होता है। कार्य करने वाला, इम्प्लीमेंट करने वाला हो, कास्टीट्यूशन का कन्टेंट हो, उसके बाद होता है। मैं ऐसा मानता हू कि अब जो कम्प्रोमाइज करना पड़ा है, यह हो सकता है कि हमारे विधिमंत्री को अत्यन्त प्रगतिशील रूप रखने के लिए आवश्यक हुआ हो कि प्रीएंबिल में भी सारी चीजें बदल दें।

मैं बहुत ज्यादा समय नहीं लेना चाहता, मैं सिर्फ उस तरफ इशारा करना चाहता हू जिस तरफ कम इशारा हुआ है।

42वें संविधान संशोधन में प्रजातंत्र की आत्मा पर चारों तरफ से हमला हुआ था। जुडीशियरी की बात बाद में कहूंगा या कम कहूंगा, क्योंकि हमारे बड़े-बड़े कानून के पंडित उस पर बोलने वाले हैं। सबसे बड़ा, जुडिशियरी से भी बड़ा हमला यह किया गया कि कन्ट्रोलर एण्ड आडिटर जनरल जो हुआ करता था उसको प्रधान मंत्री के हाथ में कर दिया गया। उस के संबंध में मैं कहना चाहता हू कि जब संविधान बन रहा था, आप जानते हैं, इंग्लैंड में जो हाउस आफ कामन्स है, उसका आफिसर कन्ट्रोलर एण्ड आडिटर जनरल होता है, यू० एस० ए० में कांग्रेस का होता है। वह संसद की तरफ से एग्जीक्यूटिव के खर्च को एग्जामिन करता है और उसकी सेवा करता है। इस देश में डा० अम्बेडकर ने चाहा था इस बात को करना, वे फिर संविधान बनाने के समय उनको अफसोस था, उन्होंने बड़ी सफाई के साथ संविधान सभा के सामने कह दिया

(श्री बीरी शंकर राव)

कि जो स्वतन्त्रता हम एग्जीक्यूटिव के खर्चे को एग्जामिन करने के लिये देना चाहते थे, कन्ट्रोलर एंड आडिटर जनरल को, वह जुडिशियरी से अधिक होनी चाहिए, लेकिन हमको अफसोस है कि हमें आज इस पर ही कन्टेंट करना पड़ा।

उसके बाद 42वें संशोधन में क्या हुआ ? खर्चा द्वारा जांच होगा, और खर्चे के जांच करने के मालिकाना हक प्रधान मंत्री को होगे। प्रधान मंत्री सीधे संसद को रिपोर्ट दे। इस आफिस का राष्ट्रपति से संबंध था लेकिन 42वें संशोधन में प्रधान मंत्री ने एग्जीक्यूटिव के खर्चे की जांच करने का काम अपने हाथ में ले लिया। जुडिशियरी तो प्रधान मंत्री ने अपने हाथ में ले ही ली। स्टीफन साहब ने कहा था कि हमने बड़ा कमाल कर दिया, इसको भी ले लिया।

इस के संबंध में मैं डा० अम्बेडकर को थोड़ा कोट करना चाहता हू। उन्होंने इसके महत्व के संबंध में कहा था –

"The Hon. Dr. Ambedkar: Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles relating to the Auditor-Genera in this House, assigns to him Personally, speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from that has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the judiciary—he should have been centainly as independent as the judiciary, but, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not given him the same independence which we have given to the judiciary, although I personally feel that he ought to have far greater independence than the judiciary itself."

कहने का अर्थ यह है कि सिर्फ जुडिशियरी को ही पंगु नहीं किया, बल्कि सरकार के खर्च की जो जांच थी, पार्लियामेंटरी डेमोक्रेसी का हमारा बेसिक सिद्धान्त है, एग्जीक्यूटिव के एक्सपेंडीचर पर पार्लियामेंट का कंट्रोल होगा, उस पार्लियामेंटरी कंट्रोल को एक्सरसाइज करने का जो आपरेटस था, उसको जुलपूर्ण प्रधान मंत्री ने 42वें संशोधन से अपने हाथ में ले लिया।

जुडिशियरी के रेस्टोरेशन के बारे में मैंने कहा है कि कानून के जानने वाले बहुत लोग हैं, वह बतायेंगे लेकिन उसका एक आस्पैक्ट अभी किसी ने नहीं कहा कि जजेज की नियुक्ति के सम्बन्ध में एक क्लाज जोड़ दिया कि कोई भी जुरिस्ट हो सकता है। हमारे भूतपूर्व प्रधान मंत्री या उनके मित्र, उनमें से किसी ने भी लॉ पास किया है तो उसको जुरिस्ट कह देंगे, क्योंकि प्रधान मंत्री को डिसीजन लेना था। इसके सम्बन्ध में किसी और को डिसीजन नहीं लेना था। (व्यवधान) जुरिस्ट अलग डिफाइन नहीं है कहीं भी कांस्टीट्यूशन में। आप जिसको चाहें जुरिस्ट कह लें, कोई झगड़ा करने वाला नहीं है।

इस प्रकार से उन्होंने हाई कोर्ट की मर्यादा को समाप्त कर दिया।

समय के अभाव के होने के बावजूद भी मैं एक शब्द प्रीविलेज के बारे में कहना चाहता हू। आज के संशोधन के बाद पार्लियामेंटरी प्रिविलेजेज हमारे पैदा होने वाले हैं।

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42वें संशोधन के बाद इस पार्लियामेंट का कोई प्रिविलेज नहीं रह गया था। संविधान में कहा गया था कि पार्लियामेंट स्वयं अपने प्रिविलेज बनायेगी और कोडिफाई करेगी। लेकिन इस बीच में पार्लियामेंट ने अपने प्रिविलेजिज का कोडिफाई नहीं किया। उस के प्रिविलेजिज वही थे, जो हाउस आफ कामन्ज के थे, लेकिन वे छीन लिए गये। यह ठीक है कि हमको प्रिविलेजिज प्राप्त हैं, लेकिन संविधान के तहत हमें जो प्रिविलेज प्राप्त थे, वे बिदड़ा कर लिये गये।

देश के वकील मित्रों में संविधान के विभिन्न प्रावधानों के बारे में बहस चल रही है। श्री राम जेठमलानी ने प्रिविलेजिज के बारे में कहा कि उन्हें कोडिफाई किया जाना चाहिए। लेकिन मैं यह कहना चाहता हू कि पार्लियामेंट के प्रिविलेजिज का कोडिफिकेशन नहीं होना चाहिए। यह ठीक है कि दुनिया के कुछ मुल्कों में पार्लियामेंट के प्रिविलेजिज कोडिफाइड हैं। हमें याद रखना चाहिए कि अगर यहां पर हमारे प्रिविलेजिज को कोडिफाई किया गया, तो उन्हें अदालतों में ले जाया जा सकेगा। मैं अदालतों से डरता नहीं हूं, लेकिन पार्लियामेंट के प्रिविलेजिज के पीछे एक इतिहास, एक पृष्ठ भूमि और एक कारण है। मैं महसूस करता हू कि अगर मेरे मित्र उस इतिहास और उस सब कारणों को देखेंगे, तो उन का भी यही विचार होगा कि मैं प्रिविलेजिज कोडिफाई नहीं होने चाहिए।

श्री मैं इस संविधान-संशोधन की प्रशंसा करता हूं कि उस ने हमारे गये हुए प्रिविलेजिज को लौटाया है। हमारे डेमोक्रेटिक राइट्स, सिविल राइट्स, कर्ब की जांच करने के हमारे अधिकार और पार्लियामेंटरी प्रिविलेजिज पर चारों तरफ से हमला किया गया था और उन्हें काट कर रख दिया गया था। इस संशोधन के द्वारा उन्हें रैस्टोर किया जा रहा है।

श्री इस के बाद भी हमारे मित्रों को संतोष है। वे कहते हैं कि 42वें संशोधन की ऐसी भी बातें हैं, जिन्हें हम लोग बुरा नहीं समझते हैं। हम ने उन के एक दो प्राविजन्स को बनाये रखा है इसलिए वे समझते हैं कि उनके सारे एमेंडमेंट्स सही थे, और उन्हें इस की बहुत प्रसन्नता है।

इमर्जेन्सी के प्राविजन के सम्बन्ध में मैं कोई बड़ा आदर्शवादी दृष्टिकोण प्रस्तुत नहीं करना चाहता हूं। हमारे देश में इमर्जेन्सी जिस तरह से आई उसके सम्बन्ध में दुनिया में जो कुछ हुआ है उस का वर्णन तो नहीं किया जा सकता है लेकिन मैं कुछ इशारा करना चाहता हूं। कोई प्राविजन यूनाइटिड स्टेट्स और अस्ट्रेलिया के कांस्टीट्यूशन में नहीं है। फ्रांस के 1848 के आरिजिनल ड्राफ्ट में और 1875 के कांस्टीट्यूशन में भी ऐसा कोई प्राविजन नहीं था। जेनरल दगाल ने 1856 में एक इमर्जेन्सी प्राविजन रखा। उन्होंने यहां तक व्यवस्था की कि पार्लियामेंट को भी बुलाने की जरूरत नहीं है। उन्होंने उस प्राविजन का प्रयोग किया, मगर फ्रांस के प्रबुद्ध जनमत के विरोध के कारण पांच महीने के बाद ही उसको लौटा लिया। इस लिए देश में प्रबुद्ध जनमत ही शासन के इस प्रकार के पावरफुल को रोक सकता है वर्ना जिस के हाथ में शासन होता है, वह संविधान का दुरुपयोग करता है। इतिहास इस बात का साक्षी है कि अगर शासन में पागलपन आ गया और शासन की बाग-डोर अनस्क्रुपुलस लोगों के हाथ में चली गई, तो संविधान के पन्ने फाड़े गये।

हमारा संविधान बहुत सोच समझ कर बनाया गया है। वह दुनिया का सब से बड़ा लिखा हुआ संविधान है। हमारे फाउंडिंग फादर्स ने, दुनिया के अन्य संविधानों में जो कोई भी दोष था, उनको सुधारने का प्रयास किया। लेकिन उन्होंने इस बात की कल्पना नहीं की थी कि इस देश के प्रधान मंत्री के पद पर एक ऐसा विनौना डिक्टेटर भी आयेगा, जो इस सारे संविधान के स्वरूप और उसकी मर्यादाओं को बिगाड़ कर रख देगा और उसके पन्नों को फाड़ देगा, और इस देश की पार्लियामेंट भी उस का समर्थन कर देगी। प्रेसिडेंट दगाल को इमर्जेन्सी प्राविजन को वापस लेना पड़ा, क्योंकि फ्रांस का जनमत प्रबुद्ध था। इस लिए अगर हमारे देश में भी एक प्रबुद्ध जनमत नहीं बनेगा, तो संविधान के दुरुपयोग और उस की विकृति को रोकना असंभव होगा।

जहां तक इमर्जेन्सी की व्यवस्था का सवाल है, यद्यपि अमरीका में कोई संविधान नहीं है, लेकिन वहां इस के बारे में लेजिस्लेशन है। लिंकन को भी इस का उपयोग करना पड़ा था।

पिछली सरकार राज्यों में फौज भेजने के लिए तैयार रहती थी। जैसे मुगल बादशाहों के सूबेदार हर सूबे में रहा करते थे, वैसे ही सरकारें थीं समझती थी कि वह क्वीन एम्प्रेस हैं और सूबों में उन के सरदार बैठे हुए हैं, और जरूरत पड़ने पर वह बड़ा अपनी फौज भेज देंगी, जैसा कि अकबर या औरंगजेब के जमाने में होता था। ऐसी व्यवस्था कहीं नहीं थी। ऐसी व्यवस्था केवल जर्मन राइक के आर्टिकल 48 में थी—

"If any State does not perform the duties imposed upon by the Constitution or upon by the national laws, the national President may hold it to be the performance thereby the force of arms"

सिर्फ जर्मनी में यह व्यवस्था थी कि सरकारें-प्रांतिया, एम्प्रैस फौज भेज देंगी। मैं ज्यादा कुछ नहीं बोलना चाहता लेकिन इतना जरूर कहना चाहता हूं कि इस प्रकार की व्यवस्था रख कर के सरकार ने एक अच्छा काम किया है। एक बात मैं यह कह दूं कि 30(ए) जो उड़ीसा जाड़ा है, वह मेरी राय में सुपरफ्लुअस है। मैं समझता हूं कि उस की आवश्यकता नहीं है। मंत्री महोदय तो कानून के पंडित हैं वह अच्छी तरह जानते हैं। फण्डामेंटल राइट्स से निपटने जाने के बाद फिर भी इस को कांस्टीट्यूशन में रखने की जरूरत नहीं है।

प्रिवेंटिव डीटेंशन को अस्तित्व में रखा है और जजेज का उस के अंदर अधिकार दिया है, यह एक अच्छी बात है। जजों की नियुक्ति के सम्बन्ध में जो संशोधन किया है वह भी एक अच्छा काम किया है। आजीवन जिंदगी को पांच साल से छः साल करने वाले हमारे मित्रों को अफसोस भले ही हो लेकिन यह जो टर्म फिर 6 साल से 5 साल किया है आवश्यक है और यह उन्होंने अच्छा काम किया है।

एजुकेशन के सम्बन्ध में मंत्री महोदय फिर से विचार करें। देश में बड़ा भारी जागरण है कि इस को समवर्ती सूची में रखा जाय क्योंकि सारे देश के एजुकेशन को रेगुलेट करने के लिए सेंटर की तरफ से इंतजाम होना चाहिए। लिंग्विस्टिक

[श्री चौरी शंकर राव]

और दूसरी सारी फीलिंग्स को इनकारपोरेट करते हुए उस को क्रियान्वित करना है तो उस के लिए यह आवश्यक है ।

एमर्जेन्सी के सम्बन्ध में जो प्रावधान अब रह गया है संविधान में उस का मैं ने विरोध इसलिए नहीं किया क्यों कि उस का रहना आवश्यक है और इस सम्बन्ध में मैं डा० अम्बेडकर का एक कोटेशन पढ़ना चाहता हूं । डा० अम्बेडकर से लोगों ने कहा कि आप तो 1935 के ऐक्ट के मुताबिक सारे डीटेल्स को संविधान में डाल रहे हैं, जैसे इन्होंने भी डाला है तो उन्होंने यह कहा :

"Dr. Ambedkar while replying to the debate said, "I wish very much that the Drafting Committee could see its way to avoid the inclusion of certain details in the Constitution. He said, I would like to tell you the necessity which will justify their inclusion.

"Grote, the Historian of Greece has said that the diffusion of the Constitutional morality, not merely among the majority of any community, but throughout the whole, is the indispensable condition of a Government at once free and peaceable, since even any powerful and abstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves.

By constitutional morality Grote meant a paramount reverence for the forms of the Constitution, enforcing obedience to authority, acting under and within their forms. yet combined with a habit of open speech, of action subject only to legal control, and unrestrained censure of those very authorities as all their public acts combined to with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own.

While everybody recognizes the necessity of the diffusion of the constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it, which are not, unfortunately, generally recognized. One is that the form of Administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution.

The other is that it is perfectly posible to prevent the Constitution, without changing its form by merely changing the form of adminstration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with the constitutional morality such as the one described by Grote, the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the legislature to prescribe them. The question is: Can we presume such a diffusion of Constitutional morality? Constitutional morality is not a national sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on the Indian soil which is essentially undemocratic.

In these circumstances, it is wiser not to trust the legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution."

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Speaker, Sir, today the soul of India is partially resurrecting itself again, thanks to the demo-

eratic aspirations of the teeming millions of this country. Though the people of this country have been kept underfed, under-nourished, uneducated, half-educated, unemployed and deprived of the basic necessities of life, they have, yet, given their clear verdict against the disfigurement of the body of the Constitution and the deliberate distortion, if not annihilation, of the spirit of the Constitution by the Forty-Second Amendment The verdict was in the clearest terms possible because of the bitter experience of the people in this country—how even the organic law of the country could be mutilated by a dictator through a captive Parliament and with the help of persons who were proclaiming themselves to be the true representatives of the people although Parliament had ceased to reflect the true will of the people as was clearly established during the March 1977 elections.

The Janata Party gave a pledge to the people of this country for the wholesale repeal of the Forty-Second Amendment. But, although we have been reminding them since the last Lok Sabha elections that they should keep their pledge, it seems that, they thought of arriving at a decision by compromise and consensus. But 'compromise and consensus' with whom? With the people who had perpetrated ghastly crimes against humanity, those who have not even expressed a sense of sorrow and shame over what was done during the Emergency, the people who are still gloating over the so-called gains of Emergency, those who are still singing praises for the malevolent dictator. Government tried to come to an arrangement with those people. I feel that, instead of being pampered, they should have been thoroughly exposed by this time. Because the Janata Party has dragged its fete so long, we have had to listen to a lecture from the Leader of the Opposition as to the Constitutional proprieties and Constitutional niceties in this country.

We have opposed, and the people have opposed, the Forty-Second Amendment as it had been the product of insatiable hunger for power and it represented, according to us, an evil in the body politic of this country; it represented the grossest form of anti-people outrage. It has been nothing but synonymous with fascism and dictatorship. Therefore, we believe that, so long as a single word of the Forty-Second Amendment remains in our Constitution, the Constitution will continue to remain polluted thereby. That is our view.

The defilement of the Constitution started with the Thirty-Nineth Amendment when, for the sake of one individual, the so-called constituent power of this august House was utilised to invalidate a judicial determination. What happened at that time? The Members of Parliament then belonging to the Congress Party vied with one another in supporting the politically immoral and illegal Constitutional Amendment. That was done for the sake of one individual The Constitution was amended; the Representation of the People Act was amended, as if any one person in this country was indispensable. For the sake of saving the election of Mrs. Indira Gandhi, the Constitution had been defiled and mutilated at that time, and the President and the Speaker were brought in only to keep company This was the position. The Thirty-Nineth Amendment Bill, the Members would recall, was passed in unseemly hurry and haste—no discussion, no debate, worthwhile, either outside or inside this House. This was followed by the Fortieth Amendment which was passed by the Rajya Sabha to the lasting shame of Parliamentary institution in this country, giving immunity to one particular individual from the consequences of crimes. Therefore, we felt that unless and until, in future, the provision for amendment of the Constitution was kept beyond the reach of such dictators, ruthless dictators, those

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whose hunger for power cannot be met, the constitution of this country and the people of this country cannot be saved.

Then came the Forty-second Amendment where really it reached the nadir of political immorality and the grotesque and grossest exhibition of lust for power. It was a calculated attempt not only to denude the people of their right, emasculate the judiciary and to strike at the very root of even the quasifederal set up we have in this country and in fact it was only to perpetuate the dynastic hegemony of one individual at the expense of the country and its people.

What was the position in the country then? The press had been muffled, the voices of the people had been gagged and rights and personal liberties were gone. All meetings and processions were banned, freedom of expression and speech was lost totally in this country to the people. Members of Parliament were kept in detention for an indefinite duration without even being told of the charges they were supposed to be guilty of. This was the position in the country then, when no political activity on the part of the opposition parties was permitted and that situation was taken advantage of by a dictator who had already tasted blood and utilised a rubber stamp Parliament to reduce the people to servility and to reduce the status of the different States to that of colonies. That was the position.

Not a single provision of the Forty-second Amendment was conceived in public interest. There were frills here and there—innocent and unnecessary frills. There have been some gimmickry here and there like the amendment of the Preamble and inclusion of some provisions of Directive Principles which have remained only on paper. They were never translated into action. Apart from that, the Forty-second Amendment was nothing but a declaration of war on the people to perpetuate one person rule. I believe because of the mandate of the people in this country, it is our solemn duty to remove the cancer from the body politic of this country. Should we not remind ourselves of the *modus operandi* that was taken recourse to before the Forty-second Amendment was passed? What happened? A socalled Review Committee was set up with persons belonging to a particular political party then in power and headed by Sardar Swaran Singh and others whose credentials about going into such matters were so much suspect. We have seen how officially sponsored demonstrations and organized jamborees were held throughout the capitals and in different capitals of the States where Ministers met and visited and, unfortunately, some of the Judges were vying with each other to go and attend these so called law conferences and trying to trumpet the benefits of the proposed Constitution Amendment At that time, no opposition party was allowed to hold a seminar even inside a hall to give expression to their views on the proposed amendment. There was no public debate outside. Nobody had any occasion to give expression to their views. All the real opposition parties had boycotted the Parliament session and that was utilised for the purpose of amending in such a ghastly manner and in such a comprehensive manner the Constitution of the country. I would like to know from my hon. friends here: can they point out a single provision, a single line in the Forty-second Amendment which is for the real benefit of this country? After the Twenty-fourth and Twenty-fifth amendments, nothing stood in the way of real achievement of the socio-economic objectives of the country through constitutional amendments or making laws. There had been ample provision. Art. 31 had been amended. Art. 368 had been

amended but that was never taken recourse to for the purpose of bringing about real improvement in the conditions of the people of this country. There is the Twenty-fifth amendment, there is the Twenty-fourth Amendment. We were then in the Opposition but we supported the then government because it was expected that it would be utilised for the good of the people but that was never to be. That was never done because they believed only in gimmicks, only in hoaxes all the time trying to mislead the people and always searching for scapegoats. 'Now it is the judiciary standing in the way of our progress, therefore, we want more power' and we really conceded more power but that was never utilised in the country.

The real object of the Forty-Second Amendment was to curb the people and the opposition parties. It provided a wonderful scheme of curbing so-called anti-national activities keeping in hand the power to declare any opposition party as an anti-national organisation and completely stifling its activities They conceived of imposition of fundamental duties as if the people of this country are not patriots; they do not love the country, they are not prepared to work for the good of the country. These are all gimmicks and hoaxes played on the country. They put various curbs on the powers of the judiciary, they curtailed the scope and ambit of Article 226 of the Constitution. Last but not the least, they took away the powers with regard to various matters by tampering with the Seventh Schedule and also providing for deployment of para-military forces in the States against the wishes of the State Governments.

The object was to see that all the powers remained concentrated in the hands of the Centre and with that slogan that India is Indira and Indira is India, one leader, one party, one country, in that order, as I said on the last occasion, they hoped that she will be there for ever and the sycophants and cohorts will dance to her tune and she will go on. The Prince of Wales was being groomed; and it was thought that dynastic rule will be established through the means of Constitution in this country. A captive Parliament was there. The life of the Parliament was extended. For whose benefit? What was the difficulty in holding elections? It was again extended, but then probably some astrological predictions prompted her to go to the polls for which she must be repenting now. This was the position.

We feel, therefore, that the Forty-Second amendment represents cancerous symptoms in our body-politic and should have been removed lock, stock and barrel. It is not as it is coming from us alone. With the same mandate, they approached the people and now they are trying to compromise with that mandate because they want their blessings and help. The composition of Rajya Sabha should not have determined the course adopted by the ruling party in this case.

Even here the preventive detention laws are still being continued. We shall hear, no doubt, from the hon. Law Minister that they are providing for the Chief Justice to constitute the Advisory Board with a sitting judge and therefore, all troubles would be over. Two months detention is there without the Advisory Boards. Then, Sir, our experience is that even the Advisory Boards that were there before MISA was made more Draconian, what happened? There were ex-judges, even district judges were presiding over the Advisory Boards, but how many persons were acquitted by the Advisory Boards? They always go by *ex parte* presentation of facts from the police records. There was no other material before these

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Advisory Boards. It will be denial of the basic provision of the rule of law. Shri Ram Jethmalani rightly said that if prevention detention is retained, then you are keeping in the hands of the Government the power to stifle all legitimate democratic activities. Why are we opposing it so strongly? Even after the Janata Party came into power, there was an attempt to introduce MISA through the Criminal Procedure Code, which on the reaction and protest of the public, they had to withdraw. In the States ruled by the Janata Party, the mini MISA is still there and is being utilised not against the perpetrators of crimes or zamindars, or other persons, but against the workers, the State Electricity Board workers and the common people of this country. In whose hands are you giving this power? Even the Janata Government in the States have utilised it for their own political purposes, for their so-called administrative purposes. Therefore, on principle, we are against this. Regarding Article 352, has not this country learnt a lesson? On the plea of so-called internal disturbances, which was nothing but a hoax, the Shah Commission has made it clear, a hoax was perpetrated on the people of this country in the name of internal disturbances; this country was made a captive and a huge prison house. And people like Jayaprakash Narain and other leaders of the democratic movements, trade unionists, students, teachers and ordinary, common people were put behind the bars, taking advantage of the Emergency. If provision about the armed rebellion is there, who will decide whether it was there or not? Where is the accountability for it? If you happen to have a majority, and if you are able to control it in this House, whatever you allege to be a rebellion, will go as an armed rebellion. There is no question of accountability. Nobody can find it out. There are no standards. Who will decide it? Therefore, I request the hon. Members of the Janata Party, "Please ponder once more, before you betray the trust which people have reposed in you. Please think once more. Don't have the idea that you are indispensable in this country, or that you will be permanently here. The way you are functioning, she has gained strength; and she and her cohorts are moving in this country, professing a democratic attitude. This is the lesson which you have learnt within these 16 months. It is the experience of the people within 16 months."

The power under Article 352 can be abused by this Government, because of its composition, or the changes—we do not know what will be the permutation or combination; whether there will be any exodus from here or there, we do not know what will happen. I request Government to consider this. Similarly, we are opposing Articles 356 to 360. We are supporting referendum, because we have seen the functioning of the minority Government after 1971 elections; that election showed that with a minority of votes, Mrs Indira Gandhi could have a large, artificial majority of Members. Therefore, even with that minority vote, she could go on trumpeting about her massive mandate, which Mr Piloo Mody used to call 'MM'. She utilized that so-called massive mandate as the justification for the purpose of bringing about the 42nd Amendment. Therefore, it is necessary that the lessons that you have learnt, should not be forgotten soon. We should not betray the trust which the people have left with the present Parliament. We ought to see that those aberrations do not recur in future in this country.

With regard to other matters, we shall give our views when amendments come. But we support this Amendment Bill with these reservations. We shall still hope that in the

two days left, there will be a little introspection on that side, and that they will restore what should be restored to the people of this country.

श्री राज नारायण (राय बरेली): प्राचीनकाल में राज दरबारों में भाट हुआ करते थे जो कविताओं के द्वारा अपनी शैलियो से राजाओ का गुणगान किया करते थे। मै अपने आप को उस श्रेणी में नही रखना चाहता। मैं कहना चाहता हूं कि आज जो संशोधन विधेयक आया है इस को आप देखें। मै समझता हू कि यह खट्टा भी है और मीठा भी है। खट्टा कहां है मै चाहता हूं कि जो सत्ताधारी दल के सम्मानित सदस्य है वह देखें। जनता ने उन को किन कारणो से यहां भेजा है और क्या यह संविधान संशोधन जो सोलह महीने के बाद और सत्रहवे महीने मे आया है क्या उन आकांक्षाओं की पूर्ति करता है या नही करता है जो जनता की थी और है? यह जनता पार्टी का इलैक्शन मैनिफेस्टो है। इस मे वह पोलिटिकल चार्टर है। इस म यह लिखा है लिफ्ट दी एमरजेंसी। मै पूछना चाहता हू कि क्या इमरजेंसी इन टोटो हट गई है? क्या वर्तमान सरकार अगर इमरजेंसी लाना चाहे तो ला सकती है या नहीं ला सकती है? इस सवाल का जवाब कानून मंत्री को देना चाहिये।

दूसरी बात इस में यह है रेस्टोर दी फंडेमेंटल फ्रीडम्ज दैट हैव बीन सस्पेंडिड बाई ईजीडेंशल आर्डर। वे बहुत हद तक रैस्टोर हो गई है।

सीक टू रेसेंड दी फार्टीसैकिंड एमेंडमेंट। जनता पार्टी ने जनता के मध्य में ऐलान किया था कि हम 42वें संशोधन को पूर्ण रूपेण खत्म करेंगे। यह है मामला पूरा और सीधा।

अब मै जानना चाहता हूं जनता पार्टी के सदस्यो से कि किस मुह से जनता के बीच में जायेंगे? क्या यह 42वें संविधान संशोधन को इन टोटो खत्म कर रहे हैं? नही। इसलिए हमने अपनी सम्मति पहले भी दे दी थी कि 42वें संशोधन को पूर्ण रूपेण समाप्त किया जाये उस के बाद जो कुछ हम को लाना होगा लायेंगे। लेकिन कहीं कहीं मुंह हो जाता है 36 और कहीं हो जाता है 63। तो हम सोचते हैं कि इन्दिरा जी की व्यवस्था में और हमारी व्यवस्था में 63 का सम्बन्ध है, यानी मुह चुम्मा चुम्मी होने लगी। तो इस विधेयक के जरिये कहीं कहीं मुंह चुम्मा चुम्मी भी हो रही है। मै चाहूंगा कि सम्मानित सदस्य जनता पार्टी के उस मुह चुम्मा चुम्मी को काट दें और बिल्कुल 36 कर दें।

"move to amend article 356 to ensure that the power to impose President's rule in the States is not exercised to benefit the ruling party or in favour of sections within it."

क्या 356 को हमने उस तरह से अमेंड किया है जिस तरह से हम ने जनता को वायदा किया था? अब तो हम यह देख रहे हैं कि तीन साल तक अगर इलेक्शन कमीशन अपनी सिफारिश दे दे कि राज्यों में चुनाव न कराओ तो इमरजेंसी में 3 साल तक चुनाव नही होगा। प्रेसीडेंट का रूल राज्यों में कायम रहेगा।

दूसरे यह कि इलैक्शन की एज 21 साल से 18 साल करने को कहा था जनता से कि हम जाते ही 21 साल से 18 साल कर देंगे। बराबर अपने भाषणो में कहते थे कि प्रापर्टी खरीदने के लिये, प्रोपर्टी बेचने के लिये, सेना में भर्ती होने के लिये, हर काम के लिए 18 साल वाले को बालिग माना जाता है। मगर वोट देने के लिये 21 साल क्यों? 21 साल नहीं होना चाहिये बल्कि 18 साल होना चाहिये। मै विधि मन्त्री से पूछना चाहता हू कि अब वह कौन सा संशोधन लायेंगे कि 21 साल की जगह 18 साल हो। क्योंकि हम केवल इसी हाल में नही रहते, न दिल्ली के अपने कमरे मे रहते है बल्कि देहात मे घूम कर जनमत जाना करते है। अभी कानपुर में पब्लिक मीटिंग मे एक सवाल पूछा गया कि तुमने वायदा किया था कि 18 साल वोटर की उम्र करेंगे। अभी तक क्यो नही किया? इसका जवाब हम क्या दें? असल मे कुछ लोग पूछते हैं हम से कि शांति भूषण जी आपके वकील थे। यह तो बहुत बड़े वकील हैं इन्होंने कलकत्ते में अखबारों में बयान दे दिया कि राजनारायण की दृष्टि बड़ी पैनी है। अगर हमारी दृष्टि पैनी होती तो हम इन को वकील क्यो करते। हम बड़े लायर अगर होते तो श्री शांति भूषण जी को मै क्यो करता। समझ लीजिये श्री शांति भूषण हम से बहुत बड़े लायर हैं। मगर हर जगह कानून की बारीकी काम नही देती। जहां जनता जनार्दन की आकांक्षाओं का प्रश्न होगा वहां कानून की बारीकियां काम नही देंगी। इसलिये मै चाहूंगा कि तत्काल यह सरकार कोई ऐसी व्यवस्था करे जिस से कि तमाम बालिग जो 18 साल के हों वह हर जगह वोट देने के हकदार हो जायें चाहे असेम्बली हो, पार्लियामेंट हो, म्युनिसिपैलिटी हो, टाउन एरिया हो या नोटिफ़ाइड एरिया हो।

अब मैं दूसरे पन्ने पर चल रहा हूं:

"As a corollary to this it will also delete 9th Schedule to the Constitution".

मैं जानना चाहता हूं कि क्या नौवां शेड्यूल डिलीट हुआ? नही। नही हो रहा है तो चुप क्यों बैठे हो? बोलो।
हमारे एक दोस्त कहा करते थे —

खोल कंठ मानव, तू कंठ जरा खोल रे,
जन गण हित, कम-से-कम-कांव कांव बोल रे
कांव-कांव कर के जब क्रान्ति एक आयेगी,

[श्री राजनारायण]

बात कही कान को कूह-कूह आयेगी । इस समय आवश्यकता है, कांव-कांव-काव की, और शांति भूषण जी कह रहे हैं कूह, कूह ...

हमारे कवि ने कहा है कि एक कौआ मार दो, तो देखो जितने कौआ रहेंगे, सब काव -काव करेंगे और सर पर भी मारेंगे । हमारे बिहार में एक गांव में देखा है कि जिसने कौए का मारा था, जहां भी वह जाता था, 6 महीने बाद भी कुए पर पानी भरने जाता था तो कौए आकर उस के सिर पर चांच मारते थे । 6 महीने के लिए उस आदमी को गांव से निकाल दिया गया ।

हम तो कौमे भी नहीं है, क्योंकि जनता मर रही है, सड़ रही है मुनीफाखोरों में आवश्यक पदार्थ मिल नहीं रहे हैं यानी किसानों के एग्रीकल्चरल प्रोडक्ट्स की कीमत गिर रही है, उनका गुड़ और गन्ना सस्ता हो गया है, वह आज किसान के खेत में है। उत्तर-प्रदेश के बारे में बता रहा हूं कि 5 करोड़ क्विंटल गन्ना पड़ा हुआ है, 75 करोड़ किसान का नुकसान हुआ है, उसका कोई देखने वाला नहीं है । (व्यवधान) ।

मैं अपने सदन के सम्मानित सदस्यों का ध्यान देना चाहता हूं कि वह घबरायें नहीं, पट में पानी का बुलबुला न उठे, सारे साल भर तक जो कुछ भी अन्दर ही अन्दर पका है, सबको खाकर रख दूंगा । हम जनता के हैं, इस किसी मिनिस्टर या प्रधान मंत्री के बनाये हुए नहीं हैं । (व्यवधान)

हमने इलैक्शन मैनिफैस्टो में लिखा है कि 1 और 20 बड़ी और छोटी आमदनी का रिश्ता होगा, क्या इस के सम्बन्ध में कभी संशोधन आयेगा ? संविधान में इसकी व्यवस्था होगी या नहीं ?

डिलीशन आफ प्रापर्टी फ्राम फंडामेंटल राइट ठीक है, मुझे बड़ी खुशी है इस बात की । इस के लिए हम एक मर्तबा सोशलिस्ट पार्टी में निष्कासित किये गये थे । हमारे मित्र कामत साहब बैठे हैं, कांग्रेस सरकार थी इन्दिरा जी की, उस समय सवाल आया था कि फंडामैंटल राइट्स को या इसकांस्टीट्यूशनली चेंज कर सकते हैं । यह कहते थे कि पार्लियामेंट इज सुप्रीम, हम कहते थे कि कांस्टीट्यूशन इज सुप्रीम। बड़ी लड़ाई हुई, लेकिन हम को अन्त में नुक्तची फरमान मिला कि आप इसका विरोध नहीं कर सकते । हमने कहा कि विरोध करेंगे, चाहे जो हो, आप हमें निकाल दें । मगर हम मनुष्य हैं, हमारी मानवता ना रहे । हमने सोशलिस्ट पार्टी की एक वर्किंग कमेटी में पढ़ कर सुनाया ।

यह है हिटलर, 2 अगस्त, 1934 को वाइमर कांस्टीट्यूशन का कैसे चेंज किया गया और किस तरह से चार साल के लिए कांस्टीट्यूशन को सस्पैंड कर दिया गया और कहा गया कि हर नागरिक को हिटलर की शपथ खानी पड़ेगी और हिटलर जो कुछ बोलेगा, उसी के मुताबिक काम करना पड़ेगा । यह शपथ खिलाई गई थी ।

मैं जानना चाहता हूं कि हमारे संविधान में और भी व्यवस्थाओं को क्या वाइमर कांस्टीट्यूशन की तरह इधर-उधर नहीं बदल सकते हैं ? कर सकते हैं, पर उस पर जाने में बड़ा समय लगेगा ।

इन्दिरा जी प्राइम मिनिस्टर थीं, उन में के दिमाग में यह बात आ जाती कि मैं सदन को डिजाल्व कर दूं तो कर सकती थीं, या नहीं ? वह डिजाल्व कर सकती थी । क्या आज का प्रधान मंत्री चाहे कि सदन को डिजाल्व कर दूं तो कर सकता है या नहीं ?

कुछ माननीय सदस्य : जरूर कर सकता है ।

श्री राज नारायण : मैं शांतिभूषण जी से कहना चाहता हूं कि कानूनों की जानकारी रखना और उस के मुताबिक काम करना दोनों दो चीजें हैं । शांति भूषण जी की यहां आने से पहले जो प्रतिभा थी, उस प्रतिभा को वह कायम रखें, यहां आकर उस प्रतिभा को कुंठित न होने दें । वह प्रतिभा कुंठित हो रही है । मान लीजिए कि लोग चाहते हैं कि प्रधान मंत्री के विरुद्ध अविश्वास-प्रस्ताव ला कर उन को हटा दिया जाये । तो क्या प्रधान मंत्री को अविश्वास-प्रस्ताव ला कर हटाया जा सकता है ?

एक माननीय सदस्य : क्या आप उन को हटाना चाहते हैं ?

श्री राज नारायण : मैं एक एक्जाम्पल दे रहा हूं । मैं इच्छा व्यक्त नहीं कर रहा हूं। मैं एक प्राबेबिलिटी बता रहा हूं ।

ऐसी स्थिति में क्या कोई शक्ति है, जो प्रधान मंत्री को सदन को डिजाल्व कराने से रोक सकती है ? प्राइम मिनिस्टर सदस्यों को बुला कर कह सकते हैं खबरदार मैं तो चुन कर चला आऊंगा, मगर मैं सदन को डिजाल्व करा दूंगा और तुम लोगों की मिट्टी पलीत हो जायेगी । इस आतंक और भय से बचने की क्या गुंजायश है ? श्री शान्ति भूषण कृपा कर के अपनी कानूनी प्रतिभा का प्रयोग करें और इस की कोई गुंजायश लायें कि अगर कोई भी प्रधान मंत्री अपने पद का दुरुपयोग कर के अपने बहुमत को बनाने की कोशिश करे, तो इससे बढ़ कर भ्रष्टाचार का कोई दूसरा काम नहीं माना जायेगा और वह प्रधान मंत्री भ्रष्टाचार का दोषी होगा ।

जनता पार्टी के घोषणापत्र में राइट टु वर्क एण्ड फुल एम्पलायमेंट देने का वचन दिया गया था । क्या इस संविधान-संशोधन में सभी

बेकारों को काम देने की कहीं कोई व्यवस्था है ? अगर नहीं है, तो क्यों नहीं है? किसके पास क्या खिंचा, किस तरह रख दिया, मुझे तो मालूम नहीं है ।

श्री सौगत राय (बैरकपुर): क्या कैबिनट में यह सब पास नहीं हुआ ?

श्री राज नारायण : हमारे घोषणा-पत्र में कहा गया है कि इल्लीट्रेसी विल बि इरेडिकेटिड । इल्लीट्रेसी कब इरेडिकेट होगी ? उसके लिए क्या हो रहा है ? हमारे मित्र इस बारे में कह चुके हैं, इस लिए मैं उसको दोहराऊंगा नहीं । मगर फ्रैंसी स्कूल अब भी हैं, और उन को कायम रखने के लिए वही बूर्जवा तर्क होता है कि हमारे पास पैसा है, हम अपने लड़के को पढ़ायेंगे, तो आप क्या कर लेंगे । यही कैपिटलिस्ट कहना है कि हमारे पास बाप की कमाई का पैसा था, हमने मिलें खोली, हम चाहें मजदूरों को रखें या न रखें। विल इज बूर्जवा टकनालोजी एण्ड एमलैसिस आफ दि मिथुएशन। मैं नहीं चाहता हूं कि जनता पार्टी का कोई मंत्री या जनता पार्टी की सरकार आज बूर्जवा टेकनालोजी और बूर्जवा वें आफ थिंकिंग को यहां पर रख कर अपना काम निकाले।

मैं नजरबन्दी का घोर विरोधी हूं । मगर नजरबन्दी की व्यवस्था अब भी है । मेरे लायक दोस्त, कानून मंत्री, ने नजरबन्दी की व्यवस्था कायम रखी है। मैं चाहता हूं कि वह इस व्यवस्था को हटायें । मान लीजिए कि यह संविधान एक सुन्दरी नायिका है, तो संविधान के आर्टिकल 352 से आर्टिकल 360 उस सुन्दरी नायिका की आंख को फोड़ देते हैं, उसको कानी बना देते हैं। इस लिए इन आर्टिकल्ज को समाप्त कर दिया जाये ।

MR SPEAKER: There are a large number of speakers. So, please be brief.

श्री राज नारायण . मैं क्या करूं ? (व्यवधान) ...

SHRI SAUGATA ROY (Barrackpore): We support his demand for more time. (*Interruptions*).

MR. SPEAKER: There are a large number of speakers. The list is growing. I must give an opportunity to as many Members as possible. I am extending the time. Therefore, members must respect the rights of other members. Everybody must have a chance.

SHRI C. K. JAFFER SHARIEF: Sir, you can take the opinion of the House and give Shri Raj Narain more time.

चौधरी लखबीर सिंह (होशियारपुर) : यह विधान को बदलने का सवाल है, विधान को बदलने के लिए हर आदमी को अपनी बात पूरी कहने का वक्त मिलना चाहिए। यह कोई छोटा मोटा कानून नहीं है ... (व्यवधान)..

श्री मनीराम बागड़ी : एमर्जेन्सी में जेल गए थे, वह दर्द है, इसलिए बोल रहे हैं .... (व्यवधान) .... यह सदन चाहे कि राज नारायण बोलें तो आप क्या करिएगा ? अगर हाउस चाहता है ..... (व्यवधान). .

MR. SPEAKER No. Everybody must have a chance. If other Members are prepared to give up their time, I have no objection

SHRI C. K. JAFFER SHARIEF. Sir, take the opinion of the House and give him more time.

श्री मनीराम बागड़ी समय बढाया जाय और समय दिया जाय ।

मेरा प्रस्ताव है कि समय बढाया जाय । यह ठीक है ? ठीक है । समय बढाया जाता है, बोलिए ।

MR. SPEAKER· Shri Bagri is not presiding over the House

श्री राज नारायण · श्रीमन, मैं निहायत अदब के साथ आप से विनम्र निवेदन कर रहा हूं कि मैं ने ज्यादा समय नहीं लिया है । मैं 35 मिनट से शुरू हुआ हूं और आप देखेंगे कि अभी 50 पर जा रहा है, 15 मिनट हुआ है मैं आप से पांच सात मिनट और मांग रहा हूं, ज्यादा नहीं ।

मैं आप के द्वारा एक निवेदन और करूंगा कानून मंत्री जी से कि स्पेशल कोर्ट के बारे में हम अब भी इस मत के हैं कि स्पेशल कोर्ट बनाई जाय और श्रीमती इंदिरा नेहरू गांधी का मामला उसमें ले जाया जाय ।

स्टेट और सेंटर का रिलेशन जो है उस को फिर अच्छी तरह से डिफाइन किया जाय जिस से सेंटर स्टेट पर हावी न हो पाए और स्टेट को ज्यादा पावर मिले ताकि स्टेट अपनी शक्ति को ठीक तरह से इस्तेमाल करे ।

[श्री राज नारायण]

हमारे कुछ मित्रों ने जूडिशियल रिव्यू का यहां विरोध किया है, मैं उन के साथ नहीं हूं नहीं हूं। क्योंकि जूडिशियल रिव्यू के लिए तो हम बराबर बकते रहे हैं और इंदिरा जी ने जो अमेंडमेंट कर के हटाया था उसकी हम लोगों ने पूरी ताकत के साथ मुखालिफत की थी।

उसी के साथ साथ मैं एक बात अपने मित्र शांति भूषण जी के लिए कहना चाहता हूं। इन की तरह मैं अच्छी अंग्रेजी तो बोल नहीं सकता। डेमोक्रेसी एण्ड डिसिप्लिन, यह स्पीचेज आफ श्रीमती इंदिरा गांधी का कलेक्शन है। मैं पूछना चाहता हूं इन दि हिस्ट्री आफ दि वर्ल्ड क्या इंदिरा जी से बढ़ कर कानून और संविधान को भंग कर के नागरिकता के अधिकार को रौंदने वाली कोई दूसरी सत्ता आई? इन दि हिस्ट्री आफ दि वर्ल्ड क्या कभी ऐसा हुआ? मैं शांति भूषण जी से पूछना चाहता हूं, क्योंकि इन्होंने मेरा रेफरेंस दे कर कहा कि मैं जब ऐसा बोल रहा हूं तो लोग कहेंगे कि मैं लीनिएन्ट व्यू ले रहा हूं, लीनिएन्ट व्यू ले नहीं रहे हैं, ले चुके हैं, नहीं तो शाह कमीशन की रपट 11 मार्च को आई। अब तक इंदिरा जी पर स्पेशल कोर्ट में मुकदमा क्यों नहीं चलाया अगर सुप्रीम कोर्ट की राय लेना जरूरी था तो इस के पहले श्री शांति भूषण ने राय क्यों नहीं ली? और अब अखबारों में निकलवाते हैं, कैबिनेट के डसीशन को अखबारों में किसने दिया? मैंने कैबिनेट में रखा था। जिस दिन चौधरी चरण सिंह जी का बयान आया उसी दिन अखबारों में यह आया कि राजनारायण ने यही बात फलां तारीख की कैबिनेट की मीटिंग में भी रखी थी। कोई टिकता है यहां सीक्रेसी में? बराबर इस को खोल देते हैं। मैं इस का खोल नहीं रहा हूं, आगे खोलूंगा। (व्यवधान) मैं यहां पढ़ देता हूं शाह कमीशन की रिपोर्ट से। जितना समय मिला है उसमें सुन लीजिए।

"In the light of forgging rule, it is not understood how this provision could have been circumvented by the application of Rule 12 of the same Transaction of Business Rules, Rule 12 of the Government of India (Transaction of Business) Rules reads as follows

"12 Departure from Rules: The Prime Minister may, in any case or classes of cases, permit or condone a departure from these rules to the extent he deems necessary."

आगे कहते हैं :

"Cases relating to a proclamation of emergency under Article 352 to 360 of the Constitution and other matters related thereto"—

हर हालत में ...

they shall be put in the Cabinet meeting first.

फर्स्ट क्लास में जो साधारण बिजनेस है वह जिस डिपार्टमेन्ट का भी चाहें उसको ग्राइम मिनिस्टर कर सकते हैं लेकिन जो फण्डामेंटल चीज है, जो बड़ी बात है उसको तो पहले कैबिनेट में ले जाना ही है। अब मैं श्री शांति भूषण जी से पूछना चाहता हूं कि जिस व्यक्ति ने इतना जबर्दस्त कांस्टीट्यूशन का रेप किया, कैबिनेट को डार्क में रखा, कैबिनेट की राय नहीं ली और सीधे सीधे जा कर राष्ट्रपति से कहा—यह सारी बातें डिस्कशन में आई हैं कि श्री सिद्धार्थ शंकर राय से उन्होंने पूछा क्या मैं बिना कैबिनेट में जाये प्रेसिडेन्ट को सलाह दे सकती हूं, इस पर आप अपनी सलाह दीजिए,—यह सारी ही बातें आ गई हैं कि उन्होंने चीफ मिनिस्टर्स और गवर्नर्स की राय ली और यह कहा कि मैं नहीं चाहती कि बिना राष्ट्रपति के प्रोक्लेमेशन के कैबिनेट में जाऊं, यह बिल्कुल साफ हो चुका है इसलिए क्या इंडियन पीनल कोड की धारा 124 (1) के अन्तर्गत यह मामला सीधा नहीं आता है? मैं श्रीमान, आपसे रिक्वेस्ट करूंगा कि आप श्री शांति भूषण जी को एक दिन छोड़ दीजिए, ये अपनी बहस कर और मैं अपनी पूरी बहस करूंगा और फिर आप देखें कि मामला बनता है या नहीं? आप इसमें जज होंगे।

The Speaker has to take the Chair of a Judge and he should decide whether Shanti Bhushan is right or I am right I will abide by your ruling

MR SPEAKER I have lost my judicial power because of you.

SHRI RAJ NARAIN. You have lost your judicial power because of my ... (*Interruptions*) That was why I recommended and proposed your name for the Speakership

SHRI KANWAR LAL GUPTA: You should be happy about it.

MR. SPEAKER: I am not unhappy about it.

श्री राज नारायण: मैंने पहले ही कहा था कि चूंकि सुप्रीम कोर्ट में आपको सुपरसीड किया गया इसलिए आपको यहां पर स्पीकर बनाया जाये। यही शांति भूषण जी के लिए भी है। हमारा केस न किये होते और न यहां आते। (व्यवधान)

और भी मैं पढ़ देता हूं। जिस प्रकार गैर-कानूनी ढंग से इमर्जेन्सी लागू की गई वैसा कि शाह कमीशन की रिपोर्ट में लिखा गया है कि किस तरह से लाखों को जेल में बन्द किया गया, न मालूम कितन कहर ढाय गए, न मालूम कितनी माताओं की गोदें सूनी हो गई, कितनी ललनाओं के सिन्दूर धुल गए, कितने ही बच्चे अनाथ हो गए, इसके बाद भी स्पेशलकोर्ट बना कर श्रीमती इन्दिरा गांधी को सजा कराने में जो सरकार हिचके वह सरकार जनद्रोही होगी। (व्यवधान) इसलिए मैं आपके द्वारा इस सदन के सम्मानित सदस्यों से फिर निवदन करता हू कि व शाह कमीशन की रिपोर्ट को ध्यान से पढें ·

"This was more in the nature of a shock treatment than a legally permissible Emergency, which could be declared according to the law then in force"

यानी यह एमर्जेन्सी इल्लीगल है, इस एमर्जेन्सी के खिये मन्त्र के अन्दर नहर ढाया गया। जब भी इन्दिरा गांधी का नाम आता है तो तर्क दिया जाता है कि जनता ने उन को सजा दे दी है, लेकिन इस सरकार ने क्या किया है ' यह सरकार भी तो जनता द्वारा बनाई गई है। यह ठीक है कि जनता ने उनको सजा दी, लेकिन इस सरकार का भी तो कुछ कर्तव्य है यह अपने कर्तव्य से क्यों च्युत हुई है। जब चिट्ठी लिखी जाती है कि इस कैबिनट म नपुंसक भरपडे है, तो कितना कितना शोर मचता है, लेकिन यही बात इन्दिरा गांधी भी बोलती है। आप उस की नौटंकी को देखिए। पब्लिक मीटिंग मे जा रही है लेकिन अपने साथ बिस्तर-बद ले जायगी, एक अटैची ले जायगी, एक ब्रीफ-केस ले जायगी और पब्लिक में जा कर कहती हैं—आप जानते है—मै ये सब चीजें लेकर क्यो आई हू ? क्योंकि पता नही जनता पार्टी की सरकार हमें कब गिरफ्तार कर ले। मैंने एक दिन और एक रात में बडे बडे नेताओं को बन्द कर दिया, देश में पत्ते को भी हिलने नही दिया, इन की क्या हिम्मत है, ये हमें गिरफ्तार करेंगे, जनता मेरे साथ है। इस घमण्ड से वह बोलती है और हम इतने बेशर्म बेहया हो गये हैं, जो उस की चुनौती को स्वीकार नही करते हैं। अपनी साधुवादिता दिखलाते है कि हम बड़े उदार हैं, बडे डमोक्रेट हैं। कितने डेमोक्रट हो, तुम्हारी डेमोक्रेसी हम ने देखी है—न एक झूठे आरोप में तुम अपने कोलीग से इस्तीफा—मांगत हो, अफसरों की बात को मान कर कहते हो कि इस्तीफा देने की स्थिति आ गई है। मंत्री पद के लिए हम कभी नही लडे, हमारा सघर्ष सिद्धान्त रहा है। अगर हमारा कार्यक्रम पूरा नही होगा तो हमारी यह लडाई जारी रहेगी। कानून अच्छा है, संविधान अच्छा है, लेकिन यदि ये मुसीबत बढ़ाते हैं, परेशानी पैदा करते हैं, तो इन को उखा कर फेंक देना चाहिए।

"या सोनो को जारिये जाके टूट जाय।"

ये कानून और संविधान किस के लिए हैं—ये इन्सान के लिए हैं,

मुझ नफरत न थी अंग्रेज,
इन्दिरा की कौमो-सूरत से,
मुझे जो कुछ भी नफरत थी,
वह थी अन्दाजे हुकूमत से।
जो अपनो की हुकूमत आज,
रहमत हो नही सकती,
तो अपनो की भी सूरत से
मुहब्बत हो नही सकती।

जनता आप को ऐसा फेकेगी कि कोई भी रोक नही सकेगा, यदि आप जनता की आकाक्षाओं के साथ खिलवाड करोगे।

SHRI VASANT SATHE (Akola): Mr Speaker, Sir, just now we have heard one of the bitterest indictment of the Government of the Cabinet, by no less a person than the ex Minister, Shri Raj Narain The entire burden of his song his entire speech, was to reiterate his charge that this Government consists of impotent persons...

SHRI K P UNNIKRISHNAN How can you test it?

SHRI VASANT SATHE Ask Shri Raj Narain who was also the Minister of Health Probably he has enough evidence about his Cabinet colleagues' potency I do not know He has to testify.

19.00 hrs.

What was the gravamen of his charge? For the entire 15 months his senior colleague and *guru* was the Home Minister. In that period, with all this bravado that he has been talking of arresting Mrs Indira Gandhi, even under MISA, he did not do, he *did not even bring a proposal* before the Cabinet to arrest Mrs. Indira Gandhi under MISA. He does not talk of that. Now he has become brave to make an allegation and appeal to the whole Party that it was only because Mrs. Indira Gandhi

[Shri Vasant Sathe]

could not be arrested. An arrest attempt was made by his Guru and we know what a farce that was and how he become a laughing-stock before the whole country....

AN HON. MEMBER: Whole world.

SHRI VASANT SATHE: That is the type of demagogy that he is trying to parade even today, to try to pressurize the Government to act in a foolhardy manner. I do not mind. It is for the Government to decide.

Today we are considering here the Forty-Fifth Amendment Bill. The simple point of argument which was urged by so many Members is that the Forty-Second Amendment should have been overthrown, abrogated, lock stock and barrel. That was the promise given to the people, and that promise, you could not fulfil. That is the charge laid by so many of your colleagues, including Shri Ram Jethmalani. Now, why has the Government not found it fit to abrogate the entire Forty-Second Amendment and all its clauses? That is because, probably, a man of experience, legal experience, like Shri Shanti Bhushan, has seen that there are certain provisions which should be kept. I will come to my friend, Mr. Somnath Chatterjee, presently. He asked, 'Show me a single article which was for the good of the people'. I ask you, 'Show me a single article in the Forty-Second Amendment under which the so-called dictatorship of one person....(*Interruptions*). Not a single Member who has spoken till now has shown a single article under which an individual could make himself or herself a dictator. There is not even one article under which they can show that a person can establish a dynastic rule. Show me one article. You cannot because it is not there in the Forty-Second Amendment. Art. 329 has been trumpeted. What does that Article say? As far as election of the Prime Minister and the Speaker is concerned, there will be a different machinery, a different forum. If you are dispassionate, it is not that the dispute will not be tried by anybody. It is only that probably on par with some other countries like the United Kingdom, a separate forum is created. You can very well object to that. I am not questioning. All I am saying is that the travesty of the whole thing is: from whose mouth do we hear so much of democracy?...(*Interruptions*) From the mouth of persons like Shri Somnath Chatterjee and his tribe who do not believe in democracy at all,.... (*Interruptions*) who do not believe in the entire philosophy. If ever these persons come to power, with the support of the Janata Party friends, can you imagine what type of opposition will there exist? What are they talking of democracy? Which democracy are they talking of? And then, who should speak the loudest? The man, the champion who was out throughout the period of emergency. He was here making speeches and opposing all this. So, he had the freedom to oppose...(*Interruptions*) I do not know what he had done. How did he manipulate to see that he had remained out while others were in?....

SHRI SOMNATH CHATTERJEE: Manipulated with your leaders.

SHRI VASANT SATHE: Therefore, it does not lie in his mouth. Sometimes I feel that my friends who talk so much against emergency suffer from a guilt complex...(*Interruptions*) I tell you why. Those persons who fought during the Independence struggle and want to jail for years—have they ever thereafter said, 'Oh! We were put in jail. Oh! We suffered so much...(*Interruptions*) These persons did not do that. If you had not gone to jail, you have no right to speak...

SHRIMATI AHILYA P. RANGNEKAR (Bombay North-Central): We had gone to jail during the Independence struggle also.

SHRI VASANT SATHE: Doing Satyagraha or breaking law? No. They were put in jail like any other

criminals. That is why they cannot ghost about it. Therefore, they feel guilty. That is what is troubling their conscience.

The simple test that I apply to the emergency and the post-emergency periods is this. You also apply this test and see. Emergency in terms of the Constitution is an extra-ordinary period where even the normal fundamental rights and laws get suspended in terms of the constitution which was made by our forefathers—the original constitution. Therefore, if you can prove that certain things which happened in emergency, certain excesses, the moment the emergency was lifted, those things have stopped happening —those excesses. Some of the excesses mentioned before the Shah Commission were that rallies were held, people were transported in trucks and so on. Was that not done after emergency, in the post-emergency period? Were they not brought here by Shri Raj Narain when he organized a rally here? You talk of Turkman Gate, and Muzaffarnagar What happened at Pantnagar, what happened at Belchi and Aurangabad? What happened in Rohtak under your very nose? Who did it? Whose Government is there? Let us be dispassionate.

SHRI DINEN BHATTACHARYA: Do not talk irrlevant things?

SHRI VASANT SATHE: I know. these Marxists are the worst criminals. You have restored the right in West Bengal to Naxalites to chop off the heads, to tarnish the statues and break the heads of statues of Ram Mohan Roy, Netaji Subhash Chander Bose, and Mahatma Gandhi. You should be ashamed of that . . . . . (*Interruptions*). All these things are happening even during the period when there is no emergency. There is nexus between these excesses and emergency *per se*, by itself. Since you can establish such a nexus, you cannot say that these things happened in emergency. Therefore, what has this amendment tried to do?

There are some good features like 31-C. You take away right to property, good, you bring in Article 38, fair, but how will you implement it? You cannot make any laws in pursuance of the Directive Principles, because again some court on some pretext or the other will strike it down.

I would like to submit one more point. I am talking of good features; nobody has mentioned that. We created a new chapter, chapter 14-B of tribunals. It is your experience, our experience and of those who have experience of law including Shri Somnath Chatterjee that merely an advocate with ten years' experience when he becomes a high court judge, he does not become omniscient in law. Does he? Persons who are practising on the criminal side, or who are experts in company law, or civil law or on the labour side, do not become experts merely because they are elevated to the bench of the high court. What did we provide? Let us have specialised tribunals with the status of high courts. That was the provision, a salutary provision so that we may get expeditious justice from knowledgeable, experienced experts. Is this a good or a bad provision? Even that provision you have taken away... (*Interruptions*).

A good provision was introduced under Article 352. What in effect have you done? You say, you remove Forty-Second Amendment. In the old Article 352, the provision was that even if the emergency had to be imposed in a part, you had to do it for the whole country. A good provision was introduced which, I am thankful, has been retained, *viz* that Emergency can be imposed for a part alone, and removed from that part, so that if there are such conditions prevailing in a part, you can restrict it to that part, and nip things in the bud. Was that a bad provision? I am not in agreement with those friends who say that the provision about armed rebellion should be

[Shri Vasant Sathe]

retained. I feel that it is very dangerous. Armed rebellion has an inherent lacuna. Tomorrow, as has been pointed out, you will have to resort to an excuse of somewhere there being an armed rebellion. There may be a mere strike somewhere. You can use it. Therefore, I would beg of you: either remove the provision of Emergency altogether; or otherwise, this armed rebellion business has no meaning.

Then we come to the question of referendum. What is this concept of referendum? I would like to point out its defects.

MR. SPEAKER: When we come to amendments, you can elaborate.

SHRI VASANT SATHE: Yes They were talking about 25 per cent or 26 per cent of the people deciding it Will you go to the people, with this very amendment? Will you have a referendum on this? Secondly, what is federal character? You conduct a referendum in the whole country on a particular issue If States which are over-populated, like UP and Bihar vote in favour of a particular amendment, they can take away the rights of the rest of the country Have you made a provision that a majority of the States also will have to give their approval by way of referendum? Is there any such provision?

I would, therefore, submit that with all the arguments given till now by my friends on the other side, they have not been able to make out a case as to how the 42nd Amendments, lock, stock and barrel was rubbish, was draconian and should have been thrown out. That case they have failed to make out. Therefore, don't scratch each other's backs by saying that the 42nd Amendment was bad and deserves to be condemned.

SHRI YASHWANT BOROLE (Jalgaon): Sir, it reminded me of one story of my school-days, when I listened to the speech of Mr. Sathe. A teenager committed the murder of his parents; and when he was under trial, he claimed mercy of the Court because he was an orphan. The same thing is applicable to Mr. Sathe and his party also.

It has murdered democracy. The teenager has murdered his parents but he claims mercy on that count, that he is an orphan and there is nobody to look after him, therefore he should be shown mercy at the hands of law. Mr. Sathe should kindly bear in mind that whatever benefit he claims has been done to the people by the 42nd amendment is a fraction, is nothing in the eyes of the people compared to the upheavel that has taken place in the country. Remember the treatment meted out to millions of people in the country. Democracy was no more in existence; everybody will agree on this point, including Mr. Sathe. There was no democratic functioning at all. The facts have been revealed by Shah Commission Even 352 and other provisions of the Constitution have been misused. It has been found by the Shah Commission that a single individual for his own benefit could throttle the constitutional provisions completely. 62 million of the Indian people had seen that experience. Mr. Sathe cannot render any account of the democratic functioning of his party during 19 months; it is impossible for him. Therefore, when we are considering the constitutional amendment, I thought that we would be doing so from a different perspective. In fact this is not an amendment which we are making for the ruling party or the opposition. We are to see that at least some future generations will get the guidelines from this. With the present amendment, we are undoing things which are not necessary for this country. We are anxious to see that no ruler at any time in this country can misuse the democratic set up in this country. It is not only 352, but all the subsequent provisions, 356, 358,

359, etc., which require to be reconsidered. From this aspect I really feel that our Law Minister has rightly amended the provisions of 352, and also rightly amended 358 and incorporated therein article 19 and also incorporated article 21 in 359. The sum total, the impact of this is if we read together very carefully to see whether there could be any misuse of this provision for the emergency, I do see no lacuna but one, a single lacuna, apprehended danger from armed rebellion. Whether there shall be armed rebellion or not, this is a subjective idea which will be formed without any objective criteria. Therefore, it is likely to be a misleading factor. So far as external aggression is concerned, so far as war is concerned, you will be in agreement that provision in 352 should stand. We may differ so far as armed rebellion is concerned

Kindly read article 358 as it will stand amended. Article 19 is not suspended on declaration of an emergency on account of armed rebellion Article 19 shall be in force and all the freedoms and rights will be there in existence, even during the emergency declared on account of armed rebellion We further find out that the right to life and personal liberty under article 21 shall be there throughout whether it is emergency on account of armed rebellion or on any other ground. These two articles will be there and on account of these two articles, there will be a guarantee to the persons that personal liberty shall not be limited or hampered in any way.

Also, this decision to declare emergency is required to be taken by the Cabinet and given in writing. It is not that the Prime Minister can write a letter to the President for imposing emergency. It will be a Cabinet decision and it will be also in writing Approval will be required within one month. After every six months, approval will have to be there. Parliament can itself do away with the emergency. Do we think all these will be misused again? We have become too much averse because of the practical rape of the Constitution by Mrs. Indira Gandhi and her party. We are averse to every provision. We doubt everybody's integrity and honesty. We do not find any virtuous people at all in this country to be in existence at anytime. The pendulum is swinging to the other side absolutely. We have become apprehensive because we have seen that a provision in the Constitution in a democratic set-up itself has been misused and millions of people have suffered. It is on this account that our psychology has developed in such a way that we are not prepared to weigh the pros and cons of the matter independently from the effects which have been produced on our minds. As a consequence, we find that provisions which are really meant for the usefulness of the country at the time of emergency are also being adversely criticised.

It has been said that in a country like India it is not possible to have referendum at all. Of course, we can think over the various drawbacks which have been pointed out by Mr. Venkataraman. We know that ours is a vast country and not a small country like Switzerland. But the question is whether the utility of a referendum is dependent on this. So far as supremacy of Parliament is concerned, we, the representatives of the people are assembled here. In this connection, I remember what Sir Ivior Jennings had said: "Don't trust too much the parliamentarians!" We have seen on several occasions on the floor of this House that we were not at all motivated by the good of the people at large but by factional interest which we were trying to safeguard either party-wise or castewise or whatever it may be. Have we not exhibited this character on the floor of this House on several occasions? We did have exhibited it.

[Shri Yashwant Borole]

We cannot deny that aspect of the matter and therefore I want to submit that there should be certain other bodies which can independently think what is good for them as well. A referendum will be the best kind of provision in the Constitution itself. A referendum will certainly tell us that the people at large want this or do not want that. It will be a verdict of the masses You and I are here functioning on their behalf.

SHRI VASANT SATHE: Mr. Jethmalani says that the janata is a mob, people is a mob. What do you say to that?

SHRI YASHWANT BOROLE: He may say so, but at least the verdict of the people after the emergency in the election is itself an eye-opener to everybody who thinks that the intellectual is the person concerned and that an ignorant man is not in a position to consciously think of any particular problem This has ever been true. That has been proved completely now.

Therefore, we have to go by a referendum about the basic features of the Constitution. It is not a referendum on every point.

Shri Venkataraman pointed out that there will be difficulties in holding a referendum, because there will be no questions like aye and no. He has stated a number of other difficulties, but in practical functioning, we shall find out a way. People do not even know the manifestos of different parties.

SHRI VASANT SATHE: Suppose on the issue of Hindi or non-Hindi you have a referendum. The majority of the people in the north and in the south will fall out. What will you do?

MR. SPEAKER: Firstly it has to be passed by the House.

SHRI YASHWANT BOROLE: The verdict of the majority should prevail. What are you doing here in Parliament? Are we not going by the majority verdict?

SHRI R. VENKATARAMAN: I may make it clear that it will not prevail.

SHRI YASHWANT BOROLE: So, we must have faith in the people. We have lost faith in the people, in the conscious will of the people, and we think that the representatives who have been returned only can have conscious opinions about matters.

With these words, I support the Bill.

AN HON. MEMBER: How long are we sitting?

MR. SPEAKER: I for one have no objection to sit up to 10 O'Clock if you want.

SHRI HARI VISHNU KAMATH: (Hoshangabad): We should not be hustled.

MR SPEAKER: A line has to be drawn somewhere It has been extended by two hours now

SHRI HARI VISHNU KAMATH: I recall that in the Constituent Assembly it was not hustled like this.

MR. SPEAKER: It was very compact, small body.

SHRI HARI VISHNU KAMATH: No, it was bigger than this one here today. Mr Speaker, it is more than a mere coincidence that this august House which was brought into existence last year by a revolutionary, popular upheaval is considering in the month of August a Bill which I may describe as a mini Constitution Bill That is why I was anxious that there should have been a special session for this Bill, but it was not to be.

This month of August has seen many great days in our annuls. Mahatama Gandhi gave the call for non-co-operation in 1920 in the month of August. Then came the Quit India Movement also in August on the 9th,

and today is the 8th of August, the eve of the 9th of August; and independence also, though it was unfortunately clouded by a blood-stained partition, came in August.

It would be in the fitness of things, it would be most appropriate, if this Bill, by your leave and with the consent of the House, is discussed and finally adopted by this House on the eve of Independence Day, next Monday, not Friday; the discussion should go on till next Monday, the 14th, Independence Day eve. This is the least I would request, the least I would demand.

SHRI VASANT SATHE: There is the "Save India Day" also tomorrow.

AN HON. MEMBER: It is "Save Indira Day"... (*Interruptions*)

SHRI HARI VISHNU KAMATH: My hon. friend, Shri Sathe, who has seen better days when he was a colleague with me as a member of the Socialist Party, is inebriated by the exuberance of his own verbosity I can assure him that India has been saved last year, and it has been saved from his cohorts, his leaders, from a vile dictatorship India has been saved and will be saved by people, other than he and his party, from the vile dictatorship of a mini-dictator

In this House today there are only six founding fathers; in this Sixth Lok Sabha, there are six founding fathers, members of the Constituent Assembly; I would not like to use that phrase, but it has been used in this House There are only six founding fathers, Members of the Constituent Assembly, almost one per cent of the strength of this House

AN HON MEMBER Who are they?

SHRI HARI VISHNU KAMATH: I will tell you privately, outside.

MR. SPEAKER: No, no.

SHRI HARI VISHNU KAMATH: I do not mind telling, if you permit me! There is no difficulty. It is not taboo, it is not secret.

MR. SPEAKER: It is not taboo, but...

SHRI HARI VISHNU KAMATH: I can mention the names. Six names would not take much time—four on the Janata benches and two on the Congress benches. They are Shri Jagjivan Ram, Shri Shibban Lal Saksena, Shri P C. Sen and your humble servant, myself, and on the Congress side—not Cong. (I) but Congress—Shri Subramaniam and Shri Alagesan. These are the six founding fathers in this House.

I recall the great debates in the Constituent Assembly—I do not wish to go into details of these great debates, because when we come to clause by clause consideration, we will have occasion to refer to them. On the last day of the Constituent Assembly, that is, the 25th of November 1949, the President of the Assembly, Dr Rajendra Prasad in his final address, valedictory address to the Constituent Assembly, he said—only two sentences I want to quote, not much:

> "If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution If they are lacking in these, no Constitution can help the country After all. "

he went on to say·

> " the Constitution is like a machine, a lifeless thing. It acquires life because of the men who control it, and operate it, and India today" I am quoting him; he was referring to the position at that time; it is applicable today also—

> "India today needs nothing more than a set of honest men, who will have the interests of the country before them."

AN HON. MEMBER: We have got.

SHRI HARI VISHNU KAMATH: I am sorry to say that in 1975 and earlier years, that decade was a decadent decade a diabolical decade, of 1967—76 and from the incubus of that decade perhaps the country has still not fully recovered, because some hon. friends still gloat over some of the things which happened then, and they still today to the leader who brought about that state of affairs.

In 1975 on June 12th, when the then Prime Minister met with her Waterloo in Gujarat and Watergate in Allahabad, she made up her mind consumed by her insatiable lust for personal power and for entrenching herself in power by hook or crook, more by crook than by hook, she launched on her mad career for personal power and dictatorship in this country I am sorry to say that those who adorn those benches today if not all, many of them, most of them, became her toadies and flunkies, if not her donkeys too. And outside the House they were reinforced ..

AN HON. MEMBER Neither donkeys nor monkeys? (*Interruptions*)

SHRI A. BALA PAJANOR: Is 'monkeys' parliamentary?

MR. SPEAKER: I do not think it is unparliamentary

SHRI HARI VISHNU KAMATH Outside the House, they were reinforced by an army of henchmen and hatchmen, hoodlums and hooligans who suppressed, who tried to distort debauch and destroy the Constitution Today, we are celebrating in a way, the rebirth of freedom, the resurrection of freedom, the resurrection of a free Constitution, the resurrection of democracy, the resurrection of independence by the resurgence of the people And that is why this Lok Sabha, is today on the 8th of August 1978, engaged in a very historic ceremony and I am sure it will go on till the 14th of August, again I repeat, till the eve of Independence Day.

Now I will come to the main features of the Constitution Amendment Bill. I will not dilate too long upon this aspect at present, because tomorrow and the following days, we will come to the Clause by Clause consideration

MR SPEAKER: We will come to the amendments.

SHRI HARI VISHNU KAMATH: There are four issues, I may say, there are four pillars on which this Bill rests One is the Emergency provisions, the other is preventive detention, the third one is property and the fourth one is referendum These are the four main controversial, I may say, provisions of this Bill, which have raised some sort of controversy in this House and perhaps outside also We had given a solemn promise, made a commitment to the people last year during the elections that we would rescind the 42nd Amendment. True, because that was an amendment neither to amend the Constitution nor to mend the Constitution but to end the Constitution and that is why we wanted to end that 42nd Amendment. I am glad to say that most of the abnoxious provisions of that 42nd Amendment have been sought to be repealed by this 45th Amendment Yet, there are some provisions of that Act. 42nd Amendment Act which, perhaps still disfigure our statute book. may be with a deceptive facade of innocuous provisions. Yet because the Government has got its own constraints, because it requires a two-thirds majority in both the Houses and all that, they are not bringing forward all the other provisions which would completely annul the 42nd Amendment Act; no other constraints, I am sure, that is the only constraint because of which the Bill may fall through. Otherwise, my hon. friend, Shri Shanti Bhushan, would have brought forward the Bill which would have sought to completely rescind the 42nd Amendment Act. I have faith in his bona fides on this

account, on this score. Now these four provisions of the Bill, Emergency, Detention, Property and Referendum are controversial. Well, believe it or not, I was one of those few who, in the Constituent Assembly had raised their voice against the Emergency provisions.

I also proposed referendum in the Constituent Assembly. And I opposed the preventive detention measure that was brought forward by Sardar Patel, as Mr. Nathwani said yesterday. As regards the property right also, I was one of a few, perhaps half a dozen members of the Constituent Assembly, who had opposed it as a fundamental right. So, I am not surprised, after the lapse of 30 years that the Congress all along remained silent on that score and, though these issues were raised quite often, they did not move an inch or raise little finger to change the provisions of the Constitution in that regard. I am happy that at last it has fallen to the lot of the Janata Government, the people's Government, to bring forward a Bill to amend those provisions of the Constitution so as to make them more in tune with the aspirations of the people. I am not fully satisfied still that they are the perfect ones and perfection is seldom achieved....

MR. SPEAKER: Perfection is always aimed at, not realised.

SHRI HARI VISHNU KAMATH: We should strive for perfection.

Aim at the sky, and you will shoot at the tree.

As regards the Emergency provisions, my hon. friend, Shri Shanti Bhushan—I think, if I heard him aright—if I remember his speech aright, he forgot to mention one little feature of this Forty-fifth Constitution Amendment Bill which is an important provision.

MR. SPEAKER: Please try to conclude now. You may take one or two minutes more I would like to call at least one more member.

SOME HON. MEMBERS: Let him have some more time.

SHRI HARI VISHNU KAMATH: I do not wish to plead for myself but I have got to say a few more things.

MR. SPEAKER: When you come to the amendments, you can speak. But the difficulty is that you had forecast all these things at that time.

SHRI VASANT SATHE: He wants to recall all that today.

SHRI HARI VISHNU KAMATH: Yesterday, the Law Minister forgot to refer to one of the provisions of the Bill which provides for judicial review in the case of Emergency provisions. Clause 5 of the present article 352 is sought to be omitted and a judicial review is being provided for, so that any proclamation of the President could be questioned in a court of law on the ground of *mala fides*. Sir, you have been a luminous judge and, as a luminary of the Supreme Court, you will appreciate this kind of a provision—you have a dual role to play today. I am sure, the House will be re-assured on this score, in the case of Emergency provisions, because it has been attacked and the House is suspicious as to how it might be misused, that there will be a judicial review as a judicial safeguard, besides the parliamentary safeguard. I leave it at that.

As regards preventive detention, my hon. friend Shri R. K. Amin talked of MISA. There is no question of MISA here. MISA was the most hellish, pernicious and obnoxious laws. Earlier we had a PD Act, not MISA. MISA was, as I once said earlier, the Maintenance of Indira-Sanjay Act—Humpty, Dumpty together; one is Humpty and the other is Dumpty.

Today, I am glad to note that there is a provision, an entrenched provi-

[Shri Hari Vishnu Kamath]

sion, with regard to article 21—it is entrenched, and cannot be suspended. Even the right to haveas corpus was suspended during the Emergency which the present Chief Justice of India confessed in a remniscent mood recently—you, Sir, left the Bench earlier...

MR. SPEAKER: Fortunately.

SHRI HARI VISHNU KAMATH: I am glad, it has fallen from your lips that it has been fortunate for you, it has been fortunate for us too. The present Chief Justice confessed that he did not have the courage, and he was not alone in not having the courage to resign...

SHRI VASANT SATHE: Once a coward, always a coward.

SHRI HARI VISHNU KAMATH: That is what happens. That has happened to you, I suppose.. (*Interrutions*)

SHRI VASANT SATHE: I am standing by what I have said. I have not changed. (*Interruptions*)

SHRI HARI VISHNU KAMATH: There is a provision with regard to property I had opposed this strenuously in the Constituent Assembly. Now it has been, after all, relegated to its legal status, legal position, satutory position But it is likely to be exploited against us, the Janata Party and the Janata Government, by the vested interests and maybe, by some friends on the Opposite side also. Especially to *kisans* and peasants, they may say, 'Look here...'

किसानों को कहेंगे कि आप जमीन, आप के बर्तन, आप के पशु, आप के घर, आप के बाग, सब कुछ नेशनलैंट छीन लेगी।

Government will have to keep guard over such exploitation. I do not know how this article 300A will be implemented. That is the new article—300A. We will discuss that article tomorrow. There is some sort of a safeguard provided there. Even Lenin, I suppose, in 1922 or 1923, before he died, introduced the New Economic Policy, which later on his successors followed, permitting the right to have private property. in the Soviet Union. I do not know about China. In the Soviet Union, however, there is the right to have some private property.

One last word about referendum. When I raised it in the Constituent Assembly, Pandit Jawaharlal Nehru or Dr Ambedkar—I do not know who it was—said: 'It is a good idea, but in the present state of illiteracy in the country, people do not understand political issues; we should not go ahead with this at the present moment' But after the last year's elections, shall we say the same thing about our people? No A hundred times, a thousand times No' People now understand these issues. Therefore, this referendum is a very wise provision.

One last word and I have done—the rest for tomorrow and the day after Through this Bill we have sought to provide Constitutional safeguards for the preservation of our freedom and democracy, the Constitutional threat to democracy, we have sought to avert. But where does liberty really lie? What is the real safeguard for liberty, liberty, freedom and independence? Liberty lives and flourishes in the hearts of the people, in the hearts of men and women who have been described as sovereign by my hon. friend, the Law Minister If it dies in the hearts of the people, if it dies in the minds of the people, no Constitution, no Parliament, no Judiciary, no Supreme Court, can help country..

MR. SPEAKER: It is a famous saying. (*Interruptions*)

SHRI HARI VISHNU KAMATH: Therefore, a poet has very wisely sung...

AN HON. MEMBER: Who is the author?

SHRI HARI VISHNU KAMATH: I will tell you later on.

Etnernal spirit of the chainless mind, Brightest in dungeons, Liberty! Thou art,

For there thy habitation is the heart,

The heart which love of thee alone can bind,

And when thy sons to fetters are consigned,

To fetters and the damp vault's dayless gloom,

Their country conquers with their martyrdom,

And Freedom's fame finds wings on every wind.

Such a wind brought us into this august House last year. The first republic died in 1975, that silver jubilee year when there was neither jubilation nor sheen on the silver. The second Republic is now born. Long live the great second republic. On that note, I conclude.

MR. SPEAKER: Mr. Bedabrata Barua.

SHRI BEDABRATA BARUA (Kaliabor): I think I will have to continue tomorrow in any case. I will speak for two minutes.

MR. SPEAKER: If the House agrees, we can sit for another ten minutes so that you may finish.

SHRI BEDABRATA BARUA: I am prepared to speak tomorrow. I will start now.

MR. SPEAKER: You have only 15 minutes.

SHRI BEDABRATA BARUA: We have got half an hour still, we have calculated it.

Mr Speaker, Sir, we have generally expressed our support to the amendments except some reservations that we have expressed...

MR. SPEAKER: You will continue tomorrow. Now we adjourn for the day and meet tomorrow at 11 a.m.

20.00 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, August 9, 1978/Sravana 18, 1900 (Saka).

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