

a Bill further to amend the Representation of the people Act, 1951."

The motion was adopted.

श्री मधु लिमये : मैं विधेयक पेश करता

a Bill further to amend the Delivery of Books and Newspapers (Public Libraries) Act, 1954."

The motion was adopted.

SHRI A. T. SARMA : I introduce the Bill.

REGULATION OF THE FLOW OF FOREIGN MONEYS BILL*

REGULATION OF EXPENDITURE AND ERADICATION OF CORRUPTION BILL*

श्री मधु लिमये (मुंशेर) : मैं प्रस्ताव करता हूँ कि विदेशी धन की भारत में आमद का विनियमन करने तथा इस देश में विदेशियों और उनके एजेंटों की हानिकार गतिविधियों पर रोक के लिये उपबन्ध करने वाले विधेयक को पेश करने की अनुमति दी जाये।

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill to regulate the flow of foreign money coming into India and to provide for the curbs on the harmful activities of foreigners and their agents in this country."

The motion was adopted.

श्री मधु लिमये : मैं विधेयक पेश करता

SHRI HUMAYUN KABIR (Basirhat) : I beg to move for leave to introduce a Bill to regulate internal and external expenditure and payments of the Governments of the Union, the States and Union Territories, their undertakings, concerns and institutions, and all civic bodies under their direct and indirect control ; to maintain watch over all business transactions of trading and commercial establishments ; to prevent leakage of Income-tax, Sales-tax and other taxes and check other mal-practices, and to eradicate corruption, black marketing and smuggling.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill to regulate internal and external expenditure and payments of the Governments of the Union, the States and Union Territories, their undertakings, concerns and institutions, and all civic bodies under their direct and indirect control ; to maintain watch over all business transactions of trading and commercial establishments ; to prevent leakage of Income-tax, Sales-tax and other taxes and check other mal-practices : and to eradicate corruption, black marketing and smuggling."

The motion was adopted.

SHRI HUMAYUN KABIR : I introduce the Bill.

DELIVERY OF BOOKS AND NEWSPAPERS (PUBLIC LIBRARIES) (AMENDMENT) BILL*

(Amendment of sections 2, 3, 4 etc.)

SHRI A. T. SARMA (Bhanjanagar) : I beg to move for leave to introduce a Bill further to amend the Delivery of Books and Newspapers (Public Libraries) Act, 1954.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce

15.05 hrs.

CONSTITUTION (AMENDMENT) BILL—contd.

(Amendment of article 368)

by Shri Nath Pat

MR. DEPUTY-SPEAKER : We shall

*Published in Gazette of India, Extraordinary, Part II, section 2, dated 29.11.68.

[Mr. Deputy-Speaker]

now take up further consideration of the motion moved by Shri Nath Pai.

SHRI PILOO MODY (Godhra) : On a point of order, Sir. Has it been moved properly ?

MR. DEPUTY-SPEAKER : It has been moved.

Now, at the request of some Members of the House, we have allotted 4½ hours to this Bill.

SHRI RANGA (Srikakulam) : Much more time is needed.

MR. DEPUTY-SPEAKER : At the present juncture, we could not give more time.

श्री अटल बिहारी वाजपेयी (बलरामपुर) : उपाध्यक्ष महोदय, मैं एक बात जानना चाहता हूँ। क्या सरकार इस बारे में, इस विधेयक पर विचार करने के लिये सभी दलों की एक साथ बैठक बुला रही है या स्वयं सरकार ही कोई विधेयक लाने का विचार कर रही है क्योंकि कांग्रेस पार्टी तो इस विधेयक पर बंट गई है। तो क्या आप नये सिरे से इस पर विचार कर रहे हैं ;

MR. DEPUTY-SPEAKER : The motion that is now before the House is the one moved by Shri Nath Pai. This Bill was referred to a Joint Committee and both the Report and the Bill are here.

SHRI SURENDRANATH DWIVEDY (Kendrapara) : The majority of the members of the Joint Committee were Congressmen. So, the question does not arise.

MR. DEPUTY-SPEAKER : It would be a wrong precedent to say that a private Member should not...

SHRI ATAL BIHARI VAJPAYEE : I never said that ..

MR. DEPUTY-SPEAKER : Why should he be prevented ?

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, मैंने श्री नाथ पाई के अधिकारों को चुनौती नहीं दी है बल्कि कांग्रेस-सदस्यों की बुद्धिमत्ता की अपील कर रहा हूँ।

MR. DEPUTY-SPEAKER : Mr. Nath Pai. I would request the hon. Member to take 15 or 20 minutes... (Interruptions)

SHRI RANGA : I would like to request you to keep in mind the possibility of the House agreeing and yourself also agreeing and even the Government themselves coming to agree with us in our suggestion that more time will have to be given to it. Therefore, when you are good enough to call the members of various political parties, kindly keep this in mind and do not pull them up much too strictly.

MR. DEPUTY-SPEAKER : During the current session, we have allotted the maximum possible time to this Bill, i.e., 4½ hours. So, as we watch the progress of the Bill, we shall consider, the Committee will consider.

Mr. Nath Pai.

SHRI NATH PAI (Rajapur) : Mr. Deputy-Speaker, I support Mr. Ranga and the others who have asked for extension of time. This has been my position that the House should discuss every aspect of the Bill before it finally makes up its mind. This may be the only motion that he made on which I may find myself in agreement with Acharya Ranga.

Regarding your proposal that I should if possible, limit myself to 20 minutes, I shall try my very best, but in view of the importance of this subject and the confusion that is sometimes caused, I have to try my best to present subject-matter of the Bill with as much clarity as I can afford to bring to it.

Before I take up the subject-matter, I should like to make an appeal to all members, particularly to those who disagree with me—they agree with Chief Justice Hidayatulla, I think, Chief Justice Hidayatulla has asked us to look at the question in the proper way. I have al-

ways held the highest regard for him, and I expected such an advice from him, particularly to those who disagree with me. Speaking recently in Delhi, he has put this in the proper perspective as a true great liberal should put on any debate on a major issue :

"I must think that this is amongst the most important subjects on which Parliament has engaged itself after the Constitution was accepted by the Constituent Assembly..."

He utters a word of caution. Regarding the disagreement among judges of the Supreme Court, this is what the learned Chief Justice of India has to say :

"It is a moot question, who is right and who is wrong, and on that I can venture no opinion before you."

What a becoming modesty for a Chief Justice, who holds a strong view. He says "I hold a certain view ; the others hold certain other views ; I do not know who is right ; I shall try to persuade others to my point of view." It is in this spirit that I shall try to make my appeal to my colleagues in this House.

Mr. Deputy-Speaker, let us now proceed step by step. In the first place, what is the judgement we are talking about ? I will just briefly refer to the essential points made in this judgement, by the majority led by Chief Justice Mr. Subba Rao. It says :

"The power of Parliament to amend the Constitution is derived from articles 245, 246 and 248 of the Constitution and not from article 368 thereof, which only deals with procedure. Amendment is a legislative process."

The Chief Justice says, these are the conclusions to which we are led after discussing the pros and cons and submission 5 made on both sides. Then he pronounces :

"Amendment is law within the meaning of article 13 of the Constitution and therefore if it takes away or abridges the right conferred by Part III thereof, it is void."

Then he proceeds :

"On the application of the doctrine of prospective over-ruling..."

This is a totally new doctrine imported

into India and like precious imported goods getting damaged because they have to be brought in very difficult conditions, this doctrine as it has been imported and implemented on the Indian judicial system has got seriously mutilated and damaged so that the American judges who first formulated it—if they come and have a look at their body—will not be able to recognise it. So much it has been distorted out of all proportion. They say :

"On the application of the doctrine of prospective over-ruling, ... as explained by us earlier..."

Sir, this is the first doctrine to the Indian judicial system and this doctrine has been applied totally differently by the Supreme Court of America. Mr. Deputy-Speaker, this question will have only prospective operation and therefore the said amendment will continue to be valid. They said :

"We declare..."

And this is the most important part—

"We declare that Parliament will have no power from the date of this decision, that is, the 27th of February, 1967, to amend any of the provisions, of Part III of the Constitution, so as to take away or abridge the fundamental rights enshrined therein."

Mr. Deputy Speaker, by the most revealing sentence in this whole judgement which is the nub and the crux of the thinking and the philosophy, the attitude and approach of the majority of the supreme court in this case is given in these gems of words :

"But having regard to the past history of our country, it could not..."

It means the Supreme Court—

It could not believe the representatives of the people. This is the essential approach. The Supreme Court tells the people of India. We are not prepared to believe the representatives who sit in the Parliament and therefore we are to be the guardians of the rights of the people of India. Without fear of being accused
(Interruption)

SHRI FRANK ANTHONY (Nominated—Anglo-Indians) : Sir, that is a complete distortion. Let my friend argue ; but let him not distort the judgement. It is deliberate distortion. (*Interruption*)

MR. DEPUTY SPEAKER : I have carefully gone through it. That is all right.

SHRI FRANK ANTHONY : That is a distortion.

MR. DEPUTY-SPEAKER : Every Member, I presume, has gone through the judgement as well as the evidence before the Joint Committee which has been circulated. What he has said now, in the context, is very clear.

SHRI RANGA : What is clear, Sir ? Shri Frank Anthony is right in his objection. (*Interruption*)

MR. DEPUTY-SPEAKER : That is a sentence from the judgement. He is quoting.

SHRI ATAL BIHARI VAJPAYEE : He has put his interpretation on the judgement.

SHRI RANGA : The judges never said that their view should be accepted, their view should be taken, they alone should be trusted, and all that.

MR. DEPUTY-SPEAKER : It is not his interpretation. It is there in the sentence.

SHRI SURENDRANATH DWIVEDI : Let him read the judgement.

SHRI PILOO MODY : Nobody objects to what he has quoted from the Supreme Court's judgment. Nor is it necessary that every court should require a ruling from the Chajr whether it is right or wrong. Otherwise, we cannot have a debate. What the objection of Shri Frank Anthony was to the words that Shri Nath Pai appended after he had quoted a sentence from the Supreme Court judgment, in which he had said that the Supreme Court had arrogated to itself the right of representing the people of India. That was what Shri Nath Pai said, and I think it is highly objectionable.

MR. DEPUTY-SPEAKER : I would request Shri Nath Pai to read the relevant sentence first, and he is free to make his own observations thereon. He is free to do so.

SHRI NATH PAI : Before I had completed the latter part—and the record and also the tape will show it ; I was saying—without fear of being accused ; but before I had completed my sentence, Shri Frank Anthony jumped to his feet. Had he been a little more patient, he could have heard the full sentence. And the full sentence is this :

“But having regard to the past history of our country, it could not implicitly believe....”

—I say, the Supreme Court could not believe—

“...the representatives of the people, for uncontrolled and unrestricted power might lead to an authoritarian State.”

But this plea, this interpretation is not my interpretation only, but it is the interpretation of so eminent a judge who subsequently became the Chief Justice of India, Justice Wanchoo, that this kind of casting of doubt on the wisdom of the people of India to send representatives who will be subverting the Constitution is not the legitimate function of any judiciary. I have got my right, with all my respect for the judiciary, to express my greater faith in the wisdom of my people ; I respect the judiciary, but I respect my people ; they are dumb and they are illiterate, I know, but through their dumbness came the freedom of this country and not through the scholarship of a bunch of a few individuals and scholars. So, if there is a free Constitution which was given to us by these dumb millions, then ultimately my commitment is to uphold the judgment of my people because it has its roots in the dumb millions ; therefore, I make no apologies for saying this.

SHRI J. B. KRIPALANI (Guna) : Can he interpret the law ?

SHRI NATH PAI : I have heard Shri Acharya Kripalani's question and now, let me reply to it. He has asked me

'Can you interpret the law?' If he wants to listen to me he can listen to me. But I find that he is carrying on a dialogue with Shri Frank Anthony; since he has put me a question. I am prepared to reply to it. Are we free to interpret the law? I say, 'No, Acharyaji'. We are not free to interpret. Interpretation is absolutely the field of the Supreme Court. Legislation is our field. What I am submitting is this that under the garb of judicial review courts have shown a tendency where they have taken upon themselves to a function which is patently reserved for the legislature of the country. May I say that this is not a new tendency? Please forgive me for saying this. A very wise old man, Francis Bacon has warned the judges. He has said that it shall not be the function of judges to try to make law while interpreting the law. Parliament should not take over the function of the judiciary nor should the judiciary take over the function of the legislature. This is very well-established principle.

Having read this judgment, now I would like to say why we disagree from this judgment. Firstly, this judgment betrays a fear of the democratic decisions of the people, expressed by the judges in their desire to protect the people from themselves. What the judges sincerely and honestly are trying to do is to protect the people of India. From Whom? From themselves?

Secondly, the judgment is based, according to my humble opinion, and with all my due respect for the learned judges, on an erroneous view that imposition of restrictions on the right to property was evidence of the dangers of a drift towards totalitarian regime.

I must crave your indulgence to point out that the case in which the Supreme Court delivered so important a judgment banning Parliament from exercising its inherent right was not a case in which fundamental rights were alleged to have been assailed but it was a case in which some zamindars alleged that unlimited property rights were in jeopardy. It is an extraordinary thing that on the three occasions, that is, in Sankari Prasad's case, in Sajjan Singh's case and in Golak Nath's case, if the Supreme Court matter was agitated in the Supreme Court it was not because any

fundamental right like right to freedom of speech or like the right to worship or like the right to organisation etc. was in danger but because the right to property was in danger.

I would have understood if this ban from the Supreme Court had come while delivering a judgment when any citizen of India had sought the help of the Supreme Court or High Court to uphold the right of the citizen. But it was not in response to such a call from a citizen of India; it was a call to protect the property rights of zamindars in response to which this important judgment has been delivered. And this is of the greatest importance in considering the whole philosophy that goes behind this.

Now, some basic questions arise here. In the first place, what it is that we are trying to do? Some of my critics point out—some honestly, and some perhaps not quite in such a convincing degree of honesty—that if this Bill is passed, the floodgates of a totalitarian regime in this country will have been opened.

SHRI J. B. KRIPALANI: They can be opened.

SHRI NATH PAI: If there are big defenders of totalitarianism, the Supreme Court cannot prevent it coming in. A totalitarian regime does not come here because there is a Supreme Court; it does not come here because my countrymen are committed to democracy. Therefore, we remain a democracy, not because of the charity of a party, not because of the charity or interpretation of a court.

A nation remains free. I would like to read at a convenient stage how a nation remains a democracy. Not because of the judgment of five or six Judges, but because of the massive commitment of the people as a whole (*Interruptions*). In this context, there are some friends who are so afraid of listening to wisdom from any source that they want to drown it by keeping a murmuring campaign or a whispering campaign.

May I point out what Justice Holmes, who was for 50 years in the Supreme Court of the US, and who is among the greatest judges of all times and of all countries, has opined

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"The Constitution of a free country is not what a few judges say, it is but what the people want it to be".

This is the basic meaning of a Constitution. Ultimately, a Constitution has to be the repository of the will, wishes, dreams and aspirations of a people. To the extent that it is, it remains; to the extent it needs to be amended, the people must come forth through their representatives to amend it.

We are accused and charged with wanting to subvert the fundamental rights of the citizen enshrined in the Constitution. May I ask a very relevant question in this context? The power of Parliament to amend fundamental rights was taken away, according to the Supreme Court judgment, on 27th February, 1967. It means this nation, this Parliament, had the power to take away fundamental rights. Did it ever do it? Did it ever happen? The only restriction put on fundamental rights was with regard to property rights. There is article 15. I know there were two other amendments in which the so-called equality was slightly modified in order to protect those who are the weakest sections of our community, the backward classes and the scheduled castes.

SHRI MADHU LIMAYE (Monghyr) :
Article 19 was modified.

SHRI NATH PAI : It modified the unlimited right to freedom of speech. I was always claiming the unlimited right to freedom of speech, but here the restriction put—a limited restriction—in the interest of the security and integrity of the country, to prevent the vivisection, disintegration, fragmentation and secession of any part from of the territory of India.

By and large, this executive might have tried to curtail civil liberties, but if it has not succeeded, why has it not succeeded? In this context, I would like to quote from Justice Hans in his famous treatise on the Role of the Supreme Court and people in upholding the spirit of a free country. This brilliant scholar has this to say :

"A society so riven that a spirit of moderation is gone, no court can save. A society where the spirit flourishes, no

court need save. In a society which evades its responsibility by thrusting upon the nature (that is, the defence) of that spirit, that spirit in the end will perish".

The spirit of moderation, the spirit of liberty is something which the people themselves will have to uphold. We shall not have to take shelter behind the apronstrings of judges to defend the spirit of our liberty, to defend the justice of our people, to defend the equality of our people. This is the basic thing one has to bear in mind.

In this context, before I come to the so-called danger, I would like to quote some well-known authorities. We are not among the first democracies of the World. There have been before very inspiring examples of people with their very shining example of faith in, and commitment to, the democratic way of life. One such man was Jefferson. He says :

"Governments are republican only in the proportion they embody the will of the people and exercise it."

Then he says :

"It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves."

And finally he says :

"I know of no safe depository of the ultimate power and security of our liberty but the people themselves."

Here is a class of philosophy and ideology. The Supreme Court is worried that we may have irresponsible representatives whom it is not prepared to trust. I shall always take the risk of trusting the people of India. Sometimes they will make mistakes, sometimes they muddle, but eventually as we have seen the finest guarantee against dictatorship is to give the people the right, make the people have a stake in freedom. If freedom is only to be found in the shelves of libraries or in forgotten documents, there is nobody to defend it. It is to the extent that, that freedom becomes part of the life of the people, to the extent that they experience it, feel it, partake in it, participate in it, that they come forth to defend it. This is the only guarantee of defending freedom.

After dealing with this charge of funda-

mental freedoms being jeopardy, I would like to deal with two very important aspects raised by the Supreme Court in this connection. The Supreme Court's contention is that article 13(2) bars Parliament from passing any law which in any way abrogates, abridges, takes away the fundamental freedoms given in clause (3). Two points are very important in this connection to bear in mind.

In the first place, is the law contemplated by Article 13(2) the same as amendment of the Constitution contemplated by article 368? I am going to substantiate my humble submission with the finest quotations from the Supreme Court itself. Not one Judge of the Supreme Court but three Chief Justices of the Supreme Court have held that law contemplated in Article 13(2) of the Constitution is not the same as amendment of the Constitution as contemplated in article 368. Article 13(2) acts as a bar to an ordinary law made by Parliament or any legislature, and there are innumerable cases in this country. Take for example the case of A. K. Gopalan vs. the State of Madras and Justice Kania's famous remarks. He was the Chief Justice of India. What does he say? He says that article 13(2) is there only for abundant caution and even if article 13(2) had not been there the Supreme Court of India and the people of India also would have fought against any piece of legislation which would have curtailed fundamental freedoms. There is a distinction between the law of the land and the constitutional law of the country. May I here quote some authorities?

Dicey, in his treatise on the law of the land, has elaborated that constituent law and legislative law are two totally different things. It is when Parliament is exercising its constituent powers that it can amend the Constitution, but if a normal law of Parliament tries to take away the fundamental freedoms the Supreme Court will be justified in striking it down, and I will of course uphold them, and I will uphold even the striking down of this Bill if the Supreme Court is so pleased and inclined to do. But let us remember this classic difference. This is not a difference that Nath Pai has made. It has existed from the beginning of law.

Here I will read an extract :

"There is a clear separation between

constituent law and the rest of the law and that must never be forgotten. An amendment of the Constitution is a constitutional law and is in exercise of constitution-making powers. It is not an ordinary law in the exercise of ordinary legislative power and is clearly different from the power to amend the Constitution."

Justice Wanchoo, in the same case, quoting from the *Law on the Constitution* by Ivor Jennings, says :

"Written constitution is thus the fundamental law of the country, it is an express embodiment of the doctrine of the reign of law. All public authorities, legislative, administrative and judicial, take their powers directly or indirectly from it. Whatever the nature of the written Constitution, it is clear that there is a fundamental distinction between constituent law and the rest of the law. There is a clear separation, therefore, between the constituent law and the rest of the Law."

I have quoted Ivor Opinion Jennings, I quoted Dicey and I have quoted Chief Justice Wanchoo. Sir, in this connection now I would like to point out what the Supreme Court itself in the famous case of Shankari Prasad had to say on this issue, because we are now discussing the contention of the Supreme Court that Art. 13(2) is a bar even to Article 368. Is it that the politicians only are discussing it? Has not the Judiciary ever become seized of this issue and, if so, what is the opinion of the Judiciary? I may submit that this matter was discussed by the Supreme Court not once but twice, once by the unanimous judgment and on the second occasion by preponderance of the judicial opinion and it has held that Parliament has the competence to amend Part III of the Constitution and that Art. 13(2) is not a bar to that power. May, I, therefore, in this connection read what the Judges had to say in Shankari Prasad case? We must remember that so eminent a Judge as Chief Justice Patanjali Shastri, who will always be inspiring future students of jurisprudence and law in this country and who took a leading part in drafting this judgment, had to say. No doubt our Constitution-makers, following the American model, have incorporated certain fundamental rights' in Part III and

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made them immune from interference by laws made by the State. We found it however, difficult in the absence of a clear indication to the contrary to support that they also intended those rights immune from Constitutional amendment. The terms of Art. 368 are perfectly general and empower the Parliament to amend the Constitution without any exception whatever. We are of the opinion that in the context of Art. 13 law must be taken to mean rules and regulations made in exercise of ordinary legislative power and not amendment to the Constitution made in exercise of the constituent power with the result that Art. 13 does not affect amendments made under Art. 368.

Here, Mr. Deputy Speaker, we have to take into our mind that the Indian Constitution is a detailed constitution. It is not a skeleton constitution like the United States constitution. The American constitution is just a 4 page document. Our Constitution has tried to provide not for every contingency but tried to make it as detailed and specific as possible. Now, is it conceivable that if it was the intention of the Constitution-makers to exclude Part III of the Constitution from the purview of Art. 369? Why did they fail to do this? What prevented them from doing that? It is a question which nobody is able to answer. You are aware and the House is familiar with it. If it was the intention of the constitution-makers to exclude from the purview of Art. 368. Part III what prevented the legislative body like the Constituent Assembly which was so careful about what it says? The inference is very clear. I am quoting this. This absence of any kind of bar in Art. 368 preventing the Parliament from bringing an amendment to Part III is there. It will now be argued 'Why do you want to disturb this?' This is more an innuendo and an insinuation than a more statement of fact. In the first place I would draw the attention of the House that these fundamental freedoms are precious. Are they the only freedoms? We are concerned, I think, the whole House is zealous about the freedom of speech, the freedom of association, organization, assembly, religion, faith and worship and I think all Indians for all times will continue to enjoy these freedoms. A very pertinent question is this: are these

all the freedoms that we are entitled to; what about the other freedoms? The right to vote—Art. 326 gives this right. This is not in Part III of the Constitution. Can it be therefore abolished? Are not the other freedom as precious as the freedoms given in Part III? Is not the right to vote a most precious freedom that we have got in the Constitution? Can it ever be destroyed? This is not in Part III. Can the Parliament take away that right? I would ask another question. What about the right to work? Art. 41 of the Constitution confers on the people of India the right to work. There is a right to education. There is a right to adequate means livelihood.

Now, if those critics of mine who are disagreeing, I think, seriously and sincerely, are prepared to incorporate this right to work, right to vote, right to education, right to adequate means of livelihood, and enshrine them in the Constitution, then, let us all agree that this will not be appealable, but we have never seen any tendency to oppose the right to work, the right to education, the right to livelihood, the right to live, the right to life and the right to a livelihood, as a free Indian, and the right to speech. The right to speech, is of course, as important for me as any other right, and if it is denied we will fight. But let us see the fun of the whole thing. These are the directive principles which I have quoted. I would now, Mr. Deputy-Speaker, reserve some of the agreements.

MR. DEPUTY-SPEAKER : Half an hour.

SHRI NATH PAI : Sir, you are aware that 15 minutes were taken in points of order and other submissions. (*Interruption*).

MR. DEPUTY-SPEAKER : All right; please conclude in five minutes.

SHRI NATH PAI : I would like to point out here in this connection, what is this power of amendment; is it something new? Was it implicit? Was it wanted by the makers of the Constitution I will quote the man who piloted the Constitution of India, Dr. Ambedkar. (*Interruption*). I am glad to know that some are inclined to

respect him, but there are some who accept no other authority except their own !

SHRI ATAL BIHARI VAJPAYEE : I respect Mr. Nath Pai's opinion also.

SHRI NATH PAI : I am glad that Shri Vajpayee extends his respect at least to some individuals. (*Interruption* . It is very nice, very modest and very kind of him. Now, Dr. Ambedkar, speaking in the Constituent Assembly, has this to say about this issue. Not that this was not taken up. It was contemplated ; it was thought about and it was provided for by the makers of the Constitution. Here it is :

"The Assembly has not only refrained from putting a seal of finality and infallibility upon the Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or in Australia, but has provided a most facile procedure for amending the Constitution."

The constitution-maker has said in the Constituent Assembly that we have deliberately provided for a most facile procedure, and why did he say that ? I think Burke was a very conservative political thinker. He said that a Constitution which does not provide for its amendment does not provide for its preservation. Dr. Ambedkar, therefore, is in the same line of thinkers when he observed :

"I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution."

MR. DEPUTY-SPEAKER : I would like to quote here one more great thinker who has come to be the symbol of freedom for all people. This is Thomas Paine, from his *Rights of Man*. He said :

"There never did, there never will, and there never can, exist a Parliament, or any description of man, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to 'end of

time', or of commanding for ever how the world shall be governed, or who shall govern it ; and therefore, all such clauses, acts or declarations by which the makers of them attempt to do what they have neither the right nor the power to do, nor take power to execute, are in themselves null and void... .."

MR. DEPUTY-SPEAKER : Please conclude.

SHRI NATH PAI : I am concluding. You are hurrying me too much, because the points are still to be replied to but I am bound to follow your guidance in this matter. I would like to quote—

DR. SUSHILA NAYAR (Jhansi) : It is an important matter ; give him some more time.

MR. DEPUTY-SPEAKER : I know how to conduct the proceedings. Please conclude. (*Interruption*)

SHRI NATH PAI : Let me quote, Mr. Deputy-Speaker, from Philips Frankfurter, who was a conservative judge, and a colleague of Justice Holmes and Prof. Laski. This is what he says :

"The Constitution owes its continuity to a continuous process of revivifying changes. The Constitution cannot make itself, somebody made it, not at once, but at several times. It is alterable ; and by that draweth nearer perfection ; and without suiting itself to differing times and circumstances, it could not live."

A Constitution which cannot be amended cannot live. Why did this American Judge give this warning ? You know, Sir, after the depression, the Americans were confronted with a very dangerous situation. The President tried to bring legislation which the Supreme Court again and again struck down. It was in this context that the then President of the United States had to tell that the Supreme Court cannot be allowed to be a third chamber which will be arrogating to itself the power of making laws.

My amendment does not try to abrogate any fundamental freedom. The Supreme Court has introduced an amendment

[Shri Nath Pal]

of the Constitution. The Constitution, after the judgement in Golaknath's case, is a different Constitution. What I am trying to do by my amendment is to restore to the people of India the Constitution, the sovereignty, which belonged to them before the Supreme Court took it away by a slender majority of six to five, because to the extent that we create this balance between our people, their representatives in Parliament and the Supreme Court do we create the necessary sanction for the smooth functioning of the democratic set-up of this country.

I do not want an artificial conflict with the Supreme Court. I am one who is committed to upholding authority. But the source of all authority in this country is the people of India and it is their right that has been infringed. Therefore, I submit, let us proceed to debate this amendment and restore to the people of India the sovereignty which has been tampered with by the judicial process.

MR. DEPUTY-SPEAKER : Motion moved :

"That the Bill further to amend the Constitution of India, as reported by Joint Committee, be taken into consideration."

There is an amendment to the consideration motion.

SHRI LOBO PRABHU (Udipi) : Sir, I beg to move :

"That the Attorney General of India be summoned to advise the House on the constitutional validity of the Constitution (Amendment) Bill, 1967 (*Amendment of article 368*) by Shri Nath Pal, M.P."

I have moved this motion because the proposed Bill flies in the face of the Constitution. I have moved this amendment because the Bill flies in the face of the Supreme Court. I have moved this amendment because the Attorney General, who always advises the Government on laws, was conspicuously absent when the Select Committee considered this Bill.

SHRI K. LAKKAPPA (Tumkur) : Parliament is the supreme authority. We

have appointed the Advocate General and the Attorney General. (*Interruptions*)

SHRI LOBO PRABHU : I maintain that this Bill flies in the face of the Constitution, because in spite of this Bill having received a record consideration, according to Mr. Nath Pai himself, of several judges and others, this Bill has not considered some very vital questions.

The first question which I want to ask Mr. Nath Pai and those who are enthusiastic about the powers of Parliament is this :

What does the Select Committee think about Article 13 ?

MR. DEPUTY-SPEAKER : Your submissions are to be limited only to the amendment, namely, as to why do you want to invite the Attorney General ? The scope of your amendment is limited to this only. (*Interruptions*)

SHRI RANGA : What he says is that this is against the Constitution and against Parliament and so he wants the Attorney General to come here and reply.

SHRI LOBO PRABHU : I am saying that Article 13 has not been considered at all by the Select Committee.

SHRI AMRIT NAHATA (Barmer) : Sir, I rise on a point of order. The usual practice is that when amendments are moved, they are moved. And when we take up clause by clause discussion, then only the speeches are made. Now, you are allowing him to make a speech. Then please restrict him to make a speech specifically on this amendment only. Or else you call the other Members as per the list.

MR. DEPUTY-SPEAKER : Unfortunately it has not been understood properly. He has moved the amendment at the consideration stage and I have given him the opportunity to just speak a few words. I cannot allow him to go beyond that. First of all, I shall ask the Law Minister to reply and then we shall proceed further.

SHRI LOBO PRABHU : I am asking questions and nothing more than this. My

first question is this. Does Article 13 say that the States will not have the power to abridge Part III ?

SHRI S. M. BANERJEE (Kanpur) : To this you will get a written reply.

SHRI PILOO MODY : I do not know why Shri Banerjee is troubling us here.

SHRI LOBO PRABHU : I have examined the proceedings of the Select Committee and I have not seen it considered whether this particular provision should be abrogated or not. It was never posed if you want to amend Part III, will you have to abrogate Article 13 or not ?

MR. DEPUTY SPEAKER : You cannot go into the merits of it. Your request, by this motion, to this House and to Government is that the Attorney General should be invited to throw more light because you are not convinced about this.

SHRI LOBO PRABHU : The question remains unanswered.

SHRI PILOO MODY : At least he can give the reasons as to why he should send for the Attorney General. He must give reasons for that. (*Interruptions*).

SHRI LOBO PRABHU : Are you afraid of the reasons why I request inviting the Attorney General here ?

MR. DEPUTY SPEAKER : Please conclude.

SHRI LOBO PRABHU : Please don't interrupt me.

MR. DEPUTY SPEAKER : The time is limited here.

SHRI LOBO PRABHU : Are we not having the freedom from such limits here.

MR. DEPUTY SPEAKER : Here I would like to point out that I am only giving you an opportunity since you have moved the motion at the early stage.

(*Interruptions*). On this, I am quite clear in my mind. So far as the invitation to the Attorney General to come and answer is concerned, you can speak. I cannot allow you to go through the merits of the case.

SHRI RANGA : He only wants to develop his arguments. How do you know as to what his argument is ? (*Interruptions*)

MR. DEPUTY SPEAKER : I will not allow beyond the restrictive point.

श्री अटल बिहारी वाजपेयी (बलरामपुर) : उपाध्यक्ष महोदय, अगर माननीय सदस्य यह नहीं कह सकते कि एटार्नी जेनेरल को क्यों बुलाया जाये, किन मुद्दों पर प्रकाश डालने के लिए एटार्नी जेनेरल को बुलाना जरूरी है, तो फिर आप ने उन्हें अपना संशोधन क्यों रखने दिया ? आप उन्हें टोक रहे हैं। आप उन्हें बोलने नहीं देते हैं।

MR. DEPUTY SPEAKER : If I give him the latitude to pose all the questions, he will go on laboursing the other points in his mind instead of inviting the Attorney General here to throw some light. That would be the position.

Now, confine your remarks to this only.

SHRI LOBO PRABHU : Why did the Joint Committee not recommend the abrogation of article 13 ? Secondly, can article 13 co-exist with the amended article 368, because, as long as article 368 co-exists it is a contradiction of article 13. Then, if article 368 contains a provision that it will apply also to article 13, then article 13 should go. Otherwise, it is meaningless. Thirdly, the suggestion is that the marginal heading should be changed from "Procedure to amend" to "power to amend". Now, the power to amend must be in the powers of Parliament, and the powers of Parliament are given in article 105. I would like the Attorney-General to explain why it should not be made in article 105, instead of in an article which is procedural.

This is so much as the Bill goes. It

[Shri Lobo Prabhu]

flies into the face of the Constitution, it flies into the face of the Supreme Court.....

MR. DEPUTY SPEAKER : He should conclude now.

SHRI LOBO PRABHU : Sir, it is difficult to develop a thought in a complicated subject like this, if you go on interrupting every minute like this.

MR. DEPUTY-SPEAKER : Normally, I dispose of such amendments without giving an opportunity to the Member. The hon. Member who makes the motion presumes that the House is ignorant of the ramifications and complications of the law and, therefore, the Attorney-General should be invited. That is his presumption. On that basis, he has moved an amendment and I have permitted him to speak.

SHRI LOBO PRABHU : I have three points to make. I have made one.

MR. DEPUTY SPEAKER : He should conclude soon.

SHRI PILOO MODY : Sir, you have already spoken more than he has spoken.

SHRI LOBO PRABHU : The Supreme Court has clearly said that Parliament has no power to amend Part III. Now, is this House trying to bring the Supreme Court into contempt... (Interruptions). Sir, it is very difficult for me to continue if you cannot control the House. Is this House trying to bring the Supreme Court into contempt by saying that the judgement is by a majority of one vote? At a time when there is contempt for law all over the country, it is the intention of this House that it should set an example by itself saying 'We have no regard for the judgement of the Supreme Court, because it is only by a majority of one vote'? This cannot be the intention of this House. This House was not meant to come into conflict with the Supreme Court, this House was not meant to bring the Supreme Court into contempt. I would like the Attorney-

General to come and give his opinion on this point.

Thirdly, Shri Nath Pai has quoted a lot of rulings and he has exhausted all authorities, old and new, available to him. One simple thing he has not said. He is releasing a Frankenstein monster, because it attacks not only the right to property, but it attacks many more fundamental rights, the right to speech, the right of minorities and Scheduled Castes, the right to occupation, the right of language and so on. Is it the intention of this House that these rights should be exposed to be amended by anyone? It is not a question of the power of this House, it is not a question of the competence of this House; it is a question of the composition of this House. One day it may be full of people who have no respect for the Constitution... (Interruptions).

SHRI S. M. BANERJEE : Sir, I rise on a point of order... (Interruption).

MR. DEPUTY SPEAKER : Every Member here has taken an oath of allegiance to the Constitution... (Interruption). You will have to withdraw that... (Interruption). This will be withdrawn... (Interruption).

SHRI LOBO PRABHU : I do not mind withdrawing... (Interruption).

MR. DEPUTY SPEAKER : He has withdrawn... (Interruption).

SHRI LOBO PRABHU : What I would like to say is about the future Parliament. I would like to point out to my hon. friends, who are so excited, that only two days ago they exhausted every fundamental right to defend their own position. Law defends the weak; law is for the weak and the moment you subject fundamental rights to their erosion, it is the weaker section of the population which is exposed. This is what I would like to be explained. I would like each one sitting here to lay his hand on his heart and say if we should go in for a piece of legislation which is contradictory to the articles of the Constitution, which is contemptuous of the Supreme

Court's decision and which is defying and ignoring the rights of the people. On these questions I demand in the name of the people of this country that the Attorney-General be summoned here to advise this House.

SHAI AMRIT NAHATA : Sir, I rise on a point of order.

SHRI PILOO MODY : Shri Lobo Prabhu threw a hat and he found thirty wearers !

SHRI AMRIT NAHATA : I draw your kind attention to rule 344, sub-rule (2) of which says :—

"An amendment shall not be moved which has merely the effect of a negative vote."

MR. DEPUTY-SPEAKER : That is not correct. The hon. Law Minister.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : Mr. Deputy-speaker, Sir, I am surprised that my learned friend moved an amendment to this Bill requesting the presence of the Attorney-General. That is never done. Rule 77 says what motions may be moved on the presentation of the Select/Joint Committee Report. I can never conceive of an amendment to a Bill calling the Attorney-General to be present in the House to clarify certain positions.

SHRI ATAL BIHARI VAJPAYEE : It is a motion.

SHRI SURENDRANATH DWIVEDI (Kendrapara) : There always can be such a motion as the hon. Member has moved. There cannot be an amendment to the Bill to that effect.

SHRI GOVINDA MENON : I agree that there may be a motion like that but I submit that there is no need to call the Attorney-General in this matter.

SHRI PILOO MODY : Now he is objecting against the motion.

SHRI GOVINDA MENON : That is my view. If my hon. friends would read the report of the Golak Nath case as

reported either in the Supreme Court Reports or in the All India Reporter
(Interruption)

SHRI LOBO PRABHU : Would you like to answer my arguments ?

SHRI GOVINDA MENON : I can answer your arguments also.

If the House is desirous of knowing what the views of the Attorney-General are on this matter, they will be seen in the report of the case where the Attorney-General appeared for the Union Government and advocated the points of view which are upheld by the minority judgement in that case.

SOME HON. MEMBER : No.

SHRI GOVINDA MENON : As to the points that have been raised by Shri Prabhu, I must with great respect to him say that there is no merit in those points. He says that the powers of Parliament are included in article 105 of the Constitution. In article 105 the power of Parliament with respect to matters which are not legislative are enumerated. But if he will go to the chapter in which articles 245 and others appear, he will see that there is something known as legislative powers. For example, in Chapter I of Part XI—the chapter heading is *Distribution of Legislative Powers*—

Article 248 speaks of residuary powers of legislation ; article 247 speaks of power of Parliament to provide for the establishment of additional courts ; article 249 speaks of Parliament to legislate with respect to a matter in the State List, etc. There is something called the legislative power ; there is also something known as constituent power. The Joint Committee wanted to change the marginal note to article 368 by way of abundant precaution to show that article 368 does not merely lay down procedure but also contains in it the power of amendment.

10'00 hrs.

Article 368 in our Constitution is a copy of an article in the Australian Constitution where also it is said 'procedure to amend'. Where 'procedure to amend' is given, it implies that there is the power to

[Shri Govinda Menon]

amend also. What is attempted by the Joint Committee is to change the marginal note to show, by way of abundant precaution, that article 368 contains the power to amend also.

I do not consider that it is necessary that the Attorney-General should come here to clarify any point. It is only a division of opinion in this House whether the power to amend all parts of the Constitution should be vested in Parliament or not. There are some friends who think there that the power should not be there and are other who think that the power should be there. No legal point arises in this matter.

As far as his view that we are disregarding the judgment of the Supreme Court, my submission is that whenever the Supreme Court or a High Court comes to a decision on account of certain lacuna in the legislation which they point out, this House, times out of number, has passed laws to get over the difficulty. Take, for example, the recent judgment of the Supreme Court regarding passports. They gave a certain decision pointing out that the position in law is such and such, etc. So, Parliament stepped in to get over the difficulty. It is

16.09 hrs.

not unusual for Parliament to legislate to get over a decision by the Supreme Court. If this amendment goes against the fundamental principles of the Constitution.....

SHRI RANGA : Fundamental Rights.

SHRI GOVINDA MENON : my learned friends on the opposite side need not be anxious. They can go to the Supreme Court and get it struck down, if possible.

MR. DEPUTY-SPEAKER : Now, I put it to vote.

SHRI LOBO PRABHU : Will you answer why don't you amend article 13 ?

MR. DEPUTY-SPEAKER : Nothing more. I put it to vote.

The question is :

"That the Attorney-General of India be summoned to advise the House on the constitutional validity of the Constitution (Amendment) Bill, 1967 (*Amendment of article 368*) by Shri Nath Pal, M.P."

The Lok Sabha divided.

DIVISION NO. 21

AYES

Amat, Shri D.
Barua, Shri Kolai
Deb, Shri D. N.
Deo, Shri P. K.
Deo, Shri R. R. Singh
Devgum, Shri Hardayal
Girraj Saran Singh, Shri
Gowder, Shri Nanja
Goyal, Shri Shri Chand
Joehi, Shri Jagannath Rao
Khan, Shri H. Ajmal
Kuahwah, Shri Y. S.
Majhi, Shri M.

Meghrajji, Shri
Mody, Shri Piloo
Nalk, Shri R. V.
Patodia, Shri D. N.
Ramamoorthy, Shri S. P.
Ranga, Shri
Rao, Shri V. Narasimba
Shah, Shri Virendrakumar
Sharma, Shri Beni Shanker
Swell, Shri
Vajpayee, Shri Atal Bihari
Xavier, Shri S.

NOES

Ahirwar, Shri Nathu Ram
Anjanappa, Shri B.
Arumugam, Shri R. S.
Azad, Shri Bhagwat Jha
Bejj, Shri Kamalnayan

Banerjee, Shri S. M.
Barua, Shri Bedabrata
Barua, Shri Hem
Basu Dr. Maitreyee
Baswant, Shri

Behera, Shri Baidhar
 Besra, Shri S. C.
 Bhagat, Shri B. R.
 Bhandare, Shri R. D.
 Bhargava, Shri B. N.
 Bharti, Shri Maharaj Singh
 Biswas, Shri J. M.
 Bohra, Shri Onkarlal
 Brij, Bhusan Lal, Shri
 Burman, Shri Kirit Bikram Deb
 Chakrapani, Shri C. K.
 Chanda, Shri Anil K.
 Chandrika Prasad, Shri
 Chaturvedi, Shri R. L.
 Chaudhary, Shri Nitiraj Singh
 Chavan, Shri Y. B.
 Chittybabu, Shri C.
 Choudhary, Shri Valmiki
 Dange, Shri S. A.
 Daschowdhury, Shri B. K.
 Dass, Shri C.
 Deoghare, Shri N. R.
 Desai, Shri Dinkar
 Desai, Shri Morarji
 Deshmukh, Shri K. G.
 Dhillon, Shri C. S.
 Dwivedi, Shri Nageshwar
 Dwivedy, Shri Surendranath
 Gandhi, Shrimati Indira
 Ganpat Sahai, Shri
 Gopalan, Shri P.
 Gowda, Shri M. H.
 Gupta, Shri Indrajit
 Jamna Lal, Shri
 Kamble, Shri
 Kamala Kumari, Kumari
 Kedaria, Shri C. M.
 Keari, Shri Sitaram
 Khan, Shri Latafat Ali
 Khan, Shri M. A.
 Kinder Lal, Shri
 Kripalani, Shrimati Sucheta
 Kuchelar, Shri G.
 Kundu, Shri S.
 Kureel, Shri B. N.
 Lutfal Haque, Shri
 Mahajan, Shri Vikram Chand
 Maharaj Singh, Shri
 Mahishi, Dr. Sarojhai
 Malhotra, Shri Inder J.
 Maran, Shri Muraloli
 Masuriya Din, Shri
 Mehta, Shri Asoka
 Menon, Shri Govinda
 Mirza, Shri Bakar Ali
 Mishra, Shri Bibhuti
 Mishra, Shri G. S.

Mohammad Ismail, Shri
 Mohammad Yusuf, Shri
 Mohammed Sheriff, Shri
 Mulla, Shri A. N-
 Nahata, Shri Amrit
 Nath Pai, Shri
 Padmavati Devi, Shrimati
 Pahadia, Shri Jagannath
 Pandey, Shri Vishwa Nath
 Paokai Haokip, Shri
 Parmar, Shri Bhaljibhai
 Partap Singh, Shri
 Parthasarathy, Shri
 Paswan, Shri Kedar
 Patel, Shri N. N.
 Patil, Shri N. R.
 Patil, Shri T. A.
 Pramanik, Shri J. N.
 Rajasekharan, Shri
 Raju, Dr. D. S.
 Ram Charan, Shri
 Ram Dhan, Shri
 Ram Dhani Das, Shri
 Ram Subbag Singh, Dr.
 Rana, Shri M. B.
 Randhir Singh, Shri
 Rao, Shri K. Narayana
 Reddi, Shri G. S.
 Saigal, Shri A. S.
 Salve, Shri N. K. P.
 Sambasivam, Shri
 Sayyad Ali, Shri
 Sen, Shri Deven
 Sezhiyan, Shri
 Shah, Shri Manabendra
 Shambhu Nath, Shri
 Shankaranand, Shri B.
 Sharma, Shri M. R.
 Shashi Bhusan, Shri
 Shastri, Shri Prakash Vir
 Shastri, Shri Ramavatar
 Sher Singh, Shri
 Sheth, Shri T. M.
 Shankre, Shri
 Shukla, Shri Vidya Charan
 Siddayya, Shri
 Singh, Shri D. V.
 Sinha, Shri Mudrika
 Snatak, Shri Nar Deo
 Solanki, Shri S. M.
 Sreedharan, Shri A.
 Supakar, Shri Sradhakar
 Tarodekar, Shri V. B.
 Tiwary, Shri K. N.
 Ulkey, Shri M. G.
 Veerappa, Shri Ramachandra
 Venkateswamy, Shri G.

Virbhadra Singh, Shri
Vyas, Shri Ramesh Chandra
Yadav, Shri Chandra Jeet
Yadav, Shal Jageshwar

MR. DEPUTY-SPEAKER : The result* of the division is : Ayes : 25 ; Noes : 128.

The motion was negatived.

MR. DEPUTY-SPEAKER : Mr. N. C. Chatterjee.

SHRI LOBO PRABHU : The Swatantra party should open the debate, being the largest Opposition group.

MR. DEPUTY-SPEAKER : I have called Mr. N. C. Chatterjee. I never thought that any member from this side would raise an objection to this.

SHRI RANGA : It is our right to speak first.

MR. DEPUTY-SPEAKER : On this Bill, there is no question of right..... (Interruptions). This is a Constitution (Amendment) Bill. I recognise the party spokesmen ; I will give them an opportunity.

Mr. N. C. Chatterjee.

SHAI N. C. CHATTERJEE (Burdwan): The Bill was first introduced by Shri Nath Pal in this House. We discussed this Bill in this House for four days. Then on the motion moved by the hon. Law Minister, the Bill was referred to the Joint Committee. You, Mr. Deputy-Speaker, were the Chairman of the Committee. I must say that the Committee called almost all the jurists for giving evidence. You remember, we called almost everybody....

SHRI J. B. KRIPALANI : Those who were against it were not called...

SHRI N. C. CHATTERJEE : No ; that is not correct. The Committee called almost everybody, those who were for and those who were against it...

SHRI J. B. KRIPALANI : I was not called...

SHRI PILOO MODY : I was also not called in spite of the fact that I asked to be called six times ! They did not want adverse testimony.

SHRI N. C. CHATTERJEE : We called the best jurists. I remember, Sir, that the Attorney-General of India came and gave his opinion. Not that the Bill is perfect, but he pointed out certain amendments to the Bill. I have myself moved certain amendments. The whole thing is this ; the main question is this, namely, who has got the power to amend our constitution ? The Supreme Court have not said that we have no power to amend with regard to the fundamental right ; but they said, you have no power to abridge, but you have got the power to amend for the purpose of extending it, for the purpose of expanding it. But, Sir, the whole question is this : The Supreme Court settled this law in the year 1951 by a judgement delivered by Mr. Justice Patanjali Shastri and it was unanimous—not that this point was not taken, this point was taken. Sir, in 1952, in the Supreme Court Report, page 88, it is reported. The Counsel's arguments were all noted. Mr. P. R. Das, a great barrister, and ex-judge of Patna High Court appeared. He appeared in Shankari Prasad's case. All the other jurists and advocates appeared. One counsel argued that article 368 must be read subject to article 13 (2). The whole question before this Parliament is this : Should article 368 be read, subject to article 13 (2) ? If that is so then, of course, law includes constitution amendment, and if a law is bad then, that must be declared void. The Supreme Court, after careful consideration, said : That is not the correct view. The arguments of the counsel were negatived, and a very fine judgement was delivered by Mr. Justice Patanjali Shastri. He said :

"Having regard to the considerations...we are of opinion that in the context of Article 13, law must be taken to mean rules and regulations made in exercise of ordinary legislative

*The following Members also recorded their votes :—

A YES : Shri Lobo Prabhu.

NOES : Sarvashri K. Suryanarayana, Badrudduja, and K. Lakkipati.

power and not amendment to this constitution within the exercise of constitutional powers."

The result is, Article 13 (2) does not affect amendments made under Article 368. That was the view taken in 1951. As a matter of fact, Sir, it gave great relief not merely to Bihar but all others; the Bihar land reforms Act was declared illegal by the Patna High Court; that was declared legal here, after this amendment. Not only that, Sir. They pointed out that the two things are separate. Article 13 (2) says :

'The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.'

Now the question is, what is the meaning of the word 'law'? They pointed out that it cannot cover Article 368. Therefore the law was clarified. The law was made clear. And, Sir, all the Acts, all the Bills, passed by the different legislatures in India became valid because of that judgment. From the 26th January, 1950 our constitution was promulgated. In 1951 the law was settled. From 1951 upto February 1967 the law was the same. Not only that, Sir. Kindly look at Article 368.

With the greatest respect to the Chief Justice who delivered the judgment, I must point that 368 not only shows a basic procedure for amendment of the Constitution...

SHRI J. B. KRIPALANI : Written procedure.

SHRI N. C. CHATTERJEE : In the *Berubari case*, the Supreme Court pointed out that the preamble or headline or heading cannot possibly affect the contours, of the whole section. Look at the contour. 'Upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the provisions of the Bill'. Kindly see 368. After we pass this Bill with the requisite majority in this House and in the other, it goes to the President, and upon the assent of the President being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

In '*Sankari Prasad*' and also in *Sajjan Singh's case* the Supreme Court pointed out that the language here is that 'the Constitution shall stand amended'. The Constitution must be the whole book; it does not say this part or that part, or any part apart from Part III. It does not make any exception in the case of fundamental rights.

Therefore, the constituent power, the sovereign power, the supreme power, the legislative power lies with us, and that is the law. What emerges after the passing of the Bill and assent of the President being given is that this book, the Constitution book of India, shall stand amended. That was the view taken.

I have been trying my best, in Parliament and outside, not to allow any fundamental right to be abridged. In this Parliament, I have delivered many speeches. Every time any Bill would come to curtail these rights, I had to fight it.

You remember the terrible disaster which took place in Bengal after partition. Lakhs and lakhs of people came from East Pakistan and settled near Calcutta. They all came in 1947 and 1948. Thousands of people actually occupied some of the big palaces in Calcutta. Ultimately, they would not go back either to Pakistan or to any other place outside Bengal. They stuck to the place. There was a great demand for regularising the position of these unfortunate people. Dr. Bidhan Chandra Roy was Chief Minister then. He got a Bill passed in, I think 1955. In that they said we will acquire the property but that compensation shall be paid on the basis of the price of August 1948 because they held that in 1948 all these refugees had come and those poor people had no other place to go.

15 19 hrs.

[*Shri R. D. Bhandare in the Chair*]

Dr. Roy approached me and asked me to fight for the Act in the Supreme Court. That Act was struck down by the Court because they held that you have got no power to change any fundamental right in this way, by ordinary legislation. It is reported in SC 1954 p. 170.

That created the difficulty. For that

[Shri N. C. Chatterjee]

reason, i.e., the judgment of the Supreme Court, the Constitution was amended. Mr. Justice Patanjali Shastri took the view that compensation must be paid in complete indemnification. You cannot have complete indemnification in 1955 by paying the market price of 1948, although they all came and settled in 1948 and the landlords, owners were ousted at that time.

So the Constitution was amended. Can you say that it was badly amended, illegally amended, improperly amended?

SOME HON. MEMBERS : No, never.

SHRI N. C. CHATTERJEE : It is a question of humanity.

It is a question of moral and human rights. Therefore, you have got to see what the position is. In the next case of Sajjan Singh in 1965, Vol. I, Supreme Court, page 933, Chief Justice Gajendragadkar delivering the judgement said the same thing. The point was argued by one counsel after another that the judgment in Shankari Prasad's case should be reviewed as it was not good law. The majority of the Judges said in that case in 1965 that the contention for reconsidering the judgment in Shankari Prasad's case had absolutely no justification, that the power conferred by article 368 on Parliament could be exercised both prospectively and retrospectively. Then they said that the power conferred by article 368 includes the power to take away fundamental rights guaranteed by the Constitution. What Mr. Nath Pai's Bill wants to do is to restore what Justice Patanjali Shastri and Chief Justice Gajendragadkar said, namely that the power conferred by article 368 includes the power to take away the fundamental rights guaranteed by Part III. If this is correct, this Constitution shall stand amended and that means every part of the Constitution.

AN HON. MEMBER : Including article 13.

SHRI FRANK ANTHONY : If you take away article 32, nothing will remain.

SHRI N. C. CHATTERJEE : That

will be bad for lawyers, but who is the man in India who is going to stand up in Parliament and say that it should be removed. Nobody will do it.

We have a Constitution which is better than that of America and Australia. We have not merely conferred fundamental rights on our citizens, but deliberately conferred remedial rights in this Constitution. When I argued a case in the Supreme Court, Mr. Satalvad said that I should first exhaust the High Court in Bengal and then come to the Supreme Court, that I could not straight-way come to the Supreme Court. I said that under article 32 I had the inherent right to come to the Supreme Court for the vindication of my fundamental rights, and the Supreme Court upheld that and over-ruled Mr. Setalvad's argument. I am pointing out that we have not only given remedial rights, but we have made the remedial rights fundamental rights under article 32. Therefore, do not think that because Mr. Nath Pai has introduced this Bill, if this Bill is passed, anybody will possibly say, unless he is a lunatic, that article 32 should go. We are very proud of it, proud of our remedial rights, and this is the most amazing thing that in this country of 50 crores of people you can go to the Supreme Court straight for the vindication of fundamental rights. Mr. Nath Pai's Bill is not making any atrocious attempt to do something which is improper. He is simply trying to restore the judgment of Justice Patanjali Shastri, to restore also the judgment of learned Judge, Justice Gajendragadkar.

My learned friend read out a passage from the man who piloted the Constitution Bill, Dr. Ambedkar. He said : "Show me any Constitution in the world so facile as this." Therefore, the Constitution-makers did not want to make it so rigid. Certainly they wanted to make it difficult to amend the Constitution. They put it on a high pedestal, made it transcendental, but not so high as to make it unapproachable and also untouchable by Parliament. The whole question is this. Who can amend it—Parliament or the Supreme Court, the chosen representatives of the people or some members of this judiciary?

Actually, if we go to the Supreme Court, 12 Judges have decided now in favour of this. Art. 368 operates in one field and Art. 13 (2) operates in another field. I am reading a passage from what Pandit Jawahar Lal Nehru said on 11-11-1948 :

"And remember this. While we want this Constitution to be as solid and permanent as we can make it, there is no permanent permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's the growth, the growth of a living vital organic people. In any event, we could not make this Constitution as rigid that it cannot be adapted to changing conditions."

Therefore, he pointed out, deliberately the Prime Minister of India who was also one of the Constitution makers, pointed out that we should not make it so rigid as to be absolutely unchangable and unalterable. Parliament performs dual functions. One is legislative. Another function is constitutional. We are really a constituent assembly in another form.

SHRI RANGA : No.

SHRI N. C. CHATTERJEE : We are a Constituent Assembly while functioning under Art. 368. (*Interruptions*) Under Art. 368 we are a Constituent Assembly but certain safeguards have been imposed.

Mr. Justice Bachawat—one of the Judges of the Supreme Court, has quoted one paragraph ; it is not that he has found it out. Mr. Nath Pal has pointed out this thing—says that you cannot legislate for ever you cannot legislate beyond the grave, you cannot legislate beyond your generation, if you do that you are doing something improper. He has pointed out that it should not be done. I am reading the judgment of Justice Bachawat—page 925 of 1967 Supreme Court report :

"There never did, there never will, and there never can, exist a Parliament or any description of man, or any generation of men, in any country, possessed of the the right or the power of binding and controlling posterity to the 'end of time'."

This sentence Mr. Nath Pal quoted. Then the hon. Judge goes on to say :

"Every age and generation must be as free to act for itself in all cases as the ages and generation which proceeded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies."

It is living and not the dead that they have to be accommodated. I am therefore submitting only what Mr. Setalvad pointed out. It should be done with certain safeguards. He said 'Omit all the references to law'. There is also my amendment to that effect and I am happy that I am in his company. Otherwise that will only encourage the people to go to the Supreme Court.

I ought to tell you that there is no majority of one even by which it can be said that it is done by prospective overruling. It is a fantastic doctrine imported from America. With the greatest respect I do not subscribe to that, and I submit that what five judges have said is fallacious. Our constitution says that the law shall be void in such circumstances, and so, how can a void thing be prospectively overruled ? It is bad, and therefore, there is no legal existence. How can it be given any validity ? That is the point they have made. One Judge said what is a little startling. He said that Parliament has the power to amend the Constitution but not in this way. His Lordship said that Parliament can by law constitute a Constituent Assembly and say whatever law shall be passed. Therefore, these 520 Members, the chosen representatives of the people, can appoint 50 or 52 men and say, "You are the Constituent Assembly and you shall do whatever you like, and that shall be the law." What cannot be done directly cannot be done indirectly. That is the first principle.

I therefore submit that this Bill merits the closest attention of Parliament and could be adopted with certain modifications.

SHRIMATI SHARDA MUKERJEE (Ratsagiri) : Mr. Chairman, Sir, I am speaking immediately after my learned colleague Shri N. C. Chatterjee who has had many years of experience in legal

[Shri Sharda Mukerjee]

matters and constitutional matters. I shall try to deal with this much more on a basis of how it can affect the citizens of India. This is the first time since the Constitution came into being, in 1950, that we are confronted with the question of whether or not Parliament can amend the fundamental rights. As late as 1965, in Sejjan Singh's case, Chief Justice Gajendra-gadkar had observed that "In our opinion, the expression 'amendment of the Constitution' plainly and unambiguously means amendment of all the provisions of the Constitution." Therefore, in 1967, when Sajjan Singh's case came up and the judgment came out, there was a direct reversal of this judgment. An eminent jurist, Mr. Setalvad, said in his evidence, as to why the Supreme Court in its judgment has made certain references, has expressed certain doubts about Parliament. With your permission, I shall quote :

"You must not forget that judges after all human beings and they are affected as much by other things happening outside as an ordinary citizen can to a lesser extent, although they hold their balance and keep their mind more balanced and even."

I think we would be right in presuming that when the Supreme Court's judgment included a certain ban on Parliament's future powers to enact laws which may abridge or take away the fundamental rights, the Supreme Court was being influenced by the state of conditions in our country today. They have said, as Shri Nath Pai quoted,—

"We therefore declare Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein."

If the Supreme Court had just limited its observations to the property question, I do not think there would have been this noticeable reaction from Parliament. But to the extent these words pre-suppose that Parliament will enact laws which will destroy the very foundations of our democracy, it is, I submit with due respect to the wisdom and experience of the learned judges, a step beyond their legitimate jurisdiction. They can by all means de-

clare that an Act of Parliament is *ultra vires* of the Constitution, for in doing that, they are merely interpreting the Constitution. But can they presume that Parliament will enact constitutional amendments which would restrict or destroy all or any of the other six fundamental rights, excluding property rights? If such a situation should arise in the country, democracy as we understand it would have ceased to exist.

There is instability in the State legislatures and we have to admit that the legislators have not kept up the mandate they received from the electorate. There are also frequent outbursts of violence. There are disturbances in the country which cause us anxiety. These may well have influenced their lordship in the pronouncement of their judgment. The question before us now is, in the event, what does Parliament do to cope with the present situation?

Article 144 gives power to the Supreme Court to declare the law of the land. As the position is today, therefore, the fundamental rights cannot be altered or abridged by Parliament. The Supreme Court is the highest court of appeal and our Constitution has invested it with authority to pronounce judgments in matters of dispute between the States and the Government of India, in disputes arising between the individual and the State, and in cases involving a substantial question of law or the interpretation of the Constitution. Can we then say at this juncture, when the Supreme Court has put a ban on Parliament, that we shall have a direct confrontation, or direct retaliation? If Parliament were honest, I think it would go to the source of the trouble and have the courage to say that we shall amend article 13(2). That is one possibility. I am merely suggesting the possibilities before Parliament. One possibility is that Parliament can go straight to the point and say, "we shall amend article 13(2)" and take the chance of the Act being struck down by the Supreme Court.

The second possibility is, Parliament can, as it is done in this Bill, go round and try to amend article 368. This has become, if I may say so, a very old habit in

our country that where we cannot resist injustice and fight a straight battle, we shall go round the law, try to subvert the law and try to circumvent the law. That is the question before us. Parliament does not amend article 13(2), which in any case in its original form does not permit Parliament to amend the fundamental rights in such a way that they would be abridged or taken away.

So, the Parliament, if it chooses, as Mr. Nath Pai's Bill has provided, can get round it by amending Article 368. What does Mr. Nath Pai's Bill say? Mr. Nath Pai's Bill says first of all that we change the nomenclature in respect of procedure for amendment. Article 368, as Mr. Nath Pai puts it, confers the right of amending to the Article. Secondly it says that Parliament may amend any provision of the law in accordance with the procedure laid down. And then it adds Part III and then it says that notwithstanding anything said in Article 13, Clause (2), which debar Parliament from touching the fundamental rights. It says :

"Notwithstanding anything contained in Article 13 shall apply to any law in pursuance of this Article."

So, Sir, we have only in fact continued the process, which has been, shall I say the process, very familiar, that we always circumvent the law. Here lies the real danger. When you say that rule of law shall prevail, it means, first of all, that you have respect the law? Why do you respect it? Because, you have the confidence that the law will be administered without favour or without fear.

Now, Sir, I ask you that if Parliament allows this precedent of subverting the Constitution, of subverting the spirit of the Constitution, it means we do not respect the Constitution. The Constitution says that the Supreme Court is the supreme authority to administer the law of the land. So, we say that we respect that. But, we shall find a way out of it.

Then, Sir, if the people say that 'Parliament has passed a law, but we can find a way of getting out of it,' Can you blame them? This is in fact what is happening. This Parliament passed the Land Acquisition Acts. What is our experience? The Land Acquisition Acts have been used by certain Chief Ministers for acquiring lands

from the poor people and to help their friends and relations. This Parliament passed the Industrial Policy Resolution. And what is our experience?

श्री शक्ति कुमर (लारगोन) : जनता ने पाप को माफ़िकार दिया है, पाप उसको जब के यहाँ गिरवी रख दीजिये ।

SHRIMATI SHARDA MUKERJEE : We have created monopolies. This Parliament, over and over again, passed legislation which the people do not respect. I submit to you, Sir, that the supremacy of Parliament will come into being the day people respect Acts of Parliament. Can you expect them to have it as long as Parliament finds ways and means of killing the very soul of the Constitution? Mr. Chatterjee is a very able advocate and I am perhaps not as able as him? I say that this thing will affect the people. Will the people have the confidence if Parliament itself says that we shall subvert the Supreme Court's decision?

Therefore, Sir, what is the sure way out of this? We do not want this impasse to continue. Then what is the way? The Constitution itself provides a way out. It provides by Article 143 that you can go back to the Advisory Councils of the Supreme Court and ask them to reconsider their opinion. Perhaps, this will affect the vanity of Parliament and this will affect the supremacy of Parliament. But this would ensure the confidence of the people that there is the Supreme Court whose authority Parliament does not want to infringe.

16 45 hrs

[Mr Deputy-Speaker in the Chair]

Now you talk of democracy and the constitution. In the 20th century the Weimar Constitution was supposed to be the best democratic constitution; absolutely flawless. What happened? There emerged Hitler out of it. So, it is not the word or letter of the Constitution, it is not the interpretation of the Constitution, by the lawyers, it is the extent to which the people support the Constitution that matters. Therefore, I say, after 20 years Parliament has the opportunity, occasion, to

[Shrimati Sharda Mukerjee]

acknowledge that it is not supreme to this or that, that it does not question the authority of the Supreme Court and that it agrees to work in conformity with the Constitution for the enactment of legislation.

I ask you this question. What do we gain by this amendment? Whom are we trying to fool? This is like a man who cheats himself while playing patience. He thinks he will finish the game soon by cheating himself. He is not fooling anybody else; he is fooling himself. This is not a matter for quibbling. Let us consider what the Bill does. It is argued that it is purely an enabling measure. True, until Parliament acts upon it nothing drastic is going to happen. What has happened, unfortunately, is that instead of considering this on a rational level, the discussion has descended to an emotional level.

When you are considering the freedoms guaranteed to the citizens—leave alone the property rights; besides that, there are six other fundamental rights—I do not understand what is this question of socialism and capitalism and that sort of thing. How are they relevant? Property rights are separate in any way; Land Acquisition Acts remain; we can have further agrarian reforms and further restrictions on property. But, surely the rights which are guaranteed in our Constitution to remove the insecurity which a minority community feels, the political conditions prevailing in the country, these have to be taken into consideration.

I would say that it would be very wrong at this time to continue the conflict between Parliament and the Supreme Court, and I do not think that this Bill is going to end it. So, out of the three alternatives perhaps the most moderate, perhaps the most reasonable is that we should refer the matter to the Supreme Court. But if the fundamental rights have to be touched, I for one would say that I have not got the mandate from my electorate. How could I go back to the electorate and tell them that I, on their behalf, have given Parliament the right to abridge or take away their right to speech or freedom of association or freedom of religion or the other so many freedoms which have been guaranteed to them in the Constitution? This

is not a matter which Parliament can by two-thirds majority decide. Even if this Bill is passed, it would be almost impossible to make it effective because you have to refer it to at least 50 per cent of the State. That, in itself, is going to create trouble. So, acquiring this enabling power is just an affront to the Supreme Court and I do not understand the value of it.

श्री अश्वकुल गनी डार (गुडगांव) मेरे साथ इंसफ नहीं हो रहा है। सबसे बुनियादी एमेंडमेंट मेरी है। मैंने दस बार रिक्वेस्ट की है लेकिन वह कबूल नहीं हुई है। आप जिसको चाहें बुलायें, मैं आपके इस अधिकार को चैलेंज नहीं करता हूँ। लेकिन मैं समझता हूँ कि बुनियादी तौर पर जो एमेंडमेंट है वह मेरी है और आप मुझे मौका नहीं दे रहे हैं।

[श्री महलन्नी डार (गुरुकाँठ) - میرے ساتھ انصاف نہیں ہوتا ہے۔ سب سے بنیادی ایمنڈمنٹ میری ہے۔ میں نے دس بار ریکویسٹ کی ہے لیکن وہ قبول نہیں ہوئی ہے۔ آپ جس کو چاہیں بلائیں۔ میں آپ کے اس اور اس بار کو جسے چاہیں نہیں کرتا ہوں۔ لیکن میں سمجھتا ہوں کہ بنیادی طور پر جو ایمنڈمنٹ ہے وہ میری ہے اور آپ مجھے موقع نہیں دے رہے ہیں۔]

MR. DEPUTY-SPEAKER: The hon. Member will get an opportunity when I ask him to move it, not at this stage.

SHRI SRIRAJ MEGHRAJJI DHARGADHRA (Surendranagar): If I may point out to the hon. Member, his amendment is no different from the one that I am moving.

Mr. Deputy-Speaker, I share Shri Nath Pai's faith in the people of India and it is for this very reason that my amendment provides for a referendum.

Before I go to that, I should like to make one or two observations on the points made by my learned friend, Shri N. C. Chatterjee. He says that article 368, on the amendment of the Constitution has the words:—

"the Constitution shall stand amended". Meaning that every part of it is amendable.

I may point out that actually the words are:—

"the Constitution shall stand amend-

ed in accordance with the terms of the Bill,"

Elsewhere in the Constitution, the Constitution provides what the terms of the Bill may be or what they may not be. As to Constitutions being vital, living, dynamic instrument; nobody has ever denied it. When Shri Nehru said that he had not made the Constitution "so rigid," he meant surely that he had made it "partly rigid", that there was some rigidity about it. A house can be repaired and renovated but in repairing or renovating a house one does not change the foundations of the house. That is the point. I hope, hon. Members will bear it in mind.

Sir, the Constitution, the Polity of India, stands at a fork in the road. The passage of the Bill presently before this House or its rejection at the hands of Parliament will determine for all time the future of democracy in this country.

The Constitution of a country is its supreme fundamental law. But a political or statutory Constitution does not embody and exhaust the whole of the fundamental social law or constitution of a people or society. The political constitution, whether written or unwritten, is but a part of the total social constitution. The latter, which governs all social and organic relationships, is a product of long evolution, the result of generations of social experience and wisdom.

A written constitution simply codifies a part of the fundamental constitution. Its primary concern is the superstructure of society, the body politic, rather than its foundations. But some written constitutions go further than this. They touch the foundations of society. Ours is one. Not all constitutions embody a declaration of fundamental rights. But this does not mean that those societies do not possess fundamental rights or that they are not recognised and enforced by their legislatures and their judiciaries.

The wise and farseeing framers of the Constitution of India saw fit to delve into the foundations of society, to pick out what they thought was essential, and they included a statement of Fundamental Rights in our Constitution. The object of their doing so was to give these rights pre-eminence; to invest them with an aura

of sanctity; to guide, curb, and inhibit the future rulers of society and to make these rights—whether of majorities, minorities, or individuals,—justiceable in the courts of law. These natural rights belong to the people and are a part of the fundamental constitution of any civilised society. The object of selecting these particular rights and codifying them was not to expose them to the power of passing parliaments but to safeguard them from legislative interference.

Otherwise, what was the object of codifying them at all? Since most of these rights are natural rights in any democratic society, the future legislatures might have been trusted to respect them as the judiciary was bound to enforce them. It is, therefore, clear that the object was to place these fundamental rights beyond the reach of the ordinary legislative process.

16.55 hrs.

(Mr. Speaker in the Chair)

This object is fully revealed and categorically stated in article 13, the fateful article, of the Constitution.

As I have said, the Constitution is not exhaustive. Neither is the Part of Fundamental Rights. If I may give a homely example, the love of a mother for her child is something natural and fundamental. It does not find a place in Part III. But if it did, it would not mean that it would then come within the reach of Parliament and that it could be snatched away by a two-thirds majority or even by unanimity. Nor do I believe that any judge worth the name would fail to recognise, uphold, and enforce such a fundamental thing in society, whatever the consequences.

The historic reasons for including a statement of Fundamental Rights in our Constitution has been most cogently dealt with by Shri Justice Hidayatullah (as he was then) in the Supreme Court judgment in the Golaknath case—an epochal judgment which I hope will be read by every lover of freedom and democracy in India.

I may quote here from the 1928 Report, on this subject, by Pandit Motilal Nehru :

"It is obvious", he said, "that our first care should be to have our Fundamental Rights guaranteed in a manner

[Shri Sriraj Meghrajji Dhrangadhra]

which will not permit of their withdrawal under any circumstances."

Almost 20 years later this high, onedistant, goal was at length achieved. On 30th April, 1947, Pandit Jawaharlal Nehru, proposing the Interim Report on Fundamental Rights, for adoption by the Constituent Assembly, said :

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

Note the distinction between things permanent and things that can be amended.

Now, what are the things permanent which find a place in the Third Part of our Constitution? I cannot do better than quote Shri Justice Hidayatullah. Summing up the judgment in the Golaknath case, he said :

"Our liberal Constitution has given to the individual all that he should have—freedom of speech, of association, of assembly, of religion, of motion and locomotion, of property and trade and profession. In addition, it has made the State incapable of abridging, or taking away these rights to the extent guaranteed, and has itself shown how far the enjoyment of those rights can be curtailed. It has given a guaranteed right to the person affected to move the court. The guarantee is worthless if the rights are capable of being taken away."

These are the rights of the people, given by the people, unto themselves in their Constituent Assembly. Who, hon. Members, shall take them away?

Let us turn to the avowed intentions of the Constituent Assembly itself. The hon. Dr. B. R. Ambedkar, while explaining that the procedure for amending the Constitution was simple, expounded on the necessity of curbing the powers of Parliament. He said :

"In considering the Articles of the Constitution; it (the Constituent Assembly) has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as

partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed."

"to get through Parliament by reason of some article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none." (*Constituent Assembly Nov. 4, 1948*).

SHRI RANGA : This is the distinction which Shri N. C. Chattarjee has forgotten conveniently.

SHRI SRIRAJ MEGHRAJJI DHRANGADHRA : I beg to draw the pointed attention of hon. Members to the distinction made between the nature and spirit of a Constituent Assembly and that of a Parliament. This is a distinction well-known and repeatedly emphasized. The purpose of the framers of our Constitution was that the distinction must endure as long as the Constitution itself. I submit that the effect of this Bill will be to arrogate the functions of a Constituent Assembly to the existing legislatures of the day.

This idea, of thus empowering the existing legislative bodies, had not escaped the broad vision of the Founding Fathers of the Constitution. They were not unaware that the legislative bodies of the land would be elected bodies, composed of the chosen representative of the people. They did reserve certain amending powers to these bodies collectively.

But they, in their corporate wisdom, acting under the mandate of the whole people, did not bequeath to Parliament or to the legislative bodies collectively, the power of abridging or abrogating Fundamental Rights. This was made explicit by Dr. Ambedkar during the discussion on draft article 304 (now article 368). He said :

"If the future Parliament wishes to amend any particular article, which is not mentioned in Part III or Article 304; all that is necessary for them is to have two-thirds majority. Then they amend it." (*Constituent Assembly, Sept. 17, 1949*).

17.00 hrs.

Had there been any intention to vest the power collectively in the existing Parliament and State Legislatures: 'Part III' have been included in the proviso to this article,—as is now being sought to be done. Instead, the Fundamental Rights were placed beyond the reach of amendment by the legislative process. But let it to be noted that the articles in Part III already do contain built-in provisions for the legitimate curtailment of Fundamental Rights.

Sir, the life and health of democracy depend not so much on written Constitutions as on traditions and the enjoyment of freedoms such that are embodied as 'Fundamental Rights' in our Constitution. The Supreme Court, after deliberating the Constitution, has concluded that the State is "incapable of abridging or taking away these rights to the extent guaranteed". In other words, the people may perhaps yield up a right of their own volition, but even the supreme legislature, or all the legislatures put together, do not have the power of depriving them of it without their consent. That is to say so long as national supremacy and the springs of power are conceived and deemed to reside in the people, and so long as India has a parliamentary democracy and not a parliamentary autocracy, parliamentary supremacy is only safe where the democratic tradition is deep-ingrained and unassailable. Therefore, comparisons with other countries—comparisons which ignore the governing factors and circumstances of their whole polity and society,—are not merely native and irrelevant, but highly dangerous.

Sir, certain Fundamental Rights may be inscribed in the Constitution, but they transcend the Constitution. They are now, if they were not before, part and parcel of the fundamental constitution and of our self-given way of life. They are inherent in the people. They are their birth-right. If they are to survive, without danger from the variable five-yearly parliamentary preponderances and predispositions,—indeed from the mid-term fluctuations of legislative majorities,—they must be shielded from the passing tempers and prejudices of the times and have a sanctity above the Constitution itself. This is clearly the

whole trend, the anxiety and motivation of the judgment of the Supreme Court,—which body cannot be too highly praised as the repository and vigilant guardian of the Law and the Constitution.

The independence of the judiciary, also a fundamental provision, is one of the brightest ornaments of our national policy.

Sir, we Members of Parliament, have been elected to protect and promote the people's interests, not to abridge or derogate their rights. We have sworn to uphold the Constitution. How can we, by what right can Parliament, turn itself into a sort of Constituent Assembly and so assume itself the powers which the Constitution has expressly denied to it? We have neither asked for, nor been given, such a mandate. Sir, I ask: "Has any hon. Member put the issue to his electorate in clear and explicit terms that, if elected, he will try and procure for Parliament the comprehensive power to amend, not this or that right, but the entire gamut of Fundamental Rights embodied in Part III of the Constitution?" If any one has, he alone has the right to speak in support of this Bill.

I grant that Parliament, the national legislature, is supreme; but only so in the legislative sphere, just as the national executive and the national judiciary are supreme in their respective spheres. I deny that Parliament is supreme in India. It has no such warrant from the people. It can only attain such supremacy by the trespass and usurpation of the rights which under the Constitution, belong to and are vested in the Republic of India. I am sure, no member will claim that 'Parliament' and 'Republic' are interchangeable terms.

I therefore hold, and most respectfully submit that the basic features of our Constitution, including the fundamental rights enshrined in it, cannot be amended by the legislatures of the day. The Parliament of the day means the Party in power, which in turn means the Government of the day. No Government,—and I do not mean the present Government,—but any Government, however much to the right or to the left—should be enabled to undo what the Constituent Assembly has so painstakingly done.

But, if I am wrong in what I have submitted and it has always been open for

[Shri Sriraj Meghrajji Dhrangadhra]

Parliament to exercise or give itself a power it does not at present possess, then must Article 13 be deprived of all meaning and be redundant? Clause (2) of this Article says :

"(2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Here 'law' cannot mean only the ordinary laws enacted by public authority, since any law which contravenes any part whatsoever of the Constitution would be *Ultra vires* and void. It must therefore specifically include 'constitutional law'. Else, this clause would have been redundant *ab initio*.

In the matter of the constitutional innovation introduced by Article 31B, which bars the jurisdiction of courts from the Acts placed under the shelter of this Article, Shri Justice Hidayatullah had this to say, in the judgment I have referred to before :

"By this device which can be extended to other spheres, the Fundamental Rights can be completely emasculated by a two-thirds majority even though they cannot be touched in the ordinary way by a unanimous vote of the same body of men. The State Legislatures may drive a coach and pair through the Fundamental Rights and the Parliament by a two-thirds majority will then put them outside the jurisdiction of the Courts. Was it really intended that the restriction against the State in Article 13(2) might be overcome by the two agencies acting hand in hand?"

That is to say, an ordinary Act unanimously passed if it contravenes a fundamental right would be void. But passed as a Constitution Amendment Act, by just two-thirds majority, it would become law. Shri Justice Hidayatullah went on to observe :

"If a halt is to be called, we must declare the right of Parliament to abridge or take away Fundamental Rights. Small inroads lead to larger inroads and become as habitual as before our freedom was won."

Put in another way, it can be said that the process can gradually take away the freedom we have so painfully won.

Sir, the Constitution as it stands, is the sheet-anchor of our freedom, of our democracy and of Parliament. Of this sheet-anchor the weightiest part, the most valuable part, is the fundamental provisions. The vital question before this House is whether the Constitution should be the sheet-anchor or the plaything of Parliament. I cannot here resist quoting Shri M. C. Setalwad, who has been hailed as one of the great jurists of the English-speaking world. He said :

"Amendments of the Constitution have been too frequent and if I may use the expression, without any disrespect to Parliament, too irresponsible."

His proposal is to replace two-thirds majority by a three-fourths majority, a suggestion which I strongly commend as a fit subject for the serious consideration of the House.

SHRI SURENDRANATH DWIVEDY : He has supported the Bill. (*Interruption*).

SHRI NATH PAI : When you are quoting Mr. Setalwad, you may quote also what he has said about this Bill.

SHRI VIRENDRAKUMAR SHAH (Junagadh) : Let him quote as he likes... (*Interruption*).

MR. SPEAKER : Order please. Let him have his say.

SHRI SRIRAJ MEGHRAJJI DHRANGADHRA : Sir, I put it to the supporters of the Bill that the present is the most inopportune time they could have chosen. I do not believe that the object can be simply to provoke a debate, or a confrontation between the legislative and judicial branches of government, which would put a further strain on the Constitution, in these troublous times, when our whole attention and energy should be concentrated on keeping the country together and upholding the Law ; on strengthening rather than weakening our constitutional

and administrative institutions. Then, what is the need? I submit, Sir that there is none. There is no particular need or practical measure in contemplation for utilising the new power now sought to be assumed by Parliament. Then, where is the hurry? As I have said the articles on Fundamental Rights themselves contain built provisions for their modification. Are we then to open a door which at present does not need to be opened but which, once opened, cannot be shut?

We shall have opened the way, if not for this Parliament, then, for a future Parliament, and the Party which rules that Parliament, to do what Hitler did to the German Constitution. I am not being far-fetched. In the process we shall make the national judiciary impotent. Even the able mover of this Bill, Shri Nath Pai, cannot predict the future course and complexion of things.

Let him not, then lead us away from the shelter of the Constitution. He has himself, I believe, said that he finds no difficulty with the Constitution as it stands.

On the contrary, he has claimed to be an ardent champion of fundamental rights. I therefore conjure him to support my amendment instead of his own Bill.

I do not say that an occasion may not arise for amending something in Part III of the Constitution. But I would still say and hope that the fundamental values of human life and society must remain. For example, article 11 of the Japanese Constitution declares that the fundamental rights are eternal and inviolable. And article 97 provides that these rights are to be held inviolable for all time.

But if we are to alter the Fundamental Rights, then it is my humble but most earnest submission, that the arbiter must be the people themselves. My amendment to the Bill provides for a Referendum. The device is known to other Constitutions such as the Swiss. In Australia, no part of the Constitution can be amended without this recourse. Let the matter be put to the people themselves, in the simplest language, and unclouded by any other issue. Let them weigh the pros and cons. Let them judge and decide. It would be an exercise in real democracy.

I thank you and the House for the

patient hearing you have given me. I am afraid I am no orator. I beg of you hon. Members, to search your hearts and minds. Should there not be *something basic and permanent* in the grand contract of the Constitution, by which *all the people of India* have consented to be governed? Let us not go down in history as the witting or the unwitting subverters of Indian democracy, and of civic rights and liberties, for which our people have so long struggled under an autocratic power. I beg of you not to do this thing. Let us not, in this Fourth Lok Sabha, incur the future woes and opprobrium of posterity. There is no pressing need or justification for this Bill. Then where is the hurry?

This is a matter calling for the most sober consideration. It is too momentous for routine or summary disposal. It is not, please do not let it become, a party issue. It is an all time national issue, a matter for your *individual political conscience and sober statesmanlike judgement*.

There are a fair number of us in this hon. House and Parliament and a large body of intelligent and enlightened opinion in the country that are deeply agitated by this proposal and dreadfully apprehensive of its ultimate consequences. Will you not consider it possible, hon. Members, that there may be good reasons for this anxiety and agitation? Will you not give yourselves time to ponder these reasons? I include in my appeal the hon. mover of the Bill and the Treasury Benches. I remind you of the oath you have taken to uphold the Constitution. I beg of you to give plenty of time, and even more reflection, to this fateful measure, *which may seal the doom of democracy in India*. And when you have considered the issue, I pray that you will be moved to relegate the Bill as it stands. In so doing, you will be hailed and be acclaimed in history as the defenders and champions of a free democracy and a free society.

Sir, I now beg to commend my amendment to the Bill for the consideration of this hon. House.

SHRI FRANK ANTHONY (Nominated—Anglo-Indians): Mr. Speaker, I rise to oppose this Bill for many reasons. My first reason for opposing it is that by supporting this Bill, Government, in my

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respectful view, will be giving a major hostage to lawlessness. God knows, already there is this increasing climate of lawlessness in the country.

SHRI SURENDRANATH DWIVEDY : What has that got to do with this Bill ?

SHRI FRANK ANTHONY : I will explain. The rule of law has already steadily receded. There is very little respect for the rule of law in most sections of our people.

My hon. friend, Shri Dwivedy, asked : what has that got to do with this ? Everything to do with it. Because today we see what is happening.

I am not pointing my finger at any member of the House, but the self-seeking, unprincipled politicians form the centre, beginning and end of this lawlessness. You see Ministers casting themselves in the role of common criminals. What is the Government doing ?

What is your Constitution ? It is the symbol of the rule of law. You open your newspapers. Every day you will see reports of students on the rampage, so-called students committing every conceivable crime, and presumably being able to get away with it.

What I am opposing is this. As I say, the Supreme Court under the Constitution, in this climate of Lawlessness, is the symbol of the rule of law, and when Government itself repeatedly mounts an assault on the Constitution, then, it is, as I said, giving this major hostage to lawlessness, and Mr. Chatterjee outside will agree with me. As lawyers we deal with this. There is this increasing tendency of lawlessness on the part of Government, on the part of the executive. There is this neurosis of power. It is a mania for power. As soon as the Supreme Court hands down a judgement, as soon as there is a prescription of law which they do not like, immediately they will seek, as my hon. friend Mrs. Mukerjee said, tortuously to get around it, if they cannot efface it directly. That is the tragedy.

Another reason is this. Mr. Chatterjee may try to rationalise it. My hon. friend

Shri Nath Pai did try to rationalise it, but what is this Bill ? It is a ill-conceived, ill-concealed, direct attack on the Supreme Court, however much you try to rationalise it. It serves to give notice to the Supreme Court : "You do proper homage, you make proper obeisance to Parliament ; otherwise, we will put you in your proper place." That is what you are seeking to do.

There are many members of this House who look at things objectively or are able to look at things rationally. There is this misconception amongst so many politicians. There is this arrogation of sovereignty by the increasingly arrogant politician; and that is what I join issue with. Parliament is not sovereign, the Constitution is sovereign.

AN HON. MEMBER : No,

SHRI NATH PAI : The people are sovereign. (*Interruption*).

SHRI FRANK ANTHONY : Look at these cheap jibes.

MR. DEPUTY-SPEAKER : He must be allowed to have his say. You may not agree with him. He must have the right to say what he wants, what he feels. You can reply later on, but this is not the way. You must not prevent other people from speaking. That fundamental right at least cannot be disturbed.

SHRI FRANK ANTHONY : What I say is this. It is axiomatic to anybody who knows anything about the Constitution, it has been emphasized and re-affirmed in this very judgment, that it is the Constitution that is supreme. Parliament is a creature of the Constitution, as the Judges have pointed out in this very judgment.

SHRI SURENDRANATH DWIVEDY : So also is the Supreme Court.

SHRI FRANK ANTHONY : Yes, I shall quote from the judgment.

The Constitution has created three instruments of power, the legislature, the

judiciary and the executive, and it has carefully demarcated the jurisdiction of each of these instruments. Let me read from the Supreme Court's judgment itself. I am reading from the judgment in Golaknath's case, page 1655. At least to this Mr. Chatterjee will not demur :

"No authority created under the Constitution is supreme. The Constitution is supreme, and all the authorities function under the supreme law of the land. The rule of law under the Constitution has a glorious content."

Surely, we are not going to denude it of its glorious content as we are seeking to do today.

This is very important especially for my communist friends :

"The rule of law under the Constitution.... that is what I am contending for—

"...serves the needs of the people without unduly infringing their rights. It recognises the social reality and tries to adjust to it from time to time, avoiding the authoritarian part. Every institution...

—and the parenthesis is mine, "including Parliament"—

"...all political parties that function under the Constitution must accept it. Otherwise it has no place under the Constitution."

Here is an affirmation. As I say, this is a supreme maxim of the rule of law. The Constitution is supreme. These are the instruments of power. They must accord with the rule of law.

What are we seeking to do in this Bill? We are seeking to do indirectly, or indeed directly, precisely what the Supreme Court in terms said we cannot do. This is what Chief Justice Hidayatullah said. Mr. Chatterjee, a very able lawyer, of course, might say that is obiter. I do not know whether it is obiter but it is certainly an observation of Mr. Justice Hidayatullah as he then was. He gave a separate but concurring judgment. He said in terms "You cannot do what we are purporting to do. May I read from page 1705 :

"It is submitted that revolution as

the only alternative to changes is necessary."

"This is not right. The whole Constitution is open to amendment only two dozen articles are outside the reach of Art. 368." But what is much more and conclusive for our purpose is this. "It may be said that this is not necessary. You have to have a Constituent Assembly not a constituted body. It may be said this is not necessary, Art. 368 can be amended to confer on Parliament constituent powers over the fundamental rights. This would be wrong and against Art. 13(2). Parliament cannot increase its power in this way doing directly what it is intended not to do directly." In terms Mr. Justice Hidayatullah, now the Chief Justice, has said, you cannot do what you are going to do now. The majority Judges have said the same thing. They affirm this proposition in their majority judgment. They said the same thing. I am reading from page 1647.

SHRI NATH PAI : What is it you are trying to impress upon ?

SHRI FRANK ANTHONY : Anyway this is the majority judgment.

"The importance attached to the fundamental freedoms is so transcendental that a Bill enacted by you, by an unanimous vote of all the Members of both Houses is ineffective to derogate the most guaranteed exercise. This is not conducive to the public benefit. This is what Part III declares as protected." Here, Mr. Speaker, we have the Supreme Court, at least through the majority judges, saying in terms that you cannot do this, you cannot amend Art. 368. They have gone further and said that even if you pass it unanimously in both Houses, if there is some kind of derogation from the fundamental rights and you cannot do what we are seeking to do. That is why I join issue with the Government. Nobody in the Government seems to have applied his mind to this matter. I do not know if the Law Minister has done it. You are seeking to provoke deliberately a conflict with the Supreme Court. What is going to happen? You will have to make the present Judges change their dicta if you will have to threaten, as Mr. Nath Pai

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referred to it, the Judges with adding so many more acquiescent and obliging Judges to the Supreme Court that they may toe your line.

What will happen? It is elementary. But let us pass this Bill. Put it on the Statute-Book. Immediately somebody will go and challenge it. That will happen. If the Supreme Court affirms the majority view, what will happen? They will strike it down, and they will say that in the terms of what Justice Hidayatullah said they will strike it down. (*Interruption*) Immediately, the Government will be brought into contempt. The Government will be exposed to public ridicule. On the other hand—and that is what I am afraid of—we like to uphold the Supreme Court—there may be a deliberate attempt to browbeat politically the judges. What will happen if the judges backslide? What will happen if the judges take back their observation and their dicta? This is the danger. The Supreme Court will be brought into contempt. The Supreme Court today is a bulwork of our democratic fabric. (*Interruption*) One of the pillars of our democratic society is faith in the integrity of the judges, faith in their sense of independence. If they are made to backslide, if they are made to swallow their own dicta, the faith will be destroyed, and immediately the Government will be... (*Interruption*)

SHRI SURENDRANATH DWIVEDY: Has the Supreme Court ever reversed any judgment? (*Interruption*)

SHRI FRANK ANTHONY: Well, Mr. Chatterjee has argued the Bengal Immunity case. The Supreme Court does not rigidly accept the doctrine of '*Stare decisis*'. Let me argue it with him; I would not argue it with you. (*Interruption*)

SHRI N. C. CHATTERJEE: I can assure my hon. friend that there is no question of dramatisation of a conflict between the legislature and the judiciary. (*Interruption*)

SHRI SURENDRANATH DWIVEDY: You are unnecessarily bringing in the Supreme Court.

SHRI FRANK ANTHONY: Let me deal with this aspect. Your very report of the Joint Committee concedes the thesis of the dictum, the ratio of the Supreme Court. What has the Select Committee done? It shows they had a guilty conscience. Those who say that article 368 has posited a substantive right according to the two previous decisions—all right; that is their view; if that is their view, and if this is Mr. Nath Pai's view, if this is the view of the Members of the Joint Committee...

SHRI NATH PAI: The view of the 12 judges.

SHRI FRANK ANTHONY: My hon. friend only likes to listen to himself. (*Interruption*)

SHRI NATH PAI: I am telling you, why don't you tell this House that 12 judges of the Supreme Court held this view? (*Interruption*)

MR. SPEAKER: Order, order. Let him proceed.

SHRI FRANK ANTHONY: What I was saying is this. If it was Mr. Nath Pai's view, if the Joint Committee was of that view, that article 368 gave a substantive right, all right; it was a right to alter the fundamental rights: How? By a bare majority of one and by a two-thirds majority of the Members present and voting. Then, why have you yourselves recommended that we should have an additional condition of ratification by the States? When you recommend that, you concede the proposition of the Supreme Court that article 368 could never have been meant to extend to the fundamental rights, because, *ex-facie*, it is a contradiction in terms to say that an ordinary article, article 55, executive powers, etc., can be changed by a special procedure requiring ratification, but the transcendental, the basic, sacrosanct—we are the greatest sanctimonious humbugs in the world—and transcendental rights can be changed by a bare majority of one. This is what the Supreme Court has said. If you believe that the Supreme Court is wrong, why have you accepted yourself

that the procedure prescribed in article 368 is not adequate? In doing that, you accept the thesis of the Supreme Court that article 368 was never intended to apply to the fundamental rights.

My Communist friends are not here: I can understand them saying—*(Interruption)*.

AN HON. MEMBER: They are here.

SHRI FRANK ANTHONY: Well, look here, look at my uninformed friends. I say, if they live a thousand years, and they would not represent their constituency as I do mine. *(Interruption)* You can live a thousand years but you would not represent your constituency as I do mine.

SHRI HEM BARUA (Mangaldai): Sir, Mr. Frank Anthony does not represent the people of India. He only represents Rashtrapati Bhavan, but he challenges those people. *(Interruption)*

SHRI FRANK ANTHONY: I am the acknowledged leader of an important minority. Mr. Hem Barua will never represent his constituency as I do mine. *(Interruptions)*.

SHRI KAMALNAYAN BAJAJ (Wardha): It is a greater honour to be nominated by the President than to be elected by the people of one constituency. *(Interruptions)*.

SHRI J. M. BISWAS (Bankura): When we were fighting for independence, these people were with the Britishers. *(Interruptions)*.

SHRI FRANK ANTHONY: Sir, I am concluding.

The argument has been made that if your fundamental rights are immutable, you will impart to that chapter rigidity and it will invite its own destruction. I can understand some kind of argument with regard to property rights. If you like, I myself would be prepared to do something to make article 31 more elastic so that it would not be inhibiting. But what I am concerned with is this tremendous threat that is going to be posed to the minorities. I hope I will not be shouted at again. They say, I am nominated. I am the respected

leader of a small but not an unimportant community and I know where the shoe pinches. What is happening? Since independence, we have had more communal riots than throughout the British regime. Look at my Harijan friends. I am not talking from hearsay; because I defend them. They can be assaulted, murdered and their women raped, but they can get no redress.

So far as the minorities are concerned, even with the fundamental rights, we are under pressure and we are facing conditions of near helotry. In Mrs. Sucheta Kripalani's erstwhile State—unfortunately she is not there. I am associated with some 300 schools. My elected friends do not have anything to do with a single school. *(Interruptions)*.

MR. SPEAKER: I think this is not proper. Hon. members will have their say.

SHRI FRANK ANTHONY: Sir, I was ending on this that the minorities today are under increasing pressure. In spite of the fundamental rights, we are facing conditions of near helotry, educational and cultural. Take away our fundamental rights—articles 25, 26, 29 and 30—and it will be the easiest thing to take them away because the communists already tried to take them away when they tried to regiment my schools in Kerala, I argued that case and they were not able to regiment according to their techniques, because of article 30. Mr. Morarji Desai tried to destroy my schools in Kerala. I argued that case and article 30 saved my schools. Tomorrow the communists will join hands probably with the communalists, who do not want Urdu or English and you will get more than a bare majority. This is what I am afraid of.

My friend said, they had the power before; why not restore it to them?

The Supreme Court had heard this argument about inflexibility. Flexibility is brought about by interpretation. This has been the history of the Supreme Court and the Constitution in America has been adapted to changing political, economic and social conditions by judicial interpretations. And Shri Chatterjee knows perhaps better than I know how our own Judges are doing

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it by judicial interpretation, not by an assault on the Constitution. They are adapting legislation to the needs of labour, to the needs of workmen.

What I am afraid of is this. Why did the Supreme Court bring in this judgment? They also do not function in a vacuum. They also take note of the milieu and they have taken note of the fact that today with instability, with growing violence, with the vicious revivalist movement, they do not dare remit the fundamental rights, and even more so the minority rights, to a bare majority of people where passions, prejudices and the vicious doctrines of revivalism may destroy the minorities.

My earnest plea, particularly to the Members of Parliament who have their conditioning by Jawaharlal Nehru specially, is this. These rights were given to us by men with vision, men with imagination, men with a sense of liberalism. All these qualities are now receding. They gave them to us because they knew that the minorities, permanent minorities, should live with self-respect. Now you give this power to this House by one vote to take away our rights. Immediately, articles 25, 26, 29 and 30 will be eliminated. Today we face helotry; tomorrow we will face death.

17.37 hrs.

HALF-AN-HOUR DISCUSSION

Provision of Civic Amenities to unauthorised Colonies in Delhi

श्री रमेश्वर सिंह (रोहतक) : माननीय स्पीकर साहब, दिल्ली शहर हमारे देश की शान, बान और शान है। यह देश का तारीखी कस्बा है और बड़ी शानदार इस की तारीफ रही है। एक शायर ने तो दिल्ली की बात कहा है कि :

“क्या हाल पूछते पूरब के साकिनों,
हमको गरीब जान के, हंस-हंस पुकार के,
दिल्ली जो शहर था प्राणमे इस्तक़ाब,
हम ही रहने वाले उसी उखड़े दरार के।”

और फिर शायर से पूछा कि दिल्ली से बाहर जाना चाहोगे तो उसने जवाब दिया :

“कौन जाये दिल्ली की गलियाँ छोड़ कर।”

इस शहर में जहाँ इतनी तरक्की है, तमहुन है, इतना खर्च होता है, जहाँ इस दिल्ली में एक और राष्ट्रपति भवन है, इण्डिया गेट है, कनाट सर्कस है, नई दिल्ली, चानक्यपुरी, और चांदनी चौक है, लाल किला है, राजघाट है, वहीं इस दिल्ली में छः लाख धारमी मवेशियों की खिदगी, कीड़े-मकोड़ों की खिदगी बसर करते हैं। 203 बस्तियाँ इस दिल्ली में हैं जिसमें से 113 बस्तियों में लोग हरिजनों की हालत में गरीबी की खिदगी गुजार रहे हैं। जैसे गाँव में उजड़े हुए भ्रोंपड़े वाले लोग बाहर गाँव में डाल दिये जाते हैं वही उनकी हालत है। दिल्ली के नाम पर यह कलंक है। 113 बस्तियों में जो छः लाख लोग बसते हैं वह हैं कौन लोग? वह छोटी तनखाह वाले मुलाखिम हैं। वह बड़े भ्रफसर नहीं हैं। वहाँ वजीर लोग नहीं रहते हैं, लीडर नहीं रहते हैं, आई० सी० एस०, आई० एफ० एस०, इंजीनियर, चीफ इंजीनियर, डायरेक्टर नहीं रहते हैं। वहाँ छोटे मुलाखिम रहते हैं, छोटी तनखाह वाले मजदूर रहते हैं, छोटे दुकानदार रहते हैं, गरीब हरिजन रहते हैं, या वह तबका जो पिछड़ा तबका है, जो पसमांदा तबका है, वह रहता है। और दिल्ली में रहने वाला कमाऊ पूत है, साऊ नहीं, यह पार्लियामेंट जिसने बनाई और नई दिल्ली जिसने बनाई, बदकिस्मती है कि वह बनाने वाले यहाँ नहीं रहते हैं, वे फेंक दिये गये हैं, उनकी बुरी हालत है।

17.39 hrs.

(Shri Thirumala Rao in the Chair)

चेयर मैन महोदय, मैं उन लोगों के लिए बात करने चला हूँ।

न उन बस्तियों में बिजली का बन्दोबस्त है, न ड्रेनेज का बन्दोबस्त है और न स्ट्रीट