

and proper medical facilities made available.

SHRI SANTOSH BAGRODIA: Sir, the hon. Member was talking about the psyche of the accused and not the victim. ...(*Interruptions*)...

SHRI SHIVRAJ V. PATIL: I think it was about the victim and not the accused.

SHRI SANTOSH BAGRODIA: No, Sir, it was about the psyche of the accused, not the victim. ...(*Interruptions*)...

SHRI SHIVRAJ V. PATIL: Well, the psyche of the accused is a very big question. If the Government were to give the treatment, we shall have to find out who is having that kind of a tendency. How do we know that a person has such a tendency? Those who are in the show business also know how much they contribute, how much the literature produced is contributing, and how much the television is contributing. These are some of the things, which have to be looked into very carefully by the society as a whole. Government alone, by itself, would not be enough. But we will certainly help in this respect, in studying the psychology of the accused person, and whatever is possible could be done. But this a responsibility which has to be shouldered by those also who are in the show business, those who write articles and novels and those who are producing films for the television too ...(*Interruptions*)...

MR. CHAIRMAN: Next question. Question No. 462.

### **Amendment to Article 356**

\*462. SHRI MANOJ BHATTACHARYA:††

SHRI N.K. PREMACHANDRAN:

Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether the Supreme Court in the famous S.R. Bommai case made several suggestions to be incorporated in Article 356 of the Constitution; if so, the details thereof;

(b) whether the Sarkaria Commission also made similar suggestions and if so, the details thereof;

(c) whether these suggestions are being put in place by a suitable amendment of Article 356; and

(d) if so, the details thereof and if not, the reasons therefor?

††The question was actually asked on the floor of the House by Shri Manoj Bhattacharya.

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): (a) to (d) A Statement is laid on the Table of the House.

**Statement**

In the case of S.R. Bommai Vs. Union of India, a 9-Judge Bench of the Supreme Court of India has had the occasion to interpret the provisions of Article 356. Some of the salient features of the Bommai's Judgement delivered on 11th March, 1994 are as follows:

- (i) Though the power of dissolving of the Legislative Assembly can be said to be implicit in clause (1) of Article 356, it must be held, having regard to the overall constitutional scheme that the President shall exercise it only after the proclamation is approved by both Houses of Parliament under clause (3) and not before.
- (ii) Article 74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.
- (iii) The proclamation under Article 356(1) is not immune from judicial review.
- (iv) Secularism is one of the basic features of the Constitution.

The Sarkaria Commission on Centre-State relations had also examined the scope and effect of this Article 356 and made 12 recommendations in Chapter VI of its report on "Emergency Provisions". The Supreme Court, in the Bommai's case, observed that the recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 do merit serious consideration at the hands of all concerned. The main recommendations of the Sarkaria Commission on Article 356 are as follows:

- (i) Article 356 should be used very sparingly.
- (ii) A warning should be issued to the errant State, in specific terms, that it is not carrying on the Government of the State in accordance with the Constitution.
- (iii) In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker Government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue.

- (iv) The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitable amended to ensure this.
- (v) To make the remedy of judicial review on the ground of *mala fides* a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of Article 74 of the Constitution, the material facts and grounds on which Article 356(1), is invoked should be made an integral part of the proclamation issued under that Article.
- (vi) The report of the Governor should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

The Inter-State Council, in its eighth meeting, discussed the recommendations of the Sarkaria Commission at length and made certain recommendations to the Ministry of Home Affairs. These recommendations were considered by the Ministry of Home Affairs in the light of views of the Inter-State Council thereon. While most of these recommendations have been accepted and are being implemented, however, it is found that these do not necessitate amendment in Article 356 of the Constitution. The Supreme Court judgement in Bommai case is always kept in view while considering the issuance of Proclamation under Article 356 in relation to any State.

**SHRI MANOJ BHATTACHARYA:** Sir, I wish to express my thanks to the Home Ministry for giving a detailed reply to my very important question. My first supplementary relates to the Sarkaria Commission recommendations on Centre-State relations, particularly in relation to Article 356, and others, which are in place for a number of years. Now, the Sarkaria Commission has recommended certain amendments in Article 356. Is the Government, the Home Ministry, contemplating to bring forth any Bills for amending Article 356 or the other recommendations of the Sarkaria Commission? If so, by which date is the Government coming out with the amendments, or, the legislation for those amendments?

SHRI SHIVRAJ V. PATIL: Sir, the previous Government had considered the recommendations given by the Sarkaria Commission in Inter-State Council and they had come to the conclusion that certain recommendations can be implemented but need not be codified or need not be introduced in the law as such or in the Constitution as such because codification sometimes helps but sometimes creates problems also. So, they had said that the spirit of the words used in Bommai's case should be considered by the Government while taking the action, but if you amend the Article 356, it is likely to create some problems. So, we are following the principles but we are not suggesting that Article 356 should be amended.

SHRI MANOJ BHATTACHARYA: My second supplementary is more interesting. Kindly refer to your reply which says that the Supreme Court judgement in Bommai case is always kept in view while considering the issuance of Proclamation under Article 356 in relation to any State. Sir, kindly allow me to quote a small paragraph from the verdict of the Supreme Court in Bommai case, 1994. It is reading like this and I am just quoting this: "Secularism is a part of the basic structure of the Constitution." This is also being referred to in your reply. "The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution." After quoting my question is: Has this question of secularism not been thoroughly trampled in Gujarat? Is the Government of India contemplating to take stringent action by immediately promulgating Article 356 in Gujarat?

SHRI SHIVRAJ V. PATIL: Sir, as far as the principle enunciated in the judgement is concerned, we accept it thoroughly. As far as the factual position in one State or another is concerned, I would not be required to give my judgement and my decisions while replying to a question like this. We should be allowed to consider the matter carefully to take proper decisions.

SHRI N.K. PREMACHANDRAN: Sir, the observations made in S.R. Bommai case, the recommendations made in the Sarkaria Commission Report and the recommendations made in the National Commission to Review the Working of the Constitution are seem to be similar. So many recommendations have not been implemented so far. The last part of the answer of the hon. Minister goes to show that while most of these recommendations have been accepted and are being implemented, however

it is found that these do not necessitate amendment in Article 356 of the Constitution. Sir, regarding sending of the bi-weekly report to the President of India and so many other recommendations—due to lack of time I am not going into those recommendations—the Government is telling that there is no need of it because it will create problems. I could not understand what is the problem. So, let us be very specific and clear about Article 356 in order to avoid the experience which we have met in Chhattisgarh as well as in Goa. So, is it not proper to have a clear amendment of Article 356?

SHRI SHIVRAJ V. PATIL: Sir, it is a very good question and I would like to reply to this question in a little more detail. Supposing, we make a law or we amend Article 356 and say that in the first instance only the Legislative Assembly will be suspended and it will not be dissolved. It will be binding on us. Now, what we did in Goa is clear. We suspended the Legislative Assembly there, we did not dissolve it. And, after getting the approval for the Proclamation made by the Government of India by both the Houses, it is left to the Government to take appropriate decision in that, whether to dissolve or not to dissolve it. But, supposing you have a case in which you are compelled to only suspend, supposing there is a State in which the Government is not able to be formed or the Government is formed but it is not enjoying the majority and if the horse-trading is taking place and supposing you just suspend it and allow that horse-trading to continue, will it be in the interest of the Constitution or spirit of the Constitution? So, by and large, we are following the recommendations given by the Supreme Court while interpreting Article 356 and not dissolving the House, but if any case arises in which the Constitution will be more damaged by allowing just suspended animation, and not dissolution, we are keeping that. so, there are many such cases and I can give the instances to prove as to how it can create difficulties. That is why, in the initial statement, I said, "Codification helps, but sometimes, codification creates problems." So, everything need not be put in the law and in the tight framework in which it can create problems.

SHRI V. NARAYANASAMY: Mr. Chairman, Sir, the hon. Minister has stated that the Government will keep in view, while imposing the Proclamation of Article 356 in relation to any State, the judgement of the Supreme Court in the S.R. Bommai case. Sir, the hon. Home Minister also, in his reply, has mentioned that the warning should be issued to the errant State in specific terms that it is not carrying on the administration in accordance with the Constitution. Sir, I am pained to say that the honourable former President of India, Shri K.R. Narayanan, had made certain

observations as far as Gujarat is concerned. And, apart from that, there were observations made by the Supreme Court also that either the State Government was a silent spectator or an active partner of the communal violence in the State. The hon. Minister was observing when hon. Member was asking the question that we would have to see the overall perspective.

Mr. CHAIRMAN: Please come to your question. He understands everything.

SHRI V. NARAYANASAMY: This is a general feeling of the people of the country that it is a fit case, Gujarat situation is a fit case for the imposition of Article 356 because according to Sarkaria Commission recommendations and also the agreed principle, the judgement of the Supreme Court, secularism is one of the basic features of the Constitution. Therefore, we want a specific reply from the hon. Home Minister as to what step the Government of India is taking as far as the communal situation that happened in Gujarat is concerned.

SHRI SHIVRAJ V. PATIL: Sir, what has been said by the respected former President, by the Supreme Court, in the Parliament and in the media, is in the public knowledge. I do not have to either endorse it or oppose it. What I am saying is that this Government will take into account everything which is prevalent over there and I should not be asked to give a decision with respect to a State while replying to a supplementary question.

DR. P.C. ALEXANDER: Sir, Article 356 is to be invoked only if the Government of the State concerned cannot be carried on according to the provisions of the Constitution. The various judgements quoted by some of the Members seem to be forgetting that the fundamental test is whether the Government of the State can be carried on under the provisions of the Constitution. And, this is something which cannot be defined in advance by an amendment of the Constitution. Sir, this decision whether the failure of the Constitution calls for invoking Article 356 is a decision to be taken at the highest level in the country and it has been now established that it should be subject to judicial review. Therefore, I compliment to the hon. Home Minister on the manner in which he has replied should satisfy all doubts about of Article 356 of the Constitution, we should not repeat the mistake of what the Janata Government did in 1977 and which was followed by the Indira Gandhi Government in 1980 by bringing in extreneous factors for dismissing State Governments...

श्री सभापति: चलिए छोड़िए, नेक्स्ट क्वेश्चन।