Constitution Amendment Bill

(*Amendment of articles 32 and 226*).

SHRI TENNETI VISWANATHAN (Visakhapatnam): I beg to move: "That the Bill further to amend the Constitution of India be taken into consideration."

This Bill seeks to amend two articles of the Constitution. I know I am labouring under a great difficulty, because it is an amendment of the Constitution and I see from the thinness of the House, it is somewhat difficult to muster strength unless Government itself supports it. I shall submit the reasons why the Government also should support it.

On 22nd November, 1968, the Supreme Court pronounced judgment in the case Trilokchand Motichand and others *vs.* Bombay Sales Tax Commissioner. On 26th November, I gave notice of the Bill as I felt it important and urgent. The writ petition led to a sharp division of opinion among the members of the Bench. Mr. Justice Sikri and Mr. Justice Hegde would allow the petition, while Mr. Justice Bachawat and Mr. Justice Mitter would dismiss it on the ground of laches. The Chief Justice agreed with the latter and dismissed it. What is more important for us is not the result of the case, but the observations, which are relevant.

The Chief Justice said:

> "There was no law which prescribes a period of limitation for a petition under Art. 32 of the Constitution. The question was,"

he continued,

> "whether any limitation or time at all can be imposed on petitions under Art. 32 and whether this court would apply by analogy of Article of the Indian Limitation Act of appropriate to the facts of the case or any other limit.
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> The question is one of discretion for this court."

As it is, articles 32 and 226 are absolute in their language and no limitation has been placed for the enforcement of any right or for getting redress from the courts under those articles by any person who has been aggrieved. Therefore the Chief Justice says:—

> "The question is one of discretion for this court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within the Act. But this court."

And he went one,

> "need not necessarily give the total time to a litigant to move this court under Art. 32."
>
> "Similarly,"

He continued,

> "in a suitable case this court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose."

Sir, The Constitution-makers deliberately and wisely did not put any time limit on any person going before the Supreme Court or the High Courts to get redress under these two articles.

What had happened in this case was that they paid away the money demanded of them by the Sales-tax authorities and when the section of the Act under which the demand was made by the Government was struck down by the Supreme Court, they went to the Supreme Court within six months to get a refund. That was the case.

"The mistake," the Judge said,

> "they discovered like all assessees when this court struck down Sec. 12 A (4) of the Act. The petitioners had come to this court within six months of that date and therefore there was no delay. "

Here, Sir, there is an assumption that if there is any delay the fundamental right would not be enforced.

But Mr. Justice Hegde said:—"All of them were unanimous on the question that the impugned collection amounts to an invasion of one of the fundamental rights guaranteed to the petitioners. Their difference centred round the question whether their right to get relief under Art. 32 was subject to any limitation or whether this court had any discretion while exercising its jurisdiction under that Article.

> Our Constitution-makers in their wisdom thought that no fetters should be placed on the right of an aggrieved party to seek relief from this court under Art. 32. He was therefore, firmly of the view that a relief asked for under Art. 32 cannot be refused on the ground of laches."

Unfortunately, as I said the decision went by a majority of three to two but among them was Mr. Justice Bachawat's judgment who himself was a party to a prior judgment passed in April in which it was clearly said that laches shall not be a ground for refusal of any writ petition. Actually, therefore, it is not three to two ; Mr. Justice Bachawat's judgment could be on the side of allowing the petition. But the interpretation now given by the Supreme Court is that a limitation could be placed but it is not an interpretation of the section to be binding under article 143 or so. They wanted as if from case to case by judging by using discretion, to enact an article in the law of limitation. Where the Constitution itself does not put any time limit on the right of a person to go before a court under article 32 or on the part of the court to impose a time limit, it is not fair—and my opinion is not a mere opinion of a layman but it is supported by the judgments of the two judges.

I submit that there is great danger. If this principle of laches is allowed to code the rights given under articles 32 and 226. These rights are fundamental; these rights are absolute; in fact, this Constitution has been lauded and applauded for one reason that it was a thoroughly democratic Constitution. Whatever the other provisions may be, the provisions given under articles 32 and 226 embodied very great fundamental principles of justice. They may look cheap to us because we got them embodied only in 1950 but it took centuries, nearly five, or six centuries, in England and other western countries for the people to get these rights. Fight after fight, struggle after struggle, legal and otherwise, had to be gone, through before these rights were secured. In 1950 we got them embodied in articles 32 and 226 and we should not allow the Supreme Court by a process of judicial interpretation, to legislate for us. It is the right of this Parliament to legislate. If the Parliament believes that the Constitution must be amended and a time limit imposed it could have been done and it can do now if it so chooses but it is not right for the Supreme Court to use discretion from case to case and slowly add to the law of limitation. Today we might have a very good Judge, a man with balance of mind ; tomorrow we may not have a Judge with the same balance of mind or temperament. Therefore it is very

[Shri Tenneti Vishwanatham]

wrong for us to have this left in a haze. It is good of Chief Justice Hidayatullah to have put the matter very clearly that there is no time limit imposed under the article. It is not a case of mere interpretation or inference or misinterpretation of the Constitution. No time limit is given no time limit has been put and therefore, he suggested that the court should apply the principles of limitation from case to case. I submit that, that is wrong. It is a function, it is the province of Parliament to impose a period of limitation and not that of the courts. That is the reason why I place this small Bill, but in my humble opinion a very important Bill, before the House which saves for the people democratic rights of redress given to them under articles 32 and 226.

I hope, the Government will see its way to support this Bill. Being a Constitutional amendment, I know there will be some difficulty. But there is no other way of coming here except by way of coming with an amendment of the Constitution having regard to what Chief Justice Hidayatullah said. That is the reason for my taking a little time of this House.

Sir, I move :

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

SHRI G. VISWANATHAN (Wandiwash) : If the Minister accepts the Bill, there need not be any discussion.

SHRI M. YUNUS SALEEM : I am going to oppose this Bill vehemently.

MR. CHAIRMAN : Motion moved :

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

SHRI R. D. BHANDARE (Bombay Central) : Sir, I have heard the speech of the hon. Mover. I appreciate his sentiments and views. His main argument was that since some of the Judges were inclined to use their discretion in the matter of allowing or rejecting any petition .... (*Interruption*).

SHRI SURENDRANATH DWIVEDY (Kendrapara) : You appreciate his views but deprecate his move.

SHRI R. D. BHANDARE : Sir, I was trying to say that since some of the Judges were trying to use discretion in either allowing or rejecting the remedy granted by way of a petition under articles 32 and 226 of the Constitution, Shri Tenneti Viswanatham is making an effort to amend the Constitution. I respect his age; I respect his view; I respect his eminence and learning.....

SHRI PRAKASH VIR SHASTRI (Hapur): But.....

SHRI R. D. BHANDARE:....but, I think, the amendment of the Constitution which he wants to suggest is redundant because the present Constitutional provisions do not lay any limitation whatsoever.

AN HON. MEMBER: The judges dismissed it on the ground of delay.

SHRI R. D. BHANDARE: I have used very discreetly the words, 'the discretion of the judges'. Should we put any limitation on the discretion of the judges? Should we put any limitation? Let me explain the position for the benefit of the members and especially for Mr. Banerjee. Today the Constitutional position is that there is no limitation whatsoever....

SHRI S.M. BANERJEE (Kanpur): That is bad.

SHRI R. D. BHANDARE: Therefore, do you agree that discretion should be given to the judges to see whether the latches should be taken into consideration or not, that discretion should be allowed to the judges to see to what extent the liberty, the freedom, the right, to move the Supreme Court under articles 32 and 226 should be allowed in a manner that it does not defeat the notion of justice itself? If, after two years or three years, a person wants to move the Supreme Court under articles 32 and 226, should it be allowed? Should any petitioner or any citizen be allowed to move the Supreme Court even after five years—sleep over it for five years and then all of a sudden like Rip Van Winkle get up and move the Supreme Court—or should we allow discretion to the judges.....

SHRI S. M. BANERJEE: Suppose he had no means at that time, what would he do? Unless you have Rs. 5,000 in your pocket, you cannot move the Supreme Court.

SHRI R. D. BHANDARE: Even in that eventuality, the discretion is given to the Supreme Court judges. If you can plead that you had no money at that particular time and that you could, after a great deal of difficulty, collect the money in order to file the petition, should it not be taken into consideration by the judges? Should that not be left to the discretion of the judges? Or, should we say that at any time the petitioner should be allowed to move the Supreme Court? This is the point. This is a very simple point. According to my jurist friend, Shri Tenneti Viswanatham, even that discretion should not be allowed to be exercised by the judges; under no circumstances there should be limitation; under no circumstances the discretion should be exercised by the judges. I hope, my hon. friend will see the reason, the wisdom of the Constitution-makers. Of course, Mr. Tenneti Viswanatham and those who are of his views may explain in how many cases injustice was done because the judges of the Supreme Court exercised their discretion in a manner detrimental to the interests of the petitioners. If there are a vast number of cases in which injustice has been done because the discretion has come in their way--they may give the statistics, the number of cases, in which injustice has been done—I would certainly have no hesitations whatsoever, in supporting the measure which seeks to take away the discretion of the judges and accepting the amendment to the Constitution. But I know it for certain that such cases are few and far between, negligible, microscopic, very small, when the judges might have exercised their discretion denying the right of the petitioner to move the Supreme Court under articles 32 and 226. The Constitution (Amendment) Bill has these two Clauses. Clause 2 of the Bill says:

> "In article 32 of the Constitution, after clause (2), the following new clause shall be inserted, namely:—
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> '(2A) No remedy under this article shall be denied to any petitioner by the Supreme Court on the ground of delay'."

This speaks of a blanket power to be given to the petitioner, to the citizen, to move the Supreme Court at any time he likes or he is in a position to move according to Mr. Banerjee. Then, the other clause which speaks of article 226 also says the same thing.....

SHRI S. M. BANERJEE: We want to convert the Supreme Court into People's Court.

SHRI R.D. BHANDARE: I have no objection whatsoever. That is exactly the point. The Constitution is very silent. The Constitution is very meticulously silent over the question as to what period should be allowed. The Constitution keeps the way open to the citizen. There is no limitation whatsoever. The judges have been given the power—since they are judges of the Supreme Court—to exercise their discretion. I doubt very much whether under Mr. Banerjee's "People's Raj" there could be people's courts which courts could entertain an application or petition and deal with Fundamental Rights at any time.

AN HON. MEMBER: In China there are people's courts.

SHRI R.D. BHANDARE: Wherever there is a State worth its name, there is bound to be this position . . .

SHRI S.M. BANERJEE: If under the so-called Ram Raj or the so-called Kamraj there could be Supreme Court, under our People's Raj there will be definitely good people's courts.

SHRI R.D. BHANDARE: I appreciate his keenness to cut jokes and to be humorous; I appreciate his capacity to be so, but I doubt whether under people's courts also there could be no limitation whatsoever, whether even after, say, 15 years the right could be exercised.....(*Interruptions*). Therefore, I think that this Amendment is redundant, will serve no purpose and will go against the very juridical concep t under which discretionary powers are given to the Supreme Court. Therefore, I am afraid I cannot agree with my hon. friend who has moved the Bill.

SHRI G. VISWANATHAN (Wandiwash): The Bill brought before the House by Mr. Viswanathan, the Senior, has to be supported. Agruments against this Bill have been advanced by Mr. R.D. Bhandare. He said that the Bill was redundant. He has also pointed out that the Constitution is meticulously silent in prescribing the time-limit. It shows that the Constitution-makers, the fathers of the Constitution, were willing to give the citizens any number of years to file a writ. For any case to go for an appeal, there are fixed rules—for a lower court it is 30 days and for a higher court it is 90 days. But the fact that there is no rule fixed to go to the High Court or the Supreme Court goes to show that there cannot be and there should not be a time-limit to file a writ. Articles 32 and 226 are just the backbone of the Constitution of India; they are the axis on which the whole judiciary in the country revolves. Hence, the remedy which has been granted to the citizens of this country through articles 32 and 226 should not be abridged by some of the judges using their discretion in rejecting the applications, the writ petitions. It has been argued that there are only a few cases where the petitions were rejected by the Supreme Court or the High Court. Even if there are only one or two cases, we have to be careful about it. But, at the same time, I agree with my friend, Mr. Bhandare, that the time limit should not be any number of years. In that case the Government must accept the principle of the Bill and they must bring a Bill on their own stating the time limit to file a writ. That must be shown by them.

Again, regarding filing writs of *Mandamus* or *Certiorari* or *Habeas Corpus* there are cases where a person

cannot file a writ immediately, for example, take the case of Government employees and others when they are dismissed or even people working in private enterprises. When they are dismissed or their services are terminated, they cannot go to the court immediately and file a writ. They try through various sources, through politicians and others. They take many years before they go to the High Court or Supreme Court. In these cases they must be allowed to file a writ in the Supreme Court.

SHRI R. D. BHANDARE : Our Constitution allows that.

SHRI G. VISWANATHAN : But the discretion of the Judges is there to disallow a petition. If you are keen on getting the citizens their rights which have been guaranteed by the Constitution, let the Government accept this Bill in principle and let them bring a Bill of their own. But the principle underlying in this Bill has to be supported by all.

SHRI S. M. BANERJEE (Kanpur) : I rise to support my friend, Shri Tenneti Viswanatham and I have a feeling that merely because there has been delay, the rights should not be denied to any petitioner. My hon. friend, Shri Viswanathan, has mentioned that because of some disabilities Government servants sometimes find that they cannot file a writ. May I refresh my memory and the memory of Mr. Bhandare that nearly 3 lakhs of employees working in Defence establishments cannot seek protection under Art. 311. Supposing a particular departmental enquiry is going on and adequate opportunity has not been given to a Government servant according to Art. 311, naturally because of the limitation of Art. 310 this particular article is not applicable to the Armed Forces. The framers of the Constitution did not perhaps realise at that time that there will be certain trade union movement in Defence establishments and apart from the Defence employees, there will be other employees also who will be guided by various labour laws. Is it a fact that 3 lakhs of Central Government employees working in the Defence installations cannot seek the protection of Art. 311 where adequate opportunity is denied to a person ? Can he go immediately and file an appeal to the Supreme Court ? Similarly also in Art. 226. I was myself a victim of dismissal from service in 1955. I was dismissed from Government service merely because I filed a writ after three months. That was rejected. Again I had to approach the Calcutta High Court and I was about to be reinstated by the Calcutta High Court when I got elected to Parliament. My lawyer said, 'My Lord, my client has become a Member of Parliament and I withdraw the case'. I had suffered myself. I was denied the benfit of Art. 311. In this case what has happened ? Now the Supreme Court Judges are given discretion. Sir, without imputing any motive to the Judges or casting any aspersion on the integrity of the Judges, we have seen the Judges sitting over in judgement on the validity ofthe Banking Amendment Act and the Banking Ordinance. We have demanded the impeachment of 2 Judges of the Supreme Court. They had shares in the Punjab National Bank. Is it not a sad commentary on our judiciary and their integrity ? That is why we have demanded the impeachment of these two judges.

SHRI K. NARAYANA RAO (Bobbili) : On a point of order, Sir. According to the Constitution, conduct of the Judges of the High Court or the Supreme Court can be

[Shri K. Narayana Rao]

discussed only by way of a substantive motion of impeachment.

SHRI S. M. BANERJEE : I am not impeaching them.

SHRI K. NARAYANA RAO : Unless a substantive motion for impeachment of a judge has been specifically moved in this House,we have no right or freedom to criticise any judges or the use of their discretion in this House.

SHRI G. VISWANATHAN : He said only Judges. He did not mention any name.

SHRI K. NARAYANA RAO : He said some Judges who have shares in a Bank have been hearing this case. This is casting aspersion. You are doubting the integrity and impartiality of the Judges.

SHRI S. M. BANERJEE : I have not mentioned any name. I am actually trying to explain to my friend, Mr. Rao who is quite young and can become a Judge also but I am not a lawyer and I can never be. When he becomes a Judge, let him not have shares in a particular Bank and also sit in judgment whether nationalisation of banks is wrong or right.

I do not doubt the integrity of the Judges. They are very good people. Why should they have shares in banks We are demanding their impeachment. When the question of impeachment comes, we will definitely do it.

I am happy that an amendment is brought in this House that under Art. 226 writs can be filed not only in the High Court where the cause of action has taken place but in any of the High Courts. This saves the worry of an individual whose services were terminated either at Nagpur or at any other place. In any case the law of limitation or rejection because of delay should be eliminated. Justice should not be denied to a person in the Supreme Court or in the High Court merely because he has failed to file a writ within time. In this case if the Government want to bring some amendment, let them do so. If they want to limit the appeals, let them bar once for all appeals to the Supreme Court. It is very difficult to go to the Supreme Court. Only a man who has got enough money can go to the Supreme Court. I had appealed to Supreme Court twice and I know what the Supreme Court is. Otherwise there should be legal aid to the poor. The ex-Law Minister, Shri A. K. Sen, had promised that a scheme was being chalked out, but nothing has happened. I know the cases of many condemned prisoners. When they go to the Supreme Court and they want a laywer, they get a third rate lawyer or a lawyer like many of us.

SHRI K. NARAYANA RAO : This is really casting an aspersion.

SHRI G. VISWANATHAN : Aspersion on us.

SHRI S. M. BANERJEE : That is why I request that this Bill should be amended in a manner which is acceptable to this House.

SHRI R. D. BHANDARE : After your election, you lost the battle in the Court. After our election, we have lost our brief.

SHRI S.M BANERJEE : Since 1956 I had scored a hat-trick in the Parliamentary elections.

17·59 hrs.

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

SHRI K. NARAYANA RAO : I am very sorry for the remarks made by Mr. S. M. Banerjee. I won't enter in to that part of it. But I must tell my friend that it is of the historical cases. The case of A. K. Gopalan, who is the

first case in the annals of this country where they upheld the liberty and freedom of the individual. Therefore, so far as the Supreme Court is concerned, let us not bring about politics in this matter.

Coming now to the present Bill, I can share the anxiety of the mover of this Bill. He anticipates some difficulty so far as filing of writs is concerned. As Mr. Bhandare rightly drew the attention of the House, even assuming on merits this particular decision of the Supreme Court is going to bring about hardship

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MR. DEPUTY SPEAKER : You can continue your speech on the next day. Now we may take up the half-an-hour discussion.

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18 hrs.

HALF AN-HOUR DISCUSSION

MANAGEMENT OF BENNET COLEMAN AND CO.

श्री प्रकाश वीर शास्त्री : (हापुड़) : उपाध्यक्ष जी, बेनेट कोलमैन कम्पनी से सम्बंधित जिस प्रश्न पर आधे घंटे की चर्चा प्रारम्भ कर रहा हूं वह इस बात का प्रत्यक्ष प्रमाण है कि समाजवाद के अलमबरदार पूंजीपतियों की जेब में किस तरह से जा कर पड़ जाते हैं। समाचार-पत्रों को उद्योग मान कर भारत में चलने वाली यह बेनेट कोलमैन कंपनी सबसे बड़ी कंपनी है जिस के माध्यम से लगभग 17 पत्र इस देश में चल रहे हैं। दो बार ऐसे प्रसंग आए जब सरकार की कोपदृष्टि इस कंपनी के ऊपर हुई। एक तो तब जब आचार्य कृपलानी और श्री कृष्णा मेनन का चुनाव हुआ उस समय इस के पत्रों ने विशेषकर टाइम्स आफ इंडिया ने श्री कृपलानी जी का समर्थन किया तो तत्कालीन प्रधान मन्त्री का कोप-भाजन इन समाचार पत्रों को बनना पड़ा। दूसरा एक प्रसंग तब आया जब श्री टी० टी० कृष्णमचारी के संबंध म बम्बई हाई कोर्ट के मुख्य न्यायाधीश श्री चागला ने अपना निर्णय दिया। उस के बाद श्री टी० टी० कृष्णमाचारी को भी कोप-भाजन इस कंपनी को बनना पड़ा। दो बार इस कंपनी कानून में उसी आधार पर परिवर्तन भी हुए। एक बार तो इस कंपनी कानून में परिवर्तन तब हुआ जब इस की जांच करानी थी और जांच कराने के लिए उन्होंने कहा कि केवल कंपनी कानून में शेयर-होल्डर्स की सुरक्षा ही नहीं होनी चाहिए, सार्वजनिक हितों की सुरक्षा की व्यवस्था भी होनी चाहिए। एक तो कंपनी कानून में परिवर्तन तब हुआ और दूसरा परिवर्तन तब हुआ जब कि यह तय हुआ कि जो कंपनी के कुछ कर्मचारी उस से संबंधित भेद दें भले ही वह उसी प्रकार के भ्रष्टाचार के दोषी क्यों न हों, उन के खिलाफ़ सरकार से बिना पूछे कोई कार्यवाही न हो। एक इस प्रकार का निर्णय लिया गया। यह कम्पनी कानून में दो परिवर्तन हुए। लेकिन जो पहला परिवर्तन हुआ उस के बाद श्री एस० पी० चोपड़ा को कंपनी कानून के हिसाब से एक इंसपेक्टर मुकर्रर किया गया इस बात के लिए कि वह बेनेट कोल मैन कंपनी की जांच करें कि इस के अन्दर कितना गोलमाल है। श्री एस० पी० चोपड़ा के संबंध में बाद में सुना यह गया कि वह शेयर-होल्डर्स के प्रतिनिधियों से मिल गए जिस के संबंध में कई एक आरोप लगाये गए लेकिन इतना होने के बावजूद भी उन्होंने करोड़ों रुपये के ग़बन, जालसाजी और गोलमाल के केस बनाकर सरकार को दिए। मगर इतना सब होने के बाद भी जो बात मैं विशेष रूप से कहना चाहता हूं वह यह कि सरकार उन तमाम बातों को दबाये हुए क्यों बैठी रही ? इस का कारण मुझे ऐसा मालूम होता है और जो सरकार पर मैं विशेष रूप से आरोप भी लगाना चाहता हूं कि इस के दो कारण थे। एक कारण तो यह था कि श्री चोपड़ा ने जितने भी थोड़े बहुत केसेज़ निकाल कर सरकार को दिए थे वह करोड़ों रूपये के होते हैं उसी आधार पर अगर क्रिमिनल कोर्ट में केस चला दिया जाता तो श्री शांती प्रसाद जैन को सजा अवश्य भुगतनी पड़ती। दूसरा यह था कि किसी भी कंपनी के वह डायरेक्टर नहीं