

(2) (i) A copy of the Punjab Public Service Commission (Limitation of Functions) First Amendment Regulations, 1970, published in Notification No. G.S.R. 30 in Punjab Government Gazette dated the 6th March, 1970 under clause (5) of article 320 of the Constitution read with clause (C) (iii) of the Proclamation dated the 15th June, 1971 issued by the President in relation to the State of Punjab. [*Placed in Library. See No. LT—743/71.*]

(ii) A statement (Hindi and English versions) explaining the reasons for laying the above Notification before Parliament and for not laying the Hindi version thereof. [*Placed in Library. See No. LT—744/71.*]

#### COTTON TEXTILE, (CONTROL) THIRD AMDT. ORDER

THE DEPUTY-MINISTER IN THE MINISTRY OF FOREIGN TRADE (SHRI A. C. GEORGE) : I beg to lay on the Table a copy of the Cotton Textiles (Control) Third Amendment Order, 1971 (Hindi and English versions) published in Notification No. S.O. 2199 in Gazette of India dated the 5th June, 1971, under sub-section (6) of section 3 of the Essential Commodities Act, 1955. [*Placed in Library. See No. LT—745/71.*]

#### MESSAGE FROM RAJYA SABHA

SECRETARY : I have to report the following message received from the Secretary of Rajya Sabha :

"In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Gujarat Appropriation Bill, 1971 which was passed by the Lok Sabha at its sitting held on the 23rd July,

1971, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

#### COMMITTEE ON PRIVATE MEMBERS BILLS AND RESOLUTIONS

##### FIFTH REPORT

SHRI G. G. SWELL (Autonomous Districts) : I beg to present the Fifth Report of the Committee on Private Member's Bills and Resolutions.

12.53 hrs.

#### CONSTITUTION (TWENTY-FOURTH AMENDMENT) BILL\*

MR. SPEAKER : Shri Gokhale.

SHRI BIRENDER SINGH RAO (Mahendragarh) : Sir, I rise on a point of Order.

MR. SPEAKER : Unless the Bill is moved, on what will you raise a point of Order ?

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

MR. SPEAKER : Motion moved :

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

SHRI P. K. DEO (Kalahandi) : Sir, I oppose the Bill.

MR. SPEAKER : Three or four Members have sent their names. They wanted to oppose it. They are : Shri P. K. Deo, Shri Frank Anthony and Shri Piloo Mody.

MANY HON. MEMBERS : Shame. Shame.

\*Published in the Gazette of India Extraordinary Part II, section 2, dated 28-7-71.

**श्री अटल बिहारी वाजपेयी (ग्वालियर) :** अध्यक्ष महोदय, यह 'शेम, शेम' क्या हो रहा है क्या इस सदन में ऐसे गम्भीर मामलों पर शान्त चर्चा होगी या नहीं ? बहुमत भी इन के साथ है और शोरगुल भी यही करते हैं ।

**MR. SPEAKER :** Shri Narayana Rao and Shri Deshmukh have sent their chits too late ; they came after the time. I am sorry, only three will be allowed.

**SHRI BIRENDER SINGH RAO :** Sir, I want to raise a point of order before this matter is considered and I would request for your ruling. My point of order is whether a Member of this House, and least of all a Minister, can move for the introduction of a measure in violation of the oath or affirmation under which he has here undertaken to owe allegiance to the Constitution as by law established.

**SHRI S. A. SHAMIM (Srinagar) :** Sir, I have another point of order whether a Member can raise a point of order which is not a point of order.

**SHRI BIRENDER SINGH RAO :** We have taken an oath of allegiance to the Constitution of India as by law established, before taking our seat in this House, on the microphone, that I shall bear true faith and allegiance to the Constitution of India as by law established. We also took an oath or made an affirmation when we filed our nomination papers. I would like to vote for a progressive measure but I would like to know if I violate my oath of allegiance to the Constitution, is there any penalty that I might suffer from. My fear is that I might lose my seat in this House. I would like to be assured by you on this. The Constitution has been sanctified by the Supreme Court of India. You have got to give your ruling on this point and I hope, you will give a ruling which may carry your name in history as the greatest Speaker in India.

**अध्यक्ष महोदय :** राव साहब को बहुत दूर की सूझी है ।

**SHRI BIRENDER SINGH RAO :** I want your ruling, Sir.

**Mr. SPEAKER :** My ruling is that the point of order raised by you is not a point of order.

**SHRI BIRENDER SINGH RAO :** If it is not a point of order, what would be a point of order ?

**SHRI P. K. DEO :** Mr. Speaker, Sir, I deem it my duty to oppose it under proviso of rule 72 of the Rules of Procedure and Conduct of Business as the Bill seeks to initiate legislation which is outside the legislative competence of the House. More or less it is a carbon copy of Shri Nath Pai's Bill which was introduced in 1967 but which never saw the light of the day.

**SHRI AMRIT NAHATA (Barmer) :** It had seen a full day.

**SHRI P. K. DEO :** Rather, another rigorous provision has been made to curtail the power of the President under this Bill. As pointed out by my hon. friend, Shri Birender Singh Rao, the Constitution, which is sovereign and to uphold which.....

**SHRI AMRIT NAHATA :** No ; the people are sovereign.

**SHRI P. K. DEO :** ...we have subscribed our oath or affirmation, contemplates three organs of the Government—the judiciary, the executive and the legislature—with specific duties assigned to them. Here, the Supreme Court has decided on some vital issues. To question the procedure of the Supreme Court or to call the verdict as a narrow majority, as has been mentioned in the Statement of Objects and Reasons, is most uncharitable. As most of the Members know, they have come to this House with a minority electoral support and issues have been decided even by a fraction of a vote. Now, to call the judgment of the Supreme Court as a narrow-majority judgment is most uncharitable.

13.00 hrs.

**SHRI S. A. SHAMIM :** It was a political judgement.

**SHRI P. K. DEO :** The Supreme Court has decided on some interpretation of law in face of the judicial verdict. It will be a sad day if this leads to the confrontation of the

two organs of the Government. It will lead to usurpation of judicial function by the legislature.

SHRI S. A. SHAMIM : It will lead to preservation.

SHRI P. K. DEO : This running commentary should stop.

The amending power under article 368 is not a sovereign power but a power which is sovereign within the scope of the power conferred by the Constitution. Article 13 (2) clearly states that the State shall not make any law which takes away or abridges the right conferred by Chapter III. Any law in contravention of this article or to the extent of the contravention is void.

SHRI S. A. SHAMIM : It is an anachronism.

SHRI P. K. DEO : So, I say, this Bill takes away and abridges the fundamental right which has been enshrined in Chapter III of the Constitution and is void.

The fundamental rights are the modern name for natural rights, the primordial rights for the development of human personality, the rights which enable a man to chalk out his own life in the manner he likes best. Besides, our Constitution includes rights of minorities and other backward communities which should not be subjected to the tyranny of the majority. All these rights have been cited in articles 25 to 30 of the Constitution, Part III.

The whole idea is that not even a single man should be lynched by the majority. The theory is a compact based on a variety of considerations, the most important being the protection of minorities. Once the temporary majority within the legislature is permitted to tinker with the fundamental rights, there is no saying where the mischief will end. The "property" is a dirty word today. But "liberty" may become a dirty word tomorrow. Can our Parliament replace the Republican form of Government by a monarchical one? Can we change the democratic character of the Constitution by a dictatorship or its secular character by theocracy?

In this regard, I would like to quote from a distinguished Law Minister, Mr. Ashok Sen, our distinguished colleague in this House.

This is what he has said on Nath Pai's Bill.

He says :

"It seeks to make Parliament supreme and not the Constitution so that an irresponsible Parliament with an irresponsible majority may sweep away the very basis of our Constitution as it did happen in Germany when the third Reich was established and the dictatorship of Hitler was built up on the ashes of the Weimer Constitution....."

"...which was destroyed by the majority of the Fascist Party in Germany's Reichstag which employed the amending process to destroy the very structure on which the Weimer Constitution was erected."

The same drama was repeated in post-war Indonesia and Ghana and is going to be enacted here.

SHRI B. P. MAURYA (Hapur) : On what point of order is he being allowed to speak, Sir?

SHRI P. K. DEO : I am building up my case in regard to the inalienability of the Fundamental Rights.

MR. SPEAKER : Building up your case for what? Do you think that by citing these things you can convince them?

SHRI P. K. DEO : I am trying to convince them?

When the world to-day is moving to provide supranational guarantees for fundamental rights and minority safeguards, our taking steps to abridge or curtail our fundamental rights is a retrograde step. Recently, the United Nations General Assembly adopted two covenants—one on civil and political rights and the second on social and cultural rights.....

SHRI BHAGWAT JHA AZAD (Bhagalpur) : Are they relevant, Sir?

SHRI P. K. DEO : Those in the former covenant are identical with our fundamental rights.

**SHRI R. S. PANDEY (Rajnandgaon) :** Why is he trotting out all those borrowed ideas and wasting our time ?

**अध्यक्ष महोदय :** इस में जो बेसिक चीज है, उस को लीजिए। आप क्या कह रहे हैं, कहां हिटलर तक पहुंच गये हैं। न हिटलर मदद को आयेगा और न कोई और आयेगा।

**SHRI P. K. DEO :** Even our great visionaries and freedom fighters dreamt of fundamental rights as early as 1895. Lokmanya Tilak visualised a constitution guaranteeing to every citizen "Freedom of expression, inviolability of his house, right to property and equality before law."

Similarly, Mrs Annie Besant's Commonwealth of India Bill enumerated identical provisions...

**MR. SPEAKER :** The hon. Member's time is up.

**SHRI P. K. DEO :** Sir from these Opposition Benches roared one man. He was the late-lamented Motilal Nehru...

**AN HON. MEMBER :** Let his speech be laid on the Table of the House, Sir, instead of wasting the time of the House.

**SHRI K. NARAYANA RAO (Bobilli) :** My contention is that the proviso to rule 72 is not applicable. The operative part relates to legislative Lists in the Seventh schedule. Constitutional amendment is not legislation. Therefore, only a brief discussion would lie under the operative part but not a full discussion.

**SHRI P. K. DEO :** Sir, a full discussion should be permitted.

**MR. SPEAKER :** The rule is very clear and I really wonder why Maharaja Sahab does not follow it. It says :

"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."

**SHRI P. K. DEO :** I demand that...

**MR. SPEAKER :** I have not been able to understand from the hon. Member...

**SHRI P. K. DEO :** Without hearing me, how will you understand ?

**MR. SPEAKER :** I kept on hearing ; I keep on hearing you. You went to Germany, you went to Hitler, and so many other places ; I thought you would come to rules and the Constitution. Kindly be brief.

**SHRI P. K. DEO :** Yes, Sir, I will be brief.

43 years ago, from these opposition Benches, Pandit Motilal Nehru roared these words :

"It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances."

When the Constitution was on the anvil, the late-lamented Jawaharlal hehru, father of the present Prime Minister, while moving the Chapter on Fundamental Rights, said,

"Fundamental Rights should be looked upon not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the constitution."

**AN HON. MEMBER :** Let him quote Mrs. Indra Gandhi also.

**MR. SPEAKER :** He may try to conclude...

**SHRI P. K. DEO :** I will conclude within a couple of minutes.

Among those Members who served in the sub-Committee of Fundamental Rights, 5 out of 12, are still living. They hold identical views. They are : Acharya Kripalani, Shri Masani, Shri Jairamdas Daulatram, Mrs. Hansa Mehta and Sardar Harnam Singh. The makers of the Constitution intended that the integrity of the Constitution should be

preserved against hasty or ill-considered changes. Especially in our country, with our varying and widely divergent creeds and ideologies and religions and languages, our country is pre-eminently a country where inalienable fundamental rights are an absolute necessity. Fundamental rights are the conscience of the Constitution and they are sacrosanct, not like pie-crusts, to be broken as convenient. We have been talking of a Bill which Parliament cannot even unanimously pass.

They have been talking of their massive mandate, I would like to speak something in this regard and straighten the records. I would like to quote from the Election Commission's own report. Only 54.81 per cent went to the polls. Of them only 43.64 per cent voted for P.M.'s party. She has got hardly less than 24 per cent electoral support.

It is this which they call their massive mandate...

MR. SPEAKER : Now, the hon. Member should conclude.

SHRI P. K. DEO : I would like to differentiate between constituent power and legislative power. They are banking on the constituent power. In this regard, I would like to quote a paragraph from Shri K. Subba Rao. What is constituent power? This is what he says :

"It is a power to elect representatives charged with making or changing the Constitution. This power rests with the people. They can elect a Constituent Assembly and confer the power on them. The Constituent Assembly, after making the Constitution becomes *functus officio*. It cannot confer a wide power of amendment on the Parliament, but that power of amendment exercised under the Constitution, and therefore, is not a constituent power. To put in other words, amending power is a power under the Constitution, whereas the constituent power is a power outside the Constitution. The former is given to Parliament and the latter rests with the people."

Constituent power can only be acquired by a referendum. This has not been done.

The people are sovereign. I quite appreciate. But Parliament's sovereignty is limited within the four corners of the Constitution.

MR. SPEAKER : Will the hon. Member please sit down now or not?

SHRI P. K. DEO : I am just concluding.

MR. SPEAKER : He is going off the point. I am sorry I cannot allow him to say anything more.

SHRI P. K. DEO : It is an important debate.

MR. SPEAKER : He can say all this during the second and third reading, not now.

SHRI P. K. DEO : Kindly allow me to complete the sentence.

MR. SPEAKER : That is not relevant.

SHRI P. K. DEO : I am concluding. I oppose this Bill as being beyond the legislative competence of the House. If the intention is to cover the lapses and the deficiencies of the Government on the home front, in the economic front and in the foreign front, then I have nothing to say.

MR. SPEAKER : Shri Frank Anthony.

SHRI FRANK ANTHONY (Nominated—Anglo-Indians) : If I may seek a clarifications from you, actually I had given notice of my intention to oppose the Constitution (Twenty-fifth) Amendment Bill. I hope you would not shut me out from that...

MR. SPEAKER : If he does not want to speak now, I shall give him time later on.

SHRI FRANK ANTHONY : I hope you would not shut me out from that.

MR. SPEAKER : No, I would not.

SHRI FRANK ANTHONY : I think that the other Bill is also being introduced today. I shall speak on that. I shall oppose it. In certain circumstances I would be prepared not to oppose this. That is why I want to reserve my opposition only for the Constitution (Twenty-fifth) Amendment Bill.

MR. SPEAKER : Now, Shri Piloo Mody.  
The hon. Member is absent.

श्री अटल बिहारी वाजपेयी (ग्वालियर) :  
अध्यक्ष महोदय, मैं आपसे दूसरी बात कह रहा  
हूँ।

एक सम्मानित सदस्य ने यह आपत्ति की  
है कि इस विधेयक पर विचार करना सदन की  
कानूनी क्षमता के अन्तर्गत नहीं है। मेरा निवेदन  
है कि आप इस पर पूरी चर्चा का मौका दें।

आप नियम देख लीजिए :

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

क्या आप इस विधेयक पर चर्चा करने के  
हमारे अधिकार को कुंठित करना चाहते हैं ?

MR. SPEAKER : 'May.'

श्री अटल बिहारी वाजपेयी : मेरा आपसे  
निवेदन है कि आप चर्चा करने का मौका दें।  
यह बड़ा महत्वपूर्ण विधेयक है। हर तरह का  
पहलू इस विधेयक पर चर्चा में सामने आना  
चाहिए। आप चर्चा का मौका देंगे तो मैं भी  
अपनी बात कहूँगा।

MR. SPEAKER : I have been studying  
this aspect of the question and I am satisfied  
that there is competence.

श्री अटल बिहारी वाजपेयी : क्या आप  
चर्चा का अधिकार नहीं देना चाहते हैं ?

MR. SPEAKER : No, No.

श्री अटल बिहारी वाजपेयी : आपके निर्णय  
के खिलाफ हम को सदन से बाहर जाना पड़ेगा।  
...(व्यवधान)... करने से कैसे रोक सकते हैं ?  
क्या आप यह समझते हैं कि विषय महत्वपूर्ण  
नहीं है।

MR. SPEAKER : I did not get any inti-  
mation from him.

श्री अटल बिहारी वाजपेयी : मैंने पहले पक्षों  
आप को लिख कर भेजी या नहीं, यह सवाल नहीं  
है। अब जब एक मेम्बर ने आपत्ति कर दी है  
तो आप सदन को चर्चा करने का मौका दे सकते  
हैं। इस विधेयक में कई पहलू हैं। यह जरूरी  
नहीं है कि माननीय पी० के० देव ने जो कहा है  
मैं उससे सहमत हूँ। मुझे अपने विचार रखने का  
अधिकार होना चाहिए। अध्यक्ष महोदय, यह  
विधेयक पास किया जाय इस के लिए सत्तारूढ़  
दल की मैं जल्दबाजी समझ सकता हूँ। मगर  
आप चर्चा करने का मौका नहीं देना चाहते।

MR. SPEAKER : He did not oppose on  
this ground.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय,  
अगर आप चर्चा का मौका नहीं दे रहे हैं तो हम  
सदन के बाहर जा रहे हैं।

SHRI S. A. SHAMIM : I have a sub-  
mission to make.

MR. SPEAKER : The question is ..

[*Shri Atal Bihari Vajpayee and some  
other hon. members then left  
the House*]

MR. SPEAKER : The question is :

"That leave be granted to introduce a  
Bill further to amend the Constitution of  
India—that is, the Constitution (Twenty-  
fourth Amendment) Bill."

*The motion was adopted.*

SHRI H. R. GOKHALE : I introduce  
the Bill.

13.24 hrs.

#### CONSTITUTION (TWENTY-FIFTH AMENDMENT) BILL\*

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