

correct, I feel that they should not come and ask for it. But it is the debt of the nation; the nation has to discharge its debt to them. In China I found that they opened a university for all those people who fought for freedom. Small peasants and others who did not know anything got education and training for some years and got employment. Every country has helped its freedom fighters in some form or other. Here also you must help them because it is a debt you owe them. They have done a sacrifice and they should not demand any recompense for it. But the Government should not just ignore what they have done. To obtain certificates they have to go to the District Magistrates or SDO. They face a lot of difficulties.

The hon. Minister himself comes from a family of patriots and freedom fighters. His father was my leader. When the Simon Commission visited Lucknow his back bone was injured by police lathi charge and all his life thereafter he was an invalid. He spent a large number of years in prison. So, he has got full sympathy with the sentiments with which I have moved this Bill and I am sure he will interpret the provisions of my Bill and my amendments in the light in which they had been given. The statement which the Government has given is too bald. It should be improved and the scheme should be implemented.

For all these reasons I have no reason to press my Bill to a vote and so I am withdrawing it.

MR. CHAIRMAN : Shri Daga has moved an amendment for circulation of the Bill for eliciting public opinion by 1st March, 1972. He is not here now. That date is already over and we may extend this date to 1st July, 1972. I hope the House agrees with it. So, I shall put this amendment to vote : The question is :

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 1st July, 1972."

*The motion was negatived.*

MR. CHAIRMAN : The question is :

"That leave be granted to withdraw the Bill."

*The motion was adopted.*

PROF. S. L. SAKSENA : I withdraw the Bill.

17'51 hrs.

## CONSTITUTION (AMENDMENT) BILL

(AMENDMENT OF ARTICLE 141 AND INSERTION OF NEW ARTICLE 143A ETC.  
BY SHRI C. M. STEPHEN

SHRI C. M. STEPHEN (Muvattupuzha)  
I beg to move :

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

I submitted the draft of this Bill on the 23rd June, 1971, and it was introduced on the 5th August, 1971. Subsequent to the introduction of this Bill, the Twentyfourth Constitution Amendment Bill came in, and this House in a historic act accepted that Bill, and that has now become part of the Constitution of India. Part of the purpose of my Bill was to undo the mischief that was done by the judgement in the Golaknath case, and to invest in parliament its inherent authority to amend the Constitution of India, including fundamental rights, but that is not the sole purpose and intentment of my Bill. Clause 6 of the Bill is covered by the Twentyfourth Amendment Bill, but the other provisions of my Bill are not covered.

Under the Constitution, there are three authorities which are given the obligation and the right to Safeguard the Constitution and to implement the provisions of the Constitution. One is the legislature which has got to enact laws in accordance with the provisions of the Constitution; the other is the judiciary which has to interpret the laws in the light of the provisions of the Constit-

[Shri C. M. Stephen]

ution, and those decisions have to be implemented; and the third is the President of India who is invested with the authority to guard and defend the Constitution of India. The legislature in enacting laws is guided by two considerations. One is article 37 which says that it should be guided by the Directive Principles enumerated in Chapter IV and the other is that it shall not pass any law under article 13 which is in contravention of the provisions of the fundamental rights. Whenever Parliament or a Legislature passes a law, it has to be assumed that it does so in full awareness of the obligations cast on the legislature. That is to say, when Parliament passes a law, it in effect does and act of interpretation also. That is to say, it takes cognizance of the question whether in framing a particular law and in passing a particular law, it is or it is not contravening article 13 of the Constitution. Having been satisfied that it does not contravene article 13, it passes a law. In that act, an act of interpretation is involved. So, in the exercise of the constitutional right vested in the Parliament or State legislatures by the Constitution, it interprets a particular provision of a Bill and satisfies itself that it does not contravene the provisions of the Constitution and passes it. That law comes to the Supreme Court. The Supreme Court in effect sits in judgment on the interpretation of a particular law by the Parliament or legislature. Both the constituent authorities are exercising functions lawfully vested in them and in exercising that authority, they come to a conflict. What exactly should be done in that case is the question to which we should address ourselves.

The question of constitutional law is a class different from the other laws. Our Constitution itself treats the question of constitutional law differently. For example, it is specifically spelt out in the Constitution that when the question of interpretation of the Constitution comes up, the Supreme Court shall constitute a Bench of five judges or more. That is to say, the Constitution takes the constitutional law as a class apart and takes sufficient caution by providing that the interpretation of constitutional law and its enunciation is made by a Bench larger than the ordinary. When a series of precedents are laid out, so far as the Constitutional law is concerned, the Supreme Court has got the jurisdiction to lay out the law from time to time unnumbered by whatever a previous Bench has said. They have got complete freedom even otherwise. They say, article 141 does not apply to the Supreme Court. In the matter of constitutional law, both the Indian law as well as the American law take the position that constitutional law is fundamental and any interpretation of the constitutional law shall not be fastened on the nation by the rule of precedents.

MR. CHAIRMAN : He may continue on the next day.

28 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Saturday, March 18, 1972/ Phalgun 28, 1893 (Saka)*