

17. 42 hrs.

RESOLUTION RE :
RIGHT TO PROPERTY

SHRI P. RAMAMURTI (Madurai) :
I beg to move :

"This House is of opinion that the right to private property in the means of production is inconsistent with the evolution of a real democratic society and having regard to the fact that the existence of the Right to Property among the justiciable Fundamental Rights in our Constitution has become a serious obstacle to the country's social, economic and political advance, recommends that the Government should take steps to amend the Constitution accordingly."

We all know that this right to property was enshrined in Article 19(f) and Article 31 of the Constitution of India as it was adopted in 1950. We also know that the Constituent Assembly which adopted this Constitution was not a real, sovereign Constituent Assembly. It was not an Assembly created by the sovereign will of the people. It was an Assembly which was created under the goodwill of the British Government and British Parliament, and the representatives in that Constituent Assembly could by no stretch of the imagination be called the representatives of the people of this country. They were representatives of the Assemblies which were elected under the Government of India Act, 1935. As far as the Indian States are concerned, the representatives were elected by a College of Princes. They were the nominees of the Princes. The Assemblies were elected on the basis of property qualifications and literacy qualifications. We all know that at that time very few people in this country were literate. Literacy itself was a big privilege of the propertied classes in those days. The position was very clear then. An illiterate man if he happens to be a propertied man, is a good man, can vote and can be elected; only a poor man has not got that right. It is on this basis that the Assemblies were elected at that time and the members of the Constituent Assembly were indirectly elected by

these Assemblies together with the Princes' representatives. Therefore, I say that it was a Constituent Assembly which was weighted in favour of the propertied classes in this country and against the non-propertied classes, who are the masses of people. It was a *misnomer* to call it a Constituent Assembly because it was not a real Constituent Assembly in the real sense of the term. No wonder, it laid so much stress on the right to property and enshrined it in the fundamental rights of the Constitution. What is a fundamental right? This question has now become very acute particularly because of the judgment in the Golaknath case and later on in the Bank Nationalisation case. There is a valid and big distinction between property and property. There is property which is meant for consumption and use; there is property which is a means of production. Property in the sense of means of production is different from property for use by individuals or families. Wealth is created by the application of labour to the means of production. I am not speaking of times when society was rent into two classes—slaves and slave owners or the distant period of time when land was the only means of production in the world. I am talking of modern times when industrialisation has taken place on the basis of capitalist private property relations in the world in a capitalist society; according to the laws of production that exist in capitalist society we find that property rights in the sense of ownership of means of production have got a tendency to concentrate wealth in the hands of fewer and fewer people. This has been the history of countries which have taken to the path of capitalist development, countries such as USA, Britain and other capitalist countries. So long as this right to property is accepted as a fact of life, they cannot prevent concentration of wealth and the growth of monopolies whatever may be the laws they may pass. This is what we find in America, Great Britain and in other countries and India is no exception. Despite all their pronouncements and protestations that they are working for a socialist society, what has happened in this country? Here also there is concentration of wealth in fewer and fewer hands. Is

this conducive to the growth of a real democratic society? On the one hand people say that they are in a democratic society; on the other hand they allow the growth of concentration of wealth in the hands of a few people. They are talking with the tongue in their cheek; this is hypocritical as there is no such thing as democracy if it allows concentration of wealth in the hands of fewer people. Why go to other countries? We know what happened in the last Rajya Sabha elections. Members of the ruling Congress complain that money played a big role in the elections to the Rajya Sabha. That is the position—concentration of wealth is playing a decisive role in affecting the votes of Members of the Legislative Assemblies for elections to Rajya Sabha. When that is the case, we can understand what role it plays in the other aspects of social and economic and political life. Therefore,—

AN HON. MEMBER : Defection.

SHRI P. RAMAMURTI : I am not talking of defection alone. I am talking of other fundamental rights given in the Constitution. Therefore, when the majority judgment in the Golaknath's case said that fundamental rights are natural rights, I want to know whether the right to property is a natural right. Was the right to property a primordial right as they pointed out? Was the right to property existing from time immemorial? Did property relations exist in society from time immemorial? Is it or is it not a fact that property itself is a creation of the law from time to time? Take Hindu law for example. Is the property right the same for those who follow the Dayabhaga system and to those who follow the Mitakshara system? Is the Manu code a primordial thing? It is something which happened after Hindu society had progressed to a certain extent, and then when the rulers had to keep slaves under slavery, Manu's code came into existence.

Therefore, let us be very clear that property is not a primordial thing. We know the Vedic hymn :

सहना भवतु, सहनौ भुनक्तु सहवीर्यं कर-
वाव है ।

तेजस्विनावदीतमस्तु । माविद्विविषावहे ॥
ओं शान्तिः शान्तिः शान्तिः ।

Do we know what it means? It means, let us work together; let us enjoy the fruits of our labour together; and then there will be peace. That is the song that the ancient Vedic tribes used to sing. There was a tribal society and they had to work together. There was no such thing as individual property right. It is only when society was rent into classes, when more powerful people grabbed the means of production and made other people work for them, that the question of property came up. This is how society has developed all along. I am not going into the historical aspect. I am now concerned with what is happening in our society today.

My question is this. Today, in the Constitution, you say something as the Directive Principles of State Policy, and you say something in the fundamental rights. Are these two reconcilable? Can you reconcile, and have you been able to reconcile the directive principles of State policy enshrined in Part IV of the Constitution with the fundamental rights, the justiciable fundamental rights, as enshrined in Part III of the Constitution? Why is it, for example, that during all these 22 years, not one principle of these directive principles of State policy has been made something real, something tangible? And can I go to the Supreme Court asking them to say that this Government has not adopted policies as per the directives given in Part IV? I cannot go there. It is a trick played upon the common people. Those members of the Constituent Assembly, who are more concerned with property rights, but understanding that the democratic feelings of this country at that time were something, to be reckoned with they played a trick on the common people and said: "These are the directive principles, but you cannot go to the Supreme Court; you cannot go to a court for their enforcement. They are just directive principles. But what is fundamental is the right

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to property and certain other rights."

I want to point out that all these rights were ephemeral. They cannot be enjoyed so long as this fundamental right to property exists. Article 19, which relates to fundamental rights, says :

"All citizens shall have the right—

to freedom of speech and expression ; to assemble peaceably and without arms ; to form associations or unions ; to move freely throughout the territory of India ; to reside and settle in any part of the territory of India ; to acquire, hold and dispose of property ; and to practise any profession, or to carry on any occupation, trade or business."

Now, I want to know, are all these things open to the common man in the street? Yes ; theoretically he has got the right ; theoretically he has got the right to carry on any profession, any trade in this country. But can he do it? After all, the property of this country is what? They are the means of production in land and big factories. When all these big factories and lands are concentrated in the hands of a few people of this country, what is the use saying to the other people, "You are equal before law. The Supreme Court will treat you equally"? How can he enjoy that equality? The rich man will engage Mr. Setalvad to argue his case, while the poor man will not be able to find money even to appear before the Supreme Court. This is a chimaera, a sham thing. The common man does not enjoy all these things so long as the right to hold private property is enshrined in the Constitution itself. It is a bogus thing. The Supreme Court, in the latest Bank Nationalisation case, have said :

"The restriction imposed upon the rights of the named banks to carry on 'non-banking' business is, in our judgment, plainly unreasonable. No attempt is made to support the Act which while theoretically declaring the right of the named banks to carry on 'non-banking' business makes it

impossible in a commercial sense for the banks to carry on any business".

They say, by this Bank Nationalisation Act, you have taken away all their assets. Nothing is left. You say, they have got the right to carry on non-banking business, but for that they must have money. You have taken away their assets. So, although the right is declared theoretically, it is unreasonable, it is a chimaera ; it is not a fact. That is what the Supreme Court says. I wish they are able to take the same attitude with regard to the common people of this country. All this talk of right to hold property is nothing but a theoretical right so far as the common people, the workers, are concerned. When the worker has not got the right of work, when he cannot get employment in this country, what is the use of having the right to hold property? That is only a theoretical right so far as the vast majority of the people are concerned. It is intended only for the richer sections of people, not for common people. That is the reality of the situation.

When we talk about the right to hold property, I want to point out that this right should not be included in the justiciable fundamental rights of Constitution. It is for Parliament, for the society from time to time, on the basis of conditions obtaining in that particular society and through the appropriate organs of Government, be it Parliament the Legislature, be it the Panchayat, whatever might be the form of Government that might obtain in a particular society, it is for that society to define what shall be the form of private property that will be good for that society. It is not for any court or Constitution to decide permanently. This is the basic question I want to canvass here.

When we say that everybody has got the right to hold property, I want that right to be a real one. After all, property in this country consists of lands and big factories. When we say that every man must have the right to that property, I want that right for every single individual in this country. How can I get that right? If all these lands belong to a few individuals, obviously the

majority of the people will not have right to property. If all the factories belong to a few individuals, the overwhelming majority of people will not have the right to hold property. Unless property is either collectivised or is held by cooperatives or is social property, every individual in this country does not have a share in that property. Therefore, when you enshrine this right to private property as a fundamental right, you are denying the right to hold property to the overwhelming majority of the people. Therefore, it is a humbug practised on the common people; it is a deception practised on them. I want that deception to go. Now, having said so much about this thing, I want to ask you, this Golaknath case, after this latest Bank Nationalisation case, are we to leave this matter in the hands of these wonderful wise people who call themselves the judges of the Supreme Court? After this case, I have no respect for these people. I want to make it clear. After all, there is a purpose, there is a point, why the Supreme Court decided the Golaknath case in the way in which it did. There is also a purpose why in the Bank Nationalisation case, the Supreme Court decided in the way in which it did. We know this is not the first time when this question was raised.

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Then, in 1951, in the Sankari Prasad case, the same question arose as to whether the Parliament, under Article 368, gets a constituent power, constituent authority, and not merely a legislative authority, and on the basis of that constituent authority, whether the Parliament can amend the Constitution including the Part III of the Constitution. This question was raised as early as the 1951 and the Supreme Court at that time.....

MR. CHAIRMAN: Are we discussing the Supreme Court or the property right?

SHRI P. RAMAMURTI: I am pointing out why this has become necessary. I am arguing my case. After these judgments have come, we cannot trust them. They

decided unanimously that the Parliament has that right. This was the position taken in 1951.

Later on, in 1965, in the Sajjan Singh case also, the Supreme Court decided to uphold the decision taken in 1951. Then in 1967, another set of wise members of the judiciary—those people who decided earlier also were wise people and those people, in 1965, who decided to uphold the decision the Sankari Prasad case, including the then Chief Justice, Mr. Gajendragadkar, were also wise people—some other wise members of the judiciary said, “No. They were fools.” We are the wise people and we say, you have not got the right to amend the Fundamental Rights Chapter of the Constitution. Like Buddha, under the Bodhisattva tree in 1967, these people got a revelation was and the revelation that the Parliament cannot amend the Fundamental Rights Chapter of the Constitution. This is the most wonderful thing.

Similarly, in 1970 or in 1969, another set of the Supreme Court judges held differently, on everyone of the issues raised in the Bank Nationalisation case, on the question of applicability, on the question of the mutual exclusiveness, of Article 19 and various other articles of the Constitution, including Article 31. They held that these articles are totally, mutually, exclusive and that they cannot be joined together. For 20 years, in case after case they held that position. But in 1970, they say, “No. They are not mutually exclusive.” On the other hand, the correctness, the constitutional validity of a particular Act passed by the Legislature will be decided not on the basis of the object of that law, whether the object is enshrined in an article of the Constitution, but it shall be judged on the basis of how far it infringes the fundamental right of the individual under Article 19 of the Constitution. The side effect of that Act becomes far more important than the social good of the country. This was the position taken by these ten Judges suddenly. For twenty years they held differently; suddenly under the Bodhisattva tree today they say, “We are now Buddhas; revelation has come; this is the revelation which the

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entire country must accept." I refuse to accept that revelation; I refuse to have any consideration or regard for such people who change like this.

Why such things took place? There is a reason for this. In the Golak Nath case the Judges said—I want to point out the contempt that they have for this House and the people of this country—

"But, having regard to the past history of our country, it could not implicitly believe the representatives of the people,"—

Mind you, they say that the Constitution makers and the Constitution, having regard to the past of the country, could not have implicit faith in the representatives of the people of this country; remember that—

"for uncontrolled and unrestricted power might lead to an authoritarian State. It, therefore, preserves the natural rights," including the right of property.

They could not trust the people of this country. They could not trust the elected representatives of the people of this country. These people do not trust, the majority of the Judges who gave that Golak Nath case judgement do not trust the people of this country. They do not trust the representatives of the people of this country. That is the reality.

Why? After these 20 years new currents have begun to stir the political and economic life of this country. You know the result of the last general elections. The last general elections resulted in what? They knew that new forces were emerging in this country which were going to question the right to hold property altogether. They wanted to buttress against that. It is not without significance that this judgment came just immediately after the results of the last general elections in 1967 were announced. These people were afraid of the rising forces. They cannot trust the representatives of the people who may take away the right of property. Therefore they say, "No; the Constitution, as

we interpret it, means that as far as the Fundamental Rights, Chapter III, is concerned, that Chapter is unamendable; it is unalterable; it is for ever; it is *anadi*; it is *anantam*; it will never end; it is for ever." This is the kind of mentality with which they had gone about.

Similarly, we also know how the later Judges also behaved. We also know that all the norms have been upset, not only with regard to mutual exclusiveness of Article 19 and various other articles but even on the question of compensation and even with regard to the Fourth Amendment of the Constitution how they had completely changed. The position that they held in the judgement which this Court itself had delivered just a few months back in what is known as the Shantilal Mangaldas case was completely reversed. Every position was totally reversed.

Why? I wish to point out that after all the Supreme Court is not something which is above politics; it is not something which is above ideology; it is not something which is sitting somewhere in an ivory tower. After all, it is a part and parcel of the upbringing which they have had all these years. Their upbringing comes out; it is bristling—in that judgment; it drips from every pore of that judgment. I will tell you just one gem of it.

After all we are dealing in the case with a situation after the Fourth Amendment to the Constitution was passed. Therefore, there is no need whatsoever to refer to the position before that. Nonetheless, while explaining the position of compensation our learned Judges observed :

"In its dictionary meaning 'compensation' means anything given to make things equal in value: anything given as an equivalent, to make amends for less or damage. In all States where the rule of law prevails, the right to compensation is guaranteed by the Constitution or regarded as inextricably involved in the right to property."

Therefore, they have come to the conclusion that if our country is to be a country with rule of law, then the right to compensation must be inextricably involved in the right to property. All these conceptions they have. Therefore, they quote what is the position in the USA. How are we concerned with that? We are concerned not with the position in USA. We are concerned not with the position with regard to Japanese Constitution. We are not concerned with the Canadian Constitution. We are not concerned even with the laws of England. We are concerned with the Constitution and with the Amendment that has been passed by the Parliament in its Fourth Amendment in 1955. Instead of dealing with that specific subject, these people go on quoting Blackstone in his "Commentaries on the Laws of England":

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

This is the understanding with which these Judges function.

SHRI VASUDEVAN NAIR (Peermade) : They might have learnt it by heart.

SHRI P. RAMAMURTI : It is not something which they have learnt alone. It is something which is in their blood. That is reality. This is something which is in their blood and these are the people who want to arrogate to themselves the right to dictate the Constitution of this country. I say this in all seriousness. They say that even the representatives of the people elected by adult suffrage cannot amend the Constitution, they cannot touch this fundamental right to property. This is what is said in Golak Nath majority judgement. They say, 'We cannot trust you, elected representatives of the people.' This is the position. Therefore, I would like to say whether this country can at all trust these Supreme Court Judges and entrust its fate and development of the country to them.

SHRI R. BARUA (Jorhat) : On a point of order, Sir. Are we discussing the powers of the Supreme Court? are we discussing the amendment to the Constitution. It will be very wrong to discuss the character and the judgment of the Supreme Court. Some may feel that the property right should not be there. If his argument is to be accepted that they wrongly interpreted the Constitution, then there is no substance in the amendment he has proposed. The whole amendment seems to be that the Judges did not properly apply their minds and therefore, they came to a wrong judgement. If it is a case of wrong judgment, where is the necessity of this amendment? Therefore, I submit that it is not the Supreme Court Judges and their powers we are discussing. We are discussing whether the amendment should be there or not.

MR. CHAIRMAN : I was also feeling like that. That is why I asked you whether we are dealing with your resolution. You have spoken much more against the working of the Supreme Court than the points referred to in your amending Bill.

SHRI D. N. TIWARY (Gopalganj) : Sir, necessarily the judgement of the Supreme Court will come here. Members have every right to criticise the judgement.

श्री मृत्युंजय प्रसाद (महाराजगंज) : सभापति महोदय, मेरा पायंट आफ आर्डर है। माननीय सदस्य सुप्रीम कोर्ट के जजिज को, उनकी पर्सनैलिटी को लेकर, क्विस्टिआइज कर रहे हैं क्या यह उचित है? उनकी अपत्रिगिंग और ब्लड आदि की बात करना सरासर गलत है। यह बर्दाश्त नहीं किया जा सकता है।

MR. CHAIRMAN : I will request you to confine yourself to your resolution.

SHRI P. RAMAMURTI : My resolution is, this thing should be taken out of the Constitution of India. By including it in the justiciable chapter of the Fundamental rights, this is subject to the decision by the

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Supreme Court. I want to point out the changing decisions** of the Supreme Court. We cannot leave this question to the changing decisions** of the Supreme Court. That is my argument. Therefore I have to point out that this Supreme Court has been behaving in various ways.

We cannot leave the future of this country to the changing decisions** of the Supreme Court from time to time. That is my argument, Sir. (*Interruption*) I have got every right; I will repeat it from every public platform.

MR. CHAIRMAN: That will not go on record. So far as these words against the Supreme Court are concerned, they should not go on record. Supreme Court is the highest judiciary in the country.

SHRI P. RAMAMURTI: Therefore, Sir,....

MR. CHAIRMAN: Those words need not go on record. Supreme Court is the highest judicial authority.

SHRI P. RAMAMURTI: They are perfectly parliamentary terms. They are not derogatory terms, Sir. After all, for some people it might be hurtful. What am I to do? I am finding myself in a position where I do not know where I am. I do not know where the Parliament stands.

Therefore, I want to point out that after all these decisions by the Supreme Court with regard to Fundamental Rights, it has become impossible for this country to take a single step forward in the direction of all these principles which have been enshrined in the Directive Principles of the Constitution. Why? Sir, it has been stated that compensation should not only be the market value but should also take into account the potential value of the particular property. That is one of the things; there may be so many other things. When that is the case, I want to ask, whether at all it is possible. I will

take a very simple thing. Take the city of Old Delhi. In 20 years time from now on, what will be the traffic problem in Old Delhi? What will be the size of buses? Their wheel bases are increasing day after day; the buses and trucks are increasing in large numbers. Will we be able to demolish houses on both sides and widen the streets? What will be the amount of compensation to be paid to these things? What will be the market value at that time? What will be the potential value at that time? If these schemes are to be accepted, Sir, no social progress whatsoever can ever take place in this country, so long as this Fundamental Right is there in the Constitution. It is not a fundamental right, because it is not a natural right. By natural right, when a man is born he gets the capacity to work, he gets the capacity to speak he gets the capacity to associate himself with people—these are natural rights. But, on the other hand, the right to property is certainly not a natural right. The right to property comes to the person who is born with a silver spoon in his mouth. It is not the natural right of all the individuals that are born in this country. Therefore, Sir, to call this a natural right, to call this a primordial right, is a misnomer. It is a travesty of truth in this country, the largest majority of the people of this country are born without property. Therefore they cannot enjoy any of the freedoms that are mentioned in the Fundamental Rights Chapter of the Constitution. Therefore I want that the Government, if it is true to its professions, if it wants to carry this country forward— I am not bothered about socialism, if it wants to move the country forward to a more just and democratic society, if it is true to that profession, want the Government to come forward with measures to abolish and take away Article 19 (f) and (g) and Article 31 from the Fundamental Rights Chapter of the Constitution. Thank you.

SHRI KANWAR LAL GUPTA: Prime Minister has defended private property today.

*Expunged by order of the Chair.

Mr. CHAIRMAN: Resolution moved:

"The House is of opinion that the right to private property in the means of production is inconsistent with the evolution of a real democratic society and having regard to the fact that the existence of the Right to Property among the justiciable Fundamental Rights in our Constitution has become a serious obstacle to the country's social, economic and political advance, recommends that the Government should take steps to amend the Constitution accordingly."

Are you moving your amendment, Shri Shiv Chandra Jha?

SHRI SHIV CHANDRA JHA (Madhubani): Yes, Sir. I beg to move:—

"That in the resolution:—

after "production"

insert "distribution and exchange"

Mr. CHAIRMAN: Are you moving your amendment, Shri Deorao S. Patil?

SHRI DEORAO PATIL (Yeotmal): Yes, Sir. I beg to move:—

"That in the resolution:—

add at the end:—

"during the current session".

समापति महोदय : श्री मधु लिमये की तबियत खराब है, वह जाना चाहते हैं, इसलिए उन्हें बोल लेने दीजिए पहले।

श्री मधु लिमये (मुंगेर) : अध्यक्ष महोदय, श्री राम मूर्ति के प्रस्ताव का समर्थन करने के लिए मैं खड़ा हुआ हूँ। लेकिन मैं सुप्रीम कोर्ट बनाम पालियामेंट के विवाद में उलझना नहीं चाहता क्योंकि जो बुनियादी स्वामित्व हमारे संविधान में है उनको दूर किए बिना सिर्फ सुप्रीम कोर्ट की आलोचना करने से काम बनने वाला नहीं है। क्योंकि सारे गुण पालियामेंट में इकट्ठा हो गए हैं और सारे दुर्गुण सुप्रीम कोर्ट

में हैं, इस सिद्धांत को मैं नहीं मानता। बहुत सारी जो बुराइयां हैं वह वर्तमान समाज-व्यवस्था में हैं और उसी का प्रतिबिम्ब हमारे आईन में और संविधान में है। तो अगर परिवर्तन की राजनीति को चलाना है तो सामाजिक और आर्थिक परिवर्तन के लिए भी हम लोग लड़ें और संविधान में और कानून में भी परिवर्तन लाने के लिए प्रयास करें। मैं एक बात आपके सामने रखना चाहता हूँ अमेरिका की। अमेरिका में भी आप देखें कि जनता के द्वारा चुनी हुई कांग्रेस बहुत सारे मामलों में बहुत ज्यादा प्रतिक्रियावादी रही है जैसे व्यक्तिगत आजादी। मैकार्थी के जमाने में ऐसी लहर दौड़ी कि अमेरिका की कांग्रेस में उसका मुकाबला करने के लिये कोई तैयार नहीं था और उस समय हमने देखा कि नीग्रो के मामले में, व्यक्तिगत आजादियों के मामले में अमेरिका की कांग्रेस जब प्रतिक्रियावादी थी तब अमेरिका के सुप्रीम कोर्ट ने वारंट के नेतृत्व में व्यक्तिगत आजादियों की भी रक्षा की है, नीग्रो के अधिकारों की हिफाजत की है और साथ-साथ कांग्रेस में सही माने में मतदाताओं का प्रतिबिम्ब हो, इसके लिए उन्होंने चुनाव क्षेत्रों को बदलने के बारे में भी पहल की है वरना कांग्रेस के हाथ में यह रहता तो सभी लोगों का प्रतिनिधित्व कांग्रेस में हो ही नहीं पाता। इसलिए हमको देखना चाहिए कि किस विशिष्ट परिस्थिति में पालियामेंट या कांग्रेस के द्वारा जनता की आकांक्षाओं की पूर्ति होती है और किन परिस्थितियों में सुप्रीम कोर्ट का इस्तेमाल हम लोग कर सकते हैं। क्योंकि राममूर्ति जी को मैं बताना चाहता हूँ कि जैसे सुप्रीम कोर्ट की बुनियादी अधिकारों में परिवर्तन करने वाले कानून को संवैधानिक करार किया, उसी सुप्रीम कोर्ट के जज ने व्यक्तिगत आजादी का जब सवाल आया, गोपालन का मामला आया, तो क्या वह प्रतिक्रियावादी, उदार मतवाद विरोधी साबित नहीं हुई? उस समय सुप्रीम

[श्री भधु लिमये]

कोर्ट ने यह भाष्य किया कि जो बुनियादी अधिकार दिये गये हैं, एक-एक अधिकार की अलग-अलग व्याख्या करनी चाहिए, नतीजा यह हुआ कि गोपालन साहब को रिहा करने के बारे में जो लोगों की उम्मीद थी... (ब्यबधान) मैं यही कह रहा हूँ। इसलिए आज जो नया भाष्य आया है यह तो सम्पत्ति के सन्दर्भ में आया है। मैं स्वयं मानता हूँ। व्यक्तिगत आजादी के सम्बन्ध में नहीं आया। लेकिन कल ही मैंने रिट दायर किया है और जिसको सुप्रीम कोर्ट ने स्वीकारा है बहस के लिए उस में मैंने चुनौती दी है कि आज तक व्यक्तिगत आजादी के बारे में आपके जितने निर्णय हैं और क्रिमिनल प्रोसीजर कोड, इंडियन पीनल कोड के तहत हमारे अधिकारों के ऊपर जो अतिक्रमण हो रहा है, उसको मैंने चुनौती दी है और इसीलिए एटार्नी जनरल को भी नोटिस देने का सुप्रीम कोर्ट ने निर्णय दिया है कि उनको भी नोटिस दिया जाय क्योंकि क्रिमिनल प्रोसीजर कोड और इंडियन पीनल कोड की धाराओं को भी मैंने चुनौती दी है कि सुप्रीम कोर्ट के नये भाष्य के अनुसार जो पुराने निर्णय हैं जो गोपालन के केस में हुए हैं उनको बदलने की जरूरत है। यह तो दोनों के रिश्ते की बात हो गई।

18.25 hrs.

[MR. SPEAKER in the Chair]

असल में राममूर्ति जी ने जो बात कही वह सही बात है कि जो संविधान परिषद् बनी थी वह परिषद् सोधे चुनाव के द्वारा नहीं बनी थी। एक तो जो विधान सभा अंग्रेजी के जमाने में थी वह स्वयं सीमित मतदान के आधार पर बनी थी जिसमें सम्पत्ति के अधिकार को बुनियाद दी गई थी कि जिसके पास सम्पत्ति होगी उसी को वोट का अधिकार मिलेगा। उनके द्वारा सीमित मताधिकार से चुनी हुई जो

विधान सभाएं थीं उनके द्वारा प्रत्यक्ष मतदान से यह संविधान परिषद् बनाई गई थी। बहुत सारे लोग आजकल प्रचार कर रहे हैं कि डा० अम्बेडकर के द्वारा यह संविधान बनाया गया था। यह बात सही है कि उसमें उनका बड़ा योग था। लेकिन सब चीजें जो उसमें हैं वह डा० अम्बेडकर की इच्छा के अनुरूप हैं, यह मानना गलत होगा। इस संविधान का जो विशेषताएं हैं, उसकी एक ही विशेषता का मैं उल्लेख कर रहा हूँ कि संविधान की धारा 32 में, दुनिया के किसी और संविधान में यह नहीं है, हमारे संविधान में है कि अगर किसी के बुनियादी अधिकारों का हनन होता है तो सीधे सर्वोच्च न्यायालय के सामने एक साधारण नागरिक भी जा सकता है। अगर अम्बेडकर साहब का कोई बड़ा कांटीव्यूशन है तो वह यह है जो संविधान में 32 वीं धारा डाली गई। अब जो बाकी सामियां हैं, बाकी दोष हैं, तो 32 वीं धारा का भी दुरुपयोग हो सकता है जैसे सम्पत्ति के अधिकार को लेकर हो रहा है। इसलिए मैं चाहूंगा कि संविधान में बुनियादी परिवर्तन आए। बुनियादी परिवर्तन लाने के दो तरीके हैं। एक नई संविधान परिषद् आप बुलाइए जिसमें 18 और 21 (ब्यबधान) आप नहीं बुलाइयगा लेकिन आप कितने समय रहने वाले हैं? हिन्दुस्तान का युवा जरूर करेगा इस काम को। वह विद्रोह करेगा और नई संविधान परिषद् बुलाएगा जिसमें समाजवाद और लोकतंत्र के लिए नया आईन बनाने का काम होगा। आप जैसे लोग हवा में उड़ जायेंगे। आप किस दुनिया में रहते हैं। छोड़ दीजिए इस बात को। यह जरूर होने वाला है। समाजवादी समाज की प्रस्थापना के लिए नया संविधान और आईन बनेगा। सत्ता का, राजनैतिक और आर्थिक सत्ता का उसमें विकेन्द्रीयकरण होगा और इस तरह की कई बातें उसमें होंगी। लेकिन दरमियानी असें के लिए हम क्या कर ? यह सवाल है।

यह बात सही कि गोलकनाथ केस के बाद और बैंक नेशनलाइजेशन के केस के बाद अब राष्ट्रीयकरण करना मेरी दृष्टि से तो बिलकुल असंभव हो गया है क्योंकि राष्ट्रीयकरण के लिए दुगुना, तीन गुना अगर मुआबजा देना है और सो भी कैश के रूप में देना है तो इसका मतलब होगा कि सामाजिक परिवर्तन के लिए आर्थिक समानता प्रस्तावित करने के लिए अब सम्पत्ति का राष्ट्रीयकरण करना बिलकुल बेमतलब हो जाता है। इसलिए दरमियानी बरसे के लिए मेरा सुझाव है कि संविधान में कुछ हम लोग परिवर्तन करें और ईमानदारी से करें। इस तरह की जो एक बहस चल रही है कि सुप्रीम कोर्ट श्रेष्ठ है या हम श्रेष्ठ हैं यह बेमतलब है। आप संविधान में कौन-सा परिवर्तन चाहते हैं यह सदन के सामने रखिए और इन परिवर्तनों को लाने के लिए क्या करना चाहिए उसके बारे में हम लोग सोचें।

जहाँ तक सम्पत्ति का सवाल है सम्पत्ति के बारे में 19 वीं धारा में एफ और जी और साथ-साथ 26 वीं धारा में सी और डी और 31, 31-ए और 31-बी, 31-बी में तो कोई खराबी नहीं है इसलिए उसको तो मैं छोड़ देता हूँ लेकिन 31, 31-ए, 26 सी और डी और 19 एफ और जी, इनमें परिवर्तन की आवश्यकता है। मैंने स्वयं इसके बारे में कई विधेयक दिए हैं। लेकिन जो ताजा विधेयक मैंने दिया है उसमें मैंने चाहा है कि 19 एफ और जी को हटा दिया जाय, 26 सी और डी को हटा दिया जाय और 31 ए में जहाँ एस्टेट शब्द का प्रयोग है वहाँ पर "आर प्रापर्टी" जोड़ दिया जाय ताकि जमीन और भूमि-सुधार के अलावा जो कारखाने वाली सम्पत्ति है वह भी इसमें जाए क्यों कि इस संविधान का आधार है पूंजीवादी। इस संविधान में जो परिवर्तन किए गए वह भूमि सुधार के लिए या सामन्ती अधिकारों को समाप्त करने के लिए, पूर्णतया नहीं, लेकिन

कुछ मात्रा में लेकिन जो पूंजीवादी अधिकार हैं यानी शहरी सम्पत्ति जो है कारखानों की सम्पत्ति जो है उसके अधिकारों के बारे में संविधान बहुत ज्यादा सहानुभूति दिखाता है। तो मैं यह चाहूंगा कि जिस स्तर पर आपने एस्टेट को रखा है उसी स्तर पर अन्य सम्पत्ति को भी ले आइए ताकि पूंजीवाद के बारे में कोई रियायत दिखाने की बात न हो। जो जमींदारी आदि के बारे में रवैया रहा वही पूंजीवाद के बारे में हो। अब रह जाती है संविधान की धारा 31। तो उसमें (व्यवधान)..... वह बता रहा हूँ। जो एस्टेट के लिए है, जमीन के लिए है, मैं यह कह रहा हूँ कि 31-ए एम एस्टेट लिखा हुआ है उसमें प्रापर्टी भी जोड़िए ताकि शहरी सम्पत्ति भी उसमें आए। उसमें क्या आपत्ति आपकी हो सकती है? अब जहाँ तक किसानों की जमीन का या छोटे लोगों की सम्पत्ति का सवाल है मैंने 31 वीं धारा को बदलना चाहा और मैंने यह कहा है कि :

"No person holding or possessing property below the ceiling prescribed by law in this behalf."

समापति महोदय : माननीय सदस्य अपना माषण अगले दिन जारी रखेंगे। अब हाफ ऐन अवर डिस्कशन शुरू होगा।

श्री मधु लिमये :

"No person holding or possessing property below the ceiling prescribed by law in this behalf and which shall not exceed..."

MR. DEPUTY SPEAKER: He can continue the next day.

18.30 hrs.

HALF-AN-HOUR DISCUSSION

HELP TO FOOD CORPORATION OF INDIA
BY NATIONALISED BANK

श्री मोगेन्द्र झा (जयनगर) : उपाध्यक्ष महोदय, यह चर्चा 23 फरवरी को दिये गये