

The question was put and the motion was adopted

SHRI SHRIDHAR WASUDEO DHABE: Sir I introduce the Bill.

THE CONSTITUTION (AMENDMENT BILL, 1979 (to Amend Article 233)—contd.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): Now we take up the Constitution (Amendment) Bill, 1979 (to amend article 233) for further consideration and passing. The Law Minister last time was replying to it. He will continue.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI JAGANNATH KAUSHAL): Mr. Vice-Chairman, Sir, last time when the House adjourned, I was replying to the Bill. I had given certain reasons while submitting that the Bill was suffering from a number of contradictions. On the merits I had not yet stated my reasons. Well, one other point which I wish to bring to the notice of the hon. House is this. The Mover of the Bill has not satisfied as to when a District Judge is elected, for how long he will be elected. Is he elected for his whole life? Is he elected till he attains the age of superannuation? The Bill is silent over these aspects. Obviously, mind has not been applied to these questions. And then my esteemed friend who has vast experience of the Judiciary as a member of the Bar, then as a Judge, and then as a Chief Justice, said that probably the Member had forgotten that his is a transferable post. Once a District Judge has been elected for District 'A' and he is appointed there, after three months the High Court might feel that this man should be transferred to District 'B'. Then, what will the electorate think of that situation? The electorate will think, "We elected this particular District Judge in this District 'A', but he has been transferred." So, peculiar type of situations do arise

The only reasons which the hon. Mover of the Bill advanced in support of the Bill was that there should be democratisation of the judiciary also. And according to him the elected judiciary will be more democratic. I feel this is again a contradiction. Probably the hon. Mover is trying to push the doctrine of democracy too far.

He has been able to cite the instance of one state of the United States of America. Probably he mentioned California. But again he had no experience as to whether the experiment has succeeded or not. We have the authority again of my hon. friend Justice Mitra. He said that from the United States very senior members of the Bar had met him and that each one of them had been complaining that this system of choosing the District Judge through election had completely failed. It has not satisfied anybody.

SHRI SHANKAR PRASAD MITRA (West Bengal): I was told that in one case a person who had not taken any law degree at all had been elected as Judge.

SHRI JAGANNATH KAUSHAL: That can happen.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): That is people's justice.

SHRI JAGANNATH KAUSHAL: Then he was quoting instance from here also there, and he was taking about the mother of democracy The United Kingdom. But I do not suppose that they have elected judiciary even in that country. Therefore I thought there is not much to be elaborated upon. The very idea of having elected judiciary would in fact defeat the concept of judiciary.

Again I am quoting my friend because his experience may be greater than mine, because, my experience is only at the Bar but his experience is on the Bench also and is ranging for a number of years. Again Justice Mitra said, "There are three essential ingredients of judiciary—

[Shri Jagannath Kaushal]

impartiality and competence". Do we really seriously believe that a person elected will be as impartial as a person who has come through a process of selection either by the Public Service Commission or by a Bench of the High Court? Experience indicates that the people who elect their representative always feel that whenever they go to their representative he will be nice, that he will try to help them, that he will try to oblige them. Surely, we cannot expect this of Judges.

SHRI BUDDHA PRIYA MAURYA (Andhra Pradesh): Mr. Minister, we elected people are also impartial.

SHRI JAGANNATH KAUSHAL: I am asking which of the two you would prefer. Impartiality, I do not say, is the monopoly of A, B or C. But it is inherent in the situation. With humility I am saying this because I have also had experience of being an elected person as well as being on the Bench also.

DR. RAFIQ ZAKARIA (Maharashtra): I do not think your impartiality has been affected.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): He is doubly impartial.

SHRI JAGANNATH KAUSHAL: My submission, therefore, to the House would be that even on the basic assumption I am not agreeing at all. Therefore, this Bill—I cannot even make a request to the mover to withdraw the Bill as he is not here—will have to be voted down.

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): The mover of the motion is not there to reply. So I am putting the question. The question is:

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

The motion was negatived.

The Constitution (Amendment) Bill, 1980
(to amend articles 83 and 172)

THE VICE-CHAIRMAN (SHRI R. RAMAKRISHNAN): The next Bill is the Constitution (Amendment) Bill, 1979 (insertion of new article 165A), in the name of Shri Shiva Chandra Jha. He is not present. The next five Bills are also in the name of Shri Shiva Chandra Jha. The next Bill is the National Committee for Haj and Ziarat Bill, 1980, in the name of Shri Syed Shahabuddin. He is not present. The next Bill is in the name of Shri Jha. The next Bill is the Constitution (Amendment) Bill, 1980, Shri J. P. Mathur.

SHRI JAGDISH PRASAD MATHUR (Uttar Pradesh): Mr. Vice-Chairman Sir, I beg to move:

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

श्रीमन्, 1980 में मैंने यह बिल रखा था। उस समय देश की परिस्थिति काफी बदल चुकी थी।

श्री बुद्ध प्रिय मौर्य (मध्य प्रदेश):
किसके बारे में है ?

श्री जगदीश प्रसाद माथुर : भाषक ही बारे में है।

उन परिस्थितियों को देखते हुए ही मैंने यह बिल रखा है। बिल के उद्देश्य से ही आपको स्पष्ट होगा कि मेरा लक्ष्य क्या है। स्टेटमेन्ट आफ भावजेक्ट्स एंड रीजंस में मैंने जो कहा है मैं उसका थोड़ा पढ़ देना चाहता हूँ ताकि आपको पता चले कि इसमें क्या है। इसमें है कि :

"There has been a visible trend in our country that the ruling party at the Centre dissolves the Lok Sabha or the State Assemblies to suit its party interests. It is desirable that this trend