

Shri Mahanty: Sir, I introduce the Bill.

14:36

CONSTITUTION (AMENDMENT)
BILL—contd.

REPRESENTATION OF THE
PEOPLE (REMOVAL OF DIS-
QUALIFICATIONS) BILL*

(Amendment of Article 226) by *Shri*
C. R. Pattabhi Raman

Shri Khushwaqt Rai (Kheri): I beg to move for leave to introduce a Bill to provide for removal of disqualifications for membership of and voting at elections to Parliament and State Legislatures.

Mr. Deputy-Speaker: The House will now resume further discussion of the motion moved by *Shri Pattabhi Raman* on the 5th May, 1961:

Mr. Deputy-Speaker: The question is:

“That the Bill further to amend the Constitution of India be taken into consideration.”

“That leave be granted to introduce a Bill to provide for removal of disqualifications for membership of and voting at elections to Parliament and State Legislatures.”

Out of two hours allotted for the discussion of the Bill, one minute has been taken on the 5th May 1961 and one hour and fifty-nine minutes remain. *Shri Pattabhi Raman*.

The motion was adopted.

Shri Khushwaqt Rai: Sir, I introduce the Bill.

Shri C. R. Pattabhi Raman (Kumbakonam): Mr. Deputy-Speaker, Sir, the Bill, consideration of which I am moving, seeks to amend article 226 of the Constitution by providing for the issue to the Government of India of any direction, order or writ by any High Court within whose jurisdiction the “cause of action” arose, even though the seat of the Government was not within the territories in relation to which the High Court exercised jurisdiction. Judicial interpretation culminating in the judgment of the Supreme Court in the latest case of Lt. Col. Khajoor Singh *versus* the Union of India (A I R 1961 S C 532—Civil Appeal 37 of 55 from the State of Kashmir) delivered in December 1960 has resulted in a state of affairs in which only the High Court of Punjab can issue any direction, order or writ under Article 226 of the Constitution to the Government of India. It is needless to state that this is more or less the denial of the remedy to an aggrieved party who lives in States far away from Delhi, e.g., Kerala, Madras, Andhra, Assam or Gujerat.

CONSTITUTION (AMENDMENT)
BILL*

(Amendment of Article 226) by
Shri C. R. Narsimhan

Shri Narasimhan (Krishnagiri): Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

Shri Narasimhan: Sir, I introduce the Bill.

*Published in the Gazette of India Extraordinary, Part II—Section 2, dated 18-8-1961.

Sir, the Law Commission in paragraph 17 of its Fourteenth Report stated as follows:—

“High Courts other than the High Court of the Punjab have found themselves unable to exercise jurisdiction under Article 226, when the statutory authority or official concerned has headquarters in Delhi. This tends to defeat the very purpose of the jurisdiction conferred by Article 226 which is to enable a person to seek a remedy under that article in respect of acts done in violation of his rights within the State by an application to the High Court of his own State.”

Sir, reviewing the case law after the establishment of the Supreme Court and following the decision of Supreme Court in Election Commission of India *versus* Saka Venkata Subba Rao (1953) and later on in *K. S. Rashid & Son versus* the Income-tax Investigation Commission (1954) the Supreme Court by a majority held that there can be no escape from the conclusion that article 226 referred not to the place (I am quoting them) where a Government may be functioning but only to the place where the person or authority is either resident or is located. They added that so far as the Government is concerned, it is within the particular territory only if its seat is within these territories. The Supreme Court also noted that their decision may result in inconvenience to aggrieved persons. The actual words used by them are very illuminating. They say:

“It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226.”

This is the majority judgment,—that this is really a matter for amendment of the Constitution.

They were pleased to state in that case that where the Government may

be functioning did not matter but it was only where the person or the authority was either resident or located that mattered. You are aware of the analogous principle of *lex situs*. They added that so far as Government is concerned, it is within the particular territory only if its seat is within the territory of the concerned High Court. The Supreme Court also noted, as I told you earlier, that this may result in serious difficulties. Towards the concluding portion of the judgment, they repeat this and say that if any inconvenience is felt on account of this interpretation, then, “the remedy seems to be a constitutional amendment.” It is unnecessary to cite the various other judgments in this connection. Suffice it to say, Mr. Justice Subba Rao in his dissenting judgment has observed that the differentiation between the Union Government and the State Government is, therefore, not territorial but only subject-wise and that both the Governments function within a State. He says that the Union Government functions in all States in so far as the Union List is concerned. So, it is really subject-wise; and it is really the function that matters. Of course, his view was a minority view and his judgment was only a dissenting judgment. He also said that according to him, the word ‘any Government’ in article 226 must include the Union Government, for two State Governments cannot administer the same State). Perhaps, it will be better if I read out article 226 for the benefit of hon. Members. Article 226 runs as follows:

“Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement

[Shri C. R. Pattabhi Raman].

of any of the rights conferred by Part III and for any other purpose."

Mr. Justice Subba Rao has stated that the words 'any Government' there cannot mean two State Governments, and, therefore, they must mean the Union Government and the State Government.

Then, he has also observed that:

"The Constitution nowhere fixes the seat of the Union Government or even that of the President.",

and quite rightly so. For example, the President goes to Hyderabad for some time during the year. So, it is not that Delhi alone is the seat of the Union Government. The Union Government functions throughout India. Therefore, he says that the Constitution nowhere fixes the seat of the Union Government in Delhi.

He has no doubt that the Union Government has no fixed legal footing and that it is present throughout the territories over which it exercises jurisdiction, and he has observed that the Union Government must, therefore, be deemed in law to have functional existence throughout India. He was for allowing the appeal of Col. Khajoor Singh.

I am aware that my colleagues in Parliament have sought to move similar amending Bills making wider provision and they wish to say that any order passed by 'any authority' inside a State should be covered by the amendment. So far as I am concerned, my purpose will be served if any cause of action arises, but they want to go further and insert the words 'any authority'.

For their benefit, I would like to say that the Supreme Court in their majority judgement dealt with this very word. They say that:

"The first argument is that the word 'authority' used in article 226 cannot and does not include Government. We are not impressed by this argument. In interpreting the word 'authority' we must have regard to the clause immediately following it. Article 226 provides for 'the issue to any person or authority including in appropriate cases any Government' within those territories. It is clear that the clause 'including in appropriate cases any Government' goes with the preceding word 'authority', and on a plain and reasonable construction it means that the word 'authority' in the context may include any Government in an appropriate case."

But I have no quarrel with the measures which seek to widen it. They envisage cases where the authority may not be the Union Government but some other authority; for instance, there may be an appellate authority; I believe that in railway matters it is so; there is an appellate authority which sits in Delhi and which gives the appellate judgment, and in those cases, the aggrieved person has to come to the East Punjab High Court; that is what probably my hon. friends seem to have in their minds.

I am, however, only concerned where the cause of action has arisen within a State, where the action of the Central authority has warranted the issue of a writ or a direction to correct the injustice.

I am happy to note that from all sides of the House. I am having support. I have noted that, and I commend this Bill for the acceptance of the House.

At present, many an aggrieved person in places far away from Delhi has not been able to vindicate his or

her right guaranteed right under the Constitution, on account of the cost of travel itself. Apart from the cost of travel, he or she has to come all the way to Punjab. They may not even be able to make themselves understood by the lawyers in Delhi or in the Punjab Court as the case may be; and in the court itself, they will be severely handicapped. I do not think that that was the intention of the framers of our Constitution in so far as the provision for the vindication of the rights of citizens is concerned.

I wish also to say that I was myself concerned as counsel with the case of an employee of the All India Radio. He was a temporary servant, and, therefore, his services could be terminated without any further enquiry. I had to fight that matter out in the East Punjab Court. I actually appeared in the case *Chinnaraj vs. the Union*, that is, the All India Radio case. That was the position in which I found myself. Fortunately, my client had to make I think two trips for the purpose, and if there had been one more trip, he would have given up the ghost, as it were. That was really the position so far as he was concerned.

So, I submit that this is a measure which must meet with the approval of the House, and I hope that I shall have support all through.

I also find that there is a motion for circulation, which I would beg may be moved in order to save me from the provision regarding the two-thirds majority, in case motion is to be put to vote.

Mr. Deputy-Speaker: Motion moved;

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

There is an amendment to this motion.

Shri Morarka (Jhunjhunu): With your permission, I would like to make a slight change in the date. Instead of '31st December, 1961' it will be '31st October, 1961'.

I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st October, 1961."

My reason for moving this amendment is that this is a Bill moved by a private Member for amending the Constitution. An amendment of the Constitution must be regarded as a very serious matter. Before the Constitution is amended by a Bill of a private Member, it is fair and proper that public opinion on that Bill be invited.

When I say this, I do not dispute the objects of this Bill. I am in full agreement with them, but I think that it would be proper if the Bill is circulated and the public is given an opportunity to express their opinion on the contents of the Bill. Therefore, I move my amendment, and I request the hon. Deputy Law Minister to accept it.

Mr. Deputy-Speaker: Amendment moved;

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st October, 1961."

Shri Sadhan Gupta (Calcutta-East): I rise to extend my fullest support to the Bill that has been moved by Shri C. R. Pattabhi Raman. Of course, *prima facie* I would oppose any motion for circulating the Bill for eliciting public opinion. But, here there is the question whether the required majority would be forthcoming. Apparently, it would not be forthcoming today, if it is voted upon.

Regarding purely the merits of the motion for circulation, I submit that Shri Morarka's contentions do not hold good at all, because this aspect of the Constitution, namely the operation of

[Shri Sadhan Gupta].

article 226, has been the subject-matter of a good deal of discussion for a long time. As a matter of fact, the Law Commission has pronounced on this matter very convincingly and very definitely that this kind of an amendment should be made in article 226 of the Constitution. The matter is quite obvious. A person from Kerala or from Assam or even from Bengal should not be required to come to Delhi or to go to Punjab to be able to obtain redress, an efficacious constitutional redress against the Government of India. This seems to be absurd, and I do not know why the Constitution-makers did not think of it at that time. And the High Courts are functioning in those States also. Under the Civil Procedure Code, and I think that under any legal system, a person has a remedy where a cause of action arises. Now unfortunately, the Constitution made a departure from that principle. Whether the Constitution-makers realised it or not, I do not know. But the departure was made, or at any rate, the language in which the right was expressed was a little too dangerous and warranted the conclusion that in this case a departure had been made. There is no doubt much to be said in favour of Mr. Justice Subba Rao's view, but then I think there is more to be said in favour of the majority view of the Supreme Court that the Government of India was not meant on the language of the Constitution.

Whatever that may be, the Supreme Court has pronounced it recently, and before that many High Courts have taken the same view. Therefore, the position is quite clear, that the citizen cannot have a remedy where he has suffered a wrong. That would be an absurdity and that would require that something has got to be done. The Law Commission has felt the necessity, everyone feels the necessity, everyone who has had a little practice feels the necessity. I have been forced to come with cases

from Kharagpur in West Bengal upto here for nothing at all. The client has had to come here, incur expenses and all that. The client is put to the alternative of either bringing his lawyers at considerable expense from there or of engaging lawyers here where he is not familiar with lawyers and he is grabbed by all sorts of persons who take him to lawyers. You know what I mean. All these things are very unsatisfactory and call for speedy redress.

I would have expected that if Government were really serious, they would take steps to secure the requisite majority for the passage of this Bill here today. It is no argument that because it has been moved by a private Member, therefore, it must be circulated for eliciting public opinion. This question has long been a public question and the fact that a private Member moved it does not make any difference. I would rather suggest the other alternative, that the debate might be adjourned to some other date and then Government may arrange for the requisite majority being present. That way I think we can have speedy passage of the Bill. If we circulate it for eliciting public opinion, the result will be that we will have to refer it to a Select Committee, then the Committee will have to report and then it will have to pass through the two Houses. Thus within the life of the present Parliament, we will not get this Bill through at all. It means, in other words, that whatever the necessity may be, the Bill will be shelved for the life of the present Parliament. That would be very unfortunate.

On the other hand, it is very widely recognised that an amendment of this kind is necessary. I believe the Government itself would not be against it on principle. If that is so, it can be easily arranged that if today we cannot have the requisite majority, we can have an adjournment of the discussion and later on, say Friday next or Saturday next, we

can take up this Bill with the requisite number of Members present and vote it. It would be very unfortunate if this Bill gets shelved for the life of this Parliament and even thereafter, for I do not know whether Shri Pattabhi Raman will be nominated or not. Then it will lack a sponsor in the next Parliament. I do not know what will happen.

Therefore, I would suggest that the Bill be adopted; if there is any difficulty today, let the debate be adjourned and let us have sufficient number of Members next time.

Dr. M. S. Aney (Nagpur): I am sorry we have to move a Motion for circulation for eliciting public opinion. So far as public opinion is concerned, I believe there is no doubt whatever that it is entirely in favour of the Bill which is before the House. In fact, those who are most competent to pronounce an opinion on a question of this kind have already expressed their opinion in the body of that Report which is known as the Law Commission's Report, on the recommendations contained in which my hon. friend has based this Bill itself.

Yet, there are certain practical difficulties which we must recognise. This is a Bill to amend the Constitution and is being brought in this Session just now when probably the voting strength which is required for getting it through the House may not be easily available. It is better, therefore, that the whole community should know that a Bill of this kind is going to come up before the House next session. Then I am sure the parties will keep their Members present and it will be voted by the House.

Also there is one advantage in eliciting public opinion. This is a thing which requires to be published, circulated and advertised. That purpose will be served by this Motion. Therefore, I support the Motion moved by my hon. friend, Shri Morarka.

Shri N. R. Munswamy (Vellore): I whole-heartedly support this Bill because it has been exercising the minds of lawyers and clientele for a very long time because we have not been able to go and agitate our grievances in a court which is nearby.

The Bill, as it is framed, deals with the aspect of the seat of Government. It says:

"Provided that nothing herein contained shall be deemed as excluding the jurisdiction of the High Court or any State in respect of any order passed by any authority inside the State, whether such order has been dealt with in appeal or revision by any authority outside the State or not".

As regards the seat of Government, I want to make certain observations. He has narrated the whole gamut of the law from the beginning up-to-date so far as this aspect is concerned and the House has been posted with up-to-date developments. My only submission is that the seat of Government is not to be determined for taking any cause of action. The seat for the Government of India has been nowhere mentioned. But as far as the working of the Constitution is concerned, the seat of the Government of India is only Delhi. We should not be guided by the aspect of seat, but by the cause of action where it arises. The entire geographical territory of India is governed by our Constitution. The Government of India functions not only in Delhi but in every part of India. The President acts through the Governors in the States, who function through the Ministries, and the Ministry is in control of every corner of the State. Thus, the writ of the Government of India runs over the entire country. As such, if a person feels aggrieved by an action or order of an officer of the Government of India, he can certainly apply for mandamus or any other writ before a High Court, at least he should be

[Shri N. R. Muniswamy].

able to. But the difficulty is that though the Government of India functions through the States just as the Secretary of State did in the olden days through the Viceroy or Governor-General down to the district Collectors, unfortunately in our Constitution we have made a provision that any action against the Government of India should be instituted only in Delhi. That is why we have to come forward with an amendment of the kind, for which Shri C. R. Pattabhi Raman has taken the initiative. Any suit against a State Government can be filed within the territory of the State in its High Court, though even here there is an exception in the case of Punjab, as its High Court is situated in Delhi.

15 hrs.

Unfortunately, some of the hon. Members have expressed doubt about the ultimate passing of this Bill. Even if it is shelved, I suggest the baby be passed on to the Government. They should be asked to come forward with such a Bill in this or the next Parliament. It is very difficult for a private Member to muster bare majority and a two-third majority of members present. Even Government finds it difficult at times. Therefore, this task of bringing such a Bill should be taken up by the Government.

Shri C. R. Narasimhan has also introduced a Bill, and it is almost the same as that of Shri C. R. Pattabhi Raman. Even their initials are the same! Now that Shri Morarka has moved for the circulation of the Bill that is now under consideration, it may not be proper for me to make a motion or suggest that the two Bills might be circulated together for eliciting public opinion, but if that is at all possible, I would welcome it. The only difference between the two is that one refers to authority while the other refers to jurisdiction. The two Bills being circulated together would better achieve the purpose of

eliciting public opinion, as the scope of both would be taken into consideration. If only the Bill now under consideration is circulated, it may well be that later the other Bill may be held to be out of order, being on the same subject. That is why I am suggesting this step.

Lastly, I wish to express my grateful thanks to Shri C. R. Pattabhi Raman for bringing forward this Bill, because this has been agitating the minds of people in all the States, as they have to spend a lot of money in coming to Delhi and filing the case in the Supreme Court. More often than not cases go by default as the persons concerned cannot afford to incur the heavy expenditure involved in fighting the case in Delhi, not the least part of which is the fees payable to the lawyers. In order to remove all these difficulties and inconveniences, I hope this Bill will ultimately be passed into law.

Shri C. R. Narasimhan (Krishnagiri): I heartily support the motion for circulation moved by Shri Morarka. Public opinion has to be elicited. No doubt, the need for a measure like this has been felt by the public and expressed by the various bodies, but only the exact terms of the Bill would enable them to express their views on the subject, and I am sure the opinions of the various learned bodies, advocates etc., would be very useful to the Government as well as this House.

Reference was made to my Bill. My Bill is very much wider in scope and that is why I thought I should bring it forward. If that also can simultaneously go for eliciting public opinion, I should be only too happy. Otherwise, I shall take recourse to the normal procedure obtaining here.

The introduction of these two Bills is a commentary on the extraordinary slowness of governmental machinery. Though the Government's attitude is sympathetic and public opinion favour-

able, we have not been able to move in this matter. The machinery is so slow by its very composition that nothing seems to be possible of achievement. That is why, when one would have expected the Government itself to have initiated such a measure and get it passed, we have to come forward with it. We are like doctors trying to treat an unwilling patient, make him take the proper medicine. We have to persuade him to take it.

The non-official hour has become a kind of legislative loudthinking, and we have to use this for converting the Government in slow stages to our views. Therefore though I am somewhat disappointed at the slowness of the procedure, I am sure that ultimately we will be able to have a measure of the type we want. That would make all courts equal, and there would be no discrimination directly or indirectly, in the matter of their being able to give relief to the aggrieved persons.

I warmly support the proposal that this Bill should be sent for circulation.

The Deputy Minister of Law (Shri Hajarnavis): I am in considerable sympathy with the amendment which is sought to be introduced by the Bill. As has been mentioned by the hon. Mover in the Statement of Objects and Reasons, this has been strongly supported by the Law Commission, and the Supreme Court themselves have made such a suggestion in a majority judgment.

It is not possible for us now to argue as Shri N. R. Muniswamy has done that the High Court does have jurisdiction with respect to matters where the cause of action arises within its jurisdiction because that point has been considered by the Supreme Court and negatived. The law declared by the Supreme Court is law for the land and therefore, that must be regarded as binding for all time and final interpretation of the Constitution unless it is changed by a

constitutional amendment. I may inform the hon. Members that amendment of article 226 is under the very active consideration of the Government and personally nothing will give me greater pleasure than the fact that such an amendment finds a place in the Constitution before my tenure in this Ministry comes to an end. It will be seen that this amendment is to article 226 which forms part of chapter V of Part 6 which, under article 368, requires ratification by the States. Before the constitutional amendment becomes effective such a procedure will have to be adopted. Under these circumstances, I accept the motion for circulation firstly, for the reason that today it will not be possible for us to consider the Bill because we do not have enough colleagues in attendance. But what appeals to me more is the other reason which has been mentioned by Shri C. R. Narasimhan who sponsored a similar motion. We shall be grateful for any suggestions that may be made for the amendment of article 226. Government are considering several drafts of amendments to article 226 and I may mention that we are not completely satisfied with any of them because we want to introduce an amendment which gives power to a High Court to act as it acts in the case of an order of the State Government. It is logical that if the local High Court has a power in respect of an act of the State Government subject to its jurisdiction, then it should similarly have the power in respect of the Government of India also. It is an advantage not only to the citizen who comes up to the High Court but equally convenient to the Government department. Just as a citizen should come all the way from distant Kerala or Assam or Madras to make a grievance against an act of the Government of India to the East Punjab High Court, similarly the Government of India, in order to defend their action have also to bring the records and officers and other things necessary all the way from Kerala or Assam. So, Government are viewing the amendment

[Shri Hajarnavis].

with a great deal of sympathy and we would be grateful for any suggestion made by the various judicial authorities or learned people as Shri C. R. Narasimhan mentioned . . .

Shri C. R. Narasimhan: Learned bodies.

Shri Hajarnavis: Yes, learned bodies, who would give us their advice as to how our object may best be achieved. With these words, again thanking the hon. Member who has quickened the pace of the Constitution amendment with which I am personally in a great deal of sympathy I accept the motion for circulation.

Mr. Deputy-Speaker: The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st October, 1961."

The motion was adopted.

15.16 hrs.

SIKH GURDWARAS BILL

Sardar A. S Saigal (Janjgir): Sir, I beg to move:

"That the Bill to provide for the better administration of Sikh Gurdwaras situated in different States of Indian Union and for inquiries into matters connected therewith, be referred to a Joint Committee of the Houses consisting of 45 members, thirty members from this House, namely, Sardar Hukam Singh, Sardar Iqbal Singh, Sardar G. S. Musafir, Sardar Ajit Singh Sarhadi, Sardar Bahadur Singh, Sardar Ajit Singh Bhatinda, Sardar Daljit Singh, Sardar Joginder Singh, Shri Diwan Chand Sharma, Raja Bahadur Birendra Bahadur Singh, Dr. Vijaya Anand of Vizianagaram, Shri Ram Garib Singh,

Shri H. C. Heda, Smt. Manjula Devi, Shri Jhulan Sinha, Shri S. N. Dwivedy, Dr. Ram Subhag Singh, Shri Narendra Bhai Nathwani, Shri Manek Lal Maganlal Gandhi, Shri V. P. Nayar, Shri C. D. Pande, Shri N. G. Goray, Shri Nath Pai, Dr. M. S. Aney, Dr. G. S. Melkote, Shri Jaganatha Rao, Sardar Surjit Singh Majithia, Shri Lal Bahadur Shastri, Shri A. K. Sen, and the Mover Shri A. S. Saigal,

and fifteen Members from Rajya Sabha,

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make, and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

Mr. Deputy-Speaker: I was never consulted. But I have no objection.

Sardar A. S. Saigal: As regards the Sikh Members, I have not consulted anybody.

The Deputy Minister of Law (Shri Hajarnavis): Then there is no compliance with the rules; he cannot take it for granted that because a Member is Sikh so he will consent to serve on the Select Committee.

Mr. Deputy-Speaker: Now that he will have to read out the names we