बीच में एक गहरा मतभेद इस वजह से जो खड़ा हुआ है इसलिए आपके द्वारा मेरा विदेश मंत्री से और सरकार से निवेदन है कि तत्काल इस पर वे छानबीन करायें और ग्रीक की सरकार को लिखे कि उनके जहाज के ओनर ने क्यों इस तरह का दुर्व्यवहार हमारे भारतीयों के साथ किया। इस सिलसिले में मैं एक बात और कहना चाहता हूं कि उस दिन मुझे आपने आदेश दिया था--विदेश विभाग के किसी प्रश्न पर मैंने कहा था कि यू० के० में एक नेशनल फ्रन्ट के नाम पर जो जाति-पांति के आधार पर दुर्भावना एशियों के खिलाफ इंग्लैंड में फैलाते रहते हैं, इस सारे काण्ड के पीछे जाति-पांति की जो भावना है वह निहित है। इसलिये यू० के० की सरकार से हमारी सरकार, यद्यपि आदेश तो नहीं दे सकती, तो भी आग्रहपूर्वक कहे कि पावेल द्वारा प्रचारित जाति-पांति की भावना का अन्त करे अन्यथा एशिया के देशों में अंग्रेजों के खिलाफ, इंग्लैंड के खिलाफ एक ऐसे असंतोष की भावना पैदा होगी जो प्रज्वलित अग्नि में परिवर्तित हो सकती है।

THE CONSTITUTION (FORTY-FIFTH) AMENDMENT BILL, 1978.

MR. CHAIRMAN : Shri Shanti Bhushan.

SHRI S.W. DHABE (Maharashtra) : Sir, before he moves the Bill. I want so say a few words by way of a point of order about the introduction of the Bill. Last time when the 42nd Amendment Bill was introduced , a procedure also was laid down.

MR. CHAIRMAN : It is a motion for consideration.

SHRI S.W. DHABE : After the Motion for consideration is moved I would like to raise it because very serious questions arise out of it.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN) : Mr. Chairman, Sir, I consider it a great privilege to move :

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be taken into consideration".

Sir, this is a very important Bill as all hon. Members are aware, and I am very happy to say that in finalising the provisions of this Bill I have received great co-operation and help from all sections of this House, from the leaders of all the Opposition parties and Opposition groups. I am very grateful to them for all the co-operation help and support with the help of which it has been possible to introduce this Bill.

Sir, I am also happy to say that when this Bill was discussed in the other House, it received very wide support and ultimately the final Motion was adopted without dissent. Sir, when I say that, it must be recognised that in a democracy there is always room for some honest difference of opinion so that if there is no complete agreement in regard to every provision of the Bill, it does not mean that a particular section is not interested in securing the best possible future for the people of India in which India can hold its head high, but there is always room for some honest difference of opinion and, if therefore, there are some differences among the different parties on some provisions of the Bill, well, that is a matter which is to be expected. But, Sir, I believe that those differences would of the minimum and so far as the very important features of the Bill are concerned, they would receive unanimous support from all sections of the House. Sir, with these words I would like, very briefly

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to explain the main provisions of the Bill in this House also.

Now, the first part of the Bill—the important part of the Bill—relates to the Emergency provisions in the Constitution. Sir, the effort has been, by this Bill, to see that while recognising that in certain circumstances special powers may be needed by the Government to overcome special situation which might pose a threat to the security of the country, it is necessary in the interests of the country as a whole, of the people of the country as a whole, that there should not be the slightest possibility of those provisions being abused to the detriment of the people, and it is for that objective that an effort has been made through the provisions of this Bill to strengthen the safeguards in such a way and, I believe—not only do I believe but I am confident—that after those provisions are enacted into the Constitution, it will not be possible under any circumstances for anybody to create a situation in which the interests of the people and the rights of the people could be held to ransom.

Sir, the provisions which seek to achieve this objective are, firstly, that even when a proclamation of Emergency is made by the Government, while the earlier provisions of the Constitution at present in force require the ratification of such proclamation to be made by the two Houses of Parliament by a bare majority, hereafter, it is being provided, on the basis of the belief that the recognition that there are emergent situations in the country should proceed on a near consensus in the whole country among all sections., that the ratification will have to be made by the two Houses, firstly, within one month of the proclamation being made by the President and that ratification will require not merely the support of a bare majority in the two Houses but it will also require the support of an absolute majority of the total membership and, in addition, two-thirds majority of those present and voting. Sir, it is believed —and I believe rightly— that it will be a very important safeguard and the result of the adoption of such a provision would be that it will not be possible, unless there is a near consensus in the country, to proclaim an Emergency in the country.

Sir, it was also felt that once the proclamation of Emergency made by the President, is ratified by the two Houses, thereafter, the two Houses do not continue to have any say in regard to the continuance of the proclamation of Emergency because so long as proclamation of Emergency continue in the country, there are so many restrictions on the Fundamental Rights, the right of the people, their situation and the legal rights and the manner in which those legal rights are eonforced—there are so many impediments—and so it is also necessary that the Emergency in the country should continue only so long it is really required in order to tackle, the threat which might arise to the security of India. And, for that, Sir, an attempt has been made through the provisions of this Bill to involve the two Houses even in the matter of the continuance Emergency. It has accordingly been provided, that, in spite of the two Houses separately ratifying the proclamation of Emergency once by a two-thirds majority, it would also be necessary for the two Houses again within six months of the arlier ratification to ratify it again by the same two-thirds majority of those present and voting to enable the Emergency to continue. And this process will go on as long as the proclamation of Emergency is really required. Apart from the requirement that within six months the two Houses would again be seized of the matter to see as to whether the conditions are such that the Emergency should continue, or not, it is also

sought to be provided through the provisions of the Bill that if the Lok Sabha is of the view that there is no longer any need to continue Emergency even during the period of six months for which the ratification might have been made, it would be possible for a certain proportions of the Members to seek a special session of the Lok Sabha which will have to be convened.

SHRI BHUPESH GUPTA (West Bengal) : Why not Rajya Sabha also ?

SHRI SHANTI BHUSHAN : The whole question is, if one House itself by a bare majority says that the proclamation of Emergency should not continue, then, in that case, it should be mandatory on the Government to revoke the Emergency forthwith. Shri Bhupesh Gupta knows very well that there is some difference between the Lok Sabha and the Rajya Sabha. So far as the proclamation of Emergency is concerned, so far as the continuance of the proclamation is concerned, obviously it requires a two-thirds majority in both Houses; but, so far as the revocation of the Emergency even during the period of six months is concerned, it does not require a two-thirds majority but it requires a bare majority of the Lok Sabha to pass that Resolution ; and if that Resolution is adopted, then the Emergency would have to be revoked straightaway. Apart from that, it is also important, not merely as to how an Emergency can be proclaimed and how the proclamation of Emergency can be ratified. but even with regard to the proclamation of Emergency , that a safeguard is sought to be introduced by the provisions of this Bill, namely, that the proclamation can be made only as a result of a positive decision of the Cabinet and when written advice to the President on the basis of such a positive decision of the Cabinet is tendered to the President —only then the proclamation of emergency would be possible—so that even the initial proclamation, which naturally has to be made by the President, will have to be preceded by a discussion in the Cabinet and a consensus decision of the Cabinet as a whole ; and when written advice as a result of this decision is tendered to the President, then only even the initial proclamation would be made.

Then, Sir, the consequences of the proclamation of an emergency are also important because we have to see that safeguards have to be introduced in regard to the proclamation of an emergency. It is not enough that safeguards are introduced and in what circumstances an emergency can be proclaimed. It is also important that even when a proclamation of an emergency is made, such conditions cannot be created in which democracy would be at a stake or the people's interests would be at a stake. So, it is also necessary to look into this aspect of the matter as to what should be the position and what should be the policy during the period of an emergency, and, Sir, it is with that object that some changes of far-reaching charatcter are proposed through the provisions of this Bill particularly in Article 359 because as the House is aware Article 359 contemplates virtual suspension of the Fundamental Rights. Many of the Fundamental Rights are very important. They are safeguards for the people of the country; they are safeguards for democracy and they are in the ultimate interest of the people. It should not be possible to do away with those safeguards even during the period of an emergency.

In that connection, I recall that during the period of the last internal emergency a decision was given by the Supreme Court, a majority decision by 4:1, in which a view was

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taken that Article 21 was the sole repository of the right to life and liberty. I do not want to go into it whether the majority decision was correct or not correct. Once the Supreme Court has given its decision, it is binding. But, Sir, the result, the unfortunate result, of that decision was that even if a person was deprived of his liberty during the period of an emergency when a proclamation or a notification under Article 359 was existing, the result was that there was no forum in which he could go and question his detention on the ground that even under the laws which provide for preventive detention, his detention could not be justified. Even if he was in a position to convince everybody, even forum, which had the authority to look into it, that his detention was absolutely *mala fide* absolutely on extraneous considerations and could not be justified by any reasonable person whatsoever, it was not possible for the courts to look into the matter, to go into the question and to direct the person to be set at liberty. Sir, it was realised that it was a great weakness in the Constitution as interpreted by the Supreme Court.

Sir, the right to life or liberty is sacrosanct. After all, what does the society consist of, for whom does the society exist and for whom does the Constitution exist? The entire society consists of individual citizens. The whole Constitution is meant for the people which consist of individual citizens. If their right to life or liberty itself would not be sacrosanct, if they would not have any kind of right to life or liberty during the period of an emergency—the emergency, the country, democracy etc. would be futile. Therefore, Sir, it is being sought to be introduced as an exception in Article 359 that the right to life or liberty guaranteed under Article 21 of the Constitution would not be capable of suspension even during any kind of emergency. The right to life or liberty shall be regarded as sacred, and that is why this proviso is sought to be introduced in Article 359.

Sir, another safeguard which has been introduced when this Bill was being debated in the other House—I had great pleasure in accepting that amendment which was moved by an Hon. Member—relates to non-suspension of even Article 20 of the Constitution so that now the Bill as amended in the Lok Sabha provides that even during the period of an emergency it would not be possible for suspending even the Fundamental Rights guaranteed by Article 20 because, Sir, as the House is aware, Article 20 also gives a very sacred right. If Article 20 is not there, it can become possible for the Government which means the ruling party, to victimise the people by creating an offence with retrospective effect and thereafter proceeding against person on the basis of that offence.

When an offence is created with prospective effect, then, Sir, the individual knows that he is not expected to act in such and such way because acting in such and such way will be an offence and he would punishable therefor.

SHRI DEVENDRA NATH DWIVEDI (Uttar Pradesh): But that is what you have done in the Lokpal Bill.

SHRI SHANTI BHUSHAN: The Lokpal Bill has not yet been enacted.

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): It is yet to come.

SHRI SHANTI BHUSHAN: So long as article 20 is there,

it is not possible, and I have said it on so many occasions. I welcome article 20. The Constitution-makers were very wise people when they incorporated article 20 in the Constitution, because if the Government has the power, or if the ruling party which may be supported by the majority in Parliament, has the power, to enact penal laws to create crimes from time to time —different new crimes may also have to be created—then the important safeguard has to be, if there is to be no possibility of any people or opponents being victimised, that a person must know vwhat amounts to a transgression of law before he commits an act. But if he commits the act first and thereafter, some time later, he is told "What you did yesterday, we are now making an offence", then he has no way to avoid committing that act. Therefore, this was an important safeguard, and it was felt that these safeguards should continue even during the period of Emergency, so that it would not be possible to hold any person to ransom or to victimise even one's political opponents and so on even during the period of Emergency. Why? Because the idea is that if these safeguards are not there during the period of Emergency. then an era of fear, an era of terror can be created during an Emergency, and on account of that widespread fear which might be created by the use of such powers given by the Constitution, all the safeguards of democracy also can be done away with, because democracy postulates that people would not be living in fear, that it should be seen that people are able to exercise their democratic rights without being afraid. Therefore, it was necessary that any provisions of the Constitution which could be misused during the period of Emergency for creating that era of fear must be eliminated, so that even during the period of Emergency such a situation is not created.

Then, Sir, there are other changes also proposed in articles 358 and 359 because it was realised that when the fundamental rights are suspended wholesale, then even ordinary laws which have nothing to do with the Emergency, their reasonableness on a certain basis, also cannot be questioned, so that an unintended hardship is caused to the people— Article 358, as it originally stood, suspended all the basic freedoms contained in Article 19 as soon as there was a proclamation of Emergency. So, even if there was any ordinary law which had nothing to do with the Emergency—a non-Emergency legislation—and if there was something unreasonable in it which unreasonably restricted the freedom of speech of the people or the right to form associations, trade unions, etc., then even that unreasonable part of that law could not be challenged during the period of Emergency. Therefore, an amendment has been proposed in this Bill to say that the effect of the protection of articles 358 and article 359 would be confined only to those laws which have been conceived or which are intended to really avoid that threat to the security of India, namely, Emergency legislations, and which will contain a recital to that effect, namely, it will have a conscious decision that such and such law is being enacted for the purpose of meeting the threat which has arisen to the security of India. Only those laws which are for that purpose alone will have the benefit or protection of articles 358 and 359. So far as the other laws are concerned, which do not contain that recital, they will not unnecessarily get the benefit or protection of articles 358 and 359.

SHRI B. N. BANERJEE (Nominated) : Will the declaration be justiciable?

SHRI SHANTI BHUSHAN : The declaration will not be justiciable. Ultimately, the question as to what is necessary, of course, apart from not being able to suspend article 20 and not being able to suspend article 21, to what extent restrictions have to be imposed on other

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fundamental rights in order to deal with the Emergency situation, obviously has to be left free. If it is made justiciable, then in that case there would be an impediment in tackling even that threat which has arisen to the security of India.

One has to harmonise; some powers in the Government, some extraordinary or special powers in the Government, are necessary even for protecting democracy and liberty, because if the Government is not given even those minimum powers so that it can avoid that threat to security of India, then, in that case, neither would the liberties be safe nor would democracy be safe. Therefore, a harmony has to be created, a proper balance has to be found, as to what extent individual rights have to be curbed, to what extent they must not be curbed; there has to be a wise balance. And with the help of all sections of the House an effort has been made to find that balance, that golden mean, so that it will not be possible for the Government to abuse those powers, to curtail unnecessarily the liberties of the people. These are broadly the safeguards which are sought to be introduced so far as Emergency provisions are concerned.

Then so far as Article 22, the Article of the Constitution dealing with preventive detention, is concerned, of course, the purpose of Article 22 was to introduce certain safeguards recognising that in certain situations there may be need to resort to preventive detention which is not a very desirable thing. But so long as there are certain weaknesses in our society, well, it may be necessary for the Government—whichever Government is in power; whichever party is in power; one day one party may be in the Government, another day another party may be in the Government—the Government may require the use of those special powers for the benefit of the people themselves. But Article 22 has imposed certain safeguards, that is, the law authorising preventive detention shall comply with certain safeguards which were spelt out in Article 22. The effort of this Amendment Bill has been to strengthen those safeguards particularly in two areas. One of the weaknesses of those safeguards was contained in Clause 7 of Article 22 which gave power to Parliament to provide for an unlimited period during which preventive detention could be resorted to even without going to an Advisory Board, even without the safeguard of an Advisory Board. That was an unlimited period for which Parliament could provide. That Clause is sought to be done away with so that hereafter even Parliament will not have the authority, after these changes are made, to provide or to authorise preventive detention without reference to an Advisory Board beyond a period of two months. The period of three months which was stipulated is also being reduced to two months. What is more important than the period of three months in the absence of an authority from Parliament under Clause 7—by that authority under Clause 7 Parliament could provide for an unlimited period of preventive detention without any reference to an Advisory Board—is that power of Parliament itself is sought to be taken away so that hereafter it will not be possible under any circumstances to resort to preventive detention under Article 22 without reference to an Advisory Board within a period of two months, namely, unless the Advisory Board met and came to the conclusion that there was good material and proper reason to justify the detention of a person, it would not be possible for the Government to detain any person beyond the period of two months....

SHRI HAMID ALI SCHAMNAD (Kerala) : Are not the provisions in the Criminal Procedure Code enough to meet the situation ?

SHRI SHANTI BHUSHAN : The Code of Criminal Procedure can be amended at any time. It is the constitutional provision which really gives a constitutional protection. The Code of Criminal Procedure can be amended even by an ordinance. The real protection, the real safeguard, is in the constitutional provision.

Then, what may appear merely by reading the language to be an ordinary thing but which is a very, very valuable safegaurd, as I regard it, is in regard to the composition of the Advisory Board. Earlier the provisions of the Constitution did not contemplate as to how the Advisory Board shall be constituted. How a particular forum is constituted. How a paricular forum is contemplated, is very important. The manner in which it is constituted, or who has the right to decide upon the persons who constitute the Advisory Board, is very important. And for the first time this safeguard is sought to be introduced, namely, the selection of all the three members of the Advisory Board will be made by the Chief Justice of the appropriate High Court so that will not be the Government which will be selecting the members of the Advisory Board; the members of the Advisory Board will be selected by the Chief Justic of the appropriate High Court. The reason is the verdit of the judiciary in all these matters, like whether a person should be convicted, on what material, and so on and so forth, has the confidence of the people. If such an Advisory Board is to be presided over by a sitting Judge of a High Court and if the other two members are also either sitting Judges or retired Judges of the High Court and if all these three are to be selected by the Chief Justice of the appropriate High Court, then it would not be possible for any person to abuse the power of preventive detention because so far as the verdict or functioning of the judiciary is concerned the entire country has confidence in it and so also the people of this country have great confidence in any forum or body constituted by the Chief Justice of the appropriate High Court. This is a very important safeguard.

The third important feature of this Bill is in regard to the fundamental right of property contained in articles 19(1)(f) and 31 of the Constitution. It was felt that in a poor country like India where large masses of the people are not propertied people and where only a comparatively small section of the people has property, right to property should not be regarded as fundamental right acting as a restriction on the powers of the Parliament and the elected representatives of the people. Further, it was also the experience that when the right to property was a fundamental right, there used to be new curbs on some fundamental rights which are more valuable for the poor masses of this country. These curbs used to come on these valuable rights also because the right to property was also a sister fundamental right in the same chapter. Therefore, it was felt that there is no justification, so far as the right to property is concerned, to give it the status of fundamental right. But right to property will be regarded as a legal right. It is not the intention of this amendment to deprive people of their property. We will leave it to the judgement of the elected reprresentatives of the people from time to time, whether in Prliament or in State Legislatures, to decide as to how they should regulate the right to property. It is the will of the people expressed through their elected representatives in the Parliament and State Legislatures that must determine as to what is the proper method of regulating the right to property so that property is used as a medium for doing public good to the people of the country as a whole and not for other purposes..

SHRI HAMID ALI SCHAMNAD : What about property of small holder?

SHRI SHANTI BHUSHAN : As far as small holders, are concerned, as I have said on previous occasions, democracy itself is the best safeguard for the protection of their rights to property. They are not in need of any fundamental right to protect their rights to property. They are the people who elect their Government. They are the people who constitute their Government. They are the people who determine whether they want this Government or that Government. So long as every Government is elected democratically and so long as democracy is ensured in this country, the poor people and masses in this country, are not in need of any fundamental right for the protection of their property. The very fact of democracy and the provisions which safeguard democracy in this country are quite enough for safeguarding their legitimate rights. It is said that the tools of trade, etc. may be taken away. Which Government elected democratically can come out with a law and take away the tools of trade of a small person ? So far as that is concerned, fundamental right of property is not equired for that purpose. It is only an insignificant minority which might be wanting to retain their property and is interested in right to property as a fundamental right even if retention or possession of that property may not be for the good of the masses. That is why it is proposed to delete this provision in articles 19(1)(f) 31 in the Chapter on Fundamental Rights and to replace them by an ordinary legal and constitutional right by introducing another article elsewhere which will only provide for rule of law. That means no person can be deprived of his property except by the authority of law. Of course, it should not be possible for any Government to snatch away anybody's property illegally or unlawfully. They must have a law for it. We are for rule of law. The Government must have a law under which it must have the authority to deprive a person of his property. If it has got that authority then only it should be possible for the Government to do it. In other words, the people of India, through their elected representatives, will be able to decide how property should be regulated in the country from time to time.

Then, Sir, there are other provisions which restore the powers of the judiciary in various ways, because, Sir, in a democratic country, it has been accepted, the Constitution has to be a Constitution of checks and balances. If there is concentration of powers in a particular organ, then it is bad. "Power corrupts and absolute power corrupts absolutely". Sir, this is a time-worn phrase and, therefore, there has to be a system of checks and balances. There have to be checks and balances so that between one organ and another organ no organ has absolute powers. No one organ should have absolute powers and if there is a check furnished by another organ, then that check itself becomes the guarantee that the powers which are enjoyed by one organ would be properly used for the benefit of the people. Therefore, an attempt has been made to strengthen those checks and balances of the judiciary against the executive, against the other organs and so on, but in a balanced way, and, therefore many provisions seek to restore those powers of the judiciary which might have been taken away.

Then, Sir, there are other provisions like the provision, for instance under article 356, regarding imposition of the President's Rule Earlier, Sir, it was provided that the President's Rule could continue for a period of three years and it was felt that there was no justification because, after all, in a quasi-federal Constitution, when the States are entitled to run their own affairs which are assigned to the States

the Constitution, the interference by the Centre, for the purpose of overriding the will of the people of the State, should be of a minimal character. Of course, Sir . . . .

SHRI BHUPESH GUPTA : It should be totally abolished.

SHRI SHANTI BHUSHAN : Sir, we will wait for the day when Shri Bhupesh Gupta is able to do it. Sir, he has pledged, since he loves his role in the Opposition so much, he has taken a vow that he would never desert the Opposition benches. Of course, Sir, this kind of ideas of his are very interesting to hear, but they are not practicable.

SHRI BHUPESH GUPTA : Many such ideas we have been preaching and we have preached such ideas twenty years ago.

SHRI SHANTI BHUSHAN : So, Sir, a very good step has been taken and I hope that Shri Bhupesh Gupta would appreciate it and welcome it. I say this because the philosophy behind this idea, behind this change, is this that if certain conditions arise in a State on account of which . . . .

SHRI BHUPESH GUPTA : Your philosophy is such that I have been asked to choose between raping and molestation. We want neither raping nor molestation.

SHRI SHANTI BHUSHAN : So, you won't choose? You will have both? Sir, if Shri Bhupesh Gupta has these feelings, has these feelings only about these ideas, then I can say only this much. Of course, I do recognise that he is a bachelor and so, he might not understand the difference between molestation and raping and we can very well appreciate his handicap when he speaks of molestation and raping.

SHRI BHUPESH GUPTA No, Sir, Regarding molestation and raping, see what happens in the Janata Party.

SHRI SHANTI BHUSHAN: No raping?

SHRI BHUPESH GUPTA : What happened the other day? The Suresh Kumar incident is there. . . .

SHRI SHANTI BHUSHAN : In any case, Sir, this is not the forum for any confession and we will not take notice of that.

Now, Sir, the philosophy behind this change as it is being sought to be introduced here is that even if the President's Rule has to be imposed in a State because the constitutional macihnery has broken down, there, it should only be for the purpose of bringing into existence another representative Government in that State, namely, for the purpose of going ahead with the elections. I am happy to refer to in this connection to the period which has gone by, the period since this Government took over office, during which, whenever the President's Rule had to be imposed in a State, immediate elections were ordered in that State so that a new popular government could be installed with the minimum possible delay. A question may be asked : In that case, why this maximum period of one year instead of three years which was there earlier? One might ask as to why it is necessary to have this provision for one year and my reply which I would like to give in anticipation of that question is this : Sir, India has so many States and it is well known that there are certain seasons in which elections are not possible in certain States. In fact, there are States in which elections are possible only in certain seasons. Therefore, while on a practical plan, normally such a situation would arise in which it would not be necessary to have the President's Rule except for a period of a very few months, a theoretical situation is possible to be contemplated in which there might be some States in which elections are possible only a in a particular

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season and the President's rule may come on the heels of that season and it would be not possible to hold the elections except when that particular season comes again. Therefore, this maximum period of one year has been contemplated because in one years every season will come.

It is not possible to have a year in which every season would not come at least once, and therefore this maximum period of one year has been contemplated in this provision, so that as soon as possible, the election may be held. And this period of one year would be the maximum, except during the period of emergency, where also the Election Commission will certify that on account of the emergency the conditions are such that it is not possible to hold elections at that time. Then only this period of one year can be exceeded during the period of emergency only on a certificate being given by the Election Commission that it was not possible to hold election. Therefore, Sir. . . .

SHRI YOGENDRA SHARMA (Bihar): Will the hon. Minister tell us, if there cannot be President's Rule in the country, why should there be President's rule in a State?

SHRI SHANTI BHUSHAN : Perhaps the hon. Member wants to cross-examine me. In that case, he should wait for another forum where he will get an opportunity to cross examine me, if he is interested in that. If he is interviewing me for sort of offering me a job, then I would be glad to be interviewed at some other place. (*Interruptions*)

SHRI B. N. BANERJEE : He does not like President's rule as much as we do not like it. But, Sir, if he has provided two-thirds approval by the Houses of Parliament, so far as emergency under article 352 is concerned, why did he not provide two-thirds approval by the Houses of Parliament for President's rule?

SHRI SHANTI BHUSHAN: May I try to answer the question which the hon. Member was pleased to put, namely, if President's rule can be contemplated in a State, why should it not be contemplated for the Centre? Now, it is clear that the most important feature of the Constitution is democracy, namely, the will of the people. It is also accepted that India is one integral whole, although it has unity in diversity. But democracy is the most important feature and we do not want that in any circumstances there should be any authoritarian regime anywhere. Now, the whole question is that even so far as the Central Government is concerned, the Rajya Sabha is concerned . . . (*Interruptions*). So far as the democratically elected Government is concerned, it cannot be said that if there is President's rule, namely, the rule by elected Government . . . (*Interruptions*) it is negation of democracy. But if we have President's rule at the Centre, it would be a negation of democracy. It is not a negation, if there is President's rule in the State for a short period...(*Interruptions*). Therefore, my answer is that one would negate democracy, the other does not negate democracy. But even at the State level. . . (*Interruptions*).

Another safeguard which has been sought to be provided in this Bill and which is based on the experience of a couple of years back is. . . (*Interruptions*)

श्री कल्प नाथ राय (उत्तर प्रदेश) : आपने जनतंत्र का गला काटा, आपने दस विधान सभाओं को भंग करके जनतंत्र का गला घोंटा और दक्षिण में बुरी तरह हारे और इनको शर्म नहीं आती कि लोक सभा को भंग करें। जनता तैयार है आज मध्यावधि चुनाव कराइये, आप उसमें बुरी तरह हारेंगे। मध्यावधि चुनाव कराओ।

SHRI SHANTI BHUSHAN : Sir, the hon. Member, Shri Kalp Nath Rai wants me to blush as a coy bride, I am unable to do so . . (*Interruptions*).

Now, Sir, a very important provision is sought to be introduced by this Bill. That is in regard to the publication of Parliamentary proceedings, because, Sir, the voice of the Houses of Legislatures is the voice of the nation, and that voice cannot be stifled. If there can be censorship on the proceedings of the Houses of the Legislatures, it stifles the voice of the nation. And, therefore, Sir, the safeguard is also sought to be introduced in the Constitution so that the publication of the Parliamentary proceedings will always be possible. It is to ensure that no one shall put any restriction on the publication of parliamentary proceedings because so long as the people know what goes on in Parliament, till then their democracy is safe and that era of terror and fear would not be there because the Members will speak in Parliament to defend the rights of the people and the people will also know as to what is happening in the country. Therefore, it will not be possible to produce that kind of period of which nobody can be proud of in this country.

SHRI BHUPESH GUPTA : Provided the Presiding Officer does not expunge.

SHRI SHANTI BHUSHAN : Sir, another important provision in the Bill is in regard to the amendment of the Constitution. Sir, I quite appreciate that whenever there is a new innovation, howsoever valuable, there are bound to be some anxieties, some apprehensions, some doubts and so on. Therefore, if there have been some doubts in that regard. I can only attribute them to my incapacity of not being able to project the idea of referendum as properly as, perhaps, I should have or I should have been capable of doing. I would regard it entirely as my failing in not being able to project the idea properly. Otherwise, this is a very important safeguard which is sought to be introduced. Sir, there have been periods and this country has seen a enactment like the Constitution (Thirty-ninth Amendment) Bill being enacted in which certain functionaries were sought to be put completely above the law. This House has also seen the Constitution (Fortieth Amendment) Bill being passed because that part of the 39th Amendment Bill was struck down by the Supreme Court and that Bill was not proceeded with thereafter in the other House. But the Bill had been passed by a House. That Bill provided that important functionaries like the Prime Minister, the Speaker, the President, the Vice-President and the Governors would be above the law whatever crimes they might commit. My hon. friend, Shri Bhupesh Gupta, was referring to certain crimes just now. Even if those crimes, not only those crimes, but any other crimes also, are committed by these high functionaries, whether those crimes are committed during their office or before it, during the period they occupied those Chairs or before they occupied those Chairs, they would have a life-long immunity. If a person becomes a Governor for a day, then he can get away with all the crimes that he might have committed during his past life. In other words, it means that those high functionaries must have a licence, a constitutional right, to commit those offences. How it was thought that it would be in public interest if they had the right to commit these offences against the Penal Code, etc., I do not know. Perhaps, Shri Bhupesh Gupta would be able to throw better light on this question because of his ingenuity and long experience. Sir, it is true that the constitution makers

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contemplated that there should be a procedure for the amendment of the Constitution and they contemplated that normally two-thirds majority in both the Houses alone should be able to provide sufficient safeguard. They thought, in their wisdom, that that was a safeguard which was quite enough. In certain other respects, when there were provisions which impinged on the Centre-State relations of the quasi-federal structure of the Constitution, they also contemplated that in addition to being passed by two-thirds majority in both the Houses, the proposed amendment should also go to the States for ratification and should be enacted only after it was ratified by more than half of the State Legislatures. These were the safeguards which the Constitution makers, in their wisdom, had contemplated. But, Sir, perhaps they could not envisage and I do not blame them that they could not envisage that there may come a time when two-third majority in the two Houses, in certain situations, in a certain atmosphere, in a certain period of time, might enact such a provision by making an amendment to the Constitution which might not really be in the interest of the people. And, therefore, Sir, the question was : Should there be a safeguard in the Constitution so that all these things which are sacred in the Constitution like democracy, like adult franchise, like free and fair elections, like basic freedoms, etc., before these things are destroyed, whether the people should also have a voice ?

SHRI BHUPESH GUPTA : There is one question here. In the opposition leaders' meeting, many of us suggested that the cabinet-cum-parliamentary system should also be put in the category which would require additional sanction through a referendum. Why have you left it out when you are speaking so much of the cabinet-cum-parliamentary system ? Why is it not included along with the four or five items which you have included ?

SHRI SHANTI BHUSHAN : I will deal with that point also, Sir, the idea is that the referendum cannot be contemplated as an everyday measure. Referendum must not be contemplated when a requirement would be so vague and it will be difficult for anyone to say whether this particular proposed amendment comes within the infringement of that clause or not. Therefore, certain such basic things had to be stipulated for the purpose of referendum which would be absolutely basic. But once democracy and adult franchise, etc. have been secured, once free and fair elections have been secured, then in that case, the two-thirds majority itself, and ratification by the States itself is a guarantee. For instance, so far as the federal part of the Consitution is concerned, Sir, the federal part is not one way. There are certain subjects which are assigned to the Central List, there are certain subjects which are assigned to the State List, and there are certain subjects, which are assigned to the Concurrent List, and so on. Now, whether one subject from the Central list is taken to the State List or one subject is taken from the State List to the Union List or even one subject is taken from the Concurrent List to the State List or the Central List, well, one may say, there is some change in the quasi-federal structure which was contemplated by the Constitution. But whenever there was some re-adjustment of a small kind, and if the requirement was that there must be a referendum and then only that little adjustment can be made, so far as the basic interests of the States are concerned, the provision which requires ratification by more than half of the State Assemblies is a guaran-

tee, namely, that it will not be done, the States' interests are sought to be secured by that requirement of ratification by the State Legislatures. But, Sir, if this provision of referendum had included something which would have brought in every little change here and there, then, Sir, the referendum could have been successfully branded as an impractical measure. So long as democracy is safe, so long as the rights of the people are safe, so long as particularly the adult franchise is safe and free and fair elections are safe, one is not to be afraid of. The only danger was, the two-thirds majority in a certain situation...

SHRI BHUPESH GUPTA : Sir, here I have got the original plan, 'A fresh look at our Constitution' which was circulated during the first months of emergency to replace the Parliamentary-cum-Cabinet system by the Presidential system. I kept it with me all these years. Sir, having regard to that experience and what has happened in Sri Lanka —by a stroke of pen, there the system is changed from the parliamentary-cum-cabinet system to the presidential system — why are you not including the safeguard also for retaining the parliamentary-cum-cabinet system when the Council of Ministers and the Prime Minister are resporsible to the Lok Sabha ?

SHRI SHANTI BHUSHAN : Sir, I am not aware of the reason why Shri Bhupesh Babu has lost self-confidence. He will continue to be a Member of the Rajya Sabha, at least till the middle of the next century, Sir, and, therefore, so long as he is here, he will see to it that the two-thirds majoirty in the Rajya Sabha never passes an amendment to the Constitution which will not be liked by the people. Therefore, that itself is an ample safeguard so far as these amendments are concerned.

SHRI P. RAMAMURTI (Tamil Nadu) : You will please remember that in the meeting of the leaders of all parties, the Government itself, including you, agreed to the suggestion that the responsibility of the Cabinet to the Parliament will form one of the broad features. That is agreed to there.

SHRI SHANTI BHUSHAN : I think there is a misconception. I think there is a total misconception. I have great respect for Shri Ramamurti and I do not think that the would say anything consciously which is not quite accurate. Therefore, I can only attribute it—he not being so familiar with my gestures—to the fact that he must have misunderstood some of my gestures. This was never agreed to. I quite recognise that they advanced this argument, they made this suggestion, because various suggestions were made, but it was never agreed to. Every time we used to maintain minutes, and Shri Ramamurti also, because he is a very careful parliamentarian, I am sure, must have maintained the minutes of the meetings that he attended, and if he would just bother to consult his minutes, he would also bear me out that this was never agreed to. This was a suggestion made but it was not agreed to. Otherwise, if it had been agreed to, I would have been the last person to go back on it. Certainly not. This was a suggestion and it was said that every suggestion that was made would be considered but it was not agreed to. For instance, something was said about the federal structure, that this is a matter which should go for referendum but even this was not accepted to. After all, if two-thirds majority in the two Houses of Parliament would reflect public opinion, then so long as democracy is secure, so long as adult franchise is secure and so long as free and fair elections and secure, let the hon. Members have confidence

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in the elected representatives. (*Interruptions*). If that era of fear cannot be reproduced, nothing can be done by anybody unless it is really acceptable to the people. That is the real safeguard.

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh) : Normally, Sir, I am not used to intervene in matters when a Minister is speaking. But this is not an unimportant matter. This is one of the most basic features of the Constitution of India because the Council of Ministers being responsible to Parliament envisages the existence of a Parliament and the Council of Ministers. Mr. Shanti Bhushan himself had given a illustration, the manner in which the Constitution was sought to be trampled upon and changed basically in respect of the privileges of certain personalities. I am personally aware how the Constitution was sought to be changed and the parliamentary system was sought to be changed from the parliamentary system, which holds the Council of Ministers responsible to itself, to a presidential system. In such a situation, I am all in support of the principle of referendum because if any party can have a two-thirds majority in Parliament and if a three-line whip could be issued, notwithstanding all the dissenting voices because a Member is expected to be loyal to the three-line whip and obey, then the Constitution can be changed within 24 hours, and it does not take even one week to do it. (*Interruptions*). Keeping such a situation in view, I would urge upon the Law Minister to seriously consider this question. It is much more important than even the independence of the Supreme Court. Because in the absence of a Parliament and the Council of Ministers responsible to it—even the Supreme Court, notwithstanding the fact that the Supreme Court has been given an inependent status, or even the judiciary—cannot keep up their independence. We have seen it and we want to prevent this thing happening. I would like the Law Minister not to treat this as a small matter but to take it as a very serious question, apply his mind to it and come out with necessary proposals because we are painfully aware of the proposals to change the parliamentary system into a presidential system. This is not a small matter.

SHRI SHANTI BHUSHAN : Sir, may I ask the hon. Members to cooly ponder ? Firstly, a two-thirds majority in the two Houses of Parliament would be necessary to do any such thing. Apart from that, Sir, so long as the elections are secure, so long as the adult franchise is secure if any Government tries to do any such thing against the will of the people, it would be thrown off. Even the earlier Government, it has been seen, when it did anti-people things, was thrown off. Therefore, the real thing which is to be safeguarded is that elections may not be done away with, adult franchise may not be done away with. So long as that is secure, the people can always intervene and say even if something has been done even by a two-thirds majority in the two Houses, we do not like it and therefore we will throw out those people who voted for it and have other people who are committed to a different kind of a thing. The other difficulty is that if you introduce this flexible vague thing, namely, Parliamentary system . . .

1 P.M.

SHRI BHUPESH GUPTA : Parliamentary-cum-Cabinet system.

SHRI SHANTI BHUSHAN : Yes, Parliamentary-cum-Cabinet system; what exactly the particular change would be deemed to be embraced by this Parliamentary-cum-

Cabinet system ? I would appeal to Shri Bhupesh Gupta to ponder over it.

SHRI BHUPESH GUPTA : I pondered over it.

SHRI SHANTI BHUSHAN : And in the amendment even proposed by him, he would say : Yes, this does not affect the Parliamentary-cum-Cabinet system but there maybe somebody else sitting somewhere who might say on the basis of a clever argument by a lawyer that it does affect the Parliamentary-cum-Cabinet system and, therefore, this Constitution amendment is struck down.

SHRI BHUPESH GUPTA : We had the change-over from the French Fourth Republic to the De Gaulle Constitution. We have that experience.

SHRI SHANTI BHUSHAN : I am ending my speech. I may not dwell at length. Of course, the period of five years which had been increased to six years as the life of the Legislative Assembly and the Lok Sabha is again sought to be brought down to the original position of five years and I hope that this will be appreciated by all sections of this House.

Then, Sir, Article 257A which contemplated the Centre having the power to send armed forces from the Union in a State without the consent of that State, was also a feature which was interfering with proper Centre-State relations. So, that is also sought to be deleted.

Then, the provision for election disputes of the President and the Prime Minister where it is stated that the forum for determining the election disputes in the case of these high functionaries would be of a different character than the normal forum in the case of other Members of Parliament, is also sought to be done away with.

So far as other changes are concerned, it is not necessary for me to deal with them at this stage.

With these words, Sir, I hope that all sections of the House will support this Bill unanimously and without dissent. Thank you very much.

The question was proposed.

MR. CHAIRMAN : Now, the House....

SHRI BHUPESH GUPTA : One question to ask, Sir. May I know that the Government will go to the other House to seek the concurrence of the other House for the amendments proposed by us ? Sir, this House is considering amendments to this Bill. We are thinking of improving this Bill and amendments have been tabled. Whatever amendments we pass for improving it and for further strengthening its democratic content, do I take it that this Government will respect the views of this House and will go to the other House to seek their concurrence ? Do I have this assurance ? I have said it, Sir, because I have understood it from a very reliable authority.

MR. CHAIRMAN : The House stands adjourned till 2 P.M.

The House then adjourned for lunch at four minutes past one of the clock.

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The House reassembled after lunch at five minutes past two of the clock, **The Vice-Chairman (Shri Arvind Ganesh Kulkarni)** in the Chair.

SHRI BHUPESH GUPTA : Sir, I hope you are happily seated. Sir, I was speaking earlier but I was interrupted and the Chairman adjourned the House. All I wanted to know from the Minister was, whether they will accept all the amendments....

SHRI SUNDER SINGH BHANDARI : Sir, when his turn comes he can make all his points and get the reply.

SHRI BHUPESH GUPTA : Otherwise, this all will become infructuous. We have tabled a number of amendments.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): To what you are referring ?

SHRI BHUPESH GUPTA : We are tabling a number of amendments. As is well known, we in the Rajya Sabha are in a majority and it is possible for us to get the amendments through. We would like to know, what will be the attitude of the Government towards amendments ? As I said, we want to finish it by 30th so that on 31st the Bill as amended can be taken up by Lok Sabha for its concurrence. Now, Sir, I understand that the Government is prepared to agree whatever amendments we make except in the case of internal emergency. This is the attitude they seem to have. I do not know, he knows it very well. He may know it and I have reliable information. The Government has a political instruction that if the Rajya Sabha does not accept the provision for internal emergency for armed rebellion and eliminates the provision for internal emergency, as we want—there should not be a provision of internal emergency—the Government is thinking of not proceeding with the Bill in this House and drop it in the same way as they dropped the Banking Commissions' Bill. At the third reading stage they will not move it. If that is so, the whole effort will be infructuous. Therefore, I say, we should be very clear. This is a very fundamental question of parliamentary procedure and practice. Government should tell us. There is an attempt to blackmail the opposition. We have been told : Accept our position for armed ebellion internal emergency or be ready that we will not move the Bill at all. I am not naming anybody, but I say that I have very reliable information. I say that with all the authority that I can command. Sir, in such matters you should take their view. The Government is prepared to even agree to the amendment with regard to the referendum clause. They will ask the other House to accept it. Here we say, only the external emergency, and the clause, namely the armed rebellion internal emergency clause should be deleted. But they say that they will not then proceed. Sir, here is an anticipated blackmail. What is the position ?

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : I would request, when the time comes you make your points.

SHRI SHANTI BHUSHAN : Shri Bhupesh Gupta has raised this point. I would like to take two minutes of the House to deal with it. Since he has gone on record for saying it.

Now, Sir, Shri Bhupesh Gupta has talked of blackmail. But let me make it clear that the Government does not believe in blackmailing anybody, but at the same time the Government also does not believe in being black mailed. So, neither it will blackmail nor will it be blackmailed. So far as its attitude in regard to amendments is concerned, of course, many a time Shri Bhupesh Gupta puts the cart before the horse, and I do not mind, let him put the cart before the horse, but the attitude of the Government in regard to amendments will not be a general attitude. It is bound to depend upon what the amendment is.

But let me make it clear. The Government has come forward with certain proposals to amend the Constitution. The constitu

tional position is that a 2/3rds majority in both the Houses is required to amend the Constitution. Therefore, if any of the proposals of the Government is not accepted by a 2/3rds majority in both the Houses, it fails, we accept that position. But at the same time, the opposition also which is in a minority in the other House cannot insist that any particular amendment that they like they will move and the Government must accept it. And if their amendment to the Constitution is also not acceptable to the two-thirds majority in both the Houses, that also does not go through. That is the position. Whichever amendments proposed by us they want to support, let them support; and whichever they want to oppose, let them oppose. We accept their right to do so, but they cannot force an amendment on us and say : "Well, because we want it, therefore, you must accept it". That is the position.

SHRI BHUPESH GUPTA : No, Sir. On a point of order. He has completely distorted me. We are giving amendments to the Bill within the rules. We understand that the Government's decision is that they will accept, if we pass in this House any amendment. They will agree to it. They will not say : "We do not move the Bill." They will move the Bill and try the other House. But my information is this : if we, by a majority, do away with the provision for internal emergency even for armed rebellion, the Government is thinking of getting up in this House and saying : "We do not move the Bill in the third reading". The fate of the Bill will be that of the Banking Commission Bill which was stuck up in the House. This is the plan.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : Mr. Gupta, the time has not yet come for this.

SHRI BHUPESH GUPTA : Sir, have you got my point ?

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : Yes, I get the point. May I request for the cooperation of all the Members ? There is a long list with me and all the parties have agreed that every Member will not take more than 15 minutes. I should not be obliged to ring the bell and I hope everybody will complete his speech before 15 minutes. Now I call upon Shri Pranab Mukherjee to speak.

SHRI PRANAB MUKHERJEE (West Bengal) : Mr. Vice-Chairman, Sir, we are going to consider amendments to the Constitution. While making his preliminary observations at the introduction stage, the hon. Minister of Law wanted to draw the attention of the House to some of the important features of this Bill where they wanted to improve upon.

Sir, we do agree with some of the proposed amendments, but in respect of some, we have very serious reservations. When I was listening to the observations of the hon. Minister, it came to my mind that there is a peculiar atmosphere in which today we are considering these proposals. When the Minister stated that he wanted strengthen the parliamentary institution and democratic functioning in the country in a purposeful way, it simply reminded me of the happenings on the floor of this House. I am not saying this in anger but with sadness that in spite of the best efforts of all of us —all the Opposition combined—we could not get any favourable reaction from the Government to the Motion adopted by us. Even we were not treated with common parliamentary etiquette to have the authenticated version from the Government and the Treasury Benches as to why two members of the Council of Ministers belonging to the Cabinet

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rank and four others belonging to the junior rank were directed to resign. Sir, in an atmosphere when an authority created by the administrative decision, functioning under the Statute passed by Parliament, is going to enquire into the propriety of a decision taken by Parliament, to say at the same time, that the provisions which the hon. Law Minister is proposing will strengthen the system is, I am sure, expecting too much. Coming to the very important provision, the amendment which he tried to impress upon the House by resorting to arguments that he is going to bring in some new idea, he asked the members to give serious thought to it and give their seal of approval to his proposal. Sir, I do not claim to be a lawyer nor do I have the capacity to be so. But as an ordinary student of the Constitution with all the humility and modesty which I have at my command, I can say the provision of the amendment of the Indian Constitution is, perhaps, one of the best. Sir, the blending of flexibility and rigidity which were designed by the fathers of the Indian Constitution give a noble feature to it and the necessity of amending it works not because of any political expediency but because of certain happenings and observations made in a peculiar way to interpret the Constitution and an attempt is made to indict certain elements which the makers of the Constitution never contemplated. It was found necessary to indicate the supremacy of Parliament which represents the will of the people and which has been attempted so eloquently by the hon'ble Law Minister's amendment in the Constitution (Forty-Second) Amendment Bill.

Sir, in a parliamentary system and particularly in the Indian context which is not a federal structure in the classical sense of having a federal structure with unitary bias having more power concentrated at the Centre resorting to parliamentary system of government making the executive responsible and responsive to the people through the elected House, it was found necessary to have the supremacy of Parliament the supremacy of the legislature elected by the people.

Sir, is the argument on which the hon'ble Law Minister dwelt upon, taking for argument's sake certain aberrations which took place at a certain time, to be left to the judgment of the people who are the ultimate masters, or some artificial mechanism has to be invented and inserted in the context of the Constitution to take care of that measure is the moot question.

Sir, while making his observation on the emergency provision the hon'ble Law Minister tried to emphasise that authoritarianism will never be repeated and the political jargons which they are used to make inside and outside the House he attempted to use, some of them. I would not like to go into the background or details of the situation under which it was necessary in his own words to save democracy, to put democracy on rails, when the elected Members of the legislature were forced to resign, when the functioning of the supreme sovereign legislative body of the country was made—impossible, when the demand was raised on the streets to dismiss the governments having the confidence of the elected representatives of the people responsible and responsive to them if certain aberrations took place in the democratic system, parliamentary form of government where certain remedial measures are necessary. That is a matter to be thought of.

Sir, when the Constitution was framed, many important Members of the Constitutent Assembly suggested that taking opportunity of the weaknesses and loop-holes in the document—every document must have certain loopholes—somebody may contemplate that it might have the fate of the Weimar

Constitution in the early thirties in Germany. But it is not merely a guarantee inserted in the legal language in the context of the Constitution. What is more important is, what democratic culture we develop, what democratic norm we practice, what democratic usage and customs we resort to. And, Sir, it has been established that they are the biggest beneficiaries in the process. The people of this country are alert and they would not like you to resort to any infringement of their rights, and if they feel that their rights are infringed upon, they can react and they can react properly and rightly.

Sir, I am the first speaker and I would like to have some more time which could be adjusted against the time of speakers from my party and, therefore, you need not disturb me by consulting your watch. Therefore, Sir,...

SHRI SUNDER SINGH BHANDARI : Will he agree to that ?

AN HON. MEMBER : Yes, yes.

SHRI PRANAB MUKHERJEE: That is my business—not your business.

SHRI SUNDER SINGH BHANDARI : All right.

SHRI PRANAB MUKHERJEE: Therefore, Sir, I would like to suggest to the hon. Law Minister to keep it in mind.

In regard to the Directive Principles we made some amendments. Why did we make those amendments ? Many a time it has been said that these rights are not justiciable, and law courts have made their pronouncements. It is no use going through the Constituent Assembly debates and finding quotations from Dr. Ambedkar or Pandit Jawaharlal Nehru or other illustrious makers of the Constitution, but each and every one of them had admitted—I would not like to waste the time of the House by merely quoting their observations—that those are the instruments of instructions to the States to be implemented in executive and legislative functioning and, in that process, even if they come into conflict with the Fundamental Rights, they should be treated in preference to the Fundamental Rights. That is why we wanted all the Directive Principles to be given overriding importance compared to the Fundamental Rights. But what you are trying to do by the amendment is just to go back to the position of *status quo ante.* That only means article 39 which has been already incorporated before the 42nd Amendment and you are trying to go back to that position. We are opposed to it. We want that all the Directive Principles should have overriding priority over the Fundamental Rights.

Sir, the concept of rights has changed. I am happy today that the hon. Law Minister came forward with the proposal that he is deleting article 31 and article 19, clause 1, sub-clause (f), from the Chapter on Fundamental Rights. Sir, you were a Member of the House at the time when the 24th Amendment was passed. One of the major constituents was Dr. Bhai Mahavir—I don't find him—of the Janata Party. When the 24th Amendment was passed, he was speaking from this side and their political proposition was almost in line with the 17th century political thinker, John Lock, that three rights are inalienable—right to life, right to liberty and right to property. I am happy today that while making his observations, Mr. Shanti Bhushan has been able to influence one of the major constituents of the Janata Party within seven years—from 1971 to 1978—that the right to property is not an inalienable

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right, that the right to property is subject to changing social conditions with reference to changing socio-economic relations. Therefore, no right is fundamental. Every right is related to the particular socio-economic conditions and it changes with the passage of time, with the new approach, with the new development which takes place. Therefore, it is absurd to consider that if the society in its collective wisdom does think it necessary to make any change for the betterment of the maximum number of people to give greatest benefit to the greatest number of people, a constitutional provision should come and stand in the way. The same attitude we have and that is why we wanted to give an overriding priority so far as the Directive Principles are concerned, *vis-a-vis* the Fundamental Rights. Judicial pronouncements are there. I would not like to quote the observations of Justice S. R. Das in the Dorairajan case. I would not go into the Supreme Court judgment which was pronounced in the case of Kameshwar *versus* the State of Bihar in the earlier days and the latest one also. But I would like to emphasise, through you, Sir, that no right is fundamental, every right is relative with the concept of time; with the change of time, it assumes a new direction, a new dimension and a new meaning. Sir, with your permission, I would like to remind the hon. Law Minister of a very peculiar and interesting illustration before us. If I remember the year correctly, it was in 1763 when a Private Member's Bill was forced trying to bring a Resolution in the House of Commons for the abolition of slavery. The motion was opposed because some people thought that the right to maintain slaves was a proprietory right and, therefore, was an inalienable right nnd it could never be undone. No body, whichever political philosophy one may belong to, is agreeable to this proposition. We have seen how the concept of Divine Right claimed by the Stuart and Tudor Kings had to be conceded to the rights of the bourgeois society, feudal society. Feudal society's rights had to be conceded to the bourgeois society. But with the change of the socio-economic relations the concept of rights changes. So we do oppose the proposed amendment to push back the Directive Principles to the old position which it had before the 42nd Amendment.

Sir, another provision which he is trying to include in his amending proposals is to do away with the administrative tribunal. What was the necessity of the administrative tribunal ? Large number of cases of even ordinary transfers, postings, fixation of seniority in various administrative departments were stalled because of the writ petitions in the High Courts or any other courts. I do not know how the larger sections of people are affected if one particular officer is posted somewhere or if his seniority is being challenged. And what is the necessity of bringing in the highest court, the Supreme Court, and the High Courts in this matter, if not to delay the process inordinately. Today they are in administration, they will feel it. Therefore, it was thought necessary to have administrative tribunals to sort out some of these issues. This is not the only item. There are some more items to take care of it. But unfortunately they feel that this should not be there. It would perhaps be an infringement upon the Fundamental Rights of the person concerned. So it should be abandoned. Sir, the emergency provisions, Mr. Shanti Bhushan has tried to improve upon and very courageously he has said that so far as the imposition of the President's rule for failure of the administrative machinery in the States was concerned, the Preident's rule should be extended to the States only for one year. The present Cons-

titutional provision is for three years. And he is contemplating that we should give a chance to the people to have their own Government. Nobody denies this principle. When somebody wanted to know, very skillfully he tried to avoid the question. Since the 26th of January, 1950 to the 24th of March, 1977, could you give one instance, Mr. Law Minister, where the President's rule was extended to two years in any State. In 15 to 20 instances the President's rule was extended. Everywhere you will find that it was for 6 months, 8 months, 1 year or in one or two cases it might be a little more than one year. If I remember correctly, in Kerala once it was for more than one year.

SHRI P. RAMAMURTI: In Tamil Nadu also it was extended to more than one year.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Mr. Mukherjee, you should wind up now.

SHRI PRANAB MUKHERJEE: I am winding up within two minutes.

That too, at the interval of six months you were to seek the approval of Parliament. That provision was there. Today you are saying that without the permission of the State Governments you are not sending the armed forces. Whatever the Constitutional provision, the practice was that without the consent, without the approval of the State Government, even in a situation in which we were confronted by the party of Mr. Ramamurti, when the defence installations were gheraoed day-in-and-day-out and the integrated steel plants were gheraoed day-in-and-day-out in West Bengal, because the West Bengal Government did not agree, even the Industrial Security Force could not be posted not to speak of the Army, not to speak of other Police Forces. These are the points you have to keep in mind. Fissiparous separatist tendencies are coming up; until and unless you have some direction in a country like this, perhaps, you will not be in a position to control.

SHRI B. N. BANERJEE: Do you still want that power to remain with the Centre ?

SHRI PRANAB MUKHERJEE: What was the exact provision, I would like to be retained.

SHRI B. N. BANERJEE: I am not saying why it was brought in. I am asking you the question: Do you still...

SHRI PRANAB MUKHERJEE: I am opposing. Mr. Banerjee, you have not listened to me. I am opposing to deletion of this particular clause. I am leaving it to the discretion of the Government of India. I am very frank about it. I have no hestitation to tell you, it may be necessary. It may be necessary to stop the fissiparous tendencies; it may be necessary to stop the secessionist tendencies. It may be necessary.

SHRI P. RAMAMURTI: The people of West Bengal have answered this canard. Let him go and face the people of West Bengal.

SHRI PRANAB MUKHERJEE: They answered this canard to you in 1970. One swallow does not make a summer.

SHRI P. RAMAMURTI: They answered the canard in 1971.

(*Interruptions*)

SHRI PRANAB MUKHERJEE: Most respectfully I would like to remind Mr. Ramamurti, one swallow does not make a summer. They were reminded in 1972, they were reminded in 1971 and they were reminded...

SHRI P. RAMAMURTI: You used rigging; we know it.

SHRI PRANAB MUKHERJEE: You have multiplied it ten times, and in that process, Mr. Ramamurti, you have converted your party from the Marxist one into an absolutely narrow chauvinist regional one. This is the unfortunate state of affairs. Therefore, do not go into that.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Now you have to wind up, Mr. Mukherjee. I am calling the next speaker now.

SHRI PRANAB MUKHERJEE: I am just closing.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): I have given you 23 minutes.

SHRI PRANAB MUKHERJEE: All right Sir, if you insist, I am resuming my seat.

SHRI SANKAR GHOSE (West Bengal): Mr. Vice-Chairman, today when we are discussing the Constitution (Amendment) Bill, the House is discharging its sovereign constituent powers. Therefore, we do not approach this Bill from a political point of view or from a party point of view.

The test of a constitution is that it should be a dynamic instrument for effecting social and economic changes for strengthening our secular, democratic and socialist values. It is on that test that we judge this Bill. We do not reject this Bill; we do not accept this Bill completely; the majority of the provisions of this Bill, we welcome. In respect of some provisions, we are opposed. In respect of certain other provisions, we have reservations, but we shall not press those reservations to the point of opposition.

There are various provisions in the Bill which we welcome and which we shall support. There are four provisions in the Bill which we oppose. The first provision that we oppose is the definition and narrowing down of the ideals of secularism and socialism. We had the ideal of democracy in the Constitution. It was not defined. We had the ideal of republicanism in the Constitution. It was not defined. These are basic ideas; these are the dreams and aspirations of the Indian humanity. We should not write those things down and limit the concepts of secularism and socialism, which are growing concepts. This is my first basic opposition to the Bill.

SHRI P. RAMAMURTI: What is your concept of socialism ?

SHRI SANKAR GHOSE: My concept of socialism is that it is a growing concept and it is for the welfare of the poorest people. I do not want that concept to be defined, restricted...

SHRI P. RAMAMURTI: Secularism—why can't you define it properly ?

SHRI SANKAR GHOSE: You can't you don't define your dreams. You live up to your dreams. You strive for your ideals. The ideals are not limited by your present actualities.

SHRI P. RAMAMURTI: I, too, agree with the definition...

SHRI SANKAR GHOSE: I do not define. Life defines. These concepts are not to be defined by jurists. These concepts are defined by the struggles of the suffering humanity, the Indian humanity; and they, through their struggles, will define them and take them to greater heights.

The second opposition that I have is to the removal of Education and Forests from the Concurrent List to the State List. Sir, most

of the educationists wanted Education to be in the Concurrent List. We are one country; we have unity in diversity. We must have a common policy and common goals. And for this reason, Education should be in the Concurrent List. I would want that provision to be retained.

The third thing that I oppose and we shall oppose is the removal of the idea of having administrative tribunals. Sir, the Supreme Court had often said in many judgments that if you have tribunals so far as labour disputes are concerned, they could be expedited; so far as the public distribution system is concerned—we know that in levy matters there were so many injunctions—if there were tribunals, it could be expedited; in respect of service matters, if there were tribunals, it could be expedited; in respect of taxation matters, if there were tribunals, it could be expedited. Therefore, we want retention of the concept of administrative tribunals.

Sir, the fourth thing in the Bill that we oppose is the concept regarding referendum. I am not opposed to referendum. I am not opposed to the principle of referendum. But the way that the question has been brought here will not subserve the purpose for which the concept of referendum has been brought. I believe in the sovereignty of the people. The people have the political sovereignty; the legal sovereignty resides in Parliament. The ultimate sovereign are the people. But if you see the concept of referendum that is given here, I am afraid there has not been much home-work with regard to this concept. Sir, what has been done is to define certain things, a kind of basic structure, and parliamentary form of Government is not included in it. If you include certain things and exclude the parliamentary form of Government and quasi-federal structure—ours is neither a unitary structure nor a federal structure; it is a quasi-federal structure—if you define certain things and try to treat them as more or less the basic structure and do not include or do not define the parliamentary form of Government and the quasi-federal structure, then there is one danger. The other danger is this: when there is a referendum, you do not refer to the people the question whether there should be secularism; you do not refer to the people the question whether there should be democracy; you do not refer to the people the question of independence. You refer a particular measure, a detailed measure, a complicated measure. There will never be any difference so far as the values of secularism, of independence of judiciary, of free and fair elections are concerned. These are entrenched; these are inalienable. Nobody can ever question them. But the question arises: when these broad features are given, then it is a matter of interpretation. What is democracy ? The Law Minister a little while ago said parliamentary democracy cannot be defined. That is precisely the point. If you want to define every concept, then you will give the power of interpretation to the courts which the courts do not seek. These are political questions. Justice Home and others have always said the courts do not want to get themselves involved in political questions; these political questions are for the people. Therefore, it is not desirable to give an unchartered, unguided and uncanalised power of interpretation to the courts, and they do not seek it. All jurists, all eminent judges, have said, political questions do not come to us. Therefore, on the machinery of referendum as it is provided, there is not much home work done; it is not worth it. I oppose this provision although I do not oppose the concept of referendum. If the Law Minister comes forward with a better machinery, we are prepared to examine it. The machinery that he has come forward with is not satisfactory.

[Shri Sankar Ghose]

There are other questions where we have reservations. Apart from these four questions, so far as we are concerned, we have reservations which I shall indicate. But we shall not press those reservations to the point of dissent to vote those clauses down. Directive principles are principles of the 20th century. Fundamental rights are principles of the 17th and 18th centuries. Fundamental rights are valuable. They are basic rights. They are basic individual rights. What has to be harmonised is the concept of the 17th century and the 18th century with the emerging, growing, concepts of the 20th century of economic and social justice, of socialism. When there is a conflict between individual rights and social good, the question is: Which shall prevail ? Pandit Jawaharlal Nehru said in this Parliament in March 1951 that Parliament shall resolve the conflicts between the fundamental rights and the directive principles. And we want that conflict to be resolved. We welcome that property has ceased to be a fundamental right. Mr. Justice Hidaytullah said, if socialism was the goal, then it was a mistake to put property in the chapter on fundamental rights; property right in the chapter on fundamental rights is the weakest right; it is the most vulgar right. So said Mr. Justice Hidaytullah. It is good that that right to property which stood in the way of socio-economic legislation, which stood in the way of bank nationalisation, which stood in the way of abolition of privy purses, is done away with. It would like the Law Minister to examine another question. What are we doing now ? We are removing Article 31 and we are bringing in a new Article 300A saying property will not be taken away except according to the authority of law. In article 31 we have removed the word 'compensation' and introduced the word 'amount' and by that process we have ensured that market value is not to be given, we have ensured that for public purposes we can take property, we can take property for social good. Now, if Article 31 goes, all the good things that have been done since the time of that amendment, will be destroyed. Therefore, I ask the Law Minister if it is his intention to destroy it. I do not think it is his intention to destroy it. What I submit is that if Article 31 were to go completely and Article 300A were to come, then there should be something more clarificatory that those concepts should remain, because it was the intention that so far as the question of compensation was concerned, Parliament should be supreme. There are certain other things....

(Interruptions)

SHRI PRANAB MUKHERJEE: Mr. Vice-Chairman, please tell us clearly. I was under that impression and so I abruptly sat down. You told me that our party also agreed to give only 15 minutes. I have never heard in my ten years' experience here. The first speaker will only get 15 minutes, this I never heard.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): I want to clarify the position. It is my mistake, because I was told that 15 minutes are given to each speaker. From your party there are a large number of speakers. Now I have come to know from Mr. Bhalerao that your party has got 4 hours and 20 minutes in all. But there are only two speakers from your party today. So, if you two want to speak for two hours each, I have no objection. But if you are going to give more names tomorrow, then you will have to consider it

yourself. The mistake is mine. I am sorry for it.

AN HON. MEMBER: Let him speak again.

SHRI BHISHMA NARAIN SINGH (Bihar): The first speaker should get half-an-hour.

SHRI SANKAR GHOSE: So far as this question of amount is concerned, I will ask the Law Minister to clarify one thing. It is not that there is any dispute on this question. But in the courts a question of interpretation will be raised now that article 31 has gone completely where for the word 'compensation' the word 'amount' had been substituted by the various amendments in the Parliament. Now an argument will be raised that we will have to give full compensation. I would ask the Law Minister to give clarification on this point.

So far as amendment to article 74 is concerned....

SHRI P. RAMAMURTI: May I interrupt you ?

SHRI HAMID ALI SCHAMNAD: This is just for clarification....

SHRI SANKAR GHOSE: There are two interruptions. I would like to reply to one at a time.

SHRI HAMID ALI SCHAMNAD: All these years the country was ruled by the Congress and therefore..

SHRI SANKAR GHOSE: It will again be ruled by the Congress.

I will ask the Law Minister to examine this amendment once again. Now power has been given to the President to send back the Bill once. Please do not involve the President in this controversy. In our country the President is a political President, elected President. Do not allow the President to divide the Cabinet. Previously there was a convention or discretion. But do not put it as an entrenched right in the Constitution. Article 74 now gives an entrenched right to the President to interfere or intermeddle by constantly sending back the advice he received for reconsideration. This may give rise to difficulties.

There are certain things in the Constitution (Amendment) Bill which I welcome. They have retained in the Preamble words like 'secular' and 'socialist' though they have redefined the terms. They have also retained in the Constitution fundamental duties. What we need today in the country is not merely amendments to our Constitution. We need amendments to each individual's thinking. we want amendments to the very human nature. Otherwise the things that are happening in the country, the in-fighting that is going on, the squabbles, the character assasination, etc. can not be checked. It is only when we realise that more institutional changes or Constitutional changes cannot solve our problems that we can forge ahead. It is in this context the fundamental duties are relevant. These fumdamental duties ask us to preserve the values of the freedom struggle. These fundamental duties ask us to strengthen the oneness and the integrity of this country and rise to greater heights. All those fundamental duties and values should be preserved. It is here I would like to compliment the Law Minister on his decision, after consultation with the Parties, to retain at least the concept of secularism and socialism in the preamble and to retain the fundamental duties provision and also so far as the Directive Principles are concerned.

But I may submit that on those four points we are opposed and on other points I have expressed my reservation but we will not take them to the point of dissent. The remaining points we will support.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Mr. Surendra Mohan, your party has 4 hours and 40 minutes and there are four speakers as on to-day. It will be upto you to regulate your time among your speakers. Otherwise, whatever injustice I have done to Mr. Pranab Mukherjee will be done to you also by giving you only fifteen minutes. Your Whip has to advise me. Otherwise, I will limit the time to fifteen minutes. That is the general time I have given to every speaker.

SHRI SURENDRA MOHAN (Uttar Pradesh): Sir, I think that this Constitution (Amendment) Bill should be considered as the quintessence of the experience of our d - mocratic experiment for the last thirty years. I do not think that this Bill can be considered or should be considered as a reaction to the emergency or as reaction to any instantaneous consideration. I would, therefore, submit that when we apply our minds to this Bill, we will have to consider what happened during the last 30 years, and Sir, I congratulate the Law Minister that he has not only considered what has happened during the emergency, but he has also taken into consideration the various other points, particularly the question of preventive detention and other things. Sir, some friends have raised this question of the property rights, for instance. The debate regarding the property rights has been going on in this country for a long time and I would most humbly remind all friends that it was the honourable Member of the Lok Sabha, the late Shri Nath Pai, who had, for the first time, proposed in Parliament that Parliament had supremacy in response to the Golak Nath case judgment, and he also said, that property rights must not be treated as Fundamental Rights. I might olso remind you, Sir, that it was Mr. Madhu Limaye who had specifically mentioned that property rights must be taken away from the list of Fundamental Rights. And, Sir, may I also remind that what the late Shri Nath Pai said was not considered in 1967, but it took him four years and it was only after his death that Parliament accepted the sovereignty of itself. Similarly, Shri Madhu Limaye's contentions were not accepted at that time and it took us eight years and another party came to power and we are now saying that property rights do not belong to the list of Fundamental Rights. So, all those who now show great concern for the sovereignty of Parliament and who agree that property rights should be deleted from the list of Fundamental Rights should also remember—I would humbly request them to remember—that there were people who wanted it, that there were voices, which wanted it in 1967 and in 1969, but they were denied of that and they are being vindicated only now. I would also request you, Sir, to agree that the whole question has to be looked at as the fulfilment of the various pledges given by the Janata Party. The Janata Party Government appointed the Asoka Mehta Commission, the Janata Party Government appointed the Verghese Committee and the Janata Party Government also appointed the Kuldip Nayar Committee. Now, Sir, there is going to be the Anti-Defection Bill and you would see that all the points which the Janata Party has put in its political charter, almost all of them, are being put into practice through all these measures and this Forty-fourth Amendment Bill. I was surprised at the controversy raised with regard to the Directive Principles and the Fundamental Rights. I was surprised because I do not think that the right to life can be subservient to any other right and I do not think that any Directive Principle whatsoever can take away from any individual his right to liberty and his right to life and I do not think

that the right to life or the right to liberty can be relative in any historical circumstance and, Sir, I was surprised at the contentions of my Hon'ble friend, Shri Mukherjee on this score. I would submit that there are Fundamental Rights like the right to worship, for instance. I do not think that such rights can be subordinated to any kind of Directive Principles. Otherwise, what will happen is that in the name of Directive Principles, in the name of the best possible Directive Principle or in the name of socialism or whatever it is, we would allow a position in which liberty will be suppressed and in which life will be in danger and that would mean that we are opening the floodgates of dictatorship. May I also say that if there are people who support this Constitution (Amendment) Bill, partly or wholly, with tongue-in-cheek, then I would request them to make it plain whether they would oppose it or support it. I would also say that it is no use discussing what happened during the emergency or what happened after the emergency because, Sir, it is not a question while discussing this amendment which is going to be discussed in that context. It is going to change the entire history of the whole nation, and therefore, we must, with great humility and great seriousness, debate this question. I would also like to invite the attention of the Law Minister to a particular point relating to the question of preventive detention. I agree with him that it has been liberalised to a great extent. But I would very much like to say that if a legislator, whether he is a Member of Parliament or of a State Legislature, is arrested when Parliament or the State Legislature concerned is in session or is going to be in session, then, in spite of his detention, he should be allowed to attend the session. Therefore, I would request him to consider this point whenever that can be done.

Some questions have also been raised as to the compensation. I would only submit that there is the Ninth Schedule still intact, and although article 31 goes, the Ninth Schedule protects whatever beneficial legislation in support of the poor, in defence of the poor, has already been adopted, and there need be no difficulty in accepting this position. The Ninth Schedule has been kept. Although the Janata Party in its election manifesto had announced that the Ninth Schedule will be deleted, but we were made conscious of the fact that this would not be correct. A large number of things had been put in the Ninth Schedule which have nothing to do with the fundamental rights of the people, which have nothing to do with the directives principles, but which have something to do with certain individuals. Those things have been deleted from the Ninth Schedule. The Ninth Schedule stays. All those Acts which gave the people their rights, whether it was the Zamindari Abolition Act or any other Act, which disallowed the abolition of zamindar etc., all such legislations or such Acts will be prevented because of the Ninth Schedule.

I would also submit, Sir, that there has been a discussion prematurely raised by hon. Shri Bhupesh Gupta with regard to what happens to article 352. I would submit, Sir, that if there is democracy functioning in the country, with the active support of the people with decentralisation of political and social economic powers—if it extends to becoming an economic democracy, a social democracy then I do not think there will be any need for violent agitations or armed rebellions. I do submit that if this process of democracy is scuttled, then there might be the need for armed rebellion. But since we are ensuring that democracy will be successful experiment, since we are ensuring to the people their fundamental rights, and since we are ensuring that there will be free elections, adult suffrage, etc., I have

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no doubt that this democratic experiment will flower into economic and social democracy, and therefore I do not think that there is any need for an armed rebellion. But if an armed rebellion does take place, it may take place because there might be an organised group, and such an organised group will not come from the teeming millions, but such an organised group will come from the vested interests, which would work against the interests of the poor people....(*Interruptions*) and against the interest of democratic structure of the country and not in favour of the poor people. That is why, I would submit to my friends on the other side to consider these things. Who are in a position today to create an armed rebellion ? It is only the vested interests who would say: No, no, the right to property is being taken; it is they who might create that situation. And that is why in such a situation, emergency may have to be enforced. Therefore, I would request him to consider this.

The question of referendum has also been raised. I would only request that the entire scheme, the entire structure, must be considered, before we criticize the provisions regarding referendum. What happens sometimes is that election takes place in 1978 or in 1988. Then, in two or three years the ruling party gets isolated from the people, and at that time when the social and economic pressures are there, the ruling party says that these pressures will have to be subordinated, these pressures will have to be suppressed, and at that time the ruling party by using the two-thirds majority or by using the majority in the States, may curtail the democratic rights of the people. It is in that context that although there would be the majority in Parliament, requisite majority in Parliament, there will be the requisite majority in the State Legislatures as well, and yet the Government will be doing something anti-people. In that context, what is the alternative for the people? The
3 P.M. only alternative for the people is to see that a Government which has been isolated does not suppress their expressed desires. The only alternative is referendum so that the people can say: This Government is isolated: it cannot take away from us our liberties and we by a referendum are going to assert what we want to assert. In this context, there is a guarantee that this basic structure will not be dismantled by a two-thirds majority of Parliament. There is another guarantee that it will not be dismantled even if a majority of the States accept it if the party in power has been isolated from the people. There have been instances like this. It has happened in Indian history also. Therefore, it is important that the people must be brought in somewhere. It is important that when such a question arises in future, the ruling party is told what the people really want. I will submit that it is in this spirit that this question of referendum will have to be discussed.

Sir, a question has been raised as to why the term 'social' or the term 'secular' has been defined. I think that any definition makes a concept precise. It gives it a structure. I find that when we try to define a thing or we want to make it correct or we want to give it a direction, we are accused that we are limiting it or circumscribing it. That is not the intention at all. The intention is that the words should not be left vague. A question was raised as to why democracy has not been defined. Sir, the whole Constitution defines democracy. But socialism was not defined because this Constitution is not the Constitution of a socialist State. Therefore, socialism has been defined. In the Preamble, we say that we are a socialist State or we want socialism. That is why,

socialism has to be defined and it cannot be left vague. The same thing has to be said about secularism. There have been instances in history when the most communal forces have flaunted themselves as secular forces. There have been instances when the most undemocratic forces have said that they were the most democratic. Sometimes, even the fascists have held conferences against fascism. Therefore, you have to define what secularism is. You have also to define what socialism is. This will make things clear.

With these words, I would once again recommend that the amendments as a whole should be adopted. There are certain very laudable features of this Constitution Amendment Bill. I would say that guaranteeing the basic structure of the Constitution itself is one of the most important things. There was a debate on this. The question was whether the Parliament alone is empowered to change, to destroy, to amend and to subjugate the basic structure including the fundamental rights of the people including the right of the people to vote or not. I think it was necessary for us to define our basic structure. We say that this basic structure cannot be amended ordinarily. We say that even if somebody wants to amend it, it can be amended only by reference to the people and through a referendum. This is why this basic structure had to be defined. Independence of the judiciary, independence of the press, equality before law, etc. have been incorporated again. There are various other features which are commendable. I would once again submit that it should be adopted unanimously.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA : I will speak tomorrow. Let others speak.

SHRI B. N. BANERJEE : Sir, I am grateful to you for giving me this opportunity to speak on this Bill. Sir, I come straightway to the Bill and say at the outset that I support the Bill though with some reservations in some points which I shall explain during the course of my rather brief speech.

Sir, I first propose to take up clause 3 which seeks some amendments to article 22 of the Constitution. Sir, I support the amendments since. They extend the fundamental rights guaranteed under this article. Sir, there is an errors impression in the minds of many people and also of some people in Parliament that article 22 enables the appropriate legislatures to enact law relating to preventive detention. Sir, that is not so. The right to make law relating to preventive detention is contained in article 246, read with item 9 of List I and item 3 of List III. Sir, article 22, as the Law Minister explained during his introductory speech, only provides some safeguards in the shape of fundamental rights, providing protection against such preventive detention. Sir, viewed from this limited angle, clause 33 which imposes some further restriction or extends the safeguards, deserves support of the House and I certainly support it.

Sir, the next amendment proposed in the Bill is to take away the right of property from the category of Fundamental Rights and make it a right to be regulated by ordinary law. Sir, this amendment has received an all-round support in the other House and will also receive the same treatment here. Sir, I do not know and probably the Law Minister will be able to tell me and I hope the ingenuity of lawyers and the judgments of the superior courts will not frustrate the noble objective and purpose behind this particular amendment. Sir, inscrutable are the judgments of some of the superior courts and also the ingenuity of the lawyers. I think, they

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will also understand why we are transferring this particular property right from the Fundamental Rights, and they will help us in achieving this object.

Sir, I welcome the amendments to articles 103 and 194 which restore the original Constitutional provision and make the decision of the Election Commission final in matters relating to disqualification of legislators.

Sir, I next come to articles 105 and 194—clause 26 of the Bill—in relation to parliamentary privileges. Sir, as one who has spent nearly two decades in the service of Parliament, I was extremely unhappy when in 1976, by the Constitution (Forty-Second Amendment) Bill, some amendments were made to articles 105 and 194 of the Constitution. Under these amendments the parliamentary privileges would have been vague, indefinite and left to the whims and fancies of the legislature. I am delighted to find that the present amendment restores the original constitutional provision and makes it absolutely impossible for the legislatures of the day to enlarge their own privileges by what I may call the arbitrary decisions of the House and not by enacting a law on the subject.

Sir, I welcome the amendment to article 226 and restoration of article 227 in the Constitution. But, I only hope, Sir, that the superior courts, while they exercise jurisdiction under articles 226 and 227, will observe necessary restraint and exercise jurisdiction only in those cases where ends of justice require their interference. Otherwise, they will never be able to clear the mounting arrears even if the hon. Law Minister would go on increasing the number of Judges by leaps and bounds.

Sir, I now come to clause 38 dealing with emergency, proclamation of emergency, i.e., article 352. Sir, there is no controversy anywhere that this power is necessary when there is war, or external aggression or even threat thereof. Sir, there is a justifiable demand that in no other circumstances there should be a proclamation of emergency. Sir, I understand that the power proposed to be taken to proclaim emergency during an armed rebellion is a consensus amendment. I do not know. We were not present there. It may be that it is a consensus amendment, consensus reached during the discussion with the leaders of the political parties. If that is so, Sir, I do not oppose it.

SHRI BHUPESH GUPTA: What do you say?

SHRI B. N. BANERJEE: The power to impose emergency in the event of an armed rebellion is on the basis of a consensus and...

SHRI BHUPESH GUPTA: No consensus. It is only Government's imposition.

SHRI B. N. BANERJEE: Sir, all that I want to know is whether this armed rebellion formula is a consensus formula arrived at the meeting with the leaders of the parties. If that is so, I do not oppose it.

SHRI BHUPESH GUPTA: Mr. Banerjee, I want to make it very clear, I attended every single meeting, that we all opposition parties were opposed to internal emergency in any form. It is the Government's policy. Even in their election manifesto they had said that such a thing would not be there. We thought that they would give consideration to it. Ultimately, they, among themselves, came to a compromise, that is their internal compromise. They brought in the "armed rebellion" even after we opposed it.

SHRI B. N. BANERJEE: Sir, I never said that it is a unanimous recommendation of the meeting where all the political parties and

their leaders met. Sir, I said that if it is a consensus, I do not oppose it.

SHRI BHUPESH GUPTA : It is not a consensus. (*Interruptions*)

SHRI B. N. BANERJEE : I was under the impression because...

SHRI BHUPESH GUPTA : Let Shri Shanti Bhushan deny. He knows very well which of the opposition parties attended. Except one party, all the others were opposed to it.

SHRI B. N. BANERJEE : Be that as it may. That is there in the Bill. It has been said, Sir...

SHRI KALP NATH RAI : Do not try to...

SHRI B. N. BANERJEE : That is there in the Bill and I was under the impression that it was so.

SHRI BHUPESH GUPTA : For your information Mr. Banerjee, am surprised it was Mr. Chavan who was then in the united Congress —that Congress was one then and e was the leader of the Congress, Mr. Kamlapati Tripathi and Mr. Chavan, both were present — who gave the items which should be cluded for referendum. There ere written by Mr. Chavan in his vn handwriting and given to Mr. Morarji Desai. When the matter as being discussed, Mr. Morarji esai said, all right, you better write out. Mr. Chavan wrote it out. 'e all endorsed. We wanted to ld something. That document ust be in the possession of the overnment. That was given.

SHRI B. N. BANERJEE : Sir, am very happy to know that this s not a consensus amendment. (*Interruptions*). Sir, I am not try-:...

SHRI SHANTI BHUSHAN : you like, you can oppose it.

DR. BHAI MAHAVIR (Madhya Pradesh): Do you support internal disturbance?

SHRI B. N. BANERJEE : The point is that since these words have been substituted for the words 'internal disturbance' it has my support.

SHRI BHUPESH GUPTA : We oppose internal emergency (*Interruptions*).

SHRI B. N. BANERJEE : Sir let me make my point clear. Since it is a definite improvement over the words 'internal disturbance'.... (*Interruptions*)

SHRI BHUPESH GUPTA : We did it. We made mistake What of that? Do not make it point. How does it help? You abuse me— Sir, you give him half an hour to abuse me for that— but take out this armed rebellion formula.

SHRI SHANTI BHUSHAN : I cannot abuse you even if you provoke me.

SHRI BHUPESH GUPTA : You say that you will dismantle the provision of internal emergency and you are bringing it this armed rebellion provision. You said it in your election manifesto.

SHRI SHANTI BHUSHAN : Show me where it is given in our election manifesto.

SHRI B. N. BANERJEE : Since the expression 'internal disturbance' has been removed and since 'armed rebellion' is a much better expression than the internal disturbance, I do not object to it. However, I have a fear that some day this power may also be misused by a power-loving Government and it may be used for the purpose of suppressing legitimate movements of the kisans or the labourers.

I now come to amendment to Article 356 which reduces the

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maximum of the President's Rule. Here I have a grievance against the Law Minister. While moving for Consideration of the Bill, he did have the courtesy of replying to or clarifying the points raised by other Members. I definitely put a very important question, not backed by any partisan spirit and I raised the point that after all, this Article 356 is also an emergency provision and it is in the same Chapter as the Proclamation of Emergency. It is an emergency provision. While moving the Bill, he also said that this Article 356 is not a good thing and that is why he was reducing the period. If that is so, you have very rightly taken a major amendment that so far as Article 352 is concerned, it must be approved by both the Houses by a two-thirds majority of Members present and voting and by a majority of total members of the Houses. Why are you not doing the same thing in case of Article 356? I will tell you how it happens. The Lok Sabha has 540 Members. With a majority of 28 Members in the Lok Sabha on a day where there are 243 Members and with a majority of 25 in the Rajya Sabha, they may approve the proclamation of President's Rule. If you are providing for a two-thirds majority of the Members present and voting in the case of the proclamation of emergency, why are you not providing for the same in case of President's Rule? I only wanted to know why he has not done that. I am supporting the amendment which he is proposing but, unfortunately, even a question which we ask honestly to understand the correct position, is not replied to.

I would request the Law Minister to clarify one more point. He proposes to delete clause (2A) from Article 352 and clause (5) from Article 356 which makes President's satisfaction in these Articles non-justiciable. If I remember the law correctly—the Law Minister definitely knows it much better than myself — even before the 38th amendment, the decisions of the superior courts were that the President's satisfaction in Articles 352 and 356 is not justiciable. Does the present Government take this position that the satisfaction of the President will be hereafter justiciable in a law court? I must, however, make it clear that I only want to hear the Government's stand on this particular point in support of the amendment. I now come to my last point. This will make Mr. Bhupesh Gupta happy. This is in relation to clause 45 of the Bill which proposes some amendments to article 368 of the Constitution. Sir, I have tabled two amendments to this clause. I can tell you, Sir, that in my two and a half years of tenure in this House, this is the first time that I have tabled an amendment. So far, I have not done so.

SHRI SANKAR GHOSE : Is it the convention that the maider amendment must be accepted by this House?

SHRI B. N. BANERJEE Mr. Sankar Ghose...

SHRI SANKAR GHOSE : am suggesting that the convention should be established that the maider amendment should be accepted.

SHRI B. N. BANERJEE : Le not the convention be like that. A least, the convention should be tha a Member who gives his maide amendment must be heard.

SHRI SANKAR GHOSE : am giving you more.

SHRI B. N. BANERJEE : do not want that much. I know I will not be able to say 'No' to th amendments which I have table I am perfectly clear about that. need not personally go to hir asking him to support my amen ments. The Law Minister, in t notes on clauses appended to t Bill, has said that these amendmen

have been made with two objectives. I am reading from the notes on clauses :

"(1) to provide that amendments in relation to some important matters generally enumerated in the new proviso to clause (2) should hereafter require to be approved by the people of India at a referendum;

(2) to omit clause (4) and (5) of article 368 which took away the jurisdiction of courts in relation to validity of constitutional amendments."

These are the two objectives, as has been stated in the notes on clauses. Sir, a lot has been said in the other House, and a lot will be said here also, about the practical feasibility or utility of a referendum. The Law Minister himself was apologetic about this, as I understood from his speech. He was saying that if he was not able to properly explain about this referendum, it might be due to his inability to express and so on. He was not that emphatic about referendum. Now, Sir, some objections have been raised. Actually, these are not objections. They are only some difficulties which were pointed out in the other House to the Law Minister and these will be pointed out here also. I would presently point out one difficulty. I will mention one particular aspect. (*Time bell*) Sir, I will just take five minutes. You had the courtesy to call me at this stage because you did not have speakers. Otherwise, would anybody expect a nominated Member to be called on the first day, as the third or the fourth speaker?

SHRI BHUPESH GUPTA : Sir, I think, he should be given time. As Secretary-General, he had heard speeches. He was bored to hear speeches for many years.

SHRI B. N. BANERJEE : I will take only five minutes.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): I do not mind. Go ahead.

SHRI B. N. BANERJEE : I will mention one particular aspect. Will 51 per cent of the people having voting rights vote at such a referendum? When we examine the figures of voting in the last General elections to Parliament, we have reasonable doubts whether 51 per cent of the voters will vote at a referendum. I will give you the figures. I am not talking in the air. 1952 elections —45 per cent; 1957 elections—47 per cent; 1962 elections—55 per cent; 1967 elections—61 per cent; 1971 elections—55 per cent and 1977 elections—60 per cent. (*Interruptions*) We know how much money the political parties spent to get people from their houses to the election booths. Even in the last General Elections, which was an important one, the figure was 60 per cent. Would anybody seriously expect that 51 per cent of the people will vote at a referendum where the subjects enumerated are like this? Compromising the independence of the judiciary, democratic character of the Constitution, etc. These sub-clauses (i), (ii), (iii) and (iv), all are to be approved by the people of India at a referendum. I do not say that the people do not understand it, but this is the difficulty. I will not go beyond that.

SHRI PREM MANOHAR (Uttar Pradesh) : Normally, it is more than 60 per cent.

SHRI B. N. BANERJEE : No argument Sir. In spite of all this, I do not oppose the provision in this referendum clause since the principle behind this is to involve the people of India—as the Law Minister has said in the Objects and Reasons of the Bill—directly in the Constitutional amendment process. I must, however, point out to the Law Minister that the categories in the proviso should have been more than the four enumerated therein, Since the

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time is limited, whatever the other points, he should have at least brought in the collective responsibility of the Cabinet to the Lower House. That could have been done by inserting this new provision in that particular clause.

Sir, I beg of you to give me two more minutes. I have not spoken on any other Bill.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : I am not opposing you.

SHRI B. N. BANERJEE : Now I come to the second objective which proposes to omit sub-clauses (4) and (5) inserted by the 42nd Amendment. Is it the intention of the Law Minister to vest jurisdiction in courts to question the validity of Constitutional amendments? Let him make the position clear first and then we will understand and vote accordingly. But is he forgetting the implication of what he is doing? He is now involving the people of India in Constitutional amendments by the process of referendum. Now he may say, well, Parliament wrongly amended the Constitution last time. There are mistakes. No body disputes that. But when you say that a Constitutional amendment in respect of particular matters will be approved by the people of India, then after that, whatever may be his reverence for the wisdom of the law courts, to give the superior courts to sit in judgment over the wisdom of the people of India, is not understood. The House would have to seriously consider it. It was all right, though speaking for myself, my view is definitely this that if the amending process prescribed in the Constitution of India has been satisfied, courts cannot question. Then the question of sovereignty will come in. I will not go into that discussion. If you do not make a provision that courts of law shall not question the validity of an amendment made in accordance with the provisions of this article—I will not use the words which were used in 42nd Amendment which were wide words "purported to have been made" and "under this article". In my amendment I have suggested that any amendment of the Constitution made in accordance with the provisions of this article shall not be called in question in a court of law or in the alternative, if he cannot accept even that, I have suggested the other alternative, *i.e.* any amendment which has been approved by the people of India at a referendum under proviso to sub-clause (2) and which has been made in accordance with the other provisions of the Constitution by this particular article, shall not be called into question any court. If the House and the Law Minister does not accept this latter amendment at least I will think the Law Minister considers courts to be superior, which are nothing but a limb of the Government in a higher pedestal, than the people of India who are masters of every body and in whom the sovereignty of India is vested.

SHRI S. W. DHABE: Mr. Vice-Chairman, Sir, I first want to say that though some good amendments made through the Forty-second Amendment to the Constitution last time have been accepted by the Law Minister, he could not forget his profession. In omitting, under clause 35, the provisions regarding tribunals, he has only played into the hands of the lawyers and made it a lawyers' paradise in so far as industrial adjudication and service matters are concerned. What is provided under Part XIVA? Articles 323A and 323B provide that Parliament may, by law, provide for adjudication or trial by administrative tribunals. There is nothing in article 323A or 323B that the Constitution by itself creates a tribunal, or gives powers to any authority to decide the matters. Articles 323A and 323B provide that Parliament may, by law, constitute tribunals for disputes about service

matters land reform matters, ceiling on urban properties and also about industrial and labour disputes. If he had tried to understand the aspirations of the working classes and the imperative need to solve the disputes with expedition, he would not have omitted articles 323A and 323B and invested the High Courts with powers of writ jurisdiction to decide these matter.

Sir, what is the history of this legislation? It is not that this was done by the previous Government merely to curtail the powers of the judiciary because there was a feeling of struggle between the judiciary and Parliament. But it was a request of the working classes right from 1954. Initially, the Industrial Disputes Act, 1947, provided for constitution of labour courts, industrial tribunals. Then the Labour Appellate Tribunal was brought in 1950 for some appeals to be preferred. This was very much abused by the employers. They used to get stay orders and even ordinary matters like those relating to reinstatement, service conditions, suspension and wages used to be stayed by the Labour Appellate Tribunals for years together. Therefore, in 1956 the Act was again amended bringing in the 3-tier system in which many provisions have been taken from the Bombay Industrial Relations Act, 1946. Under this State Act, there are tribunals like the labour court under section 77, then an appeal lies to the industrial court under section 84 and then the matter goes to the High Court. Under writ jurisdiction. Against the Labour Appellate Tribunal's decisions also, the matters used to go to the High Courts. And what is the experience about the High Courts? The experience is much worse in these matters. If the Law Minister has got great confidence in the High Courts, he is sadly mistaken. With the present complement and machinery, the cases cannot be disposed of for years. Even today we have got 4 lakh cases pending in various High Courts and more than 20 thousand in the Supreme Court. Matters relating to the year 1970-71 are still pending and labour matters and ordinary service matters are not heard for years. The other day Shri Naik and myself asked for information. Even in Karnataka High Court, the land reforms matters 10,000 cases are pending.

SHRI L. R. NAIK (Karnataka): Now it has increased to 15,000.

SHRI S. W. DHABE: So wherefrom is he going to get the judiciary to tackle this? These are not like the ordinary civil or criminal matters that the High Court can decide in routine manner, these are matters where special legislation is necessary. Sir, if we really want industrial democracy to succeed it is essential that labour matters are decided with expedition. They must be decided within a particular time. The cumbersome procedure of the High Court and Supreme Court litigation can be afforded by the rich people and not by the ordinary poor men who are fighting to get their claims settled. Sir, it has been rightly said by a very well known author in this matter. I quote the opinion of Richard Leister in his famous book "Economics of Labour."

> "Industrial relations play a very vital part in the establishment and maintenance of industrial democracy. The problem of industrial relations is inextricably inter-linked with the freedom of association, collective bargaining and success of conciliation and arbitration. Industrial democracy cannot succeed, unless all concerned employees, employers, Government and public should fully realise their importance and its due place in national life."

Every day there are strikes and lock-outs and the workers' cases are not decided. In Bombay under the leadership of Mr. Dange a *morcha* was taken out by the workers for

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the abolition of the Labour Appellate Tribunal. Here a provision has been made for the purpose that Parliament may by law provide the Tribunal and the power of the Supreme Court is kept intact. I think bringing back article 226 in its full force will be doing a great disservice. It may not be helping democracy. It may not be helping the cause of the working class and the poor people of India, and the litigation will be much more costlier, and no justice would be possible. I, therefore, appeal to re-consider the position and take back clause 35. The enabling provision which has been made salutary by itself does not bring any law into force. Therefore, the Law Minister should reconsider the matter and should not leave the working class and government servants to the whims and fancy of the courts. Thousands of service matters are now pending in the Calcutta High Court even today when we are discussing this Bill.

Now, Sir, in High Courts we can very easily get stay orders. And once a matter is stayed it will drag on for years and it will not be in the hands of the Law Minister to give them speedy justice. Therefore, if there has to be speedy disposal and speedy justice in industrial disputes and if collective bargaining and peaceful method of agitation is to succeed in this land, it is very essential that special tribunals are constituted and the appeal only to the Supreme Court is provided as was done by the previous amendment.

Sir, there are two other matters on which I would like to make my submission. It is really very surprising that when this Government has retained the power of detention while amending article 22 which was condemned by the Janata Party previously, namely, the power of detention for political reasons which was used against political opponents during emergency to suppress their legitimate aspirations and democratic trade union movement has been still retained in the Constitution.

Sir, article 22 (1) and (2) provide for the right of the people against arrest and detention. But afterwords it says that the Parliament has got Legistlative powers of unlimited detention without trial. It has also provided advisory board. I do not understand how the Government has come to the conclusion of having political prisoners and of detaining politicians and why the voice of dissent should not be accepted. When they were sitting in the opposition they were crying hoarse that this law must go. But when they have come to power they feel that this law should be retained to use against the legitimate movements as is shown in Madhya Pradesh and Uttar Pradesh. In Uttar Pradesh and Madhya Pradesh the law has been used in the name of essential services to break down the trade union movement. Sir, the Janata Government is using this law to serve their own interest. I, therefore, appeal to the Minister to reconsider the matter and delete article 22 from clauses (3) onwards. Lastly, Sir, there are two questions I would like to pose. I fully endorse the view of Mr. Banerjee. He said that Government does not accept the sovereignty of Parliament. This is the main question which we have to decide. Is it that they want unlimited powers, untrammelled powers under article 356 to dissolve elected bodies like State Legislatures? We saw the phenomena. As soon as Mr. Charan Singh became the Home Minister, he ordered elections for eight State Assemblies, where there were Governments which were against them. They had thumping majority in those Houses and the Houses had passed the Budget On the simple ground that they had lost the confidence of the people

because they had lost the Lok Sabha elections, they were dissolved. If some party loses a municipal election, will it be said that they had lost the confidence of the people? The Supreme Court had upheld the orders under article 356 because the words used are "or otherwise". If the Law Minister really wants the State Legislatures to function, he should have limited the powers of the President. But because they are in power now at the Centre, they do not want to curtail their powers, as was rightly stated by Mr. Banerjee.

What is article 368, Sir? Does he accept that the judiciary should be a third chamber? How is it that he has omitted clauses 4 and 5? Clauses 4 and 5 specifically state that Parliament shall be sovereign and there shall be no other authority which can challenge the authority of Parliament. Sir, in this connection I saw the Constitutions of different countries. There is no such power in England. Can he show any power in England which can challenge a law passed by Parliament? In the Constitutions of many countries, I saw it provided that whatever is decided by Parliament is final. In this connection there are constitutional provisions in Switzerland, Australia, Hungary and France. France has got the constitutional provision that only the Constitutional Council or Members of Parliament can see if any complaint comes, but no court has been given the power. Similar is the provision in the Constitution of the USSR. In the Constitutions of democratic countries and in the Constitutions of Socialistic countries, it is specifically provided that the will of the people cannot be taken away by a third chamber like the judiciary. Are the Supreme Court Judges so high that as in the *Kesavananda Bharati* case they can decide whether a provision of the Constitution is valid or not?

What is the fundamental right, what is the basic character? The whole thinking of this Janata Government and unfortunately, of the Law Minister, smacks of too much reliance on the judiciary—probably because he has been a practising lawyer for a long time in the leading High Courts. But he should have learnt that nobody in Parliament believes in this doctrine that Parliament is not sovereign and somebody else must decide, the validity of its actions.

Sir, what is the provision about referendum? There is no logical conclusion given to it. (*Time bell rings*) I am finishing, Sir. What will be the effect if a referendum is rejected? Will the House of the People be dissolved or will the party in power take a vote of no confidence? The initiative and a referendum is the basic principle accepted in the Constitutions of Switzerland, Australia and the USA because they have got firm faith in direct democracy. I am completely in favour of referendum and the principle that the people must be sovereign, but the way in which the proposition has been brought in here is absolutely useless to fulfil the aspirations of the people. Is what Mr. Jayaprakash Narayan said, correctly—that the people must have the right to recall the elected representatives—is necessary in this country where politicians, with impunity, are changing parties for selfish interests, when they go from Janata to Congress or *vise versa* and from one party to another and where they talk of opportunist politics without caring for the interests of the people. There is no deterent for this. The politicians are misusing the opportunities meant to serve the people. It would be mush better to have a provision, under article 368, about the right to recall only then the provision of referendum would

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have been taken to its logical conclusion. Sir, lastly, I would like to say that the deletion of article 31 from the Constitution is a welcome provision. But there must be some protection. If the landlords and the property owners in this country are going to get the market value as compensation of their properties, it may not be possible to acquire. The whole object of the legislation passed in the last so many years with regard to the land reforms, as brought out in the Ninth Schedule, was to give compensation and if the amount of compensation bears a good relationship with the value of the property that should be supposed to be reasonable. Therefore, Sir, if the legal right is to be given to them in case of land acquisition, the result will be that the landlords will get more money and it will just be as if the Manifesto of the Janata Party was in reality to help the landlords. *Bagal mein chhuri, munh mein Ram Ram* will not work. It is no use talking of the poor people when you are actually implementing the legislation, and bringing amendments, in favour of the landlords. Let the Janata Party awake to its Manifesto and bring proper amendments.

Sir, I would also like to say that some good features are there and I welcome those good proposals.

श्री कल्प नाथ राय : उपसभाध्यक्ष महोदय, जो संविधान का संशोधन विधेयक कानून मंत्री महोदय ने पेश किया है उसमें कुछ ऐसी बातें हैं जिनसे मैं सहमत नहीं हूं। जनता पार्टी ने अपने चुनाव घोषणा-पत्र में देश की जनता के सामने एक वचन दिया था कि हम संविधान में इमरजेंसी को नहीं रखेंगे। किसी भी पार्टी का जो एलेक्शन मैनिफेस्टो होता है वह जनता की अदालत में दिया गया हल्फनामा या एफीडेविट होता है। लेकिन यह जनता सरकार और उसके प्रवक्ता शान्ति भूषण जी ने "इंटरनल डिस्टरबेंस", जो भारतीय संविधान के बनाने वालों ने, राष्ट्रीय नेताओं ने जो शब्द रखा था उस शब्द को हटा कर "आर्म्ड रिबेलियन" रख दिया यानी फर्स्ट डिकलेयर दि डाग मेड, देन शूट दि डाग। पहले उस को पागल डिकलेयर करो और फिर उसे जान से मार दो। उपसभाध्यक्ष महोदय, जनता सरकार द्वारा इस प्रकार की बातों का रखा जाना ही हमारे मन में उनकी नीयत पर संदेह पैदा करता है। इंटरनल इमरजेंसी का प्राविधान जो हमारे संविधान के पितामहों ने रखा था वह ठीक था। आज भी ठीक है और भविष्य में भी वह ठीक रहेगा, लेकिन आपने जो देश को वचन दिया उस वचन से आप, उस हल्फनामे से आप मुकर गये। यह एक प्रश्न है, जो मैं आपके द्वारा उनके सामने उपस्थित करना चाहता हूं।

श्री शान्ति भूषण : कहां वचन दिया था ?

श्री कल्प नाथ राय : आपने वचन दिया था एलेक्शन मैनिफेस्टो में।

श्री शान्ति भूषण : नहीं, मेरे सामने एलेक्शन मैनिफेस्टो है।

श्री कल्प नाथ राय : उपसभाध्यक्ष महोदय, सारा देश इस बात को जानता है कि संविधान में संशोधन समय-समय पर होते रहे हैं लेकिन अब इसमें उन्होंने प्रियेंबिल को बदलने की कोशिश की है। हमने अपने देश का लक्ष्य घोषित किया है समाजवाद की स्थापना और समाजवाद की प्राप्ति हमारे देश का उद्देश्य है। लेकिन इस पूरे संविधान में जुडिशियरी पर, न्यायपालिका पर ज्यादा जोर दिया जाये, इस पर इंफैसिस है आदरणीय शान्ति भूषण जी द्वारा। शान्ति भूषण जी सच को झूठ और झूठ को सच करने में माहिर है। इसी विद्या के कारण वे यहां आज लो मिनिस्टर हैं।

श्री शान्ति भूषण : मैं तो कहता हूं कि कल्प नाथ जी बड़े विद्वान हैं।

श्री कल्प नाथ राय : उपसभाध्यक्ष महोदय, आप जानते हैं कि हिन्दुस्तान के प्रजातंत्र के सामने क्या समस्या आयी थी जब इस मुल्क में बैंकों का राष्ट्रीयकरण हुआ था। उस समय यहां की न्यायपालिका ने बैंकों के राष्ट्रीयकरण के खिलाफ फसला दिया। जब इस मल्क में राजे महाराजाओं के प्रीवी पर्स समाप्त हुए तो उसके खिलाफ उन्होंने फसला किया। इस मुल्क में लड रिफार्म हुए, न्यायपालिका ने उसके खिलाफ फसला किया। आज तक हिन्दुस्तान की न्यायपालिका ने पिछले 30 वर्षों के अन्दर भी समाजवादी कदम के पक्ष में कोई निर्णय नहीं दिया। फिर समाजवाद और स्वतंत्र न्यायपालिका दोनों एक साथ नहीं चल सकते। मार्क्स ने कहा है कि न्यायपालिका या कोर्ट या कचहरी, ये पूंजीवादी हुकूमत को कायम करने के तरीके हुआ करते हैं।

उपसभाध्यक्ष महोदय, हमने हिन्दुस्तान के संविधान में लोकतंत्र को स्वीकार किया है और समाजवाद को स्वीकार किया है। रूस ने समाजवाद को स्वीकार किया और समाजवाद लाये भी, लेकिन वहां लोकतंत्र को स्वीकार नहीं किया। दुनिया को लूटने वाले साम्राज्यवादी मुल्कों ने लोकतंत्र को अपनाया, वह समाजवाद का नाम लेने के लिए भी तैयार नहीं। हिन्दुस्तान ही एक ऐसा मुल्क है जहां आजादी की लड़ाई के बाद हमारे देश के नेताओं ने रोटी की आजादी और पेट और मन की आजादी के साथ-साथ लोकतंत्र और समाजवाद दोनों को स्वीकार किया। इन दोनों को साथ-साथ कायम करने के लक्ष्य को मद्देनजर रखते हुए हमने अपने देश में संविधान का निर्माण किया और उस संविधान के मार्ग में हमेशा रोड़े पूंजीवादी व्यवस्था ने उपस्थित किये।

उपसभाध्यक्ष महोदय, आज यह सरकार लोकतंत्र की बात करती है। ये कहते हैं कि लोकतंत्र हम हिन्दुस्तान में लाये हैं। आज लोकतंत्र के नाम पर चोर-बाजारी बढ़ रही है, लोकतंत्र के नाम पर होर्डिंग बढ़ रही है, लोकतंत्र के नाम पर भ्रष्टाचार बढ़ रहा है, लोकतंत्र के नाम पर तस्करी बढ़ रही है, लोकतंत्र का नाम लेकर देश की जनता को लूटो, मुल्क को तबाह करो, देश की एकता तोड़ो, और दिन-रात लोकतंत्र का नाम लो। उपसभाध्यक्ष महोदय, हिन्दुस्तान जैसे देश में लोकतंत्र के साथ सबसे पहला हमारा लक्ष्य है समाजवाद की स्थापना। अध्यक्ष महोदय, इस संविधान संशोधन के माध्यम से इन्होंने कुछ बातें तो सही कही हैं, लेकिन कुछ बातें ऐसी की हैं जिनके माध्यम से हम समाजवादी समाज के लक्ष्य को प्राप्त नहीं कर सकते हैं। वर्षों की लड़ाई के बाद हमने एजुकेशन को कांकरेंट लिस्ट में रखा, शिक्षा को कांकरेंट लिस्ट में रखा और कहा कि पूरे देश में एक तरह की शिक्षा की व्यवस्था होगी। इसी पार्लियामेंट के सामने 1 लाख शिक्षकों ने प्रदर्शन किया मगर जनता सरकार यह चाहती है कि हम शिक्षा को कांकरेंट लिस्ट से हटाकर स्टेट लिस्ट में ले जायें, यह जनघाती कदम है, राष्ट्रघाती कदम है। हम इस कदम का विरोध करते हैं। हिन्दुस्तान के एक लाख अध्यापकों ने इसे कांकरेंट लिस्ट से हटाने पर विरोध किया था 14 सितम्बर को लेकिन इन लोकतंत्र के हत्यारों ने जिनको टीचरों की आवाज सुनाई नहीं देती है, उस पूरे समाजवादी कार्यक्रम को उलटकर पुनः शिक्षा को एक प्राइवेट मैनेजमेंट को देने की चीज बनाने का कुचक्र किया और कर रहे हैं और यही लोकतंत्र का नाम लेते हैं। इस देश की शिक्षा पद्धति दिल्ली में अलग होगी, केरल में अलग होगी, मद्रास में अलग होगी, असम में अलग होगी, गुजरात में कुछ होगी, सब का स्टेंडर्ड अलग-अलग होगा। यह राष्ट्रीय एकता स्थापित करना है?

उपसभाध्यक्ष महोदय, जनता पार्टी की हुकूमत के इन कार्यों के परिणामस्वरूप देश की एकता टूट रही है। हिन्दुस्तान की आजादी खतरे में पड़ गई है। हिन्दुस्तान का समाजवाद

[श्री कल्प नाथ राय]

खतरे में हो गयी है। उनकी नीतियों से हमारा राष्ट्र बिल्कुल जर्जर हो कर ही रहेगा।

उपसभाध्यक्ष महोदय, ऐडमिनिस्ट्रेशन ट्रायब्यूनल का हमने प्रावधान किया। 42वें संविधान संशोधन में कुछ बातें गलत थीं, यदि उनको आप समझते हैं, देश की जनता समझती है कि हमारे संविधान की चीजें गलत थीं तो उसमें परिवर्तन के लिए कानून लाते। लेकिन जो उनकी सही बातें थीं उनको हम कैसे इंकार करेंगे ? ऐडमिनिस्ट्रेशन ट्रायब्यूनल किसके लिए थे ? एक से एक भ्रष्ट कर्मचारी जो दिन-रात भ्रष्टाचार करते हैं, केन्द्र सरकार या राज्य सरकार के अन्दर उनके लिए। आदरणीय घनश्याम जी ओझा यहां मौजूद हैं, पंडित कमलापति त्रिपाठी यहां मौजूद हैं। सबसे भ्रष्ट कर्मचारी जो होते हैं वे भ्रष्टाचार करते हैं और जब चीफ मिनिस्टर ने उनको सस्पेंड किया तो हाईकोर्ट की शरण ले लेते हैं और 20 वर्ष तक रिटायरमेंट तक वह हाई कोर्ट में केस चलता रहता है। हिन्दुस्तान जैसे देश में हाई कोर्ट चलो। ये ला मिनिस्टर हैं, इनको हिन्दुस्तान की जनता का क्या ज्ञान है ? एक झूठे मुकद्मे को जीता, एकदम झूठा मुकद्मा जीते, उसके बदले में कानून मंत्री हैं। इनको हिन्दुस्तान की जनता का क्या ज्ञान है ? हिन्दुस्तान के करोड़ों लोग जो गांव में रहते हैं जिनके बीच हम काम करते हैं हम जानते हैं कि हिन्दुस्तान में लोकतंत्र का मतलब यहां की जनता की रोटी से है। दो चीजें बुनियादी हैं जो जनता को चाहिये। एक तो चाहिये रोटी और दूसरी चाहिये सूखी रोटी खाने के बाद आराम से सुख की नींद। यह जनता की मिनिमम मांग है। इनको क्या ज्ञान है ? आज तो रोटी भी खतरे में है और समाजवाद भी खतरे में है। गरीब जो मेहनत से रोटी कमाता है उसकी रोटी आज खतरे में पड़ गई है। यह है इस जनता सरकार की उपलब्धि। हमने देश को स्ट्रांग बनाया था, हमने स्टेबल देश बनाया था, समाजवाद की दिशा में जाने वाला देश बनाया था। एकता को मजबूत किया था। जो हमने गरीबों के दिलों में आशा का चिराग जगाया था वह चिराग आज बुझाया जा रहा है। जो आशा का अंकुर हमारे समय में गरीबों के दिलों में फूटा था वह अंकुर नष्ट किया जा रहा है।

आज यह जो संविधान में संशोधन कर रहे हैं इसमें डायरेक्टिव प्रिंसिपल को प्राथमिकता नहीं मिलेगी जबकि हमने डायरेक्टिव प्रिंसिपल की, नीति निर्देशक सिद्धान्तों को फंडामेंटल राइट्स के ऊपर प्राथमिकता दी थी। कोई भी समाजवाद में विश्वास रखने वाला पार्लियामेंट का मैम्बर, चाहे यहां का हो या वहां का हो वह इस सिद्धान्त को स्वीकार करेगा कि The Directive Principles should be given priority over the Fundamental Rights. यह बुनियादी बात है। जो समाजवाद के दुश्मन हैं, सेक्युलरिज्म के शत्रु हैं वे ही लोकतंत्र के नाम पर इन सिद्धान्तों को हटाने की बात करते हैं। सैक्युलरिज्म और सोशलिज्म की बात हमने प्रिएम्बल में की थी। हमने देश की एकता को बनाने की बात की थी। हमारा उद्देश्य राष्ट्रीय एकता है और इस एकता को बनाने के लिये, बहुत सोच-समझने के बाद, पूरे देश की बार-एसोसिएशन से कंसल्ट करने के बाद, पूरे देश की पब्लिक ओपिनियन लेने के बाद हमने प्रिएम्बल में यह बात रखी थी। इसलिये जो हमने पिछली बार प्रिएम्बल में रखा था उसे रखे रहना चाहिये, हटाना नहीं चाहिये। वह हमारी राष्ट्रीय एकता के लक्ष्य को उद्घोषित करता है।

चौथी बात इस संविधान के अन्दर रिफ्रेण्डम की कही गई है। हमारा यह देश कन्याकुमारी से लेकर कश्मीर तक फैला हुआ है। इसलिये जनता के चुने हुए प्रतिनिधि जो यहां आते हैं उन चुने हुए प्रतिनिधियों को यह अधिकार है कि वे, इस पार्लियामेंट में क्या

सही है और क्या गलत है इसके ऊपर निर्णय लें। अगर कोई सरकार, कोई केबीनेट नपुंसक हो जाए, अगर कोई मेम्बर पार्लियामेंट अपने अधिकारों की जानकारी नहीं रखता है तो उसकी नपुंसकता के लिये, उसकी कायरता के लिये पार्लियामेंट को दोष नहीं दिया जा सकता (*Interruptions*)

लोकतंत्र की बात कही जाती है मैं पूछना चाहता हूं कि आपने नौ विधान सभाओं को किन मान्यताओं पर भंग किया था। नौ विधान सभाएं जो पांच साल के लिये चुनी गई थीं उनको कलम की एक नोक से लोक शाही की हत्या करके भंग कर दिया था। लेकिन आप जानते हैं दक्षिण भारत में आप चुनाव हारे। दक्षिण भारत की जनता ने जनता पार्टी को बुरी तरह से चुनाव में पराजित किया। जब आप दक्षिण भारत में पराजित हुए तब आपको थोड़ी सी भी लज्जा नहीं आई कि देश की पार्लियामेंट को भी भंग कर देते। जिस कानून पर, जिन मान्यताओं पर आपने 9 विधान सभाओं को भंग किया था क्या उन्हीं मान्यताओं पर दिल्ली की संसद को आपको भंग नहीं करना चाहिये था। लेकिन कड़वा-कड़वा थू और मीठा-मीठा गप्प। यह है आपका सिद्धान्त। यह है आपकी राजनीति और यह है आपका लोकतंत्र।

श्रीमती जमुना देवी (मध्य प्रदेश) : उपसभाध्यक्ष जी, मेरा एक पोइंट आफ आर्डर है। मैं यह कहना चाहती हूं कि माननीय सदस्य ने अपने भाषण में कहा है कि लोकसभा के सदस्य, पार्लियामेंट के नपुंसक सदस्य हो गये हैं। इनको अपने शब्द वापस लेने चाहियें। मैं पूछना चाहती हूं कि क्या नपुंसक व्यक्ति यहां मैम्बर बन कर आ सकता है? इनको अपने शब्द वापस लेने के लिये कहिये।

श्री कल्प नाथ राय : मैंने यह कहा कि अगर लोकसभा का सदस्य अपने मन से कोई काम 4 p.m. करता है तो आप समझते हैं गलती है। पहले आप बारबार यह कहते रहे हैं कि आप केपटिव पार्लियामेंट हैं। श्री जार्ज फर्नेन्डीज ने हिन्दुस्तान की पार्लियामेंट को दलालों की पार्लियामेंट कहा था और यह कहा था कि आप यहां पर दलाल बन कर आए हैं। जो बात आपके मन के खिलाफ होती है उसको आप गलत बता देते हैं। जो बात आपके मन के अनुकूल होगी उसको आप लोकतंत्री पद्धति कह देते हैं।

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI) : I am calling the next speaker. I gave you only 15 minutes.

श्री कल्प नाथ राय : आप मुझे कैसे कंक्लूड करो कह रहे हैं। यह कोई तरीका नहीं है। मुझे दो मिनट बोलने का मौका और दीजिये।

उपसभाध्यक्ष (श्री अरविन्द गणेश कुलकर्णी) : आप दो मिनट में अपना भाषण समाप्त कीजिये।

श्री कल्प नाथ राय: उपसभाध्यक्ष महोदय, मैं यह कहना चाहता हूं कि सदन के अन्दर हमारी पार्टी अपनी नीतियों पर बोलती रहेगी। हमने एडमिनिस्ट्रेटिव ट्राइब्यूनल का प्रावधान किया है, वह हमारे संविधान में रहना चाहिए। इस देश मे आपने जो रेफ्रेंडम की बात रखी है वह नहीं रहनी चाहिए। हमने शिक्षा और फौरिस्ट विभाग को कंकरेन्ट लिस्ट में रखा था। वह कंकरेन्ट लिस्ट में ही रहना चाहिए। प्रिएम्बूल में हमने जो कानून बनाये थे वे वैसेही रहने चाहिएं। हमारे संविधान में जो बुनियादी सिद्धान्त प्रतिपादित किये गये हैं और जोड यरेक्टिव प्रिंसिपल का प्रावधान किया गया है उनको उसी रूप में बनाये रखना चाहिए। इस संबंध में एक बात मैं और कहना चाहता हूं। समाजवादी समाज के निर्माण के लिए हमारे देश मे एक दृष्टिकोण रहा है। हमारे देश में समाजवादी समाज का निर्माण तब तक नही हो सकता है जब तक कि समाजवादी सिद्धान्तों और मूल्यों का प्रतिपादन हमारे संविधान में नहीं होता है। हम चाहते हैं कि

[श्री कल्प नाथ राय]

हिन्दुस्तान में कानून और लोकतंत्र को कायम रखना चाहिए। सदन में बारबार स्वतंत्र न्यायपालिका की बात कही जाती है। लेकिन मेरा कहना यह है कि हिन्दुस्तान में पार्लियामेन्ट की सुपरमेसी कायम रखी जानी चाहिए और पार्लियामेंट को उच्च स्तर पर रखा जाना चाहिए। हिन्दुस्तान में न्यायपालिका को स्वतंत्र रूप में रखने से समाजवाद नहीं आ सकता है। पार्लियामेंट को मोटी मोटी बातों को समझना चाहिए। जब तक इस देश में पार्लियामेंट की सुपरमेसी कायम नहीं होगी तब तक इस देश में गरीबों की हुकूमत कायम नहीं हो सकती है और न ही इसका वेलफेयर स्टेट कहा जा सकता है। इसलिए मैं इस संविधान संशोधन विधेयक के कुछ प्रावधानों का तो स्वागत करता हूं, लेकिन कुछ प्रावधानों का कड़े शब्दों में विरोध करता हूं। मैं चाहता हूं कि उन प्रावधानों को हमारे कानून मंत्री जी वापस लें। जो बातें इस विधेयक में जनता की भलाई के लिए हैं उनका तो हम अवश्य समर्थन करेंगे, लेकिन जो बातें जनता के हितों के विरुद्ध हैं उनका हम विरोध करेंगे। मैं चाहता हूं कि आपको शिक्षा को कंकरेन्ट लिस्ट में अवश्य रखना चाहिए।

DR. BHAI MAHAVIR : Mr. Vice-Chairman, I rise to compliment the honourable Law Minister on the Bill that he has moved for the amendment of our Constitution.

[The Vice-Chairman (Shri Shyam Lal Yadav) in the Chair]

The democratic spirit of the country is being resurrected and we are trying to reassert the fundamental fact that the right to life, liberty, freedom of speech, a free press, freedom of worship and assembly and other fundamental rights...

श्री कल्प नाथ राय : क्या आप हिन्दी में नहीं बोल सकते हैं? क्या इसी तरह से जनता का राज कायम होगा? क्या अंग्रेजी भाषा को जनता समझती है।

SHRI MANUBHAI PATEL (Gujarat) : There are other people who understand English. There are people who do not follow Hindi.

आप तो हिन्दी समझ सकते हैं, लेकिन दूसरे कई लोग हैं जो हिन्दी नहीं समझते हैं।

SHRI HAMID ALI SCHAMNAD : Mr. Kalp Nath Rai has also become anti-English.

SHRI KALP NATH RAI : I never said that.

डा. भाई महाबीर : श्रीमन्, ये मेरा जितना समय बरबाद कर रहे हैं उतना समय आप को मुझे और देना होगा।

SHRI HAMID ALI SCHAMNAD : Your supporters are from the south; do not forget that, Mr. Kalp Nath Rai.

DR. BHAI MAHAVIR : Sir, it is being asserted today that there are certain fundamental rights of liberty and freedom which are not at the mercy of any Government or any party or any great dictator. They arise from the nature of mankind and therefore there should be a limit to which anybody can toy with them. After long centuries of sufferings and sacrifices, this country won certain basic freedoms and those basic freedoms were enshrined in our Constitution. Within a quarter of a century, however, through an irony of fate there came people at the helm of affairs in this country who claimed the right to take away those rights, those liberties and those freedoms. The twenty-fourth amendment to the Constitution was such a declaration which sought to clear the way for abridgement of all the fundamental rights of citizens of this country. My friend Mr. Pranab Mukerjee is not

here. I am told that he was good enough to refer to me and to say that when this Twenty-fourth Amending Bill was moved we were talking in some seventeenth century language when we wanted the right to property to remain a fundamental right. If I recall a right, the Twenty-fourth amendment prepared the ground for abridgement of all fundamental freedom not only right to property. But after that amendment, right till the day when the Party to which he belongs was unseated, no effort was made to remove this right to property from the list of fundamental rights. And the right to property remained a fundamental right till the day the Congress Party was in power. If I have changed, well I do not admit to be as unchanging or as stagnant a person as he would like me to be or apparently takes me to be. But I would like to ask him how he reconciles his position of saying that emergency should not be for this purpose or that purpose and still keeps on alleging that the emergency was nothing wrong and continues to follow his leader who became a mini-Hitler for this country, robbing this country of the liberty and grace which she had won after centuries. He continues to deny the right of the Shah Commission to ask for information as to how things happened and takes shelter behind the oath of secrecy. With all these, I do not understand how he is able to claim that this Party stands for freedom, for democracy and for the rights of the individual. So much for his constituency.

My friend Shri Kalp Nath Rai said many things. I do not want to pay much attention to all that he said because he said many meaningless things. But he said a lot about the courts and ended by saying that no good thing has ever been done by the courts. Is it the reason why his leader and her son are continuously knocking at the doors of the courts for bails and anticipatory bails and all sorts of legal protection which the courts are giving them? Is it because of this that he says that the courts have done nothing? He should realise that his leader often gets more than juctice from our courts where she goes very frequently.

During the days of the Twenty-fourth amendment, several amendments, particularly during the traumatic days of emergency, such as the 39th, 40th, 41st and 42nd amendments, in effect, made a laughing stock of the Constitution and put the country virtually in a state of dictatorship. It was a totalitarian rule by a Party which became nothing less than a Fascist Party dominated by one person, being the matter of everything that he or she set eyes upon.

Article 329A was virtually a save Indira clause and a black mark on the Constitution of the country. The Government is now resurrecting the spirit of the Constitution by removing it.

Through the various amendments the President was reduced to a figurehead. It was ordained that the President had to sign anything which was placed before him by the Prime Minister or the Cabinet. Now, Sir, the President's dignity is being restored and he is being given the authority and right to advise or to ask the Council of Ministers to reconsider a Bill once they have approved of it. Then, Sir, through these amendments, as the Law Minister has said, one more thing is going to be done. several very high constitutional functionaries were given a special privilege earlier, that is, the Speaker, the Prime Minister, the President and the Vice-President, and it was said that they were above law and no law applied to them. They could do any thing and they might have done anything in the past and no action could be taken against them. No law applied to them. Is this the *samajwad* or the socialism that our friends on that side want? And, Sir, if the Janata Party wants to

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bring all before the law as equal citizens, what objection can there be to it? Even the Prime Minister has said rather he has insisted that he would like the jurisdiction of the Lokpal to cover him also. That was never done by the previous Government. Does that show that they were anxious about honesty in public affairs? Why should the Prime Minister have been placed above law and why should the other high functionaries be above law? Why should they be given a blanket protection against all crimes that they might have committed or might commit? This is a very interesting concept of what socialism or democracy meant to them.

Now, Sir, the other things that the new amendment seeks to bring in, almost all the things, are most welcome. The right to publish parliamentary proceedings and the right of an individual not to be punished under an Act passed after certain actions have been done by him-i.e., retrospective punishment or retrospective application of laws—these are all things which are important and the negation of these is something which no democratic or free system can permit and this is something of a great pledge being redeemed, this is what the Constitution (Amendment) Bill is doing.

Sir, some of our friends on the other side, notably Mr. Bhupesh Gupta, have objected to the clause relating to armed rebellion being kept as a justification or ground for internal emergency being declared. Of Course, there is the possibility of a Government which tries to distort this provision or tries to present something which is not an armed rebellion as an armed rebellion and declares an internal emergency on that basis. The recent experience is so eloquent and so fresh that people cannot forget it. After all, there was no emergency. The Prime Minister being unseated by a High Court judgment was no emergency for the country as such. But it was made into an emergency and with all the media and with all the Press controlled as a captive Press, the whole world was made to believe that there was a great conspiracy to create chaos in this country. So, it may be that another government tries like that. But, Sir, you have to place some reliance on the human being and no law can be a foolproof law for all possible conditions or for all possible situations. I also believe that even Mr. Bhupesh Gupta would not plead that the right of armed rebellion should be given to anybody. After all, if the democratic system is to function, it has to function in a peaceful manner and no party should be given that right. I do not know whether it is because of the Communist Party's belief in that type of violence or that type of violent action. But still, Sir, I would believe that he accepts the Constitution, when he pledges and takes oath as a Member of the House under the Constitution and that he accepts that no party or no group should be given the right to try to bring about changes in the country through an armed rebellion.

Then, Sir, the referendum clause has also been objected to by some friends. This referendum provision, as I conceive it is a compromise between two extreme positions. One is, as our friends on the other used to say that Parliament is supreme and that it can bring about any change and alteration in the Constitution, and the other is that the Constitution is sacrosanct and it should not be changed at the will or the whim and fancies of the party in power. Now, Sir, this is a *via media* between the two. There are certain basic things which, we believe, should not be changed in a very casual

manner and if at all a situation arises in which they need to be changed, then, Sir, let the people be the last judge because, after all, sovereignty rests with the people and not with Parliament as was claimed by our friends there.

SHRI B. N. BANERJEE : Then, what about the powers of the courts to question the validity of the amendment which has been approved by the people ? Please answer straightway.

DR. BHAI MAHAVIR : Well, I suppose that when the people are given this right and the people have the right to amend the Constitution, it means that their amending power is ultimate. That is how I look at it. I suppose the Law Minister would be able to clarify from the Government's point of view.

I do believe that there are certain things which are required to be accepted if any amendment is to work, if any Constitution has to be successful. We have to be self-disciplined. Whatever order the emergency wrought to the extent that some discipline was also brought with it, has been appreciated or was appreciated by people. Of course, discipline is imperative. But had that been the only purpose, there would have been nothing wrong with the emergency. But that was not the purpose, and it was only brought merely to cover some gross misuse of authority on the part of the people who sat in the chairs of authority. But the desire has to be there. I believe that my hon. friends on this side as well as on that side would accept that if this House or any other body has to function, it can function only with a minimum of discipline and a minimum cooperation.

Sir, the second condition of successful working of the Consitution.... (*Time bell rings*).

I will finish in three or four minutes. I started at 4·05.

THE VICE - CHAIRMAN (SHRI SHYAM LAL YADAV) : You started at 4·02.

डा. भाई महावीर : तीन मिनट तो कल्पनाथ जी की भेंट हो गये ..... (*Interruptions*) वे तीन मिनट उनके खाते में डालिए ।

The second condition is that the party in power should believe in consultation with the Opposition. The party in power today believes in consultation with the Opposition. The status given to the Opposition leaders, the recognition given to the Opposition leader, is something which they had never agreed to all these years. The Janata Party has done that. The way in which it has proceeded in connction with this Bill is creditable. The manner in which the Law Minister and the Prime Minister went about in this matter is even more creditable. So, Sir, the consultation with the Opposition is something which is to be accepted as part of the democratic life, because we start with the presumption that no man or no party has the monopoly of wisdom or patriotism and go with the presumption that these qualities are there among all parties. And, therefore, if we are to work in this country, and if we want to solve the problems of the country, we have to have the cooperation, as far as possible, of all the parties.

Sir, the willingness and the capacity of the people to serve in a disinterested way, is the third condition. If remaining in power remains the only consideration or the only objective in the minds of all of us or any of us. I suppose that any good Constitution will go by default and it will not be able to deliver the goods.

Then, Sir, we have to pledge faith in the freedom and the right of dissent also. The Opposition has to exist. Such type of talks

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as the Opposition has become irrelevant," were indulged in during the emergency. The president of the ruling party those days went about saying that the whole country had chosen one party and the party had chosen one leader ; everything else was irrelevant in this country. Sir, that type of talk is nothing but naked fascism. And that has to be given up. if any party is to claim to be democratic in this country.

Sir, I would just submit two points to the hon. Law Minister. It does appear to be an anomalous situation that to take care of any person or a group of persons who subvert the Constitution there should be no law and there should be no way to proceed against them in a court of law,. That lacuna —if it is a lacuna—needs to be corrected, otherwise this would encourage any people in future also to tinker with the Constitution to subvert and to murder democracy.

Sir, we have been saying that the right to work should be given a place in the Fundamental Rights. I understand that it is not a thing to be lightly taken. But I think that the Government should sooner or later seek a situation to be created where it can be given that fundamental status.

Last word, Sir, and that is our ultimate faith in the people and our confidence in the people that they would be able to protect their sovereignty, their freedom. After all, freedom is not something which has to be won once and to be enjoyed for all time to come. It has to be fought for again and again and it has to be won generation after generation. Without that, the people are likely to slip into some sort of slavery. Sir, I wish to end by recalling a little from a quotation which Shri Sachchidananda Sinha read in his inaugural address to the Constituent Assembly on 9th December 1946:

"The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful, its arrangements are full of wisdom and order: and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created—these are the words which I commend to you for your consideration —by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people in order to betray them."

SHRI MURASOLI MARAN (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise to welcome the Constitution (Fortyfifth Amendment) Bill whole-heartedly. I would say that this Bill marks a milestone in our political history and the people will have a sigh of relief because it dismantles many of the obnoxious provisions of the 42nd Amendment. Sir, while speaking on the previous Amendment Bill, I had said that if the country had to pass through a traumatic exprience for more than 20 months, the responsibility was that of Mr. Shanti Bhushan. I had also said that but for his being instrumental in getting the Allahabad High Court judgment, the emergency would not have been proclaimed.

DR. BHAI MAHAVIR : He is the villain of the piece.

SHRI MURASOLI MARAN And the Forty-second Amendmen would not have come. Now, it ha fallen on Mr. Shanti Bhushan t do away with the evils of the Forty

second Amendment. So, I feel that a dramatic justice is being rendered today. Sir, as it is always said, the life of law is not logic but experience. We had a bitter experience, a nightmarish experience, for 19-20 months. Sir, if there is any test for seeing whether this new Amendment Bill is good or not, I would say that my test would be that it should answer the question whether such a nightmarish experience can be repeated if the Bill becomes an Act. That is the question I would pose. Sir, the answer is that I have my own doubts and fears. Sir, even with these provisions, the old bitter experience, the night marish experience can be repeated. Take, for example the emergency provisions. The words 'internal disturbance' have been substituted by 'armed rebellion'. Sir, I would say that an armed rebellion is the twin brother of internal disturbance. I could not find much of a difference between the two terms. What is an armed rebellion? How many should participate in it? What types of arms should be used? Even sticks can be considered to be arms. We heard about the Provincial Armed Constabulary revolt in U.P. in 1973. We had the Naxalbari movement. But even though they were never considered as 'armed rebellion' a future government may misinterpret them as 'armed rebellion'. Even today, we have read in the newspapers that in Visakhapatnam there was an armed rebellion between the naval officers and the citizens. I would quote another example of my home-town in Madras. In a place called Otteri, two groups of vendors of illicit liquor started clashing with each other with all kinds of native arms. People could not move out from their places for four days. There was Section 144 imposed. Then the Special Armed Police came and they had a flag march. But a future Government which wants to misuse the provisions would take these instances and say: Here is an armed rebellion and we want to impose emergency. Of course, you have provided many safeguards. Even then, if you have the two-thirds majority in Parliament you can misuse the provision as it had been misused before. Sir, the Law Minister claimed that the abuse of emergency powers will be made impossible by this amendment. Sir, I express my doubts. For example, let us imagine that the amendments have been passed and it is a law of the land today and the former Government is here. Suppose, JP makes a statement as he made then that the police and the Army should not obey the illegal orders. Sir, naturally the Government would consider it as a threat to armed rebellion and they would make use of the situation and proclaim the emergency also. That is why, I would ask the hon. Law Minister to reconsider this. Sir, in the United States, the Supreme Court can go into the question whether there is a state of emergency. Anybody can seek the help of the Supreme Court and the Supreme Court can go into the question and decide whether such circumstances are there for the declaration of emergency. Sir, only such a provision will help our case. That is why, once again I would beseech the Law Minister to reconsider the case. He may say that the written advice of the Cabinet should be there. We know that any Minister who wants to protest against this measure can be dismissed. The Prime Minister plus one Minister will form the Council of Ministers, and they may become the Cabinet. Even the Prime Minister himself after dismissing all the ministers in the name of the Cabinet—I do not know the provision—can advise on any flimsy pretext and another emergency situation might come and the democracy burried. That is why, I want them to be careful.

Sir, next I come to article 356 which provides for the clamping of the President's Rule in the States. Sir, in the election manifesto of the Janata Party it has been stated that they will "move an amendment to

[Shri Murasoli Muran]

article 356 to ensure that the power to impose the President's Rule in the States is not misused to benefit the ruling party or any favoured faction within it." But, now, what they have done? Even now the mischief can be done by the Central Government. If they want, they can dismiss any State Government. That mischief can be done. So, Sir, I would say that they have not fulfilled the election promise. What they have done is small changes here and there, for example, reducing to six months the period of President's Rule in the first instance. And they say that it cannot be extended for more than a year. And I would say that during the emergency time, the time can be prolonged for three years. Then, Sir, the Election Commission should certify that on account of difficulties for holding the elections, it may be extended by one year. Sir, I do not know why the Election Commission should be brought into the picture. Formerly, the Centre was using the Governor for dirty works. Now, the Election Commissioner also comes into the picture. Sir, I would say that just like the Governor, the Election Commissioner will also become the handmaid of the Central Government. This morning, the hon. Law Minister has stated that there is a philosophy behind the President's Rule and that philosophy is, even then it is a representative Government. Sir, I cannot agree with that view. There is no philosophy at all. That philosophy kills the very federal structure of any Government. Nowhere in the world in any democratic federal country, can you find a similar provision like article 356. Sir, it was a carbon copy of section 93 of the Goverment of India Act of 1935. In fact, I want to quote what Sardar Patel stated when this provision was incorporated. He said, "In a democratic constitutiou, it does not fit jn properly." Well, Sir, our Minister says that there is a philosophy. I would say that article 356 runs counter to the principles of democracy and federalism. Therefore, I would say that it should be repealed and I would support Mr. Banerjee who asked this morning that if it comes under the emergency provisions of the Cnstitution, if you say that for the declaration of an emergency two-thirds majority of the Lok Sabha should be there, then why should you not have the same provision here also? Sir, the Minister did not answer the question. I can tell the answer. It is simple. It is because everybody who comes to power, whichever party comes to power, thinks that they are going to be their for ever and so, it is convenient for the ruling party to have that article 356 so that the State Governments can be tied up to the whims and fancies of the Centre. That is why the provisior is there. I would request the hon. Law Mirister to reconsider the situat'on.

Sir, the Law Minister has suggested far-reaching changes in article 368. He has provided for new innovations like referendum. I would support referendum in principle because the principle of popular sovereignty finds real expression in referendum only. After all, our Constitution speaks in the name of the people. So, it is quite natural that we have the provision for a referendum in our Constitution. In principle, I have nothing against referendum. In fact, we should have also provisions for recall, i.e., recalling erring Members of Assemblies or of Parliament. We should also have provisions for initiative, i.e., people initiating amendments to Constitution or other laws. But my question is what are the matters that are to be referred to referendum? There I beg to differ with the hon. Minister. Further, it has been said that the result of a referendum cannot be questioned in a court of law. Sir,

many people have dealt with the subject. Now, this brings us to the question of basic structure. They have defined five basic structures, namely, (i) impairing the secular or democratic character of this Constitution, or (ii) abridging or taking away the rights of citizens under Part III, or (iii) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage, or (iv) compromising the independence of the judiciary and (v) amendment of this proviso. These have been defined as the five basic structures of the Constitution. Sir, I would say that Pandit Nehru is the Godfather of the theory of the principle of basic structures. While speaking on the First Amendment in Parliament, he said, amendment means a "change here or there" and not "an alteration of its basic structure, for that would necessarily involve the Constitution losing its identity." Sir, Justice Khanna referred to this passage in his famous judgement. Sir, many people have said, including Members in the other House that if Constitution is unamendable, revolution would follow. Sir, I do not think so. It may be true in theory but not in practice. Sir, India is not a unitary State. So, we have to draw our parallel from many of the federal countries where Constitution is supreme. For example, when Canada and Australia were offered unlimited power to amend their Constitutions by the Statute of Westminster, 1931, they declined to have that power and expressly guarded against such powers. Sir, take the history of the United States of America. Its Constitution was created in 1787. Sir, the basic structure of their Constitution, like the separation of powers or the presidential form of Government, has not been changed at all. Sir, the Canadian Constitution was created in 1867 and the Australian Constitution was created in 1901 and they have not amended the basic structure of their Constitutions. We should also think on those lines and why should we change the basic structure of our Constitution at all if we accept that there are certain basic structures in our Constitution? The pity has been that all the famous judgements were delivered regarding the reference to property alone. That created the confusion during the Golaknath case, when the Supreme Court said that Parliament cannot repeal or take away the Fundamental Rights. Sir, we were all worried. I was one of the persons who thought that Parliament is supreme and should be given the powers. Many jurists have said that the judgement in the Golaknath case was wrong. Then came the Keshvanand Bharati case. Just like the Golaknath case entrenched the Fundamental Rihts, the Keshavanand Bharati case entrenched the basic structure of the Constitution. Then also we thought that short of total abrogation or repeal, Parliament should have the power to amend any portion of the Constitution. But, Sir, what happened? The Thirtyninth Amendment and the election case and, in fact, the Fortieth Amendment also, made us to think, if you say Parliament is supreme, what happened during that period ? The captive Parliament destroyed our democratic system. That is why we had to change our mind. We have to be very careful. I would say that by this referendum certain dangers are possible. Take for example, tomorrow a Government having a two-thirds majority, passes a legislation saying that in India all citizens should be only Hindus and no other religion should be there. Sir, it impairs the secular character of the Constitution and you are putting it to vote, putting it before the people in the form of referendum. And suppose, the majority of the population, because they are all Hindus, support it; what would happen ? I shudder

[Shri Murasoli Maran]

to think of the result. So also, take the language issue. If tomorrow a Government which has two-thirds majority here passes a law saying that those who know Hindi or pass a test in Hindi alone will be given the citizenship of India and voting rights and nobody else, thereby attracting the provision of this Chapter and taking away the rights of citizenship, and the Government then puts it before the people for a referendum; what will happen? The Hindi-speaking people are in a majority and if they pass the law, what will happen? Sir, these may be extreme situation; but these are our genuine fears and I think the hon. Law Minister will enlighten us on this point.

I would also put another suggestion to hon. Law Minister. When he was defending the case of Mr. Rajnarain, he got the 39th amendment struck down as void on the only basis that it destroyed the basic structure of the Constitution. Sir, let us imagine a situation if Mrs. Gandhi continues today after this Bill becomes an Act and if she puts it to the people in the form of a referendum. If the 39th amendment becomes part of the basic law of this land because in that atmosphere 51 per cent of the people also accept it, what would happen? Sir, I shudder to think of those things.

Finally, Sir, there is no judicial review for it. If the referendum is based on sufficient majority, there is no judicial review. We all know, judicial review is a part of the fundamental structure and Justice Khanna said that not a limited judicial review but a total judicial review is part of the basic structure. So is the case with federalism. By changing two or three Articles in the Constitution and passing a law that hereafter the Parliament alone has got the power to make laws for the entire country, it could make the Constitution unitary. Federalism will be killed. That point has not been considered at all. This can be done very easily without even a referendum according to the present position. In this case I want to make a similarity. Let us take the example of Canada. Canada is very much similar to us. They have their minority problem; they have their language problem. In the English-speaking part of Canada, there is a French-speaking State Quebec. If there are French-speaking people in the English-speaking part of Canada, there are also English-speaking people in the French-speaking State. If there are English-speaking minorities in one part, there are French-speaking minorities in the other part. I would rather say if Canada has one Quebec, we have more than 19 or 20 Quebecs. But there are certain provisions in the Canadian Constitution which cannot be changed or amended at all. Certain basic structures Provincial legislation contained in the Section 92 of B.N.A. Act, the rights in respect of schools, and use of English and French languages are expressly excluded from the amending powers of the Constitution, because it is a federal structure. It contains a multi-racial, multilingual society like India. So I would say if you think that there are certain structures, certain basic structures, let them remain basic. Why should we change it? You define them and make them basic and I would say, the basic structure if defined should be as inalienable as the sovereignty itself.

Sir, there are certain lacunae in the Bill also. Supposing, a referendum fails to get sufficient majority. What is going to happen? When are you going to have the second referendum? And before that, should the Parliament meet once again and pass the Bill? These are some of the doubts raised and I think the hon. Minister will

clarify the situation. If tomorrow a Government commanding a two-thirds majority and 51 per cent of votes of the people does something, you can very well say: "What can we do ? The majority of the people are doing like that." You can simply say that. Sir, you know, democracy is a delicate plant. Two-thirds of the world's population lives under some form of an authoritarian Government. Democracy exists only in a very few countries. By using money power, police and army and by misusing the Emergency provisions, an authoritarian regime can be planted here for ever. That fear is there. Sir, I would conclude my speech by quoting what Prof. Wheare said:

> "The absolutisms of the twentieth century have usually been based upon universal sufferage—and a compulsory universal sufferage at that. Have not modern tyrannies been returned to power by majorities of over 90 per cent ?"

Sir, I warn the Janata Members and my friends here. If a dictator comes tomorrow, he or she will not at all commit the folly of having elections. Let us bear that warning in mind. With these words, I conclude.

श्री देवराव पाटिल (महाराष्ट्र) : उपसभाध्यक्ष महोदय, यह जो संविधान संशोधन विधेयक है, समय बहुत कम होने के कारण मैं इस के केवल दो तीन संशोधनों पर ही अपने विचार आपके सामने रखना चाहूंगा। आप इस संविधान संशोधन विधेयक में सम्पत्ति के अधिकार को संशोधित करने जा रहे हैं, इसके संबंध में और आय की असमानताओं को कम करने का जो संशोधन है, उस के बारे में मैं अपने विचार सदन के सामने रखना चाहता हूं। हमें इस संविधान संशोधन विधेयक को भारत की जो बहुसंख्यक जनता है उसकी दृष्टि से देखना चाहिए। जब हम यह देखते हैं कि हमारे देश के बहुत से नागरिकों के पास रहने के लिए जगह भी नहीं है, उनके पास अपना घर भी नहीं है तो इस सम्पत्ति के अधिकार का उनके लिए कोई उपयोग नहीं रह जाता है। जिस देश में आय में भयानक असमानता हो जितनी हमारे देश में है, उस देश में सम्पत्ति के अधिकार का निर्धन जनता के लिए कोई उपयोग नही रह जाता है। हमारे सामने यह सवाल भी आता है कि जब हमारे देश में इस प्रकार की परिस्थिति है तो फिर ये संशोधन किसके लिए हैं ? किसी भी संविधान संशोधन की सफलता इसी में है कि वह बहुसंख्यक जनता का भला करता हो। अगर बहुसंख्यक समाज का इन संशोधनों से कोई भला नहीं होता है तो इन संशोधनों की सफलता में संदेह हो जाता है। हर एक स्टेट में अर्थव्यवस्था में असंतुलन है। मैं चाहता हूं कि कोई भी संशोधन निर्धनों को ध्यान में रख कर किया जाना चाहिए। जब तक हमारे देश में बहुसंख्यक लोगों की तरफ ध्यान नहीं दिया जाएगा, तब तक इन संशोधनों को सफल नहीं माना जा सकता है। विलेज पुअर, अरबन पुअर और रूरल पुअर, वेरी वेरी पुअर और किसान, ये जो लोग हैं इनकी तादाद को देखा जाये तो मालूम होगा कि इनकी संख्या हमारे देश में बहुत अधिक है। लेकिन हमारे देश में परिस्थितियां ऐसी हो गई थीं कि इनकी तरफ ज्यादा ध्यान नहीं दिया जा सका। श्रीमन्, मुझे पता है, इन लोगों के लिए एक आर्थिक कार्यक्रम तैयार किया गया था, लेकिन उसका विरोध किया गया। हमारे नेता माननीय श्री मोरारजी देसाई क्रांतिकारक आर्थिक प्रोग्राम के खिलाफ थे और वे इस देश में स्टेट्स को चाहते थे। उन्होंने इन विचारों के लोगों का नेतृत्व किया। परिणाम यह हुआ कि हमारी पार्टी में दो मत हो गये और उस इकनोमिक प्रोग्राम पर खास ध्यान नही दिया जा सका।

[श्री देव राव पाटिल]

लेकिन बाद में हमारी पार्टी ने इस इकनोमिक प्रोग्राम के बारे में कुछ फैसले लिये और इसलिये हमारी पार्टी ने तय किया कि देश में सामाजिक और आर्थिक क्रांति होनी चाहिए और इसी क्रांति के द्वारा ही देश में गरीबी दूर हो सकती है। आर्थिक असमानता को दूर करने के लिए और उन लोगों को न्याय देने के लिये संविधान में संशोधन करने का इरादा किया गया । यह इसलिये किया गया; क्योंकि कुछ संवैधानिक बातें इस क्रांति के मार्ग में बाधा बनकर कार्यक्रम का चुनौती दे रही थीं । इस बात की ओर उस समय की कांग्रेस सरकार का ध्यान गया और भारत की गरीब और पिछड़ी जनता को समानता और न्याय दिलाने के लिये संविधान में संशोधन करने का प्रयास किया गया। यह प्रयास संविधान के 42वें संशोधन में किया गया । हमने 20-सूत्री कार्यक्रम के अन्तर्गत लैंड का डिस्ट्रीब्यूशन किया लेकिन जिनकी लैंड इस के लिये ली गई, उन्होंने कोर्ट मे जाकर स्टे आर्डर ले लिये और इस तरह से जो यह प्रोग्राम था, यह बन्द हो जाता था। यह जो सम्पत्ति का अधिकार है वह एक कानूनी अधिकार बन गया था। इसलिये यह सवाल हमारे सामने आया कि जिनके पास जो भी सम्पत्ति है, स्थाई या अस्थाई, ऐसे लोग जमीन जुमला वाले लोग, मकान वाले लोग और भी ऐसे दूसरे लोग जो कि अपने सम्पत्ति के अधिकार को कायम करने के लिये कोशिश कर रहे थे उन लोगों से निबटने के लिये कानून के रास्ते में आने वाली संवैधानिक बाधायें समाप्त की जायें । संविधान में दिये गये बुनियादी अधिकारों की आड़ में इन कानूनों को चुनौती दी जा सकती थी । मैं बड़े विश्वास के साथ कहता हूं और बड़े अभिमान के साथ कहता हूं कि गये दो साल में संविधान में आवश्यक संशोधन कर के इस बारे में कानून बने। आप लोक सभा और राज्य सभा का रिकार्ड देख लीजिये। उस समय जो कानून बने उन कानूनों के आधार पर उन लोगों को, गरीब लोगों को फायदा पहुंचाने की कोशिश की गई । उन के लिये कुछ करने की कोशिश में उनके लिये नये कानून हमने बनाये ।

महोदय, आपने बताया कि मेरे पास बोलने के लिये कम समय है, इसलिये मैं सिर्फ सम्पत्ति के अधिकार के बारे में कुछ कहना चाहूंगा । सम्पत्ति के अधिकार के बारे में हमने कहा है कि यह अधिकार जो है वह संविधान के डाइरेक्टिव प्रिंसिपल्स जो हैं, निदेशक सिद्धान्त जो हैं उसके अन्तर्गत मूलभूत अधिकार को लाना चाहिए और निदेशक सिद्धान्त को मूलभूत अधिकार के ऊपर उस वक्त लाया गया । आज सम्पत्ति के अधिकार को मूलभूत अधिकारों में से हटाया गया है । लेकिन कुछ लोग यह कह रहे हैं कि हमारा यह मूलभूत अधिकार है इसलिये जो जमीनें और सम्पत्ति हैं उनसे वंचित नहीं किया जाना चाहिए । इसके अनुसार विधि के प्राधिकार के बिना किसी भी व्यक्ति को सम्पत्ति से वंचित न किया जायेगा, जिसको लैंड आफ ला कहते हैं। तो इसका मतलब यह हुआ कि कोई भी सम्पत्ति जो कानून के द्वारा प्राप्त कर ली गई है उसको उस से वंचित नहीं किया जायेगा । 20-सूत्री कार्यक्रम के अंतर्गत हमने जब लैंड का डिस्ट्रीब्यूशन किया, हर एक व्यक्ति को एक एकड़, दो एकड़, तीन एकड़ और चार एकड़ जमीन दे दी और उसको उस जमीन का मालिक बना दिया और उसको उसका ओनर-शिप राइट दे दिया । आज वह उनकी प्रोपर्टी बन गई है । वैसे ही मकान बनाने के काम लिये उन को प्लाट के

मालिकाना अधिकार दिये और फिर मकान बन गया तो उस को उस के पूरे अधिकार दे दिये गये और उनको उस के ओनर-शिप राइट मिल गये। अब इस बारे में एक बात ध्यान रखने की है। मैं देख रहा हूं कि गरीब लोगों के लिये जो यह राइट्स मिले, प्रापर्टी राइट, जमीन का हक है, इसके लिये आपने कांस्टिट्यूशन में यह प्राविजन किया कि कोई भी व्यक्ति विधि के प्राधिकार के बिना अपना सम्पत्ति से वंचित नहीं किया जायेगा। लाखों लोगों को यू० पी० और बिहार में जिनको जमीन दी गई थी उन से लैंड लार्ड जबरदस्ती ले रहे हैं। अभी यहां का मामला ले लीजिए। मैं परसों गया था। वे गरीब लोग पुलिस के प्रोटेक्शन में जमीन को कल्टीवेट कर रहे हैं। मराठवाड़ा की चर्चा यहां पर हुई है। मैं यह कहना चाहता हूं कि चाहे जमीन का मामला हो, झोंपड़ी का मामला हो जो कि गरीब लोगों का मिलो हैं। उनको सम्पत्ति से वंचित करने का काम बहुत जोर से चल रहा है। यह बहुत खुशी की बात है इस संशोधन से कोई भी व्यक्ति मनमाने ढंग से अपना सम्पत्ति से, वंचित नहीं किया जा सकता। लेकिन आज सामुदायिक रूप से जो जमीन ली जा रही है, कोई अकेले की झोंपड़ी ली जा रही है वहां तो सामुदायिक रूप से झोंपड़ियों में से निकाल रहे हैं। झोंपड़ियों को अपने कब्जे में ले रहे हैं और वहां पर अपनी खेती बना रहे हैं। इसलिए मैं मंत्री महोदय से चाहता हूं कि इनको रोकने के लिये ज्यादा से ज्यादा जोर दिया जाए। कांस्टिट्यूशन में इसका प्राविजन कर उन लोगों के लिए जो जागीरदार हैं, इजारेदार हैं, इनके प्रापर्टी के अधिकार का मूल अधिकार से हटा दिया, लेकिन उनको सम्पत्ति से कोई वंचित नहीं कर सकता। उनकी प्रापर्टी कोई भी नहीं छीन सकता लेकिन गरीबों की प्रापर्टी छीनी जा रही है। इस के बारे में आपका ध्यान दिला रहा था। बेरोजगारी की बड़ी समस्या है। स्वयं-रोजगार के नाते, जो बैंकों ने पैसा दिया था वह एक धंधा था, उसके वे मालिक बन गये थे, कानूनन मालिक बन गए लेकिन वह उनसे भी वंचित किये जा रहे हैं। मैं राइट टू प्रापर्टी की तरफ ज्यादा नहीं जाऊंगा लेकिन बहुत महत्व का संशोधन जो है वह क्लाज-9 अनुच्छेद-38 में है--

"राज्य, विशेष रूप से, आय की असमानताओं को कम करने का प्रयास करेगा और न केवल व्यष्टियों के बीच प्रतिष्ठा, सुविधाओं और अवसरों की असमानता का समाप्त करने का प्रयत्न करेगा बल्कि विभिन्न क्षेत्रों में रहने वाले और विभिन्न व्यवसायों में लगे हुए लोगों के समूहों के बीच भी असमानता समाप्त करने का प्रयत्न करेगा।"

बहुत दिनों से हम चाहते थे कि यह जो आय के बारे में विषमता है इसका दूर किया जाना चाहिए। कहां तो एक डेली वेजज वाले को एक रुपया भी नहीं मिलता और कहां पांच हजार रुपये तनख्वाह है। यह वेजेज के बारे में, इनकम के बारे में, वही हालत है और व्यक्ति व्यक्ति की आय में जो विषमता है उसको कम करना चाहते हैं, और समूह में जो विषमता है, प्रतिष्ठा के बारे में इस का भी कम करना चाहते हैं। यह एक स्वागत योग्य कदम है। मैं इसके साथ ही यह कहना चाहता हूं कि संविधान में संशोधन करने से ही काम नहीं चलेगा। जब हम कांस्टिट्यूशन देखते हैं, पार्ट-(3) और पार्ट-(4) को देखते हैं तो हमें ऐसा लगता है कि अब हमारे लिए कुछ करने का नहीं है। हमने संविधान में कितने अधिकार देने का बन्दोबस्त किया है यह देखने के बाद इस देश में कुछ नहीं करने का है लेकिन इस

[श्री देव राव पाटिल]

तरह से नहीं होगा । इसलिए मैं सुझाव देना चाहता हूं जैसे रूस का कांस्टिट्यूशन जो संशोधित हुआ उसके वहां घरों का प्राब्लम था, मकानों की समस्या थी और मकानों की प्राब्लम होने से उन्होंने अभी जो कांस्टिट्यूशन बना है, संशोधन हुए हैं, उसमें हर एक को कांस्टिट्यूशन में मकान देने का प्राविजन किया है । वहां मकान की एक बड़ी समस्या थी लेकिन यह उन्होंने स्टेट पर नहीं छोड़ा अधिकारियों पर नहीं छोड़ा बल्कि कांस्टिट्यूशन में प्राविजन कर दिया । इसी लिए उपसभाध्यक्ष जी, रोजगार को मौलिक अधिकार देने के बारे में सरकार को संशोधन लाना चाहिए था। सम्पत्ति अधिकार को तो मूल अधिकार में से हटा दिया, लेकिन सरकार रोजगार को मूल अधिकार बनाने को तैयार नहीं है । मेरा कहना है कि संविधान में इस को आप अमेंडमेंट के नाते से या किसी भी नाते से रखें । रोजगार को मौलिक अधिकार देने की हमारी मांग है ।

भारत को सब से बड़ा खतरा यह है कि देश में बेरोजगारी बढ़ रही है, उस से खतरा होगा । युवकों में यह भावना बढ़ रही है, घर करती रही है कि रोजगार की जल्दी से जल्दी व्यवस्था होनी चाहिए और आखिरी सवाल इस में यह है कि जब आप आय में समानता लाना चाहते हैं, विषमता दूर करना चाहते हैं, तो ऐसी गरीब जनता जिसको ग्रामीण विकास कहते हैं, जो देहात में रहते हैं उन की आय बढ़ानी चाहिए । ग्रामीण विकास के माने यह हैं कि वहां रहने वाले किसान, वहां रहने वाले खेतिहर मजदूर और वहां रहने वाले आर्टीसन्स, इनका विकास हो और उनकी आय में बढ़ोतरी हो । अगर यह करना है तो संविधान में प्राविजन करना पड़ेगा और रिम्यूनरेटिव प्राईसेज टू दी ग्रोअर्स करना पड़ेगा । और वह भी कैसे? वहां जो खेत मजदूर हैं उन को जो मजूरी मिलती है वह कानून से करना चाहिये। उसको कंसीडर कर के ज्यादा से ज्यादा मजूरी लोगों को देने के बाद रिम्यूनरेटिव प्राईस टू दी फारमर्स क्या देना चाहिए । उस के प्राविजन के लिए सरकार क्लाज में, आर्टिकिल 38 में संशोधन लाई है । उस में आर्टीकिल 36 में मैंने संशोधन दिया है कि डाइरेक्टिव प्रिंसिपिल में रेम्यूनरेटिव प्राईस फार एग्रीकल्चरल प्रोडक्ट्स देने का राज्यों को प्रयत्न करना चाहिये, मेरा यही संशोधन है ।

SHRI DINESH GOSWAMI (Assam): Mr. Vice-Chairman, Sir, I approach this Constitution (Amendment) Bill with a mixed feeling. There are undoubtedly provisions in this Bill which have provided safeguards to the individual from executive oppression. So far as these provisions are concerned I and my party whole heartedly welcome them. But so far as the economic aspects of this Constitution amendment is concerned, I feel that there are retrograde in nature and this, to a certain extent, reflects our allegation against the Janata Party—I know they will not accept it—that the economic philosophy of the Janata Party is only in favour of the vested interest and the propertied class and I will try to convince this House about the contention which I have just now made. I will try to show from some of the amendments that so far as the economic aspect of this Constitution amendment is concerned, it is in favour, in the ultimate analysis, of the propertied class and the vested interests. Let us take, first, the clauses relating to the property rights.

Mr. Shanti Bhushan in his initial address, has dwelt at length about the removal of property from

the Chapter on Fundamental Rights and he has said that in a country like India where thousands and millions live below the poverty line, obviously property right cannot be given as a fundamental right to a handful few. I entirely agree and I do support the contention that property right should be taken away from the Chapter of fundamental rights. But I feel that without some other safeguards the mere taking away of property rights from the fundamental rights will only help the propertied class. I would like the honourable Law Minister to explain in detail to the House and convince us whether my contention is correct or not.

Sir, the Law Minister will remember that in the Constitution itself initially the provision was that when a legislature acquires or requisitions a property for a certain amount of compensation, the compensation cannot be questioned in any court of law. But what happened? We know that in a number of cases including the famous case of Bela Banerjee, which was reported in the 1954 Supreme Court Report, the Supreme Court held that if the State acquires or requisitions a certain property then the person will be entitled to full monetary equivalent of the property which, in other words, means market value in terms of compensation. That lead 5 P.M. the Parliament to the Fourth Amendment of the Constitution where again it was reiterated by Parliament that if a property is acquired or requisitioned, the court cannot question the value provided by the legislature. There were some decisions which accepted that contention, but Mr. Law Minister will agree with me that the entire thesis was overturned in the Bank Nationalisation case and in that case the Supreme Court held on the interpretation of the word "compensation", that as the word "compensation" means to compensate, if a person's property is acquired or requisitioned, he will be entitled to full market value. That is why we had to bring in the Twenty-fifth Amendment of the Constitution where we substituted the word "compensation" by the word "amount" and we reiterated, once more, a proposition which we were holding so long, right from the time the Constitution was enacted, but of which a different interpretation was given by the courts at different times—that if a Legislature acquires a property by providing a certain amount, that amount cannot be questioned in a court of law. Thereafter, many industries were nationalised. The coal industry was nationalised; many other nationalisations took place. Now, what will happen today? You have deleted article 31(2) from the Constitution, the Twenty-fifth Amendment of the Constitution which stated that if a property is acquired or requisitioned by the State by providing a certain amount, that cannot be questioned in a court of law, is deleted by you. Therefore, I would say today as the Constitution stands, after this amendment, the effect will be that property cannot be taken without the authority of law. Supposing the State acquires a property by paying the amount which does not equal to the market value will not the concerned person be entitled to question this law on the ground that "If my property would have been acquired under the Land Acquisition Act, I would have got the market value of compensation and, therefore, the law is violative of article 14 of the Constitution ?" Will he not be entitled to question that law under article 19(1)(g) because you have not deleted article 19(1)(g) ? I think the Law Minister knows well that after all the courts have always taken very very liberal view so far as individual liberty is concerned and the courts have always protected the interests of the vested class, the propertied class, in their judgments. Therefore, will not a person be entitled to

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question such a kind both under article 14 and article 19(1)(g) ? Supposing a person's mill is taken over, will he not be able to question, under article 19(1)(g), that his right to practise his profession, carry on occupation trade or business has been affected and therefore that Act should be struck down ? Therefore, what we so long tried to restore—the attempt that was made by the Twenty-fifth Amendment—the right of the Legislature to provide an amount if a property is taken over and, that is, for the purpose of building up an egalitarian society, will be done away with the way you have brought this amendment. That is why I am submitting that though outwardly you have shown that you have taken a very progressive measure by taking away the right to property out of the Chapter on Fundamental Rights, you are protecting, in fact giving fillip, to the propertied class itself and, therefore, I would like to have a clear and categorical answer from you.

I have said that your entire thesis so far as the economic matters are concerned is retrograde. Now looking at the question of referendum, I have my own objections to the provisions on referendum, but I will not go into them for the time being. But let us look at the provisions. You have provided that a referendum will be necessary if it impairs the secular or democratic character of the Constitution. But you do not consider a referendum necessary if the socialist character of the Constitution is impaired. In the Preamble, three concepts are given importance, the concepts of socialist, secular and democratic. So far as the democratic character is concerned, referendum; so far as the secular character is concerned, referendum. But, so far as socialist character is concerned, no referendum. And do not you think that apart from the various clauses which you have mentioned, one of the most important features of our Constitution the egalitarian character of the Constitution and it has been deliberately omitted. In the country today, where 80 per cent of people live below the poverty line, what is vitally necessary to protect the interests of the people is to protect the egalitarian character of the Constitution. But you do not think it necessary and that is why I complain that, so far as your economic approach is concerned, you do not have a progressive approach. Look at your definition of 'socialism'. Let me point out at this stage that the word 'socialism' is not really something which was brought to the statute by the 42nd Amendment, the necessity of incorporation of word "socialist" was debated in the Constituent Assembly when a large section of the Members wanted the word 'socialism' to be included in the Constitution. In fact, there was a motion by Mr. K. T. Shah that the words 'socialism' and 'secularism' should be introduced, but the Constituent Assembly was concerned at that time primarily with the question of safeguarding the newly gained freedom and there were a large number of people who represented the vested interests in the Constituent Assembly and, therefore, the founding fathers of the Constitution decided to avoid the confrontation. I want to quote one of the observations made by Pt. Jawaharlal Nehru in the Constituent Assembly. This is what he had said :

"We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy. Orders might take objects to this Resolution on the ground that we have not said that it should be a *Socialist State*. Well, I stand for socialism and, I hope, India will stand for socialism and that India will go

towards the Constitution of Socialist State and I do believe that the whole world will have to go that way. What form of socialism it should be, again, is another matter for your consideration. But the main thing is that in such a Resolution, if, in accordance with my own desire, I had put in that we wanted a *Socialist State,* we would have put in something which might be agreeable to some and we wanted this Resolution not to be controversial in regard to such matters."

And that is why, at the time of the framing of the Constitution, or at the time of the discussion of the Objective Resolution, the word 'socialism' could not be introduced. But the situation changed. And today you have again tried to dilute the concept of socialism by defining it in this way : "SOCIALIST", means a republic in which there is freedom from all form of exploitation, social, political and economic." Any student of economic philosophy will know that it goes nowhere near the ideals of socialism. After all, it is impossible to define socialism. But what I have understood of socialism is that that the basic means of production must be under the control of the State so that exploitation may be avoided. But you have tried to define socialism differently. Therefore, I say that in the economic content it is retrograde. And what have you done ? In the last 42nd Amendment—which you may criticise on various matters—one very important thing was done, and that was, the Directive Principles were given primacy over the Fundamental Rights. It was done because in a country where 80 per cent of the people live below the poverty-line, when there is a conflict between the individual interests and the collective good, the collective good must prevail. And that has been the view of the founding fathers of the Constitution.

May I, in this context, once more refer to what Pt. Jawaharlal Nehru had to say ? He said like this :

"Here I am reminded that one has to respect the majesty of law. The majesty of the law is such that it looks with an even eye on the millionaire and the beggar. Whether it is a millionaire or a beggar who steals a loaf of bread the sentence is the same. It is all very well to talk about the equality of the law for the millionaire and the beggar but the millionaire has not much incentive to steal a loaf of bread, while the starving beggar has. This business of the equality of law may very well mean, as it has come to mean often enough, the making of existing inequalities rigid by law. This is a dangerous thing and it is still more dangerous in a changing society. It is completely opposed to the whole structure and method of this Constitution and what is laid down in the Directive Principles."

It is on this assumption that we made an amendment in the Constitution giving primacy to the Directive Principles over the Fundamental Rights. You have altered the position by only bringing in article 39(b) and (c), but I hope you will appreciate that there are clauses 38, 39(a), 41, 42, 43, 44, 47 and 48 dealing with directive principles fundamental to the development of the economy of this country. Obviously, you are trying to limit the primacy of Directive Principles only to article 39(b) and (c), once again showing that really speaking your entire effort in the Constitution Amendment is to provide the economic content of the Amendment for the interest of the vested class and the propertied class, though I must say that you have done it in a very fine way so that people may not immediately notice this effort. With these observations, Sir, I come to some other articles of the Constitution. Let us take Article 74-

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wherein you have provided that the President is bound by the advice of the Council of Ministers. He has the right to send back the case once to the Council of Ministers, but whatever opinion the Council of Ministers will then give, will be binding on him. I do consider that we made this amendment under the Forty-second Amendment Act by which we expressly stated that the President was bound by the advice of the Council of Ministers. But looking back, now I feel that this was a wrong amendment in the sense that there are many provisions where the President has to use his individual discretion. I would like that that provision made under the Forty-second Amendment should be repealed and the provision brought to its original position. I will state three cases wherein the President has to exercise his individual discretion.

First, you will appreciate and admit that the President has to use individual discretion so far as the determination of the age under Article 217(3) of the Constitution is concerned. You are aware of the Jyoti prakash Mitter case where the Supreme Court ultimately held that so far as the question of the decision of the age of a judge is concerned, the individual judgement of the President counts and that the Cabinet or the Executive does not come into the picture. That convention would have been developed. But where you have put it in writing, obviously within the four walls of the written provisions conventions do not come and I would like to know whether you have changed the stand and hold that it will be the Cabinet which will decide.

There are two other cases. For example, dissolution. Even on the first dissolution there might be doubts. But even in England where the king is not an elected head, it has been held that the king is not bound by the advice of the Council of Ministers so far as the second dissolution is concerned. I will give a very concrete example. Supposing Mrs. Indira Gandhi who was the Prime Minister for some days even after losing here election, and had advised the President to dissolve the Parliament for the second time. Under the amendment which you have brought the only thing the President would have been able to do was to ask the Cabinet again to reconsider it. Supposing that the Cabinet reiterated its decision, the President would have no other alternative but to dissolve Parliament. So far as this is concerned, even in England it has been held that the King or the Queen has individual discretion, not to be bound by the Cabinet decision.

The third is regarding the election of a Prime Minister, more particularly when a Prime Minister dies. In this case, when you have completely brought Article 74 within this compass, I think this discretion is left out. But I have a greater worry. Knowing the Indian background what it is. When for the first time when you are giving the Constitutional right expressly under the Constitution for the President to send certain things back to the Cabinet, my apprehension is that the President may henceforth in some cases start playing politics and divide the Cabinet. This is a danger which this introduction will bring forth. I would like and in fact I will support an amendment by which you repeal the Forty-second Amendment and bring the power of the President back to his original position. I think the amendment that you have brought, will not help the matter (*Time bell rings*). You give me three or four minutes.

As far as Article 220 is concerned, I have got two objections. We have deleted, "any other purpose". It is not that the Forty-seconnd

Amendment deleted, "any other purpose". You should appreciate that in 1954 a committee under the chairmanship of Jawaharlal Nehru was formed, and the committee suggested that "any other purpose" should be deleted. In fact, you will find again as a lawyer that in the earlier cases, the Supreme Court confined its power of writ Jurisdiction and its scope, while it dealt with Article 226. But, in this country everyone has a tendency to grab more power when power is given, and the judiciary is no exception. From the middle of fifties, they started encroaching more or other areas. That is why, "any other purpose" should be deleted.

What about the stay ? I would like the House and you to ponder over it. Today the present position is that if I got an order of stay, supposing my adversary makes an application, and if the application is not dispose of within 14 days, the stay order is vacated. Supposing a tenant gets an order of stay and the landlord files a petition to get the order vacated by manipulation—we know things can be manipulated in the offices—if the petition is not disposed of within 14 days, on the 15th day the stay order gets vacated automatically for no fault of the party. I can tell you, look at the Gauhati High Court. There are days when there were no judges to take up the petitions under article 226 for one reason and another. Why not you make some provision by which the stay order is not automtically vacated but the discretion is left to the court to extend the stay if the petition is not disposed of for some difficulty of the court or for no fault of the party ? (*Time bell rings*)

So far as President's rule under article 356 is concerned, may I point out that in your Election Manifesto you had said :

"Move to amend article 356 to ensure that the power to impose President's rule in the States is not misused....."

Why have you forgotten that commitment in your Election Manifesto ? As the time-bell has been rung, I will not make my observations on Internal Emergency and Referendum. I leave them to the clause-by-clause discussion stage. But only I would like to point out two things to you, before I conclude....

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV) : Please conclude.

SHRI DINESH GOSWAMI : I am sorry; I am encroaching. One is regarding office of profit. When we made the amendment in the Forty-second Amendment that Parliament should legislate regarding those offices of profit which disqualify Members, the purpose was that the Members should know when they are disqualified. To-day nobody knows. If I accept a contract to broadcast a talk on Radio I do not know whether I come within the mischief of "office of profit". Now you have altered it, but mere alteration will not do. Please try to apply your mind and see that the situation is changed.

Lastly, you have undoubtedly kept a pledge of your Election Manifesto by removing the property right from the chapter of Fundamental Rights. But may I refer you once more to your Election Manifesto ? After all, it is this manifesto on which you won the elections. We take your manifesto very very seriously. In your Election Manifesto, you have said in the Political Charter—this was your charter;

"Delete property from the list of Fundamental Rights..."

Very good; you have done it. But why have you forgotten the second part ?

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"and, instead, affirm the right to work."

This was your Election Manifesto. It was with this manifesto that you went to the people. You are deleting property from Fundamental Rights. And I have said that the motivation is really to safeguard the inrerests of the propertied class. The amendment as you have brought will only safeguard the interests of the propertied class. You do not care for the poor people. Therefore, you do not implement to the second part of the manifesto. I know it is difficult. I hope the party will not lightly give pledges to the people. If it gives pledges to the people, it should respect them.

With these observations, broadly speaking, I extend support for those provisions of the Bill which curb or curtail the executive's oppressive powers against individual liberty. But so far as the economic side is concerned, please satisfy us that this deletion of property from the chapter of Fundamental Rights—we have indicated some safeguards by way of some amendments, because we support that it should be deleted from the chapter of Fundamental Rights—will not help the propertied class. Unless you convince us, in spite of the fact that you have said that you will not accept these amendments, so far as the question of property is concerned, we may have to press our amendments. Therefore, I leave it to you. If you can convince us, we have an open mind in the matter; we would like to be convinced. If not, we will have to take a stand.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV) : Mr. S. K. Vaishampayen. Not here. Mr. Mahadeo Prasad Varma.

श्री महादेव प्रसाद वर्मा (उत्तर प्रदेश): मान्यवर, एक चेतावनी है और एक प्रश्न है। ये दो बातें मैं 15 मिनट में कहना चाहता हूं। चेतावनी यह है कि मुझे दो बातें याद आती हैं। बरसात का दिन था लेकिन पानी नहीं गिर रहा था, गर्मी बहुत पड़ रही थी। कुछ लोगों ने एक छप्पर बनवाया और उस छप्पर को हवादार बनवाया क्योंकि उस समय इस की जरूरत थी। लेकिन उनको अपनी गलती उस समय मालूम हुई जब जाड़े की ठंडी हवा चलने लगी और जब लू चली तो छप्पर घेरना पड़ा। मुझे लगता है कि इमरजेंसी के बाद जनतंत्र को जो फुलप्रूफ बनाने की कोशिश की वह सराहनीय जरूर है। लेकिन उस के साथ साथ, यह भी ध्यान रखना है कि हमारे देश की परिस्थितियां कसी हैं। अगर लोकतंत्र को किसी प्रकार का खतरा होता है तो वह इस तरह से नहीं आता है। वह किसी दूसरे रूप में आता है। उस लहर को कोई भी संविधान रोक नहीं सकता है। इसलिए जरूरत यह है कि हमारे देश की जो परिस्थितियां हैं उनकी तरफ ध्यान दिया जाय। मेरी चेतावनी है कि लोकतंत्र को बुनियादी चीजों से खतरा होता है। आपने इस में रेफरेन्डम की बात भी रखी है। यह तो ठीक है, लेकिन देखने की बात यह है कि अगर हम किसी सन्दूक के पटरे पर कील गाड़ना चाहते हैं तो हमें यह देखना पड़ेगा कि हमारे सन्दूक का पटरा किसी प्रकार से कमजोर न हो। अगर हम मोटी कील गाड़ते जाएंगे और पटरे की तरफ ध्यान नहीं देंगे तो सन्दूक बेकार हो जाएगा। अगर जरूरत से ज्यादा मोटी कील सन्दूक में गाड़ी जाएगी तो उस के फटने का डर रहेगा। मैं यह चेतावनी देना चाहता हूं कि रेफरेन्डम बहुत खतरनाक चीज है। अगर किसी संशोधन को पार्लियामेंट में दो तिहाई बहुमत से हम लोकतंत्र की रक्षा नहीं कर सकते हैं। इस प्रकार

की हालत में रेफ्रेन्डम उसकी रक्षा नहीं कर सकता है । इस स्थिति को आपको याद रखना चाहिए । हमारे देश में जो भी कानून बनते हैं उन की रक्षा न्यायालय करते हैं । हम एक चीज को भूल जाते हैं कि किसी देश में जनतंत्र तभी सफल हो सकता है जब उस देश की जनता जागरूक होती है। इस के लिए यह आवश्यक है कि लोकतंत्र को चलाने के लिए देश में लोकतंत्री पार्टियां होनी चाहिए । जिस देश में लोक तंत्री पार्टियां नहीं होंगी उस देश में लोक-तंत्र सफल नहीं हो सकता है । हमारे देश में यह बुनियादी भूल हुई है और यह भूल सन 1947 से हुई है । यहां पर इस प्रकार स्थिति रही है कि प्रधान मंत्री को पार्लियामेंट नहीं चुनती बल्कि हमारे देश में पार्टियों के लीडर मेम्बरों को चुनते रहे हैं। यही नहीं नेताओं का चुनाव कार्यकर्ताओं के द्वारा नहीं होता है बल्कि लीडर कार्य-कर्ताओं को चुनते रहे हैं। प्रधान मंत्री देश का नेता होता है । इमरजेन्सी के वक्त हमारे देश में क्या परिस्थिति बनी, वह किसी से छुपी हुई बात नहीं है । एक व्यक्ति के ऊपर सारा प्रशासन निर्भर करने लगा। इसलिए मैंने कहा कि हमारे देश में एक बुनियादी भूल हुई है । मैं विरोधी दलों को भी चेतावनी देना चाहता हूं कि चुनावी दांवपेच के ऊपर आप भरोसा न कीजिये । इस देश में लोकतंत्र की भावनाओं को फैलाने के लिए सब से बड़ी जरूरत लोकतंत्री पार्टियों की है । जब तक हमारे देश में लोकतंत्री पार्टियां नहीं होती हैं तब तक इस देश में लोकतंत्र सफल नहीं हो सकता है । जब देश में इस प्रकार की व्यवस्था हो कि पैसे के बल पर या झूठे प्रचार के बल पर चुनाव लड़े जाते हों और वोटों को पैसे के माध्यम से खरीदा जाता हो तो इस देश में लोकतंत्र की रक्षा नहीं हो सकती है । इसलिए मैं कहता हूं कि सब पार्टियों को लोकतंत्री ढंग से संग-ठित कीजिये । यही लोकतंत्र की रक्षा के लिए यही प्रिय और श्रेयस्कर चीज है । अगर इस देश में पार्टियों का ढांचा लोक-तंत्री होगा तो वे देश की जनता की भावनाओं, का भी अवश्य ध्यान रखेंगे । गरीबी भी नहीं दूर हो सकती है । इसलिये जनतंत्र जो हमारे देश का जीवन है उसको बनाने और पनपाने के लिये जरूरी है कि हम उस बुनियाद को देखें कि कहां वह बिगड़ रही है । यह मेरी तो चेतावनी है ।

प्रश्न जो आपके सामने है वह मेरी समझ में एक बहुत बड़ा गम्भीर प्रश्न है । आपने प्रारम्भ में संविधान में दिया है कि डेमोक्रेटिक सोवरेन्टी, फिर पिछली गवर्नमेंट ने उस में यह जोड़ दिया, शायद और ज्यादा मजबूत कील लगाने की कोशिश की गई—सोशलिज्म और सेकूलरिज्म । मैं यह मानता हूं कि यह उस पर एक मोटी कील ठोंकने की कोशिश की गई है और आज भी आप इसकी बात कर रहे हैं । क्यों ? याद रखिये, प्रश्न यह है और माननीय मंत्रीजी जरा गौर से सुन लीजिये कि..... if there is any conflict between democracy and socialism and that conflict is a must if you are true to both which of them shall prevail? मोटे तौर पर Property right of some sort is a must in a democracy while true socialism means total denial of the so-called fundamental rights. How are you going to reconcile these conflicting ideas and conflicting principles ? Socialism means total denial of fundamental rights.

आप इसे भूल क्यों जाते हैं ? आप सांप और नेवले को एक ही पिटारी में बन्द करना चाहते हैं । यह दोनों आइडिया एक दूसरे के विरोधी हैं । कैसे आप उन्हें कोन्साइल करने जा रहे हैं । सवाल यह

[श्री महादेव प्रसाद वर्मा]

है कि सोशलिज्म से आप इस देश की गरीबी, भ्रष्टाचार और जातिवाद को जड़ से मिटा सकते हैं या डेमोक्रेसी में। सोशलिज्म और डेमोक्रेसी साथ साथ नहीं जा सकती है। सोशलिज्म को आप कसे डिफाइन करेंगे। इसकी आपको जरूरत नहीं है। सोशलिज्म डिफाइन है रशिया द्वारा, सोशलिज्म डिफाइन है चीन द्वारा। इस में फण्डामेन्टल राइटस नाम की कोई चीज नहीं है। आप दोनों का कसे एक साथ रख सकते हैं। जहां तक गरीबी दूर करने का सवाल है, उसका दूर करने का एक मात्र रास्ता केवल सोशलिज्म नहीं है, दूसरे भी रास्ते हैं। इसलिये इन शब्दों के जाल में पड़कर देश बरबाद होगा। जैसा अभी हमारे माननीय मित्र ने कहा कि फण्डामेन्टल राइटस सोशलिज्म के रास्ते में बाधा नजर आयेगी, जूडीशियरी बाधा नजर आयेगी लेकिन जब आप डेमोक्रेसी को पायेंगे जो वहां पर जूडीशियरी और फण्डामेन्टल राइटस को मजबूत पायेंगे। तो इस में यह एक कानफ्लिक्ट है। माननीय भूपेश गुप्ता जी चले गये। यदि कोई उन के साथी यहां पर हों तो मैं उन के सामने यह बात रखना चाहता कि Democracy means [at least] some sort of property right—and [this] is a must. तो दोनों इस तरह से नहीं चल सकता। इसलिये मेरा सवाल आपके सामने है कि किसी दिन आपके सामने यह सवाल आयेगा और जब तक आप केवल ऊपर से देखते रहेंगे, शब्दों के जाल में पब्लिक को खश करने के लिये सोशलिज्म का नारा लगाते रहे और साथ में डेमोक्रेसी की भी बात करते रहे तो मैं इसे देश के सामने एक धोखा मानता हूं, साफ धोखा मानता हूं। इसलिए धोखा मानता हूं क्योंकि दोनों एक साथ नहीं चल पायेंगे। इसलिए आपको इस मामले में अपने दिमाग का साफ कर लेना चाहिए। यह बात मैं मानता जरूर हूं और यह तय है कि सोशलिज्म ही गरीबी को दूर करने का एकमात्र रास्ता नहीं है। और भी दूसरे रास्ते हैं। कैपिटलिज्म की देन है मार्डन डेमोक्रेसी और प्रोलेटेरियेट डिक्टेटरशिप जो रशिया और चाइना की देन है उसके अलावा सोशलिज्म का कोई दूसरा रास्ता नहीं है। यदि आप देश में गरीबी को दूर करने के लिये कोई रास्ता अपनाना चाहते हैं तो उस के लिये दो ही रास्ते हैं। अगर आप कोई रास्ता दे सकते हैं तो यह इस मुल्क की देन होगी, यही इस मुल्क की जिन्दगी होगी, और तभी डेमोक्रेसी की रक्षा हो सकती है वरना रक्षित नहीं हो सकती है। जहां आपने सोशलिज्म का नारा दिया उतनी दूर तक डेमोक्रेसी का साथ कम हो गया। आप क्यों भूलते हैं कि आदमी शुरू से ही जब से पैदा हुआ है इनबार्न टेंडेंसीज की लड़ाई से पड़ा हुआ है। आदिम काल से आदमी जिस दिन धरती पर उतरता है उस दिन उसकी लड़ाई होती है समाज या माबाप उस की सारी इच्छाओं की, सारी जरूरतों को पूरा करे। वह रोता और बचपन से चिल्लाता है और दूसरी उसकी इनबार्न टेंडेंसीज होती हैं कि उसे किसी काम में कोई दखल न दे। यह ह्यूमेन नेचर है और जितना ही आप सोशल कंट्रोल करेंगे, यह चाहे जहां से हो जितनी कोशिश आप करें tnen it is denial of democracy. सोशलिज्म के मायने आप क्या समझते हैं। सोशलिज्म के मायने बराबरी नहीं है। सोशलिज्म के मायने दूसरी चीज है। सोशलिज्म के ठीक मायने होते हैं Total control by society, total control of individual by society.

यह सोशलिज्म के मायने हैं और डेमोक्रेसी के मायने होते हैं

As far as possible, total freedom for individual.

यह दोनों कनफलिक्ट टर्म्स हैं । दोनों को ले कर चलने की बात आप कर रहे हैं। मैं इस को दिमागी दिवालियापन कहता हूं । इसलिए जब आपने प्रिएंबल में लिखा डेमोक्रेटिक रिपब्लिक तो बात समझ में आती है । आपने उस में जोड़ दिया सोशलिज्म । आपने भी उसको कायम रखा बगैर यह समझे हुए कि दोनों का मतलब क्या है ? दोनों साथ नहीं चल सकते। इसलिए मेरा यह प्रश्न आपके सामने है और सारे देश के सामने है । इस देश को अगर जिन्दा रहना है तो इस को डिक्टेटरशिप नहीं चल सकती, प्रोलिटेरियन डिक्टेटरशिप नहीं हो सकती । एक बात मैं आप से पूछता हूं । क्या आप रशियन और चाइनीज रिवालूशन की तरह सोशलिज्म आप इस डेमोक्रेसी में पार्लियामेंटरी पद्धति से लाना चाहते हैं ? यह कैसे संभव है ? क्यों आप देश को धोखा देते हो। क्यों गलत रास्ता लगाते हो कि सोशलिज्म आएगा । इसका एक ही रास्ता है और वह रास्ता वह है जो चाइना और रूस ने पकड़ा है । आप क्यों देश को धोखा दे रहे हो । सोशलिज्म का यह रास्ता नहीं है । 50 साल तक ब्लड-बाथ के अन्दर से मुल्क को चलना पड़ेगा तब रशिया और चाइना की स्थिति आपके यहां आएगी। 20 साल तक वियतनाम में खून के आंसू रोये गए, खून की नदियां बही हैं तो चेंज हुआ है । आप सोशलिज्म लाना चाहते हैं रशिया और चाइना टाइप का, वह भी यहां बैठ कर पार्लियामेंट में बहस कर के। मैं यह कहना चाहता हूं कि यह नहीं हो सकता । पार्लियामेंटरी डेमोक्रेसी के अन्दर चाइनीज सोशलिज्म, आप क्यों यह बात करते हैं ? यह संभव नहीं है । इसलिए आपको अपने दिमाग को क्लीयर करना पड़ेगा । आप जनता के नुमाइंदे हैं और इस देश में सही रास्ता आपको देना पड़ेगा। केवल झूठे नारों के पीछे देश को तीस साल तक मुगालते में रखा गया है, आप भी उस मुगालते में रखना चाहते हैं । इसलिए यह बर्निंग क्वेश्चन है , सवाल है । आपको दिमाग को साफ कर के एक तरफ चलना पड़ेगा । मेरा पूरा विश्वास है कि बगर उस रशियन रिवेलूशन के, बगैर उस ब्लड-बाथ के आप मुल्क की समस्याओं को डेमोक्रेटिक पद्धति से हल कर सकते हैं क्योंकि हम झूठे नारों को छोड़कर उन सवालों पर जुट जाएं और रास्ता निकालें । सम्भव है आप उधर लगने के बजाय केवल झूठे नारों पर चलते जाएं, बगैर यह समझे हुए यह संभव नहीं हो पाएगा। दोनों रास्तों को आप नहीं रख सकते। यह मेरा प्रश्न है । मैं समझता हूं कि कल जवाब देते वक्त आप इस का जरूर जवाब देंगे कि कैसे आप कांस्टीट्यूशन में दोनों शब्दों को रिकंसाइल करेंगे । सुझाव का टाइम इस समय मेरे पास नहीं है जब आप पूछेंगे तो बता दूंगा ।

SHRI HAMID ALI SCHAMNAD : Mr. Vice- Chairman, Sir, I welcome the Constitution (Amendment) Bill introduced by our learned Law Minister. Sir, our Constitution has come into force on the 26th of January, 1950, In the Preamble you will find :

"WE, THE PEOPLE OF INDIA, having solemnly resolve to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens ;

JUSTICE, social economic and political;

LIBERTY, of thought ,expression, belief, faith and worship ;

[Shri Hamid Ali Scamnad]

EQUALITY, of status and of opportunity;

and to promote among them all;

FRATERNITY, assuring the dignity of the individual and the unity of the Nation....."

Sir, who are these "We, the people of India"? Our experience of the working of the Constitution says that "we, the people of India" only mean a few of the people of India. Democracy has no meaning for the people of India, by the people of India and of the people of India. But it has been put into a practice by a few of the people of India, for a few and of a few. This is our experience. During the last 20 years we constituted the bulk of the masses of this country—the Harijans of this country, the backward citizens of this country and also the Muslims who form not only a religious minority but also who form a socially, educationally and backward section of this country did not find themselves as a part of nation. The Janata Government have appointed a Minorities Commission. That is only a bogus Commission. Even though they said that constitutional guarantee would be given, statutory powers would be given, and for that a constitutional amendment is necessary, yet that constitutional amendment has not been brought by the Law Minister. I appeal to the Law Ministry to see that the constitutional amendment is brought as early as possible so that it properly functions.

Sir, coming to the emergency provision to be fair, I do not oppose this. If in any contingency the law breaks down completely, if they are not able to take care of the law and order in the ordinary course, if the Government genuinely feels that it is impossible for democracy to function, then definitely, Sir, there should be a provision so that the emergency is declared. Otherwise our fate will be like that of Pakistan or Bangladesh and the military might step in. But, at the same time, may I ask : If this so-called armed rebellion or whatever it may be happens in one part of the country like Kerala or Assam, why should emergency be for the whole of India ? Is it not enough that in that particular area alone emergency is imposed ? This, the Law Ministry should consider, and how much the entire people should suffer their liberties and freedom.

With regard to the imposition of President's rule the Election Commission also has come into the picture. The Election Commission should certify that the law and order position is safe and that election could be held. Sir, as far as the Election Commission is concerned, the Election Commission does not have any independent machinery. The Election Commission has got Government machinery. He will have to depend on the reports of Government Secretaries. It would be like Government finding whether it is ripe for election to be held. It is stated that the Election Commission would certify. I do not attach much importance to it. Why should you make the Election Commission speak from his mouth ? What is decided by the Government? Who are assistants to the Election Commission ? They are the District Collectors, Home Secretaries and other Secretaries of the Government. They are the people who are to assist the Election Commissioner and they are directly under the Government. These officers would carryout the orders of the Government rather than election Commissions.

Another important clause is about referendum. The basic structure of the Constitution can be changed by sending it for referendum after it has been passed by both the Houses of Parliament with two-thirds majority. Sir, it is very dangerous, especially in respect of changing the secular character and the basic structure of the Constitution. As has been pointed out by my friend, if the people were to decide that every non-Hindi speaking person cannot be a citizen of India or like that, it will be very dangerous. As you know, the majority of the people are Hindi-speaking people and they can very easily say that everybody should know Hindi otherwise they are not Indians. I do not know how that structure can be changed by referring it to the people as a whole. Sir, India is a very vast country and we know that the majority of the people are illiterate. As such, this clause is not only dangerous, but sometimes it may work against the very basic principles for which our Constitution has been framed by our founding fathers.

I beg to differ about the property rights also. I do not want to say that the right to property should be included in the Fundamental Rights. But as far as small holdings are concerned, they should be included in the Fundamental Rights. In Kerala, we submitted a memorandum to the previous Government when they amended the Constitution saying that small holdings should be included in the Fundamental Rights. For example, a small piece of land and a small hut are precious for the life of a person. Therefore, a minimum ceiling should be fixed by the Government, but that minimum ceiling should be given as a Fundamental Rules under the Constitution. That should have been done now. It has been pointed out by our friends that indirectly, property is being made a legal right, compensation has to be given and all that. But this is only for propaganda in order to take away that right from the Constitution. In Kerala, all the opposition parties, including the Marxist Communist Party submitted a memorandum saying that a minimum ceiling of land for a farmer and a dwelling hut, should come within the Fundamental Rights.

SHRI SHANTI BHUSHAN: That is covered by Article 31A. It is being retained.

SHRI HAMID ALI SCHAMNAD: Is it retained ? Then I come to judiciary. Giving more powers to the judiciary is dangerous. After all, they are also human beings. Those who have a little experience of the legal profession will find that there is corruption even there. You cannot say that our judiciary is always above everything. Sometimes, even the lawyers would say whether a particular Judge will convict or acquit in a particular case. They also say that if a particular case goes to another Judge, his attitude may be different. That shows that the Judges are also prejudiced. As such, we cannot centralise everything in their hands. Another thing is about economic offences. I think that the tribunals are the proper authorities for speedy trial and disposal of those cases. I do not want to say anything further on this point. It is good that the liberties which had been taken away by the previous Government are being restored by this Government. It is a big thing. You should appreciate it. During the emergency period, even it has been argued that a person could be shot dead and that cannot be questioned. This has been argued in the Supreme Court of India not by a lesser person than on behalf of Government of India. Now, at least, that has been restored to the people and we would be thankful to the Janata Government for having restored the personal liberty of man. Thank you, Sir.

DR. M. M. S. SIDDHU (Uttar Pradesh): Mr.Vice-Chairman, Sir, I rise to welcome the Constitution Amendment Bill. But before I come to some of the salient features of the Amending Bill, let us for a while consider what are the factors which a person was to subvert the Constitution itself, and why the elite of the country, the working class which does not have any say, and the middle class which was promised something, acquiesced in this Act. Can the mere raising of the status of the judiciary or restoring its proper position protect and prevent such occurrences ? First and foremost, we must understand that to the majority of the people, who are poor, it is the slogans which give any hope. It is only the slogans which create a hope in them and take away from them the liberty itself. And that is why false slogans created a sense of amnesia in the people and that they forgot what they were bartering for. Conditions for false hopes were created and for minor things people's freedom was bartered away. It was said during the emergency that emergency was good because the trains ran in time, it was good because this or that small thing was done, as if the emergency was needed for it. And some people, at least some of the leading lights of the then Government even considered at one time that the courts should be shut or closed. They went to that extent. A cursory glance at the history shows that wherever the authoritarian or totalitarian regimes have come in, they have come sometimes through the ballot box, and they have also come in by raising false slogans. And only the people who understand this process are able to resist it. Therefore, unless and until an informed public opinion is created, the Constitution can be subverted, and the nation pays its price for it, as the nation paid its price earlier. Therefore, Sir, it is not only necessary that the statute is to be amended—which is a welcome sign—but a political situation is to be created in which a few persons or a party or a group of people will not be able to go against the spirit of the Constitution. When we defined socialism, it is good that it is defined in a manner which the people can understand. The measures to be taken should make it impossible for anyone to exploit or distort the social, economic and political freedoms. In other words, the Directive Principles, the directions to the Government, should have precedence over many other things. Unless the people, the downtrodden and the hungry have got hope and confidence they will not be able to resist he acts which create aberrations.

Many of the Constitutional amendments that were being enacted earlier were due to the property right being included in the Fundamental Rights because property in the legal terminology not only included property as an ordinary layman thinks of but also certain rights which accrue out of contract or out of other things. Therefore removal of the property right from the list of fundamental rights is the right direction and if it had been done earlier, I think fifty per cent of the litigation to which the nation has been subjected and many of the amendments to the Constitution would not have been there.

But, when you say that there should not be exploitation, are we going to guarantee the right to work as one of the Fundamental Rights to the citizens of this country ? If we include the right to work in the Fundamental Rights it becomes justiciable, while the Directive Principles which are not justiciable, and are only the guidelines for the Government. Therefore, if the right to work were to be included in the fundamental rights any person would be able to approach the court for getting this right from the Government.

Now, I will come to another aspect of the Constitution Amendment and that is whether the basic structure of the Constitution can be altered and, if so, whether it can be done through a referendum. I agree with hon. Mr. Banerjee when he says that it is not only the judiciary that is there but the whole parliamentary system as it is existing today or as it existed before the emergency, which is sacrosanct. If that is the case, the parliamentary system as such should be taken to be sacrosanct and not the presidential form of the Government, which at one time was considered as an alternative and any thought in that direction should be scotched. Therefore, I would plead with the hon. Minister to consider this matter and see whether the parliamentary system of Government and the Government being responsible to the House of the People should also not form a part of the proviso to article 368 as has been provided in the case of compromising the independence of judiciary. Of course, we have got a high respect for judiciary. But, let us, for a moment, understand what difference justice and injustice makes to a common man. As George Bernard Shaw once said, when a tiger kills a man that is called ferocity, but when man kills a tiger, he calls it sport. The difference between justice and justice is no more than this. When persons with money bags, who have economic power and who can circumvent the law even though they may not be able to influence the judiciary, make the legal processes linger on, the result is that the common man is not able to get justice from the judiciary. Therefore, Sir, this referendum is good. But considering the rigging and other malpractices that are resorted in the elections, what safeguards we prescribe that the referendum will be conducted under the direct supervision of the Election Commission and fairly? There have been instances when booths were captured, at many a place, voting did not take place but the ballot boxes were full. What is the answer if such a contingency takes place? The hon. Minister may say that it is the commonsense of the ordinary citizen, and his democratic value to which he adheres is the only safeguard in a democracy. I agree but we have to consider the method by which a referendum is to be done and carried out, and the manner and the means by which the people are to be educated. I remember, there was one referendum in the pre-independence North-West Frontier Province. There the question was whether people wanted Pakistan or they did not want Pakistan. As a matter of fact, Pakhtoons wanted independence for themselves. If the referendum had been on either this or that or the other one, the result would have been different. Instead of the division of the country if they had been asked whether they want to be with India or with Pakistan or want to have a Pakhtoons State, I think, Pakhtoons would have gone for Pakhtoonistan. Therefore, the manner in which the question will be posed in a referendum is equally important.

Sir, I welcome the measure in respect of many of the provisions by which certain persons holding high positions wanted to become big brothers. I use the word 'big brother' in the sense that they considered themselves or were considered by some to be above law. They could do whatever they liked. It is good that all citizens are equal now before the law.

May I request the hon. Minister to consider also the sentiments of the people about the Concurrent List? They want that education may still be allowed to be retained on the Concurrent List. There are teachers who are emotionally attached to it. I am also conscious of the fact that some of the States who want autonomy, feel that education should be within the State subjects and within the State Sche-

[Dr. M.M.S. Sidhu]

dule. They have equal force in their argument. But by and large, teachers as a group, have found that the States have not given them a fair treatment. If the States had given them a fair treatment, I am sure, the teaching community would have never asked for education being included in the Concurrent List. When we ask for a referendum on any particular issue and if the teachers right from the primary school to the university level, are against this provision of education being extracted from the Concurrent List, it is possible that the results of the referendum may not reflect their opinion on that particular issue but rather their hatred for not being given the right of being on the Concurrent List. And, therefore, I request the hon. Minister to consider it because this is not a matter of any basic policy. This is only a matter of division of subjects. As a matter of fact, the teaching community also knows that even if education is on the Concurrent List, its administration is to be done through the State. Being on the Concurrent List does not make them enjoy more benefits but it gives them an emotional satisfaction, and therefore, Sir, I would request the hon. Law Minister to consider it.

6·00 P.M.

It is also a coincidence that the Law Minister was the person who initiated much of the debate on the basic structure of the Constitution, who has been a valiant exponent of the right of the individual and who fought for it. I think, it would be giving him the greatest satisfaction of his life that he is able to achieve what he could not get done through the court of law because of the various interpretations of the statute. Now, he has brought forward the amendment, with the object that the basic structure of the Constitution will not be impaired. Sir, I congratulate the hon. Law Minister for having brought forward this Constitution (45th Amendment) Bill and I wholeheartedly support it.

SHRI R. NARASIMHA REDDY (Andhra Pradesh): Sir, I welcome this Bill. This is a significant piece of legislation which has been brought before this House and one which will be watched with anxiety in the whole country.

Particularly, I would like to mention that the fundamental right to life and liberty of the individual is guaranteed in all situations. Even during the Emergency, this fundamental right to life and liberty cannot be taken away as a result of the present amendment. To my mind, this is the greatest part of the legislation. After all, State is only an instrument for a particular purpose. The State has to serve the people, has to serve the individual. The individual cannot be sacrificed at the altar of the State and this, to my mind, is a fundamental democratic principle. This principle has now been enshrined in the proposed amendment. Even regarding Emergency, it has been very clearly laid down. The general term which was there of 'internal disturbance' has been replaced by 'armed rebellion'. This is clear and categorical. Internal disturbance can be interpreted in many ways. Even a state of strikes by the working class can be interpreted as internal disturbance. Now, under the proposed amendment, Emergency can be proclaimed only in cases of external aggression, war and armed rebellion. This is also a welcome aspect of the Bill.

Then, Sir, coming to the property right, I agree with my friend that if the property right had been removed much earlier from the Fundamental Rights, much of the litigation would have been avoided and the many amendments to the Constitution would not have been

necessary. Now, it has been made a legal right. In this connection, I would like to say that when this property right is taken away from the Fundamental Rights, the conflict between the Directive Principles and the Fundamental Rights does not arise. I do not say that the Directive Principles and the Fundamental Rights are contrary to each other. Actually it is by the implementation of the Directive Principles that the Fundamental Rights are guaranteed. Therefore, the only obstruction was the recognition of the right to property as a fundamental right. And this went against the most important Directive Principle and that was to eliminate economic inequality among different sections of the people. Now that this has been removed, there is no necessity for once again saying that the Directive Principles should override the Fundamental Rights. There is no question of any conflict between the two. There is no question of overriding, particularly when the Fundamental Rights are the rights which guarantee the basic human rights of the individual. Therefore, there is neither the question of conflict nor of overriding.

Sir, the other important aspect of this Bill is regarding the provision of preventive detention. Quite a number of hon. Members feel that preventive detention must be taken off the Constitution. Sir, I am against the preventive detention provision being used for political purposes by anybody, by any Government. I was one of those who were detained. I would tell for the information of this House, when I was detained the grounds were given. The first and important ground was a very fantastic one. The ground was that I organised a series of students' strikes as long back as 1941. Sir, we organised the students' strikes in protest against the arrest of Shri Jawaharlal Nehru by the British and this was the ground that the Congress Government came to me for arrest. So, Sir, such fantastic grounds used to be adduced to abuse the preventive detention provision in the country. In the past 30 years this provision of preventive detention has been used merely on political grounds. If we have to establish democracy, safeguard the democratic functioning, if we have to strengthen the parliamentary democracy, I am of a firm opinion that the preventive detention should not be used in any case, merely and solely, on the political grounds. But, Sir, the enabling provision, the power of detention must be there for any Government. The primary duty of a Government is to maintain law and order, is to protect and maintain the security of the State. Therefore, we should not disarm the Government of this power and then condemn the Government that the law and order is not maintained and the security of the State is not preserved. This weapon should be there. The preventive detention provision should be there, particularly for economic offenders, like smugglers and blackmarketeers, gangsters and others who disturb the social life. The preventive detention clause should be there for spies and others. Therefore, I appeal to the Members not just to say that the preventive detention clause should not be there. It is a very unrealistic and impracticable attitude. That is why here I have also given a notice of an amendment in this clause, saying that the preventive detention cannot be there merely and solely on political grounds. I hope the hon. Minister will accept this posture and see that in this country the preventive detention provision is not used on political grounds and this will be one of the surest safeguards for a proper functioning of the parliamentary democracy.

Now I come to the next important provision of the Constitutional amendment. The original article 368 of the Constitution lays down the procedure for amendment of the Constitution. It is a very significant

[Shri R. Narasimha Reddy]

procedure, much more than any ordinary law. For all the amendments both Houses of Parliament should pass the Bill with half of the total number of the Houses and two-thirds of the Members present and voting and for certain amendments which affect Centre-State relations; half the number of State Legislatures should approve them. This was the safeguard that the Constitution-makers had introduced. Now regarding certain basic features—about free and fair elections, about its democratic and secular character, about independence of the judiciary and such other aspects—the proposed Bill has said that these should be approved by a referendum. Sir, referendum, as a principle—referring to the people of the country—I don't think anybody can oppose. But we must see whether even a good principle is practicable. In my humble opinion in this country where apart from what my friend, Dr. Siddhu has said about the way the elections are being held and conducted even today there is so much illiteracy that the poor voter is still capable of voting only for a symbol on a constitutional amendment will referendum be practicable ? I feel, Sir, that it cannot be practicable and the referendum may not be meaningful. A demagogue can just sway the emotions of the people and in their emotion they may vote one way or the other. Therefore Sir I would suggest that because of the importance of the basic features of the Constitution the procedure given by the Constitution-makers may be kept with a slight amendment: that these amendments shall require two-thirds of the total number of the Houses and three-fourth of the Members present and voting and shall be approved by two-thirds of the State Legislatures. By this really the necessary safeguard for the basic structure, in my view, will be provided and this will be much more meaningful.

Secondly, Sir, I would like to say that as representatives of the people, do we think that we will be—the entire House will be—so irresponsible as to just wipe out the basic structure of the Constitution ? I personally do not believe it. The Law Minister himself has said that the people's will be expressed by this Parliament. In a parliamentary democracy, the people's will is expressed by both Houses of Parliament and if the Parliament acts as it acted previously, there is a referendum once in five years and the people threw them out. Therefore, from the practical point of view, from a realistic point of view, I would suggest that this sort of amendment be accepted.

Sir, coming to the last point, we have done all this. The aberrations which were made, the amendments which were made which took away certain democratic contents of the Constitution, have been reserved. We are reversing them; we are making the Constitution as perfect as we can. But, Sir, I would like to say one word: Constitutions do not protect democracy. Democracy can be protected by the people. Today the parliamentary democracy which we are having is a parliamentary democracy at the top—I would call it democracy of the elite. Sir, as long as the democratic instruments of action are not developed at the grass-roots, as long as they are not developed in the villages, in the factories, in the mohallas, the democratic instrument is not safe. This is only a democracy of the elite. In my view parliamentary democracy is not an end in itself. Parliamentary democracy is a means to an end. The end is the elimination of poverty and unemployment in this country. The end is elimination of the colossal disparity between the top luxurious rich and the crawling poor who have no means to live, who have no work to do, who have no food, who have no shelter. If these problems are not solved, if the

parliamentary democracy fails to solve these problems no Constitution can save democracy. And, therefore, the primary duty of any government which is interested in maintaining democracy of the country is to strengthen, what I would call, the economic democracy, the grass-roots of democratic instrument in the villages, in the Mohallas and in the factories. Apart from that, unless we develop the economic life of the people and solve the problems of poverty, unless we solve the problems of unemployment, these foundations will not be there.

With these observations I welcome this Bill broadly with the two suggestions I have made. Thank you.

श्री शिव चन्द्र झा (बिहार) : उपसभाध्यक्ष महोदय, आज का दिन एक ऐतिहासिक दिन है । आज का दिन उसी तरह से ऐतिहासिक दिन है जिस तरह से इसी तरह इसी दिल्ली में पंडित जवाहर लाल नेहरू ने कहा था कि हम टेनिस कोट का ओथ लें। संविधान बनाने के लिए देश में मांग थी कि संविधान बने। अंग्रेज जा रहे थे और एक जनतांत्रिक संविधान के मुताबिक देश चले इसलिए पंडित जी ने ऐलान किया कि हम टेनिस कोर्ट का ओथ लेते हैं और संविधान बन कर रहेंगे । वह एक ऐतिहासिक समय था। संविधान बना और उस के मुताबिक देश चलने लगा । मोटे तौर पर जो संविधान बना वह एक डेमोक्रेटिक जनतंत्र की मोटी बातें थीं उस के मुताबिक बना था और चलता रहा । कोई कुठाराघात या कोई प्रहार उस संविधान पर नहीं हुआ । हालांकि पंडित जी के वक्त में ही, पंडित जी ने खुद ही 1960 में इशेन्शियल सर्विसेज मेन्टिनेन्स एक्ट लागू किया था। 1960 में रेलवे की हड़ताल जब हुई थी, जो रूप उन्होंने दिखाया था उस से लोगों को तकलीफ हुई थी कि मजदूर की हड़ताल—बावजूद इस संविधान में आजादी के—को पंडित जी ने दबा दिया। लेकिन फिर भी जो ढांचा था उस ढांचे के मुताबिक देश चलता रहा । लेकिन संविधान के इतिहास में और देश के इतिहास में एक दुर्भाग्य का वक्त आया और वह जब आया जब उसी पंडित जवाहर लाल नेहरू की पुत्री ने जिसके पिता ने वह ढांचा बनाया और जिसके सपने पिता देखते थे जिसके मुताबिक देश को चलना था, उस पर प्रहार शुरू किया और उस ढांचे का अंग भंग करना शुरू किया । जिससे कि जो कुछ बुनियादी बात उस संविधान में थीं, उन सबो का खात्मा उन्होंने किया इमरजेंसी के वक्त में और उसी रूप में खात्मा किया जिस रूप में — मैं फिर दोहराऊंगा बावजूद पिछले दफा कहने के—हिटलर ने वाईमार रिपब्लिक का अंग भंग करने का काम शुरू किया एक ऐसा रूप बनाया जो सब जानते हैं (*Interruptions*)

श्री कल्प नाथ राय : प्वाइंट आफ आर्डर, उपसभाध्यक्ष महोदय।

उपसभाध्यक्ष (श्री श्याम लाल यादव) : सुनिये । क्या है ?

श्री कल्प नाथ राय : इस तरह की बात करना, ये संविधान पर बहस कर रहे हैं या दिल्ली के नहीं, देश के नहीं, दुनियां के एक बड़े नेता की व्यक्तिगत रूप से यह चरित्र हनन कर रहे हैं। इंदिरा गांधी ने अगर प्रजातंत्रवादी . . . (*Interruptions*) चुनाव नहीं कराये होते तो आप जैसे आदमी यहां नहीं आये होते।

उपसभाध्यक्ष (श्री श्याम लाल यादव) : यह कोई प्वाइंट आफ आर्डर नहीं है।

श्री शिव चन्द्र झा : देश के इतिहास में संविधान के इतिहास में वह दुर्भाग्य न आये और जो बुनियादी बातें थी संविधान की वे बातें कायम रहें, उन पर किसी तरह का कुठाराघात न हो इसलिए यह संशोधन आया है । इस में एक दो बात नयी हैं जो पहले संविधान का ढांचा था उस में नहीं थीं । लेकिन मोटे तौर पर इस का यही आदर्श है कि जो पहले फंडामेन्टल राइट्स पर कुठाराघात होता था अब वह न हो । वह कुठाराघात कोई न कर सके इस की व्यवस्था की गयी है । जब तक उन के लिए रैफरेंडम नहीं किया जाता, जब तक उन के लिये जनता से राय नहीं ली जाती तब तक उनको परिवर्तित नहीं किया जा सकता । जूडिशियरी के हाथ पर जैसे पहले बांधे गये थे वह आगे नहीं बांधे जा सकते । प्रैस का मुंह बंद नहीं किया जा सकता जब तक कि जनता ही उस के लिये मत नहीं देती है । तो इन फंडामेंटल बातों पर कुठाराघात न हो और उन का जैसा रूप था वैसा ही कायम रहे और देश चलता रहे इस दृष्टिकोण से रेफरेंडम की व्यवस्था की गयी है । जैसा गोस्वामी जी ने कहा, आर्थिक दर्शन में उस के द्वारा कोई परिवर्तन नहीं होने जा रहा है । मेरी इस बात में दम है । जैसा ढांचा था वैसा ही ढांचा रहे और उस पर कोई कुठाराघात न हो यही इकोनामिक उद्देश्य है और ऐसा करने से जो हमारा आर्थिक दर्शन है उस में कोई बड़ा परिवर्तन नहीं आता और जो पहले था वही रहेगा । कहने का मतलब यह है कि पूंजीवादी व्यवस्था जिस रूप में पहले चलती थी, इमरजेंसी के पहले, बावजूद इस संशोधन के, वह व्यवस्था उसी रूप में चलती रहेगी।

इस के बाद आता है राइट टू प्रापर्टी। उस को खत्म किया जा रहा है और इस की मांग संविधान सभा के वक्त से ही थी । मैं उस की डिबेट्स से कोई उद्धरण नहीं देना चाहता, लेकिन वहां भी मांग उठाई गई थी कि राइट टू प्रापर्टी खत्म किया जाय । लेकिन वह उस समय नहीं हो सका । उस के बाद जैसा सुरेन्द्र मोहन जी ने कहा, नाथ पै जी ने यह बात उठायी और यह बात लगातार उठती रही क्योंकि जनता में परिवर्तन लाने के लिये राइट टू प्रापर्टी खत्म करना जरूरी है । वह इस में किया गया है और यह एक आगे का कदम है । मैंने कहा कि हम संविधान को वही रूप देने जा रहे हैं कि जो उसका रूप इमरजेंसी के पहले था, लेकिन यह उस में एक आगे का कदम है कि जिस से राइट टू प्रापर्टी खत्म किया जा रहा है । लेकिन इस में प्रोसेस आफ ला की जो बात कही गयी है वहां मैं मंत्री महोदय से कहना चाहता हूं कि वे इस बात की सफाई करें कि प्रापर्टी का दर्शन क्या है । प्राइवेट प्रापर्टी और पर्सनल प्रापर्टी की बात आप को साफ करनी होगी । प्रियेंबिल की जो बात है, उस में सोशलिस्ट वगैरह की जो बात है, उस में मैं बाद में जाऊंगा, लेकिन पहले मैं प्रापर्टी के दर्शन की बात साफ करना चाहता हूं । आप को यह बात साफ करनी होगी ताकि पर्सनल प्रापर्टी पर कोई धक्का न लगे । यह कुर्ता मेरी पर्सनल प्रापर्टी है । यह कोट, यह जूता मेरी पर्सनल प्रापर्टी है, इस को कोई नहीं ले सकता लेकिन उस संपत्ति के जरिये जब मैं किसी दूसरे का शोषण करता हूं और शोषण के लिये उसका जब मैं इस्तेमाल करता हूं तो उस प्राइवेट प्रापर्टी को खत्म किया जा सकता है इस बात की सफाई होनी चाहिए । अगर इस को इस वक्त ऐसे ही रहने देते हैं तो बहुत से रास्ते निकल आयेंगे कि जिन

के कारण आप प्राइवट प्रापर्टी को खत्म नहीं कर सकते और बड़े बड़े प्राइवेट प्रापर्टी वाले बच जायेंगे ।

फिर दूसरी बात यह कही गयी है कि इमरजेंसी लगाने के वक्त में जैसा हुआ कि कैबिनेट के डिसीजन लिये बिना ही दस्तखत करा लिये गये और बाद में उस के लिये कैबिनेट डिसीजन हुआ, ऐसी बात भविष्य में न हो, इस के लिए वह लिखित रूप में प्रसीडेंट को जायगा । जल्दीबाजी में यह काम नहीं होगा । लेकिन यदि कोई बाहरी हमला हुआ तो उस की व्यवस्था होनी चाहिए । इंटरनल डिस्टरबेंस की जगह आप ने आर्म्ड रिबेलियन कर दिया है । उस में इमरजेंसी की बात आती है । यह कितने अरसे के लिये हो वह डिटेल की बात है । यहां मैं कहना चाहता हूं कि क्रिस्टिस होक्स ने कहा है कि "क्लियर एंड प्रेजेंट डेंजर" जब किसी कौम और सत्ता को होता है तो तभी राजसत्ता को अधिकार होता है अपने को बचाने का और तब वह कोई जबरदस्त कदम उठा सकती है । और अगर क्लियर और प्रेजेंट डेंजर नहीं आता है तो जनता को पूरी आजादी है कि वह डमांस्ट्रेशन करे, धरना दे, नारेबाजी करे या जेल भरे । आर्म्ड रिबेलियन नहीं होता है और इंटरनल डिस्टरबेंस होता है तो उस समय कोई इमरजेंसी न लगायी जाय यह बात ठीक है । लेकिन आर्म्ड रिबेलियन की जो बात आती है, एक साथी ने ठीक ही तो कहा है कि नक्सलवादी वाली बात है । नक्सलवादी बात थी बड़े पैमाने पर । लेकिन एक तरह की बगावत थी, बड़े पैमाने पर बगावत नहीं थी । लेकिन अब एक बहाना इस तरह की घटनाओं से मिल सकता है कि ...

SHRI BHUPESH GUPTA: Sir, one minute, because the Minister for Parliamentary Affairs is going. We opposed at the meeting with the Prime Minister that Anti-Defection Bill. Now I am told they have withdrawn that Bill. It is a good thing. They should announce it in this House. They wanted to bring the Anti-Defection Bill despite our opposition at the meeting with the Prime Minister, but they did not listen to us. But within their own party the opposition came and so they have withdrawn it.

श्री शिव चन्द्र झा : तो, इस तरह की गुंजाइस है । लेकिन मैं जानता हूं कि इस तरह से जो कुछ करेंगे, बहुत तरह के संशोधन आ रहे हैं, वे भावनाएं कम होंगी । छुट-पुट यदि सशस्त्र बातें भी होंगी, तो उस रूप में नहीं लिया जायगा जो आर्म्ड रिबेलियन विद्रोह का मतलब है !

दूसरी बात फ्रीडम पर कोई रोक नहीं है । मैं मंत्री महोदय से पूछना चाहता हूं कि एमरजेंसी के पहले और अब जो संशोधन देने जा रहे हैं क्या उस से देश में प्रेस स्वतंत्रता सही मायने में हो रही है ? आप कहते हैं कि यहां की प्रोसीडिंग्ज पर कोई रोक नहीं लगाई जायेगी छापने आदि में यदि मैलिशियस नहीं लिखा जायेगा । अभी तो कोई रोक नहीं है । लेकिन जो प्रेस की स्वतंत्रता का तराजू है उस पर तोलें कि क्या आप जो यहां करते हैं, वह ठीक से अखबार और रेडियो में आता है । तोड़ना, मरोड़ना ही नहीं है प्रेस फ्रीडम को सप्रेस करने का तरीका, इगनोर करना, नजरन्दाज करना या अच्छी बातों को छोड़ देना । अभी हम आप को कड़ा शब्द

[श्री गिरिधर झा]

कह दें, देखिये कल बड़ो हड़ताल इन्स आयेंगी। अच्छी बात कहेंगे, तो कोई ध्यान नहीं देंगे। पी० टी० आई०, रेडियो वाले सभी का यही धन्धा है और प्रैस फ्रीडम उस रूप में नहीं होगा जिस रूप में आप संविधान में संशोधन करने जा रहे हैं। आप वही चाह रहे हैं जो इमरजेंसी के पहले था। एमरजेंसी के पहले भी देश में प्रैस फ्रीडम नहीं थी और आज भी देश में प्रैस फ्रीडम नहीं है। प्रैस फ्रीडम यदि है वह कण्ट्रोल्ड है। प्रैस मालिकों, अखबारों वगैरह यह सब बातें हैं। चूंकि कोई बड़ा परिवर्तन नहीं होने जा रहा है, प्रैस फ्रीडम होने वाला नहीं है। यदि प्रैस फ्रीडम लाना है, तो सारे प्रैस को आप प्लेन करें, सुनियोजित करें, और तुरन्त चीनी के पार्टी प्रैस को उठावें। प्लेन्ड प्रैस और पार्टी प्रैस यह व्यवस्था जब देश में होगी, तब सही मायने में फ्रीडम आफ दी प्रैस होगा। यदि ऐसा नहीं होता है तो जिस रूप में आप संविधान में संशोधन करके ला रहे हैं, उस में कोई बड़ा परिवर्तन नहीं होने जा रहा है। यह एक सन्स आफ कम्पलेन्सी है और आप संतोष के लिये करें। लेकिन यह बड़ा परिवर्तन नहीं है।

तो संविधान में यदि संशोधन लाना है, तो इनका मद्देनजर रखें, कि प्रैस फ्रीडम कैसा होगा। सब बात जो डिस्टार्सन की है, श्रीमती इन्दिरा गांधी के जमाने में हुई, वे सब बात तोड़-मरोड़ का संशोधन ठीक ही है।

लेकिन मैं मंत्री जी से जानना चाहता हूं कि क्या उनको हम लोगों की बात से कोई मतलब नहीं है? हां उस के दो-चार लोगों से हो उनका मतलब रहता है, उन्हीं को सुनना और ट्रेजरी बेंच वाले तो सबसे दुर्भाग्य वाले लोग हो जाते हैं क्योंकि यह समझा जाता है कि इनको जो देंगे, सब मान लेंगे। मैं जानना चाहता हूं कि जिस गर्व से यह जनता सरकार बनी है, क्या उसका आदर्श राइट टू वर्क नहीं था और है? घोषणा-पत्र में राइट टू वर्क है कि नहीं है? तो आप यदि संविधान में बड़ा परिवर्तन लाना चाहते हैं तो राइट टू वर्क क्यों नहीं आप जोड़ते हैं। इसे आज से पचास वर्ष के बाद का जो भारत आयेगा तब या सौ वर्ष के बाद जब सदन बनेगा तब करेगा। जिस राइट टू रिकाल की बात पर आप रिफ्रेन्डम की ओर जाते हैं और कहते हैं कि कोई भी बात हम रिफ्रेन्डम लेकर करेंगे, क्या जनता किसी बात को नहीं उठा सकती है कि हम अपने प्रतिनिधि को जो हमारा काम नहीं करता था गलत है, उसको रिकाल कर लें? तो राइट टू रिकाल की बात क्यों नहीं आ सकती है। राइट टू वर्क और राइट टू रिकाल जनतान्त्रिक ढांचे के लिये बुनियादी बातें हैं। जब तक यह बातें संविधान में लिखित रूप में नहीं आती हैं, संविधान कितना भी गला फाड़ कर कहे कि जनतांत्रिक है, सही मायने में जनतांत्रिक नहीं होगा। चाहे वह भारत का संविधान हो, चाहे इंग्लैंड का हो, चाहे अमरीका का हो और कहीं का हो, ये बातें ऐसी होती हैं जो बुनियादी हैं। कौन सी बातें हैं, कौन से आपके प्रशासन के माध्यम हैं जहां ब्यूरोक्रेसी का अड्डा है, ब्यूरोक्रेसी से जो हम परेशान हो रहे हैं, वहां अफसर भी चुने जायें। मैंने उस दिन भी कहा कि पुलिस का अफसर, जुडिशियरी और कोर्ट का जज ये सब चुने जायें। जनता का इनवल्वमेंट हो, जनता का पार्टिसिपेशन हो और डिसेंट्रलाइजेशन आफ पावर ये बातें गांधी जी के देश में चलें। यह तभी होगा जब पंचायत को आप पावर दें, पंचायत अपना फैसला करे पंचायत की बात उठे, पंचायत यह निर्णय करे तो आपके प्रशासन के जितने भी माध्यम हैं उनमें ऐसे जनतंत्रीय लोग पहुंचेंगे तो देश में जनतंत्र आयेगा। यदि आप इस तरह से परिवर्तन लाना चाहते हैं तो प्रियेम्बल में जो सोशलिस्ट शब्द है उसकी भी हकीकत में हम

जायेंगे। यह बात ठीक कही गई कि सोशलिस्ट में ऐक्सप्लायटेशन फ्रोम सोशल, इकानामिक्स एण्ड पालिटिकिल को काबू करना है। यह बात ठीक है। लेकिन मीन्स आफ प्रोडक्शन और डिस्ट्रीब्यूशन पर समाज का कब्जा होना जरूरी है और समाजवाद के ये माने नहीं होते हैं कि समाजवाद हम जनतंत्रीय तरीके से चाहते हैं। कार्ल मार्क्स ने कहा था कि देश की परिस्थितियां जैसी होंगी समाजवाद तक पहुंचने के लिए उसके अनुकूल रास्ता निकाला जाएगा। उसने 1872 में हैग कांफ्रेंस में साफ कहा था कि इंगलैण्ड और अमरीका के ट्रेडीशंस बहुत लम्बे है वहां समाजवाद आ जाएगा, यह बड़ा विवाद वहां पर हुआ। लम्बा उसका इतिहास है। इसलिए हम चाहते हैं कि समाजवाद में जितना भी उत्पादन हो उस पर समाज का कब्जा होगा और साथ ही साथ हमारा ढांचा यह होगा। वह ढांचा डैमोक्रेटिक होगा, हम बोलेंगे, नुक्ताचीनी करेंगे, वह विरोध हमारा करेंगे, हम सुनेंगे, हम भी विरोध करेंगे, वह भी सुनेंगे। यह हमारा तरीका होगा। लेकिन समाज में जो उत्पादन हो उसकी मिल्कियत समाज की होगी न कि कुछ घरानों की होगी और समाजवाद और जनतंत्र दोनों कांट्रेडिक्टरी नहीं है। जनतंत्र का असल फार्म समाजवाद है और समाजवाद बगैर जनतंत्र के कम्प्लीट नहीं हो सकता है। दोनों का अनिवार्य होना जरूरी है। बरनार्ड शा को देख लीजिए, जय प्रकाश को देख लीजिए। मार्क्स को देख लीजिए। लेनिन को देख लीजिए। लेनिन की डाक्ट्रीन क्या थी? मैं किसी दूसरे दिन पेश करूंगा कि लेनिन का भी दर्शन रहा है। इसलिए यदि आप समाजवाद के प्रियेम्बल में सोशलिज्म कहते हैं तो आपको साफ करना होगा यह भेद कैपिटलिस्ट इकनामी का। इतना ही नहीं उससे आगे उतरना होगा। मीन्स आफ प्रोडक्शन और डिस्ट्रीब्यूशन पर कब्जा होगा और कंट्रोल होगा समाज का और समाज में मुनाफाखोरी नहीं होगी। उत्पादन उपभोग के लिए होगा। उत्पादन के लिए संविधान में इन-इक्वेलिटी का आपको संशोधन करना होगा।

इन शब्दों के साथ जो संशोधन आ रहे हैं, मैं उनका स्वागत करता हूं। इमरजेंसी का दुर्भाग्य न आये, इसके लिए साफ साफ कुछ कदम उठाये हैं जिससे हम आगे जा रहे हैं। मैं इनका समर्थन करता हूं।

उपसभाध्यक्ष (श्री श्याम लाल यादव): अब सदन की कार्यवाही कल सबेरे 11 बजे तक के लिए स्थगित होती है।

The House then adjourned at thirty-four minutes past six of the clock till eleven of the clock on Tuesday, the 29th August, 1978.

GMGIPND—M—1096 R. S.—6070