

प्राइमरी स्कूलों, हाई स्कूलों तथा इंटरमीडिएट के 6 लाख अध्यापक पुनः हड़ताल करेंगे और उन्होंने हड़ताल करने की धमकी दी है। यदि राज्य सरकार ने उनको 43 दिनों की तनक्वाह नहीं दी तो मैं आपके माध्यम से शिक्षा मंत्री जी से, केन्द्र सरकार से कहना चाहता हूँ कि वे 14 नवम्बर को पूरे उत्तर प्रदेश के अन्दर प्राइमरी, इंटरमीडिएट शिक्षक हड़ताल करने जा रहे हैं। जिसका परिणाम...

श्री जी० सी० भट्टाचार्य (उत्तर प्रदेश) : डिग्री कालेज के अध्यापक भी शामिल होने जा रहे हैं।

श्री कल्प नाथ राय : डिग्री कालेज के अध्यापक उस हड़ताल में शामिल होने जा रहे हैं। 6 लाख अध्यापक अगर हड़ताल करेंगे तो करोड़ों बच्चों की शिक्षा अन्धकार में फँस जायेगी और पूरे देश की जनता का, अभिभावकों का बहुत बड़ा नुकसान होगा। इसलिए मैं केन्द्रीय सरकार से अपील करता हूँ कि वह उत्तर प्रदेश के अध्यापकों की समस्याओं को मुलह के माध्यम से हल करे और तीन लाख अध्यापकों को तनक्वाह देने की तुरंत व्यवस्था करे। क्योंकि शिक्षा इस समय कान्कर्टेड लिस्ट में है। मैं आपके माध्यम से सरकार से अपील करता हूँ कि उत्तर प्रदेश को पुनः हड़ताल के संघर्ष में मत जाने दें और अध्यापकों की तनक्वाह को तुरंत राज्य सरकार पेमेंट करे। धन्यवाद।

श्री जी० सी० भट्टाचार्य : सभापति जी, श्री कल्प नाथ राय जी ने जो कहा है उसका मैं पूरा समर्थन करता हूँ... (Interruptions)

REFERENCE TO THE ALLEGED PREVENTION OF MUSLIM MINORITIES FROM PURCHASING HOUSES IN VARANASI

श्री श्याम लाल यादव (उत्तर प्रदेश) : हमारे वाराणसी शहर में मुसलमान अल्पसंख्यकों को मकान खरीदने से रोका जा रहा है। मकान जो अल्पसंख्यक मुस्लिम खरीदते हैं उनको उनसे बेदखल करने की साजिश वहाँ की सरकार और जनता पार्टी के कार्यकर्ता कर रहे हैं। मैं इसकी तरफ सरकार का ध्यान दिलाना चाहता हूँ कि इसको रोका जाय वरना गंभीर स्थिति उत्पन्न हो जाएगी। धन्यवाद।

1134 RS—3.

I REFERENCE TO THE REPORTED STRIKE BY EIGHTY THOUSAND SCHOOL TEACHERS IN ORISSA

SHRI LAKSHMANA MAHAPAT-RO (Orissa): Mr. Chairman, Sir, I will just take one minute only.

Sir, the Orissa Assembly has commenced its session from the 28th. Eighty thousand teachers in Orissa are on a strike and many are on a dharna also. It is still a Central subject. Let the Central Government intervene and ask the Chief Minister to start negotiations with 80,000 teachers of non-governmental schools.

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): Both the things cannot go together. You want more powers to be given to the States and you also ask the Centre to intervene.

MR. CHAIRMAN: May I know the views of the hon. Members whether we should meet at 2 p. M. or earlier! than 2 P.M.?

SOME HON. MEMBER'S: Sir, we should meet at 2 P.M. only.

MR. CHAIRMAN: All right. The House rises now and reassembles at 2 P.M.

The House then adjourned for lunch at twenty-two minutes past one of the clock.

The House reassembled after lunch at four minutes past two of the clock.

The Vice-Chairman Nizam-ud-Din. In the Chair

THE CONSTITUTION FORTY-FIFTH ' AMENDMENT BILL, 1978—Contd.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Vice-Chairman, Sir, as I said yesterday, I am very grateful to the hon. Members for the very general support which they have given to the provisions of the Bill. I would like, very briefly, to deal with some of the points

[Shri Shanti Bhushan] which have been made and if I am not able to deal with all the important points which have been made by the hon. Members or to deal with each of them specifically, it is not that there is no force or merit in those points which needs consideration but because I have a limited time at my disposal as the hon. Members would appreciate and, therefore, I will try to deal with the points as briefly as possible.

Now, Sir, if I might first take the points which have been made, particularly by Shri Bhupesh Gupta, for whom I have a lot of esteem, and not merely that, Sir, but he has made a valiant effort on my behalf, if I may say so, in regard to the clause relating to referendum to convince those who were not convinced by what I had said in my opening speech, and I have no doubt that with his eloquent style, he must have been able to convince everybody so that when we come to the stage of voting on this clause, perhaps, even on this referendum, there would be unanimity. But Sir, —

SHRI BHUPESH GUPTA (West Bengal): Some I have done.

SHRI SHANTI BHUSHAN: In fact, I must confess that I have, for myself, decided that if ever I were to be hauled up before a court and I need the assistance of a lawyer to argue my case, I propose to engage Shri Bhupesh Gupta provided he gets himself enrolled by that time.

SHRI BHUPESH GUPTA: Next time, you appear against Mr. Raj Narain. You may choose me.

SHRI SHANTI BHUSHAN: At the moment, I have to defend myself from him. He has brought a privilege motion against me.

SHRI BHUPESH GUPTA: Did you charge him fees?

SHRI SHANTI BHUSHAN: I do not charge fees in political cases.

SHRI BHUPESH GUPTA: That is the fee, he is paying you; privilege motion.

SHRI SHANTI BHUSHAN: But since he has tried to lighten my burden I must deal with the important point made by him first. Sir, this is in regard to preventive detention. His complaint was that, when the Constitution was being amended, why not do away with the article in the Constitution which permits preventive detention although it purports to give certain safeguards in the matter of preventive detention. Sir, I am not sure whether Mr. Bhupesh Gupta, while voicing those sentiments, has taken into account the realities of the situation which are there in the coun-

try. I know he had certain other things in his mind, but possibly, he lost sight of certain things to which I would like to call his attention. Sir, we saw yesterday the anguish and the anger that was voiced in this House in regard to a very dastardly crime. I do not think there is any single person in the country who does not hang his head in shame in regard to that dastardly crime and who does not share all those feelings of anguish and anger. Sir, I was pained to read one hypothesis in the newspapers today. I do not know whether there is any substance in that. But in regard to this crime, there is some hypothesis which has been suggested which connects the commission of this dastardly crime, the like of which this country, I do not think, has seen before, with some kind of smuggling activities and the activities of some smugglers. I do not think anybody could be so heartless as to put those beautiful children, these innocent and handsome children and those accomplished children, to such a brutal death unless those persons did not have any heart in them. To me, it seems, they are some kind of professional killers. When "this hypothesis is flashed in the newspapers that there is some smuggling etc., connected with it, the minds of all of us go to those

smugglers who have held this country to ransom, the economy of this country and the life of this country to ransom by such activities which can only be compared with Mafia operations. Now, the question arises: How are such criminals to be dealt with? Are not some special powers, needed to deal with such people who are prepared to hold the entire society to ransom? Or, are the normal laws, the ordinary laws, the normal legal processes, as we know it in this country and also as we know in what shape it is today in this country, quite sufficient to deal with every kind of nefarious activity which can hold the normal civilised life of the country to ransom? Today, Sir, the position is this. MISA has been repealed, lock, stock and barrel. The only law enacted by this Parliament which is on the statute book, which provides for preventive detention, is the one under which a large number of smugglers are still in detention. If today the amendment of Shri Bhupesh Gupta or rather the proposal made by him was to be accepted, I want to tell him that if preventive detention was to be banned today by a constitutional amendment, the immediate result of that amendment would be that all the smugglers who are in preventive detention will have to be set at large, let loose on society. I do not think Shri Bhupesh Gupta, even in his wildest dreams, would like that to happen, and particularly in the light of what happened only a few days before, which is so fresh in the minds of all of us. Entire population of this country is agitated, small children are agitated, girls are agitated. Then we need to ponder that the Constitution must not permit any victimization, whether political or of any other character. Nothing

should be done which would jeopardise the security of a single citizen

unless for good reasons. But at the same time a golden mean has to be found that while no abuse of the powers may take place, the State which represents or which is deemed to re-

present the conscience of the nation, is not lacking in powers to deal with lawless elements with the full might of the people behind it. And, Sir, that has been the attempt of this Constitutional amendment, however humble it might have been. The attempt has been to see that while in certain special situations to deal with criminals of the mafia kind, etc., some special powers may be needed, at the same time the misuse of those powers for other purposes should not be possible. And this can only be done by strengthening the safeguards against preventive detention. This is not the time to ban preventive detention entirely and to wipe it off from the Constitution. I know India has had a very glorious past. I am sure it is going to have a very glorious future and I am sure that a time will come, and that this time will come in our life times and not later, perhaps sooner, when it would be possible to ban preventive detentions completely, when the society is such, when the normal processes have been so strengthened to deal with this evil. I recognise that preventive detention is an evil, but I do not think that a stage has come when we can completely ban it at this time. At the moment, we can only strengthen the safeguards against it so that misuse may not be possible. Apart from that, in case of the right to life and liberty an attempt has been not to make it suspendable even during emergency, the consequence of which would be that a habeas corpus would always be permissible in the courts. The result of this would be that if it is shown that a detention is mala fide for extraneous considerations, not for legitimate considerations, the courts will have the power to set aside that detention. But I am not satisfied with mere habeas corpus because after a habeas corpus is for limited purpose. It is only to a certain extent that the courts can go into the matter. They cannot go in to the reasons on the basis of which

the detention order has been made against a person. That is why we

[Shri Shanti Bhushan]

have tried to strengthen the other important safeguard. After all, if I call attention to the fact that when a person who is suspected of having committed a crime is arrested and detained in jail, what exactly is that kind of detention is the question. Is it punitive detention? It cannot be punitive detention because a person has not been adjudged guilty. At this stage, it can only be recorded as a preventive detention because the idea is to prevent him from committing a crime in future. The idea of that detention is to prevent him from doing certain things which might not be desirable, in the interest of the society. But why has not there been a voice against that kind of preventive detention? The reason is not far to seek. The reason is because so far as that detention is concerned, pending trial and pending investigation, the final voice as to whether the person shall remain in detention or shall be at liberty, is not with the executive, it is with the judiciary. It is for the judiciary either to release him on bail or not to release him and they are to justify his detention. Therefore, there is an independent authority, the court, who wield that power and there is no possibility of the power being abused. Of course, a mistake might be made. Every single citizen who is a part of society sometimes, to some extent, has to be prepared to suffer in the overall interest of society. To that extent, even if a mistake is made by the Court, so long as it is an honest mistake, the society does not raise its voice because to that extent it is justified, but there must not be any deliberate victimisation. And that is why there has not been any voice against detention of that kind. It is that principle which we have tried to import even in the concept of preventive detention. Earlier Art. 22 authorised, or rather gave powers to the Parliament to authorise the preventive detention of a person to an unlimited extent. Although Art. 22 laid down the period of 3 months normally with-

out reference to the Advisory Board, at the same time clause (7) was there which empowered Parliament by an enactment to extend that period of three months to any unlimited period—and it had been done. Therefore, this safeguard of an Advisory Board was not available. What we have tried to do is, apart from the fact of reducing this period normally of three months to two months, we have done away with the power of the Parliament to extend that period of detention beyond two months without reference to an Advisory Board. And we have done something more important also. Its importance might not be realised in cold print, but in reality it is a more important safeguard. Earlier the Advisory Boards were constituted by the Government. The Government had the widest discretion to choose the personnel of the Advisory Board. Obviously, that confidence in the functioning of an Advisory Board of that kind constituted by the Government would not be there as there would be in the case of an Advisory Board constituted by the independent judiciary. Therefore, we have introduced a provision which would require that the Chief Justice of the appropriate High Court would select the personnel of the Advisory Board. Of the three members, the Chairman will have to be a sitting Judge to be selected by the Chief Justice; the other two members could also be either sitting Judges or retired Judges who are well versed in the traditions of an independent judiciary and who can be expected to discharge their functions with an even eye, objectively and so on. All the three are to be selected by the Chief Justice of the appropriate High Court. If a panel of three such persons, to be selected by the Chief Justice of the appropriate High Court, which has not merely those limited powers which a Habeas Corpus Bench has but which* has unlimited powers to "view the grounds of detention and go into the material on the basis of which the detention

of a person has been ordered, comes to the conclusion that there is good *f~* material to justify the detention of a person whose being at large would be harmful to the society, then I expect and believe that the society will have confidence in this preventive detention. It might be an evil of course but it will be regarded as not an unmitigated evil but as a necessary evil which in the larger interests of the society has to be tolerated at least for some time. Sir, with these words...

SHRI G. C. BHATTACHARYA (Uttar Pradesh): What about your assurance against the detention of social and political workers?

SHRI SHANTI BHUSHAN: All right, my friend, who is a distinguished lawyer and a very close friend of mine from Allahabad, has raised a point which perhaps does not require an answer. So long as the power of preventive detention is exercised *bonafide*—I repeat *bonafide* of course during the period of emergency, all the safeguards had vanished; there was no *habeas corpus*; no Advisory Board; no communication of grounds of detention so it was possible to detain a person *mala fide* and yet there was no relief available during the normal period when the *habeas corpus* would be available, when the Advisory Board consisting of independent persons, to be selected by the Chief Justice of the appropriate High Court would be available, it would not be possible for any authority to detain a person on political grounds or a political person. Art. 22 itself provides in what circumstances it could be done and the preventive detention law lays down what kind of satisfaction is needed. So, therefore, that power can never be exercised for political purposes, so long as there are adequate safeguards and there are remedies available with the result that there is an institutional arrangement to answer that question.

SHRI G. C. BHATTACHARYA:

What we want to be clear about is whether you are contemplating any law which will enable detention of political workers. Safeguards come later on.

SHRI SHANTI BHUSHAN: Not at all. I can assure my hon. friend that it would be the farthest thing from anybody's imagination to contemplate a law for the detention to contemplate a law for the detention of political workers or political opponents because there could not be a grosser misuse of any power of preventive detention and I don't think any law would be able to justify it at all.

Coming to article 31C a lot has been said because an amendment has been proposed by this Bill to this article. Sir, the sentiments which have been expressed by many hon'ble Members in this House seem to indicate that there is a belief in some minds that Fundamental Rights on the one side and Directive Principles on the other side are in conflict with each other. The objectives of the two are absolutely not contradictory. Shri Ramamurti is not here. I am happy that he has tried to defend the proposal made in this regard. As to what is the difference, with all humility, I would like to submit it for the consideration of the hon'ble Members that there is no intrinsic clash between the Directive Principles and the Fundamental Rights. The purpose of the two Chapters of the Constitution is entirely different. While the Directive Principles spell out the goals of the Constitution, objectives to be achieved, in which direction the State has to go, where has it to set its eyes and in what way, it has to move to achieve it. In so far as Fundamental rights are concerned, they indicate the path, or the method of achieving these directive principles. For instance, if I may be pardoned for giving a very rather crude example, if a person's destination is in a particular direction he has to be

[Shri Shanti Bhushan] told that he has to reach there and he is also told that he has to go by a car but that he must drive cautiously so that he may not trample upon somebody, so that he may not kill somebody on the way if he drove the car very rashly. But if somebody says, "Look here, this clashes with your fundamental right," namely, telling him that he must drive the car cautiously and carefully so that he does not trample upon somebody but reaches his objective this is implementing the Directive Principle. But the Directive Principle tells him that he must reach such and such a place. The fundamental right comes in the way which tells him that he must drive the car cautiously. But that is not the question because you must achieve the directive principle in a particular manner so that you do not trample upon the people's right. If you bring forward a provision and say that, "All right, so long as you are trying to achieve your objective, well, you must drive your car cautiously when you are going to such and such a place. Now you are going to Parliament House. In that case because going to the Parliament, is very important, then the injunction of driving a car cautiously does not come at all and you can run down any number of people on the way because it is very important that you should be able to reach Parliament. Sir, I am trying to point out that there is no clash between the two. I will just give one or two examples.

Perhaps, hon'ble Shri Bhupesh Gupta and the other hon'ble Members would agree with me as to what would happen if article 31(C), as had been amended by Forty-second Amendment, had been allowed to remain, what curious results it would have.

There are these Directive Principles. Some of them are, for instance, article 47, to "raise the standard of living of the people and also prohibition". I would forget prohibition for

the time being lest I should offend the sentiments of Shri Bhupesh Gupta and come in the way of his fundamental right. It is a very valuable Directive Principle that the State must take steps to raise the standards of living of the people. And if article 31(C) remains in the form in which it was brought about by the Forty-second Amendment, then any legislation which is enacting for the purpose of implementing this Directive Principle, namely, trying to raise the standards of living of the people, then articles 14 and 19 do not come in the way. Therefore, that legislation, in whatever form it is enacted by the ruling party, which is supported by the majority in both the Houses, cannot be questioned on the ground that it interferes with any of the basic freedoms which are guaranteed under article 19. Now some government says that because the standards of living of the people have to be raised and if the workers are allowed to go on a strike, production suffers. When production suffers, the prices rise and people do not get their necessities. Then how can their standards of living be raised if the fullest production is not ensured? Therefore, give them less wages, prevent them from going on strike. Prevent them even from speaking out, resisting against all these things, freedom of speech must be curtailed. If that is the legislation, people will have to work from 6 o'clock in the morning to 12 o'clock in the night every day without murmur and they will not be able to complain. He would have to be content with so much of wages. He will not have the right to strike or the right even to criticise because it is necessary to raise the standards of living.

He must be content with so much of wages, he will not have the right to strike or the right even to criticise, because it is necessary to raise the standards of living of the people, we are trying to implement the Directive Principles. Therefore, article 19 is out of the way, article 14 is out of

the way. I would like to put a question to hon. Shri Bhupesh Gupta: would he support that and would he say that it is good; because this legislation can be justified as a legislation which tries to implement this Directive Principle of raising the standards of the people, therefore, it is right that the fundamental right... SHRI YOGENDRA SHARMA (Bihar): How can there be any raising of the standards of the people by reducing the rights of the workers?

SHRI SHANTI BHUSHAN: Please ponder over it, because I have seen even in the law courts that while one is arguing one's case one does not realise that is arguing against oneself. I am not merely telling you a story. It happened in the Supreme Court. A very distinguished lawyer argued very vehemently and afterwards he realised that he had gone on arguing against his interests. That does happen. So I just want to register this warning, that this is the kind of thing that will happen. Every law can be justified as being for the purpose of implementing one Directive Principle or the other. They are laudable goals. But those goals could be achieved in more than one way. Those goals could be achieved either by trampling upon the rights of workmen, by depriving them of their right to forming associations and trade unions, by depriving them of the right to speak out against those injustices which are being caused, or in a manner which is consistent with the rights of a trade union, the right of the freedom of speech also, and the question is, what is the philosophy behind the Constitution which was framed by the Constitution-makers was that it is not merely the end which is important, the means are also important. Therefore, while you must strive to achieve the goals of having an egalitarian society, and so on, a welfare society, you do it in a manner that you do not oppress the working people. you do not oppress the masses, you do not deprive them of the things which are so valuable for them. Of course if the hon. Members feel

that all these basic freedoms are useless, they have no value, the working class does not cherish these basic freedoms which are guaranteed by article 19 and they would like them to be trampled upon just because somebody could say that this legislation is for the purpose of implementing a Directive Principle, that is a different thing.

Now, there is article 40, another Directive Principle, regarding organising the village panchayats. Now organising the village panchayats is a very laudable objective. That can be done in two ways. One way of doing it is: All right. All sections of the society, whether owing allegiance to one party or the other, will have an equal say in choosing the panchayats. Everyone will have the right to vote so far as the village panchayats are concerned. Another way of organising the village panchayats is to say: No, the Communist Party is bad. Therefore, so far as they are concerned, they would neither be entitled to put up their candidates nor be entitled to vote. Well, the village panchayats would not be constituted. Now, of course, if

article 31C in its present form is there, then the members of the Communist Party would not be entitled to challenge such a law which provides for the constitution of the village panchayats by depriving the members of the Communist Party the right to vote and the right to candidature for even if article 31C is there, article 14 has been given a go-by. Then the law cannot be challenged on the ground that it is discriminatory. Then, the Parliament, the ruling party has the right to discriminate and constitute the village panchayats. Would you like it in the village panchayats or in all these institutions?

Similarly, with regard to property also, so far as the re-distribution of property is concerned, the reallocation of property is concerned, for the purpose of reducing concentration of wealth and so on, it is a very important Directive Principle. It can be

[Shri Shanti Bhushan] done in two ways. One is: All right. If a ceiling is fixed, that ceiling is to be applied to everybody irrespective of political affiliations. Another way would be all right. Let there be a ceiling only in the case of the persons who owe allegiance to the Opposition parties. So far as those owing allegiance to the ruling party are concerned, they will be freed from the law of ceiling. Such a law cannot be challenged if article 31C is there, because article 14 cannot be brought into play for testing the validity of this law. Therefore, all these things can be done. I would not like to suggest that somebody tried to make this form of article 31C deliberately for that purpose. I would not like to suggest that. But it should have been realised of course it is very easy to sort or excite the feelings of the people and create a class between the Directive Principles and the Fundamental Rights because obviously when we speak of the Directive Principles, we touch a very important chord of sympathy in the hearts of the poor people; quite right—and it should not be forgotten that by touching their heart, that chord of sympathy, if we try to do something which is undesirable and against the interests of those very people. Even we are trying to misuse the constitutional provisions.

[MR. CHAIRMAN *in the Chair*]

SHRI V. B. RAJU (Andhra Pradesh) : You have retained Articles 39 (b) and (c) in 31C according to your amendment. But what about Articles 38, 38 (a), 41, 42, 43 and 43A? They all actually relate almost to the same objective.

SHRI SHANTI BHUSHAN: I understand it. Let me answer it. Article 31C had been amended earlier, rather it had been brought about for the purposes of those two Directive Principles, important Directive Principles, at a time when the Fundamental Right to property was there. We do not yet know what the ultimate fate of this proposal to delete the

Fundamental Right to property would be. Well, Article 19 (1) (f) is also a Fundamental Right, and Articles 31 and 31C are also spoken of. They are limited laws which are only for the purpose of implementing those two Directive Principles because those two Directive Principles can be implemented only by certain kinds of laws. So far as those laws are concerned, well, we did realise that it would not be right, particularly so long as the right to property is also a Fundamental Right to put any kind of an impediment of the Fundamental Rights in their way. But Shri Raju is very right, if I may say so with great respect, that a State may come when one may have to think that particularly when the Fundamental Right to property has been deleted both from Article 19 and Article 31, whether there is any need of a provision like Article 31C which says that when you are trying to implement any Directive Principle no Fundamental Right would be allowed to come in the way, because then only two things remain. After Articles 19 (1) (f) and 31 go, then it will be either Article 12 or the other clauses of Article 19 which I would say are innocuous. These are not for the purpose of the rich people and the vested interests and so on. Equality is not in the interest of the vested interests. Equality is for the people who are poor. The right to equality is a very valuable right for the poor people, for the deprived people. Similarly are the freedoms, the freedom of speech, the freedom to assemble, the freedom to form trade unions and the freedom to move from one place to another. The freedom of movement, of course, is a sacred right. If that Fundamental Right is done away with for the purpose of the Directive Principles, then the sacred right of the Hon Members to stage a walk-out would also disappear because that is a part of the freedom. Sir.

Sir, regarding Article 74, that the President being bound by the advice of the Council of Ministers, two point?

were made. I would very briefly deal with them. One was made by Mr. Sankar Ghose. He said that this limited right which is being given to the President, namely, to send back a decision of the Council of Ministers for consideration once because an advice given after reconsideration is binding, would make the President come in the arena of politics. Sir, I submit that it has always been recognised that the President is a very important functionary, and the manner in which the electoral college elects him also ensures that he would be a very responsible functionary. And he is the Head of the State. He must have this because after all nobody is infallible, even the Council of Ministers, I am prepared to admit, can make a mistake. There can be an oversight. They may not take into consideration certain other aspects of the matter. Therefore, when one such reconsideration is given, if it occurs to the President that there are some valid reasons which have been overlooked, and if these reasons are put before the Council of Ministers, perhaps the Council of Ministers may come to a different conclusion. This has always been recognised a part of the functions of the President all along from 1950. Even when this controversy was raised whether the President was bound by the advice of the Council of Ministers or not in 1950 by Dr. Rajendra Prasad, the Constitutional experts had examined the position and came to the conclusion that he was a moral and Constitutional Head bound by the advice of the Council of Ministers. But this function was clearly recognised that he could caution, that he could advise. He could caution the Council of Ministers; he could advise the Council of Ministers. Thereafter the ultimate decision will be a matter of the Council of Ministers. But this much was always there. Even in the British parliamentary democracy, this function of the Crown is also recognised. And that is why when by the Forty-second Amendment, a change was made in the role also in jeopardy. It is not clear. Perhaps it

might be possible to interpret that even after the Forty-second Amendment, it was possible for the President to ask for reconsideration, but in any case, it is not clear. Therefore, if it was sought to be taken away, then that right which always was with the President, is sought to be restored; but if that right was still there that it is sought to be made explicitly clear because there can be no doubt that this is a very important role, a very valuable role—the President is not in the dim of day-to-day politics—and, therefore, he must have the right to advise and caution. The ultimate decision must, of course rest with those who are responsible to the Lok Sabha, namely, the Council of Ministers.

Then, Sir, Mr. Dinesh Goswami raised a few more points. He asked, was it that there were no functions in which the President had an independent voice? He somehow had the impression—I have great respect for him and also for his advocacy—that so far as the determination of the age of a judge is concerned, the President has the power, because the Constitution says that "the President shall determine". Of course, all articles of the Constitution refer to the President—"the President shall do this, the President shall do that" and so on. But wherever the power is given to the President, except in an exceptional situation, all those functions are supposed to be exercised in accordance with the decision of the Council of Ministers. It is for the Government, which is responsible to the Lok Sabha, to decide, not for another functionary who is not responsible to the Lok Sabha. But there are two situations undoubtedly, to which he has called attention, and he has raised a doubt as to whether in those situations also, the President has no power. For instance, he mentioned choosing of the Prime Minister. Now, article 74 and article 75 are there. Article 74 is the normal provision, and article 75 is an

[Shri Shanti Bhushan] exceptional and special provision. So far as the function of choosing the Prime Minister is concerned, that is conferred on the President by article 75. It is quite clear that so far as choosing of the Prime Minister is concerned, that is a function which the President has to exercise on his own individual judgment, not on the advice of an outgoing Council of Ministers. That is quite clear. That is not governed by article 74; that is governed by article 75. Similarly, he raised the other point: suppose the Lok Sabha is dissolved and fresh elections are taking place. Our Constitution does not contemplate that there shall be any Government without a Council of Ministers. The Council of Ministers remains there. Well, whether we call it a care-taker Government or not is immaterial; but it is there. He raised the point; suppose the party whose Council of Ministers was functioning during the time that the elections were taking place, happens to lose at the General Elections and yet that Council of Ministers chooses to give an advice to the President to dissolve the newly constituted Lok Sabha again and to order fresh elections again: would such an advice be still binding on the basis of article 74? I would like to assure the hon. Member that no such position would arise because all the constitutional provisions have to be read in harmony. There is the constitutional provision saying that the Council of Ministers is responsible to the Lok Sabha. I do not think he expressly stipulated this situation, but this situation was stipulated in the Lok Sabha also, in the other House, when the matter was being discussed, that is, when the Government, namely, the Council of Ministers has been defeated on a no-confidence motion and after that no-confidence motion has been passed against the Government, yet the Council of Ministers, instead of resigning, try to advise the President, for doing something and so on and so forth: then in that case, would that advice be still binding? I submit, Sir.

that the article which says that the Council of Ministers is responsible to the Lok Sabha ensures that it is only so long as the Council of Ministers is functioning in accordance with the constitutional provisions, till then only the advice of the Council of Ministers is binding on the President. So, a defeated Council of Ministers, whether defeated in General Elections or defeated on a no-confidence motion, has no constitutional power thereafter to advise the President, and the President will have the power, just as to install a new Government, to dismiss that Government also if it does not resign by itself.

SHRI DINESH GOSWAMI :

(Assam): Mr. Law Minister, so far as the age of a judge is concerned, is it not a fact that the Supreme Court in Jyoti Prakash Mitter's case held that in determining the age of a judge of a High Court, the President acts quasi-judicially, in his own individual discretion, and the advice of the Cabinet does not come in? The second point is whether you have left an option to the President to determine whether the Prime Minister is acting within the Constitution or not. I think you are giving over-riding powers to the President again. Therefore, the whole argument is contradictory.

SHRI SHANTI BHUSHAN: I have understood your point. I am not doing that. What I am saying is that once the Council of Ministers has been defeated either in a General Election or has been defeated in a No Confidence Motion, then, thereafter its function, its role, of advising the President comes to an end. In that situation the President is fully-entitled, under article 75, to dismiss that Council of Ministers. That is what I am saying.

So far as the question of quasi-judicial is concerned, so many functions of the Government are quasi-judicial. Quasi-judicial means that

you give a hearing, you give a hearing to the person affected before you come to a decision. It does not mean that the President performs that function in his individual discretion. In fact, in Shamsher Singh's case the Supreme Court has gone into the question very elaborately. All the seven Judges came to the unanimous conclusion that the defeated Council of Ministers, etc. are only exceptions. Chief Justice Subba Rao tried to create this theory, this doctrine, namely, there are two kinds of functions. For some functions he has to act on the advice of the Council of Ministers, in others he has to act in his individual discretion. In some cases, some view to that effect was expressed. When Chief Justice Subba Rao was there. But that doctrine has never been supported by jurists. Mr. Setalvad did not support it. Alladi Krishnaswamy did not support it. Others did not support it. with the result that it is now agreed on all hands that the President is only a constitutional head. He is bound by the advice of the Council of Ministers.. (Interruptions)

SHRI V. B. RAJU; I raised a point: How did you import the word Cabinet.

SHRI SHANTI BHUSHAN: I must not forget to deal with it. Sir, a point has been raised that if in the other articles of the Constitution the expression 'Council of Ministers' has been used, why was it necessary to innovate and use the expression 'Cabinet', so far as article 74 was concerned. I will immediately explain to you why it was so. In fact, article 72 says: "With the aid and advice of the Council of Ministers. . . All orders are made in the name of the President and are supposed to be made with the aid and advice of the Council of Ministers. How the Council of Ministers should advise the President is laid down in the Rules of Business which are framed under the appropriate article. In the Rules of Business, some distinctions have been made between one function and other

functions. In the case of less important functions, a single individual Minister is entitled to take the final decision and the decision constitutes the advice to the President on the basis of which the order of the President comes to be made. On the other hand, there are functions which are allotted by the Rules of Business to the Cabinet which come within the Cabinet purview of advice. If we use the expression "Council of Ministers", then in that case even the question of declaration of emergency would have been allotted to individual Ministers, let us say, the Home Minister. He would be competent to take a decision as to whether an emergency should be declared or not. It would be merely a question of altering the Rules of Business 'which are alterable. The Constitution provides that no Rules of Business can give this function to individual Minister, and so on. It must be done by the Cabinet. The concept of 'Cabinet' is well-known, namely, that Ministers of the Cabinet rank constitute the Cabinet. Therefore, the requirements of article 352 are that so far as such important matters are concerned as the question of declaration of emergency, there should be a collective decision and then they should send a written advice to the President. Sir,....

SHRI B. N. BANERJEE (Nominated) : When you have used the language meaning that it should be the Union Cabinet, that is to say, the Council of Ministers, Prime Minister and other Ministers, appointed under article 75, you specifically say that only the Ministers of Cabinet rank will be entitled to discharge these functions, not others (Interruptions)

SHRI SHANTI BHUSHAN: That is well recognised. So far as Cabinet decisions are concerned, only Ministers of Cabinet rank participate in them, even otherwise

Then, right to property. Certain doubts have been raised in regard to

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fundamental right of property. I am surprised that even distinguished lawyers should raise this doubt and then it occurs to me that perhaps the reason for their raising doubt is not that they are really doubtful but because they want me to say so expressly on the floor of the House. The doubt they have expressed is that even though the fundamental right article 31 is deleted and 19(1) (f) is also deleted, yet 300A is introduced as a right, namely, that no person shall be deprived of his property save by the authority of law. What they are apprehensive about or at least what they say they are apprehensive about is whether this concept of market value of compensation might not come back by the back door which has been done away with by various amendments, particularly the last amendment substituting the word "amount" for the word "compensation". When article 31 had a clause saying that no property shall be acquired except for public purpose and on payment of compensation, there was a requirement. If you acquire a property, then you have to comply with two conditions, namely, it shall be for a public purpose and secondly there should be compensation paid. Since there was fundamental right to compensation, in that context the scope for interpretation was possible. But so far as 300A is concerned, admittedly this language has been used. In fact an amendment was proposed in the other House that it shall be either by due process of law or it should not be done except by procedure established by law in conformity with the language used in article 21. But this was not accepted. If that language is used, then all kinds of concepts could have come in by the back door. "Save by authority of law" simply means that there must be an enactment to justify that deprivation. Not that enactment must contain a provision for compensation—either market value or otherwise. It is left to the judgement of the legislature. The legislature in its wisdom, seeing as to what the situation is, may pro-

vide for compensation or may not provide for compensation or may provide for market value or may not provide for market value so that when the fundamental right to property has been taken away, obviously it is not possible to say that any requirement of compensation can at all be read in article 300A.

Some reference was made to small agricultural holdings....

SHRI DINESH GOSWAMI: I raised this question because my apprehension

SHRI SHANTI BHUSHAN: May I suggest that we can discuss this when we take up clause by clause consideration as otherwise I may take too much of time?

There was a reference to small agricultural holdings and an apprehension was expressed....

SHRI TRILOKI SINGH (Uttar Pradesh) : The Land Acquisition Act is there....

SHRI SHANTI BHUSHAN: Land Acquisition Act is not a perpetual law. It is not a Constitutional law. It is amendable. You can amend it any time. You can have other laws for certain situations. The Land Acquisition Act was there already when you enacted article 14. The principle which has been laid down is that if you have two laws operating in the same field and the two laws give you a choice either to acquire under this or that—it is not a compulsory law to take away certain types of property—there is no question of land acquisition. That law provides for acquisition under those circumstances and then the decision of the Supreme Court will not come in. You have the discretion either to acquire under this or under that. It can be done at your sweet will. If the Parliament does not allow that sweet will to the Government, but says that this shall be acquired under this Act alone, then in

that case there is no question of article 14 coming in because otherwise that argument could have been raised even when you had 31 in a way. Article 14 was still there. Obviously when the fundamental right is being taken away, it does not enhance the right of any person, it can only reduce the right of certain people.

Regarding small agricultural holding, an apprehension was expressed as to what will happen to a small holder or a small farmer. You have probably omitted to notice that article 31A is being retained. And, Sir, so far as the agricultural holdings within the ceiling limits as imposed from time to time are concerned, it guarantees them the right and their rights have been preserved and the agriculturist cannot be deprived of his holdings so long as they are within the ceiling limits, without payment of the market value compensation and that particular right has not been touched, because the small peasants do constitute the bulk of the people of this country and, as an honourable Member said, Sir, if they do not produce, then, in that case, the entire country will perish. I agree with it and, therefore, I agree that they have to be preserved and this is the preservation of their rights and this preservation has been maintained.

PROF. N. G. RANGA (Andhra Pradesh) : Under what article?

SHRI SHANTI BHUSHAN: 31A. That right is given in 31A which is being maintained and which is not being deleted.

Then, Sir, some honourable Members referred to the right to work and also referred to the election manifesto of the Janata Party and said that it has been said in that that while the right to property would be deleted, the right to work would be affirmed. I am very happy and I feel gratified. Sir, to note that the Janata Party manifesto has evinced so much interest and

I take it as a sign of everyone converting himself to the views of the Janata Party and I am happy to note that the honourable Members are getting themselves converted to our views. "Interruptions". But I have no doubt that the Janata Party philosophy would definitely convert even people like Mr. Bhupesh Gupta if he has not already been converted. Very soon he will be converted.

SHRI HARISINH BHAGUBAVA MAIUDA (Gujarat): Provided the Janata Party exists.

SHRI SHANTI BHUSHAN: Sir, here I would like to make it clear as to why it has not been possible to include or incorporate the Fundamental Right to work at this stage. True, we said that it would be brought and that the Fundamental Right to property should go. I think it would be a mistaken notion to read that election manifesto to mean that the two things must happen simultaneously. In fact, they cannot happen simultaneously. Whenever certain things are said in the manifesto, there is always a suitable time for doing them and they cannot be done immediately and it is not a *mantram* and it is not just by incantation that you can do it by saying, 'All right. Article 19 in respect of the Fundamental Right to property should go and it shall be obligatory on the part of the State to give meaningful employment to everybody by way of a Fundamental Right to work and straightway, the next thing, the State should do it.' There are meaningful employment and meaningful jobs avail for everybody and they have merely to go to a court of law and the court of law will say, "All right. You will be a typist, you will be an engineer and you will be an architect," and so on. It is not like that. Certain conditions have to be created, because, otherwise, it would be like passing a decree. If somebody is satisfied in getting a decree passed for Rs. 30 crores against a pauper like myself, for instance, then, in that case, you would be very happy to have that

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decree. But the important thing is that a court decree against a pauper would be unenforceable and the same would be the position then. So, the question is at what stage the Fundamental Right to property should go and the other right should be there, because the Fundamental Right is an enforceable right and you can go to a court of law and have it enforced it straightway; no defence, and the State would not have to say, "Well, there is this difficulty or that difficulty". It is at this stage that you have to do it if you have to basically solve the unemployment problem. Of course, there would be some people who would be unemployed. Then in that case, the Fundamental Right has to be there and, connected with that right, the right to unemployment relief. Otherwise, if you write down the Fundamental Right today into the Constitution, it will be a dead-letter and it will be an unenforceable right. That is why it has been kept and it was kept in the Directive Principles. But efforts are being made and I can assure the honourable Members that serious attention has been paid to this problem by the Planning Commission. I have myself gone into it and I had obtained a note from the Planning Commission and I had made a speech also....

SHRI BHUPESH GUPTA: Mr. Shanti Bhushan, the Planning Commission, in the Draft Sixth Plan Report, envisages an increase in the middle-class educated unemployment and whatever figures they have given show that unemployment will only rise.

SHRI SHANTI BHUSHAN: What I am saying is that certain strategies and certain policy orientations and certain things have been decided upon. But, obviously, you cannot just come to this conclusion. If you want to effectively solve the problem of unemployment, then, first of all, you have to scientifically study it, and then identify the problem, identify the magnitude of the problem also and identify as what would be the only possible way of solving it. Otherwise, if you just start |

running without knowing as to what is to be done and how it should be done, then, in that case, no results are possible because these things cannot be solved just by slogans. A scientific approach is necessary and I am very happy to say that the Planning Commission has applied a scientific approach and they have been able to identify as to what has happened, what has gone wrong in the past, why it has not been possible to solve this problem of unemployment, what reorientation is necessary, what new approaches are necessary and so on and so, this is not the occasion.

SHRI BHUPESH GUPTA: Sixteen months after the Janata rule, unemployment has increased by 12 per cent

... (interruptions)

SHRI SHANTI BHUSHAN: Sir, I am reminded here of a case in which a factory-owner was going to instal a new factory, and he said that he was going to have production of 200,000 tonnes after four years. So a person after one year said: You said that in four years you would have a production of 200,000 tonnes, so in one year it should be 50,000 tonnes; where is the production? The machinery was being set up. So he wanted even when the factory had not been installed, at least 1/4th production should be there. He was not prepared to wait till the completion of the factory.... (Interruptions) Are they threatening to stop the factory being constructed? They do not want to solve the unemployment problem? So long as the unemployment problem is there, you would thrive? No, no, we can't permit this. The unemployment problem shall be solved.

Then, Sir, in regard to the office of profit, it was said that a good thing had been done by the forty second amendment, leaving it to the convenience of hon. Members or potential Members, so that they would know what exactly is an office of profit. Only those offices of profit which are specifically mentioned for the purpose of disqualification would alone be disqualified, not

other offices. On the other hand, the earlier condition which was sought to be restored was that every office of profit disqualifies, unless Parliament has provided that a particular office of profit does not disqualify. Now, what is the difference between the two positions. A very important difference. The idea is that it is necessary for honest politics, where politics cannot be polluted and cannot be diverted for other ends, namely, that a person, if he is a Member of Parliament, must not hold an office of profit, that is, an office under the Government. Why? Because independent functioning must be ensured. Obviously, there has to be some offices like those of poor Ministers and certain officers also. Therefore, certain offices of profit are exempted. But the exemption has to be given by the Parliament consciously, that: all right, this is the office which is essential, therefore it must not disqualify. On the other hand, if you have a provision like the one which was brought up by the forty-second amendment, then the position, in brief, would be that an office of profit could be created till the time the Parliament might apply its mind and specify those offices, it would be possible for the Government to keep on creating offices of profit and say that this cannot disqualify. There is thus vital difference between these two positions. The laws must come first and giving of office of profit must come later.... (*Interruptions*)

SHRI V. B. RAJU: It is not very relevant here. The question is of definition. ... (*Interruptions*)

SHRI SHANTI BHUSHAN: Perhaps the hon. Member has not understood me. It is a wellknown concept; it does not require any definition. The word "office" is wellknown. The word "profit" is wellknown. The word "Government" is also well known. If the Government makes appointment of a person to an office which office securing profit, that is office of profit. It is very clear. If they appoint me to an

office and that office gives me some remuneration one way or the other, then in that case I know that I am being appointed to an office of profit. After all, the profit is well-known. What is profit? Any 3 P.M. pecuniary benefit is profit. (*Interruptions*) The parliament will disqualify after a long time. Till the parliament goes to make the enactment and as soon as the parliament disqualifies all these offices the Government will create other offices. Therefore, the spirit of this provision can be evaded if this kind of innocuous or innocent-looking amendment was allowed to remain.

Then, Sir, I would skip certain things. I will take the time of the hon. Members on administrative tribunals. I appreciate that there have been delays in the High Courts, etc. Therefore, this concept of administrative tribunals appealed to them. But may I just ask them, with great humility, whether they do not have the experience of similar delays even in administrative tribunals. I can assure them that there have been administrative tribunals and administrative tribunals. (*Interruptions*) There is no such magic in administrative tribunals that cases would not accumulate there. It all depends on who is the person, with what speed he functions, how many Judges are there, how many Benches are there and what work is there. Whether you appoint the same two Judges as a Bench of the High Court to deal with labour matters or you appoint the same two Judges as a Labour Appellate Tribunal, it would not make the slightest difference. It all depends on whether you have the requisite number of Judges with the requisite speed and capacity who do not allow the backlog to accumulate. If you allow the backlog, it can accumulate and has accumulated in various tribunals. I know of some administrative tribunals clogged up with work and cases not coming up for years together. So, the solution is not administrative tribunals because merely by calling

[Shri Shanti Bhushan] somebody an administrative tribunal, he does not get the capacity of working very fast. It is a question of taking a pragmatic look at things. And the handicap of a tribunal is that the Government can appoint any person to these administrative tribunals. Any person can be appointed in a partisan way and the Government can create any number of administrative tribunals. Would you like your rights to be placed before every administrative tribunal? Supposing for income-tax matters, not this old Income-Tax Tribunal which also functions under the supervision of the High Court, etc., a new Income-Tax Tribunal was created today and supposing we appoint two politicians there to dispose of income-tax matters. They would immediately I assess Shri Bhupesh Gupta's income as Rs. 2 crore and impose a tax of Rs. 1.5 crores on him and say: Yes, this decision is final. So, Shri Bhupesh Gupta goes and Shri Bhupesh Gupta is not there in the Rajya Sabha only because an administrative tribunal appointed by us, in its wisdom, chooses to say: All right, yes yes it is the best judgment; after all it is the best judgment. He makes such eloquent speeches. He must be a very able man and must be earning Rs. 2 crores. Therefore, let us assess him at Rs. 2 crores. It becomes final. Would Shri Bhupesh Gupta like to have such a tribunal?

SHRI YOGENDRA SHARMA: Mr. Shanti Bhushan, your efforts will not succeed.

SHRI SHANTI BHUSHAN: I know you would not like them to succeed.

SHRI L. R. NAIK (Karnataka) : The hon. Minister, in reply to my question, has said that a Judge can dispose of not more than 600 to 700 cases in a year. At that time, I had also said that there were writ petitions to the tune of 15000 in respect of Land Reforms Act in Karnataka and if he appointed one Judge, he would take about 22 to 25 years to dispose of those cases. Will you permit that sort of thing?

SHRI SHANTI BHUSHAN: I have understood your point. Let me dispose of his objection in two sentences. In Karnataka, what happened was that certain administrative tribunals were created in regard to land reform matters. I would not like to say in what way those administrative tribunals were created and how they functioned. I was only saying that there should not be various tribunals to deal with Shri Bhupesh Gupta packed with politicians and so on who will decide not on facts but on the basis of other considerations. There in Karnataka, the orders were being given without any reasons, etc. They were sometimes in favour of this person and sometimes in favour of that person. The High Court said that if the legal rights of the people were being decided, then it must be made known as to why those cases had been decided in A's favour and why those cases had been decided in B's favour. So, they quashed all those orders. You must give a reasoned order. Again they decided them without giving reasons. Such cases do not take much time to be decided in the High Courts, and it may be even 10,000 cases can be decided in one day because all that the Judge has to ask the Counsel is, "All right, are all these 10,000 writs cases in which no reasons have been given?" When he says, "Yes, the reasons have not been given", the Judge says, "All right. Orders quashed." Even in Karnataka, it has been realised_____

SHRI L. R. NAIK: In Karnataka, the High Court is very rigid in disposing of cases and orders of the tribunals at the level of Taluks. We have seen that action has been blocked by the rigidity applied by the High Court in the matter of distribution of 4 or five lakh acres of surplus land to the Scheduled Castes and Scheduled Tribes. What have you to say about it?

SHRI SHANTI BHUSHAN: Even in Karnataka, I am happy to say that now this infirmity has been realised

and the right of appeal or revision to some impartial agency has now been conceded there. So, that difficulty is over even in Karnataka.

Sir, so far as the emergency provisions are concerned, there are just two or three small points which have been referred to. One was the armed rebellion. I would not like to take much time of the House. Some hon. Members said, what is the difference between the internal disturbance and the armed rebellion? Now, the difference is very obvious, because for so many days I have seen internal disturbance in this House but I have yet to see an armed rebellion in the House. So, the difference is very clear to see, namely, who can deny that there have been plenty of days -----

SHEI BHUPESH GUPTA: You will see that when Mr. Ramamurti comes with a lathi, you will term it an armed rebellion.

SHRI SHANTI BHUSHAN: Sir, Shri Bhupesh Babu can be so ingenious as to call that an armed rebellion. Firstly, there is no rebellion. Then, Sir, there are no arms. And this concept of armed rebellion is so well-known that by trying to define it you would, of course, make it absolutely un-understandable. One has clearly to recognise an armed rebellion. But, Sir, it is said that if the danger to the security of the country is from outside, then emergency may be justified. But if the danger is from inside, although the danger may be of the same magnitude, of the same character, and for instance, suppose some foreign power cleverly and in such a manner that you cannot show it—and it is not visible—supplies arms and does something and, therefore, creates any armed rebellion inside the country and you are unable to show it objectively that the inspiration and the help is from outside, then you can say, well, it is not an external aggression which has posed a threat to the security of the country because unless it can be shown, you cannot -1134 RS^1

say that it is necessarily from external aggression. But the whole question whether these powers are needed or not depends upon the objective situation, and it is not by definition or by words that the misuse can be prevented. The misuse can be prevented by safeguards. The words do not prevent the misuse. You use any words. Then if the Government has to misuse, it will say that it is from external aggression. Mr. Bhupesh Gupta's aggression may be said to be from external aggression. Therefore, so far as the misuse is concerned, no words, even 'external aggression', that word, is not going to save the situation. It is an institutional safeguard. And that is why the attempt has been to strengthen the institutional safeguards. Firstly, the Cabinet advice...

SHRI BHUPESH GUPTA: You go to the next point.

SHRI SHANTI BHUSHAN: He is convinced. I am grateful to him, Sir, that he has accepted this.

Sir, I need not take much time of the House on article 356. It is well-known. The safeguards have been strengthened.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): I would like to know whether you consider the agitation by the Nagas in Naga-land as an armed rebellion or an internal disturbance.

SHRI SHANTI BHUSHAN: Perhaps, the hon. Member has not realised that armed rebellion alone is not enough. Armed rebellion must pose a threat to the security of India or to the security of any part of India. Even if there is armed rebellion but it does not pose a threat to the security of the country, then, in that case, the consitions for emergency are not created.

Just ons void about the definitions of 'socialist' and 'secular'.

SHRI BHUPESH GUPTA: Don't bother.

SHRI SHANTI BHUSHAN: Sir, he is convinced. He does not want me to speak on it.

SHRI BHUPESH GUPTA: What about referendum?

SHRI SHANTI BHUSHAN : Now, Sir, about referendum, even though I had thought that Shri Bhupesh Gupta had made a very convincing argument so far as referendum was concerned, but since Shri Bhupesh Gupta himself is desirous that I must add some more strength to all that he has argued, I would just take a few minutes.

SHRI BHUPESH GUPTA: I did not ask that. I do not know whether you will add the strength or take away the strength.

SHRI SHANTI BHUSHAN: Well, let me make an attempt and we will see what happens.

Sir, a very pertinent question has been asked by Shri Antulay and I wish that I had the time to deal with the points raised by him at length. *(Interruptions)*. That is why I say that I do not have the time. Now, in any case, he has asked whether in the Kesvanand Bharati case the Supreme Court had the jurisdiction to give that judgment because it was an article 32 petition, and he felt that article 32 is only for enforcement of fundamental rights, and asked further how does the Supreme Court get the jurisdiction to determine upon the constitutional validity of a constitutional amendment. Now, Sir, the answer is very simple. If article 368 gives a power to Parliament, uses certain language to the effect that Parliament can amend the Constitution, the question arises supposing something which purports to be an amendment of the Constitution is enacted, but it is not really an amendment of the Constitution, what happens? May I give an example? Supposing, a two-thirds majority of the

two Houses purport to enact a Bill which says "Shri Antulay is a small girl", what happens? *(Interruptions)*. Would Shri Antulay say, well, they have done it under article 368, they have done it by a two-thirds majority and therefore nobody can question it and therefore Shri Antulay is a small girl. But the question that the Supreme Court will pose will be, whether calling Shri Antulay a small girl amounts to an amendment of the Constitution? Does it mean to say that Shri Antulay is a small girl because it has been done by a two-thirds majority of the two Houses and so it must be an amendment of the Constitution?

SHRI A. R. ANTULAY (Maharashtra) : If Parliament under article 368 says that Shri Shanti Bhushan is an old girl, will the Minister-----

SHRI SHANTI BHUSHAN: I will not challenge it.

SHRI A. R. ANTULAY: Still the Supreme Court cannot go into it. That is not my doubt. As you said, that is my reading of the Constitution and that is my conviction.

(Interruptions)

SHRI BHUPESH GUPTA: I am quite sure if the Supreme Court says that Shri Antulay is a small girl, he will welcome that.

SHRI SHANTI BHUSHAN: Sir, article 368 gives the power of amending the Constitution to Parliament. The concept of amendment is so very clear to hon. Members. So many times it is said when a particular amendment to a particular clause is moved, well, this is not an amendment to this clause, therefore this is beyond the scope of the Bill, etc. That is what exactly the Supreme Court did.

Then, Sir, Shri Seervai, who was the greatest exponent of the theory that there can be no judicial review of a constitutional amendment, has also got converted after Mrs. Gandhi's case. He has written in the second edition of his book that the two-

thirds majority of the Parliament could not be given absolute powers. The question is how a constitutional principle etc. is created in a certain 'context, in a certain situation? Today, Sir, the whole country is asking whether the two-thirds majority of the two Houses must have absolute powers, even the power of clamping a law to say that for the next 26 years there shall not be any election to either House of Parliament and only the casual vacancies will be filled in? The question is whether democracy can be allowed to be scuttled even by this process and that is why this referendum clause is sought to be introduced. The idea is not that the referendum will be used again and again. The very existence of this requirement of referendum itself will be a guarantee that nobody will ever propose an amendment...

SHRI A. R. ANTULAY: Misconceived.

SHRI SHANTI BHUSHAN:... which will impair the democratic character of the Constitution. So, it is merely a safeguard. And, Sir, those who think that the Supreme Court should not have the judicial review, I hope, would also welcome this referendum because after this referendum is there, one institution can certainly say that we can check the other institution but no institution can say that they can act as a check on the sovereign people of the country. Thereafter it will not be possible for the Supreme Court to say that even if a certain amendment had been ratified by the people of the country in a referendum, the Supreme Court will have the authority.

With these words, Sir, I would not like to take more time of the House and would commend the Bill to the House.

SHRI A. R. ANTULAY: Mr. Law Minister, that is precisely what the

framers of the Constitution thought— you may go through the debates— and yet the Supreme Court sat in judgment and whatever the hon. Law Minister is saying today, is certainly not going to be taken note of by the Supreme Court. He knows it as good as I do. The only thing is, he is sitting on that side and this is his job.

SHRI B. SATYANARAYAN REDDY: I want a clarification, Sir. He has not clarified about lowering of age from 21 years to 18 years and also about the right of recall.

SHRI DINESH GOSWAMI: I had a question regarding referendum. I want to know whether I should put it now or at the time of Clause-by-Clause consideration.

MR. CHAIRMAN: You may ask at the time of Clause-by-Clause consideration.

SHRI U. R. KRISHNAN (Tamil Nadu): Sir, he has not replied to the point about the right to recall. This is a general question and he has not replied to it.

MR. CHAIRMAN : The question is:

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

The House divided.

MR. CHAIRMAN: Ayes—177
Noes—Nil.

AYES—177

Adivarekar, Shrimati Sushila Shank T

Advani, Shri Lai K.

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anandam, Shri M.

Anjiah, Shri T.

Antulay, Shri A. R.

Arif, Shri Mohammed Usman

Asthana, Shri K. B.

Bagaitkar, Shri Sadasiv
 Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharlal
 Barman, Shri Prasenjit
 Basavaraj, Shri H. R.
 Bhabhda, Shri Harishankar
 Bhagat, Shri Ganapat Hiralal
 Bhandari, Shri Sunder Singh
 Bhattacharjee, Prof. Sourendra
 Bhattacharya, Shri G. C.
 Bhola Prasad, Shri
 Bose, Shrimati Pratima
 Chakraborty, Shri Amarprosad
 Chandrasekhar, Shrimati Maragatham
 Chatterjee, Shri Pranab
 Chattopadhyaya, Prof. D. P.
 Chaurasia, Shri Shivdayal Singh
 Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Goswami, Shri Sriman Prafulla
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannathrao
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishan-
 ker

Kadershah, Shri M.
 Kakati, Shri Robin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kameshwar Singh, Shri
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Prof. Rasheeduddin
 Khan, Shrimati Ushi
 Khobragade, Shri Bhaurao Devaji
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Kumaran, Shri S.
 Kunjachen, Shri P. K.
 Kureel, Shri Piare Lal waf Piare Lal
 Talib
 Lakhan Singh, Shri
 Lakshamanan, Shri G.
 Lal Sawia, Shri
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahapatra, Shri Lakshmana
 Mahida, Shri Harisinh Bhagubaya
 Majhi, Shri Dhaneshwar
 Makwana, Shri Yogendra
 Mallick, Shri Harekrushna
 Manher, Shri Bhagatram
 Maran, Shri Mursoli
 Mathur, Shri Jagdish Prasad
 Maurya, Shri Buddha Priya
 Mehrotra, Shri Prakash
 Mehta, Shri Om
 Menon, Shrimati Leela Damodara
 Menon, Shri Viswanatha
 Mishra, Shri Kalraj
 Mishra, Shri Mahendra Mohan
 Mody, Shri Piloo
 Mohanty, Shri Surendra

Mohinder Kaur, Shrimati
 Mcdal, Shri Ahmad Hossain
 Moopnar, Shri G. K.
 Morarka, Shri R. R.
 Mukherjee, Shrimati Kanak
 Mukherjee, Shri Pranab
 Mulla, Shri Suresh Narain
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalraya
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Nizam-ud-din, Shri Syed
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Pathak, Shri Ananda
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prasad, Shri K. L. N.
 Prem Manohar, Shri
 Rai, Shri Krlp Nath
 Raj an, Shri Pattiam
 Sajender Kaur, Shrimati
 Raju, Shri V. B.
 Ramamurii, Shri P.
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 *eddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 ileddy, Shri R. Narasimha
 itoshan Lai, Shri
 !toy, Shri Kalyan
 3ahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed -
 husain A.

Saring, Shri Leonard Solomon Sarup
 Singh, Dr. Satchidananda, Shri
 Schamnad, Shri Hamid Ali Sezhiyan,
 Shri Era Shahedullah, Shri Syed
 Shahi, Shri Nageshwar Prasad Shanti
 Bhushan, Shri 'Sharma, Shri Ajit
 Kumar Sharma, Shri Anant Prasad
 Sharma, Shri Kishan Lai Sharma, Shri
 Yogendra Shastri, Shri Bhola Paswan
 Sheikh, Shri Abdul Rehman Siddhu,
 Dr. M. M. S. Singh, Shri Bhishma
 Narain
 Singh, Shri J. K. P. N.
 Singh, Shri Ng. Tompok
 Singh, Shri Shiva Nandan
 Sinha, Shri Indradeep
 Sinha, Dr. Ramkripal
 Sisodia, Shri Sawaisingh
 Soni, Shr.mati Ambika
 Sujan Sir:gh, Shri
 Sultan, Shrimati Maimoona
 Sultan Singh, Shri
 Surendra Mohan, Shri
 Surjeet, Slui Harkishan SiDSh
 Swu, Shri Scato
 Tama, Shri Ratan
 Totu, Shri Gian Chand
 Tripathi, Shri Kamlapati
 Vaishamr^yen, Shri S. K.
 Varma, Shri Bhagwati Charan
 Varma, Shri Mahadeo Prasad
 Venigalla Satyanarayana, Shri
 Venkatrao, Shri Chandavada
 Warjri, Shri Alexander
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lai

NOSE—NIL

*The motion was carried by a majo-i
 rity of the total membership of the*

House and by a majority of not less than two-thirds of the Members present and voting.

MR. CHAIRMAN: Now the procedure to be followed. We shall now take up clause by clause consideration of the Bill. Amendments to the clauses may be moved, considered and disposed of when that particular clause is under consideration. If any amendment is adopted by a simple majority, then that particular clause as amended will be put to vote immediately. For adoption of the clause as amended, special majority as prescribed would be necessary. If the amended clause does not get the prescribed majority then that particular clause would be treated as negatived by the House. Thereafter all the clauses on which there are no amendments or on which amendments have not been accepted will be put to vote together. In case member presses any particular clause to be put to vote separately voting on that clause will take place accordingly.

I hope the House agrees with this procedure.

SHRI BIPINPAL DAS (Assam): I want to go on record that we want separate voting for clauses 35, 44, 45 and 47.

MR. CHAIRMAN: That is all right. It has been made clear it would be done.

We shall now take up clause by clause consideration of the Bill.

Clause 2 (Amendment of article 19)

SHRI DINESH GOSWAMI: Sir, I move:

3. "That at page 1, for clause 2. the following clause be *substituted*, namely:

'2. In article 19 of the Constitution, for sub-clause (f), the following sub-clause shall be substituted, namely: —

"(f) to work; and".'

(The amendment also stood in the names of Shri Devendra Nath Dwivedi, Shrimati Ambika Soni and Shrimaflj Leela Damodara Menon)

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Sir, I move:

4. "That at page 1, for lines 9 to 12, the following be substituted, namely:

'(a) in clause (1), for sub-clause (f), the following sub-clause shall be *substituted*, namely: —

"(f) to gainful work and adequate means of livelihood; and." "

(The amendment also stood in the name of Shri Amarprosad Chakraborty)

SHRI P. RAMAMURTI (Tamil Nadu): Sir, I move :

5. "That at page 1 for lines 9 to 12, the following be *substituted*, namely:—

'(a) in clause (1) for sub-clause (f), the following sub-clause shall be *substituted*, namely: —

"(f) to work and to an adequate means of livelihood; and"."

(The amendment also stood in the names of Shri Harkrishan Singh Surjeet, Shri Vishwanatha Menon and Shrimati Kanak Mukherjee)

SHRI BHUPESH GUPTA: Sir, I move:

6. "That at page 1, for lines 10 to 12, the following be *substituted*, namely:

'(i) for sub-clause (f), the following sub-clause shall be *substituted*, namely: —

"(f) to work and earn a living" wage; and

(ii) in sub-clause (g), the words, "trade or business" shall be omitted." "

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bit Chand Deb Burman, Shri Bhola prasad and Shri Lakshmann Mahapatro).*

The questions were proposed.

SHRI DINESH GOSWAMI: Sir, by this amendment I have asked to amend the clause by introduction of 'right to work'. The hon. Minister gave an illustration that if a person wants to construct a factory which should have produced 2 lakh tonnes of a certain thing in four years, another man may ; complain as to why 50,000 tonnes could not actually be produced in a year. I can understand it. But the difficulty is if you want to bring a machinery for 2 lakh tonnes of production in four years, your construction must show some amount of progress. Our complaint is that the Government is functioning in such a way that within one year instead of the concern showing some kind of construction, the owner is beginning to sell out his land.

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

Our whole complaint is that not only you have not been able to solve the problem of unemployment to a certain extent, as Mr. Bhupesh Gupta has pointed out, the question of unemployment is getting worse day by day. And it is not because of anything else except lack of commitment to the right to work. That is why we have brought this amendment because we feel that under the present context it is extremely essential that the right to work should form part of the rights available to the individual; otherwise there is no hope whatsoever for the unemployed and unemployed educated youths in this country.

PROF. SOURENDRA BHATTACHARJEE: Mr. Vice-Chairman, Sir, my amendment is in a way self-explanatory saying that the right to work or right to adequate livelihood has not been included as one of our Fundamental Rights. In a welfare State which claims to have an egalitarian society, work to all able-bodied person should be assured in the interest of the nation and in the interest of the individuals. I am quite aware that merely by insertion of this clause, overnight employment won't be produced. As I

said in the earlier discussion, merely by explaining that socialism means end of economic exploitation, economic exploitation will not end in this blessed country of ours where the power of capitalism is in full play unless an obligation is undertaken to end it. Similarly a greater obligation would devolve on the Government if this amendment is adopted to clause (f) of Art. 19. At the same time, the people's movement for right to work and end of unemployment will be further strengthened. I would, therefore, appeal to the Law Minister to accept this amendment and I would appeal to the House to pass it unanimously. At least 27 years after the adoption of our Constitution it is time that we accept it as a Fundamental Right of the people and as a fundamental obligation of the Government.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Ramamurti.

SHRI P. RAMAMURTI: I am not speaking.

SHRI AMARPROSAD CHAKRA-BORTY (West Bengal): I have got an amendment.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Your name is not on this. Mrs. Ambika Soni.

SHRIMATI AMBIKA SONI (Punjab): I would like to move this amendment because as the Law Minister just now said, if you want production after 5 years in some big factory you cannot expect one-fourth of it after only one year has elapsed. But certainly we want to see that the foundations are being dug, if not the output. Sir, he mentioned that the Planning Commission is trying to create various avenues for further employment. But Prof. Raj Krishna, a Member of the Planning Commission, has said recently that to guarantee full employment it would be necessary to have an outlay of Rs. 3,300 crores, which is one-

I. Shrimati Ambika Soni]

third of the total Plan outlay. It has also been made clear that this amount of money can be collected if adequate resources are mobilised in agriculture industry, trade and other professions. What I mean to say is that unless it is incorporated in the Constitution that every one has the right to work, the very motivation and the compulsion of Government to fulfil it will not be there.

Another point that I want to make is that in this Forty-fifth Amendment Bill, the hon. Law Minister has moved an amendment for the definition of the word "socialism" where he has tried to define it as where there shall be no 'exploitation, socially, politically or economically. I hold that if a person is not guaranteed his right to work he is being exploited economically, socially and politically. I, therefore, move that the right to work should be incorporated.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Bhu-pesh Gupta.

SHRI BHUPESH GUPTA: I have not much to say. No speech is needed. Right to work should be included. What is there to speak? Let us save time.

SHRI SHANTI BHUSHAN: I appreciate and would like to respond to the sentiments expressed by Shrimati Soni and Shri Goswami. I would entirely agree with the definition of "socialism". It has been given that there shall be no exploitation of any kind. It does include that if a person is unemployed he is certainly being exploited by society. I could not agree more. And that is why we are committed to removing unemployment completely. I would like to assure the honourable lady Member that the Plans which have been drawn up by the Planning Commission contemplate that the level of unemployment which exists today would be reduced by 60 per cent, at the end of the first Five Year Plan because every year new unemployment is also being generated.

But taking care of that and the existing backlog, 60 per cent, would he get rid of in addition to the new unemployment which is being generated in the first Five Year Plan and by the end of the Second Five Year Plan there would be no unemployment.

SHRI KALYAN ROY (West Bengal) Even in the public sector thousands of workers are being thrown out. You are not only not opening new avenues of employment you are throwing out workers. You are creating further unemployment.

SHRI SHANTI BHUSHAN: At a stage when new strategies are being worked out and decided upon it is only when they are put in force that the results will come out. Until the new plans are in force and the new strategies have been really implemented until then the results would not come out.

SHRI AMARPROSAD CHAKRABORTY: For the last twenty eight years right to work has been included in Directive Principles but nothing has been done.

SHRIMATI LEELA DAMODARA MENON (Kerala): By this definition against exploitation are not negating the provisions of the Constitution if you do not make it a positive one and give the people the right to work? You have a planned economy. You are getting all the resources also mobilised and if you do not do that it will not be a positive thing. Why should it not be a positive thing? It is a positive negation of rights. We have a planned economy and we have accepted a socialist State and also a Welfare State. Therefore, why make it a negative thing and negate your own Constitution?

SHRI K. K. MADHAVAN (Kerala): Just one minute. You can reply together.

SHRI SHANTI BHUSHAN: Let me reply to this first. I have already agreed with Shrimati Ambika Soni

that even though it is couched in a negative language, there is a positive content in the definition of socialism. When you say that there shall be no poverty, it is not a negative concept; it is a positive concept, namely, that everybody will be well-provided for. It is a question of concept. I have already agreed with you that the concept of socialism is a positive concept.

SHKIMATI LEELA DAMODARA MENON: Let us not mitigate a thing when people are not being given even a dole.

SHRI LAKSHMANA MAHAPATRO (Orissa): I would just like to mention that the confidence of the working class is shaken after the Bhootha-lingam Committee report which recommended only Rs. 100 per month as the lowest wage whereas a Committee went into the matter of wages in the year 1939 and it recommended Rs. 150 per month. Now, 39 years after that, there is a Committee which says that Rs. 100 should be the minimum wage. Therefore, we are not able to believe that the working class will be having a living wage to ensure what you said in the amendment. Therefore, not only should there be a guarantee of work but also a living wage ensured to the people. The other thing I want to say is that now during the regime of this Ministry 18 lakhs unemployed people have been added on to the rolls of the employment exchanges; and the number is going to increase further. Mr. Biju Patnaik might say: I will take one lakh of people. He has started it by shooting people at Bailadila ! How do you say that you will put up factories in four years and then you will provide employment to these people? Your factories are not going to cope with this problem because unemployment will be ever increasing. You may be working on it, you may work for years, but you will not be able to get away from this thing, i.e. the rise in the number of the unemployed people. This is the reason why so many youngsters even in the Janata group— I

the other day I was reading the resolution which was taken up at the Lohia Vichar Manch; I am referring to that—have said that they have been greatly disillusioned by the Janata rule. Therefore, these are the things which have been agitating us. We are, therefore, saying that the right to work and the right to a living wage should be provided for.

SHRI K. K. MADHAVAN: Sir, there is a set of amendments—amongst which there is an attempt at the abolition of the private property. And the right to work is a corollary to the attempt at the abolition of the private property. I do not stand by the private property. I am totally opposed to the private property. At the same time, you have to ensure the right to work to the citizens; every able-bodied person should have the right to work. That has to be assured. The hon. Law Minister is making a mirage of promises by saying that they will be doing this thing or that thing in future. Here is a Government which speaks a confusing language because of confused thinking. They talk of Socialism, they talk of Gandhi-ism, they talk of all sorts of 'isms' and they are making all sorts of confusions. By passing these amendments, can such a Government ensure the right to work? Can they ensure work at all?

SHRI SURENDRA MOHAN (Uttar Pradesh): Sir, I wish to make a submission. I would only submit that, as the Law Minister has said, the Janata Party, in its election manifesto, has accepted that there will be the right to work. The Draft Plan says that 41 million jobs will be created during the next five years, and within ten years maybe everybody will be given employment. So the right to work, if it has to be realised, will have to be realised progressively. The problem is that, during the last two and a half decades, we have been seeing a situation in which unemployment has increased. As everybody knows, when

[Shri Surendra Mohan]

the Second Five-Year Plan was launched, it was said that five million people were unemployed; when the Third Five-Year Plan was launched, the number was 9 million; and in any case now it is 34 crores, *i.e.* 35 million. Now, if today you have in the Constitution the right to work, then it means that we are going to reverse this whole process, a process in which unemployment increased seven-fold in 20 years. Can We do it with a stroke of pen? Will this be realistic? That is one thing. And secondly I say that the creation of employment will mean the definition of an entirely different economic strategy from the one that has been followed so far. The Janata Party has sought to define a certain alternative strategy. That is why the Janata Government and the Planning Commission say that during the next five years 41 million jobs will be created, which will take care of some backlog of the unemployed. And may I also say that every year 50 to 55 lakhs of people will find new jobs. They enter the labour market. When we say that the right of work is going to be made a Fundamental Right which is justiciable in a court of law, are we sure that we will be able to give employment every year not only to those 55 lakhs of new entrants but the backlog of the unemployed who are 300 crores. Therefore, my submission is that, while I entirely agree with the sentiments that the right to work must be recognised as a Fundamental Right, I think that writing it now will be unrealistic. Therefore, I would submit to the House

SHRI KALYAN ROY: For the last 30 years we have been hearing this. We have been told that the time has not been right, that it has not been pragmatic, and the same thing is being repeated now.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The Hon. Minister has replied. Therefore, there is no question of the Members speaking now.

SHRI SURENDRA MOHAN: My only submission is that it is not a question either of promises or of statistics; it is a question, as I said, of finance and putting into practice an alternative economic development strategy has been defined: intensification of agriculture, building up of small rural industries and cottage industries and also in a big way construction of rural infrastructure without in any way diverting ourselves from the expansion of the public sector. This is the strategy, and I think that this strategy will guarantee the right to work.

SHRI G. C. BHATTACHARYA: One clarification.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): After the Hon. Minister has replied, there is no question. He has replied already. You should have asked at the appropriate time.

SHRI G. C. BHATTACHARYA: I want to know from the Hon. Member who has supported the right to work, whether he can expect the State to guarantee the right to work and that too fundamental right to work without the State having control over the means of production?

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): That is true.

SHRI G. C. BHATTACHARYA: That was a slogan-mongering. We should not waste the time on such slogan-mongering.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): I would like to know whether you withdraw your amendment. What about your amendment, Mr. Goswami?

SHRI DINESH GOSWAMI: Sir, we have made our point, and we have exposed the hollowness of the Janata Party's promise.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The Minister has not accepted it.

SHRI DINESH GOSWAMI: Sir, I withdraw.

The Amendment (No. 3) was, by leave withdrawn.*

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Prof. Bhattachar-gee, are you pressing your amendment or are you withdrawing?

SHRI AMARPROSAD CHAKRABORTY: We are not withdrawing.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Mr. Chakraborty, you please see, your name does ^{not} appear in the list of the amendment.

SHRI AMARPROSAD CHAKRABORTY: Yes, it appears.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Do you not withdraw?

SHRI AMARPROSAD CHAKRABORTY: No.

SHRI PRANAB MUKHERJEE (West Bengal): If it goes in this way, I am afraid, it will take the whole night. Either you must regulate in such a way or I think the Minister of Parliamentary Affairs should see that on important articles we can speak, and the rest of the things we can go on. Otherwise, the whole night we have to pass. I have no objection, but it is for the Government to decide. I am prepared to co-operate.

SHRI KALYAN ROY: Now the time has come when we should have a Government.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Unless the Members co-operate, it cannot be otherwise.

THE LEADER OF THE OPPOSITION (SHRI KAMLAPATI TRIPATHI): When the Minister has already made his speech on any amendments, after that nobody should speak.

*For text Amendment vide col. 108 Supra.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): That is true.

The question is:

4. "That at page 1, for lines 9 to 12s, the following be *substituted*, namely: —

'(a) in clause (1), for sub-clause (f), the following sub-clause shall be substituted, namely: —

"(f) to gainful work and adequate means of livelihood; and" "

The motion was negated.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Amendment No. 5. Mr. Ramamurti, are you pressing your amendment?

SHRI P. RAMAMURTI: I am not pressing it.

The amendment (No. 5) was, by leave, withdrawn.*

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Amendment No. 6. Mr. Bhupesh Gupta, are you pressing it or withdrawing it?

SHRI BHUPESH GUPTA: Take voice vote. How can I withdraw it?

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

6. "That at page 1, for lines 10 to 12, the following be *substituted*, namely: —

'(i) for sub-clause (f), the following sub-clause shall be substituted, namely: —

"(f) to work and earn a living wage"; and

(ii) in sub-clause (g), the words, 'trade or business' shall be omitted." "

The motion was negated.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Now, we take up clause 3. There are seven amendments.

*For text of Amendment vide cols. 107 Supra.

Clause 3 (*Amendment of Article 22*)

SHRI HARKISHAN SINGH SUR-JEET (Punjab): Sir, I move;

7. "That at pages 1 and 2, *for* clause 3, the following clause be substituted, namely:—

'3. In article 22 of the Constitution,—

"(a) in clause (3), sub-clause (6) shall be omitted.'

"(b) clauses (4), (5), (6) and (7) shall be omitted.'"

The amendment also stood in the names of Shri P. Ramamurti, Shri ViFVsanatha Menon, Shrimati Kanak Mukh'rjee, Prof. sourendra Bhattn_ eharjee and Shri Amarprosad Chakra-borty).

The question was proposed.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Amendment No. 8. Mr. Dhabe. He is not here.

Amendment No. 9. Mr Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I move:

9. "That at pages 1 and 2, *for* clause 3, the following clause be substituted, namely >-

'3. In Article 22 of the Constitution,—

"(a) for clause (4), the following clause shall be substituted, namely: —

(4) No person who is arrested shall be detained without trial except under orders of the court and in accordance with the provisions of the law, for more than 24 hours.'

(b) clauses (5), (6) and (7) shall be omitted.'"

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Maha-patro)

This is the amendment. It is self-explanatory. We want the provision empowering preventive detention to go. This is the amendment. No speech is called for.

The question was proposed.

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): Sir, I move;

10. "That at pages 1 and 2, *for* clause 3, the following clause be substituted, namely: —

'3. In article 22 of the Constitution, clauses (3), (4), (5), (6) and (7) 'shall be omitted.'

(The amendment also stood in the name of Shri Mulka Govinda Reddy)

SHRI MURASOLI MARAN (Tamil Nadu): Sir, I move;

11. "That at page 1, line 19, *before* the words 'No law' the words 'Notwithstanding anything in the Constitution, no law providing for preventive detention shall operate in respect of any citizen of India except during the period when Proclamation of Emergency issued under Article 352(1) is in operation and' be inserted."

SHRI DINESH GOSWAMI: Sir, I move;

12. "That at page 2. lines 8-9, for the words 'and the other members shall be serving or retired Judges of any High Court' the words 'and of the other members at least one shall be a serving Judge of any High Court and another may be a serving Judge of any High Court or a person qualified to be a Judge but not a retired Judge' be *substituted*."

SHRI R. NARASIMHA REDDY (Andhra Pradesh): Sir, I move,

13. "That at page 2, line 11, *after* the words 'detention of any person'

the words 'merely and solely on political grounds and' be *interted*."

The questions were proposed.

SHRI HARKISHAN SINGH SUR-JEET: Sir, this is a very important amendment. Within one-and-a-half years the Janata Party has forgotten its pledge and both the Congress (I) and the Janata Party are joining together to see that preventive detention remains in the Constitution. Sir, this has always been used earlier against the democratic movement, not against the black-marketeers, not against the monopolists, not against the big business houses, not against the landlords. We have got the worst experience of its use. I myself, Sir, had been kept under preventive detention for seven years, under the British regime as well as under the Congress rule. All the safeguards which the Law Minister has mentioned here would not be of any avail. He says that instead of "three months", it has been made "two months", that there will be a review and that it will be the judges who will decide and so on. Earlier also all these promises had been there. Here in the House whenever such preventive detention measures were brought, it was stated that they would not be used against the political workers. But they have always been used against the political people. Now, I could understand that after the economic situation became very difficult, the Congress had been using all these provisions. But the Janata Party had given new promises to the people; they had come forward with a solemn pledge to the people that they would not use it, that they would do away with the MISA immediately and so on. But now they want to put the same thing in the Constitution as a constitutional provision. I do not understand how the Law Minister and the Janata Party can justify this. I do not want to repeat, but I again appeal to them to reconsider the opposition on this question because the whole national movement

had fought against this. Subsequently also for 30 years we have been fighting against it. The whole history shows that this has been used against the democratic movement of the country, especially the Left movement, and the working class has been deprived of their rights by the use of this power, by putting their leaders in prison. On the basis of this experience, no protection, no safeguards will work. The executive will do whatever they want. And how is it done. Sir? Here at the Centre, from the Home Ministry in the night instructions are sent. Papers are cyclostyled or printed. They are instructed to prepare a list first. And then immediately in the whole night the operation takes place throughout the country, all the people are arrested, put behind bars and all that, and subsequently everything is done. Earlier also if you see the Forty-second Amendment, they had the same provisions. The present Law Minister also provided so many provisions, this and that. On this issue both the Janata Party and the Congress-I are united. What they have been doing, they do not want to undo. During its 17 years rule now the Janata Government says that this must be kept there. Why? Are not the present laws sufficient to protect them? And protect whom? Whom do they want to protect? The big industrialists, the big landlords, have already been protected. It is only the working class people who have to suffer under this. So I again appeal to the Government, if they want to adhere to their election pledge, if they want to assure the people, if they want to win the confidence of the people, they must accept this amendment and do away with this black provision, this preventive detention, from the Constitution.

SHRI INDRADEEP SINGH (Bihar): I would just like to refer to the Law Minister's statement here that preventive detention is necessary for detaining smugglers and other criminal elements. The Law Minister knows as well as I do, that these smugglers and criminal elements are

[Shri Indradeep Singh]

maintained by certain social classes and politicians arising out of those classes. The other day a Minister of the Janata Government in Bihar declared openly and he declared it in the Bihar Assembly, that he harbours goondas, he maintains them because goondas are necessary for capturing booths, election booths, polling booths during elections, and securing victory in the elections. Honestly he said it; others have not said it. So, who maintains these goondas and criminal elements and smugglers?

SHRI P. RAMAMURTI: You must thank that Minister.

SHRI INDRADEEP SINHA: Yes, we have thanked him. He is a very outspoken man. So it is a certain social system which maintains these goondas, and your preventive Act will not prevent them from carrying on their nefarious activities. There was a time when your great leader, Jayaprakash Narayan, went to the smugglers and wanted to convert them and change their heart. Smugglers are big patrons and smugglers cannot be tackled by this method. As a matter of fact, preventive detention is designed only to control the activities of the leftist and democratic forces. I have my experience. He talks of the Advisory Board. In 1965 when I was detained, we filed a *habeas corpus* petition in the High Court and the High Court ordered our release. We were released and just outside the jail gate we were again Arrested and again put into the jail. That is how your Advisory Boards are treated by the Government. So the only remedy is to do away with preventive detention altogether. If you want a special law for dealing with Ministers who harbour criminals or for smugglers or other anti-social elements, Parliament is competent to enact. But there can be no provision in the Constitution for any type of preventive detention.

SHRI K. V. RAGHUNATHA REDDY: This is rather a draconian part of the Constitution though the honourable Minister tried to soften

4 P.M.

it by providing for a Advisory Boards and other machinery. We realise that, this is a part of the colonial heritage. During the British days, the British Government depended mostly on preventive detention in some form or other. Though the arguments advanced by Mr. Shanti Bhushan appear to be rather impressive as far their content is concerned, if you follow them to their logical conclusion, then even the very Constitutional amendment can be got passed by a conniving and designing Government by a simple majority in the House by putting most of the members of the opposition in jail....

SHRI P. RAMAMURTI: It was attempted in Kerala.

SHRI K. V. RAGHUNATHA REDDY: When the Forty-second Amendment was passed by both Houses of Parliament, it is not as if all the Members of parliament were present and voted. Where was the two-thirds majority? Even with a simple majority the Government can manage to get any amendment passed without any trouble. Last time also some of the leading Members of the opposition were under arrest. Our present Prime Minister was himself in prison. I am rather amazed that the Janata Government, having learnt the lesson and with sufficient experience of this should have thought it fit to continue this preventive detention provision. Of course, Mr. Shanti Bhushan mentioned about criminals, smugglers and dacoits. I do not think that the ingenuity of human legal brain is such that it cannot provide other necessary means to deal with such criminals and anti-social elements in this country.

SHRI P. RAMAMURTI: With political will it can be done.

SHRI K. V. RAGHUNATHA REDDY: Political will and determination of the law enforcing machinery should be there. They should be patriotic enough and then they can certainly eliminate these criminal activities from the country, of course,

with the public support. Experience in the past has shown that preventive detention was used only to deal with political opponents and not to deal with majority of criminals operating in this country.

SHRI MURASOLI MARAN: I am totally against preventive detention. It is an illegal law. We know there was a time when there was no preventive detention at all in our country. When Mrs. Gandhi wanted to bring in preventive detention law, after its life had expired, the DMK Party and the CPI did not give their support to the measure. At that time she was heading a minority Government. Preventive detention then came to an end in the midnight of December 31, 1969. For one and half years from then there was no preventive detention. The heavens did not fall because India did not have this law. It is very strange that after Mrs. Gandhi had a massive mandate in the election, she brought in prevention detention. Many of the Janata leaders are former detenus. They know that prevention detention was used against the RSS, the socialists, the communists and the labour leaders. It is very strange that the former detenus, after getting a massive mandate of the people are bringing in another provision for preventive detention. It is a shame. When in 1950 they brought in preventive detention law, they said it was to suppress Telengana movement. In 1961 when Rajaji was the Home Minister he said it was to suppress Communists. We know how the law was misused. Even though I am for total negation of preventive detention, yet as a compromise I have moved an amendment. If you think preventive detention is inevitable, use it only during emergency and according to me emergency should not be declared for armed rebellion. Nowhere in the world in any democratic country there is preventive detention during peace. Even in Britain or in America, only during a war, Sir, the Government is given such powers. That is why I beseech the honourable Minister to consider my request and I

think, Sir, that many even in the Janata Party are not for preventive detention. When they wanted to bring in the MISA as a part of the Criminal Procedure Code, they had to face terrific opposition and they had to drop it. I do not know how the Janata Party members are allowing this, are permitting this situation. I want to bring to the notice of the honourable Minister and also the House what a Janata Party member himself said in the Lok Sabha. Sir, one Janata Member, Mr. B. p. Mandal, has said;

"The Bill may prove to be the Waterloo of the Janata Party in the next elections."

That is all Sir.

SHRI DINESH GOSWAMI: Sir, my amendment is only that retired Judges should not be put on the Advisory Boards. I think many eminent jurists expressed their views against the appointment of retired jurists. Any way, the general feeling is that the appointment of retired Judges on this type of Boards is not a very healthy practice. I hope the honourable Minister will say something on this and accept it.

SHRI R. NARASIMHA REDDY: Sir, this problem of preventive detention must be looked at in my view, from a practical and a realistic point of view and not from merely an emotional angle. Human beings being what they are, I do not think that the human society, the human beings, whether in this country or in any other country, would become angels and that no law would become necessary. I do not think that the human beings would become so much conscious of their duties and other things that there would be no necessity for a State or for laws, I do not expect this situation. When we cannot visualise such a situation, we have to look at this problem from a practical point of view and, therefore, I am striking a midway. I say that this is an enabling provision in the Constitution and

[Shri iR. Narasimha Reddy] this Preventive Detention clause should be there. But herein comes the most important thing; The previous history has been that this has been misused against political opponents on political grounds and on political grounds they have been arrested. I was one of those who were detained for political purposes and on political grounds. The Law Minister has said that this is a necessary evil and that there are safeguards. There are plenty of safeguards and, therefore, these safeguards will see to it that this is not used for political purposes. This is what he has said. But, Sir, I would like to know whether this prevents any Legislature from passing a Preventive Detention Act where, certainly, these political grounds could be brought in. In such cases, what is it that your Advisory Boards can do? These Advisory Boards can go into the cases and can go into the causes and the reasons according to the Act that is there and they have to go by the Act only. Therefore, I have moved this amendment saying that preventive detention merely and solely on political grounds should not be there. and once this is there, once this is incorporated in the Constitution, no legislature can misuse this Act, and we will have the power to use it against the smugglers, against the blackmarketeers and against the spies. I therefore, request the honourable Minister to consider this.

SHRI P. RAMAMURTI: Sir, Mr. Shanti Bhushan talked of safeguards that have been provided for preventive detention. I would like to remind him that previously also there had been safeguards. We were also given charge-sheets not after three months, but even within a month. We been given the charge-sheets within a month and there had also been 3 sitting Judges of the High Court who were appointed on the Advisory Boards. I will give you my own experience. In 1948, I was detained. Actually, they could not execute the detention order till 1952.

In 1952, when that order of detention was executed and when I was given the charge-sheet, it said:

"He incited the peasants of Coimbatore, the tenants of Coimbatore, to fight for giving their share to the landlords in government-stamped measures and to receive their wages in Government-stamped measures."

This was one of the charges given to me then; I can go on giving such examples. In spite of that, Sir, the Advisory Board confirmed that detention. Similarly, you all know, that in 1962 and in 1965, we were all detained, just because we said that there must be a peaceful solution of the problem with China, that there should be a peaceful solution to the Sino-Indian border dispute, because we could not go to war with them and that a war could not be there. In 1965, Sir, we said that we must improve our relations with China, we must send our ambassador from here to China and start getting their ambassador here so that things could become better later and things would improve later on. For that reason only, for that only reason, we were put in jail in 1965. We all know that whatever might be your safeguards, I know that in spite of all these safeguards, it does not work in practice. This can be used against leaders of the working class, leaders of the peasantry, leaders of the down-trodden people and their political opponents and particularly people who stand for a new kind of society. It is not there in any democratic country. Therefore, this is absolutely unnecessary. This clause must go.

SHRI GHANSHYAMBHAI OZA (Gujarat): My feeling is, my apprehension is, that if the matter is examined by a sitting judge, along with other judges, and they hold that the preventive detention is all right and then the matter goes before the

High Court which sets aside and says that the detention is *malafide* then they will be in an embarrassing position, and the sitting judge will come in for criticism.

SHRI AMARPROSAD CHAKRABORTY: Sir, the Law Minister has told this House that he would not apply this detention provision against political workers. Dr. Prafulla Chandra Ghosh gave similar assurance. But we know how it has worked. We want that it should be completely omitted from the article. I think this should be omitted completely from the statute book.

SHRI SHANTI PRUSHAN: Sir, I would not like to take much time of the House because there are so many clauses. But so far as the retired judges are concerned, it is a practical consideration because there are some High Courts which have very small number of judges, so that it is necessary to have this provision. So far as the sitting judge is concerned, actually the roles of the Advisory Board and the *habeas corpus* bench would be complementary in nature. There are certain things which can be seen by the Advisory Board. But at the same time, since the Advisory Board does not have the assistance of the counsel, that counsel properly puts forward all kinds of things in the Court. Therefore, it may be that the Advisory Board may not have certain materials before it which material may be available to the *Habeas Corpus* Bench. Therefore, no such embarrassing situation would arise. With these words, I would appeal to the hon. Members to withdraw their amendment and not to press it.

SHRI HARKISHAN SINGH SURJEET: Sir, I press it.

1134 R.S.—5

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That at pages 1 and 2, for clause 3, the following clause be substituted, namely:—

"3. In article 22 of the Constitution,—

(a) in clause (3), sub-clause (6) shall be omitted.

(b) clauses (4) (5), (6) and (7) shall be omitted."

The House divided.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): 2 Ayes—25; Noes—140.

AYES—25

Anand, Shri Jagjit Singh
Bhattacharjee, Prof. Sourendra
Bhola Prasad, Shri
Chakraborty, Shri Amarprosad
Deb Burman, Shri Bir Chandra
Goswami, Shri Sriman Prafulla
Gupta, Shri Bhupesh
Khan, Prof. Rasheeduddin
Kumaran, Shri S.
Kunjachen, Shri P. K.
Lakshmanan, Shri G.
Mahapatro, Shri Lakshmana
Maran, Shri Murali
Mehta, Shri Om
Menon, Shri Viswanatha
Mukherjee, Shrimati Kanak
Pathak, Shri Ananda
Rajan, Shri Pattiam
Ramamurti, Shri P.
Reddy, Shri K. V. Raghunatha
Roy, Shri Kalyan
Shahedullah, Shri Syed
Sharma, Shri Yogendra
Sinha, Shri Indradeep
Surjeet, Shri Harkishan Singh

NOES—140

Adivarekar, Shrimati Sushila Shankar,,
 Advani, Shri Lai K. Alva, Shrimati Margaret Amla, Shri Tirath Ram Anandam, Shri M. Anjiah, Shri T. Antulay, Shri A. R. Arif, Shri Mohammed Usman Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri Balram Das, Shri Banerjee, Shri Jaharlal Bansi Lai, Shri Basavaraj, Shri H. R. Bhabhda, Shri Harishanker Bhagat, Shri Ganapat Hiralal Bhagwan Din, Shri Bhandari, Shri Sunder Singh Bhattacharya, Shri G. C. Bhim Raj, Shri Bose, Shrimati Pratima Chandrasekhar, Shrimati Maragatham Chatterjee, Shri Pranab Chattopadhyaya, Prof. D. P. Chaurasia, Shri Shivdayal Singh Das, Shri Bipinpal Desai, Shri R. M. Dinesh Chandra, Shri Swami Dinesh Singh, Shri Dutt, Dr. V. P. Dwivedi, Shri Devendra Nath Gadgil, Shri Vithal Gupta, Shri Ram Lakhan Prasad Habibullah, Shrimati Hamida Hegde, Shri Ramakrishna Jagbir Singh, Shri Jamuna Devi, Shrimati Jha, Shri Kamalnath Jha, Shri Shiva Chandra Joshi, Shri Jagannathrao

Joshi, Shri Jagdish Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishan-ker
 Kadershah, Shri M.
 Kakati, Shri Rabin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kameshwar Singh, Shri
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor AH
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Shrimati Ushi
 Khaparde, Shrimati Saroj
 Khobragade, Shri Bhaurao Devaji
 Krishna, Shri M. R.
 Krishna, Shri E. R.
 Krishnan, Shri U. R.
 Kureel, Shri Piare Lall *urj* Piare Lall
 Talib Lakhan Singh, Shri Lokesh Chandra,
 Dr. Lotha, Shri Khyomo Mahanti, Shri Bhairab Chandra Mahida, Shri Harisinh Bhagubava Majhi, Shri Dhaneswar Makwana, Shri Yogendra Mallick, Shri Harekrushna Manhar, Shri Bhagatram Mathur, Shri Jagdish Prasad Maurya, Shri Buddha Priya Mehrotra, Shri Prakash Menon, Shrimati Leela Damodara Mishra, Shri Kalraj Mishra, Shri Mahendra Mohan Mody, Shri Piloo Mohanty, Shri Surendra Mohinder Kaur, Shrimati Mondal, shri Ahmad Hossain Moopnar, Shri G. K. Morarka, Shri R. R. Mukherjee, Shri Pranab

Munuswamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalray
 Naik, Shri L. R.
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Prabhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Pradhan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Rajinder Kaur, Shrimati
 Raju, Shri V. B.
 Rameshwar Singh, Shri
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava
 Ray, Shri Rabi
 Reddy, Shri B. Satyanarayan
 Reddy, Shri R. Narasimha
 Roshan Lai, Shri
 Sahaya, Shri Dayanand
 Samad, Shri Golandaz Mohammed-
 husain A.
 Saring, Shri Leonard Solomon
 Sarup Singh, Dr.
 Satchidananda, Shri
 Schamnad, Shri Hamid Ali
 Sezhiyan, Shri Era
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Ajit Kumar
 Sharma, Shri Anant Prasad
 Sharma, Shri Kishan Lai
 Shastri, Shri Bhola Paswan
 Singh, Shri Bhishma Narain
 Singh, Shri J. K. P. N.
 Singh, Shri Ng. Tompok

Singh, Shrimati Pratibha Singh, Shri
 Shiva Nandan Sinha, Dr. Ramkripal
 Sisodia, Shri Sawaisingh Sujan Singh,
 Shri Sultan, Shrimati Maimoona Sultan
 Singh, Shri Surendra Mohan, Shri Totu,
 Shri Gian Chand Tripathi, Shri
 Kamalapati Varma, Shri Bhagwati
 Charan Varma Shri Mahadev Prasad
 Venka, Shri V. Venkatrao, Shri
 Chadalavada Warjri, Shri Alexander
 Yadav, Shri Ramanand Yadav, Shri
 Shyam Lai

The motion was negatived.

THE VICE-CHAIRMAN (SHRI SYED
 NIZAM-UD-DIN): Now Amendment No. 9
 by Shri Bhupesh Gupta.

The question is:

9. "That at pages 1 and 2, for clause 3,
 the following clause be substituted,
 namely:—

'3. In article 22 of the Constitution,—

"(a) for clause (4), the following clause
 shall be substituted, name-
 ly:—

"(4) No person who is arrested shall
 be detained without trial except under
 orders of the court and in accordance
 with the provisions of the law, for more
 than 24 hours.' "

"(b) clauses (5), (6) and (7) shall be
 omitted."

The motion was negatived,

THE VICE-CHAIRMAN (SHRI SYED
 NIZAM-UD-DIN): Amend, ment No. 10.

SHRI K. V. RAO: Sir, I am not pressing my amendment and I am withdrawing it.

The amendment (No. 10) was, by leave, withdrawn.*

SHRI MURASOLI MARAN: Sir, I want voice vote on my amendment No. 11.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

11. "That at page 1, line 19, before the words 'No law' the words 'Notwithstanding anything in the Constitution, no law providing for preventive detention shall operate in respect of any citizen of India except during the period when Proclamation of Emergency issued under article 352(1) is in operation and' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Amendment No. 12—Shri Dinesh Goswami is not here.

12. The question is:

—*r.oti*

"That at page 2, lines 8-9 for the words 'and the other members shall be serving or retired Judges of any High Court' the words 'and of the other members at > least one I shall be a serving Judge of any ! High Court and another, may-be a serving Judge of any High Court or a person qualified to be a Judge but not a retired Judge' be substituted."

The motion was negatived.

SHRI R. NARASIMHA REDDY: Sir, I withdraw my Amendment No. 11.

*For the text of the Amendment vide cols. 120-21 supra. •For the text of the Amendment vide col. 120 surjir^{rrloT}

Amendment *(No. 13) was, by leave withdrawn.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That clause 3 stand part of the Bill'.

SHRI B. N. BANERJEE: Sir, may I bring something regarding the procedure to the notice of this House?

I will take two minutes only. I am helping you. I can understand that in respect of those clauses where there are no amendments, we are putting them to vote together. Now, in case of clause 2, the amendments were moved; many of the amendments were negatived and, Sir, you did not put clause 2 to vote, when we come to clause 2, there are amendments; some of them are rejected, the amendments, and then you are putting clause 3 to vote. Why is this different procedure being followed?

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): It is because some of the Members wanted that clause 3 should be put to vote separately.

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): All other Articles when there is no objection, are to be taken up together.

SHRI B. N. BANERJEE: In case of clause 2, there are amendments which have been negatived. Clause 2 is kept there and is not put to vote. Why, then in case of clause 3, where the amendments are negatived you are putting straightaway clause 3 to vote? I cannot understand it.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): The question is:

"That clause 3 stand part of the Bill".

The House divided.

THE VICE-CHAIRMAN: Ayes—160;
Noes—14.

AYES—160

Adivarekar, Shrimati Sushil Shankar
Advani, Shri Lai K.
Alva, Shrimati Margaret
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anandam, Shri M.
Anjiah, Shri T.
Arii, Shri Mohammed Usman
Asthana, Shri K. B.
Bagaitkar, Shri Sadasiv
Baleshwar Dayal, Shri
Balram Das, Shri
Banerjee, Shri B. N.
Banerjee, Shri Jaharlal
Bansi Lai, Shri
Barman, Shri Prasenjit
Basavaraj, Shri H. R.
Bhabhda, Shri Harishanker
Bhagat, Shri Ganpat Hiralal
Bhagwan Din, Shri
Bhandari, Shri Sunder Singh
Bhattacharya, Shri G. C.
Bhim Raj, Shri
Bose, Shrimati Pratima
Chandrasekhar, Shrimati Maragatham
Chatterjee, Shri Pranab
Chattopadhyaya, Prof. D. P.
Chaurasia, Shri Shivdayal Singh
Das, Shri Bipinpal
Desai, Shri R. M.
Deshmukh, Shri Bapuraoji Marotraoji
Dinesh Chandra, Shri Swami

Dinesh Singh, Shri
Dutt, Dr. V. P.
Gadgil, Shri Vithal
Goswami, Shri Sriman Prafulla
Gupta, Shri Bhupesh
Gupta, Shri Ram Lakhan Prasad
Habibullah, Shrimati Hamida
Hegde, Shri Ramakrishna
Jagbir Singh, Shri
Jamuna Devi, Shrimati
Janardhanaim, Shri A. P.
Jha, Shri Kamalnath
Jha, Shri Shiva Chandra
Joshi, Shri Jagannath Rao
Joshi, Shri Jagdish
Joshi, Shri Krishna Nand
Joshi, Shrimati Kumudben Manishan-ker
Kadershah, Shri M.
Kakati, Shri Robin
Kalaniya, Shri Ibrahim
Kamble, Prof. N. M.
Kameshwar Singh, Shri
Kesri, Shri Sitaram
Khan, Shri Ghayoor Ali
Khan, Shri Khurshed Alam
Khan, Shri Maqsood Ali
Khan, Shrimati Ushi
Khaparde, Shrimati Saroj
Khobargade, Shri Bhaurao Devaji
Krishna, Shri M. R.
Krishnan, Shri E. R.
Krishnan, Shri U. R.
Kureel, Shri Piare Lall *urf* Piare Lall Talib
Lakhan Singh, Shri
Lakshmanan, Shri G.
Lokesh Chandra, Dr.
Lotha, Shri Khyomo
Madhavan, Shri K. K.
Mahanti, Shri Bhairab Chandra
Mahavir, Dr. Bhai
Mahida, Shri Harisinh Bhagubava

Majhi, Shri Dhaneswar
 Makwana, Shri Yogendra
 Mallick, Shri Harekrushna
 Manher, Shri Bhagatram
 Mathur, Shri Jagdish Prasad
 Maurya, Shri Buddha Priya
 Mehrotra, Shri Prakash
 Mehta, Shri Om
 Menon, Shrimati Leela Damodara
 Mishra, Shri Kalraj
 Mishra, Shri Mahendra Mohan
 Mody, Shri Piloo
 Mohanty, Shri Surendra
 Mohinder Kaur, Shrimati
 Mondal, Shri Ahmad Hossain
 Moopnar, Shri G. K.
 Morarka, Shri B. B.
 Mukherjee, Shri Pranab
 Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalraya
 Naik, Shri L. B.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Parbhu Singh, Shri
 Parikh, Prof. Bamlal
 Patel, Shri Manubhai
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Pradhan, Shri Patitpaban Prasad, Shri K.
 L. N. Prem Manohar, Shri Bai, Shri Kalp
 Nath Bajinder Kaur, Shrimati Bajju, Shri
 V. B. Bamamurti, Shri P. Rameshwar
 Singh, Shri Banga, Prof. N. G. Rao, Shri
 V. C. Kesava Batan Kumari, Shrimati

Bay, Shri Babi
 Bazack, Shrimati Noorjehan
 Beddy, Shri B. Satyanarayan
 Beddy, Shri K. V. Baghunatha
 Beddy, Shri Mulka Govinda
 Beddy, Shri B. Narasimha
 Boshan Lai, Shri
 Sahaya, Shri Dayanand
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammedhu-
 Sian A.
 Saring, Shri Leonard Soloman
 Sarup Singh, Shri
 Satchidananda, Shri
 Schamnad, Shri Hamid Ali
 Sezhiyan, Shri Era
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri Ajit Kumar
 Sharma, Shri Anant Prasad
 Sharma, Shri Kishan Lai
 Shastri, Shri Bhola Paswan

»

Singh, Shri Bhishma Narain
 Singh, Shri J. K. P. N
 Singh, Shri Ng. Tompok
 Singh, Shrimati Pratibha
 Singh, Shri Shiva Nandan
 Sinha, Dr. Bamkripal
 Sisodia, Shri Sawaisingh
 Soni, Shrimati Ambika
 Sujan Singh, Shri
 Sultan, Shrimati Maimoona
 Smltan Singh, Shri
 Surendra Mohan, Shri
 Totu, Shri Gian Chand Tripathi, Shri
 Kamlapati Vaishampayan, Shri S. K.
 Varma, Shri Bhagwati Charan Varma,
 Shri Mahadeo Prasad Venigalla
 Satyanarayana, Shri Venka, Shri V.

Venkatrao, Shri Chadalavada !

Warjri, Shri Alexander

Yadav, Shri Ramanand Yadav,
Shri Shyam Lai

NOES—14

Bhattacharjee, Shri Sourendra Bhola Prasad, Shri Chakraborty, Shri Amarprosad Deb Burman, Shri Bir Chandra Kumaran, Shri S. Kunjachan, Shri P. K. Lakshmanan, Shri G. Maran, Shri Murasoli Menon, Shri Viswanatha Mukherjee, Shrimati Kanak Pathak, Shri Ananda Raj an, Shri Pattiam Shahedullah, Shri Syed Surjeet, Shri Harikishan Singh

The motion was carried by a majority of the total membership of the House and by a majority of not less than the two-thirds of the members present and voting.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): Now, clauses 4 and 5. There are no amendments. We shall take up clause 6. There is one amendment, amendment No. 14 by Shri Devendra Nath Dwivedi.

SHRI DEVENDRA NATH DWIVEDI (Uttar Pradesh) : Sir, I am not moving.

THE VICE-CHAIRMAN (SHRI SYED NIZAM-UD-DIN): There are no amendments. We shall take up clause 8. *Clause 8—Amendment of article 31C.*

SHRI VITHAL GADGIL (Maharashtra) : Sir, I beg to move:

15. "That at page 3, clause 8 be deleted."

(The amendment also stood in the names of Shri Pranab Mukherjee, Shri A. R. Antulay and Shri Shyam Lai Yadav.)

SHRI K. V. RAGHUNATHA REDDY: Sir, I beg to move :

16. "That at page 3, for clause 8, the following clause be substituted, namely: —

'8. in Article 310 of the Constitution for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.'

(The amendment also stood in the name of Shri Mulka Govinda Reddy)

SHRI BHUPESH GUPTA : Sir, I beg to move:

17. "That at page 3, line 8, for the words, brackets, letters and figures 'clause (b) or clause (c) of article 39' the words, figures and letters 'articles 38, 39, 39A, 41 42, 43, 43A, 44, 45, 46 and 51 of Part IV of the Constitution' be substituted."

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Mahapatro)

SHRI V. B. RAJU: Sir, I beg to move:

18. "That at page 3, line 8, for the words and figures 'in clause (b) or clause (c) of article 39' the words, figures and letters 'in article 38, 39, 39A, 41, 42, 43, 43A, 45 and 46, be substituted."

The questions were proposed.

SHRI DINESH GOSWAMI: Sir, I am not moving my amendment, amendment No. 19.

SHRI BHUPESH GUPTA: Sir, I beg to move :

28. "That at page 3, lines 12 to 15 be deleted."

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Mahapatro).

Sir, this is one of the amendments on which we propose to press for divi-

[Shri Bhupesh Gupta]

sion. Sir, by this, we want that the position of the Directive Principles should be restored. We want to give the Directive Principles a place of supremacy. In our amendment, you will have noted that we have taken out cow slaughter and prohibition. These Directive Principles will not be protected. These Directive Principles will have no supremacy. But the other Directive Principles should be protected. This is my amendment.

SHRI V. B. RAJU: Sir, I will give the same argument. When the Minister has retained article 39(b) and (c), why not other articles also? For example, article 38 says, 'The State to secure a social order for the promotion of the welfare of the people'. Why should there be any objection? Why should the Minister have any objection to keep article 38? What is the objection? In article 31C, when you are keeping article 39(b) and (c), why should you not keep article 38? Then, article 42 says 'Provision for just and humane conditions of work and maternity relief'. What is the objection? Article 43 says 'Living wage etc. for workers'. Therefore, whatever justification is there to protect article 39(b) and (c) the same should be there in respect of other articles also. They come in the same queue. Why should the Minister have any objection to this?

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

This is the general feeling. I am not entering into the controversy in regard to the Directive Principles and the Fundamental Rights, which is superior, which is not superior and so on.

The question was proposed.

SHRI PRANAB MUKHERJEE: Sir, I would like to make a submission. Mr. Vice-Chairman, before you proceed, I would like to make a submission. On this occasion, every vote is important and it is not fair on the part

of the Chairman to remain absent and deprive a Member of either party to exercise his vote. Here, every decision has to be taken by vote. This has never happened so far as the Constitution Bills are concerned. It is the bounden duty of the Chairman to preside over the meeting so that individual Members can exercise their voting right. I do not understand what type of procedure we are going to follow. (Interruptions) If the Treasury Benches cannot ask the Chairman, let them provide a Member from their side and not our Member. Let the Chairman come. (Interruptions) I agree Mr. Nizam-ud-din should also exercise his right to vote. But my point is this. Therefore, let the Chairman be contacted and let him be requested to come and preside.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): All right, proceed with the business.

SHRI PILOO MODY (Gujarat): Don't be petty-minded.

SHRI ANANT PRASAD SHARMA (Bihar): Mr. Mody, you go out. To compensate you go out.

SHRI SHANTI BHUSHAN: Sir, I have already explained the reasons as to why it would not be proper to trample upon important Fundamental Rights, like right to equality, freedom of speech, trade unions, and so on. Therefore, I am unable to accept this.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Amendment No. (15) is a negative amendment. Amendment No. (16). Mr. Reddy are you pressing it?

SHRI K. V. RAGHUNATHA REDDY: No, Sir. I withdraw my amendment.

The Amendment* (No. 16) was, by leave, withdrawn.

SHRI VITHAL GADGIL: What about my amendment No. 15?

*For the text of the amendment vide cols. 141-42 supra.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Amendment No. 15 is a negative amendment because it says that clause 8 be deleted. When clause 8 is put to vote, you can press for it.

Now the question is:

"That at page 3, line 6, for the words, brackets, letters and figures 'clause (b) or clause (c) of article 39' the words, figures and letters articles 38, 39, 39A, 41, 42, 43, 43A, 44, 45, 46 and 51 of Part IV of the Constitution be substituted."

The House divided.

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Ayes—67; Noes—111.

AYES—67

Adivarekar, Shrimati Sushila Shankar.
Alva, Shrimati Margaret.
Amla, Shri Tirath Ram.
Anjiani, Shri T.
Antulay, Shri A. R.
Arif, Shri Mohammed Usman
Basavaraj, Shri H. R.
Bhagwan Din, Shri
Bhim Raj, Shri
Bhola Prasad, Shri
Chandrasekhar, Shrimati Maragathan
Chattopadhyaya, Prof. D. P.
Deb Burman, Shri Bir Chandra
Desai, Shri R. M.
Dinesh Chandra, Shri Swami
Dutt, Dr. V. P.
Gadgil, Shri Vithal
Goswami, Shri Sriman Prafulla
Gupta, Shri Bhupesh
Habibullah, Shrimati Hamida
Jha, Shri Kamalnath
Joshi, Shri Krishna Nand

Kalaniya, Shri
Kamble, Pro[^]jN[^]gS[^]p. Kesri, Shri
Sitaram Khan, Shri Khurshed Alam
Khan, Shri Maqsood Ali Khaparde,
Shrimati Saroj Kumaran, Shri S.

Kureel, Shri Piare Lall *urf* Piare Lall Talib

Lokesh Chandra, Dr. Mahapatro, Shri
Lakshmana Mahida, Shri Harisinh
Bhagubara Mak[^]ana, Shri Yogendra Manhar,
Shri Bhagatram Maurya, Shri Buddha Priya
Mehrotra, Shri Prakash Mehta, Shri Om

Mishra, Shri Mahendra Mohan

Moopanar, Shri G. K.

Mukherjee, Shri Pranab

Naik, Shri L. R.

Pande, Shri Bishambhar Nath

Patil, Shri Deorao

Rai, Shri Kalp Nath

Raju, Shri V. B.

Ranga, Prof. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati

Reddy, Shri K. V. Raghunatha

Roshan Lai, Shri

Roy, Shri Kalyan

Satchidananda, Shri

Sharma, Shri Anant Prasad

Sharma, Shri Kishan Lai

Sharma, Shri Yogendra

Singh, Shri Bhishma Narain Singh,

Shrimati Pratibha Sinha, Shri

Indradeep Sisodia, Shri Sawaisingh

Sultan, Shrimati Maimoona Sultan

Singh, Shri Totu, Shri Gian Chand

Tripathi, Shri Kamalapati Venkatrao,
Shri Chadalavada # Yadav, Shri
Ramanand

NOES—111

Advani, Shri Lai K.
Amarjit Kaur, Shrimati
Anandam, Shri M.
Asthana, Shri K. B.
Bagaitkar, Shri Sadasiv
Baleshwar Dayal, Shri
Balram Das, Shri [
Banerjee, Shri Jaharlal
Barman, Shri Prasenjit
Bhabhda, Shri Harishankar
Bhagat, Shri Ganapat Hiralal
Bhandari, Shri Sunder Singh
Bhattacharjee, Prof. Sourendra
Bhattacharya, Shri G. C.
Bose, Shrimati Pratima
Chakraborty, Shri Amarprosad
Chatterjee, Shri Pranab
Chaurasia, Shri Shivdayal Singh
Das, Shri Bipinpal
Deshmukh, Shri Bapuraoji Marotraoji
Dinesh Singh, Shri
Dwivedi, Shri Devendra Nath
Gupta, Shri Gurudev
Gupta, Shri Ram Lakhan Prasad
Hegde, Shri Ramakrishna
Imam, Shrimati Aziza
Jagbir Singh, Shri
Jamuna Devi, Shrimati
Jha, Shri Shiva Chandra
Joshi, Shri Jagannath Rao
Joshi, Shri Jagdish
Kadershah, Shri M.
Kakati, Shri Robin
Kameshwar Singh, Shri
Khan, Shri Ghayoor Ali
Khan, Prof. Rasheeduddin
Khan, Shrimati Ushi
Khobragade, Shri Bhaurao Devaji
Krishna, Shri M. R.

Krishnan, Shri E. R.
Krishnan, Shri U. R.
Kunjachen, Shri P. K.
Lakhan Singh, Shri
Lakshmanan, Shri G.
Lotha, Shri Khyomo
Madhavan, Shri K. K.
Mahanti, Shri Bhairab Chandra
Mahavir, Dr. Bhai
Majhi, Shri Dhaneswar
Mallick, Shri Harekrushna
Maran, Shri Murasoli
Mathur, Shri Jagdish Prasad
Menon, Shrimati Leela Damodara
Menon, Shri Viswanatha
Mishra, Shri Kalraj
Mody, Shri Piloo
Mohanty, Shri Surendra
Mohinder Kaur, Shrimati
Mondal, Shri Ahmad Hossain
Morarka, Shri R. R.
Mukherjee, Shrimati Kanak
Munusamy, Shri V. P.
Muthu, Dr. (Shrimati) Sathiavani
Naidu, Shri N. P. Chengalraya
Nanda, Shri Narasingha Prasad
Narendra Singh, Shri
Nigam, Shri Ladli Mohan
Nizam-ud-Din, Shri Syed
Oza, Shri Ghanshyambhai
Parbhu Singh, Shri
Parikh, Prof. Ramlal
Patel, Shri Manubhai
Pathak, Shri Ananda
Pattanayak, Shri Bhabani Charan
Poddar, Shri R. K.
Pradhan, Shri Patitpaban
Prasad, Shri K. L. N.
Prem Manohar, Shri
Qasim, Sayyed Mir
Raj an, Shri Pattiam
Rajinder Kaur, Shrimati

Ramamurti, Shri P.
 Ray, Shri Rabi
 Reddy, Shri B. Satyanarayan
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Sahaya, Shri Dayanand
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
 busian A. Saring, Shri Leonard
 Solomon Sarup Singh, Shri
 Schamnad, Shri Hamid Ali Sezhian,
 Shri Era Shahedullah, Shri Syed
 Shahi, Shri Nageshwar Prasad Shanti
 Bhushan, Shri Sharma, Shri Ajit
 Kumar Shastri, Shri Bhola Paswan
 Siddhu, Dr. M. M. S. Singh, Shri J. K.
 P. N. Singh, Shri Ng. Tompok Singh,
 Shri Shiva Nandan Sinha, Dr.
 Ramkripal Soni, Shrimati Ambika
 Sujan Singh, Shri Surendra Mohan,
 Shri Surjeet, Shri Harkishan Singh
 Varma, Shri Bhagwati Charan Varma,
 Shri Mahadeo Prasad Venigalla
 Satyanarayana, Shri Venka, Shri V.
 Warjri, Shri Alexander *The motion*
was negatived.

THE VICE-CHAIRMAN (SHRI SHYAM
 LAL YADAV): We shall now take up
 amendment No. 18 by Shri V. B. Raju:

SHRI V. B. RAJU: Sir, it is the game
 amendment and it will have the same fate. So
 I would like to withdraw my amendment.

*The amendment * (No. 18) was, by leave,*
withdrawn.

*For the text of the amendment *vide* col. 142 supra. *For the text
 of the amendment *vide* col. 142 supra.

THE VICE-CHAIRMAN (SHRI SHYAM
 LAL YADAV): Amendment No. 19 has not
 been moved. So we shall take up amendment
 No. 20 by Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA: I would like to
 withdraw my amendment.

The amendment i(No. 20) was, by leave,
withdrawn.

THE VICE-CHAIRMAN (SHRI SHYAM
 LAL YADAV): I will now put clause 8 to
 vote.

The question is:

"That clause 8 stand part of the Bill."

The House divided.

THE VICE-CHAIRMAN (SHRI SHYAM
 LAL YADAV): Ayes—116; Noes—68

AYES—116

Advani, Shri Lai K.
 Amarjit Kaur, Shrimati
 Anandam, Shri M.
 Asthana, Shri K. B.
 Bagaitkar, Shri Sadasiv
 Baleshwar Dayal, Shri
 Balram Das, Shri
 Barman, Shri Prasenjit
 Bhabhda, Shri Harishanker
 Bhagat, Shri Ganapat Hiralal Bbandari, Shri
 Sunder Singh Bhattacharjee, Prof.
 Sourendra Bhattacharya, Shri G. C. Bose,
 Shrimati Pratima Chakraborty, Shri
 Amarprosad Chatterjee, Shri Pranab
 Chattopadhyaya, Prof. D. P. Chaurasia,
 Shri Shivdayal Singh

Das, Shri Bipinpal
 Deshmukh, Shri Bapuraoji Marotraoji
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Goswami, Shri Dinesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannath Rao
 Joshi, Shri Jagdish
 Kadershah, Shri M.
 Kakati, Shri Robin
 Kameshwar Singh, Shri
 Khan, Shri Ghayoor Ali
 Khan, Shrimati Ushi
 Khobragade, Shri Bhaurao Devaji
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Kunjachen, Shri P. K.
 Lakhan Singh, Shri Lakshmanan, Shri G.
 Lotha, Shri Khyomo Madhavan, Shri K.
 K. Mahanti, Shri Bhairab Chandra
 Mahavir, Dr. Bhai Majhi, Shri Dhaneswar
 Mallick, Shri Harekrushna Maran, Shri
 Mursoli Mathur, Shri Jagdish Prasad
 Menon, Shrimati Leela Damodara Menon,
 Shri Viswanatha Mishra, Shri Kalraj
 Mody, Shri Piloo Mohanty, Shri Surendra
 Mohinder Kaur, Shrimati Mondal, Shri
 Ahmad Hossain

Morarka, Shri R. R.
 Mukherjee, Shrimati Kanak
 Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalraya
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Nizam-ud-Din, Shri Syed
 Oza, Shri Ghanshyambhai
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Pathak, Shri Ananda
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prasad, Shri K. L. N.
 Prem Manohar, Shri
 Rajan, Shri Pattiam
 Rajinder Kaur, Shrimati
 Raju, Shri V. B.
 Ramamurti, Shri P.
 Ray, Shri Rabi
 Razack, Shrimati Noorjehin
 Reddy, Shri B. Satyanarayan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Sahaya, Shri Dayanand
 Sahu, Shri Santosh Kumar
 Samad, Shri Golandaz Mohammed-
 husian A. Saring, Shri Leonard
 Soloman Sarup Singh, Dr. Schamnad, Shri
 Hamid Ali Sezhiyan, Shri Era
 Shahedullah, Shri Syed Shahi, Shri
 Nageshwar Prasad Shanti Bhushan, Shri
 Sharma, Shri Ajit Kumar, Shastri, Shri
 Bhola Paswan Siddhu, Dr. M. M. S. !
 Singh, Shri J. K. P. N.

Singh, Shri Ng. Tompok
Singh, Shri Shiva Nandan
Sinha, Dr. Ramkripal
Soni, Shrimati Ambika
Sujan Singh, Shri
Surendra Mohan, Shri
Surjeet, Shri Harkishan Singh
Varma, Shri Bhagwati Charan
Varma, Shri Mahadeo Prasad
Venigalla Satyanarayana, Shri
Venka, Shri V.
Warjri, Shri Alexander

NOES—68

Adivarekar, Shrimati Sushila Shankar
Alva, Shrimati Margaret
Amla, Shri Tirath Ram
Anjiah, Shri T.
Ahuja, Shri A. R. V.
Arif, Shri Mohammed Usman
Banerjee, Shri Jahar Lal
Bansi Lal, Shri
Basavaraj, Shri H. R.
Bhagwan, Din, Shri
Bhim Raj, Shri
Bholu Prasad, Shri
Chandrasekhar, Shrimati Maragatham
Deb Burman, Shri Bir Chandra
Desai, Shri R. M.
Dinesh Chandra, Shri Swami
Gadgil, Shri Vithal
Goswami, Shri Sriman Prafulla
Gupta, Shri Bhupesh
Habibullah, Shrimati Hamida
Jha, Shri Kamalnath
Joshi, Shri Krishna Nand
Joshi, Shrimati Kumudben Mani-
shanker
Kalaniya, Shri Ibrahim
Kamble, Prof. N. M.
Kesri, Shri Sitaram
Khan, Shri Khurshed Alam
Khan, Shri Masood Ali
Kumar, Shrimati Saroj

Kumaran, Shri S.

Kureel, Shri Piare Lal urf Piare Lal
Talib

Lal Sawia, Shri

Lokesh Chandra, Dr.

Mahapatro, Shri Lakshmana

Mahida, Shri Harisinh Bhagubava

Makwana, Shri Yogendra

Manhar, Shri Bhagatram

Maurya, Shri Buddha Priya

Mehrotra, Shri Prakash

Mehta, Shri Om

Mishra, Shri Mahendra Mohan

Moopnar, Shri G. K.

Mukherjee, Shri Pranab

Naik, Shri L. R.

Patel, Shri Bishambhar Nath

Pati, Shri Deorao

Rai, Shri Kalp Nath

Ranga, Prof. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati

Roshan Lal, Shri

Roy, Shri Kalvan

Satchindananda, Shri

Sharma, Shri Anant Prasad

Sharma, Shri Kishan Lal

Sharma, Shri Yogendra

Singh, Shri Bishma Narain

Singh, Shrimati Pratibha

Sinha, Shri Indradeep

Sisodia, Shri Sawaisingh

Sultan, Shrimati Maimoona

Sultan Singh, Shri

Toti, Shri Gian Chand

Tripathi, Shri Kamlepati

Vaishampayan, Shri S. K.

Venkatrao, Shri Chadalavada

Yadav, Shri Ramchand

Yadav, Shri Shyam Lal

The motion was not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

SHRI SHANTI BHUSHAN: Sir, a consequential amendment would be needed of a routine nature. May I move that consequential amendment at the appropriate time?

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): Yes. We now move to clause 9.

Clause 9 (Amendment of article 38)

SHRI K. V. RAGHUNATHA REDDY: Sir, I move;

21. "That at page 3, for lines 19 to 23, the following be substituted, namely; —

'(2) The State shall, in particular strive to minimise and eliminate the inequalities in wealth, income and control over means of production and distribution, status, facilities and opportunities, not only amongst individuals but also amongst groups of persons residing in areas or engaged in different profession, trade or business, for bringing in socialistic economic order.'"

(The amendment also stood in the name of Shri Mulka Govinda Reddy)

SHRI BHUPESH GUPTA: Sir, I move,-

22. "That at page 3, line 19, the words 'strive to' be deleted."

23. "That at page 3, lines 21—23, the words 'not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations' be deleted."

(The amendment Nos. 22 and 23 also stood in the names of Sarvashri Kalyan Roy, Bir Chandra Deb Burman, Bhola Prasad and Lakshmana Maha-patro.)

SHRI DEORAO PATIL (Maharashtra) : Sir, I move:

24. "That at page 3, after line 23, the following be inserted, namely: —

'(3) The State shall take steps, by suitable legislation or in any

other way, to secure remunerative price for each major agricultural produce having regard to, *inter alia*, , the cost of production including minimum wages to be paid to the agricultural labourers under any law.' "

SHRI PRANAB MUKHERJEE: Sir, I move;

25. "That at page 3, lines 22—23, after the words 'engaged in different vocations' the words 'and no law passed by Parliament or a State Legislature to give effect to the said objective shall be called in question in any court of law' be inserted."

(The amendment also stood in the names of Shri A. R. Antulay and Shri Kalp Nath Rai).

The questions were proposed.

SHRI K. V. RAGHUNATHA REDDY: In article 38, the clause that is proposed by the Government is:

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

As the Directive Principles of the Constitution, the wording of this clause appears to be a kind of a pious wish. I have moved an amendment which seeks to substitute this clause. I have suggested a comprehensive amendment;

"The State shall, in particular, strive to minimise and eliminate the inequalities in wealth, income and control over means of production.."

Without the fetter of controlling the means of production it is a pious wish that they will be able to remove inequalities of income. And mere control of production will not do. There has to be control over distribution and wealth and income. Therefore, I have suggested this amendment

in order to make the amendment suggested by the Government more comprehensive, more meaningful, more purposeful and more practical. That is why we have suggested this amendment. I think if the Government is very serious and they will be able to accept this amendment.

[Mr. Chairman in the Chair]

SHRI BHUPESH GUPTA: I do not wish to read what is written there, which is self-explanatory. I want to improve upon it. Only two points I should like to make in regard to this clause, relating to the amendment. First of all, I want to make, it absolutely clear that we want the President to be bound absolutely and unconditionally by the advice of the Council of Ministers.

AN HON. MEMBER: Not this.

SHRI BHUPESH GUPTA: If we go beyond that, the President may create some lobby in Parliament, as has happened in other countries, like the King's lobby.

AN HON. MEMBER: You are on some other amendment.

SHRI BHUPESH GUPTA: As far as our amendment is concerned, it is self-explanatory. The "only thing is that Mr. Pranab Mukherjee wants that the advice of the Council of Ministers to the President...

SHRI PRANAB MUKHERJEE: That will come later on.

SHRI BHUPESH GUPTA: I will not have a chance to speak. I am speaking on my amendment. I do not know. They have the chance. Here the provision is a good one. Advice must be of the Council of Ministers, must not be that of the Prime Minister.

SHRI SHANTI BHUSHAN: Which clause?

SHRI PRANAB MUKHERJEE: (Interruptions) That will come later on.

SHRI BHUPESH GUPTA: Well, so far as our amendments are concerned, they are written. So no speech is called for.

श्री देवराव पाटील : सभापति महोदय, मेरा जो संशोधन है वह डाइरेक्टिव प्रिंसीपल्स आफ स्टेट पालिसीज, पार्ट IV में आर्टिकल 38 के संबंध में है। आर्टिकल 38 में डाइरेक्टिव प्रिंसीपल्स यह है और मेन क्लॉज यह है :

38. "The State to secure a Social order for the promotion of the people" "

सरकारी संशोधन आया है। उनका संशोधन यह है कि जो भाज आया की डिसपेरीटीज है उसको कम करना चाहिए। मेरा जो संशोधन है वह मैं पढ़कर बताता हूँ जिससे कि सदन के सदस्यों को इसका मतलब और महत्व ध्यान में आ जायगा।

"That at page 3, after line 23, the following be inserted, namely: —

'(3) The State shall take steps, by suitable legislation or in any other way, to secure remunerative price for each major agricultural produce having regard to, *inter alia*, the cost of production including minimum wages to be-paid to the agricultural labourers under any law."

5 P.M.

सभापति महोदय, आर्टिकल 38 और 39 में जो डाइरेक्टिव प्रिंसीपल्स दिये गये हैं, उनको देखें तो उसमें adequate means to livelihood 39 में दिया गया है, 43 में living wage to the workers for | I 47 «F Duty of the State to raise the standard of living.

The President of India received a salary of Rs. 10,000 as the Chief Justice of India received a salary of Rs. 5,000 और श्री बिप्लवजितसिंह का फार्म है, उनकी घर सेवा की इन्कम रु. 120,000 होती है। अभी भूतलियम कमेटी की रिपोर्ट आयी है उसमें लिखे के बारे में सफाई है कि उनकी मासिक आय रु. 100 होनी चाहिये। सभापति महोदय मेरे मित्रों का कहना है कि 'विरोध' में अंशदा कुछ नहीं करूँगा सोचिए कोर्टों को लिफ्टा वगैरह देना है। इस कारण, मैं सदन का अंशदा नहीं लूँगा। लेकिन सभापति महोदय, मैं आपका ध्यान इस से सम्बन्धित राष्ट्रपति के अभिभाषण की ओर दिलाना चाहता हूँ क्योंकि यह आपसे सम्बन्धित है। यह आपका संसद के माध्यम से अभिभाषण है। भारत के राष्ट्रपति के रूप में कार्य करते हुए आपका अभिभाषण है जो कि 28 मार्च, 1977 को दिया गया, 'I quote' 'प्रामाण्य श्रेय' की उपेक्षा में अर्थ-व्यवस्था में एक भयानक असंतुलन उत्पन्न हुआ है जिससे लोग गाँवों से शहरों की ओर जाने लगे हैं।' यह आपका स्पीच है। 'किताबों को छापने उत्पादन का उचित दाम नहीं मिला है। I quote यह राष्ट्रपति के रूप में कार्य करते हुए आपने जो भाषण दिया है दोनों सदनों के सदस्यों के सामने वह मैंने कोट किया है और उनके महत्व को ध्यान में रखते हुए मैंने यथेष्ट के नामने यह संशोधन रखा है। मैंने यह बात रखी है कि 'कृपि उत्पाद के लिए रेग्युलेशन प्राइस निर्धारित करने के लिए स्टेट बैंक प्रिंसिपल प्राइस और उनके लिए इमेका डाइरेक्टिव प्रिंसिपल में रखा जायें। संशोधन के बारे में मैंने कहा कि 'राज्य अन्य बातों के साथ साथ उत्पादन प्राइस, जिसमें किसी विधि के अन्तर्गत रेग्युलेशन के द्वारा की जाने वाली न्यूनतम मजदूरी का शामिल है, को ध्यान में रखते हुए प्रत्येक मुख्य कृषि उत्पाद के लिए, लाभकारी मूल्य सुनिश्चित करने के लिए उचित विधान द्वारा या किसी अन्य प्रकार से, कदम उठाया। उसके लिए डाइरेक्टिव प्रिंसिपल आफ स्टेट पालसी में लाया चाहिए। आपसे और सरकार से मेरी इक्वेस्ट है कि सरकार इस संशोधन को मान लें। संसदीय व्यवस्था में मेरी आशा है कि यदि सबों से कृपया को लाभकारी मूल्य देने की बात को सदस्य मान रहे हैं। मिनिमम प्रिंसिपल ट्रांज़िक्चरल लेबर और मिनिमम रेग्युलेशन प्राइस शीट्स को मिलनी चाहिये। और उसका डाइरेक्टिव प्रिंसिपल आफ स्टेट पालसी में लाया जायें।

MR. CHAIRMAN: Amendments 22 and 23. Mr. Bhupesh Gupta is not here. I shall put them to vote.

The question is:

22. "That at page 3, line 19, the words 'strive to' be deleted."

The -motion, *was* negatived.

MR. CHAIRMAN; The question is:

23. "That at page 3, lines 21-23, the words 'not only amongst individuals' but also amongst, groups of people residing in different areas or engaged in different vocations be deleted."

The motion *was* negatived.

MR. CHAIRMAN: Amendment No. 24. Mr. Deorao Patil, are you pressing it?

SHRI DEORAO PATIL; Yes.

MR. CHAIRMAN: Now, before putting it to vote, I would like to bring to the notice of the hon. Members the clauses on which separate voting will take place. They are clauses 9, 11, 12, 14, 35, 38, 39, 43, 44, 45 and 47.

Now, the question is:

24. "That at page 3, after line 23, the following be inserted, namely:

'(3) The State shall take steps, by suitable legislation or in any other way, to secure remunerative price for each major agricultural produce having regard to, *inter alia*, the cost of production including minimum wages to be paid to the agricultural labourers under any law'."

The *House* divided.

MR. CHAIRMAN: Ayes—67; Noes—113.

AYES—67

Adivarekar, Shrimati Sushila Shankar

Alva, Shrimati Margaret

Amla, Shri Tirath Ram

Anjiah, Shri T.

Antulay, Shri A. R.

1134 RS—6.

Arif, Shri Mohammed Usman Bansi
Lai, Shri Basavaraj, Shri H. R. Bhagwan
Din, Shri Bhim Raj, Shri Bhola Prasad,
Shri

Chandrasekhar, Shrimati Maragatham
Chattopadhyaya, Prof. D. P.

Deb Burman, Shri Bir Chandra

Desai, Shri R. M.

Dinesh Chandra, Shri Swami

Gadgil, Shri Vithal

Goswami, Shri Sriman Prafulla

Gupta, Shri Bhupesh

Habibullah, Shrimati Hamida

Jha, Shri Kamalnath

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudben

Manishanker Kalaniya, Shri Ibrahim
Kamble, Prof. N. M. Kesri, Shri Sitaram
Khan, Shri Khurshed Alam Khan, Shri
Maqsood Ali Khaparde, Shrimati Saroj
KumSran, Shri S. Kureel, Shri Piar, Lall urf
Piare Lall

Talib Lokesh Chandra, Dr. Mahapatro,
Shri Lakshmana Mahida, Shri Harisinh
Bhagubava Makwana Shri Yogendra
Manher, Shri Bhagatram Maurya, Shri
Buddha Priya Mehrotra, Shri Prakash
Mishra, Shri Mahendra Mohan Moopnar,
Shri G. K. Mukherjee, Shri Pranab Naik, Shri
L. R.

Pande, Shri Bishambhar Nath Patil,
Shri Deorao Rai, Shri Kalp Nath Raju,
Shri V. B.

Ranga, Prof. N. G. Rao, Shri V. C
Kesava Ratan Kumari, Shrimati
Reddy, Shri K. V. Raghunatha

Roshan Lai, Shri
Roy, Shri Kalyan
Satchidananda, Shri
Sharma, Shri Anant Prasad
Sharma, Shri Kishan Lai
Sharma, Shri Yogendra
Singh, Shri Bhishnra Narain
Singh, Shrimati Pratibha
Sinha, Shri Indradeep
Sisodia, Shri Sawaisingh
Sultan, Shrimati Maimoona
Sultan Singh, Shri
Totu, Shri Gian Chand
Tripathi, Shri Kamalapati
Venkatrao, Shri Chadalavada
Yadav, Shri Ramanand
Yadav, Shri Shyam Lai

NOES—113

Advani, Shri Lai K.
Amarjit Kaur, Shrimati
Anandam, Shri M.
Asthana, Shri K. B.
Bagaitkar, Shri Sadasiv
Baleshwar Dayal Shri
Balram Das, Shri
Banerjee, Shri JaharM
Barman, Shri Prasenjit
Bhabhda, Shri Harishanker
Bhagat, Shri Ganapat Hiralal
Bhandari, Shri Sunder Singh
Bhattacharjee, Prof. Sourendra
Bhattacharya, Shri G. C.
Bose, Shrimati Pratima
Chakraborty, Shri Amarprosad
Chatterjee, Shri Pranab
Chaurasia, Shri Shivdayal Singh

Das, Shri Bipinpal Deshmukh, Shri
Bapuraoji Marotraoji
Dinesh Singh, Shri
Dutt, Dr. V. P.
Dwivedi, Shri Devendra Nath
Goswami, Shri Dinesh
Gupta, Shri Gurudev
Gupta, Shri Ram Lakhan Prasad
Hegde, Shri Ramakrishna
Imam, Shrimati Aziza
Jagbir Singh, Shri
Jamuna Devi, Shrimati
Janardhanam, Shri A. P.
Jha, Shri Shiva Chandra
Joshi, Shri Jagannath Rao
Joshi, Shri Jagdish
Kadershah, Shri M-
Kakati, Shri Robin
Kameshwar Singh Shri
Khan, Shri Ghayoor Ali
Khan, Shrimati Ushi
Khobragade, Shri Bhaurao Devaji
Krishna, Shri M. R.
Krishnan, Shri E. R-
Krishnan, Shri U. R.
Kunjachen, Shri P. K.
Lakhan Singh, Shri
Lakshmanan, Shri G.
Lotha, Shri Khyomo
Madhavan, Shri K K.
Mahanti, Shri Bhairab Chandra
Mahavir, Dr. Bhai
Majhi, Shri Dhaneswar
Mallick, Shri Harekrushna
Maran, Shri Murasoli
Mathur, Shri Jagdish Prasad
Menon, Shrimati Leela Damodara
Menon, Shri Viswanatha
Mishra, Shri Kalraj
Mody, Shri Piloo
Mohanty, Shri Surendra
Mohinder Kaur, Shrimati
Mondal, Shri Ahmad Hos^ain

Morarka, Shri R. R. Mukherjee,
Shrimati Kanak Munusamy, Shri
V. P. Muthu, Dr. (Shrimati)

Sathiavani Naidu, Shri N. P.
Chengalraya Nanda, Shri Narasingha
Prasad Narendra Singh, Shri Nigam,
Shri Ladli Mohan Nizam-ud-Din, Shri
Syed Oza, Shri Ghanshyambhai Parbhu
Singh, Shri Parikh, Prof. Ramlal Patel,
Shri Manubhai Patbak, Shri Ananda
Pattanayak, Shri Bhabani Charan
Foddar, Shri R. K. Pradhan, Shri
Patitpaban Prasad, Shri K. L. N. Prem
Manohar, Shri Rajan, Shri Pattiam
Rajinder Kaur, Shrimati Ramamurti,
Shri P.

Rameshwar Singh, Shri

Ray, Shri Rabi Razack, Shrimati
Noorjehan Reddy, Shri B. Satyanarayan
Reddy, Shri Mulka Govinda Sahaya,
Shri Dayanand Sahu, Shri Santosh
Kumar Samad, Shri Golandaz
Mohammedhusian A. Saring, Shri
Leonard Solomon Sarup Singh, Dr.
Sezhiyan, Shri Era Shahedullah, Shri
Syed Shahi, Shri Nageshwar Prasad
Shanti Bhushan, Shri Sharma, Shri Ajit
Kumar Shastri, Shri Bhola Paswan
Siddhu, Dr. M. M. S. Singh, Shri J. K.
P. N. Singh, Shri Ns. Tompok

Singh, Shri Shiva Nandan Sinha, Dr.
Ramkripal Soni, Shrimati Ambika Sujan
Singh, Shri Surendra Mohan, Shri
Surjeet, Shri Harkishan Singh Varma,
Shri Bhagwati Charan Varmg, Shri
Mahadeo Prasad Venigalla
Satyanarayana, Shri Venka, Shri V.
Warjri, Shri Alexander

The motion was negatived.

MR. CHAIRMAN: Are you pressing your
amendment No. 25?

SHRI PRANAB MUKHERJEE: I am not
pressing my amendment. I withdraw it.

Amendment (No. 25) was, by
leave withdrawn. MR.*

CHAIRMAN: The question is:

"That Clause 9 stand part of the Bill"

The House divided.

MR. CHAIRMAN: Ayes—181; Noes —
NIL.

AYES—181

Adivarekar, Shrimati Sushila Shankar
Advani, Shri Lai K.
Alva, Shrimati Margaret
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anandam, Shri M.
Anjiah, Shri T.
Antulay, Shri A. R.
Arif, Shri Mohammed Usman
Asthana, Shri K. B.
Bagaitkar, Shri Sadasiv
Baleshwar Dayal, Shri

*For the text of the Amendment vide cols
156 supra

Balram Das, Shri
 Banerjee, Shri B. N.
 Banerjee, Shri Jaharlal
 Bansi Lai, Shri
 Barman, Shri Prasenjit
 Basavaraj, Shri H. R.
 Bhabhda, Shri Harishanker
 Bhagat, Shri Ganpat Hiralal
 Bhagwan Din, Shri
 Bhandari, Shri Sunder Singh
 Bhattacharjee, Prof. Sourendra
 Bhattacharya, Shri G. C.
 Bhim Raj, Shri
 Bhola Prasad, Shri
 Bose, Shrimati Pratima
 Chakraborty, Shri Amarprosad
 Chandrasekhar, Shrimati Maragatham
 Chatterjee, Shri Pranab
 Chattopadhyaya, Prof. D. P.
 Chaurasia, Shri Shivdayal Singh
 Das, Shri Bipinpal
 Deb Burman, Shri Bir Chandra
 Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Goswami, Shri Sriman Prafulla
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Habibullah, Shrimati Hamida
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Smgh, Shri
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannath Rao

Joshi, Shri Jagdish Joshi, Shri Krishna
 Nand Kakati, Shri Robin Kalaniya, Shri
 Ibrahim Kamble, Prof. N. M. Kameshwar
 Singh, Shri Kesri, Shri Sitaram Khan,
 Shri Ghayoor AH Khan, Shri Khurshed
 Alam< Khan, Shri Maqsood Ali Khan,
 Prof. Rasheeduddin Khan, Shrimati Ushi
 -Khaparde, Shrimati Saroj Khobragade,
 Shri Bhaurao Devaft Krishna, Shri M. R.
 Krishnan, Shri E. R. Knshnan, Shri U. R.
 XT OU • <?
 Kumaran, Shri S. Kunjachen,
 Shri P. K.
 Kureel, Shri Piare Lall *urf* Piare Lall Talib
 Lakha_n Singh, Shri
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mhapatro, Shri Lakshmana
 Mahavir, Dr. Bhai
 Mahida, Shri Harisinh Bhagubava Majhi,
 Shri Dhaneswar Makwana, Shri
 Yogendra Malick, Shri Harekrushna
 Manher, Shri Bhagatram Maran, Shri
 Murasolj Mathur, Shri Jagdish Prasad
 Maurya, Shri Buddha Priya Mehrotra,
 Shri Prakash Menon. Shrimati Leela
 Damodara Menon, Shri Viawanatha
 Mishra, Shri Kalraj Mishra, Shri
 Mahendra Mohan Mody, Shri Piloo

Mohanty, Shri Surendra Mohinder Kaur,
Shrimati Mondal, Shri Ahmad Hossain
Moopanar, Shri G. K. Morarka, Shri R.
R. Mukherjee, Shrimati Kanak
Mukherjee, Shri Pranab Munuswamy,
Shri V. P. Muthu, Dr. (Shrimati)
Sathiavani Naidu, Shri N. P. Chengalraya
Naik, Shri L. R. Nanda, Shri Narasingha
Prasad Narendra Singh, Shri Nigam, Shri
Ladli Mohan, Nizam-ud-Din, Shri Syed
Oza, Shri Ghanshyambhai

Pande, Shri Bishambhar Nath

Prabhu Singh, Shri

Parikh, Prof. Ramlal

Patel, Shri Manubhai

Pathak, Shri Ananda

Patil, Shri Deorao

Pattanayak, Shri B'labani Charan

Poddar, Shri R. K.

Prasad, Shri Patitpaban

Prasad, Shri K. L. N.

Prem Manohar, Shri

Rai, Shri Kalp Nath

Rajan, Shri Pattiam

Raju, Shri V. B.

Ramamurti, Shri P.

Rameshwar Singh, Shri

Ranga, Prof. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati Say, Shri Rabi

Sazack, Shrimati Noorjehan teddy, Shri

B. Satyanarayan teddy, Shri K. V.

Raghunatha teddy, Shri Mulka Govinda

teddy, Shri R. Narasimha toshan Lai,

Shri 'oy, Shri Kalyan

Sahaya, Shri Dayanand Sahu, Shri Santosh
Kumar Samad, Shri Golandaz Mohammedhu-
sian A.

Saring, Shri Leonard Solomon Sarup

Singh, Dr. Satchidananda, Shri Sezhiyan,

Shri Era Shahedullah, Shri Syed Shahi,

Shri Nageshwar Prasad Shanti Bhushan,

Shri Sharma, Shri Ajit Kumar Sharma,

Shri Anant Prasad Sharma, Shri Kishan

Lai Sharma, Shri Yogendra Shastri, Shri

Bhola Paswan Siddhu, Dr. M. M. S.

Singh, Shri Bhishma Narain Singh, Shri J.

K. P. N. Singh, Shri Ng. Tompok Singh,

Shrimati Pratibha Singh, Shri Shiva Nandan

Sinha, Shri Indradeep Sinha, Dr.

Ramkripal Sisodia, Shri Sawaisingh Soni,

Shrimati Ambika Sujan Singh, Shri

Sultan, Shrimati Maimoona Sultan Singh,

Shri Surendra Mohan, Shri Surjeet, Shri

Harkishan Singh

Totu, Shri Gian Chand Tripathi,

Shri Kamlapati Vaishampayan, Shri

S. K. Varma, Shri Bhagwati Charan

Varma, Shri Mahadeo Prasad Venigalla,

Satyanarayana, Shri Venka, Shri V.

Venkatrao, Shri Chadalavada

Warjri, Shri Alexander

Yadav, Shri Ramanand

Yadav. Shri Shyam Lai

NOES—NIL

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 9 was added to the Bill.

MR. CHAIRMAN: Clause 10. There are no amendments.

Clause 11—Amendment of article 74.

MR. CHAIRMAN: We will now go to the next clause. There are no amendments to clause 10. So, we will now go to clause 11. There are four amendments.

SHRI DINESH GOSWAMI: Sir, I beg to move:

26. "That at page 4, for clause 11, the following clause be substituted, namely: —

'In article 74 of the Constitution,—

(a) in clause (1) the following proviso shall be inserted at the end, namely: —

"Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

(b) in clause (2), after the 'President', the words 'and whether the President required the Council of Ministers to reconsider such advice, either generally or otherwise' shall be inserted."

SHRI PRANAB MUKHERJEE: Sir, I beg to move :

27. "That at page 4, line 3, after the word 'President' the words 'on the advice of the Prime Minister' be inserted."

(The amendment also stood in the names of Shri A. R. Antulay and Shri Kalp Nath Rat)

SHRI BHUPESH GUPTA • Sir, I beg to move :

28. "That at page 4, for lines 3 to 6, the following be substituted, namely: —

'Provided that where the President considers that the advice goes against the provisions of this Constitution, he shall give his reasons in writing and may require the Council of Ministers to reconsider such advice, either generally or otherwise, within a period of five days, and the President shall act in accordance with the advice tendered after such reconsideration'."

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad, and Shri Lakshmana Maha-patrol)

The questions were proposed.

SHRI DINESH GOSWAMI: Sir, I am not moving my amendment No. 29.

Sir, only I was pointing out that there are two amendments in my name, that is, No. 26 and 29 and that I am moving only my amendment No. 26 and not No. 29. (Interruptions). Sir, will you please bring some order in the House? So far as this clause is concerned, I had raised some points in the First Reading of the Bill and the honourable Minister has replied to it. I am not repeating those points though I am not satisfied with it. Now, So far as this amendment is concerned, I would only like to have a clarification from the honourable Minister. My amendment is only this: Under clause of article 74, nobody can question in a court of law the advice the Council of Minister gave to the President. Now, under the amended provision the President has been given a constitutional right to refer back matters to the Council of Ministers for reconsideration and the Council of Ministers is constitutionally bound to consider such advice. I would like to know from the hon. Minister, since no amendment has been made to clause 2 whether it will be open for a person now to question

in a court of law about the advice that the President might have given to the Council of Ministers for reconsideration or to complain that the Council of Ministers did not consider the advice expressed by the President, a constitutional right being provided in terms of letters of law. Is it desirable that whatever advice the President gives the Council of Ministers for reconsideration should also be made immune from scrutiny of the court. My amendment seeks to remove this lacuna.

SHRI PRANAB MUKHERJEE:

My amendment is very simple, though Bhupesh Babu suggested that it should not be there. The whole Cabinet revolves round the Prime Minister. The Law Minister was trying to visualise a certain situation in which he made out his point and said that if a situation may arise, if the House of the People expresses no confidence, then why should not be the President go according to the advice given by that Council of Ministers. He is quite clear that the President is going to accept that advice. But the convention which has been practised in this country and which has been practised in other parliamentary forms of Government have never been questioned. In England, the practice has been that dissolution has become and is treated as the prerogative of the Prime Minister. Here a new idea is being injected in. We visualise a scheme where the President will have to go according to the advice of the Council of Ministers. The Council of Ministers is accountable to Parliament and through Parliament to the people. They are going to insert a clause where the President has the right to send it back to the Council of Ministers for its re-consideration. It is ensured in parliamentary democracy that the President should not act without the advice of the Council of Ministers. He should at least take the Prime Minister into confidence, and if the Prime Minister also feels that the matter should be reconsidered by the Council of Ministers, then the President can do it, otherwise cannot leave

it to the discretion of the President. The President may feel that a matter should be reconsidered. Actually, a situation may arise when the Prime Minister and the President do not see eye to eye. In that case, he can send back almost every issue for reconsideration at least once. Such a situation may arise. In that case, a situation will be created in which the Prime Minister would not be able to render any service. On the other hand, he enjoys the confidence of the House. He is the Leader of the Council of Ministers. Therefore, in order to avoid such a situation, I have suggested that the President and the Prime Minister must act in complete harmony. Therefore, if the President feels that certain matters should be reconsidered by the Council of Ministers, he should at least convince the Prime Minister about the necessity of it. That is the purpose of my amendment.

SHRI BHUPESH GUPTA : Sir, first of all I make it very clear that I wish that the Government had not disturbed the existing provision. I think it is a solid principle that the President shall be guided according to the advice of the Council of Ministers. The matter should have ended there. Now, they have brought in this reconsideration concept, that is to say, that

the President can send back certain things to the Council of Ministers for reconsideration. Then my friend, Mr. Pranab Mukherjee, brings in something else. I will speak about that later. First of all, I want the original position to remain.

SHRI PRANAB MUKHERJEE : I have no objection if you go back to the original position.

SHRI BHUPESH GUPTA: Now, Sir, if you bring in this concept of the President asking for reconsideration, what happens in some countries will happen here. The President may have his own opinion for a short while. Anyhow, the real situation will be that there will be a President lobby over

[Shri Bhupesh Gupta]

certain matters. That lobby may not be identified in the formal sense. But we know that under similar arrangements what is called 'The President's Lobby' does operate. The President disagrees with the Council of Ministers and send a matter back to the Council of Ministers. Then almost automatically he will try to influence some Members of Parliament and also some Ministers. This position is not very good. So, the original position is better. Now, Sir, if you must have it, then we want to make it a little binding by saying:

"Provided that where the President considers that the advice goes [against the provisions of this Consti.] tution, he shall give his reasons in writing and may require the Council of Ministers to reconsider such advice, either generally or otherwise, within a period of five days, and the President shall act in accordance with the advice tendered after such reconsideration."

If you must have this doctrine of re-consideration, which in my view is a very dangerous doctrine, then I want this kind of protection. What has our friend, Mr. Pranab Mukherjee, said? He says that if the President sends something for reconsideration, he will consult the Prime Minister. It is illogical. The Prime Minister will give the advice and then the Prime Minister will also agree to reconsideration. It cannot be. It is illogical. After all, the Prime Minister sends matter- to the President. His advice has been given. The President does not agree. Then again the Prime Minister comes into the picture. Will the Prime Minister say: All right, send it back to me for consideration? In that case, the

Prime Minister need not have given that advice.

SHRI PRANAB MUKHERJEE : The President cannot send anything for reconsideration.

SHRI BHUPESH GUPTA : I know that. Well, you may talk about the British Prime Minister. I won't talk

about him. After all, going through the experience of the emergency and also what is happening now, Sir, I would say: save us from the great personality of the Prime Minister and better go by the collective responsibility. Of course, Mr. Pranab Mukherjee, I do not know, I hear, that there is nothing called 'collective responsibility'. But our whole thing is based on collective responsibility. So, I say that Mr. Pranab Babu need not press it. I am also not pressing the amendment for vote. I think we have expressed our views. If we win by voice vote, we will win. If we lose by voice vote, we lose it. Sir, the original position would have been better. But if you do not accept our amendment and if you put this re-consideration clause for vote, then I will vote against that clause. I want the original position.

SHRI SHANTI BHUSHAN: Sir, so far as the amendment proposed by Shri Pranab Mukherjee is concerned, Shri Bhupesh Gupta has already replied to it on my behalf. So, I need not deal with it. So far as his own amendment is concerned, may I say that it is introducing this complication, namely that the President should first apply his mind to the question whether the advice goes contrary to some provisions of the Constitution and the controversy between the Council of Ministers and the President would arise as to who is going constitutionally, etc.—and that Shri Bhupesh Gupta will not press it? He has also made it clear that he wanted to make a speech. From time to time, he must make a speech and, therefore, I appreciate that idea, and he will not press it.

Sir, so far as Mr. Dinesh Goswami's amendment is concerned, Sir, I appreciate the objective behind it. But may I say that that amendment is not necessary because, Sir, the purpose of clause 2 of article 74 is that when a Government has made an order which is an effective order, then a question arises, and sometimes people want to raise a question as to whether the

rules of business were followed or not, | as to what advice was tendered by the Council of Ministers in the legal sense, and whether the order is in accordance with that advice which is under the rules of business deemed to be an advice. But that question arises only after the final order of the Government has been made. So long as the stage for reconsideration, etc. is going on, the question of going into that does not arise. Therefore, never such a question can arise before a court of law. It is only after reconsideration when the final decision has been made, when the final order has been made, then only the question arises. Therefore, that amendment is also not necessary.

MR. CHAIRMAN : Now Amendment No. 26.

SHRI DINESH GOSWAMI: Sir, I am not pressing my amendment. I am withdrawing it.

The amendments (No. 26) was, by leave, withdrawn.
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SHRI PRANAB MUKHERJEE: Sir, I am not pressing my amendment No. 27. I am withdrawing it.

The amendments (No. 27) was, by leave withdrawn.

MR. CHAIRMAN: Amendment No. 28. Mr. Bhupesh Gupta, are you pressing it?

SHRI BHUPESH GUPTA: I do not move amendments which I easily withdraw.

THE CHAIRMAN: The question is:

28. "That at page 4, for lines 3 to 6, the following be *substituted*, namely.

'Provided that where the President considers that the advice

For the text of the Amendment vide col. 171 supra.

goes against the provisions of this Constitution, he shall give his reasons in writing and may require the Council of Ministers to reconsider such advice, either generally or otherwise, within a period of five days, and the President shall act in accordance with the advice tendered after such reconsideration.' "

The motion was negatived.

MR. CHAIRMAN: Now we will go to clause 12. There is one amendment (No. 30) by Shri Pranab Mukherjee.

SHRI PRANAB MUKHERJEE: Sir, I am not moving my amendment No. 30.

MR. CHAIRMAN: Now clause 13, There are no amendments.

Clause 14—Substitution of new article for article 103

SHRI PRANAB MUKHERJEE: Sir, I am not moving my amendment No. 31.

SHRI SHYAM LAL YADAV (Uttar Pradesh): Sir, I beg to move:

32. "That at page 4 *after* line 25, the following sub-clause be *inserted*, namely:

'(3) The question as to whether a person, found guilty of corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, a Member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, shall be decided by the Court finding the person guilty of such corrupt practice.' "

यह जो ओरिजनल है इसमें आर्टिकल 103 था। उसमें जो परिवर्तन किया गया वह इस दृष्टि

[Shri Shyam Lal Yadav]

से हुआ कि कोई सदस्य कब अयोग्य हो जाए, डिस्कवालोफाई हो जाए इसके संबंध में निर्णय कौन करेगा, कौन अधिकारी होगा, किस को अधिकार होगा यह सब अर्टिकल 103 में स्पष्ट किया गया जिसकी पहले व्यवस्था नहीं थी। क्योंकि पहले 103 में जो व्यवस्था थी वह इस तरह की नहीं थी जिससे प्रेजिडेंट इस तरह का फैसला करे और जब कोई सवाल उठे या अदालत फैसला दे तो उस समय यह प्रश्न राष्ट्रपति के विचाराधीन होगा और राष्ट्रपति इस पर इलेक्शन कमीशन से सलाह लेंगे। और उस सलाह लेने के बाद वे फैसला देंगे। ऐसा राष्ट्रपति को नहीं था कि वह अपनी मर्जी से फैसला दे दें। एक अच्छी व्यवस्था थी और चूंकि राज्यों के द्वारा या समय समय पर जो प्रश्न उत्पन्न होते हैं यह आवश्यक होता है कि राष्ट्रपति उसका फैसला दे। मैं समझता हूँ कि वह जो व्यवस्था की गयी है 42 वें संशोधन में अर्टिकल 103 में संशोधन करके वह बहुत ही उचित थी और उसमें किसी प्रकार का विवाद नहीं होता। उसमें कमीशन किसी के संबंध में जो विवाद उत्पन्न होता तो एक मौका उन मेम्बर को कमीशन के सामने साल्यूशन के लिए मिलता और वह दुबारा राष्ट्रपति के सामने जाता और उस समय वह रिप्रेजेंटेशन कर सकता था। इसलिए मेरा अनुरोध था कि कोई ऐसी परिस्थिति नहीं उत्पन्न हुई है-विधि मंत्री ने अपनी जो भूमिका दी है उसमें भी केवल इतना ही लिखा है कि जो पुराना विधान था उसी को हम कायम कर रहे हैं दुबारा। मेरा समझ में ऐसी कोई स्थिति उन्होंने नहीं बतायी जिसके कारण से अर्टिकल 103 को क्रियान्वित करने में कोई समस्या कहीं उत्पन्न हुई हो या किसी पक्ष को कोई असुविधा हो या उसके साथ अन्याय हो। उल्टे इससे मौका था और वह राष्ट्रपति ही फैसला करता है अन्यथा अब इसका फैसला दूसरी तरह से होगा। इसलिए मैं समझता हूँ कि इसका जो पुराना विधान था 103 अर्टिकल 42 वें संशोधन के बाद उसमें ऐसी व्यवस्था थी जो काफी उचित थी। उसमें लोगों को मौका था। इससे सही फैसला होता, संतोष होता। क्योंकि कितने साल के लिए हो, कितना समय घटाया जाय या कितना नहीं घटाया जाय। कभी कभी 6 वर्ष के लिए डिस्कवालोफिकेशन होती है तो पूरे दो चुनावों में भाग नहीं ले पाता और फिर तीसरे चुनाव में जाकर 10 वर्ष का समय उसका व्यर्थ हो जाता है इसलिए मैं समझता हूँ कि यह उचित व्यवस्था थी और राष्ट्रपति जिस प्रकार से कार्य करता है मुझे दोहराने की जरूरत नहीं है साफ जानता है कि राष्ट्रपति अपनी मंति परिषद् की सलाह पर काम करता है। अकेले राष्ट्रपति स्वतः कोई ग्राम नहीं करता है इसलिए इलेक्शन कमीशन और मंति परिषद् दोनों को मौका मिलता, इस बात पर विचार करते और उसी को दृष्टि में रखते हुए मैं वह संशोधन रखा है कि जो वर्तमान व्यवस्था संविधान के 42 वें संशोधन के अर्टिकल 103 की थी और वही व्यवस्था विधान सभाओं के लिए है उसको कायम रखा जाय।

The question was proposed.

SHRI SHANTI BHUSHAN: Sir, the only difference between article 103

as introduced by the Fortysecond Amendment and the one which was there before, and which is proposed to be re-introduced, is that the President, before the Forty-second Amendment, was bound by the advice of the Election Commission. So far as the matter of disqualification was concerned, virtually the power of taking a decision was with the Election Commission and not with the Government. But by the Fortysecond Amendment this effective power had been given to the Government. The Election Commission was only to be consulted. The advice or the views of the Election Commission were not to be binding on the Government.

Sir, the hon. Members would appreciate that in a democracy, when Governments are formed by political parties, it would not be right, in matters of disqualification, to have a provision, which would affect either an opposition Member or a Member of the ruling party, which would give the final decision making authority to the Government of the day. Rather the Election Commission, which is an independent authority, constitutional authority, must be given this final effective voice and, therefore, this position is being restored.

MR. CHAIRMAN: Mr. Yadav, will you press for it?

SHRI SHYAM LAL YADAV: Yes, Sir.

MR. CHAIRMAN: The question is:

32. "That at page 4, *after* line 25, the following sub-clause be *inserted*, namely:

'(3) The question as to whether a person found guilty of corrupt

practice at an election to a House of Parliament, under any law made by Parliament, shall be disqualified for being chosen as, a Member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, shall be decided by the Court finding the person guilty of such corrupt practice."

The motion was negatived.

MR. CHAIRMAN: Next is clause 15. There are no amendments to it. Then there is clause 16. There is one amendment by Shri Dinesh Goswami, No. 33.

Clause 16—Amendment of article 123

SHRI DINESH GOSWAMI: Sir, I move:

33. 'That at page 4, *for* clause 16, the following clause be *substituted*, namely,

'16. In article 123 of the Constitution, for clause 4 the following clause shall be substituted, namely: —

(4) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground except on the ground of *mala-fide*.' "

Sir, this amendment is again of a technical nature. Sir, if the President issues an Ordinance, his satisfaction cannot be questioned in a court of law. Now, that was the position even previously to 42nd amendment namely, that the satisfaction of the President regarding the promulgation of an Ordinance could not be questioned in a court of law. But, for the first time, if I am correct—if I am wrong, the Law Minister will correct me—I think in the Bank Nationalisation Case the minority judgment of the Supreme Court expressed some views to the effect that the satisfac-

tion can be questioned, though on that the majority did not give any opinion. That is why an express provision was made in article 123(4) to the effect that notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court of law. I would like to know from the Law Minister what the view of the Government was. Is it the Government taking up a position that the President's satisfaction can be questioned in a court of law. Or, is it simply because that you feel that it is redundant, that you want to delete it? My submission is that when the minority view of the Supreme Court expressed some doubt, why is it that you want to delete the clause, which was, by way of an abundant caution, introduced in article 123.

The further amendment that I have suggested is that the Presidential question in a court of law but its satisfaction should normally be not questioned in a court of law but it should be questioned if one can prove that it is an Ordinance as a result of *mala fide*. We know that during emergency—it was the allegation of the opposition, and sometimes quite rightly, that a number of Ordinances were promulgated which were promulgated not *bona fide* but *mala fide*. Therefore, I have suggested as a matter of abundant caution that Presidential satisfaction cannot be questioned in a court of law except on the ground of *mala fide*. It is almost giving recognition—if I am wrong, the Law Minister will correct me—to the minority view which was expressed earlier.

The question was proposed.

SHRI SHANTI BHUSHAN: I appreciate the sentiments behind this amendment moved. But, Sir, the amendment proposed by him is totally unnecessary, if I may say so, with all respect, because that will have effect on the deletion of clause

[Shri Shanti Bhushan]
4. Clause 4 could have prevented the power being exercised even when it was found that it was exercised *mala fide*. So far as the Government is concerned, the Government would not like to affect the power of the court in a case of provide *mala fide* but so far as sitting in judgment over the satisfaction of the President in other matters is concerned, it is an established law that whenever a power is given based on a condition, which is a subjective satisfaction, even then the subjective satisfaction of the Government cannot be replaced by subjective satisfaction of the court. So the court cannot say that it is *bona fide*. Therefore, the amendment is not acceptable.

MR. CHAIRMAN: Mr. Goswami, do you press for voting?

SHRI DINESH GOSWAMI: Yes, Sir.

MR. CHAIRMAN: The question is: ! 33. "That at page 4, for clause 16, the following clause be substituted, namely: —

'16. In article 123 of the Constitution, for clause (4) the following clause shall be substituted, namely: —

(4) Notwithstanding anything in this Constitution, the Satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground except on the ground of *mala-fide*."

The motion was negatived.

MR. CHAIRMAN: Clause 17 to 22. There are no amendments. We proceed to clause 23. There is one amendment No. 34 by Shri Dinesh Goswami.

SHRI DINESH GOSWAMI: I am not moving.

MR. CHAIRMAN: Clauses 24 to 29. I There are no amendments. Now we

proceed to 'clause 30. There are two amendments Nos. 35 by Shri Goswami and 36 by Shri Dhabe.

Clause 30—*Amendment of article 226.*

SHRI DINESH GOSWAMI: Sir, I move:

35. "That at page 7, after line 32, the following proviso, be inserted, namely: —

'Provided that if the application is not disposed of within a period of two weeks for reasons beyond the control of the contesting parties, the stay order will continue to be operative, if in the discretion of the court such extension is necessary for ends of justice.' "

The question was proposed.

MR. CHAIRMAN: Amendment No. 36 by Shri Dhabe. He is not here.

SHRI DINESH GOSWAMI: Sir, I have moved amendment No. 35 and I will beg of Mr. Shanti Bhushan to accept this amendment. Sir, the present position is—after the amendment of the Law Minister, as suggested, to Article 226—that if a person gets an order of stay in a High Court and if the respondent files an objection to the order of stay and if the application is not disposed of in 14 days, the stay order gets vacated though the parties may not be at all informed. Supposing a tenant gets a stay order in the High Court. The landlord files an application for vacation of the stay and within 14 days the application does not come up for hearing for no fault of the tenant, automatically on the 15th day, that stay order will get vacated. Mr. Shanti Bhushan, with his experience in the Bar, knows that one can create a situation by influencing the office so that the applications do not come up for disposal within 14 days and thus a rich landlord will be always in an advantage. I can tell him my personal experience of the High Court where sometimes we had only one judge—

because there are so many Benches— and the judge could dispose of only one application in a day. The result will be that for no fault of litigants, in very many cases, the stay order will get vacated. That is why I have suggested a very reasonable amendment. The amendment is that if the application is not disposed of within a period of two weeks for reasons beyond the control of the contesting parties—if the application is not disposed of because the court did not say so or because there are so many petitions and the court could dispose of only two petitions a day—then the stay order will continue to be in operation, if in the discretion of the court such extension is necessary for ends of justice.

I feel, Sir, that the Government should not stand on prestige because, I think, there will be lot of complications. I feel, this amendment should be accepted.

SHRI SHANTI BHUSHAN: Sir, I am not in a position to accept this amendment for this reason. The hon. Member referred to my experience of courts. If he is really prepared to rely on my experience, I would request him to withdraw this amendment for this reason. There have been lots of complaints that petitioners go and obtain interim orders and thereafter they do not want that, after hearing both the parties, the stay matter should be heard. That has been the complaint against the judiciary and even against the exercise of the writ jurisdiction. Even in this House, voices have been heard on this and that is why these administrative tribunals and so on have been suggested. These are the reasons why it has been proposed. So far as this is concerned, there should be absolutely no practical difficulty. The petitioner has obtained an interim order. He is available. His version is available. Then, the other party, after serving a copy of the notice of his application for vacation of the stay order files his version. Both the parties are available. The versions of both the

parties are there. It is only a miscellaneous application, stay application. There is not the slightest reason why that application cannot be heard and disposed of either in favour of this party or that party within a period of two weeks. Two weeks is quite a large period. It could have even been shorter. Once the provision is there, there would be no difficulty in passing the order one way or the other.

SHRI DINESH GOSWAMI: Sir, I am pressing my amendment.

MR. CHAIRMAN: The question is:

35. "That at page 7, after line 32, the following proviso be inserted, namely:—

'Provided that if the application is disposed of within a period of two weeks for reasons beyond the control of the contesting parties, the stay order will continue to be operative, if in the discretion of the court such extension is necessary for ends of justice.' "

The motion was negatived.

MR. CHAIRMAN: Now, we will go to the next clause. Clauses 31 to 33. There are no amendments. We shall now take up clause 34. There are four amendments. Shri V. B. Raju.

SHRI V. B. RAJU: Sir, on a point of order. Now, clause 34 refers to article 300A. Article 31C is retained as it was. Now, article 31 is also there. It is bad tactics that the vote of the House was not taken first for the deletion of article 31. Now, not only article 31C is there, but also article 31. consequentially, I do not know whether I am clear. (*Interruptions*) We have rejected the amendment in respect of article 31C. Therefore, the original article 31C is there. In article 31C, article 31 is mentioned. Article 31 continues.

SHRI SHANTI BHUSHAN: That is why I have given notice of a consequential amendment.

SHRI V. B. RAJU: Now, my question is, is my amendment relevant or not? If you are deleting article 31 and if you are keeping article 300A, the new article 300A, then, I have said that this article should be substituted in the following manner. What is exactly article 300A?

"No person shall be deprived of his property save by authority of law."

That is the new article. Then, I have added:

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount ____"

This was there originally. Now, if article 31 is going to continue...

SHRI SHANTI BHUSHAN: Article 31 is not going to continue. Clause 8 which has been voted down is in respect of article 31C. Now, you say that reference to article 31 is there in article 31C. I have moved a consequential amendment. Since clause 8 has been voted down, I have given notice of a consequential amendment that clause 7 A should be added to the Bill which will delete the reference to article 31 in article 31C. *(Interruptions)* May I explain? Clause 6 deals with the deletion of article 31. This is clause 6 of the Bill. That is yet to be put to vote. Now, if that is put to vote and passed, then, in that case, article 31 would not at all be there in the Constitution. The discrepancy you have pointed out is that, although article 31 would be deleted, reference to it would continue in article 31C. That is the reason why as soon as clause 8 was defeated I have given a notice of a consequential amendment. It will serve that purpose, namely, it will delete the reference to article 31 and article 31C.

SHRI V. B. RAJU: I want to know the legal position when an amend-

ment, that is to say, clause 8 is rejected, in clause 8(b) there is a reference to article 31 for deletion. Now, suppose, the House does not agree for 'the deletion of article 31 there, what will be the position?

SHRI SHANTI BHUSHAN: If the House does not agree for the deletion of article 31...

SHRI V. B. RAJU: That has yet to come. The House has not yet agreed for the deletion of article 31.

SHRI SHANTI BHUSHAN: Not so far because it has not been put to vote.

SHRI V. B. RAJU: When it is not put to vote I am not sure whether that will be accepted or not by the House.

SHRI SHANTI BHUSHAN: After the fate of article 31 has been decided, then only the question of the consequential amendment will come in.

Clause 34 may be taken up after clause 6 has been voted because if that clause is adopted only then this clause will be necessary. If clause 6 is defeated, a different situation may arise.

SHRI K. V. RAGHUNATHA REDDY: I may submit that by virtue of restoring article 31C to its previous position, article 31 is also mentioned in the body of article 31C. In other words, the Parliament has voted for the restoration of article 31 also indirectly. Therefore, it necessarily follows that unless article 31 is removed, it will be of no use *to go to* article 300A. If this clause is passed prior to taking up the clause relating to article 31, it would lead to a ridiculous position. Suppose we accept amendment to article 300A, then again it will lead to confusion. Therefore, let us take the clause relating to article 31 so that this matter may be very clear. Instead of creating any more confusion.

SHRI V. B. KAJU: You will kindly excuse me for a second. In clause 8 whatever has been struck down by the Supreme Court has been put in as an amendment by the Government. Now the House says, retain it. What is the consequence?

SHRI K. V. RAGHUNATHA REDDY: The Supreme Court may revise its decision.

SHRI SHANTI BHUSHAN: It will remain infructuous. It was merely written there but by the agreement of the previous Government. It was struck down by the Supreme Court. Even on behalf of the Government this has been stated in Keswananda Bharti's case that we do not support the validity of this. That was struck down on a concession. Yet also, if people want to retain it, let it remain there in golden letters.

SHRI K. V. RAGHUNATHA REDDY: At that time the Government itself wanted to remove this.

MR. CHAIRMAN: Yes, Mr. Gos-wami.

SHRI DINESH GOSWAMI: Sir, I move my amendment, but it is the same thing, we will take it up along with other clauses.

MR. CHAIRMAN: It will be put along with other clauses.

SHRI SHANTI BHUSHAN: After the other clauses have been taken up, this clause can be taken up.

SHRI DINESH GOSWAMI: Along with all the other clauses on the same subject.

SHRI NARASINGHA PRASAD NANDA (Orissa): We have also proposed two amendments to the same article. The two amendments Nos. (37) and (38) should be taken up later on when clause 6 is voted. Let us first know what is the fate of clause 6.

6 P.M.

SHRI SHANTI BHUSHAN: Consideration of clause 34 can be postponed to after clause 6 alongwith the other clauses has been adopted. I have no objection.

Clause 35—Omission of Part XIVA

MR. CHAIRMAN: We will go to the next clause—clause 35. There are two amendments. Amendment No. 41 is by Shri Shyam Lai Yadav. He is not here.

SHRI SHANTI BHUSHAN: Sir, they only negative the clause. Therefore, these are not amendments.

MR. CHAIRMAN: But they have a right to speak. Shri Shyam Lai Yadav is not here. Then amendment No. 42 is by Shri Pranab Mukherjee.

SHRI PRANAB MUKHERJEE: Sir, I am not speaking on it.

MR. CHAIRMAN: Now I will put clause 35 to vote separately, as per request of the toon. Members.

The question is:

"That clause 35 stand part of the Bill."

The House divided. MR. CHAIRMAN: Ayes—94 Noes—96.

AYES—94

Advani, Shri Lai K. Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri Bhabhda, Shri Harishanker Bhagat, Shri Ganapat Hiralal Bhandari, Shri Sunder Singh Bhattacharjee, Prof. Sourendra Bhattacharya, Shri G. C. Bhola Prasad, Shri Chakraborty, Shri Amarpros_d Chatterjee, Shri Pranab

Chaurasia, Shri Shivdayal Singh
 Deb Burman, Shri Bir Chandra
 Dinesh Singh, Shri
 Gupta, Shri Ram Lakhan Prasad
 Hegde, Shri Ramakrishna
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannath Rao
 Joshi, Shri Jagdish
 Kadershah, Shri M.
 Kakati, Shri Robin
 Khan, Shri Ghayoor Ali
 Khobragade, Shri Bhaurao Devaji
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Kunjachen, Shri P. K.
 Lakhan Singh, Shri
 Lakshmanan, Shri G.
 Lotha, Shri Khyomo
 Mahanti, Shri Bhairab Chandra
 Mahavir, Dr. Bhai
 Majhi, Shri Dhaneswar
 Mallick, Shri Harekrushna
 Maran, Shri Murasoli
 Mathur, Shri Jagdish Prasad
 Menon, Shri Viswanatha
 Mishra, Shri Kalraj
 Mody, Shri Piloo
 Mohanty, Shri Surendra Mohinder Kaur,
 Shrimati Morarka, Shri R. R. Mukherjee,
 Shrimati Kanak Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani Naidu,
 Shri N. P. Chengalraya Narendra
 Singh, Shri Nigam, Shri Ladli Mohan
 Nizam-ud-Din, Shri Syed Oza, Shri
 Ghanshyambhai Parbhu Singh, Shri

Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Pathak, Shri Ananda
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Pre_m Manohar, Shri
 Rajan, Shri Pattjam
 Rajinder Kaur, Shrimati
 Ramamurti, Shri P.
 Rameshwar Singh, Shri
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 Reddy, Shri R. Narasimha
 Sahaya, Shri Dayanand
 Samad, Shri Golandaz Mohammed-
 husian A. Saring, Shri Leonard
 Solomon Sarup Singh, Dr. Schamnad, Shri
 Hamid AH Sezhiyan, Shri Era
 Shahedullah, Shri Syed Shahi, Shri
 Nageshwar Prasad Shanti Bhushan, Shri
 Sharma, Shri Ajit Kumar Siddhu, Dr. M.
 M. S. Singh, Shri J. K. P. N. Singh, Shri
 Ng. Tompok Singh, Shri Shiva Nandan
 Sinha, Dr. Ramkripal Sujan Singh, Shri
 Surendra Mohan, Shri Surjeet, Shri
 Harkishan Singh Swu, Shri Scato Tama,
 Shri Ratan Varma, Shri Bhagwati Charan
 Varma, Shri Mahadeo Prasad Venka, Shri
 V. Warjri, Shri Alexander

NOES-96 Adivarekar,

Shrimati Sushila Shankar

Alva, Shrimati Margaret Amarjit
Kaur, Shrimati Amla, Shri Tirath
Ram Anandam, Shri M. Anjiah,
Shri T. Antulay, Shri A. R. Arif,
shri Mohammed Usman Balram
Das, Shri
Banerjee, Shri Jaharlal
Bansi Lai, Shri
Barman, Shri Prasenjit
Basavaraj, Shri H. R.
Bhagwan Din, Shri
Bhim Raj, Shri
Bose, Shrimati Pratima
Chandrasekhar, Shrimati Maragatham
Chattopadhyaya, Prof. D. P.
Chaudhari, Shri N. P.
Das, Shri Bipinpal
Desai, Shri R. M.
Deshmukh, Shri Bapuraoji Marotrao-
ji Dhulap, Shri Krishnarao Narayan
Dinesh Chandra, Shri Swami Dutt, Dr. V. P.
Dwivedi, Shri Devendra Nath Gadgil,
Shri Vithal Goswami, Shri Dinesh
Goswami, Shri Sriman Prafulla Gupta,
Shri Bhupesh Gupta, Shri Gurudev
Habibullah, Shrimati Hamida Imam,
Shrimati Aziza Jha, Shri Kamalnath
Joshi, Shri Krishna Nand
Joshi, Shrimati Kumudben Mani-
shankar
Kalaniya, Shri Ibrahim
Kamble, Prof. N. M.
Kameshwar Singh, Shri
Kesri, Shri Sitaram
Khan, Shri Khurshed Alam
Khan. Shri Maqsood Ali 1134
R.S.—7

Khan, Shrimati Ushi
Khaparde, Shrimati Saroj
Kumaran, Shri S.
Kureel, Shri Piare Lall *urj* Piare Lall
Talib Lokesh Chandra, Dr. Madhavan,
Shri K. K. Mahapatro, Shri Lakshmana
Mahida, Shri .Harisinh Bhagubava
Makwana, Shri Yogendra Manher, Shri
Bhagatram Maurya, Shri Buddha Priya
Mehrotra, Shri Prakash Menon, Shrimati
Leela Damodara Mishra, Shri Mahendra
Mohan Mittal, Shri Sat Paul Mondal,
Shri Ahmad Hossain Moopanar, Shri G.
K. Mukherjee, Shri Pranab Naik, Shri L.
R
Nanda, Shri Narasingha Prasad Pande,
Shri Bishambhar Nath. Patil, Shri
Deorao Prasad, Shri K. L. N. Rai, Shri
Kalp Nath Raju, Shri V. B. Ranga, Prof.
N. G. Ra-o, Shri V. C. Kesava Ratan
Kumari, Shrimati Reddy, Shri K. V.
Raghunatha Reddy, Shri Mulka Govinda
Roshan Lai, Shri Roy, Shri Kalyan Sahu,
Shri Santosh Kumar Saleem, Shri
Mohammad Yunus Satchidananda, Shri
Sharma, Shri Anant Prasad Sharma, Shri
Kishore Lai Sharma, Shri Yogendra
Shastri, Shri Bhola Paswan
Singh, Shri Bhishma Narain Singh,
Shrimati Pratibha Sinha, Shri
Indradeep
Sisodia, Shri Swaisingh

Soni, Shrimati Ambika

Sultan, Shrimati Maimoona

Sultan Singh, Shri

Totu, Shri Gian Chand

Triloki Singh, Shri

Tripathi, Shri Kamlapati

Vaishampayan, Shri S. K.

Venigalla Satyanarayana, Shri

Venkatarao, Shri Chadalavada

Yadav, Shri Ramanand

Yadav, Shri Shyam Lai

The motion was not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

SHRI SHANTI BHUSHAN: Since clause 35 has not been adopted a consequential amendment would be necessary to clause 47. So I am giving notice of the consequential amendment to be taken into consideration.

MR. CHAIRMAN: Now we go over to the next clause. For clauses 36 and 37 there are no amendments. So we proceed to clause 38. There are eight amendments.

Clause 38—*Amendment of article 352*

SHRI BHUPESH GUPTA: Sir, I move:

43. "That at pages 8 and 9, for lines 31 to 33 and 1 to 8, respectively, the following be substituted, namely:—

'(a) in clause (1), the words "or internal disturbance" shall be omitted'."

47. "That at page 10, for lines 34 to 38, the following be substituted, namely:—

(c) clause (4) shall be re-numbered as clause (9) and in the clause so renumbered, the words "or internal disturbance" in both the places where they occur shall be omitted'."

[The amendments also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad, Shri Lakshmana Mahapatro, Shri P. Ramamurti, Shri Harkishan Singh Surjeet, Shri Viswanatha Menon, Shrimati Kanak Mukherjee, Prof. Sourendra Bhatta-charjee, Shri Amarprosad Chakra-barti and Shri Murasoli Maran.]

SHRI K. V. RAGHUNATHA REDDY: Sir, I move:

44. "That at pages 8 and 9, for lines 31 to 33 and 1 to 8, respectively, the following be substituted, namely:—

'(a) in clause (1),—

(i) the words "or internal disturbance" shall be omitted; and

(ii) the following Explanation shall be inserted at the end, namely:—

"Explanation.—A Proclamation of Emergency declaring that the security of India or any Part of the territory thereof is threatened by war or by external aggression may be made before the actual occurrence of war or of any such aggression if the President is satisfied that there is imminent danger thereof" ' "

48. "That at page 10, for lines 34 to 37, the following be substituted, namely:—

'(c) clause (4) shall be re-numbered as clause (9) and for the

clause as so re-numbered the following shall be substituted namely:—

"(9) The power conferred on the President by this Article shall include the power to issue different Proclamations on different grounds, being war or external aggression or imminent danger of war or external aggression, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation." "

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

45. "That at page 8, lines 32-33, after the words 'armed rebellion', the words 'or organised mob-violence against a section of society' be inserted."

46. "That at page 10, line 33, after the words 'such resolution' the words 'and at least seven days' notice shall be given to the members to 'attend such session', be inserted."

SHRI MURASOLI MARAN: Sir, I move:

49. "That at page 10, after line 37, the following be inserted, namely:—

'(cc) after clause (9) as so renumbered, the following clause shall be inserted, namely:—

""(10) A Proclamation issued under clause (1) shall be revoked within thirty days after the termination of war or external aggression." "

I

50. "That at page 10, after line 38, the following be inserted namely:-

'(dd) Notwithstanding anything in the Constitution, the Supreme Court alone shall have the jurisdiction to decide about the validity of a Proclamation issued under clause (1).'"

The questions were proposed

SHRI BHUPESH GUPTA: Sir, this is a very important clause. This clause relates to the issue of Emergency. My amendment is to the effect that there should not be—and shall not be—any internal Emergency under any pretext, not even under the pretext of dealing with 'armed rebellion'. Emergency should only be for dealing with external aggression, or threat of external aggression. Now, Sir, as you see, we the CPI group and the CPI(M) group, the Forward Bloc, RSP, AIADMK and others, have given this amendment. What I would like to point out here, and it should be known, is that I am a little pained and distressed that in the course of the discussion with the Prime Minister, we of the Opposition parties, if I remember aright, agreed that there should not be any internal Emergency. In fact, when Mr. Morarji Desai and the Government came with the suggestion of keeping alive internal Emergency under some pretext like 'armed rebellion', there was protest against it from the Opposition leaders—most of them. Publicly also, several Opposition leaders pertaining to my party and others have spoken against internal Emergency in any form. Sir, unfortunately, I am at a loss to understand why there should not be amendment of this type from Mr. Kamalapati Tripathi, our dear friend Bholu Paswanji. Well, it is very difficult to understand.

AN HON. MEMBER: They are supporting you.

SHRI BHUPESH GUPTA: You are living under an illusion. If they do it, I will welcome it. I still appeal to them to vote for it. Sir, if you keep internal Emergency provision, you will not have learnt the biggest lesson of the Emergency because internal Emergency, in whatever form you like, is likely to be misused. It maintains the spirit and carries forward under false pretence the internal Emergency of 19 months. Sir, we

[Shri Bhupesh Gupta]

thought that they would say a good bye to internal Emergency. Shrimati Indira Gandhi has said that for a thousand of years there shall not be any internal Emergency. I do not think our amendment will last up to a thousand years. Certainly, for ten centuries it will not last. Before that, much of the show will be over. We will be living in another world. If Shrimati Indira Gandhi thinks that internal Emergency would not be there for a thousand years, let us at least provide against it for the next fifty years, or at least ten years. At least 10 years? I am surprised, I do not know what our friends sitting there, honest friends, smiling and all that, would say. What do they say now? Is it the way of implementing the thousand-years-no-internal-emergency pledge? Then who will take them seriously? Well, in the public meetings you will say that there would be no emergency for a thousand years, and here, perhaps, you take the side of the Government. I would request them to reconsider. Take a little time to speak to your leader. You can telephone your leader, Prime Minister Indira Gandhi. Ex-Prime Minister. You see, even now I committed a mistake by saying, 'Prime Minister.' I appeal to them, Shrimati Ambika Soni and other ladies sitting here not to back internal emergency. Many of them do not like it. What has happened? What revolution has taken place somewhere that they do not support this amendment? Sir, internal emergency must go. It is an instrument which built authoritarian power. Well, I need not say very much. Enough we have spoken. Only I am intrigued to find out that the champions of no emergency for a thousand years, perhaps will not move with us, for taking it out even for a short time. After all after some years many things will change.

Now, Sir, I appeal to the Congress friends. Paswan Ji. I would appeal

to you. I know that during the emergency you were against many of the things. I know, even after the emergency you have spoken against the emergency. Am I to bear the sight that you shall be voting with Shanti Bhushan Ji? I cannot understand.

Sir, the national mood is that the internal emergency provisions- must go. Any situation can be dealt with without such a provision in a written Constitution. Sir, we say that we fight against Authoritarianism. But how will you fight it out if you keep the internal emergency provision alive?

Now, I come to the last point. I want to finish very quickly. Our friend says, "armed rebellion." He gave a theory. Wonderful. Mr. Shanti Bhushan says, "We do not have 'internal disturbance', but 'armed rebellion'." Well, armed rebellion is a vague term. Anything can be taken advantage of to say that it is an armed rebellion. We know, in Bengal, in 1948, the charge against the Communist Party was that we were organising armed rebellion in the country. We were fighting for the peasants and for the workers, and we were accused of organising armed rebellion. Fantastic lying documents were published by the Ministry of Home Affairs at the Centre. We know it. Then he will say, 'no armed rebellion' but only when it threatens the security of the country. 'A sweepers' strike threatens the security of the country. We have seen how the MISA and the Preventive Detention Act have been misused by cooking a theory that the security of the State had been threatened. Well, there are many people sitting here, who were in jail for months and months on the ground that they were threatening the security of the country.. We know how

you will use it. Not only that, there may be the peasants' struggle in certain areas of a village or something like that against the oPPI^{ress}io:l against the Harijans, and you may say that the armed rebellion has started and that the internal emergency should be put on the whole country. Well, Sir, therefore, I say that this argument is very much dangerous, and I will ask my friends here to say 'no' to it. ' Perhaps they think they will come to power again, some of them....

SHRI G. LAKSHMANAN (Tamil Nadu): And you are there to support them.

SHRI BHUPESH GUPTA: Please stop this. They may be thinking of advance booking. But if you do this thing here, well, you will be doing something which will negate many of the good things. We have a very interesting experience today. On the preventive detention clause, the Janata Party and the two Congress Parties voted together. On Emergency, perhaps they will vote together. On preventive detention, they have voted together. On President's rule—we want its abolition—I am sure they will vote together. Can you blame us if after that we say that a third alternative is needed in this country? You are no alternative to each other. You are complementary to each other. This is the position. I would ask my friends, Mr. Bhola Paswan Shastri and Mr. Kamalapati Tripathi to disabuse our minds of that apprehension. Well, Sir, today if they will vote together like that, the day after they may form a coalition Government also. Well, I he is smiling because he knows that what I am saying is God's own truth.

SHRI SHANTI BHUSHAN: I cannot help smiling whenever I listen to you or look at you.

SHRI BHUPESH GUPTA: He can smile. He himself was very much afraid that Internal Emergency would go altogether. Then he thought he would not move the Bill in the House

if Internal Emergency was not accepted. But he had negotiations and it does appear that he has successfully negotiated. I will not, however, congratulate him. Now, here our good friends are sitting. On many things we are voicing our demands together here. This Internal Emergency is a challenge to our conscience. Let the country know that the majority in the Rajya Sabha has done away with Internal Emergency. Therefore, I am appealing to you. You may come to power or may not come to power; I do not know. But today life has taught us that we must do away with Internal Emergency. All of us are for the security of the country, the unity of the country and the independence of the country. But for that, we do not need Internal Emergency. We have seen what Internal Emergency creates. Therefore, I do not wish to say very much. I hope some other will speak on this subject. Our friends, Mr. Ramamurti—where has he gone? He was here. Anyway he will also speak.

Sir, I am appealing to them, especially the two major parties in the Opposition. Let it not be said that the two majority parties in the Opposition had it open to them to do away with Internal Emergency but they threw their weight on the side of the Government to preserve and maintain Internal Emergency under some other guise. This is not dismantling the Emergency. To our Marxist friends. Mr. Harkishan Singh Surjeet and others, I would say, here is their democracy. Here is how they defend democracy.

SHRI HARIKISHAN SINGH SURJEET: We know. You must know that.

SHRI BHUPESH GUPTA: For defending democracy, some other "forces must emerge. I know there are very good people, democratically minded, on this side and on that side also. I would appeal to them also: let us together vote against the Internal

[Shri Bhupesh Gupta] Emergency clause and make it a "red-letter day in the history of free India's Parliament. Thank you.

SHRI HARKISHAN SINGH SUR-JEET:

Sir, I do not know how after going through the experience of Emergency, my friends of the Janata

Party have brought this amendment with the argument that they have ! changed the wording: earlier it was "internal disturbance" and now it is "armed rebellion". If they have gone into the experience of "internal disturbance", they must understand that "the words "armed re- , bel'-ion" also can be used in the same way the words "internal disturbance" were used. What was the "internal disturbance" in the country? Railway j strike, JP movement, people rising in defence of their interests; that was called an internal disturbance. And to protect their own rule the whole Emergency was imposed. Many of them had to go to prison. We are used to it. We don't bother about it. Therefore, we know why it is being brought again; it is being brought mainly for us. That is why both of them are voting together . . .

SHRI HARISINH BHAGUBAVA MAHIDA: Are you-'going to create disturbances again?

SHRI HARIKISHAN SINGH SUR-JEET: No. But they created it. the policies pursued by the Congress the policies pursued by the Congress Government. So. to suppress the working class movement, that measure was brought. It is a chronic situation in the country which is not being tackled by the Janata

Party also. It is the economic situation which is responsible for it. If not tackled, it will again create such a situation. What is going to happen tomorrow? One cannot understand the arguments put forward by the Law Minister. He said, somebody from-outside will supply some arms and with that some armed rebellion might be created. In a country like India, if has got any experience of a revolt and something happening like that, like an armed rebellion, then, he must know that it is not on the basis of some arms supplied by some secret agency that some disturbance can be created, not in today's world. It will happen only when you are not able to manage the affairs of the country, if you are not able to tackle the acute economic and social problem. Then nobody can save you. This is the situation in the country. If the economic situation goes on worsening as happening now; then no Emergency can stop it. That is *why* I say, after having gone through the experience of Emergency, the worst part of what the Janata Government has brought forward here is that they are asking us to give our sanction in the name of an armed rebellion. Tomorrow they will say, some ten people in the forests of Bihar are creating some trouble, they have got arms in their hands, so a disturbance has occurred, or if some tenants are defending their land against the attacks of the landlords, they will say, it is an armed rebellion. Now, who will judge it? Who is to say what it is? It is the Government in power, it is the party in power which becomes the judge to say, now there is an armed rebellion as they had done earlier that an internal disturbance was created. I would, therefore, request the Law Minister even at this stage to withdraw this Clause and accept our amendment. I would also ask those Congressmen who, like us, also suffered under the Emergency—we know how the Emergency affected their internal party functioning, democratic functioning of that party, how they suffered under one person rule; they

were all affected—I would appeal to them not to vote for this provision so that this country has not to say again that this power is being used like earlier.

SHRI K. V. RAGHUNATHA RED-DY: Having gone through a gruesome experience of the Emergency, having got some personal knowledge of how Emergency provisions have been implemented, I consider it my duty to oppose Emergency in whatever form it might appear in the Constitution. I have seen the agony of my DMK friends who had been arrested during the period of Emergency without any rule or rhyme or cause. I have also seen many distinguished leaders being taken away, including members of the Congress Working Committee, without the knowledge of the Congress Party or the Council of Ministers. This is how the provisions of Emergency were implemented, and to detriment of democracy and democratic principles. I thought having gone through this hell, the Janata Party would have realised the need to remove the emergency provision once and for all from the statute. But unfortunately they want to replace the words 'internal disturbance' by the expression 'armed rebellion'. It looks as though they want to replace a milder expression like 'internal disturbance' by a wilder expression like 'armed rebellion' so that it might find acceptance among the people. Internal disturbance can be easily interpreted as armed rebellion and armed rebellion can be easily interpreted as internal disturbance. For that there is no difficulty at all. In fact internal disturbance can be engineered and equally armed rebellion can be engineered by the powers that be if they want to declare an emergency. Apart from that, even for a judicial determination of the expression 'armed rebellion', I would submit it is very imprecise like the term 'waging war

against the State in the Indian Penal Code for which many of our friends sitting here had been detained, imprisoned and punished. Similarly, armed rebellion can be interpreted to mean any offence covered under the Arms Act. This is the most dangerous thing that the Janata Government has thought of. I would appeal to the conscience of the Janata Party members who had suffered during the emergency, and who had come out with the election manifesto that they would liberate India from any emergency provision and to the people of India who voted them to power with the hope that the emergency provision would be done away with for all time to come and I appeal to their conscience and good sense to think seriously about it. Please do not think for a moment that you are going to remain in power for all time to come. Those who brought emergency to this country, notwithstanding their pious hopes and assurances, the people of India did not allow them to continue. After all you are going to be in power for a few years more—not beyond that. For the purpose of imposing emergency again this can be misused. It is very easy to say that there is armed rebellion because this provision is not subject to judicial interpretation at all. Armed rebellion is a very imprecise expression even for interpretation. Therefore, as in the case of internal disturbance, armed rebellion can be used as a camouflage to declare emergency. That is why I appeal to my friends and members of the Janata Party who had the experience of the emergency to have second thoughts on this provision. I appeal to the good sense of my friends to vote down the emergency provision. I appeal to Mr. Shanti Bhushan to withdraw this clause so that he will not give an opportunity to others to restore "internal disturbance" again in this country.

SHRI KHURSHED ALAM KHAN: I am sorry that I do not agree with the views expressed by the hon. members from the other side because

[Shri Khurshed Alam Khan]

I have my own say about this matter. The change in the amendment proposed by the Government in the original provision is not free from complications and implications and we have certain doubts about it which we have to express before this august House.

What has happened recently in the case of Harijan troubles starting from Belchi spreading to Agra, Marathwada and even upto Tamil Nadu. What is this? You had to call the army to quell the trouble and bring peace. Is it armed rebellion or worse than that? Maybe some occasions may arise when there may be an armed rebellion or a situation may arise which may be considered as armed rebellion.

But there may be certain situations which may be very disastrous and very damaging for certain communities, particularly the minority communities, and also the weaker sections of society and then it may not be possible for them to really face that kind of situation. Therefore, I very earnestly appeal to the Government and to all the Members that this should be retained. I am not in favour of any internal emergency or anything of that sort. Surely, we want certain safeguards for the security and safety of the weaker sections and the minorities. Now, Sir, surely, there can be certain situations which would not or cannot be strictly termed as an armed rebellion. But the consequences may be as disastrous, as I have said, as the consequences of an armed rebellion or anything of that sort. For instance, there may be a situation when certain persons may be determined to paralyse the administrative set-up of the country in order to create chaos and confusion as was done by some people in May 1974 when they had threatened to completely paralyse the Government as a result of a threatened railway

strike. Or, unfortunately, there may be a condition in which class struggles may be fanned by certain parties endangering the life and property of a large section of the people as has been done in Marathwada very recently... (Interruptions). It was done in Telengana very recently... (Interruptions) .. and what will be in Bihar very recently and it was done in West Bengal very recently... (Interruptions).. and what will be the remedy in this sort of a situation? How are you going to tackle it? (Interruptions).

SHRI G. LAKSHMANAN: Your definition of internal disturbance is the railway strike? Is it your idea of internal disturbance? Was the railway strike conducted in 1974 an internal disturbance?

(Interruptions)

SHRI KHURSHED ALAM KHAN: I am not saying about the railway strike. But you may remember that in certain parts of the country trains were available and in certain other parts trains were not available and the trains could not go from one part of the country to the other and you were not able to go from one part of the country to another part. If the people have the right to strike I have nothing to say. But

one thing I want to tell you and that is that such special situations have to be kept in view. Now, the question is this; What are you going to do in this sort of a situation which I mentioned just now? Unfortunately, determined and calculated efforts may be made for creating widespread communal riots, wide-spread communal trouble. Now, in the country, what are you seeing? How are you going to put them down? Are you not going to put down such troubles, this sort of atmosphere and this sort of a condition in the country? And, if you allow this, will it not be disastrous for the whole nation? What happens in the eastern part of the country now? What is happening there? It may not be te-

chnically an armed rebellion. But the situation is almost the same which is not really very tolerable. So, my appeal to you is this: I have nothing to say against the strike and I have nothing to say in favour of internal security. But I have only to say that we want safeguards and we want the security to life and property for ourselves and that is the amendment of mine which seeks to make this necessary provision for meeting such a situation as I have mentioned above.

SHRI MURASOLI MARAN: Sir, after the eloquent appeal of Mr. Raghunatha Reddy, I do not have much to say and I do not have many words to convince the honourable Minister and the Janata Party Members. We are totally against any kind of internal emergency. The honourable Minister has said that the Constitutional amendments are made because of certain compulsions and circumstances and experiences. But, Sir, what is our experience? We have gone through the darkest period in history. So, even after that, the Janata Party comes forward to substitute the words "armed rebellion" for "internal disturbance" and it is very vague also. Sir, I want to say only one thing: Even if the words "armed rebellion" were not there in the original Constitution, we could have had the emergency. For example, Sir, at that time, Shri Jaya-prakash Naryan was telling that the police and the army should not obey any illegal order. Sir, it could have been construed as a threat of army rebellion and the emergency could have been declared. That is why I say that a lot of abuse is possible. If the Government commands a majority and a two-thirds majority in the Rajya Sabha and also in the Lok Sabha, they can declare the emergency. Then, Sir, after declaring the emergency, with the use of money power and with the use of the police and the army, the referendum provision also can be manipulated. That

is why, Sir, I once again request the honourable Law Minister and also the Janata Party Members to reconsider the situation and to reconsider position. Again, I have given an amendment to amend the situation and to reconsider their position. Again, I have given an amendment, Amendment No. 49. There should be some time-limit even if the emergency is declared for the purpose of war or external aggression. What happened when the first emergency was declared in 1962; it was removed in 1968 alone. For six years it continued. The second emergency was declared in 1971; it continued up to 1977. So, during 28 years of our Republic, 12 years' period we went through emergency. That is why I say that there should be some kind of time-limit even if there is an emergency on account of war or external aggression. Sir, he has provided certain definite safeguards. They are not enough. That is why I have given another amendment that declaration of emergency should be justiciable in the Supreme Court. In the United States this is the situation. I would request the hon. Minister to consider my amendment.

SHRI SOURENDRA BHATTACHARJEE: I would request the Law Minister to consider whether by this amendment he would not deny in a way the very existence, the very basis of existence, of Janata Party, which was born out of emergency. It is a pity that the Janata Government had to bring forward this amendment as a concession to those who were responsible for imposing this internal emergency. If they were unable to amend it, perhaps that would have been a better situation. We have gone through the worst type of emergency for 19 months. The Law Minister should have noted it. This should be an eye-opener to the Janata Party. Please look to the dangerous potentiality of this clause. The list that he has given very clearly indicates that it would be used against the working class

[Shri Sourendra Bhattacharjee]

struggle, against the toiling people. A new concept has been brought today. If the Government are unable to defend the minorities or the weaker sections in the absence of internal emergency, that Government has no right. So, I appeal that the Law-Minister should consider this seriously. I would most earnestly appeal to you and the friends of Mr. Raghu-natha Reddy and those on the other side too at least now accept that the internal emergency was a wrong thing. They must prove the courage of conviction and vote with us in favour of this amendment.

SHRI AMARPROSAD CHAKRABORTY (West Bengal): Sir, if you remember the days of double emergency, you cannot do so. The Janata Government and its leaders were against it. Now, he has introduced this clause in the Constitution (Amendment) Bill. This is a strange thing. The real thing comes from him. This is how they suppress the progressive movement and this how they suppress the progressive Government under the garb of some rebellion or internal disturbance. They are creating public opinion and they are not allowing the other affairs to go into the country. It is a kind of idea. It is the principle for which we are fighting. We are fighting continuously. We are thankful and grateful to Mr. Gupta. Mr. Gupta supported the emergency and today they are giving their support to us who are against the emergency and who have suffered much at the time of emergency. I do not know how this clause comes in this Amendment Bill. It was not expected from the Janata Government and we did not expect it from the Law Minister. Sir, on behalf of my party, on behalf of the Forward Block, we strongly object to this. This clause should be omitted. We make a firm appeal to our friends in this House not to allow this clause to go down on the Statute Book. Sir, with these words, I conclude.

SHRI P. RAMAMURTI (Tamil Nadu): Sir, I would like to remind the Janata Party leaders of the time when the 42nd Amendment was being considered and when we could not discuss it in the entire country, but ; some low or the other we could manage to have a convention in Delhi. That convention was addressed, among others, by Mr. Charan Singh and Mr. Ashok Mehta. The convenor was Mr. Krishan Kant. A poem, a powerful poem was read in Hindi. It was sent by Mr. Vajpayee who now adorns the ministerial gaddi. All these people categorically stated that there shall be no emergency for any reason whatsoever. I want to remind them of the promise that they made that if they come to power:- at any time, they will delete this provision of internal emergency under any circumstances. That is all. They were not in power then. I understand it. You were frank enough. It is clear that what was said at that time was only for the consumption of the people. They were not in power then. The moment they came to power, they said: We are going to substitute the words 'armed rebellion' for the words 'internal disturbance'. So, it is clear that on this question, the Congress (I) and the Janata Party are the birds of the same feather. There is no distinction whatsoever. The class character of these two people is the same because they come from the same class.

SHRI PILOO MODY: Cultural-character.

SHU P. RAMAMURTI: It is class character because they are afraid that if the people of this country rise in revolt against certain policies, it will always be open to them to say that this is an armed rebellion to put down the people. When Hitler came to power, he himself created the trouble and put it on the communists and became a dictator. Therefore, Sir, it is

not difficult for anybody to want to become a dictator to manoeuvre things. (Interruptions) Therefore, it is not at all difficult for anybody to become a dictator to manoeuvre an armed rebellion. If you want it, they can manoeuvre an armed rebellion. The CPI knows it very well. With their support it will be quite possible to manoeuvre the so-called armed rebellion. After all, an armed rebellion is not a justiciable thing, as he has pointed out. Anybody can do anything. And we also know as a result of the Commissions of Inquiry that have been going on through the whole question of Emergency in 1975, that it was promulgated on the basis of that internal disturbance, and it has been found that no internal disturbance report had come from any State whatsoever or even from the Police establishment. Therefore, who can prevent this kind of a thing? Therefore, I would appeal to the conscience of the Janata people, all those people who had at that time stated in a strident voice that there shall be no internal emergency, to stick to their words and not to betray the trust of the people that they have got.

श्री योगेन्द्र शर्मा : मैं भाषण नहीं करना चाहता। मैं सिर्फ माननीय मंत्री जी से दो बातें पूछना चाहता हूँ। आपने काम करने के अधिकार को मूल अधिकारों में न रखने के मुद्दे पर मेरा जवाब दिया था कि हमने यह वादा नहीं किया था कि आप ही हम उसको करेंगे। लेकिन जहाँ तक हम जानते हैं आपने इन्टरनल इमरजेंसी के बारे में यह जवाब दिया था कि हमने कोई टाइम लिमिट नहीं रखा है। मैं समझता हूँ आपने जनता से यह मेनडेट लिया था कि क्योंकि आप सरकार में जायेंगे क्योंकि आप इन्टरनल इमरजेंसी के प्राविजन को कांस्टीट्यूशन से निकाल देंगे। यह मेनडेट देकर आप आए थे और यदि आप आज कांस्टीट्यूशन से इस चीज को नहीं निकालते हैं, इन्टरनल इमरजेंसी के प्राविजन को नहीं निकालते हैं तो जनता के मेनडेट के साथ आप धोखाधड़ी करते हैं, आप धोखाधड़ी साबित होंगे। यह तो स्पष्ट एक है और स्पष्ट दो मैं यह कहना चाहता हूँ कि हमारे देश में जो आदिवासी लोग हैं, आप जानते हैं वे हमेशा तौर धमप हथियार हैं। हमारे देश में बराबर आदिवासियों पर अत्याचार होते हैं और इन्हीं अत्याचारों से बचने के लिये तौर धमप का सहारा लेते हैं। आप जानते हैं तौर धमप हथियार है। जब यह हथियार है तो आप यह कहेंगे कि आदिवासी लोग

आमद रिबेलियन कर रहे हैं इसलिए पूरे देश में इन्टरनल इमरजेंसी लगाई है। फिर क्या तबीयत निकलेगा यह आपको बताना चाहता हूँ कि हम और आप सभी उसके भूक्त भोगी होंगे।

तीसरी बात हम आपसे यह पूछना चाहते हैं जो आप आर्मेड रिबेलियन की बात कर रहे हैं और यदि आपका यह प्रमेडमेंट मान लिया जाता है और कमलापति जी और गृह मंत्री होते हैं तो इमरजेंसी लगा करके जायें फर्नेन्डो, जो अग्री उद्योग मंत्री हैं उनको जेल में बंद कर दिया जाएगा। आप ऐसे लोगों को जेल में बंद करने के लिये कांस्टीट्यूशन में यह हथियार दे रहे हैं।

चौथी बात हम यह कहना चाहते हैं कि कुछ साल पहले डिस्टर्ब एरिया बिल पेश हुआ था। जहाँ हिन्दू मुस्लिम दंगे होते हैं, साम्प्रदायिक दंगे होते हैं उन दंगों का सामना करने के लिये डिस्टर्ब एरिया बिल गवर्नमेंट ने पेश किया था। आपकी गवर्नमेंट ने नहीं—पंडित जी की गवर्नमेंट जब भी तब तैयार किया गया था ऐसी स्थिति का मुकाबला करने के लिये। मेरा आपसे यह निवेदन है कि आप भी ऐसी स्थिति का मुकाबला करने के लिये इस तरह का कोई प्रावधान कीजिए। मैं माननीय मंत्री जी से कहता हूँ कि यह आप जनता के प्रति कृतसंकल्प है, आप घोषणा पत्र के प्रति यदि बंधासार हैं तो जनता को हमारे माननीय सदस्य भूपेण गुप्त और राममूर्ति जी वगैरह ने जो बातें कही हैं उनको मान लेना चाहिये। पूरा देश पर इमरजेंसी का जो एक चौकनाक अनुभव है और इमरजेंसी का जो खौफ लोगों पर छाया हुआ है उससे देश को मुक्त किया जाये।

श्री हरिश्चंकर भाभड़ा (राजस्थान) : सभापति महोदय, इमरजेंसी के बारे में बहुत ही भावना पूर्ण जवाबों में विरोध प्रकट किया गया है। इमरजेंसी का शिकार मैं भी हुआ था। जीवन में बहुत से ऐसे काम होते हैं जो हम करना नहीं चाहते हैं, लेकिन परिस्थितियाँ ऐसी होती हैं कि वे हमें करने पड़ते हैं। कोई भी व्यक्ति अपने संबंधी के शरीर को दबावा पहुँचाना नहीं चाहता, लेकिन मृत्यु होती है तो वही उसको जलाता है, अपने हाथों प्राण लगाता है। हम इमरजेंसी के बारे में यहाँ पर सोचने के लिए बैठे तो हम अपने सुख और दुख जो हमने भोगे हैं उन पर विचार करने लगे और सारा देश हमारी नजरों में न रहे तो यह उचित नहीं होगा। हमारे देश के अन्दर विघटनकारी लोग, देश की तत्कालीन परिस्थितियों और देश में काम करने वाले ऐसे तत्व जो शांत लोगों को और कानून का पालन करने वाले लोगों को अगर गलत रास्ते पर ले जायें तो उसका परिणाम क्या होगा इस पर हमें सम्मति से विचार करना होगा। सदन के अन्दर जो पावरफुल लोग हैं अगर वे अत्याचार करने लगे तो जंगल का कानून हो जाएगा और मरवाइवल आफ् दी फिटटेस्ट की बात लागू हो जाएगी। कमजोर वगैरे पर जो पावरफुल लोग हैं वे हावी हो जाएंगे। उनके साथ अत्याचार करेंगे। मान्यवर, हमने प्रजातंत्र के आधारभूत सिद्धान्त को माना है।

[THE VICE-CHAIRMAN Shri Shyam Lal Yadav in the Chair] in the Chair]

जब हमने प्रजातंत्र को स्वीकार किया है तो उसमें जो इनहेरेंट कमियाँ हैं और अच्छाइयाँ हैं, वे दोनों हमें स्वीकार करनी पड़ेंगी। प्रजातंत्र में स्टेट और प्रजा में लड़ाई चलती ही रहती है। जहाँ स्टेट अपने अधिकारों को बढ़ाने का प्रयास करता है वहाँ प्रजा विरोध करती है। मैं समझता हूँ कि यह बहुत कुछ प्रजा के विवेक पर निर्भर करता है कि वह अत्याचारी शासन को निकाल फेंके। यह लड़ाई प्रजातंत्र में सदैव से चली आ रही है। जहाँ प्रजातंत्र है वहाँ प्रजा और राज्य के बीच में इस प्रकार का संघर्ष चलता ही रहता है। हम इस बात को क्यों भूल जाते हैं कि जिन लोगों ने मरजेन्सी का दुरुपयोग किया है, जिन्होंने इमरजेन्सी लगा कर लोगों पर अत्याचार किये हैं उनके खिलाफ भारतवर्ष की जनता ने ऐसा उदाहरण पेश किया है जो विश्व में एक ही है। आप जानते हैं कि जहाँ जहाँ तानाशाही काम हुई है, चाहे वह इंग्लैण्ड हो, इटली हो, जर्मनी हो, चाहे फ्रांस हो, वहाँ पर तानाशाही को हटाने के लिए खून की नदियाँ बही हैं। लेकिन भारत की जनता ने शांतिपूर्ण तरीके से प्रजातंत्र पद्धति को मानते हुए अत्याचारी शासन को हटा दिया। यह बात हम सब जानते हैं। ऐसी स्थिति में हम अपनी शक्ति को क्यों भूल जाते हैं और यह क्यों सोचने लगते हैं कि अगर कोई दूसरी सरकार आएगी तो वह हमारे ऊपर अत्याचार करेगी। क्या हमारी भावनाएँ तब तक मर जाएँगी और क्या हमारी कुतत्व शक्ति नष्ट हो जाएगी? यदि कोई सरकार अपने अधिकारों का दुरुपयोग करेगी तो हमारा संघर्ष चलता रहेगा। मैं समझता हूँ कि अगर हमें राजनीति में काम करना है तो इन बातों को अपने ध्यान में रखना ही होगा। हम इस संघर्ष से बच नहीं सकते हैं, भाग नहीं सकते हैं। हमें अपने अधिकारों और कमजोर वर्गों के हितों की रक्षा के लिए सदैव संघर्षरत रहना पड़ेगा। यदि हम सरकार को पावर शून्य कर दें या शक्तिहीन कर दें तो इस तरह से इस देश में हम प्रजातंत्र को किस तरह से सही ढंग से चला पाएँगे? पिछले कुछ दिनों से इस सदन के अन्दर ला एंड आर्डर की सिचुयेशन को लेकर आपत्तियाँ उठाई जा रही हैं। इसका एक मात्र कारण अनेक कारणों में से जो मैं समझता हूँ वह यह है कि पिछले एक साल से जो शांति थे, चुप थे, उन लोगों को जब प्रजातांत्रिक अधिकार मिले तो उन्होंने जगह जगह पर अपनी आवाज उठाई और जो लोग हमेशा अशांति में विश्वास करते हैं वे उनको भड़काने में लग गये। इससे ला एंड आर्डर की सिचुयेशन में कमी आई है। मान्यवर, इमरजेन्सी के बारे में यथार्थ भारी मन से मैं माननीय सदस्यों की भावनाओं की कद्र करता हूँ। मैं स्वयं इस बात को मानता हूँ कि इमरजेन्सी के माध्यम से गरीब जनता पर अत्याचार नहीं किया जाना चाहिए। लेकिन हमें अपने आप में विश्वास है और अगर कोई सरकार अपने अधिकारों का दुरुपयोग करेगी तो हम उस दुरुपयोग का जवाब देने के लिये सक्षम हैं। भारत की जनता में यह शक्ति है। इसलिये इस संविधान के शोधन में मजबूत जनता सरकार इमरजेन्सी को रख रही है उससे ह इतना घबराना या उससे इतना भयभीत

होने की मैं समझता हूँ कोई आवश्यकता नहीं है। क्यों कि यहाँ की जनता पर हमें विश्वास होना चाहिए, हमें अपनी शक्ति पर विश्वास होना चाहिए कि चाहे यह सरकार रहे और कोई भी सरकार हो वह इमरजेन्सी का दुरुपयोग नहीं कर सकती। इस बात के लिये जनता सरकार को धन्यवाद देना चाहिए कि जब और सरकारें सत्ता में आती हैं तो वे संविधान में संशोधन करके अपने अधिकारों को बढ़ाना चाहती हैं। लेकिन जनता सरकार ने संविधान में जो संशोधन प्रस्तुत किया है उससे वह अपने अधिकारों को कम करती जा रही है। आप भले ही इस बात को स्वीकार न करें परन्तु मैं समझता हूँ कि जनता सरकार जान-बूझकर इस तरह का एक उदाहरण प्रस्तुत कर रही है। इस का आप लोगों को क्याल रखना चाहिए। श्रीमन्, इतना कह कर मैं समाप्त करता हूँ।

SHRI KAMESHWAR SINGH
(Bihar): Sir, on a point of order.

THE VICE-CHAIRMAN (SHRI SHV. AM LAL YADAV): What is it?

SHRI KAMESHWAR SINGH: Sir, the ^ok Sabha has adjourned *sine die*. Ever if we sit here till 2 o'clock in the morning to pass this Bill...

THE VICE-CHAIRMAN (SHRI SHYAM LAL YADAV): This point has been discussed so many times. There is nj point of order. Mr. Mulka Govinda Reddy.

SHRI MULKA. GOVINDA REDDY (Karnataka): Mr. Vice-Chairman, Sir, internal emergency should be opposed after having gone through the nightmare of emergency for 20 months, when important national leaders, like Shri Jayaprakash Narayan and others, were arrested and ill-treated in the jail and even their representatives were threatened.

[Mr. Chairman in the Chair]

I cannot understand how the Janata Government which came into power mainly because they opposed emergency are now proposing this emergency in case of armed rebellion. Whether for reasons of armed rebellion or for internal disturbances, this emergency should never be imposed. In case of external aggression or war,

everybody in this House will support provision for emergency. Sir, after having gone through the reports of the Shah Commission on the atrocities that were committed, demolitions that took place, arrests that were made and the treatment meted out to the political leaders, we all feel ashamed that we were in the Congress Party at that time when this emergency was imposed. We had lost our courage to oppose these illegal provisions of the emergency and persons like Chawlas, like Dhavans and like Jag Mohans took the law into their own hand in imposing all sorts of indignities on the Indian people. Therefore, Sir, after having gone through such a period, it is impossible, for any honest and right-thinking man to support emergency provision here again. There are enough powers under the law whereby we can tackle such of the offences. If there is any armed rebellion, the armed forces are there. With the help of the armed forces, we can put down any armed rebellion. I do not think there is any need for this Emergency provision, whether for 'internal disturbances' or for armed rebellion.

SHRI SRIMAN PRAFULLA GOSWAMI (Assam): Sir, it is shocking to me that the Janata Government which came to power by the ballot box, by non-violent methods and which pledged to remove internal Emergency has now brought this provision with a sugar coating. Instead of 'internal disturbances' they say 'armed rebellion'. I do not know whether you are going back to the old days when the British ruled us. We revolted against it. We had a national movement. We revolted against the British imperialists. We had the 1942 movement. Even at that time, the British imperialists did not have such a provision as 'armed rebellion'. There were ample provisions then. They had sedition and other things which they could control. Now, Sir, this word 'armed rebellion' is shocking. By this amendment, they are exposing their class character. They are afraid of class

consciousness. They are the representatives of the capitalists and the bourgeois. Sir, during the Emergency, when I was a member of the ruling party, I brought to the notice of the Government many Emergency excesses. But they did not do anything. Now, Sir, they are introducing this 'armed rebellion'. There have been many armed rebellions in many places, many local struggles. But they have been subdued a long time ago. There was the Naga trouble. It was subdued. Then, there was the Mizo trouble. Sir, I suspect there is a motive, a very bad motive. This 'armed rebellion' reminds us of those days. If you introduce this 'armed rebellion', people will be constrained to resort to armed rebellion—they will exercise their right—when they find that there is an unjust order, there is an oppressive Government, there is a dictatorial Government. They will rebel against such a Government. It is their birth-right to rebel. They will rebel against any injustice or against any Government which oppresses them. They will rebel against a Government which is a capitalist Government. Now, Sir, they were accusing others of being fascists. But they are now behaving like fascists. Not only that. If you are inserting this provision, this will encourage the people. They will become conscious. They will resort to armed action if necessary. I warned you about this yesterday. If you are not hypocritical, don't do this. If you dare and if you have the courage, go to the people. Dissolve Parliament and go to the people. Let us see whether the people will accept this or not.

श्री कमलनाथ झा (बिहार) : सभापति महोदय, अभी इमरजेंसी के विरोध में जबरदस्त नारा लगा कर, हिन्दुस्तान की जनता के सामने वायदा करके कि हम आपात कालीन स्थिति को समाप्त करेंगे, ऐसा दावा करते हैं कि हम सत्ता में आए लेकिन सत्ता में आने के सिर्फ डेढ़ वर्ष के अन्दर जनता पार्टी ने उन सारे मुद्दों को जिनके विरोध में उन्होंने हमारे विरुद्ध आवाज उठाई थी चाहे वह फैमिली प्लानिंग का ही हो, उसको बदल दिया। चाहे वह प्रिवेन्टिव डिटेन्शन

[श्री कमलनाथ झा]

के रूप में हो और अब मीसा को भी अंगीकार कर लिया, फैमिली प्लानिंग को भी अंगीकार कर लिया और इमरजेंसी को भी अंगीकार कर लिया ...

श्री नागेश्वर प्रसाद शाही (उत्तर प्रदेश) : श्रीमन्, एक व्यवस्था का प्रश्न है ।

समापति महोदय, अगर हमारे साथी चाहते हैं कि 12 बजे तक बैठें तो ऐसा तय कर लिया जाये और सब लोग लम्बे लम्बे भाषण दें, हमें कोई एतराज नहीं है । लेकिन तय कर लिया जाये और नहीं तो सवा सात हो चुका है, घाठ बजे खत्म किया जाये और अगर घाठ बजे के बाद बैठना हो तो मैं अनुरोध करूंगा कि सदन को एडजॉन किया जाये और कल कार्यवाही की जाये, यह उचित नहीं है कि रोजाना... (अन्तर्वाधा) नहीं श्रीमन्, मुनिये, परसी हाऊस बैठा, कल हाऊस 9 बजे रात तक चला तथा आज फिर 12 बजे रात तक बैठना चाहता हूँ... (अन्तर्वाधा) आपने क्या कन्ग्रुअ मजदूर बना रखा है हम लोगों को ? ... (अन्तर्वाधा)

MR. CHAIRMAN: Thank you, we will not take more time now.

SHRI BHAURAO DEVAJI KHOB-RAGADE (Maharashtra): There has been enough discussion on this clause now.

श्री कमलनाथ झा : व्हाइट आफ आर्डर, यही जनतंत्र को स्टोर किया है । हाउस में उनके पक्ष के लोग 15 मिनट बोले और हम बोले तो व्हाइट आफ आर्डर उठता है । 30 वर्ष से कांग्रेस पार्टी इस देश में सत्ता चला रही थी । कॉन्स्टीट्यूशन में इमरजेंसी का प्राविधान था और इमरजेंसी के प्राविधान का कोई दुरुपयोग कांग्रेस ने नहीं किया और मैं समझता हूँ कि विरोधी दल के लोगों ने देश में अराजकता की स्थिति पैदा की तो हमें बाध्य होकर इमरजेंसी का प्राविजन लागू करना पड़ा और ऐसी परिस्थिति में आज वह खुद परिस्थिति के सामने झुक रहे हैं । जनता के सामने वादा करते हैं कि इमरजेंसी को नहीं लागू करेंगे और फिर इमरजेंसी के प्राविजन को रखा है । इसलिए समापति जी इनकी कथनों और करने में कहीं मेल नहीं है और इनकी सत्ता का कोई व्यावहारिक अनुभव नहीं है । क्योंकि आदर्श और कार्यों में जो मेल होता है वह नहीं है । इसलिए मैं इनसे निवेदन करना चाहता हूँ, आपके माध्यम से कि दूसरों पर छोटकरी करना, आलोचना करना, बहुत ज़ुलम की बात करना और इमरजेंसी से सौगुना अधिक ज़ुलम करना तो इसी लिए अपने नेताओं को, आपको हिम्मत है जो दूसरी पार्टी के लोग इमरजेंसी का विरोध करते हैं, हमारी पार्टी भी इमरजेंसी का समर्थन नहीं करती है और हम यह चाहते हैं कि इमरजेंसी को जो हमारे सीडर ने कबूल नहीं किया फिर

श्री इमरजेंसी लागू करेंगे तो दुनिया का कोई डिक्टेटर चाहे वह हिटलर हो, मसौलिनो हो या जो भी हो, अगर दुनिया के किसी भी डिक्टेटर को हटाया गया है तो इन्टरवेंशन से । लेकिन हमारे सीडर ने इमरजेंसी को खत्म कर के, जनता की वोट का राईट दिया । इसलिए जो इस तरह से अप्रत्यक्ष रूप से छोटकरी जो है वह नहीं होनी चाहिए और मिम्युल डिक्लेरेशन होना चाहिए ।

DR. V. P. DUTT (Nominated): Only one minute, Sir. If the Law Minister permits and if he is willing to hear, I would like to say. Some of us have ri i to speak because, our esteemed colleagues, Shri Bhupesh Gupta and Shri Harikishan Singh Surjeet, asked the question as to what our position is on this. I said, well my esteemed colleague, Mr. Mulka Govinda Rfddy, has already made the position clear. So far as we are concerned, we are against the retention of any provision for internal emergency. There is no question about it. Our position is clear and categorical on this. The only question was whether certain technical problems compelled us to vote with the Government or not. That is a different matter. But go far as the issue itself is concerned, we are against it. I would like to say to the Law Minister that he teaches law, he practices law, I teach history and political systems and institutions. When does an armed rebellion take place in a country? When does an armed rebellion occur in any country in history? I would like to say that it occurs only when the social conditions have deteriorated beyond the point of tolerance, when people's sufferings and miseries go beyond the acceptable limits and when there is hunger and starvation in the country and finally—that is most important—when the central authority collapses. That is when an armed rebellion takes place in any country. Now if they are afraid that the central authority is going to collapse in this country, that they are not even going to be able to rule or govern, then perhaps they are right. In fact, what we are pre seeing is the process of the collapse of

the central authority and maybe that is why they want to have the provision for internal emergency so that they can impose it in order to be able to rule. Otherwise, hon'ble Law Minister, you have not given any cogent reason for the retention of this provision and you have not mentioned what is the difference between 'internal disturbance' and 'armed uprising'. What is this nice distinction? You are very good at making nice distinctions—like you have made the distinction between 'blast' and 'explosion'. I do not understand what is this difference between 'internal disturbance' and 'armed uprising'. So far no cogent reason has come. What you have said is that you are providing for certain safeguards. That is an entirely different matter. What we are worried is more fundamental. Your present powers are sufficient and abundant. You have even now sufficient powers under the external emergency which is there. There are tremendous powers being given to the Government under external emergency. In fact they can also be misused. Some slight incident can be created on the border and you can say, "there is external aggression" and declare external emergency and use all the provisions under the external emergency. Therefore, it is not as if you have not sufficient powers. Even under the present laws, you have tremendous powers to control. It is for the first time that we are hearing this argument in this House that for the sake of the protection of the weaker sections we need internal emergency provisions. I have great respect for you. My friend and colleague, Mr. Khurshed Alam Khan also pointed this out, but I cannot imagine that you need internal emergency for the protection of the weaker sections. You have plenty of powers available under the laws at present to be able to meet the situation provided there is

the will power. You need the will power, not the laws, to meet that kind of a situation. That will power is lacking unfortunately. You have to have that. Therefore, we appeal, along with other sections of the House, to the hon. Law Minister to accept this. This is the general feeling here as well as in the country. You don't need any provision for internal emergency.

SHRI K. K. MADHAVAN: Sir, it is a very serious subject. It is a matter to be trifled with. There is a mistaken notion about the saying that the right to revolt against tyranny or oppression is sacred. As a dictum, it is all right. But let us look at the present day conditions. We are towards the close of the twentieth century. I think every right thinking Member of this House should support this amendment because ours is a democratic State having democratically elected people where people are free to work out a revolution by their willing consent. That is the condition, whatever be the social atmosphere prevailing in this country. In action, ours is a democratic State. Are we interested in importing revolution? Are we interested in having a revolution by armed insurrection or armed rebellion? We are not for that. This country is not for that. The culture of this country is not for that. This amendment seeks to amend this particular article by the substitution of a word. In article 352, in place of the word "internal disturbance" the word "disturbance" is sought to be substituted by rebellion". Armed rebellion is a different question. There is a world of difference between the two words because this can be misinterpreted in any manner.

MR. CHAIRMAN: Please conclude.

SHRI K. K. MADHAVAN: It is precisely this word that this amendment seeks to replace. It reduces the possibility of misinterpretation. Therefore, I support the amendment and I hope all hon'ble Members will support this amendment.

SHRI SHANTI BHUSHAN: Sir, Shri Bhupesh Gupta is the greatest champion of Parliamentary democracy that I have ever known.

SHRI MOHAMMAD YUNUS SA-LEEM (Andhra Pradesh): How many compliments are you going to pay him today?

SHRI SHANTI BHUSHAN: That was also proved when he wanted that so far as Parliamentary democracy is concerned, not merely democracy should be preserved and protected, even by being included in the guarantee of referendum I hope Parliamentary democracy also includes democracy in Parliament. Sir, I am sorry for him, and I would like to sympathise with him when today I found him so desolate. He is having a feeling that he is being deserted by all his people, either belonging to the right parties or to the left parties.

SHRI BHUPESH GUPTA: No. no. We are all together. (*Interruptions*)

SHRI SHANTI BHUSHAN: They are the parties on the right and we are the parties on the left, to the right of Shri Bhupesh Gupta and to the left of Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA: Here, Sir, there is emergency to my left and emergency to my right.

SHRI SHANTI BHUSHAN: Sir, he is feeling deserted and he is looking for friends all round. He does not find any friends on the right and he does not find any friend on the left.

On the question of having an armed rebellion in the country, Sir, I am sorry that he is not having many supporters. Even, Sir, in his block the Member who keeps constant vigil from behind, Mr. Madhavan, has demolished all his arguments.

SHRI BHUPESH GUPTA: He has supported me very valiantly on this question.

SHRI SHANTI BHUSHAN: On the question of armed rebellion in the country he finds himself almost in isolation. Of course, he has a few friends still left. But I am not surprised because in democracy when people have the freedom to remove the government whom they do not like, they can propagate, they can educate and they can persuade the people to remove that government by ballot, by their sweet will, as they have shown that in this country the people can remove the government through peaceful means. They do not need any armed rebellion. You can persuade the people against the government if you do not like it. But please do not think of armed rebellion. This country does not believe in armed rebellion. The Government must have ample powers to deal with armed rebellion.

SHRI BHUPESH GUPTA: Did Mr. George Fernandes not believe in it when he associated himself with the Bareilly Dynamite case?

SHRI SHANTI BHUSHAN: I believe even Mr. Bhupesh Gupta appears to be convinced now. I need not take more time of the House.

SHRI YOGENDRA SHARMA: I had put two or three questions to which he has not replied.

SHRI SHANTI BHUSHAN: Sir, because there is a complaint that a specific question was put by an hon. Member and I have not replied to it, let me reply. He referred to the election manifesto. I am glad that he has read the election manifesto, but in which language he has read it, I do not know. I have it before me. It clearly shows that two promises were made: to lift the Emergency; and to amend article 352 of the Constitution to prevent its abuse in the interests of an individual or a group. Therefore, we are carrying out the pledge to its full. We had never said that even on the ground of external aggression, even if there is a threat to the security of India, under

10 circumstances, can Emergency be declared. Of course, "internal disturbance" was too weak a thing, but an "armed rebellion" can create the same situation which "external aggression" can create.

(Interruptions)

SHRI YOGENDRA SHARMA: And, Sir, my second question was about Mr. George Fernandes.

MR. CHAIRMAN: The question is:

43. "That at pages 8 and 9 for lines 31 to 33 and 1 to 8, respectively, the following be substituted, namely: —

'Ca) in clause (1), the words "or internal disturbance" shall be omitted.' "

47. "That at page 10, for lines 34 to 38, the following be substituted, namely: —

'(c) clause (4) shall be re-numbered as clause (9) and in the clause as so re-numbered, the words "or internal disturbance" in both the places where they occur shall be omitted.' "

SHRI BHAURAO DEVAJI KHOB-RAGADE: How can you put both simultaneously?

MR. CHAIRMAN: Yes, yes, the Members desired.

The House divided.

MR. CHAIRMAN: Ayes—41; Noes—143

AYES—41

Amarjit Kaur, Shrimati Anandam, Shri M. Balram Das, Shri Bhattacharjee, Shri Sourendra Bhola Prasad, Shri Bose, Shrimati Pratima Chakraborty, Shri Amarprosad 1134 RS—8.

Chattopadhyaya, Prof. D. P.
Chaudhari, Shri N. P.
Deshmukh, Shri Bapuraoji Marotraoji
Dutt, Dr. V. P.
Dwivedi, Shri Devendra Nath
Goswami, Shri Sriman Prafulla
Gupta, Shri Bhupesh
Gupta, Shri Gurudev
Imam, Shrimati Aziza
Kameshwar Singh, Shri
Khan, Shrimati Ushi
Kumaran, Shri S.
Kunjachen, Shri P. K.
Lakshmanan, Shri G.
Mahapatra, Shri Lakshmana
Maran, Shri Murasoli
Menon, Shri Viswanatha
Mukherjee, Shrimati Kanak
Nanda, Shri Narasingha Prasad
Pathak, Shri Ananda
Rajan, Shri Pattiam
Raju, Shri V. B.
Ramamurti, Shri P.
Reddy, Shri K. V. Raghunatha
Reddy, Shri Mulka Govinda
Roy, Shri Kalyan
Saleem, Shri Mohammad Yunus
Shahedullah, Shri Syed
Sharma, Shri Yogendra
Sinha, Shri Indradeep
Soni, Shrimati Ambika
Surjeet, Shri Harkishan Singh
Triloki Singh, Shri
Venigalla Satyanarayana. Shri

NOES—143

Adivarekar, Shrimati Sushila Shankar
Advani, Shri Lai K.
Alva, Shrimati Margaret
Amla, Shri Tirath Ram
Anjiah, Shri T.
Antulay, Shri A. R.

Arif, Shri Mohammed Usman
 Asthana, Shri K. B. Bagaitkar, Shri
 Sadasiv Baleshwar Dayal, Shri
 Banerjee, Shri Jaharlal Bansi Lai,
 Shri Barman, Shri Prasenjit
 Basavaraj, Shri H. R. Bhabhda,
 Shri Harishar. ker Bhagat, Shri
 Ganapat Hiralal Bhagwan Din, Shri
 Bhandari, Shri Sunder Singh
 Bhattacharya, Shri G. C. Bhim Raj,
 Shri

Chandrasekhar, Shrimati Maragatham
 Chatterjee, Shri Pranab
 Chaurasia, Shri Shivdayal Singh
 Das, Shri Bipinpal
 Desai, Shri R. M.
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Gupta, Shri Ram Lakhan Prasad
 Habibullah, Shrimati Hamida
 Hegde, Shri Ramakrishna
 Jagbir Singh, Shri
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannath Rao
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishar-ker
 Kadershah, Shri M.
 Kakati, Shri Robin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor Ali
 Khan, shii Khurshed Alam

Khan, Shri Maqsood Ali Khaparde,
 Shrimati Saroj Khobragade, Shri
 Bhaurao Devaji Kiishna, Shri M. R.
 Kiishnan, Shri E. R. Kiishnan, Shri U.
 R.

Kureel, Shri Piare Lall *uri* Piare Lall Talib
 Lfkhan Singh, Shri

Lckesh Chandra, Dr. LcJtha, Shri
 Khyomo Madhavan, Shri K. K.
 Mahanti, Shri Bhairab Chandra
 Mahavir, Dr. Bhai

Mahida. Shri Harisinh Bhagubava Mnjhi,
 Shri Dhaneswar M;:kvvana, Shri Yogendra
 Miillick, Shri Harekrushna Manhar, Shri
 Bhagatram Mathur, Shri Jagdish Prasad
 Maurya, Shri Buddha Priya Mflhrotra, Shri
 Prakash

Menon, Shrimati Leela Damodara
 Mifehra, Shri Kalraj

Miihra, Shri Mahendra Mohan

Mi:tal, Shri Sat Paul

A.'charity, Shri Surendra

Mchinder Kaur, Shrimati

Mondal, Shri Ahmad Hossain

Mcopanar, Shri G. K.

Morarka, Shri R. R.

Mukherjee, Shri Pranab

Munusamy, Shri V. P.

Mujthu, Dr. (Shrimati) Sathiavani

Na du, Shri N. P. Chengalraya Na k,
 Shri L. R. Narendra Singh, Shri Nigam,
 shri Ladli Mohan Nizam-ud-Din, Shri
 Syed Ozck, Shri Ghanshyambhai
 Paitde, Shri Eishambar Nath Paibhu
 Singh, Shri Pai'ikh, Prof. Ramlal

Patel, Shri Manubhai
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Rajinder Kaur, Shrimati
 Rameshwar Singh, Shri
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava
 Ratan Kumari, Shrimati
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 Reddy, Shri R. Narasimha
 Roshan Lai, Shri Sahaya, Shri
 Dayanand Sahu, Shri Santosh
 Kumar
 Samad, Shri Golandaz Mohammed-
 busian A.
 Saring, Shri Leonard Solomon
 Ssrup Singh, Dr.
 Satchidananda, Shri
 Sezhiyan, Shri Era
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri Sharma, Shri
 Ajit Kumar Sharma, Shri Anant
 Prasad Sharma, Shri Kishan Lai
 Shastri, Shri Bhola Paswan Siddhu.
 Dr. M. M. S.
 Singh, Shri Bhishma Narain Singh,
 Shri J. K- P. N. Singh, Shri Ng.
 Tompok Singh, Shrimati Pratibha
 Singh, Shri Shiva Nandan
 Sinha, Dr. Ramkripal Sisodia, Shri
 Sawaisingh Sujan Singh, Shri
 Sultan, Shrimati Maimoona Sultan
 Singh, Shri Surendra Mohan, Shri

S'vuu, Shri Scato
 Tama, Shri Ratan
 Totu, Shri Gian Chand
 Tripathi, Shri Kamlapati
 Varma, Shri Mahadeo Prasad
 Venka, Shri V.
 Venkatrao, Shri Chadalavada
 Warjri, Shri Alexander
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lai

The Motion was negated.

MR. CHAIRMAN: Now I put to vote amendment Nos. 44 and 48 by Shri K. V. Raghunatha Reddy. Do you press them?

SHRI K. V. RAGHUNATHA REDDY; I am pressing the amendments. Sir.

MR. CHAIRMAN: The question is:

44. "That at pages 8 and 9, for lines 31 to 33 and 1 to 8 respectively, the following be substituted, namely:—

'(a) in clause (1),—

(i) the words "or internal disturbance" shall be omitted; and

(ii) the following Explanation shall be inserted at the end, namely:—

•Explanation—A Proclamation of Emergency declaring that the security of India or any Part of the territory thereof is threatened by war or by external aggression may be made before the actual occurrence of war or of any such aggression, if the President is satisfied that there is imminent danger thereof." "

48. "That at page 10, for lines 34 to 37, the following be substituted, namely:—

'(c) clause C4) shall be re-numbered as clause (9) and for the clause as so re-numbered the following shall be substituted, namely.—

"(9) The power conferred on the President by this Article shall in-

[Mr. Chairman] elude the power to issue different Proclamations on different grounds, being war of external aggression or imminent danger of war or external aggression, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation." " "

The motion was negated.

MR. CHAIRMAN: Amendments 45 and 46. Mr. Khurshed Alam Khan, are you pressing?

SHRI KHURSHED ALAM KHAN: Let there be voice vote,

MR. CHAIRMAN : The question is:

45. "That at page 8, lines 32-33, after the words 'armed rebellion', the words 'or organised mob-violence against a section of society' be inserted."

The Motion was negated.

MR. CHAIRMAN: The question is:

46. "That at page 10, line 33, after the words 'such resolution' the words 'and at least seven days' notice shall be given to the members to attend such session', be inserted."

The Motion was negated.

MR. CHAIRMAN: Amendments 49 and 50. Mr. Maran, are you pressing them?

SHRI MURASOLI MARAN : Yes.

MR. CHAIRMAN: The question is :

49. "That at page 10, after line 37, the following be inserted, namely:—

'(cc) after clause (9) as so re-numbered, the following clause shall be inserted, namely:—

"(10) A Proclamation issued under clause (1) shall be revoked within thirty days after the termination of war or external aggression." " "

The Motion was negated.

MR. CHAIRMAN: The question is:

50. "That at page 10, after line 38, the following be inserted, namely:—

'(dd) Notwithstanding anything in the Constitution, the Supreme Court alone shall have the jurisdiction to decide about the validity of a Proclamation issued under clause

u'

The Motion was negated.

MR. CHAIRMAN; Now, I shall put clause 38.

The question is:

"I hat clause 38 stand part of the Bill. "

The House divided.

MR. CHAIRMAN: Ayes—171; Noes— 7.

AYES—171

Adivarekar, Shrimati Sushila Shankar

Advani, Shri Lai K.

Alva, Shrimati Margaret

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anandam, Shri M.

Anjiah, Shri T.

Antulay, Shri A. R.

Arif, Shri Mohammed Usman

Asthana, Shri K. B.

Bagaitkar, Shri Sadasiv

Baleshwar Dayal, Shri

Balram Das, Shri

Banejee, Shri B. N.

Banerjee, Shri Jaharlal

Bansal, Shri

Barnjan, Shri Prasenjit

Basai, Shri H. R.

Bhabha, Shri Harishanker

Bhagat, Shri Ganapat Hiralal

Bhagwan Din, Shri

Bhandari, Shri Sunder Singh
 Bhattacharya, Shri G. C.
 Bhim Raj, Shri
 Bose, Shrimati Pratima
 Chandrasekhar, Shrimati Maragatham
 Chatterjee, Shri Pranab
 Ohattopadhyaya, Prof. D. P.
 Chaudhari, Shri N. P.
 Chaurasia, Shri Shivdayal Singh
 Das, Shri Bipinpal
 Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Habibullah, Shrimati Hamida
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannath Rao
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishan-ker
 Kadershah, Shri M.
 Kakati, Shri Robin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kameshwar Singh, Shri
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Shrimati Ushi

Khaparde, Shrimati Saroj
 Khobragade, Shri Bhaurao Devaji
 Krishna, Shri M. R.
 Krishnan, Shri E. R.
 Krishnan, Shri U. R.
 Kunjachen, Shri P. K.
 Kureel, Shri Piar, Lall urf Piar Lall Talib
 Lakhan Singh, Shri
 Lakshmanan, Shri G.
 Lokesh Chandra, Dr
 Lofcha, Shri Khyomo
 Madhavan, Shri K. K.
 Mathanti, Shri Bhairab Chandra
 Mahavir, Dr. Bhai
 Mahida, Shri Harisinh Bhagubava
 Majhi, Shri Dhaneswar Makwana,
 Shri Yogendra Mallick, Shri
 Harekrushna Manhar, Shri Bhagatram
 Maran, Shri Murasoli Mathur, Shri
 Jagdish Prasad Maurya, Shri Buddha
 Priya Mehrotra, Shri Prakash
 Menon, Shrimati Leela Damodara Menon,
 Shri Viswanatha Mishra, Shri Kalraj Mishra,
 Shri Mahendra Mohan Mittal, Shri Sat paul
 Mohanty, Shri Surendra Mohinder Kaur,
 Shrimati
 Mondal, Shri Almad Hossain
 Mopnar, Shri G. K. Morarka, Shri
 R. R. Mukherjee, Shri Pranab
 Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani Naidu, Shri
 N. P. Chengalraya Naik, Shri L. R. Nanda, Shri
 Narasingha Prasad Narendra Singh, Shri I
 Nigam, Shri Ladli Mohan Nizam-ud-Din, Shri
 Syed

Oza, Shri Ghanshyambhai Pande, Shri
Bishambhar Nath Parbhu Singh, Shri
Parikh, Prof. Ramlal Patel, Shri
Manubhai Patil, Shri Deorao

Pattanayak, Shri Bhabani Charan

Poddar, Shri R. K.

Pradhan, Shri Patitpahan

Prem Manohar, Shri

Rai, Shri Kalp Nath

Rajan, Shri Pattiam

Rajinder Kaur, Shrimati

Raju, Shri V. B.

Ramamurti, Shri P.

Rameshwar Singh, Shri

Ranga, PROF. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati

Ray, Shri Rabi

Razack, Shrimati Noorjehan

Reddy, Shri B. Satyanarayan

Reddy, Shri Mulka Govinda

Reddy, Shri R. Narasimha

Roshan Lai, Shri

Sahaya, Shri Dayanand

Sahu, Shri Santosh Kumar

Saleem, Shri Mohammad Yunus

Samad, Shri Golandaz Mohammed
husian A. Saring, Shri Leonard

Soloman Sarup Singh, Dr.

Satchidananda, Shri Sezhiyan, Shri Era

Shahi, Shri Nageshwar Prasad Shanti

Bhushan, Shri Sharma, Shri Ajit Kumar

Sharma, Shri Anant Prasad Sharma,

Shri Kishan Lai Shastri, Shri Bhola

Paswan Siddhu, Dr. M. M. S. Singh,

Shri Bhishma Narain Singh, Shri J. K.

p. N. Singh, Shri Ng. Tompok

Singh, Shrimati Pratibha Singh,
Shri Shiva Nandan Sinha, Dr.
Ramkripal Sisodia, Shri Sawaisingh
Soni, Shrimati Ambika Suja Singh,
Shri Sultan, Shrimati Maimoona
Iltai Singh, Shri Surendra Mohan,
Shri Swu, Shri Secato Tama, Shri
Ratan Totu, Shri Gian Chand Triton
Singh, Shri

Tripalathi, Shri Kamlapati

Vaishampayen, Shri S. K.

Varra, Shri Mahadeo Prasad

Venigalla Satyanarayana, Shri

Venka, Shri V.

Venkatrao, Shri Chadalavada

War j-i, Shri Alexander

Yada/, Shri Ramanand

Yada/, Shri Shyam Lai

NOES—7

Bhattacharjee, Prof. Sourendra
Chakraborty, Shri Amarprosad
Goswami, Shri Sriman Prafulla
Mukherjee, Shrimati Kanak Pathak, Shri
Ananda

T

Shahodullah, Shri Syed Surjeet, Shri

Harkishan Singh

*The motion was carried by a majority of
the total membership of the House and by a
majority of not less than two-thirds of the
Members present and voting.*

Clause 38 was added to the Bill.

Clause 39—Amendment of Article 356.

SHRI K. V. RAGHUNATHA
REDDY: Sir, I move.

51. "That at pages 10 and 11, for clause 39, the following clause be substituted, namely:

'39. in article-356 of the Consti-tion,—

(a) in clause (4),—

(i) for the words, brackets and figure "one year from the date of the passing of the second "of the resolution approving the Proclamation under clause (3)", the words "six months from the date of issue of the Proclamation" shall be substituted;

(ii) in the first proviso, for the words "one year", the words "six months" shall be substituted;

(iii) in the second proviso, for the words "one year", the words "six months" shall be substituted;

(b) for clause (5), the following clause shall be substituted, namely:—

"(5) notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of such Proclamation shall not be passed by either House of Parliament unless,—

(a) a proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approve-ed under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

(c) notwithstanding anything contained in this Constitution, if the President is satisfied, he may appoint a Judicial Commission

consisting of three serving Judges, among whom one shall be the Judge of the Supreme Court, who shall be the Chairman of the Commission and two from among the Judges of the High Courts, to enquire and advise him whether the report of the Governor is made in good faith or the information received by him otherwise for his satisfaction is founded on sufficient evidence; and, on the advice of the Commission, the President may revoke the Proclamation,

(d) the Judicial Commission shall submit its Report within a period of two months. The Judicial Commission, in expressing its view, shall consult the opinion of the Members of the Legislative Assembly and/or the Members of the Legislative Council, as the case may be,

(e) notwithstanding anything contained in the Constitution, no Assembly shall be dissolved before the expiry of a period of three months after the Proclamation under clause (1)".

(The amendment also stood in the name of *Shri Mulka Govinda Reddy.*)

SHRI P. RAMAMURTI: Sir, I move:

52. "That at pages 10 and 11, for clause 39, the following clause be substituted, namely: —

'39. Article 356 of the Constitution shall be omitted."

The amendment also stood in the names of Shri Harkishan Singh Surjeet, Shri Viswanatha Menon, Shrimati Kanak Mukherjee, Prof. Sourendra Bhattacharjee, Shri Amar-prosad Chakrabarty, Shri Bhupesh .Gupta, Shri Kalyan Roy, Shri Bir Vandra Deb Burman, Shri Bhola .Prasad, Shri Lakshmana Mahapatra and Shri Mirasoli Maran.)

SHRI BHUPESH GUPTA: Sir, I move:

[Shri Bhupesh Gupta]

54. "That at page 10, line 43, for the words, 'six months' the words 'two months' be substituted."

55. "That at page 10, line 46, for the words 'six months' the words 'two months' be substituted."

56. "That at page 10, line 48, for the words 'six months' the words 'two months' be substituted."

57. "That at page 11, line 6, for the words 'one year' the words 'six months' be substituted."

(The amendments also stood in the names of Shri Kalyan R°V, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Maha-patro.)

The questions were proposed.

SHRI K. V. RAGHUNATHA REDDY: This is a matter relating to proclamation of President's rule in the States. Of all persons in the House, you will kindly pardon me if I say, you have got a very intimate knowledge of the way in which President's rule is promulgated in the States. This is an Article which had been put to a lot of misuse for purposes of settling political quarrels of political parties. Very often we also know that the so-called reports of Governors are written in Delhi, and not by Governors _____

AN HON MEMBER: Were you not a party to that?

SHRI K. V. RAGHUNATHA REDDY: I have some knowledge, I was not a party to it. Sir, you also know that whenever even the internal problems of a political party have to be settled, proclamation of President's rule is resorted to, instead of settling those problems of the political party internally. You are also fully aware, to illustrate my point, of how Governor's rule had been brought in Orissa, for instance. As you are aware, I happened to visit that State just before the Governor's rule was imposed there. I happened to meet the Governor in the

irjprning at his invitation. I asked the Governor as to what was all that about that was going on: Was there any real reason for the apprehension about the way in which the administration was going on there? Was there any cause for alarm? The Governor said, except some kind of certain administrative problems here and there in one or two districts, there was absolutely nothing; the Chief Minister enjoyed the confidence not only of the legislature but of her own legislature party. This was what the Governor told me. And a few days later instead of settling the internal problems of the party with the good offices of the political leadership, the Cabinet decided to introduce President's rule, and after the Cabinet decision had been taken, a message had been sent to the Chief Minister "either you resign or you will be dismissed, with all the consequences of a dismissal". Probably it was planned to take her to Rohtak. You know that famous Rohtak, you know why it is so famous. Rohtak is known to everybody, why it is famous in this context. Then, with regard to

MK Government: Not that the MK Government did not commit one of the things which they were accused of, but still the problem with the dismissal of the DMK Government as a political problem which has nothing to do with administration. Many accusations were levelled against the DMK Government in Tamil Nadu. It was dismissed as a result of the Emergency to which rather due to this Emergency provision to which the Janata Government has now become a party. This Emergency power was invoked and even some of our colleagues like Mr. Murasoli Maran were victims of that Emergency. Notwithstanding all this....

SHRI YOGENDRA MAKWAN (Gujarat): What were you doing in those days? Did you not have the courage to say this thing in those days? You could have resigned.

SHRI K. V. RAGHUNATHA REDDY: As I said the other day, we have been members of a community of sinners who are quite a number in this House. We had to fight against such tendencies in our own way. Now you have combined with the Janata Party. These twin brothers of right reaction are emerging hand in hand today and we have to fight this battle with our own technique without falling prey to the emergency provision.

Sir, the Chief Ministers were not safe and no State Government was safe and we all know how these provisions were implemented in those days when even the Cabinet was a captive Cabinet. Even the Parliament was captive in those days. ...

SHRI YOGENDRA MAKWANA: What prevented you from resigning?

SHRI KALP NATH RAI (Uttar Pradesh): Why did he not resign?

MR. CHAIRMAN: You ought to have asked him at that time, not now.

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

SHRI K. V. RAGHUNATHA REDDY: Sir, I do not want Governor's rule or President's rule in any State. But if it becomes inevitable and if it is considered necessary to have this provision, then it must be in a modified form. There must be an independent machinery to judge whether the Governor's report has been sent in good faith or it has been drafted in Delhi and sent to the Governor who is forced to sign it. I know of one of the Governors who paid glowing tributes the government of his State, but when he came here he made all sorts of malicious allegations against that State. This does not add to the dignity of the office of the Governor. This happened in the South. If that is the case there must be some kind of guarantee against the manipulation of Governors' reports. I am not in favour of the President's rule. But I recog-

nise that sometimes there may be some emergency situation in a particular State. If in such cases the President's rule is felt inevitable, then I have suggested an amendment saying that a judicial Commission consisting a Supreme Court Judge as its Chairman and two High Court Judges as the Members should visit that State, take evidence of people there including members of the legislature and submit a report to the President independently giving advice what the President must do. Then the President can exercise his discretion and revoke the President's rule in the State. This acts as a corrective against the Governors who write their reports at the behest of the Central Government. This may give some protection to Parliamentary Democracy and Party Governments especially in a federal structure. This is absolutely necessary. This is a simple amendment and I hope the House will appreciate this amendment and commend its acceptance.

SHRI HARKISHAN SINGH SUR-JEET: Since 1954, in the history of this country, article 356 has often been misused for narrow political ends of the Party ruling at the Centre whether it was PEPSU, Travancore-Cochin or any other State in this country. I hope everybody will agree on this. Wherever some disagreement was there in the past or some difficulty was there in any particular State, this article has been misused to see that the monopoly of power of the Party ruling at the Centre remains in tact and not broken. I do not know why the Janata Party required it. They have got their own problems, enough number of problems. Is it by using this article that they want to consolidate themselves? I think this article is unwarranted and the whole experience shows that even if it is one year, one year also plays disaster so far as the democratic functioning of the institutions are concerned. That is why I propose that they should accept this amendment and adhere to the princi-

[Shri Harkishan Singh Surjeet] pies which they have been advocating and they should see that this article completely goes away.

SHRI BHUPESH GUPTA: Naturally, Sir, it has been spoken upon. I am at least in agreement with the one amendment which wants the deletion of article 356. My second amendment comes later. If you delete this, then, Sir, Mr. Shanti Bhushan will not be troubled with my next amendment.

Sir, we are fully in favour of the deletion of article 356, that is, we are for the abolition of the provision in the Constitution which empowers the Central Government to intervene at will and to do away with the elected government and to impose what they call the President's Rule. Sir, we have at least in this House two former Chief Ministers and one of them is sitting here and the other is Mr. Kamlapati Tripathi.

SHRI K. V. RAGHUNATHA REDDY: The third one is there, Mr. Bhola Paswan Shastri.

SHRI BHUPESH GUPTA: But he is not a victim of this provision. Now, two former Chief Ministers are here. I know about it and I was here. Sir, here are the victims of inter-party manoeuvres and manipulations. Sir, Mr. Tripathi is not here now and I would like to say this in his presence. You know, in 1973, he suddenly resigned. What was that for? President's Rule came there. How? The Assembly was suspended and was not dissolved. The decision was taken in New Delhi in the Congress Party that Mr. Tripathi now the leader of the Congress(I) here, should be replaced by another leader of the UP Legislature Party, that is, another Chief Minister should be there. His friends were aware of it and everybody knew about it. Mr. Raghunatha Reddy, did you know it? You must have known this and everybody knew about it and it is an open secret. Everybody knew that plans were prepared to see that Mr. Tripathi was squeezed out. How?

Kamlapatiji was told, or his followers were told, "Better resign; otherwise. President's Rule is coming". And, Sir, the arrangement was that Mr. Kamlapati Tripathi would step down in favour of another Congressman and he would resign. Being a saintly man and not going in for trouble he thought it would be better to get out. So, he left and the President's Rule was imposed for some time.

SHRI G. LAKSHMANAN: He is coming now, Mr. Gupta.

SHRI BHUPESH GUPTA: Mr. Tripathi, I am saying that in this House itself we saw you were becoming a victim of article 356 and that victim happens to be the Leader of the Opposition here today. That is what I am saying.

SHRI KAMLAPATI TRIPATHI: Thank you very much.

SHRI BHUPESH GUPTA: I know you will not deny it.

SHRI P. RAMAMURTI: Where is the question of his denying it? He is thanking you.

SHRI BHUPESH GUPTA: I know why he is thanking me, because he cannot tell the truth, not that he is not a truthful man.

Now, Sir, I say that he was removed in the name of resignation which, just like emergency in the name of armed rebellion, was engineered. This is what I say. We all knew it. We knew that he was going and that the President's Rule was being planned in a particular Secretariat and that emissaries had been sent and later, Sir, our good friend: Shri Kamlapati Tripathi, went out. This is how the President's Rule came there. Who succeeded you as the Chief Minister there, Mr. Tripathi? Sir, the Assembly was suspended and not dissolved. He had a clear majority. He had a very clear majority in the UP Assembly and there was no manipulation to reduce his majority. Nothing was there.

So, they imposed the President's Rule. Was the President's Rule meant for the internal affairs of a political party. *t* Here is another example of Mr. Oza, Chief Minister...

SHRI GHANSHYAMBHAI OZA:
President's rule came long after I left.

SHRI BHUPESH GUPTA: Anyway, there is the example of Mrs. Nandini Satpathy. When some people demanded that Nandini Satpathy should go, telephone went: You resign, otherwise President's rule is coming. And then she had to resign, and the President's rule came and some arrangement was made, another Chief Minister was found. Well, within 13 days the President's rule was revoked there. So many examples are there. Fifty times President's rule had been imposed. If you examine them, on most occasions they had been imposed either for subverting democratic institutions or for handling internal circumstances of Congress Party. We became the first victim in Kerala. We had the majority—United Communist Party in 1957. In 1959 it was removed. Nothing could be done. President's rule came. We had the majority and they ordered President's rule by making some excuse of the vimochan struggle. In West Bengal, President's rule was imposed. Comrade Surjit said: We want to take the country out of the jungle. Now, how will you handle the situation. You can hold mid-term elections. Mr. Charan Singh has shown that when he wants he can hold elections—within 40 days. So the Government that is in power can function as a caretaker Government.

SHRI SUNDER SINGH BHANDARI: Not in the rainy season.

SHRI BHUPESH GUPTA: That is the period required for notification, for announcement. Therefore, it can be easily done. But that was not done. It all depends on how the ruling party behaves. In Madhya Pradesh, Mr. D. P. Mishra was a clever man. He was the 'Chanakya' of the Congress raj, he knew how to handle the situation. I can give many instances.

President's rule is a bogus method. I know he will give the argument; The Centre is there, there is to be unity of the country. But what about the States? Why only the "Centre"? What is wrong there?

Sir, about the Governor, the less said the better. Governor's institution should really go. Governor's are just the agents of the Centre. It is true. Charan Singh dispensed even with the Governor's report. Some of the reports used to be written in Delhi, signed by the Governor. They would send for the Governors to Delhi. Mr Charan Singh would say: I am satisfied, there must be President's rule. President's rule came by a stroke of pen in nine States. That is how it all happened. Therefore, I say that this is an antidemocratic arrangement. It does not conform to democratic standards. There are other countries also where, if then, is some constitutional difficulty, elections are held and the problem is settled that way, going to to the people and asking them.

8.00 P.M.

Sir, something has be done here. As long as the President's rule remains, the pressure of the Central Government on the State Governments will also remain and the Government of the State will be at the mercy of the Central Government. They misuse it. because the democle's sword of President's rule under one pretext or the other will always be available to the Central *Government*. They misuse it. They have misused it. Everybody knows it. Therefore, Sir, I think that our amendment is the most sensible amendment. Kamlapati Ji will not support it. What can I do? He is the biggest victim of it and still he will not support it.

(Interruptions)

SHRI KAMLAPATI TRIPATHI:
Everybody else joined the Janata *Government* except myself. I am here.

SHRI BHUPESH GUPTA: Kamlapati Ji, anyway I must say one thing. If President's rule had not been there.

[Shri Bhupesh Gupta] Kamlapati Ji would have never come to the Centre. Nobody would have found you on our side in the opposition. It has been a long-term gain. It was in 1973 and we gained you in 1977, after four years. I say, Sir, that this provision is a very bad provision. Sir, there are other things also. I will not seek division on them. But this is a very crucial provision. I say: Hands down with the President's rule and hands down with article 356.

SHRI MURASOLI MARAN: Sir, article 356 is a much misused article in our Constitution. Is antidemocratic and anti-federal. Sir, Mr. Raghunatha Reddy and Mr. Bhupesh Gupta were saying how the reports of the Governors were prepared. Sir, we have practical knowledge about it. When Mr. K. K. Shah was the Governor of Tamil Nadu, he was praising the then D.M.K. Government of the day at a function in the morning. But the President's rule was declared in the evening.

[Mr. Chairman in the Chair]

Perhaps he was not aware when he was praising the Government that at Delhi, in the Home Ministry, the report was being prepared. He was asked to sign a report for which he was not the author. That is how the reports were prepared. Sir, there is a word 'otherwise' in article 356. The Central Government does not believe the Governors also. Supposing the Governor is a conscientious man, then even without the Governor sending the report, the President can dismiss the Government. That is there. Cruel situation it is. We all know that it is borrowed, textually copied, from Section 93 of the 1935 Act. When there was interim Parliament and there was the Constituent Assembly, this section was not there in the 1935 Act as it was amended then. Later, when we became a republic and we had our own Constitution, this provision was transplanted. Sir, it is a pity that when the white Sahibs were there this section was there. Later

came the brown Sahibs. It was very useful for them. So, they are keeping it. I am sorry that even the Janata Government continues to have it. It means that there is a kind of imperialism going on here. That is why they want this provision for their exploitation. I am sorry, I cannot understand that the hon. Minister the other day said that even the President's rule is a kind of representative Government because it is governed by Parliament. I (cannot understand. If it were so, why are you going to award statehood to Delhi? It is against the federal concept. It is a pistol pointed at the States in order to blackmail them. If you believe in democracy, if you believe in federalism, then please take this article out of the Constitution.

SHRI SHANTI BHUSHAN: Sir, I do not have to say much on this clause. But I entirely agree with Shri Bhupesh Gupta that this provision has been very much misused in the past by the previous Government. Sir, we have a galaxy of victims even in this House. But, Sir..

SHRI A. R. ANTULAY: Sir, the hon. Law Minister went on the AIR to convince the people of India as to how the Government was right in dismissing all the State Governments. That was the biggest misuse.

SHRI KALP NATH RAI: That was the slaughter of democracy by you. You slaughtered democracy.

SHRI SHANTI BHUSHAN: Sir, I was¹ only wondering whether Shri Bhupesh Gupta did really try to analyse as to how it had become possible for a Government to misuse its powers under article 356. Sir, if he had been vigilant in regard to his parliamentary functions in checking the Government from doing a wrong thing. I am sure, he would have been able to prevent that Government from doing wrong things.

SHRI BHUPESH GUPTA: That is why I cannot prevent you now.

SHRI SHANTI BHUSHAN: No. You are not supporting us. You were supporting them. That was the trouble, [if you had really been checking them, perhaps, all that abuse would not have taken place. Sir, I have seen that he can check and check so strongly and valiantly that he is like a road-block and nothing can go through. So, Sir, when he had given up his function of that road-block, the speeding-cars, rash driving, etc. were allowed to take place without using his road-block. Then all that misuse occurred. Sir, now that the road-block is alive and kicking, no abuse is possible. And that is why we have made an attempt to impose restrictions, limitations on this power of imposing the President's Rule.

MR. CHAIRMAN: Now I put amendment No. 51 to vote.

SHRI P. RAMAMURTI: Sir, may I say one thing? You first put amendment No. 52 to vote because, if this amendment is passed, the other amendment does not arise. Therefore, Sir, you put this to vote.

MR. CHAIRMAN: I will put amendment No. 52 to vote.

The question is:

52. "That at pages 10 and 11, for clause 39, the following clause be substituted, namely:—

'39. Article 356 of the Constitution shall be omitted.' " *The House divided.* " "

MR. CHAIRMAN: Ayes—20; Noes—

162 AYES—20

Bhattacharjee, Prof. Sourendra
Bhola Prasad, Shri
Chakraborty, Shri Amarprosad
Deb Burman, Shri Bir Chandra
Gupta, Shri Bhupesh
Kumaran, Shri S.
Kunjachen, Shri P. K.
Lakshmanan, Shri G.

I Mahapatro, Shri Lakshmana
Maran, Shri Murasoli
Menon, Shri Viswanatha
Mukherjee, Shrimati Kanak
Pathak, Shri Ananda
Rajan, Shri Pattiam
Ramamurti, Shri P.
Roy, Shri Kalyan
Shahedullah, Shri Syed
Sharma, Shri Yogendra
Sinha, Shri Indradeep i Surjeet,
Shri Harkishan Singh

NOES—162

Adivarekar, Shrimati Sushila Shankar
Advani, Shri Lai K.
Alva, Shrimati Margaret
Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram
Anandam, Shri M.
Anjiah, Shri T.
Antulay, Shri A. R.
Arif, Shri Mohammed Usman
Aslhana, Shri K. B.
Bagaitkar, Shri Sadasiv
Baleshwar Dayal, Shri
Balram Das, Shri
Banerjee, Shri Jaharlal
Bansi Lai, Shri
Barman, Shri Prasenjit
Vasavaraj, Shri H. R.
Bhabhda, Shri Harishanker
Bhagat, Shri Ganapat Hiralal
Bhagwan Din, Shri
Bhandari, Shri Sunder Singh
Bhattacharya, Shri G. C.
Bhim Raj, Shri
Bose, Shrimati Pratima
Chandrasekhar, Shrimati Maragatham
Chatterjee, Shri Pranab
Chattopadhyaya, Prof. D. P.
Chaudhari, Shri N. P. Chaurasia,
Shri Shivdayal Singh
Das, Shri Bipinpal

Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhulap, Shri Krishnarao Narayan
 Dinesh Chandra, Shri Swami
 Dinesh Singh, Shri
 Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Habibullah, Shrimati Hamida
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannathrao
 Joshi, Shri Jagdish
 Joshi, Shri Krishnanand
 Joshi, Shrimati Kumudben Manishan-ker
 Kadershah, Shri M.
 Kakati, Shri Robin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Shrimati Ushi
 Khaparde, Shrimati Saroj
 Khobragade, Shri Bhaurao Devaji
 Krishnan, Shri M. R.
 Krishnan, Shri E. R'. Krishnan, Shri U.
 R. Kureel, Shri Piare Lall urf Piare
 Lall Talib Lakhan Singh,
 Shri Lokesh Chandra. Dr.
 Lotha, Shri Khyomo
 Madhavan, Shri K. K.

Mlahanti, Shri Bhairab Chandra
 MJihavir, Dr. Bhai
 Mkhida, Shri Harisinh Bhagubava
 Majhi, Shri Dhaneshwar
 Makwana, Shri Yogendra
 Maillick, Shri Harekrushna
 Mannar, Shri Bhagatram
 Myithur, Shri Jagdish Prasad
 Milurya, Shri Buddha Priya
 Mahrota, Shri Prakash
 Manon, Shrimati Leela Damodara
 Mi|shra, Shri Kalraj
 Mishra, Shri Mahendra Mohan
 Mittal, Shri Sat Paul
 Mdhanty, Shri Surendra
 Moainde, Kaur, Shrimati
 Mopdal, Shri Ahmad Hossain
 Moppanar, Shri G. K.
 Mofaka, Shri R. R.
 Muiherjee, Shri Pranab
 Mulhu, Dr. (Shrimati) Sathiavani
 Naiiiu, Shri N. P. Chengalraya
 Naic, Shri L. R.
 Narida, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Nizam-ud-Din, Shri Syed
 Oza Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Parl|bhu Singh, Shri
 Parikh, Prof. Ramlal
 PateL Shri Manubhai
 Patii, Shri Deorao
 Patt mayak, Shri Bhabani Charan
 Podilar, Shri R. K.
 Pradaan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Raju Shri V. B.
 Rameshwar Singh, Shri
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava
 Ratan Kumari, Shrimati

Ray, Shri Rabi Razack, Shrimati Noorjehan Reddy, Shri B. Satyanarayan Reddy, Shri Mulka Govinda Reddy, Shri R. Narasimha Roshan Lai, Shri Sahu, Shri Santosh Kumar Saleem, Shri Mohammad Yunus Samad, Shri Golandaz Mohammed-husian A.

Saring, Shri Leonard Solomon Sarup Singh, Dr. Satchidanda, Shri Schamnad, Shri Hamid Ali Sezhiyan, Shri Era Shahi, Shri Nageshwar Prasad Shanti Bhushan, Shri Sharma, Shri A jit Kumar Sharma, Shri Anant Prasad Sharma, Shri Kishan Lai Shastri, Shri Bhola Paswan Siddhu, Dr. M. M. S.

Singh, Shri Bhishma Narain Singh, Shri J. K. P. N. Singh, Shri Ng. Tompok Singh, Shrimati Pratibha Singh, Shri Shiva Nandan Sinha, Dr. Ramkripal Sisodia, Shri Sawaisingh Soni, Shrimati Ambika Suja Singh, Shri

Sultan, Shrimati Maimoona Sultan Singh, Shri Surendra Mohan, Shri Swu, Shri Scato Tama, Shri Ratan

Totu, Shri Gian Chand Triloki Singh, Shri Tripathi, Shri Kamlapati Vaishampayan, Shri S. K. Varma, Shri Mahadeo Prasad Venigalla Satyanarayana, Shri

Venka, Shri V.

Venkatarao, Shri Chandalavada Warjri, Shri Alexander Yadav, Shri Ramanand Yadav, Shri Shyam Lai *The motion was negatived.*

SHRI MOHAMMAD YUNUS SA-LEEM: We shall go for dinner, Sir. We are very hungry... (*Interruptions*).

MR. CHAIRMAN: Now, clause 39.

SHRI MOHAMMAD YUNUS SA-LEEM: We shall go for dinner and come back.

MR. CHAIRMAN: My request is that when the third reading starts, we can go and take food.

SOME HON. MEMBERS: No, No. . . . (*Interruptions*)

SHRI KAMLAPATI TRIPATHI: My request is, Sir, to continue it and finish it as early as possible. I request that Members may be requested not to make long speeches.

सदन के नेता (श्री लाल कृष्ण आडवाणी) :
सभापति जी, विरोधी दल के नेता ने जो सुझाव दिया है मैं भी उसका अनुमोदन करता हूँ और मैं निवेदन करूँगा कि जिस समय बर्ड रीडिंग, तीसरा वाचन शुरू हो उस समय हममें से कुछ लोग भोजन करने के लिए जा सकते हैं।

MR. CHAIRMAN: I now put amendment No. 51 by Shri K. V. Raghunatha Reddy to vote. The question is:

51. "That at pages 10 and 11, for clause 39, the following clause be sub-situated, namely:—

'39. In article 356 of the Constitution,—

(a) in clause (4),—

(i) for the words, brackets and figure 'one year from the date of the passing of the second of the resolution approving the Proclamation under clause (3)', the words "six months from the date of issue of the Proclamation" shall be substituted;

(ii) in the first proviso, for the words 'one year', the words "six months"* shall be substituted;

[Mr. Chairman]

(iii) in the second proviso, for the words "one year", the words "six months" shall be substituted;

(b) for clause (5J, the following-clause shall be substituted, namely:—

'(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of such Proclamation shall not be passed by either House of Parliament unless,—

(a) a Proclamation of Emergency is in operation, in the whole of India, or as the case may be, in the whole or any part of the State, at the time of the passing of such resolution;

(b) the Election Commission certifies that the continuance in force of the proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

(c) notwithstanding anything contained in this Constitution, if the President is satisfied, he may appoint a Judicial Commission consisting of three serving Judges, among whom one shall be the Judge of the Supreme Court, who shall be the Chairman of the Commission and two from among the Judges of the High Courts, to enquire and advise him whether the report of the Governor is made in good faith or the information received by him otherwise for his satisfaction is founded on sufficient evidence; and on the advice of the Commission, the President may revoke the Proclamation;

(d) the Judicial Commission shall submit its Report within a period of two months. The Judicial Commission, in expressing its view, shall consult the opinion of the

Members of the Legislative Assembly and/or the Members of the Legislative Council, as the case may be;

Oe) notwithstanding anything contained in the Constitution, no Assembly shall be dissolved before the expiry of a period of three months after the Proclamation under clause (D'I"

The motion was negatived.

MR. CHAIRMAN; Amendment No. 53 by Siiri Dhabe. He has not moved. Amendments Nos. 54 to 57 are by Shri Bhupesh Gupta.

SHRI BHUFESH GUPTA: Sir, I withdraw the amendments.

Amendments Nos. 54, 55, 56 and 57 were, by leave, withdrawn.*

MR. CHAIRMAN: The question is :

"That clause 39 stand part of the Bill."

The House divided.

MR. CHAIRMAN: Ayes—173; Noes —2.

AYES—173

Adivaresar, Shrimati Sushila Shankar

Advani, Shri Lai K.

Alva, Shrimati Margaret

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anandafn, Shri M.

Anjiah, Shri T.

Antulay, Shri A. R.

Arif, Shri Mohammed Usman

Asthantl Shri K. B.

Bagaitkar, Shri Sadasiv

Baleshwar Dayal, Shri

Balram Das, Shri

Banerje?, Shri B. N.

♦For text of amendments, vide cols. 23?) supra.

Banerjee, Shri Jaharlal Bansi Lai, Shri ' Barman, Shri Prasenjit Basavaraj, Shri H. R. Bhabhda, Shri Harishanker Bhagat, Shri Ganapat Hiralal Bhagwan Din, Shri Bhandari, Shri Sunder Singh Bhattacharya, Shri G. C. Bhim Raj, Shri Bose, Shrimati Pratima Chandrasekhar, Shrimati Maragatham Chatterjee, Shri Pranab Chattopadhyaya, Prof. D. P. Chaurasia, Shri Shivdayal Singh Das, Shri Bipinpal Desai, Shri R. M.

Deshmukh, Shri Bapuraoji Marotraoji Dhulap, Shri Krishnarao Narayan Dinesh Chandra, Shri Swami Dinesh Singh, Shri Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath

Gadgil, Shri Vithal

Goswami, Shri Dinesh

Goswami, Shri Sriman Prafulla

Gupta, Shri Gurudev

Gupta, Shri Ram Lakhan Prasad

Habibullah, Shrimati Hamida

Hegde, Shri Ramakrishna

Imam, Shrimati Aziza

Jagbir Singh, Shri

Jain, Shri Dharamchand

Jamuna Devi, Shrimati

Janardhanam, Shri A. P.

Jha, Shri Kamalnath

Jha, Shri Shiva Chandra

Joshi, Shri Jagannathrao

Joshi, Shri Jagdish

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudbhen Mani-

shanker Kadershah, Shri

M. Kakati, Shri Robin

1134 RS—9.

Kalaniya, Shri Ibrahim Kamble, Prof. N. M. Kameshwar Singh, Shri Kesri, Shri Sitaram Khan, Shri Ghayoor AH Khan, Shri Khurshed Alam Khan, Shri Maqsood Ali Khan, Shrimati Ushi Khaparde, Shrimati Saroj Khobragade, Shri Bhaurao Devaji Krishna, Shri M. R. Krishnan, Shri E. R. Krishnan, Shri U. R.

Kureel, Shri Piare Lall *urf* Piare Lall

Talib Lakhan Singh, Shri Lakshmanan, Shri G. Lokesh Chandra, Dr. Lotha, Shri Khyomo Madhavan, Shri K. K. Mahanti, Shri Bhairab Chandra Mahavir, Dr. Bhai Mahida, Shri Harisinh Bhagubava Majhi, Shri Dhaneswar Makwarta, Shri Yogendra Mallick, Shri Harekrushna Manhar, Shri Bhagatram Maran, Shri Murasoli Mathur, Shri Jagdish Prasad Maurya, Shri Buddha Priya Mehrotra, Shri Prakash Menon, Shrimati Lee] a Damodara Menon, Shri Viswanatha Mishra, Shri Kalraj Mishra, Shri Mahendra Mohan Mittal, Shri Sat Paul Mohanty, Shri Surendra Mohinder Kaur, Shrimati Mondal, Shri Ahmad Hossain Moopnar, Shri G. K. Morarka, Shri R. R. Mukherjee, Shrimati Kanak Mukherjee, Shri Pranab Munusamy, Shri V. P.

Muthu, Dr. (Shrimati)- Sathiavani
 Naidu, Shri N. P. Chengalraya
 Naik, Shri L. R.
 Nanda, Shri Narasmgha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Nizam-ud-Din, Shri Syed
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Pathak, Shri Ananda
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Raju, Shri V. B.
 Ramamurti, Shri P.
 Rameshwar Singh, Shri
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava
 Ratan Kumari, Shrimati
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha
 Roshan Lai, Shri
 Sahu, Shri Santosh Kumar
 Saleem, Shri Mohammad Yunus
 Samad, Shri Golandaz Mohammed-
 husian A. Saring, Shri Leonard
 Solomon Sarup Singh, Dr.
 Satchidananda, Shri Schamnad, Shri
 Hamid Ali Sezhiyan, Shri Era
 Shahedullah, Shri Syed Shahi, Shri
 Nageshwar Prasad Shantl Bhushan, Shri

Sharma, Shri Ajit Kumar
 Sharna, Shri Anant Prasad
 Sharna, Shri Kishan Lai
 Shas;ri, Shri Bhola Paswan
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shri J. K. P. N.
 Singh, Shri Ng. Tompok
 Singh Shrimati Pratibha
 Singh, Shri Shiva Nandan
 Sinha, Dr. Ramkripal
 Sisod.a, Shri Sawaisingh
 Soni, Shrimati Ambika
 Sujar Singh. Shri
 Sultai, Shrimati Maimoona
 Sultan Singh, Shri
 Suren dra Mohan, Shri
 Swu, Shri Scato
 Tama, Shri Ratan
 Tctu, Shri Gian Chand
 Trilohi Singh, Shri
 Tripa hi, Shri Kamlapati
 Vaish impayen, Shri S. K.
 Varmii, Shri Mahadeo Prasad
 Venigilla Satyanarayana, Shri
 Venka, Shri V.
 Venkatrao, Shri Chadalavada
 Warjr , Shri Alexander
 Yadav, Shri Ramanand
 Yadav, Shri Shyam Lai

NOES—2

Bhattacharjee, Prof. Sourendra
 Chakraborty, Shri Amarprosad

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present ai-d voting.

Clause 40—Amendment of article 358

MR. CHAIRMAN. We shall now take up clause 40. There is one amendment, amendment No. 58 by Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I beg to move:

58. "That at page 11, for clause 40, the following clause be substituted, namely:—

'40. Article 358 of the Constitution shall be omitted'."

[The amendment also stood in the names of Shri Kalyan Roy, Shri Bir 'Chandra Deb Burman, Shri Bhola Prasad, Shri Lakshmana Mahapatro, Shri P. Ramamurti, Shri Harkishan Singh Surjeet, Shri Viswanatha Menon, Shrimati Kanak Mukherjee, Prof. Souren-dra Bhattacharjee and Shri Amarpro-sad Chakraborty.]

Sir, I do not wish to make any speech. These are deletions. These are omissions. You can put it to vote. Voice vote will be sufficient.

The question was proposed.

MR. CHAIRMAN: The question is:

58. "That at page 11, for clause 40, the following clause be substituted, namely:—

'40. Article 358 of the Constitution shall be omitted'."

The motion was negated.

Clause 41—Amendment of article 359

MR. CHAIRMAN: We shall now take up clause 41. There is one amendment, amendment No. 59 by Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA; Sir, I beg to move:

59. "That at pages 11 and 12, for clause 41, the following clause be substituted, namely:—

'41. Article 359 of the Constitution shall be omitted'."

[The amendment also stood in the names of Shri Kalyan Roy, Shri Bir 'Chandra Deb Burman, Shri Bhola Prasad, Shri Lakshmana Mahapatro, Shri P. Ramamurti, Shri Harkishan Singh Surjeet, Shri Viswanatha Menon, Shrimati Kanak Mukherjee, Prof. Souren-dra Bhattacharjee and Shri Amarpro-sad Chakraborty.]

The question was proposed.

Sir, this is another Emergency clause which should go.

MR. CHAIRMAN: The question is:

59. "That at pages 11 and 12, for clause 41, the following clause be substituted, namely:—

'41. Article 359 of the Constitution shall be omitted'." *The motion was negated.*

Clause 42—Amendment of article 368

MR. CHAIRMAN: We shall now take up clause

42. There is one amendment, amendment No. 60 by Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA; Sir, I beg to move:

60. "That at page 12, for clause 42, the following clause be substituted, namely:—

'42. Article 360 of the Constitution shall be omitted'."

Chandra Deb Burman, Shri Bhola Prasad, Shri Lakshmana Mahapatro, Shri P. Ramamurti, Shri Harkishan Singh Surjit, Shri Viswanatha Menon, Shrimati Kanak Mukherjee, Prof. Sourendra Bhattacharjee and Shri Amarprosad Chakraborty.]

1 [The amendment also stood in the names of Shri Kalyan Roy, Shri Bir

Sir, this is the last of the Emergency clauses which should also go.

The question was proposed.

MR. CHAIRMAN: The question is:

60. "That at page 12, for clause 42, the following clause shall be substituted, namely:—

'42. Article 360 of the Constitution shall be omitted'." *The motion was negated.*

MR. CHAIRMAN: Now, clause 43. There are no amendments.

Clause. 44:—Amendment of article 366

SHRI S. K. VAISHAMPAYEN: Sir, I do not move my Amendment No. 61.

PROF. SOURENDRA BHATTACHARJEE: Sir, I move:

62. "That at page 13, lines 6 and 7, for the words 'in which there is equal respect for all religions; and',

[Prof. Sourendra Bhattacharjee]

the words 'in which the State administration as such is not identified with any particular religions denomination and there is equal respect for all religions; and' be substituted."

69. "That at page 13, line 10, after the words 'political and economic', the words 'and in which there is public social ownership of all means of production, distribution and exchange through the State and through cooperative or collective forms of social organisation' be inserted."

'(The amendments also stood in the name of Shri Amarprosad Chakra-borty)

SHRI BHUPESH GUPTA; Sir, I move:

63. "That at page 13, lines 6 and 7, for the words 'there is equal respect for all religions; and' the words 'all citizens irrespective of their religious beliefs or not shall have equal rights and opportunities; and' be substituted."

66. "That at page 13, for lines 8 to 10, the following be substituted, namely: —

'(2) the expression "REPUBLIC" as qualified by the expression "SOCIALIST" means a republic in which there shall be social ownership of all means of production, distribution and exchange, and there shall be freedom from all forms of exploitation, social, political and economic'."

(The amendments also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Mahapatra.)

SHRI SYED SHAHEBULLAH (West Bengal); Sir, I move:

64. "That at page 13, lines 6-7, for the words 'there is equal respect for all religions', the words 'there is equal respect for right to belief in, and practice of, any religion, and freedom to pursue one's faith' be substituted."

{The amendment also stood in filename of Shri Nageshwar Prasad Shahi)

SHRI VTURASOLI MARAN: Sir, I move:

65. "That at page 13, line 7, after the word 'and' the words 'a republic which shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, where neither any religious test shall be required as a qualification for any office nor any discrimination shall be made on grounds of religion and' be inserted."

SHRI [C. V. RAGHUNATHA REDDY : Sir I move :

67. "That at page 13, for lines 8 to 10, the following be substituted, namely: —

'(2) The expression 'REPUBLIC' as qualified by the expression 'SOCIALIST' means a Republic in which the means of production and distribution and financial institutions are owned and controlled by the State, and all forms of exploitation, social, political and economic for private benefit are eliminated and a society based on the principles of scientific socialism is created'."

(The amendment also stood in the name of Shri Mulka Govinda Reddy.)

SHRI P. RAMAMURTI: Sir, I move:

68. "That at page 13, line 10, after the words 'political and economic' the words 'and in which there is public ownership of all means of production, distribution and exchange' be inserted."

(The amendment also stood in the names of Shri Harkishan Singh Surjeet, Shri Viswanatha Menon and Shrimati Kanak Mukherjee).

The questions were put and the motions were negatived.

MR. CHAIRMAN: The question is:

"That clause 44 stand part of the Bill."

The House divided.

MR. CHAIRMAN: Ayes—86; Noes— 198.

AYES.—86 Advani, Shri

Lai K. Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri Bhabhda, Shri Harishanker Bhagat, Shri Ganapat Hiralal Bhandari, Shri Sunder Singh Bhattacharjee, Prof. Scurendra Bhattacharya, Shri G. C. Chakraborty, Shri Amarprosad Chatterjee, Shri Pranab Chaurasia, Shri Shivdayal Singh Dinesh Singh, Shri Gupta, Shri Ram Lakhan Prasad Hegde, Shri Ramakrishna Jagbir Singh, Shri Jain, Shri Dharamchand Jamuna Devi, Shrimati Janardhanam, Shri A. P. Jha, Shri Shiva Chandra Joshi, Shri Jagannath Rao Joshi, Shri Jagdish Kadershah, Shri M. Kakati, Shri Robin Khan, Shri Ghayoor Ali Khobragade, Shri Bhaurao Devaji Krishna, Shri M. R. Krishnan, Shri E. R. Krishnan, Shri U. R. Kunjachen, Shri P. K. Lakhan Singh, Shri Lakshmanan, Shri G. Lot ha, Shri Khyotno Mahanti, Shri Bhairab Chandra Mahavir, Dr. Bhai Majhi, Shri Dhaneswar Mallick, Shri Harekrushna Maran, Shri Murasoli Mathur, Shri Jagdisn Prasad Menon, Shri Viswanatha Mishra, Shri Kalraj Mohanty, Shri Surendra Mohinder Kaur, Shrirr.Eiti

Morarka, Shri R- R- Mukherjee, Shrimati Kanak Munusamy, Shri V. P. Muthu, Dr. (Shrimati) Sathiavahi Naidu, Shri N. P, Chsngalraya Narendra Singh, Shri Nigam, Shri Ladli Mohan Nizam-ud-D,in, Shri Syed. Oza, Shri Ghanshyambhai Parbhu Singh, Shri Paril^i, Prof. Ramlal Patel, Shri Manubhai Pathak, Shri Ananda Pattanayak, Shri Bhabari Charaa Poddar, Shri R. K. Pradhan, Shri Patitpaban Prem Manohar, Shri Raj an, Shri Pattiam Rameshwar Singh, Shri Ray, Shri Rabi Razack, Shrimati Noorjehan Reddy, Shri B. Satyanarayan Reddy, Shri R. Narasimha Samad, Shri Golandaz Mohammedhu-sian A. Saring, Shri Leonard Solomon Sarup Singh, Dr. Schamnad, Shri Hamid Ali Sezhiyan, Shri Era Shahi, Shri Nageshwar Prasad Shanti Bhushan, Shri Sharma, Shri Ajit Kumar Siddhu, Dr. M. M. S, Singh, Shri J. K. P. N. Singh, Shri Ng. Tompok Singh, Shri Shiva Nar.dan Sinha, Dr. Ramkripal Sujan Singh, Shri Surendra Mohan, Shri Swu, Shri Scato Tama, Shri Ratan Varma, Shri Mahadeo Prasat Venka, Shri V. Warjri, Shri Alexander

NOES—88

Adivareloar, Shrimati Sushila

Shankar Alva, Shrimati Margaret Amarjit Kaur, Shrimati Amla, Shri Tirath Ram Anandam, Shri M. Anjiah, Shri T. Antulay, Shri A. R. Arif, Shri Mohammed Usman Balram Das, Shri Banerjee, Shri Jaharlal Bansi Lai, Shri Barman, Shri Prasenjit Basavaraj, Shri H. R. Bhagwan Din, Shri Bhim Raj, Shri Bhola Prasad, Shri Bose, Shrimati Pratima Chandrasekher, Shrimati Maragatham Chattopadhyaya, Prof. D. P. Chaudhari, Shri N. P. Das, Shri Bipinpal Deb Burman, Shri Bir Chandra Desai, Shri R. M. Deshmukh, Shri Bapuraoji Marotraoji Dhulap, Shri Krishnarao Narayan Dinesh Chandra, Shri Swami

Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath

Gadgil, Shri Vithal

Goswami, Shri Dinesh

Goswami, Shri Sriman Prafulla

Gupta, Shri Bhupesh

Gupta, Shri Gurudev

Habibullah, Shrimati Hamida

Imam, Shrimati Aziza

Jha, Shri Kamalnath

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudben Manishan-

ker Kalaniya, Shri Ibrahim

Kamble, Prof. N. M. Kameshwar

Singh, Shri Kesri, Shri Sitaram

Khan, Shri Khurshed Alam Khan,

Shri Maqsood Ali Khan, Shrimati

Ushi

Khaparde, Shrimati Saroj

Kumaran, Shri S.

Kureel, Sri Piar, Lall urf Piare LalL Talib

Lokesh Chandra, Dr.

Madhavm, Shri K. K.

Mahapalro, Shri Lakshmana

Mahida, Shri Harisinh Bhagubava

Makwana, Shri Yogendra

Manher, Shri Bhag-atram

Maurya Shri Buddha Priya

Mehrotia, Shri Prakash

Menon, Shrimati Leela Damodara.

Mishra, Shri Mahendra Mohan

Mittal, Shri Sat Paul

Mondal, Shri Ahmad Hossain

Moopnar, Shri G. K.

Mukherjee, Shri Pranab Naidu, Shri

N. P. Chengalraya

Naik, Siri L. R.

Pande, Shri Bishambhar Natb

Patil, Siri Deorao Rai,

Shri Kalp Nath

Raju, Siri V. B

Ranga Prof. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati

Reddy, Shri K. V. Raghunatho

Reddy, Shri Mulka Govinda

Roshan Lai, Shri

Roy, Shri Kalyan

Sahu, Siri Santosh Kumar

Saleem, Shri Mohammad Yunus

Satchide nanda, Shri

Shahedtlah, Shri Syed

Sharma, Shri Anant Prasad

Sharma, Shri Kishan Lai

Sharma, Shri Yogendra Shastri,

Shri Bhola Paswan Singh, Shri

Bhishma Narain Singh, Shrimati

Pratibha Sinha, Shri indradeep

Sisodia, Shri Sawaisingh Soni,

Shrimati Ambika Sultan, Shrimati

Maimoona Sultan Singh, Shri Totu,

Shri Gian Chand Triloki Singh, Shri

Tripath, Shri Kamlapati

Vaishampayan, Shri S K. Venigalla
Satyanarayana, Shri Venkatrao, Shri
Chadalavada Verma, Shri Shrikant Yadav,
Shri Ramanand Yadav, Shri Shyam Lai
Zakaria, Dr. Rafiq

The motion was not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 45.—Amendment of article 368

SHRI B. N. BANERJEE: It appears that both the Congress Parties will turn down this clause. Therefore, what is the need of wasting the time of the House by moving the amendments?

SHRI BHUPESH GUPTA: No, that we cannot accept.

SHRI K. V. RAGHUNATHA REDDY: Sir, I move;

71. "That at page 13, for lines 17 and 18, the following be substituted, namely: —

'(i) impairing the secular, demo
cratic or socialist character of the
Constitution or any of the objec
tives of the Preamble'."

75. "That at page 13, for lines 19 and 20, the following be substituted, namely: —

'(ii) abridging or taking away the rights of citizens under Part III, except right to practise any profession or to carry on any occupation, trade or business, occurring in clause (g), of Article 19 for achieving any of the objectives mentioned in the Preamble or Directive Principles or for strengthening secular, democratic and socialist character of the Republic'."

80. "That at page 13, after line 25, the following be inserted, namely: —

'(v) altering the parliamentary system as contained in the Constitution and the responsibility of the

Council of Ministers to the Parliament and the multiple political party system'."

(The amendments also stood in the name of Shri Mulka Govinda Reddy)

MR. CHAIRMAN: Amendments Nos. 72, 85 and 88—not moved.

SHRI P. RAMAMURTI: Sir, I move:

73. "That at page 13, line 17 after the word 'democratic' the words 'or federal' be inserted."

(The amendment also stood in the names of Shri Harkishan Singh Surjeet, Shri Viswanatha Menon, Shrimati Kanak Mauherjee, and Shri Murali Maran) The question was proposed SHRI DINESH GOSWAMI: Sir, I move:

74. "That at page 13, line 17, before the word 'secular' the words 'socialist or' be inserted."

(The amendment also stood in the names of Shri Devendra Nath Dwivedi and Shrimati Ambika Soni)

76. "That at page 13, after line 23, the following be inserted, namely: —

'(iii) compromising the egalitarian character of this constitution; or'."

SHRI DEVENDRA NATH DWIVEDI: Sir, I move:

77. "That at page 13, line 24, after the word 'judiciary' the words 'and power of judicial review' be inserted."

78. "That at page 13, after line 25, the following be inserted, namely: —

'(v) changing the Parliamentary system of Government; or

'(vi) changing the basis of Federalism; or*.

(The amendments also stood in the name of Shrimati Ambika Soni)

SHRI P. RAMAMURTI: Sir, I move:

79. "That at page 13, after line 25, the following be inserted, namely: —

[Shri P. Ramamurti]

'(v) altering or impairing or affecting or abrogating the Parliamentary and Republican system of Government under this Constitution; or

(vi) affecting or abrogating the principle of collective responsibility of the Council of Ministers to the House of the People; or'."

(The amendment also stood in the names of Shri Harkishan Singh Surjeet, Shri Viswanatha Menon and Shrimati Kanak Mukherjee.)

SHRI BHUPESH GUPTA: Sir, I move.

81. "That at page 13, after line 25, the following be inserted, namely:—

'(V) imparting or weakening in any manner the Cabinet-responsible Parliamentary system under this Constitution; or

(vi) impairing or weakening the principle of collective responsibility of the Council of Ministers to the House of the People; or'."

(The amendment also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad and Shri Lakshmana Mahapatra.)

MR. CHAIRMAN: Amendments Nos. 82 and 83—not moved.

SHRI MURASOLI MARAN: Sir I move:

84. "That at page 13,—

(i) in line 40, after the word 'poll' the words 'in each State' be inserted; and

(ii) in line 42, after the word 'poll' the words 'in each State' be inserted."

SHRI B. N. BANERJEE: I am not moving amendment No. 86. Sir, I move only amendment No. 87.

87. "That at page 14, after line 4, the following be inserted, namely—

'(7) An amendment of the Constitution approved by the People of India at a referendum under clause (4) and made in accordance with the other provisions of this article shall not be called in question in any court.'

cordance with the other provisions of this article shall not be called in question in any court.'

I reserve my right to speak on my amendment No. 87.

The questions were proposed.

SHRI K. V. RAGHUNATHA REEDY: I fully appreciate the feelings of my colleagues here.

MR. CHAIRMAN: The reporters are not hearing anything. Order please. They cannot take down. Order please.

SHRI K. V. RAGHUNATHA REEDY: MR. Chairman, Sir, *(Interruption)* If you do not want to hear my speech I can stop—this clause goes to the basic problem of the Indian Constitution and some of the basic features of the Indian Constitution for the purpose of protecting a democratic institution and also not to allow any change in the objectives mentioned in the preamble of the Constitution and the parliamentary system and the Cabinet system sought in the Preamble by any Constitutional amendment. For that there must be some guarantee. And that guarantee can only be the people of India.

We have seen in recent years how the Constitution has been amended, sometimes rightly, sometimes wrongly, very often wrongly, and the only way in which this malpractice can be prevented is to go back to the people of India as the Preamble itself says:—"We, THE PEOPLE OF INDIA

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

I note the Parliament that has given a Constitution, but it is the people of India who have given the Constitution to themselves. And if the people of India are not supreme and if sovereignty does not rest in the people of India what is the use of a Parliament and, therefore, the Parliament cannot be accepted by the people. Therefore, ultimately, it is the people who will have to decide in what manner the basic features of the

Constitution have to be adopted. The Parliament cannot do so. Therefore, Sir, as an additional guarantee, apart from the provisions that are contained in the Constitution, there are basic matter- considered in the democratic institutions such as democratic processes, the character of the country's economy. The Parliament itself is the creature of this Constitution. If the Parliament has got the right to dissolve itself, the Parliament has got the right to demolish itself within the framework of the Constitution and the people would not tolerate such a situation. If a mad person comes to power and wants to demolish the political system and the Cabinet, the Government and the responsibility of the Cabinet to this Parliament and the very democratic institution called Parliament itself, in such a case if the Parliament becomes a captive Parliament and becomes a victim of such a manipulation, then the people of India alone can be a guarantee to save such a situation under such circumstances. I do not suggest that for all the procedural matters the Parliament must go to the people. But on all basic matters Parliament must go to the people for their sanction. Therefore, the sovereignty rests with the people and they must give the sanction before a drastic change is made in the Constitution. This will be additional guarantee so that any mad man does not run amuck as far as the Constitution is concerned. Therefore, I whole-heartedly support the referendum clause.

It has been said that it is very difficult to have referendum in this country. If a turbulent country like Italy can have referendum in certain matters and if the people can exercise their vote and decide the fate of the Government and the Parliament, it is impossible to imagine, rather farcical to imagine, that the people of India cannot take a wise decision on matters concerning them in all basic matters regarding the Constitution.

SHRI P. RAMAMURTI: Sir, I do not want to argue the question. I have argued enough... (*Interruption*) I have got a right to speak. I do not want to argue this question. I have already talked about it yesterday. The only point that I want to make is that it is a very unfortunate position that in the consultations which took place between the leaders of all the parties— at that time the Congress Party was a united party; it was represented by Shri Kamalapati Tripathi, by Mr. Chavan and Dr. Syed Ahmad. All the three of them were present—after a good deal of discussion we persuaded them to accept the position. And after having accepted they did not raise the question again. They could have called a meeting and said that they had no second thoughts. They never did such a thing. This is the way in which this party has behaved. Therefore, whether any trust can be placed in that party which does not honour its own thing is a thing to be considered.

(Interruptions)

SHRI B. N. BANERJEE: Sir, my amendment is very simple. I have said that when you are associating the people with the Constitutional amendment process, you have my support. But I insist on the amendment because my support is conditional on the acceptance of this amendment, namely, that an amendment of the Constitution approved by the people of India at a referendum and made in accordance with the provisions of the article shall not be questioned in any court of law. Sir, I want our honesty to be tested, whether we consider the wisdom of the court superior to the wisdom of Parliament—and ratified by the State Legislatures and approved by the people, whom we are supposed to represent; and we loudly say that the sovereignty rests with the people. Sir, I do not accept the statement of the Law Minister that this is implicit in the article. Sir, we are not fools.

श्री कल्प नाथ राय : सभापति महोदय हमें एक बात कहनी है। वन मिनट। श्री राममूर्ति जी ने कहा है कि कांग्रेस पार्टी ने उस समय

[श्री कल्प नाथ राय]

समर्पण किया। मैं बताना चाहता हूँ कि जनरल कांग्रेस ने इस बात को नहीं माना है और फिर क्यों पिछली बातें करते हैं। सभी पी० राममूर्ति की पार्टी ने इस भ्रष्टाचार के मामले में समर्थन किया था हम लोगों का और फिर दो दिन के बाद जनता पार्टी के जमचे बनकर उधर मिल गये और भ्रष्टाचार की जांच नहीं हो सकी।

श्री कमला पति जिषाठी : श्रीमन्, राममूर्ति जी ने कुछ बातें कही हैं। उनको पता नहीं है कि इस बात का कि कांग्रेस में इस पर काफी बड़ा विरोध रहा है। हमारी पार्टी में, बकिंग कमेटी में इस पर काफी बहस हुई है। हममें बहुत से लोग रीफरेंडम के खिलाफ थे। अब भी जो कांग्रेस एस है उसमें बहुत से लोग, मान्यवर, रीफरेंडम के खिलाफ हैं। बहुत से लोग पक्ष में हैं जैसे रचनाय रेडी पक्ष में हैं और बहुत से लोग खिलाफ हैं। हम लोग इसके खिलाफ थे और हमारी पार्टी घलग हुई। तब हमने निश्चित किया कि हम मुखालफत करेंगे, हमने मुखालफत की। मुझे खेद है कि इस बात का कि राममूर्ति जैसे सैनियर आदमी इस तरह का आक्षेप, इतनी बड़ी पार्टी के ऊपर लगाते हैं, जिसका कि प्रमुख रोल विरोधी दल में है। हम बैठे हुए हैं और यह गलत बातें कहते हैं।

SHRI BHUPESH GUPTA: Sir, I do not wish to go into the details. The only thing is that, while supporting referendum, I want to lay stress on the fact that the Cabinet-cwm-Parliamentary system should also be covered under it. That is my amendment. And the principle of collective responsibility of the Council of Ministers to the House of the People, should also be enshrined as one issue on which referendum will have to be sought. These are the two things. As far as the other things are concerned, I do not wish to say much. I would not enter into any controversy. The only thing I can say is that the referendum item was written by Shri Y. B. Chavan in his own hand-writing—those are past things—to the Prime Minister at the meeting with the Opposition leaders. We thought that we had come to an agreement. But people are liable to change their views. They changed their views. Let us take it as it is. But, Sir, I would like the Government to accept the Cabinet-cwm-Parliamentary system as a point of referendum like the question of secular and democratic character of the State. Sir, in Ceylon,

changes have taken place suddenly—from the Parliamentary system to the Presidential system. Here everybody knows that there are people in the Government who stand for the Presidential system. Mr. Charan Singh, even after becoming the Minister, gave an interview and told that he preferred the presidential system. Mrs. J. Chandrawati, the Janata Party leader, made a public statement that she wants the presidential system. We want protection. We want Parliament-cum-Cabinet system to be protected, and also we want collective responsibility of the Council of Ministers to the House of the People protected.

SHRI MURASOLI MARAN: My amendment is to make the amendment process rigid by making every State to have a say in this process. According to my amendment, the referendum should have a majority in every one of the States. That means, a Muslim majority State like Jammu & Kashmir can repel an imposition of the religion of the majority of the States of India. In the same way, Sir, a State like Tamil Nadu can repel the measures to impose Hindi language. That is why, Sir, according to that principle, I want to give a veto power to every one of the States. Then only you can clear the doubts and fears of the South Indians.

SHRI DINESH GOSWAMI: Mr. Ramajmurti made a point regarding the stand taken by my party during the consultation. It is not a very healthy precedent to bring to the notice of the House the discussions that took place outside. Mr. Chavan is not a Member of this House. It is improper on his part to take the name of Mr. Chavan. His party could have raised it in the other House; and Mr. Chavan could have replied to the point.

So far as our party is concerned, this question of referendum was discussed threadbare in the working committee, in the executive committee and in the general body, and then we went with a proposal to the GOT-

srnment asking it to delink the question of referendum from this Bill, iind after delinking it, to bring a separate Bill, many of the lacunae to which Members have expressed their views. Therefore, Sir, I think, on behalf of my party I should set the record straight. I have pointed out various lacunae. The Janata Party considers that if the secularism and the democratic characters are impaired, there should be a referendum, and if the socialist character is impaired, they are not for a referendum. My point is that the egalitarian character of the Constitution in the present context of the Indian economy, with 80 per cent of the people living below the poverty line, the most important concept, the most important criteria to ask for a referen- j dum, and the thing which should be safeguarded is that no Government can touch the egalitarian character of the Constitution. Sir, we also have technical difficulties. I am not going into the details. Mr. Shanti Bhushan knows that the eminent jurist, Justice Mathews, has written an article in Hindi where he has shown the entire falacy oi the amendment Shri Shanti Bhushan has brought before the House. As time does not permit; I «m not going for a detailed discussion on it. I thought that I should say this to put the record straight.

SHRI SHANTI BHUSHAN.- I have nothing to say because I have already said enough so far as this question of referendum is concerned,

MR. CHAIRMAN: The question is:

71. "That at page 13, for lines 17 and 18, the following be substituted, namely:—

"(i) impairing the secular, democratic or socialist character of the Constitution or any of the objectives of the Preamble'."

75. "That at page 13, for lines 19 and 20, the following be substituted, namely:—

'(ii) abridging or taking away the rights of citizen* under I

Part HI, except right to practise^ any profession or to carry on any occupation, trade or business, occurring in clause (g), of Article 19 for achieving any of the objectives mentioned in the secular, democratic and socialist character of the Republic'."

80. "That at page i3, after line 25, the following be inserted, namely: —

*(v) altering the parliamentary system as contained in the Constitution and the responsibility of the Council of Ministers to the Parliament and the multiple political party system'."

The motions were negatived.

MR. CHAIRMAN: The question is:

73. "That at page i3, line 17, after the word 'democratic' the words 'or federal' be inserted."

The motion was negatived.

MR. CHAIRMAN: The question is:

74. "That at page 13, line 17, before the word 'secular' the words 'socialist or be inserted."

76. "That at page 13, after line 23, the following be inserted, namely: —

'(iia) compromising the egalitarian character of this Constitution; or'."

The motions were negatived. MR.

CHAIRMAN: The question is:

77. "That at page 13, line 24, after the word 'judiciary' the words 'and power of judicial review' be inserted."

78. "That at page 13, after line 25, the following be inserted, namely:—

'(v) changing the Parliamentary system of Government; or

'(vi) changing the basis or Federalism; or'."

The motions were negatived.

MR. CHAIRMAN: The question is:

79. "That at page 13, after line 25, the following be inserted, namely: —

'(v) altering or impairing or affecting or abrogating the Parliamentary and Republican system of Government under this Constitution; or

(vi) affecting or abrogating the principle of collective responsibility of the Council of Ministers to the House of the People; or"

The motions were negatived.

MR. CHAIRMAN: The question is:

81. "That at page 13, after line 25 the following be inserted, namely: —

'(v) impairing or weakening in any manner the Cabinet-aim-Parliamentary system under this Constitution; or

(vi) impairing or weakening the principle of collective responsibility of the Council of Ministers to the House of the People; or"

The motion was negatived.

MR. CHAIRMAN: The question is:

84. "That at page 13,—

(i) in line 40, after the words 'poll' the words 'in each State' be inserted; and

(ii) in line 42, after the word 'poll' the words 'in each State' be inserted,"

The motion was negatived.

MR. CHAIRMAN: Amendment No 87. Mr. Banerjee, are you press-ing it?

SHRI B. N. BANERJEE: Yes.

MR. CHAIRMAN: The question is:

87. "That at page 14, after line 4, the following be inserted, namely: —

'(7) An amendment of the Constitution approved by the People of India at a referendum under clause (4) and made in

accordance with the other provisions of this article shall be called in question in a court "

Those in favour may please say "Aye".

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Those against may please say "No".

SOME HON. MEMBERS: No.

MR. CHAIRMAN: I think that "Noes" have it...

SHRI B. N. BANERJEE: The "Ayes" have it. I want a division Sir, even one Member is entitled to call for a division and you will have to order a division. Let me see how many respect the judgment of the people, how many respect the wisdom of the people. And let it be recorded.

MR. CHAIRMAN: Mr. Banerjee, now the slight difficulty is, the machine...

SHRI B. N. BANERJEE: I know it. I want to have it recorded as to how many believe in the wisdom of the court in preference to the wishes of the people.

MR. CHAIRMAN: I will take voice vote.

SHRI B. N. BANERJEE: I press for a division. You have to order a division under the rules.

MR. CHAIRMAN: The only difficulty is, after two votings, we will have to go to the Lobby and take all the trouble. Therefore, I am asking if I take voice vote, will you agree?

SHRI B. N. BANERJEE: Sir, if the House wishes that there should be no division, as one who has served the House for many years, I would not press for it.

The motion was negatived.

MR. CHAIRMAN: Now, the question is;

"That clause 45 stand part of the Bill".

The Rouse divided,

MR. CHAIRMAN; Ayes—91; Ndes—

AYES—91 dvani Shri
Lai K-sthana, Shri K. B. agaitkar, Shri
Sadasiv aleshwar Dayal, Shri tiabhda,
Shri Harishanker dagat, Shri Ganapat
Hirala^ handari, Shri Sunder Singh
tiattacharjee, Prof. Sourendra
nattacharya, Shri G. C. hola Prasad,
Shri hakraborty, Shri Amarprosad
hatterjee, Shri Pranab haurasia, Shri
Shivdayal Singh eb Burman, Shri Bir
Chandra inesh Singh, Shri upta, Shri
Bhupesh upta, Shri Ram Lakhan
Prasad egde, Shri Rarr. akrishna agbir
Singh, Shri amuna Devi, Shrimati la,
Shri Shiva Chandra jshi, Shri
Jagannath Rao
ashi, Shri Jagdish
akati, Shri Robin
han, Shri Ghayoor Ali
Jian, Prof. Rasheeduddin
ihobragade, Shri Bhaurao Devaji
Irishna, Shri M. R.
Irishman, Shri U. R.
[umaran, Shri S.
lunjachen, Shri P. K.
.akhan Singh, Shri
akshmanan, Shri G.
, otha, Shri Khyomo
lahanti, Shri Bhairab Chandra
lahapatro, Shri Lakshmana
lahavir, Dr. Bhai
Jajhi, Shri Dhanes^ar

Mallick, Shri Harekrushna
Mar an, Shri Murasoli
Mathur, Shri Jagdish Prasad
Menon, Shri Viswanatha
Mishra, Shri Kalraj
Mohanty, Shri Surendra
Mohinder Kaur, Shrimati
Morarka, Shri R. R.
Mukherjee, Shrimati Kanak
Munusamy, Shri V. P.
Naidu, Shri N. P. Chengalraya
Narendra Singh, Shri
Nigam, Shri Ladli Mohan
Nizam-ud-Din, Shri Syed
Muthu Dr. (Shrimati) Sathiavan
Oza Shri Ghanshyambhai
Parbhu Singh, Shri
Parikh, Prof. Ramlal
Patel, Shri Manubhai
Pathak, Shri Ananda
Pattanayak, Shri Bhabani Charan
Poddar, Shri R. K.
Pradhan, Shri Patitpaban
Prem Manohar, Shri
Raj an, Shri Pattiam
Ramamurti, Shri P.
Rameshwar Singh, Shri
Ray, Shri Rabi
Reddy, Shri B. Satyanarayan
Reddy, Shri K. V. Raghunatha
Samad, Shri Golandaz Mohammed-
husian A. Saring, Shri Leonard
Soloman Sarup Singh, Dr. Sezhiyan>
Shri Era Shahedullah, Shri Syed Shahi,
Shri Nageshwar Prasad Shanti Bhushan,
Shri Sharma, Shri Ajit Kumar Sharma,
Shri Yogendra Siddhu, Dr. M. M. S.
Singh, Shri J. K. P. N.

Singh, Shri Ng. Tompok Singh, Shri
Shiva Nandan Sinha, Shri Indradeep
Sinha, Dr. Ramkripal Sujan Singh, Shri
Surendra Mohan, Shri Surjeet, Shri
Harkishan Singh

Swu, Shri Scato

Tame, Shri Ratan

Varma, Shri Mahadeo Prasad

Venka, Shri V.

Warjrij Shri Alexander

NOES—86

.Adivarekar, Shrimati Sushila Shankar

.Alva, Shrimati Margaret

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ra_m

Anandam, Shri M.

Anjiah, Shri T.

Antulay, Shri A. R.

Arii, Shri Mohammed Usman

Balram Das, Shri

Banerjee, Shri Jaharlal

Barman, Shri Prasenjit

Basavaraj, Shri H. R.

Bhagwan Din, Shri

Bhim Raj, Shri

Bose, Shrimati Pratima

Chandrasekhar, Shrimati Maragatham

Chattopadhyaya, Prof. D. P.

Das, Shri Bipinpal

Desai, Shri R. M.

Deshmukh, Shri Bapuraoji Marotraoji

Dhulap, Shri Krishnarao Narayan

Dinesh Chandra, Shri Swami

Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath

Gadgil, Shri Vithai

Goswami, Shri Dinesh

Goswami, Shri Sriman Prafulla

Gupta, Shri Gurudev

HabibuHah, Shrimati Hamida

Imam, Shrimati Aziza Jha, Shri

Kamalnath Joshi, Shri Krishna

Nand

Joshi, Shrimati Kumudben Manishan-ker

Kalaniya, Shri Ibrahim

Kamble, Prof. N. M.

Kameshwar Singh, Shri

Kesri, Shri Sitaram

Khan, Shri Khurshed Alam

Khan, Shri Maqsood Ali

Khan, Shrimati Ushi

Khaparde, Shrimati Saroj

Kureel, Shri Piare Lall *urf* Piare Lai

Talib Lokesh Chandra, Dr. Madhavan, Shri

K. K. Mahida, Shri Harisinh Bhagubava

Makwana, Shri Yogendra Manhar, Shri

Bhapatram Maurya, Shri Buddha Priya

Mehrotra, Shri Prakash Menon, Shrimati

Leela Damodara Mishra, Shri Mahendra

Mohan Mittal, Shri Sat Paul Mondal, Shri

Ahmad Hossain Moopanar, Shri G. K.

Mukherjee, Shri Pranab Naik, Shri L. R.

Nanda, Shri Narasingha Prasad Pande,

Shri Bishambhar Nath Patil, Shri Deorao

Rai, Shri Kalp Nath Raju, Shri V. B.

Ranga, Prof. N. G. Rao, Shri V. C.

Kesava Ratan Kumari, Shrimati Reddy,

Shri Mulka Govinda Roshan Lai, Shri

Sahu, Shri Santosh Kumar Saleem, Shri

Mohammad Yunus Satchidananda, Shri

Sharma, Shri Anant Prasad Sharma, Shri

Kishan Lai Shastri, Shri Bhola Paswan

Singh, Shri Bhishma Narain Singh,

Shrimati Pratibha

Sisodia, Shri Sawaisingh Soni, Shrimati Ambika Sultan, Shrimati Maimoona Sultan Singh, Shri Totu, Sri Gian Chand Triloki Singh, Shri Tripathi, Shri Kamlapati Vaishampayan, Shri S. K. Venigalla Satyanarayana, Shri Venkatrao, Shri Chadalavada Yadav, Shri Ramanand Yadav, Shri Shyhm Lai

The motion was not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

MR. CHAIRMAN: We will now go to the next clause Clause 46. There are no amendments to this Clause. So we proceed to Clause 47.

Clause 47—Amendment of the Seventh Schedule

MR. CHAIRMAN: There are 11 amendments. Mr. Vaishampayan, are you moving your amendments, 89, 93 and 98?

SHRI S. K. VAISHAMPAYEN (Maharashtra): No, Sir, I am not moving them.

MR. CHAIRMAN: Amendment Nos. 92 and 96 in the name of Shri Pranab Mukherjee. These are negative amendments. Then, amendments Nos. 94 and 97 in the name of Mr. Dwivedi...

SHRI DEVENDRA NATH DWIVEDI; No, Sir, I am not moving them.

MR. CHAIRMAN; Mr. P. Rama-murti, are you moving your amendments?

SHRI P. RAMAMURTI: Sir, I move:

90. "That at page 14, after line 19, the following be inserted, namely:—

'(iia) for entry 3, the following entry shall be substituted, namely:—

"3. Administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts; Officers and servants of the High Courts; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court." "

95. "That at page 14, for lines 32 to 38, the following be substituted, namely: —

'(i) entry 11A shall be omitted.'" "

(The amendments also stood in the names of Shri Harkishan Singh Surjeet, Shri Vishwanatha Menon and Shrimati Kanak Mukherjee.)

SHRI BHUPESH GUPTA: Sir, I move:

91. "That at page 14, lines 20 to 24 be deleted."

(The amendments also stood in the names of Shri Kalyan Roy, Shri Bir Chandra Deb Burman, Shri Bhola Prasad, Shri Lakshmana Mahapatra, Shri Devendra Nath Dwivedi, Shrimati Ambika Soni, Shrimati Leela Damodara Menon and Shri Jaharlal Banerjee.)

SHRI JAHARLAL BANERJEE (West Bengal): Sir, I move;

99. "That at page 14, for line 42, the following be substituted, namely: —

"25. Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

(The amendments also stood in the names of Shri Devendra Nath Dwivedi, Shrimati Ambika Soni and Shrimati Leela Damodara Menon.)

SHRI SHANTI BHUSHAN; Sir, I move:

104. "That at page 14, lines 28, 29 and 30 be deleted."

105. "That at page 14, lines 32 to 38 be deleted."

The questions were proposed.

MR. CHAIRMAN: The question is:

90. "That at page 14, after line 19, the following be inserted, namely:—

(iia) for entry 3, the following entry shall be substituted, namely:—

"3. Administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts; Officers and servants of the High Courts; procedure in rent and revenue courts, fees taken in all courts except the Supreme Court""."

The motion was negatived.

MR. CHAIRMAN: The question is:

95. "That at page 14, for lines 32 to 38, the following be substituted, namely: —

(i) entry 11A shall be omitted."

The motion was negatived. 9 P.M.

SHRI BHUPESH GUPTA: On this amendment I want division. I want education to remain in the Concurrent List.

SHRI P. RAMAMURTI: The original amendment is that education should be taken away from the Concurrent List. Therefore, Bhupesh can oppose it.

SHRI SHANTI BHUSHAN: In this clause, apart from education and forest, there are other changes also. So far as education and forest are concerned, if amendments 92 and 96 are taken together, that will serve the purpose.

SHRI BHUPESH GUPTA: They cannot be taken together. I want education to remain in the Concurrent List and I want forest in the State List.

SHRI PRANAB MUKHERJEE: Amendments 92 and 96 are negative amendments.

SHRI SHANTI BHUSHAN: It is not merely confined to education and forest. There are other things such as deployment of police force, army, etc. All these are in clause 47. You have to have your amendment voted.

SHRI PRANAB MUKHERJEE: Amendments 92 and 96 are to delete clause 47.

SHRI SHANTI BHUSHAN: No.

MR. CHAIRMAN: Shall I put 92 and 96 together to vote?

SHRI DINESH SINGH (Uttar Pradesh) : Voice vote will do.

SHRI BHUPESH GUPTA: What about 91? What you say is not clear. This is not a negative amendment. I do not want deletion of the whole thing. Amendment 91 should be separately put to vote. You are confusing the whole thing. I do not know why this confusion. Clause 47 speaks of List I and List II. All these things are there. We are not asking for the deletion of the entire clause. We are asking "Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III" to be deleted. That particular clause should go.

SHRI B. N. BANERJEE: You have to put Bhupesh Babu's amendment first and then Shri Pranab Mukherjee's amendments.

MR. CHAIRMAN: The question is;

91. "That at page 14 lines 20 to 24 be deleted."

The motion was negatived.

SHRI PRANAB MUKHERJEE: My amendment No. 92 should be separately put to vote.

MR. CHAIRMAN: Now I put amendment No. 92 of Mr. Pranab

Mukherjee to vote.

The question is:

92. "That at page i4, lines 20 to 27 be deleted."

The motion was negatived.

SHRI BHUPESH GUPTA: It cannot be done like that. I protest against it. I protest against it because it deals with "Forests". I am prepared to vote for "Education" to be in the Concurrent List. But I am not prepared to vote for "Forests" being in the Concurrent List. Therefore, I have been suggesting that amendment No. 91 should be put to vote first and separately.

MR. CHAIRMAN: I have already put it to vote.

SHRI BHUPESH GUPTA: You cannot do like that. You cannot just force me to accept something which I do not want "Forests" I wanted in the State List and I wanted "Education" to be retained in the Concurrent List. I have been saying it again and again. I do not know how you say that it should be together. You see the amendment; the lines are like that. I cannot understand this and we cannot vote for it.

(Interruptions)

SHRI P. RAMAMURTI: I think you want a Division on that, Mr. Bhupesh Gupta. But it has been put to vote.

(Interruptions)

SHRI DINESH SINGH: All that Mr. Bhupesh Gupta wants is a Division only.

SHRI P. RAMAMURTI: Sir, amendment No. 91 has been put to vote. But Mr. Bhupesh Gupta wants a Division.

SHRI BHUPESH GUPTA: Yes, I want a Division.

SOME HON. MEMBERS: All right.

MR. CHAIRMAN: Once again I am putting amendment No. 91 to vote.

The question is;

91. "That at page 14, lines 20 to 24 be deleted."

The House divided.

MR. CHAIRMAN: Ayes—13; Noes—156.

AYES—13 Bhola Prasad, Shri Deb Burman Shri Bir Chandra Dhulap, Shri Krishnarao Narayan Gupta, Shri Bhupesh Khan, Prof. Rasheeduddin Kumaran, Shri S. Mahapatro, Shri Lakshmana Muthu, Dr. (Shrimati) Sathiavani Ramamurti, Shri P. Reddy, Shri K. V. Raghunatha Sharma, Shri Yogendra Sinha, Shri Indradeep Vai>hampayen, Shri S. K.

NOES 156 Adivarekar, Shrimati Sushila Shankar Advani, Shri Lai K. Alva, Shrimati Margaret Amarjit Kaur, Shrimati Amla, Shri Tirath Ram Anandam, Shri M. Anjiah, Shri T. Antulay, Shri A. R. Arif, Shri Mohammed Usman Asthana, Shri K. B. Baleshwar Dayal, Shri Balram Das, Shri Banerjee, Shri Jaharlal Barman, Shri Prasenjit Basavaraj, Shri H. R. Bhabhda, Shri Harishanker Bhagat, Shri Ganapat Hiralal Bhagwan Din, Shri

Bhandari, Shri Sunder Singh
Bhattacharjee, Prof. Sourendra
Bhattacharya, Shri G. C. Bhim Raj,
Shri Bose, Shrinati Pratima

Chakraborty, Shri Amarprosad
Chandrasekhar, Shrimati Maragatham
Chatterjef, Shri Pranab Chattopadhyaya,
Prof. D. P. Das, Shri Bipinpal

Desai, Sh. fi R. M. Bapuraoji Marotraoji
Deshmukh, Shri Bapuraoji Marotraoji
Dinesh Chandra, Shri Swami

Dinesh Singh, Shri

Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath

Gadgil, Shri Vithal

Goswami, Shri Srima_n prafulla

Gupta, Shri Gurudev

Gupta, Shri Ram Lakhan Prasad

Habibullah, Shrimati Hamida

Hegde, Shri Ramakrishna

Imam, Shrimati Aziza

Jagbir Singh, Shri

Jamuna Devi, Shrimati

Jha, Shri Kamalnath

Jha, Shri Shiva Chandra

Joshi, Shri Jagannath Rao

Joshi, Shri Jagdish

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudben Manishan-ker.

Kakati, Shri Robin Kalaniya, Shri

Ibrahim Kamble, Prof. N. M. Kesri,

Shri Sitaram Khan, Shri Ghayoor

Ali Khan, Shri Khurshed Alam

Khan Shri Maqsood Ali Khan,

Shrimati Ushi

Khaparde, Shrimati Saroj Khobragade, Shri
Bhaurao Devaji Krishna, Shri M. R.
Krishnan, Shri U. R. Kunjachen, Shri P. K.
Kureel, Shri Piare Lall urf Piare Lall

Talib

Lakhan Singh, Shri Lakshmanan, Shri G.
Lokesh Chandra, Dr. Lotha, Shri Khyomo
Madhavan, Shri K. K. Mahanti, Shri
Bhairab Chandra Mahavir, Dr. Bhai Mahida,
Shri Harisinh Bhagubava Makwana, Shri
Yogendra Mallick, Shri Harekrushna Manhar,
Shri Bhagatram Maran, Shri Murasoli
Mathur, Shri Jagdish Prasad Maurya, Shri
Buddha Priya Mehrotra, Shri Prakash
Menon, Shrimati Leela Damodara Menon,
Shri Viswanatha Mishra Shri Kalraj Mishra,
Shri Mahendra Mohan Mittal, Shri Sat Paul
Mohanty, Shri Surendra Mohinder Kaur,
Shrimati Mondal, Shri Ahmad Hossain
Moopnar, Shri G. K. Morarka, Shri R. R.
Mukherjee, Shrimati Kanak Mukherjee, Shri
Pranab Munusamy, Shri V. P. Naidu, Shri
N. P. Chengalraya N;ik, Shri L. R.

Nanda, Shri Narasingha Prasad Narendra
Singh, Shri Nigam, Shri Ladli Mohan
Nizam-ud-Din, Shri Syed Oza, Shri
Ghanshyambhai Parbhu Singh, Shri

Parikh, Prof Ramlal
 Palel, Shri Manubhai
 Pathak, Shri Ananda
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Rajan, Shri Pattiam
 Raju, Shri V. B.
 Rameshwar Singh, Shri
 Rao, Shri V. C. Kesava
 Ratan Kumari Shrimati
 Ray, Shri Rabi
 Reddy, Shri B. Satyanarayan
 Reddy, Shri R. Narasimha
 Roshan Lai, Shri
 Sahu, Shri Santosh Kumar
 Saleem, Shri Mohammad Yunus
 Samad, Shri Golandaz Mohammed-
 husian A.
 Saring, Shri Leonard Solomon
 Sarup Singh, Dr.
 Satchidananda, Shri
 Schamnad, Shri Hamid Ali
 Sezhiyan, Shri Era
 Shahedullah, Shri Syed
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri Sfrarma, Shri
 Agit Kumar Sharma. Shri Anant
 Prasad Sharma. Shri Kishan Lai
 Shastri, Shri Bhola Paswan Sidhu, Dr.
 M.M.S. Singh, Shri Bhishma Narain
 Singh, Shri J. K. P. N. Singh, Shri Ng.
 Tompok Singh, Shrimati Pratibha
 Singh, Shri Shiva Nandan Sinha. Dr.
 Ramkripal Soni, Shrimati Ambika
 Sujan Singh, Shri

Sultan, Shrimati Maimoona Sultan
 Singh, Shri Surendra Mohan, Shri
 Surjeet, Shri Harkishan Singh Swu,
 Shri Scato Tama, Shri Ratan Totu, Shri
 Gian Chand Triloki Singh, Shri
 Tripathi, Shri Kamlapati Varma, Shri
 Mahadeo Prasad VenigalTa
 Satyanarayana, Shri Venka, Shri V.
 Venkatrao, Shri Chadalavada Warjri,
 Shri Alexander Yadav, Shri Ramanand

The motion was negatived.

MR. CHAIRMAN: I would like to draw
 your attention to one thing.

SHRI DINESH SINGH: Sir, there is one point
 now. There is one point in amendment No. 91.
 According to that, "Education" would have
 been in the Concurrent List. Now that it J has
 been voted down, how can it be raised again in
 amendment No. 92? (Interruptions)

SHRI P. RAMAMURTI: I wish to point out
 that the House has already decided on it.
(Interruptions). The \ House has already
 decided that Education must be in the State
 List. It has rejected the amendment. The House
 has decided it. Therefore, you cannot put it to
 vote again. You have to separate that. You
 cannot vote again on the question of
 "Education". You can separate "Forests" from
 that and I can understand it.

(Interruptions)

SHRI B. N. BANERJEE: Sir, let us put
 our heads together. *(Interruptions)*. Hon.
 Members of the Congress (I) have made a
 mistake. The only way he can recover from
 that is to move at once for recession of the
 decision on the previous amendment and
 even vote for Mr. Bhupesh Gupta's

[Shri B. N. Banerjee]

amendment and amend Mr. Pranab Mukherjee's clause by deleting reference to lines 21 to 24. That is the only way.

SHRI BIPINPAL DAS: Sir, we have decided to vote against clause 47 as a whole.

(Interruptions)

SHRI PRANAB MUKHERJEE: We are going to oppose clause 47 in toto.
(Interruptions)

MR. CHAIRMAN: May I know from the honourable Members whether I can go to the clause itself instead of the amendments?

SOME HON. MEMBERS: Yes.

SHRI SHANTI BHUSHAN: Sir, I would like to submit that even though there might be a little embarrassment, etc., technically, the amendments which have been moved by Shri Pranab Mukherjee can still be moved and still be put to vote because the amendments are more comprehensive. If one amendment is more comprehensive than the amendment which has been negatived, it can be put to vote. The mere fact that one amendment has been negatived does mean that it cannot be done. It is not identical and it is of a different nature. So, Sir, Mr. Mukherjee's amendments can still be put to vote. That is my submission.

(Interruptions)

SHRI ANANT PRASAD SHARMA: Put clause 47 to vote.

(Interruptions)

SHRI PRANAB MUKHERJEE: Sir, I am not pressing my amendment. I am requesting the Chair to put clause 47 to vote.

SHRI SHANTI BHUSHAN: Before the hon. Members decide as to what they want to do, let me indicate the implications of the total defeat of clause 47. For instance, clause (a)

says: in List I—Union List, entry 2A (shall be omitted. What is 2A? Entry 2A in the Union List reads thus:

"Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

Now, let the hon. Members decide...

SHRI PRANAB MUKHERJEE: We know it and in my speech I supported that the Central Government should have this power.

SHRI SHANTI BHUSHAN: Then that is different. But my amendments which I have moved have to be taken into consideration. May I indicate what they are?

SHRI ANANT PRASAD SHARMA: If clause 47 is voted down, where is the question of explaining your amendments?

SHRI SHANTI BHUSHAN: Before that amendments to clause 47 have to be taken into consideration first. These two amendments I have moved for the reason because one of the clauses of the Bill has been turned down by this House. That relates to clause 35 and clause 35 relates to Administrative Tribunals in Part XIVA of the Constitution. This is sought to be deleted by this Bill. Now it remains. Clause (1) of article 323A gives exclusive power to the Union to set up Administrative Tribunals in regard to services either of the Union or the States. If that is retained, this consequential amendment is necessary because these Entries were consistent with the amendment. Now this provision is retained and this cannot be in the Concurrent List. By this article the power to set up administrative tribunals in regard to services of the

Union as well as the services of the State is exclusively assigned to the Union. I think the hon. Members will now appreciate the implications of the total defeat of clause 47. After / all, Constitutional Amendment is a serious thing. It should not be that outside this House people of this country have a feeling that something has been done by this House which is not consistent. You can take any decision but whatever decision you take, do it appropriately in the Constitution in a consistent manner, so that the provisions of the Constitution may not conflict with each other. Therefore, I would appeal to the hon. Members that in their excitement and emotion, they may not do something which may bring discredit to the House as a whole, which may make people say that this august body has made an amendment which does not make any sense, that one part is omitted and the other part is retained, something which is not consistent.

SHRI A. R. ANTULAY: You should not have moved your amendments at all.

SHRI SHANTI BHUSHAN: Clause 35 was brought before us for deleting Part XIV-A. If part XIV-A had to be deleted, then certain amendments were also required in the entire because in that case this item could be put in the Concurrent List and it was "being put in the Concurrent List, namely, that the administrative tribunals could be set up either by the States or the Union. Now that you have retained Part IV-A, which provides that these administrative tribunals have to be created only by the Union, whether they relate to the services of the States or of the Union, then the entries must be consistent with the main body of the Constitutional provision. Therefore, the entries have to be rearranged. That is why a consequential amendment has to be moved.

SHRI PRANAB MUKHERJEE: I would like to ask for one clarification. Now, what would be the position if

clause 47 is voted down and Part XIV-A is retained? Then we go to the entire position of the Forty-second Amendment. Therefore, if Part XIV-A is retained and if clause 47 is voted down, then the proposition of consequential changes which you are contemplating would not arise.

SHRI SHANTI BHUSHAN: I won't pre-suppose. These amendments have to be put to vote first.

SHRI PRANAB MUKHERJEE: That I know, but the anomaly which you contemplate will not arise because we will arrive exactly at the position which obtained before these amending provisions were suggested because Part XIV-A remains.

SHRI ANANT PRASAD SHARMA: Therefore, clause 47 should be put to vote.

SHRI SHANTI BHUSHAN: I am pressing my amendments. Let them be put to vote.

SHRI BHUPESH GUPTA: I suggest that Mr. Pranab Mukherjee, with your permission, can move his amendment. Whereas I have covered lines 20 to 24, he can cover now lines 25 to 27. He can do that with your permission.

SHRI PRANAB MUKHERJEE: I have clearly explained my views. I am not going to make any addition or Amendment to it.

MR. CHAIRMAN: The question is:

99. " That at page 14, for line 42, the following be substituted namely:—

'25. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.' "

The motion was negatived.

MR. CHAIRMAN: The question is:

104. "That at page 14, lines 28, 29 and 30 be deleted."

105. "That at page 14, lines 32 to 38 be deleted."

The House divided.

MR. CHAIRMAN: Ayes—88; Noes—

84

Ayes—88

Advani, Shri Lai K.
Asthana, Shri K. B.
Bagaiikar, Shri Sadasiv
Baleshwar Dayal, Shri
Bhabhda, Shri Harishanker
Bhagat, Shri Ganapat Hiralal
Bhandari, Shri Sunder Singh
Bhattacharjee, Prof. Sourendra
Bhattacharya, Shri G. C.
Chakraborty, Shri Amarprosad
Chatterjee, Shri Pranab
Dinesh Singh, Shri
Gupta, Shri Ram Lakhan Prasad
Hegcie, Shri Ramkrishna
Jagbir Singh, Shri
Jain, Shri Dharamchand
Jamuna Devi, Shrimati
Janardhanam, Shri A. P.
Jha, Shri Shiva Chandra
Joshi, Shri Jaganath Rao
Joshi, Shri Jagdish
Kadershah, Shri M.
Kakati, Shri Robin
Khan, Shri Ghayoor Ali
Khobragade, Shri Bhaurao Devaji
Krishna, Shri M. R.
Krishnan, Shri E. R.
Krishnan, Shri U. R.
Kunjaehen, Shri P. K.
Lakhan Singh, Shri
Lakshmanan, Shri G.
Lotha, Shri Khyomo
Mahanti, Shri Bhairab Chandra
Mahavir, Dr. Bhai

Majhi, ghri Dhaneswar
Mallick, Shri Harekrushna
Maran, Shri Murasoli
Mathur, Shri Jagdish Prasad
Menon, Shri Viswanatha
Mishra, Shri KaTraj
Mohanty, Shri Surendra
Mohinder Kaur, Shrimati
Morarka, Shri R. R.
Mukherjee, Shrimati Kanak
Munusamy, Shri V. P.
Muthu Dr. (Shrimati) Sathiavani:
Naidu, Shri N. P. Chengalraya
Narendra Singh, Shri
Nigam, Shri Ladli Mohan
Nizam-ud-din, Shri Syed
Oza, Shri Ghanshyambhai
Prabhu Singh, Shri
Parikh, Prof. Ramlal
Patel, Shri Manubhai
Pathak, Shri Ananda
Pattanayak, shri Bhabani Charani
Poddar, Shri R. K.
Pradhan, Shri Patitpaban
Prem Manohar, Shri
Raj an, Shri Pattiam
Ramamurti, Shri P-
Rameshwar Singh, Shri
Ray, Shri R'abi
Razack, Shrimati Noorjehan
Reddy, Shri B. Satyanarayan
Reddy, Shri R. Narasimha
Sahaya, Shri Dayanand
Samad, Shri Golandaz Mohammedhu-
sian A.
Saring, Shri Leonard Soloman
Sarup Singh, Dr.
Sezhiyan, Shri Era
Shahedullah, Shri Syed
Shahi, Shri Nageshwar Prasad
Shanti Bhushan, Shri
Sharma Shri A jit Kumar
Siddhu, Dr. M. M. S.

Singh, Shri J. K. P. N. Singh, Shri Ng. Tompok Singh, Shri Shiva Nandan sinha, Dr Ramkripal Sujan Singh, Shri Surendra Mohan, Shri Surjeet, Shri Harkishan Singh 3wu, Shri Scato Tama, Shri Ratan V'arma, Shri Mahadeo Prasad ^enka, Shri V. Warjri, Shri Alexander

NOES—84

Adivarekar, Shrimati Sushila Shankar Alva, Shrimati Margaret Amarjit Kaur, Shrimati Amla, Shri Tirath Ram Anandam, Shri M. Anjiah, Shri T. Antulay, Shri A. R. Arif, Shri Mohammed Usman Balram Das, Shri Banerjee, Shri Jaharlal Barman, Shri Prasenjit Basavaraj, Shri H. R. Bhagwan Din, Shri Bhi_m Raj, Shri Bose, Shrimati Pratima Chandrasekhar, Shrimati Maragatham Chattopadhyaya, Prof. D. P. Das, Shri Bipinpal Desai, Shri R. M. Deshmukh, Shri Bapuraoji Marotraoji Dhulap, Shri Krishnarao Narayan Dinesh Chandra, Shri Swami Dutt, Dr. V. P. Dwivedi, Shri Devendra Nath Gadgil, Shri Vithal Goswami, Shri Dinesh Gupta, Shri Gurudev Habibullah, Shrimati Hamida Imam, Shrimati Aziza

Jha, Shri Kamalnath Joshi, Shri Krishna Nand Joshi, Shrimati Kumudbe_n Manishan-ker

Kalaniya, Shri Ibrahim Kamble, Prof. N. M. Kameshwar Singh, shri Kesri, Shri Sitaram Khan, Shri Khurshed Alam Khan, Shri Maqsood AH Khan, shrimati Ushi Khaparde, Shrimati Saroj Kureel, Shri Piare Lall *urf* Piare Lall Talib

Lokesh Chandra, Dr.

Madhavan, Shri K. K.

Mahida, Shri Harisinh Bhaguba[^]

Makwana, Shri Yogendra

Manhar, Shri Bhagatram

Maurya, Shri Buddha Priya

Mehrotra, Shri Prakash

Menon, Shrimati Leela Damodara-

Mishra, Shri Mahendra Mohan

Mittal, Shri Sat Paul

Mondal, Shri Ahmad Hossain

Moopanar, Shri G. K.

Mukherjee, Shri Pranab

Naik, Shri L. K.

Nanda, Shri Narasingha Prasad

Pande, Shri Bishambhar Nath

Patil, Shri Deorao

Rai, Shri Kalp Nath

Ranga, Prof. N. G.

Rao, Shri V. C. Kesava

Ratan Kumari, Shrimati

Reddy, Shri Mulka Govinda

R'oshan Lai, Shri

Sahu, Shri Santosh Kumar

Saleem, Shri Mohammad Yunus

Satchidananda, Shri

Sharma, Shri Anant Prasad

Sharma, Shri Kishan Lai

Shastri, Shri Bhola Paswan

Singh, Shri Bhishma Narain Singh, Shrimati Pratibha Sinha, Shri Indradeep Sisodia, Sfcrl Sawaisingh Soni, Shrimati Ambilca Sultan, Shrimati Maimoona Sultan Singh. Shri Totu, Shri Gian Chand Tripathi, gfcrl Kamlapati Vaishampayen, Shri S. K. "Venigalla Satyanarayana, Shri Venkatrao, Shri Chadalavada Yadav, Shri Ramanand Yadav, Shri Syam Lai

The motion was adopted.

MR. CHAIRMAN: I now put amended clause 47 to vote.

The question is:

"That clause 47, as amended, stand part of the Bill."

The House divided. Mr. Chairman: Ayes—

91; Noes—87

AYES—91 Advani, Shri Lai K. Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri Bhabhda. Shri Harishanker Bhagat, shri Ganapat Hiralal Bhandari, Shri Sunder Singh Bhattacharjee, Prof. Sourendra Bhattacharya, Shri G. C. Chakraborty, Shri Amarprosad Chatterjee, Shri Pranab Dinesh Singh, Shri Gupta, Shri Bhupesh Gupta, Shri Ram Lakhan Prasad Hegde, Shri Ramakrishna Jagbir Singh, Shri Jain, Shri Dharamchand Jamuna Devi, Shrimati Janardhanam, Shri A. P. Jha, shri Shiva Chandra

Amended Bill 1979
Joshi, Shri Jagannathrao

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Joshi, Shri Jagdish
Kadershah, Shri M.
Kakati, Shri Robin
Khan, Shri Ghayoor Ali
Khobragade, Shri Bhaurao Devaji
Krishna, Shri M. R.
Krishnan, Shri E. R.
Krishnan, Shri U. R.
Kunjachen, Shri P. K.
Lakhan Singh, Shri
Lakshmanan, Shri G.
Lotha, Shri Khyomo
Mahanti, Shri Bhairab Chandra
Mahavir, Dr. Bhai
Majhi, Shri Dhaneswar
Mallick, Shri Harekrushna
Maran, Shri Murasoli
Mathur, Shri Jagdish Prasad
Menon, Shri Viswanatha
Mishra, Shri Kalraj
Mohanty, Shri Surendra
Mohinder Kaur, Shiimati
Morarka, Shri R. R.
Mukherjee, Shrimati Kanak (West Bengal)
Munusamy, Shri V. P.
Muthu, Dr. (Shrimati) Sathiavani
Naidu, Shri N. P. Chengalraya
Narendra Singh, Shri
Nigam, Shri Ladli Mohan
Nizam-ud-din, Shri Syed
Oza, Shri Ghanshyambhai
Parbhu Singh, Shri
Parikh, Prof. Ramlal
Patel, Shri Manubhai
Pathak, shri Ananda
Pattanayak, Shri Bhabani Charan
Poddar, Shri R. K.
Pradhan, Shri Patitpaban
Prem Manohar, Shri
Raj an, Shri Pattiam
Ramamurti, Shri P.

R'ameshwar Singh, Shri
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri R. Narasimha
 Sahaya, shri Dayanand
 Samad, Shri Golandaz Mohammedhu-
 sian A. Saring, Shri Leonard
 Soloman Samp Singh, Dr. Schamnad,
 Shri Hamid AH Sezhiyan, Shri Era
 Shahedullah, Shri syed Shahi, Shri
 Nageshwar Prasad Shanti Bhushan,
 Shri Sharrna, Shri Ajit Kumar Siddhu,
 Dr. M. M. S. Singh, Shri J. K. P. N.
 Singh, Shri Ng. Tompok Singh, Shri
 Shiva Nandan Sinha, Dr. Ramkripal
 Sujan Singh, Shri Surendra Mohan, Shri
 Surjeet, Shri Harikrishan Singh Swu,
 Shri scato Tama, Shri Ratan
 Varma, Shri Mahadeo Prasad
 Venka, Shri V. Warjri, Shri
 Alexander

NOES—87 Adivarekar, Shrimati Sushila
 Shankar Alva, Shrimati Margaret Amarjit
 Kaur, Shrimati Amla, Shri Tirath Ram
 Anandam, Shri M. Anjiah, Shri T. Antulay,
 Shri A. R. Arii, Shri Mohammed Usman
 Balram Das, shri Banerjee, Shri Jaharlal
 Barman, Shri Prasenjit

Basavaraj, Shri H. R.
 Bhagwan Din, Shri
 Bhim Raj, Shri
 Bose, Shrimati Pratima
 Chandrasekhar, Shrimati Maragatham
 Chattopadhyaya, Prof. D. P.
 Das, Shri Bipinpal
 Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji
 Dhulap, Shri Krishnarao Narayan
 Dinesh Chandra, Shri Swami
 Dutt. Dr. V. P.
 Dwivdsi, Shri Devendra Nath
 Gadgil, Shri Vithal
 Goswami, Shri Dinesh
 Goswami, Shri Sriman Prafulla
 Gupta, Shri Gurudev
 HabibulTah, Shrimati Hamida
 Jha, Shri Kamalnath
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishan-ker
 Kalaniya, Shri Ibrahim
 Kamble. Prof. N. M.
 Kameshwar Singh, Shri
 Kesri, Shri Sitaram
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Prof. Rasheeduddin
 ,
 Khan, Shrimati Ushi
 Khaparde, Shrimati Saroj
 KureeJ, Shri Piar_e Lall urf Piar_e Lall Talib
 Lokesh Chandra, Dr.
 Madhavan, Shri K. K.
 Mahida, Shri Harisinh Bhagubava
 Makwana, Shri Yogendra
 Manhar, Shri Bhagatram
 Maurya, Shri Buddha Priya

Mehrotra. Shri Prakash
Menon, Shrimati Leela Damodara

Mishra, Shri Mahendra Mohan Mittal,
Shri Sat Paul Mondal, Shri Ahmed
Hossain Moopananar, Shri G. K.
Mukherjee, Shri Pranab Naik, Shri L. R-
Nanda, Shri Narasingha Prasad Pande,
Shri Bishambhar Nath Patil, Shri Deorao
Rai, Shri Kalp Nath Raju, Shri V. B.
Kanga, Prof. N. G. Rao, Shri V. C.
Kesava Ratan Kumari, Shrimati Reddy,
Shri Mufka Govinda Roshan Lai, Shri
Sahu, Shri Santosh Kumar Saleem, Shri
Mohammad Yunus Satchidananda, Shri
Sharma, Shri Anant Prasad Sharma, Shri
Kishan Lai Sharma, Shri Yogendra
Shastri, Shri Bhola Paswan Singh, Shri
Bhishma Narain Singh, Shrimati
Pratibha Sisodia, Shri Sawaisingh Soni,
Shrimati Ambika Sultan, Shrimati
Maimoona Sultan Singh, Shri Totu, Shri
Gian Chand Triloki Singh, Shri Tripathi,
Shri Kamlapati Vaishampayan, Shri S.
K. Venigalla Satyanarayana, shri
Venkatrao, Shri Chadalavada Yadav,
Shri Ramanand Yadav, Shri Shyam Lai

*The motion was not carried by a
majority of the total membership of*

*the House and by a majority of not less than
two-thirds of the Members present and voting.*

MR. CHAIRMAN: Now we go to the next
clause 48. There is one amendment No. 100
by Shri P. Ramamurti.

SHRI P. RAMAMURTI: I am not moving.

Clause 49—*Amendment of the Constitution
(Forty-second Amendment) Act, 1976.*

MR. CHAIRMAN: Clause 49. There are
two amendments Nos. 101 by Shri V. B. Raju
and 102 by Shri Bhupesh Gupta.

SHRI V. B. RAJU: Sir, I move :

101. "That at page 15, line 4, the
figures '19 and 32' be *deleted*."

SHRI BHUPESH GUPTA: Sir, I move:

102. "That at page 15, line 4, the
figures '21 and 34' be *deZeted*."

*(The amendment also stood in the names of
Shri Kalyan Roy, Shri Bir Chandra Deb
Burman, Shri Bhola Prasad and Shri
Lakshmana Maha-ptro.)*

*The questions were put and the
motions were negatived.*

MR. CHAIRMAN : The question is:

"That clause 6 stand part of the Bill."

The House divided.

MR. CHAIRMAN: Ayes—181; Noes—
Nil

AYES—181

Adivarekar, Shrimati Sushila
Shankar Advani, Shri Lai K. Alva,
Shrimati Margaret Amarjit Kaur, Shrimati
Amla, Shri Tirath Ram Anandam, Shri M.
Anjiah, Shri T. Antulay, Shri A. R.

Arif, Shri Mohammad Usman Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri I'Balram Das, Shri Banerjee, Shri B. N. Banerjee, Shri Jaharlal Barman, Shri Prasenjit Basavaraj, Shri H. R. Bhabhda, Shri Harishanker Bhagat, Shri Ganpat Hiralal Bhagwan Din, Shri Bhandari, Shri Sunder Singh Bhattacharjee, Prof. Sourendra Bhattacharya, Shri G. C. Bhola Prasad, Shri Bose, Shrimati Pratima Chakravorty, Shri Amarprosad Cfrandrasekhar, Shrimati Maragatham Chatterjee, Shri Pranab Chattopadhyaya, Prof. D. P. Das, Shri Bipinpal Deb Burman, Shri Eir Chandra Desai, Shri R. M.

Deshmukh, Shri Bapuraoji Marotraoji Dhulap, Shri Krishnarao Narayan Dinesh Chandra, Shri Swami Dinesh Singh, Shri Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath Gadgil, Shri Vithal Goswami, Shri Dinesh Goswami, Shri Sriman Prafulla Gupta, Shri Gurudev Gupta, Shri Ram Lakkhan Prasad Habibullah, Shrimati Hamida Hegde, Shri Ramakrishna Imam, Shrimati Aziza Jagbir Singh, Shri Jain, Shri Dharamchand Jamuna Devi, Shrimati Janardhan Shri A. P. Jha, Shri Kamlanath Jha, Shri Shiva Chandra

Joshi, Shri Jagannathrao

Joshi, Shri Jagdish

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudben Mani-shanker

Kadershah, Shri M.

Kakati, Shri Robin

Kalaniya, Shri Ibrahim

Kamble, Prof. N. M.

Kameshwar Singh, Shri

Kesri, Shri Sitaram

Khan, Shri Ghayoor Ali

Khan, Shri Khurshed Alam

Khan, Shri Maqsood Ali

Khan, Prof. Rasheeduddin

Khan, Shrimati Ushi

Khaparde, Shrimati Saroj

Khobragade, Shri Bhaurao Devaji

Krishna, Shri M. R.

Krishnan, Shri E. R.

Krishnan, Shri U. R.

Kumaran, Shri S.

Kunjachen, Shri P. K.

Kureel, Shri Piare Lall *urf* Piare Lai! Talib

Lakhan Singh, Shri

Lakshmanan, Shri G.

Lokesh Chandra, Dr.

Lotha, Shri Khyomo

Madhavan, Shri K. K.

Mahanti, Shri Bhairab Chandra

Mahapatro, Shri Lakshmana

Mahavir, Dr. Bhai

Mahida, Shri Harisinh Bhagubava Majhi,

Shri Dhaneswar Makwana, Shri Yogendra

Mallick, Shri Harekrushna Manhar, Shri

Bhagatram Maran, Shri Murasoli Mathur, Shri

Jagdish Prasad Maurya, Shri Buddha Priya

Mehrotra, Shri Prakash Menon, Shrimati

Leela Damodara Menon, Shri Viswanatha

Mishra, Shri Kalraj
 Mishra, Shri Mahendra Mohan
 Mittal, Shri Sat Paul
 Mohanty, Shri Surendra
 Mohinder Kaur, Shrimati
 Mondal, Shri Ahmad Hossain
 Mooppanar, Shri G. K.
 Morarka, Shri R. R.
 Mukherjee, Shrimati Kanak
 Mukherjee, Shri Pranab
 Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalraya
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mchan
 Nizam-ud-Din, Shri Syed
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambar Nath
 Prabhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhni
 Pathak, Shri Ananda
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan Poddar,
 Shri R. K. Pradhan, Shri Patitpaban Prem
 Manohar, Shri Rai. Shri Kalp Nath Raj
 an, Shri Pattiam
 Raju, Shri V. B.
 Rameshwar Singh, Shri
 Ranga, Prof. N. G.
 Rao, Shri V. C. Kesava Ratan
 Kumari, Shrimati
 Ray, Shri Rabi
 Razack, Shrimati Noorjehan
 Reddy, Shri B. Satyanarayan
 Reddy, Shri K. V. Raghunatha
 Reddy, Shri Mulka Govinda

Reddy, Shri R. Narasimha
 Roshan Lai, Shri
 Roy, Shri Kalyan
 Sahaya, Shri Dayanarid
 Sahu, Shri Santosh Kumar
 Saleem, Shri Mohammad Yunus
 Samad, Shri Golandaz Mohammedhu-sian
 A.
 Saring, Shri Leonard Soloman
 Sarup Singh, Dr.
 Satchidananda, Shri
 Schamnad, Shri Himid Ali
 Sezhiyan, Shri Era
 Shahedullah, Shri Syed
 Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri
 Sharma, Shri A jit Kumar
 Sharma, Shri Anant Prasad
 Sharma, Shri Kishan Lai
 Sharma, Shri Yogendra
 Shastri, Shri Bhola Paswan
 Siddhu, Dr. M. M. S.
 Singh, Shri Bhishma Narain
 Singh, Shri J. K. P. N.
 Singh, Shri Ng. Tompok
 Singh, Shrimati Pratibha
 Singh, Shri Shiva Nandan
 Sinha, Shri Indradeep
 Sinha, Dr. Ramkripal
 Soni, Shrimati Ambika
 Sujjan Singh, Shri
 Sultan, Shrimati Maimoona
 Sultana Singh, Shri
 Surendra Mohan, Shri
 Surjeet, Shri Harikishan Singh
 Swu, Shri Scato
 Tama, Shri Ratan
 Totu, Shri Gian Chand
 Trilok Singh, Shri
 Tripathi, Shri Kamalapati
 Vaishampayan, Shri S. K.
 Varma, Shri Mahadeo Prasad
 Venigalla Satyanarayana, Shri

Venka, Shri V. Venkatrao, Shri Chadalavada Warjri, Shri Alexander Yadav, Shri Ramanand

NOES—Nil.

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 6 was added to the Bill.

SHRI SHANTI BHUSHAN: May I have your permission to move a consequential amendment? Now that Article 31 has been deleted by adoption of clause 6, reference to Article 31 in Article 31C is inappropriate. Therefore, I am moving amendment No. 103:

103. "That at page 3 after line 4, the following new clause be inserted, namely:—

'7A. In Article 31C in the Constitution for the words and figures "Article 14, Article 19 or Article 31" the words and figures "Article 14 or 19" shall be substituted.'

SHRI B. N. BANERJEE : On a point of order, Sir. I am not opposing that amendment, the new clause proposed by the Law Minister, but this is not the stage. You have got to adopt all other clause and then the new clause can be taken. That is the practice.

SHRI K. K. MADHAVAN: The hon. Law Minister has presented a consequential amendment No. 103. I may point out that an amendment like this has to apply to Article 31A also because there is a mention there also.

MR. CHAIRMAN: May I now put to vote clauses 2, 4, 5, 7, 7A, 10 to 34, 36, 37, 40 to 43, 46, 48, 49, Clause 1, the Enacting Formula and the Title.

SHRI DINESH GOSWAMI: So far as clause 34 is concerned, there are two amendments. You have to consider ; them. After clause 31 you did not consider because clause 31 was not amended.

MR. CHAIRMAN : We can coiffid-r clause 34 just now and then we will put all the clauses together.

Clause 34:—Insertwn of new Chapter IV in Part XII.

SHRI V. B. RAJU: Sir, I move:

37. "That at page 8, for lines 23 and 24, the following be substituted, namely:—

'300A. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be com-pulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisition ing of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash.' "

SHRI DINESH GOSWAMI: Sir, I move :

38. "That at page 8, line 23, article 300A be renumbered as clause (1) thereof and after clause (1) as so-renumbered, the following be inserted, namely:—

'Provided that notwithstanding anything contained in Part III of the Constitution, if any property is com-pulsorily acquired or requisitioned for an amount fixed by law on which may be determined in accordance with such principles and given in such manner as may be prescribed in such law; no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise

than in cash or that such law is void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, or Article 19(1) (g).

(2) No such law as is referred to in clause 300A(1) made by a legislature of a State shall have effect unless such law, having been reserved for the consideration of the President has received his assent."

(The amendment also stood in the names of Shri Devendra Nath Dwivedi and Shri Narasingha Prasad Nandu).

The questions were put and the motions were negatived.

MR. CHAIRMAN : I now put all the clauses to vote. The question is:

"That Clauses 2, 4, 5, 7, 7A, 10 to 34, 36, 37, 40 to 43, 46, 48, 49, Clause 1, the Enacting Formula and the Title stand part of the Bill."

The House divided.

MR. CHAIRMAN: Ayes—185; Noes—Nil

AYES—185

Adivarekar, Shrimati Sushila Shankar Shankar

Advani, Shri Lai K. Alva, Shrimati Margaret Amarjit Kaur, Shrimati Amla, Shri Tirath Ram Anandam, Shri M. Anjiah, Shri T. Antulay, Shri A. R. Arif, Shri Mohammed Usman, Asthana, Shri K. B. Bagaitkar, Shri Sadasiv Baleshwar Dayal, Shri Balra. n Das, Shri Ban 2rje.fi, Shri B. N. Bansrje,e, Shri Jaharlal Barman, Shri Prasenjit Basavaiaj, Shri H. R

Bhabhda, Shri Hanshanker Bhagat, Shri Ganpat Hiralal Bhagwan Din, Shri Bhandari, Shri Sunder Singh Bhattacharjee, Prof. Sourendra Bhattacharya, Shri G C. Bhim Raj, Shri Bhola Prasad, Shri Bose, Shrimati Pratima Chakraborty, Shri Amarprosad Chandrasekhar, Shrimati Maragatham

Chatterjee, Shri Pranab

Chattopadhyaya, Prof. D. P.

Das, Shri Bipinpal

Deb Burman, Shri Bir Chandra

Desai, Shri R. M.

Deshmukh, Shri Bapuraoji Marotraoji

Dhulap, Shri Krishnarao Narayan

Dinesh Chandra, Shri Swami

Dinesh Singh, Shri

Dutt, Dr. V. P.

Dwivedi, Shri Devendra Nath

Gadgil, Shri Vithal

Goswami, Shri Dinesh

Goswami, Shri Sriman Prafulla

Gupta, Shri Bhupesh

Gupta, Shri Gurudev

Gupta, Shri Ram Lakha, Prasad

Habibullah, Shrimati Hamida

Hegde, Shri Ramakrishna

Imam, Shrimati Aziza

Jagbir Singh, Shri

Jain, Shri Dharamchand

Jamuna Devi, Shrimati

Janardhan Shri A. P.

Jha, Shri Kamalanath

Jha, Shri Shiva Chandra

Joshi, Shri Jagannathrao

Joshi, Shri Jagdish

Joshi, Shri Krishna Nand

Joshi, Shrimati Kumudben Manishan-kar

Kadershah, Shri M.

Kakati, Shri Robin
Kalaniya, Shri Ibrahim
Kamble, Prof. N. M.
Kameshwar Singh, Shri
Kesri, Shri Sitaram
Khan, Shri Ghayoor Ali
Khan, Shri Khurshad Alam
Khan, Shri Maqsood Ali
Khan, Prof. Rasheeduddin
Khan, Shrimati Ushi
Khaparde, Shrimati Saroj
Khobragade, Shri Bhaurao Devaji
Krishna, Shri M. R.
Krishnan, Shri E. R.
Krishnan, Shri U. R.
Kumaran, Shri S.
Kunjachen, Shri P. K.
Kureel, Shri Piare Lall *ur* Piare Lall Talib
Lakhan Singh, Shri Lakshmanan, Shri G.
Lokesh Chandra, Dr. Lotha, Shri
Khyomo Madhavan, Shri K. K Mahanti,
Shri Bhairab Chandra Mahapatro, Shri
Lakshmana Mahavir, Dr. Bhai Mahida,
Shri Harisinh Bhagubava Majhi, Shri
Dhaneswar, Makwana, Shri Yogendra
Mallick, Shri Harekrushna Manhar, Shri
Bhagatram Maran, Shri Murasoli Mathur,
Shri Jagdish Prasad Maurya, Shri Buddha
Priya Mehrotra, Shri Prakash Menon,
Shrimati Leela Damodara Menon, Shri
Viswanatha Mishra, Shri Kalraj Mishra,
Shri Mahendra Mohan
Mittal, Shri Sat Paul
Mohanty, Shri Surendra
Mohinder Kaur, Shrimati

Mondal, Shri Ahmad Hossain
Moopanar, Shri G. K
Morarka, Shri R. R. Mukherjee,
Shrimati Kanak
Mukherjee, Shri Pranab Munusamy, Shri V. P.
Muthu, Dr. (Shrimati) Sathiavani Naidu,
Shri N. P. Chengalraya. Naik, Shri L. R.
Nanda, Shri Narasingha Prasad Narendra
Singh, Shri Nigam, Shri Ladli Mohan Nizam-
ud-Din, Shri Syed Oza, Shri Ghanshyambhai
Pande, Shri Bishambar Nath Parbhu Singh,
Shri Parikh, Prof. Ramlal Patel, Shri
Manubhai Pathak, Shri Ananda Patil, Shri
Deorao Pattanayak, Shri Bhabani Charan
Poddar, Shri R. K. Pradhan, Shri Patitpaban
Prem Manohar, Shri Rai, Shri Kalp Nath
Rajan, Shri Pattiam Raju, Shri V. B.
Ramamurti, Shri P. Rameshwar Singh, Shri
Ranga, Prof. N. G. Rao, Shri V. C. Kesava
Ratan Kumari, Shrimati Ray, Shri Rabi
Razack, Shrimati Noorjehan Reddy, Shri B.
Satyanarayan Reddy, Shri K. V. Raghunatha
Reddy, Shri Mulka Govinda Roshan Lai, Shri
Roy, Shri Kalyan Sahaya, Shri Dayanand
Sahu, Shri Santosh Kumar Saleem, Shri
Mohammad Yunus Samad, Shri Golandaz
Mohammedhusain A.

Saring, Shri Leonard Soloman
Sarup Singh, Dr.

Satchidananda, Shri

Schamnad, Shri Hamid Ali

Sezhiyan, Shri Era

Shaheduilah, Shri Syed

Shahi, Shri Nageshwar Prasad

Shanti Bhushan, Shri

Sharma, Shri Ajit Kumar

Sharma, Shri Anant Prasad

Sharma, Shri Kishan Lai

Sharma, Shri Yogendra

Shastri, Shri Bhola Paswan

Siddhu, Dr. M. M. S.

Singh, Shri Bhishma Narain

Singh, Shri J. K. P. N.

Singh, Shri Ng. Tompok

Singh, Shrimati Pratibha

Singh, Shri Shiva Nandan

Sinha, Shri Indradeep

Sinha, Dr. Ramkripal

Sisodia, Shri Sawaisingh

Soni, Shrimati Ambika

Sujan Singh, Shri

Sultan, Shrimati Maimoona

Sulta_n Singh, Shri

Surendra Mohan, Shri

Surjeet, Shri Harkisaan Singh

Swu, Shri Scato

Tama, Shri Rata_n

Totu, Shri Gian Chand

Triloki Singh, Shri Tripathi, Shri

Kamlapati Vaishampayan, Shri S. K.

Varma, Shri Mahadoo Prasad

Venigalla Satyanarayanaj Shri

Venka, Shri V. Venkatrao, Shri

Chadalavada Warjri, Shri Alexander

Yadav, Shri Ramanand Yadav, Shri

Shyamlal

NOES—Nil *The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.*

Clause 2, 4, 5, 7, 7A, 10 to 34, 36y 37, 40 to 43, 46, 48, 49, Cloture 1, *the Enacting Formula and the Title were added to the Bill.*

SHRI SHANTI BHUSHAN: Sir I move:

"That the Bill, as amended, be passed."

The question was proposed.

MR. CHAIRMAN: I hope nobody is trying to speak on the third reading. Without speeches if you can finish, we can go for dinner.

SHRI SHANTI BHUSHAN: Sir, I am very grateful to the hon. Members and I thank them profusely and I commend that the Bill, as amended, be passed.

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The House divided.

MR. CHAIRMAN: Ayes—182

Noes—1

AYES—182

Adivarekar, Shrimati Sushila Shankar

Advani, Shri Lai K.

Alva, Shrimati Margaret

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anandam, Shri M.

Anjiah, Shri T.

Antulay, Shri A. R.

Arif, Shri Mohammed Usman

Asthana, Shri K. B.

Bagaitkar, Shri Sadasiv

Baleshwar Dayal i

Balram Das, Shri

Banerjee, Shri B. N.

Banerjee, Shri Jaharlal

Bansi Lai, Shri

Barman, Shri Prasenjit

Basavaraj, Shri H. R. Bhabhda, Shri
 Harishanker Bhagat, Shri Ganapat
 Hiralal Bhagwan Din, Shri Bhandari,
 Shri Sunder Singh Bhattacharjee, Prof.
 Sourendra Bhattacharya, Shri G. C. Bhola
 Prasad, Shri Bose, Shrimati Pratima
 Chakraborty, Shri Amarprosad
 Chatterjee, Shri Pranab Chattopadhyaya,
 Prof. D. P. Chaurasia, Shri Shivdayal
 Singh Das, Shri Bipinpal Deb Burman,
 Shri Bir Chandra Desai, Shri R. M.
 Deshmukh, Shri Bapuraoji Marotraoji Dhulap,
 Shri Krishnarao Narayan Dinesh Chandra, Shri
 Swami Dinesh Singh, Shri Dutt, Dr. V. P.
 Dwivedi, Shri Devendra Nath Gadgil, Shri
 Vithal Goswami, Shri Dinesh
 Goswami, Shri Sriman Prafulla
 Gupta, Shri Bhupesh
 Gupta, Shri Gurudev
 Gupta, Shri Ram Lakhan Prasad
 Habibullah, Shrimati Hamila
 Hegde, Shri Ramakrishna
 Imam, Shrimati Aziza
 Jagbir Singh, Shri
 Jain, Shri Dharamchand
 Jamuna Devi, Shrimati
 Janardhanam, Shri A. P.
 Jha, Shri Kamalnath
 Jha, Shri Shiva Chandra
 Joshi, Shri Jagannathrao
 Joshi, Shri Jagdish
 Joshi, Shri Krishna Nand
 Joshi, Shrimati Kumudben Manishan-
 ker Kadershah, Shri M.

Kakati, Shri Robin
 Kalaniya, Shri Ibrahim
 Kamble, Prof. N. M.
 Kameshwar Singh, Shri
 Kesri, Shri Sitaram
 Khan, Shri Ghayoor Ali
 Khan, Shri Khurshed Alam
 Khan, Shri Maqsood Ali
 Khan, Prof. Rasheeduddin
 Khan, Shrimati Ushi
 Khaparde, Shrimati Saroj
 Khobragade, Shri Bhaurao Devaji j
 Krishna, Shri M. R. ! Krishnan, Shri E.
 R. Krishnan, Shri U. R.
 Kumaran, Shri S.
 Kunjachen, Shri P. K.
 Kureel, Shri Piare Le.U urf Piare I. all
 Talib
 Lakhan Singh, Shri Lakshmanan, Shri G.
 Lokesh Chandra, Dr. Lotha, Shri Khyomo
 Madhavan, Shri K. K. Mahanti, Shri
 Bhairab Chandra Mahapatro, Shri
 Lakshmana Mahavir, Dr. Bhai Mahida,
 Shri Harisinh Bhagubava Majhi, Shri
 Dhaneswar \ Makwana, Shri Yogendra
 Maliick, Shri Harekrushna Manhar, Shri
 Bhagatram Maran, Shri Murasoli Mathur,
 Shri Jagdish Prasad Maurya, Shri Buddha
 Priya Mehrotra, Shri Prakash Menon,
 Shrimati Leela Damodara Menon, Shri
 Viswanatha Mishra, Shri Kalraj Mishra,
 Shri Mahendra Mohan Mohanty, Shri
 Surendra Mohinder Kaur, Shrimati
 Mondal, Shri Ahmad Hossain

Moopanar, Shri G. K.
 Morarka, Shri R. R.
 Mukherjee, Shrimati Kanak
 Mukherjee, Shri Pranab
 Munusamy, Shri V. P.
 Muthu, Dr. (Shrimati) Sathiavani
 Naidu, Shri N. P. Chengalraya
 Naik, Shri L. R.
 Nanda, Shri Narasingha Prasad
 Narendra Singh, Shri
 Nigam, Shri Ladli Mohan
 Nizam-ud-Din, Shri Syed
 Oza, Shri Ghanshyambhai
 Pande, Shri Bishambhar Nath
 Parbhu Singh, Shri
 Parikh, Prof. Ramlal
 Patel, Shri Manubhai
 Pathak, Shri Ananda
 Patil, Shri Deorao
 Pattanayak, Shri Bhabani Charan
 Poddar, Shri R. K.
 Pradhan, Shri Patitpaban
 Prem Manohar, Shri
 Rai, Shri Kalp Nath
 Rajan, Shri Pattiam
 Raju, Shri V. B.
 Ramamurti, Shri P.
 Rameshwar Singh, Shri
 Ranga, Prof. G.
 Ray, Shri Rabi

 Razack, Shrimati Noorjehan Reddy, Shri
 B. Satyanarayin Reddy, Shri K. V.
 Raghunatha Reddy, Shri Mulka Govinda
 Reddy, Shri R. Narasimha Roshan Lai,
 Shri Roy, Shri Kalyan Sahaya, Shri
 Dayanand

 Sahu, Shri Santosh Kumar
 Saleem, Shri Mohammad Yunus
 Samad, Shri Golandaz Mohammedhu-sian
 A.

Saring, Shri Leonard Solomon Sarup
 Singh, Dr. Satchidananda, Shri
 Sezhiyan, Shri Era Shahedullah, Shri
 Syed Shahi, Shri Nageshwar Prasad
 Shanti Bhushan, Shri Sharma, Shri
 Ajit Kumar Sharma, Shri Anant
 Prasad Sharma, Shri Kishan Lai
 Sharma, Shri Yogendra Shastri,
 Shri Bhola Paswan Siddhu, Dr. M.
 M. S. Singh, Shri Bhishma Narain
 Singh, Shri J. K. ? N. Singh, Shri
 Ng. Tompok Singh, Shrimati
 Pratibha Singh, Shri Shiva N and an
 Sinha, Shri Indradeep Sinha, Dr.
 Ramkripal Sisodia, Shri Sawaisingh
 Soni, Shrimati Ambika Sujan Singh,
 Shri Sultan, Shrimati Maimoona
 Sultan Singh, Shri Surendra Mohan,
 Shri Surjeet, Shri Harkishan Singh
 Swu, Shri Scato

 Toma, Shri Ratan Totu, Shri Gian
 Chand Triloki Singh, Shri Tripathi,
 Shri Kamalapati Vaishampayen, Shri
 S. K. Varma, Shri Mahadeo Prasad
 Venigalla Satyanarayana, Shri
 Venka, Shri V. Venkatrao, Shri
 Chadalavada Warjri, Shri Alexander
 Yadav, Shri Ramanand Yadav, Shri
 Shyam Lai

NOES—1

¹ Rao, Shri V. C. Kesava

The motion was carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

MESSAGES FROM THE LOK SABHA (I)

The Press Council Bill, 1978

(II) The Visva-Bharati (Amendment) Bill, 1978

(ni) The Industrial Relations Bill, 1978

(IV) The Hospitals and Educational Institutions (Conditions of Service of Employees and Settlement of Employment Disputes) Bill, 1978

(V) The Employment Security and Miscellaneous

Provisions (Managerial Employees) Bill, 1978.

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

SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

(I)

"In accordance with the provisions of Rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 31st August, 1978, agreed without any amendment to the Press Council Bill, 1978, which was passed by Rajya Sabha at its sitting held on the 7th August, 1978."

(II)

"I am directed to inform Rajya Sabha that Lok Sabha, at its sitting held on Thursday, the 31st August, 1978, has adopted the enclosed motion concurring in the recommendation of Rajya Sabha that Lok Sabha do join in the Joint Committee of the Houses on the Visva-Bharati (Amendment) Bill, 1978. The names of the members nominated by Lok Sabha to serve on the said Joint Committee are set out in the motion.

MOTION

"That this House do concur in the recommendation of Rajya Sabha that the House do join in the Joint Committee of the Houses on the Bill further to amend the Visva-Bharati Act, 1951, made in the motion adopted by Rajya Sabha at its sitting held on the 25th July, 1978 and communicated to this House on the 27th July, 1978 and do resolve that the following 22 members of Lok Sabha be nominated to serve on the said Joint Committee, namely:—

- (1) Shrimati Renuka Devi Bar-kataki
- (2) Shri Bedabrata Barua
- (3) Shri Tridib Chaudhuri
- (4) Shri Dhirendranath Basu
- (5) Shri Rudolph Rodrigues
- (6) Shri C. K. Chandrappan
- (7) Shri Ajitsinh Dabhi
- (8) Shri Raj Krishna Dawn
- (9) Shri V. Kishore Chandra S. Deo

- (10) Shri R. D. Gattani
- (11) Shri Samar Guha
- (12) Shri V. G. Hande
- (13) Shri Nirmal Chandra Jain (14) Shrimati Mohsina Kidwai

- (15) Dr. (Shrimati), Sarojini Mahishi
- (16) Shri P. Rajagopal Naidu
- (17) Shri K. A. Raju
- (18) Shri Ramjiwan Singh