

The motion was adopted.

[English]

[Translation]

SHRI MOHAN SINGH: I introduce the Bill

15.35 hrs.

REPRESENTATION OF PEOPLE
(AMENDMENT) BILL*

(Amendment of Section 77, etc.)

[English]

SHRI CHITTA BASU (Barasat): I beg to move for leave to introduce a Bill further to amend the Representation of the People Act, 1951.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1951."

The motion was adopted.

SHRI CHITTA BASU: I introduce the Bill.

MR. CHAIRMAN: Shri Bandari Dattatraya - Absent.

15.36 hrs.

CONSTITUTION (AMENDMENT) BILL-
CONTD.

(Amendment of Article 356)

By Shri Sudhir Giri

MR. CHAIRMAN: Now we shall take up further consideration of the following motion moved by Shri Sudhir Giri on the 20th December, 1991, namely:-

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

SHRI P. C. THOMAS (Muvattupuzha): Madam Chairman, I was speaking on this Bill and I was trying to say that article 356, though it is very necessary, is an article which is being openly attacked by almost all since it has been used at various points of time against various States. In 1977, we saw that the Government which came to power after alleging that the previous governments were using article 356 indiscriminately, had actually used this as a weapon to scuttle so many State Governments without any other reason than for a statement that the majority was thinking otherwise. There was absolutely no cause for that but that was done in 1977, just after the Government came in power in 1977.

In a similar way, we all speak about Sarkaria Commission's Report. We have several times stated that it is a report which should be given effect to. But we have seen that the very essence of the Report was flouted by the Government which came to power two years back in 1989, in the case of Kashmir, when a Governor was appointed in a manner which was not befitting at all and which was against all the spirit of the Sarkaria Commission's Report which said that in the case of appointment of Governors, the State Government or the Chief Ministers may be consulted.

15.38 hrs.

[SHRI SHARAD DIGHE *in the Chair*]

But not only the Chief Ministers weren't consulted but the Governors were thrust upon against the will of that government and further that government had to go just be-

[Sh. P.C. Thomas]

cause of this appointment. The Government resigned and immediately after that, the Central Government dismissed even the Assembly. So, we have so many examples where article 356 has been found to be of use but on many occasions it had been used in a manner which was not so be fitting.

But this is not an article which should be scrapped and I do not think that even the mover of the Bill has stated that this article should go. But the amendment which has been given is only to the effect that this should not give general power to the Central Government when the State Government is not in a position to act in accordance with the Constitution or when the constitutional machinery has failed. The amendment is to effect that it should be on the basis of counting of heads in the Council of Ministers to know as to whether the Council of Ministers has lost the majority or not. Secondly, it is also said that if the State Government acts in such a way as to put the country's sovereignty at stake, action will be taken. These are all things which can be interpreted in so many manners. I would say that even if this amendment has to come, even then the purported or apprehended dangers cannot be taken off because this can be interpreted in other ways and the Government will have full powers to dismiss a Government in the State on these lines.

I do not think that even by an amendment of this nature, there can be any kind of boundaries put to Article 356. I would suggest that there is absolutely no need to bring an amendment of this nature. But this is an aspect where the politicians as well as the persons in power have to think and have to be provoked for this Bill as well as the objects that are behind this Bill. It is a time for taking a firm decision that Article 356 will not be used indiscriminately and will be used with much care and caution for which provision has already been made in the Constitution.

In conclusion I want to add one more point. Many hon. Members, in the course of

this discussion, stated about the dismissal of the Government of Kerala in 1957. In 1957 Communist Government came to power. It is true that the Government was dismissed in 1959. But it is also true that within the short span of about 18 months or about two years of rule, the State was in such a condition that the law and order machinery had completely failed and there were instances of the Government causing so many deaths. There was a point of time where the people of Kerala would not have allowed the Government to function as such. That was the condition. And the Government also felt that it was not easy to function in a constitutional manner and, therefore, the Government had to take so many measures which were absolutely to the complete dislike of the people of Kerala. There were instances where pregnant women were indiscriminately killed in the firing by the police. There was so much of firing that took place during that time that it is difficult to describe. That was not thought of at all in Kerala which State, even now — years after that — continues to be a very peaceful State and where the law and order situation is maintained in a very proper fashion.

When the conditions went to that extent, there was absolute necessity for the Centre to intervene and it was only Article 356 which came to the rescue. I would think that Article 356 had actually been used in the best manner at that time when the Government of Kerala was dismissed by using this power under Article 356.

I appreciate and I am happy that the hon. Member has moved this amendment Bill to bring out the immoral way in which, sometimes, this Article is being used or may be used. It has also been abused. He has moved this amendment to give proper thoughts to all concerned as to whether this Article should be used in an indiscriminate manner or whether it should be used in a very proper manner where such caution is much necessary. I would congratulate the hon. Member and at the same time, I would request him to withdraw the Bill because the amendment sought will not be in tune with the spirit which is expected out of the Bill.

PROF. K. V. THOMAS (Ernakulam): Mr. Chairman, Sir, at the outset I congratulate my hon. colleague Shri Sudhir Giri for having brought this amendment Bill which gives a chance to this House to have a deliberation on Article 356 of the Constitution of India.

Sir, India became a Republic in 1950 and we have passed 42 years since then. Ours is a federal structure, a strong Centre and a prosperous State. But after 42 years, when we discuss Article 356, I feel that a lot of light should be thrown on this Article. Sir, the first time when this Article was put into action was the dissolution of the Communist Government in Kerala in 1959. We know the background of the decision that was taken by Pandit Jawaharlal Nehru. There was a people's movement against the then Communist Government and that too was the first Government in India which came to power through the ballot paper. After 42 years when we analyse the decision taken by Panditji, there may be a difference of opinion on whether that decision was correct or not. There are still certain pertinent points which we have to bring out.

Sir, at the present juncture when we are discussing this Bill, look at the world scenario. The Soviet Union which was a Republic, which was one of the world forces balancing the political forces in the globe, is being slowly disintegration. Some of my friends say that Communism is becoming irrelevant. Some of my friends say that the rule of the Communist Party in Soviet Russia was not up to the expectations of the people of U.S. S. R. but I am very sorry that the Soviet Union has disintegrated because that was the only force which was a match against American imperialism. Now, America has become a global policeman. U.S. A. is against the development of all the developing nation. We had a powerful Soviet Union which was always checkmating the imperialistic movement of the American Government. You know that America has its own vested interests. It never want any other country to develop. It always wants to function as a world policeman. So, the disintegration of

the Soviet Union, the disintegration of Yugoslavia, is a new stroke or the democratic fras on the strong. I still feel that the Soviet Union should have been strengthened and the Soviet Union should not have been disintegrated. But you know, all the liberal movements, the Perestroika and Glasnost, initiated by Gorbachev have been in good direction with all broad mindedness. But where has Russia landed now? So, we are unhappy. I still feel that the Socialist and Communist movements in the world have got a role to play, because we do not want the Communist movement to perish and we do not want the Socialist movement to perish. They have to grow, but they have to understand the changes that are taking place in the global scenario. The globe is shrinking because of the widespread and rapid communication changes. Anything happening in Moscow can be seen in India through the small screens. So, when the world is shrinking to such a small size, the Communist movement also should have understood what is happening around. Unfortunately, the Communist leadership could not understand the changes that are taking place around the world and as a result, now we find that the Soviet Union is disintegrating and many of the Socialist countries are also disintegrating. These particular developments which are taking place around India are also something on which we have to ponder about.

We should have a strong Centre, a Centre which should be able to see that India is united. Now, we see the divisive and secessionist forces working in our country. We have got problems in Punjab; we have got problems in Kashmir, we have got problems in Assam, we have got Naxalite problems in Andhra Pradesh and we have got the LTTE activities in Tamil Nadu. Within our country, there are a large number of disintegrating forces and above all that some communalist forces are also there. Then, there is the linguistic problem. Even today morning, in the Question Hour, unfortunately some of our friends wanted to impose certain things. None of us are against Hindi, but we want that all the Indian languages should be equally respected. So, there are so many

[Prof. K.V. Thomas]

disintegrating forces which are working in this country. This is a vast country in which 83 millions of people are living, talking different languages, possessing different cultures and different food habits. So, if this country is to be united, one major factor is that there should be a strong Centre. What that Centre should be? Should it be like an India family where the husband and wife function together and the husband has got a little more prominence?

SHRIMATI MALINI BHATTACHARYA
(Jadavpur) We want husband-wife relationship in the Centre-State relations also.

PROF. K. V. THOMAS: I agree with that (*Interruptions*) So, some kind of a relationship where the Central Government accepts the functioning of a State Government should be there. The State Government should have independence in their own functioning.

Sir, one of the decisions taken by the V. P. Singh Government was the decision on Kashmir and we know what had happened later. In 1989, atleast we could go to Srinagar. I have gone there in 1988 and 1989. At that time, there was no problem which we are seeing now. One political decision which was taken had dethroned a popular Government and now we are in a very bad situation. So, what I suggest is that, the Central Government, when they take a decision on the basis of Article 356 on State Governments, there should be considerations above political considerations. It should be not be merely political but there should be a discussion with the major parties. The Government at the Central may belong to one party and at the States, it may be different. In this country, there are number of states which are ruled by other Parties. In the Centre itself, there is a Government which lacks majority by a few Members. And this Government, as the hon. Prime Minister has said, wants to function on consensus and he wants to run this Government on consensus. All major issue should be tackled not on the strange in the House but on consensus. We have seen how the consensus worked. When the Tenth Lok Sabha

started we had the Mandal Commission problem and other problem. At least, now there is some kind of peaceful atmosphere. Similarly, about Ramjanambhoomi-Babri Masjid issue, discussion is going on and there is somewhat peaceful atmosphere. These are achieved through a number of debates and discussions. All major political parties ought to be taken into confidence.

One of my request is, when any decision is to be taken by the Central Government under article 356, there should be a discussion by the Central Government with all the recognised political parties. Some structure should be there. In that structure, there should be a debate. Supposing tomorrow early morning, I wake up and find that my State Government is not there and the Assembly is dissolved it is painful to me. So, there should be a debate. At the same time, I do not completely agree that there should be a clause which says that the majority test of the Council of Ministers shall be proved on the floor of the Legislative Assembly only. By and large, I agree with it. But it cannot be the only criterion because we see, what happens in many of the States. There is widespread horse-trading. We cannot allow the horse trading, whether it is done by that Party. In the political system, we cannot agree for a horse trading. Therefore I cannot completely agree with such clause. Of course, as far as possible, it is always best to put the majority test on the floor of the House and the strength on the floor should be taken into account. At the same time, there should not be horse trading.

There are some disputes. For example, there is Cauvery water dispute which is quite unfortunate. Water is not the property of any State. It belongs to the entire nation. In many of the water disputes, each State has its own point which may be valid but can it be taken to an extent where the State have to fight against each other, to the extent of moving from away the federal structure. We should think of it. Water resource should not be the property of any one State and that too under the present geographical situation where the original of the river may be from one State and

it is flowing through different States. With this geographical situation, I feel water resource should not be vested in any particular State. My point is, water resource should be the resource of the nation so that if there is a dispute, the Government of India could decide about it.

16.00 hrs.

(Interruptions). These are the disputes which come in between. These are the problems which have crept into the national political structure.

My request to the august House is that we should have a wide thinking on how this Article 356 should have a wide thinking on how this Article 356 should be used and when it is used, the message should go to the people of this country that it is not a political vendetta and that it has been done with all good intentions.

This Bill which my hon. friend moved in the House has started a debate within the House. It may trigger off debate outside and we will get back some message which will try to improved the political system of the country.

SHRIMATI MALINI BHATTACHARAYA (Jadavpur): Sir, I want to make a few points while supporting the resolution of the hon. Member Shri Sudhir Giri.

Article 356 come under Part XVIII of our Constitution. It is one of the emergency provisions.

We have been talking for a long time about deleting this Article from the Constitution. This has proceeded from the way in which the bogey of emergency has been raised at different stages in the history of different State. This bogies has been raised at the beck and call of the ruling party at the Centre.

Beginning from the dismissal of the E. M. S. Nambudiripal Government in 1959 right down to the dismissal of the Tamil Nadu

Government last year, there has not been a single instance in our constitutional history where Article 356 has not been abused.

Even if we admit that the makers of our Constitution had a good intention when they included this Article in the Constitution, we cannot think to a single instance where it has been used with justice. (Interruptions)

SHRI M. R. KADAMBUR JANARTHANAN (Tirunelveli): It is the wish of the people to pull down the Government and it has been justified by Shri Karunanidhi's total defeat.

SHRIMATI MALINI BHATTACHARAYA: Please allow me to speak.

MR. CHAIRMAN : Please do not disturb. Don't interrupt.

SHRIMATI MALINI BHATTACHARAYA: The previous speaker had been talking about the dismissal of the E. M. S. Nambudiripad Government in 1959 which he said came as a result of a people's movement.

Now even if I admit for a moment that there was a people's movement in Kerala against the Nambudiripad Government then, I am sure my friends would agree that people's movement would have been sufficient to topple the Government.

Why did the Centre has to intervene and bring down the Government ? There would be no reason why Article 356 had to be applied to Kerala when E. M. S. Nambudiripad was the Chief Minister there, if there was a people's movement to bring down the Government.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M. M. JACOB); : If you yield for a moment. It was specifically on the request of the Governor there that there was a total break-down of the administrative machinery. That was the basis on which that decision was taken by the Government of India at that time.

SHRIMATI MALINI BHATTACHARAYA: Yes, I know that there is a provision in Article 356 that for dismissal of State Government there has to be a report from the Governor or otherwise. I am coming to this point about the way in which either with report from the Governor or without reports from the Governor, the Governments were brought down. In the case of Tamil Nadu, last years, I wonder whether there was any report from the Governor. It is very dubious whether the Governor signed that report and in spite of that the Tamil Nadu Government was brought down. There was no report.

SHRI M. R. KADAMBUR JANARTHANAN : I admit there was no report. But historically it has been proved. The LTTE movement has been proved by the people of this country. It has been proved to the world. That Government was pulled down because of the support given to the LTTE. It was proved to this country as well as the world.

MR. CHAIRMAN: There is no discussion like this.

SHRIMATI MALINI BHATTACHARAYA: So, I would like to say that by the term "Governor's report" or when there is no Governor's report, by the term "Otherwise", Governments are brought down. They are brought down, we find, at times when these Governments turn out to be inconvenient for the ruling party at the Centre. It is precisely because of this liability to be abused that we want the Article to be abrogated.

Now I come to the question of law and order. When a Government is about to be dismissed, there has to be a report from the Governor saying that there is a law and order problem in the State which the State cannot tackle and therefore the President should take over. But in very many cases we find that encouragement to these fissiparous forces is given by certain interested political parties. What happened in Punjab when the Government of the Akali Dal was there? Who encouraged the separatist, who raised Bhindranwale to prominence? In West Bengal also we have suffered from this. A few

years back we found suddenly a spurt of movement in the Hills of West Bengal, a separatist movement. Some people were initially demanding that they wanted to go out of India, they wanted to form a separate Gorkhaland.

Mr. Chairman: Just one minute. The time allotted to this Bill is over. Shall we extend it? How much time should we extend?

SEVERAL HON. MEMBERS: We should extend the time.

SHRI E. AHAMED (Manjeri): This is a very important matter. We should extend the time.

MR. CHAIRMAN: All right. Shall we extend it by one hour?... We extend the time by one hour. You can finish it before that. There is no compulsion that you must carry it on for one hour. One-hour's time is extended. Madam, please proceed.

SHRIMATI MALINI BHATTACHARAYA: So, in West Bengal, a few years back, we found a sudden spurt of these fissiparous forces. The Central Government was taking a very ambiguous attitude towards it was not coming down with any strong approach against this kind of a separatist slogan, this kind of a separatist movement deliberately fomented by a few people. Then, we found during the elections a kind of open understanding between this party which had raised a separatist demand and the ruling party at the Centre. So, time and again we found that fissiparous forces are encouraged. So it becomes a political matter. If the spirit of this Article 356 is that law and order should be maintained in different State, then, that spirit is violated by the political fact that we find so often, the political phenomenon that we find so often of certain interested forces fomenting law and order problems in the State and then using that as an excuse for dislodging a popularly elected Government.

My previous speaker has also spoken about the Soviet Russia and disintegration

of Soviet Russia. I do think that we should that a lesson from the tragic disintegration. But what is that? I am not sure and I could not understand what the hon. Member was trying to say. At one point, it seemed to me that he was trying to say that the Soviet Russia disintegrated because it did not have sufficiently strong centre. Now I would be ask you to look back in the pages of history. The different republics which chose to remain within the Union of Soviet Socialist Republic were the backward areas, backward States. And after the Russian Revolution, there was an astonishing development of these different regions, different language and different culture. It was an astonishing development and no one can deny that. It was because of this decentralisation of power, the Union of Soviet Socialist Republics had that guts, had that courage to allow the devolution of power to the different republics and to see that people in backward areas got the most of the fruits of development. This is why, through the attack of Nazism under which the whole of Europe reeled, the Soviet Russia however, remained united. None of the republic yielded to nazy terror. And that was because this decentralisation had been there because sufficient attention had been paid to the development of the backward State. If at a later phase of history, we find an opposite thing happening, if we find the U. S. S. R. disintegrating - I do not know, maybe the time has not yet come to analyse it - we can certainly make a conjecture that somewhere this process of decentralisation, this process of devolution of power to the States, to the different regions, to people belonging to different cultural, linguistic groups, must have been stalled at some point or the other. This is the mistake, possibly - I do not know. It is too complex a phenomenon for us to come to a definite analysis as yet. But this could be one problem with the USSR which might have been a factor in the disintegration. There might have been a certain hegemony grow of one republic over another which had come about at one particular phase of history. I do not know. It could be. But certainly, it was not decentralisation that led to the disintegration of the Russian Republic. And I think, that this is the lesson that our Gov-

ernment, that our political parties, that our States should learn from the tragic disintegration of U. S. S. R. Here, I would like to say that when the sarkaria Commission produced its report, we had hoped that in its recommendations, it would agree with our point of view regarding the deletion of Article 356. However, we do not find this in the Sarkaria Commission Report. And as such, we cannot accept this part of its recommendations. Nonetheless, it had also been suggested by us that even if Article 356 was not deleted at the moment, let the Inter-States Council be activated and if Article 356 has to be used, let it be done only through the sanction of the Inter States Council.

The Inter-State Council was activated; that was during the brief period of National Front Government. It was activated; there were some meetings of the Inter-State Council. However, on the question of the Inter-State Council having a role to play, having a say in the matter of application of the Article 356, there has been no further discussion on that and the present Government also is completely silent on this issue.

It has been said that the Governor has to give certain reports. In Tripura, we heard a year before last that there had been a report from the Government dealing with the law and order situation in Tripura. What happened to that? Is it always that the Governor's Report is paid heed to by the Central Government, not always but only when it suits the Central Government that it pays heed to the reports to the Governor? And I think that certainly the role of Governors has to be one, like the role of the Chair. The person who is sitting in the Chair, may belong to one or other political party, may have political affiliations, but when he or she sits in the Chair, there must be absolute political neutrality. And that is how the Governor is expected to behave. That is the high standard that a Governor has to maintain. I am afraid that with a kind of party politics vitiating different aspects of our civic life, with the narrowing down of politics, narrowed to petty party interests, the role of Governors also is not always above question.

[Shrimati Malini Bhattacharya]

I have raised the matter of Tripura. But in the case of Tripura, even if there is an incriminating report from the Governor, we of ourselves, would not ask for the application of Article 356 neither in the case of Tripura nor in the case of any other to be one particular hon. Minister or another, they tell us "look, this is a State matter and we cannot do anything about this." State matter is something sacrosanct.

So, when a couple of years back, in Ujan Madam in Tripura, a number of tribal women-poor tribal woman-were raped by some members of the Assam Rifles, that incident was sought to be suppressed by the Tripura Government. A commission was set up by the Supreme Court and the report of the Commission has come out. Now we know that these accusations and allegations of rape were based on hard fact. We also know that although two-three years elapsed after that, even now the guilty have been brought to book. Why? Because it is a State subject and because the Centre cannot intervene into the sacrosanct character of the State Governments.

So we find that this sanctity of the State Government can be interpreted in many different ways at different times. That is why at the very outset of my speech I have said that article 356 is known more in its abode than in its proper use. In fact, I have said that we cannot find a single case where it has been used properly.

Where the President Rule has been imposed in a State we find that there is a special situation. There are certain rights of individuals, certain rights of citizens which are curtailed to a certain degree. It is said that only under a very special situation the President's rule is imposed in a State. And because it is a very special situation every citizen must be prepared under the special situation to forego some of his or her basic rights of citizenship, basic human rights.

Today we find that a certain very powerful international forces wants to intervene

into the matters of our country, into the politics of our country and the economics of our country. We find such forces are raising the question of human rights with reference to Punjab and Kashmir. We are very sure that these parties are interested parties. Why? Because these spokesmen for human rights only speak of police repression; but they do not speak to the repression that is enacted by the terrorists, which is enforced by the terrorists upon the citizens of a particular State. That is why we are convinced that these foreign forces which say that we are not observing human rights in Kashmir and Punjab are interested parties and we are not convinced by what they say.

At the same time is it not true that the question of human rights, the question of civil rights is one which becomes all the more important when a State is under the President's rule? Think of Punjab, think of Kashmir. It the role of the police and the army in Punjab or in Kashmir is identified with the role of oppressor, if it is seen by the people as a repressive role, as a monstrous role, if the police and the army are regarded with terror and with disgust, then the very purpose of President's Rule is defeated because instead of improving the law and order situation, it has the opposite effect of throwing the people over to the side of the terrorists, to the side of the separatist forces.

Therefore, I think that during President's rule in a State, it is very difficult to prevent this situation when army and the police become objects of terror and hatred for the people. This is another reason why Article 356 should not be used. In Punjab, the Akali Government was dislodged. Did that lead to a reduction in terrorism or it cause an increase in terrorism? I am sure it caused an increase in terrorism. So, while imposing President's rule, you are not solving a law and order problem even if it is there. You are increasing the terror and indirectly you are encouraging the terrorists. That is why I think that this particular Article has no place in our Constitution and it should be repealed. With these few words, I conclude thanking you for having allowed me so much time

SHRI GOPI NATH GAJAPATHI (Bengaluru): Mr. Chairman, Sir, indeed the Bill to amend Article 356 of the Constitution moved by Shri Sudhir Giri on 20th December 1991, deals with a very sensitive issue. Considering the vastness and composite nature of our country, the founding-fathers of our Constitution have rightly chosen a federal structure with the balance of power tilted in favour of the Centre. In a country like ours, the Centre must have some extra power to deal with unforeseen situations. Even the Sarkaria Commission corroborates to this view. But to prevent misuse of this power, Constitution-makers have in their infinite wisdom provided certain safeguards also. For example, any proclamation issued under Article 356 must be placed before both House of Parliament and shall cease to operate at the expiration of two months, unless it is approved by both the Houses of Parliament before expiry of this period.

Ours being a federal structure, different political parties rule the State and the Centre. When a Presidential proclamation under Article 356 is issued in respect of a State ruled by a party other than the ruling party in the Centre, the action of the Centre is quite often viewed with political colour. But such proclamations are issued normally on the recommendations of the Governor of the concerned State. If the President is to act only when the Council of Ministers of a State loses majority on the floor of the Assembly, it will trigger defections leading to avoidable political uncertainty in the State. Here it will not be out of context to recall the action of the Janata Party Government in 1977, when elected Governments of quite a few States were dismissed just because they were Congress Governments. Again in 1989, when the National Front Government came to power, at the Centre, it changed the Government of some States because these Governors were appointed by the previous Congress Government. Therefore, I would request the preachers of constitutional propriety sitting on the other side, to look into the actions of these Governments of which they were either partners or supporters.

In some cases, the central intervention would be inevitable. Also, in some other cases, the Central cannot go on waiting for the issue being decided on the floor of the State Assembly because in most cases, the Chief Minister would try to win the support of the majority of the MLAs before recommending an Assembly session. This situation will unnecessarily lead to political instability in the State. Therefore, in my view, the problem will not be solved by amending this Articles, as suggested by my learned colleague, Shri Sudhir Giri. After all, these are the people who are the ultimate deciders in our country. They can judge the action of the Centre and exercise their mandate suitably when elections are conducted for the State Assembly. Hence, I am of the firm opinion that there is no reason for a change in Article 356 of the Constitution in the interest of the national unity.

SHRI E. AHAMED (Manjeri): Mr. Chairman Sir, the Bill moved by my learned friend, Shri Sudhir Giri comes as food for thought to the parliamentarians, administrators also the people in general. The question before us is whether it is necessary to retain or delete or amend suitably Article 356 of the Constitution. Sir, I am of the view that talking into account the invocation of Article 356, right from 1959, in the matter of Shri E.M.S. Nambudiripad Government up today, there is no necessity as such to amend, as in view of the fact that there is nothing wrong with the provisions or the contents of the Article. It is the trouble with those who used it or misused it. As Shrimati Malini Bhattacharya said they misused it but every time when we discuss Article 356, we are being guided by political motivations than the reality of the situation. For example, in 1977, when the then Prime Minister, Shri Morarji Desai dismissed a set of State Governments ruled by the Congress, it was as though those State Governments do not represent the will of the people as reflected in the 1977 elections. But, when the same Article 356 was invoked by Shrimati Indira Gandhi after her election in 1980, she was accused of sabotaging the Constitution. A similar view was expressed with regard to Kerala's incident too. Shrimati

[Sh. E. Ahamed]

Malini Bhattacharya, in a passing reference, made some observations with regard to what happened in Kerala in 1959. To make the record straight, I must say that due to the mass upsurge against the State Government, the then Central Government, headed by no less a person than Jawaharlal Nehru, was constrained to take the decision to invoke Article 356. Article 356 is very specific with respect to the failure of the constitutional machinery. Therefore, when there is a real failure of the constitutional machinery, as provided under Article 356, the Government of India has no other alternative than to invoke Article 356. I may inform here that this action was justified by the results of the elections which followed after the dismissal of Government headed by Shri E.M.S. Nambodripad in 1959. That was the bone of contention in the election - 1960. The opposition parties under the leadership of Nambodripad put the matter before the public and enlightened and the literate people of Kerala about the issues involved. The people of Kerala had come out with the verdict that the decision taken by the Central Government was correct.

When the Communist Parties were alleging at that time that democracy was threatened by the Government of India, I am reminded of what Jawaharlal Nehru described their stand with a very interesting analogy in the floor of this August House. He acquit house said that it was like a man murdering his father and mother and then appearing before the court pleading for mercy as he become an orphan! That was the situation prevailing in Kerala at that time. Those people who molested democracy were alleging that democracy was threatened. I should say so because they had not only abused their constitutional power, but they made aggression on the very letter and spirit of democracy. I was a student at that time and I was observing what actually happened in those days.

SHRI SAIFUDDIN CHOUDHARY
(Katwa): Did you take part in the agitation?

SHRI E. AHAMED: Who will not? Anybody who has a sense of democracy and feeling for the rights of the people will be up against a government which does not respect the people.

SHRI SAIFUDDIN CHOUDHARY: I am referring to the upsurge against the dismissal of the Government.

SHRI E. AHAMED: That decision was taken respecting the sentiments of the people at large.

AN. HON. MEMBER: So, you rejoiced at that decision.

SHRI E. AHAMED: Sir, no Government can close its eyes to the popular feeling. As far as Kerala was concerned at that time. That was the situation forced by Government of Jawaharlal Nehru. The Centre-State relationship is the most important thing. The relation between the Centre and the State should be of a conciliatory nature and not of confrontation. Whenever the Central Government wishes to invoke article 356, they must think twice about the outcome of such invocation of Article 356. Sir, I will be very happy if my learned friend Shrimati Malini Bhattacharya and Members of her party admit that when their party was having friendly partnership with the Janata Dal Government, the latter invoked Article 356 in Jammu and Kashmir. Against Farooq Abdullah, Shri Jagmohan not only used Article 356 but took much more excessive action than referred to in Article 356. Unfortunately, my friend, Shrimati Malini's party had to support the action taken by the then Janata Dal Government. Without their support the Government would not have continued. I now come to the point. I was not a Member of this House at that time.

SHRIMATI MALINI BHATTACHARYA: If we wanted that we would have long ago asked it for Tripura.

SHRI E. AHAMED: I would like to ask only one question, were you not a party to support the V.P. Singh Government when it invoked Article 356?

MR. CHAIRMAN: Please address to the Chair. This is not question-answer session.

SHRI E. AHAMED: Sir, but for the support of the Communist Party of India and CPM the Janata Dal Government would not have remained in the power. That is why I say that political motivation is the most important consideration before a political party than the actual situation.

The Sarkaria Commission has made certain observations about Article 356. The Sarkaria Commission has also mentioned in its report about the role of the Governors. I should say that some times the Governors act in a very ridiculous way. Some of the report of the Governors given to me a distant impression as if they are puppets in the hands of Centre. They do not even apply their mind to the real problem. That is what, as pointed out by Shri Gajpathi also, the Janata Dal Government did. It put its own Governor because of the political reason. Therefore, I would say that all of them are the partners in the game. We cannot blame one party or the other party. Whenever such a question comes before us, we should view it not on political consideration but on constitutional consideration and for the prosperity of the country. Unfortunately no such stand was taken by a political party in this country. When we discuss a matter we say something and when come to the power we do something else. I would request the House to consider the points or suggestions made by the Sarkaria Commission about the role of the Governors. The Report says:

"The Governor should not risk determining the issue of majority support on its own outside Assembly. The prudent course for him would be to cause the rival claims to be tested on the floor of the House or if during the period when the Assembly remains prorogues the Governor receives reliable evidence that the Council of Ministers has lost majority, it should not as a matter of Constitutional propriety dismiss the Council unless the

Assembly has expressed on the floor of the House its want of confidence in ?...."

"..... Generally, it will be reasonable to allow the Chief Minister a period of thirty days for surviving of the Assembly unless there is a very urgent business to be transacted such as the passing of the Budget in which case a shorter period may be allowed in special circumstances the period may be up to sixty days".

If he is able to give certain guidelines to the Governor how to invoke Article 356 in a given situation, I think we will be able to wriggle out of the present political situation and controversies with regard to the invoking of Article 356. Sarkaria Commission is also equally specific on the Article 356 of the Constitution dealing with the President's rule.

"It should be used very sparingly in extreme cases as a matter of last resort when all available alternatives failed to prevent or rectify a break down of the Constitutional machinery in the State or a warning should be issued to errant State in specific terms that it is not carrying on the Government of the State in accordance with the Constitution. Before taking action under Article 356 any explanation received from the State should be taken into consideration".

Therefore, instead of asking for amending the Article 356 which is specific on failure of the Constitutional machinery, we have to evolve a policy where some guidelines are to be prepared; lay it on the floor of the House and discuss the matter.

In this respect, I wish that the implementation of the recommendation of the Sarkaria Commission will largely help to avoid such controversies on the abuse of Article 356. With these few words, I oppose the Bill and ask my friend to withdraw it.

SHRI OSCAR FERNANDES (Udupi):
Mr. Chairman, Sir, I do not want to speak at length but I would like to make one or two points.

First of all, I would like to congratulate Mr. Giri for having brought this Bill. It is because this is a subject which is being discussed throughout the country. This is not a subject matter where a particular political party takes up a particular line. This concerns the country. Keeping the country in view and in the present day context, how we have to run the country and in this, Article 356 has a very important part to play.

More than a written Constitution, it is the spirit of the Constitution that we have to take into consideration.

In Britain, there is no written Constitution at all and ultimately, it is the spirit of the Constitution that is carrying the whole nation through. It is not merely a matter of Centre and States relationship either.

Respected Shrimati Malini has made certain points regarding the Governor's role. But, there, there is a relationship between the State Governments and the Municipalities also. At times, Municipalities are also dismissed by the State Governments which is similar to Governor using his power. So, let us not confine this to that particular political aspect. Even, take the example of the matters to be decided on the floor of the House. In today's context, there is a problem. At least, in four States, the matters could not have been decided on the floor of the House because of the Anti-Defection Law where another authority comes into play and that is the Presiding Officer of the House - the Speaker.

The role of the Governor also comes into play. But my feeling is that let there be a debate on this particular subject. We need not scrap Article 356, but the provisions, the spirit of Article 356 should be properly used and implemented.

[Translation]

SHRI PIUS TIRKEY (Alipurduars): Mr. Chairman, Sir, I support the Bill, introduced by hon. Member Shri Sudhir Giri in the House for amending the article 356, I would like to say something in this regard.

It has been said in the Objects and Reasons* of the Bill that:

[English]

"The founding fathers of our Constitution conceived of the Indian Policy as a federation to successfully maintain the healthy relationship between the Centre and the States on the basis of the principles of democracy and equality".

[Translation]

I mean to say that there is no equality but there should be good relations between centre and states. All are of this view. Much has been said about the misuse of article 356. The Home Minister is present in the House, I would like to ask him what will be the fate of those who are launching agitations though they have not been granted statehood. I would like to know the difficulty in creating small states. When Haryana, Punjab and Kerala and be created on the basis of language in the other small States be created. First you created States on the basis of languages and not on geographical basis and that is the main reason of so many disputes now-a-days. There are so many languages in our country. The languages, which are not developed, want to get equal status and make progress. There were 620 princely States which were called Native States at the time of British rule. There was no corruption at that time. All was well. It is said that we have democracy but I ask where is this democracy.

[English]

They were ruled by the English people; and now they are ruled by the other people.

[Translation]

We have no right. There is seven percent reservation for Schedule Castes and Schedule Tribes in tribal areas. Rest of the 93 percent posts are filled up by the outsiders. All the posts from top to watchman are filled up by the persons from outside. There is survival of the fittest. Then, who will care for the poor? What for do the Central and State Governments are there? There is corruption in many states. The people are starving in a tribal district in Orissa but the State Government is paying no heed. Centre is unconcerned of all these things. None of the Government think about their plight. They have been left on the mercy of their own fate. There is nothing for them. It is not democracy. In democracy people have equal rights. We wish that even the district should be autonomous. So that a man can make progress. The State should be small so that people may have cordial relation with each other. Various castes and community's may live with love and peace. If you want to promote love and harmony among them, then you should ponder over all these things. According to article 366 the Governor is only an agent of Central Government in the State. He functions as an agent even if there is an opposition Government in the State. They work according to a set politics. I would like to submit that the State Assembly should elect the Governor in the same way as the President is elected in the Centre. It can be possible when there is no manipulation and he may not be merely an agent of the Centre.

[English]

The Governor is appointed at the pleasure of the President.

[Translation]

When he is appointed by the President, it is very clear that he will follow the instructions of the President; his post is very crucial. Therefore this amendment must be introduced so that the Governor may be elected by the State Assembly, in the same way as the President is elected.

Secondly, there has been a long-standing demand for making small States. The issues of Bodo land, Jharkhand State and Uttara Khand State are going on. These issues are going on because the Adivasi people live there.

The Government does not pay any attention to it. The Adivasi people will never be given their right to rule, they will not be given vital posts anywhere. How long the Government will continue commit such an injustice on Adivasi? I do not know what language does the Government understand. The Government listens only the language of violence and then only it is compelled to think over the issues. The similar was the case of the Gorkhaland. Gorkhaland is the creation of heavy fighting, killings of many children and blood-shed. The creation of Gorkhaland was not desirable at all. We desire for peace among different communities. Now caste-war is going on everywhere. States have already been created on the basis of languages. Does the Government intend to create new States on the basis of caste now? There is still time to correct the mistakes committed by us. In a Democracy the power should be vested in the people.

The manner of polling in Punjab is obvious. Today, money and muscle power are the prerequisite conditions for getting votes. Horse-Trading is very common among the Members of Parliament. What is the reasons behind it? Why our representatives are indulged in such odd things? As far as I think there is no control of the people on the representatives of the public. They have gone out of the people's control. There is no real democracy in India and in the name of democracy the people of the ruling party are enjoying like any thing and are playing with the people of India. Thus, the common people are neglected and they are subjected to oppression. Today, people are starving they do not have education and drinking water. We live in bigger States. So their problems are not heard. Therefore I would like to state that everybody should be given equal rights, and everybody should have a house to live in.

[Sh. Pius Tirkey]

The people living in slum areas in Delhi do not get drinking water. They are living like animals. This is the fate of those who are living in the Delhi slum areas. One may visit those places and look their conditions. The Government should make every arrangement for them so that they may lead their lives smoothly. Do they not want equal rights in India. Should not they enjoy equal rights?

[English]

Equality to State-relationship? What is the relationship when there is no real community to community or man to man relationship?

[Translation]

Therefore the Government will have to bring about certain changes. Hence our utmost effort should be to create smaller States so that every citizen may be able to have a chance for his progress. Government will have to take into account the problems of all persons, then alone this country can progress. The Government will have to understand the problems of the rural people also and it will have to remove those problems with the advice of the people of the villages. This democracy cannot last long with the power of police only. Today, a Minister has been provided with a number of body-guards. Can he be able to serve the people if such a large number of police personnel accompany him. In Democracy Centre-State relations are required to be regarded, but today there is tight-security arrangements around a Minister who claims himself to be a representative of the people. It is beyond my mind as to what will be the fate of this country in such a poor democracy. But now there is much awakening in the people. They have started knowing as to what they actually need. The Government cannot rule by force in such a manner. Therefore, it should pay its attention towards the problems of the people. I, therefore, propose that every Governor should be

elected by the respective State Assemblies.

SHRISHYAMBIHARI MISRA (Bilhour): Mr. Chairman, Sir, in the light of the present political atmosphere of the country, the Amendment to the Article 356, moved by Shri Sudhir Giri is worth praising and I support it.

The main purpose of the framers of the Constitution was to establish cordial relations between the Centre and the States so that both the Central and State Governments may run smoothly, in a democratic way. The imposition of emergency in 1975-76 had caused great upheaval in the national political atmosphere and sea-change was witnessed in the outlook of all the political parties. The Centre-State relations should be cordial. But today, the motto of maintaining the unity and integrity of the country and rendering services to all the citizens of the nation has gone astray in one way or the other. The situation has gone from bad to worse and has deteriorated to such an extent as by the ruling political party in the centre has started misusing of this Article 356. Now the situation has reached to such a point where a change in this Article has become a necessity. Therefore, the amendment introduced by Shri Giri has its utility in the present time. We can realize the actions taken by the Central Government in Mizoram and Tamilnadu and draw a conclusion from them. I do not want to prolong the discussion but I can only suggest that in order to keep the Centre-States relation cordial, it is very essential to incorporate this amendment in the said Article. As my colleague has stated that the opinion of the State Legislative Assembly should also be taken while appointing a Governor in the concerned State and in case, the dismissal of a State Government becomes inevitable, the State Government should be given sufficient time for this. Unless a State Government falls in minority in the Legislative Assembly on any motion, it should not be dismissed. For this purpose, if the Article 356 needs to be amended it must be amended because discriminatory treatment is being meted out by the Centre against some of the State Governments.

These days the Congress is in power in the Centre, while the opposition parties are ruling in several States. In this way the Central Government adopts a discriminatory attitude against such States and misuses the Article 356 in its favour.

I would like to give one more suggestion. If a Governor proposes to dismiss a State Government, the proposal should have sufficient reasons for doing so. It should also be looked into whether the Government enjoys its majority in the Assembly or not. The real situation should also be examined before taking such a decision. In view of the support given by the people to different political parties in different States, it has become inevitable to bring a change in Article 356. The situation can be improved only after introducing this amendment. This amendment should be made to ensure the smooth running of the Central and the State Government in a democratic manner.

The misuse of this Article has also caused deterioration in our political character.

We should also ensure that the feeling of our political nationalism should not be hurt in any way. We should set up an ideal before the world so that we can present a true picture of democracy. For this, it is necessary to amend the Article 356. This is the only request of mine.

[English]

SHRI RAMESH CHENNITHALA (Kottayam): Sir, at the outset, I congratulate Shri Sudhir Giri for bringing this Bill.

This subject has been widely discussed, so, I do not want to take much time of the House.

The founding fathers of the Constitution had taken the care in framing this article and also when it was discussed in the Constituent Assembly it was discussed widely. This article has its own significance. The other hon. Members who have taken part in this discussion have mentioned and cited certain

examples. Of course, I agree with some of them. Abuse of article 356 cannot be tolerated. But this article has its own significance in the present political scenario. The unity and integrity of the country is the most important thing. As Shri K.V. Thomas has mentioned, certain socialist countries and some other countries in different parts of the world are saying that their countries are disintegrating. So, for the national unity, this article is highly necessary.

Some hon. Members were very critical of this article. They are urging for scrapping this article. I want to know if some State Assembly passes a resolution saying that their State will have an independent character then what will be the fate of our country? So there must be a provision in our Constitution so that the States should not say like that. There must be a strong Centre. At the same time, self-sufficient

I agree that this article should be used very carefully and it should not be used on mere political considerations. In the past — I do not want to cite examples; everybody knows — it was used like that. In 1957 this was first used in Kerala. But at that time the situation was entirely different. There was a vast movement. The State Government was not responsive to the people. The will of the people is the most important thing. There was complete breakdown of the law and order situation there. So, the Governor had reported it to the Central Government and subsequently this article was applied and the then Namboodripad Government was dismissed. If we go through the history, we will be able to see that an unprecedented situation was there at that time.

My point is that all the powers should not be centralised in the Central Government, States also should get some freedom. The Sarkaria Commission made lot of recommendations. 247 recommendations were made by the Sarkaria Commission. The States are facing lot of difficulties in running their governments. Let us take the case of Bills, Certain Bills, which are passed by the Assemblies, are sent to the Centre without

[*Sh. Ramesh Chennithala*]

any valid reason and which is unnecessary. The unnecessary delay in passing the legislation could be avoided. When I was a Member of the Kerala Legislative Assembly I came to know that one Bill was sent from the State which is pending in the Centre for the last twenty three years without any valid reason.

The amendment to the Constitution to give States powers to amend Parliamentary laws of States List is one of the most important recommendations of the Sarkaria Commission. A law should be enacted to ensure regular election and proper working of the local bodies. *Shri Oscar Fernandes* has rightly mentioned that certain State Governments are dismissing the local bodies. The local bodies are also a part and parcel of our democratic system.

MR. CHAIRMAN: Only one Member has to speak after him. The time allotted for this Bill is over. After the speeches, the Minister concerned will reply and also the mover of the Bill has to speak. Is it the pleasure of the House to extend the time allotted for this Bill by another half-an-hour?

SEVERAL HON. MEMBER: yes.

MR. CHAIRMAN: The time allotted to this Bill is extended by half-an-hour *Shri Ramesh Chennithala* may continue.

17.12 hrs.

[*SHRI P.M. SAYEED in the Chair*]

The role of the Governor is widely discussed. The Governor is supposed to be the Head of the State. But before appointing a Governor to a particular State, the States should be consulted on the appointment of the Governors. This is one of the important recommendations of the Sarkaria Commission. Certain other recommendations have also been made. Regarding dismissal of Governments, Sarkaria Commission suggested that the report of the Governor in

dismissal of the Government or dissolution of the Assembly should contain a clear statement of all material facts and it should be given wide publicity. Wide publicity means that the people must be aware as to why this Article is going to be used and why the Governor is sending the report. The people must be aware of the facts as to why there is a breakdown of the law and order situation and why the State Government is not in a position to carry out the normal functioning. The people of the State and other parts of the county must also know about it.

There is another point regarding deployment of armed forces. It is entirely the responsibility of the Centre and there is no doubt in that. But it must be done in consultation with the States. There are lot of complaints in this regard that the para-military forces are arbitrarily sent and the armed forces are sent by the Centre. These will demoralise the local police force also. There are lot of complaints in this regard. Proper consultation with the State Government is highly necessary. This is a sensitive matter.

The issues regarding Centre-State relations can, of course, be discussed in the inter-State council meetings. I would like to know from the hon. Minister — who is going to reply to this now — as to how many times the inter-State councils are meeting. These meetings of inter-State councils should be conducted regularly. Then only the matters can be discussed and sorted out.

The States are complaining about the sharing of the corporate tax, that they are not getting their due and what they are entitled to get. About the grants also, the grants should be given to the States in lieu of railway passenger fare and the States should be allowed to borrow from banks and given foreign exchange. This is what the Sarkaria Commission says. If you take the Budget of any of the States you will notice that all these are very much necessary. They are not in a position to carry out the normal functioning because of the lack of funds. So, support from the Centre is highly necessary and the economic support to which the States are entitled should be given.

Sir, progressive decentralisation is necessary because otherwise the States cannot function. I do not want to go into the details. Even regarding the All India Services there are disputes. We have to discuss about that also. On the one hand the Centre must be strong and on the other hand the States also should get more powers. Progressive decentralisation is necessary so that States can also function properly.

Sir, referring specially to the imposition of President's Rule under Article 356, the Sarkaria Commission has stated that this power was necessary, but it should be used very sparingly in extreme cases when all possible alternatives fail to prevent a breakdown of the Constitutional machinery.

Sir, we must act to invoke this Article with due care. The relationship between the Centre and States is the main thing. The States and the Centre should have good relations.

Lastly, I want to stress the point that the Inter-State Council is, of course, meeting and discussing, but the outcome is nothing. So, some statutory powers should be given to the Council so that they are vested with the power to see that the States get the due share to which they are entitled.

[*Translation*]

SHRI TEJ NARAYAN SINGH(Buxar):
Mr. Chairman Sir, I rise to support the resolution of the hon. Member Shri Sudhir Giri. The amendment in the article 356 of the Constitution is must. There is a lot of difference between the present condition and the condition at the time when the Constitution was framed. At that time there was the rule of only one party in all the States. Therefore the question of Constitutional crisis did not arise. All the State Governments were at the mercy of the Central Government and whenever the Central Government wanted to dissolve any of the State Governments it could have done so easily. Particularly it

was only one party Government therefore, there was no constitutional crisis. But as soon as the opposition party's Government came into existence the misuse of Article 356 has started. I want to submit that this misuse was not initiated by the opposition parties. At first, it was started by the Congress party. The people of opposition parties had raised their voice against this misuse and repeated by said that it was the violation of the law and the Constitution but the people of the ruling party, did not pay any heed to it. They always contended that, according to the report of the Governor, the law and order situation in the State is in danger, so the assembly or the Government is being dissolved at the report of the Governor. But today, if the same thing is repeated by the opposition the brethren of the Congress says that it is a wrong attitude. I want to submit that you have shown the way on which the people of opposition parties also have started walking because there is no alternative left with them but to follow the same path. In view of the present circumstances of the country, it is essential to amend the constitution whether the Government is to be dismissed or not, should be decided on the floor of the Legislative Assembly by its Member and not by the report of the Governor only. When this amendment is passed it will not be at the will of the Central Government to dismiss the State Governments. In this way, this right of the Central Government can be withdrawn. Now the days of the one party rule in all the States are over and different parties are in power in different States. Therefore, the relations of each and every States should be cordial with the Centre. It is the need of the hour. Therefore, it is also the need of the hour to support this amendment irrespective of the party affiliations. Some people may think that this proposal has come from the opposition parties so they may hesitate in giving their support to it but if this amendment is passed, every party will have the benefits of it. I hope that all the parties will be benefited. In view of the present circumstances, none can say, what will happen tomorrow. Therefore, I would submit to the people of all the parties that this proposal must be passed, unanimously.

[Sh. Tejnarayan Singh]

Mr. Chairman Sir, this is not a question of its and buts. I do not want to go into the details but the coalition Government in Andhra Pradesh with the support of the Left-Front was dismissed by Congress. Similarly, the same tactics were adopted in Manipur, Meghalaya and Kerala. I do not want to repeat this History. Therefore, I submit that this proposal should be supported by all the sections of the House and I also support it.

Mr. Chairman, Sir, some more things have come up. The Governor should be elected by the Members of the Legislative Assembly. It will be a right step. Now the Governor is imposed upon the State by the Centre and he gives his report according to the wishes of the Central Government because he is nominated by the Centre. So his report sometimes lacks fairness. If the Governor is elected by the Members of Legislative Assembly then I think that the Governor will give his decision according to the situation of the State and not according to the wishes of the Centre. So, I support that the Governor should be elected by the Members of the Legislative Assembly.

One of my colleagues has said that casteism is prevailing in Bihar. I want to say that there is no casteism in Bihar. On the contrary, if someone goes for casteism there, he is stopped and discouraged. I do not understand why that is called casteism? Casteism is one, where there is the rule of one caste, or a party is formed in the name of caste but it is not like this in Bihar. It is correct casteism was prevailing, but it was prevailing during the reign of the Congress and not during the reign of the opposition parties. In those days, all the Ministers of the Centre, all the Ministers of the State belong to the same caste. The small of casteism can be felt in the States ruled by Congress.

Mr. Chairman Sir, at last I support the resolution of Shri Sudhir Giri and would like to request the people of the ruling party that

if they want to keep up the cordial relations between the Centre and the States, they should also support this resolution. With these words I conclude. Thank you.

[English]

MR. CHAIRMAN: The Minister will reply now.

SHRI SOMNATH CHATTERJEE (Bolpur): Sir we know his standard speech. Let him say something new.

17.24 hrs.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M.M. JACOB): Mr. Chairman, Sir, I am thankful to the senior leader of the CPM who inaugurated my speech by his successful interruption. I will not be taking much time, because my erstwhile colleague, Shri Chitta Basu is wanting to move another Bill and he whispered the urgency of his Bill. But, this amendment moved by Shri Sudhir Giri is an important topic which, time and again, attracts the attention of a very large number of people of our country. There is no political party which at one time or the other did not comment on this article 356. But I am happy, even Shri Sudhir Giri during the course of his speech mentioned that the framers of our Constitution had in mind, the perception of unity and integrity of India while drafting this very provision. This is what the major point which we have to keep in mind. The unity and integrity of India is very important and everyone of us is committed to it.

But how is article 356 contravened to unity and integrity of India? It is very difficult to even imagine at the remotest piece of imagination. Our Constitution is one of the dynamic Constitutions in the world. It is not a static one. Even Pandit Jawaharlal Nehru when he championed the cause of Constitution, mentioned to the nation the possibility of constant changes, whenever changes were necessary, to suit the conditions exist-

ing in the country at a particular point of time. Well, that may be the reason why some of our friends say, let us have a fresh look at article 356. Essentially on this, there are several instances in our own history when the presiding officers had at one stage discussed about this article. They also came to certain conclusion, by and large supporting the retention of article 356. But there was some criticism. The Governors have also discussed in the Governors' Conference. I do not want to quote all these recommendations of the Governors and that of the Presiding Officers. The Administrative Reforms Commission also analysed this. All of them have agreed by and large that in a country like India where you have multi-party system, various political parties are likely to come to power in various parts of the country—at the Centre as well as in the States—and the President's power must be there unrestricted.

This Bill of Mr. Sudhir Giri is restricting the power of the President in exercising his power vested in the representative of the President. When you look back to the Constituent Assembly our Constitution was considered to be one of the best in the world, though some of our then leaders had said: It is the beggars' Constitution because you borrowed something from England, something from America and something from Soviet Russia. But this has proved to be a very living Constitution and not a dead one. This Constitution is able to face any situation that came up in the country.

SHRI SAIFUDDIN CHOUDHARY: Then, why do you say constitutional breakdown in the State?

SHRI M.M. JACOB: That is the Constitutional provision to see that there is no break-down. The Constitutional breakdown in a State must be averted to maintain the unity and integrity of the country. That is why, provision of article 356 is here. That is the dynamic part of it.

Finally when many of the leaders have stated, "A fresh look is required," the Gov-

ernment of India was very happy to appoint the Sarkaria Commission to analyse the Centre-State relations in toto. The recommendations of the Sarkaria Commission were discussed in the Consultative Committee of the Ministry of Home Affairs and discussed in the Lok Sabha and the Rajya Sabha. Opinions of several leaders were collected and pooled. It resulted in the constitution of the National Integration Council. The National Integration Council was constituted with a purpose to find out how best or how much the Sarkaria Commission recommendation has to be accepted or how best it should be adopted. The National Integration Council met in 1990 and elected a Sub-Committee and that Sub-Committee of the National Integration Council met on three occasions.

I must say for the information of the House that I am one who is very keen on the result of the National Integration Council's Sub-Committee's recommendations. As soon as the recommendations come, this Government will certainly take a very positive decision on the recommendation because that will be the sum result of the collective thinking and the wisdom of the country.

Several points were mentioned and about 18 speakers participated. I do not want to comment on all the speakers looking to the time at my disposal though I have got certain points noted down. One of the speakers has left also!

SHRI PIUS TIRKEY (ALIPURDUARS): I have raised a new point. What is your thinking on the concept of small States? Have you anything to say on that?

SHRI. M.M. JACOB: That is not within the purview of Article 356 which contains Governor's powers.

As you know, in 1957, the States Reorganisation Commission came out with certain recommendations.

MR CHAIRMAN: Are you talking about the smaller States Council?

SHRI M.M. JACOB: Yes. And we formed certain States on the basis of linguistic provinces. Then we had States formed on the ethnic necessity of 1950. That is a different subject. It does not fit in here. So, I do not want to go into it.

SHRI SOMNATH CHATTERJEE: You are referring again to the National Integration Council. You are right. My friends were telling about even sending para-military forces to a State. Para-military forces are not sent to a State under normal conditions. They will be sent only on the request of the State Government unless otherwise there should be very extreme situation. I do not think that such a situation has been warranted.

SHRI M.M. JACOB: We never invited such a situation. They are sent only at the invitation of the State Government concerned and the para-military forces are deployed on the specific direction of the State Government at that time. That is what we are doing. I do not think that criticism is any more valid on that point.

Another Member has raised a point about State's powers to legislate. Everybody in this House knows we have three Lists, the State List the Central List and the Concurrent List. Under the subjects that fall under the State List, the State Governments are empowered to legislate. Nobody restricts them from legislating on that.

Another friend of mine was saying that this Article was abused many times. Shrimati Malini Bhattacharya criticised it and she said "You abused this Article 356". That was her comment about it. Well, I do not agree to that. We have seen that the unity of the country is maintained. So, we always believed in the ground reality.

SHRI SOMNATH CHATTERJEE:*

SHRI M.M. JACOB: It is a joke for some but the nation is important for some others.

SHRI SOMNATH CHATTERJEE: *

MR. CHAIRMAN : All these things will not go on record.

SHRI M.M. JACOB: Nobody was there when the Governors were summarily dismissed. Nobody came and pleaded with them. Governors were summarily dismissed by one Government here. Governors then were on daily wages. Nobody commented on that. I do not want to comment either. But in 1977, even without any report of any Governor when the State Governments were summarily dismissed nobody criticised at that time in vehement language including the Members sitting on that side.

SHRI SAIFUDDIN CHOUDHURY: We criticised all the time.

SHRI SOMNATH CHATTERJEE: We got the approval of the Supreme Court. You are very enamoured of the Supreme Court. (Interruptions)

SHRI M.M. JACOB: Thank you. You always look at the end-result of it. You are found in that Company. Please don't speak about it.

MR. CHAIRMAN : The hon. Minister may kindly address the Chair instead of talking to the hon. Members. (Interruptions)

SHRI M.M. JACOB: Sir so, I do not think that the criticism of abuse of power under Article 356 by the Governor can be substantiated by any stretch of imagination.

Well, there was one point raised by Shrimati Malini Bhattacharya and several other Members about the dismissal of a Government in 1959 in Kerala. Everyone who knows the political history will understand that it was done based on the report of the Governor that the administration of the State was paralysed; the Collectorate did not move; the Secretariat did not move. There was almost a large siege around the secretariat. At such a situation, the Governor's report came and the Government was dismissed. There were some Ministers who refused to go out even from the Secretariat

even after the dismissal order came into force. That is a different situation. Now, I do not want to digress.

Then they asked: "What about Tamil Nadu?" Another question was asked. They said: "In Tamil Nadu you dismissed the Government without the Governor's Report. Yes we dismissed that Government. You know that Article 356 says:

"If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on.... etc etc."

(Interruptions)

MR. CHAIRMAN: Shri Manoranjan Bhakta, please do not disturb. We are already short of time.

SHRI M.M. JACOB: So a situation had arisen. What happened in Tamil Nadu? What was the result of that? Please look at the result. Soon after that, elections were held with a thumping majority people came to power. The dismissal was ratified. The subsequent events proved that there was something very wrong in that State at that time. Even Shri Rajiv Gandhi lost his life.... *(Interruptions)* Even a person like Shri Rajiv Gandhi lost his life because the ground reality in that State at that time was really warranting some careful attention. I do not want to use any other word. Even in Assam, what happened? The people have given the mandate for the new scenario, for the new set-up. They were also convinced about the action taken by the President at that time based on the recommendation of the Governor of the State.

SHRI SOMNATH Chatterjee: Will the election result justify the imposition?

SHRI M.M. JACOB: It is not a question of imposition. I said that the people's mandate was behind it subsequently. The people were against it. You have also to analyse

another situation. Suppose, there are three realities. Suppose, if nobody is willing to take the administration of a State after the election, if nobody gets the majority, what is the way-out? I would remind you at the situation that existed in 1965 in Kerala.

SHRI SOMNATH CHATTERJEE: Are we school children?

MR. CHAIRMAN: Please do not treat us like that sitting and talking. Let him reply. Mr. Minister how much time you may need?

SHRI M.M. JACOB: Maybe, five minutes.

MR. CHAIRMAN: For a moment, please take your seat. The time for this Bill has to be extended.

Is it the pleasure of the House to extend 10 more minutes for this Bill?

SEVERAL HON. MEMBERS: Yes.

MR. CHAIRMAN: With the consent of the House, the time for this Bill is extended for another 10 minutes. Mr. Ministers, please continue.

SHRI M.M. JACOB: I respect the sentiments of the House. I only want to point out three situations. One such situation is when nobody is in a state of majority. It happened in one State where no party was prepared to take the administration. If such a thing happens, then the Governor has to send a report and the Governor's rule is necessary. Even here we were running into such a situation. The majority party came to power. One party got the majority of the seats. But that party was not prepared to take the responsibility at that time. So, in such a situation you have to think about it. Or, if there is a break-down of the machinery then also you have to think about it. So, in all scenarios it is necessary to act Sir, I want to make one more correction. I said in the earlier stage, 'Sub-committee of the National Integration Council. It is the Sub-committee of the Inter-State Council and not

[Sh. M.M. Jacob]

the National Integration Council. This may be corrected.

With this I have only one request to you that we are again coming before you when the Report of the Sub-committee of the Inter-State Council is ready. We will have plenty of opportunity to discuss this. At this moment, I request the Mover of this Bill Shri Sudhir Giri to withdraw it. Discussion on particularly this Article is very necessary. It is good to review and discuss this Article. Nation is more important and everybody agreed to it. In view of all these factors, I hope while replying, Shri Sudhir Giri will take this into account and withdraw the Bill. We are happy that it is a live subject and this must be thoroughly discussed. Whenever time comes, let us discuss it again. Let us have certain standards in public life, let us have certain standards in political life. And only measure at the moment for maintaining the unity is to strengthen the hands of the President by giving him powers to exercise discretionary powers to exercise under varying circumstances. This is very important, because situations in one State may differ from the other State. In our country, varying situations exist, varying conditions exist and assessment has to be made. The situation says that power has to be retained. And that power is the essence of Article 356. With these words I conclude my speech and request Shri Giri to withdraw his Bill.

MR. CHAIRMAN: Now Shri Sudhir Giri to reply.

(Interruptions)

SHRI SOMNATH CHATTERJEE: Before Shri Giri replies I just want to say something.

Sir, the rule of law and the Congress(I) Government cannot subsist together. This is the experience of the people of this country (Interruptions)

SHRI SOMNATH CHATTERJEE: After this, he talked of the unity and integrity of this country. I want probity in political administra-

tion. This Government, right from 1950 onwards, never believed in any Article of the Constitution. No Article of the Constitution has been more misused than this. It is not my statement. That has been made by Justice Sarkaria.... (Interruptions)

MR. CHAIRMAN : Normally, after the Minister's intervention on the Bill, the Mover of the Bill gives the reply. Now you have come in-between. I do not know whether I have to give you permission to speak or not.

(Interruptions)

SHRI SOMNATH CHATTERJEE: With deference to you, Sir, I say that the hon. Minister, instead of giving all bogus excuses and lame excuses, should have accepted this Bill - at least the provision of the Bill which contemplates that the majority of the Council of Ministers will be decided on the floor of the House. You do not want that. (Interruptions)

MR. CHAIRMAN : You are speaking now as an exception.

(Interruptions)

SHRI SOMNATH CHATTERJEE: You have never said what is your view on this. What is the Government's view on this?

(Interruptions)

SHRI M.M. JACOB: I said it categorically that the restriction of the President's powers is not conducive...(Interruptions)

MR. CHAIRMAN: Somnathji, the Mover of the Bill will be replying. So, please conclude.

SHRI SOMNATH CHATTERJEE: In deference to your desire I concede. (Interruptions)

SHRI SUDHIR GIRI (Contai): Sir, I express my deep gratitude to the 18 hon. Members and also the hon. Minister who participated in the debate on my Motion for amendment of Article 356 of the Constitution of India. (Interruptions)

MR. CHAIRMAN: As an exception, Shri Somnath Chatterjee's speech will be there on record. But it will not be taken as a precedent.

SHRI SUDHIR GIRI (Contai): I hope the attention of the House has been drawn to the abuse of the extraordinary powers by the Centre in extraordinary situations.

Some friends have supported my Bill and some friends have opposed it.

Hon. Sudhir Sawant ji has mooted the question of constitutional validity of the Bill. He has opined that the Bill is void *ab initio* and *ultra vires* of the Constitution, because the Bill seeks to amend the Article 356 of the Constitution. And in his opinion the Bill for the amendment of Article 356 strikes at the very root of the basic structure of our Constitution.

Here, I vehemently contradict his view. Hon. Sawant ji has cited the decisions in the Keshavananda vs State of Kerala case. I would submit that in Keshavananda's case it was held that the objectives specified in the Preamble contain the basic structure of our Constitution, which cannot be amended in exercise of the power under Article 356 of the Constitution. What are these objectives? The objectives and the nature of the State is a Sovereign, Socialist, Secular, Democratic and Republic.

As regards the freedoms secured to the citizens of India, they are — Justice: Social, Economic and Political; Liberty of thought, belief, expression, faith and worship and Equality of Status and Opportunity. Further the people of India have decided to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

Thus my amendment does in no way infringe upon the nature of our polity. My amendment in no way affects the sovereignty of the country. It also does not affect the socialist functioning of the Government. Further the Secular, Democratic and Repub-

lican character of the State is in no way affected.

The freedoms and opportunities declared to be provided to the people of India have not been infringed upon. Rather my amendment, it will be admitted by you all, will pave the way for strengthening the basis of these individual freedoms and liberty. It will further strengthen the very basic structure of India — the Republican and Democratic character of the State.

I would further submit that Shri Sawant's objections are also not tenable in the light of the decisions of the Supreme Court in the *Minerva Mills vs Union of India* case, in as much as my amendment does not touch upon the power of judicial review.

The Bill is, therefore, not void *ab initio*.

Hon. Members have raised the question of misconception about the malafide of the Central Government. In this regard, I once again observe with all my force at the command that the Central Government has been abusing the extraordinary powers with an ulterior motive of bundling out the State Governments which differ in political creed with that of the political party ruling at the Centre.

What did the Congress Party do in the case of West Bengal in 1967, 1969 and 1971? What did the Congress Party do in the case of Kerala in 1959? What did the Chandrasekhar Government do in Tamil Nadu at the behest of the Congress Party in 1991? What has the Congress Party done in Manipur a couple of weeks ago? There are so many other cases. What did the Congress Party do in J&K? All these incidence clearly bring out the malafide intention of the Central Government. So, the less we speak of the malafide and fraud on the Constitution of India, imposed by the Central Government formed by the Congress Party, the better for the posterity. There are some people who cannot live without power at their command. And they can stoop so low that principles of democracy appear to them as nothing but

[Sh. Sudhir Giri]

useless ideas of some political thinkers.

Next comes the question of strong Centre. Whenever the promulgation under Article 356 is called in question, the idea of strong Centre is put forward to counter the criticism. It is projected in such a fashion that India can have a strong Centre if more and more power are centralised in Delhi, in the Central Government by denying powers to the States and through the military and the armed forces. This is not proper. This is not the right thing. We are surely second to none to have a strong Centre, a very strong Centre. But the Centre cannot be strong by taking away power from the States, by eroding power of the States. *Tangere* said:

"By developing all the body, if blood is gathered in the face, it cannot be called a good physique. Rather it is a symptom of fatal disease."

In fact, for a really strong Centre we very much need strong States and cooperation and coordination between them. For this purpose we need trust in the people and the good will of the people despite the existence of multi-religious and multi-lingual population as well as multifaceted culture and so on.

How can this be made possible? We have to ponder over the problems and find out the remedies. The Centre has certain functions to perform and the States have other functions to perform. There should not be any conflict or confrontation. To reach the goal there should be decentralisation of powers - political, administrative, legislative and financial - what has been done in West Bengal. However, I do not want to take much time.

It has been raised that without a strong

Centre there cannot be maintaining of unity and integrity of the nation. The question of secessionism has also been put forth. All these things relate to the concept of democracy and right to liberty and equality. Democracy, freedom and equality we cannot have without upholding the majesty of federalism. We will not be able to maintain our Parliamentary democracy which we have adopted from the UK if we do not cautiously guard against the disruptive forces.

Because of shortage of time, I cannot reply to all the questions raised by the hon. Minister and other hon. Members. I want that the hon. Members should accept my Bill. So my party demands that the provisions of this Bill be put to the vote of the House.

MR. CHAIRMAN: Shri Sudhir Giri, are you withdrawing your Bill?

SHRI SUDHIR GIRI: No Sir. I want that the motion should be put to the vote of the House.

SHRI SOMNATH CHATTERJEE: May I request that the sitting of the House be extended by a little more time because the voting process will take time?

MR. CHAIRMAN: Before I put the motion for consideration of the Bill to vote, I would like to say that this being a Constitution (Amendment) Bill, voting has to be by division.

Let the Lobbies be cleared -

Now the Lobbies have been cleared.

The question is:

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

The Lok Sabha divided:

603 *Const. (Amend.) Bill*
(Amend. of Art. 356)
by Shri Sudhir Giri

MARCH 13, 1992

Const. (Amend.) Bill 604
(Insertion of new Part XIA)
by Shri Chitta Basu

Patel, Shri Uttambhai Harjibhai

18.04 hrs

Pradhani, Shri K.

ADVOCATES (AMENDMENT) BILL*

Rao Shri J. Chokka

(Insertion of New Section 24 B)

Sai, Shri A. Pratap

[English]

Shingda, Shri Damu Barku

SHRI DATTATREYA BANDARU (Secunderabad): I beg to move for leave to introduce a Bill further to amend the Advocates Act, 1961.

Singh, Shri Dalbir

Singh, Kumari Pushpa Devi

MR. CHAIRMAN: The question is:

Thomas, Prof. K.V.

"That leave be granted to introduce a Bill further to amend the Advocates Act, 1961."

Tytler, Shri Jagdish

Umbrey, Shri Laeta

The motion was adopted.

MR CHAIRMAN : The result of the division is:

Ayes : 23

Noes : 34

SHRI DATTATRAYA BANDARU: I introduce the Bill

18.05 hrs.

CONSTITUTION (AMENDMENT) BILL

(Insertion of New Part XIA)

The motion is not carried in accordance with Rule 157 of the Rules of Procedure and in accordance with the provisions of Article 368 of the Constitution of India.

The motion was negatived.

[English]

(Interruptions)

SHRI CHITTA BASU (Barasat): I beg to move:

MR CHAIRMAN: Now, the Home Minister, Shri M.M. Jacob has to make a statement. So, is it the pleasure of the House to extend the time for ten minutes?

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

SEVERAL HON. MEMBERS: Yes.

Mr. Chairman Sir,.....

MR. CHAIRMAN: You may continue next time.

*Published in Gazette of India, Extraordinary, Part-II, Section, dated 13-3-1992.

*Besides, the following member also recorded his vote for Noes: Shri K. Thulasiah Vandayar.