

[श्री सवाई सिंह सिसोदिया]

संसद की ही है। कुछ लोग इन संशोधनों को लेकर बहुत सी भ्रान्तियां देश में फैलाते हैं और उन भ्रान्तियों का मुकाबला करने और उनके बारे में सही स्थिति जनता के सामने रखने की जिम्मेदारी हमारे सबके ऊपर है। सत्र में जो इस संशोधन की मुख्य विशेषतायें हैं वे इस प्रकार हैं —

यह सदा सर्वदा के लिए संसद की सर्वोच्चता व उसके संविधान के किसी भी प्रावधान में संशोधन के निर्वाध अधिकारों को पुनः प्रतिष्ठित करता है।

यह सभी मूलभूत अधिकारों पर नीति निर्देशक सिद्धान्तों को प्रतिष्ठित करता है। ताकि निर्देशक सिद्धान्त लागू हो सकें।

यह संविधान में विशेष रूप से प्राधिकारित अल्पसंख्यक समुदायों के अधिकारों का किसी प्रकार उल्लंघन नहीं करता।

यह भारतीय यूनिन के संघात्मक चरित्र में किसी प्रकार का परिवर्तन नहीं करता जो इस बात से चाहिए है कि वर्तमान विधेयक का राज्य विधायिकाओं द्वारा अनुमोदन वांछनीय है।

इसमें प्रथम बार प्रस्तावना में समाजवाद व धर्म-निरपेक्षता जैसे शब्दों को शामिल किया गया है।

इसमें प्रथम बार विधान में नागरिकों के कर्तव्यों का भी उल्लेख किया गया है।

मान्यवर ये विशेषतायें इस संविधान संशोधन में हैं और मेरा ऐसा ख्याल है कि हमारे संसद के इतिहास में जैसा कि मैंने अपना भाषण शुरू करते समय कहा था यह संसद के इतिहास में एक सुनहरा पृष्ठ होगा जिस में हमारे देश के हित के लिए, जनता के उत्थान के लिए उसकी गति के लिए, देश की अखंडता और एकात्मता को कायम रखने के लिए पहली बार अनुभव के आधार पर व्यावहारिक और लोकहितमयी संशोधन सुझाये गये हैं। प्रावधान किया गया है।

जो संशोधन विधेयक हमारे देश की प्रधान मंत्री के नेतृत्व में बड़ी सूझ-बूझ के साथ प्रस्तुत किया गया है, वह सर्वथा जनहितमयी नितांत आवश्यक प्रशंसनीय है और उसका मैं हृदय से अनुमोदन करता हूँ।

MR. DEPUTY-CHAIRMAN: The House stands adjourned till 2.00 P.M.

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

The House reassembled after lunch at three minutes past two of the clock, The Vice-Chairman (Shri Lokanath Misra) in the Chair.

MESSAGE FROM THE LOK SABHA The Electricity (Supply) Amend- ment Bill, 1976

ADDITIONAL SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Electricity (Supply) Amendment Bill, 1976, as passed by Lok Sabha at its sitting held on the 4th November, 1976."

Sir, I lay a copy of the Bill on the Table.

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

SHRI N. K. BHATT (Madhya Pradesh): Mr. Vice-Chairman, Sir, the present Constitution Amendment Bill, in every sense of the term, is a unique and historic Bill. Its uniqueness lies in the fact that this session of Parliament has been specially convened to discuss these amendments. That shows how much importance is given to this measure and to what extent it is going to have an impact on the life of our people.

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Mr. Vice-Chairman, Sir, the Indian Constitution which we adopted in 1950 and which made this country a republic is a very unique document and the features that it has have got their own speciality. The Founding Fathers who laboured hard to frame this Constitution were very competent, learned and dedicated people. In their zeal to give this country a frame work to shape its future to suit its own genius, they tried to give their best—whatever was available—after a deep study in the democratic world. They have taken inspiration from the democratic guiding principles in the Constitution of Britain. They tried to take the best of the American Constitution. Also, they did not lose sight of the Swiss Constitution which is supposed to be one of the best Constitutions in the world. They incorporated the salient features of this Constitution also to guide the destiny of the people of this country. Sir, the founding fathers were so careful that they did not lose sight of even the announcements and the decisions taken by the All Indian Congress Committee during the Freedom Movement right from 1920 till the Karachi Congress and later AICC resolutions. They took care to see that all the aspirations of the people are properly reflected in the Constitution can be a dynamic one if it does not reflect peoples urges and aspiration. It is impossible for a country like India with its vast population to have any rigid Constitution. We have got to adjust ourselves with the changed circumstances. We have got to understand the problems of the people and the challenges they are facing. We have to find out the solutions to the problems so that our declared objectives can be achieved and our people can lead a better and prosperous life. When this Constitution was being drafted, Pandit Nehru had declared that this was not the last word because he knew it very well that in a dynamic society, we cannot afford to shut ourselves behind closed walls or closed ideas. We have to have an

open mind. We have to make an objective study of the problems that confront us. He said that in times to come, we may have situations when the Constitution will be required to be amended from time to time. We had amendments, no doubt. When we took up the nationalisation of banks and the Privy Purses, there was a great hue and cry in the country. At that time, if the Prime Minister Shrimati Indira Gandhi wanted to continue as Prime Minister, she could have very well continued. Had she been after power, she would have continued. We know that she is not after power. She has, in her mind, as to how best she could be the instrument to serve the people and how best, along with her colleagues and through her party, she can help the people to get out of the age-old traditions and make India a modern progressive country in every sense of the term. Sir, ours is an age-old society. We have legacies from the foreign rulers. All these things have created problems. Mrs. Gandhi thought that unless she goes to the people and takes a mandate from them, it would not be possible for her to carry out her dynamic and progressive policies which she wanted to introduce. It was precisely for this reason that she dissolved the Parliament and elections to Lok Sabha were held in 1971. It was clearly stated in the manifesto of the All India Congress Committee that the society at that time was facing a number of problems. It was under the grip of feudal elements. It was under the grip of vested interests. Unless she got a clear mandate, it would not be possible to bring about socio-economic transformation in India. The result was that the people were keen that she should be given enough power to so govern the country as to enable us to advance to our aspirations and goals. The Congress has returned with more than two-thirds majority. Two-thirds majority is the requisite without which the Constitution cannot be amended. So, they wanted her to complete it

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without depending on the support or co-operation of any other political party. They gave her a clear mandate. Whatever she wants, she can go ahead and the entire country is with her. Sir, I fail to understand that in this very country, in spite of the fact that Prime Minister Shrimati Indira Gandhi and her Party were given more than two-thirds majority, a clear-cut mandate, there are people who still doubted her capacity, who doubted the strength of her Party and who said, "Well, if she wants to amend the Constitution, if she wants to bring about the socio-economic changes, there should be a Constituent Assembly and that too specially elected for the purpose." Sir, we have seen the Constituent Assemblies, how the Constituent Assemblies are set up and when they are set up. It is only when a revolution takes place or if there is a complete breakdown in the governance of a country as we have seen in France. France had a number of Constitutions. And still that was the situation. And that was not the case with India. India is a country which has gained through the Congress Party freedom after years of struggle and established a stable administration. So, I do not find any justification or any reason whatsoever for convening a Constituent Assembly. Already much has been said about this aspect and I do not want to go into that. But the fact remains that the present Parliament is quite competent to bring about the changes which have been overwhelmingly supported by the Lok Sabha, and in this House, I am more than sure, they are going to have a smooth sail.

The Congress Party and Prime Minister Indira Gandhi had given a clear indication in the election manifesto that there may be a necessity and we may have to bring about drastic changes. Why I am saying drastic changes is, when the banks were nationalised and the Privy Purses were abolished, on flimsy grounds, people went to the Supreme

Court and we have seen how the judiciary came in the way and how the judiciary went out of its way to defy the decisions of Parliament. Sir, we know that in the Indian Constitution when the principle of separation of powers was introduced, the respective jurisdictions of the legislature, executive and the judiciary were defined. Nobody could think of a situation where the sovereignty of the people or the supremacy of the Parliament would be challenged. Sovereignty is indivisible. Parliament and at the same time the judiciary cannot be supreme. In our country, only the people, elected representatives of the people and the Parliament are sovereign. Sovereignty rests with the people. So, this is the basic point about sovereignty. As a matter of fact, it is the duty of the judiciary to interpret, in its own wisdom, the Constitution for the benefit of the common man. But here, in this case, the judiciary assumed upon itself the sovereignty and started giving judgments upon the wisdom of Parliament. Sir, individual has no importance. The Society or the community at large has the importance. Similarly, the judiciary however important it is, whatever importance we may give through legislation, it cannot assume upon itself the authority of the people because they are just an instrument created under an Act of Parliament to judiciously interpret the law and give justice. This is how it is proved, this is how it is established that it is the Parliament and Parliament alone, in other words, the elected representatives alone, in whom vests the principle of sovereignty.

So, Sir, when this was the position, the way the judiciary started functioning of late, the Government was left with no other alternative but to bring about these changes.

Then, Sir, there is a general criticism about the policies of the Prime Minister. In the British Press so much is said about it. The British Parliament is said to be the mother of Parliaments. But if anybody goes through or examines the structure

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of the House of Lords, he will find that a Lord of that House is not an elected representative as a Member of the Rajya Sabha in our country is. We all are the elected representatives of the people. Of course, in the case of the Rajya Sabha it is an indirect election. In other words, the representatives of the people are elected in the Rajya Sabha by their elected representatives in ten State legislatures. In the case of British House of Lords a Lord is nominated and still they say that it is a democracy and then what happens is that the Lord *ex-officio* happens to be the chief of the judiciary also. And still they have the cheek to say that in India democracy is being throttled.

Similarly, Sir, there are also the protagonists of the American democracy. They also say that America is a democratic country and people are free to give their verdict. Sir, if we make an analysis, we will find that it is an executive democracy. The President of the United States is supreme and the elected representatives of the people either in the Senate or in the House of Representatives are just a controlling factor. In fact the position is that whatever the President of America wants to do he can do. Sir, if that is the conception of a democracy, I am very happy to say that India is quite cautious about this sort of democracy and we are going to pursue our own method of working and evolving what best suits the requirements of our people.

Similarly, Sir, some of our friends talk of referendum. Referendum on a limited issue is possible. There was a referendum in the United Kingdom when the Government of Britain sought an entry of that country in the European Economic Community. But, can there be a referendum about the proposed amendments or suggested changes that we want to bring about in our Constitution. Certainly it is not possible. From that point of view all talk about referendum is impracticable and devoid of any practical farsightedness and wisdom. As a matter of fact, the election of 1971 was nothing

short of a referendum when the people of the country gave a clear-cut verdict and all authority to the Prime Minister and her party to bring about changes as she liked. (Time bell rings).

Sir, I have got a few more sentences and I will have finished. Mr. Vice-Chairman, Sir, I would not like to take the time of the House by going into all the essential features of these amendments. But I would like to mention one point and that is about the workers' participation in the management of their organisations. It is one of the essential items in the 20-point programme of the Prime Minister and the mere fact that this has been so introduced shows how honest and sincere the Government is and how anxious the Government is to seek the participation of workers as an effective instrument in the socio-economic transformation of our country. There is no employer in the former sense of the term and workers are not subordinate to employers but they are parts of the same establishment. I feel, Sir, that when relevant legislation is introduced, workers participation will not only be in name but they will have their involvement in the establishments. Workers from the lowest level to the highest level are equally important for an establishment.

Sir, one other point that I want to mention is regarding anti-national activities. I fully realise that in the interests of the integrity of the country and in the interests of safeguarding the legitimate rights and aspirations of the people a provision of this type was very necessary. But, Sir, in spite of the assurances that have been given by the hon. Law Minister, I have got some doubts. Today, during this emergency, you have seen that we are a committed people, we are committed members of the party with an ideology and programme, but I am sorry to say that we have yet to have committed bureaucracy. Today the bureaucratic machinery is not so committed and there is no control

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over them. I do hope, Sir, that when this aspect is taken into consideration, measures will be taken to see that there are proper and effective checks on the bureaucracy. (*Time bell rings*).

Sir, the people of this country are very conscious and they want more and more and speedier measures for the social and economic changes leading to better and happier life for them and for the posterity. The present constitutional measures are a right steps in that direction. With these words, Sir, I extend my whole-hearted support to these measures.

SHRI SARDAR AMJAD ALI (West Bengal): Mr. Vice-Chairman, Sir, I take it as an honour for me to take part in this deliberation of national importance which not only is going to make some influence upon the present generation to which I belong but also, I believe, the future generation. That is, those who will come hereafter and when they will have an assessment in retrospect as to the social, political and economic situation of the country at their command at that time and at the same time will assess as to what the legislators of our country did at this particular moment, I believe my voice will also be one of those which will be very deeply scrutinised. Therefore, I think that I have to take a very cautious view, a very plausible view, a very understandable view and a rational and reasonable view. I start with a quotation and that quotation is of a very eminent man. It says:

"I say it is a unique Constitution in that it is a fraud on the common people of this country because a Constitution if it has got any validity, must be one in which the people must have the right to get it enforced."

This is the voice of Mr. P. Ramamurti, CPI(M) Politburo member, before the Fourth Lok Sabha when he himself moved a Resolution with regard to the right to property, all the way

impressing upon the Fourth Lok Sabha that right to property is not a primordial right or a sacrosanct right and that the Constitution which he was speaking about at the point of time should not be regarded by the Fourth Lok Sabha or the Lok Sabha and the Rajya Sabha of that time and the Parliament as such, as a sacrosanct one. It was his point at that time. And in that particular scene he said: If a Constitution has got to get any validity, then it is the voice of the people that should be supreme. I do not know when Parliament speaks, according to the estimation of his colleagues in the CPI(M) today, whether it is the voice of the people or not. It is a strange peculiarity. He also suggested in his speech, Sir, which I quote. . .

SHRI N. H. KUMBHARE (Maharashtra): I think you have taken fancy for Mr. Ramamurti.

SHRI SARDAR AMJAD ALI: I take fancy for you also but I will come to that later. (*Interruptions*)

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): I am afraid we cannot have the luxury of too much of interruption because the time is very limited and the speaker has to conclude within fifteen minutes strictly. So, no interruptions please.

SHRI SARDAR AMJAD ALI: Then, what was his suggestion at that time in 1970. Fortunately or unfortunately I had the opportunity of belonging to the other House at that time. He suggested: "If the Constitution has got to be meaningful, if it has to reflect the voice of the people, the urge of the people, the call of the nation, the changing necessity of the society as such, what we can do, we cannot, leave the future of this country to the changing decisions of the Supreme Court from time to time. That is my argument, Sir. I have got every right; I will repeat it from every public platform." This is a public platform where I find that Mr. Ramamurti and

his party, when that changing call of the society is being incorporated in our Constitution, are completely absent. This is the contrary stand this party is taking. Now, Sir, I believe in these amendments which have been brought forward before this House. I had the privilege of hearing a very honourable colleague of mine yesterday, Shri Krishan Kant. He said :

"We are making it clear that we are here today to make our stand clear."

He also said:

"here, may I say that I am speaking on behalf of the Congressmen for Democracy and parties of the Janata Front in Rajya Sabha, namely, Congress(O), B.L.D. and Jana Sangh...."

He started with this sentence:

"I rise to oppose the whole process of Constitution amendment and the Constitutional philosophy lying at the back of it."

This is what he said. When I give this quotation before you in regard to this Bill, what do I aim at? I would like to project here that these were the people who, some time ago, said that the Constitution should be a living document, that it should not be a static one, that it should reflect the will, the aspirations, the aims and the expectations of the people. But when the Government is proposing to incorporate these amendments in the Constitution to make it a living document, it is very strange that these very people oppose it and say that this Parliament has no right to amend the Constitution. Then, who has got the right? Is it not a fact that these very people, in 1972, took the stand that the Courts are not the masters of the Constitution and that Parliament and Parliament alone should be the master of the Constitution? Now, what is their argument? Their argument is that through

these amendments, the ruling party is trying to abridge the rights of the courts which gave interpretations of different types at different times as has been said by one of the eminent Members. When we are going to abridge this right, they ask 'What are you going to do'? When we are respecting the voice of the millions of people in this country and when we are going to do the very same thing for which they clamoured a few years ago, it is strange...

SHRI G. LAKSHMANAN: You feel sorry for the absence of Marxist Members from this House. Do you not feel sorry for the absence of Mr. Chandra Shekhar from this House?

SHRI SARDAR AMJAD ALI: I feel sorry for many things. I know I am a fool. But I feel sorry for those who do not even know that they are also fools. This is the predicament through which we are passing in this country now. When the Courts stood in the way of fulfilment of the aims, the aspirations, the expectations and the desires of the people and when we are proposing to abridge some of the rights of the Courts, why should not these people support these amendments is a question I want to ask them. Through this amendment, we are making it clear that Parliament is the supreme body to decide what the Constitution, the basic law for the country, should be.

A group of people have now come up with the theory that this Parliament is not competent to amend the Constitution. I am neither going to quote Dr. Ambedkar, the founding father, the Chariman of the Drafting Committee, of our Constitution, nor am I going to repeat again what our hon. Prime Minister has said in her speech that article 368 of the Constitution, as it stands today, gives ample powers to this Parliament to amend or to repeal any of the provisions contained in the Constitution, including Part III, namely, the

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Fundamental Rights Chapter. When anybody speaks about a Constituent Assembly, I do not know what is the regard they have for the earlier Constituent Assembly which of course we all held in high esteem. But at the same time, they should remember that that was a Constituent Assembly which was not elected on the basis of adult suffrage and which was not elected by the independent people of this country. That was a Constituent Assembly which was created by an Act, passed not by the sovereign Parliament of this country, but by the sovereign Parliament of another country across the ocean, namely, the U.K.

Sir, when we speak here, we echo the voice of the sovereign people of this country. We as representatives of the Indian citizens, derive this right from them and I do not know whether anybody will come and say that we do not have the right to amend the Constitution or reject or pass the Bills. With all the emphasis at my command I say and believe that Parliament has every right. Therefore, I do not know under what process the question of appointing a Constituent Assembly or giving this right over to a Constituent Assembly arises, I do not know whether the Law Minister will be able to tell us, I wonder. Well, I do not want to part with that right as a Member of this House, to part with my right to amend any part of the Constitution, since any provision in the Constitution is not a primordial one, is not a sanctified one, is not that sacrosanct which cannot be changed according to the changing will and aspirations of the people, those who are sovereign and whose voice we echo here in this House.

Now, Sir, I have a great doubt, for the sake of argument—even though we do not admit it even for the sake of argument—if we accept that a Constituent Assembly can do it, I would very humbly ask: What are the things we are aiming at? If

any Constituent Assembly is appointed, is it not a fact—I have a doubt in my own mind—that the issues which have been settled during these long thirty years in this country are going to be reopened? Is it not a fact that some of the chiefs of the States who have given views earlier on some of the issues will once again open those issues with the Centre? Is it not an issue that some of the States and representatives in their own fanatic ideas and ideals will come up and represent the issue whether Hindi will be the national language or not? Is it not a fact that an issue of the mode of drawing of funds from the Consolidated Fund of India which we have settled for the last 30 years, will once again be reopened? Is it not an issue wherein some people will be saying that this should be representation of the minorities, of the Muslims, of the Buddhists, of the Sikhs and so on and so forth? There will be so many things. I have a serious doubt. Therefore, I believe in my humble estimation, that it is a dangerous proposition. It is a dangerous proposition in the sense that ultimately at a point of time the very sense of Indian federation may be challenged. I do not know whether it will be so but it is the question of integrity and the very essence of integrity, that is there in the Constitution in the saying that India is a Union of States, will be exposed to serious challenge. So, it is a dangerous proposition. Mr. Vice-Chairman, at this point of time I want to say and record my voice on this.

The second issue is raised that by this amending Bill we are going to abridge certain powers of the Courts. I do not know what they have in mind. I have every respect, every reverence for those people in black attire known as judges but is it those wise people who will determine the fate or what the *fait accompli* of the people of this country will be? I do not think, Sir, they can be the masters. I definitely have a grudge against a third House to sit upon to

legislate. Since my people of this country have sent me over here for the essential duty to create a law, a law which will take the entire people of this country to a particular stage for which they have thrived, for which they have struggled, for which they fought the freedom struggle, I do not think in my own humble wisdom to part with this right to a third House, namely the Supreme Court or the High Courts.

The other criticism is.....

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Please take two minutes more and conclude.

SHRI SARDAR AMJAD ALI: It is a very serious debate and I am speaking for my generation, not for Mr. H. D. Malaviya's generation.

SHRI U. K. LAKSHMANA GOWDA (Karnataka): He has already spoken for his generation.

SHRI SARDAR AMJAD ALI: There is another criticism against us, against the Bill, in which it has been said: Well, what is this? You are going to restrict the rights of the High Courts and the Supreme Court. How is it that a man living in Calcutta or Karnataka or Jammu & Kashmir will be able to challenge any Act which is supposed to have done injustice to him and which has been done under the Central law? This is also another criticism that is being made.

Because we have proposed it in this amendment, I believe. Well, there may be certain apprehensions on this score that it will be too expensive for a citizen, for an individual to come over to Delhi to get relief from the Supreme Court for an action which has been taken against him or against his interests under any Central law.

SHRI N. H. KUMBHARE: In every State there should be a Supreme Court Bench.

SHRI SARDAR AMJAD ALI: They are going to have. Equally, at the same time, not only have we incorpo-

rated it here in this very amendment that legal aid should be given. I would humbly inform this House that first of all the States, by now, have framed schemes for giving legal aid to those who do not find themselves financially or economically sound in getting relief from the law courts. Therefore, that apprehension also has no reasonable grounds.

Then, if any State law will have to be challenged or if it is necessary that a particular State law will have to be declared unconstitutional, why not we give this power to the High Court? There are various laws. Take, for example, a Central law. Well, some High Court says it is unconstitutional whereas some other High Court says it is constitutional. It is a peculiar feature that we are having. After this experience, if the framers of the Constitution at that point of time thought it fit to regulate the jurisdiction of the Supreme Court and High Courts in a particular way, if we incorporate our experience in the Statute Book, the basic law of the country, I do not think anybody can grudge it. Mr. Vice-Chairman, Sir, these are the fundamental criticisms that have been made against us.

Somebody said that it is a ceremonial burial of the basic structure. My friend, Mr. Malaviya asked what that thing is. I do not know what that thing is. While I was a student of Intermediate (Arts), I had to study logic and my professor said, "There are certain things like the state of super-consciousness of the mind". Well, that you cannot explain. That you can see; that you cannot feel; that you can touch. I do not know if Mr. Krishan Kant has that state of super-consciousness of mind of stepping over here, having rejected this House, having rejected in his own language "A rump Parliament having no authority to continue", I do not know how one can sign in the register kept in the lobby of a "rump Parliament" and come to project his views. This is the type of criticism, these are the type of people we are to deal with.

We have gained experience during these thirty years of our independence. Positively, that experience will have to be courted and unless we incorporate that experience in our Statute Book, the basic law of our country, we will have to give an explanation to the future generations and that explanation may come in a way which I can only say, in parliamentary language, is not "a sombre way" and that way we simply want to avoid. There may be violence as some people did. There may be violence of words. Please forgive those who are having their violence of words tilted against us, directed against us at the present moment till we get a judgment from the future. We only say, we recall the experience of the thirty long years in order to take this country to a direction in which the sovereign people of this country want to go. There will be people who will be criticising us, and I shall conclude with the saying of the illustrious statesman and orator, Edmund Burke—

"A big country and a petty people cannot go together. Therefore, the petty people should be rejected"

Thank you.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Before I call the next speaker, I would like to impress upon the hon. Members that we have a list of 65 out of which five only have spoken by now. Therefore, the time has to be restricted and I would suggest and plead with hon. Members that they confine their speeches to ten minutes only. (Interruptions). . . Or, in the alternative, the hon. Members who transgress their time-limit would be elbowing out other Members.

श्री गुणलाल ठाकुर (बिहार) : श्रीमान, मेरा निवेदन यह है, कि जब हाउस 8.00 बजे तक बैठ रहा है तो कोई ऐसी व्यवस्था की जानी चाहिए कि हम लोग दसवीं तरह से बोल सकें।

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): That is what I am going to suggest. In spite of...

श्री कल्पनाय राय : (उत्तर प्रदेश)
श्रीमान, अगर आज हाउस 8 बजे तक बैठे तो भी अन्यथा समय बढ़ा दिया जाय।

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) :
अगर आनरेबल मेम्बर उसके लिये राजी है, तो ठीक है।

Is it the desire of the House to sit till 10 P.M.?

SOME HON. MEMBERS: Yes.

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) :
अगर इस हाउस के आनरेबल मेम्बर यह चाहते हैं तो हम लोगो को यहाँ 9 बजे तक, 10 बजे तक बैठना पड़ेगा।

श्री कल्पनाय राय : समय बढ़ा दीजिये।

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Those Members who are in favour of sitting till 10 P.M. will say 'Yes'. Those who are against sitting till 10 P.M. will say 'No'.

SOME HON. MEMBERS: Yes.

SOME HON. MEMBERS: No.

SHRI SYED NIZAM-UD-DIN (Jammu and Kashmir): Sir, my submission is that you had suggested whether 10 minutes' time is sufficient, the question of sitting up to 10 P.M. is not there. My submission is that 10 minutes is a sufficient time for every speaker. We may sit up to 10 P.M. or 11 P.M. That is a different matter.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Then I will put that also to the House.

SHRI YOGENDRA SHARMA (Bihar): I think the Chair should have the discretion. It will be bad if you decide it by votes. The only point is that you see to it that you accommodate as many speakers

as want to speak. Since we are having a very important and historic discussion, Members want to participate in it. I think we should find time for it.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): I would like the maximum number of Members to participate in this debate and therefore, nobody would be left out from the list.

श्री कल्पनाथ राय : : आदरणीय उप-सभाध्यक्ष महोदय, भारत के संविधान में संशोधन हो रहा है . . .

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) : वह तो मैं समझ गया ।

श्री कल्पनाथ राय : तो फिर 15 मिनट का समय दीजिये ।

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) : 15 मिनट समय देने से समय डेढ़ गुना बढ़ जायेगा । 60 सेकंड्स को 15 मिनट दिय जाये तो उसका डेढ़ गुना कितना हो जाता है ।

I would appeal to the Members to confine their speeches to 10 minutes.

SHRI G. LAKSHMANAN: Mr. Vice-Chairman, Sir, I am glad that you are restricting the time. It is only the Members from the ruling party who are agitating over it. That is what we wanted but they did not support it.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): All right. Ten minutes.

श्री कल्पनाथ राय : राज्य सभा का अधिवेशन एक दिन के लिये और बढ़ा दिया जाये ।

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) : यह निश्चय कर दिया गया है कि अब 10 मिनट से अधिक समय नहीं दिया जायेगा ।

SHRI N. H. KUMBHARE: Sir, how many minutes will you allow me?

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Ten minutes.

SHRI N. H. KUMBHARE: Then I think it will be better for me not to deliver the speech but read it. Therefore, I am reading the speech.

Mr. Vice-Chairman, Sir, on behalf of the Republican Party, I wholeheartedly welcome this Constitution (Amendment) Bill. The Republican Party feels confident that these amendments to the Constitution will accelerate the process of socio-economic change, which is indispensable to improve the condition of life of several millions who are suffering from abject poverty. The Republican Party of India therefore congratulate the Government and the Prime Minister and the Law Minister for this revolutionary measure.

The Republican Party had an electoral understanding with the Congress in the year 1971 in the Lok Sabha elections.

We had then supported the Congress with whatever little strength we had because their manifesto contained well-planned measures to help the poor. And among the various measures which have been taken so far, the present one to amend the Constitution is vital and far-reaching; it not only reiterates and amplifies the directions but also removes the hurdles in the march of the people towards the goal of socialism. The Republican Party had an occasion to discuss the proposals with the Law Minister. We are of the view that on such vital matters as the amendments to the Constitution party differences should not be allowed to come in the way. What I want to suggest is that even if there is discussion at the level of political parties, they should have accepted that suggestion and should have actively co-operated in framing the proposals for the amendment of the Constitution. It is unfortunate that some of the Opposition parties have taken recourse to blind opposition to the ruling Congress Party. It was opposition for the sake of opposition, for their narrow political ends. The parties which did not participate in the discussion even

[Shri H. N. Kumbhare]

at the parliamentary level have failed to discharge their obligation towards the people. These parties could have certainly played a more constructive role when an opportunity was offered to them to hold discussions with the Law Minister on these amendments. They would have served the people better by making suggestions and by persuading the Government to accept them.

The founding fathers of the Constitution were very clear about the constitutional provisions which give unfettered right to Parliament to change even the entire frame-work of the Constitution. The Hon. Shri Boroah in his speech quoted Dr. Baba Saheb Ambedkar. I think Dr. Ambedkar's views could be understood better if we read his whole speech. He said that our Constitution is the only Constitution in the world which provides a very facile procedure to amend it. He had also asserted that any part of the Constitution could be amended, there will be no fetters. For a better understanding of the context in which Dr. Ambedkar said it. I will take only two minutes to read a passage from his speech and it will provide a very interesting reading to my socialist and Communist friends also. He said—

"The condemnation of the Constituent Assembly came from two quarters, the Communists and the Socialist Party. Why do they condemn the Constitution? Is it because it is a really bad Constitution? I venture to say 'No'. The Communist Party wants a Constitution based on the principle of the dictatorship of the proletariat. They condemn the Constitution which is based upon parliamentary democracy. The socialists want two things. The first thing which they want is that if they come in power, the Constitution must give them the power, the Constitution must given them the freedom to nationalise and socialise all private pro-

perty and without payment of compensation."

"The second thing that the Socialists wanted was that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitation so that if their party comes into power, they would have the unfettered freedom not merely to criticise but to overthrow the State.

These are the main grounds on which the Constitution is condemned. I do not say..."

This is very important.

"...I do not say that the principle of parliamentary democracy is the only ideal for political democracy. I do not say that the principle of no acquisition without compensation is so sacrosanct that there can be no departure from it. I do not say that the Fundamental Rights can never be absolute and limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation and if you think it is overstatement, then these are the views of the Members of Parliament."

Therefore, what I submit is, as Baba Saheb Ambedkar said, that under the present provision of the Constitution, namely article 368, Parliament gets unfettered power to amend any article of the Constitution. Of course, it is not so easy to amend the Constitution. You must have a two-thirds majority, without which you cannot claim to represent the people. Therefore, this Parliament can amend the Constitution because it is in a position to command the support of two-thirds of its Members.

Sir, with the present amendment, the Constitution will become more purposeful because the amending Bill has sought to make the necessary changes which were indispensable to ensure that the hurdles in the way are removed and it responds to chang-

ing political, economic and social situations. Even though the Constitutional provisions, through an amendment, are not subject to judicial scrutiny, there is bound to be a challenge to the very provisions presumably on the ground that it is an essential feature of the Constitution that the articles have to be clarified, amplified by judicial interpretations. Through the new amendment, we have taken out judicial scrutiny from the purview of the Supreme Court. But I think the battle will not come to an end here. There is going to be another battle because of the decision of the Supreme Court in the Kesavananda Bharati case where they have said that we cannot touch the basic structure. The challenge will be on this ground that this is the basic structure that the Supreme Court has the power to interpret the Constitution and you cannot take away that right. I think on that ground there is going to be another challenge. Let us see the result.

(Time bell rings).

Sir, the amending Bill, to begin with, has put the expressions "secularism" and "socialism", in the Preamble. My submission is that it is not enough. It must also be seen that there is no executive or administrative act which undermines our concept of secularism and socialism. Sir, I will give an example.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): There is hardly any time for you to give examples. Your ten minutes are already over. If you want to wind up, please wind up in a minute.

SHRI N. H. KUMBHARE: Sir, I will give an example. There is a provision for the purpose of classification or identification.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Please wind up.

SHRI N. H. KUMBHARE: Two minutes.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Two minutes in every case means another two hours.

SHRI N. H. KUMBHARE: You have just warned me. I am only winding up. It is a very important point. For the purpose of identification of poor people, there is a provision in the present Constitution to the effect that those people will be identified and will be given special treatment. Will you do it? Now we have an Act whereby those people could only be either Hindus or Sikhs. Suppose there is a section of people who are neither Hindus nor Sikhs. What is the criterion for identifying them for special treatment? My fear is this benefit of special treatment will not be extended to those who are neither Hindus nor Sikhs. This is an executive Act. In view of the fact that now we are laying more emphasis on secularism, we feel that the Government should scrutinise all the previous Acts passed by the Executive and see that those Acts are repealed. This is the only suggestion that I wanted to make.

SHRI M. ANANDAM (Andhra Pradesh): Mr. Vice-Chairman, I rise to support this Amendment Bill. You are aware that this is a historic session not because that we are passing a voluminous Constitution Amendment Bill, but because we are in this session trying to restore Parliament's supremacy. There are, of course, criticisms over this. Critics are always there for criticism's sake. I was rather amazed—I should say amused—when Shri Krishan Kant yesterday opposed this Bill. Shri Krishan Kant has been a Member of this House for nearly eight years now and he has been with us in the Congress Party during most of this period. We all know well how he was speaking on various occasions. He was one of the champions supporting the cause of the Parliament vis-a-vis the judiciary. If I remember well, when the Twenty-fourth and Twenty-fifth Constitution Amendment Bills were being

[Shri M. Anandam]

debated on the floor of this House, it was he who said that judiciary was not behaving well so far as Directive Principles are concerned. Today he sits with the opposition. It does not matter where one sits. But he cannot change his own political philosophy. He was speaking of constitutional philosophy. I would only say that there is nothing like constitutional philosophy. But there is a political philosophy and one must adhere to that. Probably he has changed his political philosophy just because he has gone to the opposite side.

We all should realise that the Constitution has given us the right to amend the Constitution by article 368. I would only invite your attention to a passage in the minutes of the Drafting Committee on the Constitution and to one of the speeches made by Shri Mahavir Tyagi at the time when this particular article was being discussed in the Constituent Assembly. First I will quote from the Drafting Committee minutes:

"The process of amending the Constitution during the first few years should be made easier than is provided in the article. We have to remember that the present Constituent Assembly is not based on adult franchise. If a Constituent Assembly based on restricted franchise can by a simple majority frame the original Constitution, it is illogical to lay down that the Constitution so framed shall not be amended by Parliament based on adult franchise, except by a specially difficult process involving special majority and in some cases States' ratification."

I would again quote from the speech of Shri Mahavir Tyagi, who was a Member of the Constituent Assembly. When this article was being debated, he said like this:

"While considering this article, we should not lose sight of the universally recognised maxim on which we base the whole concept of democratic society today."

The maxim is that the earth belongs in usufructs to the living and the dead have neither the power nor the rights over it. From this maxim it is construed that one generation is disabled morally to bind the succeeding generations by inflicting on them a Constitution which is unalterable. I, therefore, emphasise that a Constitution which is unalterable is practically an act of violence committed on the coming generations."

3 P.M.

From these two portions of the minutes and the speech, Sir, you will understand that even a Member of the Constituent Assembly who is sitting in the opposition now was at that time very clear that the Constitution which they were giving to us was not sacrosanct, but it was alterable. Sir, as the time at my disposal is very short, I do not wish to go into the various questions and details. But I would only deal with a few features of the present amending Bill.

One of the amendments relates to the extension of 31C to the whole of Part IV of the Constitution. Part IV of the Constitution deals with the Directive Principle of State Policy. The Twenty-Fifth Amendment originally dealt with only one or two clauses. This amendment makes the entire Directive Principles supreme in relation to the Fundamental Rights. From this point of view, this amendment is very important. It is really necessary because, as you know, in this country we are trying to build a welfare society wherein the welfare of the society is supreme over or superior to the welfare of the individual. So, we have to abrogate our individual rights in favour of the society. Viewed in that light, I would say, the present amendment to the Directive Principles is really welcome.

There is another important feature in the present amending Bill and it is the one dealing with administrative tribunals. Now, Sir, there are two types of tribunals which have been envisaged. One is for the services and the other is for taxation and other

matters. This is a welcome measure. If these tribunals are constituted, the jurisdiction of the High Courts will be ousted in respect of the subjects covered by these administrative tribunals. Now, Parliament has got to provide by law for the way in which and the manner in which these tribunals are to function. There is one lacuna or omission in these two articles, that is, article 323(A) and 323(B). I do not know whether this is a deliberate omission. But I am of the opinion that as and when the tribunals would step into the shoes of the High Courts, there is need for prescribing the qualifications of the members who would constitute these tribunals. There is absolutely nothing said about this. As a matter of fact, if you read articles 216 and 219 of the Constitution, you will find that there is a specific provision with regard to the qualifications of the judges and also with regard to the remuneration to be paid to them. Actually, the Second Schedule prescribes the salaries and other emoluments to be paid to the High Court Judges. But, when once these tribunals step into the shoes of the High Courts, we would expect that the members of these tribunals would not only be of the same order or rank as the High Court Judges or experts in their lines, but also they would be getting similar remuneration as the High Court Judges are getting. I think the honourable Minister would explain to us whether this is a deliberate omission regarding qualifications of the members and their salary because they wanted to do something later or it is only an inadvertent omission.

Then, Sir, there is another point also with regard to the tribunals. You will find that so far as the working of the High Courts and the subordinate courts is concerned, there is a supervisory control of the Supreme Court over the High Courts and of the High Courts over the subordinate courts. But I do not find any supervisory control to be exercised over the working of these administrative tribunals. If such a control is not there,

I would only like to submit that these tribunals would become despotic. Therefore, I would suggest that in the interest of the proper functioning of these tribunals, there must be some sort of control over them and I would say that the Subordinate Legislation Committee of Parliament might be entrusted with the task of supervision of the administrative tribunals.

I would make only one point more and then finish. It is with regard to the provision regarding the inclusion of education in the Concurrent List. I expected that there would be certain provisions in the amending Bill relating to inter-governmental co-operation, both between the Centre and the States and between States and States. During the emergency, and under the dynamic leadership of our Prime Minister, many of the inter-governmental and inter-State problems, especially river water disputes, were solved. For a cordial atmosphere, it is worth while considering legislating a law to give authority to the Union Government to settle all inter-State matters.

Finally, I fully support clause 55 of the amending Bill which eliminates confrontation between Parliament and Judiciary. Let us realise that we are in a dynamic society. This Constitution was given to us more than 25 years ago. There is need for the judiciary to interpret the Constitution according to the changing times and circumstances. Courts, too, should realise it. It would be a sad day if the courts did not respond to the aspirations of the people.

Thank you.

SHRI S. K. VAISHAMPAYEN (Maharashtra): Mr. Vice-Chairman, Sir, in the life of a nation, historic occasions come once in a way. And I think this consideration of the Constitution (Amendment) Bill is one such occasion in the life of our country. Therefore, I hope that everyone in this House as well as the people of India will welcome this Bill.

[Shri S. K. Vaishampayan]

The hon. Law Minister has ably stated the objectives behind this Bill. But I consider, Sir, that this Bill is a logical culmination of the process initiated by the Prime Minister in 1970. The process was of a rapid socio-economic transformation. The Prime Minister in 1971, during the mid-term poll, got a massive mandate for such a rapid socio-economic transformation. But later on it was realised that a socio-economic transformation cannot become a reality without removing the legal political and constitutional road blocks in the way of such measures. These road blocks were removed in one sweep by our Prime Minister by declaring emergency and by launching the Twenty Point Programme. The constitutional road blocks, Sir, are now being removed with this Bill.

Secondly, Sir, the Bill is a fitting reply to the crisis which some of the Opposition parties, in collusion with vested interests from inside and outside the country, were trying to build up in this country. Unfortunately, the Judiciary, instead of helping this process of socio-economic transformation as intended by the framers of the Constitution created difficulties through their judgments. Not only that, but the Supreme Court challenged the supremacy of Parliament and a need, therefore, has arisen for setting things right in this sphere. The Bill seeks to define more specifically the role of the Judiciary, vis-à-vis Parliament.

Then, Sir, this process of amending the Constitution is now being undertaken not because certain things have happened during the course of last one year or in an extraordinary way. The Government has up to now brought in about 43 amendments some of them from the same point of view for which this Bill is there. Even Members have shown their anxiety to make amendments in the Constitution. One can judge this from the number of Private Members' Bills introduced both in the Lok

Sabha and the Rajya Sabha, aiming at amending the Constitution. Sir, I will give you only a few figures. During 1950 and 1976, that is, 26 years, there were 376 Private Members' Bills aiming at amending the Constitution which were introduced in the Lok Sabha, while during 1952 to 1976, that is, 24 years, 105 Bills were introduced in Rajya Sabha aiming at amending the Constitution.

Sir, two important issues will now be settled once for all with the passing of the Bill. One is the competence and authority of Parliament and second is the conflict between the Directive Principles and Fundamental Rights.

Sir, I will not take the time of the House by making my own observations. I will only quote from the speeches of Pandit Jawaharlal Nehru and Nath Pai on these vital issues. Shri Nath Pai said in April, 1967:

"The issue raised as a result of the judgment of the Supreme Court in Golaknath case is of cardinal importance to the supremacy of Parliament. This supremacy implies the right and authority of Parliament to amend the Fundamental Rights. Just as Parliament can extend these rights, it can in special circumstances modify them."

I quote this from Mr. Nath Pai's speech because he was one of the leading Members of the Socialist Party. In regard to the conflict between the Directive Principles and the Fundamental Rights, Pandit Nehru visualised the possibility of conflict as early as 1951. Speaking in Parliament at that time, he said:

"Whenever there is any conflict or contradiction between the Directive Principles and Fundamental Rights of a citizen, the Directive Principles should get precedence because individual's Fundamental Rights have to be subservient to Fundamental Rights of society as a whole."

Thus, Pandit Nehru visualised the possibility of Fundamental Rights being used by forces of reaction and *status quo* to prevent implementation of the Directive Principles.

Sir, I will now dilate upon two or three features of this Bill. I am very happy that the objective of secularism has now been incorporated in the Preamble and the same has been further strengthened in two of the provisions. I am very happy personally because I had moved a Constitution (Amendment) Bill for inclusion of secularism in the Preamble. More than that, I am happy because the dream of Pandit Jawaharlal Nehru has come true. It was he who yearned to include the objective of secularism in the Preamble. I must congratulate the Government for taking this step.

This House knows that this concept of secularism has been there in our Constitution. The articles which give our Constitution a secular bias are articles 25, 26 and 30, articles 15, 16 and 17, article 292 and articles 325, 327 and 328. What I am trying to draw your attention to is that despite so many articles in the Constitution which had implications of secularism, the communal forces in the country, both Hindus and Muslims, the R.S.S. and Jamat-e-Islami, carried out a virulent propaganda against this. I may be permitted to quote one or two of their expressions. Organiser published in 1960:

"Secularism is a colourless, odourless thing without life and without truth. India cannot grow into anything worthwhile in such a negation of the whole being."

Golwalkar, who was the R.S.S. Chief, said in 1965:

"Neither secularism nor democracy nor socialism are able to exercise any patriotic appeal for our people as yet—the democracy we speak of is a borrowed hotch-

potch—the name does not strike responsive cord in the common man."

These are expressions of Hindu militant forces. So far as Muslim communal organisations are concerned, the Head of Jamat-e-Islami has called the concept of secularism as irreligious. Maulana Maudoodi said in 1947:

"So far as the Muslims are concerned, I want to tell them clearly that the present-day irreligiousness and the concept of national democracy are out and out opposed to your religion."

This is how he wanted the Muslims to treat secularism. These forces could do so because the objective of secularism was not only not brought out in specific and definite words, but it was not stated in the Constitution. There were a number of provisions. True. But it was not stated as such. Now it is there. Now not only the objective has been there but it has been further strengthened under the provisions of Fundamental Duties and anti-national activities. And I think this is a very major step to see that communalism in this country ceases to exist absolutely and the real national forces hold the sway. Sir, I am coming to a close and I have just two points to make. One is about the question of the incorporation of Fundamental Duties. And I think the Government has done well to incorporate the Fundamental Duties in this amending Bill. But at the same time what I feel is, about one particular clause, they should have made it more specific and concrete. And that particular provision is 51A-(e). It says:

"to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women;"

[Shri S. K. Vaishampayan]

My humble suggestion is that this is a poetic sort of expression. It should have been more specifically stated as—"to promote harmony and the spirit of common brotherhood by abjuring communalism, casteism and parochialism." It should have been stated in this particular way. I do now know how the Law Minister became rather poetic in framing this particular clause.

My last point would be, Sir, in this amending Bill, certain powers have been taken by the Centre in the Concurrent List. I congratulate the Government for making Education a Concurrent subject. The Swaran Singh Committee desired that agriculture should also be a Concurrent subject. But later on, due to the opinion that has been there, it was not taken up. But at least the Government should see that the powers which are there with the States in regard to taxation on agricultural income, taxation on agricultural land and estate duty in respect of agricultural land these three powers, are taken over by the Centre because, today what we find is that according to the Raj Committee report, a large sum can be realised by taxing the agricultural income and wealth. So, it is necessary that the Centre should take over this power.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Have you finished?

SHRI S. K. VAISHAMPAYEN: I am concluding now. Sir, I wholeheartedly support this Constitution Amendment Bill.

SHRI NABIN CHANDRA BURAGOHAIN (Assam): Mr. Vice-Chairman, Sir, through you, I would like to draw the attention of the Members of this House to the fact whether the new provisions now attempted to be inserted in the main Constitution occupied some place in the intentions of the Constitution framers. The

thesis of my argument and what I am trying to show is that the inclusion of the words 'secular and socialist' had already been presumed in the Constitution, and the presumption is now put in black and white. Other points I would like to discuss are whether the precedence of Directive Principles over the Fundamental Rights and the supremacy of Parliament have been already inserted in the Constitution by the framers of the Constitution. So far as the inclusion of these two words 'socialism' and 'secularism' is concerned, I draw a presumption from the conduct of our national leaders. Our national leader and hero, Pandit Jawaharlalji, could inspire the people of India with the ideology of socialism from the Congress platform, socialism was accepted by the people as their political objective and aspiration when the country became independent. The Indian Constitution also accepted it as its objective. This can be easily inferred from the provisions of article 39 of Part IV dealing with the Directive Principles of State Policy wherein it is stated that the State shall, in particular, direct its policy towards securing the ownership and control of the material resources of the community in a way as to best subserve the common good and that the operation of the economic system shall not result in the concentration of wealth and means of production to the common detriment. These are the two special features of socialism. Therefore, the addition of the word 'socialism' in the Preamble is the unequivocal reiteration of the adopted objective of the Constitution.

The inclusion of the term 'secularism' will multiply the confidence of the religious minorities. To nip in the bud the adverse effects of the propaganda of secession done by some of the anti-national forces, the inclusion of the words, 'unity and integrity' of the nation is absolutely necessary. Though secularism was not formally mentioned in black and

white in our Constitution, I infer that since the Directive Principles adopted the principles of socialism, secularism was indirectly adopted because religion does not have any place in a socialist State. That way non-secularism did not have any place in our secular country as well as our Constitution.

The hon. Law Minister has rightly said that the Preamble is the key to the statute. Therefore, the amended Preamble truly acts as the key to our Constitution.

Sir, this august House has to consider in the light of our objectives of democracy, secularism and socialism, whether the Directive Principles or the Fundamental Rights should have precedence over the other. The Directive Principles are to be applied to the society as a whole. They deal with citizens' right to adequate means of livelihood, the distribution, ownership and control of the material resources of the community to subserve the common good and operation of the economic system in such a way that it does not result in the concentration of wealth and means of production to the common detriment. There are many other directives which help us much in the realisation of socialism. The Fundamental Rights are generally for the benefit of the property-owning classes or those whom we call "haves". They are not for the benefit of "have nots". The property-owning classes use these rights to protect their reactionary life and conduct. The Fundamental Rights were given too much precedence even at the cost of socio-economic reforms by the judiciary who proved to be deaf and blind to the hopes and aspirations of the people. The other day Mr. Antulay rightly said that these are decorations on the pages of the Constitution. Sir, the framers of our Constitution specifically laid down that the Directive Principles were fundamental in the governance of the country and further that it was the duty of the State to implement them. In other words,

they made it very plain that **merely** because they (Principles) are not enforceable through judicial decrees, they do not cease either to be Fundamental or to be legally obligatory. The Constitution (Amendment) Bill seeks to put the Directive Principles which embody the rights of the society, on a higher pedestal than those of the individual for ensuring that benefits of growth and development should go to the general masses. So, Sir, the proposed changes would ensure public or social control over the means of production.

Sir, about the supremacy of Parliament, Mr. Borooah stated about Shri Gajendragadkar who is an eminent jurist. Shri Gajendragadkar said: It is an extremely elementary principle of jurisprudence that legislative power is a generic term. It consists of normal law making power derived from the Constitution of the country and constituent power which enable the Constituent Assembly to frame a Constitution for the country. The Indian Constituent Assembly framed our Constitution and it provided for the amendment of its provisions by article 368. It would thus be clear that when Parliament acts under article 368, it is a Constituent Assembly and has, in substance, the character of the original Constituent Assembly, except that it can exercise its power subject to the limitations imposed by article 368.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): I hope you would try to wind up.

SHRI NABIN CHANDRA BURAGOHAIN: The Prime Minister rightly stated, Sir, in the Lok Sabha that to stall the progress, the reactionary forces have interpreted the Constitution in a different manner. They have invented a new interpretation the provisions in the Constitution...

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): You kindly wind up now.

SHRI NABIN CHANDRA BURAGOHAIN: So my argument is that these amendments only have cleared the cloudy mind of the judiciary and have made the mind of the judiciary free from all doubts and prejudices. So I suggest insertion of the following clause after clause (3) of article 368.

"No amendment of this Constitution made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution shall be called in question in any court on any ground".

"For the removal of doubts, it is hereby declared that there shall be no limitation whatever in the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the Constitution under this article."

Therefore, the position has been made clear.

With these words, I support the Bill.

SHRI G. LAKSHMANAN: Mr. Vice-Chairman, Sir I stand to oppose this Constitution (Forty-fourth Amendment) Bill. I oppose this Bill not because the Central Government and the ruling party are angry over the DMK, not because they dismissed a Government which had a strength of 180 MLAs and not because they had arrested 35,000 people when President's Rule was imposed. Of course, some of them have been released. But still, 500 of my party colleagues are in prison and five Members of Parliament belonging to my party are in prison. My party, a democratic political party, has not been allowed to function as a political party. For instance, Sir, if a member of my party wants to hoist our party flag, instructions go from the Superintendent of Police that only three people could go and hoist the flag, that no slogans should be raised and that there should be no crowd. This is the position in which our party has been placed. We are not worri-

ed about this. It is not because of this that I am opposing this Bill. The latest attack which has been unleashed by the Government is the criminal case which has been filed against the former Chief Minister of Tamil Nadu, Dr. Kalaignar Karunanidhi. Do you know who is the approver in this case? The approver is the person who is alleged to have given Rs. 4 or Rs. 4½ lakhs to the former Chief Minister in his own hands. This person has been made the approver. A criminal case has been filed. We are not worried about it. We will face it politically. Whatever may be the attack, we will face it.

Sir, the Law Minister has said that we are running away from our responsibilities. I would like to make it clear here that as far as my party is concerned, whenever there has been a national crisis in this country, we have been with the progressive forces. We have never run away from our responsibilities as an Opposition party. In the year 1969, when the Prime Minister's candidate was contesting the Presidential Elections against the reactionary forces, it was the DMK which extended its support to the Prime Minister's candidate and Mr. V. V. Giri was elected as the President of India...

(Interruptions)

SHRI SYED NIZAM-UD-DIN: My only point is this. Has this any relevance to the Bill which we are discussing?

SHRI G. LAKSHMANAN: Why should you become nervous? When I state facts, why should you become nervous (Interruptions). Sir, because of these interruptions, I should be given extra time. In the 1971 Elections, when the Congress Party put forward the election manifesto before the people—at that time, we had an alliance with the Congress Party—we supported the Congress. As a matter of fact, some of our members withdrew their nominations and in their places, Congress Party members filed their nominations. I am stating this

to make it clear that we have never been with the reactionary forces. We have been with the progressive forces. When I say we have been with the progressive forces, I accept you are a progressive force. Somehow or other, you have become suddenly angry over us and you have done something. But we are not taking revenge. In a democracy, a revengeful attitude must not be shown towards your own political friends. Therefore, I am not angry and I am not opposing this Bill merely because the Government had done something against our party.

I am opposed to you purely on democratic lines. We do not also dispute that Parliament has power. We do say that Parliament has got the power. The difference of opinion is whether Parliament is supreme or the people. On behalf of my Party, I say the people are supreme. Here the people are stating that Parliament is supreme. No, I say on behalf of my Party, that the people are supreme. This Constitution has been amended 42 to 43 times. On all occasions my Party or any other Party has expressed the opinion. Every time we have co-operated. All the parties have given their co-operation and the Constitution amendments have been carried out. But today why are we opposed to this Bill? We say that you must take the verdict of the people because the Parliament has completed its tenure. The period of five years is over. This is an extended Parliament. That is why we say the people or the authority of the people is supreme. They must be consulted. Therefore, as far as my Party is concerned, I say that Parliament is supreme, but in the conditions that are prevailing today people must be consulted. And why are you afraid of the people so much? You say that the people are completely with you. What is the barometer to show that the people are completely with you. Now our fear has come true. After passing the amendments, we thought that you would go to the people and take their verdict, but today you have extended the life of Parliament for one more year for

which this Session was not at all convened. That shows that you are afraid of the people and you are sure that these amendments are anti-people amendments. You have not consulted the people or hold elections and still you are going to pass the amending Bill because of the two-thirds majority for which we are also responsible. After passing these amendments, you must go to the people and seek the verdict of the people to see whether these amendments are acceptable to them or not. I do not know what is in store because I am afraid, there will be no democracy in the coming years. So many legislations might come in. (*Interruptions*).

Sir, it is clear that the Constitution (Forty-fourth Amendment) Bill will be passed in this Parliament Session itself. It is our duty to point out here and now that the DMK will stress and insist its demand till the last stage and phase and it is prompted to do so not in party or partisan interest but in the nobler and larger interest that the democratic polity should thrive with strength.

As far as we are concerned, we have no difference of opinion in that the Parliament has every right to amend the Constitution.

Some of the Pradesh Congress Committees have suggested that a new Constituent Assembly should be elected and that the newly elected constituent Assembly alone should discuss and decide the proposed amendments. But we should think over that how far this suggestion is possible and feasible.

If the idea of new Constituent Assembly is not feasible what would be the wrong, it is argued, if the Parliament discussed and decided the amendments. I repeat and reiterate the Parliament discussing the amendments is not at all wrong. But the present problem is a different one in nature. Will it be fair and proper for a Parliament whose mandate has already ceased to exist and which

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has wilfully extended its term by one more year to decide such a matter of vital and far-reaching importance?

It is not now necessary to enter into the controversy whether the extension of the term of the Parliament by one more year on the ground of emergency is proper or not. The mandate given by the voters in the year 1971 is for a specified period of five years and five years only. It would be definitely contrary to the verdict of the people in 1971 to extend its own life and to attempt fundamental changes in the Constitution during the extended period. The election to have been held in 1972 was advanced by one year and held in 1971 for the specific purpose of seeking the mandate from the people only for the progressive and socialistic legislations such as abolition of privy purse and nationalisation of scheduled banks. We should never forget that the support given by the people then is not on the basis that these constitutional changes will be effected. Even assuming that the people have given the support for that purpose it would not be proper to consider that the people have given such a right for this extended Parliament.

The Punjab Pradesh Congress Committee meeting in which more than 250 M.L.As. and M.Ps. and leading Congress men participated has resolved that a new Constituent Assembly should be elected for the stupendous task of effecting vast changes and recasting the Constitution.

Similarly, in Uttar Pradesh Congress Legislature Party joint meeting a resolution was passed to the effect that this Parliament itself should be converted into a Constituent Assembly to effect the amendments to the Constitution. Prime Minister, Mrs. Indira Gandhi, has also participated in the same meeting. No doubt, the argument that there is no need for a Constituent Assembly is tenable; the argument that Parliament is supreme

is maintainable; yet is this extended Parliament entitled to, is empowered to discuss and pass such vital and far-reaching amendments? Is it proper? Is it constitutional? Such questions are pricking our hearts. The discussions on the Bill. . .

(Interruptions)

SHRI BHUPESH GUPTA (West Bengal): Here is a new convert to Constituent Assembly (*Interruptions*) . . . Mr. Kamalapati Tripathi, will you present him to the Uttar Pradesh Congress? . . .

(Interruptions)

SHRI G. LAKSHMANAN: The discussions on the Bill placed before Parliament on the basis of Swaran Singh Committee's recommendations on constitutional amendments started on October 25th. Jana Sangh, Socialist Party, B.K.D. and Congress (O) have declared that they will not participate in the discussions . . .

(time bell rings)

The C.P.M. also has announced that it will not participate in the discussions. The said parties have explained the reasons for their non-participation in the previous parliamentary session itself. Our friend Mr. Era Sezhiyan explained on the floor of Parliament on October 25th the reasons for the inability of D.M.K. to participate in the discussions.

On behalf of the D.M.K., we would like to point out that the time and circumstances are not conducive for effecting the proposed amendments and that there is no scope for country-wide discussions now. But at the same time, we never hesitate to welcome whatever amendment is given to whichever clause of whatever Article for the implementation of socialistic policies. We have whole-heartedly appreciated them. The supporters of the amendments whether they belong to Congress party or to its allied parties, have not accepted all of the amendments without reservation or exception. The supporters themselves have stated that the Central

Government should not appropriate to itself the power of sending the armed police to States. The supporters have stressed that shifting of education to the Concurrent List would affect the Centre-State relations.

Though the former Central Minister, Mr. V. K. R. V. Rao has supported the Bill on behalf of the Congress, he has pointed out that "some of the rights incorporated in Articles 14 and 19 like freedom of speech and expression, the right to assemble peacefully and to move freely throughout the country, etc. had been "what we fought for and had become part of the values of civilisation and parliamentary democracy. If they took the view that in the name of social progress any legislation could be passed superseding these rights, they might be" laying the door constitutionally open for the establishment of a regimented society. He also stressed that the Fundamental Rights should not be rejected *in toto*....

(Time bell rings)

Only one minute, Sir. Mr. Indrajit Gupta, who has strongly supported the proposed amendments on behalf of C.P.I., has raised some objections. Clauses extending the term of Members to six years, fixing the quorum of the Lok Sabha and the Rajya Sabha and dealing with anti-national activities were irrelevant to the Statement of Objects and Reasons.

Mr. Gupta was specially critical of the clause to extend the period of the Lok Sabha. His party was totally against any prolongation of the life of the Lok Sabha and would oppose it.

Many of the clauses unrelated to socio-economic transformation should be withdrawn. They would only help in diverting public attention from the basic amendments.

Mr. Hanumanthaiya who supported the Bill on behalf of the Congress has pointed out that "one should be cautious against going to the other

extreme in respect of obligations. Instead, a healthy balance should be struck. While he was committed to socialism as a Congress man, he was not in favour of imposing his conditions on the future generations....

(Time bell rings)

Only one minute more, Sir.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): You have already exceeded 10 minutes.

SHRI G. LAKSHMANAN: Sir, it is because they interrupted.

The Muslim League leader Mr. Sulaiman Sait, while supporting this Bill, expressed doubts about the clause seeking to prohibit anti-national activities and there was already a law—the Unlawful Activities Act—to take care of such activities.

Though they started their speeches in support of the amendment, they have pointed out that the unnecessary and unwarranted clauses should be withdrawn.

Keeping in mind the issues pointed out by the supporters and the clauses and the probable outcome of the clauses, the D.M.K. and the Opposition parties have demanded that the Bill should be reserved. Restoring the Fundamental Rights which now stand suspended, providing ways and means for nation-wide discussion, the Parliament which would be elected after the General Election should discuss and decide these amendments.

(Time bell rings). Only one sentence more. They have withdrawn from the parliamentary discussion since their demand has not been conceded by the ruling party. Even after the general discussion is over and even at the stage of clause-by-clause discussion, there is scope for the ruling party to reconsider its decision. (Interruption) In this House, I would appeal to the Prime Minister... (Interruption) She went to Africa and...(Interruption). We have already support

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ed them with regard to the socio-economic matters. These things can be discussed and as such all these clauses could be withdrawn; the Parliament can discuss that issue.

شری سید نظام الدین: مسٹر وائس

چھرمین - ابھی جو آنریبل ممبر صاحب دوسری طرف سے انہوں کے بارے میں تقریر کر رہے تھے انہوں نے وہی چند بلدیاتی سوال اٹھائے ہیں، جن کا جواب اس معزز ایوان میں بھی لوگ سمجھا رہے ہیں اور اس پارلیمنٹ سے باہر بھی بہت دفعہ دیا گیا ہے لیکن انہوں نے خاص کر جو تین پوائنٹس اپنی پارٹی کی طرف سے کہتے کہ ان کی پارٹی کا اعتقاد اس بات میں ہے کہ وہ دی پھوپل آر سپریم - پارلیمنٹ از ناٹ سپریم، میں نہیں سمجھا کہ وہ یہ بات کہاں سے لائے۔ حالانکہ اس وقت جو بلدیاتی اختلاف ہے وہ اس بارے میں ہے کہ پارلیمنٹ vis-a-vis جوڈیشیہ کیا صورت ہے۔ پارلیمنٹ میں اور جوڈیشیہ میں اس وقت جو اختلاف ہے وہ اس بارے میں ہے کہ پارلیمنٹ از سپریم - پارلیمنٹ آئین کے ترمیم کے متعلق جو قانون پاس کریگی یا پارلیمنٹ جو آئین میں ترمیم کریگی کیا ججہز کو کوئی حق ہے اس کو رد کرنے کا یا نہیں؟ لیکن یہ سوال کہ پھوپل آر سپریم - ہم ان کو کہیں گے کہ کانگریس اس

بارے میں سب سے آگے ہے جب کانگریس تحریک آزادی لڑ رہی تھی اس وقت بھی کانگریس کا نعرہ تھا سرداری عوام کا حق ہے۔ اس لئے انہیں اس بات میں شک و شبہ نہیں ہونا چاہئے کانگریس پارٹی کو اس بات پر اس سے زیادہ یقین ہے کہ لوگوں کو ہی سرداری کا حق ہے اور پارلیمنٹ جو کہ لوگوں کی نمائندہ جماعت ہوتی ہے اس لئے آئین کو ترمیم کرنے کا حق بھی پارلیمنٹ کو ہی حاصل ہے۔

دوسری بات جو انہوں نے کانسٹیٹیوٹنٹ اسمبلی کے بارے میں اٹھائی ہے۔ میرے خیال میں تھوڑا سا ان کو کلفیوزن ہے اس مسئلہ میں - ہریانہ پردیس کانگریس نے جو یہ مانگ کی تھی کہ کانسٹیٹیوٹنٹ اسمبلی بدنامی جائے وہ اس لئے نہیں تھی کہ جو ہمارا یہ چوالہسواں امیڈمیٹ بل ہے اس کے لئے - بلکہ وہ مانگ اس لئے کی گئی تھی تاکہ سارے آئین کی دوبارہ نظر ثانی کی جائے کیونکہ ۲۵ سال کے عرصہ میں جن مشکلات کا ساملا آئین کے عمل درآمد میں ہوا ہے ان مشکلات کو دور کرنے کے لئے مکمل نظر ثانی کرنا ضروری ہے۔ اس لئے جلد اسمبلیز نے اور کانگریس کمیٹی نے یہ سچھاو دیا تھا یہ مانگ کی تھی کہ ایک کانسٹیٹیوٹنٹ اسمبلی بدنامی جائے۔

(Interruption)

پروپوزیشن کانگریس کمیٹیوں کی یہ جو مانگ تھی وہ سارے آئین کے بارے میں تھی - یہ جو ہمارا بل ہے اس کے بارے میں وہ مانگ نہیں تھی - اور دوسری بات جو انہوں نے کہی کہ یہ ایکسٹینڈڈ پارلیمنٹ ہے اس کو اس طرح کا امینڈمنٹ لانے کا کوئی حق نہیں ہے - اس کا جواب بہت سے لوگوں نے دیا - مجھ سے زیادہ جاننے والے لوگوں نے دیا ہے لیکن میں یہ کہنا چاہتا ہوں کہ جو لوگ آئین کے نام پر بات کرتے ہیں ان کو خود آئین کا احترام کرنا چاہئے - آئین اگر یہ حق دیتا ہے کہ پارلیمنٹ اپنی لائف کو بڑھا سکتی ہے لیکن اس کے ساتھ کوئی شرط نہیں ہے - پارلیمنٹ کی میعاد میں توسیع کرنے کا حق تو پارلیمنٹ کو دیا گیا ہے لیکن اس کے بعد پارلیمنٹ کو یہ کرنے کا حق ہوگا - یہ کرنے کا حق نہیں ہوگا - ایسی شرط کہیں نہیں ہے تو اس لئے اگر پارلیمنٹ کو پہلے آئین کو ترمیم کرنے کا حق تھا تو آج بھی ویسا ہی حق اس کو ہے - کیوں کہ آئین میں اس طرح کی کوئی پابندی نہیں ہے - میرے فاضل دوست اگر اس طرح آئین کی باتوں پر زیادہ زور دے رہے ہیں تو ان کو کم سے کم اس بات کو ذہن میں رکھنا چاہئے کہ آئین میں ایسی کوئی بات نہیں

ہے کہ جس میں ایسی پارلیمنٹ کے اختیار کو محدود کیا گیا ہو جس کی لائف بڑھا دی گئی ہے - ایسی پارلیمنٹ کوئی آئینی امینڈمنٹ نہیں کر سکتی -

جواب والا - کچھ مفاد پرست لوگ اس آئینی ترمیم کے بارے میں جس بات پر بہت زور دے رہے ہیں وہ یہ کہ اس کے ذریعہ عدالتوں کے اختیارات کم کئے جا رہے ہیں - میں نے جب اس بل کا مطالعہ کیا تو پایا کہ عدالتوں کے اختیار سے متعلق کل تین دفعات ہیں - ۲۳، ۲۴، ۲۵ یہ تین دفعات جن کے ذریعے تین نئی دفعات آئین میں درج ہوتی ہیں - آرٹیکل ۱۳۱-اے - ۱۳۹-اے اور ۱۴۴-اے اگر ہم ان کا مطالعہ کریں تو میری سمجھ میں نہیں آتا کہ یہ بات ان کے ذہن میں کہاں سے آئی ہے کہ عدالتوں کے اختیارات کم کئے جا رہے ہیں لیکن اگر ہم انکا مقصد دیکھیں تو وہ بہت واضح ہے - (۱) تمام مرکزی قوانین کی یکساں تشریح ہونی چاہئے - جیسا کہ سردار امجد علی صاحب نے کہا کہ آج تک سنٹرل لاز کی تشریح ایک عدالت ایک طرح سے کرتی ہے اور دوسری عدالت دوسری طرح سے کرتی تھی - کہیں اس کو سیمٹائزڈ کیا جاتا تھا اور کہیں اس کو صحیح مانا

[شری سید نظام الدین]

جاتا تھا۔ تو اس لئے جو بنیادی مقصد ہے ۲۳، ۲۴ اور ۲۵ کا وہ یہ ہے کہ سنٹرل قوانین کی یکساں تشریح ہو۔ کہیں ایک عدالت ایک قسم کی تشریح نہ کرے اور دوسری عدالت دوسری قسم کی تشریح نہ کرے۔

نمبر دو جو میں سمجھتا ہوں عدالتی فیصلوں میں اور قانون سازی کی منشا میں ہم آہنگی پیدا کی جائے۔ یہ چیز بہت واضح ہے دفعہ ۲۵ میں شرط رکھی گئی ہے کہ اگر سپریم کورٹ کسی بھی سنٹرل لا کو رد قرار دے تو اس صورت میں جہوں کی تعداد کیا ہونی چاہئے۔ تو یہ کہنا کہ سپریم کورٹ کے اختیار کو کم کیا گیا ہے۔ میں نہیں سمجھتا پتا کہ کہاں تک صحیح ہے۔ یہ ضرور کیا گیا ہے کہ اس میں ایک ہم آہنگی پیدا کی جائے۔ کیونکہ جیسا ہم نے دیکھا کولک نانہ کیس میں۔ پانچ کے مقابلہ میں صرف چھ نے ایک دوردرس اثرات کا فیصلہ دیا۔

تیسری بات جو میں سمجھتا پایا ہوں عدالتوں کے متعلق قانون کے بارے میں۔ یہ ہے کہ دفعہ ۲۲۶ میں۔ ددنی ورد ایڈمی ادر پریزہ کو حذف کرنے سے عدالتوں کی کارروائی کو با مقصد بنایا گیا ہے یعنی جب تک کسی خاص قانون کے خلاف ورزی نہیں

ہوتی یا کسی کی حق تلفی نہیں ہوتی تب تک کسی بھی عدالت کے سامنے کوئی بھی کارروائی نہیں ہو سکتی۔ اس لئے میں سمجھتا ہوں کہ جو عدالتوں سے متعلق دفعات کی گئی ہیں ان میں تین دفعات کی تصویز کا کوئی مقصد نہیں ہے سوائے اس کے کہ عدالتوں کی کارروائی کو بامقصد بنایا جائے۔

ان الفاظ کے ساتھ میں اس ترمیم کی پوری پوری حمایت کرتا ہوں۔

†[श्री सैयद निजामुद्दीन : मिस्टर वाईस चैयरमैन अभी जो आनरबल मेम्बर साहिब; दूसरी तरफ से आईन के बारे में तकरीर कर रहे थे, उन्होंने वही चन्द बुनियादी सवाल उठाये हैं जिनका जवाब इस मुअजिज एवान में लोक सभा में भी और इस पार्लियामेंट से बाहर भी बहुत दफा दिया गया है, लेकिन उन्होंने खासकर जो तीन प्वाइन्ट्स अपनी पार्टी की तरफ से कहे कि इनकी पार्टी का एतकाद इस बात में है कि द पीपल आफ सुप्रीम, पार्लियामेंट इज नाट सुप्रीम । मैं नहीं समझा कि वो यह बात कहां से लाये । हालांकि इस वक्त जो बुनियादी इख्तिलाफ है वह इस बारे में है कि पार्लियामेंट vis-a-vis जुडीशियरी की क्या सूरत है । पार्लियामेंट में और ज्यूडिशियरी में जो इस वक्त इख्तिलाफ है वह इस बारे में है कि पार्लियामेंट इज सुप्रीम-पार्लियामेंट आईन के तर्मीम के मुतल्लिक या पार्लियामेंट जो कानून पास करेगी या पार्लियामेंट जो आईन में तर्मीम करेगी, क्या जजिस को कोई हक है इसको रद्द करने का या नहीं । लेकिन यह सवाल कि पीपल आर सुप्रीम, हम इनको कहेंगे कि कांग्रेस इस बारे में सबसे आगे है, जब कांग्रेस तहरी के आजादी

लड़ रही थी, उस वक्त भी कांग्रेस का नारा था सरदारी अवाम का हक है। इसलिये उन्हें इस बात में शक व शक नहीं होना चाहिये कि कांग्रेस पार्टी को इस बात पर उनसे ज्यादा यकीन है कि लोगों को ही सरदारी का हक है और पार्लियामेंट क्योंकि लोगों की नुमाइन्दा जमायत होती है, इसलिये आईन को तरमीम करने का हक भी पार्लियामेंट को ही हासिल है।

दूसरी बात उन्होंने कांस्टीट्यूट असेम्बली के बारे में उठायी है। मेरे ख्याल में थोड़ा सा उनको कन्फ्यूजन है। इस मामले में हरियाणा की प्रदेश कांग्रेस ने जो यह मांग की थी कि कांस्टीट्यूट असेम्बली बनायी जाये, वह इसलिये नहीं की थी कि जो हमारा यह चवालीसवां अमेंडमेंट बिल है, इसके लिये बल्कि वो मांग इसलिये की गयी थी ताकि सारे आईन की दुबारा से नजरसानी की जाये क्योंकि 25 साल के अर्सा में जिन मुश्किलों का सामना आईन के अमल दरामद में हुआ है, उन मुश्किलों को दूर करने के लिये मुकम्मिल नजरसानी करना जरूरी है। इसलिये चन्द असेम्बलीज ने और कांग्रेस कमेटीज ने यह सुझाव दिया था, यह मांग की थी कि एक कांस्टीट्यूट असेम्बली बनायी जाये। (Interruption)...प्रदेश कांग्रेस कमेटीयों की यह जो मांग थी वो सारे आईन के बारे में थी। यह जो हमारा बिल है, इसके बारे में वह मांग नहीं थी। और तीसरी बात जो उन्होंने कही कि यह एक एक्सटेंडिड पार्लियामेंट है, इसको इस तरह का अमेंडमेंट लाने का कोई हक नहीं है। इसका जवाब बहुत से लोगों ने दिया है मुझ से ज्यादा जानने वाले लोगों ने दिया है, लेकिन मैं कहना चाहता हूँ कि जो लोग आईन के नाम पर बात करते हैं उनको खुद आईन का एहतरीम करना चाहिये। आईन अगर यह हक देता है कि पार्लियामेंट अपनी लाईफ को बढ़ा सकती है, लेकिन इसके साथ कोई शर्त नहीं है। पार्लियामेंट की मियाद में तौसीह करने का हक तो पार्लियामेंट को

दिया गया है। लेकिन इसके बाद पार्लियामेंट को यह करने का हक होगा, यह करने का हक नहीं होगा, ऐसी शर्त कहीं नहीं है। तो इसलिये अगर पार्लियामेंट को पहले आईन को तरमीम करने का हक था तो आज भी वैसा ही हक इसको है क्योंकि आईन में इस तरह की कोई पाबन्दी नहीं है। मेरे फाजिल दोस्त अगर इस तरह आईनी बातों पर ज्यादा जोर दे रहे हैं तो उनको कम से कम इस बात को जहन में रखना चाहिये कि आईन में ऐसी कोई बात नहीं है जिसमें ऐसी पार्लियामेंट के अख्तियार को महदुद किया गया हो, जिसकी लाईफ बढ़ा दी गयी है, ऐसी पार्लियामेंट कोई आईनी अमेंडमेंट नहीं कर सकती।

जनाबेवाला, कुछ मुफादपरस्त लोग इस आईन में तरमीम के बारे में जिस बात पर जोर दे रहे हैं वह यह कि इसके जरिये अदालतों के अख्तियारात कम किये जा रहे हैं, मैंने जब इस बिल का मुतालिखा किया तो पाया कि अदालतों के अख्तियार से मुत्तलिक कुल तीन दफात हैं—तेईस, चौबीस, पच्चीस। जिनके जरिये तीन नयी दफात आईन में दर्ज होती हैं—आर्टिकल 131 ए, 139 ए और 144 ए। अगर हम उनका मुतालिखा करें तो मेरी समझ में नहीं आता कि यह बात उनके जहन में कहां से आयी है कि अदालतों के अख्तियारात कम किये जा रहे हैं। लेकिन अगर हम उनका मकसद देखें तो वो बहुत बाजे है। तमाम मरकजी क्वान्टिन की यकसां तशरीह होनी चाहिये जैसा कि सरदार अमजद अली साहब ने कहा है कि आज तक सेंट्रल लाज की तशरीह एक अदालत एक तरह से करती थी और दूसरी अदालत दूसरी तरह से करती थी। कहीं उसको सेट एसाइड किया जाता था और कहीं उसको सही माना जाता था, तो इसलिये जो बुनियादी मकसद है, 23, 24 और 25 का वो यह है कि सेंट्रल क्वान्टिन की यकसां तशरीह हो, कहीं एक अदालत एक किस्म की तशरीह न करे और दूसरी अदालत

[श्री सैयद निजामुद्दीन]

दूसरी किस्म की तशरीह न करे। नं० 2 जो मैं समझता हूँ अदालती फैसलों में और कानूनसाजी की मंशा में हमआहंगी पैदा की जाये। यह चीज बहुत वाजे है। दफा 25 में शर्त रखी गयी है कि अगर सुप्रीम कोर्ट किसी भी सैंट्रल ला को रद्द करार दे तो उस सूरत में जजिज की तादाद क्या होनी चाहिये। तो यह कहना कि सुप्रीम कोर्ट के अख्तियार को कम किया गया है, मैं नहीं समझ पाता कि कहां तक सही है। यह जरूर किया गया है कि इसमें एक हमआहंगी पैदा की जाये। क्योंकि जैसा हमने देखा, गोलक नाथ के केस में, पांच के मुकाबिले में सिर्फ छः ने एक दूर-रस असरात का फैसला दिया तीसरी बात जो मैं समझ पाया हूँ अदालतों के मुत्तलिक कानून के बारे में यह है कि दफा 226 में—द वंड 'एनी अदर पर्पज' को हब्बल करने से अदालतों की कार्यवाही को बामकसद बनाया गया है, यानी कि जब तक किसी खास कानून की खिलाफवर्जी नहीं होती, या किसी की हकतलफी नहीं होती, तब तक किसी भी अदालत के सामने कोई भी कार्यवाही नहीं हो सकती। इसलिये मैं यह समझता हूँ कि जो अदालतों से मुत्तलिक दफात तजवीज की गयी है उन तीन दफात का कोई मकसद नहीं है सिवाए इसके कि अदालतों की कार्यवाही को बामकसद बनाया जाये।

इन अलफाज के साथ मैं इस तरमीम की पूरी पूरी हिमायत करता हूँ।]

SHRIMATI LEEA DAMODARA MENON (Kerala): Mr. Deputy Chairman, Sir, I support the Constitution (Forty-fourth Amendment) Bill. As many Members have already stated, this is a very momentous occasion. But all the same, Sir, so far as I am concerned, I am not surprised nor do I think it is extraordinary. Ever since our Prime Minister stated that it is our national policy to eradicate

poverty and that we are committed to social justice for all, the nation had been expecting these amendments. Sir, these amendments have been widely discussed, whatever Mr. Daphtary might have said earlier this morning. Also it had been necessary in order to see that these ambiguous judicial interpretations do not continuously upset the very concept of the provisions envisaged in the Constitution. Also it had been necessary to accommodate far-reaching social changes in this country. A living, growing nation has to have a wider constitutional structure to bring about social changes and to fulfil the people's aspirations.

Sir, everybody quotes people from outside in order to be more convincing. So I thought that with regard to the need for changes in the Constitution and also with regard to some people's statement that the Constitution should not be changed, I should quote Mr. Justice Earl Warren who said "No law or Constitution is too sacred to change. Constitutions have been changing." Sir, yesterday Mr. Krishan Kant said that Parliament has become a tyrant. Sir, I quote Mulford again. He said "A rigid Constitution is the worst form of tyranny." Therefore, any rigid Constitution is most vulnerable to extra-constitutional behaviours. Therefore, we do not want such upheavals. We want to do things in a perfectly constitutional manner and in a peaceful manner. Therefore, I find that these amendments are also meant to see that any constitutional changes in this country are not due to violent, extra-constitutional behaviours but through peaceful constitutional means. Sir, if there had been a violent revolution in this country and our Constitution had been scrapped and thrown overboard, these people would not have found it anything but a natural phenomenon. But peaceful changes they do find a little difficult to swallow. Sir, as has been stated the Opposition had also been

asking for constitutional changes. Now they say "No". And they also say that the Congress does not have the mandate. This morning the Congress President made it very clear that the Congress had the mandate because it was in the Election Manifesto of the Congress and the people had voted for the manifesto. Sir, they also said that it should have

4 P.M.

been done within the first five years. I ask those people: Why was it not done during the first five years? Did they give the Government any chance to do so? They were so engaged in destabilising and disorganising the peace in this country that the Government was mostly concerned with establishing peace and giving at least a chance for the country to survive from being dragged to civil war, violence and other difficulties. Every time there has been a vital amendment before this House, some people had cried wolf, wolf. But it is also very interesting to note that once it had become the law, these very people who cried wolf had not dared to repeal that law because it had already become so vital for the nation as such. We have come a long way from the dawn of freedom when under the shadow of British supremacy and the background of British history of India we had written our Constitution. In those days the primary motive force of our nation was to be free, for the individual to be free. Therefore fundamental rights became the most important goal in those times. But today after 25 years of working this Constitution, we have found that personal freedom means nothing if millions and millions of our people are still in anguish under utter poverty and social injustices. Therefore, we have now realised that fundamental rights and Directive Principles have to be taken together. If fundamental rights are inalienable rights of the individual, Directive Principles become inviolable rights of the people and the masses as society. Therefore, we have now to give equal emphasis to

Directive Principles so that the goal that we have set for ourselves, namely, social justice, can be attained.

We are also amending the Preamble. I feel it is not sacriligious to amend the Preamble because we are not removing any of the supremely meaningful ideas that we have enshrined therein such as justice, liberty, equality and fraternity. Nor are we diluting the declaration on sovereignty and democracy. We are adding only two essential points, namely secularism and socialism. I have one doubt. I could envisage a democracy being sovereign as against stooge democracies and protected democracies. But I do not know whether sovereign will qualify secularism and socialism. Therefore, I was wondering whether the drafters of the amendments would not agree to have sovereign democracy qualifying republic with socialism and secularism in between so that a republic can be sovereign democracy, a republic can be secular and a republic can be socialist. But I do not know whether socialism and secularism can be sovereign. This is my only doubt. This is the doubt in my mind.

The main change in the Constitution is inclusion of fundamental duties. Just as fundamental rights are inalienable, I think fundamental duties have now become inescapable for our people. Laws have been passed in this country which have cut down other rights for fundamental rights. When there is an infringement of fundamental rights over fundamental duties, I would like to know whether the courts will cut down the fundamental duty as against fundamental right.

Therefore, Sir, I think it should be made clear as to how the Fundamental Duties and the Fundamental Rights will co-exist in our Constitution without coming into any confrontation with each other. I have also one suggestion to make. The Fundamental Duties, when they become part of our Constitution, should become part of the lessons for the children in the

[Shrimati Leela Damodara Menon]

schools in our country so that they will grow with an idea of their duties and they would know what is expected of them as citizens.

Sir, some people seem to think that they have no duty once they leave this country and they continue to say things which are derogatory to the country and they carry on with shameful campaigns against our country. I was wondering whether the Fundamental Duties that we are adding now should also include some provision which will take care of the fact that Indians shall be Indians wherever they are, whether they are in India or outside India. Then, Sir, a provision has been made to the effect that nothing should be done which is derogatory to the dignity of women and I think it is a good thing. The honourable Member just now said that he does not want the Law Minister to be poetic and he should say that there is something which is against casteism, communalism, etc. I just cannot see the relevance of the statement that the ban on doing anything derogatory to women should not be clubbed with casteism and communalism and so on. Sir, in this country, this Constitution has given equal status and equal rights to women. But, after 25 years of our freedom, we find that today the most backward section of society in the country, according to a recent survey, is the women in this country and, therefore, I feel that it is a good thing that this thing has been included... (Time bell rings)... Sir, just a minute and I will finish. I must speak about two things. One is with regard to the question of legal aid. Sir, legal aid is very necessary. Shri Borooah today explained in detail about this. But I feel that it should not be an aid to ineffective legal exercise by half-baked advocates. You are aware that the biggest expenditure on law to get justice is the payment to the advocates and even today our legal system as it is now is to be changed. Our Evidence Act

has to be changed and our legal procedures have to be changed and various other things have to be done. All these things have to be considered. I am not against the lawyers. But I would say that rich men should not get away by getting the best lawyers.

Then, Sir, with regard to the question of workers' participation, I would suggest that the workers should be trained in order that they can play their role across the table. This way they can play their role effectively when they sit across the table with the management because they are not considered as blacklegs.

Sir, I find that when the amendments are made, our Constitution will become perfect. Then the Preamble of the Constitution will be its head, the Fundamental Rights and the Directive Principles will be its two arms, the Fundamental Duties will be its heart, Parliament will be its legs and the Executive and the Judiciary would be its body. Sir, with the words of Panditji, I would like to conclude my speech. This is what he said:

"It is of the utmost importance that the people would realise that this Constitution of ours is not final or rigid. But, as the society changes and as conditions change, we amend it in the proper way."

Sir, I think we are amending it in the proper way. Thank you, Sir.

श्री श्रीकान्त वर्मा (मध्य प्रदेश) : उप-सभ अध्यक्ष महोदय, बाईबल में कहा गया है कि :
I shall not take the name of God in vain.

पिछले वर्षों में कुछ विरोधी पार्टियों ने लोकतन्त्र और संविधान का नाम जिस तरह बार-बार दोहराया है उससे मुझे यह कहने को बाध्य होना पड़ता है कि :

I shall not take the name of the constitution in vain.

लेकिन शायद यह कहना फ़िज़ूल है, नक्का रखाने में तूती की तरह है । क्योंकि जो लोग सब चीज़ों का लेबल राजनैतिक आशय या प्रर्थ निकालने के लिये प्रतिबद्ध हैं, वे इन बातों

पर गौर नहीं करेंगे। भारतीय संविधान केवल एक राजनैतिक दस्तावेज नहीं है। दरअसल वह राजनैतिक दस्तावेज है ही नहीं, वह कानूनी दस्तावेज भी नहीं है वह एक नैतिक और सामाजिक दस्तावेज है। राजनैतिक दस्तावेज तो छोटी सी चीज हुआ करता है और उसका अर्थ केवल कुछ वर्षों में थोड़ी सी अवधि के लिये हुआ करता है। अगर हमारे प्रतिपक्षी यह मानते हैं कि यह संविधान स्थायी है तो फिर उन्हें संविधान के प्रति राजनैतिक दृष्टिकोण नहीं अपनाना चाहिए। लेकिन अक्रोस इस बात का है कि उन्होंने न केवल वह राजनैतिक दृष्टिकोण अपनाया बल्कि संविधान को गली-गली में और सड़कों-सड़कों पर बहस का विषय बना दिया; उसे न जाने कहाँ-कहाँ घसीटा, उसे अदालतों में घसीटा गया, जिसका नतीजा यह हुआ कि अदालतों को भी यह भ्रम हो गया कि वे संसद से अधिक सत्ता रखती हैं या यह कि वे संविधान के निर्माताओं से भी ज्यादा महत्वपूर्ण हैं और वे संविधान को बदल सकती हैं। मैं अदालतों को बहुत दोष नहीं देता क्योंकि अदालतों में जो भ्रान्ति पैदा हुई; उसके लिये हमारी बहुत सी राजनैतिक पार्टियाँ जिम्मेदार हैं। जिस तरह से उन्होंने संविधान की व्याख्या की और जिस तरह अदालतों में उसको घसीटा उसमें अदालतों के मन में एक भ्रान्ति पैदा होनी स्वाभाविक थी। लेकिन अदालतें भी कठपुतली में खड़ी होती हैं। इतिहास में उन्हें भी जवाब देना पड़ेगा। पिछले ढाई हजार वर्ष के इतिहास में न जाने कितनी अदालतें बनीं और आज उनके खण्डहर भी नहीं बचे हैं। नीरो की भी अदालत थी। वह अदालत खुद नीरो और उसके आस-पास के लोगों की थी। जब रोम जल रहा था तो नीरो बांसुरी बजा रहा था। वह भी एक अदालत थी और आज उस अदालत का नामोनिशान नहीं है। इसलिये अदालतों को यह समझना होगा कि उनका काम समाज और नागरिकों के हितों की रक्षा करना है। उसका काम संविधान और संसद जो कि नागरिकों का

प्रतिनिधित्व करती है, उनके बीच तनाव पैदा करना नहीं। अक्रोस है कि यह तनाव पिछले कुछ वर्षों में पैदा हुआ और उसकी पूरी जिम्मेदारी परोक्ष रूप से अदालतों पर या प्रत्यक्ष रूप से विरोधी पार्टियों पर है।

कल मैंने अपने मित्र श्री कृष्णकान्त जी को एक दूसरी ही मुद्रा में देखा। मैं एक समाचार-पत्र का रिपोर्टर भी हूँ और पिछले 10 वर्षों से कांग्रेस महासमिति की रिपोर्टिंग भी करता रहा हूँ। ऐसा आज तक कभी नहीं हुआ जब कि उनको मैंने उत्तेजित मुद्रा में न देखा हो। उनकी उत्तेजना और आलोचना का विषय यह होता था कि कांग्रेस एक कन्जरवेटिव पार्टी होती जा रही है, कांग्रेस परिवर्तन-गामी नहीं है। मुझे याद है कि 1972 में कांग्रेस के गांधीनगर अधिवेशन में उन्होंने कांग्रेस नेतृत्व पर सीधा सीधा हमला यह कह कर किया था कि कांग्रेस अपने वायदों से मुकर रही है। लेकिन आज जब वही कांग्रेस, या उस कांग्रेस की सरकार उस वायदे को न केवल पूरा करने के लिये बल्कि उससे भी एक कदम आगे जाकर इतिहास को एक नया रूप देने के लिए एक निर्णायक फैसला ले रही है तो वही कृष्णकान्त जी आज उस मुद्रा में हैं जिसके लिये वे दूसरों की आलोचना करते थे। आज वे पुरोगामी हैं आज वे प्रतिगामी हैं और मैंने देखा कि किस तरह कल के क्रांतिकारी आज के कन्जरवेटिव हुआ करते हैं।

उसभाष्यक महोदय, मैंने कहा कि संविधान राजनैतिक दस्तावेज नहीं है यह किसी पोलिटिकल पार्टी का मैनीफेस्टो नहीं है जिस पर उंगली उठाई जा सके। इस पर विचार करना होगा और सोचना होगा कि किस तरह हमें उसको जनता की इच्छाओं के अनुरूप बनाना है। पिछले दिनों जो उथल-पुथल देश में होती रही है उससे यह साफ था कि जनता परिवर्तन चाहती है और अगर जनता परिवर्तन चाहती है तो उस परिवर्तन को किस तरह से लाया जा सकता है? क्या

[श्री श्रीकान्त वर्मा]

वह सड़कों में जलूस निकलवा कर लाया जा सकता है, क्या रेल की पटरियां उखाड़ कर लाया जा सकता है, या कि संविधान में संशोधन कर लाया जा सकता है ? उपसभाध्यक्ष महोदय, अगर आप यह पान्ते हैं कि संविधान में संशोधन करके यह परिवर्तन लाया जा सकता है, तब तो इस संसद को पूरा अधिकार है कि वह संविधान में परिवर्तन करे क्योंकि संसद ही जनता है, संसद को जनता चुनती है। यह कहना कि संसद अलग है और जनता अलग है—एक तरह की हिपोक्रसी है। “टु बी आर नाट टु बी”—यह हैमलेट ने कहा था। बहुत साल तक संसद इसी मनःस्थिति में रही कि—टु बी आर नाट टु बी। इस तरह से वह हैमलेट प्रिंस आफ डेनमार्क हो गया। आज भी उसी को डेनमार्क दिया जा रहा है, डेनमार्क की स्थापना की जा रही है, संसद को उसका अधिकार दिया जा रहा है। अगर उस समय इसकी बात का लोग विरोध कर रहे थे तो उनकी स्थिति लेफ्टर्स जैसी है और जिस हैमलेट ने कहा था कि :

“Forty thousand laertes with all the swords at their command”

उसी तरह से कहना पड़ेगा कि :

“Forty thousand Judges with all the lawyers at your command”.

संसद को जनता ने चुना है। उपसभाध्यक्ष महोदय, कुछ भी स्थायी नहीं होता। अन्यायी अधिकारों की चर्चा फजूल है क्योंकि मनुष्य ही अपनी सृष्टि की रचना करता है और मनुष्य ही अपनी सृष्टि का संहार करता है। संशोधन तो साधारण चीज है ; जनता ने संविधान रचा है और संभव है सौ, डेढ़ सौ, ढाई सौ साल बाद वह इस संविधान को भी रद्द कर दे, और उसका ऐसा करना बिल्कुल उचित होगा क्योंकि संविधान उसकी सृष्टि है। उपनिषद में

लिखा है—और इसलिए मैं उपनिषद से कह रहा हूँ क्योंकि यहां भारतीय संस्कृति का हवाला देने वाले कुछ लोग हैं—कि पुरुष ने प्राण को रचा, फिर प्राण से आकाश, वायु, जल, पृथ्वी, इन्द्रिय, मन तथा तन को रचा और उसके बाद उन से तप कराया और लोक को रचा। इस तरह से एक व्यक्ति, एक पुरुष, —चाहे उस पुरुष को आप ईश्वर कहें और चाहे उस पुरुष को आप व्यक्ति कहें—वह संसार की रचना करता है और वहीं संविधान की रचना करता है ; उसको सैकड़ों नाम से पुकारता है—वे सैकड़ों नाम से कानून है जो इस संसद ने रचे हैं। उस पुरुष ने वह रचे हैं और इसको नष्ट करने का किसी को अधिकार नहीं है। इसको नष्ट करने का अधिकार है तो संसद को है।

(Time bell rings)

उपसभाध्यक्ष महोदय, चूंकि आपने घंटी बजा दी है, मेरे पास समय ज्यादा नहीं है, फिर भी मैं स्मरण दिलाना चाहता हूँ : वे लोग जो कल तक और आज भी भारतीय संस्कृति का दावा करते हैं, उनको, कि हमने जिसे मौलिक कर्तव्य कहा है वह स्वयं भारतीय संस्कृति तथा भारतीय परम्परा की उपज है। गीता के छठे सर्ग में स्पष्ट शब्दों में कहा गया कि जो व्यक्ति कर्तव्य करता है उसी को अधिकार है ; चर्चा करने का अधिकार है। अशोक ने अपने जीवन काल में आदेश निकाला कि वनस्पतियों की रक्षा की जाए, सड़कों के दोनों ओर छायादार वृक्ष लगाए जाएं और अहिंसा का पालन किया जाए, यहां तक कि जंगलों में तोतों की भी हत्या न की जाए। मैं पूछना चाहता हूँ कि जो 10 मौलिक कर्तव्य निर्धारित किए गए हैं उन में ऐसा क्या है कि जो भारतीय परम्परा के अनुसार नहीं हो रहा है ? वही सब कुछ है। अशोक के विषय में 19वीं शताब्दी के कुछ ब्रिटिश इतिहासकारों ने लिखा था कि :

“He was half idiot and half monster”.

لےکین ایتہاس نے اس بات کو سابعیت کر دیا کي اشاک ن تا اڈیٹ یا ن مائسٹر یا; وه اک مہان سمراٹ یا, اک ویکٹ یا, بالک وه ایتہاسکار اڈیٹ اور مائسٹر یه ا

انٹ مے مے سدن سے آشا کرتا ہں کي اِن سانشونوں کو اارٹیی سانبہ مے اےہے ; بار-بار یورپ اور امریکا کا ہوالا ن دے اور اس ویاہیک کو سواکار کرے ا گااھی جی نے ہون پہلے کہا اور اسکے باء جواہرلال جی نے کہا کي جب تک اک بھی آاں مے آاسو ہے تب تک یہ آاااا ااااا ااااا ہے, یہ آاااا ساااا نہی ہے ا مے اسی کو اااa

سید میر قاسم (جمن و کشمیر):

جنااب عالی- کلمستی نیوشمل املت ملت بل جو اوان کے سامنے ہے میں اس کی تائید میں بولنے کے لئے کھڑا ہوا ہوں- بحث ہوی مختصر ہے کہ ہماری اس ترمیم سے کہا مران ہے- ہمارے لائسنس صاحب نے بہت ہی کلیرلی اور کٹیکریکلی پانچ موٹے سوال سامنے رکھے- ہم نے پری-ایبل میں سیکولرزم انتگریٹی اور موولزم کے لفظ کیوں رکھے- انہوں نے فرمایا کہ ہمیں ضرورت کیوں پڑی کہ پارلیمنٹ کی سپریمسی کے بارے میں اگر کہیں کوئی ڈاؤٹ ہو جو کہ ہونا نہیں چاہئے لیکن اگر ہو تو اس کو ہمیشہ کے لئے ختم کیا جائے- انہوں نے یہ بھی فرمایا کہ کیا وجوہات ہیں کہ فلڈامینٹل رائٹس جو ہمارے ہیں ان کے مقابلہ میں جو

ڈائریکٹیو پرنسپلس ہیں فار دی گورننس آف دی کلمدی- ان میں اگر کہیں کوئی کلمیکٹ ہو تو اس کو کیے ریڈالو کیا جائے اور یہ بھی بتایا کہ جوڈیشیل ریویو کے سلسلہ میں جو عام تجربہ ہے اس میں ضرور کچھ کمی کی گئی ہے- دفعہ ۲۲۶ میں لفظ فار ایلی اڈر پریز نکال دیئے گئے ہیں لیکن جوڈیشیل ریویو کو قائم رکھا گیا ہے- اگر چیز اسی پر اڈرتی جیسا کہ انہوں نے خود فرمایا تو انہیں بتلانا چاہئے تھا کہ اس میں کیا کمیاں ہیں اس سے ہم کو زیادہ روشنی ملتی لیکن بد قسمتی سے اعتراضات چار پانچ اٹھائے گئے ہیں- پہلا اعتراض تو یہ اٹھایا جاتا ہے کہ آپ کو اس ترمیم کی ضرورت کیوں پڑی- ہم جواب دیتے ہیں کہ پریوی پرسیز، بلک نیشنلائیشن، ایملڈ ریفارمس کے بارے میں جو جوڈیشیل ایڈجوڈیکیشن آئے اس سے ہمیں لگا کہ کلمستی نیوشن کے انگریڈیٹیشن میں کوئی ڈاؤٹ ہے- تو ہم نے اس کو کلر کرنے کی ضرورت محسوس کی- ہمارے پاس اور کوئی طریقہ نہیں تھا- ہم نے عوام کو آگاہ کیا کہ ہمیں لگتا ہے کہ اس آڈن میں کچھ کمیاں رہ گئی ہیں- انگریڈیٹیشن میں کچھ ڈاؤٹ رہ گئے ہیں- کیونکہ یہ منی ہوئی بات تھی کہ پارلیمنٹ لا بنا سکتی ہے اور جوڈیشی اس کو انگریڈیٹ کرے گی- اگر انگریڈیٹیشن میں ان کو کوئی ڈاؤٹ لگا تو اس کو کلر کرنے کے لئے ہم نے سوچا کہ

[سید میر قاسم]

اچھا ہے لوگوں کا میلڈیٹ لے لو۔ ہم نے manifesto میں صاف ظاہر کیا کہ آئین کی ترمیم کرنا مطلوب ہے۔ پھر پوچھا جاتا ہے کہ کیا میلڈیٹ ہے آپ کے پاس۔ جب ہم اپنا یہ امیلڈمینٹ ایوان کے سامنے رکھ رہے ہیں تو کہتے ہیں کیا جب ہم میلڈیٹ لینے کے لئے لوگوں کے پاس گئے تو ان کو بتایا کہ کنسٹیٹیوشن امیلڈمینٹ کے لئے ہم کو دو تھائی معجارتی چاہئے۔ ہم کو لوگوں نے دو تھائی معجارتی دی اور پھر ہمارا یہ فوض بنتا تھا جو وعدہ ہم نے جلتا سے کیا تھا اس کو ہم پورا کریں۔ تیسرا اعتراض یہ اٹھایا جاتا ہے کہ آپ نے میلڈیٹ تو لیا لیکن دیر کیوں کی۔ آپ پانچ سال تک رہے کیوں رہے۔ ہم اس سوال کا جواب دیتے ہیں کہ دیر ہم نے اس لئے کی کہ آپ نے دہلیوں کو کام کرنے سے روکا۔ آپ نے ملک میں گجرات اور بہار میں ایک خاص ماحول پیدا کیا۔ آپ نے جمہوریت کے خلاف ایک ماحول پیدا کرنے کی کوشش کی تو اس پر لاجواب ہو کر پھر سوال پوچھا جاتا ہے کہ آپ اب جلدی کیوں کر رہے ہیں۔ جب ہم کہتے ہیں کہ ہم جلدی نہیں کر رہے ہیں تو دفتری صاحب نے آج ہی نہایت اعلیٰ انداز میں کہا کہ اس ریکورڈی پبلک ڈیبٹ نہیں

ہوئی کہوں - اپنے رائٹس کو قائم رکھتے ہوئے وہ ہم سے مطالبات کرنا چاہتے ہیں۔ اسمبلی ایکسپریشن اور ایسوسی ایشن کے اپنے رائٹس کو وہ ابھور کر رہے تھے لیکن یہ مانگ کر رہے تھے کہ ہمارے لیڈرس کو دھا کرو - ہم نے ان کو صلاح دی کہ آپ پرائم منسٹر کے پاس اس کے لئے جائیے۔ لیکن اس بات کا پبلک ڈیبٹ سے کوئی تعلق نہیں تھا - دفتری صاحب تو اس حد تک گئے کہ پبلک ڈیبٹس selected گورنمنٹس میں ہو رہی ہے - میں کہنا چاہوں گا کہ دفتری صاحب اور انٹیلیجنٹس کے دوسرے لوگوں نے اس امیلڈمینٹ پر جو ایجیکشنس ڈرافٹ کئے ہیں ان کو کیا ہمارے ملک کے جو لاکھوں کروڑوں لوگ ہیں وہ سمجھ پائیں گے - اندرا جی اس سے بہتر اور کیا کرتے ہیں کہ پہلے انہوں نے ملک کو ایک ایسا ماحول دیا کہ جس میں پیداوار کرنے والے کارکن اپنی پیداوار بڑھانے میں لگیں - ایسا ماحول دیا جس میں ملازمان اپنی نوکری ٹھیک تھلک سے کرتے لگیں - جس ماحول میں لوگ اپنی تعلیم پانے لگے اور جس ماحول میں پارلیمنٹ ایذا کم کرنے لگی ایک اس قسم کا ماحول بنا جس کو انہوں نے خود ہی آگت کہا - ایسے ماحول میں پبلک Debate

ہوئی پھر کہتے ہیں کہ امینڈمنٹ کی کیا ضرورت ہے - کہا آپ نے امینڈمنٹ لیا - دوسری بات وہ کہتے ہیں کہ اب تو آپ کے پاس ایکسٹینڈڈ ٹائم ہے - آپ کی ایکسٹینڈڈ لائف ہے - میں ان سے پوچھنا چاہتا ہوں کہ جب ججز کی لائف بڑھا دی ہم نے اور ۶۲ کی بجائے ۶۵ کر دی جو جج ۶۲ میں ریٹائر ہوتا تھا اس کو ۶۵ کر دیا - کیا ہم نے کہا کہ تمہاری ایکسٹینڈڈ لائف ہے اس لئے تم فیصلہ نہیں کر سکتے - جب ہم کسی سیکریٹری کو ایکسٹینشن دیتے ہیں اور زیادہ سے دیتے ہیں ریٹائرمنٹ کا جب کسی ڈسٹرکٹ مجسٹریٹ کو کسی ایس۔ پی۔ کو ایکسٹینشن دیتے ہیں کیا وہ اپنا کام نہیں کرتے تو ایک پارلیمنٹ کو جسے خود کسٹی۔ ٹیوشن کے اندر اپنی لائف ایکسٹینڈ کرنے کا جو رسکشن ملا ہوا ہے اور وہ اس کو ایکسٹینڈ کرتا ہے تو وہ ایکسٹینڈڈ لائف کو ایلو سارون پاور کو ایکسٹینڈ نہ کرے - میرے خیال میں ہر سوال کا جواب ایوزیشن کو مل گیا - لیکن حقیقت یہ ہے کہ ہماری ایوزیشن کہتی ہے کہ پریزنٹ گورنمنٹ ایک قسم سے انٹراڈین روڈ کی طرف جا رہی ہے اور فلڈامینٹل رائٹ آف فریڈم

رائٹ آف ایکسپریشن، رائٹ آف سپیچ اور رائٹ آف اسمبلی کو اہرور کیا جا رہا ہے لیکن خود ایسی۔ فضا قائم کر رہے ہیں کہ جمہوریت سے اعتقاد اٹھ جائے۔ کیا وہ یہ جانتے ہیں کہ جب ہم کو امینڈمنٹ لینے کیلئے کہا جا رہا تھا تب اندرا گاندھی امینڈمنٹ لینے کے لئے لوگوں کے پاس گئی - کہا بلراج مدھوک اس بات سے انکار کر سکتا ہے کہ انہوں نے ان ویزیل اہرور کی تھوڑی نہیں نکالی - ان کی مراد کیا تھی کہ لوگوں کے دماغ میں یہ آجائے کہ یہاں ٹھیک ڈھنگ سے الیکشن نہیں ہو رہے ہیں - جو کہتے ہیں پبلک ڈبیت ٹھیک نہیں ہوئی ہے - یہی بلراج مدھوک قسم کے لوگ گرفتار ہیں - مجھے معلوم نہیں ہے کہ بلراج مدھوک جیل میں ہے یا باہر ہے لیکن وہ جب ہار گئے تو سب کی طرف سے جن سنگھ کی طرف سے کل تقریر ہوئی ان کی تھوڑی ایک قسم کی فسطائیت تھی - آج سب سے ان کو جو سخت پریشانی ہوئی ہے وہ یہ ہے کہ فلڈامینٹل رائٹس اور ڈیموکریٹک رائٹس سہرست ہو رہے ہیں - کوئی اس بات سے انکار نہیں کر سکتا کہ انہیں رائٹس کو ایڈوز کرتے کرتے انہوں نے ڈیموکریسی کو ختم کر ڈالا ہوتا۔ میں Socialist ملکوں کی مثال

[سید میر قاسم]

نہیں دیتا ہوں کیونکہ ان کو ان سے
چڑ ہے - اکثر وہ امریکہ اور برطانیہ کا
نام لیتے ہیں - کسی سوشلسٹ
کلٹری کا نام لیتا ہوں تو وہ پسند
نہیں کرتے - میں ان کو دو کلٹریز
کے نام بتاؤں گا - ایک فیڈرل ریپبلک
آف جرمنی وہاں انہوں نے خود کہا
ہے -

"Article 18 provides that—

'Whoever abuses freedom of expression of opinion, in particular freedom of the press, freedom of teaching, freedom of association shall forfeit these basic rights'."

یہ فیڈرل ڈیموکریٹک ریپبلک کا
میلشن میں نے اس لئے کیا کہ یہ
ہم پر ایلتی ڈیموکریسی اسٹیپ
اٹھانے کی بات کرتے ہیں - جس
ایلتی ڈیموکریٹک کمیٹی میں کوشن
کانت بیٹھے ہوئے ہیں - ان کی تہذیبی
خود ایک فاسسٹ تہذیبی ہے - وہ
بگن کوٹے ہیں - ڈیموکریسی سے پھر
فریدم کو دسترائے کرتے کرتے فریدم
لانا چاہتے ہیں یہ ان کی تہذیبی
تھی - آر - ایس - ایس - کی تہذیبی
کیا ہے - کمیونل پارٹی کی تہذیبی
کیا ہے - جس کمیٹی میں وہ بیٹھے
ہوئے ہیں وہی رائٹس کو ایڈوز کرتے
ہیں - جاپان کو دیکھ لیجئے -
انہوں نے کہا ہے *

"The Constitution of Japan forbide abuse of even guaranteed fundamental rights. Article 10 provides:

"The freedom and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people who shall refrain from any abuse and shall always be responsible for utilising them for the public welfare."

یہ میں نے فیڈرل ڈیموکریٹک
ریپبلک آف جرمنی اور جاپان کو اس
لئے میلشن کیا - جن فلڈامینٹل
رائٹس کو وہ دھن کر رہے ہیں اور
آج دفتری صاحب نے ایک پوائنٹ
ابھارا کہ جو ایلتی نیشنل ایکٹیویٹیز
کے لئے کہا گیا ہے ان سے قریب لگتا ہے -
یہ تو انہومریٹ کر کے وہ بتائیں
کہ جو ہم نے میلشن کی ہیں اس
میں ہم نے ایسی ویکلیس رکھی ہے
جس میں خطرہ ہے کہ اچھے آدمیوں کی
ایکٹیویٹیز کو بھی روک دیا جائے -
یہ کہتے ہیں ایڈوز ہو سکتے ہیں -
ایڈوز اور اچھی پاورس کسی وقت بھی
ہو سکتے ہیں - اس سے اس کا کوئی
جوڑ نہیں ہے - ایڈوز کو روکنا ہم سب
کا فرض ہے - مہرے کہنے کا مطالبہ
یہ تھا کہ بحث اگر کلسٹی تھوشن
میں اٹھائی جائے کہ کلسٹی تھوشن
میں کیا کسی ہے - اگر یہ بحث
اٹھائی جائے کہ ہم نے کہا کیا - تو

یہ ایک الگ بات ہے - اسی لئے ہمیں ضرورت پڑی گولک ناتھ کیس اور دوسرے کیسوں کی - سوال یہ ہے کہ پارلیمنٹری سسٹم ہے - میں کہتا ہوں اگر اس کو اچھے قہرنگ سے دیکھا جائے جتنے ججمنٹس ہوئے فنڈامینٹل رائٹس کی بنیادوں پر گولک ناتھ کا کیس یا دوسرے کیس ان کا ججمنٹ کرنے کے لئے ۲۹ سپریم کورٹ کے جج بیٹھتے تھے - ۲۹ سپریم کورٹ ججوں میں سے ۲۱ سپریم کورٹ ججوں نے یہ کہا ہے کہ سب کچھ ہو سکتا ہے - یہ الگ بات ہے کہ ایک ججمنٹ کا پروریشن ۶ اور ۷ کا تھا لیکن اگر ٹوٹلی آپ دیکھیں تمام ججمنٹس کو ملا کر آپ پڑھیں تو آپ دیکھیں گے سپریم کورٹ کے خود ۲۹ ججوں میں سے ۲۱ ججوں کی انٹریکشن ہے - کل بھگوتی جی نے ایک مناسب انداز میں کہا :

"Is the judiciary the interpreter of the maker of the law?"

ہمارا امپریشن ہے وہ خود یہ مانتے ہیں -

They have to interpret the Constitution; they have to interpret the law.

ہم کہتے ہیں اگر کہیں ریگنڈس ہے اگر آپ کو لگتا ہے تو

It is for them also. 'For any purpose' means no purpose, also.

ایلی پریز کی وجہ سے جوتیشری کو دقت آئے گی اس لئے پلڈت جواہرلال نہرو نے ۱۹۵۴ء میں کہا تھا وہ ایلی پریز ۲۲ ہٹایا جائے - پلڈت جواہرلال جی کو کرشن کانت کوٹ کرتے ہیں - وہ یہ کوٹ نہیں کرتے کہ ۱۹۵۴ میں انہوں نے کہا کہا - فار ایلی اور پریز از سو ویگ کہ شک دور کرنے کے لئے اے ہٹایا جائے -

Even judicial verdict is in favour of this.

یہ مانی ہوئی بات ہے کہ ہم انہیں میں ترمیم نہ کریں تو انہیں وجہ بن جائے - دنیا کی ہسٹری یہ بتائے گی کہ جو انہیں ترمیم نہیں ہو سکتے وہ تھدد سے بدلے جاتے ہوں - ہم آرڈرلی چیلنج چاہتے ہیں تو کنڈستی ٹیوشن کو فلیکسبل بنانا ہے -

آرٹیکل ۳۶۸ کی طرف آپ کی

توجہ دلانا چاہتا ہوں - آرٹیکل ۳۶۸ خود کہتا ہے -

That Parliament can amend the Constitution. This is in article 368.

میں ایک چھوٹی سی ڈرافٹنگ

کمپنی کا سیکریٹری رہا ہوں - اس

نے کشمیر کنڈستی ٹیوشن کو ڈرافٹ

[سود مہر قاسم]

کیا ہے اور یہ کشمیر کانستٹیووشن
توافق کے ایک آرٹیکل کی گاہی ہے -
یہ آرٹیکل 1۳۷ ہے - اس آرٹیکل میں
ہم نے ایک پروویژو لکایا -

Article 147 is the amending article
for Kashmir Constitution. The pro-
viso says:

"Provided further that no Bill or
amendment seeking to make any
change in this section....

(that means the amending section)

....or the provision of sections 3
and 5....

(section 3 was that Kashmir was
an integral part of India).... and
also the provision of the Constitu-
tion applicable to the State."

یہ تینوں پروویژو ایمپلڈ نہیں کر سکتے -
میں چھوٹا سا توافق میں ہوں -
لیگل ریومنٹری آپ کو کلیم نہیں کر
سکتا ہوں جیسے کہ دفتری جی کوٹے
ہیں - سمجھ جیسا آدمی کبھی یہ
سمجھ سکتا ہے کہ کوئی گلاز ان
ایمپلڈ ایبل ہے تو اس کو اسپیسیفکلی
دکھایا ہے - تین گلاز اس ایمپلڈ میں
نہیں ہو سکتے - ایک خود ایمپلڈ گلاز
ایمپلڈ نہیں ہو سکتی - سیکشن ۳ -

that is, Kashmir is an integral part
of India.

کہتی ہے کہ نہیں ہو سکتی - میں
یہ بتانا چاہتا ہوں کہ ہمارے ملک
کے فاونڈنگ فادر -

like Dr. Ambedkar and such peo-
ple could have as well said that such

and such article cannot be amended
as we have said in Kashmir Constitu-
tion.

اب سوال یہ ہے جب ہم یہ کہتے
ہیں کہ کانستٹیووشن ایمپلڈ ہو
سکتا ہے -

They have made it abundantly
clear that every article is amendable
article. What have we done then?

We have done one thing. We have
cleared the doubts from the minds of
the people and from the minds of the
judges so that there could be no di-
fficulty in interpreting the law. We
are making it clear.

اس میں کلیرنٹیشن کا کوئی سوال
نہیں ہے -

They are in agreement with us so
far as judicial pronouncements are
concerned.

اب ہمارے سامنے جو سوال ہے اس کا
ہم برا شور مچاتے ہیں - کہا جاتا ہے
کہ فلڈ ایمپلڈ رائٹس کو مسخ کیا
گیا ہے - ہمارے ڈائریکٹرو پرنسپلس
میں بتایا گیا ہے کہ -

Article 37 says:

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

This is what the Constitution says
'fundamental in the governance of
the country'. We say, if they are fun-
damental in the governance of the
country and if the state is to apply
these principles in making laws, when

the individual rights conflict with these principles, the individual rights shall be superseded.

دفتری صاحب نے بہت سی باتوں کہی ہیں۔ میں مانتا ہوں کہ وہ ایک گڈ لائر ہیں انہوں نے اس بات کو مان لیا ہے کہ فلڈا میلٹل رائٹس کو نکالا نہیں گیا ہے۔ انہوں نے کہا کہ ان کو ایسی سرکل کیا گیا ہے۔ لیکن ہم کہتے ہیں کہ ان کو وائڈن کیا گیا ہے۔ جب انڈیویجول رائٹس اور نارمل لاز میں کوئی کلفلیکٹ ہو تو ہمارے آئین میں وہ فلڈا میلٹل گورنمنٹس فار دی کٹری، میں صاف لکھا گیا ہے.....

The Constitution uses these words 'fundamental in the governance of the country'.

اس لئے جو تیشیری اس کو کسی دوسری طرح سے انٹریپرٹ نہ کرے۔ انڈیویجول رائٹس کے ساتھ جب کوئی کلفلیکٹ آتا ہے تو وہ فلڈا میلٹل گورنمنٹس کے پرنسپل کے ساتھ کلفلیکٹ میں نہیں آتا ہے یہ کسی طرح کا آرٹیکل کا وائلیشن نہیں ہے۔

This is all we have said. We have said nothing more nothing less.

اب سوال یہ پیدا ہوتا ہے کہ فلڈا میلٹل رائٹس کیا ہیں۔ فلڈا میلٹل رائٹس نیچرل رائٹس اور سول رائٹس کا کمپلیکشن ہے۔ نیچرل

رائٹس میں اور انڈین پینل کوڈ میں انسان کو لائف کی سیکوریٹی کا رائٹ دیا گیا ہے لیکن نارمل لاز میں اگر کوئی آدمی بہت بڑا آفیسر کرتا ہے یا مقرر کرتا ہے تو اس کے لئے قہر کا پروویژن ہے۔

You can take away the life of an individual to protect law and order in the country.

جب کوئی انسان مقرر کرتا ہے تو اس کے لئے سزائے موت دی جاتی ہے تاکہ یہ فہم ہوا رہے کہ لوگ عام مقرر نہ کر سکیں۔

You are asking us 'Why are you taking away individual rights?' We are not taking away the individual rights. We are only asking you not to abuse these rights to the detriment of the society so that the Government and Parliament could enact laws applying the principles laid down in Part IV.

جہاں تک پاور آف پارلیمنٹ کی سپریمہسی کا تعلق ہے میں نے کشمیر کا کلسٹی تھوشن ریفر کیا۔ یہ چھوٹی سی ڈرافٹنگ کمیٹی تھی جو ان سب باتوں کو سمجھتی تھی۔ میں نے ۲۹ اور ۲۱ جتنوں کی بات کو بھی ریفر کیا ہے۔

Even the Supreme Court Judges themselves are in a minority of one-third to two-third when they sit together. It is one thing when they sit in separate rooms, and say 'We are divided'.

[سعود مہر قاسم]

دنیا کے اُنیلوں کا یہاں پر ریفرنڈم دیا گیا اور ہم سے کہا گیا کہ ہم اپنے اُنیل کو امیڈ نہ کریں اور ہم اس اُنیل میں امیڈمنٹ کر کے یہ کیا کام کرنے جا رہے ہیں - تین چار سوٹی باتیں ہمارے اُنیل میں رکھی گئی ہیں اور سیکولرزم کو اچھی طرح سے ڈھانپ کر دیا گیا ہے - سیکولرزم کا مطلب یہ مراد آرہی ہے کہ ہر ایک انسان کو ورشپ کی فریڈم ہوگی - کچھ لوگوں نے اس میں مائڈرٹی کے حقوق پر اثر پڑنے کا ڈاؤٹ پیدا کیا ہے لیکن میں اپنے ذہن سے یہ صاف کر دینا چاہتا ہوں مائڈرٹیز کے حقوق پر اس سے کسی طرح کا اثر نہیں پڑے گا اور نہ ہی ان کو کسی طرح کا خطرہ ہونا چاہئے - ہمارے اُنیل کا بنیادی ڈھانچہ سیکولرزم کا ہے - بیسیک اسٹرکچر اس پر بیسڈ ہے - جہاں تک بیسیک اسٹرکچر کی بات ہے - میں بروا صاحب کو ایک شعر سنا رہا تھا - جس میں ایک شاعر اپنے دوسرے شاعر دوست سے کہتا ہے اگر تمہیں میرے بار کی تلاش کرنی ہو تو اسکی ایک نشانی ہے کہ اس کی کمر بہت پتلی ہے - دوسرے نے کہا کہ اگر تمہیں میرے بار کی

تلاش کرنی ہے تو اس کی کمر ہی نہیں ہے - بیسیک اسٹرکچر کی توجہ اس شعر کی طرح ہے - جس میں کہا گیا ہے کہ جسمیں کمر ہی نہیں ہے - کل بلوچی صاحب نے کہا کہ آپ ان باتوں کو دفنا دیجئے لیکن بروا صاحب نے کہا ہم کن باتوں کو دفنائیں وہ تو ہیں ہی نہیں - ہمارے پری ایبل میں سیکولرزم کی بات کہی گئی ہے - اس کے علاوہ ہم سوشلزم کے ذریعے غریبی کو ڈیموکریٹک پروسس سے ہٹانا چاہتے ہیں - یہی بات اُنیل میں کہی گئی ہے -

It will be a democratic right.

پری ایبل میں تو چار باتیں کہی گئی ہیں - سپریم کورٹ کی ریویو کی پاور بہت کمزور نہیں کی گئی ہے ایجنسی نیشنل ایکٹیویٹی کو میں نے ایکسپلین کیا - کچھ لوگوں نے اس بات کی غلط فہمی پیدا کی کہ ہم ان رائٹس کو ایڈوز کرینگے - تو میں نے ان کو کہا -

Even Federal Republic of Germany and Japan have not allowed. We are categorically clear in our mind that we will not allow these freedoms to be abused but at the same time we respect the freedoms of expression, of association and of speech.

فائیدللی یہ سوال پوچھا گیا۔ ابھی
تی - ایم - کے - کے پوچھ رہے تھے کہ اگر
آپ ایسا سمجھتے ہیں کہ لوگوں کے
پاس کیوں نہیں جاتے اور کیٹیگریکی
ذمہ دار کی حیثیت سے کہتا ہوں
کہ ہم نے لوگوں سے وعدہ کیا تھا کہ
ہم انہیں میں ترمیم کریں گے - وہ ہم
سے پوچھتے ہیں کہ آپ نے یہ کیوں
نہیں کیا اور آج آپ کہتے ہیں آپ
جلدی کر رہے ہیں - جلدی ہم نے
نہیں کی - سوچ سمجھ کر انہیں کی
ترمیم ہوئی - لیڈر اور پرائم منسٹر
کلتوری کا یہ حق رکھتا ہے کہ جب
اس کو مناسب وقت نظر آئے گا وہ
ضرور لوگوں کے پاس جائیگا - میں
آپ کو یہ یقین دلانا چاہتا ہوں کہ
اس آگے کی ترمیم کے بعد بھی ہم
لوگوں کے پاس چائینگے جب اس کے
لئے مناسب وقت آئے گا - یہ کوئی
مطلب نہیں ہے کہ اس ملک میں
انتخابات کبھی نہیں ہونگے - یہ
تہیوری چلائی جا رہی ہے کہ انتخابات
کبھی نہیں ہونگے -

that we are going towards no elec-
tions at all.

یہ چھوڑ ہم نے کلتوری کے لیڈر پر
چھوڑی ہے - اکانامی پروگریس ایمرجنسی
کیس ان سب کا بیلنس کر کے پیپلز
ورڈکٹ حاصل کر کے بعد اپروپرٹ
ٹائم آئے گا - اس وقت آپ دیکھیں گے
کہ یہ نٹ نئے بہانے بنائینگے - اس

وقت یہ دوسری زبان میں دوسرے
الفاظ میں بولتے ہیں - انویزیبل
انک کا شور کریں گے یہ کہ پبلک کے
ایک آدمی کس جگہ گرفتار کیا گیا -
میری آپ سے یہ اپیل ہے کہ کلسٹی
ٹیوشنل امینٹ میٹ کے بنیادی مقاصد
میں لوپ ہولس دکھاو اس سے ہم لوگ
بھی ایجوکیٹ ہو جائیں گے - ہیلفٹ
ہو جائیں گے دفتری صاحب ایڑے لائے

He did oppose our theory saying that
political theory was behind these
judgments.

لیکن انہوں نے خود فرمایا کہ
اس میں فیر ہے اور فیر ان کو یہ
تھا کہ آپ فلڈ امینٹل رائٹس کو اوایت
کر جائیں گے -

This is what Mr. Daphtary said in
this House: Whether a judgment is
for favour or for fear, it is not a ju-
dicial judgment, it is not a judicial
adjudication.

دفتری صاحب جو کہ انٹیلمیچرل ہیں
کہتے ہیں کہ آپ نے فلڈ امینٹل رائٹس
پر فصیل لگایا وہ ہماری پارلیمنٹری
فیموگریسی پر فصیل لگانا چاہتے ہیں
ہم کوئی جوتیشیل پروناؤنس میٹ
نہیں لانا چاہتے ہیں - میں صرف
یہی کہنا چاہتا تھا کہ جو بنیادی
باتیں ہیں ان پر تو مائنڈ کلیئر کرو۔
یہ پالیٹیکل پرووینگڈا یہاں اس ڈھنگ
سے کیا جاتا ہے اس لئے میں اس
امینٹ میٹ کو پوری طرح سے سپورٹ
کرتا ہوں -

†[संयुक्त मीर कासिम (जम्मू और कश्मीर) : जनावें आली, कांस्टीट्यूशनल अमेंडमेंट बिल जो ऐवान के सामने है, मैं इसकी ताईद में बोलने के लिए खड़ा हुआ हूँ। बहस बड़ी मुश्किल है कि हमारी इस तरमीम से क्या मुराद है। हमारे ला मिनिस्टर साहब ने बहुत ही क्लीयरली और कैटेगोरीकली पांच मोटे सवाल सामने रखे। हमने प्रीएम्बल में सेक्यूलरिज्म, इंटीग्रिटी और सोशलजिज्म के लफ्ज क्यों रखे। उन्होंने फरमाया कि हमें जरूरत क्यों पड़ी कि पार्लियामेंट की सुप्रीमेसी के बारे में अगर कहीं कोई डाउट हो, जो कि होना नहीं चाहिए, लेकिन अगर हां तो इसको हमेशा के लिए खत्म किया जाए। उन्होंने यह भी फरमाया कि क्या वजूहात हैं कि फंडामेंटल राइट्स जो हमारे हैं, उनके मुकाबले में जो डाइरेक्टिव प्रिंसिपल्स हैं फार दि गवर्नेन्स आफ दि कन्ट्री—इनमें अगर कहीं कोई कान्फ्लिक्ट हो तो उसको कैसे रिजाल्ट किया जाये और यह भी बताया कि ज्यूडिशियल रिव्यू के सिलसिला में जो ग्राम तजुर्बा है, उसमें जरूर कुछ कमी की गई है। दफा 226 में लफ्ज 'फार एनी अदर परपज' निकाल दिये गये हैं लेकिन ज्यूडिशियल रिव्यू को कायम रखा गया है। अगर चीज इस पर उतरती है, जैसा कि उन्होंने खुद फरमाया, तो उन्हें बतलाना चाहिए था कि इसमें क्या कमियां हैं। इससे हमको ज्यादा रोशनी मिलती, लेकिन बदकिस्मती से एतराजात चार पांच उठाए गए हैं। पहला एतराज तो यह उठाया जाता है कि आपको इस तरमीम की जरूरत क्यों पड़ी। हम जवाब देते हैं कि प्रिवी पर्सिस, बैंक नेशनलाइजेशन, लैंड रिफार्म्स के बारे में जो ज्यूडिशियल एडज्यूडिशियल केशन्स आये, इससे हमें यह लगा कि कांस्टीट्यूशन के इन्टरप्रिटेशन में कोई डाउट है तो हमने इसको क्लीयर करने की जरूरत महसूस की। हमारे पास और कोई तरीका नहीं था। हमने

आवाम को आगाह किया कि हमें लगता कि इस आर्डिन में कुछ कमियां रह गई हैं इंटरप्रिटेशन में कुछ डाउट रह गये हैं—क्योंकि यह बात मानी हुई थी कि पार्लियामेंट ला बना सकती है और ज्यूडिशियरी उसको इन्टरप्रेट करेगी। अगर इन्टरप्रेटेशन में उनको कोई डाउट लगा तो उसको क्लीयर करने के लिए हमने सोचा कि अच्छा है कि लोगों का मैसेज ले लो। हमने मैनिफेस्टो में साफ यह जाहिर किया कि आर्डिन की तरमीम करना मतलूब है। फिर पूछा जाता है कि क्या मैसेज है। आपके पास जब हम अपना यह अमेंडमेंट आवाम के सामने रख रहे हैं तो कहते हैं कि क्या जब हम मैनडेट लेने के लिए लोगों के पास गये तो उनको बताया कि कांस्टीट्यूशनल अमेंडमेंट के लिए हमको दो-तिहायी मेजोरिटी चाहिए। हमको लोगों ने दो-तिहायी मेजोरिटी दी और फिर हमारा यह फर्ज बनता था कि जो वादा हमने जनता से किया था, उसको हम पूरा करें। तीसरा एतराज यह उठाया जाता है कि आपने मैनडेट तो लिया लेकिन देर क्यों की। आप 5 साल तक रुके क्यों रहे। हम इस सवाल का जवाब देते हैं कि देर हमने इसलिए की कि आपने रेलों को काम करने से रोका, आपने मुक्त में, गुजरात और बिहार में एक खाम माहौल पैदा किया, आपने जम्हूरियत के खिलाफ एक माहौल पैदा करने की कोशिश की। तो इस पर लाजवाब होकर फिर सवाल पूछा जाता है कि आप अब जल्दी क्यों कर रहे हैं। जब हम कहते हैं कि हम जल्दी नहीं कर रहे हैं तो दफ्तरी साहब ने आज निहायत ऐलानिया अन्दाज में कहा कि इस पर कोई पब्लिक डिबेट नहीं हुई, क्यों? अपने राइट्स को कायम रखते हुए वो हमसे मुतालिबात करना चाहते हैं। असेम्बली, एक्सप्रेशन और एसोसिएशन के अपने राइट को वो एब्ज्यूज कर रहे थे। लेकिन यह मांग कर रहे थे कि हमारे लीडर्स को रिहा करो।

हमने उनको सलाह दी कि आप प्राइम मिनिस्टर के पास उसके लिए जाइए, लेकिन इस बात का पब्लिक डिबेट से कोई ताल्लुक नहीं था। दफ्तरी साहब तो इस हद तक गये कि पब्लिक डिबेट सैलेक्टेड गैदरिंग्स में हो रही है। मैं कहना चाहूंगा कि दफ्तरी साहब और इंटेलीजेंसिया के दूसरे लोगों ने इस अमेंडमेंट पर जो आब्जेक्शन ड्राप्ट किए हैं उनको क्या हमारे मुल्क के जो लाखों करोड़ों लोग हैं, वो समझ पायेंगे। इंदिरा जी इससे बेहतर और क्या करतीं कि पहले उन्होंने मुल्क को एक ऐसा माहौल दिया कि जिसमें पैदावार करने वाले कारकुन अपनी पैदावार बढ़ाने में लगे, ऐसा माहौल दिया जिसमें मुलाजिमान अपनी नौकरी ठीक ढंग से करने लगे। जिस माहौल में लड़के अपनी तालीम पाने लगे और जिस माहौल में पार्लियामेंट अपना काम करने लगी, एक इस किस्म का माहौल बना जिसको उन्होंने खुद रिएडमिट किया है। ऐसे माहौल में पब्लिक डिबेट हुई। फिर कहते हैं कि अमेंडमेंट की क्या जरूरत है? क्या आपने मैनडेट दिया? तीसरी बात वो कहते हैं कि अब तो आपके पास एक्सटेंडिड टाइम है। आपकी एक्सटेंडिड लाइफ है। मैं उनसे यह पूछना चाहता हूं कि जब जजिज की लाइफ बढ़ा दी हमने और 62 के बजाए 65 कर दी, जो जज 62 में रिटायर होता था उसको 65 कर दिया, क्या हमने कहा कि तुम्हारी एक्सटेंडिड लाइफ है, इसलिए तुम फैसला नहीं कर सकते। जब हम किसी सैक्रेटरी को एक्सटेंशन देते हैं और ज्यादा समय देते हैं रिटायरमेंट का, जब किसी डिस्ट्रिक्ट मजिस्ट्रेट को, किसी एस० पी० को एक्सटेंशन देते हैं तो क्या वो अपना काम नहीं करते। हमें तो एक पार्लियामेंट को जिसे खुद कांस्टीट्यूशन के अन्दर अपनी लाइफ एक्सटेंड करने का ज्यूरिसडिक्शन मिला हुआ है और वो उसको एक्सरसाइज करता है तो वह एक्सटेंडेड लाइफ पर क्यों अपनी सावरेन पावर को एक्सरसाइज न करे। मेरे ख्याल में तो हर

सवाल का जवाब अपोजीशन को मिल गया, लेकिन हकीकत तो यह है कि हमारी अपोजीशन कहती यह है कि प्रेजेंट गवर्नमेंट एक किस्म से अथारिटेटिव रूल की तरफ जा रही है और फंडामेंटल राइट्स आफ फ्रीडम, राइट आफ एक्सप्रेशन, राइट आफ स्पीच और राइट आफ असेम्बली को इरोड किया जा रहा है। लेकिन खुद ऐसी फिजा कायम कर रहे हैं कि जम्हूरियत से एतकाद उठ जाये। क्या वह यह चाहते हैं कि जब हमको मंडेट लेने के लिए कहा जा रहा था तब इंदिरा गांधी मंडेट लेने के लिए लोगों के पास गयीं। क्या बलराज मधोक इस बात से इनकार कर सकता है कि उन्होंने इन्वीजिबल एरर की थ्योरी नहीं निकाली? उनकी मुराद क्या थी लोगों के दिमाग में यह आ जाये कि यहां ठीक ढंग से इलेक्शन नहीं हो रहे हैं, जो कहते हैं पब्लिक डिबेट ठीक नहीं हुई है। यही बलराज मधोक किस्म के लोग गिरफ्तार हैं। मुझे मालूम नहीं है कि बलराज मधोक जेल में है या बाहर हैं, लेकिन वो जब हार गये तो सब की तरफ से, जनसंघ की तरफ से कल तकरीर हुई। उनकी थ्योरी एक किस्म की फफस्ताइयत थी। आज सब से उनको जो सख्त परेशानी होती है, वह यह है कि फंडामेंटल राइट्स और डेमोक्रेटिक राइट्स मुपरसीड हो रहे हैं। कोई इस बात में इंकार नहीं कर सकता कि इन राइट्स को एब्यूज करते-करते उन्होंने डेमोक्रेसी को खत्म कर डाला होता। मैं सोशलिस्ट मुल्कों की मिमाल नहीं देता हूं, क्योंकि उनको इनसे चिढ़ है। अक्सर वो अमरीका और ब्रिटेन के नाम लेते हैं। किसी सोशलिस्ट कंटरी का नाम लेता हूं तो वो पसन्द नहीं करते। मैं उनको दो कंटरीज के नाम बताऊंगा। एक फेडरल रिपब्लिक आफ जर्मनी। वहां उन्होंने यह खुद कहा है—

Article 18 provides that—

“Whoever abuses freedom of expression of opinion, in particular

[संघर्ष मोर कासिम]

freedom of the press, freedom of teaching, freedom of association shall forfeit these basic rights."

यह फ़ेडरल डेमोक्रेटिक रिपब्लिक का मेशन मैंने इस लिए किया कि ये हम पर एन्टी डेमोक्रेसी स्टेप उठाने की बात करते हैं। जिस एन्टी डेमोक्रेटिक कंपनी में कृष्णकान्त बैठे हुए हैं उनकी थ्योरी खुद एक फ़ामिस्ट थ्योरी है। वह बिगिन करते हैं डेमोक्रेसी से, फिर फ़्रीडम को डिस्ट्राय करते-करते फ़्रीडम लाना चाहते हैं। यह इनकी थ्योरी थी, आर० एम० एस० की थ्योरी थी। कम्यूनल पार्टी की तकनीक क्या है। जिस कंपनी में वह बैठे हुए हैं वही राइट्स को एब्ज्यूज करते हैं। जापान को देख लीजिए। उन्होंने कहा है:

The Constitution of Japan forbids abuse of even guaranteed fundamental rights. Article 10 provides:

"The freedom and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people who shall refrain from any abuse and shall always be responsible for utilising them for the public welfare."

यह मैंने फ़ेडरल डेमोक्रेटिक रिपब्लिक आफ जर्मनी और जापान का इसलिए मेशन किया। जिन फ़ंडामेंटल राइट्स को वह रेफ़र कर रहे हैं और आज दफ़्तरी साहब ने एक प्वाइंट उभारा कि जो एन्टी-नेशनल एन्टीविटीज के लिए किया गया है, उनसे डर लगता है। यह तो एन्ग्रैमरेड करके वह बतायें कि जो हमने मेशन की है, समें हमने ऐसी बगनैस रखी है जिसमें खतरा है कि अच्छे आदमियों की एन्टीविटीज को भी रोक दिया

जाये। ये कहते हैं एब्ज्यूज हो सकते हैं, एब्ज्यूज और प्रच्छन्नी पावर्म किसी वक्त भी हो सकते हैं। इससे इस्का कोई जोड़ नहीं है। एब्ज्यूज को रोकना हम सबका फर्ज है। मेरे कहने का मतलब यह था कि बहस अगर कांस्टीट्यूशन में उठायी जाये कि कांस्टीट्यूशन में क्या कमी है। अगर यह बहस उठायी जाये कि हमने क्या किया तो यह एक अलग बात है। इसलिए हमें जबरूर पड़ी गोलकनाथ केस और दूसरे केसों की—यह पार्लियामेंटरी सिस्टम है। सवाल यह है कि ये पार्लियामेंटरी सिस्टम है। मैं कहता हूँ अगर इसको अच्छे ढंग से देखा जाये, जितने जजमेंट हुए, फण्डामेंटल राइट्स की बुनियादों पर, गोलकनाथ का केस या दूसरे केस, उनका जजमेंट करने के लिए 29 सुप्रीम कोर्ट के जज बैठे थे। 29 सुप्रीम कोर्ट जजों में से 21 सुप्रीम कोर्ट जजों ने यह कहा है कि सब कुछ हो सकता है यह एक अलग बात है कि एक जजमेंट का प्रोपोरशन 6 और 7 का था, लेकिन अगर टोटली आप देखें, तमाम जजमेंट्स को मिला कर आप पढ़ें तो आप देखेंगे कि सुप्रीम कोर्ट के खुद 29 जजों में से 21 जजों का यही इन्टरप्रिटेशन है। कल भगवती जी ने एक मुनासिब अन्दाज में कहा —

Is the judiciary the interpreter or the maker of the law?

हमारा इम्प्रेशन है, वह खुद यह मानते हैं।

They have to interpret the Constitution; they have to interpret the law.

हम कहते हैं अगर कहीं कोई वेगनैस है अगर आपको लगता है तो

It is for them also. 'For any purpose' means no purpose, also.

एनी परपज की वजह से जुडोशियरी को दिक्कत आएगी, इसलिए पंडित जवाहरलाल नेहरू ने 1954 में कहा था— “एनी परपज” हटाया जाए। पंडित जवाहरलाल जी को कृष्णकान्त कोट करते हैं। वह यह कोट नहीं करते कि 1954 में उन्होंने क्या कहा। फ़ार एनी अदर परपज इज सो वेग के शक दूर करने के लिए इसे हटाया जाए।

Even judicial verdict is in favour of this.

यह मानी हुई बात है कि हम आईन में तरमीमन करें तो आईन रिजिड बन जाए। दुनिया के जो आईन तरमीम नहीं हो सकते वह तसद्दुद से बदले जाते हैं। हम आर्डली चेंज चाहते हैं तो कांस्टीट्यूशन को फ्लेक्सिबल बनाना है।

आर्टिकल 368 की तरफ आपकी तवज्जह दिलाना चाहता हूँ। आर्टिकल 368 खुद कहता है —

That Parliament can amend the Constitution. This is in article 368. मैं एक छोटी सी ड्राफ्टिंग कमेटी का सेक्रेटरी रहा हूँ, उसने काश्मीर कांस्टीट्यूशन को ड्राफ्ट किया है और यह काश्मीर कांस्टीट्यूशन ड्राफ्टिंग के एक आर्टिकल की कापी है। यह आर्टिकल 147 है, इस आर्टिकल में हमने एक प्रीवीजो लगाया है।

Article 147 is the amending article for Kashmir Constitution. The provision says:

“Provided further that no Bill or amendment seeking to make any

change in this section... (that means the amending section) ... or the provision of sections 3 and 5 ... (section 3 was that Kashmir was an integral part of India) ... and also the provision of the Constitution applicable to the State.”

यह तीनों प्रीवीजन अमेंड नहीं कर सकते। मैं छोटा सा ड्राफ्टमैन हूँ, लीगल लूमो-नरी अपने को क्लेम नहीं कर सकता हूँ। जैसे कि दफ्तरी जी करते हैं। मुझ जैसा आदमी कभी यह समझ सकता है कि कोई क्लॉज इन-अमेंडेबल है तो उसको स्पेसिफिकली रखना है तीन क्लॉज इस अमेंडमेंट में नहीं हो सकते। एक खुद अमेंडिड क्लॉज जो अमेंड नहीं हो सकती, सेक्शन 3—

that is, Kashmir is an integral part of India.

कहती है कि नहीं हो सकती। मैं यह बताना चाहता हूँ कि हमारे मुल्क के फ़ाउंडिंग फ़ादर like Dr. Ambedkar and such people could have as well said that such and such article cannot be amended, as we have said in Kashmir Constitution.

अब सवाल यह है कि जब हम यह कहते हैं कि कांस्टीट्यूशन अमेंड हो सकता है।

They have made it abundantly clear that every article is amendable article. What have we done then? We have done one thing. We have cleared the doubts from the minds of the people and from the minds of the judges so that there could be no difficulty in interpreting the law. We are making it clear.

इसमें कंफ़्यूजन का कोई सवाल नहीं है।

They are in agreement with us so far as judicial pronouncements are concerned.

[सैयद मीर कासिम]

अब हमारे सामने जो सवाल है उसका हम बड़ा शोर मचाते हैं। कहा जाता है कि फंडामेंटल राइट्स को मसख किया गया है; हमारे डाइरेक्टिव प्रिंसिपल्स में बताया गया है कि --

Article 37 says:

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

This is what the Constitution says: 'fundamental in the governance of the country'. We say, if they are fundamental in the governance of the country and if the State is to apply these principles in making laws, when the individual rights conflict with these principles, the individual rights shall be superseded.

दफ्तरी साहब ने बहुत सी बातें कहीं हैं। मैं मानता हूँ कि वह एक बड़े लायर हैं। उन्होंने इस बात को मान लिया है कि फंडामेंटल राइट्स को निकाला नहीं गया है। उन्होंने कहा कि उनको एनसकिल किया गया है। लेकिन हम कहते हैं कि उनको वाइडिन किया गया है। जब इंडिविजुअल राइट्स और नार्मल लाज में कोई कॉन्फ्लिक्ट हो तो हमारे आईन में फंडामेंटल 'गवर्नमेंस फॉर दि कंट्री' में साफ लिखा गया है --

The Constitution uses these words: 'fundamental in the governance of the country'.

इसलिए जुडीशियरी इसकी किसी दूसरी तरह से इंटरप्रेट न करे। इंडिविजुअल राइट्स के साथ जब कोई कॉन्फ्लिक्ट आता है तो वह फंडामेंटल गवर्नमेंस के प्रिंसिपल

के साथ कॉन्फ्लिक्ट में नहीं आता है। यह किसी तरह के आर्टिक्ल का वारंटेशन नहीं है।

This is all we have said. We have said nothing more and nothing less.

अब यह सवाल पैदा होता है कि फंडामेंटल राइट्स क्या हैं। फंडामेंटल राइट्स नेचुरल राइट्स और सिविल राइट्स का कम्पेसेशन है। नेचुरल राइट्स में और इंडियन पेनल कोड में इन्सान को लाइफ की सिक्श्योरिटी का राइट्स दिया गया है लेकिन नार्मल लाज में अगर कोई आदमी बहुत बड़ा आफेंस करता है या मरडर करता है तो उसके लिए डैथ का प्रावीजन है।

You can take away the life of an individual to protect law and order in the country.

जब कोई इन्सान मरडर करता है तो उसके लिए सजाये मौत दी जाती है ताकि ये फ्रीयर बना रहे कि लोग ग्राम मरडर न कर सकें।

You are asking us 'Why are you taking away individual rights?' We are not taking away the individual rights. We are only asking you not to abuse these rights to the detriment of the society so that the Government and Parliament could enact laws applying the principles laid down in Part IV.

जहाँ तक पावर आफ पार्लियामेंट की सुप्रीमेसी का ताल्लुक है मैंने कश्मीर का कांस्टीट्यूशन रेफर किया। यह छोटी सी ड्राफ्टिंग कमेटी थी जो इन सब बातों को समझती थी। मैंने 29 और 21 जजों की बात को भी रेफर किया।

Even the Supreme Court Judges themselves are in a minority of one-third to two-third when they sit together. It is one thing when they

[सैयद मोर कासिम]

sit in separate rooms and say 'We are divided'.

दुनियां के आईनों को यहां पर फेरें दिया गया और हमसे कहा गया कि हम अपने आईन को अमेंड न करें और हम इस आईन में अमेंडमेंट करके यह क्या काम करने जा रहे हैं। तीन चार मोटी बातें हमारे आईन में रखी गई हैं और सेकुलरिज्म को अच्छी तरह से डिफ़ाइन किया गया है। सेकुलरिज्म का मतलब या मुराद इरिलीजन नहीं है। सेकुलरिज्म का मतलब है कि हर एक इंसान को वर्शिप की फ्रीडम होगी। कुछ लोगों ने इसमें माइनोरिटी के हकूक पर असर पड़ने का डाउट पैदा किया है, लेकिन मैं पहले अपने जहन से यह बात साफ कर देना चाहता हूँ कि माइनोरिटी के हकूक पर इससे किसी तरह का असर नहीं पड़ेगा और नही उनको किसी तरह का खतरा होना चाहिए। हमारे आईन का बुनियादी ढांचा सेकुलरिज्म का है। बेसिक स्ट्रक्चर इसी पर बेस्ड है। जहां तक बेसिक स्ट्रक्चर की बात है मैं बरूआ साहब को एक शेर सुना रहा था जिसमें एक शायर अपने दूसरे शायर दोस्त से कहता है— अगर तुम्हें मेरे यार की तलाश करनी हो तो उसकी एक निशानी है कि उसकी कमर बहुत पतली है। दूसरे ने कहा कि अगर तुम्हें मेरे यार की तलाश करनी है तो उसकी कमर ही नहीं है। बेसिक स्ट्रक्चर की थ्योरी इसी शेर की तरह है, जिसमें कहा गया है कि जिमकी कमर ही नहीं है। कल बनर्जी साहब ने कहा कि आप उन बातों को दफ़ना दीजिए लेकिन बरूआ साहब ने कहा कि हम किन बातों को दफ़नाएं वह तो हैं ही नहीं। हमारे प्रि-एम्बुल में सेकुलरिज्म की बात कही गई है। इसके अलावा हम सोशलिज्म के उरिए गीबी को डेमोक्रेटिक प्रोसेस से हटाना

चाहते हैं। यही बात आईन में कही गई है। It will be democratic right.

प्रि-एम्बुल में तीन चार बातें कही गयी हैं। सुप्रीम कोर्ट की रिव्यू की पावर बहुत कमजोर नहीं की गयी है। एण्टी-नेशनल एक्टिविटीज को मैंने एक्सप्लेन किया। कुछ लोगों ने इस बात की गलतफहमी पैदा की कि हम इन राईट्स को एब्ज्यूज करेंगे तो मैंने उनको कहा—

Even Federal Republic of Germany and Japan have not allowed. We are categorically clear in our mind that we will not allow these freedoms to be abused but at the same time we respect the freedoms of expression, of association and of speech.

फाइनली यह सवाल पूछा गया कि अभी डी० एम० के० के पूछ रहे थे कि अगर आप ऐसा समझते हैं कि लोगों के पास क्यों नहीं जाते और कटेगरिकली जिम्मेदारी की हैसियत से कहता हूँ कि हमने लोगों से वायदा किया था कि हम आईन में तरमीम करेंगे वह हमसे पूछते हैं कि आपने यह क्यों नहीं किया और आज आप कहते हैं कि आप जल्दी कर रहे हैं, जल्दी हमने नहीं की। सोच समझ कर आईन की तरमीम होगी। लीडर और प्राइम मिनिस्टर कन्ट्री का यह हक रखता है कि जब उसको मुनासिब वक्त नज़र आयेगा तो वह जरूर लोगों के पास जायेगा। मैं आपको यह यकीन दिलाना चाहता हूँ कि इस आईन की तरमीम के बाद भी हम लोगों के पास जायेंगे, जब उसके लिये मुनासिब वक्त आयेगा। यह कोई मतलब नहीं है कि हम इस मुल्क में इतिखावात नहीं होने देंगे, यह थ्योरी चलायी जा रही है कि हम इतिखावात कभी नहीं होने देंगे। that we are going towards as elections at all.

[सैयद मीर कासिम]

यह चीज हमने कन्ट्री के लीडर पर छाड़ी है। इकोनामी प्रोग्रेस एमरजेंसी गेन्स इन सबका बैलेंस करके, पीपुल्स वॉइस हासिल करने के बाद एप्रोप्रिएट टाइम आयेगा तो उस वक्त आप देखेंगे कि ये नित्य नये बहाने बनायेंगे। उस वक्त ये दूसरी जवान में, दूसरे अल्फाज में बोलते हैं। इनविजीबल इन्क का शोर करेंगे या यह कहेंगे कि एक आदमी किसी जगह गिरफ्तार किया गया। मेरी आपसे यह अपील है कि कांस्टीट्यूशनल अमेंडमेंट के बुनियादी मकसिद में लूप-होल्स दिखाओ। उससे हम लोग एजुकेट हो जायेंगे बेनिफिटेड हो जायेंगे। दफ्तरी साहब इज ए लायर।

He did oppose our theory saying that political theory was behind these judgements. लेकिन उन्होंने खुद फरमाया कि इसमें फीयर है और फीयर उनको यह था कि आप फण्डामेंटल राइट्स को इरोड कर जायेंगे।

This is what Mr. Daphtary said in this House: Whether a judgement is for favour or for fear, it is not a judicial judgement, it is not a judicial adjudication. दफ्तरी साहब, जोकि इन्टेलेक्चुअल हैं, कहते हैं कि आपने फण्डामेंटल राइट्स पर फसील लगाया। वह हमारी पार्लियामेंटरी डेमोक्रेसी पर फसील लगाना चाहते हैं। हम कोई जुडीशियल प्रोनाउन्समेंट नहीं लाना चाहते हैं। मैं सिर्फ यही कहना चाहता हूँ कि जो बुनियादी बातें हैं उन पर तो माइन्ड क्लीयर करो। यह पोलिटिकल प्रोपेगैंडा यहां इस ढंग से किया जाता है, इसलिये इस अमेंडमेंट को पूरी तरह से सपोर्ट करता हूँ।]

श्री शंकरलाल तिवारी (मध्य प्रदेश) :
उपसभाध्यक्ष महोदय, आप मुझे 10 ही मिनट

का समय देंगे। इसलिये मुझे अपना भाषण हैडलाइन्स में ही करना होगा।

मैं जनसाधारण में से हूँ और इसी दृष्टिकोण से मैं जो संविधान में संशोधन लाये गये हैं को देखता हूँ कि आया यह संशोधन जनता के हित में हैं या नहीं हैं, देश के हित में हैं या नहीं हैं। यह संशोधन यदि जनता और देश के हित में है तो यह स्वागत के योग्य है और यही मेरी कसौटी है देखने की।

लगभग एक साल हो गया। हमारे देश में कांस्टीट्यूशन में अमेंडमेंट करने की चर्चा चल रही थी। यह बिल सितम्बर के महीने में हमारे सामने आया और अब लोक सभा से पास होकर आया है। मैं आशा करता था कि इस बिल में बड़े क्रांतिकारी परिवर्तन होंगे। लेकिन उपसभाध्यक्ष महोदय, जब हम संशोधन देखते हैं तो हम पाते हैं कि ये मामूली से संशोधन हैं, साधारण से संशोधन हैं और साथ ही साथ हार्मलैस भी हैं। कोई इसमें क्रांतिकारी परिवर्तन नहीं किया गया है। 25 साल से हमारे कांस्टीट्यूशन की बकिंग के आधार पर हमने जो उसमें खामियां देखी हैं और साथ ही साथ हमारे न्यायालयों ने हमारे कांस्टीट्यूशन का जो गलत इण्टर-प्रिटेशन किया और उससे जो खामियां उत्पन्न हो गईं, मेरे खयाल से उन खामियों की वजह से सामाजिक और आर्थिक न्याय इस देश की साधारण जनता को प्राप्त होने में बाधा हुई; उन्हीं खामियों को दूर करने के लिए यह संशोधन विधेयक यहां लाया गया है। यद्यपि ये संशोधन क्रांतिकारी नहीं हैं, लेकिन महत्वपूर्ण जरूर हैं और इसी लिए मैं इसका स्वागत करता हूँ, समर्थन करता हूँ।

उपसभाध्यक्ष महोदय, मैं और भी बात कहना चाहता था लेकिन मैं सीधे अब उन आर्टिकल्स पर आ जाता हूँ जिनमें कुछ परिवर्तन किए गए हैं। मैं आर्टिकल 31 (सी)

[श्री शंकर लाल तिवारी]

की तरफ आपका ध्यान आकर्षित करना चाहता हूँ। उसमें थोड़े से शब्द हटाए गए हैं और कुछ शब्द जोड़े गये हैं, लेकिन उसका परिणाम बड़ा चमत्कारिक हुआ है। परिणाम यह हुआ है कि डाइरेक्टिव प्रिन्सिपल्स को हमने ऊँचा स्थान दे दिया फण्डामेंटल राइट्स से। यदि जनसाधारण के अधिकारों में और व्यक्तियों के अधिकारों में कहीं टकराव आए तो हमने इस संशोधन से साफ कर दिया है कि जनसाधारण के, जनता के, समाज के अधिकार उंचे होंगे। उपसभाध्यक्ष महोदय, इससे एक बाधा दूर हुई। डाइरेक्टिव प्रिन्सिपल्स को क्रियान्वित करने में न्यायालयों ने जो बाधा उत्पन्न कर दी थी वह बाधा दूर हुई। हम अब आशा करते हैं कि हमारी सरकार, जो डाइरेक्टिव प्रिन्सिपल्स में कहा गया है कि कांसेन्ट्रेशन आफ वेल्थ कुछ लोगों के हाथ में नहीं होगी और इस देश के जो मटीरियल रिसोर्सेज हैं उनका ईक्वल डिस्ट्रीब्यूशन होगा, उस डाइरेक्टिव प्रिन्सिपल का क्रियान्वयन करने के लिए तेजी से अग्रसर होगी, यह आशा हम करते हैं। इसलिए उपसभाध्यक्ष महोदय, यह जो तरमीम की गई है इसका मैं स्वागत करता हूँ।

महोदय, इसके साथ एक नयी धारा और जोड़ी गई है, आर्टिकल 31(डी)। पहली बार अपने सविधान में हमने आर्टिकल 31(डी) जोड़ा है। इसके जरिए राष्ट्र-विरोधी गतिविधियों पर अंकुश लगाने के लिए कानून बनाने की सुविधा होगी। उपसभाध्यक्ष महोदय, राष्ट्र-विरोधी गतिविधियाँ क्या हैं यह इसमें बतलाया गया है—5 तरह की। एक तो बाई फोर्स सरकार को बदल देना। अभी हम भूले नहीं हैं, हमारे इस दिल्ली शहर में डाइनामाइट केस चल रहा है जिसमें यही चार्ज है कि जो इस्तेबलिस्ट बाई लाँ सरकार है उसको हटाना चाहते थे। दूसरे, हम भूले नहीं हैं कि हमारे पड़ोस में,

बंगला देश में, क्या हुआ? तो जो राष्ट्र-विरोधी तत्व हैं हमारे देश में या राष्ट्र-विरोधी संस्थाएँ हैं हमारे देश में—अभी हैं या आगे पैदा होंगी। उनको कठोरता से दबाने के लिए, कानून बनाने के लिए स्थिति इस अमेंडमेंट के जरिए पैदा हुई है। यह भी देश के हित में है इसलिए यह स्वागत-योग्य है।

डाइरेक्टिव प्रिन्सिपल्स पार्ट फोर में बताए गए हैं, उसमें एक नया चैप्टर जोड़ा गया है—पार्ट 4-ए—जिसके जरिए पहली बार हमारे कांस्टीट्यूशन में इस बात की जानकारी दी गई है कि हमारे नागरिकों के क्या कर्त्तव्य होंगे। वे कहते हैं कि ये प्लैटीट्यूड्स हैं। जो कुछ भी हो, लेकिन ये जो कर्त्तव्य हमारे बतलाए गए हैं उन कर्त्तव्यों की जानकारी, अधिकारों के साथ में, हमारे नागरिकों को होगी और उन्हें इस दिशा में अपने जीवन को मोड़ने में प्रोत्साहन मिलेगा, ऐसी आशा हम करते हैं। दूसरे आर्टिकल 226 में संशोधन किया गया है और उस में से 'फार एनी अदर परपज' शब्द निकाल दिये गये हैं। सब झगड़े की जड़ यही थे। इन शब्दों की वजह से हमारे जजेज असीमित अधिकार अपने हाथ में लेते थे। तो यह झगड़े की जड़ हम ने हटा दी और जजेज को यह महसूस करा दिया गया है कि आपकी भी कोई सीमा है। आपको भी कानून के इंटरप्रिटेशन को एक सीमा के अन्दर रह कर करना है। लेकिन इसके बाद भी उन को रिट जारी करने का और स्टे आर्डर देने का अधिकार रहने दिया गया है हालांकि उस पर कुछ अंकुश लगाया गया है। अभी तक एक तरफा स्टे आर्डर मिल जाता था और यह प्राप्त कौन करते थे? यह प्राप्त करते थे इस देश के बड़े पूंजीपति और इन्कम टैक्स चुराने वाले। टैक्स चोरी करने वाले बड़े लोग अक्सर स्टे आर्डर प्राप्त कर लेते थे और होता क्या था। सालों तक वह मामला पड़ा रहता था और इस

[श्री शंकर लाल तिवारी]

बीच में वह अपनी संपत्ति को अफरा तफरी कर देते थे। उसमें हम ने रुकावट कर दी है और रुकावट यह कर दी है कि आपको ऐसा स्टे आर्डर देते समय विरोधी पार्टी को भी नोटिस देना पड़ेगा और आप जो भी स्टे आर्डर देंगे उस के लिये आपको कारण बताने पड़ेंगे। हां, एक्स्पेन्सल सेसेज में स्टे आर्डर दूसरी पार्टी को नोटिस दिये बिना भी 14 दिन के लिये दे सकते हैं, लेकिन कारण तो बताने ही होंगे। तो उन के अधिकार को कम नहीं किया गया है, हाई कोर्ट के अधिकार को। उपसभाध्यक्ष महोदय, इसी संबंध में मैं यह कहना चाहता हूं कि हम ने शासकीय सेवा में जो लोग हैं उन के भी मामलों को हाई कोर्ट में देखा। जब उन्होंने देखा कि कुछ गड़बड़ी हो गई तो कोई न कोई प्वाइंट उठा कर वह लोग स्टे आर्डर ले आते थे और फिर वह लोग सालों तक बने रहते थे नौकरी में क्योंकि उनको स्टे आर्डर मिल चुका था। और फिर वे रिटायर हो जाते थे और इस तरह से वे पनिसमेंट से बच जाते थे। उन पर भी कुछ अंकुश लगाया गया है।

एक और सवाल है आर्टिकल 144 का। इसमें एक नया आर्टिकल 144-ए जोड़ा गया है। अभी तक यह होता था कि हम संसद् में जो कानून पास करते थे उस की वैधता हाई कोर्ट भी देखता था और सुप्रीम कोर्ट भी देखता था और अलग-अलग जजमेंट होते थे, अलग-अलग हाई कोर्ट्स में। तो यह एक गलत परंपरा थी और एक गलत बात थी। कांस्टीट्यूटरी उन के जजमेंट होते थे। तो कांस्टीट्यूटरी जजमेंट न हो इससे जजों को बचाने के लिये यह कर दिया गया है कि संसद् के जो कानून बनेंगे उन की वैधता को जांचने का अधिकार केवल सुप्रीम कोर्ट को होगा और वह दो तिहाई बहुमत से फैसला देगा। लेकिन मैं इस सिलसिले में गोखले साहब को एक सुझाव देना चाहता हूं।

उपसभाध्यक्ष (श्री लोकनाथ मिश्र) : जो हर मिनट आप लेते हैं उस की वजह से आप किसी एक को हटा देते हैं।

श्री शंकर लाल तिवारी : मैं किसी को हटाता नहीं और आपको तो वहां बिठा ही रखा है। मैं एक सजेशन देना चाहता हूं कि हाई कोर्ट या सुप्रीम कोर्ट जो जजमेंट दे तो उन का जो मेजारिटी जजमेंट हो उसी को डिलीवर किया जाये और माइनारिटी जजमेंट को प्रकाशित न किया जाये, इसलिये कि माइनारिटी जजमेंट को प्रकाशित करने से वकीलों को बाल की खाल उखाड़ने का अवसर मिलेगा।

उपसभाध्यक्ष महोदय, आर्टिकल 257 के बाद 257-ए क्लॉज इस में जोड़ा गया है। अभी तक भारत सरकार को प्रदेशों की सरकार को कुछ मामलों में आदेश देने का अधिकार है। लेकिन अब इसमें 257-ए जोड़ा गया है। इसके अनुसार यदि कहीं ग्रेव ला एण्ड आर्डर सिचुएशन हो, जहां पर ला एण्ड आर्डर की सिचुएशन खराब हो जाए, वहां हम अपनी आम्बु फोर्स को भेज सकते हैं। हमें याद है कि दक्षिण में आज से 8—10 साल पहले भाषायी दंगे हुए थे, उसमें सरकारी प्रापर्टी जला दी गई थी। हमें याद है कि दो तीन साल पहले आंध्र प्रदेश के टुकड़े करने के लिए आन्दोलन हुए थे, उस समय भी सरकार की प्रापर्टी बड़ी बेरहमी से लूटी गई थी और जलाई गई थी और यह देखा गया कि स्टेट सरकारें इन दंगों को दवाने में नाकामयाब रहती हैं। इसलिए यह बहुत अच्छा प्रावधान देश के हित में किया गया है, देश के इंटिग्रिटी और यूनिटी को बनाये रखने के लिए यह आवश्यक है।

उपसभाध्यक्ष महोदय, कहना बहुत कुछ था, लेकिन घंटी बज गई इसलिए मैं समाप्त करता हूं।

SHRI KRISHNARAO NARAYAN DHULAP (Maharashtra): Sir, I would like to give my views on the Constitution (Forty-fourth Amendment) Bill, 1976. I do not know whether there is anything momentous or historical about this Bill. But I would like to state on behalf of my party, the Peasants' and Workers' party of India, that we agree with the views expressed by the Prime Minister regarding the supremacy of Parliament to amend the Constitution in whatever way it desires. But as far as the present amending Bill is concerned, I am not going to support it in toto because of there being incognuity between what has been stated in the Statement of Objects and Reasons and the amendments. The objectives, as explained by the hon. Law Minister, behind bringing forth this type of legislation before the House are commendable and they are welcome. In the Statement of Objects and Reasons he says—

"The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution which would end poverty and ignorance and disease and inequality of opportunity has been engaging the active attention of Government and the public for some years now"

So, what is envisaged by the hon. Minister is bringing about a socio-economic revolution which would end poverty and ignorance. So, I would request every Member of this august House to examine each and every amendment which has been brought forward in this House on the touchstone explained in the Statement of Objects and Reasons of the Bill. And after going through whatever amendments have been suggested in this Bill, I have come to the conclusion that the socio-economic revolution which is envisaged therein has found no place whatsoever by the amendments proposed by the hon. Minister. What are those amendments which are touching upon the question relating to the poor people?

974 RS—6.

5 P. M.

Sir, much has been said about the nation-wide debate over these amendments. The hon. Law Minister stated in his speech in the Lok Sabha that the Bill had been discussed widely in the country and that people belonging to different professions, including lawyers, teachers, legislators and others, had expressed their views on the amendments. These are the persons who were interested in them—teachers, lawyers, advocates, retired High Court judges and others. Even the conferences held by the Congress Party in the States were conferences of advocates and pleaders. But the common man has not been touched. The Scheduled Castes and the Scheduled Tribes people living in hilly tracts, the agricultural labourers, those who are below the poverty line, those 36 to 38 crores of people in this country were not consulted. Nobody went to them. Most of the Members who spoke on behalf of the Congress Party were talking about the lawyers, pleaders, barristers and people coming from the higher strata of the society. As far as these poor people are concerned, if they had been consulted, they would have told the hon. Law Minister: "All right, you are talking of amending the Constitution. Well and good. But what about my right? I am not worried about freedom of expression or freedom of speech I am not worried about associations or unions. I am worried about my bread. Where is it? Show me. I have to earn my livelihood with my two hands. Whatever manual work is there for me, I am prepared to accept and work in the field. Where is the right to work? Where is the right to live? There is the right for people below the poverty line only to die of starvation because no employment whatsoever is available in the countryside." So, these are the people for whom you say you are going to bring about a socio-economic revolution. This will be only here on paper. Now, what are the provisions in the Bill? Clauses 4, 6, 7, 8 and so on are there. What do these

[Shri K. N. Dhulap]

clauses say? The workers will have participation in the management of industries. Then children will be looked after. This has already been provided for in the Directive Principles of State Policy. These are the things which we are again going to include in the Directive Principles of State Policy. Sir, in Chapter IV of the Constitution, in the Directive Principles of State Policy, the down-trodden people, the underdogs of the society, are given certain assurances. But they are not justiciable. No court is going to enforce whatever has been stated in the Directive Principles of State Policy. Sir, so many assurances were given at the conception of the Constitution. What has happened to them? I will specifically refer to article 45 of the Constitution in the Directive Principles of State Policy. What does it say?

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Who came in your way in the implementation of this provision? These lawyers, pleaders, barristers and retired High Court judges are not worried about free and compulsory education to the children of poor people, the underdogs of the society.

And for that a ten-year time-limit was there. But nobody took note of it. Even the Central Government and the State Governments did not care to see that this provision was implemented properly. There are so many other provisions giving so many rights. For instance, article 41 speaks of securing the right to work within the limits of the State's economic capacity and development. I am only touching upon one issue and I will finish within the shortest time possible. My question is: What are these amendments going to do? According to the 25th amendment of the Constitution, a provision

has been made in article 31C. At that time they removed the obstacle coming in the way of the principles specified in (b) and (c) of article 39. But in the same article 31C now there is a provision to the effect that the whole of the principles contained in Chapter IV have been incorporated in this well and good. But in the original 31C there is a big hurdle. What is the hon. Minister going to do with regard to that obstacle? I will read it for the benefit of the House . . .

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): That will mean another five minutes. Please do not read it.

SHRI KRISHNARAO NARAYAN DHULAP: I won't take much time.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): Your time is up. You will have to kindly wind up.

SHRI KRISHNARAO NARAYAN DHULAP: Why are you discriminating against me? With due respect, when Mr. Mir Qasim was speaking, you gave him 30 minutes.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): When time is allotted to this side, it is allotted from the pool for the Congress Party and when time is allotted to one-man party and two-men party, it is done likewise.

SHRI KRISHNARAO NARAYAN DHULAP: Congress people want that we should be present in the House. If they do not want us here, the only way for me is to leave this august House.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): You please wind up.

SHRI KRISHNARAO NARAYAN DHULAP: I am touching only one point.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA): You cannot go on touching it indefinitely. I will give you two minutes....

(Interruptions)

SHRI KRISHNARAO NARAYAN
DHULAP: I will finish soon.

THE VICE-CHAIRMAN (SHRI
LOKANATH MISRA): I do not have
to be guided by you. I have to use
my discretion from the Chair and
when the Chair is making some ob-
servations, you need not say any-
thing.

SHRI KRISHNARAO NARAYAN
DHULAP: According to article 31C,
notwithstanding anything contained
in article 13, no law giving effect to
the principles specified in clause (b)
or clause (c) of article 39, shall be
deemed to be void on the ground that
it is inconsistent with, or takes away
or abridges any of the rights confer-
red by article 14, article 19 or article
31. It is well and good. But in the
last portion there is a sting, because
it says that no law containing a dec-
laration that it is for giving effect to
such policies shall be called in ques-
tion in any court on the ground that
it does not give effect to such policies.

The principles contained in Chap-
ter IV, namely, the Directive Princi-
ples, are not justiciable, as a matter
of fact. If at all an Act is passed
either by a State legislature or by
Parliament and if somebody goes to
the court and says that the Act does
not give effect to these policies, his
request is not entertained in the court.
If that is so, what is the use of pass-
ing such laws which are not to be
justiciable. Therefore, this is a fraud
against the poor people in the coun-
try. With these words I conclude.

SHRIMATI RATHNABAI SREENI-
VASA RAO (Andhra Pradesh): Mr.
Vice-Chairman, the most important
debate since Independence has been

going on in the country for the last
two months since the introduction of
the 44th Constitution Amendment
Bill in the Lok Sabha on the 1st Sep-
tember, 1976.

A few weeks earlier, the Swaran
Singh Committee's proposals for chan-
ges in the Constitution were publish-
ed. The motive which has prompted
this Bill is to see that there are no
internal disorders, chaos or threat of
disintegration in the country as was
witnessed before the emergency and
at other times in the recent past and
also to ensure that the progressive
social structure that is sought to be
built in the country does not face
hurdles in the Constitution itself or
from the judiciary which is to inter-
pret the Constitution. As such, this
Bill has to be welcomed by all. The
Prime Minister has repeatedly said
that the Government was not in a
hurry to change the Constitution and
has invited public opinion and debate
on the subject. The public, the intel-
ligentsia and experts have been given
reasonable opportunities and time to
discuss and debate and denote their
reactions in various forums, on plat-
forms and in the Press. Wide publi-
city has been given in all the news
media to these discussions and de-
bates. But still some people who are
averse to any change allege that suffi-
cient time has not been given to the
people to discuss and debate all these
changes in the Constitution and that
is being rushed through. At the same
time, Sir, these very same people
have refused to participate in the dis-
cussions on this subject either with
the Government or in Parliament
when a special session to discuss the
changes in the Constitution has been
called.

Sir, the Constitution is an import-
ant document and has to be respected.
But it is not a legal document nor is
it a religious document to be wor-
shipped. Also, it is not immutable
and there is nothing sacrosanct about
it. A Constitution should reflect the

[Smt. Rathnabai Sreenivasa Rao]

aspirations and the will of the people and as times change certain changes in the Constitution also become necessary. In a developing country, where the people's awareness of their backwardness and their aspirations for progress are fast spreading in every section of the society, changes in the Constitution are inevitable. The framers of our Constitution never thought that it was a rigid and infallible document. Our late revered Prime Minister, Shri Jawaharlal Nehru, said that we should not bind the future generations with a rigid Constitution. Changes in the Constitution are essential in a poor and developing country like ours. But, right from the beginning, when the Government started implementing the social and democratic policies of the Constitution in consonance with the Directive Principles, the vested interests affected by the legislative measures and executive action have run to the courts for protection and have assailed and challenged these legislations and actions taking shelter behind Part III of the Constitution entitled "Fundamental Rights". The courts have at different times struck down or upheld certain State and Central laws according to their own interpretation. All these have created a great deal of confusion on account of different interpretations in the various High Courts. Hence clauses 23, 24 and 25 of the present Bill have become absolutely necessary to maintain uniformity of interpretation and the Central laws have rightly been taken out of the jurisdiction of the High Courts and have been vested only in the Supreme Court. Indeed, the very power of Parliament to amend the Constitution has been questioned time and again. The Supreme Court, delivering the judgment in the Kesavananda Bharati case, upheld the Twenty-fourth Amendment and overruled the Golaknath case judgment and it reserved the power to invalidate a Constitutional amendment if it affected the basic structure of the Constitution without specifying

what the basic structure was. This created an air of uncertainty regarding the Constitutional amendments and every legislation which could be struck down if the courts think that they affect the elusive basic structure of the Constitution. There is no mention of basic structure or any synonym for it in the Constitution itself. It is an imaginary concept which has no substance and does not exist. With due deference to the judiciary, I think it is time that the judiciary realised that the jurisdiction of the courts is to interpret the laws, but not to make them and accepted the sovereignty of Parliament to make or change laws.

Article 368 of the Constitution is explicit and has not restricted the powers of Parliament to make any amendment by any proviso even in the original document. Clause 55 of the amending Bill makes it further abundantly clear that no amendment made under article 368 can be challenged in any court on any ground. One of our great judges, Shri P. B. Mukherjee, warned that "a Constitution that cannot be constitutionally amended is an invitation to revolution".

Sir, clause 4 of the Bill seeks to save all laws giving effect to the Directive Principles of State Policy from attack on the ground of infringement of the Fundamental Rights enumerated in Part III of the Constitution. I welcome this as a very important step which gives precedence to the Directive Principles over the Fundamental Rights, to serve the larger interests of the society, especially the weaker sections as against the individual rights.

While I welcome clause 11, which inserts a new Part IV-A in the Constitution, enumerating the Fundamental Duties of every citizen of India. I would like to suggest that another duty should be included in the list and that is, it should be the duty of every citizen to maintain cleanliness and hygienic and sanitary conditions in the environment and no citizen

should indulge in insanitary or unhygienic habits and practice which make the environment unhygienic and injurious to public health. It is a very common habit of people in our country to spit anywhere on the streets or throw waste and garbage in public places. These and other unhygienic practices should be avoided. They also make our roads, villages, towns and cities ugly and dirty.

The Fundamental Duties of every citizen as enumerated in Part IVA should be inculcated in the people from their earliest age by parents and in schools. Text books in schools should contain a lesson on the Fundamental Duties of every citizen.

In the same Part—clause 51A, sub-clause (e)—mention is made to do away with practices derogatory to the dignity of women. Women have been given equal status with men in the Directive Principles. But as long as women continue to be economically dependent on men, these changes will be inoperative. To elevate the status of women, legislation should be enacted to give daughters the same property inheritance rights as sons. The sons and daughters should be co-parceners in the ancestral properties along with the father. This will to a great extent minimise the evils of the dowry system which is most derogatory to the dignity of women. It will also curb the tendency of people in indulging in wasteful and ostentatious weddings.

Sir, I am glad that Education has been included in the Concurrent List. This will pave the way to the uniformity of the pattern and standard in the educational system throughout the country which is sadly lacking at present. In order to promote uniformity in the educational system I strongly advocate that through the medium of instruction at the lower levels, the educational system should be the regional languages, especially in the rural areas, to spread literacy

and education fast. For the high school, the students should have the choice in the matter of medium of instruction, the alternatives being the regional language, Hindi or English. Each class in every school should have at least one section in which the medium of instruction is Hindi in the non-Hindi speaking areas to promote integration and unity of the nation and one section in which the medium of instruction is English. English, being an international link language, should have due importance in our educational system.

In conclusion, I am convinced that the proposed amendments to the Constitution are essential if we are to achieve our goal of peaceful and rapid acceleration of growth and progress, removal of poverty and building up an egalitarian society.

I congratulate the Law Minister for presenting before the House such a vital Bill at this juncture in the history of our nation, when it is absolutely necessary to remove certain hurdles in the path of our development.

SHRIMATI PRATIBHA SINGH (Bihar): Sir, while supporting the 44th Amendment of the Constitution, I congratulate, through you, our Prime Minister and the Government for bringing this amendment. There is no doubt that in the last few months, the whole thing has been discussed and debated through different forums throughout the country. Sir, a very honourable Member and a legal brain of eminence has said that perhaps we have not been going to the rural areas and that if we go to the rural areas, perhaps the people there have different feelings. Sir, in this connection, I just want to say one word. When I went back from Parliament last evening, a very ordinary man, who is not at all educated and who does not know how to sign even, came and asked me this question, 'Please tell us that you have now made Parliament supreme and the courts have

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been given a little different status than what they had so far. We have heard that the Lok Sabha has passed some Bill of this type and your House is also going to pass it'. I asked him as to how he came to know about this. I said that as that was a very technical subject. How did he understand it? He told me that there was some talk in the market. People were saying that something is going on which will benefit the man in the street or the man in the rural areas. In the market, some vegetablewallahs and some other people too were saying that Parliament is doing something very big. It is taking a great leap forward. I do not agree with the hon. Member who spoke in the morning that the Congress Party is doing something without taking into consideration the views of the people in general. Through the different forums, press, colleges and other forums the whole thing has been discussed and debated for the last so many months.

The simple question for a non-legal person like me is to decide whether the Constitution is a living force which has to be amended and adjusted with the growing aspirations, consciousness and needs of its people. For that matter, in every country, from time to time, amendments have been suggested and brought about. Sir, as the time is limited, I do not want to give quotations because it has already been done in both the Houses. As I said, Constitution is not only a legal document, it is a social and a political document also. In fact, it is an effective document to carry out changes. It has been argued that those who sat in the original Constituent Assembly, were luminaries of Indian legal brain. People like Dr. Ambedkar, Shri K. M. Munshi and so many others were there. After long debate and discussion, each and every word and its legal implications were considered. Sir, we agree that to-day we may not have those luminaries, but the important question is whether the circumstances which

prevailed those days have changed or not. That is the simple question and the crux of the problem. After 27 years, are the circumstances still the same as they were that day or whether there is any change in circumstances so far as the lives of the people are concerned? Is there a new awakening in the millions of our people who still live with their bare minimum needs, which too are not satisfied? Is there a new yearning in the younger generation for a new type of education which may give them employment and also satisfy their thirst for scientific knowledge to explore and go into the new horizons of knowledge of space, to go to moon and mars. So, Sir, the question is: Could we satisfy these aspirations with the existing laws of the land now present in the Constitution? If not, we have to come forward with the amendments based on the experience of the last 27 years. A simple thing like education was mentioned as State subject in the Constitution. Since it was a State subject, we could not give more impetus to scientific education and research work and we could not establish big research centres and national libraries. The need of to-day's younger generation is that education should be brought into the Concurrent List so that there is a unified pattern of education, so that there is more scope for research work, so that there is more scope for establishing new types of universities and bringing forward amendments in the pattern of education in which only examination system will not be there but where the child will get a chance to develop his potentialities which are latent and inherent in him. Today's child is much different from the child of 27 years back.

Sir, we have seen that after passing certain laws, when they went to the courts, due to certain lacunae, they were declared *ultra vires*. This happened in the beginning, after independence, when the Zamindari was abolished—it was abolished because the Congress had taken those resolu-

tions before independence. This happened when the Privy Purses were abolished, when the bank nationalisation took place. This happened in the land ceiling cases and so many others. A country with a growing big population and limited resources had no alternative but to go for amending the Constitution. If we go through the judicial history, we will see that after a law is interpreted, we know the loopholes and lacunae and then we think of removing them. This experience showed that Fundamental Rights as they existed had to be remodelled and adjusted to benefit larger numbers. This could be done only if the fundamental guidelines were given by the Directive Principles. So far, the Directive Principles were not capable of being made directive by the law. In order to remove this difficulty, articles 14, 19 and 31 are now made subordinate to Directive Principles. One example would be sufficient to clear the matter. One has a right to hold the property but not in an unlimited manner. And secondly, property which is for the greater good of the larger number of people cannot be held by individuals. Similarly, one has a right of speech and writing everything but within a framework. To give a simple example, the road is free for all but that does not mean that while the pedestrians are going, one can bring and leave a wild bull to create confusion and hurt the people walking on the road. The air is free but this does not mean that you leave gas which hampers the health of the neighbours. Similarly, the Fundamental Rights are important. But of whose? Not of the few but of the larger numbers, those who so far had not enjoyed the benefits of these Rights though from the very beginning we had indicated about these in the Directive Principles.

Sir, another very debatable question is whether we have touched the dignity of the judiciary. Here too as a lay person my feelings are that the judiciary had a special purpose, to interpret the law. This duty of the

judiciary has not been touched. Only specific matters with a specific purpose of giving social justice to those who were denied so far social justice, who were neglected so far, have been taken out of the jurisdiction of the courts for speedy implementation of the programmes. A simple example is land ceiling programme. The experience in most of the States is that there are long delays. In order to remove these delays, the courts have to be kept out of the validity of the Constitution amendments or their constitutionality or otherwise. Article 368 is being amended for this purpose. The question is, Sir, we have to see that there is a forum which is more supreme, and that is the forum where the representatives of the people sit and that is Parliament. In order to give legitimate remedy, the composition of Tribunals has been provided.

Sir, as the time is also limited, I would like to congratulate the Government for introducing a clear conception of Duties along with Rights. This reflects the innate tendency of the Indian culture, specially when we have emphasised in clause 51A(e): "to renounce practices derogatory to the dignity of women." For the first time, we have made reference specifically about the dignity and honour of women. And we hope and expect that women's rights and honour in every field would be more and more protected, defined and respected, whether it is in the case of inheritance rights or in the field of industry or labour or education or providing legal aid when and where they require in their day-to-day life.

Sir, Franklin D. Roosevelt said: "You will find no justification in any of the language of the Constitution 'for delay in the reforms which the mass of the American people demand'. Constitution is a sacred paper but it is not an end in itself; it is an instrument for bringing in the welfare of the people."

So, Sir, the Constitution is sacred, not because it is untouchable, but be-

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cause at any given moment, it is an expression of the will of the people.

The Constitution is sacred because it upholds firmly the achieved measure of the progress of the people but it does not immobilise it. In fact this very sacredness of the Constitution would be violated and insulted if it is forbidden to reflect continually the continuing progress of the people for whose subservience it has been created. Thank you.

PROF. RASHEEDUDDIN KHAN (Nominated): Mr. Vice-Chairman, Sir, the 44th Constitution Amendment Bill is a momentous document on which the Parliament of India is called upon to give its judgment. Momentous changes, Sir, are taking place in India and indeed in the entire world as part of the completion of the decolonisation process. Many opinions have been expressed by persons belonging to different views and thoughts and ideological streams, both inside Parliament and outside. Indeed nothing has evoked as tremendous a sense of involvement in the activities of the Parliament of India as the 44th Constitution Amendment Bill has, and it is very obvious why it has done so.

[Mr. Deputy Chairman in the Chair]

We are at the threshold of completing a major task of amendment of the Constitution by amending about 56 items, involving inclusion of certain new parts, deletion of some clauses and insertion of some others. The assumption that the Constitution amendment is a preserve of the lawyers and jurists is an unfounded assumption because it impinges on the life and tenor of the entire citizens of the Republic. Therefore, Sir, it is not a mere legal document but it is also the assertion of the national will as perceived by the ruling elite of the time. It is a live document which shapes a large part of life in the contemporary times.

With the State initiative and the sphere of State activity having become very large indeed every amend-

ment of the Constitution has a vital relevance for restructuring or changing the entire social ethos. Five major objections have been raised against the amendment Bill which have to be kept in mind while answering comments on the different provisions of the Bill. Certain oppositions are of a technical nature and others of a substantive nature. The five major objections that have been raised by those who particularly oppose the Bill at this time are, (1) that Parliament does not possess the type of constituent authority which it is arrogating to itself, (2) that the legitimacy of the present Parliament is in doubt because it has extended its life by its own enactment, (3) where is the necessity for the amendment, (4) that abridgement of Fundamental Rights is involved in the amendment Bill and lastly (5) that encroachment on the judiciary is there. These are objections of a highly technical nature motivated by ideological perceptions and how one looks at the entire development. Needless for me to say here that several Members in this House and the other have attempted to address themselves to these objections. I have neither the time nor the House will allow me to speak for such a length of time and therefore I say that every Constitution is an act of the will of the ruling elite. No Constitution is a final document. No Constitution has ever been endorsed by a majority of the people. Indeed, all revolutions are minority affairs and all constitutional amendments are minority affairs. The point is not, who brings it; the point is, what has been brought? Therefore, the entire focus should be, what is the impact of the amendment? The main impact of the amendment can be perceived in six areas. The first area is of certain verbal changes in the Preamble, the inclusion of the terms 'Secular' and 'Socialist'. Those who object to the words 'Secular' and 'Socialist' in the Preamble, almost assume as if by the inclusion of these words, demagoguery is getting in-built; as if by the inclusion of democracy, full democracy was exercised. These are the ideals, hopes

and aspirations and with the inclusion of the term 'Socialist' and 'Secular' we are making it very clear that in the Governance of India and the striving for better days, we shall work according to certain lines. Indeed, the word 'socialism' is an approbation by otherwise well-known liberal democracy of a term which needs further definition and much more than definition, putting it in content. The Government and the ruling party obviously, by the inclusion of the word 'Socialist' in the Preamble, have taken upon themselves a heavy responsibility.

A word of caution has to be added here that we have to be judged, in future, according to the principles which we enshrined in the Preamble and by the inclusion of the term 'Socialist' and 'Secular' in the Preamble which is further reflected in the proposed amendments, including the insertion of Part IVA—Fundamental Duties, it becomes incumbent now that we have to put our house in order.

Amendment of article 31C is important because it attempts to make Fundamental Rights subordinate to the spirit of Part IV—Directive Principles of State Policy. This is a novelty in as much as the non-justiciable part of the Constitution is emphasised as more important than the justiciable part of the Constitution. We do hope that the spirit in which the amendment is proposed will be fulfilled subsequently.

Sir, article 368 is another important attempt of the amending Bill to emphasise the fact that Parliament of India has the unbridled right of amendment and making of laws. A controversy has been generated because India is a federal polity working in a parliamentary system. In a parliamentary system, Parliament is supreme. In a federal polity, Parliament is part of the different organs

which articulate the Constitution. But this is a fact that whether we are quasi federal or authentically federal or even non-federal—because certain people hold that we are a Union, not a federation and, therefore, the definition should be subtly clear—the will of the people is reflected more in Parliament than in any other organ of power and if it is so, it ought to be the right of Parliament periodically elected to reflect the will of the people. The principle of checks and balances which has been out of all proportions emphasised, is not really the part of our debate because the principles of checks and balances are the principles incorporated in a Constitution which was building a different sort of society in the United States of America. The liberal democracy in India has been working not towards stabilisation of a capitalist economy but towards putting some social content into the 'have-nots'. Therefore, if checks and balances mean that the checks and balances work in the interest of the 'haves' class against the interest of the 'have-nots' class, then those are not valid. Niceties of institutional principles are not to overrule the major premises of development. Therefore, as I mentioned in the beginning, we should address ourselves to know what are the major challenges facing us. The major challenge is the completion of the unfinished revolution. The major challenge facing is the completion of the decolonisation process. The major challenge and the major problem facing us is the removal of poverty, removal of ignorance, eradication of diseases and so on. We have become prisoners of Western models either in regard to the development of the polity or of the Constitution. There is need to extricate ourselves from this attempt to emulate, in complete form, the principles of the liberal democracies as had developed in England or in America. I would like to put in a word of caution here. The word of caution which I would like to put in is that, after the passing of this Bill, the ruling party arrogates to itself the basic responsibility of going

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ahead with the principles and the ideals which have been enshrined in the Constitution. This is an important thing because not only the Congress Party, but other parties and sections, which are supporting the Bill, have also to go ahead with the task of completion of the socio-economic revolution which is long overdue.

Secondly, the tendency to attack lock, stock and barrel, the judiciary, I think, is unfortunate. The judiciary, at different levels, has served certain purposes and it is also an important instrument, within our framework. We ought to restrain ourselves from condemning the judiciary outright. There are patriotic judges and magistrates just as there are patriotic and genuine Members of Parliament. The attempt to perceive this Bill as if it is conditioned between the rights of Parliament and the obligations of the judiciary is unfortunate. I would caution you here. I believe there are areas within which the judiciary has to work just as there are areas within which Parliament has to work. I am still unconvinced whether, in a federal polity, we can speak of Parliament as sovereign. Members in this House and others outside have been speaking as if Parliament alone is sovereign. What is sovereign is the Constitution as amended and as adopted by Parliament. Parliament makes the Constitution. After the Constitution is made, it becomes sovereign. This has to be kept in mind. Sometimes, I fear that we are encroaching into the field of the judiciary. I would like to caution that Parliament should not encroach into areas which are not strictly within the purview of Parliament. Political sovereign is the people. Legal sovereign is the Constitution. All these organs should work in harmony with each other.

Lastly, I would say that there is a tendency to speak of the executive as if it is there only at the Centre. The executive covers a large area. It includes administration and so on and

there have been executive excesses also. Let us also not believe that everything which the executive does, even with the approval of Parliament, is right. There is need for caution here because sometimes, an euphoria is built up—we are already building it up—that the main enemy is the judiciary and the main heroes are the Members of Parliament super-imposed by the executive. I would say that we should take a balanced view. In this hour, when we are making momentous changes, let us remember that Parliament must also exercise restraint. Let us also remember that ultimately, neither Parliament nor the judiciary nor the executive has the exclusive right. We have to mobilise the people. Mobilisation of the people is an important thing. Changes are brought about not by the Acts of Parliament. Changes are brought about by mobilising the people. This is a task which is outside the purview of the Constitution, but inside the purview of our political system of which the Constitution is an integral part. Therefore, let us address ourselves, not to the Constitution, but to the system we are building up. The system which we are building up requires the harmonious balancing between the different organs. We should also remember the fact that the task has not ended by passing this Bill. The task has only begun. We will be judged by the fact how far we fulfil the hopes which we have raised among the people. We have raised many hopes. After a couple of years, the people will not be satisfied. Despite the passing of this Bill, we have not still unleashed the forces of change which alone will bring substance and content to the words 'Sovereign Socialist Secular Democratic Republic'.

PROF. N. M. KAMBLE (Maharashtra): Mr. Deputy Chairman, Sir, I whole-heartedly support this Forty-fourth Constitution Amendment Bill. I feel only fortunate to participate in this important and momentous debate. Sir, the main aim of this amending Bill is to remove difficulties which

have arisen in achieving socio-economic transformation which would end poverty and ignorance and disease and inequality of opportunity. Now when we talk of equality of opportunity, even in our Preamble this has been made clear that the equality of opportunity must be given to all and the words there are: Social, Economic and Political Justice. For whom is this justice meant? Social justice should be for those who are socially oppressed for centuries together, economic justice for those who have been economically exploited for ages together and similarly political justice should be for those who have been politically subjugated for days, years and centuries. If this is the aim and if there are difficulties coming in our way for achieving this aim, then we must examine whether the present Constitution amending Bill fulfils the desires and aspirations of these people. If there were difficulties in achieving these things, we must see also as to who created those difficulties and whether these clauses of the Bill would be enough to achieve this objective. Sir, according to my humble opinion, I do not see that these amendments would be enough. I wish a more comprehensive Bill had come in this particular direction. As the hon. Minister for Law said in that House, this was the first step and step by step we are going ahead. I am very happy that this first instalment would remove all the difficulties which we were facing for the last 25 years and thereafter there would be a second instalment which would come out of the experience which we have gained during the last 25 years.

Now, the first question is: Who created these difficulties? In my opinion—of course, it is a very humble opinion—for the last 25 years we have been watching the performance of all the three major arms, that is, the judiciary, the executive and also the legislature. Now, we have seen that as and when an attempt is made to remove these difficulties, some section of the people started raising doubts and objections. Some

said that we could not touch this Constitution, we could not amend it. The Constitution is a sacrosanct document. Well, this objection and such sorts of debates are not new. They started as early as the 19th century. Jefferson and Hamilton were the stalwarts. It was Jefferson, the father of the American Constitution, who stated in clear-cut terms:—

“Some men look at Constitutions with sanctimonious reverence and think them like Ark of the Covenant too sacred to be touched.”

Jefferson, however, thought that the Constitution was not above amendment, not even the Preamble, not even the Fundamental Rights. Not only that, Sir. He had very jocularly put it:—

“What was good enough for my grandfather—the suit—cannot be good enough for me because it might not fit me at all. How can I have the suit of my grandfather perfectly fitting me?”

That was his saying. Even the Founding Fathers of our Constitution like Dr. Ambedkar and Pandit Jawaharlal Nehru have said it in so many words that they never wanted the future generations to be bound down. And that is why part of the Constitution contains one and only one article and that article is article 368 which gives full power to Parliament to amend the Constitution and which is now being amended furthermore to clarify or to make it more clear what is implicit. Now this Bill has added sub-clause 4 to the present article 368. Not only that. Another one is added by the Lok Sabha, that is, sub-clause (5). Though article 368 admits the supreme authority of Parliament, unfortunately the Judiciary played havoc. I am sorry to say that. With all the respect at my command for the Judiciary I must say that they did play havoc. They created doubts and confusion in the minds of the common man. I do not know and I do not want to go into

[Prof. N. M. Kamble]

the details of the various cases and judgments that were delivered. As a matter of fact, Sir, these cases and these judgments are now so popular that the common man, while he may forget the great *tapasvi*, Macaheendra Goraknath, cannot forget Goliaknath. The common man may forget great thinkers like Vivekananda and Dayananda Saraswati but not Kesavananda Bharati. What are these names to the common man?

The twenty-fourth and the twenty-fifth Constitution amendments are there, but even that could not solve the problem. And now a new concept, rather an invention as our beloved Prime Minister has put it, is developed. "Basic features of the Constitution! Essential features of the Constitution! Basic structure of the Constitution!" "There are the new concepts that are now being introduced. These words are found nowhere in our Constitution nor have they been defined by any of the Judges in any of their judgments. And I must say with all respect to the Judiciary, that this new invention is nothing but a pernicious fabrication of misguided imagination.

Sir, in my humble opinion, article 368 is a very important article. Whenever Parliament acted under article 368, it acted as a Constituent Assembly and, for all practical purposes, had, in substance, the character and authority of the original Constituent Assembly. Of course I do not want to go into details by saying that the former Constituent Assembly was not elected by adult franchise but the present one is elected so, so on and so forth. But article 368 makes it very clear and gives supreme authority to Parliament. And, after the present Bill is actually passed, I feel the right of Parliament would be asserted once and for all. This article does give absolute authority to Parliament—as rightly put by our beloved Prime Minister, the right of Parliament which is unfettered, unqualified and unabridgeable. The

Constituent power of Parliament has now finally been asserted by this Bill (*Time bell rings*). Sir, if you do not mind, I will take two minutes more.

MR. DEPUTY CHAIRMAN: One minute.

PROF. N. M. KAMBLE: Sir, our Judges should act as jurists and not as legislators. This has been said by everybody. They must not try to smuggle the power of Parliament to themselves and act as the third House of the Legislature. They should do justice under the Constitution and not over the Constitution. The Constitution is what the Constitution says and not what the Judges say. Therefore, my only request to those who are adorning these high Benches and Chairs is that they should move and march along with the demands of the time. Now, Sir, I would again come to the question whether this particular Bill fully depicts the urges of the people and the demands of the time. What I feel is that it meets much less than what the present India wants, what the have-nots of this country want. We have brought this Bill after nearly 25 years of experience. I hope that the fight which was there as to whether the Fundamental Rights or the Directive Principles are supreme, has been settled once and for all by insertion of article 31C in the present Bill and the Fundamental Rights, which are, as a matter of fact, the rights of individuals, have been given a second place and the Directive Principles have found a better placement, I may say, in the Constitution.

(*Time bell rings*).

Sir, I need only half a minute to cover the last point. If I do not touch that question, I will be failing in my duty. Sir, we have introduced in the Preamble 'secularism' and 'socialism'. Of course, we are marching in that direction. We have had the experience of the last 25 years. The word 'secular' should be there, and it is there. But I feel that that would not solve the problem. Our country is a caste-ridden country, if I may

be permitted to say so. I would have been very happy if the words 'a casteless society' would have been added in the Preamble.

SHRI N. H. KUMBHARE: Move the amendment.

MR. DEPUTY CHAIRMAN: I think you wind up now. You have taken not two but three minutes.

PROF. N. M. KAMBLE: Socialism means classless, but casteless should be there.

MR. DEPUTY CHAIRMAN: I call the next speaker.

PROF. N. M. KAMBLE: Sir, with these words, I support the Bill and urge upon the honourable Law Minister that after this he should bring the second instalment of amendments which will definitely fulfil the urges and aspirations of the people.

SHRI G. LAKSHMANAN: After 25 years.

PROF. N. M. KAMBLE: Why after 25 years? Immediately it can be done. The hurdles are being removed. Everything will be clean and clear.

6 P.M.

SHRI ZAWAR HUSAIN (Bihar): Mr. Deputy Chairman, Sir, at the outset, I must express my thanks to you for giving me an opportunity to participate in this important debate. The nation composed, as it is, mostly of the economically weaker sections of the society expresses its gratefulness to the Prime Minister and her Government for bringing forward the Constitution (Forty-fourth Amendment) Bill for adoption by Parliament.

Sir, since 1947, the poor and exploited Indian people had been awaiting the fulfilment of the national promise made at the Karachi Congress. Immediately after Independence, there were vital problems facing the nation. There was the problem of

the consolidation and emotional integration of the Princely States, the apprehension of further disintegration and the creation of confidence in the minorities. The founding fathers had to keep all these factors in mind at the time of framing the Constitution.

Sir, the sanctity of the Constitution lasts till it serves social needs; it loses its vitality the moment it ceases to respond to popular needs. Human values and human beings need change. The law must respond to changes. And if the law does not respond to changes, it dies in the archives. The weaker sections of the Indian people the Harijans, the Adivasis and the other economically backward classes and the minorities looked on helplessly while the national gains went to the Princes, the big capitalists, the monopoly houses and the monopoly press. Naturally, that section of the society which wanted to preserve its gains and its vested interests is crying hoarse against changes in the Constitution.

The history of constitutional amendments is really the history of the struggle between the brief-holders of property-holders, the monopoly houses and the vested interests on the one side and the champions of the down-trodden, the exploited and the poverty-stricken on the other. The Constitution first amendment came as early as 1951 when the Patna High Court declared the Bihar Land Reforms Act *ultra vires*. The Constitution as amended continued to be interpreted in accordance with the intent of the amendment. However, in 1967, Chief Justice Subba Rao in the Golak Nath case by a narrow majority ruled the Constitution 17th amendment and the other Constitutional amendments *ultra vires* as, according to him, they violated the fundamental rights. The honourable Judges took the surprising and unique position of giving a direction that henceforth, there would be no amendment to the Constitution affecting the fundamental rights by Parliament.

[Prof. N. M. Kamble]

Sir, the struggle for the sovereignty of Parliament was really the outcome of the judgment of the Supreme Court which encroached upon the domain of Parliament, and wanted to assert the supremacy of the Judiciary over the legislative domain.

It is a curious coincidence that Chief Justice Subba Rao soon after resigned to contest for the highest office of the land. It is no secret as to what were the political forces of the Indian society that supported him in that election. Was it another concerted attempt to throttle the progressive aspects of the Constitution from another high pedestal of authority? I congratulate the Law Minister for reasserting the sovereignty of Parliament and for redefining clearly the limits of the three organs of the Constitution. For the last 10 months, there have been discussions, seminars, articles, newspaper comments and conferences in which nearly every section of the nation has taken part fully and freely.

The Delhi "Statesman" of the 28th October in a double-column bold headline has given a news item about a petition signed by Mr. Daphtary and others requesting the Government to postpone consideration of the 44th Amendment Bill on some grounds. Then again Mr. C. N. Vakil and seven others from Bombay have sent a joint letter to the Prime Minister along with a memorandum giving their views on the amendments. The same paper, that is the "Statesman" of the 28th October, has given the views of a women's convention in which Mrs. Madhu Limaye and others have been given their views on the amendments. Before the Parliament session, there were two seminars on the same day, in the same building, Vithalbhai Patel House, where the two seminars aired their independent views. Mr. N. A. Palkhivala has written an article which has been printed by some organisation and circulated amongst the MPs. The Swa-

tantra Party and the Hindu Mahasabha have circulated their resolutions to the MPs.

I am enumerating these only to show that the discussion of the amendments in Parliament has been preceded by a national debate in which a very wide cross-section of the people, including political parties, lawyers, judges, teachers and others have taken full part. Sir, this was the question that was raised both in the "Statesman" and in the "Indian Express", that the national debate should continue. That is why I am giving in detail as to what has been the scope of the debate.

Therefore, the arguments of Mr. Daphtary and others in their petition to the President that such matters of vital importance must not be decided in haste without the widest possible public debate, have no basis or substance. But I must be fair to the signatories of the petition. They have conceded the sovereignty of Parliament when they mention in their petition:

"We, the signatories to this statement, are not opposed to changes, even sweeping changes, being made in the Constitution."

Unfortunately, these legal luminaries threw no light on the merits of the provisions of the Bill. They have tried to use the forum of debate for a political purpose.

Regarding the very welcome steps taken by the amending Bill to contain the judiciary in its limits, I would only like to quote again from the leading article of the "Statesman" under the caption "Mrs. Gandhi's Message". Before quoting that, I would like to say that today the "Statesman" has shown its wrath against the Law Minister regarding his reference to the political philosophy of the judges yesterday. But I will appeal to you

to hear what the "Statesman" itself says about the amendments. It says:

"For instance, it is possible to argue with honesty and justification that had the judiciary not faltered in its interpretation of the amending powers of Parliament saying one thing in one case and just the opposite in another, the need of the 44th amendment would not have been felt."

Further on, it adds:

"Or had the judiciary, from the very beginning, tried a synthesis between the justiciable fundamental rights and the non-justiciable Directive Principles, there would have been no attempt to tilt the balance against the fundamental rights."

This faltering by the judiciary and their failure to strike a synthesis between Directive Principles and Fundamental Rights opened the way for a series of pitfalls for them like the invention of the concept of 'basic structure' and creeping invasion in the exclusive domain of Parliament.

Another propaganda that is being given currency these days is that actually very few of the socio-economic measures have been halted and as such there is no immediate need for such vital changes. I have already stated that the very first amendment was the result of declaration of the Bihar Land Reforms Act as *ultra vires* by the Patna High Court. Since 1967 and the declaration of the Constitution (Seventeenth Amendment) Act as *ultra vires* in the Golak Nath case, there have been regular attempts to declare constitutional amendments passed by Parliament as void. The position is the same as that obtainings in the U.S.A. when the New Deal of President Roosevelt incurred the wrath of the Supreme Court of America. Mr.

Roosevelt threatened to get the famous Packing of the Judges of Supreme Court Bill passed in the US legislature. However, the Judges in the USA saw the writing on the wall and retraced their steps. Unless the position is made clear, the inroads made by the judiciary in the Golak Nath case, Bank Nationalisation case and Keshvanand Bharti case in the domains of the Parliament will create a situation when vested interests will take to delaying tactics by going to courts of law and in the meantime delay destroys the corpus even.

No one can say that with the passing of the amendment Bill, with the inclusion of the words socialist and secular in the Preamble, every problem will have been solved. Have not we seen that despite the inclusion of the words "Sovereign democratic Republic" there were political forces in the country who made attempts to wreck the democratic institutions. We have before us the example of U.P. Assembly after the last general elections where on the very first day veteran leaders in the name of democracy tried to create violent, undemocratic scenes in the Assembly chamber. The forcible dissolution of the Gujarat Assembly and the attempt at gheraos and violence against the members of Bihar Assembly to force their resignations are examples of the respect shown to the Constitution and its democratic content. Let us not be under any illusion that inclusion of the words 'socialist' and 'secular' in the Preamble will usher in an era of peaceful socialist evolution or will see an end of communal incitement. But the inclusion of these words will surely inspire a greater confidence in the youth for striving to build a socialist State and will create the right atmosphere to urge the minorities to play a positive role in the development and progress of the nation.

Let us all think of the future of the youth of India and support the

[Prof. N. M. Kamble]

amendments for building of a socialist and secular State which will usher the dawn of progress, development and economic freedom for all sections of the society.

The darkness is fading away and the morning of peace, progress and happiness is already on the horizon under the leadership of our Prime Minister, Shrimati Indira Gandhi. Let not the future historian write adversely against the persons opposing the amendments in league with the vested interests. The forces of progress will in any way march ahead.

रात भर का है मेझां अंधेरा ।
किसके रोके रुका है सवेरा ॥

With these words, I support the Bill.

SHRI U. K. LAKSHMANA GOWDA (Karnataka): Mr. Deputy Chairman, except for Prof. Rasheeduddin Khan who had a sobre attitude in making his speech, all through since yesterday I have been listening to speeches of the Congress members in which their ire and anger has been mainly directed against the Supreme Court and the fundamental rights which have more or less been regularly become "dirty words." Be that as it may, we have listened to different approaches with regard to this Bill. In accordance with the provisions of Article 368 laid down in the Constitution, I am one who holds the view that Parliament has every right to bring about amendments of the Constitution. If I may say a word to recapitulate past history here, immediately after the Golak Nath case, our friend whom you know very well—late Shri Nath Pai—introduced a Private Member's Bill for restoring the supremacy of the Parliament so far as amendments to the Constitution are concerned. But this was not taken up by the Government for several years until they faced the problem with regard to the legislation for abolition of the privy purses and the bank nation-

alisation. And, Sir, they then came with the Twenty-fourth and the Twenty-fifth Amendment Bills which I wholeheartedly supported them and I do support even now and hold the view, that Parliament has a right to amend the Constitution, as per the procedure laid down in Article 368.

Sir, I am glad that in order to get over the controversy which has arisen from the time of the Golaknath case and also the Kesavananda Bharati case, they have now brought forward amendments which put an end to long controversy over them. So far as this is concerned, I fully support this amendment. But, Sir, when it comes to the question of other amendment, I hold different views. The first objection that I have is in regard to article 31C the scope of which is being extended in order to cover the whole of the Directive Principles. In the past, the last hurdle was in 1971 and, after that amendment, for bringing about socio-economic progress or for bringing forward socio-economic legislation in the country, I do not think that the Fundamental Rights ever came in the way at all and even if they had come, these were made non-justiciable and therefore, I cannot understand why the whole of Chapter IV should get precedence over Chapter III now. After all, the Fundamental Rights are the rights which have been fought for even before the Constitution was framed and it has been the promise of the Congress Party also which actually played a major role in ushering in the Constitution and which was later on joined by the various other political parties.

Sir, so many quotations have been read out here from the speeches of the late Shri Jawaharlal Nehru, Dr. B. R. Ambedkar and others by the other side to support their stand. Please permit me also to give one or two quotations, which support my stand.

As far back as 1927, when the draft of the Swaraj Constitution for India on the basis of the Declaration of

Rights and the Irish model was prepared, a Committee was constituted with Shri Motilal Nehru as its Chairman. Sir, the Committee observed then like this:

"The conditions obtaining in the Irish State approximate to those prevailing in India and the first concern of the people of Ireland as of the people of India is to secure fundamental rights hitherto denied to them. It is obvious that our first effort should be to have fundamental Rights guaranteed in a manner which will not permit the withdrawal of those rights under any circumstances."

Then again, Sir, I would like to quote Dr. B. R. Ambedkar who has been quoted on several occasions here and my friend, Shri Kumbhare, also quoted him. He has said:

"The Declaration of the Rights of Man is a part and parcel of our mental make-up. These principles have become the silent immaculate premise of our outlook."

Then again, Sir, Shri Jawaharlal Nehru has said:

"A fundamental right should be looked upon not from the point of view of any particular difficulty of the moment, but as something that we want to make permanent in the Constitution."

Sir, I am just giving these quotations only to say that the important which was attached to the Fundamental Rights should be appreciated. Now, by giving precedence to the Directive Principles over the Fundamental Rights, we are actually allowing any legislation which will be made under the Directive Principles to override the Fundamental Rights which have been held as sacred so far. I do not mean to say that the Fundamental Right relating to property, which came in the way of implementation of

certain of the Directive Principles, should be given importance. That difficulty has been solved by earlier amendments and now the property rights have been diluted to such an extent that there is no question of anybody enjoying the privilege of unlimited property. This has been taken care of and when that is the case, I am of the view that if any of the other Fundamental Rights came in your way, for bringing socio-economic change they could have been made non-Justiciable, but should there be a blanket precedence of Directive Principles over the Fundamental Rights? And so, I am opposed to this clause.

I would also like to say here that the present amendment to article 31C, which empowers even the State Legislatures to pass laws, which will be barred from judicial review virtually involves a repeal of the Fundamental Rights. Sir, laws enacted under this can supersede a whole series of human freedoms. I wish that this should not have been resorted to.

Then, with regard to Article 31D, I know it has become necessary to control anti-national activities, and I am glad that in the other House the Prime Minister has given explanation of these anti-national activities which are to be brought under this clause. But I am a little apprehensive of the outcome, because I have apprehensions that any legitimate political activity may be brought under this clause or anti-social activities and associations. It might interfere with the Fundamental Rights, right of association freedom of speech and freedom of having trade union or any other organisations. I do hope that the explanations which have been provided will be properly laid down and the present ruling party or any party which may form a government in course of time will not have a hurdle to stifle any legitimate political activity against the Government or for changing the Government. But

[Shri U. K. Lakshmana Gowda]
if the amending clause is actually be restricted to anti-social activities which are to be laid down here, I will be satisfied. I hope, Sir, that this will be accepted in public interest.

Sir, then in the Statement of Objects and Reasons, it is said that these amendments are brought in to complete the socio-economic revolution that has taken place. I for one cannot see how the socio-economic revolution can have any connection with the proposed extension of the term of the Lok Sabha by one year. In most of the democratic countries, the life of the Legislature or Parliament is four or five years, the idea being that in this dynamic and changing world we can keep pace with the changing conditions and Political parties to seek fresh mandate from people. But instead of following such a standard, the term is proposed to be extended by one year. I cannot see what progress this is, and I am opposed to that particular clause which extends the term of Lok Sabha to six years.

Sir, another point I would like to mention is about legislations which are brought in during the emergency. There was a limitation of six months period, which is sought to be extended. I do hope that this extension will not continue term after term" resulting in continuous rule of emergency laws. It will only be a negation of the democratic principles for which we stand and interference with individual liberty.

Sir, I would like to mention here one other point with regard to Fundamental Duties. My learned colleague, Mr. Daphtary brought one point which I thought would be answered by Mr. Borooah when he spoke. But it was not touched. I think the Law Minister will clarify it, in his reply Mr. Daphtary said that in Swaran Singh Committee recommendations on specific penal measures were suggested for enforcing of Fundamen-

tal Duties as special provisions. These are not seen in the amending Bill and the penal provision for enforcement of the Fundamental Duties is left vague. His apprehension as also my apprehension is, that in order to enforce these Duties, the Government or the Executive might resort to the continuance of the Preventive Detention Act and the Maintenance of Internal Security Act which are now prevalent, which are being extensively resorted to during the emergency.... (Time bell rings). So we would like a clarification from the hon. Minister.

One minute, Sir. How are these going to be enforced? Would you like, as some other Members suggested, that emergency should be continued and the Maintenance of Internal Security and Preventive Detention Acts should be there continuously to consolidate the gains of the emergency? On this I am apprehensive, and I would request the hon. Law Minister to clarify the situation. Further I consider this an undemocratic attitude.

One word about the Preamble.

MR. DEPUTY CHAIRMAN: Mr. Lakshmana Gowda, I am very sorry. You have already taken 13 minutes.

SHRI U. K. LAKSHMANA GOWDA: These are my views on the Forty-fourth (Amendment) Bill. As I said earlier, I support the view that the Parliament has the right to amend the Constitution. But I am opposed to the Directive Principles being given precedence over the Fundamental Rights. Also, I do not feel that the extension of Lok Sabha by one year is any progressive measure and I am opposed to that. Thank you, Sir.

श्री कल्याण राय (उत्तर प्रदेश)
आदरणीय उपसभापति महोदय, मैं सर का जवाब प्रस्तुत संविधान संशोधन बिल का समर्थ

करने के लिए खड़ा हुआ हूँ। यह एक ऐसा संशोधन है जिस पर हिन्दुस्तान के सभी लोग जो समाजवाद में निष्ठा रखते हैं और जिन्होंने आजादी की लड़ाई में समाजवादी समाज की रचना की कल्पना की थी, कुछ ऐसे लोग थे जो हिन्दुस्तान की आजादी की लड़ाई लड़ रहे थे और कुछ ऐसे लोग थे जो आजादी की लड़ाई के साथ-साथ हिन्दुस्तान में समाजवाद की स्थापना हो, इसकी भी कल्पना की लड़ाई लड़ रहे थे आज उन सभी समाजवादी लोगों के लिए जो आज कांग्रेस पार्टी के अन्दर है या उसके बाहर हैं जिन्होंने समाजवादी समाज की रचना की लड़ाई लड़ी, आज का दिन एक स्वर्णिम दिन है। यह एक ऐसा दिन है जिसका खैर मकदम हिन्दुस्तान की करोड़ों-करोड़ जनता कर रही है, जिसका खैर मकदम हिन्दुस्तान के सारे किसान, मजदूर और 60 करोड़ लोग कर रहे हैं जिन्होंने कि समाजवादी समाज की रचना का लक्ष्य बनाया था जिसको हमारे नेताओं ने घोषित किया।

आप जानते हैं कि हमारे देश के राष्ट्र-नायक जवाहरलाल जी नेहरू ने अवाडी कांग्रेस में सोशलिस्टिक पैटर्न आफ सोसायटी का नारा दिया था। सन् 1954 से 1976 के बीच में कांग्रेस के अन्दर समाजवादी ताकतों में और गैर-समाजवादी ताकतों में जो संघर्ष चलता रहा जिसके परिणामस्वरूप कांग्रेस पार्टी का विभाजन 1969 में हुआ। आज उसी समाजवादी समाज की रचना के लक्ष्य, जिसको हमारे राष्ट्र के नेता ने घोषित किया उसी लक्ष्य की विजय हुई है। इसके लिए हमारे देश की नेता प्रधान मंत्री को मुबारकबाद देना चाहिए कि इस महान नेता के नेतृत्व में आज राष्ट्र का संकल्प हुआ कि देश के संविधान के प्रियम्बुल में सोशलिस्ट और सेक्यूलरिज्म शब्द जोड़ दिया जाए। आज एशिया और अफ्रीका और दुनिया के राष्ट्र हिन्दुस्तान को डेमोक्रेटिक सोशलिस्ट सेक्यूलर रिपब्लिक के नाम से जानेंगे। जब हिन्दुस्तान

आजाद हुआ तो हिन्दुस्तान के नेताओं ने, साम्यवाद और पूंजीवाद से अलग हटकर एक डेमोक्रेटिक सोशलिज्म के आधार पर एक नई सभ्यता की रचना हम करेंगे, ऐसे संकल्प की घोषणा की थी। साम्यवाद और पूंजीवाद की गुदगुदी गद्दी से हटकर एक तीसरी नई दुनिया का निर्माण करने की कल्पना की थी जिसमें मन की आजादी के साथ-साथ बात की भी आजादी हो और हिन्दुस्तान की आजादी के साथ-साथ एशिया और अफ्रीका के राष्ट्रों में भी आजादी का शंखनाद गूँजेगा और देश में समाजवाद आयेगा।

[The Vice Chairman (Shri Ranbir Singh) in the Chair]

आदरणीय उपसभाध्यक्ष महोदय, सन् 1971 में गरीबी हटाओ के नाम पर चुनाव लड़ा गया था। एक तरफ समाजवादी ताकतें थीं, दूसरी तरफ समाजवाद की दुश्मन ताकतें, ग्रांड अलायेंस बना करके चुनाव के मैदान में आई थीं। 1971 के चुनाव घोषणा पत्र में कांग्रेस पार्टी ने घोषित किया था —

“The nation's progress cannot be halted. The spirit of democracy demands that the Constitution should enable the fulfilment of the needs and urges of the people. Our Constitution has, however, been amended in the interest of the economic development earlier. It will be our endeavour to seek such further constitutional remedies and amendments as are necessary to overcome the impediments in the path of social justice.”

आदरणीय, उपसभाध्यक्ष महोदय, किसी भी पार्टी का चुनाव घोषणा पत्र जनता की अदालत में एक हलफनामा, एफिडेविट हुआ करता है। जब इस देश की जनता से, 60 करोड़ जनता से, मैडेड लेकर इस पार्लियामेंट में कांग्रेस पार्टी ने अपना

[श्री कल्पनाथ राय]

बहुमत बनाया तो मैं समझता हूँ कि किसी भी दुनिया की ताकत को पार्लियामेंट के इस अधिकार को चुनौती देने का कोई अधिकार नहीं है। हमने पार्लियामेंट में आने से पहले चुनाव घोषणा पत्र में संविधान में संशोधन करने का अधिकार जनता से मांगा था। समाजवादी समाज की सूचना का उद्देश्य हमारे राष्ट्र नायक पंडित जवाहरलाल नेहरू ने भी रखा था। उन्होंने अपने पत्र में लिखा था -

"Socialism, I have told you, is of many kinds. There is general agreement, however, that it aims at the control by the State of the means of production, that is, land, mines, factories and the like, and the means of distribution like railways, etc. and also banks and similar institutions."

पंडित जवाहर लाल जी ने कांग्रेस अध्यक्ष की हैसियत से कहा था—

"The idea is that individuals should not be allowed to exploit any of these methods or institutions or the labour of others to their personal advantage. Today, most of these things are privately owned and exploited with the result that a few prosper and grow rich while society as a whole suffers greatly and the masses remain poor."

जवाहरलाल जी ने कांग्रेस अध्यक्ष की हैसियत से लखनऊ अधिवेशन में कहा था—

"I am convinced that the only key to the solution of the world's problems, and of India's problems, lies in socialism. When I use the word 'socialism', I do so not in a vague, humanitarian way, but in a scientific, economic sense. Socialism is, however, something more than an economic doctrine. It is a philosophy of life and as such also it appeals to me.... This means the ending of private property except

in a restricted sense, and the replacement of the present profit system by a higher ideal of co-operative service."

हमारी समाजवादी व्यवस्था क्या होगी, किस प्रकार से हमारी समाजवादी व्यवस्था होगी इसकी रूपरेखा हमारे राष्ट्राध्यक्ष जवाहरलाल जी ने बनाई थी। प्रादरणीय उपसभापति महोदय, आज मौलिक अधिकारों की बात की जाती है लेकिन अगर देश में समाजवाद की स्थापना करनी है तो मौलिक अधिकारों में सी०आई०ए० और आर०एस०एस० की एकटीविटीज को इजाजत नहीं दी जा सकती। फ्रीडम आफ प्रोपर्टी के नाम पर देश की करोड़ों जनता को लूटने के लिये मोनोपली हाउस बनाने का अधिकार नहीं दिया जा सकता। राइट टू प्रोपर्टी के नाम पर ब्लैक मार्किटिंग, होर्डिंग, स्मर्गलिंग की इजाजत अब देश की सरकार नहीं देने जा रही है। फंडामेंटल राइट्स के नाम पर हिन्दू मुस्लिम दंगे कराने की इजाजत आर०एस०एस० और मल्टी नेशनल कारपोरेशन के जरिये सी०आई०ए० के एजेंटों को नहीं दी जा सकती। देश की एकता को मजबूत बनाने के लिये आज आवश्यक है कि मौलिक अधिकारों की अपेक्षा राज्य नीति निर्देशक तत्वों को आगे बढ़ाया जाये। फ्रीडम शासन के नाम पर तिरंगा झंडा जलाने, गीता जलाने और रामायण को कुचलने की इजाजत नहीं दी जा सकती। राष्ट्र की एकता को अक्षुण्ण रखने के लिये राष्ट्रीय इंटिग्रिटी को, राष्ट्रीय एकता को मजबूत करने के लिये, राष्ट्रीय स्टेबिलिटी को मजबूत करने के लिये जनतंत्र और समाजवाद की रक्षा करने के लिये हमें यह करना होगा।

संविधान के अंदर 3-4 बातें लिख गई हैं। संविधान में मौलिक अधिकारों की जगह राज्य नीति निर्देशक तत्वों को अधिकार दिया जायेगा। आज हमने समाजवाद की घोषणा की है। कांग्रेस के अंदर देश के सम्मुख

प्रतिक्रियावादी ताकतों और समाजवादी ताकतों में संघर्ष हुआ। जिस दिन मोनोपली हाउसेम राष्ट्रीयकरण की बात करेंगे उस दिन आप को मलूम होगा और फिर कोस। क बार टूटेगी। आज देश की प्रधान मंत्री इंदिरा गांधी को हिन्दुस्तान की करोड़ों करोड़ मेहनतकश जनता, देश की भूखी नंगी जनता से मुबारकबाद है कि उन्होंने राष्ट्रीय एकता का लक्ष्य घोषित किया है। प्रधान मंत्री जी ने समाजवाद की स्थापना की है। मैं पूछना चाहता हूँ कृष्ण कांत जी से कि दुनिया के किसी समाजवादी हुकूमत में न्यायपालिका को स्वतंत्रता का अधिकार दिया गया है? जहाँ समाजवाद होगा वहाँ न्यायपालिका को समाजवाद के अंदर होना होगा। हिन्दुस्तान में कानून बनाना होगा। लेकिन जिस दिन आप दुनिया के अंदर समाजवाद की स्थापना करना चाहेंगे उसी दिन आपको न्यायपालिका को समाजवाद और कार्यपालिका के अन्तर्गत लाना होगा और केन्द्र की ताकत को मजबूत बनाना होगा। आप जानते हैं कि करोड़ों लोगों की गईन समाजवाद की स्थापना के लिये हमें कटी है और इसी तरह से करोड़ों लोगों की गईन समाजवाद की स्थापना के लिये चीन में कटी है। लेकिन हमने गांधी जी के रास्ते पर चलकर शांतिपूर्ण तरीकों को अपना कर भारत में समाजवादी समाज की स्थापना का लक्ष्य घोषित किया है। हमने न्यायपालिका और पार्लियामेंट की सुपरमेसी के बारे में एक बार नहीं अनेक बार कहा है। लाखों बार इस बारे में विचार व्यक्त किये गये हैं। बल्कि साहब ने कहा कि हम सुप्रीम कोर्ट को प्रोटोमी दे सकते हैं, लेकिन सावर्नटी पार्लियामेंट को ही दी जा सकती है। पार्लियामेंट सुप्रीम है, इस बात को हमने बार-बार साफ कहा है।

आदरणीय उपसभाध्यक्ष महोदय, अब हमारे संविधान में लीगल एड देने का प्रावधान किया जा रहा है। इसके अलावा हमारे देश में कारखानों में काम

करने वाले मजदूरों को कारखाने में हिस्सेदार बनाया जाएगा। मैं समझता हूँ कि ये कुछ ऐसे प्रावधान हैं जो हमारे देश के मजदूरों के लिये एक बड़ी चीज है। कम्यूनिस्ट पार्टी कहती है कि पब्लिक सेक्टर में कारखाने चलाये जाने चाहिये। आप जानते हैं कि दुर्गापुर में हमने एक कारखाना चलाया तो 100 पी० एम० वाले वहाँ पर तोड़फोड़ करने में लग गये। उन्होंने दुर्गापुर में इस कारखाने को चलने नहीं दिया। इसलिये कम्यूनिस्टों की साजिश को नाकाम करने के लिये हम मजदूरों को पब्लिक सेक्टर के कारखानों में हिस्सेदार बनाना चाहते हैं ताकि वे लोग उन कारखानों को चलायें और हमारे देश में समाजवाद की स्थापना करें। इस तरह से हिन्दुस्तान में समाजवाद समाज की रचना की दिशा में कदम उठाया गया है और मजदूरों को कारखानों में हिस्सेदार बनाने की बात कही गई है। मैं समझता हूँ कि यह एक बहुत बड़ा कदम है। केन्द्रीय सरकार को विशेष परिस्थितियों में पुलिस और मिलिट्री भेजने की जो पावर दी गई है उससे हिन्दुस्तान की जनता के अधिकारों की रक्षा हो सकेगी और उनको प्रक्षुब्ध बनाया जा सकेगा। आप जानते हैं कि सन् 1967 में पश्चिमी बंगाल में जब ज्योति बसु के नेतृत्व में सरकार बनी थी तो उन्होंने वहाँ पर मार्काट और खून करने का नंगा नाच किया था। उस समय प्रधान मंत्री को वहाँ पर रिजर्व पुलिस भेजने का अधिकार नहीं था। इसलिये मैं समझता हूँ कि विशेष परिस्थितियों में राज्यों में केन्द्र को पुलिस और मिलिट्री भेजने का जो अधिकार दिया जा रहा है, वह बहुत महत्वपूर्ण है। इससे हमारे देश में समाजवादी समाज बनाने और एकता कायम करने में बहुत बड़ी मदद मिलेगी। धन्यवाद।

SHRI LEONARD SOLOMAN SARING (Sikkim): Sir, being a Member of this august House from the youngest State of the country, I take the privilege to welcome and hail the Constitution (Forty-fourth Amendment)

[Shri Leonard Solomon Saring]

Bill, 1976. It proclaims the Parliament supreme vesting it with appropriate powers to amend the Constitution because no Constitution worth the name can remain static for ever. Further, the amendment appropriately proclaims India as a Sovereign, Socialist, Secular, Democratic Republic. One of the amendments has incorporated the fundamental duties of the citizens of India in the Constitution which would prove a unifying force for the good of the country. Directive principles shall be judiciously implemented through wise legislation which, however, shall not affect the special safeguards or rights conferred on the minorities or the Scheduled Castes, the Scheduled Tribes and other backward classes under the Constitution.

The burden of the busy High Courts has been lightened and no more would they be saddled with the cases of constitutional validity of any Central law, rule, regulation or bye-law. On this occasion I would like to hail also the amendment which places 'Education' in the Concurrent List.

Let us hope that by the 44th Amendment we may consolidate the gains of emergency and further progress the prosperity of the country, unifying us in our purpose and strengthen the integrity so as to emerge as a contributing factor in the peace of the world, under the dynamic leadership of our beloved Prime Minister, Shrimati Indira Gandhi.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Shri Nathi Singh. Not here. Shri B. C. Mahanti.

SHRI BHAIKAB CHANDRA MAHANTI (Orissa): Mr. Vice-Chairman, Sir, the nation will ever remain grateful to the Prime Minister and to the hon. Law Minister Mr. Gokhale for bringing in this great piece of legislation before this House. The nation will also remain grateful to the Congress President Shri Barooah for appointing the Swaran Singh Committee and to Shri Swaran Singh and

the members of his Committee for submitting the report which is the base of the edifice we are about to erect.

Sir, I am neither a Constitution expert nor a lawyer. So whatever little I will be saying, will be from a common man, from a layman's approach. I need not say anything about the controversy as to whether the Parliament is supreme or the judiciary is supreme because on that, the Prime Minister's smashing reply to everybody should silence every body. Now, in trying to strengthen their argument, some Members, particularly from the opposition here and also in the Lok Sabha have cited the Australian Constitution and the Canadian Constitution. Now, the Constitution and democracies are not things to be moulded in the same mould. It is not like the Algebraic formula, $(a+b)^2$ is equal to a^2+b^2+2ab . Constitution is a document, not only a political document but also it reflects, in a way, the economic aspirations of the country. Sir, if in the years 1947 to 1949 our leaders Pandit Jawaharlal Nehru Sardar Patel, Dr. Rajendra Prasad, Maulana Azad and all of them had thought of taking lessons from the Canadian or the Australian Constitutions, then would today have been in that position where Australia or Canada is, and not a sovereign independent country as we are today. Not only that, Sir, The Constitution of a country also takes into consideration the population, the economic factors and so many other factors. Indian problems and the Canadian problems are not the same; they are absolutely different. How long will it take for us to learn to take pride in our own judgments, in our own wisdom and in our own actions? The other day I came across a report in the newspaper in which a British Statesman is reported to have said: "United Kingdom needs a leader like Indira Gandhi". I can well visualise the day not in very distant future when many other great democracies will be citing

what he and we are doing here when thinking of amending their constitution. It is not for us to think of taking lessons from other countries. The facts are different; our problems are different; our social structure is different; our economic conditions are different and, therefore, it is reasonable that our Constitution must be of a different character than most of the other countries.

I now come to the Preamble. Parliament has, before this, had occasion to pass 43 amendments. But never, not even once, it had any occasion to touch the Preamble portion. The last part of the Preamble says:

"IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

Here is a specific date mentioned, namely, "Twenty-sixth day of November, 1949". I would put before the Law Minister for consideration whether it will be historically correct if, after these words "Twenty-sixth day of November, 1949", we do not put in the date, month and year of enactment of this Bill as a law.

Rightly, Sir, the Directive Principles and the Fundamental Duties, which, I consider, was a great omission when the Constitution was originally framed—have been given precedence over the Fundamental Rights. I would suggest that there should even be a rearrangement of the different parts. The Directive Principles should become Part III, the Fundamental Duties should become Part IV and the Fundamental Rights should become Part IVA of the Constitution.

Sir, the inclusion of the word 'socialist' in the Preamble would be meaningless to the common man of this land under the new socio-econo-

mic order that is visualised, if the common man is not assured of his employment. Therefore, I would suggest that a suitable provision be made in the Fundamental Rights Chapter which may read something like this:

"The Citizens of the Sovereign Socialist Secular Democratic Republic shall have the right to work. To guarantee enjoyment of this right, the State, by planned development of the national economy, shall gradually create more employment and better working conditions and wages."

Similarly, I would also suggest for consideration of the hon. Law Minister that the right of the citizens of this country to participate in physical culture and sports should be included. After all, a nation of 600 million people has no place today in the international sphere of sports.

I now come to the anti-national activities clause. This is nothing new. In the year 1963, when the DMK demanded separation, the 16th Amendment Bill was passed. The forces of disruption are still there. We have seen this in the dynamite case, Emergency not being a permanent feature there should be some provisions under the ordinary law which will have strength enough for effectively meeting such situations in future. Therefore, this clause is most welcome.

Coming to the Fundamental Duties Chapter, I would suggest that an extension scheme should be formulated for operation in the rural areas. Today, the universities have the nation service scheme. But unfortunately this is not being implemented properly.

In regard to clauses 23 and 24, I would suggest that the functions of the Attorney-General can be conveniently transferred to the Chief Justices

[Shri B. C. Mahanty]

the High Courts by prescribing a form of reports to be submitted by them every month regarding the laws challenged in the High Courts concerned. Some provision may be made whereby whenever a Central law is challenged, the applications would be made to the High Court concerned and a reference to be made by the High Court to the Supreme Court as in "pending cases."

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Please wind up. You have already taken ten minutes.

SHRI BHAIKAR CHANDRA MAHANTY: A couple of minutes, Sir. Under clauses 38, 39 and 40 my submission is that the writ jurisdiction of the High Courts in regard to "other purposes" may be left intact and the arrears of the High Courts can be cleared by appointing more Judges and constituting two or three benches to function every day.

In Article 227 jurisdiction of the High Courts over the Tribunals should not be taken away. Rule of law is promoted when the citizen has a feeling that justice is being done to him. If the doors of the High Courts are shut against him and he is required to come to the Supreme Court for a writ for "other purposes" or against the Tribunals, the people of the States distant from Delhi—the headquarters of the Supreme Court—may nurse a grievance that scope of justice is being limited for them. This will also necessitate appointment of a larger number of Judges in the Supreme Court.

श्री बापूरावजी मास्तराव जी देशमुख (महाराष्ट्र): उपसभाध्यक्ष महोदय, यह संशोधन विधेयक भारत के संवैधानिक इतिहास में एक अत्यन्त महत्वपूर्ण घटना है। महत्वपूर्ण इसलिये कि इससे कई विवादग्रस्त पहलुओं का अन्त हुआ है और आगे चल कर शासन की क्या नीति होगी इस बारे में बची हुई

संविधान का पूरा अन्त किया गया है। संविधान एक जीवन्त प्रणाली है और समय के अनुसार उसे बदलना चाहिए इस बात के बारे में कोई दो रायें नहीं हो सकती और मेरा यह विश्वास है कि समय की आवश्यकता-नुसार और समाज के भले के लिये ही संविधान में यह परिवर्तन किये जा रहे हैं।

इस विधेयक के माध्यम से एक महत्वपूर्ण मानसिक परिवर्तन राष्ट्रीय स्तर पर हुआ है। अभी तक ऐसा महसूस होता था कि राष्ट्र उत्थान के लिये कोई बड़ा कदम उठाने में हम कुछ शक्ति थे और यही मानसिक दुर्बलता हमारे कदम पिछले चार पांच वर्षों से जकड़े हुए थी। पिछले उत्पन्न परिस्थितियों से हम ने कुछ सबक सीखा और हमारे यह मानसिक बन्धन टूट गये और हम ने कुछ करने का निर्णय लिया। यह हमारी सब से बड़ी उपलब्धि है। इस का पहला प्रमाण यह संशोधन विधेयक है।

इस विधेयक के पूरे संशोधनों से मैं सहमत हूँ फिर भी कुछ परिच्छेदों के बारे में मैं अपने विचार प्रकट करना चाहूँगा क्योंकि मेरे विचार में वह बहुत ही महत्व रखते हैं। भारतीय संविधान में संसद् को संविधान परिवर्तन के पूरे अधिकार दिये गये हैं। परिच्छेद 368 में संसद् संविधान में संशोधन किस प्रकार से करे इस का निर्गमन है और उसी अधिकार से संसद् यह संशोधन कर रही है। इसलिये यह अधिकार उसे है या नहीं इसका स्पष्टीकरण किसी न्यायालय से सुनने की कोई आवश्यकता नहीं रही।

संविधान की प्रस्तावना में समाजवादी और धर्मनिरपेक्ष शब्दों का समाविष्ट किया जाना बहुत ही महत्वपूर्ण है। समाजवाद के अर्थ और प्रकार अनेक हैं। हम इन का

अर्थ देश की सम्पत्ति, समृद्धि उत्पादन और शासन में हर नागरिक का उचित स्थान और हक होना चाहिए ऐसा मोटे तौर पर लगते हैं। इस की स्वीकृति के पश्चात् देश का हर एक कानून इसी तत्व विचारों के अनुकूल बनेगा। मतलब इस समय तक हम जो कहते आये हैं उसे अब प्रत्यक्ष तौर पर कार्यान्वित किया जायेगा। देश के हर सत्ताधारी पक्ष को अब हम सभाजवादी हैं यह बात माननी पड़ेगी। आर्थिक विकास अब सभाजवादी तन्त्र प्रणाली से होगा और पूरे देश की प्रगति और जीवन पर इन्हीं तत्वों के परिणाम और छाप नजर आयेगी। इसलिये मैं पन्त प्रधान मन्त्री श्रीमती इन्दिरा गान्धी को धन्यवाद देता हूँ। संविधान में एक नया परिच्छेद 31-डी जोड़ दिया गया है। इस व्यवस्था के अन्तर्गत किसी राष्ट्र द्रोही कार्य करने वाले अथवा ऐसे राष्ट्र-द्रोही संघटनाओं के विरोध में कोई कानून बनता है या कानूनी कार्यवाही की जाती है तो उस कानून को, मूलभूत अधिकारों का आधार लेते हुए कोई राष्ट्र द्रोही तत्व चुनौती नहीं दे सकता। राष्ट्रद्रोही किसे कहा जाय इसका पूर्ण विवरण उसी परिच्छेद में है। इस प्रकार की कुछ व्यवस्था की जरूरत पिछले कुछ वर्षों से बहुत बुरी तरह से प्रतीत हो रही थी। पिछले वर्षों में जो तत्व उभर आये थे उन्होंने खुल्लमखुल्ला देश में कानून को ही चुनौती दी थी और उसका समर्थन मूलभूत अधिकारों की आड़ लेकर करने लगे थे। बात यहाँ तक पहुँची कि किस प्रकार उन्हें दण्डित किया जाय यह एक समस्या खड़ी हो गई थी। हमारे देश में अगर कोई सैनिक या पुलिस कर्मचारी विद्रोह करता है तो तुरन्त उसे अदालत को सौंपकर योग्य दण्ड दिया जाता है तो ऐसे विद्रोही को प्रोत्साहित करने वाले व्यक्ति को क्या मूलभूत अधिकारों की आड़ में यों ही दण्डित किये बिना छोड़ दिया जाएगा? उत्तर बिल्कुल स्पष्ट

है कि ऐसा नहीं होने दिया जायेगा। लेकिन हमें याद है कि ऐसी परिस्थिति से निपटने के लिये हमें आपत्काल का सहारा लेना पड़ा। हमने सबक सीखा और बाद में यह बात न हो इसलिये यह संशोधन किया गया है जिसका मैं स्वागत करता हूँ।

इस विधेयक में मार्गदर्शक तत्वों द्वारा बहुत अच्छी बातें कही गई हैं। जैसे बच्चे और युवा वर्ग का समाज के क्रूर तत्वों से रक्षण करना उनके विकास की व्यवस्था, महिलाओं का सम्मान और उनका समाज में उचित स्थान, गरीबों को कानूनी सलाह, मजदूरों को उद्योग संचालन में स्थान इत्यादि। लेकिन इनको प्रत्यक्ष रूप से अस्पष्ट में लाने के लिये थोड़ी अवधि में निश्चित कार्यक्रम बनाये जाय इसका बन्धक इसी संशोधन में डालना आवश्यक है नहीं तो पिछले मार्गदर्शक तत्वों के समान यह भी सिर्फ बोलने की बात और करने का कोई बन्धन नहीं, इसको पुनरावृत्ति हो जायेगी।

उच्च और उच्चतम न्यायालयों के बारे में महत्वपूर्ण और उचित संशोधन किये गये हैं। संविधान के परिच्छेद 131ए, 139ए, 144ए में संशोधन के साथ उच्च न्यायालयों के अधिकार प्राप्तीय कानून कक्षा और उच्चतम न्यायालय के अधिकार केन्द्रीय कानून कक्षा तक ही सीमित हो जायेंगे। इस बात की देश के अनेक उच्च न्यायालयों में पुनरावृत्ति न हो, इस दृष्टि से यह संशोधन किया गया है जिसका मैं स्वागत करता हूँ। संविधान के परिच्छेद 226 में संशोधन से उच्च न्यायालयों के अतिरिक्त क्षेत्रों में जो टूरिस्टिक अदर केसेज के जो अनियन्त्रित; अनरिस्ट्रिक्टेड अधिकार थे उन्हें नियन्त्रित किया गया है। मूलभूत अधिकारों के बारे में उच्च न्यायालयों के

[श्री बापूराव जी भास्कर रावजी देशमुख]

अधिकारों में कोई कटौती नहीं की गई है। निष्कर्ष यह है कि उच्च न्यायालिकाएं उनका अपना मूल काम न्याय और सुचारु ढंग से करें इसलिए सिर्फ अनिश्चित काम का बोझ उन पर से हटाया जा रहा है। कुछ लोगों का यह आरोप है कि उनके मूल अधिकारों में कटौती की जा रही है, सर्वथा बेबुनियाद है।

संविधान में मूलभूत कर्तव्यों को शामिल करना, बर्तोज 11, न्यू पैरा 4ए जो है यह एक अभिनव बात है। कर्तव्य नये तो नहीं है लेकिन उनका गठन और भाषा पड़ता है। यह बात सिर्फ अधिकारों के ध्यान में जो लोग भूल गये थे उन्हें सचेत करने के लिये संविधान में सम्मिलित करना आवश्यक हो गया था। भारत का समाज आम तौर पर सिर्फ कर्तव्यों का हो पान चाहते आ रहा है। उन्हें जो मूलभूत अधिकारों का कुछ लाभ मिले इसलिये यह आवश्यक है कि कर्तव्यों में आन जनता पूरी तरह से हाथ बंटाये ताकि इनका परस्परगत बोझ थोड़ा हल्का हो। इस कर्तव्यों की सूची में सब-कलाज (एच) में दिये हुए एक महत्वपूर्ण कर्तव्य के बारे में आ सब समस्याओं का ध्यान सम्मिलित करना चाहूंगा।

"To develop the scientific temper, humanism and the spirit of inquiry and reform".

7 P.M.

अर्थात् हर एक नागरिक का यह कर्तव्य है कि वह शास्त्रीय विचारधारा, सामाजिक दृष्टिकोण, चिकित्सकवर्ग और ये विचारों के तन्त्रों को विकसित करें। दूसरे अर्थ में रूढ़ीवाद, अंधविश्वास योनि परमाणु विचार जो समाज प्राप्ति में आने तक रोड़े अटता रहे थे उन्हें अब संविधान स्वरूप करना होगा यह विचार किसी समाज सुधारक की सलाह से नहीं किन्तु अब संविधान की आज्ञा हो जायेगी। मेरा

विश्वास है कि समाज को शास्त्रीय और प्राकृतिक विचारों पर अग्रसर बनाने में संविधान कानून की सहायता अवश्य ली जायेगी। कर्तव्यों की सूची में इस सब-कलाज 'एच' को सम्मिलित करना एक कल्पना, बुद्धिमानी और धैर्य का एक प्रमाण है। समाज परिवर्तन में संविधान का यह संशोधन एक महत्वपूर्ण योगदान देने में सफल रहेगा यह उम्मीद रखते हुए मैं इस पूरी कर्तव्य सूची का स्वागत करता हूँ। इस विधेयक में दिये हुए पूरे संशोधनों का परामर्श लेना इस अन्तर्ग्रन्थ में आवश्यक है और इसलिये कुछ परिच्छेदों के बारे में मैंने अपने विचार प्रकट किये। बाद में केवल एक बात और बहूंगा वह यह कि देश को अग्र प्रगतिपथ पर जल्द से जल्द खड़ा कराना है तो मेरे विचार में वह संशोधन बहुत ही सौम्य हैं। उसे और प्रगत और गतिशील बनाने में तुरन्त प्रयत्न किये। मैं हृदय से इसका स्वागत करते हुए अपना भाषण समाप्त करता हूँ।

SHRI R. NARASIMHA REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, 'essentially when we think of this Amendment Bill and take the Fundamental Rights into consideration as one coming from the common men, we have to think of the most fundamental and the basic right of the common man, 'the right to live'. Today, in this country, there are millions of people who do not enjoy this 'right to live' because these millions of people have no means of livelihood. Unless a man has the means of livelihood, he has no 'right to live'. This 'right to live' may not be written in the Constitution, but that is the spirit of the entire Constitution. Sir, in the Directive Principles it is clearly stated that for every man and woman, the means of livelihood will have to be provided by the State. And it is also clearly written that it shall be the duty of the State to make necessary arrangements to implement the fundamental principles of the Directive Principles. I do not see how the implementation

of these Directive Principles conflict with the Fundamental Rights. Sir, this is because of confusion in attitudes. The Constitution-makers have given us the Fundamental Rights, they have also given us the Directive Principles; they have also given us the Preamble. In the Preamble it is very clearly stated "liberty", "fraternity" and "equality". And we are now making it further strong and clear by adding "socialism" and "secularism". Sir, in any Constitution, the Preamble and the Directive Principles are the life of the Constitution; all other provisions will have to be understood, will have to be interpreted in the light of the spirit enunciated in the Preamble and the Directive Principles. Unfortunately, the Judiciary has failed to do that. As we know, Judges are also men, Judges have not come from Heaven, Judges too are influenced by their environment, by their upbringing, by their education, by their socio-economic environment. Naturally, what happened? Their outlook was introduced into the interpretation of the Constitution. They have taken a very narrow, legalistic view of the Fundamental Rights. There can be no right which is absolute in life. All rights are relative. Even the right to property is relative to the particular situation. It cannot be an absolute right. If this interpretation was given, the conflict would not have arisen. Unfortunately, the Judiciary was not judicious enough and they have, in the words of the Prime Minister, invented the concept of the basic structure. They have not only invented it but also they have tried to import it into the laws of the land. Sir, here I must say that the Judiciary has transgressed their limits. They have entered into the domains of the Legislature. Here there is no question of who is supreme. I think the very way of posing the question is wrong. In a State, there is the Legislature, there is the Judiciary and there is the Executive. These three are the limbs of the State apparatus. Each one is supreme in its own sphere. Parliament is supreme in its own sphere of legislation. The Judiciary is supreme

as far as the judicial province is concerned, interpreting the laws, interpreting the Constitution. It is supreme there. The Executive is supreme in its own sphere. It is the independence of the three that is the basis of parliamentary democracy. But the difficulty comes in when the Judiciary tries to arrogate to itself the law-making power. That is why this concept of a basic structure came. We need not go to Jefferson and other famous names. Just read our Constitution. Article 368 is very clear; it is clear for even an absolute imbecile to see. It clearly says that this Parliament has the right to amend the Constitution by substituting, by repealing or by adding. Here is a clear provision made by the Constitution-makers. The founding fathers of the Constitution knew that no Constitution could remain unchanged. If it remains unchanged, as a friend put it, it becomes a dead document. After all, it must reflect the aspirations, ideas, compulsions and necessities of a particular situation. Therefore, the Constitution has to change because life itself changes. Change is the law of life. If it does not change, the Constitution has to go. Therefore, they have clearly provided article 368 to amend any article of the Constitution. If they were to provide, as the learned Judges had thought, that the basic structure should not have been amended, they would have clearly said what the basic structure was and they would have said that this basic structure could not be amended by Parliament. But the founding fathers did not do it.

Therefore, I was really surprised when some people said that they wanted a Constituent Assembly. Why do you want it? When you say that you want a Constituent Assembly, do you mean to say that Parliament is not supreme? Parliament is supreme, Parliament can change any article of the Constitution according to the needs and compulsions of time. This confusion has arisen because the Judges studied the particular question in a very isolated manner without

[Shri Narasimha Reddy]

taking the spirit of the Constitution into account, without taking the fundamental principle, the fundamental life, of the Constitution into consideration and without taking the totality of the picture into account. This aspect of looking at it in isolation has created this situation. So, we will have to make the position clear; we have made it doubly clear, though in my view, it is not necessary. Article 368 is very clear. But still we have emphasised and said that Parliament has got powers. And when Parliament exercises its constituent power, it is virtually a Constituent Assembly. When it is virtually a Constituent Assembly, what this Parliament in its constituent power does, cannot be questioned in a court of law because all these organs are bound by the Constitution. It is very clear from the legal point of view.

Then, Sir, I come to the next aspect and that is the right to live which I touched previously. The common man has no right to live. Great men, great thinkers and big men who have all the material means of livelihood in their hands—the means of production have been cornered by them—are very much naturally worried about their freedom. But I ask: What about the freedom of the common man? Do these fundamental rights apply only to the 10 per cent of the upper class? Or do they apply to the common people also? If not, how can they be effective? Suppose there is a servant in my farm. Has he the freedom of expression? If he has the freedom of expression, I would ask him to get out. That means that his livelihood has gone. So, to have these freedoms, one must have the minimum economic base. So to provide the minimum economic base is the main task of our Government and our Parliament. Sir, secondly, I would only touch on the rights and duties.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Please wind up.

SHRI R. NARASIMHA REDDY: I am finishing. I will say that if you have rights without duties, it means licentiousness. And if you have duties without rights, it means slavery. Therefore, in this amending Bill we have included duties also. This balance of rights and duties is necessary for a democracy. The Father of the Nation, Mahatma Gandhi, had insisted that one can have no right without a corresponding duty. Therefore, this is a very good provision which has been brought.

Finally, Sir, this is the first significant step. We have removed the obstacles, the major obstacles, before us to bring in the socio-economic revolution or reform as mentioned in the Statement of Objects and Reasons. Sir, there are two more tasks. The second task is in our hands. We have to do it. Parliament will have to pass the necessary legislation to bring in the socio-economic reform. And the third task, the most important task, is the task of implementation. Here comes the biggest snag. This implementation is possible only if the new values of life, socialistic values of life, dedicated work, keeping the nation's interest above self-interest, sincerity and loyalty to the ideals, all these are imbibed in all the apparatuses, in the judiciary, in the legislature and in the executive, in the three wings of the State. Otherwise this implementation will not be possible. I hope under the dynamic leadership of our Prime Minister these two steps will also be taken and this revolution which has been inaugurated will be completed. Thank you.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Shri Deorao Patil. Not here. Dr. Lokesh Chandra. Not here. Shri Tompok Singh.

SHRI IRENGBAM TOMPOK SINGH (Manipur): It is seven O'clock Sir, thanks to all those previous speakers who have imparted a very

good lesson to me. I, too, belong to a different generation because there is generation gap. And in the presence of our leader, Panditji, we are children of yesterday. But even then we also would like to put certain questions. Because the time-limit is strict, I will not give a lengthy speech. When the Constitution was first adopted, when India was declared a Republic on January 26, 1950, I was perhaps in the 5th or 6th standard. Therefore, time has changed completely. At the same time, I was also sometimes confused when we read the constitutions of the other countries with reference to Indian Constitution as I was not a student of law. But I would like to remind the Law Minister that while we were framing the Constitution, at that time, 28 years ago the founding fathers were prisoners of certain indecision because of prevailing political circumstances because in that Constituent Assembly, Rajas, Nawabs,

Zamindars and all those people with vested interests were there. There was a tug of war and there was push and pull at different stages. Therefore, the late Pandit Nehru and other progressive leaders were not in a position to give more weightage to the socialist way of life, to have a socialist constitution. As political workers, at the time of every election, we have been discussing the Fundamental Rights and the Directive Principles of State Policy. Regarding the Directive Principles of State Policy, all the time we are answerable to the people and particularly at the time of election. No doubt, the Congress commands an absolute majority. At 1971, mid-term poll, the Congress got a two-thirds majority and the Congress Manifesto had given a promise that a socio-economic transformation would be brought about and that India was on the way to socialism. I will not digress regarding secularism and democracy. But I wanted to test the mind of India. Until and unless we have a Hindu Chief Minister tolerated in Kashmir,

we cannot say it is a secular country. We have privilege of having Rashtrapatiiji belonging to minority community.

There is some controversy about adult franchise in regard to the age groups who are eligible to vote. As it is, an old man of 85 years who does not know to read or write A, B, C is allowed to exercise his franchise whereas his grandson who is a college student is deprived of his voting right simply because he is not 21 years of age. Lot of things have to be discussed, but I will not, on this occasion.

I will speak only of article 368. As far as this article is concerned, my friend Shri Reddy has pointed out that there is no question of forming a Constituent Assembly as the present Parliament has full powers to amend the Constitution. We fully and wholeheartedly support this epoch-making 44th Constitution Amendment Bill. As my friend, Sorring has said India is now in the process of integration because my friend from Sikkim is sitting here as a Member. My State of Manipur merged with the Union only on the 15th October 1949 and therefore Manipur was not represented in the first Constituent Assembly. As I said India is now in the process of integration. India is on her way to socialism. India is a socialist and democratic nation. There is no doubt about these things and there are no two opinions on this and there is no dispute regarding these. Regarding the supremacy of Parliament also there is no doubt. The founding fathers of our Constitution gave a wrong weapon in the hands of the judiciary and they misused that weapon against the Parliament. Now that we are curtailing their right, they will not use that weapon against us any more. It is in the fitness of things that we are showing the judiciary the right direction in which they should go and we are

[Shri Irengbam Tompok Singh]

telling them that Parliament is supreme.

One thing I want to say about the Preamble wherein we have said that India is a socialist country. But most of the speakers who are Anglo-saxon products and who are the products of the English era and who were educated in those schools of thought most of the time they were quoting from American and British examples. They are generation of respected Congress President, Boroohaji, and others like Shri Daphtary. We are now in a socialist country. Why should we feel shy of that? Why should we suffer from any defeatist mentality? Following the pattern of a socialist Constitutions why should we do not provide right to work and right to employment in our Constitution? I will simply quote from the Preamble of the USSR Constitution. I quote "article (1)" that the Union of Soviet Socialist Republic is a socialist State of workers and peasants "and article 118, the right to work and employment". But in India there is some confusion about the concept of socialism which has not been defined anywhere. Most of us are socialists. A majority of the Congress including many from the opposition are socialists. But socialism is a misnomer or there is misconception about it and therefore it should be defined at the higher level so that we may imbibe the real spirit of socialism. In the name of socialism we have a choice between freedom and bread. It is very difficult to understand who is a real socialist. Even among socialists there are reactionaries, anti-social elements and those who indulge in anti-national activities. For instance, Shri George Fernandez called himself a socialist. Everybody knows about the activities he was carrying on and Shri Madhu Limaye. I will quote from the Chinese Constitution. China has not said that they are a socialist nation. In article (1) I quote "that the People's Republic of China is a people's democratic

State led by the working classes and based on the alliance of workers and peasants." I quote "Article 91 of Chapter III of the Constitution of People's Republic of China guaranteed the right to work as fundamental right to a citizen" which is not in our Socialist Constitution. Therefore, in India, the workers and peasants and the backward people, as has been pointed out times without number by me in all my speeches including the one of yesterday, have no right to live. The people who are in the hill areas right from Ladakh, Jammu and Kashmir down to Mizoram at the Himalayas and also the people in the Bastar region of Madhya Pradesh and the other hill areas of the country, do not have even the right to get drinking water and they have not been provided even with kerosene and salt. Even salt, which is a very common thing and an essential thing, has been sold at a very high price in certain areas and it was sold at Re. 1.00 at Lurgle, in Mizoram. This is the condition of the country and I have told this times without number. Therefore, in the Preamble of the Constitution, even if we add the words "secularism", "socialism" or the word "democracy", they are nothing but a luxury if we fail to provide basic needs to the needy people. How many of Indian will be in a position to come to the House of elders? How many of us will be in a position to come to the House of the people, that is, the Lok Sabha? How many people of India will be able to come to Parliament unless and until they are able to spend a few thousand rupees? I do not mean to say that none will be able to do that. But, at the same time, I would like to say that we have some people in our midst who are sometimes hypocritical and, therefore, we are supposed to cleanse our hearts and we have to criticise ourselves first. Unless and until we criticise ourselves and our way of life and change our way of thinking, we have no right to tell others about what socialism is and we have no right to preach so-

cialism at all. Therefore, I would only like to appeal to the Law Minister my feeling is the feeling of Members of Parliament who stand for Socio-economic Transformation and Cultural Development of the hill States of Jammu & Kashmir, Himachal Pradesh, Manipur, Meghalaya, Tripura, Nagaland, Sikkim, the Union territories of Arunachal Pradesh, Mizoram, the hill regions of the States of UP, Bihar, Assam, West Bengal, Orissa, Madhya Pradesh, Karnataka, Tamil Nadu, Punjab and Haryana, in this connection. Sir, these are the States where there are backward regions and hill regions. I want to bring to the notice of the Home Minister once again about their conditions. I have several times said that there is regional disparity and when the regional disparity is growing, even after the adoption of the concept of planned economy and mixed economy, we could not remove regional disparity. Is not this disparity more injurious than the disparity between man and man as we have seen in the case of truncated Pakistan, that is, between Pakistan and Bangladesh? Integrity and unity are very essential and now these words are included in the Preamble which is very good and vital. It is very important. But I would like to say that mere preaching about unity and integrity, mere sermonising on unity and integrity, will not solve the problem. Why? Because this disparity is the cancer in the body-politic of India now. Therefore, this has to be removed and I think this will not be the last amendment of the Constitution. We can forecast very easily that more amendments will be coming in the future because the Indian leadership and the thinkers in India feel that when circumstances compel them to amend the Constitution, they will amend the Constitution. We have seen that and we are amending. When Himachal Pradesh was granted statehood the Constitution was amended; when the States of Maharashtra and Gujarat were formed, the Constitution was amended; and when

there was a demand for statehood in Manipur, there was an amendment to the Constitution. So, there have been many amendments to the Constitution 43 times and now we are bringing forward most important 44th amendment which will enshrine India a Socialist Country. Therefore, before it is too late, I would appeal through you, Sir, to the Prime Minister and the leadership of the Congress Party and the Members of Parliament that it is high time that all of us should sit calmly and quietly and to put our heads together to solve the socio-economic problems of the country. It is better to give a real and pure socialist Constitution with no confusion, with no foolish interpretation, and without making it bulkier than what it is now because it is a very bulky Constitution with full of interpretations. With these few words, Sir, I support the amendment.

SHRI SWAMI DINESH CHANDRA (Rajasthan): Sir, I rise to support the Forty-fourth Constitutional Amendment Bill. The move to amend the Constitution has been welcomed all over the country by people from all walks of life. If there is any opposition, it is from those who have some vested interests to protect. First of all, I would like the honourable Members to ponder over the question as to should we call a Constituent Assembly every time we want to change the Constitution in some of its details?

Sir, the Constituent Assembly gave us the present Constitution. Did they not envisage that changes might be necessary? That is why article 368 was ushered in. Even if article 368 was not there, would be Parliament back competence to amend the Constitution? The entire question boils down to this: Shall we or shall we not keep pace with the growing needs of the people? Shall we lag behind the socio-economic consciousness? Behind every Constitution

[Shri Swami Dinesh Chandra]

there is an abiding structure of the general principles of the development of society, mature and thought. This is what has been supplied to us by our Constitution in the Preamble. What we propose to do is to make to more specific, in as much as we propose add the words 'Secularism' and 'Socialism', in the clause which defines and characterises the nature of the State. If we want to dedicate ourselves to these principles which we always kept before us and which were always respected in our working, why should there be any fear in some quarters? India is a country of diverse faiths and cultures. We have to allow the national growth of the different faiths and not to allow the expanding of one at the cost of another. This will add richness and colour to the picture as a whole—this is secularism, large-heartedness, respect for the opinions of others, tolerance, harmony, peace between communities and communities. Since India is a nation of 60 crores, we need to emphasise these virtues so that they become parts of our habit of thinking. Then, these virtues can thrive only if there is a socio-economic structure in which each one of the Indian citizens has equality of opportunity. Mr. Vice-Chairman, Sir, no system of medicine can deliver the goods unless it is assured that the State guarantees not only diagnosis but treatment of all those who fall ill. If there are specialists to diagnose but then the patients are left to their own sources, made to buy their own medicines, and pay for the nursing homes from their own pockets. The result will be that the State Health Service will be looking after the rich only and not the majority of the people who lack the means to buy medicines. This is what we want to ensure by inserting the word 'Socialist' in our Objectives and enshrine it in the Constitution. By inclusion of the word 'Socialist', we mean to say that the State shall look after the bare needs of everybody. No one

must suffer for want of bare necessities. Hon. Members must share this abiding faith with me that we as a country do not lack competence, nor the resources, to provide every citizen of India with the means of a decent, comfortable life. Of course, those who want to indulge in luxuries, we leave them to enter into a healthy competition and earn for themselves greater comforts. We do not want to place any hindrance in the development of the personality. That is how we want to proceed towards the goal of socialism which we have set before us right from the dawn of independence. Our great leaders like Pt. Jawaharlal Nehru and Sardar Patel never shifted this responsibility, the behest that was laid on their shoulders by the Father of the Nation, Gandhiji.

Article 368 envisages the exercise of its Constituent power by way of amendment addition and variation. The only limitation set on the exercise of this power is contained in Chapter IV of the Constitution. Chapter IV of the Constitution deals with the Directive Principles of State Policy. Article 37 says:

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

Mr. Vice-Chairman, Sir, I am sure all of us would have felt much happier if this duty of the State to apply these principles in making laws were also to be imposed on all those associated with or involved in implementing these laws, be it the executive, judicial or legislative wings of the governance of this country. Even the judges are to be made conscious that they are honour-bound, while making decisions to bear in mind the Directive Principles of State Policy.

That our Constitution has nobly upheld the dignity of labour will become evident to anybody who reads Article 39(e).

Article 39(e) lays down—

‘that the health and strength of workers, men and women, and the tender age of children, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.’

It is the fulfilment of these objectives we have chosen to call the Directive Principles of State Policy towards which we have to devote all our energies. The illusion that every time we want to change the Constitution, the convening of the Constituent Assembly is called for must be given a go-by. The sooner it is done, the better it is. The convening of a Constituent Assembly is a symbol of achieving nationhood by the people. The moment the Indian people became entitled to the convocation of a Constituent Assembly, our assuming of nationhood was a *fait accompli*. That the Indian people were able to give into themselves such a written Constitution and the fact that we have been able to work our Constitution in so accomplished a manner has become the envy of many a nations. We need never again call the Constituent Assembly for we have been able to demonstrate to the whole world that whatever the level of our industrial growth whatever the drawbacks we may be still suffering nevertheless we may now confident our own through efforts we have been able to gain such maturity of thought and self reliance that we need look to no one in the world for the upliftment of our people. Those who advocate the convening of a Constituent Assembly must be suffering from an inferiority complex. Have we not demonstrated, during the period of recent emergency, that undaunted, we succeeded to give jolts such shakings to many an outworn ideas as had become very necessary in the interest of

our people? Everyone inside this country and outside also has to acknowledge that our great Prime Minister has successfully piloted the ship of the nation through the storm, and the haze has now cleared, the Indian people feel doubly sure of their strength and the intrinsic values with which the nation is endowed with. We are in a fit condition to undertake greater responsibility and it is in order to fulfil this responsibility towards our people that we need to introduce the amendments in the Constitution such as have been brought in this bill. There is a clamour for no-change (*Time bell rings*). The extended freedom of the press and the relaxation censorship is being utilised for raising a hue and cry against the move for introducing Forty-fourth amendment to the Constitution. We are however not afraid of these sort of things. There are people who are afraid of even the slightest change. They are certainly in the grip of fear. History repeats itself so very often. We have read some such things in the history of British Parliamentary Institutions. There were Whigs and Tories. But the trouble is change is so very necessary for progress. No change means stagnation. Well to do people are not very fond of changes.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Please try to wind up.

SHRI SWAMI DINESH CHANDRA: They are always for maintaining the *status quo* so that their privileges might remain intact. Our Prime Minister has made it clear that there is no intention to clothe the executive with extraordinary powers. Nor is there any intention to curb the powers of the judiciary such as the Supreme Court of India is enjoying today. At present of course, we are keenly interested in cutting down laws delays, and this is a very very happy situation. That the entire judiciary is co-operating in this august object. If by these proposed

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amendments, we want to establish some new tribunals, some new forums, for the services in the Centre and in the States, the only object is to lighten the work of the High Courts and the Supreme Court. This object is coupled with our intention to make things easy for the services. Hon'ble Members we are here to support the Forty-fourth Amendment Bill not because we have an obligation to do so, but because we are conscious that we are voicing what the mass of India, has been craving since many years before. The people of India want to take rapid strides towards the goal of socialism they have set before themselves. (*Time bell rings*). Hon'ble members we are at the turning point of history at the threshold of a dawn of a new era. With these words, I support the Constitution (Forty-fourth Amendment) Bill. Thank you very much.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Shri R. D. Jagtap Avergoankar. Shri Kesava Rao. Both are absent. Yes, Mr. Narasiah.

SHRI H. S. NARASIAH (Karnataka): Mr. Vice-Chairman, Sir, I welcome this Bill and support it. In my opinion, Sir, a vast valuable wealth of material has been gathered from various sections of the population of the country and brought to bear upon the vital issues involved in this Bill. The Swaran Singh Committee which was specially charged with the task of examining the amendments to this Constitution has gone in depth and has performed a stupendous task of nearly going through 4,000 memoranda and sifting out of it the grain from the unessential. Now that material again has been discussed and thrashed fully on the floor of the other House by the elected representatives of the people. And in the din and dust of the controversy that has been raised over this Bill for the last several months, nearly ten months, I find there are certain very essential features, very

outstanding features that emerged out from this Bill which in my opinion, Sir, serve as the beacon light and guide to this generation and generations to come in working the democracy of this country, which is the biggest in the world.

Sir, among these outstanding features which I want to tabulate, the most important one is that this Bill proceeds to reaffirm and reassert the supremacy of the Parliament so far as its amending power is concerned. Sir, it has become necessary to reassert and reaffirm because a simple reading of article 368 of the Constitution, even by an ordinary student of English language—never mind a jurist or a lawyer or an eminent judge—will show, Sir, and this is how the article reads, "That this Parliament by virtue of its constituent power can amend, alter, modify, vary..."—now I underline this—'any provision of the Constitution'—now to read in this phrase 'any provision of the Constitution', by the eminent judges something that is basic and non-basic, and to create a distinction between the essential and non-essential, is something to import into this phraseology an intention which was never the intention of this Parliament when it enacted it. It is not for the judiciary to import an intention into an enactment more than what the legislature itself intended. And in this process of inventing, a distinction has been made between the basic structure and the non-basic structure in this phraseology 'any provision of the Constitution'. It has been well characterised and said by the Prime Minister and others that it is an innovation, not only an innovation but an incursion and an invasion on the part of the judiciary in the domain of the Prime powers of the Parliament. It is rather unfortunate. It is on account of this and I do not want to catalogue the plethora of decisions that led to this reassertion and reaffirmation on the part of Parliament because article 368 is very clear so far as this thing

is concerned and nothing more need be made clear though we are seeking to make it clearer. And that is the most outstanding feature of this amending provision of the Constitution.

Sir, the second outstanding feature of this amending Bill is that it places and gives precedence to the Directive Principles over the Fundamental Rights and makes the Directive Principles enforceable in law. We have also enlarged the scope of the Directive Principles by adding something more than what existed, for example, the protection of the children and the youth from exploitation and also free legal aid and justice being made available on a footing of equality without any economic considerations of the individual who seeks it, and also the participation of workers in the management and safeguarding of forests and wild life. Not only have we enlarged the scope of the Directive Principles by adding four more but we have also made these Directive Principles enforceable in law which is a very welcome and outstanding feature of this amending Bill.

Now, outstanding feature No. 3 which I would like to emphasise is that it does not in any way seek to supersede the rights of the minority communities guaranteed under the specific provisions of the Constitution. It is very important to be noted because some minorities while speaking on the Bill expressed their own apprehensions and fears that the word secularism etc., which we are going to inscribe in the Preamble to the Constitution is likely to interfere with their own peculiar pursuit of culture and religion and traditions. Well that apprehension need not be entertained and there is a guarantee, guaranteed by this amending Bill, that it does not in any way seek to supersede the rights of the minority communities guaranteed under the specific provisions of the Constitution in other articles of the Constitution.

The other outstanding feature of the amending Bill is that it does not in any way seek to alter the federal character of the Union. Some States and representatives apprehended a fear that by virtue of certain powers we are going to interfere with the federal structure. Now it has been made very clear, Sir, that this present Bill though being passed by both the Houses of Parliament, will have to be further ratified by the State Legislatures and it clearly shows that the federal nature of our Constitution is being preserved and emphasised.

The outstanding feature No 5 is that this amending Bill does not seek to take away from the Supreme Court the right to issue writs in all extraordinary matters for the enforcement of the Fundamental Rights, including even the writ of *habeas corpus*. Now, Sir, there is a misapprehension and a wrong propaganda is being carried on that this amending Bill seeks to curtail and curb the powers of the judiciary and denigrate its importance in the land. It is not so, Sir: Except in certain limited matters affecting the legislation that has got to proceed regarding the socio-economic conditions of the masses of this country, in all other matters the legal rights of the courts have been preserved and protected, and that apprehension does not arise. This is the emphasis that I would like to make so far as this aspect of the matter is concerned.

So far as aspect No. 6 is concerned, I would say that this amending Bill seeks for the first time to incorporate in the Preamble the words 'socialism' and 'secularism'. (*Time bell rings*). I will cut short by saying that these two terms constitute the life-blood of our nation, socialism and secularism, for which we are committed, for which we have sacrificed, for which we have been evolving and finding a place in the Preamble is just a natural corollary of it.

Lastly, Sir, aspect No. 7, seeks for the first time to write into the statute

[Shri H. S. Narasiah]

the duties of citizens. I need hardly say that duties are the corollary that flow from the rights. There cannot be duties without rights and if duties are inscribed and correlated to the rights that have been enunciated, there is nothing objectionable.

Sir, there is only one point which I would like to comment upon so far as duty number 5 is concerned, i.e., duty to abjure violence. I am sorry, Sir, that this has been worded in rather very unqualified and unfettered terms. Does it mean that there is a duty to abjure violence in all circumstances? Does it mean that violence is not permissible in any circumstances because there is a law itself which concedes violence to be practised under certain circumstances where, for instance, liberty and property of an individual is involved? For example, Sir, if a person is attacked by an anti-social element, does it require a citizen of this country to fold his hands and say: I respect the Constitution and abjure violence and allow to be manhandled by the *goondas*? No, Sir, that cannot be the position. I have written to the Law Minister to say that this unfettered phrase to abjure violence is to be circumscribed by some legal limitation some such thing as abjure violence where it is not permissible. That is my suggestion so far as this duty to abjure violence is concerned. Now, Sir, I appreciate the hard labours put in by the Swaran Singh Committee and the efforts taken by our Government to bring forward this legislation and I need not labour on the Parliament's powers to amend, the need to amend and the mandate to amend. The election manifesto also is very clear.

With these words, Sir, I am happy to support fully this amending Bill.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Shrimati Hamida Habibullah. She is not here. Shri Gunanand Thakur.

श्री गुणानन्द ठाकुर (बिहार) : उप-सभाध्यक्ष जी, काफ़ी लोग इस पर बोले हैं और दूसरे सदन में भी काफ़ी बहस हुई, अब कुछ कहने के लिये रुक नहीं जाता है। (Interruption) जैसा हुक्म हुआ चेयर का, तो पालन करना ही पड़ेगा। तो मुझे खुशी है कि कम से कम उस संविधान सभा के सदस्य हमारे नेता सदन पं० कमलापति त्रिपाठी जी यहां बैठे हुए हैं और आप भी उपसभाध्यक्ष जी, संविधान निर्माताओं में रहे हैं; आपने तो देखा ही होगा कि संविधान बिल के बारे में डा० अम्बेडकर साहब ने स्पष्ट शब्दों में कहा कि :

That this Constitution envisaged that the Constitution was a vehicle of either socialism or capitalism according to the temper of the people.

बहुत खुलासा करके उन्होंने कहा चूंकि नयी आजादी मिली थी। तो आप लोगों ने सोचा कि भाई, हम नयी पीढ़ी के लिये रास्ता खोल कर रख दें ताकि कल हमारे ऊपर यह कलंक न आये कि जो समाजवाद चाहेगा तो हमसे कहेगा क्यों आपने दरवाजा बंद कर दिया। तो आपने तो दरवाजा खोल कर रख दिया कि जैसी स्थिति आयेगी जो देश की मांग रहेगी, जो हवा रहेगी, उस हिसाब से आगे काम करेंगे। हम अधिक नहीं कहना चाहते हैं। बहुत से लोगो ने कहा बड़ी जल्दबाजी हुई है। तो मैं आज उस महान पार्लियामेन्टेरियन की आज याद कराना चाहता हूं, नाथ पें जी की। मैंने बहुत से वक्ताओं को बोलते सुना लेकिन कभी किसी ने उनका रेफरेंस नहीं दिया . . .

कुछ माननीय सदस्य : दिया है।

श्री गुणानन्द ठाकुर : मैंने नहीं सुना वे कितने तेजस्वी समाजवादी नेता थे। जब मैं 1967 में उस सदन का सदस्य था और गोलकनाथ केस का फ़ैसला हुआ था तो नाथ पें जी ने बिल पेश किया था और उन्होंने कहा : 1

कि पार्लियामेंट सुप्रीम बाड़ी है, उसको अधिकार है फ़्रडामेंटल राइट्स को भी अमेंड करे। इस पर काफ़ी बहस हुई थी। मुझे वह दिन याद है उस समय स्वतंत्र पार्टी और जनसंघ का एक बड़ा गैंग था, ऐसे लोगों ने उसका विरोध किया और मुझे उस समय बड़ी हंसी लगी थी जब दादा कृपालानी जी भी बैठकर नाथ पैं जी के विधेयक का विरोध कर रहे थे। आप जानते हैं, वह दिन भी मैंने देखा कि कांग्रेस पार्टी ने इस विधेयक को जोइन्ट सेलेक्ट कमेटी में भेजा था। तो उन राजनितिज्ञों को इस बात को सोचना चाहिये था कि श्रीमती इन्दिरा गांधी के नेतृत्व में यह जो कांग्रेस पार्टी का बेंच है और जो लोक सभा है वह इस बात को स्वीकार कर रही है कि जोइन्ट सेलेक्ट कमेटी में इसे जाने दो; हम वह रास्ता साफ़ कर रहे थे। इसको 10 साल हुए, 1967 की बात है और फिर यह मामला जोइन्ट सेलेक्ट कमेटी में गया और फिर कैसे-कैसे डेवलपमेंट हुए। इसलिये मैं कहना चाहूंगा इसमें कोई जल्दबाजी नहीं बल्कि देर हुई है। लोग कहते हैं जल्दबाजी मैं कहूंगा देर हुई है और मेरे जैसा आदमी इतना संतुष्ट है कि हिन्दुस्तान की इस महान नेता—महान पिता की महान पुत्री—श्रीमती इन्दिरा गांधी का नाम स्वर्णाक्षरों में लिखा रहेगा क्योंकि हम समाजवादी होकर आए थे और समाजवाद के लिये उनसे लड़ना चाहते थे और उन्होंने समाजवाद को आज संविधान में लिख कर अपने को इतिहास में अमर कर दिया।

इसलिये यह सवाल नहीं उठता। अब प्रश्न यह है कि प्रस्तावना में तो हम ने समाजवादी शब्द जोड़ दिया, लेकिन मुझे डर लग रहा है कि हमारे इस बीस सूत्री कार्यक्रम का एक तरफ़ तो कम्युनिस्ट पार्टी समर्थन कर रही है और दूसरी तरफ़ कुछ पूंजीपति लोग भी उस का समर्थन कर रहे हैं। तो गरीब और पूंजीपति दोनों ही इस का समर्थन कर रहे हैं तो आखिर हम जायेंगे कहां? यह सवाल हम से लोगों ने पूछा, तो मैंने कहा कि

इस के लिये हमारी नेता सज्जग है। उन्होंने 1971 में वायदा किया था कि हम मुल्क से गरीबी मिटायेंगे और जब मुल्क से गरीबी को मिटाना है तो देश के संविधान को भी उसी रास्ते पर ले चलना है। उपसभाध्यक्ष जी, आप भी बड़े अनुभववी है। आज तक गांवों में धनी मानी और जमींदार लोग अगर गरीब किसान पर कोई मुकदमा दायर कर लेते थे तो वह बेचारा 6 महीने में ही सरंडर कर जाता था। उस के पास न तो वकील को देने के लिये फ़ीस थी, न जमा करने के लिये कोर्ट फ़ीस का ख़या था और न पांच गवाहों को ले जाने के लिये उस के पास पैसा था। नतीजा होता था कि वह जल्दी सरंडर कर देते थे। आज जो संशोधन आया है उस ने रास्ता साफ़ किया है और जिन लोगों के मन में अभी भी भ्रम हो कि इन्दिरा जी इस मुल्क की गरीबी अभी भी नहीं मिटायेंगी उन के दिमाग साफ़ हो जाने चाहिये। सच पूछिये तो अब हमारे जैसे कार्दकत्ता के लिये तो आराम करने का समय आ गया है। हम अपने लक्ष्य तक पहुंच गये हैं। हम ने अपने बचपन में समाजवाद के लिये लड़ाई चलाई थी और आज जब हम ने देश के संविधान में समाजवाद शब्द को लाकर रख दिया है तो यह हमारी जीत की बात है। हम जीत कर जा रहे हैं। नाथ पैं जी ने हसते हुए कहा था और मैं चाहूंगा कि मैं नाथ पैं जी की दो चार पंक्तियां पढ़े। जब यह कहा गया स्वतंत्र पार्टी और दादा कृपालानी जी की ओर से यह दलील दी गयी कि आप को फ़्रडामेंटल राइट संशोधित करने का अधिकार नहीं है तो नाथ पैं जी ने कहा था :

“Parliament remains sovereign and supreme. But we are now told that a creature of Parliament can amend the Constitution, but the creator of that creature cannot amend the Constitution. A Constituent Assembly to be called by us can amend the Constitution, but we, who will be creating the Constituent Assembly will not have the power to amend the Constitution.”

[श्री गुणानन्द ठाकुर]

नाथ पं जी ने खुलासा तौर पर कहा था कि कौसी विडंबना है कि हमारे माध्यम से कांस्टीट्यूट असेम्बली बनायी जाये और हम को ही कांस्टीट्यूशन में अमेंडमेंट करने का अधिकार न हो। तो वह दिन मुझे याद है और 67 की बात जब कही जाती है और कहते हैं कि जल्दबाजी हो रही है तो आज तो 76 है और वह भी समाप्त हो रहा है आज दस साल हो गये हम दफ्तरी साहब को सुन रहे थे और मुझे हंसी आ रही थी। कोई पांच हजार दे तो वह इधर से बहस करने लगेंगे और कोई दस हजार दे तो वह दूसरी तरफ से बहस करने लगेंगे। तो इस मुल्क में वकीलों का क्या हिसाब रहा है इसे हम सब जानते हैं। उनका तो प्रोफेशन है वकालत। असली बात तो उन लोगों की है कि जो जनता का मैडेट लेकर यहां आये हैं। जनता ने जिनको अधिकार दिया है असली बात उनकी है। मुझे वह दिन याद है कि जब सुप्रीम कोर्ट का फैसला आया था प्रीवी पर्स को लेकर, उस दिन मैं बैठा था लोक सभा में। मैं भी विरोधी बेंच पर था और हम हल्ला मचा रहे थे कि चलो चुनाव करो। उसके ठीक एक महीने बाद डिजलूशन हुआ और उस पर तमाम लोग राष्ट्रपति जी के यहां चले गये कि इन्दिरा गांधी जी माइना रिी को लेकर बैठी हैं, यह कैसे लोक सभा डिजाल्व कर सकती हैं। फिर इलेक्शन का रिजल्ट आया और हमने देखा कि इस देश की तमाम जनता उनके पीछे है। आज हमें पूरा विश्वास है कि यह इलेक्शन रुकेगा नहीं। हो सकता है कि 6, 8 महीने के लिये इलेक्शन टल जाये लेकिन चूंकि वह जनतंत्र की गोद में पली है, देश के महान जनतांत्रिक नेता की संतान हैं और जनतंत्र के लिये उनके परिवार ने अपना सर्वस्व दिया है इसलिये ऐसा जनतंत्रीय नेता इस देश को इलेक्शन से वंचित नहीं कर सकता। अब प्रश्न यह है कि (Time bell rings) कुछ समय और चाहिए।

श्री कामेश्वर सिंह (बिहार) : इनको 8 बजे तक बोलने दीजिए। ये बहुत पिछड़े इलाके से आते हैं, इनकी आवाज बहुत जबरदस्त है।

उपसभाध्यक्ष (श्री रणवीर सिंह) : एक मेम्बर को और बोलने का मौका दें।

श्री गुणानन्द ठाकुर : चूंकि आपने लास्ट में कहा इसलिए मैं चाहता था कि थोड़ा समय और दिया जाए। मैं वहना चाहता हूं कि आज जो हवा इस देश में बन गई है और गरीबी मिटाने का पैगाम हमने लिया है, उसके लिए संविधान में हमने संशोधन किया है। अगर इसके बाद भी हम ईमानदारी और मजबूती से अपने कामों में नहीं जुट पायेंगे तो फिर यह जनता और देश हमें माफ नहीं कर सकता। इसलिए अब इसके बाद हम क्या करेंगे यह सोचना है। यह बिल जो करोड़ों दबे, कुचलों और दीन दुखियों को जनतंत्र के नाम पर बहस और फ्रेशन की बात कर सकते हैं, लेकिन जब रोटी का सवाल आता है तो सीधे धुम हिला कर पीछे भाग जाते हैं, उनके लिए बहस की चीज हो सकती है, लेकिन इस मुल्क के करोड़ों लोगों की जहां आंख लगी हुई है, मैं इस सम्बन्ध में एक छोटा सा कोटेशन देना चाहता हूं, खास करके पंडित जी उन्हें जानते रहे हैं कि कितने बड़े दूरदर्शी रहे और इस मुल्क के महान समाजवादी नेता आचार्य नरेन्द्र देव जी 1949 में पटना में जब सोशलिस्ट पार्टी का राष्ट्रीय सम्मेलन हुआ था तो उन्होंने अपने अध्यक्षीय भाषण में कहा था, मैं थोड़ा कोट करके कहना चाहता हूं।

"Here is one more factor which has also to be taken into consideration if you want to assess Indian situation correctly. The Indian Prime Minister is not so rigid and

inelastic in the formulation of his policy as his counterpart in China has been. I persuade myself to believe that in the moment of crisis if he feels that all the radical changes in the social system will save the situation, he will not hesitate to take the necessary steps."

अब आप सोच लीजिये कि इस देश के सबसे जाने-माने, मैं तो कहूंगा कि हिन्दुस्तान के सबसे महत्वपूर्ण समाजवादी नेता जो गांधी जी और जवाहर लाल जी के परम विश्वासी और परम नज़दीकी थे, वही एक महान नेता थे जिनके नाम पर गांधी जी और पंडित जी एकमत हो जाते थे, उन्होंने 1949 में कहा था जब चाइना में रेवलूशन हुआ था और कम्युनिस्ट लोग हिंसा की बात कर रहे थे, तो आज समय आया है, जनता सबसे बड़ी है और जनता की चुनी हुई यह संसद् है और उस संसद् को यह अधिकार नहीं तो फिर यह अधिकार किसको है? इसलिए यह प्रश्न एक बहुसं-मुणायरे के लिए है?

आज का दिन बड़ा ही सौभाग्य का दिन है, सुनहरा दिन है और मेरे जैसे साधारण कार्यकर्ता अपने को धन्य समझता है कि इस ऐतिहासिक बेला में आपने मुझे समय दिया। मैं आपके माध्यम से इस देश की महान नेता को धन्यवाद देता हूं कि उसने हिम्मत करके, क्रिटिसिज़्म को मुन करके, इस देश में गरीबों भित्ताने का व्रत लिया था और रास्ते में जो भी रोड़े अटकते थे इस जुड़ियारी के रास्ते को उन्होंने साफ किया है और यह संशोधन लाई हैं।

DR. V. B. SINGH: Mr. Vice-Chairman, Sir, in view of the limited time, I shall confine myself to four sets of problems. One set deals with the samepl sources through which

objections to the Forty-fourth Amendment Bill have come. Out of these sources there are two letters in my hand, sent from America by people who are fugitive, who are anti-Indian, who have left the motherland and who are distorting anti-India propaganda, anti-Government propaganda, anti-Prime Minister propaganda from the American soil. I appeal to the Law Minister to demand their extradition and try them under the law of the land.

8 P.M.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): Dr. Singh, you may continue the next day. There is a message from the Lok Sabha.

MESSAGE FROM THE LOK SABHA

The House of the People (Extension of Duration) Amendment Bill, 1976.

ADDITIONAL SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the House of the People (Extension of Duration) Amendment Bill, 1976, as passed by Lok Sabha at its sitting held on the 5th November, 1976."

Sir, I lay a copy of the Bill on the Table.

THE VICE-CHAIRMAN (SHRI RANBIR SINGH): The House stands adjourned till 11 A.M. on Monday, the 8th November, 1976.

The House then adjourned at one minute past eight of the clock till eleven of the clock on Monday, the 8th November, 1976.