

[Mr. Deputy Speaker]
the House and the House has accepted it. Therefore, you cannot raise that question. If you have any new ground, I am prepared to allow you.

SHRI VARKEY GEORGE : Yes; I oppose the motion on the ground that this Parliament has no competence to discuss it.

MR. DEPUTY SPEAKER : Then I will put that proposition of yours to the vote.

AN. HON. MEMBER : Let somebody move it.

SHRI VARKEY GEORGE : It is purely a State subject. It is about education in Kerala. It is about the Kerala University Act. It is a State subject.

MR. DEPUTY SPEAKER : Because it is a State subject and therefore this Bill cannot be brought here, that question does not arise. If you have read article 31B, any piece of legislation which a State legislature has passed can be included in the Ninth Schedule according to that article. That is all that is sought to be done. I do not think you have any new reason. I will put the motion to the vote of the House.

The question is :

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

The motion was adopted.

SHRI C. K. CHANDRAPPA : I introduce* the Bill.

15.40 hrs.

CONSTITUTION (AMENDMENT) BILL
—Contd.

[Amendment of article 74]

by Dr. Karni Singh

MR. DEPUTY SPEAKER : We shall take up further consideration of the Bill

to amend the Constitution of India moved by Dr. Karni Singh on 26th May, 1971. He has authorised Mrs. Godfrey to pilot the Bill on his behalf. Two hours were allotted for this Bill; 35 minutes were taken and one hour and 25 minutes remain. Shri Bhandare has taken five minutes on the last occasion; he may continue.

SHRI R. D. BHANDARE (Bombay Central) : Mr. Deputy Speaker, when the Bill was introduced even then I raised the question as to what was the ground on which the learned Dr. Karni Singh wanted to introduce this Bill. In his introductory speech, he says he is afraid that the High Courts and the Supreme Court would be packed by judges who would always give decisions favourable to the Executive or government. He was afraid that this was likely to take place during the course of years to come. At that time I asked whether Dr. Karni Singh would like to change the polity that we have under the Constitution. Under the Constitution, we have the Parliamentary form of Government even though we have a Federal polity. By this Bill he wants to add an explanation to article 74 of our Constitution; if this Bill is accepted, it would change the very polity that has been existing in our country. I do not know if Dr. Karni Singh would like to introduce the Presidential Form of Government or whether he would be satisfied with the Parliamentary Form of Government which exists under our Constitution. I do not know what is in his mind. Unwittingly in order to forewarn against future dangers or to safeguard against future dangers, he himself has landed in a serious danger; he would like the country to run into a serious danger of the introduction of the Presidential form of government.

15.42 hrs.

[SHRI K. N. TIWARY in the Chair].

The Founding Fathers of our Constitution in their wisdom accepted the Parlia-

*Published in Gazette of India Extraordinary, Part II, Section 2, dated 4.3.72.

mentary form of government; the powers and functions of each organ of the State are well defined under the Constitution. As I said a Parliamentary form of Government envisages that an institution of Parliament must be created. Parliament is defined as the body constituting the three organs : the President, the Lok Sabha and the Rajya Sabha. These three together constitute the Parliament. In England, under the British Constitution, the King, the House of Commons and the House of Lords constitute the British Parliament. Similarly, the President, the Lok Sabha and the Rajya Sabha constitute the Indian Parliament.

The powers and functions of these three organs are well defined. Their functions are well defined. If we accept Dr. Karni Singh's Bill which seeks that there ought to be an amendment to Article 74, the power to appoint the judges will be vested or given exclusively to the President alone. Now our scheme of the Constitution is that the President will be the Head of the State and the President shall have under Article 74 the Council of Ministers who will tender or give advice to the President. This is what Article 74 says :

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

If we accept the explanation or if we add the explanation as Dr. Karni Singh would like us to accept in the matter of appointment of judges, the advice of the Council of Ministers need not be taken and should not be taken, and that power should exclusively vest in the President. That is the sum and substance of Dr. Karni Singh's amendment.

By adding the small explanation we are thereby amending Articles 53, Article 124, then part XIV of the Constitution dealing

with Services. Therefore, if we accept the small amendment as he sought to mention to the House, in the matter of appointment of the judges to the High Courts and the Supreme Court the power should be given exclusively to the President. He has forgotten all about the other Articles of the Constitution which deal with the power of appointment. Now the power of appointment is vested under the Constitution in the President. But that power cannot be exercised by him without the aid and advice of the Council of Ministers. That is the position under the Constitution. Therefore, I suggested to him that it would be far more wise and befitting for Constitutional propriety to withdraw the Bill.

He also went to the extent of saying, and he has also incorporated his fear in the aims and objects of this Bill, that if we do not accept the explanation as he has suggested to Article 74, then we would be giving go-by to the principle of Rule of law. That is his second fear which he has mentioned.

In fact he tried—he must have, I do not say he might not have—but I may very politely ask whether he has understood the implications and connotations of the acceptance of the principle of rule of law. The Rule of Law has three elements. One is that there can be no arbitrary exercise of powers by the executive. Secondly, no person can be above the law. All persons must be put in the matter of trial on the same base and between the same parallels. We have amended the Constitution and also the C.P.C. and Ct. P.C. taking away the special rights and privileges given to the rulers of former Indian States. So, I have no hesitation in concluding that we have now implemented the principle of equality of all persons before the law. I am not talking of article 14 but of the second element of the principle of the rule of law.

Shri R. D. Bhandare]

The third element is that everybody must submit to the municipal law and that they stand on the same base between the same parallel lines

Therefore, Dr. Karni Singh's fears are not based on factual, statistical, rational or legal basis at all. The fear haunting the mind of Dr. Karni Singh that the judges would be packed and we will have a committed judiciary and also the fear that rule of law would be given the go-by have no basis and that fear complex must be given up in understanding the proper constitutional position, the federal polity and the parliamentary democracy which we have accepted

With these words, I would request Mrs. Godfrey to withdraw the Bill. After withdrawing the Bill, she can persuade and satisfy Dr. Karni Singh on the political, constitutional and basic principles of rule of law

*SHRI MADHURYYA HALDAR (Mathurapur). The Bill introduced by Dr. Karni Singh can be supported if the hopes that have been expressed in the Bill are fulfilled. But no one can say that this stage that these hopes will actually be fulfilled. From our every day experience we have seen how the Judges of the Supreme Court and the High Court are appointed. We have also seen how they are made to work. The ruling class offers them new jobs in lieu of their work as rewards. A Judge of the High Court after his retirement was given a job of Governor and after that he was given a post in the Law Commission. These Judges are often made members of some Committees and Commissions and also appointed Chairmen of also some Inquiry Commission, and after their retirement they are brought to Lok Sabha or Rajya Sabha. The Ruling class is utilising the Judges in a way that their judgment may help them though in an indirect way. If we are really

interested to curb the indirect help given to the ruling class then I would say the present bill is only a step in that direction but it cannot fully meet this objective. It is so because it has been provided in the Constitution that the President will act on the advice of the Prime Minister and his Council of Ministers. This advice, which is given to the President is confidential. It cannot be divulged nor it can be challenged in the Court of law. That is to say that the advice given will not be known to any one. In the light of the constitutional position, I feel quite doubtful that the explanation that is sought to be added to Article 74 would be able to achieve its objective

16.00 hrs.

A little while ago Shri Bhandare posed a question and inquired if we are heading towards a Presidential form of Government or not. It can be said that the Constitution has given our President the apex position in all State matters but in reality he is a titular head. Therefore if the powers of the Prime Minister or the Council of Ministers are sought to be limited then it cannot be argued that there is an effort to increase the power of President. Therefore, I would say that even though the present legislation may seek to give more powers to the President but merely by that his real powers may not actually increase. Under the Constitution the President is the Supreme Commander of the Defence Service of country, he is the head of the Judiciary, he is the head of the Executive and even he is at the head of Lok Sabha and Rajya Sabha. But in reality as I have already stated despite all these constitutional provisions, the President is only a titular head. Therefore, the apprehension of Shri Bhandare that we are marching towards a Presidential form of Government may not be true and I hope it will not come to be true. Here, even if

*The Original speech was delivered in Bengali.

the powers of the President will be increased slightly, the powers of the Council of Ministers will remain the same only the Executive and the Council of Ministers would not be able to interfere in the matter of appointment of judges. That is the only restriction imposed through this Bill. We have seen the consequences of the interference by the Executive in such matters. We have seen how Members of Lok Sabha and Rajya Sabha, old and infirm people who are unable to step out from their houses are arrested under false pretext and they are not given bails for release by the High Court nor they get any justice because these Judges are appointed on political basis, and they give judgment for political considerations and after retirement they are offered new jobs. (*Interruptions*).

MR. CHAIRMAN : Is it proper to condemn the whole of judiciary like this? What he said just now is that the judiciary gives judgment on political considerations. It is not proper for him to condemn the entire judiciary like this. He has got protection here but he has also got a responsibility not to make such a wild charge.

SHRI MADHURYYA HALDAR : I am not condemning the whole judiciary system. But there are cases like that. There was one Minister in Dr. B. C. Roy's Cabinet in West Bengal. Immediately after his defeat, he was appointed a Judge of the High Court.

MR. CHAIRMAN : He is no more now. Please don't bring his name like that. That is not proper.

SHRI MADHURYYA HALDAR : Whatever it be, we feel that if the powers of the executive are curbed to maintain the independence of the judiciary then we feel that personal liberty of the individuals will be safe and from this point of view we support Dr Karni Singh's Bill.

SHRI B. R. SHUKLA (Bahraich) : Mr. Chairman, Sir, I strongly opposed the Constitution Amendment Bill brought forward by Dr. Karni Singh.

The amendment is based on a fear that judges will not act impartially if they are appointed on the advice of the Prime Minister. My submission is that such fears can be voiced not only in respect of the appointment of judges but also in respect of other matters. The success of the Constitution does not depend so much on the safeguards or on the letters or the various provisions of the Constitution but on the spirit in which it is worked out.

In this connection, I would recall the examples of two great democracies of the world. One is the democracy of England which is known all over the world as the mother of democracy. There, the judges are known as King's judges or Queen's judges and they are appointed on the advice tendered by the Cabinet. There is complete separation of judiciary obtaining in the United Kingdom. There, Lord Chancellor who is a Member of the House of Lords also happens to be the presiding officer of the court which is constituted by a Committee of the House of Lords.

So, there is complete separation. If it is analysed in all its logical bearings, you would find that it exists in none of the countries howsoever ideally democratic they may appear to be. (*Interruption*).

The second is the case of the United States of America. There you find that the judges are appointed by the President. The President is the Head of the State, he is the Head of the Executive and he is directly elected by the vast electorate of that country. There you would find that, when certain political and economic controversies arise and the President finds that judges have different inclinations and different attitudes and are not going to support the measure passed

[Shri B. R. Shukla]

by the legislature there, the number of judges is increased by the President. Such is the condition prevailing in one of the most ideal type of democracies by which Dr Karni Singh may swear and which he may adopt as the model democracy.

These are the two countries which I want to quote. In our country we have adopted a Constitution which is neither purely Parliamentary nor Presidential, but shares the characteristics of both. But, essentially speaking, the democracy in India is not of the federal type because ultimately it is the Parliament that controls every wing, be it executive or judiciary, it controls even, in one way or the other, the functions of the President because if the President acts in a way which the parliament feels is not in accordance with the Constitution and wishes of the Parliament, it has the power to impeach him. If any of the States does not function in accordance with the Constitutional provisions and there is failure or breakdown of the Constitutional machinery, the President would act on the advice of the Central Cabinet and there would be President's rule. How does Parliament control all the three wings? It controls through the Cabinet, and the Cabinet is responsible to the House.

Therefore, my submission is that it is the Prime Minister who is responsible and answerable for everything that happens in this country, whether in the sphere of judiciary or in the sphere of executive or within Parliament, and the Prime Minister is responsible to the people because the party that comes to form the government is elected by adult franchise in this country. Therefore, these unfounded fears which have been expressed through this Bill should disappear. The judiciary has been functioning in this country from the British time. Even when there was autocratic rule in this country, the judges of the federal court had invalidated

measures—when the Second World War was in progress, I would recall the instance when certain rule of DIR was declared *ultra vires* when Mr Maurice Gwyer was the chief Justice.

My submission is that, because certain judges are appointed on the advice of the executive, *i.e.* on the advice of the Prime Minister that shall not go to detract their independence impartiality or quality therefore, I would request the hon Member to withdraw his Bill. We have developed certain very good conventions about the functioning of the judiciary in this country. We have inherited those conventions from the Britishers. There may have been many had things in the time of British India. But at least the Parliamentary Democracy, the system of judiciary have functioned very well and we have adopted that system after independence and barring a few erratic cases here and there, the judiciary has functioned effectively impartially and also with ability. Therefore my submission is that Dr Karni Singh should withdraw this Bill.

*SHRI J M GOWDER (Nilgiris) Mr Chairman Sir, I stand to oppose Dr Karni Singh's Constitution (Amendment) Bill, seeking to amend Article 74 of the Constitution.

During the past 25 years, the Judges of the Supreme Court have all along been appointed by the President on the advice of the Prime Minister. All these years, our judiciary has proved to be the unassailable custodian and protector of our democracy. The Judges of the Supreme Court have been acting independently and impartially. They have so far not belied the principles of equity and good conscience. Their judgments have never been influenced by the policies of the Prime Minister on whose advice they might have been appointed. They have sustained the health of democracy in this country.

*The Original speech was delivered in Tamil

I will give you one or two classic examples of the independence of our Judiciary. After the Privy Purses (Abolition) Bill fell through in Rajya Sabha, the Presidential Order abolishing the privy purses was proclaimed. When this Order was contested in the Supreme Court, it was declared *ultra vires* of the constitution. The Judges of the Supreme Court did exercise their good conscience, though they might have been appointed by the President on the advice of the Prime Minister. The Prime Minister also did not bring any pressure on the Judges of the Supreme Court for getting the judgment in favour of Government. The Judges knew that the Order had been proclaimed by the President who appointed them. This factor did not at all influence them in saying that the Order was *ultra vires* of the Constitution. I am sure, Sir, that Dr. Karni Singh will definitely have nothing against this judgment of the Supreme Court. This judgment is a classic example of the independence of Judiciary.

I will refer also to the oft-repeated Golak Nath case, which did not favour the Government. This Golak Nath case is the stick which everyone takes to attack the socialist policies of the Government. If the Prime Minister had wanted, she or he could bring to bear some influence on the Judges for getting a judgment favouring the Government. This kind of undue interference in the judiciary has never happened in our country. I am sure it will never happen.

These two classic examples of the independence of our Judges should prove to the hilt that the fears of Dr. Karni Singh are unfounded.

Take also the appointment of the Chairman of the Union Public Service Commission who is appointed on the advice of the Prime Minister. The Union Public Service Commission has been functioning

as an independent body. The Commission has been discharging its functions without fear or favour. Who appoints the Chief of Staff of the Army, Navy and Air Force? They are all appointed on the advice of the Prime Minister. They are all independent in their field of activities and they don't obey the dictates of the Prime Minister in the matter of defence strategy. They have been defending the freedom of the country according to their own plan of activities. There is no question of the Prime Minister influencing them in their strategy for the defence of the country.

In the democratic traditions we have adopted, it is the prerogative of the Prime Minister to aid and advise the President who is the head of the Executive, Judiciary and Legislature. The Judges of the Supreme Court have not been detracted from their independence and impartiality just because they are appointed by the President on the advice of the Prime Minister.

In conclusion, I would request Dr. Karni Singh to withdraw this Bill as he has based his surmises on unfounded fears.

SHRI DINESH CHANDRA GOSWAMI (Gauhati) : I oppose this Bill on three grounds. Firstly, it goes against the basic spirit of the Constitution. Secondly, there are various safeguards to ensure the independence of the judiciary in the provisions of the Constitution itself. This provision, sought to be incorporated will not lead to improvement, but it will open up dangerous possibilities and thirdly, the Bill is the result of unwarranted and misleading apprehensions about the policy of the Government.

Coming to the second point first, we can see from a cursory glance at the provisions of the Constitution that there are various provisions in the Constitution which have enshrined an independent

[Shri Dinesh Singh Goswami]
judiciary in this country. Nobody can have two opinion that courts must be independent, and immune from outside influences. The Constitution-makers have drafted the Constitution very carefully to achieve this objective. It is incorporated under the provisions of our Constitution that the tenure of a judge will not be dependent upon the mere pleasure of a Government, as in the case of Government servants, subject to Art. 310, but then, is made subject to what is called, good behaviour. Art. 124 (4) in the case of Supreme Court judges and Art. 217 in the case of High Court judges, lays down the procedure of removal, of judges a very elaborate procedure indeed. Judges are free from interference by Parliament because the Constitution has laid down the conditions of service, salaries and allowances, etc. and the amount of salary etc is not subject to the vote in the Parliament. Also it has been laid down under Art. 121 that the conduct of a judge cannot be criticised in Parliament.

We find from the form of the Oath which the judge has to make in Form IV and form VIII that they will discharge the duties freely and independent of any outside interference. There are sufficient provisions in the Constitution which makes the judiciary independent and the provision which is sought to be introduced in the Article is not necessary. The practice, Sir, is this. My learned friend knows the practice. Three of the most sensitive Bills of this House on whom the prestige of the Government was dependent, were struck down by the Supreme Court. The Supreme Court is completely free from interference by the Government. Judges are free from interference by anybody or anything. The provision it incorporated in the Constitution, will not make the judiciary more independent but will lead to dangerous precedents.

Under the provisions of our Constitution judges are appointed by the President in consultation with the Chief Justice. Of course, the President has to act on the advice of the Council of Ministers. This is different from the practice in England where the appointments of judges are absolutely dependent upon the Executive. The departure from the English practice is this; it was thought that judges' appointment should not be left to politicians, because political interference may be there. Also it was thought that appointment of judges should not be left to any individual, the Chief Justice of the Supreme Court or anybody else, as however eminent that person may be, one cannot exclude the possibility of any individual having his own feelings and attitudes, his own failings and prejudices.

Therefore, it was thought desirable that appointment of judges should be made by the President in consultation with the Chief Justice of the Supreme Court. One may say, there is not binding on the part of the President to accept the consultation rendered or recommendation given by the Chief Justice of the Supreme Court. But if that argument is accepted and if the entire power of appointment is given to the President, then, the entire power of appointment of members of the judiciary will go to a single individual and even though he may occupy an eminent position, he may have his own failings and prejudices and therefore that may lead to dangerous possibilities.

That is why I strongly object to the principle which is sought to be incorporated by this Bill.

My hon. friend has raised the question why we are talking of commitment. We have not talked of commitment, in the sense in which Dr. Karni Singh says it. He has said that the judiciary should not be committed to the ephemeral Prime Minister or the

Ruling Ruling Party. We have never advocated it. What we have said is that the judiciary should be committed to the basic objectives for which the State stands. What we have said is that the judiciary, while interpreting the Constitution should not interpret the Constitution as a closed document but as a living document. In fact, if we look to the different rules of interpretation of a constitution, we find that the Supreme Court of this country as well as of the different countries has held that there is an essential distinction between the interpretation of an ordinary legislative enactment and the interpretation of a Constitution, because the Constitution must always be interpreted liberally. After all, what is the Constitution? The Constitution reflects or gives expression to the hopes and aspirations and the ideologies of the people. These hopes and aspirations and ideologies and basic factors for which people stand will change from time to time, and the concepts will also change. Therefore, when we interpret the Constitution in 1970, on the basis of the ideologies prevalent in 1950, it will not be a proper interpretation of the Constitution, because in that case, the interpretation will not be an interpretation of a living document but the interpretation of a closed document.

Therefore, what we are saying is this. While interpreting the Constitution, interpret it as a living document, keep in before the eye the basic objectives for which the country stands, and keeping before the eye the ideologies for which the people stand. We are not speaking of a committed judiciary in the sense in which my hon. friend has tried to interpret it.

Therefore, my submission is that there being enough safeguard for the independence of the judiciary, this provision is most dangerous and should be withdrawn.

My hon. friend has raised the question that retired judges have been appointed in

executive posts or different Government or semi-Government posts in order to exercise influence upon the judiciary. I submit that that is an absolutely wrong approach. Undoubtedly, retired judges sometimes have been appointed. That is because we feel that these judges with their varied experience and with their legal knowledge have many parts to play in the progress and development of the country.

Undoubtedly, judges who have not retired or precisely who have resigned have been made Ministers, because we feel that in this House we should have the help of their advice and we should have the help of those who know how to interpret the Constitution and the subtleties of the law and the niceties of law, and, therefore, if somebody is brought in here to help the Government in this respect, I do not know what wrong Government have committed.

In fact, as I said, Dr. Karni Singh had probably been prompted to move this Bill because he had a completely unwarranted and misleading appreciation of the policies of Government. After listening to the speeches, I hope he will come to the conclusion that this Bill will not serve the purpose for which it has been introduced.

With these words, I oppose the Bill.

श्री जटल बिहारी बाजपेयी (भारतीय) :
उपाध्यक्ष महोदय, इस बात विवाद में भाग लेने की मेरी इच्छा नहीं थी। किन्तु जो वाक्य हुए हैं उन्होंने मुझे दो शब्द कहने के लिये उतेजित किया है। इससे इन्कार नहीं किया जा सकता कि डा० कर्णो सिंह का वर्तमान विधेयक प्राज्ञ जो कुछ हो रहा है, उसके प्रति आशंका की भावना से प्रेरित है। उन्हें यह डर है कि धीरे-धीरे न्यायपालिका की स्वाधीनता या तो समाप्त कर दी जायेगी या नियंत्रित कर दी जायेगी और यह डर केवल डा० कर्णो सिंह को नहीं है, इस सदन के भीतर भी और बाहर भी यह डर व्यापक पैमाने पर छाया हुआ है। इस डर का आधार

[श्री मदन बिहारी बाबुदेवी]

सत्तारूढ़ दल ने चलने वाला यह विचार है कि ज्युडिशरी को कमिटेड होना चाहिये। अभी हमारे दिल में कमिटेड की जो व्याख्या की है उससे किसी का विरोध नहीं हो सकता। न्याय-पालिका श्रोकतात्मिक धारेशों के लिये प्रतिबद्ध हो, हमारे जज संविधान में निहित लिखातों के लिये प्रतिबद्ध हो, यह नितात स्वामाधिक है, आवश्यक है। हम सब संविधान की शपथ लेते हैं और संविधान में निहित धारेशों को हमें कांथीन्वित करना है। लेकिन संविधान बना 1950 में। गणतंत्र की घोषणा हुई 1950 में। लेकिन "कमिटेड" की चर्चा 1950 से नहीं बस भूरी है। "कमिटेड" एक नया शब्द है। और फिर केबल कमिटेड तक ही बात नहीं रहती है। कहा जाता है कि जजिज का क्लास कैरेक्टर क्या है। क्या यह देखा जायेगा कि जज किस कुल में पैदा हुआ है। क्या यह देखा जायेगा कि उसकी कुल-परम्परा क्या है? और अगर वह मध्यम वर्ग का है, तो वह बर्जना जज है। फिर वह मजदूरों के साथ न्याय नहीं कर सकता?

यह सारी विचारधारा हमारे जीवन की परम्परा और हमारे चिन्तन के सर्वथा प्रतिकूल है। हमने इस देश में एक ऐसे चिन्तन का विकास किया कि न्यायाधीश की पीठ पर जो भी व्यक्ति बैठ गया, वह तगवू के दोनों पलकों को बराबर रखने की कौशिल्य करेगा, वह किसी स्वार्थ के साथ अपने को नहीं बाडेगा। इसी लिये जब ककराचार्य और मदन मिश्र ने सास्त्रार्थ हुआ, तो उस सास्त्रार्थ का निर्णय करने के लिये मदन मिश्र की पत्नी को न्यायाधीश बनाया गया। ककराचार्य ने यह शपथ नहीं की कि यह तो मदन मिश्र की पत्नी है, वह मदन मिश्र के पक्ष में निर्णय देगी। पक्ष-परमेश्वर की कल्पना जहां से प्रसूत हुई, उसी की परिणति जा कर न्यायपालिका की विषयता से हुई।

शाय न्यायपालिका की विषयता पर शोध हो रहे हैं। प्रायः सा कमीशन की रिपोर्टें मद्रास आदि में। न्यायाधीशों की नियुक्तियां केवल गुणों के आधार पर नहीं होती हैं, उनके विचारों के

आधार पर भी होती हैं, वे किस जाति के हैं, किस मजहब की मानने वाले हैं, इस आधार पर भी होती हैं। मुख्य मंत्री जब इस बारे में सलाह देते हैं, तो उन के सामने कई बातें रहती हैं। मैं नहीं समझता कि मुख्य मंत्री या प्रधान मंत्री को तत्वीर में लाने की आवश्यकता है। यह उन के प्रति किसी अविश्वास की भावना से प्रेरित हो कर नहीं कहा जा रहा है। लेकिन व्यवस्था ऐसी होनी चाहिये कि किसी प्रकार के दुष्प्रयोग की सम्भावना न रहे।

कमिटेड की बात कर के सत्तारूढ़ दल के कुछ सदस्य केवल इस भय की भावना को बढ़ा रहे हैं कि इस देश में हर एक व्यक्ति को सत्तारूढ़ दल के प्रति प्रतिबद्ध होना पड़ेगा, फिर चाहे वह जज या समाचारपत्र हो और चाहे सिविल सर्वेंट हो। आखिर लोकतंत्र में सत्तारूढ़ दल बढेगा। जमता किसी दूसरे दल को चुनाव में विजयी कर के ला सकती है। हा, लोकतांत्रिक धारेशों में हमारी निष्ठा घटूट और अडिग रहनी चाहिये। उनके प्रति प्रतिबद्ध आवश्यक है और समझ में आने वाली बात है।

जिस भय की भावना से प्रेरित हो कर यह विधेयक धारा है, उस का निराकरण करने की आवश्यकता है और मैं धारा करता हू कि यही महोदय इस बहस का ऐसा उत्तर देने कि इस तरह के भय की भावना न रहे और वह अपने दल के सदस्यों को भी सलाह देंगे कि अब उन का भारी भरकम बहुमत हो गया है, अब कमिटेड की चर्चा करने से प्रारंभ नहीं है, जिन् के लिये कमिटेड है, वह कुछ कर के दिखायेंगे।

अगर सुप्रीम कोर्ट बैंक नैशनलाइजेशन के विषय में सरकार के विधान निर्णय दे देती है तो, वह रीएक्शनरी हो जाती है और यही सुप्रीम कोर्ट अगर राष्ट्रपति गिरि के चुनाव को बैक ड्रॉप देती है, तो वह शम्की हो जाती है। सुप्रीम कोर्ट यही है, लेकिन अगर वह सरकार का मनचाहा निर्णय दे दे, तो वह शम्की, शरेशिव, क्राईम-मुक्ति है, कमिटेड है और अगर वह सरकार के विधान कौत्ता दे दे, तो अब बर्जना है, उनका क्लास

कैरेक्टर देखना होगा, यह देखना होगा कि उन्होंने किस कृप में जन्म लिया है। क्या यह कसौटी है सुप्रीम कोर्ट के क्रीसबों को कसने की? क्या यह कसौटी है न्यायपालिका के निर्णयों पर विचार करने की? यह विचार-प्रणाली दूषित और विह्वल है, वह लोकतंत्र के लिये घातक है और उसका परिस्थाय करना होगा। न्यायपालिका सर्वथा स्वतंत्र और निष्पक्ष रहनी चाहिये और जब मैं कहता हूँ "रहनी चाहिये", तो केवल रहनी ही नहीं चाहिये, दिखाई भी देनी चाहिये और ऐसी चर्चा नहीं होनी चाहिये, जिस से यह धारणा पैदा हो कि जजों को प्रभावित करने की कोशिश की जाती है।

यह भी बड़ा महत्वपूर्ण प्रश्न है कि धक्काबल लेने के बाद जजों को किसी कमीशन में नियुक्त किया जाये या नहीं। यह मैं मानता हूँ कि बहुत से रिटायर्ड हो जाते हैं, लेकिन टायर्ड नहीं होते हैं। वह कुछ सेवा करने के लिए बाकी रहते हैं। उन्हें किसी कमीशन में नियुक्त किया जा सकता है। उनकी विद्वता का और उनके गुणों का लाभ उठाया जा सकता है। लेकिन इसमें मनमानी होती है। जो जज सरकार को पसंद है वह कमीशन पर कमीशन पाता है और जो उसना पसंद नहीं है वह वानप्रस्थ और सत्याम की ओर प्रयाण करता हुआ दिखाई पड़ता है। इस बात का एक तरीका यह है हाई कोर्ट और सुप्रीम कोर्ट के रिटायर्ड जजों का एक पैनल बनना चाहिये और उस पैनल के हिसाब से कमीशन में उन की नियुक्ति होनी चाहिये। उसमें से किसी को छोड़ने की आवश्यकता नहीं है। जिस का नम्बर भा जायेगा वह कमीशन में चला जायेगा। तब उन्हें धरोसा रहेगा कि हम कमीशन में सरकार की छुपा से नहीं लिये जायेंगे, सरकार के पक्ष में निर्णय देने इसलिये हमारी पूछ कमीशन में नहीं होगी। लेकिन अगर आवश्यकता पड़ेगी तो हमारी सेवाओं को जायेंगी। इसलिये पैनल बना कर जजों को नियुक्त करना बहुत आवश्यक है और सरकार इस के लिये तैयार नहीं है तो रिटायर्ड जजों को नियुक्त करना छोड़ दे, उन्हें इतना वेतन दे इतनी पेंशन दे कि रिटायर होने के बाद उन को किसी नौकरी बाकरी की आवश्यकता

न पड़े। सभी वह अपनी स्वतंत्रता और निष्पक्षता को रखा कर सकते हैं।

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI NITIRAJ SINGH CHAUDHARY): Mr. Chairman, Sir, I am sorry that the hon. Mover is not present in the House today. While moving the Bill, he had said—

AN HON. MEMBER : He has authorised another hon. Member.

SHRI NITIRAJ SINGH CHAUDHARY: Yes; that authorisation does not mean the presence of the hon. Member concerned. While moving he had said that he found some ambiguity between the provisions of the Constitution, and he referred to article 124 and 74. He said that there is ambiguity between the provisions of these two articles, and therefore he has moved this Bill.

Sir, with your permission, I shall refer to article 74. Article 74 says :

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

By his amendment, the Mover wants an explanation to be added to this article, and by the explanation, the power of the Prime Minister to aid and advise the President in the appointment of judges is sought to be taken away. Suppose it is accepted, what could happen. The appointment would be as provided by articles 124 and 217; that is, with the advice of the Chief Justice and judges of the Supreme Court and of the high courts. I do not understand if the hon. Mover wants that the rights of representatives who have been elected by the people of this country and who form the Government of the day should be taken away and should be vested on a limited number of people. If that be

[Shri Nitiraj Singh Chaudhary]

the intention of the Mover, I have only to thank him and his intelligence

I submit that throughout the world, in all the democracies, it is the executive which advises the head of the Government and the executive has to advise according to the times. If the executive does not do it, such an executive and the parties and the Governments are thrown out. That has happened throughout the world and shall continue to happen hereafter also. Therefore, to have any doubt in the Government of the day and the executive is I most respectfully submit, not correct.

Two hon Members of this House Shri Biren Dutta and Shri Halder, while speaking on this Bill, said that they supported this Bill. Shri Vajpayee also spoke, but I have not been able to make out whether he has supported the Bill or opposed it.

SHRI ATAL BIHARI VAJPAYEE I did not support the Bill.

SHRI NITIRAJ SINGH CHAUDHARY I am glad to hear that he has not supported the Bill. But he has made some suggestions. I will come to them later. The other point that was tried to be made by the Mover was in regard to democracy. He said "It is not only my belief but the belief of all of us who believe in democracy that the President should be advised by the Chief Justice of the Supreme Court..." If he had said that 'it was my belief', it would have been all right but to say that it is the belief of all the Members of the House is wrong and it has been proved to be wrong by various hon Members who had spoken and opposed the Bill. If he were here he would have seen for himself that what he said was entirely wrong.

In this country during these long years a procedure has been followed for the appointment of judges of the Supreme Court and

of the High Court. In the case of the Supreme Court, the Chief Justice and in the case of the High Courts, the concerned Chief Justice of the High Court makes suggestions. They come through the State Governments with their comments in the case of High Courts. In the case of the Supreme Court, the Chief Justice in consultation with his colleagues in the Supreme Court sends his recommendation to the Government and then the Government acts on it. This procedure has been followed and the Government does not intend to change that procedure. Therefore to say that in the appointment of judges politics comes in and people of a particular way of thinking are brought in, is entirely wrong.

SHRI ATAL BIHARI VAJPAYEE
Now the Chief Ministers do not count.

SHRI NITIRAJ SINGH CHAUDHARY They count, they do not count for you, we know what we receive from them and how we act on them. This point was very well replied to by Shri Bhandare. As Shri Bhandare said, "if we accepted his suggestion, we shall be ending democracy and parliamentary system and we shall be reverting to the presidential type of rule".

Then the hon Member said "For the last few years we have been seeing intolerance both in Government and our supreme Parliament." If he means to say that the majority view of Parliament is not acceptable to him and he is allergic to that, I think he has to thank himself for that. In a democracy it is the majority view that is accepted and the Government has to act accordingly. He knows that in parliamentary democracy it is the decision of Parliament on which the executive has to act. I have already said that we are a parliamentary democracy and would continue to be so and it is the will of the people of this country that will guide us and not

the thinking or will of some people who think otherwise.

The hon. Mover also referred to Gandhiji and Nehru and said that he believed in democracy and in the preachings of Nehru and Gandhiji. If he were here I would have asked him whether he was working with them or siding with bureaucracy when Ghandi and Nehru were fighting for the freedom of this country.

SHRI ATAL BIHARI VAJPAYEE :
That is a cheap jibe.

SHRI NITIRAJ SINGH CHAUDHARY:
It is not a cheap jibe. One can refer to the preachings of someone if one had faith in them. If one does not have faith then to refer to them, I submit, would be a cheap claim to make.

Then, he said. I would read that portion :

"By sheer majority of laymen democracy should not function". I submit, by using these words he has insulted the people of this country. It is the people of this country who have elected these representatives and and if the people want that they shall be guided and their policies are determined by laymen, he cannot come and blame. He has to put up with that.

Other points that were made by him have been replied to by my friends who have taken part in the debate and have opposed the Bill.

For these reasons I oppose the Bill. Dr. Karni Singh is not here. His representative, Mrs. Godfrey, is here. I would request her to withdraw it.

MR. CHAIRMAN : Shrimati M. Godfrey.

SHRIMATI M. GODFREY (Nominated Anglo-Indians) : I am sorry that Dr. Karni Singh is not here and according to Rule 109, I am not permitted to withdraw the

Bill. I could only ask the Chairman for adjournment of the Bill till the mover comes back.

I would like to say that I do not think that Dr. Karni Singh had any idea behind his mind to insult the people of India by saying that this power of appointment of judges should be, perhaps, vested with the President. I would also suggest, as one of our earlier hon. speakers has said that the Ruling Party had been elected by the people of India, I would like to say that the opposition also had been elected by the people of India and they also do form a large part of the people of our country. So, I think that the opposition members also should have a say in the election of the judges, which really forms the very vital part, and a very vital role in determining the conditions of life of our people. If the view of some of the leaders of the opposition is taken when they are deciding the appointment of judges, I think that can solve our problem.

I do not deny that the Council of Ministers is the supreme body for selecting judges, who naturally should be selected by the supreme body in the country; I would also request that the leaders of the opposition who also hold sway over a large number of people in India should also be given a chance to give their point of view in the selection of the judges.

MR. CHAIRMAN : We see that according to Rule 109 she is not entitled to withdraw it. That is why she wants adjournment of the debate. I am putting it to the House.

SHRI B. SHANKARANAND (Chikodi) : When the Mover is not here and it cannot be withdrawn, whether the Bill could be adopted or not, there cannot be adjournment.

MR. CHAIRMAN : When she has requested, I am putting it to the House and

[Mr. Chairman]

think I according to the rule she is justified in asking for adjournment.

SHRI ATAL BIHARI VAJPAYEE : Why not agree to adjournment?

SHRI K. NARAYANA RAO (Bobilli) : The Bill has been discussed and a reply given on the understanding that she has the capacity to reply and she has been authorised to reply. She is now saying that she is not entitled to withdraw. We are not urging her to withdraw. That is not the only option. Let it be put to vote.

MR. CHAIRMAN : The Minister has requested her to withdraw. She is prepared to withdraw but according to the rules, she is not entitled to withdraw. That is why she has requested that the debate be adjourned. Now it is the pleasure of the House to grant the adjournment or not.

The question is :

"That the debate on the Bill moved by Dr. Karni Singh be adjourned."

The motion was negatived.

MR. CHAIRMAN : Now, before I put the motion for consideration to the vote of the House, this being a Constitution Amendment Bill, voting has to be by division. So, let the lobbies be cleared.

The question is :

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

The Lok Sabha divided.

Division No. 1] [16.56 hrs.

AYES

Nil

NOES

Ahirwar, Shri Nathu Ram
Amlach, Shri
Ankineedu, Shri Maganti

Barman, Shri R. N.
Barua, Shri Bedabrata
Bhagirath Bhanwar, Shri
Bhandare, Shri R. D.
Bhargava, Shri Basheswar Nath
Bist, Shri Narendra Singh
Chakleshwar Singh, Shri
Chandrashekarappa Veerabsappa,
Shri T. V.
Chandrika Prasad, Shri
Chaudhary, Shri Nitiraj Singh
Chellachari, Shri A. M.
Chhotey Lal, Shri
Choudhary, Shri B. E.
Daga, Shri M. C.
Dandavate, Prof Madhu
Darbara Singh, Shri
Das, Shri Anadi Charan
Dasappa, Shri Tulsidas
Dhamankar, Shri
Dixit, Shri Jagdish Chandra
Doda, Shri Hirralal
Dumada, Shri L. K.
Gandhi, Shrimati Indira
Gautam, Shri C. D.
Gill, Shri Mohinder Singh
Gomango, Shri Giridhar
Gopal, Shri K.
Goswami, Shri Dinesh Chandra
Gowder, Shri J. M.
Hanumanthayya, Shri K.
Jadeja, Shri D. P.
Jaffer Sharief, Shri C. K.
Jitendra Prasad, Shri
Kader, Shri S. A.
Kailas, Dr.
Kalingarayar, Shri Mohanraj
Kamla Kumari, Kumari
Kapur, Shri Sat Pal
Kedar Nath Singh, Shri
Kotrashetti, Shri A. K.
Lakshminarayanan, Shri M. R.
Lutfal Haque, Shri
Mehta, Dr. Jivraj
Mishra, Shri Jagannath
Modi, Shri Shrikrihan
Mohapatra, Shri Shyam Sunder

Mohsin, Shri F. H.
 Negl, Shri Pratap Singh
 Oraon, Shri Tuna
 Pabadia, Shri Jagannath
 Pandit, Shri S. T.
 Panigrahi, Shri Chintamani
 Partap Singh, Shri
 Patel, Shri Natwarlal
 Patil, Shri S. B.
 Patnaik, Shri Banamali
 Peje, Shri S. L.
 Pradhani, Shri K.
 Raj Bahadur, Shri
 Ramkanwar, Shri
 Rana, Shri M. B.
 Rao, Shrimati B. Radhabai A.
 Rao, Shri Jagannath
 Rao, Shri K. Narayana
 Rao, Shri M. Satyanarayan
 Rao, Shri Nageshwara
 Reddy, Shri M. Ram Gopal
 Reddy, Shri P. Narasimha
 Richharia, Dr. Govind Das
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Salve, Shri N. K. P.
 Samanta, Shri S. C.
 Sarkar, Shri Sakti Kumar
 Satpathy, Shri Devendra
 Savant, Shri Shankerrao
 Savitri Shyam, Shrimati
 Shankar Dayal Singh, Shri
 Shankaranand, Shri B.
 Sharma, Shri Nawal Kishore
 Sharma, Shri R. N.
 Siva Chandika, Shri
 Shivnath Singh, Shri
 Shukla Shri B. R.
 Siddheshwar Prasad, Shri
 Sohan Lal, Shri T.
 Sokhi Shri Swaran Singh
 Suryanarayana, Shri K.
 Swaminathan, Shri R. V.
 Tarodekar, Shri V. B.
 Tiwary, Shri D. N.

Venkatswamy, Shri G.
 Verma, Shri Balgovind
 Vikal, Shri Ram Chandra
 Yadav, Shri R. P.
 Yadav, Shri D. P.

MR. CHAIRMAN : The result* of the division is :

Ayes : Nil

Noes : 99

The minimum number of votes required for taking this Bill into consideration is 263.

The motion is not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

So the motion is lost.

The motion was negatived.

16.54 hrs.

FACTORIES (AMENDMENT) BILL

SHRI S.C. SAMANTA (Tamluk): Mr. Chairman, Sir, before I move my Bill for Consideration and passing, I would like to remind the hon. Minister that on the 11th May 1972 the same Bill was discussed in this House threadbare. So, first I would like to know from the hon. Minister whether there is any reaction in the mind of the Government about my proposal. It had already been discussed threadbare.

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI BALGOVIND VERMA) : We know the hon. Member introduced Bill some years back and at that time some assurance was given on the floor of the House. Again, some delay has taken place. The Government have nearly completed the consideration of it and, verysoon, we are going to bring forward the Bill before the House.

*The following members also recorded their Votes for Notes :—
 Sarvasbri Umed Singh Rathia and Nimbalkar.