THE CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL, 1976

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Chairman, Sir, I beg to move:

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

Sir, only the other day the Lok Sabha passed this Bill with great acclamation and joy and I am sure that when that stage will come in this House, this House also will accept this Bill with the same joy and acclamation. During the last one year a great deal of discussion and debate has been going on in the country on these proposals and for over one week the Lok Sabha has discussed all these proposals in great detail. At this stage I do not wish to take the hon. Members of this House to minor details which are contained in this Bill and which will be considered by the House when the clause by clause discussion will be taken up. I would deal broadly with the major aspects of the proposed changes in the Constitution.

It is regarded by everybody as quite obvious that the changes made are very far reaching changes from the point of view of our country, from the point of view of benefit to all people, and that has been the main motivation behind bringing this Bill before the House. There have been critics here and there but by and large there has been a general acceptance in the country of the main changes which are proposed to be made. It is quite clear that this Parliament now is putting beyond any doubt that Parliament is the supreme authority to amend any provision of the Constitution or all provisions of the Constitution. That was the proposal contained in the original Bill as it was introduced and moved in the Lok Sabha. But, as a result of discussions which took place there, further changes to remove such doubts as might have arisen in respect of this have also been made by appropriate amendments. For example, the original proposal contained the provision 'excepting on the ground of procedure, there can be no challenge to an amendment of the Constitution in any court on any ground'. Now this has been changed because it was apprehended—and I think rightly—that a provision like this might lead to a challenge on the ground that the procedure has not been followed and the procedure which had been followed in the two Houses would itself be the subject-matter of arguments in courts and of decisions by courts. Therefore, it was a good suggestion made and we accepted it and amended it so as to remove those portions of the amended article 368 which left some ground open for challenging the Constitution. Not only that; but as will be seen by hon. Members in the Bill as it has come here now a new clause has been added saying that on no ground whatsoever Parliament's right to make an amendment can be the subject-matter of any issue before a court of law. I think that now the article as has come before this House makes it abundantly clear that the courts have no jurisdiction whatsoever to deal with any challenge to a constitutional amendment.

Sir, everyone knows why it has become necessary to make such a provision now. It is not as if this was not the situation before. In fact, it was never contemplated even when the original article 368 was brought in the Constitution that the courts should have the power to intrude on the supremacy of Parliament and on the basis of their views as to what the Constitution meant, they could set aside an amendment made by Parliament in respect of any

provision of the Constitution. This started first in 1967 when the Supreme Court held that other provisions can be amended but the Fundamental Rights cannot be amended, Part III of the Constitution was unamendable. This gave rise and justly and legitimately to a great feeling of anger in the country when the very power and the competence of Parliament was challenged and that challenge was upheld by the courts. That case, which I need not mention because that name is well-known to everybody, for the first time introduced into the judicial determination an element of the political philosophy of the judges who decided that case. Many unusual, unknown things were done apart from saying that Part III is unamendable. Because of the difficulties which they by reason of the fact that faced so many laws, particularly agrarian laws, had been passed by Parliament earlier and wherever it was necessary even by an amendment of the Constitution it was done. They introduced in that case a new theory which had itself become outmoded even in the country from where it was brought, the new theory of prospective over-ruling. Therefore, they were faced with this dilemma that if they said that Parliament never had the power to amend Part III, what to do with those amendments which had already been made and in pursuance of which not only laws had been made but the very structure, particularly in the agrarian field, of our economy, had been changed. Therefore, no attempt was left out by the judges in that case to see that some way was found on political considerations to hold that Parliament cannot amend Part III of the Constitution. But as a method to get out of the difficulty, which was going to be a genuine difficulty, they imported this theory of prospective repeal which was unknown, so far as I know, in any country, and even in the country from which it had been brought by the Supreme Court of India, it had been discarded long time back. In another case while they accepted that every provision in the Constitution can be amended, they brought in a new theory. We used to say it had been imported but the Prime Minister rightly pointed out in the other House that it has not been imported but it has been invented; it has come from the thinking of the judges who thought that they should reserve to themselves some power which really they did not possess and which they, in their heart of hearts knew that it really belonged to only one authority in India, the highest authority, namely, the Parliament.

Now, all these cases of judicial determinations left us with no alternative but to place before Parliament, in unequivocal terms, a proposal where not the Supreme Court or any other court in India but Parliament alone can have the authority and have the necessary supremacy which, as we all know, always existed. But we had to reassert because of the situation created by judicial determinations. Therefore, what we are doing now by accepting this proposal in the constitutional amendment is really, once again, to assert, without any shadow of doubt, that the courts will have no function in the matter of determining the validity of a constitutional amendment which function is only of Parliament and of no one else. This, to my mind, is one of the most important features of the amendment which this House is going to discuss from today onwards for a few days.

Sir, it is not as if this is the only thing because there are many other things of very great importance in the proposed amendments in the Constitution. While it is true that because of the very nature of the Directive Principles contained in Part IV of the Constitution, they were not enforceable, in fact, one Article stated that they are of great significance for making laws and that they are of great significance for

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the Government in the pursuit of its policies but they were not enforceable. The courts took every opportunity and whenever a legislation was undertaken and passed by Parliament to give effect to these Directive Principles, the courts said: "They are not enforceable and, therefore, the legislation is not good". There has been a feeling in the country and here in both the Houses for a long time that now, after more than 25 years of our independence, it is high time that we set right this situation and once again make such provisions as will enable Parliament to pass legislation to give effect to the Directive Principles and even though they might, in some cases, go contrary to the Fundamental Rights, it is not the Fundamental Rights which will supersede the Directive Principles but it will be the Directive Principles which will supersede the Fundamental Rights. Therefore, in respect of a challenge made to a legislation on the ground that that legislation is violative of three articles Nos. 19, 31 and 14, that challenge cannot now be upheld if the legislation is for giving effect to any or all of the Directive Principles contained in the Constitution. This is for the first time that a provision is proposed in the amending Bill for giving a place of primacy to the Directive Principles over the Fundamental Rights and I think, as you know the right which is taken in the Directive Principles in Part IV, opens out possibilities of undertaking legislation without any legal difficulty to give effect to the Directive Principles of the Constitution. This, to my mind, is another very important feature of the proposed Constitution (Amendment) Bill.

Then, one more Chapter is being added which is entirely a new provision in the Constitution. Perhaps, it is new in the sense that it does not exist in many other Constitutions of the world. It does exist in a few, but not in many other Constitutions of the world. This is the Chapter relating to the fundamental duties of a citizen. Everyone has been thinking that, all along, the emphasis has been only on the rights of an individual. The most important part of any political system where the duties should have the same, if not more, significance was ignored. Therefore, the proposed new Chapter sets out, enumerates, a list of ten duties, which are fundamental duties of citizens and, which, though not for the time being proposed to be made enforceable by penalities, are, to my mind, as fundamental as any other fundamental provisions of the Constitution. This is another very important feature of the proposed amendments.

Then, the Preamble is now proposed to be amended and two words are proposed to be added, namely, 'socialist' and 'secular'. Not that this country has not accepted the objectives of socialism and secularism before. In fact this has been there for years in this country. Long ago, Shri Jawaharlal Nehru enunciated the theory of socialism and said that in this country, we will have a socialist pattern of society. The thinking of all right-minded people has been on these lines that this country can progress only on the basis of socialism. Secularism has also been made, in some parts of the Constitution, one of the important features of our Constitutional structure. Now, for putting it before the country and before the people with greater emphasis once again, these two aspects, socialism and secularism, are being put in a very important way in the Preamble itself. Some critics have commented that there is no use having these words in the Preamble. They have the technical argument that this is not a part of the Constitution, which I dispute. It is a part of the Constitution. It is the Preamble which really gives you a correct perspective as to how to understand the whole Constitution. Even the Courts have recognised that the Preamble is really the key to the statute in which it is placed. If it is the key to the various

other statutes, it is all the more the key to the understanding of the Constitutional provisions which are incorporated in the proposed amendments. Therefore, it was thought necessary that we should once again highlight these two larger objectives which the country has always kept in view and which we must always keep in view in the future also, in the making of laws, in the performance of our duties, in the administration and elsewhere. Therefore, the argument that it is not a part of the Constitution is really irrelevent. The main part is that once again we reflect the view of the whole nation that in the Constitution, which is the basic law of the country and which is the fountain-head and the source of all other legislations, emphasis should once again be laid on these two great objectives which our country and our people have all along accepted.

Then, there are provisions with regard to the judiciary. This is another important aspect of the proposed amendments. A lot has been said about this in the other House and on other platforms outside Parliament. I think it is necessary to refute the criticism which is made that we are trying, once and for all, to denigrate the judiciary and that the judiciary will not have any important role to play after these amendments are passed. This is a motivated criticism with a view to create a feeling of suspicion in the minds of the judges. The people who criticise are those who have a vested interest in the present functioning of the Courts. But when Parliament takes a view in this matter, the paramount consideration which Parliament keeps in mind is not the interest of some persons or the benefits which certain provisions of the Constitution would give to a small section of the people. It has to keep in mind the larger perspective. The larger perspective is in answering the question: What is the purpose for which the judiciary exists, what is its role, scope and what is its real function, within what bounds will the judiciary function? Experience unfortunately has shown in the last 10 or 12 years that in every case, in every important matter where things were considered as very vital from the point of view of the people at large and the country, the judiciary transgressed its limits and entered into a field which really did not belong to it. Well, somebody has said somewhere that the Constitution is what the court says. But that is not a theory which is accepted anywhere. Now the Constitution is what it says and not what the court says. The courts will no doubt interpret the Constitution but will not invent theories to put into the plain clauses of the Constitution what is not said in the Constitution but what is according to the political philosophy of the Judges who import these objectives or who bring those ideas which are not there in the Constitution. This is what is sought to be stopped by making the present amendments with regard to the functioning of the judiciary in this country.

Article 226 is proposed to be amended and that was because of the experience of many years where it has been found that not only administration had become impossible but in many matters where legislation was undertaken or where executive action was taken for fulfilling the pledges which the party in power had made to the people, the courts intervened and in their so-called right which they regard as their right under the existing article 226, these actions or these proposals or the legislations were frustrated. This was never meant to be the intention of the present article 226. As we know, many years back in a Committee presided over by no less a person than Pandit Jawaharlal Nehru a proposal was made that article 226 needed to be amended. The words "any other purpose" are to be removed and the main reason why it was felt even be-

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fore many years was that even at that time difficulties had been experienced because of the intervention of courts in matters which do not or did not legitimately belong to their field, to the judicial field. Now, it is not as if even in the proposed amended article 226 the courts have been left with no power. In fact, the power to enforce Fundamental Rights is still left open. The power to strike down legislation if it contravenes any other provisions of the Constitution is still there. The power to issue one or the other of the three or four writs which are mentioned in that article is still retained as it is, but beyond this, the power is limited. That power is, of course, to see that no illegal action on the part of any authority which is a part of the executive authority, can take place. Therefore, the grievance can only be that somebody has acted illegally or somebody has gone against the provisions of the law. And even then, a further restriction is put there that if it is a technical complaint—there might be some illegality here and there but that illegality has really not caused any injury to the person who has brought this complaint, any injury of a substantial nature—High Courts should not be the place where on mere technicalities a challenge should succeed, while what was done was basically right and no complaint could be made with regard to the intention, with regard to the object with which a certain order was made provided it is broadly within the framewrok of the law. Similarly, with regard to the quasi-judicial or judicial orders there is power even now in the proposed amendment for the courts to interfere if the procedure in those bodies has been contrary to law. A further restriction is added which, I submit, is a very legitimate restriction, that even there the decisions of these bodies should not be set aside merely on technicalities. If there is a substantial failure of justice, yes, the courts still have the power to say that that judicial decision is wrong and must be set aside.

Now I wonder how any one can reasonably argue that the powers of the courts are taken away so much so that the citizen has no remedy. In fact, it is to leave the remedy open to the citizen in cases where he needs the intervention of a judicial body that the provision has been made. But, of course, if there is an alternative remedy which is provided in the law under which a particular action is taken or an order is made, it is necessary that first that alternative remedy should be exhausted, and if that remedy is exhausted, the person concerned should be content with the final determination which has come as a result of the exhaustion of that remedy. In such cases a writ application should be completely out of place. That is the proposal made with regard to the powers of the High Courts. I think in some cases the criticism has come—I think it is absolutely unreasonable—not because those who make the criticism do not understand the scope of the proposed amendments but it has come mainly because of political considerations and political objectives. That is what we have been seeing in this country for the last one year.

Meetings have been held outside. True, meetings ought to be held and people who do not like some parts of the amendments should be entitled to say that they do not like the amendments, but certainly we are also entitled to know on what grounds they are opposing these amendments. But all the criticism has not been at all on the merits of the proposed Constitution Amendment Bill. It has all come on general considerations, political considerations where people are told that the Judiciary is now being finished, that this Parliament has no mandate, that you cannot do these things, that you are doing these things in a hurry. Now what is the meaning of saying that these things are being done in a hurry when, for over a year, a long discussion has been going on in the country on public platforms, through articles appearing

in the various journals and newspapers? And even before this was done, the Congress Party took the right decision to appoint a Committee which heard a large number of people, and one would be astounded to find that even this Committee, which was not appointed by the Government, had before it no less than 4,000 memoranda and a large number of people had been interviewed; they had come and spoken before the Committee, given their views. Even in the recommendations which emerged from the Committee, you can easily see that so many changes were made from time to time in the light of the criticism made and in the light of the discussions which had taken place before the Committee by those persons who had appeared before the Committee. Even after the Committee's Report was submitted Government looked into the recommendations and made some further changes in the light of discussions which took place after the introduction of the Bill in the Lok Sabha on the 1st of September. Meetings were held with legislators of all parties; meetings were held with leaders of the Opposition who responded to our invitation to come and discuss these matters with us. And yet it is said that things are being done in a hurry, that there has not been a proper debate and discussion. From the point of view of these critics, I wonder when they would regard discussions as having taken place and at what point of time they will concede that now is the time to undertake constitutional amendments. But the real things is.. (*Interruption*) ....what has emergency to do with this.

SHRI G. LAKSHMANAN (Tamil Nadu): If you had declared the emergency as over and allowed discussion, then it would have been proper.

SHRI H. R. GOKHALE: Has emergency in any way come in the way of holding the discussion?

SOME HON. MEMBERS: Yes.

SHRI H. R. GOKHALE: No.

SHRI OMPRAKASH TYAGI: (Uttar Pradesh): All the seminars were banned.

SHRI H. R. GOKHALE: Nothing was banned.

SHRI OMPRAKASH TYAGI: Here in Delhi.

SHRI H. R. GOKHALE: Listen to me The real thing is that under the guise of holding discussions on the constitutional amendments, some meetings were sought to be used for other purposes. But I can say with confidence that every meeting which really wanted to discuss constitutional amendments was allowed not only recently but even after the question was raised for the first time in the country that the Constitution was going to be amended.

All these arguments, as I said earlier, were political arguments. What prevented, let us say, at least Members of Parliament who do not support this? They were not prevented from coming to us and telling us that this was their objection to this article or any other article. What prevented them? In what way the emergency came in their way excepting to say that you make use of the emergency to run away from the fact that there are constitutional amendments and run away from the fact that they themselves were not united—because of the kind of people who met on the same platform? If you look at the composition of this group, they do not agree on anything excepting opposition to these constitutional amendments. I will give one example.

SHRI G. LAKSHMANAN: It applies to you also.

SHRI H. R. GOKHALE: You had an extreme element there which said that the right to property should be done away with—not that some of our people did not feel like that, but I am talking of the platforms on which these various groups spoke. On the same platform the people who had asserted outside that the right to property should go were speaking, and on the same platform the other people who had said that the right to property should not only not go but should be further consolidated were speaking. Now, how can they agree on that? The point is that on no political or economic issues they were parties which could agree.

श्री ओ३म प्रकाश त्यागी : इस बात का क्या दबाव है कि हमने प्रार्थना की थी कि अपोजीशन के जो पार्लियामेंट के मेम्बर्स हैं जेल में, उन को आप रिहा करो, उन को यहां पार्लियामेंट में लाओ और फिर कांस्टीट्यूशन अमेंडमेंट बिल पर बहस का मौका दो। लेकिन यह आप ने नहीं किया। क्यों ?

SHRI H. R. GOKHALE: The point really is that you find an argument for not coming forward with any concrete suggestion. If the argument of emergency is not enough, the argument is that of detention. If detention is not enough, the argument is that of elections. If that is not enough, then the argument is that there is a great hurry. But no one comes forward and says which parts of the present proposals are bad. And certainly Mr. Tyagi was not in detention! What prevented Mr. Tyagi from coming and holding discussions with us?

श्री ओ३म प्रकाश त्यागी : हमारी पार्टी के जितने लीडर्स हैं जो हम रो पार्टी ने चुने हैं वे सब जेल में हैं। मैं उनकी अनुपस्थिति में लीडर बना दिया गया हूं ।

I am not the leader of Jana Sangh.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA): Sir, we made the proposal that we were prepared to bring the leaders out, but then they backed out from that.

श्री ओ३म प्रकाश त्यागी : आप हमारे लीडर्स को तो छोड़ो कम से कम। हमारी पार्टी के प्रामिनेंट आदमी जेल में हैं तो हम किस के साथ सलाह करें ?

SHRI H. R. GOKHALE: Sir, the real point is that.....

SHRI OM MEHTA: We made the proposal, but they did not agree at that time.

SHRI H. R. GOKHALE: Obviously, the honourable Member is at great pains to oppose this because he knows that he has not taken every opportunity which was available to him and his other colleagues who could have come and discussed these matters with us. They were invited, but on general political grounds they refused to come. But, much worse than that is that when the other House met, they came there only to walk out. They came there and they turned their backs and ran out of the House. They wanted to evade the responsibility of saying what they wanted to say in Parliament, which was their responsibility. I take it that it was their mandate when they were elected by the people that they should go to this forum and they

should reflect what, according to them, is a view of the general public. They evaded this responsibility. And that is why, Sir, I repeat what the Prime Minister said in the other House, that non-co-operating with Parliament is non-co-operating with the people. That is exactly what they have done. You find out an alibi for doing things which you have illegitimately done, and then give these arguments, general arguments, that this happened and therefore you could not come. And, moreover, when ordinary people—forget the leaders—who were vitally interested in a matter like this, gave their suggestions and they wrote to us—and they are not lawyers; in fact, most of them are not lawyers but people belonging to different professions, teachers, students and people who are interested in science and technology—the people who represent their constituencies shirked their responsibility. Not only did they come out of the House, but also they ran away from the responsibility of saying what they had to say in the House. What sense of responsibility these people have towards themselves and towards the people whom they represent in their constituencies? This is an attitude which anyone who thinks of this matter carefully will not understand. And, in spite of all this hue and cry raised about several other political matters, it is clear beyond doubt to everyone in this country that the tendency to run away from shouldering the responsibility has been there with them. Now, Sir, Members of Parliament who did not support all the proposals participated in the discussions outside, participated in the discussions in the other House. They did not agree with everyone of these proposals. They made certain suggestions. We might have agreed with some; we might not have agreed with some others. The fact is that they should discharge their duty of speaking in the House about what they think is in the best interests of the country. It is this duty which these people have run away from. This is the main thing to be remembered in all these debates which have been going on for the last one year or so.

I was only mentioning this that when a situation came in the country where any further progress can be achieved only by this, one thing was clear in our minds that whatever we do in this country we do it on the basis that there is the rule of law. If there is the rule of law, we will do things if the law enables us to do them. But if the law comes in the way of doing them, it becomes the paramount duty of Parliament to see that the law conforms to the wishes and aspirations of the people. It is for that purpose that even the fundamental law is being amended to see that no one at any time can say that something extra-constitutional was done, that something illegal was done. And that is the most important stage at which this Parliament is today, and that is the most important stage where certain people have shirked their responsibility and given all kinds of excuses by not participating in these discussions. Anyway, Sir, it is up to them to decide as to how they discharge their responsibility. But the fact remains that in the country as a whole, among all sections of the people, the proposals for amendments have been extremely well received and there is a general consensus. In fact, people have been complaining that this is something which should have been done ten years back, why did you not do it at that time? So much is the feeling that what is being done is so necessary. 'Better late than never' some of them have said.

Now, this is the situation today. We are seized of a Bill which is of great significance to our people and to our country. It is not that immediately after the amendments we are going to have an Utopia. Nobody claims that; nobody is so gullible as to believe that. The main thing is that we remove a hurdle or a diffi-

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culty and progress step by step towards what the country wants to achieve in the near future. And that is the purpose of the present constitutional amendments.

Sir, I do not wish to speak much about judicial pronouncements. I have spoken enough about them elsewhere. All that I would say is that I hope that even after these amendments are made, the people who are charged with the responsibility of judicial determination will see what the feelings of the people are, that they will bear in mind where the people want us to go and why the hurdles which come in the way of doing those things have to be removed. If this is done and if people do not import their political philosophies in their judicial determination, then I believe no court will function in the way in which it has behaved for the last ten or fifteen years. And people are telling us that you should not amend the Constitution so many times. But how many times they have reversed their own judgments, I would like to know. Has not the Supreme Court which had twice held before that Parliament has full power to amend the Constitution, suddenly after a lapse of many years, changed its view and then said that you cannot amend it? Now, the Supreme Court sits as if it is a law-making body. In fact, in one of the judgments one of the Judges said, "We not only interpret the law but we have to make the law." I am not saying it on my own; it is part of the judgment in the latest Constitution amendment case: "We are not only Judges but we are law makers". To this extent, they arrogate to themselves the functions which for some time the Supreme Court of America wanted to exercise but which it does not exercise now for the last so many years. But what happens? After a long lapse of time, until they change their judgment, so many people have already suffered. Can Parliament wait as the Judges can wait? Parliament cannot wait. These are not such matters. We are racing against time. It may be that there are many things which would have to be done sooner than later. It may be all right for people, very big people, sitting on that high pedestal to say, "Wait till the Supreme Court takes another view of the matter." Surely, the people are not willing to wait. If they are not willing to wait, it becomes the duty of Parliament to see that the people are not required to wait, and it may do things according to the law and according to the Constitution, and if necessary, even amend the Constitution for that purpose. How many times has it happened? I will give you only one example where the Fourth Amendment was passed. And everyone thought that now it was the end of all the difficulties. The Supreme Court held that in the case of property, you have to pay market value compensation. The same Supreme Court within some months, within less than a year, in another judgment interpreted this as to mean that you need not pay market value compensation. We thought that the Supreme Court had given the correct interpretation. But no sooner did the ink on their signature in the judgment dry up than they reviewed the whole judgment and set at naught what they had said only a few months earlier. How can this go on? How long can it be allowed to continue? That is the basic purpose for which we have to say in unequivocal terms that it is not the function of the courts to write the Constitution, that it is not the function of the courts to make laws. It is the function of the courts and the only function of the courts to interpret the Constitution not so as to say that this amendment should not have been done by Parliament but to say that this is the meaning read according to the well-known rule of interpretation that the intention of the legislature should be found

in the words which the legislature employs and the courts should not bring in something which is not there and say "No, no, this is what it was; this is what it really means". That is the difficulty which this country has been facing for quite some years and I think this has now come to a stage where Parliament should have undertaken this, and this it is now undertaking. In America when the question of property rights came, they said that protecting the existing rights to property was more pragmatic. Now the argument of pragmatism is used in support of the *status quo*. And one of them said "Is pragmatism a philosophy or an excuse for not having a philosophy?" Even in America where there is greater devotion to property, people have been resisting this attempt on the part of the courts to see that the *status quo* is perpetuated and the country does not move forward. Surely we in this country need to go much faster than what has happened in other countries. That is the underlying basic idea behind this Constitution Amendment Bill. Certain other provisions are also there. I do not think this is the time when I should go into these details. As I said, when the various clauses are discussed, if there is any doubt, I will try to remove that doubt. But these are the main, important features of the proposed Constitution Amendment Bill and I am quite sure, Sir, that this House will take this Bill into consideration.

The question was proposed.

MR. CHAIRMAN: Mr. Yogendra Sharma.

श्री योगेन्द्र शर्मा (बिहार) : सभापति महोदय, भारतीय संविधान का इतिहास परिवर्तनों का इतिहास है । सच तो यह है कि परिवर्तनों के रथ पर चढ़ कर ही हमारा संविधान जीवित है । यदि हमने पिछले 20 वर्षों में अपने संविधान में अनेक परिवर्तन न किए होते तो आज क्या हालत होती ? या तो हमारा देश वहीं होता जहां 1950–51 में हमारा देश था ...

AN HON. MEMBER: Speak louder. We are not able to hear you.

श्री योगेन्द्र शर्मा : सभापति महोदय, मैं निवेदन कर रहा था कि भारतीय संविधान का इतिहास परिवर्तनों का इतिहास है । सच तो यह है कि हमारा इतिहास परिवर्तनों के रथ पर चढ़ कर ही आज जीवित है । क्या होता यदि हमने अपने संविधान में परिवर्तन न किए होते ? दो ही परिणाम हो सकते थे या तो हमारा देश वहीं होता जहां 1950–51 में था या फिर यह संविधान ही समाप्त हो गया होता । और इसीलिये हम अपने देश के उन दूरदर्शी नेताओं को, दिवंगत नेता पंडित जवाहरलाल नेहरू को, और वर्तमान प्रधान मंत्री श्रीमती इन्दिरा गांधी को बधाई दिये बिना नहीं रह सकते हैं कि उन्होंने भारतीय संविधान को समय के अनुकूल परिवर्तित और संशोधित करके हमारे देश को गतिशील बनाये रखा है । सभापति महोदय, हमारे देश में संविधान में संशोधनों का इतिहास संघर्षों का इतिहास रहा है । इसका इतिहास प्रगति और प्रतिक्रियावाद के बीच संघर्षों का इतिहास रहा है । आप जानते हैं कि परिवर्तन प्रकृति में भी होते हैं और परिवर्तन समाज में भी होते हैं । परिवर्तन ही जीवन है । लेकिन प्रकृति में परिवर्तन शान्ति और निर्विरोध होते है । इसके विपरीत समाज में परिवर्तन संघर्षों के बीच से होते हैं । यही कारण है कि हमारे संविधान में संशोधनों का इतिहास संघर्षों का इतिहास हो गया है । मैं समझता हूं कि इन संघर्षों ने खासतौर से पिछले 10 वर्षों में बहुत ही उग्र रूप धारण कर लिया है जब कि एक तरफ यथा-स्थितिवादी और प्रतिक्रियावादी शक्तियों ने संविधान को जड़ बनाने की कोशिश की और

[श्री योगेन्द्र शर्मा]

कहा कि इसमें संशोधन नहीं हो सकते हैं मौलिक अधिकारों में किसी प्रकार का संशोधन नहीं हो सकता है, बुनियादी ढांचे का संशोधन नहीं हो सकता है और सम्पत्ति के मौलिक अधिकार को खत्म नहीं किया जा सकता है, लेकिन दूसरी तरफ देश की प्रगति के पथ पर ले जाने वाले लोग भारतीय जनता को आगे बढ़ाने की आकांक्षा से प्रेरित होकर यह मांग कर रहे थे कि संविधान में परिवर्तन होना चाहिये। मैं इस तमाम इतिहास में जाना नहीं चाहता हूं। लेकिन इसके साथ-साथ हम इस बात को भी नहीं भूल सकते हैं कि गोलक नाथ केस के बाद हमारे देश में जो एक नया अध्याय शुरू हुआ उस नये अध्याय ने यह साफ जाहिर कर दिया कि आज संविधान में संशोधन के प्रश्न पर जो संघर्ष हो रहा है वह उन्हीं संघर्षों का कांटिनुएशन है।

सभापति महोदय, प्रश्न यह है कि इन संघर्षों का मुख्य बिन्दु क्या है? हम गोखले जी की तरह संवैधानिक और कानूनी बारीकियों में जाना नहीं चाहते हैं। लेकिन एक सवाल पेश करना चाहते हैं कि पिछले 10 वर्षों में संविधान संशोधनों के प्रश्न पर जो संघर्ष हमारे देश में चला है उन संघर्षों का मूल बिन्दु, मुख्य बिन्दु क्या है? मैं समझता हूं कि उन संघर्षों का मुख्य बिन्दु यह है कि हमारे देश की संसद सर्वसत्ता सम्पन्न है या नहीं? हमारी यह संसद् सर्वाधिकार सम्पन्न है या नहीं? पिछले 10 वर्षों में संशोधनों के प्रश्न पर जो संघर्ष हमारे देश में चल रहा है उसका मूल बिन्दु यही है। हमारे विपक्षी भाई सदन से गायब हो गये है। कुछ यहां पर हैं लेकिन कुछ गायब हो गये हैं। इसलिये बोलने में भी बहुत जोश नहीं आता है। मैं समझता हूं कि सही बात यह है कि हमारे विरोधी भाई जो जनतंत्र की दुहाई देते हैं वहीं लोग जनतंत्र की सर्वोच्च संस्था संसद् से भाग खड़े होते हैं। उन्होंने कहा कि इस समय हमारे देश में इमरजेन्सी है लेकिन हमारे देश में जो लोग संसद से भाग खड़े होते हैं वही लोग संसद् और विधान-सभाओं के सामने सम्पूर्ण क्रान्ति के नाम पर मुहिम खड़ा करते हैं और कहते हैं कि विधान सभा को तोड़ दो इसको फैंक दो। ऐसा वे उस विधान सभा के लिये कहते हैं जो जनता की आकांक्षाओं की प्रतिनिधि होती है और जनता की सर्वोच्च संस्था होती है। तो जनतंत्र की उनकी दुहाई पाखण्ड की दुहाई है। प्रश्न यह है कि इस जनतंत्र में सर्वोच्च कौन है और इसके सिलसिले में तरह-तरह के तर्क हमारे बड़े-बड़े विधि विशेषज्ञों ने, दूसरे लोगों ने उपस्थित किये हैं। उनके तर्कों के कुछ पहलुओं में हम जायेंगे लेकिन जाने से पहले हम यह सवाल उपस्थित करना चाहते हैं कि जब हम संसद् की सर्वोच्चता और जनतंत्र की बातें कर रहे है तो उनको नापने और तोलने का मापदण्ड क्या है? जनतंत्र का मूल मंत्र क्या है? मेरी समझ में सभापति महोदय, जनतंत्र का मूल मंत्र है जनता के प्रति वफादारी। जनता के प्रति वफादारी जनतंत्र का मूल मंत्र है और जनता के प्रति वफादारी का प्रश्न हमको फिर 1971 की ओर ले जाता है। 1971 में जब लोक सभा का मध्यावधि चुनाव हुआ था तो उस समय यह पूछा गया था कि इस देश की सबसे बड़ी अदालत कौन है। सुप्रीम कोर्ट बड़ी है या पार्लियामेंट बड़ी है? हम समझते हैं कि इस देश में सबसे बड़ी अदालत सन् 1971 में बैठी थी और यह अदालत जब भी संसद् के चुनाव होते है तब बैठती है। वह देश की सबसे बड़ी अदालत है। सन् 1971 के मध्यावधि चुनाव में जनता की अदालत बैठी थी। क्या उस अदालत से भी सुप्रीम कोर्ट की अदालत को ज्यादा अधिकार है? उस अदालत ने अपना फैसला दिया। उस अदालत ने हम चाहें या न चाहें इन्दिरा जी को दो तिहाई बहुमत दिया। सभापति महोदय उन्होंने किस बात के लिये इन्दिरा जी को दो तिहाई बहुमत दिया? जिस चीज को लेकर इन्दिरा जी और उनकी पार्टी इस देश

की सबसे बड़ी अदालत के सामने खड़ी हुई थी उसने उसका समर्थन किया । उनके चुनाव घोषणा-पत्र में यह कहा गया है :

"It will be our endeavour to seek such further constitutional remedies and amendments as are necessary to overcome the impediments on the path of social justice."

इन्दिरा जी और उनकी पार्टी भारतीय जनतंत्र की सबसे बड़ी अदालत के सामने खड़ी हुई थी और उस अदालत ने फैसला किया कि 'जाओ तुम इस चीज को करो' । उसके सामने सुप्रीम कोर्ट की क्या हैसियत है । जनतंत्र की बात करने वाले महानुभावों से हम दरख्वास्त करना चाहेंगे कि आप सोचिए . . . .

SHRI G. LAKSHMANAN: Mr. Sharma, up to what date the election manifesto was in force? Is it in force up to March 1976?

श्री योगेन्द्र शर्मा : वह उनसे पूछिये ।

तो मैं यह कह रहा था कि जनता की सबसे बड़ी अदालत ने यह फैसला दिया कि संविधान में संशोधन करो, संविधान में से उन चीजों को निकाल दो जो सामाजिक और आर्थिक प्रगति के रास्ते में जनता की आकांक्षाओं की पूर्ति के रास्ते में बाधक है । जनतंत्र का तकाजा है कि हम तमाम भारतीय जनता के फैसले पर अमल करें और उस पर अमल करने के लिये संविधान में वैसा संशोधन करें ।

सभापति महोदय; हमारी पार्टी छोटी पार्टी है । आप जानते हैं कि भूपेश गुप्ता जी बेचारे चिल्ला रहे हैं कि हम लोग बढ़ें, हम बढ़ रहे हैं । हम किस बात को लेकर जनता के सामने गये थे ।

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हमने किस बात को लेकर के जनता का हुक्म, जनता का मैन्डेट प्राप्त किया था ? हम समझते हैं कि जनता के प्रति वफ़ादारी का तकाजा है कि जिन चीजों को लेकर हम जनता की अदालत में गये थे, जनता ने हम को वोट दिए और जनता ने हमारे पक्ष में फैसले दिए, हम पूरे जी-जान से उनके लिए संघर्ष करें । और किन बातों को लेकर हम जनता के सामने गए ? 1971 के मध्यावधि चुनाव में अपने चुनाव घोषणा-पत्र से सिर्फ एक पैरा पढ़कर सुनाना चाहता हूं ।

"संसद् की सर्वोच्चता को जिस सर्वोच्च न्यायालय ने चुनौती दी है हर कीमत पर पुनः प्रतिष्ठित किया जाना चाहिये ।" यह अपील लेकर हम जनता की सबसे बड़ी अदालत में गये थे, और उस अपील पर जो फ़ैसला हुआ था उस को लेकर हम यहां पर बैठे हुये हैं । "संविधान में इस प्रकार का संशोधन अनिवार्य है जिससे संसद् की संस्था के माध्यम से अभिव्यक्त जनता की इच्छा की सर्वोच्चता को न्यायपालिका, जिसमें सर्वोच्च न्यायालय भी शामिल है, चुनौती न दे सकें ।" हमें खुशी है कि इसी आशय के संशोधन इस विधेयक में किए गए हैं । "इसका अर्थ सर्व प्रथम और सर्वोपरि यह है कि संविधान के मूलभूत अधिकारों वाले परिच्छेद में संशोधन करने के संसद् के अधिकार की पुनः प्रतिष्ठा हो । संविधान में इस प्रकार का संशोधन भी अनिवार्य है जिससे कि न्यायपालिका के लिये यह लाजमी हो जाए कि वह कानूनों की व्यवस्था सामाजिक और आर्थिक परिवर्तनों के हित में, न कि उनकी परिधियों को सीमित करने अथवा उनसे प्रभावित होने वाले निहित स्वार्थों की रक्षा करने के लिये हो, उनको आगे बढ़ाने के लिये करें । न्यायपालिका के लिये यह लाजमी हो जाना चाहिये कि ऐसे मामलों में वे संविधान की प्रस्तावना और निर्देशन सिद्धान्तों से मार्ग दर्शन ग्रहण करें ।" इस चीज को लेकर जनता की सबसे बड़ी अदालत में हमारी पार्टी गई थी, और जनत

[श्री योगेन्द शर्मा]

के प्रति वफ़ादारी का तकाजा है कि हम संविधान में ऐसे संशोधनों के प्रस्ताव का स्वागत करें, समर्थन करें और संघर्ष करें और उनके विरोधियों का विरोध करें।

हम पूछना चाहते हैं विरोधी पक्ष के उन लोगों से, जो भूल गए हैं जनता की सबसे बड़ी अदालत की बात। और, उनको याद है कि सिर्फ़ सुप्रीम कोर्ट वाली बात कि संविधान में बेसिक स्ट्रक्चर को नहीं बदला जा सकता है। यह क्या है बेसिक स्ट्रक्चर वाली बला ? बेसिक स्ट्रक्चर की बला कहां है ? हम संविधान के विद्यार्थी नहीं लेकिन जब से बहस शुरू हुई तो हमने संविधान के पन्ने उलट डाले, और आप तो सभापति महोदय, विद्वान आदमी हैं, क्या कहीं संविधान में बेसिक स्ट्रक्चर की बात आपने पढ़ी है ? किसी ने पढ़ी है ? आपने पढ़ी है ? जो बात संविधान में नहीं है वह संविधान में घुसाई जा रही है। तो फिर जनता की सबसे बड़ी अदालत का क्या होगा ? संसद् का क्या होगा ? इसलिये प्रधान प्रश्न यह है कि जनता की सबसे बड़ी अदालत ने जो अपनी सर्वोच्च संस्था, संसद् कायम की है, उस संसद् को संविधान में संशोधन करने का, परिवर्तन करने का अधिकार है कि नहीं ? और जनता की सर्वोच्च अदालत ने फ़ैसला दे दिया है ; अधिकार है। अधिकार है तो फिर इस बात पर, किस बात को लेकर बहस है ?

तरह-तरह के सवाल उठाये जाते हैं—संविधान प्रधान या संसद् प्रधान ? एक बहुत महान् विधि-वेत्ता ने सवाल उठाया कि संविधान प्रधान है या संसद् प्रधान है ? हम क्या कहें ? अरे भाई, संविधान के अनुसार संसद् और संसद् के अनुसार संविधान। इतनी सरल बात उनको समझ में नहीं आती है और इस तरह से बहस शुरू करते हैं जो अनन्त काल की हो सकती है। या उस तरह की बहस कि बीज प्रधान है या वट प्रधान अनन्त काल से हम इस सवाल पर बहस कर रहे हैं और बहस करते रहेंगे। यह मुख्य समस्या को उलझाने और बरगलाने का प्रयत्न है। स्थिति यह है कि यह संसद् संविधान के अनुसार और संविधान इस संसद् के अनुसार होगा। जनतंत्र की यही पुकार है, जनतंत्र की यही मांग है।

कुछ लोगों ने कहा कि इस संसद् को अधिकार नहीं है, रिफरेंडम होना चाहिये। हम उन भले मानसों से पूछना चाहते हैं कि क्या किसी भी देश में वहां का संविधान रिफ़रेंडम से तैयार हुआ है। रिफ़रेंडम इसके लिये हो सकता है कि फलां चीज़ हो या नहीं हो। हमारे संविधान में कितनी धारायें हैं—385–386 या अब और भी ज्यादा हो जायें—क्या उनका फ़ैसला रिफ़रेंडम से हो सकता है। मालूम नहीं उनकी अक्ल को क्या हो गया है। जब ऐसी अवास्तविक, ऐसी अव्यवहारिक, ऐसी काल्पनिक बातें की जाती हैं तो हमको शक होता है कि उनका उद्देश्य सिर्फ़ यह है कि किसी न किसी बहाने इस संसद् को अपने अधिकार से वंचित किया जाए।

सवाल उठाया गया कि संविधान में परिवर्तन करने के लिए विधान-निर्मात्री परिषद् या विधान सभा का गठन करना चाहिये। हम इस प्रश्न का कानूनी जवाब नहीं देना चाहते हैं। वह तो गोखले जी देंगे, शायद उन्होंने दिया भी है कि हमारे संविधान में इसकी कहीं गुंजाइश नहीं है। हम देखते हैं कि तरह-तरह के लोग तरह-तरह के मनसूबों को लेकर आज कांस्टीट्यूएन्ट एसेम्बली की बात कर रहे हैं। हमारे सी० पी० एम० के बन्धुगण कांस्टीट्यूएन्ट असेम्बली की बात कर रहे हैं। उनकी तो ढपोलशंखी बात है। मालूम होता है कि अल्टर रिवोल्यूशन हो गया है और वे एक नई राज्य व्यवस्था कायम करना चाहते हैं। कांस्टीट्यूएन्ट असेम्बली बनती है जब नया

राज्य बनता है। क्या हम नया राज्य बनाने जा रहे हैं? क्या इसकी सम्भावना है? यह राज्य भारतीय गणतंत्र जिसकी स्थापना हमने संविधान के अनुसार की थी वह कायम है। कुछ लोग कांस्टीट्युएन्ट असेम्बली की बात करते हैं, इसलिये कि भारत के इस समाजवादी, धर्मनिरपेक्ष जनतांत्रिक राज्य को नव-उपनिवेशवादी राज्य बना दें। जब जनसंघ के लोग, स्वतन्त्र पार्टी के लोग, बी० एल० डी० के लोग विधान निर्मात्री परिषद् की बात करते हैं तो उनका यही मन्सूबा है। सभापति महोदय, हमको आश्चर्य होता है कि कांग्रेस दल के भीतर भी यह बात हो रही है। अचानक एक दिन अखबार में हमने पाया कि तीन-चार कांग्रेस की प्रान्तीय कमेटियों ने मांग की कि विधान निर्मात्री परिषद् बनाई जाये। कांग्रेस के भीतर कुछ लोग, जनसघ के लोग, सी० पी० एम० के लोग, कैसे इस बात पर एक जगह आ गये, यह विचारणीय विषय है। यह विचारणीय विषय ही नहीं है, खतरे का भी सवाल हो जाता है। इसका मतलब यह है कि कांग्रेस के भीतर भी ऐसे तत्व और ऐसी प्रवृत्तियां हैं जो भारत की जनतांत्रिक, संसदीय व्यवस्था की जड़ काट रही हैं और दूसरी व्यवस्था कायम करना चाहती हैं वरना कांस्टीट्युएन्ट असेम्बली की बात कहां से आ गयी? और इन तमाम बातों के बीच तमाम मन्सुबावादियों के बीच समानता इस बात पर कि संसद् को सर्वाधिकार-सम्पन्नता से वंचित कर दिया जाए। हम समझते हैं कि हम तमाम लोग आज यहां पर इस बात के लिए हैं कि संसद् के सर्वोच्च-अधिकार को, सर्वाधिकार सम्पन्नता को पुनर्स्थापित करें। इस मेन्डेट को लेकर हम आये हैं, इस मेन्डेट को लेकर पांचवी लोक सभा बनी है, इस मेन्डेट को हम पूरा करेंगे।

सभापति महोदय, इस बिल के चार प्रगतिशील पहलू हैं। चार प्रधान प्रगतिशील पहलू हैं। पहला पहलू तो यह है कि बिल के उद्देश्य में घोषित किया गया है कि भारत की सामाजिक और आर्थिक क्रान्ति के रास्ते में जो भी कठिनाइयां हैं उन को दूर किया जायेगा। भारत की शोषित, पीड़ित जनता स्वतंत्रता संघर्ष के अपने सपने को चरितार्थ करने के लिये उस दिन की प्रतीक्षा कर रही है। तो संविधान संशोधन के इस बिल का जो यह उद्देश्य है वह ऐसा है कि जिस के लिये भारत का प्रत्येक व्यक्ति, भारत का जन मन लालायित है, अधीर है। इस का दूसरा पहलू इस का आमुख है, प्रियेंबिल है, जिस के बारे में गोखले जी अभी-अभी कह चुके हैं। उस को दोहराने की आवश्यकता नहीं कि हम घोषित कर रहे हैं कि हमारा देश न केवल जनतांत्रिक बल्कि समाजवादी और धर्म निरपेक्ष जनतांत्रिक जनतंत्र है। यह पूरे देश को एक दिशा प्रदान करता है। पूरे देश को एक परस्पेक्टिव देता है। इस दिशा के लिये हम जीवित हैं और इस के लिये आज एक विश्वव्यापी संघर्ष हो रहा है। आज दुनिया के पमाने पर जो संघर्ष हो रहा है उसमें देखा जा रहा है कि दुनिया समाजवाद की ओर जायेगी या पूंजीवाद की ओर जायगी। यह ऐतिहासिक संघर्ष भारत के जनगण के लिये और भारत की जनता के लिये एक बड़ी भारी चीज है और हमारा यह कदम इस दिशा में एक विजय की बात है। तीसरी चीज इस संविधान संशोधन के द्वारा संसद् की सर्वोच्चता पुनःस्थापित की गयी है। इस पर मुझे ज्यादा बोलने की आवश्यकता नहीं। इस पर गोखले जी काफी बोल चुके हैं और चौथी चीज कि इस संशोधन बिल में मौलिक अधिकारों पर निदेशक सिद्धान्तों की श्रेष्ठता और प्रधानता को प्रतिष्ठापित किया गया है। वह चीज की गयी है कि जिसके लिये हम पिछले दस वर्षों से संघर्ष कर रहे हैं। तो यह संविधान संशोधन के चार प्रगतिशील पहलू हैं और यदि इनको हमने, सरकार ने, संसद् ने निष्ठापूर्वक पालन किया तो इसमें कोई शक नहीं कि इस देश में जनतंत्र की, समाजवाद की

[श्री योगेन्द्र शर्मा]

स्थापना होगी और देश तेजी के साथ आगे बढ़ेगा ।

सभापति महोदय, इस बिल में मौलिक कर्त्तव्य भी शामिल किये गये हैं । और उन मौलिक कर्त्तव्यों में बहुत ही अच्छी और आदर्शवादी बातें कही गयी हैं । बड़ी अच्छी बातें हैं, लेकिन उसी से एक दूसरा प्रश्न पैदा होता है । अधिकार के साथ कर्त्तव्य रहते हैं और कर्त्तव्य के साथ अधिकार जुड़े रहते हैं । आप मौलिक कर्त्तव्यों को पहली बार स्थापित कर रहे हैं तो उस का तकाजा यह भी हो जाता है कि संसद् के अधिकारों को भी आप ज्यादा सशक्त कीजिए । संसद् की सर्वोच्चता आप ने स्थापित की है, लेकिन इस सर्वोच्चता को आप सशक्त कीजिए, कारगर बनाइये, सक्षम बनाइये । यह चीज सिर्फ औपचारिक ही नहीं रहनी चाहिए और इसी उद्देश्य से श्रीमन्, राज्य सभा के पिछले अधिवेशन में हम ने एक प्रस्ताव का नोटिस दिया था । बदकिस्मती से हमारा प्रस्ताव नहीं आ सका, और उस पर बहस नहीं हो सकी । उसमें हमने दो बातें कहीं थी । एक तो यह कहा था कि हमको स्टेंडिंग कमेटी का सिस्टम शुरू करना चाहिए । कर्त्तव्य जब हम बढ़ा रहे हैं तो अधिकार भी बढ़ाना होगा । संसद् को ज्यादा शक्तिशाली और सशक्त करना होगा, ज्यादा सक्रिय करना पड़ेगा ताकि विभिन्न मंत्रालयों के कामों की देख रेख कर सके, निगरानी कर सके और नियंत्रण कर सके । इसीलिए हमने स्टेंडिंग कमेटी की बात कही थी । हम अभी भी गोखले जी से कहेंगे कि आप विचार कीजिए कि जब हम मौलिक कर्त्तव्यों को स्थापित कर रहे हैं तो उसके अनुरूप हमें संसद् के कार्यचालन में, उसकी कार्यवाही में ऐसी चीजें कायम करनी चाहिएं ताकि वह कारगर ढंग से एग्जीक्यूटिव के कामों की देख रेख कर सके, निगरानी कर सके, नियंत्रण कर सके । इसलिए हमने स्टेंडिंग कमेटी की बात की थी ।

MR. CHAIRMAN: Shri Sharma, you have taken thirty minutes.

श्री योगेन्द्र शर्मा : ऐतिहासिक बहस है । हम एक इतिहास की रचना कर रहे हैं । श्रीमन्, हमारा दूसरा सुझाव था कि कांस्टीट्यूयेंसी कमेटी की स्थापना हो । संसद् की सर्वोच्चता एक ऊपरी चीज रह जाएगी । यदि कांस्टीट्यूएंसी के आधार पर जन-प्रतिनिधि, प्रशासक और दूसरे लोगों की कमेटी नहीं बने जो कि पार्लियामेंट के बनाये हुए कानूनों का परिपालन कर सके । इन दो चीजों की परम आवश्यकता है । यदि हम बनियादी कर्त्तव्यों के साथ-साथ पार्लियामेंट को भी ज्यादा सक्रिय, सक्षम और सशक्त बनाना चाहते हैं ।

बिल में एक बड़ी खामी है और वह खामी यह है कि मौलिक अधिकारों से सम्पत्ति का अधिकार अलग नहीं किया गया है । सम्पत्ति के जिस मौलिक अधिकार को लेकर शुरू से ही संघर्ष हुए, दुर्भाग्य से मौलिक अधिकारों में सम्पत्ति का अधिकार अभी भी बरकरार रह गया । हम जानते हैं कि विभिन्न संशोधनों का असर ऐसा होगा कि जिससे बहुत ज्यादा रुकावट नहीं होगी, उस तरह की रुकावट नहीं जिस तरह की रुकावट अब तक वह करता आ रहा था, 24वें और 25वें संशोधन से पहले करता आ रहा था । लेकिन फिर भी वह रुकावट कायम है । इसलिए जब आप समाजवाद की स्थापना कर रहे हैं तो कोई तर्क नहीं, कोई तुक नहीं कि आप बनियादी अधिकारों में से सम्पत्ति के अधिकार को न निकाल दें । समाजवाद और सम्पत्ति का मौलिक अधिकार परस्पर विरोधी हैं । आप संशोधन में इस विरोधाभास को दूर कीजिए ।

श्रीमन्, आज मौलिक अधिकारों में से सम्पत्ति के अधिकारों को निकाल देने के प्रश्न पर राष्ट्रीय सहमति है । हमारा ख्याल है कि अधिकांश कांग्रेस सदस्य दिल से इस बात को चाहते हैं कि मौलिक अधिकारों में से सम्पत्ति

के अधिकार को निकाल देना चाहिए और हमारी राज्य सभा के गत अधिवेशन के तुरन्त ही बाद शिमला में इस देश के प्रिसाइडिंग आफीसर्स की एक कान्फ्रेंस हुई थी, श्रीमन्, शायद आप भी उसमें होंगे। उस प्रिसाइडिंग आफिसर्स में लोक सभा और असेम्बलीज के तमाम प्रिसाइडिंग आफिसर्स ने क्या विचार व्यक्त किया था? बरूआ साहब हंस रहे हैं, हम जानते हैं कि उनके भी दिल में यही बात है। उसमें क्या कहा गया था? मैं हिन्दुस्तान टाइम्स के 4 जुलाई के अंक से पढ़ रहा हूं —

"The recommendations of the Swaran Singh Committee on the constitutional reforms were, by and large, supported by the Presiding Officers. He pointed out that on certain points, the Presiding Officers went beyond the Committee's report and suggested that the right to property should not come in the way of the right to work."

[Mr. Deputy Chairman in the Chair]

श्रीमन्, हमारे देश के तमाम प्रिजाइडिंग आफिसर्स की यह सहमति है, इसलिये हम कहते हैं कि यह राष्ट्रीय सहमति का प्रश्न बन गया है। जब सम्पत्ति को मौलिक अधिकारों से निकाल देने पर राष्ट्रीय सहमति है तो हम गोखले जी से पूछना चाहेंगे कि क्यों नहीं आप इसको निकाल देते है। इतना ही नहीं श्रीमन् आज दुनिया के किसी भी देश मे, अमेरिका के सिवाय, सम्पत्ति का अधिकार मौलिक अधिकार नहीं है। खुद हमारे राष्ट्रीय आन्दोलन की जो परिकल्पना थी, उस परिकल्पना मे कभी भी सम्पत्ति के अधिकार को मौलिक अधिकार स्वीकार नहीं किया गया। 1928 मे मोती लाल नेहरू कमेटी की जो रिपोर्ट थी, जिसने भारत के भावी संविधान की रचना की थी उसमें कहीं भी सम्पत्ति के अधिकार को मौलिक अधिकार नहीं माना गया था। 1933 में करांची में जिस कांग्रेस का अधिवेशन हुआ था, उसी कांग्रेस के बरूआ, साहब आप अध्यक्ष हैं...

एक माननीय सदस्य : 1931 में हुआ था।

श्री योगेन्द्र शर्मा : 1931 में जिस कांग्रेस का अधिवेशन हुआ था और जिसमें पहली मर्तबा कांग्रेस ने मौलिक अधिकारों पर प्रस्ताव पास किया था, आप उसी कांग्रेस के अध्यक्ष हैं। उन मौलिक अधिकारों के प्रस्ताव में सम्पत्ति के अधिकार को मौलिक अधिकार नहीं माना गया था। क्या बरूआ साहब आप उस परम्परा को भूल गये हैं। क्या आप उस परम्परा को नहीं निभायेंगे? प्रश्न यह है कि सम्पत्ति का अधिकार मौलिक अधिकार के रूप में हमारे संविधान मे कहां से आ गया? यह 1935 के इंडिया एक्ट के अवशेष का कलंक है। हमने जो उनके साथ समझौता किया था उसी में वह समझौते का एक अवशिष्ट कलंक है। हम गोखले जी से अनुरोध करेंगे कि इस समझौते के कलंक को धोयें और मौलिक अधिकारों से इस को निकाल दें।

आखिर में एक चीज और कह कर, उपसभापति जी, मैं अपनी बात को खत्म करूंगा। इस बिल में कुछ ऐसी बातें हैं जो बहुत ही खतरनाक हैं। बिल का जो उद्देश्य है उस उद्देश्य के विपरीत खास कर चार बातें हैं—राष्ट्रीय विरोधी कामों की परिभाषा; सरकार को संविधान में हेर-फेर करने का अधिकार, राज्यों में वहां की सरकार की सहमति के बिना फौज और पुलिस भेजना, लोक सभा और विधान सभा का चुनाव काल बढाना। इन बातों पर जब खंडवार बहस करेंगे, उस वक्त हम लोग विस्तार के साथ बोलेंगे। लेकिन एक बात मैं आप के सामने पेश करना चाहता हूं। हम इस बात के पक्ष में हैं कि जिन शक्तियों पर आपने पाबन्दी लगा दी

[श्री योगेन्द्र शर्मा]

है, प्रतिबन्ध लगा दिया है उसका समर्थन किया जाए । हम इसका समर्थन करते हैं । हम चहाते हैं कि आप इस प्रतिबन्ध को कायम रखें । प्रधान मंत्री ने लोक सभा में बहस में भाग लेते हुए राष्ट्र विरोधी हरकतों की परिभाषा की थी । हम चाहते हैं कि बिल में जो आपने राष्ट्र विरोधी हरकतों की परिभाषा की है, प्रधान मंत्री ने जो विचार इस सिलसिले में लोक सभा में व्यक्त किये हैं, उसी हद तक आप सीमित रहें । प्रधान मंत्री ने क्या कहा? प्रधान मंत्री ने इस सम्बन्ध में तीन बातें कहीं । एक तो देश को खंडित करने की सीख देना, दूसरी साम्प्रदायिक तथा प्रान्तीय घृणा तथा हिंसा फैलाना और तीसरी राष्ट्रीय प्रतिष्ठानों को नष्ट करने की कार्यवाही करना ।

इन तीन बातों के बारे में प्रधान मंत्री ने कहा है कि ये राष्ट्रीय विरोधी हरकतें हैं । मैं समझता हूं कि आज आवश्यकता इस बात की है कि हमें इस बात पर विचार करना चाहिए कि राष्ट्र विरोधी बातों में क्या-क्या चीजें शामिल की जानी चाहिएं । अभी ठीक है कि श्रीमती इन्दिरा गांधी प्रधान मंत्री हैं । इस वक्त हमारे जो ला मिनिस्टर हैं वह भी ठीक हैं । लेकिन अगर बदकिस्मती से कोई केसरी लाल ला मिनिस्टर हो जाय और कोई लाठी लाल प्रधान मंत्री हो जाय तो तब क्या होगा, वैसी स्थिति में हम सब इस राष्ट्र विरोधी हो जायेंगे । इसलिए हमारा अनुरोध है कि प्रधान मंत्री जी ने इस सम्बन्ध में जो कुछ कहा है उसी के अनुसार राष्ट्र विरोधी बातों के बारे में या राष्ट्र विरोधी हरकतों के बारे में संशोधन किया जाय ।

अन्त में ला मिनिस्टर श्री गोखले जी को मैं बधाई देता हूं, सरदार स्वर्ण सिंह जी को बधाई देता हूं, कांग्रेस नेतृत्व को बधाई देता हूं कि आपने भारतीय संविधान के क्षीर सागर का मंथन किया है और उस क्षीर सागर के मंथन से अमृत निकाला है । मगर आप जानते हैं कि जब देवताओं द्वारा क्षीर सागर का मंथन किया गया था तो उसमें से अमृत के साथ-साथ विष भी निकला था । इसी प्रकार से आपने जो मंथन किया है, उस मंथन में अमृत के साथ-साथ कुछ विष भी निकला है । उस वक्त शंकर भगवान ने विष का पान किया था । इसलिए हम चाहते हैं कि इस मंथन में जो विष निकला है उस विष को आप निकाल कर फैंक दें और जो अमृत निकला है उसके माध्यम से आप प्रतिक्रियावादी शक्तियों का सफाया कीजिए ।

SHRI A. R. ANTULAY (Maharashtra): Mr. Deputy Chairman, Sir, I rise to support the Constitution (Amendment) Bill. While supporting the Bill, I would like to express my views as briefly as possible. Why do we support the Bill? Why at all the Constitution is necessary to run the affairs of the country? In my view, an independent and democratic country has to be governed according to the wishes of the people. If it is independent, to sustain, support and strengthen its independence, it must have some system to work the machinery of the Government. For working the machinery of the Government, there are various systems. But closer to our heart, because no better alternative is yet found, is a system called democracy. To strengthen that democracy, we have adopted the Constitution. Because the Constitution has to keep pace with the changing times and has to reflect the aspirations of the people we have come forward before this august House with certain amendments so that it moves along with the people to take the country forward keeping pace with the fast developing world at large. How can anybody say that a particular type of democracy is the only democracy which has to be adopted to safeguard the independence of the country and to take the people forward? There are various types of

democracies. They have been evolved through different processes due to historical facts. As all of us know, there are democracies in the world, which, according to some, are no more democracies. There are democracies in the world, with variations along different lines in different clines and in different times. In our country, according to me, democracy has to serve the 80 per cent of our people who are poor. If the definition of democracy is 'rule by majority', none can dispute the fact that in our country, the overwhelming majority consists of those who are have-nots. If the majority of the people are have-nots, it should be the democracy for the have-nots. The Government consequently should serve the have-nots. The Constitution should also be the medium of upliftment of the have-nots. If the Constitution is primary for the have-nots, should it not reflect the aspirations and the wishes of the have-nots? We have been put questions about the Fundamental Rights. According to me, Mr. Deputy Chairman, this "Fundamental Rights part" of our Constitution serves the interests of only the minority—numerical minority of our population. It is all right to say that each citizen has a right to what is called the Fundamental Right. It is all right to say that each Fundamental Right, a citizen can move the Supreme Court to get enforced; but how many people can enjoy these Fundamental Rights is the crucial question. How many people are interested in "acquisition and disposal of property"? How many people are interested in forming associations and making speeches? How many people are interested in moving from one corner of the country to the other? These are the freedoms which in my opinion, hardly 20 per cent of the people can enjoy. The illiterate and the unlettered, those who have been semi-starving below the poverty line, those who have no time for political contests, these rights are distant of achievement. The Chapter on Fundamental Rights for them is just a decoration in the pages of the Constitution, Now, Mr. Deputy Chairman, these Fundamental Rights which are only meant for a fraction of the population are to be enforced under article 32 of the Constitution. Unless the people as a whole are educationally, culturally, economically and politically brought on a par with those citizens who can enjoy these rights, these Fundamental Rights remain a drag on their progress.

Article 32 is added to the Constitution for the enforcement of Fundamental Rights. While enforcing the Fundamental Rights, the Supreme Court amazingly also tried to create some more Fundamental Rights. I will not quote article 32. Everybody knows it that under this article 32 the Supreme Court can be moved to enforce the Fundamental Rights. Now Fundamental Rights are enumerated in the Constitution. Nowhere, so far, the Constitution makers have said that the right under Article 32 to move the Supreme Court to get a particular amendment of the Constitution struck down is also a Fundamental Right. And yet amendments have been struck down by the Supreme Court while purporting to enforce Fundamental Rights under Article 32.

Article 13(2) only mentions that any law made by Parliament which abridges or takes away the Fundamental Right is void. Does the Constitution specify the forum by which it should be declared void? What is the connection between article 32 and article 13(2)? Article 32 is there to enforce the Fundamental Rights as they existed at the time when the citizen moves the Supreme Court for their enforcement; as they occurred in pages, of the Constitution at the time a citizen moves the Court. If a citizen feels that his Fundamental Right has been abridged or taken away, the Supreme Court is supposed to enforce the right against Executive or other authority but not against Parliament. But the Supreme Court went a step ahead. It

[Shri A. R. Antulay]

said: Not only are we there to enforce the Fundamental Right under article 32 but we are also going to mention which are Fundamental Rights and which are not. As a result of that, they in Golaknath's case extended the meaning indeed over-stretched the meaning of the word 'law' to strike down a Constitutional Amendment passed under Article 368. Mr. Deputy Chairman, let me say in all gravity, nowhere in the world a Constitutional Amendment has been struck down by any court. This phenomenon unfortunately was devised only in our country by our Supreme Court. That too under the garb of Fundamental Rights, under the garb of enforcement of Fundamental Rights under article 32. That means, again, if I may put it in different words, the law as it appears in Article 13(2) is different from a constitutional amendment. Nowhere in article 368 the word "law" is mentioned. It is true that the word "Bill" is mentioned. I say, suppose, in article 368 of the Constitution, instead of the word "Bill" if the word "proposal" as it is in the Constitution of the USA was used or if the word "resolution" as it is in some other Constitutions is used, would the Supreme Court have construed that it is also a law which can be struck down? The only mischief, according to me, because of the political philosophy of the Judges who decided was the word "Bill" which is used in article 368 and because it was to be a Bill and though it was to be passed by a two-thirds majority on certain rigid conditions as prescribed under article 368, they thought that it was a Bill passed as Law and termed it to be "law" as it occurs in Article 13(2). Assuming that to be right with which I do not agree—that a constitutional amendment is law. This is the question which I would like to pose to the jurists in this country, to the Judges in this country, to the lawyers in this country. You started with article 32 to enforce Fundamental Rights. You say that the law under article 13(2) is also a Fundamental Right which cannot be abridged. Then you said, amendment of the Constitution is the law and you brought it under the mischief of article 13(2). And then you said, any amendment of the Constitution which abridges or takes away the Fundamental Rights will be struck down as void. And you assumed to yourselves the jurisdiction to strike down a constitutional amendment. So, the only link between article 32 and article 368 is article 13(2). No court can sit in judgment over article 368 independently. No article of the Constitution, no provision of the Constitution has specified that anything done in exercise of the rights in article 368 can be scrutinised by any court including the Supreme Court. I hope I have made myself very clear. I would like to have an answer to this. It is very important, according to me, because it goes to the constitutional law in this country. So, if the only link between the enforcement of Fundamental Rights—that is, Article 32 and Article 368 the Constitution itself—as said by Mr. Justice Khanna in the Kesavananda Bharati case—is article 13(2), when this only link was broken in the Kesavananda Bharati case by a clear decision that the word "law" in article 13(2) does not include a constitutional amendment, then how did the Supreme Court come to decide on Article 368? Then, how, in what capacity, under what article, under what authority did the Judges in the Kesavananda Bharati case sit to decide the ambit and scope of article 368? Having demolished the only access to article 368, under whose cover they had grabbed the power to reach Article 368 wrongly—the semblance of some sort of a feeble jurisdiction having thus been cut as under, there was no right vested in the Supreme Court to say, as Mr. Chief Justice Sikri said, "Yes, Golaknath's case is wrongly decided. We constituted the larger Bench to review the decision in Golaknath case. We come to the conclusion that Golaknath case is wrongly decided. We also come to the conclusion that the word "law" in article 13(2) does not include the

constitutional amendment." Having come to this decision, how can the very Court say, "However, the point is not important whether Golaknath case was rightly decided or not"? I am giving the meaning of the words of Mr. Chief Justice Sikri, that "we are not concerned whether Golaknath's case was rightly decided or not; what we are concerned with is a bigger issue, a more important issue, whether Parliament under Article 368 has the power at all". How can, Mr. Deputy Chairman, Parliament not have the power, the Parliament which under Article 32(3) can empower any court in this country, including a tehsil court, including a district court, including a High Court, most certainly to enforce the Fundamental Rights. How can that Parliament be powerless in the eyes of that court when powers can very easily be distributed by an ordinary legislation passed and enacted by this very Parliament? And, therefore, Sir, the point that I would like to urge upon is two-fold. To sum up, firstly, the Supreme Court's decision in Kesavananda Bharati's case, of a "basic structure", is without the Constitutional jurisdiction because the theory of law under Article 13(2) they themselves demolished and blocked their only path road to reach Article 368 and under Article 32(3), they have not cared to see, that their powers can be vested by Parliament in any smaller court, including a district court.

Now, lastly, in this connection, I would illustrate it this way: Suppose tomorrow Parliament passes a legislation and authorises the district courts all over the country to exercise jurisdiction under Article 32 for the enforcement of Fundamental Rights, what prevents those smaller courts so vested with equal powers from interpreting Article 368? If the Supreme Court in a case under Article 32 can interpret Article 368, there is nothing in the Constitution, to prevent any other court, including the district court, to sit in judgment over Article 368. So, in effect, it comes to this, that it is not the Supreme Court alone which is claiming superiority over this supreme body—Parliament—which represents the will of the people. On the analogy of the Supreme Court, even the district courts will say tomorrow that Parliament, while enacting a constitutional law or passing an amendment will not be in a position to amend in such a way, which according to them, is unalterable in terms of the doctrine of the "basic structure". My submission in this respect is—I am taking a little more time on this because I would like to have some answers. If I am wrong, I shall be very happy...

SHRI B. N. BANERJEE (Nominated): Sir, shall I ask Mr. Antulay one question, since he is inviting questions? As I understand, in Kesavananda Bharati's case, some judges of the Supreme Court held that the power to amend the Constitution does not include the power to alter the basic structure or the framework of the Constitution and abrogate the Fundamental Rights altogether. Some other judges based their decision on the theory of implied limitation on the power of amendment in Article 368. They did not go into Article 32.

SHRI A. R. ANTULAY: How can they afford not to go into Article 32? That is their only jurisdiction. If you have not understood me, it is not my fault. I have very plainly said... (*Interruption*). I do not want to enter into any controversy.

SHRI B. N. BANERJEE: It is difficult to understand the theory today that Article 32 is not a Fundamental Right.

SHRI A. R. ANTULAY: Mr. Deputy Chairman, Sir, I really do not understand how I can supply the intelligence to him to understand a simple argument. I never said any such thing; I said that Article 32 does give them authority to enforce Fundamental Rights as they are and not to judicially create more like the "basic structure". I would like to make it

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obvious and plan again that Article 368 can never be the subject-matter of judicial review or interpretation unless it is relevant. That is my precise objection. In a case under Article 32, rather than going into their own scope conferred by Article 32, they went to Article 368. They did not go, as you point out, to Article 32 at all which they should have. If they had done so they would have themselves seen that case under Article 32, does not give them authority to decide on Article 368, more so after they broke the only link of Article 13(2).

SHRI B. N. BANERJEE: That is correct.

SHRI A. R. ANTULAY: Mr. Deputy Chairman, the relevance of Article 368 cannot be there unless Article 13(2) comes into the picture because it is only by putting Article 13(2) into the picture that Article 368 becomes relevant. If Article 13(2) is taken away, the relevance of Article 368 totally goes. And that is why my submission, Mr. Deputy Chairman, is that they could not have attempted or purported to decide even by interpreting Article 368, much less to decide on the ambit or scope of Article 368, unless they would have shown some connection that in the enforcement of Fundamental Rights under Article 32, how Article 368 comes into play and becomes relevant. They have not shown it; they cannot show it. My submission is that "basic structure" decision is without any jurisdiction; and if this case is without any jurisdiction, as I think, why should we at all discuss much about this so-called basic structure? I would only say a couple of things before I close.

The Constitution, as I said at the beginning, is meant for the vast majority of the people of this great country of ours. If it did not contain in its Preamble the words 'secularism' and 'socialism', perhaps there are so many reasons for that. "Independence" was not the objective when Mr. Hume started the Congress; the Congress then had the objective of petitioning the Britishers; but years later, under Mahatma Gandhi and Jawaharlal Nehru the same Congress pushed the Britishers out. Commencing with the petitioning and ending up with pushing was the growth of Congress objective. The objective changed as the times changed, as the people progressed. Our Constitution also, in the initial stages, might not have spelt the word 'socialism' or 'secularism', perhaps rightly so. Immediately after partition, in the wake of so many displaced persons coming, when the entire country was a fire due to the communal riots, it was only the courage of Jawaharlal Nehru which made him speak the virtues of secularism. Any lesser person would have been scared in those days to talk of secularism. It was not included in the Constitution then. May be, the conditions and circumstances, then prevailing, were not favourable. The split in Congress in the wake of partition and immediately after Independence, the country could not have afforded; perhaps the newly won independence would have been lost. Pandit Nehru, himself a personification of secularism and himself of socialist conviction must have sensed that any split would endanger freedom unless it was first consolidated with whatever Congress available. A split within the Congress over socialistic and secular lines immediately after partition, immediately after independence, would have meant the loss of independence perhaps. So, he laid the foundation for secularism and socialism. In 1936, he declared his conviction in socialism, and yet a great leader like Jawaharlal Nehru could not persuade the same Congress to accept socialism and he had to put it in the garb of—if I may be allowed to use that term —socialistic pattern of society at Avadi because the Congressmen who had to be driven out of the Congress much later by Indiraji—and rightly so in the interests of the weaker sections of the Indian society—would not have allowed him to go ahead. In 1954, a Committee was formed and so many

amendments including those to Article 226 and others were adopted. I think it will be a great study to see why they were not put into effect. Jawaharlal Nehru was the lone soldier; he was perhaps surrounded by people in the hierarchy of the Congress—they were in positions of power—who because of his popularity, because of his personality were showing lip-sympathy to what he was saying but who in the heart of their hearts were hardened opponents. They would not allow his policies to be implemented. And those were the days when Jawaharlal Nehru could never have afforded a split in the Congress. But after 1964—when at Bhubaneswar he spelt out his socialism as giving the basic necessities of life to Indian citizens—he was unfortunately no more; within a few months thereafter he left us. And it was left to Indiraji, his proud daughter, the daughter of the Indian Nation, the daughter of India, ancient, present and future; it was her task to bring into effect what Panditji had visualised at Bhubaneswar prior to his departure from our midst. In 1967 the people of India, said, "Look here! we are not going to return the Congress to power." And they did not return the Congress to power in many of the States. But the people, being wise, did return the Congress in a majority at the Centre because they knew that if the same Congress was not returned in a majority at the Centre, the country would disintegrate, the nation would plunge into chaotic conditions and ultimately this country could never survive as a strong nation. Therefore, they gave a jolt. Sensing the mood of the people, Indiraji impressed upon the Congress Working Committee in 1967, they sat for ten days and worked out the 10-Point Programme. But the programme was not being implemented. The then Congress President in Faridabad was saying that the public sector was useless and he talked everything that went against the 10-Point Programme adopted by the Working Committee after ten days of deliberations. Everybody knows what happened in Bangalore. Shrimati Indira Gandhi gave a fight. And the fight was not between Giri and Reddy. If somebody says so, it is very wrong. The fight was between two different ideologies that were surviving under the umbrella of the same Congress for many years. As I said, they could not be driven out in the initial stages in the wake of independence because the country could not have survived those shocks of a Congress split during those days. But now was the time; people were impatient for economic betterment. They had demonstrated as much in 1967 elections. Indiraji as the sole leader of the country had no option if the interests of the vast number of poor were to be served. The Congress had to make the choice between socialism and reaction; between secularism and communalism. Indiraji courageously at the risk of her life preferred the poor and the split occurred. And after the split, this 'Grand Alliance' was formed. And where did these chaps who were driven out of the Congress by the people of India find shelter? They found shelter with the RSS, with the Jan Sangh. And in the name of 'Grand Alliance' there was an attempt to finish Indira Gandhi personally, as a political leader, as leader of the country, as leader of the people. But people gave a thumping majority in her favour. She asked for majority. They said "No. You want to amend the Constitution. If we give you only 51 per cent, it will not suffice. We know that Constitution amendments require a two thirds majority. So we shall give you more than a two-thirds majority." Mr. Deputy Chairman, the people, in order to bring about Constitutional changes as promised to them in the Congress manifesto during the elections, returned Shrimati Indira Gandhi with more than two-thirds majority in Parliament. And it does not lie in the mouth of those people to say that their mandate has expired. Those who wanted the Gujarat Assembly to be dissolved within a year after it was elected by the people, that is four years before

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it had run its Constitutional term, those who were forcing Congress legislators to resign, those who were 'gheraoing' Parliament, those who had brought down the dignity of this very House and especially of the lower House to the lowest depths of ignominy by squatting there and making undignified scenes, they cannot talk of the dignity of this House or of Parliament; they cannot have any use for elections and they cannot talk in terms of Parliament or democracy. And after 1971 and 1972, in spite of the fact that Shrimati Indira Gandhi won the Bangladesh war, in spite of the fact that she raised sky-high the prestige of the Congress and of the country and the stature of India in the eyes of the foreigner, in the entire international sphere, what did we find thereafter? She got the mandate twice in two years. She won the Bangladesh war. She was called Devi by these chaps. Thereafter, within a year, what happened? They suddenly began the Sangharsha Samiti under the command of Jayaprakash Narayan. They wanted India to be set on fire. They wanted everything good to go down the drain. Mr. Deputy Chairman, the Railway strike, the supersession case, all these things were a pointer to one thing. I would say this, that it all started with Subba Rao's resignation. With due respect, I would like to put it on record because this is the supreme body, more supreme than the Supreme Court. The conspiracy started in 1967 when the Chief Justice resigned to contest the post of Rashtrapati of this country. The second step was taken in the nomination of Reddy. The third step was taken in the 'Grand Alliance'. The fourth step was taken in the Sangarsha Samiti. They all failed. And six months before the elections were due—they were due in March 1976—they were talking of 'people's courts', 'people's assemblies' and 'people's Parliament.' If they did not have faith in this Parliament, if they did not have faith in the Parliament that is elected directly by the people by vote, what right do they have now to say that elections are now being postponed? Elections are being postponed wisely so and rightly so. Elections will be postponed because these are the persons who are rejected by the people. Here is a leader who is applauded and acclaimed as the leader of the nation. She has to perform her task. It is a responsibility which she owes to the people and she wants to discharge it. It is not for those people. She is duty-bound to the people of India. She has promised certain things to the people and Mr. Deputy Chairman, we have seen that during the first three years about which I have narrated she was not allowed to work. There was obstruction, there was character assassination and even her son who is today the darling of the country and the leader of the millions of down-trodden people and minorities throughout the length and breadth of our country too was not spared. Day in and day out the forum of Parliament was being used for that purpose. Shri L. N. Mishra was killed because of their preaching the doctrine of violence. There was an attempt on the life of the Chief Justice Ray. Mutiny call was given to the Police and to the military. Please compare these with what happened in Bangla Desh on the 15th August, 1975 two months thereafter. But for the Prime Minister's intuitive and wise declaration of emergency in the interests of the people, in the interests of democracy and the future of the country, who can say that what happened in Bangla Desh was an isolated incident? Ever since our Prime Minister began to take steps in the interests of the poor people—not only bank nationalisation—and went ahead in other fields and when those people knew that this country would go forward, there were international conspiracies hatched to see that this country was ultimately brought down. I would make bold to say that those conspirators, Mr. Deputy Chairman, who were doing these things in this country during the three years prior to the

emergency were not doing them on their own. They were playing to the tune of others. They were only working to the bidding of certain persons, certain institutions and powers who had not taken kindly to our progress and prosperity. Therefore, these are the amendments to remove hurdles in the path of progress, in the path of the poor, these are before the House. Mr. Deputy Chairman, according to me, to be very honest and frank, they are not frightening. In fact they are much less than what India needs today. I would ask the Law Minister whether ultimately the Supreme Court should have the power to go into this Constitution by way of interpretation, because, as I said, the word 'law' was interpreted to strike down Constitution. Why should there be the power for the Supreme Court to interpret the Constitution? Why should they have the power of judicial review even of ordinary legislation? There are many democratic countries in the world where separate forums are created for the purpose. Nobody can say that France is not a democratic country. There a separate forum is created for the purpose of judicial review. Why should not we also have such a forforum? Unless we do it today or tomorrow I do not know what will happen later on. In Shankari Prasad case in 1951 the Supreme Court said that Parliament has power to amend; but the very Supreme Court said in Golak Nath case in 1967 that it has not that power. Today they may say 'yes'. But nothing prevents them from saying something different after 5 years or 10 years. Therefore the very root, the very base of their authority by way of interpretation and by way of judicial review will have to be taken away one day or the other in the interests of the people of this great country. And judicial review of law is no inseparable part of a democratic Constitution, France, a full blooded democracy does not have it. Mr. Deputy Chairman, before concluding, I will only quote two things from the American Jurist because they are very relevant to this issue. On interpretation in the preface of the Constitution of the USA prepared by the Congressional Research Committee it says:

> "Ultimately the will of the people determines the meaning of the Constitution from generation to generation....But if in fact the sentiment of the people is lasting and deeply felt, then history shows that the judiciary must yield".

I think this also will be a good conclusion to what I have to say. This is by Lord Halifax before Chief Justice Marshall:

> "A Constitution cannot make itself; somebody made it, not at once but at several times. It is alterable; and by that draweth nearer perfection; and without suiting itself, to differing times and circumstances, it could not live. Its life is prolonged by changing seasonably the several parts of it at several times."

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> "... A living document is the Constitution, one amendable according to its own prescription, by the will of the people, yet changeable too because the circumstances in which it must function require an adaptation of institutions and a refitting of the modes of dealing with things."

Then, Sir, lastly, I will say only one thing. The eminent historian of the Supreme Court of the USA, Mr. Charles Warren has said:

> "However the Court may interpret the provisions of the Constitution ....—I repeat, Sir—However the Court may interpret the provisions of the Constitution it is still the Constitution which is the law and not the decision of the Court."

Now, faced with all these things, if we are going to think as to how the Supreme Court will feel if we make a law, even an ordinary law then Sir, I think we can never progress with the speed that we like. Let there be a forum like the Supreme

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Council of Judiciary as it is in France and in many other countries in which the parliamentarians, the judges and the jurists are selected by the President. Let them interpret the Constitution and let them also see to the constitutional validity of laws and see whether the law is according to the constitutional provisions. I think that is the basis and unless that is done, the sovereignty of Parliament cannot be restored and the sovereignty of Parliament cannot be claimed till an Act of Parliament is subject to judicial review by a court of law. Let it be entrusted to such a forum which is responsible to the people.

Lastly, Sir, I would like to make one point, I know I have exceeded the time-limit.

The three wings of the State are the Executive, the Judiciary and the Legislature. The executive is removable by the people and the legislature is removable by the people. But has anybody given any thought to the question as to how the third wing of the State, that is, the judiciary, is removable by the people? Even if the whole people of India think so, can they remove one judge?

AN HON. MEMBER: You want that also?

SHRI A. R. ANTULAY: Yes, I want that. I want the judiciary to be responsive to the urges of the people. The judiciary has to be responsible to the people. I am not talking that it should be to the Parliament or to the executive. But I am talking of the people who are sovereign and who constitute the sovereignty of the country. How are you going to make it? There are other countries like France where the judges are responsive because this very Council, the high Council of judiciary, is entrusted with the task of disciplining the judges. It also works as a disciplinary Council. Who can say that, during the past twenty-five years ever since the Constitution, came into force, there has not been a single judge who was corrupt, even a single judge, if so many Ministers, if so many legislatures, if so many social workers and if so many government officers, have been held to be corrupt—may be rightly so? Who can say that the judges also, who come from the same society—they have sprung up from the same society—have been efficiently working? Who can say that whatever they have done is what the Constitution wants them to; the people of India expect them to do, requires them to do? But there has not been a single case of impeachment even though the Constitution provides for that. There cannot be any impeachment unless a two-thirds majority is there and it is not very easy and I know that. They say why two thirds of judges to invalidate a law? I say why two thirds of members of Parliament to impeach a judge? I think there should be a disciplinary council for the judiciary on the pattern of the one in France and in many other democratic countries. If a judge goes to the court at two O'clock instead of at eleven O 'clock, what is there to prevent him from doing it? If the judge behaves as they behaved politically in the Golaknath case and the Keshavananda Bharati case, is there any forum where these judges can be judged? If, Mr. Deputy Chairman Sir, what I say is ultimately upheld—I am subject to correction: I am a small man—and if the people of India consider that Parliament has no jurisdiction at all, then who is going to sit in judgment to find out as to why they have decided it that way or why so much time of the people has been wasted and why so many amendments proposed have been struck down and why in the Prime Minister's case alone it should have been made applicable?

In the end, Sir, I would say only this much. The Prime Minister of this great country, the leader of the nation, goes to the Court in connection with her own petition and the Judge sitting there said: "Nobody

should stand up. It is only when the presiding deity comes here that every body should stand up.".

I do not think that any citizen of this great country could have gone to the extent of saying that. People in reverence and honour and respect, want to stand up when the Prime Minister comes there. She may be there in the election petition. But she does not get separated from the office of the Prime Minister. She is very much there as a symbol of the people and of the nation. When the supersession took place and when emergency was declared, they went on strike, does this fit into the judicial discipline? I know of Maharashtra, I know of Gujarat and I know of many other parts of India. They went on strike. The Judges called the lawyers in their chambers and said: Don't argue the case, we are not working in protest. Now if this is the position which the country has reached, this emergency has been a great boon and panacea for the safeguarding of democracy. And I would humbly suggest that not only this emergency should continue, not only the 25 point programme which is in the interest of the weaker sections of society has to bear fruit, not only the economy has taken an upshot, but it has to go on much higher. The poor people, the down-trodden people, people belonging to the minorities are not very much interested whether it is a six-year term or a seven-year term, whether elections are postponed by a year or two. In the past, there have been communal riots. Now the word 'Seculiarism' has been incorporated in the Preamble to the Constitution. It is only since emergency that communal riots have not taken place. Formerly. they used to take place. Who were at the back of these communal riots? No riots since these friends are behind bars! Anti-national activities are banned. I am very happy that at least we persuaded ourselves to bring this in the Constitution. Then only, secularism can survive thrive and flourish in this country. Then only socialism can be put into effect. The common man is not destined to derive any benefit unless anti-national activities on the part of parties like the R.S.S., the Jana Sangh and parochial organisations are banned. Fanaticism, whether on the part of the Hindus, the Muslims or any other community, is against the interest of the nation. Therefore, it is time that it is done away with. We are going forward under the leadership dynamic leadership, benevolent leadership, democratic leadership, of Indira Gandhi towards certain objectives, and the pace of progress should not be disrupted. Mr. Gokhale has made a brilliant speech. I am really thankful to him for having done all this in this Bill. But in my submission—I may look a little radical—this is not enough. The Constitution has to be changed at every interval of time. Nobody can say that this is the finality. A Constitution which is static is a Constitution which ultimately becomes a big hurdle in the path of the progress of the nation.

With these words, Sir, I support the amending Bill.

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

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

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

THE CONSTITUTION (FORTY FOURTH AMENDMENT) BILL, 1976—contd.

SHRI B. C. BHAGWATI (Assam): Mr. Deputy Chairman, Sir, I am a person who is the least competent to deal with the Constitution from the legal point of view. I can only speak as a layman and as an old worker who claims that he knows something