

uf Kaliganj have been cleared of Pak troops. The important highway from Meherpur via Ghenela to Goalando Ghat ferry has been cut. In Hillij Dinajpur area our troops are advancing towards the Rangpur-Bogra highway. Lalmunirghat, with its airfield, has been captured. The area north of Kurigram. Rangpur, Dinajpur is now free of occupying forces.

The hon. Members are aware of the capture of Akhaura two days ago. The strategic centres of Moulvi Bazaar and Brahmanbaria are now surrounded. Feni was vacated by Pak troops yesterday: the forward elements of our troops are now racing towards the Chandpur Ferry.

In Bangla Desh, the Pak Air Force has been virtually wiped out: our air supremacy in that area is complete. From the sea, installations of military value have been pounded around Chittagong. Chalna, Mangla and Khulna. All maritime connection between the occupying forces and West Pakistan has been severed. The hon. Members are aware of the daring operation carried out by the Indian Navy on the night of 4th and 5th December. Two Pakistani warships have been sunk and one is believed to have been seriously damaged. Our Naval Force penetrated within 15 miles of the Karachi harbour. Their bombardment has inflicted severe damage on the harbour installations and oil storage tanks. In the Bay of Bengal, the Indian Navy was able to sink one Pak. submarine. The Eastern Fleet is now operating off the Pak. occupied coast in Bangla Desh.

The three services are working on a highly integrated joint plan of operations. The efficiency with which these plans have been executed and the mutual support which one arm has provided to the other have been gratifying.

I have another matter to bring to the notice of the House about the transport of some U.N. personnel by a U.N. aircraft. A safe conduct was given to a U.N. aircraft C-130 from 8 A.M. to 10 A.M. on December 6th. This could not be utilized by the U.N. At the request of the U.N. Representative in New Delhi, a safe conduct for U.N. aircraft was given for December 7th effective from 7 A.M. to 11 A.M. (IST). There have been no operations over the Dacca area since 10 P.M. last night.

It has been reported from Decca that a U.N. aircraft has been damaged over the Dacca airfield. The Air Headquarters have confirmed that no Indian aircraft have been operating in that area up to time. The UNO have been advised to investigate in Dacca in regard to the damage reported to have been inflicted on their aircraft.

I would like on behalf of the Members to communicate to the Armed Forces the appreciation of the House for the valiant way in which they are defending the country and defeating the enemy.

#### **THE CONSTITUTION (TWENTY-FIFTH AMENDMENT) BILL, 1971— contd.**

SHRI V. B. RAJU: Sir, I was referring to the judiciary deviation which has contributed to the instability of the declared law of the Supreme Court itself. At any time, if it is said that the rule of law has been affected, it is not because of the Parliament but because of the inconsistent approach of the judiciary.

Then I was referring to the word 'compensation'. The Parliament said that it never meant "just equivalent", yet the Supreme Court held it actually in *Vajravelu*

[Shri V. B. Raju.] Mudaliar's case—1965 even after the Fourth Amendment. I tell you, Sir, it again deviated in Shantilal Mangal Dass—1969 case and in 1970 when the Bank Nationalisation case was before the Court, again it went back to the old approach of 1953 when it said that the compensation is not justiciable. Sir, how can the Supreme Court take such an attitude when the intentions of the Parliament are so clear? On this matter, I will just read what Pandit Nehru said on September 10, 1949 before the Constituent Assembly. He said that the clause says that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law should provide it. The Parliament should do it. There is no reference to any judiciary coming into the picture. Much thought has been given to it and much debate has been there. Eminent lawyers have told us that there should be a proper construction of this clause. It was Pandit Nehru who said this in 1949 before the Constituent Assembly when the Constitution was being actually accepted. In spite of this and in spite of the Fourth Amendment the Court was still taking amount of compensation as just equivalent.

Another thing is, the view of the Supreme Court is, Articles 31(2) and 19(1) (f) are not mutually exclusive. Here also there is a history. There was Gopalan's case in 1950, immediately after the Constitution was accepted. The court held that article 31(2) and article 19 are exclusive. That is, the Fundamental Rights enunciated in article 9 have no effect on other articles like 21, 22. The Supreme Court has clearly said so. That approach was held even in Ram Singh's case and Bhanj Munj case. Such an approach is contradicted by the same Court after 20 years, in 1970. How is the Supreme Court acting in these matters? This we had seen about the right to amend the Constitution also, a situation that was upheld, an approach that was upheld for 17 years was

actually negated in the Golaknath case of 1967. When the Supreme Court has been most unstable, when its attitudes have been so, what is the Parliament to do? If the Parliament goes wrong, there is a check because the Members of the Lok Sabha have to go to the polls every five years. If the Supreme Court goes wrong, there is no remedy. When the Supreme Court declares that such and such is the law it is the law of the land. I have actually placed before the House how the deviations have taken place in the part of the Supreme Court. I would make it clear that no form of Government can be ideal. I refer to the political aspect of the amendment. It must be a compromise between liberty and control. The Law Commission has not found fault with the amendment made in Article 13(2). It has accepted it. As far as Article 31 (2) is concerned, there is not much opposition to it and we should welcome it. Compensation means any amount that will be declared by the Parliament as compensation. The right to declare what should be the compensation is the right of the Parliament and is not the right of the Supreme Court. This has to be accepted and there shall be no mincing of the words. How it is to be paid is also a matter to be determined by the Parliament and I am happy that there has been all-round appreciation of that position.

Let us go to another aspect. Mr. Setalvad, the great lawyer, Attorney-General, said that the primacy of the Directive Principles is accepted. When it is accepted as a policy, then if any article in Chapter of Fundamental Rights is coming in the way, it shall be removed. When he objects to the amendment of Article 19(1)(f) in the Bill, he is making a contradictory statement. As already pointed out, the reference to articles 13, 14, 19 and 31 should not have any effect or influence on 31A. It is already there in the Fourth Amendment. Mr. Setalvad accepted that at that time that those Articles must not have any reference. Why is he objecting now I do not

understand because he ought to have objected then. They already find place in Article 31(A). The particular part of the Article is given there. I am unable to understand what exactly Mr. Setalvad has in his mind, Sir, in the scheme of things through the first amendment, the fourth amendment and the 7th amendment we have actually tried to provide social justice in the field of agricultural economy. Sir, these amendments refer to bringing in social justice in the field of non-agricultural economy. Now, Sir, these are two schemes which are identical. It took us 20 years after we adopted the Constitution to think that non-agricultural property should be meddled with. At that time the main instrument of wealth was land and so our concentration was all on land. These amendments help us to meet social needs. As other Members have already said, I would request the Law Minister to examine this scheme also against the background of the land scheme that we have taken up. The land which was occupied and cultivated was allowed certain concession, namely, market value and if that can be considered here, I think the criticism that is coming from the other side can be met. I think there is no unreasonable approach in requesting the Law Minister that the scheme which was actually adopted for land may be extended to non-land properties also.

श्री राम सहाय (मध्य प्रदेश): उपाध्यक्ष महोदय, यह 25वां संविधान संशोधन विधेयक हमारे सामने है। उसके सम्बन्ध में मेरा ऐसा निवेदन है कि हम यह समझ नहीं पा रहे हैं कि हम देश को किस ओर ले जा रहे हैं। मैं ऐसा समझता था अभी तक कि अराजकता, अनैतिकता हमारे देश में कुछ बढ़ रही है वह केवल कुछ हिस्सों तक ही महदूद है लेकिन मैं यह देख रहा हूँ कि अब हमारी सरकारें भी उससे बच नहीं पा रहीं हैं। सरकार ने ऐसे कार्य किये जो शोभनीय नहीं थे और वह सुप्रीम कोर्ट से गलत करार दिये गये। उन से चिढ़ कर और अपनी मर्मान् कानून बनाने के लिए पहले

हमारे सामने 24वां संविधान संशोधन विधेयक आया था। उस में जो हमारे कंस्टीट्यूशन का बड़ा महत्व था और जिस पर हम सब को गर्व था कि हमारी एक्सीक्यूटिव और जूडिशियरी अलग-अलग हैं और जूडिशियरी विल्कुल इंडिपेंडेंट है, लेकिन हमने देखा कि 24वें संविधान संशोधन विधेयक के जरिये से जूडिशियरी की इंडिपेंडेंस की हत्या कर दी गई। अब यह 25वां संविधान संशोधन विधेयक हमारे सामने आया है और इस में हम देख रहे हैं कि समाजवाद के नाम पर कहिये या प्रापर्टी के बटवारे के लिए कहिये या किसीके लिए कहिये हम जनता को उसके उस अधिकार से जिसके जरिये उसे न्यायालय में जाने का अधिकार है, उसे वंचित कर रहे हैं।

एक तो हम गलत कार्य करें फिर गलत कार्य से चिढ़ कर मनमानी करने के लिए इस तरह से संविधान में बहुमत के आधार पर जिस तरह चाहें परिवर्तन करें यह कुछ शोभनीय नहीं। हमने इससे पहले 23 बार संविधान का संशोधन किया है लेकिन कभी भी इस प्रकार के प्रयत्न नहीं किये गये कि जूडिशियरी का जो महत्व था उसको किसी प्रकार से खत्म किया जाय या उस पर शंका की जाय या उनको अधिकारों से वंचित किया जाय या जनता को उसके अधिकारों से वंचित किया जाय। मेरा ऐसा कहना है कि यहां तो यह हालत हो रही है कि हम समाजवाद के नाम पर ऐसा कर रहे हैं जैसी कि वह कहावत हमारे सामने आती है "हुलवाई की दुकान और बाबा जी का फातिहा"। जब अपनी जेब से कोई चीज जाती है तब हमें बड़ी तकलीफ होती है। मैंने कई बार इस हाउस में ही अर्ज किया था कि अगर हमें समाजवाद लाना है तो हमें गांधी जी के रास्ते पर चलना चाहिए और मितव्ययिता लानी चाहिए और हमारे मिनिस्टर साहबान जो इस तरह से अपव्यय करते हैं उसे कम करना चाहिए। हमने देखा कि किस तरह से मंत्री लोग विदेशों में गये हमने देखा कि किस तरह से मेम्बर साहबान विदेशों में गये और किस तरह से धन का अपव्यय किया। क्या समाजवाद ऐसी स्थिति में आ सकता है। उस

[श्री राम सहाय]

और तो ध्यान नहीं देते और, सम्पत्ति की और, ध्यान देते हैं। सम्पत्ति की और ध्यान देना, जिनके पास काफी सम्पत्ति है उनसे सम्पत्ति लेना या उनकी सम्पत्ति को किसी दूसरे को जिनके पास सम्पत्ति नहीं है, वितरित कर देने में कोई ज्यादा बेजा बात नहीं समझता लेकिन इस तरह के कानून बना कर हम मालिकों को न्यायालयों के अधिकारों से भी वंचित कर दें यह किसी तरह से भी मुनासिब नहीं होगा। आप अगर सर्वे कराएँ कि गवर्नमेंट परपजेंस के लिए या सार्वजनिक परपजेंस के लिये या शैक्षणिक संस्थाओं के लिए या पुलों के लिये या नहरों के लिये या सड़कें बनाने के लिये जो जमीने ली गई हैं उसमें कौन सा तबका ज्यादा आया है तो मैं यह समझता हूँ कि आपको पता चलेगा कि उसमें किसान वर्ग ही ज्यादा आया और उसी को ज्यादा मुसीबत उठानी पड़ी है।

श्री राजनारायण : वह भी छोटे किसानों को।

श्री राम सहाय : नो डाउट, वह भी छोटे किसान तो इस तरह से जब हम इन सब चीजों की तरफ नजर डालते हैं तो हमें बड़ा दुख होता है कि हम कहें कि उनको सरकार की ओर से मनमाना पैसा दे दिया जाये यह किस तरह से मुनासिब हो सकता है यह आपको भीर करना है। मेरा ऐसा निवेदन है कि हम देश को इन बातों से कुछ अच्छी तरफ ले जायेंगे ऐसा मुझे प्रतीत नहीं होता।

कांस्टीट्यूट असेम्बली का मेम्बर होने के नाते, जो माडल कांस्टीट्यूशन फार स्टेट एंड यूनिक्स बना था और जो बाद में कांस्टीट्यूशन में मर्ज हुआ उसकी ड्राफ्टिंग कमेटी का सदस्य रहा हूँ उस नाते से मेरा निकट का सम्पर्क कांस्टीट्यूशन के बनाने में रहा है, संविधान के बनाने वाले कभी भी यह खयाल नहीं करते थे कि इस प्रकार से इस संविधान की दुर्दशा को जायेगी और मूलभूत सिद्धांत जो हैं उनको भी खत्म कर दिया जायेगा आप कुछ भी शर्तें लगायें, आप कुछ भी फरें, किसी तरह से भी कानून बनाये लेकिन

इस तरह से महदूद कर देना कि कोई भी आदमी अपनी प्रिवांसेज लेकर के अदालत में ही न जा पाये तो यह किस तरह से मुनासिब हो सकता है। फिर यह शासन तो तानाशाही का ही शासन कहा जा सकेगा कि जिस तरह से मेजरिटी के बल पर हम चाहे कानून को बना लें। लेकिन मैं समझता हूँ कि ये बातें कुछ दिनों तक ही चल सकती हैं, अधिक दिनों तक नहीं चल सकती और इस पर हमें विचार करना पड़ेगा कि किस तरह से इस प्रकार के कार्यों को हम रोक सकते हैं।

पार्लियामेंट का अधिकार संविधान में तस्मीम करने का है उसे मैं मानता हूँ और मेरे सामने ही कई बार संविधान संशोधन हुआ है लेकिन जिस प्रवृत्ति से यहां काम किया जा रहा है वह कुछ मुनासिब नहीं मानूँ होता आप इस बारे में विचार करें कि संशोधन करने का पार्लियामेंट का जो अधिकार था वह तो था ही लेकिन स्टेट्स को भी हम वही अधिकार दे रहे हैं।

अभी एक साहब ने कहा कि स्टेट के लोग भी रिप्रेजेंटेटिव हैं, वे भी चुन कर आते हैं। निस्सन्देह आते हैं और उनको कानून बनाने का अधिकार है। लेकिन उसकी सीमा निर्धारित की गई है, संविधान में, कि किस हद तक वे कानून बना सकते हैं। उस सीमा से बाहर जाने का हमें किसी को अधिकार नहीं होना चाहिये, लेकिन हम सिद्धांतों को भी भुलाते जाते हैं और जो अच्छे सिद्धांत हैं उनको भी समाप्त करते जा रहे हैं। आप इस बारे में विचार करें कि 24वां संविधान संशोधन विधेयक जो आया, जब उसमें आर्टिकल 13(3) के बाद (4) जोड़ा गया जिसने अदालत में जाने के अधिकार से वंचित किया गया, यह शुरुआत हुई अदालतों के अधिकारों को लेने की मैं नहीं समझता कि कोई ऐसी चीज इन वक्त हमारे सामने है कि जिससे हम यह कह सकें कि हम अदालत में जाने के अधिकारों से लोगों को वंचित कर दें। अदालतों में जाने का जो अधिकार लोगों को है वह एक सभ्य गवर्नमेंट के लिए बात ही आवश्यक है क्योंकि जब तक हम किसी

व्यक्ति को न्याय नहीं दिला सकेगा, या वह न्याय नहीं पा सकेगा, तब तक शासन भी चलाना कुछ शोभनीय प्रतीत नहीं होगा। वही शासन शोभनीय है जो रियाया को, जनता को, खुद न्याय दे और अगर वह किसी कारण से नहीं दे सकते तो कम से कम उसे न्यायालय में जाने का मौका तो दे। लेकिन यहां यह बात भी समाप्त हो गई। अभी आप देखें कि यह जो कई फैसलों का जिक्र किया गया गोकलनाथ केस का और उसके पहले के फैसले का जिक्र किया गया है जब पहले सन् 1951 में 31वाँ आर्टिकल को तबदील किया गया था तब भी बहुत सी बातें हमारे सामने थीं और हम उस वक़्त भी इस तरह का प्रतिबंध लगा सकते थे कि लोग अदालतों में न जाएं लेकिन इस बात को उचित और मुनासिब नहीं समझा गया। हमें यह नहीं बताया गया कि इस वक़्त ऐसे कौन से कारण उपस्थित हो गए हैं देश में कि जिनके कारण हम अदालत में जाने के लोगों के अधिकारों को छीन रहे हैं? आप इस बात पर विचार करें कि हमारे संविधान का यही तो एक महत्वपूर्ण अंग था कि एक्जीक्यूटिव्ह, जिसमें प्रेसीडेंट भी शामिल होता है, उनके अलग अधिकार बताए गये हैं और जूडिशियरी के लिए अलग अधिकार हमारे संविधान में निहित किए गए हैं। तो यह जो उद्देश्य संविधान बनाने वालों का था, उसको हम तोड़ मरोड़कर किसी प्रकार से कहें कि उनका उद्देश्य इस प्रकार का था या उस प्रकार का था, मुनासिब नहीं है। असल में स्थिति यह है कि हम उस उद्देश्य से जो हमारे कांस्टीट्यूशन के संविधान बनाने वालों का उद्देश्य था, उनसे हम दूर जा रहे हैं और इसलिए मैं गवर्नमेंट से निवेदन करूंगा कि वह कम से कम इसके बारे में विचार करें।

SHRI D. P. SINGH (Bihar): Mr. Deputy Chairman, Sir, this Twenty-fifth Amendment is a reiteration of the will of the people to remove all impediments to the economic emancipation of our people. Sir, diseases desperate grown by desperate appliances are relieved or not at all. It will be seen, Sir, that this legislation

has unique features and has tremendous potentialities. This consists of mainly three parts. The first part, deals with the substitution of the phraseology to achieve the purposes of the original Constitution-makers and reiterated by the Fourth Amendment.

Sir, some of the Judges seem to\* have an allergy for the word "compensation" and in whatever context, this word is used it seems to signify to them the same meaning. Even if you put "no compensation is to be paid" to them, perhaps it appears that since the word "compensation" is there, there must be market value and market value must be paid.

Sir, a series of decisions have made it impossible to achieve the purpose except by submitting to the will of the judiciary. Now it is indicated, if you want no compensation to be paid why do you not put the word 'amount'? That is what Mr. Justice Subba Rao said and in deference to his wishes it appears that the word has been substituted and the word "amount" has been put in.

SHRI A. D. MANI: I want to ask one question. Suppose one N. P. compensation is paid as "amount", would it not be a fraud on the Constitution?

MR. DEPUTY CHAIRMAN: Why do you interrupt, Mr. Mani?

SHRI D. P. SINGH: Coming to the second part, I will not go into this matter. It is merely intended to avoid a post mortem. Once a property is acquired for public purposes and a demand of reasonable compensation is there . . .

**श्री राजनारायण श्रीमन्,** मैं एक स्पष्टीकरण चाहता हूँ। मैं यह चाहता हूँ कि मान लीजिये माननीय सम्मानित सदस्य की पटना में 2 करोड़ की सम्पत्ति है, उनकी दिल्ली में 50 लाख की सम्पत्ति है और दिल्ली में जो 50 लाख की सम्पत्ति है वह सरकार ले रही है। मैं यह कहना चाहता हूँ कि यह क्या जरूरी है कि उन की दिल्ली की सम्पत्ति के लिए किसी तरह का

[श्री राजनारायण]

मृगव्रज दिया जाये जबकि पटना में उनके पास पहले से ही 2 करोड़ की सम्पत्ति है। फिर यह जो "एमाउन्ड" शब्द है, वह क्यों लिखा जाय, सकी जगह लिख दिया जाय, "एनी ग्रान्ट इफ नैनेरी।"

SHRI D. P. SINGH: The second part is merely intended for avoiding a *post mortem* into reasonableness of acquisition after a property is acquired on the payment of compensation and on the finding of a public purpose. There is no requirement in law, Sir, to go into the reasonableness of it. Now for the first time in the Bank nationalisation the Supreme Court seems to have made a departure from its earlier decisions after 20 years. Here I compliment the Law Minister for the able draftsmanship and the maturity that he has brought to bear on this subject. In the other House some of the hon'ble Members said that they were ashamed of the Law Minister. We want to reiterate that we are proud of him and proud of the manner in which he has put in and signified here the will of the people.

Sir, in the third clause which excludes the jurisdiction of the court, the criticism that has been launched is that it is a novel procedure which amounts to an abdication of the functions of Parliament. My submission in this regard is if you do want to achieve a certain purpose, and if the elected representatives of the people say that this is necessary, then it is improper to call it a fraud<sup>1</sup>,

2 P.M.

Sir I do agree with, the suggestion made that this Amendment of the Constitution puts a total ban or a total prohibition on the courts and they cannot go into the question. Even when the so-called element of fraud comes in, the courts will still not be entitled to go into the matter. That matter is purely dependent on how the representatives of the people exercise their confidence. Suppose they come here in the legislature and say this is a policy matter, this is what we want as a policy, then whatever is the expressed will of the

people, their conscious intention, can never be a fraud. Sir, calling this a fraud is questioning their conduct which is impermissible. The judiciary and the legislature have to respect each other and are supreme in their own spheres. Sir, the courts are the creatures of the Constitution and they derive their power from the Constitution. And if that Constitution itself carves out a certain area where it prohibits judicial scrutiny, then that is the last word and that ought to be respected.

One more reason why there is full justification for prohibiting the judiciary from going into this question is, those who advocate judicial interference have also conceded that the area covered under article 39 (b) and (c) is undefined, unchartered, *i.e.*, what is good for the community whether the policy will lead to economic detriment or it will lead to the common good. Now, where the field is unchartered or unmapped, then what will be for the good of the people is essentially a matter of determination of policy, and on all sides it is admitted that the judiciary must not be brought into matters of policy particularly matters of policy dealing with economic matters. Otherwise, you are unnecessarily involving them and making them an object of criticism. Sir, the judiciary has done excellent work in this country and many a time has protected people from, as they say, the vagaries or the tyrannies of various executives and even of the Parliament itself. Many a time when we, in the exercise of our parliamentary privileges, have tried to punish people, the judiciary has come in and protected them. But economic matters, matters which are unchartered and unmapped wherever it is a question of laying down a policy, must essentially rest with the people who are in charge of shaping the policies.

Sir, in this matter it has to be remembered that the Directive Principles have been given scant regard in these 20 years. Article 37 of the Cons-

titution categorically says that the Directive Principles shall be fundamental in the governance of the country and though we cannot go to the court and have them enforced, as far as the Government is concerned they are bound by them under article 37. To that extent, there is no escape for them.

Today, however, we find that the Directive Principles intended to secure the common good are rendered nugatory and what is put forth is the right of the individual. Everything that is put under that Chapter on Directive Principles is sought to be subordinated to the right of the individual. We rely on the shastras. They say—

एकं तज्येत कुलं स्वायं  
ग्रामं स्वार्थे कुलं तज्येत  
ग्रामं जनपदं स्वार्थे  
अत्रात्मार्थे पृथिनि तज्येत”

The individual interests shall be subordinated, to the interests of the family; the family shall be subordinated to the interests of the village; and the interests of the village shall be subordinated to the interests of the country. And if that is the authority, there is no justification today for saying (that the categorical terms of the Constitution that the will of the individual will prevail and the will of the community shall be subordinated, makes any radical departure from our accepted jurisprudence and Political thought.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 10 A.M. tomorrow.

The House then adjourned at seven minutes past two of the clock till ten of the clock on Wednesday, the 8th December, 1971.