7. Shri K. P. Subramania Menon

8. Shri Melhupra Vero

9. Shri Golap Barbora

10. Shri G. A. Appan.'

(ii) 'I am directed to inform the Lok Sabha that the Rajya Sabha at its sitting held on Tuesday, the 27th July, 1971, adopted the following motion in regard to the Committee on Public Accounts :—

> "That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do agree to nominate one member from the Rajya Sabha to associate with the Committee on Public Accounts of the Lok Sabha for the unexpired portion of the term of the Committee ending on the 30th April, 1972, in the vacancy caused by the resignation of Shri Niranjan Verma from the membership of the Committee and do proceed to elect, in such manner as the Chairman may direct, one member from among the members of the House to the said Committee to fill the vacancy"

2. I am further to inform the Lok Sabha that in pursuance of the above motion, Shri Jagdish Prasad Mathur, Member, Rajya Sabha, has been duly elected to the said Committee.'

———

12.02 hrs.

ELECTION TO COMMITTEE

COMMITTEE ON PUBLIC UNDERTAKINGS

SHRI M. B. RANA (Broach) : I beg to move :

"That the member of this House do proceed to elect in the manner required by sub-rule (3) of Rule 254 read with sub-rule (1) of Rule 312B of the Rules of Procedure and Conduct of Business in Lok Sabha, one member from among themselves to serve as a member of the Committee on public Undertakings for the unexpired portion of the term of the Committee, *vice* Dr. V. K R. Varadaraja Rao resigned from the Committee."

MR SPEAKER : The question is :

"That the members of this House do proceed to elect in the manner required by sub-rule (3) of Rule 254 read with sub-rule (1) of rule 312B of the Rules of Procedure and conduct of Business in Lok Sabha, one member from among themselves to serve as a member of the Committee on Public Undertakings for the unexpired portion of the term of the Committee, *vice* Dr V K. R. Varadaraja Rao resigned from the Committee"

The motion was adopted.

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12.03 hrs.

CONSTITUTION (TWENTY-FOURTH AMENDMENT) BILL

THE MINISTER OF LAW AND JUSTICE (SHRI H R. GOKHALE) : Mr. Speaker, I rise to move :

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

In a democracy as ours, the people are sovereign and Parliament, which is fully representative of the people, is supreme. The Bill once again seeks to reassert that Parliament is supreme and that no person or authority, howsoever high or respected, can come in the way of the fulfilment of the will of the people at large.

So far as we the members on this side of the House are concerned, we are under a clear mandate, a massive mandate, from the people that we will bring about the necessary amendments to the Constitution so as to remove the impediments that have been created in the way of the implementation of the fulfilment of our socio-economic programmes.

The Bill seeks to amend two articles, 13 and 368 Till recently many constitutional jurists believed, and many of them believe even now, that art. 368, as it is, provides for amendment of any part of the Constitution and does not contain only the procedure for amendment of the Constitution.

Sir, even the two previous judgments of the Supreme Court in fact had given the verdict that Parliament had the power to amend any provision of the Constitution irrespective of whether that provision pertains to fundamental rights or not. But, for the first time, in the latest case, the Golaknath case, the Supreme Court reversed the earlier view and held that there are limitations on the rights of Parliament to amend the Constitution and that view was taken principally on two grounds. What was said was that article 368 contains only the procedure to amend the Constitution and does not confer a substantive power to amend the Constitution. They said that even if the entire procedure in article 368 is gone through, it will not culminate in an amendment of the Constitution taking place The other reason which the Supreme Court gave in this case was that article 13 when it refers to law takes within its ambit not only law which is passed in the ordinary legislative process but also includes the law passed by Parliament in the exercise of its soverign constituent power which Parliament does when it amends the Constitution, the organic instrument itself. This view of the Supreme Court has necessitated a reconsideration of the steps which are required to be taken to see that the power of Parliament which is the supreme body so far as this country is concerned is restored, or may I say, is reasserted so that parliament has power to take in hand the amendment of any provision of the Constitution.

A Constitution after all is an instrument which the people give to themselves for the organisaton of the governance of their country. It is at the most a means and not an end in itself. A Constitution cannot be immutable and if it is so held that it is immutable, it means that we subscribe to the theory of stagnation. All progressive countries in their Constitutions have provided for an amending process, because it has been regarded by jurists all over the world that the amending process is the only safety valve in any proper Constitution as a result of which the Constitution itself can be saved from decay.

Time and tide wait for nobody, and the mere fact that the written instrument is immutable will not stop the people from making strides towards their own progress to which and for which they for ever strive. That is why, to get over this difficulty, I would explain the import of the amendments to the two articles which have been brought before this House.

The amendment of article 368 which is now proposed seeks to make it clear beyond doubt that that article would now contain not only the procedure to amend the Constitution but would contain a substantive power to exercise the sovereign constituent right of Parliament to amend any provision of the Constitution including the fundamental rights Incidentally, the marginal note which said that it was a procedure has been amended, although some of us lawyers never understood how on the interpretation of the marginal note alone, a view can be taken that it is not power but procedure of the article itself in substance and in its content clearly indicated that there was a power to amend substantively any provision of the Constitution. To get over the difficulty, even this small change of altering the marginal note which really was not a creature of Parliament has also been one so far as the proposed amendment is concerned.

The other thing which has been done is to obviate the second difficulty which was raised in Golaknath's case. That difficulty was that the distinction which has been recognised in jurisprudence all over between constituent law which is passed in exercise of sovereign power and law which is passed by any parliament in exercise of its ordinary legislative power was blurred by that decision. Now, for the first time, in view of the provision proposed that nothing contained in article 13 will apply to an amendment under article 368, the so-called distinction between exercise of the constituent power and exercise of ordinary legislative power will be taken away, and it is now made clear and, again without any shadow of doubt, that the exercise of power under article 368 is not just ordinary legislative exercise of power but it is a power which in jurisprudence is regarded everywhere as sovereign exercise of constituent power.

A consequential amendment has also been proposed to article 13 which was really the block which came in the way substantially in Golaknath's case which says that nothing contained in article 13 will apply to a law passed in exercise of the sovereign constituent power contained in article 368 of the Constitution.

These, in substance, are the proposed amendments, and if these amendments are made, it will again be clear that Parliament alone in this country will be supreme in the matter of amendment of any provision of the the Constitution, and that is the sole purpose of amending the two articles at this juncture. When this Bill becomes law, I dare say that it will be a landmark in the legislative and constitutional history of this country.

SHRI PILOO MODY (Godhra) : Slavery.

SHRI H. R. GOKHALE : We have Chapter IV in the Constitution which provides for the Directive Principles. Every one knows that the Directive Principles are not enforceable in a court of law, but every one ought to know that the Directive Principles are fundamental to the governance of the country, and the Constitution itself provides that the State shall have due regard to the Directive Principles in making laws. If the Directive Principles are not merely to be regarded as ornaments or merely as items of beautification,...

SHRI PILOO MODY : That is what you have done for 25 years.

SHRI H. R. GOKHALE : .. but if they are intended to be given effect to so that laws give effect more and more to the Directive Principles as days go by, it is necessary that steps should be taken to see that if there is any conflict between the fundamental rights and the Directive Principles, ..

SHRI PILOO MODY : There is no conflict.

SHRI H. R. GOKHALE : ...that conflict is resolved.

I cannot resist the temptation of recalling to the attention of the House the very prophetic speech which the late revered Pandit Jawaharlal Nehru made when he spoke on the very first amendment of the Constitution in 1951. Even at that time he envisaged the possible difficulties which would come in interpreting the Constitution when the Directive Principles and fundamental rights are considered side by side. With your permission, I will read out a very small passage which I have extracted, and which is relevant for the purpose of the present discussion.

SHRI FRANK ANTHONY (Nominated—Anglo-Indians) : On a point of order. So far as the Twentyfourth Amendment is concerned, there is no reference at all to the Directive Principles. I want to hear my hon. friend on the Twentyfifth Amendment when the time comes. Today he is arguing in favour of the suppression of the fundamental rights by the Directive Principles. He can do that on the Twentyfifth Amendment. It has no relevance at all to the Twentyfourth Amendment.

MR SPEAKER : This is not a point of order. He is just arguing his case. He may reinforce his arguments, it does not matter.

SHRI H. R. GOKHALE : I am surprised that the hon. Member, who is a very senior lawyer, is not in a position to see the simple proposition that any amendment of the Constitution, whether it is the Twentyfifth Amendment Bill or any other Bill which may be brought subsequently, cannot be tackled. The root of the matter is that Parliament has to seize the power to amend any provision of the Constitution. If that is done, I wonder how my friend, Mr. Anthony can say that this is not relevant.

Sir, I was on the point of inviting the attention of the House to the prophetic words of the late Pandit Jawaharlal Nehru :

> "The real difficulty which has come up before us is this. The Constitution lays down certain Directive Principles of State Policy and after long discussion, we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain fundamental rights. Both are important. The Directive Principles of State Policy represent dynamic move towards a certain objective. The fundamental rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that dynamic

[Shri H. R. Gokhle]

movement and that static standstill do not quite fit into each other.

> A dynamic movement towards a certain objective necessarily means certain changes taking place ; that is the essence of movement Now it may be that in the process of dynamic movement, certain existing relationships are altered, varied of affected . The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to a certain goal step by step, is somewhat hampered and hindered by the static element being emphasised a little more than the dynamic element and we have to find out some way of solving it."

I said these words were very prophetic, because particularly after the last judgment of the Supreme Court in Golaknath's case, it has been exhibited beyond doubt that it is really the static element which is trying to gain predominance over the dynamic element. If it was contemplated by the founding fathers that our Constitution is intended to work in consonance with the Directive Principles, if there was an injunction on the State that they are fundamental to the governance of the country and if, further, the directive was that the State will make laws in consonance with the Directive Principles, how can anyone who has a sense of the general idea of the structure underlying the Constitution ever contend that the Constitution should not be amended, if need be, to make the Directive Principles more effective, so that the state can legislate to make the Directive Principles more effective as time goes on and when necessity arises The whole idea underlying the amendment now is that the predominance of the static element which has now really blocked all the ways to progress has to be given a subsidiary position and, if occasion arises, Parliament should have the power to amend the fundamental rights, if the necessity of implementing the Directive Principles arises

This is not to say that we wish to underrate some of the other basic rights such as the freedom of speech and expression, the right to assemble peaceably and without arms, right to form associations, right to move freely throughout the territory of India, etc , and they will be interfered with I anticipate that it may be said by some of the critics that if power is given to amend any provision of the Constitution, some of these rights also may be amended. I describe this argument as the argument of fear and nervousness.

If we look at the history of the last few years, after the Constitution came into force, we are on the twenty-fourth amendment Bill of the Constitution ; 23 amendments have gone by, but not one amendment has touched some of the other rights like the right guaranteeing the protection to minori ies or freedom of speech, except on two occasions.

SHRI FRANK ANTHONY : Question.

SHRI H. R. GOKHALE : On one occasion, the right to amend the rights of minorities was used only for the purpose of expanding the protection given to the minorities, not for reducing it. In the other case, the right to freedom of speech was amended only when a very grave threat to the very existence of the country was involved, for the protection of the security of the State and a minor amendment was carried out to enable the State to take steps to see that the country was secure.

But there is nothing to indicate in the short history after the coming into force of the Constitution that any of these fundamental rights were touched I think it was always regarded, and the Supreme Court has also accepted the position, that we had all the time the power to amend the fundamental rights. It is not as if for the first time this right is taken. But for the Golak Nath case it would not have been necessary at all. We always had the right and it was so assume l and it was so held by the judiciary also. Even then, no such right was ever touched. That is why I said it was more an argument of fear and nervousness than of substance.

Ultimately it is a question of how much faith we put on ourselves. The present Bill only seeks to amend the Constitution so as to give power to Parliament to amend the Constitution The actual amendment of the Constitution is again a matter left to this Parliament. Therefore I say that it is a question of how much faith, how much reliance we put on overselves and how much faith and how much reliance we put on our democratic institutions. If we have not that faith no written word can ever protect anything. If we have our faith

in the support of the people, if we know that what we are doing is really because of the mandate from the people, if we have that assurance, then we are not afraid of saying that in spite of the wide powers that we have given to Parliament to amend any of the provisions of the Constitution, that power would never be misused, because we have faith in this Parliament and we have faith in the Parliamentary institutions of this country.

I would like to close by mentioning that India is standing at the cross-roads after several years of independence. Yet, wide areas of our country and millions and millions of our people are steeped in poverty and backwardness. They are becoming increasingly impatient and loudly and determinedly demand swift action to effect rapid socio-economic changes and social transformation so as to ensure improvement in their lives. We have to be true to the mandate that the people have given us, and to be true to this mandate we must have the power to remove the dogs and impediments which stand in the way of implementing the socio-economic reform which we have before us. It is precisely to remove such an obstacle in the way of the implementation of our programme that this Bill has been brought before you for consideration and I commend it to the House for acceptance.

MR. SPEAKER : Motion moved :

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

The Business Advisory Committee has allotted ten hours for the consideration of this Bill and that report of the BAC has been approved by this House. I suggest seven hours for general discussion, two hours for clauses and one hour for third reading.

Some hon. Members have given notice of certain amendments for reference of the Bill to the Supreme Court, or circulation for eliciting public opinion or for reference to the Select Committee. The debate on the general discussion will cover all these motions also and they will all be put to the vote at the end of general discussion.

PROF. MADHU DANDAVATE (Rajapur) : Sir, I want to raise certain procedural points.

MR. SPEAKER : I gave my ruling the other day.

PROF. MADHU DANDAVATE : On the contrary, the record indicates that you said that I can raise this point later on.

MR. SPEAKER : When you are called you can raise this. But my ruling was there.

PROF. MADHU DANDAVATE : I have already written to you in the matter. Even today morning I have written to you that I want to raise it. So, please listen to me.

MR. SPEAKER : I have already listened to you.

PROF. MADHU DANDAVATE : At the very outset let me make it clear that I am raising a point of order regarding the procedure so as to facilitate the passing of this Bill.

MR. SPEAKER : He may speak on this when his turn comes.

PROF. MADHU DANDAVATE : That is all right. But this is a point of order.

MR. SPEAKER : I gave my ruling that there is no bar against this Bill being taken up. You may speak when your turn comes.

PROF. MADHU DANDAVATE : I am raising a point of order. If you say "you are not permitted to raise a point of order," then I will resume my seat.

MR. SPEAKER : I have given my ruling.

PROF. MADHU DANDAVATE : A member has every right to raise a point of order at any stage.

MR. SPEAKER : I said I gave my ruling.

SHRI PILOO MODY : How can you give the ruling before hearing the point of order ? This is the only place in the world where this can happen.

PROF. MADHU DANDAVATE : You cannot give a ruling before hearing my point of order. Let me make it very clear that I am raising this point of procedure to see that

[Prof. Madhu Dandavate]

the adoption of this radical Bill is facilitated. Now I come to my point of order. In the House if two similar Bills are already introduced, in that case what would be the general procedure that would be followed. I would like to point out that in order to force the pace of adoption of this radical Constitution Amendment Bill, in the very first short Session of the Parliament I introduced a Bill with the same title as of the present Bill. The area covered by the Amending Bill was the same It was Article 368. The objective of both the Bills is the same. It is to restore to the Parliament the sovereign right to amend any part of the Constitution Here I have a book which is written by the Secretary of Lok Sabha. In that it is stated : "A Bill which is dependent wholly or partly on another Bill pending before the House may be introduced in anticipation of passing of the Bill on which it is dependent, but the second Bill can be taken up for consideration and passing only after the first Bill has been passed by Parliament and assented to by the President."

MR. SPEAKER : This goes against yourself.

PROF. MADHU DANDAVATE : I am not objecting to consideration I want a clarification. Here it is specifically said that unless the previous Bill is passed the other one cannot be passed. Therefore, I would like to facilitate the adoption of this Bill by withdrawing my earlier Bill, if necessary. I may be permitted even to seek the leave of the House to withdraw the Bill so that there is speedy adoption of the present Bill. In the House of Commons also a similar situation had arisen when a Bill was taken up, a like of which was already pending before the House. Therefore, the Speaker had given the ruling that the new Bill had to be dropped in view of the previous Bill under consideration Therefore, my assurance to the mover of the Bill is, if by dint of any technicalities my Bill pending before the House comes in the way of passage of the present Bill, I am prepared even to withdraw it. However, these procedural matters must be clarified. That is my contention.

श्री अटल बिहारी वाजपेयी (ग्वालियर) : अध्यक्ष महोदय, मुझे इस के खिलाफ़ कुछ कहना है । कोई गैर-सरकारी बिल पेश कर दिया जाय, इस का अर्थ यह नहीं हो सकता कि सरकार उसी विषय पर उसी तरह का और कोई बिल नहीं ला सकती । वर्ना ऐसा होगा कि एक मेम्बर एक बिल ला कर हाउस की सारी कार्यवाही को रोक देगा ।

अध्यक्ष महोदय : आपने रूलिंग दे दिया है ।

I had given the ruling on the first day. There is no limit to Bills being introduced in this House. Any number of Bills can be introduced, but there is no bar against the consideration of the Bill unless the House has considered and given its verdict.

श्री अटल बिहारी वाजपेयी: यह समय वापस लेने का नहीं है ।

अध्यक्ष महोदय : आप उन को वापस नहीं लेने देंगे । वह वापस लें, न लें, इस में कोई फर्क नहीं पड़ता है । वापस लेना है तो ले लीजिये ।

Those who want to move their Motions for reference to Supreme Court or to the Select Committee or for circulation may move them now.

SHRI ATAL BIHARI VAJPAYEE : I beg to move :

> "That the Bill be referred to the Supreme Court for the purpose of eliciting its opinion thereon under article 143(1) of the Constitution." (1)

> "That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th November, 1971." (3)

SHRI P. K. DEO (Kalahandi) : I beg to move :

> "That the President be requested to refer the Bill to the Supreme Court for opinion under article 143 of the Constitution." (2)

SHRI FRANK ANTHONY : I beg to move :

> "That the Bill be referred to the Supreme Court, through the President, for an opinion under article 143 of the Constitution." (19)

SHRI R. R. SHARMA (Banda) : I beg to move my amendment No. 18.

MR. SPEAKER : It is the same as number one.

SHRI SHIVNATH SINGH (Jhunjhunu) : I beg to move :

"That the Bill further to amend the Constitution of India, be referred to a Select Committee consisting of 7 members, namely :—

(1) Shri Chhutten Lal

(2) Shri H. R. Gokhale

(3) Shri Nathuram Mirdha

(4) Shri Shrikishan Modi

(5) Shri Amrit Nahata

(6) Shri Nawal Kishore Sharma ; and

(7) Dr. H. P. Sharma

with instructions to report by the 7th August, 1971." (5)

SHRI M. C. DAGA (Pali) : I beg to move :

"That the Bill further to amend the Constitution of India, be referred to a Select Committee consisting of 7 members, namely :—

(1) Shri Bashweshwar Nath Bhargava

(2) Shri Chhutten Lal

(3) Shri Hiralal Doda

(4) Shri H. R. Gokhale

(5) Shri Shrikishan Modi

(6) Shri Nawal Kishore Sharma ; and

(7) Shri S. N. Singh

with instructions to report by the last day of the first week of the next session." (4)

SHRI A. K. GOPALAN (Palghat) : Mr. Speaker, Sir, we support this Amendment Bill that is there before the House now. While supporting the Bill we have to say that this Bill should have been introduced earlier, not only after the Golaknath case judgment but even before that, because several cases in 1961 as well as in 1969 were there in the Supreme Court where they had struck down some of the provisions relating to social and economic progress. So, this Bill should have come even before the Golaknath case judgment.

This Bill has come how because of the urge of the people for the last so many years after independence. The people wanted radical changes. They waited for some time. Then they understood that there were so many hurdles as far as changes were concerned ; so, they agitated. There were so many struggles in the country. The unemployed people in the country wanted employment The underemployed wanted better living conditions. So, the urge of the people was there and the people were determined not to live as before as slaves and in the conditions that were there. It was that urge of the people that prompted the Government to bring forward even at this late hour such a Bill taking the power of amending the Constitution wherever it stands in the way of social and economic progress.

Also, there was a change as far as the Government was concerned. The Government also through its experience of the last so many years understood that they would not be able to carry on the Government, as they had carried it on for the last so many years and were carrying on even today, by repressing the people whenever they came out for agitating for their demands. So, the Government also understood that with repression and military and police alone they would not be able to continue. They also wanted to create some hope or illusion in the minds of the people that something was going to come and there would be some changes in the country.

These are the two reasons why this Bill has been brought forward. Anyhow, we support this Bill because the hindrances that are there and were there for the last so many years from the High Courts and the Supreme Court, would be removed by adopting this Bill.

[Shri A. K. Gopalan]

I want to point out that two years ago when myself and E.M.S Namboodiripad gave a statement in the papers, in the course of the statement we said that the Constitution must be changed lock, stock and barrel. There was a hue and cry in the country. The monopoly press wrote editorials about it. Also, in this House there were some remarks about it that the Constitution was sacrosanct and sacred ; so, nothing should be said about the Constitution and there was no question of any change in the Constitution I am glad, now the Government and some of those, who criticized even a statement that the Constitution must be changed, have found out that unless some radical changes were made in the Constitution, even the reform which the Government proposed to bring about could not be brought about and implemented. Twentythree times the Constitution had been amended in 20 years This also shows that this Constitution is a bundle of contradictions. It is a bundle of contradictions because, as far as the Preamble is concerned, it says, Justice, social economic, political ; Liberty of thought and expression ; Equality of status and opportunity, but as far as other clauses in the Constitution are concerned, they stand in the way of any justice as far as economic and political is concerned and also equality as well as fraternity. That was the reason why twentythree changes were made in Constitution so that at least something of what is said in the Preamble, as far as those objectives of the Preamble are concerned, can be implemented.

I want to go to the history of the Constitution to show that we cannot expect anything more than this, as far as the present Constitution is concerned, which was the result of the Constituent Assembly. There was no adult franchise, the Constituent Assembly was elected by the State Legislature and also on the basis of property rights. There were 90 representatives of the princely States and there were also representatives of big business and landlords. So, the Constituent Assembly consisting of vested interests in this country could not produce a better Constitution than this one.

Now, I would like to go to some of the judgments of the Supreme Court and High Courts to show that as far as the Judges are concerned, they were keen on two things. Firstly, the Judges said in one case that fundamental rights as far as the personel liberty is concerned can be curbed. But when it came to Golak Nath case, they said that property rights cannot be touched.

I want to point out that in 1950 when I was detained, I filed a habeas petition in the Supreme Court and that petition was first constitutional case and it was a test case. In that, the majority judgement held that a person detained may not claim that the freedom guaranteed under Article 19(1) (d) was infringed by his detention, and that the validity of law providing for making orders of detention will not be tested in the light of the reasonableness of the restrictions imposed, thereby on the freedom of movement, nor on the ground that his right to personal liberty is infringed.

So, this judgement served as the guiding principle and a test case for so many year As far as the freedom of speech and personal liberty is concerned, they said that it cannot be touched.

As far as the second case that has been referred to here by the hon. Minister is concerned, it was in that case that the majority judges said that they have carefully considered the weighty pronouncements of the eminent Judges in Gopalan's case saying that "the assumption that certain articles in the Constitution exclusively deal with specific matters and in determining whether there is infringement of the individual's guaranteed rights, the object and form of the State action alone needs to be considered, and effects of the law on fundamental rights of the individuals in general will be ignored cannot be accepted as correct."

This was the judgment as far as the Bank Nationalisation case was concerned. It was the judgment of the Bank Nationalisation case where the class character of the judges came out specially, one sentence in the judgement, which showed as to what the attitude of the Judges is, how they view the problems and whether they are concerned with the interests of the community or they are concerned with the rights of individual property. In that case, they quoted so many capitalists countries like Australia, America and Britain. That one sentence in the judgement is :

"So great moreover is the regard of the law for private property that it will not authorise the least violation of it ; no, not even for the general good of the community."

So, here, the Judges did not consider the good of the community even. They said that they ignore the good of the community and that, as far as the right to individual property is concerned, it is more important than the general good of the community. So, Sir, after this judgment, if for the general good of the community it is necessary that property rights are curbed, that the profits of the monopoly capitalists are curbed for the general good of the country and for the development of the country and for solving the question of unemployment, if the Judges are of opinion and strictly say that as far as the general good of the community is concerned, if even for that certain curbs are there as far as profits are concerned and as far as the property rights are concerned, 'we will not allow', there is no question of any doubt that if any good is to be done, and also to fulfil the Preamble of the Constitution tha there will be social and economic justice in the country, unless these changes are made and unless this Bill is adopted, nothing can be done as far as the good of the country is concerned.

I want also to point out how the Judges feel as far as certain cases are concerned. In 1961 there was the Agrarian Relations Bill of Kerala. That was struck down by the Supreme Court. What were the clauses that were struck down ? The Bill said that as far as the ryotwari is concerned, the right of ownership of the landlord can be taken by the Government giving them compensation and the right must be vested in the Government and the land must be vested. That clause was struck down.

There was another case where several clauses of the University Act were struck down. It afforded protection to the teachers and the college professors, it also dealt with non-payment of wages to the professors for some months, and also some rights were given to the teachers and professors in that Education Bill and the University Act. There were some clauses in that Bill which gave some protection to the teachers and the professors, and those clauses were struck down by the Supreme Court.

There was a Bill, called the Bidi and Cigar Act and that Act gave some benefit as far as lakhs of bidi workers are concerned. Now, a month ago the Supreme Court has struck down the clauses in that Act which gave some relief to the bidi workers.

So, from all these judgments, it is very clear that the attitude of the present Judges is that as far as any relief to the toiling masses is concerned, those Bills passed by Parliament or by the Assembly will be struck down and no Assembly or Parliament will be able to do anything

This Parliament and the State Assemblies are elected on adult franchise. They know the aspirations of the people. They know the urges of the people and it is on that basis that legislations are passed. Legislations are passed unanimously in the State Assemblies and in the Parliament. So, Sir, if unanimous legislations of Parliament or the Assemblies are to be struck down by the Judiciary and if they were to say, 'We do not accept it', then, as far as the progress of the country is concerned, it is sure, Sir, that it is not in the interests of the country and the people.

I want also to point out that I am moving an amendment and I hope that Government will certainly accept it because this amendment is that Parliament shall not make any provision abridging the right of freedom of speech and expression, right to assemble, right to form associations of unions and right to personal liberty. The Minister.....

MR. SPEAKER : You may speak on your amendment when that stage comes.

SHRI A. K. GOPALAN : So, Sir, while supporting this Bill, I want to show the other side of the picture. I want to ask the Government one question. There are so many Acts passed by the Parliament and the Assemblies. Even to this day they have not been implemented. It is not because there is hindrance of the Supreme Court or the High Court as far as the land reforms are concerned. I will cite one instance. The report of the Study Group of the Home Ministry said in its report that there are several aspects to which no attention has been given by the administration and large scale evictions of tenants are going on. So, when Parliament or the state Assembly passes a legislation

[Shri A. K. Gopalan]

that there should be no eviction and if large-scale ejectments are there and nothing is done by the Government to see that these ejectments are prevented, what is the use of passing any legislation ?

As far as the Minimum Wages Act of Agricultural Labour is concerned, it is said that the condition of agricultural labour has not changed in that report. It is said also that 'The Minimum Wages Act is a dead-letter' Sir, this is the Report of the Ministry which says 'The Minimum Wages Act is a dead-letter'. It is not because of judges not agreeing to it, it is not because of the High Court or the Supreme Court not agreeing to it, but it is because they have not taken action that it remains a dead-letter. The Minimum Wages Act even today remains a dead-letter and there are so many reasons. Wherever the Agricultural Labourers asserted their rights and their struggles, they have won their struggles and they have got not only the minimum wage but they have got the wages that have been demanded by their unions, even when they wanted a particular wage which is above the minimum wage. Wherever there is no struggle, they do not get the minimum wage and they are getting wages below the minimum wage In this connection, I want to ask : What has happened to the Statutory Wage Board for newspapers ?

MR. SPEAKER : Are you not going somewhat off the point ? This is only consideration of the Constitution (Twenty-fourth) Amendment Bill.

SHRI A. K. GOPALAN : Sir, I am supporting the Bill. This Bill must be passed. All hindrances should be removed. At the same time, I have got to ask what happened to the earlier Acts which have been passed by this Parliament and why they have not been implemented. Sir, even today they are not implemented. Therefore, that aspect of the matter must be looked into. By merely passing this Bill, I have no illusion that everything will be O.K. I don't think everything will be O K. by merely giving power to the Government. What happened to the Coalmines Minimum Wages Act ? What happened to the Factories Act ? What happened to the Plantation Act ? All these various Acts have been passed by this very Parliament, but till today, nothing has been implemented. This is the state of affairs. Sir. The Beedi Wages Act was passed, but many States in India have not implemented that. Even Congress States still ruled by Congress, have not implemented that.

So, as far as this Bill is concerned, I wish to submit that we support this Bill, but we have no illusion that if this Bill is passed everything will be O K. We have had experience for the last so many years. Whenever an Act is passed, it is not only the High Courts and the Supreme Court which are the hindrances in our way. It is not so There are the bureaucrats. There are the monopolists. There are the employers. If they do not implement them, there is no power for the Government till now to see that they are implemented, to see that whatever benefits are there under these Acts are given to those to whom they are intended.

The Minister said that there is fear and nervousness and that is why certain amendments are brought. Mr. Speaker, Sir, I am not now speaking on my amendment, because, you said, I will get sometime afterwards.

I support the Bill I support this because the first hindrance that is there, that has been openly found out, has been removed. The Court stood in the way even in respect of a small change—social and economic change necessary in the interest of the nation. That is now being removed. That is the reason why I support the Bill.

SHRI R. K. SINHA (Faizabad) : I rise to support the Bill seeking to amend the Constitutional provision. This amendment is coming after 3 or 4 years after the Golaknath case. In that case, Supreme Court reversed its earlier decision. The earlier judgment of the Supreme Court was reversed by their own Judgment in the Golaknath case. So, we see, the Courts can also reverse themselves. Why don't they agree that Parliament, representing the people of India, can also change their decision ? There have been certain implications of the decision in the Golaknath case to the effect that Parliament is not sovereign. To that extent, this is an attempt to take away the sovereignty of the Indian people. The Indian people have expressed their sovereignty in the Constitution itself. If we look at the Constitution we find that the ultimate source of power in India is the

people of India. The people of India cannot as in the days of Aristotle gather together on the streets in order to convince my hon. friend Shri Frank Anthony and others.

SHRI R. S. PANDEY : (Rajnandgaon) : What has Shri Frank Anthony to do with the people ?

SHRI R. K. SINHA : The people of India have delegated their power, and the instrument of their power is the Indian Parliament. This Parliament represents the people of India and to the extent that this sovereignty is taken away, we are taking away the sovereignty of the people of India.

This question has been before the people of India for the last four years. There has been a referendum recently on this issue, because when we went to the polls, the people of India in every nook and corner of the country knew what the issue was. The Opposition parties came out and said, "Look here, these people are taking away the right to property, look here, these are the people who are going to take away the hamlets of the poor people and they will take away the rights of the so-called middle class people". Of course, such things were not intended, and yet such attempts were made in every corner of the country, and in spite of that, the people of India have given a massive mandate and a mandate which shows the impatience of the people, an impatience which says 'Do it now ; we have given you the mandate'.

Therfore, today when the Law Minister has moved this amondment to the Constitution, is a great day, and it is a day of victory for the forces that our leader Shrimati Indira Gandhi has been leading in this country.

When we talk of the sovereignty of the people of this country, we know that there would be right reactionaries and left reactionaries also. We know the history of revolutions. Always, the issue of property is posed, and the sacred rights of the minorities are posed before us. These issues are posed before us in order to divert our attention from the basic issue which is there before us. We must understand that when the people of India have given a massive mandate for a change, that change has to be implemented. Which power is there on the surface of this earth which can take away the sovereignty of the people and which power is there which can take away that sovereignty from the instrument of the people of India namely the Indian Parliament ?

It has been said that the Constituent Assembly was something more sacred. It is said that the Constituent Assembly created the Constitution and that Constitution is sacrosanct like the sacred cow. I want to examine the structure of the Constituent Assembly and that of the present Parliament.

The Constituent Assembly was a compromise arrangement with British imperialism. Our leaders were forced to agree to the setting up of a Constituent Assembly to be indirectly elected from the State Assemblies which were themselves elected on communal franchise and on limited property franchise and through indirect elections, and then there were the dictations from the British Parliament that the privileges of the ICS must be guaranteed. There was the Act of the British Parliament that we had to take note of in our Constitution. So, that was a compromise with imperialism. We had to agree with it because we thought that after the transfer of power, the Dominion of India would become the Republic of India Therefore, let not those gentlemen talk of the sacrosanct cow, the Indian Constitution, which was a compromise document from a compromise Constituent Assembly, and challenge this Parliament which is much more representative and which has come into existence after a referendum to the people of India.

So far as the character of the Constitution is concerned, they say that the previous Constituent Assembly created certain institutions and wrote certain laws and we could not amend them. Look at their perversity. There have been 23 amendments to the Constitution, and those 23 amendments are all right and must be accepted. Afterwards the law must be re-written by the Supreme Court by a majority of one ; the law should be so written that even if Parliament is unanimous and there is no vote of dissent, then according to the Golak Nath Case, it cannot enact any changes in the fundamental rights chapter of the Constitution. This is a challenge to the people of India and their sovereignty. These bourgeois judges ..

SHRI FRANK ANTHONY : On a point of order. He has referred to the Supreme Court Judges as 'bourgeois' Judges. It is an insult to the Supreme Court (*Interruptions*). Who is he to refer to them as 'bourgeois' Judges ? (*Interruptions*).

SHRI R. K. SINHA : I did not mention 'Supreme Court' Judges.

SHRI H. N. MUKERJEE : (Calcutta—North East) : It is a sociological term. There is no opprobrium attached to it.

MR. SPEAKER : He may discuss the merits of the case But let him kindly avoid use of such words.

SHRI R K. SINHA : I am not mentioning them like that.

SHRI H. N. MUKERJEE *rose*—

SHRI R. S. PANDEY : On a point of order.

MR. SPEAKER : I have given my ruling Let him continue. I am not going to allow any point of order.

SHRI BALATHANDAYUTHAM (Coimbatore) : What is wrong in the word 'bourgeois' ? Workers are described in a certain way ; others are described in some other way. What is wrong with this word ?

MR. SPEAKER : He can discuss the merits of the judgment. He can pass any remarks on the merits, But let him not describe the Judges in this manner , let him avoid such words (*Interruptions*).

SHRI BHAGWAT JHA AZAD (Bhagalpur) : On a point of order.

MR. SPEAKER : Our rules do not permit it.

SHRI INDRAJIT GUPTA (Alipore) : According to Shri Anthony 'bourgeois' is a term of abuse. How is it so ?

SHRI S. A. SHAMIM (Srinagar) : It is a complimentary term.

SHRI R. S. PANDEY : On a point of order. I do not want to define the terminology 'bourgeois'. श्री सिन्हा ने सुप्रीम कोर्ट जजेज के सम्बन्ध में जो बुर्जुआ कहा मैं उसके सम्बन्ध में कुछ नहो कहना चाहता । बुर्जुआ शब्द की व्याख्या के बारे में मुझे कुछ नही कहना है । लेकिन श्री सिन्थनी सुप्रीम कोर्ट मे प्रेक्टिस करते हैं । इस लिये उन को प्रोफेशनल मोटिवेशन है । इस लिये वह आपत्ति कर रहे है ।

He is motivated He has taken objection in order to seek the favour of the Supreme Court Judges (*Interruptions*).

SHRI S A. SHAMIM : This is another reflection on the Supreme Court. This is not fair.

अध्यक्ष महोदय : माननीय सदस्य जरा जोश में है । हमारा जो प्रोसीजर है हमें उस को तो फालो करना ही चाहिये । वह जोश मे आकर हद् से बाहर न चले जायें ।

श्री राम सहाय पांडे. श्री सिन्थनी काला कोट पहने हुए बैठे है और सुप्रीम कोर्ट से सीधे आये है ।

He never respects the sentiments of the people. (*Interruption*)

13.00 hrs.

अध्यक्ष महोदय : आपके जोश से कोई खास फर्क नही पड़ेगा । हमे कुछ प्रोसीजर पर भी चलना है । जोश की बात हो तो आप आज ही सब जजो को निकाल बाहर करे । जोश से बात नही चलेगी । हाउस में प्रोसीजर है जिस का पालन करना होता है ।

SHRI R. K. SINHA : Sir, I have the highest respect for the judges or a judge. I was only saying that the bourgeois lawyer may become a bourgeois member of the judiciary, and when we, of the era of commitment, talk of socialism and social changes, then these gentlemen of reaction and counter-revolution are revelling in reaction and they pounce upon us and they do not want changes in the Constitution.

Words of abuse were whirled on us by those defenders of the so-called rich among

the minority, and yet we kept quiet. Today, I want to say that when we speak with the voice of the people of India, with the people of India behind us. And so we have also a case to put before you.

I want to put before you something which Jefferson said and which was quoted by Dr. Ambedkar in the Constituent Assembly about the changes in the Constitution. (*Interruption*)

MR. SPEAKER : Order please.

SHRI R. K. SINHA : He said :

> "We may consider each generation as a distinct nation with a right, by the will of the majority, to bind themselves, but not to bind the succeeding generation more than the inhabitants of another country."

How could the conditions of 1947, the bourgeois, compromising generation, which was seeking a compromise-document with the British, bind us, the children of the socialist era, the socialist republic and when a change in the Constitution is wanted, when the Indian Republic will be styled as the socialist democratic republic of India ?

Further, Quoting from the same paper :

> "The idea that institutions established for the use of the nation cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself."

How can we say, when we are fighting for a cause, that it is different : and when we are entrusting power to the people of India, how can we say, "thus far and no further" and that the people of India in future shall not be given the right to amend the Constitution, their own Constitution ? This is just preposterous and is not possible.

Further, it may be pointed out that 'yet, our lawyers and priests generally inculcate this doctrine" of monarchy the unavoidable, unchangeable-the sacred cow of the Constitution "and suppose that preceding generations held the earth more freely than we do : had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generation, which they will have no right to alter ; in fine, that the earth belongs to the dead and not the living." It may belong to the dead, but I say it belongs to us, to the living and the children of the future of India.

That is why I say that the sovereignty of the Indian Parliament has to be re-asserted. In the previous Parliament the right reactionaries were more strong, and the Bill of Shri Nath Pai, that sacred soul who wanted to assert the sovereignty of the Indian Parliament, was postponed again and again. But today we are within our rights to discuss this and we want to tell the courts and the world that when we went to the polls not only were the right reactionaries on trial, but also ourselves, the Government and the court decisions in the Golaknath case, the Bank Nationalisation case and the Privy Purses case. The people of India rejected those judgments and authorised us to write a change into the Constitution, to restore and re-assert our sovereignty, so that once again that right may not be taken away from us.

Further, I want to ask the friends of the opposition what the Constitution is. Is it a dead document, is it a static document, or is it a living, dynamic document ? There is no worse tyranny in the world, worse than even a military dictatorship, than a Constitution which is frigid, which is frozen, which will not permit change. That would only promote Naxalite activity and violent revolution. If you have faith in the people of India, if you have faith in Parliamentary democracy, then the Constitution must change. We must have the right and the power to change the Constitution and assert our sovereignty.

The friends of right reaction have always helped the ultra-lunatic friends of left reaction. They always want more power for the bureaucracy, they want property rights to exist, they want property to be sacrosanct. It is these gentlemen who fired the first shot in counter-revolution which forced the people of India to react. The destiny of this country is wedded to Parliamentary democracy. We have so many communities, we have so many languages. We are a nation united by his-

[Shri R. K. Sinha]

tory, and it is only through Parliamentary democracy that even voices of secession could be integrated. It is because of Parliamentary democracy that we find Members sitting in this House who previously might have talked about secession. So, are you for change, or are you against it ? That is the question. Are you for the implementation of the Directive Principles of the Constitution or not ? I want to ask these gentlemen who consider the Constitution sacred, whether the Directive Principles are sacred or not. It is because the Directive Principles are more sacred, there is no way out except to amend the Indian Constitution and take away those irksome, poisonous sections of the fundamental rights which make some more equal then others.

Today what is the right of a poor man ? The right of a poor man is to go to the top of a mountain and commit suicide. He has no right of a livelihood. He has not got the right to live properly, he has no right to educate his children, he has no right to determine his future. Do you want to deny this right to the people of India ? Do you want to deny this right given to the people of India in the Constitution ? That is why Pandit Nehru had said that if a conflict arose between the Directive Principles and the fundamental rights, we would have to find out a solution in terms of the Directive Principles. Amendments to the Constitution became necessary because the peasantry was to be given the feudal estates I want to tell those who would like to quote Pandit Pant, Dr. Rajendra Prasad and Shri C. Rajagopalachari that there are proceedings of the Constitutent Assembly where Shri Rajagopalachari, Pandit Pant, Dr. Rajendra Prasad and Sardar Patel have said that the compensation quantum would be decided by the legislature. They were people who knew that there was a marching peasantry who would take over the lands. So, there was a peaceful transfer and the people got the land. The Constitution was amended.

Were those amendments wrong ? If a social change is proper for the feudal estates in the country why cannot there be a social change for the urban rich, for those who want today to enjoy their right to urban property ? I want to ask, how many bungalows, how many aeroplanes, these bourgeois gentlemen want to have when people starving in this country.

SHRI ATAL BIHARI VAJPAYEE : How many helicopters for the Prime Minister ?

SHRI R. K. SINHA : You were shuttled to Gwalior from U.P.

SHRI ATAL BIHARI VAJPAYEE : Gwalior is my home town.

SHRI R K. SINHA : If this Constitution stands in the way of the people of India and their future, it shall be amended, We have the future of India before us. As Pandit Jawaharlal Nehru said, we have many a promise to keep and this Parliament shall keep those promises.

SHRI INDRAJIT GUPTA : Sir, I rise on behalf of my party to support this amending Bill.

Having got that applause from the other side, let me also say, credit should be given where credit is due. The Golaknath judgment was delivered in February, 1967, I think just about the time when the Fourth Lok Sabha was elected. Mr. Nath Pai introduced his Bill, I am not quite sure of the exact date, perhaps sometime in 1968 or may be 1967 itself. So, the Golaknath judgment and Mr. Nath Pai's Bill were both before the country and Parliament from 1967. It was only towards the end of 1970 -December, 1970— that the Lok Sabha was dissolved and we went to the polls. So, while we definitely welcome this amendment, there can be no doubt that it is long, long, overdue and there never was a sense of urgency displayed by the ruling party throughout that long period.

श्री अटल बिहारी वाजपेयी : अब बजाओ तालियां ।

SHRI INDRAJIT GUPTA : A most leisurely attitude was taken towards Mr. Nath Pai's Bill I say this because today, I am glad this amendment has come and I want to give credit where credit is due not to this Government primarily, but to the masses of this country, to the democratic and leftist forces, who were determined to go ahead, who were determined that they will not allow any obstacle to radical and far-reaching economic and social reforms.

The first road block was not the Supreme Court. After the Golaknath judgment, the road block was here in this very House. That road block had to be removed first before you could come with this amendment and pass it. That road block was removed by the people of this country. It was they who cut to size those *status quo* forces, the reactionary forces, which were here in this House in considerable strength before the last elections, which had hoped and were confident of coming back after the elections in much greater strength. If that road block had not been removed, it was no use bringing this amendment. You could never get it passed. Therefore, I want to give the credit to the people first. Now, of course, some legal and constitutional obstacles in the path to progress can be removed. Mr. Masani, in this morning's papers, has referred to it as "the beginning of the end". Other people also are trying to spread panic and scare throughout the country that this will lead to the expropriation of all property, particularly the property of the small owners. I want to make it clear as far as my party is concerned, though we have been campaigning for a very long time for this and other radical amendments to the Constitution, we want to remind everybody that this power is only an enabling power. This is nothing so very revolutionary. It is Shri Masani and his friends who, by creating a big hullabaloo in the country, are trying to pass this off as something very terribly revolutionary which is going to expropriate everything. It is not so. Let us be very sober at this moment. This is only an enabling power. By itself this amendment, and the enabling power it gives to the Parliament, are not going to bring about any solution to these economic and social problems. Everything will depend on how far the ruling party and the ruling class now use these powers in the actual practice. So, the real test is going to begin now, how far you are prepared to take concrete steps to fulfil the commitments which were made to the people during the elections about curbing the powers of the exploiting class and vested interests, about breaking up the monopolistic concentration of economic wealth and translating the directive principles into practice.

The Law Minister very correctly pointed out that the Constitution enjoins upon us to frame laws which are in consonance with the directive principles. But may I know during all these years who was preventing you from framing laws in consonance with the directive principles ? There was no bar then. And now as regards this Monopolies and Restrictive Trade Practices Act, which was passed a short while ago, already everybody is speaking and writing about it and it is openly said that this Act is as dead as dodo and even the monopolists are not the least worried about it. So, it is good that we have an enabling power, it is good that the supremacy and sovereignty of Parliament are asserted through this amendment and so we supported it wholeheartedly. But we must warn the government that this is not enough. Your record in the past does not justify any confidence that simply by getting this enabling power you are actually going to go ahead in the direction in which the people want the country to go.

Now I have to say a few things about the Supreme Conrt. They may annoy Shri Frank Anthony, but I cannot help it. The basic issue, to my mind, towards which the Supreme Court has exhibited supreme indifference, is this very question which the Law Minister raised a little while ago, whether any sanctity is attached to the directive principles or not. The Supreme Court is Supremely oblivious of this question. Now when an inherent contradiction arises--I think the contradiction is inherent—between the directive principles and a part at least of the fundamental rights, how is this practical problem to be solved ?

SHRI PILOO MODY : What is the contradiction ?

SHRI INDRAJIT GUPTA : The contradiction is this. When an individual or individuals are permitted to enjoy one of the fundamental rights to such an extent that that enjoyment deprives 90 per cent of the other people from having anything to do with what is given in another part of those rights, that is a contradiction in itself and it is a negation of the fundamental right. A fundamental right cannot be something which is enjoyed by ten per cent of the people and denied to 90 per cent of the people. That is the contradiction. The Law Minister is correct when he said that the Constitution, which the people gave to themselves, is after all the instrument, the only instrument or means for translating the directive principles into reality.

The question is what happens when that instrument refuses to serve the primary needs,

[Shri Indrajit Gupta]

Where a deadlock has arisen, the social contradictions have been brought to a point where unless these contradictions are solved and this deadlock is broken we cannot go ahead, and that is precisely what we are doing by giving the sovereign right to Parliament to do that.

May I, with your permission, quote a few sentences from what Pandit Jawaharlal Nehru spoke on the 8th November 1948, in the Constituent Assembly ?

> "While we, who are assembled in the House undoubtedly represent the people of India, nevertheless, I think it can be said and truthfully that when a new House by whatever name it goes, is elected in terms of this Constitution and every adult in India has the right to vote—men and women—the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that that House elected so should also have an easy opportunity to make such changes as it wants to."

So, it was visualised even at that very time and Mr. B. N. Rao also speaking in the Constituent Assembly said : "If a Constituent Assembly based on a restricted franchise can by a simple majority frame the original Constitution it is illogical to lay down that the Constitution so framed shall not be amended by a Parliament based on adult franchise except by a special difficult process involving special majorities and in some cases special requirements." He has even hinted here that special majorities and special requirements should also not be necessary but we have provided for those.

Sir, in the old days we used to hear about the divine right of kings.

SHRI PILOO MODY : Now, we here about the divine right of queens.

SHRI INDRAJIT GUPTA : Now, this is sought to be supplanted by the divine right not of the queens but of the Supreme Court. I do not wish to undermine the highest court in the land but what is the divine sanctity which can be attached to a Supreme Court whose benches go on from period to period interpreting the same provisions of the Constitution in diametrically different ways ?

Everybody knows that in 1951, Sir, a bench of the Supreme Court unanimously upheld Parliament's right to amend the Constitution. This was Sankri Prasad's case. Soon after that there was Sajan Singh's case. Again the Supreme Court upheld the right of the Parliament Then came the Golak Nath case in which a bench of eleven judges by a majority of one—six to five—set-aside the previous judgements and ruled that Parliament has no right to amend the Constitution. What does it mean ? Sir, why I spoke of the divine right of the Supreme Court was because this history shows according to the individual subjective attitude, the social ideas which a particular judge or set of judges may have at a particular period of time their interpretation will be done according to that and it will go on changing from period to period.

May I say something about the social outlook of judges without meaning any disrespect to them One former Chief justice has gone on record to say, when he delivered a lecture somewhere, he made a distinction between what he called the "popular view" and "democratic view." According to him a popular view of the Constitution is the view which is held by politicians, that is, the elected representatives, Members of Parliament and so on. He says that this popular view must always be having inferior status to what he calls the Democratic view. Democratic view is the view that the courts take. In other words this is a sort of contemptuous attitude. If I may say so it is an attitude full of contempt towards the people who are electing their representatives to the House or Parliament or legislatures.

Then, Sir, another Chief Justice has said the meaning of the Constitution cannot change with the change in Government. But this particular Chief Justice does not explain that if this is true, how can the meaning of the Constitution change with every change in the Judges who adorn the Bench of the Supreme Court. That he does not explain.

Certain ex-Chief Justices, Shri Hidayatullah and Subba Rao for example, have openly expressed, what I would say, their suspicion or distrust of Parliament They have a sort of a fear that if you give this Parliament this power, it will do something which will be disastrous or which will be something which will upset altogether the scale of values by which they want society to progress.

Another ex-Chief Justice—I am only talking about what kind of social outlook he must have—immediately after his retirement was not averse to accepting the chairmanship of a group of companies which are openly being prosecuted for several years for breach of tax laws.

SOME HON. MEMBERS : Shame, shame !

SHRI INDRAJIT GUPTA : What sort of attachment to property is that ?

AN HON. MEMBER : This is bourgeois attitude.

SHRI INDRAJIT GUPTA : This is not bourgeois ; I do not know what it is.

Finally, about their social outlook I would just remind hon. Members of what the first Attorney General, Shri M. C. Setalvad, has said in his book, *My Life, Law and Other things*. Analysing this Golaknath case judgment he has said :—

"The majority decision"—remember, it was a decision by the majority of one—

> "clearly appears to be a political decision, not based on true interpretation of the Constitution, but on the apprehension that Parliament, left free to exercise its powers, would, in course of time, do away with the citizen's fundamental rights, including his freedom."

No less a person than Shri Sitalvad says that this was a political decision that they had taken.

Then, he refers to a very interesting anecdote which, to my knowledge, has not been contradicted till this day. After a dinner or something he had a private conversation with Chief Justice Subba Rao and Justices Hidayatullah and Wanchoo and he told them :—

> "A decision involving such far-reaching consequences should not have been arrived at by so slender a majority, but the Chief Justice's answer was that they tried to have a larger majority but could not succeed."

It has never been contradicted.

I think, this is enough to illustrate that a second look was very necessary at the implications of the Golaknath case judgment.

SHRI SHYAMNANDAN MISHRA : (Begusarai) One bourgeois is right ; the other is not.

SHRI INDRAJIT GUPTA : The prestige and authority of the highest Court and the *importance of a judicial review should not be* undermined. But we shall firmly resist any attempt to invest this judiciary with any kind of a divine right to act as the ultimate arbitrator and to place roadblocks in the way of economic and social progress of the people of this country. If the Judges act in tune with the changing times, if they adjust themselves to the changing times, the changes will be all the easier and smoother. If they do not, certainly they would not be able to prevent the onward march of the millions of people of this country.

With regard to the Supreme Court I have only one other observation or suggestion to make. Please also consider another amendment. Why should there be anything sacrosanct about this number of 13 Judges ? I am not able to follow it.

SHRI FRANK ANTHONY : Pack it up.

SHRI INDRAJIT GUPTA : Make it bigger. Increase the number. Why not ? We want a review of all these judgments. There was a time, I shall remind Shri Anthony, when in our Constitution the number was limited to six or seven. Later on it was amended and changed to thirteen. There is nothing sacred about it. Plenty of work is lying in arrears in the Supreme Court. Cases have piled up for years. We know that when our workers of factories have to go and appeal to the Supreme Court, they have to wait for five or six years. From every point of view I would suggest that it is necessary that an *amendment be brought forward increasing the* number and providing for a larger number of Judges.

There is nothing much more that I would like to say in support of this Constitution Amendment Bill. Therefore, I want to end by reminding my friends opposite again that there is no doubt, and I do not share that fear at the moment, that in our country there is a fear, there is an apprehension, amongst

[Shri Indrajit Gupta]

minorities—I do not consider Mr. Frank Anthony to be their only spokeman—and people outside, I know, a genuine apprehension, about the rights of minorities, the rights of Scheduled Castes and Scheduled Tribes people, the rights of woman to equality and so on, and who feel that perhaps, if not the Present Government, some other Government in future might misuse these powers against them.

SHRI FRANK ANTHONY : Have misued them.

SHRI INDRAJIT GUPTA : Then, there is also the question of other freedoms. Therefore, I would suggest to the Government that it is not enough simply to give oral assurances and to repeat the assurance. I would say that it should come forward, if necessary, to strengthen further by legislation he rights which are enshrined and which are assured to the minorities, to the Scheduled Castes and Scheduled Tribes and so on.

SHRI FRANK ANTHONY : Hear, hear ; that they will not do.

SHRI INDRAJIT GUPTA : There are amendments which have been tabled to this effect. They may kindly be examined and the Government should seriously consider the question of accepting the spirit of the amendments in a suitable way so that these apprehensions can be removed.

The main thing is whether the Government will now utilise this enabling power to really launch an offensive against the vested interests and exploiting classes and groups.

SHRI R. S. PANDEY : Yes.

SHRI INDRAJIT GUPTA : I am not at all assured. As far as I can see, the licences are still being given galore to the big business houses. There is no sign of any serious attempt to curb their power.

After 1971 mid-term elections, the only concrete step taken in this direction has been the taking over of the management, not the ownership yet, of the general insurance companies. For the taking over of the mangement, we have agreed to pay Rs. 33 lakhs per month as compensation to 106 companies whose original paid up capital was Rs. 12 crores and who have accumulated assets amounting to Rs. 240 crores and whose premium income amounts to Rs. 125 crores. All this was done with the original paid-up capital of Rs. 12 crores. And yet not in taking over their ownership but simply their management, we have agreed to pay Rs 33 lakhs per month as compensation. To me, this is an ill omen. When the Bill comes to take over the ownership of these general insurance companies, we may be called upon to vote for an extravagant sum of money to be given to them, not in the name of compensation but as an amount.

SHRI R S. PANDEY : No ; don't worry about that.

SHRI INDRAJIT GUPTA : I would say, first of all, after these two Constitution Amendment Bills are passed, nothing stands in the way of reducing the compensation which was taken at that time from us, by the bank magnates, Rs. 88 crores, which was the result of the Supreme Court decision. Now, once these two amending Bills are passed, there is nothing to prevent us from reducing the quantum of compensation.

Of course, as regards the privy purses and other privileges are concerned, let the Government come forward, sooner or later, I do not know and, when these confabulations behind the scene are over, we shall know what is the amount in that case also going to be.

I would appeal to the Members of the ruling party, on that side, to see that this enabling power which is now being taken is really utilised in the interest of the people and not to be appease and satisfy the vested interests. A vigorous policy of nationalisation can now be undertaken. The road block has been removed. At least, to begin with, the foreign oil companies whose role has been exposed in the last few weeks, the sharks who are looting our country and exploiting our country, should be nationalised. All these will prove ultimately whether your commitments or assurances to the people were sincere and genuine or not. Your *bona fides* are on test. Therefore, I would...

SHRI R. S. PANDEY : Oil companies must be nationalised—I agree with you.

SHRI INDRAJIT GUPTA : While supporting this amendment, we know that only the same movement of the masses, only the same pressure of the masses which brought about this long overdue amendment, only that pressure and struggle of the masses, will force you also to go ahead in the direction of these concrete measures to curb the power of the exploiters and the vested interests. Therefore, I would ask you also, like the Judges of the Supreme Court, to move in tune with the times and not exhibit the leisurely pace you have shown ever since the Golaknath judgment came out because if you do not go in that direction, let there be no doubt that the people to whom you have given these promises, will be disillusioned and certainly they will look to other leadership and other ways to go forward and revolutionary ways will be taken, if necessary, so that the social and economic fabric of this country can be changed.

श्री दरबारा सिंह (होशियारपुर): स्पीकर साहब हमारे दोस्त गुप्ता साहब ने बहुत साफ तरीके से हमारे सामने सारी बातें रखी है । मैं अर्ज करना चाहता हूँ कि समाज में एक निहायत तब्दीली आ रही है और वह तब्दीली इस लिहाज से है कि हमारे समाज में ऐसी परम्परायें आ जायें जिससे कि हम वह तब्दीली ला सकें जो आज लोग चाहते है । इसी लिहाज से हिन्दुस्तान के लोगों ने मैनडेट दिया है और प्राइम मिनिस्टर के हाथ मजबूत किए है इसी बात के लिए कि लोग जो चाहते है वह तब्दीली फौरी तौर पर हो । फंडामेन्टल राइट्स में तब्दीली इसलिए न की जाये कि किसी की फ्रीडम को खींचना है बल्कि इसलिए कि जो लोग मफादपरस्त है, बड़े-बड़े लोग जो दौलत जमा करके बैठे है और दूसरी तरफ जो लोग भूखों मर रहे है उनको हम किसी तरह से राहत और आराम पहुंचा सकें इसीलिए कांस्टीट्यूशन में यह तब्दीली लाई गई है । यह तारीख तब्दीली है और यह तारीखी तब्दीली उस दिन तक चैन से नही बैठेगी जबतक इस तब्दीली को पूरे तौर पर पूरा नहीं कर लिया जाता । इस पार्टी ने लोगों से मैनडेट लिया है, लोगों से कहा है कि हम तुम्हारी तकलीफ दूर करने के लिए और तुम को रोटी, कपड़ा, मकान और दूसरी चीजें मोहैया करने के लिए कोशिश करेंगे । जनता से जो हम ने मैनडेट लिया है और इतनी बड़ी अक्सरियत में यहां जो आये है हमारे हरएक के दिल में एक जज्बा है और उसी जज्बे से काम करने के लिए नेकनीयती से यहां पर यह तब्दीली लाये हैं । गोलकनाथ केस में एक रुकावट हमारे काम करने के रास्ते में आई । 1951 में एक केस हमारे सामने संकरी प्रसाद का आया जिसमें यह कहा गया कि फंडामेंटल राइट्स में तब्दीली की जा सकती है । एक केस मज्जन सिंह का आया उसमें भी कहा गया कि तब्दीली लाई जा सकती है । लेकिन एक गोलकनाथ का केस हमारे सामने ऐसा आया । लेकिन अगर हालात बदलते है तो उनके साथ-साथ जजेज की जेहनियत भी तब्दील होनी निहायत जरूरी है । मुझे याद है जब चंडीगढ़ में गजेन्द्रगदकर साहब गए थे जुडीशियरी और एग्जीक्यूटिव को अलाहिदा-अलाहिदा करने के लिए तो उस वक्त उन्होंने कहा था कि वह जजेज जो टाइम के साथ, समाज के साथ और तब्दील के साथ तब्दील नहीं होते और अपने दिमाग में रिजिडिटी और पुरानी चीजो को रखते है वह तरीका आज एक मुल्क में नही चाहिए । यह उनका कहना है जोकि एक निहायत अहम सख्सियत है और लीगली वह बात अपनी जगह रखती है ।

13.40 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

तो मैं कहना चाहता हूँ कि इसलिये तब्दीली लाये है कि यह चीज बहुत जरूरी है इस समाज में तब्दीली लाने के लिये । हमारे जजेज सुप्रीम कोर्ट को इसलिये सुप्रीम समझते है कि वे वक्त के तकाजे के साथ अपने को बदलने के लिये तैयार नही है । जब कि होना यह चाहिये कि ला का इन्टरप्रीटेशन लोगों की भावनाओं को समझते हुए उनके हक में होना चाहिये, न कि मुट्ठीभर लोगों के हक में । हम ने गोलकनाथ केस में देखा कि सुप्रीम कोर्ट ने कहा कि फंडामेटल राईट्स में तब्दीली न की जाय । क्यों न की जाय ? हम यह तो नहीं कर रहे है कि जिस के जी में जो आये वह करे । हम फ्रीडम खींचने वाले नहीं हैं । हम तो एक बात करना चाहते हैं कि ऐसी चीजें जिससे समाज में विषमता पैदा होती है उस चीज

[श्री दरबारा सिंह]

को न रहने दे। ईक्वैलिटी को पूरे तौर पर अपने सामने ला सके। इसलिये 13(2) में कहा है कि यह आर्डिनरी ला है। जब कि जजेज का कहना है कि कास्टीट्यूशन में कोई तब्दीली नहीं ला सकते।

मैं जजेज के बारे में कुछ नहीं कहना चाहता क्योंकि मुझे बहुत मालूम है इन के बारे में। लेकिन सुप्रीम कोर्ट के जजेज की जहनियत के बारे में कुछ कहना चाहता हूं। हमें कुछ पता नहीं था कि यह क्या फैसला देने वाले हैं बैंक नेशनेलाइजेशन के बारे में। लेकिन 15, 20 रोज पहले मैंने कह दिया था कि जजेज हमारे खिलाफ फैसला करने वाले हैं क्योंकि उन्होंने कहीं न कहीं यह बात कही थी ये कुछ लोग हैं जो नेशनेलाइजेशन कर रहे हैं। उनकी जान पहचान वाले लोग उन बैंकों के, जिनको नेशनेलाइज किया जा रहा था, हिस्सेदार थे, इसलिये जजेज का वेस्टेड इंटरेस्ट था। उनके अपने मफ़ाद होने हैं इसलिये वे भूल जाते हैं कि असली जस्टिस क्या है। माननीय ऐथौनी साहब ने कहा कि यह बात क्यों कही जाती है। लेकिन मैं उनको बताना चाहता हूं कि यह हम नहीं कह रहे हैं, बल्कि लोग कहते हैं जिन में अल्टीमेट सावरेन्टी रेस्ट करती है। माननीय ऐन्थानी साहब को क्या पता है। यह तो किसी केस को लेकर सुप्रीम कोर्ट में चले जायेंगे और जजेज को अपने पक्ष की बात समझायेंगे। मैं माननीय सदस्य के खिलाफ नहीं हूं। इनको नौमिनेट किया है माइनारिटी कम्युनिटी की हिफाजत के लिये। यह अपने आप को रिप्रेजेन्ट करें तो ठीक है। लेकिन इमतियाज पैदा करने की कोशिश करें वह ठीक नहीं है।

अगर आप तीनों केस में, शंकर प्रसाद, सज्जन सिंह और गोलकनाथ केस बैठने वाले जजेज की जजमेंट का जायजा लें तो आप पायेंगे कि 13 जजेज ने इस हक में फैसला दिया है कि आर्टिकिल 36 का अमेंडमेंट हो सकता है और केवल सात ने उस के खिलाफ जजमेंट दिया है। उन जजेज को कौन नौमिनेट करता है? मफादेआम्मा के लोग ही उनको नौमिनेट करते हैं? इसलिये उनको कोई अधिकार नहीं है कि वह यह कहें कि इस हाउस द्वारा फंडामेंटल राइट्स में कोई तब्दीली नहीं हो सकती। आखिर को इस 525 के हाउस में जनता ने हमको दो-तिहाई मैजौरिटी दे कर भेजा है और यह हुक्म दिया है कि हम फंडामेंटल राइट में तब्दीली करें जिससे प्रौपर्टी एक आदमी के हाथ में न रह सके और समाज में अच्छे ढंग से तब्दीली लायी जा सके। अब अगर हम उनके ऐस्पीरेशन्स को पूरा नहीं करते तो फिर डेमोक्रेसी किस बात की?

एक आर्गुमेंट दिया गया, एक डर पैदा किया गया है, एक सहम पैदा किया गया है कि ऐसा करने की अगर पार्लियामेंट को इजाजत मिल गयी तो हम इस हद तक पहुंच जायेंगे कि जितने फंडामेंटल राइट्स में इनको ऐब्रोगेट कर देंगे। डेमोक्रेसी आज यहीं पर्सपेक्टिव में काम कर रही है, 525 आदमी यहां चुन कर आये हैं, उन पर यह बेएतबारी करना ठीक नहीं है। लेकिन कुछ लोग कहते हैं कि ऐसा हो सकता है कि हम लोग ऐसा कर दें। तो प्रीमपोज करना कि पार्लियामेंट तमाम फंडामेंटल राइट्स को खत्म कर देगी, यह गलत है। डेमोक्रेसी सुप्रीम है और जो लोग चुन कर आये हैं, वे सुप्रीम हैं। सुप्रीम कोर्ट सुप्रीम नहीं है। ला स्टेटिक नहीं रह सकता। अगर ऐसा हो जाय तो जिन्दगी मौत बन जायेगी। चलने का नाम जिन्दगी है और खड़े होने का नाम मौत है। इसलिये हम मौत क़बूल करने के लिये तैयार नहीं हैं। हम आगे बढ़ना चाहते हैं। हम नहीं चाहते कि एक जगह पर खड़े होकर खत्म हो जायें। कास्टीट्यूशन में तब्दीली होती रही है, होती रहेगी जब तक कि लोगों की जो बेसिक नेसेसिटीज आफ लाइफ है वह पूरी तौर पर न मिल जाये। इतनी देर तक हम बैठने वाले नहीं हैं।

कमपेसेशन की जब भी कभी बात आयी तो मार्केट रेट पर देने की बात की जाती है। आज किसी की जायदाद की कीमत एक लाख रु० दें, जो ब्लेक करने वाले हैं, जो ब्यूजआ है, जो वेस्टेड इन्टरेस्ट वाले हैं, वे इससे संतुष्ट नहीं होंगे।

वह तो चाहेंगे कि उन को कम्पेन्सेशन मिलता रहे और इतना मिलता रहे जिस से उनकी तिजोरी जो कि पहले ही भरी हुई है, और भरती जाये। जो फ्यूडल्स और इन्डस्ट्रियलिस्ट्स हैं वह ब्लैक का रुपया अपनी जेब में भर रहे हैं और चाहते हैं कि कांस्टीट्यूशन में कोई संशोधन न किया जाय।...

MR. DEPUTY-SPEAKER : Are we discussing about that just now ? We are not discussing about compensation or anything of that sort at the moment.

श्री दरबारा सिंह : ठीक है, मैं उस को छोड़े देता हूं। आज जो मसला हमारे सामने है वह यह है कि इस समाज में जितनी तबदीली होनी चाहिये उस के मुताबिक लोगों की मदद की जा सके, और इस का एक ही तरीका है हम संशोधन यहां लायें जिस से 90 फीसदी जो हमारे देश के लोग हैं उन को रोटी, कपड़ा, मकान, तालीम, बुढ़ापे की पेशन, जो कि जरूरी है, मिल सके। ऐसा समाजवाद हम कायम कर सकें, और ऐसा करने के लिये कुछ ही लोगों के हाथ में रुपया इकट्ठा न होने दें ताकि लोग गरीब ही बने रहें। और हम 500 आदमी यहां बैठे सोचते रहें कि गरीबी कैसे हटेगी, इस का वक्त अब नहीं है।

आज भी बहुत कुछ कहा गया, कल भी कहा गया कि गरीबी हटाओ का नारा हमने दिया है। यह कदम हमारा गरीबी हटाने की तरफ ही जा रहा है, और यह एक हिस्टारिकल स्टैप है, इस लिये आप को इस को सपोर्ट करना चाहिये। जो चीजें मफादेआम्मा के हक में हैं उन को आप सपोर्ट करें, यही मेरी गुंजारिश है।

इसलिये मैं इस बिल का समर्थन करता हूं।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, आज जब हम इस विधेयक पर विचार कर रहे हैं, तो हमें स्वर्गीय नाथपाई जी का स्मरण आना स्वाभाविक है। पुरानी लोक सभा में इस आशय का विधेयक उन्होंने पेश किया था लेकिन सत्तारूढ़ दल उस समय बहुमत में नहीं था। **(व्यवधान)** अतः उसने इस विषय पर आगे चर्चा टालने का प्रयत्न किया और विधेयक पारित नहीं हो सका। उस समय के विधि मंत्री श्री अशोक सेन का भाषण उस दिन इस सदन में उद्धृत किया गया था। इतिहास के विद्यार्थी आज के विधि मंत्री श्री गोखले और उस समय के विधि मंत्री श्री सेन के भाषणों का तुलनात्मक अध्ययन जरूर करेंगे और देखेंगे कि सिद्धान्तों का आवरण ओढ़ कर किस तरह से सत्तारूढ़ दल अपनी भाषा बदलती रही है, संविधान की परिभाषा में परिवर्तन करता रहा है।

उपाध्यक्ष जी, इस बात से कोई इन्कार नहीं कर सकता कि गोलकनाथ के मामले में सर्वोच्च न्यायालय ने जो निर्णय दिया है, उस से अनेक महत्वपूर्ण प्रश्न खड़े होते है। मैं गोलकनाथ के मामले में सर्वोच्च न्यायालय के निर्णय को अन्तिम शब्द मानने के लिए तैयार नहीं हूँ। सर्वोच्च न्यायालय पहले भी अपने निर्णय बदल चुकी है और अगर सरकार प्रयत्न करती तो पिछले तीन सालों मे गोलक नाथ के मामले में भी सम्भव है कि सर्वोच्च न्यायालय अपना निर्णय बदल देता।

अनेक वक्ताओं ने इस बात का उल्लेख किया कि संविधान में पहला संशोधन जो 1951 में किया गया था, सर्वोच्च न्यायालय ने उस पर कोई आपत्ति नहीं की। संविधान का चतुर्थ संशोधन जो 1955 में किया गया, सर्वोच्च न्यायालय द्वारा अवैध घोषित नहीं हुआ, और संविधान का 17 वां संशोधन जो 1964 में पारित किया गया, सर्वोच्च न्यायालय द्वारा मान्य किया गया था। अगर सरकार गोलकनाथ के निर्णय के बाद सारा मामला अनुच्छेद 143 के अन्तर्गत सर्वोच्च न्यायालय की राय के लिए भेज देती तो हो सकता है कि स्वयं सर्वोच्च न्यायालय अपने निर्णय में परिवर्तन कर देता। जस्टिस हिदायतुल्ला जो गोलक नाथ के निर्णय में सर्वोच्च न्यायालय के बहुमत के निर्णय से सहमत थे, उन के पृथक निर्णय के एक अंश को मैं उद्धृत करना चाहता हूं :

> "The judgments of the Supreme Court in the cases of Sankari Prasad and Sajjan Singh conceding the power of amendment in relation to the fundamental rights were based on an erraneous view."

[श्री अटल बिहारी वाजपेयी]

जस्टिस हिदायतुल्ला के अनुसार सकरी प्रसाद और सज्जन सिंह के मामले में जो सर्वोच्च न्यायालय ने निर्णय किया वह गलत था और उनका दावा है कि उन्होंने जो निर्णय किया वह सही था। हो सकता है कि बाद में अगर सर्वोच्च न्यायालय में यह मामला जाता तो गोलक नाथ के मामले में जो सर्वोच्च न्यायालय ने निर्णय किया था, उस को सर्वोच्च न्यायालय ठुकरा देता और नई व्यवस्था देता। अभी भी समय है कि हम सर्वोच्च न्यायालय की राय के लिए मामला भेज सकते है। इससे टकराहट टाली जा सकती है। इस बात को आशंका को भी रद्द किया जा सकता है कि यह विधेयक पारित होने के बाद जब कानून का रूप ले तो उसे सर्वोच्च न्यायालय में चुनौती न दी जाए।

श्री अमृत नाहटा (बाड़मेर) अगर मामला सुप्रीम कोर्ट को रेफर करें और वह गोलकनाथ का निर्णय सही माने, तो फिर क्या करें ?

श्री हुकम चन्द कछवाय (मुरेना) आप बैठ जाइए। अगर आप ऐसा करेंगे तो जब प्रधान मंत्री बोलेंगी तो हम भी बोलने नहीं देंगे।

श्री अमृत नाहटा मैं यह जानना चाह रहा था कि अगर सुप्रीम कोर्ट यह कह दे कि गोलक नाथ के मामले में निर्णय ठीक हुआ है, तो फिर क्या करने ?

श्री अटल बिहारी वाजपेयी तब हमारे लिए संविधान में संशोधन करने का मार्ग खुल जाता। अभी तो आप ने सर्वोच्च न्यायालय का दरवाजा नहीं खटखटाया। इस बात की पूरी संभावना की है कि सर्वोच्च न्यायालय अपना निर्णय बदल देता। आपने इस अवसर का लाभ नहीं उठाया। और तीन वर्ष बिता दिये और प्रचार के लिए देश में यह धारणा पैदा करने का प्रयत्न किया कि मानो सर्वोच्च न्यायालय प्रगति रोकना चाहता है और, आप प्रगति के राजपथ पर बड़ी त्वरिता के साथ आगे बढ़ना चाहते है।

उपाध्यक्ष महोदय, यह प्रश्न भी महत्त्वपूर्ण है कि क्या संसद् सार्वभौम है, सर्वोच्च है ? हमारा संविधान लिखित है और ब्रिटेन की तरह अलिखित नहीं है। ब्रिटेन में पार्लियामेंट सर्वोच्च है। यह कहा जाता है कि ब्रिटेन की पार्लियामेंट सब कुछ कर सकती है केवल पुरुष को औरत और औरत को पुरुष नहीं बना सकती।

एक माननीय सदस्य यह बात पुरानी हो गई है।

श्री अटल बिहारी वाजपेयी हां, अब डाक्टर इस को करने लगे है, यौन परिवर्तन होने लगा है।

श्री पीलू मोदी ये सब पुरुष औरत बन गये है और एक औरत पुरुष बन गयी है।

श्री अटल बिहारी वाजपेयी ब्रिटेन का इतिहास भी भिन्न है। वहां संसद की सर्वोच्चता प्रस्थापित की गई है राजा के विरुद्ध, सम्राट के विरुद्ध। वहां संघर्ष था राजा में और संसद् में और स्वाभाविक है कि उस स्थिति में संसद् अपनी सर्वोच्चता प्रस्थापित करती। हमारे यहां इस तरह के संघर्ष का कोई इतिहास नहीं है। हमारा संविधान लिखा हुआ है और उस में शक्तियों का विभाजन है। संसद् अपने क्षेत्र में सर्वोच्च है। कानून बनाने में संसद् के अधिकार को कोई चुनौती नहीं दे सकता। उस कानून की व्याख्या करने में उसे संविधान की कसौटी पर कसने में सर्वोच्च न्यायालय सर्वोच्च है। उस के नाम के साथ लिखा ही हुआ है 'सर्वोच्च'। जहां तक कार्यपालिका का अधिकार है उस की भी संविधान ने स्पष्ट रूप से व्याख्या की है। मेरा निवेदन है कि यह विवाद व्यर्थ है कि संसद् सर्वोच्च है अथवा सर्वोच्च न्यायालय। मैं नहीं मानता कि हरेक मामले में पार्लियामेंट सुप्रीम है। क्या यह संसद् भारतीय गणतंत्र को राजतन्त्र में बदल सकती है, नहीं बदल सकती। क्या संसद् दो-तिहाई बहुमत से प्रधान मंत्री श्रीमती इन्दिरा गांधी को महारानी घोषित कर सकती है, नहीं कर सकती। (व्यवधान)·· क्या यह संसद् ऐसे राज्य की रचना कर सकती है जिसमें सभी भारतीयों को समान

अधिकार नहीं होंगे ? क्या यह संसद् मजहबी, थ्योरोक्रेटिक स्टेट बना सकती हैं ।

श्री चन्द्रजीत यादव (आजमगढ़) : आप का राज्य हो जाएगा, तो ऐसा भी हो सकता है ।

श्री अटल बिहारी वाजपेयी : तो यह अधिकार भी क्या आप हमें दे रहे है ?

14.00 hrs.

उपाध्यक्ष महोदय, हम ने अस्पृश्यता को गैर कानूनी करार दिया है। कोई संसद् छुआ-छूत को कानूनी रूप नही दे सकती। जिस दिन कोई संसद् ऐसा करने का प्रयत्न करेगी वह जनता का प्रतिनिधि स्वरूप खो देगी, और इस लिए यह कहना कोई अर्थ नही रखता कि संसद् सारे अधिकार रखती है। मेरा निवेदन है कि संसद् और सर्वोच्च न्यायालय से बड़ा संविधान है, और संविधान से बड़ी भारत की 55 करोड़ जनता है। हम अपनी सारी शक्ति जनता से प्राप्त करते है। जनता सार्वभौम है। जनता सारी शक्तियों का स्रोत है। जनता सारे बल का भंडार है।

मेरा निवेदन है कि अगर इस संसद के सदस्य और सत्तारूढ़ दल के सम्मानित व्यक्ति सचमुच में जनता की सर्वोच्चता में विश्वास रखते है तो वह मेरा संशोधन स्वीकार कर लें कि अगर बुनियादी अधिकारों में कोई कमी की जायेगी तो उस के लिए रिफरेन्डम किया जायेगा, जनमत-संग्रह किया जायेगा।

श्री अमृत नाहाटा : किया गया है।

श्री अटल बिहारी वाजपेयी : हमारे कांग्रेस के मित्र कह रहे हैं कि अभी एक रिफरेन्डम हुआ था। मेरा निवेदन है कि चुनाव में किसी एक मुद्दे पर जनता का ध्यान केन्द्रित नहीं किया जाता। अनेक विषय उठते हैं, अनेक तरह के दबाव और प्रभाव काम करते हैं। इस सदन को याद होगा कि चुनाव में गोआ की महाराष्ट्र गोमान्तक पार्टी की विजय हुई, वह गोआ को महाराष्ट्र में मिलाने के पक्ष में थी, चुनाव में जनता ने उसे बहुमत दिया। लेकिन जब ओपी-नियन पोल हुआ इस सवाल पर कि गोआ महाराष्ट्र में मिले या नहीं तो गोआ की जनता ने अलग निर्णय दे दिया, चुनाव में दिये गये निर्णय को बदल दिया। हो सकता है कि रिफरेन्डम में जनता कोई और निर्णय दे। जो प्रगतिवादी है, जो क्रान्तिकारिता का दम भरते हैं, जो यह दावा करते है कि जनता उनके साथ है, उन्हें मौलिक अधिकारों में कमी करने के सवाल पर दुबारा जनता का दरवाजा खटखटाने में संकोच क्यो होना चाहिए ?

श्री अमृत नाहाटा : कोई संकोच नहीं है। (व्यवधान)

THE MINISTER OF EDUCATION AND SOCIAL WELFARE AND MINISTER OF DEPARTMENT OF CULTURE (SHRI SIDDHARTHA SHANKAR RAY) : We did so, we have done so.

श्री अटल बिहारी वाजपेयी : अगर सत्तारूढ़ दल मेरे उस संशोधन को, जिस मे मांग की गई है कि बुनियादी अधिकारों में कमी करने के ऊपर जनता की राय ली जाय, स्वीकार करने के लिए प्रस्तुत है तो मैं इस विधेयक का समर्थन करने के लिए तैयार हूं। लेकिन अगर आप जनता के पास जाना नही चाहते...

श्री अमृत नाहाटा : अभी किस के पास गये थे ? क्या वह जनता नहीं थी ?

श्री अटल बिहारी वाजपेयी : अगर आप में यह विश्वास नहीं है कि आप इस सवाल पर जनता का समर्थन प्राप्त कर सकेंगे तो मुझे डर है कि आप जो शक्ति ग्रहण करना चाहते हैं उस का दुरुपयोग हो सकता है। 1943 में अगर जर्मनी में तानाशाही आई तो वह संसद के जरिये आई।

श्री आर० के० सिंह : वह तो सिंडिकेट वालों ने संजीव रेड्डी द्वारा लाने की कोशिश की थी।

श्री अटल बिहारी वाजपेयी : जर्मनी के कांस्टिट्यूशन ने जनता को सारे अधिकार दिये

[श्री अटल बिहारी वाजपेयी]

थे। लेकिन एक बार उन अधिकारों पर कुठाराघात करने की प्रक्रिया प्रारम्भ हो गयी तो उस में से हिटलर का उदय हुआ। लोकतन्त्र समाप्त हो गया।

विधि मंत्री महोदय ने कहा कि आज हम तिराहे पर खड़े हैं, आज हम क्रास रोड्स पर खड़े हैं। मैं उन से सहमत हूं कि आज हम लोकतन्त्र के तिराहे पर खड़े हैं। हमें देखना है कि हम किधर जाना चाहते हैं। इस बात से कोई मतभेद नहीं हो सकता कि सामाजिक और आर्थिक परिवर्तन की प्रक्रिया को बल मिलना चाहिए। मुट्ठी भर हाथों में धन संचय रुकना चाहिए। अगर आप काम करने के अधिकार को मूलभूत अधिकारों में सम्मिलित करने के लिए संविधान का संशोधन करते तो हम सब से पहले आप का समर्थन करते।

श्री राम सहाय पांडे : कहिये कि राजे महाराजाओं के महल धराशायी होने चाहियें। कहिये, हम तन मन धन से उस का स्वागत करेंगे। कहिये कि प्रीवी पर्स समाप्त होनें चाहिएँ। (**व्यवधान**)

श्री अटल बिहारी वाजपेयी : अगर बहुमत अभी इतना असहिष्णु है तो मूलभूत अधिकारों पर कुठाराघात करने के बाद वह कितना असहिष्णु हो जायेगा इस की कल्पना की जा सकती है। आप अपने से भिन्न विचार को सुनने तक के लिए तैयार नहीं हैं। क्या टोका-टोकी करना ही आप का मूलभूत अधिकार है? जरा सुनने का भी धैर्य चाहिए।

इस संविधान संशोधन विधेयक के बारे में इस लिए हमारी आशंकायें बढ़ गई हैं कि सत्तारूढ़ दल की भाषा बदल गई है, सत्तारूढ़ दल का तरीका बदल गया है। आज दक्षिणपन्थी कम्यूनिस्ट पार्टी की भाषा सें और कांग्रेस की भाषा में कोई फर्क नहीं है। यह लोकतन्त्र के लिए खतरे की घंटियां हैं। इन घंटियों के विरुद्ध मैं जानता को सावधान करना चाहता हूं। शांतिपूर्ण तरीके से, लोकतंत्रात्मक ढंग से एक शोषणहीन समाज की रचना हो, एक समता पर आधारित समाज बने, इस से हमारा मतभेद नहीं है। लेकिन आर्थिक प्रगति को जल्दी लाने की उतावली में यह कहना कि व्यक्तिगत स्वाधीनताओं की बलि चढ़ा दी जाये उचित नहीं है। इस से हम आर्थिक समता तो प्राप्त नहीं कर सकेंगे, लेकिन राजनीतिक स्वाधीनता से हाथ जरूर धो बैठेंगे।

इसलिए मेरा निवेदन है कि जब इस विधेयक पर विचार हो रहा है मैंने दो संशोधन उपस्थित किये हैं। एक तो इस मामले को सुप्रीम कोर्ट की राय के लिए भेजा जाय और अगर किसी तरह की टकराहट की भविष्य में आशंका हो तो उस को टाला जाय। दूसरा यह कि अगर आप मूलभूत अधिकारों में कुछ कमी करना चाहते हैं और मैं याद दिला दूं कि गोलकनाथ के मामले में सर्वोच्च न्यायालय ने मूलभूत अधिकारों को बढ़ाने से नहीं रोका है, अगर आप चाहें तो मूलभूत अधिकारों का विस्तार कर सकते हैं। अगर आप चाहें तो जनता की स्वाधीनता में वृद्धि कर सकते हैं, लेकिन अगर आप कमी करना चाहते हैं तो कम करने के लिए केवल सम्पत्ति का अधिकार नहीं है। मूलभूत स्वाधीनताओं में बोलने, लिखने, अपने धर्म अथवा मजहब का पालन करने, संगठन बनाने, चुनाव लड़ने की स्वाधीनता भी शामिल है, और यह स्वाधीनतायें लोकतन्त्र का आधार हैं। अगर इन स्वाधीनताओं पर कुठाराघात होता है तो देश तानाशाही की तरफ बढ़ेगा। इसी आशय का संशोधन श्री गोपालन ने रक्खा है, श्री इन्द्रजीत गुप्त ने रक्खा है। अगर आप मेरे संशोधन को स्वीकार करने से परहेज करते हैं तो उन्हीं के संशोधन मान लीजिए। अगर श्री गोपालन का न माने तो कम से कम श्री इन्द्रजीत गुप्त का तो मान ही लीजिये। वह तो हिज मैजेस्टीज लायल अपोजीशन में से हैं और वह बाकी की स्वाधीनताओं को बचाना चाहते हैं। अगर आप बाकी स्वाधीनताओं को बचाने के लिए तैयार हैं तो सम्पत्ति संबंधी अधिकार को सीमित करने की आवश्यकता के हम भी खिलाफ नहीं हैं। मैं

गोलकनाथ के मामले मे सर्वोच्च न्यायालय के निर्णय के उस अंश से सहमत नही हूँ कि अगर सम्पत्ति ली जायेगी तो बाजार भाव से 100 फी सदी मुआवजा दिया जायेगा। तब तो राष्ट्रीयकरण करने का सारा उद्देश्य विफल हो जायेगा। छोटे लोगों को हम 100 फी सदी मुआवजा दे सकते है, लेकिन बाकी लोगों को मुआवजा देने की धारा मे परिवर्तन करना होगा। लेकिन प्रश्न केवल सम्पत्ति के अधिकार का नही है। यह सविधान संशोधन केवल सम्पत्ति के अधिकार को सीमित नही करता। इस का उपयोग करके हर एक स्वाधीनता को सीमित किया जा सकता है, हर एक लोकतात्विक मान्यता को कुठित किया जा सकता है। इस लिए मेरा निवेदन है कि अगर आप इस विधेयक को पास करना चाहते है तो उस मे रिफरेंडम का सशोधन स्वीकार कर ले। तब हम इस का समर्थन करेगे।

श्री चन्द्रजीत यादव उपाध्यक्ष महोदय, भारत के संविधान मे यह पहला सशोधन नही है। इसके पहले भी 23 बार भारत के सविधान मे सशोधन किए जा चुके है। लेकिन आज जिस सशोधन पर हम यहा विचार कर रहे है यह पहले के संशोधनो से भिन्न है। पहले जितने सशोधन हुए है किसी विशेष प्रश्न को लेकर और किसी एक विशेष असुविधा को दूर करने के खयाल से हुए है। लेकिन आज जिस सशोधन पर हम विचार कर रहे है और जो हमारे सामने प्रस्तुत किया गया है वह पूरे एक दृष्टिकोण को हमारे सामने रखता है। आज हमारे देश मे एक ऐसी परिस्थिति पैदा हो गई है जिस मे एक मौलिक प्रश्न आज विचाराधीन है और वह मौलिक प्रश्न यह है कि क्या भारत की जनता द्वारा चुनी हुई ससद को इस बात का अधिकार है या नही है कि वह अपने देश की आवश्यकताओं को ध्यान मे रखते हुए, अपनी जनता की हालत मे सुधार करने के लिए, उसकी आशाओं और आकाक्षाओ की पूर्ति करने के लिए भारत के सविधान मे सशोधन कर सकती है, मौलिक अधिकारो की व्याख्या फिर से कर सकती है अथवा नही ?

उपाध्यक्ष महोदय, सुप्रीम कोर्ट ने गोलक नाथ केस मे जो निर्णय दिया था उस निर्णय से हमारे देश की आर्थिक और सामाजिक प्रगति मे एक बहुत बडा अवरोध पैदा हो गया था। अगर आज हम कोई कानून संसद के द्वारा बनाना चाहे जिस मे हम देश मे बढती हुई इजारेदारी को रोकना चाहे, देश के सार्वजनिक हितो को ध्यान मे रखते हुए हम किसी की सम्पत्ति को देश की जनता के हित मे लेना चाहें उसका मुआवजा भी हम दे, तो क्या हम ले सकते है या नही ले सकते है, क्या हम उस तरह का कानून बना सकते हैं या नही बना सकते है। हम अगर यह समझते है पच्चीस साल की आजादी के बाद कि हमारे देश मे राजाओ के प्रिवी पर्स और सुविधाये जो विशेष प्रकार की उनको मिल रही है और जिन का आज की सामाजिक व्यवस्था मे कोई मूल्य नही है समाप्त होनी चाहिए और हम उस सामाजिक भेदभाव को दूर करना चाहते है, भारत की जनता उसको दूर करना चाहती है, भारत को संसद उसको दूर करना चाहती है तो वह वैसा नही कर सकती है क्योकि सुप्रीम कोर्ट के निर्णय ने सारी बातो के ऊपर प्रतिबन्ध लगा दिया है और फैसला दे दिया है कि हम इस प्रकार का कानून नही बना सकते है। आज इसी बाधा को दूर करने के लिए हम इस सशोधन को प्रस्तुत कर रहे है।

श्री अटल बिहारी वाजपेयी ने कुछ मौलिक प्रश्न यहा प्रस्तुत किये है। उन्होने कहा है कि वह बुनियादी तौर मे किसी सशोधन के विरोधी नही है। लेकिन इस सशोधन को करने के लिए या तो सुप्रीम कोर्ट से हम दरख्वास्त करते और प्रार्थना करते कि वह फिर से अपने निर्णय के ऊपर विचार करे अथवा हम भारत की जनता के पास जाते और कहते कि इस प्रकार का संशोधन हम करना चाहते है। मैं श्री अटल बिहारी वाजपेयी को पिछले मध्यावधि चुनाव की तमाम परिस्थितियो मे अवगत कराना चाहता हू। पिछले दो वर्ष का इतिहास विवादों का इतिहास रहा है। ये दो वर्ष विवादो के वर्ष रहे है। इन वर्षों मे देश के मौलिक प्रश्नों के ऊपर विचार हुआ है, किस प्रकार का सामाजिक और आर्थिक कार्यक्रम हम चाहते है, समाज मैं किस

[श्री चन्द्रजीत यादव]

प्रकार का परिवर्तन हम करना चाहते है, देश की जनता के हितो को ध्यान मे रखते हुए अपने कानूनो और सविधान मे किस प्रकार के परिवर्तन हम करना चाहते है, ये सब प्रश्न इन दो बरसो मे उठे है। इसके लिए इस देश मे आवाज उठी है, जनता मे आवाज उठी है कि बैंकों का राष्ट्रीयकरण करो और इसलिए करो कि देश के मुट्ठी भर लोगो द्वारा इस देश की जनता द्वारा उत्पादित सम्पत्ति पर अधिकार समाप्त किया जा सके। उनके इस अधिकार को रोका जाए। जब हमने बैंको का राष्ट्रीयकरण किया और उसके लिए कानून बनाया तो भारत की सुप्रीम कोर्ट ने कहा कि तुम तब तक राष्ट्रीयकरण नही कर सकते हो जब तक कि नब्बे करोड रुपया मुआवजे के रूप में नही दे देते। जब तक आप ऐसा नही करते है हम आपको राष्ट्रीयकरण का अधिकार नही देते है। जब हमने कहा कि राजाओ के प्रिवी पर्स और विशेष सुविधाये हम समाप्त करना चाहते है तो वह भी हम नही कर सके इसलिए कि सुप्रीम कोर्ट का गोलक नाथ केस का निर्णय हमारे सामने था। हम और भी बहुत सारे कदम उठाना चाहते थे। हम महसूस करते थे कि भारत आज जहा खडा है, हमारी जनता आज जहाँ खडी है और आज जो परिस्थितिया है उनका यह तकाजा है कि हम अपने देश के आर्थिक और सामाजिक कानूनो मे इस प्रकार के परिवर्तन करे कि देश की नब्बे प्रतिशत जनता की आशा और आकांक्षा की हम पूर्ति कर सके। उसके लिए कानून मे परिवर्तन आवश्यक हो गया था। यह हम नही कह सकते थे। इन सब बातो को ध्यान मे रखते हुए जब हमने देखा कि भारत की संसद के अन्दर ऐसी स्थिति थी कि हम संविधान मे परिवर्तन नही कर सकते थे और हमारे पास उतना समर्थन नही था संसद मे तो हम ने इन प्रश्नो को बडी सफाई के साथ देश की जनता के सामने रखा। हमने कहा कि देश की जनता सर्वोपरि है, देश की जनता ने भारतीय सविधान को अपने लिए समर्पित किया है और देश की जनता अगर महसूस करेगी कि भारत के संविधान में परिवर्तन हो तो वह करना पड़ेगा और भारत की सुप्रीम कोर्ट को कोई अधिकार नही है कि वह उस परिवर्तन को रोक सके, इस बात को हम को मान कर चलना पड़ेगा। इन सब परिस्थितियो को हमने पिछले मध्यावधि चुनाव में बडी सफाई के साथ देश की जनता के सामने रखा। चुनावो मे हमारी पार्टी बहुमत में आई है। शायद वाजपेयी जी समझते होगे कि शायद दबाव के कारण, किसी गलतफहमी के कारण या और किसी कारण से हम को जनता ने इतना बडा बहुमत प्रदान किया है और शायद उन नीतियों पर स्पष्ट रूप से अपने समर्थन की मुहर नही लगाई है। अगर वाजपेयी जी की पार्टी को थोडा बहुमत मिलता तो शायद जनता की निष्पक्षता उनके दिमाग को बहुत साफ दिखाई पडती। चूंकि हमारी पार्टी को इतना भारी बहुमत मिला है इस वास्ते उनको हो सकता है कि सन्देह होने लगा हो कि हमारा उतना प्रभाव नही है।

जिन प्रश्नो के ऊपर आज भारत की जनता ने उतना बडा बहुमत हम को दिया है, उनको मे अपनी पार्टी के कार्यक्रमो मे थोडा सा उद्धृत करना चाहता हूँ। क्या चीज थी जिस को हमने इस देश की जनता के सामने, इस देश के मतदाताओ के सामने रखा और हम चुनाव मैदान मे उतरे। जिन शक्तियो द्वारा हम को चुनौतिया दी जा रही थी, वे कौन सी शक्तिया थी? वे इस देश की प्रतिक्रियावादी देश की साम्प्रदायिकतावादी शक्तियां थी, देश की पूंजीवादी ताकतें थी, देश की अपरिवर्तनशील ताकते थी और उन सब ने मिल कर महागठबन्धन कर लिया था हम को उस रास्ते पर जाने से रोकने के लिए जिस रास्ते पर चल कर हम समझते थे कि देश का और जनता का कल्याण होगा और प्रगति होगी। हमने बहुत सफाई के साथ जनता के सामने इस सारी चीज को रखा। हमने कहा :

> "प्रतिक्रियावादी शक्तियो के इस गठजोड़ के कारण हमें स्वतंत्रता के बाद के इतिहास में अब सब से बडी निर्णायक लड़ाई लड़नी है। लेकिन हमारा दृढ़ संकल्प है कि हम सामाजिक परिवर्तन के कार्यक्रम को आगे

बढ़ाते रहेंगे। इस में विघ्न डालने के लिए उन प्रतिगामी शक्तियों की ओर से चुनौती मिली है जो सामाजिक परिवर्तन की राह में रुकावटें पैदा करने वाले विचारों और तौर तरीकों से अभी तक चिपकी हुई हैं।"

इस बात को सफाई के साथ हमने जनता के सामने रखा। फिर हमने कहा :

"कांग्रेस को पूरा यकीन है कि सामाजिक और आर्थिक कार्यक्रमों को लोकतंत्रीय ढंग से कारगर तौर पर लागू करके ही वर्तमान संकटमय स्थिति से पैदा हुई चुनौतियों का मुकाबला किया जा सकता है। कांग्रेस इस बात पर जोर देना चाहती है कि वह जिन नीतियों और कार्यक्रमों के लिए वचनबद्ध है वे भारत के संविधान में दिए गए सिद्धान्तों के अनुरूप ही हैं।"

हमने इस देश की जनता को डायरेक्टिव प्रिंसिपल्ज की याद दिलाना भी आवश्यक समझा। हमने कहा कि निदेशक सिद्धान्त जो हमारे संविधान में हैं उन में कहा गया है कि "राज्य ऐसी सामाजिक व्यवस्था कि जिस में सामाजिक, आर्थिक और राजनीतिक न्याय राष्ट्रीय जीवन की सभी संस्थाओं को अनुप्राणित करे, भरसक कार्यसाधक रूप में स्थापना और संरक्षण करके लोक कल्याण की उन्नति का प्रयास करेगा।"

निदेशक सिद्धान्तों में यह भी घोषणा की गई है कि राज्य अपनी नीति का विशेषत. ऐसा संचालन करेगा कि सुनिश्चित रूप से -

(1) समुदाय की भौतिक सम्पत्ति का स्वामित्व और वितरण इस प्रकार बटा हो कि जिससे सामूहिक हित का सर्वोत्तम रूप से साधन हो,

(2) आर्थिक व्यवस्था इस प्रकार चले कि जिससे धन और उत्पादन साधनों का सर्वसाधारण के लिए अहितकारी केन्द्रण न हो और संविधान ने विशेष रूप से यह भी आदेश दिया है कि राज्य कानून बनाने में इन सिद्धान्तों को काम में लाएगा।

आगे हमने अपने घोषणा पत्र में कहा

"जो भी हो, हाल की कुछ अदालती घोषणाओं के फलस्वरूप हमारे संविधान के कुछ निदेश सिद्धान्तों और कांग्रेस के बुनियादी आर्थिक कार्यक्रमों को कारगर तौर पर अमल में लाना नामुमकिन हो गया है।"

फिर हमने जनता से कहा .

'राष्ट्र की प्रगति को रोका नहीं जा सकता। लोकतंत्र का तकाजा है कि संविधान जनता की आवश्यकताओं और आकांक्षाओं की पूर्ति में मददगार हो। हमारा संविधान आर्थिक विकास के उद्देश्य से पहले भी संशोधित किया जा चुका है। हमारी कोशिश होगी कि सामाजिक न्याय के रास्ते में आने वाली रुकावटों को दूर करने के लिए अभी और संवैधानिक उपचार और संशोधन किये जायें।"

इन सब बातों को हमने स्पष्ट रूप से जनता के सामने रखा और उसका मैंडेट मांगा, उसका निर्णय मांगा। हमने किसी बात को छिपाया नहीं। जिस प्रकार का रेफ्रेंडम आप चाहते हैं वह तो हो गया है। चुनाव में सफाई के साथ हमने कहा कि आज इन फैसलों से ये कठिनाइयां पैदा हो गई हैं। जनता के लिए हम जो काम करना चाहते हैं, उनको हम कर नहीं सकते हैं, ये ताकतें आज हम को चुनौती देना चाहती हैं। हमने यह भी कहा कि हम जनता की प्रगति के लिए कानून बदलना चाहते हैं, संविधान में संशोधन करना चाहते हैं। हमने यह भी कहा कि अगर जरूरत पड़ेगी तो सारे संशोधन जो आवश्यक होंगे वे भी किये जायेंगे। जो बिल विधि मंत्री महोदय लाए हैं, उसके लिए मैं उनको बधाई देना चाहता हूँ। देश की ओवरव्हेल्मिंग मैजोरिटी ने, नब्बे प्रतिशत जनता ने चुनाव में इसके पक्ष में निर्णय दिया है, हमारी पार्टी को भारी बहुमत प्रदान किया है। संविधान में

[श्री चन्द्रजीत यादव]

सशोधन करने का बिल ला कर विधि मत्री ने भारत की जनता की आशा और आकाक्षा को ध्यान मे रखा है और भारत की प्रगति मे आने वाली रुकावटे दूर करने के लिए और सब से बडा इस समद की प्रभुसत्ता को पुन स्थापित करने के लिए इस विधेयक को पेश किया है। इस के लिए मत्री महोदय बधाई के पात्र है।

प्रश्न यह है कि आज हम सविधान मे यह सशोधन क्यो करना चाहते है। सुप्रीम कोर्ट से हमारा कोई झगडा नही है। सुप्रीम कोर्ट हमारे देश की न्यायपालिका की उच्चतम सस्था है और हम उस की इज्जत करना चाहते है। लेकिन आज हम दिल पर हाथ रख कर सोचे कि स्वतत्र भारत मे पहली बार भारत की सुप्रीम कोर्ट की इतनी आलोचना क्यो हुई—इस लिए कि हम ने यह महसूस किया कि सुप्रीम कोर्ट के इस निर्णय से हमारे देश की प्रगति के सब रास्ते बन्द हो जाते है। सुप्रीम कोर्ट का यह निर्णय एक राजनैतिक निर्णय के रूप मे हमारे सामने आया। सुप्रीम कोर्ट का यह निर्णय हमारी प्रगति के तमाम रास्तो को अवरुद्ध करने वाला निर्णय बन गया।

अगर सुप्रीम कोर्ट का यह निर्णय 1951 मे हो गया होता, तो इस देश मे जमीदारी प्रथा का उन्मूलन नही हो सकता था। अगर सुप्रीम कोर्ट का यह निर्णय लागू रहता है, तो फिर राजा-महाराजाओ के प्रिवी पर्स हमेशा के लिए अक्षुण्ण रह जायेगे और उन पर कोई भी हाथ नही लगा सकेगा। अगर सुप्रीम कोर्ट का यह निर्णय अपनी जगह पर बना रह जायेगा, तो इस देश मे इजारेदारी निरन्तर बढती चली जायेगी, पूजीवादी शक्तिया मजबूत होती चली जायेगी और देश की जनता का शोषण निरन्तर बढता हुआ चला जायेगा। मै कहना चाहता हूं कि भारत की जनता अब इस देश मे न इजारेदारी को बढने देगी, नपूजीवादी शक्तियो को पुष्ट होने देगी और न शोषण करने वालो को एक कदम भी आगे बढने देगी। इसी लिए आज इस सशोधन की आवश्यकता पडी है।

इस सशोधन के सम्बन्ध मे श्री अटल बिहारी वाजपेयी या श्री पी० के० देव के विरोध का कोई प्रश्न नही है। यह विरोध तो नक्कारखाने मे तूती की आवाज की तरह है। इन विरोधों मे कोई ताकत या शक्ति नही रह गई है। इस विरोध की रचना इस देश मे मध्यावधि चुनावो से पहले हुई थी, जबकि सब काग्रेस-विरोधी दलो का एक महा-गठबधन बनाया गया था। श्री अटल बिहारी वाजपेयी एक साम्प्रदायिक दल के नेता है। भारत की जनता के हित मे सविधान मे यह जो सशोधन किया जा रहा है, उस का विरोध करते हुए श्री वाजपेयी ने सहारा किस का लिया? अल्पसख्यको का। जिन अल्पसख्यको को सब से बडा खतरा श्री वाजपेयी की पार्टी और उस पार्टी की नीतियो से बना हुआ है, अपने स्वार्थ की पूर्ति के लिए उन्ही की दुहाई दे कर श्री वाजपेयी ने इस विधेयक का विरोध किया है। इस देश के अल्पसख्यको को श्री वाजपेयी के मुख से अपने हितो की वकालत सुनकर कितना आश्चर्य होगा। (**व्यवधान**)

एक माननीय सदस्य मुस्लिम लीग के साथ समझौता काग्रेस ने किया है।

श्री अटल बिहारी वाजपेयी : मुस्लिम लीग साम्प्रदायिक नही है!

श्री चन्द्रजीत यादव : जैसा कि मै ने अभी कहा है, मध्यावधि चुनावो से पहले इस देश मे सभी काग्रेस-विरोधी दलो का एक महा-गठबधन बना था, जिस मे पैसे की ताकत, पुरानी विचार-धारा की ताकत, अपरिवर्तनशील शक्तियो की ताकत, प्रतिक्रियावादी और साम्प्रदायिक शक्तियो की ताकत सम्मिलित थी। उस समय इस सविधान के सशोधन को चुनौती दी गई थी, उस दृष्टिकोण को चुनौती दी गई थी, जिस को लेकर आज हम इस देश मे चलना चाहते है। उस समय उन दलो का महा-गठबधन और सारी शक्ति एक तरफ थी और हमारी पार्टी तथा उस का घोषणा-पत्र दूसरी तरफ था।

मध्यावधि चुनावो मे भारत की जनता ने यह निर्णय दे दिया था कि हम चाहते हैं कि

भारत के संविधान मे ऐसे परिवर्तन किये जाये, जिन के द्वारा हमारी प्रगति के मार्ग के रोडे हटाये जा सके जिन से जनता के हित मे देश की आर्थिक, सामाजिक और राजनैतिक प्रगति की जा सके। जो कार्य आज हम कर रहे है, अगर हम इस को न करते, तो हम अपने कर्तव्य मे च्युत होते, जनता ने हमे जो मैन्डेट दिया है, उस को पूरा न करने और अपने राजनैतिक उत्तर-दायित्व को न निभा सकने के दोषी होते। इस लिए जनता की इच्छाओ, आशाओ और आकाक्षाओ के अनुरूप अपने कर्त्तव्य को पूरा करने क लिए हम ने इस विधेयक को प्रस्तुत किया है।

हम इस सशोधन को ला कर न केवल भारत की ससद की प्रतिष्ठा को प्रस्थापित कर रहे है, बल्कि भारत के सविधान की प्रतिष्ठा और गरिमा को भी बढा रहे है और न्यायपालिका - सुप्रीम कोर्ट की गरिमा को भी प्रस्थापित कर रहे है। जिस दिन भारत का सविधान भारत की जनता की आशाओ और आकाक्षाओ का प्रति-बिम्ब नही रह जायेगा, जिस दिन जनता को मालूम हो जायेगा कि सविधान की कुछ धाराये हमारी आर्थिक और सामाजिक प्रगति मे रोडा बन रही है, जिस दिन उस को यह विश्वास हो जायेगा कि भारत का संविधान ऐसा बन गया है, जिस मे गतिशीलता नही है, जो समय के साथ परिवर्तित नही हो सकता है, जो जनता की आवश्यकताओ की पूर्ति नही कर सकता है, उस दिन इस संविधान से देश की जनता की निष्ठा उठ जायेगी और वह कोई और रास्ता तलाश करने लग जायेगी।

जैसा कि मैसे कहा है, इस सशोधन से हम न केवल ससद की प्रतिष्ठा को प्रस्थापित कर रहे है, बल्कि भारत के सविधान को भी ऐसा स्वरूप दे रहे है कि वह जनता की आशाओ और आकाक्षाओ का सही प्रतिबिम्ब बन सके और एक गतिशील सविधान बन सके। यह सविधान जनता ने अपने आप को अर्पित किया है। जैसे-जैसे परिस्थितियां बदलेगी, आर्थिक और सामाजिक रिश्ते बदलेगे और समाज की जरूरते बदलेगी, वैसे-वैसे सविधान को भी बदलना पडेगा। तभी यह सविधान सही मानो मे जनता का सविधान बन सकेगा।

जिस दिन इस देश के लोगो को यह विश्वास हो जायेगा कि सुप्रीम कोर्ट हमारी हर प्रगति के रास्ते मे रोडा बन कर बैठ गई है, न्यायपालिका का ऐसा स्वरूप बन गया है कि वह इस देश मे प्रगति को नही बढने देगी, उस दिन देश की न्यायपालिका पर से उन का विश्वास उठ जायेगा। मै नही चाहता कि भारत की ससद और भारत की सुप्रीम कोर्ट या न्यायपालिका मे किसी प्रकार का कानफ्रेन्टेशन या टकराव हो। लेकिन भारत की जनता की इच्छा को ध्यान मे रखते हुए हम सविधान मे ये जो सशोधन करना चाहत है, अगर इसके बाद भी सुप्रीम कोर्ट इन सशोधनो को स्वीकार नही करती है, इनको तिरस्कृत करती है, अगर वह फिर यह निर्णय देती है कि भारत की ससद को ये सशोधन करने का अधिकार नही है, अगर सुप्रीम कोर्ट के जज यह महसूस करते है कि भारत की जनता के भाग्य-निर्माता वे है, तो फिर इस देश मे कान-फ्रन्टेशन होना लाजिमी है, क्योकि ससद अपने अधिकारो और प्रतिष्ठा को पुनर्स्थापित करेगी। यह मैं साफ कह देना चाहता हूँ कि उस स्थिति मे सुप्रीम कोर्ट के निर्णय नही माने जायेगे।

श्री वाजपेयी ने कहा है कि कांग्रेस पार्टी की, जो सत्तारूढ पार्टी है, भाषा बदलती है, उस के विचार बदलते है। यह बात सही है। जब परि-स्थितिया बदलती है, सामाजिक रिश्ते बदलते है, नये मूल्य स्थापित होते है और बहुत सी पुरानी धारणाये समय की रद्दी की टोकरी मे फैक दी जाती है तो जनता के हित मे काम करने वाले किसी भी राजनैतिक दल को भी बदलना पडता है। इसी के अनुसार हमारी पार्टी भी बदली है। माननीय सदस्य की पार्टी शुरू से ही एक रूढिवादी और अपरिवर्तनशील पार्टी के रूप मे सामने आई है। वह शुरू से ही व्यक्तिगत स्वतत्रता, भगवान और धर्म के नाम पर इस देश की निरीह

[श्री चन्द्रजीत यादव]

और गरीब जनता को बहकाती रही है। आज वह युग बदल चुका है। इस लिए इस देश की जनता, और उस जनता का प्रतिनिधित्व करने वाली पार्टी, को परिस्थितियों के अनुसार बदलना पड़ेगा और उस के कार्यक्रम भी बदलने पड़ेंगे। हम में और माननीय सदस्य की पार्टी में यही फर्क है।

श्री वाजपेयी ने यह भी कहा कि इस संशोधन से व्यक्तिगत स्वतन्त्रता को खतरा है। मैं उनको कहना चाहता हूँ कि वह इस बात का विश्वास रखें -मैं श्री फ्रैंक एंथनी को भी इस बात का यकीन दिलाना चाहता हूँ कि इस देश में जो भी अल्पसंख्यक है, चाहे भाषा के लिहाज से अल्पसंख्यक हो और चाहे सभ्यता, संस्कृति या धर्म के लिहाज से, उनकी भाषा, संस्कृति और धर्म उनकी तहजीब और तमद्दुन, और उनकी स्वतन्त्रता की रक्षा करने की जिम्मेदारी हमने अपने ऊपर ली है और इस जिम्मेदारी को हम भविष्य में भी निभायेंगे। इस बारे में उन को किसी प्रकार का शको शुबहा नहीं होना चाहिए।

मैं निवेदन करना चाहता हूँ कि यह संशोधन एक ऐतिहासिक संशोधन है। मैं श्री इन्द्रजीत गुप्त की इस बात से सहमत हूँ कि यह संशोधन खुद में पूर्ण नहीं है, लेकिन अगर हम यह संशोधन नहीं करेंगे, तो जनता के हित में कोई भी कदम उठाना, कोई भी कानून पास करना, किसी भी विचार को आगे बढ़ना असम्भव हो जायेगा। इस लिए यह आवश्यक था कि हम इस संशोधन को लाते।

हमने इस संशोधन को प्रस्तुत किया है और हम यकीन दिला कर कहना चाहते हैं कि भारत की आज की यह संसद पिछली संसदों से भिन्न है। पिछले चुनाव में इस देश की गरीब जनता ने, इस देश के सब से निर्बल वर्ग के लोगों ने, इस देश के नौजवानों ने, इस देश के अल्प संख्यकों ने, इस देश के श्रम करने वालों ने अपने अधिकार के प्रति जागरूकता दिखाई है। उन्होंने हर शोषण के खिलाफ आवाज उठाई है, हर प्रकार के दबाव को ठुकरा दिया है, हर गठ-बन्धन को जमाने की रद्दी की टोकरी में फेंक दिया है, उस को अस्वीकार किया है। इस लिये यह संसद् इस देश की गरीब जनता का प्रतिनिधित्व करती है, समाज के निर्बल वर्ग का प्रतिनिधित्व करती है, इस देश के बहुमत की आशाओं और आकांक्षाओं का प्रतिनिधित्व करती है इस लिये यह संसद् भविष्य में ऐसे तमाम कानूनों को बनायेगी जिससे देश में इस सामाजिक और आर्थिक प्रगति हो सके, इस देश में जनतन्त्र की जड़ें मजबूत हो सकें, अपने देश की गरीब जनता को हमने जो विश्वास दिलाया है—न्याय और समता के आधार पर हम भारत में समाज का निर्माण करेंगे उस लक्ष्य को प्राप्त कर सकेंगे।

इन्हीं शब्दों के साथ मैं इस संशोधन का समर्थन करता हूं और आशा करता हूं कि हम सब इसको पास करेंगे।

SHRI FRANK ANTHONY: Mr. Deputy Speaker, Sir, I hope my friends in the ruling party are not going to be disappointed because I am not going to make a pungent speech at all.

When I opposed the Bill at the introduction stage, I made it clear that I am not opposing this 24th Amendment Bill because I said provided the Government was prepared to accept certain very modest amendments from me to the effect 'excepting minority rights' in the case of Powers that are now being sought to be assumed, I would support this Bill.

I must make it clear straightway that I am not speaking for the members of the Independents Group as such. I am aware that other members of the Group are opposed completely to this 24th Amending Bill. So, I am speaking only on behalf of myself.

I had given notice of a motion that this matter should be referred through the President to the Supreme Court and I did that advisedly and I thought my friend, Mr. Gokhale—I don't know whether his translation has been an ascent or descent—but he should have supported it because I think he will agree with me that what we are seeking to-day

in the 24th Amending Bill is something precisely that the Supreme Court says this House cannot do. It is not as if Mr. Gokhle, a very respected erstwhile colleague of mine at the Bar often on opposite sides, does not known the difference between these purported amendments and ordinary amendments seeking to rehabilitate some legislation that has been struck down. Every day legislation is either being upheld or struck down and the legislatures, the competent legislatures. rehabilitate the legislation because the Supreme Court has pointed out some vice, some lacuna, but that does not arise in this particular case. The Supreme Court has said in terms, the Chief Justice, handing down the judgment on behalf of the majority, said in terms that this Parliament has no power, it cannot in any circumstance arrogate to itself power, that you cannot do indirectly what you cannot do directly, that is, you cannot, by purporting to amend Art 368, arrogate to yourself powers which, in view of the majority Judges, you do not have What the House is now doing is to precipitate a direct conflict with the Supreme Court and I think Mr. Gokhale will admit that.

If the Supreme Court, in pursuance of the well-known doctrine of *stare decisis*, that is, upholding its previous decision, should uphold the Golak Nath judgment, is it not clear beyond a peradventure ..(*Interruptions*) May not be different. I am saying if they do, is it not clear that beyond the peradventure that they will say that what the Parliament has sought to do, it cannot do... (*Interruptions*).

SHRI H. R. GOKHALE : It is not there.

SHRI FRANK ANTHONY : I do not know what has happened to his translation—up or down. But it is very clear. I should imagine, it is elementary. I do not want to start a personal controversy. But did not Mr. Justice Hidayatullah say, you cannot do indirectly what you cannot do directly ? I thought Mr. Kumaramangalam would have seen the exact word. He was arguing that by amending Art. 368 you could. But, you cannot do that.

SHRI H. R. GOKHALE : You don't need Golaknath case for that.

SHRI FRANK ANTHONY : My two lawyer friends whose legal acumen has now been superseded by their political affiliation seem to forget what is elementry to any lawyer.

SHRI SIDDHARTHA SHANKAR RAY : Many of the majority judges did not agree with the reasonings of Mr. Justice Hidayatullah. Why don't you say that ? Were the majority judges unanimous ?

SHRI FRANK ANTHONY : We seem to be at cross purposes. I am proceeding on a very simple proposition If they review or reverse the Golaknath case judgment, well and good. But, if the Golaknath case judgment is affirmed, it means, what we have sought to do is *ultra vires*. That is the simple ratio in the Golaknath case.

SHRI SIDDHARTHA SHANKAR RAY : The Golaknath case is bad enough ; let us not make it worse by an incorrect interpretation of that judgment here.

SHRI FRANK ANTHONY : This is a facile way of so-called political humour. I ask my friend, get the judgment. I am open to correction I et him read the paragraph of Mr. Justice Hidayatullah, the paragraph where he has said that. There is another fallacy. I hope my erstwhile colleagues at the Bar will not now supersede that. And that is, the fallacy that Parliament is sovereign. It may not titillate our political ego, but let us try to understand this. It does not titillate the ego of the politician, and especially of new found MPs. to be told—look here, the Constitution is supreme, Parliament is only a creature of the Constitution. I hope my erstwhile colleagues at the bar will educate their political colleagues that unlike the British Parliament our Parliament is not sovereign. It is the Constitution which is sovereign. That is why we take the oath to the Constitution, not to Parliament, because the Constitution is supreme. It has demarcated the functions and the duties of the different limbs of the polity. One of the different limbs and creatures is Parliament and the duties, functions and limitations of Parliament and of State legislatures have been prescribed.

My Hon. friend, Mr. Mohan Kumaramangalam is a revolutionary in more senses

[Shri Frank Anthony]

than one, I am told, but he is shaking his his head and he seems to think that Parliament is supreme in the British sense. Let us now agree to disagree. The Supreme Court handed down certain precedents that have become axiomatic. With regard to Art. 32, I think, it was Mr. Justice Patanjali Sastri, well-known former Chief Justice, who said, the Supreme Court performs the sacred duty of enforcing the Fundamental Rights. That was a sacred duty cast on the Supreme Court. Then, there was that famous ex Chief Justice, Mr. S. R. Das who said this. I remember that because I was one of the lawyers in the Kerala Education Bill Reference. We heard the ringing words of his judgment Mr. Mohan Kumaramangalam was opposing me in the Kerala University Act case when I referred to those ringing words. Justice S R. Das said : As long as Constitution subsists, it is our sacred duty to enforce the Fundamental Rights on behalf of the minorities, who must be sacred to us. Or, he said words to that effect. That was what he said. Repeatedly, the Supreme Court has held that it is their sacred duty to enforce Fundamental Rights, and, therefore, every day, because of that it is striking down legislation or it is upholding legislation, but some politicians consumed with their political ego say, 'striking down our legislation ? Impertinence, arrogance ! We are the sovereign entities'. I submit that they are not. Every day it is being done. It is indeed, as I have said, not only their function but their duty to enforce Fundamental Rights. Every day they are dealing with political decisions. Therefore, I would submit with great respect that to say that the Supreme Court decisions are political decisions, and to impute motives to the judges is, to say the least, reprehensible.

I can understand parties committed either overtly of even covertly to undermining and denigrating the Constitution vilifying the judges of the Supreme Court. There is this tendency among them. Let us hope that the erstwhile members of the bar would at least deprecate this tendency in their own party. Every day. we see this ; there are wanton, malicious attacks on the members of the highest court in the country. This is, as I said, understandable in parties that are covertly or overtly committed to destroying the Constitution and to undermining the rule of law because the first postulate of the rule of law is respect for the Supreme Court. When one of the members on the other side said this, I was not only just distressed, but I was disgusted in their party meetings he said this. He did not call the members of the Supreme Court bourgeoisie, but he said that if the judges of the Supreme Court were to affirm the judgment in the Golak Nath case, they would impeach them *en bloc*.

SHRI SIDDHARATHA SHANKAR RAY : What did Roosevelt say about his Supreme Court ?

SHRI FRANK ANTHONY : After all, there should be some respect for certain minimum values Shri Siddhartha Shankar Ray has got in his lap now the politics of lawlessness and violence in West Bengal, and he is being supported by the Prime Minister who condemns this politics of lawlessness ; we all do it, but Government loses its credibility and it loses its authority to condemn lawlessness when members of the ruling party themselves are supremely lawless, when they vilify and abuse the Supreme Court who are the custodians of the rule of law in this country ; Government loses its credibility and has no right to say to other people that they should not preach the politics of lawlessness when members of the party are themselves the supreme protagonists of lawlessness when seeking to abuse and vilify the Supreme Court.

Some people have said—I may not agree with them—that the average Indian, especially intellectual, lacks moral courage. People have said that. I do not agree, because I am an intellectual ; I do not know whether I am an intellectual, but people have said this, and I do not lack a moral courage. And there is a certain modicum of truth in this that the average intellectual, be he a judge, be he a Minister, is an insecure person. He goes along with the tide ; if an average Indian becomes a member of a party, and particularly a juggernaut ruling party, he becomes an object yes-man. If he was an erstwhile independent judge, an erstwhile independent member of the bar. after he is downgraded to a Ministership, he abdicates his conscience and he abdicates his principle...

SHRI B. P. MAURYA (Hapur) : How is he nominated ?

SHRI FRANK ANTHONY : I am nominated not because of grace but because I am the undisputed accredited spokesman of my community. It is not out of grace.

SHRI S. A. SHAMIM : I would like to be nominated.

SHRI FRANK ANTHONY : My hon. friend will have to do 30 years of work building trusts, building up schools, building up crores for poor people. I do not think he will ever have the capacity to do it in several incarnations

There is this latest threat held out. I do not know why my friend, Indrajit Gupta, did not carry his thesis to its logical conclusion. He said : 'We have thirteen. Make it 26'. What was it but an invitation to pack the Supreme Court ? We are a very hypocritical people. We will not call a spade a bloody spade ; we will not even call a spade a spade Why don't we honestly say : 'Look here. We do not like the Supreme Court. It does not fit in with the totalitarian philosophy that the Supreme Court should be the arbiter of fundamental rights. Let us kick them out lock, stock and barrel'. There is this threat of packing.

SHRI K. MANOHARAN (Madras North) : Suggestion for improvement is not elimination.

SHRI FRANK ANTHONY : This is a suggestion for packing.

I see in this calculated attempt to intimidate the Supreme Court, this constant daily tirade and vilification the hope that they will be like these very obedient, accommodating Ministers who were once independent members of the Bar or a judge. You think by frightening them they will toe your political line and will bend their interpretations to suit the transient philosophy of a transient ruling party. This is a monstrous proposition. What do you think the functions of the Judges are ? Everyday to give judgments to suit your interpretation ?

SHRI INDRAJIT GUPTA : They will have to change their interpretation.

SHRI FRANK ANTHONY : Change, but not to suit it to your requirements.

I still do have considerable faith in the independence and the courage of our judiciary, at least in the higher reaches. God forbid that this calculated campaign to intimidate them, to demoralise the judiciary, will succeed. If it succeeds, I do not know what you will do. But I will certainly wrap up the Constitution ; I will certainly say : let us be honest, let us say that all our attempts to make this a viable democracy have been an abject failure. This is what will happen once you intimidate the Supreme Court.

I am very disappointed with my friend, Shri Gokhale. He had a great reputation, a man of unchallengeable convictions. He struck a heavy blow for the judiciary when he resigned and symbolised in his resignation the fact that the Government, because of its political gimmickry, keeps judges on starvation wages Now I do not know whether he feels that politics is a stratosphere or some kind of sub-sphere, whether it is an ascent or a descent. I was shocked that he should have propounded a thesis which was in advance of the most advanced ultra-communists. He stigmatised the fundamental rights as 'static'. My friends over there, the communists, call the fundamental rights a 'bourgeois concept'. Now this is a new thesis propounded. What he has proposed is that the static fundamental rights should give way to the dynamic directive principles. That is exactly where the 25th Amendment comes—I am not dealing with it now although he referred to it. He said that this is an enabling provision.

I have only said—and I hope he will accept it—that you have in the 25th amendment wrecked the basis of the Constitution, overrun the fundamental rights of the citizen and the minorities and effaced the rule of law. So far as property is concerned, you destroy every Indian ; I do no mind—I will go along with every Indian but protect the fundamental rights of the minorities : art. 26, freedom to manage religious affairs, to establish and maintain institutions for religious and charitable purposes and so on ; art 29, that protects language, script and culture, and art. 30, protects the right of minorities to establish and administer educational institutions of their choice.

SHRI SIDDHARTHA SHANKAR RAY : Have these ever been touched ?

SHRI FRANK ANTHONY : I am not arguing it out here. I will send him all the newspapers from which he can see. My interpretation is as good as his ; perhaps better. Your next move is that. The 25th Amendment is a monstrous, lawless provision.

The clear, inescapable conclusion is this. It subverts the whole basis of the Constitution. It supersedes the corpus of fundamental rights 14, 19—the seven freedoms—and 31 ; it overruns not only the rights of citizens.

MR. DEPUTY-SPEAKER : That is not under discussion now.

SHRI FRANK ANTHONY : Mr Gokhale brought it in and that is why I am mentioning it to him. It supersedes not only the fundamental rights of the citizen, but I say the clear meaning, and the only intendment of the 25th amendment is this : it proclaims to every Indian that he has no right to one rupee ; he has no right to one inch of land as property ; he has no right to his pay ; he has no right to his pension ; he has no right to his savings. That is the clear meaning of the 25th amendment.

SHRI PILOO MODY : Unless he does puja to Mataji ; then he gets everything. (*Interruption*).

SHRI FRANK ANTHONY : I say you do all that to every Indian ; wipe them out ; I am one with you. But so far as the minority rights are concerned, I am a fanatic. I say you wipe out every Indian ; wipe out Mr. Siddhartha Shankar Ray, myself and Mr. Gokhale. But everyday you are giving assurances to the miniorities. Why don't you allow your performance to square with your professions ? All I am asking you today is, except 26, 29 and 30, and I would support you on this. I will support you even on the 25th anmendment.

*SHRI M. SATYANARAYAN RAO (Karimnagar) : Sir, I will speak in Telugu. First of all, I will speak two sentences in English. I will first make it clear ; I am supporting this Bill wholeheartedly. I feel sad after listening to the speeches of many of our hon. Members, because, instead of discussing the core of the problem, we have been going outside the purview of the Bill. It is not proper to criticise the Judges of the Supreme Court, in this House. You have an absolute majority here. But I feel unhappy that you are not as generous as your majority in hearing the view points of opponents here. We are a small opposition in this House. As Members of this House we do have the rights to say what we feel and you must be patient enough to listen to us. Of course, with your majority you can get the Bill passed as you want it. Barring to sections of this House, the Bill has received the support of all others in the House. Under the circumstances, I submit that it is not in keeping with your majority to get excited unnecessarily.

Sir, we cannot afford to have a static view of life for all times. Socio-economic situations have undergone a sea-change in the last few years. We cannot harp on the conditions that prevailed in the pre-Independence days. We shall be failing our people if, with the mandate given to us, we do not work here for the amelioration of their sufferings and betterment of their lives. We have, therefore, to start from this premise and view the Constitutional provision in that angle and as and when necessity arises, change according to the demands of the social order and times. Instead of criticising this measure, we should give it our wholehearted support. 90 per cent of our people are wallowing in utter penury. They have not so far had the opportunities for improving their lot. It is for their sake that we have to bring such radical measures.

The question has been raised about the competence of Parliament to amend the provisions of the Constitution. In my opinion, as elected representatives of the people who are sovereign, we are empowered with all authority to engage ourselves in this task. Just because the Supreme Court with a majority of one Judge had handed down a judgement that Parliament had no power to amend these provisions of the Constitution, we as the chosen representatives of the sovereign people, are not prevented from exercising our rightful power. Therefore, I am convinced in my mind that this Parliament is clothed with the powers of amending the Constitution to suit the imperative requirements of our society.

*The Original speech was delivered in Telugu.

The prime question now before us is whether Parliament has or has not the power to amend Article 368 of the Constitution. Instead of debating on the pros and cons of this cardinal issue, it is extremely irrelevant for us to go into extraneous issues, unconnected with the purport of the legislation before us. I emphasis once again that Parliament does have that power and authority. If we elected representatives of the sovereign people do not have that power, then who else has the right for that ?

We here are responsible men and not men devoid of the sense of purpose. Mr. Frank Anthony has proclaimed himself an intellectual If I may say so, it does not behove him to attribute to himself omnicience. It must be left to his colleagues and others to judge him. I have no hesitation in conceding to him the claim of being an intellectual At the same time, I should tell him that he is not the sole claimant to intellectuality, there are others also nearner to him. As intellectuals, it is for us to act according to the changed circumstances. Otherwise we will not be dynamic. I therefore reiterate that Parliament does have the right to amend the Constitution and we the Members of Parliament are within our competence to amend Article 368 of the Constitution.

SHRI AMRIT NAHATA : Sir, Shri Vajpayee remembered Mr. Nath Pai. I would also like to pay my tribute to that noble soul who, with his passionate eloquence, was the first to draw the attention of the Parliament and the nation towards the dangerous implications of the Golaknath case judgment. There are some very paradoxical aspects of that judgment. Accorning to that judgment Parliament will not have any power to amend fundamental rights in future. It had that power in the past. That means, here is a judgment which is prospectively applicable and not retrospectively. This is something strange in the entire history of jurisprudence Similarly, Mr. Vajpayee just now said that under Golaknath case judgment, Parliament has a right to expand and add further to the chapter on fundamental rights, but it has no power to abridge any existing fundamental rights. Suppose this Partiament today decides to add one more fundamental right to this chapter. Having added that, this very Parliament will have no power to abridge that right tomorrow. This Parliament can shoot an arrow but cannot collect it back. This is very strange. If this Parliament has a right to add to the fundamental rights, by implication, it has the right to abridge them. If it had the right in the past to amend fundamental rights, it has the right to do so in future also. I cannot understand this hue and cry that now that Parliament will have the power to amend fundamental rights, therefore, all the fundamental rights are in danger, the minorities' rights are in danger and so on. Before the Goloknath case judgment, this Parliament had the right to amend fundamental rights. On two occasions, the Supreme Court agreed that Parliament had that right. This hue and cry was never raised then. If by passing this Bill Parliament will restore it itself the right to amend fundamental rights and if now fundamental rights are in danger, they were in danger previous to the Golaknath case judgment also. But no fears were expressed then. This sudden concern and solicitude for the rights of minorities and for the freedoms of the citizens is a smoke-screen, a camouflage, to hide their real concern about the vested interests, about the right to amass huge properties, the right of monopolists and the right to privy purses and privileges of princes. Now the opposition parties have recognised that this party is determined to do away with the right to amass unlimited property, the right to privy purses and privileges of princes. That is why they are concerned about it now. This whole concern for minorities' rights or freedoms is a smokescreen. This party and the nation are not going to be confused or misled by their crocodile tears.

15.00 hrs.

Article 13 of the Constitution lays down that no law can be passed which is contrary to the fundamental rights. The Supreme Court refused to make a distinction between ordinary law that is passed by Parliament by simple majori y and constitutional law which is passed by following a certain procedure. The Constitution itself makes a distinction between two kinds of law. The Constitution empowers Parliament to pass ordinary laws in the ordinary course of business by simple majority. The Constitution also provides for passing laws which amend the Constitution. Now article 368 was very strangely interpreted by the Supreme Court. The Supreme Court said that this article provides for the procedure of amending the Constitution but does not provide for the power to amend the Constitution. I was told that law is common-

[Shri Amrit Nahata]

sense but after reading the Golak Nath case judgment I think law is something very uncommon, because if commonsense were to interpret article 368 then it is clearly implied that this Parliament had the right to amend the Constitution. Because, at the end of article 368 it is clearly mentioned that having followed the prescribed procedure the Constitution, which includes all parts of the Constitution, shall stand amended. Therefore, I am convinced that the Golak Nath case judgment was a misinterpretation of the Constitution and it was a political judgment because it was based on the argument of fear.

The hon. Member, Shri Anthony, has expressed some fear and many other hon. Members have expressed some fears. We are being accused of vilifying the Supreme Court But is it not a fact that the very basis, the very foundation, of the Golak Nath judgment was based on contempt for politicians, for elected representatives of the people ? Even the hon. Member, Shri Anthony, has expressed his contempt for politicians, his contempt for Members of Parliament in very unmistakable terms.

What is the fear ? The fear is that if Parliament exercises its power to amend the fundamental rights, some irresponsible Members of Parliament, some irresponsible Parliament, some irresponsible government, some irresponsible State legislature and some irresponsible people might do away with all the fundamental rights, will do away with all parliamentary institutions, will destroy the Constitution and will establish dictatorship. The is the fear which was entertained by the Supreme Court judges and this is the fear which has echoed by some of the members of the oppsition.

Now no party needs a constitution to establish dictatorship. If dictatorship is to be established, if the fundamental rights are to be taken away the Constitution never comes in the way, fundamental right or nor fundamental right. We are a party who are committed to bring about change through processes of law, to bring about change through democratic peaceful parliamentary means. That is why we want to amend this Constitution, that is why we want to pass this Bill. It is to strengthen the democratic processes and procedures that we want this Constitution to be amended. My colleague, Shri Chandrajeet Yadav, had stated very emphatically that by passing this Bill we are strengthening the democratic parliamentary institutions in the country and we are raising even the stature of democracy to a higher level.

Much has been said about sovereignty, whether Supreme Court is sovereign, or Parliament is sovereign, or the Constitution is sovereign or the people are sovereign. Shri Vajpayee said that the Indian people are sovereign and, therefore, he has pleaded for a referendum Suppose tomorrow we decide for a referendum, I am sure that Shri Vajpayee will rise and say that the Constitution does not provide for a referendum and unless you change the Constitution, he will oppose a referendum.

Sir, whether it was nationalisation of banks or whether it is this Bill the Jan Sangh party has found out a very comfortable way of getting out of commitments. They have no courage to come out openly and defend the vested interests. They find out some procedural wrangle to defend the vested interests All political students of the country will agree that the recent mid-term poll was a referendum on some of the basic issues facing the country and one of the most important issues which was posed before the people was the right to property The entire election campaign of the grand alliance was based on this very argument that if Indira Gandhi comes back to power right to property is in danger, the Constitution is in danger, the judiciary is in danger, etc. We want to the people saying that we want to achieve certain economic advance. For that it is very essential to amend the Constitution, to limit the right to property. These were the focal issues in the election and people gave their clear and unmistakable mandate on these issues. In essence politically speaking the mid-term poll was a referendum on this issue and this House has a mandate from the people to amend the Constitution in the light we are amending it today.

This is not a substantive amendment. I agree with Shri Indrajit Gupta that it is an empowering Bill. It is an enabling Bill, But Sir, it is essential and this party cannot be blamed for the delay because Shri Indrajit Gupta answered his own question when he said that the previous Parliament lacked the

requisite majority to amend the Constitution. Now, the Government has taken the earliest opportunity to come forward with this amending Bill and I congratulate the Government and the Law Minister for that. The essence of the problem is right to property. Let us be very frank. Once this Parliament re-gets the powers to amend the fundamental right chap er we would like to amend the right to property. This right to property is a right which is not enjoyed by millions and millions of our people. It is an illusion. It does not exist for them and so long as a handful of people have the unlimited right to amass unlimited amount of property the millions of our people will be deprived of this right unless the right of limited few is curbed.

Therefore, when it is said that right to property is a natural right the people at large just cannot believe it because they have been deprived of it. In order to ensure this right to property or in order to give property to millions of propertyless people it is essential this right must be limited and curbed. The fundamental question is whether this Constitution of ours including fundamental rights chapter is something which is unchangeable, rigid and which is true for all times to come. Even the Constitution framers made it clear that the Constituent Assembly, composed as it was, was not within its powers to make a Constitution for all times to come. They realised the need for amendments of the Constitution. They knew that time would change very fast. They knew having attained independence India would march ahead and as India marches ahead new conditions would arise which would necessitate the amendment of the Constitution and that is why they incorporated Article 368 which makes our Constitution flexible ; which makes our Constitution not sovereign ; which makes this Parliament the instrument of exercising peoples' sovereignity I would not like to go into the niceties of the argument whether our Parliament is as sovereign as the Parliament of United Kingdom or our Constitution as rigid as the American Constitution but the fact remains that our Constitution makers chose a balance between anarchy and stability. They chose a balance between the need for change as also the need for stability. That is why they made a Constitution which had in itself the provision for its own amendment.

It is recognised by all jurists that our Constitution is a flexible constitution If fundamental rights, or for that matter any part of the Constitution, were to be made immutable, unchangeable and eternal, the only course open to the Indian people would be lawlessness and Naxalism. Since we want an orderly change and we want to change the law, we want that this Constitution, including the Fundamental Rights Chapter, should be amenable to change and should respond to changing conditions. It should be a flexible and a denamic embodiment of the people's urges and aspirations.

Lastly, I want to assure my hon. friends who have genuine apprehensions. After all, politics and policies would be the determining factor, not the letter of the Constitution. The ruling party, the Parliament and the people of India will never allow certain basic rights of the people to be destroyed, whether they are the rights of minorities or the right of assembly or the right of association, because they are embodied and incorporated not only in the Fundamental Rights Chapter but also in the Preamble itself and the Driective Principles of State Policy.

We believe, one of the mistakes that the Supreme Court has been committing is that it has completely ignored the Preamble and the Directive Principles of State Policy as enshrined in our Constitution. The whole Constitution is the fundamental law of the land. The Fundamental Rights Chapter is no more fundamental than the rest of the Constitution. I is a constitution ; it is not an Act. It is not just an ordinary law, a part of the statute book. The whole Constitution is fundamental law of the land.

There are two things which are distinctly separate from the rest of the Constitution and they are the Preamble and the Directive Principles of State Policy. Thev are more fundamental than the rest of the Constitution, including the Fundamental Rights Chapter. They are politically and morally more binding on the State, the Government and the Parliament than the rest of the Constitution.

The hon. Member, Shri Piloo Mody, was asking for an example of conflict between the Directive Principles of State Policy and the Fundamental Rights. There is, for example, the Directive Principle of State Policy that the State shall provide employment to all.

SHRI K. S. CHAVDA (Patan) : What about Prohibition, which is also in the Directive Principles.

SHRI R S. PANDEY : Ask Morarjibhai.

SHRI K. S. CHAVDA : you have betrayed what has been promised.

SHRI AMRIT NAHATA : Now, if monopolies are allowed to grow unfettered, if this right to property, which is now a fundamental right, including compensation at market value, continues to be a part of the Fundamental Rights Charter the State cannot fulfil the moral task enjoined upon it by the Directive Principles of State Policy.

SHRI SURENDRA MOHANTY (Kendrapara) : Why have you acquired the Birlas' property for Rs. 56 lakhs whereas its book value is less ?

SHRI R. S. PANDEY : Because the Fundamental Rights Chapter was not amended.

SHRI SURENDRA MOHANTY : Why could you not wait till the passage of this Amendment Bill ?

SHRI AMRIT NAHATA I wholeheartedly support the sentiment expressed by my hon. friend and I would join with him in asking the Government why this money was paid I would also ask the Government why the Defence Ministry was acquiring the Birlas' buildings in Calcutta in such a great hurry. Wait. Do not pay this compensation. I am with him.

I would also urge upon the Government to reconsider any such dealings if they are under consideration of the Government Postpone them. Let this Bill be passed. Let the Twenty-fifth Amendment Bill also be passed. Then the compensation question should be decided.

I conclude by saying that the Directive Principles of State Policy and the Preamble are far more fundamental for us. far more morally and politically binding for us, whenever there is a conflict. Any law, any action done pursuance of the Directive Principles and the Preamble of the Constitution should be beyond the jurisdiction of any judiciary.

Lastly, it has been said that confrontation should be avoided. We do not stand for confrontation. I do not know what was the source of information of Shri Atal Bihari Vajpayee when he said that the Supreme Court was in a mood to reconsider its earlier decision. The Supreme Court has not communicated with anybody intimating their intention. The only constitutional way, the only legal way, open to this Government and this Parliament is to amend the Constitution to restore to this Parliament its fundamental right and authority to amend any part of the Constitution. Then, again, if the Supreme Court persists in interpreting Golak Nath case in the older light and rejects this amendment, it should be considered as a wilful, deliberate, misinterpretation of the Constitution, as a mischief under the Constitution, which calls for an impeachment. That is the constitutional provision.

SHRI H. M. PATEL (Dhandhuka) : Mr. Deputy-Speaker. Sir, I would like to say that I have listened to the speeches that have been made so far with great attention and dismay. Here is an important subject, a matter of very great importance and significance, and we find great impatience, intolerance, to listen to points of view which differ from those of the ruling party.

AN HON. MEMBER : Indian people are impatient.

SHRI H. M. PATEL : That may be... (*Interruption*)

SHRI PILOO MODY : How do you know ?

SHRI H. M. PATEL : When we are discussing such an important subject, I suggest, we should proceed to deal with it in all the seriousness that it deserves.

It is not a matter merely of emotion or of eloquence, it is a matter of law. It is a fact that today what stands is the Golak Nath case judgment and the consequences that flow from it. It is the Supreme Court's function under the Constitution to interpret the Constitution. It may be wrong ; it may be right. But so long as the last judgment stands, it is the law of the land and, under that law, therefore, an amending Bill of the kind that has been brought cannot be brought. Because,

it amounts to challenging the Supreme Court's judgment. In effect, anybody can go, after this Bill is passed, to the Supreme Court and there will be a confrontation if it happens to disagree. It may of course, conceivably alter its attitude ; it may take a different view. But if it does not, then there is a confrontation. And that is something which ought to have been avoided. We should have taken steps to avoid it.

15.20 hrs.

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

When it is said that our apprehensions are groundless, we ought to ask ourselves : Are they as groundless as really they say ? Look at the Twenty-fifth Amendment Bill and consider how it goes to support all our apprehensions. It has put a certain provision, a new clause 31C, which in effect says that if any law says that it is to give effect to a directive policy, then even if it contravenes article 14 or 19 or 31, such law for that reason will not be void. What are these Art. 14, 19 and 31 ? They are of the greatest importance and yet to ignore them, what is to be done is for the law merely to say that this is in pursuance of a Directive Policy.

SHRI R. S. PANDEY : May I know whether Mr. Piloo Mody is uncomfortable. I have got every sympathy for him. I request that the doctor be called for.

SHRI SHYAMNANDAN MISHRA : You know he has recently undergone an operation.

SHRI PILOO MODY : They don't know—it is my fundamental right.

SHRI D. N. TIWARY (Gopalganj) : It may be amended.

SHRI H. M. PATEL : We should really have greater regard to facts. It was said that in the bank nationalisation case the Supreme Court struck a great blow for the right of property. But, there is nothing of the kind In the bank nationalisation case, all that the Supreme Court said is that compensation should not be illusory. That is all, there was no question of its saying that it is adequate : merely that it should not be illusory. It says something which an ordinary citizen wants. I am not a lawyer but I am speaking as an ordinary citizen who wants to at least see that in considering a subject of this kind, we do not distort facts, we proceed from facts.

What was the position with regard to the privy purses case ? It was not a question of the Supreme Court pronouncing anything on what compensation should be paid. What they struck down was the fact about the de-recognition of the princes and the consequences that flowed from it. It had nothing to do with the right to property. Same is the case in Golaknath case. It may be said that they reversed the earlier thinking. Were they, however, completely unmindful of the direct consequences ? Not at all. They did not give retrospective effect to their interpretation. They did not say that the First, Fourth and the Seventeenth amendments should all be declared void. Not at all. They allowed things to stand.

It seems to me that the proper course that the Government should have adopted was to have brought forward legislation for achieving what they are so anxious to achieve under the Directive Principles of Policy. What is it that they want to do which the Supreme Court's judgment on the present set of laws as it stands and the present interpretation of the constitution as it stands, prevents them from doing ? Then, it would be time to consider that an amendment is necessary. Here we are shouting at our loudest to say that because of the Golaknath case judgment, we cannot amend the Constitution, it makes it impossible for us to fulfil all the different things that we have undertaken to do, that we have promised the people to do. What piece of legislation did you come forward with and which when passed by this House the Supreme Court has challenged ? None at all. Which piece of legislation have you brought forward for the last so many years which seeks social justice and which you have been prevented from bringing forward and get it passed ? None. Why not do the thing in a proper way, in a way which will not bring about confrontation with the Supreme Court ?

The ruling Party is so impatient that they use expressions regarding the Supreme Court which are most unfortunate. It is not a matter which should be taken lightly when members of this House say that we should impeach the Supreme Court Judges. What for ? Why are

[Shri H. M. Patel]

you thirsting for vengeance from now, and say that if this Bill is passed, and if it is not accepted by the Supreme Court, if they declare it *ultra vires*, then 'We shall see what we shall do to the Supreme Court'? This is not the way to uphold the Constitution. The Constitution is supreme. Under the Constitution the Supreme Court has a very important role to perform. Its role is to interpret the Constitution and the provisions of the Constitution. It has been asked to do that and it has been in terms asked to see that the fundamental rights are respected.

The Fundamental Rights Chapter comes before the Directive Principles of Policy, and the Directive Principles of Policy are not said to be something which have the force of law. They merely indicate to the Government and those who formulate the policy that they should bear in mind that these are the objectives towards which they have to work consistent with the Fundamental Rights and not by demolishing the Fundamental Rights. We seem to think that just because it is an older generation, which had this approach, it was stupid. Forty years ago, the Nehru report said :

> "The first care we took, the first care we thought necessary to take was to see that the Fundamental Rights should be so guaranteed that there would be no withdrawal from them."

This is what they said. And how shocking, it was, Mr. Chairman, to find some Hon. Members saying that those who framed our Constitution were men who were wedded to compromise. There were men like Dr. Ambedkar. He did so much for the scheduled castes and backward classes He was a giant intellectually. They were all men of vision who formulated our Constitution. They looked at it from a long term point of view, not from the point of view of the next 5 years or 10 years. They looked at it as something of permanent value. That does not mean that they sought rigidity and considered no change was possible.

The American Constitution was formulated a couple of hundred years ago, but they regard that their Constitution has a certain definite value. It gave stability to the Government, stability to the country. In all these years, how many amendments have they passed and how many have we? Their supreme court also has to interpret the provisions of their Constitution ; it seeks through its interpretation to broaden the provisions in that Constitution, so as not to prevent further onward march of that great democracy Why should you assume that our Supreme Court would not interpret the Constitution so that it does not become an obstruction to your going forward ?

SHRI M. RAM GOPAL REDDY (Nizamabad) : Are there any conflicts between judiciary and executive at any time in America ?

SHRI H. M. PATEL : Certainly, there may be and there have been conflicts, differences of opinion, but these never led to such statements as the Supreme Court is of no value, the judges should be impeached, since they do not agree with you and all that.

PROF. MADHU DANDAVATE : When the New Deal programme was struck three times President Roosewelt said he would not permit the Supreme Court to become a third chamber in their country.

SHRI H. M PATEL : He may have said, but it did not happen. Here, what are we trying to do ? Let us approach this question in a sensible way. Posterity was not going to be particularly grateful to us for being radical instead of being reasonable. Let us be reasonable about it. What is our objective ? Our objective is to see that we achieve the goals set by the Directive Principles, and whatever obstacles there may be in the way, we should consider how best to overcome those obstacles.

The Supreme Court has not so far even once come in the way of any piece of legislation that we have formulated in order to achieve those objectives ..

SHRI SIDDHARTHA SHANKAR RAY : They have come in the way so many times.

THE MINISTER OF STEEL AND MINES (SHRI MOHAN KUMARAMANGALAM) : For instance, in the case of the Metal Corporation Act.

SHRI SIDDHARTHA SHANKAR RAY : And again in the bank nationalisation case.

SHRI H. M. PATEL : I can enter into arguments with my hon. friends on this matter, but the time that I have at my disposal is short. Otherwise, I would certainly go into each one of those cases and point out how it is that the Supreme Court has certainly not come in the way of any piece of legislation, any social legislation or any piece of legislation designed to achieve social justice. This is my main point.

In conclusion, I would point out only this that this amending Bill has caused a great deal of apprehension in the minds of many people ; it is not merely a question of the 'haves' objecting, but it is the ordinary people who are also the citizens of this country, exactly as my hon. friends are, who are objecting. There can be different points of view. When we approach this question or when people like myself look at this question, we are looking at it quite objectively, and we do feel apprehensive that if unrestricted power is given, even to a Parliament in which the representatives of the people sit, even they, when there is unrestricted power given to them, may abuse that power, and if the court of law cannot give any relief to an individual citizen, then there would undoubtedly be what one is apprehending, namely a march towards totalitarianism. Here in this legislation, let us note that we are making things of great importance non-justiciable. That is all that I have to say.

SHRI JAGANATH RAO (Chatrapur) : My hon. friend Shri Frank Anthony relied on the Golak Nath case as if it is a Bible...

SHRI FRANK ANTHONY : I may not agree with it.

SHRI JAGANATH RAO : With due respect to the learned judges, who held the majority view in this case, may I submit that the Supreme Court in the Golak Nath case has set a very bad law. There were other judges earlier who had in the Shankari Prasad case and the Sajjan Singh case rightly decided that the power to amend the Constitution was a constituent power and that it vested in Parliament. And what did the judges who held the majority view in the Golak Nath case say ? They could not get over that difficulty. They said that the first amendment, fourth amendment and the seventeenth amendments were valid for all time to come and for this they relied on an American doctrine of prospective invalidation or prospective overruling. It is curious to say that our Constitution does not contain the power to amend. For that they go to the residuary power under entry 97 in the Union List and say that under that entry read with articles 245 and 246, Parliament could convene a Constituent Assembly and pass a law. According to the majority view, even that amending law is under the legislative power vested in Parliament and not under the constituent power. If that is so, even then, is it not hit by article 13(2) ? If any law is made which has the effect of taking away or abridging fundamental rights, it would be hit by article 13(2).

Secondly, I may point out that article 368 itself contains the amending power. Kindly look at the title of Part XX which reads 'Amendment of the Constitution'. Lower down it says that after the Bill is passed with the requisite majority, and after both Houses pass it, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill. Is that not the amending power given to Parliament ? Again, lower down, the proviso which is an entrenched provision, the legislatures of at least half the number of States should ratify those amendments.

Therefore, it is rather curious that the Supreme Court should rely on the marginal note of an article and say that article 368 is only a procedural article and it does not contain a substantive power.

Be that as it may, the learned judges who decided earlier cases, who are more learned than the learned judges who decided the Golak Nath case, rightly said that the subject to the special majority laid down in article 368, our Constitution vests constituents power in the ordinary legislature of the Union, that is to say, the constituent power is vested in the Parliament, and there is no separate body for amending the Constitution as exists in the United States or Australian Constitution. Subject to the provisions of article 368, Constitution amendment Bills are to be passed in the same way as ordinary Bills. No provision of the Constitution is immune from constitutional amendment, and provided the procedure laid down under article 368 is complied with,

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Parliament may, by a Constitution Amendment Act, amend even article 368 itself.

This being a constituent power and the Constitution amendment not being an amendment which is done in exercise of the legislative power of Parliament, it is not hit by article 13(2). Therefore, what is the effect of the majority view in the Golak Nath Case ? The majority view denies to Parliament which is the Parliament of the sovereign country and which is sovereign within its own sphere, all power to amend any part of the Constitution. This power is denied to Parliament. Should we agree to this ? Should we not give a cause of action to the Supreme Court to reconsider their judgment in the Golak Nath case ? The majority judgment in substance amends the Constitution. The power to amend the Constitution does not lie with the judges. They have taken this naked power to amend the Constitution, because under article 13(2) they say though these earlier amendments are valid from 1951 to 1967, yet they will be invalid in future. If a thing is void, it is void from its inception ; it is void *ab initio*. Therefore, these amendments must be declared to be *non est*.

SHRI P. K. DEO : They did not want to give it retrospective effect.

SHRI SIDDHARTHA SHANKAR RAY : That was the fallacy.

SHRI JAGANATH RAO : It is really fallacious that the learned judges of the Supreme Court should say that these amendments are valid up to 1967, that is, the first fourth and seventeenth amendments, are valid up to 1967, and that this power does not vest in Parliament to make any amendment or to pass any legislation which may in a way take away or abridge the fundamental rights. All those three amendments which were earlier made by Parliament affected the fundamental rights one way or the other. In exercise of the authority of Parliament to implement the Directive Principles, legislation can be made or action can be taken only if the fundamental rights are touched. Fundamental rights are not that fundamental. How can we implement the Directive Principles of State Policy without touching the fundamental rights ? All the earlier Constitution amendment Bills have touched the fundamental rights, and they have been held to be valid. Therefore, the consequence of the majority judgment is that it places a judicial veto on a legal amendment of Part III and denies to the sovereign people acting through its freely elected representatives in Parliament the power to implement policies in the interests of the people should they require amendment of Part III.

Therefore, with due respect to Shri Anthony and the learned Judges who held the majority view in *Golak Nath*, I would say that it was wrongly decided. Therefore, the power of Parliament cannot be taken away by the Supreme Court. Parliament is sovereign. With the transfer of power from the British, sovereignty was transferred to the people. The people through their elected representatives, through their Constituent Assembly, framed a Constitution which they have given unto themselves. In that the power to amend the Constitution is also there. If the Constitution is static, it would be a worse tyranny than anything anybody can conceive of. A written Constitution must be flexible. Our is a flexible Constitution. The power to amend is contained in Art. 368. Therefore, the sooner we ignore the verdict in the Golak Nath case the better for the country.

Then comes the question of the alleged transcendental character of fundamental rights. Are these fundamental rights transcendental, immutable or sacrosanct ? Is it a sacrilage to abridge them ? How are they transcendental ? When I hear this word, I am reminded of Maharishi Mahesh Yogi who used to practise transcendental meditation at Dehra Dun and perhaps still does. These rights have been created by the Constitution. The Constitution was made by Parliament. It is up to Parliament, whenever necessary in the larger interests of the general public to abridge them. It has been done earlier, it will be done in future too.

Fundamental rights in Part III and Directive Principles in Part IV are complementary to each other. They are the basic foundations on which the structure of the Constitution is built to promote and foster a truly socialistic and welfare state. As Dr. Ambedkar said, the directive principles are like the instrument of instructions to the State, to implement the policies assigned in the Constitution. These principles are not

enforceable in a court of law ; nevertheless, they are fundamental in the governance of the country. This is what art. 37 says.

In the Ramgarh case, Justice Mahajan had to rely on Art. 39 and held that the Bihar Land Reforms Act was valid. The Act itself could not spell out the public good that was intended to be achieved by that measure.

Put differently, the rights in Part III are the settled concept of past centuries ; the directive principles are the aspirations for the future to achieve a new world order. The former are static in nature ; they should not become more static. Here I am reminded of Shakespeare's lines : 'Lest a good custom corrupt the world, the old order should change giving place to new'. The directive principles, if pursued on a planned basis, will bring about an era of economic and social justice. If the rights in part III are flouted by Government, the people can go to court for protection ; but if the directive principles are forgotten and disregarded, the people will not go to court but take up cudgels against Government themselves. We know what happened in the 1967 elections The Congress lost heavily because the people felt the directive principles had not been implemented. It should be the policy of Government to implement the directive principles to achieve the welfare state, the goal we have set ourselves.

The chapter on freedom in part III has alongside it restrictions also on those rights. If the directive principles are sought to be promoted by any statute or action, it is the solemn duty of the court to interpret them as a reasonable restriction on the fundamental rights in the interest of the general public.

All over the world, this race is always there between what is called the well-fed drawing-room dog and the neglected and despised underdog. This fight is there all over the world. Therefore, unless we look after the underdog, the under-privileged and the unprotected sections of society, there will be no meaning of Independence, which we achieved in 1947. That has no meaning to the poor man ; while we may be feeling proud of it, the men in the villages have no food to eat ; no clothes to hide their nakedness and no shelter ; what is the meaning of Independence to them ? Therefore, it behoves upon the Government to implement the directive p inciples.

One more word and I have done. Our Constitution is founded on the assumption that there is no irreconcilable antithesis between the philosophies of the first three revolutions and the fourth, and that a planned economy and social control of the material resources of the society are compatible with the freedom of the individual. Our Constitution thus strives to achieve a synthesis of the two systems—democracy and communism.

Our Constitution is a synthesis of the various revolutions which took place in our history ; the English revolution of the 17th century ; the French and the American revolutions of the 18th century and the Russian revolution of the 20th century. We have taken out the best from all these philosophies of these revolutions and we have embodied them in our Constitution, and we have given unto ourselves this Constitution. Therefore, the power to amend the Constitution vests with Parliament, because the Constitution is a creature of Parliament. It is only the Constituent Assembly which framed the Constitution, not that it came from above. Therefore, when we make the Constitution, we have the right also to amend the provisions. The Constitution is flexible and has to be flexible. If it is static, it is the worst tyranny anyone can conceive of. This Bill is only an enabling piece of legislation.

Now, let me say a word about the fears entertained by Shri Frank Anthony. He wants that articles 26, 29 and 30 should be excluded from the ambit of this Bill. This Bill does not deal with any of the articles under Part III. This Bill only wants to restore the sovereignty of Parliament to amend the Constitution. The moment the Bill is adopted, it becomes an Act and it forms an integral part of the Constitution. If any law is brought forward which effects or abridges the fundamental law then it is open to objection.

Therefore, Sir, my humble submission is that this Bill is highly necessary to word off the mischief created by the Golaknath case. Let the Supreme Court reconsider that the power of Parliament to amend the fundamental rights cannot be taken away by the judiciary. They arrogated to themselves the power which does not exist, the power which the judges had taken to themselves. The

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effect of the Golaknath case is that the right of Parliament to amend the Constitution is taken over by the judiciary. It cannot be. The power to amend always lies with Parliament which is sovereign.

Thank you.

SHRI TRIDIB CHAUDHURI (Berhampore) : Mr. Chairman, Sir, in order to avoid possible misunderstanding, I might make it clear at the very outset that I am against the right to private property being included in the chapter on fundamental rights. As one distinguished Chief Justice has said—(*Interruption*) he uttered one great truth and let us not forget it—it was a mistake on the part of the Constitution-makers—and I agree with him—to have included private property as a fundamental right, because private property is the weakest of the rights that should inhere in a Constitution.

SHRI SEZHIYAN (Kumbakonam) : He said it was an error.

SHRI TRIDIB CHAUDHURI : It was an error ; whatever you call it, it should not have found a place in the chapter on fundamental rights.

Now, having said that, I also feel it my duty to say that the leftist opposition in this Parliament—their number may be very small—are against any attempt at whittling down the other fundamental rights in the Constitution. I tried to number them and I find as many as 14 or 15 fundamental rights, which are fundamental to see democratic way of life, for which we have opted. Let me enumerate them : Equality before law, right to non-discrimination on the grounds of religion, race, caste sex or place of birth, equality of opportunity in matters of public employment, right against untouchability, right to freedoms of speech and expression, freedom to assemble and form associations or unions, right to freedom of movement and residence, right to practise any profession, occupion or trade, right to protection in respect of conviction for offences, right to protection of life and personal liberty, right against arrest and detention under certain circumstances, rights against exploitation by way of forced labour and exploitation of children in factories, right to freedom of conscience and religion, cultural and educational freedom and right to constitutional remedies for the enforcement of fundamental rights. These rights are most fundamental, so far as the functioning of our democracy is concerned and I for one am not prepared to support any whittling down of these rights by way of asserting the right of Parliament to amend the Constitution.

I do agree that Parliament must have the right to amend the Constitution. As a matter of fact, this Bill only seeks to restore the *status quo ante* before the Golaknath case. The right of Parliament to amend any part of the Constitution was never questioned before either in this House or outside in the courts of law. That position is being sought to be restored, but an apprehension has just arisen in the minds of many people, not only those who are anxious to uphold the rights of private property, not only religious and communal minorities, but political minorities, ideological minorities, party minorities and even individuals whose rights must be protected.

SHRI K MANOHARAN : Industrial minorities.

SHRI TRIDIB CHAUDHURI : Yes, industrial minorities, industrial workers who are not in a majority. Organised trade union organisations are in a minority. Whatever it may be, even the rights and liberties of an individual should be sacrosanct in a democracy. To that extent I stand for the fundamental rights enumerated in the Constitution and would oppose any attempt at changing them

Coming to the objects of the Bill, these two Bills, the 24th Amendment and 28th Amendment should be taken together, It should also be remembered it should be borne in mind, that neither of these Bills seeks to abrogate the right to private property as such. Although government have been advised to change the right to private property by substituting the word "amount" for "compensation", so long as the right to private property continues in the Constitution as a fundamental right, I say at some time or the other the very notion of property, the theoretical and juridical notion of private property and the provision for payment of amount, all those things together should not be interpreted in a way which would frustrate the objectives that the government have in view. Therefore, I would request the legal advisers of the government, particularly the Law Minister for whom I have great respect, to look into this aspect

of the matter. Of course, the 25th Amendment is not before us just now. These two Bills should be taken together and serious thought should be given to that aspect.

श्री जियाउर्रहमान अंसारी (उन्नाव) . मिस्टर चेयरमैन, मैं इस कास्टीट्यूशन अमेंडमेंट बिल को सपोर्ट करने के लिए खडा हुआ हूं । जहा तक इस बिल के कानूनी पहलुओ का सवाल है उसके सिलसिले मे बहुत कुछ इस हाउस मे दोनो तरफ से कहा जा चुका है । मैं सिर्फ उन चीजो के मुताल्लिक कहना चाहता हू जो सवाल उस तरफ से हमारे कुछ मोहतरिम मेम्बरान ने माइनारिटीज के सिलसिले मे उठाये । बिल शुबहा हम इस कास्टीट्यूशन अमेंडमेंट बिल के जरिए से वह अख्तियार लेना चाहते है, इस पार्लमेंट को वह अख्तियार देना चाहते है कि वह फडामेंटल राइट्स मे जो तब्दीली करना चाहे करे और बिला शुबहा हम ऐसा समझते है कि वह अख्तियार हमको कास्टीट्यूशन मे पहले से मिला हुआ है, इस पार्लमेन्ट को मिला हुआ है लेकिन गोलकनाथ केस ने कुछ शुबहात पैदा कर दिये और उन शबहात को दूर करने के लिए हम इस बिल को लाये है । इस मुल्क की कास्टीट्यूशनल हिस्ट्री मे आज का दिन एक तारीखी दिन होगा जब हम यह तय करने जा रहे है, इस बात को सेटिल करने जा रहे है कि कास्टीट्यूशन मे फडामेंटल राइट्स के अमेंडमेन्ट के सिलसिले म गोलकनाथ केस मे जो सवालात उठाये गए थे वह बेबुनियाद सवालात थे और इस पार्लमेन्ट को जोकि इस मुल्क के अवाम की नुमाइन्दा जमात है यकीनन इस बात का हक है कि कास्टीट्यूशन मे कोई भी तब्दीलिया, कोई भी अमेन्डमेन्टस ला सके ।

एक सवाल उधर से माइनारिटीज के सिलसिले मे उठाया गया । उसके बहुत बड़े एडवोकेट हमारे आनरेबिल मेम्बर, फ्रेंक एन्थानी साहब है । मैं कहना चाहता हू कि माइनारिटीज के एडवोकेट वे बनने की कोशिश न करे, यही माइनारिटीज के हक मे बेहतर है । अभी इस लोक सभा का जो पिछला एलेक्शन हुआ उसमे वे देखे कि माइनारिटीज ने इन इस्युज पर किस तौर पर किस पार्टी को सपोर्ट किया ।··· (**व्यवधान**)··· मैं कहना चाहता हूं कि अगर इस मुल्क की सारी जमातों में किसी जमात की होलहार्टेड सपोर्ट कास्टीट्यूशन अमेंड करने के हक में रही है तो वह इस मुल्क की माइनारिटीज है, रेलिजस माइनारिटीज, कम्युनल माइनारिटीज और वह माइनारिटीज जिनको सोसायटी में एक पिछडा हुआ दर्जा मिला हुआ है । मै कहना चाहता हू कि इस कांस्टीट्यूशन अमेंडमेन्ट बिल के सिलसिले मे माइनारिटीज के दिमाग में इस किस्म की गलतफहमिया पैदा करने से काम बनने वाला नही है । इस मुल्क की यह एक अजीबोगरीब खूबसूरियत है । ये माइनारिटीज जिनके हकूक के लिए आज इस कदर परेशान है फडामेन्टल राइट्स के सवाल पर, अगर वो मिल जायेगी किसी इस्यू पर, अगर इन माइनारिटीज के फडामेन्टल राइट्स को किसी तरह से इफ्रिन्ज करने या लेने की कोशिश की गई तो ये सारी की सारी माइनारिटीज मिल करके इस मुल्क की मेजारिटी है । तब ये माइनारिटी नही रहती है अगर इनके हकूक को लेने की कोशिश की गई । इसलिए माइनारिटीज के दिमाग मे यह खौफ नही आना चाहिए कि उनके हकूक लिए जा रहे है । मै कहना चाहता हू कि इससे पहले जो 23 अमेन्डमेन्ट्स कास्टीट्यूशन मे किए गए है उनमे से कौन सा ऐसा अमेंडमेन्ट आया जिससे माइनारिटीज के हकूक को कम करने की कोशिश की गई हो या माइनारिटीज को हकूक और फडामेन्टल राइट्स को लेने की कोशिश की गई हो । लेकिन मै पूछना चाहता हू इस मुल्क की सुप्रीम कोर्ट जो कि अदालते आलिया है उसने किस जगह पर माइनारिटीज के हकूक का तहफ्फुज किया है । मै याद दिलाना चाहता हू अलीगढ मुस्लिम यूनिवर्सिटी के सिलसिले मे कि माइनारिटीज का यह फडामेन्टल राइट है कि वे अपने कल्चरल, लिंग्विस्टिक और एजूकेशनल इन्स्टीट्यूशस कायम कर सकती है और अलीगढ यूनिवर्सिटी इनमे एक है । कुछ गिरफिरो ने सुप्रीम कोर्ट मे, उस गलतफहमी की बुनियाद पर कि अदालते उनके हकूक की ज्यादा मुहाफिज है, एक रिट दायर कर

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दी। अदालत मे इनको क्या मिला ? इसलिए मै यह अर्ज करना चाहता हू कि यह शुबहा पैदा करके माइनारिटीज के दिमाग मे जो खौफ भरा जा रहा है वह बिल्कुल बे बुनियाद है, और उसकी कोई अस्लियत नही है।

एक सवाल यह उठा कि आज की गवर्नमेन्ट की माइनारिटीज के सिलसिले मे जो एप्रोच है वह सेकुलर है, वह माइनारिटीज के हुकूक का तहफुज करना चाहती है लेकिन आज के बाद कोई दूसरी गवर्नमेन्ट भी यहा पर आ सकती है जोकि माइनारिटीज के हुकूक को तल्ख करना चाहे। तो मै आपसे अर्ज करना चाहता हू कि इस मुल्क के अन्दर कभी भी ऐसी हुकूमत आने वाली नही है, यहा की जनता कभी भी उसको ताकत देने वाली नही है जोकि माइनारिटीज के हुकूक को तल्ख करना चाहे। और अगर कभी ऐसा काला दिन आयेगा तो उस दिन इस मुल्क की सारी माइनारिटीज मिल करके एक हो जायेगी। सारे बैकवर्ड क्लासेज, सारे हरिजन, सारे मुसलमान, सारे क्रिश्चियन्स, सारी लिग्विस्टिक माइनारिटीज और सोशल माइनारिटीज, सभी माइनारिटीज मिल करके मेजारिटी हो जायेगी। और इस मुल्क की कोई जमात उन माइनारिटीज के बगैर पावर मे नही आ सकती है।

16.00 hrs

इसके बाद मै यह कहना चाहता हू कि माइनारिटीज को खतरा है। लेकिन किन माइनारिटीज को खतरा है ? वह माइनारिटीज जो इस मुल्क की इकानामिक माइनारिटीज है जिन के मुट्ठी भर इन्सानो ने सारे मुल्क की दौलत को समेट करके अपने हाथ मे रख लिया। वह इकानामिक माइनारिटीज जो माइनारिटीज के नाम पर इस मुल्क के 90 फीसदी इन्सानो को ऐक्सप्लायट करना चाहती है। वह माइनारिटीज जो माइनारिटीज का नाम ले कर सारी दौलत को समेट कर इस मुल्क के अवाम का खून चूसना चाहती है। और जब उन की निजोरियो को खतरा होता है तो इस मुल्क के गरीब अवाम को तकसीम करने के लिये रिलीजस माइनारिटीज का सवाल उठा करके आपस मे लडा देना चाहती है।

मैं इस वक्त एक शेर पढना चाहता हूं जनाब अल्लामा इकबाल सुहैल की जो 1950 से अपनी जिन्दगी के आखिरी लमहे तक इस मुल्क के नेशनल पोएट रहे। वह आजमगढ के रहने वाले थे। उन्होने अग्रेजो के मामले में यह कहा था कि वह डिवाइड ऐड रूल की पौलिसी को अख्तियार करके इस मुल्क की रिलीजस माइनारिटीज को एक दूसरे से लडवा देना चाहता है। उस वक्त जो बात अग्रेजो के बारे मे उन्होने लखनऊ असेम्बली मे कही थी, आज भी वह बात इन इकानामिक माइनारिटीज और उन के एजेन्ट्स के लिये सही है।

वह चश्मे फितनागर है साकिये मेखाना बरसों से,
कि बाहम लड रहे है सागरो पैमाना बरसो से।

जिस तरह से इस मुल्क के अवाम को सिर्फ नेशनल मूवमेंट को डिफीट करने के लिये अग्रेजो ने लडवाना चाहा था, इसी तरह से आज इस मुल्क के इकानामिक रिवोल्यूशन के रास्ते मे रोडा अटकाने के लिये गरीब अवाम को रिलीजन के नाम पर लडवा देना चाहते हैं। और यह है सारी बुनियाद, सारी थिंकिंग उन लोगो की जो आज माइनारिटीज का नाम ले कर इकानामिक माइनारिटीज के इंटरेस्ट को सेव करना चाहते है।

इसलिये मै मुबारकबाद देना चाहता हू अपने ला मिनिस्टर को, इस मुल्क की प्राइम मिनिस्टर और हाउस की लीडर को कि आज इस हाउस मे हम एक तारीखी फैसला लेने जा रहे है। हम उस मैन्डेट को जो अवाम से लिया था, उस मैनीफैस्टो को जिस की बुनियाद के ऊपर हम ने अवाम का कानफीडेंस हासिल किया था, आज हम उस मैनीफैस्टो को पूरा करने के लिये पहला कदम उठा रहे है। इसलिये सारा का सारा हाउस, इस हाउस की लीडर, और ला मिनिस्टर काबिले मुबारकबाद है। मै उन को मुबारकबाद देता हूँ इस कान्स्टीट्यूशन अमेन्डमेंट बिल के लिये और इस कान्स्टीट्यूशन अमेन्डमेंट बिल को पूरे तौर पर सपोर्ट करता हूँ।

MR CHAIRMAN Shri Krishna Menon

SHRI KRISHNA MENON (Trivandrum) I would like to speak tomorrow

MR CHAIRMAN Tomorrow there is very little time left

SHRI S A SHAMIM He said I will speak tomorrow I say, I will speak today

MR CHAIRMAN There is one difficulty So many hon Members want to speak tomorrow There will be only 1 hour left tomorrow Today we will take 6 hours as it begin at 12 hrs Then there will be only 1 hour left for tomorrow So it is better you speak today.

Shri Dandavate

PROF MADHU DANDAVATE Mr Chairman, Sir, as a committed radical socialist, I fully support the Bill that has been moved by the hon Minister Shri Gokhale, for the consideration of the House I welcome this Bill and I support it because the Bill rightly seeks to make our Constitution a living and a vibrant document that will respond to the urges of the people in matters of social and economic transformation

In my case Sir, permit me to say that there is also an emotional overtone to my support to this Bill because I can never forget that my hon friend and colleague late Barrister Nath Pai struggled in this House against all the forces of *status quo* to get this Bill adopted and make it an Act that will become the symbol of hopes and aspirations of the common people in the country

[Prof. Madhu Dandavate]

I am happy that this Bill is before the House today. I feel there can be no better lasting monument to the memory, the shining memory, of late Barrister Nath Pai than the Bill that has been brought here

There is so much talk of confrontation between the Parliament and the judiciary. I will not try to heckle Mr. Frank Anthony. But I would like to join issues with him. He has said a lot about confrontation between the Parliament and the judiciary. Who are responsible for this confrontation ? We have three well-defined spheres. There are the people ; there is the Parliament and there is the judiciary. The Constitution itself lays down definite functions for these three. The people are sovereign as far as election of the Government of the sovereign country is concerned. So far as the Parliament is concerned, it is supreme and sovereign as far as enactment of laws and amendments of the Constitution of this country are concerned. And permit me to say that so far as the Supreme Court is concerned, it is supreme and sovereign only in interpreting the amendments to the Constitution and the laws enacted by the Parliament. Unfortunately, when one entity out of these three entities tries to have an encroachment on the other, then only the confrontation between the two begins. And if there is a virtual confrontation between Parliament and judiciary, it is those who gave the perverse judgment in the Golak Nath Case who are responsible for this type of confrontation between Parliament and judiciary. That is my view.

In the Golak Nath case judgment, the judiciary did not merely interpret the Constitution. But they went a step further and they tried, in reality, to modify the Constitution. They became the makers of the Constitution and they, actually, became the third chamber of the Parliament of our country. Therefore our Prime Minister should be able to tell them what President Roosevelt told the judiciary in America. When the 'New Deal' was struck down three times, President Roosevelt came forward with a categorical statement that he will never allow the Supreme Court of America to be the third chamber in that country and that it must know its own limitations

There should be full respect for judiciary provided they do not encroach upon the powers and functions of others So much talk is there about the sacrosanct character of the Constitution. Our friend Shri H. M. Patel quoted Dr. Ambedkar. Now, let me also quote Dr. Ambedkar which will be inconvenient to Shri H. M. Patel. Dr. Ambedkar in his speech in the Constituent Assembly said :

> "The Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon the Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution."

He refers to he procedure provided by article 368 of the Constitution. Sir, there is a lot of controversy. One legal aspect about the controversy is that some feel that Art 368 cannot amend the part of the Constitution which contains Fundamental Rights. The real controversy is : what is the relation between Art. 13(2) and Art. 368 ? Those who are opposed to accept the supremacy of the Parliament, feel that Art. 13(2) is a controlling clause for Art. 368 whereas we believe that Art. 368 refers to certain powers which are derived from the constituent law and they are not to be construed as ordinary law. I do not want to go into details. The prominent legal luminaries the world over have accepted this point which is the basis of the modification, the amendment over here.

Dicey said :

> "There is clear separation between Constituent Law and the rest of the law and that must never be forgotten. An amendment of the Constitution is a constitutional law and is in exercise of constitution making powers. It is not an ordinary law in the exercise of ordinary legislative powers."

Ivor Jennings in his '*Law on the Constitution*' says :

> "Whatever the nature of the written Constitution, it is clear that there is a fundamental distinction between the constituent law and the ordinary law."

Again, so many Judges have been quoted Justice Kania says :

> "There is a distinction between the law of the land and the constitutional law of the country "

One of our friends, Mr Frank Anthony quoted Chief Justice Patanjali. I will now quote him which will be a matter of great inconvenience to Mr. Anthony. In Sankari Prasad case, Chief Justice Patanjali says :

> "The terms of Art. 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatsoever. We are of the opinion that in the context of Art. 13, law must be taken to mean rules and regulations made in exercise of ordinary legislative powers and not amendment to the Constitution made in exercise of the Constituent powers with the result that Art. 13 does not affect amendments made under Art. 368."

Had this judgment remained there, there would have been no necessity for hon. Mr. Gokhale to come forward with this amending Bill but because of the Golaknath case the supremacy of the Parliament has been challenged. That is the only reason why this Bill has been brought forward.

Again, there is a lot of talk about the Sacrosanct character of the judiciary But, can our friends who are opposing this Bill deny the fact that out of 19 Judges of the Supreme Court who have expressed their views regarding the supremacy of the Parliament to amend even the Fundamental Rights, 12 Judges have expressed their view that Parliament is supreme and it has the power to amend even the Fundamental Rights guaranteed by the Constitution. That is a fact that has to be noted.

There is so much talk about threat to democracy if this Bill is adopted I would like to give a simple illustration. As far as Britain is concerned, in the entire history of Britain, the great character of liberty, the Magna Carta, the Bill of Rights and the Act of Settlement have become the corner stones not only of the liberty of Britain but of entire Europe. But remember, the British Parliament can repeal all these three laws. They can repeal them in the same manner in which they could repeal the Dog Act or the Traffic Act. But the British people are conscious, the Parliament is conscious. Not only that, the Member of the Parliament have faith in themselves. Therefore, they have come to the conclusion that possessing power is one thing and exercising it is another. We are not at all frightened because we have faith in ourselves that the Parliament will not misuse the powers in order to destroy the liberty of the people.

Some have given the illustration of Germany. We are told that if Mr. Gokhale's Bill is accepted, probably there will be a growth of militarism and there will be military dictatorship in the country. If any group of parties or individuals try to organise a military coup in the country, they will neither respect the Supreme Court nor will they respect the Parliament.....

SHRI S. A. SHAMIM : They will first arrest all of us.

PROF. MADHU DANDAVATE : They will not debate whether the Supreme Court is supreme or whether the Parliament is supreme. They will send the tanks and machine guns first to the Supreme Court and then to the Parliament and the dictators will say that 'we accept only the supremacy of ourselves.' Therefore, remember that those who want to install the military dictatorship in the country, will never file a writ petition to the Supreme Court and ask whether they are permitted to bring military dictatorship in the country. If there is a situation in which we have to fight a military dictatorship in our country, we shall fight the dictatorship in the streets of this country, in the same manner in which the people of Bangla Desh have fought the dictatorship of Yahya Khan. That will be the manner in which the dictatorship will be fought. It cannot be fought on the basis of the provisions of the Constitution.

The doctrine of prosective over ruling in Golaknath case was strange enough ; it was modelled on the American pattern. Till 27th February 1967, this Parliament was supreme and within one day, it ceased to be supreme ! Quoting the theory of prospective over-ruling they said, it will not be applicable to past, it will apply only to the future. It is a strange paradox. Till 27th February, 1967 this House continued to be supreme. After that it loses its supremacy.

[Prof. Madhu Dandavate]

That is the most perverse aspect of the Golaknath case judgement.

Some of my hon. friends said that if this Bill is passed freedom will be at stake. In all three cases, in 1951, in 1965 and in 1967 who were the people who had gone to the supreme court ? In 1951 Shankari Prasad, a landlord went to the supreme court. In 1965, Sajjan Singh, another landlord, went to the supreme court. In 1967, again it was the landlord Golaknath who went to the supreme court. They were all opposed to land reforms. Those who represent landlords in this House and are championing their cause are opposing this Constitution Amendment Bill.

Certain references were made to religious freedom and minorities Excepting Swatantra, Cong (O) and Jan Sangh, all other political parties had made radical announcements regarding constitutional amendments and this has been the core of their ideologies which they put into their election manifestos. All of us are committed to the basis of our manifestos. Some hon friend mentioned about referendum. We have recently gone to the polls and the electorate has given its verdict. That is why this verdict is as good as referendum and we should respect the people's wishes. I fully support the Bill moved by Mr. Gokhale. Let this Bill be passed ; but at the same time, let it be made clear that there are certain entities, which are fundamental entities in life, namely, the freedom of expression, the freedom of speech, the freedom of association, the freedom to form unions, which have been denied in some capitalist countries, fascist countries and other totalitarian countries. These rights must for ever remain inviolate.

In this respect, Mr. Gopalan and Mr. Indrajit Gupta have moved certain amendments. I too have done it. Those amendments must be accepted.

In conclusion I would say, Mr. Gokhale has been for years a close associate of Mr. Nath Pai in the socialist and working class movements. He will have the sense of satisfaction that after coming to this Parliament, for the first time, he has been able to pay meaningful tribute to the memory of Mr. Nath Pai who was the real author of this Bill.

THE MINISTER OF EDUCATION AND SOCIAL WELFARE AND MINISTER OF DEPARTMENT OF CULTURE (SHRI SIDDHARTHA SHANKAR RAY): I must confess to a feeling of bewilderment listening to the speeches from the Jan Sangh, the Swatantra party and Mr. Frank Anthony. They seem to think, and fact they even accused us of this that we are committing a grievous wrong by bringing this Bill What is the wrong that we are committing ? Is honouring one's pledge to the people a wrong ? Did we not categorically say to the people of India at the time of the last general election that we are going to do precisely what we are doing today ? If this is a wrong, let us commit a hundred such wrongs, - the wrong of honouring our promises, the wrong of acting in accordance with our beliefs, the wrong of wishing to do what millions of our countrymen want. But, Sir, this is not a wrong. How can it be wrong for a political party to act in accordance with its election manifesto ? If the Jan Sangh or the Swatantra Party feel that this is a wrong, then I must say that their loud proclamations about their loyalty to the democratic way of life have not only to be viewed with suspicion but totally rejected as being insincere and hollow.

Let us take the Jan Sangh first. Listening to their arguments, I was reminded of a word used by Humpty Dumpty in *Alice in Wonderland*, namely "outgribing". He used this expression suddenly and when he was asked 'What on earth was "outgribing" he said, "outgribing is something in between a bellow and a whistle with a peculiar kind of a sneeze in the middle". The Jan Sangh has sneezed today and sneezed so loudly that it has failed to breathe the free and pure air of public opinion. And that is why, although their first amendment to this motion was that the Bill be circulated for the purpose of eliciting opinion thereon by the 15th November, 1971, they had second thoughts about it. The public they can never trust ; so, they thought, 'Let us change this amendment and bring in a new amendment ; instead of going to the public, let us go to the Supreme Court'. Therefore, their present amendment is that the Bill be referred to the Supreme Court for the purpose of eliciting its opinion thereon. The public has been

swept aside. They think that the Supreme Court would be their only saviour.

I am not against the Supreme Court. I am not against the majesty of the Supreme Court ; the Government is not against the majesty of the Supreme Court. The Supreme Court shall certainly be honoured, and by moving this Bill, as I shall show presently, we are not in the slightest manner dishonouring the Supreme Court. But the Jan Sangh's point of view is this that it would be better not to go to the public. They walked out of this House yesterday or the day before ; I was not here but I read in the newspapers that the Jan Sangh had walked out of this House to register some kind of a protest. Protest against what ? Protest against whom ? The only thing that I can say is this that they had walked out of this House because they wanted to protest against the people of India for having walked away from them during the last general elections. (*Interruptions.*) My hon. friend forgets the walk-out and it is no wonder, because they must have been criticised by the vast majority of our countrymen for having walked out in that unceremonious manner from this sacred House.

The Jan Sangh and the Swatantra Party and also, I am sorry to say, Mr. Frank Anthony, my learned and honourable friend, seemed to think...

SHRI AMRIT NAHATA : They are all honourable.

SHRI SIDDHARTHA SHANKAR RAY : .. that fundamental rights are something sacrosanct. I do not dispute that. Fundamental rights are certainly sacrosanct as long as they are fundamental rights. But if it is said that fundamental rights are permanent, fundamental rights are perpetual, fundamental rights are unalterable, I join issue with all these hon. gentlemen What is a fundamental right ? After all, it has to be right. Before any right can become fundamental, it has to be a right. I am not going into the niceties of jurisprudence and placing before this House the various juridical divisions and sub-divisions of rights. But I do not think that any student of jurisprudence will dispute this elementary proposition that rights are broadly classified under two heads, natural rights and civil rights.

Natural rights are those which are necessarily inherent rights, which are innate and which come from the elementary laws of nature, such as the right to life or liberty. Civil rights are those which are the outgrowth of civilisation. They are defined and circumscribed by such positive laws as are necessary to the maintenance of organised government. They include the right to acquire, hold and dispose of property, to enjoy freedom of contract and so on.

Our Constituent Assembly in their supreme wisdom—and in my respectful submission, quite rightly—did not make a distinction between natural rights and civil rights when formulating our fundamental rights, as a result of which we have the right to liberty as well as the right to property in our fundamental rights They are natural rights, they are civil rights, all bundled together in our fundamental rights. But can any right be ever permanent in a changing society, in a changing world when the concept of economic growth and social growth are taken into account ?

I understand Shri Vajpayee -he is not here - is a bachelor. But prior to 1955, he had a right to marry, as a Hindu, as many wives as he wanted to, 365 wives if he wanted to, and if he was particular and wanted to provide for the odd leap year, 366 wives. But today that right is not open to him. He cannot marry more than one wife. That right is gone. That has changed. It was a civil right, now gone .

SHRI R S. PANDEY : That is why he has decided not to marry.

SHRI SIDDHARTHA SHANKAR RAY : On the contrary, our Hindu women, in India, after the passing of the Hindu Marriage Act acquired a new right to send their husbands to jail if they tried to marry more than one wife. This has happened.

AN HON MEMBER : Jan Sangh was against that Act.

SHRI SIDDHARTHA SHANKAR RAY : I have no doubt that the Jan Sangh had protested against that right being given to our women. After all, the Jana Sangh is living in an age which can only be found in the pages of history. As such, it is only natural that they would say : "do not take away this right ;

[Shri Siddhartha Shankar Ray]

we want to marry a thousand wives." I am not surprised that the Jan Sangh had objected.

16.28 hrs.

[MR. SPEAKER *in the Chair*]

Take the case of the Hindu widow. Prior to 1937, she was helpless. She had no right whatsoever apart from getting some measly maintenance from the family. In 1937, she was given a right, a limited right, a share equal to that of a son, in certain kinds of property. But she could not sell that property, nor transfer it, nor gift it away. Nonetheless that right was bestowed upon her But in 1956, when this House passed the Hindu Succession Act, that limited right became an absolute right. Today the Hindu widow is entitled without any hindrance whatsoever to deal with the property inherited as a widow.

AN HON. MEMBER : Maharani of Gwalior.

SHRI SIDDHARTHA SHANKAR RAY : That law takes within its sweep the Maharani of Gwalior, the Rajmata of Jaipur and every body else, every woman who is a widow.

SHRI HUKAM CHAND KACHWAI (Morena) : Indira Maharani.

SHRI SIDDHARTHA SHANKAR RAY : Rights will go on changing. Take the law of primogeniture. The hon. leader of the Swatantra Party had inherited pursuant to this law all his father's property to the exclusion of the junior members of the family Today does he have that right ? The law of primogeniture has gone. Civil rights change : they must, they can never be constant

Take, for example, the Hindu mitakshara coparcenary. It was a sacred body once upon a time. Tenancy in common in the coparcenary has however gone today and in a few yearstime joint tenancy will become the order of the day. This is how it happened No right can be constant. It changes from state to state government to government, from decade to decade. When we have fundamental rights in the Constitution which include civil rights, should we not grant to ourselves the power to change those rights as well ?

Take natural rights. A man has a right to live, but subject to various restrictions in various states. A man has a right to live, but the state has also, under certain circumstances, the right to take away his right to live. If he commits murder, he is sentenced to death. If he commits in certain countries rape with violence he is sentenced to death. But this again is a variable right—changes from State to State, from Government to Government and from generation to generation. In England today, for example, all murders are not visited with capital punishment. Murders with violence of police men for instance are still liable to a death penalty but there are various kinds of murders for which there is only life imprisonment. There are countries where thieves and blackmarketers are subjected to a death sentence. Perhapa in India one day we shall have that law. I am sure we shall have that law that a blackmarketer will be sentenced to death. I am sure that law will come.

Sir, all that I was trying to say is that rights change from time to time. Take the Constitution. Under article 22 which is in the chapter on fundamental rights, a man is under an obligation to be detained under a preventive law ; this is necessary today, I concede Coming from West Bengal I think it is absolutely necessary now. But shall we for ever allow this article to remain in the Constitution, giving the Government the right to pass a Preventive Detention Act ? Surely a day will come—five, 10 or 20 years hence, I do not know when—surely a time will come when the elected representatives of the people meeting in this house will demand the deletion of article 22 from the Constitution.

Sir, today, we have certain fundamental rights. But in the sort of society which we want to build, which our party under the leadership of our Prime Minister wants to build, a day is bound to come when we shall have to grant a fundamental right to employment ; a fundamental right to paid holidays ; a fundamental right to rest and leisure ; a fundamental right to education ; a fundamental right to medical aid. When the government of the day comes forward to Parliament proposing that these new fundamental rights should be added, would the government tarry if the Members of the Opposition said, "You cannot do that because by introducing new rights you are indirectly

taking away certain rights of the employers, certain rights of various institutions, and therefore, because Cheif Justice Subba Rao had in the year of our Lord 1967, had said that Parliament has no right to take away fundamental rights from the Constitution, you are debarred from giving a fundamental right to employment to the people of India" ?

The opposition's arguments, in my humble subimission, are arguments of desperation. No right can be constant and as such when that right becomes a fundamental right, obviously that right also cannot be constant. It has to change with the change of society, change of ideas, change of concepts ; these changes have to take place, must take place.

I come to the Cong (O). They did not speak today. I do not know what they really want to do. I understand that they are neither here nor there Tney do not want to say yes or no. I am reminded of the lady about whom we sung as school children :

'She didn't say yes,
'She didn't say on
'She didn't say stay,
'She didn't say go.

She wanted to climb ;
But was afraid to fall ;
So she bided her time ;
And clung to the wall.

That is my lady Cong (O). And with these words, Sir, may I leave my lady Cong (O) still clinging to the wall and go to the glamorous Swatantra Party.

Sir, to really understand the present position a great deal of thought is necessary.

But unfortunately, the Swatantra Party, being a glamorous party, suffers from that drawback which practically all glamorous persons suffers from, namely, lack of thinking. Thinking to them Sir, is an extremely difficult process, an extremely arduous process, an extremely tortuous process. It is just as well that they do not indulge in this sort of thing ; it is just as well that they do not indulge in thinking, for, had they done so, the fragments of their party that peep from here and there from some odd parts of India, I am afraid, will disappear into nothingness. So, the Swatantra Party is correct in avoiding thinking altogether. Thinking is tabooed in the party and I think it is just as well that it is so. Their existence depends on not thinking about anything at all. May they go on doing so !

Then I come to.....

AN HON. MEMBER : Frank Anthony.

SHRI SIDDHARTHA SHANKAR RAY : I will deal with Mr. Frank Anthony's arguments while dealing with the Golaknath case. What is this Golaknath case ? Golaknath, unfortunately, is becoming a very famous man, but he lost his case. He went from the Supreme Court a very sad man. He must have spent lakhs on lawyers, because he had various interests supporting him. I was approached by one of the parties- I am talking about my career as a Barrister—to appear in the case as an intervener, but I thought I should not do so and I did not do so. However, the position is that Golaknath must have been told, "You have won a brilliant battle". But when he went back to his wife that night, it must have been a very sorry tale that he had to relate : "I have lost my case and also my lakhs".

However, what is the past history of this particular kind of decision ? In 1951, in Shankari Prasad's case, the Supreme Court, by an unanimous judgment of five judges, held that Parliament was certainly supreme and had the right to amend fundamental rights. Mr. Frank Anthony has run away—I would not say run away—he has perhaps gone where it is more profitable to be present—but he had been praising Mr. Justice S. R. Das and Mr. Justice Patanjali Shastri for the two very famous judgments to which he referred. In this Bench of five judges, which decided that fundamental rights could be amended by Parliament were Chief Justice Kania, Mr. Justice Patanjali Shastri, Mr. Justice B. K. Mukherjee, Mr. Justice S. R. Das and Mr Justice Chandrasekhara Iyer. I do not make any distinction between one Supreme Court Judge and another Supreme Court Judge, but I would like to know if there is any lawyer who would say that a stronger Bench than this had ever presided over the Supreme Court—Chief Justice Kania, Mr. Justice Patanjali Shastri, who

[Shri Siddhartha Shankar Ray]

later became Chief Justice, Mr. Justice B. K. Mukerjee, who later became Chief Justice, Mr. Justice S. R. Das, who later became Chief Justice and Mr. Justice Chandrasekhara Iyer. Those of us who are lawyers here and who had appeared before these great judges know with what caution and thought, they approached every problem before them. So, we have this unanimous judgment. Then, in 1965, in Sajjan Singh's case, this question was sought to be re-agitated. There we had Chief Justice Gajendragadkar, Mr. Justice Wanchoo, and Mr. Justice Raghubir Dayal, who said that Parliament had the fullest right to amend fundamental rights.

There were two judges who differed -Mr. Justice Hidayatulla, I am afraid, and Mr. Justice Mudholkar. So, up to that time the total calculation was 8 in favour and 2 against—5 unanimous in the first judgment and 3 in the second judgment ; and I hope the Jan Sangh would not dispute my arithmetic when I say that 5 and 3 make 8 ; there were 2 against this view, zero in the first case and 2 in the second case. Then we had the Golak Nath judgment of 6 to 5. Sir, if you go through the judgments of the majority judges—I have nothing against them—but I should be very surprised if you would be able to find out what in fact they had decided except that Parliament had no power. There were many points discussed, many theories brought in but, ultimately, of course, they decided that Parliament had no power to amend fundamental rights. The reasonings are all different, but nonetheless I shall take all the six against and five in favour of the proposition which we are seeking to make today. So, what is the tally ? My hon. friend was a little mistaken about the tally, and I do not blame him There were 21 judges in all, in all the three cases and 14 had decided in favour of Parliament's right to amend the fundamental rights and only 7 against . . . (*Interruptions*) Sorry Sir I beg your pardon. I stand corrected. Two judges are common ; but let us take a judge twice ; let us count a judge twice. Even if we sort that out, it comes to 13 and 8. So, if we go by pure arithmetic the Supreme Court was really in favour, the majority of the judges of the Supreme Court who had to deal with this problem from time to time were in favour of the preposition that we are trying to make.

Some hon. Members who spoke against this Bill had talked about the supremacy of the Supreme Court, about which there is no doubt ; I am not doubting that, as I shall presently contend. But may I ask these hon. members, the members of the Jan Sangh, the members of the Swatantra Party and Mr. Frank Anthony *in absentia*, one question ? Do they realise what are disastrous consequences of the Golak Nath case are ? Supposing this Golak Nath decision, instead of having been decided in 1967, had come out in the year 1951, what would have been the position ? We would not have been able to have any land reforms, the zamindari abolition would have been still a dream, the more progressive provisions of the Industries (Development and Regulation) Act would not have seen the light of day and the insurance laws could not at all have been changed. These are the disastrous consequences of the Golak Nath judgment.

Then it has been said that we are having a confrontation with the judiciary. We are not. President Roosevelt wanted to have a confrontation. We have not tried to pack the Supreme Court. We have followed another method. We have accepted the Golak Nath judgment and we are trying to act in accordance with it and fill up all the loopholes and lacuna which, according to the Supreme Court, were supposed to be there I heard Shri H. M. Patel saying that you cannot do it. I would rather say he had stuck to his bureaucratic experience and not tried to trespass into that of a lawyer's.

The Supreme Court had made five points in the Golak Nath case. The first point was that article 368 does not give you the substantive right to amend and that it merely lays down the procedure for amendment of the Constitution. Of course, the indirect supposition of the Supreme Court obviously must have been that the Constituent Assembly consisting of many of our great men, great intellectuals had really gone to sleep. They had provided for an elabarate procedure but had forgotten about the substantive right, because in their sleep they perhaps had dreamed that one day a certain chief Justice by the name of Subba Rao will appear on the scene and will try to find out from the various corners of the Constitution some power somewhere enabling Parliament to amend the Constitution.

Sir, I am mentioning Chief Justice Subba Rao by name. I would not have done it had he rested content with delivering that judgment. But today he has come out in the public, he is making speeches and he is writing articles. Therefore, it is absolutely, and definitely legitimate to criticise his views and to say that he was taking a political stand.

After having failed to be elected as a Swatantra candidate in the 1967 Presidental election he has come forward to propagate the views of the Swatantra party. This is what I think I am entitled to say. However, on the assumption that the Constituent Assembly had gone to sleep the Supreme Court said that Article 368 lays down only the procedure for amendment. The substantive right to amend is not there Where is the right to amend ? The right to amend will be found from Seventh Schedule list I item 97. What is that : the residuary power of Parliament to make laws. So, Chief Justice Subba Rao thought that power to amend the Constitution came within the residuary power and as soon as you exercise the residuary power any amending Bill when passed into law became a law within the meaning of law under Article 13 of the Constitution and as such it could not infringe any fundemental right, abridge any fundemental right, take away any fundemental right. This really is the decision of the Supreme court. The substance of these five points is : (1) Parliament does not have the express power to amend fundamental rights under Article 368. (2) Parliament has the power to amend the Constitution but that amendment is law within the meaning of Article 13 and, therefore, it has to pass the test of the fundamental rights. Now, we have accepted that. Having accepted that let us give specific power to Parliament under Article 368 to amend fundemental rights, let us also say that both in Article 368 and Article 13 no amendment passed shall be deemed to be law within the meaning of Article 13 of the Constitution. Perhaps, many hon. Members are not aware that we are really following the suggestion of Justice Hidayatullah himself which he had made in the year 1965 in Sajan Singh's case. I am reading from 1965 All India Reporter—Supreme Court reports—page 860 :

> "It is true that there is no complete definition of the word "law" in the Article but it is significant that the definition does not seek to include Constitutional amendments which it would have been easy to indicate in the definition by adding 'but shall not include an amendment of the Constitution'."

That is exactly what we are doing. We are not having confrontation with judges. Certainly not. We honour them We respect them and we know in a democracy the courts of law must be given a very high position. We respect them. We honour them. But whenever they go wrong we will have to correct them in this House through constitutional methods ; through democratic means not by parading on the streets or attacking people with pipe-guns but by cool logic within the four corners of this sacred House So, that is what we are trying to do.

Now, Sir, we have just grounds to be critical of Chief Justice Subba Rao if you look at Article 368 itself Chief Justice Rao seemed to think that this did not give us the power. What is the language—"an amendment of ***this*** Constitution." *etc.* According to him "this" does not mean "this". "This" means part of "this". "This" means "this" Constitution minus Part III which is part of the Constitution. So, Sir, I am again tempted to go back to Humpty Dumpty and Alice in Wonderland. "When I use a word" said Humpty Dumpty in rather a scornful tone "it means just what I choose it to mean neither more nor less". "The question is" said Alice, whether you can make words mean so many things. The question is said Humpty Dumpty which is the master—that's all. Chief Justice Subba Rao thought. "This is the principle which I must follow ; I have to decide which is the master ; that is all. Therefore being the master I can say that 'this' means part of this and not the whole." That is the logic behind this decision which we had.

Are we the only people who are criticizing this judgment ? Sir, I am sure, you have heard the name of Shri Seervai, Advocate General of Maharashtra, one of the most famous lawyers in this country—sedate, sober and respected. In this recent Chimanlal Setalvad Lectures this is what he had to say about the Golaknath case and Chief Justice Subba Rao :—

> "But the majority judgments in Golaknath's case show that the lessons of the American experience have neither been fully realised

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> nor finally learnt. It may be said that excessive importance ought not to be given to a single judgment of a narrowly divided court but there are portents which we cannot ignore. Chief Justice Subba Rao, who wrote the leading majority judgment in Golakanath's case, resigned the office of the Chief Justice of India at two days' notice in the hope that if elected the President of India he would be able to put his constitutional philosophy into practice in the governance of India."

SHRI S. A. SHAMIM : Thank God, he was defeated.

SHRI SIDDHARTHA SHANKAR RAY : Do not thank God ; thank the people of India for having known what Chief Justice Subba Rao really was.

May I continue with what Shri Seervai said ?

> "Since he was not elected, he apparently considers it to be his duty to justify his judgment in Golaknath's case in public lectures. In this very hall, in delivering the Setalvad Memorial Lectures he called his first lecture "The Judicial Salvage of Fundamental Rights", a strange title, which like the lecture, suggests that the lessons of the American experience are unknown to him."

What was this American experience ? It is important because some Members have talked of confrontation. Let us see how valid is such a confrontation in a democracy. Let us go back to the middle of the 19th century, to Dred Scott's case.

You know, Sir, of the historic Missouri compromise. What was the compromise about ? The compromise categorically stated that slavery was abolished. Promptly people went to court. Chief Justice Taney was there to oblige and the Supreme Court of America came to the conclusion, "How can you abolish slavery ? Slaves are property. How can you take away a man's property without violating the Fifth Amendment, namely, the due process of law. Therefore, the Missauri compromise is unconstitutional, illegal. These slaves, these Negroes, that you have are not human beings ; they are chattel and, therefore, they cannot be taken away." That was the judgment.

What happened thereafter ? A civil war. It took a civil war, a Lincoln and an amendment of the American Constitution to bring back to sanity. The Thirteenth Amendmend which abolished slavery and the Fourteenth Amendment which guaranteed equal rights and equal protection of the laws were passed after the civil war.

Mr. Justice Jackson in his *Struggle for Judicial Supremacy*—he does not belong to the Congress, our party—has said that "Chief Justice Taney had attempted to forestall the anticipated verdict of the coming elections." Chief Justice Taney had thought that the elections would end differently. "He had failed forestall the anticipated verdict of the coming elections, the verdict that came with the election of 1860. "Now the weary and weather-beaten old Chief Justice"—not Chief Justice Subba Rao ; I am not referring to him ; this is about Chief Justice Taney "was overmastered by the violence of forces that he had himself turned away from compromise in legislative halls and had harried towards war." This lesson from the American experience, I hope, is known to Mr. Atal Bihari Vajpayee. He is not here. I am sure he knows everything.

SHRI R. S. PANDEY : He has gone for *satyagrah.*

SHRI SIDDHARTHA SHANKAR RAY : Then come the Legal Tender Acts which were declared unconstitutional as a result of which the economic structure of the United States was in danger of complete collapse. What happened ? President Grant acted swiftly and he appointed two new Judges to the Supreme Court....

AN HON. MEMBER : It can be done here also.

SHRI SIDDHARTHA SHANKAR RAY : What I was trying to say is that these things have happened in a democracy. When Mr. Indrajit Gupta talked about it, Mr. Frank Anthony was up in arms against him as if Mr. Indrajit Gupta had said something which had not happened anywhere else. I am citing a case from one of the great democracies of the world. Two new Judges were appointed and,

thereafter, the old decision was reversed by the Supreme Court in America.

At the time of President Roosevelt, in 1933, Industrial production was off by 45 per cent ; the employment was off by 41 per cent ; factory pay-rolls were off by 63 per cent and 17 million people were unemployed in March, 1933. So, he brought what is now known as the New Deal legislation. During the years 1934-36, in fact, it was thought that President Roosevelt would never come hack to power particularly after the New Deal legistation. He was described as a communist and, as such, Americans would not accept him. So the Supreme Court in America strucked down the New York Minimum Wage Law as *ultra vires*, the Wagner Labour Relations Act as *ultra vires* and the Social Security Act as *ultra vire*.

In November, 1936, President Roosevelt went to the country with this thing to tell the people, that this is what he had done but the Supreme Court had declared all these Acts as unconstitutional and *ultra vires*. What happend in the elections ? President Roosevelt was elected by a majority which till then no President had receied. Out of the 48 States, he carried 46 States with him.

Then, on 9th March, 1937, after assuming office this is what he said in a State of the Union message. And this is very important. I am really meeting the points made by Mr. Frank Anthony. Of course, he is not here. He said :

> "The Court in addition to the proper use of its judicial functions has improperly set itself up as third House of the Congress—a supper lagislature, as one of the Justices had called it—reading into the Constitution words and implications which are not there and which were never intended to be there. We have, therefore, reached the point as a Nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution, not over it. In our courts we want a Supreme government of laws and not of men. I want, as all Americans want, an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written, that will refuse to amend the Constitution by an arbitrary exercise of judicial power—amendment by judicial say-so,—
>
> What do they mean by the words Packing the Court ? Let me answer this question with a bluntness that will end all honest misunderstanding that I wish to place on the Bench spineless puppets who would disregard the law and would decide specific eases as I wish them to decide, I make this answer : that no President fit for his office would appoint. and no Senate of honourable men fit for their office would confirm. that kind of appointees to the Supreme Court. But if by that phrase the charge is made that I would appoint and the Senate would confirm Justices worthy to sit beside present members of the Court who understand those modern conditions, that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy—

Jana Sangh please note.

> "...that I will appoint Justices who will act as Justices and not as legislators. If the appointment of such Justices can be called 'packing the court,' then I say that I and with me, the vast majority of the American people favour doing just that thing now."

17.00 hrs.

SHRI S. M. BANERJEE (Kanpur) : We want the same thing.

SHRI SIDDHARTHA SHANKAR RAY : What happented thereafter ? After the message was delivered. what did the Supreme Court do ? The Supreme Court in March 1937 reversed its earlier decision on the minimum Wages Act. In April 1937 they reversed their decision on the Wagner Labour Relations Act. In May 1937 they reversed their earlier decision on the Social Security Act. President Roosevelt's purpose was achieved. Therefore, the court-packing plan which he had put before the Congress was not seriously considered and it was allowed to be defeated.

Chief justice Subba Rao in a public lecture has made a point on this. He said that

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President Roosevelt had failed to carry out his court-packing plan. He had not failed. It was not necessary for him to do so just as it is not necessary for us to do so here. We cannot think of it. We are amending the Constitution by following what the Golak Nath judgment has said and by removing the *lacunae* pointed out by the Supreme Court in the Golak Nath judgment.

This, Sir, is the American experience. The same experience had been shared by some European countries. In France and in other countries the same thing had happened. Judicial review on legislation in France is no longer permitted and according to a very well-known professor, there were four broad reasons for that. I am not going into the details of the reasons but the main reason was that the people trusted Parliament more than the Courts. We do not want the people here to lose confidence in the courts By people we do not mean only those who patronise the Jana Sangh or those who patronise the Swatantra Party. By people we mean the hundreds and thousands of men and women in India. After all, we must remember that 90% of Indians have no property whatsoever. So, when you talk of the right to property, it is illusory. They cannot understand that. It is said that we are against the right to property. We have made it quite clear that we are not against that right. When it was said by some members that the Congress is going to take away the right to property altogether, that small farmers, small land-owners and middle land-owners will be deprived of their property, that is a false propaganda.....

SHRI S. A. SHAMIM : They have a right to poverty.

SHRI SIDDHARTHA SHANKAR RAY : ...put forward only with a political motivation.

AN HON. MEMBER: That cuts no ice.

SHRI SIDDHARTHA SHANKAR RAY : But, there are a few who still think that by their arguments much ice has been cut and they can use it for the purpose of drinking cold water, while, all that will happen is that cold water will be poured on them.

On the 10th September, 1949, Pandit Jawaharlal Nehru, while advocating the well-known stand of the Indian National Congress to abolish zamindaris said :

> "Within limits, no judge and no supreme court can make itself a third chamber. No Supreme court and no judiciary can stand in judgment of the sovereign will of Parliament, representing the will of the entire community."

That is exactly what we say.

Sir, before I conclude, may I say that we are proud that we have brought this Bill today ? We would have been failing in our duty if we had not acted in accordance with our promises We are proud that we are wanting Parliament to have the right to amend fundamental rights, because many amendments will be necessary and the hon. Law Minister has given indication of the nature of the amendments that we want to bring. These amendments are necessary to build the sort of society, the sort of country to which we, as a party and to which our leader, the Prime Minister, are all committed. We are proud of that. I have no doubt whatsoever that the people will acclaim us for having passed this Bill.

Sir, long after the present controversy is hushed into silence, long after the dust of this din and bustle has settled, long after the Socialist Society of our dream is established in this country, and long after the millions of our people commence enjoying the fruits of Socialism, it will still be said that this was the moment of triumph for the people of India, for, it was at this moment that the elected representatives of the people gave back to Parliament what was justly its own, but wrongly taken away from it,—its Supremacy. Our Parliament is Supreme and long may it remain so.

SHRI M. MUHAMMAD ISMAIL (Manjeri) : At the outset I want to say that we know and agree that the maintenance of any right for the minorities is dependent upon the goodwill of the majority and on the sympathetic willingness of the majority to uphold in practice the law postulating any such righ.

I also want to say that the minrities doo no want any special privilege, any privilege that is not enjoyed by the majority community, as citizens of the motherland.

Therefore, what I want to urge before the House now is by way of an appeal to the other Hon. Members of the House through you, Sir. to consider sympathetically the points which I place before them.

Sir, ever since the talk of amending the Fundamental Rights adumbrated in the Constitution began, the minorities have been feeling anxious about the fate of those Articles in the Constitution, which spoke of minorities.

The Prime Minister was kind enough to make a clear statement that the rights of the minorities would not be affected by any amendment made in the Constitution. We are indeed grateful to her for this assurance and are fully confident that she and her Government would keep their word and that their service to the people in the position of Government will be of very long duration.

But, in the nature of things, there may be changes and vicissitudes in the country and the Government in the future and our anxiety is that such changes should not affect the position of minorities. Minorities, because they are minorities, cannot be in a majority either in Parliamen or Legislatures. It is for this reason that the framers of the Constitution inserted certain Rights in Part III of the Constitution for the Minorities. which would be beyond the scope of amendments.

Sir, the trouble arose when the Supreme Court in the Golak Nath case reversed by a slender majority the court's previous approval of certain amendments of the Constitution. This created difficulties for the Government in carrying out their programme of bringing about a better and happier life for the masses of the people in the country. We appreciate the Government's anxiety to remove this hurdle unfortunately created by the Supreme Court and their endeavouring to amend the Constitution for the purpose.

Here, we are of the opinion that their purpose can be achieved without taking a blanket power for the Parliament to amend any article or portion of the Constitution.

Certain articles can surely be omitted from the scope of the present Twenty-fourth Amendment Bill without detriment to the economic and socialist programme of the Government. We have given notice of certain amendments to the Bill seeking the omission of certain articles like articles 17, 19, 25, 26, 49 and 30. They refer to such matters as belief in religion and culture avoiding untouchability and so on.

These matters will not come in the way of executing the Government's economic programme. On the other hand, they will help in the Govenment's much-needed drive towards the prosperity of the people.

I would, therefore, request Government so accept the amendments which I have referred to.

SHRI SANT BUX SINGH (Fatehpur) : It is a pity that this Parliament has to spend so much time discussing a measure which was discussed fully twenty years ago when the first amendment to the Constitution was brought forward. At that time, Pandit Jawahar Lal Nehru said that the first amendment meant no more than restoring to Parliament what rights Parliament had through the Constitution. Objections were raised and Panditji said something at that time which people who oppose this Bill, inside this House and outside, might like to recall. He said that the opinions of the Constituent Assembly are being talked about ; the sanctity of the Constitution is being mentioned. He added, only a little while ago, we were the Constituent Assembly ; at that time, it was said that the powers of the Constituent Assembly were limited ; and now Panditji pointed out that after the Constitution was passed, it was deemed to be so perfect that the very people who had made the Constitution were not considered fit to amend it.

What has happened through the judgment in the Golak Nath case is that there has been a judicial outrage in this country. I am quite conscious of the word that I use. The Constitution has given different functions to the different organs of State, and the judgement attempts to interfere with the balance provided.

I would like to quote a single sentence from Mr. K. Subba Rao, then only can we realise the danger that we would be in if this kind of a clarifying and enabling

[Shri Sant Bux Singh]

amendment is not brought forward. This is what Mr. Subba Rao has said :

> "The social order visualised by the Constitution was expected to be brought about smoothly by a process of gradual social adjustment."

According to Mr. Subba Rao, it is the Supreme Court which has to bring about social changes, and in the famous judgement on the the Golak Nath case, Mr. Subba Rao also clearly says that the Supreme Court not only interprets but makes the law. Is this country going to take up a position where the judges of the Supreme Court will not only interpret but make the law and make laws in such a way that property becomes a sacrosanct institution ?

There has been a lot of whispering campaign from the other side. Everyday we are cautioned against using intemperate language. We are supposed to maintain the dignity of the judiciary. But if you read the Golak Nath judgment and the subsequent speeches and writings of Mr. Justice Subba Rao, not only do they cast a reflection on the Parliament but also a reflection on the Indian people themselves, because even in the judgment it is mentioned that Indian public opinion is not enlightened. What Mr. Subba Rao and people of his ilk like would mean that they decide what the future of the people should be, they decide what the rights of the minorities are, they determine how the conditions are to be bettered.

May I ask my friends who are great exponents of the constitution and the judiciary : Has the constitution of Pakistan, has the judiciary of Pakistan been able to guarantee the minority in Pakistan its fundamental rights ? Has the judiciary there been able to guarantee the majority of the people of Pakistan their natural human rights ?

One of the most beautiful constitutions framed was the constitution of the Third Reich, I mean the Weimar Republic. That constitution was misused and Hitler technically came into power through that misuse. Where were the judges, where was the great judiciary then ? Why did they not intervene and protect the rights of the people ?

The rights of the people can only be guaranteed through the will of the people and the people cannot manifest themselves except through Parliament. In the ultimate analysis, it is on the good sense of the people of this country as manifested through this Parliament that our rights and liberties rest.

There have been 23 amendments to the Constitution ; of these three have been serious amendments. All these three concerned fundamental rights. Can anybody in this country say that on any occasion this Parliament had misused its power ? On one occasion, as the Law Minister pointed out this morning, when the amendment referred to the minorities or a section of the commnnity, it merely increased the rights of the minorities.

Shri Siddharatha Shankar Ray talked about the concept of fundamental rights. Natural rights are no longer accepted as something sacrosanct, some things that are manifested and exist all the time. There is only one kind of right : that which society gives. You cannot have rights outside society. You can be independent outside society if you have the means to survive, but then the stronger persons can kill you, do anything to you. Freedom comes to you through society guaranteeing it. Can anybody imagine a person possessing property outside society ? Can any person think that it is possible for some one to have and to exercise rights which are against the will of the majority of the people of any country ?

So to talk about natural rights being sacrosanct or fundamental rights obtaining all the time, is to give a theological interpretation. If the laws of Manual had to change, if the laws of Vedic times had to change, how can we say that what was passed in 1949 is eternal, for all time, no matter what happens meanwhile.

I would like to read a statement by Acharya Kripalani ; may be it will be of help to the leader of the Swatantra Party when he speaks tomorrow, because he talked about the Acharya being a member of the Fundamental Rights Committee. The Acharya said in this House on 30 May 1951 :

> "I will vote with the Government if they say that there is no need for fundamental

rights. It is an old and antiquated 19th century idea which took its rise from historical natural rights. We have no more any need for natural rights and we should attach no value to the idea of fundamental rights".

Not only Acharya Kripalani. There was another politician, a statesman, who warned us a long time ago of the danger that we would face later. The name of that person is Prof. N. G. Ranga who till recently was the leader of the Swatantra party. I will not criticise the Supreme Court but I would only read what Prof. Ranga had to say. Here are Prof. Ranga's words :

> "Therefore, we have to safeguard ourselves from the conservatism or from the fancies or from the social matrics of these Supreme Court judges, day to day, and from time to time to the extent that it is possible. That is why we should try and see that such power as possible is vested in the Parliament in its own right, so that we can minimise the scope for free play of the conservative forces that will be installed in power through the Supreme Court and it is in this light I wish to support this Bill."

I hope Mr. P K. Deo and Mr. Piloo Mody will have the answer to what the leader of their party said.

It is not unknown that quite often courts have transgressed their authority.

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

SHRI SANT BUX SINGH : I shall conclude in two minutes. I merely want to place two further statements before this house, from the judges of the Supreme Court of America, because I think they are extremely relevant. I do not think that Shri Frank Anthony will think that the judges of the Supreme Court of America are committing any contempt on the judges of our courts. This is what Mr. Justice Douglas of the Supreme Court of America said :

> "But when one look down the long vista of Anglo-American history, he learns that as many, if not more, victories for freedom were won in legislatures and conventions as in courts. When it comes to human rights, we owe more than we commonly acknowledge to legislative law. Legislators have also been good guardians liberty. They have curbed judges who at times have proved to be tyrants as the history of the law of contempt particularly shows."

Sir, I would beseech the people who are opposed to this Bill to think rightly and to think in their own hearts ; were the power given to them, would they not trust themselves, this Parliament ? If people do not trust themselves, how can in their opinion of matter about the other people ? Who is here who would say that the Indian Parliament is not worthy of the trust that the people have given to it ? These criticisms are methods of circumventing things, trying to protect vested rights, and the finest way of making our Constitution a static document which it is not.

As Pandit Jawaharlal Nehru pointed out much earlier, we have a habit in this country of deifying things, of making them sacrosanct and once we make them sacrosanct we ignore them and we pass them to the dustbin of history. So, if the Constitution is to be alive, it has to be alive to the aspirations of the people. If liberties have to be guaranteed in this country, they are not going to be guaranteed by the Supreme Court but by the will of the the people as manifested through this Parliament.

MR. SPEAKER : Shri Shamim.

SHRI K. MANOHARAN : I was told that six hours have been allotted for consideration and so far five and a half hours have been taken, and an hour or so will be left after 6O' clock. So, we propose to speak tomorrow. Therefore, the time which is allowed to our party must be given to Mr. Maran.

MR. SPEAKER : The DMK's time will be given to him.

SHRI SHYAMNANDAN MISHRA : Since we have got three hours for the second reading and the third reading taken together, would it be your pleasure to see that some redistribution is made between the consideration just now and the time that would be allowed later, so that many of us are able to take part ?

MR. SPEAKER : There is a lot of time yet for the Congress Members though other parties have almost exhausted except the Cong (O) and the DMK. I do not want to be very strict by not allowing any additional speekers There are a number of speakers from your side. We can sit for an extra half an hour and try to finish the list so that there may be no difficulty tomorrow. But I miss most of the faces of those who are mentioned in the list except two or three.

THE MINISTER OF PARLIAMENTARY AFFAIRS, AND SHIPPING AND TRANSPORT (SHRI RAJ BAHADUR) : Not only half-an-hour, but we may sit for one hour more today, because I am really hard-pressed to accommodate my party members.

MR SPEAKER : I do not see your members here. Out of the list, only three gentlemen are sitting. We will mark them absent so that they may not take their turn tomorrow.

We will see as the debate proceeds. Shri Shamim.

SHRI S. A. SHAMIM : Sir, the disadvantage of being called at the fag end of the day is, most of what I had to say has been said by others and I might only be repeating what they have said. In any case, I will try to put the issue from the point of view of the common man. Several members have quoted Justices and Chief Justices and all those who have committed injustices. Some of the members tried to work out the arithmetic as to how many were for it and how many against. I do not think that is the correct approach That is not the issue before us. My contention is, even if all the Justices and Chief Justices together had debarred this Parliament from amending fundamental rights or any article of the Constitution, this House should have risen in protest and resolved that this right belongs to the people and to Parliament and it should be restored. Without worrying as to how many voted for it and how many against, I say that this right of amending the Constitution lock, stock and barrels, belongs to the people and it should be restored to them.

The issue involved is, can this present generation bind the future generation ? The answer should be a very clear and positive no The same applies to the older generation. Howsoever patriotic, wise and foresighted they were, they could not have bound the present generation which has come after the Constitution was promulgated. This positon that Parliament is supreme and fundamental rights can be amended has been there since 1951. It is very intriguing and peculiar and it needs investigation as to where were these self-appointed, nay, nominated champions or *chumchas* of minority, nay, microscopic minority, defending the rights of minorities all these years ? Doubts have been cast that this power may be misused or abused. You cannot bind the whole nation out of a complex of fear, born out of nothingness, fear born out of lack of faith in you and in the people. The whole question which was debated in 1951 is very much relevant today. I salute Golaknath, son of Bolanath, resident of Punjab, for having taken the issue to the Supreme Court and got the verdict. Whether this injurtice was perpetrated by the Chief Justice or the other Justices is not relevant, but a very relevant issue was raised. As was pointed out by my predecessors here who have spoken before me, immediately after this judgment was pronounced, Justice Subba Rao has been taking this issue to the streets and he has been speaking in public. If he had pronounced his judgment and kept quiet, that would have been a right course which a judge could have taken. But it seems that he is committed to such an extent that he is advocating something which the people have already rejected.

It is being said that the Constitution has been amended a number of times. I ask, what is wrong in amending the Contitution a number of times ? Is this the only Constitution which is being amended in the whole world ? If the Constitution is amended so rapidly, that only indicates that social changes are taking place at a greater speed. How is it that the Swiss Constitution was amended only 11 times during the first 50 years whereas it has been amended as many as 37 times during the last fifty years ? The difference in number clearly shows the changes which have to be reflected in the Constitution by amending it properly.

The word 'sacrosanct' has often been used. What is sacrosanct here ? I do not think any thing other than divine books is sacrosanct. And, mind you, there are people who challenge even the divine books. And this is a

Constitution which has been made by human beings. Our Constitution was made by a Constituent Assembly which was not as much representative as this House. That Constituent Assembly gave us this Constitution How is it that at a particular time we say that this was given to us by our forefathers, we connot change it ; whether it is inconvenient to us or harmful to us, whether it troubles us or not, we have to put up with it because it is something which has been given to us ? This status is given only to divine books and nobody has claimed that right for this piece of Constitution, howsoever sancrosanct it may be relatively.

Shri Atal Bihari Vajpayee, Shri Frank Anthony and many others are also not opposed to change in fundamental rights. Even their mentors, Justice Subba Rao and Justice Hidayatulla are not opposed to the change ; they are only opposed to the mode of change. How should we change it ? It is not a question of five judges on one side and six judges on the other ; it is five judges plus Parliament on one side and six judges on the other. Parliament and five judges decided that it will be changed by changing, if need be, article 368.

Now, as a student of law I have gone through all the articles of the Constitution. Of course, I am not as great a Barrister as Shri Frank Anthony. I have not that much time to practise because I have to contest the election, go to the voters and try to persuade them. So, I do not get enough time to go to the court. While I am not as good an advocate as Shri Frank Anthony, as a student of law I do not see any conflict in articles 13 and 368. The conflict arose because of an erroneous interpretaion by one judge.

When this House makes a mistake it has a right to correct itself. But when the Supreme Court makes an error, do you think that error should be accepted as a reality, as truth ? There must be some opportunity provided somehere to correct even the Supreme Court, because the Supreme Court judges are not infallible as Supreme Court judges, as the advocates of the Supreme Court seem to think. Therefore, this right which has been denied to us for the last two years, the sooner it is restored to the Parliament the better it would be in the interests of the people and the democratic institutions.

Dr Ambedkar has been quoted as also Pandit Jawaharlal Nehru. I have a hunch that in 1951 when in Sankariprasad case the Supreme Court by a unanimous decision held that the fundamental rights can be changed, this issue was not brought before Parliament for one reason. Because, at that time all those who framed the Constitution were present in the House and they would have clarified what they had in mind. So, this was not done then This issue was raised in 1967. And remember the circumstances in which it was raised. Justice Subba Rao imported a political theory of "this far and no further". He said he will not allow Parliament to go beyond that. Even Justice Subba Rao says that the people are supreme. At least he says so. Then, is the Parliament which is the representative of the people not supreme ? Now, as the judgment stands, Parliament is not pemitted to do anything There is nothing which Parliament can do.

This is true of that Parliament. This is true of this Parliament also. There are only certain self-devised checks which we have opted for. Otherwise there is nothing. We can scrap the whole Constitution and frame a new Constitution. This Parliament has an inherent right to change the fundamental rights. What are these fundamental rights and who is supporting them. It is very important. A particular lobby is supporting them. A rikshawalla or a person who has been sleeping on the footpath for the last 20 years does not know that he has a fundamental right to speech, that he has a fundamental right of property because his only property is footpath and he thinks that it is safeguarded in any way. My learned friend, Mr. Frank Anthony, represents only a microscopic minority. I can claim that I speak on behalf of minority. There is no Constitution which can guarantee minorities safety, right and protection. There is only one Constitution and that is the Constitution of the people's will. After partition it was witin the power of the Constituent Assembly to declare Bharat as a Hindu Raj or a theocratic State as Pakistan has done. What prevented them. There was no Constitution at that time. No Supreme Court gave a rujiht ngat character of the Constitution should be secular. It is inherent strength in the people that will protect our rights. I want to say as a spokesman of the minority that they should not led away by this talk. Our only guarantee and protection is the goodwill of the majority because these rights

[Shri S. A. Shamim]

will not benefit Hindus, Muslims, Sikhs or Anglo-Indians. These are going to benefit Indians as such, the labourers and the downtrodden. Therefore, it is important that minorities do not become a party in this issue as minority. There is only one minority and one majority. Minority which has assumed the character of majority—the exploiters—who are very small in number bnt who subjugate a majori y and that majority is exactly the minority which must be protected from that minority. I want protection. I do not want minority rights because as I said they are inherent in the basic policy of the country. I want protection from that minority which by dint of force, by hereditary characteristics and character—good character and bad character—both have assumed full strength of power and have nullified the democratic institutions. This majority of teaming millions of people should be protected from this minority. I will conclude by quoting the famous architect of the Indian Constitution no less a person than Shri Jawaharlal Nehru.

> "No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out—but in the ultimate analysis, where the future of the community is concerned no judiciary can come in the way—And if it comes in the way—ultimately the whole Constitution is a creature of Parliament—Therefore if such a thing occurs—they should draw attention to that fact—but it is obvious that no court no system of judiciary can function in the nature of a third House—as a kind of third House of correction."

The country was not freed becauee a few Supreme Court judges will convert themselves into third Chamber. We owe it to our martyrs that this country will be free and not free at a particular point of time. This country will be free to shape its own future and let us not bind future generations. That is why I am supporting this Bill.

Thank you, Sir.

SHRI VAYALAR RAVI (Chirayinkil) : Mr. Speaker, Sir, it is surprising that some friends on the other side have felt agony and panic while this amenment was moved. It is only an amendment to restore the situation before 27 February, 1967. Till that time the decision in the Sankari Prasad case prevailed. When the Golak Nath case was decided, a new phenomenon arose in this country, which created hurdles on the way of progress.

While moving this Bill the Law Minister, Shri Gokhale, is trying only to strengthen the established democratic institutions in the country. He is obeying the directive of the Supreme Court to avoid a revolution. Let me quote from the same judgment in the Golaknath case where Justice Bachawat said :—

> "A static system of laws is the worst tyranny that any constitution can impose upon a country. An unamendable constitution means that all reform and progress are at a standstill. If Parliament cannot amend Part III of the Constitution, even by recourse to article 368, no other power can do so. There is no provision in the Constitution for calling a convention for its revision or for submission of any proposal for amendment to the referendum. Even if power to call a convention or to submit a proposal to the referendum be taken by amendment of article 368, Part III would still remain unamendable on the assumption that a Constitutional Amendment is a law. Not even the unanimous vote of the 500 million citizens or their representatives at a special convocation could amend Part III. The deadlock could be resolved by revolution only."

By moving this amendment our Law Minister is avoiding this revolution that was foreseen by the learned Justice in this country and is re establishing the democratic institutions as I said.

I do not want to criticize Mr. Justice Subba Rao. I myself am a lawyer and I know hat there is a talk still in the Kerala High Court that frequent telephonic calls came from Delhi to Cochin asking Justice Vajdyalingam to reach Delhi for enabling Mr. J. Subba Rao to constitute the Constitution Bench. Mr. Justice Subba Rao himself confessed this as Shri Indrajit Gupta has quoted in the morning. Shri Subba Rao

consistently held the view in the Supreme Court that the Fundamental Rights are sacramental and could not be amended. He agreed that he did his level best and used influence to get a greater majority for the judgment but he could get only a bare majority. So, there is a suspicion about this judgment I do not want to go in detail into all that. But that is why this amendment is made necessary.

I will quote Mr. Justice Wanchoo who in the same judgment in the Golak Nath's case says :—

> "If this power to amend is made too rigid, it loses its value as a safety-valve. The more rigid a constitution, the more likely it is that people will outgrow it and throw it overboard violently."

By this judgment of this Justice Wanchoo and the Supreme Court itself has given a directive to Parliament and to the people to amend this Constitution to avoid the hurdles put by the judgment ; oherwise we will be changed. Before the people change us, every democratic institutions of the country, we are making this amendment on the basis of the Constitution itself.

Then, there are the Directive Principles of State Policy, dealt in articles 36 to 51 of the Constitution. What does it mean ? They impose a duty upon the State to change the *status quo*. Fundamental right of the individual is a concept of a capitalist society. They cannot be above the interests of society. The interests of society should be protected by the State. It is the duty of the State that the interests of society should be protected. In article 37 it is clearly stated :—

> "it shall be the duty of the State to apply these principles in making laws."

What does it mean ? It is clear that it is a duty imposed upon the State to implement the Directive Principles of State Policy in our legislation.

What is a State ? Article 36 gives he definition of State. I do not want to go into it in detail.

Article 38 gives a mandate to the State. That mandate is given to our party in Parliament in the last general election in 1971.

This mandate of Article 38 says that we shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. This mandate may not be enforceable by courts. But it does not mean that it should not be implemented by the State. So, these Directive Principles, as our Law Minister also pointed out, will bring about a social change and this needs a Constitution amendment to see that State Legislatures and the Parliament adopt and implement the Directive Principles which are enshrined in the Constitution.

Then, article 39 is the basis of our social conception. We are moving towards a socialist society. That is clearly written in article 39 of the Constitution. Further, article 41 gives right to work and to education. I do not want to go into details. Here, some people have the fear about the encroachment of the right of minorities to education. I do not think that the right of minorities rests on education alone. Education is not a question of majority or minority. It is a question of the State. It is the State which gives education to every child, whether it is majority or minority.

I come from a State where two Acts were struck down by the Supreme Court, that is the Kerala University Act and the Kerala Education Act. Of course, Mr. Frank Anthony can run a school in his own name or some individuals can run schools in their name. But no community as a whole is running any school. It is the State that runs the school. The individuals who are running schools are misusing the provisions of the Constitution by getting a clearance to adopt corrupt practices. In educational institutions, we cannot allow such corrupt practices in the name of the Constitution or in the name of protection of rights to minorities.

In the opinion of the Supreme Court the Directive Principles are below the fundamental rights. In my opinion, it is a reserve thinking. The Directive Principles should be above the fundamental rights. The fundamental right is a concept of the capitalist society. In a socialist society, the individual's right should not be above the interest of the society.

MR. SPEAKER : You should conclude now.

SHRI VAYALAR RAVI : I am concluding.

I say this Constitution Amendment is necessary to assert the authority of the People through the Parliament. I welcome and support it.

I would like to conclude by quoting Jawaharlal Nehru :

> "No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there, it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately, the whole Constitution is a creature of Parliament...It is obvious that no court, no system of judiciary can function in the nature of a third house, as a kind of Third House of correction. So, it is important that with this imitation the judiciary should function...Ultimately, the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measure of social reforms "

SHRI R. D. BHANDARE (Bombay Central) : Mr. Speaker, Sir, speaking at the fag end of the debate and confining myself within the time at my disposal, I think, it is very difficult to express myself completely and fully on the Bill which seeks to amend the Constitution of India.

Let me at the outset say that I support the Bill moved by the learned Law Minister which seeks to restore the power to Parliament to amend the Constitution. I need not mention as to why the need arose to amend the Constitution and to move this Bill.

Golaknath case has been repeated so often *ad nauseum* that I need not take the time of the House in dealing with certain propositions raised by it. Gledhill has suggested that Golak Nath's case gives an amazing decision. Why is it that Gledhill says that it is an amazing decision ? Because in the Golaknath case the Chief Justice Subbh Rao has laid down two strange propositions. One proposition is that the Indian Parliament can amend the Constitution except the Fundamental Rights. That is the first proposition which has been laid down. The second proposition is that the Parliament can convene the Constituent Assembly under Art. 248 Residuary Powers, Entry 97 in the First List of the Seventh Schedule and such a Constituent Assembly can amend any part or the whole of the Constitution That is the second proposition laid down.

These two propositions are fantastic and strange. Why is it that I said that these propositions are fantastic ? Because I want to raise three questions :

(1) Can such a law to convene the Consituent Assembly to amend the whole Constitution be passed when according to the Chief Justice Subba Rao, the Parliament cannot do it ? Can the Parliament make the law to make the Constitution ?

(2) Can anybody answer the question whether the Constituent Assembly can amend the Constitution with a simple majority or two-thirds majority ? What will be the procedure ? Can the powers of the Constituent Assembly be limited under a law passed by Parliament ?

(3) Can such a Constituent Assembly allow the ratification of the constitution framed by the Constituent Assembly ?

These are the three questions. Sir, the Constitution is, I need not mention, an organic fundamental law of the country and it, must therefore, change and grow according to the changing times. It cannot be static however rigid it may be.

In this connection, I would like to add one thing and it has been quoted by Chief Justice Gajendragadkar. He quotes Pandit Jawaharlal Nehru who said :

> "A constitution which is unchanging and static—it does not matter how good it is, how perfect it is—is a constitution that has outlived its use. It is in its old age already and gradually approaching its death. A constitution to be living must be growing, must be adaptable, must be flexible, must be changeable."

Sir, therefore, the Constitution must be changeable and, therefore, the Parliament has the power to change the Constitution.

Is it that only the Indian Constitution lays down that the Constitution can be amended ? All written Constitutions have necessary provisions in them to amend the Constitutions.

There are three ways of amending the Constitution. One is formal. The second is judicial/interpretation and the third is conventions. The Constitution of India is not the only constitution which lays down a special procedure to amend the Constitution There are other constitutions also. The American Constitution lays down the procedure for amending the constitution. The Swiss constitution lays down a procedure to amend the constitution. In the Constitution of Ireland, Art. 46, there is the provision that any provision of the Constitution may be amended. The Japanese Constitution has laid down in Art. 96 that any portion of the Constitution and any part can be amended. In the Ceylon Constitution, under Art 29(4), Parliament can amend, or repeal any provision of the Constitution. If there is a conflict between the judicial pronouncements and the legislation passed by Parliament, the power to over-ride or amend or change the judgment of the Supreme Court is laid down in Art 368 of our Constitution. This has in fact raised the hornest's nest in the Golaknath case. The hon. Minister Shri Siddharatha Shankar Ray, has dealt with two aspects. One was the point regarding amendment of the Fundamental Rights under Art. 13(2). According to Mr. Justice Subba Rao there is no substantive power laid down under Art. 368.

The question is, does the Word 'law' used in Art. 13(2) to include law made by Parliament under Art 368 ? What will be your answer ? The answer would be, no. Two types of powers must be taken into consideration. Parliament has both legislative power and the constituent power. That is found in the Constitution of the United Kingdom. That U. K. has got legislative power and constituent power. In other words, British Parliament is both a legislative body and a Constituent Assembly. The same position is obtainable so far as our Constitution is concerned.

Sir, I need not mention that we have framed the Rules of Procedure under Art 118 of the Constitution. These make provision for making an ordinary law, an ordinary piece of legislation and special provision, for amending the Constitution etc. For the special provision, under our Rules of procedure, we have certain types of procedures. We have two types, one for ordinary piece of legislation and another for amendment to the Constitution. Rules 155 and 159 deal with amendment of the Constitution dealing with special provisions of amending the Constitution.

Is the portion of our Fundamental Rights absolute, immutable and unchangeable ? What will be the answer ? The answers is provided in the Constitution itself. Under Art 19 Fundamental Rights could be amended, curtailed at any time. Art. 19 itself speaks of the Fundamental Rights laid down in Chapter III. They are not absolute, immutable and unchangeable They could be amended. We have to take into consideration also the position of the Directive Principles of the Constitution of India. I need not mention that the Chapter IV on Directive Principles of State Policy is a unique, a singular feature of the Indian Constitution, nowhere found in any other Constitutions.

18.00 hrs.

I need not mention that it has been the fashion to put in a separate chapter on Fundamental Rights in the written Constitutions, ever since after the framing of the Constitiution of the U.S.A. But so far as directive principles are concerned, they are a unique feature found only in the Irish Constitution. Therefore, what is the position and what is the explanation as to the nature of the fundamental rights in the Constitution and the nature of the directive principles in the Constitution ?

So far as the fundamental rights are concerned, as I have said, it is a fashion to enshrine and incorporate fundamental rights in the written Constitutions, which provisions could be found in almost all the Constitutions. These fundamental rights are as a matter of fact negative obligations, putting restrictions on the power of the State or the executive from touching these rights. So, they deal with negative obligations. So far as the directive principles are concerned, they deal with the positive

[Shri R. D. Bhandare]

obligations of the State which enjoined upon it to so govern itself as to implement the principles enunciated in the Preamble of the Constitution. They enjoin upon the State to establish socio-economic justice and establish a new society based on the principles enunciated in the Preamble of the Constitution

SHRI S. M. BANERJEE : Are we sitting beyond 6 p. m. today ?

MR. SPEAKER : Yes, we are.

SHRI S. M. BANERJEE : What about the fundamental right to go home after six O' clock ?

SHRI SIDDHARTHA SHANKAR RAY : He does not have that right because he has on home.

MR. SPEAKER : There is no restriction on the fundamental right to go home. The hon. Member has the option. He can keep on sitting or he can go home.

SHRI S M. BANERJEE : You are placing reasonable restriction on it.

SHRI R. D. BHANDARE : In fact, this Bill seeks to salvage Parliament's power to amend the Constitution, from the clutches or the fetters put on the power of Parliament to amend the Constitution from the side of the Supreme Court. It seeks to restore Parliament's sovereign power to amend the Constitution.

In this connection, I would like to quote a few lines from Mr Seervai who had given some lectures on the position of the judiciary under the Constitution of India as part of the Sir Chimanlal Setalved Memorial Lectures at the Bombay University. He says :

> "Art. 368, which prescribes a special procedure for the amendment of our Constitution, is not a mere matter of procedure, but in the language of the Privy Council, confers on the people of India a right not to have the Constitution amended except by the special procedure Since *R. V. Burah* it has been settled by countless decisions that the powers of an Indian legislature are as supreme and sovereign as those of the British Parliament itself, notwithstanding that they are 'confined to certain subjects or within certain reservations'. The sovereign power of Parliament to amend the Constitution is not affected by the procedural limitations of Art. 368 against amending it by a bare majority.".

The last point that I would like to mention, as far as the Supreme Court is concerned, is that the Supreme Court has specifically laid down the following at page 815 of the *Supreme Court Report, 1967 (Second Volume)*

> Subba Rao C. J. said :
>
> "We have not said that the provisions of the constitution (concerning fundamental rights) cannot be amended. What we have said is that they cannot be amended so as to take away or abridge fundamental rights".
>
> Again he says :
>
> "But even if such a contingency arises, the residuary power of Parliament may be relied upon to call for a constituent assembly for making a new constitution or radically change it".

Again I emphasise the fact that in the directive principles we see a clear statement about the social evolution. They aim at making the Indian masses free in the positive sense, free from passivity created by centuries of coercion by society, by nature, from the abject physical conditions that had prevented them from fulfilling their best selves'. That is the purpose behind the amendment now sought. I support the Bill.

SHRI P. R. SHENOY (Udipi) : It is a matter of regret that the sovereign power of Parliament has become a plaything in the hands of the Supreme Court. After holding twice in the course of 17 years that Parliament has power to amend any part of the Constitution including Part III in any way it likes, in the Golak Nath case the Supreme Court has held that Parliament has no power to amend fundamental rights so as to abridge them. The effect of this decision is that Parliament loses the power to make certain legislation and practically every important

legislation made by Parliament has to pass the test of reasonableness in an appropriate court of law. If this trend of the Supreme Court is allowed to be encouraged, it will not be a surprise if the Supreme Court holds some day in the future that no part of the Constitution is amendable.

Sir Ivor Jennings, himself a great constitutional lawyer, commenting on fundamental rights in the Indian Constitution said this :

> "It is a useful principle that one should not trust politicians, but it is a equally true in the context of the future that one should not trust constitutional lawyers. On the whole, the politician of tomorrow is more likely to be right than the constitutional lawyer of today."

In other words, he is of the view that the provisions of the Constitution should be flexible so that it should be possible for us to change them whenever considered necessary. They should not be rigid and not beyond the reach of politicians permanently.

Constitutionalists in India like the members of the Swatantra Party want the fundamental rights to be rigid, so rigid that they should not be amendable even by the procedure prescribed under art. 368. They want us and the future generations to believe that all that is said in fundamental rights is good for ever and is good not only in the environment in which it is drafted but in all environments and under all conditions. The logical conclusion of this argument is that if you want to include a new right in the scheme of fundamental rights, say, the right to work, you should include it but that right is subject to the condition that it should not infringe other existing fundamental rights. You can have a right to a rupee or a rupee worth of meal or a rupee worth of property but you can have that right provided you pay not less than 100 paise for that. And you can delete provisions relating to princely privileges in the Constitution, but please remember that the right to privy purse is a right to property which is protected by article 19(1)(f) and article 31. This is the difficulty created by the constitutionalists and the Supreme Court, and we have to solve this difficulty by passing the present amendment.

Sir, doubts have been expressed by some Members that this amendment may be declared void by the Supreme Court as unconstitutional as it seeks to amend article 13(2) which itself is a fundamental right and as it also seeks to amend article 368 which indirectly hits article 13(2). The likelihood of striking down any amendment made by us, whether by following this procedure or by resorting to a referendum or by creating a new Constituent Assembly, is always there. The Supreme Court has failed to give guidelines as to the manner of amending the Constitution in Golaknath case. In the absence of such guide-lines, I am of the opinion that the best way to amend the Constitution is by passing the present Bill.

It was said that Golaknath's case could have been referred to the Supreme Court for a review. But this review is possible even now. When this Bill becomes an Act, this amendment is sure to be challenged in the Supreme Court. At that time, the Golaknath case can certainly be reconsidered. The Supreme Court will have an opportunity at that time to consider the views of the elected representatives of Parliament who were elected at the time when the great debate on the validity of Golaknath case was going on in the country.

Sovereignty is not a question of argument. It is a question of assertion. A country becomes sovereign not by any agreement or by any legislation or by any judicial interpretation but by assertion. India is a sovereign country and the sovereign power of India is vested in Parliament. It is no use saying that the Constitution is supreme. The Constitution is only a book. The Constitution cannot act like a person. The Constitution vests sovereignty or the sovereign power in some sovereign individual or sovereign body. It is our assertion that the sovereign body in this country is the Parliament, and we have asserted our sovereign power by passing this amendment. And we may have occasion again to assert our sovereign power but I hope that the Supreme Court will never create such an occasion in the near future.

Sir, I support the Bill.

SHRI DINESH CHANDRA GOSWAMI (Gauhati) : Sir, we are discussing today the most important Constitution Amendment Bill brought for many years, which has been introduced to negative the effect of Golaknath

[Shri Dinesh Chandra Goswami]

case and to fulfil the pledge the ruling party made to the people in the last elections. In the Golaknath case, the Supreme Court threw a veritable bombshell by declaring that Parliament has no right or competency to abridge or amend fundamental rights. Why is it that the Supreme Court suddenly in Golaknath case over-ruled its two earlier decisions in Shankari Prasad case and Sajjan Singh case, ignoring the time-honoured doctrine of *stare decisis* ? The reason was more political than legal. They were influenced by an argument known as the argument of fear, namely, that if Parliament's power is not curtailed, there may be encroachments on the fundamental rights by the Parliament and may lead to their complete erosion. I cannot refrain from quoting a portion from Mr. Justice Hidayatullah's judgment in this context :

> "I am apprehensive that the erosion of the right to property may be practised against other fundamental rights. If a halt is to be called, we must void the right of the Parliament to abridge or take away fundamental rights. Small inroads lead to larger inroads and become as habitual as before our freedom was won. The history of freedom is not only how freedom is achieved but how it is preserved I am of the opinion that an attempt to abridge or take away fundamental rights even through an amendment of the Constitution can be declared void."

Mr. Justice Hidyatullah, when he made this observation, was talking like a politician and not as a judge.

The power of the Supreme Court is to interpret the laws. If the Constitution has provided Parliament the power to amend fundamental rights, it is there and the Supreme Court cannot stand in the way of exercise of that power on the hypothetical premises that it may be abused.

The opinion of Pandit Jawaharlal Nehru has been quoted and I will not go through it. What was the intention of the members of the Constituent Assembly ? Did they want to make any part of the Constitution static ? I will quote Mr. Kamath and Mr. Mahavir Tyagi in this context, when they were discussing article 304 of the draft Constitution, corresponding to the present article 368. Mr. Kamath said :

> "If the Constitution holds up, blocks, the further progress of our country, I dare say that the progress which has been retarded will be achieved by a violent revolution. Revolution will take the place of evolution. When a storm breaks out, it is the flexible little plants and blades of grass that withstand the storm. They do not break because they bend ; they are flexible. But the mighty trees that stand rigid break and they are uprooted in a storm. Therefore, I fear that when a social storm is brewing, if we want to resist that storm, this is not the way to proceed about it. If the Constitution is not made flexible, the people will break it."

It is to see that the Constitution may not be broken by the people through violent revolution that we have brought this amendment. After all, it has been the established principle, which has stood the test of time, that a static Constitution is the worst tyranny. I will quote what Monroe said :

> "A static Constitution is a contradiction in terms. It is a Government by the graveyards."

We do not want to have a Government of the graveyards. That is why we have brought this amendment.

The majority judgment of the Supreme Court, confronted with this situation says, that the fundamental rights can be amended by convening a Constituent Assembly. What is the effect of it ? The effect is that the Constitution, according to majority judgment, can be amended by a bare majority, because supposing in this election, Mrs Gandhi's party had not come to power with a two-thirds majority, there would have been nothing which would prevent our Government from passing a law saying, "We declare this Parliament to be a Constituent Assembly", thereby making a farce of the Constitution. In trying to protect the Constitution from encroachment by Parliament, in effect, the majority judgment of the Supreme Court was paving the way for the encroachment.

Therefore, I whole-heartedly support this Bill. I feel that this Bill, which has the blessing of the entire people of this country, will pave the way for the fulfilment of the pledges that we have made to the people in the last elections.

MR. SPEAKER : Shrimati Savitri Shyam, Shri Bhagwat Jha Azad, Shri Daschowdhury. Shri Mahapatra, Shri K. D. Malaviya all are absent. Now Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE (Burdwan) : Mr. Speaker, we are no doubt discussing a very important piece of legislation. I yield to none in my respect for the judiciary but as a citizen I am entitled to say that a judgment is wrong, even if it happens to be that of the Supreme Court, if I feel that it is wrong, We must have the right to say that it is wrong. criticise the judgment and take remedial action to assert the parliamentary supremacy.

We support this Bill in so far it seeks to remove the most unwarranted and unjustified encroachment by the Supreme Court on the sovereign right of the people to change even the organic law of the country to keep pace with the march of time for fulfilment of the urges and aspirations of the people. We must strike down and negative the unconstitutional and arbitrary assumption of jurisdiction by some of the hon. Judges of the Supeme Court to sit in judgment over the exercise of the constituent power of the sovereign people of India by finding out some alleged implied limitations on the power to amend the Constitution.

We agree with the hon. Law Minister that there cannot be any immutability of any provision of the Constitution which stands in the way of achieving orderly progress by constitutional means. Nothing can occupy a transcendental position in the organic law of the country than the right of a sovereign people to fashion and re-fashion that law to suit the needs of the changing times, to achieve what it thinks is necessary for the purpose of ordered development of the society. In my submission, no constitutional law can or does recognise a supra authority above the sovereignty of the people.

18.23 hrs.

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

If I may quote some very well-known jurists in England and America, it will be found that even in those countries the right of Parliament to amend the constitution, at least so far as America is concerned, has been well-accepted. Dicey in his *Law of the Constitution* has stated :

> "The endevour to create laws which could not be changed is an attempt to hamper the exercise of sovereign power ; it tends to bring the law into conflict with the will of the really supreme power in the state."

Willis in his book on *Constitutional Law of United States* says :

> "There is no power above the people and the amending power of the constitution does not recognise any power in Constitution. Sovereignty certainly does not. "

The exercise of constituent functions by the elected representatives of the people can never be subject of judicial scrutiny. Where there are written constitutions the courts can certainly decide the constitutionality of a legislation but cannot unmake the constitution, nor can stifle the elected representatives in making or remaking the constitution itself. If I may quote another well-known American author, Strong, in his book on *American Constitutional law* he says :

> "For a court to pass judgment upon the propriety of placing the matter in the Constitution would deny the people of their sovereign rights and would introduce a highly undesirable type of judicial control."

Sir, to quote Willis again :

> "To give power to court to imply any limitation on the amending power would be dangerous, since it would violate the doctrine of the sovereignty of the people and would be an unwarranted usurpation of power by the court when such a power had not been delegated to it. This would not only discredit the court but would tend to discredit the Constitutional system."

[Shri Somnath Chatterjee]

Sir, if I may quote Willis again, he has said in his book :

> "The wonder is not that the amending power is so broad but that any member of the legal profession or pseudo-constitutional lawyers should have ever thought otherwise."

Therefore, it is also our view and my submission that by merely implying certain limitations in the exercise of power to amend our Constitution the majority judgment in Golak Nath's case has robbed the Constitution of its flexibility and has made it a rigid Constitution.

Sir, the evolution of human progress and endeavour is for greater and greater self-realisation and fulfilment. As a result of Golak Nath's case this process has become a static one. That is why we must undo this stagnating affect of the majority judgment of the Supreme Court in the Golak Nath's case which has robbed Article 368 of the Constitution of its constituent content. I shall not refer to the decisions of the Supreme Court in Sankri Prasad's case and in Sajan Singh's case because many hon. Members have already referred to it but I want only to draw the attention of the hon. Member to this that it was tragic that the Supreme Court with a view to uphold the right of private property could go back upon its earlier decisions of Sankri Prasad's case and Sajan Singh's case. The last decision—that is, the decision in Golak Nath's case—was not for the purpose of finding out the content of any other fundemental right than the so-called fundemental right to property. therefore, to uphold the right of property the Supreme Court went back upon its two well-considered previous decisions where similar questions were involved and had come to the decision that Article 362 postulated and conferred power on the Parliament itself to change the Constitution and it was not 'law' within the meaning of article 13 of the Constitution. There are three most unacceptable and, if I may say so, erroneous assumptions in the Golak Nath's case to which I wish to draw the attention of the hon. Members ; (1) the so-called fundamental rights were inviolable natural rights (2) that the people of India could not trust their elected representatives and that is why they put restrictions in Part III and that Part III of the Constitution cannot be altered ; and (3) that any change in the so-called fundamental rights should necessarily mean a drift towards totalitarianism. According to us these assumptions are not only dangerous but also they cut at the very root of the concept and system of Parliamentary democracy. No democratic people aspiring for a socialistic State can put the so-called rights under 19(1)(b) and (g) -those dealing with property and carrying on business—on the same pedestal as the other fundamental rights contained in Article 19(1) (a) to (e). The democratic decisions of the people must prevail over what a Constituent Assembly not elected by adult franchise might have thought to be fundamental. To give the right of property a sacrosanct position would be negation of the very objects and directive principles of State Policy and when such alleged right is found to create obstacle than helping to achieve a socialistic State then it is the duty of the Parliament to step in and assert its own constituent function and bring back the position which was found to be already there before the Golak Nath's case.

The Bill wants to make clear what was otherwise clear. We must remove the cloud or the doubts that have been raised about the competence of Parliament. We want to reassert ourselves for the purpose of ushering in proper legislation which would be in consonance with the objects of a socialistic stale and also the Directive Principles of State Policy, because we feel that the Constitution is meant for the people and not he other way round.

There is only one word of caution. Merely getting the power to amend the Constitution will not be the end in itself. The Government must bring forward proper legislation and there must not be any attempt—although the hon. Law Minister has given that assurance but we want that to be incorporated in the Constitution itself—to take away or abridge any of the other basic human rights, like the right of personal liberty, the right of movement, the right of association. Already it has been held that even the right of demonstration is a fundamental right which is enshrined in the Constitution. We do not want that this Parliament should be hamstrung for the purpose of achieving the proper desired social progress. We are ready to give that power to Parliament to amend the Constitution but certain basic rights should not be taken away. For that purpose we have given an amendment. I shall request the hon. Law Minister to consider it favourably, because we are

supporting the right of Parliament to assert its supremacy but not at the expense of the people.

18.32 hrs.

ARREST OF MEMBER

MR. CHAIRMAN: I have to inform the House that the Speaker has received the following communication of date from the Sub-Divisional Magistrate, New Delhi :—

"Dear Mr. Speaker,

I have the honour to inform you that Shri Ishwar Chaudhry M. P. was arrested today between 1.30 p.m. and 2.15 p. m. on Parliament Street near Patel Chowk, New Delhi, by the police of Parliament Street under section 188 IPC vide FIR No. 1259 dated 3.8.1971 for violation of prohibitory orders promulgated by the Additional District Magistrate (South), New Delhi. He is being produced before Judicial Magistrate, New Delhi forthwith for trial."

18.33 hrs.

CONSTITUTION (TWENTYFOURTH AMENDMENT) BILL—*Contd.*

SHRI B. V. NAIK (Kanara) : Mr. Chairman, I will try not to repeat the points that have already been made.

The issues before Parliament, whether we like it or not, will have to be classified into two. One is, whether we admit it or not, that this is the phase of confrontation between Parliament and the judiciary.

In this behalf I would like to draw the attention of the House to a very informative discussion and seminar that took place on the 17th and 18th of last month where all these issues were discussed threadbare and certain conclusions were arrived at.

I have hastened to take this opportunity to present this case before it is too late, because once it is not presented it might be too late thereafter to amend. In the course of this discussion almost it was the consensus of the seminar, as well as those which represented the ruling party that there was not at all any indecent haste for the abolition of private property but it was in order to make this private property meaningful to the vast majority of the people in this country. When we are saying that we are abridging this right against which only the Supreme Court has given its verdict, we are actually let me repeat, trying to expand the meaning of private property for the vast millions in the country.

This idea of the amendment, to state the facts of the case, amendment to article 368 of the Constitution, has not come from any politicians or any lawyers or anyone of those who have participated in the discussion. But it has come from one of the very eminent Chief Justices of India and that Chief Justice, to name him in a good context, is S. R. Das who had presided over the Seminar and he plainly said—I am sure, he is going to own it—that these Judges can make mistakes. By implication, he has clearly said that the much debated topic, namely, the Golak Nath case, was a mistake.

Under these circumstances, what is happening here now, in this Parliament. on the 3rd of August, 1971, is that this Parliament is offering an apology for the mistakes that have been made by the Supreme Court of India. I think, we have already paid the homage that is due to the supreme judicial body in the country, namely, that we are trying to save their face, that we are trying to see that they do not lose their face, their prestige, their position in the country, and that the independence of judiciary is preserved in tact. But still there is one more hurdle. Our Government, our party, has brought this hurdle voluntarily and, that is, after this Constitution Amendment is passed, once again, we have to go before their Lordships to argue our case, to present our case and to humbly wait for the verdit of the Supreme Court of India. I do not know why this risk has been taken by our Government. In other words what is being stated now is that we have a limited time given by the fresh mandate of the people. We should have calculated time upto five years and worked backwards. Already, there has been a delay. we are not talking in a totalitarian concept of the abolition of property. We are saying that we are going to make it more meaningful. But within four years, with all these niceties as well as filnesses of the constitution and delays involved in our parliamentary procedures, if we are able to show something by way of tangible results within the time at our disposal, it would really be a miracle. Therefore, I

[Shri B. V. Naik]

one again urge upon the Government as well as the Law Minister to hasten this process and see that these amendments are put into effect as quickly as possible because the time which is of essence in dispensing this relative justice, not absolute justice, is very short. With these words, I urge upon the Government to go post haste in this matter

श्री मूलचन्द डागा (पाली) सभापति महोदय, लक्ष्य तक पहुचने का उत्तरदायित्व जनता पर है, जब जनता के इस बदलते हुए जमाने के साथ सविधान मे कोई परिवर्तन नही होता है, तो वह सविधान काम का नही रहता है। इस बात को समझ कर आप सविधान मे परिवर्तन करना चाहे या न करना चाहे, जनता स्वय आप मे परिवर्तन करा लेगी। आपने घोषणा की है कि हम देश मे समाजवाद लाना चाहते है लेकिन समाजवाद लाने के लिये जो आपत्तिया है, जो बाधाये है, जैसे मूल-अधिकारो मे परिवर्तन करना है, वह आप को करना होगा। आपने धारा-शास्त्रियो की, कानूनी वकीलो की बाते सुनी, लेकिन सवाल तो जनता का है। जनता के सामने, जब हम चुनाव लड कर आये, हमने आवाज उठाई थी कि सविधान कोई पत्थर की लकीर नही है, वेद-वाक्य नही है, इसे बदलना होगा और जमाने के साथ बदलने के लिये हमने लोगो के सामने आश्वासन दिया था। आज उस बात को पूरा करने के लिये हम इस बिल को लाये है। हम चाहते है हमारा समाज ऐसा समाज हो जो शोषणहीन हो। कुछ लोगो ने हमारा शोषण करके हमारे खून और पसीने की कमाई को इकट्ठा कर लिया है, उसको अगर हम लेना चाहते है तो मूल अधिकारो मे परिवर्तन करना होगा – लेकिन इस बात से कुछ लोगो के अन्दर बौखलाहट पैदा हो रही है। लेकिन सवाल यह नही था, आप जानते है कि सविधान तो एक प्रक्रिया है, एक मार्ग है, एक रास्ता है, जिससे आप और हम अपने उद्देश्यो को प्राप्त कर सकते है।

उस रास्ते से अगर कोई अडचन है तो उस को दूर करना होगा। हम चाहे गोलखनाथ के केस की बात कहे, चाहे किसी की बात कहें, लेकिन सब से बडी बात यह है कि सर्वोच्च सत्ता जनता के पास है और जनता उसी आधार पर अपने नुमाइन्दो को यहा भेजती है। अगर आज पार्लियामेन्ट के सदस्य गाव मे जा कर यह कहें कि हम तुम्हारी गरीबी नही मिटा सकते है, हम राजाओं को प्रीवीपर्स देगे, शोषण-कर्त्ताओ को रखेगे तो वे हम पर हसी उडायेगे और कहेगे कि आप ने तो वायदा किया था, लेकिन अब यह क्या कह रहे है। इस लिये सविधान मे परिवर्तन करने का अधिकार होना चाहिये। इस मे कोई नई बात नही है। सबसे बडा सवाल यह है कि मूल अधिकार क्या है? मूल अधिकार वही हो सकते है जिसमें शोषण न हो। जब हम शोषणहीन समाज चाहते है तो फिर उसके लिये हमारी पार्लियामेन्ट को सविधान मे परिवर्तन करने का पूर्ण अधिकार होना चाहिये।

श्री शिवनाथ सिंह (झुझुनु) : माननीय सभापति जी, कास्टीचूशन को बदलने के बिल के सम्बन्ध मे कई प्रकार के विचार यहा प्रकट किये गये है। इस सदन के किसी भी माननीय सदस्य ने नही कहा है कि हम कास्टीचूशन मे परिवर्तन नही चाहते है, सिर्फ तरीके पर आपत्ति की है। किसी ने कहा रेफेरेण्डम होना चाहिये और किसी ने कहा सुप्रीम कोर्ट की राय लेनी चाहिये। लेकिन सभी ने इस बात को माना है कि परिवर्तन होना चाहिये। जनसघ के सदस्य ने कहा कि अमेण्डमेन्ट हो सकता है, होना चाहिये, लेकिन सुप्रीम कोर्ट की राय हो और जनता की राय हो। मैं निवेदन करता हूँ कि जो कास्टीचूशन है, वह जनता के लिये है, जनता कास्टीचूशन के लिये नही है। यहां पर सुप्रीम कोर्ट की बहुत दुहाई दी गई। हम एक ऐसे समाज की व्यवस्था कर सकते है, ऐसा समाज हो सकता है जो कि बिना सुप्रीम कोर्ट और हाई कोर्ट के चले लेकिन इस प्रकार की कोई व्यवस्था नही हो सकती कि समाज के बिना सुप्रीम कोर्ट और हाई कोर्ट चले। इसलिए इस को मानकर चलना चाहिये कि संसार मे और इस देश मे जनता सबसे बडी है और जनता की सुविधा के लिये हम हाई कोर्ट और सुप्रीम कोर्ट बनाते है, विधान बनाते है, पार्लियामेन्ट बनाते है। यह सब जनता की सुविधा के लिये ही बनाते हैं। आज हम

कास्टीचूशन की दुहाई देते है कि कास्टीचूशन हमारी पवित्र पुस्तक है । हम उसकी पवित्रता को और उसकी इज्जत को बढाना चाहते है । हम चाहते है कि एक गरीब आदमी जो सडको पर सोता है, जो भूखा है, और जिस का शरीर नगा है उसको भी कास्टीचूशन कोई न कोई प्रोटेक्शन दे । इस बात को लेकर उसमे थोडी सी गलत-फहमी आ गई थी । हालाकि हम इस बात को मानते है कि पार्लियामेन्ट को कास्टीचूशन मे अमेण्डमेन्ट करने का पूर्ण अधिकार है लेकिन गोलकनाथ केस को लेकर जो डाउट पैदा हो गया था उसको हम क्लिअर करना चाहते है । जो मिस-अण्डरस्टेडिंग थी, चाहे जूडीशियरी के मामले मे हो या किसी मामले मे हो उन्होने इसको गलत इन्टरप्रेट किया इस लिये हम उसमे क्लैरिटी लाना चाहते है और पार्लियामेन्ट को उस का पूर्ण अधिकार है ।

अभी जनसघ के माननीय सदस्य ने रेफ्रेण्डम की बात कही । मैं कहना चाहता हूँ अभी इलैक्शन मे जब हम जनता के पास गये थे तो हमने उस का क्लिअर वर्डिक्ट मागा था । हमारी प्रधान मत्री श्रीमती इन्दिरा गाधी ने स्पष्ट तौर से जनता के सामने यही बात रखी थी... (**व्यवधान**)...

अभी दो ही मिनट हुए है, मैं पाच मिनट मे समाप्त कर लूगा । इस लिये मै निवेदन करना चाहता हूँ कि जनता का क्लिअर वर्डिक्ट हम को मिल गया है । इस लिये इसके बाद अब कोई आशका नही रहनी चाहिये ।

अभी हमारे माननीय सदस्य श्री फ्रैंक एन्टनी सुप्रीम कोर्ट की बहुत जोर से वकालत कर रहे थे । मैं उनकी भावना को समझता हूँ क्योकि उनको सुप्रीम कोर्ट मे पेश होना पडता है और वहा पर वकालत करनी पडती है । लेकिन हम लोग जो जनता से वोट लेकर आते है उनकी भावनाओ को भी उन्हे समझना चाहिये । जिस प्रकार वे सुप्रीम कोर्ट की वकालत करते है उसी प्रकार हम यहा पर जनता की वकालत करने आये है । हम यहा पर सुप्रीम कोर्ट की वकालत करने नही आये है । उनको इस बात मे दुख है कि सुप्रीम कोर्ट का क्रिटिसिज्म क्यो होता है ? सुप्रीम कोर्ट यदि अपने रवैये को नही बदलता, जनता की भावनाओ के अनुरूप अपने को नही बनाता तो इस से भी अधिक सुप्रीम कोर्ट का क्रिटिसिज्म यहा भी और सदन के बाहर भी होगा । इसलिये जजेज को सोचना चाहिये । हम उनकी ज्यादा आलोचना नही करना चाहते । लेकिन इस अमेन्डमेन्ट के बाद मे हमारी जुडिशियरी का क्या रवैया होता है वह हमे सोचना चाहिये ।

फडामेन्टल राइट्स किस के लिये है ? वह देश के करोडो आदमियो के लिये है, न कि मुट्ठी भर लोगो के लिये । आज 54 करोड जनता को जिस बात की आवश्यकता है वह चीज उनको मिलनी चाहिये । समाज की ऐसी गलत व्यवस्था थी जिस के कारण कुछ लोगो के हाथ मे ताकत आ गयी, चाहे धन की हो या राज्य की । और आज हमारे राजा महाराजा इस बात से डरते है कि जो अभी तक एक राजनीतिक व्यवस्था थी, जो उन के खिताब थे वे चले गये, लेकिन साथ ही उन को यह भी खतरा है कि जो उनकी प्रिविलेजेज है और प्रिवी पर्स है, वह भी चले जायेगे, इस बात का उनको खतरा है । हम चाहते है कि ये प्रिवीलेजेज और प्रिवी पर्सेज खत्म हो और जो धन जनता का लूट रहे है वह धन जनता के सामने आये । इन राजा महाराजाओ के बडे-बडे महल आज भी उस अत्याचार की कहानी कहते है जो उन्होने जनता के ऊपर ढाये है । हम चाहते है कि अब उन स्थानो को पवित्र किया जाय । वहा स्कूल, औषधालय और दूसरे कार्यालय खोले जिससे जनता को लाभ हो । इन बातो मे परिवर्तन लाने के लिये सविधान मे संशोधन करने की आवश्यकता थी, जो हम करने जा रहे है । यह बात ठीक है कि यह अधिकारी पहले भी था । लेकिन अब उसको हम क्लीयर टर्म्स मे लिख रहे है ताकि किसी प्रकार की ऐम्बीगुइटी न रहे ।

इन शब्दो के साथ मैं इस का समर्थन करता हूँ ।

SHRI SHYAMNANDAN MISHRA : Mr. Chairman, Sir, what we are considering today...

MR. CHAIRMAN : You may please continue tomorrow. The House stands adjourned to meet at 11 A.M. tomorrow.

18.49 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, August 4, 1971/Sravana 13, 1893 (Saka)

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