15.02½ hrs.

REPRESENTATION OF THE PEOPLE AMENDMENT BILL*

[Insertion of new sections 77A and 168A]

श्री मधु लिमये : (बांका) : उपाध्यक्ष महोदय, मैं लोक प्रतिनिधित्व अधिनियम, 1951 का और संशोधन करने वाले विधेयक को पेश करने की अनुमति चाहता हूं ।

MR. DEPUTY-SPEAKER. The question is :

"That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1951."

The motion was adopted.

श्री मधु लिमये : मैं विधेयक पेश करता हूं ।

15.03 hrs.

STATE BANK OF INDIA (AMENDMENT) BILL*

[AMENDMENTS OF SECTIONS 17, 19 ETC.]

श्री मधु लिमये (बांका) : उपाध्यक्ष महोदय, मैं भारतीय स्टेट बैंक अधिनियम, 1955 का और संशोधन करनेवाले विधेयक को पेश करने की अनुमति चाहता हूं ।

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the State Bank of India Act, 1955."

The motion was adopted.

श्री मधु लिमये : मैं विधेयक पेश करता हूं ।

15.03 hrs.

ALIGARH MUSLIM UNIVERSITY (AMENDMENT) BILL*

[AMENDMENT OF LONG TITLE AND PREAMBLE, ETC.]

SHRI C. H. MOHAMED KOYA (Manjeri): I beg to move for leave to introduce a Bill further to amend the Aligarh Muslim University Act, 1920.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Aligarh Muslim University Act, 1920."

The motion was adopted.

SHRI C. H. MOHAMED KOYA: I introduce the Bill.

MR. DEPUTY-SPEAKER: Shri Yamuna Prasad Mandal—absent. Shri Prasannabhai Mehta—absent. Shri Vishwanath Pratap Singh—absent.

15.04 hrs.

CONSTITUTION (AMENDMENT) BILL

[*Amendment of article* 124] by Shri Atal Bihare Vajpayee—*Contd.*

MR. DEPUTY-SPEAKER: We will now take up further consideration of the Constitution (Amendment) Bill moved by Shri Vajpayee. Out of the five hours allotted for the Bill we have taken 4 hours and 25 minutes. There is a balance of 35 minutes. Two more members have given their names. Shri Mishra.

SHRI SHYAMNANDAN MISHRA: (Begusarai): Mr. Deputy-Speaker, Sir, I do not support this Bill of the hon. Member, Shri Vajpayee, although I am completely in agreement with the spirit of the Bill.

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*Published in Gazette of India Extraordinary, Part II, Section 2, dated 30th November, 1973

[Shri Shyamnandan Mishra]

The spirit of the Bill, as I see it, is that the powers of the Government in the matter of appointment of the Chief Justice should not be left completely in the hands of the Government, that it should not be arbitrary and that the Government must not be allowed to do anything prejudicial to the independence, integrity and impartiality of the highest court of justice. That is, in fact, the objective of his Bill.

I also do not agree with the view underlying the Bill. The hon. Member, Shri Vajpayee, says in the Statement of Objects and Reasons that the powers of the Government are unlimited in this matter. I do not consider the powers of the Government to be unlimited. I think, those powers are qualified powers and they are conditioned by certain circumstances. They have to be conditional on certain circumstances and, therefore, it is not correct to take a view that the powers of the Government are unlimited.

Then, there is a third reason for not agreeing with this Bill and that is that the hon'ble Member, Shri Vajpayee, lays stress on seniority being the condition and he thinks that that has not been the practice so far. In fact, the Government itself had conceded in the affidavits submitted before the High Court of Delhi that it has been the practice so far but there have been certain departures, only one or two. The Government has conceded that seniority has been the criterion so far in most of the cases. Therefore, it is my respectful submission that the Court is bound to insist on seniority unless there are certain circumstances which warrant a departure from it. The usual rule would be that the Government has to conform to the criterion of seniority. So, the objective of the Bill of the Hon'ble Member, Shri Vajpayee, is not in danger so much, although due to the last instance which came in the month of April, there has been some doubt cast about it.

Why do I say that the Government's powers are qualified in this; because, I think, the governing clause in the Constitution is article 124. It is quite clear even from the warrant of appointment that it is under article 124 that the President appoints the Chief Justice of India. That being so, the conditions laid down in article 124 have to be fulfilled. If the Government does not fulfil those conditions, then the Government violates the Constitution. There must be some way found for making the Government adhere to the provisions of the Constitution.

My submission is that the Government is now taking a view which is completely at variance either with the letter or the spirit of the Constitution. It is at variance because the letter and the spirit of article 124 say that the President shall consult the Judges of the Supreme Court and of the High Courts in the matter of appointment of Judges and the Chief Justice of the Supreme Court. That is what article 124(2) clearly lays down.

Now, the position that has been taken by the overnment is and, particularly, as it has been revealed in the affidavits filed before the High Court of Delhi by the hon. Minister of Law....

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE) Sir, with utmost respect, I would request him not to make a reference to that because that matter is *sub judice*. So far as my reply is concerned, I am going to speak under certain constraints because the matter is in court. A reference has been made to affidavits and the plea of the Government and so on. I wonder whether it is desirable at this stage.

SHRI SHYAMNANDAN MISHRA: The affidavit has been filed by the Government in this case. I am only referring to the affidavit. Is affidavit not a public document?

SHRI ATAL BIHARI VAJPAYEE (Gwalior): It has been published.

SHRI SHYAMNANDAN MISHRA: Is affidavit not a public domument? So far as my inference from it is concerned, that may be challenged by him. But the

affidavit is a thing of which I am bound to take notice in this matter. Since that is a public document, no one should take any objection to it. I am not trying to give any opinion on the case that is pending before the High Court. I am only trying to argue a particular position. If Hon'ble Law Minister takes this position, he should have come before the House earlier and said that this Bill of the Hon'ble Member Shri Vajpayee could not be discussed.

My position is that the Government is departing from the Constitution; Government is violating the Constitution both is letter and in spirit. If hon. Member Shri Vajpayee could make the Government adhere to the letter and spirit of the Constitution, then there would not be any difficulty and the Government's power would not be considered to be that arbitrary. I am making that point. I am not referring to any particular case. But the Government has taken this position and they did that also on the floor of the House earlier. (*Interruptions*) Government has taken the stand, and particularly the Law Minister, that the appointment, removal and resignation of the Chief Justice is a part of his business and he has to take a decision in the first instance, and in the second and third instances decisions have to be taken by the Prime Minister of India and the President of India respectively; these are the three persons who matter, and if any consultation is necessary, probably, according to the Law Minister, it is amongst these three dignitaries that I have mentioned....

AN HON. MEMBER: Tin Murti.

SHRI SHYAMNANDAN MISHRA: He has taken this position that according to the allotment of business to his Ministry the appointment, removal and resignation of the Chief Justice is his sole responsibility. He has not said in his affidavit that the consultations required by the Constitution in article 124 have been held. He has not taken that position. In fact, the Joint Secretary of his Ministry has shown systematically from the very beginning that in none of the cases consultations have been held. He has said that. Therefore, my submission is that we must find a way of seeing to it that the Government does not depart from the Constitution.

Then, again, there seems to be a conflict between the opinion of the hon. Law Minister and the hon. Prime Minister in this matter. The hon. Prime Minister had said in the other House while replying to Mr. A. P. Chatterjee that, in the matter of appointment of the Chief Justice, 'appropriate consultations' are held. These were the words of the hon. Prime Minister in the other House. I will produce the whole thing later. The hon. Prime Minister has said that 'appropriate consultations' are held in this matter. But the hon. Law Minister says that the consultations are not needed at all; the Joint Secretary of his Ministry says that the consultations are not necessary and, in fact, they have not been held since the inauguration of the Constitution.

I would not like to go into the facts of the case, I do not know, whether the consultations have been held or not or whether on the basis of the files in the Ministry it can be averred that no consultations have been held. This is none of my business, but I am not bound to go by the statement or the affidavit made by the Joint Secretary in this matter before the hon. High Court.

The limited point that I am trying to make here is that Art. 124(2) makes it mandatory to hold consultations. If it is not so, why are these words included in article 124(2)? Are these words useless? Are these words redundant? If that be so, if that is the contention of the hon. Law Minister, then one can go into the intention of the constitution-makers. What was their intention? Here I would like to quote the report of the *Ad hoc* Committee of the Constituent Assembly. Then, I will also quote Dr. Ambedkar in this matter.

The *Ad hoc* Committee of the Constituent Assembly which was appointed for this purpose, that is, with regard to the Supreme Court and so on says:

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> "We do not think that it will be expedient to leave the power of appointing Judges of the Supreme Court to the unfettered discretion of the President of India."

that is what the *Ad hoc* Committee of the Constituent Assembly says. And what did Dr. Ambedkar say about it.

> "It seems to me in the circumstances in which we live today where the sense of responsibility has not grown to the same extent that we find in the United States, it would be dangerous to leave the appointments to be made by the President without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day."

That is what the chief architect of the Constitution says. Now, I would not leave it to the hon. Law Minister, Mr. H. R. Gokhale, to interpret the Constitution as he likes and violate flagrantly the spirit of the Constitution. Here, the main architect of the Constitution says that this matter cannot be left to the sweet will of the executive and the powers have to be hedged by certain reservations, qualifications and limitations. And even the larger body, the *Ad hoc* Committee which was appointed for going into the constitution of the Supreme Court and so on has also given its opinion on the same lines. Therefore, it was clearly the intention of the Constitution that these consultations with the Judges of the Supreme Court and the High Court had to take place in the matter of appointment of any Judge, including the Chief Justice of India.

It does not seem to be the case of the Government that 'Judge' does not include the Chief Justice of India. Probably, they cannot take that view because wherever, either in the matter of removal or disqualification, the word 'Judge' occurs, it has been clarified that 'Judge' includes the 'Chief Justice of India'. So, here also, it must be deemed to include the Chief Justice of India. It is conclusively proved that the Chief Justice of India is included for the purpose of Art. 124 of the Constitution in the word 'Judge' because the warrant of appointment expressly mentions that it is under Art. 124 that the Chief Justice of India is appointed. So, I say that warrant of appointment should be conclusive in this matter.

Thus my contention is that if we are able to make the Government adhere to the provisions of the Constitution, then much of the mischief can be averted. But, since the Government is going away with the violation of the Constitution, we find ourselves in a difficulty.

What is the way of doing it? I would suggest one thing. Let it not be said by the Chair, with all respect to the Chair, that in the matter of a violation of the Constitution, we have to go to the Supreme Court for the remedy. Now, the Parliament of India is the preserver and defender of the constitution and there cannot be a greater bastion for the rights of the people than the Parliament of India. Now, should the Parliament of India be told by the Chair or the other side, that 'If you think that there has been a violation of the Constitution, you should seek a remedy in the Supreme Court'?....

MR. DEPUTY-SPEAKER: I have not said it.

SHRI SHYAMNANDAN MISHRA: You have not. But many a time we have been told.

There should be a Committee of the House to see whether from time to time, violations of the Constitution occur or not. We make ourselves completely ridiculous in the eyes of the Court when some of our laws are found to be at variance with the Constitution or in conflict with the Constitution. Therefore, I would submit that there should be a Committee of the House to go into complaints about the violations of the Constitution.

Government should be made to adhere to the Constitution. The words used by the hon. Prime Minister are 'after appropriate consultations.' Now we find

ourselves completely at sea, whom to believe and whom not to believe. I have got here, when I was looking through my papers.....

SHRI H. R. GOKHALE: Please read both the question as well as the answer

SHRI SHYAMNANDAN MISHRA: Shri A. P. Chatterjee asked.....

MR. DEPUTY-SPEAKER: I would like to point this out. There are certain limitations of the rules here. In this case it might be treated as a statement of policy on the part of the Prime Minister in what she said to the other House, but.....

SHRI SHYAMNANDAN MISHRA: This is in answer to a question.....

MR. DEPUTY-SPEAKER: Under the rules of this House we cannot refer to proceedings in the other House, except when it deals with a statement of definite policy by a Minister in that House. And, if you are to quote the proceedings in order to elaborate a point, or procedure, then the rules say that you should get the prior permission of the Speaker or of the Chair. I would like to point out this rule to you. I don't think it is desirable.....

SHRI SHYAMNANDAN MISHRA: I will come to the rule also.....

MR. DEPUTY-SPEAKER: You need not quote the proceedings of the House. You have said that the Prime Minister said so. That should be enough.

SHRI SHYAMNANDAN MISHRA: The proceedings of this House and of the other House are all published in the newspapers. Do you think the proceedings of the House must not be given any weight or importance?

MR. DEPUTY-SPEAKER: No, no. Just hear me; I have got your point. Just a minute, Mr. Mishra, I will come back to you. I am only pointing out to you the limitations of the rule here.

SHRI SHYAMNANDAN MISHRA: The spirit of the rule is important.

MR. DEPUTY-SPEAKER: I have said again and again, these rules are no longer adequate and we have to re-think about them. But that is a different matter. So long as the rule is there, we have to follow it. The rule says that no speech made in the Council shall be quoted in the House 'unless it is a definite statement of policy by a Minister'.

SHRI SHYAMNANDAN MISHRA: It is a Minister.

MR. DEPUTY-SPEAKER: I have permitted you to that extent. Then the proviso says:

> "Provided that the Speaker may, on a request being made to him in advance, give permission to a member to quote a speech or make reference to the proceedings in the Council, if the Speaker thinks that such a course is necessary in order to enable the member to develop a point of privilege or procedure."

This is what the rule says and I would request you not to over-do it.

SHRI SHYAMNANDAN MISHRA: That is precisely my point. This is Government's policy.....

MR. DEPUTY-SPEAKER: This relates to privilege or procedure?

SHRI SHYAMNANDAN MISHRA: This relates to policy.

MR. DEPUTY-SPEAKER: Only 'privilege or procedure' not of policy. Anyway, you referred to a statement which the Prime Minister has made. So, I permitted you to that extent. Let us not go into details.

SHRI SHYAMNANDAN MISHRA: Since this had been raised, I would quote what the Prime Minister said:

> 'In any case appointments of judges to the High Courts and Supreme Court as well as of Chief Justice are made by the President in accordance with

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> the relevant provisions of the Constitution and after appropriate consultations.'

Please permit me to go to the end. I am taking my stand on the relevant provisions of the Constitution and she has said:

> 'Government have no intention to amend these provisions.'

That is what the hon. Prime Minister has said.

So, it is my respectful submission that there is a conflict between the statements of the hon. Law Minister and the Joint Secretary of the Law Department on the one hand and the statement made by the Prime Minister on the other.

The Prime Minister seems to be in favour of observing the practice that has prevailed so far, that is, of holding consultations with the appropriate judges in the High Court and the Supreme Court. So, to my mind, the relevant article of the Constitution is being violated, and there does not seem to be any safeguard that in future the relevant provisions of the Constitution and their requirements would not be violated.

I would therefore, submit that the House should constitute a Committee to go into the complaints of the violations of the Constitution would be met, that they would also be covered by that Committee. I, therefore, request Shri Vajpayee not to insist on his Bill being passed. I would only like to have the assurance from the other side that the requirements of the Constitution would be met, that they would see to it that there are no complaints about the provisions in the Constitution not being fulfilled, that they would not take a stand as they have been taking in certain matters and that they should go by what the Prime Minister had said only some time back.

MR. DEPUTY-SPEAKER: Well, I think we have completed five hours. Even if I call the Minister now, that would be in excess of the allotted time. I think I should call him now. Shri Gokhale.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Deputy-Speaker, Sir, the debate has been long from the point of view of the length of the time which it has taken. But, it has not been long from the point of view of the points raised in the debate. I am sorry to say, after carefully listening to all the speeches in the House, that most of the points are repetitive of what had been stated earlier when the problem of what is called 'supersession of judges' was discussed in this House at great length. Even in the course of this debate, there was an unavoidable overlapping in the points between various Members. Therefore, I do not wish to deal with each and every point excepting those which appear to me to be of vital and fundamental importance for the purpose of this discussion on the proposed amendment of the Constitution, that is, Article 124, moved by the hon. Member, Shri Atal Bihari Vajpayee.

Let me at the very outset come to the point raised just now by the hon. Member with regard to the construction of Article 124 of the Constitution. As I said earlier, I feel myself to be in a little bit of constraint because of the fact that the precise question, namely, the intrepretation of Article 124 is pending adjudication before the High Court in Delhi. I still doubt, with all respect to the hon. Member, whether references to affidavits filed, either by me or by anybody else, or to the affidavits filed by the petitioners, were appropriate in this debate. But, references having been made, I shall still avoid referring to the affidavits. I shall deal generally with the aspects to which the hon. Member referred.

Sir, this point was raised in the course of the debate when the question of the so-called supersession of the judges also was discussed. I have stated before the House that the appointment which was made was fully in consonance with the requirements of the Constitution as it is today, and I reiterate that position. I have stated, particularly, with reference to article 124(2) of the Constitution, that if a judge of the Supreme Court was to be appointed, there was an obligation

on the President to consult the Chief Justice of the Supreme Court; President may consult the other judges of the Supreme Court or the High Court as he may deem necessary but, there was no such obligation when a person who is already a judge of the Supreme Court and who has gone through all the formalities at the time of his appointment is required to be appointed the Chief Justice of India. The question whether you are right or I am right is going to be decided finally by the Court. You cannot assume that your interpretation is final; nor can I assume that my interpretation is final. I have placed the matter before the House at the time this matter was discussed. I have said also that assuming that here was some necessity of consultation, the provisions under Article 124 of the Constitution were not mandatory but were directory.

It is well known that even when similar language is used in the Constitution, the courts have construed similar language as imposing a directory duty and not a mandatory duty. Nothing more than this has been stated before the Delhi High Court.

It has been stated before the Delhi High Court, firstly, that in the appointment of the Chief Justice, whose appointment has been challenged in that case, there was no obligation to consult, and even if it were to be so, that was not an obligation which was a mandatory obligation but it was a directory or an optional obligation.

SHRI SHYAMNANDAN MISHRA: He has not even said that in his affidavit.

SHRI H. R. GOKHALE: On this matter, I know my affidavit much better because I have sworn it.....

SHRI SHYAMNANDAN MISHRA: I have it before me here.

SHRI H. R. GOKHALE: If my hon. friend is going to quarrel here on the interpretation of the affidavit, I would submit that I know what I have said in my affidavit, and I am stating what I have stated in my affidavit in the court, and it is neither any Member of the House who is going to determine, nor I who is going to determine whether I am right or somebody else is right, that is going to be determined by the court. That is why I am saying that it is extremely difficult for me to say anything more on the constitutional position in the course of this debate, because the matter is pending in the court and is *sub judice*.

What we have stated in the affidavit is this. It is true that we have said in the affidavit that all along, ever since the Constitution came into force, this is the way the Constitution has been interpreted. There has been no consultation in the matter of the appointment of the Chief Justice till a point of time when some Chief Justice started sending letters to the Government recommending his successor for appointment, but no formal or informal consultation was done by the Government at any time before in the appointment of the Chief Justice of India That is also what has been brought to the notice of the High Court in the petitions which are pending.

The third thing is that we have not said that seniority has been the practice although it is conceded that all appointments done were in fact of persons who were senior. The explanation given is this that seniority does not debar a person from being considered for appointment to the post of the Chief Justice. In fact, seniority, if at all, might be one point plus in favour of the appointment, all other circumstances and factors taken into account. Therefore, even when previously the appointment of senior people was made, it was not on the basis of seniority alone, but as will be shown when the appropriate time comes in the High Court, it was on the basis of suitability and merit and that when the senior person was found to be suitable for appointment, he was appointed as the Chief Justice of India. Therefore, what was conceded was not that seniority has become a convention. What was conceded and what was stated was that in fact senior people were appointed, because in each individual case, on a consideration of that

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case it was thought that the appointment from the point of view of merit and suitability was an appropriate appointment. I do not wish to dwell at any further length on the constitutional aspect. Suffice it to say.....

SHRI SHYAMNANDAN MISHRA: What did Dr. Ambedkar say?

SHRI H. R. GOKHALE: I have great respect for Dr. Ambedkar. I think he was greater than all of us in the matter of constitutional drafting and constitutional interpretation. I have read the debates of the Constitution-making body..

SHRI SHYAMNANDAN MISHRA: I have read out from them.

SHRI H. R. GOKHALE: He has read part of it, but I have read everything out of it and I know. But howsoever eminent a person, when it comes to the interpretation of the Constitution,—my hon. friend is a very eminent lawyer and he knows it—the courts have said, including the Supreme Court, that the debates in the Constituent Assembly do not lead support to an interpretation; when words mean a particular thing, they mean that thing, and you cannot give any other interpretation.

SHRI SHYAMNANDAN MISHRA: Here, words mean that consultations have to be held. This is what the words say.

SHRI H. R. GOKHALE: But how can it end here? That is what he may think, but I do not think so.

SHRI SHYAMNANDAN MISHRA: The words are here. Can he erase those words?

SHRI H. R. GOKHALE: We cannot proceed further this way, because that is the point on which he and I respectfully differ, and we must agree to differ on that point.

SHRI SHYAMNANDAN MISHRA: By simply wishing away the words?

SHRI H. R. GOKHALE: Unless everyone of us agree in the court that his verdict is the final verdict, we shall have to proceed on the basis that there is a point of view which he is putting forward, with which I respectfully disagree. That is all I can say at the moment, unless he says that what he says is the final thing which I am not in a position to say today.

SHRI SHYAMNANDAN MISHRA He wants to go neither by the words nor by the interpretation of the architect of the Constitution.

SHRI H. R. GOKHALE: That is again his view. What I have said is, and I reiterate it, that we have gone by the words of the Constitution and we still maintain and submit that what has been done all along and what has been done recently in the appointment of the latest Chief Justice of India has been in accordance with the constitutional provision.

This is a matter which is *sub-judice* and I do not wish to say anything further on it. I did not wish that a discussion should take place on this issue. But since the question was raised, I—content myself with stating the constitutional position.

The Bill requires the appointment of the Chief Justice of India to be done on the basis of seniority. Now, it is not possible to make such a provision. Probably the hon. member has in mind a doubt of suspicion that if this is not done, appointment will not be done on merit but will be done on ulterior or other considerations.

SHRI ATAL BIHARI VAJPAYEE: That is what you have done.

SHRI H. R. GOKHALE: With respect, the hon. member forgets that if you put seniority as an obligatory pre-condition for the appointment of the Chief Justice, you have to appoint the seniormost man; even if he is mentally or physically incapable even if he is otherwise so inferior for the purpose of the appointment. You have necessarily to appoint him. It is a recognised fact that while all the Judges

of the Supreme Court are eminent Judges, there is a difference between Judge and Judge, and the question of the appointment of the Chief Justice is not entirely the same as the question which arises at the time of the appointment of a Judge of the Supreme Court. So it is not possible to make a constitutional provision which will put the operation of this article in a straitjacket leaving no scope for discretion for the appointing authority to decide if the appointment is appropriate or not. I am, therefore, not in favour of the amendment which puts the constitutional provision in a straitjacket.

There have been instances here and abroad when for genuine reasons it has not been possible to consider the seniormost Judge for appointment as the Chief Justice. I do not wish to refer to any example by name, but there have been instances when for mental incapacity or physical incapacity, it was not possible to consider the seniormost Judge for the appointment.

SHRI ATAL BIHARI VAJPAYEE: Only one instance.

SHRI SHYAMNANDAN MISHRA: So the exception proves the rule.

SHRI H. R. GOKHALE: Then it was said—I am not referring only to the speeches made today but the speeches made on the last two previous occasions; some of the major points referred to have been noted by me; I wish to refer to only some of them—that the Constitution did not make a specific provision for the appointment of the Chief Justice because it was thought that only the seniormost Judge shall be appointed as the Chief Justice. I would submit it was the other way round. It was not so laid down because the constitution-makers recognised the fact that in the appointment of the Chief Justice of India, a certain cushion, a certain degree of discretion was necessary to be left with the appointing authorities in order that the most appropriate appointment be made to the high office.

Then it was said—this had been said several times before and answered also several times—that Government would like to appoint those people who they think would help them. Then it was said that those judges who decided against Government in the constitutional case that was going on were superseded. All these points have been dealt with. All I can do now is to categorically refute this suggestion.

It was asked: why was not the announcement of the appointment made before the judgment in the constitutional case became known? Now this was a double-edged weapon. The constitutional case had gone on for a great length of time, probably for an unprecedented length of time in the history of the world, definitely in the history of the Supreme Court of India. So much labour, time and money had been spent on it. We were expecting a decision one way or the other. If we had done something whole the case was in progress and if the three Judges who later resigned had chosen to resign at that time, the same people would have turned round and said: when you found that the case was going against you, you wanted to scuttle the judgment. Therefore, although it was open to Government to consider this matter earlier, they decided to wait until the hearing of the case was over and the judgment was announced. It was only after the judgment was delivered that it was done. But unfortunately it had to be done immediately because the time between the termination of the hearing and pronouncement of the judgment and the occurrence of the vacancy of the Chief Justice was very short, a margin of 24 hours or so, with the result that the decision which Government had to take had to be announced immediately after the judgment became known.

While it is said now: you did it because you knew that these three people decided against you, it would have been said it they had resigned in the middle: you did it because you know the case was going against you and you wanted to scuttle the progress of the case; you did not want the judgment to be delivered. Even after

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the judgment came we knew it was a narrow escape upto a point. In a case where 13 judges participated no less than 11 judges delivered the judgment. Even among the 11 judges there was difference of opinion leaving a margin of only one. We have taken considerable time to find out ultimately as to what the judgment meant. We are still working on it. And therefore if we had done so while the case was going on it would perhaps have been legitimatey said: Because you suspected you are not going to get a clear verdict in your favour you did this thing so that three judges who were superseded will resign and the whole thing will be over and you would be required to constitute a new Bench and ask the judges to sit again and hear the case again. Therefore, this is a double-edged weapon. In any case an attack could have been made on the Government, as is made now, because an announcement was made after the judgement came.

It was said that in the open court, it was argued that if Parliament's power to amend an provision of the Constitution was not conceded it would lead to an open conflict between the judiciary and the executive. This is not something which has been said new in this court or in India. It has been said repeatedly all over the world that in such cases if judicial verdicts continuously go on making pronouncements which thwarted the accepted policy of the nation as expressed through their elected representatives the people did not wait for the progress. What they do is that they throw away the laws and the Constitution which come in their way. In France a similar situation had occurred. Everyone knows it. That led to the abolition of the normal judicial hierarchy and its substitution by what is known as Counsel d'etat. The courts went on delivering judgments against the acts of the Government and the policies and programmes of the Government became infructuous because of the courts. The clamour for revolution of the people was this. If the court says that we cannot do this, what we will say is we do not want this court at all. What was argued was: that in order that the rule of law should be sustained, in order that in a democracy, judiciary, executive and legislators should function in their respective fields and do their work in harmony with each other with the result that a clash or confrontation between the two of them or three of them is avoided. That is all that was meant when it was said before the court that if Parliament's powers to do what it thought was right in the interest of the nation was denied the unfortunate consequence will only be that Parliament would say: we will not accept your verdict. That is the lesson of history to which the attention of the honourable judges was drawn. Nothing unusual has been said in the Supreme Court. In this case fortunately long elaborate and written arguments had been furnished to the Supreme Court. Therefore, what was argued was not only what was orally heard. What has also been written in black and white is there. It is a part of the record of the case in Supreme Court and, therefore, it is easy to verify. Arguments of this type had been made whenever serious challenges to the sovereignty of the people, to the plenary right of the people to decide their destiny has been made by the Judiciary howsoever high it may be.

That is why I take your permission to remind the House of the prophetic words which were uttered and which were referred to in this House several times by Pandit Nehru in the course of the debate on the constitutional amendments. He pointed out that no judiciary however high it may be could come in the way of progress of the country and he warned us that ultimately it was the aspirations of the people which would surmount all other considerations and it was only the adherence to the progress which sought to fulfil those aspirations which would have precedence over any other considerations.

Unfortunately reference was made to several points which were regarded very small and they were referred to in the course of the earlier debate also. It was said that this was done because of the malice. It was done malafide because one of the resigned judges had unfortunately

decided a case in which the Prime Minister was a party. An answer to this has been given before. All that I can say is that in any case that was a Bench of three judges and not only that judge who was fortunately or unfortunately a signatory to the judgment and resigned from the Supreme Court. The other two judges are sitting in the Supreme Court. They are there. They are some of the best judges in the Supreme Court. I refute and deny the allegations that the decisions in that case had anything to do whatsoever with the decision on the question as to who should be appointed the Chief Justice of India.

Last time a reference was made to an extract by Mr. Viswanathan. Unfortunately he is ill and is not present today. He obliged me by telling me at that time the source of this quotation and I was able to get the book. This is from a book by Mr. Justice Hegde under the caption *Crisis in Indian Judiciary*. Before I come to those quotations, I am constrained to say that it is something contrary to accepted judicial behaviour that a judge who has delivered a judgment in a case canvasses support in favour of the view he has taken after the delivery of the judgment.

SHRI SHYAMNANDAN MISHRA: Has he no right to defend himself? You are attacking him all right. Has he to go undefended?

SHRI H. R. GOKHALE: Certainly not. But after the judgment is deliered, so far as that case is concerned, he becomes functus officio. It has never been the practice that a judge, after delivering a judgment, canvasses support for his view, before or after retirement. In this book, he has given certain arguments which he has put in the mouth of the Government, which means probably the Attorney General or the other counsel for the Government. I am constrained to say that the way in which it has been depicted is to say the least, a very distorted version of what was argued before the court. What was argued before the court was that the power of Parliament to amend any provision of the Constitution was a plenary, unrestricted power. From the persons appearing against the Government as well as from some judges, questions like these were put to the counsel for Government. "What, for example, if you decide to abolish the tenet of secularism? What, for example, if you decide to substitute democracy by autocracy or theocracy? What, for example, if you decide to abolish Parliament?" Questions like these were put to show that the width of power of Parliament claimed by the Government was not feasible, because it will lead to consequences which were undesirable, according to the questioners. That was the tenor of the argument. The answer on behalf of the Government was, ultimately whose wisdom are you questioning? If the entire parliament which represents the crores of people of this country is assumed to be capable of running amuck, no judge howsoever eminent will be in a position to protect the people of this country. Ultimately the safety of the people of the country is not in the hands of 1, 2 or 13 judges of the Supreme Court but is in the wisdom and conscience of the representatives of the people who represent them. What you are really doing is, you are doubting the wisdom of the representatives of the people, a thing which has never happened and which nobody contemplates. Questions were put as if ridiculous arguments were made on behalf of the Government. The only difference between us and those who argued against us was, we had complete faith in the people, with the result that we never believe that the people will be misled into behaving in the way in which you are afraid they will behave.

Therefore, there is no fear of putting the entire power, the plenary and wide power of amending any provision of the Constitution, in the hands of the people; this was the manner in which the argument was made. In fact, even if Shri Justice Hegde's quotation was read, what precedes and what follows and not the only nine or ten points which were raised last time by the hon. Member, it was quite clear that he was trying to show that if this plenary power was accepted, it would lead to a situation where the

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basic democracy and polity which we have accepted would also be demolished. But who is to protect it? Not the Judges. The polity is going to be protected by the people and their representatives. If the people acted in their wisdom, there is nothing on this earth which can allow any such nonsensical thing to be done by this Parliament. That was the background in which these arguments were made. I am sorry that only a part of the quotation was read.

SHRI SHYAMNANDAN MISHRA: May I seek one clarification from the hon. Law Minister? Last time when he spoke on the Bill or the resolution of the Hon'ble Member, Shri Bibudhi Mishra, he did agree with the Judges that there could be no intention of going against the basic structure of the Constitution or against the whole democratic framework and so on. He did take that stand. Therefore, what he is saying just now is conflicting with what he had said earlier.

SHRI H. R. GOKHALE: Not at all. If the hon. Member will look at the judgment of the Supreme Court, there is a balance of six on one side and six on the other with one in between. Six were clearly of the view that Parliament has got the power and it can amend everything and six were of the view that Parliament cannot amend everything and that there are inherent limitations on the power of Parliament to amend certain provisions of the Constitution. One who was in the middle said that Parliament can amend everything except, what he calls, the basic features of the Constitution he has also said what are the basic features and what are not the basic features, although not exhaustively, unfortunately. He said, for example, if you say you do not want democracy, it cannot be done because it is a basic feature of our Constitution. I said I have no quarrel with that proposition. It is so because I believe that our people, and the representatives of our people, will never come to this stage where they will say "no, we do not want democracy in our country." Therefore, I am not afraid of that observation. Then the learned Judge said, for example "you cannot substitute democracy by autocracy". I do not think it was necessary for him to do so, because I do not think that such a situation can ever arise in this country, because I have complete faith in our people; they will see to it that democracy sustains in this country.

He has said categorically, in any case, that the fundamental rights in Part III of the Constitution are not the basic features of the Constitution. To that extent, even the seventh Judge, who was in the middle, is really joining the other six who were completely in favour of giving Parliament the power to amend all the provisions of the Constitution, at least the right to amend the fundamental rights in Part III of the Constitution. He has also said, for reasons which are known because of the historic background, that property rights are undoubtedly not basic features of the Constitution. It was in that context that I was saying that although the judgment does make some reservation that there are some basic features which we cannot amend, if we look at the illustrations which he has given, I should have no objection. Because, I have my faith, more than in what the Judges have said, in what the representatives of the people will do in the course of the years to come.

As I have said earlier, I certainly do not subscribe to the view that anybody will ever think of abandoning secularism, or will ever think of changing the basic tenets of democracy in the constitutional framework. It is a suspicion or fear which, with the utmost respect to those who have expressed it, is based on lack of faith in the wisdom and the responsibility of the people. That is the point which I made in the earlier debate, whenever the occasion arose, and I do make that point even today.

Then, it was argued that there must be some other mechanism for the appointment of Judges of the Supreme Court. Outside the House and inside the House also suggestions had been made. It was said that there must be a Committee. One hon. Member said that there must be three seniormost Judges of the Supreme Court who should make a

Panel, who should send it to the Bar Council of India who, in turn, should select from the Panel and then the President should appoint them after ratification by Parliament. In the first instance, apart from the fact that such a suggestion is unworkable, I say, all these suggestions had been contemplated and many other suggestions had been contemplated and discussed in the Constituent Assembly.

Apart from the fact that it is unworkable, I cannot think of Government abdicating its responsibility and sharing it with somebody else. If the Government does right, it is right and it is supported by the people. If the Government does anything wrong and, if the people regard it as wrong, the Government which is backed by the majority of the people has to face the people. Therefore, I cannot accept a proposition that in the matter of basic responsibilities of the appointment of Judges or, for that matter the Chief Justice of India, the Government can abdicate its own responsibility and sharing it with anyone else.

Here, for example, three senior most Judges, one of whom or, perhaps, all of whom will themselves be aspirant for nomination to the position of the Chief Justice of India are to recommend a Panel. To me, it seems to be something unworkable. If you think of a Panel, surely, you do not think of people who are themselves involved in the appointment or who will be involved in the appointment. Therefore, I have no hesitation in rejecting these suggestions outright.

In the Constituent Assembly, three suggestions were made. One was that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice of India; the other was that the appointment made by the President should be subject to confirmation by two-third majority vote in Parliament and the third was that they should be appointed in consultation with the Council of States. These are the three out of many alternatives which were discussed in the Constituent Assembly and were turned down. Ultimately, what was said was that the inbuilt mechanism which is there in the provisions of the Constitution, namely, in certain circumstances, you have an obligation to consult, is itself enough restraint on appointments which are undesirable. The word "concurrence" was taken away and substituted by the word "consultation". This is very significant.

I am not in a position to accept any of the suggestions that the Government should evolve any other machinery for the appointment of Judges so that the Government abdicates its responsibility and leaves the appointment of the Judges of the Supreme Court or the Chief Justice of India to some other outside authority.

Most of the other points that were referred to were, as I said, the same which were referred in the earlier debate. They have been answered on more than one occasion in the House. As I said, it is a matter which is in court and I do not want to go either into the legality or the factual aspect of the dispute in any greater detail than what I have done now.

I strongly commend to the House that it will not accept the proposed Bill of the hon. Member, Shri Vajpayee.

श्री अटल बिहारी वाजपेयी (ग्वालियर) : उपाध्यक्ष महोदय, मेरे विधेयक पर जिन माननीय सदस्यों ने अपने विचार प्रकट किये हैं, मैं उन्हें धन्यवाद देना चाहता हूं मैं सदन को यह स्मरण दिलाना चाहूंगा कि यह विधेयक 1971 में पेश किया गया था और मैंने विधेयक के उद्देश्यों में कहा है कि उसी समय यह आशंका पैदा हो रही थी कि सरकार प्रबुद्ध न्यायपालिका पर के नाम ऐसे कदम उठायेगी या उठा सकती है जिनसे न्यायपालिका की स्वाधीनता पर, निष्पक्षता पर आघात हो। बाद की घटनाओं ने इस आशंका की पुष्टि कर दी ।।

16.00 hrs.

उपाध्यक्ष महोदय, विधेयक के विरोध में एक बात कही गई कि अगर वरिष्ठतम जज

[श्री अटल बिहारी वाजपेयी]

को सुप्रीम कोर्ट मुख्यन्यायाधीश बना दिया जायगा, तो ऐसे मामलों का क्या होगा जिनमें कोई जज अपंग हो जाता है या उसका दिमाग ठीक से काम नहीं करता है ? इस तरह का एक उदाहरण हो चुका है और सब जानते हैं कि उन चीफ जस्टिस महोदय ने अपनी इच्छा से त्याग पत्र दिया था। लेकिन यह तर्क दिया जा सकता है और दिया गया है कि अगर कोई त्याग पत्र से इन्कार कर दे तब क्या होगा ? मेरा निवेदन है कि इसमें से रास्ता निकालने का तरीका यह नहीं है कि सरकार चीफ जस्टिस की नियुक्ति के अमर्यादित अधिकार अपने हाथ में लेले । उसका एक तरीका है और उसकी व्यवस्था हमारे संविधान में की गई है यूनियन पब्लिक सर्विस कमीशन के बारे में जो प्रावधान हैं उनमें एक प्रावधान यह भी है अनुच्छेद 317(3) जिसे मैं उद्धत करना चाहता हूं :

"Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

is in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body."

हमने अपने संविधान में इस बात की व्यवस्था की है कि अगर कोई ऐसा व्यक्ति हो जो अपने दायित्व का ठीक से पालन नहीं कर सकता तो राष्ट्रपति उसे हटा सकते हैं।

SHRI A. K. M. ISHAQUE (Basirhat): They stand on totally different footings; one is Public Service Commission and the other is Chief Justice of Supreme Court.

श्री अटल बिहारी वाजपेयी: मैं उत्तर दे रहा हूं इस आपत्ति का कि अगर कोई जज जो चीफ जस्टिस बनाया गया है वह दिमाग से या शरीर से ठीक न हो तो क्या किया जाये मेरा कहना है कि आप वरिष्ठतम जज को चीफ जस्टिस बनाने का फैसला कर लीजिए और उसके साथ संविधान में यह संशोधन भी जोड़ दीजिए कि राष्ट्रपति को यह अधिकार होगा कि अगर ऐसा चीफ जस्टिस इनफर्म तो माइन्ड से हो या हो बाडी से राष्ट्रपति उसे हटा सकते हैं।

SHRI A. K. M. ISHAQUE: He cannot remove them without impeaching.

श्री अटल बिहारी वाजपेयी: यह तो संविधान में संशोधन करने वाली बात है।

मुख्य न्यायाधिश की नियुक्ति वरिष्ठता के आधार पर होगी यह बात गत 25 वर्ष तक सर्वमान्य रही यहां मैं 'कास्टीट्युशनल ला आफ इंडिया जिसके लेखक है श्री एच० एम० सीरवई जो हमारे विधि मन्त्री के मित्र उन्होंने यूनियन जुडीशियरी के चैप्टर के अन्तर्गत जो लिखा है, उसको उद्धत करना चाहता हूं :

"The provisions for the appointment of the Chief Justice of the Supreme Court and the Chief Justices of High Courts do not call for any discussion since, by convention, the seniormost judge is appointed as the Chief Justice. The convention is based on the view that, on the whole, the interests of judicial administration are better served by eliminating the exercise of discretionary power in the appointing authorities than by the search for the best man."

यह श्री सीरवई का अभिमत है। सरकार संविधान के निर्माण से लेकर विगत कुछ महीनों तक इससे सहमत रही और बाद में सरकार ने वरिष्ठतम जज को चीफ जस्टिस बनाने की परिपाटी का परित्याग कर दिया।

अभी विधि मन्त्री ने जो भाषण दिया उससे लगता है कि वे चीफ जस्टिस की नियुक्ति के अमर्यादित और असीमित अधिकार चाहते हैं। इसीलिये मैंने यह संशोधन किया है जिसके अनुसार सरकार को बांधा जाना चाहिये कि केवल सीनियर मोस्ट जज चीफ जस्टिस हों। हमारे मित्र श्री मिश्र

जी ने संविधान की जो व्याख्या की है उसमें उनका कहना है कि जज के अन्तर्गत मुख्य न्यायाधिश भी आता है और उसके अनुसार उसकी नियुक्ति में उपयुक्त सलाह से काम किया जाना चाहिये उनकी व्याख्या को यदि विधि मंत्री मान लेते तो मेरे विधेयक की आवश्यकता ही नहीं थी। (व्यवधान) विधान में यह स्पष्ट नहीं है कि वरिष्ठतम जज चीफ जस्टिस बनाया जायेगा, उसमें दुविधा है और उसी का लाभ यह उठाते है मेरा कहना है कि यह बात दो टूक कर दी जानी चाहिये।

इस मुद्दे पर जो यह कहते हैं कि मुख्य न्यायाधीश की नियुक्ति के बारे में हमने विचार-विनिमय नहीं किया वे गलत कहते हैं वे यह भी कहते है कि हमने किसी मामले में विचार विमर्श नहीं किया उनका कहना हैं कि रिटायर होने से पहले चीफ जस्टिस सरकार को चिठियां लिखा करते थे, सिफारिश करते थे, कि मेरे बाद किसको चीफ जस्टिस बनाया जाये। मैं समझता हूं यह तथ्यों के विपरीत है। एक मामला मुझे मालूम है जब चीफ जस्टिस मि० कानिया रिटायर हो रहे थे और उनकी जगह किसी बाहर के व्यक्ति को चीफ जस्टिस बनाने का सवाल आया तो सुप्रीम कोर्ट के सभी जजों ने विरोध प्रकट किया था, त्याग पत्र देने की धमकी दी थी। मैं जानना चाहता हूं अगर उनसे सलाह नहीं की गई थी तो उन्हें पता कैसे लगा कि बाहर का व्यक्ति आने वाला है और जो वरिष्ठतम जज है वह चीफ जस्टिस नही बनाया जायेगा?

दिल्ली हाई कोर्ट में सरकार द्वारा दाखिल हलफनामे की मैं चर्चा नहीं करना चाहता था लेकिन चर्चा निकल पड़ी है अतः मैं भी कुछ कहुंगा वह दस्तावेज पढ़ कर मुझे ताज्कुब हुआ उसमें सरकार की तरफ से यह भी अस्वीकार कर दिया गया है कि जो जज "सुपर्सीड" किये गये थे वे एमिनेन्ट जजेज थे।

The Government denies that the Judges who have been superseded were eminent Judges.

वे सुप्रीम के जज में, उन्हें आपने सुप्रीम कोर्ट में जज बनाया था, उनकी योग्यता देखकर बनाया था उनको चीफ जस्टिस नहीं बनाया यह अलगबात है लेकिन क्या अपने पक्ष को पुष्ट करने के लिये हाई कोर्ट में यह एफिडेविड देंगे कि वे जजेज एमिनेन्ट जजेज नहीं थे?

SHRI A. K. M. ISHAQUE: He was not so eminent as to become the Chief Justice.

श्री अटल बिहारी वाजपेयी: आपने एफिडेविड पढ़ी ही नहीं है।

यह बात बहुत आपत्तिजनक है। विधि मंत्री ने अटार्नी जनरल के एफिडेविड को अपनी एफिडेविड मान लिया है और उस एफिडेविड में यह बात कही गई है इस से यह सन्देह पुष्ट हुआ है, यह धारणा बलवती हुई है कि जिनको आप ताक पर रखा जिन्हें सुपरसीड किया उन्हें आप सजा देना चाहते थे फंडामेन्टल राइट्स के मामलेमें सरकार के विरोध मे निर्णय देने के लिये मुझे ताज्जुब है विधि मन्त्री महोदय ने स्वर्गीय श्री मोहनकुमार मंगलम के भाषण के बारे में एक शब्द कहना ठीक नहीं समझा है। मेरे मित्र श्री माठे ने कहा जज ऐसे होने चाहिये जिनका दर्शन संविधान का दर्शन होना चाहिये। अगर यह बात उसी दिन कही जाती तो इतना वितंडावाद खड़ा नहीं होता लेकिन श्री मोहन कुमार मंगलम ने कहा था कि हमें ऐसे जज चाहिये जो सरकार की मदद करें, हमें ऐसे जज चाहिये जो फार्वर्ड लुकिंग हों लेकिन फार्वर्ड लुकिंग का मतलब क्या है? चीफ जस्टिस हिदायतुल्ला ने इसी पर टिप्पणी की थी कि जज फार्वर्ड लुकिंग हों या लुकिंग हों कि रिटायर होने के बाद किसी कमीशन में जगह मिलेगी या नही। लेकिन विधी मंत्री महोदय इस मामले पर बिल्कुल चुप हैं। उन्होंने इस बहस में और सवालों का जवाब तो दिया लेकिन इस सवाल पर चुप्पी साध ली कि क्या सरकार यह चाहती है कि सुप्रीम कोर्ट के जज और मुख्य न्यायाधीश

[श्री अटल बिहारी वाजपेयी]

सत्तारूढ़ पार्टी के दर्शन से बंधे हो या संविधान के दर्शन से बंधे हो ?

SHRI H. R. GOKHALE: I have said it so many times.

SHRI ATAL BIHARI VAJPAYEE: Please say it once more.

SHRI H. R. GOKHALE: I have said it so many times.

श्री अटल बिहारी वाजपेयी : अभी विधि मंत्री ने हवाला दिया है कि एटार्नी जनरल की ओर से क्या कहा गया है सुप्रीम कोर्ट में वे जस्टिस हेगड़े को कोट न करें, मैं आल इंडिया रिपोर्टर की कापी लाया हूं इसमें जजमेन्ट में जो कुछ कहा गया है वह उद्धृत करना चाहता हूं।

श्री एच० आर० गोखले : वही मैं ने पढ़ा है ?

श्री अटल बिहारी वाजपेयी :

I am reading from the A.I.R. Report It says:

> "The respondents claim that Parliament can abrogate fundamental rights such as freedom of speech and expression, freedom to form associations or unions and freedom of religion. They claim that democracy can even be replaced and one-Party rule established. Indeed, short of repeal of the Constitution, any form of Government with no freedom to the citizens can be set up by Parliament by exercising its powers under Art. 368."

उपाध्यक्ष महोदय, सरकार की तरफ से यह कहा जाना कि पार्लियामेन्ट की प्रतिष्ठा को बढ़ाने वाली बात नहीं है उल्टे यह सरकार के इरादों के बारे में संदेह पैदा करने वाली बात है यह पार्लियामेन्ट चुनी जाती है अलग मुद्दों को लेकर विधि मंत्री महोदय बोले रहे थे तो पार्लियामेन्ट और पीपुल को इक्वेट कर रहे थे । विधि मंत्री महोदय को याद होगा कि जब कांस्टीट्यूशन अमेंडमेंट बिल इस सदन में आया था तो मैं ने कहा था कि अगर आप फंडामेंटल राइट्स को एबरोगेट या अब्रिज करना चाहते हैं तो आप ओपीनियन पोल कीजिये, रेफरेन्डम कीजिये लेकिन यह कहना कि हर पांच साल बाद जो पार्लियामेंन्ट बनती है और जो अलग मुद्दों पर बनती है वह संविधान की आत्मा को ही नष्ट कर सकती है, गलत है। चुनाव में फंडामेंटल राइट्स कम किये जाये या बढ़ाये जायें, यह सवाल कभी नहीं पेश किया जाता है।

SHRI H. R. GOKHALE: This was placed in the manifesto.

SHRI ATAL BIHARI VAJPAYEE: But, your manifesto laid emphasis on *garibi hatao* and not abrogation of Fundamental Rights.

इसलिये मैं ने कहा था अगर आप इस मुद्दे पर जनता क राय लेना चाहते हैं तो उससे कहिये कि हम अभिव्यक्ति की स्वतंत्रता का गला घोंटना चाहते हैं, आप की राय है या नहीं ?

उपाध्यक्ष जी, मेरा कहना है कि पार्लियामेंट अपने दायरे में सीमित है। जिस दिन पार्लियामेंट इस लोकतन्त्र को तानाशाही में बदलने का निर्णय करेगी जिस दिन यह पार्लियामेंट नागरिकों के मूलभूत अधिकारों को समाप्त करने का प्रयत्न करेगी उसी दिन पार्लियामेंट अपना रिप्रेजेन्टेटिव कैरेक्टर छोड़ देगी । अगर आपको ऐसा काम करना है तो आप को जनता के पास जाना चाहिये कांस्टीट्युएंट एसेम्बली बुलाना चाहिये,नये संविधान का निर्माण करना चाहिये लेकिन पांच साल के लिये कुछ विशिष्ट मुद्दों पर चुना गया सर्जन इस संविधान के मूलभूत आधारों में परिवर्तन नहीं कर सकता ।

लेकिन 368 के अन्तर्गत इसी अधिकार का दावा किया जा रहा है। इसी अधिकार को चुनौती दी गई और मैं उन जजों को बधाई देना चाहता हूं जिन्होंने यह कहा कि पार्लियामेंट कांस्टीट्यूशन के बेसिक कैरेक्टर में परिवर्तन नहीं कर सकती। कोई भारत के लोकतन्त्र को राजतंत्र में नहीं बदल सकता। जिस दिन यह पार्लियामेंट ऐसा करेगी उस दिन पार्लियामेंट नहीं रहेगी लेकिन सरकार की तरफ से ऐसा क्यों कहा गया आखिर अटौनी जनरल को सुप्रीम कोर्ट में ऐसी अल जलूल बातें कहने की जरुरत क्यों हुई जो बात आप के मन में नहीं है, दिमाग में नहीं है, जैसा आप कह रहे हैं, या नहीं भगवान जाने, मैं अंतर्यामी नहीं हूं उसे आप कहते क्यों हैं इससे संदेह पुष्ट होता है। आपके मन में कुछ है इसीलिये आप ने कहा था कि पार्लियामेंट को अधिकार है चाहे लोकतंत्र को खत्म कर दे। यह अधिकार पार्लियामेंट को किसी ने नहीं दिया।

श्री एम० राम गोपाल रेड्डी (निजामाबाद) : मैं अपने मकान का पूरा सामान बाजार में रख सकता हूं। मगर नहीं रखता।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष जी, यह मकान नहीं है और न माननीय रेड्डी की दुकान है। यह भारत की सर्वोच्च प्रतिनिधी संस्था है। अपने दायरे में स्वाधीन है, सुप्रीम कोर्ट अपने दायरे में स्वाधीन है और इस को सदन सुप्रीम कोर्ट द्वारा की गई संविधान की व्याख्या को मानना पड़ेगा। अगर पार्लियामेंट चाहे तो संविधान में संशोधन कर सकती है। लेकिन उस संशोधन को फिर अदालत के सामने अपना सर झुकाना पड़ेगा। शायद इसी-लिए आप सुप्रीम कोर्ट में ऐसे जज चाहते हैं जो हां में हां मिलायें। मैं इस के लिए दर्वाजा बन्द करना चाहता हूं। वरिष्ठतम जज को चीफ़ जस्टिस बनाने की बात स्वीकार कर लीजिए। अगर उस में कोई कमी है तो एक संशोधन और किया जा सकता है कि अगर कोई चीफ़ जस्टिस इनफ़र्म हो बौडी में या माइण्ड में, जैसे कम्पट्रोलर और आडिटर जनरल के लिए भी किया है ....

श्री मूल चन्द डागा (पाली) : अगर दकियानूसी ख्यालात का हो तो।

श्री अटल बिहारी वाजपेयी : अगर दकियानूसी ख्यालात का है तो वह सुप्रीम कोर्ट तक पहुंचा कैसे ? आप उस को सुप्रीम कोर्ट तक पहुंचा सकते हैं, मगर चीफ़ जस्टिस नहीं बना सकते ? (व्यवधान) और फिर वह दकियानूसी है या नहीं यह कौन तय करेगा। दकियानूसीपन क्या है यह कौन तय करेगा ? यह क्या राज्य करने वाले करेंगे ?

हमारे डायरेक्टिव प्रिन्सिपल्स में कहा गया है कि ऐग्जीक्यूटिव और जुडिशियरी का सैपरेशन होगा। उस दिन कांग्रेस के मेम्बर बड़े भाषण दे रहे थे कि फ़ंडामेंटल राइट्स नीचे हैं, डायरेक्टिव प्रिन्सिपल्स ऊपर हैं। यही बात स्वर्गीय मोहन कुमार मंगलम ने कही थी। मैं चाहता हूं कि अगर सचमुच में डायरेक्टिव प्रिन्सिपल्स ऊपर हैं तो उन का आर्टिकिल 19 में समावेश कर दीजिए। बेकारी का भत्ता देने के डायरे-क्टिव प्रिन्सिपल का समावेश कर दीजिए कौमन सिविल कोर्ट बनाने के डायरेक्टिव प्रिन्सिपल का समावेश करिये, गो हत्या पर रोक लगाने के डायरेक्टिव प्रिन्सिपल को फ़ंडामेंटल राइट बना दीजिए। मगर जब फ़ंडामेंटल राइट्स में कमी की जाती है तो डायरेक्टिव प्रिन्सिपल्स की दुहाई दी जाती है, और जब डायरेक्टिव प्रिन्सिपल्स पर अमल करने की बात कही जाती है तो कहा जाता है कि वे जस्टिशियेबिल नहीं हैं। आखिर डायरेक्टिव प्रिन्सिपल्स जस्टिशियेबिल नहीं हैं यह व्यवस्था किस ने बनायी है ? यह व्यवस्था सुप्रीम कोर्ट की है, या इस सदन की है, या कांस्टीट्यूशन की है ?

[श्री अटल बिहारी वाजपेयी

कहा जाता है कि सुप्रीम कोर्ट के जज डायरेक्टिव प्रिन्सिपल्स का ख्याल नहीं रखते। बड़ी बेतुकी बात है, आप ने स्वयं लिख दिया कांस्टीट्यूशन में कि डायरेक्टिव प्रिन्सिपल्स जस्टिशियेबिल नहीं होंगे . . (व्यवधान) अगर सरकार और यह सदन डायरेक्टिव प्रिन्सिपल्स पर आचरण चाहता है और सुप्रीम कोर्ट के जजों के लिए यह अनिवार्य करना चाहता है कि वह डायरेक्टिव प्रिन्सिपल्स के अनुसार निर्णय दें तो संविधान में संशोधन कर के डायरेक्टिव प्रिन्सिपल्स को फंडामेंटल राइट्स के चैप्टर में लाया जा सकता है। हम उस का समर्थन करेंगे। लाइये संशोधन। लेकिन वह संशोधन आप नहीं लायेंगे। कभी आप फंडामेंटल राइट्स के हिमायती बन जायेंगे, कभी आप डायरेक्टिव प्रिन्सिपल्स के समर्थक बन जायेंगे। मगर कुल मिला कर आप का आचरण ऐसा होगा जो न्यायपालिका की स्वाधीनता पर आघात करेगा और भारत में लोकतन्त्र के भविष्य के बारे में आशंका पैदा करेगा। विधि मंत्री का भाषण हमारी आशंकाओं का निराकरण नहीं करता। सचमुच में जो आशंकायें थीं वह उनके भाषण से पुष्ट हो गई हैं, और इसी लिये मैं अपने विधेयक पर जोर देने वाला हूं। मेरा विधेयक स्वीकार किया जाना चाहिए।

MR. DEPUTY-SPEAKER: This being the Constitution (Amendment) Bill, it has to be disposed of by a special majority.

The question is:

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

The Lok Sabha divided:

Division No. 5]

(16. 26 hrs.

AYES

Samar Guha, Shri
Mavalankar, Shri P. G.
Lalji Bhai, Shri
Shakya, Shri Maha Deepak Singh
Vajpayee, Shri Atal Bihari
Bade, Shri R. V.
Chowhan, Shri Bharat Singh

NOES

Aga, Shri Syed Ahmed
Ahirwar, Shri Nathu Ram
Alagesan, Shri O. V.
Ambesh, Shri
Ansari, Shri Ziaur Rahman
Awdhesh Chandra Singh, Shri
Bajpai, Shri Vidya Dhar
Banerjee, Shri S. M.
Barua, Shri Bedabrata
Basappa, Shri K.
Basumatari, Shri D.
Bhaura, Shri B. S.
Bist, Shri Narendra Singh
Chandra Gowda, Shri D. B.
Chaturvedi, Shri Rohan Lal
Chaudhary, Shri Nitiraj Singh
Daga, Shri M. C.
Dalbir Singh, Shri
Darbara Singh, Shri
Doda, Shri Hiralal
Dumada, Shri L. K.
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gavit, Shri T. H.
Gogoi, Shri Tarun
Gokhale, Shri H. R.
Gomango, Shri Giridhar
Gopal, Shri K.
Gowda, Shri Pampan
Hari Singh, Shri

Ishaque, Shri A. K. M.
Joshi, Shrimati Subhadra
Kadannappalli, Shri Ramachandran
Kahandole, Shri Z. M.
Kailas, Dr.
Kapur, Shri Sat Pal
Kedar Nath Singh, Shri
Kinder Lal, Shri
Kisku, Shri A. K.
Malaviya, Shri K. D.
Mirdha, Shri Nathu Ram
Mishra, Shri Bibhuti
Mishra, Shri Jagannath
Modi, Shri Shrikishan
Mohapatra, Shri Shyam Sunder
Mohsin, Shri F. H.
Nahata, Shri Amrit
Naik, Shri B. V.
Oraon, Shri Tuna
Pandey, Shri Damodar
Pandey, Shri Krishna Chandra
Pandey, Shri Tarkeshwar
Partap Singh, Shri
Parthasarathy, Shri P.
Paswan, Shri Ram Bhagat
Patnaik, Shri Banamali
Patnaik, Shri J. B.
Raghu Ramaiah, Shri K.
Rai, Shrimati Sahodrabai
Reddy, Shri M. Ram Gopal
Richhariya, Dr. Govind Das
Rohatgi, Shrimati Sushila
Sadhu Ram, Shri
Samanta, Shri S. C.
Sarkar, Shri Sakti Kumar
Satish Chandra, Shri
Shailani, Shri Chandra
Shankaranand, Shri B.
Sharma, Shri Nawal Kishore
Shastri, Shri Sheopujan
Shenoy, Shri P. R.
Shivnath Singh, Shri
Shukla, Shri B. R.
Siddheshwar Prasad, Shri
Subramaniam, Shri C.
Swaminathan, Shri R. V.
Tiwary, Shri D. N.
Tiwary, Shri K. N.
Tula Ram, Shri
Unnikrishnan, Shri K. P.
Virbhadra Singh, Shri
Yadav, Shri R. P.

MR. DEPUTY-SPEAKER: The result* of the division is:

Ayes: 7; *Noes*: 82.

The motion does not have the requisite majority and it is lost.

The motion was negatived.

MR. DEPUTY-SPEAKER: The next Bill stands in the name of Shri P. M. Mehta. The hon. Member is absent. So, we take up the next Bill.

16.30 hrs

RE. CONSTITUTION (AMENDMENT) BILL

[INSERTION OF NEW ARTICLE 339A] by

Shri S. M. Siddayya

MR. DEPUTY-SPEAKER: The next Bill stands in the name of Shri S. M. Siddayya. This Bill requires the recommendation of the President which he has not even asked for, and, therefore, I do not think that we can take it up.

SHRI S. M. BANERJEE (Kanpur): Why? Why has the delay taken place?

MR. DEPUTY-SPEAKER: Under article 117 (3) of the Constitution, if a Bill involves expenditure out of the

*Shri T. Sohan Lal also recorded his vote for Noes.