

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

FORTY-SECOND REPORT

Shri Altekar (North Satara): I beg to move:

"That this House agrees with the Forty-second Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 15th December, 1955."

This is in connection with not allowing leave for the introduction of a Bill which Shri K. K. Basu wants to introduce in this House. He wants by this Bill to amend the Constitution so far as article 22 is concerned, thereby restricting it only to enemies and agents of enemies. The result will be the ordinary law of Preventive Detention will be dropped. Of course, under item 9 in List I of the Seventh Schedule, it is stated:

"Preventive detention... etc."

According to his amendment, he wants to omit clauses (4), (5), (6) and (7) of article 22. It will so happen that if a person is detained by the orders of the executive on the ground that he is the agent of the enemy, he will not be able to get the protection of these clauses (4), (5), (6) and (7). He is entitled to get the grounds for the detention. He cannot be detained beyond a period of 3 months. In these cases, if clauses (4) to (7) are dropped, no grounds will be given and there will be no period for his detention. Merely the suspicion that he is an agent will be sufficient for the Government to detain him for any length of time, without assigning any reason and without giving him any right to challenge the decision. That is rather a great hindrance placed in the way of an ordinary citizen. His liberties will be curtailed even to a greater extent and greater mischief will be caused. On that ground also, we do not want the Bill to be introduced.

Another point is this. The discussion on the Preventive Detection Act was to have taken place in this session. Owing to pressure of other

important work, the Business Advisory Committee has suggested and it has been accepted that it should be discussed in the next session. The whole question will be discussed at that time. Whether the Preventive Detention Act should be there, whether it should be abrogated, whether there should be any change made in it, all these matters will come in that discussion. That would be the proper time to consider these things. If any suggestions have to be made, it any sort of amendment is to be suggested, that would be done later at that time. In the opinion of the Committee, it would be premature to allow introduction of this Amendment Bill at this time. It should be taken into consideration in the discussion on the Preventive Detention Act next time.

There is another amendment that he wants to make in the Constitution. He wants that article 37 of the Constitution should be made justiciable. That is to say, he wants that the directive principles of the Constitution should be made justiciable. The directive principles have been laid down for purposes of policy, for the State to keep them in view in the administration of the country. Instead of those principles being matters of policy, he wants that they should be executory, capable of being executed in practice. In this connection, I would like to draw the attention of this House to article 45 which says that compulsory primary education should be introduced within 10 years. If, on account of financial or other difficulties, it is not possible for the State to introduce compulsory primary education in 10 years, somebody may go to the court and the court will pass an order that it shall be made compulsory irrespective of the fact whether a State can do it or not on account of its financial position. Find out ways, increase the taxes or do whatever you like: that would be the order. Policies, instead of being laid down by the legislatures, will be laid down by the courts. With respect to matters of policy, what should be done and what should not be done,

power should be in the hands of the legislature and not in the hands of the courts. By this amendment, if it is made justiciable, it will go into the hands of the court.

Take, for instance, article 51. It says:

"The State shall, endeavour to

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

(d) encourage settlement of international disputes by arbitration."

These are matters which are managed by the Central Government in the department of External Affairs. If a certain individual citizen thinks that it is not done properly, he can go to court if this is made justiciable. If the court comes to the conclusion that this policy is not correct or it should be something else, the international policies will be decided by a court of law. The question is whether these matters should be decided by this sovereign Parliament or by the courts. These the points which have been suggested in this amending Bill. The Committee have felt that it is not desirable that such a Bill should be introduced, and they have therefore suggested that the amending Bill which Shri K. K. Basu wants to introduce should not be allowed to be introduced.

There is one other point in regard to the classification of certain Bills. The Committee have recommended that the Sri Kashi Vishwanath Mandir Bill be transferred from category 'B' to category 'A'.

Under these circumstances, I would suggest that the Report that has been presented to the House should be agreed to.

Mr. Deputy-Speaker: Motion moved:

"That this House agrees with the Forty-second Report of the Committee on Private Members'

Bills and Resolutions presented to the House on the 15th December, 1955."

Shri N. B. Chowdhury (Ghatal): I beg to move:

That at the end of the motion the following be added:

"Subject to the modification that the Report be referred back to the said Committee with instructions to reconsider its recommendation in respect of the Constitution (Amendment) Bill by Shri Kamal Kumar Basu."

While moving my amendment, I want to submit that in para 4 of the Forty-second Report, the Committee have stated that they have examined Shri K. K. Basu's Bill in the light of the principles laid down by them in paragraph 6 of their First Report; and in the light of that examination, they have recommended that Shri K. K. Basu's Bill should not be allowed to be introduced. Now, what do we find in para 6 of the First Report? The fourth principle that has been mentioned in para 6 is as follows:

"Whenever a private Member's Bill raises issues of far-reaching importance and public interest, the Bill might be allowed to be introduced so that public opinion is ascertained and gauged to enable the House to consider the matter further."

In accordance with this principle, we are entitled to bring forward a Bill of this nature.

The Preventive Detention Act has raised a lot of controversy all over the country, and therefore it is very necessary that we have to review the position. It is certainly a matter of public importance.

There are certain other provisions in the amending Bill relating to the Directive Principles in the Constitution. On an earlier occasion, Shri K. C. Sodhia wanted to bring forward a Bill for the enforcement of certain Directive Principles of the Constitution. Then also, permission was refused. I beg to submit that all these Directive Principles are there

[Shri N. B. Chowdhury]

for the rapid development of our country. They are there to remind the administration constantly that they should take the responsibility of implementing them as early as possible.

So, we feel that the provisions of the amending Bill are not of such a nature as would prove inconsistent with the principles which have been enunciated in paragraph 6 of the First Report. We find also in paragraph 6:

"(2) Some time should elapse before a proper assessment of the working of the Constitution and its general effect is made so that any amendments that may be necessary are suggested as a result of sufficient experience."

Now, we find that several amendments to the Constitution have been brought forward by Government in the course of the last few years. And during the course of this one year itself we have come across some amendments to the Constitution. That shows that there is need for amending the Constitution in several respects. That is the reason why Government themselves have tried to bring forward certain amending Bills. When it is clear that there is a need to amend the Constitution, if a private Member seeks permission to introduce a Bill for amending the Constitution, he should not be refused permission.

While considering private Members' Bills and resolutions in this House, we have come across certain resolutions and Bills which have been found to be constitutionally untenable and not valid in the course of discussion.

As regards the merits of the Bill to which my hon. friend Shri Altekar has made a reference, we would like to urge that it is a Bill which should be considered by this House. The question of finance has been raised. In the case of Shri K. C. Sodhia's Bill also, the question of finance in order to implement certain Directive Principles was raised. But I would like to state that the resolution of Shri D. C. Sharma which we considered

here also involved the question of finance because he wanted a second Pay Commission to be appointed; the hon. Finance Minister replied to that, and there was so much of trouble about it. But that resolution was allowed to be moved and discussed.

Under these circumstances, we think that it is a severe restriction on the rights of a private Member if he is not allowed to bring forward Bills of this nature. Up till now, no private Member has been allowed to bring forward a Constitution Amendment Bill.

Considering the importance of the provisions contained in Shri K. K. Basu's Bill, we feel that the introduction of that Bill should not be disallowed. At least, the Bill should be allowed to be introduced and discussed on merits, so that the House will be in a position to analyse the provisions of the Bill in a detailed manner, and then give its opinion on merits.

Mr. Deputy-Speaker: Amendment moved:

That at the end of the motion the following be added:

"Subject to the modification that the Report be referred back to the said Committee with instructions to reconsider its recommendation in respect of the Constitution (Amendment) Bill by Shri Kamal Kumar Basu."

Shri Sadhan Gupta (Calcutta South-East): I would like to add to what my hon. friend Shri N. B. Chowdhury has said. Shri Altekar has given two or three grounds on which this Bill is not to be allowed to be introduced. The first ground is that it does away with all the safeguards which would be available to citizens detained on grounds of collaboration with enemies or enemy aliens. I submit that that is no ground for refusing leave to introduce the Bill at all. We can keep easily the safeguards by deleting one particular sub-clause of the Bill. The clause which seeks to

amend article 22 has two sub-clauses. One sub-clause seeks to amend clause 3 of that article, while the other sub-clause seeks to omit clauses 4 to 7 of that article. We can easily introduce an amendment, while considering the Bill, to delete sub-clause (ii). Then, both the purposes would be served. Clause 3 of article 22 would be amended, and at the same time clauses 4 to 7 would remain and would serve as a safeguard for those who are detained for having had connections with the enemy.

The second ground which my hon. friend has urged is that the Preventive Detention Act is going to be reviewed. But what would be the result of the review? It cannot be an amendment of article 22. At best, the result of the review can be that the Act itself may be repealed; but the provision in the Constitution would remain. Therefore, what we want to do by this Bill is to repeal that provision in the Constitution which appears to give a blanket power to Government for preventive detention, and restrict it to certain categories only. In other respects, the procedure laid down in article 22 (1) and 22 (2) would be followed.

Regarding the amendment to article 37, it is said that the provisions of Part IV of the Constitution cannot be made justiciable. My answer is also the same. If all the provisions cannot be made justiciable, then let us introduce amendments by which we could exclude those provisions which are not justiciable from the scope of this amendment, and at the same time see that the other provisions can conceivably be made justiciable. There are countries where the right to work is enforceable, where the right to education is enforceable, and so on. Similarly, we can have rights which are enforceable and rights which are not enforceable. And we could exclude from the scope of this amendment those rights which are not enforceable.

Take, for instance, article 30. Under that article, we find that citizens have a right to an adequate means of livelihood. That is a very good right if we could enforce it. We could urge it before industrial tribunals; the industrial tribunals can grant living wages. Similarly, there is a direction against concentration of wealth, and industrial tribunals in fixing wages can take account of that. Similarly, there is a direction about equal pay for equal work. That also can be taken into account by wage-fixing authorities. Therefore, there are many rights which can conceivably be enforced by courts of law, and if there are any rights which are not enforceable, they can be excluded. Therefore, whatever the merits of the Bill are, they are not to be considered at this stage. If there is an important matter raised, concerning which there is some public opinion—and there is no doubt that public opinion is very strong for the abolition of the preventive detention clause—it should be considered by us and the necessary amendment should be effected. Therefore, under paragraph 6 (4) of the First Report, this Bill should be allowed to be introduced and the House should be allowed to ascertain and gauge public opinion on these important matters. For this purpose, I support the amendment moved by Shri N. B. Chowdhury and I would recommend that this particular Report should be referred back to the Committee with a view to enable it to reconsider its decision regarding the refusal to allow leave to introduce this particular Bill.

Shri Kamath (Hoshangabad): The House is well aware that article 22 of the Constitution confers on every Indian citizen the fundamental right of being detained without trial. But as may hon. friend, Shri Altekar referred, and as the Committee has suggested in its report, this article which confers the right of detention without trial also guarantees certain...

An Hon. Member: It is a fundamental right?

Mr. Deputy-Speaker: He is putting it in a humorous way.

Shri Kamath:....other minor fundamental rights which are referred to in para 7 of this report.

The argument advanced by my hon. friend, Shri Altekar, is plausible, that because it is a badly drafted Bill, it should not be introduced in this House. The House very well knows that even important official Bills like the Representation of the People (Amendment) Bills—there were two Bills—were introduced and then withdrawn—the Minister in charge is fortunately here—and then reintroduced in the House. So I do not see any reason why a Private Member on this side of the House should not be given the same fundamental right of the Treasury Benches of introducing Bills and then withdrawing them and then reintroducing them at a later date. Let there be a convention. I sought to introduce a Bill in the last Parliament to repeal section 309 of the IPC. My hon. friend, Shri Tyagi, opposed introduction. I do not recall precisely whether you were in the Chair then or Pandit Thakur Das Bhargava was in the Chair. It was very wisely ruled by the Chair that Bills should not be opposed at the introduction stage, even private Members' Bills. They can be proceeded with at a leisurely pace, as always happens, and so my Bill was introduced. But it could not get any chance for further progress. Leave that alone. I seriously suggest to the House that my friend, Shri K. K. Basu's Bill may be allowed to be introduced. I would request him—he is not here, but other colleagues are here—through my colleagues to withdraw it, as Ministers have often done, and then reintroduce it next session casting it in a more correct form.

Shri Altekar referred to the discussion on the Preventive Detention Act which had been put down for this session but has now been postponed to the next session. If I remember aright, the Business Advisory Com-

mittee had recommended, I believe, only 3 hours or 5 hours for the disposal of that business. Within that short space of time, I do not think that the entire Act will be reviewed along with its working, the policy of Government with regard to preventive detention and the fundamental right of detention without trial. Therefore, the ground advanced in para 8 of the report is a wholly untenable and a fundamentally vicious, ground. It is wholly objectionable to suggest that because something is going to happen in the House, something may come up later on, at a later stage, the Bill of a private Member should be blocked. I think it violates the rights of Members on this side of the House—as also private Members on that side—of introducing Bills of a vital nature or any other nature. I would therefore suggest, without prejudice to the acceptance of the amendment of Shri N. B. Chaudhury's, that the Bill may be allowed to be introduced; the Member may be asked to withdraw it for the time being and he may be given the right to re-introduce it at the next session, following the bright precedent of the Treasury Benches opposite.

The Minister of Legal Affairs (Shri Pataskar): The position with respect to this Report is this. As we are all aware, there is a Committee appointed which has to look into all the Private Members' Bills. That Committee, after a good deal of consideration, reported that this particular Bill of which notice to introduce was given by the hon. Member, should not be allowed to be introduced.

As regards the point made by my he referred to the fact that there will just try and hear me—

Shri Kamath: You have my eyes and ears.

Shri Pataskar:... I do not know how he referred to the fact that there was already a Bill to amend the Representation of the People Act which

was introduced and subsequently withdrawn. If he had known the history of that Bill, probably he was not here then—I think he would not have made that charge.

Shri Kamath: I came later.

Shri Pataskar: Anyway, that is not material for the purpose of the discussion. But I would request him to look into the proceedings as to why and under what circumstances that Bill had to be withdrawn, and not repeat the charge that this Government are recklessly introducing some Bill and then withdrawing it. However, that is a little beside the point.

So far as this Bill is concerned, what Government will have to say in detail, they will have the right to say at the time the question of introduction comes. But indirectly it has come at an earlier stage, in order to save the time of the House. As hon. Members are aware, there is a limited time which has been given to private Members in order that they may have a chance of putting through some Bills. Consistent with the principles which this Committee has been following with respect to the proper use of the time so allowed, I believe this Committee recommended that this Bill should not be allowed to be introduced. So far as Private Members' Bills are concerned, it is much better that they do not raise such controversial and fundamental issues with respect to amendment of the Constitution. Not that they have no right to do so—that is different. For instance, so far as the latter portion of this Bill is concerned, I would like to submit that the subject-matter is now covered by the provisions of a Bill which this House has passed. This time we could not discuss that Act on account of several other matters. But that will be considered in due time. Therefore, I think it would now be premature to take up or introduce any Bill on that subject at this stage.

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The other point is with respect to article 37. I think my hon. friend Shri Kamath was a member of the Constituent Assembly and he knows that the Directive Principles in their very nature are different from those which are Fundamental Rights. I think he had a very great deal to do with this division between Fundamental Rights and the Directive Principles. I think the Directive Principles can never, in their very nature, be made justiciable: because, after all it is only policy. If once we declare policy-making justiciable we would try to relegate all authority of this Supreme Parliament to courts of law I think it is different from the basis of the Constitution and it is highly against the interests of this House. Considering the time at the disposal for Private Members' Bills, I would only say—I do not express an opinion—that so far as this Report of the Committee is concerned, they have carefully gone into it and I think it is correct—whatever the feelings of hon. Members might be—and it deserves to be adopted by the House.

Shri Altekar: What I have only to add in this connection is that the Committee has to think, before allowing the introduction of any Bill for amending the Constitution, whether it is urgent and whether it should be so introduced in the House. I have already made it clear that in view of the fact that the Preventive Detention Act itself has to be discussed in this House, there will be an opportunity for discussing all these things. Shri Kamath said that there are only about 4 or 5 hours allotted for that Bill. But, he fails to see that the maximum time that may be allotted, to a Private Member's Bill is only 4 hours. In these circumstances.....

Shri Kamath: I am referring to the discussion of the Preventive Detention Amending Bill.

Shri Altekar: Yes; I know. For the purpose of the discussion of the Preventive Detention (Amendment) Bill, the Business Advisory Committee has come to the conclusion that it can be done within that time. But, if that comes to the conclusion that the whole matter could not be discussed within that particular time, it can extend the time. It has decided that it should be postponed for the next session. So, the more fundamental question of amending the Constitution in that respect was thought too premature. That is what I wanted to submit and that has been made quite clear.

Mr. Deputy-Speaker: The amendment is:

That the Forty-second Report of the Committee on Private Members' Bills and Resolutions be referred back to the said Committee with instructions to reconsider its recommendation in respect of the Constitution (Amendment) Bill by Shri Kamal Kumar Basu.

The recommendation itself is:

"The Committee was of the opinion that as the working of the Preventive Detention Act would be reviewed during the next session when it will come up for discussion before the House, there was no urgency for this Bill which was premature."

Shri Kamath: The recommendation is on the last page.

Mr. Deputy-Speaker: Yes, I know that. The recommendation is that the Bill need not be allowed to be introduced. The amendment is to refer it back to the same Committee for consideration after the statements that have been made now.

Shri Pataskar: So far as Government are concerned, we have no objection to refer it back to the Committee.

Mr. Deputy-Speaker: The main point is this. The object of the Committee is not to throw out any Bill merely because it is an amendment of the Constitution. If only five hours are al-

lowed for the other Bill, that time may not be given for this Bill. If it is found necessary the time for that may be extended. The matter is coming up during the next session. That was what weighed with the Committee strongly. The matter will be discussed then and afterwards the House may reverse the whole policy regarding preventive detention.

The Bill consists of three portions. The first portion wants to do away with preventive detention under the Constitution in respect of those persons other than agents of a foreign power or enemy or institution. With respect to others, the object of the amendment is to take away the powers under the Constitution altogether. Though there is an entry in the Seventh Schedule vesting the Union with the power of passing a Bill for preventive detention, that will be restricted only to that category.

The next portion is that it wants to do away with preventive detention on the ground that circumstances no longer exist for that and that whenever there are circumstances the Preventive Detention Bill can be introduced and passed. Now, there is an essential difference. The object, as was stated in the Statement of Objects and Reasons is to do away with preventive detention or to reduce the operation of the Preventive Detention Act on account of the changed circumstances. For that an amendment of the Constitution is not necessary. It can easily be done by suggesting to Government to keep it no longer on the statute-book and to repeal it. But there is a fundamental difference between this and the argument that there ought to be no longer any right vested under the Constitution to pass any preventive detention law applying to persons other than those mentioned by him, that is, agents of a foreign power or enemy or institution. The Statement of Objects and Reasons was that on account of the changed circumstances, it is not necessary. This also weighed with the Committee

A detailed discussion will take place as to what are the changed circumstances. If the House comes to the conclusion that the Act is no longer necessary it may be repealed. But this wants to go further and say that there should be no provision in the Constitution at all empowering the Parliament to pass any such law.

So far as the third portion was concerned, it was felt that there were a number of items of a general character there. It was felt that they may not be enforceable in a court of law. For these reasons, the Committee considered that this may stand over. Actually, instead of saying that it may stand over for the present, they said that this need not be introduced. Now, the hon. Minister for Legal Affairs also agree that this may go back to the Committee to be reconsidered, by which time the House will have an opportunity to discuss another motion. All these matters will be taken into consideration by the Committee before it sends its revised recommendation to the House.

Now, I will put the amendment. Is the hon. Member willing to accept the amendment?

Shri Aitekar: I am not prepared to accept the amendment tabled, when the discussion takes place, at that time, we may consider all these suggestions.

Mr. Deputy-Speaker: The hon. Minister is willing.

Shri Pataskar: At this stage the matter is entirely between the House and the Committee. As Government we come on the scene only when the question comes. As Members of the House we also have some rights; but, we say we do not mind if it goes back to the Committee.

Mr. Deputy-Speaker: The question is:

That at the end of the motion the following be added:

"Subject to the modification that the Report be referred back to the said Committee with instructions to reconsider its recommen-

dation in respect of the Constitution (Amendment) Bill by Shri Kamal Kumar Basu."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That this House agrees with the Forty-second Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 15th December, 1955, subject to the modification that the Report be referred back to the said Committee with instructions to reconsider its recommendation in respect of the Constitution (Amendment) Bill by Shri Kamal Kumar Basu."

The motion was adopted.

Mr. Deputy-Speaker: I will take up now the Bills to be introduced. Dr. N. B. Khare is not here. Shri Raghunath Singh is also not here. Then Shri Syed Kazmi.

ARBITRATION (AMENDMENT) BILL

(AMENDMENT OF SECTIONS 2 AND 39 ETC).

Shri Kasmi (Sultanpur Dist.—North cum Faizabad Dist.—South West): I beg to move for leave to introduce a Bill further to amend the Arbitration Act, 1940.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Arbitration Act, 1940."

The motion was adopted.

Shri Kasmi: I introduce the Bill

CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL

(INSERTION OF NEW SECTION 2A)

Shri S. V. L. Narasimham (Guntur): I beg to move for leave to introduce: