

"That leave be granted to introduce a Bill to provide for the establishment of a Corporation for the purpose of producing, manufacturing, acquiring, distributing and selling milk and milk products in the Union territory of Delhi and other areas so that wholesome milk and milk products may be available to the general public, at a reasonable price, and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI ANNASAHAB P. SHINDE: Sir, I introduce the Bill.

1/1 hrs.

CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL†

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

PROF. S. L. SAKSENA (Maharajganj): On a point of order. I want to oppose the introducing of this Bill. This House has no power to legislate on the subjects contained in the Bill. May I make my submission? I rely on rule 72 which says:

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may, without further debate, put the question:

Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

MR. SPEAKER: If you want to oppose, you should have written earlier. You want to say that it is

beyond the legislative competence of the House?

PROF. S. L. SAKSENA: Yes.

MR. SPEAKER: There is no point of order in this. It is quite within the legislative competence of the House. That matter is settled now.

PROF. S. L. SAKSENA: I should have my say on this point.

MR. SPEAKER: You have had your say. Your point of order has been disposed of. The practice is to allow only a member who had written earlier that he wants to oppose introduction, if the Chair so decides. Your point of order is settled.

SHRI INDRAJIT GUPTA (Alipore): May I make one submission? About opposing this Bill at this stage, it is possible neither to support it nor oppose it because it—like the curate's egg, good in parts. It is a huge omnibus Bill; such a Bill should never have come before the House. I must point out that all the discussions which have been held so far in the country and which had been initiated by the government side had been on the basis of certain recommendations contained in the report of the committee headed by Sardar Swaran Singh. We were led to believe that that was the basis on which all the discussions were to be held and this Bill had to be drafted. We find to our surprise that the Bill contains so many other provisions which were not mentioned in the report of the Sardar Swaran Singh Committee. I should ask the government to think over the matter, it is a very important question, complicated and complex question involving so many provisions of the Constitution. Before they introduced such a Bill they should have given to all people concerned a chance to discuss the other proposals which were never mentioned by the Sardar Swaran Singh Committee at all. Why

†Introduced with the recommendation of the President.

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[Shri Indrajit Gupta]

be in such a hurry to introduce? Let them wait. Let them discuss the proposals. No popular opinion was asked on any of the other points. These are suddenly sprung on us as a surprise.

MR. SPEAKER: That the Government will bear in mind.

SHRI INDRAJIT GUPTA: No reaction to this at all?

MR. SPEAKER: He will have the chance and then he can react. He will speak at the appropriate time. Four hon. members have written to me that they want to oppose the introduction of this Bill—Shri H. M. Patel, Shri Samar Mukherjee, Shri Tridib Chowdhury and Shri P. G. Mavalankar. Normally, under the rules only one member is allowed to oppose the introduction of a Bill. But as has been said, and it is a fact, this is a very important Bill. In view of that, I am allowing, without making this a precedent, these four hon. members, Prof. Shibban Lal Saksena has not written to me and I cannot allow him.

Prof. S. L. SAKSENA: I was not here.

SHRI S. M. BANERJEE (Kanpur): In future also will you give chances like this to oppose introduction of Bills?

MR. SPEAKER: I have said that this shall not be a precedent. Because it is an important Bill, as a special case, I am allowing more than one member.

SHRI H. M. PATEL (Dhandhuka): Sir, I rise to oppose the request for leave to introduce this Bill—the 44th Constitution Amendment Bill, 1976.

The proposed amendments are based not upon the recommendation of a national committee appointed by Government but upon the recommendations of a committee appointed by the ruling party from among its own members. The recommendations which

the Law Minister invited certain opposition leaders to discuss with him were also the recommendations of this Party Committee as modified by the ruling party. It is significant that what appeared in the press in regard to these discussions was merely that certain opposition leaders had met Shri Gokhale and their views will be duly considered before Government formulated its own proposals. Not even at this stage was Government prepared to lift the censorship. In the circumstances, it was scarcely to be expected that Government would, of its own accord, seek to discuss these recommendations—party recommendations though they were—with the real leaders of the opposition parties, most of whom are under detention. In the circumstances, we—I am speaking here on behalf of Congress (O), Jan Sangh, Socialist Party and the Bharatiya Lok Dal, which constitute the Janata Front, the Akali Dal and the Parliamentary group of Congressmen for Democracy—we were left with no option but to decline the invitation to discuss these recommendations with Shri Gokhale. Again, typically there was no mention of this fact of our declining to discuss in any of the papers.

SHRI C. M. STEPHEN (Muvat-tupuzha): Sir, I rise on a point of order. The rules are very clear. He said, he was speaking on behalf of some Janata Front. This Parliament knows the existence only of certain parties and groups recognised according to the standards stipulated under the Speaker's directions. If you want to speak on behalf of a party or group, you have got to be elected on the basis of a specific election manifesto.

SHRI S. A. SHAMIM (Srinagar): That is the old Constitution!

SHRI C. M. STEPHEN: Therefore, no group of members can claim to represent here a specific group or a specific party unless they were elected to this House on the basis of a specific election manifesto. I can quote the

directions of the Speaker on this. Therefore, my point of order is, this being the rule, whether on the floor of this House any Member could be permitted to speak on behalf of a group which, in the eye of Parliament and in the eye of law governing Parliamentary procedure, does not exist.

My friend does not seek to speak on behalf of the Swatantra Party, on which ticket he was elected. He is entitled to speak on behalf of the Swatantra Party. But he speaks on behalf of, not one party or one group, but on behalf of a specific and new nomenclature which does not exist, on the basis of which no election was held and nobody was returned to this House. Therefore, if he seeks to speak on behalf of that conglomeration, he has no right to speak here on behalf of that. This is my point of order.

SHRI S. A. SHAMIM: The point of order is rejected. Shri Patel will continue.

MR. SPEAKER: This is a point of contention, not a point of order. I have recognised the hon. Member, Shri H. M. Patel, and as long as he says something which is parliamentary, I will allow him.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): This, I presume, is not giving recognition to the new party.

SHRI H. M. PATEL: In spite of the repeated declarations of the Congress Party, Government leaders, and particularly the Prime Minister, that they desired a national debate on amendments to the Constitution, no such debate has been permitted or made possible. Meetings, conferences and seminars have been banned at various places. Even the National Seminar organised by the National Committee for Review of the Constitution, consisting of representatives of various parties, independents, jurists

and academicians, was not allowed to be held in Vithalbhai Patel House, New, Delhi, on July 31st and August 1st, 1976. Moreover, whenever and wherever such meetings and seminars were permitted, the version of the proceedings that appeared in the press was truncated, distorted and misleading.

Discussions within the ruling party also appear to have been far from being genuinely free.

SHRI K. P. UNNIKRISHNAN (Badagara): On a point of order. Would you permit him to read out a declaration? He is reading not making a speech. If you allow this, it will become a precedent.

MR. SPEAKER: What is that declaration?

SHRI H. M. PATEL: Sir, I have sought your permission to read out the statement.

Even a pro-Congress national daily such as the 'National Herald' felt constrained to comment editorially that consultation with the Chief Ministers and P. C. C. Presidents was with "those whose appointments are mostly ad hoc". The national dialogue has reduced itself to a convenient monologue. Indeed, no national consensus can be evolved on any vital issue in the present oppressive climate of fear and suppression.

The intentions of the Government appear to be contrary to their declarations. They do not want any free debate, and appear determined to rush through proposal of far-reaching character in a period of 'constitutional' dictatorship, and make the dictatorship permanently in-built in the Constitution. By these amendments, the judiciary is sought to be made impotent, the press docile and the Parliament, utterly ineffective through the exercise of its own powers. People, the real masters, will lose their sovereignty and become slaves, in the name of what the ruling party calls socio-economic development and the supremacy of Parliament.

[Shri H. M. Patel]

While fundamental duties are sought to be embedded in the Constitution to inspire the people, significantly, life-long immunity has been sought to be provided for persons in authority from penal effect of all their criminal acts through the passage of the 41st Constitutional Amendment Bill in the Rajya Sabha. Thus, while the people of India will have all duties and no rights, the rulers will have all rights and no duties.

It may be pertinent to point out that some of the actions of the Government are clearly contrary to the proposed fundamental duties. Indeed, the proposed amendments to the Constitution will themselves smother the noble ideals which inspired our national struggle for freedom (Clause 11-51A (b)).

The sinister design of the Government is obvious from the way in which the anti-national activities are sought to be defined and prohibited in the Constitution. Any anti-Government, anti-vested interest activity, will become anti-national and no party except the ruling party would be able to exist. The State will become an entrenched fortress of reactionary vested interests and right authoritarianism under the cloak of national interest and national integrity.

The institution of the President is being further denuded of its power of moral persuasion.

Clause 59, by vesting the President with arbitrary power virtually to amend the Constitution by order, will sap Parliament of its authority and power and hand it over to the Executive, thereby reducing the Parliamentary system to a make-believe.

All the pillars of parliamentary democracy, Parliament, the President, the Judiciary and the Press are being converted into pliant tools of an all-powerful executive. The executive will become an omnipotent, omnipresent and omniscient God, democracy and democratic institutions the hollow shadows of their original

salves. There will be no air of freedom to breathe.

Sir, we would not like to be a party to any discussion of issues which are basic to freedom and democracy, by a Parliament which has outlived its legitimacy and has thus lost political and moral authority as well.

The Constitution authorises the extension of the life of Parliament during the period of the emergency. But, during this period only routing and the most essential or unavoidable business should be conducted without which the Government cannot function. This period ought not to be utilised for bringing about basic structural changes in the polity. As it is, the Government is extending emergency, amending the Constitution and engendering an atmosphere of fear in order to maintain its grip on the country until it is able to distort the system so thoroughly that the question of free and fair elections can never arise.

For Opposition Members to continue to participate in Parliamentary discussions in these circumstances is to give a semblance of constitutional legitimacy to the Government's move to throttle democracy and impose authoritarian rule. Accordingly, we have decided to abstain from participating in the proceedings of this House.

Over a year has gone by since the emergency was proclaimed. In its wake has followed the emasculation of Parliament by the detention of several leading opposition and Congress MPs and the imposition of a virtual ban on the publication of Members' speeches except those made by Ministers. Since the very purpose of Parliamentary debate is to assure the people that all points of view have been expressed and discussed freely before a decision is taken, the ban has made a mockery of the parliamentary institutions. And since Parliament is theynch pin of the multi-party democratic process, the ban has contributed to the subversion of democracy and

the promotion of one-party authoritarian rule. No Parliament in a democratic country can continue to claim legitimacy if most of its leading Opposition Members and important dissenters of the ruling party are kept behind bars. It is much more so when they have already been so held without trial for 14 months, and there appears every reason for assuming that, despite protestations to the contrary, they are to be held indefinitely.

After protesting against these draconian restrictions when Parliament assembled in the July, 1975 session, Members of Opposition groups participated in the subsequent sessions in the hope that the restrictions would be temporary and normal functioning would be resumed soon.

But our hopes have been dashed. Not only have the curbs continued, but the Government has postponed the general elections and extended the life of this Lok Sabha. And even though its mandate has expired, the Government has extended the MISA and tightened its control over the Press with a view to ensuring that no opposition views reach the public. The few newspapers and journals that tried to give some minimal space to mildly expressed opposition views have been shut down. Thousands of opposition party members, Congress dissidents and young dissenters of the regime remain in Jail.

You, Sir, were good enough to arrange discussions with representatives of Government in regard to our request. While it is a matter for satisfaction that for the first time something in the nature of a dialogue took place between representatives of Government and ourselves, it is also a matter for regret that this dialogue should have ended only in agreement to disagree.

We, nevertheless, continue to hope that a day will dawn fairly soon when Congress members and Government will revert to the historic traditions of

our freedom struggle and to our national commitment to democratic rights and personal freedom. Once this happens, they will realise the wisdom of releasing our hon'ble colleagues who have been detained for over a year without any grounds and for withdrawing the curbs on the press that come in the way of getting our view point faithfully across to the public.

We will be happy to respond if the Government moves in this direction. We will then assuredly extend all our cooperation in the re-establishment of the dignity and honour of Parliament and of this august House so that it truly reflects the will of the nation and not merely a part thereof.

With these words, I oppose it.

SHRI SAMAR MUKHERJEE (Howrah): Mr. Speaker, Sir, on behalf of my party, I totally oppose the introduction of this Bill on Constitutional Amendments. The Bill on such wide-ranging amendments of the Constitution having far-reaching implications on the democratic life of our country should not be hurried through in the manner it has been sought to be done (brought before the House) without a nation-wide free debate seeking the opinion of all sections of the people.

Our main objections to the introduction of this Bill in this Lok Sabha are the following:—

(1) That this Lok Sabha has not the competence to adopt this type of Constitutional reforms which demolish the main foundation of parliamentary democracy and the main features of the present Constitution;

(2) That this Parliament has already lost its mandate of the people since 18th March last. The life of the present Parliament has been kept in existence artificially by using the provisions of the Emergency and the people have been prevented from electing a new Parliament and a new Government in a free atmosphere according to

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their own choice on the basis of their experience regarding the performances and promises of the ruling party and the Government.

(3) That the ruling party and its Government which seek to basically alter the Constitution by concentrating power in the hands of the Executive do not reflect the real opinion of the majority of the population because though the ruling party captured two-thirds of the seats of Lok Sabha in the last general election of 1971, it represents only 43 per cent of the votes.

(4) That the proposed amendments were never placed before the people in 1971 during the general elections.

(5) That this Bill has been brought for introduction at a time when the country is groaning under the double Emergency, when all the fundamental rights of the people have been suspended, when the voice and free expression of views specially of the Opposition have been throttled, when press and publicity media have been muzzled and even the speeches of the Parliament Members are not being allowed to be published and the proceedings are not faithfully reported in the press due to censorship.

Not only the public meetings, seminars and conventions to discuss the proposals on the Constitutional amendments organised by the Opposition parties are banned but even closed door hall meetings organised by prominent citizens, jurists, lawyers, educationists, teachers, students, trade unions and various mass organisations are not allowed in many places. We have protested and drawn the attention of the Government but in vain. I have cited certain concrete examples of such banning in my letter to the Parliamentary Affairs Minister when I was invited for discussion on the

proposed amendments in the first week of this month. In that letter, I mentioned the major reasons why I was unable to take part in such a discussion.

On the one hand, we are reading in the newspapers and listening to the radio broadcasts the announcement of the speech of the Prime Minister that the Constitutional Amendments should not be rushed through, and that there should be a national debate before they are brought before Parliament; on the other hand, we see that the scope of free discussions and publicity of differing views are deliberately restrained. Full opportunities are kept open only for the ruling Party and their allies to hold meetings freely and to get the widest publicity in the press and radio. This cannot be called a national debate when the views from various sections of the people who differ from the views of the ruling Party are kept almost completely suppressed. Here are some of the recent examples.

The West Bengal State Government has issued an order to the effect that, throughout the State, the CPI(M) and its allies will not be allowed to hold any meetings inside halls on Constitutional Amendments since 10th August, the date of opening of the Parliamentary session. Accordingly, hall meetings organized by our Party and our allies in Calcutta, Kalimpong, Bongaon, etc., have been banned. In Kerala, all the copies of a booklet containing the views of our Party on the proposed amendments which is a translation of a booklet in English in Malayalam language have been confiscated. In Kerala, though the hall meetings have not been banned the use of mike has been banned in order that lesser number of people may be addressed.

(6) That the Bill has been rushed through at a time when the leading

Members of the various Opposition parties in the Parliament are kept in detention and thousands of their supporters are rotting in jail.

This cannot be the condition for any free debate and discussion. We are not against any amendments of the Constitution. On the other hand, we suggested many radical and progressive changes in the Constitution including many fundamental rights for the people through some non-official Bills several years ago. The Government had not reacted favourably to them and did not permit discussions on them. Now, faced with a grave crisis, the ruling Party and the Government, unable to solve any of the problems of the people, want to rush through these amendments over the head of the people to institutionalise the condition of Emergency by depriving people of their basic fundamental rights of expressing freely their views, of criticising the Government, of organizing legitimate movements of protest, of freely electing a government of their choice and of enjoying legal protection from the misuse of power by the executive and the bureaucracy. The main thrust of the proposed amendments incorporated in the Bill is to establish a totalitarian rule of one party dictatorship under the cover of the Constitution.

That is why, our Party is opposed to the introduction of this Bill in this House. I urge upon the Government to postpone this introduction and allow free discussions and debates throughout the country and to seek the verdict of the people on the concrete proposals. Only thereafter, such a Bill can be debated and discussed in Parliament. In case Government ignore this appeal and rush through this Bill, we declare that we will, in no way, be a party to this move and will refrain from taking part in any proceedings and debates on these amendments in this House.

Sir, I oppose the introduction of this Bill.

SHRI TRIDIB CHAUDHURI (Berhampore): Mr. Speaker, Sir, in addition to the points that have already been made by two of the previous speakers, I have to make one or two points as to why I am opposing introduction of this Bill. It is mainly because of this. You have just ruled—and rightly ruled—that Parliament is competent to amend the Constitution. But as far as I have been able to understand, according to the basic law of the land as it stands today, the law as pronounced by the Supreme Court,—the last pronouncement of the Supreme Court in this regard is in the Kesavanand Bharathi case,—Parliament is not competent to effect a fundamental change or transformation of the structure of the Constitution.

AN. HON. MEMBER: Basic features.

SHRI TRIDIB CHAUDHURY: Unfortunately, the way the present amendments have been framed, they affect the basic structure. I do not want to go into the details. But this Parliament, according to the law pronounced by the Supreme Court, is not at all competent...

SHRI VASANT SATHI (Akola): The Supreme Court itself has not defined what the basic structure is. So, we are left in the dark about it.

SHRI TRIDIB CHAUDHURI: Anyway, each has to understand according to his own lights. As I have understood it, this Parliament, according to the law of the land as it stands today, is not competent to effect this kind of fundamental transformation.

But besides this there is my more fundamental objection.

I have always believed that in a country with a written Constitution, it is the people who are sovereign, not any body or organ created....

SHRI S. A. SHAMIM: Not Salves and Sathes.

SHRI TRIDIB CHAUDHURI:... by the Constitution. And this Constitution itself, in its very Preamble which is being sought to be amended declares that categorically. It is an open question whether the Preamble of the Constitution is a provision or article of the Constitution and can be amended by virtue of Article 368. But even then, let me refer to the Preamble. Who gave us this Constitution? On whose behalf this Constitution was proclaimed to the world? We, the people of India. The Preamble itself says:

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

So, it is clear that this Constitution has been given to us by the people by virtue of the constituent power and the sovereignty of the people and not of this Parliament assembled in this hall. It is only a Constituent Assembly elected by the people who can effect a change in the basic structure of the Constitution.

My third point relates to the make belief superficial changes proposed in the Preamble. It is, as I have just said, it is an open question whether this Parliament is competent or can amend the Preamble by virtue of the powers given under Art 368 Preamble is really a part of the constituent provisions of the Constitution. But the way it has been sought to be amended—apparently very laudable objectives have been sought to be included, particularly, the objective of making India a Socialist Republic. But, unfortunately, at the same time, we know from our experience of the last so many years and particularly, I can claim in this connection that I have been in this House from the very beginning, that whenever from this side and particularly from the side of the Socialist left, or even from the side of some of the hon. Members of that side of the House, i.e. the Congress side, it was demanded that the fundamental right to private property be done

away with, the Government has consistently come forward to oppose that proposition. We are now constituting or are taking the powers to constitute ourselves into a Socialist Republic, keeping intact the right to private property under article 31. We have so far only changed the so-called compensation, the *quid pro quo* that has to be paid for private property taken over by the State into an ‘amount’. That is all. But the right to private property will remain inviolate. A Socialist Republic based on the system of the sanctity of private property is a fraud upon the confidence of the people and a fraud on the Constitution. That is why I oppose this Bill all the more.

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Speaker, Sir, I rise to oppose the introduction of the Forty-fourth Amendment of the Constitution Bill sought to be moved by my friend, hon. Shri Gokhale. I do so on constitutional, legal, political and moral grounds.

The Minister, has in his Statement of Objects and Reasons, opened with a very interesting paragraph, a truism in itself. He says:—I quote:

“A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy.”

Who denied this? But what has happened to the Government who only in 1975 publicly and here in the Central Hall at a special ceremony lauded the basic democratic tenets of our constitution, acclaimed it with great enthusiasm and praised the founding-fathers and makers of the Indian Constitution? What happened within one year to make them say that the Constitution became so bad, so weak, that it needed such a comprehensive piece of amending legislation? I think this is nothing but political hypocrisy on the part of the Government of the day. Nobody denied the need for changes in the Constitution. Indeed whenever a constitution of a free

country is made although the constituent power to frame the constitution is statutorily exhausted in the very making of the constitution it also implies that when the constitution needs changes in future times those changes could be made, but only according to the wishes and consent of the people concerned. Sir, Pandit Jawaharlal Nehru and many of his very esteemed colleagues all of whom we respect have said that changes in the Constitution could be made only occasionally and only after full consultation with the people. I want to quote a few lines from Pandit Jawaharlal Nehru, who said this:

'While we want this Constitution to be as solid and permanent as we can make it, we could not make this Constitution so rigid that it cannot be adapted to changing circumstances'

Now, Sir, it is to the eternal credit of Pandit Jawaharlal Nehru, Babu Rajendra Prasad, Maulana Abul Kalam Azad and Sardar Vallabhbhai Patel, the four top congress leaders within the Constituent Assembly of India who, while drafting the Constitution of free India, for the Republican and Democratic India, did not consult only their own Congress party men in that Assembly but they had the wisdom, imagination and broad-mindedness to consult all shades of opinion, even those who were opposed to the Congress party before independence. Why? Because, these four tall leaders of the Indian National Congress had this good sense and this wisdom to know that the country's constitution is not the prerogative of the party in power, whether this party or that party, but that it is the prerogative of the entire people. If you don't have such consultation now, how can you do anything to amend it? Sir, I don't want to go on record nor do I wish to give an impression to the country outside that many of us on this side of the House and persons belonging to no party whatsoever are opposed to constitutional changes as such. We want constitutional changes, but as I said, these should be only after consulting

the people. Moreover, the question is whether the constitutional changes make the constitution better which means more democratic, which means, further, the Government is under effective popular control, and people's sovereignty is further strengthened. But if that does not happen, if Government becomes more strong and people become more weak, then what kind of constitutional change this is, I fail to understand.

When the Parliamentary Affairs Minister was good enough to invite me to come for a dialogue and normally I would have gone for a dialogue, I had to write a letter declining the invitation, stating why I could not accept to come for such a dialogue under the strange situation and conditions which exist in our country today.

The point is this. Major and substantial constitutional changes were never considered as even an important election issue in 1971 or thereafter. Indeed, as I said earlier, the present constitution was lustily cheered and its merits publicly lauded by the top governmental and national leaders when the completion of 25 years of our constitution and the democratic republic was celebrated in 1975. How and why then this sudden craze and rush for constitutional amendments? In any case, what right do we, the people's elected representatives, possess to materially alter several constitutional provisions and also further venture to disturb as well as destroy the sound pattern of relationship between the three organs of Governmental machinery—Legislature, Executive and Judiciary—and reshuffle some of the basic rights of the citizens and wellconceived tenets of constitutional government, without a proper and prior consultation with the people, our only Masters in a democracy, and without obtaining their views and reactions, much less getting their consent?

Mr. Speaker, Sir, may I also ask you and, through you, this hon. House, all my colleagues on this side or that, in fact, on all sides of the House, in all humility and sincerity, is it right

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and decent, when many of our hon. colleagues belonging to different shades of opinion are in detention for more than fourteen months without knowing why they are in detention, to ask this very Lok Sabha to amend the Constitution keeping these hon. colleagues of ours in the jail? I suggest and I submit that it is neither proper nor decent to do so without their active collaboration and participation in it.

Thirdly, Sir, I do not know whether what we are saying to-day, although it is going on record, will also be permitted to go into the National Press and Radio tomorrow. (*Interruptions*) The point is that the National Press is censored. The national press with its glorious traditions of men like Dada-bhai Naoroji, Lokmanya Tilak, Mahatma Gandhi and Pandit Jawaharlal Nehru who defied the British—the mighty British—wrote what they believed was right and in the interest of the nation. Suppose all of us believe that certain things are good while certain others are bad.

MR. SPEAKER: Please conclude.

SHRI P. G. MAVALANKAR: I am concluding, Sir, we are not allowed to say what we want to say in the press. The national press is humbled, humiliated, suppressed and muzzled. Therefore, I feel that this is not the time nor is it the proper moment to bring forward such a comprehensive constitutional amending Bill.

Finally, Sir, I would assert by saying that there is no national free debate in the whole of our country. I say so because of what I see and don't see! Now, a Constitution is a fundamental law of the State. It is a sacred document and is a serious business. It binds, in any real democracy, both the Government and the governed. All must conform to the Constitution, and a constitution must above all, respect always the sovereign will and welfare of the people. It is the people who are the masters of the constitution, and not

vice versa whereby a government could in the name of the Constitution dictate and dominate over a people. When a constitution needs to be changed, the process must inevitably accompany the widest possible consultation with the people in all sorts of ways and in an atmosphere of full freedom. This is all the more important and necessary, when constitutional changes sought to be made are as widespread and deepening in their effect and impact as are outlined in the Swaran Singh Report.

This Bill goes even beyond the Swaran Singh Committee's Report. So, I want to conclude by saying that this Bill should not have brought here and it should not have been brought here in the manner in which it has been brought. The time is not ripe and it is antidemocratic. And, Sir, the anti-climax comes in clause 59 printed on page 20. I do not want to take the time of the House by referring to the whole Clause. We have read it. This Clause says....

MR. SPEAKER: Do not go into that.

SHRI P. G. MAVALANKAR: I am not going into details. I know that this is not the stage where we can go into details. But, my point is that Clause 59 printed on page 20 gives powers to the President to do everything with regard to constitutional provisions! Then, why are we sitting here? Then, why have at all a Parliament, if the President has to do everything and the Parliament is reduced not only to a non-entity but to an absurd position and humiliating situation also? It is neither honourable for the Members nor democratic for us to function in that kind of a position.

That is why I oppose this Bill which is sought to be introduced by Shri H. R. Gokhale.

MR. SPEAKER: Mr. Gokhale.

SHRI H. R. GOKHALE: Mr. Speaker, Sir... (*Interruptions*)

SHRI SAMAR MUKHERJEE: Mr. Speaker, Sir, we walk out in protest.

11.54 hrs.

At this stage, Shri Samar Mukherjee and some other hon. Members left the House.

SHRI H. R. GOKHALE: Mr. Speaker, Sir, at this stage, when the Bill is only for introduction, I do not want to make a very long speech. I will try to be brief and confine only to some of the points which are major and common in all the speeches. I might say there was nothing new. If you open the debates on the Twenty-fourth Constitution Amendment Bill which was passed by this House and the other House you will find almost exactly a reproduction of what has been said here today. Even some of the things which were spoken are irrelevant for discussion at this stage. In order to remove some misapprehensions which are deliberately sought to be created, I think, it is necessary to refer to some of them but before I touch those points I would refer to what Mr. Indrajit Gupta said with regard to the discussions which have been held with political parties by me and my colleagues before the Bill was finalised.

While it is true that the report of the Committee appointed by the Congress President and headed by Sardar Swaran Singh had been circulated and had become the basis of discussions generally yet it is not true that all the discussions were confined only to the points which were referred in Sardar Swaran Singh's report. To take the case of the party which is represented by Shri Indrajit Gupta, they had themselves given to us a printed memorandum containing suggestions for amendments to the Constitution and, I am sure, he will agree with me that many suggestions contained there in were quite different and apart from the recommendations made by the Swaran Singh Committee. We had not stopped discussion even on those

points. Moreover, at some stage in a matter like this Government has to make a decision. While the Congress President appointed this Committee and, I think, very rightly because the Congress party—as the party of the largest number of Members in this House—had to accept the responsibility of taking a lead in a matter of such vital importance. Therefore, it was in that sense, namely, the Congress as the largest party took the initiative of starting discussion on concrete recommendations made by the Committee headed by Sardar Swaran Singh. That was very useful because that in turn led to the constitution of such committees by other political parties including the Communist Party of India and other political parties who had made their own recommendations and everyone of which was considered and discussed when we held discussions with the opposition parties.

But even then it may be true there are some proposals here in this Bill which are not covered either in the Swaran Singh Committee report or were not covered in the suggestions made by other political parties. I am not only referring to CPI but to other political parties also.

Sir, it has been said that in a matter of this nature we must not rush through. That after the proposals of the Government are known there should be enough time for everyone concerned not only in this House but also outside this House to make their comments and suggestions in the light of what has been proposed for consideration in this House. That is why although ordinarily a Bill could have been introduced and passed that method was not adopted and all that is being done is to introduce in the House and discuss these proposals. That way enough time would be available to the Opposition parties as well as to those outside the House, namely, people at large to make their recommendation and comments and, if I may say so, even criticism with re-

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gard to the proposals contained in this Bill. Therefore, the time according to me is not gone. Even after this, the recommendations and suggestions can be made and I have no hesitation in saying that if the suggestions are worth considering they will be taken into account at the time when the Bill will be moved for consideration and finally for passing.

So this is all with regard to what my hon. friend, Shri Indrajit Gupta, said. But the other three or four speakers went into matters which, in my submission, are not at all relevant to the main issue when we take the Bill for introduction. But as I said earlier, some of these statements were made, I think, with a view to create misapprehension and misunderstanding in the minds of people with regard to the Bill. Therefore, while it may not be strictly relevant, I regard it as my duty to deal with some of them which may be relevant at this stage.

12 hrs.

It has been said by almost all those who spoke that the Prime Minister had said at an earlier stage that there should be a nation-wide debate. Undoubtedly so. She had said so, and everyone had thought that such a debate on a vital matter like this was absolutely necessary. But I must say that there has been a very good nation-wide debate on these proposals to amend the Constitution. I have myself seen thousands of articles appearing in big and small newspapers, big and small other journals dealing with these matters, and everyone of these comments contained in either the articles in the newspapers or in the journals had been considered by us before coming to some conclusion before the introduction of the Bill in this House.

SHRI S. A. SHAMIM: For the amendments.

SHRI H. R. GOKHALE: Not only that. There had been discussions in meetings also. I know that a large number of meetings were held all over India in Bar Associations and outside the Bar Associations, in other bodies, for discussing the constitutional amendments.

So I must repeat that it is entirely untrue that there has been no nation-wide debate. In fact, the debate has been nation-wide and has been very effective in the sense that it has brought to our notice many things which were relevant for being taken into consideration in formulating a Bill of this nature.

I know that reference was made to the banning of some meetings. Some members had written to me that some of the meetings at so and so places were banned. I had brought each of these cases to the notice of the Home Minister. I have been able to find out, and I know of some meetings personally, that under the guise of holding meetings for constitutional amendments, the meetings were sought to be used for entirely different purposes. This has happened in Delhi, this has happened in other places. And we have been told that the whole idea in some meetings was to create disorder by getting permission to discuss constitutional amendments. I am quite sure that even now after this, if the authorities concerned are satisfied that the meetings are really to discuss the constitutional amendments, no one will ban meetings genuinely intended for discussing constitutional amendments.

SHRI S. A. SHAMIM: Who will believe you, Mr. Gokhale?

SHRI H. R. GOKHALE: It has been said that there is a clause in this Bill relating to anti-national activities. If some hon. members want to say that anti-national activities should continue, that is a different matter. The whole thing is that if it is accepted that we must in our constitution have

a provision whereby activities which are in their very nature dangerous and detrimental to the nation's unity, to the nation's integrity and to its security and for such other matters. I wonder how anyone can take objection to the proposition that such activities which are basically anti-national ought to be prevented. But even then, if there is anything to be said with regard to the exact provision, that is a matter still open for discussion and can be considered when the Bill is taken up for consideration.

It has been said, as I expected would be said, that some hon. members are under detention. I think most of the members who have been detained must thank themselves because we know the manner in which while talking of democracy in this House for a length of time—for a considerable length of time—it was these members who had been using the very privilege of being members of this House for destroying the very democratic setup under the guise of saving it. Somebody said the leaders are in jail. I see most of the leaders have spoken on this. They are here, and almost all the parties who have been opposing have spoken on this Bill. I do not suppose that if in the larger interests of the country the detention of some people was justified, that can be enough ground for saying that a Bill of this nature ought not to be considered by this House.

Something was said about censorship. In the first instance, I must say that there is no pre-censorship now. They know it; they will not say it. With regard to censorship there is something like a law and all that the government, the ministry concerned had done is that they have only given guidelines and told the persons concerned what the law is. Acting under the law is entirely within the powers of the editors or other persons concerned with the publication of the newspaper or other journals. This is used as an argument though everything is reported. I know in Delhi, when constitutional amendments were

discussed all the proceedings of that body—it was not a body which could by any chance have been regarded as pro government; it was definitely anti government, all that they said about the Constitution, everything they said was reported in the Press and I had seen it myself. I do not think it is necessary for me to go into all the details.

The last but one speaker referred to the basic features or the basic structure of the Constitution. The hon. Member seems to know more than what the Supreme Court itself knows, because the Supreme Court in the judgement which I have read very carefully has not at all told us what are the basic features of the constitution. Where do we find the basic features? First of all I do not agree, with much respect to the Supreme Court, with the proposition that there is something like the basic features which could not be amended; I repeat what I have said in this House that everything in the Constitution is capable of amendment provided the due process has been followed. He says that the basic features an being sought to be amended. I say there is nothing; even if there is something called the basic features of the constitution, I do not think there is anything in the proposed amendment which affects the so called basic features of the constitution. We had had this experience looking at it from a very different point of view. When the 24th amendment Bill was moved, they said that there was the Golaknath case and they also said that it was an amendment of the fundamental rights. What happened? We went ahead in the exercise of our constituent power to amend the constitution by the 24th amendment. It is not Parliament, but it is the court which realised that what they had done in the Golaknath case was wrong and they revised the judgement with the result that all these can be subject matters for amendment. Even if some questions were raised, I have no doubt that the Supreme Court will again go into the question. What

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is not defined cannot exist and it is incapable of defining it. Therefore I am not worried at all with regard to the contention that the so-called non-existent basic features are not capable of amendment.

Now, the preamble That is again something which has been said in the Press. Somebody said that there is no debate. I read in the newspapers and journals articles written by people who have been very vocal about this, I do not want to mention their names but all of them had been against the view which had been taken by the government.

Their articles had been very elaborately printed in well known weeklies and monthlies in this country and one of them had said the preamble could not be amended. I do not know why it cannot be amended. In the Keshavanand Bharati Case, the Supreme Court held that the preamble is part of the Constitution. On what basis do they say that the preamble is not part of the constitution? I do not see any valid objection nor is there any validity in the objection, that the preamble is not part of the constitution and therefore it cannot be amended.

Most of the matters which have been referred to and which were relevant for a reply by me at this stage had been dealt with by me and I am quite sure that when this Bill comes up for consideration in this House at a later stage, every one of those points, I hope only relevant points, will be raised and will be taken into account by the government in deciding whether any changes are necessary or whether the Bill as it is can go through. Sir, I would request you to put the motion to the vote of the House.

MR SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

SHRI H R. GOKHALE: I introduce the Bill.

MR SPEAKER: Items 15, 16 and 17 are postponed and will be taken up tomorrow. I have got a request from Mr. Dinesh Bhattacharyya. We will take up item 18.

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

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K RAGHU RAMAIAH) Sir, I beg to move *

"That the Bill further to amend the Salaries and Allowances of Members of Parliament Act, 1954, be taken into consideration."

As I said the other day, this Bill has been brought in pursuance of the recommendations of the Joint Committee on Salaries and Allowances of Members. The Joint Committee made various recommendations which were considered by the government. Having considered those recommendations, the government have decided that the facilities, etc. embodied in this amending Bill may be agreed to.

The most important provision in the Bill relates to pension to ex-members. The Bill provides for a pension of Rs 300 for a member who concludes a five year term as a member, whether continuously or otherwise, whether as a member of Provisional Parliament or Constituent Assembly, whether partly as such member and partly as a member of the Council

*Moved with the recommendation of the President.