

SHRI KALYAN ROY: He has gone away under the impression that it will be taken up after the Calling Attention.

DR. RAMKRIPAL SINHA: The next Bill is in the name of Shri F. M. Khan who is again not here. The hon. Members who have to start the debate are not present in the House.

MR. DEPUTY CHAIRMAN: I cannot help that. There is no consensus in the House in favour of encroaching upon the time for non-official business. I do not think that the Chairman said that the time for non-official work should be taken for other things.

SHRI KALYAN ROY: He said Calling Attention would continue.

MR. DEPUTY CHAIRMAN: I am also saying the same thing. It will continue after five.

DR. RAMKRIPAL SINHA: Those Members who have to initiate the debate are not present in the House.

MR. DEPUTY CHAIRMAN: We will take up Bills to be introduced. Shri Shiva Chandra Jha.

### THE CONSTITUTION (AMENDMENT) BILL, 1980.

(Insertion of new article 24A)

श्री शिव चन्द्र झा (बिहार) : उप-सभापति महोदय, मैं बाबूदब इस सदन से दरखास्त करता हूँ कि भारत के संविधान का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की मुझे अनुमति दी जाये ।

*The question was put and the motion was adopted.*

श्री शिव चन्द्र झा : आपकी इजाजत से मैं विधेयक को पुरःस्थापित करता हूँ ।

### THE FILIBUSTERS IN PARLIAMENT BILL, 1980.

श्री शिव चन्द्र झा (बिहार) : उप-सभापति महोदय मैं बाबूदब इस सदन से दरखास्त करता हूँ कि संसद में अवरोधकों तथा तत्संबंधी आनुषंगिक विषयों का उपबन्ध करने वाले विधेयक को पुरःस्थापित करने की मुझे अनुमति प्रदान की जाये ।

*The question was put and the motion was adopted.*

श्री शिव चन्द्र झा : आप की इजाजत से मैं विधेयक को पुरःस्थापित करता हूँ ।

### THE CONSTITUTION (AMENDMENT) Bill, 1980.

(To amend articles 4 and 80 and omission of the Fourth Schedule)

श्री शिव चन्द्र झा (बिहार) : उप-सभापति महोदय, मैं बाबूदब इस सदन से दरखास्त करता हूँ कि मुझे भारत के संविधान का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये ।

*The question was put and the motion was adopted*

श्री शिव चन्द्र झा : मैं आप की इजाजत से विधेयक को पुरःस्थापित करता हूँ ।

### THE CONSTITUTION (AMENDMENT) BILL, 1976—Contd.

(To Amend articles 15, 19, etc.)

MR. DEPUTY CHAIRMAN: Mr. Shiva Chandra Jha may continue his speech of 18th May, 1979, if he likes.

श्री शिव चन्द्र झा (बिहार) : उप-सभापति महोदय, यह जो विधेयक संविधान संशोधन भूषण गुप्ता जी का है वह मोटे तौर पर ठीक ही है लेकिन कुछ बातें हैं जिनके मुताबिक मैं कहना चाहता हूँ। लेकिन कबल इसके मैं उन बातों पर आऊँ, मैं एक बात आपके सामने रखना चाहता हूँ। संविधान के बहुत से संशोधन हो गये, जिस रूप में संशोधन होते जा रहे हैं, आपके तीस साल बत्तीस साल के अन्दर मोटे तौर पर 43-44 संशोधन हो चुके हैं और जिस रफ्तार से संशोधन हो रहे हैं, ऐसा लगता है कि जितने आर्टिकल्स हैं, जितनी धारायें हैं, सबों में संशोधन हो जाएंगे। अमरीका का संविधान, 1776 में वहाँ क्रांति हुई थी और 8 साल के बाद संविधान बना, लेकिन आज तक करीब-करीब 200 साल हो गये, उसमें केवल 20-22 संशोधन हुए हैं। लेकिन जो समाज की परिस्थितियाँ हैं, उन सब परिस्थितियों को संविधान के संशोधन कवर करते हैं। लेकिन हमारे संविधान में संशोधन इस रूप में हो रहे हैं कि ऐसा लगता है कि सारा संविधान ही संशोधित किया जाएगा। इसका मतलब यह निकलता है कि संविधान में बुनियादी परिवर्तन की ज़रूरत है। जब देश आजाद हुआ, जो पोलिटिकल परिस्थिति थी उस वक्त की, उनके मुताबिक वह बनाया गया। जो बुनियादी बातें हैं वह दुस्त हैं लेकिन कुछ बातों को जोड़ना निहायत ज़रूरी है। जैसे मैं उदाहरण आपको देता हूँ कि राइट टु स्ट्राइक मजदूरों के लिए बुनियादी हक है, यों तो और भी फंडामेंटल राइट्स हैं, लेकिन यदि हम राइट टु स्ट्राइक का बुनियादी अधिकार उनको

नहीं देते हैं तो हम जनतंत्र को पूरा नहीं करना चाहते हैं।

दूसरे, इसमें फ्रीडम ऑफ प्रेस के बारे में प्रावधान नहीं है। आज ही इसके बारे में काल अटेंशन था। फ्रीडम ऑफ स्पीच का राइट तो संविधान में है लेकिन फ्रीडम ऑफ प्रेस वहाँ पर नहीं है। जिस रूप में प्रेस पर आघात हुआ है इमरजेंसी में, इंदिरा गांधी ने प्रेस का गला घोटना शुरू किया या उनके मंत्री जो गोवेल के रूप में, शुक्ला थे तो उन्होंने उसका खात्मा शुरू किया तो आज तकाजा हो जाता है कि अब हम संविधान में प्रेस की आजादी के लिए, फ्रीडम ऑफ प्रेस के समावेश के लिए संशोधन करें। मैं कहता हूँ कि भारत का प्रेस स्वतंत्र नहीं है। इमरजेंसी में इसके गले में फांसी लगाई गई थी, इसका दम घुट रहा था। जनता सरकार ने उस फांसी के तख्ते से प्रेस को बचाया लेकिन उसके बाद भी अभी प्रेस हिन्दुस्तान का आजाद है। फ्री प्रेस नहीं है। जो उनके मालिक हैं वह उनके मातहत हैं। कुछ मोनोपली हाउसेज हैं प्रेस उनके अधीन है। यह सिलसिला यही नहीं है बल्कि दूसरे पूँजीवादी देशों में भी है। प्रेस के सामने बुनियादी बात हो जाती है कि वह उसे मालिकों से आजाद करें। आज प्रेस वाले इसको महसूस भी करते हैं। वह समझते हैं कि जो बनवट है वह ठीक नहीं लेकिन अभी तक प्रेस आजाद नहीं है। प्रेस में हमें बुनियादी परिवर्तन करना चाहिए। जनता पार्टी सरकार के समय में प्रेस कमीशन बहाल किया गया था। अभी मंत्री महोदय ने कहा कि हम इसको स्कैप नहीं कर रहे हैं वर्कमीज हो गई है उनकी पूर्ति कर रहे हैं। लेकिन उपसभापति महोदय, मैं यह कहना चाहता हूँ कि प्रेस कमीशन के जो लोग हैं

[श्री शिव चन्द्र झा]

उन पर डायरेक्ट या इन्डायरेक्ट प्रेशर डाला जा रहा है कि वे इस्तीफा दें। उन्होंने भन्-मनसाहत से इस्तीफा दे दिया। अब जगह खाली हो गई है और उन जगहों पर अपने मन मुताबिक लोग रखे जायेंगे, यसमैन रखे जायेंगे। एक प्रैस सेनानी, जर्नलिस्ट सेनानी के साथ जो सलूक किया गया वह हम सब जानते हैं।...

THE LEADER OF THE OPPOSITION (SHRI LAL K. ADVANI): Mr. Deputy Chairman, Sir, there is no one from the Treasury Benches. I do not think we can proceed. The House should be adjourned immediately. Is this the way in which this House is to be treated; I would request you to save the Parliament from this kind of cavalier attitude. It is for the first time that this has happened when there is not a single Minister here.

SHRI LAKSHMANA MAHAPATRO (Orissa):... It is contempt of the House.

AN HON. MEMBER: I suggest that the House should be adjourned till the Minister comes.

MR. DEPUTY CHAIRMAN: The point raised by the Leader of the Opposition is very correct. The Minister should have been here. I think we cannot too strongly impress how important it is that the Government must be represented at all times when discussion takes place in the House. I hope that the Minister concerned and all other will take note of it.

श्री शिव चन्द्र झा : क्वेसीज को ये भर रहे हैं और सड़क की भाषा में जिनको चमचा कहा जाता है यानी चमचा जर्नलिस्ट जो कि इन्दिरा इज इंडिया एण्ड इंडिया इज इन्दिरा कहते हैं, उनको भरा जाएगा। इसका मतलब हो जाएगा कि प्रैस कमीशन की जो रिपोर्ट आएगी वह कोई खास मतलब की नहीं होगी, उससे प्रैस फ्रीडम के लिए कोई रास्ता

नहीं निकलेगा। कहने का मतलब यह है कि प्रैस स्वतंत्रता के लिए खास कदम नहीं उठाए जा रहे हैं। मैं पूछना चाहता हूं तो फिर यह होगा कैसे? प्रैस स्वतंत्रता कैसे कायम की जाएगी? मेरा सुझाव यह है कि जैसा मैंने पहले भी कहा कि सारी प्रैस को प्लांड कर देना चाहिए। प्लांड प्रैस और पार्टी प्रैस चलनी चाहिए। प्लांड प्रैस का मतलब होगा कि 10 हजार से ऊपर के सरकुलेशन वाले जितने प्रैस हों सरकार उनको अपने मतहत ले ले जिसे हम साधारण भाषा में नेशनलाइज कहते हैं। लेकिन जनतंत्र में हमें नुकताचीनी और आलोचना की भी गुंजाइश होती है वह रखनी होगी तभी जनतंत्र का मतलब सिद्ध होगा। इसके लिए जो विरोधी प्रैस हैं और पार्टी प्रैस हैं उनको मजबूत करना होगा और उनको सरकार से सबसिडी मिलनी चाहिए। 5 लाख या 10 लाख इसका आप फैसला कर लें कितने में अखबार चल सकता है उनको रखा जाए। जो रेकोगनाइज्ड पार्टियां हैं अगर वह प्रैस चलाती हैं तो उनको सबसिडी मिलनी चाहिए। कोई पार्टी चुनाव में खड़ी होती है लेकिन इलेक्शन कमीशन के मुताबिक वह अपनी रिकोगनिशन खो देती है तो सेंटर से सबसिडी बन्द हो जाएगी लेकिन यदि कोई नई पार्टी बनती है और रिकोगनिशन पाती है इलेक्शन कमीशन के मुताबिक तो उसको सबसिडी मिलनी चाहिए। इससे यह होगा कि इधर पार्टी प्रैस क्रिटीसिज्म के लिए और प्लांड प्रैस आम जनता के लिए खुल जाएगा।

अब क्या हालत है? आज हालत यह है कि दिल्ली का कोई भी अखबार ले लें अगर कोई व्यक्ति कुछ लिखवाना चाहता है और वह किसी अखबार को छपवाने के लिए भेजता है, अगर उसकी नीति से वह चीज नहीं मिलती तो वह नहीं छापेगा। मैं आपको बताना चाहता हूं कि टाइम्स आफ इंडिया में मैंने भेजा था, "कम बैक आफ दि इन्दिरा राज" वह अभी तक नहीं छपा है, लेटर आफ

दि अडिटर के कालम में भी नहीं छपा है। इसी तरह से 'पेट्रीयाट' में भी भेजा था लेकिन उसने भी नहीं छपा क्योंकि उनकी नीति से यह मेन नहीं खाता।

ये जो प्रैस के कालम्स हैं, अगर हमारे देश में प्लान्ड प्रैस होगा और वह फ्री प्रैस होगा तो उसके दरवाजे सब लोगों के लिए खुल जायेंगे। कंट्रोल्ड प्रैस से मेरा मतलब प्रैस पर किसी प्रकार के नियंत्रण से नहीं है। इसमें पार्टियों की बात शामिल नहीं है। हमारे देश का प्रैस ऐसा होना चाहिए जो आम लोगों की भलाई के लिए काम करे। आप जानते हैं कि प्रैस एक इंडस्ट्री है, एक उद्योग है। फ्रीडम आफ दी प्रैस एक बहुत बड़ा ह्यूमन सेन्टीमेंट है जिसके लिए मिल्टन जैसे लोगों ने बहुत पहले आवाज उठाई थी। और इसके लिए दुनिया में बड़ी बड़ी लड़ाईयां हुई हैं। पीटर जेनर और जौन लिलिवर्ड जैसे लोगों ने फ्रीडम आफ दी प्रैस के लिए काम किया और आज उनका नाम इतिहास में प्रसिद्ध है। अमेरिका के अन्दर जौन लिलिवर्ड ने प्रैस को आजाद कराया और प्रैस को आजादी दिलाने में उनका बहुत बड़ा हाथ है। हिन्दुस्तान में भी प्रैस की आजादी के लिए लड़ाई हुई। मराठी भाषा में केसरी के सम्पादक कोई साधारण जरनेलिस्ट नहीं थे। लोकमान्य तिलक ने हमारे देश में प्रैस की स्वतंत्रता के लिए बहुत काम किया। यंग इंडिया और हरिजन के सम्पादक श्री मोहनदास गांधी ने स्वतंत्र प्रैस की आजादी का झण्डा बुलन्द किया। ये लोग कोई साधारण जरनेलिस्ट नहीं थे, बहुत बड़े जरनेलिस्ट थे। हम यह देखते हैं कि हमारे देश में आम जनता को प्रैस के अन्दर आवाज उठाने का उतना मौका नहीं मिलता जितना मिलना चाहिए। सरकार की तरफ से दिए जाने वाले एडवर्टाइजमेंट्स से पैसा कमाने का अखबारों को एक रास्ता माना जाता है। आज हमारे देश में समाचार

पत्र इस प्रकार के उद्योग बनते जा रहे हैं। मैं समझता हूँ कि अगर प्लान्ड प्रैस होगा तो वह कंट्रोल हो जाएगा और एडवर्टाइजमेंट्स से प्रोफिटियरिंग करने की उसमें गुंजाइश नहीं रह जाएगी। आम जनता को अखबारों में अपनी बात कहने का मौका मिलेगा। लोग अखबारों के अन्दर अपनी बात छाप सकेंगे और लैटर टू दी एडीटर के नाम पत्र भेज कर अपने लेख भी छाप सकेंगे। इस प्रकार से आम लोगों के अन्दर जो कम्युनिकेशन है, जो लिखा है, वह भी स्थापित हो जाएगा। अगर हमारे देश में एक प्लान्ड प्रैस होगा तो उस पर सरकार का भी असर नहीं हो सकता है। मैं समझता हूँ कि इस प्रैस के लिए, इसको चलाने के लिए इंडियन जरनेलिस्ट्स सर्विस जैसी कोई सेवा बना दी जाए तो वह भी बहुत हद तक ठीक होगा। जिस प्रकार से इंडियन एडमिनिस्ट्रेटिव सर्विस और इंडियन पुलिस सर्विस है उसी प्रकार से एक इंडियन जरनेलिस्ट सर्विस होनी चाहिए और एक कम्पीटीशन के जरिए आप इसमें लोगों को भर्ती कर सकते हैं। ये लोग प्लान्ड प्रैस को चलायेंगे और मैं समझता हूँ कि बहुत हद तक यह एक आब्जेक्टिव प्रैस होगा, निष्पक्ष होगा। जिस तरह से थोड़ी देर के लिए हम कह सकते हैं कि हमारे देश में जो सरकारी कर्मचारी हैं, मैं मानता हूँ कि उनका किसी पार्टी से सम्बन्ध नहीं होता है और कभी कभी वे पार्टियों से प्रभावित हो सकते हैं, लेकिन आम तौर पर वे निष्पक्ष होकर अपना काम करते हैं। जो हमारे अफसर हैं या जो मजिस्ट्रेट हैं, जो हमारी जुडिशियरी को चलाते हैं, उसी प्रकार से अगर आई० जे० एम० बना दी जाएगी तो वह भी इसी तरह से प्रैस को चलाएगी और निष्पक्ष रूप से चलाएगी और आम जनता की तरफ से जो लैटर टू दी एडीटर के नाम पत्र होते हैं या इसी प्रकार के जो दूसरे लेख होते हैं उनको छापेंगे। आप जानते हैं कि जनतंत्र में सरकार की आलोचना होनी चाहिए, खुलकर होनी

[ श्री शिव चन्द्र झा ]

चाहिए ? हमारे देश में ऐसे अखबार होने चाहिए जो यह लिखें कि इंदिरा गांधी की हार हो, इंदिरा गांधी को हटाओ। इस प्रकार की बातें छापने के लिए अखबार होने चाहिए। मैं यह चाहता हूँ कि हमारे देश में जो रिक-गनाइज्ड पार्टियाँ हैं उनके प्रेस की तरफ भी हमें ध्यान देना चाहिए और उनको बूस्ट अप करना चाहिए। मैं पूछना चाहता हूँ कि हमारे देश में कितने लोग "न्यू एज" को पढ़ते हैं। हम लोग तो पैसा खर्च करके उसको पढ़ लेते हैं, लेकिन आम लोग उसको नहीं पढ़ पाते हैं। यह अखबार लोगों तक पहुंच भी नहीं पाता है। हमारी जनता पार्टी का 'जनता' नाम से एक अखबार बम्बई से छपता है। मैं समझता हूँ कि अधिकांश लोगों को तो इसका पता भी नहीं होगा कि इस प्रकार का कोई पत्र है। इसी प्रकार से "पीपुल्स डेमोक्रेसी" के नाम से मार्क्सिस्ट कम्युनिस्ट पार्टी का पत्र निलकता है। उसको भी लोग नहीं पढ़ पाते हैं। यह बात नहीं है वह लोगों के पास पहुंच नहीं सकता है। असल बात यह है कि उनके पास इतना पैसा नहीं है कि वे इस पत्र को लोगों के पास पहुंचा सकें। उनकी फिनेंशियल स्थिति अच्छी नहीं है। इसलिए मेरा कहना यह है कि जहां हम प्लान्ड प्रेस की स्थापना करें वहां पार्टियों के प्रेस को भी ऊपर उठाने के लिए सेंटर की तरफ से पैसा दिया जाना चाहिए। यह राशि पांच लाख, 10 लाख सालाना, कुछ भी हो सकती है। लेकिन सरकार की नुकताचीनी करने के लिए पार्टी प्रेस को ऊपर उठाया जाना चाहिए। स्वस्थ क्रिटिसिज्म से सरकार भी सुचारु रूप से चलेगी और प्रेस की आजादी भी बनी रहेगी। मैं समझता हूँ कि प्लान्ड प्रेस आम जनता के लिए फायदा खोल देगा और पार्टी प्रेस क्रिटिसिज्म के लिए दरवाजे खोल देगा। जनतंत्र में यह होना चाहिए और इस प्रकार से हमारे देश में फ्रीडम आफ दी प्रेस भी हो जाएगा। यह तभी होगा जब प्लान्ड प्रेस और पार्टी प्रेस की हम व्यवस्था करेंगे। तो इस तरह से हमको

प्रेस की फ्रीडम को कायम करना है। इसके लिये संविधान में भी हमको लिख देना 3 P.M. है संशोधन करके कि फ्रीडम आफ प्रेस हो। उसके मातहत इन बातों को भी रखना है कि फ्रीडम आफ प्रेस क्या है, प्लान्ड प्रेस और पार्टी प्रेस...

DR. RAMKRIPAL SINHA (Bihar): Sir, I am on a point of order. My point of order is this: Can we proceed with a discussion on this Bill when the Mover of the Bill is not present in the House? The Members who are making speeches here have got the right to receive a reply from the Member who has introduced the Bill. Now that the Member who has introduced the Bill is not present in the House, can we proceed with this Bill? What is the precedent and what is your ruling? It is a Private Member's Bill and the Private Member who has introduced the Bill is not present in the House. How can he reply to the members when the time of reply comes? So, how can we proceed with this Bill? I want a ruling from the Chair.

SHRI LAKSHMANA MAHA-PATRO: The hon. Member will get the proceedings, read them and then reply; let the Chair give the ruling.

MR. DEPUTY CHAIRMAN: I think a very clear point has been raised. I think the point is whether in the absence of the person who has introduced the Bill or the Member in charge of the Bill, we can proceed with the discussion. Well, one way would be that since the House is seized of the Bill, the only way in which it could be disposed of is by a vote of the House and a motion. Even if the Minister or the Member is not there, the House has to say that the Bill is rejected or the motion in regard to the Bill at this stage is accepted or not accepted. So, we have two courses open before us. One is to immediately proceed with those questions and put those questions and decide the fate of the Bill at this stage. Another course is that since

the House is seized of the Bill and there are some Members who are interested in speaking, we hear them and then proceed on with what the procedural requirements are.

**DR. RAMKRIPAL SINHA:** He has the right to reply. How can he reply without listening?

**श्री शिवचन्द्र झा :** रिकार्ड में से देख लेंगे, कोई बड़ी बात नहीं है ।

उपसभापति महोदय, मैं कह रहा था कि फ्रीडम आफ प्रेस के बारे में संविधान में संशोधन करके इसको उसमें जोड़ा जाय ; दूसरा, जनतंत्र में जो हमारा आदर्श है उसके मुताबिक राइट आफ रिकाल का अधिकार होना चाहिए । आज हम देखते हैं कि श्रीमती इंदिरा गांधी चौबीसों घंटे इसमें लगी हुई हैं कि किस तरह से बिहार, उत्तर प्रदेश और हरियाणा आदि राज्यों में डिफेक्शन कराया जाय और वारे लोगों को अपनी तरफ ओट रही हैं, खींच रही हैं । इसलिये यह जरूरी है कि संविधान में इसका राइट होना चाहिए कि यदि कोई प्रतिनिधि अपनी पार्टी छोड़ता है और इस तरह से इधर उधर जाता है तो इसलिये यह व्यवस्था होनी चाहिए कि या तो वह सीट वैकेंट मानी जाय या फिर कम से कम यह होना चाहिए कि उस इलाके के एक निश्चित संख्या में वोटर यदि रिटर्निंग आफिसर को यह लिख कर दें, जिस तरह से यह व्यवस्था है कि चुनाव में खड़े उम्मीदवार को यदि इतने वोट न मिले तो उसकी सेक्यूरिटी जप्त हो जाती है तो वह सीट खाली हो जायेगी । राइट आफ रिकाल होना चाहिए यह बहुत जरूरी है ।

तीसरी बात, श्री भूपेश गुप्ता के इस विधेयक में जो व्यवस्था है वह जूडिशियरी के बारे में है । मैं कहना चाहता हूं कि राइट आफ प्रापर्टी फण्डामेंटल राइट्स में कभी नहीं रहना चाहिए । प्राइवेट प्रापर्टी सारी खरा-

वियों की जड़ है । भारत के इतिहास में ही नहीं बल्कि दुनिया का इतिहास भी बताता है कि जब से प्राइवेट प्रापर्टी की पैदाइश हुई समाज दो वर्गों में बंट गया और वर्ग संघर्ष शुरू हुआ । जितनी खराबियां समाज में आती हैं वे प्राइवेट प्रापर्टी की वजह से आती हैं । इसीलिये हमारा लक्ष्य सम्पूर्ण क्रान्ति का है—जनता वालों का शायद शासन पक्ष का नहीं होगा । सामाजिक प्रापर्टी में दो बातें आती हैं—पर्सनल प्रापर्टी और प्राइवेट प्रापर्टी । दोनों में फर्क है । पर्सनल प्रापर्टी वह है जो अपने इस्तेमाल के लिए है, उसमें हम किसी दूसरे का शोषण नहीं करते । वह केवल अपने इस्तेमाल तक सीमित है । लेकिन जिस प्रापर्टी की बदौलत हम दूसरों का शोषण करते हैं वह प्राइवेट प्रापर्टी हो जाती है । इसके लिए मैं एक उदाहरण देना चाहता हूं । जैसे आपके पास एक खेत है जिसमें आप स्वयं खेती करते हैं यह तो आपकी पर्सनल प्रापर्टी हो गई । दूसरी तरफ यदि आप अपने खेत में 10 मजदूर बहाल करते हैं और पैदावार को बेचते हैं तो वह प्राइवेट प्रापर्टी हो जाती है । उसी तरह से हमें इस अन्तर को समाप्त करना है । कहने का मतलब यह है कि राइट टू प्रापर्टी समाज के विकास में एक बहुत बड़ा रोड़ा है । इसको खत्म करना होगा बहुत हद तक खत्म किया जा रहा है, दूसरे रूप में समाप्त किया जा रहा है लेकिन स्पष्ट रूप में राइट टू प्रापर्टी को खत्म करें । यह बात भूपेश गुप्ता जी, जो इस बिल के मूवर हैं, ने कही है, यह एक अच्छी बात है ।

इनके इस विधेयक में जूडिशियरी के इंडीपेंडेंस के लिए कहा गया है । जूडिशियरी को ले कर बहुत सी बातें की जा रही हैं । उस दिन यह भी सवाल किया गया गरीब लोगों को कानूनी मदद दी जा सकती है और दी जानी चाहिए । मैं फिर यहां पर कहना चाहता हूं जूडिशियरी में आपको बुनियादी परिवर्तन करना पड़ेगा । यदि समाज में बराबरी लाना चाहते हैं, समाजवाद के सिद्धान्त के मुताबिक

[श्री शिव चन्द्र झा]

समाज बनाना चाहते हैं तो इसके लिए जूडिशियरी में परिवर्तन लाना होगा। कैसे लायेंगे? अभी जो जज बनाने का तरीका है मैं समझता हूँ यह ठीक नहीं है। जूडिशियरी को डेमोक्रेटाइज करें, इलेक्टिव बना दें। जजेज इलेक्टिव हों। जैसे हमारे संसद के सदस्य आदि चुने जाते हैं ऐसे ही जजेज का भी इलेक्शन होना चाहिए। मैं यह बता देना चाहता हूँ कि दुनियां में कई जगह ऐसा तरीका है। केलीफोर्निया में सर्किट कोर्ट के जज जनता द्वारा बनाए जाते हैं। मैं सुप्रीम कोर्ट के जज की बात नहीं कहता, सुप्रीम कोर्ट में वहां पर ऐसी बात नहीं है लेकिन सर्किट कोर्ट के जज जनता द्वारा चुने जाते हैं। डेमोक्रेटाइज करने का यही मतलब होता है। आपने दलीप सिंह सांद का नाम सुना होगा। आप जानते हैं दलीप सिंह सांद अमरीका में पहले खेती करते थे उनके मन में आया वे राजनीति में चले गए जिससे वे हाउस आफ रीप्रेजेंटेटिव के सदस्य भी रहे। इससे पहले वे जज हुए थे। जिस एरिया में वे रहते थे वे वहां पर सर्किट कोर्ट के जज हुए। वे मैथेमेटिक्स के स्टुडेंट थे, खेती का काम करते थे। जूडिशियरी से उनका कोई सम्बन्ध नहीं था। वे जज के लिए खड़े हो गए तथा जज चुने गए। बाद में वे हाउस आफ रीप्रेजेंटेटिव में भी सदस्य हो गए। तो दुनियां में पूंजीवादी समाज में इस प्रकार का तरीका जजेज को चुनने का भी है। हम हिन्दुस्तान में समाजवाद चाहते हैं तो क्या हम जूडिशियरी में इलेक्टिव सिस्टम नहीं ला सकते? कहने का मतलब यह है कि जजेज अथाइंट करने का जो सारा प्रोसेस है वह अब इंदिरा भी सोच रहें हैं। जगमोहन, तुमने मेरे खिलाफ जजमेंट दिया था, अब हम तुमको दिखा देंगे। फलां जज तुमने हमारे खिलाफ स्टेटमेंट दिया था अब हम तुमको दिखा देंगे। तो इस तरह से तड़पाना एक गलत बात है। यह सब गलत तरीका है। इसलिए मैं यह कहता हूँ कि जूडिशियरी को डेमोक्रेटाइज कीजिए। इस विधेयक में जो इंडीपेंडेंस रखने की बात की गई है

वह ठीक है लेकिन इस पोर्शन को और साफ होना चाहिए तब इस विधेयक का आदर्श पूरा हो जाता है। यहां पर मैं देखता हूँ कुछ कमी है। जूडिशियरी को आप डेमोक्रेटाइज करें, इलेक्टिव बना लें। इसी तरह से समाज के दूसरे विंग हैं। पुलिस का महकमा ले लीजिए। पुलिस फासिज्म का अड्डा है, फासिज्म की देन है और फासिस्ट टोटलीटेरियन सरकार का मेन विंग है। क्या वह दिन नहीं आएगा जब इस विंग को हम डेमोक्रेटाइज कर सकेंगे, इलेक्टिव कर सकेंगे? मैं यहां पर फिर केलीफोर्निया का उदाहरण देता हूँ। वहां पर जो पुलिस का हेड होता है जिसे शेरफ कहते हैं वह जनता द्वारा चुना जाता है। आप सोशल साइंस के प्रोफेसर रहे हैं तो आप आई० जी० के लिए खड़े हो सकते हैं, जीत सकते हैं। कोई भी साधारण आदमी आई० जी० के लिए शेरफ के लिए जो पुलिस का हेड होता है जनता द्वारा चुना जा सकता है। जब पूंजीवादी समाज में ऐसा होता है तो समाजवादी समाज में तो जनता का पार्टीसिपेशन ज्यादा होना चाहिए। यह हमारा आदर्श है। जूडिशियरी में जनता के पार्टीसिपेशन को लाने के लिए आप वहां इलेक्टिव तरीका शुरू करें। पुलिस के महकमे में जनता के पार्टीसिपेशन को बढ़ाने के लिए वहां इलेक्टिव जनता चुनी जाय यह सिलसिला चलायें। आप कहेंगे चुनाव में गड़बड़ी होती है तो चुनाव में गड़बड़ी होती है प्रीपुल्स के रिप्रेजेंटेटिव्स के चुनने में भी ये खर्चायां हैं। लेकिन यह एक ब्राड मेन हाईवे 99 हाईवे जिसको कहते हैं नेशनल हाईवे वह है समाज को बराबरी पर लाने के लिए, दूसरा कोई रास्ता मानव समाज ने नहीं निकाला है। इसलिए इस तरीके को और बढ़ाना है, डेमोक्रेटाइज करना है। अतः भूपेश गुप्त के सर्वधान संशोधन विधेयक में जूडिशियरी के बारे में बात ठीक है। लेकिन यह बात और अच्छी हो जाती यदि हम इसको, 'इलेक्टिव के तौर पर' वाले पोर्शन को, इसमें जोड़ देते कि जजेज भी हों। यदि आप हाईकोर्ट और सुप्रीम

कोर्ट से नहीं शुरू करना चाहते हैं तो डिस्ट्रिक्ट कोर्ट के जजेज चुने जायें, यह सिलसिला आप संविधान में लायें। आई० जी० कम से कम स्टेट पुलिस का हंड होता है, वह चुना जाय या एस० पी० जो डिस्ट्रिक्ट का होता है उससे आप शुरू कर सकते हैं।

आपने किताब पढ़ी होगी 'डेमोक्रेसी इन अमेरिका' यह 19वीं सैचुरी की किताब है टक्वानील की। टक्वानील ने समाज में जो इलेक्टेड का प्रोसेस देखा, जो अमेरिका में है पुलिस के महकमे में, जनता के पार्टीसिपेशन का, उसकी उसने भूरि-भूरि तारीफ की। इसमें कहा कि this process should be democratised हमें इस विंग को डेमोक्रेटाईज करना है। भूपेश गुप्त के विधेयक में जुडांशियरी के इंडिपेंडेंस के बारे में बात है, वह ठीक है। लेकिन उसमें मैं कुछ थोड़ी कमी देखता हूं। उसको और थोड़ा सा डेमोक्रेटाईज करने का इशारा, झुकाव होना चाहिए था।

अब कलेक्टिव बारगेनिंग की बात है। इसमें कलेक्टिव बारगेनिंग हो यह बिल्कुल ठीक है लेकिन इलेक्टिव बारगेनिंग हम जरा सोचें। एक पहलवान उधर है और एक कमजोर है और इसमें हम कहते हैं कि दोनों आपस में बातचीत कर लें। एक पहलवान और एक कमजोर बीमार तथा तुम लोग आपस में बातचीत कर लो, इससे दोनों में निर्णय हो नहीं सकता है। कहने का मतलब है जो उद्योगपति, कारखाने का मालिक, एक आर्गनाइज्ड कैपिटलिस्ट है और दूसरा मजदूर यूनियन जो कमजोर है इनमें निर्णय नहीं हो सकता। कलेक्टिव बारगेनिंग बहुत अच्छी बात है अगर हम दोनों आपस में समझौता करके सामूहिक फैसला कर लेते हैं, लेकिन वह जो आर्गनाइज्ड कारखाने का मालिक है उसके पास इतने दांव पेच हैं, इतने हाथ पैर हैं, छोटों से बड़ा पुलिस अफसर तक है वह यूनियन वालों को, मजदूरों को आगे

नहीं आगे देगा यानी वह मात खा जायगा। विकसित देशों में कलेक्टिव बारगेनिंग की बात या आदर्श ठीक है लेकिन भारत जैसे अवि-कसित देश में थोड़ा सेन्ट्रल इन्टरवेंशन यानी सरकार के इन्टरवेंशन की बात जरूरी है, यानी कम्पलसरी एडजुडीकेशन जिसको कहते हैं वह जरूरी बात है। प्लाण्ड इकानामी में जब अर्थव्यवस्था प्लाण्ड होने लगती है और हम दस्तंदाजी देते हैं अर्थव्यवस्था के और महकमों में तो यदि मजदूर और कारखाने के मालिक या पूंजीपति के बीच हुए झगड़े का निपटारा नहीं होता है तब जो केन्द्र का प्रतिनिधि है यानी आम जनता का प्रतिनिधि स्टेट का है उसका इन्टरवेंशन हो, कम्पलसरी आरबिट्रेशन हो, यह भी बात जरूरी है। जनता रूल रहेगा तो इंडस्ट्रियल रिलेशन में शांति होगी, हारमोनी होगी। लेकिन हारमोनी का मतलब यह नहीं होता है कि पहलवान और कमजोर दोनों को आपस में फैसला करने के लिए छोड़ दें। यह नहीं हो सकता कभी इसलिए कम्पलसरी आरबिट्रेशन जिसको एडजुडीकेशन कहते हैं वह भी होना चाहिए। अतः कलेक्टिव बारगेनिंग की बात भूपेश गुप्त के संविधान संशोधन विधेयक में है, यह बात ठीक है लेकिन वहां क्वालीफिकेशन की जरूरत है। उस बात को साफ कर देना होगा। ये सब बातें साफ नहीं हैं। मोटे तौर पर जो हमारा संविधान है उसको हमें समाजवाद की मजिल की ओर ले जाने में जो कमियां हैं, रुकावटें हैं उन सभी को दूर करना है। यह एक अच्छा प्रयास है और इसमें दो मत हो नहीं सकते हैं कि यदि हम इन दिक्कतों को दूर कर लें तो हमारा बहुत कुछ रास्ता साफ हो जाना है। गाड़ी आगे बढ़ती है समाजवाद की ओर, बराबरी की ओर, जनतंत्र के जो सही माने हैं। वह गाड़ी आगे बढ़ती है तो हम पास कर देते हैं और जब आगे बढ़ेंगे तो फिर ओर बदलना होगा।

इन्हीं शब्दों के साथ जो इसमें अच्छी बातें हैं, जो इस संविधान संशोधन का मोटा



[श्री शिव चन्द्र झा]

रूप है, इसका मैं समर्थन करता हूँ। लेकिन जो पेश करने वाले हैं, भूपेश गुप्त जी यदि वहाँ होते तो मैं उन्हें कहता कि आप इसे रिवाइज करें, जैसे-जैसे मैं कहता हूँ। इसके मुताबिक बदल दें।

SHRI S. W. DHABE (Maharashtra): Mr. Deputy Chairman, Sir, it is an important Constitution (Amendment) Bill moved by Mr. Bhupesh Gupta. I would only touch upon some aspects of this Bill and not the entire Bill which, I think, has got a very important significance. This is required to be included in our Constitution.

Sir, under clause 3 of the Bill it is proposed to amend Art. 19 of the Constitution. Article 19(1)(c) at present says that all citizens shall have the right to form associations or unions. The amendment proposed says:—

“(c) to form association or unions or bodies for collective bargaining:

Provided that such a right shall not be available to form a communal, a separatist or an anti-secular association union or a body”;

This introduces a new element in the Constitution which has been absent uptil now—that is, to form bodies for collective bargaining. The objective is very important in industrial relations field. Today the Government has not got either a national trade-union policy or an Industrial Relations Policy in which collective bargaining, can have an important part to play.

[The Vice-Chairman (Shri U. K. Lakshmana Gowda) in the Chair]

Sir, in view of the constitutional provision, it has become a fundamental right of any person or employee to form a union if there are 7 persons and it fulfils the conditions given under the Indian Trade Union Act, 1926. The number of unions is multiplying. From a figure of about

4,000, these have grown to more than 20,000 trade unions in our country. In one industry itself in Madras—the State Electricity Board—there are 32 unions, including industry-wise union, craft-wise union and sectional unions. And now a new category has been added—the backward community union. It has become very difficult for any organisation to deal with such unions. If we take the case of railways, there are about 700 occupations. If unions are formed in every section—like the Station Masters' union, Ticket Collectors' union etc.—then you will have to deal with 1,500 representatives and will require a very big hall for discussion of any proposal. This mushroom growth of trade unions is not only affecting industrial production but also the cause of labour. Up till now the questions were decided by the Indian Labour Conference or under some conventions laid down by the Labour Ministry. Under the Madhya Pradesh Act and the Maharashtra Act—and also under the Gujarat Act—there are legal provisions for the collective bargaining agent to be decided by the verification method. Today, there is a loud cry that it should be also by ballot. I am certain in my mind that the ballot system will never help the working class. It is only the verification method of membership which is going to help and which will always give a proper and true collective bargaining agent, because the collective bargaining agent postulates the aspect and background that the trade union is functioning there and functioning properly.

Without paid membership no trade union work can be done either administratively or agitationally. Though we have been canvassing for the last thirty years, in the Industrial Disputes Act or the Trade Unions Act of 1926 no amendment could be made that one union can be recognised in one industry and that it will be the sole bargaining agent. An argument has been made at a number of places

including this forum that it is not possible to have one such collective bargaining agency unless the Constitution is amended and the freedom of forming trade unions will be affected even if the right is granted under the existing constitutional provisions. That is exactly the reason why this amendment has been brought, to clarify, though I am of the opinion that even under the present Constitution it is possible to have a law where one trade union can be statutorily recognised for the purpose of collective bargaining. But, in order to clarify the position, it has been clearly stated in this Bill that under the Constitution Parliament will have a right and it will be the fundamental right of the workers to have collective bargaining with the employers. Sir, what is the state of affairs? It is that, even today, when the Ministry of Steel called a meeting of the representatives of the steel industry, I was told that there were 100 representatives of workmen coming from all over India for discussions. In every industry even if a small union is formed—and they form a national centre—and if all the national centres are invited, the minimum number would be 10 to 15. And the worst thing happened last time when we had to send a representative to the ILO. Though the INTUC was the largest representative organisation having the largest membership in the country, putting together all other organisations, the representative of some other organisation was sent as leader of the delegation. Not only that even if the INTUC's membership is the largest, it is given only one seat in any Committee along with those who have a membership of five or six lakh whereas INTUC's membership is 30 lakhs. I am saying that for the purpose of agreement, when we have discussions with the recognised union under the Industrial Disputes Act of 1947, people can say that we can sign an agreement with you, but so far as negotiations and settlements are concerned, we must take all the unions,

whichever are existing, into consideration and hold discussions with them.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): But what is the solution? You do not want balloting either.

SHRI S. W. DHABE: I am coming to the solution. I have already said about the solution also. The solution is, first we must accept the principle of collective bargaining. If we accept the principle of collective bargaining and the right to collective bargaining, then this bargaining has two aspects. Today the right of forming unions is restricted only to the industrial workers. There is no such right to Government servants or civil servants to form unions. They have only associations. The right of forming unions is given to them in other countries. Now, once the unions are formed and they have a right to collective bargaining, the only remedy available is, under the law it should be possible to evolve legislation by which the collective bargaining agent can be identified. The National Labour Commission on this issue has said—and a proposal also was given—that an Industrial Relations Commission may be established.

DR. RAMKRIPAL SINHA: Sir, is Mr. Dhabe speaking on the Amendment Bill?

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): The Bill is so comprehensive that you can speak on any number of subjects.

SHRI LAKSHMANA MAHA-PATRO: Mr. Sinha has not seen the Bill probably. Please read it.

SHRI S. W. DHABE: It is on the first page. Clause 3. It is about Article 19 (c) of the Constitution.

Sir, I was on the question of bargaining agent. An Industrial Relations Commission has to be consti-

[Shri S. W. Dhabe]

tuted and the Industrial Relations Commission has to decide that if you have one union it will be the sole bargaining agent and if there are more unions, if the membership difference is not much—it has been stated—then a ballot can take place. But to have ballot in the railways or the Posts and Telegraphs all over India will be such a costly affair that it will not either help the industry or the cause of the union. Therefore, Sir, the most important aspect which is lacking in our Constitution is about collective bargaining and the bodies for collective bargaining so that the citizens shall have a right not only to form associations but also to claim that the associations shall be the collective bargaining agents. All over the world even in the USSR where production is good, the collective bargaining system has been given a very important place. Further, it has been stated that if the employer refuses to bargain, the workers shall have a right to go on strike. Therefore, Sir, if our industrial relations are to be improved, it will be very essential that the workers are given this right. If company unions are to be eliminated and the workers are to feel that real representatives are there for their welfare and for strengthening their cause, this idea of collective bargaining must be given a proper place in the scheme of things. In the discussion on the President's Address also I have stated that the time has come when the trade unions or the collective bargaining agents or the representative unions should also be associated right from the process of planning. Now everything is planned and then trade unions are asked to follow a certain policy. If we are really to involve the working class and the trade unions, there must be a national trade union policy under which the trade unions should be consulted in every process of economic planning. If planning is done with their consent and if a target is

fixed, I am certain it will give better results than now when they are asked to come to an agreement. That is an artificial way of involving the workers. Unless their involvement is made real, nothing will come out. Therefore, the last time when the Constitution was amended, the most important right included in it was about the worker's participation in the management. On that, the previous Government had appointed a committee and the report was almost ready. It was also said that the report would be discussed. It is possible that the private companies and the private employers will not accept the worker's participation in management as a principle and will never allow their employees to become a part and parcel of the industry. And that right can be challenged under article 19 of the Constitution. Therefore, an amendment is suggested. The right to legal aid and the right to workers' participation should have precedence over the Fundamental Rights. Otherwise, even if a legislation is passed, it is possible that in courts that legislation will be struck down and it will be held *ultra vires* because of the provision under article 19. Therefore, this amendment is very important. The question is whether the courts should have a right to strike down a legislation if it affects the Fundamental Rights and if a legislation is passed in pursuance of the Directive Principles of the Constitution. The amendment proposed here is that it will not be open to the courts to challenge or strike down a legislation like the workers' participation. I have given an example that it is against the Fundamental Rights.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Mr. Dhabe, you will have to conclude now.

SHRI S. W. DHABE: Sir, the last point I want to make is that in our country if we really want to make

progress, the question of unemployment has to be solved. Not only that there is no equality in economic status or social status, the unemployment problem is not at all tackled on a scale such as to give employment to everybody. In the State from which I come there is an employment guarantee scheme for the rural areas. Everybody who wants work can be given work. I do not know why it has not been extended to other States. One of the reasons against acceptance of this scheme is that it will give rise to inflationary pressure. I think, Sir, it is not a correct approach. When everybody talks of the right to work, we are not ready to accept that it should be a part of the Constitution. Therefore, Sir, in clause 7 of the Bill it has been provided that all citizens, men and women equally, shall have the right to work and adequate means of livelihood. And, Sir, this is a very important right that all the employees are demanding. Now is the time when the Government should come with a policy on employment and accept this very important amendment proposed by Mr. Bhupesh Gupta, that all the citizens shall have the right to work in this land. Without employment and without work, without remunerative work, no social or any other status can go up or the living standards can go up in this country. And, therefore, unless we take this responsibility, unless we keep as a cardinal principle of our administration that every person has a right to employment, no progress is possible in this country, and discrimination will never go. I, therefore, suggest to the hon. Minister that, such an important Bill as has been moved by Mr. Bhupesh Gupta and the principle underlying it, he should accept.

**SHRI LAKSHMANA MAHA-PATRO:** Sir, as you see from the Bill, this Bill was introduced long back before the Forty-second (Amendment) to the Constitution of 1976 and much earlier than the Constitution Amendment that was brought by the Janata Party when it was in the

Government. So many things which were proposed in this Bill by the hon. Member, Shri Bhupesh Gupta, were attended to when the amendment was brought in by Mrs. Gandhi in the year 1976. Some of them were undone by the Janata rulers later and some still remain to be attended to. That is why there is now the need to speak on this, at least on those matters which have not been attended to so far.

Sir, we do not know when the leaders of this country will stop speaking about the very acute and at the same time cronic problems of the country, namely, poverty, unemployment and the like and sometimes also the rise in prices. These are burning problems. Sir, these are matters of which we have been hearing. Everyday you hear a leader, whether he is in the ruling party or in the opposition speaking about these problems. But when it comes to the solution of these problems, he tries to draw himself to some background. The reason is that, in a way, if he ever happened to be the ruler or associated himself with the ruling party, he has been responsible for these problems. That is why he cannot stand the opposition of the people who were affected by these problems.

Sir, there are very general remedies proposed for these maladies of the country, and as any general medicine does not work for all specific diseases—they require specific medicines—they have never worked. Therefore, in the background of the bad economic situation in the country, the crisis that we are facing, the big problems and the draconian forms they have taken, we need to consider how far such a proposal that has been mooted in the Bill by comrade Bhupesh Gupta is relevant.

I just want to tell you how it is very very essential in the context of the events that have happened in the country for the past few years. Sir, only recently when we have crossed the general election for Parliament,

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we heard the slogan-shouting and anti-slogan shouting in relation to communal activities, authoritarian activities and so many other things. Sometimes for the stability of the Government which is very much needed for the country were the shouts from some other sides. That way we had the experience for the last few months, and at last that phase was over and the Lok Sabha was constituted. And how we are faced with the real problems of the country. The Constitution, when it was framed, took note of the conditions of the people, their traditions, their culture, etc. and the framers of the Constitution said that this will be the programme of action, this will be the project report for the people who will be on the saddle of governance. As time rolled on it was found that it proved ineffective. The things very much needed for the socio-economic transformation of this country are not being attended to. It is therefore that Comrade Bhupesh Gupta has brought these amendments which also cover a wide range of things which all point to one thing, that is, the socio-economic transformation of this country. If you go a little minutely into it, you will be able to see that all his endeavour in these amendments is to attend to those people who have been neglected so far, the toiling people, the children, the minorities, the weaker sections, the backward classes, the Scheduled Castes and Scheduled Tribes, people who are surging in poverty, people surging not in wealth but in poverty, the basic necessities of life. He has also in a way told us that we have enlisted a number of freedoms as fundamental rights for our people, but in effect only two unwritten freedoms are being enjoyed by the people. One is the freedom to die starving under the sun. The other unwritten freedom is to make as much property as possible by any means that you have at your command. These are the two freedoms that are really being enjoyed by the people.

Rich people are able to concentrate all the wealth in their own hands by one freedom while the poor people, for whom we never fail to shed crocodile tears whenever an opportunity arises, are making use of the second freedom, that is of starving and dying in the sun on the streets. If in fact you are interested to give the people of our free country some freedoms, the freedoms that have really to be given are the freedom or the right to work, the right not to be exploited, the right to have their due by collective bargaining, the right not to be oppressed by a person who has been oppressing for long years. This is what should really be written into the Constitution. This is what we should really work for. This is what Comrade Bhupesh Gupta says in his amendments.

Before I go into the details of the amendments I wish to tell you, 1947 brought us independence and along with that came a law called the Industrial Disputes Act which was meant to safeguard the interests of industrial workers. But what was done thereafter was to send workers from pillar to post. The worker has to run for years from court to court against a ferocious, tyrant-like management. Sometimes the workers die before the proceedings are over in the courts. That is what the Industrial Disputes Act tells you. Does it not require change? That is what the workers who met in a conference decided. If the trade union movement has to function properly, the workers have to do collective bargaining. When they place a charter of demands before the management, the management very delightfully tells them that they have no time to attend to their demands. What are the ways open to the workers? Either they should file a dispute and run to different courts, or ask the management to attend to their demands right then and there. They try to do it, but unfortunately the word used for that is 'gherao'. What has happened thereafter? The matter was taken

before the courts and our courts have said that 'gherao' is something illegal. What is then the remedy open to the workers? They have certain problems which are not being attended to for years. They have certain problems and any common man with prudence will agree that they should be settled. All the same, the management on this pretext or that pretext does not give them their due. Should they not have the right to say: Our demands should be settled here and now. But the management carries over the matter for years. Is it not our experience? Therefore, they are not only exploiting, but are also cheating the workers . . .

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): How much more time you will take?

SHRI LAKSHMANA MAHA-PATRO: Twenty to twenty-five minutes, if you allow. But you are all-powerful.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Five minutes.

SHRI LAKSHMANA MAHA-PATRO: This is how a man is being exploited and treated by the law. This is one example.

Then came the Janata rulers. We all had a taste of their industrial relations policy. They wanted to bring a Bill under which even the right to strike was sought to be denied to the workers. Thanks to Providence, they were ultimately thrown out. Otherwise, one shudders to think what the condition of the working class would have been under that law. Thanks also to the working class of this country, they stood united and fought against the repressive measures of the Janata Party.

As I was saying, there are very many matters touched upon by the amendments proposed by Comrade Bhupesh Gupta. He has also told you

something about secularism. Two beautiful phrases were brought into the Parliament by the Janata rulers. One is 'genuine non-alignment'. Mere 'non-alignment', they thought, was adulterated, like their own party which was an adulterated party. Naturally an adulterated fellow will see everything adulterated. The second expression they were fond of using was 'secularism' which they wanted to define, as if it was something unknown. Sir, you were here when they wanted to define 'secularism.' They were interested in a very deep game. But their bluff was called. Our people managed to do it. Anyway these were words which were played upon and, therefore, he has made references to them. He has prohibited the right of collective bargaining being given to bodies which are anti-secular and communal. Sir, therefore, that way the importance of such proposals you can visualise.

Now, the last point as you have just cautioned me about my limit of time . . .

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Your time is already up.

SHRI LAKSHMANA MAHA-PATRO: The last point I want to cover is in relation to the Directive Principles. Sir, he has made it clear in the Statement of Objects and Reasons that the Directive Principles should really be the principles which should be worked upon. But, unfortunately, the framers of our Constitution said that they should not be enforceable, though at a later time it was stated that they will be given precedence over the Fundamental Rights. Yet many things remain to be attended to. What has been the experience? The experience has been that though the fundamental law of the country wanted, in particular, a policy towards securing all these things that are put there in article 39, it is never attended to, as everything in this country is followed in breach. Therefore, he has put it very clearly

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that this should be given a proper place . . . (*Time bell rings*).

As I told you, Sir, the whole of Part IV enumerating the Directive Principles of State Policy relates to children, ladies and other weaker sections. So, Sir, this amendment that he has proposed is very much necessary. I believe, every section of this House will be supporting that.

The last thing that I want to point out is this. He has also drawn our attention to a very important fact of life. Sir, everyday you find poor workers' provident funds not being paid. The Government is not able to get their dues. Who are the defaulters? The great monopolists, the richest of the rich of the country. They are the people who are capable of taking matters before the court. And what happens with the money? A person like Birla has to pay Rs. 10 crores to . . . (*Time bell rings*). What do the Birlas, the Tatas and the Bangurs do? They use it in building a second plant. They are exploiting the workers and cheating the Government in many things. That is what you are perpetrating, and the Government is not only a silent spectator in many cases but is also a share-taker. This is my charge against not only the present Government which was also earlier there in the saddle, but also against the Government which has just lost its seat. And yet they say that they are interested in the welfare of the down-trodden the teeming millions. Sir, what is the difficulty in giving a young man of 18, whom you are not able to provide a job, at least the right of vote? He will give you the proper place; he will cut you to size. You put so many things in your manifesto but you do not implement them . . . (*Time bell rings*). Sir, this amendment is good for the country.

SHRI AMARPROSAD CHAKRABORTY (West Bengal): Sir, the Bill has been brought forward with the

avowed object of seeing that the Directive Principles and some rights which are enshrined in the Fundamental Rights in Chapter III of the Constitution of India are protected. Firstly, the mover of the Bill has laid emphasis on the provisions of Article 19 of the Constitution regarding collective bargaining. It has been held by the different High Courts and the Supreme Court that it is a fundamental right of the workers and employees of this country to form trade union organisations. But there are certain hindrances with regard to collective bargaining. There are some limitations also so that the trade union movement with the avowed object of collective bargaining is very difficult to be carried out for the interests of the workers and employees. Mr. Gupta's Bill has that object in view. Sir, we have seen what has happened in the past 30 years. We have passed the Industrial Disputes Act in 1947. Firstly, there was much confusion regarding the definition of a worker, how the collective bargaining will take place and what will be the nature of collective bargaining. The character of trade union movement has completely changed after 1947. In pre-1947 period, the trade union movement was primarily organised to fight against the British imperialism. If you go back to the days of Shri Chitranjan Das and Netaji Subhash Chandra Bose, you will find that they always emphasised the need for unions and associations as a matter of right primarily with the object of fighting against the British imperialists. But the whole outlook has changed after the transfer of power. Those who believe in scientific socialism or those who believe in the class struggle have to be protected. Our belief is that the power is concentrated in the hands of the capitalists and they are ruling the country through the ruling party. Unless there is constitutional protection given to the workers, employees or the working sections of the society, their rights and their achievements cannot be protected. It is our

experience that in India, after 1947, some trade union organisations were formed to support Government action. There are some other trade union organisations which have been formed and which have worked at All-India level and the State levels. But they have no rights and no powers, even though they have been enshrined in the Constitution. In actual practice, that right is not exercised in a proper way. It is because the employers have been invested with greater power and the Government's help is with them. So, it is very difficult for the poor workers and the weaker sections to organise themselves for the purpose of collective bargaining with regard to wages, with regard to working hours, with regard to provident fund benefit, with regard to the definition of the workman, with regard to their leave facilities, holidays, etc. That is why, Sir, if the Constitution gives a direct protection to these weaker sections of the society, a right to organise themselves and form a union, the interests of the workers and the poorer sections would have been served. So, Sir, if the Constitution gives this protection, the workers' cause which has been pursued so long would have been helped. The workers will hold you in good esteem and will give you their whole-hearted support.

Sir, we often hear that ours is a social welfare State. From 1947 onwards, till this time, some statutes have been passed, namely, the Industrial Disputes Act the Provident Fund Act, the Factories Act, the State Insurance Act, etc. presumably to show to the world that these are the statutes which are meant for the benefit of the workers and the weaker sections of the society of this country. But, Sir, because of legal contradictions because of variation of opinion in different High Courts and tribunals and the Supreme Court, to this date, the workers could not achieve their aim. So, towards that goal, to enable the workers to achieve their aim, I think, this Amendment which is sought to

be made in the Constitution by the Mover of the Bill has to be supported and it should be given effect to in the best interest of the worker. Otherwise, Sir, if there is no power vested with them, if they have no scope, if they cannot approach jointly, if they have no bargaining power, the workers' interests cannot be served. Sir, we may say loudly that we are for the weaker sections. But what has happened in the country is crystal clear. The collective bargaining could not be carried out to their benefit because the capitalists are very powerful. And virtually, Sir, for the last five or seven years, only 20 families, 20 industrial groups are ruling our country. The Reserve Bank Report goes to show that the Tatas have doubled their capital only in five years, that the Birlas have doubled their capital. The Thapars, the Singhanias, etc. are the 20 families that are ruling the country. But the workers working with these capitalists are being exploited. The workers are contributing for their capital and the capitalists are amassing wealth. But the workers have no right to fight out on the basis of the principle of collective bargaining to achieve their rights and privileges. Therefore, Sir, this should be in the statute book so that there can be Central supervision.

Secondly, Sir, regarding the Directive Principles and the Fundamental Rights, we have argued and we have argued so much during the emergency period. The power of the judiciary was attempted to be taken away by them. Taking the precedents of England, some parliamentary authoritarianism was sought to be established. But later on, it was rectified. At that time also, we argued about it. The Directive Principles are there on the body of the Constitution. You will remember, Sir, up to this date, these Directive Principles are not given effect to by many a State.

4 P.M. Why many? Most of the States have not done it. The right to employment and the right to free education is there. Though



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some of the directive principles are on the statute book or in our Constitution for the last so many years but there are only a few States which have done something in regard to them and their number can be counted on fingertips. It is only in West Bengal that we have made Education free up to the 10th standard. They are now trying to give effect to some more directive principles particularly in regard to right to work. But there are difficulties. As you know, Sir, in a capitalist form of Government it is very difficult to give effect to any programme through directive principles. So, how can the problem be solved? Of course, here may be some exceptional countries. I have seen things in Japan, in Germany and also in the Soviet Union. It is only in those countries which have a socialist system of Government believing and depending on the theory of class struggle, that this problem can be solved, where the means of production can be distributed equally among the people. So, there is little hope here. So long as the present form of Government remains, the right given by the Constitution is very difficult to be achieved. But the suggestion made in this Bill that directive principles should be given effect to should be seriously considered. At least some committee should be set up to see that the directive principles are given effect to by all the States. Otherwise it is futile and useless to keep them on the body of our Constitution. *(Time bell rings)*. Sir, I am just finishing. I have to touch only two points. Sir, at least a provision should be made that the directive principles laid down in our Constitution should be given effect to and so far as it is possible within the present structure of the Government and the society every effort should be made to implement these directive principles. But, how should it be done? Several suggestions have been given in the Bill and amendments have been suggested. The right to work or right to employment,

so that people get at least a square meal, should be given effect to. If the weaker sections, workers, labourers and employees have the right to work or they can earn a fair wage. These principles should be given a binding force, by this amendment, in the Constitution. In order to achieve this avowed object, there should be an amendment and this amendment should be accepted so that it may be given effect to through the Constitution. If we do that we can reach our goal of doing something for poorer sections who are otherwise becoming poorer and poorer and rich people are becoming richer and richer. You can give effect to this change so that the poor people are given some benefit and they may have at least two square meals. If we do that then only the real theory of socialism can be successful, in part, at least, because I do not believe that this Government can solve the problem wholly, as it works for industrialists and capitalists only. With these words, Sir, I support this amendment.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHIV SHANKAR): Mr. Vice-Chairman, Sir, Shri Bhupesh Gupta has introduced the Bill for amendment of Articles 15, 19, 31, 31C, 32, 39, 124, 226, 311, 326 and 368 and for the insertion of new Articles 39A, 46A, 50A, 51A and a new part XXA. I must submit that the discussion on this Bill stated in this House sometime on 27th April 1979. Wide-ranging discussions took place and quite a lot has been said about the various Articles, particularly with reference to Articles 15, 19 and 39 because the questions were with reference to reservations, association and also Directive Principles. Though, of course, other aspects also have been stressed to a very great extent, I would not like to go in detail but I would like to make my submission as a lawyer—like argument so that I should be brief with reference to each Article and I should give pro-

per reasons as to why I am not able to accept the amendments.

Sir, Clause 2 of the Bill is with reference to Article 15(4) and what has been said is that after the words 'backward classes', the words 'or economically weaker sections' shall be inserted: Well, Sir, according to my submission, this amendment does not seem to be necessary having regard to Article 46 itself which is in the Directive Principles, which says: that it is the duty of the State to promote with special care the educational and economic interests of the weaker sections of the people. This is something that has been ordained in the Directive Principles themselves. Once it is so, then it is a matter for the State to bring in the legislation to translate the Directive Principles into a reality. Therefore, by merely bringing in this particular expression "weaker sections" after the words backward classes, in my submission, the matter does not get solved. Already the power is there. It is only a question of exercising that power and I am sorry that by amending Article 15(4), we would create more complications unduly, than warranted. In fact, I may submit that no doubt, the expression 'weaker sections' has not been defined in the Bill, but would obviously include the Scheduled Castes and the Scheduled Tribes, as is evident from Article in question itself and among others, the economically weaker sections of the society. The term 'economically weaker sections' is also a term which has not been defined and it is not possible to define such an expression. The Government of India have appointed a Backward Classes Commission which, so far as the all-India spectrum is concerned, has got to go into the question of determining the criteria for the backward classes, though of course, according to my thinking, the criteria are already spelt by the various judgements of the Supreme Court right from Balaji's case which was decided by the Supreme Court in 1963. But nonetheless an insight into it might help

us to determine the weaker sections so that they could be entitled...

**SHRIMATI PURABI MUKHOPADHYAY** (West Bengal): What about the economically backward classes?

**SHRI SHIV SHANKAR**: I have already said that Article 46 takes care of it and, therefore, it is not necessary to make an amendment in article 15(4). That submission I have already made to the House.

**SHRI LAKSHMANA MAHAPATRO**: He has his own way of answering.

**SHRI SHIV SHANKAR**: I am also having a lot of substance in my submission. If article 46 has not been translated, you cannot blame me for not accepting the amendment. I have said that so far as article 46 is concerned, it certainly guarantees all these rights so far as weaker sections are concerned. That is precisely what I have stated.

Then, Sir, so far as clause 3 of the Bill is concerned, it seeks to amend article 19 of the Constitution. The first proposal is to substitute the existing sub-clause (c) in clause (1) in that article with a view to giving the right to form associations or unions or bodies for collective bargaining provided that such a right shall not be available to form a communal, a separatist or anti-secular association, union or body. In this connection, I must submit that so far as the scope of article 19(1)(c) is concerned, it guarantees that right to form associations and this is a fundamental right. This right, Sir, as the House is aware, is subject to the reasonable restrictions that are already enshrined in article 19 itself and these restrictions could be imposed by the State in the interest of the sovereignty and integrity of India or public order or morality. Collective bargaining, as a concept, is relevant only in a relationship between employers and employees and these matters, in my submission, are already regulated by the provisions of the Trade Unions Act 1926 and the Industrial Disputes Act, 1947. The ILO Convention No. 87 concerning the

[Shri Shiv Shankar]

freedom of association and the freedom of the right to organise and also the ILO convention No. 98 concerning the application of the principles of right to organise and to bargain collectively, recognise the right to collective bargaining as flowing from the right to form associations. While certain restrictions on these rights can be reasonably imposed in so far as they relate to the armed forces, the police and the public servants engaged in the administration of the State, these rights are already available to all employees in some form or the other. There is, therefore, no need for amplification of the right as proposed in the Bill.

What was sought to be argued was that the right to collective bargaining will have to be ensured within the meaning of article 19(3). In fact, from what I have stated it is clear that the right to collective bargaining is already there. One of my friends, Shri Shiva Chandra Jha, speaking today, has observed something about compulsory arbitration. Well, I must say, Sir, that once you initiate the concept of compulsory arbitration, then perhaps one has to forego the right to strike, as any strike at this stage would become illegal. I am and aware whether he is a trade unionist. Then the question will be...

श्री शिव चन्द्र झा : बीच का रास्ता आपको निकालना होगा, कंपलसरी आर्बिट्रेशन के लिये।

(Interruptions)

SHRI SHIV SHANKAR: I was only trying to say that this is something which would create more complications than warranted. Therefore, in my submission, article 19(1)(c), as it stands today, enjoins a right to form associations and coupled with the Trade Unions Act, the Industrial Disputes Act and the ILO Conventions, sufficiently guarantees the right to collective bargaining and, therefore, it is very difficult for me to accept the

amendment, as suggested, in article 19.

SHRI S. W. DHABE: In other countries this right is accepted as a constitutional right and the ILO conventions are not a law in our land.

SHRI SHIV SHANKAR: It is something which has been followed.

SHRI S. W. DHABE: But that is not statutory.

SHRI SHIV SHANKAR: This is precisely what I am saying that none the less the two Acts guarantee that right. That is what I have stated.

SHRI S. W. DHABE: With due respect...

SHRI SHIV SHANKAR: I am not here to argue...

SHRI S. W. DHABE: I am not arguing. I want you to clarify the position. Under the Trade Unions Act or the Industrial Disputes Act, 1947, there is no right of collective bargaining given anywhere.

SHRI SHIV SHANKAR: The spirit of these Acts, if you kindly take into consideration, it does give a right for bargaining... (Interruptions) Sir, it will be difficult for me to proceed...

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Let him continue, Mr. Mahapatro.

SHRI LAKSHMANA MAHAPATRO: I am not interrupting him. But he is a lawyer by profession, as I understand it, and, therefore, I just want to know from him whether providing under the Constitution and providing under the ILO Conventions, or some other law, is one and the same thing.

SHRI SHIV SHANKAR: May I say this much? I can say as a lawyer—as my friend has tried to put it—that if something is provided in the law, it gives the right and if that right is not translated, then you have a right

to move the High Court under article 226, or the Supreme Court under article 32 for the enforcement of that right. It is a right by itself. Therefore I would not like to go into that Sir. But I may submit, it is difficult for me to accept the amendment that has been suggested with reference to article 19(1)(c).

So far as deletion of clause (f) of article 19(1) is concerned, that, of course, I think is already on the **Statute Book** inasmuch as the fortyfourth Amendment Act has already taken care of it. I do not want to dilate on that aspect at all.

With reference to article 19(1)(g), what has been proposed is to delete the words "trade or business". I may submit that the right with reference to trade or business, as provided under article 19(1)(g) is not an absolute right. The scope of this right has been considerably diminished by virtue of article 19(6) under which the Government can impose reasonable restrictions on the exercise of this right in the interest of general public and prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or create monopolies even to the exclusion, complete or partial, of all citizens or otherwise. Therefore, what is sought to be proposed is to delete the expression "trade or business" from article 19(1)(g). Having regard to article 19(6) which empowers the State to impose restrictions, I am submitting that this is not a case of an absolute right so far as "trade or business" is concerned. And it could be limited in the interest of the society. Therefore, it is not possible for me to accept the deletion that has been proposed by the Bill.

**SHRI LAKSHMANA MAHAPATRO:** How long do you want to stand guard for traders and business people? You are standing guard for propertied people for a long time but how long do you want to stand guard for traders and business people?

**THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA):** Let him proceed.

**SHRI SHIV SHANKAR:** Mr. Mahapatro should know that if he wants to take away totally the right to trade and business, perhaps that would be a different case altogether. I am saying that this is what the Bill has proposed. The Bill has proposed the total deletion and I am saying that I am not prepared to accept the total deletion. What I am trying to say is that sufficient power is there to the State under Article 19(6) whereunder restrictions could be imposed and these restrictions could be imposed in the interest of the society. Therefore, if this be so, it is not a case of absolute right with reference to trade or business. It is a qualified right. And the courts, have time and again, taken care of it. That is the position which I am trying to explain and that is why I am not persuading myself to accept the deletion of the entire clause. This is how I am putting it.

Then, so far as the expressions "reasonable restrictions" and "interests of the general public" are concerned, they have been given quite a liberal interpretation by the courts and always in the interests of the society. Therefore, I do not think that the freedom that has been given in Article 19 is such an absolute freedom with reference to trade and business so that it could warrant the deletion as has been sought to be made out in the Bill itself.

Then, Sir, with reference to clause 3(b) of the Bill which provides that under Article 19(2) it should be possible to impose reasonable restrictions on the right to freedom of speech and expression in the interest of communal harmony or stopping of monopoly control over newspapers and press media. "Communal harmony" is covered by the expression "public

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order". That is already there in Article 19(2). The clause already exists in this Article and consequently specific mention of "communal harmony", in my submission, is unnecessary since the expression "public order" takes within its sweep the question of communal harmony also.

Then, Sir, as regards the insertion of words "stopping of monopoly control over newspapers and press media", I may mention that this involves restructuring of the ownership pattern of the newspaper industry and this is a matter where one will have to go deeper for purposes of understanding the consequences of the action. Already there had been a lot of clamour that the press is sought to be gaged and perhaps, though, of course, the second Press Commission was going into that, it has also given certain suggestions. Perhaps that could be gone into. But, unless the full implications of the action with reference to the proprietorship of the newspapers is gone into, it is not possible to accept this amendment as has been suggested.

Sir, vide clause 4 of the Bill what is sought to be said is that clauses 2, 2B and 5...

SHRI A. G. KULKARNI (Maharashtra): You suggested that the proprietorship of newspapers should be gone into. It has been gone into very many times but ultimately under the right enshrined in the Constitution, the right to have private property, you cannot change that equation unless you have some whole decision on structural changes. You are not going to do anything and...

SHRI SHIV SHANKAR: I am saying with reference to a clause that has been sought to be amended with reference to the Bill and I am answering it with reference to that part of it. I am not now stating my policy here.

So far as clause 4 of the Bill is concerned, it seeks that clause 2, 2B and 5 of Article 31 be omitted.

It is a known fact that article 31 related to the right to property and this right as a fundamental right has been abolished by virtue of the constitution (44th amendment) Act. However, so far as the question of safeguarding the right to property with reference to educational institutions established and administered by minorities is concerned, that has been done and accordingly a provision analogous to the proviso to article 31(2) has been inserted as article 30(1A) of the Constitution. So, having regard to what has already been done under the Constitution (44th Amendment) Act, I do not think I should dilate further on these clauses 2, 2B and 5 of article 31. Therefore, I am trying to avoid that. So far as the right to property is concerned, that has been removed from the Constitution as a fundamental right.

Now, Sir, so far as clause 5 is concerned, it seems to amend article 31C with a view to substituting the expression "clause (b) or clause (c) of article 39" by the expression "Part IV of the Constitution" as well as substituting the expression "article 14, article 19 or article 31" by the expression "Part III of the Constitution". Therefore, Sir, what follows is that the further proposal is to omit the proviso to this article. Article 31C, prior to the amendment by the Constitution (42nd Amendment) Act, 1976, contained the expression "clause (b) or clause (c) of article 39". The 42nd Amendment Act amended this article and extended its scope to all the principles laid down in Part IV of the Constitution so that what was argued at that moment was—and perhaps very rightly—that the Directive Principles must precede the Fundamental Rights because the individual's rights cannot supersede the Directive Principles. This is the position today. To say that by 44th Amendment, the then Government wanted to restore back the position by restoring the scope of this Article to article 39(b) and (c) as it existed but since it could not be accepted by the Rajya Sabha, the position remained what it was is not

right. In the 42nd Amendment as a result to the extent Part IV of the Directive Principles is concerned, they have been given precedence and there is no necessity that even the Fundamental Rights should also be brought in so that they can be given ascendancy. Sir, I may submit that it will not be possible to extend the scope of this article so as to include all the Fundamental Rights guaranteed by Part III of the Constitution as the rights other than those under articles 14 and 19 are not relevant for the purpose, such as the right to life and liberty; since the right to property as a Fundamental Right has been taken away by the 44th Amendment Act, article 31 has been omitted from this article *vide* section 8 of that Act. Therefore, I feel that the amendment which was brought in under 42nd Amendment takes care of Part IV properly and so far as articles 14 and 19 are concerned, they have been given protection with reference to article 31C and, therefore, to that extent I feel that so far as the amendment in article 31C is sought, it has no basis.

Now, with reference to clause 6 and clause 13(b) of the Bill, I must submit that these two clauses respectively seek amendments in article 32 and article 226. These seek to curtail the powers of the Supreme Court and the High Courts respectively to issue directions or orders or writs in respect of any law or any action taken under such a law with a view to give effect to the Directive Principles laid down in Part IV of the Constitution or in respect of the economic offences or for ensuring the collection of taxes and other revenues or for eradicating corruption in Government Services. I may submit that if all these aspects are to be taken away from the purview of judicial review and if the powers under article 32 and article 226 are restricted, it is possible that an argument could be advanced saying that curtailing of the judicial power offends the basic structure of the Constitution. And, there-

fore, having regard to this, it would be difficult for me to accept the amendment to curtail the power of judicial review *vis-a-vis* Articles 32 and 226, both. Part XIV-A of the Constitution enables Parliament to establish tribunals for the purpose mentioned in the Bill and to exclude the jurisdiction of all the courts except the jurisdiction of the Supreme Court under 136. In view of this,, in my submission, this provision which seeks to curtail the powers of the Supreme Court as also the High Courts *vis-a-vis* Articles 32 and 226 respectively is unnecessary.

Sir, clause 7 of the Bill seeks to substitute the present Article 39. By the proposed sub-clause (a), 'right to work' is sought to be included as a Directive Principle. In my submission, Article 41 makes a provision that the State shall within the limits of its economic capacity and development, make effective provision for securing, *inter alia*, the right to work. In view thereof, I feel that this amendment is unnecessary inasmuch as it is already ordained on the State to take steps in terms of Article 41. What has to be done is to translate the Directive Principle into a reality by bringing a statute, if necessary. That is the submission which I am making, and, therefore, the question of amendment to Article 39 does not arise.

Vide sub-clause (b) of clause 7, it is proposed that the ownership and control of the material resources of the community shall be progressively owned and managed by the State so as to put the State formally on the road to social progress. This amendment, in my submission, is also not called for as the Preamble to the Constitution itself indicates that ours is a 'Socialist Republic'. The present policy of the Government is also to the effect that the material resources of the community are utilised in such a way that they are put to maximum common use and are not allowed to remain in the hands of a few individuals. I feel that having regard to the Constitutional concept, the concept which the people of India have given

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unto themselves, hoping that the socialist society will be established, in my submission, it is unnecessary that sub-clause (b) of clause 7 could be conceived of so that the Constitution itself could be amended.

SHRI S. W. DHABE: I want to have a clarification. As I understood, Article 41 of the Constitution includes right to work anywhere in India. Is that what he says?

SHRI SHIV SHANKAR: Sir, I will read Article 41.

SHRI S. W. DHABE: Article 39 clearly envisages right to work. My friend is an eminent lawyer and knows the Constitution very well. Article 41, according to him, includes the right to work. Is that what he says?

SHRI SHIV SHANKAR: May I just read Article 41?

"The State shall, within the limits of its economic capacity and development, make effective provision...."

SHRI LAKSHMANA MAHAPATRO: Sir, he means that...

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Why do you interfere? Let him proceed.

SHRI SHIV SHANKAR: It is included in the Constitution, and it has to be translated.

SHRI S. W. DHABE: Does Article 41 include it?

SHRI SHIV SHANKAR: Please bear with me.

"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work..."

This is what I read.

".....to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want..."

This is exactly what I said. It covers it, and a law could be framed. (Interruptions) I do not think I can argue with you. That is the position which I wanted to indicate. So far as sub-clause (c) of Clause 7 of the Bill is concerned, that seeks to provide, inter

alia, for voluntary agricultural production cooperatives and State farms. This proposal cannot be supported as the experience in regard to cooperative farms has not been encouraging and such a provision will create a sense of uncertainty among cultivators and would repel future investment on land. Clause 8 seeks to reorganise the functions of Parliament, State Legislatures and the services under the Union and the States so that they become the prime instruments of democratic and social change. In my submission this amendment is not called for, Parliament and State Legislatures are already the instruments of democratic and social change. The services under the Union and the States have stood the test of time and they have implemented the socialistic and democratic policies enunciated by Parliament and State Legislatures. Unless we go to the extent of saying that the whole system has failed in achieving the constitutional goals, I feel that we need not be that much disappointed to include Clause 8 by way of an amendment. Clause 9 of the Bill seeks to insert a new Article 46A with a view to fix by reservation definite quota of jobs in Government services and also in Government undertakings for the Muslim community as well as for backward and weaker sections of the community. In my submission Article 16(1), (2) and (4) of the Constitution takes care of this aspect. It refers to all communities, including minority communities, which could have a fair and equal opportunity in the matter of employment or appointments under the State and reservations could be provided. What has been said is that reservation with reference to backwardness of citizens—if any community including the Muslim community or sections of the Muslim community, could fall within the ambit of backwardness of citizens—in my submission, is taken care of by Article 16 itself. So far as Backward Classes and Scheduled Castes are concerned, they are already seeking the benefit under this Article. Therefore, I do not think it is necessary that we should add Clause 9. If

we add by Clause 9, Article 46A, under the Directive Principles, and then not translate it as a reality, it does not serve any purpose. Moreover, as a fundamental right it is taken care of in Article 16. The proposal to reserve quotas for the Muslim community has got to be looked into from the point of view of the provisions contained in Article 16(2) with reference to discrimination on the basis of religion. It is very difficult to take a particular community and then make a provision because it would be hit on the ground that it makes discrimination based on religion unless it comes within the ambit of backwardness of citizens. You can take a particular section of the Muslim community, if they are backward, and then you can provide them with a better deal having regard to Article 16 itself. That is the submission which I thought I should make. So far as Clause 10 of the Bill is concerned, it seeks to insert a new Article 50A with a view to provide that the State shall take effective measures to eliminate the power of money in elections and other democratic processes. Money power in election is one aspect which has been the theme of discussion in Parliament and outside. It is mainly for the political parties and the contesting candidates to strive for elimination of baneful influence of money in elections. And already the Government is contemplating to call for a meeting to decide diverse issues and already some steps were taken in that regard. Unless we chalk out a complete programme, which perhaps would form part of electoral reforms, till then it would be difficult to immediately bring in Article 50A as a Directive Principle and then have it as a pious wish. I would rather prefer to take stock of the entire situation in regard to the electoral reform and then come to some conclusion.

Clause 11 of the Bill makes provision for the appointment by the President of a Special Officer for Directive Principles of State Policy and enumerating his duties. It further provides that Parliament or the State Legis-

lature, as the case may be, may by resolution appoint a Committee for reviewing the report made by the Special Officer and for making recommendations in this regard to their respective Legislatures. It is considered that it will not be an easy task to survey the progress made by the Governments of the Union and the States in implementing such a large number of Directive Principles over a period of 28 years since the promulgation of the Constitution. A number of laws have been made to implement the provisions of article 39(b) relating to ownership and control of the material resources of the community. Since ours is an agrarian country, the main item of material resources, is no doubt, agriculture. The institutions of hereditary proprietors and other intermediaries like Zamindars and jagirdars have been abolished. Legislations have been undertaken for the improvement of the conditions of the cultivators as regards security of tenure, fair rents, etc. and for fixing a ceiling which may be held by an individual owner. Similarly, a large number of laws have been enacted to implement the directive in article 40 to organise village panchayats. For the promotion of cottage industries, which is enshrined in article 43, a number of Boards like All India Khadi and Village Industries Board, All India Handicrafts Board, and National Small Industries Corporation have been constituted. Again, for compulsory education article 45 has been taken care of, with reference to legislation in most of the States and in the Union Territory of Delhi. Therefore, in my submission, it would be difficult to go into all these matters at this stage or to appoint the Special Officer as has been suggested in clause 11. Therefore, I do not think it is necessary that we should go into that at this stage.

So far as clause 12 is concerned, it seeks to amend article 124(4) with a view to making disregard on the part of a Supreme Court Judge of the Directive Principles a ground for his removal from office. I would submit it gives a very wide concept and a ground that he has not observed the



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Directive Principles, if he has got to be disqualified. I must say that it will create many complications. Particularly, I should submit that it would be a case of subversion of the independent judiciary. Therefore, I do not think we will be well advised to go into that aspect at this stage and in the manner as it has been suggested.

I have already given my submission with regard to clause 13(a) which seeks to amend article 226, I need not again dilate on that issue.

Clause 14 seeks to amend article 311. Sub-clause (a) thereof seeks to widen the scope of article 311 to facilitate the action by the Government for the eradication of corruption, maintenance of purity of the administration and prevention of economic offences. In effect, it seeks to dispense with the requirement of holding of an enquiry against Government servants in respect of all cases involving charges of corruption, economic offences, etc. It is considered not desirable to dispense with the requirement of holding of an enquiry in the aforesaid types of cases because before deciding the issue at least the person is entitled to a notice and what he wants to say on that aspect becomes absolutely necessary. The existing proviso (c) is invoked only in limited cases wherein the evidence is considered of such nature that its disclosure is not in the interest of the security of the State.

Therefore, clause 14 which seeks to dispense with the enquiry where the charges of corruption and economic offences are levelled affects the entire concept of article 311. Merely on the basis of the charges if a man is to be sacked, in my submission, it will be offending even the ordinary principles of natural justice. It would be difficult to accept the position.

Sir, sub-clause (b) makes provision for the adjudication of the disputes relating to action taken under article 311 by special tribunals to be set up by Parliament and State Legislatures.

The jurisdiction of the Supreme Court and other courts is also sought to be curtailed in respect of matters decided by these tribunals.

Part XIV-A of the Constitution, that is, Article 323A of the Constitution enables Parliament by law to establish Tribunals for dealing with disputes in certain matters and to bar the jurisdiction of all courts except the Supreme Court under Article 136. Once this be the position, I submit that the amendment that has been suggested by virtue of sub-clause (b) of clause 14 is unnecessary.

Clause 15 of the Bill seeks to amend Article 326 with a view to reduce the minimum age of voting from 21 years to 18 years. This proposal has been under consideration of the Government and at this stage it is not possible to straightaway agree to that, because once the entire gamut of the case is gone into, perhaps a proper decision could be taken in that regard.

So far as clause 16 is concerned, that deals with Articles 368. It wants to put a bar on judicial review of constitutional amendments. In fact, clause (4) of article 368 as inserted by the Forty-second Amendment Act contained such a provision. But the Forty-fourth Amendment Act has nullified it. Perhaps we will have to consider it at an appropriate stage, so that if we think that some other articles have got to be also amended, that may also be done. It has in fact already been argued that the matter is still sub judice, because the judgment has not been rendered. The argument that has been put forward before the Supreme Court is that it offends the basic feature of the Constitution. Having regard to these things, it would not be proper for me to accept this amendment at this stage, even though by virtue of Forty-second Amendment Act, our party had brought in Article 368 (4) at that stage.

Now, so far as clause 17 of the Bill is concerned, it seeks to make provision for the constitution of a Constitutional Committee consisting of Mem-

bers of Parliament as well as others to interpret the Constitution or to decide any question of the constitutional validity of any Parliamentary or State law. Perhaps, a clue has been taken from the Constitution of the Fifth French Republic. And the question is: So far as the amendment of the Constitution is concerned, has it to be left to a Committee of Parliament to decide this issue? I submit, Sir, that it may be difficult for us to accept this amendment for the simple reason that the fabric of our Constitution renders a judicial review to the exclusive domain of the Judiciary. Now, this is the basis of Parliamentary democracy. If judicial review has got to be taken away from the courts, even if it is with reference to the amendment of the Constitution, if it is sought to be vested in a committee constituted of Members of Parliament, I personally feel that apart from the fact that it would affect, as I have already said, the basic features of the Constitution with reference to judicial review, it would also hit at the very root of Parliamentary democracy. And having regard to this, I do not think it would be possible for us to accept this particular amendment since our Constitution which is quasi-federal and quasi-unitary has its limitations. So, in view of this I do not think it will be possible for me to accept Clause 17, as it has been propounded by the Mover of the Bill. Clause 18 seeks to delete Entry 92, that is, the Maintenance of Internal Security Act, 1971 and Entry 130, that is the Prevention of Publication of Objectionable Matter Act, 1976, from the Ninth Schedule to the Constitution. The Prevention of Publication of Objectionable Matter Act has already been repealed by Act 14 of 1977. The Maintenance of Internal Security Act, 1971 has also been repealed by Act 27 of 1978. These entries have already been deleted from the Ninth Schedule.

Having regard to this, I do not think that the Mover of the Bill would himself feel that Clause 18 should be pressed. I have tried to give balanced arguments in support of the submis-

sions that I have made and I request that the Bill be rejected. The Mover of the Bill is not here. If he were there, I would have requested him to withdraw the Bill itself. Since he is not here, the Bill has necessarily got to be rejected. Thank you, very much.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Shri Bhupesh Gupta, the Mover of the Bill, is not here. So the alternative is to put this to vote. The question is:

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

*The Motion was negatived.*

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Item No. 5, Shri F. M. Khan is not here. Item No. 6, Shri Bhupesh Gupta is not here. Item No. 7, Shri Khurshed Alam Khan.

### THE JAMIA MILLIA ISLAMIA UNIVERSITY BILL, 1977

SHRI KHURSHED ALAM KHAN  
(Delhi): Sir, I move:

"That the Bill to establish and incorporate a unitary teaching and residential University in Delhi, be taken into consideration."

वाइस चेयरमैन साहब, मैं एक तारीखी इदारे के बारे में यह बिल पेश कर रहा हूँ और समझता हूँ कि यह बिल हमारी समाजी और कौमी तारीख में एक ऐसा बिल होगा जिस से हम अपने बुजुर्गों की कुर्बानी की जिन्दगी बख्शेंगे जनाबवाला, आप को यह इल्म है कि सन् 1920 में जब नान-कोआपरेशन और खिलाफत मूवमेंट बहुत जोरों पर चल रहा था उस वक्त अलीगढ़ में मौलाना मुहम्मद अली और महात्मा गांधी गए थे और उन्होंने वहां के तालिबइल्मों और उस्तादों से यह कहा था कि ऐसे तमाम इदारे जो अंग्रेज सरकार की सरपरस्ती में चल रहे हैं, अंग्रेज सरकार जिन को माली मदद दे रही है उन को छोड़ कर अपने खुद के ऐसे इदारे कायम