

इन सदन के दो माननीय सदस्य नौ तारीख को गिरफ्तार हुए हैं। उसकी सूचना...

(Interruptions)

MR. CHAIRMAN: That is a different thing. (Interruptions). That is a different thing.

श्री रामेश्वर सिंह : सभापति महोदय, इन सदन के 3 माननीय सदस्य श्री मन्नालारयण रेड्डी, श्री हृदयदेव नारायण यादव और श्री सत्यपाल मलिक ये सब 9 तारीख को गिरफ्तार हुए हैं...

(Interruptions)

अभी 6000 लोगों के साथ मैं...

श्री सभापति : रामेश्वर सिंह जी...

श्री रामेश्वर सिंह : इसको सदन में बताना चाहिए। सभापति जी, अगर सरकार ने आपको रिपोर्ट नहीं दिया है....

श्री सभापति : नहीं, वह आ गया है।

श्री रामेश्वर सिंह : ...क्योंकि यह मुल्क के अस्तित्व का, मुल्क में जनतंत्र का मवाल है।

श्री सभापति : मिस्टर रामेश्वर सिंह जी, बैठ जाइए।... (Interruptions).

I am sorry, your question has to wait. The receipt of the information about Mr. Reddy's arrest and the other arrests.. (Interruptions).

SHRI B. N. BANERJEE (Nominated): Is there any change in the procedure? First comes the Short Notice Question, then comes privilege.... (Interruptions).

MR. CHAIRMAN: You are quite right. I will finish this question first and then take up this one. I have got everything with me now. I have noted it, I note when the thing comes to me—not only the date but I also

write the exact time; I look at my watch. I know that our Reddy had been arrested—long before this came.. (Interruptions). Short Notice Question.

SHORT NOTICE QUESTION AND ANSWER

Supreme Court judgement in the Minerva Mills Case

SHRI G. C. BHATTACHARYA: Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state whether Government propose to take suitable measures to nullify the effect of the Supreme Court judgement in the Minerva Mills case which undermines the role of Parliament given to it by the Constitution of India?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHIV SHANKAR): On the 9th of May, 1980, the Supreme Court pronounced its order in the Minerva Mills case striking down sections 4 and 55 of the Constitution (Forty-second Amendment) Act on the ground that they were beyond the amending power of Parliament. These sections amended Article 31C and inserted clauses (4) and (5) in Article 368.

The Court delivered its reasons for this Order on the 31st of July, 1980. All the Judges concurred in striking down the amendments to clauses (4) and (5) of Article 368, whether Bhagwati dissented on the question of the validity of the amendment made to Article 31C.

Certified copies of the judgement became available to Government on the 6th August, 1980 and a decision as to the measures called for by reasons of the judgment can be taken only after the judgments have been examined in detail. This excess

has not yet been completed but the affirmative answer to the question deserves favourable consideration.

SHRI BHUPESH GUPTA: This question we should deal with a little more.

SHRI G. C. BHATTACHARYA: Sir, as far as I remember, even before seeing the reasons the Law Minister gave a statement that they will ask for a review. It is such an important matter, Sir. Now he is saying that they have not got even the copies of the judgment. He is saying that they are now examining this. How you made that statement then that you will ask for a review? This is number one. Secondly, so far as the judgment is concerned, on such a vital matter, the Law Minister, who has got every concern for the down-trodden—and of course, your Prime Minister who is daily shouting from the house-tops that the down-trodden are to be protected and the common man are to be...and what not. What is this judgment? This judgment has been passed in such a way. You have been the Chief Justice of this country, Sir. Neither any conference was held, nor any draft was circulated. When Mr. Palkhiwala says about sections 31 and 31C... (*Interruptions*) How did the Judges of the highest court of this country come to the conclusion, and that, too, in a manner which is unprecedented?

MR. CHAIRMAN: You are a lawyer. You know that you cannot discuss these matters rather too openly.

SHRI G. C. BHATTACHARYA: I am only saying this, Sir. Now that we have a presiding officer who was not only a judge for many years but also the Chief Justice... (*Interruptions*) At least you will also give some importance to the precedents, practice and other things. The point is not involved. There is a confession from

Mr. Palkhiwala regarding Sections 31 and 31(c). The Minerva Mill's case has to be decided on that basis. This Supreme Court judgment on 31(c) will have no effect whatsoever on the Minerva Mills case. I want to know what is the indecent haste and hurry. Sir, I am reading one thing from the Kesvanand Bharati case . . .

MR. CHAIRMAN: I am afraid Mr. Bhattacharya that there is an article in the Constitution saying that the conduct of a Judge shall not be discussed on the floor of the House. I will have to expunge a lot of what you have said under that article. You please keep the Judges out.

SHRI G. C. BHATTACHARYA: I am keeping the Judges out. Now, the question is of the judgment and the purpose behind it. What is happening? With one judgment.....

SHRI KALYAN ROY: The Judges include industrialists.

MR. CHAIRMAN: My own experience of 12½ years is that the conferences are very few. In fact, they were so few that I can count them on the fingers of one hand. Otherwise, we only circulated our judgments. I am quite sure that my own judgments were sometimes never read by my colleagues. In fact I could have glued together the pages and they would have come back without being opened. There have been Judges who received it at 10 O'clock and I got it back at 10.15.

SHRI DINESH GOSWAMI: You have to expunge your own remarks.

SHRI SHIV SHANKAR: Sir, this will raise further controversy.

AN HON. MEMBER: Let it go, Sir.

SHRI LAL K. ADVANI: Sir, the Chairman or the Speaker or the Presiding Officer never expunges his own remarks.

MR. CHAIRMAN: Mr. Advani, I may have said something which might be referring to my own old colleagues some of whom are no more.

SHRI BHUPESH GUPTA: I suggest that you authorise some of us, say about 5 of us, to expunge your remarks.

MR. CHAIRMAN: It will be a very good idea, Mr Bhupesh Gupta.

SHRI G. C. BHATTACHARYA: I have referred to it because this is a very important issue. This judgment will now decide the fate of this country. Where will this country go? This country is at the crossroads. A system which is dying, the capitalist system of Mr. Palkhiwala's Philosophy which is a dying system, cannot solve any problem. For 30 years we have experimented. With this system we have failed to serve anyone. (*Interruptions*) Now, when the Government...

MR. CHAIRMAN: What is the question?

SHRI G. C. BHATTACHARYA: I am only making my submissions so that the questions may come later.

SHRI KALYAN ROY: Judges are not acting in the interest of the country.

SHRI G. C. BHATTACHARYA: Now, an amendment to Section 31(c) has come which gives primacy to Directive Principles over the Fundamental Rights. It means that the Government could have taken some steps so that they may have protection of law. Now the steps have been struck down by the courts. Is this the intention? I do not know how far they will have implemented even if this article 31(c) had been there. Now, even that instrument is not there. That instrument has been wiped out. What will happen in that case? The Minister has shown indifference by

his statement. What will happen? You cannot solve the problems by the present system. Article 31(c) gives an instrument to change this system and to take certain steps for the welfare of the millions. You may kindly see, Sir, this is the judgment I have got, and if necessary, I may give it to you. The present system is, in the Bharati's case it is said that the rights of a few should give way to the rights of millions. He says the rights of millions. The Directive Principles are the rights of millions, and the Fundamental Rights are the rights of a few.

MR. CHAIRMAN: Yes.

SHRI G. C. BHATTACHARYA: Now, it is in topsy-turvy. This is one thing.

MR. CHAIRMAN: You put the question.

SHRI G. C. BHATTACHARYA: The second thing is, the Chief Justice . .

MR. CHAIRMAN: Again you are referring to the Chief Justice

SHRI G. C. BHATTACHARYA: Sir, so far as 31(C) is concerned, I am not questioning those Fundamental Rights. My friends would not misunderstand me. He says the rights of millions in reference to the Directive Principles, not with other Fundamental Rights.

MR. CHAIRMAN: Mr. Bhattacharya

SHRI G. C. BHATTACHARYA: Those Fundamental Rights mean civil rights, freedom of speech, and I should not be misunderstood.

(*Interruptions*)

SHRI KALYAN ROY: This entire judgment is against the working class, against the poor peasantry.

(*Interruptions*)

MR. CHAIRMAN: Please sit down. Let me answer Mr. Kalyan Roy. There

no protection to the Prime Minister any of us in the Constitution. There is a protection only to the Judges in the Constitution. We have all taken the oath to uphold the Constitution, you as well as I. And I am upholding the Constitution. And whether you want to uphold it or not is a different thing.

SHRI N. K. P. SALVE: Sir, I am on article 121 of the Constitution. The rights of the Parliament cannot be unduly abridged. Then we are on the question of a philosophy of a judgment. Then we are not going by article 121. Article 121 is only restricted.

MR. CHAIRMAN: The philosophy of a judgment can be questioned.

SHRI G. C. BHATTACHARYA: That is what I am doing, Sir.

SHRI KALYAN ROY: That is what he is doing (*Interruptions*)

SHRI N. K. P. SALVE: I am on my second point, Sir.

MR. CHAIRMAN: Please sit down.

SHRI N. K. P. SALVE: I am on a point of order.

MR. CHAIRMAN: A point of order does not arise out of a question. Please sit down. No discussion shall take place in Parliament with respect to the conduct of a Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion...

SHRI G. C. BHATTACHARYA: I am questioning about the judgment, I am discussing the judgment.

MR. CHAIRMAN: Let me explain, Mr. Bhattacharya. The conduct of a Judge is to be judged from his judgment and not from anything else.

SHRI G. C. BHATTACHARYA: No, Sir. I respectfully submit that if the judgement cannot be discussed, then, it will be too wide an explanation...

MR. CHAIRMAN: The judgement can be discussed.

SHRI G. C. BHATTACHARYA: That is what I am doing.

MR. CHAIRMAN: You are discussing the judgement of four judges on the basis of what one single Judge has said.

SHRI G. C. BHATTACHARYA: No, Sir I am only saying: What is the philosophy here? What is the philosophy there in the Kesavanand Bharati case? And what is the philosophy in the Minerva case. I am on that only.

MR. CHAIRMAN: Just a minute.

SHRI N. P. K. SALVE: Sir, without listening to what I have to say, you are pronouncing your verdict. Kindly listen to what I have to say

MR. CHAIRMAN: What do you want to say?

SHRI N. K. P. SALVE: What I want to submit is something different. Sir, if the judgement itself refers to a procedure and there is a discussion about certain procedure which has been followed, are we debarred from discussing the procedure, Sir?

MR. CHAIRMAN: Which judgement says that?

SHRI N. K. P. SALVE: This judgement of Mr. Justice Bhagwati refers to a certain procedure which has been followed in tradition of this judgement. If we are debarred from discussing the judgements then we are certainly entitled to discuss everything that is contained in the judgement, including the procedure which he referred to.

SHRI BHUPESH GUPTA: Sir, I have a submission to make.

SHRI N. K. P. SALVE: Sir, the question is, you are sitting here as the custodian of the democratic rights of this country.

MR. CHAIRMAN: Yes, quite true.

SHRI N. K. P. SALVE: Articles 121 and 122 are there. Article 121 safeguards the rights of the Supreme Court from the Parliament encroaching upon them. And article 122 says that the Parliament's rights have to be safeguarded by the Supreme Court.

Now, where we say that there is encroachment, there it is. (*Interruptions*). Kindly listen to me. You are in too much of a haste.

MR. CHAIRMAN: You are in too much of a heat.

SHRI N. K. P. SALVE: Sir, let me formulate my points and come to you. What I am submitting is that sometimes it is such a border line case that it is impossible to separate what a judge writes in a judgement from the judge himself, and while you are speaking on the judgement, willy nilly you may be commenting, while being within your rights on the judgement, which may ostensibly appear to be a comment on the judge. In such a case the right of Parliament cannot be abridged. It is my respectful submission. You have to determine this now whether while I am within my right to comment upon a judgement and this judgement takes in the procedure, over which there is elaborate mention of Mr. Justice Bhagwati, if we are going to mention about it, then, Sir, willy nilly, there is going to be some reflection about the conduct of the four judges, which is there not because we want to comment on them but because the judgement comments on them, and therefore, we are entitled to comment in this House. That is my submission and I want your ruling.

(*Interruptions*)

MR. CHAIRMAN: We have into a question which really does arise by dragging in the remarks one judge and comments on the

SHRI G. C. BHATTACHARYA: This is the basis. This is the fundamental question.

MR. CHAIRMAN: No, it is no

SHRI G. C. BHATTACHARYA: Sir, you kindly give me one minute. Let me quote from the Bharati's case (*Interruptions*). I will quote from the judgment. Then only, you may kindly say whether what I am saying is on my own. Kindly see page 126 of the cyclostyled judgment, which has been given us, the lawyers. This is a quotation from the Bharati's case where Justice Chandrachud as he then was now the Chief Justice, says:

"If the State were to create conditions in which the fundamental freedoms could be regarded as all, the freedom of the few will be at the mercy of the many, and the all freedoms will finish. In order therefore, to preserve this freedom, the privilege of few must part with a portion of it."

When I am saying this, I am saying it only from the point of view of Justice Chandrachud as he then was now Chief Justice Chandrachud. Now in that Kesavananda Bharati case what is he saying? He is saying what he has said.

MR. CHAIRMAN: What is there? You are helpless and I am helpless.

SHRI G. C. BHATTACHARYA: What is the helplessness for? If a fair commentary can be given on a judgement by outsiders why cannot the sovereign body like Parliament even discuss it?

MR. CHAIRMAN: Because there is no article in the Constitution preventing you from saying anything

you like outside the House. But so long as...

SHRI G. C. BHATTACHARYA: But there is a law of defamation.

MR. CHAIRMAN: No, I am ruling it out.

SHRI G. C. BHATTACHARYA: You may rule it out. You must have known about Mr. Mohan Kumaramangalam's commitment of a judge and other things. (*Interruptions*). Only the other day in the Lok Sabha Justice Bhagwati's conduct was discussed. (*Interruptions*).

MR. CHAIRMAN: Mr. G. C. Bhattacharya, I will decide it according to my judgement and I personally think that the conduct of a judge should not be discussed at all.

SHRI DINESH GOSWAMI: Sir, you kindly give your ruling only after listening to some of our points. Sir, what we want to make out is that under the constitutional provision we cannot discuss individually the conduct of a judge. That is fair enough. But here the question is where Parliament's right is being infringed by a judgment, whether Parliament has the right to discuss the judgment or not? Now, here if we say that the judges come from a particular category of persons or because of their background and approaches... (*Interruptions*). My submission is that we have got the right to go into the background of the personnel of the judiciary.

MR. CHAIRMAN: Mr. Goswami, please, sit down. It is not the first time that it has been said by judges that the right of amendment is somewhat restricted by reason of the Constitutional provision themselves. And the first person to say this was myself and I know that it has led to all this and, therefore, I cannot say that the right of the judges to say that the Constitution cannot be amended in every way is something

which is either wrong for judges or it is not to be said by judges. There is no clash between the Parliament and... (*Interruptions*). That is all right; you are entitled to... (*Interruptions*).

SHRI DINESH GOSWAMI: It is the Supreme Court verdict; that cannot take away... (*Interruptions*).

MR. CHAIRMAN: Mr. Goswami, just a minute. Please remember one thing which is fundamental that I am the Chairman of this House. What I rule is correct. If my ruling is to be violated like this...

SHRI DINESH GOSWAMI: We are submitting to your ruling, but...

MR. CHAIRMAN: What are you doing otherwise?

SHRI G. C. BHATTACHARYA: No, we all submit to your ruling.

MR. CHAIRMAN: I rule that you shall not discuss the conduct of the four judges in the light of what Mr. Bhagwati has said. It is a matter between Mr. Bhagwati and the four judges. We cannot enter into it.

SHRI G. C. BHATTACHARYA: No, it is not a matter for the judges. It is not the property of the judges. This is unfair.

MR. CHAIRMAN: You have heard my ruling. You have heard my ruling. I shall go very clearly into the records and my red pencil will rule out everything... (*Interruptions*).

SHRI KALYAN ROY: As a protest against your ruling, we are walking out.

[At this stage, the hon Member left the Chamber]

SHRI DINESH GOSWAMI: We are bound by the ruling... (*Interruptions*)

MR. CHAIRMAN: It is a Question Hour... (*Interruptions*).

SHRI G. C. BHATTACHARYA Sir,...

MR. CHAIRMAN: Mr. Bhattacharya, you will ask your question and nothing more.

SHRI G. C. BHATTACHARYA: Yes, I am asking a question.

MR. CHAIRMAN: And nothing more. Will you listen?

SHRI G. C. BHATTACHARYA: I am listening and I am trying to abide by what you are saying. But when you say that it is a private thing between four judges on the one side and Mr. Bhagwati on the other, to that I am saying that it is a part of the judgement and it is the property of the public, of the 60 crores of people of India, and I have got every right to comment on it and if ... (*Interruptions*).

MR. CHAIRMAN: You have had a very fine, say, if I may say so. You have unburdened your heart; but let me tell you...

SHRI N. K. P. SALVE: Sir,...

MR. CHAIRMAN: Please sit down, Mr. Salve. When I am standing, nobody will speak. Don't record anyone else when I am standing.

SHRI N. K. P. SALVE: You are not the authority higher than May's Parliamentary Practice. You are not above this. You will have to listen to May's Parliamentary Practice... (*Interruptions*).

MR. CHAIRMAN: I am the one who has been very fair; don't start challenging me and my ruling... (*Interruptions*).

SHRI G. C. BHATTACHARYA: You are not allowing under Parliamentary practice to discuss; Parliament's right has been taken away. (*Interruptions*). Kindly see what we are saying... (*Interruptions*).

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Mr. Chairman, I have raised my hand on a point of order for half an hour.

MR. CHAIRMAN: Point of order does not arise.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Just hear me. When I came to this House, I solemnly pledged myself that I will not be a party to the disorder but I am pained to find that today I have to get up for the first time after keeping my hand raised for half an hour. Please listen to us. Please listen to my point of order. To nobody is the cause of the independence of the judiciary dearer than to me. To nobody is the cause of the honour of the judges dearer than to me. Hence, please listen to me. I am not one of those who will deride any of the judges because I have personal regard and great respect for all the judges. Article 121 says:

"No discussion shall take place in Parliament with respect to conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided."

What I am saying is that what article 121 prohibits and, rightly so, is the discussion on the conduct of a judge. It has really nothing to do with the judgement because it would indeed be a sad day if the judgements of the Supreme Court were precluded from being discussed on the floor of this House or in the Lok Sabha, because, it may be said that indirectly or incidentally, you are also discussing the conduct of the judges. Now, I would give a simple case. I will deal with it because I have some supplementaries to ask from Mr. Shiv Shankar on this Short Notice Question. Sir, kindly look at article 145(3). It says that any question of

substantial law, particularly, as regards the interpretation of the Constitution shall be decided by a Bench of five judges. Assuming that it is decided by a Bench of four judges presided over by the Chief Justice of India, should we or should we not discuss it? We are not discussing the conduct at all. We are discussing the Constitution. The jurisdiction of the Supreme Court flows from the various provisions contained in article 32 and other articles of the Constitution. Hence, it is not correct. Please, for God's sake....

MR. CHAIRMAN: Not for God's sake, but for the sake of this House.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: For the sake of this House, and more so, for the sake of the judges, I would request the Chair to permit a free discussion on the judgement, because,....

MR. CHAIRMAN: Discussion is a very different thing. But this is Question Hour.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Questions cannot be raised except on the judgement.

MR. CHAIRMAN: You cannot. (*Interruptions*).

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Supplementaries cannot be raised except on the judgement.

MR. CHAIRMAN: But supplementaries on the judgement, that is to say, not dealing with the conduct part.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Sir, we are discussing the judgement of the Court, not the conduct of the judges. This is my view of article 121. We are discussing the judgement of the Court and not the conduct of the judges.

SHRI N. K. P. SALVE: Sir, law is the same in England and in India. There was a ruling in England latest in 1973. This is in three lines. This is what is laid down in May's Parliamentary Practice. I would implore of you to kindly consider this in your calm moment.

MR. CHAIRMAN: I am calm. You are not calm (*Interruptions*). I quite see Mr. Viren Shah. Fortunately, I have a very indulgent heart which is not the case with the hon. Members.

SHRI G. C. BHATTACHARYA: We want your indulgent mind.

MR. CHAIRMAN: They want the protection of the Chair all the time. But I am very sorry to say that the Chair wants more protection in this House than any hon. Member.

SHRI G. C. BHATTACHARYA: Sir, there is no question of any attack. (*Interruptions*). We are more concerned for the prestige of the Chair. (*Interruptions*).

MR. CHAIRMAN: I have just now said that I have a very indulgent heart....

SHRI G. C. BHATTACHARYA: You should also have an indulgent mind.

MR. CHAIRMAN: . . . and I can bear more than the hon. Members can, I have seen this. Now, Mr. Salve, you have had your say. What does May say?

SHRI N. K. P. SALVE: On 4th December, 1973 . . . (*Interruptions*).

MR. CHAIRMAN: Mr Goswami, please sit down (*Interruptions*). Mr. Goswami, let us not add fuel to the fire. If we can consider the question with, what I say, calmness, I think we will do more good to the country than you have been able to do up till now. I have been one full year in this

House. On the 9th of August last year I presented my nomination paper. I had much hopes, but I think I am yet to learn many things.

Yes, Mr. Salve, I will give you one minute.

SHRI N. K. P. SALVE: I am quoting May's Parliament Practice p. 428, it is said:

"On 4th December, 1973, Mr. Speaker ruled that it can be argued that a Judge has made a mistake, that he was wrong, and the reasons for those contentions can be given within certain limits, but reflections on Judge's character and motives cannot be made except on a motion."

This is the law laid down.

MR. CHAIRMAN: Mr. Salve, the words are "motive and character". The words of our supreme document are, "the conduct of any Judge". It is said, "the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties..." (*Interruptions*). Listen to me. When a Judge writes anything in the judgment, you cannot question it, you cannot say that another Judge has said something. Otherwise, one Judge will be able to overrule four Judges.

SHRI N. K. P. SALVE: There is another article in the Constitution which says that the rules of procedure in this House are going to be the same as they are applicable in England.

MR. CHAIRMAN: Yes, Yes, I know it, Mr. Salve. It has been said by Pope, "A little learning is a dangerous thing. Drink deep, or taste not the Piercean spring." (*Interruptions*). Let me explain to you. The article to which you are referring is connected with only the privileges of the House, that they shall be the same as those of the House of Commons on the day our Constitution commenced.

SHRI N. K. P. SALVE: Is this not the privilege of the House?

MR. CHAIRMAN: No, it is not the privilege of the House.

SHRI G. C. BHATTACHARYA: May I just make one submission? Could you say whether you have come across any fair comment on any judgment.

MR. CHAIRMAN: Mr. Bhattacharya, it has been said about the Judges that justice is not a cloistered virtue. The wrong-headed are entitled to discuss it and even to criticise so long as they do it within the bounds of decorum. (*Interruptions*). Just a minute. In this House there is a brake upon the discussion. The brake is furnished by the Constitution, which is superior to you, to me, to the Supreme Court and to everybody in India and when it says that the conduct of a Judge shall not be discussed on the floor of the House and when you used this statement of Mr. Bhagwati against the other four Judges, it is my duty to stop you and I shall do so at any point and at any cost.

SHRI G. C. BHATTACHARYA: Yes Sir, but the point is, it is for you to decide whether we are trying to discuss the conduct.

MR. CHAIRMAN: What is discussing the conduct will be for me to decide.

SHRI G. C. BHATTACHARYA: But you will decide it after hearing us. If that rule is there that the judgment cannot be discussed at all...

MR. CHAIRMAN: I think I have entered into more discussion with you than anybody I care to discuss, especially when my right is to rule and I rule that you are out of order.

SHRI G. C. BHATTACHARYA: I am discharging my duty, as you are discharging your duty. I am also dis-

charging my duty. I am not an individual. I am a Member of Parliament. So when I am saying, I am voicing the grievances of 65 crore people of the country and also their hopes and aspirations. (*Interruptions*). I say it is partisan. It is absolutely baseless. This is absolutely baseless. (*Interruptions*).

MR. CHAIRMAN: Have you finished or not? (*Interruptions*)

The House is adjourned till 2 o'clock.

The House then adjourned for lunch at fifty minutes past twelve of the clock.

The House reassembled after lunch at two of the clock, Mr. Deputy Chairman in the Chair.

MR. DEPUTY CHAIRMAN: Mr. Bhattacharya. Please put a specific question.

SHRI G. C. BHATTACHARYA: Sir, through you I am putting this question. Sir, the Government is well aware that on 9th May only there was a one line order that this is *ultra vires* and that reasons will be given later on. May I tell the hon. Law Minister that on such a vitally important matter such an order has been passed? Not only Parliament's right has been curtailed, but also article 31C—a Fundamental Right—has been struck down. This order on such a vital matter which directly concerns the poor, teeming millions of this country will put a great handicap before the Government. If there is no recent order whether that order is valid or not, if that is a nullity or not, then by what time will it come? Once you made a statement that you will review it after 9th May. Now you are saying that—although you have got such a judgment—you are examining. But

will you please tell me—because of such circumstances and because of the importance—how long you will take to take effective steps to nullify the judgment in the Keshavananda Bharati case . . .

SHRI SHIV SHANKAR: You mean the Minerva Mills case.

SHRI G. C. BHATTACHARYA: Yes, the Minerva Mills case. I am sorry; I thank you for the correction.

Secondly, my submission is this. If you delay this, there is a bunch of cases concerning land reforms, and if the Minerva Mills case is in force, then all those land reform laws will go. (*Time bell rings*). Therefore, the essence of the thing is the timing. Will the Law Minister tell the House as to by what time they will take appropriate steps to get this judgment nullified?

SHRI SHIV SHANKAR: Sir, perhaps my friend has not read the last sentence of my reply where I have said that this process has not yet been completed but the affirmative answer to the question deserves favourable consideration. I have said like that.

SHRI G. C. BHATTACHARYA: I am only on the timing.

SHRI SHIV SHANKAR: I am coming to that. I had mentioned that when the conclusions were rendered we would like to seek a review of the judgment. The review can be within 30 days of the judgment. And there are two aspects of review. If we file a regular review within 30 days, then it will have to go before the same Bench. There is also a possibility of the Government seeking a review in an appropriate case for constituting a larger Bench so that the matter was considered by it. Now this was the scope of the review.

SHRI BHUPESH GUPTA: The Government does not constitute the Bench.

SHRI SHIV SHANKAR: I am saying that in an appropriate case we can request the Supreme Court for this, that the matter be referred to a larger Bench, where we could seek a review of the judgment. That is exactly what I am trying to say. So far as the question of the time is concerned, I can only say at this stage that at the earliest opportunity we will take up this issue. On the second question with reference to the land reform cases, perhaps my friends must have gone through it that on the very same day, i.e. on 9th May, 1980, in Waman Rao's case where also the order was passed on the same day when the order was passed in the Minerva Mills case, they have upheld all the land reform laws which were pending before the Supreme Court.

SHRI G. C. BHATTACHARYA: But the land reform cases are still pending from some States.

SHRI SHIV SHANKAR: If there are any, I am confident that, having regard to the judgment in Waman Rao's case, the matter stands covered.

SHRI LAL K. ADVANI: Mr. Deputy Chairman, Sir, this debate has been going on for a long time. I do not understand why the Government seeks to upturn this judgment on primacy of the Directive Principles. I do not want to go into the whole thing. But is it not true that today if the Indian citizen enjoys the right to freedom of religion, if the press in India today enjoys the right to freedom of expression. If the minorities in India today enjoy the right to run their own institutions, it is derived from Fundamental Rights, and further that these rights are inviolate because of the primacy of the Fundamental Rights over the Directive Principles? This House and the other House with a two-third majority cannot take away these rights from the minorities, cannot take away the right to freedom of religion, cannot take away the democratic right to freedom of expression.

I do not understand why the Government wants to nullify this and why the Government wants to upturn this. This is something that needs to be reviewed in the interests of democracy and in the interests of the weaker sections and the minorities of people. This is my question. And is it the Government's intention to upturn the Kesava Bharati case judgement or is it confined only to the Minerva Mills case judgement?

SHRI SHIV SHANKAR: Sir, my friend has opened rather a Pandora's box. The position is that I am entirely in agreement with him that where it is the question of the rights of the minorities and other rights that are there, they have got to be certainly protected. We have never said that they should not be protected. What article 31C sought to achieve was that, if there is any law that has been framed to implement the Directive Principles, that should not be attacked based on articles 14 and 19 of the Constitution. That was the only approach so far as article 31C is concerned. It is this which has been nullified. And I personally feel—and it is also the general view of the Government; I can go to the extent of saying that—that we believe that unless the Directive Principles are the rights of the society, the social rights, the rights of the people at large.

SHRI BHUPESH GUPTA: Not the cow slaughters.

SHRI SHIV SHANKAR: I said 'general'. Therefore, necessarily where it comes to the question of a conflict between the right of the society and the right of an individual, the individual's right should yield in favour of the society's right. This is the view which we take, and it is in this view that we would put it as primacy of the Directive Principles over the Fundamental Rights. Having

regard to this, because the judgement as it stands would create a lot of complications, I for one would believe that we have got to seek a review of this judgement in one form or another.

The second question which has been asked is with reference to the Kesavananda Bharati case. Sir, as long as the judgement stands, we bow down to that judgement on the question of the basic structure. But I may frankly confess that our Government do not subscribe to the view of the basic structure at all. Therefore, the Kesavananda Bharati case has also to be reviewed in due course of time.

MR. DEPUTY CHAIRMAN: Mr. Dinesh Goswami.

SHRI BHUPESH GUPTA: It is rather unfortunate....

MR. DEPUTY CHAIRMAN: No. Mr. Dinesh Goswami.

SHRI DINESH GOSWAMI: Mr. Chairman, Sir, I would like to know from the hon. Minister whether in all the cases where the question of the Directive Principles and the Fundamental Rights have come up involving properties and other things, the Supreme Court has upheld the primacy of the Fundamental rights over the Directive Principles, or making a distinction, only in cases where the property rights of a certain class of persons are involved that primacy of the Fundamental Rights is given and whether political parties and individuals who want to protect the Fundamental Rights of certain cloistered class of property holders, are always favouring this particular decision.

SHRI LAL K. ADVANI: We took away the property rights. They are no longer there.

SHRI G. C. BHATTACHARYA: As a Fundamental Right it was taken away.

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SHRI DINESH GOSWAMI: Secondly, is it a fact that prior to the mid-1960's the Supreme Court in a couple of judgments held that Parliament could amend any part of the Constitution, including the Fundamental Rights, and that it was only in the Golak Nath's case the suddenly the entire Fundamental Rights' chapter was taken out of the purview of the amending power? And the same Supreme Court, within a few years, again introduced a new concept of the basic structure. In view of this, I would like to know whether a few Judges of the Supreme Court according to their individual judgments have the power to stop changes in certain provisions of the Constitution or whether it is the people of this country who have the power through their representatives to amend the Constitution if at any point of time an amendment is necessary. If so, knowing fully well that the Kesavananda Bharati and the Minerva Mills cases will come in the way, will the Government propose again to have a full-scale debate on this issue in Parliament, and in the light of the decision of Parliament will the Government request the President to refer this matter once more to the Supreme Court to have this matter examined? We know fully well that the advisory opinion of the Supreme Court will not have the effect of a judgement of the Supreme Court. But at least, in that case, before we go to a larger Bench, we will know the decision of the Supreme Court even in an advisory capacity on this important matter.

SHRI SHIV SHANKAR: The first question that has been asked is whether the Supreme Court has given primacy only to the property right as enshrined in the Fundamental Rights as compared to the other rights. I may say this much that the Supreme Court has rendered the judgement not only with reference to the property right but with reference to the rights of the minorities and other rights also. It

would be unfair to the Supreme Court to say that it has only concentrated on the property right.

The second question is with reference to the Golak Nath Case and the concept of the Judges and then whether a few Judges could nullify the hopes and aspirations of the people and whether the people have no right. To that question, I for one believe and this Government also believes that it is the people who have got the greater right. It is a matter in each case to be considered. This is the view which we hold, and I would not like to go further on the debate of the issue.

Sir, with reference to a full scale debate on the basis of Article 143, I do not think that any purpose will be served at this stage by seeking the advisory opinion of the Supreme Court on the question. And even assuming, as Mr. Goswami has put it, that there is a conflict of judgment between the Minerva Mills case and the Waman Rao case, even so, I do not think it is an appropriate time for the purpose of referring it to the Supreme Court for advisory opinion.

MR. DEPUTY CHAIRMAN: Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I do not know how this will act. We are in the midst of a very critical situation. Sir, there is a conflict between the Fundamental Rights and the Directive Principles. Our Constitution-makers thought that Directive Principles should not be given primacy over Fundamental Rights and that these principles should not even be made enforceable. Now, Sir, that position was changed. They were not made enforceable, but the position was taken by an amendment of the Constitution that Directive Principles would have primacy over Fundamental Rights.

SHRI SHIV SHANKAR: Articles 14 and 19.

SHRI BHUPESH GUPTA: Now, again we are back to square No. 1. This as the position. I should like to know why the Government did not consider it necessary to hold consultations with the various political parties in Parliament to meet a situation of this kind, because according to the law as it stands today, Parliament's power to amend the Constitution has been greatly circumscribed in the name of what you call essential features or structure. Now, this cannot be solved unless this judgment is annulled by another judgment of the Supreme Court. The law of the land, as it stands, is that article 368 no longer invests Parliament with the powers that it had before this Minerva Mills case judgment. I wish to make one thing very clear. Insofar as socio-economic measures are concerned, Directive Principles in relation to them must necessarily have priority over the Fundamental Rights. I am mentioning deliberately Socio-economic measures because the Directive Principles include article 47, regarding cow slaughter; I do not know what heavens are conquered by this kind of thing, but it is there. Now, how do we meet the situation? This question arises. Even at the time of the Constituent Assembly—the hon. Minister is surely aware—B. N. Rau submitted his views saying that Directive Principles should be given primacy over Fundamental Rights. That was rejected by the majority of the Constitution Committee and then by the Constituent Assembly. Now, Sir, does the Government really think that this conflict of authority relating to the constituent power of Parliament, could be resolved by having a bigger bench? Suppose you have a bigger bench and you get a favourable judgment. Another bench may come and upset it. The whole thing remains uncertain. Therefore, Sir, I would ask the hon. Minister whether he is aware—he was not perhaps there at that time; Kamalapati ji is here—that after the 1977 elections, there was a discussion for a comprehensive amendment

of the Constitution—the Constitution (Forty-second Amendment) Act. There, Sir, I remember—he remembers also—that a chapter was sought to be included whereby certain aspects of the Constitution shall be unamendable, and one was adult franchise. We suggested cabinet-cum-parliamentary system or parliamentary-cum-cabinet system, in view of the propensities in the Treasury benches to switch over to the Presidential system. (*Interruptions*) You may not be, brother. You were not here. But I was here. During the Emergency, five Assemblies were almost moved, and there was a “fatwa” for the switch-over. A draft was circulated. A draft outline was ready. A delegation or somebody went to France to study the De Gaulle Constitution. A draft was circulated on how suitable it was to switch over from a parliamentary-cum-cabinet system to a Presidential system. Even now Mr. Tata is demanding, others are demanding and in the Treasury Benches also, not all, but you have some Presidential-system wallahs, quite strong; they may be underground now, because they can do this job better there. I do not know if there were two-thirds majority in the two Houses what you would have done. I am not so sure. You can find out who stands for what.

In view of this serious situation, when there is a conflict of authority with regard to the constituent power of Parliament or Constitution amending power, I do not know why the Government should not hold consultations in order to make certain features unamendable. We shall define what the essential features or fundamental features are, what the unamendable features are. We should not leave it to anybody else. I do not know why it cannot by agreement be decided that these are the features—cabinet-cum-parliamentary, adult franchise, secularism, democracy, etc.—that are unamendable. And then we can come with an amendment to the Constitution and get it passed in the House and then we shall see how the courts react

to it. This should be the approach Parliament should be seized of the matter more seriously than it does. And it is Government's duty to bring Parliament more directly and constructively into the picture to face the situation which undoubtedly is one of the most challenging situations from the point of view of amending the Constitution.

SHRI LAL K. ADVANI: He also subscribes to the basic structure theory. He also wants that certain provisions should be made unamendable.

SHRI SHIV SHANKAR: The basic question that has been put is whether the Government is prepared to hold consultations...

SHRI BHUPESH GUPTA. On my lines.

SHRI SHIV SHANKAR: I am saying that. The basic question is whether the Government is prepared to hold consultations with all leaders of parties or the Opposition regarding enumerating the essential features. That is the basic question that has been asked. I have already said that this Government does not subscribe to the theory of basic structure at all and I may say this much that no generation has any right to bind down the posterity with its fixed notions, and that is why since we are not in favour of the theory of basic features, the question of holding consultations on this issue does not arise...

SHRI BHUPESH GUPTA: On what does it not arise?

SHRI SHIV SHANKAR: That is for the purpose of enumerating the essential features. (*Interruptions*)

SHRI BHUPESH GUPTA. You yourself consulted. Kamalapati was there. Mr. Chavan wrote it. Kamalapati, we all,...

SHRI SHIV SHANKAR: I have said that we do not believe in the theory

or we do not subscribe to the theory of basic structure as the Constitution stands today.

SHRI BHUPESH GUPTA: I am not talking about the basic structure. All I suggested was this: Is it not possible, as it was done, that certain things be put into the Constitution in such a manner that they cannot be amended by two-thirds majority?

SHRI SHIV SHANKAR. That is a different issue. How would you conceive of binding down the posterity with your fixed notions? We do not know what they are going to have after a hundred years. That is one of the reasons why I am unable to accept the suggestion.

SHRI BHUPESH GUPTA: All right, the next generation will settle it in its own way. But your party was also in favour of it when it was in power. Now again you are in power. All I say is I am mightily afraid of you. That is why I say 'our generation' because there was a grave danger of the Constitution being subverted. Don't you know how you schemed to switch over to the Presidential system taking advantage of the Emergency?

SHRI SHIV SHANKAR: Baseless accusation.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: There seems to be some misunderstanding of the correlation between Directive Principles and Fundamental Rights. Sub-Article (2) of Article 38 provides, and that I take as the core, the soul and the conscience of the Constitution—

The State shall in particular strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Sir, the very first amendment which was moved to the Constitution by the Provisional Parliament of which the members of the Constituent Assembly were members, provided for infringement of articles 14, 19 and 31 to protect the agrarian reforms from an attack on the basis of infringement of the Fundamental Rights. The way we look at it is that through these Directive Principles we will also enrich these Fundamental Rights and we will not curtail them. The view of the court is different. Since there is a talk about reviewing file to declare this as a nullity, there is only one point, one point which I will make clear.

What has happened in this case is, the counsel who appeared for the Minerva Mills conceded that he was not challenging Articles 31A, 31B and 31C (unamended). The challenge was in regard to a sick unit taken over by the Government under the Sick Textiles Undertakings (Nationalisation) Act which was protected fully firstly by the 25th amendment because there was a provision in the nationalisation Act that it was intended to give effect to articles 39(b) and (c). The 25th amendment has been upheld by the Supreme Court in Keshvananda Bharati case. It was put in the Ninth Schedule by the Constitution (39th Amendment) Act removing any challenge to it on the ground of infringement of the Fundamental Rights. In view of that, did any question remain open for the determination of the Supreme Court? In fact the majority judgement says that there is no constitutional or statutory inhibition against the decision of the questions, before they actually arise for consideration. A strong exception should be taken to this proposition that the Supreme Court can decide any questions as and when they like even before the question arise for determination.

In view of these two judgements to which reference has been made by the

hon. Law Minister—Waman Rao's case and the Minerva Mills case, one incompatible with the other—a feeling is growing that there is no protection for the agriculturists in the country. There is protection for the industrialists because they have very powerful spokesmen. Therefore, the question is, when you make a review, will you contend in the review petition that the whole judgement of the Supreme Court is a nullity on the following grounds?

(1) The Constitution does not permit, particularly articles 32 and 141 do not permit the Supreme Court to decide questions which do not arise and which are thoroughly unnecessary for the decision. In other words, they are only academic questions.

(2) The judgement is a nullity because the Supreme Court heard the matter when the Parliament was dissolved and the mid-term poll already ordered.

(3) There was only a Caretaker Government at the Centre.

(4) The judgement is a nullity for the reason that the main questions were argued ten months earlier in the Waman Rao's case and that judgement was awaited. Was it not necessary for the Supreme Court to await the Waman Rao judgement before it heard the Minerva Mills case?

There are many other things I would like to say on this important issue. They will have to wait for some other occasion.

SHRI SHIV SHANKAR: Sir, the approach that my honourable friend has taken is that these are the grounds which we should urge in the Supreme Court if we decide to file a review. On the first question, Sir, that the Constitution does not permit a decision on the questions by the Supreme Court which do not

arise in a case is a well-known principle which my friend as a lawyer knows and he also knows that there would be at least three to four dozens of cases in the Supreme Court on this question.

SHRI G. C. BHATTACHARYA: Four cases were mentioned in the judgment itself.

MR. DEPUTY CHAIRMAN: He knows it very well.

SHRI SHIV SHANKAR: When a matter does not arise, that matter should not be gone into by the Supreme Court itself, particularly matters with reference to Fundamental Rights and so on. Now, my friend has also asked: "Would not the judgment be a nullity because, at the time it was heard, Parliament had been dissolved and the caretaker Government was in power and, further, ten months earlier, the Waman Rao case had already been heard and the judgment was awaited?" Now, this is a matter on which, while we consider it, I do not think that these grounds could be urged to say that the judgment itself is a nullity. But we will certainly bear it in mind as and when the review petition is filed. These suggestion will be kept in mind.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Sir, one supplementary only.

MR. DEPUTY CHAIRMAN: No supplementary. There is no supplementary. Yes, Mr. Nanda.

SHRI NARASINGHA PRASAD NANDA: Sir, while the conduct of a Judge cannot be discussed on the floor of the House because of the protection available to a Judge under article 121 of the Constitution, justice is not something...

MR. DEPUTY CHAIRMAN: Please do not go into all those things. Please put your supplementary.

SHRI NARASINGHA PRASAD NANDA: I am coming to the supplementary, Sir. Sir, in this context, in the context of the question that has been raised, I think there is a difference between the basic essence of the Constitution and the structure of the Constitution. I think the distinction has to be borne in mind, the distinction between the structure and the essence. The structure and the essence are not one and the same thing. Sir, those of this generation cannot bind posterity and that is obvious because the posterity might decide otherwise. But, Sir, this generation cannot also take protection under the plea that since it cannot bind the posterity, it need not act at all. My question to the honourable Minister, therefore, is: Taking this matter for a review may not serve the purpose because, this judgment in the *Minerva Mills* case and the judgment in the *Kesavananda Bharati* case go to the fundamental roots of the Constitution and the approach of the various political parties to the question is different. So, would it not be desirable to bring forward an amendment, a suitable amendment, to the Constitution, not on the lines of clauses 4 and 55 which have been struck down by the Supreme Court already and article 31(C), but in a different form and in a different mode and in a different language? Would it not be desirable to bring forward such a constitutional amendment and then judge and see how the people are reacting to this judgment and what they have got to say today. But, if you intend to go in for review that means you are accepting the judgment for the time being and the judgment will be there until you do not get it reviewed by the Supreme Court and the Supreme Court does not take a stand contrary to the stand taken by it in the *Kesavananda Bharati* case and the *Minerva Mills* case.

SHRI SHIV SHANKAR: Sir, the suggestion would be considered if an occasion arises.

MR. DEPUTY CHAIRMAN: Yes, Mr. Jha.

SHRI MANUBHAI PATEL: Sir, I have to ask a question.

MR. DEPUTY CHAIRMAN: No. Mr. Shiva Chandra Jha, please.

श्री शिव चन्द्र झा : उपन्यासपति महोदय, फंडामेंटल राइट्स हमारे संविधान में या किसी और जनताधिकार में या मोटे तौर पर दो आदर्शों पर आधारित हैं। एक आदर्श है ह्यूमैनिटी और दूसरा आदर्श है इक्वालिटी। यह फंडामेंटल राइट्स इस चट्टान पर आधारित है। अब इन दो आदर्शों पर पहुँचने में यदि कमीयाँ होती हैं, रुकावटें होती हैं तो तकाजा हो जाता है कि हम संविधान में संशोधन कर के उस पर पहुँचें। अभी जो हमारे फंडामेंटल राइट्स हैं उन्हीं आदर्शों के मुताबिक हैं। लेकिन फिर भी राइट टू वर्क, राइट टू स्ट्राइक, सोशल डिसपेरिटी को खत्म करने का, 1/10 रेड्यो, यह सब कुछ ऐसे पहलू हैं जिनके न होने से हमारे फंडामेंटल राइट्स जो संविधान में हैं उन आदर्शों के 100% कनफारमिटी में नहीं आते हैं।

इसीलिए अब मंत्री महोदय से मेरा सवाल है कि क्या इस पार्लियामेंट को या भारत की जनता को यह अधिकार है कि नहीं कि इसी पार्लियामेंट को हम दूसरे कांस्टीट्यूटेंट असेम्बली में बदल दें ताकि फंडामेंटल राइट्स और जो दूसरे हमारे अधिकार हैं उनमें इस संदर्भ में या दूसरे संदर्भ में बुनियादी तौर पर स्ट्राइक ड्राऊन कर सकें या चेंज कर सकें? यह मैं जानना चाहता हूँ।

SHRI SHIV SHANKAR: Sir, so far as the question of converting Parliament into a Constituent Assembly is concerned, there are

divergent opinions on this issue and it is not possible for me to give the details off-hand, of these divergent views. So, going into this question at this stage would be going astray from the main question that has been put before the House. (*Interruptions*).

SHRI SUSHIL CHAND MOHUNTA: Sir, the question asked is innocent in nature but the supplementaries and the answers given have brought in their compass various diverse issues fundamental in nature and of vital importance. The Rajya Sabha is now wanting to discuss the powers of Parliament regarding amendment of the Constitution. The Constitution itself provides certain rights as fundamental in nature which cannot be violated, and by increasing the power or by saying that Parliament has every power to amend we cannot give Parliament the power to reduce itself to zero. A creature of the Constitution cannot be given the power to uproot and abrogate the Constitution itself. There has to be a line beyond which neither this nor the succeeding Parliaments can go. There are the rights of the people which have to be protected, and the framers of the Constitution, when India became free in 1947, decided that this country comprises of various communities, various religions and various cultures, and it was in a sort of settlement move that we decided that the rights of particular communities and religions must be protected. Now, we cannot give Parliament the authority to abrogate them. Today the discussion has more or less centred round the fact as to what the powers of Parliament are and whether it has got the right to amend the Constitution in such a way as to take away all the rights. Therefore, I would ask of the hon. Minister, whether he is prepared to have a full discussion on this aspect about the nature of the rights of Parliament regarding its powers to

amend and what are the provisions in the Constitution which the hon. Minister considers are inviolable and cannot be subject to any amending power or that there is no restriction in the Constitution and all the provisions of the Constitution can be abrogated. In that case, if tomorrow Parliament decides that this country will be ruled only by those people who have a fair complexion or that a particular community will rule this country, what will happen? There has to be a line drawn beyond which we cannot go. Therefore, I would like the hon. Minister to tell us whether there are provisions in the Constitution which cannot be amended and, if so, what are they and whether in the light of the Keshvanand Bharati case which only says that there are certain essential features of the Constitution which cannot be taken away, why there is the necessity of the review of that case and the Minerva Mills case? The only decision should be that certain rights which go to the root of the matter, are fundamental in nature and comprise the basic features of the Constitution and cannot be amended.

SHRI SHIV SHANKAR: Sir, the content of the amending power is enshrined in article 368 of the Constitution. Therefore, it is a question of the interpretation of the content of that, article as to whether it embraces all the provisions or whether it has a limited power. As it exists today, the Supreme Court has said that you can amend the Constitution except the basic features. What those basic features are is the foot of the Chancellor because they cannot be narrated. They will have to be decided in each case. As the position stands today, this is what it is. If one feels that the amending power in Article 368 is large and wide, then, of course, it takes the entire gamut of the provisions. If the amending power is limited, it will be limited to the extent it has been interpreted.

SHRI MANUBHAI PATEL: I won't go into the Preamble. I will put a simple question. Is it the stand of the Government that the interpreting authority of the Supreme Court which is considered to be the highest interpreting authority in our democratic set up or federal set up, will not be accepted by the Government unless the Supreme Court consists of committed Judges? The next question will be this. The question of basic structure comes in. It has already been clearly stated in the Preamble of the Constitution. When the hon. Minister states that the present generation cannot bind the future generation or posterity, is it the case of the Government that secularism, nationalism and democracy which are enshrined in the Constitution will also be changed by the Government in future?

SHRI SHIV SHANKAR: Sir, the hon. Member has put a very hypothetical question when he said whether it is the approach of the Government that unless there are committed Judges and they would give the interpretation in a particular form, the Government is not prepared to accept the interpretation as it has been given. I can only remind him, without going into the details of it, that even the Judges who rendered the judgment in Golaknath case were very great Judges. They were Judges of great repute and integrity. That judgment was reversed in Keshavananda Bharati case by the Judges of the full court consisting of 13 Judges. So, it is possible that a particular Bench might take a particular view and another Bench can differ and that difference could be quite honest. To say that there should be committed Judges and their interpretation alone will be accepted, I should say, is far off the point. There is no basis for this type of projection given to the question itself. I have said some time back and I will repeat it that this is my firm faith that the Constitution as it was framed in 1950 and as it was

adopted by the nation could have certainly achieved an egalitarian society and a welfare State if it could have been worked in the proper manner. Therefore, the commitment of the Judges should necessarily be to the Constitution and its goals. If this commitment... (Interruptions) I have said this previously and I am repeating it. If this commitment is there, I am confident that an egalitarian society could be ushered in in this country. Now my friend has said about socialism, nationalism and democracy. I can say this much that we are second to none in being wedded to these principles.

श्री जगदीश प्रसाद माथुर : श्री मेरे सहयोगी अडवाणी जी ने एक सवाल खड़ा किया था कि अगर फंडामेंटल राइट्स को चेंजिबल बना दिया जाय तो माइनॉरिटीज का राइट समाप्त हो सकता है। उसका एक उदाहरण सुप्रीम कोर्ट जब बोल रहे थे तो सामने आया। उन्होंने कहा कि मोहत्या निरोध डायरेक्टिव प्रिंसिपल्स ने दिया है। डायरेक्टिव प्रिंसिपल्स की सुप्रीमेसी को न मान कर फंडामेंटल राइट्स की सुप्रीमेसी को मानने पर माइनॉरिटीज की रक्षा का उदाहरण तो हमारे सामने आ चुका। सुप्रीम कोर्ट का जजमेंट यही था कि मोहत्या पूरे तोर से बन्द इसलिए नहीं की जा सकती क्योंकि अहिन्दुओं का अधिकार गोमास खाने का है। यह हमारे सामने उदाहरण है। मेरा प्रश्न है कि जब सरकार यह मानती है कि फंडामेंटल राइट्स को पारवर्तित किया जा सकता है तो क्या इस पृष्ठ भूमि में उन का अगला कदम डायरेक्टिव प्रिंसिपल्स को बदलने का होगा ? अगर डायरेक्टिव प्रिंसिपल्स को नहीं बदलते तो मैंने जा मोहत्या का उदाहरण दिया है वह भी आप को कानून से बदलना पड़ेगा ।

सदन के सामने एक उदाहरण तो प्रस्तुत हो गया जिस में मौलिक अधिकारों

के जो मूल्य हैं उन्होंने माइनिस्ट्री के अधिकारों को उचित या अनुचित रूप जा भी हो, बचाया है। लेकिन क्या सरकार के सामने कोई ऐसे उदाहरण हैं कि जब गरीब पिछड़े तबके के किसी भी हित के साधन में इस लिए रुकावट आयी हो कि फंडामेंटल राइट्स आड़े आ रहे हैं? मंत्री महोदय ने स्वयं यह कहा कि जितने जमीनों के लैंड होल्डिंग्स से सम्बन्धित जितने मुकदमे थे वे उसी दिन 9 मई को गरीबों के पक्ष में स्वीकार किये गए और आगे भोलिए जायेंगे, ऐसा माना गया है यदि कोई उदाहरण उन के सामने हिन्दुस्तान के तीस-चालीस साल के इतिहास में विशेषतः केशवानन्द भारती के केस के बाद आया हो जिस में फंडामेंटल राइट्स से ग्रहण पड़ी हो किता गरीब या पिछड़े वर्ग के हित के साधन में तो बतायें।

SHRI SHIV SHANKAR: Sir, so far as the question of the Fundamental Rights coming in the way and the judgements rendered thereon by the courts vis-a-vis the poor classes are concerned, no doubt, my friend has later amended his question by saying after the Kesavananda Bharati case, but before that, he knows it very well. After all, every amendment of the Constitution, that has taken place right from 1950, was effected for the simple reason when it was found that the judgment of the court in interpreting a particular law or the provision of the Constitution has created difficulty. It is only to get over such a situation that the amendments have been effected. There are cases and cases. After the Kesavananda Bharati case, thousands and thousands of cases have been rendered. Even this very case, the Minerva Mills case is one such case where the Government wanted to acquire this particular mill in the larger interest of the society. Now this has been struck down on the basis of going back to article 31(C). Therefore, it would be futile

to go into this question at length at this stage. But if it becomes necessary in the larger interest of the society, I personally feel that there should be no shirking to amend the Constitution.

Sir, on the question whether the Directive Principles should be amended. I have not given serious thought as to which Directive Principle should be amended, and whether at all it is necessary because, Sir, these things would not arise having regard to the question that has been put as a Short Notice Question today.

MR. DEPUTY CHAIRMAN: Shri Kartik Oraon

SHRI JAGDISH PRASAD MATHUR: I have quoted an example. I have given the background of the right of some people to eat the cow's flesh. You know the decision by the Supreme Court. Now, with that stand, will you change the Directive Principles also?

श्री उपसभापति : इसका उत्तर वे पहले दे चुके हैं।

WRITTEN ANSWERS TO QUESTIONS

Loss suffered by the Surgical Instrument Plant, Madras

*262. SHRI M. S. RAMACHANDRAN: Will the Minister of PETROLEUM, CHEMICALS AND FERTILIZERS be pleased to state:

(a) whether Government are aware of the fact that the Surgical Instrument Plant in Madras, a unit of I.D.P.L., is incurring heavy losses year after year;

(b) if so, what are the reasons therefor; and

(c) whether Government have taken any action to rectify the defects and make the unit a viable one; if