

this can be taken up later on. We will take up non-official business now.

16.01 hrs.

**COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS
FIFTH REPORT**

श्री हर प्रसाद देवगुण (पूर्व दिल्ली) :
उपाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि यह मन्ना गैर-सरकारी सदस्यों के विधेयकों तथा संकल्पों संबंधी समिति के पांचवें प्रतिवेदन से, जो 21 जून, 1967 को मन्ना में पेश किया गया था, सहमत है।

Mr. Deputy-Speaker: The question is:

"That this House agrees with the Fifth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 21st June, 1967."

The motion was adopted.

Shri S. M. Banerjee (Kanpur): The resolution of Mr. Nath Pai should have more time.

Mr. Deputy-Speaker: When we take it up for discussion, we shall see if it could be done not now. Bills to be introduced.

16.02 hrs.

**SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT
(AMENDMENT) BILL***

श्री नीतिराज सिंह चौबरी (होशंगाबाद) :
उपाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि संसद-सदस्यों के वेतन तथा भत्ते अधिनियम, 1954 में धार्मिक संशोधन करने वाले विधेयक को पेश करने की अनुमति दी जाये।

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the

*Published in Gazette of India Extraordinary, Part II, Section 2, dated 22-6-67.

Salaries and Allowances of Members of Parliament Act, 1954."

The motion was adopted.

श्री नीतिराज सिंह चौबरी : मैं विधेयक को पेश करता हूँ।

16.03 hrs.

**CONSTITUTION (AMENDMENT)
BILL—contd.**

(Amendment of article 368) by Shri Nath Pai

Mr. Deputy-Speaker: We take up Mr. Nath Pai's Bill now. Somebody wanted to raise a point of order.

Shri Lobo Prabhu (Udipi): I am raising a point of order.

Shri Nath Pai (Rajapur): You should not invite it. He should have risen.

Mr. Deputy-Speaker: He did. He has given notice.

Shri Lobo Prabhu: Sir, I raise a point of order that this Bill is ultra vires this House; it is against the Constitution; it is against the interpretation of that Constitution very recently in the Supreme Court. I would like to establish that the Bill is ultra vires by five propositions. My first proposition is that the Member in his Statement of Objects and Reasons states that confusion and doubt have arisen from this particular judgment. I wonder if the Member has perused the majority judgment which is quite clear and which lays down that....

Shri S. M. Banerjee (Kanpur): Sir, on a point of order. My submission is that he cannot raise this point of order now.

Mr. Deputy-Speaker: I think we must hear him first. He is on a point of order. I will give Shri Banerjee an opportunity. Have a patient hearing.

Shri Lobo Prabhu: It says:

"We declare that the 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 and abridge the fundamental rights enshrined therein."

There is, therefore, no confusion or doubt. (*Interruption*).

Mr. Deputy-Speaker: Order, order. Let us proceed.

Shri Lobo Prabhu: If the argument is that the findings are in the majority judgment, I would like to point out that it is a simple proposition of the law that the majority decision is final.

The second proposition I would like to take up is also from the aims and objects. They state that the supremacy of the Parliament over the Constitution should be established. I beg to differ from this enunciation of the supremacy of Parliament. Parliament derives its rights from the Constitution. There is no other paternity for the Parliament except the Constitution.

An hon. Member: What is the point of order?

Mr. Deputy-Speaker: It is a very serious matter. I will give opportunities to all. Be patient.

Shri Lobo Prabhu: Therefore, to maintain that a Bill is necessary to establish the supremacy....

Shrimati Lakshmi Kanthamma (Khammam): Why add to this controversy now at this stage through a point of order? There has already been a discussion on the Bill

Mr. Deputy-Speaker: Please be patient and listen.

Shri Lobo Prabhu: To raise the question of supremacy of Parliament

through this Bill is completely out of order.

My third proposition is that it is only the Supreme Court which can interpret the Constitution, and the Supreme Court has interpreted the Constitution very clearly and very definitely. It has held that article 368 cannot in anyway govern article 13(2). Article 368 is procedural. It has no implied powers. It does not enable any overriding of article 13(2). In the circumstances, any amendment of article 368 cannot be effective on article 13(2). Now, there may be an attempt to say an amendment is not law within the meaning of article 13(2).

Shri S. Kundu (Balasore): Sir, I fail to hold my patience. With your permission, I beg to submit that a point of order should not be used as a guise to make a speech.

Mr. Deputy-Speaker: Please sit down. As I have said, a fundamental issue has been raised in the point of order. I will give an opportunity to all. Therefore, nobody need be impatient about it. I will listen to every side, every argument, because I have to say something about the point of order; ultimately I have to decide.

Shri Surendranath Dwivedy (Kendrapara): In an irregular manner, can this be raised? Please show me any precedent wherein, in this House, a point of order has been raised about the discussion of a Bill in the midst of a discussion. If it is *ultra vires*, this point of order should have been raised in the beginning and not in the midst of the discussion.

Mr. Deputy-Speaker: You are an experienced member. A point of order can be raised at any time. This is the general practice. This is a very important matter concerning the supremacy of Parliament. Let us hear him.

Shri Surendranath Dwivedy: You can give him full opportunity to discuss the purport of the Bill, whether he is opposed to it or not. My point is whether a point of order can be raised at this stage. I do not think in this House we have ever followed this procedure.

Shri Randhir Singh (Rohtak): I raise a point of order against his point of order. I have got enough material ready.

Mr. Deputy-Speaker: I am following a certain procedure. At any stage if a member feels that something needs to be clarified, something is *ultra vires* or not within the framework, he is entitled to place his point of view by raising a point of order. Let us hear him.

श्री मधु लिवये (मुंगेर) उपाध्यक्ष महोदय, मैं आप को रास्ता बतलाता हूँ। मैं उन के कहने में बाधा उपस्थित नहीं कर रहा हूँ, मैं तो एक रास्ता बतला रहा हूँ। श्री सुरेन्द्र नाथ द्विवेदी ने जो बात कही है वह ठीक कही है। जो प्रक्रिया है उसके अनुसार हम को चलना चाहिए। यह मैं ने उन को कहा था कि जब उस के गैज करने का सुझाव आ जाता है उसी स्टेज पर ही तरह का प्रारक्षण उठाया जाता है। आप नियम 72 देखिये। इसलिये मैं इन को यह सुझाव देता हूँ कि वह चर्चा स्वगित करने का प्रस्ताव रखें और वह उन पर अपना बातें कहें।

Shri N. C. Chatterjee (Burdwan): This very point came up in this House when Mr. Mavalankar was the Speaker. After the Supreme Court declared a particular legislation to be *ultra vires*, there was an amending Bill which was introduced in the House. I challenged the Bill as *ultra vires* and unconstitutional. Thereupon the Prime Minister brought in the Attorney General who came and argued that the Bill not *ultra vires*. The then Speaker ruled that if a point is made by a member that a Bill is unconstitutional or *ultra vires* to the Constitution, it is not for the Speaker

to give a ruling, but it shall go to the Supreme Court ultimately for decision. I submit that is the correct view to take and you should follow that.

Mr. Deputy-Speaker: What you have stated in raising a point of order is a request that the Attorney-General should be requested to clarify the position.

Shri N. C. Chatterjee: That cannot be a point of order.

Mr. Deputy-Speaker: He is only making a request.

Shri Lobe Prabhu: Sir, I hope the House will be sufficiently indulgent. My fourth point is that the Bill has not considered if it is possible for the amendment proposed to co-exist with article 13(2). Article 13(2) is very clear that you cannot touch the fundamental rights. Is it proposed that article 368 can introduce a provision contrary to that? If he is consistent he will have to ask for the deletion of article 13(2), otherwise there is going to be a conflict.

Lastly, I would like to say this. After all, this House is a House where the whole dignity of the nation is enshrined. It is not proper for it to enter into legislation which may be struck down very soon by the Supreme Court. I have, therefore, suggested to the Speaker, through you, Sir, that on this occasion the Attorney-General may be invited. I am fortunate that the Law Minister is present here. I have raised four points. I missed the fifth point in the tumult to which I was subjected. I would ask the Law Minister to answer these questions about the supremacy of Parliament, about the co-existence of these sections etc. They are very relevant. We should not commit ourselves, this august House should not commit itself to a Bill which, after all the trouble taken, is going to be rendered useless and void by the Supreme Court. So I repeat this request and failing that I press under rule 109 that this House adjourns till we obtain the opinion of the Attorney-General.

Mr. Deputy-Speaker: The question here..... (Interruptions). Order, order. When I am on my legs nobody should get up. I will listen to everyone. If anybody gets up when I am standing, he will not get an opportunity. I am going to be firm on this point. Now, a point of order has been raised. The hon. Member who raised the point of order himself is not sure whether his point of order is tenable or not. The only request that he has made is that the Attorney-General should be requested to address the House. The question is, at what stage he should be invited. That has to be decided. The Law Minister is here. He will now say something about it.

Shri M. Y. Saleem (Nalgonda): Sir, under rule 376 you are to give your ruling on the point of order.

Mr. Deputy-Speaker: I am going to do it. But I would like to hear some others before I give my ruling.

Shri Nath Pai: Mr. Deputy-Speaker, Sir, Shri Lobo Prabhu began by claiming that he was raising a point of order. You in your summing up said that he had made a request. There are totally different propositions. Now, what is it that this House Sir, have you finished your consultation with the Marshall? Mr. Deputy-Speaker, now may I claim your undivided attention? Shri Lobo Prabhu began by claiming that he was raising a point of order. Since a point of order must be given preference and priority, you were good enough to accommodate him. He ended by saying that he is making a request. Now, this is strange. In the first place, I have got it in writing and if he sticks to his written proposition, perhaps it has nothing to do with a point of order. It is a simple request. With all respect and humility, may I say that we should not be placed in this extraordinary position, that the House is allowed to believe that a point of order is being made and, under the cover of a point of order, a request is being made. Shri Lobo Prabhu has a

very cogent argument and he has, I think, a lot to say about it. I completely disagree with him but I have attentively listened to him. I want to submit that those who want to speak on this Bill, let them make a demand that the time for this Bill be extended and then let them make specific and substantial contributions. I do not think that there is any point of order. So far as this request is concerned, I am not frightened of anybody coming before the House. If the Government agrees, I am agreeable to have anybody appearing before the House. But I would now appeal to you that the discussion on this Bill be allowed to proceed.

शः सुनसंवात जावव (नारामती) :
उपाध्यक्ष महोदय, मेरा प्वाइंट ऑफ ऑर्डर है ।

Mr. Deputy-Speaker: On what issue are you raising the point of order?

शः सुनसंवात जावव : प्रसी जो स्पीच हुई, उस के बारे में मुझे कुछ कहना है । आप मेरी बात सुन लीजिये ।

Mr. Deputy-Speaker: So far as I am concerned, ultimately I will have to dispose of it. Shri Lobo Prabhu has made his submission. I want to listen to Members only on that. Now I have called Shri Banerjee. If Shri Jadhav also wants to say something, I will call him later, not now.

शः सुनसंवात जावव : मेरा प्वाइंट ऑफ ऑर्डर है ।

Mr. Deputy-Speaker: No, please resume your seat.

Shri Tulshidas Jadhav: Please listen.

श्री नाथ पाई ने जो कुछ आप के लिये कहा है, मैं उस के बारे में कह रहा हूँ ।

Shri Surendranath Dwivedy: Sir, he cannot question your ruling.

Mr. Deputy-Speaker: I have called Shri Banerjee. Let him be brief.

Shri S. M. Banerjee: I have not yet started. The point of order which has been raised by my hon. friend, Shri Lobo Prabhu is not a point of order which has been established. The practice in this House is, whenever a Bill is introduced, whether a non-official Bill or Government Bill, at the initial stage itself it is opposed and it is provided in the rules. A request is sent to the hon. Speaker that such and such member wishes to object to the introduction of a particular Bill. Shri Lobo Prabhu or any other member belonging to his party could have taken this opportunity provided by the rules and opposed the Bill at the initial introduction stage, which they did not. In that contingency, it would have been open to Shri Nath Pai to claim, or the hon. Minister in the case of a Government Bill to claim, why a discussion of the Bill should be allowed in the House. He did not do so. In the introduction stage everybody forgot about it. Now, at the discussion stage, if it is opposed, I do not know what is going to be the fate of non-official Bills. That is the first point. Secondly, it is suggested that the Attorney-General should be consulted. We have also gone through the historic judgment of the ex-Chief Justice, of the Supreme Court, Shri Subba Rao, wherein he has said that both are the creatures of the Constitution, whether this House or the Supreme Court. Now, it is the question of supremacy that is being discussed. Shri Lobo Prabhu can utilize this opportunity to tear the Bill to pieces. I do not mind. But, how can he raise a point of order at this stage?

Shri Pileo Mody (Godhra): Sir, I have a point of order which will take 20 minutes.

Shri E. D. Bhandare (Bombay Central): Sir, I will be short, brief, precise and concise in my point of order. My point of order relates to Chapter X, rules 64, 65 and 66.

Shri D. N. Tiwary (Gopalganj): Quoting chapter and verse.

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Shri E. D. Bhandare: We have the Rules of Procedure. Under it any Bill for legislation could be introduced in this House. Rule 64 refers to publication of a Bill before introduction. There was publication. So, one stage was over. Then, comes the next rule about notice of motion for leave to introduce private members' Bills. That was also granted and the Bill was under discussion. Now, how could it be objected that the Bill could not be introduced in the House or could not be discussed? If at all they want to challenge the purport of the Bill, the purpose of the Bill, the contents of the Bill, they should go to the Supreme Court. Mr. Lobo Prabhu has said something on the subject matter of the Bill. It is a very simple thing that once a Bill is introduced, the usual procedure is followed and the House has every right to discuss the Bill.

जी सुलसीदास जाधव : मुझे यह कहना था कि जब श्री नाथ पाई बोलना चाहते थे तब आप मासॉल से बात कर रहे थे उस समय नाथ पाई ने कहा कि क्या आप मासॉल से कन्सल्ट करते हैं। मैं समझता हूँ कि वेधर से यह पूछना उस की प्रतिष्ठा की दृष्टि से ठीक नहीं है। यह उस का अपमान करना है।

Mr. Deputy-Speaker: I do not think he meant it. He never meant it, I know.

The Minister of Law (Shri Govinda Menon): There are several intricate points with respect to the amendment standing in the name of Shri Nath Pai. Therefore, Shri Nath Pai himself is moving a motion that the Bill may be referred to a Select Committee. There is an amendment standing in my name wherein I have made a request that it may be referred to a Joint Committee of both the Houses. The intention of moving that amendment is that these intricate points may be discussed in a cooler atmosphere in the Joint Committee so that the ultimate law which comes out of this House may be a sound one.

[Shri Govinda Menon]

I would very much like to say that a very well informed man like Shri Lobo Prabhu should serve on that Committee but I was told by Shri Nath Pai that when he approached Professor Ranga for names of Members who should be included in the Committee, Professor Ranga said—that is my information which Shri Nath Pai communicated to me—that he would not like to see that members of his party should serve on this Committee.

An hon. Member: Shri Masani.

Shri Govinda Menon: I am sorry, Shri Masani.

Shri Ranga (Srikakulam): We totally object to this Bill.

Shri Govinda Menon: They would not serve on this Committee. That is to say, they are closing the door for discussion.

An hon. Member: No.

Shri Govinda Menon: That is how I interpret it.

Shri M. E. Masani (Rajkot): It is bad in principal. We do not want to have anything to do with it.

Shri Govinda Menon: It is because they refuse to look into it further that a well informed man like Shri Lobo prabhu committed the mistake of raising this objection against this Bill. I say this because what the majority judgment of the Supreme Court said was that Parliament has no power to amend any of the provisions of Part III of the Constitution. Article 368 is not in Part III of the Constitution. The Supreme Court has not said that article 368 is not amendable. The Supreme Court, among other things, said that article 368 only gives the procedure regarding the amendment of the Constitution and does not contain therein the power for amendment. That is a very serious matter. If that is the correct view on account of the

wording of article 368, Shri Nath Pai wants—and I agree with him—that that article should be re-drafted so that the power of amendment will not be relegated to the residuary power which is here with the Centre. Our reason is this. After the emergence of various non-Congress governments in the States there is a demand that there should be certain amendments of the legislative lists attached to the Constitution so that the States may have more power. One of the articles in the Constitution which cannot be amended without the concurrence of the States is the allocation of different subjects in the three legislative lists of the Constitution. Suppose, this House or the country wants that the lists should be amended so that some of the powers or subjects now in List I or in List III are transposed to List II and if the power of amendment is not under article 368 and we would have to go to the residuary power under entry 97 in List I, what follows would be this. That residuary power is only with the Centre. The States will not have any power with respect to that matter. Whatever that be, this is an amendment where Article 368 is sought to be improved upon.

Now, the Supreme Court judgment does not say that Part III of the Constitution cannot be amended. For example, there are several passages in the judgment of one of the judges constituting the majority, Mr. Justice Hidayatullah, who says that Part III can be improved upon by amendments. Therefore, it is not correct to say that Part III is untouchable so far as this Parliament is concerned.

Shri Piloo Mody: It takes away the fundamental right.

Shri Govinda Menon: What the majority judgment was that it is beyond the legislative competence of Parliament to abridge or take away the fundamental rights in Part III. My short answer to Mr. Lobo Prabhu's objection would be that Mr. Nath Pai's Bill to amend Article 368 does not

attempt anything like that. Therefore, I submit that there is nothing in his point of order. As pointed out by Mr. N. C. Chatterjee, the vires of a Bill is not decided upon in Parliament. Mr. Lobo Prabhu says that the majority of the Supreme Court gave a certain decision regarding Part III. But the Supreme Court gave another decision earlier and the Supreme Court may give another decision later.

Shri Piloo Mody: Wait for it.

Shri Govinda Menon: We may amend Article 368. If Article 368 cannot be amended a constitutional question need not be raised here. The rule clearly says that if a constitutional question is raised, you may discuss that question but not decide upon it because Mr. Speaker in the Chair is not the person to decide whether a law is within the legislative competence or outside the legislative competence of Parliament. The majority also of this legislature is also not in a position to decide that question. If they decide it, the court may, in its wisdom, look into the matter and give decision. Therefore, it is that we observe a rule in Parliament that the legislative competence may be debated upon but not decided upon. To give a ruling in favour of the point of order raised by Mr. Lobo Prabhu would be to decide that question.

As far as the calling of the Attorney General is concerned, the Government do not think that this is a matter on which the Attorney General should be invited.

Shri Ranga: Why?

Shri Govinda Menon: Because this has been never done.

Mr. Deputy-Speaker: I have only read the Summary of the Supreme Court judgment, both majority and minority judgments, not the original one because I could not get a copy of that.

The framers of the Constitution, in their wisdom, though that after freedom, this society will be a society in

transformation and that it might need an amendment to the Constitution. If you go through the Constituent Assembly debates I have gone through all the debates of the Constituent Assembly—

Shri S. Kandappan (Mettur): You are giving the ruling.

Mr. Deputy-Speaker: Yes, I am giving the ruling. I am not just speaking off-hand. I have given thought to it.

From all this, it is very clear that they wanted Parliament, taking into consideration the changing social situation and the political situation in the country, to be in full and sovereign authority to exercise powers of amendment. That is the substance of the debate in the Constituent Assembly. In the past, there have been many occasions when we have exercised that right. I do recognise that the Supreme Court is an independent judicial body created by our own Constitution. The same Constitution has created this sovereign body . . .

Shri M. E. Masani: Not sovereign.

Shri Lobo Prabhu: The Constitution is sovereign.

Shri M. E. Masani: It is the Constitution which is sovereign.

Mr. Deputy-Speaker: In such a situation, as the Law Minister has rightly observed . . .

Shri E. D. Bhandare: It is not necessary to discuss it now. The only question raised is whether this Bill should be proceeded with or not.

Mr. Deputy-Speaker: I am coming to that.

If at any moment, this body goes beyond the constitutional limits within which it has to function, who is to interpret it? It is not this body, but it is the Supreme Court which has to interpret it.

[Mr. Deputy-Speaker]

Therefore, the initial objection that the hon. Member has raised on the basis of a majority decision, and not a unanimous decision has no basis; moreover, that is not a final decision also, because judge will have to reconsider the whole point. Therefore, the point that the hon. Member has raised at the present juncture has no basis; the point of order has no basis and no relevance whatsoever to the Bill under discussion. I would now call upon Shri N. C. Chatterjee to continue his speech.

But before he starts, I think the hon. Law Minister wants to move some amendment.

Shri Govinda Menon: I would like to move the amendment for the reference of this Bill to a Joint Committee . . .

Shri K. Narayana Rao (Bobbili): On a point of order. How can the hon. Minister's amendment be moved now when the discussion on the original motion has already started? . . .

Mr. Deputy-Speaker: This amendment is for reference of the Bill to a Joint Committee.

Shri Govinda Menon: Regarding the names, I would request that name No. 11 be changed for Shri Rameshwar Rao, and instead of name No. 22 given in my notice, I would suggest that Shri A. N. Mulla's name be included. That was a very unfortunate omission. So, I want to effect that change also.

With these verbal amendments. I move my amendment.

I beg to move:

"That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 45 Members, 30 from this House, namely:

Shri R. K. Khadlikar, Shri R. S. Arumugam, Shri N. C. Chatterjee, Shri Kanwar Lal Gupta,

Shri Ram Krishan Gupta, Shri K. Hanumanthaiya, Shri S. M. Joshi, Shri Kameshwar Singh, Shri Krishnan Manoharan, Shri D. K. Kunte, Shri J. Rameshwar Rao, Shri V. Viswanatha Menon, Shri Mohammad Yusuf, Shri Jugal Mondal, Shri H. N. Mukerjee, Shri Nath Pai, Shri P. Parthasarathy, Shri Deorao S. Patil, Shri Khagapathi Pradhani, Shri K. Narayana Rao, Shri Mohammad Yunus Saleem, Shri Anand Narain Mulla, Shri Dwaipayan Sen, Shri Prakash Vir Shastri, Shri Digvijaya Narain Singh, Shri Sant Bux Singh, Shri Sunder Lal, Shri V. Y. Tamaskar, Shri Tenneti Viswanatham, and Shri P. Govinda Menon and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other, respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

Shri M. R. Masani: I understand the hon. Member whose name appears as No. 4 in the list has declined to serve on the committee. So, his name should be deleted. He does not wish to serve on the committee.

Shri Ranga: His leader is with the Speaker. So, let it be ascertained from him.

Mr. Deputy-Speaker: We shall have it ascertained from him. Later on, he can withdraw his name. I think that it is with his concurrence that this motion has included his name . . .

Shri M. R. Masani: His consent has not been obtained, and, therefore, it should be withdrawn.

Shri Nath Pai: I just want to state the facts. If Shri M. R. Masani or anybody else from his party does not want to serve on the committee, he is absolutely welcome to do so; among the fundamental rights it is also a fundamental right not to serve on any committee, and I uphold that right of his party. But with due respect to them, I would say that knowing that they felt very strongly, I had consultations with Shri Pilloo Mody and with Shri P. K. Deo and requested them; at that stage, there was no objection to serving on the committee, but they made their position very clear that they would oppose the Bill tooth and nail. I told them 'Simply because you are opposed to this, I would rather like that you be there so that we shall have the benefit of your disagreement and then we can reach our conclusions'. It is only today that Shri M. R. Masani has told me that the members of his party do not want to serve on the committee. I am stating this because I want the House to know the full facts.

Mr. Deputy-Speaker: It seems that his sweet reasonableness and persuasion have had no effect.

Shri Ranga: Let it also be understood that we do not mean any offence to Shri Nath Pai. We are with him for various other purposes, for all other purposes, except this Bill.

But let it be clearly understood also that this Select Committee is not merely his baby; there are two

joint parents for it; one is the Law Minister and the other is Shri Nath Pai, and it is as much the responsibility of the Law Minister to ask for the consent of these Members as that of Shri Nath Pai . . .

Mr. Deputy-Speaker: The House is seized of the measure. There is no question of any parentage now at this stage.

Shri Ranga: Shri Govinda Menon has only fathered the baby that has been nurtured by Shri Nath Pai.

Mr. Deputy-Speaker: Amendment moved:

"That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:

Shri R. K. Khadilkar, Shri R. S. Arumugam, Shri N. C. Chatterjee, Shri Kanwar Lal Gupta, Shri Ram Krishan Gupta, Shri K. Hanumanthaiya, Shri S. M. Joshi, Shri Kameshwar Singh, Shri Krishnan Manoharan, Shri D. K. Kunte, Shri J. Rameshwar Rao, Shri V. Viswanatha Menon, Shri Mohammad Yusuf, Shri Jugal Mondal, Shri H. N. Mukerjee, Shri Nath Pai, Shri P. Parthasarathy, Shri Deorao S. Patil, Shri Khagapathi Pradhani, Shri K. Narayana Rao, Shri Mohammad Yunus Saleem, Shri Anand Narain Mulla, Shri Dwaipayan Sen, Shri Prakash Vir Shastri, Shri Digvijaya Narain Singh, Shri Sant Bux Singh, Shri Sunder Lal, Shri V. Y. Tamaskar, Shri Tenneti Viswanatham, and Shri P. Govinda Menon, and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

[Mr. Deputy-Speaker]

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

Shri N. C. Chatterjee. Be brief please, because there are other Members also wanting to speak.

Shri Govinda Menon: This is a very important matter and the contribution of a Member like Shri Chatterjee will be very useful to us.

Mr. Deputy-Speaker: Therefore, I called him first. I am not restricting, but only requesting.

Shri N. C. Chatterjee: This Bill is of paramount importance. This is a matter which affects the supremacy of Parliament and also something much more than that, the sovereignty of the whole nation. I am the President of the All India Civil Liberties Union. I ought to tell you and the House that there cannot be anyone in this House more keen to uphold the fundamental rights which are the cherished human rights guaranteed to our citizens by our Constitution.

We deliberately set up a peculiar Constitution and we have given our citizens basic human rights. I remember I represented this country before the first Commonwealth Law Conference in London. Standing before them I said: 'We have given ourselves not only a liberal Constitution, but we have gone further than any other Constitution in the world.

We have deliberately conferred on our citizens certain cherished human rights embodied in a special chapter called Fundamental Rights. We have not only put them in the Constitution, but have made them real, effective rights because we have got art. 32 of the Constitution'. From Cape Comerin right up to the Himalayas, every citizen can go up to the Supreme Court and demand the issue of a writ of *mandamus*, *certiorari* or any other writ or direction or order whenever his fundamental right is threatened.

I remember in an important case in which one of our friends from the south argued, I had the privilege to argue for the *Organiser*. The point was made: you cannot come up to the Supreme Court direct; you have to go first to the High Court. I argued before Mr. Justice Patanjali Shastri and other Judges that it is not so. It is also the fundamental right of a citizen to go straight to the Supreme Court for the vindication of his rights if there is any injury or threat to them. In the great judgment of Justice Patanjali Shastri, he said: not merely have the constitution-makers conferred this right on the citizen; they have conferred a remedial right, and what is more important, they have made that remedial right also a fundamental right. Therefore, that is the glory of our Constitution.

While I am supporting Shri Nath Pai, I do not want that our fundamental rights should be whittled down. I do not want that they should be affected or abridged in any way, we want them to be improved and to be maintained.

Why am I against the perpetuation of this emergency? Standing in the Supreme Court, I pointed out that immediately art. 19 is put out of operation, all our basic freedoms, seven freedoms—freedom of speech, freedom of expression, freedom of association, freedom of movement,

freedom to form trade unions and other freedoms enumerated therein are nullified. Immediately you issue a proclamation of emergency, the fundamental rights from one end of India to the other of 50 crores of human beings are put in cold storage. I argued before the Court that that means that all the actions taken under it are illegal, unconstitutional because they violate fundamental rights. When the Attorney-General, Mr. Daphtary, had finished arguing, Mr. Justice Gajendragadkar from the Chief Justice's seat asked: 'Mr. Attorney-General, you have not answered Mr. Setalvad's and Mr. Chatterjee's point. What is your answer to this that the action of detention is all illegal? You have put in jail these M.P.s and detained them illegally'. He conceded that the detentions are illegal, unconstitutional, *ultra vires* actions.

Therefore, the Supreme Court has laid down that after the emergency is revoked, this Government will have to face hundreds of prosecutions and claims for damages for illegal, unconstitutional action. We are proud of that judgment.

As a matter of fact, Golak Nath's case gave an excuse to this Government. They may say: unless you give us indemnity, how can we revoke this emergency? because we will be flooded with cases. That is what the Chief Justice has pointed out in the D.I.R. judgment. Therefore they want an indemnity clause but how can you have an indemnity clause? The Golak Nath case judgment makes it impossible to pass an indemnity clause. That is the tragedy.

I wrote to President Radhakrishnan, possibly you read it, and he discussed it with me before he left office. I pointed out to him that in order to vindicate fundamental rights, in order to make fundamental rights under article 19 available to 50 crores of human beings, it is absolutely essen-

tial that you should revoke the emergency, and you cannot revoke the emergency unless you have a clause of indemnity or a piece of legislation amending one part of the Constitution, so that the emergency can be made effective only in particular places where there is a serious condition.

Now, under article 358 all fundamental rights are immediately put into cold storage. You will remember the argument that because of the application of article 358, any State or legislative action, interference with any of the fundamental rights, cannot be justiciable, you cannot go to the Supreme Court, you cannot go to a court of law for the vindication of fundamental rights.

I had been fighting for fundamental rights. I would appeal to my friends who are opposing Shri Nath Pai to remember this. Bengal, unfortunately just as in Punjab, our province was partitioned. In spite of all the loud proclamations of the Nehru-Liaquat Pact and other professions of friendly amity, 50 lakhs of people had to cross the border, and they flooded Calcutta and the surrounding districts. Thirty lakhs of them were settled near about the metropolis, where big houses of very big industrialists, practically garden houses, were occupied by these poor people. They were shouting that their squatting should be regularised. We wanted it to be regularised, the whole of Bengal wanted it, the Government was compelled to do it, the Assembly wanted it, therefore an Act was passed that they should be actually regularised, a statute was passed that the owners of the property, the big landlords, multi-millionaires who never used any of these garden houses except for tamash once a month, would he paid the market price in the year 1947-48 when the exodus started from East Bengal. The High Court of Calcutta struck down that Act as illegal, and they said you must

[Shri N. C. Chatterjee]

pay compensation under Part III of the Constitution, that those multi-millionaires must be paid the actual compensation payable in the year 1959 or 1960. By that time the prices had shot up ten times or in some place 20 times near about Calcutta. It was impossible for the Government of India to pay this fantastic compensation according to article 31.

Dr. B. C. Roy, he was a great man, sent for me. He told me; "Though you are in the opposite, you fight for us, to uphold this Act before the Supreme Court. The Attorney-General Setalvad, one of the greatest man of law, was there, and I was there. We argued for days, but the Supreme Court turned us down, saying that compensation means compensation on the date of the declaration of the Notification under the Land Acquisition Act. Therefore, each of them had to be paid compensation of value at the time when they were divested, when actually the Notification was issued. That makes it an impossible proposition. For resettling lakhs of human being completely outraged, completely depauperised, for resettling these unfortunate men who were thrown out of their country, we wanted to do something. So, you have got to be realistic, look at the real state of things. In order to give fundamental rights you may have to amend article 31. We had to amend article 31, you know that. After the judgment in Bela Banerjee's case, the Supreme Court upheld the judgment of the Calcutta High Court, and we had to amend the Constitution. I had to admit, when Pandit Nehru was there, I was a member of the Select Committee, that this has got to be done. Therefore, amendment of the Constitution may be necessary on some technical grounds on some ground because of the decision of a High Court or Supreme Court, and it may be necessary really for establishing basic human rights for millions of people. Two hundred or 500 big industrialists could not be paid the fantastic compensation which,

according to the strict letter of the law, under the Land Acquisition Act and under article 31, had to be paid. But look at the inequity of this. Justice Subba Rao has also said that this is a developing society; you want to build a welfare state; a socialist state. It would be a progressive evolution. You cannot contemplate and anticipate things forever. Therefore, it will have to be amended. If you read carefully, in the majority judgment they all agree that in proper cases, the fundamental rights will have to be amended but they say, that you cannot amend it through Parliament. I argued this point in Shankari Prasad case in the Supreme Court. I argued with great force—I do not say with great ability—and with great cogency and all the five Judges decided against me; that is not 'law', the law under article 13 does not mean the constitutional amendment; that means an ordinary law. Now by a majority of one, six judges have taken one view and five, another view. With great respect to the Chief Justice and the other majority judges, I must say that the judgment of the other five judges rests on sound and cogent arguments. The majority view, and the Chief Justice recognise: you will have to amend it in some way. What is their suggestion? They say: you can do it by setting up a Constituent Assembly. It is an amazing thing. With great respect to the Chief Justice, I must say that the first principle of law that I learnt both in this country and in England every man of law knows it—what cannot be done directly cannot be done indirectly. The majority judges say: you cannot amend it by Parliament but you can set up a Constituent Assembly and have it amended.

Shri P. K. Das (Kalahandi): Take a mandate from the people.

Shri N. C. Chatterjee: We have got the mandate from the people; we have got it; we represent the sovereign wish of the people of India. We are

electd by means of adult franchise. There is no question of any thing hanky-panky in our elections. I am amazed at this judgment. If you do it by article 368, you have got to do it by two thirds majority. In a Constituent Assembly, on the other hand, you can do it by a majority of one; 51 per cent would be enough. I had discussions with many eminent jurists, with Mr. Setalvad and also Mr. Pathak and Mr. Chagla, an ex-Chief Justice. They said: it seems rather peculiar that it cannot be done by a majority of two-thirds by Parliament but if Parliament chose to set up some kind of a Constituent Assembly, it can be done only by a majority of one. With great respect, that judgment seems rather a shaky one and requires careful reconsideration. Therefore, I appealed to the President to make a reference under article 143 to the Supreme Court. The Chief Justice also was not making a final decision; he says: I do not make it a judgment. So, I want a carefully considered judgment of the Supreme Court. The Supreme Court in 1951 unanimously turned it down; in 1966 they say by a majority of one, 6:5, that it cannot be done. What is Mr. Nath Pai saying? He is only saying that any provision of the Constitution may be amended in accordance with the procedure provided in this article. He is only putting in one clause in article 368. Any provision in this Constitution can be amended according to the procedure laid down. It is quiet clear that this is not only a procedural thing. Article 368 says that an amendment of the Constitution may be initiated by the introduction of a Bill. But does it mean that it is only a procedural thing? Any amendment of Constitution may be initiated by this procedure. If you want to amend these clauses, it must be by a two-third majority. The Law Minister is perfectly right. Like the old Bourbons,—of them it was said, if they learned nothing, they forgot nothing.

Now, from Bhubaneswar to Amritsar, we have got the non-Congress

Ministries, from one end of the country to the other, except one or two States. They are clamouring for greater rights. How can you have greater rights? The Law Minister pointed out very cogently, you cannot have it unless there is a resolution passed by the State legislatures, confirming and affirming that. They must demand it, and they must ratify it; when we pass it, they must ratify it. That resolution, therefore, will be part of the constitutional amendment. Therefore, Sir, this is certainly a part of the constitutional amendment.

I do not think that it is quite correct when they said that the residual thing in List I covers constitutional amendment. With great respect, I submit that it is a thing which requires very careful consideration. I am pointing out that this Bill as it stands today is completely immune from any possible attack. It is a Bill which simply says it assumes this procedure. I only say that this procedure is available for amending any part of the Constitution. That was the original intention. Five judges including the Chief Justice, Patanjali Shastri, Chief Justice Kania, and another judge who became latter on the Chief Justice, Justice B. K. Mukerjee, and that great judge who became Chief Justice, Justice S. R. Das, were all unanimous in deciding it. Of course, the Supreme Court is supreme. The judges are supreme and so are our judges, especially of the Supreme Court. You know this may be again a question of accident; who happens to be the presiding judge and who is the composition of the judiciary at a particular moment. (Interruption)

Shri K. Narayana Rao: Simply because it is the latest case the hon. Member should not blame the presiding judge. I may submit that not only in the latest case, but in a earlier case, Sajjan Singh case, breach was made; it was three to two judgment.

Shri N. C. Chatterjee Let me finish. I only point out that it is a question of supremacy of Parliament. I do not even say sovereignty of Parliament. In our own domain, we are supreme. And the sovereignty of the nation is today very greatly paralysed by this kind of thing, and this should be clarified. And this is the best and the safest way of clarifying it, so that the position can be put in proper shape and order and we can defend our stand, the proper status and position of Parliament.

Shri S. M. Banerjee: In view of the great importance of this Bill and the interest the House is showing towards the Bill, I would like to make the following motion. I move:

"That the time allotted to this Bill be extended by another two hours."

Shri S. Kundu: I rise to second the motion.

Mr. Deputy-Speaker: The question is:

"That the time allotted to this Bill be extended by another two hours."

The motion was adopted.

Shri Mohammed Imam (Chitradurga): How long are we going to sit? There is also a half-an-hour discussion today.

Mr. Deputy-Speaker: We sit till 5.30 for this Bill, and then we take up the half-hour discussion. And then we will take up this Bill the next day.

17 hrs.

Shri R. D. Bhandare: Sir, before I start my remarks on this Bill, I would like to say that Mr. Nath Pai has done yeoman's service both to the Constitution and to Parliament and has, therefore, served democracy. I do not know whether the members have read the judgment delivered by the Supreme Court. Perhaps Mr. Chatterjee,

while reading the judgment might not have laid stress on the important point in the judgment. I will just read the portion of it which raises the fundamental question which has impelled Mr. Nath Pai to bring in this Bill to amend article 368 to the extent he seeks to amend:

"We have not said that the provisions of the Constitution cannot be amended. But what we have said is, they cannot be amended so as to take away or abridge the fundamental rights. Nor can we appreciate the argument that all the agrarian reforms which the Parliament in power wants to effectuate cannot be brought about without amending the fundamental rights."

The judgment further proceeds to say:

"It was exactly to prevent this attitude and to protect the rights of the people that the fundamental rights were inserted in the Constitution. If it is the duty of Parliament to enforce the Directive Principles, it is equally its duty to enforce them without infringing the fundamental rights."

That is exactly the crux of the matter. The real conflict is between fundamental rights and the Directive principles. We have, therefore, to consider as to what is the place of Chapter III on fundamental rights and as to what is the place of Chapter IV on Directive principles of State policy in the constitutional scheme, because that is the crux of the judgment. It revolves around this proposition. If there is a conflict in between fundamental rights and directive principles, fundamental rights must have, according to the judgment, precedence over the directive principles. On this point, I differ totally with the judgment. I may go to the extent of saying that the place of the directive principles in the Constitution has not been properly appreciated by the judges in delivering this judgment. That is why the judgment says Parliament certainly can enforce the directive principles, but cannot amend fundamental rights.

In this connection, I would like in the first place, to draw the attention of the House to the position of the fundamental rights and in the second place, to the position of the directive principles. I need not dilate on the basic principles of legislation or constitutionalism. It is very abstruse to deal with this question in a short time. It may be perhaps baffling to some members here or even outsiders to deal with this question. Fundamental rights deal with what is known as negative obligations of the State. Fundamental rights say that the State shall not make such a law which will abridge or destroy the fundamental rights. All those articles incorporated in Chapter III deal with the negative obligations of the State, but the directive principles deal with the positive obligations of the State to change and transform the society based on egalitarian concept. The misunderstanding, therefore, arises regarding the negative obligations of the State and the positive obligations of the State. I need not dwell on this point. Under our constitutional scheme, I may go to the extent of saying that, the Chapter on directive principles is a contribution to Political Science made by the framers of the Indian Constitution as the federal principle is contribution to Political Science made by the founding fathers of the American Constitution and sovereignty of Parliament made by the working of the English Constitution. So the directive principles deal with the very basic policy of the State, of democratic form of Government when democracy speaks of, both the form of government and the way of life.

The question, therefore, arises whether the directive principles are inferior to the fundamental rights or they are superior to the fundamental rights. I need not again deal with that simple altruistic proposition that fundamental rights seek of the rights of individuals whereas directive principles speak of the functions, obligations and duties of the State, which functions and duties the State

is called upon to perform to bring about transformation in the social system. When the State is, therefore, trying to exercise or trying to perform those obligations, those positive obligations, here is a case where the court steps in and says that the State shall have no right to perform the positive obligations. Why? They say, because the directive principles are not justiciable. That is the point under which everybody is labouring, that because the fundamental principles are justiciable and directive principles are not justiciable, the directive principles are therefore, not superior to the fundamental rights.

Now, in this connection, I would like to mention that Shri Masani was a member when the Constitution was framed. He was also a member of the Committee on Fundamental rights when the question of fundamental rights was considered. Here is a report. There were two reports. One was published and submitted to the Constituent Assembly in 1947. Para (2) of that reports says.

"The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts: the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which though not enforceable in court are nevertheless to be regarded as fundamental in the governance of the country."

Therefore, not only fundamental rights but even the directive principles are important and fundamental in the governance of the country. It is but natural for some of my friends, who are arguing against the Bill, to say that it was a report. But what about the constitutional position of these Directive principles? I am coming to the constitutional position itself. The constitutional position as is found under articles 37 and 38 is very clear. Article 37 says that even though it is not justiciable, justiciable in the sense that no citizen of this country can move the court

[Shri R. D. Bhandare]

that the State must exercise that positive obligation and make that law. The fundamental rights are, justiciable in the sense that if an individual exercises his liberty and freedom then the State should not curb or curtail the exercise of that liberty and freedom. It is not so in the case of Directive principles. That is the difference between justiciability and non-justiciability. We are not here in a court of law. We are here in Parliament to perform the legislative powers and functions of the State, and a modern State, according to our Constitution, has been enjoined, has been called upon, to perform certain functions, certain duties, which are enumerated and enlisted in the Directive Principles. Therefore, I shall read out to you article 37.

"The provisions contained in this Part shall not be enforceable by any courts, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

But the question arises, why is it that it is laid down in so many words and terms that it is the duty of the State to perform, exercise or implement the Directive Principles? We have the Preamble in the Constitution, and in order to fulfil those Principles enshrined in the Preamble, we have article 38, incorporating them. That article says:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

These are the two articles. When the Constitution was framed, emphasis was laid on the acceptance of the Directive Principles.

Mr. Deputy-Speaker: You have got two more minutes. There are several members who want to participate in the discussion.

Shri R. D. Bhandare: Sir, this is not a usual legislation.

Mr. Deputy-Speaker: But you have to presume that those who are participating in the discussion have gone through the Constitution and the relevant articles.

Shri R. D. Bhandare: Sir, are you so meticulous about the time that I must bow before you?

As Dr. Ambedkar has observed, these Directive Principles are fundamental in the governance of the country. He observed in the Constituent Assembly:

"If any Government ignores them, they will certainly have to answer for them before the electorate at the election time."

These are the instructions given to the State, which must be followed by the State.

Coming back to the judgment, it by implication speaks of revolution and says that it could be brought about only by anarchical means or by bloodshed. It goes to the extent of saying that revolutions are not made by majority, revolutions are always brought about by minorities and by bloodshed. Therefore, when we talk of democratic form of Government not only as a form, but as a way of life, we must remember the definition of democracy given by Dr. Ambedkar. He says:

"Democracy is both form and method of government whereby revolutionary radical changes in social, and economic life of the people can be brought about without bloodshed."

"without bloodshed" is the term which governs, guides and controls our Directive Principles. Therefore, it will be a far-fetched argument to say that we cannot amend the Constitution to bring about a revolution without bloodshed by a Constitutional method.

On the question whether the Constitution could be amended and the

method of amending the Constitution even the Judges have gone to the extent of saying that barring Chapter III, the whole of the Constitution could be amended. I am reading from page 34 of the lectures given by G. N. Joshi, a constitutional lawyer of our High Court, in a book entitled *Aspects of Indian Constitutional Law*. In fact, he refers to the judgment given by the Supreme Court in *Shankri Prasad Singh Deo versus Union of India* and the Court says:—

“Now, the Constitution provides for three classes of amendments of its provisions. First, those that can be effected by a bare majority such as that required for the passing of an ordinary law..... Secondly, those that can be effected by a special majority as laid down in article 368.”

The third kind are those which deal with federal polity by a ratification by one-half of the State legislatures. The amending procedure laid down in the Constitution empowers the Parliament to amend the Constitution which procedure can be classified into three parts. In the first place, the Constitution could be amended for the purpose of an administrative measure. In the second place, the Constitution could be amended with ratification by half the States in order to bring about to change in the federal polity, and in the third place, Constitution could be amended by a majority of two-thirds. When we adopt the third method, Parliament is both a legislative body and the Constitution-amending machinery which is incorporated in the Constitution itself.

Shri Pileo Mody: Mr. Deputy-Speaker, Sir, I must preface what I am going to say by expressing the wish that when legal matters are discussed in this House lawyers should not be permitted to make any speeches or express any opinion because we tend to lose the substance of what we are about to do and get mixed up in a lot of legal technicality quoting mere this and that none of which is relevant to the point.

Mr. Deputy-Speaker: Would it be correct to say that architects and engineers need not be consulted while we plan buildings?

डा० राव मनोहर लोहिया (कन्नौज) :
आप की इमारत तो बिना आर्किटेक्ट्स के बनी थी ।

Shri Pileo Mody: I do not want to enter into an argument with you on this subject. As it is, I am feeling rather despondent because I feel that the heads have already been counted; the debate is hardly likely to swing any votes; people have already made up their minds and go through this procedure merely to satisfy ourselves that we are a democracy and that this is the sovereign body of this country.

Shri Govinda Menon: Have you also not made up your mind?

Shri Pileo Mody: I cannot imagine a more disastrous amendment than what my hon. friend, Shri Nath Pai, has brought forward because it prematurely tends to snuff out a democracy which we have not yet established. We on this side of the House are against this Bill in principle. We are against it because of its contents and we are against it being discussed over here.

Shrimati Lakshmi Kantamma: You are reactionaries.

17.18 hrs.

[Mr. SPEAKER in the Chair].

Shri Pileo Mody: Mustering the utmost Christian charity of which I am capable I would like to observe that my hon. friend, Shri Nath Pai, be forgiven by the Good Lord because he knows not what he does. I heard at one time that the hon. Member, Shri Nath Pai, would present a better case for selling short our democracy; instead, I find that he has based his entire case on a legal quibble justified on the grounds of a “changing society, a dynamic society” as he calls it—and rapping it all up by reiterating a dozen times that “Parliament is supreme”.

[Shri Piloo Mody]

Let us examine his statement of objects and reasons. He says, here that the issue raised is of "cardinal importance for the supremacy of Parliament; this supremacy implies the right and authority of Parliament." Note his obsession with the supremacy of Parliament.

He is Coy. He does not want to be disrespectful to the Supreme Court but does not hesitate to offer his points of disagreement, with the judgement that the learned judges have given. He regards the Supreme Court as the guardian and custodian of the rights of the citizen but he has no hesitation whatsoever in presiding over the liquidation of those very rights.

He says that he may appear to be defying the authority of the Supreme Court but he wishes us to remove any possible misunderstanding in the matter. He is merely trying to establish, as he says, the supremacy of Parliament.

Then, again he says:

"Parliament will not be able to function as the ultimate instrument of the will of our people. Parliament's supremacy is meaningless, ceases to have any coherent meaning if Parliament cannot amend the Constitution."

Is this the only important function of Parliament? He waxed eloquent. I would like to have quoted rather a long passage from his speech but I realise that I will not be given the time to finish what I have to say. So I will pass on. But he ended not by arriving at the right conclusion as a result of what he said but again on the same stale note about the supremacy of Parliament. What an absurd conclusion? I venture to suggest that it is Mr. Nath Pai who is applying the "Jack boot" to our democracy at this very moment.

His entire legal argument is summed up here, to quote him, when he says:

"A constitutional amendment is totally different from an ordinary enactment of Parliament. Where as the ordinary enactment which runs counter to the spirit of Article 13 of the Constitution may be null and void, *ultra vires*, and therefore, unconstitutional, a constitutional amendment itself shall not be because that makes a mockery of the supremacy of Parliament."

But my hon. friend really out Pais himself towards the end of his peroration when he says:

"This is the fundamental meaning of the supremacy of Parliament and nobody has the "right to take away, snatch away, or deprive Parliament of its inalienable right, the right to amend the Constitution of India."

Mr. Speaker, Sir, please note the misuse of the word "fundamental" and his application to the supremacy of Parliament, which incidentally also has, and mark the words, the "inalienable" right to amend the Constitution. It is when I hear Mr. Nath Pai that I begin to appreciate the rather unreasonable attitude taken by Dr. Lohia and Mr. Madhu Limaye on the language issue.

Where does Mr. Nath Pai get his ideas about the supremacy of Parliament? Does he realise that Parliament derives its powers from the Constitution of India, not from the people, but only indirectly from the people? Does my friend think that because he collected a few votes during the elections, as most of us did, that the people have surrendered their rights and freedoms and have agreed to become the slaves of their elected representatives? Mr. Nath Pai thinks so but I do not think that was the mandate that the people of India gave to Mr. Nath Pai, to Mr. Chatterjee, to Mr. Bhandare or to anybody else in this House.

What is the origin of democracy? it is based on an original belief that

the people are sovereign and that the origins of power lie with the people. This is the only moral justification of any free society. Our very existence as a nation requires moral justification not merely based on power or our capacity to protect our territorial integrity but derived from moral law, the morality being that we are a free people with certain sovereign right, rights that we enjoy subject to none not even the elected representatives over here. If we do not accept this original concept of democracy, we have no justification as a nation and any foreign power would have the right, based on pure power, or with brute force, to enslave us, as we have surrendered our sovereign rights as a people to majority rule; to the rule of force, in short, to a jungle society based on the concept that might is right.

It is this moral justification that is required which prompted the founding fathers of the American Declaration of Independence to declare:

"When in the course of human events, it becomes necessary for one people to dissolve the political bands which have kept them with another and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

This was the moral justification. And what was the basic truth?

"We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted amongst men, deriving their just powers from the consent of the governed."

The Constitution of India framed some 175 years later is no less eloquent. I shall read out the Preamble to you, because I suspect that there has been a severe lapse of memory amongst the hon. Members of this House. The preamble of this Constitution of ours says.....

Shri Nath Pai: We know it by heart.

Shri Piloo Mody: It is not enough to know it by heart, but it is necessary to understand it.

It says:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all.

FRATERNITY assuring the dignity of the individual and the unity of the Nation....."

I would stress the portion that follows:

"IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

I would like hon. Members to note that we the people of India gave to ourselves this Constitution because we assumed quite rightly that we were born free with certain inherent and inalienable rights—fundamental rights. Kindly note the correct use of the words. We do not enjoy our Constitution at the mercy of parliamentarians who think that they are supreme. Now, what are those rights?"

Shri Surendranath Dwivedy: Who made the Constitution.

Shri Pilleo Mody: I would take you to article 19, and I shall read out to you what these rights are. The first right is, that "all citizens shall have the right to freedom of speech and expression." Does Shri Nath Pai or the Congress think that they can erase this by a two-thirds majority in Parliament? Then, it says that "all citizens shall have the right to assemble peaceably and without arms." Does Shri Nath Pai or the Congress think that they can erase this with a two-thirds majority? Then, the article says that "all citizens shall have the right to form associations or unions." Do Shri Nath Pai and the Congress think that they can erase this with a two-thirds majority?

डा० राज मनोहर लोहिया : वह तो आप रोज करते रहते हैं।

Shri Pilleo Mody: Then, the article says that "all citizens shall have the right to move freely throughout the territory of India, . . . to reside and settle in any part of the territory of India, . . . to acquire, hold and dispose of property, . . . and to practise any profession, or to carry on any occupation, trade or business." Do Shri Nath Pai and the Congress think that they can erase all these rights by a two-thirds majority in Parliament?

Now, let us see what the Constitution itself has to say about this?

Shrimati Lakshminkanthamma: Does the hon. Member want the Speaker to go and appear before a magistrate?
.....

Shri Pilleo Mody: What is it that the hon. lady Member wants to say? Let her say it?

Shrimati Lakshminkanthamma: Does the hon. Member want the Speaker to go and appear before a magistrate?

Shri Pilleo Mody: Now that she has said that, would she please sit down?

Article 13 (2) says:

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

What does the term 'State' mean? Article 12 reads thus:

"In this Part, unless the context, otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities. . . ."

With regard to the term 'law' also the Constitution is very specific. It says:

"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

Mr. Speaker: The hon. Member may continue his speech on the next day.

Shri Pilleo Mody: I shall need just five more minutes.

Mr. Speaker: Those who want to hear him may hear him on the next day.

Shri Pilleo Mody: Shall I or shall not continue my speech now?

Mr. Speaker: I do not think it will be possible for him to conclude his speech today? He is in great form today. I do not know whether he will

be possible for him to finish his speech today.

Shri S. K. Taparajah (Pali): He may be called on the next day.

Mr. Speaker: He can continue on the next day.

Shri Pileo Medy: I would require about five more minutes only.

Mr. Speaker: Why only five minutes? He can take about 10 to 15 minutes more also.

Shri Surendranath Dwivedy: The rest of the portions of his speech may be taken as read.

17.30 hrs.

RE QUESTION OF PRIVILEGE

ALLEGATIONS AGAINST CERTAIN MINISTERS

Mr. Speaker: Shri Vajpayee to raise the issue concerning privilege.

The Minister of Law (Shri Govinda Menon): On a point of order.

Shri A. B. Vajpayee (Balrampur): On what?

Mr. Speaker: There is no motion before the House now.

श्री अटल बिहारी वाजपेयी : मैं विशेषाधिकार का एक मामला उठाने के बारे में प्राप की अनुमति चाहता हूँ । श्री एस० एम० बनर्जी ने 30 मई को इस सदन में ध्यानाकर्षण प्रस्ताव के सम्बन्ध में स्पष्टीकरण मांगते हुए इसी सदन के दो सम्मानित सदस्यों जो मंत्री परिषद् के सदस्य भी हैं, उन पर यह आरोप लगाया था कि वे बिड़ला बंधुओं के बोन मांगी हैं । ये आरोप श्री अर्जुन अरोड़ा द्वारा कांग्रेस संसदीय दल की बैठक में लगाये गए आरोपों के सम्बन्ध में थे । लेकिन मंत्रियों के नाम पहली बार सदन में लिए गए और लेने वाले मेरे मित्र श्री एस० एम० बनर्जी थे । मंत्रियों के विरुद्ध

लगाये जाने वाले आरोपों की जांच किस तरह से की जाए इस के सम्बन्ध में प्राप ने 1951 के एक निर्णय का हवाला दिया था । मैं उस के दो अंग प्राप ने के सामने पढ़ना चाहता हूँ । प्राप ने कहा था—मैं उद्धृत करता हूँ :—

“The person making such an allegation should first make sure of his facts and base them on such authentic evidence, documentary or circumstantial as he may have. He should be careful in sifting and arranging facts because if the allegations are proved to be frivolous, worthless or based on personal jealousy or animosity, directly or indirectly, he will himself be liable to a charge of breach of privilege of the House”.

आगे जा कर प्रापने कहा था—मैं उद्धृत करता हूँ :—

“However, if in the course of preliminary investigation, it is found that the person making the allegations has supplied incorrect facts or tried to bring discredit to the name of the member wilfully or through carelessness, he shall be deemed to guilty of a breach of privilege of the House.”

इस निर्णय में प्राप ने स्वयं स्वीकार किया है कि यदि यह सिद्ध हो जाए कि आरोप असत्य हैं, निराधार हैं या असावधानी में लगाये गये हैं तो उस सदस्य की विशेषाधिकार भंग करने के आरोप में जावा देना होगा और उक्त के खिलाफ कार्यवाई की जा सकेगी । श्री अर्जुन अरोड़ा के आरोपों की जो जांच प्रधान मंत्री महोदया ने की है और जिस जांच के परिणाम सदन में घोषित किए गए हैं यदि सदन यह स्वीकार करता है कि वे जांच के परिणाम ठीक हैं तो फिर सदन के सामने इस के प्रतिरिक्त और कोई चारा नहीं है कि वह श्री बनर्जी द्वारा लगाए गए आरोपों को विशेषाधिकार समिति को सौंप दे ।

देख में एक सन्देश का, एक परिवर्तन का वातावरण है । चरित्र हत्या की प्रवृत्ति बढ़