ures which are anti-people and antidemocratic, we have opposed. The C.P.I. (M) too has opposed some ^ of them. They have a political line. They have also walked out with us. Therefore, I am not blaming them on this question. Now, Sir, this question about walking in and walking out. Today, we walked out. They followed us. Another day, the C.P.I. (M) may walk out and we may follow them. On some other day, the Congress may walk out. One day, we all may walk out together. Sometimes, we walk out after making speeches. Therefore, these are not responsible statements. Therefore, Sir, all I say is this. I say it with pain because this is the organ of a party whom we look upon as our potential ally, as one of the allies in the left democratic front, the Communist Party of India (Marxist), whose great leaders, Comrade Rama-murti and Comrade Surjeet are here. If only they had made enquiries with me whether I had met Mrs. Gandhi, I would have told them. They are not the editors of this paper. I do not blame them. All I say is that, in political life, certain norms should be maintained. Even in contradicting each other, we can maintain norms. Sir, I think, I have made it abundantly clear. This is a very interesting thing. I am sure, my friends, Comrade Ramamurti and Comrade Surjeet, will ask the editor, Comrade Basava Punniah who was a Member in this House, sitting there, when I was leading the united party. I have no doubt in my mind that Comrade Baoava Punniah will publish the second editorial, giving the correction that I have mentioned, the second editorial of Mr. C. S. Pandit.

Before I sit down, I will say only one word. This is subject to correction. My friend, Comrade Rama-murti, it seems, last night met Mr. Chavan at his residence to discuss . as to how things should happen. If he had not met him, he can correct me. But it does seem that there was a meeting, after which the Congress changed its policy on this question.

SHRI P. RAMAMURTI: Today, I met Mr. Kalp Nath Rai and talked to him. I met so many others. I do not deny.

THE CONSTITUTION (FORTY-FIFTH AMENDMENT BILL, 1978— contd.

THE VICE-CHAIRMAN (SHRl ARVIND GANESH KULKARNI): Yes, Mr. Antulay. You have 30 minutes to speak.

SHRI A. R. ANTULAY (Maharashtra) : Mr. Vice-Chairman, Sir, I am not one of those who have either to fight shy or to be apologetic. Those who do not have the correct understanding of either the situation or the democratic norms may take shelter behind something or the other. Sir, I have a very clear understanding for myself of both democracy and parliamentary democracy. Those who do not have a correct concept of parliamentary democracy can point out day in and day out, speaking about dictatorship. On parliamentary democracy to which we claim we are wedded, can the hon. Law Minister throw some light in his reply? And I challenge him to do so. Can he really, in the words of all the jurists who have either preceded or succeeded Dicey, the great jurist of all, say that ours is a parliamentary democracy? Are we really a Cabinet system of government? In my humble submission, Mr. Vice-Chairman, we are neither. We are neither a parliamentary democracy, nor are we a presidential system of Government and because we are neither, whenever we do something or the other, we take the lopsided view and put the excuse on something else, interior or exterior. The basic concept of parliamentary democracy is parliamentary sovereignty and nobody can claim that our is parliamentary sovereignty. And if we are not a parliamentary sovereignity, how can we be a parliamentary democracy?

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We are in a way a removable government in our country by Parliament. That is the only point of similarity which can link us up with the parliamentary democracy, but the moment we eliminate that, we finish up with the whole thing. Then the points of difference start. I would crave the indulgence of the hon. Law Minister and I do not want the Chief Whip to obstruct the attention of the Law Minister. Therefore, Sir, we are a parliamentary democracy insofar as the Cabinet is removable by Parliament but are we a Parliament which is sovereign? We may be supreme, I subscribe to this, but I cannot say and I am sure nobody can say in his sense that ours is a parliamentary democracy because sovereignty presupposes anything, any act, any step taken which cannot be challenged by any external form. But anything even under our own Constitution done by way of a legislation is liable to be struck down and rightly so by a court of law and the moment there is an external authority which can look into your things and give a judgment and if necessary strike down what you have done, nobody can say that it is sovereignty. And we have accepted it in our Constitution; there is no dispute about that. Ours is a federation? I do not accept that. But certainly 1 do say that ours is a quasi-federation. But can a parliamentary form of Government fit into federalism? Dicey would not have agreed with that. He would have said that the parliamentary sovereignty can go hand in glove with unitaria-nism. We are not. Parliamentary sovereignty presupposes unwritten constitution where nobody can sit to scan and interpret, whereas we—the people of India—have adopted for ourselves a Constitution that is written. And the moment we have adopted a written Constitution, Mr. Vice-Chairman, we have, under the same Constitution, given authority to the Supreme Court and the High Courts to interpret that Constitution. That means it comes to this in one entence: we are a system of Government which is controlled by and even removable by a House called Parliament; the House itself is bound by the interpretation given by the Supreme Court—i.e. the judiciary—and whatever the House does can also be struck down by the courts. That means that the Cabinet is subject to the House and the House, in certain respects, is subject to the judiciary. Are we a parliamentary democracy? No.

In the U.S.A. the President is sovereign within the sphere demarcated for the President of the U.S.A. by their Constitution. He is on a par with the House and the judiciary on equality. Here the Government is responsible to and removable by Parliament and cannot claim to be on a par. In the U.S.A. whatever is defined to be the power vested in the President by their Constitution—and immense powers have been vested in the President of the U.S.A.—he is sovereign. Ours is not. And, therefore, Mr. Vice-Chairman, when the Law Minister the other day said, which Mr. Palkhivala has *ad nauseam* repeated, about checks and balances, I felt that there was no such thing as checks and balances in a parliamentary democracy. Yes, there are checks and balances in a federal set-up. There are checks and balances in a Presidential form of Government. There are checks and balances where there is a written Constitution. There are checks and balances when all the organs have to be functioning within their own spheres.

Now that we are not a parliamentary sovereignty—which is what we are not enjoying—then how do we go about it? Are we by these amendments trying to establish that parliamentary sovereignty? No. Then what precise objective are we achieving? I do not know. The Law Minister has not thrown light on this point as to what precisely we are going to achieve by voting these amendments which have been proposed by the Government through the Law. Minister. When Mr. Bhupesh

Gupta mentioned certain things, he said: "Yes, why should the Cabinet system of Government not be a basic feature of this Constitution?" I don't think there is anything basic in this Constitution. I cannot persuade myself to think so, because if there is anything basic, that is only the people of India. That is all. There is nothing basic. If we feel like thinking: All right, democracy is basic to "the Constitution, I would say: No, democracy has to be basic to the people of India. You cannot have it basic in the Constitution, because what is democracy again? Can there be any definition of democracy, though an attempt has been made here on the basis of secularism and socialism? And because there has been no definition of democracy, nobody can say that he does not recognise democracy. Even today a boy of 15 knows what democracy is. But I was on that point. When Mr. Bhupesh Gupta said that certain things need to be put in the basic feature like the Cabinet system of Government or Parliamentary democracy, I do not accept your Parliamentary democracy. We cannot make that tall claim because there is no substance so far as we are concerned in it. Assuming, for the sake of argument that, we are a Parliamentary democracy, I do not thifik it can be a basic feature. I agree with Mr. Shanti Bhushan there. How can it be a basic feature? I fully agree with you when you say that you will not be wedded fully to democracy, if at all because it is not a basic feature. Democracy should never be given the go-by. But what type of democracy? Can it be called a basic feature? All the founding fathers of the Constitution during the Constituent Assembly debates have said so. I think it was Mr. Tyagi and Mr. Saxena, among others, who said that tomorrow after 25 or 30 years in this country if a new generation emerges which wants to jettison the parliamentary form of democracy, whatever is there in the Constitution and replace it by the Presidential form of Government, who is going' to prevent them from doing so? If the founding fathers of the Constitution, not one but so many, cutting across the party lines, sitting here in the Central Hall, then called the Constituent Assembly, have said so, it could never be basic. The founding-fathers never deemed it to be basic. Tomorrow if the people of India so feel why should there not be the Presidential form of government in this country, I do not see any reason as to why it cannot be so? Therefore, it cannot be basic. But the argument that Mr. Shanti Bhushan as Law Minister gave is something to which I have to take exception. The argument he gave was this. After all, should we not have faith in the two-thirds elected by its people of both the Houses? Take this argument to its logical end. Why should we have faith in these two-thirds for A thing and no faith for B thing? If the people are responsible they are responsible. If they can raise wheat from this earth they can and if they cannot, they cannot. Therefore, the argument cannot be that for a certain thing we go to the people for referendum. Say plainly for God's sake, ye$_s$ we want this to be left to the good sense of the House. The day will be the blackest, Mr. Vice-Chairman, when two-thirds of the people in this House and in the Lower House are such as will gave the go-by to secularism. If two-thirds of the representatives of this country in future say that secularism need not be the basic feature of our Constitution, in the sense not of unamendability, but basic to the society, basic to the people, then who is going to put secularism in that? After all, the representatives come from the same society which elects them. And if two-thirds of the elected representatives think in a particular way, what makes us feel that the people are thinking in a different way? After all, let us leave many things to the good sense of the people. An unwritten Constitution in England can work. Parliamentary sovereignty in England can work and work successfully but we here feel lost. Very unfortunately in our country anything foreign is good and anything indigenous or local

[Shri A. R. Antulay] is bad. We have lost faith not only in the good things of our tradition and culture, not only in the good things or our civilisation and history, we have lost faith in ourselves, and that is why we feel, let us put some sort of balances. Yes, I know power corrupts and absolute power corrupts absolutely. But it did not corrupt, and if it did corrupt it could be corrected in England. If it did not corrupt the President of the U.S.A. who is vested with so much of power, why should we feel it will corrupt our people? And yet I hold the same view which I held about two years ago and I held ten years ago and which I shall hold ten years hence also. Even if you are there, you are the representative of the people. Why should we distrust you and say that it makes it feel that you are fetting to do something which is going against the people? You have been elected by the people. And if the people in India have chosen you to be here, most centainly they want you to be here knowing your views as they do. And, therefore, we cannot say that whatever you in your wisdom perhaps, and two-thirds of the Lower House and in the Upper House have done, in spite of that we should go to the people. Apart from that, as a lawyer he will know wherefrom the idea of referendum has come. It comes from *Kesavananda Bharati,* it did not come before that. And the Law Minister, as a brilliant lawyer, if I make a submission will accept it. If he does not accept it, he will have to give good reasons for that. In my humble opinion, the decision in the *Kesavananda Bharati* case is a nullity; it is without jurisdiction. Only a smile will not do; you will have to listen when I say it.

Mr. Vice-Chairman, article 32 of the Constitution envisages enforcement of the Fundamental Rights. It does not envisage change or amendment of the Constitution. Article 32 is there when Mr. Shanti Bhushan or A. R. Antulay can go to the Supreme Court and say, "Fundamental Rights of mine are attacked and I would like to have protection and the guarantee to be enforced." Now, how does the Supreme Court, in a case under article 32, decide on the amendability or un-amendability of the Constitution? Mr. Vice-Chairman, since the Law Minister has been a practising lawyer till the other day, I will pose a problem to him—and I will explain it in half a minute. From 1950 to 1968, the Supreme Court, in terms held, in a series of decisions and judgments, that Parliament can amend any part of the Constitution, any chapter in the Constitution, any clause or article of the Constitution. When in the *Golak Nath* case they wanted to put a curb and a restraint on the powers of Parliament to amend the Constitution, they found a very ingenious method: They linked up article 32 with article 13 and said, "Article 13 says that any law passed, which abridges or takes away the Fundamental Rights, will not be held valid, will be held void, will be struck down." Now a constitutional amendment is passed under article 368. Here I may humbly make a tall claim by saying something which, I hope, you will consider. Suppose the Constitution-makers had laid down in article 368, for the amendment of the Constitution, a procedure different from the one that is there, namely, instead of initiating an amendment through a Bill as it is today—ever since the Constitution was adopted—and said a resolution will be passed by two-thirds majority in both the Houses and that will be the amendment of the Constitution, then how could the Supreme Court have sat in judgment in the Golak Nath case to say that a resolution i_g la_w and therefore it should be struck down as bad in law?. Mo. That is why, Mr. Shanti Bhushan, the hon. Law Minister, when this Constitution was to be amended, I had myself made a suggestion, as Secretary of that Committee: "Look, I think we better do this: Instead of a Bill we say a resolution should be initiated, to be passed by two-thirds in the Lower House and the same resolution to be adopted in the Upper House. Then it goes to the President and he says, 'Well, certified.' when it becomes a constitutional

amendment." But, precisely because that is not the procedure and precisely because the procedure for passing an ^ordinary Bill and the procedure for passing a constitutional amendment are the same except for the fact that a constitutional amendment is passed by two-thirds majority and ordinary legislation is passed by simple majority, the Supreme Court, in the *Golak Nath* case, have said, "Look. This is also a law and because this is a law under article 13 of the Constitution, if it violates the Fundamental Rights, then it will be struck down." Now, please tell me, Mr. Law Minister: How, can you test one part of a touchstone with the other part of the touch-stone? Have you ever heard of such a fantastic proposition ever propounded in the world? A touchstone is a touch-stone. It is there to test other things—barring itself. But, if a Constitutional part is to be tested on the Constitution, it means a Constitutional Amendment is to be tested on article 13 in a case coming before Parliament under article 32. Now, assuming that to be correct—which it is not—it is a law. . .(Interruptions) I know. I am coming to that. I have fully studied it. And this point of mine is not new. But nobody has answered it, unfortunately. I would like you to answer it. Now, assuming that the Supreme Court was right and the Supreme Court said All riglit. Even by two-thirds majority if you pass a law, it is a law and, therefore, it is to be struck down, in the *Kesava\ Bharati* case, the Supreme Court said: "No, the Golaknath case was wrongly decided. It is not a law which is passed. It is a Constitutional Amendment. Justice H. R, Khanna's judgment is very ingenious. One day, in a joking mood, I told him: "I like your reasoning; till the end, I thought you were reasoning for Parliament but then suddenly you shifted. Otherwise, it is very intelligent." It is an intelligent judgment given by Justice H. R. Khanna. I must compliment him. The only thing is that his conclusion and his reasoning cannot be linked up. That is the only thing. Because his arguments lead to the point that Parliament can amend any part of th$_e$ Constitution; .here is no such thing as law. Now, in the Golaknath case also^ the only linl between article 32 and article 13, how does it get jurisdiction to say that the basic features of the Constitution cannot be changed? Where does this thing come from? The Law Minister will please throw some light on this. Because, under article 13, the Constitutional amendment law, the Golaknath case, howsoever fantastic, howsoever—excuse me, with due respect— preposterous, is correct. At least, there was some link. When the link is broken, what is there to connect article 32 with article 368? Now, Mr. Vice-Chairman, article 368 can only make certain amendments under this, thisl, this, and has given no basic feature. I could not find it. But I am not on that. I say that judgment is itself in nullity; it is without jurisdiction. And if the Court in their nullity jurisdiction and wise judgment have said certain things, are we going to say: All right, because the Supreme Court has said this. Some<-body has said—I think Dr. Bhai, Mahavir—that it is a compromise. Some people say you cannot change it; some people say it can be changed. So the compromise is the referendum. If you are going to tinker with the Constitution by compromises, God save our country! It is not a matter of compromise. It is a matter of conviction. Either Parliament has got the right; or it does not have the right. No country which can really boast of Constitutional sovereignty, especially the United Kingdom, can get even an ordinary law passed struck down, but we have given that right to the Supreme Court—and we are not regretful for that. Do not make a mistake. But for the Court to come forward and have the audacity to say: Oh, you are also passing an amendment of the Constitution. We strike it down. They are striking down a part of the Constitution. They are striking down their own authority from which they get that power. They are striking down something which they are not autho-

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rised to. And they are striking down under the authority which the Constitution has never vested in them. Would the Law Minister explain how in a given case of article 32, if article 13 goes—I do not want to be on the Golaknath ca,se but I shall speak only for the sake of argument—that having been overruled, how does the Supreme Court get the authority and the jurisdiction to come to the conclusion of the basic features? From where does he get the basic features, I do not know. Therefore, why this referendum? What is the basic feature? Do you think that we have gone that barren that our people can elect any sort of fellows? No, at least I do not think so. *(Time bell rings)* I have enough time. If you do not mind, I can take some more time out of the time given to my party. Now, Mr. Law Minister, please tell me, assuming for fh$_e$ sake of argument that this referendum clause is accepted by our party—it is only assuming, though I do not—you pass a law. You have said democracy and secularism, not socialism. Though wrongly, they forget socialism because they think that socialism means all things to all men. Socialism means freedom from being exploited. Oh, God! even the best of exploiters have always claimed that nobody should be exploited, nobody on earth.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): You claim it.

SHRI A. R. ANTULAY: Not we. You must have faith in the people. Politically, the people have put us here, instead of over there. Not Constitutional referendum. They do not have time for this every time. Either they return you or not return.

They have taken two things: democracy and secularism. You have not defined democracy, you cannot and I hope do not. And the definition that you have given of secularism is the biggest joke of the year, "equal respect for all religions." *Sarv dharma sambhav.*

SHRI L. R. NAIK (Karnataka): And a joke on the Constitution.

SHRI A. R. ANTULAY: How are you going to put with secularism definition there? I hope the House will please try to appreciate. Secula-rism$_f$ the$_v$ have defined $_a$s equal respect for all religions. Do the religious haters ever say that they hate other religions? No. Even the worst fanatics have never said that they hated some other religion. How are you going to enforce secularism? Suppose, somebody comes and says that he wants Ramraj. Nothing wrong, I would say, provided you really go by Ramraj, you really do what Ram did, and under the shelter of Ramraj you do not make it Hindu raj. Let us say, tomorrow somebody comes and says, it should be Hindu raj. How does it attack secularism of this Constitution under your definition? It does not. It does not. I am a lawyer; you are a lawyer. We have got, of course, to interpret many things, and how do we interpret, we know. Interpretation is unfortunately spreading beyond the courts, and interpretation is goi'.ig i$_n$ a different way than it should have been. Even if a Hindu raj is declared, under the Constitution, under your definition, it will not be an attack on secularism because if you have Hindu raj, that does not mean that you are anti-Islam, Christianity or some other religion. You have equal respect to them. Let there be Hindu raj; let there be Muslim raj and let there be equal respect for Hinduism. Your definition is no definition in the secular sense as I know. You have not defined democracy.

Now about compromising the independence of the judiciary. I have many things to say, but I would say only a few things. Now compromising the independence of the judiciary. I have known many compromises, but I have never known such a compromise. What is meant by compro-

mising the independence of the judiciary? And it is the judiciary which has to interpret. Now, Mr. Shanti ^Bhushan, whatever you have done, """i do not say that you have done wrongly because I have held that, I have written a book on that. I do not mean that what I think was correct for me to do was being done by you. If you supercede a judge under a Constitutional amendment, if that Constitutional amendment goes to the Supreme Court saying that you are not bound to take the seniormost as the Chief Justice of India or the seniormost in the State as the Chief Justice there or the seniormost to go to the Supreme Court as a judge and the judiciary says that its independence is compromised and that it is *ultra vires,* you have got to go at a referendum for anything in the domain of the judiciary or any change whatsoever.

I am not saying this on party lines. In fact, I tell you that the powers which are necessary for the Government should be necessary for you as much as they were necessary for us when we were on those benches. I am not talking on party lines because the Constitution 4 P.M. is not a document for one Government; it is for all times to come. All these things which are enumerated there are capable of meaning ten things to ten people, different things to different men. It is anything for anybody. You are opening a Pandora's box. Any amendment that you bring here, anybody can challenge and you will have to refer it to a referendum. And the referendum itself will be a thing which will have to be changed by a referendum. It means you are finishing us for all times to come. You cannot change article 368 as you would like it to be, amended, and there will have to be a referendum over it. I think the people of India will get bored and ultimately they may lose faith in iemocracy itself. It will not be a

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question of you and me; it will be a question of the people of India. Therefore, only five points I will make before I conclude.

Referendum is impracticable. Referendum is loss of faith in the representatives of the people. Today you are there. I have faith in you. I am accepting you. Everybody accepts you. Why are you saying that you have got to go to the people for everything? After all, the people have no time to be bothered with these things. They send you as their delegate; they send you as their representative. They want you to do your job. For everything if you go about asking, "How shall I proceed? How shall I do it?", then you are not a good secretary. Better resign a: secretary and let somebody else take over as secretary, who can really see the mind of the people and go about his job accordingly.

Secondly, Directive Principles. I really do not know—perhaps that is why you have not put "socialism" as a basic feature—why you have not kept the Direct Principles as Paramount to the Fundamental Rights. Yesterday you said, Mr. Law Minister that Fundamental Rights belong to all as it is the individuals who make the society. Wonderful! But 80 per cent of the people of this country cannot enjoy the Fundamental Rights. They do not have the time. The Fundamental Rights which are there in the Constitution are our ideal, rather than a directive. We want all people to be enabled to enjoy those Fundamental Rights. But that stage is yet to come. And till that stage comes, we must put the social purpose, the social good before and above the individual good, that is, the Fundamental Rights. You have not done that. What you are doing is, you want each person to have the Fundamental Rights. You want to please everybody. But go to the Adivasi who is walking in the jungle,

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You ask him, "What is your name?, He says, "My name is Ram". You say, "All right, Ram, what is your age"? He says "Thirty-five" Now, if you tell him, "You can become the Rashtrapati of this country because under the Constitution of the country, you are eligible to become the Rashtrapati", it will be a big joke. And it will b$_e$ such a big joke that he will say, "You are telling me that I ean become the Rashtrapati, but you do not give us the fundamental right to live! Ou$_r$ people are being slaughtered." And what Mr. Kalp Nath Rai raised in this House half-an-hou$_r$ ago should make us hang our heads in shame. A boy of 15 and a girl of 17 leave their house. They are dressed up by their parents. They go for a certain programme in AH India Radio. At that time, the parents, the poor parents, do not know that they will not come back, that they will be brutally butchered, murdered and thrown on the Ring Road. This is happening in the Capital city of India. And you are talking of fundamental rights. Let alone the other fundamental rights, where is the security to live? Where is the fundamental right to live? Where is the fundamental right at least to live? Therefore, Mr. Law Minister, so far as the Fundamental Rights are concerned, they should not be given precedence over the social directives (Times belt *rings).* Therefore, cutting across party lines, I would urge that the Directive Principles—I am not enumerating them; I have taken down long notes—should be given precedence over the Fundamental Rights. If in furtherance of every Directive Principle, a law is made, it should not be challanged in a court of law. What are those Directive Principles for? They are for the poor.. me one Directive Principle which is not for the poor? Every Directive Principle is in the interest of the poor. That is why the Directive Principles are for the society, for the majority of the society, the 80 per cent of the poor. You are not doing , that. These social rights which are rights under the Directive Principles which should be justiciable, if a law in furtherance of these is made, it should not be made void. Then there is the secular concept, the secularism on which you propounded and ther$_e$ is the econcept of democracy on which you have very skilfully kept mum. And lastly I come to education. Of course, there is the Article, 368. About education, the honourable Chairman wants education. So I would like to say that every boy and girl should be educated. Mr. Chagla who is with you has written an article in the Illustrated Weekly; I was reading an article written by him in the current Illustrated Weekly. Apart from the fact that he wants a presidential form of government in our country to which I do not subscribe at this stage at least—I have not yet lost my faith in the present form of government or whatever it may be called, though I do not want to call it a parliamentary democracy—he says he has been fighting for education ever since he was an Education Minister; if we want our country to be united and strong, if you want it to be one, then kindly put it in the concurrent List. Why have you not taken it up? Let education be there; let forests be there. All this sort of difficulties that we have been facing day in and day out continuously, in all the successive years are exactly as a result of this... Therefore, while resuming my seat I only make a humble submission, we should apply our mind to tbi$_E$ problem, irrespective of this or that consideration. There are things which we accept; there are others we do not accept. (Time bell rings) last point, Sir. There were certain things about which we strongly feel there are other things which are desirable. "Desirable" means, they may be there, may not be there...

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Now I am calling Mr. Rabi Ray.

SHRI A. R. ANTULAY: I.certainly wanted to speak about certain things. On them now my friends will, of course, speak. I would only humbly appeal to your conscience, your good sense, your sense of equity, to accept our suggestions. Thank you.

THE VICE-CHAIRMAN (SHRI ARVIND GANESH KULKARNI): Mr. Rabi Ray, your party has got only 10 minutes.

श्री रबी राय (उड़ीसा) : उपसभाध्यक्ष महोदय, आप जानते है कि मैं ज्यादा समय नहीं लेता । अंतुले साहब का भाषण सुनने के बाद हमको एक टिप्पणी करने के लिए आप अनुमति देंगे कि फ्रांस के बोरबोन राजवंश की तरह कुछ अनुमति से इतिहास से सीखे नहीं । जैसे अंतुले साहब से मैंने आशा की थी वे उसके अनुसार ही बोले कि उनके लिए कोई चीज बेसिक नहीं है, कोई चीज बुनियादी नहीं है. यह उनके भाषण के दौरान उनके जीवन का दर्शन और उनकी राय में जो संविधान का दर्शन है सामने आ गया। (*Interruptions*) कल्प नाथ राय जी जरा सुनने की कृपा करें। सब से पहले में आपके सामने एक चीज अर्ज करना चाहता हूं । वह एक व्यक्तिगत चीज होगी क्योंकि जिस आसन पर आप बैठे हुए हैं और सदन के जो चेयरमैन हैं जती जी जब मैं संकट कालीन स्थिति के दौरान अम्बाला जेल में बन्द था उस समय करीब 20 चिट्ठियां मैंने लिखी होंगी लेकिन किसी को भी स्वीकार नहीं किया गया और न ही एकनोलेजमेंट दी गई । संविधान को इस तरीके से हत्या की गई थी। जब मैं अंतुले साहब को सुन रहा था, ऐसा लग रहा था जैसे जनता को आरती उतारते हों । मेरे मन में आता था क्योंकि गरीब लोगों के बारे में जब स्तुति करते थे तो फिर मैं अपनी राय नहीं बताऊंगा क्योंकि भारतीय जनता पिछले 15 महीनों से जानती है कि संकट कालीन स्थिति के दौरान स्वर्ण सिंह कमेटी के अनुसार संविधान में परिवर्तन हुआ जिसमें संसद सदस्य के नाते अंतुले साहब भी रह चुके हैं और उस कमेटी के मंत्रित्व को स्वीकार किया था और यह व्यक्तिगत जिम्मेदारी उनकी होनी चाहिए । जिस तरीके से संविधान को तोड़ मरोड़ कर संविधान की आत्मा को आतम किया गया था वे भी जिम्मेदार हैं क्योंकि स्वर्ण सिंह कमेटी ने सिफारिश की थी जिसके अनुसार ज्यूडिशियल रिव्यू को खत्म किया गया था, उससे ज्यादा 56 क्लाज के तहत 42वां संशोधन किया गया था । तो इसलिए जो मैंने सोचा था कि अंतुले साहब अंतरमुखी बनकर सदन से माफी चाहेंगे क्योंकि उनके दल ने संविधान की आत्मा का खात्मा किया था । मैं उनसे यह उम्मीद नहीं करता हूं कि वे अन्तरमुखी बनेंगे । क्योंकि उनमें अन्तरमुखी बनने की शक्ति नहीं है । इसलिए उपसभाध्यक्ष महोदय, में आप लोगों से कहना चाहता हूं कि संविधान के बारे में जिस तरीके से–क्योंकि मैं कहना चाहता हूं, जिन जिन कारणों के लिए–तो जिस तरीके से यह किया गया, मैं कहना चाहता हूं कि अंतुले साहब फिर उनके भाषण के दरमियान जिन फासिस्ट तत्वों को खुद इन्होंने उभारा था, अभी भी वे उनकी स्तुति कर रहे हैं । मैं नहीं जानता इंदिरा गांधी क्या यहां पैरोनशाही को लाना चाहती हैं लेकिन यह उनका जीवन-दर्शन और राजनीतिक दर्शन साफ है। मैं सदन को कहना चाहता हूं कि जो एक अंग्रेजी पत्रकार है, उपसभाध्यक्ष जी, आप जानते हैं, वरनार्ड लेविन का कहना है कि शाह कमेटी की सिफारिशों और रिकमेंडेशनों के आने के बाद वह तीन लेख लिख चुके हैं जिनको उपसभाध्यक्ष जी, आप खुद भी पढ़ चुके होंगे, मैं उनके मुंह से यह कहलाना चाहता हूं कि हिन्दुस्तान में इन्दिरा गांधी के नेतृत्व में जिस तरीके से डिक्टेटरशिप चलायी गयी, जिस तरीके से प्रजातंत्र के जो इंस्टीटयूशंस हैं, संस्थाएं हैं उनको आहिस्ते, आहिस्ते, सालों

[श्री रवी राय]

से खत्म कर दिया गया, जिस तरीके से पार्लियामेंट को खत्म कर दिया गया, उसी सिलसिले में मैं कहना चाहता हूं कि लेविन साहब का कहना है कि इंग्लिस्तान में मान-लीजिए अगर लोग सचेत नहीं होंगे, यहां पर लोग पहले से आगाह नहीं होंगे तो वहां भी यह चीज आ सकती है। मैं लेविन साहब के मुखारविन्द से यह चीज कहलवाना चाहता हूं :

I have before me the two volumes of the commission's published report, and have been through them with care. And it now seems to me well worth my spending, all three of my columns this week in presenting the story of what Mrs. Gandhi and her cronies (especially her son) actually did in the 21 months between her seizure of dictatorial powers and her overthrow. I do this partly because otherwise it cannot be long now before her sycophants here, emboldened by her political survival and indeed politically flourishing condition, begin to tell us once again how de-voted she was and is to the democratic ideal, how mild and in any case inescapable were the mea-mures she took against the most intransigent of her opponents, how cruelly exaggerated were the stories of injustice, censorship and brutality, and how of course she had no knowledge of the excesses committed by officials and others to which she would certainly have put a stop if she had known about them—may, did put a stop as soon as she did know about them. But I have another purpose in examining her record in this place. The ambitions and qualities that carried Mrs. Gandhi and her colleagues down the road they travelled are by no means unknown here; indeed, some of the attitudes displayed will be horribly familiar. And I write, therefore, in the hope that those of my readers who still need to learn that it can happen here or indeed anywhere—

will have their British eyes opened by my Indian examples.

उपसभाध्यक्ष महोदय, अंत में लेविन साहब कहते हैं :

I can only add now that the Report of the Shah Commission shows how right the Indian people were, and makes it all the more important for us to strengthen our resolve to ensure, should the same choice face us, that their lesson will not have been taught or learned in vain.

उपसभाध्यक्ष जी, इसलिए मैंने यह चीज आपके सामने रखी कि संविधान संशोधन जिस तरीके से किया गया। जो वचन जनता पार्टी की ओर से दिया गया, कुछ हद तक उसको पूरा किया गया। लेकिन मैं आप लोगों के सामने और सदन के सामने एक चीज रखना चाहता हूं कि प्रीएम्बुल में एक समाजवादी समाज और धर्म निरपेक्ष समाज के बारे में कहा गया है, असल में यह तरमीन पहले नहीं था और 42वें संशोधन में आया था। इसलिए समाजवादी होने के नाते अगर उसमें रखना है तो मुझे इसमें कोई एतराज नहीं है। लेकिन उपसभाध्यक्ष जी, सवाल है अभी जो मौजूद स्थिति है हम मानकर चलें कि उस आदर्श को पूरा करने के लिए हम लोगों को बहुत जबर्दस्त पग उठाने पड़ेंगे। संविधान के बारे में मैं एक चीज कहना चाहता हूं कि मैं अंतुले साहब के साथ कत्तई सहमत नहीं हूं जब वह कहते हैं कि संविधान में कोई बेसिक चीज है ही नहीं, बेसिक स्ट्रक्चर है ही नहीं। उपसभाध्यक्ष जी हर एक मनुष्य के पेट और मन दोनों होता है और जिस तरीके से पेट की आवाज को और पेट की मांग को बुझाना पड़ता है, उसी तरह से मन की जो मांग है उसको बुझाने की भी जरूरत होती है। इसलिए यहां मन और पेट का सवाल है, इसमें हमारे लिए कोई अंतर नहीं है, कोई इसमें प्राचीर नहीं है अंतर नहीं है। रोटी और आजादी इन दोनों में कोई अंतर नहीं रहना चाहिए और अंतुले जैसे कांग्रेस के सदस्यों

मेरा यह कहना है कि वे अभी भी सबक लें कि किस तरह से रोटी और आजादी, ब्रेड और फ्रीडम दोनों में अंतर नहीं करना चाहिए जो अंतर करेगा, न वह ब्रेड के लिए लड़ पायेगा, न गरीबों के लिए और न समाजवाद के लिए लड़ पायेगा या मौलिक मानवीय अधिकारों के लिए लड़ पायेगा । दोनों की मनुष्य को समान रूप से जरूरत है । इसलिए मैं कहना चाहता हूँ कि इस संविधान के दरमियान, संविधान के जो संशोधन हैं, उसे किया गया है, दोनों को समान रूप से देखना होगा । मैं एक अर्ज करना चाहता हूँ कि 19 महीने में जिस तरीके से संकट कालीन स्थिति का देश में सामना किया गया, डेढ़ लाख लोग जेल में गये, डेढ़ सौ लोग मरे और उसके बाद आज अगर कोई कहता है कि बुनियादी मानवीय अधिकारों की जरूरत नहीं है तो मैं आज कहना चाहता हूँ कि जब तिहास लिखा जायगा, 50 साल के बाद तो जनता सरकार की यह जो बड़ी उपलब्धि है कि जिन मानवीय अधिकारों को इंदिरागांधी ने छीन लिया था उसको दुबारा जनता सरकार ने लौटा दिया और लौटा इसलिए दिया कि रोटी की लड़ाई के रास्ते को साफ किया जा सके । रोटी की लड़ाई के लिए बुनियादी अधिकार चाहिए । मानवीय अधिकार न होते गरीबों का मुह बन्द कर दिया था नहीं खुलता । रोटी की लड़ाई लड़ने के लिए भी मानवीय अधिकार चाहिए, तो यह सवाल है, उपसभाध्यक्ष महोदय, कि 42वें संविधान संशोधन के दरम्यिान कोशिश की गयी, स चीज को लाने के लिए संसद् ही सुप्रीम है । लेकिन सही बात यह है कि संसद संविधान के तहद है । जनता और संविधान इसका सर्वोपरि है । संसद एक लिखित संविधान से ही चलता है । इसलिए जो यह सिद्धांत लाते हैं कि संसद ही सार्वभोम है वे संविधान की जो मौलिक आत्मा है उसके खिलाफ है । इसलिए मैं इस चीज को कहना चाहता हूँ कि संशोधन कोई मानवीय मूल अधिकारों को टर्मिनेट नहीं कर सकता है । इसलिए इसमें रिफरेन्डम का जिक्र किया गया है क्योंकि आगे चलकर आज मैं शांति भूषण से यह चीज पूछना चहता हू कि यह चीज जिस तरीके से 352 से 360 धाराएं आयी हैं जिससे आपातकालीन स्थिति को लागू करने के लिए जो कुछ अधिकार दिये गये है कुछ शर्तें, कुछ सेफगार्डस के साथ

[The Vice-Chairman (Shri Syed Nizam-ud-Din) in the Chair]

लेकिन मेरा एक अहम सवाल है कि जर्मनी के वाईमर संविधान में भी हम लोग कहते थे दुनियां में सबसे आगे वाईमर संविधान था । फिर उपसभाध्यक्ष जी आप जानते हैं कि किस तरीके से 2 अगस्त 1934 को हिटलर ने उस संविधान को भंग कर दिया और जर्मनी की जनता को कह दिया कि म्यूहरर, हिटलर के प्रति लायलटी दिखाईए । जिस तरीके से वहां के सभ्य समाज को तानाशाही का शिकार बनाया गया मैं अपने ला मंत्री से अनुरोध करूंगा कि यह जो 352 से 360 धाराएं हैं जो सेफगार्डस हैं, उन सेफगाडस को मद्देनजर रखकर सदन को और देश को तसल्ली देनी चाहिए कि आगे चलकर, सौ साल तक भी कोई डिक्टेटर संविधान को मैनीपुलेट करने का इंदिरागांधी का रास्ता न पकड़ सके ।

क्योंकि हमको समाजवाद की लड़ाई के लिये मौलिक मानवीय अधिकार चाहियें । इसलिये मैं चिन्तित हूं क्योंकि जो वायदे हम लोगों ने किया था, आज जनता पार्टी के कार्यकर्ता के नाते मैं कहना चाहता हूं, मैं इस बात से सन्तोष नहीं कर लेना चाहता हूं कि हमने जनता को वे मौलिक अधिकार, जो श्रीमती इन्दिरा गांधी ने छीन लिये थे उनको लौटा दिया । आज संविधान में हम कहें कि समाजवादी समाज को अपनाना चाहते हैं । हमारी जनता पार्टी जिन सिद्धान्तों पर चल रही है, वह गणतान्त्रिक समाजवादी सिद्धान्त गान्धी जी के मूल्यों पर आधारित हैं । इसलिये आज जनता पार्टी के कार्यकर्ता के नाते, एक संसद सदस्य के नाते और एक भारतीय जनता के सेवक के नाते मैं

[श्री रबी राय]

अन्तरमुखी होकर के खुद को पूछना चाहता हूं और मैं चाहता हूं कि हमारे ला मिनिस्टर भी अन्तरमुखी बन कर के खुद को पूछें कि जो वायदे किये थे गरीबों के लिये, उसके लिये इस संविधान में कोई परिवर्तन किया है क्या ? अभी तक जो करोड़ों नौजवान हैं जिनसे जनता पार्टी की घोषणा के तहद वायदा किया गया था कि 21 साल को घटा कर 18 साल वालों को हम वोटाधिकार देंगे, बालिग बनायेंगे, तो क्यों नहीं किया गया ? पन्द्रह महीने बीत गये। यह सवाल है, क्योंकि मैं जिस तरोके से चाहता हूं कि नई पीढ़ी का इन्वाल्वमेंट देश के डिवैलपमेंट में हो, नया हिन्दुस्तान बनाने के लिये हो, तो इस चीज को क्यों नहीं किया गया ?

उपसभाध्यक्ष जी आप हम से सहमत होंगे कि राजनीति में समय का बहुत जबरदस्त असर रहता है। जो राजनीतिक काम जो आर्थिक कार्यक्रम समय के अनुसार नहीं होता तो जब रफ्तार खत्म हो जाती है वह आगे चल कर नहीं हुआ करता है। पिछले तीस साल से हम लोग देख रहे हैं कि जिस दिन हमारा देश आजाद हुआ और लाल किले पर यूनियन जैक हटा कर के देश का राष्ट्रीय झण्डा फहराया गया, उसके बाद लोग एक सामाजिक क्रान्ति के लिये तैयार थे। लेकिन वह नहीं किया गया। जिस तरोके से विश्वासघात आजादी के बाद हुआ, मैं आज सोचता हूं कि आज दूसरी आजादी की लड़ाई जिसे जनता ने लड़ा और जीता, कोई मुट्ठी भर नेता, जनता पार्टी के चुनाव में जिस तरह की जीत हुई, यदि कहें कि इसके लिये हम जिम्मेदार हैं, यह मैं नहीं कहता क्योंकि गरीब लोग, ग्रामीण लोग जोकि अनपढ़ हैं उनके मन में आ गया कि इस तानाशाह सरकार को हमको खत्म करना है।

इसीलिये एक ऐतिहासिक पग उठा कर के क्रांतिकारी परिवर्तन जनता ने किया। हम लोग जो सरकार में बैठे हैं, शान्ति भूषण जी जो जनता सरकार में यहां आये, यह क्रांति की सन्तान है। अभी हमको लगता है कि इस आन्दोलन के फलस्वरूप 23 मार्च को जो सरकार बनी, जिस उत्साह से, जिस उमंग से लोगों ने प्यार, पैसा और साथ दिया, उसके बाद जिस रफ्तार से सामाजिक और आर्थिक कार्यक्रम होना चाहिये था, वह नहीं हुआ है। इसको मैं आपके सामने कहना चाहता हूं। तो संविधान में इस तरीके से हमको देखना है। आर्थिक कार्यक्रम के लिये। हमने कहा था कि संविधान में परिवर्तन करेंगे, डाइरैक्टिव प्रिन्सिपल्ज में कहा गया है कि हर एक को रोजगार मिलना चाहिये, राइट टू वर्क, उस सिलसिले में हमने क्या पग उठाए हैं ? उस सिलसिले में समाज में परिवर्तन करने के लिये संवैधानिक परिवर्तन करने की जो जरूरत है, हमने किया कि नहीं। उसके साथ हमने फूल एम्प्लायमेंट की भी बात की है। उसके साथ ही जो गरीब अमीर की एक बड़ी जबरदस्त गैर-बराबरी है उसको पाटने के लिये हम लोगों ने कुछ पग उठाने के लिये अपने चुनाव घोषणापत्र में कहा है। लेकिन अभी तक हम नहीं उठा पा रहे हैं। आज इस बात की जरूरत है कि जनता सरकार के मन्त्री, कार्यकर्ता, संसद सदस्य और हम सब लोग अन्तरमुखी बनें कि किस तरीके से जो संविधान में मौलिक अधिकारों को जनता सरकार ने जनता-जनार्दन को लौटा दिया उसका फायदा उठा कर के जो सामाजिक और आर्थिक कार्यक्रम करने हैं उसकी तरफ हम जा रहे हैं कि नहीं जा रहे हैं।

इसलिये हम लोगों को अन्तरमुखी बनना चाहिये। तो इसलिये उपसभाध्यक्ष जी इस बात को जब हम लोग.....

एक माननीय सदस्य : आप अन्तरमुखी कब बन रहे हो ?

श्री रबी राय : संशोधन करने जा रहे हैं तो अन्तरमुखी बनने के लिये, मैं नहीं जानता

कि हमारे दोस्त इन्कार क्यों करते हैं। तो सवाल यह है। अन्तुले साहब जब जस्टिस श्री एच०आर० खन्ना साहब का जिक्र कर रहे थे तो उन की बात सुन कर मुझे ताज्जुब हुआ कि किस तरह से उन्होंने कहा कि जस्टिस एच आर खन्ना साहब ठीक तरह से विचार किए थे जब कि उनका कन्क्लूजन ठीक नहीं था? मैं उन की खिदमत में और सदन की खिदमत में श्री एच०आर० खन्ना, जिनको मैं अच्छा खासा ज्यूरिस्ट मानता हूं उनका ही इमरजेन्सी के सिलसिले में और उसके बाद जो काम होना चाहिए था, जो खुद का बयान था उसका एक उद्धरण देना चाहता हूं :

"The end of the emergency was understandably a time of rejoicing all over the country. During the period of the emergency the lights which are the hallmarks of a free society were put out one after the other and we were all wondering as to when would they be aglow again. It was like a nightmare wherein there was an eclipse of the higher values of life and words like sanctity of life and liberty appear to be an anachronism and sounded almost like an echo from another world. Fear stalked then and, as is but natural in such a situation, its attendants were servile sycophancy, blatant opportunism and nauseating charlatanism and the casualties were the noble impulses of the mind.

Now that the euphoria over the end of the emergency is over and a new government has come into power on the test of people*? right-ous indignation against the excesses of the emergency, it is appropriate that we do a bit of stock taking and indulge in a bit of introspection. The necessity for such introspection is all the more great because when one breaks loose the chains which have bound him for some time and got out of an atmosphere of suffocation, the danger is that one may not go to the other extreme and lose one's moorings."

उपसभाध्यक्ष महोदय, मैं खत्म करने के पहले अन्त में कहना चाहता हूं कि हम सब लोगों को यह बात याद रखनी चाहिए कि इतिहास में जब जब कोई डिक्टेटर या तानाशाह एक प्रजातान्त्रिक संविधान को खत्म कर के गद्दी पर बैठ जाता है तो उस के पहले बुद्धिजीवी वर्ग हो या जनता के जो बोकल सेक्शन है, उन के मन से तानाशाही का विरोध करने की भावना और संकल्प शक्ति सब से पहले खत्म होती है, यह इतिहास से हम सीखते हैं इसलिए कि हम एक मुक्त समाज में विश्वास करते हैं, हम डिसेण्ट में विश्वास करते हैं। तो इसलिए जब हम मुक्त समाज में विश्वास करते हैं, लोकशाही में और विकेन्द्रीकरण में विश्वास करते हैं, राजनैतिक विकेन्द्रीकरण और आर्थिक विकेन्द्रीकरण में विश्वास करते हैं, और जो यह मानते हैं गणतन्त्र में लोक शाही का मतलब है आर्थिक और राजनैतिक अधिकार का विकेन्द्रीकरण तो आज इस बात की ज्यादा जरूरत उन लोगों को महसूस होती है जो सचमुच हिन्दुस्तान को एक नया हिन्दुस्तान बनाना चाहते हैं। इस के लिए हमको गांधी जी के अन्त्योदय को याद रखना चाहिए, हम को देखना चाहिए कि हिन्दुस्तान में जो गरीब से गरीब आदमी है, जो सबसे नीचा से नीचा आदमी है वह सबसे ऊंचे पर उठे और गांधी जी चाहते थे कि हिन्दुस्तान का प्रधान मन्त्री वह बने जो हरिजन घर की लड़की हो और जवाहरलाल नेहरू उसका सचिव बने---यह मैंने गांधी जी की किताब में पढ़ा था जब मैं जेल में था कि हिन्दुस्तान का प्रधान मन्त्री एक हरिजन लड़की बने जिसका सचिव जवाहरलाल नेहरू बने। (*Time bell rings*) अन्त में मैं कहना चाहता हूं कि यह जो 45वां संविधान संशोधन विधेयक है उस के अन्तर्गत समाज में मौलिक परिवर्तन करने की गुंजायश है। . . .

श्री कल्पनाथ राय (उत्तर प्रदेश) : शिक्षा के विषय में आपकी क्या राय है ?

श्री रबी राय : शिक्षा के विषय में पब्लिक स्कूल, जिसको आप बढ़ा चुके थे, उसको ख़त्म करने के लिए हम कटिबद्ध हैं और हम इसके पक्ष में नहीं हैं, राज्यों को जो अधिकार दिए गए थे, जैसा आपकी पिछली सरकार ने किया था, कि संकटकाल के दरमियान सारे राज्यों के अधिकार को ख़त्म करके केन्द्र को मजबूत किए थे—उसके हम हामी नहीं हैं इसलिए शिक्षा के स्तर में कोई भी क्रान्तिकारी परिवर्तन करने से पहले हम करेंगे कि प्राथमिक शिक्षा का समान स्तर हो चाहे वह राष्ट्रपति का बच्चा हो चाहे वह गरीब से गरीब एक मेहतर का बच्चा हो वह एक ी स्कूल में जा सकता है । यह हमारी राष्ट्रीय प्राथमिक शिक्षा नीति होगी जिसके लिए हम री जनत सरक र कटिबद्ध है, यह मैं आपको बत न चाहता हूं ।

DR. RAFIQ ZAKARIA (Maharashtra) : Mr Vice-Chairman, Sir, during the Lok Sabha elections, the Janata Party in its manifesto assured the people that they would do away with the Forty-Second Amendment *in toto.* In their enthusiasm, which led them to a complete misunderstanding of many of the basic features of the Forty-Second Amendment, that commitment, unfortunately for them, was made. But I must congratulate both the Government and their able Law Minister that what they threatened to do during the elections, they have not carried out. They have realised that while there were some ugly features in the Forty-Second Amendment, there were also very many good features. And I find that a number *oi* them are being retained. Sir, in fact, I am reminded of a couplet of the late Maulana Hali—

कम लुत्फ, अनार की लताफत में नहीं,
अगर उस में हों गले सड़े दाने चन्द ।

So, and quite a number of good points have been retained. There have teen differences of opinion in the Janata Party and a man like Mi Minoo Masani went to the extent of saying that in not rejecting *in toto* or doing away with the Forty-Second g-Amendment, the Janata Party was guilty of betrayal of the people. But when one sits on the Treasury Benches, I think, better wisdom begins to prevail. And in this case while I cannot say as, perhaps, Mr. Antulay would like to do so, that all that has been sought to be done through this Amendment Bill also deserves to be thrown out lock, stock and barrel as the Janata Party wanted to do so as far as the Forty-Second Amendment Act is concerned. And in this connection, Sir, while I was much impressed by many of the arguments advanced by my good friend, Mr. Antulay—his speech was like a curate's egg; good only in parts—I do not believe that sovereignty in concrete terms can vest in the people. When we say that sovereignty vests in the people, all that history has so far demonstrated is that people have been called upon either to elect their representatives from among whom a Government will be constituted, responsible to that representative body so elected or in some smaller countries through referendums peoples' opinions have been so^lght. In this case, I cannot say that in the last 30 years, our parliamentary democracy, as envisaged by our founding-fathers, has not succeeded, but for the period of emergency, when due to circumstances which are known to everybody, a certain situation arose and as a result of which derailment of democracy did take place. As Mr. Antulay said, the punishment that we received was that those who deserved to be on this side were thrown on the other side and those, perhaps, who did not deserve to be on that side, have been brought on that side. But, that apart, the fact remains tnat every five years this popular democracy exercises its power and exercises its sovereignty by giving expression by electing a Government to be formed which carries out certain programmes which are placed before the people and, on that basis it functions, while we have

been emphasising the essential features of parliamentary democracy, we must note the separation of powers between the legislature, the executive and the judiciary, which in effect, is the basis of its functioning. Mr. Shanti Bhushan, with his love for the Bar and desire to protect the judiciary, has put among the basic features the independence of the judiciary. Which judiciary, I would like to know from Mr. Shanti Bhushan, is really independent. Is our judiciary, even as envisaged after thi$_s$ Constitution Amendment Bill, going to be independent? For, after all, the appointment of judges, whether of the High Court or of the Supreme Court, rests with the executive. And, it cannot be said that only Mrs. Indira Gandhi was guilty of appointing judges which the Bar or others did not believe were the right choices and that Mr. Shanti Bhushan and his Government are such paragons of democratic functioning that the most suitable persons have been elevated to the Bench. Thi$_s$ basic weakness in the separation of powers will remain and, that is why, like equity, justice also will vary with the Chancellor's foot. Mr. Shanti Bhushan is well aware that there are judges and judges and, therefore, when we try to emphasise that we are ensuring,, as never before, through this amendment, the independence of the judiciary, let me tell him with all the humility, that we are not only fooling ourselves but fooling the people also. Then, Sir, I agree with Mr. Antulay when he asks, what is the idea of this definition of 'democratic' and 'secular'? When you say that secular means equal respect for all religions, I believe that you have taken away the right of the judiciary to interpret secularism in the spirit in which the founding fathers have thought of it by just confining its meaning to those two words "equal respect". And, if equal respect is the only protection, then let me tell you that in the Koran there i$_s$ one verse which clearly says: "To you your religion, to us our religion." There is no compulsion in religion. This was the injunction of the Koran. But did it prevent Mahmud of Ghazni from showing all the disrespect to Hinduism that he showed. Simply because you will enshrine in the Constitution these words, what is the guarantee to the minorities that you will give them equal treatment, equal opportunities? Even despite your Fundamental Right$_s$ and all that you have enshrined in Chapter III of the Constitution, what is the condition of the minorities? Have any statistics been taken? Have you tried to find out as to why we have failed? The Constitution alone cannot guarantee the type of society which you think, by making some of these amendments, you will bring about.

Mrs. Gandhi is said to be the villain of the piece as far as internal emergency is concerned because it is said that she misused the expression "internal disturbance". I want to know from Mr. Shanti Bhushan that if tomorrow his Government or the successor Government wants to misuse the expression "armed rebellion", what is the guarantee? Have you defined armed rebellion? Can the armed rebellion be defined? And the more you think in these terms, the more you will find you have created greater confusion.

I am happy that he has curtailed the period of the proclamation from one year at a time to six months and then again six months. He has provided some other safeguards and they are certainly most welcome. I am also glad that as far as the Constitutional amendments to the Fundamental Rights or Whittling away some of these things are concerned, a referendum has been provided there. I do not agree with Mr. Antulay and I do not agree even with my Party which, by a majority, has decided that referendum is not the answer to it. Certainly it is an additional safeguard. What has been done is not that any amendment, as far as these features are concerned, is going to be taken to the people. What has been provided is that these amendments, after

[Dr. Raflq Zakaria]

they have been passed by both Houses of Parliament by the requisite majority, will go, so to say, for ratification, to the people and there it has been provided that at least 51 per cent of the people have to ratify. There is nothing wrong in it and it is a further safeguard and is most welcome... *(Interruptions)* The judiciary cannot upset it. It is there as far as I know; it is there.

SHRI B. N. BANERJEE (Nominated) : He never said so.

DR. RAFIQ ZAKARIA: If he has not said it, I will have to revise my opinion, because even after taking all the trouble and even after its passage . . .

SHRI B. N. BANERJEE: And he supports the basic structure theory...

SHRI SHANTI BHUSHAN: That is implicit.

DR. RAFIQ ZAKARIA: That is implicit; that is good, because I am not prepared to go to the extent that Mr. Shanti Bhushan would like to go that the 248 or the 250 Members of the Rajya Sabha and almost 600 Members of the Lok Sabha, after all their deliberations in their wisdom and with all the maturity and understanding of the various complications, decide certain things, when political parties g,o to the people in a referendum, explain these amendments to the people and get their stamp and then also, judiciary is going to review and say whether it is *ultra vires* or not or whether it is wrong or right. That will be a constitutional tyranny. Let me tell Mr. Shanti Bhushan that recently a book has come out in England: Politics in Judiciary. It makes a terrible reading. If we think that the judges—because we will gjve them their independence—will not be motivated by certain socio-economic considerations or that they themselves are not the victims of their own environment and up-bringing, then we are making a great mistake.

"We have to take their weaknesses and foibles also into consideration. Therefore, as I said, many features of the present Bill are good.

Then, Sir, I do not know, for instance, why education has been brought from the Concurrent List again to the State List. I do not think Mr. Shanti Bhushan—if he puts his hand on his heart—can stand up and say that he really approves of it. I do not think he will be able to say it. And if he does, then I will say that he has no heart, because if we want the unity of India, we have to consider this issue. Mr. Chagla was right and he is one of your founding fathers...

AN HON. MEMBER: Step-father.

DR. RAFIQ ZAKARIA: Whenever it suits you, you make use of Mr. Chagla; whenever it suits you. you make use of Shri Jayaprakash Narayan; whenever it suits you, you make use of Acharya Kripalani. And when it does not suit you, you call ther-> outsiders. Give up this habit. They are your founding fathers and you should rely on their wisdom also, because what you are doing today, is not just for the sake of the Janata Government. I do not know how long it will last. I do not want to topple it. I will not join hands with Congress (I) in doing so. You may be there for two years or three years. The Constitution will be there for all times to come. I hope it will not be satisfied with. Sir, the time at my disposal is rather short. Mr. Antulay had much more time. Because ours is a shrinking party with fewer Members only, it makes our task a little more difficult as far as putting forth our views is * concerned. Time is rationed. But as I said, there are some very good features in this Bill. The type of independence that Mr. Shanti Bhushan is thinking of giving to the judiciary, I think, is all right. I have got brought forward any amendment against it. But let us be quite clear that this is again another document which will be tested by the people. You cannot say that it is going to be

a perfect document as the old document was not.

SHRI SHANTI BHUSHAN: Nothing can be perfect.

DR. RAFIQ ZAKARIA: The great poet Iqbal has said:

आइने नो से डरना, तरजे कुहन पे उड़ना,
मंजिल यही कठिन है, कौमों की जिन्दगी में ।

Therefore, it is a difficult task. We have to go about it, not in a partisan way; but we have to go about % cutting across party considerations a'nd not with vindictiveness or vengeance. You should not think that whatever was done in the last thirty years was so teddible that it has to be undone. It connot to undone. If you try, you will be wiped out. Nor can you say that the Forty-Second Amendment had nothing to commend. I am glad that that has not been the approach. That is why I welcome the Bill.

SHRI BHUPESH GUPTA (West Bengal): Sir, we are amending for the forty-fifth time the Constitution of our country which is loaded undoubtedly in favour of the exploiting classes. We have no illusion that by these amendments, some of which are undoubtedly very welcome, the basic character, or, shall I say, the class character, of the Constitution is going to be changed. At the same time. Sir, we have been, and we are, interested in strengthening the democratic content of the Constitution with all its limitations so that our working people can carry on their struggle for social justice and for radical transformation of the society, for taking the nation along the road to socialism, through socialism. That is why we seek more rights and more liberties. That is why we are against powers being given to the bureaucracy, to the ruling class, to the capitalist class and their political representatives. That is why we are opposed to money power being strengthened and vested interests bolstered. Sir, therefore, I look upon i^e amendments in that spirit, as a chain in the continuing process of the struggle that has been going on ever since we attained our political freedom.

Sir, sixteen or seventeen months ago, there was a protest vote by our people to do away with the Emergency Raj and that was a great event in our 'national life. That protest vote today echoes in some of the provision3 of the Constitution (Forty-Fifth Amendment) Bill now under discussion. Therefore, Sir, may I pay my tribute to the great people of our country who rose seventeen months ago to do away and dismantle the Emergency Raj by giving a solid and robust verdict against it? Today I pay a tribute to the people because their unconquerable and undefeatable spirit for democracy echoes in seme of the changes that we are making. Sir, I look upon the Constitution (Forty-Fifth Amendment) Bill as something which is the product of the struggle of our people, not as a gift of the Janata Party or any party for that matter in this House, sir, if the founding-fathers of this Constitution (Amendment) Bill were to be identified, they were to be identified in the villages, in the slums, in the factories, in the fields, in the schools and colleges where our millions are fighting for a better life and a more democratic society.

This Constitution (Amendment) Bill has drawn some lesson of the grim nightmare of emergency, as well we call it, but not wholly. Had it drawn that lesson fully and frankly, there would not have been any provision in the amending Bill for retention of internal emergency in the guise of in-trnal emergency for armed rebellion. We are for doing away with that, for erasing from the Constitution the provision for internal emergency which had in the name of defending our country let loose the forces of authoritarianism, tyranny, corruption and unbounded shame. I should have thought that this Government would come forward and say, out with internal emergency. Only for dealing with external aggres.

[Shri Bhupesh Gupta] sion emergency will be justified and not for internal reasons. We are sorry that the lesson has not been fully drawn. Here 1 have made this point. I have to make a number of other points. Now I shall pass on-But that is one point I wanted to make because that lesson has to be drawn. It will take us time and struggle to fully assimilate the lessons of the emergency to correct ourselves all over, to find our bearing for the forward march.

Now I should like to know one thing. The Preamble of the Constitu tion has been defined. No definition of the Preamble of the Constitution is called for. It is not necessary. It has 'not been done in any other Constitu tion. Preamble remains as preamble. Here I do not know why the Govern ment has sought to define it. If you at all want to define it, well, define it, but you must accept our amend ment of the definition 'not the one that you have given. But I do main tain that no definition is called for. Sir, Preamble, remains preamble. Hardly do I know of a Constitution which defines Preamble. Then Sir, the spirit of Preamble is to be im-plemented in various provisions of the Constitution and by the Government. It is good that property has been taken out of the Fundamental Jtights Chapter. I wish, Sir, trade and business also had been taken out of the Fundamental Rights Chapter because that has given rise to many litigations and cases by the vested interests to obstruct socio-economic measures.

I wish article 22(2) had been given a little more attention than it has been given now. In fact, we would not like in our Constitution a'ny empowering provision for preventive detention. If this provision in Art. 22 remains, many of the States will be in a position to enact preventive detention laws, and some of them have already got the preventive detention laws. That article should go. Sir, we would have liked in the Fundamental Rights Chapter to include the right to work and proper wages and all that. We have given an amendment on that.

Then, Sir, we stand for the Directive Principles having the primacy over the Fundamental Rights in the event of a conflict between the two. I think that the Directive Principles are excellent principles. They breathe the spirit of the freedom struggle of our masses. I do not have in mind the Di-rective Principle enshrined in Art. 47, which provides for prohibition, or Art. 48 on cow slaughter. These may go; I am not bothered about these Directive Principles. But the Directive Principles mainly of socio-economic nature which ai'e really for the well Basing of the people should claim priority over the Fundamental Rights. In other words, they must not be negated on the ground of being violative of Fundamental Rights. At the time of the Constitution-making, Mr. B. N. Rau made a suggestion to this effect. But, unfortunate^ it did not find acceptance by, whom they call, the founding fathers. We do not own up that parentage. They may be founding fathers of anybody; but we do not claim them. They are not founding fathers in our eyes. They were political leaders who had assumed power under the Constitution. I do not know why this American phrase has been borrowed.

Then, sir, I shall come to another aspect before coming to referendum which I shall deal with last because it is controversial. I would like Art. 356, which provides for President's rule, to go altogether. We do not need President's rule in the States. Fifty times the President's rule has been proclaimed in the states since the commencement of the Constitution and on most occasions this Art. 356 has been criticised for imposition, for interference, for subverting, in' the name of the Constitution, constitutional principles and constitutional democracy. This obnoxious article should be banished once and for all from the Constitution of India. The question arises as to how then the States will

tie run if there is some constitutional tangle or difficulty. Well, Sir, it has been seen that within a matter of 40 days, we can hold election in the States, as was held last year. Therefore, let the Government, for the time being, function as a caretaker government and the election be gone through in a matter of 40 days and a popular government installed m order to run the government, as is run in any other parliamentary democratic system. So I may say: Hell with the' President's rule and Art. 356.

Then, Sir, another point is there. In fact, the whole Chapter on Emergency needs to be given up—that is to say from Art. 352 to Art. 360. These should all go except for the provision for emergency to deal with external aggression with the needed safeguards of the kind that have been suggested —with even more effective safeguards. That is all. We do not want that kind of articles.

Then coming to the referendum, Eir, here kindly just bear with me for some time. I am not in agreement with our friends opposite—when I say our friends opposite, I do not mean opposite in the parliamentary sense but in the sense that they are sitting to my right—and also with some of my friends of the Congress Party when they oppose referendum. I may inform you that at the meeting of the leaders, with the Prime Minister, it was agreed on all hands, by all of us that there should be provision for referendum. I share my knowledge with you and

I remember how it was 5 P.M. evolved. In the course of the

discussion many of us suggested and then Mr. Morarji Desai asked Mr. Chavan who jotted down the points...

SHRI B. N. BANERJEE: One information. Did the original provision which the Government placed before the leaders of the parties contain any provision for referendum?

SHRI BHUPESH GUPTA: It was »not the original thing. We were discussing the principle. Sir, the question of referendum came as an independent proposition.

SHRl B. N. BANERJEE: By whom?

SHRI BHUPESH GUPTA: And then. Sir, we agreed that there should be referendum. I thought Mr. Chavan and Mr. Kamlapati Tripathi then represented the Congress Party. Comrade Ramamurti is there. He can correct me. Then Mr. Chavan was asked to suggest the points which should be the subject matter of the referendum. Mr. Chavan in his own handwriting drew up these points and passed them on to Mr. Morarji Desai. They were read out to us and we all agreed. I do not know why they have changed their minds. I cannot simply understand why. It was the unanimous view...

SHRI B. N. BANERJEE: What were these agreements?

SHRI BHUPESH GUPTA; That is there. That is all repeated.

SHRI B. N. BANERJEE: We do not know. Please read out.

SHRI BHUPESH GUPTA: "Sit and make" would have the effect of ensuring the secular, democratic character of the Constitution which cannot be changed without additional safeguards, without the additional process of referendum.

Similarly, it was said also that abridging and taking away the rights of the citizen under Part HI should not be gone through, should not be abridged without the additional step of referendum so the impeding of the free and fair election to the House of the People or the Legislative Assembly of the State on the basis of adult franchise. That also should be put on a similiar footing. Without referendum compromising of the independence of the judiciary. Sir, it is not as if we are providing in the Constitution that everything should go for referendum.

[Shri Bhupesh Gupta J We are not making an overall provision that a Constitutional amendment must be gone through referendum.

No.

What is provided here are additional safeguards. Even if you have two-thirds majority, should that two-thirds majority be used for doing something very drastically wrong? Only then you are called upon to go to the people and tak$_e$ their concurrence. Is it not a safeguard? Sir, we know from experience how two-thirds majority had been misused, how the brute majority of the ruling party, the two-thirds majority was thrust upon with a view to getting passed the most atrocious and undemocratic measures. When these questions are involved, why should we not trust our people? Why should we not be interested, I ask my friends, to put additional safeguards? One barrier, yes, in the House, the two-third$_s$ majority, and even if you cross that barrier and if you want to alter the secular character of the Constitution, you will have to pass another barrier, another hurdle. And that is the greatest forum of our sovereign people. This should be welcome. But I find that this is not welcome.

Sir, I had suggested to my friends at the meeting that the Parliamen-tary-cum-Cabinet system should also be included among the items foi" which the referendum should be additionally sought. Why did I do so?

Sir, today here is a very interesting thing, a document typewritten—"Fresh Look on our Constitution, Some Suggestions". It was circulated from the official quarters, from the highest sources, towards the end of 1975—within three or four months of emergency—and that document was canvassed for changing the parlia-mentary-cum-cabinet system into a presidential system. And the first line of this document, in original form, came into my hands from the hands, I must say, of a Minister of the Government who did not like this thing and wanted us *to* fight the battle because sycophancy and fear were the order of the day. The first line says:—

> "The present system of Government, most will agree, has not come up to the expectations of the common man of our country. Some variation is, therefore, warranted in the light of the experience of the working of democracy in our country' in the past twenty-five years."

Then, Sir, the whole concept of Chief Executive is developed in order to say that the Prime Minister should be the Chiel Executive—call him President or Prime Minister, as you like; he should not be responsible to the Lok Sabha; he should be directly elected and he could choose Ministers from outside the Members of Parliament. These were the preposterous suggestions made. At that time a delegation was sent from here to study the de Gaulle Constitution in order to get inspiration to establish a presidential system of Government. Sir, that Constitution was cyclostyled and circulated among chosen people at that timei in order to canvass and push it. is ative; but Rashtrapati Fakhruddin of the Rashtrapati Bhavan at that timei—well, I will not name him; he i$_s$ alive; but Rashtrapati Fakhruddin Ali Ahmed is not alive—came and told me that Rashtrapatiji was very much upset as to what would happen to him since a presidential system of Government $_W$as coming to be installed in this country. On that, Sir, I may give you another bit and I hope it will not be disputed. Another Cabinet Minis-ter told me: 'Bhupesh Babu, we have lost; we cannot do anything. People like you can take it up and fight out and prevent the grim position *of a* presidential system."

SHRi L. R. NAIK: Sir, may I ask a question of Mr. Bhupesh Gupta?

SHRI BHUPESH GUPTA: I beg of you, please don't ask me. Sir, such was the climate of hopelessness and fear at that time. Sir, I tell you that documents were prepared in this very building, this Parliament House, which

became a centre of propagation of this idea.

May I ask the Law Minister: Why don't you investigate it and reveal as to how all these documents came to be circulated, who were responsible— politicians and bureaucrats combined— to produce the documents and send them to the States in order to establish a presidential system in our country? Sir, that is why we stressed that the cabinet-cum-parliamentary system should also not be changed without referendum—even if with two-thirds; majority you want to change it. What is wrong then? I said this thing—I am finishing, Sir—because Mr. Charan Singh is fond of the presidential system. And I know it for a fact that the one reason why our suggestion did not find acceptance— the inclusion of this Cabinet-cum-Parliamentary system provision—was the opposition at "that time of Mr. Charan Singh, the then Home Minister of the country, we are told.

Sir, anyhow, Mrs. Chandrawati, the Haryana Chief of the Janata Party, has come out with an open statement that the presidential system is better than the present system. Therefore, there is a strong trend within the ruling party for the presidential system and the Jat landlords and all the rest of them would like to instal the presidential system. Is it not proper, Sir, that we take precautions and create this safeguard?

Sir, I would only ask my hon, friends of the Congress Party and Congress (I), why are they opposed to this thing? This Government, under pressure of the public, pressure of the Opposition, has accepted certain proposals and have now come out with this. Then we say: No, we shall not pass it. I cannot .imagine such a suicidal course in a parliamentary democracy played by the Opposition. The Opposition's point of view was accepted by them and today a large segment of the Opposition has come to the conclusion: No, we should not do it because it is impracticable. Well, how is it impracticable? Our people are not fools? It is very much practicable. Anyhow, accept it first. Then we shall see the practice part of it. Even if it is there in the Constitution, any Government in power will think a hundred times before considering to take away the secular character, the democratic character underlying many things that are in the proposed Bill. It is surprising that this thing is not seen.

Sir, here is the other note I was mentioning about. I have kept it. When the presidential system was being talked about during the Emergency, there was a meeting convened and we were invited to that meeting and we were given that note to the effect that they wanted to change the working of the parliamentary system. Question. Hour to be changed, Adjournment Motion to be changed, No Confidence Motion to be changed. The note is called "the broad features of the proposal for change in parliamentary procedure". The whole thing was there.

It was officially given by the then Minister, Mr. Raghu Ramaiah—Mr. Om Mehta was also there. We said: "No Put into the pipe and smoke it". Here is the preposterous, outrageous document. I have kept this because some day when I may write a book, I shall put this in the form of appendix to show how things went during those days of the Emergency. This is the original document given by Mr. Raghu Ramaiah, the then Minister for Parliamentary Affairs. Other Opposition leaders also may have it. Therefore, I say it should be kept. Now I have said this thing. One or two words more and I sit down. Therefore, I would like to ask you to consider this thing seriously. As far as the independent Judiciary is concerned, we know what it is. I would not say anything on that. But let the Judiciary also be appointed from a panel approved by Parliament. The talk of independent Judiciary, if it is not a joke, is not a very convincing statement. Sir, we stand for the independence of the Judiciary, but we want to make it react, we want

[Shii Bhupesh Gupta]

to ensure its independence so that the socio-economic influence of the upper class, of the exploiting class, does not cloud and vitiable the thinking and judgment of our judicial institutions. That can never be ensured if we do not have another arrangement for appointment to the highest judicial posts.

Sir, Education, in our view, should be in the Concurrent List. It should not be taken to the State List. I am in agreement with those who stand for retaining it in the Concurrent List. Sir, I have suggested other amendments The only thing I would like to say is that we know that some of the amendments are good and they are tc be welcomed. I welcome also the discussion that took place before the Bill was prepared, but I wish the discussion was given full expression in the Bill.

But, I know, Sir, that so long as the money power dominates our political life, nothing can save democracy, safeguard democracy. The money power should be eliminated, and that is very very important. And, Sir, we alao know that so long as the capitalist system remains, democracy will be inhibited.

My friend, Mr. Verma, has written a letter asking me to enlighten on some of the points that he had made in his speech. But I can not do it now

Socialism and democracy both go together. In fact, socialism would be the best form of democracy if I may say so. In that connection, 1 should like to ask Mr. Shanti Bhushan: Why do you do you don't think of reducing the verting age to 18 years? Since you want to strengthen democracy, why do you not do it? Here is an occasion, and you should have done it through this Bill.

Sir, electoral reform is also very importa'it, and in this connection I stress the urgency of proportional representation. True democracy can never be there in operation in the -country under these conditions unless you have proportional re-presentation. The present system of election with single Member constituency and what is called the first past the post system has only worked in favour of the vested interests and reaction to the detriment of the working people and against the cause of social justice. Sir, I do hope that the Government will hold consultation with the opposition parties to bring about important and essential changes in our electoral system where the money power is gradually curbed, where the voting age is lowered to 18 and where the present system is replaced by proportional representation.

I welcome this measure despite the limitation of it, and I do hope, the amendments will be accepted.

Another thing I would like to say is this. This is his weak point. Mr. Shanti Bhushan has made it known somehow or other that if we do not provide for internal emergency in the form in which he has provided for it, he would not perhaps move the Bill in this House so that it drops and the Constitution Amendment Bill is not passed. He is prepared to take any other amendment and seek he concurrence of the House, but he would go on boycott and kill the Bill if we do not accept their provision for internal emergency. Is this the way, Mr. Shanti Bhushan? Is this the way? I ask you. You had been lecturing all over the country. Mr, Charan Singh when he was the Home Minister, was saying that the emergency provisions must go. But now you made it such a condition that unless we submit to your dictation, you will not allow this Bill to be passed and that at the third reading you will not move this Bill and kill it in the same way you had killed the Banking Commission Bill which lapsed in this House.

Sir, the country should know. Let the people know this. Sir, I think, »we should insist on that amendment. Having got it, it should be passed. The internal emergency provision should go. Let the Government say, no. Having dismantled the emergency provisions from the Constitution, with regard to internal emergency the great champion of anti-emergency struggle, would not even push this Bill in the House would block the Bill with all the good provisions and with all the good amendment! Sir, I appeal to Mr. Shanti Bhushan that he should not indulge in this blackmail. He says ours is blackmail. No, ours is the majority of the House. If the majority in the House votes for the deletion of internal Emergency, it will be a good thing. How can you call the majority of the House black-mailers?

SHRI SHANTI BHUSHAN: What about the right to property?

SHRl BHUPESH GUPTA: No, you will not? Blackmail, if at all it is there, is there with you. I hope you will not use the instrument of political, constitutional, legislative blackmail in this House to sabotage the measure which you are passing through our co-operation. I hope, Sir, tomorrow, smoothly and freely, as we have been doing, we shall pass this measure. It is not a party matter. They have done it. We are doing it. Some differences are there and we will resolve them in this House. I hope the measure will become the law of the land and the mischief of the Forty-fourth Constitution Amendment Bill will have been undone by the Forty-fourth Constitution Amendment Act. Historic judgment will have been pronounced in this manner on that Bill which contained also some good clauses. That is why we did not want it to go lock, stock and barrel. But it contained very many bad clauses also.

THE VICE-CHAIRMAN (SHRl SYED NIZAM-UD-DIN): Dr. Sathia-yani Muthu.

SHRI SHANTI BHUSHAN: What about the fundamental right of property?

SHRI BHUPESH GUPTA: I have already said, it is a good thing you have taken it out.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Dr. Muthu.

SHRI BHUPESH GUPTA: I think you did not hear. A man of property does not even like to hear good things said about him.

SHRI SHANTI BHUSHAN: I was thinking you must be a man of property.

DR. (SHRIMATI) SATHIAVANI MUTHU (Tamil Nadu): Mr. Vice-Chairman, Sir, I welcome this Constitution (Forty-fifth Amendment) Bill, 1978, as passed by the Lok Sabha. The Bill attempts to set right many of the distortions introduced in the Constitution by the Forty-second Amendment Act. At the same time, it should be stated to the credit of the Janafta Government that they have decided to go by a policy of consensus. In their bitterness against the Emergency, they have not thrown out the Forty-second Amendment Act lock, stock and barrel. Many good features of that Act have been retained. What the country needs is a pragmatic policy of doing the greatest good to the greatest number in the quickest possible time. Political passions and political vindictiveness should give way to sober, constructive realism and to concentrated efforts for securing to the people of India justice, social, economic and political. The present amendment Bill is a refreshing attempt in this direction to the extent it goes, though, of course, the problems of building up a prosperous India remain still formidable and require the concerted efforts of all parties to wipe out poverty and disabilities from the face of our beloved country.

Sir, much as I welcome this Bill, I have to express my disappointment that no amendment has been brought

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to depict the fundamentally federal feature of our Constitution. There is no better place in the Constitution where this federal feature can be depicted than in the Preamble. Having agreed with the previous Government's amendment to the Preamble describing India as a "sovereign, socialist, secular, democratic republic", I have every reasonable hope that the present Government would like the word "federal" also to be introduced. It cannot be denied that the structure of Indian policy is basically federal. The introduction of the word 'federal' in the Preamble would strengthen this basic identity, particularly when many of the States have ruling parties different from that at the Centre. The description of the nation as 'federal' would give encouragement to the various States to pursue their policies for the good of the country with a sense of freedom sanctified by the Constitution. Modern society has advanced so much that it is no longer necessary for stereotyped steam-rolling uniformity to be imposed by a strong Centre. Honest and efficient leaders in various parts of the country carrying the mandate of the people from their respective constituencies can be trusted *to* cater *to* the people effectively in accordance with their basic urges and needs. A sense of freedom to carry out these tasks will be the greatest incentive. This sense of freedom can be given in an unshakable manner by the use of the word 'federal' in the Preamble. Every State has its own Assembly, its own Cabinet, its own Government. All the features of a federal system are there. After all, the strength of a nation consists not in the unquestioning obedience of the people to the strong authority of the Centre, but in the healthy growth of the various parts in accordance with their genius aspirations. The most enduring unity of a nation can be secured by unity in diversity. I would therefore request the Law Minister to consider introducing the word 'federal' in the Preamble to the Constitution.

Let me express my satisfaction at"* the re-inclusion of the subjects of education and forest in the State List which were transferred to the Concurrent List in the Forty-second Amendment Act. This is in keeping with the federal structure of the Constitution. We have been fighting that education should be kept in the State List for many years. So I thank the Central Government for bringing these into the State List now, the subjects of education and fotrest. Development in the field of education and forest can be most effective under the guidance and control of the respective State authorities and in accordance with the genius and cultural traditions of the people. This will not, however, mean that the States will not take into acount the need for harmonising the efforts in the rest of India for a meaningful development in order to achieve efficiency. The accent will be again on unity in diversity

Now let me come to the provisions regarding tribunals. I find that the present Bill does away with the tribunals. In fairness to the authors of the original provisions it should be said that the tribunals offered scope for speedy justice. The courts under the . present set-up are clogged with so much of work that arrears of cases are mounting, pending cases are piling up, to staggering proportions. There is a feeling of despair about getting quick justice. Justice delayed is justice denied. I would, therefore, look upon the proposed abolition of the tribunals with favour only if it can be ensured that the functioning of the courts is improved. Their administrative staff should be strengthened and the number of judges increased. The whole procedure of court work should be rationalised and streamlined so that obsolete and outmoded practices are eliminated.

Now coming to the clauses regarding the appellate jurisdiction of the Supreme Court I have to bring to the

notice of the House the enormous difficulties faced by the people in the xSouth because of the location of the Supreme Court at a distance, in Delhi. This should be available to all without difficult. Justice through appeal is a vital element in judicial procedure. There should be a provision in the Constitution for the setting up of a Bench of the Supreme Court somewhere in the middle part of the country, at a convenient place in the South, so that appeals from the people of the South can be heard and disposed of at a place nearer to the people. I also welcome the pro-viislions regarding drop|piing out of the rights of the Centre to deploy armed forces in the States. This is more in consonance with the fundamentally equal responsibility of the Centre and the States on law and order in their respective spheres.

Now, coming to amending article 368, I welcome the amendment procedure and referendum for seeking the approval of the people for amendments of basic nature. Referendum is the most democratic procedure for introducing basic changes. After all sovereignity rests with the people and if the people are directly associated with the changes in the Constitution, it will strengthen the roots of democracy. I would very much like amendments seeking changes in the federal structure also to be specifically decided by referendum in addition to the ordinary procedure.

Sir, in certain case? I am in favour of a limited referendum because I envisage the dangers of a total referendum throughout India in respect of certain problems which affect certain areas or certain sections of the people. Let us not forget that the whole nation has to move together. Certain parts of the nation suffer from various pronounced disparities and they should be enabled to give their vardict separately wiithout running the danger of being swallowed by the overwhelming majority of the whole nation. Special problems require special treatment. So, I would re~quest the hon. Law Minister to consider the idea of having a limited referendum confined to getting the approval of people from the affected areas and the affected sections only.

In this connection, I would like to mention about the fissiparous tendencies which the language issue creates in the fabric of the Indian polity. There is vehement opposition against imposition of Hindi as the official language in the non-Hindi speaking States. The Government should recognise the force of this opposition which can result in the splitting up of India. Nehru's assurance against imposition of Hindi should be concretely translated into the Constitution itself and not left to the vagaries of the powers at the Centre that may vary from time to time. It is-the easiest thing to make an amendment of this nature and its benefit for national integration will be immesurable. Such an amendment, if necessary, should be decided by referendum in addition to the ordinary procedure and this referendum should be confined to seeking the approval of people from the non-Hindi speaking region.

I find that the right of property has been taken away from the chapter on Fundamental Rights and it has now been made a purely legal right. But I trust that the removal of this right from fundamental rights will not affect the acquirement of property from vested interests and some companies for public purposes resulting in the payment of huge compensation which the economy of the country cannot afford.

I would like to express my disappointment that the right to work. which has been emphasized so strongly in the Janata Party election manifesto has not been incorporated in the fundamental rights. Now is the time to incorporate such, a right in the Constitution when the whole nation is poised with eager expectancy for a break-through in the unemployment situation. I would request the hon. Law Minister even now to consider

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enshrining such a right in the Constitution. This would bring hope to hundreds and millions of our brethren and also result in energetic action if the planners give real substance to this.

Coming to the provision regarding emergency, I think the Janata Party do really realise the need for emergency powers for dealing with dangerous and troublesome situations. The new amendment substitutes 'armed rebellion' for 'internal disturbance' in the old article. Sir, I am not going to quarrel with this and I am not going to insist on a precise definition of the term "armed rebellion". Everything depends on the values and attitudes displayed by the ruling government of the time. An instrument can be used or misused. A knife can be used to cut a portion of an apple and it can be used to slit the throat of a man also. So, it is the values and the attitudes of the power, the ruling government, that count for for the use or misuse of an instrument that we design. Hedged with the safeguards of written recommendations from the Cabinet and the two-thirds majority in both the Houses, there is far less scope for the misuse of the emergency provision.

Now, dealing with the Directive Principles in the Constitution, Sir, it is a matter of regret that these Principles which are vital for the growth and development of the country remain as mere recommendatory principles. It is high time that these Directive Principles were placed on a par with the Fundamental Rights. Then only, Sir, there would be an impetus for rapid economic, social and scientific development and prosperity within our life-time without their remaining, a distant dream. I would, therefore, like the Government to examine the matter in depth and bring forward an amendment conferring the significance of the Fundamental Rights on these Principles. Last but not the least, Sir, I would like tdw refer to atricle 38 of the Constitution regarding the responsibilities of the State to secure a just social order for the promotion of the welfare of the people. Sir, this is a very important article directly concerned with the securing of justice, social, economic and political, to the citizens of the country, especially the weaker sections and the members of the Scheduled Castes and the Scheduled Tribes. As the State has to function necessarily through its officers, a great responsibility rests on the offers to comply with the provisions of the article both in letter and spirit. No longer shall the officers be judged only by doing the office work efficiently. But they have to be judged by the spirit and enthusiasm which they have to show in dealing with the weaker sections and in raising their status. I would, therefore, like the Government to introduce a provision in the Constitution enjoining on the officers specific responsibilities for converting the glorious ideals of the Constitution into living realities and also to prescribe penalties for not implementing the various provisions by the various officers in the spirit of the Constitution. The erring officials should be punished and that provision should be enshrined in the Constitution. For example, if untouchability still continues and if still the Scheduled Caste people suffer from atrocities and harassment, the officers concerned with securing justice and a just social order shouia be brought to book for their derelection of duty. It is the duty of the State not only to secure political rights for a person, but also' his social rights. Thank you, Sir.

SHRI S. K. VAISHAMPAYEN (Maharashtra): Sir, I rise to generally support this Constitution (Amendment) Bill which has been brought forward by the honourable Law Minister. 1 am purposely using the word "generally" because I have certain reservations about some of the clauses

in thi$_s$ particular Bill. I have some disagreement with a few other clauses.

Sir, it was expected, after the Janata Government came into power, that in bringing forward a Constitution (Amendment) Bill, they would mainly concentrate on removing the restrictions that were imposed on the freedoms and the Fundamental Rights during the past two or three years. It was also expected that they would mainly concentrate on re-establishing the independence of the judiciary. These were the two main objectives on the basis of which the Janata Party got the verdict from the people. But, Sir, what I find, after having gone through the Bill, is that the Government has not only tried to remove the restrictions on the freedoms and the Fundamental Rights, and the restrictions on the independence of the judiciary, but it has also brought in some new features. If the Law Minister wanted to bring in these new features in this Constitution, there could have been some other provision also to restore democracy and to reach our goal of socialism. For instance, today, after thirty years in our country the people in the backward regions are still not feeling that they have obtained social or economic freedom. Therefore, some other suggestions in order to make this Bill more comprehensive and to strengthen it further from the point of view of objects could have been there. But, unfortunately, the Government has made it comprehensive but has not tried to secure other suggestions also.

Sir, two main features of this Bill, according to me, are the restoration of freedom and fundamental figlits and the independence of the judiciary. Sir, nobody will disagree with that. But the question is whether today these freedoms and these fundamental rights which have been guaranteed now are going to be the be-all and end-all of our democratic life. It can-not be. Whatever constitutional measures or other measures or economic policies be there, these cannot be the be-all and end-all of our democratic life. Sir, after all, the Constitution is an instrument of social and, economic transformation and of laying down policies for the uplift of the weaker sections in our society. What are the different provisions with regard to the social and economic transformation, so far as our country is concerned. What I find is that while they are granting freedom, and granting fundamental rights, they have removed the precedence, so far a$_K$ the Directive Principles are concerned. Again, they are granting independence to the judiciary by doing, away with the precedence that was given earlier to the Directive Principles. There was a possibility of marching ahead. There was a sort of security, so far as social justice to the people is concerned. But now, because of these amendments, the precedence having been removed, to Directive Principles, there is every fear that > these Directive Principles would not get that particular importance in our march towards socialism as it should have been.

Here. Sift I am reminded of a philosophical saying: Man does not live by bread alone. It is true. But for whom? For a person who has at least half a loaf of bread for his living. But what is the fact of life, so far as our country is concerned? We have millions of people who do not get even half a loaf, so far as their daily existence is concerned. So they will have no meaning for freedom if the policies of the Government are such that they cannot give the necessary economic existence. So far as this country is concerned, it cannot live by these freedoms and fundamental rights alone. So the time has come, according to me, when there should be definite policies of the Government, so far as the economic policies of the Government are concerned. If we try to analyse the policies and whatever they have brought forth before the' country during the last two years—if we analvse the Sixth Five Year Plan, the Rolling Plan, you will find a dfffu-

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sion in these policies. Whereas the attention should be concentrated on measures for economic uplift of the weaker sections of our society, it is not there. There is a sort of generality in all the approaches, whether it is an approach in the industrial field, -or it is an approach in the economic field or any other field.

Now, Sir, so far as the independence of judiciary is concerned, I am not a student of law and I would not like to say much on this point, because other hon. Members have said so much about it. I am afraid, Sir, with this independence of judiciary and removal of the precedence to the Directive Principles, there may be again some confrontation which was there between the Judiciary and Parliament. How are you going to see that this particular confrontation does not arise? I have already said that I am not a student of law. Therefore, I will not dilate upon this particular point. But what is the present state of affairs so far as the judiciary is concerned? How does the common man feel about the judiciary today? Today the common man feels that the justice that he has to get is very costly and there are long delays in getting justice. What is the Law Minister or the Government doing about it? Should he not bring forward a legislation regarding judicial reforms in order to see that the common man gets the feel of the justice as such.

Mr. Vice-Chairman, Sir, I will now make some observations with regard to Clauses 44 and 47. In Clause 44, they have tried to define what secularism is'and what socialism is. I do not know why this Government or the Law Minister felt the need for defining these words when during the last 30 years we have definite concepts about these words. Why have they taken this position? I feel that the intention is to dilute the whole concept and to dilute the whole significance erf the words secularism and socialism. After all, they have defined secularism as respect for all religions. What about the respect for those who stand for freedom of conscience? Will it cover that? So far as secularism is concerned, there are Articles 14 to 17 and Articles 25—28. There it has been made very clear that the Government will be such that it will belong to no religion. In the first instance, what is going to happen to this particular article saying that the Government will belong to no religion? Whether A belongs to Hi'ndu religion or B belongs to Muslim religion or Buddhist religion, the Government will not make any distinction so far as their rights are concerned. It is incorporated in the Constitution in these articles. No religi6n shall be allowed to impose itself on the secular way of life of the people. When we talk of democracy in India, we talk of democracy which is secular. People belong to different religions and faiths. At the same time, when they function as citizens, there will be no discrimination between a Hindu or a Muslim so far as the benefits of the Municipal Corporation are concerned or so far as other governmental measures are concerned. What about this concept? What will happen to this concept? I will not go into details about it. I think that this particular clause should not be there as it will not only restrict the scope of the concept of secularism or socialism, but it will dilute its importance and significance so far as our demccracy is concerned. Therefore. I will request the Law Minister to consider this particular thing.

Secondly, I do not know why the Government has removed 'education' from the Concurrent List and brought it under the State List. So far as other measures are concerned, I can understand that there has been some sort of political consideration for restricting the freedom so far as the fundamental rights are concerned. I can understand that there was some political consideration in trying to remove the independence of the judiciary. But what consideration was

there in bringing education in the ' Concurrent List. There was no such point in that. There was no political consideration. I have been in the field of education for so many years. In this House also I have tried hard for bringing education on the Concurrent List purely on educational grounds.

Sir, I am just giving my experience. I was in the State of Greater Bombay where there were four different types of secondary education and because of which the students suffered. Why, Sir, in one country, there is not one system of education, one particular pattern of education? If we want to have one system of eduation throughout the country, then education must be in the Concurrent List. We would not like to interfere in the States' formulation of their own policies. But in regard to integration of education in the country, it is necessary that education should be in the Concurrent List.

Sir, I have made one more suggestion by way of my amendment. Today, we are hard-pressed so far as raising of resources is concerned. We have also to look to the developmental expenditure which is increasing while the resources are getting restricted. In order that the Centre should have more resources for the developmental expenditure, I suggested and I still suggest, and I urge upon the Government to keep the 'tax on agricultural income' in the Concurrent List.

Sir, in conclusion, I do hope that the Law Minister would take into consideration whatever suggestions that I have made and see that the present Bill is not merely a Bill for the restoration of fundamental rights or restoration of independence to the judiciary but it is something more. It should include the right to work. Sir, the Government of Maharashtra has formulated an employment guarantee scheme, to guarantee work to those who would like to work and ensure some minimum wages as such. I do not know why the Centre has not given its consent to that scheme. So, I would suggest that this right to work should also be included in the Constitution in order to help over people who would like to work but are unable to find work. Let us give them work. Let us give them the minimum means to live. And them only these freedoms and these fundamental rights will have a meaning for them. Thank you, Sir.

श्री इयाम लाल यादव (उत्तर प्रदेश) : माननीय उपसभाध्यक्ष महोदय, इस विधेयक को प्रस्तुत करते हुए विधि मन्त्री ने जिस प्रकार की बातें कही हैं मैं समझता हूं कि उन बातों का कोई आधार उनके इस विधेयक में नहीं दिखाई देता । जैसे जनता पार्टी ने वायदा किया था कि 42वें संविधान संशोधन विधेयक का पूर्णतः हम निषेध करेंगे, लेकिन जब विधेयक लाने का सवाल हुआ तो उन्होंने इस प्रकार का कोई विधेयक लाने का प्रयास नहीं किया । यही इस बात का द्योतक है कि जब कोई दल विरोध पक्ष में बैठता है तो बड़े लम्बे चौड़े वायदे करता है और जब वही शासन में आता है तो शासन की मजबूरियों को देख कर उसे अपने वायदों को भूल कर नये प्रकार से सोचना पड़ता है । यही गति जनता पार्टी के के उ वायदे की थी और आज इस पैंतालीसवें संशोधन विधेयक में भी वही स्थिति हुई ।

इस विधेयक में मैं ऐसा समझता हूं कि जनता पार्टी ने जो यह वायदा किया था कि वे जनतन्त्र स्थापित करने के लिये, रूल आफ ला स्थापित करने के लिये उसको पुर्नस्थापित करने का प्रयास कर रहे हैं, लेकिन उन्होंने कोई इस प्रकार का प्रयास इस विधेयक के द्वारा नहीं किया । केवल कुछ धाराओं को अपनी सुविधानुसार, अपनी दृष्टि से उन्होंने बदलने का प्रयास किया । इस पर मैं ज्यादा नहीं कहना चाहता । अभी हाल में ही मिस्टर सुब्रत राय चौधरी, जो एक बहुत ही मशहूर विधिवेत्ता हैं और सब कमेटी आन रीजनल प्राबलम्स के चेयरमैन भी है, इन्टरनेशनल ला एसोसिएशन की कान्फरेंस में उन्होंने

[श्री श्याम लाल यादव]

कहा मनीला में कि इस संविधान में न तो रूल आफ ला की आत्मा की स्थापना होती है और न मानवाधिकारों को सुरक्षित किया जा सकता है और इस संशोधन विधेयक में भी ऐसी बातें हैं जिनसे इनकी पूर्ति नहीं होती। विधि मन्त्री ने इसको देखा होगा कि इस प्रकार की भावना उन्होंने प्रकट की है। इसलिए मैं कहना चाहता हूं कि किसी भी देश के जनतन्त्र की सुरक्षा उस देश के नागरिकों के द्वारा ही हो सकती है। अगर नागरिक सतर्क नहीं हैं, जागरूक नहीं हैं तो देश में जनतन्त्र नहीं रह सकता है। संविधान की धाराओं को लागू करने की जिम्मेदारी जिनके कंधों पर है, वह उनको लागू कर सकते हैं लेकिन अगर जनता कमजोर हुई और उनके इरादे निर्बल हुए तो फिर संविधान हमारी स्वतन्त्रता की रक्षा करने में असमर्थ है।

मान्यवर, एक बहुत बड़ी बहस जिसकी तरफ़ अभी हमारे मित्र श्री अन्तुले ने इशारा किया, काफ़ी अच्छी तरह से प्रकाश डाला कि संविधान का संशोधन किस प्रकार से हो, बहुत दिनों से यह चर्चा सुप्रीम कोर्ट में हो रही है, हमारे देश में हो रही है, पार्लियामेंट में होती रही है। उसकी कुछ मूल धाराओं में परिवर्तन के लिए इस संविधान में नये संशोधन की व्यवस्था की गई है कि जो मूल प्रश्न हैं, जो बेसिक फीचर्स आफ दि कांस्टीट्यूशन हैं, उनको बदलना हो तो उसके लिए रेफरेंडम किया जाए। एक नई व्यवस्था इसमें की गई है। मैं समझता हूं कि रेफरेंडम के बारे में कल भी सदन में कहा गया और आज भी कहा गया कि बहुत बड़ी कठिनाइयां हमारे देश में हैं। क्या प्रश्न उपस्थिति किया जाता है, शासक दल जो हो वह किस प्रकार से वह प्रश्न जनता के सामने उपस्थित करेगा, इस बात पर निर्भर करेगा कि क्या उस रेफरेंडम का नतीजा निकलता है। रेफरेंडम के बाद भी सुप्रीम कोर्ट को यह अख्तियार रहेगा कि उस पर विचार करे। कल विधि मंत्री ने आश्वासन दिया, उनका कोई आश्वासन माने नहीं रखता, मन्त्री आते हैं, आश्वासन देते हैं और बदल जाते हैं किन्तु उन आश्वासनों का मूल्य उतना भी नहीं होता जितनी कि उस कागज की जिस पर वह लिखा गया उसकी कीमत होती है। एक ही बात इन्होंने कही है कि जो रेफरेंडम का नतीजा होगा वह अदालत में चैलेंज नहीं किया जा सकेगा। लेकिन रेफरेंडम किस प्रश्न पर होता है, वह जो प्रावधान है वह संविधान के अनुकूल है कि उसके विपरीत है, उसकी धाराओं का उल्लंघन करता है, मौलिक अधिकारों के विपरीत जाता है, उसमें कोई गड़बड़ी है, उसके बारे में कोई रुकावट इस विधेयक के द्वारा नहीं लाई गई है। इसलिए मुझे सन्देह है कि चाहे रेफरेंडम पर कोर्ट में बहस न हो सके लेकिन जो मूल प्रावधान है उसको सुप्रीम कोर्ट में चैलेंज किया जा सकता है, उसको कोई रोक नहीं सकता।

मान्यवर, दूसरी बात मैं यह कहना चाहता हूं कि अदालतों के सम्बन्ध में विधि मन्त्री ने कहा है कि अदालतों की निष्पक्षता को कायम रखने के लिए अगर जरूरत हो तो रेफरेंडम किया जाए। उस पर कोई बदलाव हो तो रेफरेंडम किया जाए। लेकिन यहां पर आर्टिकिल 226 और 227 में जो परिवर्तन पिछले संविधान में किया गया था उसको दुरुस्त करने का प्रयास किया गया। ठीक है, मैं उसका स्वागत करता हूं क्योंकि मैं उस समय भी इस राय का था कि आर्टिकिल 226 में हमारे देश के नागरिकों को शासन द्वारा उत्पीड़न होने के विरुद्ध उनकी रक्षा का प्रावधान है। मान्यवर, मैं भी ऐसा मानता हूं कि हमेशा मन्त्री ही आदेश नहीं देते हैं। मन्त्री से लेकर पटवारी और सिपाही, दरोगा तक अनेक अधिकारी और पदाधिकारी हैं जो आदेश देते हैं और जनता के ऊपर शासन चलाते हैं। उनके विरुद्ध अगर कोई कहीं न्याय

मिल सकता था, सुरक्षा मिल सकती थी तो संविधान के आर्टिकिल 226 में मिल सकती थी । उसको उस समय हटा दिया गया । आज उसको फिर स्थापित किया जा रहा है तो हमारे विधि मन्त्री उस पर ऐसा प्रतिबन्ध लगा रहे हैं कि उस अधिकार का नकारात्मक प्रभाव पड़ेगा कि अगर कोई अन्तरिम आदेश आर्टिकिल 226 के अन्तर्गत प्राप्त हो जाए तो विरोधी पार्टी उसको खारिज़ कराने के लिए, वेकेंट कराने के लिए दरख्वास्त दे और विपक्ष के वकील को सूचना दे और इसको दो महीने के अन्दर फ़ैसला नहीं होता तो आटोमैटिकली वह स्टे-आर्डर वेकेंट हो जाएगा ।

6 P.M. मैं विधि मन्त्री जी से आग्रह करूंगा कि वह इस बात पर ध्यान दें कि आर्टिकिल 226 में जहां और बातों को स्थापित किया गया है वे स्वागत योग्य हैं, लेकिन उसमें एक लकड़ी लगा दी है जो सारी धाराओं की मंशा का मूल नष्ट कर देती है । इसमें यह है कि दो महीने के अन्दर अगर नोटिस सर्व हो गया, पिटिशन फाइल हो गया और फैसला नहीं हुआ तो आटोमेटिकली स्टे वेकेट हो जाएगा । माननीय मन्त्री जी अदालत में जाते रहते हैं, काम करते हैं, उन्हें तजुर्बा है कि चाहे हाईकोर्ट हो या सुप्रीम कोर्ट हो, इस प्रकार से किसी मुकदमे की सुनवाई पर आने से रोका जा सकता है, यह आज के दिन बहुत आसान है । मगर विधि मन्त्री जो कहेंगे, आसान नहीं है । जो तजुर्बा है उसके विपरीत बात कहेंगे । जनता पार्टी का कोई भी हो, साधारण सा आदमी जो साधन सम्पन्न हो, वह प्रयास कर सकता है । जिसका प्रभाव हो वह अदालत में प्रयास कर सकता है कि दो महीने से ज्यादा स टल जाए । तो आटोमेटिकली स्टे हो जाएगा और रिट का जो मकसद है—उसका ल ही नष्ट हो जाएगा । वह फ्रस्ट्रेट हो जाएगा । मैं समझता हूं इस प्रकार के विधेयक : विधि मन्त्री जी लोगों से सलाह-मशविरा करते, डिस्कस करते तो शायद यह मंजूर नहीं किया जाता । मैं समझता हूं यह हटा दिया जाना चाहिये । गवर्नमेंट की तरफ से खुद ऐसा प्रयास होगा कि डिले हो । इनके पास इतने जज नहीं हैं कि जल्दी फैसला कर सकें । मैं यह कहना चाहता हूं कि इसमें जो वादी-प्रतिवादी है उसका क्या दोष है । दोष होगा अदालतों का, सुप्रीम कोर्ट का जो दो महीने के अन्दर फैसला नहीं करेगा । मैं जानना चाहता हूं कि दोष वादी प्रतिवादी को क्यों दिया जा रहा है । यह बात मेरी समझ में नहीं आती । विधि मन्त्री बतायें कि जो अधिकार वापस लिया जा रहा है, एक दूसरे से रास्ते से छीना जा रहा है, वह क्यों छीना जा रहा है । देश का जो एक्जीक्यूटिव है, जो लोगों पर जुल्म करता है उसको सुरक्षा क्यों प्रदान की जा रही है ? कोई भी सरकार हो, चाहे पिछली सरकार हो और चाहे आज की सरकार हो, उसका एक मुख्य और सर्वप्रथम कर्तव्य है कि जो ब्यूरोक्रैसी है, एक्जीक्यूटिव है उसका जो काम है उस पर एक आवरण डाल दिया जाए । ताकि कानून के मातहत नागरिकों को न्याय मिल सके, उनकी चमड़ी को उखाड़ा न जाए । इसीलिये मैं इसका सख्त विरोध करता हूं कि मन्त्री महोदय ऐसी चीज न लायें । मुझे आशा है, मन्त्री जी कोई ऐसा प्रस्ताव करेंगे, सुझाव देंगे जिससे यह दूर हो सके ।

श्री शान्ति भूषण : आपने शायद पढ़ा नहीं ।

श्री श्याम लाल यादव : जितना पढ़ा है उतना ही कह रहा हूं ।

श्री शान्ति भूषण : जिसके खिलाफ स्टे आर्डर जारी हुआ है अगर वह दरख्वास्त देता है स्टे आर्डर को वेकेट करने को, तो तो मैं बताना चाहता हूं कि इसमें अब दो फरीक हैं, एक तो जिसने रिटपिटीशन फाइल की है, स्टे लिया है वह मौजूद है और दूसरा फरीक है जिसके खिलाफ स्टे आर्डर जारी हुआ है उसने भी दरख्वास्त दे दी । अब दोनों

[श्री शान्ति भूषण]

फ़रीक अदालत के सामने मौजूद हैं । स्टे वकैट करने की दरख्वास्त को दो हफ्ते के अन्दर सुनना जरूरी होगा । इसकी हीयरिंग में कोई मुश्किल नहीं है । अगर उसकी दो हफ्ते के अन्दर सुनाई नहीं होती, तो स्टे आर्डर वकेट हो जाएगा ।

श्री श्यामलाल यादव : मैं यही कह रहा हूं । दो हफ्ते का समय निर्धारित किया गया है । दो हफ्ते में पक्षों की तरफ से कोई प्रयास हो, कोई काम हो तो उनको क्यों दण्ड दिया जाए । जो तजुर्बा है उसके आधार पर मैं कहना चाहता हूं कि कोई नई व्यवस्था आप लागू करें । हम यह समझते हैं कि अगर यह विधेयक लागू हो जायेगा तब देखेंगे कि किन अदालतों में दो हफ्तों के अन्दर इन रिटों का, स्टे का फैसला होता है । आज तक नहीं हुआ है और आगे भी नहीं होने वाला है । यह थोथी दलील है । यह आपका भ्रम है । मैं कहना चाहता हूं कि पैसे के बल पर अगर वादी-प्रतिवादी प्रयास करेगा तो सब कुछ हो सकेगा । मेरा यह कहना है कि आपके पास इतने जज नहीं हैं कि जल्दी फैसला कर सकें । सुप्रीम कोर्ट एक दिन बैठती है उस पर फैसला करने के लिये जो स्टे एप्लीकेशन देते हैं । मैं कहना चाहता हूं कि अब कैसे सम्भव होगा जब कि आज तक सम्भव नहीं हो सका और जो प्रैक्टीकल नहीं है । इसलिये विधि मन्त्री जी ने जो दलील रखी है, जो प्रस्ताव रखा है, वह बिल्कुल निरर्थक है । इसका कोई लाभ नहीं होगा, बल्कि इसका बुरा प्रभाव होगा । वादी इससे परेशान होगा । सारा उनका प्रयास फ्रस्ट्रेट हो जाएगा । इसमें मुझे कोई सन्देह नहीं है कि जो हमारे देश की न्याय व्यवस्था है, जिस तरह की न्याय व्यवस्था है, उसमें पैसे का बड़ा प्रभाव है । वकील कैसे हैं यह आप जानते हैं । जब आप वकील थे और जो परम्परा डाल दी है फीस लेने की, वह इस देश की सारी न्याय व्यवस्था के प्रति लोगों के दिल में अनास्था पैदा करती है । आज हमारे देश में स्थिति यह है कि सुप्रीम कोर्ट में और हाईकोर्ट में जो बड़े बड़े लोग हैं या जो बड़े बड़े एडवोकेट हैं, वे सब एक तरफ तो रूल आफ ला की बात करते हैं, लेकिन दूसरी तरफ 1650 रु० फीस के रूप में लेते हैं । उनकी दिलचस्पी केवल मात्र पैसे कमाने में रहती है । अन्य बातों में उनका कोई मतलब नहीं होता है ।

माननीय, इस संविधान संशोधन विधेयक के सम्बन्ध में मैं एक दो बातें और कहना चाहता हूं । इस विधेयक में इमरजेन्सी के बारे में कुछ बातें कही गई हैं । क्लाज 38 में आर्टिकिल 352 के कुछ शब्दों में संशोधन किया गया है और "इन्टरनल डिसटरबेन्स" के स्थान पर "आर्म्ड रिबैलियन" शब्दों को रखा गया है । यह एक ऐसा संशोधन किया जा रहा है जिससे कोई भी व्यक्ति इस देश में इमरजेंसी लागू कर सकता है । मैं समझता हूं कि अगर आप तमाम परिस्थितियों की कल्पना करें तो आपको मालूम हो जाएगा कि जो प्रधान मन्त्री होता है वह बहुमत में होता है, उसके पीछे उसका दल भी होगा और उसकी कैबिनेट चाहे तो वह इस आर्म्ड रिबेलियन का कोई भी अर्थ लगा कर देश में इमरजेन्सी लागू कर सकती है । मैं तो यह कहना चाहता हूं कि अगर यह वर्तमान जनता पार्टी की सरकार अपने वायदे के अन्दर सही है और अगर इसको अपने वायदे को कायम रखना है तो बेहतर तो यही होगा कि इनको इमरजेन्सी के प्रावधान को हटा देना चाहिए । यह तो केवलमात्र लोगों को धोखा देने वाली बात है, चालाकी है । इसमें यह भी कहा गया है कि कौंसिल आफ मिनिस्टर्स के बदले केबिनेट मिनिस्टर्स की सलाह पर राष्ट्रपति इस प्रकार की इमरजेन्सी लागू कर सकते हैं । आर्टिकिल 75(3) में कौंसिल आफ मिनिस्टर्स की बात आती है

कौंसिल आफ मिनिस्टर्स में 55–60, सभी मन्त्री आ जाते हैं, लेकिन अब यह प्रावधान किया जा रहा है कि केबिनेट मिनिस्टर्स की सलाह पर इमरजेन्सी लागू की जा सकती है। आप जानते हैं कि केबिनेट मिनिस्टर्स में थोड़े मन्त्री होते हैं। इस प्रकार के प्रावधान से प्रधान मन्त्री और केबिनेट के कुछ थोड़े से मुट्ठी भर लोग राष्ट्रपति को इस प्रकार की सलाह दे सकते हैं कि देश में इमरजेन्सी लागू कर दी जाये। मैं समझता हूं कि यह मुनासिब बात नहीं है।

मान्यवर, दूसरी बात मैं यह कहना चाहता हूं कि आर्टिकिल 30 में जिस प्रकार का संशोधन किया जा रहा है और जिस प्रकार से प्रापर्टी राइट को लीगल राइट बनाया जा रहा है उसमें जो संशोधन है वह इस प्रकार है—

"All minorities, whether based on religion of language, shall have the right to establish and administer educational institutions of their choke."

आज हमारे देश में स्थिति यह हो रही है और खास करके वस्ट बंगाल में यह किया जा रहा है कि जो संस्थाएं मजहबों द्वारा चलाई जा रही हैं या इसी प्रकार की जो दूसरी इंस्टिट्यूशन्स हैं, जैसे रामकृष्ण मिशन है, वे जो एजूकेशनल संस्थाएं चलाती हैं उनको वहां की सरकार टेक-ओवर करती जा रही है। इसलिए मैं यह कहना चाहता हूं कि अगर आपके दिल में माइनोरिटीज के प्रति कोई हमदर्दी है तो आप इस प्रकार का प्रावधान कीजिये जिससे ये बातें न होने पायें। मैं आपको उत्तर प्रदेश का एक उदाहरण देना चाहता हूं। पिछले साल उत्तर प्रदेश में पुलिस के लिए कुछ इंस्पेक्टरों का सेलेक्शन हुआ और उसमें 40 अभ्यार्थी चुने गये। लेकिन बाद में उनको बदल करके एक जाति विशेष के लोगों को सेलेक्ट कर लिया गया। आपको यह जानकर आश्चर्य होगा कि जिन 40 व्यक्तियों को बदला गया वे अल्पसंख्यक मुसलमान थे। कोई दूसरा आदमी नहीं बदला गया। जनता पार्टी की सरकार ने पिछले साल उत्तर प्रदेश मे इस तरह से 40 अभ्यर्थियों को बदल दिया और एक जाति विशेष के लोगों को चुन लिया गया। ऐसी स्थिति में अगर आप माइनोरिटीज को संरक्षण देा चाहते हैं तो उसके लिए आपको स्पष्ट प्रावधान करना चाहिए। आर्टिकिल 30 में जहां यह लिखा है कि :—

"All minorities, whether based on religion or language...

fg% 3K % 'Sis? 3$T f3& ^ —

"... including religious denominations, shall have the right to establish and administer educational institutions of their choice."

ताकि कोई भी प्रदेश सरकार या केन्द्रीय सरकार रिलिजियस डिनोमिनेशन्स को या उनकी संस्थाओं को टेक-ओवर न कर सके।

मान्यवर, इसके साथ-साथ जो क्लाज 14 और 25 में लोक सभा के मेम्बरों और विधान सभाओं के मेम्बरों के बारे में डिस-क्वालीफिकेशन की बात कही गई है, उसके बारे में कुछ परिवर्तन किया गया है। मैं समझता हूं कि इस संबंध में पहले जो व्यवस्था थी वह ठीक थी। इसमें यह कहा गया है कि इलेक्शन कमीशन से सलाह-मशविरा करके कोई निर्णय होगा। उसका मतलब यही है कि इलेक्शन कमीशन जो सलाह देगा उस पर मंत्री अपना फैसला देगा वही बाद में राष्ट्रपति का फैसला कहलाएगा। मैं समझता हूं कि पुरानी व्यवस्था ठीक थी। अब इसमें परि-वर्तन लाया जा रहा है, यह ठीक नहीं है।

इन बातों को कहते हुए मैं एक बात और निवेदन करना चाहता हूं। कंकरीट लिस्ट से एजूकेशन को हटाने का जो प्रयास हो रहा है यह बहुत ही निन्दनीय है। मान्यवर, जनता सरकार के आने के पश्चात् से उन्होंने यह कहा कि हम शासन का विकेन्द्रीकरण

[श्री श्याम लाल यादव]

करेंगे परन्तु देश के किसी भी हिस्से में इनकी सरकार ने शासन का विकेन्द्रीकरण नहीं किया जो स्थानीय निकाय, नगरपालिकायें, कार-पोरेशन और जिला परिषदें, थी, उन सब को भंग कर दिया है और जो दूसरे निकाय थे उन के अधिकार समाप्त हो गये । फाइनेंस कमीशन भारत सरकार के पास है, प्लानिंग कमीशन है । सारी थैली पर कन्ट्रोल भारत सरकार का है । कोई प्रदेश सरकार चाहे भी तो वह शिक्षा के क्षेत्र में कोई काम नहीं कर सकती है । युनिवर्सिटी ग्रान्टस् कमीशन देश की सभी युनिवर्सिटियों को नियंत्रित करता है । उसने कह दिया है कि अब कोई नयी युनि-वर्सिटी नहीं खुलेगी । शिक्षा चाहे प्रदेश सरकारों की लिस्ट में हो लेकिन युनिवर्सिटी कोई स्टेट गवर्नमेंट नहीं खोल सकती है क्योंकि यू० जी ० सी० ने इस पर प्रतिबन्ध लगा दिया है । कोई भी प्रदेश सरकार डिग्री कालेज नहीं खोल सकती है क्योंकि यू० जी० सी० का प्रतिबन्ध है । तो शिक्षा के क्षेत्र में यू० जी० सी० जो कि शिक्षा मंत्रालय के अधीन है, उसके माध्यम से, हमारे फाइनेन्सी कमीशन के माध्यम से और प्लानिंग कमीशन के माध्यम से उस पर भारत सरकार का कन्ट्रोल है । प्रदेश सरकार म्युनिसपैलिटी हो गई है । कंकरीट लिस्ट में रहने से शिक्षा का बहुत सा काम यहां हुआ । बहुत समय से शिक्षणगणों की मांग थी, विद्यार्थियों की मांग थी, अध्यापकों की मांग थी । इसलिये सारे देश में समान रुप से शिक्षा की व्यवस्था को लागू करने के लिये कंकरीट लिस्ट में इसको लाया गया । इसका सारे देश में स्वागत हुआ । यह जनता पार्टी का अहमकपन। है, यह जिद है कि हमने कहा था कि हम उसे वापस करेंगे लिहाजा हम इसे जरुर वापस करेंगे । मैं कहता हूं कि ऐसा करके आपको बाद में पछताना पड़ेगा और फिर शिक्षा को कंकरीट लिस्ट में रखना पड़ेगा, आज नहीं तो कल । आप इसको हटा नहीं सकते हैं । कोई भी विषय ला एंड आर्डर का जो है वह स्टेट सबजेक्ट है । लेकिन आज केन्द्रीय सरकार को इस बारे में कितनी पावर्स है । वह पुलिस भेज सकती है, फौज भेज सकती है, सी० आर० पी० भेज सकती है, बी० एस० एफ० भेज सकती है और राष्ट्रपति का शासन लागू किया जा सकता है । सदन में हम देखते हैं कि आज जो चीजें कंकरी लिस्ट में हैं उनको यहां रख देने से किसी के अधिकार पर कोई कुठाराघात नहीं होता । शिक्षा की पद्धति को बदलने का एक नारा दिया गया था । मान्यवर, लेकिन कहीं भी शिक्षा की पद्धति बदलती दिखाई नहीं दे रही है । जो नारे पब्लिक स्कूल के क्षेत्र में या दूसरे क्षेत्र में दिये गये थे वे सारे नारे समय के साथ बदलते जा रहे हैं और नौकरशाही के शिकंजे में जकड़ते जा रहे हैं । जो उद्देश्य थे, जो घोषणायें थी उन सब को आज यह लोग विस्मृत कर चुके हैं, भूल चुके हैं । इसलिये मैं समझता हूं कि इस विधेयक के जरिये यह कोई ऐसी बात नहीं करने जा रहे हैं जिसके लिये हम सरकार को बधाई दे सकें । ये कोई ऐसा कदम नहीं उठाने जा रहे हैं जिससे इस देश की गरीबी को हटाने का कोई ठोस प्रयास हो सके ।

SHRI AJIT KUMAR SHARMA (Assam): Mr. Vice-Chairman, Sir, I congratulate the Law Minister for placing these proposals for the amendment of the Constitution to fulfil the major commitment of the Janata Party given during the election time. It is true that he had to encounter a lot of constraints, specially the constraints of the composition of this House and it is because of that that there has been sufficient delay in bringing forward these amendments.

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

It is also true that because of these constraints some more amendments which we liked or which the Janata Party liked, could not be brought forward at the present moment. Now,

Sir, from the opposition benches hon. Members, for instance Mr. Zakaria and now Mr. Shyam Lal Yadav, point-~ed out that although the Janata Party had declared that it would make an end to the Forty-Second Amendment, it became wiser not to end it but to amend it. Sir, here I should like to point out to our friends what the Janata Party had promised before the people and when it made that promise it was conscious that there might be some difficulties in fulfilling the same. Therefore, the exact wording that we placed before the people was that the Janata Party would 'seek to rescind' the Forty-Second Amendment. It did not say that it will rescind, but it said that it will 'seek to rescind' the Forty-second Amendment. There is a lot of difference between the two. The party was conscious that even if it got the majority in the Lok Sabha as representatives of the people, it might not get that representation in the Upper House which was constituted in a different manner. Now, Sir, the Janata Party has fulfilled it. I should say it has fulfilled it more democratically. Here I may compare the position as it obtained during the Forty-second Amendment of the Constitution. During the Fortysecond Amendment, what we realised from inside the jails was that the Government and the ruling party were not prepared to have any kind of compromise, any kind of talks, any kind of respect for the opinion put forward by the other sections. They only wanted to impose their opinion. They put Members of Parliament into jails, they gagged the Press, they did not allow people to hold any meetings. In that atmosphere, they brought forward the proposals for the amendment of the Constitution.

> Sir, I would like to quote from a very interesting report which I happened to read during those times inside the jail. I just preserved a copy of that. At that time, our present Law Minister, Shri Shanti Bhu-shan, while participating in a discussion in Delhi, made certain very interesting remarks. The then Prime Minister had declared that they had thrown open the amendments for discussion amongst the people and had also asserted that there was a good debate. But what kind of debate was it? Shri Shanti Bhushan had said in that discussion:
>
> > "The debate o_n the proposed amendments was like a boxing match. It is almost like a boxing match which has earlier been publicised as a well-contested game. But, in fact, the hands of one of the boxers are tied behind him and the other boxer is given two to three pairs of gloves to fight. And thi_s well-equipped boxer floors his opponent. The referee steps in and says that the match has been very interesting and the boxer with the free hands is the winner.'"

That was the exact situation in which the Forty-second Amendment was passed. The entire people were gagged and the amendments were rushed through. Many of my friends from the Opposition have talked about referendum clause. Mr. Antulay said that the inclusion of this clause meant disrespect to the people's representatives in Parliament. But, Sir, may I point out that our friend, Mr. Antulay, and the then Law Minister, Mr. Gokhale, made two statements opposing referendum? At that time also, there was a demand from certain sections of the Press that there should be a referendum on the question of amendments. The argument put forward was that the extended or rump Parliament was not authorised to pass these amendments; therefore, there should be a referendum. In answer to that demand, Mr. Kokhale and Mr. Antulay issued a public statement in which they said: "People are illiterate and so we cannot have any referendum from these illiterate people." Such was the respect shown by them during that time. But today, they say, when the referendum clause is there, when the Janata Party is giving full respect to the people and their sovereignty, when they are giving ultimate authority to

(Shri Ajit Kumar Sharma)

the people t_0 decide the main features of the Constitution, then they come forward and say that this is a disrespect shown to the legislators or the Members. I think this needs no comment on the political philosophy which i_s pursued by our friends here who *were* at that time the ruling party and who imposed this black Act of the Forty-Second Amendment over the people of India.

There is another very interesting point raised by our friend, Mr. Antulay. He has, if I may say so, shed his crocodile tears over parliamentary democracy. But may I point out another speech made in this very Central Hall of Parliament during the Commonwealth Parliamentary Conference by their leader, the then Prime Minister of India? In that speech she made two remarks. In one remark she said:

> "Ushering in a democratic system, adoption of a free Constitution and establishment of a parliamentary government did not necessarily guarantee concensus arid order."

What more does she say? I quote: —

> "Democracy had different forms suitable to a country's history and national character. Many countries which had adopted the British model had later adapted it to their own circumstances."

The real meaning behind these two statements was that she did not want a parliamentary government to function because what she achieved through the Forty-Second Amendment was to make Parliament completely ineffective. The Forty-Second Amendment established supremacy of Parliament over the judiciary, then supremacy of the Cabinet over Parliament, and then the supremacy of the Prime Minister over everybody else. That was the substance of the Forty-Second Amendment that was passed by Parliament.

During that very time she addressed the Commonwealth Parliamentary Conference and said that she had no belief in the parliamentary system. She did not believe in all that talk about parliamentary sovereignty. But she also said that although the British people had parliamentary sovereignty, the Indian people should not and need not have parliamentary sovereignty m our country.

श्री भीष्म नारायण सिंह (बिहार) : कहां, कहां की कोटेशन दे रहे हैं ।

SHRI AJIT KUMAR SHARMA: We have to remember this background and in this background it is the Janatt Party which has re-established the power of the people, the sovereignty of the people, restoring them their basic freedoms. It has fulfilled all the commitments which it gave in the political Charter in its election manifesto. It has fulfilled the other items by taking the second step, the legal step to fulfil the other items in the economic charter. The first item in the economic charter was the abolition of private property. This has been incorporated in this Constitutional Amendment. Only one item is still left out, that is, lowering the voting age to 18 from 21 years. This is the only item left in the political charter which has not yet been fulfilled by the Janata Party. I hope this will also be done ns soon as we get out of the constraints of this House.

Sir, I have also to remind the Law Minister, while congratulating him on all these steps he has taken for constitutional amendments, keeping in view the constraints that exist today, that sooner or later—sooner rather than later—he should try to bring forward further amendments to the Constitution to establish the right to work for the Indian citizens and also to provide for a decentralised structure of the Indian State by bringing; district administration and panchayat ad-ritinistration into the Constitution and

thus fulfil the aims which the Janata Party pursues for the establishment of a real Swaraj of the Indian people. """ Thank you.

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, while I extend my hearty welcome to most of the provisions of this Bill—the provisions which had been endorsed by the people of India in the last General Election and now that have come in the form of a statute—I would like to refer to the provision of referendum straightway. I was one of those persons who had been rather skeptical about thi$_s$ principle of referendum before the last Constitution Amendment Bill which was moved on the floor of this House itself while I was in the Government. When I saw with my own eyes in my own presence, how the Constitution could be amended. If I may say so, with all humility, but for the resistance of some of us—myself and some of my friends—probably the amendments that would have come in the Constitution could have been much more drastic and, probably, Mr. Shanti Bhushan would not have had a chance to amend the Constitution at all. Having been a witness to this phenomenon and having successfully resisted the more obnoxious provisions that would otherwise have been included here, now I would like to confess that I am converted to the doctrine of referendum because there must be one more additional guarantee that the Constitution cannot be amended at the whims and fancies of any leader who happens to be the Head of the Government.

It has been said—I think it was Professor Laski who said it—that even in a parliamentary democracy, ultimately it is the dictatorship of the executive and if the executive decides —and much more so on the eve of elections while the party members will have to go for tickets monetary help, etc.,—a three—line whip could do all the magic and any amount of persuasion will not help to make the members realise and vote against any obnoxious provision in conditions of our society. A captive Parliament and a capitve political party and a populist leader with dictatorial tendencies can get the Constitution amended within twenty-four hours— there is no doubt at all. But it is not Parliament that is sovereign: It is the people of India who are sovereign and it is the people of India who have given unto themselves a sovereign republic and a Constitution.

Mr. Shanti Bhushan has, in certain respects, tremendous faith in two-thirds majority, and Mr. Antulay seems to have a pathetic faith in two-thirds majority. Purely as a matter of argument—perhaps not merely as an argument but, i$_n$ fact, it happened last time; suppose the ruling party technically has a majority in both the Houses of Parliament. What is contemplated by the Constitution is two-thirds of majority present and voting at the time when the constitutional provisions come up for consideration. Now Mr. Shanti Bhushan is not hesitant to keep the preventive detention provision in the Constitution itself; article 22 in some form exists. Suppose, during that period of seven or eight days, the Opposition Members are arrested—which happened last time—and technically the majority is available for the purpose of amending the Constitution, you can easily get the two-thirds majority keeping the Opposition Members of Parliament in jail. Then we are satisfied because under the provisions of the Constitution it is quite all right and no court in the country can go into this question because normally the courts may not like to question the Constitutional amendment in such a case. What is the guarantee that any dictator will not trample the provisions of the Constitution? The only guarantee ultimately lies in the people of this country. It has been said by some people; how can they understand the Constitutional niceties and all that? Whether they understand the Constitutional niceties or not, they have got the horse sense to understand in what

[Shri K. V. Raghunatha Reddy]

manner the country is going, in what direction it is going. If Mr. Raj Na-rain could win the election in Rae Bareli, it is because of the horse sense of the people and their will and determination to see that dictatorship is not established in this country, which ultimately prevailed. I do not think it is their love and affection for Mr. Raj Narain. But it is the democratic spirit of the people that ultimately prevailed in Rae Bareli. The same thing happened in almost all the States. And if the people could throw away a Government which was quite populist, and which, of course, had generated seductive effect through the 20-point economic programme, if the people could judge well, the people will not belie the confidence which any parliamentary government and system has placed in them. And if the people cannot protect themselves, then what is the guarantee? If the people want to amend the Constitution, by all means, it could be amended. We should not stand in the way.

Then, Mr. Shanti Bhushan is also hesitant about including the Cabinet system with the Council of Ministers being responsible to Parliament. He seems to be a little hesitant about it in the context of referendum. I would like to urge upon him to apply his mind seriously to this question. If by way of an amendment of the Constitution the parliamentary system is changed and the presidential system is installed, what will happen? Mr. Bhupesh Gupta has said that it was there on the agenda, but it was prevented. I must on this occasion congratulate Mr. Bhupesh Gupta and his distinguished colleagues who had played a very historic role in preventing this country going over to the presidential system from the parliamentary system and the Cabinet being responsible to Parliament. Then, if the parliamentary system itself is amended and changed into the presidential system, all the guarantees which Mr. Shanti Bhushan has kept for the purpose of referendum will not have much meaning. Therefore, Sir, for the purpose of maintaining £ parliamentary democracy for keeping the populist leaders away from changing the Constitutional system and the parliamentary system, it is necessary that it must be included within the clause which is meant for the purpose of referendum. I would like Mr. Shanti Bhushan to apply his mind to it. 1 am not pressing this matter purely for the sak$_e$ of argument or for winning a debating point. I am a witness to many things that had happened in this country. I would like to strongly advise Mr. Shanti Bhushan to pay heed to my advice because it is the future generations that will be there to judge whether we had taken a proper decision.

SHRI BHUPESH GUPTA: Sir, may I, with your permission, inform you that he is one of the Ministers who showed great concern at the prospect of the presidential system being installed. He is one of the Ministers who also warned me and asked me to act before it was too late. I thank you, Mr. Raghunatha Reddy for that.

SHRI K. V. RAGHUNATHA REDDY: While I thank Shri Bhupesh Gupta for all the affection he has shown to me all these years, not by way of returning the compliment to him, whatever might be the ultimate decision that he had to take on behalf of his party, he had expressed his unqualified agony over what was happening in this country, and in that sense he had fought against the dictatorial tendencies in this country. Another argument that has been advanced by one friend of mine is that if the people will have to amend the Constitution, any populist leader, as Mussolini rode to Rome, can ride to Delhi and change the Constitution. Well, here again I would say, Sir, that we must have confidence in the wisdom, sagacity and horse sense of the people. There is no other guarantee than the vigilance of the people. As

far as the democratic rights are concerned, there cannot be a greater guarantee than the people of India, and we will have to place faith in them. At every point of turn of history, they have shown greater wisdom, capacity, courage, conviction and faith than their leaders have done. In this connection, I would like to urge upon Mr. Shanti Bhushan to consider that if the age limit is reduced to 18 years for the purpose of enlisting the voters, it should be further guaranteed that the Constitution or the Parliamentary system will not be changed so easily in the case of a referendum.

SHRI SHANTI BHUSHAN: That is being considered separately as a package of electoral reforms.

SHRI K. V. RAGHUNATHA REDDY: Then I come to the question of preventive detention and *habeas corpus.* I must say with great concern that nothwithstanding our expectations about the independence of the judiciary—it was not doubt the finest hour as far as the High Courts were concerned—if cannot pay the same compliments to the lordships of the Supreme Court though some of them have really shown great concern and I must pay homage to Justice Khanna who had stood all the ordeals of the day. But even the independence of the judiciary depends upon democratic temper and the atmosphere that prevails during a particular period; it is not free from all the confusions that might be created and might prevail at a given point of time. Therefore, Sir. even for the purpose of the independence of the judiciary, unless the judiciary realises that its independence cannot be touched by Parliament or by the Executive and that its independence can be dealt with only by the people of the country, the judges would not he able to act more independently than they are e^{x}-roected to do so now. If this is the case with th_{e} independence of the judiciary, for whose independence •every possible Article provides in the Constitution, then, to expect the ordinary men who happen to be Members of Parliament and who have their own problems, to act with such great judiciousness and independence is a very difficult task. There can be a captive Parliament, we have seen. In this context, even to maintain the independence of the judiciary, a referendum is necessary, and that is why I support this with understanding and humility because I was one of those who were very much pained at the judgement of the Supreme Court. I expected the Supreme Court Judg.es to rise to the heights. There are, no doubt, a few Lord Atkins. But others were terrorised into taking the line which was softer one. Why I was very unhappy about this matter is only for this reason. Why I am worried about preventive detention is only for this reason.

On my advice as the Labour Minister and with my help and guidance, two young girls organised the Agricultural Labour organisation which was affiliated to the All India Trade Union Congress. They organised the agricultural labour, not for any revolutionary purposes, but for demanding the implementation of the provisions of the Minimum Wages Act in a locality where the elite of Delhi lived in bungalows in pomp and where the agricultural labourers were being denied the minimum wages which were expected to be paid under the Minimum Wages Act. And, therefore, when they came for my advice, I told them that without a labour organisation it is very difficult to implement the Minimum Wages Act. All the crimes that they committed were only to organise the trade union organisation and demand the implementation of the provisions of Minimum Wages Act. The result was, Sir, that one girl's spine was broken. Finally, on the 25th June, 1975, at midnight both of them were detained under the preventive detention provision. This is what had happened. I still remember it. One of the girls filed a writ petition in the

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Delhi High Court in which it was stated by her that the labour organisation was undertaken with the help and guidance of the Labour Ministry ana the Labour Minister commended their activity in public, which I did. This was the affidavit filed (before the High Court. But the High Court also was helpless. I went to the Home Minister. Mr. Brahmananda Reddy was then the Home Minister. I asked him to release these people, and I convinced Mr. Brahmananda Reddy that what was done by the Lieutenant Governor was wrong. Mr. Brahmananda Reddy tried for a few days and finally told me "Unless the order comes from the chief of the caucus, the Lieutenant Governor says he will not be able to release them". This was the situation which we had to face and I do not want a repetition of this situation. There may be an advisory board and some checks and balances may be maintained. But I would like the I.iw Minister to concede the point that there should not be any preventive detention at all. Even in Northern Ireland, Australia the United Kingdom, Canada and the United States, there is no preventive detention. Temporarily, for a very short period in Northern Ireland, preventive detention was introduced. Even then it was fought tooth and nail by the British public and finally the British Government had to withdraw it. So, Sir, preventive detention is uncalled for and I would like the Law Minister to apply his mind and take away this provision because I am speaking from experience which perhaps Mr. Shanti Bhushan may not have, though he may have argued cases...

SHPI BHUPESH GUPTA: He has argued the case of Mr. Rajnarain and made him win the case. And now Mr. Rajnarain is moving a privilege motion against him. What a wonderful wcrld we are living in:

S.HTI K V. RAGHUNATHA REDD' f: Then I will only touch upon one point. I have many amendments and when the amendments come up. I will speak. As far as the removal of property right from article 19 is concerned, I will say with himility ** that I raised this demand first in 1569 in my speech in Kerala and it became a topic of furious discussion throughout the country. At that time, the united Congress Party's Working Committee had to pass E resolution assuring the people of India that the property right would not be taken away from article l'J-They got frightened by the controversy that had been raised. I should congratulate the Law Minister for having removed the right to property from the Fundamental Rights; but I cannot congratulate him for another reason because he has brought in, in a very surreptitious manner, article 300A. Though article 31 is taken away, "compensation" again comes back...

SHRI SHANTI BHUSHAN: No, no.

SHRI K. V. RAGHUNATHA REDDY:... as laid down in th© judgement in the Metal Corporation case.

SHRI SHANTI BHUSHAN: Total misconception.

SHRI K. V. RAGHUNATHA REDDY: If I am wrong, I am willing to be corrected. But once the word compensation" has been used, even in the judgement of the Supreme Court in the Metal Corporation case it had been pronounced by the Supreme Court that the compensation must be fair and equitable, in other words, the market price. What was provided previously under article 31 was that if the legislature fixes [an]y amount, it is bound to be fair compensation and no court can go into that question. Even if the Law Minister does not have any doubt about it, in order to clear all doubts, he can accept the amendment which we have proposed so that he can lay at rest all kinds of misinterpretations that are possible as far as this article is concerned.

Finally, I would like to say that ultimately the democratic principles depend upon the character of the State. Abraham Lincoln in his last days, just before his assassination said—I quote:

> "I see in the near future a crisis approaching that unnerves and causes me to tremble for the safety of my country.. .Corporations have been enthroned: an era, of corruption in high places will follow; and the money power of the country will endeavour to prolong its reign by woiking upon the prejudices of the people until wealth is aggregated in a few hands and the republic is destroyed."

As long as money power, concentrated in a few hands, is not controlled and removed by adopting the principles of socialism, whatever might be the provisions of the Constitution, whatever might be the various laws that are expected to protect the interests of the people, I am afraid, ultimately it is the character of the State, the will of the people, which can prevent the erosion of democratic rights. Money power is an antithesis to democracy, democracy is an anti-thesis to capitalism, and capitalism and democracy are inconsistent with one another, and socialism and democracy alone can survive with one another. Demo-cracy cannot be protected except in an economic system based on socialist principles. Unless this is done, any number of Constitutional Amendments we may make, to formalise our rights and our aspirations, they will not take us far. "We have to provide a system in which democracy itself flourishes. Democracy without socialism or socialism without democracy are like a plant that does not flower.

SHRI SWAMI DINESH CHANDRA (Rajasthan): Mr. Vice-Chairman, Sir, I have heard Mr. Ready with rapt attention. His observations regarding the Forty-second Amendment to which he himself was a party, are really painful. I wish he had shown the same audacity and courage while he was in the Government. He continued to share power and he did not resign at that time. I would call it an act of cowardice on his part...

SHRI K. V. RAGHUNATHA REDDY: I would like to submit, I am not here to plead not guilty. I accept, we also belong to the community of sinners who were responsible for all the calamities in this country, But I also share that agony...

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): You are bold enough to say that.

SHRI K. V. RAGHUNATHA REDDY: With all the agony that we suffered, I am prepared to say, in the circumstances of the day, though we tried our best to prevent what was resorted to, we could not prevent the calamity.

SHRI SWAMI DINESH CHANDRA: He did not resign at that time. I would call it an act of cowardice on his part.

Mr. Vice-Chairman, the move to introduce the Forty-fifth Amendment to the Constitution is an attempt on the part of the ruling party to subvert the Constitution itself. There might have been many controversies regarding the . Forty-second Amendment made to the Constitution, but the Forty-fifth Amendment seeks to usher in many more controversial features in the constitution than did the Forty-second Amendment to the Constitution. The first ignominous feature of the motion is to surreptitiously try to rob the nation of its most glorious achievement by diluting the definition of the word 'socialist'. The Forty-second Amendment introduced and added the expression 'socialist' before the expression 'republic' in the Preamble to the Constitution. In fact, the introduction of the expression 'social-

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ist' to qualify 'republic' was to take note of the political advance registered by India since independence; and to take note of the craving and yearning of the vast populace of this country for the establishment of a socialist society without which the country could not have solace; it took note of the fact that in order to end unemployment, hunger, poverty, squalor and disease, the nation wished to have before it the goal of establishment of socialist society. This is what the Forty-second Amendment did by adding the expression 'socialist' before 'republic'.

Sir, the attempt to define 'socialist' by giving it a meaning as suggested in the Amendment moved to article 365 of the Constitution h in fact a subterfuge to whittle down the gain that the addition of the word 'socialist' had achieved. By saying that 'socialist' means a 'republic' in which there is freedom from exploitation, social, economical and political, you are attempting to give a meaning to the word 'socialist' as would be acceptable to the big business houses. It will be in estblish-ment of a paradise which will suit these people and their huge industrial empires consisting of vast industrial estates.

They even now assert that in India there is perfect freedom from all forms of exploitation, social, economic and political. The interests of the employees in the private sector and the nationalised sector have come to be common. Both have given a call for wage freeze while the nation's economic growth has retarded because the wages are very low. So long as .the wages are low, there will be no purchasing power *and* unless there is purchasing power there will be no large-scale production.

There is nothing surpri-ing in it that the advent of Bhoothalingam Committee and the attempt to define 'socialism' are synchronising with each other. Way back in 1939 the Report of the Committee known as the Bombay Textile Workers' Committee under the chairmanship of

Shri Harshid Bhai Divatia, ex-Chief Justice of the High Court of Bombay, suggested a national minimum wage of Rs. 120.00 per month for the textile workers. The recommendation of the Bhoothalingam Committee is

i in favour of a minimum wage of Rs. 100.00 per month while the prices have risen twenty time as compared to 1939. Look at the Bhoothalingam Committee's recommendation of Rs. 100.00 per month as minimum wage in this background and you will not be impressed why this attempt to define 'socialist' according to one's own taste.

Sir, a socialist society is one in | which there is no large-scale production in the private sector, artisans may continue to work on their own, farmers may continue to til] their small farms, there might be shop keepers selling grocery and provisions, but so long as large textile mills, heavy engineering industries, tobacco and oil manufacturing companies are in private hands, how can you end exploitation, only our socialist friends who are on the other side and now an ally of the ruling party will be able to say. The private sector and corruption must co-exist. This is the hard fact of life. One cannot survive without the other. If you are earnest about defining the word 'socialist', do define it, not so vaguely, but in clear terms, 'say so openly that there will be no joint sector companies henceforth. Joint sector company is not a gospel truth. In England and other European countries, in the Middle East, in China and in India trade and merchandise flourished without the formation of joint sector companies. The cankerous growth of joint stock

companies the forming of large industrial empires in private sector, has robbed the nation of all its financial resources. There is no money left in the hands of the Government to invest in small-scale industries to help the small farmer or the village artisan. Every pie has been devoured by the industrialists. Every monopoly house is indebted to the tune of 100, 200 or 300 million rupees borrowed ten, twenty or thirty years back from the nationalised State Bank or State Financial Corporations, and there is no recovery over these years neither there is any hope of recovery in sight. There is the rot that must come to an end if this country is to live, this nation is to be 'Saved. Average Indian is leading - a life of drudgery and of no hope in future. There is no other way out but boldly to do away with the large-scale production in private hands, no more forming of joint stock companies, and ' immediate control of industries which have not been able to pay even the interest on the loans granted to them years back.

A socialist society must guarantee work to its citizens, no government has a right to rule unless it can guarantee food, two square meals to every citizen, a roof over the head, free medical attention and medicines from hospitals and dispensaries without payment of any cost, and the education of all children should be the responsibility of the State. This is how you have to define the word "socialist". Don't give that expression a vulgar meaning by saying that it means a state in which there is no exploitation, social, economic or political. You.say there is no exploitation and the industrialist say$_s$ that there is no exploitation. Then it means that you have already become successful in establishing a socialist society. The introduction of the word "socialist" in the Preamble to our Constitution by the Forty-second Amendment was a milestone, it was something in which the nation could take pride, something which gave a ray of hope tc the nation.

Do not rob the nation of its optimism, as to its future, by defining the word "socialist" in such vague and uncertain terms as would $_s$ecure-the 'industrialists a paradise which they have formed on this earth. If at all you want to add anything to the Preamble, add here guarantee to work, guarantee every Indian his daily bread. You have no right to govern unless you guarantee food. One cannot wait for his morning l bread and for his evening meal till eternity, and thi$_s$ is what Morarjibhai, qur honourable Prime Minister, has promised to the nation. To famished Indians the ten-year period is eternity. The Prime Minister says that he will eradicate unemployment after ten years. But what to eat during these ten long years? This question has to be answered.

Sir, the Janata Party is making an attempt to give a meaning to the word "socialist" which would be much nearer to the heart's desire of the worst exploiter in this country. In conjunction with their still-born child, the Bhoothalingam Committee Report, the amendment will provide the exploiter the airbone umberalla which he needs. He will be able to say: I am paying my workers just what the Bhothalingam Committee has suggested and I am doing that what I have been asked to do and as such there is no exploitation. If there' is no exploitation, that means that socialism has already dawned in. India. Socialism seeks to establish a society in which culture has spread to the farthest limit enveloping the whole society of masses, and does not mean merely the end of exploitation. When you say that there will be no exploitation, $_s$ay so what you mean by it? Do you or do you not mean full employment, a decent life, a life full of hope? End of exploitation must mean that.

Sir, I will request the honourable Law Minister to introduce only those

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amendments as are in consonance with, and are in furtherance of the Directive Principles of State Policy, wards the fulfilment of these objectives. There could not be a greater mockery than to tell the Indian people cflery han to tell the Indian people that no courts shall enforce the Directive Principles of State Policy. What for then the Directive Principles have been enshrined in the Constitution? Are these principles there only to remain ornamental? If there is no application of these Principles, it is useless to take of such a principle. Certainly, the founding-fathers must not have thought of the Directive Principles only to serve as a Camouflage. Article 368 clearly envisages 7 p.M. the exercise of its constituent power by way of amendment, variation and addition. The only limitation set down on this exercise of power is contained in Part IV of the Constitution. Part IV of the Constitution deals with the Directive Principles of State Policy. Article :37 laid down:

> 'The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

I am sure, all of us would have felt much happier if this duty of the state to apply these principles in making laws were also imposed on all those who are associated or involved in the implementation of these laws; be it the executive, judicial or the legislative whvj$_s$ of the governance of this country. Even the Judges are to be made conscious that they are honour bfund to bear in mind the Directive Principles of State Policy while pi-mouncing decisions. The •imposition of thi$_s$ duty should have been incorporated in the forty-fifth amendment to the Constitution which ^ the hon. Law Minister has moved in the Parliament.

I most humbly request the hon. Law Minister that for God's sake do not decieve the Indian people by putting in such vague terms the defini tion of the term 'socialist'. The best form in which it stands at present. I would like to warn him, that any nefarious attempt on his part, to dilute the meaning of the word 'socialist i$_s$ bound to unleash a war between the vested interests on the one side and the broad masses in general on the other, and I am afraid, in that event you will side with the vested interests. I appeal to you to -refrain from doing that, give up this attempt to water down the meaning of the word 'socialist.

Thank you very much, Sir.

कलराज मिश्र (उत्तर ¨ प्रदेश) : उपसभाध्यक्ष महोदय, मैं सबसे पहले विधि मंत्री जी को धन्यवाद देता हूं कि पैंतालीसवें संशोधन के माध्यम से उन्होंने जो संविधान का ब्यालीसवां संशोधन था जिसके माध्यम से एक काला कानून पूरे देश में लागू कर दिया गया था उसको समाप्त किया है । अभी मैं बड़े गौर से अपने विपक्षी सम्मानित सदस्यों का भाषण सुन रहा था । उस भाषण को सुनने के पश्चात् यह बात लगी कि वे लोग भी ब्यालीसवें संशोधन के पक्ष में नहीं हैं । स्वयं कांग्रेस के लोग भी जो उस संशोधन को पारित कराने में सहयोगी रहे, उनकी भावना से भी स्पष्ट रूप से जाहिर होता है कि उस संशोधन को समाप्त करना चाहिये। इसीलिये मैं तो यह कहना चाहता हूं कि जो पैंतालीसवा संशोधन लाया गया है, सब लोग अपने स्वयं की मनोभावना से उसको स्वीकार करते हैं ।

श्रीमन्, मैं आपसे कहना चाहता हूं कि आपातकाल के दौरान संविधान का ब्यालीसवां संशोधन करके सम्पूर्ण शक्ति व्यक्ति विशेष के हाथ में केन्द्रित कर दी गई थी और उस आधार पर संविधान का आवरण लेकर अपनी तानेशाह मनोवृत्ति का क्रूर प्रदर्शन कर रहे थे। सारे देश में इस प्रकार का एक ऐसा वातावरण निर्माण हो गया था कि लोगों को यह सोचने के लिये मजबूर होना पड़ा कि कहीं जर्मनी में जिस प्रकार हिटलर ने संविधान का आश्रय लेकर दुनिया के सामने यह प्रस्तुत करने का प्रयास किया कि लोकतान्त्रिक प्रणाली से सारा शासन चल रहा है, लेकिन वास्तविकता क्या थी ? वह शुद्ध रूप से तानाशाह का नग्न स्वरूप था। शुद्ध रूप में वह तानाशाही थी। इस संशोधन में जो विशेष ध्यान देने योग्य बात है वह आपात काल की घोषणा करने की शक्ति के संबंध में कही गई है कि किस आधार पर, मंत्रिमण्डल के आग्रह पर या किस ढंग से, आपातकाल की घोषणा राष्ट्रपति कर सकता है। उस में जिस प्रकार से भूतपूर्व सरकार की प्रधान मंत्री ने बिना मंत्रिमण्डल को सूचना दिये राष्ट्रपति को आपातकालीन स्थिति की घोषणा करने की दृष्टि से बाध्य किया था उस को ध्यान में रख कर विशेष रूप से इस संशोधन विधेयक में बात कही गयी है कि बिना मंत्रिमण्डल के परामर्श तथा निर्णय को लिखित रूप से, जब तक राष्ट्रपति को नहीं दिया जाएगा और राष्ट्रपति को उस से संतोष नहीं होगा तब तक आपातकाल की घोषणा नहीं की जाएगी। ऐसा करके, मैं समझता हूं, मंत्रिमण्डल को विश्वास में रख कर और किसी तरह परिस्थिति के बारे में पूरा विश्लेषण कर के ही आपातकाल की घोषणा की जाए---यह इसकी मूल भावना है।

साथ ही साथ, इस में एक बिन्दु जोड़ा गया है कि आखिर यह आपातकाल की घोषणा किस आधार पर की जा सकती है ? संविधान के अन्तर्गत पहले जो यह था कि आंतरिक गड़बड़ी के कारण आपातकाल की घोषणा जारी की जा सकती है, इस शब्द को हटा कर विशेष शब्द का प्रयोग किया गया है कि जब तक सशस्त्र विद्रोह नहीं होता है तब तक आपातकाल की घोषणा नहीं कर सकते। लेकिन इसके बाद भी लोगों के मन में यह आशंका पैदा होती है कि जैसे आंतरिक गड़बड़ी के आधार पर आपातकाल की घोषणा की बात संविधान के अन्तर्गत की गई थी और बिना उसको विशेष महत्व दिए हुए इस प्रकार के आरोप लगा कर कि पूरे देश में हिंसात्मक वातावरण का निर्माण हो गया है, सैनिकों को विद्रोह करने के लिए प्रोत्साहित किया जा रहा है, झूठे आरोप लगा कर इमरजेंसी की घोषणा, आपात कालीन स्थिति की घोषणा सत्ताधीश के द्वारा करायी गयी---वहीं इस तरह का दुरुपयोग न हो। (*Interruptions*) कल्पनाथ राय साहब जरा शांत होकर सुनते जाइए। मैं यह इसलिए कह रहा हूं कि हमारे वर्तमान राजनैतिक नेताओं का इतने वर्षों के अन्दर स्तर गिरता गया है फलतः सामान्य जनता के मन में यह आशंका निर्माण हुई कि कहीं उक्त प्रकार की स्थिति इस संशोधन के द्वारा तो निर्माण नहीं होगी ? श्रीमन् इसको अपने व्यवहार से सरकार को यह सिद्ध करना होगा। मैंने यह वाक्य इसलिए कहा कि हो सकता है लोकतंत्र है, लोकतंत्र के अन्दर सरकार परिवर्तित हो सकती है। आने वाली सरकार हो सकता है कि इस का दुरुपयोग कर ले। इसलिए सशस्त्र विद्रोह की जो बात कही गयी है उस को जस्टिफाई करने की दृष्टि से जब तक इस प्रकार की स्थिति नहीं निर्मित होगी तब तक हम आपातकाल की घोषणा नहीं करेंगे, यह कहा गया है। मैं इसके लिए विधि मंत्री जी को, इस शब्दावली को जोड़ने के लिए बधाई देता हूं।

[श्री कलराज मिश्र]

दूसरी बात, नजरबंदी निरोधक कानून संबंधी संशोधन में परिवर्तन लाया गया है। कोई प्रशासन दार्शनिक भूमिका पर ही नहीं चलता। प्रशासन को चलाने के लिए कड़ायो की आवश्यकता पड़ती है। यह बात सत्य है कि कहीं व्यक्ति का अमानुषिक तौर पर शोषण न हो, उस को गलत तरीके से न्याय न देकर कारागार के अन्दर कर दिया जाए, उसको परेशान किया जाए। उनको ध्यान में रखते हुए आर्टिकल 22 को संशोधित किया गया है, उस में साफ साफ है कि जो डिटेन्शन का स्वरूप बनेगा उस के लिए एक परमार्श-दात्री परिषद बनेगी और वह परिषद उच्च न्यायालय के मुख्य न्यायाधीश की सिफारिश पर 2 लोगों की बनेगी जिसका अध्यक्ष उच्च न्यायालय का न्यायाधीश होगा और दो वर्तमान या निवर्त्तमान न्यायाधीश उस के सदस्य होंगे। तीन महीने के अन्दर जो उस के रिव्यू की बात है उसे तीन महीने को घटा कर दो महीने कर दिया गया है तथा दो महीने के अन्दर यह जो परामर्श दात्री परिषद होगी वह परामर्शदात्री परिषद परिस्थितियों एवं तथ्यों का विश्लेषण कर के निर्णय करेगी तथा इस कालावधि के अन्दर वह विरुद्ध व्यक्ति को मुक्त भी कर सकती है। यह प्रावधान रख कर जो भी शंका इस कानून के बारे में निर्माण हो रही थी उस को निर्मूल करने का प्रयास किया गया है।

उपसभाध्यक्ष महोदय, मैं विधि मंत्री जी को इस बात पर भी संशोधन पेश करने के लिये बधाई देना चाहता हूं कि जो इतने वर्षों के अन्दर अमीर और गरीब की खाई जबरदस्त तरीके से बढ़ती जा रही थी उसको संपत्ति के अधिकार को मौलिक अधिकार में से समाप्त कर दिया गया। यह स्वस्थ चिंतन की दिशा को प्रकट करता है। श्रीमन्, शिक्षा के संबंध में मैं जरूर कहना चाहता हूं और विधि मंत्री जी से निवेदन करूंगा कि अगर संपूर्ण देश की एकता को ध्यान में रखते हुए शिक्षा जैसे विषय पर विचार कर के उस को समवर्ती सूची में रख कर चलें तो ज्यादा उपयुक्त होगा। साथ ही साथ जीवन का विषय है उस संबंध में भी सूखा और अनेक प्रकार से जो अकाल की स्थिति का निर्माण होता है उस के लिये वन के संबंध में भी केन्द्र की व्यवस्था के आधार पर उस की कोई व्यवस्था की जानी चाहिए। उस को भी समवर्ती सूची में जोड़ने में यदि किसी प्रकार की प्राविधिक परेशानी न हो तो जोड़ने के संबंध में विचार करना चाहिए। अन्त में मैं यह भी कहना चाहता हूं कि जो बेरोजगारी की भयंकर समस्या पूरे देश में विद्यमान है उस को यदि मौलिक अधिकार के अन्तर्गत रखा जाता तो मैं समझता हूं कि देश में जो करोड़ों की संख्या में बेरोजगार भटक रहे हैं उन को अपनी जीविकोपार्जन करने की दृष्टि से आश्वस्ति प्राप्त होती। इतना कह कर मैं पुनः 45वें संशोधन विधेयक को पेश करने के अवसर पर सरकार के इस पग का स्वागत करता हूं और इस का समर्थन करता हूं।

श्री कल्पनाथ राय : धन्यवाद शिक्षा के संबंध में जो आप ने कहा उस के लिये।

एक माननीय सदस्य : केन्द्रीयकरण होने तक।

श्री कल्पनाथ राय : उस को आप समझिये भी तो।

SHRI M. ANANDAM (Andhra Pradesh). Mr. Vice-Chairman, Sir, I have great pleasure in welcoming this Constitution (Forty-fifth Amendment) Bill. After some of the stalwarts and constitutional experts have spoken on this Bil, there is not very much that I could say *on* this.

Mr. Vice-Chairman, Sir, you are aware that the Constitution (Forty-*• Second Amendment) Bill was passed at a time when there was emergency. And you are also aware that the Forty-Second Amendment was passed at a time when the Parliament was serving its extended period. What I first felt was that when the Law Minister brought about changes into the Constitution, he would have first thought of making a provision in the Constitution that no Constitutional Amendment could be brought during the extended period of a Parliament for reasons of emergency. As you are aware, Sir, the extended period of Parliament is always there only to act as a caretaker Parliament or a caretaker Government and during that particular period, there should not be any occasion for the Parliament Members to pass any Constiutial Amendment. I thought the Law Minister would take care to see that while he brought in this Forty-fifth Amendment Bil, the very first thing that he would do was to see that in an extended period of the term of the Parliament, no amendment to the Constitution could ever be made. Unfortunately, it seems to have escaped his attention and I would even now appeal to him that when he comes next any Constiutional Amendment, he would take care to see that this type of a provision is made.

Mr. Vice-Chairman, Sir, the Mem bers on our side have expressed some helplessness at the time when the Forty-second Amendment to the Constiution was made and they have said that they were all in fetters and their advice was not heeded. It may be true and, I say, it is true. While I say that this Forty-second Amend ment Bill has been very obnoxious md has fairly scuttled the democracy in this country, I also say that there ire very many good features in the ;ame Constitution Amendment Bill, especially those that deal vith administrative tribunals. I nust say that in a country like ours 1 vast country like ours, it is neces-:ary that there must be some sort of 1 division of work, and even the division of the judicial work is necessary especially when you consider that legal matters are getting complicated day after day. It is, therefore, necessary thai we should have administrative tribunals for services and adminstra-tive tribunals for matters other than services. Take, for instance, matters connected with economic offences and ether things. Those laws are very complicated and the decisions in these matters also are a fairly complicated affair. It is, therefore, necessary that we should have some experts to deal with these matters. I wish the Law Minister had retained the provisions in regard to the administrative tribunals.

Sir, I may be considered a reactionary if I say that the omission of article 19(1) (f) is not desirable. Sir, the Law Minister has explained to us that after the right to property is taken out of the fundamental Rights, the right to property is just made an ordinary legal right. I want to know from the hon. Minister whether ha has taken into consideration the consequences of the omission of that particular provision. Let not anybody think that I am opposed to making 'IT's right to property just a comon legal right. But, what are the consequences of it? I may just bring to your kind notice some, aspects of it. Article (19) (1) says that all citizens shall have the right—(a) to freedom of speech and expression, (b) to assmble peaceably and without arms,

(c) to form associations or unions
(d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India, (f) to acquire, hold and dispose of property and (g) to practise any profesion, or to carry on any
1 occupation, trade or business.

Mr. Vice-Chairman, Sir, there are about seven rights that a citizen posseses. Out of these seven rights the right to acquire, hold and dispose of property has been omitted. I would like to know from the hon. Law Minister 1 whether by the omission of this right i other fundamental rights enumerated in article 19(1) (f) are no affeced. 1

[Shri M. Anandan] would only like to quote one or two instances to illustrate how its omission also affects them.

Take, for instance, article 19(l)g), which says that all citizens shall have the right to practice any profession or to carry on any ocupation, trade or business. Now, if there is a doctor who has got a nursing home and the Government, in its wisdom, tries to acquire that property, and deprives him of that property, the result would be that that man would be deprived of or prevented from carrying on his trade, occupation or business, or practising his profession as a doctor. Now,, in such a situation the man has no redress, because, as you know, article 31 which provided that the Government could acquire any property only for a public purpose, is also omitted. Now, the Government can acquire any property for any purpose, even though it is not a public purpose. So, if a doctor is deprived of his property, for any political reason, and he has no more the roperty, the result will be that he will be deprived of practising or carrying on any trade, profession or occupation. Similarly, 1 will give another illustration. Take xlor example freedom of speech and expression. Suppose, there is a political party which has got a printing, press. Suppose, the Government, out of its wisdom, tries to deprive that party of its press. There is absolutely no remedy for that. The party cannot go to the court and challenge it because to acquire property is no more a fundamental right. What happens is, the party is deprived of the press and as a consequence, the treedom of expression or the "freedom of speech is impaired.

ihcre is another thing which T would like to bring to the notice of the hon. law Minister and say that while I am not very much opposed to the new provision, yet I would say that by omitting the right of a citizen to acquire property, from the Fundamental Rights, dire consequences may he th*IF. I would also like to caution the Government on another matter. Mr. Vice-Chairman, you are aware that under the Jammu and Kashmir Act, no person who is not ^ a citizen of Jammu and Kashmir can (acquire and property there That is tne provision in the Jammu and Kashmir Act. Now, here by I omitting this particular clause, any : State may take to its head to see that no j)eisen who is not a citzen of that pa* titular State or who is no a voter in any Parliamentary constituency of that particular State, acquires a pro-I perty there. There is no provision in the Constiution to challenge that particular law. The moment you remove this fundamental ri£ht, the consequence will be that the States may try to become autonomous in the sense that they would try to see that no citizen who does not belong to that particular State, acquires > any property there because the fundamental right to acquire property is not there. The States can debar a citizen not belonging to the particular State from acquring property there. Therefore, I want to caution the Law Minister. By removing it, he is doing a greater harm to the Constitution than he probably contemplates. Article 300A only deals with deprivation of property and does not] deal with acquisition of property. Mr. Vice-Chairman, you must also realise that 'Property' is not defined in any of the Acts so far. Even if you take Transfer of Property Act there is absolutely no definition of the word 'Property'. Property does not mean only an immovable property. It is immovable and movable; it is tangible and intangible. Therefore, omission of this right will affect not only the immovable property but it will affect' the movable property also and it will affect tangible and intangible assets. This is the warning I am giving to the Law Minister. He may have to face more number of litigation cases in the courts in future than we find now, by keeping this clause under Article 19.

There is only one other aspect which I would like to deal with before ' I conclude. Mr. Vice-Chairman, there

ha$_s$ been a demand both in the Lois
r Sabha and in the Rajya Sabha by some Members coming from Tamil Nadu that in the Preamble you should include the word 'Federal'. *Prima* facie, the demand seems to be justified. Let us take the Constitutional history of our country during the last thirty years. We know that during this period till 1977, there has been only on$_e$ single party both at the Canfcre and in the States—in most of the States—which har, been ruling the entire country. It was only in February, 1977, that the Janata Party came to pow,er at the Centre, and in March, 1978, in certain States, oth^r parties formed the Governments. After this, we find that there has been a demand from most of the States that there is need for some decentralisation of power. Mr. Vice-Chairman, you may be aware that in Tamil Nadu, when the D.M.K. was there, they constituted a Committee known a$_s$ the Rajamannar Committee to go into the Centre-State relation?. He has given a report where he has said that there is need for greater autonomy to the States. Similarly, in West Bengal, after the C.F.I. (M) formed the Government, they have given a memorandum in which they have said that there is need for greater autonomy to the States. The cry for autonomy is there because we know that most of the things that have been done in the States and elsewhere have been done through the Planning Commission. I must say that the Planning Commission ha*> absolutely no constitutional sanction. While we have a provision in the Constitution for a Finance Commission to be appointed once in five years, there has been no similar power or right for the Central Government to appoint a Planning Commission. The effect of it is that, though the Planning Commission has been theie, even for a very minor project in a State, what is happening is that they have to run to the Planning Commission for its sanction. This is done purely as an exercise between the State and the Centre without consti-
l tutional sanction. Mr. Vice-Chairman, you are aware that out of nearly Rs. 10,000' crores of revenue which the Centre is getting, only 22 per cent is being distributed to the States. That i$_s$ exactly the reason why the States have been crying for greater autonomy in various matters including fiscal matters. Therefore, there is a feeling that there is a case for reorganising the entire federal system in India and this is a matter which lias to be seriously considered, i do not wish to elaborate on thi$_s$ except to
j mention a few things. I will mention a few articles of the Constitution which have eroded into the State autonomy. I say that it is necessary for thi$_s$ Government to think over these articles when they come forward with certain amendments at a subsequent date.

Take, for instance, artirle 248. This is an article which vests residuury powers in the Centre. My feeling is that the residuary powers should bo vested in the States and not in the Centre. Similarly, there is article 249. Thi$_s$ article deals with certain matters where, with the Rajya Saoh3 passing a resolution, Parliament can legislate on matters not enumerated in the Union or the Concurrent Li3U Even in respect of certain matters, in the State List, Parliament can legislate. As a matter of fact, Mr. Vice-Chairman, you are aware iiut the Urban Land Ceiling Act has been passed by the Centre though it *is* a State subject. This is again another irritant that just because the Rajya Sabha, with a two-thirds majority, pusses a resoluton, the Centre can make, Parliament can make, a lav/. This is an irritant and I am sure the Law Minister would consider this and see that article 249 is also removed. Similarly, i would suggest that articles 356, 357 and 360 should be deleted in order to deny the power to the Centre to impose President's Rule and also to deprive it of tne right to interfere in a State administration on the ground of thrtat to financial stability. This is again an-- other irritant which the Government

[Shri M. Anandan]

ought to consider and see that the State autonomy is maintained. I am making a particular mention about these things because it is no more a case where there is a single party ruling at the Centre and in all ilie States. These irritants have strained the relations between the Centre and the States and, I am sure, very soon, if no proper thought is given to these things, there will be ar. agitation from tha States for the purpose of greater autonomy and this would put tne Centre in an awkward situation. Finally, Mr. Vice-Chairman, I would only deal with article 368 and I will be very brief, I will not go into details. It is really very good that there is a provision for referendum. I know, Mr. Antulay has raised the question whether parliamentary sovereignty is there or whether the people are sovereign, but let us not go into these things. There is also this question whether the Parliament has got the power to amend the Constitution, i.e. the constituent power of the Parliament. This reference to a referendum is in the sense that the constituent power of the Parliament is delegated to the referendum. I am not going into the merits of these things, but what I want to say is,, all these four matters that have been left for referendum are so sacrosanct, so basic to the features of the Constitution that it is not even permissible for a referendum to order a change. It makes a very populistic appeal to refer the matter to the referendum. I agree to that and people being sovereign it is probably necessary that certain powers be delegated to the people, but what are the powers that you are now giving to the people? I will just refer to . . .

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): The words are clear. You please conclude. Please make your observation. Do not go into details.

SHRI M. ANANDAM: The first thing is, "impairing[1] the secular or democratic character of this Consti- > tution." Do you mean to say that by-referring it to a referendum you can change or impair the secular system of the Constitution? This is sacrosanct. This is the basic edifice on which the entire Constitution is built. I do not think that even a referendum should make any alteration with regard to these things. Similary, the other provision is, "abridging or taking away the rights of citizens under Part III". This is the basic feature on which the entire Constitution is built. Even the people should not alter that thing.

Then there is, "compromising the independence of the judiciary." Why should people ever think of exercising thei$_r$ referendum for the purpose of impairing or compromising the independence of the judiciary?

These are all the matters which are unamendable. I must say that even a referendum should not amend these things. They are so sacrosanct, they are so necessary,, they are the very fundamental or the basic features of the Constitution. The entire constitution is built only on these features and even people should not be allowed to amend these things.

Therefore, I say that a referendum may be reasonable, but these are not the subjects that should be referred to the referendum.

With these remarks I welcome the Constitution (Forty-fifth Amendment) Bill.

श्री प्रणब चटर्जी (बिहार) : मान्यवर, 18 दिसम्बर, 1976 को 42वां संशोधन एक कानून के रूप में देश में आया और उसके पहले 11 नवम्बर, 1976 को राज्य सभा ने 42वां संशोधन एक मत से होकर पास किया और उसके कानूनी रूप में आने के तीन महीने के अन्दर भारत की जनता ने इस काले संशोधन को अपने बहुमत से, जो

यह देश के इतिहास में एक शर्मनाक स्थिति थी उसको पूरी तरह से रद्द कर दिया । मैंने कौतूहलवश यह देखने की कोशिश की कि तत्कालीन राज्य सभा के सदस्यों ने इस कानून पर कसे-कैसे अपना मत दिया है । मैंने पाया कि एक मात्र श्री भोला पासवान शास्त्री जी ने इसका विरोध किया । यद्यपि वे कांग्रेस बैंच में बैठने वाले एक सदस्य थे लेकिन उन्होंने ही पूरी आवाज से इसका विरोध किया । आज जब मैं श्री भूपेश गुप्त को यहां पर दहाड़ते हुए देख रहा था तो मुझे ताज्जुब हो रहा था कि उन्हीं भूपेश गुप्त का क्या शर्मनाक रोल इसमें रहा है । उनकी पार्टी ने सम्यक रूप से इस कानून का समर्थन किया था । और मैं दो एक जुमले श्री भुपेश गुप्त के मुंह से जो निकले थे आज इतिहास को याद दिलाने के लिए यहां दोहराता हूं । श्री भूपेश गुप्त ने कहा—

"Second tryst with destiny and we must be equal to it" and fulfill the assignment given to us. Let the dog of Counter Revolution bark."

यह शब्द थे श्री भूपेश गुप्त जी के । आज सुबह मैं देख रहा था और उनके घड़ियाली आंसू देख रहा था और मजदूरों के नाम घड़ियाली आंसू बहाते देख रहा था । मुझे धिक्कार हो रहा था हमारे जनजीवन में राजनीतिक जीवन में इतना ढकोसला आ गया है । दो दिन पहले कम्युनिस्ट पार्टी के नेता श्री महापात्र जी दिल्ली पुलिस बिल पर दहाड़ रहे थे । मैंने उनकी भी स्पीच पढ़ी और ताज्जुब हुआ कि एक शब्द उन्होंने उस वक्त मजदूरों के बारे में, किसानों पर जुल्मों के बारे में नहीं कहा ।

SHRI LAKSHMANA MAHAPATRO (Orissa) j I am here. Please read it again. You have not read it properly.

I have said many things about the working class.

SHRI PRANAB CHATTERJEE: Yes, please read it here.

हमारे राज्य से आए हुए श्री योगेन्द्र शर्मा ने तो कमाल कर दिया । क्षीर सागर से मंथन और अमृत निकलने की बात कही । उन्होंने सारी तरमीम को अमृत समझ लिया और अमृत पी कर मस्त हो गए । उन्होंने कहा कि विरोधी संसद् से भाग खड़े हुए हैं इसलिए जोश की कमी महसूस करते हैं । यह श्रीमन्, जोश की कमी महसूस कर रहे थे क्योंकि सारे विरोधी लोग जेल में थे । फिर उसको क्या संज्ञा दी कि भाग खड़े हुए । यह देश के वामपंथी नेताओं के लिए शर्मनाक बात है । साथी जेल में थे और वे कहते हैं कि भाग खड़े हुए इसलिए जोश की कमी महसूस कर रहे हैं । फिर उन्होंने कहा कि बड़ी अदालत चुनाव में बैठी थी । 1971 में भारतीय जनतंत्र ने इंदिरा जी को फैसला दिया कि बड़ी चीजों को करो ? किसी ने पूछा कि पांच वर्ष के बाद क्यों कर रहे हैं— उन्होंने कहा कि मैं नहीं जानता हूं । श्री योगेन्द्र शर्मा का जवाब था कि बेसिक स्ट्रक्चर क्या बला है, संविधान में कहा है, मैं नहीं जानता, खोजता रहा, नहीं मिला शायद अब सुमति जागी हो अब बेसिक स्ट्रक्चर कहते हैं कि उन्हें दिखता है । इसी तरह से मान्यवर, स्वतंत्र एक सदस्य बनर्जी जिनकी बुद्धिमता और जिनकी स्वतंत्रता के बारे में हम लोग सुनते आ रहे हैं उन्होंने कहा कि सेरीमोनियल बरियल आफ बेसिक स्ट्रक्चर शानो-शोकत से उसको दफनाया जाना चाहिए और उन्होंने कैसे चापलूसी भरे शब्दों में अपना उदगार सदन के सामने प्रस्तुत किया । मेरा सिर शर्म से झुक जाता है और यह देखता हूं कि अब पैंतरा बदल रहा है । श्री रघुनाथ रेड्डी की तरह वे शर्म की बात कहते तो मैं समझ सकता था कि आज उनको पछतावा तो हो रहा है लेकिन नहीं आज भी एक डिबेटिंग प्वाइंट को स्कोर करने के लिए एक बात बोल कर डिबेट करते हैं और ऐसे लोग

[Shri Pranab Chatterji]

भारतीय संसद के प्रतिनिधि हो कर यह कहते हैं कि संसद बड़ी ह और जनता के पास मत जाओ रेफेंडम मत करो । यह मेरी समझ में नहीं आता । आखिर संसद ने अपना करेक्टर दिखा दिया । संसद ने दिखा दिया कि काले दिनों में हम कैसे घुटने टेक सकते हैं लेकिन जनता ने नहीं दिखाया । जनता ने दो महीन के अन्दर इस राज्य को फैंक दिया, इस निजाम को फैंक दिया और आलम को फैंक दिया । मान्यवर, हमें इतिहास से सीखना चाहिए और इतिहास हमें बार बार सिखाता है लेकिन न जाने हम कैसे नादान हैं कि कभी नहीं सीखते हैं । फ्रांस में बार बार जनतंत्र कायम हुआ और बार बार नेपोलियन बोनापार्ट के परिवरा ने उसे उखाड़ फैंका लेकिन वहां की जनता सजग हो कर विद्रोह पर विद्रोह कर के पुनः जनतंत्र को कायम रखा और सदियों के बाद शायद लगता है कि वहां पर जनतंत्र कायम हो गया है । जनतन्त्र के लिए राख होना पड़ता है दो चार पीढ़ीयों को भी राख होना पड़ता है तभी जा कर जनतंत्र जमता है । जनतंत्र खोखले बात नहीं है कि आम की तरह से ऊपर से टपक पड़े । मान्यवर, जहां तक इस सदन में वाद-विवाद हुआ है लगता है कि एक दल के सदस्य हैं जिन्हें अभी तक भी ज्यूडिशियरी पर गुस्सा है । ठीक है कुछ सदस्यों ने कहा है कि हाईकोर्ट ने इस काले समय में अच्छा परिचय दिय, सुप्रीम कोर्ट ने नहीं दिया, यह बात सही है । मान्यवर, ज्यूडिशियरी में कभी हो सकती है, जो ज्यूडिशियरी से आंकाक्षायें थी वे पूरी नही हो सकी फिर भी यह एक बहुत बड़ा चेक है, बंदिशा है एकाधिकार के ऊपर इसे तो माना पड़ेगा । ज्यूडिशियरी इसी देश में पैदा हुई एक संस्था है और उसमें वही कमी होगी जो हमारे और अंगों में है । लकिन ज्यूडिशरी ने एकधिकार की क्षमता पर एक बहुत बड़ी बन्दिश रखी है और आप देखगे कि ज्यादातर मुकदमे जो सुप्रीम कोर्ट में संविधान के विरोध में हुए, वे ज्यादातर प्रापर्टी को लेकर हुए और सारे मुकदमों का सम्पत्ति के आधार पर फैसला हुआ । आज जब सम्पत्ति मौलिक अधिकार से निकल जाती है, तो इसकी सम्भावना बहुत कम है कि कोई भी संवैधानिक मामला सुप्रीम कोर्ट या हाई कोर्ट में उसी स्तर पर रखा जाए । जब आप सम्पत्ति का मौलिक अधिकार देंगे तो साथ-साथ उसका मुआवाजा देंगे और उसके साथ साथ ही साथ एक अधिकार हो जाता ह तब सुप्रीम कोर्ट या किसी कोर्ट को मानना ही पड़ता है । जब आप मौलिक अधिकार मानेंगे और केवल एक साधारण कानून के अन्तर्गत व्यवहार करेंगे, तो सुप्रीम कोर्ट या किसी कोर्ट को ताकत नही होगी कि मौलिक अधिकार वाली स्थिति उसमें डाल दें । इसलिये मान्यवर, आज मौलिक अधिकार से सम्पत्ति को निकाल कर एक बहुत बड़ा संवैधानिक हेर-फेर हमारी जनता पार्टी ने आपके सामने प्रस्तुत किया है । मैं समझता हूं कि कोई भी ऐसा निजाम नहीं , ऐसा कानून नहीं है जोकि सब तरह की आशकाओं को रोक सके । लेकिन जहा तक आशंकाएं नजर आ सकती हैं या पूर्व व्यवहार से या तजुर्बे से जो हो सकता है, उसको रोक रखने का प्रावधान इस संशोधन में किया गया है । हमारे कुछ पूर्व वक्ताओं ने इसको बहुत जोर से कहा कि साहब यह जो परिभाषा है समाजवाद की वह ठीक नहीं है और इसकी परिभाषा से मजदूरों को, किसानों को, गरीबों को फायदा नहीं होगा । कोई भी परिभाषा आप समाजवाद की करेंगे तो वह उपयुक्त नहीं हो सकती है । मेरे जानने में समाजवाद की सबसे बढ़िया परिभाषा डा० राम मनोहर लोहिया ने की थी 'प्रोसपैरिटी विद इक्वालिटी' वैभव के साथ समता । यह एक ऐसी परिभाषा है जो हरेक समाजवादी की आकांक्षाओं को नजदीक ला सकती हैं लेकिन कोई भी परिभाषा पूर्ण नहीं हो सकती है । लेकिन जो दी गई है, मैं समझता हूं । कि यह बहुत दूर

तक जायगी । चूंकि मेरा समय समाप्त हो गया है, अब मैं यहीं खत्म करता हूं ।

SHRI U. R. KRISHNAN (Tamil Nadu): Mr Vice-Chairman, Sir, it gives me great pleasure to supprt the Forty-Fifth Constitution (Amendment). Bill. The Janata Party when it was formed,, and with election manifesto as well, has declared to faring a comprehensive amendment to the Constitution, which was amended during the time of emergency. Sir,, it is worthy to note that the present Amendment Bill has got the support from all quarters of people, from the Opposition and the party which amended the Constitution during the time of emergency is also supporting this amendment. This one aspect itself shows that the people of India believe in democracy. In a democratic country according to the social changes, and political changes the people expect the Constitution of the country to co-operate with the changes.

One of the most important changes made in the amendment Bill is referendum. For the first time in the Indian Constiution referendum is included. The referendum can be had only in cases of Constitutional amendments which would have the effect of altering the secular or democratic character of the Construction or abridging or taking away the rights of citizens or Compromising, the independence of the judiciary or amending the referendum clause itself. A minimum of 51 per cent, of eligible minimum of 51 per cent, of eligible voters must participate in the referendum and its declared result would be beyond judicial review. Of course,, for referendum there may be some practical difficulties , while actually exercising the provisions.

But, for the welfare of the society and for the improvement of democracy,, such bold steps are necessary and I would request this House to pass this clause unanimously.

Sir, another important change which the ruling Government failed to make is the provision for a right to recall elected representatives of the people, either to State Assembly or to Parliament if the people want to do so. Puratchi Thalaivar M. G. Ramachandran, the Chief Minister of Tamil Nadu has been advocating it from the very beginning, and the Government can think it over and do the needful.

It is a welcome feature to see that the written opinion of the Council of Ministers is necessary for the declara-of emergency. The collective wisdom of the Cabinet would have to decide whether a situation for declaration of emergency exists or not. The precondition that the President could proclaim emergency only on the written recommendation of the Council of Ministers would certainly prevent the exercise of arbitrary authority. For the approval of emergency, two thirds majority of both the Houses is necessary. This will clearly safeguard against misuse of the efmer-gency provision and the people can be satisfied that emergency cannot be imposed for the benefit of a handful of individuals.

Sir,, there is a provision that emergency can be put to an end by a simple majority of the Lok Sabha. The provision that emergency can be revoked or varied by the Lok Sabha should be extended to the Council of States also. The brutal majority in Lok Sabha may cause undue hardship to the people of India. Hence I request the Government to consider it and act accordingly.

The provision dealing with preventive detention is a very important one, with directions for safeguarding the interests and liberties of the citizens. It gives great relief to note that Parliament would not have any power to authorise preventive detention of persons beyond a period of two months without reference to an advisory body consisting of three Judges selected by the Chief Justice of the

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appropriate High Court. This provision clearly erases any wrong impression that the authorities can make use of preventive detention as a weapon for any purpose, especially for political reasons. The advisory body consists of Judges of the High Court. The judiciary commands high confidence in the minds of the people because it is an independent organ and the Government may not be in a position to get the desired effect if a detention is against the law of the land. The case has to be placed within two months before the board so that there may not be any chance for the Government to abuse the power. The Government will always be very careful and alert when a person is arrested under preventive detention provisions. If the advisory body comes to the conclusion that there i_s no ground for the detention of the person concerned under preventive detention, then that person can be set free. This is one of the important provisions which has to be supported by all. Sir, there should be provision that the FIR should be filed at the earliest. I would suggest the incorporation of a provision,, that the FIR should be filed within fifteen days of the arrest of the concerned persons under preventive detention.

Sir, another provision that the High Court has to dispose of any *ex-parte* orders made in the interim application within two weeks if the aggrieved party opposes it, will definitely curb unnecessary litigation.

The right to property has been taken away from the Fundamental Rights and the right to property has been made a mere legal right. The right to property will, however, continue to remain as a Constitutional right though not fundamental. However, the right of the minorities will be protected, that is,, to establish and administer educational institutions of their choice. For a big country like India it is a good thing, but the rights of the people whose belongings are ver$_y$ small should be protected very carefully.

The most important change is that the Fundamental Rights of the people cannot be suspended even during emergency. This provision will certainly be hailed by people from all walks of life,, and it has to be appreciated.

There is a change in the preamble of the Constitution, and the expression "Republic" qualified by "Secular" and "Socialist^' has been* defined. Sir, in this connection I would like to urge that our system of Government is a federal system and so the expression "Federal Government" should also find a place in the Constitution. I therefore request the Government for the incorporation of federal structure a_s a basic structure in our Constitution.

The proposed additional clause in article 38 of the Constitution puts more responsibilities on the State Governments for the welfare of the people residing in the States. It emphasises specifically the need to reduce disparities in incomes as well as regional imbalances. To achieve this goal, the States should be given more powers and more financial aid from the Centre which the States are legally entitled to.

Now,, Education is in the Concurrent List, but the proposed Amendment Bill seeks to place it in the State List. Education should only be in the State List. State Governments are more competent to look after education. Now in Tamil Nadu there is a change in the education policy and we are following the 10-)-2-}-3 pattern of education. This pattern of education ha$_s$ got great support from the people and there is much rush for the vocational courses in the plus 2 stage. This suits the changing conditions of the society. Regarding the language for education,, the mother-tongue and' English should be taught.

The recent Education Ministers' Conference held in West Bengal fovoured the idea of education being in the State List. I appeal to the good sense of the hon. Members to suport the clause whole-heartedly.

The new clause which enables to publish the proceedings of the august Houses of Parliament is really good— good in the sense of the freedom of the press. The freedom to publish the proceedings of Parliament is essential for the effective functioning of democracy and, therefore, this right must be guaranteed in the Constitution. So this provision should also be commended.

Now it is decided to give power to the Supreme Court to decide the dispute,, if any, regarding the election of the President and the Vice-President. This shows how much of faith our people have got in the Judiciary. The provision that the election petition relating to the Prime Minister, the Speaker,, the Ministers and the Members of Parliament is to be treated in the same manner by the High Court, is to be appreciated.

It is regrettable to note that there is no reference regarding the citizens' right to work. The right to work should be guaranteed in the Constitution. There are thousands of unemployed persons in our country, posing a great problem for the economy of our country. The educated youth, specialists,, skilled persons are there without jobs. We are not utilising their services and their skill and knowledge are being wasted.

Coming to the Eemergency,, the provision can be invoked only in case of an armed rebellion, by the President. What is an armed rebellion,, has not been denned. If there is a revolt or a rebellion in one corner of India.why should the Emergency be imposed throughout India? It is unnecessary to impose the Emergency in a peaceful area causing some anxiety in the minds of the people residing in the trouble-free area. Here, I request the Minister to consider this aspect.

The Government has entirely forgotten about the Centre-States relationship . Nowadays not [a] day passes without comments regarding the Centre-States relationship by the State Governments. The State Governments are dried up in economic resources and depend on the Centre. The Government has to reconsider the Centre-States relationship and grant greater autonomy to the States in economic matters. The Government has to formulate a new direction. If the country wants to go ahead and achieve peace, progress and production for the masses,, the unnecesary centralisation of power i_n the Centre should be given up.

The powers of the judiciary are fully restored by the present Constitution Amendment Bill, for it maintains the independence of the judiciary.

The development of Army to the States,, with the concurrence of the Slate Governments, is a good provision. It is the main duty of the State Governments to maintain law and order in the States. So the State Governments have to make necessary arrangements to maintain law and order. The States are always expected to assess the law and order situation and be alert. So,, where it is absolutely necessary, the State Government will themselves ask for the help of the Army. For a federal set-up, the Centre should have confidence about the State Government's stability.

The provision that the Tribunals are subjected to the supervisory jurisdiction of the concerned High Court is a welcome feature. In India, the Judiciary commands a good respect. India is a very big country and it is highly impossible for every litigant to go to the Supreme Court. The expenses are much more than those in the High Courts. As far as the rights and liberties of the poor men, the common men, are concerned. they are protected only by the inde-

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pendent judiciary whose independence is guaranteed under the Constitution.

The other proposal the change of the time of the Lok Sabha and the .Legislative Assemblies from six years to five years, is a very good thing. Five years is sufficient to assess the performance of the Government, and in a democratic set up the people should not be deprived of their fundamental right to choose their Government for a long time.

The Amendment Bill contains a large number of salutary provisions which are in line with the democratic sentiments and are, therefore, non-controversial.

The provision relating to the Presi dent's rule in the State, catches the eyes of all. The maximum period a State can be under the President's rule is one year except in cases of emergency. It is one of the good provisions in this Amendment Bill. The people of the State where the President's rule is imposed, now can be quite sure that they can elect their Government within one year from the imposition of the President's rule. With these words, I conclude. Thank you.

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PROF. SOURENDRA BHATTACHARJEE (West Bengal): Mr. Vice-■ Chairman, Sir, at the very outset I must make it clear that so far as the Constitution of India goes, it is the opinion of my party, that is the R.S.P., that it is vested interest oriented. It is the product of a distinctly exploitative system of society, and to that extent, the amendments suggested would not change the fundamental character of the Constitution. But even then these amendments nurture the bourgeois democratic Constitution which was introduced in our country in 1950 where the democratic rights of the people were denied at the same ' breath. The Forty-second Constitution Amendment further eroded the fundamental rights. My friend, Mr. Ajit Sharma, has correctly said that actually by the Forty-second Amendment the executive, particularly the office of the Prime Minister, was made all in all. Erosion of the democratic system and the establishment of near fascist rule over the country was rejected by the General Election of 1977, and it enjoined on the party coming victorious to correct that distortions. And to the extent the Law Minister on behalf of his Government has come forward to redress that distortion, I would welcome it, but at the same time, I would draw the attention of the House to the serious limitations that even the Forty-fourth Amendment of the Constitutiia has.

As for example, the provision of emergency, actually the provision of double emergency, which has led to great distortions, continues even in the Forty-fifth or should I say the Forty-fourth Amendment as it was renumbered in the Lok Sabha. 'Internal disturbance' has been replaced by 'armed rebellion'. As you know, originally, 'domestic violence' was suggested. Later on, in the Constituent Assembly, it was replaced by 'internal disturbance.' Now 'armed rebellion' has come. But who is to justify the proclamation of an emergency? The executive. And the Constitutional provision, provision of the original Constitution, actual outbreak of war or actual outbreak of armed rebellion, would not be necessary. Even a threat of it or an assessment on the part of the 8 P.M. executive or the Cabinet that there exists a threat of war or armed rebellion would justify a proclamation of Emergency. In the Forty-second Amendment, proclamation of Emergency in a part of the country was provided for, and that provision still continues. I would submit that we are thoroughly opposed particularly to the clause of internal Emergency under whatever plea. We want that only in the case of an

actual war of aggression upon our country, Emergency may be proclaimed. I appreciate the safeguards which have been provided, but these safeguards can be reduced to nullity by a wily and despotic executive.

We are opposed to the promulgation of President's rule in the States. It cuts at the very root of the federal character of our Constitution, I would submit.

Regarding preventive detention, there are other democratic countries where there is no peventive detention. I think the Law Minister would not say that there is no problem of smuggling there, that there is no problem of internal disturbance there. But preventive detention is not there -at least in the advanced democratic countries, as far as I know; may be it is there in countries where there is a backward economy. With our claim of advance, this primitive clause, I should say, should not remain there. It has been continuing in our body politic from the days of the British rule.

I would draw the attention of the Law Minister to another aspect in this connection. The right to life, the right to live, it has been said, is ensured. But it is our experience that even before the double Emergency, when there was no such Draconian law; at least in my part of the country and in certain other parts of the country, the lives of citizens were taken away at will by the police, the para-military forces and the Armed Forces on the plea that certain persons were extremists. Now, I do not know what institutional guarantees would ensure that no citizen of the country is in this way done away with by the custodians of law and order. This is our long and painful history, not just connected with the double Emergency. I would appeal to the Law Minister to consider this question as to how institutional guarantees can be evolved so that such large-scale murder by the machinery enforcing law and order can be pre-vented. I know it from my own experience that it was practised on a very wide scale and thousands of youths were done away with by the machinery of law and order.

I would have been glad if the Law-Minister on this occasion had moved to lower the voting age to 18 by amending article 326 of the Constitution.

So far as the clause on referendum is concerned, I do very strongly support that clause. The question of its feasibility or practicability has arisen. Not that a referendum is very simple, I do admit. But my submission is that perhaps because it is difficult it has, therefore, been introduced. The-process of Constitution Amendment by a two-thirds majority of the Members sitting and voting and with at least a majority of the total Membership of the House is intended to make an amendment to the Constitution a bit more difficult than an ordinary law. This referendum would be a road-block to those who try to subvert the Constitution as was done in the very recent times or as may be sought to be done even in the future, because we know those who supported the near fascist regime of total Emergency are even now very enamoured of Emergency, are not averse to propagating - the virtues of Emergency. Therefore, here Parliament is sovereign subject to the sovereignty of the people. The popular representatives must acknowledge the supre-macy of those who chose them as representatives. This clause on ref-erendum is a handsome tribute to that, and this is a safeguard, a strong safeguard, against possible distortions of the Constitution and to that extent definitely I would remark that perhaps this is the most positive aspect of this Constitution Amendment as it has underlined the sovereignty of the people in the most handsome manner particularly after their performance in the last general election.

I would deal with one or two other points just in two minutes. I would

[Prof. Sourendra Bbattacharjee]

draw the attention of the Law Minister to a particular aspect of the concept which is characterised as minority rights. The provisions contained in Articles 29 and 30 of the Constitution are for minority communities. At the same time I would draw the attention of the Law Minister to find out the way how those working in the ss,-called minority institutions are employed. It should be ensured that their fundamental rights are protected, it should be ensured that they are not treated like slaves, denied all their fundamental rights. My submission is that you have to take into account the interpretation of the courts, the courts' interpretation has created a situation in which those working in the minority institutions are practically without any right. This the present law must redress. I would appeal to the Law Minister to include this in fundamental rights in Chapter III.

Then, on the right to work it is argued that by including it in fundamental rights, everybody is assured of his right to work. I agree that by including this provision work is not ensured to everybody immediately but it will bring about a sense of urgency. By including the definition of socialism, does he think that he would be able to end economic explanation, he would be able to end social exploitation? Right to work is an inseparable part of the right to live.

I would also draw the attention of the Law Minister to another very sensitive situation developing over the question of language. It is not just the people of the South are aggrieved over this. In my part of the country also we have a fear that a certain language is sought to be imposed. There is great resentment over this issue. We are for evolving a language as official language of the «ountry. But it is well known that in the Constituent Assembly the casting vote decided this issue, and great tension has developed in between over this issue. So I would request the Law Minister, if it is not possible in this amendment, he should examine this aspect thoroughly and provide for some guarantee against such imposition which may lead to an undesirable situation. Thank you.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Mr. Satya-narayan Reddy will be the last Speaker.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): Mr. Vice-Chairman,. ..

श्री कल्प नाथ राय : मातृ भाषा में बोलिये ।

श्री बी० सत्यनारायण रेड्डी : मुझे बोलने तो दीजिये । आप हमेशा बोलते हैं । जब मैं बोलने के लिये खड़ा हूं तो बोलने दीजिये ।

In the first instance, I would like to welcome the broad features of this Constitution (Amendment) Bill, Jor the simple reason that it has relegated the Forty-Second Amendment which was passed by a prolonged Parliament and an illegal Parliament. All the Acts passed by that illegal Parliament are anti-demccratic, anti-people and invalid. All those laws ought to be struck down. That is what this Bill seeks to achieve and I am glad the Law Minister has taken the initiative to amend the Forty-Second Amendment.

In this connection, I would like to draw the attention of the House to how the party in power could misuse the law. After passing the Forty-second Amendment Bill, the Government of the day misused their powers and turned the whole country into a jail. Even this House and the whole Parliament was turned into a prison. Nobody was allowed even to express his views. The opposition was suppressed. The Members of Parliament were put in jail. The freedom of the press was curbed. We were in jail in those days. We heard that the life

at the Parliament was extended from five to six years. We were not able J to understand how this could happen because people had given it the life «f only five years. Then we heard it "was extended to six years. Such things could happen because the Parliament was imprisoned. Whatever the Government of the day wanted, they did. This was all done under the Forty-second amendment. Such illegal Constitutional amendment cannot remain for ever. It has to be changed and now this is being done. 1 am very happy about it.

We also saw that the judiciary was suppressed and the press was gagged. The courts were unable to deliver judgements. Hundreds of our people were in jail. I come from Hyderabad in Andhra Pradesh. We were all in jail. We wanted to move the courts. Then we found that the courts were helpless. They were also inside the golden walls of the jail. Even the Judges were not able to deliver judgements. They were helpless. They expressed their helplessness. That kind of fear was prevalent throughout the country. There was terror everywhere. Now this Bill has removed that fear. I, therefore, want to say most emphatically that in future no Government and no person shall be in a position to exercise such powers with the help of the Constitution or any law and suppress the will of the people.

Coming to the various articles, I -would like to draw the attention of the Law Minister to one point. In article 22 you have said that no law providing for prevention detention shall authorise the detention of a person for a longer period than two months. I am afraid that even when this Bill was passed and even in the previous Acts, Sir, there were certain things. The "Preventive Detention Act was there earlier. They said then hat only under special circumstances ;he people would be detained. But ?ven this may be utilised by the future autocrats for this purpose. So,

am suggesting to the Law Minister that it would have been better if this also had been removed from this.

Secondly, Sir, I would like to draw the attention of the honourable Law Minister to the question of the removal of the provision of right to property. I welcome this provision. For the first time, Sir, in free India, in a free House, this has been passed. It is for the benefit of the vast masses of our country. The right to property has been removed. But, at the same time, I want to tell that the Law Minister should have considered the question of inclusion of the right to work because unless and until we give this right to the people, the unemployment problem and the miseries of the people cannot be removed. So, I suggest that, if not today, at least in future, this right to work should be included and it is most important for the welfare of the people of the country.

SHRI KALP NATH RAI: What about Education in th$_e$ Concurrent List?

SHRI B. SATYANARAYAN REDDY: Thirdly, Sir, I also welcome the most important feature in the Bill, that is, the clause relating to referendum, because the supremacy of the people of this country has been recognised for the first time and every one must be proud, and th$_e$ whole country must be proud of the fact that their representatives have not forgotten the rights of the people who have sent them here. So, I wholeheartedly welcome this and support the provision regarding referendum.

Then, Sir, I would also like to draw the attention of the honourable Law Minister to one more thing. Franchise has been given only to those people who have attained the age of 21 years in our country. I would like to request the honourable Law Minister to give this right to those ^{w}h° have attained the age of 18 years. That will be most appropriate and that would give really a democratic character to our Constitution.

[Shri B. Satyanarayan Reddy] So, Sir, by placing this amending Bill before the House, he has done a good thing and I hope every section of the House will support this and really, Sir, we will be giving the country a new life and a new Constitution and this is really beneficial to the people of this country. Also, Sir, it is a safeguard for democracy, for the welfare of the people and for the democratic institutions in this country. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Yes, Mr. Bagaitkar.

श्री सदाशिव बागाइतकर (महाराष्ट्र) : मान्यवर, मैं कर्त्तव्य की भावना से इस बहस में हिस्सा ले रहा हूं : जिन हजारों नागरिकों को जेलों की यातनायें भुगतानी पड़ी उन में से मैं भी एक हूं । जो संशोधन सदन के सामने है उस संशोधन से मेरे मित्रों को आश्चय नहीं होना चाहिए । एक चीज हम लोगों को याद रखनी चाहिए कि किसी भी देश में जहां लिखित संविधान होता है संविधान की मर्यादायें बन जाती हैं और जैसे तजरुबे आते हैं उसके मुताबिक उसमें हेरफेर संशोधन किए जाते हैं । मैं आपको याद दिलाना चाहता हूं कि प्रथायें और परम्परायें जल्दी नहीं बनती । हाऊस आफ कांमस के एक स्पीकर सेल्लिन लायड हैं जो अपने जीवन की एक पुस्तक में प्रस्तुत करते हैं जिसका नाम है "मिस्टर स्पीकर सर" । उसमें उसने लिखा है कि हाऊस आफ कांमस के 700 सालों के इतिहास में कम से कम दो तीन स्पीकर्स को हाऊस की मर्यादा की रक्षा करने के लिए अपनी जान गंवानी पड़ी । राजा और हाऊस के बीच इंग्लैंड में जो दीर्घकाल तक लड़ाई चली उसका यह परिणाम था । तो इस तरह से कोई आश्चर्य नहीं होना चाहिए कि 28 साल के हमारे संविधान के अनुभव से जो अनुभव हमको हो रहे हैं और आए हैं उससे हम कुछ परिवर्तन की दिशा की खोज में है । क्योंकि जो संविधान हम लोगों ने अपने देश में बनाया है, जिसके बारे में बीसवीं शताब्दी के शुरू में देश में सोच विचार शुरु हुआ, उसको एक चीज हम लोगों को हमेशा याद रखनी चाहिए कि संविधान हमारा संघीय है लेकिन व्यवहार एकानुवर्ती यूनीटेरी है । इस को लेकर बहुत सारे स्ट्रेन्स बढ़ते जायेंगे, अनुभव आयेंगे और संविधान में कई बार संशोधन करना पड़ेगा । तो संविधान कोई ऐसा वेद नहीं है कि जिसमें कोई संशोधन हो ही नहीं सकता । तो इस बुनियाद पर ही इस चीज को देखा जाए तो तत्काल जो तजुर्बा हुआ है । जो अनुभव आया हैं, उसको सामने रखते हुए संशोधन अनिवार्य हो जाता है । इस सारे संशोधन की जो पृष्ठभूमि है उसमें मैं विस्तार में नहीं जाना चाहता । वह सारी हकीकत आज इतिहास की चीज बनी हुई है । उसका बखान इस सदन में और बाहर हमेशा होता रहेगा और उसकी याद भी दिलाती जायेंगी । मैं जानता हूं कि कुछ मित्रों को वह याद दिलाना पसन्द नहीं है । लेकिन उससे कोई छुटकारा नहीं है, आज श्री अन्तुले साहब जो उस वक्त श्रीमती इन्दिरा गांधी के जमाने के सबसे बड़े 'आयडियल लोग' विधि पंडित माने जाते थे—यहां भाषण किया, उनके भाषण मैं बहुत गौर से सुनता था वह एक ही चीज कहना भूल गये हैं, पार्लियामेन्ट इज सुप्रीम और उस पार्लियामेन्ट में नेता प्राइम मिनिस्टर इज सुप्रीम और यही उनके मन की मंशा है । मैं आपसे निवेदन करना चाहता हूं कि जो तजुर्बा हम लोगों को एमरजेन्सी का हुआ वह क्यों हुआ । मैं समझता हूं कि श्री रघुनाथ रेड्डी साहब ने फरमाया डीगाल का जिस किस्म का शासन फ्रांस में चलता था उसको देखा गया, अभ्यास

किया गया । लेकिन डीगाल का अभ्यास करते करते उस वक्त के शासक और उस वक्त के पंत प्रधान अर्जेन्टाइना के पास पहुंचे । मैं आपके सामने यह कहना चाहता हूं कि एमरजेन्सी के दौरान जिस किस्म का शासन हिन्दुस्तान में रहा उसकी तुलना की जा सकती है और उसकी बुनियाद है 'पेरोनिज्म' । अर्जेन्टाइना में पेरोन और उसके बाद उनकी पत्नी इवाबेला का शासन हुआ जो तानाशाह था । उसकी जड़ में जायेंगे तो एक चीज आप पायेंगे कि उस किस्म की डिक्टेटरशिप फासिज्म से अलग होती है, कम्यूनिज्म से अलग होती है । चेरिसमेटिक लीडरशिप । यह उसका महत्वपूर्ण अंग रहता है । गरीबों के लिये घोषणायें देना और जो धनी लोग है, मालदार हैं उनका समर्थन पाना यह उसकी विशेषता होती है । जादूवाला नेतृत्व, सामंतों का समर्थन और पौप्यूलिस्ट स्लोगन्स यह पेरोनिज्म है । उसका रुख राजनैतिक संगठनों के प्रजातांत्रिक ढंग के खिलाफ और अधिनायकवादी होता है । चैरिसमैटिक लीडरशिप, धनियों की सपोर्ट और आम गरीबों के लिये स्लोगन यह एक ऐसा मिश्रण बन जाता है जिसको लेकर पेरोनिज्म अर्जेन्टाइना में बहुत लम्बे अर्से तक चला और सदन को मालूम हो जाना चाहिये कि पेरोनिज्म का खात्मा अर्जेन्टाइना में हुआ । इवाबेला पेरोन खत्म हुई, मिलिट्री कूप के जरिए से । यह सौभाग्य इस मुल्क का है कि यहां मिलिट्री डिक्टेटर कायम नहीं हुए, वह नौबत नहीं आई और यहां के लोगों ने हिम्मत से काम लिया, जो सबक उन्होंने तीस साल की जंगे आजादी के दरमियान और उसके बाद सीखा उससे काम लिया और मिलिट्री कूप को बनाए अपनी ताकत से, अपनी अक्ल से परिस्थिति में परिवर्तन लाए । इसलिये मैं कहना चाहता हूं कि जो पेरोनिज्म का अनुभव है, वही हम लोगों को हुआ । उससे स्वाभाविक बन जाता है कि ऐसी चीज को दुबारा नहीं आना है । तो क्या-क्या उपाय हो सकते हैं, मैं आपसे कह सकता हूं कि जिन बातों को विधि मंत्री जी ने सुझाया है यह आखिरी काम है, ऐसा मैं नही मानता हूं क्योंकि आगे चल कर इस तरीके को गैर-कानूनी रास्तों का इस्तेमाल करने वाले कर सकते हैं । जम्हूरियत की रक्षा आखिरकार उस देश के लोगों को ही करनी पड़ती है । वे चौकन्ने रहेंगे, सजग रहेंगे, तो इस देश की जम्हूरियत की जो प्रथा, परम्परा रहती है उसकी रक्षा हो सकती है। लेकिन चूंकि हम लोगों के पास लिखित निजाम है, अंग्रेज लोगों जैसी हमारी स्थिति नहीं है, हमारे पास परम्परा का आधार नहीं है, हमारी परम्परा केवल अठाईस साल की है । उस परम्परा के आधार पर काम चल नहीं सकता । इसलिये बहुत जरूरी है कि लिखित हमारा संविधान होने के नाते उसमें अनुभव से जो हेर-फेर करने जा रहे हैं उसको हम आज की परिस्थिति में देखें । इसलिए मेरा यह निवेदन है कि हमारा जो अनुभव हुआ है उसके आधार पर, एक रक्षा करने के हेतु कुछ धाराओं को हम लोग इस में जोड़ रहे हैं । ये धाराएं आखिरी हैं, उसमें आगे परिवर्तन करने की जरूरत नहीं पड़ेगी, ऐसा मैं नहीं मानता हूं । कौन जानता है 10 साल बाद क्या होगा ? कौन जानता है, उन्हीं धाराओं को तोड़ मरोड़ कर, जैसा हिटलर ने जर्मनी में किया था—क्योंकि, मैं आप को याद दिलाना चाहता हूं जब हमारा संविधान बन रहा था तो उस समय कामथ साहब अकेले व्यक्ति थे जिन्होंने कहा था और जिन्होंने हम को सतर्क किया था कि इमरजेंसी वाला प्राविजन न रखें इसलिए कि इमरजेंसी को लेकर जैसे हिंडनबर्ग ने हिटलर को कायम किया, और इस तरह कामथ साहब की भविष्यवाणी सोलह आने सही निकली—इसलिए संविधान की जो धाराएं आपके सामने प्रस्तुत है उसका सिर्फ इतना ही महत्व है—एक व्यक्तिवाद को रोकना । इसलिए हम ऐसा मानने के लिए तैयार नहीं हैं कि इस से हमेशा के लिए संरक्षण होता है, हमारी हिफाजत

[श्री सदाशिव बागाइतकर]

होती है। इसलिए हमारा निवेदन है कि जो संशोधन अभी आ रहा है उसको हम सब कबूल करें।

दूसरी बात, जो अधिनायकवाद का अनुभव एक बार हुआ उसकी तरफ कई लोगों की निगाहें हमेशा दौड़ती रहेंगी और वह खतरा भी हमेशा बनता रहेगा क्योंकि अंतुले साहब के भाषण को सुन कर मेरे दिमाग में यही प्रभाव हुआ है कि किसी किस्म का भी पश्चाताप उन को नहीं है। रघुनाथ रेड्डी साहब ने कहा तो कम से कम, उनको ऐसा कहना पड़ा कि उनकी गलती हुई ...

श्री कल्प नाथ राय : उन का झूठा पश्चाताप है।

श्री सदाशिव बागाईतकर : अगर पश्चाताप का ढोंग भी है—कल्पनाथ राय को उसका ढोंग भी नहीं हो सकता है —क्योंकि ढोंग आदमी तब करता है जब उस को लगता है किसी चीज का समर्थन करना मोरली ना-मुमकिन है। तो ढोंग की भी एक मर्यादा होती है और अगर किसी के हेतु पर, किसी के इरादे पर, शंका करनी है तो आप तो कीजिए, में कुछ नहीं कहता। लेकिन हमारे देश में उन विद्वानों में तो आज पश्चाताप होना चाहिए इस बात का कि क्या हुआ और क्या होना चाहिए था।

(Time bell *rings)*

इसलिए मेरा यह निवेदन है कि यह संशोधन विधेयक जो हम लोगों के सामने पेश है, इसको इतिहास की पृष्ठभूमि में स्वीकार करेंगे जो कि हमारे लिए बहुत आवश्यक है। इस बिल के बारे में विधि मंत्री जी से एक-दो बातें कहना चाहूंगा, एक तो यह कि आपने इसमें 'आर्मेड रिबेलियन' रखा है। इसकी पृष्ठभूमि में कहा जाए कि मिजोरम और नागालैंड में आज भी वह हकीकत है, तो क्या आर्म्ड रिबेलियन की जगह आप "सिविल वार" नहीं कर सकते हैं ? जब सही मानी में शासन को या सरकार को चिंता होती है, ऐसी परिस्थिति में आप सोचिए—क्योंकि आर्म्ड रिबेलियन की वैसी व्याख्या नहीं है, जैसी कि स्थिति रहती है नार्थ ईस्टर्न स्टेटस में तो कहा जा सकता है वहां आर्म्ड रिबेलियन की स्थिति है। एक्सटर्नल एग्रेशन हो तो साफ होता है। लेकिन आर्म्ड रिबेलियन का मतलब सिविल वार' है तो हम सिविल वार शब्द का इस्तेमाल क्यों न करें। अगर आप को ठीक लगता है तो इसको आप करें।

तीसरी बात मैं यह कहना चाहूंगा, जहां 2 महीने की मर्यादा प्रिवेंटिव डिटेन्शन की रखते हैं, उसको में गैर-जरूरी मानता हूं क्योंकि जिन देशों में उस की कतई व्यवस्था नहीं है वहां भी स्मगलर हैं, एस्पीयानेज चलता है, सैबोटाजिंग होती है, सब कुछ चलता है। तो हम लोगों को प्रयास करना चाहिए, जिससे इस प्रिवेंटिव डिटेन्शन को जिसको आज कोई नहीं चाहता है उस को हमेशा के लिए समाप्त कर के कोई और व्यवस्था करनी चाहिए। इसलिए इन दो-तीन सुझावों पर मुझे उम्मीद है विधि मंत्री जी विचार करेंगे और यह जो वोटिंग वाली एज का मामला है इस पर अलग से विचार करेंगे। यह कह कर मैं इस संविधान संशोधन विधेयक का अनुमोदन करता हूं।

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

The House then adjourned at twenty-nine minutes past eight of the clock till eleven of the clock on Wednesday, the 30th August, 1978.