Report thereon.

[Placed in Library. *See* No. LT-11439/76 for I and II].

REPORT OF PUBLIC ACCOUNTS COMMITTEE

SHRIMATI SUSHILA SHANKAR ADIVAREKAR (Maharashtra): Sir, I beg to lay on the Table a copy of the Two hundred and thirty-second Report of the Public Accounts Committee on Paragraphs 5, 10, 16, 17, 18 and 21 of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Defence Services).

LEAVE OF ABSENCE TO PROF. RAMLAL PARIKH

MR. CHAIRMAN: I have to inform Members that a letter dated October 27, 1976, has been received from Prof. Ramlal Parikh to the effect that leave of absence from attending the 98th Session of the House may be granted to him on account of his detention.

Is it the pleasure of the House that permission be granted to Prof. Ramlal Parikh for remaining absent from all meetings of the House during the current Session?

(No. hon. Member dissented)

MR. CHAIRMAN: Permission to remain absent is granted.

ANNOUNCMENT RE. GOVERNMENT BUSINESS

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA): With your permission Sir, I rise to announce that Government Business in this House during the week commencing 8th November, 1976, will consist of:

(1) Consideration of any item of Government Business carried over from today's Order Paper.

(2) Consideration and return of following Bills, as passed by Lok Sabha:

(a) The Appropriation (Railways) No. 4 Bill, 1976.

(b) The Appropriation (Railways) No. 5 Bill, 1976.

(c) The Appropriation (No. 7) Bill, 1976.

(d) The Gujarat Appropriation (No.2) Bill, 1976.

(e) The Pondicherry Appropriation (No. 4) Bill, 1976.

(3) Consideration and passing of the following Bills, as passed by Lok Sabha:

(a) The Electricity (Supply) Amendment Bill, 1976.

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

In order to complete the essential items of Government Business, I request you and through you the House to agree to the extension of the current Session up to Saturday, the 13th November, 1976.

THE CONSTITUTION (FORTY-FOURTH AMENDMENT) BILL, 1976—*Contd.*

DR. M. R. VYAS (Maharashtra): Mr. Chairman, Sir, I would like to rise to support the Bill. A number of points have been raised in reference to the individual items of the Bill. Also the hon. Minister for Law, in his introductory remarks, has given an analysis of the situation

leading to the present Bill. What I would like to refer here is not to individual items, but to the spirit behind the present Bill. The entire conflict that we see between our thinking and the thinking of some of the opposition Members is not on the question of the Bill or the ideas behind the Bill, but the fundamental attitude towards the people and the Constitution.

The importance of the present Bill lies in the fact that we are establishing a rule by which we are emphasising the fundamental importance of the decision of the people and not of any individual or individuals, whatever position they may be holding either in the judiciary or in the public. It is in this context that we find that the Opposition today is raising various slogans. As has been rightly pointed out earlier by many speakers and by the Law Minister in particular, the Opposition has not come out with any specific proposals either negativing the present Bill or opposing it on definite items. They have been saying, for example, that the Congress Party did not ask for a mandate for making any change in the Constitution. Various speakers have quoted from the Congress manifesto and it is very much apparent that the Congress Party has stood for the Directive Principles and in the implementation of these principles from time to time, a number of changes have been made in the Constitution and the present Bill, though it contains a large number of clauses, remains essentially a Bill to change the Constitution in accordance with the principles laid down in the Constitution itself.

The arguments that have been raised are based on the conception that you cannot change the Constitution whenever it conflicts with the inherent and vested interests of some of the groups. Now, which are these vested interests? The vested interests, it seems, have been relying on this conception that the judiciary should protect the interests of those who are in possession of wealth and power. Now, this conception is outmoded and outdated all over the world and there is no reason why our country should not emphasise it once more. It is not something new that is being enunciated; it is laid down in the Constitution itself. Now, a number of points have been raised to say that Parliament has no right to amend the Constitution. Somebody has suggested a Constituent Assembly for this purpose and some others have raised the question of referendum. But, Sir, both these things are not within the Constitution. Actually, what the Constitution lays down can be seen in Article 368 under which Parliament is the Constituent Assembly, a permanent factor, and, as such, is entitled to make any amendments provided it is within the laid down rules and the present Bill conforms to it fully. Now, what is the conflict that has led to the practical boycott by some of the parties and to the criticism against the Bill? If we examine the history of the past few years, we will find that whenever Parliament has asserted something to the benefit of the people in general and in the implementation of the principles laid down in the Constitution and whenever Parliament has tried to enforce them because they were not enforceable by law, they have come out with opposition to the same on the ground that it touches the fundamental rights. When they talk of fundamental rights, what are the fundamental rights that they speak of ? They speak of the right of speech and the right of the Press and all sorts of things. Now, I would like to ask whose rights they are trying to defend. Are they trying to defend a few people with vested interests or the public in general? As far as the Press is concerned, we have witnessed with regret that in India our Press has been given the widest freedom which you cannot come across in any part of the world. But what is the use of this Press? Eighty per cent of our people live in

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the rural areas. But, if you look at the Press, even today you will find that the vast multitude is being ignored and the progress that is being achieved in the countryside is being ignored. Is this the conception of the freedom of the Press? It is freedom for those who are in possession of power and money. But this cannot be accepted by people who have been elected by adult franchise and who represent the people in Parliament. And it is this broad aspect that has angered some of them to lead a kind of struggle against Parliament itself. It is very apparent that their struggle is against the elected representatives of the people and Parliament and they thought that courts will be a good means of opposing the people. For example, their emphasis is on the supremacy of the Supreme Court. Now, if the Supreme Court is being delegated powers by the people, certainly they can talk of democracy or in defence of democracy. Is that democracy that somebody who is nominated and a servant of the people should sit in judgment over the people who are elected the people in general? It is very apparent that whenever there is a conflict, those who have been elected by adult franchise, by the voice of the people, should decide the future of this country and not those who have been made to sit in a particular chair to give effect to the work of Parliament. Now, here what has been attempted is that those who have been delegated the power to see to the implementation of the will of Parliament, are trying to sit in judgment over Parliament itself. And what is the reason behind it?

Sir, it is very simple. For twenty years or twenty-five years, they tried, in vain, to come to power by means of elections. When they did not succeed, they thought that the means of judiciary would be a good means to supersede the representatives of the people as represented by Parliament. We have seen the sorry spectacle that very many progressive legislations enacted by Parliament were brought to naught by writ petitions and other means in the Supreme Court or other courts. Now, is that the attitude towards people, that when we are trying to make progress through legislation somebody should go to a particular place because that right has been given and stop and block the passage of good legislation? This is what was being done. In the initial stage of our Constitution making, when this particular point was discussed there were various points of view, and one of them was that we should follow the British policy of not allowing writs against every action that arises out of legislation. Ultimately, we thought that our people should have more rights than even what the British Constitution has given to the British people. Whenever you get a right and when you use it properly, certainly there is no reason to complain. It is always when misuse takes place that we have to think back and think again. And this is what happened. Thousands of petitions started going on in the name of writs, thousands of petitions in the name of *mandamus*, and so on. So the ultimate effect was that our courts got blocked, our justice got blocked. It is said that justice delayed is justice denied, and here in the name of justice, justice was denied to the millions, because most of these writs were not against individual's rights but were against the social policy of the Government. And this attitude to bypass the elected representatives has been the back-bone of the entire Opposition argument. That is why they have not been able to come out with any specific problem. They say that this Bill is wrong. Some of them have said that they have no time because of emergency, that they have no means of communication and all that. But Sir, this is absolutely wrong. I remember about two years back, one of the leaders, top leaders, Shri Jayaprakash Narayan, announced a committee to go into the aspect of the Constitution and they brought out a report, but that

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report was nothing but a white-wash of a theory or something that does not exist. At that time there was no emergency. At that time they did not do anything concrete. If they had given some suggestions, I am sure nobody could have prevented them. It only shows that the argument of emergency is being used simply to participate in the debate and try to block in the minds of the people the correct attitude towards the Constitution amendment that we are carrying through here. The worst aspect of this point is that they have looked upon the courts and especially the Supreme Court as a kind of means to come to power over the head of Parliament. I remember and many of us will remember that about two years back, one of their leaders. Shri Morarji Desai, had announced that in 18 months, the Prime Minister would have to vacate. If you remember the date, you will find out on what strength he was saying this. I am sure he must have calculated in his own way that the judgment of the Allahabad High Court will come out. How did he feel sure that the court judgment in Allahabad would be against the Prime Minister? Their calculation was upset by the supersession of some of the Judges in the Supreme Court. The calculation was very simple. The Prime Minister would be defeated in Allahabad and thereafter it would come in appeal to the Supreme Court and their great friends in the Supreme Court who were sitting in judgment at that time would see to it that the Prime Minister was defeated. The Prime Minister was not to be defeated by the people. Certainly, we are democrats. If we go to the polls and people defeat us, the Prime Minister would be the last person to say anything against it. Who are these people who are trying to defeat the Prime Minister in the name of justice by bypassing the Constitution itself? These are the people who talk of the Constitution. These are people who have no regard for democracy. One of their top leaders talks the loudest about our not keeping the Fundamental Rights. These were the people who were preaching total revolution. I do not know whether this revolution comes by constitutional amendments. These are the people who have, in the past, supported the theory of Ayub Khan's basic democracy. What was Ayub Khan's basic democracy? They talk about the Fundamental Rights of our people. It was for these Fundamental Rights that our party in power has for the last so many years, stood for elections and fought the elections. Last year, despite many handicaps, when some of the opposition leaders wanted that we should go to the polls in Gujarat, we did so. Gujarat Assembly was legally constituted. They saw to it that it was broken up. In spite of all that, we said that we are democrats and we would go to the polls although there was no necessity whatsoever to call for early polls in Gujarat. These are the people who argue today in the name of democracy that we have no right to amend the Constitution.

As far as the referendum slogan is concerned, it is utter humbug. On what will you seek referendum? The very fact that the Congress Party has been elected for a particular purpose, for a particular slogan and a particular right of the people, certainly that itself is a referendum. If the Congress Party feels, since it is the ruling party and the majority party with responsibility to the people, that certain aspects of the Constitution have to be changed, there is nothing that a referendum can do about it. Sir, if you read the Constitution, it is very apparent that there is only one article by which you can amend the Constitution and that is article 368. It has been specifically mentioned that Parliament becomes the constituent power. The power of being a constituent authority is vested in Parliament and it is only the constituent authority as mentioned in the Constitution which can implement or change the Constitution. There is no mention of a referendum. There can be no referendum under the present Constitution. In fact, if anybody wants a referendum or raises the slogan of a

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Constituent Assembly, I would say that there is no provision whatsoever for that. Parliament remains the permanent Constituent Assembly. We change it today. We may change it again. It is up to the Parliament to judge when and how it should amend the Constitution as it fits in with the aims and objects of the people's progress. The ultimate object is people's progress. After all, what is democracy? It is only a means. It is not an end in itself. Democracy is meant to enable us to implement the wishes of the people. Today, the wishes of the people are that we must make faster progress and that we should have greater equality before the law.

We should have equal opportunity. Now, as far as law is concerned, they have been raising the slogan that we are keeping the people away from the law, we are keeping the people away from the judiciary. Who has kept the people away from the judiciary? What is the system of judiciary that has been going on in this country for the last 25 years? For the first time in the present amendment, we see a kind of free legal aid being given and assured to the people. This is the only way to arrive at justice and not by simply slogan-mongering or by saying that justice is not available to all. We know the conditions in our country. We know the difficulties that stand in the way of a common man to go to a court. And if they have had any feeling for the common people, they would have come out suggesting how we can expedite meting out justice to the people, particularly the weaker section. (*Time bell rings*). I will take just two minutes, Sir. There is no question of a weaker section with them because, if you talk privately to most of these people who stand in opposition to the present Bill, you find they always say, "Oh, you win on the votes of the illiterates." Yes, they have a hatred for illiterates. They have a hatred for the weaker sections. And it is out of this hatred that they do not want the present Parliament to function or any Parliament to function because they think that a man who has money and who can show off is the only one who can govern the country. Those are outdated notions in the world. They talk of Britain. They talk of the United States and other countries. But in the present context, I have noticed particulary that they have not referred to the United States or to the United Kingdom because they find that there are weak points in this particular section in both these countries. The powers they are demanding here do not exist there. In Britain or in the United States, no court can say, "Mr. Prime Minister, you go out". It is only here they want to have the right to tell this through the judiciary, one single man or two or three sitting on the Bench and saying one thing today and another thing tomorrow. We must amend this sort of jungle of laws and decisions. We must stop people who are not elected by the people to dictate to the Parliament what should be done or what should not be done. So, the importance of the present Bill lies in the fundamental aspect of our thinking and our progress and that is, the people should decide the future of this country, the people should decide what we want and not somebody who has been appointed to whatever post it may be in any part of the country. They have objected also to the legalisation of a fact which exists in all the democratic countries. And that is, the Head of the State always abides by the decision of the Cabinet and the Government. Now, we have legalised it. They make a hue and cry about it. Why? Because they are only trying to find avenues whereby a kind of conflict may be caused in the thinking of the Government and the President. There is no such conflict. What is being done is to stop any future Supreme Court from trying to say what the President should have said. So, it is in this spirit that I support the Bill and I hope it will receive the unanimous support of this House. Thank you, Sir.

SHRI C. K. DAPHTARY (Nominated): Mr. Chairman, Sir, I rise to speak with great diffidence and considerable hesitation. I really did not wish to do so at all but I do so for a particular reason to which I shall come later. I say with diffidence because I am a lawyer, I have always been a lawyer and I continue to be a lawyer. The Law Minister said in the Lok Sabha the other day with great relish and he quoted a former Member of the House having said that lawyers are one generation behind the times, that judges are two generations behind the times. As one, therefore, who is a generation behind the times, I hesitate to speak. But I may say this. Everyone has not had the opportunity, which the hon. Law Minister had, of quitting a profession where everyone is one generation behind the times and quitting the Bench where every judge is two generations behind the times and of becoming a Minister in order to bring himself up to date and in conformity with the present times. Everyone has not got that opportunity.

Now, Sir, I may be a generation behind the times and distance ordinarily lends enchantment to the view but the generation gap that makes a distance here does not lend in this case enchantment to the view. It certainly lends a proper perspective to the view. But I do not propose, Sir, to go into the questions of law or the High Court or the Supreme Court or what they have done, what wrongs they have done, and so on. The cake has already been baked by the Lok Sabha. It only remains for this House to put a little iced sugar on the top and it will be given to the public. In that position it is idle to speak of any matters at any great length. But I would like to touch on two or three points.

The first thing is that the hon. Law Minister has said that it had been welcomed by the people, this measure had been welcomed. I do not know how he says that. There has been no public debate, if I may venture to say that. There has been none. There has been some debate that is true. At the time the Swaran Singh Committee sat it was good enough to call certain lawyers' association to give evidence and talk evidence before it and talk with it and they did so to some effect, I believe. But all public meetings were prohibited. There were two meetings here which I was to address but they were prohibited. One in Bombay was prohibited, one in Bengal, one in Madras and several elsewhere were prohibited. It is only after the Bill was introduced on the last day of the last session that there has been some relaxation. But there was a condition for the holding of these meetings, namely, that they should be held always in a hall with a limited audience and not in a public place where a large number of people would address. The public, as a whole, is aware only of one side of the picture because the prophets of the new deal, major prophets and minor prophets, have been stamping the country, addressing meetings everywhere and extolling the virtues of this new Constitution that is to come. Now, some of the things they have said are acceptable, there is no question about that. But they have not given a true picture and no one has been able to say anything in adverse criticism of any part of the new Constitution in a large public meeting. I say there has been no public debate. As to the appreciation by the people, there have been no doubt communications. The hon. Law Minister said that he had in one meeting of a Committee received 500 or more letters from various people. He stated here that the Swaran Singh Committee had received about a thousand letters. We do not know from whom they were received or what they said. I do not know if any of the Members of the ruling party or any other Members have had the opportunity of speaking to their own constituents and telling them about the provisions of this Constitu-

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tion and what they imply. I do not think there has been any such movement at all.

Coming next, Sir, to one or two features of this Constitution, I say that it is a far-reaching measure. In substance and in fact it takes away the powers from the Public Service Commissions, from the Election Commission and from some of the courts and vests them all in the Prime Minister or the Cabinet, let us put it that way. Now, that may be a good thing. Dictatorship can be very good; may be good for the country in the present situation. But the Constitution is not for the present; it is for ever and however remote the time may be, when the Government may change—it is very remote indeed—and some other Government may come, we shall not be as wise or as considerate and may use these very provisions to oppress the people. That has to be borne in mind when you look at it as something which is for good or evil. It is for good at the moment, perhaps; but it may be for evil in the remote future. That is one aspect.

Next aspect, Sir, is that of apprehension and fear. This Bill has been introduced at an unfortunate time. I do not speak about the mandate or the constituencies or the Select Committee.

But, Sir, for a period of 18 months, the country and the people have been in a state of doubt, disturbance and in some localities even terror by reason of the manner in which the controlling measures or the repressive measures during the emergency have been administered. I refer, in particular, to the Maintenance of Internal Security Act. It is notorious and I do not think anybody will deny that it has been gravely abused. It has been used for purposes like preventing a person from filing a suit—I speak of known cases—against the Government or committing a traffic offence. A policeman had in his hand a bundle of orders signed by the District Magistrate, in blank, to be used by him whenever he liked, thereby taking away the discretion of the District Magistrate and he could use them for purposes of ordinary crimes or suspected crimes where he is too lazy to investigate the case and file a prosecution. His simple way was to fill in the order and detain the man. Now, in that state of affairs, when a Bill like this is introduced which confers great power upon the executive, it is bound to be looked at with suspicion and apprehension which would not otherwise have arisen. And I will tell you, Sir, where the apprehension lies, at least to me. The apprehension lies in article 31D. That is a clause dealing with anti-national activities. Anti-national activities have been defined very widely. Naturally, there will be some law against these activities. True; but we know from our experience of statutes like MISA that all sorts of things have been brought within it which strictly do not fall within it at all. And the apprehension is that the measures to be taken in regard to anti-national activities will not be hedged in whereby some specific act is punished but recourse will be preventive detention. Now, preventive detention was, Sir, in the Constitution. It was limited in many ways. It was hedged round with safeguards of various kinds. These safeguards have been done away with during the emergency and who knows they may remain absent even in the future. With the absolute power of amendment which Parliament now has, it is possible that it may be induced to pass laws for preventive detention which do away with these safeguards as they have been done away with during the emergency. My fear is not entirely groundless because it has been said that the emergency has brought certain gains by way of foreign exchange, discipline and so on and so forth. That is so. But at the same time, there have been many disadvantages. Yesterday, the Law Minister, while moving the Bill in the Lok Sabha for extending the life of Parliament, mentioned the fact that various gains had been obtained

by reason of the Emergency. He did not say, but he implied, that it is not desirable that the Opposition should now be vocal and be able do away with the gains obtained during the Emergency. My fear is that Government will consider or think that there is no way of continuing to make gains except by measures tantamount to those which have been enforced during the Emergency. As it is, Emergency is going to continue at least for a year more so far as one can see. Some gains may be obtained. But what is there to prevent the Government, the executive, from thinking that it is desirable to continue this state of affairs permanently in order to make sure that they obtain more gains.

Sir, I, for myself, apprehend this. First of all, look at the Fundamental Duties clause. This has been very generally worded. When the Swaran Singh Committee met and finalised its tentative report, it said that Parliament may provide, by law, for imposing penalties or punishment for breach of any of these Fundamental Duties. This is not there in the Bill. But there was a press note—unfortunately, I have not got a copy of it with me here—which said that it is open to Parliament to impose penalties. The present Bill does not speak of penalties or punishment. It simply says that no law with reference to any matters contained in sub-clauses (a) and (b) of clause (1) of article 31D (which is proposed to be inserted) shall be called in question on the ground that it violates the provisions of articles 14, 19 and 31. This in itself, to my mind, is an indication that there will be no punishment or penalty, but there will be a continuation of preventive detention. Everyone will agree with me that this, as a permanent measure, would be undesirable. In fact, it would be destructive of the liberty of the people.

One word, Sir, about what has been said by the hon. Minister and by others about the Supreme Court and the High Courts. It is unfortunate that no one has produced any statistics or figures to show how many statutes have been set aside by the High Courts or the Supreme Court and how many have been upheld. I would say that the vast majority of cases and impugned statutes have been upheld by the Courts and not declared void. There has been constant mention of the Golaknath and Kesavananda Bharati cases. Right or wrong, a word is said. They were decided, I would submit, not because of the political views of the judges who decided them, majority of them, but because of a genuine fear which they had that sooner or later, there would be an attack on the Fundamental Rights and that an important Chapter of the Constitution would be deleted. Because they had that fear—to some extent, this has been realised by this Bill—they came to those conclusions in an attempt, as they thought, to prevent anything of that kind being done. They could not prevent it. It has, in fact, come here now.

The Fundamental Rights have not been done away with. I agree. They still remain on the Statute Book. They have not been killed. They have been merely imprisoned. You just put a fence round a man and say: I have done nothing to him but I have put a fence round him. The Fundamental Rights Chapter is there as much as the chapter or the corresponding chapter in the Bill of Rights in certain countries, we know where they exist on a piece of paper, they are not observed, not intended to be observed. This Chapter, when it was inserted, was intended to be observed and the founding-fathers who drafted the Constitution were aware of the Directive Principles which they themselves put into the Constitution and deliberately they gave the Fundamental Rights preference. Now the whole Constitution is being upset in the sense that the Directive Principles are made superior to the Fundamental Rights If that were so, even then there is no harm in it. The Constitution, its article 19, provides with reference to various Fundamental Rights. It is open to Parliament to make reasonable

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laws, making reasonable restrictions on those rights and laws have been made in the past. But this Bill is as much as a notice to the people that the laws that are going to be made in future to carry out whatever the objects of the Government, will be unreasonable, will be oppressive, will be tyrannical, will be draconic and no one can say a word against them. When the Supreme Court decided those few cases, why don't people point out also that they decided the *habeas corpus* case on lines which were entirely in conformity with Government's opinion, Government's policy and Government's desire? They went to the length even of saying that if a detention was on the face of it *mala fide*, it would not be challenged in any court and they accepted it more or less but the mouthpiece of the Government, the Attorney-General, said that here is the case, a man was shot and he has no remedy. Now that case has never been mentioned. Why not, when Golak Nath and Kesava Nanda Bharati are mentioned in order that the Prime Minister, as she did in the Lok Sabha on the 28th of last month, may waive a big stick at them, threatening them and warning them? At least I have not seen it before. Have they taken into account the numerous cases decided by the Courts in favour of Government, upholding legislations and, in particular, the *habeas corpus* case? I say, Sir, the approach to the Courts or the attitude towards the Courts is unfair and I leave it at that altogether.

Now, Sir, lastly the Fundamental Duties. May I submit that the inclusion of that clause in this Bill, unless it is made punishable as the intention apparently was, is entirely superfluous? After all, Sir, a majority of people are law abiding. There are always a few people who commit murders, thefts and so on. These people know that every action of theirs is controlled. They know that every statute that is passed nowadays or in the past carries a chapter of penalties and punishment. They are law abiding by nature and by training and what is the necessity of telling them what their duties are unless the Government is of the opinion that people do not know their duties? That I say is a fallacy. They know them very well. When the Swaran Singh Committee made these suggestions, the last item was to pay taxes. Now everyone knows it, wisely or rightly but the other things fall in the same category to abide by the law. Everyone knows, if you do not abide by the law you are liable to a penalty and nine out of ten or 999 out of thousand abide by the law. They abide by it not because they know that there is a penalty but because they know that it is the right thing to do. They observe the law, they observe their duties, and people will continue to observe their duties and perform them so long as they are happy and reasonably content and proud of being citizens of this country. So long as that is the situation, they will continue to do it and if it is suggested that they are not conscious of their fundamental duties, it means that they are not content and not proud of being citizens of this country. If that is so after twenty-six years of independence, it is not their fault.

SHRI D. K. BOROOAH (Assam): Mr. Chairman, Sir, I thought it was not necessary for me to enter into a passage at arms with Mr. C. K. Daphtary, whom I hold in great respect both for his erudition and his gentlemanliness. Nonetheless, I have an idea that he has mixed up his arguments in a manner which left us as wise as when he began.

Sir, I will start with the end of his speech when he said that the fundamental duties should have carried a penal measure along with them. I could see, Sir, the lawyer speaking through him. He was frank enough to say that he has been a lawyer, is still a lawyer and is going to be a lawyer. Sir, in this country or, for that matter, in any democratic country where people's will controls the governance of the country, we do not control people only by the fear of law. We

instil into them a sense of democratic responsibility. These fundamental duties only indicate to the people that in the present situation when we are establishing a democratic governance what they are expected to do. Democracy is a plant of slow growth. You cannot order it as you like. Therefore, these duties have been placed before the people so that they will consider them and act accordingly. It does not require the baton of a policeman to teach people what their duties are. They are like the Ten Commandments. The Ten Commandments do not carry any penal clause with them, nor are they justiciable in a court of law. Yet people follow them. Why? Because people have faith in their inherent goodness and inherent utility. So, these are in the nature of the Ten Commandments—not privileges—for national consolidation, for strengthening our nationalism in order that people might follow them without any fear or without any fear of police or any authority outside their own heart and outside their own decision.

Now, what are these? "To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem". Sir, it is a very large country with about 600 million people. It is only 27 years ago that we started our onward march. Both the National Flag and the National Anthem form part of one's life, form part of our national culture. That is the purpose. The people should know that it forms part of our life style both individual as well as collective life. Then: "To cherish and follow the noble ideals which inspired our national struggle for freedom". Certainly, we are where we are today because there was the struggle for freedom by which we won our independence. Had we not fought that struggle, neither Mr. Daphtary nor I would have been here—Mr. Daphtary would have been here, but I would not have been here. Then: "To uphold and protect the sovereignty, unity and integrity of India". What is wrong in asking the people to uphold the sovereignty of India? In fact, during the last 27 years we have fought three wars and protected our sovereignty. Then, "unity and integrity" are the very basis of our strength. What is wrong in asking the people to uphold them? Have we to threaten the people to accept it? The people will accept it willingly. All that is enshrined in the Constitution is their political Bible.

Then, it is stated: "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". Have we to go with a policeman's baton and tell them that if you don't do this, you will be beaten or you will be sent for imprisonment and a fine of Rs. 500? The Constitution has to provide leadership to the country, leadership for strengthening and consolidating nationalism. So, these are the items which strengthen our nation. Therefore, we have placed them before the people and I am sure the people will accept them without the policeman's baton being wielded about.

Secondly, it is said: "To value and preserve the rich heritage of our composite culture". What is wrong in that? Sir, in this country, we have produced marvels of civilization, literature, arts and architecture. What is wrong when we ask the people to preserve these things? Is it not a fact, Sir, that in this country there was complete indifference to our cultural achievements? Is it not a fact that had not Lord Curzon been the Viceroy of India, the Taj Mahal would have been sold brick by brick? There was that lack of awareness. Therefore, Lord Curzon passed the Ancient Monuments Act. I think that is one of the greatest services that he did to our nation. When he was asked, "What is your biggest achievement in India?" He said, "I have protected the monuments of ancient India". He protected the Taj Mahal; he also protected Khajuraho. What is wrong in asking the people to preserve our ancient heritage and composite culture?

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In terms of money, many of our art specimens have become very expensive, very valuable, and there is a lot of smuggling going on. Therefore, if you ask the people that they should be preserved for the country, what is wrong in that? You cannot stop it only by penal measures. You must also create in the people respect and pride in our art and culture.

Then, "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". What is wrong in that? America did it in 1905 when Theodore Roosevelt was the President of the United States. One of his greatest achievements was that it was he who first started what is known as the conservation policy, and it later became a very widespread policy of the United States of America and other countries of the world—the civilized countries of the world. What is wrong in having compassion for the living creatures?

"To develop the scientific temper, humanism and the spirit of inquiry and reform;". We only ask the people to do it. Can you compel them to do it by threat of punishment or by threat of imprisonment or by threat of fine? You cannot do it. These are meant to raise our people above themselves, to think in terms of not one's personal benefit but of the glory and greatness of the country. That is the purpose why these Fundamental Duties have been incorporated in the Constitution And I am sure, Sir, that the people of India will certainly respond massively to this and we do not need any threat of punishment for the people to accept these duties. Not being a lawyer, I have some faith left in the people of India.

DR. Z. A. AHMAD (Uttar Pradesh): Does that mean that lawyers do not have that faith?

SHRI D. K. BOROOAH: Let me come to it a little later. When I say this, certainly the present company is always excepted. Sir, I was a little amused when I got a statement by 200 odd intellectuals....

AN HON. MEMBER: Supposed to be intellectuals.

SHRI D. K. BOROOAH: Anyhow, they did not claim that they were intellectuals. They are headed by the redoubtable name of Shri Daphtary. But for the fact that they are headed by Shri Daphtary himself, I would not have put much weight on this.

Sir, what does it say?

> "We, the signatories to the statement, are not opposed to changes, even sweeping changes, being made in the Constitution. As concerned citizens, however, we feel that matters of such vital importance must not be decided in haste without the widest possible public debate in the country as the Prime Minister herself has often stressed. We also unanimously and firmly believe that the present Parliament has neither the political nor the moral authority to enact such fundamental changes in the Constitution. Firstly, the Parliament was expressly elected by the people of India for a period of five years and that period expired in March, 1976. Secondly, in the General Election of 1971, the ruling party had neither asked for nor was given any special mandate for making the changes now proposed."

Sir, here is the AICC mandate, the election manifesto of the Indian National Congress—

> "14. However, as a result of certain recent judicial pronouncements, it has become impossible to effectively implement some of the Directive Principles of our Constitution.
>
> 15. 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 had earlier been amended in the interests of economic development. 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."

This was the mandate asked for and the people gave this mandate. Even in this House, there is more than two-thirds majority which is necessary to change this Constitution. It is as simple as that. But I see, Sir, that it includes some historians also, some well-known names I find—Dr Gopal and a few others. All I say, Sir, is that certainly you have the right to interpret; the right of interpretation is there. But facts must be correct. And how will they write history about 200 B.C. or 700 A.D. when they cannot get correct information about June 1 and 2, 1972? Therefore, I would suggest, Sir,....

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SHRI G. LAKSHMANAN (Tamil Nadu): Mr. Borooah, even taking for granted that the 1971 mandate is there, at least when the life of Parliament was extended by one more year you could have placed these things before Parliament and then asked for extension. You have not done that also.

SHRI D. K. BOROOAH: I will come to that. Now, what is Parliament? The Lok Sabha is elected by adult franchise, according to the Constitution. And here we are in the Rajya Sabha and we are also elected through the State legislatures. Now we constitute the Parliament. Now what is the interpretation of the Constitution in regard to Parliament? Extension by one year at a time is permitted by the Constitution. And this is not a new Constitution. It is the Constitution which was framed by the founding fathers of the Constitution. Therefore, we have done nothing unconstitutional. Therefore, we need not be apologetic about it. I will come to the reason why this extension became necessary. This became necessary because for the last two years or more, before the 26th of June 1975, before the Emergency, what was the situation in this country? Mr. Daphtary, may be, was in blissful ignorance about it. But what about the common man? How was life made impossible? Children could not go to school. Buses, instead of being used as vehicles, were used as firewood. Trains never ran on time. And there was a strike in the Railways on a vast scale, the purpose of which was to starve the people of India. All this was really to make it impossible for us to implement that mandate. If we did not complete that mandate of amending the Constitution during this period, the fault is not ours. The fault is of those who wanted to excite the army to revolt and the police to strike and the legislatures to break. They broke one legislature in Gujarat. They wanted to destroy another duly elected legislature in Bihar. Fortunately Congressmen stood up to them and all the progressive forces stood up to them, and they did not succeed. But that is why we could not complete this legislative work in time. I also feel that we should have started it immediately. Perhaps that would have been better. But we thought that normally we had five years and so we would be able to do it in time. Now they say we have no authority because we delayed. Now they say "You are in a hurry because we could not get a chance to consider this." About a year ago, in about February, the Swaran Singh Committee was appointed. Since then a lot of discussion has taken place. Not only lawyers from Delhi but lawyers from all other important High Courts had come. I myself saw that all the eminent lawyers of Calcutta High Court appeared before the Swaran Singh Committee and discussed this problem. I myself attended a conference of lawyers in Calcutta attended by the Chief Justice of Calcutta High Court, all the High Court Judges and

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four Judges of the Supreme Court. I was present and we discussed this matter of Constitution amendment also.

SHRI G. LAKSHMANAN: Have you accepted any of the suggestions made by these people at any of these meetings?

DR. V. P. DUTT (Nominated): Two of my suggestions were accepted by the Committee.

SHRI C. K. DAPHTARY: They have accepted one of my suggestions also.

SHRI D. K. BOROOAH: Have they? But acceptance or rejection of suggestions can be done by Parliament. But to say that we did not discuss this matter of amendment with people is incorrect. I was in Bombay. There 14 Judges of the High Court were present and most of the eminent lawyers were present and we discussed this problem with them. They all felt that it was necessary that the Constitution should be amended. We will come to it later. Therefore, to say that we did not discuss is certainly not based on facts. I suppose it is now clear so far as the facts as raised by the intellectuals led by Shri Daphtary are concerned.

Shri Daphtary raised the point about this emergency. Emergency is a situation which is not of our choosing. Emergency was imposed on us. To protect the people of India from chaos, from lawlessness and from hooliganism this had to be taken recourse to. It was envisaged by our founding fathers. It is in conformity with the Constitution. There is also nothing unconstitutional about it. What happened soon after the emergency was imposed? The trains started moving on time. The students started going to their classes. The teachers started teaching. Offices started working on time and I am told even magistrates and Judges started coming on time....

AN HON. MEMBER: Not all.

SHRI D. K. BOROOAH: But majority of them, certainly. These are the gains. And then there are economic gains. The runaway prices have been contained. Our foreign exchange has improved considerably. I myself was a victim of foreign exchange. When I came here as a Minister you remember the crude price went up from 2 dollars and 6 cents per barrel to 11 dollars and 45 cents per barrel and our exchange went from 200 to 1400 crores. You know how difficult it was to provide the necessary power for the industries to run, the diesel oil for our trucks to run and for our pumps to work and kerosene to our people for light and fuel. We all know that. Now what has happened? We were getting only Rs. 12 crores by way of remittances from our citizens abroad. Now it has risen to Rs. 140 crores. At one time we did not know what to do and how to get foreign exchange required to buy crude oil. Some people are lucky. I was most unlucky whereas my illustrious successor Shri Malaviya is a very lucky person.

Therefore, are these not gains? Is it not a gain that we have been able to control the prices and we have been able to control inflation which no other country in the world has done? I am talking from personal knowledge, Sir. Soon after the emergency, I travelled in Italy and I travelled in England and I travelled in other countries also. What did I find? I found that ours is one of the few countries which has contained inflation and stopped the runaway prices which England has not been able to do even today. Therefore, these gains are important gains and these are not negligible gains and these gains are necessary for the survival of the people. Why did we found this Constitution? Only for achieving the aims mentioned in the Objectives Resolution. Replying to the debate on the Objectives Resolution to found this Constitution, the late Jawaharlal Nehru said on the 22nd January 1947:

"We shall pass this Resolution, the Objective resolution for the founding of the Constitution. I hope this Resolution will lead us to a Constitution on the lines suggested by the Resolution. I trust that the Constitution will lead us to real freedom for which we have been clamouring so far and that real freedom in turn will bring food to us and to the starving people, will bring clothing to them and will bring housing and all manner of opportunities for progress."

Sir, I would like to submit that the emergency which is a child of the Constitution has brought about all these things. It has tried to bring food to the people, clothes to the people, houses to the people and many opportunities of development. Therefore, it is necessary that the gains are consolidated and not frittered away. So, Sir, I suppose that the emergency was necessary and I suppose it still continues to be necessary.

Sir, I was reading a book by one Mr. Kelly, who was the Professor of law at University of Dublin. He has said in the book that De Valera, in the thirties started the emergency and his successors are still continuing because they found it useful. Even today it is there if I am not mistaken and at least when Mr. Kelly wrote this book a few years ago, there was emergency in Ireland. Therefore, Sir, this emergency is not quite uncommon even in democratic countries.

Now, Sir, I will come to the biggest point of all of them and it is the question of the Supreme Court *vis-a-vis* this Parliament. Sir, our Constitution, as I said, has one characteristic, one basic characteristic, and that is the sovereignty of the people expressed through Parliament. That is the only basic quality of this Constitution, that is, it has founded the sovereignty of Parliament and nobody else's sovereignty in this country. And in this country, both the executive and the judiciary, Sir, are subordinate to Parliament. The executive, that is, the Prime Minister is certainly very powerful. But then she is the creature of this Parliament. Then, the judiciary, certainly, has its own field and in its field nobody should disturb it. They can claim autonomy, but they cannot claim sovereignty because that is not envisaged in our Constitution.

Another characteristic of our Constitution, Sir, is its changeability.

SHRI C. K. DAPHTARY: I know what you have to say now....

DR. Z. A. AHMAD: He cannot stand it any longer.

SHRI D. K. BOROOAH: He is an old man and he may be tired. Let us give him the benefit of doubt.

SHRI JAGAN NATH BHARDWAJ (Himachal Pradesh): He does not know about the people himself.

SHRI D. K. BOROOAH: About the changeability, I will not quote Pt. Jawaharlal Nehru. He has often been quoted. But I will only quote from the speech of one of the principal draftsmen of the Constitution, who is known as the Father of the Indian Constitution, Dr. Ambedkar. He quoted Jefferson and said that every generation has a right to make its own decisions. I will not go into that. But I will quote, in a nutshell what he said before the Constituent Assembly:

"The Assembly has not only refrained from putting a seal of finality and infallibility upon the Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in

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the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. Those who are dissatisfied with the Constitution have only to obtain a two-thirds majority and if they cannot obtain even a two-thirds majority in the Parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public."

Because of this, Sir, the responsibility of amending the Constitution fell on our shoulders, because we are the only party which got two-thirds majority. It was envisaged by the founding fathers as very clearly stated by Dr. Ambedkar himself.

Sir, when we became independent, the historic destiny made it obligatory for the Congress to frame a Constitution. We did not make the Constitution by holding a meeting of the All India Congress Committee. We established a Constituent Assembly and invited all parties to join. Some joined, some did not. I do not want to name them. But those who did not perhaps may not have a chance in their life-time to serve the people of India. In any case they did not represent two-thirds majority which is necessary for passing this amendment. What I want to say, Sir, is **what the Congress did at that time.** We invited experts, irrespective of their political affiliations. Dr. B. N. Rau, who was made adviser, came from the Bench of Calcutta High Court. Sir Krishnaswamy Aiyangar was Advocate-General of Madras. Then, Dr. Ambedkar was never a friend of the Congress. Shri K. M. Munshi was there. Even Sir Mohammad Saadulla, who was Muslim League Chief Minister of Assam was also put on the Drafting Committee. Sir, this Constitution was built up by consensus, except of those who thought they were too revolutionary to join the Constitution Assembly or who perhaps had no conception of what the Constituent Assembly was, because, Sir, as Lord Budha said, "The enemy of good is not evil, but ignorance".

Sir, about the changeability, as I said, you can change the Constitution, we have to consider what the founding fathers said about it because interpretation of the Constitution should be based on the intentions of those who wrote that Constitution.

Sir, here I must say one thing. In this country the Judges have done a yeoman service to the country. The main architect of the Indian Constitution was, Sir, B. N. Rau, who was a Judge of the Calcutta High Court and later on of the International Court of Justice. So, therefore, we have nothing but respect for the Judges. But for Sir, Ashutosh Mukerjee, the Calcutta University would not have attained the standard it did.

Sir, but for Sir Maurice Gwyer would you have had the Delhi University, which is one of the biggest and best in the world? Is it not a fact that Justice Varadachari and Sir Zafrullah, when they were the Justices of the Federal Court, struck down the Special Court Tribunal Ordinance as a black law? They turned it down and it went to the Privy Council. The Privy Council upheld the Special Court Tribunal Ordinance. We have Judges who have been great public servants. We are proud of them. Sir, till 1967, the Supreme Court produced eminent Judges. How can we forget the greatness of Patanjali Sastri? How can we forget the learned Judge who is still living amongst us, Dr. Gajendragadkar? They said that Parliament has the right to change the Constitution because they had respect for the founding fathers of the Constitution. What happened in 1967? It is not the political belief of the Judges. I do not believe that they have any belief. It is that political ambition entered the portals of the Supreme Court and when political

ambition entered by the main door, judicial restraint and discretion escaped by the window. A Chief Justice became a candidate for the presidentship of India. If we examine it closely, we will find that Golaknath and other similar cases were passed by a majority of one only in most of the cases. How can we blame the others for the mischief done by those who were politically motivated? I have full faith in the Judges. That group of Judges has gone. I am sure the new Judges will come as has happened elsewhere in the U.S.A. or Great Britain. When the old Judges retired, the new generation came with a sense of realism. What I want to say is this. I am sure that there is no confrontation between the Parliament and the Supreme Court because our founding fathers did not divide the powers vertically or horizontally as they did in America. The American President has all the executive rights. Both the Houses of Congress have only legislative rights and the Supreme Court has judicial rights. But, in our country, Parliament has the executive and legislative authority and the Supreme Court has only one right, that is to interpret the law in terms of the Constitution. They cannot make laws. I would like to quote what Lord Devlin has said in The Times:

> "....But in our law what is implicit is destroyed by what is express. There would of course be nothing so crude as a section in the Act saying that a Minister may misdirect himself as much as he likes: there will be, as there has often been in the past, a section which says simply that his decision may not be reviewed in any court of law. And that puts the lid on....

Secondly, he says:

> "....If power is abused, Whitehall would not, I believe, resent the exposure, but it may well resent any more general judicial supervision."

> "If even the crunch comes, it is important that the judges should have kept clear of that. For the British have no more wish to be governed by judges than they have to be judged by administrators".

Therefore, Sir, any effort of extension of judicial authority would be fatal for the Constitution and certainly fatal for the Supreme Court itself.

Sir, in our Constitution there is a very amusing article. I only wonder whether the Members have noticed it. It is article 145. It says:

> "(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time with the approval of the President, make rules for regulating generally the practice and procedure of the Court including rules as to the persons practising before the Court; ... the minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law;... rules as to the granting of bail; rules as to stay of proceedings; etc."

Now, the Supreme Court cannot make those rules. The rules must be made with the approval of the President. And you know, Sir, the President in our Constitution means the Government. But more than that, the law says, 'subject to the provisions of any law made by Parliament'. So whatever the President has decided, whatever law has been framed or rules have been framed with the approval of the President that can be superseded by a law of this Parliament. Why was it done? It is very interesting. In the 1935 Act, the High Courts were allowed to make their own rules. It is one of the tests of a supreme body it can make its own procedures. This House is a master of its own procedures. The Lok Sabha is a master of its own procedures. In the Constitution itself, it is curious the Supreme Court is not the master of its own procedures. We can make procedures for them. This question was raised by Bakshi Tek Chand. He said, "It is an interference with the law because it deviated from the rights given to the High Court in the 1935 Act." He was supported by the redoubtable Mr. Shibban Lal

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Saksena. He said, "Yes, it is an interference with the Supreme Court," Mr. Santhanam who took up the cudgels for the Government. And Dr. Ambedkar said this:

> "This idea that the Supreme Court has to be somebody which is absolutely separate from every other institution set up by the Constitution is a wholly wrong and mischievous idea. The Supreme Court has to be one of our safeguards but if it is to be in a position of hostility to the executive or the Parliament, then the power of the Supreme Court will vanish because after all it has to depend upon the goodwill both of the Parliament and the executive. I would suggest, therefore, that this idea of independence of Supreme Court should not be done to death as many Members are attempting to do."

Sir, it was on the 6th June, 1949. That makes it clear that even in a minor matter like procedure, this House has control over the Supreme Court. Why have you not framed and passed an Act framing the rules? Because, this House is satisfied that the Supreme Court, so far as the rules are concerned, is in conformity with the Constitution and we do not want to disturb them. We have shown, Sir, what may be called an exemplary Parliamentary selfrestraint. I only wish the Supreme Court will reciprocate. And I tell you that this Constitution was built on the basis of a confrontation. This was built with the unique combination of a historic person and leader like Pandit Jawaharlal Nehru, Sardar Patel, Shri B. N. Rau, Shri Alladi Krishnaswami Ayyar, Dr. Ambedkar and many others. This was a Constitution built on the basis of harmony and accommodation and this is the only way that this can function. I would, therefore, request and plead, Sir, with this Parliament and Judiciary to exercise restraint because only on the basis of restraint we can have the harmonious working of the Constitution, subject to one condition, which the founding fathers were very clear in placing before the country. Now, what is that? That is sovereignty of the Parliament. Those who believe in the sovereignty of Parliament can have no confrontation with Parliament and, I am sure, Parliament has no business, no interest or no intention to have any confrontation with Judiciary. If you function on this basis, I am sure there will be no scope for any confrontation with the Supreme Court.

Then, Sir, there is a fundamental question. I wish, Sir, Mr. Daphtary were there because he would know better. He told me once that he had spent about 12 years in England in school and college and read law there. He must have mastered and have a deep knowledge of the British traditions of law and the Constitution.

Sir, America is a State where there is division of power horizontally between the Supreme Court and the Congress and the President. There is also division of power vertically between the States and the Federal Government. Because the States were there before the Federal Government came into existence, that conflict is still there and it appears on the surface from time to time. Sir, as you know, there was great confrontation between Chief Justice Marshall and President Jackson, so much so that once President Jackson said that Chief Justice Marshall has given his verdict and let him implement it. Now what did Chief Justice Marshall say about the position of courts. Pointing out that "Courts are mere instruments of the law and can will nothing", Chief Justice Marshall once stated: "Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."

Therefore, Sir, even in the United States of America the Judges have refrained from going in for any confrontation by extending the right of interpretation. Certainly, Sir, they

struck down the laws made by the Congress, laws like the New Deal legislation. Justice Hughes struck them down and Roosevelt wanted to change them. Roosevelt wanted to appoint additional judges. What did they do to avoid this confrontation? The Supreme Court in the United States of America under the leadership of Chief Justice Hughes changed all their verdicts. They delivered judgements restoring the laws which they had struck down. So the confrontation ended. It is difficult to say who won and who lost. But, certainly Sir, whatever Roosevelt wanted he got practically. Therefore, Sir, confrontation is a thing which is not practised anywhere. It is a matter, if I may say so, of indiscretion on the part of the judges to go in for confrontation with Parliament.

Sir, there is another thing which I would like to bring to your notice. As I said, Sir, the Congress had the responsibility of framing the Constitution because it was the only party which had the majority and enjoyed the confidence of the nation.

Sir, what Dr. Ambedkar said in this respect, I quote:

> "It is because of the discipline of the Congress Party that Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment."

Today, Sir, it is the discipline in the Congress Party which will make it possible for this Constitution (Amendment) Bill to be passed. Sir, we are doing only what our forebearers, under the leadership of Pandit Jawaharlal Nehru, did and we are doing the same thing under the leadership of Shrimati Indira Gandhi. We are only performing our historic duty.

Sir, I wanted to say something; it is a very interesting thing. Now, the constitutional issues are very important. As you know, Sir, it is customary to address the judges as 'Learned Judges'. In Great Britain, I am told, Sir, Members of Parliament who are of legal profession, are also addressed as 'My learned friends'. But learned in what? Learned in case of law only? Constitutional law includes also constitutional history and allied subjects. Therefore, before one can really give any effective and comprehensive verdict on points of constitutional law, one's comprehension also must be wider than mere case laws. Sir, one of the greatest judges produced by America is Justice Learned Hand. He never reached the Supreme Court but he is considered to be really one of the most learned judges of America. He wrote an article which I quote. It is a little longish but I think it will give some comprehension of how well-equipped a judge has to be before he can really decide constitutional issues :

> "I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have a bowing acquaintance with Acton, and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne, and Rebelais, with Plato, Bacon, Hume and Kant as with books that have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly everything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalization of universal applicability. They must

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be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined."

Sir, may I suggest with great humility that our judges may read, before they decide any constitutional issue about our Constitution, Dharamashastra, at least the *History of Dharamashastra* by Maha Mahopadhyaya Kane, works of Mahatma Gandhi, because his was the spirit which was hovering over this Constitution making process and also when we fought for independence under his leadership, the works of Pandit Jawaharlal Nehru, works of Maulana Azad, works of Vivekananda, works of Shri Aurobindo, works of Rabindra Nath Tagore and Iqbal and also the *History of India* by Vincent Smith. That will really equip them to understand the problems that face the country. What I mean to say is that, to have a proper understanding of the problems, they must have the comprehension on the lines suggested by Justice Learned Hand. Sir, when I say this, it does not mean that this excludes other books which have been mentioned by Justice Learned Hand. They are also necessary because our Constitution is an amalgam of all that is best in the Western civilisation as well as its own civilisation.

DR. Z. A. AHMAD: Parliamentarians should also read these books. Could you suggest that?

SHRI D. K. BOROOAH: The choice is there. I cannot say. Sir, one thing is certain. We have included in our Directive Principles the question of legal aid. Why is legal aid necessary? This is because of the expensiveness of the judicial system. Litigation has been expensive ever since the law courts started functioning in this country. One of the earliest predecessors of Mr. Gokhale was Lord Macaulay, who was the Law Member. He was really the person who drafted the Indian Penal Code. He had something to say about the expenses in our law courts. He said this about the Supreme Courts at Calcutta, Madras and Bombay. About the Supreme Court, Calcutta, he said:

"a court which in one most important point, the character of the judges, stands as high as any court can stand . . ."

This is in the official minutes made by the Law Member of the Government of India—

"...but which in every other respect I believe to be the worst court in India, the most dilatory, and the most ruinously expensive."

He also said:

"A sullied stream is a blessing compared to a total drought and a court may be worse than corrupt. It may be inaccessible. The expenses of litigation in England are so heavy that daily people sit down quietly under wrongs and submit to losses rather than go to law; and yet the English are the richest people in the world. The people of India are poor; and the expense of litigation in the Supreme Court is five times as great as the expenses of litigation at Westminster. An undefended cause which might be prosecuted successfully in the Court of King's Bench for about eight pounds sterling cannot be prosecuted in the Supreme Court under forty pounds sterling. Where an English barrister receives a guinea, a barrister here receives two gold mohurs—more than three guineas. For making a motion of cause an English bar-

rister receives half a guinea; a barrister here receives a gold mohur."

Then, he says:

"I speak of Bengal, where the system is now in full operation. At Madras, the Supreme Court has, I believe, fulfilled its mission. It has done its work. It has beggared every rich native within its jurisdiction, and is inactive for want of somebody to ruin. This is not all. Great as the evils of the Supreme Court really are, they are exaggerated by the apprehensions of the natives to a still more frightful magnitude. The terror with which it is regarded by them is notorious."

Those who have any case today in any Court of Law in India, as I had in regard to an election case will never get away from the terror. Mr. Daphtary is not here. I wish he was here. He was my lawyer. He could have told you how expensive it was. It is very good that legal aid has been included in the Directive Principles. But we should go to the root of the problem, namely the expensiveness in the Courts of India. If they are expensive, they are inaccessible. If they had been inaccessible in the days of Lord Macaulay, I do not think the position has changed now. I hope Mr. Gokhale would emulate his predecessor in this and write a minute containing the same information about the functioning of the Courts in this country from the Supreme Court to the mofussil Courts, as Lord Macaulay did.

Therefore, Sir, I feel that it is time for us to restructure our judicial system because ultimately the Constitution is the law and all that emerges from the Constitution or from Parliament is in the form of laws. So, if the law courts are not accessible to the people, the courts are beyond the reach of the people, these law courts will have no meaning for them. Sir, May I suggest in all humility that if the Supreme Court and other Courts become less expensive, the prestige of Judges in this country will go up? If there has been disrespect for law courts, it is because the people have no link with them. Why should the people have respect for anything which they cannot use in time of need? Hammurabi the Babylonian Law giver in the 17th century had said: "The purpose of law is to protect the weak from the strong, the oppressed from the oppressor." Therefore, one of the failures of the judicial system in this country is that it does not reach the man who needs it.

SHRI NRIPATI RANJAN CHOUDHURY (Assam): The purpose is to protect the people.

SHRI D. K. BOROOAH: That is true. Therefore, I hope the Law Minister will take note of this and do the needful in this behalf. Sir, there is one more thing that relates to legal education in this country. Before the establishment of the Constitution we had to study law for two years in a Law College and for three years in some Universities, but it was mostly the study of case laws or certain basic principles of law. Sir, as I said now, any decision on a constitutional law means knowledge wider than the law. Therefore, we might have to consider the restructuring of our legal study in this country. I shall be satisfied if you have a legal study at the Cambridge level. Then we should have the legal course for two to three years. In our times it was two years. There should be a deeper study of law which will include study of legal history and constitutional history. Sir, with due deference to those who are called upon to decide those issues, some of them have never read the constitutional history.

DR. V. B. SINGH (Uttar Pradesh): There was legal history.

SHRI D. K. BOROOAH: Many of them are M.Scs. and after going

[Shri D. K. Borooah]

to a Law College for two years have become lawyers and judges. Now, they have been called upon to decide issues on the basis of knowledge which is certainly inadequate. Therefore, I will suggest to the Law Minister to look into this question carefully and along with the question of restructuring the entire judicial system, the question of changing the legal course should be taken up. Without that we will not have good lawyers and if you do not have good lawyers, you will not get good judges.

Sir, I have done. I have taken more time than my share.

SHRI KALI MUKHERJEE (West Bengal): Very much more.

SHRI D. K. BOROOAH: All I can say, I need not go into the question whether this Parliament has the right to amend the Constitution or not.

I am sure, now there should no question that this Parliament has the authority of the Constituent Assembly when it decides amendments to the Constitution, subject to the procedure that two-thirds majority must vote and majority of the States must vote. On that there should be no doubt. Patanjali Sastri said it and Justice Gajendragadkar made it very clear and I am sure there will be no doubt about it.

I need not say about the basic structure. Firstly, nobody knows what the basic structure is. Yesterday Mr. B. N. Banerjee said that we are ceremonially burying the basic structure. How can you bury something which is insubstantial and which has no shape? The judgment is not pleasant reading—whether that of the Judges of the Supreme Court or the High Court. I went through it. I could not make out what is meant by basic structure. It is not even a chaotic idea. It is only a term which they used which has no meaning. Therefore, how can you bury or cremate it? Therefore, we leave it at that and march along with the amendments in order that we implement what Pandit Jawaharlal Nehru wanted to do when he moved the Objective Resolution for the founding of the Constitution. To give food to the hungry, to clothe the naked, to provide houses to the houseless, to protect men from sun and rain and create opportunities for development and progress. I feel, Sir, the 20-point programme is a step in that direction.

We have lost some time. Certainly, Sir, we could have come earlier. In the ultimate analysis, what we need today is priorities. The priorities have been fixed by the Prime Minister. So what we need now is, the Government should have, Parliament should have untrammelled authority, unhindered power to implement those measures which will bring about the objective Panditji had spelt out when the founding of the Constitution was started.

Sir, both as an individual and as the head of the Congress organisation I feel that we have done our duty to our people in bringing this Constitution amendment before Parliament, and I am sure, not only Congressmen, Congress Members but all those who love the people of India, all those who have the good of the people of India at heart would support this and this will be passed with the same acclaim and joy with which this Bill was passed in the other House.

Sir, thank you very much for giving me more time. I feel guilty that I have been somewhat selfish, but all I can say is, I thought that I should unburden myself and place before the House my thoughts as well as I could. Thank you.

[Mr. Deputy Chairman in the Chair]

SHRI K. A. KRISHNASWAMY (Tamil Nadu): Mr. Deputy Chairman, Sir, I rise to support this historic amending Bill on behalf of my party, the All India Anna DMK, with some reservations.

The Constitution (Amendment) Bill seeks to uphold the supremacy of Parliament, give the Directive Principles precedence over the Fundamental Rights, re-define the powers and responsibilities of the Judiciary in interpreting the Constitution and make it quite explicit that the President shall be bound to act on the advice of the Union Cabinet in all circumstances.

Parliament as the representative of the people is the supreme body that reflects the will of the sovereign people. No one can deny the right of Parliament to effect changes in the Constitution which was framed by a body constituted only by indirect election, especially Parliament that has been elected on the basis of universal adult suffrage and has in its possession the Constituent powers to bring forward such changes by following a prescribed procedure.

The hurdles in implementing the socio-economic reforms in the country have been pointed out. Many judicial decisions were on a conservative basis and they formed a roadblock to such reforms and progress. It is perhaps an undisputed fact that the controversy between the Judiciary and the Parliament started with the ruling of the Supreme Court in the famous Golaknath case to the effect that the Fundamental Rights could not be amended. The ruling was later revised by the Supreme Court. There are so many cases in which the Supreme Court has changed its opinion on the given issue. But it may be too late and the damage is already done. There is no provision to take any action against the earlier erring Judges. It is in this context that the provision in the Bill providing for special majority of the Judges for declaring any law to be Constitutionally invalid is to be considered and welcomed. Judges should not be vested with an absolute power or a veto power. They must not be allowed to function as a super Parliament or an additional Legislature. The proposed amendment restricts the Judiciary's encroachment on everything, while it does not rule out judicial review wholly. A careful analysis of the Bill would confirm the democratic concept fully and squarely, as it demarcates the jurisdiction of the Supreme Court and the High Courts in deciding the validity of the Parliamentary and State Legislature enactments respectively and will create a healthy trend in the working of the administration and its relationship with the Judiciary. Prescribing the minimum number of Judges in a Bench required to strike down a law is a sound principle which will establish the correct position in determining the validity of a law. Constitution of high-powered administrative and labour tribunals to replace the High Courts in regard to certain matters will relieve the High Courts of thousands of frivolous petitions and eliminate the inordinate delay in the administration of Justice. It is good to remember that no democracy in the world has equated its Judiciary with Parliament, whether it has a written Constitution or an unwritten Constitution like the British Constitution. The courts are there only to interpret the Constitutional laws or statutes made by Parliament and not to substitute themselves in the place of Parliament. This is true of our Parliament and the Supreme Court as well. Many make the mistake of treating the Supreme Court as supreme, since it is so called, when comparing it with other institutions including Parliament, without realising that it is supreme only among the courts of India and no more. For the sake of giving high status to the Supreme Court, they also seek to make an artificial distinction between the people and the Parliament. They say only the people are sovereign and not the Parliament, as if the people can have a hand in the day-to-day affairs of the country. There is no room for confusion because the Parliament and the people constitute a single entity when considering the process of democracy. Parliament exercises its Constituent power in Constitution-making and

[Shri K. A. Krishnaswamy]

1 P.M.

acts in the name of the people who elect its Members. To twist this is a negation of democracy. That is why the founding fathers did not restrict the power of Parliament to amend the Constitution while shaping article 368. Nor did they attempt to the hands of a future Parliament by making artificial distinctions like basic and non-basic features.

Clause 43 of the proposed amendment which seeks to insert a new article 257A empowers the Central Government to send the Armed Forces or any other forces subject to its control for dealing with any grave situation of law and order in any State. This amendment might vitiate, to some extent, the principle of State autonomy. The Central Government already has adequate powers under the Constitution to deal with any grave law and order situation in any State. The police power contemplated in the proposed amendment is the thin end of the wedge threatening to transform a federal State into near unitary State. With the entire Defence Force at its disposal, the Centre can deploy its forces with lightning speed.

Any invasion of the rights or jurisdiction of the State in regard to the two subjects, Education and Law and Order, amounts to alteration of the essential functions of the State Government. Any seizure of power by the Centre to invade the already diluted, weakened, decentralised State on exclusively provincial sphere would be treated as a derogation from the general federal plan of local control. Any contemplated dilution of the State of the subject of law and order would result in the effacement of responsibility.

Having recognised the supremacy of Parliament through these amendments, we cannot understand why the President of India should be invested with super powers through clause 59(1) of the 44th Constitution Amendment Bill. To give this power to the President would be to undermine the supremacy of Parliament and it will not be wise to give such powers—'to make by order such provisions including any adaptation or modification as appear to him necessary'—in relation to the amendment to the Constitution. This ultimately makes the Executive superior to Parliament and a country wedded to the concept of parliamentary democracy cannot agree to Parliament's supremacy taken away by the Executive which may result even in the Constitution being amended by Presidential Acts. Parliament cannot abdicate its constituent powers in favour of the President.

Clause 17 of the Bill proposes a six-year term for Parliament and the State Legislatures. The reason attributed to such an extended life is to enable the party in power to implement the welfare schemes. In a democracy, holding of the elections at regular intervals is of paramount importance. It reminds the politicians of their obligation to the electorate and strengthens the bond between the people and their representatives. The Directive Principles being given precedence over the Fundamental Rights is welcome. The fact that the Fundamental Rights are justiciable while the Directive Principles are not, has led to some conflict between the Judiciary and the Executive. Even Pandit Jawaharlal Nehru regarded the Directive Principles as dynamic part of the Constitution. He said—

> "There is a certain conflict in the two approaches not inherently because that was not meant—I am sure. But there is that slight difficulty and naturally, when the courts of the land have to consider these matters, they have to lay stress more on the Fundamental Rights than on the Directive Principles of State Policy. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to certain goals step by step, is somewhat hampered and hindered by

static elements and we have to find out some way of solving it."

Thank you.

श्री सवाई सिंह सिसोदिया (मध्य प्रदेश): मान्यवर, हमारे देश की महान राजनैतिक संस्था के आदरणीय अध्यक्ष जी ने बहुत ही विद्वतापूर्ण विचार इस संविधान संशोधन विधेयक के बारे में इस सदन में अभी थोडी देर पहले रखे हैं और मैं उनका हृदय से अनुमोदन करते हुए इस संस्था का एक विनम्र सदस्य होने के नाते और राजनीति विज्ञान का विद्यार्थी होने के कारण अपनी भावना को इस संविधान संशोधन विधेयक के संबंध में रखने की कोशिश करूंगा।

हमारे देश की यशस्वी प्रधान मंत्री जी ने देश की आर्थिक स्थिति को सुधारने के लिए, गरीबों को राहत देने के लिए और राष्ट्र को अखंड और मजबूत बनाने के लिए जब कभी भी प्रगतिशील कदम उठाये हैं तब विरोधियों ने उसमें रुकावटें पैदा कीं और इस प्रकार की रुकावटें पैदा कीं जिससे शासन के काम को चलाना मुश्किल कर दिया। यह जो संविधान संशोधन विधेयक इस सदन में विचार के लिए रखा गया है यह इस बात का परिचायक है कि जो कठिनाइयां पैदा हुई हैं और जो डाइरेक्टिव्ह प्रिन्सिपल्स हैं जिनका कि संविधान मे समावेश है उस डाइरेक्टिव्ह प्रिन्सिपल्स को कैसे अमली रूप दिया जा सके। जो 20 सूत्री आर्थिक कार्यक्रम हैं, अन्य सामाजिक कार्यक्रम हैं, राजनैतिक कार्यक्रम हैं, जो समय समय पर केन्द्रीय शासन द्वारा अथवा हमारी संस्था कांग्रेस के द्वारा रीति-नीति तय की गई हैं उन सब को अमली रूप देने के लिए जो रुकावटें पिछले वर्षों से सामने आती रही हैं उनको दूर करने के लिए यह संविधान संशोधन विधेयक लाया गया है और इसका समर्थन करते हुए मुझे काफी हर्ष हो रहा है। इसलिए हर्ष हो रहा है कि यह मेरी दृष्टि से हमारी संसद् के तिहास में एक ऐसा स्वर्णिम पृष्ठ है जो हमेशा अजर और अमर रहेगा क्योंकि इससे जितनी रुकावटें पूर्व में आती रही हैं वह दूर करके हम अपने देश को लक्ष्य की ओर आगे बढ़ा सकेंगे। शासन के आर्थिक सुधार के कार्यों को अमली रूप देने में हमेशा रुकावटें पैदा हुई हैं, और कायदे कानून और व्यवस्थाएं तभी सार्थक हो सकती हैं जब कि जनता की जो आकांक्षाएं हैं उनको पूरा करने में सक्षम हों और यदि हम उन आकांक्षाओं को पूरा नहीं कर सकते तो उन कायदे-कानूनों में और संविधान मे जनता का विश्वास उठ जाता है। इसलिए यह जरूरी हो गया है कि संविधान का जो मूल उद्देश्य सामाजिक और आर्थिक प्रगति लाने के लिए है उससे संबंधित संशोधन अवश्य किया जावे।

संविधान के बारे में यह कहा जाता है कि संविधान में बार-बार संशोधन क्यों होते हैं? मान्यवर, यदि संविधान में संशोधन की व्यवस्था नही हो और समय और परिस्थिति के अनुरूप उसमें संशोधन नहीं होता है तो वह संविधान जनता के हित के लिए है, ऐसा नहीं माना जा सकता। वही संविधान सच्चा संविधान है जिसमें समय के साथ परिवर्तन करने की गुंजायश हो और जो आम जनता की जरूरतें हैं उनको पूरा कर सके।

हमारे राष्ट्रनायक जवाहरलाल जी के नेतृत्व में संविधान बनाया गया और उसमें संशोधन की गुंजायश रखी गई लेकिन न्यायपालिका ने अपने का अनर्थ किया है और इस प्रकार की रूढ़िवादिता की परिपाटी के आधार पर निर्णय किया जिससे कि संविधान का ठीक लाभ जनता को नहीं मिल पाया है। संविधान के विशेषज्ञ श्री जेफरसन के अनुसार 25 वर्ष में पीढ़ी बदलती है अतः लोकतंत्र में नयी पीढ़ी को अधिकार होता है कि वह नये परिवेश में संशोधन करे। इस प्रकार के संशोधन न केवल हमारे मुल्क में बल्कि दूसरे मुल्कों में भी बराबर होते रहे है। भारतीय संविधान एक फेडरल कन्स्टीट्यूशन है और फेडरल कन्स्टीट्यूशन में अमेंडमेंट का प्रावधान है और समय के अनुसार, समय की जरूरत के मुताबिक उसमें अमेंडमेंट किया

[श्री सवाई सिंह सिसोदिया]

जाना बहुत जरूरी है। हमारी संसद संविधान में तरमीम करने के लिए हर प्रकार से सक्षम है और गतिशील होने का यही प्रमाण है कि इसमें संशोधन करने का प्रावधान रखा है। एक भय का वातावरण संविधान के संशोधन की बात को लेकर पूरे मुल्क में बनाया जा रहा है। इससे हमको सावधान रहने की जरूरत है। दूसरे देशों में भी समय समय पर संविधान में संशोधन हुए हैं। दक्षिण अफ्रीका के संविधान में 200 बार और स्विटजरलैंड के संविधान में 50 वर्षों में 100 बार संशोधन हुए हैं। आजादी के पूर्व भी हमारे यहां की जो ब्रिटिश शासन व्यवस्था थी उसमें 1858 से लेकर 1947 तक सात बार नया विधान इंडिया एक्ट के नाम से यहां लागू किया गया। इस प्रकार संविधानों की जो पूरी श्रंखला है सारी दुनिया में या ऐसे विधान जिनके आधार पर कोई शासन व्यवस्था चलती है उसमें बराबर परिवर्तन होते रहे हैं और होना जरूरी हैं। महात्मा गांधी के स्वप्न और लोकनायक जवाहर लाल नेहरू के आदर्शों को पूरा करने के लिये श्रीमती इन्दिरा गांधी के नेतृत्व में राष्ट्र ने दृढ़ संकल्प लिया है और उसके फलस्वरूप समाजवाद और धर्म निरपेक्ष शब्दों का प्रस्तावना में समावेश किया गया है यह संशोधन बहुत महत्वपूर्ण है। सब से बड़ी बात, जैसा कि आदरणीय कांग्रेस अध्यक्ष जी ने कही, इसके द्वारा संसद की सर्वोच्चता को स्वीकार किया गया है और जब कभी इसमें रुकावटें आयेंगी उनको दूर करने की जवाबदेही संसद की है और उसी के लिये संविधान में यह संशोधन लाया गया है। हमारे संविधान में निदेशक तत्व बहुत अहम हैं, लेकिन उनको अमली रूप देने के लिये जब भी कानून बने सर्वोच्च न्यायालय ने उनको रद्द किया है और इससे देश की तरक्की में बड़ा व्यवधान हुआ है। हमारी न्यायपालिका परम्पराओं से बंधी हुई है और पुराने कानूनों और परम्पराओं में जकड़ी हुई है और इसका नतीजा है कि हमारी न्यायपालिका के जो निर्णय होते हैं वह सामाजिक, राजनीतिक और आर्थिक स्थिति के विपरीत होते हैं। न्यायपालिका के निर्णय संविधान की भावना और जन आकांक्षाओं के विपरीत होते हैं और इसलिये जरूरी है कि हमारे देश की जो न्याय व्यवस्था है उसमें आवश्यक परिवर्तन हों। आज नहीं तो कल हमको इस बात पर विचार करना होगा कि कैसे हमारी न्यायपालिका हमारे देश की परिस्थितियों के अनुकूल व्यवहारिक हो सकती है। वर्तमान संविधान संशोधन संसद को सर्वोत्तम घोषित करता है लेकिन इसके द्वारा मूल अधिकारों के अधिकार किसी प्रकार भी सीमित नहीं किये गये हैं और किसी प्रकार का कुठाराघात भी उनके अधिकारों पर नहीं हुआ है। इस संविधान संशोधन का उद्देश्य केवल संसद की सर्वोच्चता को निरूपित करना और निदेशक तत्वों को मूल अधिकारों से ऊपर का दर्जा देना है। मैं लीगल प्रोफेशन में 25 वर्ष तक रहने के अपने अनुभव के आधार पर कह सकता हूं कि बड़ा क्रान्तिकारी निर्णय लिया गया है निःशुल्क कानूनी सहायता देने का। बहुत से गरीब लोग जो कि आर्थिक दृष्टि से कमजोर हैं वह न्यायालयों के सामने अपने केस को ठीक से पट अप नहीं कर पाने और ऐसे लोग न्याय प्राप्त करने से वंचित रह जाते हैं। इसलिये मैं अपने अनुभव के आधार पर कह सकता हूं कि इसके लिये जो प्रावधान रखा गया है वह बहुत अच्छा और परमावश्यक है। बहुत से प्रान्तों में निःशुल्क सहायता मिलनी शुरू हो गयी है और इस दिशा में अच्छा काम हो रहा है। हमारे मध्य प्रदेश में इस सम्बन्ध में बहुत सराहनीय कार्य हुआ है और वहां का शासन बधाई का पात्र है और मैं समझता हूं कि दूसरे प्रान्तों में भी इस प्रकार की व्यवस्था वहां की सरकारों द्वारा शुरू की जानी चाहिए। संसद को और लोकतंत्र को मजबूत बनाने के लिये यह सारी कार्यवाही

जरूरी है। नागरिकों के कर्त्तव्यों के बारे में एक पृथक उपखंड आर्टिकिल 51ए जोड़ा गया है। यह हमारे मुल्क में ही नहीं बल्कि दूसरे समाजवादी देशों में भी, तथा जापान में, इटली में और दूसरे देशों में भी, उनके संविधानों में इस प्रकार की व्यवस्था है। उनके यहां भी इस प्रकार के फ़ंडामेंटल ड्यूटीज के चेप्टर्स संविधान में हैं और यह देश की अनुशासनबद्धता के लिये और राष्ट्रीय चेतना को जाग्रत करने के लिये बहुत जरूरी है और यह प्रयास प्रशंसनीय और अनुमोदनीय है। कांकरेंट लिस्ट (समवर्ती सूची) में अमेंडमेंट किया गया है। खास तौर पर शिक्षा, परिवार नियोजन, जनसंख्या नियंत्रण, वन आदि विषयों को शरीक किया गया है। देश में पिछले काफ़ी समय से इस सम्बन्ध में मांग हो रही थी। शिक्षा की जो पद्धति है और जो वर्तमान स्वरूप है उसमें परिवर्तन करने के लिये तथा अधिक उपयोगी बनाने के लिये इस प्रकार का संशोधन जरूरी था। बहुत से विषयों (विचारों) को ट्राइब्यूनल्स के सामने रखने का प्रावधान संशोधन में किया गया है। इस सम्बन्ध में मैं एक निवेदन करना चाहता हूं। इन ट्राइब्यूनल्स में अगर हम नौकरशाही को और रिटायर्ड आई० ए० एस० अफ़सरों आदि को ही रखेंगे तो उसका परिणाम आशा के अनुकूल बहुत अच्छा नहीं हो सकेगा। ऐसे अनेक अशासकीय सर्वथा सक्षम व्यक्ति हैं जो कि आवश्यक योग्यता एवं पात्रता रखते हैं, उनको इस प्रकार के ट्राइब्यूनल्स में नियुक्त किया जाना चाहिये वांछित लक्ष्य की पूर्ति तब ही हो सकती है। इन संशोधनों के बारे में काफ़ी व्यापक चर्चा देश में हुई है। मुझे भी संयोग से मौका मिला और जनवरी, 1976 में मैंने इस सम्बन्ध में एक अशासकीय प्रस्ताव भी इस सदन मे विचारार्थ रखा था। उस पर बहुत उपयोगी चर्चा सदन में हुई। पूरे देश में संविधान सशोधन के संबंध में प्रत्येक स्तर पर बहुत वाद विवाद हुआ है। कहा जाता है कि रेफ़रेंडम (जनमत संग्रह) होना चाहिए। एक तो आज का जो संविधान है उसमें जनमत संग्रह के बारे में कोई प्रावधान, कोई आर्टिकिल नहीं है। जो विरोधी दल यह भी कहता है कि संविधान में संशोधन करने की पात्रता वर्तमान लोक सभा की नहीं है। रेफ़रेंडम की बात स्वीकार तब ही हो सकती है जब कि संविधान में संशोधन किया जावे व इस बारे में आवश्यक प्रावधान का स्थान विधिवत् संविधान मे हो जाये। विरोधियों का यह कहना है कि संविधान में संशोधन हो ही नहीं सकता है। फ़िर क्या रेफ़रेंडम की बात बेबुनियाद नही है। विरोधाभास वाली बात करने का विरोधी दल आदी है। कांग्रेस ने अपने घोषणा-पत्रों में संविधान में संशोधन की आवश्यकता को जनता के सामने विचार के लिये प्रस्तुत किया है। चुनावों में इस बात को खुले तौर पर जनता के सामने रखा है कि संविधान में संशोधन करने की महान आवश्यकता है। देश की सामाजिक और आर्थिक उन्नति मे जो दिक्कतें आ रही हैं उनको दूर करने के लिये इस प्रकार के संशोधनों की आवश्यकता को इंगित किया गया था। दो-तिहाई से अधिक बहुमत कांग्रेस को सन् 1971 मे लोक सभा के चुनावों में देश की जनता ने दिया है। विधान-सभाओं के चुनावों में भी पर्याप्त बहुमत सन् 1972 में कांग्रेस को मिल चुका है। इस दृष्टि से इन परिणामों के आधार पर रेफ़रेंडम की कोई आवश्यकता शेष नहीं रहती है। इतिहास इस बात का साक्षी है कि जो संविधान जनता की आकाक्षाओं की पूर्ति नही करता वह समाप्त हो जाता है, जनता का विश्वास उससे उठ जाता है और राष्ट्र को एकसूत्र में वह बांधकर नहीं रख सकता है। जितने भी विदेशों के संविधान हैं, खास तौर पर ब्रिटेन या अमरीका के उन सब में जो संसद् है उसकी सर्वोच्चता को स्वीकार किया गया है। ब्रिटेन के बारे में डा० लीन के शब्दों में कहा गया है—"ब्रिटिश संसद् सब कुछ कर सकती है केवल पुरुष से स्त्री और स्त्री से पुरुष नही बना सकती"। इस प्रकार सर्वोच्चता वही की

[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 उसके बारे में सही स्थिति जनता के सामने रखने की जिम्मेदारी हमारे सबके ऊपर है। संक्षेप में जो इस संशोधन की मुख्य विशेषताय है वे इस प्रकार हैं —

यह सदा सर्वदा के लिए संसद की सर्वोच्चता व उसके संविधान के किसी भी प्रावधान में संशोधन के निर्बाध अधिकारों को पुनःप्रतिष्ठित 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 उल्लघन नहीं करता।

यह भारतीय यूनियन के संघात्मक चरित्र में किसी प्रकार का परिवर्तन नहीं करता जो इस बात से जाहिर 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 कर्त्तव्यों का भी उल्लेख किया गया है।

मान्यवर ये विशेषतायें इस संविधान संशोधन में हैं और मेरा ऐसा ख्याल है कि हमारे संसद् के इतिहस 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 प्रगति के लिए, देश की अखंडता और एकता को कायम रखने के लिए पहली बार अनुभव के आधार पर व्यावहारिक और लोकहितमयी सशोधन 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 हूं।

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) 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 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.